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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6752 of October 28, 1994

The Year of Gospel Music, 1994

By the President of the United States of America

A Proclamation

Born in the soul of America's churches, Gospel music is an integral part of liturgy and spirituality in parishes from Atlanta to Dallas, Detroit to Baton Rouge, the heart of New York City to the smallest hamlets of our country. It is a music of the people, one that has provided hope and inspiration for generations of Americans.

Gospel music has come to influence singers and composers of all popular forms, including jazz, the blues, and soul music. The rhythm and expressiveness—the very feeling—has become an important part of our culture and a vital part of our heritage.

Our Nation owes a great debt of gratitude to those who preserve and bring to life Gospel music in our churches, in recordings, in concerts, and through the media. It is in our national interest to promote and support Gospel music so that generations to come may enjoy and appreciate it. In so doing, we will gain a greater understanding of the breadth and vitality of the human spirit and its indomitable faith as it is expressed through the beauty of song.

The Congress, by Senate Joint Resolution 157, has designated the year of 1994 as "The Year of Gospel Music" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the year of 1994 as The Year of Gospel Music. I urge all Americans to celebrate Gospel music with appropriate ceremonies and activities and to reflect on the role that this music has in reinvigorating and renewing our souls and our communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-27182
Filed 10-28-94; 1:40 pm]
Billing code 3195-01-P

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Presidential Documents

Memorandum of October 27, 1994

Delegation of Authority

Memorandum for the Secretary of Defense

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Defense, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 27, 1994.

[FR Doc. 94-27224
Filed 10-28-94; 4:26 pm]
Billing code 5000-04-P

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Rules and Regulations

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Deregulation of "Organizing a Federal Credit Union", "Standard Form of Bylaws", "Amendment of Bylaws and Charters"

CFR Correction

In Title 12 of the Code of Federal Regulations, parts 600 to end, revised as of January 1, 1994, on pages 273 and 274, §§ 701.3 and 701.4 are removed.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-27-AD; Amendment 39-8991; AD 94-06-02]

Airworthiness Directives; Luscombe Model 8 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 94-16-02 concerning Luscombe Model 8 series airplanes, which was published in the **Federal Register** on August 11, 1994 (59 FR 41237). That publication inadvertently referenced the existing vertical stabilizer forward attach fittings as aluminum. Two of the three possible existing fittings are aluminum, but one is made of steel. This action changes the AD by deleting reference to aluminum.

EFFECTIVE DATE: September 19, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; telephone (310) 988-5229; facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION: On August 11,1994, the Federal Aviation Administration (FAA) issued AD 94-16-02, Amendment 39-8991 (59 FR 41237), which applies to Luscombe Model 8 series airplanes that have round-tipped vertical stabilizer installations. This AD supersedes AD 79-25-05, Amendment 39-3630, with a new AD that requires replacing the existing vertical stabilizer forward attach fitting, part number (P/N) 28415, P/N 28444, or P/N 28453, with either Luscombe P/N 28455 manufactured by the Don Luscombe Aviation History Foundation (DLAHF); a welded steel fitting manufactured by the Univair Aircraft Corporation, P/N U28444; or an FAA-approved equivalent part.

The AD inadvertently references the existing part numbers as aluminum. Two of the three possible existing fittings are aluminum, but one is made of steel. This action changes the AD by deleting reference to aluminum.

Need for Correction

As published, the final regulations have incorrectly referenced the existing part number vertical stabilizer fittings as aluminum fittings; when in actuality two of the three possible fittings are aluminum and the other is steel. The way the final regulations are currently written could cause confusion when locating the existing vertical stabilizer fitting to accomplish the required replacement.

Correction of Publication

Accordingly, the publication of August 11, 1994 (59 FR 41237) of Amendment 39-8991; AD 94-16-02, which was the subject of FR Doc. 94-18841, is corrected as follows:

On page 41237, in the first column, in line 4 of the "SUMMARY:" section, delete the word "aluminum".

On page 41237, in the second column, in line 10 of the "SUPPLEMENTARY INFORMATION" section, delete the word "aluminum".

On page 41237, in the third column, in the third line from the top of the page, delete the word "aluminum".

§ 39.13 [Corrected]

On page 41238, in the second column, in § 39.13, in line 1 of paragraph (a) of AD 94-16-02, delete the word "aluminum".

Issued in Kansas City, Missouri, on October 26, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-26977 Filed 10-31-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related Products; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The supplemental NADA provides for use of ceftiofur sterile powder as an aqueous injectable for dogs for treatment of canine urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis*.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles W. Francis, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1617.

SUPPLEMENTARY INFORMATION: The Upjohn Co. Kalamazoo, MI 49001, filed supplemental NADA 140-338, which provides for use of Naxcel® Sterile Powder (ceftiofur sodium) reconstituted as a 50 milligrams per milliliter (mg/mL) injectable solution for treating dogs for urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis*. The product is currently approved for use in cattle, swine, horses, and day-old chicks. The supplemental NADA is approved as of October 4, 1994, and the regulations in 21 CFR 522.313 are amended by adding new paragraph (d)(5) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21

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CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning October 4, 1994, because the supplemental application contains reports of new clinical or field investigations, other than bioequivalence or residue studies, essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.313 is amended by adding new paragraph (d)(5) to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

* * * * *

(d) * * *

(5) *Dogs—(i) Amount.* 1.0 milligrams per pound (2.2 milligrams per kilogram) of body weight.

(ii) *Indications for use.* Treatment of canine urinary tract infections associated with *Escherichia coli* and *Proteus mirabilis.*

(iii) *Limitations.* For subcutaneous use only. Treatment should be repeated at 24-hour intervals, continued for 48 hours after clinical signs have disappeared, for 5 to 14 days. Do not use in animals found to be hypersensitive to the drug. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 25, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–27069 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Triple "F", Inc., to A. L. Laboratories, Inc.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Triple "F", Inc., 10104 Douglas Ave., Des Moines, IA 50322, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 133–334 (Virginiamycin) to A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. Accordingly, the agency is amending the regulations in 21 CFR 558.635(b)(2) to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS.

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.635 [Amended]

2. Section 558.635 *Virginiamycin* is amended in paragraph (b)(2) by removing "011490" and adding in its place "046573".

Dated: October 24, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–27068 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–94–051]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the regulations governing the operation of the Hillsboro Boulevard (SR 810) drawbridge, mile 1050.0 at Deerfield Beach, Florida, by permitting the draw to remain closed for a longer period of time during the winter season. This modification is being made to relieve highway congestion created by bridge openings while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager, Bridge Section at (305) 536–5117.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT. J.M. Losego, Project Counsel.

Regulatory History

On June 7, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (59 FR 29406). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal, except that from October 1 through May 31, from 7 a.m. to 6 p.m., the draw opens only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Deerfield Beach requested that the Coast Guard change the operating regulations to provide for hour and half-hour drawbridge openings. The bridge owner (Florida Department of Transportation) recommended a change to a 20-minute opening schedule during the season to reduce traffic delays.

A Coast Guard analysis of highway traffic and bridge opening data provided by the bridge owner and four on-site investigations of the waterway holding conditions and local traffic patterns which were concluded on May 5, 1994, established that the highway traffic levels for this four-laned roadway and the frequency of bridge openings did not justify the proposed hour/half-hour opening schedule. However, in order to reduce drawbridge openings and periodic traffic congestion during the tourist season, a 20-minute opening schedule appears to be warranted.

Discussion of Comments and Changes

We received no comments in response to our public notice. Our investigation convinces us that vessels can find a safe a holding position in the vicinity of the bridge so the 20 minute schedule will not unreasonably interfere with safe navigation. The Final rule is unchanged from the Notice of Proposed Rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Samll Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this rule, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (bb) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway, FL.

* * * * *

(bb) *Hillsboro Boulevard drawbridge (SR 810), mile 1050.0, at Deerfield Beach.* The draw shall open on signal; except that from October 1 to May 31, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: October 13, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–27044 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 168

[CGD 91–202]

RIN: 2115–AE10

Escort Vessels for Certain Tankers; Partial Suspension of Effectiveness

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation with request for comments.

SUMMARY: On August 19, 1994 the Coast Guard published a Final Rule (59 FR 42962) requiring escorting of certain tankers in Prince William Sound, Alaska and Puget Sound, Washington. The regulations are scheduled to go into effect on November 17, 1994. However, concerns have been expressed to the Coast Guard that one of the requirements (the crash-stop criteria) may not be achievable without putting the escort vessels, and their crews, at serious risk. Because it is not possible to resolve this issue prior to the November 17th effective date, the Coast Guard is suspending the effective date of that particular criteria until there has been an opportunity for more-detailed studies to be conducted and publicly reviewed.

EFFECTIVE DATE: 33 CFR 168.50(b)(2) scheduled to become effective on November 17, 1994, in the final rule published at 59 FR 42962, August 19, 1994, is suspended as of November 17, 1994.

Comments: Comments must be received on or before January 30, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Jordan, Project Manager, (202) 267–6751 or fax (202) 267–4624.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, Oil Pollution Act (OPA 90) Staff, and Pam Pelcovits, Project Counsel, Oil Pollution Act (OPA 90) Staff.

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Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled "Escort Vessels for Certain Tankers" (59 FR 42962, August 19, 1994).

Discussion of Federal Escort Regulations

This discussion is intended to complement, and further clarify, the escort regulations published in the final rule on August 19, 1994 (59 FR 42962).

The final rule created 33 CFR part 168 which, in addition to other provisions, included operational and performance requirements for tankers and escort vessels.

The operational requirement of § 168.50(a)(3) requires that the tanker must not exceed the speed beyond which the escort vessels can reasonably be expected to safely bring the tanker under control within the navigational limits of the waterway, taking into consideration ambient sea and weather conditions, surrounding vessel traffic, etc. It requires the tanker to be operated within the performance envelope of its escorts, relative to the limits of the waterway and in consideration of the transit conditions (wind and sea). Thus, this requirement is both waterway-specific and transit condition-specific. In general, the fouler the weather, the higher the required performance envelope for the escort vessels.

When developing the escort regulations, the Coast Guard expected that this operational requirement would govern most escort vessel selections. However, under extremely benign transit conditions a relatively low-performance escort could be selected. Although such an escort might meet the operational requirement, the Coast Guard was concerned that there would be no margin in the event that transit conditions deteriorated unexpectedly. (In such circumstances, it would be incumbent upon the tanker master to order more escorts; however, there might still be a significant time delay before the escorts could actually rendevous with the tanker. In the meantime, the tanker would be left with an inadequate escort).

Therefore, the Coast Guard decided that additional criteria were necessary to set a minimum performance level for the escort vessels, regardless of how benign the transit conditions might be. Accordingly, § 168.50(b) established five minimum performance criteria for the escort vessels:

—the ability to tow the tanker at a speed of 4 knots in calm conditions (§ 168.50(b)(1));
—the ability to hold the tanker steady against a 45-knot headwind (also in § 168.50(b)(1));
—the ability to stop the tanker within the same distance that it could crash-stop itself from a speed of 6 knots using its own propulsion system (§ 168.50(b)(2));
—the ability to hold the tanker on a steady course against a 35-degree locked rudder (§ 168.50(b)(3)); and
—the ability to turn the tanker 90 degrees, assuming a free-swinging rudder and a speed of 6 knots, within the same distance (advance and transfer) that it could turn itself with a hard-over rudder (§ 168.50(b)(4)).

These criteria are not waterway-specific. The Coast Guard determined that it was appropriate that the escort vessels should have the capability of bringing the tanker under control within some specified parameters, regardless of how much sea room might be available. However, as previously mentioned these criteria are only intended to set a minimum performance requirement. Except in relatively benign transit conditions, it is not expected nor necessary that these criteria be more stringent than the operational requirement of § 168.50(a)(3).

These criteria are based upon the conceptual approach that the escort vessels should have abilities equivalent to the tanker's ability to control itself at a speed of 6 knots. Similar minimum requirements could have been specified in other ways, such as in units of the tanker's shiplength or some percentage of its deadweight tonnage. However, each of these alternative methods had shortcomings.

The performance criteria are not intended to dictate a particular response tactic. The Coast Guard recognizes that at certain points in the waterway a steering response may be the appropriate tactic whereas at other points a towing response might be the appropriate tactic. The performance criteria are only intended to ensure that both tactics can be performed at a minimum level.

Reason for Suspension of Effectiveness

Immediately after the final rule was published, several tanker operators contracted the Glosten Associates (Glosten) of Seattle, WA to perform calculations comparing the maneuvering and control characteristics of various tankers and escort vessels (both conventional and tractor tugs). Glosten was the primary contractor conducting the Disabled Tanker Towing Study for Prince William Sound, and is currently conducting a similar study for San Francisco Bay. Glosten had also done a similar study for Puget Sound.

The preliminary Glosten findings indicated that, in order to meet the crash-stop criteria, three to four conventional tugs would typically be required to create a retarding force equal to a tanker's reversed propulsion power. This is particularly the case for diesel-powered tankers, which have superior reversing power compared to steam-powered tankers. However, industry's concern was that it is not safe to attach more than two tugs to a tanker in a retarding configuration. Therefore, the crash-stop criteria was not achievable without endangering the escort vessels and crews.

Representatives of the tanker operators met with the Coast Guard on September 23, 1994, to raise this issue, and requested a second, more formal opportunity to present their calculations. A report on that first meeting has been placed in the docket (CGD 91–202, file no. 108).

The second meeting took place on October 7, 1994, at Coast Guard Headquarters. Although there was insufficient time to publish a notice of public hearing, the Coast Guard was able to contact several other interest groups who attended. The second meeting was recorded and transcribed; copies of the tape and transcript have been placed in the docket (CGD 91–202, files no. 110 and 111, respectively).

At the second meeting, the Glosten findings were presented and discussed. However, detailed calculations, in a form suitable for submittal, were still being developed and were not yet ready by that date.

On the basis of the preliminary Glosten findings, the Coast Guard agrees that the crash-stop criteria should be revisited. However, recognizing that there will not be adequate opportunity for resolution of this issue before the November 17, 1994, effective date, the Coast Guard has decided to suspend the crash-stop criteria from going into effect until both the Coast Guard and the public have an opportunity to review the technical submittal. All other provisions of the final rule, however, will still go into effect on November 17, 1994.

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments on the crash-stop criteria or other aspects of the final rule. The Coast Guard particularly seeks comments on the minimum performance criteria, either those as published or alternatives that could achieve the same purpose.

Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–202) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

At this time, the final Glosten technical submittal has not yet been received by the Coast Guard. Persons wishing to receive a copy of the submittal in order to comment on it should submit their mailing address to the project manager, Mr. Thomas Jordan, who will distribute copies of this submittal following its receipt by the Coast Guard (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

The Coast Guard will consider all comments received during the comment period. It may change this action in view of the comments.

Dated: October 26, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–27047 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 37–1–6592a; FRL–5086–9]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Arizona State Implementation Plan (SIP). The revised rule controls emissions of volatile organic compounds (VOCs) from the transfer of gasoline into motor vehicle fuel tanks. The revision applies to the Phoenix nonattainment area and this approval action will incorporate the regulation into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on January 3, 1995, unless adverse or critical comments are received by December 1, 1994. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the regulation and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted regulation are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Arizona Department of Weights and Measures, 1951 West North Lane, Phoenix, AZ 85021.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

The Phoenix area is designated nonattainment for ozone and classified as moderate. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the amended Act, Arizona was required to submit stage II vapor recovery rules for this area by November 15, 1992. An 18-month sanctions clock under section 179(a) of the CAA began on January 15, 1993 when EPA made a finding that the State failed to make a complete submittal. In addition, section 110(c) of the Act provides that EPA promulgate a FIP no later than two years after a finding under section 179(a). On May 27, 1994, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA stage II vapor recovery rules that were adopted by the State on August 27, 1993. The mandatory sanctions clock was stopped on June 30, 1994 when EPA determined that the State had made a complete submittal. By this document, EPA is taking direct final action to approve this submittal. This final action will incorporate this regulation into the Federally approved SIP and stop the FIP clock. The EPA has reviewed the State submittal against the statutory requirements and for consistency with EPA guidance. A summary of EPA's analysis is provided below. In addition, a more detailed analysis of the State submittal is contained in a technical support document (TSD) which is available from the Region IX Office, listed above.

Applicability

Under section 182(b)(3), States were required by November 15, 1992 to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The amended Act specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM. The State has adopted a general applicability requirement of 10,000 gallons of gasoline per month and has provided an applicability requirement of 50,000 gallons of gasoline per month for ISBM's.

As more fully discussed in EPA's Enforcement Guidance and the General

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

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Preamble (57 FR 13514), the State has provided that the gallons of gasoline dispensed per month will be calculated as stringently as the average volume dispensed per month for the 2-year period prior to State adoption of the regulation. In addition, the State has specified that the stage II requirement apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities.

Implementation of Stage II

The Act specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) 2 years for all other facilities. Although the submitted regulation was not adopted until August 27, 1993, the State regulations meet the express timetables in the Act since emergency rules were in effect prior to this submittal and the State compliance dates were set with respect to the November 15, 1992 statutory deadline for adoption of stage II regulations.

Additional Program Requirements

Consistent with EPA's guidance, the State requires that stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using only systems approved by the California Air Resources Board (CARB). The State requires sources to verify proper installation and function of stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every year or upon major modification of a facility (i.e., 75 percent or more equipment change).

With respect to recordkeeping, the State has adopted those items recommended in EPA's guidance and specifies that sources subject to Stage II must make these documents available upon request: (1) A license or permit to install and operate a stage II system, (2) results of verification tests, (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements, (4) training certification files, and (5) inspection and compliance records issued by the State. In addition, the State requires facilities that are not subject to stage II to maintain files containing the gasoline throughput of the facility. The State has also established an inspection function consistent with that described in EPA's guidance. The State plans to conduct inspections of facilities including a visual inspection of the stage II equipment and of the required records and a functional test of the stage II equipment.

EPA Action

Because EPA believes that the State has adopted a stage II regulation in accordance with section 182(b)(3) of the Act, as interpreted in EPA's guidance, Arizona Administrative Code title 4, Chapter 31, Article 9 (R4–31–901 through R4–31–910) is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 182(b)(3) and 110(a) and part D. Therefore, if this direct final action is not withdrawn, on January 3, 1995, any FIP clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995, unless, by December 1, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the Arizona was approved by the Director of the Federal Register on July 1, 1982.

Date: September 23, 1994.

Felicia Marcus,

Regional Administrator.

Subpart D of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows;

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.120 is amended by adding paragraphs (c)(69)(i)(A) to read as follows:

§ 52.120 Identification of Plan.

* * * * *

(c) * * *

(69) The following amendment to the plan was submitted by the Governor's designee on May 27, 1994.

(i) Incorporation by reference.

(A) Maricopa County Bureau of Air Pollution Control stage II vapor recovery program, adopted on August 27, 1993.

* * * * *

[FR Doc. 94–27075 Filed 10–31–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[TN–125–1–6395a; FRL–5085–6]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Knox County Operating Permit Regulations for Synthetic Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) to incorporate rules for the permitting of minor sources. On November 12, 1993, the State of Tennessee Division of Air Pollution Control (TDAPC) submitted a SIP revision on behalf of Knox County, fulfilling the requirements necessary to make Knox County's minor source operating permit program federally enforceable. The submittal conforms with the requirements necessary for a state's minor operating permit program to become federally enforceable.

DATES: This final rule is effective January 3, 1995 unless adverse or critical comments are received by December 1, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Yolanda Adams at the EPA Regional office listed below. Copies of the material submitted by Knox County, Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.
Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.
Knox County Department of Air Pollution Control, City/County Building, Suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams at the above EPA Regional office. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the State of Tennessee through the TDAPC submitted a SIP revision on behalf of Knox County designed to make Knox County's minor source operating permit program federally enforceable pursuant to EPA requirements as specified in a **Federal Register** document entitled "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans" (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA to enforce terms and conditions of state-issued minor source operating permits. In addition, operating permits that are issued under the state's minor source operating permit program that is approved into their SIP, may provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA) for air toxics which are also Volatile Organic Compounds (VOCs) or Particulate Matter with a diameter of less than 10 micrometers (PM–10). Any existing source may limit its potential to emit, for purposes of avoiding title V requirements, up to one year after the effective date of the Knox County title V program. If, by that date, the source has not obtained a federally enforceable permit limiting its potential to emit under the applicability thresholds of title V, the source will need to submit a title V permit application. Otherwise, if it is later discovered that the source does not qualify for a minor source operating permit, the source may be subject to enforcement actions for failure to submit a title V permit application.

However, for limiting the potential to emit of air toxics, which are not also VOCs or PM–10, it is necessary for the State to make a submittal under 40 CFR part 63, subpart E, Approval of State Programs and Delegation of Federal Authorities. For other mechanisms that may be used to limit an air pollution source's potential to emit see the guidance document entitled "Limitation of Potential to Emit with Respect to title V Applicability Thresholds" dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division, to William A. Spratlin, Director of EPA Region VII's Air and Toxics Division and the guidance document entitled "Approaches to Creating Federally-Enforceable Emissions Limits" dated November 3, 1993, from John S. Seitz, Director of EPA's Office of Air Quality and Planning Standards (OAQPS), to the Air Division Directors for Regions 1 through 10.

In the aforementioned June 28, 1989, **Federal Register** notice, EPA listed five criteria necessary to make a state's minor source operating permit program federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for federal enforceability by a verbatim incorporation of the criteria language listed in such notice.

Knox County agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permit.

With the addition of these provisions, Knox County's minor source operating permit program satisfies all the requirements listed in the June 28, 1989 **Federal Register** document. Therefore, EPA is approving this revision to the Knox County portion of Tennessee's SIP making the County's minor source operating permit program federally enforceable.

Final Action

In this action, EPA is approving the Knox County minor source operating permit program. The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995 unless, by December 1, 1994, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

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based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: October 6, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(119) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(119) The minor source operating permit program for Knox County, submitted by the Tennessee Division of Air Pollution Control on November 12, 1993 as part of the Tennessee SIP.

(i) Incorporation by reference.

(A) Revisions to Regulations 17.4.E, 18.1.B, 19.1.B, 25.3.I., and 47.3.C. of the Knox County portion of the Tennessee SIP, as adopted by the Knox County Air Pollution Control Board on October 13, 1993.

(ii) Other material. None.

[FR Doc. 94–27073 Filed 10–31–94; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

[FPMR Amendment A–52]

RIN 3090–AE93

Fire Protection (Firesafety) Engineering

AGENCY: Public Buildings Service (PBS), GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes a further definition of the term *equivalent level of safety*. The Federal Fire Safety Act of 1992 amended the Fire Prevention and Control Act of 1974 to require sprinklers or an *equivalent level of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units. This rule identifies certain performance criteria which an alternative approach must satisfy in order to be judged equivalent. The criteria have been selected to provide the level of life safety prescribed in the Act.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Director, Safety and Environmental Management Division (PMS), General Services Administration, 18th & F Streets NW., Washington, DC 20405, (202) 501–1464.

SUPPLEMENTARY INFORMATION:

1. General Requirements of the Act

The Fire Administration Authorization Act of 1992 (Public Law 102–522) was signed into law by the President on October 26, 1992. Section 106, Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) to require sprinklers or an *equivalent level of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units. The Act's applicability and requirements are very complex.

They are summarized as follows:

In Federal employee office buildings with more than 25 Federal employees that are newly constructed, purchased, renovated, or leased (with the Government occupying 35,000 sq. ft. or more and some portion on or above the sixth floor):

- Buildings with 6 or more stories must have sprinklers (or an *equivalent level of safety*) throughout.
- All other buildings must have sprinklers (or an *equivalent level of safety*) in hazardous areas, as defined in National Fire Protection Association Standard 101, Life Safety Code®.

In Federal employee housing:

- New or rebuilt multifamily housing must have sprinklers (or an *equivalent level of safety*) throughout, and hard wired smoke detectors.
- All other housing requires hard wired smoke detectors on tenant change or no later than October 26, 1995

In federally assisted housing:

- New multifamily housing, 4 or more stories above ground level, must have sprinklers and hard wired smoke detectors.
- New multifamily housing in New York City, 4 or more stories above ground level, must have sprinklers (or an *equivalent level of safety*) and hard wired smoke detectors.
- Rebuilt multifamily property, 4 or more stories above ground level, must comply with the chapter on existing apartment buildings in National Fire Protection Association Standard 101, *Life Safety Code®*.
- All other housing must have hard wired or battery operated smoke detectors.

The requirements of the Act apply to all Federal agencies and all federally owned and leased buildings in the United States, except those under the control of the Resolution Trust Corporation.

In addition, there are a number of definitions associated with the Act. The major definitions are summarized below:

- *Federal Employee Office Building* means any building, owned or leased by the Federal Government, that can be expected to house at least 25 Federal employees in the course of their employment.
- *Renovated* means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the land on which the Federal employee office building is located.
- *Multifamily property* means a residential building consisting of more than 2 residential units under one roof housing Federal employees or their dependents or a residential building consisting of more than 4 residential units under one roof housing other persons.
- *Rebuilding* means the repairing or reconstructing of portions of a multifamily property where the cost of the alterations is 70 percent or more of the replacement cost of the completed multifamily property, not including the land on which the Federal employee office building is located.
- *Housing assistance* means assistance provided by the Federal Government for housing, in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; but does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act or the homeownership assistance program under section 235 of such Act; the National Homeownership Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act; or the Resolution Trust Corporation under the affordable housing program under section 21A(c) of the Federal Home Loan Bank Act.
- *Hazardous areas* means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, *Life Safety Code®*, or any successor standard.
- *Smoke detectors* means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard.
- *Automatic sprinkler system* means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire:

(a) will protect human lives by discharging water over the fire area, in accordance with National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

(b) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard.

A critical issue regarding implementation of the Act involves the definition and determination of an *equivalent level of safety*. The Act defines the term as an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems.

The General Services Administration is required to issue regulations to further define the term *equivalent level of safety*. The Act specifies that, to the extent practicable, these regulations be based upon nationally recognized codes. In addition to describing the physical characteristics of an automatic sprinkler system, the Act sets a performance objective for the system. According to the definition, automatic sprinkler systems installed in compliance with the Act must *protect human lives*. This regulation, further defining the term *equivalent level of safety*, uses this performance objective to establish a quantifiable measure of the level of safety provided by sprinklers. In addition, a framework is presented for evaluating alternatives against the performance objective.

The Act did not address property protection or fire fighting. Thorough prefire planning, required by the Act, will allow firefighters to determine whether or not to enter a burning building solely to fight a fire. Therefore, the regulation does not directly address these issues either.

II. Objectives of the Legislation

Despite the widespread availability of affordable means of preventing fire losses, the United States continues to have one of the highest per capita fire death rates in the industrialized world. Fire is the fourth largest accidental killer in the United States, claiming at least 4,500 lives annually and injuring an additional 30,000 individuals. The fire vulnerability of office buildings and residential housing units can be reduced through strong fire safety measures. It is essential for the protection of life and property that effective technology be employed in detecting, containing and suppressing fires. When properly installed and maintained, automatic sprinklers and smoke detectors provide effective safeguards against loss of life and property from fire. According to the National Fire Protection Association (NFPA), there is no record of a multiple death fire (involving the loss of three or more people) in a completely sprinklered building where the system was properly operating, except in an explosion or flash fire or where industrial fire brigade members or employees were killed during fire suppression operations. The Federal Government, in addition to increasing the protection provided its own employees and individuals living in federally subsidized housing, can set an example in the area of fire safety and, by its own actions, encourage the private sector to use technology that has been proven to save lives.

The Federal Fire Safety Act of 1992 was created to serve as a model for local jurisdictions where the Congress believed not enough was being done to promote and provide for the fire safety of citizens. The evidence for the congressional concern is clear. According to National Fire Protection Association data, there are about 30,000 fire departments in the country, yet, according to the National Fire Sprinkler Association, only 7 states and 34 local

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jurisdictions have sprinkler requirements that affect existing buildings. These ordinances have exclusions, applying to only specific occupancies. Most of them exclude residential occupancies, the occupancy where most fire deaths occur. The Federal Government chose to lead by example without imposing requirements on the states and local communities.

Congress recognized the need to have legislation that proactively addressed protection of life from fire. Throughout hearings on the Act, many groups testified that sprinklers were not the only system component necessary for firesafety in buildings. In addition, Congress did not want the legislation to inhibit the development of new technology. Therefore, the law does not simply mandate the installation of sprinklers. The law specifies certain life safety objectives to be achieved by the sprinkler systems. An equivalency clause was provided to allow for the use of alternatives which satisfied the identified life safety objectives.

III. Background

Use of automatic sprinklers may be the best, currently available approach to providing life safety. Sprinklers respond automatically to fire, limit fire size, and are also able to sound an alarm. In addition to enhancing life safety, sprinklers provide property protection and limit potential business interruption. Sprinklers can significantly reduce the hazards firefighters must face in combating a fire. The cost effectiveness of sprinklers for new construction cannot be overstated. Sprinkler protection can be added with minimal impact on overall project cost while significantly improving the level of firesafety. In recognition of the many benefits and relatively low cost of sprinkler protection, the General Services Administration has instituted a policy of providing sprinklers in its new construction projects.

The issue of providing sprinkler protection in existing buildings is not as clear cut. Typically, the cost of providing protection is higher in existing buildings. It may not be possible to provide complete sprinkler protection due to existing physical conditions or competing requirements (e.g., historic preservation laws). The decision to provide sprinkler protection must be part of an integrated fire protection strategy. Existing building systems and applicable requirements must be considered in developing the strategy. Most model codes provide an equivalency concept which allows for use of alternative approaches or systems. This concept is provided in recognition of the fact that compliance with one prescribed solution may not be the best alternative in every case.

These alternative systems, methods, or devices can achieve a reasonable level of protection and can then meet the intent of the specific code requirement. Alternative methods which might be considered include using fire-rated enclosing barriers, low flame spread interior finish materials, low heat release rate furnishings, and low ignition tendency materials. In evaluating alternatives, consideration needs to be given to the reliability of the proposed approach over the life of a structure. In addition, enforcement and maintenance practices will vary significantly depending on the use (office, residence, store, factory, etc.) of the facility.

The Federal Fire Safety Act of 1992 requires that the General Services Administration, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, issue regulations further defining the term *equivalent level of safety*. In developing the regulations, GSA held meetings with a working group composed of representatives from the agencies named in the legislation and other affected Federal agencies. The Department of Veterans Affairs, the Social Security Administration, the Department of Housing and Urban Development, and the U.S. Coast Guard were invited to participate because of the Act's potential impact on their office space or housing.

The group met several times during 1993 and discussed several issues key to the development of a definition of an *equivalent level of safety*. Ultimately, the group agreed that sprinklers provide a unique combination of fire detection and suppression, and that no current system could be considered equivalent. However, other systems in various combinations could provide a level of safety, especially life safety, equivalent to that provided by complete sprinkler protection. The group determined that reaction time is the significant difference between the two occupancy groups (office and residential) addressed by the Act. Reaction time is especially important in analyzing equivalency in housing. An occupant's ability to react to a fire and evacuate from the area exposed to fire effects can be influenced by a number of factors including physical ability, mental status, age, available warning systems, and training.

The question of whether or not the regulation should have a height threshold, specifically should it not apply to high rise buildings, was the most difficult for the group to deal with and a consensus was never reached. The group was divided between two opposing points of view. One portion of the group believed that the firesafety problems inherent in high rise buildings could only be addressed through complete sprinkler protection, and the Act was intended to require sprinklers in high rise buildings. Therefore, the regulation should place a maximum height limit on the applicability of the *equivalent level of safety* provision. The opposing view held that no height threshold was necessary. In high rise buildings, fire fighting and egress will be more difficult. However, appropriate combinations of automatic detection, fire and smoke containment, egress facilities, and suppression could produce effective fire protection strategies in these buildings. An analysis, required as part of the *equivalent level of safety* regulation, could adequately address the firesafety problems associated with high rise buildings and lead to development of appropriate solutions.

Model codes support the use of equivalency concepts especially in existing buildings. The congressional intent for an equivalency option was reinforced by the passage of an amendment to the original legislation providing an equivalency option in federally assisted housing in New York City (Public Law 103–195). The legislation gives the General Services Administration the responsibility to develop the regulation defining an *equivalent level of safety*. GSA believes that the law is clear requiring high rise (6 or more stories) Federal employee office buildings to have sprinklers, or an *equivalent level of safety*. The regulation should not have specific thresholds.

IV. Summary of Proposed Rule

In order to evaluate whether or not a life safety equivalency has been achieved, the building systems must be defined, reasonable worst case scenarios developed, maximum probable loss estimated, time required for the space to become hazardous calculated, and time required for egress determined. A number of factors are critical in developing a life safety equivalency analysis. Rate of fire growth is controlled by the type and location of combustible items, the layout of the space, the materials used in construction of the rooms, openings and ventilation, and suppression capability. Detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress are important considerations in evaluating egress time.

The proposed regulation established a general measure of building firesafety performance. Building environmental conditions were specified to ensure the life safety of building occupants outside the room of fire origin. The specified environmental conditions would be applicable whether or not the evaluation is conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room could be a room of origin in the entire building scenario.

Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin. In order to provide an *equivalent level of safety*, alternative methods must allow sufficient time for occupants to reach areas of safety by limiting the spread of the fire and its effects. A typical room fire will not pose a hazard to the rest of the building until flashover. A functioning sprinkler system should activate prior to the onset of flashover. Smoldering fires can have significant life safety impact beyond the room of origin. However, a typical sprinkler system would not activate in response to a smoldering fire. Therefore, the sprinkler system would have little or no impact on life safety in the smoldering fire.

Flashover is a phenomenon that occurs in many building fires. In the initial (preflashover) stages, fire development is controlled by the amount, type, and location of combustible materials in the area and the speed with which it spreads. As the fire develops, however, the hot smoke and fire gases accumulate at the ceiling, heating all of the unignited materials in the room. The hot ceiling gases radiate energy onto the burning fuel causing it to burn faster. As the fire grows, the available air cannot support the combustion of all of the fuel that is produced. The unburned fuel collects in the smoke layer; the smoke normally blackens at this time. When this combination of events reaches a temperature of about 550 to 600 °C (1000 to 1100 °F), the radiant heat from the hot gas layer will quickly ignite all of the exposed combustible material. Frequently any combustible gases accumulated in the smoke layer will find air and burn out at this time. When this rapid ignition of combustible material or gases occurs, the fire often violently erupts from the room of origin spreading flame, hot fuel laden gases, and toxic smoke into adjacent spaces. This transition is called flashover, and a fire that has undergone this transition is called a flashed over fire.

The proposed regulation established three endpoint criteria designed to achieve the level of life safety prescribed in the Act. To be equivalent, an office building or housing unit must be designed, constructed, and maintained to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), or prevent flames from leaving the room of origin. For the purposes of this regulation, flashover is intended to describe a fire in which the upper layer temperature in a room reaches approximately 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m² (1.8 Btu/ft²/sec). As with the prevent flashover criteria, the limitation on maximum heat release rate and the requirement to keep flames within the room of fire origin are designed to limit the size of the fire.

A 1 megawatt fire is approximately equivalent to a single burning easy chair or two burning 1.8 m (6 ft) tall Christmas trees. In a 3.6 m (12 ft) by 4.6 m (15 ft) gypsum board lined room with a 1.4 m (4 ft) wide open doorway, a fire growing proportionally with time will produce an upper gas temperature of 425 to 480 °C (800 to 900 °F) in 300 seconds. The fire heat release rate at 300 seconds would be approximately 1 megawatt assuming a medium growth rate t-squared fire as referenced in Appendix B of the National Fire Protection Association Standard 72, National Fire Alarm Code. This fire is about the largest that can occur in such a room without a substantial likelihood of flames discharging out the room doorway.

The person conducting a life safety equivalency analysis must be familiar with fire dynamics, building construction, hazard assessment, and human behavior in a crisis. The proposed regulation established minimum qualifications for the people expected to conduct the required analyzes. In addition, the regulation specified the Federal Government official responsible for reviewing and accepting *equivalent level of safety* analyses.

The proposed rule did not address the life safety impact of a smoldering fire. Smoldering fires can represent a significant life safety hazard, however, typical sprinkler systems will not control this hazard. In addition, it did not attempt to provide guidance in determining acceptable levels of protection against property loss or business interruption.

V. Discussion of Comments

GSA published the proposed rule in the **Federal Register** (Vol. 59, No. 99, pp. 26768–26772) for public comment on May 24, 1994. On June 30, 1994, a notice of extension of the public comment period was published in the **Federal Register** (Vol. 59, No. 125, pg. 33724). The public had until July 25, 1994, to comment on the proposed rule.

In response to the proposed rule and subsequent extension, a total of 46 items of correspondence were received. Of these, 14 were from state fire marshals, 10 were from professional or trade associations, 7 were from Federal Government entities, 3 were from private fire protection engineering consultants, 1 was from academia, and 11 were from private citizens. The comments ranged from general support or opposition to the concept of an *equivalent level of safety* to very specific comments related to technical details of the regulation. A summary of the comments, and our responses to them, follow.

A. Intent of Legislation

Comment: Several commenters indicated that defining an *equivalent level of safety* would provide a means to avoid the intent of the Act.

Response: As indicated in House Report 102–509, Part 1, the purpose of the Federal Fire Safety Act of 1992 was to set an example for State and local governments by mandating firesafety requirements for new or renovated Federal office space and certain categories of federally assisted housing. By prohibiting Federal funding for these buildings, the Act promotes the use of automatic sprinklers, or an *equivalent level of safety*. The Act defines the term *equivalent level of safety* as an alternative design or system (which may include sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems. The Congress had a number of expectations concerning the definition. The alternative would provide flexibility in instances where fire protection engineering analyses demonstrated that other means would yield the same level of life safety as that provided in a fully sprinklered building. In many situations, there would be no effective *equivalent level of safety* in comparison to the life safety protection afforded by a building conforming with the requirements of current building design criteria for a fully sprinklered building. In addition, several factors were to be considered in further defining

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equivalent level of safety: the provisions of nationally recognized model codes and the firesafety guidelines followed by the General Services Administration for sprinklered buildings; analyses of potential fire loss exposures and adverse conditions related to the firesafety of a building, and analyses of safety alternatives for a building; and current technical research, including the study "on the use, in combination, of fire detection, fire suppression systems, and compartmentation," of the National Institute of Standards and Technology. The intent of the Act is very clear in requiring an *equivalent level of safety* option for all situations.

Comment: A number of commenters wanted sprinklers to be the only option.

Response: It should not be taken lightly that this legislation originated in the House Committee on Science, Space, and Technology and that one intent of the Act (as specifically articulated in the report language) was to encourage the development and use of new technology. The Congress recognized that the intent of the Act could not be met by specifying only one type of currently available fire technology. The concept of *equivalent level of safety* has and will continue to promote the development of new firesafety technologies. Providing for an *equivalent level of safety* is in keeping with equivalent clauses contained in the model building and fire codes. For example, section 1–5.1 of National Fire Protection Association Standard No. 101®, Life Safety Code®, states

> Nothing in this Code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety as alternatives to those prescribed by this Code, provided technical documentation is submitted to the authority having jurisdiction to demonstrate equivalency, and the system, method, or device is approved for the intended purpose.

The regulation provides a means for demonstrating equivalency based on a technical evaluation.

Comment: A few Federal agencies indicated that defining an *equivalent level of safety* could jeopardize their automatic sprinkler system installation programs.

Response: The public law sets a standard. This regulation provides a means to achieve the standard while maintaining a degree of flexibility. Use of this *equivalent level of safety* option is not mandatory. As outlined in this regulation, there are numerous reasons for installing automatic sprinkler systems in buildings. These reasons cover issues well beyond the very limited scope of this regulation. Full compliance with the sprinkler requirements contained in the Federal Fire Safety Act will be the easiest solution, especially when Federal agencies lack the fire protection engineering expertise to evaluate an equivalency.

B. Scope of the Regulation

Comment: A number of comments reflected confusion concerning the scope of the regulation.

Response: This regulation is intended solely to define an *equivalent level of safety* appropriate for judging compliance with the requirements of the Federal Fire Safety Act of 1992. It does not necessarily apply to the evaluation of equivalency to other building and fire code requirements. In order to address this issue, the scope of the regulation has been refined and clarified.

Comment: Several commenters expressed concerned over the decision to exclude firefighter safety from the regulation especially when rescue of building occupants is required.

Response: The concept presented in the proposed regulation was not intended to totally exclude consideration of firefighter safety. The need for the fire department to conduct rescue operations must be considered in an *equivalent level of safety* analysis. If rescue operations are expected, then the firefighters conducting them must be protected. Firefighter safety is not considered from the standpoint of them entering a building solely to fight a fire and limit property loss.

Comment: A few commenters questioned the impact of the proposed rule on local codes.

Response: Legally, buildings built on Federal property are exempt from local building codes. In the case of buildings developed on private land to be leased by the Federal Government, the applicable local codes govern. Public Law 100–678 requires, among other things, that Federal agencies comply "to the maximum extent feasible" with "one of the nationally recognized model building codes and with other applicable nationally recognized codes" when constructing or altering Federal buildings. This law also directs agencies to comply with State and local zoning laws to submit plans for buildings being altered or constructed to State or local officials for review prior to construction, and to permit local officials to inspect Federal buildings while under construction or alteration. However, the law places limitations on the obligations of Federal agencies; for example, agencies can limit the time local officials have for plans review to 30 days, are not required to follow the recommendations of local officials, and are not allowed to pay any fees or fines to local governments. The impact of the Federal Fire Safety Act will primarily be an additional requirement with which Federal buildings, both owned and leased, will have to comply. However, firesafety protection measures required in order to comply with local codes or other requirements can and should be considered in assessing the existence of an *equivalent level of safety*.

Comment: Some commenters questioned the applicability of existing equivalency clauses in currently available consensus standards and their relationship to the proposed rule.

Response: Equivalency as described in national standards requires approval by an authority having jurisdiction. No specific performance measures are provided for making the judgment as to the level of equivalency, leading to non-uniform application and acceptance. The rule provides a performance definition, as required by the law. It is possible the philosophy outlined in the proposed rule could form the basis for further development and adoption of performance-based equivalency measures in the national consensus codes.

C. Technical Issues

Comment: Several commenters recommended the establishment of a threshold height limit above which only total sprinkler protection would be acceptable. However, other commenters indicated that the height issue could be addressed in the required engineering analysis.

Response: The objective was not to rewrite the law. The Act requires that the General Services Administration further define the term *equivalent level of safety*. By specifying a maximum height threshold, the equivalency option specifically intended by Congress would be eliminated without their consent. The intent of Congress to provide an equivalency option without height limitations is further evidenced by the addition of an equivalency option after the bill had been passed (Public Law 103–195).

Comment: A number of comments were received concerning whether or not meeting one or all of the selected equivalency criteria was sufficient. These commenters recommended replacing the word *or* in the phrase "prevent flashover in the room of origin, limit fire size to no more than 1 megawatt (950 Btu/sec), or prevent flames from leaving the room of origin" with the word *and*.

Response: The word *or* was chosen specifically in preference to *and*. The intent of this statement was that the condition or conditions producing the most hazardous exposure to building occupants be selected for measuring equivalency. For example, it could be concluded that an acceptable level of safety had been achieved if flames did not extend beyond the room of origin. If flashover or the 1 MW fire represented a more severe hazard to building occupants, this conclusion would not be valid.

Comment: Many commenters raised issues associated with the definition of the *room of origin*, specifically raising concerns related to establishing an appropriate size. Is it appropriate to use a closet as the *room of origin*? What would the *room of origin* be in an area with open plan space?

Response: The concept of *room of origin* was deliberately left open to encourage comments. Based on comments received, the definition of *room of origin* is being refined to include a maximum area limitation of 200 m^2 (2000 $ft.^2$). Fires involving areas greater than 200 m^2 pose substantial difficulties for firefighters and threaten occupants, especially those located on upper levels of high-rise structures. Exit paths are easily jeopardized by fires involving 200 or more square meters of floor area. In order to provide equivalent life safety, especially in high-rise structures, no fire area should be permitted to exceed 200 m^2. Fire separations or other protective measures should be provided to limit potential fire areas.

Comment: A few commenters questioned the use of flashover as an endpoint criteria.

Response: Flashover was selected as an endpoint for two reasons. First, the potential for flashover can have a significant impact on required notification time. Prior to flashover, a fire represents a hazard primarily to occupants in the room of origin. The energy released by the fire is insufficient to "drive" significant quantities of products of combustion beyond the room of origin. Any smoke that leaves is low temperature and contains minimal amounts of toxic gases. Based on a series of fire tests in mobile homes, researchers at the National Bureau of Standards (now the National Institute of Standards and Technology) concluded "Limiting conditions adverse to life safety are likely to be reached in the living room at the end of the mobile home remote from the bedroom where the fire started at approximately the same time that flashover occurs in the bedroom. Limiting levels of carbon monoxide and oxygen are less likely to be reached in the living room if flashover does not occur in the bedroom."(Budnick, E.K., Klein, D.P., and O'Laughlin, R.J., "Mobile Home Bedroom Fire Studies: The Role of Interior Finish," NBSIR 78–1531, National Bureau of Standards Center for Fire Research, September 1978.) Occupants in the room of origin should be able to detect a fire and leave prior to flashover. If flashover is expected, the use of sophisticated fire alarm systems will be required to provide sufficient egress time for building occupants outside the room of origin.

A second reason for flashover as an endpoint is its use as a firesafety performance objective in the national consensus standards. Two of the three sprinkler installation standards referenced in the Federal Fire Safety Act use flashover as an objective. These two standards (NFPA 13D and 13R) indicate that a sprinkler system "installed in accordance with this standard is expected to prevent flashover (total involvement) in the room of fire origin, where sprinklered, and to improve the chance for occupants to escape or be evacuated." The third standard (NFPA 13) simply states that its objective is "to provide a reasonable degree of protection for life and property from fire." Currently, compliance with the specifications contained in the standard is the only way to judge whether or not the proposed performance objective has been achieved. Several large loss fires have indicated that complying with the requirements in the standard may not always adequately protect the specific hazard and ensure attainment of the firesafety objective. In recognition of this, the NFPA has recently formed a group, composed of members of the sprinkler installation standard committee, to develop a fully performance oriented sprinkler installation standard. In addition, the NFPA has established a project, under the Committee on Hazard and Risk of Contents and Furnishings, to develop a document on prevention of flashover titled Guide on Methods for Decreasing the Probability of Flashover.

Comment: A number of commenters questioned the definition of *reasonable worst case scenario* and several provided recommendations for improving the definition.

Response: The *reasonable worst case scenario* definition was not intended to be an all inclusive listing of things to be considered in conducting an equivalency analysis. Based on comments received, the definition is being expanded to identify additional items which should be considered in establishing *reasonable worst case scenarios*. Specific issues to be considered as part of a worst case scenario are types of fuel (paper, plastics, chemicals), form and arrangement of fuel (furniture, shredded newspaper, stacked chairs), availability of suppression systems (sprinkler system, fire department), capability of suppression systems (proper sprinkler system design, fire department manning, fire department response time) and capability of occupants (awake, asleep, intoxicated, physically or mentally impaired).

Comment: A few commenters suggested identifying recommended alternatives to complete sprinkler protection such as specific compartmentation or detection system requirements.

Response: The Act specifies one method, complete sprinkler protection, of achieving a prescribed level of life safety. The *equivalent level of safety* option is the exception to the general rule of complete sprinkler protection. If a list of alternatives was provided, sprinkler protection would become one of several options instead of the intended primary choice. In applying the *equivalent level of safety* provision, each building must be evaluated on its own merits and an individualized fire protection strategy developed. Each application of the *equivalent level of safety* option will involve a different set of circumstances. A list of recommended alternatives would not provide the necessary flexibility or allow for scientific and technological advancements.

Comment: A few comments expressed concern that the regulation attempts to force the use of computer based fire models which the commenters suggested were in the infancy stages of development and produced inconsistent results.

Response: The law is explicit that equivalency be based on a fire protection engineering analysis. The proposed rule suggests several tools that can be chosen based on the specific situation, including fire models. The decision of which tools to use is left to the engineer and agency to decide, based on the needs of each case. The use of engineering calculation methods is encouraged, models are but one way of efficiently applying first principles.

From a public policy perspective, the use of engineering applications must be encouraged to better prepare the engineering community for global competition. A Conference on Firesafety Design in the 21st Century, held in May 1991, at Worcester Polytechnic Institute, graphically illustrated how far the United States had lagged behind other countries in developing performance-

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based building codes and applying analytical measurement techniques. Computer based models are readily accepted for use in a variety of countries, including Japan, United Kingdom, New Zealand, and Australia. These countries have embraced these design concepts and are capable of building and operating better performing and most cost-effective facilities. Recognizing this face, the National Fire Protection Association has established a task force on its Board of Directors to expedite its activities in the development and dissemination of computational methods.

These computational methods are no longer research and development activities. A variety of validation tests on many different models have been reported and indicate very good correlation with full scale fire tests and experience. Calculation procedures, including computer models, have been used in fire reconstruction with excellent results in determining the course of events. New information is being developed almost daily, supporting the use of calculation methods and models to develop sound engineering solutions to fire protection problems.

Finally, the various tools suggested in the proposed rule have a wide variety of support. The Fire Safety Evaluation System, for example, is codified in the manual Alternative Approaches to Life Safety (NFPA 101M), which is developed and accepted through the national consensus standards process. Numerous calculation methods have been accepted and compiled in the Handbook of Fire Protection Engineering, the source document for engineering methods for the fire protection engineering profession. The use of calculation methods and computer models is commonplace in other engineering disciplines. If fire protection engineering is to be accepted as an engineering discipline, it must accept, understand, and use these analytical tools.

D. Qualifications and Consistency Issues

Comment: Several comments were received regarding the qualifications of the personnel conducting the *equivalent level of safety* analyses.

Response: The required years of experience factor has been increased from two to four. This modification brings the three qualification options into closer agreement. The education requirement has been modified to reflect technical differences between undergraduate and graduate engineering programs. In addition, it has been revised to allow for engineers trained outside the United States.

Comment: A number of commenters inquired as to who should or could review *equivalent level of safety* analyses.

Response: As stated in the proposed rule, the head of the agency making facility improvements or providing Federal assistance is ultimately responsible for determining the acceptability of an *equivalent level of safety* analysis. In developing this determination, an independent review of the analysis by Government fire protection engineering professionals will be required. However, a few fire protection engineering professionals, employed by Federal Government agencies, indicated they did not have the expertise to conduct the required reviews. This concern was not shared by other fire protection engineers, including those working for private consulting firms. Comments from these engineers indicated they could conduct and review the analyses as appropriate. It may be necessary for Government agencies who lack in-house professional expertise to contract with private firms or other Government agencies (General Services Administration Central Office for example) for services to review *equivalent level of safety* analyses.

Several commenters expressed a desire to have specific Federal Government agency, the General Services Administration, responsible for the review of all *equivalent level of safety* analyses. Discussion of the issues associated with this option is beyond the scope of this regulation. As resources permit, the General Services Administration will develop and distribute, from time to time, information on conducting and evaluating *equivalent level of safety* analyses. In addition, the GSA will maintain a library of its own successful analyses and will seek to establish a dialogue with other agencies concerning determining an *equivalent level of safety*. Other Federal agencies should consider maintaining their own libraries of *equivalent level of safety* analyses.

A final issue associated with review of *equivalent level of safety* analyses concerns the involvement of local jurisdictions. Implementation of the Federal Fire Safety Act and this regulation cannot place a burden on local jurisdictions. Local jurisdictions cannot be required to review or evaluate an *equivalent level of safety* analysis. However, the *equivalent level of safety* analysis should be provided to the local jurisdiction as part of the required prefire planning.

Comment: Some comments were received concerning the consistency to be expected from the *equivalent level of safety* analyses.

Response: Any engineering analysis is dependent on a variety of assumptions. Individuals are likely to make different assumptions. Even in the interpretation of written words in a code book, different courses of action are recommended by different individuals. Uniformity of application is an issue inherent in dealing with human beings, and not unique to engineering analyses. An analysis based on the application of science-based first principles should provide consistent results. While the recommended corrective actions may differ, the use of personnel with the minimum qualifications identified in the regulation will ensure that the technical support for the recommendations is consistent with the governing principles of physics and chemistry.

E. Miscellaneous

Comment: A number of commenters identified editorial corrections or provided updated or corrected statistical data.

Response: These comments have been adopted to the extent the referenced section of the regulation remains in the final rule.

VI. Summary of Changes

As a result of the public comments, a number of changes were made to the regulation. These changes are briefly outlined in this section.

1. The scope of the regulation has been modified and expanded to clarify the intent of this regulation and its impact on local codes and standards.

2. The qualification requirements have been modified to bring the three alternatives into closer alignment, clarify some issues, and provide opportunities for engineers educated in other countries.

3. The *room of origin* has been defined to set a maximum limit on the potential size of an involved area.

4. The definition of *reasonable worst case scenario* has been expanded to clarify its meaning.

5. The equivalency criteria have been changed to better link the equivalency measurement to the mandated baseline level of safety associated with complete sprinkler protection.

The General Services Administration (GSA) has determined that this rule is a significant regulatory action for the purposes of Executive Order 12866. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 101–6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Fire protection, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, 41 CFR Part 101–6 is amended as follows:

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR Part 101–6 continues to read as follows:

Authority: Sec 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart 106–6.6—Fire Protection (Firesafety) Engineering

2. Subpart 101–6.6 is added to read as follows:

Subpart 101–6.6—Fire Protection (Firesafety) Engineering

Sec.

101–6.600 Scope of subpart.
101–6.601 Background.
101–6.602 Application.
101–6.603 Definitions.
101–6.604 Requirements.
101–6.605 Responsibility.

§ 101–6.600 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under Title I of the Fire Administration Authorization Act of 1992 concerning definition and determination of *equivalent level of safety*. The primary objective of this regulation is to provide a quantifiable means of determining compliance with the requirements of the Act. It is not a substitute for compliance with building and fire code requirements typically used in construction and occupancy of buildings.

§ 101–6.601 Background.

(a) The Fire Administration Authorization Act of 1992 (Pub. Law 102–522) was signed into law by the President on October 26, 1992. Section 106 Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 *et seq.*) to require sprinklers or an *equivalent of safety*, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units.

(b) The definition of an automatic sprinkler system is unique to the Act. In addition to describing the physical characteristics of an automatic sprinkler system, the definition sets a performance objective for the system. Automatic sprinkler systems installed in compliance with the Act must *protect human lives*. Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

(c) This subpart establishes a general measure of building firesafety performance. To achieve the level of life safety specified in the Act, the structure under consideration must be designed, constructed, and maintained to minimize the impact of fire. As one option, building environmental conditions are specified in this subpart to ensure the life safety of building occupants outside the room of fire origin. They should be applicable independent of whether or not the evaluation is being conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room, space, or area could be a room of origin in the entire building scenarious.

(d) The *equivalent level of safety* regulation in this subpart does not address property protection, business interruption potential, or firefighter safety during fire fighting operations. In situations where firefighters would be expected to rescue building occupants, the safety of both firefighters and occupants must be considered in the *equivalent level of safety* analysis. Thorough prefire planning will allow firefighters to choose whether or not to enter a burning building solely to fight a fire.

§ 101–6.602 Application.

The requirements of the Act and this subpart apply to all Federal agencies and all federallly owned and leased buildings in the United States, except those under the control of the Resolution Trust Corporation.

§ 101–6.603 Definitions

(a) *Qualified fire protection engineer* is defined as an individual, with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(1) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or firesafety engineering, plus a minimum of four (4) years work experience in fire protection engineering,

(2) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering, or

(3) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

(b) *Flashover* means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m² (1.8 Btu/ft²/sec).

(c) *Reasonable worst case fire scenario* means a combination of an ignition source, fuel items, and a building location likely to produce a fire which would have a significant adverse impact on the building and its occupants. The development of *reasonable worst case scenarios* must include consideration of types and forms of fuels present (e.g., furniture, trash, paper, chemicals), potential fire ignition locations (e.g., bedroom, office, closet, corridor), occupant capabilities (e.g., awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

(d) *Room of origin* means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m² (2000 ft²) including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the *room of origin* to the extent it did not exceed the 200 m² (2000 ft²) limitation.

§ 101–6.604 Requirements.

(a) The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities

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which impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues which must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

(b) To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed. Three options are provided for establishing that an *equivalent level of safety* exists.

(1) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egressd time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed *reasonable worst case fire scenarios* including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an *equivalent level of safety*.

(2) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an *equivalent level of safety*.

(3) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

(c) Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101M) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

§ 101–6.605 Responsibility.

The head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each *equivalent level of safety* analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted *equivalent level of safety* analysis and provide copies to fire departments or other local authorities for use in developing prefire plans.

Dated: September 29, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–27020 Filed 10–31–94; 8:45 am]

BILLING CODE 6820–23–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–70; RM–8168]

Radio Broadcasting Services; Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 283C2 to Wellton, Arizona, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Farmworkers Communications, Inc. See 58 FR 17819, April 6, 1993. Coordinates used for Channel 283C2 at Wellton are 32–42–40 and 114–12–15. Wellton is located within 320 kilometers (199 miles) of the United States-Mexico border and, therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective December 9, 1994.

The window period for filing applications for Channel 283C2 at Wellton, Arizona, will open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

ADDRESSES: Questions related to window application filing process for Channel 283C2 at Wellton, Arizona, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–70, adopted October 19, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154,303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Wellton, Channel 283C2.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26959 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–248; RM–8321]

Radio Broadcasting Services; Pleasant City, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Peter L. Cea, allots Channel 221A to Pleasant City, Ohio, as the community's first local aural transmission service. *See* 58 FR 51603, October 4, 1993. Channel 221A can be allotted to Pleasant City in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.7 kilometers (7.2 miles) northeast, at coordinates North Latitude 40–00–00 and West Longitude 81–29–30, to avoid a short-spacing to Station WMPO–FM, Channel 221A, Middleport, Ohio. Canadian concurrence has been received since Pleasant City is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, the proceeding is terminated.

DATES: Effective December 9, 1994. The window period for filing applications will be open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–248, adopted October 18, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor. International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Pleasant City, Channel 221A.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26960 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–286; RM–8377]

Radio Broadcasting Services; Jeffersontown, Shelbyville and Richmond, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request Channel Chek, Inc., substitutes Channel 267A for Channel 269A at Jeffersontown, Kentucky, and modifies Station WLSY(FM)'s license accordingly. We also, at the request of Shelby County Broadcasting, Inc., substitute Channel 269A for Channel 267A at Shelbyville, Kentucky, and modify Station WTHQ(FM)'s license accordingly. In addition, at the request of WCBR Radio, Inc., we denied the substitution of Channel 268C3 for Channel 269A at Richmond, Kentucky. *See* 58 FR 63319, December 1, 1993.

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–286, adopted October 18, 1994, and released October 26, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 267A can be allotted to Jeffersontown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.8 miles) northeast, in order to avoid a short-spacing to Station WKKG(FM), Channel 268B, Columbus, Indiana, and to a construction permit for Station WRZI(FM), Channel 268A, Vine Grove, Kentucky. The coordinates for Channel 267A at Jeffersontown are North Latitude 38–13–41 and West Longitude 85–30–30. Channel 269A can be allotted to Shelbyville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometer (3.8 miles) east, to avoid a short-spacing to Station WKYL(FM), Channel 271A, Lawrenceburg, Kentucky. The coordinates for Channel 269A at Shelbyville are North Latitude 38–12–48 and West Longitude 85–09–13. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 269A and adding Channel 267A at Jeffersontown; and by removing Channel 267A and adding Channel 269A at Shelbyville.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26962 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–276; RM–8353]

Radio Broadcasting Services; Franklinton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of GACO Broadcasting Corporation, allots Channel 255A to Franklinton, Louisiana. *See* 58 FR 63321, December 1, 1993. Channel 255A can be allotted to Franklinton, Louisiana, in compliance with the Commission's minimum distance separation requirements without the

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imposition of a site restriction. The coordinates for Channel 255A at Franklinton are North Latitude 30–50–54 and West Longitude 90–09–18. With this action, this proceeding is terminated.

EFFECTIVE DATES: December 9, 1994.

The window period for filing applications will open on December 9, 1994, and close on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–276, adopted October 19, 1994, and released October 25, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 75—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Franklinton, Channel 255A.

John Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26958 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 59, No. 210

Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–44–AD]

Airworthiness Directives; Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) that is applicable to all transport category airplanes. The existing AD currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That action was prompted by fires occurring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The actions specified by the AD are intended to prevent such fires. This action would provide for an alternative action regarding the current requirement to install specific placards at certain locations.

DATES: Comments must be received by December 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2773; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–44–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1974, the FAA issued AD 74–08–09, amendment 39–1917, which is applicable to all transport category airplanes having one or more lavatories equipped with paper or linen waste receptacles. That AD requires:

1. installation of placards on each side of each lavatory door over the door knob, containing wording to prohibit smoking in the lavatory;
2. installation of a placard on or near each lavatory paper or linen waste disposal receptacle door, containing wording to prohibit disposing of smoking materials in the waste receptacles;
3. establishment of a procedure to announce to airplane occupants that smoking is prohibited in the aircraft lavatories;
4. installation of ashtrays on or near the entry side of the lavatory doors; and
5. repetitive inspections of all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation.

That action was prompted by numerous incidents of fire that had occurred in the lavatory paper and linen waste receptacles of transport category airplanes, which were apparently caused by smoking materials deposited by passengers or crew in these receptacles. These fires can be a significant threat to the safety of persons on the airplane because of the emission of toxic smoke and the possibility of the fire progressing to critical components. The requirements of AD 74–08–09 are intended to prevent such fires.

Subsequent to the issuance of that AD, certain required actions contained in it were added to part 25 of the Federal Aviation Regulations (FAR) (14 CFR part 25) ("Airworthiness Standards: Transport Category Airplanes") by amendment 25–51 (issued March 6, 1980), making them applicable to all transport airplane designs certificated after the effective date of that amendment. Specifically, amendment 25–51 added a requirement to section 25.853 of the FAR (14 CFR 25.853) calling for the installation of "No Smoking In Lavatory" or "No Smoking" placards on both sides of the lavatory doors. Additionally, "No Smoking" symbology was permitted to be used on the placards in addition to the required wording.

Amendment 25–72 (issued August 20, 1990) subsequently relocated these requirements to section 25.791 of the FAR (14 CFR 25.791) ("Passenger information signs and placards"). However, during the process, that amendment also incorporated the current FAA determinations that the

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lavatory door placards are acceptable if located "on or adjacent to" the lavatory doors [ref. section 25.791(d)]; and that appropriate "No Smoking" symbology may be used in lieu of wording specifying "No Smoking," "No Smoking in Lavatory," and "No Cigarette Disposal" [ref. section 25.791(e)].

Consequently, there now exists a difference between current type design philosophy and the requirements of AD 74–08–09.

It has recently come to the FAA's attention that some aircraft certificated in accordance with section 25.791, amendment 25–72, and properly equipped with symbology-only placards installed adjacent to the lavatory doors, are being required to have worded placards added onto the door in accordance with AD 74–08–09 upon entering service.

The FAA's intent in requiring installation of the "No Smoking" placards is to ensure that there is a visual reminder to passengers and other personnel onboard the airplane that smoking is prohibited in the lavatories. Whether this visual reminder is in the form or words or symbols is not necessarily a concern to the FAA, as long as the intent of the placards is clear and recognizable by the average person. The FAA considers that having airlines install worded placards in addition to their currently installed symbology placards represents an unnecessary cost burden to industry, with no added benefit to safety. Therefore, the FAA finds it is appropriate to revise AD 74–08–09 in order to make its requirements for placard installation consistent with those of part 25 of the FAR.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would continue to require all of the same actions as currently required by AD 74–08–09. However, this action proposes to revise AD 74–08–09 to provide for an alternative action relative to the current requirement to install specific placards at specific locations. This proposal would permit operators to install the "No Smoking" placards in an area conspicuously located on or adjacent to each side of the lavatory door. In addition, in lieu of the currently required specified wording for required placards, this action proposes to permit the use of symbols that clearly express the intent of the placard.

Since this proposed action only provides for an alternative method of complying with an existing rule, it does not add any new additional economic burden on affected operators. The current costs associated with this amendment are reiterated below for the convenience of affected operators:

The costs associated with the currently required placard installations entail approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the total cost impact of the installation requirements of the AD on U.S. operators is estimated to be $60 per airplane.

The costs associated with the currently required inspections entail approximately 1.5 work hours per airplane per inspection, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $90 per airplane per inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1917, and by adding a new airworthiness directive (AD), to read as follows:

Transport Category Aircraft: Docket 94–NM–44–AD. Revises AD 74–08–09, Amendment 39–1917.

Applicability: All transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles.

Note: The following is a partial list of aircraft, some or all models of which are type certificated in the transport category and have lavatories equipped with paper or linen waste receptacles:

Aerospatiale Modelx ATR42 and ATR72 series airplanes;
Airbus Models A300, A310, A300–600, A320, A330, and A340 series airplanes;
Boeing Models 707, 720, 727, 737, 747, 757, and 767 series airplanes;
Boeing Model B–377 airplanes;
British Aircraft Models BAC 1–11 series, BAe-146 series, and ATP airplanes;
CASA Model C–212 series airplanes;
Convair Models CV–580, 600, 640, 880 and 990 series airplanes;
Convair Models 240, 340, and 440 series airplanes;
Curtiss-Wright Model CW 46;
de Havilland Models DHC–7 and DHC–8 series airplanes;
Fairchild Models F–27 and C–82 series airplanes;
Fairchild-Hiller Model FH–227 series airplanes;
Fokker Models F27 and F28 series airplanes;
Grumman Model G–159 series airplanes;
Gulfstream Model 1159 series airplanes;
Hawker Siddeley Model HS–748;
Jetstream Model 4101 series airplanes;
Lockheed Models L–1011, L–188, L–1049, and 382 series airplanes;
Martin Model M–404 airplanes;
McDonnell Douglas Models DC–3, -4, -6, -7, -8, -9, and -10 series airplanes;
Model MD–88 airplanes; and Model MD–11 series airplanes;
Nihon Model YS–11;
Saab Models SF340A and SAAB 340B series airplanes;
Short Brothers and Harlin Model SC–7 series airplanes;
Short Brothers Models SD3–30 and SD3–60 series airplanes:

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles, accomplish the following:

(a) Within 60 days after August 6, 1974 (the effective date of amendment 39–1917, AD 74–08–09), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Install a placard either on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must either contain the legible words, "No Smoking in Lavatory" or "No Smoking;" or contain "No Smoking" symbology in lieu of words; or contain both wording and symbology; to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users.

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating "No Cigarette Disposal."

(b) Within 30 days after August 6, 1974, establish a procedure that requires that no later than a time immediately after the "No Smoking" sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a "No Smoking" sign, the required procedure must provide that the announcement be made prior to each takeoff.

(c) Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(d) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspection; accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (d)(1) of this AD.

(e) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000 hour repetitive inspection interval specified in paragraph (d)(1) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

Issued in Renton, Washington, on October 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27052 Filed 10–31–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515–AB51

Treatment of Reusable Shipping Devices Arriving From Canada or Mexico

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to allow certain foreign-manufactured shipping devices arriving from Canada or Mexico to be released, under specified conditions, without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked, if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories. As millions of these devices are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico, Customs recognizes that requiring the importing and exporting communities to individually mark and track these devices places a burden on commerce that Customs should attempt to alleviate.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Office of Regulatory Audit, (202–927–1100).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), in order to facilitate the prompt clearance at ports of entry of certain substantial containers and holders, the Secretary of the Treasury is authorized to permit the admission of the containers without entry and to permit any duties thereon to be paid cumulatively from time to time either before or after their importation when conditions exist which permit adequate Customs controls to be maintained. Pursuant to subheading 9803.00.50, HTSUS, substantial containers and holders which are of foreign production and previously imported and duty (if any) thereon paid, or if of a class specified by the Secretary of the Treasury as instruments of international traffic (IITs) are free of duty. Pursuant to 19 U.S.C. 1322, instruments of international traffic shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instruction of the Secretary of the Treasury.

Current regulations regarding shipping devices are set forth in §§ 10.41a and 10.41b, Customs Regulations (19 CFR 10.41a and 10.41b). According to § 10.41a, certain containers are designated as IITs and, as such, may be released without entry or duty subject to the provisions of the section. According to § 10.41b, other substantial containers and holders are required to be serially numbered and marked in order to be released without entry or payment of duty. Section 10.41b(b), (c) and (d) currently describe the numbering and marking requirements.

In this latter regard, Customs has received a petition from, and has met with representatives of, the American Automobile Manufacturers Association (AAMA) concerning an amendment to the Customs Regulations intended to ease the burden of serially numbering and marking certain containers arriving from Canada or Mexico. According to the AAMA, the business community cannot efficiently and economically individually mark and track the millions of these smaller shipping devices that hold goods, such as racks, holders, pallets, totes, and packaging material, that are used annually in hundreds of millions of transportation moves between the United States and Canada or Mexico without placing an excessive and undue burden on commerce. In the highly integrated manufacturing environment of today's economy, programs which place strict reporting, control and usage requirements on reusable shipping devices, beyond what is actually necessary for Customs to acquit its responsibilities, create an unusual and unnecessary burden on the growth and competitiveness of companies located in the U.S. Restrictions on the use and control of these reusable shipping devices needlessly increase the cost of goods and materials in the U.S.

After reviewing the AAMA proposal, Customs believes that the requirements to serially number and mark the substantial holders and containers in

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question can be eased without risking a loss of revenue.

Accordingly, Customs is proposing to amend § 10.41b to allow an importer or his agent to apply to a district director of Customs for permission to have certain foreign-made shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked.

The application would, among other things, describe the subject shipping devices, identify the ports where they would arrive and depart the U.S., and set forth the proposed program for accounting for and reporting the shipping devices to Customs. If the application is approved, the importer or agent would submit to Customs a periodic report for the shipping devices, which could not be less frequent than annual, using his own accounting and recordkeeping procedures to keep track of the devices. Records supporting the periodic reports of the shipping devices would have to be retained for at least 3 years from the date the reports are filed with Customs. Any duty applicable to the devices would have to be tendered cumulatively at the time specified in the approved application. Such tender could not occur more than 90 days following the end of the related reporting period.

In the event the application should be denied, in whole or in part, by the district director, the applicant could appeal the denial to the regional commissioner.

By eliminating the serial numbering and marking of the shipping devices concerned, and by permitting a consolidated accounting or reporting period for such devices, the real benefit of the proposal, it is believed, will be reduced operating costs for the international trade community.

In this respect, the proposed rule would achieve the desired purposes for those who wish to apply, by supplanting the existing system which depends upon physical examination of the shipping devices concerned as well as the maintenance of elaborate and costly identification systems, with a system based upon the applicant's own books and records, including, most importantly, acquisition and repair cost records. Since duty would be due on all shipping devices acquired within the period covered by the periodic report which the applicant would undertake to file, even though the devices may not have yet been used in transborder traffic, accounting for specific movements of the devices or for diversions would be superfluous.

The proposed amendments to the Customs Regulations are set forth below.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor would the proposed amendments result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 10.41(b). The information is necessary so that Customs may determine whether the plan submitted by the importer or his agent to keep track of and pay duty on his shipping devices is acceptable. The likely respondents would be business organizations.

Estimated total annual reporting and/or recordkeeping burden:

Estimated average annual burden per respondent/recordkeeper:

Estimated number of respondents and/or recordkeepers:

Estimated annual frequency of responses:

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the Regulations

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows, and the specific sectional authority for part 10 would be amended by adding specific authority for § 10.41b, in appropriate numerical order thereunder, to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the U.S. (HTSUS)).

* * * * *

2. It is proposed to amend section 10.41b by redesignating paragraphs (b), (c), (d), (e), (f), (g) and (h) as (c), (d), (e), (f), (g), (h) and (i), respectively, and by adding a new paragraph (b) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(b) Subject to the approval of a district director pursuant to the procedures described in this paragraph, certain foreign-manufactured shipping devices arriving from Canada or Mexico, including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot containers of general use and "igloo" air freight containers.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign-manufactured shipping devices, may apply to a district director of Customs at one of the importer's chiefly utilized Customs districts or the district within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked. Application may be filed in only one district. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (*e.g.*, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the ports where the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the district director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in § 113.66 of this chapter. If the application is approved by the district director and the conditions set forth in the application or of the bond are violated, the district director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The district director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The district director may suggest amendments to the applicant's proposal. The district director shall notify the applicant in writing of his decision on the application within 90 days of its receipt, unless this period is extended for good cause and the applicant so informed in writing. The district director shall have authority to approve the application and procedures for utilization in each district or area identified in the application.

(5) If the decision is to deny the application, in whole or in part, the district director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the regional commissioner within 21 days of its date. If the decision is appealed, the regional commissioner shall coordinate his review thereof with the district director. The regional commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application and districts and areas identified in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, in whole or in part, by the district director, the appeal process described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative means for obtaining the release of holders, containers and shipping devices.

* * * * *

George J. Weise,
Commissioner of Customs.
Approved: October 13, 1994.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 94-26955 Filed 10-31-94; 8:45 am]
BILLING CODE 4820-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 638

Job Corps; Allowances and Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Job Corps proposes to amend its regulations on student allowances and allotments. The objectives are: to increase the length of enrollment requirements for readjustment allowance eligibility, in order to encourage students to lengthen their enrollment and maximize Job Corps offerings and benefits; and to amend the allotment section to coincide with revisions in readjustment allowance accrual.

DATES: All comments and information should be submitted by December 1, 1994.

ADDRESSES: Send comments to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., room N-4510, Washington, DC 20210, Attention: Peter E. Rell, Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Dana Davidson Johnson, Office of Job Corps, Division of Program Management and Review. Telephone: (202) 219-6568 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Job Corps is devising a new pay and allotment system which will provide students with enough money to meet their basic needs, while adding greater incentives than are available in the current system to encourage student retention, performance, program completion, and length of enrollment. The proposed rule enables the Job Corps Director to increase the number of paid days for eligibility for readjustment allowances. This will encourage students to stay in the program longer. Students thus can be better prepared for employment,

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particularly because this added time will encourage students to acquire social skills along with vocational and academic training.

Payroll will be conducted on a biweekly schedule versus the current twice-monthly procedure. The proposed rule ties into the implementation of the new Student Pay, Allowance and Management Information System (SPAMIS) utilized by Job Corps. The new pay system will be much more responsive than the current system, with individual student pay levels and leave status maintained on a current basis and status changes made by the Job Corps Centers as they occur. The proposed rule will allow the accrual of readjustment allowances to be set for each paid day and allotments to be processed on a biweekly basis.

This rule applies only to allowances and allotments for Job Corps students. The proposed rule is not classified as a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." It does not (1) materially alter the budgetary impact of entitlements or the rights and obligations of recipients thereof; or (2) raise novel legal or policy issues arising out of legal mandates in the President's priorities. It is not likely (3) to result in having an annual effect on the economy of $100 million or more; or (4) to create a serious inconsistency or interfere with action taken or planned by another agency. As required by the Regulatory Flexibility Act, the Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 20 CFR Part 638

Contract programs, Labor, Training and employment programs.

Proposed Rule

Accordingly, 20 CFR part 638 is proposed to be amended as follows:

PART 638—[AMENDED]

1. The authority for part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

2. In § 638.524, paragraphs (b) and (c) are revised to read as follows:

§ 638.524 Allowances and allotments.

* * * * *

(b) The Job Corps Director shall ensure that each student receives a readjustment allowance for each paid day of satisfactory participation in Job Corps after termination from the program if he/she terminates after 210 days in pay status or after 180 days if he/she is a maximum benefits or vocational completer. In the event that a student receives a medical termination, he/she shall be eligible for the accrued readjustment allowance, regardless of length of stay or other considerations. See also paragraph (d) of this section. (Section 429(c)).

(c) The Job Corps Director shall establish procedures to allow students to authorize deductions from their readjustment allowance, which shall be matched by an equal amount from Job Corps funds and sent biweekly as an allotment by the SPAMIS Data Center to the student's spouse, child(ren) or other dependent, if such spouse, child(ren) or other dependent resides in any State in the United States.

* * * * *

Signed at Washington, DC, this 25th day of October 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–26928 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of change of meeting location.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing a change in the location of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) meetings scheduled for November 8–10, 1994 in St. Louis, Missouri from the Embassy Suites to the Ramada Henry VIII Hotel and Conference Center. The meetings are open to the public. Information on room numbers will be available in the lobby of the designated building.

DATES: The meetings will be held November 8–10, 1994. The meeting will begin at 1:00 p.m. on November 8th and 7:00 a.m. on November 9th and 10th.

ADDRESS: Ramada Henry VIII Hotel and Conference Center, 4690 North Lindbergh, St. Louis, Missouri 63044, (314) 731–3040.

FOR FURTHER INFORMATION CONTACT: OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document contains corrections to the notice published Tuesday, September 6, 1994, announcing the meeting of SENRAC in St. Louis. The location of the meetings scheduled for November 8–10, 1994 is changed from the Embassy Suites to the Ramada Henry VIII Hotel and Conference Center. The meeting will begin at 1:00 p.m. on November 8th and 7:00 a.m. on November 9th and 10th.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 27th day of October 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–27096 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ34–1–6418; FRL–5100–3]

Phoenix Ozone Nonattainment Area, Clean Air Act Section 182(f) Exemption Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The EPA is proposing to approve a petition submitted by the Arizona Department of Environmental Quality (ADEQ) requesting that the EPA grant an exemption for the Phoenix ozone nonattainment area (Phoenix Area) from the requirement to implement oxides of nitrogen (NO_X) Reasonably Available Control Technology (RACT). In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the Phoenix area may be exempted from the NO_X reduction requirements where the Administrator determines that net air quality benefits are greater in the absence of NO_X reductions from the sources concerned or that additional NO_X reductions would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The ADEQ petition uses the Urban Airshed Model (UAM) to demonstrate that additional NO_X reductions in the Phoenix Area would not contribute to attainment of the ozone NAAQS. The EPA is proposing to exempt the Phoenix Area from the requirement to implement NO_X RACT and the applicable NO_X general and transportation conformity requirements. The EPA is proposing approval of this action under provisions of the CAA regarding plan requirements for nonattainment areas.

DATES: Comments on this proposed action must be received in writing on or before December 1, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the exemption petition are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted petition may be obtained from the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix Arizona 85012.

Maricopa County Air Pollution Control District, 2406 S. 24th Street, suite E214, Phoenix, Arizona 85034.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section (A–5–3), or Scott Bohning, Air Quality Section (A–2–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1202; (415) 744–1293.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM (57 FR 55620) entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). These requirements are RACT and New Source Review (NSR) for major stationary sources in certain ozone nonattainment areas.

The RACT requirements for major stationary sources of VOCs are contained in section 182(b)(2), while the NSR requirements are contained in section 182(a)(2)(C) and other provisions of section 182. Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment, and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. Section 182(a)(2)(C) requires submittal of NSR rules incorporating the new preconstruction permitting requirements for new or modified sources. The RACT and NSR rules were required to be submitted by November 15, 1992.

The Phoenix area is classified as a moderate [1] nonattainment area for ozone; therefore this area is subject to the RACT and NSR requirements cited above and the November 15, 1992 deadline.[2] On April 13, 1994, the State of Arizona submitted a petition to the EPA requesting that the Phoenix area be exempted from the requirement to implement NO_X RACT measures pursuant to section 182(f) of the CAA. The exemption request is based on UAM modeling conducted in accordance with EPA guidelines.

General Criteria—Section 182(f) Exemption Requests

The NO_X RACT petition was submitted in accordance with the EPA guidance document entitled, *Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)* issued on December 16, 1993 (exemption guidance). In addition to the exemption guidance, EPA's NO_X exemption policy is contained in two memoranda [3] providing that under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside the ozone transport region (OTR) if EPA determines that additional reductions of NO_X would not contribute to attainment of the NAAQS for those areas. EPA's approval of monitoring-based NO_X exemptions are granted on a contingent basis and last for only as long as the area's monitoring data continue to demonstrate attainment. As described below, EPA's approval of modeling-based NO_X exemptions are also granted on a contingent basis.

EPA's conformity rules [4, 5] also reference the section 182(f) exemption process as a means for exempting affected areas from NO_X conformity requirements.[6] Therefore, ozone nonattainment areas that are granted areawide section 182(f) exemptions under this approach will also be exempt from the NO_X general and transportation conformity requirements.

The EPA first provided guidance on NO_X exemptions in the NO_X Supplement. The guidance states that EPA would rescind a NO_X exemption in cases where NO_X reductions were later found to be beneficial to an area's ability to attain and maintain the ozone

[1] The Maricopa County ozone nonattainment area was redesignated nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] The State of Arizona was issued a finding of nonsubmittal for the section 182(f) NO_X RACT requirements on April 21, 1993, and subsequently submitted a commitment on April 23, 1993 to adopt and submit the NO_X RACT rules. The commitment was submitted as an interim measure to satisfy the NO_X RACT requirements, and proposed that the Maricopa County Bureau of Air Pollution Control (MCBAPC) would develop the NO_X RACT rules for submittal in January 1994. The rules were to be developed at the same time that the Maricopa Association of Governments (MAG) was conducting UAM for the 1994 attainment demonstration requirements. If the UAM modeling showed that NO_X reductions would not contribute to attainment of the ozone standard, then Arizona would petition for a section 182(f) exemption from the NO_X RACT requirements.

[3] Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, dated September 17, 1993, entitled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992", and a subsequent revision to this memorandum from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, issued on May 27, 1994, entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria".

[4] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans or Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act", November 24, 1993 (58 FR 62188).

[5] "Determining Conformity of General Federal Actions to State or Federal Implementation Plans: Final Rule", November 30, 1993 (58 FR 63214).

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NAAQS. That is, a modeling-based exemption would last for only as long as the area's modeling continues to demonstrate attainment without NO_X reductions from major stationary sources.

If EPA later determines that NO_X reductions are beneficial based on new photochemical grid modeling in an area initially exempted, the area would be removed from exempt status and would be required to implement the NO_X requirements, except to the extent modeling shows that the NO_X reductions are excess reductions.[7] A determination that the NO_X exemption no longer applies would mean that the NO_X general and transportation conformity provisions would again be applicable (see 58 FR 63214; 58 FR 62188; 59 FR 31238) to the affected area. The NO_X requirements would also re-apply, although some reasonable time period after the EPA determination may be provided for sources to meet the RACT limits. EPA expects this time period to be as expeditious as practicable, taking into account any current and applicable State or Federal regulations.

The subsequent modeling analyses alluded to above need not be limited to the purpose of demonstrating attainment in the 1994 SIP revisions. For example, future modeling might also be initiated to resolve issues related to transport of ozone and ozone precursors into downwind nonattainment areas. State or local officials might want to consider a strategy that phases in NO_X reductions only after certain VOC reductions are implemented. As improved emission inventories and ambient data become available, planning officials may choose to remodel. In addition, alternative control strategy scenarios might be considered in subsequent modeling analyses in order to improve the cost-effectiveness of the attainment plan.

EPA's exemption guidance provides that pursuant to the requirements of section 110(a)(2), States should consider evidence, such as photochemical grid modeling, which shows that granting the NO_X exemption would interfere with attainment or maintenance in downwind areas. The State of Arizona has not yet implemented NO_X RACT, and at the time of this notice, EPA has not received evidence from the Phoenix Area or any downwind areas that shows that granting the NO_X exemption for the Phoenix Area would interfere with attainment or maintenance in downwind areas.

Exemption Modeling Requirements

The policy documents cited above which contain guidance on the petition requirements state that the modeling performed for the petition should follow the *Guideline on Regulatory Application of the Urban Airshed Model*, EPA–450/91–013, July 1991, (UAM guideline). The UAM guideline describes procedures for the appropriate use of UAM, such as for attainment demonstrations required of all ozone nonattainment areas.

Section 182(f) of the CAA recognizes that although VOC and NO_X emissions are both precursors to ozone, in certain circumstances the reduction of NO_X emissions can actually increase ozone concentrations. This occurs because two competing groups of chemical reactions are affected by NO_X. NO_X emissions reduction reduces one of the basic materials needed for ozone production, but it also enhances the formation of hydrocarbon radicals, thus increasing another basic ozone ingredient. Which effect dominates, if any, depends on the ratio of VOC to NO_X in the atmosphere, temperature, and other factors. The atmosphere is said to be "NO_X-limited" if NO_X reductions decrease peak ozone concentrations, and "VOC-limited" if NO_X reductions increase peak ozone concentrations. UAM can simulate ozone photochemistry to determine the effects of VOC and NO_X emission reductions on ozone. Therefore, if these simulations demonstrate that NO_X emission reductions are of no benefit or are counter-productive, then an exemption under section 182(f) would apply.

The NO_X exemption guidance sets forth two possible tests for showing that NO_X emission reductions are of no benefit or are counter-productive to ozone attainment for areas outside the OTR. The petition must show that one or both of these tests is/are passed.

(i) *Net air quality benefit:* Show that the required NO_X reductions from the potential exempted sources are counter-productive for overall air quality, primarily considering the modeled effect on the number of ozone NAAQS exceedances. Also considered are welfare, visibility, toxic pollutants, the effect on secondary PM_{10} formation, etc. This must include UAM modeling reflecting an area's submitted ozone attainment demonstration, with adopted control measures.

(ii) *Contribute to attainment:* This test uses UAM modeling to show that substantial reductions of VOC emissions result in lower ozone levels than substantial reductions of NO_X emissions AND combined reductions of VOC and NO_X emissions.[8] The maximum one-hour ozone concentrations from these three scenarios are then compared. These three UAM simulations need not be tied to an actual attainment demonstration[9], but the modeled "NO_X reductions should be as source-specific as possible, rather than across-the-board" (p.27), and should reflect "baseline" NOx reductions that are expected to occur without the exemption.

The UAM guideline describes procedures for applying UAM, such as choosing ozone episodes and the geographical domain to model, setting emissions and meteorological inputs, setting boundary conditions to the model, and evaluating the model's performance. The reliance of the NO_X exemption guidance on the UAM guideline is intended to ensure that the model is used in a scientifically appropriate manner. Portions of the UAM guideline that are specific to SIP attainment demonstrations may not always be applicable to modeling used specifically for NO_X exemptions.

Description of Submitted Petition

The petition submitted by the ADEQ first briefly describes the methodology used. Then, citing UAM modeling results of simulations required for the chosen exemption test (the contribute to attainment test), it concludes that the test is passed. In an appendix (Exhibits 1–4), the petition notes revisions to the emission inventory input made after the cited *Addenda to the MAG 1993 Ozone Plan for the Maricopa County Area* was prepared, and includes descriptions and graphs of UAM modeling performance indicators and concentration results cited in the main text.

The contribute to attainment test applied in the petition requires a showing that substantial reductions of VOC yield a lower ozone peak than do reductions of NO_X, and of both VOC and

[6] The section 182(f) exemption is explicitly referred to and is described in similar language in 40 CFR 51.394(b)(3)(i), the "Applicability" section of the transportation conformity rule, and in the preamble (see 58 FR 62197, November 24, 1993). The language is repeated in the provisions of the rule regarding the motor vehicle emissions budget test [section 51.428(a)(1)(ii)] and the "build/no-build" test [sections 51.436(e), 51.438(e)], although section 182(f) of the Act is not specifically mentioned. In the general conformity rule, the section 182(f) NO_X exemption is referred to in section 51.852 (definition of "Precursors of a criteria pollutant") and is discussed in the preamble (see 58 FR 63240, November 30, 1993).

[5] "Substantial VOC reduction" means that required to show attainment, and "substantial NOx reduction" means a similar percentage reduction.

[9] If an exemption is being requested for only certain NO_X sources, then the chosen test is to determine whether just the "excess emission reductions" from these sources would be counter-productive; in this case, the test must be tied to an actual submitted attainment demonstration.

NO_X. In order to make the modeling as source-specific as possible (required by the exemption guidance), UAM simulations were also performed to examine the effects of possible NO_X RACT reductions at specific NO_X sources in the Maricopa County nonattainment area.

The ozone episodes chosen for modeling were the August 9–10, 1992 episode, which is the base case modeling described in Exhibit 2 (of the petition) in an abbreviated form, and the June 13–14, 1993 episode. The petition notes that there is only a single meteorological regime associated with ozone NAAQS violations in Phoenix, due to stable weather patterns, its "island" location which isolates the area from other urban complexes, and its generally even distribution in size and location of NO_X emissions throughout the area. The reduction levels chosen for the three 1996 modeled scenarios for each simulation are as follows:

Episode 1

(1) A 20% VOC reduction, and a 0% NO_X reduction;
(2) a 0% VOC reduction, and a 60% NO_X reduction; and
(3) a 40% reduction of both VOC and NO_X.

The results of these reduction simulations are described and illustrated in Exhibit 1 of the petition. The ozone peaks are 11.9 parts per hundred million (pphm), 16.5 pphm, and 12.8 pphm, respectively. Since the 11.9 pphm value, corresponding to the VOC-only reduction, is the lowest, the test is passed. Also noted for this scenario is the lowest area covered by high ozone concentrations.

Episode 2

(1) A 20% VOC reduction, and a 0% NO_X reduction;
(2) a 0% VOC reduction, and a 20% NO_X reduction; and
(3) a 20% reduction of both VOC and NO_X.

The results of these reduction simulations are described and illustrated in attachment 1 of the Technical Support Document (TSD). The ozone peaks are 11.1 pphm, 14.6 pphm, and 13.0 pphm, respectively. Since the 11.1 pphm value, corresponding to the VOC-only reduction, is the lowest, this test is also passed.

The petition also describes modeling of 1996 emissions (including adopted and committed control measures), with and without RACT applied to specific NO_X sources (this modeling is explained in attachment 1 of the TSD). Exhibit 1 of the petition states that the total NO_X reductions from potential NO_X RACT measures for the August episode is 50.6% of the large point source emissions, or 5.4% of the total NO_X emissions for the second day of the ozone episode (August 10). These yielded a 0.1 pphm ozone increase. For the June episode, with a 52.5% reduction in elevated point source NO_X emissions and a 6.9% reduction in total NO_X emissions, the results showed no impact on the maximum simulated concentration. As referred to above, a more detailed discussion of the petition can be found in the Technical Support Document, dated October 1994.

Evaluation of Submitted Petition

The petition correctly utilizes an appropriate test from the NO_X exemption guidance. The "contribute to attainment" test is available to nonattainment areas outside an OTR, and need not be tied to an adopted and submitted attainment demonstration.

The single meteorological regime and the August 9–10, 1992 and June 13–14, 1993 ozone episodes used in the three required reduction scenarios are described in the modeling protocol used for the Phoenix Area's ozone attainment demonstration due November 15, 1994. For attainment demonstrations, the UAM guideline requires an area with a single regime to model three episodes of that meteorological type. The intent in requiring that the UAM guideline be followed is to ensure that the UAM is utilized in a scientifically appropriate manner and to ensure that multiple meteorological regimes are addressed, if necessary. However, in cases where an area is using intensive data from a field study, a minimum of two episodes is acceptable. This is appropriate where a field study is conducted that provides more comprehensive data for the modeling analysis. The field study was conducted during the summer of 1992 and provided more air quality and meteorological data than is routinely available.

Since 1996 is the required attainment year for a moderate ozone nonattainment area, the 1996 year is appropriate for use in the analysis using UAM simulations.

The NO_X and VOC reduction levels used in the test were "substantial" within the meaning of the exemption guidance, and provide a reasonable basis for comparisons of their effect on ozone. The additional simulations of NO_X RACT reductions at specific sources meet the exemption guidance requirement that the test be as source-specific as possible, and further substantiate the conclusion that implementation of NO_X RACT for major stationary sources would not contribute to attainment.

EPA Proposed Action

This action proposes to exempt the Phoenix ozone nonattainment area from implementing the NO_X RACT requirements and the general and transportation conformity regulations for NO_X. It is based on UAM modeling for two episodes in the Phoenix area which demonstrate that NO_X reductions do not contribute to attainment. The final action on this proposal will serve as a final determination that the finding of nonsubmittal for the NO_X RACT requirements has been corrected and that on the effective date of the final action on this proposal, any Federal Implementation Plan (FIP) clock is stopped.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for a section 182(f) exemption shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

This exemption action does not create any new requirements, but allows suspension of the indicated requirements for the life of the exemption. Therefore, because the proposed approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

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Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule.

This action may not be challenged later in proceedings to enforce its requirements. Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding § 52.235 to read as follows:

§ 52.235 Control strategy for ozone: Oxides of nitrogen.

EPA is approving an exemption request submitted by the State of Arizona on April 13, 1994 for the Maricopa County ozone nonattainment area from the NO_X RACT requirements contained in section 182(f) of the Clean Air Act. This approval exempts the area from implementing reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NO_X) and the NO_X related requirements of general and transportation conformity regulations. The exemption is based on Urban Airshed Modeling as would last for only as long as the area's modeling continues to demonstrate attainment without NO_X reductions from major stationary sources.

[FR Doc. 94–27018 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–125–1–6395b; FRL–5095–7]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Knox County Operating Permit Regulations for Synthetic Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the revisions to the Knox County portion of the Tennessee State implementation plan (SIP) submitted by the State of Tennessee for the purpose of incorporating rules for the permitting of minor sources. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by December 1, 1994.

ADDRESSES: Written comments should be addressed to Yolanda Adams of the EPA Regional Office at the address listed below. Copies of the material submitted by Knox County, Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, City/County Building, suite 459, 400 Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Yolanda Adams, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 6, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–27074 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AZ 37–1–6592b; FRL–5099–6]

Approval and Promulgation of State Implementation Plans; Arizona State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOCs) from the transfer of gasoline into motor vehicle fuel tanks. On May 27, 1994, Arizona submitted a SIP revision request to EPA to satisfy the requirement of section 182(b)(3) of the Clean Air Act, as amended in 1990 (CAA or the Act), which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate stage II vapor recovery equipment. In the Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 1, 1994.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the regulation and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted regulation are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Arizona Department of Weights and Measures, 1951 West North Lane, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns Arizona Administrative Code Title 4, Chapter 31, Article 9 (R4–31–901 through R4–31–910), submitted to EPA on May 27, 1994 by the Arizona Department of Environmental Quality. For further information, please see the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 23, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–27076 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–122, RM–8513]

Radio Broadcasting Services; Atlantic and Glenwood, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Valley Broadcasting, Inc., seeking the reallotment of Channel 279C from Atlantic to Glenwood, IA, and the modification of Station KXKT's license to specify Glenwood as its community of license. Channel 279C can be allotted to Glenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.6 kilometers (15.3 miles) north of Glenwood, at coordinates 41–15–49 North Latitude and 95–46–21 West Longitude, to accommodate petitioner's desired transmitter site. In compliance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 279C at Glenwood.

DATES: Comments must be filed on or before December 19, 1994 , and reply comments on or before January 3, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, a follows: John M. Pelkey, Esq., Susan H. Rosenau, Esq., Haley, Bader & Potts, Suite 900, 4350 North Fairfax Drive, Arlington, VA 22203–1633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–286, adopted October 18, 1994, and released October 26, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–26961 Filed 10–31–94; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 31, 1994. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:
The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington:
The Spokesman Review.

Regional Forester decisions in North Dakota:
Bismarck Tribune.

Beaverhead—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Bismarck Tribune (North Dakota); Rapid City Journal (South Dakota)
Deerlodge—Montana Standard
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independant Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: October 25, 1994.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 94–26981 Filed 10–31–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Postponement of Preliminary Antidumping Duty Determination: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202–482–5288) or Michelle Frederick (202–482–0186), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION: The Department of Commerce ("the Department") is postponing the preliminary determination in the antidumping duty investigation of canned pineapple fruit from Thailand. The deadline for issuing this preliminary determination is now no later than January 4, 1995.

On June 28, 1994, the Department initiated an antidumping duty investigation of canned pineapple fruit from Thailand (59 FR 34408, July 5, 1994). The notice stated that we would issue our preliminary determination on November 15, 1994.

On July 25, 1994, the U.S. International Trade Commission determined that there was a likelihood that a U.S. domestic industry was materially injured, or threatened with material injury, by reason of imports of canned pineapple fruit from Thailand.

On October 21, 1994, pursuant to 19 CFR 353.15(c), Maui Pineapple Co., Ltd. and the International Longshoremen's and Warehousemen's Union, the petitioners, requested that the Department postpone until January 4, 1995, the issuance of its preliminary determination in the above investigation in order to allow the Department the opportunity to include a sales below the cost of production analysis in the calculation of dumping margins at the preliminary determination. Petitioners' request for postponement was timely, and the Department finds no compelling reasons to deny the request. Therefore, we are postponing the deadline for issuing this determination until no later than January 4, 1995.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1930, as amended, and 19 CFR 353.15(d).

Dated: October 26, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27061 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, December 6, 1994, from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include presentations on NIST programs; the Advanced Technology Program: progress report, planning, and management; and a discussion of the Institute budget.

Discussions on the NIST budget, including funding of the Applied Technology Program and the staffing of management positions at NIST scheduled to begin at 4:00 p.m. and to end at 5:00 p.m. on December 6, 1994, will be closed.

DATES: The meeting will convene December 6, 1994, at 8:30 a.m. and will adjourn at 5:00 p.m. on December 6, 1994.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, NIST, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determine on August 2, 1994, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the ATP and the MEP Programs may be closed in accordance with 5 U.S.C. 552(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: October 26, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–27066 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–13–M

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, December 7, and Thursday, December 8, 1994, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on December 7 and 8, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 22091.

AGENDA:

—Welcome and Update
—Overview of Meeting
—Common Criteria Activities
—Cryptographic Updates
—Congressional Updates
—Governmentwide E-Mail
—Generally (Accepted) System Security Principle's Update
—Public Participation
—Pending Board Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by December 1, 1994. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: October 26, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–27067 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–CR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Visa Stamp for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Beginning on November 1, 1994, the Government of the Republic of Hungary will begin issuing a new export visa stamp for shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after November 1, 1994. There will be a two-month grace period, from November 1, 1994 through December 31, 1994, during which goods exported from Hungary may be accompanied by either the old or new export visa stamp. Goods exported from Hungary on or after January 1, 1995 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of

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Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 49 FR 8659, published on March 8, 1984.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Hungary for which the Government of the Republic of Hungary has not issued an appropriate visa.

Effective on November 1, 1994, you are directed to amend further the directive dated March 5, 1984, to provide for the use of a new visa stamp to accompany shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after November 1, 1994. Goods produced or manufactured in Hungary and exported from Hungary during the period November 1, 1994 through December 31, 1994 shall be permitted entry if accompanied by either the old or new visa stamp. Merchandise exported from Hungary on or after January 1, 1995 which is not accompanied by the new visa stamp shall be denied entry. A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27060 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Colombia

October 27, 19994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65579, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated October 15, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 3, 1994, you are directed to amend the December 9, 1994 directive to increase the limit for Category 443 to 123,537 numbers [1], as provided under the terms of the Memorandum of Understanding dated October 15, 1993 between the Governments of the United States and the Republic of Colombia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27059 Filed 10–31–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Protective Batting Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from the American Academy of Facial Plastic and Reconstructive Surgery which requests the Commission to develop a safety standard for protective batting helmets intended for use by children under age 15 that would require these helmets be manufactured with a face guard. The Commission solicits written comments concerning the petition.[1]

DATES: Comments on the petition should be received in the Office of the Secretary by January 3, 1995.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be captioned "HP 95–1, Petition for Development of Safety Standard for Protective Batting Helmets."

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from the American Academy of Facial Plastic and Reconstructive Surgery ("the Academy") which requests that the Commission develop a safety standard for protective batting helmets intended for children under 15 years of age as a petition for rulemaking under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). The Commission is docketing the petition under the Federal Hazardous Substances Act because that statute addresses products intended for children that present a mechanical hazard and is thus the more appropriate statute. (15 U.S.C. 1261 *et seq.*)

The petition asks that the requested standard require all protective batting helmets intended for the use of children under 15 years of age be manufactured with a face guard that conforms to Standard F910 of the American Society for Testing and Materials ("ASTM"). The Academy asserts that use of batting helmets without face guards by children under the age of 15 creates an unreasonable risk of injury. The petition includes two articles from the journal "Pediatrics" which state that batting-related injuries are a leading cause of sports-related eye injuries and that the Sports Eye Safety Committee of the National Society to Prevent Blindness has endorsed requiring face guards with batting helmets. The petition also includes a copy of the ASTM standard F910.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 419, 4330 East West Highway, Bethesda, Maryland.

Dated: October 27, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27064 Filed 10–31–94; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission approved publication of this notice by a vote of 2–0.

DEPARTMENT OF DEFENSE

Department of the Army

Public Notice for the Wyoming Valley Levee Raising Project, Luzerne County, PA; Phase II General Design Memorandum

AGENCY: U.S. Army Corps of Engineers, Baltimore District, DOD.

ACTION: Public notice.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act, the U.S. Army Corps of Engineers, Baltimore District, is conducting public coordination regarding the proposed Wyoming Valley Levee Raising Project, Luzerne County, Pennsylvania. The purpose of the levee raising project is to modify the existing four flood protection projects to provide protection against a reoccurrence of a flood equal to that caused by Tropical Storm Agnes in June 1972. The proposed project consists of the raising of levees and floodwalls an average of 3 to 5 feet, appurtenant features, and structural and non-structural mitigation measures for adverse increased flood impacts. The project was authorized under Section 401(a) of the 1986 Water Resources Development Act. Luzerne County will be the non-Federal sponsor of this project.

DATES: Comments must be received not later than December 16, 1994.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Baltimore District, CENAB–PL–EC, P.O. Box 1715, Baltimore, MD 21203–1715.

FOR FURTHER INFORMATION CONTACT: Mr. Richard R. Starr, (410) 962–4633.

SUPPLEMENTARY INFORMATION: The Baltimore District, U.S. Army Corps of Engineers has prepared a Phase II General Design Memorandum (GDM) which has evaluated an increased level of protection for the existing flood protection systems along the Susquehanna River in the Wyoming Valley of Luzerne County in the vicinity of Wilkes-Barre, Pennsylvania. Additionally, the study evaluated increased flooding due to the proposed project and alternative solutions for this problem in areas upstream and downstream in Lackawanna, Luzerne, Columbia, Montour, Northumberland, and Snyder Counties. A Supplemental Environmental Impact Statement (SEIS) has been prepared as part of the Phase II GDM to document changes in the project actions, existing conditions and project effects which were described in the Final Environmental Impact Statement (FEIS) prepared for the Phase I GDM in 1981.

The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably for foreseeable detriments. All factors which may be relevant to the proposal, including the cumulative effects thereof, will be considered; among these factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and the general needs and welfare of the people.

Initial evaluation of the levee raising project indicates that the overall quality of the study area will be maintained with exception to some social impacts caused by the increased flooding; environmental impacts to a 0.38 acre river fringe emergent wetland; and cultural impacts to one archeological site and two architectural structures. Mitigation plans have been developed for all of these impacts. The evaluation of the potential effects of the proposed projects has included: Cultural resources; hazardous, toxic and radioactive waste; terrestrial resources; aquatic resources; wetlands; threatened and endangered species; aesthetics; recreation, and the general needs and welfare of the public. Only minor impacts to aquatic resources are expected to occur as a result of limited fill activities in waters of the United States. No significant adverse impacts are expected to occur, other than the ones mentioned above, to cultural resources, wetlands, terrestrial habitat areas or listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act.

An evaluation of the proposed actions on waters of the United States was performed pursuant to the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under the authority of Section 404 of the Clean Water Act. The Section 404(b)(1) evaluations and other preliminary analyses indicate that the proposed project will result in no significant adverse impacts to the aquatic ecosystem, recreation, aesthetics, flood protection or economic values of the waterways. The U.S. Army Corps of Engineers, Baltimore District, has requested a Section 401 water quality certification from the Commonwealth of Pennsylvania for the levee raising project. Any comment relating to water quality concerns should be forwarded to the Commonwealth of Pennsylvania, Bureau of Dams, Waterways and Wetlands, North Central Office, 200 Pine Street, Williamsport, Pennsylvania 17701, within 30 days of receipt of this notice.

In accordance with NEPA and the Clean Water Act, the Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials, and other interested parties in order to consider and evaluate the impacts. Any comments received will be considered by the Corps of Engineers in the decision to implement the proposed project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest

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factors listed above. Comments regarding the levee raising project will be incorporated in the SEIS pursuant to NEPA. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. This public notice is being sent to organizations and individuals known to have an interest in the project. Please bring this notice to the attention of any other individuals with an interest in this matter.

Any person who has an interest in the project may make comments and/or request a public hearing. Comments must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. Written comments and requests must be submitted within 45 days of the date of this notice in the **Federal Register**.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–26982 Filed 10–31–94; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 1, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 25, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Standards, Criteria, and Procedures Governing the Repayment and Consolidation of Loans Under the Direct Loan Program.

Frequency: One time.

Affected Public: Individuals or households; non-profit institutions; business or other for-profit.

Reporting Burden:

Responses: 62,068

Burden Hours: 27,218.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: On August 10, 1993, the Student Loan Reform Act of 1993 (P.L. 103–66) was enacted. The legislation authorized the Federal Direct Student Loan Program to make loans beginning July 1, 1994. On July 1, 1994 the regulations implementing the Consolidation Loan Process were published. The Repayment and Consolidation rules satisfies the requirements needed for the first year of this program.

[FR Doc. 94–26969 Filed 10–31–94; 8:45 am]

BILLING CODE 4000–01–M

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of Public Meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATES: November 21, 1994, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 703A/727A, 200 Independence Avenue, S.W. Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4613, Switzer Building, Washington, D.C. 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) update the membership on the SSI children's disability program; and (2) discuss the results of the community survey on integration and continuity of services for children with special needs.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4613, Switzer Building, Washington, D.C. 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–26949 Filed 10–31–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Deviation To Permit Use of Fixed Obligation Awards

AGENCY: Department of Energy.

ACTION: Notice of Class Deviation.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby announces a deviation from its Financial Assistance Rules to permit, for a two (2) year pilot period, the issuance of certain assistance awards on a "fixed obligation" basis. This deviation is considered to be necessary to conserve public funds, and essential to the public interest. The deviation will reduce administrative requirements involved in the management of grants and will streamline the award of financial assistance actions by the Department.

FOR FURTHER INFORMATION CONTACT: E. Stephen Logan, Office of Management Review and Analysis (HR–523), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9048.

EFFECTIVE DATE: November 16, 1994.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Energy announces that, pursuant to 10 CFR part 600, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for a class deviation to the Department's Financial Assistance Rules. A deviation to 10 CFR 600.109 has been approved which provides that for certain assistance awards incurred costs will not be subject to regulation by the standards of cost allowability. This deviation is necessary to allow the award of certain assistance instruments on a "fixed obligation" basis. A fixed obligation award is one for which a fixed amount of funds are issued in support of a project without a requirement for Federal monitoring of actual costs subsequently incurred. It is intended for use in support of projects in which there is certainty about the cost, and in which the accomplishment of the purpose of the award is readily discernible such as conferences, workshops, equipment, travel, etc. It is noted that the Financial Assistance Rules permit use of fixed obligation awards under Phase I of the Small Business Innovative Research Program. This current deviation will expand the use of the fixed obligation award concept for a pilot period of two years. Programs which require mandatory cost sharing are not eligible for fixed obligation awards.

The Contracting Officer must determine the appropriateness of issuance of a fixed obligation award. In making this determination, the following factors are considered: (1)(A) The certainty that the funds requested will be the actual cost of the effort so that funds will not be remaining upon completion of the project or (1)(B) if there cannot be certainty about the actual cost of the project, then the certainty that the award is definitely less than the total actual cost of the project; (2) the possibility of making the evaluation involved in (1) above, if there are likely to be changes in the project; and (3) the ability to easily identify accomplishments or results. The use of a fixed obligation award must also be consistent with programmatic requirements. Each fixed obligation award may not exceed $100,000 or exceed one year in length.

The following administrative standards shall apply to all fixed obligation awards: (1) Proposed costs must be analyzed in detail to ensure consistency with applicable cost principles; (2) although budgets are submitted by a recipient and reviewed for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award; (3) prior approval for rebudgeting among categories by the recipient is not required; (4) payments will be made in the same manner as other financial assistance awards (see Section 600.112), except that when determined appropriate by the cognizant program official and contracting officer a lump sum payment may be made; (5) recipients must certify in writing to the contracting officer at the end of the project that the activity was completed or the level of effort was expended, however, should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements; (6) requirements for periodic reports may be established for each award so long as they are consistent with Section 600.115; and (7) changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the Department.

Issued in Washington, DC, September 27, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 94–27054 Filed 10–31–94; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee on Human Radiation Experiments

AGENCY: U.S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463,86 Stat. 770), notice is hereby given of the Advisory Committee on Human Radiation Experiments meeting.

DATES AND TIMES:

November 14, 1994, 9:00 a.m.–5:00 p.m.
November 15, 1994, 9:00 a.m.–5:00 p.m.

PLACE: Renaissance Hotel, 999 9th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Advisory Committee on Human Radiation Experiments was established

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by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, November 14, 1994
- 9:00 a.m. Call to Order and Opening Remarks
- 9:10 a.m. Discussion, Status and Strategies of Document Collection and Review
- 12:15 p.m. Lunch
- 1:15 p.m. Subcommittee Reports
- 5:00 p.m. Meeting Adjourned

Tuesday, November 15, 1994
- 9:00 a.m. Opening Remarks
- 9:10 a.m. Subcommittee Reports (continued)
- 10:45 a.m. Public Comment (5 minute rule)
- 12:15 p.m. Lunch
- 1:45 p.m. Discussion, Committee Strategy and Direction
- 5:00 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 27, 1994.

Rachel M. Samuel,

Acting Advisory Committee Manager Officer.

[FR Doc. 94–27053 Filed 10–31–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG91–1–006]

National Fuel Gas Supply Corp., Notice of Filing

October 26, 1994.

Take notice that on October 12, 1994, National Fuel Gas Supply Corporation (National) filed revised standards of conduct pursuant to Order Nos. 497 *et al.*[1] and Order No. 566.[2]

National further states that copies of this filing were served upon its customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1994). All such motions to intervene or protest should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–26966 Filed 10–31–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58976 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994), Order No. 566–A, *order on rehearing*, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

[Docket No. RS92–86–016, et al.]

Transcontinental Gas Pipe Line Corp.; Notice of Request for Initiation of a Complaint Proceeding

October 26, 1994.

Take notice that on January 18, 1994, Fina Natural Gas Company (Fina), P.O. Box 2159, Dallas, Texas 77002–6760, filed a request for the initiation of a complaint proceeding under Section 5 of the Natural Gas Act (NGA) and the consolidation of such complaint proceeding with the issues pending in Phase II of the consolidated hearing in Docket Nos. RP92–137–016 and RP93–136.

Fina states that a December 17, 1993, order in Transcontinental Gas Pipe Line Corporation's (Transco) restructuring proceeding denied Fina's request to examine the functionalization of Transco's production-area facilities for jurisdictional and/or rate design purposes in the proceedings in Docket Nos. RP92–137–016 and RP93–136. Fina states that the Commission concluded that any need for refunctionalization of Transco's facilities was not germane to the unbundling of rates. The order also stated that parties dissatisfied with the current functionalization of Transco's facilities could file a complaint, but that the Commission would not delay Transco's current rate proceedings with a reexamination of the primary function of its facilities.

On January 18, 1994, Fina requested rehearing of the order or, alternatively, establishment of a complaint proceeding under Section 5 and the consolidation of the complaint proceeding with the issues in the pending Section 4 rate cases in Docket Nos. RP92–137–016 and RP93–136. Fina contends that in its March 17, 1994, restructuring order, the Commission denied Fina's request for rehearing. However, Fina submits that the Commission stated the arguments and information submitted by Fina warrant further consideration to determine whether there is sufficient justification to initiate a complaint proceeding and deferred action on Fina's request until the Commission completed its review of Fina's presentation. The Commission further stated that if it determined that a Section 5 proceeding should be initiated, it would issue a notice establishing a separate docket number for such proceeding.

On July 21, 1994, Fina requested expedited action on its request for the initiation of a complaint proceeding against Transco under NGA Section 5 and the consolidation of such complaint proceeding with issues pending in Phase II of the hearing in Transco's current rate proceedings in Docket Nos. RP92–137–016 and RP93–136.

Fina maintains that it has shown that, under the modified primary function test, some of Transco's production-area facilities have been misfunctionalized as transmission. Since the recent gathering orders revising the Commission's gathering policy indicate that the Commission will continue to give principal consideration to the modified primary function test factors when determining the proper functionalization of facilities for jurisdictional and rate design purposes, Fina argues, the Commission should grant its request for expedited action and initiate a complaint proceeding to investigate the functionalization of Transco's production-area facilities.

Fina asserts that, in its pleading, it has fully demonstrated the need to examine the functionalization of Transco's production-area facilities to assure all parties that Transco's rates are based on a proper categorization of facility costs between Transco's services. Fina submits that this inquiry is equally justified whether viewed as an exploration under NGA Section 1(b) to ensure proper functionalization of Transco's facilities or as an investigation under NGA Sections 4 or 5 to ensure that Transco's rates correctly reflect the actual functions performed by its production-area facilities, regardless of their jurisdictional functionalization.

Any person desiring to be heard or to make any protest with reference to said request for the initiation of a complaint proceeding should, on or before November 28, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before November 28, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27008 Filed 10–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–000]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

October 26, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 1:00 p.m., on November 2, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE, Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2176 or John P. Roddy at (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 94–26967 Filed 10–31–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5100–5]

Notice of Public Water Supervision Program: Program Revision for the State of Connecticut

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Connecticut is revising its approved State Public Water Supply Supervision Primacy Program. Connecticut has adopted drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for public hearing must be submitted by December 1, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 1, 1994 a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on December 1, 1994. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Connecticut Department of Health and Addiction Services, Water Supplies Section, 21 Grand Street, Hartford, CT 06106 and

U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203—2211.

FOR FURTHER INFORMATION CONTACT: Mark Sceery, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, J.F.K. Federal Building, Boston, MA 02203–2211, Telephone (617) 565–3604.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Date: October 27, 1994.

John P. DeVillars,

Regional Administrator.

[FR Doc. 94–27017 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–F

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[FRL-5099-7]

A Notice of Intent To Invite Proposals for the Environmental Education and Training Program

The purpose of this notice is to provide you with advance notice that the U.S. Environmental Protection Agency (EPA) intends to publish an "Invitation for Proposals" in the **Federal Register** in December 1994 to solicit proposals to operate the Environmental Education and Training Program. This notice is also intended to help EPA develop a mailing list for the distribution of the "Invitation for Proposals."

The purpose of the Environmental Education and Training Program is to train educational professionals to develop and deliver environmental education programs as authorized under section 5 of the National Environmental Education Act of 1990 (P.L. 101–619). Under this program, EPA awards a cooperative agreement with a three-year project period to an institution of higher education, a non-profit organization, or a consortia of such institutions.

This program was initiated in 1992 with the award of a cooperative agreement to the University of Michigan which developed and now leads the National Consortium for Environmental Education and Training (NCEET). EPA awarded $1.6 million in FY 1992, $1.8 million in FY 1993, and $2.0 million in FY 1994 to NCEET to implement this program. EPA encourages applicants for the second three-year phase of this program (1995–1997) to collaborate with existing programs, including NCEET. EPA expects the annual funding for this program to remain relatively constant over the next three years, subject to Congressional appropriations. For additional information on NCEET, please contact NCEET, School of Natural Resources, University of Michigan, Dana Building, Ann Arbor, Michigan, 48109–1115, 313–998–6726.

Specific guidelines and priorities on the functions and activities of the program as well as EPA's basis for evaluating proposals will be provided in the "Invitation for Proposals." No additional information on the training program will be available to the public until the "Invitation for Proposals" has been published in the **Federal Register**.

EPA's tentative schedule for this program is an follows:

- Publish "Invitation for Proposals" in the **Federal Register**: December 1994.
- Deadline for mailing applications: March 1995 (exact date to be announced).
- Award cooperative agreement: by September 30, 1995.

To be placed on the EPA mailing list to receive a copy of the "Invitation for Proposals," please call 202–260–3335 or write to: Kathleen MacKinnon, U.S. Environmental Protection Agency, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street, SW., Washington, DC 20460.

Dated: October 14, 1994.

Loretta M. Ucelli,

Associate Administrator, Office of Communications, Education and Public Affairs.

[FR Doc. 94–26991 Filed 10–31–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320.9.

October 25, 1994.

The Federal Communications Commission is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission by the Office of Management and Budget (OMB) on October 6, 1994. These collections were all previously approved by OMB and are unchanged. Public comments are invited on any of these collections for a period ending December 1, 1994. Persons wishing to comment on these information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street N.W. Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0492
Title: Section 74.992 Access to channels licensed to wireless cable entities
Form Number: FCC Form 330
Action: Extension of a currently approved collection
Respondents: State or local governments, businesses or other for profit including small businesses, non-profit
Frequency of Response: On occasion
Estimated Annual Burden: 10 responses; 6.5 hours burden per response; 65 hours total annual burden
Needs and Uses: Section 74.992 requires that requests by Instructional Television Fixed and/or Response Station(s) (ITFS) entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330. The data is used by FCC staff to determine if an ITFS entity is eligible to demand access on the wireless cable facility.

OMB Number: 3060–0493
Title: Section 74.986 Involuntary ITFS station modification
Form Number: FCC Form 330
Action: Extension of a currently approved collection
Respondents: State or local governments; businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 20 responses; 8 hours burden per response; 160 hours total annual burden
Needs and Uses: Section 74.986 requires an application for involuntary modification of an ITFS station be filed on FCC Form 330. FCC staff uses the data to insure that ITFS licensees/permittees proposals to modify ITFS facilities would provide comparable ITFS service and serve the public interest in promoting the MMDS service.

OMB Number: 3060–0491
Title: Section 74.991 Wireless cable application procedures
Form Numbers: FCC Forms 330 and 494
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 4.33 hours burden per response; 433 hours total annual burden
Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC Form 330, Sections I and V, with a complete FCC Form 494 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. FCC staff uses the data to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Number: 3060–0490
Title: Section 74.902 Frequency Assignments
Form Number: FCC Forms 330 and 327
Action: Extension of a currently approved collection

Respondents: State or local governments; businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 32 responses; 7.625 hours burden per response; 244 hours total annual burden
Needs and Uses: Section 74.902 requires that an MDS applicant files the appropriate application for suitable alternative spectrum when involuntarily displacing a point to point ITFS station operating on MDS channels E and F. FCC staff uses this data to insure that proposals to displace point to point facilities of ITFS stations would provide comparable point-to-point ITSF service and serve the public interest in promoting the MMDS service.

OMB Number: 3060–0494

Title: Section 74.990 Use of available instructional television fixed service frequencies by wireless cable entities
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 2 hours burden per response; 200 hours total annual burden
Needs and Uses: Section 74.990 requires a wireless cable applicant to show that there are no multipoint distribution service or multichannel distribution service channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for. This data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use.

OMB Number: 3060–0297
Title: 80.503 Cooperative use of facilities
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; non-profit institutions including small businesses
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 100 recordkeepers; 16 hours burden per recordkeeper; 1,600 hours total annual burden
Needs and Uses: Section 80.503 recordkeeping requirements are necessary to insure licensees which share private facilities operate within the specified scope of service, on a non-profit basis, and do not function as communications common carriers providing ship-shore public correspondence services. FCC Field Operations Bureau staff use the data during inspections and investigations to insure compliance with applicable rules.

OMB Number: 3060–0222
Title: 97.213 Remote control of a station
Action: Extension of a currently approved collection
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 500 recordkeepers; 12 minutes burden per recordkeeper; 100 hours total annual burden
Needs and Uses: Section 97.213 requires posting a photocopy of the station license, a label with the name, address and telephone number of the station license and the name of at least one authorized control operator. This facilitates quick resolution of any harmful interference problems in accordance with the Communications Act of 1934, as amended. FCC Field Operations Bureau staff use this information during inspections and investigations to assure that remotely controlled amateur radio stations are licensed in accordance with applicable rules, statutes and treaties.

OMB Number: 3060–0202
Title: Section 87.37 Developmental license
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profits; non-profit institutions including small businesses
Frequency of Response: Annual
Estimated Annual Burden: 12 responses; 8 hours burden response; 96 hours total annual burden
Needs and Uses: This requirement in Section 87.37 enables the FCC to gather data on the results of developmental programs conducted in the Aviation Services for which developmental authorizations have been issued. The data is used to determine whether developmental authorizations should be renewed and/or whether rule making proceedings should be initiated to include such operations within the normal scope of Aviation Services.

OMB Number: 3060–0197
Title: Section 87.31 Changes during license term
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 100 responses; 1 hour burden per response; 100 hours total annual burden
Needs and Uses: This requirement in Section 87.31 is necessary to ensure name and/or address of licensee.

OMB Number: 3060–0264
Title: 80.413 On-board station equipment records
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; federal agencies or employees; non-profit institutions; small businesses or organizations
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 1,000 recordkeepers; 2 hours burden per recordkeeper; 2,000 hours total annual burden
Needs and Uses: The recordkeeping requirement in Section 80.413 is necessary to document the number and type of transmitters operating under an on-board station license. FCC Field Operations Bureau staff use the information during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel.

OMB Number: 3060–0132
Title: Supplemental Information 72–76 MHz Operational Fixed Stations
Form Number: FCC Form 1068A
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit; non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 300 responses; 30 minutes burden per response; 150 hours total annual burden
Needs and Uses: This collection is required to evaluate applicants for authorization in the Operational Fixed Private Land Mobile Stations in the 72–76 MHz frequency band.

OMB Number: 3060–0021
Title: Civil Air Patrol Radio Station License
Form Number: FCC Form 480
Action: Extension of a currently approved collection

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Respondents: Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 12 responses; 5 minutes burden per response; 1 hour total annual burden
Needs and Uses: FCC Form 480 is used by apply for a new, renewal or modified Civil Air Patrol Radio Station License. The data is used by the Commission personnel to evaluate the application to issue licenses, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of licensees.

OMB Number: 3060–0182
Title: Section 73.1620 Program Tests
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit; non-profit institutions including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 1,136 responses; 1.06 hours burden per response; 1,204 hours total annual burden
Needs and Uses: The notification to FCC regarding program tests (Section 73.1620(a)) alerts FCC that station construction is complete and that the station is ready to broadcast program material. The notification to UHF translator stations (Section 73.1620(f)) alerts the station that the potential for interference exists. The report to FCC regarding deviations (Section 73.1620(g)) ensure that comparative promises relating to services are not inflated.

OMB Number: 3060–0348
Title: Section 76.79 Records available for public inspection
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: Recordkeeping
Estimated Annual Burden: 2,150 recordkeepers; 2 hours burden per recordkeeper; 4,300 hours total annual burden
Needs and Uses: Section 73.79 requires that every cable employment unit with more than five full-time employees maintain, for public inspection a file containing copies of all annual employment reports and related documents. This data is used to assess the cable unit's equal employment opportunity (EEO) efforts.

OMB Number: 3060–0187
Title: Section 73.3594 Local public notice of designation for hearing
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 48 responses; 4 hours burden per response; 192 hours total annual burden
Needs and Uses: Section 73.3594 request that applicants of any AM, FM or TV broadcast station designated hearing must give notice of such designation. This notice must be given in a daily newspaper of general circulation published twice weekly for two consecutive weeks in the community in which the station is or will be located. This notice gives interested parties the opportunity to respond.

OMB Number: 3060–0488
Title: Section 73.30 Petition for authorization of an allotment in the 1605–1705 kHz band
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 500 responses; 2 hours burden per response; 1,000 hours total annual burden
Needs and Uses: Section 73.30 requires any party interested in applying for an AM broadcast station to be operated on the 1605–1705 band to first file a petition for the establishment of an allotment to its proposed community of service. FCC staff uses the data to determine whether applicants meet basic technical requirements to migrate to the expanded band.

OMB Number: 3060–0218
Title: Section 90.41(b) Disaster Relief Organization "Special eligibility showing"
Action: Extension of a currently approved collection
Respondents: Non-profit institutions; small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 75 responses; 10 minutes burden per response; 13 hours total annual burden
Needs and Uses: Information used to establish the eligibility of disaster relief organizations to use Special Emergency Radio Service frequencies which are primarily used for emergency medical services. This is necessary to assure efficient communications operations.

OMB Number: 3060–0259
Title: Section 90.263 Substitution of Frequencies below 25 MHz
Action: Extension of a currently approved collection
Respondents: State or local governments; businesses or other for profit
Frequency of Response: On occasion
Estimated Annual Burden: 60 responses; 30 minutes burden per response; 30 hours total annual burden
Needs and Uses: Applicants proposing operation in certain frequency bands below 25 MHz must submit supplemental information showing such frequencies are necessary from a safety of life standpoint. FCC personnel uses this information to evaluate the applicants need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Number: 3060–0295
Title: Sections 90.607(b)(1) & (c)(1) Supplemental information to be furnished by applicants for facilities under this subpart
Action: Extension of a currently approved collection
Respondents: State or local government; businesses or other for profit including small business
Frequency of Response: On occasion
Estimated Annual Burden: 2,028 responses; 15 minutes burden per response; 507 hours total annual burden
Needs and Uses: Applicants must submit a list of any radio facility they hold within 40 miles of the base station transmitter site being applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum.

OMB Number: 3060–0221
Title: Section 90.155(b) Time in which station must be placed in operation (exceptions)
Action: Extension of a currently approved collection
Respondents: Individuals or households; state or local governments; businesses or other for profit, including small businesses; non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 55 responses; 1 hour burden per response; 55 hours total annual burden
Needs and Uses: state and local governments are must show a need if they require longer than eight months to place a station in operation. Commission licensing staff use the information to determine if an exception to the eight month requirement is warranted.

OMB Number: 3060–0173
Title: Section 73.1207 Rebroadcasts
Action: Extension of a currently approved collection

Respondents: Businesses or other for profit, including small businesses non-profit institutions
Frequency of Response: Recordkeeping
Estimated Annual Burden: 1,012 recordkeepers; 30 minutes burden per recordkeeper; 506 hours total annual burden
Needs and Uses: Section 73.1207 requires licensees of broadcast stations to obtain written permission from an originating station prior to retransmitting any program or part thereof. A copy of the permission must be kept in the station's file and made available to the FCC upon request. This written consent assures the Commission that prior authorization for retransmission of a program was obtained.

OMB Number: 3060–0190
Title: Section 73.3544 Application to obtain a modified station license
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses; non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 272 responses; 1 hour burden per response; 272 hours total annual burden
Needs and Uses: Section 73.3544 requires broadcast licensees to file informal applications with FCC to obtain modified station license when prior authority is not required to make changes. FCC uses the data to ensure changes are in accordance with FCC rules and regulations and to issue a modified station license.

OMB Number: 3060–0489
Title: Section 73.37 Applications for broadcast facilities, showing required
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 210 responses; 4.86 hours per response; 1,021 hours total annual burden
Needs and Uses: Section 73.37(d) requires applicants for new or major change AM broadcast stations to make a satisfactory showing if new or modified nighttime operations by a Class B station is proposed. Section 73.37(f) requires applicants seeking facilities modifications that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model 1 facilities. The FCC staff uses the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Number: 3060–0346
Title: Section 78.27 License Conditions
Action: Extension of a currently approved collection
Respondents: Business or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 455 responses; 10 minutes burden per response; 76 hours total annual burden
Needs and Uses: Section 78.27 requires licensees of Cable Television Relay Service stations to notify the Commission when stations commence operation and to request additional time to complete construction when needed. FCC staff uses the data to provide accurate records of actual CARS channel usage for frequency coordination purposes.

OMB Number: 3060–0570
Title: Section 76,982 Continuation of Rate Agreements
Action: Extension of a currently approved collection
Respondents: State and local governments; businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 150 persons; 30 minutes burden response; 75 hours total annual burden
Needs and Uses: Section 76.982 provides that franchise authorities who were regulating basic cable rates pursuant to a rate agreement executed before July 1, may continue to regulate rates during the remainder of the agreement after notification to the FCC that it intends to do so. This notification will give the FCC information needed to assess impact of new regulatory scheme.

OMB Number: 3060–0314
Title: Section 76.209 Fairness doctrine, personal attacks, political editorials
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 1,312 responses; 2.6 hours burden per response; 3,411 hours total annual burden
Needs and Uses: Section 76.209(b) requires that a cable television system operator must notify a person or group on which a personal attack was made of the date, time and identification of the cablecast. They are to offer a script or tape of the attack and offer a reasonable opportunity to respond to the attack over the licensees facilities. Section 76.209(d) requires that when a cable television system operator in an editorial endorses or opposes a candidate, the licensee must notify the other qualified candidate(s) for the same office or the candidate opposed, of the date and time of editorial, provide a script or tape editorial and offer a reasonable opportunity to respond over the system's facilities.

OMB Number: 3060–0561
Title: Section 76.913 Assumption of jurisdiction by the Commission
Action: Extension of a currently approved collection
Respondents: State or local governments; federal agencies or employees
Frequency of Response: On occasion
Estimated Annual Burden: 500 responses; 8 hours burden per response; 4,000 hours total annual burden
Needs and Uses: Section 76.913 provides that a franchise authority that has insufficient resources to regulate rates or lacks the legal authority may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchise. FCC uses the data to identify situations where it should exercise jurisdiction.

OMB Number: 3060–0447
Title: Section 25.134 Licensing Provisions of Very Small Aperture Terminal Network
Action: Extension of a currently approved collection
Respondents: Business or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 10 responses; 120 hours burden per response; 1,200 hours total annual burden
Needs and Uses: Section 25.134 requires applicants seeking higher satellite carrier power density to make certain showings including a copy of their engineering analyses output, accompanied with a narrative summary and also proof of consent to all potentially affected parties. The FCC uses this data to identify potential interference problems.

OMB Number: 3060–0560
Title: Section 76.911 Petition for reconsideration of certification
Action: Extension of a currently approved collection
Respondents: Businesses or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 450 responses; 2 hours burden per response; 900 hours total annual burden

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Needs and Uses: Section 76.911(b)(2) requires competing video programmers, when requested by cable operators to provide information regarding the competitor's research and number of subscribers. The information will be used by cable operators to rebut a franchising authority's certification to the FCC that the cable system is not subject to effective competition. FCC staff will use the data to achieve the goals of the Communications and Cable Acts, by ensuring that the threshold effective competition determination is based on a complete record and to resolve disputes concerning the presence or absence of effective competition.

OMB Number: 3060–0562

Title: Section 76.916, Petition for Recertification

Action: Extension of a currently approved collection

Respondents: State or local governments

Frequency of Response: On occasion

Estimated Annual Burden: 1,300 responses; 2.5 hours burden per response; 3,250 hours total annual burden

Needs and Uses: Section 76.916 provides that franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked must file a "Petition for Reconsideration." If this collection was not conducted, such franchise authorities would not have the opportunity to establish their qualifications after their initial request for certification was denied or revoked.

OMB Number: 3060–0486

Title: Document Index Terms

Action: Extension of a currently approved collection

Respondents: Businesses or other for profit, including small businesses

Frequency of Response: On occasion

Estimated Annual Burden: 21,120 responses; .017 hours burden per response; 360 hours total annual burden

Needs and Uses: This information is used by the FCC to enter documents into the Commissions Records Imaging Processing System (RIPS). This system is used for storage and retrieval of docketed, rulemakings and petitions for Rulemaking proceedings. The data assists the public in assigning documents in the system.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27136 Filed 10–28–94; 11:56 am]

BILLING CODE 28712–01–M

Public Information Collection Requests Submitted to Office of Management and Budget for Review

October 21, 1994.

The Federal Communications Commission has submitted the following information collection requests to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on these information collection should contact Timothy Fain, Office of Management and Budget, Room 10102, NEOB, Washington, D.C. 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please Note: Pursuant to 5 CFR 1320.18, the Commission has requested expedited review of these collections by December 1, 1994.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form No.: FCC 600.

OMB Control No.: None.

Action: New collection.

Respondents: Individuals, State or local governments, Non-profit institutions, Business or other for-profit, including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 151,000 respondents; average 4 hours per respondent; 604,000 hours total annual burden.

Needs and Uses: FCC Form 600 is filed by applicants applying for a new or modified authorization to provide or use commercial, private, both commercial and private, or fixed service. The data is used to determine eligibility, for rulemaking proceedings, enforcement purposes and for resolving treaty obligations.

Title: Notification of Commencement of Service or of Additional or Modified Facilities.

Form No.: FCC 489.

OMB Control Number: 3060–0318.

Action: Revised collection.

Respondents: Business or other for profit, including small businesses.

Frequency of Response: On occasion.

Estimated Annual Burden: 10,000 respondents; average 3.62 hours per response; 36,200 hours total annual burden.

Needs and Uses: FCC 489 is a multi-purpose form used by commercial mobile radio service providers to notify the Commission of commencement of service, satisfaction of construction requirements, additional transmitters, minor modifications to stations and for certain other miscellaneous purposes. FCC 489 is used by the Commission to verify compliance with construction and service requirements and to update the database.

Title: Application for Assignment of Authorization or Consent to Transfer of Control of License.

OMB Control Number: 3060–0319.

Action: Revised Collection.

Respondents: Business or other for profit, including small business.

Frequency of Response: On occasion.

Estimated Annual Burden: 5,000 respondents; average 3 hours per response; 15,000 hours total annual burden.

Needs and Uses: FCC 490 is filed to solicit Commission approval to assign a radio station authorization to another party or to transfer control of a licensee. The information collected in the application is used by Commission staff to determine whether the proposed sale of a radio station and the qualification of the new carrier are in compliance with the requirements of FCC rules and regulations.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, D.C. 20503.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Federal Communications Commission

Information and Instructions

Notification of Commencement of Service or of Additional or Modified Facilities

Introduction

FCC 489 is a general purpose notification form for use in the Public Mobile Service and the Personal Communications Service. Each notification must contain one and only one form FCC 489, but may also use one or more of the schedules from form FCC 600 as attachments.

Applicable Rules and Regulations

Before the notification is prepared, the notifier should review the relevant part(s) of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules often require various exhibits to be filed with a notification in addition to the information requested in the notification form. Notifiers should make every effort to file complete notifications. Failure to do so can result in the return of the notification as unacceptable.

Microfiche

Notifications on FCC 489 must be filed in microfiche form. Generally, three microfiche (one original and two copies) are required. Each microfiche must be a copy of the signed paper original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an background providing sufficient contrast to make legible copies) at 24× or 27× reduction. At least one of the microfiche sets must be a silver halide camera master of a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper mircofiche envelopes and submitted in a 5" x 7½" envelope. Row "A" (the first row for page images) of the first microfiche must be left blank.

Paper Original

Generally, the paper original must be submitted at the same time as the microfiche. Refer to the pertinent part of the FCC rules for specific instructions.

Magnetic Disks, Electronic Filing

Notifications on FCC 489 may be filed in magnetic disk form or through electronic data transmission. Each notification must be in a separate ASCII computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. N7>>>DC<<<). For items from attached form FCC 600 Schedules B or C, add the letter "N" before the item number and use bracketed, comma delimited integers to indicate as needed the schedule number, FCC location number, FCC antenna number and FCC transmitter number. For example, if the second Schedule C attached to a notification reports the addition of a location number 15, the sequence NC1{2,15} >>>A<<< must appear in the file. For another example, if the fourth Schedule B attached to a notification reports the addition of a transmitter number 3 operating on 152.24 MHz using antenna 2 at location 12, the sequences NB43 {4,12,2,3}>>>A<<< and NB44 {4,12,2,3}>>>152.24<<< must appear in the file. In general, for attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Exhibits

Each document attached as an exhibit must be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit, and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. Notifiers using electronic or magnetic disk filing must tag each exhibit using the relevant item number followed by "A". For example, if a text exhibit concerning item N24 is submitted the sequence N24A>>> [text of the exhibit]<<< must appear in the file.

Processing Fee

A processing fee is required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable to this form, call (202) 418–0220.

Incorporation by Reference

You may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC if the information previously filed is more than one 8½" by 11" page in length, and all information therein is current and accurate in all significant respects. The reference must be attached as an exhibit. The reference must contain details sufficient to locate the previously filed information found (*e.g.*, station call sign, application file number if any, title of proceeding, docket number and legal citations, exhibit and page references). Items that request numbers, alphabet letters (*e.g.* "Y" or "N") or other short answers must be answered directly without reference to a previous filing.

Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to update its official and unofficial records, and to determine whether licensees have complied with requirements imposed upon them by FCC rules. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the notification may be delayed or the notification may be returned pursuant to FCC rules. Failure to file a notification as required by FCC rules may result in apparent liability for forfeiture.

Public reporting burden for this collection is estimated to be ?? to ?? hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0318), Washington, D.C. 20503.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Specific Instructions for the Notification

Licensee

Items N1–N8 These items identify the licensee filing the notification (the notifier). The information provided must match the licensee's name, address and telephone numbers as they appear in FCC records, unless one of the purposes of the notification is to change or correct this information. These items must be completed.

Items N9–N16 These items identify the contact representative (usually the headquarters office of a large licensee, the law firm or other representative of the licensee or the person or company that prepared or submitted the notification on behalf of the licensee). In

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the event there is a question concerning the notification, the FCC will attempt to communicate with the contact representative first. These items are optional.

Reference Information

Item N17 This item requests the FCC call sign assigned to the station to which the notification relates. This item must be completed.

Item N18 This item requests the file number of the application, the grant of which resulted in the specific authorization to which the notification relates. This item must be completed only for notifications reporting that construction requirements have been met, and notifications reporting that service to subscribers has commenced. For other types of notifications it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N19 This item requests the date of required completion of construction (or the date of required commencement of service) for the authorization to which the notification relates. This date is printed on most authorizations. The FCC may use this date for further identification of the referenced authorization and to determine whether the notification has been timely filed. If the date supplied in this item differs from the date in FCC records, an exhibit explaining the discrepancy should be attached. If the notifier realizes that the notification is being late filed, an exhibit explaining the reason for the late filing should be attached. This item must be completed only for notifications reporting that construction requirements have been met, and notifications reporting that service to subscribers has commenced. For other types of notifications it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Market/Channel Block

Item N20 This item identifies by number the market or licensing area of the station to which the notification is relevant. The market designators are listed in FCC Public Notices or in the FCC Record. The response to this item must be consistent with the response to item N23. This item must be answered only if the notification is for a station or system in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). It should not be answered for notifications in radio services licensed on a station by station basis, instead it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N21 This item indicates the channel block assigned to the station to which the notification is relevant. It must be answered only if the notification is for a station or system in one of the radio services for which spectrum is assigned in channel blocks. For filings in the Cellular Radio Service, the answer to this item is either "A" or "B". For filings in the Air-ground Radiotelephone Service (commercial aviation), the answer to this item is "C-" followed by a number between 1 and 29 (e.g. C-17). This item should not be answered for filings in radio services in which channels are individually assigned.

Item N22 This item identifies the sub-market of the system to which the notification is relevant. This item must be answered only if the notification is for a system in one of the radio services that is licensed on a geographic licensing area or "market" basis, and the market has been subdivided. For notifications in other services it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Item N23 This item identifies by name the market or licensing area of the station to which the notification is relevant. The market names are listed in FCC Public Notices or in the FCC Record. The response must be consistent with the response to item N20. This item must be answered only if the notification is for a system in one of the radio services that is licensed on a geographic licensing area or "market" basis. This item should not be answered for notifications in radio services licensed on a station by station basis. For notifications in other services it may be left blank (or omitted, in the case of electronic or magnetic disk filings).

Purpose of Notification

Item N24 This item states the purpose(s) for the notification. Enter one or more letters corresponding to the listed purposes. If letters H or I are indicated, Schedule B or C from form FCC 600 must be attached, as appropriate.

Control Points

Items N25–N27 These items provide for changes to the station or system control points, and the telephone number(s) where a person responsible for operation of the station or system could be reached, if necessary. These items must be answered only when a control point is to be added, deleted or modified. To move an existing control point or change a telephone number, delete the old information and add the new.

System Identification Numbers

Items N28–N33 These items provide for the use or discontinuance (by licensees in the Cellular Radiotelephone Service) of the system identification numbers (SIDs) assigned to other cellular systems. For other types of notifications these items must be left blank (or omitted, in the case of electronic or magnetic disk filings). Cellular licensees that need a new (not previously assigned) SID must apply for it using form FCC 600, rather than filing this notification form. By placing an "A" on a row in item N28 and providing data on that row in items N29–N33 that agree with FCC records, the notifier indicates that it has sought and obtained the consent of the licensee of the cellular system identified on that row in items N30–N33 (the consenting cellular system) to the use, by the notifier in the cellular system indicated in items N20–N23, of a system identification number (given in item 29) originally assigned to the consenting cellular system.

Certification

Items N34–N38 To be acceptable for filing, notifications must be signed in accordance with Part 1 of the FCC rules.

Attachment of Schedules A, B or C From FCC 600

Schedule A

Schedule A is attached only if it is necessary or desirable to use the FACILITIES NOT CONSTRUCTED module in connection with purpose E (reporting that a system has been partially constructed). In some cases where more than one antenna or transmitter is authorized at a location, and some but not all of the facilities have been constructed, it may be necessary to further distinguish the unconstructed facilities by channel. If so, indicate the affected channels in an exhibit, using item number NA12A.

Schedule B

Schedule B is used when site-specific data is required for notifications in radio services involving individual channel assignments. At least one Schedule B must be filed for each location for which data is required. Schedule B provides location data, information concerning proximity to market boundaries, technical information concerning the antennas and transmitters at the particular location, radial power and antenna height data, and information about points of communication for transmitters at the particular location. Each Schedule B can hold data for multiple antennas at one location by using additional copies of page 2. For each antenna, Schedule B can hold data for up to four transmitters and/or channels. Additional Schedule Bs may be filed for the same location or antenna if necessary.

Schedule C

Schedule C is used when site-specific data is required for notifications in the radio services for which spectrum is assigned in channel blocks. One Schedule C must be filed for each location for which data is required. Schedule C provides location data, technical parameters of the facility at the particular location, radial power and antenna height data.

Specific Instructions for Schedule B Technical Data—Individual Channel Assignment

Location

Item B1 This item indicates what action the notifier wants the FCC to take in the database with regard to the location specified in items B3–B10. If the notification is for a new location in an existing system or station (i.e. the location does not already exist on any channel in the authorized system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items B11–B14 below). In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will not be processed.

Item B2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc.).

Items B3–B10 These item identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items B7, B8, B9 and B10 These items are the geographic coordinates of the location. Items B7 and B8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items B7 and B8 are required. Items B9 and B10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items B9 and B10 are optional, but may assist processing of the Schedule B.

Items B11–B14 These items key to location data that is to be replaced by the data in items B3–B10 in the data base. The notifier should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items B3–B10. The notifier must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the notifier must submit two Schedule Bs with the notification—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Supplementary Location Information

Item B15 This item is optional and concerns proximity of the location to Canada. If the notifier does not know whether the location is North of Line A or East of Line C, this item should be left blank.

Item B16 This item is optional and concerns proximity of the location to Mexico. If the notifier does not know whether the location is within 200 kilometers (124 miles) of the U.S.-Mexico border, this item should be left blank.

Items B17–B19 These items must be completed only for filings in the narrowband Personal Communications Service (other than nationwide and response channel related filings).

Antenna

Item B20 This item indicates what action the notifier wants the FCC to take in the database with regard to the antenna specified in items B22–B28. If the filing is for a new antenna (i.e. the antenna does not already exist at this location for any channel in the authorized system or station), the answer to this item is "A". If the antenna is an existing antenna in an authorized system or station and *the licensee has abandoned or intends to abandon the antenna completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the antenna with the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will not be processed.

Item B21 This item indicates whether the antenna in question is already authorized or whether it is only proposed in a pending application. The notifier must answer this item.

Item B22 This item indicates the FCC antenna number of the antenna. If the notifier knows this number (which is printed on the authorization), he or she should complete this item.

Items B23–28 This item describes the antenna by its type, manufacturer and model number, and must be completed for all notifications where a Schedule B is attached, except for those in the Air-ground Radiotelephone Service. Type means a generic description (e.g. collinear vertical, Yagi, panel array). Manufacturer is the name of the company that made the antenna, and model number is the designation that the manufacturer assigns to the antenna. If a polar plot of the antenna horizontal or vertical radiation pattern is required by the pertinent FCC rules, attach as an exhibit such plot (or in the case of electronic or magnetic filing, substitute a table of the polar data for 360° in 5° increments in the format: bearing, gain_{dBd}), using item number B25A.

Items B26 & B28 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all notifications where a Schedule B is attached, except for those in the Air-ground Radiotelephone Service.

Item B27 This item is not used with notifications and should be left blank or omitted.

Transmitters for Antenna

Item B29 This item is the FCC transmitter number for the transmitter

Item B30 This item indicates what action the notifier wants the FCC to take in the database with regard to as many as four transmitters (or channels) associated with the (same) antenna. If the notification is for a new transmitter or channel (i.e. a transmitter or channel that does not already exist for this antenna at this location in the system or station), the answer to this item is "A". If the transmitter or channel already exists for this antenna at this location in the authorized system or station and the

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licensee has abandoned or intends to abandon the transmitter or channel completely, the answer to this item is "D". In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station this portion of the Schedule B will not be processed.

Item B31 This item specifies the center frequencies of the channels on which the transmitters operate. The pertinent channel(s) must be specified for each transmitter.

Item B32 This item requests a four letter code that identifies the transmitter class. The four letter code consists of two letters that conform to the international station classification nomenclature used by the International Frequency Registration Board, followed by two letters that further classify the transmitter by usage. The codes are as follows:

Base	FBBS
Standby	FBST
Mobile subscriber	MLSB
Dispatch	FXDI
Auxiliary test	FXTS
Control	FXCT
Repeater	FXRP
Fixed relay	FXRX
Ground	FBGS
Air-ground signaling	FBSI
Inter-office	FXIO
Fixed subscriber	FXSB
Central office	FXCO

Item B33 This item should be completed only if the notification reports the use of an emission type that is not authorized in the FCC rules for use by all stations in the pertinent radio service, but has already been authorized for use by the station or system to which the notification pertains.

Item B34 This item reports the maximum effective radiated power (ERP) in any direction on the specified channel. This item must be completed for all transmitter notifications. The answer must be stated in Watts.

Radial Data for Antenna

Item B35 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all antenna notifications, except for those in the Air-ground Radiotelephone Service.

Items B36–B39 These items report the effective radiated power (ERP) for each transmitter or channel in each of the eight cardinal radial directions. These items must be completed for all transmitter notifications, except for those in the Air-ground Radiotelephone Service.

Points of Communication for Antenna

Item B40–B45 These items describe fixed points of communication for (1) stations in the Rural Radiotelephone Service serving individually licensed subscribers, and (2) point-to-multipoint transmitters operating on channels that are assigned only to stations that communicate with four or more points. These items should be completed only by notifiers reporting a relocation of these points of communications and not for any other purpose.

Specific Instructions for FCC 600 Schedule C Technical Data—Block Channel Assignment

Location

Item C1 This item indicates what action the notifier wants the FCC to take in the database with regard to the location specified in items C3–10. If the notification is for a new location in an existing system or station (i.e. the location does not already exist in the authorized system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items C11–C14 below.) In all other cases, the answer to this item is "M". If the notifier answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule C will be processed as if this item had been answered "M". If the notifier answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will be processed as if this item had been answered "A". If the notifier answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will not be processed.

Item C2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc).

Items C3–C6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items C7, C8, C9 and C10 These items are the geographic coordinates of the location. Items C7 and C8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items C7 and C8 are required. Items C9 and C10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items C9 and C10 are optional, but may assist processing of the Schedule C.

Items C11–C14 These items key to location data that is to be replaced by the data in items C3–C10 in the data base. The notifier should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items C3–C10. The notifier must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the notifier must submit two Schedule Cs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Technical Parameters

Items C15, C16 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C17 This item reports the maximum effective radiated power (ERP) of the facility in any direction. This item must be completed for all transmitter notifications to which Schedule C is attached. The answer must be stated in Watts.

Radial Data

Item C18 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C19 This item reports the effective radiated power (ERP) in each

of the eight cardinal radial directions. This item must be completed for all notifications to which Schedule C is attached, except for those in the Air-ground Radiotelephone Service.

Item C20 This item reports the calculated radial distance to the service area boundary (SAB) from the specified location. This item is required only for notifications in the Cellular Radiotelephone Service.

Item C21 This item reports the determined radial distance to the Cellular Geographic Service Area (CGSA) from the specified location. This item is required only for notifications in the Cellular Radiotelephone Service.

BILLING CODE 6712-01-M

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FCC 489

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
3060-0589
Expires approximately
Est. Avg. Burden Hours
Per Response: 45 Hrs.

Notification of Commencement of Service or of Additional or Modified Facilities

Personal Communications Service
Cellular Radiotelephone Service
Paging and Radiotelephone Service
Rural Radiotelephone Service
Offshore Radiotelephone Service
Air-ground Radiotelephone Service

FEE Use Only

File Number
(FCC Use Only)

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

LICENSEE

N1. Legal Name of Licensee	N2. Voice Telephone Number ( )
N3. Assumed Name Used for Doing Business (if any)	N4. Fax Telephone Number ( )
N5. Mailing Street Address or P.O. Box	
N6. City	N7. State / N8. Zip Code

N9. Name of Contact Representative (if other than licensee)	N10. Voice Telephone Number ( )
N11. Firm or Company Name	N12. Fax Telephone Number ( )
N13. Mailing Street Address or P.O. Box	
N14. City	N15. State / N16. Zip Code

REFERENCE INFORMATION

N17. Call Sign	N18. File Number	N19. Date of Required Completion (or commencement)

MARKET / CHANNEL BLOCK

N20. Market Designator	N21. Channel Block	N22. Sub-Market Designator	N23. Market Name

PURPOSE OF NOTIFICATION

N24 The purpose of this submission is to notify the Commission that:

[ ]

Enter one or more letters from the list to the right that indicate the purpose of this notification.

SATISFACTION OF CONSTRUCTION REQUIREMENTS
- A stage I construction requirements for the referenced system have been met (CN, CW, CG)
- B stage II construction requirements for the referenced system have been met (CN, CW, CG)
- C stage III construction requirements for the referenced system have been met (CN, CW)
- D all of the facilities authorized pursuant to the referenced filing have been constructed, in exact accordance with the authorization unless otherwise indicated (CL, CD, CR, CO, CG)
- E some, but not all, of the facilities authorized pursuant to the referenced filing have been constructed, in exact accordance with the authorization unless otherwise indicated (CL, CD, CR, CO, CG)

COMMENCEMENT OF SERVICE
- F nationwide service to subscribers has commenced (CN, CG)
- G service to subscribers has commenced (CN, CW, CL, CD, CR, CO, CG)

ADDITIONAL OR MODIFIED FACILITIES
- H minor modifications have been made to authorized facilities (CL, CD, CR, CO, CG)
- I one or more transmitters have been added to an authorized system (CL, CD, CR, CO, CG)

OTHER
- J one or more system identification numbers have been put into use or discontinued (CL)
- K one or more authorized facilities have been taken out of service (CL, CD, CR, CO, CG)
- L one or more control points have been established or discontinued (all)
- M a partial assignment of authorization was not completed within 60 days (all)
- N the licensee's name, address, etc. is changed, but no assignment or transfer of control occurred (all)
- O there are errors in FCC records that should be corrected as indicated herein (all)

CONTROL POINTS

N25. Action Requested Add Delete	N26. Location Street Address, City or Town, State	N27. Telephone Number

SYSTEM IDENTIFICATION NUMBERS

N28. Action Requested Add Delete	N29. SID	N30. Market Designator	N31. Channel Block	N32. Sub-Market Designator	N33. Market Name

NOTE By placing an "A" on a row in item N28 and providing data on that row in items N29-N33 that agree with FCC records, the notifier indicates that it has sought and obtained the consent of the licensee of the cellular system identified on that row in items N30-N33 (the consenting cellular system) to the use, by the notifier in the cellular system indicated in items N20-N23, of a system identification number (given in item 29) originally assigned to the consenting cellular system.

CERTIFICATION

The LICENSEE waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise. All information on this notification is a material part of the notification. All statements made in any attached exhibits are a material part hereof and are incorporated herein as if set out in full in this notification. The undersigned, individually and for the licensee, hereby certifies that the statements made herein are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

N34. Licensee is a (an) [ ] Individual Unincorporated Association Partnership Corporation	
N35. Typed Name of Person Signing	N36. Title
N37. Signature	N38. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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Federal Communications Commission

Information and Instructions

Application for Assignment of Authorization or Consent to Transfer of Control of Licensee

Introduction

FCC 490 is a form used for applications for assignment of authorization and consent to transfer of control in the commercial mobile radio services and the Rural Radiotelephone Service. Each such application must be made on form FCC 490. For full assignments of authorization, FCC 490 alone is sufficient. For partial assignments, additional forms (FCC 600 and FCC 480) are required.

Applicable Rules and Regulations

Before the application is prepared, the applicant should review the relevant part(s) of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules often require various exhibits to be filed with an application in addition to the information requested in the application form. Applicants should make every effort to file complete applications. Failure to do so can result in the return as unacceptable for filing or dismissal of the application.

Microfiche

For the services governed by Part 22 and Part 24 of FCC rules, applications on FCC 490 must be filed in microfiche form. Generally, three microfiche (one original and two copies) are required. Each microfiche must be a copy of the signed paper original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an background providing sufficient contrast to make legible copies) at 24× or 27× reduction. At least one of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5" x 7½" envelope. Row "A" (the first row for page images) of the first microfiche must be left blank. The paper original must be submitted at the same time as the microfiche.

Magnetic Disks, Electronic Filing

For the services governed by Part 22 and Part 24 of FCC rules, applications on FCC 490 may be filed in magnetic disk form or through electronic data transmission. Each application must be in a separate ASCII computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. T6>>>DC<<<). In general, for attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Exhibits

Each document attached as an exhibit must be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit; the number of the page of the exhibit and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. Notifiers using electronic or magnetic disk filing must tag each exhibit using the relevant item number followed by "A". For example, if a text exhibit concerning item T48 is submitted, the sequence T48>>>[text of the exhibit]<<< must appear in the file.

Processing Fee

A processing fee is required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable in the radio services governed by Part 22 and Part 24 of the FCC rules, call (202) 418–0220. For assistance with fees in other radio services, contact the Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17326, (800) 322–1117.

Incorporation by Reference

Applicants in the radio services governed by Part 22 and Part 24 of FCC rules may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC if the information previously filed is more than one 8½" by 11" page in length, and all information therein is current and accurate in all significant respects. The reference must be attached as an exhibit. The reference must contain details sufficient to locate the previously filed information can be found (e.g. station call sign, application call sign, application file number if any, title of proceeding, docket number and legal citations, exhibit and page references). Items that request numbers, alphabet letters (e.g. "Y" or "N" or other short answers must be answered directly without reference to a previous filing.

Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to determine whether a grant of the application would serve the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned pursuant to FCC rules. Failure to obtain prior FCC approval of an assignment of authorization or transfer of control as required by FCC rules may result in revocation or apparent liability for forfeiture.

Public reporting burden for this collection is estimated to be ?? to ?? hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Information and Regulatory Affairs, Office of Management and Budget. Paperwork Reduction Project (3060–0319), Washington, D.C. 20503.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Specific Instructions for the Application

Assignor or Transferor

Items T1–T8 These items identify the licensee that is applying to assign its authorization or for consent to a transfer for control. The information provided must match the licensee's name, address and telephone numbers as they appear in FCC records, unless it is intended to change or correct this information. These items must be completed.

Items T9–T16 These items identify the contact representative (usually the headquarters office of a large licensee, the law firm or other representative of the licensee of the person or company that prepared or submitted the application on behalf of the licensee). In the event there is a question concerning the application the FCC will attempt to communicate with the contact representative first. These items are optional.

Type of Transaction

Item T17 This item indicates whether the application is for assignment of authorization or consent to transfer of control. This item must be completed.

Item T18 This item indicates how the assignment or transfer of control is to be accomplished. This item must be completed.

Item T19 This item indicates whether the assignment of authorization or transfer of control is voluntary or involuntary. This item must be completed.

Item T20 This item indicates whether or not the application is for a *pro forma* assignment of authorization or transfer of control. This item must be completed.

Item T21 This item indicates whether or not local or state authorization is required for the assignment of authorization or transfer of control. This item must be completed.

Assignment of Stock

Items T22–T27 These items report the number of shares of stock and the classification of these shares (e.g. common stock) involved in a transfer of control effected by the transfer of stock. These items must be completed only for applications involving a transfer of stock.

Authorization(s) to be Assigned or Transferred

This table identifies the authorization(s) to be assigned, or for which control of the licensee is to be transferred. At least one row of this table must be completed. Use a separate row for each authorization. Attach additional copies of page 2 if necessary to list more authorizations.

Item T28 This column of the table lists the call sign(s) of the authorizations to be assigned or transferred.

Item T29 This column of the table identifies the radio service or radio service sub-category for each authorization. Use the following two-letter codes designating the FCC radio service, or radio service subcategory.

Commercial	
Personal Communications Service	
Broadband	CW
Narrowband	CN
Cellular Radiotelephone Service	CL
Paging and Radiotelephone Service	CD
Air-ground Radiotelephone Service	CG
Offshore Radiotelephone Service	CO
Rural Radiotelephone Service	CR
Business Radio Service (if commercial)	
806–821/851–866 MHz, conventional.	GB
806–821/851–866 MHz, trunked	YB
896–901/935–940 MHz, conventional.	GU
896–901/935–940 MHz, trunked	YU
929–930 MHz, paging systems	GS
Other	IB
Specialized Mobile Radio	
806–821/851–866 MHz, conventional.	GX
806–821/851–866 MHz, trunked	YX
896–901/935–940 MHz, conventional.	GR
896–901/935–940 MHz, trunked	YS
220 MHz Systems	
Nationwide Non-Commercial 10 Channel.	NL
Nationwide Non-Commercial 5 Channel.	NS
Nationwide Commercial 5 Channel	NC
Non-Nationwide 5 Channel Trunked.	QT
Non-Nationwide Data	QD
Non-Nationwide Public Safety/Mutual Aid.	QM
Non-Nationwide Other	QO

Item T30 This column of the table lists the data on which each authorization was first granted to the assignor or transferor.

Item T31 This column of the table indicates how the assignor of transferor obtained the authorization(s). Use the following codes:

Uncontested Application (no competing applications).	UA
Contested Application (competing applications)	
Comparative Hearing	CH
Random Selection	RS
Competitive Bidding	CB
Voluntary Assignment of Authorization.	VA
Involuntary Assignment of Authorization.	IA
Voluntary Transfer of Control	VT
Involuntary Transfer of Control	IT

Item T32 This column of the table must contain the name of the licensee exactly as it currently appears in the official FCC records. It may differ from that in items T1 and T3 if the name has been changed but FCC records do not yet reflect the change.

Assignee or Transferee

Items T33–T40 These items identify the party that is applying to become or control the licensee of the authorizations listed in items T28–T32. These items must be completed.

New Licensee Information

Items T41–T48 These items identify who the licensee will be if an assignment of authorization is granted. The information provided will become the licensee's name, address and telephone numbers of record, and the authorization will be sent to this address. This item must be completed only if the licensee name and other information will be different from that given in items T1–T8 after the authorization is assigned.

Basic Qualifications

Items T49–T53 These items request indications and information that enable the FCC to determine whether the assignee or transferee or assignor or transferror is disqualified from holding, assigning or transferring an FCC authorization because of misconduct. Items T49–T51 must be answered "N" if there is no misconduct. Item T52 must be answered "N" if the assignor or transferor and the assignee or transferee applicant is not a party in any pending matter relevant to misconduct. Item T53 must be answered "Y" if the applicant is not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). If the answer to items T49, T50, T51 or T52 is "Y" or if the answer to item T53 is "N", attach as an exhibit a statement explaining the circumstances and why the applicant believes that an FCC grant of the application would be in the public interest notwithstanding the actual or alleged misconduct. Use T49A, T50A, T51A, T52A, or T53A as the item number(s) for such exhibits, respectively.

Assignor or Transferor Certification

Items T54–T57 In order for the application to be acceptable for filing, the assignor or transferor must sign this certification in accordance with Part 1 of the FCC rules.

Assignee or Transferee Certification

Items T58–T62 In order for the application to be acceptable for filing, the assignee or transferee must sign this certification in accordance with Part 1 of the FCC rules.

BILLING CODE 6712-01-M

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FCC 490

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
3060-0000
Expires (date)
Est. Avg. Burden Hours Per Response: 60 Hrs.

Application for Assignment of Authorization or Consent to Transfer of Control of Licensee

Commercial Mobile Radio Services
Rural Radiotelephone Service

FEE Use Only

File Number (FCC Use Only)

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

ASSIGNOR OR TRANSFEROR

T1. Name of Assignor or Transferor	T2. Voice Telephone Number ( )
T3. Assumed Name Used for Doing Business (if any)	T4. Fax Telephone Number ( )
T5. Mailing Street Address or P.O. Box	
T6. City	T7. State / T8. Zip Code

T9. Name of Contact Representative (if other than Assignor or Transferor)	T10. Voice Telephone Number ( )
T11. Firm or Company Name	T12. Fax Telephone Number ( )
T13. Mailing Street Address or P.O. Box	
T14. City	T15. State / T16. Zip Code

TYPE OF TRANSACTION

T17. This application requests [ ] Assignment of authorization Consent to Transfer of Control of Licensee

T18. How will assignment or transfer of control be accomplished? [ ] Sale or other transfer or assignment of stock Other

T19. This assignment of authorization or transfer of control of licensee is [ ] Voluntary Involuntary

T20. Will this be a pro forma assignment or transfer of control? [ ] Yes No

T21. Is local or state authorization required for this assignment or transfer of control? [ ] Yes No

ASSIGNMENT OF STOCK

Stock	Number of Shares	Classification
Shares to be transferred	T22.	T23.
Shares issued and outstanding	T24.	T25.
Shares authorized	T26.	T27.

AUTHORIZATION(S) TO BE ASSIGNED OR TRANSFERRED

T28. Call Sign	T29. Radio Service	T30. Date of Grant	T31. How Obtained	T32. Name of Licensee (as appearing in FCC Records)

ASSIGNEE OR TRANSFEREE

T33. Name of Assignee or Transferee	T34. Voice Telephone Number ( )
T35. Assumed Name Used for Doing Business (if any)	T36. Fax Telephone Number ( )
T37. Mailing Street Address or P.O. Box	
T38. City	T39. State / T40. Zip Code

NEW LICENSEE INFORMATION

T41. Legal Name of Licensee	T42. Voice Telephone Number ( )
T43. Assumed Name Used for Doing Business (if any)	T44. Fax Telephone Number ( )
T45. Mailing Street Address or P.O. Box	
T46. City	T47. State / T48. Zip Code

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BASIC QUALIFICATIONS

T49.	Has the assignor or transferor, assignee or transferee, or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission?	[ ]	Yes No
T50.	Has the assignor or transferor, assignee or transferee, or any party to this application, or any party directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application ever been convicted of a felony by any state or federal court?	[ ]	Yes No
T51.	Has any court finally adjudged the assignor or transferor, assignee or transferee, or any party to this application, or any person directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?	[ ]	Yes No
T52.	Is the assignor or transferor, assignee or transferee, or any party to this application, or any person directly or indirectly controlling the assignor or transferor, assignee or transferee, or any party to this application, currently a party in any pending matter referred to in the preceding two items?	[ ]	Yes No
T53.	Do the assignor or transferor and the assignee or transferee each certify that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, or, in the case of a corporation, partnership or unincorporated association, no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section?	[ ]	Yes No

ASSIGNOR OR TRANSFEROR CERTIFICATION

The ASSIGNOR or TRANSFEROR represents that the authorization will not be assigned or that control of the licensee will not be transferred unless and until the consent of the Federal Communications Commission has been given; that all exhibits attached or referenced herein are a material part hereof and are incorporated herein as if set out in full in this application; and that all statements made in this application are true, complete and correct to the best of his or her knowledge and belief.

T54. Typed Name of Person Signing	T55. Title
T56. Signature	T57. Date

ASSIGNEE OR TRANSFEREE CERTIFICATION

The ASSIGNEE or TRANSFEREE waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise. The assignee or transferee certifies that grant of this assignment or transfer of control would not cause the assignee or transferee to be in violation of the spectrum aggregation limit in 47 CFR Part 20. The undersigned, individually and for the assignee or transferee, hereby certifies that the statements made herein are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

T58. The assignee or transferee is a (an) [ ] Individual Unincorporated Association Partnership Corporation

T59. Typed Name of Person Signing	T60. Title
T61. Signature	T62. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Federal Communications Commission

Information and Instructions

Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization

Introduction

Form FCC 600 is a multi-part form comprising a main form and several optional schedules. Each application or amendment must contain one and only one main form (pages 1 and 2), but may contain as few or as many of the optional schedules as necessary. Some of the schedules are also used as attachments to Form FCC 489.

For Assistance

For assistance with Form FCC 600 applications for radio services regulated under Part 22 or Part 24, contact the mobile licensing division at the FCC, Washington D.C. 20554, (202) 481–1350. For assistance with Form FCC 600 applications for other services, contact Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245, (800) 322–1117 or (717) 337–1212.

English to Metric Conversions

The following English to Metric equivalents should be used to convert heights and distances, where necessary:
1 foot = 0.3048 meters
1 mile = 1.6093 kilometers

Applicable Rules and Regulations

Before the application is prepared, applicant should review the relevant part of the FCC rules in Title 47 of the Code of Federal Regulations. Copies of Title 47 may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. FCC rules generally require various exhibits to be filed with an application in addition to the information requested in the application form. Applicants should make every effort to file complete applications. Failure to do so can result in a dismissal or return of the application or a delay in processing the application.

Paper Copies

The number of paper copies of this application required to be filed varies depending on the radio service. Refer to the pertinent part of the FCC rules for specific instructions.

Microfiche Copies (Part 22 and Part 24)

Applications on Form FCC 600 for authority to operate facilities in the radio services governed by Part 22 or Part 24 of the FCC rules must be filed in microfiche form. See the pertinent part of the FCC rules to determine how this requirement applies. If microfiche is required, submit three microfiche (one original and two copies). Each microfiche must be a copy of the signed original. Each microfiche copy must be a 148mm × 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicating Film. The microfiche must be placed in paper microfiche envelopes and submitted in a 5″ × 7.5″ envelope. Row "A" (the first row for page images) of the first microfiche must be left blank.

Magnetic Disks, Electronic Filing

Applications on Form FCC 600 for authority to operate facilities in certain radio services may be filed in magnetic disk form or through electronic data transmission. See the pertinent part of the FCC rules to determine whether this provision applies and the requisite filing details.

For applications in the services governed by Part 22 or Part 24 of the FCC rules, each filing must be in a separate computer file, even if on the same disk. Each item must consist of the item number followed by >>> followed by the data, followed by the character sequence <<< (followed by CRLF) to mark the end of the item (e.g. 7>>>DC<<<). For items from Schedules B or C, use bracketed, comma delimited integers to indicate as needed the schedule number, FCC location number, FCC antenna number and FCC transmitter number. For example, if the second Schedule C in a filing is to add a location number 15, the sequence C1{2, 15}>>>A<<< must appear in the file. For another example, if the fourth Schedule B in a filing is to add a transmitter number 3 to operate on 152.24 MHz using antenna 2 at location 12, the sequences B43{4, 12, 2, 3}>>>A<<< and B44{4, 12, 2, 3}>>>152.24<<< must appear in the file. In general, attached exhibits use the item number to which they refer with an "A" suffix. All data and text must be in ASCII format.

Processing Fee

A processing fee may be required with this form. To determine the required fee amount, refer to Subpart G of Part 1 of the FCC's rules (47 CFR Part 1, Subpart G) or the current fee filing guide for the radio service involved. For assistance with fees applicable in the radio services governed by Part 22 and Part 24 of the FCC rules, call (202) 418–0220. For assistance with fees in other radio services, contact the Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245, (800) 322–1117 or (717) 337–1212.

Incorporation by Reference (Part 22 and Part 24)

You may incorporate by reference documents, exhibits, or other lengthy showings already on file with the FCC only if: the information previously filed is more than one 8½″ by 11″ page in length, and all information therein is current and accurate in all significant respects; the reference states specifically where the previously filed information can be found (i.e., station call sign and application file number, title of proceeding, docket number and legal citations), including exhibit and page references. Use the relevant item number followed by "A". Items that call for numbers, or which can be answered "Y" or "N" by or other short answers must be answered directly without reference to a previous filing.

Current Information

Information filed with the FCC must be kept current. The applicant should notify the FCC regarding any material change in the facts as they appear in the application. See 47 CFR 1.65.

Waiver Requests

Requests for waivers must contain as an exhibit a statement of reasons sufficient to justify a waiver. A separate request with the required showing must be made for each rule waiver desired, identifying the specific rule or policy for which the waiver is requested. For waiver requests other than for rules in Part 22 and Part 24, there may be a fee requirement. Refer to the appropriate FCC fee filing guide.

Exhibits (Part 22 and Part 24)

Each document required to be filed as an exhibit should be current as of the date of filing. Each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit and the total number of pages of the exhibit. If material is to be incorporated by reference, see the instruction on incorporation by reference. If interference studies are required by rule, attach these as an exhibit. If this application is a request for an extension of time to complete construction, then attach as an exhibit a statement explaining how failure to complete construction was beyond the applicant's control.

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Paperwork Reduction and Privacy Act Notice

The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The FCC will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to FCC rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection is estimated to be 0.25 to 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Federal Communications Commission, Records Management Branch, Washington, D.C. 20554.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–597, December 31, 1974, 5 U.S.C. 552a(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

International Registration (Other Than Part 22 and Part 24)

Notice: As a signatory party to international treaty agreements, the FCC performs certain actions regarding the use of radio. The technical details of your station parameters may be reported to the International Telecommunications Union, Geneva, Switzerland and to countries which border on or are in close proximity to the United States. This information along with data reported by other nations will be used to protect reported stations and aid in resolution of interference disputes between licensees in different countries.

Certain stations, because of their geographic location, would be best protected by provision of additional information. Specifically, this includes any proposed station which is located in the region north of Line "A" as defined in Section 1.955 of FCC rules, or in the State of Alaska east of Line "C". If the desired station is to operate in the 806–821/851–866, 821–824/866–869, 896–901/935–940 MHz bands, please consult the applicable rules for available frequencies and use near the United States/Canada/Mexico border.

Note: For control stations meeting the 20 foot criteria that require greater than 5 watts output power/ERP for operations in regions north of Line "A" or in Alaska east of Line "C", complete Schedule E items E1–E8 and Schedule G items G1–G6 and G8 as LOC letter A–F.

For your convenience and ease of determination, a list of all States and counties within those States above line "A", for which applicants may wish to submit additional information, has been included following schedule H instructions and designated Appendix 1. In addition, a new form labeled Form 600 Schedule H has been developed for supplying this information. Because the operational characteristics for the majority of Land Mobile stations are quite similar, submission of all of the data requested by the ITU or other nations imposes a somewhat heavier burden on applicants than would seem necessary. NOTE: However, the form in which certain information is provided, can significantly benefit an applicant. In particular, mobile or temporary stations whose area of operation is defined in terms of a kilometer radius of specified geographical coordinates will provide for more accurate protection of these stations than defining their area of operation by some other means (See Items E9–E11 on the Form 600 Schedule E) and will expedite the coordination process where it is necessary.

Unless advised to the contrary, the FCC will make certain assumptions which reflect the typical station in these services. Carefully review the list below with respect to your particular situation. If you believe that these assumptions would leave your station insufficiently protected, provide the correct data on Form 600 Schedule H and attach it with your application. If you do not provide the actual data and an interference problem arises involving another country's station, your station will be protected only to the limit of the FCC's assumptions.

The following station parameters will be assumed unless otherwise stated:

1. Antenna Polarization. All stations will be reported as having antennas with vertical polarization.

2. Antenna Gain. The antenna gain for all stations will be assumed to be 6 dB.

3. Antenna Azimuth of Main Lobe. We will report each base or mobile relay station as having an omnidirectional (360 degrees) azimuth. We will assume that each control station associated with a mobile relay station has a directional antenna with its azimuth of maximum radiation directed toward the mobile relay station.

4. Beamwidth. Where an omnidirectional antenna is assumed, beamwidth has no relevance, and therefore, no assumed value will be used. For control stations we will assume 20 degrees.

5. Class of Operation for HF Fixed Stations. All HF Fixed applicants must file Form 600 Schedule H. Therefore no assumption will be made.

6. Receiver Information. All stations specified on the same application form are assumed to be communicating with each other as a system. Receivers will be assumed to operate at the same location as the transmitter. In other words, we will assume that the receiver site for a mobile station transmission is the location of the associated base station. The receiver site for a base station transmission will be assumed to be the area of operation of the associated mobile stations. For a control station transmission, the location of the associated mobile relay station is the location of the receiver.

7. Control stations meeting the 20 foot criteria that are operating in the region north of Line "A" or in Alaska east of Line "C" will not be coordinated with Canada unless Schedule E items E1–E8 and Schedule G items G1–G6 and G8 are completed as LOC letter A–F. The ERP will be limited to 5 watts if the fixed location is not provided for controls meeting the 20 foot criteria operating in these areas.

Frequency Coordination

All applications for station authorizations which require frequency coordination in accordance with applicable FCC rules and any correspondence relating thereto, must initially be submitted to the certified frequency coordinator for the radio service or frequency group involved. For frequency coordination fee information, contact the appropriate frequency coordinator for your radio service. After the completion of frequency coordination, these applications shall be forwarded by the coordinator to the correct address. All other applications shall be filed by the applicant at the correct address listed on the most current Public Notice. Applications should be filed at least sixty (60) days prior to the date upon which the radio facilities are required to be in operation.

List of Certified Coordinators (Other Than Part 22 and Part 24)

See the most current Public Notice for correct addresses or contact Consumer Assistance Branch, Federal Communications Commission, Gettysburg, PA 17325–7245 (717) 337–1212 or (800) 322–1117.

Quiet Zone

The quiet zone is a restricted area of operation within Virginia, West Virginia, and Garrett County, Maryland in the vicinity of the National Radio Astronomy Observatory, Green Bank, Pocahontas County, West Virginia. Permanent Stations in this area should be checked for compliance with applicable Commission rules. If the permanent station, including control stations meeting the 20 foot criteria, is bounded by 39° 15′ N on the north, 78° 30′ W on the east, 37° 30′ N on the south, and 80° 30′ W on the west, the application must be accompanied by a copy of the clearance obtained from the National Radio Astronomy Observatory.

The request for clearance must be sent to: National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944.

Specific Instructions for the Main Form

Applicant

Items 1–8 These items identify the applicant. If an authorization is granted, the information provided will become the licensee's name, address and telephone numbers of record, and the authorization will be sent to this address. Applicants must provide a current and valid mailing address in the United States, and this address must be that of the applicant, not the address of the radio equipment supplier, service shop or of any other third party. Failure to respond to FCC correspondence sent to the address of record may result in dismissal of an application, liability for forfeiture or revocation of an authorization.

Items 9–16 These items identify the contact representative (usually the headquarters office of a large applicant, the law firm or other representative of the applicant, or the person or company that prepared or submitted the application on behalf of the applicant). In the event there is a question concerning the application, the FCC will attempt to communicate with the contact representative first.

Classification of Filing

Item 17 Indicates whether the filing is intended as an application or an amendment to a previously filed application. If "N" is indicated, the FCC will assign a new file number to the filing. If "A" is indicated, the FCC will attempt to associate the filing with a pending application described by Item 21.

Item 18 Indicates whether the applicant believes that the FCC should classify the filing, for purposes of compliance with Section 309 of the Communications Act of 1934, as amended, as an application for a *minor* change to an existing station, if the filing is an application, or as a *minor* amendment, if the filing is an amendment. For private radio services to which Section 309 does not apply, this item should be marked "D". For commercial mobile services, which are subject to Section 309, this item must be marked either "Y" or "N". If this item is marked "Y", the FCC will not list the filing in a Public Notice unless during processing the FCC subsequently determines that the filing should not be classified as minor. If this item is marked "N" and the filing appears to be acceptable for filing, the FCC will list the filing in a Public Notice as acceptable for filing prior to actually classifying it during processing.

Item 19 This item indicates whether the filing proposes an initial facility, modification of an existing facility or renewal of an existing station, for the purposes of classification in regard to eligibility for inclusion in competitive bidding procedures. In the event that the filing is or becomes mutually exclusive with one or more other filings, the indication given here assists the FCC in determining what method will be used to select which filing(s) to grant. This item does not have to be completed for minor applications or amendments.

Item 20 If the filing is related to an existing station, this item must be completed. The information requested in this item (call sign) identifies the existing station to which the filing is relevant.

Item 21 If the filing is an amendment to a previously-filed application, this item must be completed. The information requested in this item identifies the previously-filed application.

Nature of Service

Item 22 This item indicates whether the applicant is applying for authorization to provide or use commercial mobile radio service, private mobile service, both commercial and private mobile service, or fixed service (such as Rural Radiotelephone Service, including BETRS, but not including fixed stations that are incidental to provision of mobile service). If the answer is "both", attach as an exhibit a description of the proposed service that explains why the applicant believes that a portion of the service to be provided should be classified as a private mobile service. Use 22A as the item number for the exhibit.

Items 23–25 These items request information that the FCC could use to determine whether a proposed service is a commercial mobile radio service or a private radio service under Section 332 of the Communications Act of 1934, as amended. Item 23 must be answered "P" if the proposed service is to be made available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, "E" if the service is to be made available to eligible users other than the applicant, but not constituting a substantial portion of the public, or "I" if the service will be available only to the applicant and its employees. Item 24 must be marked "P" if the service is to be provided for profit, *i.e.* with the intent of receiving compensation or monetary gain. Otherwise, Item 24 must be marked "N". Item 25 must be marked "Y" if the applicant proposes to provide interconnected service as defined in § 20.3 of the FCC rules. Otherwise, Item 25 must be marked "N".

Item 26 This item requests a two-letter code designating the FCC radio service, or radio service sub-category, in which the applicant requests authorization and to which any requested channels are allocated. The codes are as follows:

Commercial	
Personal Communications Service	
Broadband	CW
Narrowband	CN
Cellular Radiotelephone Service	CL
Paging and Radiotelephone Service	CD
Air-ground Radiotelephone Service	CG
Offshore Radiotelephone Service	CO
Rural Radiotelephone Service	CR
Specialized Mobile Radio	
806–821/851–866 MHz, conventional.	GX
806–821/851–866 MHz, trunked	YX
896–901/935–940 MHz, conventional.	GR
896–901/935–940 MHz, trunked	YS
220 MHz Systems	
Nationwide Non-Commercial 10 Channel.	NL
Nationwide Non-Commercial 5 Channel.	NS
Nationwide Commercial 5 Channel	NC
Non-Nationwide 5 Channel Trunked.	QT
Non-Nationwide Data	QD
Non-Nationwide Public Safety/Mutual Aid.	QM
Non-Nationwide Other	QO
Industrial	
Business Radio Service	
806–821/851–866 MHz, conventional.	GB
806–821/851–866 MHz, trunked	YB
896–901/935–940 MHz, conventional.	GU

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896–901/935–940 MHz, trunked	YU
929–930 MHz paging systems	GS
Other	IB
Industrial services, except Business Radio Service	
806–821/851–866 MHz, conventional.	GO
806–821/851–866 MHz, trunked	YO
896–901/935–940 MHz, conventional.	GI
896–901/935–940 MHz, trunked	YI
Other:	
Forest Products Radio Service	IF
Petroleum Radio Service	IP
Special Industrial Radio Service	IS
Telephone Maintenance Radio Service.	IT
Film and Video Production Radio Service.	IV
Power Radio Service	IW
Manufacturers Radio Service	IX
Relay Press Radio Service	IY
Land Transportation	
Land Transportation services	
806–821/851–866 MHz, conventional.	GO
806–821/851–866 MHz, trunked	YO
896–901/935–940 MHz, conventional.	GI
896–901/935–940 MHz, trunked	YI
Other:	
Automobile Emergency Radio Service.	LA
Railroad Radio Service	LR
Taxicab Radio Service	LX
Interurban Passenger Radio Service	LI
Interurban Property Radio Service	LJ
Urban Passenger Radio Service	LU
Urban Property Radio Service	LV
Public Safety	
National Plan	
821–824/866–869 MHz, conventional.	GF
821–824/866–869 MHz, trunked	YF
Public Safety services	
806–821/851–866 MHz, conventional.	GP
806–821/851–866 MHz, trunked	YP
896–901/935–940 MHz, conventional.	GA
896–901/935–940 MHz, trunked	YA
Other:	
Fire Radio Service	PF
Highway Maintenance Radio Service.	PH
Local Government Radio Service	PL
Emergency Medical Radio Service	PM
Police Radio Service	PP
Forestry Conservation Radio Service.	PO
Special Emergency	
Special Emergency Radio Service	PS
Other	
Low Power Auxiliary Broadcast	LP
Remote Pickup Auxiliary Broadcast	RP
Radiolocation Radio Service	RS

Item 27 This item requests a two-letter code indicating the type of operation proposed. This item must be completed for radio services governed by Part 22. It may be omitted for applications in all other services. The codes are as follows:

One-way paging	OP
Response paging	RP
Two-way mobile telephone	TT
Two-way mobile data	TD
Two-way mobile telephone, data & images.	TB
Two-way mobile communications	TC
Dispatch	DP
Rural radiotelephone, conventional	RR
Rural radiotelephone, BETRS	RB
Air-ground radiotelephone	AR
Point-to-point	PP
Point-to-multipoint	PM
Other	NS

Environmental Policy

Item 28 This item is required for compliance with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335. See also Part 1, Subpart I of the FCC rules (47 CFR 1.1301–1.1319). This item must be answered, either "Y" or "N". Answer "Y" if an FCC grant of the proposed facility may have a significant environmental effect as defined in § 1.1307 of the FCC rules and attach an exhibit with the required environmental assessment. Use 28A as the item number for this attachment. Examples of facilities that may have a significant effect on the environment include:

- An antenna structure located in a residential area (as defined by applicable zoning laws) which will utilize high intensity aviation obstruction lighting
- A facility located in an officially designated wilderness area, wildlife preserve or floodplain
- A facility that affects a site significant in American history
- A facility, the construction of which involves extensive changes in surface features

Alien Ownership

Items 29–33 These items request indications and information that enable the FCC to determine whether or not an applicant is eligible under Section 310 of the Communications Act of 1934, as amended, to hold a station license. Item 29 must be answered, either "Y" or "N". Items 30–33 must be answered on applications for authority to provide commercial mobile service, but may be omitted on other applications. The FCC can not grant an authorization to a foreign government or the representative of a foreign government. Therefore, if the true and correct answer to Item 29 is "Y", the applicant is not eligible for a license and the FCC will dismiss the application, if filed, without further consideration. Likewise, the FCC can not grant an authorization to provide commercial mobile radio service to any applicant for which the true and correct answer to Item 30, 31 or 32 is "Y". If the answer to Item 33 is "Y" and the application is for authorization to provide commercial mobile radio service, attach an exhibit explaining the nature and extent of any foreign ownership or control. Use 33A as the item number for this exhibit.

Basic Qualifications

Items 34–38 These items request indications and information that enable the FCC to determine whether an applicant is disqualified from holding an FCC authorization because of misconduct. Items 34–36 must be answered "N" if there is no misconduct. Item 37 must be answered "N" if the applicant is not a party in any pending matter relevant to misconduct. Item 38 must be answered "Y" if the applicant is not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). If the answer to Items 34, 35, 36 or 37 is "Y" or if the answer to item 38 is "N", attach as an exhibit a statement explaining the circumstances and why the applicant believes that an FCC grant of the application would be in the public interest notwithstanding the actual or alleged misconduct. Use 34A, 35A, 36A, 37A or 38A as the item number(s) for such exhibits, respectively.

Certification

Items 39–43 These items must be completed. To be acceptable for filing, applications and amendments must be signed in accordance with Part 1 of the FCC rules. The signer must be a person authorized to sign the application. Paper originals of applications must bear an original signature. Neither rubber-stamped nor photocopied signatures are acceptable.

The Schedules

The purposes of the schedules are as follows:

Schedule A

One Schedule A is required for each application or amendment in the radio services governed by Part 22 or Part 24 of FCC rules. These services are the Personal Communications Service, the Cellular Radiotelephone Service, the Paging and Radiotelephone Service, the Rural Radiotelephone Service, the Offshore Radiotelephone Service and the Air-ground Radiotelephone Service. Schedule A indicates the purpose of the filing. It is the only schedule needed for initial systems where no site specific data is being submitted, and for requests for extension of time to construct facilities. Schedule A must not be filed with Schedules D or E.

Schedule B

Schedule B is used when site-specific data is required for applications, amendments or notifications involving individual channel assignments, in the radio services for which Schedule A is required. At least one Schedule B must be filed for each location for which data is required. Schedule B provides location data, information concerning proximity to market boundaries, technical information concerning the antennas and transmitters at the particular location, radial power and antenna height data, and information about points of communication for transmitters at the particular location. Each Schedule B can hold data for multiple antennas at one location by using additional copies of page 2. For each antenna, Schedule B can hold data for up to four transmitters and/or channels. Additional Schedule Bs may be filed for the same location or antenna if necessary.

Schedule C

Schedule C is used when site-specific data is required for applications, amendments or notifications in the radio services for which Schedule A is required and for which spectrum is assigned in channel blocks. One Schedule C must be filed for each location for which data is required. Schedule C provides location data, technical parameters of the facility at the particular location, radial power and antenna height data.

Schedule D

Schedule D is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides additional administrative data for stations in these services.

Schedule E

Schedule E is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides station location data for stations in these services.

Schedule F

Schedule F is required when permanent location data is submitted on Schedule B, C or E. However, in some services (e.g. PCS), applicants may need to obtain antenna clearance independent of the system authorization by filing Form FCC 854. See the pertinent part(s) of the FCC rules.

Schedule G

Schedule G is required for applications and amendments in all radio services for which Form FCC 600 may be used, except those for which Schedule A is required. It provides technical data for stations in these services. The reverse side of Schedule G provides for additional frequencies. Additional Schedule Gs may be filed if necessary.

Schedule H

Schedule H is required for applications and amendments in the Remote Pickup Broadcast Auxiliary Radio Service for permanent location stations and for land mobile stations operating on frequencies lower than 27.5 MHz. Failure to include this schedule when required will result in the return of the application without further action. Land mobile stations located near international borders that seek protection from interference should complete Schedule H.

Schedules Required (Other Than Part 22 and Part 24)

If the application to be submitted includes fixed or permanent location stations (A–F), complete the Main Form, Schedule D, Schedule E, Schedule F and Schedule G. Schedule H must also be completed for fixed location stations proposed in the Remote Pickup Broadcast Auxiliary Radio Service.

If the application to be submitted includes only control stations meeting the 20 foot criteria, mobile, temporary or itinerant locations (G–Z), complete Form 600 Main Form, Schedule D, Schedule E and Schedule G.

Schedule H must also be completed for all stations proposing to operate on frequencies below 27.5 MHz.

Note: The Main Form and applicable schedules should be submitted as one package, stapled in the upper left corner. The Main Form should be first with the following schedules in alphabetical order.

Specific Instructions for Schedule A Administrative Information

Purpose of Filing

Item A1 This item states the purpose(s) for the filing. Enter one or more letters corresponding to the listed purposes. If none of the listed purposes correctly describe the reason for the filing, or if the filing requests a waiver of one or more FCC rules or an extension of time to construct facilities, attach as an exhibit a narrative description of the purpose, circumstances and/or waiver request including required justification. Use A1A as the item number for this exhibit.

Market/Channel Block

Item A2 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). It identifies the market to which the filing pertains. The market designators are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station-by-station basis.

Item A3 This item must be answered only if the filing is for an authorization in one of the radio services for which spectrum is assigned in channel blocks. For filings in the Cellular Radio Service, the answer to this item is either "A" or "B". For filings in the Air-ground Radiotelephone Service (commercial aviation), the answer to this item is "C–" followed by a number between 1 and 29 (e.g. C–17). This item should not be answered for filings in radio services in which channels are individually assigned.

Item A4 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis and the market has been subdivided.

Item A5 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis (e.g. Cellular Radio Service). In addition to item A2, it identifies the market to which the filing pertains. The market names are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station by station basis.

Control Points

Items A6–A9 These items provide the location(s) of the station or system control points, and the telephone number(s) where a person responsible for operation of the station or system could be reached, if necessary. These items must be answered only for new systems or stations and when a control point is to be added, deleted or modified. These items do not have to be answered for broadcast subcarrier paging (i.e. if the answer to item A1 is "O"). If a control point modification is the only purpose of the filing, answer item A1 "S" and file Schedule A as an attachment to Form FCC 489, rather than Form FCC 600. To move an existing control point or change a telephone number, delete the old information and add the new.

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Facilities not Constructed

Items A10–A12 These items must be completed only in connection with (1) filings that request an extension of time to construct specific facilities in services where locations are individually subject to a construction period requirement, and the rest of the station or system has been completed; (2) notifications, using Schedule A as an attachment, reporting that a system has been partially constructed. In some cases where more than one antenna or transmitter is authorized at a location, and some but not all of the facilities have been constructed, it may be necessary to further distinguish the unconstructed facilities by channel. If so, indicate the affected channels in an exhibit, using item number A10A.

Specific Instructions for Schedule B Technical Data—Individual Channel Assignment

Location

Item B1 This item indicates what action the filer wants the FCC to take in the database with regard to the location specified in items B2–B10. If the filing is for a new station or system or for a new location in an existing system or station (i.e. the location does not already exist on any channel in the authorized system or station or in a pending application for the same system or station), the answer is this item is "A". If the location is an existing location in the authorized system or station or a location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items B11–B14 below.) In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule B will not be processed.

Item B2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g. A, B, C etc). In either case, this item is used as the key to identify the location on Schedule F (if Schedule F is filed).

Items B3–B6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g. "5 km south of Anytown, US").

Items B7, B8, B9 and B10 These items are the geographic coordinates of the location. Items B7 and B8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items B7 and B8 are required. Items B9 and B10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items B9 and B10 are optional, but may assist processing of the Schedule B.

Items B11–B14 These items key to location data in the database that is to be replaced by the data in items B3–B10. The filer should complete these items only if (1) correcting geographical coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items B3–B10. The filer must *not* complete these items if the intent is to relocate some, *but not all*, of the facilities at a particular location. (In such a case, the filer must submit two Schedule Bs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Supplementary Location Information

Item B15 This item is optional and concerns proximity of the location to Canada. If the filer does not know whether the location is North of Line A or East of Line C, this item should be left blank. If the filer answers "A" or "C" (and this appears to be plausibly correct), the FCC will initiate applicable coordination procedures with the Government of Canada. In the event the filer needs to submit additional information regarding coordination of a channel assignment with the Government of Canada, this should be attached as an exhibit, using item number B15A.

Item B16 This item is optional and concerns proximity of the location to Mexico. If the filer does not know whether the location within 200 kilometers (124 miles) of the U.S.-Mexico border, this item should be left blank. If the filer answers "Y" (and this appears to be plausibly correct), the FCC will initiate applicable coordination procedures with the Government of Mexico. In the event the filer needs to submit additional information regarding coordination of a channel assignment with the Government of Mexico, this should be attached as an exhibit, using item number B16A.

Items B17–B19 These items must be completed only for filings in the narrowband Personal Communications Service (other than nationwide and response channel related filings).

Antenna

Item B20 This item indicates what action the filer wants the FCC to take in the database with regard to the antenna specified in items B22–B28. If the filing is for a new antenna (i.e. the antenna does not already exist at this location for any channel in the authorized system or station or in a pending application for the same system or station), the answer to this item is "A". If the antenna is an existing antenna in the authorized system or station or an antenna proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the antenna completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the antenna within the system or station, this, this portion of the Scheduled B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified antenna within the system or station, this portion of the Schedule B will not be processed.

Item B21 This item indicates whether the antenna in question is already authorized or whether it is only proposed in a pending application. The filer must answer this item.

Item B22 This item indicates the FCC antenna number of the antenna. If a number has been printed on an authorization the applicant knows it, he or she should complete this item.

Items B23–28 This item describes the antenna by its type, manufacturer and model number, and must be completed for all filings except for those in the Air-ground Radiotelephone Service. Type means a generic description (e.g. collinear vertical, Yagi, panel array). Manufacturer is the name of the company that made the antenna, and model number is the designation that the manufacturer assigns to the antenna. If a polar plot of the antenna horizontal or vertical radiation pattern is required by the pertinent FCC rules, attach as an exhibit such plot (or in the case of electronic or magnetic filing, substitute a table of the polar data for

360° in 5° increments in the format: bearing, gain $_{dBd}$), using item number B25A.

Items B26 & B28 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all filings except for those in the Air-ground Radiotelephone Service.

Item B27 This item provides the beamwidth of the main major lobe of a directional antenna used with a fixed station. This item need not be completed for any stations other than fixed stations.

Transmitters for Antenna

Item B29 This item is the FCC transmitter number for the transmitter.

Item B30 This item indicates what action the filer wants the FCC to take in the database with regard to as many as four transmitters (or channels) associated with the (same) antenna. If the filing is for a new transmitter or channel (i.e., a transmitter or channel that does not already exist for this antenna at this location in the system or station or in a pending application for the same system or station), the answer to this item is "A". If the transmitter or channel already exists for this antenna at this location in the authorized system or station or for an antenna at this location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the transmitter or channel completely*, the answer to this item is "D". In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified transmitter or channel for this antenna at this location within the system or station, this portion of the Schedule B will not be processed.

Item B31 This item specifies the center frequencies of the channels on which the transmitters operate or are proposed to operate. The pertinent channel(s) must be specified for each transmitter.

Item B32 This item requests a four letter code that identifies the transmitter class. The four letter code consists of two letters that conform to the international station classification nomenclature used by the International Frequency Registration Board, followed by two letters that further classify the transmitter by usage. The codes are as follows:

Base	FBBS
Standby	FBST
Mobile subscriber	MLSB
Dispatch	FXDI
Auxiliary test	FXTS
Control	FXCT
Repeater	FXRP
Fixed relay	FXRX
Ground	FBGS
Air-ground signaling	FBSI
Inner-office	FXIO
Fixed subscriber	FXSB
Control office	FXCD

Item B33 This item should be completed only if the filing requests authority to use an emission type that is not already authorized in the FCC rules for use by all stations in the pertinent radio service.

Item B34 This item reports the maximum effective radiated power (ERP) in any direction on the specified channel. This item must be completed for all transmitter filings. The answer must be stated in Watts.

Radial Data for Antenna

Item B35 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all antenna filings except for those in the Air-ground Radiotelephone Service.

Items B36–B39 These items report the effective radiated power (ERP) for each transmitter or channel in each of the eight cardinal radial directions. These items must be completed for all transmitter filings except for those in the Air-ground Radiotelephone Service.

Points of Communication for Antenna

Items B40–B45 These items describe fixed points of communication for (1) stations in the Rural Radiotelephone Service serving individually licensed subscribers, and (2) point-to-multipoint transmitters operating on channels that are assigned only to stations that communicate with four or more points. These items should not be completed by filers for any other purpose.

Specific Instructions for Schedule C Technical Data—Block Channel Assignment

Location

Item C1 This item indicates what action the filer wants the FCC to take in the database with regard to the location specified in items C3–C10. If the filing is for a new station or system or for a new location in an existing system or station (i.e., the location does not already exist in the authorized system or station or in a pending application for the same system or station), the answer to this item is "A". If the location is an existing location in the authorized system or station or a location proposed in a pending application for the same system or station, and *the licensee has abandoned or intends to abandon the location completely*, the answer to this item is "D". (Also see the instruction for items C11–C14 below.) In all other cases, the answer to this item is "M". If the filer answers this item "A" and the FCC computer finds an exact match for the location within the system or station, the Schedule C will be processed as if this item had been answered "M". If the filer answers this item "M" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will be processed as if this item had been answered "A". If the filer answers this item "D" and the FCC computer cannot find an exact match for the specified location within the system or station, the Schedule C will not be processed.

Item C2 This item is the FCC assigned location number for an existing location, or for a new location, a letter (e.g., A, B, C, etc.). In either case, this item is used as the key to identify the location on Schedule F (if Schedule F is filed).

Items C3–C6 These items identify the location by its address or, if there is no address, by a brief description of the location such as a distance and direction from known landmarks (e.g., "5 km south of Anytown, US").

Items C7, C8, C9 and C10 These items are the geographical coordinates of the location. Items C7 and C8 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1927. Items C7 and C8 are required. Items C9 and C10 are the North latitude and West longitude, respectively, with reference to the North American Datum of 1983. Items C11 and C12 are optional, but may assist processing of the Schedule C.

Items C11–C14 These items key to location data that is to be replaced by the data in items C3–C10 in the data base. The filer should complete these items only if (1) correcting geographic coordinates or (2) relocating *all* facilities at the location indicated by these items to the location specified in items C3–C10. The filer must *not* complete these items if the intent is to relocate some,

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but not all, of the facilities at a particular location. (In such a case, the filer must submit two Schedule Cs with the filing—one to delete the facilities at the previous location and another to add those facilities at the new location.)

Technical Parameters

Items C15, C16 These items report the actual and effective height at which the antenna is mounted. These items must be completed for all filings except for those in the Air-ground Radiotelephone Service.

Item C17 This item reports the maximum radiated power (ERP) of the facility in any direction. This item must be completed for all transmitter filings. The answer must be stated in Watts.

Radial Data

Item C18 This item reports the height of the antenna center of radiation above the average terrain elevation (AAT) along each of the eight cardinal radials. This item must be completed for all Schedule C filings except for those in the Air-ground Radiotelephone Service.

Item C19 This item reports the effective radiated power (ERP) in each of the eight cardinal radial directions. This item must be completed for all Schedule C filings except for those in the Air-ground Radiotelephone Service.

Item C20 This item reports the calculated radial distance to the service area boundary (SAB) from the specified location. This item is required only for filings in the Cellular Radiotelephone Service.

Item C21 This item reports the determined radial distance to the Cellular Geographic Service Area (CGSA) from the specified location. This item is required only for filings in the Cellular Radiotelephone Service.

General Instructions for Schedule D, E, F, G and H

LOC letters A through F carry through on Schedule E Items E2–E8, Schedule F Items F1–F13, Schedule G Items G1–G8, and Schedule H Items H1–H5. It is requested that the applicant begin by inserting the parameters of the principal base or mobile relay station on LOC line "A" (plus any other different class of station at that location), followed by control station, fixed relay stations, etc. When more than one class of station is proposed to be at a common location, use the same permanent location letter A through F and a separate horizontal line entry for each class of station, and furnish the information required by the schedules for each separate class of station. For example, if it is proposed to install a base station, a mobile relay station, and a fixed relay station at common location "A", the appropriate information must be entered on three (3) separate horizontal lines. The next separate permanent location would use letter "B", etc.

Note: Applicants for all control stations in the 470–512 MHz band (except those licensed under Part 22 of the FCC rules) must use LOC letters A–F and furnish the information required by the schedules.

In the 470–512 MHz band, applicants for mobile units, itinerant stations and stations at temporary locations must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G6. In the 220–222 MHz and above 512 MHz, applicants for control stations with antenna heights meeting the 20 foot criteria and/or for mobile units, itinerant stations and stations for temporary locations must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G6. Below 470 MHz except 220–222 MHz, applicants for control stations with antenna heights meeting the 20 foot criteria, itinerant stations, stations at temporary locations, and mobile units must furnish the information requested in Schedule E Items E9–E12 and Schedule G Items G1–G5. Since LOC letters A through F are reserved for permanent location stations, entries for control stations meeting the 20 foot criteria (excluding 470–512 MHz) may be inserted on one line.

If your application is approved, a license will be mailed to you. This authorization permits you to commence operations. (Note: It is a violation of Federal Law to begin transmitting prior to obtaining an authorization.) If an application is incomplete or filled out incorrectly, it will be returned or dismissed along with the reasons for this action. Applications which are not in good order will take additional time to process. You are, therefore, urged to be very careful when completing the application. Each entry on the Form 600 must be complete in itself. Do NOT use entries such as "On File", "No Changes", "Does Not Apply", "Same as * * *", etc.

Applications for modification of existing station authorizations MUST include all current station information in addition to all items being modified. (See Schedule D Item D3).

Specific Instructions for Schedule D Administrative Data

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

Purpose of Filing

Item D1 Enter the purpose of this filing in the brackets.

N=New Station—Place an N in the brackets to indicate that this is an application for a radio station not presently licensed in the service listed in Item 26 on page 1 of the Form 600 Main Form.

M=Modification—Place an M in the brackets to indicate a desired change in the conditions of a license(s) during the current authorized period. See applicable Commission rules. Use Item D3 to describe the change(s) desired. Complete the form in full as for a new station. (Note: Once a license(s) is modified, all previous copies of the license(s) are no longer valid regardless of the expiration date shown.)

R=Renewal—Place an R in the brackets to indicate that you wish to renew an existing authorization that has not expired.

X=Reinstatement of Expired Authorization—Place an X in the brackets to indicate reinstatement of an expired authorization. Complete the form in full as for a new station. Licenses that have been expired more than 30 days cannot be reinstated. In these cases, the former licensee should submit a completed application including required frequency coordination for a *new* license.

A=Assignment of Authorization—Place an A in the brackets to indicate the request for an assignment of the right, title, and interest to a station presently authorized to another person or entity. Prepare the application in your own name and complete it in the same manner as for a new station with all questions answered and include a detailed statement of your eligibility for Item D12. Include a letter from the assignor meeting the requirements of the Commission's rules. For your convenience, FCC Form 1046, "Assignment of Authorization" may be obtained from any Commission office for this purpose.

Note: If the purpose of filing is Renewal, Reinstatement of Expired Authorization or Assignment of Authorization and a modification to the license is also required, use Item D3 to describe the changes.

Item D2 If your application is for a new station, leave Item D2 blank. If you are changing to system licensing, list the existing call signs assigned to the system and indicate which of your existing fixed call signs you would prefer to retain by listing that call sign first.

Item D3 If the application is intended to modify a current license(s), indicate the modification(s) proposed.

Applications for modification of existing station authorizations must include all current station information in addition to all items being modified. (Note: Certain modifications may require new frequency coordination or notification to the FAA—See Part 17 of the FCC Rules and Part 77 of the FAA Rules).

Associated Call Signs

Item D4 List any call sign(s) which is part of the system and licensed separately.

Point of Contact

Items D5–D6 Enter the street address, city, state and voice telephone number (including the area code) of the contact point.

Associated Broadcast Station

Items D7–D9 Complete these items for the Broadcast Auxiliary Radio Services only. Enter the parent station call sign, parent station city and parent station state.

Market Area

Item D10 This item must be answered only if the filing is for an authorization in one of the radio services that is licensed on a geographic licensing area or "market" basis. It identifies the market to which the filing pertains. The market designators are listed in FCC Public Notices or in the FCC Record. This item should not be answered for filings in radio services licensed on a station by station basis.

Paging Operations

Item D11 List the number of paging receivers in this system.

Eligibility

Item D12 Provide a statement that clearly indicates your qualifications for the chosen service. This statement should include:

(1) A general description of your business or activity.

(2) A description of how radio will be employed in the activity.

(3) Any other information which you believe will aid in a determination of your eligibility for the service requested.

Note: Failure to provide clear and complete details justifying eligibility will result in return or dismissal of your application. Do not use terms such as "No Change" or "On File".

Item D13 Enter the number and paragraph of the FCC Rule Section which describes the eligibility for the particular radio service you specified in Item 26 on page 1 of FCC Form 600 Main Form.

Frequency Coordination Number

Item D14 This item will be completed by the appropriate certified frequency coordinators for those applicants who are required to comply with the frequency coordination requirements.

Specific Instructions for Schedule E Station Location Data

The Form 600 Schedule E has been designed to accommodate six (6) permanent locations. LOC letters A through F are to designate the separate locations. No more than six (6) different permanent locations may be licensed under one call sign. LOC letters A through F for items E2–E8 correspond to LOC letters A through F on Schedules F, G and H. Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

Item E1 The latitude and longitude for locations in the United States and the Carribean Islands must be referenced to either the North American Datum of 1927 (NAD 27) or 1983 (NAD 83). Enter "2" for NAD 27 or "8" for NAD 83. For locations in other areas, enter "O" for Other and specify the datum used. Topographical maps will indicate which datum is used. All coordinates shown on this filing must be calculated using the same datum.

Fixed or Permanent Locations

Item E2 Enter the street address or specific geographic description for the transmitter antenna location for each station listed for LOC letters (A) through (F). (P.O. Box or geographic coordinates are not acceptable.)

Item E3 Enter the name of the city or town in which the transmitter antenna is located for LOC letters (A) through (F). For rural or unincorporated areas, enter the nearest city or town to the transmitter antenna location.

Item E4 Enter the name of the county in which the transmitter antenna is located for each station listed for LOC letters (A) through (F).

Item E5 Enter the two letter abbreviation for the state in which the transmitter antenna is located for LOC letters (A) through (F). The abbreviations for each state are provided in Table 1 on the reverse of Form 600 Schedule E.

Item E6 Enter the geographic coordinates of latitude in degrees, minutes, and seconds to the nearest second for LOC letters (A) through (F). "N" for north will be assumed. Enter "S" south.

Item E7 Enter the geographic coordinates of longitude in degrees, minutes, and seconds to the nearest second for LOC letters (A) through (F) "W" for west will be assumed. Enter "E" for east.

Item E8 Enter to the nearest meter the elevation above mean sea level of the ground at the antenna location for LOC letters (A) through (F). This information can be determined using a 7.5 minute topographical quandrangle map of the area or you may consult the city or county surveyor in your area. Topographical maps may be purchased from the U.S. Geological Survey, Washington, DC 20242 or from its office in Denver, Colorado 80225. See antenna figure examples on Schedule F (c=ground elevation above mean sea level).

Controls Meeting the 20 Foot Criteria, Mobile or Temporary Locations

Items E9–E12 These items are for mobile units, stations operating at temporary locations, itinerant stations and control stations meeting the 20 foot criteria. Location letters G through Z should correspond with location letters G–Z on Schedule G. For example, H 30 kilometer radius of Station A, I 30 kilometer radius of Station B.

For *control stations* meeting the 20 foot criteria, enter the location letter associated with the control station(s) frequencie(s) on Schedule G and the primary control state in item E11.

For *mobile, temporary and itinerant operations*, enter the location letter associated with the mobile, temporary or itinerant frequencie(s) on Schedule G.

Area of Operation Codes to be Used in Completing Item E10:

A–F = Centered around permanent station A–F
P = Centered around the operating area other than A–F
S = Statewide operations within a single state
N = The 48 contiguous states
O = Includes Hawaii, Alaska, territories or possessions

If the area of operation is centered around permanent stations (A–F), enter the location letter, complete Item E9 with the radius in kilometers of the normal area of operation and E10 with the appropriate permanent station location letter A–F. For example, H 45 kilometer radius of station A.

In the event a specific mile radius of station A is an inadequate description for your system, the application is for mobile only, stations operating at temporary locations or for itinerant stations, enter the location letter, in item E9 enter a radius in kilometers, in item E10 enter "P", in item E11 enter the geographical coordinates (latitude and longitude in degrees, minutes and

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seconds), the county and state of the center of the operating area. For example, H30 kilometer radius of 42–29–47, 87–41–16, Cook County, IL.

For statewide operations within a single state, enter the location letter. In item E10 enter "S" and in item E11 enter the abbreviation for the state (See Table 1 on the reverse of Form 600 Schedule E). If the state you are operating in is Alaska, enter "W" in item E12 if your operations are west of Line C. If your operations are east of Line C, enter "E" in item E12 (Line C=144 degrees Longitude).

If your area covers the 48 contiguous states, enter the location letter, in item E10 enter "N" and in item E11 enter "US" for the state. Complete item E12 with "S" if your operations will be South of Line A. If operations will be North of Line A, complete item E12 with "N". See Appendix 1 for a list of counties by state, having areas north of Line A following Schedule H instructions.

If your area includes, in addition to the 48 contiguous states, Hawaii, Alaska, territories or possessions, enter a separate line for each additional state, territory or possession by including its respective two letter state code. Enter the location letter, in item E10 enter "O", and in item E11 enter the singular two letter state code. If operating in Alaska west of Line C, enter "W" in item E12. If operating in Alaska east of Line C, enter "E" in item E12 (Line C=144 degrees Longitude).

Specific Instructions for Schedule F Antenna Structure Data

Schedule F must be completed and filed when permanent location data is submitted on Schedules B, C or E, except if Form 854 is required. Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

If you completed Schedule E, LOC letters A–F for items F1–F13 correspond to LOC letters A through F on Schedule E.

Item F1 If you completed Schedule B or C, Location Number is used as the key to associate with item B10 on Schedule B and item C10 on Schedule C. Enter a Location Number.

Item F2 If your antenna will be mounted on a structure with an existing antenna, enter "E". If you propose to construct a new structure or use one which contains no existing licensees, enter "N". The term "existing antenna" applies to any structure with an antenna which is presently utilized by existing licensees.

Item F3 If item F2 is "E", enter the call sign of one existing licensee using the structure.

Item F4 If item F3 is completed, enter the radio service for that call sign.

Item F5 Enter the full legal name of the owner of the antenna structure. If the owner is:

1. an individual doing business in his/her own name, enter last name, first name, middle initial.
2. an individual doing business under a firm or company name (sole proprietorship), enter both the individual's name and the firm or company name. "Doing business as" may be abbreviated as "dba".
3. a partnership doing business under a firm or company name, enter the full name of the partnership.
4. an unincorporated association, enter the name of the association.
5. a corporation or governmental entity, enter the full legal name of the entity.

Enter the area code and telephone number.

Item F6 See antenna figure examples 1–3 on the reverse of Form 600 Schedule F. Indicate the number of the figure which most resembles your antenna structure.

Item F7 Enter the type of supporting structure on which the antenna is or will be mounted (i.e., building, tower, tank, silo, building/tower, etc).

Item F8 Enter the height above ground in meters, to the highest point of the *supporting structure only*. For instance, if the antenna structure consists of a building/tower combination, include any elevator shaft, flag pole, or penthouse in the support structure height, but not the antenna, tower, pole or mast. If the antenna structure is a tower only, include the height of the tower but not the antenna. Refer to letter "b" in the antenna figure examples on the reverse of Form 600 Schedule F.

Item F9 Enter the overall height above ground in meters, of the entire antenna structure to the highest point, including any appurtenances. You must include antennas, dishes, obstruction lighting. Refer to letter "d" in the antenna figure examples on the reverse of Form 600 Schedule F.

Item F10 Enter the FCC assigned tower number if the tower is existing and the number is known.

Item F11 If a Notice of Construction or Alteration has been filed with the FAA, enter "Y". If a Notice of Construction or Alteration has not been filed, enter "N". You must notify the Federal Aviation Administration on FAA Form 7460–1 (obtainable from any FAA office), with certain limited exceptions as set forth in Part 17 of the FCC Rules and Part 77 of the FAA Rules, of any of the following construction or alterations of an antenna structure:

(1) Construction of any new antenna structure or alteration of any existing antenna structure, which would result in the top of the antenna or the antenna structure exceeding a height of 61 m (200 feet) above ground level at the antenna site.

(2) Construction of any new antenna structure or alteration of any existing structure, which would result in the top of the antenna or the antenna structure exceeding the height of an imaginary surface extending outward and upward at one of the following slopes:

(a) 1 m above the airport elevation for each 100 m from the nearest runway longer than 1 km within 6.1 km of the antenna structure, excluding helicopter and seaplane bases with specified boundaries, if that airport is either listed in the Airport Directory of the current Airman's Information Manual or is operated by a Federal military agency.

(b) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure, excluding helicopter and seaplane bases without specified boundaries, if that airport is either listed in the Airport Directory or is operated by a Federal military agency.

(c) 4 m above the airport elevation for each 100 m from the nearest landing and takeoff area within 1.5 km of the antenna structure of each heliport listed in the Airport Directory or that is operated by a Federal military agency.

(3) Any construction of an antenna structure (or any alteration of an antenna structure that would increase its height) on an airport listed in the Airport Directory of the current Airman's Information Manual.

(4) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed an obstruction standard of the FAA.

If you intend to install towers of unusual height or at locations in close proximity to aircraft landing areas, it will be to your advantage to discuss the location and height of the antenna in detail with the appropriate FAA area office before filing your application.

Item F12 If item F11 was answered "Y" (yes), enter the date filing was made with the FAA.

Item F13 If item F11 was answered "Y" (yes), enter the name of the regional FAA office where the filing was made.

Item F14 If item F11 was answered "Y" (yes), enter the FAA assigned Aeronautical Study Number if known.

Specific Instructions for Schedule G Technical Data

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

LOC letters for items G1 through G8 correspond to LOC letters on Schedules E, F and H. Enter the LOC letter if other than letter A.

Item G1 Enter the specific frequency(ies) in megahertz. The requested frequency(ies) must be available in the Commission's rules governing the radio service in which you are seeking eligibility. Use a separate line for each frequency, except that 800 MHz SMRS mobile(s) and control(s) are now designated by frequency range "806–821" and 900 MHz SMRS mobile(s) and control(s) are now designated by frequency range "896–901". Use a different letter (A–F) for each permanent location and refer to Item G2 of these instructions for different classes of stations. When multiple frequencies are used at one station location, the LOC letter of the previous frequency must be entered.

Item G2 Enter the appropriate class of station code from the following table. Definitions for most of these items are listed in the Commission's rules.

STATION CLASS CODE TABLE

Class of Station	Code
Base	FB
Mobile Relay	FB2
Community Repeater	FB4
Private Carrier (Profit)	FB6
Private Carrier (Non-Profit)	FB7
Control	*FX1
Mobile	MO
Mobile/Vehicular Repeater	MO3
Private Carrier Mobile Operation (Profit).	MO6
Private Carrier Mobile Operation (Non-Profit).	MO7
Operational Fixed	FXO
Fixed Relay	FX2
Fixed	**FX
Radiolocation Land	LR
Radiolocation Weather Radar	WDX
Radiolocation Mobile	MR
Secondary Fixed Signalling (for 800 MHz only).	FX3

* Station associated with a mobile relay that employs the same frequency as the associated mobile station for control purposes.

** Station operating on frequencies available for fixed use for control purposes in accordance with applicable rules.

Note: Where appropriate follow each code with "T" for Temporary, "I" for Itinerant, "S" for Standby, "C" for Interconnect, "J" for Temporary Interconnect, "K" for Standby Interconnect, and "L" for Itinerant Interconnect, (e.g., FBT meaning Temporary Base).

Item G3 Enter the number of actual transmitting units at each location. Normally, for a station at a pemanent/fixed location (base, mobile relay, etc.) only one transmitter is involved; therefore, the number "1" should be entered on lines (A) through (F). However, if more than one transmitter is placed at the same location, so indicate. The total number of mobile units is normally the sum of the units to be placed in operation at the time of grant plus the units for which purchase orders have already been signed and will be in use within eight (8) months. There are some exceptions provided for in the rules which should be noted.

For this item vehicular, portable, aircraft, and marine units are considered to be mobiles. Paging receivers should not be counted as mobile units, but must be listed separately in Schedule D, Item D11.

Item G4 Enter the bandwidth and class of emission for each station. Normally, land mobile operations are intended to provide voice communications. The new ITU (International Telecommunications Union) emission designators must be used in place of the old designators. The following provides samples of the corresponding new ITU designators for the most commonly used emission designators.

EMISSION DESIGNATORS

	Old	New
Frequency modulated (FM) voice.	20F3	20K0F3E
Frequency modulated (FM) voice.	13.6F3	13K6F3E
Frequency modulated digitized voice.	20F3Y	20K0F1E
Frequency modulated digitized non-voice.	20F9Y	20K0F1D
Amplitude modulated single sideband voice.	3A3J	3K00J3E
Amplitude modulated (AM) voice.	8A3	8K00A3E

Item G5 When operating with single side band (A3J or new designator J3E) emission enter the peak envelope power, in Watts, followed by the letter "X" which represents peak envelope power in accordance with Appendix 1, ITU Radio Regulations. For operations using A0, A1, A2, A3, A9, F0, F1, F2, F3, and F9 emissions, or the following new emission designators N0N, A1A, A2D, A3E, A9W, F1B, F2D, F3E, and F9W, enter the mean RF output power, in Watts, normally supplied by the transmitter to the antenna feedline. (See applicable rules.)

Note: The power entered should be the minimum required for satisfactory operations.

Item G6 This information is required, for operations above 10 MHz, from applicants requesting new station authorizations, and for major modifications described in the applicable rules.

Enter the effective radiated power. The ERP is the transmitter output power times the net gain of the antenna system. The net gain of the antenna system is the gain of the antenna minus the transmission losses which include losses attributable to the transmission line, duplexers, cavity filters and isolators. The actual formula is: ERP (watts) equals Power (watts) times Antilog (net gain in dB divided by 10).

Item G7 For operations in 220–222 MHz and above 470 MHz, enter the height of the antenna above ground elevation for the average terrain. See the applicable rules for instructions for computing the height above average terrain for the antenna. All other applicants may omit this item.

Item G8 Enter the overall height above ground to the nearest meter of the highest part of your antenna (antenna structure plus the height of the antenna, if top mounted; the total height to the tip of the antenna, if side-mounted). See antenna figures on Schedule F. (a=antenna height to tip)

Specific Instructions for Schedule H Additional Antenna Data

General. All Remote Pick Up Broadcast Auxiliary Radio Service fixed location stations and all stations proposing to operate on frequencies below 27.5 MHz *must* complete Form 600 Schedule H. Failure to do so will result in the return of your application without further action. Land Mobile stations located near international borders that seek protection from interference should also complete Form 600 Schedule H. Form 600 Schedule H may be completed for all other stations if you believe the assumptions made by the FCC would leave your station insufficiently protected internationally. The assumptions are listed under International Registration for other than Parts 22 and 24 Applicants. If you do not provide the actual data and an interference problem arises involving another country's station, your station will be protected only to the limit of the FCC's assumptions. You may have to adjust. This is especially important for stations proposed to be operated in any of the state-counties defined in

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Appendix 1 following Form 600 Schedule H instructions.

Instructions for Completion of Individual Items

Enter the Licensee Name, Radio Service and Call Sign or Station Location city and state.

LOC letters for items H1–H5 correspond to LOC letters on Schedules E, F and G. Enter the station LOC letter code.

Item H1 Enter the transmitter frequency in megahertz corresponding to the LOC letter codes (A, B, C, etc.) which uniquely define the station location identified on Schedule E. When multiple frequencies are used at one station location, the station location letter code of the previous frequency must be entered.

Item H2 Enter the angle in the horizontal plane of the transmitting antenna main lobe measured clock-wise with respect to True North in degrees, or enter 360 to indicate the transmitting antenna is non-directional.

Item H3 For directional antennas, enter the total angle in degrees measured horizontally in a plane containing the direction of maximum radiation within which the power radiated in any direction does not fall more than 3 dB below the power radiated in the direction of maximum radiation. This information should be available from the specification sheet included with the antenna at time of purchase.

Item H4 Enter one of the code letters below representing the polarization of the transmitting antenna for those circuits above 27.5 MHz:

E—Elliptical
F—45 Degrees
H—Horizontal
J—Linear
L—Left hand circular
R—Right hand circular
S—Horizontal and Vertical
T—Right and left hand circular
V—Vertical
X—Other (Provide a description)

Item H5 Enter the ratio, in decibels, of the power required at the input of loss-free reference antenna to the power supplied to the input of the given antenna to produce, in a given direction, the same field strength or the same power flux-density at the same distance. This information should be available from the specification sheet included with the antenna at the time of purchase.

Appendix I—List of Counties, by State, having areas North of Line A

Idaho

Bonner
Boundary
Shoshone

Indiana

Allen
De Kalb
Steuben

Maine

Aroostook
Franklin
Hancock
Kennebec
Oxford
Penobscot
Piscataquis
Somerset
Waldo
Washington

Michigan

Alcona
Alger
Alpena
Antrim
Arenac
Baraga
Bay
Branch
Calhoun
Charlevoix
Cheboygan
Chippewa
Claire
Clinton
Crawford
Delta
Dickinson
Eaton
Emmett
Genesee
Gladwin
Gogebic
Gratiot
Hillsdale
Houghton
Huron
Ingham
Ionia
Iosco
Iron
Isabella
Jackson
Kalkaska
Keweenaw
Lapeer
Leelanau
Lenawee
Livingston
Luce
Mackinac
Macomb
Marquette
Menominee
Midland
Missaukee
Monroe
Montcalm
Montmorency
Oakland
Ogemaw
Ontonagon
Oscoda
Otsego
Presque Isle
Roscommon
Saginaw
Sanilac
Schoolcraft
Shiawassee
St. Clair
Tuscola
Washtenaw
Wayne

Minnesota

Beltrami
Carlton
Clearwater
Cook
Itasca
Koochiching
Lake
Lake of the Woods
Marshall
Pennington
Polk
Roseau
St. Louis

Montana

Blaine
Chouteau
Daniels
Flathead
Glacier
Hill
Lake
Liberty
Lincoln
McCone
Phillips
Pondera
Richland
Roosevelt
Sanders
Sheridan
Teton
Toole
Valley

New Hampshire

Carroll
Coos
Grafton

New York

Alleghany
Cattaraugus
Cayuga
Chautaugua
Clinton
Erie
Essex
Franklin
Genesee
Hamilton
Herkimer

Jefferson
Lewis
Livingston
Madison
Monroe
Niagara
Oneida
Onondaga
Ontario
Orleans
Oswego
Seneca
Steuben
St. Lawrence
Warren
Washington
Wayne
Wyoming
Yates

North Dakota

Benson
Bottineau
Burke
Cavalier
Divide
Grand Forks
McHenry
McKenzie
Mountrail
Nelson
Pembina
Pierce
Ramsey
Renville
Rolette
Towner
Walsh
Ward
Williams

Ohio

Ashland
Ashtabula
Cuyahoga
Defiance
Erie
Fulton
Geauga
Hancock
Henry
Huron
Lake
Lorain
Lucas
Medina
Ottawa
Paulding
Portage
Putnam
Sandusky
Seneca
Summit
Trumbull
Williams
Woods

Pennsylvania

Crawford
Erie
Warren

Vermont

Addison
Caledonia
Chittenden
Essex
Franklin
Grand Isle
Lamoille
Orange
Orleans
Rutland
Washington
Windsor

Washington

Chelan
Clallam
Douglas
Ferry
Grays Harbor
Island
Jefferson
King
Kitsap
Mason
Okanogan
Pend Oreille
Pierce
San Juan
Skagit
Snohomish
Spokane
Stevens
Whatcom

Wisconsin

Ashland
Bayfield
Douglas
Florence
Forest
Iron
Vilas

Appendix II—Commission Field Offices

The Commission's field offices and the zip codes are listed below. Correspondence with the field offices should be addressed to: Federal Communications Commission, Engineer-in-Charge. The street address of any office may be found in the local directory, for the city in which the office is located, under the heading United States Government.

Alaska

Anchorage 99502–1896

Arizona

Douglas 85608–0006

California

San Diego 92111–2216
Livermore 94551–0311
Cerritos 90701–3684
Hayward 94545–1914

Colorado

Lakewood 80228–2213

Florida

Vero Beach 32961–1730
Miami 33166–4668
Tampa 33607–2356

Georgia

Duluth 30136–4958
Powder Springs 30073–0085

Hawaii

Waipahu 96797–1030

Illinois

Park Ridge 60068–1460

Louisiana

New Orleans 70123–3333

Maine

Belfast 04915–0470

Maryland

Baltimore 21201–2802
Columbia 21045–9998

Massachusetts

Quincy 02169–7495

Michigan

Allegan 49010–9437
Farmington Hills 48335–1552

Minnesota

St. Paul 55101–1467

Missouri

Kansas City 64133–4895

Nebraska

Grand Island 68802–1588

New York

Buffalo 14202–2398
New York 10014–4870

Oregon

Portland 97204–2898

Pennsylvania

Langhorne 19047–1859

Puerto Rico

Hato Rey 00918–1731

Texas

Dallas 75243–3429
Houston 77008–1775
Kingsville 78363–0632

Virginia

Virginia Beach 23455–3725

Washington

Custer 98240–9303
Kirkland 98034–6927

BILLING CODE 6712-01-M

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FCC 600
Main Form

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB
3060-0600
Expires (date)
Est. Avg. Burden Hours Per Response: 60 Hrs.

Application for Mobile Radio Service Authorization
or Rural Radiotelephone Service Authorization

FCC Use Only
(File Number)

FEE Use Only

FILING FEE

(a) Fee Type Code	(b) Fee Multiple	(c) Fee Due for Fee Type Code in (a)	(d) Total Amount Due	FEE Use Only
			$	

APPLICANT

1. Legal Name of Applicant	2. Voice Telephone Number ( )	
3. Assumed Name Used for Doing Business (if any)	4. Fax Telephone Number ( )	
5. Mailing Street Address or P.O. Box ATTENTION:		
6. City	7. State	8. Zip Code

9. Name of Contact Representative (if other than applicant)	10. Voice Telephone Number ( )	
11. Firm or Company Name	12. Fax Telephone Number ( )	
13. Mailing Street Address or P O Box		
14. City	15. State	16. Zip Code

CLASSIFICATION OF FILING

17. This filing is a (an) [ ] New application Amendment to a pending application

18. Does the applicant believe that this filing should be classified as MINOR under 47 U.S.C. § 309? [ ] Yes No Does not apply

19. If not minor under 47 U.S.C. § 309, classification for purposes of competitive bidding: [ ] Initial Modification Renewal

20. If this filing is in reference to an existing station:	21. If this filing is an amendment to a pending application:
Call sign of existing station:	File number of pending application: Date Filed:

NATURE OF SERVICE

22. This filing is for authorization to provide or use the following type(s) of radio service:
[ ] Commercial mobile Private mobile Both commercial and private mobile Fixed

23. Users are or will be: [ ] Public subscribers Eligibles Internal		24. Status: [ ] Profit Not for profit
25. Interconnected service? [ ] Yes No	26. Radio Service code: [ ]	27. Type of operation code: [ ]

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental effect as defined by 47 CFR 1.1307?
* If "yes", attach environmental assessment as required by 47 CFR 1.1308 and 47 CFR 1.1311. [ ] Yes No

ALIEN OWNERSHIP

29. Is the applicant a foreign government or the representative of any foreign government? [ ] Yes No

30. Is the applicant an alien or the representative of an alien? [ ] Yes No

31. Is the applicant a corporation organized under the laws of any foreign government? [ ] Yes No

32. Is the applicant a corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country? [ ] Yes No

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? [ ] Yes No
* If "yes", attach exhibit explaining nature and extent of alien or foreign ownership or control.

BASIC QUALIFICATIONS

34. Has the applicant or any party to this application or amendment had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? [ ] Yes No
* If "yes", attach exhibit explaining circumstances.

35. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? [ ] Yes No

36. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? [ ] Yes No

37. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? [ ] Yes No

38. Does the undersigned certify (by responding "Y" to this question), that neither the applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance? [ ] Yes No
* See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.

CERTIFICATION

The APPLICANT waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

39. Applicant is a (an) [ ] Individual Unincorporated Association Partnership Corporation Governmental Entity

40. Typed Name of Person Signing	41. Title
42. Signature	43. Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S.Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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FCC 600 Schedule A	FEDERAL COMMUNICATIONS COMMISSION **Administrative Information** Personal Communications Service Cellular Radiotelephone Service Paging and Radiotelephone Service Rural Radiotelephone Service Offshore Radiotelephone Service Air-ground Radiotelephone Service	Approved by OMB 3060-0600 Expires: 07/31/97 Est. Avg. Burden Hours Per Response: 60 Hrs.
		FCC Use Only

PURPOSE OF FILING

A1. The purpose of this filing is to:

[ ]

Enter one or more letters that correctly describe the purpose of this filing.

MAJOR

- A request an initial authorization for a new system or station; additional channels or spectrum (all)
- B request authorization or amend a pending application to change a channel or channel block (all)
- C request a partial assignment of a radio station authorization (all)
- D request authorization for facilities for which environmental assessment is required (all)
- E request authorization for facilities for which international coordination is required (all)
- F request a developmental authorization (CD, CL, CR)
- G request regular authorization for facilities operating under developmental authority (CD, CL, CR)
- H amend a pending application to substantially change the technical proposal (CD, CR)
- I request authorization for a cellular facility that would produce a de minimis SAB extension (CL)
- J amend a pending application to modify a CGSA to include area not previously proposed (CL)
- K request that a CGSA boundary be determined using an alternative method (CL)
- L request authorization for a new or expanded service area on a requested channel (CD)
- M request authorization for one or more new or relocated fixed stations (CD)
- N request authorization to increase the ERP and/or antenna height AAT of a fixed station (CD)
- O request authority to provide commercial paging service using a broadcast station subcarrier (CD)
- P request authorization for a Commercial Aviation ground station location to be established (CG)
- Q request authorization for a new or relocated General Aviation ground station (CG)
- R request authorization for a new/relocated rural/offshore central office/interoffice station (CR, CO)

MINOR

- S request authorization for one or more minor change(s) to an existing system or station (all)
- T effect a minor amendment of a pending application (all)
- U request an extension of time to complete construction of one or more facilities (all)
- V request authorization for a new or relocated rural or offshore subscriber station (CR, CO)
- W request to consolidate separately authorized facilities (all)

MARKET / CHANNEL BLOCK

A2. Market Designator	A3. Channel Block	A4. Sub-Market Designator	A5. Market Name

CONTROL POINTS

A6 Control Point Number	A7 Location Street Address, City or Town, State	A8. Telephone Number	A9. Action Requested Add Delete
		( )	
		( )	
		( )	

FACILITIES NOT CONSTRUCTED

A10. Location Number	A11. File Number	A12. Location Street Address, City or Town, State

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FCC 600 — **FEDERAL COMMUNICATIONS COMMISSION**

Schedule B

Technical Data
(Individual Channel Assignment)

Personal Communications Service (Narrowband)
Paging and Radiotelephone Service
Rural Radiotelephone Service
Air-ground Radiotelephone Service (General Aviation)
Offshore Radiotelephone Service

Approved by OMB
3060-0600
Expires: (Month/Yr)
Est. Avg. Burden Hours Per Response: 60 hrs.

FCC Use Only

LOCATION

B1. Action Requested [ ] Add Delete Modify	B2. FCC Location Number (Key to Schedule F)
B3. Street Address or other Description of Location	
B4. City	
B5. County	B6. State
B7. NAD 27 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B8. NAD 27 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ " — FCC Use Only
B9. NAD 83 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B10. NAD 83 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "

If changing antenna location, provide coordinates, FCC location number and datum for old location:

B11. North Latitude (DD-MM-SS) ____ ° ____ ' ____ "	B12. West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "	B13. FCC Location Number
		B14. Datum (NAD 27 or NAD 83)

SUPPLEMENTARY LOCATION INFORMATION

B15. Is this location North of Line A or East of Line C? [ ] Yes, North of Line A Yes, East of Line C No
B16. Is this location within 200 kilometers of the U.S.-Mexico border? [ ] Yes No

Complete the following for any adjacent markets within 200 kilometers of this location:

B17. Adjacent Market Designator	B18. Adjacent Market Name	B19. Shortest Distance to Adjacent Market (kilometers)

ANTENNA

B20. Action Requested [ ] Add Delete Modify	B21. Status: [ ] Existing Proposed	B22. Antenna Number
B23. Type	B24. Manufacturer	B25. Model Number
B26. Height of Center of Radiation AAT (meters)	B27. Beamwidth of Main Lobe (degrees)	B28. Height to Tip AGL (meters)

TRANSMITTERS FOR ANTENNA

B29. Transmitter Number	B30. Action Requested Add Delete Modify	B31. Channel Center Frequency (MHz)	B32. Transmitter Class Code	B33. Non-standard Emission Type Designator	B34. Maximum Transmitting ERP
I					
II					
III					
IV					

RADIAL DATA FOR ANTENNA

Azimuth (degrees from true North)	B35. Antenna Height AAT (meters)	B36. Transmitter I ERP (Watts)	B37. Transmitter II ERP (Watts)	B38. Transmitter III ERP (Watts)	B39. Transmitter IV ERP (Watts)
0°					
45°					
90°					
135°					
180°					
225°					
270°					
315°					

POINTS OF COMMUNICATION FOR ANTENNA

B40. Action Requested Add Delete	B41 Transmitter Number	B42. Location (City or Town, State)	B43. North Latitude (DD°MM'SS")	B44. West Longitude (DDD°MM'SS")	B45. Subscriber Call Sign

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FCC 600 Schedule C

FEDERAL COMMUNICATIONS COMMISSION

Technical Data

(Block Channel Assignment)

Cellular Radiotelephone Service
Personal Communications Service (Broadband)
Air-ground Radiotelephone Service (Commercial Aviation)

Approved by OMB 3060-0600 Expires 02/29/96 Est. Avg. Burden Hours Per Response: 60 Hrs.

FCC Use Only

LOCATION

C1. Action Requested [ ] Add Delete Modify

C2. FCC Location Number (Key to Schedule F)

C3. Street Address or other Description of Location

C4. City

C5. County

C6. State

C7. NAD 27 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "

C8. NAD 27 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "

FCC Use Only

C9. NAD 83 North Latitude (DD-MM-SS) ____ ° ____ ' ____ "

C10. NAD 83 West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "

If changing antenna location, provide coordinates, FCC location number and datum for old location:

C11. North Latitude (DD-MM-SS) ____ ° ____ ' ____ "

C12. West Longitude (DDD-MM-SS) ____ ° ____ ' ____ "

C13. FCC Location Number

C14. Datum (NAD 27 or NAD 83)

TECHNICAL PARAMETERS

C15. Height of Antenna Center of Radiation AAT (meters)	C16. Height to Top of Antenna AGL (meters)	C17. Maximum ERP (Watts)

RADIAL DATA

Azimuth (Degrees from true North)	C18. Antenna Height AAT (meters)	C19. Transmitting ERP (Watts)	C20. Distance to SAB (kilometers)	C21. Distance to CGSA (kilometers)
0°				
45°				
90°				
135°				
180°				
225°				
270°				
315°				

FCC 600

FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE D

Administrative Data

(all services except those for which Schedule A is required)

Approved by OMB 3060-0600 Expires 02/29/96 Est. Avg. Burden Hours Per Response: 60 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

PURPOSE OF FILING

D1. The purpose of this filing is to:

[ ] N request a new station license.
[ ] M modify an existing licensed station(s).
[ ] R renew an existing licensed station.
[ ] X reinstate an expired call sign.
[ ] A assign an existing license.

D2. If system licensing, list call signs of stations to be combined. (First call sign will be retained.)

D3. Specify proposed modifications, if any:

ASSOCIATED CALL SIGNS

D4. Call signs:

RADIO SYSTEM OPERATION POINT OF CONTACT

D5. Street Address, City, State

D6. Voice Telephone Number ( )

ASSOCIATED BROADCAST STATION

D7. Call Sign	D8. City	D9. State

MARKET AREA

D10. Market Area / Number

PAGING OPERATIONS

D11. Number of Paging Receivers

ELIGIBILITY

D12. Describe Activity	D13. Rule Section

FOR FREQUENCY COORDINATOR'S USE ONLY

D14. Frequency Coordination Number [ ]

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FCC 600	FEDERAL COMMUNICATIONS COMMISSION SCHEDULE E **Station Location Data** (all services except those for which Schedule A is required)	Approved by OMB 3060-0390 Expires: 4/30/97 Est. Avg. Burden Hours Per Response: 60 Hrs.
		FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

E1. Specify the datum used to determine all coordinates on this filing: [ ] NAD27 NAD83 Other (Specify _____)

FIXED OR PERMANENT LOCATIONS

LOC	E2. Station Address / Geographic Location	E3. City	E4. County	E5. State
A				
B				
C				
D				
E				
F				

LOC	E6. Latitude (degrees, minutes, seconds)	E7. Longitude (degrees, minutes, seconds)	E8. Ground Elevation (meters)
A			
B			
C			
D			
E			
F			

CONTROLS MEETING THE 20 FOOT CRITERIA, MOBILE OR TEMPORARY LOCATIONS

LOC	E9. Radius (km)	E10. Area of Operation Code	E11. LATITUDE	LONGITUDE	COUNTY	STATE	E12. Operations (S) South of Line A and/or (W) West of Line C
G			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			
			- -	- -			

FCC 600 - Schedule E
October 1994

State Table

Abbreviations for States, Jurisdictions and Areas

AL Alabama
AK Alaska
AZ Arizona
AR Arkansas
CA California
CO Colorado
CT Connecticut
DE Delaware
DC District of Columbia
FL Florida
GA Georgia
GM Gulf of Mexico
HI Hawaii
ID Idaho
IL Illinois
IN Indiana
IA Iowa
KS Kansas
KY Kentucky
LA Louisiana
ME Maine
MD Maryland
MA Massachusetts
MI Michigan
MN Minnesota
MS Mississippi
MO Missouri
MT Montana
NE Nebraska
NV Nevada
NH New Hampshire
NJ New Jersey
NM New Mexico
NY New York
NC North Carolina
ND North Dakota
OH Ohio
OK Oklahoma
OR Oregon
PA Pennsylvania
RI Rhode Island
SC South Carolina
SD South Dakota
TN Tennessee
TX Texas
UT Utah
VT Vermont
VA Virginia
WA Washington
WV West Virginia
WI Wisconsin
WY Wyoming
AS American Samoa
GU Guam
UM Midway Island
MP Northern Mariana Islands
PR Puerto Rico
VI Virgin Islands
UM Wake Island

BILLING CODE 6712-01-M

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FCC 600	FEDERAL COMMUNICATIONS COMMISSION SCHEDULE F Antenna Structure Data (All Services)	Approved by OMB 0060-0000 Expires xx/xx/xxxx Est. Avg. Burden Hours Per Response: 60 Hrs.
		FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

STATUS AND IDENTIFYING INFORMATION

LOC	F1. Location Number	F2. New or Existing	F3. Call Sign of Existing Station	F4. Radio Service	F5. Tower Owner's Name and Telephone Number
A					( )
B					( )
C					( )
D					( )
E					( )
F					( )

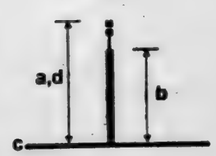
STRUCTURE TYPE AND HEIGHT

LOC	F6. Figure Number (see reverse)	F7. Structure Type	F8. Height of Support Structure (b) (meters)	F9. Overall Height of Structure (d) (meters)	F10. FCC Tower Number
A					
B					
C					
D					
E					
F					

FAA NOTIFICATION

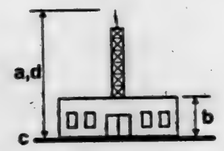
LOC	F11. FAA notified? Yes No	F12. Date FAA Notification Filed	F13. FAA Regional Office Notified	F14. FAA Study Number
A				
B				
C				
D				
E				
F				

Figure 1



a = height to tip of antenna (AGL)

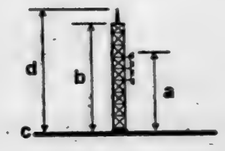
Figure 2



b = height of support structure (AGL)

c = ground elevation (AMSL)

Figure 3



d = overall height of structure including all appurtenances (AGL)

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FCC 600

FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE G

Technical Data

(all services except those for which Schedule A is required)

Approved by OMB 3060-0589 Expires: (date) Est. Avg. Burden Hours Per Response: 60 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

LOC	G1. Frequency (MHz)	G2. Station Class	G3. No. Units	G4. Emission	G5. Output	G6. ERP	G7. AAT (meters)	G8. Ant. Ht. (meters)
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FEDERAL COMMUNICATIONS COMMISSION

SCHEDULE H

Additional Antenna Data

(Remote Pickup Broadcast Auxiliary)

(Land Mobile Stations Operating on Frequencies Under 27.5 MHz)

(Land Mobile Stations Located Near International Borders that Seek Protection from Interference)

Approved by OMB
3060-0390
Expires: (date)
Est. Avg. Burden Hours Per Response: 60 Hrs.

FCC Use Only

Licensee Name	Radio Service	Call Sign or Station Location (City, State)

LOC	H1. Frequency (MHz)	H2. Azimuth	H3. Beamwidth (degrees)	H4. Polarization	H5. Gain (dB)

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[GEN Docket No. 90-287; DA 94-1168]

Private Land Mobile Radio Services; Northern California Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Acting Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Northern California (Region 6). As a result of accepting the amendment for the Plan for Region 6, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: October 25, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 17, 1994.
Released: October 25, 1994.
By the Acting Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Northern California (Region 6) Public Safety Plan (Plan) on November 20, 1990, 5 FCC Rcd 7123 (1990).

2. By letter dated May 9, 1994, the Region proposed to amend its Plan. The proposed amendment would, in part, revise the current channel allotments. The Commission placed the letter on Public Notice for comments due on September 15, 1994, 59 FR 42046 (August 16, 1994). The Commission received two comments, both of which urged the Commission to approve the proposed amendment.

3. We have reviewed the proposed amendment to the Region 6 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, IT IS ORDERED, That the Public Safety Radio Plan for Northern California (Region 6) IS AMENDED, as set forth in the Region's letter of May 9, 1994. This Amendment is effective immediately.

Federal Communications Commission.

Rosalind K. Allen,

Acting Chief, Land Mobile and Microwave Division.

[FR Doc. 94-26957 Filed 10-31-94; 8:45 am]

BILLING CODE 6712-01-F

FEDERAL RESERVE SYSTEM

NSB Holding Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 25, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. NSB Holding Corp., Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Northfield Savings Bank, Staten Island, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Century South Banks, Inc., Dahlonega, Georgia; to acquire 99.21 percent of the voting shares of First Community Bank of Dawsonville, Dawsonville, Georgia.

2. Century South Banks, Inc., Dahlonega, Georgia; to merge with Gwinnett Bancorp, Inc., Duluth, Georgia, and thereby indirectly acquire Gwinnett National Bank, Duluth, Georgia.

3. S&V Holding Company, Maryville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Etowah Bancing Company, Etowah, Tennessee, and thereby indirectly acquire Southern United Bank of McMinn County, Etowah, Tennessee.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Altus NBC Corporation, Altus, Oklahoma; to acquire 100 percent of the voting shares of Capital National Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Capital National Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26986 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Louis F. Pignatelli; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Louis F. Pignatelli, Rock Falls, Illinois, to acquire 7.5 percent of the voting shares of Community Illinois Corporation, Rock Falls, Illinois, and thereby indirectly acquire Community State Bank of Rock Falls, Rock Falls, Illinois.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26987 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; Norwest Financial Special Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to engage *de novo* in consumer finance and sales finance, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and the offering for sale and selling of bookkeeping, payroll and other management financial reporting services and data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26990 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Christopher Thomas Moser; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-94-26260) published on page 53477 of the issue for Monday, October 24, 1994.

Under the Federal Reserve Bank of Dallas heading, the entry for Christopher Thomas Moser, is revised to read as follows:

1. Christopher Thomas Moser, San Antonio, Texas; to acquire 4.61 percent, for a total of 10.29 percent; William B. Moser, Jr., Beeville, Texas, to retain a total of 6.64 percent; Margaret Lyne Moser, Beeville, Texas, to retain a total of 4.04 percent; William Barnett Moser, III, Live Oak County, Texas, to retain a total of 1.65 percent; Katheryn Olivia Moser Trust, San Antonio, Texas to retain a total of .35 percent; Sybil Small West Grantor Trust, San Antonio, Texas, to retain a total of .35 percent; Edward Zacharias Lyne Moser, San Antonio, Texas, to acquire .17 percent, for a total of 2.92 percent; and Ruth Moser Davies, Austin, Texas, to retain a total of 1.64 percent of the voting shares of Southwest First Community, Inc., and thereby indirectly acquire State Bank & Trust Company, Beeville, Texas, and Commercial State Bank, Sinton, Texas.

Comments on this application must be received by November 14, 1994.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26989 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

Bank South Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia, to acquire Gwinnett Bancshares, Inc., Lawrenceville, Georgia, and thereby indirectly acquire Gwinnett Federal Bank, FSB, Lawrenceville, Georgia, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-26988 Filed 10-31-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 911 0097]

Baby Furniture Plus Association, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

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ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Alabama buying cooperative and trade association from taking any action on behalf of its members, or encouraging them to take any action, that interferes with a juvenile product manufacturer's decision as to how or to whom to distribute its products. The consent agreement also would prohibit the respondent from coercing—by means of actual or threatened refusals to deal—any juvenile products manufacturer to abandon or adopt—or to refrain from abandoning or adopting—any marketing method for its products.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20850.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 State. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.35), notice is hereby given that the following consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Baby Furniture Plus Association, Inc. ("BFPAI") and it now appearing that the BFPAI, hereinafter referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the BFPAI, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Baby Furniture Plus Association, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at Suite 1, 1020 Montgomery Highway, Birmingham, Alabama 35216. Respondent is a voluntary association of retailers of juvenile products doing business in approximately twenty-five States.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

A. "Baby Furniture Plus Association, Inc." means Baby Furniture Plus Association, Inc., and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "Juvenile products" means products or accessories to products that are used by or are intended for use by babies, children or juveniles.

I

It is ordered that BFPAI, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s); and

C. Requesting, urging, recommending or suggesting that BFPAI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s).

Provided that this order shall not be construed to prevent BFPAI from engaging in trade association or buying cooperative activities that are lawful under the antitrust laws.

II

It is further ordered that BFPAI shall:

A. Distribute by first-class mail a copy of this order and the accompanying complaint to each of BFPAI's members within thirty (30) days after the date on which this order become final;

B. For a period of five (5) years after the date on which this order becomes final, provide each new BFPAI member with a copy of this order and the accompanying complaint at the time the member is accepted for membership; and

C. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail to each manufacturer enumerated in "Appendix A" to this order a copy of the Commission's complaint and order in this matter and letter, on BFPAI letterhead and signed by BFPAI's president, in the form shown as "Appendix B" to this order.

III

It is further ordered that, for a period of five (5) years after this order becomes final, BFPAI shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer of juvenile products, any manufacturer of juvenile products, or any association representing manufacturers of juvenile products and that such copies of minutes and correspondence be made available to Commission staff for inspection and copying upon reasonable notice.

IV

It is further ordered that, within sixty (60) days after the date on which this order becomes final, BFPAI shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission or its staff may, by written notice to BFPAI, require.

V

It is further ordered that BFPAI shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Appendix A

A.D.I. Lamps, P.O. Box 6357, Phoenix, AZ 85005, Attn: National Sales Manager
Aprica U.S.A., Inc. P.O. Box 25408—Zip 92825–5408, 1200 Howell Avenue, Anaheim, CA 92805, Attn: National Sales Manager
Baby Trend, Inc., 1928 W. Holt Avenue, Pomona, CA 91768, Attn: National Sales Manager
Bandaks Emmaljunga Incorporated, 737 South Vinewood Street, Escondido, CA 92029, Attn: National Sales Manager
Bassett Furniture Industries, Inc., P.O. Box 626, Bassett, VA 24055, Attn: National Sales Manager
Carlson Children's Products, Inc., 122 Kirkland Circle, Oswego, IL 60543, Attn: National Sales Manager
Century Products Company, 9600 Valley View Road, Macedonia, OH 44056–9989, Attn: National Sales Manager
Chicco Artsana of America, 200 Fifth Ave., Rm 910, New York, NY 10010, Attn: National Sales Manager
Child Craft Industries, Inc., P.O. Box 444, Salem, IN 47167–0444, Attn: National Sales Manager
Children on the Go, 1670 S. Wolf Road, Wheeling, IL 60090, Attn: National Sales Manager
Cocso, Inc., 2525 State St., Columbus, IN 47201, Attn: National Sales Manager
Dutalier, Inc., 298 Chaput St. Pie, Quebec, Canada JOH 1WO, Attn: National Sales Manager
Evenflo Juvenile Furniture Co., 1801 Commerce Drive, Piqua, OH 45356, Attn: National Sales Manager
FBS, Inc., 1071 Batesville, Rd., Greer, SC 29650, Attn: National Sales Manager
Fisher-Price, Inc., 636 Girard Ave., East Aurora, NY 14052, Attn: National Sales Manager
Gerry Baby Products, 12530 Grant Drive, Denver, CO 80233, Attn: National Sales Manager
Glenna Jean Mfg., P.O. Box 2187, Petersburg, VA 23804, Attn: National Sales Manager
Graco Children's Products, Inc., Rt 23, Main St., Elverson, PA 19520, Attn: National Sales Manager
Jolly Jumper, P.O. Box M, Woonsocket, RI 22895, Attn: National Sales Manager
Lambs & Ivy, 5978 Bowcroft St., Los Angeles, CA 90016, Attn: National Sales Manager
The Little Tikes Co., 2180 Barlow Rd., Hudson, OH 44236, Attn: National Sales Manager
Newborne Company, River Rd., Worthington, MA 01098, Attn: National Sales Manager
Noel Joanna Inc., 22942 Arroyo Vista, Rancho Santa Margarita, CA 92688, Attn: National Sales Manager
Nu-Line, 214 Nu-Line St., Suring, WI 54174, Attn: National Sales Manager
Omron Marshall Products, 600 Barclay Blvd., Lincolnshire, IL 60069, Attn: National Sales Manager
Pansy Ellen Products, 1245 Old Alpharetta Rd., Alpharetta, GA 30202, Attn: National Sales Manager
Perego, USA, 3625 Indpendence Drive, Fort Wayne, IN 46808, Attn: National Sales Manager
Prince Lionheart, 3070 Skyway Dr., Bldg. 502, Santa Maria, CA 93455, Attn: National Sales Manager
The Red Calliope & Associates, Inc., 13003 S. Figueron St., Los Angeles, CA 90061, Attn: National Sales Manager
Rochelle Furniture, 722 North Market St., Duncannon, PA 17020, Attn: National Sales Manager
Safety 1st, Inc., 210 Boylston St., Chestnut Hill, MA 02167, Attn: National Sales Manager
Sandbox Industries, P.O. Box 477, Tenafly, NJ 07670, Attn: National Sales Manager
Sassy, Inc., 1534 College SE, Grand Rapids, MI 49507, Attn: National Sales Manager
Simmons Juvenile Products Co., 613 E. Beacon Avenue, New London, WI 54961, Attn: National Sales Manager
Snugli, Inc., 12520 Grant Drive, Denver, CO 80233, Attn: National Sales Manager
Summer Infant Products, 33 Meeting Street, Cumberland, RI 02864, Attn: National Sales Manager
Welsh Company, 1535 S. Eighth St., St. Louis, MO 63104, Attn: National Sales Manager

Appendix B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the Baby Furniture Plus Association, Inc. ("BFPAI"). The BFPAI has voluntarily entered into an agreement with the FTC which resulted in the issuance by the FTC on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the complaint, the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that, among other things, the BFPAI will cease and desist from:

A. Taking any action, directly or indirectly, on behalf of its members, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its products(s);

B. Coercing, compelling, inducing, or intimidating by means of actual or threatened refusals to deal, or attempting to coerce, compel, induce, or intimidate by means of

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actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from , abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s); and

C. Requesting, urging, recommending or suggesting that BFPAI members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s).

A copy of the complaint and the order are enclosed.

Sincerely,

President

Enclosures

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from proposed respondent Baby Furniture Plus Association, Inc. ("proposed respondent" or "BFPAI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Description of Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that proposed respondent's members, all of whom are retailers of juvenile products, agreed to act in concert to restrict the competition that some of the members faced from the New Hampshire Buyer's Service catalog.

The complaint alleges that pursuant to this agreement, the BFPAI wrote letters to thirty-seven manufacturers of juvenile products in which it directly or impliedly threatened that its members would refuse to deal with them if the manufacturers continued to do business with the New Hampshire Buyer's Service catalog.

The complaint alleges that these actions constituted a combination or conspiracy to threaten to boycott juvenile product manufacturers that do business with the New Hampshire Buyer's Service catalog. This conduct, it is alleged, had the purpose or effect, or the tendency or capacity, to restrain competition unreasonably and injure consumers. Among other things, it is alleged that the conduct restrained competition between the proposed respondent's members and other retailers of juvenile products, including the New Hampshire Buyer's Service catalog, restrained the ability of manufacturers of juvenile products to distribute their products through mail order catalogs, and deprived consumers of the benefits of additional price, quality and service competition in connection with the sale of juvenile products.

Description of the Proposed Consent Order

The proposed order would require the proposed respondent to cease and desist from taking any action on behalf of its members, including an actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with a juvenile product manufacturer's decision as to how or to whom it distributes its products. In addition, the proposed order requires the BFPAI to cease and desist from actual or threatened boycotts, refusals to deal or the use of other means of coercion to compel or induce any juvenile product manufacturer to adopt or refrain from adopting any marketing method, practice or policy with regard to the distribution of its products. Finally, the proposed order requires the proposed respondent to cease and desist from requesting, urging, recommending or suggesting that its members take action, such as an actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with a juvenile product manufacturer's decision as to how or to whom it distributes its products.

The proposed order contains a safe harbor provision which provides that the order shall not be construed to prevent the BFPAI from engaging in trade association or buying cooperative activities that are lawful under the antitrust laws.

The BFPAI is required to take several remedial actions under the terms of the proposed order. Within 30 days after the order becomes final, the BFPAI must distribute a copy of the order to all its members and, for a five year period, the BFPAI must make a copy of the order available to all new members at the time they are accepted for membership. In addition, within 30 days after this order becomes final, the BFPAI must also send a letter to the manufacturers it had threatened to boycott in which it acknowledges the consent order and outlines the order's principal terms.

Finally, the proposed order requires the BFPAI to file compliance reports, to retain certain documents for a five year period, and to notify the Commission of certain changes in status.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in *New England Juvenile Retailers Association*, File 911–0079, and *Baby Furniture Plus Association, Inc.*, File 911–0097

In these cases, two trade associations complained to manufacturers about free riding by a catalogue seller, and the Commission charges them and the retailer members of one association with directly or impliedly threatening a concerted refusal to deal with the manufacturers. Although the letters of complaint were ill-advised, evidence that the retailers (many of whom were not represented by counsel during our investigation) were committed "to a common scheme designed to achieve an unlawful objective"[1] (*i.e.*, a coercive, concerted refusal to deal) is thin at best. Given the dearth of evidence of unlawful agreement, the arguably procompetitive purpose, and the absence both of market power and of anticompetitive effects, I do not find reason to believe that the challenged conduct unreasonably restrained trade or that the imposition of an order is in the interest of the public. I dissent.

[FR Doc. 94–27010 Filed 10–31–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984).

[File No. 911 0079]

New England Juvenile Retailers Association, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent agreement also would require the dissolution of the association within sixty days.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston, Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of:

New England Juvenile Retailers Association, an association;
Elliot Young and Susan Young, individuals trading and doing business as The Baby Place, Inc.;
Baby's Room, Inc., a corporation, and
Stephen Brass, individually and as an officer of said corporation;
Baby Specialties, Inc., and Baby Specialties of Natick, Inc., corporations, and
George Koury, individually and as an officer of said corporation;
Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc., corporations, and
Michael Slobodkin, individually and as an officer of said corporations;
Chapin Specialties Co., Inc., a corporation, and
Allan Broverman, individually and as an officer of said corporation;
Crib-N-Cradle Juvenile Furniture Inc., a corporation, and
Louis Avarista, Sr., individually and as an officer of said corporation;
Cribs and Cradles, Inc., a corporation, and
Robert Newhouse, individually and as an officer of said corporation;
Juveniles, Inc., and Waltham Slumber Shop, Inc., corporations, and
Timothy Precourt, individually and as an officer of said corporations;
Normand Poirier, an individual trading and doing business as Norm's Discount;
Small Wonders Limited, Inc. d/b/a Rooms To Grow, a corporation, and
Henry Ritchotte, individually and as a manager of said corporation;
Tiny Totland, Inc., a corporation, and
Jack Resnick, individually and as an officer of said corporation; and
Rudolph Mosesso, an individual.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the above-named corporations, proprietorships and individuals, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between the proposed respondents and their duly authorized attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent New England Juvenile Retailers Association ("NEJRA") is an unincorporated association of retailers of juvenile products doing business in New England, with an office and principal place of business located in Boston, Massachusetts. The NEJRA's designated agent is Arthur Goldberg, Esq., c/o Nathanson & Goldberg, 10 Union Wharf, Boston, Massachusetts 02109.

2. Proposed respondents Elliot Young ("E. Young") and Susan Young ("S. Young") have done business as and are proprietors of The Baby Place, Inc., a retail store engaged in the sale of juvenile products. Their principal offices or places of business are 50 Worcester Road, Natick, Massachusetts 01760.

3. (a) Proposed respondent Baby's Room, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal office located at 20 Garden Street, Danvers, Massachusetts 01923. Baby's Room, Inc. is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Stephen Brass ("Brass") is president of proposed respondent Baby's Room, Inc. His principal office is located at 20 Garden Street, Danvers, Massachusetts 01923.

4. (a) Proposed respondent Baby Specialties, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Grove Street, Worcester, Massachusetts 01605, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Baby Specialties of Natick, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1276 Worcester Road, Natick, Massachusetts 01760, where it is engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent George Koury ("Koury") is treasurer of proposed respondents Baby Specialties, Inc. and Baby Specialties of Natick, Inc. His principal office or place of business is 100 Grove Street, Worcester, Massachusetts 01605.

5. (a) Proposed respondent Boston Baby, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 30 Tower Road, Newton, Massachusetts 02164, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Boston Baby of Avon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place or business located at 15 Stockwell Drive, Avon, Massachusetts 02322, where it is engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent Boston Baby of Hingham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 100 Derby Street, Hingham, Massachusetts 02043, where it is engaged in the business of the retail sale of juvenile products.

(d) Proposed respondent Michael Slobodkin ("M. Slobodkin") is treasurer of proposed respondents Boston Baby, Inc., Boston Baby of Avon, Inc., and Boston Baby of Hingham, Inc. His principal office or place of business is located at 30 Tower Road, Newton, Massachusetts 02164.

6. (a) Proposed respondent Chapin Specialties Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 1140 Main Street, Springfield, Massachusetts 01103, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Allan Broverman ("Broverman") is president of proposed respondent Chapin Specialties Co., Inc. His principal office or place of business is 1140 Main Street, Springfield, Massachusetts 01103.

7. (a) Proposed respondent Crib-N-Cradle Juvenile Furniture Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 1000 Bald Hill Road, Warwick, Rhode Island 02886, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Louis Avarista, Sr. ("Avarista") is president and treasurer of Proposed respondent Crib-N-Cradle Juvenile Furniture Inc. His principal office or place of business is 1000 Bald Hill Road, Warwick, Rhode Island 02886.

8. (a) Proposed respondent Cribs And Cradles, Inc. is a corporation organized and

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existing under and by virtue of the laws of the Commonwealth of Massachusetts. Cribs And Cradles, Inc. maintained an office and principal place of business located at 623 Broadway, Route 1, Saugus, Massachusetts 01906, where, until approximately January 1992, it was engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Robert Newhouse ("Newhouse") is president and treasurer of proposed respondent Cribs And Cradles, Inc. Mr. Newhouse resides at 34 Garvey Road, Framingham, Massachusetts 01701.

9. (a) Proposed respondent Juveniles, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Juveniles, Inc. maintained an office and principal place of business located at 8 Bourbon Street, W. Peabody, Massachusetts 01960, where, until approximately May 1, 1991, it was engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Waltham Slumber Shop, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts. Waltham Slumber Shop, Inc. maintained an office and principal place of business located at 879 Main Street, Waltham, Massachusetts 02154, where, until approximately May 1, 1992, it was engaged in the business of the retail sale of juvenile products.

(c) Proposed respondent Timothy Precourt ("Precourt") is president of proposed respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Mr. Precourt resides at 998 Summer Street, Lynnfield, Massachusetts 01940.

10. Proposed respondent Normand Poirier is an individual trading and doing business as Norm's Discount. Mr. Poirier maintains an office and principal place of business located at 55 Airport Road, Fitchburg, Massachusetts 01420, where he is engaged in the business of the retail sale of juvenile products.

11. (a) Proposed respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 117 Chestnut Street, Warwick, Rhode Island 02888, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Henry Ritchotte ("Ritchotte") is manager of the Warwick, Rhode Island store of proposed respondent Small Wonders Limited, Inc. d/b/a Rooms to Grow. His principal office or place of business is 117 Chestnut Street, Warwick, Rhode Island 02888.

12. (a) Proposed respondent Tiny Totland, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at 1111 Elm Street, Manchester, New Hampshire 03101, where it is engaged in the business of the retail sale of juvenile products.

(b) Proposed respondent Jack Resnick ("Resnick") is president of proposed respondent Tiny Totland, Inc. His principal office or place of business is 1111 Elm Street, Manchester, New Hampshire 03101.

13. Proposed respondent Rudolph Mosesso ("R. Mosesso") is an individual whose address is 132 Pine Street, Holbrook, Massachusetts 02343. Mr. Mosesso was president of Welcome Baby Boutique Inc., a corporation that was organized, existed and did business under and by virtue of the laws of the Commonwealth of Massachusetts until approximately April 27, 1993, when it was formally dissolved. While it was in operation, Welcome Baby Boutique Inc. maintained an office and principal place of business located at 1500 Main Street, S. Weymouth, Massachusetts 02190, where it was engaged in the business of the retail sale of juvenile products.

14. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

15. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

16. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

17. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

18. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Except for the proposed respondents listed below that are inactive corporations, delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service.

Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent Robert Newhouse's address as stated in this agreement shall constitute service upon proposed respondent Cribs And Cradles, Inc. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent Timothy Precourt's address as stated in this agreement shall constitute service upon proposed respondents Juveniles, Inc. and Waltham Slumber Shop, Inc. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

19. Proposed respondents have read the proposed complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

A. "New England Juvenile Retailers Association" means New England Juvenile Retailers Association, and its directors, committees, officers, representatives, agents, employees, successors and assigns.

B. "Retailer respondents" means the corporate and individual respondents named in PARAGRAPHS TWO through THIRTEEN of the complaint.

C. "Juvenile products" means products or accessories to products that are used by or are intended for use by babies, children or juveniles.

I

It Is Ordered that each retailer respondent, directly or indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A. Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

Provide that this order shall not be construed to prohibit any individual retailer respondent from becoming or remaining a member of a bona fide trade association, buying cooperative, or joint venture, or from participating in any such organization's activities that are lawful under the antitrust laws.

II

It Is Further Ordered that the retailer respondents shall dissolve the New England Juvenile Retailers Association within sixty (60) days after the date on which this order becomes final.

III

It Is Further Ordered that respondent New England Juvenile Retailers Association shall:

A. Within thirty (30) days after the date on which this order becomes final, and prior to the dissolution provided for in PARAGRAPH II of this order, mail to each manufacturer enumerated in "Appendix A" to this order a copy of the Commission's complaint and order in this matter and a letter, on the letterhead of its attorney, Arthur Goldberg, Esq., and signed by each of the respondent retailers, in the form shown as "Appendix B" to this order; and

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in PARAGRAPH II of this order, file a verified written report demonstrating how it has complied with PARAGRAPH III.A. of this order.

IV

It Is Further Ordered that:

A. Each retailer respondent that is a corporation shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this order.

B. For a period of five (5) years after this order becomes final, each retailer respondent that is an individual shall notify the Commission in writing of each new affiliation with a business or employment, including self-employment, within seven (7) calendar days of such affiliation or employment. Each such notice shall include the individual retailer respondent's current business address and a statement of the nature of the business affiliation or employment which defines his/her duties and responsibilities in connection with such business affiliation or employment.

V

It Is Further Ordered that, within ninety (90) days after the date on which this order becomes final, the retailer respondents shall file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. Thereafter, additional reports shall be filed at such other times as the Commission or its staff may, by written notice to the retailer respondents, require.

Appendix A

Aprica U.S.A., Inc., P.O. Box 25406—Zip 92825–5408, 1200 Howell Avenue, Anaheim, CA 92805, Attn: Douglas W. Dolansky, Executive, Vice President

Bandaks Emmaljunga Incorporated, 737 South Vinewood Street, Escondido, CA 92029, Attn: Sami Bandak, President

Bassett Furniture Industries, Inc., P.O. Box 626, Bassett, VA 24055, Attn: R. H. Spilman, President

Carlson Children's Products, Inc., 122 Kirkland Circle, Oswego, IL 60543, Attn: Mark Flannery, President

Century Products Company, 9600 Valley View Road, Macedonia, OH 44056–9989, Attn: Frank Rumpeltin, President

Child Craft Industries, Inc., P.O. Box 444, Salem, IN 47167–0444, Attn: David E. Branaman, President

COMBI International Corporation, 1401 N. Wood Dale Road, Wood Dale, IL 60191, Attn: Takashi Osato, President

Dutalier, Inc., 298 Chaput St. Pie, Quebec, CANADA J0H 1W0, Attn: Pierre Cloutier, President

Graco Children's products, Inc., Rt 23, Main Street, Elverson, PA 19520, Attn: Derial Sanders, President

Lambs & Ivy, 5978 Bowcroft Street, Los Angeles, CA 90016–4302, Attn: Barbara Laiken, President

Noel Joanna Inc., 22942 Arroyo Vista, Rancho Santa Margarita, CA 92688, Attn: Shirley A. Pepys, President

The Red Calliope & Associates, Inc., 13003 South Figueroa Street, Los Angeles, CA 90061, Attn: Neil Fohrman, President

Simmons Juvenile Products Co., 613 E. Beacon Avenue, P.O. Box 287, New London, WI 54961, Attn: John Moeller, President

Appendix B

Dear _____

As you may be aware, the Federal Trade Commission ("FTC") has been investigating certain activities of the New England Juvenile Retailers Association ("NEJRA") and its member retailers. The NEJRA has voluntarily entered into an agreement with the FTC which resulted in the issuance by the FTC on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the complaint, the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NEJRA will be dissolved. In addition, among other things, the retailers that were members of the NEJRA will cease and desist from entering into any agreement or understanding, express or implied, with any other retailer respondent(s), or with any competing retailer(s) of juvenile products, to:

A: Fix, maintain, or stabilize prices, or terms or conditions of sale of juvenile products;

B. Take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, that has the purpose or effect of interfering with any juvenile product manufacturer's decision as to how or to whom it distributes its product(s); and

C. Coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, or attempt to coerce, compel, induce, or intimidate by means of actual or threatened refusals to deal, any manufacturer of juvenile products into abandoning, adopting or refraining from abandoning or adopting any marketing method, practice or policy with regard to the distribution of its product(s).

A copy of the complaint and the order are enclosed.

Sincerely,

Arthur Goldberg, Esq.,
Attorney for the NEJRA.

Signatures of Members
Enclosures

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from proposed respondents New England Juvenile Retailers Association ("proposed respondent" or "NEJRA"), and the following of its individual members and their owners, officers or managers: Elliot Young, Susan Young; Stephen Brass, Baby's Room Inc.; George Koury, Baby Specialties, Inc., Baby Specialties of Natick, Inc.; Michael Slobodkin, Boston Baby, Inc., Boston

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Baby of Avon, Inc., Boston Baby of Hingham, Inc.; Allan Broverman, Chapin Specialties Co., Inc.; Louis Avarista, Sr., Crib-N-Cradle Juvenile Furniture Inc.; Robert J. Newhouse, Cribs and Cradles, Inc.; Timothy Precourt, Juveniles, Inc., Waltham Slumber Shop, Inc.; Normand Poirier; Henry Ritchotte, Small Wonders Limited, Inc. d/b/a Rooms to Grow; Jack Resnick, Tiny Totland,Inc.; and Rudolph Mosesso.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Description of Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that proposed respondent's members, all of whom are retailers of juvenile products, agreed to act in concert to restrict the competition that they faced from the New Hampshire Buyer's Service catalog. The complaint alleges that in furtherance of this agreement the retailers formed the NEJRA. It is further alleged in the complaint that, on its members' behalf, the NEJRA wrote letters to thirteen manufacturers of juvenile products in which it directly or impliedly threatened that its members would refuse to deal with them if the manufacturers continued to do business with the New Hampshire Buyer's Service catalog.

The complaint alleges that these actions constituted a combination or conspiracy to threaten to boycott juvenile product manufacturers that do business with the New Hampshire Buyer's Service catalog. This conduct, it is alleged, had the purpose or effect, or the tendency or capacity, to restrain competition unreasonably and injure consumers. Among other things, it is alleged that the conduct restrained competition among members of the NEJRA and between the proposed respondent's members and other retailers of juvenile products, including the New Hampshire Buyer's Service catalog; restrained the ability of manufacturers of juvenile products to distribute their products through mail order catalogs; and deprived consumers of the benefits of additional price, quality and service competition in connection with the sale of juvenile products.

Description of the Proposed Consent Order

The proposed order prohibits the retailers from entering into any combination, agreement or understanding to fix, maintain or stabilize prices or the terms or conditions of sale of juvenile products. The proposed order also prohibits the retailers from combining, conspiring or agreeing to engage in any actual or threatened boycotts or refusals to deal in order to affect a juvenile product manufacturer's decision as to how or to whom it distributes its products. Finally, the proposed order prohibits the retailers from combining, conspiring or agreeing to use coercion or threatened refusals to deal in order to compel or induce a manufacturer of juvenile products to adopt or refrain from adopting any marketing method, practice or policy with regard to the distribution of its products.

The proposed order contains a safe harbor provision which provides that the order shall not be construed to prohibit the retailers from becoming and remaining members of a bona fide trade association, buying cooperative, or joint venture, or from participating in any such organization's lawful activities.

The proposed NEJRA order requires two remedial actions to be taken after the agreement becomes final. First, the proposed order requires the dissolution of the NEJRA within 60 days after the order becomes final. Second, the proposed order requires that, prior to dissolution, the NEJRA send a letter to the manufacturers it had threatened to boycott in which it acknowledges the consent order and outlines its principal terms.

Finally, the proposed order requires the NEJRA and the other proposed respondents to file compliance reports, and to notify the Commission of certain changes in status or employment.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA in *New England Juvenile Retailers Association*, File 911–0079, and *Baby Furniture Plus Association, Inc.*, File 911–0097

In these cases, two trade associations complained to manufacturers about free riding by a catalogue seller, and the Commission charges them and the retailer members of one association with directly or impliedly threatening a concerted refusal to deal with the manufacturers. Although the letters of complaint were ill-advised, evidence that the retailers (many of whom were not represented by counsel during our investigation) were committed "to a common scheme designed to achieve an unlawful objective"[1] (*i.e.*, a coercive, concerted refusal to deal) is thin at best. Given the dearth of evidence of unlawful agreement, the arguably procompetitive purpose, and the absence both of market power and of anticompetitive effects, I do not find reason to believe that the challenged conduct unreasonably restrained trade or that the imposition of an order is in the interest of the public. I dissent.

[FR Doc. 94–27011 Filed 10–31–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, November 9, 1994 from 9:00 A.M. to 4:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions of issues on (1) the Revenue Recognition project: reporting on financing sources other than revenue; (2) Entity and Display; and (3) the Stewardship project: land, heritage, and miscellaneous property and also future claims.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: October 26, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–26954 Filed 10–31–94; 8:45 am]

BILLING CODE 1610–01–M

[1] Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 768 (1984).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant.

Time and Date: 9 a.m.–4 p.m., November 16, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to obtain guidance regarding the technical and scientific merits of the proposed Epidemiologic Evaluation of Cancer and Occupational Exposures at the Rocky Flats Plant being conducted as a cooperative agreement between the Colorado Department of Health and NIOSH. Participants will review the proposed study protocol, provide individual recommendations for scientific changes, and provide individual advice to NIOSH on the conduct of the study. Viewpoints and suggestions from industry, labor, academic, other government agencies, and the public are invited.

Contact Person for Additional Information: Richard W. Hornung, Dr. P.H. NIOSH, CDC, 4676 Columbia Parkway, Mailstop R44, Cincinnati, Ohio 45226, telephone 513/841–4400.

Dated: October 26, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–26976 Filed 10–31–94; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

[Docket No. 94F–0358]

Alcide Corp., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified solutions of sodium chlorite/chlorous acid in poultry processing waters. The acids used to prepare these acidified solutions could be either phosphoric acid, citric acid, hydrochloric acid, lactic acid, malic acid, or sulfuric acid.

DATES: Written comments on the petitioner's environmental assessment by December 1, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4433) has been filed by Alcide Corp., 8561 154th Ave., NE., Redmond, WA 98052. The petition proposes that the food additive regulations in part 173 *Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) be amended to provide for the safe use of acidified solutions of sodium chlorite/chlorous acid in poultry processing waters.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 1, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 24, 1994.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–27070 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0383]

Drug Export; Bulk Drug Substance Code 5020 (Superparamagnetic Iron Oxide)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Advanced Magnetic, Inc., has filed an application requesting conditional approval for the export of the bulk drug substance Code 5020 (superparamagnetic iron oxide) to France for formulation into a dosage form.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the

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Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Advanced Magnetics, Inc., 61 Mooney St., Cambridge, MA 02138–1038, has filed an application requesting conditional approval for the export of the bulk drug substance Code 5020 (superparamagnetic iron oxide) to France for formulation into a dosage form. This drug is used as an oral magnetic resonance imaging contrast agent. The application was received and filed in the Center for Drug Evaluation and Research on September 6, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26994 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0385]

Drug Export; GenESA® (Arbutamine) System Sterile Solution for Intravenous Infusion 0.05 Milligram Per Milliliter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gensia, Inc., has filed an application requesting conditional approval for the export of the human drug GenESA® (Arbutamine) System, sterile solution for intravenous infusion 0.05 milligram per milliliter (mg/mL) to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gensia, Inc., 9360 Towne Centre Dr., San Diego, CA 92121, has filed an application requesting approval for the export of the human drug GenESA® (Arbutamine) System, sterile solution for intravenous infusion 0.05 mg/mL to the United Kingdom. This product is used as an adjunct to echocardiography or radionuclide myocardial perfusion imaging for the evaluation of patients with known or suspected coronary artery disease. The application was received and filed in the Center for Drug Evaluation and Research on September 20, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26995 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0384]

Drug Export; Lovastatin Bulk Human Drug Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck & Co., Inc., has filed an application requesting approval for the export of the bulk human drug substance Lovastatin for formulation into Mevacor 20 milligrams (mg) and 40 mg tablets to Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has filed an application requesting approval for the export of the bulk human drug substance Lovastatin for formulation into Mevacor 20 mg and 40 mg tablets to Spain. While the firm has an approved new drug application for Lovastatin, the subject of this request was produced using an unapproved revised process. This product is used as an adjunct to diet for the reduction of elevated total and low density lipoproteins (LDL) cholesterol levels in patients with primary hypercholesterolemia when the response to diet restricted in saturated fat and cholesterol and to other nonpharmacological measures alone has been inadequate. The application was received and filed in the Center for Drug Evaluation and Research on September 19, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 10, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 19, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–26993 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 18, 1994, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; Nancy T Cherry or Stephanie A. Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear presentations pertaining to matters previously considered by, pending consideration by, or affecting the advisory process. The committee will also review safety and efficacy data for a live oral polio vaccine.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications or product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. November 22, 1994, 9:15 a.m., Holiday Inn Crowne Plaza, Plaza Ballroom, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9:15 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 5

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p.m.; Jack Gertzog, Scientific Advisors and Consultant Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Allergenic Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 8, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss issues relevant to: (1) The European Pharmacopeia for Allergen Standardization, and (2) the status of standardized grass extracts, which is the Center for Biologics Evaluation and Research's standardization program for various allergenics.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to three product license applications and two investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whateyer longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 24, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–26950 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. November 17 and 18, 1994, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Closed presentation of data, November 17, 1994, 8:30 a.m. to 9:50 a.m.; open committee discussion, 9:50 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, November 18, 1994, 8:30 a.m. to 3:30 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 9, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will hear presentations and discuss data submitted regarding the safety and efficacy of the following: (1) Etridronate disodium/calcium carbonate, new drug application (NDA 20–082), (Didrocal®, Proctor and Gamble); (2) calcitonin (nasal spray), NDA 20–313, (Miacalcin®, Sandoz Pharmaceutical); and (3) calcitonin (injectable), NDA 17–769 (Calcimar®, Rhone-Poulenc-Rorer), for an osteoporosis indication.

Closed presentation of data. On November 17, 1994, the committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, time, and place. November 17, 1994, 8:30 a.m., and November 18, 1994, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, November 17, 1994, 8:30 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:30 p.m., unless public participation does not last that long; open committee discussion, 12:30 p.m. to 5:30 p.m.; open committee discussion, November 18, 1994, 8 a.m. to 9 a.m.; closed committee deliberations, 9 a.m. to 2 p.m.; Lee L. Zwanziger or Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immunedeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 11, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 17, 1994, the committee will discuss data relevant to NDA 20–460 for oral ganciclovir (Cytovene®, Syntex Laboratories, Inc.) for the treatment of cytomegalovirus retinitis in immunocompromised patients, where the retinitis is stable after prior therapy. On November 18, 1994, the committee will hear scientific presentations on aspects of clinical trial design for drugs used for hepatitis.

Closed committee deliberations. On November 18, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a

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minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 24, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–26951 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

RIN 0905–ZA81

Program Announcement and Proposed Special Consideration for Grants for Residency Training and Advanced Education in the General Practice of Dentistry for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for Residency Training and Advanced Education in the General Practice of Dentistry under the authority of section 749, title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed special consideration.

Approximately $3,600,000 will be available in FY 1995 for this program. Total continuation support recommended is approximately $1,600,000. It is anticipated that $2,000,000 will be available to support 16 to 18 competing awards averaging $125,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There was no competitive cycle for FY 1994. In FY 1993, HRSA reviewed 45 applications for Grants for Residency Training and Advanced Education in the General Practice of Dentistry. Of those applications, 64 percent were approved and 36 percent were disapproved. Seventeen projects, or 38 percent of the applications received, were funded.

Purpose

Section 749 of the PHS Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry; to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry; and to fund innovative, nontraditional models for the provision of postdoctoral General Dentistry training.

Eligible Applicants

To be eligible for a Grant for Residency Training and Advanced Education in the General Practice of Dentistry, the applicant shall:

(a) be a public or nonprofit private school of dentistry or an accredited postgraduate dental training institution (hospital, medical center, or other entity) and be accredited by the appropriate accrediting body, and

(b) be located in any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, subpart L. The period of Federal support should not exceed 3 years.

Categories of Program Support

There will be no funding preference between residency training programs and advanced educational programs in general dentistry. Grant support will be available for three distinct categories of program development. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support to assist in establishing a new program. Support may be for 3 years of program operation, or for up to 1 year of program planning and development, followed by 2 years of program operation. An applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1, 1995). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting priority areas. The grant program for Residency Training and Advanced Education in the General Practice of Dentistry is related to the priority area of Oral Health. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 749 of the Act.

(2) The degree to which the proposed project adequately provides for meeting the project requirements.

(3) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner.

(4) The extent to which the objectives of the program are consistent with the purposes of the grant program and the extent to which the evaluation methodology will effectively assess the impact of the project.

(5) The extent to which the proposal demonstrates a need for the project.

(6) The extent to which present or potential problems are understood by the applicant and the extent to which solutions to these problems have been developed.

(7) The extent to which the organizational and administrative relationships between institutional and programmatic components of the project enhance the achievement of project objectives.

(8) The extent to which the curriculum will enhance the trainee's ability to become an efficient, effective, and competent practitioner of general dentistry.

(9) The qualifications of proposed staff and faculty.

(10) The extent to which the trainee recruitment and selection process assures that highly qualified trainees with a true interest in general practice are enrolled in the program.

(11) The extent to which the facilities and equipment used in the training program are appropriate to the general practice of dentistry.

(12) The potential of the project to continue on a self-sustaining basis after the period of grant support.

(13) The extent to which the budget justification is reasonable and indicates that institutional support to the project is provided to the maximum extent possible.

(14) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding

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factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory General Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

"High rate" is defined as a minimum of 25 percent of graduates in academic year 1991–92, 1992–93 *and* 1993–94, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1992–93 and 1993–94, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 59 FR 15741, dated April 4, 1994.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment (57 FR 11325, dated April 2, 1992) and the Administration is extending this preference in FY 1995. In determining the order of funding of approved applications, a funding preference will be given to approved applications which propose to establish new Post Graduate Year-1 training positions, whether through the establishment of a new program or the expansion of an existing program.

First funding within this preference will be for approved applications designed to offer substantial clinical experiences for trainees to provide primary care services to underserved and high risk populations. The experiences must include training at one or more of the following entities: PHS 332 health professional shortage area (HPSA); health care facility that draws at least 50 percent of its patients from HPSA designated areas or populations; PHS 329 migrant health center; PHS 330 community health center; health care facility of the Indian Health Service (IHS); State designated clinic/center serving an underserved population, or other rural/urban health clinic that meets grant program requirements.

Applicants may address the funding preference by:

1. Establishing a new accredited advanced general dentistry program in one or more of the prescribed entities;

2. Establishing trainee off-site rotations into one or more of the prescribed entities as part of a new or existing advanced general dentistry program; or

3. Increasing the number of training positions in an existing advanced general dentistry program that currently provides training experiences in one or more of the prescribed entities, either by location of the primary site or by off-site rotations.

The following guidelines must be addressed within the application when requesting the funding preference:

(a) The new training positions must be PGY–1 positions.

(b) In regard to service to underserved and high risk populations, 20 percent of each resident's training time over the course of the training program must occur in one or more of the above eligible settings.

Established Funding Priority

In determining the order of funding of approved applications, a funding priority will be given to applicants which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Proposed Special Consideration

It is proposed that special consideration will be given to approved applications based on the extent to which they address innovative means of providing advanced general dentistry education that can help meet the current and future demand of such training. This might include new sponsor/co-sponsor arrangements; different organizational and administrative structures; expanded private/public sector affiliations and setting linkages; and creative applications for current instructional telecommunications and computer technologies.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Residency Training and Advanced Education in the General Practice of Dentistry program only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Definitions

The following definitions apply to those training sites/facilities included in the proposed funding preference listed above:

"Community health center" means an entity as defined in section 330 of the Public Health Service Act and in regulations at 42 CFR 51c.102(c).

"Health professional shortage area" means an area designated under section 332 of the PHS Act.

"Migrant health center" means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

Additional Information

Interested persons are invited to comment on the proposed special consideration. The comment period is 30 days. All comments received on or before December 1, 1994 will be considered before the final special consideration is established. Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 am and 5:00 pm.

Application Requests

Grant application materials are being mailed only in response to requests received. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Judy Bowen, Grants Management Specialist (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be sent to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Rosemary Duffy, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

The deadline date for receipt of applications is January 25, 1995. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

Grants for Residency Training and Advanced Education in the General Practice of Dentistry is listed at 93.897 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: September 28, 1994.

Ciro V. Sumaya, M.D., M.P.H.T.M.

Administrator.

[FR Doc. 94–26996 Filed 10–31–94; 8:45 am]

BILLING CODE 4160–15–P

RIN 0905–ZA80

Program Announcement and Proposed Funding Preference for Centers of Excellence in Minority Health Professions Education—Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1995 for Grants for Centers of Excellence (COE) in Minority Health Professions Education will be accepted under the authority of section 739, title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed funding preference stated below.

Approximately $23,481,000 will be available in FY 1995 for this program. The statute requires that, of the amount appropriated for any fiscal year, the first $12 million will be allocated to certain Historically Black Colleges and Universities (HBCUs) described in section 799(1)(A) of the Act and which received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987. Of the remaining balance, sixty (60) percent must be allocated to Hispanic and Native American Centers of Excellence, and forty (40) percent must be allocated to the "Other" Centers of Excellence. After supporting 25 noncompeting continuation projects approved in prior years, the remaining funds could support only one competing award. A grant made for a fiscal year may not be made in an amount that is less than $500,000 for each Center.

Purposes

Grants for eligible Historically Black Colleges and Universities (HBCUs), Hispanic, Native American and Other Centers of Excellence must be used by the schools for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

3. To improve the capacity of such school to train, recruit, and retain minority faculty;

4. With respect to minority health issues, to carry out activities to improve the information resources and curricula of the school and clinical education at the school; and

5. To facilitate faculty and student research on health issues particularly affecting minority groups.

Applicants must address the five legislative purposes.

In addition, grants for eligible HBCUs as described in section 799(1)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987 may also be used to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals, and to provide improved access to the library and informational resources of the school.

Other Requirements

For Hispanic Centers of Excellence, the health professions schools must agree to give priority to carrying out the duties with respect to Hispanic individuals.

Regarding Native American Centers of Excellence, the health professions school must agree to:

1. Give priority to carrying out the duties with respect to Native Americans;

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their

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educational preparation for entry into the health professions school; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and assist them in completing the educational requirements for a degree from the health professions school.

With respect to meeting these requirements, a grant for a Native American Center of Excellence may be made not only to a school of medicine, osteopathic medicine, dentistry, or pharmacy that individually meets eligibility conditions but also to such school that has formed a *consortium* of schools that collectively meet conditions, without regard to whether the schools of the consortium individually meet the conditions. The consortium would be required to consist of the school seeking the grant and one or more schools of medicine, osteopathic medicine, dentistry, pharmacy, nursing, allied health, or public health. The schools of the consortium must have entered into an agreement for the allocation of the grant among the schools. Each of the schools must have agreed to expend the grant in accordance with requirements of this program. Each of the schools of the consortium must be part of the same institution of higher education as the school seeking the grant or be located not farther than 50 miles from the school.

To qualify as an Other Minority Health Professions Education Center of Excellence, a health professions school (i.e., a school of medicine, osteopathic medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for such enrollments of health professions schools.

Eligibility

Section 739 authorizes the Secretary to make grants to schools of medicine, osteopathic medicine, dentistry and pharmacy for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals, as well as for HBCUs as described in section 799(1)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987.

To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions school; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

These entities must be located in any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal year 1994, 25 awards were made, including four (4) competing renewals to Historically Black Colleges and Universities.

Period of Support

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary, the availability of appropriations, acceptable progress toward meeting originally stated objectives and negotiation of a detailed budget justification.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The Centers of Excellence Program is related to the priority area of *Educational and Community-Based Programs*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U. S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the applicant can arrange to continue the proposed project beyond the federally-funded project period;

2. The degree to which the proposed project meets the purposes described in the legislation;

3. The relationship of the objectives of the proposed project to the goals of the plan that will be developed;

4. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

5. The adequacy of the staff and faculty to carry out the program;

6. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;

7. The number of individuals who can be expected to benefit from the project; and

8. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

Other Considerations

In addition, the following funding factor may be applied in determining the funding of approved applications:

A funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

Proposed Funding Preference

The following funding preference is proposed for FY 1995:

A funding preference will be given to competing continuation (renewal) applications for Centers of Excellence programs whose current project periods end in fiscal year 1995. The purpose of this preference is to maximize Federal and non-Federal investments in accomplishing the nature and scope of the legislative purposes of the Centers of Excellence Program. To realize the intended impact of the COE program more than one grant period is required. This funding preference is intended to direct assistance to quality COE programs that have documented sustained or increased accomplishments under this program.

Additional Information

Interested persons are invited to comment on the proposed funding preference. The comment period is 30 days. All comments received on or before November 1, 1994 will be considered before the final funding preference is established.

Written comments should be addressed to: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Statutory Definitions

"Health professions schools" mean schools of medicine, osteopathic medicine, dentistry and pharmacy, as defined in section 739(h) which are accredited as defined in section 799(1)(E) of the Act. For purposes of the HBCUs, this definition means those schools described in section 799(1)(A) of the Act and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

"Native Americans" means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

"Program of Excellence" means any programs carried out by a health professions school with funding under section 739 Grants for Centers of Excellence in Minority Health Professions Education.

Other Definitions

The following definitions established in fiscal year 1991 after public comment, 56 FR 22440, dated May 15, 1991, are being continued in fiscal year 1995. Osteopathic medicine was added by Pub. Law 102–408.

"A significant number of minority individuals enrolled in the school" means that to be eligible to apply for a Hispanic COE, a medical, osteopathic medicine, or dental school must have at least 25 enrolled Hispanic students. Schools of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least eight enrolled Native American students and a school of pharmacy or osteopathic medicine must have at least five enrolled Native American students. To be eligible to apply for an Other Minority Health Professions Education COE, an eligible school must have above the national average of underrepresented minorities (medicine 15%, osteopathic medicine 8%, dentistry 15%, pharmacy 11%) enrolled in the school. These numbers represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Data from relevant professional associations include sharp differentiation in target group numbers among schools. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

"Effectiveness in Providing Financial Assistance" will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

"Effectiveness in Recruitment" will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

"Effectiveness in Retaining Students" will be determined by retention rates for the targeted group and academic and non-academic support systems operative for the target group of students at the school.

"Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

"Underrepresented Minority" means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, Native Americans, and, potentially, various subpopulations of Asian individuals. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

Maintenance of Effort

A health professions school receiving a grant will be required to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the school for the fiscal year preceding the fiscal year for which the school receives such a grant. In addition, the school agrees that before expending grant funds, the school will expend amounts obtained from sources other than the grant.

Application Requests

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray (D–34), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857, FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is February 3, 1995. Applications shall be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Postmarked on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly

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dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Each applicant is responsible for the completeness of its application, which will be reviewed as submitted.

To obtain specific information regarding the aspects of this grant program, direct inquiries to: A. Roland Garcia, Ph.D., Chief, Centers of Excellence Section, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493, FAX: (301) 443–5242.

This program is listed at 93.157 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: September 28, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–26997 Filed 10–31–94; 8:45 am]

BILLING CODE 4165-15-P

Public Health Service

National Toxicology Program; Update on the Biennial Report on Carcinogens; Review of the Criteria Used for Inclusion of Substances by an Ad Hoc Working Group of the National Toxicology Program Board of Scientific Counselors: Call for Nomination of Potential Members

Action—Request for Public Input

An *ad hoc* working group of the National Toxicology Program (NTP) Board of Scientific Counselors is being established to review and make recommendations on the criteria for listing substances in the Biennial Report on Carcinogens (BRC). The working group will number approximately 35 members and will include representatives from academia, history, labor, public interest groups, state and local health officials, government, and the public at large. A two-day public meeting of the working group will be held in mid-January 1995 in Washington, D.C., with specific dates and location to be determined.

Nominations of individuals for consideration for membership on the working group are invited and encouraged. Please forward your nominations by November 14, 1994, to Dr. C. W. Jameson, NIEHS, MD WC–04, P.O. Box 12233, Research Triangle Park, N.C. 27709, or fax (919) 541–2242.

Background

The Biennial Report on Carcinogens (BRC) is prepared in response to Section 301 (b)(4) of the Public Health Service Act which stipulates that the Secretary of the Department of Health and Human Services shall publish a report which contains a list of all substances (i) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (ii) to which a significant number of persons residing in the United States are exposed.

The selection process for listing substances in the BRC will be revised to add review by the NTP Board of Scientific Counselors. The objectives for revising the process are to: broaden the input at all stages throughout the process; broaden the scope of scientific review, and provide a review of the criteria used for inclusion on substances in the BRC. The review of the criteria for selecting a substance for listing in the BRC is the first step in the process.

The timetable below outlines the procedures established for the review of the criteria used to select substances. This review includes the establishment of an ad hoc working group of the NTP Board of Scientific Counselors to initially review the criteria and make recommendations to the Board.

Timetable for Criteria Review Process

mid-January 1995 A two-day public meeting of the NTP Board *ad hoc* BRC working group, in Washington, D.C., to review and make recommendations on the criteria for listing substances in BRC. Specific location and dates to be determined.

mid-February 1995 A public meeting of the full NTP Board of Scientific Counselors to review the ad hoc working group's report and develop the Board's recommendations concerning the selection criteria to the Director, NTP.

March 1995 NIEHS review of the criteria and NTP Board recommendations.

April 1995 NTP Executive Committee BRC subcommittee review of criteria and the NTP Board's recommendations.

May 1995 NTP Executive Committee review all criteria recommendations.

June 1995 Submission of report and recommendations by Director, NTP, to the Secretary, DHHS, concerning the criteria for selection of a substance for listing in the BRC.

Draft Discussion Document to be Available

A draft discussion document concerning the existing criteria for selection is to be provided to the NTP Board's ad hoc working group and will be available by December 16, 1994. Copies of the document can be requested by contacting Dr. Jameson at the above address.

Registration for Public Meeting

Public comments concerning the criteria for listing a substance in the BRC will be accepted during the first day of the ad hoc working group's public meeting in mid-January. Oral comments will be limited to five minutes to permit maximum participation. Written comments accompanying oral statements are encouraged. Those wishing to submit only written comments to be considered by the ad hoc working group are requested to submit them by January 13, 1995. To register to make oral comments about the criteria or to attend the ad hoc working group meeting as an observer, contact Dr. Jameson at the above address or fax number. Although advance registration is not mandatory, it would be helpful in organizing the meeting. Specific dates and location will be provided upon confirmation of registration and will also be posted in the **Federal Register** in December.

Dated: October 26, 1994.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–26974 Filed 10–31–94; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on November 29, 1994, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda

topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Additionally, the draft Technical Report of the short-term toxicity study on 1-nitropyrene will be reviewed. This is the first NTP short-term report where the conclusion has been drawn that the chemical is a likely carcinogen in the absence of neoplasms in an NTP study.

Tentatively scheduled to be peer reviewed on November 29 are draft Technical Reports of six two-year studies, listed alphabetically, along with supporting information in the attached table. Similar information is given for the short-term report on 1-nitropyrene. All studies were done using Fischer 344 rats and B6C3F$_1$ mice, while one two-year study also employed Sencar mice. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, or by mail no later than November 22, 1994, and provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members and staff and made available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. *Presentations should be limited to no more than five minutes.*

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3491; FAX 919/541–2260) will furnish a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Attachment

Dated: October 26, 1994.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE

[November 29, 1994]

Chemical/CAS No.	Project leader/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
LONG-TERM STUDIES					
2,2-Bis (bromomethyl)-1, 3-Propanediol; 3296–90–0.	Dr. J. Dunnick, 919–541–4811; TR–452.	Flame retardant for epoxy, polyester, and urethane forms. Chemical intermediate.	Dosed-Feed (NIH–07): R: 0, 2500, 5000, or 10000 PPM; 70/group M: 0, 312, 625, or 1250 PPM; 60/group.	Southern Research Institute.	5
Isobutyl nitrite; 542–56–3.	Dr. K. Abdo, 919–541–7819; TR–448.	Industrial intermediate in chemical synthesis. (TDB).	Inhalation (air): R&M: 0, 37, 75, or 150 PPM.	IIT Research Institute.	1
Nickel (II) oxide; 1313–99–1.	Dr. J. Dunnick, 919–541–4811; TR–451.	Chemical intermediate for stainless and alloy steels. Catalysts. Electrical devices. Thermister material.	Inhalation (air): R: 0, .62, 1.25, or 2.5 M: 0, 1.25, 2.5, or 5.0 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	3
Nickel sulfate hexahydrate, 10101–97–0.	Dr. J. Dunnick, 919–541–4811, TR–454.	Nickel plating. Blackening zinc and brass. Mordant in dyeing.	Inhalation (air): R: 0, 0.125, 0.25, or 0.5 M: 0, .25, .5, or 1.0 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	4
Nickel subsulfide; 12035–72–2.	Dr. J. Dunnick, 919–541–4811; TR–453.	Major component in nickel refinery flue dust. Not used commercially in U.S.	Inhalation (air): R: 0, 0.075, or 0.15 M: 0, 0.6, or 1.2 mg/m3; 50/group.	Lovelace Inhal Tox Res Inst (DOE).	2
Triethanolamine; 102–71–6.	Dr. J. Bucher, 919–541–4532; TR–449.	Intermediate in manuf. surfactants, textile specialties, waxes, polishes, herbicides, petroleum demulsifiers, toilet goods.	Topical (acetone): MR: 0, 32, 63, or 125; FR: 0, 63, 125 or 250; MM: 0, 200, 630, or 2000; FM: 0.	Battelle Columbus Laboratory.	6
Triethanolamine; 102–71–6.	Dr. J. Bucher, 919–541–4532; TR–449.	Intermediate in manuf. surfactants, textile specialties, waxes, polishes, herbicides, petroleum demulsifiers, toilet goods, cement additives, cutting oils, in making mineral and veg. oil emulsions, solvent, pharmaceutic aid (alkalizer) (Merck 1989).	Topical (acetone): MR: 0, 32, 63, or 125; FR: 0, 63, 125, or 250; MM: 0, 200, 630, or 2000; FM: 0, 100, 300, or 1000 mg/kg; 60/group.	Battelle Columbus Laboratory.	6
SHORT-TERM TOXICITY STUDY					
1-Nitropyrene; 5522–43–0.	Dr. P. Chan, 919–541–7561; TOX–34.	Byproduct of combustion primary nitrated PAH emitted in diesel engine exhaust.	Inhalation (air): R: 0, 0.5, 2.0, 8.0, 20.0, or 50.0 mg/m3 12/s/group (core); 5/s/group for lung burden.	Battelle Northwest Laboratory.	7

R=Rats.
M=Mice.

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[FR Doc. 94-26973 Filed 10-31-94; 8:45 am]
BILLING CODE 4140-01-M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Girish C. Barua, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804 (telephone 301/496-7735 ext. 263; fax 301/402-0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Anti-HIV Compositions Containing Native And Recombinant Peptides

Fischinger, P.J., Wong-Staal, F., Gallo, R.C., Matthews, T.J. (NCI)
Filed 23 Feb 89
Serial No. 07/314,664

A kit containing substantially pure native and recombinant HIV glycoproteins is valuable for testing anti-HIV vaccines or as diagnostic aids for detecting HIV infection. Previously, it has been difficult to obtain large, pure quantities of HIV proteins for use in vaccines or diagnostic procedures. This kit contains deglycosylated envelope proteins as well as recombinant fusion molecules containing HIV and non-HIV amino acid sequences.

Production Of Complementary DNA Representing Hepatitis A Viral Sequences By Recombinant DNA Methods And Uses Therefor

Ticehurst, J., Baltimore, D., Feinstone, S.M., Purcell, R.H., Racaniello, V.R., Baroudy, B.M., Emerson, S.U. (NIAID)
Filed 6 Nov 91
Serial No. 07/788,262 (CIP of 07/256,135, CON of 06/654,942, CIP of 06/536,911)

A method for the production and use of single- and double-stranded (ds) cDNA representing hepatitis A virus (HAV) sequences has been discovered, including an infectious, full-length cDNA clone of wild-type HAV. Large quantities of the novel HAV cDNA can be harvested at a relatively low cost via insertion of the cDNA molecules into a recombinant DNA vector and subsequent transformation in appropriate cells; modification of bacteria by genetic engineering permits for the production of ds HAV cDNA. The cDNA molecules hold substantial diagnostic potential because they are highly specific and very sensitive to HAV; they can also be used in the production of either HAV antigen or antibodies to HAV antigen for possible vaccine development. Currently, no vaccine is available for protection against HAV infection.

Mammalian Guanine Nucleotide-Binding Protein With An ADP-Ribosylation Factor Domain (ARD1)

Moss, J., Mishima, K., Nightingale, M.S., Tsuchiya, M. (NHLBI)
Filed 19 Apr 93
Serial No. 08/049,473

ADP-ribosylation factors (ARFs) constitute one family of the ~20-kDa guanine nucleotide-binding *ras* superfamily. ARFs regulate secretory, endocytic, exocytic, and nuclear fusion events and activate phospholipase D and cholera toxin. ARD1 is a 64-kDa protein containing an ARF domain at its carboxy terminus. This invention includes a cell line transfected with an expression vector containing either rat or human ARD-1 DNA and an immunoassay kit for detecting ARD proteins in samples.

Hepatitis A Vaccine

Nainan, O.V., Margolis, H.S., Robertson, B.H., Brinton, M.A., Ebert, J.W. (CDC)
Filed 6 Jul 93
Serial No. 08/087,016 (FWC of 07/678,828)

A hepatitis A virus (HAV) was isolated from cynomolgus macaques, and the capsid region of this new HAV was sequenced. It was found that the amino acid sequence within the immunodominant site of the capsid region is significantly different from that of other HAV isolates. This new virus is suitable for preparing a whole virus vaccine for preventing hepatitis A in animals and, potentially, in humans.

Hepatitis A Vaccine

Cohen, J.I., Purcell, R.H., Feinstone, S.M., Ticehurst, J.R. (NIAID)
Filed 13 Sep 93
Serial No. 08/120,646 (FWC of 07/789,640, CON of 07/462,916, CON of 07/088,220)

A full-length DNA analog of the hepatitis A virus genome and RNA transcripts of the DNA analog can be mutated to produce an infectious hepatitis A virus suitable for a vaccine. Prior technologies have used cell culture techniques, rather than recombinant DNA methods, in an attempt to produce an acceptable hepatitis A entity. This new method overcomes the difficulties associated with the random mutation processes that occur with conventional methods.

Nucleic Acids Of A Novel Hantavirus And Reagents For Detection And Prevention Of Infection

Nichol, S.T. (CDC)
Filed 7 Oct 93
Serial No. 08/133,591 (CIP of 08/084,724)

An outbreak of acute illness in the Four-Corners region of the United States in the spring of 1993 has been associated with the Muerto Canyon strain of hantavirus. The identification of specific nucleotide sequence information for this virus will aid in the development of diagnostic assays and vaccines.

Plasmids For Efficient Expression Of Synthetic Genes In E. Coli

Fields, H.A., Khudyakov, Y. (CDC)
Filed 25 Oct 93
Serial No. 08/141,917

This invention covers the development of a recombinant gene encoding the hepatitis C nucleocapsid protein, which offers to significantly improve the detection and diagnosis of this disease. Hepatitis C virus (HCV) is a recently identified agent responsible for most cases of post-transfusion non-A, non-B hepatitis worldwide. The N-terminal region of the HCV polyprotein is processed into proteins C (a nucleocapsid) and EI and E2/NS1 (envelope proteins). Previously, there has been no acceptable immunoassay kit for detecting HIV infection because growing the virus in bacteria has been difficult. Therefore, there has been no large-scale source of HCV proteins from which to stimulate the production of antibodies for immunoassays. This problem has been addressed by cloning the sequence from HCV nucleocapsid protein and inserting it into an expression vector with a Shine-Dalgarno, which enhances expression of the protein encoded by the nucleotide sequence. Thus, an *E. coli* can be used as a host for the vector, and large amounts of protein are produced even when there is low copy number of the vector.

Clones Encoding Mammalian ADP-Ribosylarginine Hydrolases

Moss, J., Stanley, S.J., Nightingale, M.S., Murtagh, J.J., Monaco, L., Takada, T. (NHLBI)
Serial No. 08/183,214 (DIV of 07/888,231)

ADP-ribosylation of arginine residues in proteins may be involved in cell adhesion and is crucial for the action of cholera toxin and *E. coli* heat-labile enterotoxin, agents involved in the pathogenesis of cholera and traveller's diarrhoea, respectively. ADP-ribosylation is reversed by ADP-ribosylarginine hydrolases, which cleave the ADP-ribose-arginine bond.

ADP-ribosylarginine hydrolases from a variety of mammalian species and tissues were isolated, and the coding regions for the hydrolases were cloned and expressed. The availability of this new hydrolase cDNA and expression system provides a novel molecular approach for studying the role of ADP-ribosylation in cell function. The gene products may be useful in treating or preventing a variety of bacterial diseases, including cholera, that appear to be mediated via ADP-ribosylation.

Novel Anti-Mycobacterial Compositions And Their Use For The Treatment Of Tuberculosis And Related Diseases

Barry, C.E., Yuan, Y. (NIAID)
Filed 18 Mar 94
Serial No. 08/210,519

This invention comprises a number of novel anti-mycobacterial compositions, which offer to significantly improve the treatment of mycobacterial infection such as tuberculosis. *Mycobacterium* is a genus of bacteria encompassing a number of organisms, many of which are highly pathogenic in humans. The most well known of these are *M. tuberculosis*, which causes pulmonary tuberculosis, and *M. leprae*, which causes leprosy. Tuberculosis is a major worldwide problem, especially among HIV-infected and other immune-compromised individuals. Present treatments for tuberculosis often have toxic side effects or have limited utility because of the growing number of multi-drug resistant strains of *M. tuberculosis*. These newly discovered anti-mycobacterial compounds, which are analogs of thiatetracosanoate, have been shown effective in the treatment of mycobacterial infections and are relatively nontoxic. They may be given alone or in combination with standard anti-mycobacterial drugs and are valuable as antiseptics as well as therapeutics.

Dated October 21, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94-26971 Filed 10-31-94; 8:45 am]
BILLING CODE 4140-01-P

Technology Assessment Conference on Bioelectrical Impedance Analysis in Body Composition Measurement

Notice is hereby given of the NIH Technology Assessment Conference on "Bioelectrical Impedance Analysis in Body Composition Measurement," which will be held December 12-14, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on December 12 and 13 and at 9 a.m. on December 14.

BIA has become a popular and widely used method to estimate body composition. A number of instruments have been manufactured for use in estimating body composition. The technology is relatively simple, quick, easy, and noninvasive. Similar to other methods of assessing body composition, BIA can be used to estimate body composition by making several assumptions regarding the composition of fat and fat-free body mass.

Consequently, modification of some of the assumptions and other small differences among the various instruments has led to the use of different equations in the derivation of the final estimate of body composition. The relationships among various components of the body such as fat mass and lean body mass are generally assumed to be static. However, the hydration status of the subject, room or skin temperature, age, gender, ethnic origin, level of physical fitness, and other individual characteristics may all contribute to differences in the observed measurements within BIA.

Consequently, a Technology Assessment Conference on this methodology, its validity, and the appropriate interpretation of the data would be worthwhile.

This conference will bring together experts from various perspectives with regard to this methodology. Presentations will highlight the necessary standardization of the methodology and provide the basis for the different equations that have been derived. Mechanical and physiological conditions that may influence BIA measurements will be discussed along with suggestions to minimize the variability. Various clinical characteristics influencing BIA measurements will also be presented. Finally, the indications and limitations for the use of this technology and the clinical assessment of individuals or populations will be discussed. Although this instrumentation has often been used to estimate the level of adiposity in the individual, it is beginning to find greater clinical use in the measurement of body cell mass and total body water in other clinical conditions.

After 1½ days of presentations, audience discussion, and the opportunity for public and industry comment, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The statement will address the following key questions:

- What does BIA measure in terms of electrical and biological parameters?
- How should BIA be performed and how can BIA measurements be standardized?
- How safe and valid is the BIA technology in the estimation of levels of adiposity?
- How safe and valid is the use of BIA technology to estimate body cell mass and total body water status?
- What are the appropriate clinical uses of BIA technology and what are the limitations?
- What are the future directions for basic science, clinical research, and epidemiological evaluation of body composition measurement?

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770-3153.

On the second day of the conference, time has been allocated for 5-minute formal oral presentations by concerned individuals or organizations. Those individuals or groups wishing to send a representative to contribute during this session must contact Ms. Elsa Bray by 5 p.m. EST, November 28, 1994 at: Office of Medical Applications of Research, National Institutes of Health, Federal Building, Room 618, 7550 Wisconsin Avenue, Bethesda, Maryland 20892-9120, phone (301) 496-1144. If the number of requests received exceeds the slots available, presenters will be chosen by lot, and those selected will be notified by December 5, 1994.

The primary sponsors for this conference are the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Child Health and

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Human Development and the National Institute on Aging.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the technology assessment statement will be available beginning December 14, 1994 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: October 24, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–26975 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Co-Exclusive License; Vector With Multiple Target Response Elements Affecting Gene Expression

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/596,299 (CIP of 07/467,497) entitled "Vector With Multiple Target Response Elements Affecting Gene Expression" to Targeted Genetics Corporation, of Seattle, Washington. The patent rights in this invention have been assigned to the United States of America.

The prospective license will be royalty-bearing, will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7, and will be co-exclusive with one other party, Genetic Therapy, Inc. It is anticipated that this license will be limited to the field of use of gene therapy treatment for Acquired Immunodeficiency Syndrome (AIDS). Publication of this notice should be considered a modification of an earlier notice "Prospective Grant Of Exclusive License: Vectors For Gene Therapy Treatment Of AIDS" (Vol. 57, No. 169, Monday, August 31, 1992, page 39405).

This prospective co-exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes the design and construction of DNA sequences that will inhibit viral replication through competitive inhibition of tat function and by down-regulating HIV–1 LTR-directed gene expression. Inhibition is mediated via the product of transcription of the newly constructed vector. The vector product is directed against the AIDS virus (HIV) and may be used in vaccine development (intracellular immunization) and as a therapeutic agent for treating viral infections. Unlike other similar vectors, this invention is not limited by retroviral mutations or by variations between different HIV isolates.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852. Telephone: (301) 496–7735 extension 266; Facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application(s). Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before [insert date 60 days after date of publication in the **Federal Register**] will be considered.

Dated: October 24, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–26972 Filed 10–31–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N–94–3693; FR–3532–N–02]

Announcement of Funding Awards for Fiscal Year 1994 Community Outreach Partnership Centers

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 Community Outreach Partnership Centers Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to establish and operate Community Outreach Partnership Centers that will: Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Thompson, Acting Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8100, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–1600. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Community Outreach Partnership Centers Program was enacted in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Initially administered by the Assistant Secretary for Community Planning and Development, the program was transferred August 15, 1994 to the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, this newly created Office will administer HUD's ongoing grant programs to institutions of higher education as well as create initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Community Outreach Partnership Centers Program provides funds for: Research activities which have practical application for solving specific problems in designated communities and neighborhoods; outreach, technical assistance and information exchange activities which are designed to address specific problems in designated communities and neighborhoods. The specific problems that the local program must focus on are problems associated with housing, economic development, neighborhood revitalization.

infrastructure, health care, job training, education, crime prevention, planning, and community organizing.

On January 4, 1994 (59 FR 488), HUD published a Notice of Funding Availability announcing the availability of $7 million in FY 1994 funds for the Community Outreach Partnership Centers Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance under the FY 1994 Community Outreach Partnership Centers Funding Competition, by Name, Address, and Grant Amount

1. University of California—Los Angeles, Prof. Jacqueline Leavitt, Architecture and Urban Planning, 405 Hilgard Avenue, Los Angeles, CA 90024, Grant Amount: $549,415
2. Trinity College, Eddie A. Perez, Director of Community Relations, 300 Summit Street, Hartford, CT 06106, Grant Amount: $580,000
3. Duquesne University, Dr. G. Evan Stoddard, Graduate Center for Social and Public Policy, College Hall, Room 210, 600 Forbes Avenue, Pittsburgh, PA 15282, Grant Amount: $580,000
4. The City College of CUNY, Dr. Ghislaine Hermanuz, Director, City College Architecture Center, Shepard Hall, Convent Avenue and 138th Street, New York, NY 10031, Grant Amount: $580,000
5. University of California—Berkeley, Dr. Victor Rubin, Executive Director, University-Oakland Metropolitan Forum, 316 Webster Hall, Berkeley, CA 94720, Grant Amount: $580,000
6. Texas A & M University, Mr. A. Kermit Black, Director, Center for Housing and Urban Development, College of Architecture, College Station, TX 77843, Grant Amount: $580,000
7. University of Illinois at Chicago, Ms. Laurie Alperin, Assistant Director, Great Cities Office, 601 South Morgan Street, M/C 102, Chicago, IL 60607, Grant Amount: $580,000
8. Arizona State University, Dr. Rob Melnick, Director, Morrison Institute of Public Policy, P.O. Box 874405, Tempe, AZ 85287, Grant Amount: $580,000
9. Wayne State University, Dr. Larry C. Ledebur, Director, Center for Urban Studies, Faculty Administration Building, 656 West Kirby, Detroit, MI 48202, Grant Amount: $580,000
10. Pratt Institute, Dr. Brian Sullivan, Associate Director, Pratt Institute Center for Community and Environmental Development, 379 DeKalb Avenue, Second Floor, Brooklyn, NY 11205, Grant Amount: $580,000
11. University of South Florida, Ms. Virginia S. Roo, Director, Institute of Government, 4202 East Fowler Avenue, Tampa, FL 33620, Grant Amount: $370,417
12. Merrimack College, Ms. A. Patricia Jaysane, Executive Director, Urban Institute, 55 East Haverhill Street, Lawrence, MA 01841, Grant Amount: $463,941
13. Yale University, Ms. Sally Tremaine, Assistant Director, Grant and Contract Administration, 12 Prospect Place, New Haven, CT 06511, Grant Amount: $580,000
14. The University of Texas—Pan American, Mr. Roland S. Arriola, Director, Center for Entrepreneurship and Economic Development, 1201 West University Drive, Rm BA124, Edinburg, TX 78539, Grant Amount: $300,000.

Dated: October 25, 1994.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 94–26956 Filed 10–31–94; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–05–1430–00]; UTU–71138, UTU–71175, UTU–72794

Resource Management Plans; Beaver River Resource Area, UT

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent.

SUMMARY: The BLM is proposing to amend the Cedar, Beaver, Garfield, Antimony (CBGA) Resource Management Plan (RMP) approved October 1, 1986, to allow for the disposal of certain public lands in Beaver and Iron Counties, Utah.

DATES: For a period of 30 days from December 1, 1994, interested parties may submit comments on the issues to be addressed in the subsequent Environmental Analysis.

ADDRESSES: Comments should be addressed to Arthur L. Tait, Area Manager, Beaver River Resource Area Office, 365 South Main, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait at the above address or telephone (801) 586–2458.

SUPPLEMENTARY INFORMATION: The purpose of this proposed amendment is to make certain public lands available for noncompetitive sale to Beaver and Iron Counties pursuant to the Recreation and Public Purposes Act of 1926, as amended. Also, an additional 10 acres of public land would be made available for disposal by direct sale to Sheldon Jessop of Adamsville, Utah, pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

The public land being considered for sale is described as follows: Salt Lake Meridian, T. 29 S., R. 7 W., sec. 8, NW¼ NE¼, comprising 40 acres; T. 29 S., R. 8 W., sec. 20, W½W½SW¼SE¼, comprising 10 acres; and T. 36 S., R. 15 W., sec. 20, NW¼NE¼NE¼SW¼, NW¼NE¼SW¼, comprising 12.547 acres. The existing plan does not identify these lands as suitable for disposal. However, because of resource values, public values, and objectives involved, the public interest may be well served by offering these lands for sale. An Environmental Assessment(s) will be prepared using an interdisciplinary team to analysis the impacts of this proposed amendment as well as other alternatives. General issues to be addressed in the forthcoming Environmental Assessment(s) include the possible social, economic, and resource consequences of these proposed amendments. No additional planning criteria beyond those previously identified in the Cedar, Beaver, Garfield, Antimony Resource Management Plan are contemplated.

Mat Millenbach,

State Director.

[FR Doc. 94–26992 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–DQ–M

[NM–060–05–1610–00] (600)

Availability of Draft Roswell Resource Management Plan/Environmental Impact Statement, Draft Carlsbad Resource Management Plan Amendment/Environmental Impact Statement, and Public Hearing Schedule

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability for public review of the

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Draft Roswell Resource Management Plan/Environmental Impact Statement (RMP/EIS) and the Draft Carlsbad Resource Management Plan Amendment/Environmental Impact Statement (RMPA/EIS). The Draft RMP/EIS and Draft RMPA/EIS have been combined in a single document.

The Carlsbad RMPA/EIS addresses the management of oil and gas resources on about 2.2 million acres of public surface and subsurface, and an additional 1.6 million acres of federal mineral estate, in Lea and Eddy counties, and the "bootheel" of Chaves County, in southeast New Mexico. The Roswell RMP/EIS addresses the comprehensive management of all resources and uses on about 1.5 million acres of public surface and subsurface, and an additional 8.4 million acres of federal mineral estate, in the remainder of Chaves County and all of Lincoln, DeBaca, Roosevelt, Curry, Quay, and Guadalupe counties, in east-central and southeast New Mexico.

The Roswell RMP/EIS focuses on resolving three key issues that were identified with public involvement early in the planning process. These issues are: (1) oil and gas operations; (2) land tenure adjustment; and, (3) access. Additionally, two management opportunities (non-issue related practices or land-use allocations that need modification) were identified. These are: (1) recreation; and (2) wildlife habitat management. The Carlsbad RMPA/EIS is focused solely on resolving the oil and gas operations issue.

Notice also is given that two public hearings will be held to seek public comment on the adequacy of the Draft Roswell RMP/EIS and the Draft Carlsbad RMPA/EIS, including alternatives and the impacts of those alternatives.

DATES: Written comments on the Draft Roswell RMP/EIS and the Draft Carlsbad RMPA/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of these drafts in the **Federal Register**. Public hearings on the drafts will be held on: Jan. 10, 1995, from 1:00 to 5:00 p.m. and 7:00 to 9:00 p.m., at the Pearson Auditorium on the New Mexico Military Institute campus, Roswell, New Mexico; and, Jan. 11, 1995, from 1:00 to 5:00 p.m. and 7:00 to 9:00 p.m., at the BLM's Carlsbad Resource Area office, 620 East Greene, Carlsbad, New Mexico.

Oral and written testimony will be accepted at the hearings. Oral comments will be limited to five minutes and should be accompanied with written text, if possible.

In addition to the public hearings, three open houses are scheduled for:

Jan 3, 1995, from 1:00 to 5:00 p.m., and 6:00 to 8:00 p.m. at the office of the Ruidoso Chamber of Commerce, 720 Sudderth, Ruidoso, New Mexico;

Jan 4, 1995, from 1:00 to 5:00 p.m. and 6:00 to 8:00 p.m. at the BLM's Carlsbad Resource Area office, 620 East Greene, Carlsbad, New Mexico; and,

Jan 5, 1995, from 1:00 to 5:00 p.m. and 6:00 to 8:00 p.m. at the BLM's Roswell District Office conference room, 1717 West 2nd Street, Roswell, New Mexico.

ADDRESSES: Written comments on the document should be addressed to: David Stout, RMP/EIS Team Leader, Bureau of Land Management, Roswell District Office, 1717 West 2nd Street, Roswell, New Mexico, 88201–2019, telephone: 505–627–0272. Copies of the combined RMP/EIS and RMPA/EIS are available at the Roswell District Office (address immediately above), the Roswell Resource Area Office, 500 North Richardson Avenue, Roswell, New Mexico, 88201, and the Carlsbad Resource Area Office, 620 East Greene, Carlsbad, New Mexico, 88220.

FOR FURTHER INFORMATION CONTACT: David Stout, RMP/EIS Team Leader, at the address listed above.

SUPPLEMENTARY INFORMATION: Five alternative management options have been proposed and analyzed in detail in the document. Alternative A is the continuation of current management and is also the "No Action" alternative. Alternative B emphasizes environmental values, while Alternative C emphasizes production and development. Alternative D attempts to balance use and development of resources while maintaining or improving important environmental values. The BLM's preferred alternative, identified in the RMP/EIS and RMPA/EIS as Alternative E, is a combination of portions of the other four alternatives, plus management that is common to all alternatives.

For the Roswell Resource Area, any of the alternatives could be chosen as the proposed management for the Resource Area and would provide for realistic, comprehensive management of the public lands. For the Carlsbad Resource Area, any of the alternatives could be chosen and would provide for realistic management of oil and gas resources on the public lands. However, in an effort to standardize the management of oil and gas resources between the two Resource Areas and to provide improved customer service, each alternative in the Carlsbad RMPA/EIS corresponds with a similar alternative for oil and gas management in the Roswell RMP/EIS. Management proposed for each Resource Area under a specific alternative is essentially the same. Thus, for oil and gas management, the alternatives are essentially Roswell District alternatives. Because of the tie between the two Resource Areas, the alternative selected for the management of oil and gas resources in the Carlsbad Resource Area will be the same alternative selected for oil and gas management in the Roswell Resource Area.

Areas of Critical Environmental Concern: The Roswell RMP/EIS evaluates the proposed designation of five areas of critical environmental concern (ACEC). The proposed ACECs total 61,629 acres. This acreage represents a total acreage based on the presence of resources and opportunities for efficient management. The total acreage figure includes 9,227 acres of private land and 4,680 acres of state land. The designation of an ACEC would pertain to the surface and mineral estate managed by the BLM and to the BLM-administered federal mineral estate under private or state lands. Private or state inholdings within the boundaries of the proposed ACECs would not be designated as part of an ACEC, nor would the management proposed for an ACEC be applied to those lands. The inholdings would be acquired, however, if opportunities for acquisition arise. If inholdings in an ACEC are acquired, they would be included in the ACEC without conducting additional land use planning, and would be managed according to the management in place for the ACEC.

The management emphasis for each proposed ACEC under the preferred alternative is described below. Also listed are brief descriptors of significant uses of the public lands within the proposed ACECs that may be emphasized, limited, or otherwise affected. These descriptors or topics are: A—oil and gas; B—salable minerals; C—leasable minerals; D—locatable minerals; E—rights-of-way; F—land tenure adjustment; G—livestock grazing; H—vegetation management; I—off-highway vehicle use; J—recreation use and development; and, K—riparian management.

Management of the proposed Overflow Wetlands ACEC (6,814 acres) emphasizes the protection of the biological and scenic values of the area, including critical habitat for threatened or endangered fish and significant riparian/wetland values. Topics of significant management emphasis are A; B; C; D; E; F; G; H; I; J; and, K.

Management of the proposed North Pecos River ACEC (6,400 acres) emphasizes the protection of the biological and scenic values of the area, including critical habitat for threatened or endangered fish and significant riparian/wetland values. Topics of significant management emphasis are: A; B; C; D; E; F; G; H; I; and, K.

Management of the proposed Mescalero Sands ACEC (10,007 acres) emphasizes the protection of the biological, archeological and scenic values of the area with emphasis on a portion of the shinnery oak-dune plant community to enhance the biodiversity of the ecosystem. Topics of significant management emphasis are: A; B; C; D; E; F; G; and, I.

Management of the proposed Fort Stanton ACEC (24,630 acres) emphasizes the protection of the biological, archeological and scenic values of the area, while providing for quality recreation opportunity. Topics of significant management emphasis are: A; C; D; E; F; G; H; I; J; and, K.

Management of the proposed Roswell Cave Complex ACEC (16,818 acres) emphasizes the protection of the natural and scenic values of caves, while allowing for limited recreational, commercial, scientific and educational use. Topics of significant management emphasis are: A; C; D; E; F; G; I; and, J.

Copies of the combined Roswell RMP/EIS and Carlsbad RMPA/EIS are available at the Roswell District Office, the Roswell Resource Area Office, and the Carlsbad Resource Area Office, at the addresses listed above.

Dated: October 25, 1994.

Leslie M. Cone,

District Manager.

[FR Doc. 94–26985 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Hilltown Property Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Coleman-Prewitt Investments (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned Permit Number PRT–791946. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of a residential development on 51 acres, in Austin, Travis County, Texas. The proposed development will permanently impact about 100 acres of occupied and/or potential endangered species habitat.

The Service has prepared an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of the publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and EA/HCP should be received on or before December 1, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Robert B. Simpson, Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection, by written request and by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESS** above). Please refer to Permit Number PRT–791946 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Robert B. Simpson at the above Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a residential subdivision 7.5 miles northwest of downtown Austin, Travis County, Texas. An EA/HCP has been developed as mitigation for the incidental taking of the golden-cheeked warbler. The Applicant proposes to mitigate the incidental take via dedicating 60 acres of occupied golden-cheeked warbler habitat as a permanent preserve, providing funding for the operation and management of the preserve lands, performing golden-cheeked warbler monitoring and research studies on the project lands, and avoiding construction activities within warbler territories during the breeding season. Details of the mitigation are provided in the EA/HCP for the Hilltown Property Development. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Applicant considered three alternatives but rejected two of them because they were not economically viable.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–26980 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Wallace Tract Subdivision Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Highway 71 Properties (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned Permit Number PRT–782991. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a residential development on 73.3 acres in Austin, Travis County, Texas.

The Service has prepared an Environmental Assessment/Habitat

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Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and/or EA/HCP should be received on or before December 1, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Alma Barrera, Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9 to 4:30), U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written data or comments concerning the application and/or EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to Permit Number PRT–782991 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Alma Barrera at the above Austin Ecological Services Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations government permits for endangered species at 50 CFR 17.22.

The Applicant plans to build a residential subdivision located approximately 11.5 miles southwest of Austin, Travis County, Texas. An Environmental Assessment/Habitat Conservation Plan has been prepared for the construction of the 73.3 acre residential subdivision. As mitigation for the incidental taking of the golden-cheeked warbler, the Applicant proposes to preserve approximately 9.5 acres of open space as conservation and greenbelt easement, acquire and donate 14 acres of preserve lands, provide operating and maintenance funds for preserved lands, minimize impacts to warbler habitat, avoid direct impacts during breeding/nesting season, seek ecologically sensitive chemical alternatives, preservation of undeveloped areas, and environmental monitoring.

The Applicant considered five alternatives but rejected four of them because they were not economically viable.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–26979 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 22, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 16, 1994.

Antoinette J. Lee,

Acting, Chief of Registration, National Register.

ARKANSAS

Benton County

Siloam Springs Dowtown Historic District (Benton County MRA), Roughly bounded by Sager Cr., Ashley St., Madison Ave. and Twin Springs St., Siloam Springs, 94001338

Howard County

Garrett Whiteside Hall, Jct. of N. Third Ave. and Locksburg St., SW corner, Nashville, 94001340

Ouachita County

Tyson Family Commercial Building, 151 Adams St., SE., Camden, 94001339

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Manhattan Laundry, 1326–1346 Florida Ave., NW., Washington, 94001327

KENTUCKY

Washington County

Brown, Stephen Cooke, House (Washington County MRA), KY 438, Springfield vicinity, 88003471

MARYLAND

Charles County

Mount Aventine, 1.8 mi. SW of Bryans Rd. on Chapman's Landing Rd., NW side, Bryans Road vicinity, 94001328

MISSISSIPPI

Hinds County

Bellevue Court Apartments, 950 North St., Jackson, 94001336

NEW YORK

Cayuga County

Schines Auburn Theatre, 12–14 South St., Auburn, 94001333

Monroe County

Whalen, Harvey, House, 140 Whalen Rd., Penfield, 94001342

Orleans County

North Main—Bank Streets Historic District, Roughly, along N. Main, E. Bank, W. Bank and Liberty Sts., Albion, 94001341

TENNESSEE

Sequatchie County

Dunlap Community Building, Jct. of Cherry and Rankin Sts., SE corner, Dunlap, 94001337

TEXAS

Bexar County

Builders Exchange Building, 152 Pecan St., San Antonio, 94001335

VERMONT

Orleans County

Irasburg Town Hall (Historic Government Buildings MPS), Jct. of VT 14 and VT 58, E of Creek Rd., Irasburg, 94001334

WISCONSIN

La Crosse County

Mundstock, Carl August, Farm, US 14/61, N side, E of jct. with WI 35, Shelby, 94001332

Manitowoc County

Island Village Site, Address Restricted, Eaton vicinity, 94001331

Oneida County

Fishers Island, Address Restricted, Minocqua vicinity, 94001329

Tom 2 Site, Address Restricted, Lake Tomahawk vicinity, 94001330

[FR Doc. 94–27007 Filed 10–31–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 151X)]

Norfolk and Western Railway Company—Abandonment Exemption—In Appomattox and Campbell Counties, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.0-mile line of railroad between milepost N–190.2 at Phoebe and milepost N–191.2 at Concord, in Appomattox and Campbell Counties, VA.[1]

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 1, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by November 14, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 21, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 4, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 24, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27000 Filed 10–31–94; 8:45 am]

BILLING CODE 7535–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of November 30, 1994. Because the verified notice was not filed until October 12, 1994, consummation should not have been proposed to take place prior to December 1, 1994. Applicant's representative has confirmed that the correct consummation date is on or after December 1, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing a 1994 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1994 aggregate production quota for morphine, a Schedule II controlled substance, as required under the Controlled Substances Act of 1970.

DATES: This is effective on November 1, 1994. Comments must be submitted on or before December 1, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

The DEA established initial 1994 aggregate production quotas for controlled substances in Schedules I and II, including morphine, in a **Federal Register** notice published on October 8, 1993 (58 FR 52508). DEA revised some of the aggregate production quotas on June 22, 1994 (59 FR 32223) in accordance with 21 CFR 1303.13. At that time, there were no comments on the aggregate production quota for morphine and therefore it was not revised.

Since publication of the revised 1994 aggregate production quotas, DEA has received information which necessitates an increase in morphine's 1994 aggregate production quota. Because this increase is immediately required to meet the 1994 year-end medical needs of the United States and for reserve

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stocks, an interim notice is being published.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quota for the listed controlled substance, expressed in grams of anhydrous base:

Basic class	Established revised 1994 quota
Morphine	7,500,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 25, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–27049 Filed 10–31–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

October 26, 1994.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 (202) 395–7316).

Type of Review: *Extension*
Agency: Employment and Training Administration
Title: Unemployment Insurance Quality Appraisal
OMB Number: 1205–0161
Agency Number: ETA Handbook No. 365
Frequency: Annually (recordkeeping)
Affected Public: State or local governments
Number of Respondents: 53
Estimated Time Per Respondent: 465 hours
Total Burden Hours: 24,645
Description: The Unemployment Insurance (UI) Service and State Employment Security Agencies (SESAs) utilize UI quality appraisals annually to assess accuracy and timeliness of UI operations. The results help the Employment and Training Administration and the SESAs to determine what operating areas need corrective action plans to meet achievement standards in the States' annual program budget plan (PBP).

Type of Review: *Reinstatement*
Agency: Mine Safety and Health Administration
Title: Certificate of Electrical/Noise Training
OMB Number: 1219–0001
Agency Number: MSHA 5000–1
Frequency: On occasion
Affected Public: Businesses or other for-profit; Small businesses or organizations
Number of Respondents: 8,400
Estimated Time Per Respondent: 0.02 hours
Total Burden Hours: 128
Description: The Mine Safety and Health Administration (MSHA) Form 5000–1, Certificate of Electrical/Noise Training, is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–27024 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[NAFTA–00172]

American Cyanamid Co., Lederle Laboratories, Pearl River, New York; Notice of Revised Determination on Reopening

On October 24, 1994, the Department, on its own motion, reopened its investigation for workers producing declomycin at the subject facility. The initial investigation resulted in a negative determination on August 5, 1994. The negative determination was published in the **Federal Register** on August 25, 1994 (59 FR 43868).

Updated findings on reopening show that the statutory requirements for a worker group certification have been met.

The investigation revealed that American Cyanamid Company has received the necessary approval by the Federal Drug Administration of a site in Mexico to produce declomycin. Production of declomycin ceased at the Pearl River, New York plant in April 1994, and an important proportion of this production is being shifted from Pearl River to a plant in Mexico.

Workers producing declomycin at the Pearl River plant experienced employment declines as a result of this shift of production. Accordingly, the Department is revising its negative determination for workers engaged in the production of declomycin at the Pearl River, New York plant of American Cyanamid Company, Lederle Laboratories.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that there was a shift of production from the Pearl River, New York plant to Mexico of articles that are like or directly competitive with the declomycin produced by the subject plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of declomycin at the Pearl River, New York plant of American Cyanamid Company, Lederle Laboratories who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27025 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,070; Kasmark & Marshall, Inc., Luzerne, PA
TA–W–30,147; Gordon Country Farm, Bryan Foods Div., Calhoun, GA
TA–W–30,333; The HF Butler Corp., Piscataway, NJ
TA–W–30,216; AEG Transportation System, Inc., Pittsburgh, PA
TA–W–30,127; RMI Titanium Co., Niles, OH
TA–W–30,225; Oshkosh Truck Corp., Oshkosh, WI
TA–W–30,133; Tunnelton Mining Co., Uniontown, PA
TA–W–30,164; The American Press, Cuttently, American Graphics, & Printing, Inc., Utica, NY
TA–W–30,148; Moore Business Forms, Buckhannon, WV

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,110; Texaco Chemical Co., Cuttently, Huntsman Corp., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,222; Easton Corp., Westinghouse & Cutler Hammer Products, Kenosha, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,085; Tenneco Gas Pipeline Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,279; Oklahoma Gas & Electric, Red Rock, OK

The Department found that aggregate imports of products like or directly competitive with electricity manufactured at Oklahoma Gas & Electric, Red Rock, OK were insignificant during the period under investigation.

TA–W–30,150; Heekin Can, Inc., Augusta, WI

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,286; Dana Corp., Publo, CO

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–30,184; Markwest Siloam Plant, South Shore, KY

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,334; Bodard & Hale Drilling Co., Shawnee, OK

A certification was issued covering all workers separated on or after September 2, 1993.

TA–W–30,246; Century Mills, Wilmington, NC

A certification was issued covering all workers separated on or after August 24, 1993.

TA–W–30,244; Leggett & Platt, Inc., Fashion Bed Group, Chicago, IL

A certification was issued covering all workers separated on or after July 8, 1993.

TA–W–29,961; Peabody Coal Co., Eagle #2 Mine, Shawneetown, IL

A certification was issued covering all workers separated on or after May 30, 1993.

TA–W–30,242; Moss, Inc., Camden, ME

A certification was issued covering all workers separated on or after August 2, 1993.

TA–W–30,166 Vought Aircraft Co., Dallas, TX, Job Families 7500 thru 7510

A certification was issued covering all workers separated on or after July 6, 1993.

TA–W–30,167; Vought Aircraft Co., Dallas, TX, Job Families 7350, 7351, 7352, 7380

A certification was issued covering all workers separated on or after July 13, 1993.

TA–W–30,202; Vought Aircraft Co., Dallas, TX, Job Families 7140, 7143, 7260, 7210; 7230, 7154, 7170

A certification was issued covering all workers separated on or after July 27, 1993.

TA–W–29,951; Saft Aerospace Batteries, Gainesville, FL

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A certification was issued covering all workers separated on or after January 1, 1994.

TA–W–30,249; Vought Aircraft Co., Dallas, TX, Job Families 7441, 7430, 2080, 2090, 2110, 7491, 7492, 7442, 7431, 7340, 7700, 7710, 7720, 7730, 7750, 7752, 7760, 7770, 7771, 7780, 7790, 7800, 7820, 7830, 7840, 7860, 7870

A certification was issued covering all workers separated on or after August 10, 1993.

TA–W–29,895; Keytronic, Las Cruces, NM

A certification was issued covering all workers separated on or after May 7, 1993.

TA–W–30,069; Smartscan, Inc., Boulder, CO

A certification was issued covering all workers separated on or after June 16, 1993.

TA–W–30,080; Double B Drilling Corp., Kingfisher, OK

A certification was issued covering all workers separated on or after June 30, 1993.

TA–W–29,956; Anchor Drilling Fluids USA, Inc., Sidney, MT

A certification was issued covering all workers separated on or after May 6, 1993.

TA–W–30,239; Catoosa Knitting Mills, Inc., Crossville, TN

A certification was issued covering all workers separated on or after August 8, 1993.

TA–W–30,009; Santa Fe Energy Resources, Inc., Houston, TX With Other Operations in the Following States: A; CA, B; LA, C; MT, D; NM, E; OK, F; TX, G; WY

A certification was issued covering all workers separated on or after June 10, 1993.

TA–W–30,355; Cardinal Drilling, Billings, MT

A certification was issued covering all workers separated on or after September 2, 1993.

TA–W–30,200; Larson Shingle Co., Forks, WA

A certification was issued covering all workers separated on or after August 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) that the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00229; The American Press, Currently, American Graphics & Printing, Inc., Utica, NY

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers of The American Press revealed that these customers did not import printed materials from Canada or Mexico in 1992, 1993 or during the first three quarters of 1994. There was no shift in production from the workers' firm to Mexico or Canada.

NAFTA–TAA–00228; Lierg, Inc., Missoula, MT

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services did not constitute production of an article as required by the Trade Act of 1974.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00225; Champion International Corp., Forest Products Division, Klickitat, WA

A certification was issued covering all workers of the Forest Products Div. of Champion International Corp., Klickitat, WA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of October, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 24, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27023 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration, McDonnell Douglas Corp.; Tulsa, Oklahoma

[TA–W–29,945]

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–29,945 which was published in the **Federal Register** on June 24, 1994 (59 FR 32717) in FR Document 94–15413. This revises the date received and the date of petition as they appear in the 15th line of the third and fourth columns, in the appendix table on page 32717. Both dates should read "March 28, 1994" on the 15th line of the third and fourth columns.

Signed in Washington, D.C., this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27028 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,945]

McDonnell Douglas Corp. Tulsa, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on September 15, 1994, applicable to all workers of the subject firm. The notice was published in the

Federal Register on October 4, 1994 (59 FR 50629).

At the request of the workers the Department reviewed the subject certification. The findings show that worker separations occurred just prior to the May 20, 1994 impact date.

In amending the May 20, 1993 impact date in the subject certification, the Department is setting the new impact date of March 28, 1993, one year prior to the petition date of March 28, 1994 petition.

The intent of the Department's certification is to include all workers of McDonnell Douglas who were adversely affected by increased imports.

The amended notice applicable to TA–W–29,945 is hereby issued as follows:

All workers of McDonnell Douglas Corporation, Tulsa, Oklahoma engaged in employment related to the production of military and commercial aerospace parts and subassemblies who became totally or partially separated from employment on or after March 28, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27026 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 14, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 14, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Morrison Berkshire, Inc (Wkrs)	North Adams, MA	10/17/94	10/06/94	30,400	Textile Machinery.
Miller Group, Inc (Wkrs)	Schuylkill Haven, PA.	10/17/94	10/04/94	30,401	Bleached or Dyed Textiles.
Rosa Fashions, Inc (ILGWU)	Hoboken, NJ	10/17/94	10/06/94	30,402	Ladies' Coats.
Noltina Crucible & Refractory (Wkrs).	Philadelphia, PA	10/17/94	09/30/94	30,403	Clay Graphite Crucibles.
Nahama & Weagant Energy (Wkrs).	Bakersfield, CA	10/17/94	10/04/94	30,404	Oil and Gas.
McDonnell Douglas (IAMAW)	Edwards, CA	10/17/94	10/05/94	30,405	Commercial Transport Aircraft.
Lockheed Fort Worth Co (Co)	Klamath Falls, OR	10/17/94	10/03/94	30,406	Trainers & Spares for Aircraft Sup.
John H. Harland Co (Wkrs)	El Paso, TX	10/17/94	05/10/94	30,407	Check Printers, Computers, Vouchers, etc.
Karen Mfg (ILGWU)	Sweet Valley, PA	10/17/94	08/31/94	30,408	Ladies' Dresses.
Spartan Undies/Imerman (Wkrs)	New York, NY	10/17/94	10/03/94	30,409	Office Workers Sample, Sales, Clerical.
Hoechst Celanese Corp (Co)	Coventry, RI	10/17/94	10/04/94	30,410	Dyes, Pigments, Fine Chemicals, etc.
Harmon Automotive (Wkrs)	Sevierville, TN	10/17/94	10/04/94	30,411	Rearview Mirrors & Seatbelt Assemblies.
Dexter Automotive (Wkrs)	West Unity, OH	10/17/94	10/05/94	30,412	Automobile Acoustical Products.
A.P. Green Industries (Wkrs)	Hitchins, KY	10/17/94	10/04/94	30,413	Refractory Bricks.
Texaco Refining & Marketing, Inc (Wrkrs).	Tulsa, OK	10/17/94	10/09/94	30,414	Crude Oil & Natural Gas.
Enron Exploration Co/Enron Oil (Wkrs).	Houston, TX	10/17/94	10/03/94	30,415	Oil and Gas.

[TA–W–29,856]

VOUGHT AIRCRAFT Co.; A/K/A/ LTV Aerospace & Defense Co., Dallas Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on August 26, 1994 and published in the **Federal Register** on October 4, 1994 (59 FR 50625).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages were reported under an unemployment insurance (UI) tax account for LTV Aerospace & Defense Company in Dallas, Texas. Accordingly, the Department is amending the certification to properly reflect this matter.

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The amended notice applicable to TA–W–29,856 is hereby issued as follows:

All workers of Job Family 2060 Department engaged in employment related to the production of aircraft components at Vought Aircraft Company, also known as (a/k/a) LTV Aerospace and Defense Company, Dallas, Texas who became totally or partially separated from employment on or after April 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27027 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,157]

Hoechst Celanese, Somerville, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 1, 1994 in response to a worker petition which was filed on July 12, 1994 on behalf of workers at Hoechst Celanese, Somerville, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 25th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–27029 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–76; Exemption Application No. D–9676, et al.]

Grant of Individual Exemptions; L.H. Chapman Investment Company Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847 August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

L.H. Chapman Investment Company Pension Plan (the Plan); Located in Columbus, Ohio

[Prohibited Transaction Exemption 94–76; Application No. D–9676]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase (the Purchase) by Margaret Chapman, Loyal Chapman, and Lou Chapman Koester's individually-directed accounts (the Accounts) in the Plan from Indianapolis Life Insurance Company and Columbus Mutual Life Insurance Company of certain undivided interests (the Interests) in certain promissory notes (the Notes) of which the obligor is L.H. Chapman Investment Company, a party in interest with respect to the Plan.

This exemption is conditioned on the following requirements: (1) The terms of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's length transaction with an unrelated party; (2) the Purchase price is equal to the Accounts' pro rata share of the aggregate outstanding principal balances of the Notes on the day of the Purchase; (3) the Purchase occurs only if such outstanding principal balances are not greater than the fair market values of the Interests on the day of the Purchase as determined by an independent, qualified appraiser; (4) the Purchase does not involve more than twenty-five percent of the assets in each of the Accounts; and (5) the Accounts are not required to pay any fees, commissions or expenses in connection with the Purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 19, 1994 at 59 FR 47951.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

BMJ Financial Corp. Deferred Savings Plan (the Plan); Located in Bordentown, New Jersey

[Prohibited Transaction Exemption 94–77; Exemption Application No. D–9732]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition of certain stock rights (the Rights) by the Plan pursuant to a stock rights offering (the Offering) by BMJ Financial Corporation (BMJ) to shareholders of record as of February 9, 1993 of BMJ common stock (the Common Stock); (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the past exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(1) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of the Common Stock;

(2) The Plan's acquisition and holding of the Rights resulted from an independent act of BMJ as a corporate entity, and all holders of Common Stock, including the Plan, were treated in the same manner with respect to the Offering; and

(3) The authority for all decisions regarding the acquisition, holding and control of the Rights by the Plan was exercised by an independent fiduciary which made determinations as to whether and how the Plan should exercise or sell the Rights acquired through the Offering.

EFFECTIVE DATE: This exemption is effective as of February 9, 1993, the Record Date of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 2, 1994 at 59 FR 45721.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of October, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–27055 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9718 & D–9719, et al.]

Proposed Exemptions; Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wells Fargo Bank, N.A. (Wells Fargo) and Wells Fargo Institutional Trust Company, N.A. (WFITC); Located in San Francisco, California

[Application Nos. D–9718 and D–9719]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

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and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan for which Wells Fargo, WFITC or an affiliated company (the Applicants) are fiduciaries, provided that the following conditions are met:

(A) The securities are loaned to a broker-dealer which is registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government Securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank (A Borrower);

(B) Neither the Borrower nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(C) The lending plan receives from the Borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the Borrower, collateral (the Collateral) consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102% of the then market value of the securities lent;

(D) Prior to the loan of any securities, the Borrower furnishes the Applicants with the most recent available audited statements of the Borrower's financial condition and a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statements furnished to the plan, that has not been disclosed to the Applicants;

(E) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the lending plan as an arm's length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

(F) (1) The lending plan (a) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(2) The plan receives the equivalent of all distributions made on or with respect to the loaned securities during the term of the loan;

(G) If the market value of the Collateral at the close of trading on a business day is less than 102% of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of Collateral (as described in paragraph C) the market value of which, together with the market value of all previously delivered Collateral, equals at least 102% of the market value of all the borrowed securities as of such preceding day;

(H) The trustee of such fund or account may terminate the loan of securities at any time. In the event of termination, the Borrower shall deliver Replacement Securities, as defined below, to the trustee of the lending plan. The Borrower shall deliver Replacement Securities that are equivalent in value to the loaned securities within five business days of notice of termination by the trustee. For purposes of this exemption, the term "Replacement Securities" means securities that: (a) Are issued by the same agency as the loaned securities, (b) have the same coupon as the loaned securities, (c) have a principal amount at least equal to but no more than 2% greater than the then current principal amount of the loaned securities, (d) are of the same program or class as the loaned securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned securities is properly taken into account.

If the Borrower fails to return the Replacement Securities, the trustee may apply the Collateral to purchase other Replacement Securities and to pay other expenses associated with the purchase. In addition, the Borrower is obligated to pay the amount of any remaining obligations and expenses not covered by the Collateral plus interest at a reasonable rate.

For purposes of this exemption the term "affiliate" of another person shall include: (a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (b) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (c) Any corporation or partnership of which such other person is an officer, director, partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

EFFECTIVE DATE: This exemption, if granted, will be effective May 27, 1994.

Summary of Facts and Representations

1. Wells Fargo is the tenth largest commercial bank in the United States as measured by assets held on June 30, 1993. Wells Fargo serves as trustee for many employee benefit plans, many of which invest in certain of its collective investment funds. WFITC is a trust company owned 99.9% by Wells Fargo Nikko Investment Advisors (WFNIA). WFNIA is a general partnership owned 50% by a wholly owned subsidiary of Wells Fargo and 50% by a subsidiary of The Nikko Securities Co., Ltd., a Japanese securities firm. Like Wells Fargo, WFITC serves as a fiduciary for employee benefit plans, many of which invest in certain of its collective investment funds. (The plans for which Wells Fargo, WFITC or an affiliated company serves as a fiduciary shall be collectively referred to as the Plans.)

2. WFITC currently maintains the Mortgage-Backed Securities Index Fund (the Fund), a collective investment fund maintained pursuant to the regulations of the U.S. Comptroller of the Currency. The Fund owns as part of fts investment portfolio, pass-through certificates issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC) (collectively, the Agency Securities).

3. The Applicants seek an exemption to permit Wells Fargo, WFITC and any affiliated companies to lend these Agency Securities on behalf of the

Plans.[1] The Applicants represent that the proposed securities lending transactions would comply in all respects with the provisions of Prohibited Transaction Exemption (PTE) 81–6[2] (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) except that, under the Applicants' proposed lending program, the Replacement Securities that will be returned by the Borrower will not necessarily be identical to the loaned securities but must have substantially identical generic criteria to the loaned securities. In this regard, the Applicants represent that upon termination of the loan, the Borrower is required to deliver Agency Securities that (a) are issued by the same issuer as the loaned Agency Securities, (b) have the same coupon as the loaned Agency Securities, (c) have a principal amount equal to at least 100% of the then current principal amount of the loaned Agency Securities and no greater than 102% of such amount, (d) are of the same program or class as the loaned Agency Securities, and (e) either (i) have an aggregate weighted average maturity within a 12-month variance of the then current aggregate weighted average maturity of the loaned Agency Securities, but in no case will the variance be more than 10% of such aggregate weighted average maturity of the loaned Agency Securities, or (ii) meet some other comparable objective standard containing a range of variance that is no greater than that described in (i) above and that assures that the aging of the loaned Agency Securities is properly taken into account.[3] The applicants represent that notification that the Replacement Securities will not be identical in all respects to the loaned Agency Securities has been provided to all current Plans and will be provided to any new Plans.

4. The Applicants represent that the proposed transactions would be beneficial to the Plans because the lending of Agency Securities increases the investment return for Plans participating in the lending program without increasing the Plans' level of risk. In addition, the Applicants represent that the fees for the securities lending that are paid by the Borrowers or the proceeds from investing cash collateral supplement the interest, dividends, or other distributions paid on those securities. The Applicants assert that the same protections afforded to plans relying on PTE 81–6 will be present for the participants and beneficiaries of any Plans engaging in the described transactions.

5. In summary, the Applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) All the conditions specified in PTE 81–6 for the protection of plans engaging in transactions in reliance on that class exemption will be met with regard to the transactions proposed in the application; (b) a specific set of criteria will ensure that the securities returned to a Plan upon termination of a loan are, in fact, substantially identical to the loaned securities in accordance with the PSA guidelines for generic trading of Agency Securities; (c) no securities will be loaned to any entity which is a Plan fiduciary with respect to such securities; (d) the Plans participating in the lending program will receive an enhanced return over the level that they would have enjoyed had the securities simply been held; and (e) the Collateral will be at least 102% of the market value of the loaned securities (plus interest) and will be monitored daily by the Applicants.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

[1] The exemption would cover the lending of Agency Securities held in the Fund or in any other fiduciary account for which Wells Fargo, WFITC or any affiliated company serves as a fiduciary.

[2] PTE 81–6 is a class exemption that permits, under certain conditions, the lending of securities that are assets of employee benefit plans to banks and certain broker-dealers which are parties in interest with respect to such plans. The class exemption requires, among other conditions, that upon termination of the loan, the borrower must deliver to the lending plan certificates for securities identical to the borrowed securities.

[3] The Applicants represent that Agency Securities are primarily traded on a generic basis. In other words, the purchaser places an order to acquire Agency Securities by specifying certain generic criteria and receives specific Agency Securities that satisfy the generic criteria in accordance with the Public Securities Association Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities (the PSA Guidelines). The PSA Guidelines provide for delivery of an Agency Security that has the same issuer (i.e., GNMA, FNMA, or FHLMC), the same coupon, the same program or class of mortgage pools (e.g., 15 year, 30 year or 5 year balloon) as the traded Agency Security so long as the principal amount of the delivered Agency Security is no less than 98% of the principal amount of the traded Agency Security and no greater than 102% of such amount. The Applicants represent that over 95% of the Agency Securities traded in the market are effected using this generic trading method and that it would be extremely difficult to establish a lending program that did not operate on a generic trading basis. The Applicants represent that the criteria for the Replacement Securities will at all times be at least as restrictive as the PSA Guidelines in effect as of the date of the loan.

The Lubrizol Corporation Employees' Stock Purchase and Savings Plan (the Plan); Located in Wickliffe, Ohio

[Application No. D–9770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to the Lubrizol Corporation (Lubrizol), the Plan sponsor and a party in interest with respect to the Plan, of the Plan's interest (the Interest) in certain securities (the Securities) issued by Columbia Gas Systems, Inc. (CGS), provided: (a) No commissions or other expenses are paid by the Plan in connection with the sale; (b) the Plan will receive the greater of $227,158.01 or the fair market value of the Plan's Interest in the Securities at the time of the sale as determined by Bankers Trust Company (BTC), the Plan's independent fiduciary; and (c) BTC has determined that the proposed transaction is appropriate for the Plan and in the best interest of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. Lubrizol is a leading full-service supplier of performance chemicals to diverse markets worldwide. The Plan is a defined contribution plan with 2,521 participants. As of May 31, 1994, the Plan had assets with an approximate aggregate fair market value of $67,061,827.

2. BTC, a New York banking corporation headquartered in New York City, served as trustee of the Plan from April 1, 1986 until October 1, 1992. In June, 1991, BTC held in one of its collective investment funds the Securities, which consisted of: a) CGS Discount Note with a maturity date of 8/5/91, acquired 5/9/91, with an interest rate of 6.28%; b) CGS Discount Note with a maturity date of 8/7/91, acquired 5/9/91, with an interest rate of 7.04%, and c) CGS Loan Participation due 6/20/91, acquired 2/22/91, with an interest rate of 6.9%. The Plan's original investment for its Interest in the Securities was $181,617.47. BTC remains the Plan's independent trustee with respect to the Securities.

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3. In June, 1991, CGS made a surprise announcement of financial difficulties. CGS suspended its dividend and announced that it faced potential charges to income exceeding $1 billion due to adverse prices under long-term contracts to purchase natural gas. CGS pursued a renegotiation of the gas purchase contracts of its subsidiary Columbia Gas Transmission Corp. and certain of its bank credit lines. As part of its efforts to renegotiate such gas contracts and credit lines, CGS threatened to file for bankruptcy and failed to pay interest and principal on its short-term debt obligations. CGS's commercial paper and term debt were downgraded on June 19, 1991 from A2 to B1 and subsequently further downgraded to D on June 21, 1991. CGS ultimately filed for protection under Chapter 11 of the Bankruptcy Code on July 31, 1991.

4. Because the Securities remain frozen by the Bankruptcy Court with no clear indication as to when CGS will emerge from Chapter 11, Lubrizol has offered to purchase the Plan's Interest in the Securities from the Plan for cash. The Plan will pay no commissions or expenses in connection with the transaction. BTC has determined that the Plan's Interest in the Securities had a fair market value of $227,158.01 as of May 31, 1994. The purchase price for the Interest will be the greater of $227,158.01 or the fair market value of the Interest as of the time of the sale as determined by BTC.[4] BTC represents that it values the Securities on a monthly basis, and the Securities would be valued for purposes of this transaction in accordance with the following formula: BTC receives the Average Monthly Commercial Paper Rate from Merrill Lynch which is used to calculate a projected Weighted Average Yield. This Weighted Average Yield is then used to calculate the projected price for each of the Securities. BTC represents that as of the date the Securities became frozen, June 30, 1991, the Plan's Interest in the Securities was $200,000. CGS has not been accruing interest past the maturity dates of the Securities. However, BTC believes that once CGS emerges from bankruptcy, it will pay post-bankruptcy petition interest to the date of emergence. BTC uses the above-described formula to estimate this post-maturity interest in its monthly calculation of the value of the Securities.

5. BTC represents that because there is not a regular market for the CGS notes and the CGS loan participation does not trade in the market, BTC believes that it will be in the best interest of the Plan for Lubrizol to purchase the Plan's Interest in the Securities at a price determined in accordance with the formula described in rep. 4, above. BTC represents that Lubrizol's acquisition of the Plan's Interest in the Securities at this time would remove an illiquid asset from the Plan and allow for further investment of Plan assets.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 406(a) of the Act because: a) the sale would be a one-time transaction for cash, and no commissions or other expenses would be paid by the Plan in connection with the transaction; b) the sales price would be determined by BTC, the Plan's independent fiduciary with respect to the Securities; and c) BTC has determined that the proposed transaction is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of October, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–27056 Filed 10–31–94; 8:45 am]

BILLING CODE 4510–29–P

[4] Lubrizol represents that should the Plan receive greater than the fair market value of the Securities, the excess, if treated as a contribution to the Plan, would not cause the Plan to violate sections 401(a)(4), 404 or 415 of the Code.

LEGAL SERVICES CORPORATION

Grant Award for Legal Services State Support in Puerto Rico

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, nonrecurring grant to the Puerto Rico Legal Services (PRLS) for the purpose of planning for state support activities in its service area. The Corporation plans to award a grant in the amount of $25,000.

The one-time grant will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 pm on or before November 30, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. PRLS is a recipient of LSC funding for the provision of direct legal services to this service area. The amount of the 1994 state support planning grant is consistent with the 1994 LSC Appropriations Act.

Dated: October 27, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–27065 Filed 10–31–94; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL SCIENCE BOARD

Nominations for Membership

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*.

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

All of the members whose terms expire in May 1996 are eligible for reappointment. Current NSB membership is as follows:

Terms Expire May 10, 1996

Dr. Perry L. Adkisson, Regents Professor, Department of Entomology, Texas A&M University, College Station, TX

Dr. Bernard F. Burke, William A. M. Burden Professor of Astrophysics, Massachusetts Institute of Technology, Cambridge, MA

Dr. Thomas B. Day, President, San Diego State University, 5300 Campanile Drive, San Diego, CA

Dr. James J. Duderstadt, President, The University of Michigan, 2074 Fleming Administration Building, Ann Arbor, MI

Dr. Marye Anne Fox (Vice Chairman, National Science Board), M. June and J. Virgil Waggoner Regents Chair in Chemistry, Department of Chemistry, University of Texas at Austin, Austin, TX

Dr. Phillip A. Griffiths, Director, Institute for Advanced Study, Olden Lane, Princeton, NJ

Mr. Jaime Oaxaca, Vice Chairman, Coronado Communications Corporation, 11340 West Olympic Boulevard, Suite 206, Los Angeles, CA

Dr. Howard E. Simmons, Jr., Central Research & Development, Du Pont Experimental Station, P.O. Box 80328, Wilmington, DE

Terms Expire May 10, 1998

Dr. F. Albert Cotton, W.T. Doherty-Welch Foundation Distinguished Professor of Chemistry and Director, Laboratory for Molecular Structure and Bonding, Texas A&M University, College Station, TX

Dr. Charles E. Hess, Professor and Director of International Programs Office, University of California, Davis, CA

Dr. John E. Hopcroft, Joseph Silbert Dean of Engineering, College of Engineering, Cornell University, Ithaca, NY

Dr. James L. Powell, President, Museum of Natural History, Museum of Los Angeles County, 900 Exposition Boulevard, Los Angeles, CA

Dr. Frank H.T. Rhodes (Chairman, National Science Board), President, Corneli University, Ithaca, NY

Dr. Ian M. Ross, President-Emeritus, AT&T Bell Laboratories, Inc., 101 Crawfords Corner Road, P.O. Box 3030, Holmdel, NJ

Dr. Richard N. Zare, Marguerite Blake Wilbur Professor of Chemistry, Department of Chemistry, Stanford University, 121 Mudd Building, Stanford, CA

Terms Expire May 10, 2000[1]

Dr. Eve L. Menger, Director, Technical Services & Administration, Corning, Inc., Corning, NY

Dr. Claudia I. Mitchell-Kernan, Vice Chancellor, Academic Affairs and Dean, Graduate Division, Office of the Chancellor, University of California, Los Angeles, CA

Dr. Diana Natalicio, President, The University of Texas at El Paso, El Paso, TX

Dr. Robert M. Solow, Institute Professor Department of Economics, Massachusetts Institute of Technology, Cambridge, MA

Dr. Warren M. Washington, Director, Climate & Global Dynamics Divisions, NCAR, P.O. Box 80307, Boulder, CO

Dr. John A. White, Jr., Dean, College of Engineering, Georgia Institute of Technology, Atlanta, GA

(Two Vacancies)

Member Ex Officio

Dr. Neal F. Lane (Chairman, Executive Committee), Director, National Science Foundation, Washington, DC

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, 4201 Wilson Boulevard, Arlington, VA, 22230, no later than January 6, 1995.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board (703/306–2000).

Dated: October 26, 1994.

Frank H. T. Rhodes,

Chairman, National Science Board.

[FR Doc. 94–26914 Filed 10–31–94; 8:45 am]

BILLING CODE 7555–01–M

[1] NSB nominee pending U.S. Senate confirmation.

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1994 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of

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public health and safety). During the second quarter of CY 1994, the following incidents at NRC licensees were determined to be AOs and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 17, No. 2, ("Report to Congress on Abnormal Occurrences: April–June 1994"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037 about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees

(Industrial Radiographers, Medical Instructions, Industrial Users, etc.)

94–8 Multiple Medical Brachytherapy Misadministrations at Deaconess Medical Center in Billings, Montana

One of the AO reporting guidelines notes that a therapeutic exposure which affects two or more patients at the same facility (regardless of any health effects) can be considered an AO.

This report documents two misadministrations involving brachytherapy procedures performed at the licensee's facility in September and November 1993, which are related to nine other events identified at another NRC-licensed medical facility, because the events are the result of a common root cause.

Date and Place—September and November 1993; Deaconess Medical Center; Billings, Montana.

Nature and Probable Consequences—On March 22, 1994, representatives from Northern Rockies Cancer Center (NRCC), Deaconess Medical Center (DMC), and St. Vincent Hospital and Health Center (SVHHC) notified the NRC Region IV office of a misadministration involving a brachytherapy treatment performed at DMC on September 24, 1993 (Preliminary Notification of Event or Unusual Occurrence PNO–IV–94–010; March 23, 1994; Docket No. 030–02389). The event was not discovered until March 20, 1994, during the course of a thorough review of a select group of treatments performed at DMC and SVHHC under treatment plans developed at NRCC. The three licensees participated in the telephonic notification because NRCC provides brachytherapy planning services to both DMC and SVHHC, and the potential cause of the misadministrations involved errors in treatment plans developed at NRCC. (NRCC is jointly owned by DMC and SVHHC.) The licensees reported that based upon initial information developed by the physics staff at NRCC, it appeared likely that additional brachytherapy treatment errors had occurred at both DMC and SVHHC.

The following day, March 23, 1994, the licensees reported an additional brachytherapy misadministration at DMC, and nine other incidents due to the same error that resulted in administered doses greater than prescribed (one at DMC and eight at SVHHC) (Preliminary Notification of Event or Unusual Occurrence PNO–IV–94–010A; March 24, 1994; Docket No. 030–02389). The misadministrations reported by DMC involved administration of radiation such that the doses received by the patients exceeded the prescribed doses by 21 and 24 percent. In each case, the patient had received radiation by external beam as well as "boost" doses administered via brachytherapy. The overdoses noted above pertain only to the brachytherapy component of each treatment.

During the initial telephonic report, NRCC staff explained that during a recent routine treatment setup a new staff member identified errors in a dose table generated by a Theratronics Theraplan L treatment planning system. Following considerable review of treatment plans and data generated using the treatment planning system, the physics staff at NRCC, with assistance from Theratronics, concluded that the data in a software file used to compute dose tables for cesium-137 (Cs–137) sources were deleted and were later replaced with data which did not properly characterize the Cs–137 sources used by DMC and SVHHC. The computer-generated dose tables that were computed using erroneous data were in error by as much as 20 to 25 percent. The errors were not detected because an incorrect reference dose table was used to verify and adjust the output of the treatment planning algorithm and individual patient treatment plans.

An NRC inspection was conducted at the facility on March 28 through April 1 and April 5 through 29, 1994. In addition, the events were reviewed by regional and headquarters NRC staff accompanied by personnel from the Idaho National Engineering Laboratory on April 6 through 8, 1994, to examine generic aspects of the root causes and contributing factors.

The physics staff at NRCC promptly corrected the data in the Theraplan L software and recalculated the doses received by the patients. Based upon a review of the recalculated doses conducted by the authorized users and an independent medical consultant contracted by NRCC, the authorized users have determined that no long-term adverse health effects beyond those normally expected for this form of treatment are anticipated for the patients. The licensee has been informed that an NRC medical consultant will review each case in order to provide an independent assessment of the potential consequences of the overdoses.

The patients involved in the misadministrations were notified both orally and in writing.

Cause or Causes—The inspection disclosed that the root cause of the misadministrations was a failure to conduct independent (manual) verification checks of treatment plans that were adequate to determine the accuracy of computer-generated dose tables (Letter from Leonard J. Callan, Regional Administrator, NRC Region IV, to Lane Basso, Chief Executive Officer, Deaconess Medical Center, Docket No. 030–02389, License No. 25–01051–01, dated May 26, 1994; and Letter from Samuel J. Collins, Director, Division of Radiation Safety and Safeguards, to Mr. Lane Basso, Chief Executive Officer, Deaconess Medical Center, forwarding NRC Inspection Report 030–02389/94–01, Docket No. 030–02389, License No. 25–01051–01, dated June 10, 1994). Several factors involving clarity of instructions provided in the Theraplan user's manual, and in prompts and data presented to treatment planning system users in printed format and at the system console, were identified as contributing factors to the inadvertent entry of and failure to detect the erroneous data entered in program software for linear Cs–137 sources.

The inspection also disclosed significant weaknesses in DMC's implementation of its quality management program (QMP) for brachytherapy procedures. In addition, several apparent violations of NRC requirements relating to DMC's QMP and its implementation were identified. One apparent violation involved a failure to establish a QMP in January 1992, as required, although the inspection confirmed the DMC later established a QMP in May 1992. However, the QMP established by DMC failed to meet the following requirements: (1) that written directives are signed by authorized users and completed in accordance with NRC regulations; (2) that final plans of treatment are in accordance with the respective written directive; and (3) that each administration of radiation is in accordance with the applicable written directive. Other apparent violations included failures to (1) conduct an annual review of the QMP during the calendar years 1992 and 1993, (2) train all individuals working under the supervision of DMC's authorized users in the provisions of its QMP, (3) train nursing personnel who cared for patients undergoing brachytherapy treatment in accordance with the conditions of DMC's license, and (4) record all required information in survey records related to brachytherapy and in brachytherapy source usage records.

Actions Taken To Prevent Recurrence

Licensee—DMC voluntarily suspended its brachytherapy program until certain corrective measures could be implemented. However, because the findings of the inspection indicated significant, programmatic weaknesses in DMC's QMP and its implementation, the NRC sought to confirm with DMC staff the specific actions planned for completion prior to resuming brachytherapy treatments. The licensee's proposed corrective actions were documented in a Confirmatory Action Letter (CAL) issued by the NRC on May 3, 1994 (Letter from Leonard, J. Callan, Regional Administrator, NRC Region IV, to Lane Basso, Chief Executive Officer, Deaconess Medical Center forwarding Confirmatory Action Letter, Docket No. 030–02389, License No. 25–01051–01, dated May 3, 1994). As of the date of this report, the licensee has not yet completed each of the actions described in the CAL and has continued suspension of its brachytherapy program.

NRC—An enforcement conference was held with the licensee on June 28, 1994, to discuss the apparent violations described above and to review the corrective actions taken by the licensee. NRC is continuing its deliberations regarding any proposed enforcement action.

An NRC Information Notice has been drafted to inform other licensees of the particulars of this case and of the importance of conducting adequate checks of computer-generated treatment plans. NRC has also discussed concerns related to the Theraplan treatment planning system software, and related instructions provided by the manufacturer, with representatives from the U.S. Food and Drug Administration (FDA). FDA has recently cleared the software for the treatment planning system to allow modifications of existing software to be imported into the United States.

A medical consultant will review each misadministration and provide NRC with an independent assessment of the overdoses and the potential adverse health effects to patients.

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94–9 Medical Brachytherapy Misadministration at Memorial Hospital in South Bend, Indiana

One of the AO reporting guidelines notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an AO.

Date and Place—April 13, 1992; Memorial Hospital; South Bend, Indiana.

Nature and Probable Consequences—On April 13, 1992, the first of two brachytherapy treatments was begun. Each of the treatments was to deliver 15 gray (GY) (1500 rad) to the patient's cervix. For the first treatment, five cesium-137 (Cs–137) sources were to be loaded into a treatment device, known as a Fletcher-suit applicator, which was placed in the patient's vagina. The sources were placed into afterloaders by a dosimetrist in preparation for placement in the applicator. The afterloaders were then placed in the applicator by the treating physician.

About eight hours later, the patient's care provider discovered a Cs–137 source on the floor near the foot of the patient's bed. The source was found after the care provider had changed the patient's bed linen. The care provider recovered the source with long handled forceps and placed it in a shielded container.

The treating physician and the licensee's Radiation Safety Officer (RSO) were notified. They determined that one afterloader in the applicator was empty and that the Cs–137 source had not been placed in the applicator. The source was then placed in the afterloader and loaded into the applicator to continue the patient's treatment.

The first treatment was then completed, giving the patient a dose to the treatment site of 13.83 Gy (1383 rad), which was 8 percent less than the intended dose. The second treatment was then performed on April 27 and 28, 1992, without incident.

The licensee investigated the incident and concluded that the source had fallen on the floor while it was being placed in the afterloading device by the dosimetrist. The incident was not reported to NRC because the radiation dose to the treatment site differed by only 8 percent from the intended dose. This variance would not require reporting as a misadministration.

During an NRC inspection on May 4 and 5, 1994, the inspector reviewed the circumstances surrounding the treatment incident. The inspector evaluated the routine radiation surveys of the patient's room that were done after the radiation sources were placed in the applicator. The surveys showed that it was unlikely that there was an unshielded Cs–137 source on the floor of the room.

Further inquiry by the inspector led to the determination that the source likely fell from the afterloader while it was being placed in the applicator. The physician reported having difficulty in placing the afterloader in the applicator, and, according to the treatment chart, the patient had reported that she felt a small metal object fall next to her skin during the source placement.

As a result, the source may have been next to the skin of the patient's thigh for about 7.5 hours resulting in a radiation dose of up to 10.34 Gy (1034 rad), according to the licensee's calculation.

An NRC medical consultant was retained to evaluate the case and concluded that the radiation dose to the patient's thigh could result in some later damage to the tissue of the patient's thigh.

Because this incident resulted in a radiation dose to the wrong treatment site, this constitutes a misadministration.

The licensee notified the patient and the patient's physician of the misadministration on May 6, 1994. However, the licensee did not provide a written report to the patient until June 27, 1994, after NRC inquired about patient notification.

Cause or Causes—The incident apparently was the result of the source falling out of the afterloader as it was being placed in the applicator. The physician reported some difficulty in placing the sources and apparently did not observe the source when it fell.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for placing the radiation sources, including use of a pillow under a patient's pelvis in difficult situations. Its investigation of any future incidents will also include an evaluation of radiation doses to unintended treatment sites.

NRC—The NRC inspection during May 4 and 5, 1994, identified two violations of NRC requirements. They were (1) failure of the licensee's Radiation Safety Committee and RSO to adequately investigate a possible misadministration to include consideration of possible radiation doses to the wrong treatment sites; and (2) failure to provide a written report to the patient within 15 days of the discovery of a misadministration. A

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Notice of Violation (Letter from Roy J. Caniano, Chief, Nuclear Materials Safety Branch, NRC Region III, to George Soper, Senior Vice President, Memorial Hospital, forwarding Notice of Violation and Inspection Report 030–17335/94001, Docket Nos. 030–17335 and 030–191173, License Nos. 13–18881–01 and 13–18881–02, dated July 15, 1994) was issued to the licensee on July 15, 1994. There was no Civil Penalty involved.

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94–10 Teletherapy Misadministration at Jewish Hospital, Washington University Medical Center, in St. Louis, Missouri

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation can be considered as an AO.

Date and Place—April 22, 1994; Jewish Hospital, Washington University Medical Center; St. Louis, Missouri.

Nature and Probable Consequences—A patient was being treated for cancer of the brain. The written prescription directed that a 3000 centigray (cGy) (3000 rad) total absorbed dose be delivered in a series of 10 treatments of 300 cGy (300 rad) each. Each treatment was to consist of 150 cGy (150 rad) from the left side, and 150 cGy (150 rad) from the right side. The eyes were to be shielded during the treatments. The patient's first treatment on April 21, 1994, was delivered without incident in accordance with the prescription.

On April 22, 1994, the licensee informed NRC that after administering the first treatment to the patient, the physicians decided to include the patient's right eye orbit into the whole brain treatment field for subsequent treatment fractions. The radiation therapist was verbally instructed of the change, but the written directive was not changed.

The first portion of the second treatment was properly delivered using the modified treatment plan. However, the radiation therapist erroneously changed the treatment angle for the second portion of the treatment. The error meant that the left eye orbit received the radiation dose instead of the right eye orbit. Consequently, the left eye orbit erroneously received a dose of approximately 150 cGy (150 rad) and the right eye orbit received 150 cGy (150 rad) less than intended. The licensee stated that the patient received an explanation of the event and that the error did not affect the treatment. The entire treatment was completed on May 6, 1994, without further incident. The patient subsequently died as a result of the cancer. The NRC consultant determined that the misadministration had no impact on the patient's death.

Cause or Causes—Failure of the authorized physician to prepare a change in the written directive, and failure to effectively supervise the administration of the treatment.

Action Taken To Prevent Recurrence

Licensee—The licensee's corrective actions included (1) policy changes to clarify the radiation therapists' responsibility when treatment plan changes are made; (2) retraining staff on quality management program (QMP) procedures; (3) requiring that on the first day of treatment the setup is supervised by a physician; (4) modifying the written directive form used for documenting written directives and subsequent revisions; and (5) reviewing and revising the current QMP and submitting the changes to NRC for review.

NRC—NRC Region III conducted an inspection from May 2 through June 9, 1994, to review the misadministration. NRC also contacted a medical consultant to review the incident. Significant violation of NRC requirements were identified during the inspection. The violations included (1) failure to make a written revision to a written directive prior to administering a revised teletherapy dose to a patient; (2) failure to review the written prescription; (3) failure to verify that details of the administration of the verbally revised dose were in accordance with the written directive and plan of treatment; (4) failure to follow the written QMP procedures established by the licensee; and (5) failure to include in written directives the overall treatment period. On July 11, 1994, NRC Region III issued a Notice of Violation (NOV) with a Severity Level III violation with no fine assessed (Letter from W.L. Axelson, Director, Division of Radiation Safety and Safeguards, to Walter Davis, Jr., Assistant Dean and Chief Facilities Officer, Washington University Medical Center, forwarding Inspection Report No. 030–15101/94001, Docket No. 030–15101, License No. 24–00063–10, dated July 11, 1994). The NOV requires the licensee to document the specific actions taken and any additional actions planned to prevent recurrence.

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94–11 Medical Brachytherapy Misadministration at The Queen's Medical Center in Honolulu, Hawaii

One of the AO reporting guidelines notes that administering a therapeutic radiation dose greater than 1.5 times that intend from a sealed source should be considered an AO.

Date and Place—May 2, 1994; The Queen's Medical Center; Honolulu, Hawaii.

Nature and Probable Consequences—A patient was prescribed to receive two treatments of 1000 centigray (cGy) (1000 rad) to the patient's right eye using a strontium-90 (Sr-90) eye applicator. The treatment plan called for the two treatments to be scheduled one week apart. The first treatment was properly delivered on April 25, 1994, by keeping the source in contact with the patient's right eye for 18 seconds. On May 2, 1994, when the patient returned for the second treatment, the same physician treated the patient, but a different oncology nurse assisted. The physician did not refer to the written directive or to the dose-rate information available with the eye applicator, although he had used other applicators in the past. He also did not discuss the procedure with the oncology nurse prior to the second treatment. At the end of the desired 18-second period, the nurse raised her voice and paused at the count of "18" (as she had been trained) without saying "stop" as the physician expected. As a result, the treatment continued until 32 seconds had passed, when the physician realized that the desired time must have elapsed. As a result, the patient received 1778 cGy (1778 rad) to the right eye during the second treatment, rather than the prescribed 1000 cGy (1000 rad).

The Radiation Safety Officer reported the misadministration to the NRC Operations Center at 8:37 p.m. on May 2, 1994. The referring physician was also notified on the same day. The patient was notified of the event during follow-up examinations by the referring physician on May 5 and May 14, 1994. No clinical damage was observed by the referring physician, and none is expected. The patient will be examined during subsequent follow-up visits to the medical center.

The NRC staff retained a medical consultant to evaluate the potential medical effects on the patient as a result of the misadministration. The medical consultant stated that dosimetry for Sr-90 eye applicators is difficult, due to calibration factors, clinical factors, and treatment technique. The consultant will send an update on the dosimetry and calibration in the near future. The medical consultant stated that the increased unintended dose is within the range of normal treatments. He indicated that the medical consultant stated that the increased unintended dose is within the range of normal treatments. He indicated that the medical consequences of the misadministration would be negligible.

Cause or Causes—Part of Title 10 of the *Code of Federal Regulations* states that licensees must establish and maintain a written quality management program (QMP) to provide high confidence that each administration is in accordance with the written directive. However, at the time of the treatment, the licensee did not have a written procedure to require that staff members confirm that the planned administration will be as specified in the written directive. Consequently, neither the physician nor the oncology nurse referred to the written directive, nor did they discuss the procedure before it took place. Inconsistent training given to the oncology nurses in the method of timing treatments was also a contributing factor.

Actions Taken To Prevent Recurrence

Licensee—The licensee revised the QMP procedures to prevent recurrence of similar misadministrations. The new procedure specifies that prior to the procedure, the staff will determine that the eye applicator is as specified in the written directive. It also states that the staff must seek guidance prior to continuing if they do not understand any aspect of the written directive.

NRC—NRC Region IV conducted an inspection at The Queen's Medical Center on May 16–17, 1994, to review the circumstances associated with the misadministration and its probable cause(s). The NRC staff is currently reviewing the inspection results for possible violations, and enforcement action is pending.

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94–12 Medical Sodium Iodide Misadministration at Stamford Hospital in Stamford, Connecticut

One of the AO reporting guidelines notes that administering a radiopharmaceutical other than the one intended which results in any part of the body receiving unscheduled diagnostic radiation, and the actual dose to the wrong body part, is five times the upper limit of the normal range of exposures prescribed for diagnostic procedures involving that body part, can be considered an AO.

Date and Place—May 17, 1994; Stamford Hospital; Stamford, Connecticut

Nature and Probable Consequences—On May 19, 1994, the licensee notified the NRC Operations Center that on May 17, 1994, a patient was administered 37 megabecquerel (MBq) (1 millicurie [mCi]) of sodium iodide iodine–131 (I–131) for a whole body scan when no such study was prescribed. The licensee identified this misadministration during review of the scan by the authorized user.

A patient was scheduled by a referring physician to have a "whole blood red cell mass" test, correctly known as a "red blood cell volume" test. This test involves withdrawing an amount of blood from the patient, and labeling the patient's red blood cells *in vitro* with the radionuclide chromium–51 having a nominal activity of 1.02 to 3.7 MBq (30–100 microcurie [μCi]). This is followed by reinjection of the labeled red blood cells into the patient, and measurement of radioactivity in blood samples withdrawn from the patient 10 to 30 minutes later. The referring physician contacted the patient's Health Maintenance Organization (HMO), as the HMO requires that it place the order with Stamford Hospital. The HMO wrongly contacted the central booking area for Nuclear Medicine at Stamford Hospital, rather than the Clinical Laboratory which performs this test as authorized in Part 35.100 of Title 10 of the *Code of Federal Regulations*. The central booking secretary, and the HMO secretary, in an attempt to fit the procedure into one of those listed under Nuclear Medicine, converted the prescribed "Whole Blood Red Cell Mass" test into "Whole Body I–131 Scan," a scan that uses 37 MBq (1 mCi) of I–131. The central booking secretary then printed the name of the referring physician at the bottom of the form for "Consultation for Nuclear Medicine," and sent it to the Nuclear Medicine Department where it was received on May 13, 1994. A nuclear medicine technologist (NMT) looked at the form and saw that it was for "total red cell mass," but since the NMT knew the referring physician, the NMT assumed that this was a new test using I–131 to determine "total red cell mass." The NMT ordered the requested 37 MBq (1 mCi) I–131 capsule, which was administered on May 16, 1994. The patient was scanned on May 17, 1994, and May 18, 1994, the authorized user (AU), who is also the Radiation Safety Officer (RSO), read the films. The AU immediately noticed the error and notified the referring physician, who notified the patient.

The licensee estimated that the patient received a whole body dose equivalent of 4.7 millisievert (470 millirem) and a thyroid absorbed dose of 800 centigray [cGy] (800 rad). NRC was notified within 24 hours of the discovery of the misadministration. The licensee submitted a written report of the misadministration to NRC Region I on May 31, 1994.

Cause or Causes—The licensee had failed to establish a quality management program (QMP) for administering quantities of I–131 and iodine–125 (I–125) greater than 1.11 MBq (30 μCi) which would require written directives and failed to instruct supervised individuals in NRC requirements of a QMP.

Actions Taken To Prevent Recurrence

Licensee—The licensee now requires that (1) all requests for diagnostic or therapeutic procedures be in writing and sent via facsimile transmission from the referring physician's office; (2) all administrations above 1.11 MBq (30 μCi) of I–131 be done only by written order from the AU/RSO or other AU's authorized to do so; (3) all diagnostic and therapy requisitions will be reviewed by a radiologist, and designated as approved or not approved; (4) all technologists will be trained in regard to the clinical diagnosis for which each test is applicable; (5) the central booking staff will meet with the RSO and will be informed that the clinical diagnosis must match the test being requested, and that any deviation from the match or any diagnosis that they don't understand must be challenged and brought to the attention of the radiologist; and (6) the RSO and physicist will review the QMP annually and discuss it at the Radiation Safety Committee meeting and with the entire nuclear medicine staff.

NRC—NRC Region I conducted a special inspection on May 23 and 24, and June 1 and 6, 1994, to investigate the circumstances of the misadministration. An NRC inspection report (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Andrew H. Banoff, Vice President, Ambulatory Services, Stamford Hospital forwarding Inspection Report No. 030–01265/94–001, Docket No. 030–01265, License No. 06–06697–02, dated June 15, 1994) was issued June 15, 1994, and identified the following five apparent violations: (1) failure to establish a QMP for amounts of I–125 and I–131 greater than 1.11 MBq (30 μCi); (2) failure to conduct annual reviews of the QMP; (3) failure to have records specifying the methods used to verify patients identity which can be audited; (4) failure to have written directives signed by the authorized user; and (5) failure to instruct individuals in the QMP. An NRC medical consultant reviewed the information in the NRC's inspection report, the licensee's 15-day misadministration report, and the preliminary notification, and conducted telephone interviews with the RSO/AU.

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The medical consultant concluded that without an actual measurement of the thyroid uptake of I–131 there was a moderate uncertainty in the estimate of the radiation dose to the thyroid, and estimated a radiation absorbed dose of approximately 530-to-1600 cGy (530-to-1600 rad). The medical consultation further stated that it is unlikely that the misadministration will result in a clinically detectable effect on the patient's thyroid. The impact on the patient's health should be negligible, with no expected long-term disability.

An enforcement conference was held with the licensee on June 24, 1994. The five violations were classified as a Severity Level III problem and a Notice of Violation and Proposed Imposition of Civil Penalty (Letter from Thomas T. Martin, Regional Administrator, to Andrew H. Banoff, Vice President, Ambulatory Services, Stamford Hospital forwarding Notice of Violation and Proposed Imposition of Civil Penalty—$1,250, Docket No. 030–01265, License No. 06–06697–02, dated July 11, 1994) for $1,250 was issued on July 11, 1994.

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94–13 Medical Brachytherapy Misadministration at Blodgett Memorial Hospital in East Grand Rapids, Michigan

One of the AO reporting guidelines notes that a therapeutic dose that is greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—June 14, 1994; Blodgett Memorial Medical Center; East Grand Rapids, Michigan.

Nature and Probable Consequences—On June 15, 1994, the licensee notified NRC that a misadministration occurred on June 14, 1994, during the second of a series of three treatments to an eye surface lesion using a strontium-90 (Sr-90) eye applicator. The misadministration resulted in the patient receiving a total dose that was 53.6 percent above the intended total dose.

The patient was to receive 25.5 gray (Gy) (2550 rad) in a series of three equal treatments. The intended treatment time for each of the three treatments was 19.1 seconds. The first treatment was performed as intended. During the second treatment, the treatment time was misread and the patient received treatment for 1 minute and 9 seconds. The second treatment dose was 30.68 Gy (3068 rad) instead of the intended 8.5 Gy (850 rad). The third treatment was not administered. Therefore, the patient's eye received a total dose of 39.18 Gy (3918 rad).

The patient and referring physician were notified of the incident by the licensee. The licensee and the referring physician do not anticipate any serious health consequences to the patient and have conducted follow-up medical examinations.

Cause or Causes—The licensee reported that when the first treatment fraction was performed on June 7, 1994, the treatment time of 19.1 seconds was erroneously recorded on the medical chart as 1.91 seconds. When it came time for the second treatment fraction to be administered, the therapist made the assumption that the treatment time was 1 minute 9 seconds. The physician did not verify the specific details of the administration prior to administering the brachytherapy dose, and did not confirm the treatment time. In addition, the licensee failed to establish a written Quality Management Program (QMP) for the Sr-90 eye application eye application, and the therapist was not instructed in the licensee's QMP.

Action Taken To Prevent Recurrence

Licensee—The licensee reported that in the future the brachytherapy quality management program (QMP) will be strictly adhered to when performing eye applications, and a physics check will be done before each treatment fraction. In addition, a source activity decay chart for Sr-90 will be provided to the physicians for immediate reference.

NRC—NRC Region III conducted an inspection from June 28 through July 6, 1994, to review the circumstances of the misadministration. An NRC medical consultant, retained to review the case, concluded that chances are favorable that the patient will suffer no health complications, but the risk of future complications is not zero.

On August 18, Region III issued a Notice of Violation (Letter from John B. Martin, Regional Administrator, NRC Region III, to Randy Oostra, Assistant Vice President, Blodgett Memorial Medical Center, forwarding Notice of Violation, NRC Inspection Report No. 030–02008/94001, Docket No. 030–02008, License No. 21–01424–03, dated August 18, 1994) to the licensee for the following violations: (1) treating a patient with the Sr-90 eye applicator without preparation of a written directive; (2) failure to establish and use a written QMP for the Sr-90 eye applicator; (3) investigation of the misadministration by the Radiation Oncology Department instead of the Radiation Safety Officer as required; (4) failure to maintain required records of the Sr-90 source usage; (5) failure to maintain the manufacturer's instructions for the eye applicator as required. There was no Civil Penalty assessed for the violations.

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94–14 Medical Brachytherapy Misadministration that Required Medical Intervention at The William W. Backus Hospital in Norwich, Connecticut

One of the AO reporting guidelines notes that a therapeutic dose that results in an actual dose greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—June 21, 1994; The William W. Backus Hospital; Norwich, Connecticut.

Nature and Probable Consequences—NRC Region I was notified by the licensee on June 21, 1994, of a therapeutic misadministration that had occurred at its facility earlier that day. The misadministration involved a patient who was prescribed to receive a prostate implant of 112 iodine-125 (I–125) seeds have a radionuclide activity per seed of between 15.9 and 17.0 megabecquerel (MBq) (0.43 and 0.46 millicurie [mCi]), but who instead was implanted with 112 I–125 seeds having an activity of 166 MBq (4.49 mCi) each.

Following the preplanning dosimetry performed at Yale-New Haven Hospital (YNHH), a written directive was prepared by an authorized user and was sent via facsimile transmission to The William H. Backus Hospital on June 16, 1994, by the dosimetrist from YNHH. (YNHH is under contract with The William W. Backus Hospital to provide radiation oncologists, dosimetrists and health physicists, and two of the physicians from YNHH are listed as authorized users on The William W. Backus Hospital's NRC license). The Chief Nuclear Medicine Technologist (NMT) received the directive and called Medi-Physics in Arlington Heights, Illinois, to place the order for the required I–125 seeds. The package containing the seeds arrived at The William W. Backus Hospital on June 17, 1994, and was received by one of the NMTs, who was not the same individual who had ordered the seeds. The NMT opened the package after making the required radiation surveys. In accordance with the licensee's established procedure, information on the packing slip that accompanied the package was compared with the information that was posted on the lead "pig" that contained the seeds. The verified information included the number of seeds (112), activity per seed (166 MBq [4.49 mCi] per seed), and total activity (18,600 MBq [502.88 mCi]), and was entered into the sealed source inventory log book by the NMT.

On June 21, 1994, the dosimetrist from YNHH arrived at The William W. Backus Hospital to assist in the implant procedure. The same dosimetrist had performed the preplanning dosimetry, and had prepared the written directive that was signed by the authorized user. The dosimetrist took the package after reviewing the documentation, but failed to notice that the activity of the seeds was 10 times higher than the prescribed activity. The dosimetrist made entries into the log book before removing the container from the nuclear medicine hot lab, and the entries documented that 112 seeds with activity of 166 MBq (4.49 mCi) each were taken to the operating room.

The implant procedure was completed between 10 and 11 a.m. on June 21, 1994, in the presence of the authorized user, who at the completion of the procedure documented that 112 I–125 seeds with total activity of 1840 MBq (49.73 mCi) were implanted. Following the implant procedure, the required radiation surveys were made by the dosimetrist and the dose rate of 1 microcoulomb per kilogram (4 milliroentgen) per hour at 1 meter (39 inch) from the patient was recorded by the dosimetrist.

The patient was moved to the recovery area, and the dosimetrist returned to the nuclear medicine department to complete the documentation required by the licensee's procedure. At this time, the dosimetrist noted discrepancies between the entries made in the log book by the NMT at the time of receipt of the package, and those made by himself earlier that morning. The dosimetrist assumed that these were clerical errors, and therefore "corrected" two of the three sets of entries in the log book by drawing lines across them and entering the "correct" figures as 16.6 MBq (0.449 mCi) per seed and 1860 MBq (50.288 mCi) total, respectively.

The dosimetrist realized the possibility of an error when it was noted that the packing slip also indicated that each seed had an activity of 166 MBq (4.49 mCi). The dosimetrist contacted the Chief NMT, and together they both called Medi-Physics to verify the activity of the seeds. Upon confirmation by Medi-Physics that each seed had an activity of 166 MBq (4.49 mCi), the surgeon was notified of the error. (The surgeon was also the patient's referring physician.) Unable to contact the authorized user who had supervised the implant procedure, the surgeon consulted with a second authorized user (also from YNHH) and the two agreed that a surgery to explant as many seeds as possible was the most appropriate approach under the circumstances. This involved removal of the patient's prostate gland where a majority of seeds were located. The patient and his family were informed of the misadministration, and the patient was brought back to the operating room and prostatectomy was completed at approximately 4:00 p.m.

The licensee was able to explant 69 of the 112 seeds that were implanted, leaving 43 seeds still remaining inside the patient's body. During the explanting procedure, one of the I–125 seeds was ruptured. The patient was administered prophylactic potassium iodide to block the possible uptake of I–125 by the patient's thyroid. The licensee also collected the fluids and the tissue that may have been contaminated. Approximately 5 liters (5.28 quarts) of fluid were collected and appeared to be contaminated with approximately 1.85 MBq (0.050 mCi) of I–125. The personnel who were present in the operating room during the surgery were also monitored for possible uptake, and the results indicated no internal contamination of these personnel.

The patient was transferred to YNHH on June 23, 1994, in order that a more precise localization of the remaining seeds could be made by the use of equipment available at that facility. At YNHH three-dimensional scans were taken, and on June 27, 1994, the patient was again operated on and an additional 15 seeds were explanted. This left 28 seeds still remaining in the patient. The remaining seeds appeared to be scattered in the lower pelvic region and the licensee decided that further mitigating surgery at this time was not warranted. The patient appeared to be in stable condition. Preliminary dose calculations by the licensee indicated that the remaining seeds would cause the body tissue to receive a radiation dose of the same order of magnitude as would have been received by the surrounding organs and tissue if the originally planned seeds were permanently implanted. The patient was discharged from YNHH on July 4, 1994.

Cause or Causes—There was a misunderstanding in communication between the Chief NMT who ordered the seeds, and the representative of Medi-Physics who received the order. The Chief NMT and the NMT were not familiar with the magnitude of the radionuclide activities that are used in prostate implant procedures. The NMT did not inform the Chief NMT as to the activity received. The Chief NMT was confused by the two telephone calls that were received from Medi-Physics subsequent to placing of the order, but failed to act to clear the confusion. The licensee did not have any procedure that required a comparison of the material ordered and the material received. The YNHH dosimetrist failed to notice that the activity of the seeds was 10 times higher when he logged out the seeds. The licensee did not have a procedure that required an independent verification of the activity that was being loaded into the implant needles. The authorized user relied totally on the dosimetrist and did not verify the activity of the seeds. Dual control (by the licensee and YNHH) of the radiation safety program related to brachytherapy procedures caused the YNHH to assume that the Chief NMT was familiar with the ordering of the radioactive material and did not need additional training.

Actions Taken To Prevent Recurrence

Licensee—The licensee made a commitment to voluntarily suspend its brachytherapy program until written authorization is granted by NRC to resume the program. This commitment was documented in a Confirmatory Action Letter (Letter from Charles W. Hehl, Director Division of Radiation Safety and Safeguards, to Brian J. Smithwick, Vice President and Chief Executive Officer, The William W. Backus Hospital, forwarding Confirmatory Action Letter 1–94–010, Docket No. 030–01287, License No. 06–11734–02, dated June 23, 1994). The licensee was considering a requirement that radioactive sources be assayed prior to implantation, and that the implant sources be ordered in writing from the supplier.

NRC—NRC Region I dispatched an inspection team, which arrived at the facility at approximately 2:00 p.m. on June 22, 1994, to review the circumstances surrounding the misadministration. An NRC medical consultant was engaged to assess the effects of the misadministration on the patient. The medical consultant reviewed the events and the mitigating actions that the licensee has taken to minimize the impact of the misadministration on the patient. The consultant advised NRC that the licensee's actions appeared appropriate. On June 23, 1994, NRC Region I, in consultation with the NRC Office for Nuclear Material Safety and Safeguards (NMSS) and the NRC Office for Analysis and Evaluation of Operational Data, upgraded its inspection effort to an Augmented Inspection Team (AIT). NMSS contacted the U.S. Department of Energy's Idaho National Engineering Laboratory (INEL), who formed a team of consultants to provide technical support to the AIT. The AIT and INEL support consultants returned to The

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William W. Backus Hospital on June 28, 1994 and also to YNHH. NRC Region I issued a press release on June 23, 1994, and the AIT held a public exit meeting with the licensee at The William W. Backus Hospital on July 7, 1994. NRC has received the information gathered on the incident by INEL support team and incorporated this information in the AIT report issued to the licensee on August 4, 1994 (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Michael T. Moore, President and Chief Executive Officer, The William W. Backus Hospital, forwarding NRC Augmented Inspection Team (AIT) Report No. 030–01287/94–001, Docket No. 030–01287, License No. 06–11734–02, dated August 4, 1994). In a letter to the licensee dated August 10, 1994, NRC indicated that its review of the AIT report noted two apparent violations: (1) 10 CFR 35.32(a); and (2) 10 CFR 35.25(a) (Letter from Charles W. Hehl, Director, Division of Radiation Safety and Safeguards, to Michael T. Moore, President and Chief Executive Officer, The William W. Backus Hospital, forwarding NRC Inspection Report No. 030–01287/94–001, Docket No. 030–01287, License No. 06–11734–02, dated August 10, 1994). NRC will discuss these apparent violations at an Enforcement Conference scheduled for August 24, 1994.

Dated at Rockville, MD this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–27005 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–30266–ML–Ren; ASLBP No. 95–701–01–ML–Ren]

Innovative Weaponry, Inc.; Albuquerque, New Mexico; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Renewal proceeding.

Innovative Weaponry, Inc., Albuquerque, New Mexico

Byproduct Material License No. 30–23697–01E

The President Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to an October 5, 1994 request for a hearing submitted by Innovative Weaponry, Inc. (IWI). The request is in response to a "Notice of Denial of License Application" and "Demand for Information" issued by the NRC Staff to IWI on September 23, 1994. The notice specifies the basis for the Staff denial of a license renewal application of IWI.

The presiding officer in this proceeding is Administrative Judge Charles Bechhoefer.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 25th day of October 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–27002 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–339]

Virginia Electric and Power Company; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its April 8, 1993, as supplemented July 28, 1993, and September 2, 1993, application for proposed amendment to Facility Operating License No. NPF–7 for the North Anna Power Station, Unit No. 2, located in Louisa County, Virginia.

The proposed amendment would have allowed use of the Westinghouse laser-welded sleeving process for repair of defects in steam generator tubes.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 12, 1993 (58 FR 28062). However, by letter dated October 11, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 8, 1993, as supplemented by letters dated July 28, 1993, and September 2, 1993, and the licensee's letter dated October 11, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland this 25th day of October, 1994.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Acting Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27003 Filed 10–31–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

GENERAL SERVICES ADMINISTRATION

U.S. Court Facilities in Brooklyn and Reuse of General Post Office Environmental Impact Statement

AGENCIES: Postal Service, General Services Administration.

ACTION: Notice of Intent.

SUMMARY: The United States Postal Service and the United States General Services Administration are issuing this notice to advise the public that an Environmental Impact Statement will be prepared and considered for proposed Federal Court Facilities and reuse of the General Post Office in Brooklyn, New York.

FOR FURTHER INFORMATION CONTACT:

Mr. Leon Levine, Environmental Specialist, United States Postal Service, P.O. Box 40591, Philadelphia, PA 19197–0591

Mr. Peter A. Sneed, Director, Planning Staff, Public Buildings Service, U.S. General Services Administration, 26 Federal Plaza—Room 1609, New York, NY 10278

SUPPLEMENTARY INFORMATION: The United States Postal Service (USPS) and the United States General Services Administration (GSA) will prepare an Environmental Impact Statement (EIS) for the proposed Federal Court project. The project will entail reuse and modernization as well as partial infill construction of the Brooklyn General Post Office building; demolition of the existing Celler Federal Office Building and construction of a new, larger court building in its place; and modernization of the existing Courthouse. The General Post Office Building, located at 271 Cadman Plaza East, across Tillary Street from the Emanuel Celler Federal Office Building and Courthouse at 225 Cadman Plaza East, is listed on the State and National Registers of Historic Places, and is a designated New York City Landmark. The two parcels total approximately 4 acres and the three existing buildings contain approximately 1,011,000 gross square feet. As proposed, the project would provide approximately 1,531,000 gross square feet, and would provide space for the Federal Courts, the U.S. Attorney, the U.S. Marshals Service, and various support functions. A portion of the ground floor of the General Post Office Building would continue to house a retail postal facility. The proposed project is being undertaken to serve the dual needs of USPS, which seeks an appropriate reuse for the General Post Office building, now that its mail-processing functions have been relocated to a new facility in the Spring Creek area of Brooklyn, and GSA, which needs to accommodate the projected space requirements of the Federal Courts and related agencies.

The EIS will evaluate alternative sites and designs for the proposed court facilities and reuse of the General Post Office as well as the No Build alternative. The EIS will assess impacts on the affected environment, including the following resource areas: land use and community facilities, historic resources, visual character, economics, traffic and transportation, air quality, noise, hazardous materials, and utilities. Construction impacts will also be assessed.

The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations and procedures as set forth in the Code of Federal Regulations (CFR), the USPS *Facilities Environmental Handbook*, and the GSA *PBS Handbook Preparation of Environmental Assessments and Environmental Impact Statements*. To ensure that the full range of issues and alternatives relating to the proposed project are addressed, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held on November 15, 1994, from 2 PM to 4 PM and 7 PM to 9 PM in the Dibner Library Auditorium, Polytechnic University, CATT Building, 5 Metrotech Center, Brooklyn, NY. Written comments may be mailed to either of the informational contact persons identified above no later than December 2, 1994.

Dated: October 24, 1994.

Dennis E. Wamsley,

USPS Realty Asset Management.

Dated: October 26, 1994.

Karen R. Adler,

Regional Administrator, GSA.

[FR Doc. 94–27021 Filed 10–31–94; 8:45 am]

BILLING CODE 6820–23–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34690; File No. SR–Amex–94–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing of Entities Resulting From Limited Partnership Rollups

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on September 6, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to adopt Section 126 to the *Company Guide* to allow the listing of entities resulting from limited partnership rollup transactions under specified conditions and to impose certain corporate governance standards on limited partnerships. The text of the proposed rule follows (italics reflects proposed additions to the Rules):

§ 126 LIMITED PARTNERSHIPS—No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Exchange Act), shall be eligible for listing unless (i) the rollup transactions was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Exchange Act, as it may from time to time be amended and (ii) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Exchange Act participates in the rollup transaction. The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

Each limited partnership listed on the Exchange shall have a corporate general partner or co-counsel partner which must satisfy the independent director and audit committee requirements of Section 121.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 1993, Congress adopted the Rollup Reform Act of 1993 to regulate limited partnership rollups. The Rollup Reform Act amended Section 6 of the Securities Exchange Act of 1934 ("Exchange Act") to provide that the rules of an exchange must prohibit the listing of a rollup security unless "the transaction was conducted in accordance with procedures designed to protect the rights of limited partners." Section 6(b)(9) of the Exchange Act further specifies certain procedures which would protect limited partners' rights.

In accordance with Section 6(b) of the Exchange Act, the Exchange is proposing to adopt a new Section 126 to

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the *Company Guide* which would condition the listing of securities issued in a rollup transaction upon satisfaction of the criteria set forth in Section 6(b)(9) of the Exchange Act. The new section would also provide that a broker-dealer which is a member of the NASD must participate in the rollup transaction, and that the issuer should provide the Exchange with an opinion of counsel confirming that the rollup was in fact conducted in accordance with NASD procedures. This will enable the Exchange to rely upon the regulatory scheme adopted by the NASD (and recently approved by the Commission) to govern the listing of rollups.

In addition, the Exchange is proposing to amend Section 126 to require that limited partnerships have at least one corporate general partner, or co-general partner, which would have to satisfy the Exchange's independent director and audit committee requirements (at least two independent directors, and an audit committee, a majority of whose members must be independent directors). The NASD has a similar rule, while the NYSE has a similar policy.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will prevent fraudulent and manipulative acts, promote just and equitable principles of trade and protect investors and the public interest since it will prohibit the listing of any securities resulting from an unfair rollup transaction and will impose enhanced corporate governance standards for limited partnerships.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–34 and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27038 Filed 10–31–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34897; File No. SR–NASD–94–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees for Member Firms Employing Statutorily Disqualified Individuals

October 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing of fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. However, the NASD does not plan to assess the fee until January 1, 1995. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule A, Section 12 to the By-Laws to require that the initial application fee for any individual who is subject to a statutory disqualification ("SD") be assessed at $1,500.00, and at an additional $2,500.00 if the Association determines that the applications should be subject to the full hearing process. The NASD also is proposing to redesignate the existing paragraph in Section 12 as subsection (a) and add a new subsection (b) to require that all Tier 1 SDs be assessed an annual fee of $1,500.00, and all Tier 2 SDs be assessed an annual fee of $1,000.00. Proposed new language is in italics; proposed deletions are in brackets.

Schedules to the By-Laws

Schedule A

* * * * *

Sec. 12. Application *and Annual Fees* for Member Firms with Statutorily Disqualified Individuals

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article II, Section 4 of the Association's By-Laws shall, upon the filing of an application pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws, pay to the Association a fee of [$1,000.00] *$1,500.00. Any member firm whose application filed pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws results in a full hearing for eligibility in the Association pursuant to Article VII, Section 2 of the NASD's Code of Procedure, shall pay to the Association an additional fee of $2,500.00.*

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article II, Section 4 of the Association's By-Laws shall pay annually to the Association a fee of $1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Rule 19h–1 under the Exchange Act[1] requires a member to supervise any SD employed by that member if the SD is statutorily disqualified because of serious securities laws violations but has been granted new employment in the securities industry following a membership continuance proceeding. Pursuant to Article VI of the By-Laws of the Association, NASD members must file an application for relief from disqualification pursuant to Article II, Section 3, paragraph (d) of the Association's By-Laws and must pay an application fee pursuant to Section 12, Schedule A of the By-Laws if they seek to employ or continue to employ as an associated person any SD. The current fee imposed under Section 12 is $1,000.00. Some applications require the full National Business Conduct Committee ("NBCC") hearing process pursuant to Article VII, Section 2 of the NASD's Code of Procedure.

The NASD classifies SDs that are admitted or re-admitted to registered status with a member firm as Tier 1, Tier 2 or Tier 3 based upon regulatory priority. Tier 1 consists of: (i) SDs statutorily disqualified pursuant to the statutory disqualification provisions in effect before the Securities Acts Amendments of 1990 (generally securities-law and/or commodities-law violations); and (ii) those persons designated pursuant to the Securities Acts Amendments of 1990 whose offenses are such that an annual review of their activities is warranted. Tier 1 SDs usually are subject to strict supervision by the member and possible limitations upon their activities.

Tier 2 generally consists of SDs statutorily disqualified pursuant to the Securities Acts Amendments of 1990 whose offenses typically are not related to securities-law or commodities-law violations and do not warrant the level of supervision required of Tier 1 individuals.

Tier 3 consists of those SDs who are permitted to enter or re-enter the securities industry without any limitations imposed upon their activities or any special supervisory requirements placed upon the firms that employ these SDs.

Earlier this year, the NASD conducted an analysis of the work effort and costs associated with the processing and review of SD applications. The NASD determined that, on average, it incurs costs of approximately $1,600.00 per application if an application does not go to the full hearing process and costs of approximately $3,900.00 per application if an application requires the full hearing process. Accordingly, the NASD is proposing to amend Section 12 to Schedule A of the By-Laws to require that the initial SD application fee be assessed at $1,500.00 and that an additional $2,500.00 be assessed when the Association determines that the application should be subject to the full hearing process.

The NASD's analysis also covered the additional oversight and examination costs that the NASD incurs with respect to SDs that member firms continue to employ. The NASD has determined that Tier 1 SDs, who are subject to an annual examination, incur average annual oversight costs of approximately $1,525.00 per person. The NASD has further determined that Tier 2 SDs, who are subject to at least one examination of their main or branch office within the first 24 months of employment, incur average annual oversight costs of approximately $1,000.00. Accordingly, the NASD is proposing to amend Section 12 to Schedule A of the By-Laws to reclassify the existing paragraph in Section 12 as subsection (a), and to add a new subsection (b) to require that all Tier 1 SDs be assessed an annual fee of $1,500.00, and all Tier 2 SDs be assessed an annual fee of $1,000.00. Tier 3 SDs will not be charged a fee because no additional burden is imposed upon the NASD with respect to their continuing employment.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule change equitably allocates among member firms the costs incurred by the NASD for its oversight of the initial and continuing employment of SDs.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and Section (e) of Rule 19b–4 promulgated thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined not to implement the rule change until January 1, 1995.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 17 CFR 240. 19h–1 (1993).

[2] 15 U.S.C. 78o–3.

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public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27042 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34689; File No. SR–NYSE–94–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rollup Transactions

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 6, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt listing standards for securities issued in limited partnership rollup transactions. The proposal responds to the requirements of the Limited Partnership Rollup Reform Act of 1993 ("Reform Act"). The rule will become effective on December 17, 1994, the date on which the Reform Act takes effect. The text of the proposed rule follows (italics reflects proposed additions to the rules; deletions are in [brackets]):

105.00 Limited Partnerships Rollups

The Exchange will not list a security issued in a limited partnership rollup transaction, as that term is defined in paragraphs (4) and (5) of section 14(h) of the Securities Exchange Act of 1934, unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners. The Exchange will consider a rollup transaction to have been conducted in accordance with such procedures only if: (a) a broker-dealer registered with the Securities and Exchange Commission participates in the transaction; and (b) the Exchange receives a written opinion of outside counsel stating that such broker-dealer's participation in the rollup transaction was conducted in compliance with rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

[105.00] *106.00* Miscellaneous Matters

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[105.01] *106.01* Stock Symbol Allocation

* * * * *

[105.02] *106.02* Specialist Allocation

* * * * *

[105.03] *106.03* Original Listing Ceremonies

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Reform Act requires that a national securities exchange adopt rules prohibiting "the listing of any security issued in a limited partnership rollup transporation * * * unless such tranaction was conducted in accordance with procedures designed to protect the rights of limited partners * * *."[1] The purpose of the proposed rule change is to comply with the requirements of the Reform Act.

The Reform Act contains three related requirements regarding SRO rollup rules: the exchange listing standard discussed above; a similar requirement for national securities associations regarding the authorization of quotations in rollup securities on an automated interdealer quotation system; and a requirement that national securities associations adopt rules prohibiting its members from participating in a limited partnership rollup transaction unless the transaction is conducted in accordance with procedures designed to protect the rights of limited partners.

As a result of these requirements, a broker-dealer that participates in a rollup transaction will be subject to national securities association rules governing its participation in the transaction.[2] Those rules will contain the same substantive requirements that the Reform Act requires exchanges to impose before listing a rollup security. Accordingly, if a broker-dealer participates in a rollup transaction, the rules governing a broker-dealer's participation in the transaction will ensure that the transaction is conducted in a manner consistent with the requirements of the Reform Act.

The proposed rule provides that the Exchange will list a rollup transaction only if a broker-dealer participates in the transaction. Such participation will result in the triggering of the national securities association rollup rules governing rollup transactions. The proposed rule will also require that the Exchange receive a written opinion of outside counsel stating that the broker-dealer conducted its participation in the rollup transaction in compliance with the applicable rules. Thus, the Exchange will not list securities issued in rollup transactions unless investors are provided with the substantive protections required by the Reform Act.

2. Statutory Basis

The basis under the 1934 Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or approriate in furtherance of the purposes of the Act.

[1] *See* Section 303(b) of the Reform Act (which also specifies the manner in which the rights of limited partners are to be protected).

[2] With limited exceptions not relevant here, Section 15(b)(8) of the Act requires that all broker-dealers be members of a national securities association.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–35 and should be submitted by November 22, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27037 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34698; International Series Release No. 735; File No. SR–PHLX–94–47]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendment to Foreign Currency Option Trading Hours

October 26, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on September 22, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend PHLX Rule 101, "Hours of Business," to provide that foreign currency option ("FCO") trading will be conducted between 2:30 a.m. Eastern Time ("ET") and 2:30 p.m. ET each business day.

Notice of the proposal appeared in the **Federal Register** in Securities Exchange Act Release No. 34798 (October 6, 1994), 59 FR 51649 (October 12, 1994). No comments were received on the proposal.

Currently, PHLX Rule 101 provides that the FCO trading session will be conducted between 1:30 a.m. ET and 2:30 p.m. ET each business day. The PHLX proposes to amend PHLX Rule 101 to move the opening of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET for all PHLX-listed FCOs except the Canadian dollar, which will continue to commence trading at 7:00 a.m. ET each business day.

According to the PHLX, the Exchange's FCO trading hours for the last nine months have commenced at 1:30 a.m. ET each Monday through Friday and terminated at 2:30 p.m. ET on the afternoon of each trading day. During that time, less than one percent of the PHLX's FCO volume was generated during the 1:30 a.m. ET to 2:30 a.m. ET time period. Upon the recommendation of the Exchange's FCO Committee, a standing committee of the Board of Governors ("Board"), the Board approved the proposed adjustment in trading hours to change the commencement of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET. The proposal is designed to ease the staffing burden on current registered FCO specialist units as well as floor brokerage units and registered option trader firms. The PHLX proposes to implement the adjusted 2:30 a.m. ET commencement of FCO trading on October 31, 1994, to coordinate with the resumption of Eastern Standard time, as October 30, 1994, will mark the end of Eastern Daylight savings time.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[3] in that it is designed to foster just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. The PHLX has stated that over the last nine months less than one percent of the PHLX's FCO trading volume occurred during the 1:30 a.m. ET to 2:30 a.m. ET time period. Accordingly, the Commission believes that the proposal to begin FCO trading at 2:30 a.m. ET, rather than at 1:30 a.m. ET, will not have a material impact on market participants. At the same time, the proposal will help to reduce the operational burdens on the current registered FCO specialist units as well as floor brokerage units and registered option trader firms. In addition, the Exchange will be open for trading FCOs (other than Canadian dollar FCOs) from 2:30 a.m. ET to 2:30 p.m. ET, so that investors will have the ability to access the Exchange's FCO market. Moreover, the Commission notes that the Exchange has issued a notice to its membership advising them of the proposed rule change, and will issue another notice to its members upon approval of the proposal, thereby avoiding any possible investor confusion.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of the proposal will allow the PHLX to implement the proposal on the morning of October 31, 1994, to coordinate with the resumption of Eastern Standard time. In addition, accelerating approval of the proposal will permit the Exchange to ease the operational burdens associated with the low FCO trading activity that occurs between 1:30 a.m. ET and 2:30 a.m. ET. Based on the foregoing, the Commission believes that it is consistent with

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] 15 U.S.C. 78f(b)(5) (1988).

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Section 6(b)(5) of the Act to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR-PHLX-94-47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27043 Filed 10-31-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34893; File No. SR-Phlx-92-09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Prohibiting Trading the Quote Spread on PACE

October 25, 1994.

On April 10, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to prohibit the use of the Phlx Automated Communication and Execution System ("PACE") volume execution guarantees with offsetting orders in low-volatility, high volume stocks in order to "trade the quote spread." On April 14, 1994, and June 6, 1994, the Phlx submitted Amendment Nos. 1 and 2, respectively.[3]

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 34259 (June 27, 1994), 59 FR 34000 (July 1, 1994). No comments were received on the proposal.

The proposed rule change adopts Commentary .18 to Phlx Rule 229,[4] which details the execution guarantees due a PACE order. Commentary .18 generally prohibits members from engaging in any established pattern of trading via PACE to generate short-term trading profits by exploiting PACE volume execution guarantees.

PACE is the Exchange's automated order routing, delivery and execution system for equity securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees. For example, limit orders for less than 600 shares become due an execution once an accumulative volume of 1,000 shares of that security prints at the limit price or better on the New York Stock Exchange ("primary market guarantee").[5]

As used in the proposed rule change, unjustly exploiting the PACE volume execution guarantees by trading the quote spread refers to the practice of placing an order to buy at the primary market's bid price and simultaneously or shortly thereafter placing an order to sell for a related account at the primary market's offer price, or vice versa. This creates the expectation that each of the orders will be elected at their respective limit prices when the required volume trades on the primary market. When both orders are filled due to volume guarantees, a profit is locked-in, equal to the amount of shares multiplied by the quote spread less commissions. This profit can be made within minutes after the orders are placed and without any quote change in the stock. This practice usually is most successfully undertaken with respect to low-volatility, high-volume stocks, because the bid-ask spread for these stocks is often narrow and static.

For the reasons described below, the Commission believes that the proposed rule change is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b).[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public in that it prevents the misuse of the Exchange's execution guarantees available through PACE.[7]

The Commission believes the use of the PACE system as proscribed in the proposal is inappropriate and inconsistent with PACE's functioning as a small order execution system. Automated order routing and execution systems were described in general in the *Report of the October 1987 Market Break*.[8] The *Report* stated that these systems provide the primary means of executing the vast majority of small-sized trades both for listed and OTC stocks, and that, with the exception of program trades, most of these trades are for retail customers. According to the *Report*, small order routing and execution systems are designed to receive smaller sized orders electronically from broker-dealers and route them to the appropriate stock exchange floor for automatic execution or for manual handling by the specialist. The Exchange's PACE system is one of these systems. The Commission believes, therefore, that PACE was intended to facilitate execution of small orders, and not to force Phlx specialists to trade at the inside primary market quote with traders trying to get the advantage of the spread without taking any risk.

The Commission also believes that trading the quote spread as proscribed in the proposal potentially can result in misleading market information with respect to the level of bona fide investment interest in the subject stocks. Using PACE to trade the quote spread could potentially disadvantage other market participants by ultimately reducing liquidity. Moreover, this type of trading is unfair to the PACE specialists, who are not obligated to trade at the same prices as the primary market, but who have agreed that for small, retail orders, they will provide primary market price guarantees.

The Commission further believes the Exchange has adequately identified in the proposal the violative trading activity and what constitutes an established pattern of violative trading. The proposal makes clear that three occurrences of proscribed trading in the same security within a one-month period constitute an established pattern in violation of Rule 229. Because the rule excludes from its coverage random or inadvertent violations, the Commission believes that the Phlx has reasonably tailored and defined its prohibition.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-Phlx-92-09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27036 Filed 10-31-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34886; File No. SR-SCCP-94-05]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Modifying SCCP Rule 2, Section 1 to Require Execution of a Participant's Agreement by Participants

October 24, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on October 3, 1994, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP proposes to modify SCCP Rule 2, Section 1 to require each participant to sign a Participant's Agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend SCCP Rule 2, Section 1 with respect to participants' obligations to SCCP. The proposed rule change will add language requiring each participant to execute a Participant's Agreement and language stating that SCCP's by-laws, rules, and procedures shall supersede any conflicting provision of the Participant's Agreement. The proposed rule change also will delete language requiring participants to execute and deliver a written instrument specifying their adherence to certain obligations set forth in SCCP Rule 2. This second written agreement will be unnecessary because once a participant signs a Participant's Agreement, the participant has agreed to abide by all of the rules and obligations of SCCP, including those set forth in SCCP Rule 2. Accordingly, all provisions of Rule 2 will be directly enforceable against participants.

The proposed rule change will codify SCCP's existing but unwritten policy and practice of requiring all participants to execute a Participant's Agreement. The proposed rule change is consistent with Section 17A of the Act and particularly with Section 17A(b)(3) (A) and (F) in that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR-SCCP-94-05 and should be submitted by November 22, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27039 Filed 10-31-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34891; File No. SR-PSE-94-19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Firm Quote Rule to 20 Contracts

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] on June 20, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend PSE Rule 6.86, "Trading Crowd Firm Disseminated Market Quotes," to increase from 10 to 20 contracts the minimum size of all non-broker/dealer customer option orders that are guaranteed for execution at the bid/offer displayed as the disseminated

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[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* letters from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Commission, dated April 14, 1994, and June 1, 1994. In Amendment No. 1 the Phlx amended the language of the rule to clarify that three occurrences of trading the quote spread within one month may constitute a violation of the rule. In Amendment No. 2 the Phlx (a) clarified that the three occurrences are meant to be in the same stock, and (b) changed the word "may" to "will" constitute a violation.

[4] *See* Philadelphia Stock Exchange Rules, Rule 229.

[5] *See* Phlx Rule 229, Supplementary Material .10(a).

[6] 15 U.S.C. § 78f(b) (1988).

[7] *See generally* Securities Exchange Act Release No. 33678, 59 FR 10192 (March 3, 1994), in which the Commission approved a NYSE proposed rule change prohibiting certain abusive uses of that Exchange's odd-lot order execution system. The prohibited uses were not consistent with the traditional odd-lot investing practices of smaller investors for which the odd-lot order execution system was developed.

[8] Division of Market Regulation of the Securities and Exchange Commission, *Report of the October 1987 Market Break* (February 1988) ("*Report*").

[9] 15 U.S.C. § 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

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market quote at the time the order is announced or displayed at the option's trading post.

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34571 (August 22, 1994), 59 FR 44446 (August 29, 1994). No comments were received on the proposal.

Currently, PSE Rule 6.86 requires each trading crowd on the PSE to provide a depth of 10 option contracts for all non-broker/dealer customer orders at the bid/offer displayed as the disseminated market quote at the time the order is announced or displayed at the option's trading post. The PSE proposes to amend PSE Rule 6.86 to increase the minimum size guarantee for non-broker/dealer options orders from 10 to 20 contracts. In addition, the PSE proposes to make conforming amendments to PSE Rule 6.86(d) and to Commentaries .01, .02, and .03.[3]

The PSE states that the proposal is a response to competitive market conditions and is designed to enhance the PSE's competitive position in the securities industry. The Exchange believes that the proposal will result in improved market quality and market maker performance. In addition, the PSE believes that the proposal will ensure greater depth of markets at the Exchange and will result in better executions of customers orders to buy or sell 20 contracts or less. According to the PSE, the proposal will also encourage Exchange market makers to be more competitive in making markets, and thereby will facilitate transactions in securities and improve the quality of the PSE's options markets. Moreover, the Exchange believes that by attracting greater customer order flow to the Exchange, the proposed rule change should enhance market depth and liquidity and result in tighter options pricing spreads.

Based on the combined capital of the members of each trading crowd, the PSE believes that its market maker system can provide sufficient liquidity to meet the needs resulting from this rule change. The Exchange does not believe that the proposal will require its market makers to assume undue risks. The PSE is able currently to provide a guarantee for customer orders of 10 contracts or less in all options series, including long-term options ("LEAPs"), and the Exchange believes that it has the capacity to expand that guarantee to 20 contracts in all series, including LEAPs. Previously, the Exchange has evaluated the operation of current PSE Rule 6.86 and has concluded that the program has resulted in better executions for customer orders and an improvement in the quality of the PSE's options markets and market maker performance.[4]

Finally, the Exchange believes that it has adequate systems capacity that would be necessary if the Commission approves the proposed rule change, and, further, that the proposal will have no negative impact on the Exchange's Pacific Options Exchange Trading System ("POETS").

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, Section 6(b)(5), in that it is designed to facilitate transactions in securities and to protect investors and the public interest.[5]

The Commission believes that the proposal is designed to improve the quality of the PSE's options markets and the performance of PSE options market makers. Specifically, under the proposal, public customers will be assured order execution to a minimum depth of 20 contracts at the best disseminated bid or offer, which, in turn, may result in better executions of small customer orders by providing greater depth to the PSE's options markets. In addition, the proposal should encourage PSE market makers to become more competitive in making larger sized markets, thereby facilitating transactions in securities and contributing to a more free, open, and liquid market. The proposal may also attract greater customer order flow to the Exchange, which would further enhance market depth and liquidity and result in tighter options pricing spreads.

In its order granting permanent approval to the PSE's 10-up pilot program, the Commission noted that the Exchange had submitted a report concerning the operation and effectiveness of the 10-up program.[6] In its report, the Exchange stated that the 10-up rule had resulted in faster executions of public customer orders and had improved the quality of the Exchange's options market and market maker performance. The report also noted that the 10-up rule places greater obligations on market makers since they must either keep their markets updated or run the risk of having to fill a customer order based on a stale quote that may not be competitive under current market conditions. The Commission believes that the proposal to increase the 10-up guarantee to 20 contracts may continue to improve the performance of the PSE's market makers and produce better executions of small public customer orders.

In addition, the Commission believes that the proposal is designed to enhance fair competition among brokers and dealers and among exchange markets. Presently, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX"), all impose some form of 10-up requirement on their markets.[7] The Commission believes, as it has stated in the past, that the PSE is entitled to respond competitively to the actions of the other options exchanges in order to encourage brokerage firms and their customers to trade in PSE options and, where those options are multiple traded, to choose to route their orders to the PSE.[8]

Accordingly, the Commission finds that the proposal is consistent with Sections 11A(a)(1)(C) (ii) and (iv) of the Act because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."[9]

Moreover, although the Commission carefully scrutinizes discriminatory order execution practices, the Commission believes that limiting the 20 contract minimum to public customers furthers the purposes of the Act by helping to ensure that market makers' volume guarantees will not be exhausted by competitors to the detriment of public customers.[10]

The PSE has stated that its market maker system has sufficient liquidity to meet the 20-contract guarantee, and that the proposal will not require PSE market makers to assume undue risks. In this regard, the Commission notes that market makers' clearing firms guarantee their trades, and that the clearing firms are subject to Rule 15c3-1 under the Act. In addition, under PSE Rule 6.82(c)(8), Lead Market Makers ("LMMs") must maintain cash or assets in the amount of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the LMM holds an appointment. Finally, under PSE Rule 6.86(d), an Order Book Official will allocate among market makers at the trading post the balance of contracts necessary to provide an execution on 20 contracts if there is insufficient response by members present at the trading post. In light of this, the Commission believes that the PSE floor should be able to adequately handle the 20-up requirement and that it will not place undue burdens or capital risks on the PSE's options market makers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR-PSE-94-19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-26965 Filed 10-31-94; 8:45 am]

BILLING CODE 8010-01-M

[3] Currently, PSE Rule 6.86(d) provides that the order book official shall allocate among the market makers present at the trading post the balance of contracts necessary to provide an execution on 10 contracts if the response of members at a trading post is insufficient to provide a depth of 10 contracts. The Exchange proposes to amend paragraph (d) to replace the term "ten" with "twenty." In addition, the PSE proposes to replace the term "ten" with "twenty" in Commentaries .01, .02, and .03. Commentary .01 states that if the bid or offer being displayed as a disseminated market quote is on behalf of an order represented by a floor broker or the order book official, and is for less than 10 contracts, the trading crowd is obligated to buy or sell the balance of the contracts necessary to provide a depth of 10 contracts at the disseminated bid or offering price. Commentary .02 provides that a floor broker's failure to remove a bid or offer from the screen after the bid or offer has been filled or cancelled may result in the floor broker being held responsible for providing a depth of 10 contracts upon being present or returning to the trading crowd, and/or being subject to disciplinary action by the Exchange. Commentary .02 also provides that a market maker or floor broker who has caused a bid or offer to be disseminated, but who leaves the trading post without removing the bid or offer, may be held responsible for providing a depth of 10 contracts upon returning to the trading crowd, and/or being subject to disciplinary action by the Exchange. Commentary .03 states that market maker orders for less than 10 contracts that are represented at a trading post by a floor broker shall not be disseminated.

[4] See Securities Exchange Act Release No. 31824 (February 4, 1993), 58 FR 8078 (February 11, 1993) (order approving File No. SR-PSE-92-40) ("10-Up Approval Order").

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See 10-Up Approval Order, *supra* note 4.

[7] See Amex Rule 958A, "Specialist Options Transactions," CBOE Rule 8.51, "Trading Crowd Firm Disseminated Market Quotes," NYSE Rule 758A, "Specialist Options Transactions," and PHLX Rule 1033, "Bids and Offers—Premium."

[8] See Securities Exchange Act Release No. 28021 (May 10, 1990), 55 FR 21131 (May 22, 1990) (order approving File No. SR-PSE-89-16).

[9] 15 U.S.C. 78k-1 (1984).

[10] See Securities Exchange Act Release No. 34400 (July 19, 1994), 59 FR 36011 (July 26, 1994) (order approving File No. SR-PHLX-91-45).

[11] 15 U.S.C. 78s(b)(2) (1984).

[12] 17 CFR 200.30-3(a)(12) (1993).

[Investment Company Act Release No. 20655; 811-3243]

Equity Strategies Fund, Inc.; Notice of Application

October 25, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equity Strategies Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 28, 1994, and amended on August 3, 1994, and October 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 767 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company, organized as a corporation under the laws of the state of Maryland. On August 14, 1981, applicant registered under the Act and filed a registration statement on Form N-2. From February 25, 1982, when applicant commenced operations, through April 25, 1984, applicant was a closed-end, diversified management company. On April 25, 1984, applicant's shareholders voted to change its subclassification to "non-diversified" and approved the adoption of applicant's current investment objective and fundamental investment restrictions. On April 29, 1986, applicant's shareholders voted to change its subclassification to "open-end."

2. Applicant filed a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act of 1933 on June 9, 1986. Applicant's registration statement became effective on July 3, 1986. To the best of applicant's knowledge, public offering of its shares commenced on or about that date. On November 13, 1986, applicant's directors voted to cease the further offering of shares effective December 1, 1986, and applicant has not sold any shares since that date.

3. On August 9, 1993, applicant's board of directors authorized the Agreement and Plan of Reorganization (the "Reorganization Plan") and the Plan of Complete Liquidation and Dissolution of Applicant (the "Liquidation Plan"), recommended that applicant's shareholders vote in favor of the adoption and approval of same and authorized its officers to take all action necessary or advisable, including the filing of proxy materials, to effectuate the Reorganization and Liquidation Plans and to deregister applicant under the Act.

4. Applicant distributed a proxy statement relating to the Special Meeting of Stockholders to its shareholders and filed it with the Commission. At the meeting held March 21, 1994, the Reorganization and Liquidation Plans were approved by the holders of 1,206,695 shares, representing 53% of the shares of applicant entitled to be cast on the matter.

5. Applicant established a $1 million reserve fund (the "Reserve Fund") designated for the satisfaction of any liabilities of applicant which were unknown to applicant as of the closing date. Potential contingent liabilities include the possibility that the Internal Revenue Service or a state tax authority could assert that applicant had made inadequate provision for taxes on past transactions, or that applicant's net asset value had been erroneously computed. Although applicant is currently unaware of any such liabilities, the Reserve Fund was established to protect applicant's officers and directors, who otherwise would be personally liable for

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such liabilities. On the three-year anniversary of the Closing Date, as defined below, any funds remaining in the Reserve Fund which are not required to satisfy any then outstanding liabilities will be distributed to applicant's shareholders of record based on each shareholder's *pro rata* ownership of applicant as of the Closing Date. The Reserve Fund constitutes a liquidating trust for tax and other purposes and will be administered by an independent trustee who is not an affiliated person of the Fund's investment adviser.

6. Pursuant to a Reorganization Plan dated as of August 26, 1993 by and between applicant and Nabors Industries, Inc. ("Nabors") whereby applicant transferred, effective April 5, 1994 (the "Closing Date"), substantially all of its assets to Nabors, applicant's shareholders received (i) 5.844 shares of common stock of Nabors per share of applicant, (ii) cash in lieu of any fractional shares of Nabors, and (iii) a *pro rata* interest, currently $.44 per applicant share, in the Reserve Fund, for a total net asset value ($39.16 per applicant share) equal to their *pro rata* ownership of applicant.

7. An application for an order exempting the transactions proposed in the Reorganization and Liquidation Plans from section 17(a) of the Act pursuant to section 17(b) of the Act and permitting such transactions pursuant to section 17(d) of the Act and rule 17d–1 thereunder was filed with the Commission on September 20, 1993. The Commission granted such order on February 1, 1994 (File Number 812–8592).

8. Applicant filed Articles of Transfer and Articles of Dissolution with the State of Maryland, on April 5, 1994 and April 26, 1994, respectively.

9. As of the date of the application, applicant has no debts or liabilities and is not a party to any litigation.

10. There are six shareholders of applicant who have not yet surrendered their stock certificates (although applicant has attempted and is continuing to attempt to contact such shareholders by telephone and letter). Accordingly, these shareholders have not yet received their stock certificates of Nabors. The stock certificates to which these shareholders are entitled are being held by the transfer agent designated by Nabors, who will release such certificates individually to each such shareholder upon receipt of notice from applicant that such shareholder has surrendered its stock certificates of applicant.

11. Expenses incurred in connection with the liquidation were borne by applicant, except for costs of Nabor's legal counsel in connection with negotiations of the Plans, which costs were borne by Nabors.

12. Applicant is current with respect to all filings required under the Act, including all N-SAR filings, and will make any final filings required by the Act.

13. Applicant has no assets and is not now engaged nor does it propose to engage in any business other than the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–26963 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20663; 812–7301]

Institutional Liquid Assets et al.; Notice of Application

October 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The taxable money market portfolios of Institutional Liquid Assets ("ILA"), Financial Square Trust ("FST"), Trust for Credit Unions ("TCU"), and Paragon Funds ("PF") (the taxable money market portfolios of ILA, FST, TCU and PF are referred to herein as the "Funds"; ILA, FST, TCU and PF are referred to herein as the "Trusts"), and any other registered investment company or series thereof that is a taxable money market fund for which Goldman, Sachs & Co., Goldman Sachs Funds Management, L.P. ("GSFM"), or Goldman Sachs Asset Management International ("GSAMI") serves as investment adviser in the future (the "Future Funds"), Goldman, Sachs & Co., Goldman Sachs Money Markets, L.P. ("GSMM"), GSFM, and GSAMI. The application is also being made on behalf of any successors to all or substantially all of the business, assets, or property of Goldman, Sachs & Co. or GSMM. Any such succession shall be solely by way of change of organization, such as incorporation, reincorporation, or reorganization as a partnership or similar entity.

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Funds and the Future Funds to engage in certain principal transactions with Goldman, Sachs & Co. and GSMM.

FILING DATE: The application was filed on April 20, 1989 and amended on August 17, 1993, February 17, 1994, August 19, 1994, and October 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. ILA, FS, TCU, and PF, 4900 Sears Tower, Chicago, Illinois 60606–6303. Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004 and 32 Old Slip, 34th Floor, New York, New York 10005. GSMM, 85 Broad Street, New York, New York 10004. GSFM, 32 Old Slip, 34th Floor, New York, New York 10005. GSAMI, 140 Fleet Street, London EC4A 2BJ, England.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a no-load, diversified, open-end management investment company registered under the Act. Each Trust is a Massachusetts business trust and has as its investment objective maximizing current income to the extent consistent with the preservation of capital and the maintenance of liquidity by investing in high quality taxable money market instruments. Currently, Goldman, Sachs & Co. is the investment adviser and the principal underwriter of each Fund.

2. Goldman, Sachs & Co., GSFM, and GSAMI are each registered as investment advisers under the Investment Advisers Act of 1940

(Goldman, Sachs & Co., through its division Goldman Sachs Asset Management ("GSAM"), GSFM, and GSAMI may individually be referred to as an "Adviser" and collectively as "the Advisers").

3. Goldman, Sachs & Co., a registered broker-dealer, is one of the largest international investment banking and brokerage firms in the United States and is a major dealer in money market instruments (excluding commercial paper). Commercial paper is handled by GSMM, a subsidiary of The Goldman, Sachs Group, L.P. ("GS Group"),[1] which is a controlling person of Goldman, Sachs & Co. A registered broker-dealer, GSMM is one of the largest dealers in commercial paper. The broker-dealer operations at Goldman, Sachs & Co. are handled by approximately 1,360 professionals worldwide within the Fixed Income Division (including GSMM), with 750 professionals in New York. (Goldman, Sachs & Co., in its capacity as dealer in securities and financial instruments and as counterparty in repurchase agreement transactions, and GSMM are collectively referred to herein as "Goldman Sachs" or the "Dealers.")

4. Goldman, Sachs & Co., GSFM, and GSAMI are directly or indirectly partnership or corporate subsidiaries of GS Group. GS Group is a Delaware limited partnership with more than 150 general partners and over 90 limited partners, including certain institutional limited partners, and is a general partner of Goldman, Sachs & Co., with a 99 percent interest in the profits and losses thereof. GSFM is a Delaware limited partnership of which the general partner is a corporation wholly-owned directly by GS Group and the sole limited partner is GS Group. GSAMI is a English company indirectly wholly-owned by GS Group. Neither GSFM nor GSAMI currently act as investment adviser to a Fund, but may do so in respect of a Future Fund. The Advisers will maintain offices physically separate from Goldman Sachs.

5. The investment advisory operations for the Funds are handled by a group currently consisting of 10 persons (the "Funds Group Trading Desk") within GSAM. The personnel assigned to the Funds Group Trading Desk are exclusively devoted to the business and affairs of GSAM. Subject to the supervision of the Trustees of the Funds, the executive management of GSAM, the Investment Policy Committee (discussed below) and the Credit Department (discussed below), all portfolio selection and trading decisions made for the Funds are made by personnel assigned to the Funds Group Trading Desk. All portfolio managers responsible for the Funds are assigned to the Funds Group Trading Desk. Such personnel are also responsible for U.S. dollar-denominated short-term taxable and tax-exempt funds management for other GSAM clients, including tax-exempt money funds registered under the Act.

6. Personnel in the Funds Group Trading Desk are not responsible for the marketing or sales of the Funds' shares or other GSAM products, although from time to time they participate in solicitations for significant potential clients and client service. Because of their expertise in and knowledge of the markets for short-term, money market instruments, other GSAM personnel, and occasionally personnel from other divisions within Goldman Sachs, solicit their views on the viability (from the portfolio management perspective) of proposals for pooled investment vehicles involving such markets or instruments. Finally, Funds Group Trading Desk personnel, who are generally familiar with instruments structured to satisfy various provisions of rule 2a–7, are solicited from time to time by various dealers, including Goldman Sachs, for their views on the structure of new instruments designed to be eligible under the rule.

7. Credit analysis for the Funds Group Trading Desk, Goldman Sachs and other affiliates of GS Group is performed by the Credit Department. The Credit Department is a central department of Goldman, Sachs & Co. which performs securities credit analysis, counterparty risk, customer credit, and related issues. The Credit Department maintains a list of eligible instruments which is used by the Funds Group Trading Desk for portfolio management. The Funds Group Trading Desk is not authorized to purchase instruments not on this list.

8. In general, the Funds Group Trading Desk develops and implements portfolio investment strategies within a preselected average maturity range. The average maturity range is selected in a weekly "Investment Policy Committee" meeting (the "Committee"). The Committee determines the target average maturity range based on (a) Fundamental economic analysis and technical market data, (b) anticipated trends in monetary and fiscal policy and (c) anticipated customer activity. In connection with (a) and (b), personnel of the Funds Group Trading Desk solicit views of dealers, including Goldman Sachs, on economic and market developments. For example, such personnel routinely canvas other dealers and Goldman Sachs to determine the "market" consensus regarding pending economic data releases, anticipated changes in Federal Reserve policy, and the forecast gross supply of money market securities available for investment. The Committee is currently composed of seven GSAM employees (including personnel of the Funds Group Trading Desk, but no other portfolio management personnel) and one employee from the Investment Research Division of Goldman, Sachs & Co. This Goldman Sachs' employee's input in the process is limited to participation in the Committee's deliberations on economic policy outlook, as it pertains to the very narrow issues for which the Committee is responsible.

9. The Committee is not involved in review or approval of specific securities to be purchased, the terms of any transactions or the types of securities in which the Funds may invest. Security and sector selection is exclusively the responsibility of the portfolio managers, subject to the portfolio's prospectus and credit guidelines, and is entirely outside the Committee process. The Committee's decisions on average maturity ranges are made by consensus, and no member has a veto over the decisions made by the Committee. Once decisions are made, the Funds Group Trading Desk manages the Funds' average maturity ranges until the ranges are changed at a subsequent meeting of the Committee.

10. The Funds Group Trading Desk monitors daily the portfolios of each of the Funds and places purchase and sell orders and enters into other transactions for the Funds by monitoring market quotations and market information and placing orders with, or receiving orders from, salesmen or dealers at investment or commercial banking institutions. After a transaction has been completed, the Funds Group Trading Desk employee completes a trade ticket evidencing the transaction and its agreed-upon terms. The average weekly trading volume that the Funds Group Trading Desk effected for the Funds was approximately $23.3 billion for the twelve-month period ended July 1, 1992.

11. As indicated above, neither GSFM nor GSAMI currently manage any Funds. As a result, neither has established a unit corresponding to the Funds Group Trading Desk or to an

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[1] GSMM Corp., the general partner of GSMM holding a 1% interest in the profits and losses thereof, is a corporation owned by 35 individual general partners of GS Group, in order that GSMM Corp. be accorded treatment under Subchapter S of the Internal Revenue Code. GS Group is the limited partner of GSMM with a 99% interest in its profits and losses

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Investment Policy Committee. It has not been determined whether, if GSFM or GSAMI manage a Fund, either would do so, or alternatively whether GSFM and/or GSAMI would rely in whole or in part on GSAM's Funds Group Trading Desk and Investment Policy Committee. In any event, any analogue to the Funds Group Trading Desk or the Investment Policy Committee established by either GSFM or GSAMI would conform in all material respects with the respective unit described herein and would comply with all of the conditions to the order.

12. Applicants believe that the Advisers, on the one hand, and the Dealers, on the other hand, are factually independent of each other, as described in part by condition 7. Important among those elements are the facts that the compensation of no person assigned to the Advisers will depend on the volume or nature of trades with the Dealers; and neither of the Dealers will share with the Advisers any portion of the profits or losses on transactions associated with such trades.

13. GS Group is a large, multinational financial enterprise, the net profits or losses of which arise from combined profits and losses of many and disparate sources. As noted in condition 7, the general partners, including those primarily responsible for the Advisers, are allocated their respective percentages of such net profits or losses. In addition, employees may be awarded general firmwide bonuses or participate in deferred compensation plans the profit or loss on which depend on GS Group's firmwide profits or losses. Applicants do not believe the factual independence of the Advisers and the Dealers is affected by the allocation of firmwide profits and losses.

14. General partners of GS Group allocate among themselves specified percentages of GS Group's profits and losses, which are determined on a firmwide basis. Such percentages are generally reviewed and changes are agreed to on a biennial (alternate year) basis, although there occasionally may be interim changes.

15. Nonpartner employees may be paid firmwide bonuses measured by, for example, a percentage of normal, annual compensation or a number of weeks of normal compensation. Other nonpartner employees are compensated by reference to performance goals within their respective divisions or departments. For example, a GSAM portfolio manager may receive (or not receive) a bonus based on the comparison of the performance of the portfolios under his or her supervision to standard or specialized indices measuring the performance of similar securities or funds with similar investment objectives. A Fixed Income Division employee may receive (or not receive) his or her bonus based on a variety of subjective and objective performance factors during a pertinent time period.

16. In addition to nonpartner employees' bonuses, various operating subsidiaries of GS Group, including Goldman, Sachs & Co., GSMM, and GSAMI, offer to certain qualified professionals the opportunity to participate in unfunded deferred compensation plans the profit (or loss) on which is determined on the basis of GS Group's firmwide profits and losses. The formula pursuant to which participants' contributions are allocated profits or losses is determined annually by GS Group on the basis of then current market conditions and applies uniformly to all contributions made in that plan year. Qualifying employees of the Advisers and the Dealers may be participants in these plans.

17. The portfolio securities in which the Funds invest consist of taxable money market instruments and repurchase agreements. Practically all trading in money market instruments takes place in over-the-counter markets consisting of groups of dealer firms which are primarily major securities firms or large banks. Money market securities are generally traded in round lots of $1,000,000 on a net basis and do not normally involve either brokerage commissions or transfer taxes. The cost of the Funds' portfolio transactions consists primarily of dealer or underwriter spreads. Spreads vary among money market instruments but generally do not exceed 12 basis points (.12%). It has been the experience of the Funds Group Trading Desk that spreads have narrowed and there is not a great deal of variation in the spreads charged by the various dealers, except during turbulent market conditions.

18. The money market consists of an elaborate telephone communication network among dealer firms, principal issuers of money market instruments and principal institutional buyers of such instruments. The dealer usually acts as principal for his own account. Because the money market is a dealer market, rather than an auction market, there is not a single obtainable price for a given instrument that prevails at any given time. Price is determined by negotiations between traders. Money market instruments are generally sold by each participating dealer from inventory and the quotations of the dealers will vary depending upon a number of factors. Only customers of the dealer may obtain quotations and trade on them.

19. Because of the variety of types of money market instruments, the money market tends to be somewhat segmented. The markets for the various types of instruments will vary in terms of price, volatility, liquidity, and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there are significant differences in yield among the various types of instruments, and even within a particular type, depending upon the maturity date and the quality of the issuer. Moreover, from time to time segmenting exists among money market securities with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company and whether the issuer is domestic or foreign. Because dealers tend to specialize in certain types of money market instruments, the particular needs of a potential buyer or seller in terms of type of security, maturity, or quality may limit the number of dealers who can provide best price and execution. Hence, with respect to any given type of instrument, there may be only a few dealers who can be expected to have the instrument in inventory (or add the instrument to inventory) and be in a position to quote a favorable price.

20. Goldman Sachs is among the largest major dealers in the taxable money market. As of November 1992, Goldman Sachs was the dealer in more commercial paper programs for U.S. industrial companies and their captive finance subsidiaries rated A–1/P–1 or better by Standard & Poor's Corporation or Moody's Investors Service, Inc. than any other dealer. Goldman Sachs' ranking in the repurchase agreement market has in recent years fluctuated between second and fifth depending on economic factors, the amount of its own commercial paper outstanding, and its level of outstanding short-term borrowings. Goldman Sachs has also consistently been one of the leading dealers in medium-term notes ("MTNs"). Within the maturities permitted by rule 2a–7, the longer term investment alternatives for the Funds are fewer than the shorter term investment alternatives, since commercial paper cannot be issued with a maturity greater than nine months, and bankers' acceptances cannot be issued with a maturity greater than six months. Accordingly, MTNs with nine months to one year maturities are important to the Funds as alternative investments to United States Government securities and bank certificates of deposit.

21. Since mid-1987, several dealers have terminated or significantly reduced their money market dealer activities. These terminations and reductions have had the effect of decreasing the liquidity in the money market. Goldman Sachs has remained committed to the taxable money market and has moved to fill the void left by departing dealers. As the number of dealers with whom the Funds can transact business decreases, it becomes more important for the Funds to have meaningful access to all of the major dealers in the money market, particularly Goldman Sachs, given its leading role in the money market.

22. Subject to the general supervision of the Trustees of the Trusts, GSAM is responsible for portfolio decisions and the placing of the Funds' portfolio transactions. The Funds have no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an investment adviser must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type, and difficulty of the transaction involved, and the firm's general execution and operation facilities.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c) and 17(b) exempting certain transactions from the provisions of section 17(a) so as to permit Goldman Sachs, acting as principal, to sell to or purchase from the Funds and the Future Funds certain money market instruments, subject to the conditions set forth below.

2. Because of the above-described affiliations of Goldman Sachs with the Funds, the Funds are currently prohibited from conducting portfolio transactions with Goldman Sachs in transactions in which Goldman Sachs acts as principal. Section 17(a) prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property, subject to exceptions not here relevant. Section 17(b) provides, however, that the SEC, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and with the general purposes of the Act.

3. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. The rationale behind the proposed order is based upon the decreased liquidity in the money market, the growing and significant role played in the money market by Goldman Sachs, and the special requirements of the Funds with respect to their portfolio transactions. In particular, applicants note the following:

(a) With over $15.5 billion invested in money market instruments, the Funds are major buyers and sellers in the money market with a strong need for a constant flow of large quantities of high quality money market instruments. Applicants believe that access to such a major dealer as Goldman Sachs in these markets increases the Funds' ability to obtain suitable portfolio securities.

(b) The policy of the Funds of investing in securities with short maturities, combined with the active portfolio management techniques employed by GSAM, will often result in high portfolio activity and the need to make numerous purchases and sales of securities and instruments. Such high portfolio activity makes the need to obtain suitable portfolio securities and best price and execution especially compelling.

(c) Goldman Sachs is such a major factor in the money market that being unable to deal directly with it may, upon occasion, deprive the Funds of obtaining best price and execution.

(d) The money market is highly competitive and removing Goldman Sachs from the dealers with which the Funds may conduct principal transactions may indirectly deprive the Funds of obtaining best price and execution even when the Funds trade with unaffiliated dealers.

5. Applicants believe that the requested order will provide the Funds with access to the money market, which is necessary to carry out the policy of each of the Funds of obtaining the best price and execution in effecting portfolio transactions, and will provide the Funds with important new information sources in the money market, thereby working to the benefit of the shareholders of the Funds. Applicants believe that the transactions contemplated by the application are identical to those in which they are currently engaged except for the proposed participation of the Dealers therein and that such transactions are consistent with the policies of the Funds as recited in their registration statements and reports filed under the Act.

6. Applicants believe that the procedures set forth with respect to transactions with Goldman Sachs are structured in such a way as to insure that such transactions will be, in all instances, reasonable and fair, and will not involve overreaching on the part of any person concerned, and that such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. *Transactions Subject to the Exemption*—The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed price dealer offerings not made pursuant to underwriting syndicates. The principal transactions which may be conducted pursuant to the exemption shall be limited to transactions in *Eligible Securities* meeting the portfolio maturity and quality requirements of paragraphs (c)(2) and (c)(3) of rule 2a–7, provided that: [2]

(a) No Fund [3] shall make portfolio purchases pursuant to the exemption that would result in the Fund investing pursuant to the exemption more than 2% of its *Total Assets* in securities which, when acquired by the Fund (either initially or upon any subsequent roll over) were *Second Tier Securities*; provided that any Fund may make portfolio sales of *Second Tier Securities* pursuant to the exemption without regard to the percentage of its *Total Assets* involved:

(b) The exemption shall not apply to an *Unrated Security* other than (1) A *Government Security*; or (ii) a security that is a rated security and is the subject

[2] Italicized terms are defined as set forth in paragraph (a) of rule 2a–7, unless otherwise indicated.

[3] References to the Funds include the Future Funds.

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of an external credit support agreement that was not in effect when the security (or the issuer) was assigned its rating, provided that (A) the issuer of the external credit support agreement is rated with respect to a class of *Short-term* debt obligations (or any security within that class) that is now comparable in priority and security with the credit support agreement, in one of the two highest rating categories for *Short-term* debt obligations, (B) the external credit support agreement is irrevocable, unconditional, and has terms coextensive with those of the underlying security, and (C) for the purposes of the exemption, the security covered by the external credit support agreement will be deemed to have a rating no higher than the rating described in subparagraph 2(b)(ii)(A).

(c) The exemption shall not apply to any security, other than a repurchase agreement, issued by Goldman, Sachs & Co. or any affiliated person thereof or to any security subject to a *Put* or *Demand Feature* issued by Goldman, Sachs & Co. or any affiliated person thereof.

(d) The exemption shall not apply to any *Asset Backed Security* unless it is an *Eligible Security*.[4]

2. *Repurchase Agreement Requirements*—The Funds may engage in repurchase agreements with a Dealer only if the Dealer has: (a) Net capital, as defined in rule 15c3–1 under the Securities Exchange Act of 1934, of at least $100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer, during which time it engaged in repurchase agreements relating to the kind of security subject to the repurchase agreement. The Dealers shall furnish the Advisers with financial statements for their most recent fiscal year and the most recent semi-annual financial statements made available to their customers. The Advisers shall determine that the Dealer complies with the above requirements and with the repurchase agreement guidelines adopted by the Board of Trustees of each Trust. Each repurchase agreement will be *Collateralized Fully*.

3. *Volume Limitations on Transactions*—Transactions conducted pursuant to the exemption shall be limited to no more than 25% of (a) The purchases or sales, as the case may be, by each Fund of *Eligible Securities* other than repurchase agreements; and (b) the purchases or sales, as the case may be, by each Dealer of *Eligible Securities* other than repurchase agreements. Transactions conducted pursuant to the exemption shall be limited to no more than 10% of (a) The repurchase agreements entered into by each Fund and (b) the repurchase agreements transacted by the Dealer. These calculations shall be measured on an annual basis (the fiscal year of each Fund and of each Dealer) and shall be computed with respect to the dollar volume thereof.

4. *Information Required to Document Compliance With Price Tests*—Before any transaction may be conducted pursuant to the exemption, the Funds or the Advisers must obtain such information as they deem necessary to determine that the price test (as defined in condition (5) below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Funds or the Advisers must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of security involved (the same instrument, credit rating, maturity and segment, if any, but not necessarily the identical security or issuer). With respect to prospective purchases of securities, these dealers must be those who have, in their inventories, money market securities of the categories and the types desired and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of securities, these dealers must be those who, in the experience of the Funds and the Advisers, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Funds or the Advisers must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers only one other competitive quotation is required.

5. *Price Tests*—In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Funds and the Advisers, that the price available from the Dealer is at least as favorable as that available from other sources. In the case of "swaps" involving trades of one security for another, the price test shall be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Funds and the Advisers, that the income to be earned from the repurchase agreement is at least equal to that available from other sources.

5. *Permissible Dealer Spread*—The Dealers' spreads in regard to any transaction with the Funds will be no greater than their customary dealer spreads, which in turn will be consistent with the average or standard spread charged by dealers in money market securities for the type of security and the size of transaction involved.

7. *Parties Must be Factually Independent*—The Advisers, on the one hand, and the Dealers, on the other, will operate on different sides of appropriate Chinese Walls with respect to the Funds and *Eligible Securities*. The Chinese Walls will include all of the following characteristics, and such others as may from time to time be considered reasonable by the Dealers and the Advisers to facilitate the factual independence of the Advisers from the Dealers.

(a) Each of the Advisers will maintain offices physically separate from those of Goldman Sachs.

(b) The compensation of persons assigned to any of the Advisers (*i.e.*, executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisers for the Funds with the Dealers under this exemption, except to the extent that such trades may affect the profits and losses of The Goldman Sachs Group, L.P. and Goldman, Sachs & Co. (which includes those of GSMM).

(c) Neither the Fixed Income Division of Goldman, Sachs & Co. nor GSMM will share any of their respective profits or losses on such transactions with any of the Advisers, provided that the allocation of the profits of The Goldman Sachs Group, L.P. and Goldman, Sachs & Co. (which includes those of GSMM) to general partners thereof, and the determination of general firmwide compensation to nonpartners, will be unaffected by this undertaking.

(d) Personnel assigned to the Funds Group Trading Desk will be exclusively devoted to the business and affairs of one or more of the Advisers.

(e) Personnel assigned to the Fixed Income Division and GSMM will not participate in or otherwise seek to influence the Funds Group Trading Desk other than in the normal course of sales and dealer activities of the same nature as are simultaneously being

[4] The terms "Asset Backed Security" and "Eligible Security" as used in condition 1(d) refer to those terms as defined in paragraphs (a)(2) and (a)(9)(iii)(C) of the proposed revisions to rule 2a–7, as currently proposed and as they may be reproposed, adopted, or amended. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993).

carried out with respect to nonaffiliated institutional clients. Each Adviser, on the one hand, and Goldman, Sachs & Co. and GSMM, on the other, may nonetheless maintain affiliations other than with respect to the Funds, and in addition with respect to the Funds as follows:

(i) GSAM has organized and any other Adviser may organize an Investment Policy Committee the members of which include Funds Group Trading Desk personnel, other GSAM personnel and one representative from the Investment Research Department of Goldman, Sachs & Co. This non-GSAM member's input on the Committee will be limited solely to expressions of his or her opinion on interest rate and similar economic matters, and will be included in the Committee only to the extent of considering and ratifying the portfolio managers' average maturity recommendations. The Investment Policy Committee will develop recommendations only on average maturity ranges and will not develop recommendations on specific securities or on types of securities.

(ii) Funds Group Trading Desk personnel may rely on research, including credit analysis and reports prepared by the Goldman Sachs Credit Department, which is responsible firmwide for credit analysis and counterparty credit risk evaluations and recommendations.

(iii) Members of the Management Committee of Goldman, Sachs & Co. and The Goldman Sachs Group, L.P. and certain other senior executives with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of Goldman Sachs are not precluded from exercising those functions over the Advisers because they oversee the Fixed Income Division and GSMM as well, provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Funds or any Adviser of others in respect of *Eligible Securities* with Goldman Sachs.

6. *Record-keeping Requirements*—The Funds and the Advisers will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Fund shall maintain an itemized daily record of all purchases and sales of securities pursuant to the exemption, showing for each transaction: the name and quantity of securities; the unit purchase or sale price; the time and date of the transaction; whether such security was a *First Tier Security* or a *Second Tier Security*; and the name of the Dealer from whom purchased or to whom sold. Such records also shall, for each transaction, document two quotations received from other dealers for comparable securities, including: The names of the dealers; the names of the securities; the prices quoted; the times and dates the quotations were received; and whether such securities were *First Tier Securities* or *Second Tier Securities*.

(b) Each Fund shall maintain a ledger or other record showing, on a daily basis, the percentage of the Fund's *Total Assets* represented by *Second Tier Securities* acquired from the Dealers.

(c) Each Fund shall maintain records sufficient to verify compliance with the volume limitations contained in condition (3), above. The Dealers will provide the Funds with all records and information necessary to implement this requirement.

(d) Each Fund shall maintain records sufficient to verify compliance with the repurchase agreement requirements contained in condition (2), above.

The records required by this condition (8) will be maintained and preserved in the same manner as records required under rule 31a–1(b)(1).

9. *Goldman Sachs Guidelines*—The legal department of Goldman, Sachs & Co. or such other department responsible for compliance (the "Legal Department") will prepare guidelines for personnel of the Dealers and the Advisers to make certain that transactions conducted pursuant to the exemption comply with the conditions set forth therein, and that the parties generally maintain arm's length relationships. In the training of personnel of the Dealers, particular emphasis will be given to the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The Legal Department will periodically monitor the activities of the Dealers and the Advisers to make certain that the conditions set forth in the exemption are adhered to.

10. *Audit Committee Guidelines*—The Audit Committees of the Trustees of the Trusts, consisting of the noninterested Trustees, will prepare and periodically review and update guidelines for the Funds and the Advisers to ensure that transactions conducted pursuant to the exemption comply with the conditions set forth therein and that the above procedures are followed in all respects. The respective Audit Committees will periodically monitor the activities of the Funds and the Advisers in this regard to ensure that these matters are being accomplished.

11. *Scope of Exemption*—Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, rule 2a-7.

12. *Board Review*—The Trustees of each Trust, including a majority of the noninterested Trustees, have approved the Fund's participation in transactions conducted pursuant to the exemption and have determined that such participation by the Fund is in the best interests of the Fund and its unitholders. The minutes of the meeting of the Board of Trustees at which this approval was given reflect in detail the reasons for the Trustees' determination. The Trustees will review no less frequently than annually the Fund's participation in transactions conducted pursuant to the exemption during the period year and determine whether the Fund's participation in such transactions continues to be in the best interests of the Fund and its unitholders. The minutes of the meetings of the Trustees of each Trust at which this determination is made will reflect in detail the reasons for the Trustees' determination.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan K. Katz,

Secretary.

[FR Doc. 94–26964 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20657; File No. 812–9144]

Salomon Brothers Capital Fund, Inc. et al.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: Salomon Brothers Capital Fund, Inc., Salomon Brothers Investors Fund, Inc., and Salomon Brothers Series Funds, Inc. (collectively, the "Funds"), Salomon Brothers Asset Management, Inc. (the "Adviser"), Salomon Brothers, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act exempting applicants from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

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SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to issue multiple classes of shares representing interests in the same portfolios of securities and assets, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATES: The application was filed on August 3, 1994, and amended on September 28, 1994, and October 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, c/o Michael S. Hyland, Salomon Brothers Asset Management, Inc., Seven World Trade Center, New York, New York 10048; copy to Gary Schpero, Esq., Simpson Thatcher & Bartlett, 425 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 or Robert A. Robertson Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

A. Multi-Class Distribution System

1. Each Fund is an open-end management investment company registered under the Act. The term "Fund" refers to the registered investment company while the term "Portfolio" refers to a particular portfolio of a Fund. For a single series investment company, the terms "Fund" and "Portfolio" are interchangeable. The Adviser provides investment advisory services to each Fund. The Distributor acts as distributor for the shares of each Fund. Applicants request that the relief granted extend to any open-end investment company that is or may become a member of Salomon Brothers Asset Management, Inc.'s "group of investment companies" as defined in rule 11a–3 under the Act. Existing Funds that intend to rely on the requested order have been named as applicants.

2. Applicants propose to establish a multiple class distribution system. Each Portfolio proposes to offer investors the option of purchasing shares that are either subject to a conventional front-end sales load ("Front-End Option"), subject to a CDSC ("Deferred Option"), or not subject to any such sales charge. Shares offered pursuant to any of these options could be offered in conjunction with a rule 12b–1 plan or non-rule 12b–1 shareholder services plan. The 12b–1 plans and shareholder services plans collectively are referred to as the "Plans." The sum of any initial sales charge, asset based sales charge, and CDSC will not exceed the maximum sales charge provided for in article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

3. Under the proposed distribution system, a Fund (on behalf of a Portfolio) or the Fund's distributor may enter into agreements with service agents for services pursuant to a 12b–1 plan or pursuant to a shareholder services plan. The expense of payments made pursuant to a 12b–1 plan agreement or a shareholder services plan agreement ("Plan Payments") will be borne entirely by the beneficial owners of the class to which the particular agreement relates.

4. A Portfolio's gross income will be allocated pro rata to each class on the basis of the net assets of each class. Expenses incurred by a Fund that are not attributable to a particular Portfolio of the Fund or to a particular class of a Portfolio ("Fund Expenses"), and expenses incurred by a particular Portfolio of a Fund that are not attributable to any particular class of the Portfolio ("Portfolio Expenses") will be allocated to each class on the basis of relative net assets. Expenses specifically attributable to a particular class of a Portfolio ("Class Expenses") will be allocated directly to such class. Class Expenses will consist only of those expenses specified in condition one, below. Because Plan Payments and Class Expenses will be borne by the class to which they are attributable, the net investment income of (and dividends payable to) the classes may differ. As a result, the net asset value per share of different classes may differ for Portfolios that do not declare dividends daily.

5. Under the proposed distribution system, each Portfolio's shares, regardless of class, will represent a pro rata interest in its portfolio securities and will have identical voting, dividend, liquidation, and other rights, preferences, powers, restrictions, limitations, qualifications, designations, terms, and conditions, except that: (a) each class will have a different designation; (b) each class will bear its own Plan Payments and Class Expenses; (c) only shareholders of affected classes will be entitled to vote on matters pertaining to the 12b–1 plan and 12b–1 plan agreements relating to such class; (d) each class will have different exchange privileges; and (e) certain classes will have a conversion feature.

6. Shares of each class may be exchanged only for shares of the same class in another Portfolio. The exchange privileges will operate in accordance with rule 11a–3 under the Act.

B. The CDSC

1. Investors choosing the Deferred Option will purchase shares at net asset value, without the imposition of a sales load at the time of purchase, but subject to a CDSC that decreases over time. A CDSC will not be imposed on redemptions of Deferred Option shares purchased more than a specified period before the redemption, or shares derived from reinvestment of dividends and distributions. No CDSC will be imposed on any amount that represents an increase in the value of the Deferred Option shares resulting from capital appreciation above the amount paid for such shares. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions; then of amounts representing the increase in net asset value above the total amount of payments for the purchase of Deferred Option shares currently held by the shareholder; and finally, of other shares held by the shareholder for the longest period of time. This order of redemption will result in a charge, if any, imposed at the lowest possible rate.

2. After Deferred Option shares are no longer subject to a CDSC, the shares (except those purchased through reinvestment of dividends and other distribution paid in respect of Deferred Option shares of such Portfolio) will automatically convert to non-CDSC shares of such Portfolio at the relative net asset values of the two classes. For purposes of conversion to Front-End Option shares, all shares in a shareholder's Portfolio account that were purchased through the reinvestment of dividends and other distributions paid in respect of Deferred Option shares (and which have not converted to Front-End Option shares) will be considered to be held in a separate sub-account. Each time any Deferred option shares in the shareholder's Portfolio account (other than those in the sub-account referred to in the preceding sentence) convert to Front-End Option shares, a pro rata portion of the Deferred Option shares then in the sub-account also will convert to Front-End Option shares. The portion will be determined by the ratio that the shareholder's Deferred Option shares converting to Front-End Option shares bears to the shareholder's total Deferred Option shares not acquired through dividends and distributions.

3. Applicants request relief to permit each Fund to waive or reduce the CDSC under certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 under the Act.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares representing interests in a Fund's Portfolios could be deemed: (A) to result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1), and (B) to violate the equal voting provisions of section 18(i). Applicants believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to assess and, under certain circumstances, waive a CDSC on redemptions of shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Portfolio will related solely to: (a) the impact of the disproportionate Plan Payments; (b) the method of allocating certain Class Expenses, which are limited to (i) transfer agent fees as identified by the transfer agent as being attributable to a specific class and any shareholder servicing costs not covered by a shareholder services plan; (ii) printing and postage expenses related to preparing and distributing to the shareholders of a specific class materials such as shareholder reports, prospectuses and proxies; (iii) Blue Sky registration fees incurred by a class; (iv) SEC registration fees incurred by a class; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class; (vii) professional fees relating solely to such class; (viii) directors' fees, including independent counsel fees, incurred as a result of issues relating to one class, and (ix) shareholder meeting expenses for meetings of a particular class; (c) the fact that the class will vote separately with respect to any matter specifically affecting that class, including without limitation rule 12b–1 distribution plans and shareholder services plans, except as provided in condition sixteen below; (d) the different exchange privileges of the classes of shares; (e) designation of each class of shares of the Portfolio; and (f) certain classes will have a conversion feature. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocable to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of each Fund, including a majority of the independent directors, will approve the system of the offering of the various classes of shares. The minutes of the meetings of the directors regarding deliberations of the directors with respect to the approvals necessary to implement the multi-class arrangement for any Portfolio will reflect in detail the reasons for the directors' determinations that the system is in the best interests of that Portfolio and its shareholders.

3. On an ongoing basis, the directors of each Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor such Fund for the existence of any material conflicts between the interests of the classes of outstanding shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and Distributor of each Fund will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors of each Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In such statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid with respect to each class of shares of a Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Plan Payments and Class Expenses applicable to a class will be borne exclusively by that class.

6. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The methodology and procedures for calculating the net asset value, dividends, and distributions of the various classes, and the proper allocation of expenses among the classes, have been reviewed by an expert (the "Expert"). The Expert has rendered a report to applicants, a copy of which has been provided to the staff of the SEC. The report states that such methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. The Expert or an appropriate substitute Expert will monitor, on an ongoing basis, the manner in which the calculations and allocations are being made and, based on that review, will render at least annually a report to each Fund that the

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calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the SEC's Divisions of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrative or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in the AICPA's SAS No. 70, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition seven, above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition seven. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another.

10. Each Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Portfolio will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain in the statement of assets and liabilities and statement of operations information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it also will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value and public offering price will present each class of shares separately.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to conform to these standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of each Fund with respect to the multi-class arrangement will be set forth in guidelines that will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the directors.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that may be made pursuant to a 12b–1 plan or a shareholder services plan in reliance on the exemptive order.

14. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the relevant Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to such Fund's directors, and such Fund's directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the National Association of Securities Dealers, Inc.'s Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject before the conversion.

16. If a Fund adopts or implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under a plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. Such Fund's directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed before implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by such Fund's directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that such Fund's directors reasonably believe will not be subject to federal taxation. In accordance with condition three, any additional cost associated with the creation, exchange, or conversion of New Target Class shares or New Purchase Class shares shall be borne solely by the Adviser and Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27040 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No 20660; 812–8586]

The Galaxy Fund, et al.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Galaxy Fund (the "Trust"), Fleet Investment Advisors, Inc. (the "Advisers"), and Fleet Securities, Inc. ("Fleet Securities").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c), 10(f), and 17(b) from sections 10(f) and 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to let the Trust's Rhode Island Municipal Bond Fund (the "Portfolio") purchase certain debt securities issued by the State of Rhode Island from Fleet Securities when such securities are underwritten solely by Fleet Securities or when Fleet Securities is a member of the underwriting syndicate. The order also would let the Portfolio purchase such securities from a syndicate manager of an underwriting syndicate of which Fleet Securities is a member when such securities are designated as group sales.

FILING DATES: The application was filed on September 20, 1993, and amended on February 10, 1994, May 6, 1994, and June 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. The Trust, 440 Lincoln Street, Worcester, Massachusetts 01605–1959. The Adviser, 45 East Avenue, Rochester, New York 14604. Fleet Securities, 14 Wall Street, 27th Floor, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust. The Portfolio is a series of the Trust that has not yet commenced operations. The Adviser will act as investment adviser to the Portfolio. The Adviser is a wholly-owned subsidiary of Fleet Financial Group, Inc. ("Fleet Financial"), a multi-bank holding company.

2. The Portfolio's investment objective is to seek as high a level of current interest income exempt from federal income tax, and, to the extent possible, from Rhode Island personal income tax, as is consistent with relative stability of principal. To achieve this objective, the Portfolio's assets will be invested in debt securities of the State of Rhode Island, its political sub-divisions, authorities, agencies, instrumentalities, and corporations, the interest on which is exempt from Federal and Rhode Island personal income taxes ("Rhode Island Tax-Exempt Securities"), and in debt securities of other governmental issuers such as Puerto Rico, the interest on which is tax-exempt.

3. Fleet Securities, a wholly-owned subsidiary of Fleet Financial, is one of the top three underwriters in most types of Rhode Island Tax-Exempt Securities based on both dollar volume and number of new issues. From 1988 through 1993, Fleet Securities served as underwriter of approximately $5.1 billion in principal amount of Rhode Island Tax-Exempt Securities. This number represented approximately 57% of the total dollar amount, and approximately 76% of the total number, of new issues of Rhode Island Tax-Exempt Securities during those years.

4. Applicants assert that the supply of Rhode Island Tax-Exempt Securities in the secondary market historically has been limited, both as to the number of available issues and their size. Even when the amount available in the secondary market is relatively high, many of the issues available may be unsuitable for purchase by the Portfolio due to their credit quality or other characteristics. Consequently, applicants have an increased need to acquire Rhode Island Tax-Exempt Securities in underwritten offerings.

5. Applicants request relief from: (a) section 17(a) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from Fleet Securities when such securities are underwritten solely by Fleet Securities; (b) sections 17(a) and 10(f) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from Fleet Securities when Fleet Securities is a member of an underwriting syndicate; and (c) sections 17(a) and 10(f) to permit the Portfolio to purchase Rhode Island Tax-Exempt Securities from a syndicate manager when such securities are designated as group sales. The requested order would not permit principal transactions between Fleet Securities and the Portfolio in other securities or for Rhode Island Tax-Exempt Securities sold in the secondary market.

6. A "group order" is an order submitted to an underwriting syndicate which benefits all members of the syndicate according to their percentage participation in the syndicate. A group order may be distinguished from a "designated order," in which the investor designates two or more members of the syndicate to retain that portion of the commission not retained by the syndicate manger(s), and from a "member order," in which an investor places an order directly with a member of the syndicate that retains that portion of the commission not retained by the manager. Group orders may be filled "net" (the syndicate retains the entire commission) or "less the concession" (a dealer who is not a member of the syndicate receives part of the commission). An investor who places a "group net order" has no power to designate particular members of the syndicate to receive that portion of the commission not retained by the syndicate manager(s). If an offering is oversubscribed, "group net orders" are the first orders to be filled. Applicants believe that a significant portion of all orders submitted for oversubscribed new issues of Rhode Island Tax-Exempt Securities are submitted as group net orders. Consequently, the Portfolio must be able to place group net orders to obtain its proper share of oversubscribed new issues. "Group sales" result from group orders.

7. Although the terms and conditions of a new issue of tax-exempt securities may be negotiated between the issuer and the underwriters, the market for

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Rhode Island Tax-Exempt Securities is very competitive and the yield and price of the securities must be satisfactory to the issuer as well as to potential purchasers to consummate an offering. The issuer and the underwriters have access to current information about comparable yields and prices commanded by contemporary new issues of similar quality and maturity in Rhode Island and throughout the country, and to information about yields and market prices of outstanding Rhode Island Tax-Exempt Securities. Because the pricing of each new issue is governed by the disciplines of yield and price that exist in a competitive market, applicants believe that the pricing of securities purchased in reliance on the requested order will be fair notwithstanding the dominant position of Fleet Securities in the market for Rhode Island Tax-Exempt Securities.

8. All the transactions conducted under the requested order will comply with the provisions of rule 10f–3, other than paragraph (f). In addition, the Adviser, Fleet Securities, Fleet Financial and any affiliated persons thereof, and all other entities for which investment decisions are made by the Adviser, Fleet Securities, Fleet Financial, and/or affiliated persons thereof ("Related Purchasers") will not in the aggregate purchase more than the greater of 4% or $500,000, but in no event more than 10%, of any class of an issue of Rhode Island Tax-Exempt Securities purchased pursuant to the requested order. As a result, any new issue of Rhode Island Tax-Exempt Securities will have to be made on such terms and conditions, including the price, as are acceptable in the new issue market.

Applicants' Legal Analysis

1. Section 2(a)(3) defines the term "affiliated person of another person" to include, in relevant part, (a) any person directly or indirectly controlling, controlled by, or under common control with such other person; and (b) if such other person is an investment company, any investment adviser thereof. Because Fleet Securities and the Adviser are under the common control of Fleet Financial, they are affiliated persons of each other within the meaning of section 2(a)(3).

2. Section 10(f), in relevant part, prohibits an investment company from purchasing securities from an underwriting syndicate in which an affiliate of the investment company's investment adviser acts as a principal underwriter. Under section 10(f), the SEC may exempt any transaction or class of transactions from the prohibitions of section 10(f) if such exemption is consistent with the protection of investors. Rule 10f-3 permits purchases otherwise prohibited by section 10(f) under certain conditions, including that the investment company does not purchase the securities being offered directly from its affiliated persons, and that as to municipal securities, purchases from a syndicate manager are not designated as group sales or otherwise allocated to the account of an affiliated person.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any securities or other property to such registered investment company. Section 17(b) provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction from the prohibitions of section 17(a). The SEC will grant exemptive relief under section 17(b) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and the general policies and purposes of the Act.

4. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the order will benefit the shareholders of the Portfolio by providing the Portfolio with access to the new issue market for Rhode Island Tax-Exempt Securities needed to insure the availability of suitable portfolio securities. Applicants believe that absent the requested relief, the Portfolio will not be able to offer its shares to the public due to the limited availability of suitable Rhode Island Tax-Exempt Securities in the secondary market and the substantial portion of new issues of Rhode Island Tax-Exempt Securities which Fleet Securities alone underwrites or with respect to which Fleet Securities participates as a member of the underwriting syndicate.

6. The procedures to be followed with respect to the proposed transactions are structured in such a way as to insure that the transactions in all instances will be reasonable and fair and will not involve overreaching on the part of any person concerned and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act

Applicant's Conditions

Applicants agree to the following as conditions to the requested order:

1. Principal transactions effected pursuant to the order will be effected in accordance with all of the provisions of rule 10f-3 (other than paragraph (f) thereof). Related Purchasers will not in the aggregate purchase more than the greater of 4% or $500,000, but in no event more than 10%, of any class of an issue of Rhode Island Tax-Exempt Securities purchased pursuant to the requested order. If the aggregate number of securities the Related Purchasers wish to acquire exceeds this limit, the securities acquired will be allocated to each Related Purchaser in the proportion that the number of securities that such Related Purchaser wishes to acquire bears to the total number of securities that all Related Purchasers wish to acquire.

2. Principal transactions may be effected only in Rhode-Island Tax-Exempt Securities which at the time of purchase have one of the following investment grade ratings from at least one nationally recognized rating agency: (a) one of the two highest investment grade ratings in the case of securities with remaining maturities of one year or less; and (b) one of the top three investment grade ratings in the case of securities with remaining maturities greater than one year.

3. Principal transactions effected pursuant to the order will be limited so that no such transaction will be effected if, as a result, the value of securities held by the Portfolio acquired pursuant to the order would exceed 50% of the total net assets of the Portfolio.

4. Principal transactions will be effected pursuant to the order only when the Rhode Island Tax-Exempt Securities acquired are otherwise unavailable for purchase. If Fleet Securities is the sole underwriter of the securities, this condition is automatically fulfilled because there is no other potential seller. When Fleet Securities is a member of an underwriting syndicate, the Adviser will observe the following procedures to determine when the securities are unavailable from other members of the syndicate. Initially, the Adviser will determine the aggregate number of securities which the Related Purchasers wish to acquire. Next, the Adviser will attempt to purchase as much of this number as possible from members of the syndicate other than Fleet Securities. After acquiring as many securities as possible from such other members, the Adviser will attempt to purchase from Fleet Securities the number of securities which the Related Purchasers wish to acquire and have been unable to obtain from such other members. The securities acquired from such other members will be allocated first to the Portfolio to the extent of the number of securities it wishes to acquire, or the number of securities it is entitled to acquire based upon the relative needs of the Related Purchasers and the total number of securities purchased from such other members and from Fleet Securities, whichever is less.

5. When the Portfolio purchases Rhode Island Tax-Exempt Securities from a syndicate manager of an underwriting syndicate of which Fleet Securities is a member, the Portfolio will not (a) submit designated orders to a syndicate manager which are allocated to Fleet Securities, (b) submit group orders to a syndicate manager which designate Fleet Securities to receive any portion of the commission, or (c) otherwise allocate orders to Fleet Securities.

6. The personnel of Fleet Financial will not have any involvement with respect to proposed transactions between the Portfolio and Fleet Securities and will not attempt to influence or control in any way the Adviser's placement of orders with Fleet Securities.

7. The exemption will be valid only so long as the Adviser and Fleet Securities operate as separate entities within the holding company framework of Fleet Financial with their own separate officers and employees, separate capitalizations and separate books and records.

8. The legal departments of Fleet Securities and the Adviser will prepare guidelines for personnel of Fleet Securities and the Adviser to make certain that transactions conducted pursuant to the order comply with the conditions set forth in the application, and that the parties generally maintain arm's length relationships. The legal departments will periodically monitor the activities of Fleet Securities and the Adviser to make certain that such guidelines and the conditions set forth in the application are adhered to.

9. The trustees, including a majority of the independent trustees of the Trust who are not "interested persons" of the Trust and have no direct or indirect financial interest in the transaction, will review no less frequently than quarterly each transaction conducted pursuant to the order since the last review and will determine that the terms of such transaction were reasonable and fair to the shareholders of the Portfolio and did not involve overreaching of the Portfolio of its shareholders on the part of any person concerned. In considering whether the price paid for the security was reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time.

By the Commission

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27041 Filed 10–31–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Hartford District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting on Monday, November 14, 1994 at 8:30 a.m. at 2 Science Park, New Haven, Connecticut 06511, to discuss such matter as may be presented by members, staff of the U.S. Administration, or others present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: October 26, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–26984 Filed 10–31–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/72–0556]

DFW Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 12, 1994, a notice was published in the Federal Register (59 FR 41548) stating that an application had been filed by DFW Capital Partners, L.P. of New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on August 27, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Administration Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0556 on September 19, 1994, to DFW Capital Partners, L.P. to operate as a small business investment company.

The Licensee will be owned by DeMuth, Folger and Wetherill II, L.P. (99.0%), and by Capital Partners—GP, L.P. (1.0%) and will have $10.1 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 26, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–26953 Filed 10–31–94; 8:45 am]

BILLING CODE 8025–01

[License No. 02/72–0557]

Mercury Capital, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 26, 1994, a notice was published in the Federal Register (59 FR 44221) stating that an application had been filed by Mercury Capital, L.P. of New York, New York, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on September 16, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0557 on September 26, 1994, to Mercury Capital, L.P. to operate as a small business investment company.

The Licensee will be owned by Rosenkranz & Company and Subsidiaries, L.P. (96.8%), David Elenowitz (3.0%) and Mercury Management Company, Inc. (0.2%).

The Licensee will begin operations with $13.5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

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Dated: October 26, 1994.
Robert D. Stillman,
Associate Administrator for Investment.
[FR Doc. 94–26952 Filed 10–31–94; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2109]

Delegation of Authority No. 145–11

Pursuant to the Iran-Iraq Arms Non-Proliferation Act of 1992 (Public Law 102–484), and the President's Memorandum Delegation of Authority dated September 27, 1994, Section 1(a) of the State Department Delegation of Authority No. 145 of February 4, 1980, 45 FR 11655, as amended, is hereby further amended by adding the following new subsection:

(11) The functions specified in the Iran-Iraq Arms Non-Proliferation Act of 1992 (Public Law 102–484), to the extent that such functions were delegated to the Secretary of State pursuant to the Presidential Memorandum Delegation of Authority dated September 27, 1994.

Dated: October 24, 1994.
Warren Christopher,
Secretary of State.
[FR Doc. 94–27009 Filed 10–31–94; 8:45 am]
BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Study on Interstate Commerce Commission Functions

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: Section 210(b) of the "Trucking Industry Regulatory Reform Act of 1994," (Act) requires the Secretary of Transportation to study organizational changes to the Interstate Commerce Commission (ICC), including some specified in the Act, that lead to government, transportation, or public interest efficiencies. The Department is presently seeking public comment on the ICC's report entitled, "Study of Interstate Commerce Commission Regulatory Responsibilities" dated October 25, 1994, and on options for the future locus of ICC functions.

DATES: Comments are due by November 21, 1994.

ADDRESSES: Comments may be mailed to Docket 49848, Office of Documentary Services (C–55), U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590–0001. The ICC Report referenced in this notice may be ordered from Dynamic Concepts, room 229, Washington, DC 20423; phone orders 202–289–4357 (cash, check or money order). The ICC report can also be accessed electronically from the FedWorld Information Network via the internet or with a computer and modem. Modem users can dial 703–321–8020, no parity, eight databits and one stop bit. After signing on, the report can be accessed from the FedWorld MISC Library of Files under the file name iccstudy.wp5. Internet users can use the File Transfer Protocol to connect to ftp.fedworld.gov (192.239.92.205)/misc/iccstudy.wp5, or ftp://fwux.fedworld.gov/pub/misc/iccstudy.wp5.

FOR FURTHER INFORMATION CONTACT: Edward Rastatter, 202–366–4420; Robert Stein, 202–366–4846; or Paul Smith, 202–366–9285.

SUPPLEMENTARY INFORMATION: The "Trucking Industry Regulatory Reform Act of 1994" significantly reduced entry requirements into the trucking industry and eliminated filing of independently set motor carrier tariffs. It also requires the ICC to submit a report to the Congress and to the Secretary of Transportation within 60 days of enactment, identifying and analyzing all regulatory responsibilities of the agency and recommending specific statutory or regulatory functions that could be eliminated or restructured.

Section 210(b) of the Act requires DOT to study the feasibility and efficiency of merging the ICC into the DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that lead to government, transportation, or public interest efficiencies. This study by DOT shall consider the cost savings that might be achieved, the efficient allocation of resources, the elimination of unnecessary functions, and responsibility for regulatory functions. DOT must solicit comments from the public with respect to both the Department's and the Commission's findings. DOT must submit the results of its study, together with any recommendations to the Congress, within four months after the date of submission of the Commission's report required in Section 210(a). Consequently, the Department is presently seeking public comment on the Commission's report, dated October 25, 1994, as well as options, including those listed below, for the future locus of ICC functions and responsibilities:

- Retaining ICC in its present form.
- Merging ICC into DOT, but keeping it as an independent agency, e.g., like the Federal Energy Regulatory Commission is part of the Department of Energy.
- Merging ICC into DOT but *not* as an independent agency, e.g., either with a separate Administrator or into an existing modal administration, such as the Federal Railroad Administration.
- Transferring all or some ICC functions to DOT and/or other Federal agencies.
- Combining ICC with other Federal agencies, e.g., Federal Maritime Commission.

At a later date, about mid-January, 1995, the Department will seek comment in a **Federal Register** notice on its preliminary findings.

Dated: October 26, 1994.
Frank E. Kruesi,
Assistant Secretary for Transportation Policy.
[FR Doc. 94–26947 Filed 10–31–94; 8:45 am]
BILLING CODE 4910–62–M

Coast Guard

[CGD 94–092]

Chemical Transportation Advisory Committee (CTAC); Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee.

DATES: Completed applications and résumés should be submitted to the Coast Guard before February 3, 1995.

ADDRESSES: Persons interested in applying for membership on CTAC may obtain an application form by writing to Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or by calling the points of contact in the following paragraph.

FOR FURTHER INFORMATION CONTACT: CDR Kevin J. Eldridge, Executive Director, or LT Rick Raksnis, Assistant to the Executive Director; telephone (202) 267–1217, fax (202) 267–4816.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee provides advice and consultation to the Chief, Office of Marine Safety, Security and Environmental Protection on matters relating to the safe transportation and handling of hazardous materials in bulk on U.S. flag vessels and barges in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating U.S. positions at meetings of the International Maritime Organization.

The Committee meets at least once a year at U.S. Coast Guard Headquarters, Washington, DC. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for eight positions that expire or become vacant in July, 1995. To be eligible, applicants should have experience in chemical manufacturing, marine transportation of chemicals, occupational safety and health, or environmental protection issues associated with chemical transportation. Each member serves for a term of three years. Members of the Committee serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Dated: October 21, 1994.
Joseph J. Angelo,
Acting Chief, Office of Marine Safety Security and Environmental Protection.
[FR Doc. 94–27045 Filed 10–31–94; 8:45 am]
BILLING CODE 4910–14–M

Federal Highway Administration

Memorandum of Understanding Between the United States and Canada Relating to the Recognition of Motor Carrier Safety and Compliance Reviews by the United States and Facility Audits by Canada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation for the United States and the Minister of Transport for Canada signed an agreement at the North American Free Trade Agreement (NAFTA) Transportation Summit on April 29, 1994, which allows for the reciprocal recognition of safety ratings resulting from motor carrier compliance reviews conducted by the United States and facility audits conducted by Canadian Provinces. As each Province enters into this agreement, notification will be published in the **Federal Register**. The terms of the Memorandum of Understanding (MOU) will not restrict U.S. or Canadian officials from performing investigations, facility audits, or safety and compliance reviews of a motor carrier in the other country when such investigation or review is deemed necessary.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald G. Ashby, Office of Motor Carrier Field Operations, (202) 366–1795, or Mrs. Allison Smith, Office of Chief Counsel, (202) 366–1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to the **Federal Register** Act (44 U.S.C. Chapter 15), the Administrative Procedure Act (5 U.S. C. 551 et seq.), and the Freedom of Information Act (5 U.S.C. 552) notice is hereby given that an agreement was signed by the governments of the United States and Canada as set forth below.

(23 U.S.C. 315; 49 CFR 1.48).

Issued on: October 24, 1994.
Rodney E. Slater,
Federal Highway Administrator.

An Understanding Between the Government of the United States of America and the Government of Canada Relating to the Recognition of Motor Carrier Safety and Compliance Reviews by the United States and Facility Audits By Canada

The Government of the United States of America and the Government of Canada (hereinafter referred to as the "Parties");

Desiring to improve the productivity and foster the economic vitality of the transborder motor carrier industry;

Seeking to promote adoption and application of compatible international safety standards for motor carriers;

Recognizing that the Parties will benefit from the elimination of the duplication of effort in the monitoring of motor carrier compliance performance;

Noting that the Parties intend that their systems for rating a motor carrier's safety fitness be compatible; and

Desiring that transborder motor carrier's safety fitness be rated in the most efficient and accurate manner possible;

Have established the following working arrangements:

Article 1—Definitions

For the purpose of this Understanding:

(A) "Central Authorities" for the United States means the Department of Transportation and for Canada means Transport Canada;

(B) "Compliance Review" for the United States means an on-site investigation by the Federal Highway Administration of a motor carrier's safety operations to determine whether a motor carrier meets safety fitness standards. The compliance review may result in the initiation of enforcement activity;

(C) "Facility Audit" for Canada means an on-site assessment by the responsible authority of a Province or Territory of a motor carrier's compliance with all applicable highway safety regulations covered by the National Safety Code for motor carriers. The facility audit may result in the initiation of enforcement activity;

(D) "Home Jurisdiction" means the State, Province or Territory of a Party which a motor carrier maintains or designates as its principal place of business;

(E) "Implementing Agency" for the United States means the Federal Highway Administration and for Canada means the Provincial or Territorial authority that has responsibility over safety regulations for transborder motor carrier operations and where a transborder motor carrier operates motor vehicles;

(F) "Motor Carrier" means a person, or legal entity, who is responsible for the vehicle, goods or passengers, and the behavior of the driver;

(G) "Motor Carrier Safety Rating" means a measure of a motor carrier's safety management controls in effect and an evaluation of motor carrier's performance with respect to safety standards by an Implementing Agency as determined by:

(1) The results of a facility audit or motor carrier safety or compliance review conducted at the motor carrier's place of business covering the safety standards of Central Authority and an Implementing Agency; and

(2) The motor carrier's performance as evidenced by a driver and vehicle roadside inspection or examination or other pertinent safety data;

(H) "Safety Review" for the United States means an on-site assessment by the Federal Highway Administration to determine if a motor carrier has adequate safety management controls in place and functioning to meet safety standards. It includes a review of the records and operations of selected motor carriers, and is used to assign motor carrier safety ratings to unrated carriers or to change an existing rating of a motor carrier; and

(I) "Safety Standards" means the motor carrier safety standards and

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regulations in effect of each Central Authority and Implementing Agency that apply to drivers, vehicles, motor carriers and the carriers of hazardous materials and/or dangerous goods. Safety standards include the management controls necessary to ensure compliance and performance with all applicable safety standards.

Article 2—Facilitation and Implementation

The Central Authorities responsible for the facilitation of this Understanding will be the Department of Transportation for the United States and Transport Canada for Canada. The Implementing Agencies responsible for the implementation of this Understanding will be the Federal Highway Administration for the United States and the relevant Canadian Provincial or Territorial authorities.

Article 3—Obligations of Each Party

Each Implementing Agency is responsible for monitoring a motor carrier's compliance and performance in the motor carrier's home jurisdiction. Each Implementing Agency is responsible for enforcing its motor carrier safety standards applicable to transborder motor carriers.

Article 4—Mutual Recognition

(A) Each Implementing Agency will endeavor to establish a mutually compatible motor carrier facility audit or safety and compliance review program;

(B) When an Implementing Agency of one Party, after consultation and review with the Implementing Agency of the other Party, determines that the motor carrier facility audit or safety and compliance review program of the Implementing Agency of the other Party is compatible, it will notify the relevant Implementing Agency;

(C) Where the Implementing Agency of one Party has established a mutually compatible motor carrier facility audit or safety and compliance review program, the Implementing Agency of the other Party will recognize and accept its motor carrier safety rating;

(D) In the event that a mutually compatible motor carrier facility audit or safety and compliance review program has not been established, an Implementing Agency of one Party is not required to recognize or accept the motor carrier safety rating of the Implementing Agency of the other Party;

(E) Nothing in this Understanding will restrict or preclude representatives of the Central Authorities or Implementing Agencies of either Party from performing investigations, facility audits, or safety and compliance reviews of a motor carrier in the territory of the other Party when deemed necessary; and

(F) This Understanding is intended to establish working arrangements among the Central Authorities and Implementing Agencies of both Parties and is not intended to create new international legal obligations between the Parties.

Article 5—Exchange of Information

The Implementing Agency or Agencies of each Party will provide for the cost free exchange of motor carrier enforcement and safety rating data to the other Implementing Agency or Agencies of the other Party.

Article 6—Application of Laws

A motor carrier of one Party must comply with all applicable laws and regulations while entering, within or leaving the territory of the other Party.

Article 7—Consultations

The Parties may consult at any time on issues relating to the implementation of the Understanding. Such consultations will take place at the earliest possible date, but no later than thirty (30) days after a Party makes a written request, unless otherwise agreed.

Article 8—Termination

Either Party may, at any time, give notice in writing to the other Party of its decision to suspend or terminate this Understanding. Such suspension or termination will take effect ninety (90) days after such notice.

Article 9—Amendments

This Understanding may be amended at any time by agreement of the Parties. Any amendment will be effected by an exchange of diplomatic notes.

In witness whereof, the undersigned, being duly authorized by their respective Parties, have signed this Understanding.

Done at Washington this twenty-ninth day of April, 1994, in two originals, each in the English and French languages, the texts in each of the languages being equally authentic.

Federico Peña,

Secretary of Transportation.

For the Government of the United States of America

Douglas Young,

Minister of Transport.

For the Government of Canada

[FR Doc. 94-27001 Filed 10-31-94; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545-0393.
Form Number: IRS Letters 109C and 109(SC).
Type of Review: Extension.
Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy (Letter 109C); Statement of Nonreceipt of Refund Shown on Tax Return (Letter 109(SC)).
Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquires about their non-receipt of refund and no return is found, this letter is sent requesting the taxpayer to file another return.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 18,223.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,513 hours.

OMB Number: 1545-1093.
Regulation ID Number: IA-56-87 and IA-53-87 Final.
Type of Review: Extension.
Title: Minimum Tax-Tax Benefit Rule.
Description: Section 58(h) of the 1954 Internal Revenue Code provides that the Secretary shall provide for adjusting tax preference items where such items provide no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items provided no tax benefit because of available credits and describes how to claim a credit or refund of minimum tax paid on such preferences.
Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: Other (One-time claim for credit or refund).
Estimated Total Reporting Burden: 40 hours.

OMB Number: 1545-1098.
Regulation ID Number: TD 8418 (FI-91-86 NPRM, FI-90-86 TEMP, FI-90-91 NPRM, and FI-1-90 NPRM).
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.
Description: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit a form with the rebate. The regulations provide for several elections, all of which must be in writing.
Respondents: State or local governments, Non-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Respondents—1 hour, 30 minutes
Recordkeepers—2 hours, 48 minutes
Frequency of Response: On occasion, Other (at most, every 5 years).
Estimated Total Reporting/ Recordkeeping Burden: 8,550 hours.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-27013 Filed 10-31-94; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

October 21, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510-0019.
Form Number: FMS-1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the FMS-1133 Claim Form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery, he or she answers questions on the form, and signs and returns it to the Financial Processing Division. Claims Analysts review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Number of Respondents: 120,192.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: Other (as needed).
Estimated Total Reporting Burden: 20,072 hours.
Clearance Officer: Jacqueline R. Perry, (301) 344-8577, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-27014 Filed 10-31-94; 8:45 am]

BILLING CODE 4810-35-P

Public Information Collection Requirements Submitted to OMB for Review

October 21, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550-0035.
Form Number: None.
Type of Review: Extension.
Title: Securities Offering Disclosure.
Description: Provides necessary information, including financial disclosure, to persons to make an informed investment decision regarding possible purchase or sale of securities of savings associations. Sets standards for disclosure to reduce the risk of fraudulent securities offerings, which could adversely affect the public and the safety and soundness of savings associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 139.
Estimated Burden Hours Per Respondent: 432 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 60,054 hours.
Clearance Officer: Colleen Devine (202) 906-6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-27015 Filed 10-31-94; 8:45 am]

BILLING CODE 4810-25-P

Public Information Collection Requirements Submitted to OMB for Review

October 25, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by November 14, 1994. All public comments must be received by close of business November 8, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545-1432.
Survey Project Number: IRS PC:V 94-011-G.
Type of Review: Revision.

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Title: Laguna Niguel District Director's Newsletter Reader Survey.

Description: The Director's Newsletter is sent to tax practitioners in the Laguna Niguel District on a bi-monthly basis. This newsletter has been published by the Public Affairs Office for over twenty years. In that twenty year time span, there has never been a formal mechanism to ascertain if this newsletter is meeting the needs of the practitioners. Also, there has never been any formal feedback on the quality of the contents of the newsletter.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 700 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-27016 Filed 10-31-94; 8:45 am]

BILLING CODE 4830-01-P

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6-8000) also prescribed use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 3 percent for calendar year 1995.

DATES: The rate will be in effect for the period beginning on January 1, 1995 and ending on December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Program Compliance & Evaluation Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 874-6630).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95-147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1995 reflects the average investment rates for the 12-month period ended September 30, 1994.

Dated: October 21, 1994.

Larry D. Stout,

Assistant Commissioner, Federal Finance.

[FR Doc. 94-27030 Filed 10-31-94; 8:45 am]

BILLING CODE 4810-35-M

Surety Companies Acceptable on Federal Bonds; Liquidation; Pacific States Casualty Company

Pacific States Casualty Company, a California corporation formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 57 FR 29366, July 1, 1992. The Company's authority was terminated by the Department of the Treasury effective March 10, 1993. Notice of the termination was published in the **Federal Register** of April 26, 1993, on page 22018.

On June 16, 1993, upon a petition by the Insurance Commissioner of the State of California, the Superior Court of the State of California for the County of Los Angeles issued an Order of Liquidation with respect to Pacific States Casualty Company. Mr. John Garamendi, the Insurance Commissioner of the State of California, was appointed as the Liquidator of the Company. All persons having claims against Pacific States Casualty Company should file their claims immediately, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 USC 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044-0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will consolidate and file any and all claims against Pacific States Casualty Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 514-7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874-6507.

Dated: October 21, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94-27034 Filed 10-31-94; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent 10-94

Question Presented

Does 38 U.S.C. 5110(g), which governs effective dates of awards of compensation and pension benefits based on liberalizing laws or administrative issues, apply to awards based upon judicial precedents?

Held

The effective dates of awards of compensation or pension based upon judicial precedents alone are governed by 38 U.S.C. § 5110(a) and not 38 U.S.C. 5110(g), i.e., the effective dates may generally be no earlier than dates of receipt of claims. However, if an award may be predicated upon an administrative issue, such as an amendment to a regulation, prompted by a judicial precedent, 38 U.S.C. 5110(g) should be applied in assigning the effective date if to do so would be to the claimant's benefit.

Effective date: April 25, 1994.

O.G.C. Precedent 11-94

Question Presented

Are Veterans Benefits Administration officials authorized to deny a claimant's request for equitable relief under 38 U.S.C. 503, or must such a request be forwarded to the Secretary of Veterans Affairs for determination?

Held

The Secretary of Veterans Affairs has the authority pursuant to 38 U.S.C. 501(a), 503, and 512(a) to delegate the authority to determine that equitable relief is not warranted in a particular case and has impliedly delegated that authority by regulation to VA department heads, including the Under Secretary for Benefits. In addition, we believe the Secretary may authorize the Under Secretary for Benefits to subdelegate the authority to deny requests for equitable relief to subordinate officials within the Veterans Benefits Administration. However, there is no indication that such subdelegation has been attempted.

Effective date: May 2, 1994.

O.G.C. Precedent 12-94

(a) For purposes of determining entitlement to accrued pension benefits under 38 U.S.C. 5121(a), where evidence submitted prior to a beneficiary's death provides sufficient basis for prospective estimation of unreimbursed medical expenses, may such evidence form the basis for an award of accrued benefits only in cases where unreimbursed medical expenses were actually deducted prospectively from the deceased beneficiary's income for purposes of determining pension entitlement during the beneficiary's lifetime?

(b) What criteria must be met in order to provide a sufficient basis for prospective estimation of medical expenses?

Held

(a) Accrued pension benefits may be allowed under 38 U.S.C. 5121(a) on the basis that evidence in the file at the date of a veteran's death permitted prospective estimation of unreimbursed medical expenses, regardless of whether unreimbursed medical expenses were actually deducted prospectively from the veteran's income for purposes of determining pension entitlement prior to the veteran's death.

(b) Where a veteran had in the past supplied evidence of unreimbursed medical expenses which, due to the static or ongoing nature of the veteran's medical condition, could be expected to be incurred in like manner in succeeding years in amounts which, based on past experience, were capable of estimation with a reasonable degree of accuracy, such evidence may form the basis for a determination that evidence in the file at the date of the veteran's death permitted prospective estimation of medical expenses. There may be situations in which medical expenses may be predicted with a reasonable degree of accuracy from evidence in the file at the date of the veteran's death on a basis other than the recurring nature of the expenses.

Effective date: May 2, 1994.

O.G.C. Precedent 13-94

Whether service connection may be established for a disability incurred following the date on which a veteran was, in fact, discharged from active military duty, where the discharge was subsequently voided and full active-duty credit granted by a Board for Correction of Military Records to a date subsequent to the date on which the disability was incurred.

Held

Service connection may not be established for a disability incurred following the date on which a veteran was discharged from active military duty, although the discharge was subsequently voided and full active-duty credit granted by a Board for Correction of Military Records to a date after the date on which injury occurred, because the veteran was not engaged in active service at that time.

Effective date: May 9, 1994

O.G.C. Precedent 14-94

Question Presented

Where a veteran of service in the Regular Philippine Scouts or the Philippine Commonwealth Army reports having detained or interned by the enemy on a date following the date of termination of the veteran's period of active duty as certified by the service department, may VA recognize the veteran as having been in a prisoner-of-war (POW) status during the period of detention of internment and recognize that period as a period of active service under 38 CFR 3.9?

Held

In determining for veterans' benefit purposes under 38 CFR 3.9 the period of active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army while serving with the United States Armed Forces, the Department of Veterans Affairs is not bound by a service-department certification as to the ending date of the veteran's period of active duty. The Department may include a period spent in a prisoner-or-war status in determination of the veteran's period of active service, if the veteran was detained or interned by the enemy "immediately following a period of active duty." The phrase "immediately following a period of active duty," as used in section 3.9(b), may be construed as referring to an event following closely after a period of active duty, directly related to that duty, and occurring before the veteran performed activities not related to active military duty. The Department is not bound in determining a period of active service by a service-department finding of pay entitlement under the Missing Persons Act, as amended.

Effective date: June 8, 1994

O.G.C. Precedent 15-94

Question Presented

May the Secretary enforce a right to subrogation with respect to a guaranteed housing loan on which VA paid a claim

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if VA failed to provide the veteran with notice of a transferee's default?

Held

Veterans who obtain a VA guaranteed loan have a constitutionally protected right to receive notice of a foreclosure proceeding that will affect their rights and liabilities. When a third party assumer defaults on the loan, VA must notify the original veteran obligor of the impending foreclosure, provided VA knows or can reasonably ascertain the veteran's address. If VA fails to provide the required notice, VA may not collect a debt from the veteran under subrogation, unless the private loan holder obtained a personal judgment against the veteran prior to VA paying the guaranty claim, or the holder provided the veteran with reasonably sufficient notice. The judgment may be subject to collateral attack in the VA appeals process if the court lacked jurisdiction to render that judgment. VA Form letter 26–251 is deemed to satisfy the notice requirement.

Effective date: June 23, 1994

O.G.C. Precedent 16–94

Questions Presented

(a) Under CFR 3.458(d), may only certain compensation benefits be apportioned to a child of a veteran adopted out of the veteran's family, or should this regulation be read to permit apportionment of the portion of improved-pension benefits payable to a veteran on the basis of the existence of the child?

(b) Does adoption outside the family divest a veteran of legal custody of a child for improved-pension purposes?

(c) If adoption outside the family does not divest the veteran of legal custody of a child, would the child be considered in the custody of the veteran for purposes of determining the rate of improved-pension payable to the veteran?

Held

(a) Under 38 CFR 3.458(d), improved-pension benefits generally may not be apportioned to a child of the veteran who has been adopted out of the veteran's family.

(b) Under Utah law, adoption of a veteran's child outside the veteran's family divests the veteran of legal custody of the child for improved-pension purposes.

(c) In light of the holding in paragraph (b) above, the third question presented is moot.

Effective date: July 1, 1994

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 94–27032 Filed 10–31–94; 8:45 am]

BILLING CODE 8320–01–M

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on November 14, 1994, from 1:00 p.m. to 4:00 p.m. and on November 15, 1994, from 8:30 a.m. to 4:00 p.m. The meeting will take place at One Dupont Circle, NW., Washington, DC, in the Kellogg Room. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia P. Dollarhide, Director, Education Service (phone 202–273–7132), prior to November 10, 1994.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 2:00 p.m. on November 14, 1994.

Dated: October 24, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–27031 Filed 10–31–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 210
Tuesday, November 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 7, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27209 Filed 10–28–94; 3:45 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–36]

TIME AND DATE: November 4, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, D.C. 20436.

STATUS:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–663 (Final) (Certain Paper Clips from China)—briefing and vote.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 27, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27119 Filed 10–28–94; 10:23 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 8, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 21215, *Seaboard Air Line Railroad Company—Merger Atlantic Coast Line Railroad Company*

Docket No. 40653, *Yellow Freight System, Inc. Of Indiana—Petition for Declaratory Order—Weighing Shipments*

Docket No. 41017, *Household Goods Carriers' Bureau—Petition for Declaratory Order—Broker Practices*

MC–247354 (C) and (P),[1] *Allen Freight Trailer Bridge, Inc., Common and Contract Carrier Applicaton*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27131 Filed 10–28–94; 10:53 am]

BILLING CODE 7035–01–P

[1] Embraces No. 40783, *Marine Transportation Services Sea Barge Group Inc. v. Allen Freight Trailer Bridge, Inc.*

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Wednesday, November 16, 1994 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Wednesday, November 16, from 10:00 a.m. to 6:00 p.m., on Thursday, November 17, from 9:00 a.m. to 6:15 p.m., and on Friday, November 18, from 8:30 a.m. to 12:20 p.m.

PLACE: The Coonamessett Inn, Jones Road and Gifford Street, Falmouth, Massachusetts 02541.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Among the major issues the Commission plans to consider at the meeting include: Implementation of the 1994 amendments to the Marine Mammal Protection Act; the status and incidental take of harbor porpoise; right and humpback whales in the North Atlantic; reintroduction of captive marine mammals to the wild; the status of marine mammals in Alaska; the proposed Acoustic Thermography of Ocean Climate (ATOC) experiment; and the gray whale, Hawaiian monk seal, and West Indian manatee.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 512, Washington, D.C. 20009, 202/602–5504.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's 1994 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the September 12, 1994 (59 FR 46886) notice.

Dated: October 28, 1994.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 94–27159 Filed 10–28–94; 2:01 pm]

BILLING CODE 6820–31–M

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federal register

Tuesday
November 1, 1994

Part II

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives: Deposit Control Gasoline Additives; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-5094-3]

RIN 2060-AD71

Regulation of Fuels and Fuel Additives: Interim Requirements for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 6, 1993, EPA published a notice of proposed rulemaking to govern the use of deposit control (detergent) additives in all gasoline used in the United States beginning January 1, 1995. The proposal included a detergent additive certification program based on deposit control performance testing and standards. To provide adequate lead time to the regulated industry, however, simpler interim requirements were proposed to be in effect during the first year of the program. This final rule establishes an interim detergent additive program consistent with the proposed start-up provisions. In a subsequent action, EPA will take final action on the proposed more rigorous detergent additive testing and certification program.

EFFECTIVE DATE: This rule is effective January 1, 1995. 40 CFR 80.141(c)–(f), 80.157, 80.158, and 80.160 which contain information collection requirements (ICR) are not effective until the Office of Management and Budget (OMB) has approved them. EPA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–91–77 at the following address: Air Docket Section (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460; phone (202) 260–7548; fax (202) 260–4000. The docket is open for public inspection from 8 a.m. until 4 p.m., except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials. Electronic copies of major documents associated with this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Details on how to access this bulletin board are included in Section VI of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to qualification of detergent additives for use in complying with gasoline detergency requirements contact: Jeffrey A. Herzog, US EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, Fax: (313) 741–7816. For information related to the registration of fuels and fuel additives under 40 CFR part 79 contact: James W. Caldwell, US EPA (6406J), Field Operations and Support Division, 401 M Street SW., Washington DC 20460; Telephone: (202) 233–9303, Fax: (202) 233–9556. For information related to enforcement contact: Judith Lubow, US EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 969–6490.

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I. Background

A. Legal Authority and Rulemaking History

1. Statutory Provisions and Legal Authority

The accumulation of fuel deposits in motor vehicle engines and fuel supply systems and the impacts of these deposits on vehicle performance have been studied by industry for many years. Fuel injector and intake valve deposits have been shown to have significant adverse effects on driveability, exhaust emissions and, in some cases, on fuel economy as well. The adverse effects of these deposits have been widely accepted, and industry has or will soon have in place

standard test procedures to evaluate the deposit control effectiveness of gasoline detergent additives.[1]

Since detergent additives can help to prevent engine and fuel supply deposits,[2] Congress specified in section 211(l) of the Clean Air Act that:

> Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States, any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. * * *

Section 211(l) further provides that "the Administrator shall promulgate a rule establishing specifications for such additives." As provided in section 211(l), today's rule specifies that all parties involved in the chain of gasoline production, distribution and sale are responsible for compliance with the detergent requirements. Certain compliance responsibilities will also apply to manufacturers of detergent, even before it is blended with gasoline. The registration reporting requirements of detergent additive manufacturers (under 40 CFR part 79) have also been clarified and reinforced, and these requirements must be met before a detergent additive is eligible for use in complying with gasoline detergency requirements.

EPA is issuing today's final rule under the authority of section 211(c) as well as section 211(l) so that the preemption provisions of section 211(c)(4) will apply. This is consistent with the approach EPA has taken in its reformulated gasoline regulations (59 FR 7717, February 16, 1994). As explained there, whenever the federal government regulates in an area, the issue of preemption of state action in the same area is raised. Here, as with reformulated gasoline and the associated "anti-dumping" program, the regulations will affect virtually all of the gasoline sold in the United States. Also, in contrast to commodities produced and sold in a single area of the country, gasoline produced in one area is often distributed to other areas. The national scope of gasoline production and distribution indicates that this federal rule should preempt state action to avoid an inefficient patchwork of potentially conflicting regulations. Section 211(c), enacted in the 1977 Amendments to the Clean Air Act, provides that federal fuels regulations adopted under that authority preempt non-identical state controls except under certain specified circumstances set out in section 211(c)(4). Those exceptions apply: (1) To any state for which application of section 209(a) of the Act has at any time been waived under section 209(b); and (2) where non-identical state regulations are included in a State Implementation Plan as necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. Thus, only California may regulate gasoline detergency under the first exception. Other states may adopt non-identical regulations only upon the specified showing under the second exception.

Section 211(c) authorizes the Administrator, by regulation, to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle" if, under section 211(c)(1)(A), emission products of the fuel or additive cause or contribute to air pollution endangering the public health or welfare, or, under section 211(c)(1)(B), if emission products of the fuel or additive will impair to a significant degree the performance of an emission control device in general use. While EPA believes that it has clear authority to regulate gasoline detergency under section 211(c)(1)(A), the Agency also recognizes that it has such authority under section 211(c)(1)(B).

That gasoline combustion emissions cause or contribute to harmful air pollution is now undisputed, and a requirement for proper detergent additization to mitigate such emissions is appropriate under the broad authority of section 211(c). This authority also supports certain program elements that EPA is implementing in order to make the detergent program most effective. As explained further below, these include a detergent registration scheme and, as explained in the enforcement section of the preamble (Section IV), application of certain requirements to detergent manufacturers even prior to blending of detergent with gasoline. Public comment on EPA's legal authority to make such requirements of detergent manufacturers is addressed in Section IV.

EPA believes consideration of the factors under section 211(c)(2)(A) support its authority under section 211(c)(1)(A). Air pollution from gasoline vehicles is clearly harmful. Further, while vehicle technology can affect deposit formation, EPA does not believe that the formation of the deposit types that are the focus of the regulatory controls implemented today, and the associated emissions effect, can reasonably or cost effectively be addressed by requiring changes in vehicle design. Vehicle manufacturers have an incentive and continue to work to minimize susceptibility to deposit formation, which affects driveability as well as emissions. In addition, detergents are also important to control deposits in vehicles currently in use and prone to deposit formation which will continue to remain in use for some time.

2. Rulemaking History

The CAA requires that EPA promulgate a rule establishing specifications for detergent additives and requiring all gasoline to contain detergent additives by January 1, 1995. EPA encouraged full participation of the regulated industry and other interested parties in the development of the rule to implement these requirements. A public workshop was held on February 13, 1992 to initiate open discussion of the relevant issues and EPA met with numerous industry representatives separately to obtain their input.

The notice of proposed rulemaking (NPRM) was published on December 6, 1993 (58 FR 64213) and a public hearing was held in Ann Arbor, Michigan on January 11, 1994. Oral testimony was heard from 6 presenters. EPA's initial intent was to accept subsequent written public comment on the NPRM until February 11, 1994. However, in response to industry requests for additional time, comments were accepted until March 11, 1994. EPA received 31 written comments on the NPRM. These comments are summarized and responded to in later sections of this preamble.

For the reasons discussed further in Section I.C., EPA has decided to finalize the proposed detergent gasoline program in two stages. Today's final rule, establishing an interim detergent program, will be in effect until replaced by the anticipated second final rule. The latter is expected to cover the remaining issues from the NPRM as well as issues raised in a notice to reopen the comment period.

B. Proposed Regulatory Approach

EPA proposed a performance-based detergent additive certification program under which all gasoline distributed and sold in the United States would be required to contain a detergent additive which, in the context of prescribed

[1] The reader is referred to the Notice of Proposed Rulemaking (NPRM: 59 FR 64213, December 6, 1993) for an in-depth discussion of the causes of engine and fuel supply deposits, their impacts on vehicle performance, and deposit control measures.

[2] See Sen. Rep. No. 101–228, 101st Cong., 1st Sess. at 116 (Dec. 20, 1989) ("[F]uel additives, such as detergents, are available to maximize the performance of engines and minimize emissions.").

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vehicle testing, had the demonstrated ability to meet specified standards of deposit control performance in a predetermined series of test fuels. Fuel injector deposit (PFID) and intake valve deposit (IVD) control performance tests and standards were proposed that would rely on industry-consensus test procedures. Additives meeting the detergent performance standards would qualify for certification. These detergents would then be acceptable for meeting gasoline deposit control requirements when used at the treatment rates which were needed to meet the performance standards during testing.

Due to inadequate lead time for industry to complete the vehicle testing requirements for certification, EPA proposed a simpler interim program to be in effect January 1 through December 31, 1995. During this interim period, all gasoline would be required to contain detergent additives that satisfied simplified criteria, but compliance with the certification testing program would not be required until January 1, 1996. EPA proposed that additives could qualify for the interim program based either on data collected to satisfy California's detergent additive program,[3] or on specifications on chemical composition and additive manufacturer recommendations regarding proper usage.

C. Scope of This Action

As previously mentioned, this final rule implements only the interim detergent program, beginning January 1, 1995. Full certification requirements are expected to be promulgated by June 30, 1995 and to go into effect about a year thereafter.[4] The requirements of the interim program will remain in effect until replaced by the later rulemaking.

EPA is following this two-step approach for two reasons. The first reason is to allow the industry time to complete development of a consensus test procedure to evaluate an additive's ability to control fuel injector deposits. At the time the NPRM was published, many of the basic elements of the most widely used vehicle-based PFID and IVD control test procedures were broadly accepted by industry, but standard versions of these procedures had not been published. While the American Society for Testing and Materials (ASTM) was actively developing standard versions of these procedures to enhance comparability of test results, the availability of finalized test specifications was uncertain. EPA thus proposed versions of these test procedures based on the most current ASTM drafts available at the time, which included many of the improvements under consideration by ASTM. EPA also proposed to adopt the ASTM versions of these procedures in the detergent program final rule if the final ASTM specifications became available in time and if they closely resembled the proposed procedures. Public comment on the NPRM supported EPA's intent to adopt the final ASTM procedures when available.

Since the publication of the NPRM, ASTM finalized its intake valve deposit control procedure as ASTM D–5500, and EPA anticipates adopting it for use under the detergent certification program without further notice and comment. However, ASTM has not yet finalized its PFID control test procedure, and EPA believes it is appropriate to delay finalization of the detergent certification program until this procedure is available (expected in late 1994 or early 1995). Adoption of the final ASTM PFID control test procedure will result in improved confidence in the certification test results.[5] Consistency of EPA testing requirements with an industry consensus standard test procedure will also avoid unnecessary industry burdens and confusion which would result from different regulatory and industry practices.

The second reason to delay finalization of the full certification program is to allow EPA an opportunity to assess concerns raised by some commenters related to the possible incremental accumulation of combustion chamber deposits (CCD) which may result from the use of detergent additives designed to control PFID and IVD. EPA received contradictory public comments on this issue. On one side, the petroleum and additive manufacturing industries stated that the causes and impacts of CCD are not understood well enough to warrant EPA's implementation of any measures to control CCD at this time. These commenters further stated that, even if the need for CCD control is established, regulatory action should not be taken until a suitable CCD control test procedure and standard are available.

On the other hand, automobile manufacturers claimed that the impact of CCD on driveability and emissions is sufficiently well demonstrated for EPA to take action. They strongly urged EPA to investigate the additive contribution to CCD as soon as possible, with the ultimate aim being a CCD control performance test and standard. Comments from automobile manufacturers further stated that, in the absence of a standardized CCD performance test, EPA should implement some interim measure to help limit the potential for increased CCD that could result from detergent additive over-use. To this end, the American Automobile Manufacturer's Association (AAMA) suggested a 70mg/100ml maximum limit on the unwashed gum level in additized gasoline, as determined by ASTM test procedure D381. AAMA stated that a correlation exists between the levels of unwashed gums in gasoline and the amount and type of detergent additive present, and hence the potential for such additives to have an adverse impact on CCD. However, comments from the petroleum industry stated that the unwashed gum level is an unreliable measure of detergent usage and is not well correlated with CCD formation. The relationship between detergent use, unwashed gums, and CCD will be addressed at length in the forthcoming reopening notice.

II. Applicability

A. Summary of Proposed Applicability Provisions

The NPRM noted that section 211(l) refers to "any gasoline," and does not distinguish between gasoline used for highway vehicles and engines and gasoline used in nonroad applications.[6] Therefore, EPA proposed that detergent requirements apply to all gasoline used in highway vehicles and engines (including both reformulated and conventional gasolines,[7] oxygenated gasoline, and the gasoline component of alcohol blends such as M85 and E85), as well as gasoline used in nonroad applications (including racing fuel and marine fuel). EPA also proposed that gasoline for military use be covered by this regulation.

EPA proposed that both leaded and unleaded gasoline would be required to contain detergent additives that comply with the same proposed requirements. In the NPRM it was noted that, while barred from sale for highway vehicles as of January 1, 1996, leaded gasoline will still be permitted to be sold for off-highway use, for example, in certain construction equipment and farm vehicles. EPA also stated the belief that the use of detergent additives would have a beneficial impact on the emissions performance of engines using leaded gasoline.

EPA proposed that the detergent requirements would not apply to gasoline used in internal combustion aircraft engines because they are separately regulated under Part B of Title II of the Clean Air Act. EPA also proposed that test fuels for research and developmental purposes would be exempted from the detergency requirements provided that certain requirements for exemption were satisfied (see Section IV).

B. Applicability Provisions Finalized Under the Interim Program

The detergency requirements adopted in today's rule closely follow the proposed provisions. They apply to all gasoline, highway and off-road, including both reformulated and conventional gasolines, oxygenated gasoline, and the gasoline component of alcohol blends such as M85 and E85, as well as to marine fuel and gasoline used for military purposes. Gasoline service accumulation fuel will also be required to comply with detergency requirements, as will the gasoline component of alcohol blend service accumulation fuel.[8] However, racing fuel, aviation fuel, emissions certification fuel, and gasoline used for research and developmental purposes will be exempted from compliance. Different requirements for leaded gasoline will be implemented to allow optimization of the additive used (see Section III.C.). The reader is directed to Section III.D for a summary and analysis of comments on the applicability of gasoline detergency requirements.

III. Interim Program Basic Provisions

A. Background

As noted above, to allow adequate time for industry to comply with the specific vehicle testing requirements of the detergent certification program, EPA proposed a simplified interim program as an available option during 1995. Under the proposal, compliance with the full detergent certification program would not be required until January 1, 1996. EPA estimated that the one-year duration of the interim program would be sufficient to allow industry to complete the testing requirements of the certification program.

Under the interim program, EPA proposed that all gasoline sold to the ultimate consumer (unless otherwise exempted) would be required to contain a detergent which had been registered under the 40 CFR Part 79 Fuels and Fuel Additives (F/FA) Registration Program and which: (1) Was composed primarily of at least one, or a combination of, four chemical classes of detergent that EPA believed to be effective in controlling deposits based on current industry practices (polyalkyl amines, polyether amines, polyalkylsuccinimides, and polyalkylaminophenols); or (2) had been approved under the California Air Resources Board (CARB) detergent certification program. Detergents that met the chemistry-based criteria would be required to be used at least at the minimum concentration recommended by the manufacturer for keep-clean control of intake and fuel injector deposits, and those that met the criteria based on CARB certification would be required to be used at least at the minimum concentration approved in the CARB certification. Detergents used under the interim program would be required to be identified by an interim detergent certification number issued by EPA.

EPA proposed that an application for an interim detergent certification number would need to be submitted to EPA containing the following: the name of the detergent manufacturer and the detergent as supplied by the detergent manufacturer to satisfy the standard registration requirements of 40 CFR part 79, a complete description of the detergent additive's chemical composition including the weight percent of each of the components that compose the detergent package, the minimum concentration of each component of the detergent additive that will be used, and a suitable analytical procedure to identify the detergent additive in its pure state.

In addition to these proposed requirements, EPA asked for comment on whether some form of performance test data should also be required to be submitted for detergents used under the interim program, and the appropriate acceptance criteria for this data. EPA proposed to reserve the right to examine any substantiating data and could deny or revoke a detergent registration based on this review. The enforcement task of ensuring that the proper type and amount of additive has been added to the gasoline in the market was proposed to be accomplished primarily through paper audit "mass balance" procedures rather than actual chemical or vehicle-based testing.

The interim detergent program finalized in today's rule retains the basic structure and intent of the proposed program, but departs from the proposal in a number of implementation details. As was proposed, the interim program requires precise composition and concentration information on detergent additives which are to be used for compliance with the detergency requirements of today's rule, as well as consistency between this information and the additive treat rate reported for (and used in) detergent gasoline. However, to reduce paper flow and other administrative procedures, a detergent certification number will not be issued by EPA to acknowledge properly registered additives during the interim program. Furthermore, the final rule does not contain the proposed restriction that a detergent additive must either be CARB-certified or belong to one of four specified chemical classes. Other departures from the proposed rule have been made, as well.

The specific requirements of the interim detergent program as finalized in today's rule are described in sections B-D below. The key differences between the proposed and final requirements for the interim program are discussed in Section D, the Summary and Analysis of Comments. The enforcement provisions included in todays rule are discussed in Section IV.

B. Description of Interim Detergent Program Requirements

Since CAA section 211(l) requires that all gasoline contain detergent additive(s) prior to sale to the consumer, the direct responsibility rests on the fuel manufacturer/marketer to ensure that a suitable registered detergent has been added to gasoline at an effective concentration. However, detergent manufacturers are responsible for properly registering their detergent additives and for providing detergent products which conform to these registrations. This section describes how EPA will implement the registration aspects of the interim program, and addresses the responsibilities of both gasoline manufacturers/marketers and detergent manufacturers. This section focuses on requirements related specifically to unleaded gasoline.

[3] Title 13, section 2257 of the California Code of Regulations.

[4] This expectation is based on EPA's estimate of the amount of lead time which industry will require to comply with anticipated testing requirements after promulgation of the detergent certification program in the second final rule. See memo to the Docket A–91–77 from Robert Johnson, entitled, "Estimated Lead Time for Industry to Comply with Vehicle Testing Requirements," September 21, 1994.

[5] EPA will evaluate whether changes to the ASTM PFID test procedure are necessary prior to its adoption for regulatory purposes, and will provide the opportunity for additional public comment if appropriate.

[6] The reader is directed to the NPRM for a discussion of EPA's legal authority regarding the types of gasolines which were proposed to be covered by the proposed detergency requirements (59 FR 64213, December 6, 1993).

[7] Reformulated and conventional gasolines are defined in "Regulation of Fuel and Fuel Additives: Standards for Reformulated and Conventional Gasoline," Final Rule, 59 FR 7715 (February 16, 1994).

[8] Service accumulation fuels are used to demonstrate compliance with durability requirements during vehicle emission certification testing.

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Special provisions applicable to leaded gasoline are discussed in Section III.C.

In the NPRM, EPA proposed that any interested party (detergent manufacturer, fuel manufacturer/marketer, or other) could take responsibility for the informational requirements under the interim program. EPA recognized that, in many cases, the fuel manufacturer/marketer would likely accept most of this responsibility since it would bear the ultimate accountability for ensuring the proper use of detergent additives. EPA further proposed that the detergent additive data (e.g. composition, treatment rates) would be submitted in a separate application. However, comments indicated that much of the same information was already required under the existing F/FA registration program. Furthermore, in many cases, fuel marketers would have to be dependent on data generated by additive manufacturers to comply with the detergent information requirements.

Therefore, as described below, the requirements of this interim program are based primarily on information items already required for F/FA registration. EPA has selected this approach for three reasons: (1) it utilizes an existing reporting program rather than creating a new one; (2) it minimizes additional information submittal; and (3) it eliminates the confidential business information (CBI) concerns raised by additive manufacturers in their comments on the NPRM (see Section III.E).

1. Requirements for Detergent Additive Manufacturers

For a detergent additive to be eligible for use in complying with gasoline detergency requirements, its manufacturer must ensure that the additive registration data provided under 40 CFR part 79 meets the registration information requirements described below.[9] To the extent that existing detergent additive registrations do not comply with these specifications, they must be updated prior to the January 1, 1995 start date for the interim program.

a. *Detergent Additive Compositional Data.* Pursuant to pre-existing requirements under § 79.21(a), the registration of fuel additives requires the submittal of information on the identity and amounts of the components of the additive product. Today's rule specifies that, to be eligible for use in compliance with gasoline detergency requirements, the compositional information submitted for registration of a detergent additive must include: (1) A complete description of the chemical composition of the detergent additive package, such that the chemical structure of each of the components in the detergent package can be determined; and (2) the exact weight and/or volume percent (as applicable) of each of the components that compose the detergent package. In addition, components of the detergent additive package which have an effect on deposit control efficiency (i.e. detergent-active components) must be identified as such. Specifically, the registration must indicate which of the following chemical or other designations pertains to each detergent-active component: (1) polyalkyl amine, (2) polyether amine, (3) polyalkylsuccinimide, (4) polyalkylaminophenol, (5) detergent-active carrier oil, (6) other detergent-active component.

In the past, in registering their additives, some detergent manufacturers have reported detergent-active components as a product of the reaction of specified chemical reactants. Since yields of detergent-active components from these reactions could vary from 0 to 100 percent, chemical specifications of this type are inadequate for EPA to determine the composition of the detergent additive package. For example, the package could contain unknown amounts of unchanged primary reactants as well as chemical products of different molecular weight and different side reactants. To be eligible for use after the effective date of this rule, more precise identification of the components of the detergent additive package will now be required. In the case of polymer components, IUPAC nomenclature with a molecular weight distribution should be specified.

Within a given detergent additive registration, no variation will be allowed in the identity or concentration of any of the detergent-active components. The identity and concentration of other components of the detergent additive package may vary under a single registration provided that such variability does not change the treat rate needed for effective deposit control. Detergent additive packages which differ in identity or concentration of detergent-active components must be separately registered. Variability in other possible additive package components such as the antioxidant, corrosion inhibitor, metal deactivator, and/or handling solvent is acceptable, provided that such variability does not affect the concentration of the active ingredients in the additive package. It should be noted that EPA will continue to evaluate what is an acceptable level of variability in additive compositional data and may revise these requirements for the detergent certification program in a later rulemaking.

b. *Recommended Minimum Effective Concentration.* As specified by § 79.21(d), a fuel additive registration must include the recommended range of concentration for the additive when mixed in fuel. To qualify for use in detergent gasoline under the requirements of today's rule, the lower bound of this recommended range, in the case of a detergent additive, must equal or exceed the minimum concentration which the detergent additive manufacturer deems necessary for the control of fuel injector and intake valve deposits. While not required to be submitted on a routine basis, data which supports the claim of deposit control effectiveness at this concentration is expected to be available to EPA on request. Requirements for such supporting data are further discussed in Section B.1.c, below.

The minimum effective concentration of the detergent additive, as reported in the detergent registration,[10] must correlate with the concentrations reported to be used by the fuel manufacturer. Specifically, the lower end of the detergent additive concentration range listed in a gasoline registration must equal or exceed the minimum recommended concentration specified in the respective additive registration.[11] Thus, it is incumbent upon the detergent additive manufacturer to accurately communicate the recommended concentration to his customers, in writing, for each registered detergent package. As described below in Section III.C, different concentration recommendations may be specified for leaded and unleaded gasoline, and, in the case of carburetor detergents, restriction to leaded gasoline should be indicated. If the detergent manufacturer recommends a minimum concentration to his customers that is higher than the minimum recorded on the additive registration, this could be construed as a potentially fraudulent misrepresentation. On the other hand, if the detergent manufacturer recommends to his customers a minimum additive concentration that is lower than the minimum amount recorded on the additive registration, then a misadditization of the gasoline would be presumed to occur, and both the fuel and additive manufacturers might be liable for the nonconforming gasoline. These liability issues are discussed further in Section IV of this preamble.

In an analogous case, detergent additive registrants must also accurately communicate the recommended detergent concentration and any usage restrictions, in writing, to their customers who are secondary additive manufacturers. Such secondary manufacturers purchase detergent from original manufacturers with the intent to resell the detergent, with or without additional ingredients in the additive package. In many instances, the secondary additive manufacturer will not know the identity and/or concentration of the components of the purchased additive product. However, provided with the recommended concentration of the purchased additive, the secondary manufacturer can, in turn, specify the proper concentration rate for his "relabeled" or "re-registered" detergent additive package. By linking registrations, EPA will be able to ascertain whether consistent concentrations of the same detergent are recommended by the original manufacturer and used (as a minimum) by any related secondary additive manufacturers and, ultimately, by the fuel manufacturers who are customers of either the original or secondary additive manufactures.

c. *Substantiation of Deposit Control Effectiveness.* As discussed in detail in the Summary and Analysis of Comments, the weight of public comment on the NPRM supported requirements for data to substantiate claims of detergent performance, even during the interim program. Public comment further stated that reputable detergent manufacturers would already have such data. Accordingly, this final rule requires that, during the interim program, supporting data must be available to demonstrate effective deposit control, but does not adopt specific test procedures and standards. This approach should provide reasonable assurance of effective deposit control performance, without sacrificing the flexibility which manufacturers will need in order to rely on existing data during the interim period. On a case-by-case basis, therefore, EPA may require that test data be provided to support the claim of deposit control effectiveness which is implicit in the minimum recommended concentration submitted by the detergent additive manufacturer pursuant to the F/FA registration requirements in § 79.21(d). EPA may request supporting data for a variety of reasons, for example, as the result of a review of detergent additive registration information disclosing an apparent anomaly in the type or concentration of the detergent additive used.

EPA will request the supporting test data from the party who registered the detergent additive. EPA regards the supporting test data as substantiation of the "recommended range of concentration" data which the additive manufacturer is required to submit under § 79.21(d) of the F/FA registration program. As such, EPA believes that the regulatory authority to require this data from the additive manufacturer derives from CAA section 211 (a) and (b). This authority is further supported by CAA section 114, which provides that the Administrator may require the submission of any information that is necessary to implement the requirements of the Act from any party subject to the provisions of the Act.

When requested, the detergent registrant must provide the supporting data to EPA within 30 days of receipt of the request for such data. If EPA judges the supporting data to be inadequate (or if it is not received), EPA may suspend or revoke the eligibility of the subject detergent for use in compliance with the requirements of this rule and may notify all fuel manufacturers (and secondary additive manufacturers) whose registrations contain the subject detergent of this revocation. In addition, EPA may initiate the enforcement actions described in Section IV.

EPA will be guided by the following considerations during the interim program when evaluating the adequacy of data used as evidence of detergent additive performance in controlling fuel injector and intake valve deposits. First, during the interim program, EPA will accept the data required by CARB to obtain a valid California detergent certification for gasoline sold anywhere in the United States, provided that the subject detergent was not certified by CARB specifically for use in California Phase II reformulated gasoline (Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996). CARB detergent certification specific to California Phase II reformulated gasoline will not be considered adequate to support the effectiveness of a detergent additive in gasoline sold outside the State of California.

EPA may also accept other test data to demonstrate adequate deposit control performance, provided that good engineering practices were followed during the conduct of the test and provided that the test fuels were reasonably typical of in-use fuels. For example, data collected using industry standard BMW 318i IVD and Chrysler 2.2 liter PFID tests (including the CARB procedures) will generally be acceptable. Other vehicle or engine tests may be acceptable, provided that a reasonable correlation with the BMW and Chrysler tests and the associated industry standards can be demonstrated.[12] Bench test data may be acceptable to support performance claims for fuel injector deposits but not for IVD. Furthermore, the validity of bench-test data will likely require a high level of scrutiny by EPA due to concerns that it may not be as representative of actual in-use performance as vehicle or engine test data.

The test fuels used in obtaining the required supporting data must contain the active components of the detergent additive package at no more than the minimum concentration recorded in the subject gasoline registration. Also, these test fuels must not contain any active detergent components other than those recorded in the subject gasoline registration. Any test fuel that was taken directly from commercial refinery production stock will be acceptable for deposit control testing. Specially refined low-deposit-forming fuels such as indolene are not acceptable.

Other specially blended test fuels will be evaluated by EPA for acceptability based on the following criteria. The composition of the blended test fuel(s) used in deposit control testing should be reasonably typical of in-use gasoline in its tendency to form such deposits (or more severe than typical in-use fuels). As an example, EPA will likely consider a test fuel acceptable if the key fuel parameters identified in the NPRM as affecting a gasoline's tendency to form PFID/IVD (sulfur, olefins, aromatics, T–90, and oxygenates) are at least at

[9] Detergents used to comply with gasoline detergency requirements must, of course, comply with other applicable registration requirements prescribed in Part 79, including those recently finalized in Subpart G (see 59 FR 33042, June 27, 1994).

[10] Detergent additive concentration must be reported in gallons of detergent additive per gallons of gasoline, to facilitate compliance with volume accounting reconciliation requirements (see section IV).

[11] Exceptions to this requirement are permitted when specifically approved by EPA, as discussed in Section III.B.2.

[12] The reader is directed to the NPRM for a discussion of IVD and PFID control test procedures. The historical industry standard for the BMW 318i test requires the maintenance of less than 100 mg per valve on average over the accumulation of 10,000 miles. The historical industry standard for the Chrysler 2.2 liter test requires the maintenance of less than 10 percent flow loss in any injector over the accumulation of 10,000 miles. The basic elements of these tests have been well established (driving cycle, test vehicle, etc.). However, various laboratories have conducted these tests over the years by following their own in-house procedures regarding other less vital aspects of the tests. For the purposes of the interim program, EPA will allow latitude in regard to the manner in which these tests were performed provided that a reasonable level of test quality was maintained per industry practice.

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average levels.[13] To help account for the deposit forming tendency of oxygenates, the test fuel(s) used for PFID/IVD control testing should preferably contain an oxygenate (ethanol, MTBE, ETBE, TBA, etc. * * *) at greater than 7 volume percent. Seven percent total oxygenate content was chosen because it will permit the use of data collected on most of the oxygenates for which waivers have been granted under Section 211(f) of the CAA. EPA is not requiring that fuels used in testing to support additive performance claims contain an oxygenate during the interim program. However, EPA anticipates that testing of oxygenated gasoline will be required under the detergent certification program and wishes to encourage this practice under the interim program.

The test fuel evaluation criteria discussed above are significantly less stringent than the test fuel specifications proposed for the performance testing under the detergent certification program. However, EPA's intent in using test fuel evaluation criteria for the interim program is primarily to preclude the use of test data collected on fuels that have an abnormally mild tendency to form deposits. Also, EPA recognizes the need for manufacturers to use existing data to the fullest extent possible, and believes that these specifications will not disqualify most existing test data. To help ensure that this is the case, a manufacturer may petition EPA to accept test data that does not conform to the guidelines for acceptability described above. Such a petition should include information demonstrating that the test data submitted to support additive performance claims will ensure an equivalent level of deposit control as that provided by data based on test fuels conforming to the guidelines described above.

d. *Detergent Additive Identification Procedure.* EPA's enforcement responsibilities require the ability to analyze detergent additive samples to determine whether the composition of such additives is consistent with the compositional information supplied by the additive manufacturer (see Section IV). For this purpose, a suitable analytical procedure capable of identifying the detergent additive in its pure state is needed. Thus, EPA reserves the right to request such a procedure from any party who has registered a detergent additive.

In the NPRM, EPA proposed that the party "certifying" a detergent additive under the interim program would be responsible for supplying the analytic test procedure. The NPRM further assumed that the fuel manufacturer, rather than the detergent additive manufacturer, would most often be the certifier. Public comment did not dispute the need for EPA to have access to such a procedure. However, commenters did point out that detergent manufacturers consider such procedures to be confidential business information, and would be unwilling to provide these procedures to the fuel manufacturers, who are their customers. This final rule therefore specifies that, when EPA determines that an identification test procedure is needed for a detergent additive, EPA will direct its request for such a procedure to the detergent additive registrant. Similar to the argument concerning the provision of supporting test data by the detergent additive producer, EPA regards the identification test procedure as substantiation of the registration information which the additive manufacturer is required to submit under § 79.21(a). EPA thus believes that the regulatory authority to require this data from the additive manufacturer derives from CAA section 211 (a) and (b). In fact section 211(b)(2)(b) specifically calls for the fuel additive registrants "to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, * * *". EPA's authority to require the submission of this data is also supported by the provisions of section 114 of the CAA, which authorizes the Administrator to collect any information which may reasonably be required to carry out the purposes of the Act from any person subject to the provisions of the Act.

The detergent registrant will be required to comply with EPA's request for the analytical test procedure within 30 days of the request. The procedure must be acceptable to the Administrator in its ability to both qualitatively and quantitatively identify each component of the detergent additive package. EPA reserves the right to reject aspects of this procedure if the Administrator determines that they are insufficient. EPA will evaluate the adequacy of the test procedure by conducting such procedure, attempting to repeat the results submitted by the additive manufacturer. To be acceptable, the procedure must be able to provide results that conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy, for the type of test in question. If the detergent manufacturer does not supply an adequate procedure within the allotted time, the detergent will no longer be eligible for use in complying with the requirements of this rule. Fuel manufacturers (and secondary additive manufacturers) whose registrations include the ineligible additive will be given 45 days to switch to another additive product.

Although not required under the interim detergent program, EPA prefers that the test procedure provided to satisfy the requirements of this rule be a fourier transform infrared spectroscopy (FTIR) test method which will yield a qualitative and quantitative infrared spectrum of the detergent additive package in its pure state. As part of such a FTIR method, an actual infrared spectrum of the detergent additive package and each component part of the detergent package obtained from this test method would be needed to make a full identification possible. EPA intends to require that such a FTIR test procedure be provided by the additive manufacturer as part of the standard requirements of the detergent certification program to be finalized in a later rulemaking.

2. Requirements for Fuel Manufacturers

The registration information provided by the fuel blender (i.e., the fuel manufacturer who adds detergent to gasoline fuel) must include the exact trade name and manufacturer of the detergent additive product (pursuant to §§ 79.11(b) and (c)). In addition, except as discussed below, the range of concentration submitted pursuant to § 79.11(c) must indicate that the gasoline contains the subject detergent additive at a concentration no less than the minimum recommended concentration specified in the detergent additive registration for control of deposits. Fuel manufacturers should be aware that their existing gasoline registrations, which list detergent additives as components, may need to be changed to conform to these requirements, reflecting potential changes in the additive registrations necessitated by this rule. Accurate identification of the detergent additive being used is critical to the validity of the fuel registration. Fuel manufacturers must provide identifying information adequate to enable EPA to determine which registered detergent additive product is being used by the fuel manufacturer.

[13] In this regard the following national 50th percentile levels were determined as part of the analysis performed for the NPRM: sulfur 0.015 weight percent, olefins 8.6 volume percent, aromatics 28.6 volume percent, and T–90 335 °F. The NPRM contains a detailed discussion of the method by which these values were calculated using American Automobile Manufacturers Association (AAMA) fuel survey data.

It is EPA's expectation that fuel marketers will ensure that a detergent is effective in controlling deposits prior to purchasing the product from the detergent manufacturer. If EPA finds that performance claims are unsubstantiated, the fuel marketer and/or detergent registrant may both potentially be liable for violations as described in Section IV. EPA is aware that, as part of current good business practice, fuel marketers generally do insist on such evidence for themselves before purchasing the additive for purposes of blending detergent gasoline. Consistent with current business practice, this regulatory approach recognizes the responsibility of both the fuel and detergent manufacturers in assuring that an effective detergent is used.

EPA recognizes that, theoretically, the requirements discussed above could put additive manufacturers in the position of being able to dictate the minimum amount of their detergent additive products which their customers (i.e., the fuel manufacturers) are required to purchase. In practice, EPA believes that competitive forces in the marketplace will generally prevent additive manufacturers from inflating the minimum recommended concentration in their detergent registrations in order to boost their sales. However, as an additional safeguard against this possibility, the final rule contains a special provision which permits fuel manufacturers to record and use a lower detergent concentration than is specified in the respective detergent registration.

Under this provision, fuel manufacturers may use a detergent additive product at a treat rate lower than the minimum specified by the additive manufacturer, provided that the fuel manufacturer informs EPA in writing of the intent to use the lower concentration, and states in this notification that data demonstrating the deposit control effectiveness of the lower treat rate is available at EPA's request. In exercising this option, the fuel manufacturer thus undertakes responsibilities normally assigned to the additive manufacturer. When requested by EPA, the fuel manufacturer must supply, within 30 days, the data necessary to support the claim of detergent effectiveness at the lower treat rate. In such an instance, EPA will also require that the additive manufacturer submit data, in support of the higher treat rate specified in the subject additive registration. EPA will then evaluate whether the lower treat rate provides adequate deposit control by comparing the quality and results of both sets of test data in relation to each other and to industry-consensus practices and standards. EPA will inform both the fuel manufacturer and the additive manufacturer of its decision within 60 days of receipt of both sets of data. Either party may appeal EPA's decision. If EPA determines that the fuel manufacturer's data does not adequately demonstrate the effectiveness of the lower detergent concentration, the fuel manufacturer may be subject to penalties (described in Section IV) for any gasoline which has been additized using the lower concentration.

C. Requirements for Leaded Gasoline

Although barred from sale for highway vehicles as of January 1, 1996 (under CAA section 211(n)), leaded gasoline will still be permitted to be sold for off-highway use. Since deposit-related emissions problems are not restricted to highway vehicles, EPA believes that it is necessary to require a proper level of deposit control in leaded gasoline. However, due to the less sophisticated nature of the emissions control equipment in leaded fuel vehicles, the prevention of deposit-related emissions does not necessitate the same level of deposit control performance in leaded gasoline as in unleaded gasoline. EPA agrees with public comment that a sufficient level of deposit control can be achieved in leaded gasoline by the use of carburetor-type detergents as well as IVD/PFID detergents, at relatively low concentrations, with a concomitant savings in additive treatment cost (see summary and analysis of comments on this subject in Section D.1.a, below). Therefore, this final rule allows the use of either carburetor-type or IVD/PFID detergents to comply with leaded gasoline detergency requirements. The responsibilities of fuel and detergent manufacturers regarding the requirements for leaded gasoline are otherwise the same as those described previously for unleaded gasoline.

Carburetor-type detergent additives intended for use in leaded gasoline, as well as IVD/PFID detergents (which are effective in both leaded and unleaded gasoline) must still be registered and leaded fuel manufacturers must use a registered detergent at a concentration that is effective in controlling deposits. To comply with gasoline detergency requirements, the leaded fuel manufacturer has the option of using a carburetor-type detergent at the minimum concentration recommended by the additive manufacturer for the control of carburetor deposits, or an IVD/PFID-type detergent. If the latter is used, it may be added at the minimum concentration recommended by the additive manufacturer for IVD/PFID control or, if available, the manufacturer's lower recommendation for carburetor deposit control. In any case, the minimum concentration used by the fuel manufacturer must correspond to the minimum effective concentration stated in the detergent manufacturer's additive registration for the control of the relevant type of deposits, unless a specific exception is allowed by EPA.

Under the same provisions described earlier in the case of unleaded gasoline, EPA may require the submission of data by the additive manufacturer to support the applicable minimum treatment rates recommended in the detergent registration. As mentioned in the previous section, if the fuel manufacturer believes a lower effective treatment rate is supported by available data, then he may submit data to EPA which substantiates the effectiveness of the detergent at the lower concentration EPA will follow the same evaluation process as described previously in relation to treat rates for unleaded gasoline.

EPA will be guided by the following considerations during the interim program when evaluating the adequacy of data used as evidence of detergent additive performance in controlling carburetor deposits. Any type of vehicle, engine, or bench test data may be acceptable for demonstration of carburetor deposit control, provided that a reasonable level of test quality was maintained per industry practice. Since the control of port and throttle body fuel injector deposits requires a greater degree of detergent effectiveness than the control of carburetor deposits, EPA may also accept port and throttle body fuel injector deposit control test data as adequate demonstration of an additive's ability to control carburetor deposits.[14]

EPA prefers that carburetor deposit control test data be collected using leaded fuels, but may also accept data collected using unleaded fuels, provided that the data on detergent performance in unleaded fuels can be shown to be indicative of its performance in leaded fuels. The guidelines for evaluating the adequacy of test fuels used in carburetor deposit control testing otherwise parallels those for IVD/PFID control testing. As for unleaded gasoline, specially blended test fuels will be acceptable provided

[14] See the NPRM for a discussion of the relative difficulty of controlling port fuel injector deposits, throttle body injector deposits, and carburetor deposits through the use of detergent additives.

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they are reasonably typical of in-use gasoline in its tendency to form such deposits (or more severe than typical in-use fuels). As an example, EPA will likely consider a test fuel acceptable for demonstration of carburetor deposit control if the key fuel parameters identified as affecting a gasoline's tendency to form carburetor deposits (sulfur, olefins) are at least at average levels.[15]

D. Summary and Analysis of Comments

1. Applicability

Public comment on various aspects of EPA's proposal regarding the applicability of the proposed detergency requirements are discussed below by topic. There was no objection to EPA's proposal that gasoline detergency requirements would apply to all gasoline, whether used in motor vehicles on nonroad vehicles, except where noted.

a. *Leaded Gasoline.* Summary of Comments: The public comment opposed the applicability of the proposed detergency requirements to leaded gasoline. The comment stated that leaded gasoline would be obsolete in 1995 and that such fuels represent only a tiny share of total gasoline used. The comment further stated that, in leaded gasoline, the use of deposit control additives that are formulated to control fuel injector and intake valve deposits in modern engines per EPA's proposal would not provide benefits in improved performance or emissions control commensurate with the added cost associated with their use. It was stated that leaded fuels are used in older carbureted engines where the additional detergency protection provided by the use of PFID/IVD control additives would have no effect on performance or emissions over that which is achieved by the use of less expensive carburetor-type detergents. The comment further noted that it is current industry practice to use carburetor-type detergents in leaded fuels.

Analysis and Conclusion: EPA agrees that adequate deposit control can be achieved in leaded gasolines by the use of either carburetor-type detergents or IVD/PFID detergents. Engines that use leaded gasoline are typically carbureted and employ less sophisticated emissions control technology than those that use unleaded gasoline. The control of carburetor deposits can be achieved with the use of relatively unsophisticated and inexpensive carburetor-type detergents at low concentrations or with either PFID or PFID/IVD control additives at concentrations lower than required for engines that use unleaded gasoline. In addition, intake valve deposits are not likely to increase the emissions in engines that use leaded gasoline.[16] However, EPA disagrees with the comment that leaded gasoline should be exempted from the requirements of today's regulation. Leaded gasoline will still be available for non-road applications, and the fact that it is current practice to use carburetor-type detergent additives does not mean this practice will continue in the absence of regulation. Thus, EPA believes that it would be more appropriate to tailor the detergency requirements that must be met in leaded gasoline to provide that adequate protection is achieved without additive overuse and undue cost. As described above in section III.C, this final rule provides an option for leaded gasoline, allowing the use of either an IVD/PFID detergent or one capable of controlling carburetor deposits.

b. *Gasoline used for Military Purposes.* Summary of Comments: Public comment was in support of EPA's proposal to require gasoline used for military purposes to comply with the proposed detergency requirements. Comments from automobile manufacturers supported this position by stating that many military vehicles are subject to the same deposit control concerns as civilian vehicles. The Department of the Army in its response to issues raised at the public workshop on the regulation of detergent additives did not oppose the applicability of detergency requirements to military fuels (Docket A–91–77, item I–D–01). No comment was received from the Department of Defense (DOD) on this issue.

Analysis and Conclusion: EPA agrees that many military vehicles are subject to the same deposit control concerns as are civilian vehicles. Given that there was no comment indicating otherwise, the final rule makes gasoline used for military purposes subject to the detergency requirements.

c. *Racing Gasoline.* Summary of Comments: Public comment was divided on whether racing gasoline should be covered by the proposed requirements. Automobile manufacturers supported their position that racing gasoline should not be covered by stating that racing engines are frequently rebuilt and the racing drivers take appropriate steps to prevent the formation of deposits. The comment from the petroleum industry that racing gasoline should be required to comply with gasoline detergency requirements was not elaborated upon.

Analysis and Conclusion: EPA believes that, given the short lifetime of racing engines, the frequent maintenance that is performed on such engines, their relatively unique design, and the fact that significant mileage accumulation must occur for deposits to form, it is unlikely that deposits accumulate to any appreciable degree in racing engines. Therefore, EPA believes that it is appropriate to exempt racing gasoline from compliance with the detergency requirements adopted in today's rule since the added cost would not be likely to result in a commensurate emissions benefit. EPA defines racing gasoline to be gasoline that is specially blended for racing purposes, is segregated from other gasoline, and is delivered directly to racing facilities. Gasoline that does not meet this definition will not be considered racing gasoline for the purposes of exemption from the requirements of this regulation.

d. *Marine Gasoline.* Summary of Comments: Public comment supported the applicability of the proposed detergency requirements to marine gasoline. No specific supporting details were provided to support this position.

Analysis and Conclusion: EPA continues to believe that marine gasoline should be required to comply with gasoline detergency requirements. Marine gasoline is not specially formulated and is delivered to marine filling stations by the same distribution system that supplies gasoline to highway vehicles. Also, much of the engine technology used in marine engines is very similar to that employed for motor vehicles and hence similar concerns regarding the need for deposit control are likely to be present. Many current gasoline marine engines use carburetor technology. Leaded fuel for marine engines may employ the carburetor detergent additive option discussed above. Unleaded fuel using IVD/PFID additives will provide control for carbureted and fuel injected marine engines.

e. *Gasoline Used in Flexible-Fuel Vehicles.* Summary of Comments: Comment from the petroleum industry stated that available data indicate that in-use problems with fuel filter plugging in flexible-fuel vehicles which were suspected to be caused by an incompatibility of gasoline detergent additives in flexible fuel vehicles are in fact caused by the corrosion of incompatible metal parts in the fuel distribution and dispensing system.

Analysis and Conclusion: EPA is also aware of data brought forward in the context of investigations made by the Coordinating Research Council (CRC) which indicate that the filter plugging in flexible-fueled vehicles that had been attributed to the use of gasoline detergent additives is actually caused by the corrosion of incompatible metal parts in the fuel system. No public comment expressed any current concerns regarding the use of gasoline detergent additives in flexible-fueled vehicles. Therefore, there appears to be no reason to exempt the gasoline component of alcohol blends such as M85 and E85 from compliance with this regulation. EPA believes that this approach is beneficial because gasoline detergent additives are also likely to provide a level of deposit control in flexible fuel vehicles since the technology used in such vehicles is very similar to that employed in gasoline-fueled vehicles. Data brought forward as the result of activity by the CRC also have highlighted the need for deposit control in flexible-fueled vehicles to maintain proper vehicle performance.

f. *Gasoline Used for Research and Vehicle Certification Purposes.* Summary of Comments: The public comment stated that gasoline used for emissions certification purposes should be exempt from detergent requirements since such gasoline is used only for brief periods in the engine. The comment also stated that gasoline used for emissions durability demonstration should be required to contain a detergent additive. Public comment agreed with the Agency position that test fuels for research and developmental purposes should be exempted from the detergency requirements of today's rule. However, these comments stated that the procedures to obtain an exemption from EPA must be streamlined. Comments related to research exemptions are discussed in Section IV.

Analysis and Conclusion: The applicability of detergency requirements to gasoline used for vehicle certification was not addressed in the NPRM. The Agency agrees with public comment that the gasoline emission test fuel used for emission certification and fuel economy vehicles should be exempt from the gasoline detergent requirements adopted today. Therefore, no changes are made to the current test fuel specifications found in 40 CFR 86.113–94(a)(1). Such gasoline is used only for brief periods in new vehicles and hence there is little likelihood of a deposit-related emissions impact.

No comments were received specific to methanol certification test fuel. However, the rationale that supports exempting gasoline emissions certification fuel from the requirements of this rule also applies to the gasoline portion of methanol emissions certification test fuel. Therefore, the gasoline portion of methanol emissions certification test fuel will be exempt from the gasoline detergency requirements of today's rule.

Today's action will require the service accumulation fuel used in gasoline-fueled vehicles and the gasoline portion of the service accumulation fuel used in methanol-fueled vehicles to meet gasoline detergency requirements. This is consistent with (1) Public comment that the emissions certification durability fuel should continue to contain a deposit control additive package; (2) the current provisions of 40 CFR 86.113–94(a)(2), which state that "unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation for petroleum-fueled Otto-cycle vehicles"; and (3) the current provisions of 40 CFR 86.113–94(a)(3) and (b)(4) which require methanol fuel used for service accumulation of Otto-cycle and diesel-cycle methanol-fueled vehicles be "representative of commercially available methanol fuel". As previously discussed, today's regulation will require that the gasoline portion of methanol fuel comply with gasoline detergency requirements.

2. Interim Registration Requirements

Public comment supported the need for an interim detergent registration program with simplified requirements to allow industry adequate time to comply with the vehicle testing requirements and other provisions of the detergent certification program. Comments related to specific provisions of the proposed interim registration program are discussed below by topic.

a. *Need for the Demonstration of Both PFID and IVD Control Performance.* Summary of Comments: As a condition of certification under the proposed detergent certification program, EPA proposed that the ability of a detergent additive to control both intake valve deposits (IVD) and fuel injector deposits (PFID) to specified performance standards must be demonstrated through separate vehicle-based tests. Public comment was mostly in favor of this approach, although one commenter stated that requiring fuel injector deposit control testing was unnecessary because demonstration of adequate intake valve deposit control also ensured proper fuel injector deposit control. Although this comment was directed at the proposed vehicle testing requirements under the detergent certification program, it is also applicable to the interim program requirements for supporting data to substantiate detergent performance.

Analysis and Conclusion: For many detergent additives, demonstration of intake valve deposit control will also ensure adequate control of fuel injector deposits. However, some detergent-active chemicals may be effective for IVD alone, and thus EPA continues to believe that separate PFID control performance data is necessary. This approach is supported by the weight of public comment, which agreed that both PFID and IVD control performance tests are necessary to determine if effective deposit control is achieved. In fact, ASTM is currently completing development of a standard vehicle-based test procedure for PFID and the Coordinating Research Council is working on an updated PFID-test procedure for the future. These activities provide further evidence that the affected industry also considers PFID control performance tests to be necessary in addition to IVD tests.

b. *Additive Qualification Under the Interim Program.* Summary of Comments: Comments from the petroleum and additive industry generally supported the acceptability of CARB-certified detergent additives to satisfy federal detergency requirements under the interim program. Comments from automobile manufacturers stated, however, that a certification under California's detergent additive program should not be allowed to serve as proof of performance for non-California gasolines after 1996, when California's Phase II reformulated gasoline program goes into effect. These comments stated that California Phase II reformulated gasoline is likely to have a significantly lower tendency to form deposits than gasoline in the rest of the country and hence demonstration of performance under CARB's program after 1996 would not provide adequate deposit control for non-California gasoline. These comments from automobile manufacturers were primarily focused on issues related to additive qualification under the proposed detergent certification program but are also relevant to additive qualification

[15] The reader is directed to the following SAE paper for a review of data which indicates that levels of sulfur and olefins impact a gasoline's tendancy to form carburetor deposits: SAE Technical Paper 902105, "Deposits in Gasoline Engines—A Literature Review", Gautam Kalghatgi. As discussed previously, the following national 50th percentile levels were determined as part of the analysis performed for the NPRM: sulfur 0.015 weight percent, olefins 8.8 volume percent.

[16] For a review of published literature related to the control of carburetor, fuel injector, and intake valve deposits the reader is directed to SAE Technical Paper 902105, "Deposits in Gasoline Engines—A Literature Review" Gautam Kalghatgi, and the NPRM.

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under the interim program since the interim program is now projected to continue until June of 1996.

Commenters were divided on what criteria to apply under the interim program for additives not certified by CARB. Comments from the petroleum industry supported the proposed use of chemical criteria along with the requirement that the additive be used at no less than the additive manufacturer's recommended minimum keep-clean treatment rate. These commenters stated that test data to demonstrate the effective performance of detergent additives was not necessary under the interim program. This position was not discussed in depth.

Comments from the additive manufacturing industry opposed EPA's proposed approach for non-CARB certified additives and stated that EPA must insist on some basis in engine or vehicle test results to support a manufacturer's recommended minimum treatment rate. These commenters argued that there is no established absolute relationship between additive chemistry and deposit control performance and that belonging to one of the four proposed chemical classes would provide no assurance of satisfying the statutory requirement. Concerns were voiced that the proposed chemistry-based interim program requirements, without a requirement for supporting test data, would allow unscrupulous manufacturers to concoct inexpensive additives for quick profit that could have little or no efficacy in controlling deposits. These commenters also stated that an additive with demonstrated effectiveness in controlling deposits should not be precluded from use because it does not belong to one of the four chemical classes.

Comments from additive manufacturers further stated that all responsible detergent manufacturers will have test data available to support claimed deposit control effectiveness. One commenter suggested that EPA require at least two different tests for both IVD and PFID control performance, both at the recommended treatment level, before an interim certification is granted.

Analysis and Conclusion: EPA agrees with the commenters that it is appropriate to allow the use of CARB-certified detergent additives to satisfy federal detergency requirements in the entire United States under the interim program, provided that the certification was not obtained for California Phase II reformulated gasoline (RFG). EPA agrees that the introduction of California Phase II reformulated gasoline (RFG) requirements effective in March, 1996 may cause gasoline sold in California to be significantly less severe in deposit-forming tendency than gasoline used in other areas of the nation. Thus, the introduction of California Phase II gasoline may result in CARB certifications at a significantly lower concentration for a given detergent relative to earlier CARB certifications. Therefore, detergents certified under the CARB program for use in California Phase II RFG may not provide adequate detergency protection for gasolines sold outside of California and, under this final rule, may only be used to satisfy federal detergency requirements in gasoline sold in California.

EPA agrees with the additive manufacturers that the proposed chemical compositional criteria would not adequately ensure that effective detergent additives are used under the interim program and could prevent the use of otherwise suitable additives unless they are certified under CARB's program. EPA has reviewed the available literature and cannot confirm that the proposed chemical compositional criteria would assure detergent efficacy. Although many commonly used detergents belong to the four chemical classes which EPA proposed would be acceptable, relatively minor differences in composition which are not addressed by the compositional criteria could result in a significant change in deposit control efficiency and additive cost. Also, it is of course possible that an effective detergent could be introduced which does not fall into one of these four classes. Thus, EPA agrees that claims of keep-clean fuel injector and intake valve deposit control must be based on some form of engine or vehicle test data.

To provide the flexibility needed under the interim program, it is necessary to evaluate the adequacy of supporting data on a case-by-case basis. Otherwise, if EPA were to codify strict or limited criteria by which test data were to be evaluated for adequacy, much of the available data could be precluded from use due to the diversity of the deposit control procedures that have been used. This would be inconsistent with the aims of the interim program. Therefore, EPA will request and evaluate the adequacy of deposit control test procedures, and quality assurance and quality control procedures used during testing, on an individual basis, using the criteria discussed earlier.

Public comment largely supported the validity of the fuel parameters that EPA proposed to use to define the tendency of gasoline to form deposits (sulfur, olefins, aromatics, T–90, and oxygenates) although there was some conflicting comment regarding the relative importance of these parameters. Based on the general agreement regarding the use of these parameters, EPA believes that it is appropriate to use them to evaluate the tendency of the test fuels used in the supporting data procedures. However, since no specific test fuel parameters were proposed specifically for the interim program, any test fuel that is reasonably typical in its tendency to form deposits will be acceptable for the purposes of the interim program.

The guidelines that will be used by EPA to evaluate whether detergent additive performance data is sufficient are discussed in Section III.B. EPA's intention in establishing these guidelines is to allow the use of any credible vehicle, engine, or bench test data to support claims of additive performance under the interim rule.

c. *Performance Demonstration for Different Versions of the Same Detergent Package.* Summary of Comments: Comment from additive manufacturers stated that EPA should allow the same test data to be used to demonstrate the performance of all versions of the same detergent package. They stated that it is common industry practice to vary certain minor nondetergent components in a detergent additive package without changing the active deposit control components of the detergent package. The commenters further stated that it would be burdensome and redundant to require performance data on each separate variant of a detergent additive package. While this comment pertained specifically to the requirements of the proposed full detergent certification program, it is also relevant to the requirements for supporting data under the interim program.

Analysis and Conclusion: EPA agrees that separate performance tests should not be needed for multiple detergent additive packages which contain the same active detergent ingredients in different concentrations, provided that the minimum recommended treat rate specified in the registration information for each additive package properly accounts for the variations in concentration. Specifically, for each registered detergent package which the manufacturer intends to support with a single set of test data, the final concentration of active detergent ingredients (resulting when the detergent package is added to gasoline at its respective minimum recommended treat rate) must be no less

than the minimum concentrations shown to be effective by the testing.

In summary, any variation affecting the active detergent ingredients of an additive package, whether affecting the composition or the concentration of such ingredients, requires generation of a separate detergent registration. However, separate supporting data are needed only if the actual chemical identity of an active detergent ingredient is changed. If only the concentration of active detergent ingredients is changed from one detergent package to another, then separate supporting data are not required so long as the recommended treat rate is changed accordingly.[17]

However, it is not always possible for EPA to discern which components of an additive package are important to deposit control effectiveness. Detergent additive packages may be composed of numerous components that provide different functions in addition to deposit control. These components may potentially include: the detergent, a carrier oil necessary for detergency action to take place, an antioxidant, a corrosion inhibitor, a metal deactivator, and a handling solvent. Additive manufacturers commonly vary nondetergent active components in response to market needs and to tailor the flow characteristics of the detergent package to seasonal variations in temperature. Thus, this final rule requires detergent additive registrations to specifically identify all active ingredients.

d. *Reporting Requirements, Confidential Business Information.* Summary of Comments: Comments received from additive manufacturers stated that information on the chemical composition of the detergent additive(s), including the identity and minimum concentration of each component in the detergent package, are highly confidential trade secrets. Although useful to EPA's enforcement purposes, it would be inappropriate for EPA to compel additive manufacturers to share this data with their fuel marketer clients. The commenters suggested that, to protect the confidentiality of trade secrets, EPA should require fuel registration submissions to contain the name of the additive as registered under 40 CFR part 79, and that the information needed regarding the chemical composition of the detergent additive could then be accessed by EPA through review of its part 79 registration files. The comment also stated that EPA should not implement duplicate reporting requirements, but rather should rely on registration information provided under 40 CFR part 79.

Additive manufacturers were not opposed to the proposed requirement that a suitable test procedure be made available to EPA to identify the composition of the detergent additive in its pure state. However, their concerns regarding the confidential nature of additive compositional data also apply to additive identification test procedures, since these procedures may be tailored to the additive type targeted for evaluation. Thus, they objected to the proposed process whereby EPA would seek the detergent identification procedure from the fuel manufacturer, who would in turn be expected to obtain it from the additive manufacturer. Finally, additive manufacturers stated that the detergent additive treatment rate is competitively sensitive information that should not be made part of the public record.

Analysis and Conclusion: EPA recognizes the confidential nature of additive compositional data and agrees that additive manufacturers should not be required to provide such information to their fuel marketer clients. EPA further agrees that the Agency could access the detergent registration information and, if it is adequately and correctly identified, link it to the associated fuel registrations for purposes of this program. However, the registration data supplied by manufacturers under part 79 in the past has not always been of sufficient quality, detail, and scope to allow its use for this program's purposes. To remedy this shortcoming, the detergent registrations submitted under 40 CFR part 79 must meet specified data quality criteria if these additives are to be eligible for use in complying with the detergency requirements in today's notice. For example, additive manufacturers must meet minimum requirements on additive compositional data, must obtain a separate registration under 40 CFR part 79 for each significantly different formulation of their additive package, and must report their recommended minimum treatment rate to control either PFID and IVD or carburetor deposits (see Section III.B.1). Obviously, each detergent additive product registered by an additive manufacturer must be assigned a unique trade name so that EPA can properly link specific detergents to the additive information supplied by fuel manufacturers in their detergent gasoline registrations.

To address additive manufacturer concerns regarding the confidentiality of detergent identification procedures, this final rule provides that, if EPA's enforcement responsibilities call for such a procedure, then EPA may require it to be submitted by the detergent registrant rather than the fuel manufacturer. EPA's authority to take this action is further supported by section 211(b)(2), which requires the F/FA registrant to provide such information, and by section 114 of the CAA, which provides that EPA may require the submission of information if it is necessary to implement the requirements of the CAA.

EPA recognizes that, to address the CBI concerns of additive manufacturers, the availability of information on detergent additive treatment rates should be restricted to those parties who have a need to know such information to fulfill their obligations under this rule, e.g., fuel manufacturers and other additive manufacturers who list the additive as a component of their gasoline or secondary additive product, respectively. EPA fully intends to honor this restriction, unless enforcement and/or appeal procedures require EPA to reveal a contested treat rate publicly.

IV. Interim Program Enforcement Provisions

A. Introduction and Overview

Today's rule adopts the general interim program enforcement scheme proposed in the NPRM. It incorporates the following major elements:

(1) Gasoline must be additized pursuant to a part 79 detergent registration, and must meet registration specifications as to detergent composition, minimum detergent concentration, and use. In addition, the detergent must comply with part 79 composition specifications in its pure (unadditized) state.

(2) Detergent blenders (as defined by this rule) must perform volume accounting and reconciliation procedures to determine the accuracy of their detergent additization. The sale or transfer of additized product that fails to conform to the detergent's part 79 minimum concentration rate, as established through the mandatory reconciliation procedures, is prohibited. Product reconciliation records must be maintained for at least 5 years.

(3) Each detergent equipment system measuring the amount of detergent added to gasoline by automated detergent blending facilities must be

[17] An exception to this provision is the case when an additive manufacturer submits two registrations with the same detergent ingredients, but with differing recommended treat rates—one for use in controlling carburetor deposits and one for use in IVD/PFID control. In this case, data supporting the effectiveness of the carburetor detergent concentration could not be used as evidence of the effectiveness of that concentration in controlling PFID/IVD.

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calibrated every calendar quarter. Such systems must also be calibrated whenever the composition of the detergent package being measured is changed. Calibration records must be maintained by the blender for at least 5 years.

(4) All parties in the gasoline and detergent distribution systems must transfer to receiving parties product transfer documents with necessary additive information. Receiving parties have the obligation to obtain such records. These records must be maintained by transferring and receiving parties for at least five years.

(5) Presumptive and vicarious liability are the cornerstones of the liability scheme for the detergent program, as they are for other major EPA fuels programs. Certain parties will be required to establish the existence of quality assurance, product testing, and/or contractual oversight programs, as part of establishing their defenses to liability.

An overview of these key enforcement provisions follows below.

1. Part 79 Registration Conformity

In order to be additized in conformity with the interim detergent program, gasoline must be blended with detergent that complies with both the chemical composition and the concentration specifications of a part 79 detergent registration. Except as described previously in Section III.B.2, the detergent package's concentration in the gasoline must not be less than the manufacturer's minimum recommended concentration as specified in the additive registration.

A detergent registered under part 79 for the control of only carburetor deposits may be used only with leaded gasoline. If a detergent is registered with one concentration for the control of carburetor deposits only, and a higher concentration for the control of port fuel injector and intake valve deposits, then the lower concentration may only be used with leaded gasoline while the higher concentration may be used with either leaded or unleaded gasoline. Otherwise, during the interim program, any registered detergent, with the exception of certain detergents certified by CARB for use in California Phase II reformulated gasoline (see discussion in Section III.B.c) may be used with any registered gasoline. As a caveat, however, part 79 fuel registrations must specify the specific additive products to be included in the fuel formulations. A fuel registration that fails to include such specification is in violation of the part 79 registration requirements.

Today's rule addresses the problem of certain components, such as oxygenates or raffinate, which are added to gasoline after the refining process and must be additized at some point before being added to gasoline to be sold to an ultimate consumer. These post-refinery components may be additized separately from the gasoline to which they will ultimately be added, provided that they are additized with a registered detergent at no less than the concentration specified for gasoline.

Under today's rule, an additized gasoline may properly be commingled with another gasoline which has been additized under a different part 79 registration, provided that each has been separately, properly additized.

If a detergent blender discovers that it has under-additized a batch of gasoline, the blender may correct the problem before the product is transferred. The detergent blender may add more of the same detergent that was originally added to the under-additized batch, bringing the batch up to the compliance concentration rate, provided the product has not been transferred, and provided that the blender maintains documentation of the correction.

For example, if a batch of unleaded gasoline was additized at a concentration rate applicable to the control of carburetor deposits only (and thus restricted to leaded gasoline), the detergent blender could add more of the same detergent so that the treat rate equals the higher concentration specified for use of that detergent with unleaded gasoline. This must occur prior to the product's transfer to another party, and must be fully documented. This remedy would only be appropriate if the same detergent was registered as effective at two different rates for the two different products.

2. Volume Reconciliation

The interim detergent program requires detergent blenders to regularly reconcile the volume of detergent used with the amount of gasoline or post-refinery component additized. In the NPRM, this accounting procedure was called mass balance accounting, a typical industry nomenclature. In this final rule, however, in response to comments discussed below, the reconciliation will be identified as volumetric additive reconciliation ("VAR").

Under the VAR requirements promulgated today, blenders must use a specified formula, under which the actual concentration of detergent used in the compliance period is compared to the correct concentration of detergent that should have been used according to the concentration specified in the fuel registration. Manual detergent blenders, who have the ability to ascertain the exact amount of detergent used in each blend, will be required to perform and record the VAR calculations for each blend. Automated blenders, whose automated recording equipment may not be able to record per-batch additization, will be required to perform and record the VAR calculations on a monthly basis.

In order to ensure that automated detergent blenders can accurately measure their detergent use, today's rule requires that these blenders calibrate their detergent additization systems at the start of every calendar quarter, *i.e.*, in the months of January, April, July, and October, and at any time that the detergent package is changed.

Whenever the required VAR procedures reveal an averaged under-additization of the blended product, a VAR standard violation has occurred. VAR violations also exist if investigation shows that the detergent blender inaccurately performed the VAR calculations in a way that masks under-additization, if VAR records are not created or maintained as required by today's rule, and if the required calibration procedures are not performed.

Parties should be aware that violations of today's rule can occur outside of VAR calculations. For example, it is a violation of this rule to blend a detergent registered only for control of carburetor deposits into unleaded gasoline. As discussed above, such detergent should only be used with leaded product. Similarly, it is a violation of today's rule for any party to sell gasoline which is inadequately additized, even though that party might not have been involved with the VAR procedures.

As in all cases of presumptive liability under the interim detergent rule, potentially liable parties in these situations have the right to raise affirmative defenses. They can also assert, where appropriate, that a violation has not happened, such as when they can establish that proper VAR averaging procedures had been followed by the automated detergent blender for the gasoline in question, and that no irregularities beside low single batch detergent concentration existed.

3. Product Transfer Documents

Under today's rule, each transfer of gasoline, detergent or detergent-additized post-refinery component from one party to another must include the transfer of a product transfer document. This document must identify the product being transferred and its additization status, and must contain other important information to facilitate both proper additization of the product and EPA's ability to confirm that proper additization has taken place.

4. Liability and Defenses

Today's rule establishes a scheme of liability for violations that is similar to existing liability schemes in other fuel programs administered by EPA, such as the fuel volatility program and the reformulated/conventional gasoline program. EPA decided to erect a similar structure in this rule because the Agency believes that such liability schemes have been demonstrated to work successfully in other fuel programs.

Under today's rule, all parties in the distribution chain prior to the point at which a violation is discovered are presumed to be liable for gasoline non-conformities (other than VAR violations), detergent non-conformities, and detergent-additized post-refinery component non-conformities. In addition, each party who fits within the regulatory definition of "detergent blender" promulgated today is presumed to be liable for a violation of the VAR requirements discussed above. For failure to meet product transfer document requirements, any party who owns, leases, operates, controls, or supervises the facility at which the violation was found will be presumed liable.

Any party who is held presumptively liable for a violation of this rule can rebut that presumption by successfully establishing an affirmative defense. In general, to establish an affirmative defense, a party must show that it did not cause the violation and that product transfer documents met applicable requirements when the product left the party's control. Specific additional affirmative defense requirements pertaining to particular parties in the gasoline and detergent distribution chain are described below.

Under today's rule, refiners are subject to vicarious liability for violations that occur at branded facilities, including VAR violations as well as non-conformity violations affecting gasoline, detergent, and/or detergent-additized post-refinery component. Branded refiners must establish, as an affirmative defense to such liability, (1) That they did not cause the violation, and (2) that product transfer documents account for the product and indicate that it met the relevant requirements. In addition, they must establish either: (1) That the violation resulted from an act in violation of law, or of sabotage or vandalism, or (2) that the violation occurred despite a contractual obligation designed to prevent such violation, and that compliance with the contractual obligation was monitored by an adequate oversight program.

Under today's rule, detergent manufacturer is defined as "any person who owns, operates, leases, controls, or supervises a facility that manufactures detergent." Detergent manufacturers are subject to presumptive liability for non-conforming detergent, gasoline, and detergent-additized post refinery components, as described above. They can rebut the presumption of liability for such violations by establishing an affirmative defense. The required elements of such an affirmative defense under this rule are as follows: (1) Product transfer documents that indicate conformity with applicable requirements, (2) test results that indicate conformity of detergent with applicable requirements when it left the manufacturer's control, and (3) demonstration that adequate blending instructions were supplied to the customer.

Under this final rule, carriers of detergent and gasoline may also be held liable for violations, since they are an important component of the distribution chain of detergent and detergent-additized gasoline, and have the potential to cause violations of this rule.

Gasoline carriers are subject to liability for all violations discovered at their facilities. Carriers of gasoline are also subject to liability for non-conformity of such gasoline discovered downstream, provided that EPA satisfactorily demonstrates that the carrier caused the violation. In addition, gasoline carriers are also liable for detergent-additized post-refinery component non-conformity and detergent non-conformity discovered downstream, if they dispensed, supplied, stored or transported any such component or detergent found to be in violation, and if EPA can demonstrate that the carrier caused the violation.

Detergent carriers are also subject to liability for certain violations of this rule, since they have the potential to cause non-conforming detergent to be introduced into commerce. The role that detergent carriers play in the product distribution chain provides them with significant control over the detergent that is subject to the requirements of this rule.

Detergent carriers, like gasoline carriers, are subject to liability for all violations discovered at their facilities. Under today's rule, detergent carriers are also liable for detergent and gasoline non-conformity discovered downstream, if they dispensed, supplied, stored, or transported any of the detergent, or any of the detergent in the non-conforming gasoline, and if EPA can demonstrate that they caused the violation. In addition, detergent carriers are liable for detergent-additized post-refinery component non-conformity if they dispensed, supplied, stored, or transported any of the detergent portion of the non-conforming component, and if EPA can show that they caused the violation.

Carriers who are found to be in violation of any requirement of this rule have the right to establish an affirmative defense. To successfully establish an affirmative defense to liability for a violation found at its facilities, a carrier must show that it did not cause the violation, and that it complied with product transfer document requirements. For violations discovered downstream, carriers are only liable if EPA shows that they caused the violation.

Under this rule, manufacturers and carriers of post-refinery components will not be held liable for violations. This approach is consistent with other fuel programs administered by EPA where the addition of a post-refinery component to gasoline is relevant, such as the volatility and reformulated/conventional gasoline programs. In these other programs, the responsibility to ensure the appropriate addition of post-refinery components rests on the party additizing the gasoline, and not on the manufacturer or carrier of such components. EPA believes a similar approach is reasonable under today's rule, since additizing parties are likely to have the practical ability to ensure conforming additization of post-refinery components. It is important to note that the composition of post-refinery components is not proprietary information, and can be easily ascertained by sampling and testing. Therefore, EPA is not aware of any concern that additizers will not be able to obtain sufficient information about the composition of post-refinery component.

EPA believes that manufacturers and carriers of post-refinery components will have very little impact on the accuracy of the additization of such components, unlike manufacturers and carriers of detergents. The composition of post-refinery components is less important to the effectiveness of this rule than is the proper additization of the component itself and the proper blending of the detergent-additized post-refinery component with detergent-additized gasoline. EPA believes that

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the requirements promulgated today provide sufficient control over these critical activities. Therefore, EPA has decided not to bring manufacturers or carriers of post-refinery components under the purview of this rule.

5. Exemptions

Parties who create fuels or additives for research, development or testing purposes (including emission certification testing) are exempt from the requirements of this rule, provided certain requirements are met. Racing and aviation fuel will also be exempt from the requirements of this rule, as discussed in more detail in Section IV.B.6, below.

The remainder of this section of the preamble discusses key changes to the detergent program from the provisions proposed in the NPRM, together with analysis of public comments on enforcement issues in the NPRM. Comments received that impact solely upon the detergent certification program will be addressed at the time the certification program is promulgated.

B. Analysis of Public Comments and Significant Rule Changes

1. Volumetric Additive Reconciliation (VAR)

One of the areas of major concern to commenters was the proposed product reconciliation requirements. Product reconciliation is important in the detergent enforcement program because it is difficult to determine compliance through sampling and testing. As previously mentioned in the NPRM, there does not presently exist a standardized test method to determine the identity and concentration of detergent in gasoline. It would therefore be difficult to make a sampling and testing program the cornerstone of detergent enforcement efforts.

Under these circumstances, required product reconciliation is a useful enforcement tool. It will be relied on as an alternative to an extensive testing-oriented program. EPA does, however, reserve the right to conduct sampling and testing to determine compliance with the interim detergent program in appropriate circumstances, such as in determining: the conforming identity of detergent in its pure state; the presence of lead in gasoline additized with detergent only effectively registered for use with leaded product; and assisting in determining whether VAR compliance standards have been accurately attained or if non-conforming gasoline is being sold.

In the NPRM, EPA proposed that detergent blenders had to conduct mandatory detergent reconciliations, called mass balance accounting, using one of three specified formulas. The detergent blender was required to use the formula applicable to the type of blending operation it used, *i.e.*, an automated detergent blending operation using meters on every injector; an automated operation that did not have meters on every injector; and a hand blending additization operation. The automated formulas required weekly reconciliations, while the hand blending formula required that a reconciliation be completed for each batch of product additized. If an automated blender altered the detergent concentration rate within the weekly compliance period, such alteration terminated the reconciliation period and required the start of a new period. Each formula required the detergent blender to account for transfers of detergent and gasoline into and out of inventory. Each formula also required the blender to record the opening and closing volumes of detergent and gasoline used in the accounting period.

The American Petroleum Institute (API) commented that the term "mass balance accounting" was inaccurate, because the proposed procedure did not incorporate temperature adjustments for product measurements and, without them, the accounting was actually an analysis of volume. API proposed that the name for the required accounting procedure be changed to volumetric additive reconciliation ("VAR"). EPA agrees, and the interim detergent program incorporates this change.

API also recommended that EPA adopt a more generic approach to VAR formula use, and adopt one comprehensive formula that would be applicable to all blenders. API expressed concern that the VAR formula should require the basic information necessary for EPA to determine that the correct detergent concentration was being attained, while being flexible enough to permit industry to use the additization procedures presently in place. EPA agrees that one simplified formula would be appropriate for all automated blenders. The final rule has therefore condensed into one comprehensive formula the two formulas previously proposed for VAR calculations for automated detergent blenders. The components of this automated formula are discussed below.

a. *General Description of the Automated Facility VAR Formula in the Final Rule.* Under the comprehensive formula of the final rule, automated detergent blenders must complete an additive reconciliation record for all of the product additized with each detergent used. At a minimum, one VAR record must be created each calendar month for each additive storage tank used. At the blender's option, the record may be completed for smaller, discrete additive system units, such as for each additive injector. If the same additive package in a detergent storage tank is being used in different concentrations for different products, *i.e.*, different treat rates for different grades of gasoline, then the automated blender will generally be able to combine the product additized under the different concentrations in the same VAR record. However, if the detergent has been registered with two different minimum effective concentrations, with the lower registered concentration being effective only for use with leaded product, then a separate VAR record must be created for the leaded product being additized at the lower, leaded-only rate.

Detergent blenders must indicate each detergent concentration for which their equipment is set at the beginning of the VAR period. Any changes in the concentration set rate(s) must either be recorded on the VAR document, or be made available on other documentation such as computer printouts. No concentration may be set lower than the minimum recommended concentration specified in the Part 79 detergent registration.

Automated blenders will be permitted under the interim program to adjust upward from the initially set concentration rate by as much as 10 percent within the same VAR period. If a rate is altered by more than 10 percent above the initially indicated rate, either at one time or cumulatively, then the VAR period terminates, and a new VAR record must be started as of that point.

Under the comprehensive formula for automated blenders, the blender is required to note the volume of detergent used from the storage unit, and the volume of gasoline and/or post-refinery component additized by the detergent from the measured unit. The blender will be required to indicate, either on the VAR form or on other documentation, such as computer printouts, which will be made available to EPA, the measurement figures from which these detergent volumes are derived, *i.e.*, the beginning and ending metered flow readings, the metered per-batch volume readings for the period, or other comparable metered readings; or the beginning and ending gauge inventory measurements, with corrections for additions to the storage tank and subtractions of unadditized product leaving the storage tank.

The actual concentration of detergent in additized product is then calculated, and compared to the correct concentration, *i.e.*, the minimum concentration specified in the detergent's Part 79 registration (or as provided in Section III.B.2). Compliance period additization in which the actual concentration is equal to or above the specified concentration, is in compliance with the VAR standard. In addition to recording the comparison of the actual concentration with the Part 79 minimum registered concentration, detergent blenders, if they choose for the convenience of their own operators, may also indicate compliance comparison by percentage figures.

Hand blenders will remain outside the comprehensive automated formula and will have their own formula under the interim program. The automated formula requires monthly calculations, based on present limitations in the automated equipment measurement and recording capabilities of some automated blenders. Since manual blenders do not have these equipment limitations and can easily calculate per-batch additization, they will be required to compute VAR compliance on a per-batch basis. EPA would prefer that all blenders conduct per batch detergent reconciliation, since such frequent reconciliation would give much greater assurance that each batch of additized product is additized with at least the minimum concentration of detergent specified in the detergent's Part 79 registration. However, the equipment limitations of many automated blenders are acknowledged in this rule, and automated blenders are therefore permitted to conduct detergent reconciliations on a monthly basis during the interim period.

Hand detergent blenders require a separate formula for the additional reason that they often do not have access to the gasoline inventory or flow readings that are the basis of the gasoline volume figures in the automated formula.

b. *Detergent Measurement Equipment.* For the sake of clarity and simplicity, the interim program's comprehensive formula for automated blenders will be flexible enough to be used by automated blenders using a variety of detergent measuring equipment that is presently in use, namely, gauge measurement equipment, meters on every injector, or master metered equipment. The gauge system uses sight or stick measuring gauges to ascertain the level of inventory in a tank at a particular time. A metering measuring system is typically in one of two configurations, *i.e.*, either one meter per injector measures product flow running through each detergent injector, or there is a master meter which measures total flow, which is situated prior to the separation of the detergent lines running to the individual injectors.

The Agency considered requiring the use by all automated detergent blenders of metered detergent measurements in the VAR calculations, since meters are a more accurate measurement system than gauges. However, several commenters indicated that not all automated blenders presently were equipped with metered detergent measuring equipment, and EPA is not mandating the use of detergent metering during the interim detergent program. However, the Agency encourages and prefers the use of metered detergent measurements for the VAR calculations, and intends to request comment in the reopening notice about implementing a potential metering requirement in the final certification rule. This provision would require all automated blenders to use meters to measure detergent usage, and might also require the use of meters on each detergent injector.

The National Petroleum Marketers Association expressed concern that automated blenders might be required to perform detergent tank gauging at the beginning and ending of each VAR period, whether or not their system was also metered. This was not the intent of the proposed formulas, and the rule finalized today clarifies that either tank-gauged or metered measurements must be the basis of the detergent volume figures reported on the VAR record. Since there must be some numeric measurement as a realistic basis for the reported VAR detergent volumes, however, today's rule does require that either meters or gauges must be used.

c. *Use of Multiple Concentration Rates in One VAR Record.* Arco Refining Company commented that its additization equipment was capable of measuring and automatically switching to a variety of set concentration rates depending on the type of gasoline needing additization. One detergent package was sometimes used at different concentration rates, as needed for the different grades of gasoline being additized. Arco was concerned because the automated formulas proposed in the NPRM would require the creation of a new VAR calculation period every time the concentration rate was automatically altered. EPA agrees that this would be burdensome, and the Agency does not desire to penalize parties for acquiring newer equipment that can measure several concentration rates. Therefore, the interim program's automated formula permits automated parties to utilize different concentrations in actual usage, provided that only one physical detergent package is being measured, and provided that each concentration rate being used is indicated on the VAR record (except as discussed in the following paragraph). If any of the initial concentration rates are raised in the reconciliation period, the blender must follow the procedures described below.

The exception to the general principle that multiple concentration rates will be permitted to be measured in one VAR record concerns detergents to be used with leaded product. If a detergent has been registered with two minimum effective lowest concentrations, and the lower of the two is to be used solely with leaded gasoline, a single VAR record cannot be used to calculate compliance for both concentrations. This is because the actual concentration rate attained would have to be compared to two different lowest effective rates, which would make the formula meaningless. In order to determine if a VAR violation has occurred in the above circumstances, the blender would have to complete a separate VAR record for each concentration rate at which the detergent is registered for use. For this record to be accurate, the blender must separately measure the detergent being used at the lower rate. The blender could have a separate tank for the detergent so used, or a separate meter for it, or some other way to accurately distinguish the use of detergent at the lower concentration.

d. *Detergent Concentration Rate Adjustments.* The Agency is very concerned with preventing automated blenders from compensating for significant under-additization discovered in a compliance period by altering their concentration rate so as to significantly over-additize later loads in the compliance period. Additization of any load of gasoline below the minimum concentration is not acceptable, because the Agency wants to assure that all gasoline being sold to the consumer is appropriately additized. Over-additization of later batches of gasoline as compensation for prior under-additization is also inappropriate because of concerns that over-additization may contribute to automotive combustion chamber deposits.

To address this concern, the NPRM proposed that detergent blenders would not be permitted in a VAR period to alter the concentration rates that their additization equipment had been set for. In the NPRM proposal, if any such adjustment occurred, then the VAR period was terminated, and a new VAR period was required to be initiated.

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API presented the results of an industry survey indicating that industry presently experienced an enormous range in ability to attain a VAR standard accurately. API suggested that EPA should institute the use of an enforcement tolerance in determining compliance with the VAR standard to acknowledge and account for the wide range in equipment variation in ability to ensure full accuracy.

For reasons discussed below, the Agency has decided that the use of an enforcement tolerance in the detergent regulatory context is inappropriate. However, the Agency acknowledges that without an enforcement tolerance, many detergent blenders would find it extremely difficult to attain the VAR standard without the ability to adjust detergent concentration rates throughout the compliance period. Consequently, the final rule will permit limited adjustment of concentration rates within the VAR period during the interim period. Extreme adjustments, however, will be prohibited, so that excessive swings in additization will not occur. In no event may any concentration rate be altered in any compliance period higher than 10 percent over the concentration specified as the initially set rate.

The 10 percent figure was chosen because the industry VAR survey results submitted by API reveal that at least 10 percent VAR monthly accuracy is already obtained by many automated blending parties (73 percent of company-owned responding parties, and 37 percent of systems operated by exchange agreement or third party terminals). Since many detergent blenders already attain a monthly VAR accuracy within 10 percent of target, the interim program reasonably prohibits automated blenders from altering their concentration rate above 10 percent of the target. This provides blenders with some flexibility in meeting the monthly compliance standard, while discouraging excessive fluctuations from the standard per-batch additization rate.

To assure that adjustments beyond 10 percent of the indicated concentration will not be made, the final rule requires that any adjustment beyond the 10 percent cut-off will terminate the VAR period, necessitating the start of a new VAR calculation. Blenders will be required to indicate on the VAR record each set concentration rate used at the beginning of the VAR period, and all changes to each rate that occurred during the period must be reported on the VAR record or otherwise be made available.

e. *Reconciliation Period.* EPA proposed that automated blenders must perform at least weekly detergent reconciliations. This final rule, however, permits monthly reconciliation periods. The vast majority of commenters urged adoption of the longer period. They asserted that a monthly period was more consistent with the reconciliation period presently being used by industry and the recordkeeping period required in the CARB detergent regulation. API presented evidence from its member survey indicating that none of the 2,199 exchange agreement or third party systems responding to its survey conducted reconciliation more frequently than monthly.

The Agency has decided to accept the monthly reconciliation period already being used by a majority of industry, rather than require a shift to a shorter period for the interim rule. One goal of choosing this period was to prevent lead time problems that parties might experience in implementing a weekly reconciliation period in time for the January 1, 1995 effective date of this rule.

EPA believes the monthly time frame provides reasonable assurance that individual loads will be additized properly. Although monthly averaging includes greater volumes than weekly calculations, and thus tolerates somewhat greater inaccuracy than weekly reconciliation, the number of additizations performed by the typical additization terminal per month is sufficiently small to ensure the results should reasonably approximate per-batch additization accuracy. In addition, EPA feels that the prohibition against altering the detergent concentration in the compliance period above 10 percent of the set concentration rate will further assure that significant per-batch under-additization will not occur.

However, EPA is not willing to further lengthen the VAR compliance period. Some commenters urged adoption of a quarterly reconciliation period, saying that a quarterly approach would be consistent with some other EPA record keeping requirements, such as the quarterly lead phase down and quarterly reformulated gasoline reporting requirements. EPA does not agree that quarterly reconciliation would be appropriate for detergent additization. First, the detergent program does not have the reporting requirements or the exhaustively detailed reconciliation requirements that exist alongside the quarterly reconciliation requirements found in the reformulated gasoline program. Second, a quarterly detergent reconciliation period would involve averaging approximately 2,500 truckloads for the typical terminal, so that a quarterly averaging period would not give sufficient guarantee that the gasoline being sold to the ultimate consumer was adequately additized as required by section 211(l). Even if the typical number of truckloads is actually somewhat smaller, as the National Petroleum Refiners Association argues, the large number of batches being additized over a quarterly period in the typical terminal is too great to permit reasonable assurance of adequate per-batch additization.

Although the Agency is promulgating a monthly reconciliation requirement in this rule, the Agency is still concerned about assuring as much per-gallon accuracy as possible in the final detergent certification rule. Some ideas being considered for the certification rule, in addition to the 10 percent concentration alteration cut off, involve creating a weekly compliance period and/or establishing a minimum per-gallon requirement that must be met in addition to meeting the averaged standard within the compliance period.

f. *Transfers of Unadditized Gasoline.* As was proposed in the NPRM, the transfer of unadditized gasoline from detergent blending terminals is not prohibited under this final rule. Information about such transfers, however, will be required to be recorded. The NPRM required transfers of unadditized product to be accounted for within the VAR formula. The interim program deletes this requirement from the formula itself. Such information about transfers from inventory is only significant to the accuracy of formulas based on inventory measurements. The new automated VAR formula permits measurements based on metered flow usage as well as on inventory changes. In cases of such metered measurements, information on inventory transfers is not relevant to the formula's accuracy. However, information about such transfers, outside of the formulas, is required to be compiled as a supporting document to the VAR records of all automated parties, since such information is vitally important to EPA in ascertaining that all product has been properly additized. In addition, any hand detergent blender which is a terminal must also compile this information.

g. *Equipment Calibration Requirements.* EPA received several comments about the quarterly calibration requirement for automated detergent blenders proposed in the NPRM. The National Petroleum Refiners Association urged EPA to clarify whether the calibration requirement would pertain only to the detergent equipment meters, or also to the injectors. The Agency clarifies in this rule that it is the additization system, *i.e.*, the injector flow as measured by the meters, that must be regularly calibrated to ensure that the system's measurements are accurate. It is the additization system's accuracy as a whole that is important.

EPA is today finalizing the requirement proposed in the NPRM that the automated equipment be calibrated quarterly, in spite of the National Petroleum Refiners' request that calibration be required only annually. The detergent rule continues the quarterly calibration requirement because such calibration intervals should result in some realistic compensation for the temperature-related changes in equipment accuracy resulting from seasonal variations in detergent viscosity. Since it would be unrealistic and expensive to require continuous equipment calibration to compensate for every temperature-related viscosity change, a quarterly calibration requirement would at least give some assurance of accuracy of the VAR required measurements. It would also give assurance of timely correction of normal variations in equipment accuracy that occur over time.

EPA received industry comment that variations in viscosity between different detergent packages requires calibration of the additization equipment when detergent packages are changed, in order to maintain measurement accuracy. In response to this comment, the final rule requires automated blenders to calibrate their measuring equipment each time they change the detergent package being measured.

h. *VAR Enforcement Tolerance.* Many parties commented on the need for an enforcement tolerance to be used in determining VAR violations. After reviewing these comments, EPA reaffirms the position taken in the NPRM that enforcement tolerance for VAR violations would be inappropriate. The Clean Air Act does not require the Agency to establish an enforcement tolerance in the detergent program. Absent a specific directive from Congress, the matter of enforcement tolerance is left to the Agency's discretion, and EPA considers such a tolerance in the VAR context to be neither necessary nor environmentally beneficial.

The Agency has never announced an enforcement tolerance in its fuels programs for parties with primary control over attaining standards. Such tolerances have only periodically been established for downstream parties who have much less ability than primary parties to control accuracy. Furthermore, EPA fuels programs have never announced enforcement tolerances for parties with primary control when standards can be met through averaging, since averaging is a process that has built-in tolerance of deviations from the standard.

While API has submitted survey data to EPA indicating that many automated detergent blenders do not presently attain a high degree of VAR accuracy, this information does not at all confirm that, in the future, industry would not be able to fulfill an averaged compliance standard if it were legally required. EPA believes industry should be able to attain the VAR compliance standard over the reconciliation period. The interim rule will allow detergent blenders to correct, and even compensate for, mis-additizations that occur within the VAR period, provided that they do so within the 10 percent rate alteration limit. The averaging implicit in this flexibility is sufficient to permit responsible parties to meet the standard, provided that they implement reasonable quality control procedures. Therefore, EPA does not believe that an enforcement tolerance is appropriate here.

An enforcement tolerance is also not needed, nor would it be beneficial, in the hand blending situation, since hand blenders do not have to use variable mechanical equipment in their blending.

Industry commented about the need for enforcement tolerances in other areas involving enforcement standards proposed in the NPRM, such as in performance testing of detergents. None of these comments pertain directly to today's rule, since the rule promulgated today does not require specific detergent performance tests. However, if the presence of lead in gasoline being additized with a detergent effectively registered for use only with leaded gasoline should become an issue, testing of lead and phosphorus to determine the legal identity of leaded gasoline will be conducted by the Agency according to the specifications listed in Appendices B and A, respectively, of 40 CFR Part 80. No enforcement tolerance has been created in the past for lead or phosphorus testing, and none is being contemplated now.

i. *Over-Additization.* Under the proposed regulations, over-additization of gasoline was considered a violation of the VAR standard, since compliance with the proposed VAR formula only existed if actual usage of detergent equalled the required usage. In the NPRM, however, the Agency explained that it did not intend to treat over-additization as a violation, since data was not available establishing the point at which over-additization became environmentally harmful.

The final rule promulgated today clarifies this situation, and specifies that VAR accounting compliance occurs when the actual detergent concentration equals or exceeds the minimum concentration specified in the detergent's Part 79 registration. This clarification codifies EPA's intent that over-additization would not be considered a violation of the VAR standard. Both API and Amoco had commented that they did not support a limit on additization over the minimum treat rate.

Some auto industry commenters expressed fears that over-additization might result in an increase in combustion chamber deposits. As discussed in Section I.C, EPA is concerned about this matter, and intends to re-visit this issue in the near future. For the duration of this interim program, however, over-additization will not be considered a violation.

The Agency does not believe that our decision to permit over-additization in the interim period will result in the occurrence of significant over-additization. The expense involved with adding detergents to gasoline should mitigate against any significant overuse of detergents. However, the fact that over-additization cannot at this time be considered a violation should not be construed as approval by EPA of over-additization, since serious concerns do exist about the potential harmful effects of over-additization.

j. *VAR for Hand Blenders.* EPA also received comment about the formula proposed for hand blending detergent facilities. The National Petroleum Refiners Association informed EPA that, typically, carrier drivers do not have the information necessary to comply with the VAR calculation requirements proposed in the NPRM. EPA agrees with this comment, and has thus modified the formula for hand blending facilities to include only information that the hand blender must possess in order to additize properly, *i.e.*, the amount of gasoline or post-refinery component additized, the amount of detergent actually blended, and the Part 79 registered minimum recommended detergent concentration rate.

2. Record Maintenance Requirement

a. *Five Year Record Retention.* The NPRM proposed that all VAR and transfer documents required to be created under the detergent rule must be maintained for five years. Many

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commenters requested that the proposed five year requirement be reduced because it was considered too burdensome. Western Independent Refiners Association also asserted that the proposed retention period violated the Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq*; 5 CFR § 1320. Regulations promulgated under the PRA state that the Office of Management and Budget will not approve record retention requirements for periods greater than three years, unless an Agency can establish substantial need for a longer required retention period. Alternative retention periods suggested by commenters included three, two, or even one year.

In this rule, EPA is promulgating the five year record retention period. EPA is aware of the burden of retaining records for the five year time period, and has alleviated this burden by deleting the proposed "place of creation" record retention requirements in the final rule (see next section).

The five year retention period is necessary for several reasons. The first is the enforcement reality that there are an enormous number of gasoline facilities subject to enforcement under this rule. Typically, inspections at particular facilities will therefore be widely spaced. Under these circumstances, EPA needs to be able to deter detergent violations by having the ability to review records over a significant period. Secondly, EPA expects that the detergent program will be enforced, to a significant extent, through review of records, as no standardized test has yet been developed to identify detergent in gasoline. In the absence of the ability to conduct extensive testing, records become extremely important in determining violations, and the Agency needs to have extensive record review ability to effectively enforce the program. Finally, the five year period is reasonable because it corresponds to the five year statute of limitations typical for fuels enforcement violations. Pursuant to the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.6, EPA believes that these factors demonstrate that there is substantial need for record maintenance beyond three years.

b. *Place and Manner of Record Retention.* The NPRM proposed that records must be retained in the place that they were created. It further proposed that VAR records must be maintained together with the transfer documents for the product covered by the VAR records.

Several commenters argued that industry should be able to maintain records centrally, or in any appropriate place, as long as the records were made available to EPA when requested. These commenters felt the proposed requirement that records be maintained at the facility where created was inconsistent with current business practices and was unduly burdensome. EPA agrees that the place of record retention should be left to the discretion of the regulated party, provided that the records are available for EPA inspection. The final rule reflects this revision.

National Petroleum Refiners Association disapproved of the proposed requirement that product transfer documents be maintained together with the mass balance (VAR) records with which they are associated. The National Petroleum Refiners argued that this requirement would necessitate a massive amount of burdensome sorting and collating of records. The intent of the proposed requirement was to help EPA in its auditing of the VAR records, by making easily accessible some of the primary records that support the validity of the VAR calculations. EPA agrees, however, that this collating requirement would produce significant space and labor costs for industry. Since other EPA fuels enforcement programs are effective without such a requirement, EPA has decided to delete this collating requirement from the interim detergent program.

3. Transfer Documentation

EPA proposed that product transfer documents be created and transferred with each transfer of detergent, gasoline, and post-refinery component. The product transfer documents would identify the product and provide important information about the product.

Several parties had comments about the proposed product transfer document requirements. Unocal Corporation argued that product transfer documents should not be required to be maintained at all, since the Agency was requiring mass balance (VAR) records to be created and maintained. Presumably, Unocal believed that VAR records documenting detergent blending would be sufficient to ascertain detergent program compliance. Western Independent Refiners Association made a similar argument that the CARB requirement of monthly compilation of suppliers and purchasers should be an adequate, less burdensome substitute for maintaining product transfer documents.

EPA disagrees with these comments. First, EPA has authority to require that regulated parties provide product transfer documents when they transfer detergent, gasoline, or detergent-additized gasoline to another party. Section 211(i) requires EPA to establish specifications for detergent additives. To ensure that detergents meet the specifications promulgated today, it is necessary to require transfer documents that properly identify the product to be provided with each transfer of the product.

In addition, section 211(c)(1) allows EPA to control the sale of any fuel or fuel additive if the Administrator determines that emissions from such fuel or fuel additive cause or contribute to air pollution that may reasonably be anticipated to harm the public health or welfare. As stated below in Section IV.B.4.d., this provision allows EPA to require that gasoline be additized to reduce harmful emissions. To ensure that gasoline is properly additized, it is necessary for EPA to require all parties to provide transfer documents that identify the product whenever the product is transferred to another party. Such documents are necessary to provide important information to receiving parties about blending restrictions. Further, transfer documents can establish the existence of violations that occurred prior to the detergent blending process, such as improper labeling of gasoline or detergent. An analysis of VAR records would not indicate such violations. Product transfer documents are an essential part of the primary records which can be used to verify the validity of the VAR records. EPA's experience conducting lead phase down audits confirms the necessity of assuring the retention of the primary records which are the basis for figures contained in reconciliation records.

Product transfer documents are also necessary to provide important information to receiving parties about blending restrictions. Furthermore, transfer documents can establish the existence of violations that occurred prior to the detergent blending process, such as improper labeling of leaded product. An analysis of the later VAR records would not detect such violations.

Finally, EPA does not expect the transfer document requirement of this rule to be unduly burdensome to industry. The reformulated gasoline rule already requires these documents, and transfer documents are already routinely transferred by industry in many product transactions. Typically, the added burden of this requirement will only involve some additional data requirements on already existing documents. Thus, this rule contains

requirements for both product transfer documents and VAR records.

Western Independent Refiners Association raised another concern about product transfer documents. The Western Refiners advised the Agency that fuels and fuel additives sent through pipelines are not always accompanied by documentation. These products are often fungible and they are not transported in discrete packages. Western Refiners argued that requiring the transfer of a product transfer document at the same time as the physical transfer of such product would be burdensome to those parties not presently simultaneously transferring both the product and the document.

EPA agrees that some parties in the gasoline distribution system may not presently transfer documentation at the same time as they physically transfer the product to another party. The Agency's position is that the information required by this rule to be supplied on the product transfer document is important to proper additization. It thus must be supplied to the receiving party in such manner, and within such time, as to give adequate notice of the relevant information. The Agency therefore believes that contemporaneous transfer may not always be necessary, although document transfer at or near the same time as the transfer of the product is expected.

It is important to clarify that the detergent program only requires the transfer of a product transfer document when custody or title to product is transferred from one party to another party. Such a document is not required to be created when product is merely being transferred, or even commingled, within one party's own organization.

As a further clarification, this final rule does not require transfer documents to physically accompany the product they cover at all times, as was a concern of one commenter. Parties who receive gasoline, detergent, or detergent-additized post-refinery components from other parties and who have received the transfer documents for such products, will be expected to produce, for EPA inspection, product transfer documents for any such product in their possession. The transfer documents need not, however, be attached to or stored in the same physical location as the product. Receiving parties must be prepared to account for product as it passes within their organizational structures, however, in order to establish that they are accurately producing the applicable transfer documents when requested.

The product transfer document requirements promulgated in this rule are much simpler than those proposed in the NPRM, since this rule does not contain certification restrictions. For example, gasoline transfer documents in the interim period need not include fuel-specific or PADD-specific information. Furthermore, product transfer documents for additized gasoline or post-refinery component are not required to identify the specific detergent used to additize the product. This requirement was deleted in response to an industry lead time concern about being able to implement this requirement in the product document software in time for the January 1, 1995 detergent rule implementation date.

Several parties commented about the required contents of product transfer documents. Koch Refining Company was concerned about the need to identify on a product transfer document each component base gasoline when several base gasolines have been commingled. EPA agrees that such multiple identification would be burdensome and unnecessary. In the interim program, only the type of regulated product, *i.e.*, base gasoline, detergent-additized gasoline, detergent, or detergent-additized post-refinery component, will be required to be listed. Thus, if product contains commingled base gasolines, the transfer document would only need to identify the product as base gasoline. However, if different types of covered product, such as base gasoline and detergent-additized ethanol, are added together, then the transfer document for the combined product must identify each of the combined components. It is necessary in the interim program rule promulgated today for the regulated parties and the Agency to know if unadditized product has been added to additized product.

The Chemical Manufacturers Association (CMA) urged EPA to clarify the proposed requirement to list "identity of product" on the transfer document. With this requirement, EPA intended that the generic type of transferred product regulated under the detergent rule must be specified, *i.e.*, base gasoline, detergent-additized gasoline, detergent, etc. See § 80.158(a)(5).

CMA further urged EPA to delete the requirement that time of transfer be listed on the transfer document. In the interest of streamlining transfer document contents, the Agency agrees to this request, especially in light of the fact that the reformulated/conventional gasoline program has also deleted this requirement. Date of transfer, however, is still required to be listed on each product transfer document.

Product transfer documents for leaded gasoline must identify the product as containing lead or phosphorus. This requirement is necessary because detergent registered for use only with leaded gasoline cannot be used with unleaded gasoline, as described earlier in this preamble. Such detergents can only be blended into gasolines whose transfer documents identify them as leaded.

Finally, API requested that EPA allow the use of approved product codes on transfer documents, as a means of compactly presenting the information required by the regulation. The intent is to streamline the space requirements for these documents. EPA appreciates industry's concern about lack of space on commercial documents and will consider special requests by regulated parties to use product codes on transfer documents. To be considered, such requests must demonstrate that all required information items will be included and that the information can be easily accessed and decoded by EPA.

4. Liability Issues

a. *Presumptive Liability.* The detergent rule's presumptive liability scheme is modeled after, and substantially similar to, the liability scheme already existing in previously-established EPA fuels programs, such as lead contamination, volatility, and diesel desulfurization, and in the reformulated/conventional gasoline program which is soon to be implemented. The rationale for the imposition of a presumptive liability framework is the same for the detergent rule as for the other rules. Typically, many parties handle and control gasoline, detergent, and detergent-additized post-refinery component. Much of the product is also fungible. It will, therefore, often be difficult for EPA to determine which party has caused a detergent program violation.

EPA must have the ability to hold presumptively liable all parties in the gasoline and detergent distribution networks that are involved in a particular violation, in order to effectively enforce the rule when multiple parties may have caused the violation. EPA's previous experience indicates that this type of enforcement scheme is highly effective. The comprehensive threat of liability is an incentive to all parties to comply with the regulation, and once a violation is found, to cooperate in determining which party actually caused the violation.

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Several parties have commented that the detergent program should not be based on a presumptive liability scheme since this program is different than the other fuels programs which have this type of scheme. According to these commenters, detergent is typically blended into gasoline downstream, prior to transfer of the gasoline to the retail outlet. These commenters argue that such downstream additization means that upstream parties, contrary to the situation in other fuels programs, cannot cause detergent program violations. Therefore, they assert, upstream parties should not be held presumptively liable for detergent program violations, and liability should only be imposed if EPA can establish actual responsibility.

EPA agrees with the commenters that gasoline is typically additized at a terminal prior to its transfer to the retail outlet. EPA disagrees, however, with the further assertion that detergent program violations cannot be caused by upstream parties. Upstream parties may cause gasoline non-conformity violations in a variety of ways. For example, they may fail to indicate on a product transfer document that the subject gasoline is leaded, and they may fail to provide accurate information about blending restrictions to detergent blending parties. Upstream parties may also cause gasoline, detergent, or detergent-additized post-refinery component non-conformity violations by improperly manufacturing detergent or commingling it.

Upstream parties may thus cause detergent program violations in a multitude of ways and circumstances, and all the parties in the gasoline and detergent distribution system have the potential to cause such violations. Given the multitude of potential causes of detergent program violations, and given the fact that it is the regulated parties themselves who have the most knowledge of, and ability to know what happens in their distribution system, EPA believes that the imposition of a presumptive liability scheme is as essential in the detergent program as it is in the other EPA fuels programs. The interim program rule promulgated today, therefore, continues the NPRM's presumptive liability scheme.

In the case of VAR violations, however, upstream parties are relieved of presumptive liability under today's rule, because detergent blenders will typically be solely responsible for the accuracy of their own detergent blending and VAR calculations. This issue may be revisited, however, when the certification program final rule is issued, since other parties could cause VAR violations in specific circumstances. These circumstances include the failure of upstream parties to provide adequate blending instructions, and the participation and collusion of other parties in intentional mis-additization by a detergent blender.

(1) Detergent Manufacturers and Detergent Distributors. CMA commented that, even if EPA has the authority to regulate detergent manufacturers, they should not be subject to presumptive liability for violations that are discovered downstream, because they do not retain sufficient control over the detergent to cause such violations once it leaves their facility.

EPA does not agree with CMA's argument. The presumptive liability scheme in today's rule, as is true with similar schemes found in other EPA fuels programs, is not dependent upon the control upstream parties may have over downstream parties. Control over the activities of another is the basis for vicarious liability. Detergent manufacturers will not be subject to vicarious liability under today's rule.

On the other hand, the basis of presumptive liability in the EPA fuels programs, including today's rule, is that a multitude of parties have the ability to cause a fuels program violation, given the fungible nature of gasoline and the extensive number of parties typically involved in its distribution. Given the difficulty in establishing which party actually caused a violation under these circumstances, presumptive liability needs to be imposed on all parties who could cause the violation. Detergent manufacturers can cause detergent program violations discovered downstream in a number of ways. For example, they may improperly manufacture the detergent. In addition, they may fail to properly identify the detergent on product transfer documents, or to provide accurate blending instructions. Therefore, it is appropriate to include detergent manufacturers in the presumptive liability scheme of today's rule.

Further, detergent manufacturers will not be required to demonstrate, as an independent element of an affirmative defense to liability for a detergent rule violation, that they did not cause the violation. EPA believes that the demonstration that: (1) The manufacturer provided proper product transfer documents; (2) testing when the product left the manufacturer's control indicated compliance with registration specifications; and (3) the manufacturer provided accurate written blending instructions about minimum concentration requirements and, where relevant, leaded gasoline use restrictions, is sufficient in most situations to effectively establish that the manufacturer did not cause the violation.

The Agency, however, needs to acknowledge and provide for the fact that unusual situations will exist in which a detergent manufacturer could cause a violation even though it has established all the required elements of an affirmative defense to liability for that violation. For example, situations could arise in which there was complicity on the part of the manufacturer in intentional downstream mis-additizations, or in which the manufacturer provided inaccurate oral instructions.

Therefore, under today's rule, manufacturers will be liable for violations even when the above affirmative defense documentation elements are satisfied, if the Agency can establish that the detergent manufacturer actually caused the violation. This provision is necessary to ensure that a manufacturer who actually causes a violation does not escape liability for that violation, which recognizing that most manufacturers who meet the requirements of the affirmative defense stated above will not have caused downstream violations. EPA does not believe that any regulated party who actually causes a violation should ever escape the imposition of liability for that violation.

In the NPRM, EPA proposed that all parties in the detergent distribution system, including distributors of detergent, be subject to presumptive liability for non-conformity violations affecting detergent, detergent-additized gasoline, and detergent-additized post-refinery component. EPA received no comments disputing the imposition of such liability on detergent distributors. Recognizing that detergent distributors may cause nonconformity violations in a number of ways, EPA has retained the proposed detergent distributor liability scheme in the final rule. Examples of such violations include commingling of mislabeled detergent and transfer of inaccurate blending instructions.

(2) Detergent and Gasoline Carriers. The Truck Carriers correctly point out that the proposed carrier liability for violations discovered downstream is different than, and inconsistent with, carrier liability under the volatility and reformulated/conventional gasoline rules. Under those programs, carriers are only held liable for violations discovered downstream when EPA can prove that they caused the violation. In the proposed detergent program, however, carriers were to be presumed liable for downstream violations.

EPA agrees that this inconsistency is inappropriate, since carriers' legal relationship with their products is the same in the detergent situation as it is in other fuels programs. Therefore, carrier liability for downstream violations is changed in this final rule to be consistent with the other programs. Gasoline carrier liability under the volatility program, which is the model for carrier liability in today's rule, was upheld in the National Tank Truck Carriers case, supra.

b. *Liability for Failure to Comply with VAR Requirements.* Commenters expressed concern regarding who EPA would hold responsible for performing VAR accounting procedures, and who EPA would hold liable for violations resulting from failure to comply with the requirements for such procedures. Commenters noted that parties commonly enter into arrangements concerning the manner in which detergent is blended into gasoline. Therefore, for any single blending operation, several different parties may separately own, lease, operate, control, and/or supervise the blending, and all such parties would be considered blenders under the proposed regulations.

EPA is aware of this situation, and intends that all parties who control or have the power to control the product and/or its additization should be held responsible for compliance with VAR requirements under today's rule. In the other fuel programs administered by EPA, the definitions of various regulated parties are sufficiently broad to include several types of persons or organizations. For example, the definition of "oxygenate blender" (40 CFR 80.2(mm)) could include a branded refiner, independent terminal operator, carrier, or other party. Under these other fuels programs, EPA may hold several parties, all of whom fit within the relevant definition, liable for the same violation, and may collect the full penalty amount from each such party. The reader is referred to the discussion of liability in the reformulated/conventional gasoline rulemaking (59 FR 7777).

In the reformulated/conventional gasoline program, EPA stated that it would not require multiple responsible parties to comply with the same requirement. EPA intends to take a similar approach under this rule, and does not intend to require multiple blenders to fulfill VAR requirements for a single blending operation. However, if VAR requirements are not fulfilled, all parties who qualify as blenders under the definition promulgated today will be presumed liable as discussed above.

EPA expects that parties will enter into contractual agreements with other parties to perform the required VAR calculations and equipment calibrations, and to establish adequate quality assurance programs. As part of raising an affirmative defense, a detergent blender may, where appropriate, establish that it reasonably relied on another party to fulfill the VAR requirements of this rule. Of course, parties have the legal right to establish an indemnification system among themselves if penalties are imposed.

The National Tank Truck Carrier Association ("Truck Carriers") submitted a comment to EPA stating that carriers should not be held liable for detergent blending violations, since they merely loaded the blend components according to the product owner's instructions. EPA is aware that, in many instances, detergent manufacturers and other parties expected to obtain detergent registrations do not actually blend the detergent into the base gasoline. This blending is often performed by distributors, refiners, carriers, and other parties. Thus, many detergent blenders must obtain information from other parties regarding the proper treat rate and any other applicable blending limitations.

However, EPA believes that carriers who blend detergent into gasoline, even if they do so pursuant to manufacturers' instructions, can cause violations, and should therefore be included in the liability scheme under today's rule. As discussed above, EPA lacks the ability to adequately determine the cause of a particular violation, and will thus impose liability on all parties, including carriers who are detergent blenders, who could have caused the violation. Carriers who blend detergent into gasoline can cause such violations in several ways: improper commingling of products, misdelivery, improper identification of products, and failure to obtain or follow instructions provided by manufacturer. Further, to ensure that carriers who blend detergent into gasoline obtain proper blending instructions, detergent blenders must demonstrate possession of adequate written blending instructions as part of an affirmative defense to liability. Such instructions should specify the minimum recommended detergent concentration, as specified in the registration. In addition, the instructions must state whether the detergent is registered for use at that concentration only in leaded gasoline.

Detergent blenders who purchase detergents from other parties may have sufficient influence over the sellers to insist on the receipt of this necessary information as a condition of purchase. However, carriers who are detergent blenders may not have such purchasing or contractual power, but must depend on their clients, the owners of the detergent, to provide adequate blending instructions. Therefore, EPA will require detergent blenders to demonstrate, as part of establishing an affirmative defense to liability, that they either supplied or obtained, depending on thei position in the distribution chain, appropriate written additization instructions. The reciprocal nature of this duty satisfies the requirements of *National Tank Truck Carriers v. EPA*, 907 F.2d. 177, 185 (D.C.Cir. 1990). In this case, the court refused to allow EPA, in its fuel volatility regulations, to require carriers to obtain documents from shippers as part of establishing the carrier's affirmative defense to liability, unless EPA also imposed a reciprocal requirement on shippers to supply their carriers with such documents.

Of course, if a detergent blender believes that a violation resulted from inaccurate blending instructions supplied to the blender, the blender could demonstrate that as part of establishing an affirmative defense to liability for the violation. As always, EPA will review all the relevant facts and circumstances of a specific enforcement case to determine whether the party had actual culpability in that situation.

The Truck Carriers commented that gasoline carriers should not be held liable as blenders, even if they add detergent to gasoline, since carriers typically follow instructions provided by the owner when blending detergent into gasoline. The Agency agrees that when gasoline carriers blend detergent into gasoline, they typically do so pursuant to the product owners' instructions. However, EPA does not agree that this reliance on the instructions of others means that gasoline carriers cannot be considered detergent blenders. Such carriers, like any other party, will be considered a detergent blender under today's rule if they own, lease, operate, control or supervise the blending operation of a detergent blending facility, including a truck (see 40 CFR 80.139(j)).

EPA expects that gasoline carriers will be considered detergent blenders under today's rule in truck hand-blending situations, as will the shippers who control the product and provide the blending instructions to the carriers. Gasoline carriers may also be considered detergent blenders in automated blending situations,

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depending on the degree of control they exercise over the automated detergent blending process. The situation is analogous to the ethanol blending process under the volatility regulations. In many instances in the volatility program, gasoline carriers have been considered ethanol blenders, especially in hand blending situations.

c. *Liability for Inadvertent Violations.* Western Independent Refiners commented that only the knowing sale or transfer of noncompliant product should be the basis of liability under this rule. EPA disagrees. Knowledge of non-compliance has never been the prerequisite for liability in any of the EPA fuels programs. Since many detergent program violations could, and probably will, be caused by negligence or error, it would be counter-productive for the Agency to tolerate mis-additization merely because it is inadvertent. For the Agency to do otherwise would discourage parties from instituting the quality control procedures necessary to ensure compliance.

Furthermore, if parties unknowingly sell or transfer non-conforming product that is later found to be in violation, they will not be treated unfairly under the detergent rule. First, as mentioned above, if the violation is a VAR violation that is discovered through an audit of VAR calculations, only detergent blenders are presumed liable in this interim period. Even if the violation is a detergent program violation not discovered through the VAR calculations, parties will always have the right to establish that they did not cause the violation, as part of an affirmative defense to liability.

The Western Refiners further commented that liability should not attach if parties contracted to avoid liability. EPA's response is that the Agency is not bound, and should not be bound, by contracts between private parties that seek to avoid the imposition of liability imposed by regulations. However, parties may legally decide between themselves about private indemnification if liability is imposed. Parties may also contract between themselves as to the fulfillment of regulatory responsibilities. If these responsibilities are not actually fulfilled, however, each party subject to them faces liability if a violation is found.

The Western Refiners also argued that a party should not be subject to liability for violations in situations where the party relied on misrepresentations of another. EPA again disagrees. If a party believes a detergent program violation was caused because the party relied on improper blending instructions or other misrepresentations of another, the potential respondent can assert this fact as evidence of lack of causation of the violation, as part of its affirmative defense. EPA will review all such relevant information in determining if the respondent has established its affirmative defense.

d. *Detergent Manufacturer Liability: Legal Authority.* EPA proposed to include manufacturers of detergent additives within the presumptive liability scheme of this rule. In the NPRM, EPA claimed authority to regulate detergent manufacturers under CAA sections 211(l) and 211(c)(1), as well as under section 301(a). CMA strongly objected to EPA's proposed imposition of liability on detergent manufacturers, and claimed that EPA did not have the authority to regulate detergent manufacturers under the Act.

EPA disagrees. First, section 211(l) directs EPA to promulgate regulations "establishing specifications" for detergent additives. In today's rule, the Agency is exercising its authority to set specifications by insisting that detergents be properly registered under Part 79, and that registrants provide upon EPA request information required to substantiate the registration information (such as test procedures for identifying the claimed components of the registered product).

To establish effective detergent specifications, it is reasonable to include the manufacturer of the product that must meet the required specifications within the scope of the regulatory scheme. The manufacturer is in the best position to determine whether the product meets the regulatory specifications. Therefore, EPA believes that Congress did not intend to prohibit EPA from regulating the very party who has primary control over determining whether the regulatory specifications are met. This is especially true since detergent manufacturers typically claim that the chemical identity of a detergent package is confidential business information. The detergent manufacturer, therefore, may be the only non-governmental party with the ability to determine whether its product conforms to the applicable specifications.

Section 301(a) of the Act provides EPA with additional authority to regulate detergent manufacturers, by providing EPA with the general authority to promulgate such regulations "as are necessary to carry out" the Agency's functions under the Act. EPA believes that it is necessary to regulate detergent manufacturers in order to effectively implement the requirements of section 211(l). As explained above, detergent manufacturers are in the best position to ensure that their product meets the specifications that EPA is required to promulgate under section 211(l). Therefore, it is necessary for EPA to impose certain obligations on detergent manufacturers in this rule. Although manufacturers do have a business incentive to respond to their customers' desire to use detergent that complies with EPA requirements, EPA does not believe such a market incentive is sufficient to ensure that the product meets the applicable requirements. Of course, liability will attach only where problems arise.

Further, to effectively regulate detergents, it is necessary to regulate all parties in the chain of distribution of detergents and detergent-additized gasoline who could cause violations of this rule, especially since, in some cases, EPA may not be in a good position to determine the cause of a particular violation. EPA believes that it is possible for detergent manufacturers to cause violations of today's rule. For example, if detergents are manufactured incorrectly, they may not provide the expected degree of deposit control. In addition, detergent manufacturers may improperly label the product, or may fail to provide adequate instructions.. Finally, downstream parties rely on the manufacturer to properly produce and identify a detergent additive.

In addition, EPA believes it has authority to regulate detergent manufacturers under section 211(c)(1) of the Act. This provision states that EPA may, under certain circumstances, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of a fuel additive. CMA concedes in its comments that section 211(c)(1) provides EPA with the authority to regulate gasoline for the purpose of reducing harmful emissions from gasoline, and to require that gasoline contain detergent additives that would help control such emissions. However, CMA states that section 211(c)(1) does not provide EPA with authority to regulate manufacturers of detergents, since this regulation is not directed at controlling harmful emissions from *detergents.*

EPA disagrees that its authority under section 211(c) is limited to regulating only marketers and producers of gasoline. Section 211(c)(1) grants to EPA the authority to "control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive * * * if in the judgment of the Administrator any emission product of such fuel or fuel additive causes or contributes to air pollution which may reasonably be anticipated to endanger the public health or welfare." The requirement that gasoline contain detergent additives is intended to reduce harmful emissions from gasoline, and is therefore a "control" on the manufacture and sale of gasoline within the meaning of the term as used in section 211(c)(1).

In *Amoco I,* supra, the D.C. Circuit upheld EPA's promulgation of an affirmative unleaded gasoline marketing requirement as a proper exercise of section 211(c)(1) authority. Under EPA's unleaded gasoline regulations, retailers were required to sell at least one grade of unleaded gasoline at their retail outlets. The court stated that this requirement was a "control" on the sale of leaded gasoline (which impairs the emission control system), since it effectively prevented retailers from selling leaded gasoline unless they also offered for sale at least one grade of unleaded gasoline. In addition, EPA had the authority to impose such a requirement to assure the availability of unleaded gasoline.

Similarly, under today's rule, EPA is promulgating a control on the manufacture and sale of *gasoline* by requiring all gasoline to contain detergent additives at a concentration designed to control the formation of deposits which could cause increased emissions. In addition, this regulation is designed to ensure that properly additized gasoline, which will result in reduced emissions of harmful pollutants compared to unadditized or improperly additized gasoline, will be available for consumer use. For the same reasons, EPA believes it also has authority to regulate distributors of detergent, under sections 211(l), 211(c), and 301(a).

Finally, sections 114 provides EPA with authority to require detergent manufacturers to register detergent additives, and to submit certain information upon EPA request. Section 114 grants EPA broad authority to require the submittal of any information from any person subject to the requirements of the Act for the purpose of enforcing those requirements. This provision further supports EPA's authority to require detergent manufacturers to submit supporting data in order to receive detergent registration, and to submit test data as part of establishing an affirmative defense to liability. To ensure that gasoline is properly additized with detergent, it is necessary for EPA to have information supporting the manufacturer's recommended detergent concentration.

API submitted a comment about the information which upstream parties should be required to provide to establish their affirmative defenses for downstream misadditization violations. API argued that upstream parties should only be required to establish that they transferred the product with a product transfer document accurately identifying it as base gasoline that should not be sold to the ultimate consumer.

EPA agrees that compliance with product transfer document requirements is an important element of an affirmative defense to liability for downstream violations. However, EPA does not agree that such compliance should by itself be sufficient to establish an affirmative defense. As discussed above, upstream parties may cause downstream violations in a variety of ways, and all such causes cannot be detected through the product transfer document. Therefore, EPA is including as a required element of an affirmative defense for most downstream parties a demonstration that the party did not cause the violation.

In the case of detergent manufacturers, an affirmative defense will be established if the manufacturer demonstrates the following: (1) Product transfer document requirements were met; (2) testing of the detergent when it left the manufacturers control showed compliance with applicable requirements; and (3) the manufacturer provided proper blending instructions to its customer. EPA does not believe that a manufacturer who demonstrates these elements could have caused a downstream violation.

e. *Sale of Unregistered Detergent.* CMA expressed concern that the proposed prohibition against selling or offering to sell or supply detergent that does not conform to Part 79 registration specifications would prevent detergent manufacturers from selling to prospective customers detergents that have not yet been developed and registered. EPA does not intend to prohibit detergent manufacturers from having sales discussions with prospective customers about possible future sales of detergents yet to be developed. Such sales discussions are too far in time from the offering for sale of actual detergent for actual use, to be considered covered by the prohibition in today's rule against offering for sale a non-conforming product. Once the product is in the actual development stage, it may qualify for an exemption from the requirements of this rule under the research and development exemption discussed above.

f. *Legal Authority to Regulate Carriers.* The National Tank Truck Carriers ("Truck Carriers") commented that EPA lacked the statutory authority to regulate detergent carriers under CAA sections 211(l) and 301(a). EPA disagrees with these comments. EPA believes that it has sufficient authority under the Clean Air Act to regulate carriers of detergent additives.

First, section 211(l) requires EPA to promulgate regulations "establishing specifications" for detergents. In addition, as stated above, section 301(a) grants EPA the authority to promulgate regulations that are necessary to carry out its functions under the Act. As stated above, EPA often lacks the ability to accurately determine the actual cause of a detergent program violation. Therefore, to ensure that gasoline sold to the ultimate consumer is properly additized, EPA is establishing a scheme of liability under which all parties in the distribution chain who could cause a violation are presumed liable for that violation. Detergent carriers are an essential component of the chain of distribution of detergent additives, and exercise sufficient control over a portion of that distribution chain such that it is necessary for EPA to regulate detergent carriers in order to ensure that detergent additives comply with the regulations promulgated today.

Detergent carriers have the ability to cause violations of this rule. For example, carriers may improperly commingle detergents, or may fail to provide accurate identification of the detergent to the receiving party. EPA is therefore concerned that, without regulation of detergent carriers, neither the requirements of this rule nor the mandate of Congress in Section 211(l) will be effectively implemented, because of the potential for carriers to cause violations, the need to impose a duty on carriers to exercise care in transporting or storing detergent and gasoline, and the need for EPA to determine the cause of violations of today's rule.

The Truck Carriers also commented that EPA does not have the authority to regulate common carriers under section 211(c), since they do not manufacture, introduce into commerce, offer for sale, or sell fuels or fuel additives. EPA disagrees with this argument, and believes that carriers clearly participate in the introduction of fuels and/or fuel additives into commerce. The term "introduce into commerce" is not defined by Congress in the Act. The common definition of the term is sufficiently broad to include carriers of gasoline. The Webster's New Universal Unabridged Dictionary, 1983 edition,

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defines "to introduce" as "to take or bring into a given place or position." EPA believes that it is reasonable to include common carriers' transporting activities within this definition.

Furthermore, EPA's ability to regulate carriers pursuant to the authority of section 211(c) has long been recognized by the Agency and industry in other fuels enforcement programs, such as the lead contamination and volatility programs. Under these programs, EPA regulates all parties in the gasoline distribution system, including carriers, pursuant to section 211(c). The Agency's authority, pursuant to section 211(c), to regulate gasoline carriers under today's program is consistent with its long-held authority under these prior programs. In *National Tank Truck Carriers* v. *EPA*, 907 F.2d. 177 (D.C.Cir. 1990), the court found that EPA's rationale for imposing liability on carriers in the volatility program was sufficiently reasonable to uphold such regulation of carriers. The Agency's rationale in the volatility program was similar to the rationale for imposing liability on carriers in this rule, i.e., that it is necessary to impose some degree of responsibility for compliance on all parties in the chain of distribution of the regulated product.

EPA also disagrees with the Truck Carriers' argument that section 301(a) of the Act does not give the Agency authority to regulate carriers. As previously mentioned in the discussion of detergent manufacturer liability, section 301(a) gives EPA the general authority to prescribe regulations necessary to carry out its statutory functions. It is reasonable to interpret this general authority to include the authority to create a detergent program liability scheme covering all parties, including carriers, within the gasoline and detergent distribution systems. The creation of this comprehensive scheme is necessary to ensure effective enforcement of the detergent program, which is a statutorily mandated function of the Agency.

g. *Interaction with Department of Transportation Safety Regulations.* The Truck Carriers commented that the Department of Transportation is the only federal agency that has authority to regulate the transportation of gasoline, and therefore gasoline carriers, since the Hazardous Metals Transportation Safety Act (HMTSA) designates the Secretary of Transportation as the sole source of all regulations affecting commerce in hazardous materials.

EPA does not agree with this argument. It is true that gasoline is a hazardous substance, and is therefore subject to the safety regulations and other requirements of the HMTSA. However, the fact that the Department of Transportation has the authority to promulgate safety regulations governing the transportation of gasoline does not deprive EPA of the authority to regulate the sale and transfer of gasoline to implement the goals of the Clean Air Act. The regulation promulgated today is not intended to regulate any aspect of transportation safety, and therefore does not implicate the HMTSA.

h. *Definition of "Marketer" under Section 211(l).* The Truck Carriers also stated that common carriers were not subject to the prohibitions of section 211(l) because they were not "marketers" of gasoline. EPA disagrees with this argument, and believes that it is reasonable to include carriers in the term "marketers" as used in section 211(l).

The Act does not define "marketers" for purposes of section 211(l). The term generally appears to indicate a broad category of persons involved in the distribution system of a product (see sections 211(h)(4), 211(k)(5), and 211(m)(2)). As used in these provisions, the scope of the term "marketers" may be broader or narrower, depending on the detail with which Congress specified the parties covered by each provision. For example, the long list of parties referenced in section 211(h)(4) makes it clear that "marketer" as used in that provision means an undefined category of persons other than distributors, blenders, resellers, carriers, retailers, or wholesale purchaser-consumers. However, in sections 211(l) and 211(m)(2), the term includes an undefined category of parties other than refiners.

The generally accepted meaning of the term marketer is "one that deals in the market." (Webster's Ninth *New Collegiate Dictionary* 1990.) A carrier would reasonably fall within this definition. Given the lack of a clear definition in the Act for this vague term, the indications that Congress intended the term as used in section 211(l) to have a broad meaning, and the reasons provided above supporting EPA's inclusion of carriers as regulated parties in today's rule, EPA has reasonably determined that carriers are included in the term "marketer" for purposes of section 211(l).

i. *Special Situation of Carriers.* The Truck Carriers commented that, even if EPA has the authority to regulate gasoline carriers, under the Act, the Agency should not exercise that authority because of the special nature of carrier services. The Truck Carriers claimed that gasoline carriers merely follow the owner's instructions when they transport products, and should therefore not be held liable for such products that are in violation of this rule.

EPA disagrees with this argument. EPA has established similar liability schemes in the other fuel programs that the Agency administers, i.e. lead volatility program, lead contamination program, and reformulated/conventional gasoline program. The rationale for the imposition of liability on carriers of gasoline is the same for all these programs, including the rule promulgated today. Although carriers do not take title to the product they transport, they can and do exercise sufficient control of gasoline at some point in the distribution chain, and can therefore cause violations.

It is EPA's experience in the lead contamination and volatility programs that carriers have the ability to improperly commingle, label, or deliver products. These actions could result in violations of the requirements of this rule. Therefore, EPA believes that it is appropriate to include gasoline carriers within the liability scheme promulgated today.

j. *Liability of Common Carriers.* The Truck Carriers expressed concern that the proposed liability scheme placed common carriers at a competitive disadvantage compared to private carriers, because the private carrier would not bear the same risk of penalties and costs of defenses against presumptive liability for violations found in a truck. The Truck Carriers stated that EPA has no rational basis for treating common carriers in a different manner than private carriers.

EPA recognizes the Truck Carriers' concern, but does not agree that the liability scheme in today's rule treats common carriers differently from private carriers. If a refiner chooses to transport its own product, rather than hiring a common carrier, the refiner will be subject to liability for violations found in its transport vehicle. In addition, if the transport vehicle is a branded facility, the refiner will be subject to vicarious liability for violations found at that facility.

Further, carriers will not be presumed liable under today's rule for violations found downstream from their facilities. Carriers will only be held liable for such violations if EPA can demonstrate that they caused the violation. Regarding violations at their own facilities, carriers will be held liable in the same manner that any party is held liable for a violation found at its own facility, and can establish a defense to such liability by showing that they did not cause the violation, and that it complied with

product transfer document requirements. Therefore, EPA believes that the liability scheme promulgated today treats common carriers equitably.

k. *Liability Related to Insufficient Supporting Data or Test Procedures.* Today's rule requires that a detergent manufacturer who registers a detergent under part 79 must make available to EPA, upon EPA's request, supporting data which adequately establishes the effectiveness of the detergent at the minimum recommended concentration specified under the part 79 registration. A workable test procedure, including test results where necessary, to identify the detergent in its pure state is also required upon request.

If the Agency requests such supporting data and/or identification test procedure and results, and the information is not available or is determined by the Agency to be inadequate, the detergent will no longer meet the requirements of this rule, and can no longer be used in gasoline to be sold to the ultimate consumer. Detergent blenders (fuel manufacturers) who continue to use an unacceptable detergent after EPA or the detergent registrant has notified them that the detergent has been disqualified for use in compliance with this rule will be liable for violations resulting from the improper additization. The detergent blenders will be given a 45-day grace period from the date of notification to switch to an eligible detergent product.

However, if the Agency determines that the detergent manufacturer was guilty of fraud or other serious transgression in registering the detergent, then the detergent registration will be considered void *ab initio* as a means of complying with the detergent program requirements of this rule, starting from the time of the detergent's use under the interim detergent program. The detergent manufacturer would thus be liable for the improper use of the detergent from the date it was first used under this program. Fuel marketers who used the detergent will also be liable for such prior use if they cannot establish that they did not cause the violation by having culpability in the improper use, such as by failing to ask to review the detergent manufacturer's supporting data, or by other culpable behavior.

l. *Vicarious Liability.* Today's rule provides for imposition of vicarious liability on branded refiners when violations are discovered at facilities operating under the refiner's name or that of a marketing subsidiary. The vicarious liability concept has been used in many other EPA fuels programs, such as the volatility, lead contamination, and reformulated/conventional gasoline programs. The reason for imposing vicarious liability in today's rule is the same as it is under the other programs.

Vicarious liability in the EPA fuels programs is predicated upon the control the branded refiner has over its branded outlets and other facilities operating under the brand name or the name of a marketing subsidiary. Branded refiners have great contractual and practical ability to control such facilities. This control includes the ability to dictate and determine the attributes and quality of product being stored, transferred or sold in these facilities.

This control is especially apparent in the case of detergent additization, where branded refiners typically advertise their gasoline based on the alleged efficiency or supremacy of their additive packages. The additive package may actually be the only major distinguishing factor between different branded gasolines, which may be substantially fungible in other respects. Branded refiners, accordingly, go to great lengths to ensure that their additive packages are properly blended into their gasoline, even to the point of maintaining their own additive systems in facilities operated by other parties, such as by exchange agreement refiners.

EPA, therefore, does not agree with the comments of API and Amoco Oil Company that vicarious liability on branded refiners should not be imposed. As previously mentioned, branded refiner control over branded facilities is just as significant, or even more significant, in regard to detergent quality than it is in the other EPA programs where vicarious liability has been successfully imposed. In addition, the detergent program's presumptive and vicarious liability scheme is consistent with prior judicial decisions. See *Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 722 (D.C. Cir. 1974) ("Amoco I"); *Amoco Oil Co.* v. *Environmental Protection Agency*, 501 F.2d 270 (D.C. Cir. 1976) ("Amoco II") and *National Tank Truck Carriers, Inc.* v. *U.S. E.P.A.*, 907 F.2d 177 (D.C. Cir. 1990).

There are several significant aspects of branded refiner vicarious liability under today's rule. First, vicarious liability will not attach to a branded refiner for VAR or other violations found at a terminal operating under that refiner's name, where the violation involves an exchange agreement refiner's designated product. In these circumstances, although the terminal refiner's brand name is on the overall facility, it is not on the other refiner's product in violation, and the branded terminal refiner does not have sufficient control of such product to impose vicarious liability here. However, the terminal branded refiner may, in appropriate circumstances, be considered an actual detergent blender if the facts warrant such a conclusion and the terminal refiner fits within the detergent blender definition. Also, the exchange agreement branded refiner has potential vicarious liability for VAR violations that occur which involve its branded product in additization equipment that is used solely for that branded product.

Another important clarification of branded refiner vicarious liability involves the imposition of such liability for detergent program violations after the additization process. As previously mentioned, only detergent blenders have presumptive liability for VAR violations. However, downstream parties are presumptively liable for gasoline nonconformity violations, such as those involving the sale of inadequately additized product or unleaded product improperly additized only with a carburetor detergent.

If such violations are found at branded downstream facilities, then the branded refiner would be subject to vicarious liability for those violations. As is always the case under the provisions of this rule and EPA's other fuels programs, the branded refiner would have the right to assert its affirmative defense to the imposition of such liability. Similarly, the retailer would also have the right to assert its affirmative defense, including lack of causation, to the imposition of liability for the violation. Both the branded refiner and the retailer would, additionally, have the right to raise the argument, when appropriate in under-additized gasoline situations, that VAR procedures for the gasoline were followed and that no averaging violation of the VAR standard actually occurred.

Another important point about branded refiner vicarious liability involves downstream product transfer document violations. Such violations will not be the basis for any vicarious or presumptive liability, since proper care of these documents is a matter under the sole control of the violating party itself. This approach is consistent with the approach to these violations found in the reformulated/conventional gasoline program, where no presumptive or vicarious liability attaches to these violations.

API and Amoco Oil Company raised an additional concern about vicarious liability under the proposed rule. These commenters urged that the vicarious liability affirmative defense

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requirements should not include the need to establish that the violations were caused, or must have been caused, by other parties. This requirement, according to these commenters, creates an unfair burden to refiners.

EPA disagrees. The *Amoco II* case, supra, upheld EPA's right to require branded refiners to establish, as part of an affirmative defense to vicarious liability, that a lead contamination violation was not caused by the refiner, and was instead either caused by an unforeseeable act of vandalism of another, or by an unpreventable breach of contract by another. The language to which these commenters object is the same vicarious liability affirmative defense language which was crafted by the Court and which commenter Amoco and other branded refiners consented to, in the *Amoco II* decision. See *Amoco II*, supra, note 8, p.273.

As previously mentioned, EPA does not believe that a branded refiner has any less control over its branded facilities in the context of the detergent rule than in the context of EPA's other fuels programs. Today's rule, therefore, contains this judicially sanctioned affirmative defense requirement language, as proposed in the NPRM.

One clarification of the proposed vicarious liability affirmative defense requirements is contained in this detergent rule. The NPRM mentioned that the proposed vicarious liability affirmative defense requirements were similar to those found in the volatility program. The volatility program liability provision, 40 CFR 80.28(g)(4), requires that branded refiners establish as part of their affirmative defenses, *inter alia*, that the violation was either caused by an act in violation of law, vandalism or sabotage, or by an unavoidable breach of contract. Intentional commingling is not considered to be an act in violation of law, or of vandalism or sabotage, under the volatility rule, but is instead covered by the provision requiring the branded refiner to establish existence of an effective contractual oversight program to prevent the violation. To be consistent with the volatility and with the reformulated/conventional gasoline rules, this final rule (at 40 CFR 156(c)(2)(ii)) also places acts of intentional commingling in the defense section requiring branded refiner establishment of contractual oversight programs.

m. *Affirmative Defenses to Liability.* The Western Independent Refiners Association ("Western Refiners") commented that the affirmative defense provisions, as proposed by EPA, would be simpler to understand if EPA adopted a quality assurance program requirement as a condition of detergent certification. In this rule, EPA is not promulgating a certification program for detergent additives; however, EPA at this time does not believe that a quality assurance requirement should be required as a condition of receiving certification, but that it should remain a required element of an affirmative defense to liability for certain violations of this rule. Agency experience with similar affirmative defense requirements in other fuels programs indicates that industry is able to understand and work with this concept. In fact, the threat of potential liability if adequate quality assurance programs are not established has proven to be a powerful incentive ensuring the continued existence of such programs. Further, regulated parties are free to choose not to meet the required elements of an affirmative defense, and will not be subject to liability because of that choice as long as no violations occur.

(1) Detergent Manufacturers. EPA proposed that conformity of a detergent with applicable requirements be determined at the time the product was transported from the manufacturer's facility. CMA suggested in its comments on the proposed rule that EPA change the point at which detergent manufacturers must demonstrate through test results, as part of establishing an affirmative defense, that their product conformed with applicable requirements. CMA noted that the detergent product leaves the control of the manufacturer at the point of loading for transport, rather than at the time of actual transport. EPA agrees with the logic and fairness of CMA's argument, and is therefore requiring in this final rule that, for the purposes of a manufacturer's affirmative defense to liability, conformity will be determined at the time the detergent was loaded for transport or otherwise left the manufacturer's control.

(2) Detergent and Gasoline Carriers. The Truck Carriers also expressed concern that carriers will find it difficult to demonstrate, as part of an affirmative defense, that they did not cause a violation, because carriers do not have sufficient power in the gasoline distribution chain to elicit other parties' cooperation in demonstrating lack of causation.

EPA recognizes the Truck Carriers concern, but does not believe that it is valid. It is EPA's experience that, in the other fuel programs implemented by the Agency, all involved parties typically cooperate with EPA to discover who caused the violation. Under this rule, carriers have the burden of demonstrating lack of causation as an element of an affirmative defense only if they are held liable for violations discovered at their own facilities. Carriers should have sufficient control over information regarding activities at facilities that they own or control. For all other violations, carriers will only be held liable where EPA can satisfactorily demonstrate that they caused the violation.

The Truck Carriers also commented that the possession of proper product transfer documents should be the only element required to establish an affirmative defense to carrier liability. EPA disagrees, and does not believe that such an approach would ensure successful implementation of today's rule. Carriers can cause violations in a number of ways that would not necessarily be reflected on or related to the product transfer document, such as improper commingling or blending.

5. California Gasoline

Several California fuel marketers have commented about the detergent program's treatment of gasoline already subject to the CARB detergent program. These commenters argue that the CARB detergent certification program already instituted for California gasoline is as effective as the proposed federal program would be. According to these commenters, California marketers should be exempted from the federal program enforcement requirements since the federal requirements would merely be duplicative of the CARB requirements, unnecessarily burdensome, and not environmentally beneficial.

EPA does not agree with this argument. CARB does have a detergent certification program in place for gasoline sold in California. The federal program does not preempt the California program with respect to certification testing for gasoline sold in California.

CARB bases enforcement of its detergent program on a review of blending records to determine adequate additization. In this respect, the CARB and federal programs are very similar. However, the federal program promulgated today has some additional enforcement requirements that are not found in the CARB program. These additional federal requirements include requiring: detergent accuracy in its unadditized state; transfer documents to accurately identify additive status of product; and quarterly automated equipment calibrations.

The federal enforcement program, therefore, is not identical to CARB's, and can be said to be stricter in some important respects. These differences may result in greater additization

accuracy. EPA does not believe it is appropriate to have a more lenient program in California, in certain important aspects, than in the rest of the country, merely because the gasoline sold in California is also subject to enforcement by another regulatory agency. Consumers of gasoline in California should have the same environmental benefits from the federal rule promulgated today as consumers in other states will acquire.

Furthermore, fulfilling the federal enforcement requirements should assist California marketers in meeting CARB's additization mandates. The federal program requirements are, thus, neither duplicative nor unduly burdensome.

6. Exemptions

Many parties commented about the need to simplify the research waiver provisions of the detergent rule. Commenters advised that detergent research is ongoing, with new products being continuously developed. The research waiver process proposed in the detergent rule NPRM would disrupt industry's ability to develop new detergents in a timely manner, according to these commenters.

EPA agrees that a less cumbersome research control process than the one proposed in the detergent NPRM would be appropriate and would still be effective. Therefore, the interim detergent program takes a much more streamlined approach. All detergent and detergent-additized gasoline being used for research, development, or testing (including certification testing) purposes only, will be exempt from the provisions of the rule, provided certain requirements are met. To be exempt, the fuel will have to be properly identified by documentation, cannot be sold from retail outlets or from non-research wholesale purchaser consumer facilities, and will have to be covered by an annual research notification to EPA.

Racing fuel and aviation fuel will also be exempted from the detergent program requirements. The exemption requirements are similar to those promulgated for research fuels, except that manufacturers will not be required to annually notify EPA of the production of such fuel in order to obtain an exemption. EPA does not believe such an annual notification requirement is necessary or beneficial. However, only racing fuel sold from racing facilities will be exempt from the requirements of today's rule. Fuel will not be exempt if it is sold from retail outlets or for use in motor or nonroad vehicles. The rationale for this requirement is to ensure that such fuel is not available for sale to the general public, since the basis for the exemption is that racing fuel is not being sold or transferred to the public. Aviation and racing fuel must also be covered by documentation establishing such fuels as the specified exempt fuel.

7. Penalties

In the NPRM, it was proposed that there would be a presumption of the number of days of VAR violation, based on the number of days that the product in violation was in the gasoline distribution system. The Western Independent Refiners Association objected to the idea that there should be a presumed number of days for violations of the VAR standard.

The Agency agrees that such a presumption is inappropriate in regard to the detergent rule's VAR violations, since violations of the VAR standard are averaged violations. Section 211(d)(1) specifies that violations of section 211(l) standards based upon multi-day averaging periods shall constitute a day of violation for every day of the averaging period. Consequently, the rule promulgated today complies with this statutory requirement and deletes the number of days presumption proposed in the NPRM.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action". EPA's regulatory impact analysis (RIA), available in the docket and summarized below, indicates that the annual costs to producers for compliance with the requirements of the interim program are not expected to exceed $100 million. However, the analysis demonstrates that the annual costs to producers for compliance with the expected full certification program (to be finalized in a later rulemaking) would be expected to exceed $100 million. Therefore, EPA has treated this action as significant, and has submitted a regulatory analysis to OMB for review.

The total cost of the detergent additive interim registration program to the gasoline industry is estimated at about $130 million over an 18-month period, nearly all of which is associated with the cost of incremental detergents added to gasoline. Annual costs from the start of the interim program (January 1, 1995) through the fourth full year of the expected certification program (i.e., the year 2000), discounted at a rate of 7 percent, amount to a net present value in 1995 of about $650 million. Full certification program costs include costs associated with certification testing and additional registration and recordkeeping requirements, as well as additization costs. Still, over 90 percent of the total estimated cost of the program is associated with the price of the additives needed to bring all gasoline up to the effective detergency levels which much of U.S. gasoline already contains. This cost is generally expected to be passed along to the consumer, increasing the average price of gasoline by about .10 to .25 cents per gallon. This would amount to only a dollar or two per motorist per year, and would be more than compensated by the increased fuel economy and decreased maintenance requirements which improved deposit control would be expected to provide.

The gasoline detergent additive requirements are expected to result in reductions in motor vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen, totalling about 700,000 tons during the 18-month interim program, and about 600,000 tons per year thereafter. These emission reductions will be achieved at relatively low cost, i.e., about $220 per ton. Fuel economy benefits are also expected as a result of the detergent program, amounting to over 390 million gallons during the 1995–2000 period The savings associated with this fuel economy benefit are expected to partially offset the costs of the program, decreasing the cost per ton of emission reduction to about $120.

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The program is not expected to be a significant cost burden to individual businesses. As described above, incremental costs for detergent additive are expected to be passed on to the consumer. Furthermore, adverse effects on competitive relationships are not expected. In fact, this rule should result in increased sales and business opportunities within the fuel additive industry. Any written comments from OMB and any EPA response to OMB's comments are available in the public docket for this rule.

B. Compliance With Regulatory Flexibility Act

Under section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, federal agencies are required to assess the economic impact of federal regulations on small entities. Accordingly, a Regulatory Flexibility Analysis (RFA) has been prepared. The RFA is included as Chapter 5 in the Regulatory Impact Analysis described in the previous section of this notice, and is available for review in the public docket.

The RFA shows that the regulatory responsibilities of the various types of businesses affected by this rule, along the chain from gasoline refiner to distributor to retailer, differ markedly. For each type of business, however, even for the small business entities in this chain, the costs of the regulation are estimated to be modest. The largest costs would be incurred by gasoline producers in the price of the additional detergent additive required to be added to gasoline. As described above, this cost is expected to be passed along the distribution chain to consumers. In any case, if small businesses were permitted a special provision allowing under-additization, this would minimize realization of the program's projected air quality benefits. EPA has thus concluded that significant adverse economic impacts on small businesses are extremely unlikely. On the contrary, in the case of small additive manufacturers and additive injection equipment manufacturers, this interim registration regulation and the expected certification rulemaking could result in significant economic opportunities through increased sales.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1655.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street, SW., (Mail Code 2136); Washington, DC 20460, or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated reporting burden averaging 6.3 hours per response and an estimated annual recordkeeping burden averaging less than one hour per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch; EPA; 401 M Street, SW., (Mail Code 2136); Washington, DC 20460, and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC, 20503; marked "Attention: Desk Officer for EPA."

VI. Electronic Copies of Rulemaking Documents

Electronic copies of the preamble, the Regulatory Impact Analysis, and the regulatory text of this final rule are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

TTNBBS can be accessed using a dial-in telephone line (919–541–5742) and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS
(K) Rulemaking and Reporting

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. The following four "aip" files are currently available:

DCA_PRE.ZIP (Preamble from the Notice of Proposed Rulemaking)
DCA_1FP.ZIP (Preamble to the final rule on the Interim Requirements for Deposit Control Additives)
DCA_IFR.ZIP (Regulatory text for the final rule on the Interim Requirements for Deposit Control Additives)
DCA_RIA.ZIP (Regulatory Impact Analysis)

File information can be obtained from the "READ.ME" file. Choose from the following options when prompted:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit.

To download a file, e.g., <D> filename.ZIP, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. A new subpart G, consisting of §§ 80.140 through 80.169, is added to part 80, to read as follows:

Subpart G—Detergent Gasoline

Sec.

80.140 Definitions.
80.141 Interim detergent gasoline program.
80.142—80.154 [Reserved]
80.155 Controls and prohibitions.
80.156 Liability for violations of the interim detergent program controls and prohibitions.
80.157 Volumetric additive reconciliation ("VAR"), equipment calibration, and recordkeeping requirements.
80.158 Product transfer documents.
80.159 Penalties.
80.160 Exemptions.
80.161—80.169 [Reserved]

Subpart G—Detergent Gasoline

§ 80.140 Definitions.

The definitions in this section apply only to subpart G of this part. Any terms not defined in this subpart shall have the meaning given them in 40 CFR part 80, subpart A, or, if not defined in 40 CFR part 80, subpart A, shall have the meaning given them in 40 CFR part 79, subpart A.

Additization means the addition of detergent to gasoline or post-refinery component in order to create detergent-additized gasoline or detergent-additized post-refinery component.

Automated detergent blending facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component, by means of an injector system calibrated to automatically deliver a prescribed amount of detergent.

Base gasoline means any gasoline that does not contain detergent.

Carburetor deposits means the deposits formed in the carburetor during operation of a carburetted gasoline engine which can disrupt the ability of the carburetor to maintain the proper air/fuel ratio.

Carrier of detergent means any distributor of detergent who transports or stores or causes the transportation or storage of detergent without taking title to or otherwise having any ownership of the detergent, and without altering either the quality or quantity of the detergent.

Deposit control effectiveness means the ability of a detergent additive package to prevent the formation of deposits in gasoline engines.

Deposit control efficiency means the degree to which a detergent additive package at a given concentration in gasoline is effective in limiting the formation of deposits. The addition of inactive ingredients to a detergent additive package, to the extent that this addition dilutes the concentration of the detergent-active components, reduces the deposit control efficiency of the package.

Detergent additive package means any chemical compound or combination of chemical compounds, including carrier oils, that may be added to gasoline, or to post-refinery component blended with gasoline, in order to control deposit formation. Carrier oil means an oil that may be added to the package to mediate or otherwise enhance the detergent chemical's ability to control deposits. A detergent additive package may contain non-detergent-active components such as corrosion inhibitors, antioxidants, metal deactivators, and handling solvents.

Detergent blender means any person who owns, leases, operates, controls or supervises the blending operation of a detergent blending facility. Pursuant to the definition in 40 CFR 79.2(d), a detergent blender is also considered a fuel manufacturer.

Detergent blending facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component.

Detergent-active components means the components of a detergent additive package which act to prevent the formation of deposits, including, but not necessarily limited to, the actual detergent chemical and any carrier oil (if present) that acts to enhance the detergent's ability to control deposits.

Detergent-additized gasoline (also called *detergent gasoline*) means any gasoline that contains base gasoline and detergent.

Detergent-additized post-refinery component means any post-refinery component that contains detergent.

Distributor of detergent means any person who transports or stores or causes the transportation or storage of detergent at any point between its manufacture and its introduction into gasoline.

Fuel injector deposits (also known as *port fuel injector deposits* or *PFID*) means the deposits formed on fuel injector(s) during and after operation of a gasoline engine, as evaluated by the reduction in the gasoline flow rate through the fuel injector(s).

Gasoline means any fuel for use in motor vehicles and motor vehicle engines, including both highway and off-highway vehicles and engines, and commonly or commercially known or sold as gasoline. The term "gasoline" is inclusive of base gasoline, detergent gasoline, and base gasoline or detergent gasoline that has been commingled with post-refinery component.

Hand blending detergent facility means any facility (including, but not limited to, a truck or individual storage tank) at which detergent is blended with gasoline or post-refinery component by the manual addition of detergent, or at which detergent is blended with these substances by any means that is not automated.

Intake valve deposits (*IVD*) means the deposits formed on the intake valve(s) during operation of a gasoline engine, as evaluated by weight.

Manufacturer of detergent means any person who owns, leases, operates, controls, or supervises a facility that manufactures detergent. Pursuant to the definition in 40 CFR 79.2(f), a manufacturer of detergent is also considered an additive manufacturer.

Post-refinery component means any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process.

§ 80.141 Interim detergent gasoline program.

(a) *Effective date of requirements; responsible parties.* Beginning January 1, 1995, all gasoline sold or transferred to the ultimate consumer, or to the marketer who sells or transfers gasoline to the ultimate consumer, must contain detergent additive(s) meeting the requirements of this section. The applicability of these detergency requirements to specific types of gasoline is specified in paragraph (b) of this section. Pursuant to paragraphs (c) through (f) of this section, compliance with the requirements of this section is the responsibility of parties who directly or indirectly sell or dispense gasoline to the ultimate consumer as well as parties who manufacture, supply, or transfer detergent additives or detergent-additized post-refinery components.

(b) *Applicability of gasoline detergency requirements.* Except as specifically exempted in § 80.160, the detergency requirements of this subpart apply to all gasoline, including highway-use, off-road, reformulated, conventional, and oxygenated gasolines, as well as the gasoline component mixtures of petroleum and alcohol fuels, gasoline used as marine fuel, gasoline service accumulation fuel (as described in § 86.113–94(a)(1) of this chapter), and the gasoline component of fuel mixtures of petroleum and methanol used for service accumulation in flexible fuel vehicles (as described in § 86.113–94(d) of this chapter).

(c) *Detergent registration requirements.* To be eligible for use by fuel manufacturers in complying with the gasoline detergency requirements of this subpart, a detergent additive package must be registered by its manufacturer under 40 CFR part 79 according to the specifications in paragraphs (c) (1) through (3) of this

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section. After evaluating the adequacy of registration data provided by the detergent manufacturer pursuant to these requirements, if EPA finds the data to be deficient, EPA may disqualify the detergent package for use in complying with the gasoline detergency requirements of this subpart, under the provisions of paragraph (g) of this section.

(1) *Compositional data.* The compositional data supplied to EPA by the additive manufacturer for purpose of registering a detergent additive package under § 79.21(a) of this chapter must include:

(i) A complete listing of the components of the detergent additive package, using standard chemical nomenclature when possible or providing the chemical structure of any component for which the standard chemical name is not precise. Detergent-active components may not be reported as the product of other chemical reactants.

(ii) The exact weight and/or volume percent (as applicable) of each component of the package, with variability in these amounts restricted according to the provisions of paragraph (c)(2) of this section.

(iii) For each detergent-active component of the package, classification into one of the following designations:

(A) Polyalkyl amine;
(B) Polyether amine;
(C) Polyalkylsuccinimide;
(D) Polyalkylaminophenol;
(E) Detergent-active carrier oil; and
(F) Other detergent-active component.

(2) *Allowable variation in compositional data.* A single detergent additive registration may contain no variation in the identity or concentration of any of the detergent-active components identified pursuant to paragraph (c)(1)(iii) of this section. The identity and/or concentration of other components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such variability does not change the minimum recommended concentration of the additive package reported in accordance with the requirements of paragraph (c)(3) of this section. Detergent additive packages which constitute a variation from these restrictions must be separately registered. EPA may disqualify an additive for use in satisfying the requirements of this subpart if EPA determines that the variability included within a given detergent additive registration affects the concentration of detergent-active components.

(3) *Minimum recommended concentration.* (i) The lower boundary of the recommended range of concentration for the detergent additive package in gasoline, reported by the additive manufacturer pursuant to the registration requirements in § 79.21(d) of this chapter, must equal or exceed the minimum concentration which the manufacturer has determined to be necessary for the control of deposits in the associated fuel type. This concentration must be reported in gallons of the detergent additive package per gallons of gasoline.

(A) When registered for use in unleaded gasoline, the minimum recommended concentration must not be less than the concentration necessary for the control of PFID and IVD.

(B) When registered for use in leaded gasoline, the minimum recommended concentration must not be less than the concentration necessary for the control of carburetor deposits.

(ii) The minimum concentration reported in the detergent registration according to the provisions of paragraph (c)(3)(i) of this section must also be communicated in writing by the additive manufacturer to each fuel manufacturer who purchases the subject detergent for purpose of compliance with the gasoline detergency requirements of this subpart, and to any additive manufacturer who purchases the subject additive with the intent of reselling it to a fuel manufacturer for this purpose.

(iii) Pursuant to the requirements of paragraph (e) of this section, EPA may require the additive manufacturer to submit data to support the deposit control effectiveness of the detergent package at the specified minimum effective concentration. EPA may disqualify an additive for use in satisfying the requirements of this subpart upon finding that the supporting data is inadequate. Manufacturers may be subject to the liabilities and enforcement actions in §§ 80.156 and 80.159 if such a finding is made.

(d) *Detergent gasoline registration requirements.* (1) Pursuant to the fuel registration requirements of § 79.11 of this chapter, a detergent blender/fuel manufacturer must include adequate information in the gasoline's registration to identify which registered detergent additive(s) will be used in the gasoline. This information must at a minimum include the specific commercial identifying name and manufacturer of the detergent additive package(s), the range of concentration of each such additive package intended to be used in the base gasoline, and any additional information needed to clearly identify which registered detergent additive(s) are to be used. A fuel registration shall be deemed insufficient if the registered additive to be used cannot be clearly identified based on the information provided. To comply with the detergency requirements of this subpart, the lower boundary of the range of concentration of the detergent additive package, reported by the fuel manufacturer pursuant to the registration requirements of § 79.11(c) of this chapter, must equal or exceed the minimum recommended concentration specified in the detergent additive's registration, unless otherwise approved by EPA under the provisions of paragraph (d)(2) of this section.

(2) If a detergent blender believes that the minimum treat rate recommended by the manufacturer of a detergent additive exceeds the amount of detergent actually required for effective deposit control, then, upon informing EPA of these circumstances pursuant to paragraph (d)(2)(i) of this section, the detergent blender may use the detergent at a lower concentration than recommended by the detergent manufacturer. Under the provisions of paragraph (d)(2)(ii) of this section, EPA may subsequently require the detergent blender to provide test data substantiating the effectiveness of the detergent at the lower concentration. Pursuant to paragraph (d)(2)(iii) of this section, if EPA determines that the lower concentration does not provide a level of deposit control consistent with the requirements of this section, the detergent blender may be subject to the penalties described in §§ 80.156 and 80.159 for any gasoline additized at the lower concentration.

(i) The detergent blender must inform EPA in writing of an intent to use a detergent product at a lower concentration than the minimum recommended by the detergent manufacturer. This notification must clearly specify the name of the detergent product and its manufacturer, the concentration recommended by the detergent manufacturer, and the concentration which the detergent blender intends to use. The notification must also attest that data are available to substantiate the deposit control effectiveness of the detergent at the intended lower concentration. The notification should be sent by certified mail to the address specified in § 80.160(a).

(ii) At its discretion, EPA may request that the detergent blender submit the test data purported to substantiate the claimed effectiveness of the lower concentration of the detergent additive.

In such instance, EPA shall also require the manufacturer of the subject detergent additive to submit test data substantiating the minimum recommended concentration specified in the detergent additive registration. In each case, the supporting data will be due to EPA within 30 days of receipt of EPA's request.

(A) If the detergent blender fails to submit the required supporting data to EPA in the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the effectiveness of the lower detergent concentration, and the detergent blender will be subject to any applicable liabilities and penalties in §§ 80.156 and 80.159 for any gasoline it has additized at the lower concentration.

(B) If the detergent manufacturer fails to submit the required test data to EPA within the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the minimum recommended concentration specified in the detergent registration, and the subject additive may be disqualified for use in complying with the requirements of this subpart, pursuant to the procedures in paragraph (g) of this section. The detergent manufacturer may also be subject to applicable liabilities and penalties in §§ 80.156 and 80.159.

(iii) If both parties submit the requested information, EPA will evaluate the quality and results of both sets of test data in relation to each other and to industry-consensus test practices and standards, in a manner consistent with the guidelines described in paragraph (e) of this section. EPA will inform both the detergent blender and the detergent manufacturer of the results of its analysis within 60 days of receipt of both sets of data. Either party may appeal EPA's decision, using procedures analogous to those specified in paragraphs (g)(3) through (g)(4) of this section.

(e) *Demonstration of deposit control efficiency.* At its discretion, EPA may require a detergent additive registrant to provide test data to support the deposit control effectiveness of a detergent at the minimum concentration recommended, pursuant to paragraph (c)(3) of this section and § 79.21(d) of this chapter. The required supporting data must be submitted to EPA within 30 days of receipt of EPA's request. EPA will notify the submitter, within 60 days after receiving the supporting data, whether the data is adequate to support the deposit control efficiency claimed. Subject to the procedures specified in paragraph (g) of this section, if the supporting data are not submitted or if EPA finds the data insufficient, the detergent may be disqualified for use by fuel manufacturers in complying with the requirements of this subpart. EPA will use the following guidelines in determining the adequacy of the supporting data:

(1) *CARB-based supporting test data.* For detergent additives which are certified by the California Air Resources Board (CARB) for use in the State of California (pursuant to Title 13, section 2257 of the California Code of Regulations), the CARB certification data constitutes adequate support of the detergent's effectiveness under this section, with the exception that CARB detergent certification data specific to California Phase II reformulated gasoline (pursuant to Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996) will not be considered adequate support for detergent effectiveness in gasoline sold outside of California. For CARB-based supporting data to be used to demonstrate detergent performance, the concentration of the detergent-active components reported in the subject CARB detergent certification must not exceed the minimum recommended concentration reported in the applicable detergent additive registration.

(2) EPA will evaluate the adequacy of other supporting data according to the following guidelines:

(i) Test fuel guidelines.

(A) The gasoline used in the supporting tests must contain the detergent-active components of the subject detergent additive package in an amount which corresponds to the minimum recommended concentrations recorded in the respective detergent registration, or less than this amount.

(B) The test fuels must not contain any detergent-active components other than those recorded in the subject detergent registration.

(C) The test fuels used must be reasonably typical of in-use fuels in their tendency to form deposits. Test fuel taken directly from commercial refinery production stock is acceptable. Specially refined low-deposit-forming fuels such as indolene are not acceptable. Other specially blended test fuels will be evaluated by EPA for acceptability based on the extent to which such fuels adequately represent the deposit-forming tendency of typical (average) in-use fuels, as reflected in the levels of the following fuel parameters: sulfur content, aromatic content, olefin content, T–90, and oxygenate content.

(D) The composition of the blended test fuel(s) used in carburetor deposit control testing, conducted to support the claimed effectiveness of detergents used in leaded gasoline, should be reasonably typical of in-use gasoline in its tendency to form carburetor deposits (or more severe than typical in-use fuels) as defined by the olefin and sulfur content. Test data using leaded fuels is preferred for this purpose, but data collected using unleaded fuels may also be acceptable provided that some correlation with additive performance in leaded fuels is available.

(ii) Test procedure guidelines.

(A) To be acceptable, test data submitted to support the deposit control effectiveness of a detergent additive must derive from testing conducted in conformity with good engineering practices.

(B) For demonstration of fuel injector and intake valve deposit control performance, vehicle-based tests using standard industry procedures and standards is preferred. Engine-based tests may also be acceptable, assuming a reasonable correlation with vehicle-based tests and standards can be demonstrated. Bench test data may be acceptable to demonstrate fuel injector deposit control performance, assuming the results can be correlated with vehicle- or engine-based tests and standards. Bench testing will not be considered acceptable for demonstration of IVD control performance. Examples of acceptable test procedures are contained in the following references:

(*1*) Intake Valve Deposit Test Procedures:

(*i*) "Intake Valve Deposits—Fuel Detergency Requirements Revisited", Bill Bitting et al., Society of Automotive Engineers, SAE Technical Paper No. 872117, 1987.[1]

(*ii*) "BMW—10,000 Miles Intake Valve Test Procedure", March 1, 1991, Section 2257, Title 13, California Code of Regulations.

(*iii*) "Standard Test Method for Vehicle Evaluation of Unleaded Automotive Spark-Ignition Engine Fuel for Intake Valve Deposit Formation", American Society for Testing and Materials, ASTM Test Method D–5500.[2]

(*iv*) "Effect on Intake Valve Deposits of Ethanol and Additives Common to the Available Ethanol Supply", Clifford Shilbolm et al., SAE Technical Paper Series No. 902109, 1990.

(*2*) Fuel Injector Deposit Test Procedures:

(*i*) "Test Method for Evaluating Port Fuel Injector (PFI) Deposits in Vehicle

[1] Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001.

[2] American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA, 19103–1187.

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Engines", March 1, 1991, Section 2257, Title 13, California Code of Regulations.

(*ii*) "A Vehicle Test Technique for Studying Port Fuel Injector Deposits—A Coordinating Research Council Program", Robert Tupa et al., SAE Technical paper No. 890213, 1989.

(*iii*) "The Effects of Fuel Composition and Additives on Multiport Fuel Injector Deposits", Jack Benson et al., SAE Technical Paper Series No. 861533, 1986.

(*iv*) "Injector Deposits—The Tip of Intake System Deposit Problems", Brian Taneguchi, et al., SAE Technical Paper Series No. 861534, 1986.

(C) For demonstration of carburetor deposit control performance, any generally accepted vehicle, engine, or bench test procedure for carburetor deposit control will be considered adequate. Port and throttle body fuel injector deposit control test data will also be considered to be adequate demonstration of an additive's ability to control carburetor deposits. Examples of acceptable test procedures for demonstration of carburetor deposit control, in addition to the fuel injector test procedures listed above in paragraph (e)(2)(ii)(B)(*2*) of this section, are contained in the following references:

(*1*) "Fuel Injector, Intake Valve, and Carburetor Detergency Performance of Gasoline Additives", C.H. Jewitt et al., SAE Technical Paper No. 872114, 1987.

(*2*) "Carburetor Cleanliness Test Procedure, State-of-the-Art Summary, Report: 1973–1981", Coordinating Research Council, CRC Report No. 529.[3]

(f) *Detergent identification test procedure.* (1) At its discretion, EPA may require the additive registrant to submit an analytical procedure capable of identifying the detergent additive in its pure state. The test procedure will be due to EPA within 30 days of the registrant's receipt of the request. Subject to the provisions in paragraph (g) of this section, if the registrant fails to submit an analytical procedure, or if EPA judges a submitted procedure to be inadequate, EPA may deny or withdraw the detergent's eligibility to be used to satisfy the detergency requirements in this section.

(2) The analytical procedure submitted by the registrant must be able to both qualitatively and quantitatively identify each component of the detergent additive package. To be acceptable, the procedure must provide results that conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy, for the type of test in question.

(3) A fourier transform infrared spectroscopy (FTIR)-based procedure, including an actual infrared spectrum of the detergent additive package and each component part of the detergent package obtained from this test method, is preferred.

(g) *Disqualification of a detergent additive package.* (1) When EPA makes a preliminary determination that a detergent additive registrant has failed to comply with the requirements of paragraph (c), (d)(2)(ii)(B), (e), or (f) of this section, either by failing to submit required information for a subject detergent additive or by submitting information which EPA deems inadequate, EPA shall notify the additive registrant by certified mail, return receipt requested, setting forth the basis for that determination and informing the registrant that the detergent may lose its eligibility to be used to comply with the detergency requirements of this section.

(2) If EPA determines that the detergent registration was created by fraud or other misconduct, such as a negligent disregard for the truthfulness or accuracy of the required information or of the application, the detergent registration will be considered void *ab initio* and the revocation of qualification will be retroactive to January 1, 1995 or the date on which the additive product was first registered, whichever is later.

(3) The registrant will be afforded 60 days from the date of receipt of the notice of intent of detergent disqualification to submit written comments concerning the notice, and to demonstrate or achieve compliance with the specific data requirements which provide the basis for the proposed disqualification. If the registrant does not respond in writing within 60 days from the date of receipt of the notice of intent of disqualification, the detergent disqualification shall become final by operation of law and the Administrator shall notify the registrant of such disqualification. If the registrant responds in writing within 60 days from the date of receipt of the notice of intent to disqualify, the Administrator shall review and consider all comments submitted by the registrant before taking final action concerning the proposed disqualification. The registrants' communications should be sent to the following address: Director, Field Operations and Support Division, Mail Code: 6406J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(4) As part of a written response to a notice of intent to disqualify, a registrant may request an informal hearing concerning the notice. Any such request shall state with specificity the information the registrant wishes to present at such a hearing. If an informal hearing is requested, EPA shall schedule such a hearing within 90 days from the date of receipt of the request. If an informal hearing is held, the subject matter of the hearing shall be confined solely to whether or not the registrant has complied with the specific data requirements which provide the basis for the proposed disqualification. If an informal hearing is held, the designated presiding officer may be any EPA employee, the hearing procedures shall be informal, and the hearing shall not be subject to or governed by 40 CFR part 22 or by 5 U.S.C. 554, 556, or 557. A verbatim transcript of each informal hearing shall be kept and the Administrator shall consider all relevant evidence and arguments presented at the hearing in making a final decision concerning a proposed cancellation.

(5) If a registrant who has received a notice of intent to disqualify submits a timely written response, and the Administrator decides after reviewing the response and the transcript of any informal hearing to disqualify the detergent for use in complying with the requirements of this subpart, the Administrator shall issue a final disqualification order, forward a copy of the disqualification order to the registrant by certified mail, and promptly publish the disqualification order in the **Federal Register**. Any disqualification order issued after receipt of a timely written response by the registrant shall become legally effective five days after it is published in the **Federal Register**.

(6) Upon making a final decision to disqualify a detergent additive package pursuant to this paragraph (g), EPA shall inform all fuel manufacturers and secondary additive manufacturers whose product registrations report the potential use of the disqualified detergent that such detergent is no longer eligible for compliance with the requirements of this subpart. Such fuel manufacturers and secondary additive manufacturers shall have 45 days in which to stop using the ineligible detergent additive package and substitute an eligible detergent additive. When applicable, EPA shall also notify such parties that the detergent registration had been created by fraud or other misconduct, pursuant to paragraph (g)(2) of this section.

[3] Coordinating Research Council Inc. (CRC), 219 perimeter Center Parking, Atlanta, Georgia, 30346.

§ 80.142—80.154 [Reserved]

§ 80.155 Controls and prohibitions.

(a) (1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of gasoline to the ultimate consumer for use in motor vehicles or in any off-road engine use (except as provided in § 80.160), or to a gasoline retailer or wholesale purchaser-consumer, and no person shall additize gasoline, unless such gasoline has been additized in conformity with the requirements of § 80.141.

(2) Gasoline has been additized in conformity with the requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141 and when:

(i) The gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of an applicable detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(ii) The gasoline is composed of two or more commingled gasolines and each component gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(iii) The gasoline is composed of a gasoline commingled with a post-refinery component, and both of these components have been additized in conformity with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2).

(b) No person shall blend detergent into gasoline or post-refinery component unless such person complies with the volumetric additive reconciliation requirements of § 80.157.

(c) No person shall sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline, detergent, or detergent-additized post-refinery component unless the product transfer document for the gasoline, detergent or detergent-additized post-refinery component complies with the requirements of § 80.158.

(d) No person shall refine, import, manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any detergent that is to be used as a component of detergent-additized gasoline or detergent-additized post-refinery component unless the detergent conforms with the composition specifications of a detergent registered under 40 CFR part 79, and the detergent otherwise complies with the requirements of § 80.141.

(e) (1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of detergent-additized post-refinery component unless the post-refinery component has been additized in conformity with the interim detergent program requirements of § 80.141.

(2) Post-refinery component has been additized in conformity with the interim detergent program requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141, and:

(i) The post-refinery component has been additized in accordance with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2); or

(ii) The post-refinery component is composed of two or more commingled post-refinery components, and each component has been additized in accordance with the detergent composition and use specifications of a detergent registered under 49 CFR part 79, and in accordance with at least the minimum concentration specifications of a detergent registered under 40 CFR part 79 or as otherwise provided under § 80.141(d)(2).

§ 80.156 Liability for violations of the interim detergent program controls and prohibitions.

(a) *Persons liable*—(1) *Gasoline non-conformity.* Where gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, is found in violation of any of the prohibitions specified in § 80.155(a), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized gasoline, the base gasoline component, the detergent component, or the detergent-additized post-refinery component, of the gasoline that is in violation; and

(iii) Each gasoline carrier who dispensed, supplied, stored, or transported any gasoline in the storage tank containing gasoline found to be in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any post-refinery component or gasoline in the storage tank containing gasoline found to be in violation, provided that the EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(2) *Post-refinery component non-conformity.* Where detergent-additized post-refinery component contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized post-refinery component, or the detergent component of the post-refinery component, in violation; and

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(iii) Each carrier who dispensed, supplied, stored, or transported any detergent-additized post-refinery component in the storage tank containing post-refinery component in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any detergent-additized post-refinery component which is in the storage tank containing detergent-additized post-refinery component found to be in violation, provided that the EPA demonstrates by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(3) *Detergent non-conformity.* Where the detergent (prior to additization) contained in any storage tank or container found at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.155(d), the following persons shall be in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent that is in violation; and

(iii) Each gasoline or detergent carrier who dispensed, supplied, stored, or transported any detergent which is in the storage tank or container containing detergent found to be in violation, providing that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(4) *Volumetric additive reconciliation.* Where a violation of the volumetric additive reconciliation requirements established by § 80.155(b) has occurred, each detergent blender who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation has occurred, shall be in violation.

(5) *Product transfer document.* Where a violation of § 80.155(c) is found at a facility owned, leased, operated, controlled, or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, the following persons shall be in violation: each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, control or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found.

(b) *Branded refiner vicarious liability.* Where any violation of the prohibitions specified in § 80.155 has occurred, with the exception of violations of § 80.155(c), a refiner will also be deemed liable for violations occurring at a facility operating under such refiner's corporate, trade, or brand name or that of any of its marketing subsidiaries. For purposes of this section, the word facility includes, but is not limited to, a truck or individual storage tank.

(c) *Defenses.* (1) In any case in which a gasoline refiner, importer, distributor, carrier, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent distributor, carrier, or blender, is in violation of any of the prohibitions of § 80.155, the regulated party shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for the gasoline, detergent, or detergent-additized post-refinery component in violation and indicate that the gasoline, detergent, or detergent-additized post-refinery component satisfied relevant requirements when it left their control; and

(iii) That the party has fulfilled the requirements of paragraphs (c) (2) or (3) of this section, as applicable.

(2) *Branded refiner.* (i) Where a branded refiner, pursuant to paragraph (b) of this section, is in violation of any of the prohibitions of § 80.155 as a result of violations occurring at a facility (including, but not limited to, a truck or individual storage tank) which is operating under the corporate, trade or brand name of a refiner or that of any of its marketing subsidiaries, the refiner shall be deemed not in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, that the violation was caused by:

(A) An act in violation of law (other than these regulations), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the prohibitions of § 80.155 occurred; or

(B) The action of any gasoline refiner, importer, reseller, distributor, oxygenate blender, detergent manufacturer, distributor, blender, or retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite the implementation of an oversight program, including, but not limited to, periodic review of product transfer documents by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any gasoline or detergent carrier, or other gasoline or detergent distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, post-refinery component, or detergent, to a gasoline or detergent distributor, oxygenate blender, detergent blender, gasoline retailer or wholesale purchaser consumer, despite specification or inspection of procedures or equipment by the refiner which are reasonably calculated to prevent such action.

(ii) In this paragraph (c)(2), to show that the violation "was caused" by any of the specified actions, the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) *Detergent blender.* In any case in which a detergent blender is liable for violating any of the prohibitions of § 80.155, the detergent blender shall not be deemed in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, the following:

(i) That it obtained or supplied, as appropriate, prior to the detergent blending, written instructions from the detergent manufacturer or other party with knowledge of such instructions, specifying the detergent's minimum recommended concentration as found in the 40 CFR part 79 registration and, where appropriate, the detergent's use limitations in regard to leaded product; and

(ii) That it has implemented a quality assurance program that includes, but is not limited to, a periodic review of supporting product transfer and volume measurement documents to confirm the correctness of the product transfer and volumetric additive reconciliation

documents created for the additized product.

(4) *Detergent manufacturer.* In any case in which a detergent manufacturer would be liable for violating any of the prohibitions of § 80.155 pursuant to paragraph (a) of this section, the detergent manufacturer shall not be in violation if it can demonstrate the following:

(i) Product transfer documents which account for the detergent component of the product in violation and which indicate that such detergent satisfied relevant requirements when it left the detergent manufacturer's control;

(ii) Test results performed in accordance with the detergent testing analysis submitted, or available for submission, by the manufacturer to EPA as part of the interim detergent program requirements. The test results must accurately establish that the detergent component of the product determined to be in violation was in conformity with the composition and concentration specifications of the detergent's 40 CFR part 79 registration when the detergent left the manufacturer's control; and

(iii) Written blending instructions that were supplied by the detergent manufacturer to its customer who purchased or obtained from the manufacturer the detergent component of the product determined to be in violation. The written blending instructions, which must have been supplied by the manufacturer to the customer prior to the customer's use or sale of the detergent, must accurately identify the minimum recommended concentration of the detergent necessary to control deposits, as specified in the detergent's 40 CFR part 79 registration, and must also accurately identify if the detergent, at that concentration, is only registered as effective for use in leaded gasoline.

(d) *Detergent manufacturer causation liability.* In any case in which a detergent manufacturer is liable for a violation of § 80.155 pursuant to paragraph (a) of this section, and the manufacturer establishes affirmative defense to such liability pursuant to paragraph (c) of this section, the detergent manufacturer will be liable for the violation of § 80.155 pursuant to this paragraph (d) of this section, provided that EPA can demonstrate, by reasonably specific showings by direct or circumstantial evidence, that the detergent manufacturer caused the violation.

§ 80.157 Volumetric additive reconciliation ("VAR"), equipment calibration, and recordkeeping requirements.

This section contains requirements for automated detergent blending facilities and hand-blending detergent facilities. All gasolines and all post-refinery components (PRC) intended for use in gasoline must be additized, unless otherwise noted in supporting VAR records, and must be accounted for in VAR records. The VAR reconciliation standard is attained under this section when the actual concentration of detergent used per VAR record equals or exceeds the lowest additive concentration (LAC) specified for that detergent in its 40 CFR part 79 registration, except as may be modified pursuant to § 80.141(d)(2). Each VAR record must identify the brands and grades of gasoline, and the types of PRC, being measured on that record. There must be a separate VAR record for leaded gasoline being additized with a detergent registered as effective for use with leaded gasoline only, or used at a concentration that is registered as effective for leaded gasoline only. Detergent being so used must be accurately and separately measured, either through the use of a separate storage tank for it, or a separate meter, or the use of some other measurement system that is able to accurately distinguish its use from that of other detergents. Measurements of detergent and gasoline must be precise to at least the nearest gallon.

(a) For an automated detergent blending facility, for each VAR period, for each detergent storage tank and each detergent in that storage tank, the following must be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified for that detergent in its 40 CFR part 79 registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per gallons of gasoline. The record must indicate if the specified LAC is only effective for use with leaded gasoline.

(2) The total volume of detergent blended into gasoline and PRC, in accordance with either paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section, as applicable.

(i) For a facility which uses in-line meters to measure detergent usage, the total volume of detergent measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied in the form of computer printouts or other comparable documentation.

(ii) (A) For a facility which uses a gauge to measure the inventory of the detergent storage tank, the total volume of detergent shall be calculated from the following equation:

Detergent Volume = (A) − (B)+(C) − (D)

where:

A = initial detergent inventory of the tank

B = final detergent inventory of the tank

C = sum of any additions to detergent inventory

D = sum of any withdrawals from detergent inventory for purposes other than the additization of gasoline or PRC.

(B) The value of each of the variables in the equation in paragraph (a)(2)(ii)(A) of this section must be separately recorded. In addition, a list of each detergent addition included in variable C and a list of each detergent withdrawal included in variable D must be provided.

(3) The total volume of gasoline plus PRC to which detergent has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied in the form of computer printouts or other comparable data.

(4) The actual detergent concentration, calculated as the total volume of detergent added (pursuant to paragraph (a)(2) of this section), divided by the total volume of gasoline plus PRC (pursuant to paragraph (a)(3) of this section).

(5) A list of each concentration rate initially set for the detergent that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied in the form of computer printouts or other comparable documentation. No concentration setting is permitted below the applicable LAC specified in the detergent's 40 CFR part 79 registration, except as may be modified pursuant to § 80.141(d)(2).

(6) The dates of the VAR period, which shall be no greater than a calendar month, and which shall in no event terminate beyond the end of the calendar month in which that VAR

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period began. Any adjustment to any detergent concentration rate more than 10 percent over the concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period.

(b) For a hand-blending detergent facility where any non-automated method is used to blend detergent, for each detergent and for each batch of gasoline and each batch of PRC to which the detergent is being added, the following shall be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified for that detergent in its 40 CFR part 79 registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per gallons of gasoline. The record must indicate if the specified LAC is only effective for use with leaded gasoline.

(2) The date of the additization that is the subject of the VAR record.

(3) The volume of added detergent.

(4) The volume of the batch of gasoline and/or PRC to which the detergent has been added.

(5) The brand, grade, and leaded/unleaded status of gasoline, and/or the type of PRC.

(6) The actual detergent concentration, calculated as the volume of added detergent (pursuant to paragraph (b)(3) of this section), divided by the volume of gasoline and/or PRC (pursuant to paragraph (b)(4) of this section).

(c) Every VAR formula record created pursuant to paragraphs (a) and (b) of this section shall contain the following:

(1) The signature of the creator of the VAR record;

(2) The date of the creation of the VAR record; and

(3) A certification of correctness by the creator of the VAR record.

(d) Automated detergent blenders must calibrate their detergent equipment each calendar quarter, in January, April, July, and October and each time the detergent package is changed.

(e) The following VAR supporting documentation must also be created and maintained; all volume measurements must be to at least the nearest gallon in accuracy:

(1) For all automated detergent blending facilities, documentation reflecting performance of the calibrations required by paragraph (d) of this section, and any associated adjustments of the automated detergent equipment;

(2) For all automated detergent blending facilities, a record specifying, for each VAR period, the volume in gallons of each transfer from the facility of unadditized base gasoline, identifying its date of transfer and the name of the recipient;

(3) For all hand blending facilities which are terminals, a monthly record specifying the volume in gallons of each transfer from the facility of unadditized base gasoline, identifying its date of transfer and the name of the recipient; and

(4) For all detergent blending facilities, product transfer documents for all gasoline, detergent and detergent-additized post-refinery component transferred into or out of the facility; in addition, bills of lading, transfer, or sale for all unadditized post-refinery component transferred into the facility.

(f) All detergent blenders shall retain the documents required to be created by this section for a period of five years from the date the VAR calculation records and VAR supporting documentation are created pursuant to this section, and shall deliver them to the EPA Administrator, or the Administrator's authorized representative, upon the Administrator's or the Administrator's authorized representative's request.

§ 80.158 Product transfer documents.

(a) *Contents.* For each occasion when any gasoline refiner, importer, reseller, distributor, carrier, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, carrier, or blender, transfers custody or title to any gasoline, detergent, or detergent-additized post-refinery component other than when detergent-additized gasoline is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility to the ultimate consumer for use in motor vehicles, the transferor shall provide to the transferee, and the transferee shall acquire from the transferor, documents which accurately include the following information:

(1) The name and address of the transferee;

(2) The name and address of the transferor;

(3) The date of the transfer;

(4) The volume of product transferred;

(5)(i) The identity of the product being transferred (i.e., its identity as base gasoline, detergent, detergent-additized gasoline, or a specifically named detergent-additized oxygenate or detergent-additized gasoline blending stock that comprises a detergent-additized post-refinery component);

(ii) If the product being transferred consists of two or more different types of product subject to this regulation, *i.e.*, base gasoline, detergent-additized gasoline; or specified detergent-additized post-refinery component, then the product transfer document for the commingled product must identify each such type of component contained in the commingled product;

(6) If the product being transferred is base gasoline, the following must be stated on the product transfer document: "Base gasoline—Not for sale to the ultimate consumer";

(7) The name of the detergent as specified in its 40 CFR part 79 registration must be used to identify the detergent on its product transfer document;

(8) If the product being transferred is a leaded gasoline as defined in § 80.2(f), then the product transfer document must identify the product as leaded base gasoline or leaded detergent-additized gasoline, as applicable;

(9) If the product being transferred is detergent that is only authorized for the control of carburetor deposits, then the following must be stated on the detergent's transfer document: "For use with leaded gasoline only";

(10) If the product being transferred is detergent-additized gasoline that has been over-additized in anticipation of the later (or earlier) addition of post-refinery component, a statement that the product has been over-additized to account for a specified volume in gallons of additional, specified post-refinery component.

(b) Gasoline cannot be additized with a detergent authorized only for the control of carburetor deposits and whose product transfer document states "For use with leaded gasoline only", and gasoline cannot be additized at the lower concentration specified for a detergent authorized at a lower concentration for the control of carburetor deposits only, unless the product transfer document for the gasoline to be additized identifies it as leaded gasoline.

(c) *Recordkeeping period.* Any person creating, providing or acquiring product transfer documentation for gasoline, detergent, or detergent-additized post-refinery component shall retain the documents required by this section for a period of five years from the date the product transfer documentation was created, received or transferred, and shall deliver such documents to EPA upon request.

§ 80.159 Penalties.

(a) *General.* Any person who violates any prohibition or affirmative

requirement of § 80.155 shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation.

(b) *Gasoline non-conformity.* Any violation of § 80.155(a) shall constitute a separate day of violation for each and every day the gasoline in violation remains at any place in the gasoline distribution system, beginning on the day that the gasoline is in violation of the respective prohibition and ending on the last day that such gasoline is offered for sale or is dispensed to any ultimate consumer.

(c) *Detergent non-conformity.* Any violation of § 80.155(d) shall constitute a separate day of violation for each and every day the detergent in violation remains at any place in the gasoline or detergent distribution system, beginning on the day that the detergent is in violation of the prohibition and ending on the last day that detergent-additized gasoline, containing the subject detergent as a component thereof, is offered for sale or is dispensed to any ultimate consumer.

(d) *Post-refinery component non-conformity.* Any violation of § 80.155(e) shall constitute a separate day of violation for each and every day the post-refinery component in violation remains at any place in the post-refinery component or gasoline distribution system, beginning on the day that the post-refinery component is in violation of the respective prohibition and ending on the last day that detergent-additized gasoline containing the post-refinery component is offered for sale or is dispensed to any ultimate consumer.

(e) *Product transfer document non-conformity.* Any violation of § 80.155(c) shall constitute a separate day of violation for every day the product transfer document is not fully in compliance. This is to begin on the day that the product transfer document is created or should have been created and to end at the later of the following dates: Either the day that the document is corrected and comes into compliance, or the day that gasoline not additized in conformity with interim detergent program requirements, as a result of the product transfer document non-conformity, is offered for sale or is dispensed to the ultimate consumer.

(f) *Volumetric additive reconciliation (VAR) record keeping non-conformity.* Any VAR recordkeeping violation of § 80.155(b) shall constitute a separate day of violation for every day that VAR recordkeeping is not fully in compliance. Each element of the VAR record keeping program that is not in compliance shall constitute a separate violation for purposes of this section.

(g) *Volumetric additive reconciliation (VAR) compliance standard non-conformity.* Any violation of the VAR compliance standard established in § 80.157 shall constitute a separate day of violation for each and every day of the VAR compliance period in which the standard was violated.

(h) *Volumetric additive reconciliation (VAR) equipment calibration non-conformity.* Any VAR equipment calibration violation of § 80.155(b) shall constitute a separate day of violation for every day a VAR equipment calibration requirement is not met.

§ 80.160 Exemptions.

(a) *Research, development, and testing exemptions.* Any detergent that is either in a research, development, or test status, or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes, is exempted from the provisions of the interim detergent program, provided that:

(1) The detergent (or fuel containing the detergent) is kept segregated from non-exempt product, and the party possessing the product maintains documentation identifying the product as research, development, or testing detergent or fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) The detergent (or fuel containing the detergent) is not sold, offered for sale, transferred, or offered for transfer from a retail outlet. It shall also not be transferred or offered for transfer from a wholesale purchaser-consumer facility, unless such facility is associated with detergent or fuel research, development or testing; and

(3) The party using the product for research, development, or testing purposes notifies the EPA, on at least an annual basis and prior to the use of the product, of the purpose(s) of the program(s) in which the product will be used and the volume of the product to be used. This information must be submitted to the following EPA address: Director (6406J), Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(b) *Racing fuel and aviation fuel exemptions.* Any fuel that is refined, sold, offered for sale, transferred, or offered for transfer as automotive racing fuel or as aircraft engine fuel, is exempted from the provisions of the interim detergent program, provided that:

(1) The fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, offering for sale, transferring, or offering for transfer the fuel as automotive racing fuel or as aircraft engine fuel, maintains documentation identifying the product as racing fuel or aviation fuel, as applicable, and stating that is it not for street or highway use in motor vehicles; and

(2) The fuel is not sold, offered for sale, transferred, or offered for transfer for highway use in a motor vehicle; and

(3) In the case of racing fuel, the fuel is sold, offered for sale, transferred, or offered for transfer to the ultimate consumer only at a racing facility.

§ 80.161–80.169 [Reserved]

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Part III

Department of Education

34 CFR Parts 690 and 691
Federal Pell Grant Program; Presidential Access Scholarship Program; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 690 and 691

RIN 1840–AB73

Federal Pell Grant Program; Presidential Access Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Pell Grant Program regulations and establishes regulations for the Presidential Access Scholarship Program. These regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA) as amended by the Higher Education Amendments of 1992, Public Law 102–325 (the 1992 Amendments), enacted on July 23, 1992 and the Higher Education Technical Amendments of 1993, Public Law 103–208 (1993 Technical Amendments), enacted on December 20, 1993.

The final regulations for the Federal Pell Grant Program change the program name from "Pell Grant Program" to "Federal Pell Grant Program." In addition, the regulations update student eligibility requirements and institutional administration requirements.

The final regulations for the Presidential Access Scholarship Program specify the eligibility requirements for a student to apply for and receive an award. These regulations also specify the roles of institutions of higher education, State officials, and State agencies in administering the program.

EFFECTIVE DATE: These regulations take effect on July 1, 1995 and apply to the 1995–96 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in §§ 690.12, 690.13, 690.75, 690.82, 691.61, 691.73, 691.82, and 691.83 until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Denise Boulanger, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue SW., Room 4018, Regional Office Building 3, Washington, D.C. 20202–5447. Telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the Federal Pell Grant Program and the Presidential Access Scholarship Program in the **Federal Register** (59 FR 9354) to implement portions of the 1992 Amendments and the 1993 Technical Amendments.

These regulations, a result of the NPRM and public comment on those proposed rules, implement the statutory changes required under the 1992 Amendments and the 1993 Technical Amendments to the HEA. The revised regulations—

- Rename the Pell Grant Program the Federal Pell Grant Program;
- Eliminate the duration of eligibility limitations for an undergraduate student without a baccalaureate degree or its equivalent;
- Implement the new academic year definition for the Federal Pell Grant Program by revising the methodology for calculating a Federal Pell Grant payment for a payment period. Revised methodologies are also included for programs of study offered by correspondence and for programs where the Secretary has granted an exception to the requirement that a program's academic year must include at least 30 weeks of instructional time;
- As a result of the passage of the Violent Crime and Law Enforcement Act of 1993, incarcerated students in Federal or State penal institutions are ineligible to receive Federal Pell Grants for any period of enrollment beginning on or after enactment of that Act. Incarcerated students, other than those in Federal or State penal institutions, are still eligible to receive Federal Pell Grants. The cost of attendance of those students under section 472(6) of the HEA is still limited to "tuition and fees and, if required, books and supplies." The provisions of this Act also repeal the statutory requirements that are the basis for the provisions in § 690.75 (f), (g), and (h) of the NPRM. These provisions are deleted from the final regulations.
- Incorporate references to the expected family contribution (EFC) under part F, title IV of the HEA and eliminate references to the Pell Grant Index (PGI);
- Eliminate the necessity that a student present a Student Aid Report (SAR) to an institution in order to be paid his or her Federal Pell Grant if the institution participates in the electronic or magnetic disbursement systems.
- Require an institution to pay a student on the basis of a valid Institutional Student Information Record (ISIR), *i.e.*, a report to an institution generated by the central processor that includes an applicant's application information and EFC;
- Provide that less-than-half-time students receive Federal Pell Grants; and
- Provide that, under certain circumstances, a full-time student pursuing an associate or baccalaureate degree may receive up to two Scheduled Federal Pell Grants within one award year. One of those circumstances is a determination by the Secretary that sufficient funds are available from the Federal Pell Grant Program appropriation for that award year to make all or part of a second Scheduled Federal Pell Grant award.

Conforming changes have also been made to incorporate changes made in the regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 34 CFR part 600 (59 FR 22324), and in the Student Assistance General Provisions, 34 CFR part 668 (59 FR 22348).

The regulations also implement the Presidential Access Scholarship (PAS) Program, a program to encourage students from low- and moderate-income families to upgrade their course of study at the high school level, finish high school, and attend college. However, funds have yet to be appropriated for the PAS Program.

Changes were made to the PAS Program regulations to parallel changes being made to the Federal Pell Grant Program regulations because the delivery of PAS Program funds would be done using the same delivery system as the Federal Pell Grant Program and conforming changes would simplify the administration of the PAS Program in the following provisions: § 691.2, § 691.3, § 691.61, § 690.64, § 691.66, § 691.77, § 691.82, and § 691:83.

Substantive Changes to the NPRMs

Part 690—Federal Pell Grant Program

The Federal Pell Grant Program application process is evolving from a paper to an electronic application process. To reflect that change and respond to public comment with regard to this evolution, the Secretary has made a number of changes in the final regulations.

A student may still submit a paper application to the Secretary for the latter to calculate the student's expected family contribution. A student applying using a paper application receives an SAR. Any institutions listed by the student on his or her application may also receive the student's application information and expected family contribution (EFC) from the central processor. At the election of the institution, the central processor may mail a magnetic record or paper document to the institution or electronically transmit the student's information to the institution.

The student may also apply electronically through the institution he or she is attending or plans to attend. Under this procedure, the student still may complete a paper application and obtain the necessary signatures on that application, *e.g.*, the student and at least one of the student's parents if the student is a dependent student. However, the student would bring the signed application to the institution. Alternatively, the student may complete an electronic application, and the student, and one of the student's parents if the student is dependent, sign a printout of the information entered on the electronic application. The institution would then transmit electronically the student's application information to the central processor. The central processor would calculate the student's EFC based upon the application information and transmit electronically the student's application information and EFC back to any institutions designated by the student to receive the information.

When an institution receives the student's application information and EFC from the central processor, the electronic or magnetic record or the paper document is considered an "Institutional Student Information Record" or "ISIR." If that information is accurate and complete as of the date of application, that electronic record or paper document is considered a "valid ISIR." Based upon that valid ISIR, the institution determines a student's eligibility for a Federal Pell Grant award and the amount of that award and pays the student his or her award. An institution receiving ISIRs may not require a student to submit an SAR as a precondition to receiving a Federal Pell Grant award. Thus, in general, the ISIR and valid ISIR are taking the place of the SAR and the valid SAR in the processing of Federal Pell Grant awards. However, an institution must pay a student a Federal Pell Grant award on the basis of receiving either a valid SAR or valid ISIR. An institution is not required to pay a student in circumstances where (1) the student is not qualified to receive a disbursement, *e.g.*, the student is in default on a Federal Stafford loan; or (2) the institution is specifically authorized by the Secretary to withhold payment, *e.g.*, the institution has requested, but not yet received, a financial aid transcript under 34 CFR 668.19.

As a result of this change and public comment on the proposed regulations that pointed out that current and proposed regulatory provisions were not in keeping with this change, the Secretary is revising several current and proposed regulatory provisions, as explained below.

As just noted, an institution pays a Federal Pell Grant award to a student on the basis of a valid ISIR, which is defined as a paper document or a computer-generated electronic or magnetic record that the Federal Pell Grant central processor transmits to an institution. This document takes the place of what was previously known as an electronic SAR or "ESAR" that an institution would receive under the Electronic Data Exchange (EDE). Therefore, the Secretary has amended the definition of a "valid SAR" to delete the reference to an SAR received under EDE.

The Secretary has also changed the signature requirements necessary to support a Federal Pell Grant award. The Secretary has deleted the requirement that a valid ISIR be signed. The ISIR is also valid if it accurately reflects corrections that (1) are based on signed correction documentation or documentation submitted under 34 CFR 668.57 and (2) are processed through the central processor.

The Secretary is adding § 690.63(a)(6) that designates the methodologies in § 690.63 that the institution uses to calculate a payment for a payment period if an institution is granted a waiver of the minimum 30-week requirement for the academic year.

The Secretary is removing § 690.64(c) that requires an institution to combine minisessions during payment periods that occur within two award years.

The Secretary is revising § 690.66 that establishes how to calculate a payment for a payment period for a program of study by correspondence. The revision incorporates the new academic year definition by requiring that payments for correspondence courses be calculated in a way that considers both the number of weeks of instructional time and the number of credit hours.

The Secretary is adding a new § 690.67 to the regulations allowing for up to 2 Scheduled Federal Pell Grant Program awards in an award year and is authorizing an institution that provides up to 2 Scheduled Federal Pell Grant awards in an award year to determine which students qualify for a second Scheduled Award within the award year using criteria established by the Secretary in this section.

The Secretary is removing § 690.77, Initial disbursement of a Pell Grant in an award year without a valid SAR.

The Secretary is adding requirements to § 690.82 to specify what types of application information must be retained at an institution when the institution submits a student's application information to the Secretary electronically. An institution has been required to retain a student's application information under its EDE participation agreement with the Secretary when that institution has submitted the student's application information electronically to the central processor. However, the Secretary believes that it is important to add to the record retention requirements in the regulations what types of application information must be retained rather than rely solely on an institution's EDE participation agreement. In addition, the Secretary, through publication of a notice in the **Federal Register**, is allowing for institutions to retain documents in media formats other than paper and microform. The Secretary intends to indicate in the notice the types of media storage acceptable to the Secretary and documents an institution may retain in media other than paper.

Part 691—Presidential Access Scholarship Program

There are no substantive differences between the PAS Program NPRM and the final regulations except where conforming changes were made to coordinate the PAS Program regulations with the Federal Pell Grant Program regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the NPRM, 61 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues and changes are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

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Federal Pell Grant Program

Section 690.2 General Definitions

Comments: None.

Discussion: The Secretary published final regulations governing Institutional Eligibility Under the Higher Education Act of 1965, as Amended, 34 CFR part 600, and the Student Assistance General Provisions, 34 CFR part 668, in the **Federal Register** on April 29, 1994. The Secretary is amending the Federal Pell Grant Program final regulations to reference accurately the definitions published in those final regulations. The Federal Pell Grant Program final regulations now reference in § 690.2(a) the definitions of "award year," "correspondence course," "incarcerated student," "regular student," and "State," as published in the Institutional Eligibility Under the Higher Education Act of 1965, as Amended, regulations at 34 CFR part 600, and the references to "award year," "regular student," and "State" in § 690.2(b) are removed. The Federal Pell Grant Program final regulations also update the references to the Federal Perkins Loan Program, Federal Supplemental Educational Opportunity Grant Program, and Federal Work-Study Program and reference the definitions of "full-time student" and "HEA" as published in the Student Assistance General Provisions regulations at 34 CFR 668.2. The references to the definitions of "full-time student," "Pell Grant Index," and "Student Aid Report Payment Document" under § 690.2(c) are removed. An institution must use the same definition of a full-time student for all title IV, HEA programs. The Federal Pell Grant Program final regulations also remove the reference to the definition for "Public or private nonprofit institution of higher education" in 34 CFR 668.2(b) since this definition is no longer used. The final regulations under § 690.2(c) add the definitions for "annual award," "central processor," "expected family contribution," "Institutional Student Information Record," "less-than-half-time student," "Student Aid Report Payment Voucher," and "valid Institutional Student Information Record."

The proposed definition of the term "academic year" in § 690.2(c) has been deleted. Instead, the final regulations reference the definition of that term in 34 CFR 668.2 of the Student Assistance General Provisions.

Changes: Section 690.2 of the final regulations is revised to reference the definition of the terms "award year," "incarcerated student," and "regular student" in 34 CFR part 600. Also, § 690.2 is revised to reference the definitions of the terms "full-time student" and "HEA" in 34 CFR part 668; to remove the reference to the definitions of the terms "award year," "regular student," and "Public or private nonprofit institution of higher education" in § 690.2(b); and to remove the definitions of the terms "academic year" and "full-time student" in § 690.2(c). The final regulations under § 690.2(c) also add the definitions for "annual award," "central processor," "expected family contribution," "less-than-half-time student," "Processed Information Record," "Student Aid Report Payment Voucher," and "Valid Processed Information Record."

Student Aid Report (SAR) Payment Document

Comments: While the definition of the term "Student Aid Report (SAR) payment document" was not discussed in the proposed regulations, one commenter believed that the definition of the term needed to be updated because the third part of an SAR is no longer called a "payment document" but, instead, is called a "payment voucher." The commenter also noted that the definition of an SAR payment document did not address the automated formats that many institutions use to submit payment information to the U.S. Department of Education (Department).

Discussion: The Secretary agrees that the name of the document used to report individual payment information to the Secretary has changed and is now called a "SAR payment voucher." The Secretary also agrees that automated methods of submitting the payment information are not addressed in the current definition nor does that definition accurately reflect the disbursement information that is required to be submitted by the institution for payment. The Secretary also agrees that the definition of a payment voucher needs to be updated and needs to provide for all forms of the payment voucher.

Further, most institutions currently submit their student payment information to the Secretary in an automated format. To ease the administrative burden for all institutions by reducing the amount of paperwork that institutions must handle through the manual encoding and batch preparation of paper Payment Vouchers in the submission process, and to accelerate the processing of payment information, the Secretary intends to provide that all institutions must submit student payment information to the Department in an automated format beginning with the 1996–97 award year. Therefore, at that time, the Department will no longer print paper payment vouchers with SARs. The Secretary believes that new costs to an institution because of this requirement are generally nonexistent. Most institutions currently have a personal computer or other technology that will allow them to process Payment Vouchers in this manner. In addition, the Department will provide all required software, and also the necessary training and guidance in using the software for automated Payment Voucher submissions.

Changes: The term "SAR payment document" is renamed a "payment voucher." The definition is revised to provide that a payment voucher is an electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Valid Institutional Student Information Record (ISIR)

Comments: A commenter noted that valid electronic SARs (ESARs) and valid ISIRs appear to be the same since they are both records of students' application information and EFCs provided directly to institutions by the central processor.

Discussion: The Secretary agrees and is revising the definition of the term "valid SAR" to, in effect, eliminate ESARs.

Changes: The Secretary is removing paragraph (2) in the definition of the term "valid SAR" that references EDE and serves as the basis for ESARs. A report to an institution of student information that is generated through EDE is encompassed by the term ISIR in the final regulations.

Section 690.2 General Definitions, Section 690.13 Notification of Expected Family Contribution, and Section 690.14 Applicant's Request for Recalculation of Expected Family Contribution Because of Clerical or Arithmetic Error

Comments: Several commenters questioned why a valid ISIR has signature requirements if the student's application for Federal student aid is properly signed. These commenters noted that the additional signature on the ISIR did not afford the Secretary additional protection against Federal Pell Grant awards being made on the basis of inaccurate information. Another commenter believed that the signature requirements for a valid ISIR should be consistent with the signature requirements for a valid paper SAR, which does not require a signature.

Another commenter requested increased flexibility in the program regulations regarding signature requirements. He believed that electronic documents increased the need for flexibility in these requirements and improved delivery of the Federal Pell Grant Program assistance to students at a large institution. He further believed that the signature requirements for valid ISIRs negated these improvements and that signatures were unnecessary because the signatures certifying the accuracy of the application information are collected on the application. Another commenter believed that, if the ISIR was the product of a paper application the student submitted through the postal service to the central processor, a signature need not be required.

Discussion: The Secretary agrees with the commenters that the signature requirement for a "valid ISIR" does not provide the Secretary with additional protection against the use of inaccurate information in calculating Federal Pell Grant awards, delays the award process and may needlessly increase the administrative burden on an institution. Therefore, the Secretary is removing that requirement. Application signatures will be on file, however, at the institution that transmitted the application data to the central processor or at the application processor if the student submitted a paper application.

In addition, if a student wishes to make corrections to the information previously reported for the purpose of having his or her expected family contribution recalculated, the student would either send a paper application or Part 2 of an SAR, that was certified by all appropriate parties, or would have its institution transmit that information. Under the latter circumstance, the institution would not transmit that information unless it had the student's certified "correction application," or documentation that contained appropriate signatures, such as verification documentation required under 34 CFR 668.57, supporting the change. Thus, for example, an institution would transmit a change in the adjusted gross income of the student's parents if the student provided the institution with his or her parents' signed Federal income tax return, and that tax return supported the changed adjusted gross income.

While the Secretary believes that it is reasonable to remove the signature requirements for a valid ISIR, he believes that a student should always receive a copy of his or her application information and EFC produced by the central processor so that the student has an opportunity to review the accuracy of his or her processed application information. Currently, because of processing system constraints, the Secretary can only generate an SAR if a paper application is received by one of the application processors. Therefore, for the 1995–96 award year, the Secretary will continue to provide a student with his or her application information and EFC only if the student submits a paper application or a correction on Part 2 of an SAR to an application processor. Because the Secretary cannot provide an SAR to a student whose application information is submitted through EDE, the Secretary is providing that for the 1995–96 award year an institution must provide to a student a copy of his or her application information and EFC from the central processor if the institution submits the student's application information or corrections through EDE since the student cannot receive his or her information in any other manner. In the 1996–97 and subsequent award years, once system changes have been implemented, the Secretary will provide a copy of the student's application information and EFC directly to each student, including those whose application information is transmitted to the central processor under EDE. The Secretary believes this change reduces the administrative burden associated with the ISIR signature requirements since signed correction documentation is already required and an institution will no longer need to collect a second signature on the ISIR to pay a student.

An ISIR produced from an application submitted to the Secretary should match the information on the student's application. (An ISIR can be generated by the central processor and transmitted to an institution if the student submits a paper application to an application processor and releases the information to the institution. In addition, an institution may obtain a ISIR through EDE if the student provides his or her PIN number to the institution.) If the student's information requires corrections, the documentation to support those corrections can be collected in several ways; however, the student's signature, and a parent's signature if the student is dependent, must be collected. The correction information and signatures can be collected on Part 2 of the SAR, a correction application, or, under EDE, a copy of the corrected information that is sent to the central processor. Also, if the institution (1) has verification documentation under 34 CFR 668.57 from the student, or one of the student's parents if the student is dependent, *e.g.*, tax returns, nontax filer statements, and verification worksheets, (2) makes corrections to the student's information based on the content of those documents through EDE, and (3) verifies the accuracy of the ISIR information generated from those corrections, the ISIR is valid.

Since the student need not return to the financial aid office to review the information on the ISIR and verify its accuracy, the institution must assume a greater responsibility for assuring that application information and corrections to application information submitted electronically from the institution accurately reflect the content of the application or correction documentation. The institution is reminded that it must resolve any inconsistent information concerning a student's application information in accordance with 34 CFR 668.16(f). If an institution using EDE makes an error and does not submit accurately the student's information from his or her application or corrections to the student's application information, the ISIR would not be valid, and the institution, under § 690.79, as well as the student would be liable for any overpayments made to the student. An institution is reminded that if, through institutional error, disbursements are made to a student without a valid SAR or ISIR, the institution may also be subject to a penalty, in addition to any liability for an overpayment, for improper administration of Federal Pell Grant Program funds. The institution must also assure that funds are only disbursed to an eligible student that the institution has documented as being enrolled in an eligible program of study at the institution before the student is paid.

Changes: The signature requirements for a valid ISIR are removed. In addition, §§ 690.2, 690.12, 690.13, and 690.14 of the regulations are revised. The EDE definition in § 690.2 is revised to reference the ISIR. Section 690.12 is modified to describe the EDE option of applying for a Federal Pell Grant. Section 690.13 is modified to indicate that the Secretary will forward to each applicant his or her student eligibility information starting in the 1996–97 award year. For 1995–96, under § 690.13(b) an institution must provide to all applicants whose data the institution transmits to the central processor through EDE, a copy of the applicant's student eligibility information received back from the central processor. Institutions must provide the information to ineligible students and students who do not attend that institution. Section 690.14 is

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revised to require that corrections submitted through EDE be based on (1) information on an approved form *e.g.*, a correction application or Part 2 of an SAR, certified by the applicant and, if the applicant is dependent, one of the applicant's parents or (2) verification documentation provided by an applicant under 34 CFR 668.57.

Section 690.10 Administrative Cost Allowance to Participating Schools

Comments: Several commenters recommended that the Secretary clarify the term "significant number" of students as it is used in this section. If an institution enrolls a significant number of less-than-full-time or independent students, the regulations would require that the institution use a portion of its Federal Pell Grant administrative cost allowance funds to assure that financial aid services are available to those students. The commenters suggested "significant number" be defined as instances where 75 percent of an institution's students attend less-than-full-time or are independent.

Discussion: The Secretary believes the term "significant number" represents a number of students attending less-than-full-time or who are independent that is substantially less than 75 percent. However, the Secretary is not defining "significant number." Instead, the Secretary is relying on the institutions to be able to demonstrate to the Secretary through its annual audits or in a program review that their expenditures for financial aid services resulted in those services being reasonably available to those students.

Changes: None.

Section 690.61 Submission Process and Deadline Date for Student Aid Reports or Institutional Student Information Record

Comments: Several commenters supported the Secretary's proposal in § 690.61 to allow the institution to pay a student his or her Federal Pell Grant from either an SAR or ISIR. One commenter questioned why an institution was required to base a student's award on an eligibility document received from the Secretary. Another commenter requested clarification of the requirements to pay a student if the institution had received an ISIR and had not yet received an SAR.

Discussion: The Secretary added the use of the ISIR as an appropriate document to determine a student's Federal Pell Grant to implement the provisions of section 401(f) of the HEA as amended by the 1992 Amendments. Section 401(f) of the HEA mandates that an institution pay a student his or her Federal Pell Grant based on that document. Thus, when an institution receives a valid ISIR, it must pay a Federal Pell Grant to an otherwise eligible student based on the valid ISIR. An institution may not require the student to provide an SAR unless the institution relies solely on the SAR payment voucher to report Federal Pell Grant expenditures to the Secretary. In response to the other commenter, an institution must pay a student a Federal Pell Grant based on the receipt of a valid SAR. There are instances where a student will receive an SAR before the institution receives an ISIR.

Changes: None.

Section 690.63 Calculation of a Federal Pell Grant for a Payment Period

General

Comments: A commenter requested clarification concerning whether a student who had completed the credits for an academic year but had not yet completed the weeks of instructional time and had remaining eligibility from his or her Scheduled Federal Pell Grant award could be paid the remainder of that Scheduled Award.

Discussion: Section 481 of the HEA now defines an "academic year" as a period of at least 30 weeks of instructional time during which a student completes at least 24 semester or trimester hours or 36 quarter hours unless, for good cause on a case-by-case basis, the Secretary has reduced the 30-week minimum to not less than 26 weeks. Section 401(d) of HEA specifies the amount of a Federal Pell Grant that can be paid to a student for an academic year. Thus, a student must complete an academic year in both weeks of instructional time and clock or credit hours to receive his or her Scheduled Award. A student who has remaining eligibility from his or her Scheduled Award may always receive a payment for any amount of his or her remaining eligibility as long as he or she continues to be an eligible student enrolled in an eligible program for a payment period that is within that award year. For example, an institution defines a program's academic year as 24 semester hours and 30 weeks of instructional time. A full-time student enrolls in a program that provides 24 semester hours in 25 weeks of instructional time and the student completes 24 semester hours in 25 weeks. Therefore, because the student has not completed an academic year in both credit hours and weeks of instructional time, the student has not received his or her entire Scheduled Federal Pell Grant award. If the student enrolls and attends another payment period within that award year and that payment period is at least 5 weeks, the student may receive any amount remaining of his or her Scheduled Federal Pell Grant award.

Changes: None.

Comments: Three commenters at institutions subject to the Student Assistance General Provisions clock-hour/credit-hour formula in 34 CFR 668.8(d) proposed alternatives to that formula. The commenters proposed that, rather than determine the number of credit hours through the clock-hour/credit-hour formula, they retain the credits at their current value and determine a student's enrollment status simply by using the methodology in the full-time student definition in 34 CFR 668.2.

Discussion: The Secretary does not agree with the commenters' proposals that would, in effect, negate the clock-hour/credit-hour formula in 34 CFR 668.8(d). Thus, an institution subject to the clock-hour/credit-hour formula in 34 CFR 668.8(d) must first calculate the number of credit hours under the formula in 34 CFR 668.8(d) before a payment for a payment period can be determined and must use the result for all purposes in the title IV, HEA programs including calculating a Federal Pell Grant award. For example, an institution has a 24-semester-hour program of study before the clock-hour/credit-hour formula is applied. The 24 semester hours is completed in 18 weeks of instructional time. The institution defines the academic year for that program as 24 semester hours and 30 weeks of instructional time. A student attends 600 classroom hours to complete the 24 semester hours in the program. The clock-hour/credit-hour formula in 34 CFR 668.8(d) requires that one semester hour equals 30 classroom hours. Therefore, the program is 20 semester hours under the formula for title IV, HEA program purposes. The institution uses credit hours without terms. Therefore, it would use § 690.63(e) to calculate the student's Federal Pell Grant award for a payment period. Assuming the student's Scheduled Federal Pell Grant award was $2,340, the institution would first multiply $2,340 by 18/30 (18 being the number of weeks of instructional time in the program; 30 being the number of weeks of instructional time in the program's academic year definition) to equal $1,404; and then multiply $1,404 by 10/24 (10 being the number of credit hours in the payment period; 24 being the number of credit hours in the program's academic year definition) to equal $585. Thus, the student would receive a $585 Federal Pell Grant award for each payment period.

The Secretary recommends that in addition to the information presented in the NPRM and these final regulations, an institution review the information in the 1994–95 Student Financial Aid Handbook (Handbook) in Chapter 4, Section 4. The Handbook presents detailed examples and explanations that are generally in accordance with the methodologies presented in these final regulations for calculating a payment for a payment period for the Federal Pell Grant Program.

Changes: None.

Payment for a Payment Period at Institutions Using Credit Hours With Terms

Comments: Several commenters supported the Secretary's proposed methods of calculating a payment for a payment period at a term institution. One commenter objected to one of the criteria proposed in § 690.63(a)(1) for using the methodology in § 690.63(b). The commenter believed that the requirement to have a full-time academic enrollment standard of at least 12 credit hours for all terms, including summer, rather than some lesser figure, such as at least 6 hours, was administratively burdensome. The commenter also suggested that the Federal Pell Grant Program establish an academic year policy interpretation similar to that of the Federal Family Education Loan (FFEL) programs. The commenter stated that under the FFEL programs' policy, if the "normal academic year" (fall through spring terms) for an institution meets the statutory definition of an academic year, and the student can be enrolled on at least a half-time basis in the summer, the summer should be treated as just another term. Another commenter proposed language to be added to § 690.63(a)(1) that would allow a student enrolled at least half-time who is taking a "concentrated course load" at a standard term institution over a shorter period of time than the standard term to have his or her award calculated based on that enrollment status under § 690.63(b).

Discussion: The criteria developed in § 690.63(a) for determining which methodology under § 690.63 (b) or (c) that an institution may use to calculate a Federal Pell Grant payment for a payment period for a term-based credit-hour program provides maximum institutional flexibility while meeting the intent of the statute and limiting the potential for fraud and abuse. The Secretary disagrees with the commenter that requiring a full-time student to be enrolled for at least 12 credit hours creates a new administrative burden on a term institution because this requirement is not a change in the current Federal Pell Grant Program requirements with which an institution must already comply. The definition of a full-time student requires that such a student be enrolled for at least 12 semester hours in a standard term for title IV, HEA program purposes. The only major change in this requirement is that the definition has been moved from the Federal Pell Grant Program regulations into the General Provisions regulations so that it is now consistent among all title IV programs.

Because of statutory program differences between the Federal Pell Grant Program and the FFEL programs, the academic year criteria cannot be implemented in the same manner. A Federal Pell Grant payment is based, in part, on enrollment status; the amount of the Federal Pell Grant award is reduced if a student attends less-than-full-time. Moreover, a Federal Pell Grant award is reduced if a student attends less than a full academic year. An FFEL Program loan can be certified for the maximum amount even if the student attends only half-time if the student's financial need supports the amount for which the loan is being certified.

Changes: None.

Comments: Two commenters believed that the prohibition against "multiple start dates" under the methodologies proposed in § 690.63(a)(1) or (a)(2) would prevent an institution from allowing a student to start classes at the beginning of any of an institution's terms rather than a specific term such as the fall quarter. One commenter asked what method of calculation was his institution to use in determining a student's payment for a payment period if his institution did not meet these particular criteria.

Discussion: The Secretary believes that there is not a clear distinction between the phrases "multiple start dates" and "overlapping terms." Therefore, the Secretary is removing the phrase "multiple start dates" from the final regulations. "Overlapping terms" refers to such institutional practices as starting new terms one right after the other. For example, an institution that offers a program that begins a new term every week or every month for a new group of students would be considered to have "overlapping terms" and would be required under § 690.63(a)(3) to use the methodology in § 690.63(d). If a term-based program does not meet the criteria under § 690.63(a)(1) or (a)(2), it must calculate awards under § 690.63(d).

Changes: The phrase "multiple start dates" is removed from § 690.63(a)(1)(i)(D) and (a)(2)(i)(D) of the regulations.

Comments: One commenter at a credit-hour term-based institution stated that the methodologies in § 690.63(b), (c), and (d) appeared complex. The commenter believed that the complexity arose in two ways. First, an institution that offered a wide variety of programs would be required to perform tracking for each program because of differing definitions of academic year. Second, complications would arise when a student transferred from one academic program to another within the same institution necessitating a recalculation of the student's Federal Pell Grant award. The commenter requested that the Secretary reexamine the administrative burden before implementing this section of the proposed regulations.

Discussion: The Secretary believes that at the majority of institutions, an institution uses the same definition of an academic year for most programs. In addition, the need to recalculate a student's award when he or she transfers between programs is not a new requirement created by the proposed rule. An institution has always had to redetermine eligibility and recalculate a student's award for any number of reasons, such as if a student enrolls in a new educational program that differs in program length from the old program.

Changes: None.

Comments: A commenter requested that the Secretary delay implementation of § 690.63 and extend the comment period because the Secretary had deliberately barraged the financial aid community with notices of proposed rulemaking in an attempt to provide the public with little time for review and comment. Another commenter expressed appreciation that the Secretary had provided a 45-day comment period on this NPRM and thanked the Secretary for his willingness to make significant changes to this provision before publication of the proposed regulations as a result of extensive discussions with the financial aid community.

Discussion: While it is true that a number of proposed rules for title IV student financial aid programs were published within a short period of time, it was not the intention of the Secretary to limit public comment on the proposed regulations. However, the Secretary has a statutory publication deadline of December 1, 1994, that he must meet in order for these regulations

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to be effective for the 1995–96 award year. In the case of payment period calculations in § 690.63 of the proposed regulations, the Secretary began disseminating information to the public and provided training to the financial aid community about this section before the proposed regulations were published. Therefore, the Secretary believes that the public had sufficient time to provide thoughtful comment on these proposed regulations; these comments provided valuable information both before the proposed rule was published and in the development of these final regulations.

Changes: None.

Comments: A commenter requested clarification of the preamble statement regarding § 690.63(a)(1) that "the student will be eligible to be paid one-half of his or her Scheduled Award, if he or she has enough remaining eligibility (including, if eligible, a second Scheduled Award) for a summer term even if that term is not at least one-half of the academic year in weeks of instructional time."

Discussion: The statement is true for an institution that uses the methodology under § 690.63(b) to calculate a Federal Pell Grant payment for a payment period. The Secretary believes the following example clarifies the statement. An institution has a fall and spring semester. Each semester provides 15 weeks of instructional time in which a full-time student is required to complete 12 semester hours. Institution A defines its academic year as 30 weeks of instructional time in which a full-time student is expected to complete 24 semester hours. The institution also has a summer term that begins on June 15 and runs for 12 weeks. To be a full-time student in the summer term a student must enroll for at least 12 semester hours. Because the fall and spring semesters provide 30 weeks of instructional time, a full-time student would be paid one-half of his or her Scheduled Federal Pell Grant award in each of those semesters. If a student attends only the spring semester, the student would have half of his or her Scheduled Award remaining if he or she enrolls for the summer term. Even if the summer term provides only 12 weeks of instructional time, a full-time student would be eligible to receive the remaining half of his or her Scheduled Federal Pell Grant award because the institution satisfied the 30 weeks of institutional time requirement with the fall and spring semesters.

Changes: None.

Comment: A commenter suggested that the Secretary revise § 690.63(a)(1) to clarify that an institution may also choose to calculate the payment for a payment period under § 690.63(d) even if it qualifies to calculate the payment under § 690.63(b). The commenter also preferred that seasonal names like fall, winter, and spring, not be used to indicate terms because some institutions did not use those names. The commenter believed that the Secretary should select some other means of describing those terms.

Discussion: The Secretary believes that the language in the proposed regulations clearly indicates an institution may choose to calculate the payment for a payment period under § 690.63(d) even if it qualifies to calculate the payment under § 690.63(b).

The Secretary agrees that many institutions do not attach seasonal names to their standard terms. However, the Secretary is using the names generically to describe which methodology or methodologies an institution can use to calculate a payment for a payment period. The Secretary does not require that an institution provide seasonal names for its terms.

Changes: None.

Payments for a Payment Period for a Clock-Hour Program or a Credit Hour Program Without Terms

Comments: Several commenters believed there was an error in § 690.63(e) (2) and (3) of the proposed regulations that outline payment period calculations for credit-hour without terms and clock-hour programs. Those commenters believed that the requirement that an institution with a credit-hour without terms or a clock-hour program calculate the Federal Pell Grant payment for a payment period by considering both the timeframe and the clock or credit hours to be completed in the academic year was a mistake. The commenters believed that creating two ratios, one based on the weeks of instructional time and a second based on the clock or credit hours, and then multiplying the Scheduled Federal Pell Grant award by each ratio created a double reduction of a student's award. Other commenters believed that this provision was particularly unfair to economically disadvantaged students in clock-hour or credit-hour vocational programs without terms and was not legally supportable.

Discussion: The methodology in § 690.63(e) is not in error and is consistent with the definition of the term "academic year" contained in section 481(d) of the HEA and 34 CFR 668.2. Under each of the methods set forth in § 690.63 for calculating a Pell Grant award for a payment period, the Secretary takes into account two variables relating to an academic year: a credit- or clock-hour variable, at least 24 semester or trimesters, 36 quarters, or 900 clock hours; and a timeframe variable, at least 30 weeks of instructional time. Moreover, a student's Pell Grant award for a payment period is subject to reduction under each variable, if appropriate.

The credit-or clock-hour component is implemented under paragraphs (b) (1) and (2), (c) (1) and (2), and (d) (1) and (2) of § 690.63 by determining a student's "enrollment status" for a payment period and by calculating the award of a less-than-full-time student using the Disbursement Schedules. Under paragraphs (c)(3) and (d)(3), a student's award for a payment period is reduced again if the institution does not provide 30 weeks of instructional time. (No such reduction is required under paragraph (b) because, by definition, an institution may use paragraph (b) only if it provides at least 30 weeks of instructional time in its fall through spring terms.)

Under paragraph, (e) the procedure is somewhat different but the results are the same. An institution does not calculate a student's enrollment status and does not calculate an award for a less-than-full-time student by using the Disbursement Schedules. The institution determines the student's Scheduled Pell Grant award using the Payment Schedule, reduces that amount by the weeks of instructional time variable under § 690.63(e)(2) if the institution does not provide 30 weeks of instructional time, then calculates the award using the clock- or credit-hour variable. The Secretary in all the methodologies in § 690.63 first takes into consideration the length of a program's academic year in weeks of instructional time before considering the number of credit or clock hours within the academic year. For a program with terms, the institution must either determine the weeks of instructional time in its fall through spring terms or examine the weeks of instructional time in each term in relationship to its academic year definition. For a credit-hour program without terms or a clock-hour program, the institution examines the weeks of instructional time it takes a full-time student to complete the clock or credit hours in the program or the academic year. If it takes less than 30 weeks of instructional time for a full-time student to complete the clock or credit hours in the program or academic year, the Federal Pell Grant award must be reduced just as at a term institution. Second, for a term-based program an institution must determine a student's

enrollment status. If the student is not attending full-time, the award must be reduced to reflect the student's enrollment status. In a credit-hour program without terms or a clock-hour program, the payment for a payment period is not based on enrollment status but on how many clock or credit hours the student will complete in the payment period. Thus, to treat a student in a credit-hour program without terms or a clock-hour program in the same manner as a student in a term program, a second calculation must take place that equates to the adjustment for enrollment status at a term institution. The adjustment is the calculation of the number of clock or credit hours the student will complete in the payment period compared to the number of clock or credit hours in the academic year.

Changes: None.

Comments: Some commenters expressed concern that under the proposed regulations a student's Federal Pell Grant award in a program using credit hours without terms or clock hours may be somewhat less than the percentage of the academic year that the student may have completed.

Discussion: It is true that as a result of the mathematical formulas in the regulations, the calculations used to adjust a student's Scheduled Federal Pell Grant award at both a term institution and an institution using credit hours without terms or clock hours may result in an award that is somewhat less than the percentage of the academic year that the student may have completed. The Secretary believes that an institution has the flexibility to adjust its enrollment periods to conform to an academic year. Further, the Secretary believes that it was the intent of the 1992 Amendments that an institution offer instruction in a reasonable timeframe to ensure a favorable learning environment. The Secretary believes that the calculations may act as an additional incentive to encourage institutions to provide instruction in a timeframe that is more in keeping with the academic year definition and that the Secretary believes is most educationally beneficial to the student.

Changes: None.

Comments: Another commenter questioned whether the requirements of the regulations for credit-hour without terms and clock-hour programs were the same as those specified in the 1994–95 Delivery System Training. The commenter noted that the preamble of the NPRM did not mention the complete methodology for calculating timeframe fractions for the number of weeks of instructional time in the program divided by the number of weeks of instructional time in the academic year and fails to mention that an institution must use the lesser of that fraction or a fraction that divides the number of weeks in the academic year by the number of weeks in the academic year. The second fraction always results in the number one, as discussed in the 1994–95 Delivery System Training.

Discussion: The preamble of the Federal Pell Grant Program NPRM provided only a summary description of the timeframe component in calculating a payment for a payment period for a credit-hour without terms or clock-hour program. While the preamble discussion did mention the fraction based on the time it takes a full-time student to complete a program whose length is less than an academic year, the preamble did not describe the calculation for a program that requires a full-time student to attend longer than an academic year. In the latter case, the fraction can be less than or greater than one. However, since a student may not receive more than a Scheduled Federal Pell Grant for an academic year except as provided for under § 690.67, the institution must use the lesser of the result of the fraction for the timeframe requirement for an academic year or the number one.

Changes: The fraction in § 690.63(e)(2) has been modified to clarify that the fraction used for timeframe can never be greater than one.

Payments for a Payment Period for a Program Granted a Waiver to the Academic Year Definition

Comments: None.

Discussion: In the NPRM as well as the NPRM for the Student Assistance General Provisions regulations, the Secretary requested comments from the public on how to implement changes in the 1993 Technical Amendments in the academic year definition which provides that "* * * the Secretary may, on a case-by-case basis, reduce for good cause the 30-week minimum instructional time to not less than 26 weeks of instructional time in the case of an institution that provides a 2-year or 4-year program of instruction for which it awards an associate or baccalaureate degree * * *." While the Secretary did not receive any comments in connection with this NPRM, the Secretary did receive comments in connection with the NPRM for the Student Assistance General Provisions regulations. As a result, the Secretary implemented the statutory provision in 34 CFR 668.3.

If an institution receives a waiver of the 30 weeks of instructional time component for its academic year, the Secretary has provided instructions on how to accommodate that waiver under § 690.63(a)(6).

Institutions may use the methodologies in § 690.63 (b) or (d) for a program offered in terms and credit hours where a waiver of the 30-week requirement is granted. An institution may use the methodology in § 690.63(e) for a credit-hour without terms or a clock-hour programs where a waiver of the 30-week requirement is granted.

Changes: If an institution receives a waiver of the 30 weeks of instructional time requirement under 34 CFR 668.3, the institution may use § 690.63 (b), (d), or (e), as applicable, to calculate a student's award. If the institution qualifies to use the procedures in paragraph (b), no changes are necessary unless the provisions of paragraph (b)(3)(ii) apply. If the institution must use, or chooses to use, the procedures in paragraph (d) or (e), the institution will substitute the number of weeks in its academic year, *i.e.* 26, 27, 28, or 29, whenever any provision calls for the institution to use the number of weeks of instructional time in its academic year.

Section 690.64 Calculation of a Pell Grant for a Payment Period Which Occurs in Two Award Years

Comments: One commenter requested clarification on what constituted minisessions versus nonstandard terms. The commenter noted that under § 690.64(c) minisessions were required to be combined when a payment period occurred in two award years. However, there was no similar requirement for minisessions that occurred at other times during the award year, nor was there a similar requirement to treat nonstandard terms in this manner.

Discussion: The Secretary believes that there is little difference between minisessions and nonstandard terms except that minisessions have traditionally been assembled into one single payment period and a nonstandard term is a payment period by itself. Under § 690.64(c), institutions have been required to assemble minisessions into a single payment period when the payment period occurs in two award years. There has not been a similar requirement that an institution combine terms at any other time in the award year although many institutions have chosen to do so in accordance with policy guidance that the Department has issued. The Secretary believes that requiring an institution to combine minisessions at only one point during the award year serves little purpose. The requirement also limits an institution's flexibility in meeting the needs of its

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students and may be administratively burdensome. The Secretary, therefore, believes it is not necessary to require that minisessions be combined in a payment period that occurs in two award years.

Changes: The Secretary removes § 690.64(c) that requires minisessions to be combined in a payment period that occurs within two award years.

Section 690.65 Transfer Student: Attendance at More Than One Institution During an Award Year

Comments: One commenter was unsure whether the provisions to provide a second Scheduled Federal Pell Grant award in an award year would apply to a transfer student and requested clarification of the language in § 690.65(c) that requires an institution to ensure that a transfer student receives no more than one Scheduled Federal Pell Grant award during an award year. The commenter asked if it was the Secretary's intent to change the historic practice of limiting a student to 100 percent of a Scheduled Federal Pell Grant award during an award year regardless of the number of institutions the student attends during the award year.

Discussion: The requirements for determining the amount of remaining Federal Pell Grant eligibility for a transfer student have not changed. However, if a student meets the requirements for a second Scheduled Federal Pell Grant award within the same award year under § 690.67, the institution receiving the transfer student may make disbursements to the student from his or her second Scheduled Federal Pell Grant award in accordance with § 690.63.

Changes: Section 690.65(c) is revised to permit a transfer student to receive a second Scheduled Award in an award year.

Comments: When a transfer student has been overpaid because of attendance at more than one institution, a commenter recommended that the regulations clarify which institution the student must repay. The commenter believed that the regulations should require the student to indicate which institution he or she would repay and restrict the institution at which the student is currently enrolled from making additional title IV disbursements until the student has indicated which institution he or she would repay.

Discussion: The Secretary believes that current Federal Pell Grant regulations under § 690.79 are clear regarding an institution's responsibility regarding overpayments to a transfer student. The Secretary does not believe that the current regulatory requirements, which designate responsibility for repayment when an overpayment occurs, should be changed to provide that a student determine which institution to repay. In addition, the Secretary believes that the student should not regain eligibility for title IV, HEA assistance until the Secretary has been repaid or determines that the overpayment has been resolved.

Changes: None.

§ 690.66 Correspondence Study

Comments: One commenter noted that the proposed regulations did not describe how to calculate a student's payment for a payment period if he or she was taking a program of study by correspondence. The commenter noted that the Secretary had not added the academic year timeframe requirement to the payment period calculations for a correspondence program.

Discussion: The Secretary agrees that the new academic year requirements must be incorporated into payment for a payment period calculations for correspondence study. The Secretary believes that the weeks of instructional time in the academic year for correspondence study can be determined from the written lesson schedule that must be developed by the institution. The written lesson schedule reflects a workload of at least 12 hours of preparation per week. Since correspondence programs generally are programs without terms, the Secretary believes that payments for payment periods for these programs can be calculated in much the same manner as clock-hour programs and credit-hour programs without terms. The Secretary is adapting the methodology under § 690.63(e) to determine a payment for a payment period for correspondence programs in § 690.63(f). If a correspondence program uses terms, the Secretary is providing that an institution may calculate a payment for a payment period using § 690.63(d). Of course, a student taking a program of study by correspondence is considered to be enrolled no more than half-time and can never receive more than one-half of his or her Scheduled Award. Therefore, the Secretary requires an institution to use the half-time Disbursement Schedule to calculate the payment for a payment period for a program of study by correspondence except in the case of a correspondence program offered using terms. In the latter circumstance, the institution would use the less-than-half-time Disbursement Schedule for a student enrolled in less than the hours necessary to be a half-time student.

Changes: Section 690.66 is revised to incorporate the academic year definition into the method for calculating a payment for a payment period for a program of correspondence courses. § 690.66 is also amended to incorporate consideration of enrollment status for students taking only correspondence courses in a term-based program.

Section 690.67 Receiving Two Scheduled Federal Pell Grant Awards During a Single Award Year

Comments: Several commenters responded to the Secretary's request for suggestions on how to implement fairly and equitably the statutory provisions in the 1992 Amendments and the 1993 Technical Amendments that permit a student to receive up to two Scheduled Federal Pell Grant awards in a single award year. One commenter believed that all students must be treated equitably and fairly regardless of the type of institution they attend, and recommended that any program whose courses are fully transferable into an associate or baccalaureate degree program be eligible for an additional Federal Pell Grant in an award year. Some commenters proposed that the Secretary determine a reasonable method to identify a student eligible to receive more than one Scheduled Federal Pell Grant award in the award year. One commenter recommended that to implement this provision, the Secretary should base his "case-by-case" approval not on a "student-by-student" basis, but on the entire program's academic calendar. It was proposed that a "blanket" approval apply to all students in an associate or baccalaureate degree program for which the institution has sought and received approval if the student completes more than an academic year's coursework and meets other program requirements. The approval would be requested by the institution from the Secretary. The commenter further proposed that a program should be approved based on its ability to provide a course of instruction that meets the statutory definition of an academic year in credit hours and weeks of instructional time. Any changes in the academic year definition or program structure at the institution should be reported to the Secretary immediately since approval would only be granted for the current program structure and changes would be subject to reapproval.

Discussion: The Secretary agrees that any implementation of this provision must be equitable and fair to all students eligible to receive a second Scheduled Federal Pell Grant award within the program's statutory

provisions. The 1992 Amendments and the 1993 Technical Amendments establish statutory eligibility criteria that a student must meet to receive a second Scheduled Federal Pell Grant award in an award year. The statutory criteria require that a student must be enrolled full-time in an associate or baccalaureate degree program and that the student must have completed all the credits for a complete academic year. A student who is enrolled in a program whose credits are fully transferable to an associate or baccalaureate degree program but is not enrolled in one of those degree programs is not eligible for a second award.

In addition, the Secretary believes that the information necessary for the Secretary to approve a student for a second Scheduled Award in an award year is maintained at the institution he or she is attending. Therefore, the Secretary believes that if an institution chooses to award up to two Scheduled Federal Pell Grants within an award year, the approval of a student for a second Scheduled Federal Pell Grant award should be entrusted to the institution. The Secretary does not believe that it is necessary to approve the program in which a student must enroll to be eligible for a second Scheduled Award if the student meets all other eligibility criteria.

The Secretary believes that a program's approval for this provision should not be based on whether an institution provides a course of instruction that meets the statutory definition of an academic year in both credit hours and weeks of instructional time. For example, an institution's definition of an academic year may not coincide with its academic calendar's enrollment periods, *i.e.*, it may have two semesters that total 28 weeks of instructional time. If a student completes an academic year's worth of credit hours yet fails to complete all the weeks of instructional time, the Secretary believes the student should still be eligible to receive additional Federal Pell Grant funds during an award year because the statute requires only that a student complete the coursework for an academic year to be eligible for a second Scheduled award, not the weeks of instructional time. The student would receive the remaining amount of his or her first Scheduled Federal Pell Grant award as he or she completes the weeks of instructional time in the first academic year in the payment period in which the student becomes eligible to receive funds from his or her second Scheduled Federal Pell Grant award. In the example, a student would have 2/30 of his or her first award remaining in a 12 semester-hour summer session. The student would receive the 2/30 balance of the first award and 12/30 of the second award in the summer session since under § 690.63(c) the payment for each payment period would be 14/30 of an annual award.

Changes: The Secretary adds a new section at § 690.67 describing the criteria under which a student may receive more than one Scheduled Award in an award year. The Secretary provides that an institution may determine which students are eligible for a second Scheduled Award in accordance with these criteria set forth in § 690.67.

Comments: Some commenters recommended that a student at a term institution be required to complete the equivalent of a full academic year of study in two semesters or trimesters or three quarters. The student would then be eligible for a second Scheduled Award to pursue additional work during a third semester or trimester or a fourth quarter. It was further recommended that full-time study for a student eligible to receive a second Scheduled Award in an award year be based on the norms required to complete the student's program as published by the institution. If the institutional norm was to complete 120 credits of a baccalaureate degree in 4 years, the student would be required to complete 30 credits during each academic year before he or she would be eligible for a second Scheduled Award.

Discussion: Since a full-time student normally completes a full academic year's worth of credit hours in two semesters or trimesters or three quarters, the Secretary does not believe that it is necessary to prescribe the number of terms over which the credits are earned. The Secretary also believes that it would be unfair to establish an academic year course load for a student using a criterion other than the one established for all students in the same program of study as long as the criterion met the minimum statutory requirement. A requirement greater than that criterion would make it more difficult for a student to qualify for a second Scheduled Award within an award year. However, under section 401(b)(6) of the HEA, a student must complete the coursework in an academic year before he or she can be considered for a second Scheduled Award. In addition, the Secretary believes that the student must be making satisfactory academic progress at the time he or she receives a second Scheduled Award. Therefore, this institution must verify, before disbursing funds from the second Scheduled Award, that a student is making satisfactory progress in his or her program of study under 34 CFR 668.7 and 668.16(e).

Changes: The Secretary has included provisions in § 690.67 that require a student to complete an academic year's coursework and to be making satisfactory progress in his or her program of study to be eligible to receive a second Scheduled Award from the Federal Pell Grant Program.

Comments: One commenter specified that the additional coursework for which a student enrolled should be coursework required for completion of his or her associate or baccalaureate degree.

Discussion: The Secretary agrees that additional coursework funded under this provision should be coursework that counts toward completion of a student's associate or baccalaureate degree program. Such a requirement is in keeping with the intent of this statutory provision to provide a student a means to continue his or her education without interruption throughout the pursuit of his or her associate or baccalaureate degree program.

Changes: The Secretary requires that coursework funded by the second Scheduled Award be either required courses or electives that will be counted toward completion of the student's associate or baccalaureate degree program.

Comments: Several commenters proposed methodologies to calculate the additional Federal Pell Grant eligibility by using ratios based either on the additional credits the student would take or, in the case of a term institution, the additional terms in which the student would enroll.

Discussion: The Secretary believes that the student's payment for a payment period should be determined using an appropriate methodology under § 690.63 or § 690.66. However, an institution must use the same methodology to calculate the payment for a payment period for all students in a program regardless of whether that calculation relates to a first or second Scheduled Federal Pell Grant for an award year.

Changes: None.

Section 690.77 Initial Disbursement of a Federal Pell Grant in an Award Year Without a Valid SAR or Valid Institutional Student Information Record

Comments: In the notice of proposed rulemaking the Secretary requested comment on whether to remove § 690.77. Most commenters supported

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removal of this section because the rapid delivery of ISIRs through electronic means makes it unnecessary to make a first payment to a student without a valid SAR or ISIR. One commenter believed that elimination of this provision would reduce the cost and the burden of trying to collect an overaward from a student who did not submit a valid SAR after being paid. Two commenters believed that, while most institutions did not make payments to students without a valid SAR or ISIR, the provision should be retained. One commenter believed that the provisions in this section were mandated in the Federal Pell Grant Program statute.

One commenter, while not commenting on whether § 690.77 should be retained or removed, noted a difference in the liability language between §§ 690.77 (c)(1) and (c)(2). In § 690.77(c)(1) an institution is liable if it chooses to make a disbursement without a valid SAR or valid ISIR. In § 690.77(c)(2), both the student and the institution are liable for a disbursement made without a valid SAR or ISIR. The commenter believed that a student was not liable for an overpayment in § 690.77(c)(1) as he or she would be in § 690.77(c)(2). The commenter recommended that the language in the two provisions be rewritten to make both the student and the institution liable in § 690.77(c)(1) if a student requested a first disbursement without a valid SAR or ISIR and the institution could document the student's request.

Discussion: Although one commenter believed that this provision was mandated in the statute, the statute was changed in the 1992 Amendments to eliminate the statutory charge that required the Secretary to allow a payment of a Federal Pell Grant without a valid SAR or ISIR. Furthermore, the Secretary agrees with the majority of commenters that the provision is no longer necessary.

Since the Secretary believes that this provision is no longer necessary, revisions to the provisions under this section are not required.

Changes: The Secretary is removing § 690.77 from the Federal Pell Grant Program regulations.

Section 690.82 Maintenance and Retention of Records

Comments: Most commenters supported the Secretary's proposed change in § 690.82 that would eliminate the requirement in the Federal Pell Grant Program to retain an SAR regardless of whether the student received a Federal Pell Grant. Two commenters indicated that they understood the intent of the change in this provision was to eliminate the requirement to maintain eligibility documents for students receiving aid from other title IV programs or for other title IV program purposes. One other commenter, while supporting the reduction in the Federal Pell Grant Program record keeping requirements, recommended that the Secretary recognize that many institutions participate in the Federal Pell Grant Program electronically and maintain a computerized data base. The commenter suggested that those institutions be allowed to maintain the data in an electronic format rather than a paper one.

Discussion: The Secretary appreciates the public support of his proposal to change the record retention requirements for the Federal Pell Grant Program. The Secretary believes, however, that clarification is necessary since two commenters were unclear as to the Secretary's intent in making this change. Eliminating the requirement under the Federal Pell Grant Program for retaining the SAR or ISIR, regardless of whether the student received a Federal Pell Grant, does not eliminate the requirement to retain an SAR or ISIR if it has been used as an eligibility document to determine and pay a student Federal student aid under another title IV program or if the information was required to complete the institution's Fiscal Operations Application Report for the campus-based programs. The change would eliminate the need to retain an SAR or ISIR if an institution did not use it as an eligibility document, the student did not receive a Federal Pell Grant, another document had been used to award other title IV, HEA assistance, or the student was ineligible for title IV, HEA assistance.

The Secretary also agrees that it is reasonable to retain many of a student's financial aid documents in media formats other than paper. However, since the electronic technology is changing so quickly the Secretary believes that he should publish periodically, in a notice, a compilation of acceptable media storage formats and the documents that can be stored in those formats.

Changes: The Secretary has added a provision in § 690.82(e) to allow for the retention of information in media formats acceptable to the Secretary other than microform and the original documents. The Secretary will publish in the Federal Register a listing of the media formats and the documents that can be retained using those formats.

Comments: One commenter indicated that although the Secretary required an institution to retain a student's application for Federal student aid when his or her application information was submitted electronically to the Secretary, the regulations at § 690.82 did not specify a record retention requirement for the application. The commenter stated that the regulations should clarify: (1) How long the application must be retained; (2) the circumstances under which an application must be retained; and (3) what constitutes an acceptable application for retention purposes (*e.g.*, a Free Application for Federal Student Aid or a printout of an electronic application).

Discussion: The commenter is correct that the Secretary requires retention of any paper application signed by the student, and by one of his or her parents if the student is dependent, when that application is submitted to the Secretary electronically from an institution or its agent. The Secretary requires that the application be retained for all students whose applications were submitted from that institution and were processed by the Secretary regardless of whether the student attends that institution or receives title IV, HEA assistance. While the regulations have not been specific on the institutional responsibilities concerning retention of a student's application at the point of submission, the Secretary requires an institution, as part of its agreement to participate in EDE, to retain an application when the application information is submitted electronically to the central processor. However, the Secretary believes that the commenter is correct in questioning what the Secretary requires of an institution under such circumstances.

Changes: The Secretary has added a document maintenance requirement at § 690.82(b) for institutions that transmit electronically the application information to the Secretary. The signed application and signed copies of any corrections to application information must be retained any time an institution submits that application information electronically to the Secretary and the application information is processed by the Secretary, regardless of whether the student attends the institution or is eligible to receive a Federal Pell Grant.

Presidential Access Scholarship Program

Comments: Commenters generally commended the Secretary for his proposal to incorporate the Presidential Access Scholarship (PAS) Program into the Federal Pell Grant Program delivery system as a way to eliminate additional burden on institutions.

Discussion: None.

Changes: None.

Section 691.16 Eligibility Requirements To Receive an Award

Comments: One of the criteria to determine eligibility to receive a PAS is to have ranked in the top 10 percent, by grade point average, of a student's secondary school graduating class. A commenter believed that the requirement to graduate in the top 10 percent of a student's class should be further defined so that students graduating in very small classes, who might have to study harder to be in the top 10 percent, would be treated equally with students graduating from larger classes. Another commenter requested that the Secretary clarify what determines that a student has graduated in the top 10 percent of his or her high school class.

Discussion: Section 406C of the 1992 Amendments requires that for a student to be eligible he or she either (a) participate in an eligible early-intervention program for a minimum of 36 months or (b) graduate in the top 10 percent, by grade point average, of his or her high school class. To determine whether a student is in the top 10 percent of his or her graduating class, the number of students in the graduating class is multiplied by .1. For example, if there are 250 students in the graduating class, 25 (250 x.1) are graduating in the top 10 percent of the class. If a student's high school does not rank its students, a student may only be considered eligible if the institution can factually and statistically document that the student would rank in the top 10 percent of graduating high school students statewide in his or her state. The institution may also consider the student's application if he or she has a GED test score equivalent to ranking in the top 10 percent of the GED test scores in the State.

Changes: None.

Section 691.61 Disbursement Conditions and Deadlines

Comments: The PAS Program regulations require that a student present written documentation that he or she has participated in an approved, eligible early-intervention program for at least 36 months or that he or she qualifies for a waiver under § 690.16(b) of the regulations. Several commenters requested clarification of the type of documentation the student must present to demonstrate that he or she has met these requirements. Another commenter recommended that to minimize the burden on institutions the student be required to submit documentation to determine participation in an eligible early-intervention program with his or her application for a Federal Pell Grant and PAS. This commenter believed that, in addition to lessening the burden on institutions, keeping this information with the central processor would allow the Secretary to keep track of eligible students more easily.

Discussion: An example of the documentation that a student can provide to establish that he or she participated in an eligible early intervention program would be a letter from the program director certifying that the student participated for at least 36 months in the eligible program. The documentation can be collected at the institution at the time the student applies to the institution for financial aid; thus, an unnecessary burden is not placed on an institution to request and maintain a certificate from a student indicating that he or she has participated in an eligible early-intervention program. In addition, a separate certificate could not be processed with the application for calculating a student's EFC since it is not relevant to calculating the student's EFC.

Changes: None.

Section 691.77 Initial Disbursement of a PAS in an Award Year Without a Valid SAR or Institutional Student Information Record

Comments: Several commenters indicated that, if this provision is removed from the Federal Pell Grant Program regulations because the provision was no longer necessary for the Federal Pell Grant Program, the Secretary should remove it from the PAS Program for similar reasons.

Discussion: The Secretary agrees that, since the section is being removed from the Federal Pell Grant Program, there is no need to retain the section under § 691.77.

Changes: Section 691.77 is removed from the final PAS Program regulations and reserved.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

Burdens specifically associated with information requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Sections 690.12, 690.13, 690.67, 690.75, 690.82, 691.61, 691.73, 691.82, and 691.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the U.S. Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

These regulations affect businesses or other for-profit organizations and nonprofit institutions that are eligible to participate in the title IV, HEA programs. The Department needs and uses the information to implement the 1992 Amendments for the Federal Pell Grant Program and PAS Program. The regulations provide the requirements that States, institutions, and students must follow to participate in these programs.

Federal Pell Grant

Annual public reporting and recordkeeping burden for this collection of information is reduced by 1140 hours because of the elimination of state recordkeeping and reporting requirements for 57 States and territories with enactment on September 13, 1994 of the Violent Crime and Law Enforcement Act of 1994 which amends section 401(b)(8) of the Higher Education Act of 1965, as amended.

Presidential Access Scholarship Program

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response for 57 States and territories and 2,280 total hours per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Annual approved public reporting and recordkeeping burden for this

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collection of information is: (1) 3 hours per response for 57 States and territories; and (2) 3 hours per response for 10,000 institutions. The approved total hours for States and institutions are 30,971 hours per year including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

List of Subjects in 34 CFR Part 691

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063 Federal Pell Grant Program; Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: September 27, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending part 690 and adding a new part 691 as follows:

PART 690—[AMENDED]

1. The authority citation for part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted

2. The heading for part 690 is revised to read as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

§§ 690.1, 690.2, 690.3, 690.5, 690.7, 690.9, 690.10, 690.11, subpart F, 690.62, 690.64, 690.65, 690.71, 690.72, 690.74, 690.75, 690.78, 690.79, 690.81, and 690.83. [Amended]

3. In part 690 add the word "Federal" before the words "Pell Grant" in the following places:

(a) Section 690.1;

(b) Section 690.2(c) under the terms "Disbursement Schedule" and "Scheduled Pell Grant";

(c) Section 690.3(a)(2)(ii);

(d) Section 690.6 (a) and (e);

(e) Section 690.7(a)(1) introductory text, (a)(2) (twice), (b) introductory text (twice), (c)(2), (c)(3), and (c)(4);

(f) Section 690.9(a) introductory text, (a)(1) (twice), (a)(2) introductory text, and (a)(2)(ii);

(g) Section 690.10 (a) and (b);

(h) Section 690.11 heading and text;

(i) Subpart F heading;

(j) Section 690.62(a);

(k) Section 690.64 heading and paragraphs (a)(2) and (b);

(l) Section 690.65(d) introductory text (twice), (d)(1) (twice), (d)(3), and (e) (three times);

(m) Section 690.71;

(n) Section 690.72(a);

(o) Section 690.75(a) introductory text, (a)(3)(i), (a)(3)(ii), (c), and (d) (twice);

(p) Section 690.78(c) introductory text;

(q) Section 690.79(a)(1) and (a)(2);

(r) Section 690.81(a)(2) and (b) (twice); and

(s) Section 690.83(a)(1) introductory text, (b)(1), and (c)(2).

§§ 690.74 and 690.81 [Amended]

4. In part 690 add the word "Federal" before the words "Pell Grants" in the following places:

(a) Section 690.74 (twice); and

(b) Section 690.81(c).

§ 690.2 [Amended]

5. and 6. Section 690.2 paragraph (a) is amended by removing in alphabetical order the terms "One-year training program", "Program of study by correspondence", Proprietary institution of higher education", "Postsecondary vocational institution", and "Six-month training program", and adding in alphabetical order the terms "Award year", "Correspondence course", "Regular student", and "State".

§ 690.2 [Amended]

7. Section 690.2 paragraph (b) is amended by adding in alphabetical order the terms "Federal Pell Grant Program", "Federal Perkins Loan Program", "Federal Supplemental Educational Opportunity Grant Program", "Federal Work-Study Program", "Full-time student", and "HEA", and removing the terms "Award year", "College Work-Study Program", "Income Contingent Loan (ICL) Program", "Perkins Loan Program", "Public or private nonprofit institution of higher education", "Pell Grant Program", "Regular student", "State", and "Supplemental Educational Opportunity Grant Program".

8. Section 690.2 paragraph (c) is amended by removing the definitions of "Full-time student", "Pell Grant Index", and "Student Aid Report (SAR) Payment Document"; by adding, in alphabetical order, new definitions of "Annual award", "Central processor", "Expected family contribution", "Institutional Student Information Record (ISIR)", "Less-than-half-time student", "Payment Voucher", and "Valid Institutional Student Information Record (valid ISIR)"; and by revising introductory text and paragraphs (1) and (2) of the definition of "Disbursement Schedule", and revising "Electronic Data Exchange", "Enrollment status", "Payment Schedule"; and "Valid Student Aid Report" to read as follows:

§ 690.2 General definitions.

* * * * *

(c) * * *

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for a full award year.

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application information, transmits an ISIR to each institution designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

* * * * *

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

* * * * *

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) A student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) An institution is able to receive an ISIR from the central processor for a student.

Enrollment status: Full-time, three-quarter-time, half-time, or less-than-half-time depending on a student's credit-hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

* * * * *

Expected family contribution (EFC): The amount, determined under title IV, part F of the HEA, which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

* * * * *

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

* * * * *

Payment Schedule: A table showing a full-time student's Scheduled Federal Pell Grant for an academic year. This table, published annually by the Secretary, is based on—

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

* * * * *

Payment Voucher: An electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

* * * * *

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

* * * * *

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

9. Section 690.3 is amended by revising the section heading and paragraphs (b)(1), (b)(2), and (b)(3), to read as follows:

§ 690.3 Payment period.

* * * * *

(b) *Payment periods for an eligible program that does not have academic terms:* (1) For a student whose eligible program is one academic year or less—

(i) The first payment period is the period of time in which the student completes the first half of his or her program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of his or her program as measured in credit or clock hours; or

(2) For a student whose eligible program is more than one academic year—

(i) For the first academic year, the first payment period is the period of time in which the student completes the first half of his or her academic year as measured in credit or clock hours, and the second payment period is the period of time in which the student completes the second half of that academic year.

(ii) For subsequent academic years, each payment period is the period of time in which the student first completes—

(A) One half of the academic year; or

(B) The remainder of the student's program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, at an institution measuring progress in credit hours, if a student cannot earn half of his or her credits in the program under paragraph (b)(1) of this section or the academic year under paragraph (b)(2) of this section until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of his or her academic coursework.

* * * * *

10. Section 690.6 is amended by removing paragraphs (c), (d), and (e), and by adding a second sentence to paragraph (b) to read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(b) * * * Any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in the institution's determination of that student's period of Federal Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

11. Section 690.8 is amended by revising paragraphs (c) and (d) to read as follows:

§ 690.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

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Under § 690.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c) [1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

12. Section 690.10 is amended by revising the authority citation at the end of the section, and by adding a new paragraph (c) to read as follows:

§ 690.10 Administrative cost allowance to participating schools.

* * * * *

(c) If an institution enrolls a significant number of students who are attending less-than-full-time or are independent students, the institution shall use a reasonable proportion of these funds to make financial aid services available during times and in places that will most effectively accommodate the needs of those students.

(Authority: 20 U.S.C. 1096)

13. Section 690.12 is amended by removing paragraph (c), by redesignating paragraph (b) as paragraph (c), by revising paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 690.12 Application.

(a) As the first step to receiving a Federal Pell Grant, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated. A copy of this form is not acceptable.

(b) The student shall submit an application to the Secretary by—

(1) Providing a copy of the application form, signed by all appropriate family members, to the institution at which the student attends or plans to attend so that the institution can transmit electronically the application information to the Secretary under EDE; or

(2) Mailing the paper application form to the Secretary.

* * * * *

(Authority: 20 U.S.C. 1070a)

14. Section 690.13 is revised to read as follows:

§ 690.13 Notification of expected family contribution.

(a) Beginning with the 1996–97 award year, the Secretary sends a student's application information and EFC as calculated by the central processor to each student and an ISIR to each institution designated by the applicant.

(b) For the 1995–96 award year, an institution participating in EDE shall provide a copy of a student's application information and EFC as calculated by the central processor to the student for whom it has transmitted the student's application information to the central processor.

(Authority: 20 U.S.C 1070a)

15. Section 690.14 is amended by revising the title of the section heading, and paragraph (c) is revised and redesignated as paragraph (b) to read as follows:

§ 690.14 Request for recalculation of expected family contribution because of clerical or arithmetic error.

* * * * *

(b) (1) If a student believes that a clerical or arithmetic error produced an inaccurate expected family contribution determination, the student may request a recalculation of that expected family contribution by submitting that request to the Secretary.

(2) A student makes that request by—

(i) Having his or her institution transmit that request under EDE to the Secretary; or

(ii) Mailing an approved form, certified by the student, and if the student is a dependent student, one of the student's parents, directly to the Secretary.

(3) If an institution transmits electronically the student's recalculation request to the Secretary, the corrected information must be supported by—

(i) Information contained on an approved form, that is certified by the student, and if the student is a dependent student, one of the student's parents; or

(ii) Verification documentation provided by a student under 34 CFR 668.57.

(4) The recalculation request must be received by the Secretary no later than the deadline date established by the Secretary through publication in the **Federal Register**.

(Authority: 20 U.S.C. 1070a)

16. Subpart C is removed and reserved.

17. Section 690.61 is revised to read as follows:

§ 690.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a Federal Pell Grant to an eligible student who is otherwise qualified to receive that disbursement if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution—

(A) Obtains a valid ISIR for that student; and

(B) For the 1995–96 award year, electronically or magnetically transmits Federal Pell Grant disbursement data to the Secretary.

(2) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to assume that SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in 34 CFR 668.60, for a student to receive a Federal Pell Grant for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) June 30 of that award year.

(Authority: 20 U.S.C 1070a)

18. Section 690.62 is amended by revising the title of the section heading, by removing paragraph (c), and by revising paragraph (b) to read as follows:

§ 690.62 Calculation of a Federal Pell Grant.

* * * * *

(b) No payment may be made to a student if the student's annual award is less than $200. However, a student who is eligible for an annual award that is equal to or greater than $200, but less than or equal to $400, shall be awarded a Federal Pell Grant of $400.

19. Section 690.63 is revised to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Provides at least 30 weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's Federal Pell Grant for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's Federal Pell Grant for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's Federal Pell Grant for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs of study offered by correspondence.* A student's Federal Pell Grant payment for a payment period is calculated under § 690.66 if the program is offered by correspondence courses.

(6) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's Federal Pell Grant payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(iii) The institution uses the methodology described in § 690.66 if the program is correspondence study.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time students;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters}}{\text{The number of weeks in the program's academic year}}$$

; or

In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

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; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The Federal Pell Grant for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1)(i) For a student enrolled in a semester, trimester, or quarter, determining his or her enrollment status for the term; or

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her enrollment status for the term by—

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule for full-time students or the Disbursement Schedule for three-quarter-time, half-time, or less-than-half-time student;

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

The number of weeks of instructional time in the term
The number of weeks of instructional time in the program's academic year

; and

(4) Paying the student the amount determined under paragraph (d)(3) of this section.

(e) *Programs using clock hours or credit hours without terms.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule;

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

(i) The number of weeks of instructional time required for a full-time student to complete the lesser of the clock or credit hours in the program or the academic year
The number of weeks of instructional time in the program's academic year

; or

(ii) One; and

(3) Multiplying the amount determined under paragraph (e)(2) of this section by—

The number of credit or clock hours in a payment period
The number of credit or clock hours in the program's academic year

(f) A single disbursement may not exceed 50 percent of any award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g)(1) Notwithstanding paragraphs (b), (c), (d), and (e) of this section and 34 CFR 668.66, the amount of a student's award for an award year may not exceed his or her Scheduled Federal Pell Grant award for that award year except as provided in § 690.67.

(2) For purposes of this section and § 690.66, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.2 and 668.3.

20. Section 690.64 is amended by removing paragraph (c).

21. Section 690.65 is amended by revising paragraphs (a), (c), and (f) to read as follows:

§ 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Federal Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student may receive a Federal Pell Grant at the second institution only if—

(1) The student submits a valid SAR to the second institution; or

(2) The second institution obtains a valid ISIR.

* * * * *

(c) The second institution may pay a Federal Pell Grant only for that portion of the academic year in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's Scheduled Federal Pell Grant for that award year except as provided under § 690.67.

* * * * *

(f) A transfer student shall repay any amount received in an award year that exceeds—

(1) His or her Scheduled Federal Pell Grant; or

(2) The amount which he or she was eligible to receive for the award year under § 690.67.

22. Section 690.66 is revised to read as follows:

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component by—

(1) Determining the student's annual award using the half-time Disbursement Schedule;

(2) Determining the length of the correspondence program in weeks of instructional time by—

(i) Preparing a written schedule for submission of lessons that reflect a workload of at least 12 hours of preparation per week; and

(ii) Determining the number of weeks of instructional time in the program of study using the written schedule for submission of lessons;

(3) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i) The number of weeks of instructional time as determined under paragraph (a)(2)(ii) of this section for a student to complete the lesser of the credit hours in the program or the academic year
The number of weeks of instructional time in the program's academic year definition

; or

(ii) One; and

(4) Multiplying the amount determined under (a)(3) of this section by—

The number of credit hours in the payment period
The number of credit hours in the program's academic year

(b) For purposes of paragraph (a) of this section—

(1) An academic year as measured in credit hours must consist of 2 payment periods—

(i) The first payment period must be the period of time in which the student completes the lesser of the first half of his or her academic year or program; and

(ii) The second payment period must be the period of time in which the student completes the lesser of the second half of the academic year or program; and

(2)(i) The institution shall make the first payment to a student for an academic year, as calculated under paragraph (a)(4) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(ii) The institution shall make the second payment to a student for an academic year, as calculated under (a)(4) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the Disbursement Schedule for a half-time student is used; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term the Disbursement Schedule for a less-than-half-time student is used;

(3) A payment for a payment period is calculated using the formula in § 690.63(d) except that paragraphs (c) (1) and (2) of this section are used in lieu of § 690.63(d) (1) and (2) respectively; and

(4) The institution shall make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training shall be calculated under § 690.63(d) if the residential training is offered using terms and credit hours or § 690.63(e) if the residential training is offered using credit hours without terms.

23. A new section 690.67 is added to Subpart F to read as follows:

§ 690.67 Receiving up to two Scheduled Federal Pell Grant awards during a single award year.

(a) The Secretary announces in the **Federal Register** whether an institution may award up to a second Scheduled Federal Pell Grant to a student in a particular award year.

(b) Based on the announcement described in paragraph (a) of this section, an institution may award up to a second Scheduled Federal Pell Grant award to a student in that award year if—

(1) The student is enrolled as a full-time student in an eligible program that is at least 2 academic years as measured in credit hours and weeks of instructional time and leads to an associate or baccalaureate degree at an institution;

(2) The student is enrolled only in coursework required for completing his or her associate or baccalaureate degree, including courses in his or her major area of study or electives that fulfill the student's graduation requirements, during any payment period in which the student is paid any portion of his or her second Scheduled Federal Pell Grant award;

(3) In the previous payment periods in the award year the student has completed the number of credit hours required in an academic year leading to his or her associate or baccalaureate degree program; and

(4) The student has completed the weeks of instructional time required for an academic year or will complete them in the first payment period for which he or she will receive a payment from his or her second Scheduled Federal Pell Grant award.

(c) If an institution awards a student up to a second Scheduled Federal Pell Grant award, the institution must make such awards to all students who qualify under paragraph (a) of this section.

(Authority 20 U.S.C. 1070a)

§ 690.73 [Amended]

24. Section 690.73 is revised to read as follows:

When an institution is terminated under 34 CFR 668.86, the institution shall provide the following information to the Secretary:

(a) The name and enrollment status of each eligible student who submitted a valid SAR or for whom the institution received a valid ISIR before the termination date.

(b) The amount of funds the institution paid to each Federal Pell Grant recipient before the termination date.

(c) The amount due each student eligible to receive a Federal Pell Grant through the end of the award year.

(d) An accounting of Federal Pell Grant expenditures to the date of termination.

25. Section 690.75 is amended by revising paragraphs (a)(2), and (b) to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) * * *

(2) Is enrolled as an undergraduate student; and

* * * * *

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid ISIR for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

* * * * *

§ 690.77 [Removed and Reserved]

26. Section 690.77 is removed and reserved.

27. Section 690.80 is amended by revising the title of the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 690.80 Recalculation of a Federal Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Federal Pell Grant award

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for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14; or

(ii) A correction based on information required as a result of verification under 34 CFR part 668, Subpart E.

(2) Except as described in 34 CFR 668.60(c), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Federal Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

* * * * *

28. Section 690.82 is amended by revising paragraphs (a) introductory text and (a)(1); removing paragraph (d); redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and by adding new paragraphs (a)(8), (b), and (e) to read as follows:

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification), which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.23, the SAR or ISIR of each student who received a Federal Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution or for whom the institution has received valid ISIRs;

* * * * *

(8) Documentation of a student's eligibility for any part of a second Scheduled Federal Pell Grant award in any award year.

(b) Each institution shall retain any completed applications and any other documents submitted by a student to the institution under § 690.14(c) if the application information is transmitted to the Secretary under EDE and is processed by the Secretary.

* * * * *

(e) An institution may substitute microform copies or other media formats acceptable to the Secretary, as published in a notice in the **Federal Register**, in lieu of original records in meeting the requirements of this section.

29. A new part 691 is added to read as follows:

PART 691—PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

691.1 Scope and purpose.
691.2 General definitions.
691.3 Payment period.
691.4 [Reserved]
691.5 [Reserved]
691.6 Duration of student eligibility.
691.7 Institutional participation.
691.8 Enrollment status for students taking regular and correspondence courses.
691.9 Written agreements between two or more eligible institutions.
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Authority: 20 U.S.C. 1070a–31 *et seq.*

Subpart A—General

§ 691.1 Scope and purpose.

The purposes of the Presidential Access Scholarship (PAS) Program are to encourage students to finish high school and attend college and to upgrade the course of study completed by high school graduates who are from low- or moderate-income families.

(Authority: 20 U.S.C. 1070a–31)

§ 691.2 General definitions.

(a) Definitions of the following terms used in this part are described in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600: Accredited Award year, Clock hour program, Correspondence course, Educational program, Eligible institution, Recognized equivalent of high school diploma, Regular Student, Secretary, and State.

(b) Definitions of the following terms used in this part are described in subpart A of the Student Assistance General Provisions, 34 CFR part 668: Academic year, Enrolled, Federal Pell Grant Program, Full-time student, and HEA.

(c) Other terms used in this part are:

Central processor: An organization under contract with the Secretary that calculates an applicant's expected family contribution based on the applicant's application data, transmits an ISIR to each of the institutions designated by the applicant, and submits reports to the Secretary on the correctness of its computations of the expected family contribution amounts and the accuracy of the answers to questions on application forms for the previous award year cycle.

Disbursement Schedule: A table showing the annual awards that three-quarter, half-time, and less-than-half-time students at term-based institutions using credit hours would receive for an academic year. This table is published annually by the Secretary and is based on—

(1) A student's expected family contribution, as determined in accordance with title IV, part F of the HEA; and

(2) A student's attendance costs as defined in title IV, part F of the HEA.

Electronic Data Exchange: An electronic exchange system between the central processor and an institution under which—

(1) A student is able to transmit his or her application information to the central processor through his or her institution and an ISIR is transmitted back to the institution;

(2) The student through his or her institution is able to transmit any changes in application information to the central processor; and

(3) The institution receives an ISIR from the central processor for that student.

Eligible early-intervention program: A program as required under § 691.16(a)(5) that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary financial aid, to students enrolled in preschool through grade 12. To qualify, a program must be one of the following:

(1) A Talent Search project as described in 34 CFR part 643 and authorized under section 402B of the HEA, as amended;

(2) An Upward Bound project as described in 34 CFR part 645 and authorized under section 402C of the HEA, as amended;

(3) An Opportunity Center as described in 34 CFR part 644 and authorized under section 402F of the HEA, as amended; or

(4) A National Early Intervention Scholarship and Partnership Program as authorized under section 404A of the HEA, as amended; or

(5) A program that is certified as an honors scholars program by the Governor of the State in which it is offered and that the Governor determines meets comparable requirements for any program funded under 34 CFR parts 643, 644, 645, or section 404A of the HEA.

Expected family contribution (EFC): The amount which the student and the student's family may be reasonably expected to contribute toward the student's postsecondary education for the academic year.

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic work load—as determined by the institution—that amounts to at least half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week or is earning at least 6 credit hours per semester, trimester, or quarter. However, regardless of the workload, no student enrolled solely in correspondence study is considered more than a half-time student.

Honors scholars program: A program designed to encourage a high level of academic achievement from students who are enrolled in the program.

Institutional Student Information Record (ISIR): A paper document or a computer-generated electronic record that the central processor transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC calculated by the central processor.

Less-than-half-time student: An enrolled student who is carrying less than half the work load of the appropriate minimum requirement outlined in the institution's definition of a full-time student.

Payment Schedule: A table showing a full-time student's Scheduled PAS Award for an academic year. This table is published annually by the Secretary.

Payment Voucher: An electronic or magnetic record, or for the 1995–96 award year a paper record, that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

Scheduled Presidential Access Scholarship: The amount of a PAS that would be paid to a full-time student for a full academic year. This table, published annually by the Secretary, is based on—

(1) The student's expected family contribution, as determined in accordance with part F of title IV of the HEA; and

(2) The student's cost of attendance as defined in part F of title IV of the HEA.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—that amounts to at least three-quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study that usually does not exceed 4 academic years or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student only for the first 4 academic years of that program.

Valid Institutional Student Information Record (valid ISIR): An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

Valid Student Aid Report: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a–31 *et seq.*)

§ 691.3 Payment period.

(a) *Payment period for an eligible program that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an eligible program that uses semesters, trimesters, quarters, or other academic terms, the payment period is the semester, trimester, quarter, or other academic term.

(2) For an eligible program that uses semesters, trimesters, quarters, or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a PAS for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) *Payment periods for an eligible program that does not have academic terms:* (1) For a student whose eligible program is one academic year or less—

(i) The first payment period is the period of time in which the student completes the first half of his or her

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program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of his or her program as measured in credit or clock hours; or

(2) For a student whose eligible program is more than one academic year—

(i) For the first academic year, the first payment period is the period of time in which the student completes the first half of his or her academic year as measured in credit or clock hours, and the second payment period is the period of time in which the student completes the second half of that academic year.

(ii) For subsequent academic years, each payment period is the period of time in which the student first completes—

(A) One half of the academic year; or

(B) The remainder of the student's program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section at an institution measuring progress in credits hours, if a student cannot earn half of his or her credits in the program under paragraph (b)(1) of this section or the academic year under paragraph (b)(2) of this section until after the midpoint between the first and last scheduled days of class, the student is considered to begin his or her second payment period on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by institution, that the student has completed half of his or her academic coursework.

(4) If an institution chooses to have more than two payment periods in an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a–32)

§§ 691.4–691.5 [Reserved]

§ 691.6 Duration of student eligibility.

A scholarship under the PAS Program shall be awarded to a student for a period of—

(a) Not more than 4 academic years; or

(b) Not more than 5 academic years in the case of a student who is enrolled in an undergraduate course of study requiring attendance for the full-time equivalent of 5 academic years.

(Authority: 20 U.S.C. 1070a–32)

§ 691.7 Institutional participation.

(a)(1) An institution of higher education is eligible to award scholarships for the PAS Program if it—

(i) Meets the appropriate definition set forth in section 481 of the HEA;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR part 668.

(2) If an institution begins participation in the PAS Program during an award year, a student enrolled in and attending that institution is eligible to receive a PAS for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the PAS Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution or whose institution received a valid ISIR from the U.S. Department of Education before the date the institution became ineligible is paid a PAS for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, received a PAS at the institution before it became ineligible;

(2) The amount of funds paid to each PAS recipient for that award year;

(3) The amount due each student eligible to receive a PAS through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the PAS expenditures for that award year to the date of ineligibility.

(Approved by the Office of Management and Budget under control number 1840–0661)

(Authority: 20 U.S.C. 1070a–32)

§ 691.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular course work is considered a less-than-half-time student.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to 6 credits per term.

Under § 691.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.

Under § 691.8	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c) [1]				Less-than-half-time.

[1] Any combination of regular and correspondence work that is greater than 0, but less than 6 hours.

(Approved by the Office of Management and Budget under control number 1840–0661)

(Authority: 20 U.S.C. 1070a–32)

§ 691.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions that apply toward his or her degree or certificate at the first institution may receive a PAS for attendance at both institutions only if there is a written agreement between the institutions.

(b) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's PAS. However, the other institution may determine and pay the student's PAS if the institutions agree in writing to that arrangement.

(c) The institution that determines and pays the PAS shall—

(1) Take into account all courses that apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(2) Maintain all records regarding the student's eligibility for and receipt of the PAS.

(Approved by the Office of Management and Budget under control number 1840–0661)

(Authority: 20 U.S.C. 1070a–32)

§ 691.10 [Reserved]

§ 691.11 Payments from more than one institution.

A student is not entitled to receive PAS Program payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a–32)

Subpart B—Application Procedures and Eligibility Requirements

§ 691.12 The application process.

Each eligible student desiring to apply for a PAS shall—

(a) Submit annually an application to the Secretary on the same approved form and at the same time the student applies for a Federal Pell Grant;

(b) Provide the application to the Secretary within the time frame required to apply for a Federal Pell Grant; and

(c) Provide such information as is required to apply for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

§§ 691.13–691.14 [Reserved]

§ 691.15 Eligibility to apply initially for a scholarship.

A student is eligible to apply for a PAS for his or her first year of postsecondary study if the student—

(a) Is scheduled to graduate from or is a graduate of a public or private secondary school, or has the equivalent of a high school diploma as recognized by the State in which the eligible student resides, but has not yet received a baccalaureate degree; and

(b) Is either enrolled, accepted for enrollment, or intends to enroll, at an institution of higher education not later than 3 calendar years after the date that the student graduates from secondary school or obtains the recognized equivalent of a high school diploma.

(Authority: 20 U.S.C. 1070a–35)

§ 691.16 Eligibility requirements to receive an award.

(a) A student is eligible to receive a PAS for his or her first year of postsecondary study if the student—

(1) Is eligible to receive a Federal Pell Grant in the award year in which the PAS is awarded;

(2) Is enrolled or accepted for enrollment in a degree or certificate program of at least 2 years in length;

(3) Has demonstrated academic achievement and preparation for postsecondary education by taking the following college preparatory level coursework that includes at least—

(i) Four years of English;

(ii) Three years of science;

(iii) Three years of mathematics;

(iv) Either—

(A) Three years of history; or

(B) Two years of history and one year of social studies; and

(v) Either—

(A) Two years of foreign language; or

(B) One year of computer science and 1 year of foreign language;

(4) Has earned a grade point average of 2.5 or higher, on a scale of 4.0, in the final 2 years of high school; and

(5) Has either (i) participated for a minimum period of 36 months in an eligible early-intervention program; or

(ii) Ranked in the top 10 percent, by grade point average, of the student's secondary school graduating class.

(b) Notwithstanding the requirements in paragraph (a)(5) of this section, a student may receive a PAS if an authorized official of the State in which the student resides certifies to the Secretary that the student was unable to participate in an eligible early-intervention program because—

(1) The program was not available in the area where the student resides; or

(2) Due to unusual and exceptional circumstances, the student was unable to participate in such a program.

(c) Notwithstanding the requirements in paragraph (a)(3) of this section, a student may receive a PAS if the student's secondary school does not offer the necessary coursework required in paragraph (a)(3) of this section, and the student has completed the required coursework at another local secondary school or at a community college.

(d) Notwithstanding the requirements in paragraph (a)(3)(v) of this section, a student may receive a PAS if the student is—

(1) Fluent in a language other than English and participates in a program to learn English; or

(2) An English-speaking student who is fluent in a second language.

(Authority: 20 U.S.C. 1070a–33, 1070a–35, 1070a–36(c))

§ 691.17 Eligibility requirements to continue to receive an award.

(a) To be eligible to continue to receive a PAS after the first year of postsecondary study, a student shall—

(1) Continue to meet the eligibility requirements in § 691.16(a) (1) and (2); and

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(2) Fulfill the requirements for satisfactory academic progress as described in 34 CFR in 668.7(c) (the Student Assistance General Provisions regulations) and section 484(c) of the HEA.

(b) If a student ceases to be eligible for a PAS because he or she is no longer eligible for a Federal Pell Grant, the student can later regain eligibility to receive a PAS at the time he or she qualifies for a Federal Pell Grant.

(Authority: 20 U.S.C. 1070a–33)

Subparts C–E—[Reserved]

Subpart F—Determination of Awards

§ 691.61 Disbursement conditions and deadlines.

(a) *Submission process.* An institution makes a disbursement of a PAS to a student only if—

(1) The student submits a valid SAR to the institution; or

(2) The institution obtains a valid ISIR for that student; and

(3)(i) The student presents a certificate issued by an appropriate official of a high school in a State verifying that the student has completed the necessary coursework to qualify for a PAS; or

(ii) The student presents written documentation that he or she has participated in an approved eligible early-intervention program for at least 36 months or qualifies for an exception under §§ 691.16(b).

(4) In determining a student's eligibility to receive his or her Federal Pell Grant, an institution is entitled to rely on valid SAR information or valid ISIR information except under the conditions set forth in 34 CFR 668.14(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in 34 CFR 668.60, for a student to receive a PAS award for an award year, the student must submit the relevant parts of the SAR to his or her institution or the institution must obtain a valid ISIR—

(1) While the student is still enrolled and eligible for payment at that institution; and

(2) By June 30 of that award year.

(Authority: 20 U.S.C. 1070a–32)

§ 691.62 Calculation of a Presidential Access Scholarship Program award.

The amount of a student's PAS for an academic year is equal to 25 percent of the student's Federal Pell Grant awarded for that academic year as determined under 34 CFR 690.62 except that—

(a) If funding in a fiscal year is sufficient to fund fully all eligible student awards in that academic year, no payment shall be made to a full-time student of less than $400 for an academic year, independent of the amount of the Federal Pell Grant.

(b) If funding is insufficient to fund fully all eligible students, the Secretary reduces each student's award in proportion to the amount that the PAS Program is not fully funded.

(Authority: 20 U.S.C. 1070a–32)

§ 691.63 Calculation of a Presidential Access Scholarship for a payment period.

For an eligible student enrolled in an institution of higher education in an eligible program, the student's PAS for each payment period is calculated by—

(a) Determining his or her total PAS award in accordance with § 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with § 690.63.

(Authority: 20 U.S.C. 1070a–32)

§ 691.64 Calculation of a Presidential Access Scholarship for a payment period that occurs in 2 award years.

(a) If a student enrolls in a payment period that is scheduled to occur in 2 award years—

(1) The entire payment period must be considered to occur within 1 award year.

(2) The institution shall determine for each PAS recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than 6 months scheduled to occur within 1 award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment that will result in the student receiving more than his or her Scheduled PAS for an award year.

(Authority: 20 U.S.C. 1070a–32)

§ 691.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a PAS at one institution subsequently enrolls at a second institution in the same award year, the student may receive a PAS at the second institution only if—

(1) The student has submitted a valid SAR; or

(2) The second institution participates in the Secretary's electronic programs to report Federal Pell Grant disbursement data electronically to the Secretary and the second institution has obtained a valid ISIR, in which case the institution shall use the information from the valid ISIR to determine the amount of the student's award. (The institution shall follow the procedures set forth in 34 CFR 668.19 relating to financial aid transcripts.)

(b) The second institution shall calculate the student's award according to § 691.63.

(c) The second institution may pay a PAS only for that portion of the award year in which a student is enrolled at that institution. The scholarship amount must be adjusted, if necessary, to ensure that the scholarship award does not exceed the percentage of the award remaining from the student's first institution for that award year.

(d) If a student's PAS award at the second institution differs from the Scheduled PAS Award at the first institution, the award amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the PAS award at the first institution to determine the percentage of the PAS award that the student has received.

(2) The percentage in paragraph (d)(1) of this section is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled PAS award at the second institution to which the student is entitled.

(e) The student's PAS award for each payment period is calculated according to the procedures in § 691.63, unless the remaining percentage of the Scheduled PAS at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's PAS is equal to the remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled PAS.

(Authority: 20 U.S.C. 1070a–32)

§ 691.66 Correspondence study.

For an eligible student enrolled in an institution of higher education in an eligible program of correspondence study, the student's PAS for each payment period is calculated by—

(a) Determining his or her total PAS award in accordance with § 691.62; and

(b) Determining the amount of each payment based on the payment amount for a Federal Pell Grant as calculated in accordance with § 690.66.

(Authority: 20 U.S.C. 1070a–32)

Subpart G—Institutional Administration

§ 691.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that it may calculate and pay PAS awards to students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.72 Institutional participation agreement.

The Secretary may enter into an agreement with an institution of higher education pursuant to which the institution will calculate and pay PAS awards to its students.

(Authority: 20 U.S.C. 1070a–32)

§ 691.73 Termination of institutional participation agreement.

When an institution is terminated under 34 CFR 668.86, the institution shall provide the following information to the Secretary—

(a) The name and enrollment status of each eligible student who submitted a valid SAR or for whom the institution received a valid ISIR before the termination date.

(b) The amount of funds the institution paid to each PAS recipient before the termination date.

(c) The amount due each student eligible to receive a PAS through the end of the award year.

(d) An accounting of PAS expenditures to the date of termination.

(Authority: 20 U.S.C. 1070a–32)

§ 691.74 [Reserved]

§ 691.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a PAS to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as eligible to receive a Federal Pell Grant and as an eligible student under §§ 691.16 or 691.17 for a continuing student;

(2) Is enrolled as an undergraduate student; and

(3)(i) Has completed required clock hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a PAS, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

(b) If an eligible student submits a valid SAR to the institution or the institution receives a valid ISIR for that student and that student then becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination before the end of the payment period, the institution may pay a PAS to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress but reverses that determination after the end of the payment period, the institution may neither pay the student a PAS for that payment period nor make adjustments in subsequent PAS payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency, or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a–32)

§ 691.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a–32)

§ 691.77 [Reserved]

§ 691.78 Method of disbursement by check or credit to a student's account.

(a) (1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or her account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b) (1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution shall return to the Secretary any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d) (1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the PAS award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the rights to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Authority: 20 U.S.C. 1070a–32)

§ 691.79 Recovery of overpayments.

(a) (1) A student is liable for any PAS overpayment made to him or her.

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(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore those funds to the Secretary even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and

(2) If unsuccessful, providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: 20 U.S.C. 1070a–32)

§ 691.80 Recalculation of a PAS Program award.

(a) The institution shall recalculate a PAS award for the entire award year if the student's Federal Pell Grant changes at any time during the award year for any reason specified in § 690.80, including changes in enrollment status, EFC, or cost of attendance.

(b) The institution shall adjust the student's award when an overaward or underaward is caused by the change in the Federal Pell Grant award. That adjustment must be made—

(1) Within the same award year—if possible—to correct any overpayment or underpayment; or

(2) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(Authority: 20 U.S.C. 1070a–32)

§ 691.81 Fiscal control and fund accounting procedures.

(a) (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of PAS funds in accordance with generally accepted accounting principles.

(b) A separate bank account for PAS funds is not required. However, the institution shall notify any bank in which it deposits PAS funds of all accounts in that bank in which it deposits Federal funds.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay PAS funds to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Authority: 20 U.S.C. 1070a–32)

§ 691.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) that include the fiscal and accounting records that are required under § 691.81, records required for audits in 34 CFR 668.23, the SAR or ISIR of each student receiving a PAS, and records indicating—

(1) The eligibility for a PAS of all enrolled students who have submitted valid SARs or valid ISIRs to the institution;

(2) The name and social security number of and the amount of the PAS award paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's enrollment period; and

(6) Documentation of a student's eligibility for any part of a second Scheduled Federal Pell Grant award in any award year.

(b) Each institution shall retain any completed applications and any other documents submitted by a student to the institution under § 690.14(c) if the application information is transmitted to the Secretary under EDE.

(c) (1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for 5 years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(d) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(e) An institution may substitute microform copies or other media formats acceptable to the Secretary, as published in a notice in the **Federal Register**, in lieu of original records in meeting the requirements of this section.

(Authority: 20 U.S.C. 1070a–32)

§ 691.83 Submission of reports.

(a) (1) An institution may receive either a payment from the Secretary for an award to a PAS recipient or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable if—

(i) The institution submits to the Secretary all SAR Payment Documents (or the equivalent as defined by the Secretary) for that award in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the scholarship is made, and

(ii) The Secretary accepts those SAR Payment Documents.

(2) The Secretary accepts SAR Payment Documents that are submitted in accordance with procedures established through publication in the **Federal Register** and that contain information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive payment or reduction in accountability only as provided in paragraph (c) of this section.

(b) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant and a resulting change in a PAS for which a student qualifies by submitting to the Secretary an SAR Payment Document reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(c)(1) An institution that has timely submitted an SAR Payment Document for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, an SAR Payment Document necessary to document the full amount of the PAS award to which the student is entitled may receive a payment or reduction in accountability in the full amount of that award if—

(i) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrated to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Document timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an overpayment for that award that is at least $100.

(2) An institution that has timely submitted and has accepted an SAR Payment Document for a student in accordance with this section shall report a reduction in the amount of a PAS award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(3) The Secretary pays or recognizes a reduction in accountability under this paragraph after deducting the amount of any overpayments for which the institution is liable under § 691.79(a).

(d) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements in paragraph (a), (b), or (c) of this section.

(e)(1) Notwithstanding paragraphs (a), (b), (c)(1) or (2), or (d) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided PAS Program scholarships in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraph (e) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report as initially submitted to the Department that was conducted after December 31, 1988 and timely submitted in accordance with 34 CFR 668.23(c), with respect to grants made during the period of that audit.

(3) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a–32, 1094, 1226a–1)

Subpart H—Administrative Responsibilities of a State

§ 691.90 Early-intervention agreement.

For a student to receive a PAS, the State agency in the State in which the student resides shall have entered into a one-time written agreement with the Secretary, except that a State must submit a subsequent agreement if the Secretary subsequently requires changes in this initial agreement. Each State's agreement must be approved by the Secretary and must include provisions designed to ensure the following:

(a) All secondary school students in the State have equal and easy access to the coursework described in § 691.16(c) and 406C(a)(2) of the HEA.

(b) The State agency has procedures in place to verify to the Secretary that—

(1) A student receiving a PAS has taken the coursework described in § 691.16(c);

(2) The coursework described in § 691.16 is of a college preparatory level; and

(3) The State requires all secondary schools in the State to issue a certificate to each eligible student certifying that the student has completed the necessary coursework to qualify for a PAS.

(c) The State agency has procedures in place to notify institutions of higher education of the availability of the PAS so that the institutions may award additional scholarships in concert with the PAS. The State agency has procedures to inform junior high school students enrolled in public or private schools and their families about—

(1) The value of postsecondary education;

(2) The availability of student aid to meet college expenses; and

(3) The availability of a PAS for students from low- and moderate-income families who take academically demanding courses.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority 20 U.S.C. 1070a–36)

§ 691.91 Records a State must maintain.

(a) The State agency shall maintain written procedures and records to support the information supplied in the early-intervention agreement in § 691.90 and the Governor's certification of other eligible early intervention programs.

(b) The State agency shall maintain the written procedures and records required under this subpart for a period of five calendar years from the end of the award year to which the records relate.

(Approved by the Office of Management and Budget under control number 1840–0681)

(Authority: U.S.C. 1070a–36)

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Part IV

Environmental Protection Agency

40 CFR Part 763
Asbestos Worker Protection; Asbestos-Containing Materials in Schools; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPPTS–62125; FRL–3801–3]

RIN: 2070–AC66

Asbestos Worker Protection; Asbestos-Containing Materials in Schools; Proposed Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Asbestos Abatement Projects; Worker Protection Rule (EPA WPR), by incorporating revised Occupational Safety and Health Administration (OSHA) asbestos workplace standards issued since the EPA WPR was promulgated in 1987. The proposed rule would generally extend the coverage provided under the 1986 OSHA Asbestos Standard for Construction to State and local government employees who are not covered by OSHA- or EPA-approved State plans. (The EPA WPR now applies solely to asbestos abatement projects). EPA also proposes to extend coverage provided under the OSHA Asbestos Standard for General Industry for automotive brake and clutch repair. The proposed revisions to the EPA WPR do not include final amendments to the OSHA asbestos standards published in the **Federal Register** of August 10, 1994. EPA intends to expedite additional rulemaking that would extend provisions of the new amendments to the OSHA asbestos standards as they apply to the public sector worker population covered by the EPA WPR. The proposed rule would also clarify that State and local government employees include prisoners and students employed in State and local government construction, or vehicular maintenance work where asbestos exposure may be encountered in the workplace. EPA also proposes to delegate authority to grant or deny State exclusions under the WPR to EPA Regional Administrators, and to add compliance and enforcement requirements for State exclusions. In addition, EPA is proposing to amend the Asbestos-Containing Materials in Schools Rule (Asbestos in Schools Rule), issued under Title II of the Toxic Substances Control Act (TSCA), the Asbestos Hazard Emergency Response Act (AHERA), by deleting certain worker protection provisions extended through the Asbestos in Schools Rule, under the EPA WPR, and by incorporating all worker protection provisions in the EPA WPR.

DATES: Written comments must be received by EPA no later than January 3, 1995. If a person requests time for oral comment by January 3, 1995, EPA will hold an informal hearing in Washington, DC. If a hearing is requested, the exact time and location of the hearing will be published in the **Federal Register**.

ADDRESSES: Comments should be submitted in triplicate to: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–62125.

Comments containing confidential business information (CBI) should be submitted in triplicate to: TSCA Document Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, E–G99, 401 M St., SW., Washington, DC 20460, Attention: OPPTS–62125. A sanitized copy of comments for which confidentiality claims are made must be provided in triplicate to the TSCA Nonconfidential Information Center (NCIC), also know as, the TSCA Public Docket Office. Unit XIV of this preamble contains additional information about CBI claims.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to regulate a chemical substance or mixture if EPA finds that the manufacturing, processing, distribution in commerce, use, or disposal of the substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those in section 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture, or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

The asbestos present in public buildings, or in vehicles or other products owned and maintained in public buildings, was sold as a commercial product. Therefore, construction work or brake repair is commercial activity, subject to section 6(a)(5) of TSCA. The removal of asbestos is considered disposal for commercial purposes subject to section 6(a)(6).

Section 203 of TSCA (TSCA Title II, AHERA), requires EPA to promulgate regulations for inspection of, and appropriate response to, asbestos-containing materials in schools that are under the authority of local educational agencies.

Sections 6 and 203 of TSCA authorize EPA to promulgate regulations to protect State and local government employees who engage in asbestos work activities who are not otherwise covered under OSHA's Asbestos Standard for the Construction Industry (29 CFR 1926.58), OSHA's Asbestos Standard for General Industry (20 CFR 1910.1001), or OSHA-approved State plans that implement OSHA regulations.

II. Background

In 1987, EPA promulgated the Asbestos Abatement Projects; Worker Protection Rule (EPA WPR), which extended to State and local government employees engaged in asbestos abatement projects the provisions of the revised OSHA Asbestos Standard for Construction. The 1987 WPR, which replaced the 1986 WPR, provided additional coverage to State and local government abatement workers by incorporating the revised asbestos workplace standard permissible exposure limit (PEL) of 0.2 fibers/cubic centimeters of air (0.2 f/cc), averaged over an 8–hour day, among other revisions.

In the 1987 WPR, EPA retained, in §§ 763.120, 763.124, 763.125, and 763.126, the same language concerning the scope of the WPR, reporting requirements, enforcement, and inspections as in the 1986 WPR. However, in the 1987 WPR, EPA replaced § 763.121 of the 1986 WPR and established new requirements for the protection of State and local government asbestos abatement workers, and in § 763.122, provisions for States to be excluded from the WPR if States had regulations that are at least as stringent as the WPR.

The OSHA Asbestos Standards were challenged in a lawsuit in 1987. In 1988, the U.S. Court of Appeals for the District of Columbia upheld the OSHA standard in most respects, but remanded several issues (*BCTD, AFL-CIO v. Brock*, 838 F.2d 1258 (D.C. Cir., 1988)). In partial response, on September 14, 1988 (53 FR 35629), OSHA issued an amendment which established a short-term exposure (or excursion) limit and other minor changes. On December 20, 1989 (54 FR 52024), OSHA issued an amendment to the Asbestos Standard in response to three of the Court remand issues that: (1) Rescinded OSHA's ban on the spraying of asbestos; (2) clarified when construction employers must resume periodic monitoring; and (3) deferred clarification of the small-scale, short-duration exemption in the construction industry to a later rulemaking.

On February 5, 1990 (55 FR 3724), OSHA issued another amendment to the OSHA Asbestos Standards in response to the second group of court remand issues that: (1) Expanded its ban on workplace smoking and increased training requirements covering the availability of smoking control programs; (2) strengthened warning signs and label requirements; and (3) explained how and why OSHA's respirator requirements reduced employee risk below that remaining at the PEL. OSHA has published a proposed rule (55 FR 29712, July 20, 1990) to address the remaining remand issues.

III. Relationship of the EPA WPR to the OSHA Asbestos Standard for Construction

EPA first issued its Worker Protection Rule in 1986 to apply to asbestos abatement projects using State and local government employees not covered by the OSHA Asbestos Standard for Construction or by OSHA-approved State plans. The EPA WPR was revised in 1987, generally incorporating and applying provisions of the 1986 OSHA Asbestos Standard for Construction to State and local government employees engaged in asbestos abatement projects.

However, the 1987 EPA WPR differs from the OSHA Asbestos Standard for Construction in several areas, discussed in this unit and in unit V. of this preamble, as a result of EPA's more limited scope of coverage and/or EPA's own assessment of the relative merits of various methods for controlling hazards to workers.

OSHA's 1986 Asbestos Standard for Construction applies generally to all "construction work" where asbestos is present, as defined under 29 CFR 1910.12(b) and 1926.58(a). In contrast, EPA's 1987 WPR applies only to asbestos abatement projects using State and local government employees who are not otherwise covered by the OSHA Asbestos Standard for Construction, or under OSHA- or EPA-approved State plans. Unlike the OSHA Asbestos Standard for Construction, the 1987 EPA WPR defines "asbestos abatement projects" as any activity involving the removal, enclosure, or encapsulation of friable asbestos material. The activities included in the definition of "asbestos abatement projects" are a subset of the definition of "construction work" in the OSHA Asbestos Standard for Construction.

The 1987 EPA WPR also differs from OSHA's Asbestos Standard for Construction in retaining the 1986 reporting requirements for asbestos abatement projects covered by this proposed rule. Under § 763.124, employers, with certain exceptions, must notify EPA that they intend to undertake an asbestos abatement project covered by the rule at least 10 days before they begin abatement, except one that involves less than either 3 linear or 3 square feet of friable asbestos material, or an emergency project. EPA considers these requirements necessary to monitor compliance with the general provisions of the rule. OSHA has proposed certain notification requirements under its proposed revision to the Asbestos Standard for Construction (55 FR 29712, July 20, 1990). The revisions would require a notification, comparable to that presently required under the EPA WPR, by any employer planning to perform any work covered by the OSHA Asbestos Standard for Construction.

The definition of "asbestos" in the 1986 EPA WPR, and retained in the 1987 WPR, differs from that defined in the OSHA asbestos standard. The definition of "asbestos" in the OSHA standard does not distinguish between the asbestiform and nonasbestiform varieties of minerals. The definition in the EPA WPR applies only to the asbestiform varieties of the asbestos minerals and is consistent with definitions of asbestos adopted by EPA in other regulations, including an Advance Notice of Proposed Rulemaking (ANPR), published in the **Federal Register** of October 17, 1979 (44 FR 60061), Notice of Proposed Rulemaking, published January 29, 1986 (51 FR 3738), and in the Final Rule, published July 12, 1989 (54 FR 29460), Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions.

The 1987 WPR also differs from the OSHA Asbestos Standard for Construction [29 CFR 1926.58), in that several appendices to the OSHA standard were omitted.

The proposed revisions to the EPA WPR do not include final amendments to the OSHA asbestos standards published in the **Federal Register** of August 10, 1994 (59 FR 40963). EPA intends to expedite additional rulemaking to extend provisions of the new amendments to the OSHA asbestos standards that would be applicable to the public sector worker population covered by the EPA WPR.

IV. Relationship of the Asbestos in Schools Rule to the EPA WPR

The current (1987) EPA WPR covers State and local government employees, including employees of public schools, who are involved in asbestos abatement projects (40 CFR 763.121(b)). The Asbestos in Schools Rule, issued under the authority of AHERA, extends coverage of the WPR to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities (40 CFR 763.91 (b)). Private school employees, performing asbestos abatement and O&M work are covered by OSHA's Asbestos Standard for Construction, as are other private sector employees.

Since public school employees would be covered directly under the EPA WPR, as well as all other public sector employees, Appendix B to Subpart E of the Asbestos in Schools Rule (40 CFR 763.80) would be moved from Subpart E and incorporated in the WPR as Appendix G to Subpart G. Appendix B to Subpart E is comparable to Appendix G of the OSHA Asbestos Standard for Construction (Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities - Non-mandatory).

V. Extended Training Requirements of the Asbestos Model Accreditation Plan (MAP) Under the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA)

AHERA required States to adopt, through an EPA-established Model Accreditation Plan (MAP), minimum training requirements for persons performing asbestos inspections, preparing management plans, designing asbestos abatement plans, or conducting asbestos abatement projects in schools. The Asbestos School Hazard Abatement Reauthorization Act of 1990, (ASHARA), amended AHERA to require EPA to revise the MAP, expand the scope of training, and extend certain of the training and accreditation requirements that apply to schools to public and commercial buildings. This requirement took effect on November 28, 1992. Thus, some State and local government employees covered by the EPA WPR for abatement projects currently need training specified by the MAP.

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In order to avoid duplication of training, EPA will consider MAP contractor/supervisor accreditation sufficient to meet the training requirements for competent persons specified in § 763.121(e)(6)(iii) of the regulatory text, and MAP worker training sufficient for compliance with the employee training requirements specified in § 763.121(k)(3).

Interested parties are encouraged to consult the **Federal Register** of February 3, 1994 (59 FR 5236), or EPA Docket OPPTS–62107A, for more information on the expansion of asbestos MAP training and accreditation requirements to workers in public and commercial buildings.

VI. Proposed Amendments to 1987 EPA WPR

This unit of the Preamble discusses proposed revisions to the 1987 EPA WPR. The major changes include:

- Adopting provisions from the current OSHA Asbestos Standards to add an excursion limit to regulate short-term exposure to asbestos, delete the ban on spray application of asbestos-containing materials, expand the regulation of smoking activities, and provide information about smoking cessation programs.
- Deleting exemptions from initial air monitoring and labeling based upon certain conditions.
- Expanding covered work activities from asbestos abatement work to construction work and to brake and clutch repair workers.
- Adding appendices to govern work practices for construction and brake and clutch repair work.
- Correcting the scope of the exemption triggers associated with small-scale, short duration operations.
- Delegating authority and modifying procedures for approving State plans governing asbestos worker protection.

Each of these proposed changes is discussed in detail in unit A. below.

A. Incorporation of Additional Provisions Under the OSHA Asbestos Standard for Construction

This proposed amendment to the EPA WPR would add the same Excursion Limit of 1.0 fibers per cubic centimeter of air (f/cc) (averaged over a sampling period of 30 minutes) as issued under the OSHA PELs for occupational exposure to asbestos in the Asbestos Standard for General Industry (29 CFR 1910.1001) and in the Asbestos Standard for Construction (29 CFR 1926.58). The excursion limit will be codified in a new paragraph (c)(2), *Excursion Limit*, under § 763.121(c), "Permissible Exposure Limits (PELs)."

Requirements would be added in § 763.121 in the following paragraphs when concentrations of asbestos exceed the excursion limit: § 763.121 (e) Regulated Areas, (f) Exposure Monitoring, (g) Methods of Compliance, (h) Respiratory Protection, (i) Protective Clothing, (j) Hygiene Facilities and Practices, (k) Communication of Hazards to Employees, (m) Medical Surveillance, and (n) Recordkeeping.

In addition, as consistent with the changes adopted by OSHA (54 FR 52024, December 20, 1989), this proposed amendment would clarify "resumption of monitoring requirements in the construction industry" and add a new provision for "additional monitoring" under § 763.121(f).

Section 763.121(e)(6)(iii)(A) would be revised to state that training shall be provided by an EPA- or State- approved training provider, or an equivalent course.

Section 763.121(g)(2) *Prohibitions* would be amended by deleting paragraph (iii) prohibiting the spray application of asbestos-containing materials. In its 1986 Asbestos Standard, OSHA banned the spray application of asbestos-containing products (29 CFR 1910.1001(f)(1)(vii) and 1926.58(g)(2)(iii)). This provision, however, was remanded to OSHA by the D.C. Circuit Court on October 30, 1989. OSHA subsequently amended the regulatory text of the 1986 standard by deleting the prohibition on the spray application of asbestos-containing products (54 FR 52024, December 20, 1989). Based on the rulemaking record of the 1986 standard, OSHA concluded that deleting this prohibition would not significantly increase the risk to workers. The PEL and excursion limit in the rule apply to all asbestos operations, including spraying.

In addition, certain spray applications of asbestos-containing materials are regulated under the EPA National Emission Standard for Hazardous Air Pollutants (NESHAP). The asbestos NESHAP, which was issued on April 6, 1973, prohibits the spray application of materials that contain more than 1 percent asbestos on buildings, structures, pipes, and conduits (40 CFR 61.146 (a)). Paragraph 61.146 (b) of the standard requires no visible emissions from spray application of materials that contain more than 1 percent asbestos on equipment and machinery.

Under § 763.121(j) *Hygiene Facilities and Practices*, paragraph (j)(3) *Smoking in work areas* would be added which prohibits smoking in work areas where workers are occupationally exposed to asbestos because of activities in that work area (55 FR 3724, February 5, 1990).

Under § 763.121(k) *Communication of hazards*, requirements would be added to provide information about smoking cessation programs and materials. Under § 763.121(m), a statement would be required that the employee has been informed by a physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

Subpart G would be amended to incorporate a new Appendix J - "Smoking Cessation Program Information for Asbestos Non-Mandatory." Appendix J was added to 29 CFR 1926.58 - OSHA's Asbestos Standards for General Industry and for Construction - in the February 5, 1990 (55 FR 3724) amendment to the rule.

B. Proposed Deletion of Certain Exemptions From Initial Monitoring and Label Requirements

Sections 763.121 of the WPR and 1926.58 of the OSHA Asbestos Standard for Construction, paragraphs (f)(2) *Initial Monitoring* and (k)(2) *Labels*, provide for certain exemptions from initial monitoring and label requirements. EPA is considering deleting certain of these exemptions.

Section 763.121(f)(2)(i) specifies that each employer who has a workplace or work operation covered by this subpart, except as provided for in paragraphs (f)(2)(ii) and (iii), shall perform initial monitoring at the initiation of each asbestos job to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

Section 763.121(f)(2)(ii) exempts an employer from initial monitoring requirements *provided that* the employer may demonstrate that employee exposures are below the action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos. EPA is considering whether to delete this exemption and seeks comment on whether this exemption should be retained or deleted.

EPA is not aware of objective criteria and therefore seeks comments on criteria that would be needed to demonstrate a product will not release asbestos fibers in excess of the action level under any reasonably foreseeable conditions of use, handling, storage, disposal, processing, or transportation. The lack of criteria to determine what constitutes "objective data," such as testing requirements, by a manufacturer to demonstrate low fiber release potential from a product that will not exceed the action level, makes it more difficult to enforce this provision.

In any case, EPA would retain § 763.121(f)(2)(iii) which exempts employers from initial monitoring requirements of paragraph (f)(2)(1) based upon earlier monitoring results. This exemption is available if the employer has data from monitoring previous asbestos jobs that closely resemble the current operation. EPA believes that this exemption, provides more direct guidance to the regulated community, and provides more reliable data for the purposes of compliance with the provisions of the exemption.

Under the WPR, § 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B), employers are exempt from the label requirements specified in paragraph (k)(2)(i), provided that manufacturers can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transport, no airborne concentrations of asbestos fibers in excess of the action level will be released, or that asbestos is present in a product or material in concentrations less than 0.1 percent by weight.

EPA is considering whether to delete the exemption provisions at §§ 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B) and seeks public comments on this proposal. EPA believes that exemption from requirements for labeling by manufacturers may lead State and local government employers subject to the rule to mistakenly assume that the material is incapable of releasing asbestos fibers and that initiation of workplace monitoring for asbestos exposure is unnecessary. If the product is not properly labeled, there is an increased risk that the asbestos-containing material may not be handled in accordance with prescribed work practices for operation and maintenance and other related asbestos work activities.

If EPA deletes the exemptions at § 763.121(f)(2)(ii) and § 763.121(k)(2)(vi)(A) and (k)(2)(vi)(B), the requirement under § 763.121(n)(1)(i) through (n)(1)(iii), recordkeeping of objective data for exempted operations, would also be deleted. However, employers would, under § 763.121(n)(2)(i) through (n)(2)(iii), continue to be required to retain accurate records of the data from earlier monitored jobs that the employer relied on for exemption.

C. Extended Scope of Coverage

The EPA WPR presently applies solely to asbestos abatement projects. The proposed amendment to the WPR would, under § 763.120(a), extend the scope of coverage to all asbestos "construction work," as defined under the OSHA Asbestos Standard for Construction, 29 CFR 1910.12(b). "Construction work" includes work for construction, alteration and/or repair, including painting and decorating, as specified in 29 CFR 1926.58(a). "Construction work," as defined in 29 CFR 1910.12(b) includes, but is not limited to, (1) Demolition or salvage of structures where asbestos is present; (2) removal or encapsulation of materials containing asbestos; (3) construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos; (4) installation of products containing asbestos; (5) asbestos spill/emergency cleanup; and (6) transportation, disposal, storage, or containment of asbestos on the site or location at which construction activities are performed.

Section 763.120 would be amended by revising paragraph (a), and by adding paragraphs (b), (c), and (d). Section 763.120(a) would establish requirements that State and local government employers subject to the EPA WPR must follow to protect employees during construction work where asbestos is present and during automotive brake and clutch repair and service operations. Section 763.120(b) would establish work practices and controls that employers may follow in special circumstances as an alternative to complying with all the requirements of § 763.121. Appendices F and G contain alternative practices and controls for certain types of construction work. Appendix K contains alternatives for brake and clutch work. These alternatives are designed to achieve employee exposure to asbestos below the action level of 0.1 f/cc. If an employer utilizes the work practices and controls as specified in the appropriate appendix, and achieves an exposure below the action level, then the employer would be able to avoid the regulatory burdens under § 763.121 that are triggered by exposures to asbestos that exceed the rule's action level or PEL. Section 763.120(c) specifies applicability under the EPA WPR. Section 763.120(d) extends protections established in this part to all State and local government employees, including employees who are prisoners or students, of all State and local governments subject to the EPA WPR.

In light of the proposed extended scope of coverage under the WPR, § 763.121(b) *Definitions* would be amended by adding definitions for "automotive brake repair operations," as defined in the OSHA Asbestos Standard for General Industry (29 CFR 1910.1001), and "construction work," as defined in the OSHA Asbestos Standard for Construction (29 CFR 1910.12(b) and specified in 29 CFR 1926.58(a)). The definition for "asbestos abatement project" would be deleted, since asbestos abatement activities are incorporated within the definition of "construction work." The definition of "friable asbestos material" would also be deleted from the EPA WPR because the scope of coverage would be expanded to cover all asbestos construction activities involving all asbestos-containing materials and would not be limited to abatement work involving "removal, enclosure, or encapsulation of friable asbestos material." Removal of friable asbestos-containing material also would be deleted from the definition of "emergency project."

D. Incorporation of Appendix F to 29 CFR 1910.1001 the OSHA Asbestos Standard for General Industry—as Appendix K to Subpart G

The 1986 OSHA Asbestos Standard for General Industry regulates brake and clutch repair operations under 29 CFR 1910.1001 and Appendix F to the standard. EPA would extend the same protections by incorporating them into the regulatory requirements of § 763.121 and Appendix K.

Workplace practices specified in proposed Appendix K to the EPA WPR are intended as employer guidance for reducing employee exposures to asbestos during automotive brake and clutch repair operations to levels below the action level of 0.1 fiber per cubic centimeter (0.1 f/cc) of air. Employers who follow the recommended work practices in Appendix K and who achieve employee workplace exposures below the action level, would be able to avoid the burden that might be imposed by complying with such requirements as medical surveillance, recordkeeping, training, respiratory protection, and regulated areas, that are triggered when employee exposures exceed the action level or PEL.

E. Incorporation of Appendices F, H, I, and J to 29 CFR 1926.58 of the OSHA Asbestos Standard for the Construction Industry in Subpart G

The following appendices to the OSHA Asbestos Standard for Construction would be incorporated in subpart G as Appendices F, H, I and J: Appendix F (Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operators - Non-Mandatory), Appendix H (Substance Technical Information for

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Asbestos, Non-Mandatory), Appendix I (Medical Surveillance Guidelines for Asbestos, Non-Mandatory), and Appendix J (Smoking Cessation Program Information for Asbestos - Non-Mandatory).

Minor revisions would be made to current Appendices A, B, C, D, and E to the EPA WPR and to new Appendices H and I to the EPA WPR. New Appendix F to the EPA WPR, which is comparable to Appendix F to the OSHA Asbestos Standard for Construction, would include several revisions. The paragraphs which describe work practices would be re-ordered. Figures depicting equipment and diagrams would also be deleted, and Demolition and Clearance checklists would be relabeled as Tables A and B. In addition, procedures outlined in the section, Cleaning the Work Area, under Appendix F, would be revised to conform to the procedures for cleaning the work area contained in Appendix A to part 763, subpart E, of the Asbestos in Schools Rule.

F. Incorporation of Appendix B to Subpart E as Appendix G to Subpart G of the EPA WPR

This proposed amendment would delete Appendix B from the Asbestos in Schools Rule and incorporate it, with minor changes, in the EPA WPR as Appendix G to Subpart G, because public school employees would now be covered directly under the EPA WPR for all "construction work," as defined in the OSHA Asbestos Standard for Construction. This Appendix is comparable to Appendix G to 29 CFR 1926.58 - the OSHA Asbestos Standard for Construction.

Since the EPA WPR would extend coverage to all public sector employees (not just public school employees) engaged in small-scale, short-duration operations involving asbestos, Appendix G provides, in one place, provisions that all public sector employers subject to the EPA WPR, including local education agency employers, shall comply with if they wish to be exempt from the negative-pressure enclosure, competent person, clearance, and decontamination area requirements, specified in § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i) for small-scale, short-duration operations. Based on the OSHA record, the use of the work practices and engineering controls described in Appendix G are capable of reducing employee exposures to asbestos to levels below the rule's action level of 0.1 f/cc for workers engaged in small-scale, short-duration activities.

Finally, EPA proposes several minor revisions to the Appendix: (1) Language referring specifically to the Asbestos in Schools Rule would be deleted because the Appendix would apply to all construction work in public sector workplaces, not just to work in schools; and (2) language exempting employers from compliance with § 763.121(f)(2)(i) for small-scale, short-duration operations would be revised to correct a transcription error in the original Appendix B to the Asbestos in Schools Rule. When Appendix B was printed, the letter "f" was inadvertently substituted for ")", thus modifying the applicability of the exemption. The proposal would remove the incorrect reference to paragraph (f), and exempt employers that complied with the provisions of the proposed Appendix G from certain hygiene facility and practices requirements in § 763.121(j)(1)(i)(B) and (j)(2)(i).

VII. Proposed Amendment to the Asbestos in Schools Rule

EPA is proposing to amend the Asbestos in Schools Rule by deleting § 763.91(b) which extends coverage of the EPA WPR to employees of local education agencies who perform operations, maintenance and repair (O&M) activities. The Asbestos in Schools Rule would also be amended by deleting Appendix B and incorporating it as Appendix G to the EPA WPR.

Since the proposed EPA WPR would provide coverage for all construction work directly to employees of local education agencies, extension of coverage through § 763.91(b) would no longer be necessary. Section 763.91 (b) would refer readers to the WPR.

VIII. Exclusions for States

Section 763.122 - *Exclusions for States* - would also be amended to delegate authority from the EPA Administrator to the EPA Regional Administrators the authority to grant or deny State exclusions from the EPA WPR. In addition, the criteria for granting State exclusions would be expanded to require State Compliance and Enforcement Plans, and to clarify that EPA can rescind exclusions to States when State plans lack enforcement provisions.

States that currently have EPA-approved State Worker Protection Plans would have 6 months, or such other reasonable time as suggested by the particular State and approved by the applicable Regional Administrators, to make their regulations comparable to or more stringent than this revised part, and to submit their regulations to the appropriate EPA Regional Administrator for review. If States do not revise their regulations and submit them to EPA within such reasonable time after promulgation of the rule, State and local government employees in such States shall automatically be covered by the revised EPA WPR.

IX. Future Revisions to this Proposed Rule and Exclusions for States

EPA may make future amendments to the EPA WPR in order to apply coverage provided in future revisions to the OSHA Standards, or as other issues are identified by EPA.

X. Reporting

The present EPA WPR requires that employers must notify EPA at least 10 days before they commence any asbestos abatement project which involves greater than 3 linear feet, or 3 square feet of friable asbestos material. As proposed, employers would be required to notify EPA before they begin any "asbestos construction work" of 3 linear feet or greater, or 3 square feet or greater. The scope of required reporting would reflect the expanded scope of coverage under the WPR and would require reporting of all "construction work" where asbestos is present, except exempted small-scale operations or emergency projects, rather than the present reporting requirements limited to asbestos abatement projects.

XI. Regulatory Assessment

TSCA requires EPA to consider and publish a statement with respect to the effects on human health and the environment and the magnitude of exposure (section 6(c)(1)(B)). In developing the 1986 WPR and revised 1987 EPA WPR, EPA considered the requirements imposed by section 6(c)(1) of TSCA in order to determine whether asbestos exposure presents an unreasonable risk. Specifically, it considered the effects of asbestos on health and the environment. It also considered the benefits of the substance and the availability of substitutes and the reasonably ascertainable economic consequences of the EPA WPR. EPA incorporates the regulatory assessments made for the previous EPA WPR (51 FR 15724 and 52 FR 5618) and assesses in this document only the incremental changes introduced by this rule.

A. Health Effects and Magnitude of Exposure to Asbestos

1. *Health effects.* EPA classifies asbestos as a Group A carcinogen, i.e., a human carcinogen (sufficient evidence in human epidemiological studies supported by evidence of carcinogenic effects in several animal species).

(USEPA/ORD Airborne Asbestos Health Assessment Update, EPA/600/884/003F, June 1986. See also, USEPA/ORD: The Risk Assessment Guidelines of 1986, EPA/600/8-87/045, August 1987), the Annual Report on Carcinogens, National Toxicology Program, U.S. Department of Health and Human Services.)

In the preamble to the 1986 WPR (51 FR 15722, April 25, 1986), EPA reviewed the serious adverse human health effects associated with the use of asbestos, and incorporated that analysis in the 1987 WPR. This proposed rule incorporates that analysis and supporting documentation as well. The studies reviewed and incorporated in the 1986 WPR Docket (Docket No. OPPTS–62044A) include the "Report to the U.S. Consumer Product Safety Commission" (CPSC) by the Chronic Hazard Advisory Panel on Asbestos, "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule of Friable Asbestos-Containing Materials in School Buildings," and the "Report of the National Research Council Committee on Nonoccupational Health Risks of Asbestiform Fibers."

EPA finds that exposure to asbestos poses risk of adverse health effects. The effects of asbestos exposure have been examined in numerous human epidemiology studies and animal studies. Diseases associated with exposure to asbestos that have been identified include lung cancer, mesothelioma, gastrointestinal cancer, and cancers of other organs, as well as asbestosis, a disabling fibrotic lung disease. A detailed discussion of specific diseases associated with asbestos exposure, the estimated exposure to workers, and cancer risk extrapolation, is found in the preamble to the 1986 EPA WPR.

2. *Magnitude of exposure.* The current (1987) EPA WPR covers State and local government employees in the 27 States that do not have OSHA-approved State plans who are engaged in asbestos abatement projects only. The proposed WPR would expand the scope of coverage to include all construction and brake repair work where asbestos is encountered in public sector workplaces by State and local government employees in those States covered by the EPA WPR.

In the 1986 WPR, EPA estimated that asbestos abatement workers would be exposed to asbestos during abatement work, that other State and local public employees, including public school employees, public hospital staff, and State and local government office workers, would be exposed during abatement, and that other occupants and visitors would be exposed after abatement. These estimates are contained in the EPA support document for the 1986 Rule - "Asbestos Abatement Rules: A Preliminary Cost-Effectiveness Analysis. Revised Draft Report May, 1986" (Docket No. OPPTS-62044A). EPA found that the risk to State and local government abatement workers would be reduced by the protection provided by the WPR (51 FR 15722, April 25, 1986).

In the 1987 EPA WPR, EPA found that the revised rule would further reduce risk to public sector asbestos abatement workers because of the reduction in the PEL from 2.0 f/cc to 0.2 f/cc, and because of the requirement for additional work practices and protective equipment. (52 FR 5619, February 25, 1987).

The incremental impact of this proposed rule is presented in the Regulatory Impact Analysis (RIA) proposed for this rule (Asbestos Worker Protection Rule Regulatory Impact Analysis, Revised Draft Report. July 23, 1993. Contract #68–D2–0064). In the RIA, the number of State and local government employees engaged in construction work and brake and clutch repair in the 27 States that would be covered by the extended scope of coverage of this proposed rule is based on estimated "full-time equivalents" (FTEs) rather than actual numbers of employees. For example, two workers exposed to asbestos in their work activities one-half year each would total one FTE. The RIA assumes that public sector workers are not engaged in asbestos-related construction work and brake repair on a full-time basis and, thus, are not exposed to asbestos full-time in the workplace.

EPA examined three kinds of worker exposures: (1) Those associated with building maintenance work, (2) those associated with building renovation work, and (3) those associated with brake and clutch repair work. To simplify the construction sector analysis, EPA grouped several maintenance tasks together. Tasks involving work on lighting, heating ventilation, and air-conditioning systems were combined in this way, as were boiler/furnace repair and plumbing repair. Exposure estimates for these tasks were also grouped together.

To estimate the magnitude of exposure to employees affected by this proposed rule, EPA first estimated the number of buildings and motor vehicles owned by State and local governments in those 27 States without OSHA-approved State plans. EPA then estimated the frequency with which various kinds of projects involving asbestos exposure would be conducted, and the person-hours required per project. Finally, for construction work, EPA used these estimates of the number of projects and person-hours needed per project to estimate the number of FTEs associated with each type of project in buildings owned by State and local governments on an annual basis in the States covered by the EPA WPR. For brake and clutch repair, EPA derived the estimated number of public sector brake and clutch repair workers affected by using the following assumption. The ratio which exists between the number of workers exposed in automobile repair nationwide (b) and the number of private brake and clutch repairs performed (c) was assumed to be the same as the ratio between the number of public sector brake and clutch repair workers (x) and the number of brake and clutch repairs performed on government vehicles (a): (x/a = b/c).

The estimated number of FTE's in the 27 States that would be covered by the proposed EPA WPR are: 1,227 to 1,910 FTEs for maintenance activities, 2,022 FTEs for renovation work, and 9,692 FTEs for brake and clutch repair.

Because public sector workers in the 27 states without OSHA-approved state plans are not covered under existing regulations, monitoring data are not available on the exposure levels for this specific worker population under unregulated conditions. For this analysis, therefore, EPA assumes that the individual baseline asbestos exposure levels for state and local government employees are those estimated by OSHA in 1986 for private-sector workers conducting the same kinds of work under OSHA's 1986 2.0 f/cc PEL. OSHA's estimates are based on a variety of sources but rely principally on personal exposure monitoring data from OSHA's Integrated Management Information System (IMIS) and on sampling conducted for OSHA under contract.

Because public sector worker exposure to asbestos in the states covered by the EPA WPR is not controlled under existing regulations for construction work, other than abatement work, or for brake and clutch repair, actual exposures may exceed the level estimated in the RIA for this proposed rule. EPA assumes that present, unregulated, exposure levels exceed the PEL proposed in this document. In that case, state and local employers would be required to comply with the work practices proposed in the amendments to the EPA WPR once the rule is issued in order to reduce employee exposures to below the PEL and action level. The rule's benefits would result from the use

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of the work practices required by this proposed rule, which would reduce exposure levels below the proposed PEL to the levels indicated in the next paragraph. Although EPA believes exposures are higher, the benefits are measured only for the incremental decrease in exposure from the exposure levels estimated by OSHA in its 1986 asbestos standard, and not for the full reduction from present, unregulated, exposure levels. Accordingly, the true magnitude of exposure is not reflected in the benefits, which are, therefore, understated.

The baseline exposure levels estimated by OSHA in 1986 and used in this proposed rule to calculate benefits are as follows. Baseline exposure levels for maintenance work are estimated to range from 0.02 f/cc for flooring repair to 0.75 f/cc for drywall repair. Exposure levels for maintenance work under this proposed rule would range from 0.001 f/cc to 0.02 f/cc. Baseline exposure levels for renovation work range from 0.12 f/cc for built-up roofing to 0.34 f/cc for drywall demolition. Exposure levels for renovation work under this proposed rule would range from 0.0012 f/cc to 0.034 f/cc. The baseline exposure level for brake and clutch repair work is 0.06 f/cc, and exposures would be reduced to 0.015 f/cc by following the work practices in this proposed rule.

B. Benefits of Asbestos Products and Availability of Substitutes

EPA has considered both the benefits of asbestos for the uses regulated by the proposed rule and the availability of substitutes for those uses. EPA has concluded that the benefits of asbestos for such uses are minimal, and that there are substitutes available for those uses.

When EPA first promulgated the WPR in 1986, and later amended it in 1987, it concluded that the benefits of asbestos-containing products affected by the rule were minimal (51 FR 15722, April 25, 1986 and 52 FR 5618, February 25, 1987). EPA noted that the 1986 and 1987 rules applied only to asbestos abatement projects where persons had already decided to remove, enclose, or encapsulate friable asbestos-containing material (ACM). In such situations, EPA presumed that the persons had already determined that there were little or no benefits in using the ACM in its present condition.

EPA continues to believe that the proposed regulation would have little or no impact on any benefits associated with the uses of asbestos that are affected by the proposed revisions to the WPR. This is particularly true where the provisions concern work associated with the removal, enclosure, or encapsulation of ACM. Persons directing those activities presumably have decided that there are no benefits to continued use of the asbestos. The same reasoning applies to most other construction activities that would be governed by the resided WPR such as demolition and asbestos spill or emergency cleanup, as well as the transportation, disposal, storage, or containment that is associated with those activities or with asbestos abatement projects. It also applies to the removal of asbestos used in brakes and clutches. In all of those activities, the persons are getting rid of the ACM, and therefore have apparently decided that there are few, if any, benefits to the continued use of asbestos.

Even where the proposed rule would regulate the installation of asbestos-containing products during construction, EPA believes that there are few impacts on the benefits from such uses of asbestos. This proposed rule would not prevent anyone from using the products. The proposed rule would require some expenditures to comply with the additional safety practices, but as discussed in unit XII of this preamble, such costs are very small when considered in the context of existing State and local government expenditures for building maintenance.

EPA also believes that there are substitutes available for the asbestos uses that would be regulated by the revised WPR. In its 1986 rulemaking, OSHA concluded that the extensive tort litigation in the area of occupational exposure to asbestos and the awareness of the health effects associated with asbestos exposure had provided a strong incentive for producers and users of asbestos products to utilize substitutes. OSHA estimated that approximately 50 to 75 percent of producers of phenolic molding compounds have substituted other materials such as clay or fiberglass for asbestos. OSHA concluded that similar success had been achieved in the production of floor tile, where non-asbestos fibers and petrochemicals were being used, and in friction materials. OSHA noted that roofing felts, pipeline felts, and asphalt coatings have all been produced using fiberglass in place of asbestos fibers.

OSHA further noted that, in the past, the price of substitute materials had been much higher than the price of asbestos, but that the "full price" of using asbestos, which includes the potential cost of control methods, tort litigation, etc., had increased significantly. OSHA concluded, therefore, that the difference between the cost of using asbestos and the cost of using other substitute materials had diminished greatly and in many instances had disappeared entirely (*see* preamble to the 1986 OSHA Asbestos Standards - Availability of Substitutes - 51 FR 22651, June 20, 1986).

Inasmuch as the proposed EPA WPR neither proscribes nor prescribes the use of asbestos or substitutes for asbestos, the rule would have little, if any, impact on the availability of asbestos or require the use substitutes. However, persons who use ACM would be subject to the work practice requirements specified in this proposed rule in order to ensure that worker exposures do not exceed the PEL and action level.

C. Economic Effects of the Proposed Rule

Section 6(c)(1)(D) of TSCA requires EPA to determine the "reasonably ascertainable economic consequences of the proposed rule after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health." Based on the Regulatory Impact Analysis (RIA) developed in support of this proposed rulemaking action, EPA projects that the economic effects on State and local governments would be minimal and that the benefits to employees of State and local governments would be significant in terms of risk reduction.

EPA estimates that the total annualized cost to State and local governments of compliance with the proposed rule would range from $15.4 to $17.3 million. The annualized cost would be $3.1 million to $4.8 million for the maintenance sector, $11.8 million for the renovation sector, and $0.6 to 0.8 million for the brake and clutch repair sector. Costs are presented as a range because of uncertainties in the number and frequency with which repairs will have to be made in the maintenance and brake and clutch repair sectors. EPA believes that these are high estimates of the actual annual compliance costs that will be incurred in future years, because, as States and localities make repairs that involve asbestos, many will decide to replace the ACM with a substitute.

When these costs are considered in the context of state and local government budgets dedicated to building maintenance, the costs of the proposed rule are very small. The incremental compliance costs for the proposed rule in both the maintenance and renovation sectors would cause 0.21 to 0.24 percent increase in the costs of State and local government spending for building upkeep. States covered by the EPA WPR are already required to comply with worker protection requirements for public sector workers engaged in asbestos abatement projects. Such a minimal change in the cost of building maintenance is unlikely to have any significant impact on State and local government budgets.

Costs were also measured in terms of cost per cancer case avoided. The cost per case avoided was calculated by dividing the social cost of the rule by the number of cases potentially prevented by the rule over the next 30 years. Compliance with the proposed rule was estimated to prevent between 61 and 67 asbestos-related cancer deaths over 30 years at a social cost of $15,442,787 to $17,331,401 millon per year. Taking the mid-point of the benefits and cost ranges, for the rule as a whole, the average annualized cost per case avoided would be $5.1 million. In the maintenance sector, the cost per case avoided is estimated to be $5.6 million; in the renovation sector, the cost per case avoided is estimated at $7.1 million; and in the brake and clutch repair sector, the cost per case avoided is estimated to be between $0.7 and $0.9 million.

EPA believes the cost per case avoided is overstated in the maintenance and renovation sectors, because not all benefits are counted. The estimates do not account for the cancer cases that the proposed rule is likely to prevent among other building occupants and bystanders who are located in the vicinity of the asbestos maintenance and renovation projects covered by the proposed rule.

D. Evaluation of Other Statutes

Under section 6(c) of TSCA, EPA may not promulgate a rule under section 6(a) of TSCA if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA has analyzed other statutes administered by EPA and concludes that no other law administered by EPA will satisfactorily eliminate or reduce the risks to State and local government workers.

Under section 9(a) of TSCA, EPA is required to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce a given risk. This amendment would extend coverage only to persons not covered by other Federal laws. The only statute not administered by EPA that could reduce risks from workplace exposure to asbestos is the Occupational Safety and Health (OSH) Act, administered by OSHA. However, the OSH Act does not apply to State and local government employees. The OSH Act does provide that a state can implement its own state worker protection plan, subject to approval by the Secretary of Labor. Twenty-three States and two U.S. territories have implemented State plans. Twenty-seven States do not have OSHA-approved State plans. EPA has determined that there is no statute administered by another Federal agency that can prevent or reduce the risk of asbestos exposure presented to public sector employees not covered by the OSHA Asbestos Standards or by State plans during asbestos-related construction and brake and clutch repair work. EPA's analysis of this issue is in the preamble to the 1986 EPA WPR (51 FR 15722).

XII. Finding of Unreasonable Risk

TSCA section 6 requires EPA to weigh the benefits against the costs of the proposed rule. To fulfill this requirement, EPA prepared an RIA to assess the costs and benefits of the proposed rule.

In the RIA, the benefits of the proposed rule were estimated in terms of the number of deaths from lung cancer, mesothelioma, and gastrointestinal cancers attributable to asbestos exposure that would be prevented by the new, lower exposures to asbestos due to the proposed rule. EPA used the models developed by Nicholson for OSHA and EPA to estimate the relative and absolute risks of lung cancer and mesothelioma cases, respectively. A detailed discussion of the data inputs for the health model is found in Appendix C of the RIA.

EPA estimates that 69 to 75 asbestos-related deaths would occur among unprotected public sector workers engaged in construction work and brake and clutch repair over the course of 30 years in the absence of the proposed EPA WPR, and that 61 to 67 of these deaths would be avoided under the proposed rule.

EPA believes that the estimated benefits are understated. The true magnitude of risk reduction is not reflected in the estimated benefits, because the benefits of risk reduction are measured only for the incremental decrease in exposure from the exposure levels estimated by OSHA in its 1986 asbestos standard, and not for the full reduction from present, unregulated exposure levels. Exposures to persons other than workers in areas where asbestos-related work activities are being conducted are also not quantified.

EPA weighed the costs and benefits of extending coverage for asbestos-related construction work and brake and clutch repair to State and local government workers. EPA believes that the benefits of 61 to 67 cancer cases avoided in the unprotected public sector worker population outweigh the estimated annualized cost per case avoided of $5.1 million.

EPA believes, therefore, that unregulated exposure to asbestos in construction and brake and clutch repair work in public sector workplaces presents an unreasonable risk of injury to human health.

XIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with the rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by the rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of the rule could constitute a separate violation. Knowing or willful violations of the rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of the rule.

XIV. Confidentiality

All comments will be placed in the public record unless the commentater claims that they contain confidential business information (CBI), and the comments are clearly labeled as containing claimed CBI when they are submitted. Because of the need to expedite this process, CBI claims should be accompanied by comments substantiating the claim as described in 40 CFR 2.204(e)(4). While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all comments subject to CBI claims should be submitted to EPA for the public file.

It is the responsibility of the commentater to comply with 40 CFR

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part 2 so that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information claimed to be CBI is included, or marking "CONFIDENTIAL," "TSCA CBI," or a similar designation on the face of each document or attachment in the comment which contains the claimed CBI. EPA will consider the failure to clearly identify the claimed confidential status on the face of the comment as a waiver of any such claim and will make such information available to the public without further notice to the commentater or business.

XV. Request for Comments

EPA is requesting comment on the proposed rule only to the extent that it would amend or change the existing regulations. EPA is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Some provisions of the existing rule and appendices are reproduced here for clarity and to facilitate understanding of how the changes and amendments fit within the existing regulatory scheme. The existing appendices are reproduced in their entirety because these appendices, along with the new appendices incorporated in the rule, are moved from § 763.121(p) and recodified as Appendices to 40 CFR part 763, Subpart G.

XVI. Rulemaking Record

EPA has established a record for this rulemaking under document control number OPPTS–62125. A public version of the record and an index of documents in the record are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office from noon and to 4 p.m., Monday through Friday, except legal holidays. TSCA NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC.

The record includes information considered by EPA in developing this proposed rule, including the following categories of information: (1) **Federal Register** notices cited in this document, (2) support documents, and (3) other referenced documents.

The record also incorporates by reference the rulemaking record for the 1987 EPA WPR final rule (Docket Number OPPTS–62050) which includes the dockets for the 1986 OSHA Asbestos Standard, and the 1986 EPA WPR.

XVII. Support Document

USEPA, OPPT, OPPTS. Asbestos Worker Protection Rule. Regulatory Impact Analysis. Revised Draft Report, January 13, 1993. Revised July 23, 1993. Prepared by ICF, Inc., Contract Number 68–D2–0064.

XVIII. References

(1) USEPA, ORD, OHEA. Airborne Asbestos Health Assessment Update. EPA/600/8–84/003F, June 1986.

(2) USEPA, OPTS, OTS. Toxic Substances; Asbestos Abatement Projects; Worker Protection; Final Rule (51 FR 15722, April 25, 1986).

(3) USEPA, 1987. Asbestos Abatement Projects; Worker Protection; Final Rule (52 FR 5618, February 25, 1987).

(4) USEPA, 1987. Asbestos-Containing Materials in Schools; Final Rule and Notice. Part 763 (amended) subpart E, 52 FR 41926, October 30, 1987.

(5) USDOL, OSHA. 20 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," Final Rules (June 20, 1986, 51 FR 22612).

(6) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Asbestos, Tremolite, Anthophyllite, and Actinolite"; Final Rules. Preamble. (September 14, 1988, 53 FR 35610).

(7) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," Final Rule; Partial Response to Court Remand. Preamble. (December 20, 1989, 54 FR 52024).

(8) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos," Final Rule; Partial Response to Court Remand. Preamble. (February 5, 1990, 55 FR 3724).

(9) USDOL, OSHA. 29 CFR Parts 1910 and 1926 "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Proposed Rule" (July 20, 1990, 55 FR 29712).

XIX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

EPA has determined that the proposed amendment to the EPA WPR will not have an effect on the economy of $100 million annually. EPA has prepared an RIA as part of this rulemaking which estimates that the economic impact of the proposed rule to *State and local governments would* not be significant. EPA estimates that the overall costs of the proposed rule to the 27 State and local governments would be about $15.4 to $17.3 million per year *over 30 years and would constitute only a very small percentage of these entities' budgets. The compliance costs* for the proposed rule in both the maintenance and renovation sectors would cause a 0.21 to 0.24 percent increase in the costs of State and local government spending for building upkeep.

A copy of the RIA has been included in the administrative record for this rule, and is available for public inspection, as outlined in Unit XVI of this Notice.

B. Executive Order 12875

Executive Order 12875 (58 FR 58093, October 28, 1993) requires the Agency to consult with representatives of affected State, local, and tribal governments prior to the formal promulgation of a regulation containing a proposed unfunded mandate. Through the Forum on State and Tribal Toxics Action (FOSTTA), EPA briefed the States that are affected by the EPA WPR, seeking comments on the proposed WPR amendments. The Forum is a mechanism for State and tribal officials to cooperate in addressing toxics-related issues and to improve communication and coordination between States, tribes, and the EPA. FOSTTA has forged a communication network linking the States and tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and the Office of Enforcement and Compliance Assurance (OECA) on a variety of toxics-related issues. EPA met with members of the FOSTTA Coordinating Committee at a meeting on February 27, 1994, to discuss the provisions of the EPA WPR. The National Conference of State Legislatures (NCSL), through FOSTTA, provided EPA with a summary of findings from a survey of asbestos programs in States without OSHA-approved State plans. Information regarding EPA's consultation with States (i.e.,the EPA briefing paper submitted to the FOSTTA membership, FOSTTA Coordinating Committee Meeting Agenda, and NCSL survey summary) has been included in the administrative record for this proposed rule and is available for public inspection in the Docket for the EPA WPR.

The proposed EPA WPR would require State and local governments to comply with additional worker protection provisions to protect State and local government workers from exposure to asbestos. The Regulatory *Impact Analysis (RIA), developed to* support this rulemaking, concluded that while the proposed rule may affect a substantial number of State and local government entities, the costs of *additional worker protection requirements under this proposed rule* would not have a significant impact on State and local government budgets, even on those portions of local government budgets that are devoted to building maintenance (see unit XIX.C. of this preamble). In addition, the proposed regulatory text provides, at § 763.122, Exclusions for States, that EPA may grant exclusions from the EPA WPR requirements to States that develop their own State worker protection plans.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 605(b)), EPA must prepare a Regulatory Flexibility analysis for all regulations that will have a significant impact on a substantial number of small entities. The Act defines "small entities" as including small governmental jurisdictions and further defines small governmental jurisdictions as the governments of cities, towns, townships, villages, school districts, or special districts that have populations of fewer than 50,000. Because the proposed rule will affect governmental jurisdictions in the 27 States covered by the EPA WPR that engage in construction work or brake and clutch repair work, the proposed rule can reasonably be expected to affect a substantial number of small governmental entities. However, the costs of the proposed rule represent only 0.21 to 0.24 percent of costs expended by State and local governments for building upkeep. Thus, the costs of the proposed rule will not have a significant impact even on those portions of local government budgets that are devoted exclusively to building maintenance. As a result, the Agency concludes that the proposed rule will not have a significant impact on a substantial number of small governmental jurisdictions and that a full Regulatory Flexibility Analysis is therefore, unnecessary. A discussion of EPA's economic analysis of this proposed amendment to the WPR appears in Unit XI of this preamble.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have *been submitted* for approval, as a *revision to OMB control number 2070–0072, to the Office of Management and* Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (*ICR No. 1246.04*), and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden averaging 1 hour per response, and to require 24.02 hours per recordkeeper annually. This includes time for reviewing the collection of information. The collection activities for this rule include: (1) Read and interpret rule; (2) respirator program, and (3) exposure monitoring activities; (4) training program; (5) medical surveillance reporting and recordkeeping; (6) employee and agency access; and (7) report project initiation. The total annual burden hours is 52,042, and represents an incremental burden-hour increase of 4,160 hours over the total annual reporting burden for the 1987 EPA WPR.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Asbestos in schools (AHERA), Hazardous substances, Reporting and recordkeeping requirements, State and local governments, Worker protection.

Dated: October 14, 1994.

Carol M. Browner.

Administrator.

Therefore, it is proposed that 40 CFR part 763 be amended as follows:

Part 763—[AMENDED]

1. The authority citation for part 763 would continue to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. *Section 763.91(b) is* revised to read as follows:

§ 763.91 *Operations and maintenance.*

* * * * *

(b) Worker protection. See Subpart G of this part.

* * * * *

3. The subpart heading for subpart G is revised to read as follows: "Asbestos Worker Protection."

Appendix B to Subpart E [Redesignated]

4. Appendix B to Subpart E is redesignated as Appendix G to Subpart G of this part, and Appendix B to Subpart E is reserved.

5. Section 763.120 is revised to read as follows:

§ 763.120 Scope.

(a) This part establishes requirements that State and local government employers must follow to protect employees from occupational exposure to asbestos during construction work where asbestos is present, and during automotive brake and clutch repair and service operations. Some of these requirements apply only to construction work, and do not apply to brake and clutch operations. Requirements that apply only to construction work are contained in § 726.121(d) which governs communications on multi-employer worksites, and § 726.121(e)(6), (i)(4), and (j)(2) which govern asbestos removal, demolition, and renovation operations.

(b) Appendix F of this subpart (Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operations), Appendix G of this subpart (Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities), and Appendix K of this subpart (Work Practices and Engineering Controls for

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Automotive Brake Repair Operations) are designed to provide guidelines to assist employers in complying with the requirements of this rule. These appendices recommend specific work practices and engineering controls that State and local government employers may follow to reduce employee exposures to asbestos in the workplace. Employers who use the recommended work practices and controls and who achieve employee exposures below the action level of 0.1 fibers cubic centimeter will be able to avoid certain burdens that would be imposed by complying with requirements triggered when employee exposures to asbestos exceed the rule's action level or permissible exposure limit.

(c) The requirements in this subpart apply only to State and local government employers that are not subject to the asbestos standards of OSHA, 29 CFR 1910.1001 or 29 CFR 1926.58, a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act, or a State asbestos plan that EPA has determined is comparable to, or more stringent than, this part.

(d) The protections established in this part extend to employees, including employees who are prisoners or students, of all State and local governments that are subject to the requirements of this subpart.

6. Section 763.121 is amended by removing from paragraph (b) the definitions for "asbestos abatement project" and "friable asbestos material," by alphabetically inserting the definitions for "automotive brake and clutch repair operations" and "construction work," and by revising the definitions for "emergency project," by revising paragraphs (c), (e)(1) and (e)(2), by redesignating and revising paragraph (e)(6)(iii)(A) as (e)(6)(iii), by deleting paragraph (e)(6)(iii)(B), by adding paragraph (e)(7), by revising paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(ii), (f)(2)(iii), and (f)(4), by revising the introductory text of paragraph (g)(1)(i), revising (g)(1)(ii), by removing paragraph (g)(2)(iii), by revising paragraphs (g)(3), (h)(1)(iii), (h)(3)(i), (i)(1), (i)(2)(i), (i)(2)(ii), and (j)(1)(iii), by adding paragraph (j)(2)(vii) and paragraph (j)(3), by revising paragraph (k)(1)(i), by adding paragraph (k)(1)(iii), by revising paragraph (k)(3)(i), by adding paragraphs (k)(3)(iii)(I), (k)(3)(iii)(J) and (k)(4)(iii), by revising paragraph (m)(1)(i), by adding paragraph (m)(4)(i)(D), by revising paragraphs (n)(1)(i), by redesignating paragraph (o) as paragraph (q) and revising it, by adding a new paragraph (o), by redesignating paragraph (p) as paragraph (r) and revising it to read as follows:

§ 763.121 Regulatory requirements.

* * * * *

(b) Definitions.

* * * * *

Automotive brake and clutch repair operations means repair, cleaning and replacement of asbestos-containing clutch plates and brake pads, shoes, and linings and removal of asbestos-containing residue from brake drums or clutch housing that has been deposited as brakes and clutches wear.

* * * * *

Construction work means work for construction, alteration, and/or repair, including painting and decorating, and includes (but is not limited to) the following construction activities:

(1) Demolition or salvage of structures where asbestos is present;

(2) Removal or encapsulation of materials containing asbestos;

(3) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain asbestos;

(4) Installation of products containing asbestos;

(5) Asbestos spill/emergency cleanup, and

(6) Transportation, disposal, storage, or containment of asbestos or products containing asbestos on the site or location at which construction activities are performed.

* * * * *

Emergency project means a project involving the removal, enclosure, or encapsulation of asbestos-containing material that was not planned, but results from a sudden unexpected event.

* * * * *

(c) *Permissible exposure limits (PELS).*—(1) *Time-weighted average limit (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.2 fibers/cubic centimeter (f/cc) of air as an 8–hour TWA as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 1.0 (1 f/cc) of air as averaged over a sampling period of 30 minutes.

(3) *Alternative voluntary method.* The employer may utilize exposure limits based on Transmission Electron Microscopy (TEM) Analytical Method following the method contained in part 763 Appendix A to Subpart E. In order to achieve limits comparable to the number of fibers counted by Phase Contrast Microscopy (PCM), the corresponding exposure limit, by TEM for the PEL of 0.2 f/cc, is 1.3 structures/cubic centimeter (s/cc) for an 8–hour TWA. The corresponding exposure limit, by TEM for the excursion limit of 1.0 f/cc as averaged over a sampling period of 30 minutes, is 6.7 s/cc averaged over the 30–minute excursion period.

* * * * *

(e) *Regulated areas.*—(1) *General.* The employer shall establish a regulated area in work areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos in excess of the TWA and/or excursion limit.

* * * * *

(6) * * *

(iii) In addition to the qualifications specified in paragraph (b) of this section, the competent person shall be trained in all aspects of asbestos abatement, the contents of this subpart, the identification of asbestos and its removal procedures, and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course, such as a course conducted by an EPA or State-approved training provider, or an equivalent course.

(7) For small-scale, short-duration operations, the employer who complies with the provisions of Appendix G of this subpart is not also required to comply with paragraphs (e)(6) and (j)(1)(i) and (j)(2)(i) of this section.

(f) * * *

(1) * * *

(ii) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8–hour TWA and 30–minute short-term exposures of each employee.

(iii) Representative 8–hour TWA employee exposures shall be determined on the basis of one or more samples representing full-shift exposure for employees in each work area. Representative 30–minute short-term employee exposures shall be determined on the basis of one or more samples representing 30–minute exposures associated with operations that are most likely to produce exposures above the excursion limit for employees in each work area.

(2) * * *

(ii) The employer may demonstrate that employee exposures are below the action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos.

(iii) Where the employer has monitored each asbestos job for the TWA, and where the employer has monitored after [insert date 60 days after date of publication of the final rule] for the excursion limit, and the data were obtained during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (f)(2)(i) of this section.

* * * * *

(4) *Termination of monitoring.* (i) If the periodic monitoring required by paragraph (f)(3) of this section reveals that employee exposures, as indicated by statistically reliable measurement, are below the action level and/or excursion limit, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

(ii) Additional monitoring. Notwithstanding the provisions of paragraph (f)(4)(i) of this section, the employer shall institute the exposure monitoring required under paragraph (f)(3) of this section whenever there has been a change in process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit.

(iii) Exception: When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the monitoring required by this paragraph.

* * * * *

(g) * * *

(1) * * *

(i) The employer shall use one or any combination of the following control methods to achieve compliance with the TWA and/or excursion limit prescribed by paragraph (c) of this section: * * *

(ii) Wherever the feasible engineering and work practice controls described in this paragraph are not sufficient to reduce employee exposure to or below the TWA and/or excursion limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

* * * * *

(3) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(h) * * *

(1) * * *

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA and/or excursion limit.

* * * * *

(3) * * *

(i) Where respiratory protection is used, the employer shall institute a respirator program in accordance with the OSHA standard for respiratory protection (29 CFR 1910.134(b), (d), (e), and (f)).

* * * * *

(i) * * *

(1) *General.* The employer shall provide and require the use of protective clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(2) * * *

(i) The employer shall ensure that laundering of contaminated clothing is done so as to prevent the release of airborne asbestos in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

(ii) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (i)(2)(i) of this section to effectively prevent the release of airborne asbestos in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section.

* * * * *

(j) * * *

(1) * * *

(iii) Whenever food or beverages are consumed at the worksite and employees are exposed to airborne concentrations of asbestos in excess of the TWA and/or excursion limit, the employer shall provide lunch areas in which the airborne concentration of asbestos is below the action level and/or excursion limit.

* * * * *

(2) * * *

(vii) For small-scale, short-duration operations, the employer who complies with the provisions of Appendix G of subpart G is not also required to comply with paragraphs (e)(6), (j)(1)(i) and (j)(2)(i) of this section.

(3) *Smoking in work areas.* The employer shall ensure that employees do not smoke in work areas where they are occupationally exposed to asbestos because of activities in that work area.

(k) * * *

(1) * * *

(i) Warning signs that demarcate the regulated area shall be provided and displayed at each location where airborne concentrations of asbestos may be in excess of the TWA and/or excursion limit prescribed in paragraph (c) of this section. Signs shall be posted at such a distance from such a location that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

* * * * *

(iii) The employer shall ensure that employees working in, and contiguous to, regulated areas comprehend the warning signs required to be posted by paragraph (k)(1)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs, and graphics.

* * * * *

(3) * * *

(i) The employer shall institute a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level and/or excursion limit and shall ensure their participation in the program.

* * * * *

(iii) * * *

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to Subpart G, to comply with this requirement.

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

(4) * * *

(iii) The employer shall inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer shall distribute such material, consisting of NIH Publication No. 89–1647, or equivalent self-help material, which is approved or published by a public health organization listed in Appendix J to Subpart G.

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* * * * *

(m) * * *
(1) * * *

(i) *Employees covered.* The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos at or above the action level and/or excursion limit for 30 or more days per year, or who are required by this section to wear negative pressure respirators.

* * * * *

(4) * * *
(i) * * *

(D) A statement that the employee has been informed by the physician of the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure.

* * * * *

(n) * * *
(1) * * *

(i) Where the employer has relied on data from earlier monitoring that demonstrates that products made from or containing asbestos are not capable of releasing asbestos fibers in concentrations at or above the action level and/or excursion limit under the expected conditions of processing, use, or handling, to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of data from earlier monitoring reasonably relied on in support of the exemption.

* * * * *

(o) *Asbestos brake and clutch repair and service operations.* The employer of employees engaged in asbestos brake and clutch repair and service operations is subject to all the provisions in this section except for paragraphs (d), (e)(6), (i)(4), and (j)(2).

(p) *Compressed air.* Compressed air shall not be used to remove asbestos in brake and clutch repair operations, unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(q) *Effective date.* These amendments shall become effective [insert date 60 days after date of publication of the final rule].

(r) *Appendices.* (1) Appendices A, C, D, and E to this subpart are mandatory.

(2) Appendix B to this subpart is informational and is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

(3) Appendix F to this subpart is nonmandatory and is intended to provide guidelines to assist employers in complying with the requirements of § 763.121.

(4) Appendix G to this subpart is nonmandatory. Employers wishing to be exempted from the requirements of § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i) shall instead comply with provisions of this Appendix for small-scale operations to achieve employee exposures below the rule's action level.

(5) Appendices H, I, and J to this subpart are nonmandatory and are not intended to create any additional obligations not otherwise imposed, or to detract from any existing obligations.

(6) Appendix K to this subpart is nonmandatory. Employers wishing to be exempted from the requirements of § 763.121 that are triggered by employee exposures above the action level or PEL during brake and clutch repair operations may instead comply with the provisions of this Appendix.

Appendices A–E to § 763.121 [Redesignated]

7. By redesignating Appendices A through E to § 763.121 as Appendices A through E to Subpart G.

8. Section 763.122 is revised to read as follows:

§ 763.122 Exclusions for States.

(a) *Application procedures for existing plans.* States that currently have EPA-approved State Asbestos Worker Protection Plans have 6 months from [effective date of rule] or such other reasonable time as suggested by the particular State and approved by EPA to make their regulations comparable to or more stringent than this part, and to submit their regulations to EPA for review. If in such reasonable time after [effective date of rule], these States have not so revised their regulations and submitted them to EPA, State and local government employers in such States shall be subject to the requirements of this part.

(1) Upon request from a State Governor, and after notice and comment, EPA may exclude that State from the requirements of this subpart in accordance with paragraphs (b), (c), and (d) of this section.

(2) All requirements of the subpart shall apply until an exclusion is granted under this section.

(b) *Request.* Each request by a Governor to exclude a State from requirements of this subpart shall be sent with three complete copies of the request to the Regional Administrator for the EPA Region in which the State is located and shall include:

(1) A copy of the State statutes, regulations, and provisions relating to its asbestos worker protection program.

(2)(i) The name of the State agency that is, or will be, responsible for administering and enforcing the State's asbestos worker protection laws, the names and job titles of responsible officials in that Agency and the phone numbers where the officials can be contacted.

(ii) In the event that more than one agency is or will be responsible for administering and enforcing these laws, a description of the functions performed by each agency, identification of the lead agency, how the program will be coordinated by the lead agency to ensure consistency and effective administration of the program within the State, the names and job titles of responsible officials in the agencies and the phone numbers where the officials can be contacted. The lead agency will serve as the central contact point for the EPA.

(3) Detailed reasons, supporting papers, and the rationale for concluding that the State's asbestos worker protection program provisions for which the request is made are at least as stringent as the requirements of this subpart.

(4) A discussion of any special situations, problems, and needs pertaining to the exclusion request accompanied by an explanation of how the State intends to handle them.

(5) A statement of the resources that the State intends to devote to the administration and enforcement of the State's asbestos worker protection laws.

(6) Copies of any specific or enabling State statutes (enacted and pending enactment) and regulations (promulgated and pending promulgation) and regulations relating to the request, including provisions for assessing criminal and/or civil penalties.

(7) Assurance from the Governor, the Attorney General, or the legal counsel of the lead Agency that the lead Agency or other cooperating agencies have the legal authority necessary to carry out the requirements relating to the request.

(c) *General notice.* (1) Within 60 days after receipt of a request for an exclusion, EPA will determine the completeness of the request. If EPA does not request further information within the 60–day period, the request will be deemed complete.

(2) EPA will publish a notice in the **Federal Register** that announces receipt of the request, describes the information submitted under paragraph (b) of this section, and solicits written comment from interested members of the public.

(3) If, during the comment period, EPA receives a written objection to a Governor's request, it will publish a notice of the objection in the **Federal Register**. Each comment must include the name and address of the person submitting the comment.

(d) *Criteria.* EPA may exclude a State from the requirements of this subpart if:

(1) The State's lead agency and other cooperating agencies have the legal authority necessary to ensure that the State's program of asbestos worker protection is at least as stringent as that provided for in this subpart.

(2) The State has an enforcement mechanism to allow it to implement the program described in the exclusion request.

(3) The lead Agency and any cooperating agencies have or will have qualified personnel to carry out the provisions relating to the exclusion request.

(4) The State will devote adequate resources to the administration and enforcement of its provisions relating to the exclusion request.

(5) When specified by EPA, the State gives satisfactory assurances that necessary steps, including specific actions it proposes to take and a time schedule for their accomplishment, will be taken within a reasonable time to conform with applicable criteria under paragraph (d)(2) through (d)(4) of this section.

(e) *Decision.* EPA will publish a notice in the **Federal Register** announcing its decision to grant or deny a Governor's request for exclusion from the requirements of this subpart. The notice will include EPA's reasons and rationale for granting or denying the Governor's request.

(f) *Modifications.* When any substantial change is made in the laws governing asbestos worker protection, or in the administration or enforcement of a State program in a State that was excluded under this section, a responsible official in the lead agency shall submit such changes to EPA.

(g) *Reports.* The lead agency in each State that has been granted an exclusion by EPA from requirements of this subpart shall submit a report to the Regional Administrator for the Region in which the State is located at least once every 12 months to include the following information:

(1) A summary of the State's implementation and enforcement activities during the last reporting period relating to the exclusion under this section, including enforcement actions taken.

(2) Any changes in the administration or enforcement of the State program implemented during the last reporting period.

(3) Other reports as may be required by EPA to carry out effective oversight of any exclusion granted from this rule's requirements.

(h) *Oversight.* EPA may periodically evaluate the adequacy of a State's implementation and enforcement of and resources devoted to carrying out requirements relating to the exclusion. This evaluation may include, but is not limited to, site visits to State or local facilities where asbestos worker protection provisions should be in place, without prior notice to the State.

(i) *Informal Conference.* (1) EPA may request that an informal conference be held between appropriate State and EPA officials when EPA has reason to believe that a State has failed to:

(i) Substantially comply with the terms of any provision under this section.

(ii) Meet the criteria under paragraph (d) of this section, including the failure to carry out enforcement activities, or act on violations of the State program.

(2) EPA will:

(i) Specify to the State those aspects of the State's program believed to be inadequate.

(ii) Specify to the State the facts that support the belief of inadequacy.

(3) If EPA finds, on the basis of information submitted by the State at the informal conference, that deficiencies did not exist or were corrected by the State, no further action is required.

(4) Where EPA finds that deficiencies in the State program exist, a plan to correct the deficiencies shall be negotiated between the State and EPA. The plan shall detail the deficiencies found in the State program, specify the steps the State has taken or will take to remedy the deficiencies, and establish a schedule for each remedial action to be initiated.

(j) *Rescission.* (1) If the State fails to meet with EPA, or fails to correct deficiencies raised at the informal conference, EPA will deliver to the Governor of the State and a responsible official in the lead Agency, a written notice of its intent to rescind the exclusion.

(2) EPA will publish in the **Federal Register** a notice that rescinds the exclusion, describes those aspects of the State's program determined to be inadequate, and specifies the facts that support the findings of inadequacy.

9. In § 763.124, paragraphs (a), (b)(2), (b)(3), (c), and (d) are revised to read as follows:

§ 763.124 Reporting.

(a) Employers subject to this rule must submit a report on their proposed project activities to the Regional Asbestos Coordinator for the EPA Region in which the asbestos construction project is located at least 10 days before they begin any asbestos construction project, except "small-scale, short-duration" projects, or "emergency projects," as defined in § 763.121(b). Employers must report any emergency project subject to this rule as soon as possible but in no case more than 48 hours after the project begins. A list of EPA Regional Offices is given under § 1.7 (b) of this chapter.

(b) * * *

(2) The location, including street address, of the asbestos construction work project.

(3) The scheduled starting and completion dates for the asbestos construction work project.

(c) The report must be received at least 10 days before the asbestos construction work project begins unless the report is for an emergency project. In such a case, the report must be received as soon as possible but in no case more than 48 hours after the project begins.

(d) Employers do not have to report under this section if EPA receives a notice under the National Emission Standard for Asbestos, § 61.146 of this chapter for construction work projects exceeding 160 square feet or 260 linear feet, at least 10 days before they begin an asbestos construction work project and that notice clearly indicates that employees covered by this rule will perform some or all of the asbestos construction work.

10. In § 763.125, paragraphs (a) and (e) are revised to read as follows:

§ 763.125 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

* * * * *

(e) EPA may seek to enjoin an asbestos construction work project that is in violation of this subpart, or take actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

11. Section 763.126 is revised to read as follows:

§ 763.126 Inspections.

EPA may conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this subpart.

12. By revising newly redesignated Appendices A, B, C, E, and G to Subpart G, revising the title of newly redesignated Appendix D to Subpart G, and adding Appendices F and H through K to Subpart G to read as follows:

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Appendix A to Subpart G—EPA/OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods essential to achieve adequate employee exposure monitoring while allowing employers to use methods that are already established within their organizations. All employers who are required to conduct air monitoring under § 763.121(f) are required to utilize analytical laboratories that use this procedure, or an equivalent method for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm electrically conductive extension cowl. The 37-mm cassette may be used if necessary, but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the "breathing zone" of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (± 2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 blanks. The blank results shall be averaged and subtracted from the analytical results before reporting. Any samples represented by a blank having a fiber count in excess of 7 fibers/100 fields shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fibers equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one-half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. *Interlaboratory program.* Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program, that as a minimum, includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

Appendix B to Subpart G—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

This appendix contains a detailed procedure for sampling and analysis and includes those critical elements specified in Appendix A of this section. Employers are not required to use this procedure, but they are required to use Appendix A of this section. The purpose of Appendix B of this section is to provide a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A of this section. Since this procedure may also standardize the analysis and reduce variability, EPA encourages employers to use this appendix.

Technique: Microscopy, Phase Contrast.

Analyte: Fibers (manual count).

Sample Preparation: Acetone/triacetin method.

Calibration: Phase-shift detection limit about 3 degrees.

Range: 100 to 1,300 fibers/mm ^{2} filter area.

Estimated Limit of Detection: 7 fibers/mm ^{2} filter area.

Sampler: Filter (0.8–1.2 µm mixed cellulose ester membrane, 25-mm diameter).

Flow Rate: 0.5 L/min to 2.5 L/min (25-mm cassette); 1.0 L/min to 2.5 L/min (37-mm cassette).

Sample Volume: Adjust to obtain 100 to 1,300 fibers/mm ^{2}.

Shipment: Routine.

Sample Stability: Indefinite.

Blanks: 10% of samples (minimum 2).

Standard Analytical Error: 0.25.

Applicability: The working range is 0.02 f/cc (1920–L air sample) to 1.25 f/cc (400–L sample). The method gives an index of airborne asbestos fibers but may be used for other materials such as fibrous glass by inserting suitable parameters into the counting rules. The method does not differentiate between asbestos and other fibers. Asbestos fibers less than ca. 0.25 µm diameter will not be detected by this method.

Interferences: Any other airborne fiber may interfere since all particles meeting the counting criteria are counted. Chain-like particles may appear fibrous. High levels of nonfibrous dust particles may obscure fibers in the field of view and raise the detection limit.

Reagents:

1. Acetone.

2. Triacetin (glycerol triacetate), reagent grade.

Special Precautions: Acetone is an extremely flammable liquid and precautions must be taken not to ignite it. Heating of acetone must be done in a ventilated laboratory fume hood using a flameless, spark-free heat source.

Equipment:

1. *Collection device:* 25-mm cassette with 50-mm electrically conductive extension cowl with cellulose ester filter, 0.8 to 1.2 mm pore size and backup pad.

Note: Analyze representative filters for fiber background before use and discard the filter lot if more than 5 fibers/100 fields are found.

2. Personal sampling pump, greater than or equal to 0.5 l/min, with flexible connecting tubing.

3. Microscope, phase contrast, with green or blue filter, 8 to 10X eyepiece, and 40 to 45X phase objective (total magnification ca. 400X); numerical aperture=0.65 to 0.75.

4. Slides, glass, single-frosted, pre-cleaned, 25 x 75 mm.

5. Cover slips, 25 x 25 mm, No. 1½ unless otherwise specified by microscope manufacturer.

6. Knife, #1 surgical steel, curved blade.

7. Tweezers.

8. Flask, Guth-type, insulated neck, 250 to 500 mL (with single-holed rubber stopper and elbow-jointed glass tubing, 16 to 22 cm long).

9. Hotplate, spark-free, stirring type; heating mantle; or infrared lamp and magnetic stirrer.

10. Syringe, hypodermic, with 22-gauge needle.

11. Graticule, Walton-Beckett type with 100 µm diameter circular field at the specimen plane (area=0.00785 mm ^{2}), (Type G–22).

Note: The graticule is custom-made for each microscope.

12. HSE/NPL phase contrast test slide, Mark II.

13. Telescope, ocular phase-ring centering.

14. Stage micrometer (0.01 mm divisions).

Sampling

1. Calibrate each personal sampling pump with a representative sampler in line.

2. Fasten the sampler to the worker's lapel as close as possible to the worker's mouth. Remove the top cover from the end of the cowl extension (open face) and orient face down. Wrap the joint between the extender and the monitor's body with shrink tape to prevent air leaks.

3. Submit at least two blanks (or 10 percent of the total samples, whichever is greater) for each set of samples. Remove the caps from the field blank cassettes and store the caps and cassettes in a clean area (bag or box) during the sampling period. Replace the caps in the cassettes when sampling is completed.

4. Sample at 0.5 L/min or greater. Do not exceed 1 mg total dust loading on the filter. Adjust sampling flow rate, Q (L/min), and time to produce a fiber density, E (fibers/mm ^{2}), of 100 to 1,300 fibers/mm ^{2} [3.85 x 10 ^{4} to 5 x 10 ^{5} fibers per 25-mm filter with effective collection area (A_c=385 mm ^{2})] for optimum counting precision (see step 21 below). Calculate the minimum sampling time, $t_{minimum}$ (min) at the action level (one-half of the current standard), L (f/cc) of the fibrous aerosol being sampled:

$$t_{minimum} = \frac{(A_c)(E)}{(Q)(L)\ 10^3}$$

5. Remove the field monitor at the end of sampling, replace the plastic top cover and small end caps, and store the monitor.

6. Ship the samples in a rigid container with sufficient packing material to prevent jostling or damage.

Note: Do not use polystyrene foam in the shipping container because of electrostatic forces which may cause fiber loss from the sample filter.

Sample Preparation

Note: The object is to produce samples with a smooth (nongrainy) background in a medium with a refractive index equal to or less than 1.46. The method below collapses the filter for easier focusing and produces permanent mounts which are useful for quality control and interlaboratory comparison. Other mounting techniques meeting the above criteria may also be used, e.g., the nonpermanent field mounting technique used in P & CAM 239.

7. Ensure that the glass slides and cover slips are free of dust and fibers.

8. Place 40 to 60 ml of acetone into a Guth-type flask. Stopper the flask with a single-hole rubber stopper through which a glass tube extends 5 to 8 cm into the flask. The portion of the glass tube that exits the top of the stopper (8 to 10 cm) is bent downward in an elbow that makes an angle of 20 to 30 degrees with the horizontal.

9. Place the flask in a stirring hotplate or wrap in a heating mantle. Heat the acetone gradually to its boiling temperature (ca. 58 °C).

Caution. The acetone vapor must be generated in a ventilated fume hood away from all open flames and spark sources. Alternate heating methods can be used, providing no open flame or sparks are present.

10. Mount either the whole sample filter or a wedge cut from the sample filter on a clean glass slide.

a. Cut wedges of ca. 25 percent of the filter area with a curved-blade steel surgical knife using a rocking motion to prevent tearing.

b. Place the filter or wedge, dust side up, on the slide. Static electricity will usually keep the filter on the slide until it is cleared.

c. Hold the glass slide supporting the filter approximately 1 to 2 cm from the glass tube port where the acetone vapor is escaping from the heated flask. The acetone vapor stream should cause a condensation spot on the glass slide ca. 2 to 3 cm in diameter. Move the glass slide gently in the vapor stream. The filter should clear in 2 to 5 sec. If the filter curls, distorts, or is otherwise rendered unusable, the vapor stream is probably not strong enough. Periodically wipe the outlet port with tissue to prevent liquid acetone dripping onto the filter.

d. Using the hypodermic syringe with a 22-gauge needle, place 1 to 2 drops of triacetin on the filter. Gently lower a clean 25-mm square cover slip down onto the filter at a slight angle to reduce the possibility of forming bubbles. If too many bubbles form or the amount of triacetin is insufficient, the cover slip may become detached within a few hours.

e. Glue the edges of the cover slip to the glass slide using a lacquer or nail polish.

Note: If clearing is slow, the slide preparation may be heated on a hotplate (surface temperature 50 °C) for 15 min. to hasten clearing. Counting may proceed immediately after clearing and mounting are completed.

Calibration and Quality Control

11. *Calibration of the Walton-Beckett graticule.* The diameter, d_c (mm), of the circular counting area and the disc diameter must be specified when ordering the graticule.

a. Insert any available graticule into the eyepiece and focus so that the graticule lines are sharp and clear.

b. Set the appropriate interpupillary distance and, if applicable, reset the binocular head adjustment so that the magnification remains constant.

c. Install the 40 to 45 X phase objective.

d. Place a stage micrometer on the microscope object stage and focus the microscope on the graduated lines.

e. Measure the magnified grid length, L_o (um), using the stage micrometer.

f. Remove the graticule from the microscope and measure its actual grid length, L_a (mm). This can best be accomplished by using a stage fitted with verniers.

g. Calculate the circle diameter, d_c (mm), for the Walton-Beckett graticule:

$$d_c = \frac{L_a \times D}{L_o}$$

h. Check the field diameter, D (acceptable range 100 mm ±2 mm) with a stage micrometer upon receipt of the graticule from the manufacturer. Determine field area (mm ^{2}).

12. *Microscope adjustments.* Follow the manufacturer's instructions and also the following:

a. Adjust the light source for even illumination across the field of view at the condenser iris.

Note: Kohler illumination is preferred, where available.

b. Focus on the particulate material to be examined.

c. Make sure that the field iris is in focus, centered on the sample, and open only enough to fully illuminate the field of view.

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d. Use the telescope ocular supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

13. Check the phase-shift detection limit of the microscope periodically.

a. Remove the HSE/NPL phase-contrast test slide from its shipping container and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooves (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7. The requirements for counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 to 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope which fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image quality deteriorates, clean the microscope optics and, if the problem persists, consult the microscope manufacturer.

14. *Quality control of fiber counts.*

a. Prepare and count field blanks along with the field samples. Report the counts on each blank. Calculate the mean of the field blank counts and subtract this value from each sample count before reporting the results.

Note 1: The identity of the blank filters should be unknown to the counter until all counts have been completed.

Note 2: If a field blank yields fiber counts greater than 7 fibers/100 fields, report possible contamination of the samples.

b. Perform blind recounts by the same counter on 10 percent of filters counted (slides relabeled by a person other than the counter).

15. Use the following test to determine whether a pair of counts on the same filter should be rejected because of possible bias. This statistic estimates the counting repeatability at the 95 percent confidence level. Discard the sample if the difference between the two counts exceeds 2.77 (F)s, where F=average of the two fiber counts and s,=relative standard deviation, which should be derived by each laboratory based on historical in-house data.

Note: If a pair of counts is rejected as a result of this test, recount the remaining samples in the set and test the new counts against the first counts. Discard all rejected paired counts.

16. Enroll each new counter in a training course that compares performance of counters on a variety of samples using this procedure.

Note: To ensure good reproducibility, all laboratories engaged in asbestos counting are required to participate in the Proficiency Analytical Testing (PAT) Program and should routinely participate with other asbestos fiber counting laboratories in the exchange of field samples to compare performance of counters.

Measurement

17. Place the slide on the mechanical stage of the calibrated microscope with the center of the filter under the objective lens. Focus the microscope on the plane of the filter.

18. Regularly check phase-ring alignment and Kohler illumination.

19. The following are the counting rules:

a. Count only fibers longer than 5 um. Measure the length of curved fibers along the curve.

b. Count only fibers with a length-to-width ratio equal to or greater than 3:1.

c. For fibers that cross the boundary of the graticule field, do the following:

(1) Count any fiber longer than 5 um that lies entirely within the graticule area.

(2) Count as ½ fiber any fiber with only one end lying within the graticule area.

(3) Do not count any fiber that crosses the graticule boundary more than once.

(4) Reject and do not count all other fibers.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of a fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields. Stop at 100 fields regardless of fiber count.

20. Start counting from one end of the filter and progress along a radial line to the other end, shift either up or down on the filter, and continue in the reverse direction. Select fields randomly by looking away from the eyepiece briefly while advancing the mechanical stage. When an agglomerate covers ca. ⅛ or more of the field of view, reject the field and select another. Do not report rejected fields in the number of total fields counted.

Note: When counting a field, continuously scan a range of focal planes by moving the fine focus knob to detect very fine fibers which have become embedded in the filter. The small-diameter fibers will be very faint but are an important contribution to the total count.

Calculations

21. Calculate and report fiber density on the filter, E (fibers/mm²); by dividing the total fiber count, F; minus the mean field blank count, B, by the number of fields, n; and the field area, A_f (0.00785 mm² for a properly calibrated Walton-Beckett graticule):

$$E = \frac{(F/n_f) - (B/n_b)}{A_f} \quad \text{fibers/mm}^2$$

where:

n_f—number of fields in submission sample

n_b—number of fields in blank sample

22. Calculate the concentration, C (f/cc), of fibers in the air volume sampled, V (L), using the effective collection area of the filter, A_c (385 mm² for a 25-mm filter):

$$C = \frac{(E)(A_c)}{V(10^3)}$$

Note: Periodically check and adjust the value of A_c, if necessary.

Appendix C to Subpart G—Qualitative and Quantitative Fit Testing Procedures—Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol

A. Odor Threshold Screening. 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25 °C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor-free water.

7. The odor test and test blank jars shall be labeled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off, and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to identify correctly the jar containing the odor test solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least five sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension, and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fitted properly and used properly, will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepieces shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points of #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g., see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2 foot diameter frame, so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selection, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. At least two facepieces shall be selected for the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne asbestos. In atmospheres greater than 10 times, and less than 100 times the PEL (up to 100 ppm), the subject must pass the IAA test using a full face negative pressure respirator.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more.

(2) Significant facial scarring in the area of the facepiece seal.

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(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.
(4) Reconstructive or cosmetic surgery, or
(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:
(1) Name of test subject.
(2) Date of testing.
(3) Name of the test conductor.
(4) Respirators selected (indicate manufacturer, model, size and approval number).
(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste threshold screening. 1. An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with mouth open with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 gram of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C.7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to expand fully.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject shall don and adjust the respirator without assistance from any person.

2. The fit test uses the same enclosure described in IIB above.

3. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

4. The test subject shall don the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

5. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B.8 through B.10 above).

10. After generation of the aerosol, read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C.9.

12. The test subject shall indicate to the test conductor, if at any time during the fit test, the taste of saccharin is detected.

13. If the saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

14. At least two facepieces shall be selected by the saccharin solution aerosol test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:
(1) Weight change of 20 pounds or more.
(2) Significant facial scarring in the area of the facepiece seal,
(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.
(4) Reconstructive or cosmetic surgery, or
(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:
(1) Name of test subject.
(2) Date of testing.
(3) Name of test conductor.
(4) Respirators selected (indicate manufacturer, model, size and approval number).
(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a high-efficiency cartridge.

B. Fit test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive-pressure and negative-pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low-pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular.*

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Repeating it after the test conductor (keeping eyes closed) will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. At least two facepieces shall be selected by the irritant fume test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

13. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of asbestos.

14. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

15. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

16. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

17. Qualitative fit testing shall be repeated at least every six months.

18. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:
(1) Weight change of 20 pounds or more,
(2) Significant facial scarring in the area of the facepiece seal,
(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,
(4) Reconstructive or cosmetic surgery, or
(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:
(1) Name of test subject.
(2) Date of testing.
(3) Name of test conductor.
(4) Respirators selected (indicate manufacturer, model, size and approval number).
(5) Testing agent.

Quantitative Fit Test Procedures

1. General

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign one individual who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. Definitions

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible.

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The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. Procedural Requirements

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfo II-M, North M, Survivair M, A–O M, or Scott–M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive-pressure test.* With the exhaust port(s) blocked, the negative-pressure of slight inhalation should remain constant for several seconds.

(2) *Negative-pressure test.* With the intake port(s) blocked, the negative-preasure of slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. Exercise Regime

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his/her head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his/her head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

e. *Reading (R).* The subject shall read out slowly and loud so as to be heard by the test conductor the 'rainbow passage' at the end of this unit.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least 30 seconds.

h. *Jogging in place (J).* The test subject shall jog in place for at least 30 seconds.

i. *Normal Breathing (NB).* Same as exercise a.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. Termination of Test

The test shall be terminated whenever any single peak penetration exceeds 5 percent for halfmasks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

7. Calculation of Fit Factors

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. Interpretation of Test Results

The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. Other Requirements

a. The test subject shall not be permitted to wear a halfmask or full facepiece mask if the minimum fit factor of 100 or 1,000, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

(1) Name.

(2) Date of fit test.

(3) Protection factors obtained through each manufacturer, model, and approval number of respirator tested.

(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. Retesting

In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

a. Weight change of 20 pounds or more.

b. Significant facial scarring in the area of the facepiece seal.

c. Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures.

d. Reconstructive or cosmetic surgery, or

e. Any other condition that may interfere with facepiece sealing.

11. Recordkeeping

A summary of all test results shall be maintained for 3 years. The summary shall include:

a. Name of test subject.

b. Date of testing.

c. Name of the test conductor.

d. Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

Appendix D to Subpart G—Medical Questionnaires—Mandatory

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Appendix E to Subpart G—Interpretation and Classification of Chest Roentgenograms—Mandatory

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the boldlines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

(b) Roentgenograms shall be interpreted and classified only by a B-reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) All interpreters, whenever interpreting chest roentgenograms made under this section, shall have immediately available for reference a complete set of the ILO-U/C International Classification of Radiographs for Pneumoconioses, 1980.

Appendix F to Subpart G—Work Practices and Engineering Controls for Major Asbestos Removal, Renovation, and Demolition Operations—Non-Mandatory

This is a non-mandatory appendix designed to provide guidelines to assist employers in complying with the requirements of § 763.121. Specifically, this appendix describes the equipment, methods, and procedures that should be used in major asbestos removal projects conducted to abate a recognized asbestos hazard or in preparation for building renovation or demolition. These projects require the construction of negative-pressure temporary enclosures to contain the asbestos material and to prevent the exposure of bystanders and other employees at the worksite. Section 763.121(e)(6) of the standard requires that ". . . [W]henever feasible, the employer shall establish negative-pressure enclosures before commencing asbestos removal, demolition, or renovation operations." Employers should also be aware that, when conducting asbestos removal projects, they may be required to comply with certain procedures under the National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR part 61, subpart M, of EPA regulations under the Clear Air Act.

Role of Competent Person in Removing Asbestos Materials

Section 763.121(e)(6)(ii) requires that employers involved in asbestos removal, demolition, or renovation operations designate a competent person to:

(1) Set up the enclosure;

(2) Ensure the integrity of the enclosure;

(3) Control entry to and exit from the enclosure;

(4) Supervise all employee exposure monitoring required by this section;

(5) Ensure the use of protective clothing and equipment;

(6) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment;

(7) Ensure the use of hygiene facilities and the observance of proper decontamination procedures; and

(8) Ensure that engineering controls are functioning properly.

The competent person will generally be a Certified Industrial Hygienist, an industrial hygienist with training and experience in the handling of asbestos, or a person who has such training and experience as a result of on-the-job training and experience.

Equipment, Methods and Procedures

Construction of a negative-pressure enclosure is a simple but time-consuming process that requires careful preparation and execution; however, if the procedures below are followed, employers should be assured of achieving a temporary barricade that will protect employees and others outside the enclosure from exposure to asbestos and minimize to the extent possible the exposure of asbestos workers inside the barrier as well.

The equipment and materials required to construct these barriers are readily available and easily installed and used. In addition to an enclosure around the removal site, the standard requires employers to provide hygiene facilities that ensure that their asbestos contaminated employees do not leave the work site with asbestos on their persons or clothing; the construction of these facilities is also described below. The steps in the process include:

(1) Planning the removal project;

(2) Procuring the necessary materials and equipment;

(3) Preparing the work area;

(4) Removing the asbestos-containing material;

(5) Cleaning the work area; and

(6) Disposing of the asbestos-containing waste.

(1) *Planning the Removal Project*

The planning of an asbestos removal project is critical to completing the project safely and cost-effectively. A written asbestos removal plan should be prepared that describes the equipment and procedures that will be used throughout the project. The asbestos abatement plan will aid not only in executing the project but also in complying with the reporting requirements of the USEPA asbestos NESHAP regulations for demolition or renovation operations (40 CFR 61, subpart M, § 61.145, 61.146, or 61.147), which call for specific information such as a description of control methods and control equipment to be used and the disposal sites the employer proposes to use to dispose of the asbestos containing materials.

The asbestos abatement plan should contain the following information:

- A physical description of the work area;
- A description of the approximate amount of material to be removed;
- A schedule for turning off and sealing existing ventilation systems;
- Personnel hygiene procedures;
- Labeling procedures;
- A description of personal protective equipment and clothing to be worn by employees;
- A description of the local exhaust ventilation systems to be used;
- A description of work practices to be observed by employees;
- A description of the methods to be used to remove the asbestos-containing material;
- The wetting agent to be used;
- A description of the sealant to be used at the end of the project;
- An air monitoring plan;
- A description of the method to be used to transport waste material; and
- The location of the dump site.

(2) *Procuring Materials and Equipment Necessary for Asbestos Removal*

Although individual asbestos removal projects vary in terms of the equipment required to accomplish the removal of the material, some equipment and materials are common to most asbestos removal operations. Equipment and materials that should be available at the beginning of each project are: (1) rolls of polyethylene sheeting; (2) rolls of duct tape or plastic tape; (3) High Efficiency Particulate Air (HEPA) filtered vacuum(s); (4) HEPA-filtered portable ventilation system(s); (5) a wetting agent; (6) an airless sprayer; (7) a portable shower unit; (8) appropriate respirators; (9) disposable coveralls; (10) signs and labels; (11) pre-printed disposal bags; and (12) a manometer or pressure gauge.

Rolls of Polyethylene Plastic and Tape. Rolls of polyethylene plastic (6 mil or more in thickness) should be available to construct the asbestos removal enclosure and to seal windows, doors, ventilation systems, wall penetrations, and ceilings and floors in the work area. Duct tape or plastic tape should be used to seal the edges of the plastic and to seal any holes in the plastic enclosure. Polyethylene sheeting can be purchased in rolls up to 12–20 feet in width and up to 100 feet in length.

HEPA-Filtered Vacuum. A HEPA-filtered vacuum is essential for cleaning the work area after the asbestos has been removed. Such vacuums are designed to be used with a HEPA filter, which is capable of removing 99.99 percent of the asbestos particles 0.3 microns or larger from the air. Various sizes and capacities of HEPA vacuums are available that range in capacity from 5.25 gallons to 17 gallons. These models are portable, and have long hoses capable of reaching out-of-the-way places, such as areas above ceiling tiles, behind pipes, etc.

Exhaust Air Filtration System. A portable ventilation system is necessary to create a negative pressure within the asbestos removal enclosure. Such units are equipped

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with a HEPA filter and are designed to exhaust and clean the air inside the enclosure before exhausting it to the outside of the enclosure such systems are available from several manufacturers. Ventilation units are available that range in capacity from 600 cubic feet per minute (CFM) to 1,700 CFM. Typical specifications for these filters specify removal of 99.99 percent for particles of 0.3 microns or larger. The number and capacity of units required to ventilate an enclosure depend on the size of the area to be ventilated.

Wetting Agents. Wetting agents (surfactants) are added to water (known as "amended water") to prepare for wetting asbestos-containing materials; amended water penetrates more effectively than plain water and permits more thorough soaking of the asbestos-containing materials. Wetting the asbestos-containing material reduces the number of fibers that will break free and become airborne when the asbestos-containing material is handled or otherwise disturbed. Asbestos-containing materials should be thoroughly soaked before removal is attempted; the dislodged material should feel spongy to the touch. Wetting agents are generally prepared by mixing 1 to 3 ounces of wetting agent to 5 gallons of water.

One type of asbestos, amosite, is relatively resistant to soaking, either with plain or amended water. The work practices of choice when working with amosite containing material are to soak the material as much as possible and then to bag it for disposal immediately after removal, so that the material has no time to dry and be ground into smaller particles that are more likely to liberate airborne asbestos.

In a very limited number of situations, it may not be possible to wet the asbestos-containing material before removing it. Examples of such rare situations are: (1) Removal of asbestos material from a "live" electrical box that was oversprayed with the material when the rest of the area was sprayed with an asbestos-containing coating; and (2) removal of asbestos-containing insulation from a live steam pipe. In both of these situations, the preferred approach would be to turn off the electricity or steam, respectively, to permit wet removal methods to be used. However, where removal work must be performed during working hours, or when normal operations cannot be disrupted, the asbestos-containing material must be removed dry. Immediate bagging is then the only method of minimizing the amount of airborne asbestos generated.

Airless Sprayer. Airless sprayers are used to apply amended water to asbestos-containing materials. Airless sprayers allow amended water to be applied in a fine spray that minimizes the release of asbestos fibers by reducing the impact of the spray on the material to be removed. Airless sprayers are inexpensive and readily available.

Portable Shower. Unless the site has available a permanent shower facility that is contiguous to the removal area, a portable shower system is necessary to permit employees to clean themselves after exposure to asbestos and to remove any asbestos contamination from their hair and bodies. Taking a shower prevents employees from leaving the work area with asbestos on themselves and thus prevents the spread of asbestos contamination to areas outside the asbestos removal area. This measure also protects members of the families of asbestos workers from possible exposure to asbestos. Showers should be supplied with warm water and a drain. A shower water filtration system to filter asbestos fibers from the shower water is recommended. Portable shower units are readily available, inexpensive, and easy to install and transport.

Respirators. Employees involved in asbestos removal projects should be provided with appropriate NIOSH-approved respirators. Selection of the appropriate respirator should be based on the concentration of asbestos fibers in the work area. If the concentration of asbestos fibers is unknown, employees should be provided with respirators that will provide protection against the highest concentration of asbestos fibers that can reasonably be expected to exist in the work area. At a minimum, employees should wear half-mask dual-filter cartridge respirators. Disposable face mask respirators (single-use) should not be used to protect employers from exposure to asbestos fibers.

Disposable Coveralls. Employees involved in asbestos removal operations should be provided with disposable impervious coveralls that are equipped with head and foot covers. Such coveralls are typically made of spun-bonded polyolefin. The coverall has a zipper front and elastic wrists and ankles.

Signs and Labels. Before work begins, a supply of signs to demarcate the entrance to the work area should be obtained. Signs are available that have the wording required by the final OSHA standard. The required labels are also commercially available as press-on labels and pre-printed on the 6-mil polyethylene plastic bags used to dispose of asbestos-containing waste material.

(3) *Preparing the Work Area*

Preparation for constructing negative-pressure enclosures should begin with the removal of all movable objects from the work area, e.g., desks, chairs, rugs, and light fixtures, to ensure that these objects do not become contaminated with asbestos. When movable objects are contaminated or are suspected of being contaminated, they should be vacuumed with a HEPA vacuum and cleaned with amended water, unless they are made of material that will be damaged by the wetting agent; wiping with plain water is recommend in those cases where amended water will damage the object. Before the asbestos removal work begins, objects that cannot be removed from the work area should be covered with a 6-mil-thick polyethylene plastic sheeting that is securely taped with duct tape or plastic tape to achieve an air-tight seal around the object.

A. Constructing the Enclosure

When all objects have either been removed from the work area or covered with plastic, all penetrations of the floor, walls, and ceiling should be sealed with 6-mil polyethylene plastic and tape to prevent airborne asbestos from escaping into areas outside the work area, or from lodging in cracks around the penetrations. Penetrations that require sealing are typically found around electrical conduits, telephone wires, and water supply and drain pipes. A single entrance to be used for access and egress to the work area should be selected, and all other doors and windows should be sealed with tape or be covered with 6-mil polyethylene plastic sheeting and securely taped. Covering windows and unnecessary doors with a layer of polyethylene before covering the walls provides a second layer of protection and saves time in installation because it reduces the number of edges that must be cut and taped. All other surfaces such as support columns, ledges, pipes, and other surfaces should also be covered with polyethylene plastic sheeting and taped before the walls themselves are completely covered with sheeting.

Next a thin layer of spray adhesive should be sprayed along the top of all walls surrounding the enclosed work area, close to the wall-ceiling interface, and a layer of polyethylene plastic sheeting should be stuck to this adhesive and taped. The entire inside surfaces of all wall areas are covered in this manner, and the sheeting over the walls is extended across the floor area until it meets in the center of the area, where it is taped to form a single layer of material encasing the entire room except for the ceiling. A final layer of plastic sheeting is then laid across the plastic-covered floor area and up the walls to a level of 2 feet or so; this layer provides a second protective layer of plastic sheeting over the floor, which can then be removed and disposed of easily after the asbestos-containing material that has dropped to the floor has been bagged and removed.

B. Establishing Negative Pressure Within the Enclosure

After construction of the enclosure is completed, a ventilation system(s) should be installed to create a negative pressure of -0.02 inches of water within the enclosure with respect to the area outside the enclosure. Such ventilation systems must be equipped with HEPA filters to prevent the release of asbestos fibers to the environment outside the enclosure and should be operated continuously until the final cleanup is completed and the results of final air samples are received from the laboratory.

The ventilation systems should exhaust the HEPA-filtered clean air outside the building in which the asbestos removal, demolition, or renovation is taking place. If access to the outside is not available, the ventilation system can exhaust the HEPA-filtered asbestos-free air to an area within the building that is as far away as possible from the enclosure. Care should be taken to ensure that the clean air is released either to an asbestos-free area or in such a way as not to disturb any asbestos-containing materials.

A manometer or pressure gauge for measuring the negative pressure within the enclosure should be installed and should be monitored frequently throughout all work shifts during which asbestos removal, demolition, or renovation takes place to maintain the negative pressure. For larger projects, differential pressure may be continuously recorded which provides a permanent record to demonstrate the integrity of the enclosure during abatement.

C. Ensuring the Integrity of the Enclosures

Ensuring the integrity of the enclosure is accomplished by inspecting the enclosure before asbestos removal work begins and prior to each work shift throughout the entire period work is being conducted in the enclosure. The inspection should be conducted by locating all areas where air might escape from the enclosure; this is best accomplished by running a hand over all seams in the plastic enclosure to ensure that no seams are ripped and the tape is securely in place.

The competent person should also ensure that all unauthorized personnel do not enter the enclosure and that all employees and other personnel who enter the enclosure have the proper protective clothing and equipment. He or she should also ensure that all employees and other personnel who enter the enclosure use the hygiene facilities and observe the proper decontamination procedures (described in this Appendix).

The competent person also should ensure that negative pressure is always maintained in the enclosure. This can be done by measuring the pressure by manometers or pressure gauges.

D. Building Hygiene Facilities

Paragraph (j) of the final standard mandates that employers involved in asbestos removal, demolition, or renovation operations provide their employees with hygiene facilities to be used to decontaminate asbestos-exposed workers, equipment, and clothing before such employees leave the work area. These decontamination facilities consist of:

(1) A clean change room.
(2) A shower.
(3) An equipment room.

The clean change room is an area in which employees remove their street clothes and don their respirators and disposable protective clothing. The clean room should have hooks on the wall or be equipped with lockers for the storage of workers' clothing and personal articles. Extra disposable coveralls and towels can also be stored in the clean change room.

The shower should be contiguous with both the clean and dirty change room and should be used by all workers leaving the work area. The shower should also be used to clean asbestos-contaminated equipment and materials, such as the outsides of asbestos waste bags and hand tools used in the removal process.

The equipment room (also called the dirty change room) is the area where workers remove their protective coveralls and where equipment that is to be used in the work area can be stored. The equipment room should be lined with 6-mil-thick polyethylene plastic sheeting in the same way as was done in the work area enclosure. Two layers of 6-mil polyethylene plastic sheeting that are not taped together from a double flap or barrier between the equipment room and the work area and between the shower and the clean change room.

When feasible, the clean change room, shower, and equipment room should be contiguous and adjacent to the negative-pressure enclosure surrounding the removal area. In the overwhelming number of cases, hygiene facilities can be built contiguous to the negative-pressure enclosure. In some cases, however, hygiene facilities may have to be located on another floor of the building where removal of asbestos-containing materials is taking place. In these instances, the hygiene facilities can in effect be made to be contiguous to the work area by constructing a polythylene plastic "tunnel" from the work area to the hygiene facilities.

Such a tunnel can be made even in cases where the hygiene facilities are located several floors above or below the work area; the tunnel begins with a double flap door at the enclosure, extends through the exit from the floor, continues down the necessary number of flights of stairs and goes through a double-flap entrance to the hygiene facilities, which have been prepared as described above. The tunnel is constructed of 2-inch by 4-inch lumber or aluminum struts and covered with 6-mil-thick polyethylene plastic sheeting.

In the rare instances when there is not enough space to permit any hygiene facilities to be built at the work site, employees should be directed to change into a clean disposable worksuit immediately after exiting the enclosure (without removing their respirators) and to proceed immediately to the shower. Alternatively, employees could be directed to vacuum their disposable coveralls with a HEPA-filtered vacuum before proceeding to a shower located a distance from the enclosure.

The clean room, shower, and equipment room must be sealed completely to ensure that the sole source of air flow through these areas originates from uncontaminated areas outside the asbestos removal, demolition, or renovation enclosure. The shower must be drained properly after each use to ensure that contaminated water is not released to uncontaminated areas. If waste water is inadvertently released, it should be cleaned up as soon as possible to prevent any asbestos in the water from drying and becoming airborne in areas outside the work area.

(4) *Removing the Asbestos-Containing Material*

All asbestos removal, renovation, and demolition operations should have a program for monitoring the concentration of airborne asbestos and employee exposures to asbestos. At least two samples should be collected outside the work area, one at the entrance to the clean change room and one at the exhaust of the portable ventilation system. In addition, several breathing zone samples should be collected from those workers who can reasonably be expected to have the highest potential exposure to asbestos.

Proper work practices are necessary during asbestos removal, demolition, and renovation to ensure that the concentration of asbestos fibers inside the enclosure remains as low as possible. One of the most important work practices is to wet the asbestos-containing material before it is disturbed. After the asbestos-containing material is thoroughly wetted, it should be removed by screping (as in the case of sprayed-on or troweled-on ceiling material) or removed by cutting the metal bands or wire mesh that support the asbestos-containing material on boilers or pipes. Any residue that remains on the surface of the object from which asbestos is being removed should be wire brushed and wet wiped.

A checklist is one of the most effective methods of ensuring adequate surveillance of the integrity of the asbestos removal enclosure. Such a checklist is shown in Table A. Filling out the checklist at the beginning of each shift in which asbestos removal is being performed will serve to document that all the necessary precautions will be taken during the asbestos removal work. The checklist contains entries for ensuring that:

- The work area enclosure is complete;
- The negative-pressure system is in operation;
- Necessary signs and labels are used;
- Appropriate work practices are used;
- Necessary protective clothing and equipment are used; and
- Appropriate decontamination procedures are being followed.

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Table A.—Checklist

Asbestos Removal, Rennovation, and Demolition Checklist

Date: _____

Supervisor: _____

Location: _____

Project No.: _____

Work Area (sq. ft.): _____

	Yes	No
I. Work Site Barrier		
Floor covered	_____	_____
Walls covered	_____	_____
Area ventilation off	_____	_____
All edges sealed	_____	_____
Penetrations sealed	_____	_____
Entry curtains	_____	_____
II. Negative Air Pressure		
HEPA Vac	_____	_____
Ventilation system	_____	_____
Constant operation	_____	_____
Negative pressure achieved	_____	_____
III. Signs		
Work area entrance	_____	_____
Bags labeled	_____	_____
IV. Work Practices		
Removed material promptly bagged	_____	_____
Material worked wet	_____	_____
HEPA vacuum used	_____	_____
No smoking	_____	_____
No eating, drinking	_____	_____
Work area cleaned after completion	_____	_____
Personnel decontaminated each departure		
V. Protective Equipment		
Disposable clothing used one time	_____	_____
Proper NIOSH-approved respirators	_____	_____
VI. Showers		
On site	_____	_____
Functioning	_____	_____
Soap and towels	_____	_____
Used by all personnel	_____	_____

Bagging asbestos waste material promptly after its removal is another work practice control that is effective in reducing the airborne concentration of asbestos within the enclosure. Whenever possible, the asbestos should be removed and placed directly into bags for disposal rather than dropping the material to the floor and picking up all of the material when the removal is complete. If a significant amount of time elapses between the time that the material is removed and the time it is bagged, the asbestos material is likely to dry out and generate asbestos-laden dust when it is disturbed by people working within the enclosure. Any asbestos-contaminated supplies and equipment that cannot be decontaminated should be disposed of in pre-labeled bags; items in this category include plastic sheeting, disposable work clothing, respirator cartridges, and contaminated wash water.

(5) *Cleaning the Work Area*

After all of the asbestos-containing material is removed and bagged, the entire work area should be cleaned until it is free of all visible asbestos dust. All surfaces from which asbestos has been removed should be cleaned by wire brushing the surfaces, HEPA vacuuming these surfaces, and wiping them with amended water. The inside of the plastic enclosure should be vacuumed with a HEPA vacuum and wet wiped until there is no visible dust in the enclosure. Particular attention should be given to small horizontal surfaces such as pipes, electrical conduits, lights, and support tracks for drop ceilings. All such surfaces should be free of visible dust before the final air samples are collected.

For areas less than 160 square feet or 260 linear feet, a minimum of 5 area air samples must be collected. These samples may be analyzed by phase contrast microscopy. Each sample must have an individual asbestos concentration less than 0.01 f/cc, as determined by the use of NIOSH Method 7400, before the worksite is considered clean.

For areas less than 160 square feet or 260 linear feet, air samples may be analyzed by phase contrast microscopy using NIOSH method 7400, or by transmission electron microscopy (TEM) following the method contained in 40 CFR part 763, Appendix to subpart E and the procedure described below in paragraphs 1, 2, and 3.

1. For areas of any size, a worksite will be considered clean when the average concentration of asbestos of five air samples collected within the affected functional space and analyzed by the TEM method contained in 40 CFR part 763, Appendix A to subpart E, is not statistically significantly different, as determined by the Z-test calculation found in 40 CFR part 763, from the average asbestos concentration of five air samples collected at the same time outside the building in uncontaminated air space and analyzed in the same manner, sequentially, and the average asbestos concentration of the three field blanks described in 40 CFR part 763, Appendix A to subpart E is below the filter background level, as defined in Appendix A to subpart E, of 70 structures per square millimeter.

2. For areas of any size, a worksite will also be considered clean when the volume of air drawn for each of the five samples collected within the worksite is equal to or greater than 1,199 liters of air for a 25mm filter or equal to or greater than 2,799 liters of air for a 37mm filter, and the average concentration of asbestos as analyzed by the transmission electron microscope method in 40 CFR part 763, Appendix A to subpart E, for the five air samples does not exceed the filter background level, as defined in 40 CFR part 763, Appendix A to subpart E, of 70 structures per square millimeters. If the average concentration of asbestos of the five air samples within the affected functional space exceeds 70 structures per millimeter, or if the volume of air in each of the samples is less than 1,199 liters of air for a 25mm filter or less than 2,799 liters of air for a 37mm filter, the action shall be considered complete only when the requirements of paragraph 1 are met.

3. If the TEM method is used, TEM laboratories accredited in the National Institute of Standards & Technology's National Voluntary Laboratory Accreditation Program must be used to perform the TEM analyses.

A clearance checklist is an effective method of ensuring that all surfaces are adequately cleaned and the enclosure is ready to be dismantled. Table B shows a checklist that can be used during the final inspection phase of asbestos abatement, removal, or renovation operations.

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Table B.—Clearance Checklist

Final Inspection of Asbestos Removal, Renovation, and Demolition Projects

Date: _____

Project: _____

Location: _____

Building: _____

CHECKLIST

Residual dust on:

	Yes	No
a. Floor	_____	_____
b. Horizontal surfaces	_____	_____
c. Pipes	_____	_____
d. Ventilation equipment	_____	_____
e. Ducts	_____	_____
h. Register	_____	_____
i. Lights	_____	_____

FIELD NOTES:

Record any problems encountered here.

_____

_____

_____

_____

_____

_____

_____

FINAL AIR SAMPLE RESULTS:

_____

_____

_____

_____

_____

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Appendix G to Subpart G—Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving Asbestos - Non-Mandatory

This Appendix formerly appeared as Appendix B to Subpart E - Asbestos-Containing Materials in Schools - and now appears as Appendix G to Subpart G of the Asbestos Worker Protection Rule (WPR).

This appendix has been moved from the Asbestos in Schools Rule to the WPR to provide work practices guidance to employers of all State and local government employees (not just school employees) who perform small-scale, short-duration operations, including operations, maintenance, and repair (O&M) activities involving asbestos-containing material. Work practices and engineering controls outlined in this Appendix are intended to provide comparable protection to public employees performing small-scale operations as that provided to private sector workers under the OSHA Asbestos Construction Standard, or under OSHA-approved State plans.

This Appendix is not mandatory, in that employers subject to EPA's Worker Protection Rule may choose to comply with all the requirements of 40 CFR 763.121 for achieving employee exposures below the rule's action level or PEL. To be exempted from the requirements for small-scale, short-duration operations in § 763.121(e)(6), (j)(1)(i)(B), and (j)(2)(i), an employer shall comply with the provisions of this appendix in order to reduce employee exposure to asbestos to a level below the action level of 0.1 f/cc.

Definition of "Small-Scale, Short-Duration Operations"

For the purposes of this appendix, small-scale, short-duration renovation and maintenance activities are tasks such as, but not limited to:

- Removal of asbestos-containing insulation on pipes;
- Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
- Replacement of an asbestos-containing gasket on a valve;
- Installation or removal of a small section of drywall;
- Installation of electrical conduits through or proximate to asbestos-containing materials.

In its 1986 asbestos standard for the construction industry, OSHA concluded that the use of certain engineering and work practice controls is capable of reducing employee exposures to asbestos to levels below the standard's action level (0.1 f/cm^3). (See 51 FR 22714, June 20, 1986.) Several controls and work practices, used either singly or in combination, can be employed effectively to reduce asbestos exposures during small maintenance and renovation operations. These include:

1. Wet methods.
2. Removal methods.
   i. Use of glove bags.
   ii. Use of minienclosures.
   iii. Removal of entire asbestos insulated pipes or structures.
3. Enclosure of asbestos materials.
4. Maintenance programs.

This appendix describes some of these controls and work practices in detail.

Preparation of the Area Before Operations, Maintenance, and Repair (O&M) Activities

The first step in preparing to perform a small-scale, short-duration O&M task, regardless of the method that will be used, is the removal from the work area of all objects that are movable to protect them from asbestos contamination. Objects that cannot be removed must be covered completely with 6-mil-thick polyethylene plastic sheeting before the task begins. If objects have already been contaminated, they should be thoroughly cleaned with a High Efficiency Particulate Air (HEPA) filtered vacuum or be wet-wiped before they are removed from the work area or completely encased by the plastic sheets.

Wet methods. Whenever feasible, and regardless of the abatement method to be used (e.g., removal, enclosure, use of glove bags), wet methods must be used during small-scale, short-duration maintenance and renovation activities that involve disturbing asbestos-containing materials. Handling asbestos materials wet is one of the most reliable methods of ensuring that asbestos fibers do not become airborne, and this practice should therefore be used whenever feasible. Wet methods can be used in the great majority of workplace situations. Only in cases where asbestos work must be performed on live electrical equipment, on live steam lines, or in other areas where water will seriously damage materials or equipment may dry removal be performed. Amended water or another wetting agent should be applied by means of an airless sprayer to minimize the extent to which the asbestos-containing material is disturbed.

Asbestos-containing material should be wetted from the initiation of the maintenance or renovation operation, and wetting agents should be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is wet and remains wet until final disposal.

Removal of small amount of asbestos-containing materials. Several methods can be used to remove small amounts of asbestos-containing materials during small-scale, short-duration renovation or maintenance tasks. These include the use of glove bags, the removal of an entire asbestos-covered pipe or structure, and the construction of minienclosures. The procedures that employers must use for each of these operations if they wish to avail themselves of the rule's exemptions are described in the following sections.

i. *Glove bags.* As discussed in the 1986 OSHA-asbestos standard for the construction industry, Summary and Explanation section of the preamble for paragraph (g), *Methods of Compliance*, evidence in the record indicated that the use of glove bags to enclose the work area during small-scale, short-duration maintenance or renovation activities will result in employee exposures to asbestos that are below the rule's action level of 0.1 f/cc. This appendix provides requirements for glove-bag procedures to be followed by employers wishing to avail themselves of the rule's exemption for each activity. OSHA has determined that the use of these procedures will reduce the 8–hour time weighted average (TWA) exposure of employees involved in these work operations to levels below the action level and will thus provide a degree of employee protection equivalent to that provided by compliance with all provisions of the rule.

Glove bag installation. Glove bags are approximately 40-inch-wide times 64-inch-long bags fitted with arms through which the work can be performed. When properly installed and used, they permit workers to remain completely isolated from the asbestos material removed or replaced inside the bag. Glove bags can thus provide a flexible, easily installed, and quickly dismantled temporary small work area enclosure that is ideal for small-scale asbestos renovation or maintenance jobs. These bags are single-use control devices that are disposed of at the end of each job. The bags are made of transparent 6-mil-thick polyethylene plastic with arms of spun-bonded polyolefin material (the same material used to make the disposable protective suits used in major asbestos removal, renovation, and demolition operations and in protective gloves). Glove bags are readily available from safety supply stores or specialty asbestos removal supply houses. Glove bags come pre-labelled with the asbestos warning label prescribed by OSHA and EPA for bags used to dispose of asbestos waste.

Glove bag equipment and supplies. Supplies and materials that are necessary to use glove bags effectively include:

1. Tape to seal glove bag to the area from which asbestos is to be removed.
2. Amended water or other wetting agents.
3. An airless sprayer for the application of the wetting agent.
4. Bridging encapsulant (a paste-like substance for coating asbestos) to seal the rough edges of any asbestos-containing materials that remain within the glove bag at the points of attachment after the rest of the asbestos has been removed.
5. Tools such as razor knives, nips, and wire brushes (or other tools suitable for cutting wires, etc.).
6. A HEPA filter-equipped vacuum for evacuating the glove bag (to minimize the release of asbestos fibers) during removal of the bag from the work area and for cleaning any material that may have escaped during the installation of the glove bag.
7. HEPA-equipped dual-cartridge or more protective respirators for use by the employees involved in the removal of asbestos with the glove bag.

Glove bag work practices. The proper use of glove bags requires the following steps:

1. Glove bags must be installed so that they completely cover the pipe or other structure where asbestos work is to be done. Glove bags are installed by cutting the sides of the glove bag to fit the size of the pipe from which asbestos is to be removed. The glove bag is attached to the pipe by folding the open edges together and securely sealing them with tape. All openings in the glove bag must be sealed with duct tape or equivalent material. The bottom seam of the glove bag must also be sealed with duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.

2. The employee who is performing the asbestos removal with the glove bag must don at least a half mask dual-cartridge HEPA-equipped respirator; respirators should be worn by employees who are in close contact with the glove bag and who may thus be exposed as a result of small gaps in the seams of the bag or holes punched through the bag by a razor knife or a piece of wire mesh.

3. The removed asbestos material from the pipe or other surface that has fallen into the enclosed bag must be thoroughly wetted with a wetting agent (applied with an airless sprayer through the precut port provided in most gloves bags or applied through a small hole in the bag).

4. Once the asbestos material has been thoroughly wetted, it can be removed from the pipe, beam, or other surface. The choice of tool to use to remove the asbestos-containing material depends on the type of material to be removed. Asbestos-containing materials are generally covered with painted canvas and/or wire mesh. Painted canvas can be cut with a razor knife and peeled away from the asbestos-containing material underneath. Once the canvas has been peeled away, the asbestos-containing material underneath may be dry, in which case it should be resprayed with a wetting agent to ensure that it generates as little dust as possible when removed. If the asbestos-containing material is covered with wire mesh, the mesh should be cut with nips, tin snips, or other appropriate tool and removed. A wetting agent must then be used to spray any layer of dry material that is exposed beneath the mesh, the surface of the stripped underlying structure, and the inside of the glove bag.

5. After removal of the layer of asbestos-containing material, the pipe or surface from which asbestos has been removed must be thoroughly cleaned with a wire brush and wet-wiped with a wetting agent until no traces of the asbestos-containing material can be seen.

6. Any asbestos-containing insulation edges that have been exposed as a result of the removal or maintenance activity must be encapsulated with bridging encapsulant to ensure that the edges do not release asbestos fibers to the atmosphere after the glove bag has been removed.

7. When the asbestos removal and encapsulation have been completed, a vacuum hose from a HEPA filtered vacuum must be inserted into the glove bag through the port to remove any air in the bag that may contain asbestos fibers. When the air has been removed from the bag, the bag should be squeezed tightly (as close to the top as possible), twisted, and sealed with tape, to keep the asbestos materials safely in the bottom of the bag. The HEPA vacuum can then be removed from the bag and the glove bag itself can be removed from the work area to be disposed of properly.

ii. *Minienclosures.* In some instances, such as removal of asbestos from a small ventilation system or from a short length of duct, a glove bag may not be either large enough or of the proper shape to enclose the work area. In such cases, a minienclosure can be built around the area where small-scale, short-duration asbestos maintenance or renovation work is to be performed. Such enclosures should be constructed of 6-mil-thick polyethylene plastic sheeting and can be small enough to restrict entry to the asbestos work area to one worker.

For example, a minienclosure can be built in a small utility closet when asbestos-containing duct covering is to be removed. The enclosure is constructed by:

1. Affixing plastic sheeting to the walls with spray adhesive and tape.
2. Covering the floor with plastic and sealing the plastic covering the floor to the plastic on the walls.
3. Sealing any penetrations such as pipes or electrical conducts with tape; and
4. Constructing a small change room (approximately 3 feet square) made of 6-mil-thick polyethylene plastic supported by 2–inch by 4–inch lumber (the plastic should be attached to the lumber supports with staples or spray adhesive and tape).

The change room should be contiguous to the minienclosure, and is necessary to allow the worker to vacuum off his protective coveralls and remove them before leaving the work area. While inside minienclosure, the worker should wear spun-bonded polyolefin disposable coveralls and use the appropriate HEPA-filtered dual-cartridge or more protective respiratory protection.

The advantages of minienclosures are that they limit the spread of asbestos contamination, reduce the potential exposure of bystanders and other workers who may be working in adjacent areas, and are quick and easy to install. The disadvantage of minienclosures is that they may be too small to contain the equipment necessary to create a negative pressure within the enclosure; however the double layer of plastic sheeting will serve to restrict the release of asbestos fibers to the area outside the enclosure.

Removal of entire asbestos insulated pipes or structures. When pipes are insulated with asbestos-containing materials, removal of the entire pipe may be more protective, easier, and more cost-effective than stripping the asbestos insulation from the pipe. Before such a pipe is cut, the asbestos-containing insulation must be wrapped with 6-mil polyethylene plastic and securely sealed with duct tape or equivalent. This plastic covering will prevent asbestos fibers from becoming airborne as a result of the vibration created by the power saws used to cut the pipe. If possible, the pipes should be cut at locations that are not insulated to avoid disturbing the asbestos. If a pipe is completely insulated with asbestos-containing materials, small sections should be stripped using the glove-bag method described above before the pipe is cut at the stripped sections.

Enclosure. The decision to enclose rather than remove asbestos-containing material from an area depends on the employer's preference, i.e., for removal or containment. Employers consider such factors as cost effectiveness, the physical configuration of the work area, and the amount of traffic in the area when determining which abatement method to use.

If the employer chooses to enclose the structure rather than to remove the asbestos-containing material insulating it, a solid structure (airtight walls and ceilings) must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent disturbing these materials by casual contact during future maintenance operations.

Such a permanent (i.e., for the life of the building) enclosure should be built of new construction materials and should be impact resistant and airtight. Enclosure walls should be made of tongue-and-groove boards, boards with spine joints, or gypsum boards having taped seams. The underlying structure must be able to support the weight of the enclosure. (Suspended ceilings with laid-in panels do not provide airtight enclosures and should not be used to enclose structures covered with asbestos-containing materials.) All joints between the walls and ceiling of the enclosure should be caulked to prevent the escape of asbestos fibers. During the installation of enclosures, tools that are used (such as drills or rivet tools) should be equipped with HEPA-filtered vacuums. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area to be enclosed should be moved to ensure that the enclosure will not have to be re-opened later for routine or emergency maintenance. If such lights or other equipment cannot be moved to a new location for logistic reasons, or if moving them will disturb the asbestos-containing materials, removal rather than enclosure of the asbestos-containing materials is the appropriate control method to use.

Maintenance program. An asbestos maintenance program must be initiated in all facilities that have asbestos-containing materials. Such a program should include:

1. Development of an inventory of all asbestos-containing materials in the facility.
2. Periodic examination of all asbestos-containing materials to detect deterioration.
3. Written procedures for handling asbestos materials during the performance of small-scale, short-duration maintenance and renovation activities.
4. Written procedures for asbestos disposal.
5. Written procedures for dealing with asbestos-related emergencies.

Members of the building's maintenance engineering staff (electricians, heating/air conditioning engineers, plumbers, etc.) who may be required to handle asbestos-containing materials should be trained in safe procedures. Such training should include at a minimum:

1. Information regarding types of asbestos-containing materials and its various uses and forms.
2. Information on the health effects associated with asbestos exposure.

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3. Descriptions of the proper methods of handling asbestos-containing materials.

4. Information on the use of HEPA-equipped dual-cartridge respirators and other personal protection during maintenance activities.

Prohibited activities. The training program for the maintenance engineering staff should describe methods of handling asbestos-containing materials as well as routine maintenance activities that are prohibited when asbestos-containing materials are involved. For example, maintenance staff employees should be instructed:

1. *Not* to drill holes in asbestos-containing materials.

2. *Not* to hang plants or pictures on structures covered with asbestos-containing materials.

3. *Not* to sand asbestos-containing floor tile.

4. *Not* to damage asbestos-containing materials while moving furniture or other objects.

5. *Not* to install curtains, drapes, or dividers in such a way that they damage asbestos-containing materials.

6. *Not* to dust floors, ceilings, moldings or other surfaces in asbestos-contaminated environments with a dry brush or sweep with a dry broom.

7. *Not* to use an ordinary vacuum to clean up asbestos-containing debris.

8. *Not* to remove ceiling tiles below asbestos-containing materials without wearing the proper respiratory protection, clearing the area of other people, and observing asbestos removal waste disposal procedures.

9. *Not* to remove ventilation system filters dry.

10. *Not* to shake ventilation system filters.

Appendix H to Subpart G—Substance Technical Information for Asbestos— Non-Mandatory

I. Substance Identification

A. Substance: "Asbestos" is the name of a class of magnesium-silicate minerals that occur in fibrous form. Minerals that are included in this group are chrysotile, crocidolite, amosite, anthophyllite asbestos, tremolite asbestos, and actinolite asbestos.

B. Asbestos is used in the manufacture of heat-resistant clothing, automotive brake and clutch linings, and a variety of building materials including floor tiles, roofing felts, ceiling tiles, asbestos-cement pipe and sheet, and fire-resistant drywall. Asbestos is also present in pipe and boiler insulation materials, and in sprayed-on materials located on beams, in crawlspaces, and between walls.

C. The potential for asbestos from an asbestos-containing product to be inhaled depends on release of fibers from asbestos-containing material. Friable material can release asbestos fibers. Friable means that the materials, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure. The fibrous or fluffy sprayed-on materials used for fireproofing, insulation, or sound proofing are considered to be friable, and they readily release airborne fibers if disturbed. Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations. Some recent studies of asbestos release associated with routine maintenance of vinyl-asbestos floor-tiles indicates that it may be possible for airborne asbestos concentrations to result from the stripping, scrubbing, and buffing of these floors, especially using a dry process with abrasive pads. Asbestos-cement pipe or sheet can emit airborne fibers if the materials are cut or sawed, or if they are broken during demolition operations.

D. Permissible exposure: Exposure to airborne asbestos fibers may not exceed 0.2 fibers per cubic centimeter of air (0.2 f/cc) averaged over the 8-hour workday, and/or an excursion limit of 1.0 f/cc as averaged over a sampling period of 30 minutes.

II. Health Hazard Data

A. Asbestos can cause disabling respiratory disease and various types of cancers if the fibers are inhaled. Inhaling or ingesting fibers from contaminated clothing or skin can also result in these diseases. The symptoms of these diseases generally do not appear for 20 or more years after initial exposure.

B. Exposure to asbestos has been shown to cause lung cancer, mesothelioma, and cancer of the stomach and colon. Mesothelioma is a rare cancer of the thin membrane lining of the chest and abdomen. Symptoms of mesothelioma include shortness of breath, pain in the walls of the chest, and/or abdominal pain.

III. Respirators and Protective Clothing

A. Respirators: You are required to wear a respirator when performing tasks that result in asbestos exposure that exceeds the permissible exposure limit (PEL) of 0.2 f/cc of air. These conditions can occur while your employer is in the process of installing engineering controls to reduce asbestos exposure, or where engineering controls are not feasible to reduce asbestos exposure. Air-purifying respirators equipped with a high-efficiency particulate air (HEPA) filter can be used where airborne asbestos fiber concentrations do not exceed 2 f/cc; otherwise, air-supplied, positive-pressure, full facepiece respirators must be used. Disposable respirators or dust masks are not permitted to be used for asbestos work. For effective protection, respirators must fit your face and head snugly. Your employer is required to conduct fit tests when you are first assigned a respirator and every 6 months thereafter. Respirators should not be loosened or removed in work situations where their use is required.

B. Protective Clothing: You are required to wear protective clothing in work areas where asbestos fiber concentrations exceed the permissible exposure limit (PEL) of 0.2 f/cc to prevent contamination of the skin. Where protective clothing is required, your employer must provide you with clean garments. Unless you are working on a large asbestos removal or demolition project, your employer must also provide a change room and separate lockers for your street clothes and contaminated work clothes. If you are working on a large asbestos removal or demolition project, and where it is feasible to do so, your employer must provide a clean room, shower, and decontamination room contiguous to the work area. When leaving the work area, you must remove contaminated clothing before proceeding to the shower. If the shower is not adjacent to the work area, you must vacuum your clothing before proceeding to change the room and shower. To prevent inhaling fibers in contaminated change rooms and showers, leave your respirator on until you leave the shower and enter the clean change room.

IV. Disposal Procedures and Cleanup

A. Wastes that are generated by processes where asbestos is present include:

1. Empty asbestos shipping containers.

2. Process wastes such as cuttings, trimmings, or reject materials.

3. Housekeeping waste from sweeping or vacuuming.

4. Asbestos fireproofing or insulating material that is removed from buildings.

5. Asbestos-containing building products removed during building renovation or demolition.

6. Contaminated disposable protective clothing.

B. Empty shipping bags can be flattened under exhaust hoods and packed into airtight containers for disposal. Empty shipping drums are difficult to clean and should be sealed.

C. Vacuum bags or disposable paper filters should not be cleaned, but should be sprayed with a fine water mist and placed into a labeled waste container.

D. Process waste and housekeeping waste should be wetted with water or a mixture of water and surfactant prior to packaging in disposable containers.

E. Asbestos-containing material that is removed from buildings must be disposed of in leak-tight 6-mil thick plastic bags, plastic-lined cardboard containers, or plastic-lined metal containers. These wastes, which are removed while wet, should be sealed in containers before they dry out to minimize the release of asbestos fibers during handling.

V. Access to Information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for asbestos. In addition, your employer must instruct you in the proper work practices for handling asbestos-containing materials, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to asbestos. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure, and, if you are exposed above the permissible limit, he or she is required to inform you of the actions that are being taken to reduce your exposure to within the permissible limit.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your physician or designated representative upon your written request.

Appendix I to Subpart G—Medical Surveillance Guidelines for Asbestos—Non-Mandatory

I. Route of Entry

Inhalation, ingestion.

II. Toxicology

Clinical evidence of the adverse effects associated with exposure to asbestos is present in the form of several well-conducted epidemiological studies of occupationally exposed workers, family contacts of workers, and persons living near asbestos mines. These studies have shown a definite association between exposure to asbestos and an increased incidence of lung cancer, pleural and peritoneal mesothelioma, gastrointestinal cancer, and asbestosis. The latter is a disabling fibrotic lung disease that is caused only by exposure to asbestos. Exposure to asbestos has also been associated with an increased incidence of esophageal, kidney, laryngeal, pharyngeal, and buccal cavity cancers. As with other known chronic occupational diseases, diseases associated with asbestos generally appears about 20 years following the first occurrence of exposure: There are no known acute effects associated with exposure to asbestos.

Epidemiological studies indicate that the risk of lung cancer among exposed workers who smoke cigarettes is greatly increased over the risk of lung cancer among non-exposed smokers or exposed nonsmokers. These studies suggest that cessation of smoking will reduce the risk of lung cancer for a person exposed to asbestos but will not reduce it to the same level of risk as that existing for an exposed worker who has never smoked.

III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos is not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis. Symptoms characteristic of mesothelioma include shortness of breath, pain in the walls of the chest, or abdominal pain. Mesothelioma has a much longer latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to be found among workers who were first exposed to asbestos at an early age. Mesothelioma is always fatal.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is based on a history of exposure to asbestos, the presence of characteristics radiologic changes, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening are observed on X-rays taken during the early stages of the disease. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted above, exposure to asbestos has been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as a cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the action level (0.1 fiber per cubic centimeter of air) for 30 or more days per year and for all employees who are assigned to wear a negative-pressure respirator. All examinations and procedures must be performed by or under the supervision of a licensed physician, at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, EPA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in Appendix D.

(iii) A physical examination including a chest roentgenogram and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of this standard and appendices; a description of the employee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos and a copy of the opinion must be provided to the affected employee.

Appendix J to Subpart G—Smoking Cessation Program Information for Asbestos—Non-Mandatory

The following organizations provide smoking cessation information.

1. The National Cancer Institute operates a toll-free Cancer Information Service (CIS) with trained personnel to help you. Call 1–800–4–CANCER® to reach the CIS office serving your area, or write: Office of Cancer Communications, National Cancer Institute, National Institutes of Health, Building 31 Room 10A18, Bethesda, Maryland 20892.

2. American Cancer Society, 1599 Clifton Rd., N.E., Atlanta, Georgia 30329–4251, 1–800–ACS–2345 (Cancer Response System), or local Atlanta area 816–7800.

The American Cancer Society (ACS) is a voluntary organization composed of 58 divisions and 3,100 local units. Through "The Great American Smokeout" in November, the annual Cancer Crusade in April, and numerous educational materials, ACS helps people learn about the health hazards of smoking and become successful ex-smokers.

3. American Heart Association, 7320 Greenville Avenue, Dallas, Texas 75231, (214) 373–6300

The American Heart Association (AHA) is a voluntary organization with 130,000 members (physicians, scientists, and laypersons) in 55 State and regional groups. AHA produces a variety of publications and audiovisual materials about the effects of smoking on the heart. AHA also has developed a guidebook for incorporating a weight-control component into smoking cessation programs.

4. American Lung Association, 1740 Broadway, New York, New York 10019, 1–800–LUNG–USA

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A voluntary organization of 7,500 members (physicians, nurses, and laypersons), the American Lung Association (ALA) conducts numerous public information programs about the health effects of smoking. ALA has 59 State and 85 local units. The organization actively supports legislation and information campaigns for non-smokers' rights and provides help for smokers who want to quit, for example, through "Freedom From Smoking," a self-help smoking cessation program.

5. Office on Smoking and Health, U.S. Department of Health and Human Services, 4770 Buford Highway, N.E, 1 Mail Stop K-50, Atlanta, Georgia 30341, (404) 488–5705

The Office on Smoking and Health (OSH) is the Department of Health and Human Services' lead agency in smoking control. OSH has sponsored distribution of publications on smoking-related topics, such as free flyers on relapse after initial quitting, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

*In Hawaii, on Oahu call 524–1235 (call collect from neighboring islands).

Spanish-speaking staff members are available during daytime hours to callers from the following areas: California, Florida, Georgia, Illinois, New Jersey (area code 201), New York, and Texas. Consult your local telephone directory for listings of local chapters.

Appendix K to Subpart G—Work Practices and Engineering Controls for Automotive Brake Repair Operations—Non-Mandatory

This appendix is intended as guidance for employers of State and local government workers engaged in automotive brake and clutch repair operations who wish to reduce their employees' asbestos exposures during repair operations to levels below the standard's action level (0.1 f/cc). EPA believes that State and local government employers are likely to be able to reduce their employees' exposures to asbestos by employing the engineering and work practice controls described in Sections A and B of this appendix. Those employers who choose to use these controls and who achieve exposures below the action level will thus be able to avoid any burden that might be imposed by complying with such requirements as medical surveillance, recordkeeping, training, respiratory protection, and regulated areas, which are triggered when employee exposures exceed the action level or PEL.

Asbestos exposure in the automotive brake and clutch repair industry occurs primarily during the replacement of clutch plates and brake pads, shoes, and linings. Asbestos fibers may become airborne when an automotive mechanic removes the asbestos-containing residue that has been deposited as brakes and clutches wear. Employee exposures to asbestos occur during the cleaning of the brake drum or clutch housing.

Based on evidence in the OSHA rulemaking record (Exs. 84–74, 84–263, 90–148), EPA believes that employers engaged in brake repair operations who implement any of the work practices and engineering controls described in Sections A and B of this appendix may be able to reduce their employees' exposures to levels below the action level (0.1 fiber/cc) and/or excursion limit. These control methods and the relevant record evidence on these and other methods are described in the following sections.

A. Enclosed Cylinder/HEPA Vacuum System Method

The enclosed cylinder-vacuum system used in one of the facilities visited by representatives of the National Institute for Occupational Safety and Health (NIOSH) during a health hazard evaluation of brake repair facilities consists of three components:

(1) A wheel-shaped cylinder designed to cover and enclose the wheel assembly;

(2) A compressed-air hose and nozzle that fits into a port in the cylinder; and

(3) A HEPA-filtered vacuum used to evacuate airborne dust generated within the cylinder by the compressed air.

To operate the system, the brake assembly is enclosed in a cylinder that has viewing ports to provide visibility and cotton sleeves through which the mechanic can handle the brake assembly parts. The cylinder effectively isolates asbestos dust in the drum from the mechanic's breathing zone. The brake assembly isolation cylinder is manufactured in two sizes to fit brake drums in the 7-to-12-inch size range common to automobiles and light trucks and the 12-to-19-inch size range common to large commercial vehicles. The cylinder is equipped with built-in compressed-air guns and a connection for a vacuum cleaner equipped with a High Efficiency Particulate Air (HEPA) filter. This type of filter is capable of removing all particles greater than 0.3 microns from the air. When the vacuum cleaner's filter is full, it must be replaced according to the manufacturer's instruction, and appropriate HEPA-filtered dual cartridge respirators should be worn during the process. The filter of the vacuum cleaner is assumed to be contaminated with asbestos fibers and should be handled carefully, wetted with a fine mist of water, placed immediately in a labelled plastic bag, and disposed of properly. When the cylinder is in place around the brake assembly and the HEPA vacuum is connected, compressed air is blown into the cylinder to loosen the residue from the brake assembly parts. The vacuum then evacuates the loosened material from within the cylinder, capturing the airborne material on the HEPA filter.

The HEPA vacuum system can be disconnected from the brake assembly isolation cylinder when the cylinder is not being used. The HEPA vacuum can then be used for clutch facing work, grinding, or other routine cleaning.

B. Compressed Air/Solvent System Method

A compressed-air hose fitted at the end with a bottle of solvent can be used to loosen the asbestos-containing residue and to capture the resulting airborne particles in the solvent mist. The mechanic should begin spraying the asbestos-contaminated parts with the solvent at a sufficient distance to ensure that the asbestos particles are not dislodged by the velocity of the solvent spray. After the asbestos particles are thoroughly wetted, the spray may be brought closer to the parts and the parts may be sprayed as necessary to remove grease and other material. The automotive parts sprayed with the mist are then wiped with a rag, which must then be disposed of appropriately. Rags should be placed in a labelled plastic bag or other container while they are still wet. This ensures that the asbestos fibers will not become airborne after the brake and clutch parts have been cleaned. (If cleanup rags are laundered rather than disposed of, they must be washed using methods appropriate for the laundering of asbestos-contaminated materials.)

EPA believes that a variant of this compressed-air/solvent mist process offers advantages over the compressed-air/solvent mist technique discussed above, both in terms of costs and employee protection. The variant involves the use of spray cans filled with any of several solvent cleaners commercially available from auto supply stores. Spray cans of solvent are inexpensive, readily available, and easy to use. These cans will also save time, because no solvent delivery system has to be asembled, i.e., no compressed-air hose/mister ensemble. EPA believes that a spray can will deliver solvent to the parts to be cleaned with considerably less force than the alternative compressed-air delivery system described above, and will thus generate fewer airborne asbestos fibers than the compressed-air method. EPA therefore believes that the exposure levels of automotive repair mechanics using the spray can/solvent mist process will be even lower than the exposures reported by NIOSH for the compressed-air/solvent mist system (0.08 f/cc).

C. Information on the Effectiveness of Various Control Measures

The amount of airborne asbestos generated during brake and clutch repair operations depends on the work practices and engineering controls used during the repair or removal activity. Data in the rulemaking record document the 8-hour time-weighted average (TWA_8) asbestos exposure levels associated with various methods of brake and clutch repair and removal.

NIOSH submitted a report to the OSHA rulemaking record entitled "Health Hazard Evaluation for Automotive Brake Repair." In addition, exhibits provided during the public comment period for OSHA rulemaking provided exposure data for comparing the airborne concentrations of asbestos generated by the use of various work practices during brake repair operations. These reports present exposure data for brake repair operations involving a variety of controls and work practices, including:

- Use of compressed air to blow out the brake drums;
- Use of a brush, without a wetting agent, to remove the asbestos-containing residue;
- Use of a brush dipped in water or a solvent to remove the asbestos-containing residue;
- Use of an enclosed vacuum cleaning system to capture the asbestos-containing residue; and
- Use of a solvent mixture applied with compressed air to remove the residue.

Prohibited Methods

The use of compressed air to blow the asbestos-containing residue off the surface of the brake drum removes the residue effectively but simultaneously produces an airborne cloud of asbestos fibers. According to NIOSH, the peak exposures of mechanics using this technique were as high as 15 fibers/cc, and 8-hour TWA exposures ranged from 0.03 to 0.19 f/cc.

Dr. William J. Nicholson of the Mount Sinai School of Medicine in public comments submitted to the OSHA asbestos docket (Ex. 74–84) cited data from Knight and Hickish (1970) that indicated that the concentration of asbestos ranged from 0.84 to 5.35 f/cc over a 60–minute sampling period when compressed air was being used to blow out the asbestos-containing residue from the brake drum. In the same study, a peak concentration of 87 f/cc was measured for a few seconds during brake cleaning performed with compressed air. Rohl et al. (1976), in comments submitted to the OSHA docket (Ex. 90–148), measured area concentrations (of unspecified duration) within 3–5 feet of operations involving the cleaning of brakes with compressed air and obtained readings ranging from 6.6 to 29.8 f/cc. Because of the high exposure levels that result from cleaning brake and clutch parts using compressed air, EPA prohibits this practice in the EPA WPR.

Ineffective Methods

When dry brushing was used to remove the asbestos-containing residue from the brake drums and wheel assemblies, peak exposures measured by NIOSH ranged from 0.61 to 0.81 f/cc, while 8-hour TWA levels were at the standard's permissible exposure limit (PEL) of 0.2 f/cc (Ex. 84–263). Rohl and his colleagues (Ex. 90–148) collected area samples 1–3 feet from a brake cleaning operation being performed with a dry brush, and measured concentrations ranging from 1.3 to 3.6 f/cc; however, sampling times and TWA concentrations were not presented in the Rohl et al. study.

When a brush wetted with water, gasoline, or Stoddart solvent was used to clean the asbestos-containing residue from the affected parts, exposure levels (8-hour TWAs) measured by NIOSH also exceeded the new 0.2 f/cc PEL, and peak exposures ranged as high as 2.62 f/cc (OSHA docket Ex. 84–263).

Preferred Methods

Use of an engineering control system involving a cylinder that completely encloses the brake shoe assembly and a High Efficiency Particulate Air (HEPA) filter-equipped vacuum produced 8-hour TWA employee exposures of 0.01 f/cc and peak exposures ranging from nondetectable to 0.07 f/cc (OSHA docket Ex. 84–263). (Because this system achieved exposure levels below the standard's action level, it is described in detail above.) Data collected by the Mount Sinai Medical Center (OSHA docket Ex. 90–148), showed that for two of three operations sampled, the exposure of mechanics to airborne asbestos fibers was nondetectable. For the third operator sampled by Mt. Sinai researchers, the exposure was 0.5 f/cc, which the authors attributed to asbestos that had contaminated the operator's clothing in the course of previous brake repair operations performed without the enclosed cylinder/vacuum system.

Some automotive repair facilities use a compressed-air hose to apply a solvent mist to remove the asbestos-containing residue from the brake drums before repair. The NIOSH data (OSHA docket Ex. 84–263) indicated that mechanics employing this method experienced exposures (8-hour TWAs) of 0.8 f/cc, with peaks of 0.25 to 0.66 f/cc. This technique, and a variant of it that EPA believes is both less costly and more effective in reducing employee exposures, is described in greater detail above in Sections A and B.

D. Summary

In conclusion, EPA believes that it is likely that employers of State and local government workers engaged in brake and clutch repair operations will be able to avail themselves of the action level trigger built into the revised standard if they conscientiously employ one of the three control methods described above: the enclosed cylinder/HEPA vacuum system, the compressed air/solvent method, or the spray can/solvent mist system.

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Department of Justice

Bureau of Prisons

28 CFR Part 524
Classification and Program Review; Proposed Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP-1026-P]

RIN 1120-AA30

Classification and Program Review

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on Classification and Program Review to require program reviews for an inmate at least once every 90 days when an inmate is within twelve months of the projected release date. Current regulations require program reviews at least once every 90 days when an inmate is within two years of the projected release date. This amendment is intended to allow for the more efficient use of Bureau staff.

DATES: Comments due by January 3, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Classification and Program Review. A final rule on this subject was published in the **Federal Register** on July 3, 1991 (56 FR 30676) and was amended August 5, 1992 (57 FR 34662).

Program reviews provide the inmate with an opportunity to discuss staff's assessment of the inmate's performance in the institution's programming. Current regulations in 28 CFR 524.12(b) require a program review for an inmate every 180 days until the inmate is within two years of the projected release date, when a program review is required at least once every ninety days. In the interest of better using staff resources, the Bureau is proposing to continue the conducting of program reviews every 180 days until the inmate is within twelve months of the projected release date.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend part 524 in subchapter B of 28 CFR, chapter V as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521-3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; Title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C. Chapter 223); 28 CFR 0.95-0.99.

2. In § 524.12, paragraph (b) is revised to read as follows:

§ 524.12 Initial classification and program reviews.

* * * * *

(b) Staff shall conduct a program review for each inmate at least once every 180 days. When an inmate is within twelve months of the projected release date, a program review shall be conducted at least once every 90 days.

* * * * *

[FR Doc. 94-27046 Filed 10-31-94; 8:45 am]

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federal register

Tuesday
November 1, 1994

Part VI

The President

Notice of October 31—Continuation of Emergency With Respect to Iraq

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Presidential Documents

Title 3—

The President

Notice of October 31, 1994

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on November 2, 1993. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
October 31, 1994.

[FR Doc. 94-27277
Filed 10-31-94; 12:03 pm]
Billing code 4810-31-P

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54513–54786.....1

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H.R. 2970/P.L. 103–424

To reauthorize the Office of Special Counsel, and for other purposes. (Oct. 29, 1994; 108 Stat. 4361; 8 pages)

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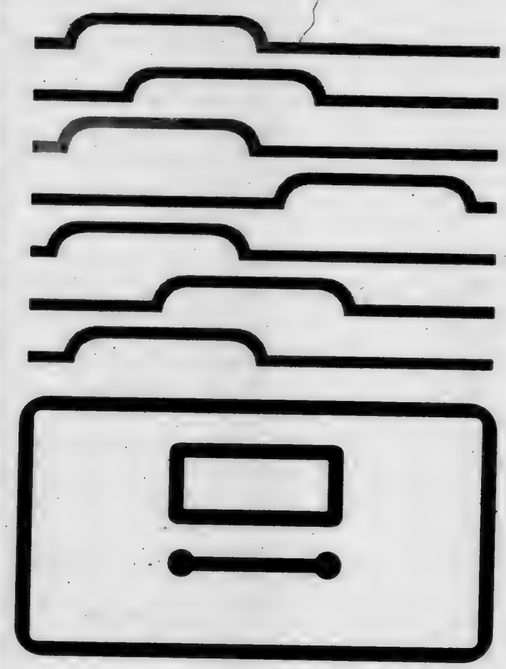
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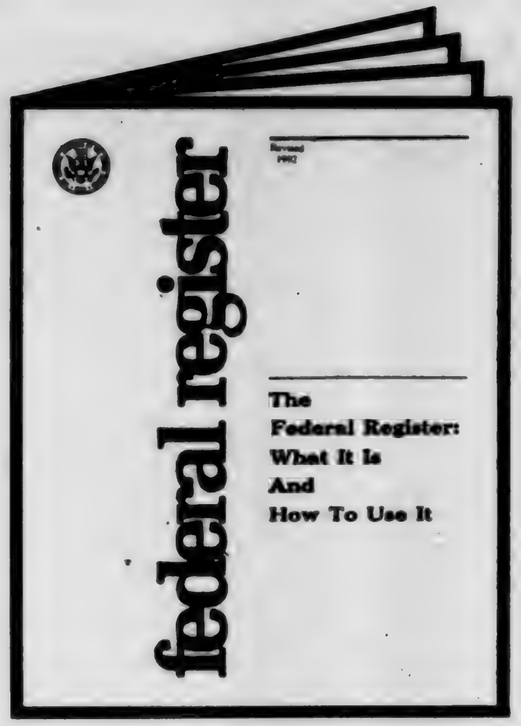
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG25

Prevailing Rate Systems; Abolishment of Detroit Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedule for printing positions in the Detroit, Michigan, wage area. Printing and lithographic employees in Detroit will now be paid rates from the regular Detroit, Michigan, wage schedule.

DATES: This interim rule becomes effective on November 2, 1994. Comments must be received by December 2, 1994. Employees paid rates from the Detroit, Michigan, special wage schedule for printing positions will continue to be paid from that schedule until their conversion to the regular Detroit, Michigan, wage schedule effective on the first day of the first full pay period beginning on or after November 2, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Detroit, Michigan, Printing and Lithographic wage schedule be abolished and that the regular Detroit, Michigan, wage schedule apply to printing employees in Detroit. This recommendation was based on the fact that the Detroit special printing wage survey would produce special schedule rates lower than the regular schedule rates for the area. Because regulations provide that the special printing schedule rates may not be lower than the regular schedule rates for an area, special printing schedule rates for Detroit are currently based on the Detroit regular wage schedule rates.

In addition, the Detroit special printing wage survey has become impractical due to the declining number of printing and lithographic employees available to serve as data collectors in the Detroit wage area. There are only nine covered employees. No employee's wage rate will be reduced upon conversion to the regular schedule. The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the January 1995 Detroit survey must begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; sec. 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. Section 532.279 is amended by removing paragraph (j)(10) and redesignating paragraph (j)(11) as (j)(10).

[FR Doc. 94–27103 Filed 11–1–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1902, 1941, 1942, 1943, 1944, and 1945

Handling of U.S. Treasury Checks and U.S. Savings Bonds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the handling of U.S. Treasury Checks and U.S. Savings Bonds. This action is necessary to update information regarding the disposition of checks and savings bonds in various circumstances. The intended effect is to identify the proper procedures for handling U.S. Treasury Checks and U.S. Savings Bonds.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: James Webb, Accounting Policy and Procedures Branch, FmHA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone 314–539–6026.

SUPPLEMENTARY INFORMATION: This action is not subject to the provisions of Executive Order 12866 since it only involves internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments, not

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withstanding the exemption in 5 U.S.C. 553 regarding such rules. This action is not published for proposed rulemaking because it involves only internal Agency management and publication for comment is unnecessary.

Discussion

The FmHA issues FmHA Instruction 2018–D, Policy and Procedure for Handling U.S. Treasury Checks and U.S. Savings Bonds, to replace FmHA Instruction 102.1, Handling of Loan Checks, Salary Checks, and U.S. Savings Bonds. The purpose of FmHA Instruction 2018–D is to identify the internal Agency procedures necessary for the proper handling of U.S. Treasury Checks and U.S. Savings Bonds. Published references to FmHA Instruction 102.1 contained in 7 CFR Parts 1902, 1941, 1942, 1943, 1944, and 1945 are being revised to reference FmHA Instruction 2018–D.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, and environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under the following number:

10.760 Water and Waste Disposal Systems for Rural Communities
10.761 Technical Assistance and Training Grants
10.762 Solid Waste Management Grants
10.763 Emergency Community Water Assistance Grants
10.764 Resource Conservation and Development Loans
10.765 Watershed Protection and Flood Prevention Loans
10.766 Community Facilities Loans
10.767 Intermediary Relending Program
10.768 Business and Industrial Loans
10.769 Rural Development Grants
10.770 Water and Waste Disposal Loans and Grants
10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans
10.427 Rural Rental Assistance Payments
10.433 Rural Housing Preservation Grants
10.434 Nonprofit National Corporations Loan and Grant Program
10.435 Agricultural Loan Mediation Program
10.437 Interest Assistance Program

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V, (48 FR 29115, June 24, 1983), all the programs listed above are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

List of Subjects

7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home Improvement, Loan programs—Housing and Community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PARTS 1902, 1941, 1942, 1943, 1944, 1945—[AMENDED]

1. The authority citation for the following parts are revised to read as follows:

Part 1902—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Part 1941—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Part 1942—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23 and 2.70.

Part 1943—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Part 1944—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Part 1945—Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

CHAPTER XVIII—[AMENDED]

2. 7 CFR, chapter XVIII is amended by changing the reference from "FmHA Instruction 102.1" to "FmHA Instruction 2018–D" in the following places:

(a) Part 1902, subpart A, § 1902.1 (c) and § 1902.2 (e).
(b) Part 1941, subpart A, § 1941.35 (b).
(c) Part 1942, subpart A, § 1942.7 (e) twice, and § 1942.12 (a).
(d) Part 1942, subpart C, § 1942.123 (j), twice.
(e) Part 1943, subpart A, § 1943.35 (b) (2) and (c) (1).
(f) Part 1943, subpart B, § 1943.85 (b) (2), (b) (3), and (c) (1).
(g) Part 1944, subpart A, § 1944.32 (b) (2) and (c).
(h) Part 1944, subpart D, § 1944.175 (e) (2).
(i) Part 1944, subpart E, § 1944.235 (f) (1).
(j) Part 1945, subpart C, § 1945.126 (b) (3).
(k) Part 1945, subpart D, § 1945.185 (a).

PART 1902—[AMENDED]

Subpart C—Selecting a Financial Institution for the Concentration Banking System (CBS)

§ 1902.104 [Amended]

3. and 4. Section 1902.104 (a) (2) introductory text is amended by changing the words "Cash Management Staff" and "Mail Code FC–32" to "Cash Management Branch" and "Mail Code FC–354", respectively.

5. Section 1902.104 (a) (3) is amended in the first and last sentence by changing the word "Staff" to "Branch".

PART 1943—[AMENDED]

Subpart A— Direct Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.35 [Amended]

6. and 7. Section 1943.35(b)(3) is amended by changing the words "FmHA Instruction 102.1, a copy of which may be obtained as stated in paragraph (b)(2) of this section." to "FmHA Instruction 2018–D".

PART 1944—[AMENDED]

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.175 [Amended]

8. and 9. Section 1944.175(f) is amended by changing the words "paragraph IV of FmHA Instruction 102.1" to "FmHA Instruction 2018–D".

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

§ 1944.235 [Amended]

10. Section 1944.235(g) is amended by changing the words "paragraph IV of FmHA Instruction 102.1" to "FmHA Instruction 2018–D".

PART 1945—[AMENDED]

Subpart C—Economic Emergency Loans

§ 1945.126 [Amended]

11. and 12. Section 1945.126(a) is amended by changing the words "FmHA Instruction 102.1, paragraph IV C" to "FmHA Instruction 2018–D".

Dated: October 3, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–27093 Filed 11–1–94; 8:45 am]

BILLING CODE 3410–07–U

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7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding processing payments under the Predetermined Amortization Schedule System (PASS). This action is taken to change the distribution of Form FmHA 1944–9A, Multiple Family Housing Statement of Payment Due. The intended effect is to only distribute the form to those borrowers that are delinquent and/or have late fees.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Christine Mechtly, Staff Accountant, Quality Assurance Branch, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, Telephone 314–539–6203.

SUPPLEMENTARY INFORMATION: This final rule has been determined to be exempt from the requirements of Executive Order 12866 because it has no adverse impact on FmHA borrowers or other members of the public and it involves only internal Agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Environmental Impact Statement

This document has been reviewed according to 7 CFR, Part 1940, Subpart G, "Environmental program." It is the determination of FmHA that the proposed action consisting only of accounting changes, does not constitute a major Federal Action significantly affecting the quality of the human environment and according to the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance under number:

10.415 Rural Rental Housing Loans

Discussion

Section 1951.506 is being amended to change the distribution of Form FmHA 1944–9A to only those borrowers who are delinquent and/or have late fees. This change in the distribution was requested by FmHA field office personnel in order to save FmHA money.

List of Subjects in 7 CFR Part 1951

Account servicing, Accounting, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

2. Section 1951.506 is amended by revising paragraphs (a) (3) and (4) to read as follows:

§ 1951.506 Processing Payments

(a) * * *

(3) On or about the 11th day of each month, the Finance Office will generate and mail to each borrower that is delinquent and/or has late fees, Form FmHA 1944–9A, "Multiple Family Housing Statement of Payment Due," showing the current monthly payment due, unpaid late fees, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage or occupancy surcharge due from the borrower or rental assistance (RA) due the borrower.

(4) Each borrower will submit to the District Office Form FmHA 1944–29 with the required monthly payment indicated or adjusted as indicated in paragraph (a)(5) of this section regardless of whether or not Form FmHA 1944–9A is received.

* * * * *

Dated: October 3, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–27092 Filed 11–1–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 16

[Docket No. 94–17]

RIN 1557–AA65

Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

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ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations governing the disclosure requirements for offers and sales of national bank securities. This final rule replaces regulations detailing the contents of offering documents covering national bank securities and requires that offering documents conform to the information requirements set forth in the appropriate Securities and Exchange Commission (SEC) registration form. The final rule also cross-references certain provisions of the Securities Act of 1933 and SEC rules.

The purpose of the final rule is to reduce unnecessary regulatory burdens on national banks and enhance their ability to raise capital, while maintaining the quality of disclosures provided to investors. The final rule generally treats national bank securities comparably to those of other corporations and eliminates a duplicative and potentially confusing system of regulations and forms.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Malone, Senior Attorney, Securities, Investments, and Fiduciary Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The OCC's securities offering regulations protect the purchasers of national bank securities by ensuring that investors receive full disclosure of all material facts when purchasing such securities, and also protect the integrity of national bank capital. The OCC determined, however, that revisions to these regulations were needed to reduce unnecessary burdens that the requirements imposed on national banks.

The OCC published a notice of proposed rulemaking (proposal), on October 15, 1992, seeking public comment on proposed revisions to the OCC's regulations governing the offer and sale of national bank securities (57 FR 47,280). The proposal replaced the OCC's former regulations with a series of regulations based, to the extent appropriate for national banks, on the Securities Act of 1933 (Securities Act) (15 U.S.C. 77a through 77aa) and the SEC's rules (17 CFR part 230). The deadline for submitting comments on the proposal originally was December 14, 1992. The OCC extended that deadline to February 1, 1993 (58 FR 4600), after several potential commenters requested additional time to prepare and submit comments.

Overview of Final Rule

The OCC is issuing this final rule pursuant to 12 U.S.C. 1 *et seq* and 93a. The final rule generally requires national bank securities offering documents to conform to the form for registration that the bank would use if it had to register the securities under the Securities Act. Accordingly, the final rule cross-references a number of provisions of the Securities Act and a number of SEC rules. The OCC's former regulations generally required the disclosure of similar information but in a different format than used by the SEC. And, unlike the SEC, the OCC did not provide for incorporation by reference of filings made under the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78a through 78jj).

By conforming its securities disclosure rules to those of the SEC, the OCC believes it can reduce significantly unnecessary regulatory burden. Banks, bank counsel, and investors are familiar with SEC disclosure requirements. In addition to being well-known in the marketplace, the interpretation of SEC disclosure requirements is well established and benefits from a significant body of precedent. Moreover, because the OCC rules will now actually reference the SEC rules, rather than parallel or copy them, the OCC rules will automatically remain current. Thus, the OCC's adoption of the SEC registration requirements, while reducing regulatory burden through the elimination of a duplicate (yet sometimes slightly dissimilar) set of disclosure rules, will maintain the quality of disclosure received by investors.

Similar to the OCC's former regulations, the final rule generally prohibits the offer or sale of bank-issued securities unless: (1) A registration statement for those securities has been filed with and declared effective by the OCC and the securities are sold through a prospectus that was filed as a part of that registration statement, or (2) the transaction is subject to an exemption. The final rule incorporates various SEC exemptions from registration requirements and adds an exemption for offers and sales of certain large denomination high-grade debt securities to accredited investors.

For example, the final rule incorporates through cross-reference the SEC's Regulation A (17 CFR 230.251 through 230.263), which sets forth the small issues exemption from registration requirements. Regulation A provides a simplified disclosure system for offerings of up to $5 million in any 12-month period. The OCC's former regulations included a similar exemption, but it was limited to offerings of up to $2 million in a 12-month period.

The final rule also includes an abbreviated registration system for offers and sales of large denominations of nonconvertible debt to accredited investors (defined in 17 CFR 230.501). This abbreviated registration system reduces unnecessary regulatory burden on offers and sales of such debt in situations where purchasers do not need the more extensive disclosures provided by the full part 16 registration process.

The OCC originally developed the abbreviated registration system through a series of interpretive and no-objection letters issued under the former part 16. While the SEC rules do not provide for this abbreviated approach, the OCC believes it is appropriate for several reasons. The market for such debt is well-developed and has not presented particular disclosure concerns. The requirements that the securities have a specified large denomination, be highly-rated, and that purchasers must meet the accredited investor criteria further ensure that the debt will only be offered and sold by a bank in situations when an abbreviated disclosure system is appropriate. Inclusion of this abbreviated approach in the final rule clarifies its criteria and provides better notice that such a system is available.

The final rule also cross-references the SEC's Rule 415 (17 CFR 230.415) on shelf registration. This enables banks to register securities for future sale and then to sell those securities when market conditions are favorable. Under the OCC's former regulations, shelf registration was not permitted. This imposed additional and unnecessary costs on national banks and put them at a disadvantage with respect to other issuers seeking to raise capital.

The final rule provides that nonpublic offerings of securities generally may be made in accordance with the SEC's Regulation D (17 CFR 230.501 through 230.508). The final rule permits sales to an unlimited number of investors who meet certain requirements (accredited investors), and up to 35 other sophisticated purchasers, or to any number of sophisticated purchasers subject to a limitation on the aggregate offering price.

Cross-reference of the SEC's Regulation D increases the number of allowable purchasers in a nonpublic offering. The former regulation allowed banks to make nonpublic offerings to only 15 sophisticated purchasers (and an unlimited number of accredited investors) in a 12-month period, unless the bank received OCC permission to increase the number of purchasers.

The revised rule makes certain conforming changes to §§ 5.46 and 5.47 to enable banks to use the SEC's Rule 415 (17 CFR 230.415) on shelf registration. The final rule further provides that a bank need not obtain prior OCC approval for a cash sale of preferred stock or an issuance of subordinated debt unless the OCC has notified the bank that prior approval is necessary. The OCC's former regulations required prior OCC approval for all cash sales of preferred stock and issuances of subordinated debt.

The Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) applies to retail sales of nondeposit investment products including bank securities. Thus, if bank securities are sold to retail customers, banks must ensure that such customers are fully informed that the securities are not insured by the FDIC, are not deposits or other obligations of the bank and are not guaranteed by the bank, and are subject to investment risks including possible loss of the principal invested.

Section-By-Section Discussion

The OCC received 13 comments on the proposal. The commenters generally supported the OCC's plan to incorporate through cross-reference certain sections of the Securities Act and the SEC's rules thereunder, and to adopt the SEC's forms. The commenters focused on specific aspects of the revisions that they believed needed modification. The OCC has carefully considered each of the comment letters and has made a number of changes in response to them.

Definitions (Section 16.2)

The proposal cross-referenced a number of definitions in the Securities Act. One such definition was the Securities Act definition of "underwriter." The proposal's cross-reference to the "underwriter" definition brought sales of stock by control persons and affiliates within the coverage of part 16. The former version of part 16 had covered those sales as indirect sales by a bank. By adopting the Securities Act underwriter definition, the proposal clarified the coverage of part 16. The final rule adopts the cross-reference to the definition of "underwriter" as proposed.

The proposal also defined "security" to conform with the definition in the Securities Act. The proposed definition was more detailed than the definition in the former part 16, specifying that all bank debt, not just debt subordinated to the claims of general creditors was considered a security. The definition in the former part 16 was unclear as to what debt instruments were covered.

The OCC received six comments on this issue. One commenter favored specifically covering senior debt in the definition while five commenters were opposed. Several commenters also stated that the definition of "security" should exclude specific traditional bank products and deposits.

The final rule includes a cross-reference to the Securities Act definition of "security." That definition clearly includes senior debt. While a number of banks interpreted the definition of "security" in the former part 16 as excluding senior debt and opposed a change in the definition that they viewed as expanding the coverage of part 16, the OCC believes there is no reason to treat senior debt differently from subordinated debt for purposes of this definition. Purchasers of both types of debt should receive the information necessary to make informed investment decisions.

In fact, the passage of the depositor preference provisions of the Omnibus Reconciliation Act of 1993 (12 U.S.C. 1821(d)(11)) has strengthened the need for purchasers of senior debt to receive disclosure materials. The depositor preference provisions require the FDIC to pay the claims of uninsured depositors prior to paying the claims of any other general creditors of a bank. Senior debt, therefore, is not equivalent to uninsured deposits. Purchasers of senior debt now are less likely than they were prior to the passage of the Omnibus Reconciliation Act to receive full payment in the event of a bank's insolvency.

The definition of "security" in the final rule does not specifically exclude traditional bank products. Nevertheless, the OCC does not intend that the definition cover insured or uninsured deposits or other traditional bank products, including letters of credit, banker's acceptances, or repurchase agreements. Judicial precedents have generally found these instruments *not* to be securities. Providing an exhaustive list of exceptions in the definition of "security" would be unwieldy and detract from the benefits of cross-referencing the SEC definition.

Registration Statement and Prospectus Requirements (Section 16.3)

Section 16.3 of the proposal set forth the general prohibitions on offers and sales of bank securities. Under the proposal, no person could offer or sell bank securities unless a registration statement for the securities had been filed with and declared effective by the OCC and the offer or sale was accompanied or preceded by a prospectus filed as a part of that registration statement, or an exemption was available under part 16. The OCC would keep on file and make available for public inspection the information that was included in the registration statement but not included in the prospectus provided to shareholders.

The OCC's proposed requirements on the use of a preliminary prospectus and the delivery of a final prospectus differed from the comparable SEC requirements. The OCC proposal simply incorporated the former part 16 requirements. The proposal required prior OCC authorization to use a preliminary prospectus. The proposal also required that, except in a situation where the OCC has authorized the use of a preliminary prospectus, offers must be made through the use and delivery of a prospectus that has been declared effective by the OCC. Unlike the SEC rules, the proposal did not generally permit a bank to provide the final prospectus to purchasers with the confirmation.

Five commenters addressed the OCC's proposed requirements on the use of a preliminary prospectus and the delivery of a final prospectus. All five commenters agreed that the OCC should follow the Securities Act requirements and SEC rules. Upon further consideration, the OCC agrees and has revised § 16.3 of the final rule to more clearly follow the requirements in the Securities Act and the SEC rules. The final rule provides that a preliminary prospectus may be used if (1) a registration statement including the preliminary prospectus has been filed with the OCC; (2) the preliminary prospectus includes the information required in a final prospectus (except for omission of certain information dependent on the offering price); and (3) a copy of the final prospectus is furnished to each purchaser prior to or simultaneously with the sale of the security.

Communications Not Deemed an Offer (Section 16.4)

The proposal listed a number of communications that the OCC did not deem to be offers and which therefore did not violate the prohibitions on making offers in § 16.3. The list included communications that comply with SEC Rule 134 or 135 (17 CFR 230.134 or 230.135). SEC Rules 134 and 135 govern advertisements used prior and subsequent to the filing of a registration statement. The proposal also

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provided that supplemental sales literature could be used after a registration statement has been declared effective if the sales literature was accompanied or preceded by a prospectus. In addition, the proposal provided that advertisements only had to be filed with the OCC upon the OCC's request.

The proposal also eliminated certain restrictions on advertisements that were in the former part 16. Former part 16 permitted the use of only extremely limited information in advertisements, such as the name of the bank and the amount of securities being offered, did not provide for the use of sales literature, and required all advertisements to be cleared by the OCC prior to use.

The OCC received no comments on this section of the proposal. However, the final rule adds to the list of permissible communications four types of communications that were not in the proposal, but which are permissible under SEC rules. Those communications include an oral offer of securities covered by a registration statement that has been filed with the OCC, a summary prospectus that satisfies the requirements of SEC Rule 431 (17 CFR 230.431), a notice of a proposed unregistered offering that satisfies the requirements of SEC Rule 135c (17 CFR 230.135c), and a communication that satisfies the requirements of SEC Rules 138 or 139 (17 CFR 230.138 or 230.139—Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) of the Securities Act in relation to certain publications).

Exemptions (Section 16.5)

Under the proposal, the registration and prospectus requirements did not apply to an offer or sale of securities exempt under certain sections of the Securities Act or the rules promulgated thereunder. The registration and prospectus requirements did not apply if the securities were exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c) by reason of an exemption other than those contained in section 3(a)(2) (for securities issued by banks) or section 3(a)(11) (for intrastate offerings). The proposed registration and prospectus requirements also did not apply to transactions exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). Section 4 of the Securities Act exempts transactions by any person other than an issuer, underwriter or dealer, transactions by an issuer not involving a public offering, transactions involving offers or sales by an issuer solely to accredited investors, and other transactions that meet certain specified requirements.

The proposal generally exempted from the § 16.3 registration statement and prospectus requirements offers and sales of bank securities to sophisticated purchasers that satisfy the requirements of SEC Regulation D (17 CFR 230.501 through 230.508). SEC Regulation D sets forth rules governing the limited offer and sale of securities without registration under the Securities Act, providing a safe harbor for compliance with sections 3(b) and 4(2) of the Securities Act (15 U.S.C. 77c(b) and 77d(2)).

The proposal also exempted from the § 16.3 registration statement and prospectus requirements offers and sales of bank issued securities in transactions that satisfy the abbreviated disclosure requirements of certain SEC rules. Those rules require only limited disclosure to purchasers because of the particular circumstances of the types of transactions. The rules include Rules 144 (17 CFR 230.144—Persons deemed not to be engaged in a distribution and therefore not underwriters), 144A (17 CFR 230.144A—Private resales of securities to institutions), 236 (17 CFR 230.236—Exemption of shares offered in connection with certain transactions), and Regulation S (17 CFR 230.901 through 230.904—Rules governing offers and sales made outside the United States without registration under the Securities Act of 1933). In addition, the proposal exempted transactions that complied with the requirements of SEC Rules 701, 702T, and 703T (17 CFR 230.701, 230.702T, and 230.703T), which cover offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

The commenters largely agreed with the OCC's approach. Two commenters recommended that the OCC also exempt transactions that comply with the SEC's Regulation A (17 CFR 230.251 through 230.263). Regulation A permits unregistered, public offerings of up to $5 million in securities under certain specified conditions.

The final rule adopts the exemptions from the registration and prospectus requirements included in the proposal, and also includes an exemption for transactions that comply with Regulation A. (This exemption is discussed further under "Small Issues (16.8)" of this preamble). This approach treats banks comparably to other corporations when issuing small quantities of securities.

Sales of Nonconvertible Debt (Section 16.6)

The proposal provided an optional abbreviated registration system for offers and sales of nonconvertible debt if those transactions met certain requirements. Offers and sales that met those requirements were deemed to be in compliance with the Registration statement and prospectus (16.3), Form and content (16.15), and Periodic and current reports (16.20) provisions of part 16.

In particular, the proposal specified that: (1) The bank issuing the nonconvertible debt must have securities registered under the Exchange Act or must be a subsidiary of a bank holding company that has securities registered under the Exchange Act; (2) The insured depository institution subsidiaries of the registered bank holding company must constitute at least 80% of the bank holding company's assets; (3) The debt must be offered and sold only to accredited investors (defined in 17 CFR 230.501(a)); (4) The debt must be offered and sold by a reputable and experienced underwriter, not affiliated with the bank; (5) The debt must be sold in minimum denominations of more than $100,000 and the notes cannot be exchanged for notes in smaller denominations; (6) The debt must be rated investment quality; (7) Each purchaser must receive an offering document describing the terms of the debt and incorporating the bank's latest Call Reports and the bank or holding company's Exchange Act filings; (8) The offering document and any amendments must be filed with the OCC within five days after first use; and (9) Any required filing fees must be submitted.

The OCC designed the requirements of the abbreviated registration system to ensure that potential purchasers of debt subject to the abbreviated registration system had access to necessary information on the issuing bank and commonly controlled depository institutions, as well as the appropriate knowledge and experience to evaluate that information.

The OCC requested comment on whether this abbreviated registration system was necessary or appropriate. The OCC received 11 comments on this issue. Although the commenters generally favored the abbreviated registration system, they expressed different perspectives about the specific requirements of the system. A number stated that the OCC should eliminate the requirement that nonconvertible debt be sold by an underwriter unaffiliated with the bank. Several commenters agreed

that the OCC needed to revise the abbreviated registration system to address the special circumstances of federal branches and agencies of foreign banks.

The OCC agrees with the commenters that the underwriter requirement is unnecessary. The underwriter requirement imposes additional costs on banks and limits their flexibility without necessarily improving the quality of the disclosure materials provided to investors. The final rule therefore does not require that the debt be offered and sold by an underwriter, not affiliated with the bank, as part of an underwritten offering.

In addition, the OCC has determined that it is unnecessary to require that the insured depository subsidiaries of a registered bank holding company constitute at least 80% of the bank holding company's assets. This asset-based requirement does not ensure that the holding company's Exchange Act filings would be more meaningful to investors than the filings would be without the requirement. Accordingly, it has been eliminated from the final rule.

Further, the final rule requires that the debt be sold in minimum denominations of $250,000, rather than more than $100,000, in order to provide additional protections to purchasers of debt. Requiring larger denomination notes, and preventing them from being broken into smaller denominations, helps ensure that the purchasers of the notes are sophisticated, high net worth individuals or entities, for whom abbreviated disclosure is appropriate.

The final rule also takes into account the special circumstances of federal branches of foreign banks. Because foreign banks and their holding companies generally are not reporting companies under the Exchange Act, federal branches and agencies often would be unable to comply fully with the requirements on Exchange Act filings in the abbreviated registration system. Federal branches and agencies usually do not have securities registered under the Exchange Act and are not subsidiaries of holding companies registered under the Exchange Act. Therefore, federal branches and agencies also cannot incorporate Exchange Act filings into offering documents.

Accordingly, the final rule provides that federal branches and agencies of foreign banks need not have securities registered under the Exchange Act or be subsidiaries of holding companies that have securities registered under the Exchange Act to take advantage of the abbreviated registration system. Instead, these entities may make information about themselves available to purchasers by filing with the OCC the information specified in SEC Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) and providing purchasers with the information specified in SEC Rule 144A(d)(4)(i) (17 CFR 230.144A(d)(4)(i)). The OCC believes that this information is adequate for the sophisticated purchasers who are eligible investors under the abbreviated disclosure system. Such purchasers also are able to determine whether they have sufficient information to make informed investment decisions, and if they do not, can request additional information.

Nonpublic Offerings (Section 16.7)

The proposal permitted offers and sales without compliance with the registration statement and prospectus requirements of § 16.3 if the offers and sales were made in accordance with SEC Regulation D (17 CFR 230.501 through 230.508) and the purchasers were either accredited investors or "sophisticated" investors. SEC Regulation D sets forth rules governing the limited offer and sale of securities without registration under the Securities Act and provides a safe harbor for compliance with sections 3(b) and 4(2) of the Securities Act (15 U.S.C. 77c(b) and 77d(2)). SEC Regulation D does not require that in all circumstances purchasers be sophisticated.

The proposal's cross-reference of Regulation D increased the number of purchasers permitted in a nonpublic offering over the number allowed under the former part 16. Former part 16, as interpreted by the OCC, permitted sales to only 15 sophisticated purchasers (and an unlimited number of accredited investors), unless the seller received OCC permission to increase the number of purchasers. The proposal permitted sales to 35 sophisticated purchasers and an unlimited number of accredited investors, or to any number of sophisticated purchasers subject to a limitation on the aggregate offering price.

The proposal required the filing of a notice of sales no later than 15 days after the first sale of securities in accordance with SEC Rule 503 of Regulation D. Under the former part 16, nonpublic offering notices had to be filed 20 days prior to the time any security was offered or sold. This proposed change gave banks added flexibility in the timing of sales of securities.

Under the proposal, securities subject to the limitations on resale of Regulation D must be sold pursuant to SEC Rule 144 or 144A, another exemption from registration under the Securities Act, or in accordance with the part 16 registration and prospectus requirements. The former part 16 did not permit any securities sold in a nonpublic offering to be resold for two years. The proposed change in resale limitations would improve the marketability of bank securities.

The OCC received two comments on this section of the proposal. One commenter supported the cross-reference of Regulation D. The other commenter believed that by including the notice requirement in the nonpublic offering section, the OCC was making the filing of a notice a condition to the availability of the nonpublic offering exemption. The commenter stated that while the SEC does provide for the filing of a notice, it is not a condition of any of the exemptions in Regulation D.

The final rule adopts this section as proposed with certain clarifying changes. The final rule indicates more clearly that although the filing of a notice is required, failure to file a notice does not result in the loss of the nonpublic offering exemption. Thus, the notice is not a condition of any of the exemptions in Regulation D. The final rule also clarifies that offers and sales made in reliance on Regulation D must only be made to sophisticated purchasers.

Small Issues (Section 16.8)

The proposal did not cross-reference the SEC's Regulation A (17 CFR 230.251 through 230.264), which permits the unregistered, public offering of securities under specified conditions. The OCC requested comment as to whether it should cross-reference Regulation A and received two comments in response. Both commenters believed that the OCC should cross-reference Regulation A.

In light of these comments, the OCC has decided to cross-reference Regulation A in the final rule. Given the criteria for use of the rule, the OCC does not believe its use reduces purchaser safeguards. Moreover, the OCC believes that the Regulation A small issues exemption from registration should be available to banks, as it is to other issuers, to prevent imposing unnecessary burdens on banks in connection with small securities issuances.

In order to use the Regulation A exemption, an issuer's offering documents must be filed with and reviewed by the OCC. The final rule states that filers should consult the SEC's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231)

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for guidance on the appropriate disclosures to be included in the offering document. The Guide 3 disclosures consist of information that potential purchasers of bank securities need in order to evaluate their investments

Form and Content (Section 16.15)

The proposal required all registration statements filed with the OCC to be on the form for registration that the bank would use were it required to register the securities under the Securities Act. Which form a bank uses depends, among other things, on whether the bank is subject to the registration and reporting requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l* and 78o(d)) and on the amount of the offering.

Several commenters suggested that the OCC clarify whether a national bank may use the SEC's Form S–3 (Form for registration under the Securities Act of securities of certain issuers offered pursuant to certain types of transactions) in connection with the offer and sale of its securities if its parent company meets the requirements set forth in Instruction I.C. to Form S–3 and the other requirements set forth in Instruction I.C. are met.

The final rule permits national banks to use Form S–3 in such situations. Pursuant to Instruction I.C. to the SEC's Form S–3, if the parent of a registrant meets the registration requirements for the use of Form S–3, the registrant may use Form S–3 for offers and sales of nonconvertible debt or nonconvertible preferred stock provided the registrant is a wholly-owned subsidiary of the parent and the securities being issued by the registrant are investment grade securities (or are fully guaranteed by the qualifying parent as to principal and interest).

A national bank may establish an Exchange Act disclosure base for the Form S–3 by registering its common stock on Form 10 (General form for registration of securities pursuant to section 12(b) or 12(g) of the Exchange Act) prior to the effectiveness of its offering document and incorporating by reference the form pursuant to Item 12(a)(1) of Form S–3 in lieu of a Form 10–K (General form of annual report).

The proposal also required that the registration statement must meet the requirements of the SEC regulations referred to in the registration form. Those regulations include Regulation S–X (17 CFR part 210), which applies to financial statements, and Regulation S–K (17 CFR part 229), which applies to the nonfinancial statement portion of the registration statement. The OCC expects that, consistent with SEC requirements and practice, filers will prepare registration statements for bank securities in accordance with Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231).

Because the proposal required registration statements to satisfy the requirements of the SEC regulations referred to in the applicable registration form, the financial statements in the registration statements must be audited. The OCC sought comment on whether it should limit the requirement for audited financial statements to banks of a certain size and whether that size should be the cut-off for the requirement for annual independent audits that was established pursuant to section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1831m). Several commenters stated that the OCC should limit the audited financial statements requirement to banks of a certain size, although they disagreed as to what that size should be.

After considering the comments, the OCC has decided not to limit the audited financial statements requirement to banks of a certain size. The final rule requires audited financial statements from national banks to the same extent that the SEC requires audited financial statements of other corporations. Requiring banks to provide audited financial statements in their registration statements helps ensure that purchasers of bank stock receive the same quality of disclosure and the same protections as do purchasers of stock of other types of issuers.

Because the proposal required registration statements to comply with the SEC regulations referenced in the applicable registration form, banks that were subsidiaries of holding companies had to include audited bank financial statements, rather than bank holding company statements, in their registration statements. However, a number of commenters felt that banks that are subsidiaries of holding companies that have securities registered under the Exchange Act should not have to include audited bank financial statements in their registration statements. The commenters stated that these banks should instead be allowed to include in their registration statements the audited financial statements contained in the holding companies' Exchange Act filings and the banks' Call Reports.

The OCC disagrees, and the final rule requires banks that are subsidiaries of holding companies to include audited bank financial statements in registration statements for bank securities. The OCC believes that purchasers of bank securities that are not subject to any sophistication requirements should be provided with bank, not merely holding company, financial statements. Those purchasers need bank level financial statements in order to make informed investment decisions about bank securities.

The proposal cross-referenced the requirements of Rule 400 and Articles 1–3 of the SEC's general rules on registration in SEC Regulation C (17 CFR 230.400 through 230.439). Regulation C includes the SEC rule on shelf registration in Rule 415 (17 CFR 230.415—Delayed or continuous offering and sale of securities). Shelf registration enables banks to register securities that are to be sold in the future and then to sell those securities when the market conditions are most favorable. Regulation C also includes SEC Rule 430A (17 CFR 230.430A—Prospectus in a registration statement at the time of effectiveness). Rule 430A allows an issuer to file a prospectus that omits certain information dependent on the offering price. The former part 16 did not contain any provisions comparable to Rule 415 or Rule 430A, so price and other information had to be set at the time an offering document was filed.

The final rule, like the proposal, cross-references the requirements of Rule 400 and Articles 1–3 of the SEC's general rules on registration in SEC Regulation C (17 CFR 230.400 through 230.439). However, the final rule also cross-references the other articles of Regulation C (17 CFR 230.445 through 230.497). The OCC is cross-referencing the remaining articles of Regulation C in order to adopt the SEC's rules and procedures governing when registration statements and amendments become effective. (For a discussion of this matter *see* "Effectiveness (§ 16.16)" in this preamble). These remaining articles include rules on delaying amendments and acceleration of the effective date that are integral to the procedures under which registration statements and amendments become effective.

Effectiveness (Section 16.16)

The proposal did not provide for the adoption of the Securities Act provisions or the SEC's rules pertaining to when registration statements become effective. The proposal retained the requirement in former part 16 that no registration statement, prospectus, or amendment was effective until declared effective by the OCC.

Only one commenter discussed this issue. That commenter urged that the OCC follow the SEC's procedures in this area. The OCC agrees and the final rule adopts the Securities Act provisions and the SEC's rules on effectiveness. (*See* discussion under "Form and Content (§ 16.15)" in this preamble.)

Under the cross-referenced provisions of the Securities Act, registration statements automatically become effective 20 days after they are filed unless a delaying amendment is filed with the OCC. However, consistent with SEC practice, the OCC expects all filers to file delaying amendments with their registration statements to prevent the registration statements from becoming automatically effective. The delaying amendments will ensure that the OCC has adequate time to review and comment upon filings.

Filing Requirements and Inspection of Documents (Section 16.17)

This section of the proposal specified that issuers must file four copies of all documents with the OCC and required the OCC to make those documents available for public inspection. The former part 16 required issuers to submit six copies of most documents. The proposal also specified that all notices or other documents required to be filed by any section of the Securities Act, the Exchange Act, or a rule of the SEC cross-referenced in part 16, be filed with the OCC. The final rule adopts this section generally as proposed, with a few technical clarifying changes.

Use of Prospectus (Section 16.18)

Under the proposal, a prospectus or amendment declared effective by the OCC may not be used more than nine months after its effective date unless the information contained therein is as of a date not more than 16 months prior to the date of use. This section of the proposal was based on the requirement in section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) pertaining to the age of information in a prospectus. The proposal provided more time for an offering to be completed than did former part 16. Former part 16 allowed an offering circular to be effective for a period of only six months, although the OCC could extend the six month period for two consecutive 90 day periods upon request. In the event there was a material change after a prospectus has been declared effective, the proposal prohibited use of the prospectus until an amendment reflecting the change had been filed with and declared effective by the OCC.

The final rule adopts this section generally as proposed, with minor clarifying changes.

Withdrawal or Abandonment (Section 16.19)

The proposed rule allowed filers to withdraw a registration statement and amendments prior to the effective date. It also stated that the OCC could determine that a registration statement and amendments had been abandoned if they had been on file for nine months and not become effective. Documents withdrawn or declared abandoned would be so marked but would remain in the OCC files. The final rule adopts this section as proposed, with minor clarifying changes.

Current and Periodic Reports (Section 16.20)

The proposal required banks that had filed registration statements declared effective pursuant to part 16 to file with the OCC periodic and current reports until the banks were eligible to suspend the filing of those reports. This requirement was based on that imposed by section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) on corporations filing Securities Act registration statements with the SEC. The filing of periodic and current reports ensures that current information about an issuer is available for a period after an offering of securities is made. The periodic and current reporting requirements cease the year after the registration statement becomes effective, if the issuer is not otherwise required to register its securities under the Exchange Act.

The proposal further provided that a bank need not comply with the periodic and current reports requirements if the bank was a subsidiary of a one-bank holding company and the bank's parent bank holding company filed current and periodic reports pursuant to section 13 of the Exchange Act.

Five commenters stated that all banks that are subsidiaries of holding companies that have securities registered under the Exchange Act should be able to rely on holding company Exchange Act filings and bank Call Reports to fulfill the current and periodic report requirements.

The final rule permits banks that are subsidiaries of holding companies that have securities registered under the Exchange Act to rely on holding company Exchange Act filings and bank Call Reports to fulfill the current and periodic reports requirements in specified circumstances. A bank need not file current and periodic reports if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files periodic and current reports pursuant to section 13 of the Exchange Act.

The OCC believes that when these conditions are met, the holding company's current and periodic reports will provide the marketplace with information equivalent to what would be provided if the holding company's subsidiary bank made separate reports. The OCC concluded that any broader exception would not be appropriate because the information provided is used in markets including both sophisticated and unsophisticated investors. In the case of the latter, they may not have sufficient financial expertise to evaluate information that differs substantially from the type and scope of disclosure that would have been contained in current and periodic reports filed by the bank itself.

Request for Interpretive Advice or No Objection Letter (Section 16.30)

The proposal set forth the requirements that a person must meet to obtain interpretive advice or a no-objection letter under part 16. Although these requirements are not detailed in former part 16, the OCC based them on Banking Circular 205, OCC Staff No-Objection Positions, which has been in effect since July 26, 1985. The final rule adopts this section as proposed, with minor clarifying changes.

Escrow Requirement (Section 16.31)

The proposal required the use of an independent escrow account if the funds received in an offering were to be certified as capital or if there was a minimum amount to be sold in an offering. One commenter opposed this requirement.

The final rule modifies the escrow requirements. Section 16.31 of the final rule allows the OCC to require any funds received through an offer or sale of securities to be held in an independent escrow account at an unrelated insured depository institution when the OCC determines it is in the best interest of the shareholders. A bank does not have to use an independent escrow account unless the OCC has notified the bank that an escrow account is necessary. However, the OCC generally expects banks to use independent escrow accounts.

Fraudulent Transactions and Unsafe and Unsound Practices (Section 16.32)

The proposal prohibited untrue statements of material fact, omissions of material fact, and acts or practices that

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operate as a fraud in the offer or sale of a bank security. The language in this section of the proposal was substantially similar to the language in section 17(a) of the Securities Act (15 U.S.C. 77q). The section 17(a) prohibitions apply to offers and sales of bank securities regardless of whether the prohibitions are restated in part 16. The OCC believed that restating the prohibitions in part 16 furnished warning that the prohibitions apply. The proposal further provided that violations of the fraudulent transactions section also constitute unsafe or unsound practices under 12 U.S.C. 1818. This section of the final rule is adopted as proposed.

Conforming Amendments to Part 5

Merger, Consolidation, Purchase and Assumption (Section 5.33(b)(6))

The proposal included a conforming amendment to 12 CFR 5.33(b)(6)(ii) which requires that all shareholders in a merger or consolidation transaction be adequately informed of all aspects of the transaction. The proposal amended § 5.33(b)(6)(ii) to add that a bank required to file a registration statement with the OCC may use that registration statement to comply with the proxy statement requirements set forth in § 5.33(b)(6)(ii). In addition, a bank subsidiary of a holding company required to file a registration statement with the SEC may use that registration statement to comply with OCC proxy statement requirements. The final rule adopts the conforming amendment to § 5.33(b)(6)(ii) as proposed, with minor technical clarifying changes.

Changes in Equity Capital (Section 5.46) and Subordinated Debt as Capital (Section 5.47)

The proposal did not include any changes to 12 CFR 5.46 and 5.47. Former § 5.46 required OCC preliminary approval for a change in capital due to a sale of preferred stock. Former § 5.46 further specified that changes in equity capital must occur within 12 months of seeking preliminary approval. Former § 5.47 required OCC approval for subordinated debt that is to be considered part of a bank's capital structure; a bank must receive preliminary approval prior to the issuance of subordinated debt and the subordinated debt must be issued within 12 months of the preliminary approval.

The OCC requested comment on whether §§ 5.46 and 5.47 needed to be modified in order to enable banks to use the SEC rule on shelf registration in Rule 415 (17 CFR 230.415—Delayed or continuous offering and sale of securities). Shelf registration permits banks to register securities that are to be sold in the future and then to sell those securities when the market conditions are most favorable.

The OCC received four comments on this issue. All of the commenters stated that because of the delays caused by the preliminary approval requirements in §§ 5.46 and 5.47, the OCC needed to amend those requirements in order for banks to take advantage of SEC Rule 415. The OCC agrees and has adopted a final rule that includes changes to §§ 5.46 and 5.47. The changes will enable most banks to use the SEC's rule on shelf registration and thereby reduce unnecessary regulatory burden.

As adopted in the final rule, § 5.46 no longer requires a bank to obtain preliminary approval of cash sales of preferred stock unless the OCC has notified the bank that preliminary approval is necessary. After selling preferred stock, a bank still must obtain final approval and certification.

The final rule also changes the approval procedures in § 5.47 for the issuance of subordinated debt. Under the new procedures, a bank need not obtain prior approval to issue subordinated debt unless the OCC has notified the bank that prior approval is necessary. A bank that has not been notified that it must obtain prior approval to issue subordinated debt must notify the OCC after issuing debt that is to be counted as tier 2 capital. Subordinated debt will qualify as tier 2 capital if it meets the requirements set forth in 12 CFR part 3, Appendix A section 2(b)(4) and complies with the OCC Guidelines for Subordinated Debt Instruments in the Comptroller's Manual for Corporate Activities.

The OCC may solicit comments on § 5.46 and § 5.47 in connection with its proposed comprehensive revisions to Part 5 of the OCC's regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action as defined in Executive Order 12866.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1557–0120. The estimated annual burden per respondent varies from two to 100 hours, depending on individual circumstances, with an estimated average of 19 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities Division, 250 E Street, SW, Washington, DC 20219 and to the Office of Management and Budget, Paperwork Reduction Project (1557–0120), Washington, DC 20503.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations, part 5 is amended and part 16 is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

2. In § 5.33, paragraph (b)(6)(ii) is amended by adding a new sentence at the end of the paragraph:

§ 5.33 Merger, consolidation, purchase and assumption.

* * * * *

(b) * * *

(6) * * *

(ii) * * * In any transaction where securities are required to be registered with the Office under part 16 of this chapter or with the Securities and Exchange Commission under the Securities Act of 1933, a depository institution may file the registration statement with the Office to meet the requirements of this paragraph;

* * * * *

3. In § 5.46, paragraphs (f)(4) and (g)(1) are revised to read as follows:

§ 5.46 Changes in equity capital.

* * * * *

(f) * * *

(4) *Preferred stock.* A bank need not submit a letter of intent and obtain preliminary approval prior to selling preferred stock for cash unless the Office has notified the bank that preliminary approval is necessary. Any bank selling preferred stock must submit a letter of notification pursuant to paragraph (g)(2) of this section to obtain final approval and certification. The Office must review and may approve provisions in articles of association concerning preferred stock dividends, voting and conversion rights, retirement, and rights to exercise control over management. A bank may submit those provisions for review and approval with the letter of notification.

* * * * *

(g) *Procedures.* (1) A bank must submit to the appropriate District office by hand or by mail, return receipt requested, a letter of intent to change capital. The bank must receive preliminary approval for any change in capital except for a stock dividend, a cash sale of common stock, a cash sale of preferred stock where the bank has not been notified by the Office that preliminary approval is required, or a reduction in par value of common stock that does not change the sum of capital and capital surplus. Stock dividends, cash sales of common stock, cash sales of preferred stock where the bank has not been notified by the Office that preliminary approval is required, or reductions in par value of common stock that do not change the sum of capital and capital surplus are subject only to the notification process described in paragraphs (g)(2) and (g)(3) of this section. For other changes in equity capital, the bank must submit a letter of intent describing the type and amount of the proposed change, and state if the bank is subject to a capital plan with the Office. If the bank is subject to a capital plan or if a capital plan is required in connection with the proposed change in equity capital, the bank must state how the proposed change conforms to the plan. The bank may consider its proposed change preliminarily approved 30 days after the day on which the Office receives the letter of intent, unless the bank is notified that preliminary approval is delayed, conditioned, or denied. The bank should submit the letter of intent and receive preliminary approval prior to seeking shareholder approval. The bank may proceed with an increase in capital after preliminary approval is received; however, it may not reduce its capital or make a distribution until it has received final Office approval as specified in paragraphs (g)(2) and (g)(3) of this section.

* * * * *

4. Section 5.47 is revised to read as follows:

§ 5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 93a.

(b) *Licensing requirements.* Unless the OCC has previously notified a national bank that prior approval is required, or unless prior approval is required by law, a national bank does not need prior OCC approval to issue or prepay subordinated debt, regardless of whether the bank intends to count the debt as Tier 2 capital. A national bank that is not required to obtain prior approval must notify the OCC after issuing subordinated debt that is to be counted as Tier 2 capital.

(c) *Scope.* This section sets forth the procedures for OCC review and approval of applications to issue or prepay subordinated debt.

(d) *Definitions.* (1) *Capital plan* means a plan describing the means and schedule by which a national bank will attain specified capital levels or ratios, including a plan to achieve minimum capital ratios filed with the appropriate district office under § 3.7 of this chapter and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and § 6.5 of this chapter.

(2) *Tier 2 capital* has the same meaning as set forth in § 3.2(d) of this chapter.

(e) *Qualification as regulatory capital.* (1) A national bank's subordinated debt qualifies as Tier 2 capital if the subordinated debt meets the requirements in part 3 of this chapter, appendix A to part 3, section 2(b)(4), and complies with the "OCC Guidelines for Subordinated Debt Instruments" in the Comptroller's Manual for Corporate Activities (Manual).

(2) If the OCC notifies a national bank that it must obtain OCC approval before issuing subordinated debt, the subordinated debt will not qualify as Tier 2 capital until the bank obtains OCC approval for its inclusion in capital.

(f) *Prior approval procedure.* (1) *Application.* A national bank required to obtain OCC approval before issuing or prepaying subordinated debt must submit an application to the appropriate district office. The application must include:

(i) A description of the terms and amount of the proposed issuance or prepayment;

(ii) A statement of whether the bank is subject to a capital plan or required to file a capital plan with the OCC and, if so, how the proposed change conforms to the capital plan;

(iii) A copy of the proposed subordinated note format and note agreement; and

(iv) A statement of whether the debt issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(2) *Approval.* (i) *General.* The OCC approves, conditionally approves, or denies an application to issue or prepay subordinated debt on or before the 30th day after the complete application is received by the OCC. The application is deemed approved by the OCC as of the 30th day after the filing is received by the OCC unless the OCC notifies the bank prior to that date that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

(ii) *Notification.* When the OCC notifies the bank that the OCC approves the bank's application to issue or prepay the subordinated debt, it also notifies the bank whether the debt qualifies as Tier 2 capital.

(iii) *Expiration of approval.* Approval expires if a national bank does not complete the sale of the subordinated debt within one year of approval.

(g) *Notice procedure.* If a national bank is not required to obtain approval before issuing subordinated debt, the bank must notify the appropriate district office in writing within ten days after issuing subordinated debt that is to be counted as Tier 2 capital. The notice must include:

(1) The terms of the issuance;

(2) The amount and date of receipt of funds;

(3) A copy of the final subordinated note format and note agreement; and

(4) A statement that the issue complies with all laws, regulations, and the "OCC Guidelines for Subordinated Debt Instruments" in the Manual.

(h) *Exceptions to rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to the issuance of subordinated debt.

(i) *Issuance of subordinated debt.* A national bank must comply with the Securities Offering Disclosure Rules in part 16 of this chapter when issuing subordinated debt even if the bank is not required to obtain prior approval to issue subordinated debt.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

5. Part 16 is revised to read as follows:

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PART 16—SECURITIES OFFERING DISCLOSURE RULES

Sec.

16.1 Authority, purpose, and scope.
16.2 Definitions.
16.3 Registration statement and prospectus requirements.
16.4 Communications not deemed an offer.
16.5 Exemptions.
16.6 Sales of nonconvertible debt.
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16.8 Small issues.
16.15 Form and content.
16.16 Effectiveness.
16.17 Filing requirements and inspection of documents.
16.18 Use of prospectus.
16.19 Withdrawal or abandonment.
16.20 Current and periodic reports.
16.30 Request for interpretive advice or no-objection letter.
16.31 Escrow requirement.
16.32 Fraudulent transactions and unsafe and unsound practices.
16.33 Filing fees.

Authority: 12 U.S.C. 1 *et seq.* and 93a.

§ 16.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the general authority of the national banking laws, 12 U.S.C. 1 *et seq.*, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

(b) *Purpose.* This part sets forth rules governing the offer and sale of securities issued by a bank.

(c) *Scope.* This part applies to offers and sales of bank securities by issuers, underwriters, and dealers.

§ 16.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)).

(b) *Bank* means an existing national bank, a national bank in organization, a bank operating under the Code of Law of the District of Columbia, or a federal branch or agency of a foreign bank.

(c) *Commission* means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the Commission referred to in this part, the term "Commission" shall be deemed to refer to the OCC.

(d) *Dealer* means the same as in section 2(12) of the Securities Act (15 U.S.C. 77b(12)).

(e) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a through 78jj).

(f) *Insured depository institution* means the same as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(g) *Investment grade* means that a security is rated investment grade (i.e., in one of the top four rating categories) by each nationally recognized statistical rating organization that has rated the security.

(h) *Issuer* means a bank that issues or proposes to issue any security.

(i) *Nonconvertible debt* means a general obligation of the bank, whether senior or subordinated, that is not convertible into any class of common or preferred stock or any derivative thereof.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *Person* means the same as in section 2(2) of the Securities Act (15 U.S.C. 77b(2)) and includes a bank.

(l) *Prospectus* means an offering document that includes the information required by section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

(m) *Registration statement* means a filing that includes the prospectus and other information required by section 7 of the Securities Act (15 U.S.C. 77g).

(n) *Sale, sell, offer to sell, offer for sale,* and *offer* mean the same as in section 2(3) of the Securities Act (15 U.S.C. 77b(3)).

(o) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a through 77aa).

(p) *Security* means the same as in section 2(1) of the Securities Act (15 U.S.C. 77b(1)).

(q) *Underwriter* means the same as in section 2(11) of the Securities Act (15 U.S.C. 77b(11)). Commission Rules 137, 140, 141, 142, and 144 (17 CFR 230.137, 230.140, 230.141, 230.142, and 230.144) (which apply to section 2(11) of the Securities Act) apply to this part.

§ 16.3 Registration statement and prospectus requirements.

(a) No person shall offer or sell, directly or indirectly, any bank issued security unless:

(1) A registration statement for the security meeting the requirements of § 16.15 of this part has been filed with and declared effective by the OCC pursuant to this part, and the offer or sale is accompanied or preceded by a prospectus that has been filed with and declared effective by the OCC as a part of that registration statement; or

(2) An exemption is available under § 16.5 of this part.

(b) Notwithstanding paragraph (a) of this section, securities of a bank may be offered through the use of a preliminary prospectus before a registration statement and prospectus for the securities have been declared effective by the OCC if:

(1) A registration statement including the preliminary prospectus has been filed with the OCC;

(2) The preliminary prospectus contains the information required by § 16.15 of this part except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price; and

(3) A copy of the prospectus as declared effective containing the information specified in paragraph (b)(2) of this section is furnished to each purchaser prior to or simultaneously with the sale of the security.

(c) Commission Rule 174 (17 CFR 230.174—Delivery of prospectus by dealers; Exemptions under section 4(3) of the Act) applies to transactions by dealers in bank issued securities.

§ 16.4 Communications not deemed an offer.

(a) The OCC will not deem the following communications to be an offer under § 16.3 of this part:

(1) Prior to the filing of a registration statement, any notice of a proposed offering that satisfies the requirements of Commission Rule 135 (17 CFR 230.135);

(2) Subsequent to the filing of a registration statement, any notice, circular, advertisement, letter, or other communication published or transmitted to any person that satisfies the requirements of Commission Rule 134 (17 CFR 230.134);

(3) Subsequent to the filing of a registration statement, any oral offer of securities covered by that registration statement;

(4) Subsequent to the filing of a registration statement, any summary prospectus that is filed as a part of that registration statement and satisfies the requirements of Commission Rule 431 (17 CFR 230.431);

(5) Subsequent to the effective date of a registration statement, any written communication if it is proved that each recipient of the communication simultaneously or previously received a written prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) and § 16.15 of this part that was filed with and declared effective by the OCC;

(6) A notice of a proposed unregistered offering that satisfies the requirements of Commission Rule 135c (17 CFR 230.135c); and

(7) A communication that satisfies the requirements of Commission Rule 138 or 139 (17 CFR 230.138 or 230.139).

(b) The OCC may request that communications not deemed an offer under paragraph (a) of this section be submitted to the OCC.

(c) The OCC may prohibit the publication or distribution of any

communication not deemed an offer under paragraph (a) of this section if necessary to protect the investing public.

§ 16.5 Exemptions.

The registration statement and prospectus requirements of § 16.3 of this part do not apply to an offer or sale of bank securities:

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities) and section 3(a)(11) (exemption for intrastate offerings) of the Securities Act. Commission Rules 149 and 150 (17 CFR 230.149 and 230.150) (which apply to section 3(a)(9) of the Securities Act) apply to this part;

(b) In a transaction exempt from registration under section 4 of the Securities Act (15 U.S.C. 77d). Commission Rules 152 and 152a (17 CFR 230.152 and 230.152a) (which apply to sections 4(2) and 4(1) of the Securities Act) apply to this part;

(c) In a transaction that satisfies the requirements of § 16.7 of this part;

(d) In a transaction that satisfies the requirements of § 16.8 of this part;

(e) In a transaction that satisfies the requirements of Commission Rule 144, 144A, 145, or 236 (17 CFR 230.144, 230.144A, 230.145, or 230.236);

(f) In a transaction that satisfies the requirements of Commission Rules 701, 702T, and 703T (17 CFR 230.701, 230.702T, and 230.703T); or

(g) In a transaction that is an offer or sale occurring outside the United States under Commission Regulation S (17 CFR part 230, Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933).

§ 16.6 Sales of nonconvertible debt.

(a) The OCC will deem offers or sales of bank issued nonconvertible debt to be in compliance with §§ 16.3, 16.15 (a) and (b), and 16.20 of this part if all of the following requirements are met:

(1) The bank issuing the debt has securities registered under the Exchange Act or is a subsidiary of a bank holding company that has securities registered under the Exchange Act;

(2) The debt is offered and sold only to accredited investors;

(3) The debt is sold in minimum denominations of $250,000 and each note or debenture is legended to provide that it cannot be exchanged for notes or debentures of the bank in smaller denominations;

(4) The debt is rated investment grade;

(5) Prior to or simultaneously with the sale of the debt, each purchaser receives an offering document that contains a description of the terms of the debt, the use of proceeds, and method of distribution, and incorporates the bank's latest Consolidated Reports of Condition and Income (Call Report) and the bank's or its bank holding company's Forms 10–K, 10–Q (or 10–KSB, 10–QSB), and 8–K (17 CFR part 249) filed under the Exchange Act; and

(6) The offering document and any amendments are filed with the OCC no later than the fifth business day after they are first used.

(b) Offers or sales of nonconvertible debt issued by a federal branch or agency of a foreign bank need not need comply with the requirements of paragraph (a)(1) of this section, if the federal branch or agency provides the OCC the information specified in Commission Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) and provides purchasers the information specified in Commission Rule 144A(d)(4)(i) (17 CFR 230.144A(d)(4)(i)). A federal branch or agency that provides the OCC the information specified in Commission Rule 12g3–2(b) need not incorporate that information by reference into the offering document provided to purchasers pursuant to paragraph (a)(5) of this section. However, the federal branch or agency must make that information available to the potential purchasers upon request. The OCC will make the information available for public inspection.

§ 16.7 Nonpublic offerings.

(a) The OCC will deem offers and sales of bank issued securities that meet all of the following requirements to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(c) of this part:

(1) All the securities are offered and sold in a transaction that satisfies the requirements of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933);

(2) Each purchaser who is not an accredited investor either alone or with its purchaser representative(s) has the knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that the purchaser comes within this description; and

(3) A notice that meets the requirements of Commission Rule 503 (17 CFR 230.503) is filed with the OCC.

(b) All subsequent sales of bank issued securities subject to the limitations on resale of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) must be made pursuant to Commission Rule 144 (17 CFR 230.144), Commission Rule 144A (17 CFR 230.144A), another exemption from registration under the Securities Act referenced in § 16.5 of this part, or in accordance with the registration and prospectus requirements of § 16.3 of this part.

(c) No offer or sale of bank issued securities shall be made in reliance on Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) without compliance with paragraphs (a)(1) and (a)(2) of this section.

§ 16.8 Small issues.

(a) The OCC will deem offers and sales of bank issued securities that satisfy the requirements of Commission Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Exemption) to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(d) of this part.

(b) A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) and requirement 7 (Loans) of Rule 9–03 of Commission Regulation S–X (17 CFR 230.9–03) for guidance on appropriate disclosures when preparing offering documents to be filed with the OCC pursuant to Regulation A.

§ 16.15 Form and content.

(a) Any registration statement filed pursuant to this part must be on the form for registration (17 CFR part 239) that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration. A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) for guidance on appropriate disclosures when preparing registration statements.

(b) Any registration statement or amendment filed pursuant to this part must comply with the requirements of Commission Regulation C (17 CFR part 230, Regulation C—Registration), except

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to the extent those requirements conflict with specific requirements of this part.

(c) In addition to the information expressly required to be included in the registration statement by paragraphs (a) and (b) of this section, the registration statement must include any additional material information that is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Notwithstanding paragraph (a) of this section, the registration statement for securities issued by a bank that is not in compliance with the regulatory capital requirements set forth in part 3 of this chapter must be on the Form S–1 (17 CFR part 239) registration statement under the Securities Act.

§ 16.16 Effectiveness.

(a) Registration statements and amendments filed with the OCC pursuant to this part will become effective in accordance with sections 8(a) and (c) of the Securities Act (15 U.S.C. 77h(a) and (c)) and Commission Regulation C (17 CFR part 230, Regulation C—Registration).

(b) The OCC will deem registration statements and amendments that become effective pursuant to paragraph (a) of this section to be declared effective. If the OCC deems a registration statement to be declared effective, the OCC will also deem the prospectus that was filed as a part of that registration statement to be declared effective.

§ 16.17 Filing requirements and inspection of documents.

(a) Except as provided in paragraph (b) of this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a bank in organization must be filed with the appropriate District office of the OCC.

(c) Where this part refers to a section of the Securities Act or the Exchange Act or a Commission rule that requires the filing of a notice or other document with the Commission, that notice or other document must be filed with the OCC.

(d) Unless otherwise requested by the OCC, any filing under this part must include four copies of any document filed. Material may be filed by delivery to the OCC through use of the mails or otherwise. The date on which documents are actually received by the OCC will be the date of filing of those documents, if the person filing the documents has complied with all requirements regarding the filing, including the submission of any fee required under § 16.33 of this part.

(e) Any filing of amendments or revisions must include at least four copies, two of which are marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(f) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.17(b) of this chapter.

§ 16.18 Use of prospectus.

(a) No person shall use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use.

(b) If any event arises, or change in fact occurs, after the effective date and that event or change in fact, individually or in the aggregate, results in the prospectus containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the prospectus not misleading under the circumstances, then no person shall use the prospectus that has been declared effective under this part until an amendment reflecting the event or change has been filed with and declared effective by the OCC.

§ 16.19 Withdrawal or abandonment.

(a) Any registration statement, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal must be signed and state the grounds upon which it is made. The OCC will not remove any withdrawn document from its files, but will mark the document *Withdrawn upon the request of the registrant on (date).*

(b) When a registration statement or amendment has been on file with the OCC for a period of nine months and has not become effective, the OCC may, in its discretion, determine whether the filing has been abandoned. Before determining that a filing has been abandoned, the OCC will notify the filer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of notice. When a filing is abandoned, the OCC will not remove the filing from its files but will mark the filing *Declared abandoned by the OCC on (date).*

§ 16.20 Current and periodic reports.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part must file with the OCC, after the effective date, the periodic and current reports required by section 13 of the Exchange Act (15 U.S.C. 78m), as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). Banks must file periodic and current reports in accordance with Commission Regulation 15D (17 CFR 240.15d–1 up to but not including 240.15Aa–1).

(b) Suspension of the duty to file periodic and current reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), Commission Regulation 15D (17 CFR 240.15d–1 up to but not including 240.15Aa–1), and Commission Rule 12h–3 (17 CFR 240.12h–3).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to § 5.33(b)(6)(ii) of this chapter.

§ 16.30 Request for interpretive advice or no-objection letter.

Any person requesting interpretive advice or a no-objection letter from the OCC with respect to any provision of this part shall:

(a) File a copy of the request, including any supporting attachments with the Securities, Investments, and Fiduciary Practices Division at the address listed in § 16.17;

(b) Identify or describe the provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(c) Include with the request a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 16.31 Escrow requirement.

The OCC may require that any funds received in connection with an offer or sale of securities be held in an independent escrow account at an unrelated insured depository institution when the use of an escrow account is in the best interests of shareholders.

§ 16.32 Fraudulent transactions and unsafe and unsound practices.

(a) No person in the offer or sale of bank securities shall directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a bank.

(b) Nothing in this section limits the applicability of section 17 of the Securities Act (15 U.S.C. 77q) or section 10(b) of the Exchange Act (15 U.S.C. 78j) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

(c) Any violation of this section also constitutes an unsafe or unsound practice under 12 U.S.C. 1818.

(d) Commission Rule 175 (17 CFR 230.175—Liability for certain statements by issuers) applies to this part.

§ 16.33 Filing fees.

(a) Filing fees must accompany certain filings made under the provisions of this part before the OCC will accept those filings. The applicable fee schedule is provided in the Notice of Comptroller of the Currency Fees published pursuant to § 8.8 of this chapter.

(b) Filing fees must be paid by check payable to the Comptroller of the Currency.

Dated: October 27, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94–27082 Filed 11–1–94; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0852]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules are intended to implement the simplified notice procedures recently established under section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 for bank holding companies proposing to engage *de novo* or through an acquisition in nonbanking activities. Because Section 346 implements this procedure immediately, the Board has proposed the following as an interim rule that will take effect immediately and will apply to all notices filed subsequent to enactment of Section 346. The Board also is seeking comments on the interim rule, and will amend the rule as needed to address the comments received. The Board is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and the Board invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim rule effective on November 2, 1994, comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R–0852 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Don E. Kline, Associate Director (202/452–3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452–3830), or Larry R. Cunningham, Senior Financial Analyst (202/452–2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) (BHC Act) prohibits bank holding companies from acquiring or retaining shares of any company that is not a bank or engaging in any activity other than managing and controlling banks, except under certain circumstances. The primary exception permits bank holding companies to conduct activities and acquire companies engaged solely in activities the Board has determined to be closely related to banking and a proper incident thereto. See 12 U.S.C. 1843(c)(8).

Section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103–325, section 346, 108 Stat. 2160, 2239 (1994)("Section 346")) amends section 4 of the BHC Act to establish a new notice procedure for obtaining Board approval under sections 4(a)(2) and 4(c)(8) of the BHC Act.[1] Under Section 346, a proposal requiring Board approval under section 4(a)(2) or 4(c)(8) may be consummated 60 days after providing the Board with a complete written notice of the proposal, unless the notice period is extended as provided in the statute. Section 346 also permits proposals to be consummated at anytime during this notice period if approved by the Board during this period.

The proposed interim rule would replace the current application procedure of section 4(c)(8) of the BHC Act with the new notice procedure.[2] The rule would streamline the current procedure for obtaining Board approval for nonbanking proposals in several respects. In particular, the proposed revisions would:

- Establish a simplified notice procedure for action on proposals to engage *de novo* or through an acquisition in a listed activity (i.e., an activity on the Regulation Y list of permissible nonbanking activities[3]) within 30 days of receipt of the notice by the Reserve Bank;
- Establish a notice procedure for action on proposals to engage *de novo* or through an acquisition in an un-listed activity or a new activity within 60 days of filing of a complete notice;
- Eliminate the current 26 day pre-acceptance period for notices involving nonbanking proposals;
- Reduce from 30 days to 15 days the public comment period for proposals involving listed activities; and

[1] Section 346 establishes a notice procedure for situations in which prior Board approval is required under section 4(c)(8) or 4(a)(2) of the BHC Act, and was not intended to impose any new approval requirements on transactions that may otherwise be consummated under section 4 of the BHC Act without Board approval.

[2] All applications and notices to engage in nonbanking activities that were filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

[3] 12 CFR 225.25.

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• Specify in the regulation the core information that bank holding companies must provide for a nonbanking proposal.

These revisions to the current application procedures should result in an overall reduction in the total period of time involved in reviewing nonbanking proposals, and in a reduction in the paperwork burden associated with proposals to engage in nonbanking activities. Comment is invited on all aspects of this proposal.

Notice Procedure Under Interim Rule

To implement these statutory changes, the Board proposes to amend Regulation Y to replace the application procedures for obtaining approval to engage in nonbanking activities with a notice procedure. The interim rule contemplates action by the Reserve Bank on nonbanking proposals involving listed activities within 30 days after a notice containing all of the information required in the rule has been received by the Reserve Bank, in cases that qualify for Reserve Bank action, and within 60 days of that date in cases involving any previously approved activity that are subject to Board action. While the rule also indicates that the Board will seek to act on notices involving new activities within 60 days of receipt of the notice by the Reserve Bank, proposals that involve activities that have not been previously approved by the Board often require substantial information and may continue to require a greater processing period.

The interim rule specifies the different types of information required for proposals to engage *de novo* in listed activities, proposals to acquire a company engaged in listed activities, and proposals to engage in activities not previously approved by regulation ("unlisted activities").

Listed Activities

The proposed rule contemplates that proposals to engage *de novo* or to acquire a company engaged in a listed activity will be approved within 30 days of the original date of filing of the notice, even if additional information is subsequently requested by the Reserve Bank or the Board. Upon receipt of a notice to engage in or to acquire a company engaged in a listed activity (or an activity previously approved by order), the Reserve Bank shall immediately notify the Board, and the Board will publish notice of the proposal in the **Federal Register** inviting public comment for a period of 15 days. Within 30 calendar days after receipt by the Reserve Bank of a notice filed under the interim rule, the Reserve Bank must approve the notice, extend the notice period for 15 calendar days, or refer the notice to the Board for decision because a substantive comment on the proposal has been received or action on the notice by the Reserve Bank is not appropriate. The Reserve Bank also may, within 15 calendar days of receipt of the notice, return the notice if it is informationally incomplete. Under the interim rule, the return of a notice by a Reserve Bank under such circumstances is deemed action on the notice.

Unlisted Activities

As is the practice under the current rules, proposals to engage in activities not previously approved by the Board by regulation or order will be published by the Board in the **Federal Register** within 10 business days of acceptance by the Reserve Bank, unless the Board determines to extend this 10-day period for an additional 30 days. Public notice of proposals to engage in such new activities shall invite comment for a period of generally 30 days, or if the Board determines that the notificant has not adequately demonstrated that the proposed activity is so closely related to banking as to be a proper incident thereto, the Board may return the notice and explain the reasons for its determination.

The interim rule provides that the Board will attempt to act on all cases referred for Board action within 60 days of the date the notice is received by the Reserve Bank. As noted above, proposals that involve new activities that have not been previously approved by the Board are likely to require a greater processing period. In the event the Board does not act on the notice within 60 days of receipt by the Reserve Bank, the Board will notify the bank holding company, and explain the reasons for needing additional time as well as provide an anticipated date by which the Board expects to act on the notice.

Elimination of Pre-Acceptance Review Period

As noted above, the interim rule eliminates the pre-acceptance review procedure currently contained in Regulation Y for proposals to engage in nonbanking activities. This procedure established a defined period of up to 28 days during which an applicant and the Reserve Bank could identify and address significant issues prior to the filing of a final application. This procedure has been particularly beneficial to the processing of complex proposals and applications to engage in activities not previously approved by the Board by regulation or order, where information requests often must be tailored to the specific proposal.

While the elimination of pre-acceptance procedures should shorten the review process, the Board recognizes the utility of a pre-acceptance procedure and anticipates that there will be certain proposals that could benefit from some form of pre-acceptance review. The Board invites comments as to whether some form of pre-notice review procedure should be reinstated in the final regulations.

Public Notice

Regulation Y currently provides that (with the exception of proposals processed under the abbreviated procedure for small acquisitions) all proposals to engage in previously approved nonbanking activities must be published in the **Federal Register** and provide for a public comment period of not more than 30 days. Under the interim rule, the public comment period has been shortened from 30 days to 15 days for proposals to engage in activities previously approved by the Board by regulation or order. The interim rule also provides that the Reserve Bank may not act on a notice before the fifth business day following the close of the public comment period unless an emergency exists requiring expedited or immediate action.

Section 346 authorizes the Board to prescribe shorter notice periods by regulation for particular activities or transactions. The Board invites comment on whether further shortening of the comment period is appropriate, particularly for notices to engage in activities previously approved by the Board. In particular, the Board requests comment on a proposal to reduce the public comment period to 5 calendar days for proposals that involve listed activities and/or activities that have been previously approved by Board order. This would enable the Reserve Banks to act on proposals that raise no substantive issues well within the 30-day target.

Statutory Period

The interim rule incorporates the provisions of Section 346 that establish the permissible length of the notice period. Under the interim rule, a notice is deemed approved by operation of law 60 days after receipt of a complete notice, unless extended as provided in Section 346. As provided in the statute, the interim rule provides that a notice is deemed complete when it contains all information required in the interim rule and all other information requested by the Board or the Reserve Bank in connection with the notice. The Board may extend the notice period for an additional 30 days upon notice to the bank holding company. If the proposal involves an unlisted activity, the Board may extend the notice period for a 90-day period in addition to the 30-day extension, provided the Board notifies the bank holding company and explains the reasons for this additional extension. Further extensions are only permissible in the event the Board determines to conduct a hearing on the proposal, or the notificant has consented to an extension or tolling of the notice period.

The interim rule adopts the provision in Section 346 that permits the Board to request additional information about a proposal at any time during the notice period. The rule also includes the provision of Section 346 that provides that the Board may deny any notice if the notificant neglects, fails, or refuses to furnish the Board all the information required by the Board.

Abbreviated Notice Procedure for Small Acquisitions

The interim rule retains the current abbreviated notice procedure contained in Regulation Y for small acquisitions of assets or shares of companies engaged in activities previously approved by the Board by regulation.[4] Currently, this abbreviated notice procedure may be used for acquisitions where neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of (i) $15 million or (ii) 5 percent of the consolidated assets of the acquiring company up to a maximum of $100 million. The interim rule retains this abbreviated notice procedure for small acquisitions of companies engaged in laundry list activities, and increases the size limitation for acquisitions that qualify for this procedure from a maximum of $100 million to a maximum of $300 million.

The primary benefit of the abbreviated notice procedure for small acquisitions is the shortened approval process realized by opting to publish public notice of the proposal in local newspapers in the communities affected by the proposal. Since this provision of Regulation Y was adopted, notificants have increasingly opted to publish notice of the proposed acquisition in the **Federal Register** in order to conduct the nonbanking activity nationwide or throughout a geographic area so large that public notice of the proposal by means of local newspaper publication is unduly expensive or impracticable. Moreover, the streamlined notice procedure established by the interim rule would effectively shorten the notice period for all acquisitions involving listed activities.

In light of this, the Board invites comment as to whether the abbreviated notice procedure for small acquisitions should be retained, eliminated, or amended.

[4] This procedure is only available to bank holding companies that meet the Board's Capital Adequacy Guidelines and are proposing to acquire a company engaged in activities for which the bank holding company has previously received System approval.

Simplified Notice Procedures

The Board believes that these proposals will substantially reduce the burden associated with the approval requirement under section 4 of the BHC Act without resulting in unsafe and unsound banking practices. Because the provisions of Section 346 are implemented immediately, the Board is proposing to adopt the following regulation as an interim rule in connection with nonbanking activities conducted pursuant to section 4 of the BHC Act. The Board invites comments on all aspects of this interim rule, and will amend this rule as needed to reflect the comments received. The Board also invites suggestions on other means of reducing the regulatory burden associated with the System's application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden on bank holding companies imposed by the Board's procedures, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on a proposal that would reduce the current information collection requirements imposed in connection with certain applications.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. Sections 225.23 and 225.24 are revised to read as follows:

§ 225.23 Procedures for notices to engage in nonbanking activities.

(a) *Notice required for nonbanking activities.* A notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities.* A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the activities to be conducted;

(ii) The identity of the company that will conduct the activity; and

(iii) If the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary.

(2) *Acquiring company engaged in listed activities.* A bank holding company seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity;

(ii) The identity of any entity involved in the proposal, and if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal; and

(iv) A description of the terms and sources of funds for the transaction; a copy of any pertinent purchase agreement(s); balance sheet and income

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statements for the most recent fiscal quarter and year-end for any company to be acquired; parent company only and consolidated *pro forma* balance sheets for the notificant as of the most recent fiscal quarter; and calculations of *pro forma* consolidated risk-based capital ratios and leverage ratio for the notificant as of the most recent fiscal quarter.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.25 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto;

(ii) A commitment to comply with all conditions and limitations that have been established by the Board governing the proposed activity; and

(iii) The information required in paragraph (a)(2) of this section, as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public*—(1) *Listed activities and activities approved by order.* A Reserve Bank that receives a notice involving an activity listed in § 225.25 or previously approved by the Board by order shall immediately send notice of receipt of the proposal to the Board for publication in the **Federal Register**. The **Federal Register** notice shall invite public comment on the proposal for a period of 15 days.

(2) *New activities*—(i) *In general.* In the case of a notice under this section involving an activity that is not listed in § 225.25 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the **Federal Register** for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The **Federal Register** notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the **Federal Register** within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices*—(1) *Reserve Bank action.*—(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (a)(1) or (a)(2) of this section, the Reserve Bank shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because substantive adverse comment has been received or because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 15 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Extension of period for action.* The Reserve Bank may, within the 30-day period provided in this paragraph for action on a notice, extend such 30-day period for an additional 15 calendar days.

(iv) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action, referral or extension under this paragraph.

(v) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph prior to the fifth business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board will notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Required time limit for Board action.* The Board shall act on any notice under this section that is referred to it for decision within 60 calendar days after the submission of a complete notice.

(iii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(ii) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.25, the Board may extend the period required for Board action under paragraph (d)(2)(ii) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(iii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may at any time request any additional information that either believes is needed for a decision on any notice under this subpart.

(4) *Tolling of period.* The Board or the Reserve Bank, as the case may be, may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(5) *Approval through failure to act.* A notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(6) *Complete notice.* A notice shall be deemed to be complete for purposes of this subpart at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank in connection with the particular notice.

(e) *Expedited procedure for small acquisitions*—(1) *Filing notice.* As an alternative to the notice procedure of paragraph (a)(2) of this section, a bank holding company may satisfy the notice requirement of this section in connection with the acquisition of voting securities or assets of a company engaged in an activity listed in § 225.25 by:

(i) Providing the appropriate Reserve Bank with a description of the transaction; and either

(ii) Submitting a copy of a newspaper notice in the form prescribed by the Board; or

(iii) Requesting the Board to publish notice of the proposal in the **Federal Register** as provided in paragraph (c)(1) of this section.

(2) *Contents of publication.* A newspaper notice under this subsection shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the notice for a period of at least 10 calendar days.

(3) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of:

(A) $15 million; or

(B) Five percent of the consolidated assets of the acquiring company up to a maximum of $300 million;

(ii) The bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) The bank holding company meets the Board's Capital Adequacy Guidelines (Appendix A of subparts A through E of this part).

(4) *Action on notice.* Within 5 business days after the close of the comment period specified in the **Federal Register** notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the proposal or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act in accordance with paragraph (d)(2) of this section on a notice under this paragraph that is referred to it for decision. The Reserve Bank, upon written notice to the notificant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days.

(f) *Hearings*—(1) *Procedure to request hearing.* Any request for a hearing on a notice under this section shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) apply to notices under this subpart that involve hearings.

(g) *Notice to expand or alter nonbanking activities*—(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(h) *Emergency thrift institution acquisitions.* In the case of a notice to acquire a thrift institution, the Board may modify or dispense with the public notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

§ 225.24 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23, the Board shall consider whether the performance by the notificant of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices).

(b) *Financial and managerial resources.* Consideration of the factors in paragraph (a) of this section includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources.

(c) *Competitive effect of de novo proposals.* Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(d) *Denial for lack of information.* The Board may deny any notice submitted under this subpart if the notificant neglects, fails, or refuses to furnish all information required by the Board.

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-27057 Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-P

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12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0853]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules implement the streamlined notice procedure recently enacted in Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act") for the formation of a new bank holding company that results from a corporate reorganization of a bank by the current shareholders of the bank. These rules also implement section 321 of the Riegle Act, which amends the Bank Holding Company Act and the Bank Merger Act to authorize the Board to shorten the post-approval waiting period for bank acquisitions and mergers (during which time the United States Attorney General may review the competitive effects of a proposal approved by the Board) from 30 to 15 days with the consent of the United States Attorney General. Because the procedures prescribed by section 319 and section 321 are effective immediately, the Board has proposed the following as an interim rule that will take effect immediately. The Board is seeking comments on this interim rule, and will amend the rule as needed to address the comments received. The Board also is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim Rule effective on November 2, 1994; comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R-0853 and may be mailed

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to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Don E. Kline, Associate Director (202/452–3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452–3830), or Larry R. Cunningham, Senior Financial Analyst (202/452–2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) ("BHC Act") requires Federal Reserve Board approval prior to consummating certain transactions resulting in the formation of a bank holding company, or in the acquisition by a bank holding company of shares or control of a bank, subject to certain exceptions. Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103–325, section 319, 108 Stat. 2160, 2224 (1994)("Section 319")) amends section 3 of the BHC Act to establish a notice procedure for the formation of a new bank holding company resulting from a corporate reorganization that involves substantially the same shareholders.[1] In connection with section 319, section 320 of the Riegle Act provides an exemption from the registration requirements of the Securities Act of 1933 for securities issued by a bank holding company pursuant to such a reorganization.

In addition, section 321 of the Riegle Act (Pub. L. No. 103–325, section 321, 108 Stat. 2160, 2226 (1994)("Section 321") permits the Board, with the consent of the U.S. Attorney General, to shorten the post-approval waiting period for bank acquisitions and mergers from 30 days to 15 days. The interim rule implement the provisions enacted in sections 319 and 321 of the Riegle Act. Comment is invited on all aspects of these proposals.

Formation of a New Bank Holding Company Under Section 319

By its terms, the notice procedure added by section 319[2] applies only if certain conditions are met. Specifically, the formation of a new bank holding company may be consummated 30 days after providing written notice to the appropriate Federal Reserve Bank if: (1) The shareholders of the bank will acquire, as a result of the reorganization, the shares of the newly formed bank holding company in substantially the same proportional interest as they held in the bank; (2) the bank holding company would meet, and its resulting subsidiary bank would meet, certain financial and capital standards; (3) the bank holding company would not, as a result of the reorganization, acquire other banking or nonbanking interests; and (4) during the 30-day notice period, the Reserve Bank or the Board does not object to the proposal.

Substantially the Same Shareholders

Under the interim rule, the requirement that shareholders of the bank acquire "substantially the same share interest" in the newly formed bank holding company would be met by proposals in which the shareholder or shareholders who lawfully control at least 80 percent of the shares of the bank at the time the notice is filed would acquire, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion.

By the terms of Section 319, allowance is made for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law. Accordingly, under the interim rule, a shareholder of the bank will be considered to have substantially the same proportional interest in the holding company (notwithstanding a change in the percentage of shares controlled by the shareholder) if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption by the bank or bank holding company of shares from dissenting shareholders, or as a result of the acquisition of shares of dissenting shareholders by the remaining shareholders.

However, this notice procedure would not be available in cases in which any shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank. Similarly, this procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

The Board seeks comment on other alternative formulations consistent with the statutory mandate that the reorganization involve substantially the same shareholders.

Financial Standards

Section 319 also establishes certain financial thresholds that must be satisfied to qualify for the abbreviated notice procedure. In particular, the bank to be reorganized must, at the time the notice is filed, be "adequately capitalized," as this term is defined in section 38 of the Federal Deposit Insurance Act. See 12 U.S.C. 1831o. In addition, Section 319 requires that the bank holding company resulting from the reorganization meet any "capital and other financial standards" established by the Board.

In the interim rule, the Board has established three requirements designed to identify reorganization proposals that do not raise financial or supervisory concerns that would benefit from review and explanation through an application process rather than an abbreviated notice procedure. Under the interim rule, a proposal to form a new one-bank holding company would qualify for the abbreviated notice procedures established in Section 319 if: (1) The

[1] Section 319 also amends section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3))—commonly referred to as the "Oakar Amendment"—to eliminate the requirement for prior Board approval of transactions by banks owned by holding companies to merge with thrift institutions. Under the Riegle Act, Oakar transactions continue to require the prior approval of the appropriate Federal banking agency for the acquiring institution, and all Oakar transactions must comply with section 3(d) of the BHC Act, the "Douglas Amendment." No amendments to the Board's regulations are needed to implement these amendments to section 5(d)(3).

[2] Any application to organize a bank holding company that was filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to examination; (2) the amount of debt that the bank holding company would assume at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis;[3] and (3) at the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency.

Section 319 provides that this abbreviated notice procedure is only available to a bank holding company that would not acquire any additional banks or any nonbanking interests as part of the reorganization.

Contents of Notice

To begin the notice period under the interim rule, the notificant organization must submit to the appropriate Reserve Bank a written notice that includes: (1) Certification that the requirements of Section 319 and the Board's implementing rule are met by the proposal; (2) a list of the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, identifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company; (3) a description of the resulting management of the proposed bank holding company and its subsidiary bank, including (i) biographical information regarding any officers, directors or shareholders of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization, and (ii) a detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding; (4) *pro forma* financial statements for the bank holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and (5) verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

As indicated above, the interim rule requires that the applicant publish notice of the proposed reorganization and invite public comment for a period of at least 15 days. This request for public comment is consistent with the Board's practice of publishing notice of all bank holding company formations and bank expansion proposals so that the public may comment in particular on the bank's record of serving the convenience and needs of the community under the Community Reinvestment Act.

Objections to Notices

Within 7 calendar days of receipt of a notice containing all the information required under this interim regulation, the appropriate Reserve Bank will provide a written acknowledgement of receipt of the notice indicating that the transaction may be consummated following the 30th calendar day after the date the notice was received by the Reserve Bank unless the Reserve Bank or the Board objects to the proposal during that time. The Reserve Bank may provide written notice of approval of the reorganization at an earlier time during the notice period.

If during the notice period the Board or the Reserve Bank objects to the proposal, the bank holding company must file an application under section 3 of the BHC Act.[4] In this case, the notificant will immediately be notified of the reason for the objection, and of any additional information that may be needed to complete an application.

Shortening of Post-Approval Waiting Period Under Section 321

Currently, section 11(b)(1) of the BHC Act (12 U.S.C. 1849(b)(1)) prohibits a bank holding company that has received approval for a transaction under section 3 of the BHC Act (other than transactions involving a probable bank failure or an emergency) from consummating the transaction prior to the thirtieth day following Board approval of the proposal in order to provide the United States Attorney General time to review the transaction for any adverse effects on competition in banking or the concentration of banking resources. The Bank Merger Act contains a similar provision applying post-approval waiting period to bank merger proposals. See 12 U.S.C. 1828(c)(6).

Because Section 319 creates an exception from the application and approval process established by section 3 of the BHC Act, a notificant who has met the criteria of Section 319 and the interim rule does not appear to be subject to the post-approval waiting period established under section 11 of the BHC Act.

With regard to other acquisitions under section 3 of the BHC Act or under the Bank Merger Act, section 321 of the Riegle Act ("Section 321") authorizes the Board to shorten the post-approval waiting period in any case to a period of not less than 15 days, provided the Board has received no adverse comment from the Attorney General relating to competitive factors and the Attorney General concurs with the Board's decision to shorten the waiting period. Section 321 does not affect processing of applications involving probable bank failures or emergencies. The interim rule incorporates these revisions to the Board's Regulation Y. The Board is currently discussing with the U.S. Department of Justice the types of cases that may qualify for this shortened post-approval waiting period, and invites public comment on the types of cases where this would be appropriate.

As described above, the Board has adopted the following interim rule which shall be effective immediately, and invites public comment on all aspects of this interim rule. The Board also invites suggestions on other means of reducing the regulatory burden associated with its application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden imposed by the Board's procedures on small bank holding companies in formation, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on a proposal that would reduce the current information collection requirements

[3] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR part 225, appendix C).

[4] See 12 CFR 225.14. If the Reserve Bank or Board believes that issues might readily be resolved within the notice period without having to issue a formal objection, the Reserve Bank or Board may request additional information during the notice period to supplement the notice.

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imposed in connection with certain applications.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR parts 225 and 262 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.11, the introductory text is revised to read as follows:

§ 225.11 Transactions requiring Board approval.

The following transactions require an application for the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.15 of this part:

* * * * *

3. In § 225.14, paragraph (i) is revised to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(i) *Waiting period.* A transaction approved under this subpart, other than a transaction approved under § 225.15, shall not be consummated until 30 days after the date of approval of the application, except that a transaction may be consummated:

(1) Immediately upon approval, in the event that the Board has determined under paragraph (h) of this section that the application involves a probable bank failure;

(2) On or after the fifth calendar day following the date of approval, in the event that the Board has determined under paragraph (h) of this section that an emergency exists requiring expeditious action; or,

(3) On or after the fifteenth calendar day following the date of approval, in the event that the Board has not received any adverse comments from the United States Attorney General relating to the competitive factors and the Attorney General has consented to such shorter waiting period.

4. A new § 225.15 is added under Subpart B to read as follows:

§ 225.15 Notice Procedure for One-Bank Holding Company Formations.

(a) *Transactions which qualify under this section.* An acquisition by a company of control of a bank may be consummated 30 days after providing notice to the appropriate Reserve Bank in accordance with paragraph (b) of this section, provided that all of the following conditions are met:

(1) The shareholder or shareholders who control at least 80 percent of the shares of the bank would control, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law; [5]

(2) No shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank; [6]

(3) The bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o));

(4) The bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to an examination;

(5) At the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency;

(6) The company demonstrates that any debt that it would incur at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis; [7]

(7) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(8) During this period, neither the appropriate Reserve Bank nor the Board has objected to the proposal or required the filing of an application under § 225.14 of this subpart.

(b) *Contents of notice.* A notice filed under this subsection must include:

(1) Certification by the notificant's board of directors that the requirements of 12 U.S.C. 1842(a)(C) and this section are met by the proposal;

(2) A list identifying the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, and specifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company;

(3) A description of the resulting management of the proposed bank holding company and its subsidiary bank, including:

(i) Biographical information regarding any senior officers and directors of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization; and,

(ii) A detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding;

(4) *Pro forma* financial statements for the holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and,

(5) Verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

[5] A shareholder of a bank in reorganization will be considered to have the same proportional interest in the holding company if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption of shares from dissenting shareholders by the bank or bank holding company or the acquisition of shares of dissenting shareholders by the remaining shareholders.

[6] This procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

[7] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR Part 225, Appendix C).

(c) *Acknowledgement of notice.* Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgement of receipt of the notice. This written acknowledgment shall indicate that the transaction described in the notice may be consummated on the 30th calendar day after the date of receipt of the notice if the Reserve Bank or the Board has not objected to the proposal during that time.

(d) *Application required upon objection.* The Reserve Bank or the Board may object to a proposal during the notice period by providing the bank holding company with a written explanation of the reasons for the objection. In such case, the bank holding company may file an application for prior approval of the proposal pursuant to section 225.14 of this subpart.

PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1828(c), and 1842.

2. In § 262.3, paragraph (b)(1)(i)(D) is revised to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(1)(i) * * *

(D) To become a bank holding company (except as provided in 12 CFR 225.15), and

* * * * *

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27058 Filed 11–01–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 410

Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets

AGENCY: Federal Trade Commission.

ACTION: Notice of final, non-substantive amendments.

SUMMARY: The Federal Trade Commission ("Commission") is issuing final, non-substantive amendments to its Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, known as the Picture Tube Rule. The Commission solicited comments on the Rule as part of the agency's periodic review of rules and guides. Having considered all of the issues raised during the comment period, the Commission is amending the Rule. These amendments add the metric equivalents for measurements stated in inches in the examples used in the Rule, and clarify some of the illustrations.

EFFECTIVE DATE: The effective date of these non-substantive amendments will be December 2, 1994.

ADDRESSES: Requests for copies of the regulations and the notice of final, non-substantive amendments should be sent to Public Reference Branch, room 130, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–2484.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or recision. On April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets, 16 CFR part 410 ("The Picture Tube Rule" or "The Rule").

This Rule, like the other trade regulation rules issued by the Commission, "define[s] with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce. Such rules may include requirements prescribed for the purpose of preventing such acts or practices. A violation of a rule shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of (the Federal Trade Commission Act), unless the Commission otherwise expressly provides in its rule." 16 CFR 1.8. The Commission may initiate a trade regulation rule proceeding "upon its own initiative or pursuant to written petition filed with the Secretary by any interested person stating reasonable grounds therefor," 16 CFR 1.9.

II. The Regulation

The Picture Tube Rule sets forth the appropriate means for disclosing the method by which the dimensions of television screens are measured, when the measurement is included in any advertisement or promotional material for the television set. Under the Rule, the method used to measure the size of a television screen must be clearly and conspicuously disclosed in close proximity to the size designation. However, the Rule provides a safe harbor for measurements based on the horizontal dimensions, which may be given without disclosing that the dimensions were measured horizontally. The Rule notes that the measurement must not take into account any curvature of the tube. Further, disclosing the method of measurement in a footnote rather than in the body of the ad does not constitute a disclosure in close proximity to the size designation.

The Rule includes examples of both proper and improper representations of size descriptions. Previously, these examples were expressed in terms of inches. Under Executive Order 12770 of July 25, 1991 (56 FR 35801), and the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, (15 U.S.C. 205) all federal agencies are required to use the SI metric system of measurement in all procurements, grants and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. To comply with these provisions, the examples in the Rule have been altered to include the metric equivalent in parentheses beside the English measurements. Thus, the measurements in the examples have been revised to read: 15 inches (38.10 cm); 19 inches (48.26 cm); 20 inches (50.80 cm); 21 inches (53.34 cm); and 262 square inches (1,690.32 sq. cm). This is a technical amendment to an illustrative example in the Rule rather than a substantive amendment to the Rule. It is not intended to create any new requirement under the Rule to use metric measurements or to use them in any particular fashion (for example, in hundredths of centimeters). A new note has been added to the Rule providing that the metric measurements are included for information purposes only, and are not required to be included in any of the disclosures.

The Commission received five comments, four of which supported retaining the Rule in its current form or

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with minor modifications, and one which supported repeal of the Rule. Most of the comments indicated that the Rule continues to provide a benefit to the industry and consumers, while imposing no significant costs on the industry members.[1] The one comment opposing the regulation maintained that it imposed an unreasonable burden on the Federal Trade Commission in administering and enforcing the regulation.[2] In the **Federal Register** notice, the Commission requested public comments on the following questions:

(1) Has this trade regulation rule had a significant impact (cost or benefit) on entities subject to its requirements?
(2) Is there a continuing need for this rule?
(3) What burdens does adherence with this rule place on entities subject to its requirements?
(4) What changes should be made to this rule to minimize the economic effect on such entities?
(5) Does this rule overlap or conflict with other federal, state, or local government laws or regulations?
(6) Have technology or economic conditions changed since this rule was issued, and, if so, what effect do these changes have on the rule?

The public comments on these six issues are discussed below.

1. Has This Trade Regulation Rule Had A Significant Impact (Cost or Benefit) on Entities Subject to Its Requirements?

The majority of the comments indicated that the Picture Tube Rule has provided significant benefits to the public and the consumer electronics industry, and imposed very little costs on entities subject to the Rule's requirements. One comment noted that the Rule did impose economic costs on television manufacturers in 1966 when the Rule was first promulgated.[3] At that time, manufacturers had to prepare and produce new advertising and promotional materials to comply with the Rule. Further, the United States was, and is to this day, the only country that requires screen measurements to be limited to the viewable picture area.[4] After the initial modifications, however, the Rule does not appear to have imposed any further burdens on the industry. One manufacturer noted that the Rule has had "virtually no cost impact" on the company.[5]

It appears that the Rule has also provided significant benefits. The comments indicated that by establishing a uniform system of measurement, the Rule enabled consumers to compare various products from different manufacturers.[6] One comment concluded, "the rule and industry standard have virtually eliminated the possibility of consumer deception regarding television screen size."[7] The Rule's uniform system of measurement has also served the consumer electronics industry. A television manufacturer indicated that the rule has provided a significant benefit to the company and the industry, and created "a legal framework in which a standard industry practice of planar, diagonal-dimension measurement of the viewable screen area has emerged."[8] After reviewing these comments, the Commission believes the Rule has provided a clear public benefit, as well as a service to the industry, while imposing minimal costs on the industry.

2. Is There A Continuing Need for This Rule?

Just as the comments generally maintain that the Rule has provided significant benefits, most of the comments also support retaining the Rule. A trade association maintained that the Rule is still needed to ensure the consistency in screen measurements that is relied upon by both consumers and industry members.[9] One manufacturer expressed concern that if the Federal Trade Commission repealed the Rule, then other manufacturers would return to using deceptive measurements in their advertisements.[10] Based upon these comments, the Commission finds that there is a continuing need for the Picture Tube Rule.

3. What Burdens Does Adherence With This Rule Place on Entities Subject to Its Requirements?

As noted above, while the Picture Tube may have imposed a burden on advertisers and manufacturers when it was first promulgated, it appears that the Rule does not impose any current significant burden on any entities subject to the Rule. A trade association noted that the industry has incorporated the regulation's requirements into common business practice, and thus, the Rule is no longer a burden on industry members.[11] A manufacturer also indicated that the Rule "places virtually no burden whatsoever on entities subject to it."[12] One comment, however, suggested that the Rule did impose a burden on the Federal Trade Commission through administration and enforcement of the Rule.[13] The Commission has found that enforcing the Rule has entailed relatively little administrative burden on the agency, given the industry's general compliance with the Rule. Further, in seeking public comment, the Commission was soliciting information concerning the burden on other entities rather than the agency itself.

4. What Changes Should Be Made to This Rule to Minimize the Economic Effect on Such Entities?

Although most of the comments supported preserving the Picture Tube Rule, a few comments from industry members suggested changes to the Rule. The Electronic Industries Association urged the Commission to eliminate the horizontal dimension as the default measurement.[14] Currently, the advertised dimensions must reflect the horizontal measurement unless the alternative method of measurement is clearly and conspicuously disclosed in close proximity to the size designation. According to the Association, however, the prevailing practice within the industry is to use the diagonal plane to measure the screen, and this is the measurement that is most familiar to consumers. Thus, the comment urges the Commission to amend the Rule to reflect current industry practice. A manufacturer, however, recommended that the Commission retain the existing provision concerning the disclosure of the method of measurement, suggesting that methods of measuring picture tubes are still not likely to be instinctively understood by consumers.[15]

When the Commission initially promulgated the Picture Tube Rule in 1966, most television manufacturers measured the dimensions of their sets diagonally, just as they do today. Thus, the horizontal dimension was not chosen to be the default setting based on

[1] Comments of the Consumer Electronics Group of the Electronic Industries Association (Electronic Industries Association) at 2–3; Zenith Electronics Corporation (Zenith) at 1–2; Chuck Cooper at 1.

[2] Comment of the American Association of Advertising Agencies, Inc. (AAAA) at 1.

[3] Comment of Electronic Industries Association at 2.

[4] The Commission is aware of an effort by the Canadian government to adopt similar provisions concerning televisions advertised for sale in Canada. Further, the Canadian television industry is considering adopting a voluntary standard that would provide for measurement of only the viewable area.

[5] Comment of Zenith at 1.

[6] Comments of Chuck Cooper at 1; Electronic Industries Association at 2; Zenith at 1.

[7] Comment of Zenith at 1.

[8] Comment of Zenith at 1.

[9] Comment of Electronic Industries Association at 3.

[10] Comment of Zenith at 1.

[11] Comment of Electronic Industries Association at 3.

[12] Comment of Zenith at 2.

[13] Comment of AAAA at 1.

[14] Comment of the Electronic Industries Association at 3.

[15] Comment of Zenith at 1–2.

a belief that it was the industry norm. Rather, the Commission found that almost all rectangular objects, such as blankets and rugs, were measured horizontally and vertically. Television screens were the only rectangular-shaped commodities that were measured diagonally. Thus, the Commission reasoned, if a rectangular screen was measured in the usual manner for similarly-shaped objects, then no disclosure of the method of measurement was necessary.[16] Moreover, the television industry has adopted the Rule's disclosure requirements as part of its routine business practice. Reversing the provision, to require a disclosure when a measurement other than the diagonal dimension is used, will provide no tangible benefit, and may cause confusion in the industry and among consumers. Finally, as one television manufacturer noted in its comment, identifying the method of measurement is useful to consumers because many would not instinctively understand the diagonal measurement.[17] Thus, the Commission sees no reason to revise the Rule's disclosure requirements at this time.

Another comment suggested amending Note 2 of the Rule to provide that a disclosure in a footnote or asterisk would constitute a disclosure in "close connection and conjunction" to the measurement, as required by the Rule.[18] However, footnotes or other fine-print disclosures separated from the body of an advertisement may not be adequate to qualify statements in the text.[19] Thus, the Commission has declined to amend the Rule to allow the disclosure of the method of measurement in a footnote or asterisk.

One comment urged the Commission to add an additional Note to the text of the Rule providing that advertisers need not identify the method of measurement every time an advertisement indicates a television's dimensions, as long as the method is disclosed in close connection to the most prominent indication of screen size in the given advertisement.[20] The Commission does not believe there is a sufficient basis to justify this amendment. Many advertisements for televisions promote multiple television sets of different sizes, and a single disclosure of the method of measurement may not be noticed by consumers. The commenter provided no evidence that multiple disclosures were burdensome. Under the Rule, advertisers can comply simply by stating "X inches" for picture tubes measured horizontally, or "X inches diagonal" for diagonal measurements. Further, almost all of the comments the Commission received indicated that the current provisions of the Picture Tube Rule are not a burden to manufacturers or advertisers. Thus, the Commission has decided not to adopt the proposed Note, or otherwise provide exceptions to the requirement that the method of measurement accompany each measurement other than a horizontal description.

In 1972, the staff of the Federal Trade Commission issued an opinion letter to the Consumer Electronics Group of the Electronic Industries Association concerning various methods of disclosing the method of measurement used for television screens.[21] In the letter, staff approved a number of proposed disclosures, including "20 inch diagonal." One comment maintained that the staff opinion letter approving the use "20 inch diagonal" is inconsistent with the Rule listing the disclosure "21 inch diagonal set" as inappropriate.[22] The examples in the Rule apply to a television screen measuring 19 inches horizontally, 15 inches vertically, and 20 inches diagonally. Thus, the example states that the disclosure "21 inch diagonal set" is inappropriate not because of the description of the method of measurement, but because the 21 inch measurement is not accurate for the set used in the example. The disclosure approved in the opinion letter used the correct 20 inch measurement. While the current Rule would permit "20 inch diagonal," that phrase is not included in the list of permitted disclosures. While this list is intended to be illustrative rather than exhaustive, the Commission has decided to include this disclosure in the examples provided to remove any uncertainly that may exist.

One comment suggested adding language to the text of the Rule that introduces the examples of improper disclosures to provide that these examples are only improper absent disclosures elsewhere in the advertisement that clearly indicate the method of measurement utilized to obtain the given dimensions.[23] The Commission would be concerned that combining improper and proper disclosures in the same advertisement could engender consumer confusion or deception. Thus, the Commission has determined not to amend the Rule as suggested by this comment.

One of the examples identified in the Rule as being unacceptable is "21 inch over-all diagonal—262 square inch picture." One comment suggested deleting the second half of the example that refers to square inch measurements, so as to permit such measurements for wide-screen televisions.[24] While the Commission has no information on the likelihood of manufacturers of wide-screen televisions using square inch dimensions rather than the more traditional forms of measurement, the Rule does not prohibit measurements based on square inches. Rather, the example cited above is intended only to convey that the term, "overall" is inappropriate, regardless of whether it is accompanied by the square inch dimensions of the viewable picture screen. To avoid confusion and to emphasize the phrase that causes concern, the Commission has determined to modify the example "21 inch over-all diagonal—262 square inch picture" in the list of unacceptable disclosures to read "21 inch over-all diagonal."

5. Does This Rule Overlap or Conflict With Other Federal, State, or Local Government Laws or Regulations?

None of the commenters were aware of any law or regulation that conflicted or overlapped with the Picture Tube Rule.

6. Have Technology or Economic Conditions Changed Since This Rule Was Issued, and, If So, What Effect Do These Changes Have on the Rule?

The Picture Tube Rule was first promulgated in 1966. Since then, both technology and economic conditions have changed significantly. A much greater percentage of households owns one or more televisions. Television sets have become more complex and offer an array of features. The television industry itself has expanded considerably, with the advent of cable and satellite television, and the introduction of interactive television combined with personal computers and telecommunications. However, none of these changes require any modification of the Picture Tube Rule.

[16] 31 FR 3342 (March 3, 1966).

[17] Comment of Zenith at 1–2.

[18] Comment of Zenith at 3.

[19] See FTC's Deception Statement, 103 F.T.C. 110, 180 (1983). See also *Thompson Medical Co.*, 104 F.T.C. 648, 797–98 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 488 U.S. 955 (1988); *Standard Oil Co. of California*, 84 F.T.C. 1401, 1471 (1974), *aff'd as modified*, 577 F.2d 653 (9th Cir. 1978).

[20] Comment of Zenith at 3.

[21] Letter from Carthon A. Aldhizer, Attorney, Division of Rules and Guides, Federal Trade Commission, to Mr. Jack Wyman, Staff Vice President, Consumer Electronics Group of the Electronic Industries Association (Feb. 2, 1972).

[22] Comment of Zenith at 3.

[23] Comment of Zenith at 3–4.

[24] Comment of Zenith at 4.

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The technological change with the closest nexus to the Picture Tube Rule is the introduction of high definition television (HDTV), and the new, wider screens used to display these enhanced digital pictures. Most television screens today have horizontal/vertical dimensions in a 5:3 proportion, or aspect ratio, but the screens for the HDTV have a 16:9 aspect ratio.[25] The new ratio, however, does not necessitate any changes to the Rule, because the existing provisions can easily be applied to the new screens. HDTVs may be advertised as "46 inch diagonal" sets. Most consumers are familiar with this type of measurement for televisions, and will be able to use this measurement to compare different brands of HDTVs, as well as between high definition and more traditional screens. *TV Digest*, a trade industry publication, has suggested adding a "W" (for wide-screen) to the diagonal measure of the new 16:9 television screens.[26] Nothing in the existing Rule would prohibit this designation. However, the Commission does not believe the designation is necessary to avoid consumer deception or confusion because the "46 inch diagonal" or any other measurement allowed under the Rule should provide consumers with adequate information as to the size of the HDTV. Consequently, no additional designation such as "W" is required under the Rule for wide-screen televisions.

One commenter suggested that the Picture Tube Rule be expanded to encompass video display terminals for computer monitors. He indicated that he had purchased a monitor advertised as measuring 14 inches, but discovered that the actual dimensions of the viewable area were 13 inches.[27] Currently, the Rule is limited to "television receiving sets" and does not encompass computer monitors. The Commission is considering measurement problems with regard to computer monitors, but has determined not to initiate a rulemaking proceeding to amend the Picture Tube Rule at this time. Rather, the Commission is reviewing the extent of problems in this area, and is exploring other possible options for addressing such problems.

III. Effective Date

These non-substantive amendments to the Rule will become effective thirty days after publication in the **Federal Register**.

[25] Comments of Electronic Industries Association at 2–3; Zenith at 4–6.

[26] Comment of Zenith at 5.

[27] Comment of Chuck Cooper at 1.

List of Subjects in 16 CFR Part 410

Advertising, Picture tubes, Television sets, Trade practices.

Accordingly, part 410 of 16 CFR is amended as follows:

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

1. The authority citation for part 410 continues to read as follows:

Authority: 38 Stat. 717 as amended, 15 U.S.C. 41–58.

2. Section 410.1 is amended by revising the examples for Note 2, and by adding Note 3 to read as follows:

§ 410.1 The rule.

* * * * *

Note 2: * * *

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

"20 inch (50.80 cm) picture measured diagonally" or
"20 inch (50.80 cm) diagonal"
"19 inch × 15 inch (48.26 cm × 38.10 cm) picture" or
"19 inch (48.26 cm) picture" or
"19 inch (48.26 cm)" or
"262 square inch (1,690.32 cm. sq.) picture."

Examples of improper size descriptions of a television set showing a picture of the size described above include:

"21 inch (53.34 cm) set" or
"21 inch (53.34 cm) diagonal set" or
"21 inch (53.34 cm) over-all diagonal" or
"Brand Name 21."

Note 3: The numbers in parentheses reflect the metric equivalent of the English measurements. They are provided for information purposes only, and are not required to be included in the disclosures.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–27012 Filed 11–1–94; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34606, International Series Release No. 736, File No. S7–18–93]

RIN 3235–AF86

Exemption of the Securities of the Kingdom of Spain Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission adopts an amendment to Rule 3a12–8 [17 CFR 240.3a12–8] under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Kingdom of Spain as "exempted securities." The purpose of this amendment is to permit the marketing and trading of futures contracts on those securities in the United States or to U.S. persons. This change is not intended to have any substantive effect on the operation of the Rule.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Francois-Ihor Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942–0184.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act").[1] Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("Commission" or "SEC"), however, has the authority to designate securities as exempted securities for purposes of the Exchange Act.

In order to facilitate the trading of futures contracts on debt securities of certain foreign governments by U.S. persons, the Commission has adopted

[1] The term "exempted security" is defined in Section 3 of the Securities Act, 15 U.S.C. 77c, and Section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12).

Rule 3a12–8 under the Exchange Act ("Rule")[2] to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States or to U.S. persons.[3] Currently, the foreign governments listed in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, and Italy (the "fourteen designated countries"). As a result, futures contracts on the debt obligations of these countries may be sold to U.S. persons, so long as the other terms of the Rule are satisfied.[4]

On May 5, 1993, the Commission issued a release proposing to amend Rule 3a12–8 to designate the debt obligations of the Kingdom of Spain ("Spain") as exempt securities, solely for the purpose of futures trading.[5] The Commission received two comment letters concerning the proposal from the same commenter.[6]

The Commission is adopting this amendment to the Rule, adding Spain to the list of countries whose debt obligations are exempted by Rule 3a12–8. In order to qualify for the exemption, futures contracts on debt obligations of Spain would have to meet all the other existing requirements of the Rule.

II. Background

Section 2(a)(1)(B)(v) of the CEA,[7] which was adopted as part of the Futures Trading Act of 1982,[8] provides that it is unlawful to trade a futures contract on an individual security unless that security is an exempted security under Section 3 of the Securities Act or Section 3(a)(12) of the Exchange Act.[9] These sections of the Securities Act and the Exchange Act explicitly designate certain securities, including government securities and municipal securities, as exempted securities. Securities issued by foreign governments, however, are not "government securities" within the meaning of the federal securities laws.[10] Therefore, securities issued by foreign governments are not deemed to be exempted securities under the statutory language.

Section 3(a)(12) of the Exchange Act, however, provides the Commission with the authority to designate other securities as exempted securities, either unconditionally or for specified purposes.[11] Rule 3a12–8 was adopted in 1984[12] pursuant to this exemptive authority in order to facilitate the trading of futures contracts on securities of foreign governments by U.S. persons.[13] As originally adopted, the Rule provided that debt obligations of Canada and the United Kingdom would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American Depositary Receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.[14]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities without sacrificing the longstanding policy under the federal securities laws of requiring foreign government securities to comply with the basic requirements of the federal securities laws in order to be marketed and traded in the United States. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the registration requirements and other provisions of the federal securities laws.

When the Commission originally proposed Rule 3a12–8, it recognized that the Rule might require amendment in the future to extend its provisions to debt obligations of other foreign governments.[15] Subsequently, the Commission amended the Rule to include within its coverage debt obligations issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, and Italy.[16]

Rule 3a12–8 has not been amended since 1992. Futures overlying Spanish

[2] 17 CFR 240.3a12–8 (1992).

[3] Under the Rule, the trading of futures on foreign government securities exempted by the Rule is permitted only on or through a board of trade. 17 CFR 240.3a12–8(a)(2) (1992).

[4] *See infra* note 14 and accompanying text for a discussion of the other terms of the Rule that must be satisfied in order for these contracts to be marketed or traded in the United States.

[5] Securities Exchange Act Release No. 32265 (May 5, 1993), 58 FR 27684 (May 11, 1993).

[6] Letter from Antonio Garcia Rebollar, Deputy Director, Ministerio de Economia y Hacienda, Direccion General del Tesoro y Politica Financiera to Jonathan G. Katz, Secretary, Commission, dated May 31, 1993; and letter from Antonio Garcia Rebollar to Howard Kramer, Associate Director, Division of Market Regulation, Commission, dated November 24, 1993, described *infra* notes 19–22 and accompanying text.

[7] 7 U.S.C. 2(1)(B)(v) (1991).

[8] Pub. L. No. 97–444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.* (codified at 7 U.S.C. 2(a)).

[9] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2(1)(B)(v) (1991) provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act * * * or Section 3(a)(12) of the [Exchange Act] * * *."

[10] *See* Exchange Act Section 3(a)(42), 15 U.S.C. 78c(a)(42) (defining the term "government security" for purposes of the Exchange Act).

[11] 15 U.S.C. 78c(a)(12).

[12] Securities Exchange Act Release Nos. 20708 ("Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[13] The marketing and trading of foreign futures contracts to U.S. persons is subject to regulation by the Commodity Futures Trading Commission ("CFTC"). In particular, Section 4b of the CEA, 7 U.S.C. 6b, authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. persons, and Rule 9, 17 CFR 30.9, promulgated under Section 2(a)(1)(A) of the CEA, 7 U.S.C. 2(1)(A), is intended to prohibit fraud in connection with the offer and sale to U.S. persons of futures contracts executed on foreign exchanges. Additional rules promulgated under Section 2(a)(1)(A) of the CEA, 7 U.S.C. 2(1)(A), govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991). In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the CFTC had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, supra note 12, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[14] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24200 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[15] *See* Proposing Release, *supra* note 12, 48 FR at 24726–27.

[16] As noted above, the Rule as originally adopted applied only to debt obligations of Canada and the United Kingdom. Adopting Release, *supra* note 12. In 1986, the rule was amended to include debt obligations of Japan. Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25998 (July 18, 1986). In 1987, the Rule was amended to include debt obligations of Australia, France, and New Zealand. Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43660 (October 31, 1988). In 1992, the Rule was again amended to (1) include debt obligations of the Republics of Ireland and Italy, (2) change the country designation of "West Germany" to the "Federal Republic of Germany," and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375.

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government bonds originally were, and currently are, only traded on the Mercado de Futuros Financieros ("Meff"), a Spanish financial futures exchange located in Barcelona, Spain. For several months in 1993, the London International Financial Futures and Options Exchange ("LIFFE") traded a futures contract based on Spanish government bonds denominated in Pesetas.[17] The Commission has been informed that U.S. citizens may be interested in derivative products based on securities issued by foreign governments, including Spain, and has received a request that Rule 3a12–8 be amended to facilitate such trading.[18]

The Commission is amending Rule 3a12–8 to add Spain to the list of countries whose debt obligations are deemed to be "exempted securities" under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States, and that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in the unregistered foreign sovereign debt of Spain does not develop. Therefore, the amendment should pose no risk for investors in the U.S. securities market.

III. Discussion

The Commission received two comment letters from the Finance Ministry of Spain in response to the proposal.[19] The first letter objected to the rating of Aa2 by Moody's Investors Service ("Moody's") and AA by Standard and Poor's ("S&P"), stating that such debt obligations should receive the same rating as two public Spanish companies: Red Nacional de Ferrocarriles Espanoles ("RENFE") and Instituto Nacional de Industria ("INI").[20] The letter also voiced concerns about the possible effects the rule proposal might have on Spain's debt management and policies, and requested further time to study such effects.[21]

The second comment letter stated that further study indicated that designating Spain's debt obligations as "exempted securities" would be positive for Spain's debt management and policies. However, the letter reasserted the first concern relating to the assigned rating for Spain's debt obligations.[22]

For the reasons discussed below, and in light of the comment letters received, the Commission has determined that Rule 3a12–8 should be amended to include the debt obligations of Spain. The Commission believes that the debt obligations of Spain should be subject to the same regulatory treatment under the Rule as those of the fourteen designated countries for purposes of trading futures contracts on such debt obligations by U.S. persons. Like the debt obligations of the fourteen designated countries,[23] the long-term debt obligations of Spain are rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[24] For purposes of the Rule, the Commission is aware of no material differences between the debt obligations of Spain and those of the fourteen designated countries. Although the commenter believed the assigned rating for Spain's debt obligations should be in the highest rating category, that issue is not relevant to the Commission's determination to amend the Rule.

Additionally, the Commission believes that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt obligations of Spain. Moreover, the availability to U.S. investors of these hedging vehicles will allow such investors to take advantage of the growing globalization of the securities markets.

IV. Regulatory Flexibility Act Consideration

Former Chairman Breeden certified in connection with the Release proposing the amendment to the Rule[25] that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act[26] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendments to the Rule in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of Spanish government bond futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on Spanish government securities is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[27] that the amendments to the rule are exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.

VI. Statutory Basis

The amendments to Rule 3a12–8 are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the Commission is amending Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

[17] *See LIFFE Prepares Spanish 10–Year Bond Contract*, FINANCIAL TIMES, February 3, 1993; *LIFFE Suspends Spanish Bond Contract Delivery*, REUTERS, August 4, 1993.

[18] Letter from Wesley G. Nissen, Katten Muchin & Zavis, to William H. Heyman, Director, Division of Market Regulation, Commission, dated January 14, 1993. Subsequent to the LIFFE request, the Commission published a proposal to amend Rule 3a12–8 to include Spanish sovereign debt. Shortly thereafter, LIFFE ceased to trade futures on Spanish debt. Recently, the Commission has been apprised of continuing interest by market participants in the proposed amendment to Rule 3a12–8 because of the trading on the MEFF of futures on Spanish government debt.

[19] *See supra* note 6.

[20] Letter from Antonio Garcia Rebollar, dated May 31, 1993, *supra* note 6. According to the commenter, RENFE and INI both received AAA ratings from Moody's and S&P. *Id.*

[21] *Id.*

[22] Letter from Antonio Garcia Rebollar, dated November 24, 1993, *supra* note 6.

[23] In amending the Rule to exempt the debt securities of other countries, the Commission has noted that the long-term sovereign debt of such countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations. *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (amending the Rule to exempt the debt securities of the Republics of Ireland and Italy).

[24] Spain's long-term sovereign debt is rated Aa2 by Moody's and AA by S&P.

[25] *See supra* note 5.

[26] 15 U.S.C. 78w(a)(2) (1988).

[27] 15 U.S.C. 553(d) (1988).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xiii), removing the "period" at the end of paragraph (a)(1)(xiv) and adding "; or" in its place, and adding paragraph (a)(1)(xv) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xv) the Kingdom of Spain.

* * * * *

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27161 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

October 28, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201, May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1994, through September 30, 1995, the fees in this notice will become effective October 1, 1994. The fees will apply to fiscal year 1995 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with Section 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in Room 3104 at the Commission's Headquarters, 941 North Capitol Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, D.C. 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1994, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

APPENDIX A TO PART 11

[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
ALABAMA: ALL COUNTIES	$22.97
ARKANSAS: ALL COUNTIES	17.23
ARIZONA:	
APACHE, COCHISE, GILA, GRAHAM, LA PAZ, MOHAVE, NAVAJO, PIMA, YAVAPAI, YUMA, COCONINO NORTH OF COLORADO RIVER	5.74
COCONINO SOUTH OF COLORADO RIVER, GREENLEE, MARICOPA, PINAL, SANTA CRUZ	22.97
CALIFORNIA:	
IMPERIAL, INYO, LASSEN, MODOC, RIVERSIDE, SAN BERNARDINO	11.48
SISKIYOU	17.23

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APPENDIX A TO PART 11—Continued
[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
AMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KERN, KINGS, LAKE, MADERA, MARIPOSA, MENDOCINO, MERCED, MONO, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CLARA, SHASTA, SIERRA, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO, YUBA	28.70
LOS ANGELES, MARIN, MONTEREY, ORANGE, SAN DIEGO, SAN FRANCISCO, SAN LUIS OBISPO, SAN MATEO, SANTA BARBARA, SANTA CRUZ, VENTURA	34.46
COLORADO:	
ADAMS, ARAPAHOE, BENT, CHEYENNE, CROWLEY, ELBERT, EL PASO, HUERFANO, KIOWA, KIT CARSON, LINCOLN, LOGAN, MOFFAT, MONTEZUMA, MORGAN, PUEBLO, SEDGWICK, WASHINGTON, WELD, YUMA	5.74
BACA, DOLORES, GARFIELD, LAS ANIMAS, MESA, MONTROSE, OTERO, PROWERS, RIO BLANCO, ROUTT, SAN MIGUEL	11.48
ALAMOSA, ARCHULETA, BOULDER, CHAFFEE, CLEAR CREEK, CONEJOS, COSTILLA, CUSTER, DENVER, DELTA, DOUGLAS, EAGLE, FREMONT, GILPIN, GRAND, GUNNISON, HINSDALE, JACKSON, JEFFERSON, LAKE, LA PLATA, LARIMER, MINERAL, OURAY, PARK, PITKIN, RIO GRANDE, SAGUACHE, SAN JUAN, SUMMIT, TELLER	22.97
CONNECTICUT: ALL COUNTIES	5.74
FLORIDA:	
BAKER, BAY, BRADFORD, CALHOUN, CLAY, COLUMBIA, DIXIE, DUVAL, ESCAMBIA, FRANKLIN, GADSDEN, GILCHRIST, GULF, HAMILTON, HOLMES, JACKSON, JEFFERSON, LAFAYETTE, LEON, LIBERTY, MADISON, NASSAU, OKALOOSSA, SANTA ROSA, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON, WASHINGTON	34.46
ALL OTHER COUNTIES	57.43
GEORGIA: ALL COUNTIES	34.46
IDAHO:	
CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, ONEIDA, OWYHEE, POWER, TWIN FALLS	5.74
ADA, ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE, BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM, IDAHO, JEFFERSON, KOOTENAI, LATAH, LEMHI, LEWIS, MADISON, NEZ PERCE, PAYETTE, SHOSHONE, TETON, VALLEY, WASHINGTON	17.23
KANSAS:	
ALL OTHER COUNTIES	5.74
MORTON	11.48
ILLINOIS: ALL COUNTIES	17.23
INDIANA: ALL COUNTIES	28.70
KENTUCKY: ALL COUNTIES	17.23
LOUISIANA: ALL COUNTIES	34.46
MAINE: ALL COUNTIES	17.23
MICHIGAN:	
ALGER, BARAGA, CHIPPEWA, DICKINSON, DELTA, GOGEBIC, HOUGHTON, IRON, KEWEENAW, LUCE, MACKINAC, MARQUETTE, MENOMINEE, ONTONAGON, SCHOOLCRAFT	17.23
ALL OTHER COUNTIES	22.97
MINNESOTA: ALL COUNTIES	17.23
MISSISSIPPI: ALL COUNTIES	22.97
MISSOURI: ALL COUNTIES	17.23
MONTANA:	
BIG HORN, BLAINE, CARTER, CASCADE, CHOUTEAU, CUSTER, DANIELS, McCONE, MEAGHER, DAWSON, FALLON, FERGUS, GARFIELD, GLACIER, GOLDEN VALLEY, HILL, JUDITH BASIN, LIBERTY, MUSSELSHELL, PETROLEUM, PHILLIPS, PONDERA, POWDER RIVER, PRAIRIE, RICHLAND, ROOSEVELT, ROSEBUD, SHERIDAN, TETON, TOOLE, TREASURE, VALLEY, WHEATLAND, WIBAUX, YELLOWSTONE	5.74
BEAVERHEAD, BROADWATER, CARBON, DEER LODGE, FLATHEAD, GALLATIN, GRANITE, JEFFERSON, LAKE, LEWIS & CLARK, LINCOLN, MADISON, MINERAL, MISSOULA, PARK, POWELL, RAVALLI, SANDERS, SILVER BOW, STILLWATER, SWEET GRASS	17.23
NEBRASKA: ALL COUNTIES	5.74
NEVADA:	
CHURCHILL, CLARK, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER, LINCOLN, LYON, MINERAL, NYE, PERSHING, WASHOE, WHITE PINE	2.87
CARSON CITY, DOUGLAS, STOREY	28.70
NEW HAMPSHIRE: ALL COUNTIES	17.23
NEW MEXICO:	
CHAVES, CURRY, DE BACA, DONA ANA, EDDY, GRANT, GUADELUPE, HARDING, HIDALGO, LEA, LUNA, MCKINLEY, OTERO, QUAY, ROOSEVELT, SAN JUAN, SOCORRO, TORRANCE	5.74
RIO ARRIBA, SANDOUAL, UNION	11.48
BERNALILLO, CATRON, CIBOLA, COLFAX, LINCOLN, LOS ALAMOS, MORA, SAN MIGUEL, SANTA FE, SIERRA, TAOS, VALENCIA	22.97
NEW YORK: ALL COUNTIES	22.97
NORTH CAROLINA: ALL COUNTIES	34.46
NORTH DAKOTA: ALL COUNTIES	5.74
OHIO: ALL COUNTIES	22.97
OKLAHOMA:	
ALL OTHER COUNTIES	5.74
BEAVER, CIMARRON, ROGER MILLS, TEXAS	11.48
LE FLORE, MC CURTAIN	17.23

APPENDIX A TO PART 11—Continued
[Fee Schedule for FY 1995]

STATE AND COUNTY	RATE PER ACRE
OREGON:	
HARNEY, LAKE, MALHEUR	5.74
BAKER, CROOK, DESCHUTES, GILLIAM, GRANT, JEFFERSON, KLAMATH, MORROW, SHERMAN, UMATILLA, UNION, WALLOWA, WASCO, WHEELER	11.48
COOS, CURRY, DOUGLAS, JACKSON, JOSEPHINE	17.23
BENTON, CLACKAMAS, CLATSOP, COLUMBIA, HOOD RIVER, LANE, LINCOLN, LINN, MARION, MULTNOMAH, POLK, TILLAMOCK, WASHINGTON, YAMHILL	22.97
PENNSYLVANIA: ALL COUNTIES	22.97
PUERTO RICO: ALL	34.46
SOUTH DAKOTA:	
BUTTE, CUSTER, FALL RIVER, LAWRENCE, MEAD, PENNINGTON	17.23
ALL OTHER COUNTIES	5.74
SOUTH CAROLINA: ALL COUNTIES	34.46
TENNESSEE: ALL COUNTIES	22.97
TEXAS:	
CULBERSON, EL PASO, HUDSPETH	5.74
ALL OTHER COUNTIES	34.46
UTAH:	
BEAVER, BOX ELDER, CARBON, DUCHESNE, EMERY, GARFIELD, GRAND, IRON, JAUB, KANE, MILLARD, SAN JUAN, TOOELE, UINTAH, WAYNE	5.74
WASHINGTON	11.48
CACHE, DAGGETT, DAVIS, MORGAN, PIUTE, RICH, SALT LAKE, SANPETE, SEVIER, SUMMIT, UTAH, WASATCH, WEBER	17.23
VERMONT: ALL COUNTIES	22.97
VIRGINIA: ALL COUNTIES	22.97
WASHINGTON:	
ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FRANKLIN, GARFIELD, GRANT, KITTITAS, KLICKITAT, LINCOLN, OKANAGAN, SPOKANE, WALLA WALLA, WHITMAN, YAKIMA	11.48
FERRY, PEND OREILLE, STEVENS	17.23
CALLAM, CLARK, COWLITZ, GRAY HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SKAMANIA, SNOHOMISH, THURSTON, WAHKIAKUM, WHATCOM	22.97
WEST VIRGINIA: ALL COUNTIES	22.97
WISCONSIN: ALL COUNTIES	17.23
WYOMING:	
ALBANY, CAMPBELL, CARGON, CONVERSE, GOSHEN, HOT SPRINGS, JOHNSON, LARAMIE, LINCOLN, NATRONA, NIOBRARA, PLATTE, SHERIDAN, SWEETWATER, FREMONT, SUBLETTE, UINTA, WASHAKIE	5.74
BIG HORN, CROOK, PARK, TETON, WESTON	17.23
ALL OTHER ZONES:	5.41

[FR Doc. 94–27140 Filed 11–1–94; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 94–84]

RIN 1515–AB63

Extension of Import Restrictions on Maya Artifacts From the Peten Region, Guatemala

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the extension of the import restrictions on Maya artifacts from the Peten Region, Guatemala which were imposed by T.D. 91–34. The Deputy Director of the United States Information Agency has determined that the emergency conditions which originally warranted the imposition of import restrictions still exist. Accordingly, the restrictions will continue to be in effect for an additional three years, and the Customs Regulations are being amended to indicate this extension.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: *Legal Aspects:* Donnette Rimmer, Intellectual Property Rights Branch, (202) 482–6960.

Operational Aspects: Leo Wells, Office of Trade Operations (202) 927–0300.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Convention on Cultural Property Implementation Act, the Deputy Director of the United States Information Agency (USIA), after consultation with the Secretaries of State and Treasury, determined that Maya artifacts from the Peten Region, Guatemala were in danger of pillage and looting, and that an emergency condition existed which warranted the imposition of a prohibition on the importation of such articles into the United States. In T.D. 91–34, the Customs Service announced the imposition of import restrictions and identified the types of articles covered by the restrictions.

The Deputy Director of the USIA has considered the recommendations of the Cultural Property Advisory Committee and determined that the emergency conditions which warranted imposition of the initial restrictions still exist and has decided to extend the import restrictions for another three years. (See 59 FR 50038, September 30, 1994.)

Accordingly, Customs is amending § 12.104g (19 CFR 12.104g) to reflect the extension of the import restriction.

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Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Inapplicability of Notice and Delayed Effective Date

Because this amendment reflects the extension of emergency import restrictions on cultural property which is currently subject to pillage and looting, pursuant to § 553(b)(B) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Drafting Information

The principal author of this amendment was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural Property

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general and specific authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

* * * * *

§ 12.104 [Amended]

2. Section 12.104g(b) is amended by adding, to the table, "extended by 94–84" immediately after the entry "91–34" in the column headed "T.D. No." adjacent to the entry for Guatemala.

Dated: October 21, 1994.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–27148 Filed 11–1–94; 8:45 am]

BILLING CODE 4820–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Arlington County (VA) Human Rights Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies as certified designated agencies. The designation permits the Commission to accept the findings and resolutions of State and local fair employment practices agencies in regard to most cases processed under contract without individual, case-by-case substantial weight reviews by the Commission. Publication of this amendment effectuates the designation of the Arlington County (VA) Human Rights Commission as a certified designated FEP agency.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street, N.W., Washington, DC. 10507, Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

2. Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.80 is amended by adding in alphabetical order the following agency:

§ 1601.80 Certified designated FEP agencies.

* * * * *

Arlington County (VA) Human Rights Commission.

* * * * *

Signed at Washington, DC, this 28th day of October, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94–27137 Filed 11–1–94; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0F3893/R2084; FRL–4917–4]

RIN 2070–AB78

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity leafy vegetables (except Brassica) group (except spinach). Ciba-Geigy Corp. petitioned for this regulation to establish the maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0F3893/R2084], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA

Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703)-305-5900.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of December 13, 1991 (56 FR 29767), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition PP 0F3893 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodity leafy vegetables (except Brassica) group (except spinach) at 5.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. By way of public reminder, this notice also reiterates the registrant's responsibility under section 6 (a)(2) of FIFRA to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt, the highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an *in vivo* cytogenetics assay (hamsters) and a dominant-lethal assay (mice). Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The chronic dietary exposure analysis used a reference dose (RfD) of 0.08 mg/kg bwt/day, based on a NOEL of 7.8 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is taken from a 6-month

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dog feeding study which demonstrated increased alkaline phosphatase activity and an increase in relative liver weights at 30.63 mg/kg bwt/day. The RfD was taken from actual dose values and has thus changed from 0.06 mg/kg bwt/day to the 0.08 used in the analysis.

Food uses evaluated in the residue analysis were the published uses of metalaxyl listed in 40 CFR 180.408 and 185.4000 and the proposed use on leafy vegetables (except Brassica) group (except spinach). In a memo of June 21, 1991, Chemistry Branch Tolerance Support recommended for a tolerance reassessment for metalaxyl on leafy vegetables (except Brassica) group (except spinach). In 40 CFR 180.408 tolerances exist for metalaxyl on leafy vegetables (0.1 ppm), spinach (10 ppm), and head lettuce (5 ppm). Data submitted lead to the proposed new tolerance of 5 ppm for the crop group leafy vegetables (except Brassica) group (except spinach) for metalaxyl.

The nature of the residue is adequately understood, and adequate analytical methods (GLC and AFID) are available for enforcement purposes in the Pesticide Analytical Manual, Vol. II.

A chronic exposure analysis was performed using tolerance level residues and 100-percent-crop-treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Percent-crop-treated data were used to calculate the Anticipated Residue Contribution (ARC) for the Dietary Risk Evaluation System (DRES) population subgroups for certain commodities.

The anticipated residue contribution (ARC) for the overall U. S. population from published uses is 6.5×10^{-3} mg/kg bwt/day, which represents 8% of the RfD. The proposed use on leafy vegetables (except Brassica) group (except spinach) contributes an exposure of 4.7×10^{-4} mg/kg bwt/day, representing less than 1% of the RfD. When the proposed exposure is added to the public exposure for metalaxyl the ARC is 6.9×10^{-3} mg/kg bwt/day, or 9% of the RfD.

The subgroup most highly exposed, children (1 to 6 years old), has an ARC from existing uses of 1.2×10^{-2} mg/kg bwt/day, representing 16% of the RfD. The proposed use contributes an additional 6.1×10^{-4} mg/kg bwt/day and raises the overall ARC 1.3×10^{-2} mg/kg bwt/day, still representing 16% of the RfD.

Based on the exposure and risk estimates arrived at through this analysis, the Agency believes that the proposed use for metalaxyl does not pose a chronic dietary risk that is of concern.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408 is amended in paragraph (a) in the table therein by revising the entry for leafy vegetables (except brassica) group, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Leafy vegetables (except Brassica) group (except spinach)	5.0
* * * * *	

* * * * *

[FR Doc. 94-26799 Filed 11-1-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9F3811/R2082; FRL-4916-9]

RIN 2070-AB78

Pesticide Tolerances for Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document extends the time-limited tolerances for residues of the fungicide myclobutanil and certain of its metabolites in or on the raw agricultural commodities cherries (sweet and sour), nectarines, and peaches until April 1, 1995. This extension will allow EPA adequate time to evaluate studies conducted by Rohm & Haas Co. required to support permanent tolerances for this chemical in or on these commodities.

EFFECTIVE DATE: October 14, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3811/R2082], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251,

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 9, 1990 (55 FR 779), which announced that the Rohm & Haas Co. of Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 9F3811 to EPA proposing to establish tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the fungicide myclobutanil (*alpha*-butyl-*alpha*-(3-hydroxybutyl)-1*H*-1,2,4-triazole-1-propanenitrile) and both the free and bound forms of its metabolite *alpha*-(3-hydroxybutyl)-*alpha*-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile in or on stone fruits group (except cherry) at 2.0 parts per million (ppm) and cherry at 5.0 ppm.

Subsequently, Rohm & Haas amended the petition by deleting the request for the stone fruit group and requesting tolerances for peaches and nectarines at 2.0 ppm and cherries (sweet and sour) at 5.0 ppm.

Additionally, the Agency requested that Rohm & Haas amend the petition by proposing a tolerance of 4.0 ppm in/on cherries. The petition was amended by requesting that the tolerance for cherries be reduced to 4.0 ppm.

In the **Federal Register** of February 5, 1992 (57 FR 4368), EPA established tolerances, on an interim basis, in 40 CFR 180.443 for residues of this chemical in or on the raw agricultural commodities cherries (sweet and sour), nectarines, and peaches. An expiration date of October 1, 1994, was imposed for the tolerances. The interim tolerances were established based upon the condition that data be submitted to the Agency to fully support permanent tolerances for these commodities.

The conditions imposed by the establishment of the interim tolerances were that the chronic/oncogenicity feeding studies in the mouse and the rat be repeated. Both studies need to be repeated because a maximum-tolerated dose (MTD) had not been achieved. However, no preneoplastic lesions were observed in either study to suggest possible carcinogenic activity, and myclobutanil did not induce either genotoxic effects or chromosomal aberrations in a series of mutagenicity tests. In addition, no strong structural activity correlation to other carcinogens has been found. Under these circumstances, EPA concluded that no significant carcinogenic risk was posed by these tolerances for the timeframe involved in receiving and reviewing the repeated studies.

The Agency evaluated dietary exposure to the fungicide residues for the commodities which have established permanent or interim tolerances. The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 2.49 mg/kg body weight/ day), using a hundredfold uncertainty factor, was calculated to be 0.025 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and interim tolerances is 0.002217 mg/kg bwt/day and utilizes 8.865 percent of the ADI.

The data submitted in support of the tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in the document establishing the interim tolerances which was published in the **Federal Register** of February 5, 1992 (57 FR 4369).

Based upon the above dietary risk estimate, the Agency believes that an extension of the interim tolerances would not pose a significant public health risk for the period of time indicated and would allow the Agency sufficient time to review the final reports on all the required data. EPA does not expect that the required data will significantly change the above risk estimate.

On the basis of the available studies on myclobutanil, the Agency has concluded that the human risk posed by the use of myclobutanil on cherries, nectarines, and peaches does not raise significant concerns. The Agency has determined that extending the tolerances will protect the human health. Therefore, as set forth below, the tolerances are extended to April 1, 1995. Based upon the reviews of the rat and mouse oncogenicity studies, the Agency will determine whether establishing permanent tolerances is appropriate.

Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is

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requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of the title 40 of the Code of Federal Regulations is amended in part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.443, by amending paragraph (a) by revising the table therein, to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
Apples	0.5	None
Cherries (sweet and sour)	4.0	April 1, 1995
Grapes	1.0	None
Nectarines	2.0	April 1, 1995
Peaches	2.0	April 1, 1995

* * * * *

[FR Doc. 94-26796 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F3993/R2063; FRL-4917-3]

RIN 2070-AB78

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodities cereal grains (except wheat, barley, and oats) [replacing grain crops] and forage, fodder, and straw of the cereal grains group (except wheat, barley, and oats). Ciba-Geigy Corp. petitioned to establish the maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: October 19, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F3993/R2063], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202; (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the **Federal Register** of December 13, 1991 (56 FR 29767), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted pesticide petition PP 1F3993 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the raw agricultural commodities cereal grains (except wheat, barley, and oats) at 0.1 part per million (ppm) (replacing grain crops at 0.1 ppm) and forage, fodder, and straw of cereal grains group (except wheat, barley, and oats) at 1.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing. By way of public reminder, this

notice also reiterates the registrant's responsibility under section 6 (a)(2) of FIFRA to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 17.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 50 mg/kg bwt for developmental toxicity and maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt, the highest dose tested (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl was negative in bacterial and mammalian gene mutation. The fungicide also did not increase the frequency of reverse mutations in yeast. Metalaxyl was negative in an in vivo cytogenetics assay (hamsters) and a dominant-lethal assay (mice). Metalaxyl did not increase unscheduled DNA synthesis in rat primary hepatocytes or in human fibroblasts. These results suggest that metalaxyl is not genotoxic.

5. A three-generation rat reproduction study with a NOEL of 63 mg/kg bwt/day (1,250 ppm).

6. A 6-month dog feeding study with a NOEL of 6.3 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

7. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 13 mg/kg bwt/day (250 ppm). The lowest-observed-effect level (LOEL) is 63 mg/kg/day based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

8. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 190 mg/kg/day.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD) based on the 6-month dog feeding study (NOEL 7.8 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.08 mg/kg bwt/day. The anticipated residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here are 0.006465 mg/kg bwt/day and utilize 8% of the RfD.

The anticipated residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here for the subgroup most highly exposed, children (1 to 6 years old), have an anticipated residue contribution (ARC) from existing uses of 1.2×10^{-2} mg/kg bwt/day, representing 16% of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods (N/P GLC) are available for enforcement purposes in the Pesticide Analytical Manual, Vol. II.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A

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copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 1994.

Steven L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408 is amended in paragraph (a) in the table therein by adding and alphabetically inserting a new entry for cereal grains (except wheat, barley, and oats) and in paragraph (b) in the table therein by adding and alphabetically inserting new entries for forage, fodder, and straw of cereal grains group (except wheat, barley, and oats) to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cereal grains (except wheat, barley, and oats)	0.1
* * * * *	

(b) * * *

Commodity	Parts per million
* * * * *	
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
* * * * *	

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[FR Doc. 94-26798 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4E4310/R2078; FRL-4908-1]

RIN 2070-AB78

Watermelon Mosaic Virus-2 Coat Protein, Zucchini Yellow Mosaic Virus Coat Protein, and the Genetic Material Necessary for Production of These Proteins in Transgenic Squash Plants; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act for residues of the plant pesticides watermelon mosaic virus-2 (WMV2) coat protein and zucchini yellow mosaic virus (ZYMV) coat protein, as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material necessary for the production of these proteins. Asgrow Seed Co. petitioned EPA for the exemption.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4310/R2078], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 27, 1994 (59 FR 38149), EPA issued a proposed rule that gave notice that the Asgrow Seed Co., Kalamazoo, MI 49004, had submitted pesticide petition (PP) 4E4310 to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the plant-pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L., and subsequent generations obtained through normal sexual reproduction. An amendment to this petition was received on April 4, 1994, which changed the proposed exemption by including the genetic material necessary for the production of these proteins.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. By way of public reminder, this notice also reiterates the registrant's responsibility, under section 6 (a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1132, to read as follows:

§ 180.1132 Watermelon mosaic virus-2 coat protein, zucchini yellow mosaic virus coat protein, and the genetic material necessary for the production of these proteins; exemption from the requirement of a tolerance.

The plant pesticides watermelon mosaic virus-2 coat protein and zucchini yellow mosaic virus coat protein as expressed in Asgrow line ZW20 of *Cucurbita pepo* L. and the genetic material (nucleic acids) necessary for the production of these proteins are exempted from the requirement of a tolerance in this transgenic plant and in subsequent generations of Asgrow line ZW20 of *cucurbita pepo* L. obtained through normal sexual reproduction.

[FR Doc. 94-26804 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300356A; FRL-4914-1]

RIN 2070-AB78

Poly(vinylpyrrolidone); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8) when used as an inert ingredient (surfactant, related adjuvants of surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. International Specialty Products requested this regulation.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300356A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC

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20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 31, 1994 (59 FR 44956), EPA issued a proposed rule that gave notice that International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, had submitted pesticide petition (PP) 4E4308 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by revising the currently listed exemption from the requirement of a tolerance for residues of poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8) when used as an inert ingredient (surfactant, related adjuvants of surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest to include poly(vinylpyrrolidone) polymers of molecular weights greater than 4,000. The current molecular weight limit is 40,000 or over.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Poly(vinylpyrrolidone) (CAS Reg. No. 9003-39-8), minimum number-average molecular weight 4,000.		Surfactant, related adjuvants of surfactant.

* * * * *

[FR Doc. 94-26808 Filed 11-1-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4F4361/R2086; FRL-4918-1]

RIN 2070-AB78

Pesticide Tolerances for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes increased tolerances for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on strawberries at 75 parts per million (ppm), brassica (cole) leafy vegetables group at 60 ppm, and leafy vegetables (except brassica vegetables) group at 100 ppm. This regulation to increase the maximum permissible levels of residues of the fungicide in or on these commodities was requested in a petition submitted by Rhone-Poulenc Ag Co.

EFFECTIVE DATE: This regulation becomes effective November 2, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4361/R2086], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 24, 1994 (59 FR 43579), which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide tolerance petition (PP 4F4361) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish increased tolerances for the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate) in or on strawberries from 20 ppm to 75 ppm, brassica (cole) leafy vegetables group from 55 ppm to 60 ppm, and leafy vegetables (except brassica vegetables) group from 80 ppm to 100 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 5.4 grams (g)/kilogram (kg).

2. A mouse acute oral study with an LD_{50} of 3.5 gm/kg.

3. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 5,000 ppm (250 milligrams (mg)/kg/day).

4. A 90-day dog feeding study with a NOEL of 10,000 ppm (250 mg/kg/day).

5. A 21-day rabbit dermal study with a NOEL of 1.5 g/kg/day [the highest dose tested (HDT)].

6. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study (the HDT was 2,857/4,286 mg/kg body weight (bwt)/day).

7. A rat chronic feeding/carcinogenicity study with a NOEL of 2,000 ppm (100 mg/kg bwt/day) for systemic effects (carcinogenic effects observed are discussed below).

8. A 2-year dog feeding study with a NOEL of 10,000 ppm (250 mg/kg bwt/day) and a lowest effect level (LEL) of 20,000 ppm (500 mg/kg bwt/day) based on a slight degenerative effect on the testes.

9. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day for systemic toxicity and an LEL of 600 mg/kg bwt/day based on effects on animal weights in some groups and urinary tract changes in some groups. No reproductive effect was seen.

10. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.

11. Ames mutagenicity assays, E. coli phage induction tests, micronucleus tests in mice, DNA repair tests using *E. coli*, and *Saccharomyces cervisiae* yeast assay that were negative.

As stated in a notice, published in the **Federal Register** of November 2, 1983 (48 FR 50532), carcinogenic effects were noted in the rat chronic feeding/carcinogenicity study. In this study, Charles River CD rats were dosed with aluminum tris (*O*-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000-ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the carcinogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (2,000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice.

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The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No increase in the incidence of urinary bladder tumors was observed in female rats.

In 1986, the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs concluded that the available data provided limited evidence of the carcinogenicity of fosetyl-Al in male rats and classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the **Federal Register** of November 23, 1984 (49 FR 46294). The Health Effects Division Peer Review Committee for Carcinogenicity determined that a quantitative risk assessment was not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats.

2. The tumor response was primarily due to an increase in benign tumors.

3. The tumors were seen only in surviving animals at the time of terminal sacrifice.

4. The carcinogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1,000 mg/kg/day recommended as an upper-limiting dose for bioassays.

5. The chemical was not carcinogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).

6. Fosetyl-Al was not mutagenic in eight well conducted genotoxic assays.

In 1993, the Health Effects Division Peer Review Committee (PRC) for Carcinogenicity revisited the carcinogenicity classification of fosetyl-Al because of a recent 90-day feeding study of fosetyl-Al in rats which showed a strong association between the presence of uroliths in the urinary bladder and the incidence of urinary bladder tumors in treated rats. The PRC concluded that fosetyl-Al is not amenable to classification using the current Agency cancer guidelines. Based on a mechanistic evaluation of the only tumors seen, those that occurred at exceptionally high doses (2,000/1,500 mg/kg) in the bladder of male rats, it appears that humans are not likely to be exposed to doses of fosetyl-Al that produce the urinary tract toxicity that precedes and seems to lead to the tumor response in rats. In particular, anticipated human dietary and occupational exposures to fosetyl-Al are far below the NOEL in rats for the apparent urinary tract tumor precursors (stone formation and attendant epithelial irritation). These effects are produced in rats at extremely high doses, under conditions not anticipated to occur outside of the experimental laboratory. The PRC concludes that pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to fosetyl-Al.

Using a 100-fold safety factor and the NOEL of 250 mg/kg bwt/day determined by the most sensitive species from the 2-year dog-feeding study, the RfD is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.053921 mg/kg bwt/day and utilizes 1.8 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroup in the population, Non-Hispanic Others, the TMRC is 0.081236 mg/kg bwt/day and utilizes 2.7 percent of the RfD. Previous tolerances have been established for fosetyl-Al, aluminum tris(O-ethylphosphonate), in asparagus, avocadoes, brassica vegetable crop group, caneberries, citrus, cucurbit vegetables group, dried hops, dry bulb onions, fresh ginseng root, leafy vegetables crop group, pineapples, pineapple forage and fodder, and strawberries.

The metabolism of aluminum tris(*O*-ethylphosphonate) in plants is adequately understood. No animal feed items are associated with this petition; therefore, there is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry. There are no processed commodities derived from the RACs, strawberries, brassica vegetable group, and leafy vegetable group; consequently, no corresponding food or feed additive regulations are required.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response Program Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5805.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.415, by amending paragraph (a) in the table therein by revising the entries for brassica (cole) leafy vegetables group, leafy vegetables (except brassica vegetables) group, and strawberries, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Brassica (cole) leafy vegetables group	60
* * * * *	
Leafy vegetables (except brassica vegetables) group	100
* * * * *	
Strawberries	75
* * * * *	

* * * * *

[FR Doc. 94-27176 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 186

[OPP-300199B/FRL-4910-5]

RIN 2070-AB78

Captan; Order Denying Objection to Revocation of Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Order denying objection to revocation.

SUMMARY: This Order, pursuant to section 409(f) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and in accordance with the regulations in 40 CFR part 178, announces that EPA is denying an objection to a final rule issued August 4, 1993, that revoked the feed additive regulation in 40 CFR 186.500 for residues of the pesticide captan in or on detreated captan-treated corn seed.

DATES: This denial of the objection is effective January 31, 1995. For purposes of judicial review, the entry of this Order shall be at 1 p.m. eastern time on November 16, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia C. Critchlow, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703-308-7066).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1993 (58 FR 41430), EPA revoked the feed additive regulation (40 CFR 186.500) for residues of the fungicide captan in or on corn seed at 100 parts per million (ppm). This regulation addressed corn seed that originally was treated with captan as a seed protectant and was later "detreated" by washing or roasting so that the seed could be used as an animal feed. The basis for the revocation was the absence of residue data to support the regulation and the lack of adequate control procedures to ensure seed was detreated properly. On August 27, 1993, Ken Hunt of Ken's Roasting Service filed objections to that revocation. This Order denies those objections.

Background

In March 1986, as part of an overall review of captan, EPA determined that the record contained "no acceptable residue data to support the roasting detreatment method at any dosage or period of storage." (Guidance for the Reregistration of Pesticide Products Containing Captan (March 1986).) The Residue Chemistry Chapter of the Registration Standard (August 1985) concluded that there were insufficient data for residues of captan on corn seed that had been treated at the maximum label rate and then detreated. The only available data were on residue reduction from washing of treated corn seed. The then- existing tolerance was exceeded in several samples, the treatments were not conducted at the maximum label rate, and crucial details of many of the experiments were missing. The validity of the data could not be determined, and the data covered only a washing process. Data were requested on the residues of concern on seed both before and after detreating. The detreatment methods of interest to the registrant(s), such as roasting, were to be tested. This information was essential to establish a proper tolerance and to evaluate the dietary risk from detreated corn.

EPA announced it would revoke the food additive regulation for detreated corn seed unless within 1 year the following data and information were submitted:

1. Data on the residues of concern in or on corn seed treated with captan at the maximum allowable rate and detreated by an acceptable process. Data were required on residues of concern both before and after detreatment. Moreover, EPA made clear that different methods of detreating would only be permitted under the regulation if data were presented depicting residues resulting from each method. EPA required that the data must depict the influence of varying parameters of the detreating process, such as rate of seed treatment, volume of water required, temperature employed, etc. Finally, EPA explained that these data would be used to establish the acceptable conditions for detreating by each method.

2. An acceptable method for informing corn seed treaters and corn seed distributors of acceptable methods for detreating captan-treated corn seed must be proposed.

3. An acceptable handling procedure for captan-treated seed corn (to be detreated) to assure that there are no other pesticides on the seed must be proposed.

Because no data or information were submitted over the next 3 years, on August 30, 1989 (54 FR 35897), EPA proposed to revoke the food additive regulation on the grounds that there were insufficient data to support it. EPA received several comments opposing the revocation, but none of the commenters submitted the data requested. EPA was not convinced by any of the comments that the data were not necessary and, therefore, on August 4, 1993, it issued a final rule revoking the tolerance.

On August 27, 1993, Ken Hunt of Ken's Roasting Service, Arcadia, Nebraska, filed objections to the revocation. Mr. Hunt supplemented his objections on September 7, 1993. Mr. Hunt's primary objection is that detreatment of captan-treated seed by roasting is safer than simply disposing of the seed. As support for this contention, Mr. Hunt claims that his experience in feeding to his livestock seed that he has detreated has caused no harm to the livestock or to his family, which has consumed meat from that livestock. Mr. Hunt also notes that tolerances for captan on various other crops, such as grapes, are as high as 50 parts per million (ppm). Mr. Hunt submitted analytic sampling results

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from his detreated corn which show that the tested corn contained low levels of captan (2 ppm or less). Mr. Hunt claims that he avoids detreating seeds that contain pesticide residues other than captan by having his trucker check the labels on all seed that is picked up for detreatment. Finally, Mr. Hunt asks if EPA would allow him to continue his operation for a few more years because of the sizable investment he has put into it.

For the reasons below, EPA must deny Mr. Hunt's objections. Magnitude of residue data, such as were requested here, are critical data in establishing or supporting tolerances and food additive regulations for pesticide residues. As EPA's Pesticide Assessment Guidelines explain, "[r]esidue chemistry data on processed food/feed are used by the Agency to estimate the exposure of the general population to pesticide residues in foods (including animal commodities) and for setting and enforcing food additive tolerances for pesticide residues in or on processed food/feed under provisions of Section 409 of the Federal Food, Drug, and Cosmetic Act." (Pesticide Assessment Guidelines, Subdivision O, Addendum 4, p. 2 [MIS #PB88-117270, EPA 540/09-88-004 (Nov. 1987)].)

Without magnitude-of-residue data, EPA cannot make accurate exposure estimates and hence risk estimates also will be inaccurate. The anecdotal information supplied by Mr. Hunt cannot substitute for safety evaluations made on the basis of valid scientific data. Additionally, magnitude-of-residue data allow EPA to establish enforcement levels in tolerances and food additive regulations that are representative of the residue levels that will be found under proper pesticide use patterns. If tolerances and food additive regulations are set at levels exceeding what could be expected from normal usage, then pesticide users might be encouraged to apply pesticides without strict regard to label requirements or not to follow proper detreatment procedures. If tolerances and food additive regulations are set too low, then otherwise safe food may be seized by the Food and Drug Administration or Department of Agriculture.

It is true that several foods have captan tolerances at levels exceeding the levels Mr. Hunt has reported in his detreated corn, but those tolerances are supported by residue data and the safety of those tolerances has been evaluated based on those data, consumption pattern data, and information on exposure from other uses of captan. If residue data had been submitted for detreated corn, a similar analysis could have been performed for the food additive regulation at issue.

The sampling results submitted by Mr. Hunt are no substitute for the magnitude-of-residue data requested. They represent a single detreatment method under unspecified conditions. Several summary analysis reports are given, indicating residues on detreated corn ranging from less than 0.01 ppm to 2.6 ppm. The analytical methods are not specified, and no method validation data were included. Moreover, no data were provided on the same corn prior to detreatment. The data are of the type that a business might use to monitor quality control in its process, but the data are totally inadequate for fulfilling residue chemistry data requirements. Mr. Hunt appears to follow a careful procedure for not detreating seed containing other than captan residues, but this alone is not grounds for maintaining the food additive regulation. Finally, EPA recognizes that Mr. Hunt may have a sizable investment in his operation, but tolerances and food additive regulations are rules of national application, and Mr. Hunt's investment cannot justify maintaining the legality of these pesticide residues nationwide.

Accordingly, the objections are denied. This Order is issued under FFDCA section 409(f) and is subject to judicial review as provided in FFDCA section 409(g).

Dated: September 26, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–26805 Filed 11–1–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5100–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Ringwood Mines/Landfill Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Ringwood Mines/Landfill site (Site) from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further action is appropriate under CERCLA.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT:
Mr. Lance R. Richman, P.G., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Rm. 13100, New York, New York 10278, (212) 264–6695.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Ringwood Mines/Landfill Site, Ringwood Borough, New Jersey.

A Notice of Intent to Delete for this Site was published in the **Federal Register**, on December 8, 1993 (58 FR 64539). The closing date for comments on the Notice of Intent to Delete was January 7, 1993. EPA has received no comments. Therefore there is no responsiveness summary.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not effect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 19, 1994.

William J. Muszynski,

Deputy Regional Administrator, USEPA Region II.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); (E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Ringwood Mines Landfill, Ringwood Borough, New Jersey".

[FR Doc. 94–27169 Filed 11–1–94; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[DA 94–1158]

Revised Procedures for Filing an Amateur Service License Application

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the amateur service rules to provide an electronic filing capability to the volunteer-examiner coordinators (VECs), to clarify that amateur station and operator licensees are authorized as soon as the license data is entered into the Commission's licensee data base, and to reflect other non-substantive procedural changes. This action is necessary because recent modernization of the Commission's data processing capabilities makes it possible to greatly reduce the time it takes for us to grant licenses in the amateur service, and all of the VECs have notified us that they want to begin electronic filing of license application data as soon as possible. The intended effect of this action is to allow successful license examinees to operate their amateur stations as soon as possible. The text of the final rules is at the end of this document.

EFFECTIVE DATE: December 20, 1994.

FOR FURTHER INFORMATION CONTACT:
William T. Cross, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC. 20554; or telephone (202) 632–4964.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Order adopted October 17, 1994, and released October 24, 1994. The complete text of this Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

2. Accepting from the VECs electronically filed data from applications for new and upgraded amateur operator licenses, will eliminate the time and effort required for the VECs to send, and for the Commission to receive, application documents by mail. As part of their routine operations, the VECs enter the data from the application documents they receive into an electronic form that can be sent at high speed over telephone lines to our license processing facility. This data can be used as received so that our license processors could discontinue manually reentering the data into the processing system. We have been making arrangements with the VECs to enable them to use electronic filing procedures similar to those that have been implemented for certain private land mobile radio services. The FCC Form 610 has been revised to accommodate electronic filing. VECs may also continue to send by mail to our license processing facility the application documents.

3. The decision to grant a license occurs when our license processing facility enters the data into the amateur service licensee data base. Currently, however, the new licensee must delay beginning operation until a license document can be printed, mailed, and delivered. This procedure can result in several weeks delay during which the licensee cannot operate an amateur station. Fortunately, information technology is making our amateur service licensee data base more widely available, thus diminishing the need for an amateur operator to hold a license document before exercising the privileges authorized by the grant of the license. We are amending the rules, therefore, to authorize operation on the basis of the licensee data appearing in the amateur service licensee data base.

4. Beginning in 1995, our new system also will give us the capability to make a timely mailing to a licensee's address of record a renewal short form, filled in and ready for signature. We are amending the rules to allow this form to be used. Because we cannot be certain of delivery of the form to every licensee in every instance, however, we will also continue to allow the Form 610 to be used for renewing licenses.

5. We are also combining into § 97.509 all of the administering volunteers examiner (VE) requirements that are presently stated in four separate rule sections, and adding new § 97.511, *Examinee conduct*, to emphasize that an examinee must comply with the instructions given by the administering VEs. Further, we are amending § 97.9 to treat Technician Plus as a license class.

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to the amended rules because there will not be any significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The amateur service may not be used to transmit communications for compensation, for the pecuniary benefit of the station control operator or the station control operator's employer, or for communications, on a regular basis, which could reasonably be furnished through other radio services. *See* 47 CFR 97.113.

7. The Secretary shall send a copy of this *Order*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (1981).

8. The Commission ordered that effective December 20, 1994, part 97 of the Commission's rules, 47 CFR part 97, IS AMENDED as set forth below.

List of Subjects in 47 CFR Part 97

Radio, Reporting and recordkeeping requirements, Volunteers.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Part 97 of chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.5 is revised to read as follows:

§ 97.5 Station license required.

(a) The person having physical control of the station apparatus must have been granted a station license of the type listed in paragraph (b) of this section, or hold an unexpired document of the type listed in paragraph (c) of this section, before the station may transmit on any amateur service frequency from any place that is:

(1) Within 50 km of the Earth's surface and at a place where the amateur service is regulated by the FCC;

(2) Within 50 km of the Earth's surface and aboard any vessel or craft that is documented or registered in the United States; or

(3) More than 50 km above the Earth's surface aboard any craft that is documented or registered in the United States.

(b) The types of station licenses are:

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(1) An operator/primary station license. One, but only one, operator/primary station license is granted to each person who is qualified to be an amateur operator. The primary station license is granted together with the amateur operator license. Except for a representative of a foreign government, any person who qualifies by examination is eligible to apply for an operator/primary station license. The operator/primary station license document is printed on FCC Form 660.

(2) A club station license. A club station license is granted only to the person who is the license trustee designated by an officer of the club. The trustee must be a person who has been granted an Amateur Extra, Advanced, General, Technician Plus, or Technician operator license. The club must be composed of at least two persons and must have a name, a document of organization, management, and a primary purpose devoted to amateur service activities consistent with this Part. The club station license document is printed on FCC Form 660.

(3) A military recreation station license. A military recreation station license is granted only to the person who is the license custodian designated by the official in charge of the United States military recreational premises where the station is situated. The person must not be a representative of a foreign government. The person need not have been granted an amateur operator license. The military recreation station license document is printed on FCC Form 660.

(4) A RACES station license. A RACES station license is granted only to the person who is the license custodian designated by the official responsible for the governmental agency served by that civil defense organization. The custodian must be the civil defense official responsible for coordination of all civil defense activities in the area concerned. The custodian must not be a representative of a foreign government. The custodian need not have been granted an amateur operator license. The RACES station license document is printed on FCC Form 660.

(c) The types of documents are:

(1) A *reciprocal permit for alien amateur licensee* (FCC Form 610–AL) issued to the person by the FCC.

(2) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

(d) A person who has been granted a station license of the type listed in paragraph (b) of this section, or who holds an unexpired document of the type listed in paragraph (c) of this section, is authorized to use in accordance with the FCC Rules all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC.

3. Section 97.7 is revised to read as follows:

§ 97.7 Control operator required.

When transmitting, each amateur station must have a control operator. The control operator must be a person who has been granted an amateur operator/primary station license, or who holds an unexpired document of the following types:

(a) A *reciprocal permit for alien amateur licensee* (FCC Form 610–AL) issued to the person by the FCC, or

(b) An amateur service license issued to the person by the Government of Canada. The person must be a Canadian citizen.

4. Section 97.9 is revised to read as follows:

§ 97.9 Operator license.

(a) The classes of amateur operator licenses are: Novice, Technician, Technician Plus (until such licenses expire, a Technician Class license granted before February 14, 1991, is considered a Technician Plus Class license), General, Advanced, and Amateur Extra. A person who has been granted an operator license is authorized to be the control operator of an amateur station with the privileges of the operator class specified on the license.

(b) A person who has been granted an operator license of Novice, Technician, Technician Plus, General, or Advanced class and who has properly submitted to the administering VEs an application document, FCC Form 610, for an operator license of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

5. Section 97.17 is revised to read as follows:

§ 97.17 Application for new license or reciprocal permit for alien amateur licensee.

(a) Any qualified person is eligible to apply for an amateur service license.

(b) Each application for a new amateur service license must be made on the proper document:

(1) FCC Form 610 for a new operator/primary station license;

(2) FCC Form 610–A for a *reciprocal permit for alien amateur licensee;* and

(3) FCC Form 610–B for a new amateur service club or military recreation station license.

(c) Each application for a new operator/primary station license must be submitted to the VEs administering the qualifying examination.

(d) Any eligible person may apply for a *reciprocal permit for alien amateur licensee.* The application document, FCC Form 610–A, must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

(1) The person must be a citizen of a country with which the United States has arrangements to grant reciprocal operating permits to visiting alien amateur operators is eligible to apply for a *reciprocal permit for alien amateur licensee.*

(2) The person must be a citizen of the same country that issued the amateur service license.

(3) No person who is a citizen of the United States, regardless of any other citizenship also held, is eligible for a *reciprocal permit for alien amateur licensee.*

(4) No person who has been granted an amateur operator license is eligible for a *reciprocal permit for alien amateur licensee.*

(e) No person shall obtain or attempt to obtain, or assist another person to obtain or attempt to obtain, an amateur service license or *reciprocal permit for alien amateur licensee* by fraudulent means.

(f) One unique call sign will be shown on the license of each new primary station. The call sign will be selected by the sequential call sign system.

(g) No new license for a club, military recreation, or RACES station will be granted.

§ 97.19 [Removed and reserved]

6. Section 97.19 is removed and reserved.

7. Section 97.21 is revised to read as follows:

§ 97.21 Application for a modified or renewed license.

(a) A person who has been granted an amateur station license that has not expired:

(1) Must apply for a modification of the license as necessary to show the correct mailing address, licensee name, club name, license trustee name, or license custodian name. The application document must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. For an operator/primary station license, the application must be made on FCC Form 610. For a club, military recreation, or RACES station license, the application must be made on FCC Form 610–B.

(2) May apply for a modification of the license to show a higher operator class. The application must be made on FCC Form 610 and must be submitted to the VEs administering the qualifying examination.

(3) May apply for renewal of the license for another term. (The FCC may mail to the licensee an FCC Form 610–R that may be used for this purpose.) The application may be made on the FCC Form 610–R if it is received from the FCC. If the Form 610–R is not received from the FCC at least 30 days before the expiration of the license, for an operator/primary station license, the application may be made on FCC Form 610. For a club, military recreation, or RACES station license, the application may be made on FCC Form 610–B. The application must be submitted no more than 90 days before its expiration to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the application for renewal of the license has been received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the license expiration date, the license operating authority is continued until the final disposition of the application.

(4) May apply for a modification of the license to show a different call sign selected by the sequential call sign system. The application document must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. The application must be made on FCC Form 610. This modification is not available to club, military recreation, or RACES stations.

(b) A person who had been granted an amateur station license, but the license has expired, may apply for renewal of the license for another term during a 2 year filing grace period. The application document must be received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the end of the grace period. For an operator/primary station license, the application must be made on FCC Form 610. For a club, military recreation, or RACES station license, the application must be made on FCC Form 610–B. Unless and until the license is renewed, no privileges in this part are conferred.

(c) Each application for a modified or renewed amateur service license must be accompanied by a photocopy (or the original) of the license document unless an application for renewal using FCC Form 610–R is being made, or unless the original document has been lost, mutilated or destroyed.

(d) Unless the holder of a station license requests a change in call sign, the same call sign will be assigned to the station upon renewal or modification of a station license.

(e) A reciprocal permit for alien amateur licensee cannot be renewed. A new reciprocal permit for alien amateur licensee may be issued upon proper application.

8. Section 97.23 is revised to read as follows:

§ 97.23 Mailing address.

(a) Each application for a license and each application for a *reciprocal permit for alien amateur licensee* must show a mailing address in an area where the amateur service is regulated by the FCC and where the licensee or permittee can receive mail delivery by the United States Postal Service. Each application for a *reciprocal permit for alien amateur licensee* must also show the permittee's mailing address in the country of citizenship.

(b) When there is a change in the mailing address for a person who has been granted an amateur operator/primary station license, the person must file a timely application for a modification of the license. Revocation of the station license or suspension of the operator license may result when correspondence from the FCC is returned as undeliverable because the person failed to provide the correct mailing address.

(c) When a person who has been granted a *reciprocal permit for alien amateur licensee* changes the mailing address where he or she can receive mail delivery by the United States Postal Service, the person must file an application for a new permit. Cancellation of the *reciprocal permit for alien amateur licensee* may result when correspondence from the FCC is returned as undeliverable because the permittee failed to provide the correct mailing address.

9. Section 97.25 is revised to read as follows:

§ 97.25 License term.

(a) An amateur service license is normally granted for a 10-year term.

(b) A *reciprocal permit for alien amateur licensee* is normally granted for a 1-year term.

10. Section 97.27 is revised to read as follows:

§ 97.27 FCC modification of station license.

(a) The FCC may modify a station license, either for a limited time or for the duration of the term thereof, if it determines:

(1) That such action will promote the public interest, convenience, and necessity; or

(2) That such action will promote fuller compliance with the provisions of the Communications Act of 1934, as amended, or of any treaty ratified by the United States.

(b) When the FCC makes such a determination, it will issue an order of modification. The order will not become final until the licensee is notified in writing of the proposed action and the grounds and reasons therefor. The licensee will be given reasonable opportunity of no less than 30 days to protest the modification; except that, where safety of life or property is involved, a shorter period of notice may be provided. Any protest by a licensee of an FCC order of modification will be handled in accordance with the provisions of 47 U.S.C. 316.

11. Section 97.29 is added to read as follows:

§ 97.29 Replacement license document.

Each person who has been granted an amateur station license or *reciprocal permit for alien amateur licensee* whose original license document or permit document is lost, mutilated or destroyed must request a replacement. The request must be made to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. A statement of how the document was lost, mutilated, or destroyed must be attached to the request. A replacement document must bear the same expiration date as the document that it replaces.

12. In § 97.301, introductory text of paragraphs (a) through (f) are revised to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) For a station having a control operator who has been granted an operator license of Technician, Technician Plus, General, Advanced, or Amateur Extra Class:

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(b) For a station having a control operator who has been granted an operator license of Amateur Extra Class:

* * * * *

(c) For a station having a control operator who has been granted an operator license of Advanced Class:

* * * * *

(d) For a station having a control operator who has been granted an operator license of General Class;

* * * * *

(e) For a station having a control operator who has been granted an

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operator license of Novice or Technician Plus Class:

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(f) For a station having a control operator who has been granted an operator license of Novice Class:

* * * * *

13. Section 97.501 is amended by revising the introductory text, paragraphs (d) and (e), and by adding new paragraph (f) to read as follows:

§ 97.501 Qualifying for an amateur operator license.

Each applicant for the grant of a new amateur operator license or for the grant of a modified license to show a higher operator class, must pass or otherwise receive credit for the examination elements specified for the class of operator license sought:

* * * * *

(d) Technician Plus Class operator: Elements 1(A) or 1(B) or 1(C), 2, and 3(A).

(e) Technician Class operator: Elements 2 and 3(A).

(f) Novice Class operator: Elements 1(A) or 1(B) or 1(C), and 2.

14. Section 97.505 is revised to read as follows:

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following documents:

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license document: Elements 1(B), 2, 3(A), 3(B), and 4(A).

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license document: Elements 1(b), 2, 3(A), and 3(B).

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license document: Elements 1(A), 2, and 3(A).

(4) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Class operator license document: Elements 2 and 3(A).

(5) An unexpired (or expired but within the grace period for renewal) FCC-granted Novice Class operator license document: Elements 1(A) and 2.

(6) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(7) An unexpired (or expired for less than 5 years) FCC-issued commercial radiotelegraph operator license document or permit: Element 1(C).

(8) An expired or unexpired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3(B).

(9) An expired or unexpired FCC-issued Technician Class license document granted before February 14, 1991: Element 1(A).

(10) An unexpired (or expired but within the grace period for renewal), FCC-granted Novice, Technician Plus (including a Technician Class operator license granted before February 14, 1991), General, or Advanced Class operator license document, and an FCC Form 610 containing:

(i) A physician's certification stating that because the person is an individual with a severe handicap, the duration of which will extend for more than 365 days beyond the date of the certification, the person is unable to pass a 13 or 20 words per minute telegraphy examination; and

(ii) A release signed by the person permitting the disclosure to the FCC of medical information pertaining to the person's handicap: Element 1(C).

(b) No examination credit, except as herein provided, shall be allowed on the basis of holding or having held any other license grant or document.

15. Section 97.507 is amended by revising introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE who has been granted an Amateur Extra Class operator license. A telegraphy message or written question set, however, may also be prepared for the following elements by a VE who has been granted an FCC operator license of the class indicated:

* * * * *

(3) Element 2: Advanced, General, Technician, or Technician Plus Class operator.

* * * * *

16. Section 97.509 is revised to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by 3 administering VEs at an examination session coordinated by a VEC. Before the session, the administering VEs must make a public announcement stating the location and time of the session. The number of examinees at the session may be limited.

(b) Each administering VE must:

(1) Be accredited by the coordinating VEC;

(2) Be at least 18 years of age;

(3) Be a person who has been granted an FCC amateur operator license document of the class specified below:

(i) Amateur Extra, Advanced, or General Class in order to administer a Novice, Technician, or Technician Plus Class operator license examination;

(ii) Amateur Extra Class in order to administer a General, Advanced, or Amateur Extra Class operator license examination.

(4) Not be a person whose grant of an amateur station license or amateur operator license has ever been revoked or suspended.

(5) Not own a significant interest in, or be an employee of, any company or other entity that is engaged in the manufacture or distribution of equipment used in connection with amateur station transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses. (An employee who does not normally communicate with that part of an entity engaged in the manufacture or distribution of such equipment, or in the preparation or distribution of any publication used in preparation for obtaining amateur operator licenses, may be an administering VE.)

(c) Each administering VE must be present and observing the examinee throughout the entire examination. The administering VEs are responsible for the proper conduct and necessary supervision of each examination. The administering VEs must immediately terminate the examination upon failure of the examinee to comply with their instructions.

(d) No VE may administer an examination to his or her spouse, children, grandchildren, stepchildren, parents, grandparents, stepparents, brothers, sisters, stepbrothers, stepsisters, aunts, uncles, nieces, nephews, and in-laws.

(e) No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in the revocation of the grant of the VE's amateur station license and the suspension of the grant of the VE's amateur operator license.

(f) No examination that has been compromised shall be administered to any examinee. Neither the same telegraphy message nor the same question set may be re-administered to the same examinee.

(g) Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The administering VEs, however, may also include a sending segment in a telegraphy examination.

(h) Upon completion of each examination element, the administering VEs must immediately grade the examinee's answers. The administering VEs are responsible for determining the correctness of the examinee's answers.

(i) When the examinee is credited for all examination elements required for the operator license sought, the administering VEs must certify on the examinee's application document that the applicant is qualified for the license.

(j) When the examinee does not score a passing grade on an examination element, the administering VEs must return the application document to the examinee and inform the examinee of the grade.

(k) The administering VEs must accommodate an examinee whose physical disabilities require a special examination procedure. The administering VEs may require a physician's certification indicating the nature of the disability before determining which, if any, special procedures must be used.

(l) The administering VEs must issue a CSCE to an examinee who scores a passsing grade on an examination element.

(m) Within 10 days of the administration of a successful examination for an amateur operator license, the administering VEs must submit the application document to the coordinating VEC.

17. Section 97.511 is revised to read as follows:

§ 97.511 Examinee conduct.

Each examinee must comply with the instructions given by the administering VEs.

§ 97.515 [Removed and reserved]

18. Section 97.515 is removed and reserved.

§ 97.517 [Removed and reserved]

19. Section 97.517 is removed and reserved.

20. Section 97.519 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 97.519 Coordinating examination sessions.

* * * * *

(b) At the completion of each examination session, the coordinating VEC must collect the FCC Forms 610 documents and test results from the administering VEs. Within 10 days of collecting the FCC Forms 610 documents, the coordinating VEC must screen and, for qualified examinees, forward electronically or on diskette the data contained on the FCC Forms 610 documents, or forward the FCC Form 610 documents, to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the data is forwarded electronically, the coordinating VEC must retain the FCC Forms 610 documents for at least fifteen months and make them available to the FCC upon request.

* * * * *

(d) The FCC may:

(1) Administer any examination element itself;

(2) Readminister any examination element previously administered by VEs, either itself or under the supervision of a VEC or VEs designated by the FCC; or

(3) Cancel the operator/primary station license of any licensee who fails to appear for readministration of an examination when directed by the FCC, or who does not successfully complete any required element that is readministered. In an instancce of such cancellation, the person will be granted an operator/primary station license consistent with completed examination elements that have not been invalidated by not appearing for, or by failing, the examination upon readministration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–15; Notice 2]

RIN 2127–AE36

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 108 to specify that plastic materials used in reflex reflectors show not more than 7 percent haze after a 3-year outdoor exposure test, a level at which haze becomes discernable to the naked eye. This amendment will not change the stringency of the standard as it has been applied, but it will increase its objectivity. NHTSA has not adopted its proposal that cumulative haze not exceed 7 percent when a plastic lens is placed in front of a reflex reflector. Instead, the same haze criterion is applied to the reflex reflector and outer lens material. This approach will limit cumulative haze to about the same level without the need to retest current materials.

DATES: The amendment is effective November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: Sierra Products of Livermore, California ("Sierra") filed a "Petition to Amend FMVSS 108 Updating Weather & Heat Testing of Vehicle Lights & Reflectors." In granting the petition, NHTSA considered that three principal issues and several lesser issues merited public consideration and comment. An appropriate notice of proposed rulemaking (NPRM) was published on March 9, 1993, and an opportunity afforded for comment (58 FR 13042). Its primary subject concerned the permissibility of a minimum amount of haze. NHTSA noted that if any of the other issues merited the initiation of rulemaking, a supplemental notice of proposed rulemaking would follow.

Comments on the NPRM were received from Trucklite, Truck Safety Equipment Institute (TSEI), American Automobile Manufacturers Association (AAMA), 3M, Chrysler Corporation, Ford Motor Company, General Motors Corporation (GM), Japan Auto Parts Industries Association (JAPIA), Peterson Manufacturing, Thomas Loughran, and General Electric Plastics (GEP).

1. Haze Limit for Reflex Reflectors

The principal issue of the NPRM concerned the permissible amount of haze after outdoor exposure testing of reflex reflectors. S5.1.2 of Standard No. 108 establishes requirements for plastic materials used for optical parts such as lenses and reflectors. One of the requirements (subsection (c)) is that plastic materials used for reflex reflectors shall meet the appearance requirements of paragraph 4.2.2 of SAE Recommended Practice J576c, May 1970, after the 3-year exposure test specified in the Recommended Practice. Paragraph 4.2.2 states in pertinent part that "The exposed samples, when compared with the unexposed control samples, shall not show * * * haze * * *." Whether a sample shows haze has traditionally been determined by whether haze is visible to the naked eye.

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However, all plastics will develop an amount of haze during the weathering test that may not be visible to the naked eye, but which is measurable by instrumentation.

General Electric, the manufacturer of "Lexan," a polycarbonate plastic resin used in reflex reflectors, has stated that its polycarbonate plastic will not pass the weathering test for reflector material unless the reflex reflector manufacturer coats the finished product with an optical coating approved by GE. In its latest revision of J576, SAE has replaced the visual inspection criterion for haze with a 7-percent haze limit for measurement with a hazometer. The committee recommending the change considered the new procedure equivalent to the previous practice but more objective. Properly coated polycarbonates develop about 6 percent haze, and acrylics develop about 3 percent haze in exposure tests conducted in Florida. Such products are certified under the present test and will remain in compliance. NHTSA notes that 7 percent haze is not difficult to discern visually.

Neither Standard No. 108 nor SAE J576c "requires" coating, although that process may, in fact, be the most practicable way to meet the requirements of both. The present requirement may imply the absence of haze after weathering, but an absolute requirement of zero haze is neither practicable nor appropriate. Industry studies used by the SAE Lighting Committee have demonstrated that degradation of reflex reflector performance can be limited to less than 17 percent by preventing haze in excess of 7 percent, but that degradation increases rapidly with further haze to a loss of over 80 percent of initial performance at 21 percent haze. To control reflex reflector degradation and to make the haze test more objective, the SAE amended its Recommended Practice to establish a maximum allowable limit of 7 percent haze for plastics used for reflex reflectors.

The proposal was opposed by AAMA, Ford, Chrysler, GM, and JAPIA. AAMA (supported in these views by Ford, Chrysler, GM, and GEP) believes that the rulemaking is premature for two reasons. The first is that "the agency has not identified any safety problem arising from inadequacies" in the existing requirement. The second is that "there is no currently available information [to motor vehicle manufacturers] that relates haze test data for plastic materials currently used to the performance of reflex reflectors." It recommended that the agency withdraw its NPRM and issue an ANPRM on the subject. The comments of JAPIA were similar in that it requested an effective date for the final rule 5 years after its issuance to review its appropriateness.

NHTSA disagrees that the rulemaking is premature. The purpose of the rulemaking is to ensure that an existing requirement will more closely conform to that portion of the statutory definition of a Federal motor vehicle safety standard that it "provides objective criteria." (15 U.S.C. 1391(2)). The "inadequacy", to use AAMA's term, of the existing requirement is that it is subjective. As for the second argument, the SAE considered industry data on reflector performance with various haze filters fitted in front of a reflex reflector to quantify performance loss with increased haze, and it reported a subjective demonstration test also using haze filters (haze filters were used in the experiments rather than reflectors in various weathered states because reflector facets prevent the use of a hazeometer to measure the degree of haze). NHTSA believes that the needs for safety are met by the current requirement that plastic materials used in optical parts such as lenses meet the weathering test. Absent any treatment of the raw materials that affects its ability to meet J576 (see discussion below), optical parts fashioned from complying plastic materials ought to have the same haze resistance.

AAMA also commented that the proposal would increase the stringency of haze requirements: "[w]hereas the current Standard calls for no visually-perceptible *change* in haze resulting from outdoor exposure, the proposed revision would set a limit on the *total* haze of the exposed sample. Even unexposed samples exhibit some measurable haze that would be additive to any incremental haze produced by the three year outdoor exposure test." AAMA is not aware of any body of test data demonstrating whether plastic materials used in current reflex reflectors are capable of meeting a post-exposure limit of 7 percent.

The present requirement contained in 4.2.2 of SAE J576c states that "the exposed samples, when compared with the unexposed control samples, shall not show surface deterioration, crazing, haze, dimensional changes, color bleeding, delamination, or loss of surface luster." The determination of surface deterioration, dimensional changes, and color bleeding require comparison with control samples. But the SAE bases its interpretation of the haze requirement on the premise that low levels of haze are invisible to the naked eye, and it is certainly inappropriate for the samples to have visible haze before exposure. Therefore, the haze test is actually absolute; the only criterion is whether the exposed sample has visible haze. The "comparison" of visible haze to invisible haze is nothing more than a determination of the visible haze. Implicit in the visual test requirement is a mutually exclusive concept of haze—it is either visible or it is not visible. The concept of relative haze has little meaning unless the instrumentation of the proposed method of measurement is used.

NHTSA presumes that the certification of present materials is based on test data in the possession of material manufacturers. It is likely that haze measurements as well as visual inspection have been performed on current materials following exposure to weathering, but visual inspections alone should be sufficient. It is not difficult to detect 7 percent haze visually and samples already found to endure weathering without the development of visually perceptible haze are unlikely to have developed more than 7 percent haze.

The proposal was supported by Trucklite, TSEI, and Peterson. They pointed out that the SAE Lighting Committee haze task force unanimously recommended the 7 percent haze limit in part because it did not affect the use of plastic resins currently employed for reflex reflectors.

On balance, the agency has concluded that there is no demonstrable reason not to adopt the 7 percent haze limitation for plastic materials used for reflex reflectors.

The second part of the NPRM concerned a proposed cumulative haze limit of 7 percent when a plastic reflex reflector is installed behind a plastic outer lens and not exposed directly to sunlight. This was based upon draft SAE language and was opposed by the commenters. Subsequent to the NPRM the SAE modified its draft so that a cumulative haze limit was an optional part of its specification. NHTSA has decided not to impose a cumulative haze limit of 7 percent, but simply to adopt the same criterion (7 percent haze limit with direct exposure). Thus, S5.1.2(c) as amended by this notice will apply the limit and other criteria to "plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors."

A comment from GE indicated that while uncoated "Lexan" would develop in excess of 30 percent haze in a Florida exposure test, the addition of a glass covering lens would limit haze to 4 to 6 percent. GE also offered data to show that plastic covering lenses provided similar benefits. In view of the vast reduction in ultraviolet exposure of inner reflectors afforded by glass or plastic outer lenses, the agency concluded that acrylic and coated polycarbonate materials, which experience less than 7 percent haze under direct exposure, would experience negligible haze when protected by an outer lens. Therefore, it is not necessary to consider cumulative haze when material suitable for direct exposure is used with a covering lens, also suitable for direct exposure.

NHTSA's decision not to adopt the cumulative haze provision should allay industry concerns regarding the lack of test data to continue recertifying existing designs using covered reflex reflectors, but it may have the effect of necessitating an optical coating on any polycarbonate reflex reflectors which previously relied on an outer lens to prevent the formation of visible haze.

The SAE haze task force had also considered applying the 7 percent haze limit to plastic headlamp lenses as well as reflex reflectors, but it decided that more work was required to define the safety needs of headlamps. The revision of SAE J576 left the headlamp lens requirement unchanged from previous versions. It states that "plastic material used for forward road illumination devices, excluding cornering lamps, shall show no deterioration." It is not clear whether that specification is meant to be more restrictive than the 7 percent haze limit for reflectors, but it has the same effect in practice as the visual inspection requirement had for reflex reflectors.

NHTSA notes that in Standard No. 108, plastic lenses of replaceable bulb headlamps are subject to an abrasion resistance test, and that most, if not all, lenses must be given an abrasion resistant coating to meet it. It has been the agency's assumption that the hard coating would also protect headlamps lenses against excessive haze. Standard No. 108 does not require the abrasion test for plastic sealed beam headlamps, but NHTSA believes that it is industry practice to coat plastic sealed beam lamps. To pursue the subject of haze limitations for headlamp lens material, NHTSA requested that commenters address five specific issues. Ford was the sole commenter on the first four issues. These issues and Ford's comments follow:

(1) Whether there are any replaceable bulb headlamps with plastic lenses that do not use a hard coating to achieve abrasion resistance.

Ford's headlamps of this type all employ a hard coating.

(2) Whether all abrasion resistant coatings also prevent the formation of more than 7 percent haze on samples of plastics used in headlamp lenses which are subjected to the 3-year test.

In Ford's experience, coatings prevent formation of haze that exceeds 7 percent.

(3) Whether there are any sealed beam headlamps with plastic lenses that do not use a hard coating for either haze or abrasion resistance.

Ford used headlamps of this type in two model lines for one model year each a decade and a half ago. The lamps used an acrylic coating to prevent yellowing of the polycarbonate lens.

(4) Whether the adoption of a 7 percent haze limit for plastic headlamp lenses would create a burden on industry, and if so, the nature and severity of the burden.

Ford does not believe that it would create a burden "except possibly for some initial additional testing."

(5) Whether the industry favors harmonization of Standard No. 108 with SAE J576 for haze resistance of plastic headlamp lens materials.

Ford and another commenter, Truck-Lite, supported application of Standard No. 108 to materials for plastic headlamp lenses, albeit with the more recent versions of SAE J576, those of 1986 and 1991.

It appears that the abrasion resistance requirements for replaceable bulb headlamps and the industry practice of hard coating sealed beams already act to prevent haze on plastic headlamp lenses that exceed 7 percent. NHTSA remains interested in any SAE attempts to establish an appropriate haze criterion for headlamp lenses, but it appears that there is no safety need for rulemaking at present.

2. Thermal Degradation of Acrylic Reflex Reflectors

Sierra also claimed that current weathering tests do not address the loss of reflector performance for causes other than haze. It criticized the agency for deleting the lens warpage test in 1973 which regulated distortion from heat. Before then, Standard No. 108 incorporated the heat test of SAE Standard J575d which consisted of operating a lamp for one hour in a chamber heated to 120 degrees F. The lamp would reach a temperature higher than that from the heat of the filament. At the conclusion of the test, no warpage could result that would "affect the proper functioning of the device." Since the requirement was ambiguous, NHTSA eliminated it. However, in light of Sierra's complaint, NHTSA has reviewed the matter. When the heat test was deleted, the principal concern of the test seemed to be gross distortions of through-optic lenses. It appears that the heat damage to a lens with an integral reflex reflector was not considered.

There are limited data indicating that acrylic reflex reflectors may suffer from heat degradation. The General Electric Company (GE) has reported (NHTSA Docket No. 108–PRM–000015–01) a weathering test in Florida in which amber and yellow acrylic reflex reflectors decreased in specific intensity by 18 to 32 percent after an exposure of one year, regardless of the angle of exposure. GE attributed the decrease in photometric performance to minute distortions of the reflex lens (which the industry calls "creep") which occurred when the plastics were exposed to direct sunlight (temperatures of 150 to 160 degrees F).

In view of this test, NHTSA sought comments on the potential problem of heat degradation of acrylic plastic reflex reflectors. NHTSA requested commenters to address the following:

(1) Whether the commenter has test or other data relating to the performance of acrylic reflectors after exposure to heat.

(2) The threshold temperatures for creep and stress relaxation for acrylic plastics used for lamp lenses.

(3) Whether creep will stabilize or continue indefinitely.

(4) The maximum temperature acrylic lenses may endure without experiencing visible deformation.

(5) The length of exposure required for stability at slightly over the threshold temperature and at the maximum temperature stated in response to (4).

(6) The maximum loss of photometric performance to be expected if the creep and stress relaxation eventually stabilize.

(7) The maximum operating temperature of multiple function rear lamps on passenger cars, trucks, and trailers under realistic extreme conditions.

(8) Whether integral reflex reflectors would degrade under the conditions stated in response to (7).

(9) The test procedures that would be effective and practicable for testing reflectors and lamps with integral reflectors for the purpose of detecting which devices would degrade significantly in service.

Comments were received from TSEI, Peterson, 3M, Ford, and Trucklite. They reported that acrylic devices are designed to operate up to about 170 degrees F and that stress relaxation begins at about 180 degrees. A heat test of plastic samples at 175 degrees F is

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incorporated by reference in Standard No. 108. The amount of distortion experienced at temperatures between 180 and 200 degrees F depends on the residual stress at the particular location, and the speed at which it stabilizes depends on the temperature. Unlike haze, creep is not indefinitely progressive; stabilization occurs in a matter of hours at elevated temperature.

All lamp manufacturers reported using a heat warpage test of some sort, even though no longer required by Standard No. 108. Some test more stringently than SAE J575d. Some commenters reported using photometric testing after a heat warpage test while others used a visual examination (the method set forth in SAE J575d). Peterson reported that acrylic lenses with reflectors subjected to SAE J575d show less than 5 percent losses in photometric brightness.

The agency eliminated the warpage test because it did not deem it required for safety. The degradation of acrylic reflectors alleged by Sierra would not be detected under SAE J575d which specifies a visual inspection.

Creep would affect a reflex reflector in a way fundamentally different from haze. Haze reduces the brightness of the reflector at all light entrance angles. Creep may cause the reflex reflector to lose brightness at some angles while gaining brightness at other angles. It appears unlikely that the loss of brightness reported by General Electric was the result of creep. GE did not test the acrylic reflectors thoroughly enough to make well founded conclusions about their performance.

In sum, there is no evidence that reflex reflectors degrade before other visible damage occurs.

3. Dye Loss of Acrylic Reflectors and Lenses

Sierra claimed that the weathering test of Standard No. 108 is inadequate because complying red and amber acrylic lenses lose their color in use. NHTSA responded that the breakdown of the dye may not be a property of the plastic but of the dye itself. Dyes with higher temperature tolerance are frequently used in polycarbonate products because they may be designed for higher temperature applications than acrylic products, but there is no property of acrylic plastic which contributes to fading. NHTSA understands, however, that the SAE adopted the three-year test when plastic began to replace glass because of some concern that plastic would not be as fade resistant as glass.

NHTSA requested that commenters provide information on the following:

(1) Whether the commenter has test or other data relating to fading or loss of dye color in acrylic or polycarbonate lenses through exposure to heat or weathering.

(2) Whether any data exist indicating that acrylic or polycarbonate lenses fade or do not fade under realistic operating conditions.

(3) The conditions under which fading could be expected.

(4) Whether there is any reason to believe that acrylic lenses are more subject to this type of degradation than polycarbonate lenses.

(5) Whether the commenter has observed faded lenses in service and, if so, what views the commenter has about the cause of the fading.

(6) Whether the three-year test of SAE J576, conducted in Florida and Arizona, is sufficient to identify plastic materials prone to fade in color.

(7) The kind of test procedure that would be effective and practicable for testing lenses or plastic materials used in lenses to detect any propensity to fade significantly in service.

Comments were received from TSEI, Peterson, 3M, Ford, Trucklite, and Thomas Loughran. The commenters believe that the three year weathering test of SAE J576 is adequate to identify plastic materials that are prone to fading. Acrylic materials do not appear to have a greater tendency to fade than polycarbonate materials. Peterson has observed that dyes used in acrylic material darken slightly as a result of sustained exposure to sunlight. TSEI reported that the only faded lenses in service which have been observed by its membership have been identified as made of noncomplying materials. Mr Loughran suggested that faded lenses result from the practice of blending virgin and reground material with additional dye at the time of molding.

Ford suggested that a modified xenon accelerated weathering test would be effective for testing colored plastic materials for their propensity to fade in service. This test would be configured to correlate with the three year weathering test. The object of accelerated testing with xenon lamps would be increased productivity rather than increased accuracy of detection.

The comments were unanimous in supporting the existing rule as an effective and sufficient test for dye loss of lamp and reflector materials. However, it appears from Mr. Loughran's comment that the uncontrolled use of reground material and added dye can create noncomplying plastic material to a greater degree than the lamp industry recognizes. NHTSA believes that the fading problem observed by the petitioner is the likely result of lamp manufacturing practices brought to its attention by Mr. Loughran. Accordingly, there appears to be no reason to change the present weathering test.

With respect to Mr. Loughran's comments, NHTSA takes this opportunity to present its views on the obligations of a manufacturer of reflex reflectors. The haze requirement is imposed by S5.1.2 upon "plastic materials used in optical parts". SAE Standard J594f "Reflex Reflectors" January 1977 as incorporated into Standard No. 108 at 3.2 references the plastic material test of SAE J576. This imposes an obligation upon the manufacturer of a reflex reflector to use plastic materials meeting J576. Thus, the manufacturer has an obligation to ensure that its acts do nothing to negate the conformance of the raw material with the tests of J576 when it is fashioned into reflectors.

A weathering test performed by NHTSA and comments to the docket suggest that lamp manufacturers need to take care that their coating practices actually meet the specifications used by plastic manufacturers to certify material properties. NHTSA's test included coated and uncoated "Lexan" samples exposed in Florida and Arizona. The uncoated samples failed the test visually as well as by the development of more than 7 percent haze before the end of the first year at both exposure sites. At the end of the second year, the coated Arizona sample had developed slightly less than 7 percent haze, but haze was plainly visible. The coated Florida sample had failed in both respects with 10.5 percent haze after a two-year exposure. Its uncoated mate had developed 10.3 percent haze in one year. At the end of the third year, the large haze reductions of the coated specimens, seen after one- and two-years exposure, had disappeared. Both Arizona specimens had slightly less than 20 percent haze and both Florida specimens had slightly more than 30 percent haze. The 24-month results were available at the time of the NPRM and were placed in the docket.

TSEI and Peterson commented on the 24-month test results, and Thomas Loughran's comment is relevant to cases of premature degradation. TSEI and Peterson consider the failure of coated sample to be an anomaly, uncharacteristic of the performance of all other coated polycarbonates in their experience. In their view, the failure is due to a faulty coating. Peterson suggested that either the coating thickness or the curing process was not performed in accordance with the plastic manufacturer's specifications. The rapid surface degradation of both coated samples occurring in the period between 24 and 36 months exposure and the apparent flaking of the coating of the Arizona 18-month specimen support Peterson's opinion of faulty coating.

Mr. Loughran was concerned that coated polycarbonates may not meet the 7 percent haze limit either as samples or as finished products. He cited knowledge of Arizona exposure tests in which coated polycarbonate reflectors suffered 60 percent to 70 percent losses in reflective performance, and he suggested testing of finished products as well as material.

Mr. Loughran's experience appears to be at odds with the confidence of TSEI, Peterson, Trucklite, and the SAE haze task force that coated polycarbonate plastic will haze less than 7 percent in a 3-year exposure test. However, it is likely that departures from virgin material and poor coating practices can combine to cause inferior performance in products nominally made from certified materials.

These data suggest the beneficent effect of coating on polycarbonate plastic will not be sufficiently durable to meet the performance certified after the material unless the material manufacturer's recommendations are followed rigorously. While the presence of some coating material does not guarantee compliance, the absence of coating seems to ensure that plastics such as polycarbonates will quickly fail the haze test. Use of coatings with a tint element visible under an ultraviolet inspection light affords a simple, practicable way for regulatory bodies such as NHTSA to discern whether relevant plastic materials have been coated. The 3-year test period appears to be unnecessarily long in those instances where test failures occur long in advance, such as samples that manifest haze at the end of an exposure of only a year's duration. Failure to tint, and premature hazing afforded a basis upon which NHTSA can determine noncompliance without having to complete pro forma the 3-year test period and unnecessarily delay the remedy of a noncompliant product.

4. Miscellaneous Issues

3M suggested that a test measuring reflective brightness before and after exposure of retroreflective devices be established as an alternative to haze testing so that sheeting material devices could qualify as reflex reflectors. No specific test procedures or criteria were included in the comment. Because this issue is beyond the scope of the present rulemaking, it could not be not considered in formulating the final rule.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action has not been considered under E.O. 12866. NHTSA has considered the impacts of this rulemaking action and has determined that it is not significant under Department of Transportation regulatory policies and procedures. The stringency of the haze requirement would not be changed. Further, manufacturers of plastic materials are currently measuring the haze of weathered samples by ASTM D 1003, which will govern the certification to the 7 percent haze limit. In addition, according to the agency's observation that haze not detectable by the human eye is also less than 7 percent, conformance of a reflector with the haze requirement could still be judged with the naked eye. Impacts of the final rule are, therefore, be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Manufacturers of plastic materials are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment.

Civil Justice Reform

This rule would not have any retroactive effect. Under 49 U.S.C. 30103 (formerly section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Forty-nine U.S.C. 30161 (formerly Section 105 of the Act (15 U.S.C. 1394)) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority section continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30161; delegation of authority at 49 CFR 1.50.

2. In § 571.108, S5.1.2(c) is revised to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.2 * * *

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–61.

Issued on: October 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–27152 Filed 11–1–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AC97

Endangered and Threatened Wildlife and Plants; Emergency Reclassification of the Snake River Spring/Summer Chinook Salmon and the Snake River Fall Chinook Salmon From Threatened to Endangered Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Fish and Wildlife Service is reclassifying the Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and the Snake River fall chinook salmon from threatened to endangered status under the emergency provisions of the Endangered Species Act of 1973 (Act). This reflects a determination by the National Marine Fisheries Service, which has jurisdiction for these species, that the species warrant emergency reclassification based on a projected decline in adult Snake River chinook salmon abundance. This determination by NMFS was published in the August 18, 1994, Federal Register.

EFFECTIVE DATE: This emergency rule is effective from August 18, 1994, to May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 452, Arlington, Virginia 22203 (703/358-2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 et seq.), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Snake River spring/summer and fall chinook salmon. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (Service) is responsible for the actual addition, deletion and amendment of the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) (List).

NMFS published its determination of threatened status for the Snake River spring/summer chinook salmon and the Snake River fall chinook salmon on April 22, 1992 (57 FR 14653). Accordingly, the Service added the species to the List on September 23, 1993 (58 FR 49880). On August 18, 1994, NMFS published an emergency interim rule in the Federal Register (59 FR 42529) reclassifying the Snake River spring/summer chinook salmon and the Snake River fall chinook salmon from threatened to endangered status based on new data that indicates that critically low salmon returns are expected for 1994. Accordingly, the Service is amending the List, pursuant to the emergency provisions of section 4(b)(7) of the Act, to reflect the revised status.

During the 240 days this emergency rule is in effect, NMFS will initiate and complete a rulemaking (with a public comment period) to extend the reclassification of Snake River spring/summer and fall chinook salmon to endangered status under the Act until such time as reclassification or delisting is warranted. This action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary. Therefore, in view of the public comment period that will be provided by NMFS on the proposed reclassification, the Service finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b) and to make this action effective on August 18, 1994, the date of publication of NMFS' emergency interim rule, waiving the 30-day effective date provision of 5 U.S.C. 553(d).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by suspending the two entries in the table for the Snake R. Vertebrate populations of "Salmon, chinook" under FISHES, effective August 18, 1994, to May 26, 1995.

3. Section 17.11(h) is amended by adding the following entries to the table immediately after the two suspended Snake R. Vertebrate populations of "Salmon, chinook" under FISHES, to be effective from August 18, 1994, to May 26, 1995, and to read as follows:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
FISHES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
Salmon, chinook	Oncorhynchus tshawytscha.	North Pacific Basin from U.S.A. (CA) to Japan.	Snake R. (U.S.A.—ID, OR, WA) (mainstem and the following subbasins-Tucannon R., Grande Ronde R., Imnaha R., and Salmon R.) spring/summer run, natural population(s), wherever found.	E	516,557	NA	NA
Salmon, chinook	Oncorhynchus tshawytscha.	North Pacific Basin from U.S.A. (CA) to Japan.	Snake R. (U.S.A.—ID, OR, WA) (mainstem and the following subbasins-Tucannon R., Grande Ronde R., Imnaha R., Salmon R., and Clearwater R.) fall run, natural population(s), wherever found.	E	516,557	NA	NA
•	•	•	•	•	•	•	•

Dated: September 23, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94-27124 Filed 11-1-94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940677-4177; I.D. 090994D]

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the fishery for live rock in the exclusive economic zone (EEZ) off the southern Atlantic states. This action is necessary to prevent exceeding the 1994 harvest quota.

EFFECTIVE DATE: November 1, 1994, through December 25, 1994.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf of Mexico are managed under the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act.

Under an emergency interim rule effective through September 26, 1994 (59 FR 32938, June 27, 1994), and extended through December 25, 1994 (59 FR 47563, September 16, 1994), NMFS established a 1994 harvest quota of 485,000 lb (219,992 kg) for live rock in the EEZ off the southern Atlantic states. Section 638.28(d) of that emergency interim rule requires the Assistant Administrator for Fisheries, NOAA (AA), to close the live rock fishery in the EEZ off the southern Atlantic states when the 1994 harvest quota is reached, or is projected to be reached.

The AA has determined that the quota will be reached on October 31, 1994. Accordingly, the live rock fishery in the South Atlantic EEZ is closed effective 12:01 a.m., local time, November 1, 1994, through December 25, 1994, the end of the period of effectiveness of the emergency interim rule. During the closure, live rock may not be harvested or possessed in the EEZ off the southern Atlantic states, and the purchase, barter, trade, and sale of live rock in or from the EEZ off the southern Atlantic states is prohibited. The latter prohibition does not apply to live rock that was harvested prior to November 1, 1994.

Classification

This action is required by 50 CFR 638.28(d) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-27083 Filed 10-27-94; 4:33 pm]

BILLING CODE 3510-22-F

50 CFR Part 672

[I.D. 090892B]

RIN 0648-AD44

Groundfish of the Gulf of Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to final regulations (I.D. 090892B), which were published Wednesday, October 5, 1994. The regulation established standard groundfish product types and standard product recovery rates for purposes of managing the groundfish fisheries off Alaska.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 5, 1994 (59 FR 50699), NMFS published a final rule to implement a regulatory amendment establishing standard groundfish product types and standard product recovery rates (PRRs)

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for purposes of managing the groundfish fisheries off Alaska and specify certain product types and PRRs that may be used to calculate round-weight equivalents of pollock for purposes of calculating amounts of pollock roe that may be retained onboard a vessel during the pollock fishery. The final rule is to be effective November 4, 1994. In that rule, the amendatory instruction that revises § 672.20 was inadvertently omitted.

Correction of Publication

Accordingly, the publication on October 5, 1994 (59 FR 50699) of the final regulations (I.D. 090892B), which were the subject of FR Doc. 94–24637, is corrected as follows:

§ 672.20 [Corrected]

On page 50701, in the middle column before § 672.20, the following amendatory instruction is added to read as follows:

"3. In § 672.20, paragraph (i)(4) is removed, paragraphs (i)(5) through (7) are redesignated as (i)(4) through (6), paragraph (i)(3) is revised, and a new paragraph (j) is added to read as follows:".

Dated: October 26, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–27084 Filed 11–01–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 102894A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC).

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for Pacific ocean perch in the Bering Sea subarea (BS), and for yellowfin sole and arrowtooth flounder in the Bering Sea and Aleutian Islands management area, need to be supplemented from the nonspecific reserve in order to continue operations and account for prior harvest. Therefore, in accordance with § 675.20(b), NMFS is apportioning from the reserve to TACs for the following species: (1) For the BS-286 metric tons (mt) to Pacific ocean perch; (2) for the BSAI-22,549 mt to yellowfin sole and 1,500 mt to arrowtooth flounder.

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category, because the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(d)(3) of the Administrative Procedure Act and 50 CFR 675.20(b)(2), that good cause exists for waiving the opportunity for public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27160 Filed 10–28–94; 1:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 55, AND 73

RIN 3150–AF18

Reduction of Reporting Requirements Imposed on NRC Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to reduce reporting requirements currently imposed on water-cooled nuclear power reactor, research and test reactor, and nuclear material licensees. This action would reduce the regulatory burden on NRC licensees. The proposed rule would implement an NRC initiative to review its current regulations with the intent to revise or eliminate duplicative or unnecessary reporting requirements. The proposed amendments would: (1) Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR Part 50—Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

DATES: The comment period expires December 19, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Comments may be delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of the draft regulatory analysis, the finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6103.

Background

On January 7, 1994, the Executive Director for Operations (EDO) sent to the Commission SECY–94–003, "Plan for Implementing Regulatory Review Group Recommendations." The Commission approved these recommendations for reducing regulatory burden on its licensees. This proposed rule is one of several rulemaking and other regulatory actions that the NRC staff is developing to implement those recommendations.

During the NRC staff review of the regulations, **Federal Register** notices were published on February 24, 1992 (57 FR 6299) and June 19, 1992 (57 FR 27394) that solicited the views of the public, the nuclear power industry, and other interested parties regarding reduction of the regulatory burden and reporting requirements. Comments were received in response to those notices. A summary of the comments received that are pertinent to this action is included in this document.

Discussion

These proposed amendments would: (1) Eliminate the current requirement for licensees to submit summary reports of containment leakage rate tests to the NRC (10 CFR Part 50–Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

Although these proposed reduction in reporting requirements were discussed in **Federal Register** notices published on February 24, 1992 (57 FR 6299) and June 19, 1992 (57 FR 27394), the public is again invited to submit comments. Specifically, the NRC requests comments and supporting rationale on the appropriateness of eliminating or consolidating these reporting requirements and whether the public health and safety will be adversely affected by these changes.

Elimination of Reporting Requirements from 10 CFR Part 50, Appendix J

10 CFR Part 50, Appendix J, currently requires all water-cooled nuclear power reactor licensees to conduct containment leakage testing. The containment leakage tests demonstrate that the containment system meets all the leakage criteria specified in the technical specifications of the licenses. Currently, Section V.B. of Appendix J requires licensees to submit a summary report of the results of all leak rate tests and any associated corrective actions. Under this proposed rulemaking, licensees of water-cooled nuclear power reactors will continue to conduct containment leakage testing and to prepare the summary report. However, they would not be required to submit the summary report to the NRC. They would still be required to report to the NRC instances of leakage in excess of authorized limits, via a written licensee event report,[1] as now required by § 50.73(a)(2)(ii). If such a leakage condition is found during operation, an immediate notification by telephone is required by § 50.72(b)(1)(ii). If the leakage condition is found during shutdown the telephone notification is required by § 50.72(b)(2)(i).

The NRC believes that the elimination of the requirement to submit the summary report to the NRC of leakage tests when these results are within acceptance limits would have no impact on the overall health and safety of the public. Because these tests have been performed and evaluated frequently by

[1] These reports would be required when total containment as-found, minimum pathway leak rate exceeds the limiting condition for operation (LCO) in the facility's technical specification.

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the nuclear power industry, any misinterpretation of testing requirements is highly unlikely. Moreover, licensees would still be required to prepare the summary reports and make those reports available for review and inspection at the respective plant sites. Having these reports available at the plant sites should be sufficient for normal record reviews, and for any necessary in-depth reviews. Therefore, the NRC proposes to eliminate the requirement to report results of tests within specified limits.

Consolidation of 10 CFR 50.74 and 10 CFR 55.25 Reporting Requirements

If an operator licensed pursuant to 10 CFR 55, becomes ill or disabled to the point that he or she no longer can safely perform their duties, the reactor licensee is required to report the occurrence of disability under both 10 CFR 50.74(c) and 10 CFR 55.25. The NRC is proposing to require only a single report by eliminating the reporting requirements in 10 CFR 55.25 and modifying 10 CFR 55.25 to refer facility licensees to 10 CFR 50.74(c).

In addition, when 10 CFR Part 55 was promulgated, the intent of § 55.25 was to receive reports only of permanent or potentially permanent illness or disability of licensed operators that would prevent them from safely carrying out their responsibilities. However, this intent, is not explicitly stated in either § 55.25 or § 50.74(c). To remove this ambiguity, the word "permanent" is added in both §§ 50.74(c) and 55.25. (A more detailed discussion on "permanent" versus "temporary," illness, or disability can be found in the NRC publication NUREG–1262,[2] "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," November 1987, page 21, question 91).

Public Comments

Only two comments were received concerning the reporting requirements for power reactor licensees. Neither suggested elimination of any power reactor reporting requirement. However, both suggested that the redundant requirements of 10 CFR Parts 50 and 55 addressing illness or disability of licensed operator be consolidated in 10 CFR 50.74.

Elimination of Reporting Requirements in 10 CFR Part 73.71(c)(2)

10 CFR Part 73.71(c)(1) requires that licensees maintain a current log for recording safeguards events.[3] An event that must be recorded in the log is defined in Appendix G, Part 73 as "Any failure, degradation, or discovered vulnerability in a safeguard system. * * *." 10 CFR 73.71(c)(2) requires that a copy of the log be submitted quarterly to the NRC.

The NRC proposes to eliminate the requirement that licensees submit copies of the safeguard event logs. Until recently, the NRC staff published an annual report which contained trending analysis of log events. However, the NRC now believes that the greatest benefits of dissemination of these statistics on safeguards equipment performance and lessons learned about the causes and prevention of safeguards equipment malfunctions have been realized, and that continuing to publish that report is no longer cost effective. However, licensees will still be required to enter events in the logs, and make those logs available for review and inspection at the respective plant sites. Having the logs available at the plant site should be sufficient for normal record reviews, and any necessary in-depth reviews. Therefore, the NRC believes that public health and safety will not be adversely affected if the logs are no longer submitted to the NRC.

Public Comments

The former Nuclear Management and Resources Council, now known as the Nuclear Energy Institute (NEI), commented that power reactor licensees should be deleted from the list of licensees subject to the provisions of 10 CFR 73.71(c). According to NEI, comparisons among plants using the data provided in the logs are not meaningful because the number of events reported by each site is dramatically influenced by a number of site-specific variables such as the number and design of system components and unique physical arrangements. NEI stated that comments received from industry were almost unanimous in advising that licensees receive insignificant information from the NRC's quarterly "Safeguards Events Analysis Report." NEI further commented that the real benefit in recording safeguards events lies in its usefulness as a management tool to measure a plant's specific performance, independent of other facilities.

One licensee commented that if the requirement to submit a log to the NRC were not deleted, the frequency of submittal should be reduced from 4 * times each year to 2 times each year as required for submittal of fitness-for-duty performance data in 10 CFR 26.71(d). The licensee noted that timeliness would not be adversely impacted in a significant way by annual or semiannual rather than quarterly reporting. The licensee also suggested that evaluation of trends is more meaningful when based on events over 6 months or a year rather than only 3 months.

The NRC believes that, in the early years of this program, there was considerable benefit from comparisons of the performance of a site's security equipment with the performance of the rest of the industry, notwithstanding differences in site-specific variables. However, the NRC now believes that the greatest benefits have been realized and that continuing the program as a regulatory tool has a diminishing cost benefit. As such, the NRC agrees with the comments that the primary benefit in logging events is the usefulness of the log as a means for the licensees to track and trend the performance of the safeguards systems at their own plants. In fact, the NRC has already discontinued publication of the "Safeguards Events Analysis Report." Although the NRC is proposing to eliminate the requirement that licensees submit their safeguards event logs, licensees would still be required to enter events into their logs and maintain those logs on site for review by the NRC inspectors.

Written Reports

This proposed rule would not require additional written reports. On the contrary, under this proposed rule, reporting will be reduced for all licensees under 10 CFR Parts 50, 55, and 73.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion, 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing information collection requirements, the public burden for this collection of information is expected to be reduced by approximately 10 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011, 3150–0018, 3150–0092), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Naiem S. Tanious, telephone (301) 415–6103. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects the nuclear power reactors, research and test reactors, and some material licensees. The companies and organizations that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act of the size standards established by the NRC (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109, does not apply to this proposed rule because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1). Information collection and reporting requirements are not subject to the backfit rule; moreover, the changes proposed in this rulemaking relax existing requirements.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal Penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal Penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal Penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553; the Commission is proposing to adopt the following amendments to 10 CFR Parts 50, 55, and 73.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix P also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

2. In § 50.74, paragraph (c) is revised to read as follows:

§ 50.74 Notification of change in operator or senior operator status.

* * * * *

(c) Permanent disability or illness as described in § 55.25 of this chapter.

3. In 10 CFR Part 50 Appendix J, Section III, paragraphs A.1. (a), (b), and (d); Section IV. paragraph A., and Section V. paragraphs A. and B., are revised to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.

* * * * *

III. *Leakage Testing Requirements.*

* * * * *

A. *Type A test-1. Pretest requirements.* (a) Containment inspection in accordance with V. A. shall be performed as a prerequisite to the performance of Type A tests. During the period between the initiation of the containment inspection and the performance of the Type A test, no repairs or adjustments shall be made so that the containment can be tested in as close to the "as is" condition as practical. During the period between the completion of one Type A test and the initiation of the containment inspection for the subsequent Type A test, repairs or adjustments shall be made to components whose leakage exceeds that specified in the technical specification as soon as practical after identification. If during a Type A test, including the supplemental test specified in III.A.3.(b), potentially excessive leakage paths are identified which will interfere with satisfactory completion of the test, or which result in the Type A test not meeting the acceptance criteria III.A.4.(b) or III.A.5.(b), the Type A test shall be terminated and the leakage through such paths shall be measured using local leakage testing methods. Repairs and/or adjustments to equipment shall be made and Type A test performed. The corrective action taken and the change in leakage rate determined from the tests and overall integrated leakage determined from local leak and Type A tests shall be included in the summary report required by V.B.

[2] Copies of NUREG–1262 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower level), Washington, DC 20555–0001.

[3] The full definition in 10 CFR Part 73, Appendix G, Section II is: (a) Any failure, degradation, or discovered vulnerability in a safeguard system that could have allowed unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport had compensatory measures not been established. (b) Any other threatened, attempted, or committed act not previously defined in Appendix G with the potential for reducing the effectiveness of the safeguard system below that committed to in a licensed physical security or contingency plan or the actual condition of such reduction in effectiveness.

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(b) Closure of containment isolation valves for the Type A test shall be accomplished by normal operation and without any preliminary exercising or adjustments (e.g., no tightening of valve after closure by valve motor). Repairs of maloperating or leaking valves shall be made as necessary. Information on any valve closure malfunction or valve leakage that require corrective action before the test, shall be included in the summary report required by V.B.

* * * * *

(d) Those portions of the fluid systems that are part of the reactor coolant pressure boundary and are open directly to the containment atmosphere under post-accident conditions and become an extension an extension of the boundary of the containment shall be opened or vented to the containment atmosphere prior to and during the test. Portions of closed systems inside containment that penetrate containment and rupture as a result of a loss of coolant accident shall be vented to the containment atmosphere. All vented systems shall be drained of water or other fluids to the extent necessary to assure exposure of the system containment isolation valves to containment air test pressure and to assure they will be subjected to the post accident differential pressure. Systems that are required to maintain the plant in a safe condition during the test shall be operable in their normal mode, and need not be vented. Systems that are normally filled with water and operating under post-accident conditions, such as the containment heat removal system, need not be vented. However, the containment isolation valves in the systems defined in III.A.1.(d) shall be tested in accordance with III.C. The measured leakage rate from these tests shall be included in the summary required by V.B.

* * * * *

IV. Special Testing Requirements.

A. *Containment modification.* Any major modification, replacement of a component which is part of the primary reactor containment boundary, or resealing a seal-welded door, performed after the preoperational leakage rate test shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification. The measured leakage from this test shall be included in the summary report required by V.B. The acceptance criteria of III.A.5.(b), III.B.3., or III.C.3., as appropriate, shall be met. Minor modifications, replacements, or resealing of seal-welded doors, performed directly prior to the conduct of a scheduled Type A test do not require a separate test.

* * * * *

V. Inspection and Reporting of Tests.

A. *Containment inspection.* A general inspection of the accessible interior and exterior surfaces of the containment structures and components shall be performed prior to any Type A test to uncover any evidence of structural deterioration which may affect either the containment structural integrity or leak-tightness. If there is evidence of structural deterioration, Type A tests shall not be performed until corrective action is taken in accordance with repair procedures, non destructive examinations, and tests as specified in the applicable code specified in § 50.55a at the commencement of repair work. Such structural deterioration and corrective actions taken shall be included in the summary test report required by V.B.

B. *Report of Test Results.* 1. The preoperational and periodic tests must be documented in a readily available summary report that will be made available for inspection, upon request, at the nuclear power plant. The summary report shall include a schematic arrangement of the leakage rate measurement system, the instrumentation used, the supplemental test method, and the test program selected as applicable to the preoperational test, and all the subsequent periodic tests. The report shall contain an analysis and interpretation of the leakage rate test data for the Type A test results to the extent necessary to demonstrate the acceptability of the containment's leakage rate in meeting acceptance criteria.

2. For each periodic test, leakage test results from Type A, B, and C tests shall be included in the summary report. The summary report shall contain an analysis and interpretation of the Type A test results and a summary analysis of periodic Type B and Type C tests that were performed since the last type A test. Leakage test results from type A, B, and C tests that failed to meet the acceptance criteria of III.A.5(b), III.B.3, and III.C.3, respectively, shall be included in a separate accompanying summary report that includes an analysis and interpretation of the test data, the least squares fit analysis of the test data, the instrumentation error analysis, and the structural conditions of the containment or components, if any, which contributed to the failure in meeting the acceptance criteria. Results and analyses of the supplemental verification test employed to demonstrate the validity of the leakage rate test measurements shall also be included.

PART 55—OPERATORS' LICENSES

4. The authority citation for 10 CFR Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

5. Section 55.25 is revised to read as follows:

§ 55.25 Incapacitation because of disability or illness.

If, during the term of the license, the licensee develops a permanent physical or mental condition that causes the licensee to fail to meet the requirements of § 55.21 of this part, the facility licensee shall notify the Commission, within 30 days of learning of the diagnosis, in accordance with § 50.74(c). For conditions for which a conditional license (as describing in § 55.33(b) of this part) is requested, the facility licensee shall provide medical certification on Form NRC 396 to the Commission (as described in § 55.23 of this part).

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

6. The authority citation for 10 CFR Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

7. In § 73.71, paragraph (c)(2) is deleted, paragraph (c)(1) is redesignated as paragraph (c), and paragraph (d) is revised to read as follows:

§ 73.71 Reporting of safeguards events.

* * * * * *

(d) Each licensee shall submit to the Commission the 30-day written reports required under the provisions of this section that are of a quality which will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report of NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

8. In 10 CFR Part 73, Appendix G, the title of Section II is revised to read as follows:

Appendix G to Part 73—Reportable Safeguards Events

* * * * *

II. *Events to be recorded within 24 hours of discovery in the safeguards event log.*

* * * * *

Dated at Rockville, Maryland, this 20th day of October, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–27126 Filed 11–1–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–12–AD]

Airworthiness Directives; Beech Aircraft Corporation 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive 92–08–07, which currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and, if found cracked, repairing or reinforcing. The Federal Aviation Administration (FAA) has received 43 reports of wing front spar carry-through frame structure cracks on the affected airplanes during the inspection required by AD 92–08–07. The proposed action would make this one-time inspection repetitive. The actions specified by the proposed AD are intended to prevent spar carry-through structure failure, which could result in severe structural damage to the wing.

DATES: Comments must be received on or before January 6, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–12–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and, if found cracked, repairing or reinforcing. These actions are accomplished in accordance with Beech Service Bulletin (SB) No. 2360, dated November 1990.

Since this AD became effective, the FAA has received 43 reports of wing front spar carry-through frame structure cracks on Beech 33, 35, and 36 series airplanes during the inspection required by AD 92–08–07. Several of these affected airplanes had cracks between huckbolts that incur heavy loads and along the radius of the carry-through web in critical primary airframe structure. These cracks, if not detected and corrected, could result in wing front spar carry-through structure failure, which could result in severe structural damage to the wing.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that the inspection required by AD 92–08–07 should be repetitive.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33, 35, and 36 airplanes of the same type design, the proposed AD would supersede AD 92–08–07 with a new AD that would require repetitively inspecting the wing front spar carry-through structure for cracks, and, if found cracked, repairing or replacing. The proposed action would be accomplished in accordance with Beech SB No. 2360, dated November 1990.

The FAA estimates that 11,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,840,000. This figure does not account for repetitive inspections. The only difference between the cost analysis for this proposed action and AD 92–08–07 (which would be superseded by this proposed action) is the cost of these repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), and by adding a new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 94–CE–12–AD; Supersedes AD 92–08–07, Amendment 39–8218.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304
35–C33A, E33A, and F33A	CE–1 through CE–1192
E33C and F33C	CJ–1 through CJ–179
H35, J35, K35, M35 N35, P35, S35, V35, V35A, and V35B.	D–4866 through D–10403
36 and A36	E–1 through E–2397
A36TC and B36TC	EA–1 through EA–471

Compliance: Required initially upon the accumulation of 1,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent spar carry-through structure failure, which could result in severe structural damage to the wing, accomplish the following:

(a) Inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If cracks are found in the bend radius and not in the web face in the areas of the huckbolt fasteners during the inspection specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends. Within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) For cracks between 2.25 and 4.0 inches, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(3) For cracks exceeding 4.0 inches, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(c) If cracks are found in the web face in the area of the huckbolt fasteners but not in the bend radius during the inspections specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web face is found, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure web face, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) For cracks more than 1.0 inch in length, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, accomplish one of the following as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, and reinspect at intervals not to exceed 500 hours TIS.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(d) If cracks are found in both the web face in the area of the huckbolt fasteners and the bend radius during the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) If only one crack is found on either side of the airplane, prior to further flight, repair each crack in accordance with the criteria and instructions in paragraphs (b)(1) through (b)(3) or (c)(1) through (c)(4) of this AD, as applicable. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(2) If more than one crack is found on either side of the airplane, accomplish one of the following as applicable:

(i) For any crack that is 1.0 inch or more in length, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(ii) For any crack under 1.0 inch in length, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, the repetitive inspection time may be extended to 500 hours TIS.

(e) If a fuselage skin crack is found around the opening of the lower forward carry-through fitting, prior to further flight, obtain repair instructions from the manufacturer through the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (g) of this AD, and incorporate these instructions. Reinspect thereafter at intervals not to exceed 500 hours TIS.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 08–07, Amendment 39–8218.

Issued in Kansas City, Missouri, on October 7, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27111 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92-ASW-37]

Airworthiness Directives; Sikorsky Aircraft Model S-76B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–76B helicopters. That action would have limited the applicability of the inspections of the left and right engine input drive shaft assemblies (shaft assemblies) for loose balance weights or cracks to those shaft assemblies of original (or initial) design only, and would have excluded redesigned shaft assemblies from those inspections. Since the issuance of the NPRM, the FAA has received a report of a fatigue crack in a redesigned shaft assembly indicating a need to continue the existing inspections of the redesigned shaft assembly. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, ANE–153, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to supersede an existing airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–76B helicopters, was published in the **Federal Register** on November 2, 1992 (57 FR 49431). The proposed rule would have limited the applicability of AD 91–19–02 by requiring initial and repetitive 25 hours time-in-service inspections of the shaft assemblies of original (or initial) design only, excluding the redesigned shaft assemblies from the inspections. That action was prompted by the introduction of a redesigned shaft assembly that was designed to eliminate the cause of cracks in the original shaft assemblies. The proposed actions were intended to prevent failure of certain shaft assemblies and subsequent loss of power to the helicopter rotor system.

Since the issuance of that NPRM, the FAA has received a report of a fatigue crack in a redesigned shaft assembly. Therefore, the FAA issued Priority Letter AD 93–1–05 on June 4, 1993, to require inspections of the redesigned shaft assemblies at intervals not to exceed 6 hours time-in-service from the last inspection.

Upon further consideration, the FAA has determined that the proposed rule to exclude redesigned shaft assemblies from the AD inspections is no longer appropriate. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 92–ASW–37, published in the **Federal Register** on November 2, 1992, (57 FR 49431), is withdrawn.

Issued in Fort Worth, Texas, on October 26, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–27112 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–148–AD]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require inspections to determine proper adjustment of the gap tolerances of the seat track joints at frame 64, and correction of discrepancies. This proposal would also require eventual repositioning or replacing the seat tracks on all affected airplanes, which would terminate the requirement of repetitively removing or repositioning the seat tracks. This proposal is prompted by in-service inspection reports, which have revealed that a gap between the forward and aft seat track at frame 64 could exceed the tolerance limit due to a method used on the assembly line to control the position of the seat track. The actions specified by the proposed AD are intended to ensure that the gap tolerances of the seat track joints do not exceed the tolerance limit and subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

DATES: Comments must be received by December 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–148–AD". The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that in-service inspection reports have revealed that the gap between the forward and aft seat track at frame 64 (left- and right-hand) could be exceeding the 2.8 mm (.11 inch) tolerance limit. Investigation revealed that the cause has been attributed to the method used on the assembly line to control the position of the seat track. This method is inadequate in monitoring the gap between the forward and aft seat track of the passenger seats at frame 64. Incorrectly installed seat tracks, if not corrected, could result in a gap that exceeds the tolerance limit, and could subsequently lead to separation of the passenger seats from the seat track under emergency landing conditions.

Airbus has issued All Operator Telex (AOT) 53–01, dated August 27, 1992, which describes procedures for:

1. Performing a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64;
2. Measuring the gap between the forward and aft seat tracks, if any seat fitting having an x-plunger is installed;
3. Applying sealing material at the seat tracks, if the gap is less than or equal to 2.8 mm; and
4. Removing or repositioning the seat, if the gap is greater than 2.8 mm.

Airbus has also issued Service Bulletin A320–53–1088, dated May 10, 1993, which describes procedures for repositioning or replacing the seat tracks.

The DGAC classified the AOT and service bulletin as mandatory and issued French Airworthiness Directive 93–081–042(B), dated May 26, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, and correction of discrepancies. The proposed AD would also require repositioning or replacing the seat tracks, which would terminate the requirement of repetitively removing or repositioning the seat tracks. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any cabin equipment other than passenger seats is installed at frame 64, the correction would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 85 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed inspection at an average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $32,725, or $385 per airplane.

It would take approximately 54 work hours per airplane to accomplish the proposed modification at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total impact of the modification proposed by this AD on U.S. operators is estimated to be $252,450, or $2,970.

Based on above figures, the total cost impact of the proposed inspection and modification on U.S. operators is estimated to be $285,175, or $3,355/per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94–NM–148–AD.

Applicability: Model A320 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, 080 through 122 inclusive, 124 through 179 inclusive, 183 through 194 inclusive, 196 through 228 inclusive, 230 through 251 inclusive, and 253 through 255 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the passenger seats from the seat track during an emergency landing, accomplish the following:

(a) Within 450 flight cycles after the effective date of this AD, perform a visual inspection to determine if a seat fitting having an x-plunger behind a z-stud is installed at the seat track joint at frame 64, in accordance with Airbus All Operator Telex (AOT) 53–01, dated August 27, 1992.

(b) If such a seat fitting is installed, prior to further flight, measure the gap between the forward and aft seat tracks in accordance with the Airbus AOT 53–01, dated August 27, 1992.

(1) If the gap is less than or equal to 2.8 mm, prior to further flight, apply sealing material at the seat tracks, in accordance with the AOT.

(2) If the gap is greater than 2.8 mm, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes equipped with passenger seats at frame 64: Accomplish either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Remove or reposition the seat in accordance with Airbus AOT 53–01, dated August 27, 1992. Thereafter, repeat the removal or repositioning whenever the cabin configuration is changed until the accomplishment of paragraph (c) of this AD. Or

(B) Reposition or replace the seat tracks in accordance with Airbus Service Bulletin A320–53–1088, dated May 10, 1993. Such repositioning or replacement constitutes terminating action for the requirements of this AD.

(ii) For airplanes equipped with equipment other than passenger seats at frame 64: Prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 30 months after the effective date of this AD, reposition or replace the seat tracks, in accordance with Airbus Service Bulletin A320–53–1088, dated May 10, 1993. Accomplishment of this repositioning or replacement constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27153 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM94–20–000]

Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act

Issued: October 26, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is requesting comments on issues related to alternative power pooling institutions. It also requests comments on the role of traditional power pools in an era of increased competition. This Notice of Inquiry is needed because of the increasing access to transmission services in the electric utility industry and the concomitant increase in competition.

DATES: Written comments must be received by the Commission no later than March 2, 1995. Reply comments must be received by the Commission no later than April 3, 1995.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Janice Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0921, (legal issues)

J. Stephen Henderson, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0100 (technical issues)

or

Michael A. Coleman, Office of Electric Power Regulation, Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, Telephone: (202) 208–1236.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, D.C. 20426.

Notice of Inquiry

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr.

VOL 59 ISS 211 NOV 2 1994 UMI

October 26, 1994.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is initiating this proceeding to solicit comments from interested persons on issues related to alternative power pooling institutions.[1]

Since the inception of power pools, fundamental changes have occurred in the electric utility industry. Most significant are the enactment of the Energy Policy Act of 1992 (EPAct)[2] and the emerging development of a competitive bulk power market. The Commission has recently announced in a series of orders its policy of promoting competitive bulk power markets, and has emphasized the critical role of comparable transmission access in meeting that goal.

Given the ongoing changes in the competitive environment of the electric utility industry—in particular, the potential for substantially increased access to transmission—we must consider whether we are appropriately balancing our dual objectives of promoting coordination and competition. Indeed, industry participants in many regions are responding to competitive changes by exploring the possibility of changes in, or alternatives to, traditional power pools.

The Commission believes that the new alternative power pooling institutions have great potential. In particular, they may be of assistance in facilitating the resolution of some difficult federal-state jurisdictional issues and in developing mechanisms for resolving or minimizing stranded cost issues. We therefore want to explore them in detail. We are particularly interested in determining whether alternative power pooling institutions may have special transmission pricing needs.[3]

We also wish to re-examine the role of more traditional power pools in an era of increased competition.

For these reasons, we are initiating a notice of inquiry on alternative power pooling institutions. This notice has three parts. First, we relate our understanding of an innovative power pooling concept proposed by two utilities in Southern California in response to the California Public Utilities Commission's (California Commission) inquiry into retail access (the "Blue Book Proposal").[4] We also note our interest in any other alternative pooling institutions that are being explored today. Second, we briefly describe power pools as they have evolved to date in order to provide a comparison of traditional power pools with emerging, innovative proposals. Third, we ask interested parties to respond to specific questions, as well as to provide us with any other comments they may have, on alternative power pooling institutions and existing power pools.

We note that a major focus of this notice of inquiry is on power pooling to accomplish short-term transactions, rather than long-term regional planning, which we addressed in our Policy Statement on Regional Transmission Groups (RTGs).[5] While power pools do some transmission planning, it is not necessarily of a regional or long-term nature. In contrast, as envisioned in our policy statement on RTGs, RTGs may be better able to focus on long-term and regional transmission planning. In this sense, RTGs and poolcos, at a minimum, would be complementary, rather than competing, institutions. Indeed, the same institution could perform both functions. For example, some RTGs may decide to develop mechanisms to accommodate short-term transactions within the RTG. The Commission is interested in exploring whether RTGs would be appropriate institutions to accommodate power pooling.

II. Alternative Power Pooling Institutions

Increased competition in the electric utility industry may signal the need for alternative power pooling arrangements. We are interested in considering new arrangements that could better capture the benefits of competition in bulk power markets without unnecessarily sacrificing coordination benefits. Serious discussion is occurring in California at the present time concerning an alternative power pooling arrangement.

A. The Poolco Concept

Two utilities (San Diego Gas & Electric Company and Southern California Edison Company) have each proposed creating a regional pooling company, or "poolco," in response to the California Commission's Blue Book Proposal. Both proposals discuss some form of restructuring, either vertical disintegration or the relinquishment of transmission control. Divestiture has not been proposed. However, the utilities may intend to create subsidiary companies for each function that would remain affiliated.

Although the two proposals vary in some details, they share many fundamental characteristics. Basically, the poolco would be an independent entity that would not own any (or would own only a limited number of) facilities, but would control the operation of some or all generators, and all transmission facilities, in a region. The poolco would be open to all generators connected to the grid, who would automatically receive any transmission service needed to sell power into the regional pool. In effect, the poolco would be responsible for creating and maintaining a regional spot market for electricity. The spot price in each trading period (perhaps hour-by-hour) would be readily available and made known to all market participants.

Generating resources would be centrally dispatched on an hourly basis by the poolco in much the same way as in current power pools. The principal difference appears to be that generators would be dispatched based on the bid price they submit to the poolco, rather than on their running costs. The poolco would operate a least-cost (in the sense of lowest bid) dispatch that accounts for any transmission constraints in the same manner as an existing power pool or a single utility dispatch center. Generators would be paid the market-clearing price[6] during each hour, as opposed to the bid price that each generator submitted to the poolco.[7] Likewise, distributors would pay the market-clearing price in each hour. Consequently, the poolco would break even in its basic dispatch function, since distributors would pay to the poolco what the generators would receive from the poolco.

In effect, the poolco would become the market clearinghouse for the hourly energy market. Under the poolco concept, dispatch benefits are implicitly allocated among sellers and buyers by the spot trading at a market-clearing price. The poolco would have no further role in dividing or allocating benefits. Also, the proposed poolco would have no role in long-term energy or capacity markets. Generators and distributors could enter into contracts outside the poolco.

Under San Diego's poolco concept as currently proposed,[8] spot prices would vary from one geographical location to another to reflect transmission constraints.[9] This would allow the spot trading to be conducted at a price that reflects the real ability and limitations of the grid to move power from low-cost to high-cost areas. The proposal includes opportunity cost pricing for grid congestion, as well as tradable capacity rights.

While the poolco concept contains many similarities to existing power pools, it appears that significant differences exist between a traditional power pool and a poolco, particularly with respect to both generation and transmission pricing. Although a traditional power pool generally has flexible cost-based pricing schemes,[10] we understand that a fundamental characteristic of the California poolco concept is that all short-term power sales would occur at a market-clearing price. In other words, whereas in a traditional power pool the offer-price mechanisms are cost-based, in the California poolco proposal they would be based on economic bids with an incentive to bid at or near the utility's marginal running costs.

Another difference between traditional power pools and the California poolco proposals is their membership. Today, some power pool agreements include explicit membership criteria. Most include no explicit provisions addressing the admission of new members. However, most existing pools to some extent limit membership. On the other hand, the California poolco proposals, as we understand them, would require open membership for at least all bulk power participants.

The California poolco proposals represent an interesting alternative approach to achieving operating efficiency and competition in hourly electricity markets. However, the proposals are in an early stage of development and a number of significant transmission issues apparently have not yet been resolved (for example, how transmission owners would be compensated for the existing facilities, how to determine priorities for use of the transmission grid, how to allocate expansion costs and how to induce appropriate expansion). Since the California poolco proposals raise several questions and issues that need additional consideration, we have included a list of questions in section III.C of this Notice on which we seek comments from interested persons.

B. Other Alternative Power Pooling Institutions

There may be other alternative pooling proposals of which the Commission is not aware. The above discussion is not intended to limit the scope of this inquiry. The Commission is interested in all innovative pooling proposals intended to capture the benefits of competitive bulk power markets while preserving those coordination benefits that are consistent with competition.

The issue of alternative power pooling arrangements, and the California poolco proposal in particular, is part of a larger discussion concerning the future structure of the electric power industry in the United States. In addition to the California poolco concept, other innovative institutions have been proposed which, as the Commission comprehends them, might either work in tandem with a poolco, or separately from a poolco to facilitate the development of a more competitive bulk power market. For example, some have suggested that the electric power industry could be restructured to include: (1) generating companies, known as "gencos," which are groupings of generators that may or may not be affiliated with utilities that compete to sell electricity in the wholesale spot and contract markets; (2) transmitters, known as "transcos" or "gridcos," which are companies that would separately own and maintain a regional transmission grid; and (3) distributors, known as "discos," which are utilities that would operate the local distribution systems and purchase energy in the competitive wholesale market for resale to ultimate customers.

In such a restructured market, the poolco could be a fourth player that could control the operation of the generation and transmission facilities owned by gencos and gridcos; *i.e.*, the poolco could dispatch the system based on buy/sell offers from individual gencos and discos. In addition, the poolco could provide any necessary ancillary services (e.g., load following, spinning reserves, and reactive power) at cost.

In addition to proposals to restructure the electric power industry along functional lines, there may be other alternative institutional structures for the industry that warrant consideration in this inquiry. The Commission is interested in expanding its appreciation of any such proposals for alternative institutional structures. In particular, the Commission is interested in the extent to which such alternative institutional structures might facilitate the achievement of a more competitive bulk power market in a way that the current institutional structure of the industry may not. We have included several questions in this regard as part of section IV. of this notice.

III. Existing Power Pools

In order to fully understand the issues presented by alternative power pooling institutions, it is necessary to understand existing power pools. In addition, given the competitive changes in the industry and the fact that new pooling alternatives are emerging, it is appropriate to consider whether existing power pools are functioning appropriately and, if not, to consider what changes are necessary.

Historically, utilities began coordination activities by entering into simple bilateral arrangements, progressing gradually to more complex contractual agreements. Such agreements may simply cover an exchange of energy and power, or they may cover a variety of services. They generally are not considered to be pooling agreements unless they include coordination of reserve generating capacity and, in most cases, some coordination of planning and

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[1] Section 202(a) of the FPA reflects Congress' desire to promote and encourage the voluntary interconnection and coordination of utility facilities. While the Department of Energy now has primary responsibility for Section 202(a) of the Federal Power Act, see 42 U.S.C. 7151, 7172, all voluntary coordination and interconnection agreements involving public utilities must be filed with the Commission. The Commission, therefore, continues to play a pivotal role in this area.

In addition, section 205(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA) authorizes the Commission to exempt electric utilities, in whole or in part, from state law, rule or regulation which prohibits or prevents voluntary coordination. Under PURPA section 205(b)(2), the Commission also may recommend to electric utilities that they enter into negotiations concerning pooling arrangements.

[2] Pub. L. No. 102-486, 106 Stat. 2776 (1992).

[3] Concurrently, the Commission is issuing a policy statement on transmission pricing in Docket No. ER93-19-000. *See* Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the FPA, Policy Statement, FERC Stats. & Regs. ¶_____ (1994).

[4] Proposed Policies Governing Restructuring of California's Electric Services Industry and Reforming Regulation, 151 PUR4th 73 (California Public Utilities Commission 1994).

[5] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶30,976 (1993).

[6] The market-clearing price is the highest bid price of any generator that is selected to provide service to the poolco in an hour. Each successful bidder would receive this price, regardless of whether its bid price was less than the market-clearing price.

[7] This method of pricing creates an incentive for each generator to bid near its marginal running cost, since it would risk losses if it bids less than its running costs and the poolco selects it to run, and it would risk losses if it bids more than its running costs and the poolco does not select it to run.

[8] We understand that both San Diego's and Edison's proposals continue to be revised, and that the two proposals may become more similar as details are worked out.

[9] Under Edison's proposal, in contrast, spot prices would not reflec. transmission constraints.

[10] These range from split-savings (e.g., Pennsylvania-New Jersey-Maryland Interconnection (PJM)) to a rate that falls under a price cap based on pool members' composite costs (Mid-Continent Area Power Pool (MAPP)).

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construction in addition to operating coordination. [11]

Traditional power pools have provided to their members significant economic benefits and operating efficiencies, including: reduced operating costs resulting from joint dispatch; reduced fixed costs resulting from joint construction of generating units and reserve sharing; and increased system reliability resulting from reserve sharing and regional planning.

Existing pools vary a great deal in the extent to which they are integrated, i.e., to which they plan and operate their individual systems as a single system.[12] The most highly integrated pools are referred to as "tight" pools.[13] Tight pools extensively coordinate their planning and operations in both the long and short run, and in theory provide the greatest benefits. They provide for joint planning on a highly coordinated basis and for centralized dispatch of generating facilities. They also establish contractual requirements with respect to generating capacity and operating reserves, together with financial penalties to enforce reserve requirements. [14]

One of the key characteristics of a tight power pool is central dispatch, which ensures short-term efficiency by dispatching the pool's combined generating resources to meet the pool's combined loads, without regard to unit ownership. The benefits of central dispatch (i.e., the savings realized by dispatching jointly rather than individually) are shared among pool members. [15]

A long-term benefit of a tight power pool is joint action to enhance reliability. A tight pool coordinates maintenance to ensure that adequate reserves are maintained, that is, units are taken out of service on a staggered basis. Also, tight pools undertake some regional planning of production and transmission to facilitate joint solutions to regional needs and problems.

Finally, tight pools conduct transactions with neighboring pools to realize additional economy savings and to increase reliability whenever possible.

Tight power pools generally require that members provide transmission access to other members without a direct charge for economy trades effected through central dispatch as compensation for use of their facilities. However, the transmission providers may be assigned a share of the savings resulting from the central dispatch. Affiliated power pools, i.e., the registered holding companies, have more extensive transmission access provisions that generally include some form of transmission equalization payments among members.

Pools that are characterized by a lower level of coordination are called "loose pools." [16] For example, while the participating utilities work together to establish principles and practices for interconnected operation, review area power supply problems and establish criteria for power supply adequacy, exchange generation and transmission construction plans, and plan coordinated efforts to attain optimal economy and reliability, there is no central dispatch and there may be less joint planning.

As discussed in section IV of this Notice, the Commission seeks comment on a number of questions pertaining to existing power pools (both tight pools and loose pools), and their strengths and weaknesses in light of emerging competitive bulk power markets.

[11] Although the terms "pooling" and "coordination" are sometimes used interchangeably, generally, the term "coordination" refers to the whole spectrum of relationships between utilities, and "pooling" refers to more formalized agreements between utilities to operate and plan their systems in a manner that achieves the greatest regional economy and reliability.

[12] Other pooling arrangements may coordinate extensively, but only involve a few companies, e.g., the coordination arrangement between Detroit Edison Company and Consumers Power Company. Some coordination arrangements often referred to as power pools are, in fact, simply vehicles for bilateral trades of economy energy, such as Western Systems Power Pool (WSPP) and Florida Energy Broker.

[13] There are three tight power pools operating today. NEPOOL operates in six New England states, and its 90 members include investor-owned utilities (IOUs) and publicly-owned utilities. The New York Power Pool (NYPP) operates in the State of New York, and its members include the seven IOUs in the State and the Power Authority of the State of New York. PJM operates in the Mid-Atlantic region, and its eight members include only IOUs.

[14] There are also several affiliated utility systems (registered holding companies under the Public Utility Holding Company Act of 1935) that operate as tight power pools. Southern Company, Entergy Corporation, American Electric Power Company, Allegheny Power System, Central & South West Corporation, General Public Utilities (which is itself a member of PJM), and Northeast Utilities (which is itself a member of NEPOOL). Together, these affiliated utility systems and tight pools account for approximately 40 percent of the generating capacity in the Eastern Interconnection.

[15] Even when pool members undertake bilateral trades with other pool members to increase their revenues from pool interchange, the pool dispatch is unaffected. The bilateral agreement is simply a mechanism for adjusting the pool's after-the-fact benefit sharing formula.

[16] An example of a loose pool is MAPP, which operates in the Midwest. Its members (as well as associated members and a liaison participant) include IOUs, publicly-owned entities, generating and transmitting cooperatives, Canadian crown corporations and one Federal power marketing administration (the Western Area Power Administration).

IV. Request for Comments

In order to assess the merits of alternative power pooling institutions, including the California poolco proposals, and to evaluate whether our existing policies will impede the development of such institutions, the Commission seeks comments from interested industry participants. We also believe that this proceeding is an appropriate forum to consider whether any changes should be made in our policies concerning existing power pools. Our intention is to ensure that our policies, while continuing to maintain adequate and reliable service, are consistent with the development of a competitive bulk power market. Answers to the questions below should refer to the number(s) of the specific question(s) when possible. In addition commenters may address any other matters related to these issues. We are interested in all aspects of potential changes in, or alternatives to, existing power pools.

Question 1. What alternative power pooling institutions might be beneficial? What are the strengths and weaknesses of these alternatives? What special transmission pricing needs, if any, would such alternative pooling institutions have? What specific benefits would an alternative bring that are not available today? What specific benefits of existing pools would be lost? What, if any, benefits would alternative power pooling institutions provide compared to bilateral trading? How would alternative power pooling institutions differ from a regime of bilateral trading?

Question 2. Do any current Commission policies impede the formation of beneficial alternative power pooling institutions? What changes in our existing policies, if any, including pricing policies, are needed to encourage pools that facilitate competitive bulk power markets?

Question 3. In discussing any alternative power pooling institution, please address how the adequacy of generation and transmission services would be ensured, *e.g.*, maintenance of adequate generation and transmission reserves and construction of needed generating and transmission capacity? How would reliability be ensured, *e.g.*, control of transmission systems, voltage support, reactive power, loop flow, load following, backup services and other control area services?

Question 4. What are the conditions required for alternative power pooling institutions to be beneficial, *e.g.*, a minimum number of sellers or buyers, a minimum geographic size, maximum market share for any seller or buyer, open membership, appropriate governance rules? Should participation by generators in the alternative pool's area be voluntary or mandatory?

Question 5. Do alternative power pooling institutions have the potential to help resolve or minimize stranded cost issues? If so, how?

Question 6. How would specific alternative power pooling institutions be regulated? In particular, can these institutions be designed to fit easily into the existing Federal-State regulatory structure so as to avoid duplicating the regulation of pool functions?

Question 7. What are the merits of proposals to restructure the electric power industry along functional lines such as the genco-gridco-disco delineation? Should the Commission be prepared to proceed with poolco-type proposals in advance of any functional utility restructuring efforts, or should the Commission refuse to act on poolco-type proposals unless the functional restructuring occurs simultaneously? Does such a restructuring have merit even if an alternative power pooling arrangement is not adopted? Would such a restructuring facilitate the development of a more competitive bulk power market in a way that the current institutional structure of the electric power industry cannot?

Question 8. In addition to the proposal mentioned in the preceding question, are there other alternative institutional structures for the electric power industry that warrant the Commission's consideration in this Inquiry?

Question 9. What are the strengths and weaknesses of today's power pools? We are particularly interested in concrete examples related to existing power pools. Should the Commission consider changing any existing power pool practices or policies to facilitate competitive bulk power markets?

Question 10. Would changes to existing power pools be preferable to creating new pooling institutions? Is an RTG an appropriate institution to become a power pool? Or should the RTG's transmission planning function be kept separate from the pool's generation market-clearing function?

Question 11. Can a pool provide advantages to its members without unduly preferring members to non-members? How should pool members relate to non-members in an open access market? Are any improvements in information availability necessary for existing pools or alternative pooling institutions to be more beneficial? What reciprocity conditions are appropriate between pool members and non-members? How would a state policy of retail access affect pool membership conditions and reciprocity obligations? What if retail access were available in only some states in the pool?

Question 12. How should the Commission's recently-announced policy concerning comparability of transmission services be implemented with respect to alternative power pooling institutions and/or existing power pools?

V. Public Comment Procedures

The Commission invites all interested parties to submit an original and 14 copies of their written comments. Comments should not exceed 100 pages in length. In addition, commenters should submit an executive summary not to exceed five pages.

The Commission will also permit interested persons to submit reply comments in response to the initial comments filed in this proceeding. Reply comments should not exceed 50 pages in length.

Persons with common interests or views are encouraged to submit joint comments. Commenters should double space their comments, provide a concise description identifying the commenter, and should reference Docket No. RM94–20–000. In addition, commenters should submit a copy of their comments on a 3½ inch diskette in ASCII II format. Initial and reply comments must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, no later than March 2, 1995 for initial comments and April 3, 1995 for reply comments.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Section, 941 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27090 Filed 11–1–94; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 42, 48, 70, 71, 75, 77, and 90

RIN 1219–AA79

Decertification of Approved Instructors and Certified and Qualified Persons

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish uniform procedures under the Federal Mine Safety and Health Act of 1977 (Mine Act) for the Mine Safety and Health Administration (MSHA) to decertify persons who have been designated as MSHA-approved instructors and those individuals certified or qualified to perform certain mining related tasks under the applicable training, safety and health regulations. These proposed decertification procedures would also apply to those persons who are deemed certified by MSHA as a result of their certification through State programs recognized by the agency. The proposal would provide notice of potential decertification by MSHA and would provide procedural due process, including a notice of proposed action, an informational meeting with the district manager, notice of the district manager's decision, appeal rights to the appropriate administrator, and a *de novo* post-decertification evidentiary hearing before an administrative law judge of the U.S. Department of Labor. In addition, the proposal would provide a new paragraph to replace the decertification of diesel mechanics previously proposed.

DATES: Written comments must be submitted by January 6, 1995.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no information collection requirements.

II. Background

In order to maintain safe and healthful working conditions in mines, MSHA recognizes that certain tasks and duties must be performed by individuals with the proper knowledge and expertise. MSHA has promulgated regulations in Title 30 of the Code of Federal Regulations (30 CFR), parts 48, 70, 71, 75, 77, and 90, that require particular activities to be performed by persons who have demonstrated their expertise or proficiency to the agency or to a State mining agency, who have been recognized as competent through training, testing or experience, and who have been formally "approved," "certified," or "qualified" by MSHA or a State to perform these activities.

MSHA regulations require some form of approval, certification, or qualification for a variety of activities. At coal mines, certification requirements apply to underground coal mine foremen, assistant foremen, and preshift examiners who, among other things, must be able to check for evidence of methane gas and identify other safety hazards. Individuals who collect respirable dust samples, maintain and calibrate dust sampling equipment, test noise levels, or examine surface coal mine work areas for hazardous conditions must also be certified by MSHA. Regulations for coal mines also require the qualification of persons who perform electrical work, examine impoundment structures, test methane and oxygen levels, operate hoists, or use explosives. Finally, MSHA

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approves instructors to provide training to coal, metal and nonmetal miners.

Depending upon the type of approval, certification or qualification sought, an individual can become certified or qualified through an MSHA-administered program, or a State-administered program recognized by MSHA. Six activities require an approval, certification or qualification issued solely by MSHA: Respirable dust sampling; maintenance and calibration of respirable dust sampling equipment; noise level testing; examination of impoundments; electrical work (several States have electrical qualification programs approved by MSHA); and the training and retraining of miners.

MSHA certifies and qualifies individuals to perform work in the remaining job categories, but also recognizes State certifications for the following: blasters; foremen; assistant foremen; preshift examiners; persons who conduct surface examinations; gas testers, and hoist operators. Because MSHA accepts State certifications for these job categories, the agency does not require an MSHA-issued certification except where there is no State certification program.

Certification and qualification procedures require an individual to show the necessary competency in the appropriate areas. In general, an individual obtains an MSHA certification or qualification by attending an MSHA-sponsored or approved training program; by demonstrating the ability to perform the activities and duties stated in the regulations; or by successfully passing an examination. MSHA currently administers examinations for certification or qualification for dust sampling, noise level testing, maintenance and calibration of dust sampling equipment, electrical work, and examination of impoundments. In order to remain qualified to perform electrical work, the qualified person must satisfactorily complete an MSHA-approved coal mine electrical retraining program annually. All other certifications or qualifications have an indefinite duration requiring no recertification, except for those persons referred to in § 75.100(c)(2) and 77.100(b)(2).

Most State certifications are conditional upon minimum age and years of mining experience, undergoing required training, and passing a relevant examination. In many instances, States also require refresher training at specified intervals. The following coal-producing States have one or more certification programs: Alabama, Alaska, Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, and Wyoming. These States do not all maintain the same number and types of certification programs, nor does MSHA recognize all State certifications. For instance, all of these States, with the exception of Alaska, maintain programs for the certification of responsible individuals. MSHA recognizes all of these types of certifications. On the other hand, although Arkansas, Illinois, and Pennsylvania have electrical certification programs, MSHA does not recognize their State electrical certifications for compliance with Federal regulations.

Currently, 30 CFR part 48 specifies procedures for revocation of the approval of part 48 training instructors. Under 30 CFR 48.3(i) and 48.23(i), a person's approval to conduct training under part 48 can be revoked for good cause which may include failure to instruct a course within a 24-month period. It may also include failure to follow the approved training plan, inadequate teaching skills, or lack of subject matter knowledge. This proposed rule would revise and expand part 48 procedures.

This proposed rule would also for the first time establish formal procedures for the revocation of the certifications or qualifications of individuals as well as the termination of MSHA's acceptance of an individual's State certification or qualification. Although an individual may continue to hold a State certification, MSHA could discontinue its recognition or acceptance of the State certification by following the procedures in this part. Revisions to the applicable sections of 30 CFR parts 70, 71, 75, 77 and 90 are included within the proposed rule. MSHA anticipates extensive coordination with the States regarding pursuit of decertification actions within those States whose certifications MSHA recognizes. MSHA will be cognizant of any State decertification actions, initiated independently of those actions specifically referred or sought by MSHA, prior to the initiation of decertification actions by MSHA under this proposed rule.

MSHA has reviewed the existing certification and qualification programs (and their attendant policies and procedures) administered by MSHA and the States. MSHA has concluded that decertification procedures are necessary to assure that specific activities are conducted only by persons who do so in compliance with the applicable regulations, or who are competently fulfilling their work responsibilities. The agency has previously taken decertification action against certain individuals on a limited basis. MSHA has determined that formalizing the process and standardizing the procedures would assure that adequate notice is provided and sufficient due process is afforded to affected individuals.

MSHA has also re-examined the proposed decertification process specifically applied to qualified diesel mechanics and published in the **Federal Register** on October 4, 1989, (54 FR 40996) as part of its comprehensive proposal for the approval and use of diesel equipment in underground coal mines. Because of the generic nature of the procedures published and proposed today, the agency does not believe that it is necessary to have a separate procedure for qualified diesel mechanics. This procedure was published under proposed § 75.1916(h) (54 FR 40996). Consequently, today's proposal also contains a new paragraph to amend proposed § 75.1915 which will serve to apply today's proposed part 42 to any qualification requirements for diesel mechanics which become a final rule. It is MSHA's intent to delete any reference to the decertification procedures referred to in proposed § 75.1916(h) when that regulation becomes final.

Although the assessment of civil penalties and the initiation of criminal action against operators or agents under 110 of the Mine Act do serve as effective enforcement measures, they may not, in all instances, induce necessary compliance with regulations. MSHA believes that the emphasis in the certification and qualification programs should be on maintaining the integrity of the certifications and the qualifications that are granted by ensuring that only those individuals who adequately discharge the obligations which a certification requires continue to hold such certification. The status of being certified or qualified is a privilege, not a right, and only those who carry out the responsibilities that are inherent in these credentials should be permitted to hold them.

Uniform decertification procedures would provide another approach for MSHA to direct a change in the actions and attitudes of certified and qualified persons who do not comply with health and safety regulations. Temporary or permanent decertification should compel compliance with the law, as decertification could adversely affect that person's livelihood, and in the most severe instances, result in loss of employment. This proposed rule will encourage certified and qualified persons to maintain their level of competence and follow required procedures, by establishing appropriate remedial measures when MSHA identifies a certified or qualified person or an approved instructor who is not fulfilling his or her responsibilities, either deliberately or as the result of accident, oversight, or lack of training. MSHA believes that establishing uniform decertification procedures will ensure that certified and qualified persons fulfill their responsibilities with due regard for compliance with safety and health standards.

III. Discussion of Proposed Rule

Section 42.1 Purpose and Scope

This part would establish the criteria and procedures for revocation of the authority given to persons to perform certain tasks that must be done by a certified or qualified person, or an approved instructor. In general, temporary or permanent decertification would be directed toward individuals who either repeatedly exhibit clear disregard for compliance with training, health or safety standards or other relevant regulations, or who commit a particular offense that is evidence of a serious disregard for the health and safety of miners affected by their activities.

When evidence indicates that a certified person does not adhere to the required procedures that are necessary to fulfill his or her certified or qualified duties, or has failed to adequately fulfill his or her work responsibilities, the appropriate MSHA district manager would initiate the decertification process. During the course of the decertification process, the district manager would determine if the certified person's actions are intentional or the result of accident, oversight, or lack of training. Based upon the facts in each case, the district manager would decide the appropriate deterrent or remedial measures to be taken, such as those described below. MSHA intends that the agency's district managers would also be able to propose temporary or permanent decertification.

The issuance of warning letters, proposal of remedial measures or temporary or permanent decertifications are actions intended to augment existing enforcement policies and procedures. When a certified person fails to adhere to required procedures due to accident, oversight, or lack of training, the district manager would generally issue a warning letter or propose remedial measures, such as additional training. If, after these initial measures are taken, the certified or qualified person continues to disregard proper procedures, MSHA would pursue temporary or permanent decertification.

Temporary or permanent decertification would be directed toward individuals who repeatedly exhibit disregard for health and safety, and also in instances when a particular single offense is of such a serious nature that temporary or permanent decertification should be pursued. In some cases, a section 110 investigation, resulting in either the assessment of civil penalties against the certified person or the pursuit of criminal proceedings, will occur concurrently with temporary or permanent decertification. However, in particularly egregious cases, the district manager may propose temporary or permanent decertification before any section 110 investigation is completed.

In summary, the district manager may choose to issue a warning letter, propose remedial action, or propose temporary or permanent decertification prior to, or concurrent with, action taken as a result of a section 110 investigation within the context of MSHA's current enforcement hierarchy.

Also, the district manager may use these actions in circumstances where civil penalties under section 110(c) of the Mine Act are not applicable, for example, because the individual in question is not a corporate agent. Decertification action would allow for actions against individuals in such cases that do not currently receive additional enforcement actions.

Additionally, while MSHA has authority to enter mine property but cannot cite an operator or contractor for refusal to allow the agency's examination of dust sampling equipment that is not located on mine property, the district manager may take action against the responsible certification holders by proposing temporary or permanent decertification when the certification holders have violated the regulations.

MSHA's current policy and procedures for revocation of approval to be a part 48 training instructor allow the instructor to present evidence or witnesses to substantiate his or her position, either through a meeting or written submission to MSHA. The person may appeal adverse actions to the appropriate MSHA administrator. MSHA believes that these same procedures also would be appropriate for those persons who would be subject to decertification under this proposed rule. To ensure equitable and uniform treatment in all decertification actions, the scope of this rulemaking would include all activities for which MSHA issues certifications or qualifications, including the part 48 instructor program. The proposed rule includes additional provisions for the issuance of warning letters and the person's right to a post-decertification hearing before the Department of Labor's Office of Administrative Law Judges.

In addition, the proposed rule would address the withdrawal of MSHA's recognition of an individual's State certification when circumstances warrant such action. MSHA believes that a single rule will afford the same level of due process for all proposed temporary and permanent decertifications. Because MSHA recognizes many State certification programs, cooperation between MSHA and State mining agencies is crucial to the success of any decertification program. Federal and State mine safety and health programs are more effective when the two government bodies operate cooperatively. In instances where the State confers upon an individual a certification which is recognized by MSHA, the agency would inform the appropriate State agencies that it has determined that an individual's actions may warrant the temporary or permanent decertification of the State-issued certification. In those States which have procedures to decertify individuals, MSHA would work closely with the State to investigate the matter and provide assistance in determining an appropriate course of action. In those cases where the State concludes that decertification is not appropriate and decides to take only limited action or no further action, but MSHA continues to believe stringent action is necessary, MSHA may decide to use the procedures outlined in this proposed rule to terminate MSHA's recognition of the individual's State certification for purposes of compliance with Federal regulations. MSHA would therefore retain the right to suspend or terminate its recognition of a person's State certification even if the State has chosen not to pursue temporary or permanent decertification.

Section 42.2 Definitions

The following definitions would apply in this part:

Administrator. Administrator would mean MSHA's Administrator for Coal Mine Safety and Health or Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate.

Certified. Certified would mean certified, qualified, or approved by MSHA, either directly or through a State

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program recognized by MSHA, to perform tasks or duties for which this chapter requires such specific authority. Similarly, certification would mean certification, qualification, or approval.

Decertify. Decertify would mean to temporarily or permanently revoke a person's certification, qualification, or approval. If MSHA recognizes a person's certification by a State, then decertify would mean that MSHA would no longer recognize that person's State certification for purposes of compliance with this chapter. Decertification would mean temporary or permanent revocation of a person's certification, qualification, or approval.

Section 42.3 Warning Letter

Proposed § 42.3 would provide that when the evidence indicates that a certified person has failed to follow the tasks set by this chapter, or the person no longer satisfies the requirements for retention of certification, or a certified person's conduct leads to or contributes to a violation of any training, safety or health standard, the district manager may send a warning letter to that person by certified mail, return receipt requested. This section would provide that the district manager may notify the certified person through the warning letter that his or her conduct has been deficient without requiring any further action, or may require remedial measures to be undertaken by the certified person. In short, the warning letter must specify the basis for the warning. In some instances, MSHA may choose to forego the issuance of a warning letter and move directly to issue a notice of proposed action under § 42.4 of this part.

MSHA believes that certain types of deficient conduct on the part of a certified person may not require remedial action or would not require, or provide a sufficient basis for, the more severe sanctions of temporary or permanent decertification. In those instances, a warning letter from the district manager to the certified person would be sufficient to put the certified person on notice that his or her conduct in the performance of regulated duties was not commensurate with that normally required of a certified individual. The district manager may also include in the letter a statement that further deficient conduct may lead to decertification action by the Agency.

Under proposed § 42.3(b)(2), the warning letter would also provide a vehicle for the Agency to require the certified individual to take some remedial action in order to retain his or her status. In these instances, MSHA district managers would specify what type of remedial action on the part of the certified person would be necessary to retain certification. MSHA intends that it would also be able to take action, such as allowing the certified person to work only under supervision or requiring retraining where the circumstances would warrant it.

The proposed rule in § 42.3(b)(3) would also give the certified person 15 days from receipt to respond to the warning letter from the district manager or to initiate the required remedial action. MSHA foresees that some certified persons may choose to ignore the warning letter from the district manager, or notify the district manager that they object to the implementation of remedial action. If no response is forthcoming from the certified person, or the certified person failed to perform the required remedial action, the district manager would have the option of sending a notice of proposed action under proposed § 42.4 to initiate temporary or permanent decertification.

Section 42.4 Notice of Proposed Action

Proposed § 42.4(a) would provide that when the evidence indicates that a certified person has not undertaken remedial action required by the district manager or that the temporary or permanent decertification is warranted because of the certified person's disregard of training, safety or health standards, or the certified person's conduct has led to or contributed to a violation of training, safety or health standards, the district manager would notify the certified person of the proposed action by a certified letter, return receipt requested.

The notice would contain sufficient information to apprise the person of the action being initiated against him or her and the basis for the proposed action. Specifically, the notice would inform the certified person under proposed § 42.4(a) (1) and (2) whether the district manager was proposing temporary or permanent decertification. Under § 42.4(b) (1), (2), and (3) of the proposal, the notice would describe how the certified person failed to appropriately discharge his or her responsibilities. This part of the notice would specifically describe the certified person's conduct or actions giving rise to the decertification action. Under § 42.4(c), the notice also would give the person 15 calendar days from the date of its receipt to submit information to or request an informational meeting with the district manager to discuss the proposed action. The notice would inform the person that if he or she fails to respond within 15 days, the administrative record of the matter would close and MSHA would temporarily or permanently decertify the person.

MSHA intends that this notice would not replace the issuance of citations for violations of regulations, but rather would supplement these normal enforcement actions and would serve as an additional measure to induce compliance. MSHA anticipates that many cases could be resolved without proceeding to an informational meeting because the certified person would respond to the notice, submit explanatory information to the district manager, or correct inadequate performance to the district manager's satisfaction.

A copy of the notice of proposed action and the return receipt, in conjunction with documentary evidence such as inspectors' notes or informational submissions, would remain on file in the district office and become a part of the administrative record of the action under proposed § 42.5(c).

Proposed § 42.4(c) would also allow the certified person to submit information in place of or in addition to an informational meeting. When no informational meeting is requested, the certified person would be able to submit relevant information to the district manager within 15 calendar days from the date the person received the notice of proposed action. After this 15-day period, the administrative record would be closed.

Section 42.5 Informational Meeting

Section 42.5 of the proposed rule would provide an opportunity for the certified person to present evidence or information on his or her behalf to the district manager relevant to the circumstances which gave rise to the initiation of the decertification action.

Under proposed § 42.5(a), if the certified person requests an informational meeting with the district manager within 15 calendar days from the date of receipt of the warning letter, the district manager would be required to hold such meeting within 15 calendar days of the certified person's request. MSHA intends that the certified person would have the right to legal representation at this meeting.

During the meeting proposed under § 42.5(b), the Agency would provide the certified person with an opportunity to present evidence or witnesses to support his or her position. In addition, this part of the proposed rule under § 42.5(b) (1) through (6) would require the district manager to inform the certified person of the following at the

informational meeting: the deficiencies in performance, and how the certified person had failed to appropriately fulfill required responsibilities; the proposed remedial action and the reasons for the action; the close of the administrative record 15 calendar days after the informational meeting date to allow for the submission of additional information; the projected date of the district manager's final decision; and the certified person's right to appeal this decision to the appropriate administrator under proposed § 42.6. MSHA anticipates that the district manager may also send a letter requesting additional information which the district manager has determined is necessary to make a decision in the case. Such a letter would set reasonable time limits for the certified person to respond with the requested information.

A detailed record of the meeting would be required to be kept under proposed § 42.5(c). The record of the informational meeting would be kept in a format agreed to by the parties, such as a tape-recorded transcription or detailed notes kept by a designated individual, and would be made a part of the administrative record for the action.

Section 42.6 Notice of District Manager's Decision

After an informational meeting, if requested, has been held, the district manager would proceed to issue a decision on the proposed action issued under § 42.6. Proposed § 42.6 would provide guidance to the district manager for the form and content of his or her decision.

Proposed § 42.6(a) would set a time limitation for the district manager to act after the administrative record closes in a decertification case, and would provide that the decision be based on a complete evaluation of the whole administrative record. The district manager would have 30 days to issue a decision once the administrative record closes. MSHA believes that the 30-day period is an appropriate amount of time for the district manager to carefully review and consider all of the evidence, and to issue a written decision.

Under proposed § 42.6(a) (1), (2), and (3), the Agency's district managers would have the power to suspend a person's certification for a finite period of time; permanently decertify the individual with no opportunity for reapplication; or allow the district manager to take any other appropriate action such as requiring the individual to undergo additional training or testing to retain his or her certification. This range of options would give the district manager authority to address each case in a manner that would be tailored to the facts presented by each case.

For example, while the Agency has recently permanently decertified seven people after criminal convictions stemming from respirable dust fraud, 73 people have also been temporarily decertified for periods ranging from one to four years for respirable dust fraud. Additionally, two training instructors have been permanently decertified and one training instructor has been temporarily decertified for a three-year period. One person has been temporarily decertified to perform noise surveys for a two-year period and two individuals have been permanently decertified from performing noise surveys. One individual has been temporarily decertified as an approved electrical qualifications instructor for a two-year period. The above pleas or convictions, and related decertification actions, were the result of criminal charges for offenses ranging from the creation and/or submission of fraudulent respirable dust samples and cards, noise surveys, and training certificates, through conspiracy, mail fraud and charges under the Racketeer Influence Corrupt Organizations (RICO) statute.

When the district manager determines that temporary decertification is appropriate under proposed § 42.6(a)(1), MSHA contemplates that at the end of the suspension period the temporarily decertified person would not be automatically certified but would make application as any other person to obtain certification. He or she would be required to fulfill all procedural steps for certification, as well as any additional special conditions that the district manager might have imposed when the certified person was temporarily decertified. For example, if a certified person was temporarily decertified and allowed to reapply for certification pending the completion of certain training, the certified person would need to demonstrate that the training had been completed prior to reapplying for certification. MSHA has provided procedural guidance for recertification under proposed § 42.10 of this rule.

The proposed rule under § 42.6(a)(2) would allow a district manager to order permanent decertification for any person who had shown evidence of a significant disregard for the health or safety of miners. For example, the Agency believes that egregious behavior, which may constitute a serious violation of safety and health regulations, exposes miners to unsafe or unhealthy conditions, and presents a clear disregard for the safety or health of miners, would warrant the sanction of permanent decertification. MSHA's aforementioned permanent decertifications to date have focused on such demonstrated behavior.

The proposed rule under § 42.6(b) (1) through (6) would require the administrative record to include certain information. The content of the administrative record is important in that it would give the certified person a basis for understanding the nature of the action being taken against him or her and would provide documentation of the evidence underlying the action. In addition, the district manager would have the ability to review all the relevant facts and information in the case before reaching a decision. This information would include the notes or transcript from any informational meeting which was held, as well as other relevant evidence. MSHA believes that other relevant evidence may include background information such as information on the mine or mines where the certified person worked; relevant correspondence between the district manager and the certified person concerning the decertification action; any relevant documentary evidence such as certification papers, or certification examinations; possible district investigation reports on the actions of the certified person; and any witness statements which were made as part of the informational meeting or submitted separately to the district manager. Within 30 calendar days after the close of the administrative record, the district manager would review and evaluate all submissions to the record, and send a written decision to the certified person informing him or her of the results of the district manager's review.

Proposed § 42.6(c) would require that the district manager's decision be in writing and include certain information. The district manager's written decision would inform the certified person of the district manager's conclusions. For example, the letter may state that the record contains information which refutes the allegations in the notice of proposed action, and that the matter has been closed. The decision could contain a description of the remedial action that the certified person must take in order to retain his or her certification. Finally, the decision could also serve as a notice of temporary decertification, with time limits and conditions for re-certification, or as a notice of permanent decertification, if such a result were warranted by the evidence.

The proposed rule would require that the district manager's written decision detail the specific facts which provide

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the basis for the decertification action, and include a clear and concise statement of the reasons for the decision reached by the district manager. The proposed rule would also provide that the decision would contain notification of the certified person's right to appeal any adverse decision to the administrator under § 42.6(c)(3). Section 42.6(c)(4) would also require that the district manager's decision contain a statement that the administrative record is available for review at the MSHA district office, and that the certified person may obtain a copy upon request. Because certain appeal rights may attach, MSHA is proposing under § 42.6(d) that the Agency would send the decision by certified mail, return receipt requested. The decision would be effective 15 calendar days after receipt by the certified person, unless it is appealed.

Section 42.7 Appeal to the Administrator

Proposed § 42.7 would allow a certified person to appeal an adverse decision of temporary or permanent decertification or other remedial action ordered by the district manager to the appropriate MSHA Administrator for Coal Mine Safety and Health or Metal/Nonmetal Mine Safety and Health. This appeal would be required to be submitted in writing.

Specifically, proposed § 42.7(a) would allow a certified or qualified person to appeal, in writing, the decision of the district manager to the appropriate MSHA administrator. The administrator must receive this appeal within 15 calendar days from the individual's receipt of the certified letter containing the district manager's decision notice ordering remedial action, or temporary or permanent decertification.

Upon receipt of the written appeal, the administrator would send written acknowledgment of the appeal to the certified person, including an acknowledgment of an automatic stay of the remedial action or temporary or permanent decertification. The stay would remain in effect pending the outcome of the appeal under proposed § 42.7(b) (1) and (2), and would allow a certified person to retain certification until the administrator reached a decision in the matter. MSHA believes that an automatic stay would be appropriate because the matter would still be under consideration by the Agency. The decision by the administrator would not be reached until after the administrator has had the opportunity to review the record and make a decision.

Under § 42.7(b)(3) of the proposal, the district office would be required to forward a copy of the administrative record to the administrator.

In addition, the proposal would allow the certified person to request a meeting with the administrator under proposed § 42.7(b)(4). Such a meeting must be requested by the certified person within 15 days of the certified person's receipt of the administrator's written acknowledgment of the appeal. When such a meeting is requested by the certified person, MSHA intends that the administrator would be permitted to consider evidence in addition to that presented to and considered by the district manager. MSHA intends that this subsection would allow the certified person to submit relevant information to the administrator in lieu of a face-to-face meeting.

Proposed § 42.7(c) would provide the administrator with a time limit of 30 days to issue a written decision after either his or her receipt of the administrative record and district manager's decision, or 30 days after his or her meeting with the certified person. MSHA believes that this is a reasonable amount of time for the administrator to review the evidence and issue a reasoned decision. In some instances, post-meeting submissions to the administrator may extend the time to issue a written decision.

Section 42.7(c) (1) and (2) would provide that the administrator would have several possible options after his or her evaluation of all of the evidence. The administrator could issue a decision that upholds the decision of the district manager, and in such a case the remedial action or temporary or permanent decertification would become effective 30 days after receipt by the certified person except as provided in § 42.8(e). The administrator could also issue a decision overturning the district manager's decision. Finally, the administrator may also refer the matter back to the district manager with appropriate instructions, based on the receipt of new evidence or information that was not available to, or considered by, the district manager at the time that his or her decision was rendered.

Proposed § 42.7(d) would require that the written decision contain a clear statement of the basis for the decision, including specific references to the evidence contained in the record that was considered in arriving at the determination. The written decision would be served upon the certified person by certified mail, return receipt requested.

Section 42.8 Hearing Before an Administrative Law Judge

Because the individual who is temporarily or permanently decertified may suffer a reduction in pay and possibly loss of his or her livelihood, the issue of due process for such individuals is a central concern of this rulemaking. MSHA is therefore committed to providing meaningful procedural safeguards at an appropriate level of due process. *Morrisey* v. *Brewer*, 408 U.S. 471 (1972). Thus, MSHA's multi-level review scheme within the Agency incorporating informal pre-decertification proceedings such as a notice of charges, explanation of the evidence, and an opportunity for the certified person to present "his side of the story" should be sufficient to satisfy the test of "what process is due" when the informal pre-decertification proceedings are followed by a full post-decertification evidentiary hearing. *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985). MSHA has carefully considered whether a certified person should get a formal pre-decertification evidentiary hearing. At this point in the rulemaking process, MSHA believes that the procedural due process safeguards proposed here are adequate under the requirements of the United States Constitution.

In addition, MSHA believes that the potential harm to miner health and safety which may result from protracted pre-decertification litigation is an issue which must be carefully considered. Therefore, under proposed § 42.8(a)(1), a person whose temporary or permanent decertification has been upheld by the administrator may obtain a *de novo* hearing before the Office of Administrative Law Judges, United States Department of Labor, by filing a request for a hearing with the administrator within 30 calendar days after receipt of the administrator's decision. The administrator would refer the request for hearing, along with the district manager's decision, and the administrator's decision to the Office of Administrative Law Judges within 10 calendar days of receipt of the hearing request.

The starting date of the temporary or permanent decertification would not be affected by the certified person's decision to obtain a post-decertification hearing. The temporary or permanent decertification would be effective 30 days after the certified person's receipt of the administrator's decision, except as provided in proposed § 42.8(e).

The request for a hearing under 42.8(a)(2) would include a summary of the issues involved and the specific

objections that the certified person has to the administrator's decision.

Under proposed § 42.8(c), the administrative law judge assigned to hear the case would expedite the hearing of the case because of the possibility that temporary or permanent decertification may significantly impair the certified person's livelihood. In addition to expediting the hearing, the administrative law judge would render his or her final decision in the case within 45 days of the close of the record.

Proposed § 42.8(d) would provide that decertification hearings before the Department of Labor Office of Administrative Law Judges would be governed by the rules of practice and procedure for hearings before the Office of Administrative Law Judges at 29 CFR part 18.

Under proposed § 42.8(e), a request for a stay would be filed within 30 calendar days after receipt of the administrator's decision. The request for a stay would automatically stay the administrator's decision until the administrative law judge could rule on the stay request. The automatic stay would allow the administrative law judge sufficient time to obtain jurisdiction to rule on the request for a stay, and it would allow the status of the certified person to remain unchanged until the stay request was decided by the administrative law judge.

In determining whether to grant a stay, the proposal would require under § 42.8(f) that the administrative law judge would be required to consider the certified person's likelihood of success on the merits, and the potential harm to mine safety and health if the certified person were allowed to continue his or her work during the pendency of the case before the administrative law judge. The administrative law judge would also be required to clearly state the reasons for the granting or denial of a stay in any subsequent order concerning the granting or denial of the stay.

MSHA envisions that a decision of the case rendered by an administrative law judge could then be appealed to the appropriate United States Court of Appeals. In the Mine Act, the Congress established a scheme whereby judicial review of all record-based Agency determinations is available only in the courts of appeal. After fully examining this statutory review scheme, MSHA believes that all judicial review of Secretarial action under the Mine Act lies exclusively in the courts of appeal, whether such review is specifically provided or whether the Mine Act is silent as to judicial review. See, *Bituminous Coal Operators' Ass'n.* v. *Marshall*, 82 F.R.D. 350 (D.D.C. 1979).

Section 42.9 Notice of Decertification.

After a decision to temporarily or permanently decertify an individual becomes final, the district manager would immediately notify, in writing, the mine operator or operators for whom the certified person performs such work that he or she has been temporarily or permanently decertified. The district manager would also notify the appropriate Coal Mine Safety and Health or Metal and Nonmetal Mine Safety and Health Technical Compliance and Investigation Division (TCID) and the Qualification and Certification Unit of MSHA. The TCID would notify other district offices of the temporary or permanent decertification so that all districts would be aware of the change in status of the certified person.

Section 42.10 Recertification

A person who has been temporarily decertified may apply for recertification by MSHA after the end of the temporary decertification period. To obtain recertification, the person must fulfill the requirements for certification or qualification as required under the applicable regulations before a new certification or qualification is issued. In addition, if the district manager, administrator or administrative law judge imposed additional requirements for recertification beyond the basic application, the certified person must also show that those requirements have been fulfilled. MSHA intends that applications for recertification would be forwarded by the Qualification and Certification Unit to the Technical Compliance and Investigation Division, which is responsible for coordinating those cases involving revocation of certification. By transferring cases involving decertification from the district offices to a single administrative office, the Agency would eliminate the likelihood that a person whose certification is suspended or revoked could become recertified without fulfilling the necessary requirements.

IV. Executive Order 12866 and the Regulatory Flexibility Act

The analysis contained in this preamble meets the Agency's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act. Under Executive Order 12866, MSHA has made a preliminary assessment of the costs and benefits of the proposed rule. The proposed rule does not meet the criteria of a significant regulatory action and, therefore, MSHA has not prepared a separate analysis of costs and benefits.

The Executive Order also requires Federal agencies to seek the views of State governments on regulatory actions that would affect them. MSHA intends to work closely with the States that have certification programs to coordinate implementation of this proposal. The Regulatory Flexibility Act requires MSHA to consider the proposed rule's impact on small entities. MSHA defines small entities as mines with 20 or fewer employees. This proposal would not have a significant economic impact on a substantial number of such small mines.

The proposal addresses procedures for decertifying individuals, either temporarily or permanently, who have failed to maintain the knowledge and skills required to perform certain tasks or duties of an "approved," "certified" or "qualified" person or who have failed to comply with the law in their role as an approved, certified or qualified person. Any costs associated with the requirement that an individual be certified to perform a specific task or duty are not included in this analysis. Such costs are attributed to the Agency's existing certification requirements, and this rule does not impose any new such requirements.

MSHA estimates that about 105,000 individuals have been certified by the Agency to perform required procedures. Many of these individuals have been certified in more than one area. In addition, MSHA estimates that about 20,000 mine foremen have been certified by State governments.

It is clear from MSHA's enforcement experience that some certified persons do not adhere to the Agency's requirements. Therefore, the proposed rule establishes procedures for temporary or permanent decertification of such individuals.

MSHA has not attributed any costs to the pay loss or potential loss of employment a certified person faces if Agency action ultimately leads to that individual's decertification. Such costs result from the individual's failure to follow Federal requirements, which in many instances could potentially endanger other miners. As such, these costs are far outweighed by no longer allowing the individual to jeopardize the safety and health of other miners. For the certified person, these losses would occur from the loss of pay differential or ultimately the loss of employment. For the mine operator, these losses might range from the cost of retraining the individual to significant lost production if the operator cannot readily replace someone

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who has been decertified. In order for the mine to continue production after MSHA has decertified an individual, the mine operator would need to hire a replacement who has the proper certification or qualification or have one of the more experienced miners achieve certification or qualification status.

MSHA has not attempted to calculate the financial losses that might accrue should an Agency decertification action ultimately be overturned on appeal or if an individual convinces the district manager that decertification action in not warranted. At this time, MSHA is unable to estimate how many such cases would occur.

MSHA anticipates that the majority of actions under the proposed rule would begin with a letter from the MSHA district manager to the certified person warning that the person's conduct in performing certain tasks is deficient. As proposed, the warning letter may or may not require that remedial measures be undertaken by the individual.

MSHA estimates that it would issue about 50 warning letters each year for the first few years—about half of which would require some remedial action such as passing a skills test or undergoing retraining. Of the 50 warning letters each year, MSHA estimates that about 20 would be issued to mine foremen who must be certified to perform various inspection and examination activities, about 25 would be issued for coal dust sampling and 5 would be issued to miners certified to perform such activities as electrical work or blasting. After the first few years, MSHA anticipates that the Agency would need to issue fewer warning letters as mine operators and certified individuals become more aware of the Agency's intent to ensure that these individuals perform their tasks as required.

The proposed rule also would allow the district manager to forego the warning letter and send out a notice proposing to temporarily or permanently decertify an individual who repeatedly exhibits disregard for health and safety, and also in instances where a particular single offense is of such a serious nature that decertification is warranted. MSHA estimates that the Agency annually would issue about 10 temporary and 10 permanent decertifications without first issuing a warning letter. MSHA expects that temporary decertifications would last an average of one year and would require the individual to reapply for certification and, perhaps, complete additional requirements, such as retraining or testing. In all, MSHA estimates that the Agency would undertake in total about 70 decertification-related actions a year (50 actions beginning with a warning letter and 20 actions without a warning letter).

MSHA has attributed most of the costs of this proposal to legal fees. In many instances, MSHA expects that the certified persons facing adverse Agency action would hire an attorney. The costs of such legal fees would vary widely depending on the nature of the action, the level to which the case is appealed, and the legal fees of the attorney. Although a few individuals may not seek legal counsel, others might retain an attorney upon the initial receipt of a warning letter. In some instances, the attorney's services would not be needed beyond the initial response to the district manager. In other instances, in-depth legal advice may be sought at each level of appeal all the way through the Federal Court of Appeals. In general, however, MSHA believes that most individuals would not pursue appeal beyond the level of the Department of Labor's Administrative Law Judges. MSHA estimates that initially about 30 percent of the 70 actions taken by the Agency each year (or 21 individual cases) would result in appeals to the Departmental level. Legal fees vary from region to region and law firm to law firm, ranging from as high as $400 per hour to as low as $50 per hour. In this analysis, MSHA has used an average cost of $120 per hour. Assuming it takes an attorney about 40 hours to prepare and appeal a client's case up through the Departmental level, costs of the proposed rule arising from legal fees would total about $100,800 a year, or $4,800 per contest. Of course, the fees for appealing a single case through the Federal Court of Appeals may total significantly more than $4,800. Conversely, the use of an attorney to draft a response to the district manager to a warning letter could cost as little as $50.

In addition, MSHA has assumed that the certified person would have to take time off from work to address decertification actions initiated by the Agency. The average total compensation (wages plus fringe benefits) for a certified person ranges from $24.74 to $28.50 per hour or an average of $26.50 per hour. Assuming that all 70 certified persons each takes an average of 20 hours off from work to avail themselves of the procedures of the proposal, then the annual loss of income attributable to responding to Agency's actions under the proposal would total about $37,100.

MSHA estimates that the total annual cost of this proposed rule to be about $137,900 ($100,800 related to legal fees and $37,100 related to income loss during the appeal process). The Agency specifically requests comments concerning these cost estimates; comments, including rationale, should be as specific as possible.

Although MSHA does not have data at this time to estimate quantitative benefits, the Agency has determined that the qualitative benefits of this proposed rule are improved safety and health conditions for miners. The possibility of a temporary or permanent decertification should be an effective incentive for certified and qualified persons to perform their duties and tasks as required. The potential loss of pay or possible unemployment resulting from decertification should serve as a strong, economic incentive for certified persons to comply with the required procedures. As the tasks and duties of certified persons are critical to the safety and health of miners, ensuring that these activities are performed in the required manner should result in fewer fatalities, injuries, and accidents.

A recent example of the need for formal decertification procedures involves the submission of fraudulent respirable coal mine dust samples by some individuals certified to take them. To ensure the integrity of the respirable dust program, the Agency needs more efficient decertification procedures to serve as a more effective deterrent to such illegal activities.

As a result of plea agreements or criminal convictions stemming from respirable dust fraud, MSHA has permanently decertified 7 people and temporarily decertified another 73 individuals for periods ranging from one to four years for respirable dust fraud. The Agency temporarily decertified about sixty-five percent of these individuals for a one-year period and about thirty percent for a three-year period.

Additionally, as the result of recent investigations, MSHA has permanently decertified two training instructors and temporarily decertified one training instructor for a three-year period. As a result of continuing criminal proceedings, the Agency also temporarily decertified for a two-year period one person who performed noise surveys and permanently decertified two individuals who performed noise surveys. MSHA temporarily decertified for a two-year period another individual who was an approved electrical qualifications instructor.

List of Subjects in 30 CFR Parts 42, 48, 70, 71, 75, 77 and 90

Decertification, Mine safety and health.

Dated: October 26, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, it is proposed to amend 30 CFR chapter I as follows:

1. A new part 42 is added to read as follows:

PART 42—DECERTIFICATION OF APPROVED INSTRUCTORS AND CERTIFIED AND QUALIFIED PERSONS

Sec.

42.1 Purpose and scope.
42.2 Definitions.
42.3 Warning letter.
42.4 Notice of proposed action.
42.5 Informational meeting.
42.6 Notice of district manager's decision.
42.7 Appeal to the administrator.
42.8 Hearing before an administrative law judge.
42.9 Notice of decertification.
42.10 Recertification.

Authority: 30 U.S.C. 811.

§ 42.1 Purpose and scope.

This part establishes the criteria and procedures for suspension or revocation of the authority given to individuals to perform certain tasks or duties that must be done by an approved instructor, or a certified or qualified, person. These procedures apply to all persons recognized by MSHA as certified, qualified, or approved under chapter I of this title.

§ 42.2 Definitions.

The following definitions apply in this part:

Administrator. MSHA's Administrator for Coal Mine Safety and Health or Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate.

Certified. To be certified, qualified, or approved in accordance with the requirements of MSHA regulations, either directly or through a State program recognized by MSHA, to perform tasks or duties for which this chapter requires such specific authority. Similarly, certification means certification, qualification, or approval.

Decertify. To temporarily or permanently revoke a person's certification, qualification, or approval. If MSHA recognizes a person's certification by a State, then decertify means that MSHA will no longer recognize that person's State certification for purposes of compliance with this chapter. Decertification means temporary or permanent revocation of a person's certification, qualification, or approval.

§ 42.3 Warning letter.

(a) If a certified or qualified person or approved instructor fails to follow the procedures set by this chapter for performing a task or duty requiring certification or qualification, or the person no longer meets the requirements to retain his or her certification or qualification or status as an approved instructor, or the certified person's conduct leads to, or contributes to the violation of any training, safety or health standard, the district manager may send a warning letter to that person in writing by certified mail, return receipt requested.

(b) The warning letter shall state—

(1) That the certified or qualified person or approved instructor is receiving a warning letter of deficient conduct in performing certain tasks or duties pertaining to his or her certification, qualification or approval, and that further deficient conduct may lead to other action by MSHA; and

(2) Any remedial action that must be initiated by the certified or qualified person or approved instructor to retain his or her status.

(3) The certified or qualified person or approved instructor shall have 15 days from the date of receipt of the warning letter to respond to the district manager or begin remedial action as stated in the letter.

§ 42.4 Notice of proposed action.

(a) When the district manager has reason to believe that a certified person's conduct has led to, or contributed to a violation of training, safety or health standards, or that the certified person has failed to respond or deficiently responded to a requirement made by the district manager under § 42.3, the district manager may notify that person in writing by certified mail, return receipt requested, that—

(1) The certification, qualification or approval which the person presently holds is proposed to be temporarily suspended; or

(2) The certification, qualification or approval which the person presently holds is proposed to be permanently revoked.

(b) The notice of proposed action shall state—

(1) The performance required by the person under the applicable regulations;

(2) How the individual failed to comply with the regulations; or

(3) How the individual failed to adequately fulfill his or her responsibilities as an approved instructor or certified or qualified person.

(c) The notice shall give the certified person 15 calendar days from the date of its receipt to submit information to or request an informational meeting with the district manager to discuss the circumstances which prompted the issuance of the notice. The notice shall state that if the person does not respond within the allotted time, the administrative record of the matter will close and MSHA may take action including, but not limited to, temporary decertification or permanent decertification.

§ 42.5 Informational meeting.

(a) If the certified person requests an informational meeting with the district manager under § 42.4(c), the district manager or the district manager's representative shall hold such a meeting within 15 calendar days of receipt of the person's request.

(b) At the informational meeting, the district manager shall—

(1) State the issues identified in the notice of proposed action;

(2) State whether temporary or permanent decertification is under consideration and the information supporting such proposed action;

(3) Provide an opportunity for the person to present evidence or witnesses to substantiate his or her position;

(4) Notify the certified person of the anticipated date of the district manager's final decision;

(5) Notify the certified person of the right to appeal any adverse decision rendered under § 42.6; and,

(6) Notify the person that the administrative record will remain open for 15 calendar days after the meeting date for the submission of additional information.

(c) The district manager or designee shall keep a detailed record of the meeting and make it a part of the administrative record for the action.

§ 42.6 Notice of district manager's decision.

(a) The district manager shall issue a decision on whether to temporarily or permanently decertify, or take other appropriate action against a certified person within 30 calendar days after the close of the administrative record. This decision shall be based on a thorough evaluation of the entire administrative record. The district manager may—

(1) Temporarily decertify the person for a specific period of time;

(2) Permanently decertify the person; or

(3) Take any other action appropriate to the circumstances based on the evidence in the administrative record.

(b) The administrative record shall include the following:

(1) Background information.

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(2) Relevant correspondence between the district manager and the certified person.
(3) Relevant documentary evidence.
(4) Relevant district investigation reports.
(5) Notes or transcripts of any informational meeting.
(6) Witness statements.
(c) The district manager's decision shall be in writing and shall contain the following information:
(1) A statement of the decision.
(2) A summary of the information supporting the decision or action.
(3) Notification of the certified person's right to appeal the decision to the administrator if the decision involves an adverse action against the certified person.
(4) A statement that the administrative record is available for review at the district office and that a copy is available upon request.
(d) The decision shall be sent to the certified person by certified mail, return receipt requested, and shall become effective 15 calendar days after it is received, unless appealed to the administrator under § 42.7.

§ 42.7 Appeal to the administrator.

(a) A person subject to temporary or permanent decertification under § 42.6 may appeal the district manager's decision to the appropriate administrator. The appeal shall be filed in writing with the administrator within 15 calendar days of the certified person's receipt of the decision.
(b) Upon receipt of the appeal, the administrator shall—
(1) Acknowledge in writing the receipt of the certified person's appeal;
(2) Stay the district manager's decision pending the outcome of the appeal to the administrator;
(3) Obtain a copy of the administrative record and the district manager's decision from the appropriate district manager; and
(4) Notify the certified person that within 15 days of receipt of the letter that he or she may request a meeting with the administrator.
(c) Within 30 calendar days after receiving the administrative record and district manager's decision, or after holding a meeting with the certified person if one is requested, the administrator shall—
(1) Issue a written decision based on the record compiled by the district manager and any new information received; or
(2) Refer the matter back to the district manager for reconsideration based on the receipt of new information.
(d) The administrator's decision shall contain a statement of the factual basis for the decision, including specific references to the evidence that was considered in arriving at the decision.
(e) The administrator's decision shall be sent to the person by certified mail, return receipt requested, and shall be effective 30 days after receipt, except as provided in § 42.8(e).

§ 42.8 Hearing before an administrative law judge.

(a) A person whose temporary or permanent decertification has been affirmed by the administrator may request a de novo hearing before the Office of Administrative Law Judges, U.S. Department of Labor.
(1) The request shall be filed with the administrator within 30 calendar days after receipt of the administrator's decision.
(2) The request shall include a concise summary of the certified person's position on the issues of fact or law desired to be raised, including specific objections to the administrator's decision.
(b) Within 10 calendar days of receipt of a request for hearing, the administrator shall refer to the Chief Administrative Law Judge the district manager's decision, the administrator's decision, and the certified person's request for a hearing.
(c) To the extent possible, any hearing shall be expedited by the administrative law judge, and the final decision of the administrative law judge shall be issued within 45 days after the close of the record.
(d) Hearings before an administrative law judge shall be governed by the rules of procedure under 29 CFR Part 18—Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.
(e) A request for a stay shall be filed within 30 calendar days after receipt of the administrator's decision. Any request for a stay filed with the administrative law judge will automatically stay the administrator's decision until the administrative law judge rules on the stay request.
(f) In determining whether to grant a stay of the administrator's decision, the administrative law judge shall consider the certified person's likelihood of success on the merits, and the potential harm to mine safety and health if the certified person remains certified during the pendency of the appeal. The administrative law judge shall state how such factors were weighed in any order granting or denying such a stay.
(g) Any party may appeal the final decision of the administrative law judge to the United States Court of Appeals for the District of Columbia Circuit or the circuit where the miner resides.

§ 42.9 Notice of decertification.

If a person is temporarily or permanently decertified, MSHA shall send a copy of the final decision to the operator of any mine affected by the person's activities.

§ 42.10 Recertification.

(a) To obtain recertification, a person who has been temporarily decertified under the procedures of this part shall—
(1) Reapply for certification after a period established by the district manager in the initial decision, or by the administrator or administrative law judge on subsequent appeal; and
(2) Satisfy the applicable certification requirements under chapter I of this title; and
(3) Provide any required documentation that additional requirements for recertification imposed by the district manager, administrator or administrative law judge have been fulfilled.
(b) Applications for recertification shall be submitted to the Chief, Technical Compliance and Investigation Division, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, VA 22203.

PART 48—[AMENDED]

2. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811 and 825.

3. Section 48.3 is amending by revising the section heading and paragraph (i) to read as follows:

§ 48.3 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors; decertification of instructors.

* * * * *

(i) Instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Any person approved as a training instructor shall be subject to the decertification procedures under part 42 of this chapter.

* * * * *

4. Section 48.23 is amended by revising the section heading and paragraph (i) to read as follows:

§ 48.23 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors; decertification of instructors.

* * * * *

(i) Instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Any person approved as a training instructor shall be subject to the decertification procedures under part 42 of this chapter.

* * * * *

PART 70—[AMENDED]

5. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

6. Section 70.202 is amended by adding a new paragraph (d) to read as follows:

§ 70.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to the decertification procedures under part 42 of this chapter.

7. Section 70.203 is amended by adding a new paragraph (d) to read as follows:

§ 70.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to the decertification procedures under part 42 of this chapter.

8. Section 70.504–1 is amended by adding a new paragraph (d) to read as follows:

§ 70.504–1 Persons qualified to measure noise exposures; minimum requirements.

* * * * *

(d) Any person qualified to take noise exposure measurements shall be subject to the decertification procedures under part 42 of this chapter.

9. Section 70.504–2 is revised to read as follows:

§ 70.504–2 Certification of qualified persons.

(a) Upon a satisfactory showing that a person has met the minimum requirements for taking noise exposure measurements set forth in § 70.504–1, MSHA shall certify that the person has the ability and capacity to conduct tests of the noise exposure in a coal mine and to report and certify the results of such tests to the Secretary and the Secretary of Health and Human Services.
(b) Any person certified to conduct tests of the noise exposure in a coal mine and to report and certify the results of such tests to the Secretary and the Secretary of Health and Human Services shall be subject to the decertification procedures under part 42 of this chapter.

PART 71—[AMENDED]

10. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

11. Section 71.202 is amended by adding a new paragraph (d) to read as follows:

§ 71.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to the decertification procedures under part 42 of this chapter.

12. Section 71.203 is amended by adding a new paragraph (d) to read as follows:

§ 71.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to the decertification procedures under part 42 of this chapter.

PART 75—[AMENDED]

13. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

14. Section 75.100 is amended by adding a new paragraph (d) to read as follows:

§ 75.100 Certified person.

* * * * *

(d) Any person certified to perform certain examinations and tests under the provisions of subpart D of this part shall be subject to the decertification procedures under part 42 of this chapter.

15. Section 75.150 is amended by adding a new paragraph (c) to read as follows:

§ 75.150 Tests for methane and for oxygen deficiency; qualified person.

* * * * *

(c) Any person qualified to perform tests for methane and for oxygen deficiency shall be subject to the decertification procedures under part 42 of this chapter.

16. Section 75.153 is amended by adding a new paragraph (h) to read as follows:

§ 75.153 Electrical work; qualified person.

* * * * *

(h) Any person qualified under this section to perform electrical work shall be subject to the decertification procedures under part 42 of this chapter.

17. Section 75.154 is revised to read as follows:

§ 75.154 Repair of energized surface high voltage lines; qualified person.

(a) An individual is a qualified person within the meaning of § 75.705 for the purpose of repairing energized surface high-voltage lines only if the individual has had at least 2 years experience in electrical maintenance, and at least 2 years experience in the repair of energized high-voltage lines located on poles or structures.
(b) Any individual qualified for the purpose of repairing energized surface high voltage lines shall be subject to the decertification procedures under part 42 of this chapter.

18. Section 75.155 is amended by adding a new paragraph (d) to read as follows:

§ 75.155 Qualified hoisting engineer; qualifications.

* * * * *

(d) Any person qualified as a hoisting engineer shall be subject to the decertification procedures under part 42 of this chapter.

19. Section 75.1915 as added in the proposed rule of October 4, 1989 (54 FR 40995) is amended by adding a new paragraph (f) to read as follows:

§ 75.1915 Training and qualification of diesel mechanics.

* * * * *

(f) Any person qualified as a diesel mechanic shall be subject to the decertification procedures under part 42 of this chapter.

PART 77—[AMENDED]

20. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

21. Section 77.100 is amending by adding a new paragraph (c) to read as follows:

§ 77.100 Certified person.

* * * * *

(c) Any person certified to perform certain examinations and tests under this part shall be subject to decertification under part 42 of this chapter.

22. Section 77.101 is amended by adding a new paragraph (c) to read as follows:

§ 77.101 Tests for methane and for oxygen deficiency; qualified person.

* * * * *

(c) Any person qualified to perform tests for methane and oxygen deficiency

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shall be subject to decertification under part 42 of this chapter.

23. Section 77.103 is amended by adding a new paragraph (h) to read as follows:

§ 77.103 Electrical work; qualified person.

* * * * *

(h) Any person qualified under this section to perform electrical work shall be subject to decertification under part 42 of this chapter.

24. Section 77.104 is revised to read as follows:

§ 77.104 Repair of energized surface high voltage lines; qualified person.

(a) An individual is a qualified person within the meaning of § 77.704 for the purpose of repairing energized surface high-voltage lines only if the individual has had at least 2 years experience in electrical maintenance, and at least 2 years experience in the repair of energized high-voltage lines located on poles or structures.

(b) Any individual qualified for the purpose of repairing energized surface high-voltage lines shall be subject to decertification under part 42 of this chapter.

25. Section 77.105 is amended by adding a new paragraph (c) to read as follows:

§ 77.105 Qualified hoistman; slope or shaft sinking operation; qualifications.

* * * * *

(c) Any person qualified as a hoistman shall be subject to decertification under part 42 of this chapter.

26. Section 77.216–3 is amended by adding a new paragraph (h) to read as follows:

§ 77.216–3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements.

* * * * *

(h) Any person qualified to inspect water, sediment, or slurry impoundments shall be subject to decertification under part 42 of this chapter.

PART 90—[AMENDED]

27. The authority citation for part 90 is revised to read as follows:

Authority: 30 U.S.C. 811 and 813(h).

28. Section 90.202 is amended by adding a new paragraph (d) to read as follows:

§ 90.202 Certified person; sampling.

* * * * *

(d) Any person certified to conduct respirable dust sampling shall be subject to decertification under part 42 of this chapter.

29. Section 90.203 is amended by adding a new paragraph (d) to read as follows:

§ 90.203 Certified person; maintenance and calibration.

* * * * *

(d) Any person certified to maintain and calibrate approved sampling devices shall be subject to decertification under part 42 of this chapter.

[FR Doc. 94–27117 Filed 11–1–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN22–3–6576; FRL–5096–6]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before December 2, 1994.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

For certain programs required under the Act (including VMT–Offset), USEPA had earlier adopted a policy pursuant to section 110(k)(4) of the Act to conditionally approve SIPs that committed to provide the USEPA with specific enforceable measures by a date certain. That interpretation was challenged in *Natural Resources Defense Council v. Browner*, consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion, dated May 6, 1994 (and in a March 8, 1994 Order and April 22, 1994 Amended Order issued earlier), the Court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the Court did not specifically address the VMT Offset program in its orders or opinions, USEPA believes that the Court's general conclusions that the USEPA's construction of the conditional approval provision was unlawful precludes USEPA from taking action to approve any submitted VMT Offset committal SIPs.

On September 10, 1993, the USEPA published a proposed rule (58 FR 47701) to conditionally approve Indiana's commitment for the VMT–Offset requirement. In light of the Court opinion, Indiana has withdrawn the committal SIP in a letter dated July 5, 1994.

In light of the outcome of the litigation, USEPA has decided that it would be appropriate to interpret the VMT Offset provision of the Act to account for how States can practicably comply with each of the provision's elements. The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

The USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992, General Preamble to title I, ozone nonattainment areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15% RFP milestone until November 15, 1993, and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP demonstrations due on November 15, 1993, and on November 15, 1994, are broader in scope than growth in VMT or trips in that they necessarily address emission trends and control measures for non motor vehicle emission sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provision to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992, date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of elements of the VMT Offset SIP.

Under this interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of a SIP submission are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15% periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15% RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15% RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15% SIP was due, as this allows States to develop the comprehensive strategy to address the 15% reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15% demonstration. Indeed, USEPA believes that only upon submittal of the broader 15% plan can a State have had the necessary opportunity to coordinate it's VMT strategy with it's 15% plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, will be due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On November 17, 1993, Indiana submitted to USEPA documentation to fulfill the first and second elements of the VMT–Offset SIP. A public hearing was held on December 14, 1993, and documentation on the public hearing was submitted to complete the SIP revision request. Indiana does not at this time anticipate the need for additional TCMs to meet the attainment demonstration requirement but will submit any necessary TCMs with the attainment demonstration SIP.

Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the

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Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act mandated SIP requirements.

The State of Indiana has demonstrated in its submittal of November 17, 1993, that the predicted growth in VMT in Lake and Porter Counties, Indiana, is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Further, Indiana has projected motor vehicle emissions to the year 2007 and, using the most current socioeconomic data, has not predicted an upturn in motor vehicle emissions. In the event that the projected socioeconomic data and associated VMT grow more rapidly than currently predicted, Indiana is required by section 182(c)(5) to track actual VMT starting with 1996 and every three years there after to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

The VMT offset submittal from Indiana dated November 17, 1993, contains the final report "TCMs to Offset Emissions from VMT Growth in Northwestern Indiana." The report used the most current socioeconomic data and the travel network model in conjunction with the MOBILE5a to estimate mobile source emissions to the attainment year of 2007.

This report also documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana may choose to take credit for TCM emission reductions as part of the post 1996 RFP requirement or to meet the attainment requirement. Not only has Indiana evaluated the effectiveness and predicted impact of a number of TCMs but actual implementation of selected TCMs has been ongoing. For example, a new inter city bus route to link the cities of Hammond, East Chicago and Gary, Indiana has been started. These three cities have operated established intra city bus routes for many years and this is the first route to link the already existing transit services for these cities.

These specific TCMs however, are not a part of the current SIP revision request and are not a required portion of this SIP revision. Thus, Indiana is not currently taking credit for the emission reductions from these TCM measures and the State is not bound to implement or continue to implement any specific TCMs. These measures, however, illustrate Indiana's work in evaluating and implementing TCMs to meet the requirements of the Act. Also, the TCMs may be used in subsequent SIP submittals as necessary to meet the post 1996 RFP requirement or the attainment requirement.

Additionally, Indiana is implementing TCMs to complement the employee commute options (ECO) program which requires a 25 percent reduction in single occupancy vehicle usage for home to work trips for employers of 100 or more persons. Activities include: Planning and promotion, new bus routes, improved transit service, and carpooling match-up services. A number of TCMs have been implemented in Lake and Porter Counties through use of the Department of Transportation's congestion mitigation and air quality funds under the Intermodal Surface Transportation Efficiency Act. These projects have included: purchasing clean fueled buses, operation of new bus service, improved transit service and ECO activities. In conclusion, Indiana is evaluating and implementing TCMs as expeditiously as possible even when the emissions projections indicate that mobile source emissions will continue to decline without additional TCMs.

Indiana submitted a 15 percent RFP SIP for northwest Indiana to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 25, 1994. The RFP SIP lacked enforceable regulations and a public hearing. The public hearing was held on March 29, 1994. Although the RFP SIP is still incomplete due to the lack of enforceable regulations. Indiana's submittal does indicate that TCM's would not be necessary to attain the 15% reduction required by 1996. The RFP SIP asserts that a 15% reduction in emissions could be achieved by 1996 through the feasible measures detailed in the SIP submittal. Under the approach contained in the submittal, the State would achieve the 15% reduction in VOCs through measures other than relying on TCMs. The majority of the reduction would be obtained from stationary source shut downs. Other measures include enhanced vehicle inspection and maintenance and reformulated gasoline. For the attainment demonstration which is due November 14, 1994, Indiana has indicated that it will include TCMs as necessary to reach attainment.

Summary of Findings

In the requested SIP revision submittal, Indiana has projected motor vehicle emissions until the statutory attainment year of 2007 using the most recent population and economic growth projections. These projections went through public hearing and comment on December 14, 1993. Using current VMT forecasts, these projections show that motor vehicle emissions are not expected to rise above the ceiling level through the year 2007.

In addition, Indiana has identified and evaluated a number of specific TCMs to reduce single occupancy vehicle usage. Several of these identified TCMs are currently being implemented. The VMT offset submittal from Indiana dated November 17, 1993, contains the final report "TCMs to Offset Emissions from VMT Growth in Northwestern Indiana." This report documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana has evaluated the effectiveness and predicted impact of a number of TCMs through actual implementation of selected TCMs, although these TCMs are not a part of the SIP revision and Indiana is not taking emission reduction credit for these TCMs.

Indiana has met the first and second requirements of the VMT offset plan. Indiana has identified and evaluated TCMs to reduce VMT. Regarding the first requirement, Indiana has demonstrated in the November 17, 1993, submittal that projected growth in VMT is not expected to result in an increase in emissions from motor vehicles and is not expected to negate the progress in emissions reductions required to meet attainment of the standard by 2007. Regarding the second element, Indiana listed in its incomplete 15% RFP submittal feasible measures intended to meet the 15% reduction by 1996 without relying on TCMs and has shown that further TCMs are not necessary to meet the second element of section 182(d)(1)(A). The third requirement is for Indiana to use TCMs as necessary to meet the attainment of the standard. This third requirement will be submitted with the attainment demonstration SIP and will be addressed in future proposed and final rules.

III. Proposed Rulemaking Action and Solicitation of Comments

Based on the submittal accompanying the State's SIP revision request, USEPA proposes to approve the SIP revision submitted by the State of Indiana as satisfying the first two of the three VMT offset plan requirements. Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received by December 2, 1994, will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 30, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–27174 Filed 11–1–94, 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 63 and 70

[ADR–FRL–5100–6]

Peer Review of the Proposed Section 112(g) Hazard Ranking; Document; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the peer reviewers.

SUMMARY: Notice is hereby given that a meeting of the peer reviewers of the proposed hazard ranking document of section 112(g) of the Clean Air Act Amendments (1990 Amendments) will be held.

DATES: November 18, 1994. The meeting will be from 8:30 a.m. to 12:00 p.m. on November 18 and is open to the public.

ADDRESSES: EPA's Office of Administration Auditorium, 79 T.W. Alexander Drive, Research Triangle Park, North Carolina.

SUPPLEMENTARY INFORMATION: The main purpose of this meeting is to allow the public to give comment to the peer reviewers on the proposed hazard ranking technical support document which describes the EPA's approach to relatively rank the 189 Hazardous Air Pollutants (HAP) listed in the 1990 Amendments. The section 112(g) rulemaking was proposed April 1, 1994 (59 FR 15504). Copies of the technical support document are available via the Technology Transfer Network [a network of electronic bulletin boards developed and operated by the EPA's Office of Air Quality Planning and Standards, phone (919) 541–5384] or by contacting the EPA office of Air and Radiation Docket [Docket # A–91–64, phone (202) 260–7548].

The designated federal official for the meeting will be Mr. Robert Kellam. Anyone wishing to make an oral presentation at the meeting should contact Dr. Jane Caldwell (U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Maildrop 13, Research Triangle Park, North Carolina 27711 (919) 541–0328 Fax: (919) 541–4028) by November 15, 1994. In general each individual or group making an oral presentation will be limited to fifteen minutes but the time allowed will be dependent on the number of speakers. Seating at the meeting will be on a first come first serve basis.

Section 112 of the 1990 Amendments establishes a control technology-based program to reduce stationary source emissions of HAP. In section 112(b) of the Clean Air Act, the 189 HAP are defined as hazardous for the purposes of regulation. Section 112(g) requires control technology reviews for new, modified and reconstructed major sources of these pollutants. Increases in hazardous air pollution emissions from existing major sources are not considered a modification if they can be offset by equal or greater decreases in HAP deemed "more hazardous". Furthermore, the HAP "with no safety threshold of exposure" may only be offset by other such "nonthreshold" pollutants. Therefore, threshold and nonthreshold pollutants must be identified and are subject to offsetting restrictions. The proposed section 112(g) rulemaking contains the EPA's guidance that identifies the relative hazard to human health of these hazardous pollutants and application of that characterization for determining allowing offsets.

Dated: October 27, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–27171; Filed 11–1–94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[PP 2E4148/P589; FRL–4907–5]

RIN 2070–AC18

Sodium Chlorate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of sodium chlorate in or on the raw agricultural commodity potato when applied as a defoliant in accordance with good agricultural practices. The Interregional Research Project No. 4 (IR-4) requested this exemption.

DATES: Comments, identified by the document control number [PP 2E4148/P589], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as

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"Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4148 to EPA on behalf of the Agricultural Experiment Station of California. Pesticide petition 2E4148 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish an exemption from the requirement of a tolerance for residues of sodium chlorate on potatoes when used as a defoliant in accordance with good agricultural practices.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include:

1. A 90-day subchronic feeding study in rats given gavage doses of 0, 10, 100, or 1,000 milligrams (mg)/kilogram(kg)/day with a no-observed-effect level (NOEL) of 100 mg/kg. Rats given doses of 1,000 mg/kg/day showed decreased hemoglobin concentration, hematocrit, and red blood cell counts.

2. A subchronic study in monkeys given drinking water containing 25, 50, 100, 200, or 400 mg/liter of sodium chlorate with no adverse clinical or hematological findings reported.

3. Mutagenicity studies including gene mutation tests in Salmonella species (Ames test) and Chinese hamster lung cells, structural chromosome aberrations test in mice (a micronucleus assay for chromosome damage), and other genotoxic effects (unscheduled DNA synthesis in HeLa cells) were all negative for mutagenic effects. A DNA repair test was positive for primary DNA damage in repair-deficient bacterial cultures of Escherichia coli.

4. A developmental toxicity study in rats given gavage doses 0, 10, 100, and 1,000 mg/kg with no maternal or developmental toxicity observed under the conditions of the study.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from dietary exposure resulting from the proposed use of sodium chlorate on potatoes.

The nature of the residues in plants is understood; sodium chlorate will be reduced to sodium chloride in the presence of organic material. The residues in plants will, therefore, be composed of sodium chlorate and sodium chloride. Magnitude of residue studies report no detectable residues of sodium chlorate on potatoes from the proposed use pattern. There is also no reasonable expectation of secondary residues in meat, milk, poultry, or eggs from the proposed use.

No enforcement actions based on the level of residues in food are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to the exemption from the requirement of a tolerance.

Based on the information and data considered, the Agency concludes that a tolerance is not needed to protect the public health. Therefore, it is proposed that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4148/P589]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"), (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 17, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1020 [Amended]

2. By amending § 180.1020 *Sodium chlorate; exemption from the requirement of a tolerance* by adding and alphabetically inserting the commodity "Potatoes" to the list therein.

[FR Doc. 94-26795 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4F4387/P592; FRL-4915-7]

RIN 2070-AC18

Pasteuria Penetrans; Proposed Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes establishing an exemption from the requirement of a tolerance for residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables, except roots and tubers, in greenhouses. Walt Disney World Co. requested this exemption.

DATES: Comments, identified by the document control number, [PP 4F4387/P592], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Acting Product Manager (PM 21), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA received from Walt Disney World Co., P.O. Box 10000, Lake Buena Vista, FL 32830, pesticide petition (PP) 4F4387 on July 14, 1994, proposing to amend 40 CFR part 180 by establishing a regulation under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to exempt from the requirement of a tolerance the residues of the biological pesticide *Pasteuria penetrans* in or on all raw agricultural commodities when used as a nematicide in producing fruits and vegetables (other than vegetables whose roots or tubers are considered to be food items) in greenhouses at The Land in EPCOT Center at Walt Disney World. This petition is not associated with an application for pesticide registration. The establishment of this tolerance exemption would not relieve manufacturers, distributors, or sellers of this pesticide of any obligation they may have under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.

Pasteuria penetrans is a naturally occurring soil microbe that is a parasite of species of the nematode genus *Meloidogyne*. *Pasteuria penetrans* reproduces by means of endospores which remain dormant in the soil until contacted by a migrating juvenile nematode. The spore attaches itself to the nematode and is carried by the nematode into a plant root. The endospore germinates and invades the body of the nematode where it eventually produces new endospores that are released into the soil following the death of the nematode and decomposition of root tissue. The infected nematodes do not produce eggs and therefore do not reproduce.

The information submitted in support of this petition and all other relevant material have been evaluated. Literature citations regarding the nature of this organism were considered adequate to support an exemption from the requirement of a tolerance for the limited use of this biological pesticide. Additionally, since *Pasteuria penetrans* can only be grown in association with the host nematode, it is not possible to conduct standard toxicological tests with this organism.

Pasteuria penetrans is not known to be pathogenic, infective, or toxic to humans. The specificity of the organism as a parasite only on nematodes of the genus *Meloidogyne* would make it extremely unlikely to infect any other unrelated organism. *Pasteuria penetrans* is a common inhabitant of soils in areas infested with nematodes, including the area of Florida where the organism will be used. The microorganism will only be applied to the soil in greenhouses, and use in this manner would result in its presence only in the soil and roots of plants grown in the greenhouses. The proposed exemption excludes plant roots which will be used for food purposes since the nematode and the associated parasite will be contained in the root portion of such plants. Since there are no data available regarding any possible effects from the consumption of elevated levels of either nematodes or their parasites, roots and tubers which may contain these organisms have been excluded from this exemption from tolerance requirements. Above-ground parts of plants harvested from treated soil would not be expected to contain levels of *Pasteuria penetrans* above that normally found in crops harvested under natural conditions and consumed on a daily basis. The information submitted is adequate to show that there are no forseeable human or domestic health hazards likely to arise from the use of the product as a nematicide in connection with the production of fruits and vegetables in greenhouses.

Although the submitted petition for an exemption from tolerance requirements for *Pasteuria penetrans* limited the use of the organism to greenhouses at The Land in EPCOT Center at Walt Disney World, the Agency believes that this limitation is overly restrictive. Based on the lack of any known hazards from the use of this organism in the manner described, the Agency has elected not to impose a geographic restriction for the use of this biological nematicide. *Pasteuria penetrans* is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is proposed as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4F4387/P592]. All

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written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Steven L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1135, to read as follows:

§ 180.1135 Pasteuria penetrans; exemption from the requirement of a tolerance.

The biological nematicide *Pasteuria penetrans* is exempted from the requirement of a tolerance in or on all raw agricultural commodities, except roots and tubers, when used as a nematicide in the production of fruits and vegetables in greenhouses.

[FR Doc. 94-26800 Filed 11-1-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300364; FRL-4912-7]

RIN 2070-AC18

Acrylic Acid-Stearyl Methacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. B. F. Goodrich Co. petitioned for this proposed regulation.

DATES: Comments, identified by the document control number [OPP-300364], must be received on or before December 2, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: The B. F. Goodrich Co., 3925 Embassy Parkway, Akron, OH 44313-1799, submitted pesticide petition (PP) 4E4298 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6) when used as an inert ingredient (emulsifier, suspending agent, or rheology modifier) in pesticide formulations applied to growing crops, or to raw agricultural commodities after harvest, or to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellents in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Subsequent to the publication of the proposal of B. F. Goodrich's request on February 25, 1994 (59 FR 9165), the Agency received a comment from the requestor (B. F. Goodrich) objecting to the proposed rule's requirement of a 1,250,000 minimum number-average molecular weight for the copolymer, stating that it was inconsistent with the October 28, 1992 final rule and would "* * * place an unnecessary burden on both Industry and the Agency to list the same copolymer every time there is a desire to use a high molecular weight polymer not meeting a 1,250,000 requirement." The referenced final rule (57 FR 48736) established an exemption from the requirement of a tolerance for residues of acrylic acid-stearyl methacrylate copolymer under 40 CFR 180.1001(d), for use on growing crops, without containing a molecular weight limitation. The commentor stated that it was not their intention to limit the tolerance exemption for acrylic acid-stearyl methacrylate copolymer to a minimum number average molecular weight of 1,250,000 in the proposed rule and sought to eliminate the molecular weight limitation.

The Agency agrees that an apparent inconsistency exists. The basis for the February 25, 1994, proposed rule was conformance to the criteria described in 40 CFR 723.250, which requires a reference to a minimum molecular weight. The previously established tolerance exemption under 40 CFR 180.1001(d) also relied on the fact that acrylic acid-stearyl methacrylate copolymer conformed to 40 CFR 723.250; however, a minimum number-average molecular weight was inadvertently omitted from that rule.

Additional information was requested to be submitted by the petitioner to support the use of a new minimum-number average molecular weight for acrylic acid stearyl methacrylate copolymer which would still conform to 40 CFR 723.250. The requested information was provided, and the Agency is hereby proposing that the exemption from the requirement of a tolerance for acrylic acid-stearyl methacrylate copolymer specify the minimum number-average molecular weight as 2,500. EPA is deleting the entry for this chemical under 40 CFR 180.1001(d) because the requested expansion to section 180.1001(c) incorporates uses on growing crops as well as raw agricultural commodities.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for acrylic acid-stearyl methacrylate copolymer will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylic acid-stearyl methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number-average molecular weight of the acrylic acid-stearyl methacrylate copolymer is 2,500. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Acrylic acid-stearyl methacrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Acrylic acid-stearyl methacrylate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Acrylic acid-stearyl methacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Acrylic acid-stearyl methacrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Acrylic acid-stearyl methacrylate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Acrylic acid-stearyl methacrylate copolymer is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Acrylic acid-stearyl methacrylate copolymer does not contain a reactive functional group that is intended, or reasonably anticipated, to undergo further reaction.

9. Acrylic acid-stearyl methacrylate copolymer is not designed, or reasonably anticipated, to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300364]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environments Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

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Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the inert ingredient, and paragraph (d) is amended in the table therein by removing the entry for acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number average molecular weight 2,500.	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	* * *	* * *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Acrylic acid-stearyl methacrylate copolymer (CAS Reg. No. 27756-15-6), minimum number average molecular weight 2,500.	.....	Emulsifier, suspending agent, or rheology modifier.
* * *	* * *	* * *

[FR Doc. 94-26809 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50611; FRL-4582-2]

RIN 2070-AB27

Dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole, which is the subject of premanufacture notice (PMN) P–91–1324. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA on or before December 2, 1994.

ADDRESSES: All comments must be sent in triplicate to: OPPT TSCA Document Receipt Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are claimed as confidential business information (CBI) must be clearly marked CBI. If CBI is claimed, three additional copies of the comments without the CBI must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection in the TSCA Nonconfidential Information Center (NCIC) located in Rm. NE–B607. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50611. Unit VI. of this preamble contains additional information on submitting comments containing information claimed as CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the substance dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole for the significant new uses described herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR would comply with the same notice

requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. Regulatory provisions covering user fees applicable to significant new use notices are codified at 40 CFR part 700 under the authority of TSCA section 26(b). Interested persons may refer to these sections for further information.

III. Background

EPA is proposing to establish significant new use and recordkeeping requirements for the following chemical name dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole. The proposed SNUR designates as significant new uses:

1. Exposure to the PMN substance without ocular protection (chemical goggles or equivalent eye protection).
2. Any predictable or purposeful release of the PMN substance to surface water above 500 ppb (parts per billion).

On August 19, 1991, EPA received a PMN (P–91–1324) for dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole. EPA had concerns that the substance may be a severe eye irritant based on test data available on other aliphatic amines and oxazoles. Also, based on that data, irritation to the exposed eye is exacerbated by irrigation. In a letter to the Company dated December 6, 1991, EPA predicted that releases of spent metalworking fluids containing the PMN substance could result in surface water concentrations as high as 16 ppm (parts per million). Assuming rapid hydrolysis of the PMN substance, the resulting surface water concentration is expected to significantly exceed the Agency's level of concern for the hydrolysis product.

To mitigate the Agency's concern regarding aquatic toxicity, the company was required to perform a 96–h bioassay in algae (40 CFR 797.1050), a 48–h LC50 test in daphnids (40 CFR 797.1300), and a 96–h LC50 test in fish (40 CFR 797.1400). Based on the results of this information, the Agency would reassess its surface water concentration estimates for the PMN substance and its hydrolysis products. The letter also recommended that each worker exposed to the PMN substance be required to wear adequate ocular protection once they were allowed to manufacture or import.

EPA has concerns for environmental effects of the PMN substance based on quantitative structure activity relationships ("QSARs") derived from test data on analogous aliphatic amines and oxazoles. The following ecotoxicity values for the PMN substance were predicted: 307 mg/L for fish 96–h LC50, 19 mg/L for daphnid 48–h LC50, and 21 mg/L for algal 96–h EC50, and algal chronic value (ChV) = 3.4 mg/L, with a concentration of concern of 0.200 mg/L.

The Company suspended the PMN review period and conducted the 96–h bioassay in algae, 48–h LC50 test in *Daphnia*, and 96–h LC50 test in fish. The data was completed and submitted to the Agency for validation and review. The results of the studies were acceptable; however, suggestions from the Agency in performing the studies were not followed.

For the aquatic toxicity testing, the Agency recommended that the PMN substance be tested two ways: The PMN substance added directly to the exposure vessels and organisms added within 10 minutes, and the PMN substance tested completely hydrolyzed.

The Company tested the PMN substance two ways, but they did not test by direct dilution. Direct dilution is adding the PMN substance directly to exposure vessels without the preparation of a stock solution. They prepared an aqueous stock solution which they added to the exposure vessels. Preparing an aqueous stock solution resulted in some unknown amount of hydrolysis, thus reducing the difference between the two recommended tests, i.e. unhydrolyzed PMN versus completely hydrolyzed PMN substance. The Agency accepted the test data, however, because (1) the unhydrolyzed PMN substance was predicted to be less toxic than the hydrolysis products of the PMN substance and (2) the hydrolysis $t_{1/2}$ (half-life) of the PMN substance appeared to be much shorter than predicted during the initial review. The results from the first type, i.e., case (1), of toxicity study were as follows:

Fish 96–h LC50	46.0 mg/L
Daphnid 48–h LC50	34.0
Green algal 96–h EC50	1.33
Fish chronic value (ChV)	5.0
Daphnid ChV	3.0
Algal ChV	1.0

The fish and daphnid ChVs were predicted assuming an acute to chronic ratio (ACR) = 10.0. In reviewing the studies where complete hydrolysis had taken place, i.e., case (2), the results were as follows:

Fish 96–h LC50	200.0 mg/L
Daphnid 48–h LC50	100.0
Green algal 96–h EC50	5.8
Fish ChV	20.0
Daphnid ChV	10.0
Algal ChV	4.6
Assessment factor (AsF)	10.0
Concentration of concern (COC)	0.500 mg/L (ppm)

The fish and daphnid acute toxicity values were predicted by calculating the difference between the partially and completely hydrolyzed chemical using test data for green algal 96–h EC50 values, i.e., a factor of 4.0. The fish and daphnid ChVs were predicted assuming an ACR = 10.0. No other additional testing was recommended by the Agency.

The review period inadvertently expired prior to EPA making a final determination on the PMN substance. The Company stated that they did not expect to commence manufacturing the PMN substance any time in the near future, but did not withdraw the PMN from review.

The only releases which may exceed the concern concentration would occur during use. It was predicted that 99 percent of the PMN substance would undergo hydrolysis; however, negligible removal of the hydrolysis products was expected during wastewater treatment. The surface water concentration of hydrolysis products resulting from releases from large metalworking shops is the only situation in which EPA expects the concern concentration would be exceeded.

Based on the completed review of toxicity data on the PMN chemical submitted to the Agency and the use scenario described in the PMN application, releases to surface water exceeding 500 ppb would be toxic to aquatic organisms. Therefore, the issuance of a Non-5(e) Notice and

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Comment SNUR requiring the use of ocular protection for workers who will be exposed to the PMN substance and any releases of the PMN substance to surface water resulting in surface water concentrations above 500 ppb would be considered a significant new use.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the final rule. If uses which commence between that date and the effective date of the final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses identified in this SNUR after the proposed date of the final rule will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50611).

VI. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50611). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by the rule could be small businesses. However, EPA expects to receive few SNUNs for these substances. Therefore, EPA believes that the number of small businesses affected by the rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070-0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: October 25, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1.The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5540 to subpart E to read as follows:

§ 721.5540 Dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance dihydro-7a-methyl-1*H*,3*H*,5*H*-oxazolo[3,4-c]oxazole is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in 40 CFR § 721.63(a)(2)(iii) (data indicate that irritation is exacerbated by irrigation), (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 500 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The recordkeeping requirements specified in § 721.125(a) through (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

[FR Doc. 94–27102 Filed 11–1–94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA21

Natural Resource Damage Assessments: Type A Procedure for Great Lakes Environments

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1994, the Department of the Interior issued a notice of proposed rulemaking (59 FR 40319) to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The August 8, 1994 proposed rule describes a procedure for simplified assessments for relatively minor discharges or releases in Great Lakes environments. The Department is extending the period for comment on the proposed rule and soliciting comment on an additional aspect of the type A procedure.

DATES: Comments will be accepted through February 6, 1995.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, Attn: NRDA Rule—GLE, Room 2340, Department of the Interior, 1849 C Street, NW, Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208–3301, or SSPECHT@IOS.DOLGOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures that Federal, State, and Tribal natural resource trustees may use to obtain compensation from liable parties for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific procedures for detailed assessments in other cases.

On August 8, 1994, the Department of the Interior published a proposed rule to amend the regulations to include an additional type A procedure for assessing natural resource damages in Great Lakes environments. The proposed procedure incorporates a computer model called the Natural Resource Damage Assessment Model for Great Lakes Environments Version 1.31 (NRDAM/GLE).

The comment period on the August 8, 1994, proposed rule was originally set to close on November 7, 1994. The Department has received numerous requests for additional time to comment on the proposed rule. The requesters have emphasized the large volume of technical documentation accompanying the NRDAM/GLE, all of which is subject to public review and comment. Some requesters are assembling multidisciplinary teams to assist in the review of the model and associated databases. The Department appreciates the level of technical review that is underway and is therefore extending the comment period by 90 days.

The Department also solicits comment on an additional aspect of the proposed type A procedure for Great Lakes environments. The proposed NRDAM/GLE is supported by a geographic information system (GIS) that supplies geographically distributed information to the submodels. The submodels divide the Great Lakes into a series of rectangular grids. The proposed NRDAM/GLE assigns a habitat type to each cell within the grids. Under the August 8, 1994 proposed rule, trustee officials would not be allowed to modify the habitat designations in the final version of the model if they wished to obtain a rebuttable presumption for their assessments. The Department specifically requested commenters to review the habitat designations and provide information about possible revisions that should be made in the final version of the model. 59 FR 40330.

The Department remains committed to ensuring that the final version of the NRDAM/GLE reflects the most accurate habitat information available. However, the Department is now soliciting comment on whether to revise the rule to allow trustee officials to modify the habitat designations in the final version of the NRDAM/GLE and still obtain a rebuttable presumption. Allowing trustee officials to modify the habitat designations might enable fine-tuning of the model to better reflect reality. On the other hand, type A procedures are designed to simplify assessments, reduce fieldwork, and narrow the potential areas of dispute. Providing an option to modify the habitat designations could undermine these goals. Therefore, the Department solicits comment on whether the final rule should allow trustee officials to modify the habitat designations and, if so, under what conditions.

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Dated: October 26, 1994.

Theresa Trujeque,

Acting Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 94–27225 Filed 11–1–94; 8:45 am]

BILLING CODE 4310–RG–P–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06; Docket No. 94–21]

Financial Responsibility Requirements for Nonperformance of Transportation; Inquiry Into Alternative Forms of Financial Responsibility for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Clarification.

SUMMARY: The language of the Notice of Inquiry published in this matter is revised to clarify that we are seeking comment on accepting, as evidence of financial responsibility, liens, mortgages or other security instruments.

DATES: Comments due on or before November 28, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") published a Notice of Inquiry into alternative forms of financial responsibility for nonperformance of transportation in the October 14, 1994 **Federal Register** (59 FR 52133). Subsequent review after publication disclosed that the Notice of Inquiry failed to include language to make clear that we are seeking comment on accepting, as evidence of financial responsibility, liens, mortgages or other security instruments. Accordingly, the Notice is being revised in the following respects:

1. The second sentence of Part B ("Reinforced Self-Insurance") is revised to read:

The Commission is concerned that its present self-insurance standards may be inadequate, but it will consider an approach whereby it would restore its former ((net worth = 100% UPR) + (working capital = 100% UPR)) standard,[17] but require prospective self-insurers to provide alternative coverage for a percentage (*e.g.*, 50% or 25%) of their uncovered UPR, through either a traditional guaranty, surety, escrow agreement, lien or mortgage or other security instrument, or through participation in a coverage association along the above-described lines.

2. The last sentence of Part C ("Coverage Requirements") is revised to read as follows:

We also solicit comments on liens or mortgages or any other form of security or proposal that would provide adequate coverage for the travelling public.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27087 Filed 11–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 94–102, RM–8143; FCC 94–237]

Enhanced 911 Emergency Calling

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend rules to ensure the compatibility of enhanced 911 services with private branch exchanges (PBXs), other private dispersed telephone systems, and wireless services. This action responds to a petition for rulemaking (RM–8143) to amend the rules to require compatibility of PBXs with enhanced 911 emergency calling systems, a petition for reconsideration filed in the Commission's proceeding on personal communications services, and issues raised in an Emergency Access Position Paper filed recently with the Commission.

DATES: Comments must be received on or before January 9, 1995, reply comments must be received on or before February 8, 1995.

ADDRESSES: Office of the Secretary, Federal Communications Commissions, 1919 M Street, NW., Washington, DC 20554, with copy to Suzanne Hutchings, Mail Stop Code 1600B2, FCC, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Attorney, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1802; or John Reed, Engineer, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This summarizes the NPRM in CC Docket No. 94–102 and RM–8143 (FCC 94–237) adopted September 19, 1994 and released October 19, 1994, which bears the title "Revision of the Commission's rules to ensure compatibility with enhanced 911 emergency calling systems."

The NPRM and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC. Copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, phone (202) 857–3800. The NPRM will be published in the FCC Record.

Summary of NPRM

1. Background

A petition for rulemaking was filed by Adcomm Engineering Co. (Adcomm), to amend part 68 of the rules to require interoperability between PBXs and enhanced 911 emergency calling systems. See FCC Report No. 1922 (RM–8143) released December 29, 1992. The Texas Advisory Commission on State Emergency Communications (TX–ACSEC) under the Office of the Attorney General for the state of Texas filed a petition for reconsideration in the Commission's proceeding on personal communications services (PCS) (GEN Dkt. 90–314) requesting Commission action to ensure the compatibility of PCS with enhanced 911 emergency calling systems. This NPRM also addresses an Emergency Access Position Paper, filed by the Associated Public Safety Communications Officials-International, Inc. (APCO), the National Emergency Number Association (NENA), the National Association of State Nine One One Administrators (NASNA), and the Personal Communications Industry Association (PCIA), which presents the consensus recommendations of these organizations to assist in developing appropriate standards for emergency access from wireless service systems to 9–1–1 systems. We seek comment on proposals for insuring the compatibility of PBXs and other dispersed private telephone systems with enhanced 911 emergency services. Second, we propose to adopt rules that would require wireless services to include features that will make enhanced 911 services available to mobile radio callers.

2. Dispersed Private Telephone Systems and Enhanced 911 Systems

The NPRM proposes to require that PBX and similar equipment: (a) have the capability of automatically providing a caller's number and location to the public safety answering points (PSAPs) where the calls are received; (b) permit callers to obtain access to a PSAP by dialing 911, *i.e.*, without dialing "9" or another access code to obtain an outside dialtone; and (c) have the capability to alert, and provide calling information to, an attendant at the location served by a dispersed private telephone system so that an attendant may assist in responding to an emergency. These requirements would apply to PBX equipment manufactured or imported one year after rules ultimately adopted in this proceeding or installed eighteen months after that date. Under the proposed rules, PBX equipment manufactured or imported during the first year must be labeled with emergency dialing instructions both on the device and on the outside of the packaging in which it is marketed.

3. Wireless Services and Enhanced 911 Systems

We propose to require commercial mobile radio services (CMRS) that provide, or are capable of providing, real time voice services to include features that will make enhanced 911 services available to mobile radio callers. These features include Station Number Identification (SNI), Automatic Location Information (ALI), and Selecting Routing (SR).

We propose that: (a) Customers of mobile radio services be able to obtain access to emergency services by dialing 911 without having to dial additional digits; (b) such callers be able to place 911 calls without meeting any mobile radio service user validation requirements; and (c) mobile radio service calls to 911 be placed at the beginning of any queue of calls awaiting availability of radio or network resources. The NPRM proposes to require that mobile radio services furnish information necessary for emergency service providers to locate a 911 caller who is using a mobile radio unit, and that mobile radio services permit PSAPs to call back immediately a mobile unit from which a 911 call has been received. The NPRM seeks comment on a proposal that mobile radio equipment that does not conform to the performance criteria proposed in the NPRM must be labelled with a warning that access to 911 is limited and a description that specifies those limitations. Further, the NPRM seeks comment on whether mobile radio services should provide PSAPs with common channel signalling information elements, including subscriber's name and routing information, to direct the call to the proper PSAP. In addition, the NPRM requests comment on ensuring access to 911 service by text telephone devices (TTY) that use wireless services. The NPRM seeks comment on when these requirements should be imposed, and seeks analysis of the technical and cost considerations involved.

4. Additional Considerations

The NPRM seeks comment on whether or what privacy considerations should apply to the provision of enhanced 911 services, and seeks analysis of any additional issues that should be considered to ensure that the benefits of 911 services are not diminished by new developments.

Initial Regulatory Flexibility Analysis

Reasons for Action

This Notice of Proposed Rule Making responds to the petitions submitted by TX–ACSEC and Adcomm to address issues raised by the provision of enhanced 911 services through commercial mobile radio systems, private branch exchanges, and other dispersed private telephone system equipment. Telephone stations for wireline stations served by PBX or similar equipment and for wireless services are not adequately identifying caller location to permit a timely response by emergency services personnel.

Objectives

The objective of this proposal is to ensure access to enhanced 911 emergency systems on the public switched telephone network for callers served by private branch exchange other dispersed private telephone systems, and for callers served by certain mobile services.

Legal Basis

The proposed action is authorized under sections 47 U.S.C. 151, 154, 155, 201–05, 208, 215, 218, 226, 227, 302, 303, 313, 314, 332, 403, 404, 410, 522.

Reporting, Record Keeping and Other Compliance Requirements

Private branch exchanges and other dispersed private telephone systems will be required to maintain records for calling number identification, caller location identification, and a call-back number for each of their calling stations. Commercial mobile radio services will be required to identify the location of mobile transmitters and provide call-back numbers for them. Equipment used for private branch exchanges and other dispersed private systems and commercial mobile radio services will have to be capable of providing this information to the local telephone exchanges to which they are connected. Local telephone exchanges will incur costs storing and relaying this information to enhanced 911 public service answering points.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The proposed changes in the regulations would affect a number of entities both large and small. An estimate of such parties affected is approximately 65 million new wireless services users and approximately 4 million PBX equipment owners.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives

With respect to PBX equipment, the NPRM asks whether the proposed rules must be applied where the equipment serves a physically small location, such as a single story building, or a small number of closely situated telephone stations.

Ex Parte Presentations

This is a nonrestricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Filing Comments

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 9, 1995, and reply comments on or before February 8, 1995. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 94–012" on each document. If interested parties want each Commissioner to receive a personal copy of comments, interested parties must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and

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reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC. Copies of comments and reply comments may be purchased from the Commission's duplicating contractor: ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 68

Communications equipment, Labelling requirements, Telephone.

Proposed Rules

Part 68 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Sections 1, 4, 5, 201–205, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–205, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.1 is revised to read as follows:

§ 68.1 Purpose.

The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto, for the correct operation of terminal equipment with public emergency access networks, and for the compatibility of hearing aids and telephones.

3. Section 68.3 is proposed to be amended by adding the following definitions in alphabetical order to read as follows:

§ 68.3 Definitions.

* * * * *

Dispersed private telephone system: A PBX or similar multi-line telephone system whose connection to the telephone network carries emergency calls from more than one emergency response location.

* * * * *

Emergency response location: A specific site, corresponding to a calling station in a dispersed private telephone system.

* * * * *

Enhanced 9–1–1: A telephone network feature that automatically provides emergency response agencies with telephone directory number and location information on calls placed to the national emergency number, 9–1–1.

Enhanced 9–1–1 compatibility: The ability to relay a number associated with each served emergency response location.

Enhanced 9–1–1 emergency services trunk: Any 2-wire or 4-wire telephone connection that provide access to Enhanced 9–1–1 service.

* * * * *

Restriction: The blocking of specific dial codes and sequences during call initiation.

* * * * *

4. Section 68.106 is proposed to be amended by adding paragraph (f) to read as follows:

§ 68.106 Notification to telephone company.

* * * * *

(f) *Dispersed private telephone system trunk and station number verification for Enhanced 911 purposes.* Customers who install dispersed private telephone systems after [18 months after effective date of order adopting rules in this proceeding] shall provide the telephone company with:

(1) The number of trunk connections desired;

(2) The number of stations that may originate emergency calls;

(3) The number of, and identification of emergency response locations that will require number identification; and

(4) The FCC Registration Number of the equipment being used. The telephone company will provide 10-digit numbers for the identified emergency response locations.

5. Section 68.228 is proposed to be added to read as follows:

§ 68.228 Enhanced 911 trunk and station number verification.

(a) *Verification requirements.*

(1) *General.* The proper transmission of station number identification (SNI) for the station dialing the emergency number 911 shall be verified as part of initial installation and subsequent changes in emergency response location data.

(2) *Station number identification.* The 10-digit station number identification transmitted for 911 calls shall be verified to:

(i) Be in the group of station numbers assigned to the trunk by the telephone company and, (ii) Be assigned to the specific emergency response location of the corresponding calling station.

(b) *Verification personnel.* Work associated with the verification of Enhanced 911 emergency services trunk operation shall be performed under the supervision and control of a supervisor as defined in paragraph (c) of this section. The supervisor and installer may be the same person.

(c) *Supervision.* Work by installation personnel shall be performed under the responsible supervision and control of a person who:

(1) Has at least 6 months of on-the-job experience in the installation of telephone terminal equipment;

(2) Has been trained in the operation of Enhanced 911 emergency services trunks and in the performance of operations needed to verify proper identification procedures and results;

(3) Or, regardless of compliance with paragraphs (c)(1) and (c)(2) of this section, is a licensed professional engineer in the jurisdiction in which the installation is performed.

(d) *Verification procedure.* The installation supervisor shall provide written notification to the telephone company that the required verification tests have been performed, including the following information:

(1) The responsible supervisor's full name, address and business telephone number; and

(2) The date when Enhanced 911 trunks will go into service, the date when the verification tests were completed, and a list of trunk identification numbers and station numbers verified.

(e) *Verification of changes.* Addition or deletion of Enhanced 911 data base entries will be cause for verification of operation.

§ 68.308 [Amended]

6. Section 68.308 is proposed to be amended by revising in the table following paragraph (b)(5) the heading "Public Switched Network Ports (2-Wire)" to read "Public Switched Network Ports (2-Wire) and Enhanced 911 Trunks".

7. Section 68.320 is proposed to be added to read as follows:

§ 68.320 Enhanced 911 compatibility: technical standards.

(a) *Trunk interface.* Enhanced 911 trunks are analog two-wire or four-wire channels supporting either E&M type 1 or E&M type 3 signaling.

(b) *Station number identification signaling.* The station number identification (SNI) code assigned to the emergency response location of a 911 caller will be sent from the registered equipment to the telephone company 911 system using multifrequency (MF) tone pulses, prompted by a solid off-hook indication from the telephone network.

(c) *Operability.* It shall be possible to access the Enhanced 911 trunk in emergencies whether or not system features are used that block access to normal dial trunks (*i.e.*, restriction of all calls beginning with "9"). Access shall be provided whether users dial 911 or additional digits preceding 911.

(d) *Equipment levels.* The minimum number of Enhanced 911 emergency services trunks connecting a private switch to the telephone network shall be one (1). Additional trunks may be used at the user's option. Additional trunks shall be added to maintain an availability of P=0.01 based on the number of users served.

(e) *Attendant notification.* Equipment manufactured or imported after [one year after the effective date of the order adopting rules in this proceeding], or installed after [18 months after the effective date of the order adopting rules in this proceeding], must be capable of notifying an attendant or on-premises personnel, if present, and of providing station number identification and emergency response location to the attendant when a 911 call is dialed.

(f) *Information requirements.* Equipment manufactured or imported after [one year after the effective date of the order adopting rules in this proceeding], or installed after [18 months after the effective date of the order adopting rules in this proceeding], must have the capability to provide the caller's station number identification, caller location identification, and call-back number to PSAP personnel.

(g) *Labeling requirements.* PBX and dispersed telephone systems manufactured or imported one year from [the effective date of the final rule] shall comply with this section. Equipment of earlier manufacture shall comply with this section if installed [18 months from the effective date of the section] or any time thereafter. Such equipment must be reregistered by the manufacturer or other person responsible for equipment compliance with part 68, if already registered but not compliant with § 68.320. PBX equipment and associated station equipment that is domestically manufactured or imported on or after [30 days, but not later than one year, from the effective date of the order adopting rules in this proceeding] that does not comply with § 68.320 must be labelled by the manufacturer with a warning describing its limitations for those attempting to use it to call enhanced 911. The warning must appear on the devices and on the outside of the packaging in which it is marketed. The domestic manufacture or importation of PBX equipment that does not comply with § 68.320 must cease as of one year from [the effective date of the final rule].

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27134 Filed 11–1–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–37; Notice 1]

RIN 2127–AF 22

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Federal motor vehicle standard on lighting to substitute SAE J576 JUL91 for the currently incorporated J576c as the referenced standard on plastics materials, to substitute ASTM D 1003–92 for ASTM D 1003–61 in the test procedures, to allow alternative processing techniques, sample sizes and thickness tolerances to those presently specified. Alternatively, the notice proposes amendments to the existing requirements that would accomplish the same ends. This action is taken pursuant to a grant of a petition for rulemaking submitted by Heraeus DSET Laboratories, Inc.

DATES: The due date for comments is January 3, 1995. The amendments would be effective 180 days after publication of the final rule in the **Federal Register**, or November 1, 1995, whichever is later.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submissions containing information for which confidential treatment is requested should be submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202–366–6987).

SUPPLEMENTARY INFORMATION: Heraeus DSET Laboratories, Inc. ("DSET"), of Phoenix, Arizona, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Specifically, DSET asked that paragraph S5.1.2 be amended "to update the weathering and heat testing requirements of plastic material used for optical parts such as lenses and reflectors." Currently, these materials are required to conform to SAE Recommended Practice J576c, May 1970. DSET wants NHTSA "to allow alternative processing techniques besides injection molding to produce test specimens, to allow test specimen sizes other than a 3 inch diameter disc and to change the specimen thickness tolerances from ±0.005 inch to ±.010 inch." Those requirements for injection molding and for the diameter and thickness of the test specimen are set forth in J576c, May 1970.

The petition set forth five reasons in support. The first is that the requirement in Standard No. 108 (SAE J576c) that test samples be injection molded is "technology limiting" and other methods of test specimen fabrication exist and should be allowed. SAE J576 JUL91 allows alternative processing techniques to produce test specimens.

Secondly, SAE J576 JUL91 contains no sample shape or diameter requirement, in contrast to Standard No. 108's present restriction to a round sample of 3-inch diameter. DSET submits that there is no technical reason to continue the limit for the test specimen.

Third, DSET stated that no technical reason exists to limit the test specimen thickness tolerance to 0.005 inch (or 0.13 mm as NHTSA expresses it). Accordingly, the petitioner recommends ±0.010 inch (0.25 mm), "since this appears to be a more reasonable tolerance that almost all plastic lens materials manufacturers can meet." The petitioner said that many manufacturers currently have trouble meeting the ±0.005 inch tolerance.

Fourth, DSET believes that States impose a burden on manufacturers to test according to Standard No. 108. Although 49 U.S.C. Chapter 301 and Standard No. 108 do not require a manufacturer to conduct testing in producing and certifying a vehicle or

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item of equipment (the requirement is that the product meet all applicable Federal motor vehicle safety standards when tested according to the procedures specified). DSET says that many State laws require proof of testing according to Standard No. 108. This means that even if there are alternative processing techniques for plastics that have been developed as a result of advancing technology, the manufacturer is obliged to follow the test procedures of Standard No. 108.

Finally, DSET said that SAE J576c has been out of print for many years. Its unavailability has resulted in manufacturers routinely submitting "test specimens that do not meet the ±0.005 inch thickness tolerance or the 3 (inch) diameter size requirement."

The agency has reviewed DSET's petition and has found that there is a reasonable possibility that the amendments asked for would occur at the conclusion of a rulemaking proceeding. Accordingly, the agency has granted DSET's petition. The requested changes would appear to simplify the test requirements of Standard No. 108 without degrading safety. These changes would also allow more flexibility in the preparation of test specimens.

However, NHTSA is concerned that simple substitution of the 1991 version of SAE J576 for the 1970 one might result in an unintended burden upon industry, as the updated version contains some requirements that are different from and in addition to those of the 1970 version. In addition, the ASTM D–1003 requirements currently referenced in S5.1.2 of Standard No. 108 are those of 1961. NHTSA is proposing to amend S5.1.2 to replace the reference to the 1961 version of ASTM D–1003 with a 1992 version and seeks comment on this change. The differences between the two versions include subtle changes to the text in virtually every section and the agency is unable to judge whether these changes would result in an increased burden to industry. Because of this uncertainty, the agency is proposing as an alternative a means of implementing DSET's request that does not include a reference to the revised standards. NHTSA welcomes informed comment on this issue. As a consequence of its age, a 33-year-old ASTM specification may be technologically limiting, as well as difficult to obtain. As noted above, strict adherence to older procedures which States may require means that manufacturers could not avail themselves of newer, less restrictive processing techniques if such exist.

As noted, NHTSA is proposing alternative amendments of S5.1.2 as a means of implementing its grant of DSET's petition. The agency asks commenters for their views on each of the alternatives.

Alternative 1

This alternative would substitute SAE J576 JUL91 for SAE J576c, May 1970, and make conforming amendments in the text of S5.1.2. This alternative would also replace ASTM D–1003–61 with ASTM D–1003–92 with respect to measurement of haze (which, as proposed at 58 FR 13042, would not exceed 7 percent). A specimen thickness tolerance of ±0.25 mm (0.010 in.) would also be allowed as there is no technical reason to limit the test specimen thickness tolerance to ±0.005 in., and the value proposed by NHTSA as recommended by DSET appears to be a more reasonable tolerance for test specimens.

Two new paragraphs would be added, maintaining the performance requirements required of plastic materials by SAE J576c for the heat test, and specifying positioning of test samples during the test. These have been omitted from J576 JUL91. NHTSA believes the J576c heat test should be retained because the test is the only heat resistance requirement in Standard No. 108. The test acts to eliminate flagrantly inferior material for reflex reflectors. (Use of material with insufficient high temperature performance can result in reflectors that lose color and reflectivity.) The positioning of test samples will allow the sample to droop if its strength is adversely affected by the test.

Alternative 2

This alternative would retain the current SAE and ASTM specifications but would allow processing techniques other than injection molding to produce equivalent test specimens, test specimens other than a disc of 3-inch diameter, and a test specimen thickness tolerance of ±0.010 inch.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date

The effective date of the final rule would be 180 days after its publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that it will not review this rulemaking action under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to update testing procedures. Since it is not anticipated that the final rule will have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of plastic materials used in optical parts would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected because the price of new vehicles and vehicle equipment would not be impacted.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. § 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by revising paragraph S5.1.2, in one of the two manners proposed below, as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

Option 1

* * * * *

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576 JUL91, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.3 and 4.2 of SAE J576 JUL91 when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–92, *Haze and Luminous Transmittance of Transparent Plastic*;

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–92.

(d) The tolerance of the thickness of the test specimens specified in paragraph 3.2.2 of SAE J576 JUL91 may vary by as much as ±0.25 mm.

(e) After exposure to the heat test as specified in paragraph (f) of this section, and after cooling to room ambient temperature, a test specimen shall show no discernable change in shape and general appearance when compared with an unexposed specimen. The trichromatic coefficients of the samples shall conform to the requirements of SAE J578a, "Color Specification for Electric Signal Lighting Devices", October 1966.

(f) Two samples of each thickness of each plastic material are used in the heat test. Each sample is supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed for two hours in a circulating air oven at 79 ±3 degrees C.

Option 2

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576c, May 1970, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.4 and 4.2 of SAE J576c, when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent haze as measured by ASTM D 1003–61, *Haze and Luminous Transmittance of Transparent Plastic*;

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003–61;

(d) Samples of plastic to be tested need not be injection molded as specified in paragraph 3.3.1 of SAE J576c, nor discs of a diameter of 76 mm.; and

(e) The tolerance specified in paragraph 3.3.2 of SAE J576c shall be 0.25 mm.

Issued on October 27, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–27151 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[I.D. 102694B]

North Pacific Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of teleconference.

SUMMARY: The North Pacific Fishery Management Council (Council) will hold a teleconference on November 14, 1994. The teleconference will begin at 9 a.m., Alaska local time.

The primary subject of the conference will be possible time/area closures for

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the groundfish fisheries to protect red king crab in Bristol Bay. The Council will receive reports on groundfish and crab concentrations and decide if an emergency rule to implement an area closure is warranted. Possible adjustments to the 1995 recommended vessel incentive program rate standards for the Bering Sea/Aleutian Island "other trawl" category will also be discussed. Listening sites for the public are being arranged for Anchorage, Homer, Kodiak, Juneau, Sitka, AK, and Seattle, WA.

FOR FURTHER INFORMATION CONTACT: For information on listening sites, contact Helen Allen or David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 217–2809.

SUPPLEMENTARY INFORMATION: The listening sites for this teleconference are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27086 Filed 11–1–94; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held December 14, 1994, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 27, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–27116 Filed 11–1–94; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 707]

Expansion of Foreign-Trade Zone 158; Vicksburg/Jackson, Mississippi Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Vicksburg/Jackson Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 158, for authority to expand its general-purpose zone at sites in the Vicksburg/Jackson, Mississippi, area, within the Vicksburg/Jackson Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on August 18, 1993 (Docket 46–93, 58 FR 46628, 9/2/93) and amended on June 23, 1994;

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations would be satisfied, and that the proposal would be in the public interest provided approval is subject to a 2,000-acre activation limit;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 23rd day of October 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 94–27184 Filed 11–1–94; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A–588–035]

Cadmium From Japan, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Antidumping Finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on cadmium from Japan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger Jr. or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0651.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1994, the Department published in the Federal Register (59 FR 38956) its notice of intent to revoke the antidumping finding on cadmium from Japan (August 4, 1972).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has

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expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on cadmium from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of cadmium from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8107.10.00. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of cadmium from Japan entered, or withdrawn from warehouse, for consumption on or after August 1, 1994. Entries made during the period August 1, 1993, through July 30, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27186 Filed 11-1-94; 8:45 am]

BILLING CODE 3510-DS-P

Revocation of the Antidumping Findings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Antidumping Findings.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-4697.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1994, the Department published in the **Federal Register** (59 FR 38956) its notice of intent to revoke the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan (August 28, 1968).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke these antidumping findings on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping findings on titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan are no longer of any interest to interested parties. Accordingly, we are revoking these antidumping findings in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Findings

Imports covered by these revocations are shipments of titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 8108.10.5010. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

These revocations apply to all unliquidated entries of titanium sponge from Estonia, Armenia, Azerbaijan, Belarus, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan, entered, or withdrawn from warehouse, for consumption on or after August 1, 1994. Entries made during the period August 1, 1993 through July 30, 1994, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1994, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27187 Filed 11-1-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-355-001]

Leather Wearing Apparel From Uruguay; Revocation of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is revoking the countervailing duty order on leather wearing apparel from Uruguay because it is no longer of interest to interested parties.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1994, the Department of Commerce published in the **Federal Register** (59 FR 34410) its intent to revoke the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032; July 17, 1982). Additionally, as required by 19 CFR 355.25(d)(4)(ii), the Department served certified written notice of its intent to revoke this countervailing duty order on each party listed on its most current service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Order

Imports covered by this order are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. This product is currently classified under item numbers 4203.10.4030, 4203.10.4060, 4203.10.4085, and 4203.10.4095 of the *Harmonized Tariff Schedule* of the United States.

Determination To Revoke

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party has requested an administrative review for at least five consecutive review periods and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party as defined under § 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations, has expressed opposition to revocation. Therefore, we have concluded that the countervailing duty order covering leather wearing apparel from Uruguay is no longer of interest to interested parties, and we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

This revocation applies to all shipments of leather wearing apparel from Uruguay exported on or after January 1, 1993. Shipments of this merchandise exported during the period January 1, 1993 through December 31, 1993, will be subject to automatic assessment in accordance with 19 CFR 355.22(g)(1). Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation on the subject merchandise as of the effective date of this notice and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1994.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27062 Filed 11-1-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-357-404]

Certain Textiles Mill Products From Argentina; Notice of Proposed Amended Conversion

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Certain Textile Mill Products from Argentina: Notice of Proposed Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty order on certain textile mill products from Argentina. Interested parties are invited to comment on this proposed amended conversion.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Megan Waters or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230, telephone (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the Department issued a countervailing duty order on Certain Textile Mill Products from Argentina (C-357-404) (50 FR 9846; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced textile mill product order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on Certain Textile Mill Products from Argentina and, therefore, that the conversion should be amended.

To rectify the problems in the 1989 Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the countervailing duty order on Certain Textile Mill Products from Argentina. A new proposed amended conversion is found in the attached appendix.

Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, Central Records Unit, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

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Dated: October 18, 1994.
Susan G. Esserman,
Assistant Secretary for Import Administration.

APPENDIX: PROPOSED AMENDED HTS LIST FOR CERTAIN TEXTILE MILL PRODUCTS FROM ARGENTINA (C–357–404)

5111.1170	[1]5111.1960	5111.2090	5111.3090
5112.1120	[1]5112.1990	5112.2030	5112.3030
5250.1110	5205.1210	5205.1310	5112.1410
[2]5205.2400	5205.3100	5205.3200	5205.3300
5207.1000	5207.9000	5407.9105	5407.9205
5407.9305	5407.9405	5515.1305	5510.1310
5801.3600	6302.6000	6305.2000	6305.9000

Notes:
[1] Coverage limited to fabric, valued not over $19.84/kg.
[2] Coverage limited to yarn, not exceeding 66 nm.

[FR Doc. 94–27185 Filed 11–1–94; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration, Commerce

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between April 1, 1994, and June 30, 1994. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jason R. Field or Wendy J. Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5222/5253.

Background

The Department's regulations (19 CFR 352.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between April 1, 1994, and June 30, 1994, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in October 1994 a notice of scope rulings and anticircumvention inquiries completed between July 1, 1994, and September 30, 1994, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between April 1, 1994, and June 30, 1994

Country: People's Republic of China
A–570–504: *Petroleum Wax Candles*
A.J. Cohen—Set 155 holiday taper wax candles are within the scope of the order, and Set 154 holiday taper wax candles are outside the scope of the order. Signed 6/6/94.
Kole Imports—Certain holiday taper wax candles are outside the scope of the order. Signed 6/6/94.
Country: Brazil
A–351–603: *Brass Sheet and Strip*
Eluma International Inc.—Certain brass circles are outside the scope of the order. Signed 6/6/94.
Country: Japan
A–588–405: *Cellular Mobile Telephones and Subassemblies*
Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Electronic Models MT109 and MT119 Portable Cellular Telephones are outside the scope of the order. Signed 6/6/94.
Antel Communications Corporation and Tottori Sanyo Electric Co., Ltd.—Sanyo Model CMP 351 portable cellular telephone and Antel Model STR 1600 portable cellular telephone are outside the scope of the order. Signed 5/4/94.
Toyocom U.S.A. Inc.—Temperature compensated crystal oscillators (TCXOs) and High Frequency Crystal Mechanical filters (HCM filters) are outside the scope of the order. Signed 5/27/94.
A–588–823: *Professional Electric Cutting Tools*
Makita Inc., Makita, U.S.A.—Router models 3621 and 3621A are outside the scope of the order. Signed 4/12/94.
Makita Inc., Makita, U.S.A.—Planner model 1912B is outside the scope of the order. Signed 6/6/94.
Country: Germany
A–428–801: *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*
SKF—Certain textile machinery components are outside the scope of the order. Signed 6/6/94.
Country: Taiwan
A–570–808: *Lug Nuts*
Consolidated International—Certain hex size lug nuts are within the scope of the order. Signed 4/19/94.

II. Anticircumvention Rulings Completed Between April 1, 1994, and June 30, 1994

None.

III. Scope Inquiries Terminated Between April 1, 1994, and June 30, 1994

Country: People's Republic of China
A–570–504: *Petroleum Wax Candles*
E & G Company—Clarification to determine whether certain musical holiday wax candles are within the scope of the order. Terminated 4/29/94.
Country: Japan
A–588–823: *Professional Electric Cutting Tools*
Makita Inc., Makita, U.S.A.—Clarification to determine whether a bench top tile saw is within the scope of the order. Terminated 4/19/94.

IV. Anticircumvention Inquiries Terminated Between April 1, 1994, and June 30, 1994

Country: Japan

A–588–807: *Industrial Belts and Components*
BRECOFLEX Corp.—
Anticircumvention inquiry to determine whether the order is being circumvented by the processing of Japanese belting into belts in Mexico before importation into the United States. Terminated 5/6/94.

V. Pending Scope Clarification Requests as of June 30, 1994

Country: Mexico
A–201–805: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Brazil
A–351–809: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
A–351–503: *Iron Construction Castings*
Southland Marketing—Clarification to determine whether certain cast iron grates and frames are within the scope of the order.
Country: People's Republic of China
A–570–001: *Potassium Permanganate*
Aerostat Inc.—Clarification to determine whether certain plastic ignitor spheres are within the scope of the order.
A–570–504: *Candles*
Two's Company—Clarification to determine whether certain decorated pillar candles and red and gold angel taper candles are within the scope of the order.
West Coast Liquidators—Clarification to determine whether certain holiday object candles and certain holiday figurine tapers are within the scope of the order.
Star Merchandise—Clarification to determine whether certain wax-filled containers are within the scope of the order.
Scentex, Inc.—Clarification to determine whether Earth Scents brand potpourri candle is within the scope of the order.
Success Sales—Clarification to determine whether certain holiday pillar candles are within the scope of the order.
A–570–502: *Iron Construction Castings*
Jack's International—Clarification to determine whether certain cast iron area drains are within the scope of the order.
Country: Korea
A–580–809: *Circular Welded Non-Alloy Steel Pipe*
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Venezuela
A–307–805: *Circular Welded Non-Alloy Steel Pipe*
Self-initiation. Clarification to determine wither pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order. Affirmative preliminary scope ruling issued on 1/13/94.
Country: Japan
A–588–802: *3½" Microdisks*
TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.
A–5588–014: *Tuners*
Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the finding.
Fujitsu Ten Corporation of America—Clarification to determine whether certain "front end" components of car tuners are within the scope of the finding.
A–588–405: *Cellular Mobile Telephones and Subassemblies*
Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable telephones, subassemblies, and components thereof are within the scope of the order (five products).
Mitsubishi Electric Corp., Mitsubishi Electronics America, Inc., Mitsubishi Consumer Electronics America, Inc.—Clarification to determine whether model 2000 cellular mobile telephone is within the scope of the order.
TDK Corporation of America—Clarification to determine whether Duplexers, Voltage Control Oscillators, and Isolators are within the scope of the order.
JRC International—Clarification to determine whether model PTR–830 portable cellular telephone is within the scope of the order.
A–588–823: *Professional Electric Cutting Tools*
Makita Inc., Makita U.S.A.—Clarification to determine whether Wood Surfacer model LP1812C is within the scope of the order.
A–588–604: *Tapered Roller Bearings and Parts Thereof*
Koyo Seiko—Clarification to determine whether certain forgings are within the scope of the order. Affirmative preliminary ruling issued on 2/28/94.
A–588–814: *Polyethylene Terephthalate (PET) Film*
Kimoto U.S.A. Inc.—Clarification to determine whether certain Anti-Static Clear Film is within the scope of the order.
Tektronix Inc., Tektronix Asia—Clarification to determine whether overhead projection film model 4681 and model 4684 are within the scope of the order.
A–588–055: *Acrylic Sheet*
Sumitomo Chemical America, Inc.—Clarification to determine whether

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acrylic sheet with light scattering properties is within the scope of the order.

Country: Argentina

C–357–803: *Leather*

Petitioners—Clarification to determine whether upper bovine leather without hair on, not whole, prepared after tanning its within the scope of the countervailing duty order.

County: Sweden

A–401–040: *Stainless Steel Plate*

Armco, Inc., G.O. Carlson, Allegheny Ludlum Corp., and Washington Steel Corp.—Clarification to determine whether Stavax, Ramax, and 904L are within the scope of the finding.

Avesta Sheffield—Clarification to determine whether stainless steel "hot bands" are within the scope of the finding.

Country: Germany

A–428–801: *Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof*

Rotek—Clarification to determine whether certain "slewing rings" are within the scope of the order.

Kaydon—Clarification to determine whether certain "slewing rings" are within the scope of the order.

Consolidated Saw Mill International (CSMI) Inc.—Clarification to determine whether certain Cambio bearings contained in its sawmill debarker are within the scope of the order.

VI. Pending Anticircumvention Inquiry Requests as of June 30, 1994

Country: Mexico

A–201–806: *Steel Wire Rope*

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope.

VII. Correction to Scope Rulings Completed Between January 1, 1994, and March 31, 1994

Country: Japan

A–588–405: *Cellular Mobile Telephone and Subassemblies*

Sony Corporation and Sony Electronics Inc.—Model CM–H333 and subassemblies thereof are outside the scope of the order. Signed 1/28/94.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 17, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27063 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Columbia, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Columbia, South Carolina Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. the MBDC will provide service in the Columbia, South Carolina Metropolitan Area. The award number of the MBDC will be 04–10–95003–01.

DATES: The closing date for applications is December 16, 1994. Applications must be received in the Atlanta Regional Office on or before December 16, 1994. A pre-application conference will be held on November 29, 1994, at 9 a.m., at the Atlanta Regional Office.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308–3516.

FOR FURTHER INFORMATION CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from April 1, 1995 to March 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15% $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project includo audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance)

11.800 Minority Business Development Center.

Dated: October 26, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27113 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 072894C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of comment period on draft stock assessments and Potential Biological Removal (PBR) workshop reports.

SUMMARY: NMFS is extending the comment period on its stock assessments and PBR workshop report in consideration of the complexity of the issues surrounding both the stock assessments and the PBR workshop report.

DATES: Comments on the draft stock assessment reports and the report of the PBR workshop must be received by December 1, 1994.

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ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226; Fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle with the Office of Protected Resources at (301) 713–2319.

SUPPLEMENTARY INFORMATION: On August 9, 1994, NMFS published a **Federal Register** notice announcing the availability of draft stock assessment reports and PBR workshop reports (59 FR 40527). The stock assessment reports are required under the new section 117 of the Marine Mammal Protection Act Amendments of 1994 (Public Law 103–238). A summary of the stock assessment reports, specifying geographical range, regional designation, minimum abundance estimate, PBR, and estimated human-caused mortality for each stock, was followed by a designation of strategic or nonstrategic. The PBR workshop, consisting of NMFS and U.S. Fish and Wildlife Service scientists, was convened to develop an initial approach for promoting consistent national interpretation of parameters to be used in draft stock assessment reports, including the calculation of PBR.

The initial comment period for NMFS draft stock assessment and PBR workshop reports was scheduled to end on November 7, 1994. In response to concern that the public comment period was inadequate, given the scope of the issues surrounding the assessments and the workshop reports, NMFS extends the comment period and welcomes comments received by December 1, 1994. Comments must be received in the Office of Protected Resources by December 1 to be fully considered. Therefore, those submitting comments close to that date should fax their comments or call to ensure their comments arrived via mail.

Dated: October 26, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27085 Filed 11–01–94; 8:45 am]

BILLING CODE 3510–23–F

[I.D. 102694C]

North Pacific Fishery Management Council; Plan Team Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plan teams will hold a meeting on November 14–18, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Room 2079, Building 4, Seattle, WA.

The meetings will begin at 1 p.m. on November 14. The agenda includes the following:

1. Review available stock assessments and catch statistics and prepare final stock assessment documents for the 1995 groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands;
2. Review status of plan amendment analyses, and provide input as necessary; and
3. Prioritize research needs.

FOR FURTHER INFORMATION CONTACT: David Witherell or Jane DiCosimo, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27180; Filed 11–1–94; 8:45 am]

BILLING CODE 3510–23–F

[I.D. 102694A]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council has appointed an industry committee to study the issue of insurance coverage for fisheries observers, including ways to decrease costs and methods to more evenly distribute the costs of observer coverage throughout the North Pacific fishing fleet. The Committee will hold its first meeting on November 4, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA.

The meeting will begin at 9 a.m., in Room 1055 (Observer Training Room) in Building 4.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 5 days prior to the meeting date.

Dated: October 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27181 Filed 10–28–94; 1:44 pm]

BILLING CODE 3510–23–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for swing and carryforward. The limit for Categories 341/641 is being reducing to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 1935, published on January 13, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 3, 1994, you are directed to amend further the directive dated January 7, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
340/640	588,000 dozen of which not more than 319,580 dozen shall be in Categories 340–Y/640–Y [2].
341/641	302,631 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27114 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 21962, published on April 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 21, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on October 27, 1994, you are directed to amend the directive dated April 21, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	4,768,413 square meters.
313	16,299,054 square meters.
369–D [2]	182,238 kilograms.
369–S [3]	252,483 kilograms.
604	596,327 kilograms of which not more than 382,316 kilograms shall be in Category 604–A [4].
619	5,734,742 square meters.
Sublevels in Group II	
334/634	524,881 dozen.
335/635/835	417,213 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27115 Filed 11–1–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Scoping Meeting for the Relocation of Navy Reservists From Naval Reserve Readiness Center at Lake Union and the Replacement of the Army Reserve Center at Fort Lawton, Seattle, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy and Department of Army announce their intention to conduct a

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scoping meeting for the preparation of a Draft Environmental Impact Statement (DEIS) for the proposed relocation of Navy reservists from the Naval Reserve Readiness Center at Lake Union and the replacement of the Army Reserve training facilities currently located in the 500 Area at Fort Lawton.

This notice augments the Notice of Intent to prepare a DEIS for this proposed action that was published in the October 12, 1994 **Federal Register**.

The Chief of Naval Reserve and U.S. Army Reserve Command's preferred alternative is to construct and operate a 120,000 square foot Joint Use Reserve Center in the southwest corner of Fort Lawton, near the existing 124th Army Reserve Command Headquarters. The DEIS will consider other sites on Fort Lawton, as well as other Federally-owned sites in the Seattle area. The DEIS will also evaluate taking no action, and constructing separate as well as joint facilities.

A public scoping meeting has been scheduled to solicit comments about the issues that need to be addressed in the DEIS. The meeting will be held at 7:00 PM on November 17, 1994 at the Blaine Elementary School auditorium, 2550 34th Ave. West, Seattle, WA. A brief presentation identifying the proposed action and the EIS process will precede a request for public comments. It is important that federal, state, and local agencies, and interested individuals take the opportunity to identify environmental concerns that should be addressed in the DEIS.

Agencies and the public are also invited and encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the coping meeting. Each speaker will be limited to five minutes at the meeting. Written comments must be received by December 15, 1994. Comments should be sent to Engineering Field Activity Northwest, Naval Facilities Engineering Command, Attn: Mr. Don Morris, Code 232DM, 3505 NW Anderson Hill Road, Silver Dale, WA 98383–7929. Questions concerning this notice should be directed to Mr. Morris at (206) 396–5976.

Dated: October 26, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–27150 Filed 11–1–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: November 14–17, 1994 from 9:00 a.m. until 5:00 p.m. daily or until the conclusion of business.

ADDRESSES: The meeting will be held at the Denver Marriott Southeast, Interstate 25 at Hampden Avenue, Denver, Colorado 80222, (303) 758–7000.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit and submit a list on nominees for the position of Director, Office of Indian Education.

The Chairman of the National Advisory Council on Indian Education, Eddie L. Tullis, has called for a meeting of the full Council, November 14–17, 1994. On Monday morning from 9:00 a.m. to 12:00 p.m. the agenda will include a general business session and the following activities: election of new officers for the 1995 fiscal year; committee development; and an update of the reauthorization of the Elementary and Secondary Education Act which includes the Indian Education Act.

The closed portion of the meeting will be held on Monday afternoon from 1:00 p.m. to 5:00 p.m. and will be devoted to discussing personnel issues related to the search process for a director for the Office of Indian Education and the internal staffing structure of the NACIE office. All discussions held in conjunction with the selection of a director for the Office of Indian Education and NACIE's internal organization will involve matters which relate solely to the internal personnel rules and practices of the Council and are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c).

Tuesday's agenda is open and will include any unfinished business from the previous day's morning session; work as previously delegated by committee; and the development of a fiscal year 1995 workplan and future goals of the Council. Wednesday and Thursday will be devoted to work group discussions that will further outline the work of the council for the current fiscal year and beyond based on the recently reauthorized Elementary and Secondary Education Act of 1994. Included also will be an opportunity for public participation in Council discussions. Interested individuals may contact the NACIE office for a final agenda the week prior to the meeting date.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Streets SW., room, 4072, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: October 21, 1994.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 94–27194 Filed 11–1–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER92–592–004, et al.]

Yankee Atomic Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 26, 1994.

Take notice that the following filings have been made with the Commission:

1. Yankee Atomic Electric Company

[Docket No. ER92–592–004]

Take notice that on October 20, 1994, Yankee Atomic Electric Company (Yankee), tendered for filing its compliance refund report pursuant to the Commission's order issued June 15, 1994.

Copies of the tendered filing have been served by Yankee upon the other parties to the above-captioned proceeding.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Northwest Regional Transmission Association

[Docket No. ER95–19–000]

Take notice that on October 20, 1994, Portland General Electric Company (PGE) tendered for filing on behalf of itself, Puget Sound Power & Light Company, City of Tacoma Department of Public Utilities, Western Montana Generation and Transmission Cooperative, Inc., Pacific Northwest Generating Cooperative, and Tenaska Power Services (together, the Filing Parties) a letter of support for the Northwest Regional Transmission Association from PacifiCorp.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER95–35–000]

Take notice that on October 13, 1994, New England Power Company, tendered for filing its Interconnection System Study Agreement with Altresco Lynn Limited Partnership.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Potomac Edison Company

[Docket No. ER95–39–000]

Take notice that on October 14, 1994, The Potomac Edison Company, tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and service by $3.81 million based on the twelve month period ending December 31, 1995. The proposed effective date for the increased rates is January 1, 1995.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER95–42–000]

Take notice that on October 18, 1994, Illinois Power Company (Illinois) tendered for filing an Interchange Agreement between Illinois and Electric Clearinghouse, Inc. (ECI). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and ECI.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket Nos. ER95–44–000 and EC95–2–000]

Take notice that on October 18, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing the following: (1) A request for authorization to sell facilities used for transmission of electric energy in interstate commerce, pursuant to § 203(a) of the Federal Power Act, and (2) an amendment to its Agreement with Niagara Mohawk Power Corporation (NMPC), designated NYSEG Rate Schedule FERC No. 90, pursuant to § 203(b) of the Federal Power Act.

The filings concern the sale (the "Transaction") of 10.04 miles of 69 kV electric transmission line and certain related facilities and property rights to NMPC; and an amendment to a facilities charge agreement. To the extent necessary, NYSEG requests waiver of the notice requirements so that the Transaction may take place and the amendment may become effective in accordance with the terms of the amendment.

Copies of the filing were served upon the Niagara Mohawk Power Corporation and on the Public Service Commission of the State of New York.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER95–45–000]

Take notice that on October 18, 1994, Montaup Electric Company tendered for filing its FERC Electric Tariff, Original Volume No. III, Unit Sale Tariff and its FERC Electric Tariff, Original Volume No. IV, System Sales and Exchange Tariff. Tariff III provides for sales for resale of unit capacity and associated energy and Tariff IV provides for sales for resale of system capacity and associated energy. Tariff IV also allows a buyer to provide capacity from one of its units. Montaup requests that the tariffs be allowed to become effective 60 days from to date of filing, on December 18, 1994.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER95–47–000]

Take notice that on October 19, 1994, Puget Sound Power & Light Company (Puget) tendered for filing, as an initial rate schedule, the PNW AC Intertie Capacity Ownership Agreement by and between the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville) and Puget, together with exhibits thereto (the Agreement). A copy of the filing was served upon Bonneville.

Puget states that the Agreement relates to the purchase by Puget of a certain amount of the transfer capability of Bonneville's PNW AC Intertie and also provides for Puget to (a) return to Bonneville an amount of electric energy to compensate Bonneville for transmission losses and (b) under certain conditions, to permit Bonneville to use Puget's unused share of the transfer capability of Bonneville's PNW AC Intertie.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER95–51–000]

Take notice that on October 20, 1994, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR § 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Burbank (Burbank).

SDG&E requests that the Commission allow the Agreement to become effective on the 2nd day of January, 1995, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Burbank.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER95–53–000]

Take notice that on October 20, 1994, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing, pursuant to 18 CFR § 35.13, proposed changes in its FERC Rate Schedule No. 3 for borderline sales to

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New York State Electric & Gas Corporation. CHG&E is requesting an effective date of December 21, 1993, for this tariff rate change. Accordingly, CHG&E has also requested a waiver of Commission's notice requirements for good cause shown.

CHG&E has sent a copy of this filing to New York State Electric & Gas Corporation, P.O. Box 3287, Ithaca, NY 14852–3287.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Power Company

[Docket No. ER95–54–000]

Take notice that on October 20, 1994, Duke Power Company (Duke), filed contract amendments to Rate Schedules contained in Duke's interchange agreements with South Carolina Electric & Gas Company (SCE&G) (Duke Rate Schedule FERC No. 293). The purpose of this filing is to amend the existing Spinning Reserve Service Schedules to lessen the amount of time one company can obtain emergency capacity from the other without a demand charge and eliminate those references to Spinning Reserve which are not consistent with the operating guidelines of the North American Electric Reliability Council (NERC).

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER95–55–000]

Take notice that on October 21, 1994, Indianapolis Power & Light Company (IPL), tendered for filing an initial rate schedule consisting of the Interconnection Agreement between IPL and the Indiana Municipal Power Agency.

Copies of this filing were sent to the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Company

[Docket No. ER95–56–000]

Take notice that on October 21, 1994, Portland General Electric Company (PGE), tendered for filing a Short-Term Utility Replacement Energy Agreement between Puget Sound Power & Light Company, Portland General Electric Company, PacifiCorp, the Washington Water Power Company, Colockum Transmission Company, Inc., and the Bonneville Power Administration (BPA), BPA Contract No. DE-MS79–94BP94427. Copies of this filing have been served on the parties included in the service list attached to the filing letter.

The Agreement provides for BPA to sell flow augmentation replacement energy to PGE. PGE asks that the Commission find that the Agreement does not need to be filed with the Commission; and in the alternative, that the Agreement be effective sixty (60) days after the date of the instant filing, or on the date of acceptance by the Commission, whichever is sooner.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Southern Company Services, Inc.

[Docket No. ER95–59–000]

Take notice that on October 21, 1994, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (the "Southern Companies"), submitted for filing Amendment No. 5 to the Intercompany Interchange Contracted dated October 31, 1988. In addition, Southern Companies have filed amendments to certain unit power and interchange agreements between Southern Companies and Florida Power & Light Company, Florida Power Corporation, Jacksonville Electric Authority, the City of Tallahassee, Florida, South Carolina Public Service Authority, Duke Power Company, Cajun Electric Power Cooperative, Inc., and Gulf States Utilities Company, respectively. Southern Companies also have informed the Commission of a proposed change in practice under Southern Companies' interchange contracts with Tennessee Valley Authority, Mississippi Power & Light Company, and South Carolina Electric & Gas Company. The purpose of this filing is to declare changes in practice and to amend energy rates contained in the foregoing agreements to reflect the energy-related costs incurred by Southern Companies to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Goal Line, L.P.

[Docket Nos. QF92–179–002 and EL95–6–000]

Take notice that on October 18, 1994, Goal Line, L.P. (Goal Line), tendered for filing a request for limited waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Goal Line requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogeneration facilities as set forth in § 292.205 of the Commission's Regulations, implementing Section 201 of PURPA, as amended, 18 CFR 292.205, with respect to its 49.8 MW cogeneration facility located in Escondido, California. Specifically, Goal Line requests waiver of the operating and efficiency standards for the calendar year 1994.

Comment date: Thirty days from the date of publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

16. Tenaska IV Texas Partners, Ltd.,

[Docket No. QF94–84–002]

On October 20, 1994, Tenaska IV Texas Partners, Ltd., (Applicant), of 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Cleburne, Texas, and will consist of a combustion turbine generator, a heat recovery boiler equipped with duct burning, and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the applicant for the manufacturing of distill water for sale to a third party. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 284 MW. Construction of the facility is scheduled to begin in April, 1995.

Comment date: Thirty days from the date published in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

17. The Wisconsin Public Power Incorporated System

[Docket No. TX95–2–000]

Take notice that on October 17, 1994, The Wisconsin Public Power Incorporated System (WPPI) tendered for filing an application requesting that the Commission order Wisconsin Electric Power Company (WEPCO), Wisconsin Power and Light Company (WP&L), and Wisconsin Public Service Corporation (WPS) jointly, joint network tariff to provide network transmission services on a joint, single-system basis to WPPI. The application was filed pursuant to Section 211 of the Federal Power Act, as amended by Energy Policy Act of 1992 (16 U.S.C. 824j).

In its application, WPPI requests that network service be provided commencing on May 1, 1995, and continuing on a long-term basis thereafter. The total transmission capacity requested would be sufficient for WPPI to integrate its load in eastern Wisconsin (now approximately 482 MW) with WPPI's resources. The service requested is network service over the integrated transmission grid of the EWU. The service requested includes both long and short-term firm and non-firm use, comparable in all respects to the EWU's use of the EWU grid. WPPI seeks services that will allow it, subject to existing power purchase contracts, (i) to schedule power and energy from a variety of sources within and outside of the EWU grid to WPPI's loads within the control areas of WP&L, WEPCO and WPS on an economic dispatch basis and in response to planned and unplanned outages and (ii) to engage in coordination purchases and sales using the EWU grid in the same manner as the owners of that grid schedule their power and energy transactions. The service would be costed on single-system basis for the EWU, with one joint rate for use of the integrated transmission system of three utilities. Revenues would be shared by the EWU. WPPI also requested that the EWU unbundle their transmission services from power sales services.

Copies of the application have been served upon the affected parties, WEPCO, WP&L, WPS, the Public Service Commission of Wisconsin, and upon Madison Gas & Electric Company.

Comment date: November 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27142 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–P

Notice of Environmental Compliance Training Course

October 27, 1994.

The Office of Pipeline Regulation (OPR) staff will convene another session of its environmental compliance training course. This is a result of the positive response to our first sessions held in 1992 and 1993. We are holding this course so that additional members of the regulated pipeline industry and interested individuals and organizations can gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

We encourage interested organizations and the public to take advantage of this course.

This session will include clarification based on questions and comments on the previous course and will contain updated material based on our experience in checking compliance in the field. It will include the following topics:

- Postcertificate clearance filings;
- Environmental inspection as it relates to:
- Right-of-way preparation;
- Temporary erosion control;
- Cultural resources/Paleontology;
- Waterbody crossings;
- Wetland construction;
- Residential area construction;
- Right-of-way restoration; and
- Techniques for environmental compliance.

The two-day training course will be held December 14 and 15, 1994, at the Red Lion Hotel, 3203 Quebec Street, Denver, Colorado, 80207. Attendees must call (303) 321–3333 by November 30, 1994 and identify themselves as FERC Seminar attendees to receive the discounted group rate.

The OPR staff and Enserch Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the course, but you must pre-register because space is limited.

If you would like to attend the December 14, 1994 session, please call the telephone number listed below to obtain a registration form.[1] Because space is limited, please mail or fax the registration form within 15 days of publication of this notice to: Ms. Donna Connor, Enserch Environmental Corporation, 211 Congress Street, 7th Floor, Boston, MA 02110, Telephone: (617) 542–8805, Fax: (617) 695–1587.

You will receive confirmation of pre-registration and additional information before the training course.

Additional training may be offered in 1995 based on the level of interest. Please indicate on the registration form whether you would like this course to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome. If other sessions or courses are planned, information will be published in the **Federal Register** and sent to you announcing the dates and locations.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27089 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2323–012; 2334–001; Deerfield River, VT, MA]

New England Power Co. Western Massachusetts Electric Co.; Notice of Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

October 27, 1994.

The Federal Regulatory Commission (FERC) has received applications for two new licenses for the continued operation of the Deerfield River Project No. 2323, and the Gardners Falls Project No. 2334. The projects are located on the Deerfield River, in Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.

The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act. The staff's EIS will objectively consider both site specific and cumulative environmental effects of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

[1] The registration form referenced in this notice is not being printed in the **Federal Register**. Copies of the form were sent to those receiving this notice in the mail.

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A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decisions.

Scoping Meetings

FERC staff will conduct three scoping meetings. The two evening scoping meetings, one each in Massachusetts and Vermont, are primarily for public input while the day-time meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to interested parties on the FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

The times and locations of the scoping meetings are as follows:

Massachusetts Public Scoping Meeting

Tuesday, November 15, 1994, 7:00 p.m. to 10:00 p.m., Mohawk Trail Regional High School, Buckland, Massachusetts

Vermont Public Scoping Meeting

Wednesday, November 16, 1994, 7:00 p.m. to 10:00 p.m., Wilmington High School, Wilmington, Vermont

Agency Scoping Meeting

Thursday, November 17, 1994, 9:00 a.m. to 12 noon, New England Power Company, Shelburne Falls, Massachusetts

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue, (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views, (4) determine the relative depth of analysis for issues to be addressed in the EIS, and (5) identify resource issues that are not important and do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the Deerfield River projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants wishing to make oral comments in the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. All correspondence should clearly show one or more of the following captions on the first page: Deerfield River Project No. 2323–012; and, Gardners Falls Project No. 2334–001.

All those that are formally recognized by the Commission as intervenors in the Deerfield and Gardners Falls projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, which require parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list, including agents of the applicants.

For further information, please contact Michael Dees at (202) 219–2807.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27095 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1542–000]

Black Hills Power and Light Co.; Notice of Filing

October 27, 1994.

Take notice that on September 12, 1994, Black Hills Power and Light Company tendered for filing an executed copy of the service agreement to purchase non-firm power and energy under proposed Rate Schedule EP–1 currently pending before the Commission in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27098 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1613–000]

Hadson Electric, Inc.; Notice of Filing

October 27, 1994.

Take notice that on September 28, 1994, Hadson Electric, Inc. submitted for filing additional information requested by staff in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27143 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1563–000]

National Power Exchange, Corp.; Notice of Issuance of Order

October 27, 1994.

On August 18, 1994 and August 29, 1994, National Power Exchange, Corp. (NPEC) submitted for filing a rate schedule under which NPEC will engage in wholesale electric power and energy transactions as a marketer. NPEC also requested waiver of various Commission regulations. In particular, NPEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NPEC.

On October 7, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NPEC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NPEC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NPEC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 7, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27099 Filed 11–01–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–394–001]

Panhandle Eastern Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

October 27, 1994.

Take notice that on October 21, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Substitute Original Sheet No. 321R
Substitute Original Sheet No. 321S

The proposed effective date of the revised tariff sheets is October 1, 1994.

Panhandle states that this filing is in compliance with the Commission's October 6, 1994, Order Accepting And Suspending Tariff Sheets Subject to Refund and Conditions, And Establishing a Technical Conference (October 6, 1994) in the above referenced proceeding.

Panhandle states that in the October 6, 1994 Order, the Commission approved the method of recovery of the miscellaneous stranded costs, but it required Panhandle to eliminate a portion of the proposed tariff language contained in § 18.14(b) and remove the definition of Miscellaneous Stranded Costs contained in § 18.14(c)(1). Panhandle has revised the language in Section 18.14 in compliance with Ordering Paragraph (B) of the October 6, 1994 Order.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27100 Filed 11–1–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. EA–102]

Application to Export Electricity Enron Power Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Enron Power Marketing, Inc., (Enron) has requested authorization to export electric energy to Mexico. Enron is a marketer of electric energy. It does not own or control any electric generation or transmission facilities.

DATES: Comments, protests, or requests to intervene must be submitted on or before January 3, 1995.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On October 4, 1994, Enron filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. Enron owns no generation or transmission facilities but has been certified by the Federal Energy Regulatory Commission (FERC) as a power marketer. Enron expects the majority of its transactions to be short-term sales of electricity for which contracts have yet to be negotiated.

This is the first application for export that FE has accepted from an individual entity that does not own or operate physical facilities. The FE decision to accept an application from a power marketer, as opposed to the "traditional" electric power entities which own and/or operate physical facilities, is based on the marketer taking possession of the electric energy inside the United States. This situation is distinguished from the power broker which simply facilitates a sale of electric energy without ever taking ownership of the commodity.

The electric energy Enron proposes to transmit to Mexico would be purchased from electric utilities and Federal power marketing agencies. Enron asserts that

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such energy would be surplus to the requirements of the entities from which it would be purchased. Enron would arrange for the exported energy to be wheeled from the selling entities, over existing domestic transmission facilities, and delivered to the foreign purchaser over one or more of the following international transmission lines: San Diego Gas and Electric Company's (SDG&E) 230-kilovolt (kV), Miguel-Tijuana transmission line (PP–68); the SDG&E 69–kV line at San Ysidro (PP–49); the SDG&E 230–kV, Imperial Valley-La Rosita line (PP–79); El Paso Electric Company's 115–kV lines at Diablo, New Mexico (PP–92) and Ascarate, Texas (PP–48-A); Central Power and Light Company's 138–kV and 69–kV transmission lines at Brownsville, Texas (PP–94); and the 138–kV transmission lines permitted to Mexico's Comision Federal de Electricidad at Eagle Pass (PP–50), Loredo (PP–57), and Falcon Dam (PP–57) in Texas.

Enron has suggested that the initial FE authorization be sufficient for all short-term exports of 90 days duration or less, at unspecified rates of transmission, over any of the international transmission facilities identified above.

For exports over 90 days duration, Enron has suggested that it notify FE prior to commencing exports and that it provide the following information: (1) The name of the purchaser(s); (2) the term of the agreement; (3) the contract transmission route(s) and the name of the companies providing transmission wheeling services; (4) the related FERC Rate Schedule, if applicable; and (5) the point(s) of exportation. Enron further suggests that FE publish a notice of the proposed transaction in the **Federal Register**, stating that the transaction would be deemed approved and allowed to commence unless, within 10 days of publication of such notice, (1) a protest is filed, or (2) FE notifies Enron that the transaction is not approved. Subject to the foregoing, Enron could commence exportation at the end of a 10-day comment period. In the case of either a protest or notification of disapproval by FE, exports could not commence without specific authorization by FE.

Before FE takes any final action on applications to export, it first must determine that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act. For applications from "traditional" electric power systems, the standard procedure is for the applicant to submit various technical studies which demonstrate the operation of the regional electric power supply system with the applicant exporting specified levels of power over identified international transmission lines. The applicant also is required to demonstrate that it would have sufficient generating capacity to sustain the proposed export under the terms and conditions of its export agreement, while still complying with any established reserve criteria.

Since marketers generally could not be seen as having any "native load" requirements, the latter criterion of maintaining sufficient reserve margins appears inappropriate and unnecessary in this instance. Conversely, FE feels that the issue of coordinated use of regional transmission (i.e., parallel path flow) becomes more critical in the case of marketers because of the unspecified nature of the transactions, in terms of the magnitude and sources of the export, and the export points.

FE recognizes the right of the marketer to compete in the electric power arena, as well as the legitimate reliability/operating concerns of the "traditional" electric power systems. Therefore, FE is proposing an alternative means for determining the reliability impacts in the case of exports by marketers. In lieu of the technical studies (power flow, transient stability, etc.) usually submitted in support of an export application, FE will consider accepting executed transmission wheeling/access agreements between the marketer/applicant and the owners of the transmission systems reasonably expected to be involved in providing transmission service to the export point. FE is considering requiring the submission of these transmission access agreements prior to any exports (short- or long-term) occurring over any particular export point. If an export order is granted, the applicant could "activate" any or all export points by submitting appropriate transmission agreements. After submission of the agreement(s), the applicant would be permitted to engage in short-term exports immediately, and long-term exports subject to the procedures discussed above.

FE is soliciting comments particularly on the procedures it is considering for addressing electric reliability concerns and the authorizing of exports of longer than 90 day duration.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Steven J. Kean, Vice President, Regulatory Affairs, Enron Power Marketing, Inc., PO Box 1188, Houston, Texas 77251–1188. (710) 853–1586. FAX (713) 646–3490 and David B. Ward, Flood & Ward, 1000 Potomac Street, NW, Suite 402, Washington, DC 20007. (202) 298–6910. FAX (202) 298–6914.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on October 27, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–27101 Filed 11–1–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–78–NG]

BC Gas Utility Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting BC Gas Utility Ltd. (BC Gas) authorization to import and export natural gas, including liquefied natural gas, from and to Canada. Specifically, BC Gas is authorized to import up to 25 Bcf of Canadian natural gas, including LNG, and to export up to 25 Bcf of domestic natural gas, including LNG. The term of this authorization is for two years beginning on the date of the first import or export delivery.

BC Gas' order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 14, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–27193 Filed 11–1–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–82–NG]

Wisconsin Gas Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Gas Company authorization to import from Canada up to 1,924 Mcf per day of natural gas. The gas would be purchased from Western Gas Marketing Limited over a period of 10 years beginning November 1, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on October 17, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–27192 Filed 11–1–94; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. FE C&E 94–9—Certification Notice—137]

LSP-Cottage Grove, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On October 18, 1994, LSP-Cottage Grove, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a baseload powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of October 18, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: LSP-Cottage Grove, L.P., Bozeman, MT

Operator: LSP-Cottage Grove, Inc., Bozeman, MT

Location: Near the southern end of Washington County, Cottage Grove, MN

Plant Configuration: Topping cycle cogeneration

Capacity: 245 megawatts

Fuel: Natural gas

Purchasing Utilities: Northern States Power Company

In-Service Date: January 1, 1995

Issued in Washington, D.C., October 27, 1994.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–27190 Filed 11–1–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5100–9]

National Advisory Council for Environmental Policy and Technology; Ecosystems Implementation Tools Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a two-day meeting of the Ecosystems Implementation Tools Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and this meeting is being held to discuss the Ecosystems Implementation Tools Committee agenda for the coming year. The Administrator has asked NACEPT to concentrate on ecosystem management and how long-term ecological, economic, and social needs can be integrated to achieve a place-based approach to environmental management.

The Ecosystems Implementation Tools Committee will evaluate opportunities to re-orient the Agency's use of its existing authorities to integrate ecosystem management into its decision-making processes; identify incentives and barriers to promoting an ecosystems orientation or place-based approach to environmental protection; and identify opportunities for partnership-building with other federal agencies as well as co-regulators at the state, local, tribal levels.

The Ecosystems Implementation Tools Committee and NACEPT include a representative cross-section of EPA's partners and constituents. However, in order to gain additional insights and perspectives from all interested parties

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as this Committee begins its work, time has been allotted during the meeting for oral comments from the public. Any member of the public wishing to present oral comments on any of these issues can schedule an appointment by contacting Gwendolyn Whitt or Debra Miller at the address and telephone numbers below. Due to time constraints, oral presentations will be strictly held to five minutes, and slots are limited. Available time slots will be allocated on a first-come, first serve basis to those scheduling a presentation in advance. Written comments will be accepted at any time prior to, or at, the meeting.

DATES: The two-day public meeting will be held on Monday, December 5, 1994, from 9 a.m. to 5 p.m. and on Tuesday, December 6, 1994 from 8:30 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held on both days at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001. Written Comments should be sent to: Gwendolyn C. L. Whitt or Debra A. Miller DFO, Ecosystems Implementation Tools Committee/NACEPT, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn C. L. Whitt or Debra A. Miller, Designated Federal Official, Direct lines (202) 260–9484, or 260–9937, respectively Secretary's line (202) 260–6891.

Dated: October 24, 1994.

Gwendolyn C. L. Whitt,

Designated Federal Official.

Debra A. Miller,

Designated Federal Official.

[FR Doc. 94–27173 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00395; FRL–4918–8]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committees on Registration/ Classification and Certification/ Enforcement; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Registration/Classification and Certification/Enforcement will hold a 3-day meeting, beginning on Monday, November 14, 1994, and ending on Wednesday, November 16, 1994. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Registration/Classification meets alone on Monday, November 14, 1994, from 8:30 a.m. to 5 p.m., the two Working Committees will meet together on Tuesday, November 15, 1994, from 9:30 a.m. to 5 p.m. The Working Committee on Certification/Enforcement will meet alone on Wednesday, November 16, 1994, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at: Double Tree Hotel, Horton Plaza–910 Broadway Circle, San Diego, CA 92101, Telephone: (619) 239–3216.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1100, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5306.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Registration Classification includes the following:.

1. Draft guidance for 24(c) update.
2. Status of reduced risk strategies.
3. EPA–USDA Memorandum of Understanding On Pesticide Alternatives.
4. Discussion of minor uses and reregistration impacts.
5. Status of aluminum sulfate as a pesticide.
6. Other topics as appropriate.

The agenda for the joint session of the SFIREG Working Committees on Registration/Classification and Certification/Enforcement includes the following:

1. Update on endangered species.
2. Status of drift reduction labeling.
3. Draft guidance on outdoor residential and commercial pesticide application.
4. Status of proposed FIFRA 25(b) exemptions.
5. Discussion of "split" labels.
6. Update on the worker protection standard implementation.
7. Spray drift control slide presentation.
8. Use of 2,4–D for preplant burndown on cotton.
9. Other topics as appropriate.

The agenda for the SFIREG Working Committee on Certification/Enforcement includes the following:

1. Discussion of bee labeling for enforcement.
2. Discussion of penalty assessments.
3. Status of cross contamination of bulk pesticides issues paper.
4. Update on the Field Operations Division's Certification/Training and Occupational Safety reorganization.
5. Other topics as appropriate.

Dated: October 27, 1994.

Judy K. Heckman,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 94–27178 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–M

[PF–611; FRL–4915–6]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two initial filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities, and it announces an initial filing of a food additive petition (FAP) and its subsequent withdrawal.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number	Address
Phillip O. Hutton (PM 18)	Rm. 213, CM #2, 703-305-7690	1921 Jefferson Davis Hwy., Arlington, VA.
Dennis Edwards (PM 19)	Rm. 207, CM #2, 703-305-6386	Do.

SUPPLEMENTARY INFORMATION: EPA has received initial filings of pesticide petitions and a food additive petition (FAP) and one subsequent withdrawal as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 4F4402.* Biosys, 1057 East Meadow Circle, Palo Alto, CA 94303, has submitted the petition for exemption from the requirement of a tolerance for residues of the microbial pest control agent *Anagrapha facifera* MNPV (celery looper) in or on all raw agricultural commodities. (PM 18)

2. *PP 4F4372.* W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, has submitted the petition for exemption from the requirement of a tolerance for residues of the microbial pest control agent *Paecilomyces fumosoroseus* Apopka Strain 97 when used on greenhouse and terrestrial food crops. (PM 18)

Initial Filing (With Subsequent Withdrawal)

3. *FAP 4H5702.* General Mills, P.O. Box 1113, Minneapolis, MN 55440, proposed to amend 40 CFR 185.1000 to establish a time-limited tolerance for residues of chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate at 0.4 ppm in or on finished oat-containing cereal products produced on or before June 15, 1994, from oats that received post-harvest treatment with chlorpyrifos. This tolerance would have expired on June 15, 1995. In a letter dated September 27, 1994, General Mills withdrew the petition. (PM 19).

Authority: 7 U.S.C. 136a.

Dated: October 6, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27177; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30375; FRL–4917–5]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by December 2, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30375] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 18 Phil Hutton,	Rm. 213, CM #2 (703–305–7690)	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 21 Leonard Cole (Acting),	Rm. 229, CM #2 (703–305–6900)	-Do-
PM 23 Joanne I. Miller,	Rm. 237, CM #2 (703–305–7830)	-Do-
PM 31 Marshall Swindell,	Rm. 272, CM #2 (703–305–6908)	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 67250–T. Applicant: Biosys, 1057 East Meadow Circle, Palo Alto, CA 94303. Product name: *Anagrapha falcifera* MNPV PIB's. Insecticide. Active ingredients: *Anagrapha falcifera* MNPV polyhedral inclusion bodies (PIB's) aqueous suspension at a concentration of 1 X 10^9 AfMNPV, PIB's/ml 1 X 10^9 AfMNPF PIB's at 100 percent. Proposed classification/Use: None. For use only in the manufacture of finished products for control of certain lepidopterous pest species on vegetable crops. (PM 18)

2. File Symbol: 11688–RL. Applicant: W. R. Grace and Company, 7379 Route 32, Columbia, MD 21044. Product name: PFR-MUP. Biological Insecticide. Active ingredient: *Paecilomyces fumosoroseus* Apopka Strain 97 at 7 percent. Proposed

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classification/Use: None. For manufacturing use only. (PM 18)

3. File Symbol: 11688–RA. Applicant: W. R. Grace and Co. Product name: PFR-97™ WDG. Biological Insecticide. Active ingredient: *Paecilomyces fumosoroseus* Apopka Strain 97 at 12.5 percent. Proposed classification/Use: None. For use against whiteflies, aphids, thrips, and spider mites on ornamentals and food crops in greenhouses and outdoors. (PM 18)

4. File Symbol: 275–OO. Applicant: Abbott Laboratories, Chemical and Agricultural Products Division, 1401 Sheridan Road, North Chicago, IL 60064-4000. Product name: ABG 9006 Biological Nematicide Technical Powder. Nematicide. Active ingredient: Dried fermentation solids and solubles of *Myrothecium verrucaria* at 98.0 percent. Proposed classification/Use: None. For manufacturing use only. (PM 21)

5. File Symbol: 275–RNN. Applicant: Abbott Laboratories. Product name: ABG 9008 Biological Nematicide Wettable Powder. Nematocide. Active ingredient: Dried fermantation solids and solubles of *Myrothecium verrucaria* at 100 percent. Proposed classification/Use: None. For use as soil application on food, fiber, and ornamental crops for control of nematodes. (PM 21)

6. File Symbol: 64296–RU. Applicant: EcoScience Corporation, One Innovation Drive, Worcester, MA 01605. Product name: Bio-Save 11 Biofungicide 10 WP. Biological Fungicide. Active ingredient: *Pseudomonas syringae*, (Strain ESC 11) at 10 percent. Proposed classification/Use: None. For postharvest application on apples, pears, and citrus. (PM 21)

7. File Symbol: 64296–RG. Applicant: EcoScience Corp. Product name: ESC-11 Biofungicide Technical. Biological Fungicide. Active ingredient: *Pseudomonas syringae*, (Strain ESC-11) at 96 percent. Proposed classification/Use: None. For formulation use only. (PM 21)

8. File Symbol: 10772–E. Applicant: Church and Dwight Co., Inc, 469 North Harrison St., Princeton, NJ 08543–5297. Product name: Armicarb Potassium Bicarbonate, F.C.C. Fungicide. Active ingredient: Potassium bicarbonate at 99.9 percent. Proposed classification/Use: None. Manufacturing use for formulation of end-use products; for disease control on fruit, vegetables, ornamental crops, and turf. (PM 21)

9. File Symbol: 10772–G. Applicant: Church and Dwight Co., Inc. Product name: Armicarb Sodium Bicarbonate, F.C.C. Fungicide. Active ingredient: Sodium bicarbonate at 99.9 percent. Proposed classification/Use: None. Manufacturing use for formulation of end-use products; for disease control on fruit, vegetables, ornamental crops, and turf. (PM 21)

10. File Symbol: 524–UAA. Applicant: Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. Product name: Battalion Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 14.9 percent. Proposed classification/Use: None. Preemergent control of weeds in field corn. (PM 23)

11. File Symbol: 524–UAL. Applicant: Monsanto Co. Product name: Manage Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 48 percent. Proposed classification/Use: None. For use to control weeds in turfgrass. (PM 23)

12. File Symbol: 524–UAL. Applicant: Monsanto Co. Product name: Permit Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 72.3 percent. Proposed classification/Use: None. For postemergent control of weeds in field corn, field corn grown for seed, and sorghum (milo). (PM 23)

13. File Symbol: 524–UAT. Monsanto Co. Product name: MON 12000 Herbicide. Herbicide. Active ingredient: Halosulfuron methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1- *H*-pyrazole-4-carboxylate at 99.4 percent. Proposed classification/Use: None. For manufacturing and formulation into herbicides only. (PM 23)

14. File Symbol: 57978–G. Applicant: Sutton Laboratories, Inc., 116 Summit Avenue, Chatum, NJ 07928. Product name: Suttoncide A. Microbiocide. Active ingredient: Sodium hydroxymethylamino acetate at 95 percent. Proposed classification/Use: None. For use as an industrial preservative for coatings, adhesives, printing inks, pastes, and polishes. (PM 31)

15. File Symbol: 57978–L. Applicant: Sutton Laboratories. Product name: Germall II. Microbiocide. Active ingredient: Urea, *N*-(1,3-bis(hydroxymethyl)-2,5-dioxo-4-imidazolidinyl)-*N*,*N*'-bis(hydroxymethyl)- at 97 percent. Proposed classification/Use: None. For use as an industrial preservative for coatings, adhesives, printing inks, pastes, and polishes. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 21, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26912 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50801; FRL–4914–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

66736–EUP–1. Extension. Ciba-Geigy Corporation, P.O. Box 12257, Research Triangle Park, NC 27709–2257. In the **Federal Register** of March 11, 1994 (59 FR 11600), EPA announced receipt of an application for an extension EUP for a transgenic plant pesticide from Ciba-Geigy Corporation. Interested parties were invited to submit written comment by April 11, 1994. Three comments were received during the comment period with two comments from grower groups and one comment from a seed trade association. All comments were supportive of the EUP. One comment was received, after the comment period closed, from Senators J. Robert Kerrey and Jim Exon also supporting the EUP. The approved experimental use permit allows the use of 197.1 grams of the *Bacillus thuringiensis* δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 190 acres of corn to evaluate the control of the European corn borer and other lepidopteran pests. The program is authorized only in the States of California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin and the Commonwealth of Puerto Rico. The experimental use permit is effective for plantings from April 12, 1994 to March 31, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. Corn grown under this permit will not be permitted to enter commerce.

524–EUP–82. Issuance. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. In the **Federal Register** of February 23, 1994 (59 FR 8616), EPA announced receipt of an application for an EUP for a transgenic plant pesticide from Monsanto Company. Interested parties were invited to submit written comments by March 25, 1994; no comments were received. The approved experimental use permit allows the use of 205.43 grams of the *Bacillus thuringiensis* cryIA(b)δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 604.6 acres of corn to evaluate the control of the European corn borer, the fall armyworm, and the corn earworm. The program is authorized only in the States of Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin and the Commonwealth of Puerto Rico. The experimental use permit is effective for plantings from April 18, 1994 to February 28, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

67979–EUP–1. Issuance. Northrup King Company, 7500 Olson Memorial Highway, Golden Valley, MN 55427. In the **Federal Register** of April 13, 1994 (59 FR 17535), EPA announced receipt of an application for an EUP for a transgenic plant pesticide from Northrup King Company. Interested parties were invited to submit written comments by May 13, 1994. No comments were received. The approved experimental use permit allows the use of 0.013 grams of a *Bacillus thuringiensis* cryIA(b)δ-endotoxin (produced by a bacterially derived CryIA(b) gene in corn plants) in seeds planted on 44.90 acres of corn to evaluate the control of the European corn borer. The experimental use permit is effective for plantings from May 19, 1994 to May 1, 1995, and associated activities such as collection of field data and harvesting and processing of seed after last planting. The program is authorized only in the States of Hawaii, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin and the Commonwealth of Puerto Rico. This permit is issued with the limitation that all crops are destroyed or used for research purposes only.

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27175 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30351A; FRL–4913–6]

Ciba-Geigy Corp.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Ciba-Geigy Corporation, to conditionally register the pesticide product Irgarol 1051, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 270, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6908).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 10, 1993 (58 FR 32533), which announced that Ciba-Geigy Corp., Additives Division, Three Skyline Drive, Hawthorne, NY 10532, had submitted an application to conditionally register the pesticide product Irgarol 1051, (EPA File Symbol 40810–RR), containing the active ingredient *N*-cyclopropyl-*N*'-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine at 96 percent, an active ingredient not included in any previously registered product.

The application was approved on September 9, 1994, as Irgarol 1051 for use in formulating antifoulant paints in boats and vessels only. The product was assigned (EPA Registration Number 40810–11).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on

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the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(A). Additional ecological effects data and environmental fate data will be required from end-use formulators for antifoulant boat bottom paints. All data, especially data which is currently held in reserve may be required to be submitted for review. If these conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on *N*-cyclopropyl-*N'*-(1,1-dimethylethyl)-6-(methylthio)-1,3,5-triazine-2,4-diamine.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26812 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–607; FRL–4911–2]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions (PP) and food/feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
Dennis Edwards (PM 19)	Rm. 207, CM #2, 703-305-6386	1921 Jefferson Davis Hwy., Arlington, VA.
Steve Robbins (PM 21)	Rm. 227, CM #2, 703-305-6900	Do.
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703-305-5540	Do.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-305-7830	Do.
Rober Taylor (PM 25)	Rm. 241, CM #2, 703-557-6800	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows that propose establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 4F4321.* Ciba-Plant Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a tolerance to permit residues of the fungicide propiconazole (1-[[1-(2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole) in or on the crop grouping stone fruits at 1.0 part per million (ppm). (PM 21)

2. *PP 4F4334.* Vanson, 8840 152nd Ave., Northeast, Redmond, WA, 98052-3535, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues in or on rice, grain to permit the use of poly-d-glucosamine (Chitosan) as a seed treatment on rice. (PM 23)

3. *PP 4F4336.* Ciba Plant Protection, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the new herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-1-phenylsufonyl] urea, in or on the following raw agricultural commodities: corn, forage at 0.02 ppm; corn, fodder at 0.02 ppm; corn, grain at 0.02 ppm; corn, fresh (including sweet kernels plus cobs with husks removed) at 0.02 ppm; milk at 0.02 ppm; meat, fat and meat byproducts, kidney and liver of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry, fat, kidney, liver, meat and meat byproducts at 0.10 ppm; eggs at 0.10 ppm. (PM 25)

4. *PP 4F4337.* Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of imidacloprid, 1-[(chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on wheat, forage at 7.0 ppm, wheat, straw at 0.3 ppm, wheat, grain at 0.1 ppm, barley, forage at 1.2 ppm, barley, straw at 0.2 ppm, barley, grain at 0.1 ppm, sorghum, forage at 0.1 ppm, sorghum, straw at 0.1 ppm, sorghum, grain at 0.1 ppm, beets, sugar (roots) at 0.1 ppm, and beets, sugar (tops) at 0.1 ppm (PM 19).

5. *PP 4F4338.* Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR 180.364(a) by establishing a regulation to permit combined residues of glyphosate (N-(phosphonomethyl) glycine) and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on citrus fruits at 0.5 ppm. (PM 25)

6. *PP 4F4340.* Valent U.S.A. Corp., 1333 North California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propenyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on sugar beet, roots, at 0.2 ppm, sugar beet, tops, at 0.5 ppm, and onion (dry bulb) at 0.5 ppm. (PM 23).

7. *FAP 4H5688.* ISK Biotech Corp., 5966 Heisley Rd., P.O. Box 8000, Mentor, OH 44061-8000, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit the residues of DCPA (Dacthal W75) in or on bean cannery wastes, tomato pomace, and potato peels. (PM 23)

8. *FAP 4H5700.* Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing a feed additive regulation to permit residues of imidacloprid, 1-[(-chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine, and its metabolites (calculated as imidacloprid), in or on the following processed commodities: Beets, sugar, molasses at 0.2 ppm. (PM 19)

9. *FAP 4H5705.* Monsanto Co., 700 14th St., NW., Suite 1100, Washington, DC 20005, proposes to amend 40 CFR 185.3500 by establishing a feed additive regulation to permit the residues of glyphosate, N-(phosphonomethyl)glycine, and its metabolite aminomethylphosphonic acid in or on citrus, pulp, dried at 1.0 ppm. (PM 25)

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food and feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: September 16, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26807; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180951; FRL–4914–3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 12 States below. One crisis exemption was initiated by the Montana Department of Agriculture. These exemptions, issued during the months of May, June, and July 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied two specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of lambda-cyhalothrin on wheat to control the armyworms; May 9, 1994, to June 30, 1994. Arkansas had initiated a crisis exemption for this use. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on strawberries to control powdery mildew; July 28, 1994, to July 27, 1995. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of imidacloprid on tomatoes to control the sweet potato or silverleaf whitefly; June 1, 1994, to June 1, 1995. A notice of receipt published in the **Federal Register** of April 15, 1994 (59 FR 18118). The situation was determined to be urgent and nonroutine, since this is a newly introduced pest, and registered materials were not providing adequate control. Significant economic losses were expected. (Andrea Beard)

4. Colorado Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 31, 1994. (Andrea Beard)

5. Idaho Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 20, 1994 (59 FR 18816). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

6. Kansas Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 31, 1994. (Andrea Beard)

7. Maryland Department of Agriculture for the use of clomazone on snap beans to control broadleaf weeds; July 19, 1994, to August 20, 1994. (Margarita Collantes)

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8. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot disease; July 12, 1994, to November 1, 1994. (Susan Stanton)

9. Michigan Department of Agriculture for the use of triadimefon on asparagus to control asparagus rust; July 15, 1994, to November 1, 1994. (Susan Stanton)

10. New Mexico Department of Agriculture for the use of cyfluthrin on chili peppers to control pepper weevils; July 8, 1994, to September 30, 1994. (Libby Pemberton)

11. Ohio Department of Agriculture for the use of cypermethrin on green onions to control thrips; July 1, 1994, to September 30, 1994. (Larry Fried)

12. Oklahoma Department of Agriculture for the use of bifenthrin on corn to control spider mites; July 1, 1994, to August 25, 1994. (Andrea Beard)

13. Oregon Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 6, 1994 (59 FR 16204). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

14. Utah Department of Agriculture for the use of imidacloprid on apples to control aphids; May 31, 1994, to September 15, 1994. A notice of receipt published in the **Federal Register** of April 6, 1994 (59 FR 16204). The situation was determined to be urgent and nonroutine due to loss of effective alternative products. Significant economic losses were expected as a result. (Andrea Beard)

15. Washington Department of Agriculture for the use of esfenvalerate on cranberries to control black vine weevils; July 6, 1994, to August 31, 1994. (Libby Pemberton)

A crisis exemption was initiated by the Michigan Department of Agriculture on July 13, 1994, for the use of avermectin on potatoes to control the Colorado potato beetle. This program has ended. (Libby Pemberton)

EPA has denied a specific exemption request from the:

1. Georgia Department of Agriculture for the use of Pirate insecticide on cotton to control the sweet potato whitefly. A notice of receipt published in the **Federal Register** of June 22, 1994 (59 FR 32207). The exemption was denied because the proposed use poses a risk of unreasonable adverse effects on nontarget birds and aquatic organisms, including endangered species. Although some growers may incur significant economic losses, the expected Statewide losses do not justify the use of this unregistered pesticide. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry for the use of Pirate insecticide on cotton to control beet armyworms. A notice of receipt published in the **Federal Register** of June 22, 1994 (59 FR 32205). The exemption was denied because the proposed use poses a risk of unreasonable adverse effects on nontarget birds and aquatic organisms, including endangered species. An emergency condition does not exist. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Agricultural commodities, Crisis exemptions, Pesticides and pests.

Dated: October 13, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–26806 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 4G4290/T687; FRL 4914–0]

Linuron; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the herbicide linuron in or on certain raw agricultural commodities. These temporary tolerances were requested by Resource Seeds, Inc.

DATES: These temporary tolerances expire September 1, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800.

SUPPLEMENTARY INFORMATION: Interregional Research Project No. 4, State Agricultural Experimental Station, Rutgers University, P.O. Box 231, New Brunswick, NJ 8903–0231, has requested in pesticide petition (PP) 4G4290, the establishment of temporary tolerances for residues of the herbicide linuron [3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the raw agricultural commodities lupine grain, lupine forage, and lupine hay at 1.0 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 67651-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Resource Seeds, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 1, 1996. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26797 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30228B; FRL–4769–9]

Rohm and Haas Co.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Rohm and Haas Company to conditionally register the pesticide product Anti-Foulant C-9211M containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, Acting Product Manager (PM) 31, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 272, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6908).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of November 16, 1983 (48 FR 52124), which announced that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had submitted an application to register the pesticide product Anti-Foulant C-9211M (EPA File Symbol 707–RTL) containing the active ingredients 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone at 35.0 percent and 4-chloro-2-*n*-octyl-3-(2*H*)-isothiazolone at 5.0 percent, active ingredients not included in any previously registered product.

This application was approved on February 28, 1994, as Anti-Foulant C-9211M, containing the active ingredient 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone at 30.0 percent, (EPA Registration Number 707–175) for use in the formulation of marine antifoulant paints.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirements, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This conditional registration has been issued even though at this time, no additional ecological effects and environmental fate data will be required for this manufacturing use product. However, additional requirements for environmental fate and ecological effects data are being held in reserve pending the review of leaching studies and will be requested for this manufacturing use product. The leaching from the matrix data will be required for end-use formulators. The data only supports the formulation of marine antifoulant paints for boats and vessels only. If these conditions are not complied with, the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on 4,5-dichloro-2-*n*-octyl-3(2*H*)-isothiazolone.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager listed above. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 28, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–26813 Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–610; FRL–4915–5]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two amendments to filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental

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Protection Agency, 401 M St., Sw., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number	Address
Cynthia Giles-Parker (PM 22)	Rm. 229, CM #2, 703-305-5540.	1921 Jefferson Davis Hwy., Arlington, VA. Do.
Joanne Miller (PM 23)	Rm. 237, CM #2, 703-557-7830.	

SUPPLEMENTARY INFORMATION: EPA has received amended pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Amended Filings

1. *PP 2F4154.* In the **Federal Register** of June 29, 1994 (59 FR 33504), EPA issued a notice of an amended petition filed by Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105 (amendment to petition filed in the **Federal Register** of December 30 1992 (57 FR 62334; Dec. 30, 1992)) proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole and its metabolites in or on bananas (whole fruit) at 0.3 part per million (ppm) of which not more than 0.05 ppm is contained in banana pulp. The amended petition is further amended to specify that the residues of fenbuconazole and its metabolites are combined and expressed parent equivalent to determine the total raw agricultural commodity (RAC) residue on bananas. The Rohm & Haas Co. requests that the following permanent tolerances be established for the total fenbuconazole residues: bananas (whole fruit) at 0.3 ppm of which not more than 0.05 ppm is contained in banana pulp. (PM 22)

2. *PP 3F4193.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued a notice that Monsanto Co., 700 14th St., NW:, Washington, DC 20005, proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of Permit Herbicide (methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1H-pyrazole-4- carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents), in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.3 ppm, and grain sorghum (milo) grain at 0.02 ppm (lower limit of method validation), grain sorghum (milo) forage at 0.07 ppm, grain sorghum (milo) stover at 0.08 ppm, grain sorghum (milo) silage at 0.14 ppm, grain sorghum (milo) hay, no tolerance proposals. Monsanto Co. has submitted to EPA an amended petition proposing to amend 40 CFR part 180 by establishing a regulation to permit residues in or on corn, field grain at 0.1 ppm, corn, field forage at 0.3 ppm, corn, field fodder at 1.5 ppm, grain sorghum (milo) grain at 0.1 ppm, grain sorghum (milo) forage at 0.3 ppm, grain sorghum (milo) fodder/stover at 0.1 ppm, and meat and meat byproducts (cattle, goats, hogs, horses, and sheep) at 0.1 ppm. The amended petition also proposes to amend 40 CFR part 180 by establishing a regulation to permit indirect or inadvertent residues when present as a result of application to field corn and/ or grain sorghum (milo) in or on soybean seed at 0.5 ppm, soybean forage at 0.5 ppm, soybean hay at 0.5 ppm, and wheat grain at 0.1 ppm, wheat forage at 0.1 ppm, and wheat straw at 0.2 ppm. (PM 23)

Authority: 7 U.S.C. 136a.

Dated: October 7, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26810; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–612; FRL–4917–3]

Pesticide Tolerance Petitions; Corrections and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces two corrections to filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities, and it announces two amendments to petitions.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operatiòns Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/telephone number	Address
George LaRocca (PM 13)	Rm. 204, CM #2, 703-305-6100	1921 Jefferson Davis Hwy., Arlington, VA. Do.
Leonard Cole (Acting PM 21)	Rm. 227, CM #2, 703-305-6900	

SUPPLEMENTARY INFORMATION: EPA has received amended/corrected pesticide petitions (PP) and a feed additive petition (FAP) as follows, proposing the establishment and/or amendment of regulations for residues of certain chemicals in or on various commodities.

Amended Filings

1. *PP 4F4186.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued the notice of the petition filed by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane-carboxylate) in or on strawberries at 2 parts per million (ppm) and tomatoes (fresh market, Florida only) at 0.5 ppm. Valent has submitted a revised petition that proposes establishing tolerances for fenpropathrin in or on the following raw agricultural commodities: strawberries (caps removed) at 2.0 ppm; tomatoes at 0.6 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; milk fat (reflecting 0.11 ppm in whole milk) at 2.75 ppm; and poultry meat, fat, and meat byproducts and eggs at 0.02 ppm. (PM 13)

2. *FAP 3H5661.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued the notice of the petition filed by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, P.O. Box 8025, proposing amend 40 CFR part 186 by establishing a regulation to permit residues of fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane- carboxylate) in or on tomato cannery waste at 5 ppm. Valent has submitted a revised petition that proposes estblishing tolerances for fenpropathrin in or on the following feed commodities: tomato pomace, wet at 6 ppm and tomato pomace, dried at 30 ppm. (PM 13)

Corrected Petitions

3. *PP 4F4351.* In the **Federal Register** of September 28, 1994 (59 FR 49397), EPA issued the notice of the petition from Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047, proposing to amend 40 CFR 180.1001(c) and (d) by establishing an exemption from the requirement of a tolerance for the insecticide *Candida oleophila* isolate I-182 in or on all raw agricultural commodities. The petition is corrected to specify that *Candida oleophila* isolate I-182 is a biological fungicide, not an insecticide, and that the petition proposes amendment to 40 CFR part 180, not 40 CFR 180.1001(c) and (d). (PM 21)

4. *PP 4F4354.* In the **Federal Register** of September 28, 1994 (59 FR 49397), EPA issued the notice of the petition from Merck & Co., Inc., P.O. Box 450, Three Bridges, NJ 0887-0450, proposing to amend 40 CFR part 180 by establishing a tolerance regulation to permit residues of the herbicide abamectin and its 8,9 isomer in or on cucurbits (melons, cucumber, and squashes). The petition is corrected to specify that abamectin and its 8,9 isomer is an insecticide, not a herbicide, and that a tolerance of 0.005 ppm in or on cucurbits is proposed. (PM 13).

Authority: 7 U.S.C. 136a.

Dated: October 20, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27179; Filed 11–1–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30374; FRL–4915–3]

Yoshitomi Pharmaceutical Industries, Ltd.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Yoshitomi Pharmaceutical Industries, Ltd., to register the pesticide product RYH-86NA, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Ruth Douglas, Product Manager (PM) 32, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 278, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–7964).

SUPPLEMENTARY INFORMATION: EPA received an application from Yoshitomi Pharmaceutical Industries, Ltd., 6-9, Hiranomachi 2-Chome Chou-ku, Osaka 541, Japan to register the pesticide product RYH-86NA (EPA File Symbol 63898–R), containing the active ingredient 4,5 dichloro-1,2-dithiol-3-one at 48.20 percent, an active ingredient not included in any previously registered product. However, since the notice of receipt of application to register this product did not publish in the **Federal Register**, as required by section 3(c)(4) of FIFRA, as amended. interested parties may submit written comments within 30 days from the date of publication of this notice.

The application was approved on August 11, 1994, as RYH-86NA for formulation into end-use products only (EPA Registration Number 63898–1).

The Agency has considered all required data on risks associated with the proposed use of 4,5 dichloro-1,2-dithiol-3-one, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of 4,5 dichloro-1,2-dithiol-3-one when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on 4,5 dichloro-1.2-dithiol-3-one.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public

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inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-26811 Filed 11-01-94; 8:45 am]

BILLING CODE [illegible]

[FRL-5100-8]

Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given of the proposed *de minimis* administrative cost recovery settlement entered into by EPA Region IX and the Respondents listed in Appendix A, set forth below. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that each respondent will reimburse the EPA its proportional share of the costs incurred at, or in connection with, an emergency removal conducted at the King Neptune Site in Bell Gardens, Califronia in May–June, 1992.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA. 94105, Attention: Steve Armsey, Regional Hearing Clerk.

ADDRESSES: A copy of the proposed settlement may be obtained from Steve Armsey, U.S. EPA Region IX Hearing Clerk (RC–1), 75 Hawthorne St., San Francisco, CA. 94105. Comments should reference the King Neptune Superfund Site and EPA Docket No. 94–13.

FOR FURTHER INFOVIMATION CONTACT: David Rabbino, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA. 94105, Telephone: (415) 744–1336.

Dated: October 26, 1994.

Jeff Zelikson, Director,

Hazardous Waste Management Division

King Neptune Lead Site; PRPs Settled

1 Alexian Brothers Hospital.
2 Alta Bates Community Hospital.
3 Alvarado Community Hospital.
4 Anaheim Medical.
5 Auburn Faith Hospital.
6 Bay General Hospital.
7 Bay Harbor Hospital.
8 Beverly Hospital.
9 Boswell Memorial Hospital.
10 Broadway Hospital.
11 Burbank Community Hospital Foundation.
12 California Hospital.
13 Cancer Foundation of Santa Barbara.
14 Cedars of Lebanon Hospital.
15 Center City Hospital.
16 Chico Community Hospital.
17 Children's Hospital.
18 Chula Vista Community.
19 City of Hope Medical Center.
20 Colusa County Hospital.
21 Community Hospital.
22 Community Hospital.
23 Community Hospital of Fresno.
24 Community Hospital of Los Angeles.
25 Community Hospital of North Hollywood.
26 Community Hospital of San Buenaventure.
27 Corona Community Hospital.
28 Costa Mesa Memorial Hospital.
29 Cottage Hospital.
30 Dameron Hospital.
31 Daniel Freeman Memorial Hospital.
32 Desert Hospital.
33 Desert Springs Hospital.
34 Doctors Hospital.
35 Doctors Hospital.
36 Dominican Hospital.
37 Downey Community Hospital.
38 Dr. David M. Brotman Memorial Hospital.
39 El Camino Hospital.
40 El Centro Community Hospital.
41 Enloe Memorial Hospital.
42 Feather River Hospital.
43 Foothill Presbyterian Hospital.
44 Fountain Valley Hospital.
45 Franklin Hospital.
46 Fremont Medical Center.
47 Garfield Hospital.
48 Glendale Memorial.
49 Glendora Community Hospital.
50 Good Samaritan Hospital.
51 Good Samaritan Hospital.
52 Granda Hills Community.
53 Grossmont Hospital.
54 Harbor General Hospital.
55 Harold D. Chope Community Hospital.
56 Hawthorne Community Hospital.
57 Henry Mayo Newhall Memorial Hospital.
58 Holy Cross Hospital.
59 Huntington Inter-Community Hospital.
60 Huntington Memorial Hospital.
61 Inter Community Hospital.
62 John Muir Memorial Hospital.
63 John Wesley Hospital.
64 Kaiser Foundation Hospital.
65 Kaiser Foundation Hospital.
66 Kaiser Foundation Hospital.
67 Kaiser Foundation Hospital.
68 Kaiser Foundation Hospital.
69 Kaiser Foundation Hospital.
70 Kaiser Hospital.
71 Kaiser Hospital.
72 Kaiser Hospital.
73 Kaiser Hospital.
74 Kaiser Hospital.
75 Kaiser Hospital.
76 Kaiser Permanente Hospital.
77 Kaiser Permanente Medical Center.
78 Kaiser Permanente Medical Center.
79 Kaweah Delta District Hospital.
80 La Habra Hospital.
81 Lodi Community Hospital.
82 Long Beach Community Hospital.
83 Los Angeles County-USC Hospital.
84 Los Medanos Community Hospital.
85 Los Roble Hospital.
86 Marian Hospital.
87 Marin General Hospital.
88 Martin Luther Hospital.
89 Martin Luther King Hospital.
90 Marys Help Hospital.
91 Maryvalé Samaritan Hospital.
92 Memorial Hospital of Gardena.
93 Memorial Hospital of Panorama City.
94 Mercy General Hospital.
95 Mercy Hospital.
96 Mercy Hospital.
97 Mercy San Juan Hospital.
97 Merritt Hospital.
99 Metodist Hospital.
100 Methodist Hospital of Southern California.
101 Midway Hospital.
102 Mission Bay Hospital.
103 Mission Community Hospital.
104 Naval Regional Medical Center.
105 Navy Hospital.
106 Northridge Hospital.
107 Ontario Community Hospital.
108 Orange County General Hospital.
109 O'Connor Hospital.
110 Pacific Hospital Long Beach.
111 Palmdale General.
112 Palo Alto Medical Clinic.
113 Palomar Memorial Hospital.
114 Paramount General.
115 Peninsula Hospital.
116 Peninsula Hospital & Medical Center.
117 Pioneer Hospital.
118 Placentia Linda Community.
119 Pomona Valley Community Hospital.
120 Presbyterian Hospital.

121 Providence Hospital.
122 Queen of the Valley Hospital.
123 Radiology Medical Group (N.M.).
124 Redlands Community Hospital.
125 Rees-Stealy Medical Clinic.
126 Ridgecrest Community Hospital.
127 Riverside General Hospital.
128 Riverside Hospital.
129 Riverview Hospital.
130 Roseville Community Hospital.
131 Ross General Hospital.
132 Salinas Valley Medical Center.
133 San Antonio Community County Hospital.
134 San Clemente General Hospital.
135 San Dimas Community Hospital.
136 San Francisco General Hospital.
137 San Gabriel Community.
138 San Joaqtin General Hospital.
139 San Joaquin Hospital.
140 San Jose Hospital.
141 Santa Ana Community.
142 Santa Monica Hospital.
143 Santa Rosa Memorial Hospital.
144 Santa Teresita Hospital.
145 Scripps Memorial Hospital.
146 Serra Memorial Hospital.
147 Sharp New Community.
148 Sherman Oaks Community Hospital.
149 Sierra Hospital.
150 Simi Valley Hospital.
151 Sonoma Valley Hospital.
152 South Bay Hospital.
153 South Coast Community.
154 Southern Nevada Memorial.
155 St. Bernardines Hospital.
156 St. Francis Hospital.
157 St. Johns Hospital.
158 St. Johns Hospital.
159 St. Joseph Hospital.
160 St. Joseph Hospital.
161 St. Josephs Hospital.
162 St. Josephs Hospital.
163 St. Luke Hospital of Pasadena.
164 St. Lukes Hospital.
165 St. Mary Desert Hospital.
166 St. Marys Hospital.
167 St. Marys Long Beach.
168 St. Rose Hospital.
169 Sunrise Hospital.
170 Sutter General Hospital.
171 S.C.P.M.G./Kaiser Hospital.
172 Temple Hospital.
173 Torrance Memorial Hospital.
174 Tri-City Hospital.
175 Tucson General Hospital.
176 UCLA Medical Center Hospital.
177 University Hospital.
178 University of California.
179 Vallejo General Hospital.
180 Valley Hospital Ltd.
181 Valley Memorial Hospital.
182 Valley Presbyterian Hospital.
183 Verdugo Hills Hospital.
184 Vesper Memorial Hospital.
185 Veterans Administration Hospital.
186 Washington Hospital.
187 West Adams Community Hospital.
188 West Anaheim Community.
189 Westlake Community Hospital.
190 Westminster Hospital.
191 White Memorial Medical Center.

[FR Doc. 94-27172 Filed 11-1-94; 8:45 am]

BILLING CODE [illegible]

[FRL-5100-1]

Proposed Administrative Settlement Under 122(h)(1), Triangle Petroleum Site, Fruita, Mesa County, CO

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed Administrative Settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(i), as amended by the Superfund Amendments and reauthorization Act ("CERCLA"), notice is hereby given of a proposed administrative settlement concerning the Triangle Petroleum Site in Fruita, Mesa County, Colorado. The proposed administrative settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Big and Little Tractor Repair; Cyprus Orchard Valley Coal Mine; City of Delta; Clymer's Ranch and Livestock; EIMCO Coal Machinery, Inc.; Fruita Consumers Cooperative; Groendyke Transport Inc.; Holsum Bakery Interstate Brands Corporation; Town of Hotchkiss; J.W. Brewer Tire Company; J.C. Thompson; Lucas Industrial Repair, Inc.; Master Petroleum Co.; Mountain West; Paul's Truck and Wash Service; Pepsi Cola West; Red Hat Produce, Inc.; Riggle Oil Company; Ryder Truck Rental, Inc.; San Juan County; United Companies of Mesa County; Valley Farms, Inc.; Van Waters & Rogers Inc.; Wagner Equipment Co.; Western Implement Company; Browning-Ferris Industries of Colorado, Inc.; Estate of Russell T. Lund, Jr., and Russell T. Lund III, as Personal Representative of the Estate of Russell T. Lund, Jr. (hereafter referred to as the "Settling Parties"). The settlement requires the Settling Parties to pay $138,941.01 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Region VIII's Superfund Records Center, which is located on the 8th floor of the North Tower, at 999 18th Street, Denver, Colorado.

DATES: Comments must be submitted by December 2, 1994.

ADDRESSES: An original and two copies of comments must be sent to James R. Rhodes, Enforcement Specialist, Triangle Petroleum Site Team, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Wendy Silver, Office of Regional Counsel, (303) 294–7568.

SUPPLEMENTARY INFORMATION: EPA alleges that the Settling Parties are responsible parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are jointly and severally liable for response costs incurred at or in connection with the Site.

By the terms of the proposed settlement, the Settling Parties will pay $138,941.01 to the Hazardous Substance Superfund within 30 days of the effective date of this Agreement. In return, EPA agrees that the Settling Parties shall have resolved any and all civil liability to EPA under section 107(a) 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the Site up through the date upon which EPA signs this Agreement.

Dated: October 7, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94-27168 Filed 11-1-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

October 26, 1994.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0621

Title: Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Fifth Report and Order, PP Docket No. 93–253.

Expiration Date: 10/31/97.

Estimated Annual Burden: 56,922 total hours; .50–20 hours per response; 10–12,000 respondents.

Description: In the Fifth Report and Order in PP Docket No. 93–253, the Commission has amended 47 CFR Part 24 to add new Subparts H and I. Subpart H contains the general rules and requirements governing the competitive

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bidding process for broadband PCS initial licenses. Subpart I contains the general rules and requirements for processing applications. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and to determine whether applicants claiming designated entity status are entitled to certain benefits. Affected public are any member of the public who wants to become or remain a licensee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27138 Filed 11–1–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with Title 16, Section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Purusant to Section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under Section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under Section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As a Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to Section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Southwest Service Center Office. These employees include: Jeffrey C. Conwell, Lawrence O. Greer, John Sears, Tommy K. Sears and John Vernon.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and delivery indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power or attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclosed any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: October 28, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–27141 Filed 11–1–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1042–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1042–DR), dated October 19, 1994, and related determinations.

EFFECTIVE DATE: October 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 19, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1994:

Effingham County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27157 Filed 11–1–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–053.

Title: The "8900" Lines Rate Agreement.

Parties: American President Lines, Ltd.; A.P. Moller-Maersk Line; Croatia Line; DSR Senator Joint Service; The National Shipping Company of Saudi Arabia; P&O Containers, Ltd.; Sea-Land Service, Inc.; United Arab Shipping Company (S.A.G.); and Waterman Steamship Corporation.

Synopsis: The proposed amendment modifies the authority of the Agreement, the Organization and Administration of the Agreement, the Meeting and Voting provisions, Independent Action, and Service Contract provisions. It also makes non-substantive changes to the alternate port service provisions of the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 27, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27101 Filed 11–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0806]

Policy Statement on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved a modification to its Policy Statement on Payment System Risk regarding net debit caps. Specifically, the Board has approved that the multiple associated with the de minimis net debit cap be doubled from 20 to 40 percent of risk-based capital. In addition, the Board approved administrative counseling flexibility for institutions that continue to exceed their net debit caps due to the posting of non-Fedwire transactions. Under this flexibility, the Reserve Banks will work with affected institutions on means of avoiding daylight overdrafts, but will not subject these institutions to routine counseling for daylight overdrafts.

EFFECTIVE DATE: October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Manager (202/452–3174), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board has established a Payment System Risk Policy Statement pursuant to its authority under the Federal Reserve Act. 12 U.S.C. 221 *et seq.* In October 1993, the Federal Reserve implemented a set of intraday posting rules for debits and credits affecting depository institution accounts with Reserve Banks. The posting rules provide for the posting of non-Fedwire transactions at specific times during the day, in addition to the posting of Fedwire funds and securities transfers as they occur throughout the day. In contrast, according to the posting rules that were in effect prior to last October, non-Fedwire payments for each depository institution were netted and, if a net credit resulted, the amount was posted to the institution's Federal Reserve account as of the opening of business and, if a net debit, as of the close of business.

Prior to implementation of the new posting rules, about 200 institutions, on average, exceeded their daylight overdraft caps during any given two-week reserve maintenance period. Immediately following implementation of the new posting rules, this number increased to between 1200 and 1500 institutions per period. In anticipation of this increase, the Board adopted a "transition period" for routine administrative counseling in order to provide institutions with a period of time to implement changes to their Federal Reserve account management procedures in order to reduce the incidence of daylight overdrafts in excess of daylight overdraft caps. Following nearly one year of "transition," about 750 to 800 institutions per period still typically exceed their caps.

The new posting rules were intended, in large part, to support the assessment of daylight overdraft fees, which began on April 14, 1994. The posting rules were developed by the Board over a three-year period and included two separate requests for public comment.

In developing the new posting rules, four general principles were established. First, the intraday posting rules were designed not to generate intraday float. The old posting rules typically created approximately $30 billion in intraday float. Second, the new posting rules were to permit depository institutions to anticipate precisely when transactions would be posted to their account. Under the old posting rules, an institution would not know until after the close of business whether the net of all non-Fedwire activity was a credit or a debit and, accordingly, whether the netted amount would be posted as of the opening or closing of business. Third, the posting rules were designed to be consistent with the legal rights and responsibilities of depository institutions. Under this principle, check debits would not be posted to an institution's account prior to presentment of the checks. Finally, the new posting rules were intended to be competitively neutral. That is, neither the Reserve Banks nor private sector providers of correspondent banking services should be artificially advantaged by the new posting rules.

Under these principles, the debit to an institution for any payment is posted at the same time as the credit is posted to the account of the counterparty to the transaction. The exception to this guideline is for check transactions where, by virtue of the nature of check processing, it is not possible to match debits and credits on a transaction-by-transaction basis throughout the day. In addition, because checks should not be debited prior to presentment, a single time for all check debits and credits would necessarily be later in the day than many depository institutions

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believed appropriate. Therefore, debits for checks presented to depository institutions are posted on the next clock hour at least one hour following presentment, beginning at 11:00 a.m., Eastern Time. Credits for check deposits are either posted (1) at a single, float-weighted posting time or (2) at multiple times throughout the day, beginning at 11:00 a.m., Eastern Time, using a set of fractions that are based upon Reserve Bank check collection experience. For check credits, depository institutions are permitted to select either option, based upon which alternative best meets their needs. Currently, the earliest float-weighted posting time (Option 1), which enables an institution to have full use of check deposit credits, is 11:45 a.m. Eastern Time.

On average over a day, these check posting rules result in a minimal amount of intraday check float. At specific points in time during the day, however, the check posting rules appear to be giving rise to as much as $20 billion in "credit float," whereby the Reserve Banks have posted debits to depository institution accounts prior to providing corresponding credits on check transactions to other institutions. The impact of this float, and the measured daylight overdrafts it creates, appears to be falling primarily on smaller depository institutions.

Under the old posting rules, smaller institutions seldom incurred significant daylight overdrafts and, thus, were able to make use of the "exempt from filing" or "de minimis" daylight overdraft caps without incurring a significant number of cap breaches. Under the new posting rules, however, on average over four recent reserve maintenance periods, 600 of the 775 total institutions with daylight overdrafts in excess of their caps were institutions that had "exempt from filing" or "de minimis" daylight overdraft caps. An additional 159 institutions with a zero net debit cap had cap breaches.

The "exempt from filing" cap permits an institution to incur daylight overdrafts up to the lesser of $10 million or 20 percent of risk-based capital. The exempt cap does not require any action by the board of directors of the depository institution or the filing of any documentation with its Reserve Bank. As additional flexibility, an exempt-from-filing institution may incur up to two daylight overdrafts in two consecutive two-week reserve maintenance periods before it is in violation of the Board's payments system risk (PSR) policy.[1] In order to incur higher daylight overdrafts, an institution may file a resolution of its board of directors requesting a de minimis cap, which permits daylight overdrafts up to 20 percent of risk-based capital. To be permitted even larger amounts of intraday credit, up to 2.25 times risk-based capital on a single day, the institution must undertake a self-assessment of creditworthiness, intraday funds management and control, and customer credit policies and controls to support a higher daylight overdraft cap.

An institution that regularly exceeds its cap is subject to progressively higher levels of administrative counseling by its Reserve Bank. Under current guidelines, a depository institution that continues to exceed its daylight overdraft cap ultimately may be assigned a zero cap and be placed on the real-time monitor. In this situation, a depository institution will be prevented from originating Fedwire funds transfers that would cause, or increase, a daylight overdraft.

The Board's policy on daylight overdraft caps is intended to address intraday risk to the Federal Reserve arising from daylight overdrafts. However, most non-Fedwire activity poses primarily interday, rather than intraday, risk. Escalated counseling, including real-time monitoring, for non-Fedwire-caused daylight overdrafts may be of limited usefulness in reducing these overdrafts. In addition, most of the daylight overdrafts caused by implementation of the new posting rules would not result in the assessment of daylight overdraft charges, owing to the deductible permitted in computing such charges.

Current alternatives available to a depository institution to address the situation where it routinely exceeds its daylight overdraft cap include: (1) filing for a "self-assessment" cap, (2) shifting funding patterns or delaying the origination of funds transfers, (3) selecting the "fractional" check posting option in order to begin receiving some check credits earlier than the single, float-weighted posting time, (4) having check debits posted to the account of a correspondent bank, or (5) transferring payment processing business to a private correspondent bank. It should be noted that filing for a self-assessment cap is an alternative available only to financially healthy institutions and presents an increased administrative burden to these institutions. In addition, many of the small institutions adversely affected by the posting rules have a limited amount of Fedwire funds transfer activity. Thus adjustments to such Fedwire activity may have a minimal impact on such institutions' level of daylight overdrafts. Similarly, a correspondent bank may be unable to provide funding to respondents earlier in the day without adversely affecting its own daylight overdraft position.

Alternatives

The Board considered three alternatives to address cap breaches attributable to the changes in the intraday posting rules for non-Fedwire activity: (1) increasing the size of the multiples associated with daylight overdraft net debit caps, (2) adopting, on a permanent basis, counseling flexibility for daylight overdrafts caused by non-Fedwire activity, or (3) changing the posting rules. Each of these alternatives is discussed below.

Caps

The Board analyzed various scenarios to determine whether the level of exempt-from-filing or de minimis cap categories could be increased without materially increasing risk to Reserve Banks. An increase in the exempt-from-filing daylight overdraft cap category would require no action on the part of a depository institution, with a potentially substantial percentage increase in intraday credit to be granted to that depository institution by the Federal Reserve. The Board believes that any increase in the size of caps, without a self-assessment, should be made in the de minimis cap, which requires the filing of a board of directors' resolution. This approach will ensure that senior bank management and directors are aware of the potential amount of credit that may be obtained by the depository institution from the Federal Reserve during the day.

In studying increases in cap levels, the Board was mindful of the existing structure of cap categories that require a self-assessment. For example, an "average" cap permits daylight overdrafts, on average over a reserve maintenance period, up to 75 percent of an institution's risk-based capital. In order not to diminish the relevance of an "average" cap, which can be obtained by an institution only after conducting a full self-assessment, the Board believes the cap multiple for the de minimis cap should not approach 75 percent.

At a level of 40 percent of risk-based capital, however, between 85 and 90 percent of cap breaches by institutions that currently have exempt or de minimis caps would be eliminated, assuming certain exempt-from-filing institutions file a board of directors' resolution adopting a de minimis cap. Diminishing reductions in cap breaches by institutions with exempt and de minimis caps are achieved with cap levels beyond 40 percent, with an associated lessening of the relative benefits of a self-assessed cap. Cap levels below 40 percent do not yield a sufficient reduction in cap breaches to warrant any increase at all in the level of the de minimis cap.

It should be noted that any increase in the size of net debit caps, in addition to providing capacity to cover current cap breaches caused by the posting rules, would also increase the intraday capacity for daylight overdrafts resulting from irrevocable Fedwire funds and book-entry securities transfers. The Board believes that, for the most part, institutions with a de minimis net debit cap have a relatively limited amount of Fedwire activity and an increase in daylight overdraft capacity will likely not increase significantly the risk exposure of the Reserve Banks. Moreover, Reserve Banks have special procedures in place for dealing with risks posed by depository institutions in poor or deteriorating financial condition. The Board has, therefore, approved an increase in the multiple associated with the de minimis net debit cap from 20 percent to 40 percent of risk-based capital.

Counseling

As noted above, the Reserve Banks administratively counsel depository institutions that exceed their caps. For cap categories other than the exempt-from-filing category, any daylight overdrafts in excess of a depository institution's cap are subject to counseling by the Reserve Banks. For institutions with an exempt cap, however, only when an institution incurs three or more daylight overdrafts in excess of its cap within a four-week period would it be subject to counseling. The Board reviewed this frequency measure to determine whether an increase may be feasible.

By increasing the number of permissible daylight overdrafts in excess of the exempt cap from two in two consecutive two-week reserve maintenance periods to four in two consecutive two-week reserve maintenance periods, 79 percent of the institutions with exempt-from-filing caps that had cap breaches would not be subject to counseling by their Reserve Banks. A significant concern with increasing the permissible occurrences of cap breaches, however, is that there is currently no size limitation on the size of those cap breaches. The Board also believes that increases in the number of non-counselable daylight overdrafts effectively increases the amount of intraday credit that may be used by an institution. Should the Federal Reserve decide to increase the amount of intraday credit to be extended to depository institutions, the Board believes it would be preferable to identify such an increase clearly through an increase in the size of a cap, rather than an increase in the number of permissible excess daylight overdrafts.

Another approach to minimize the administrative burden of counseling on both depository institutions and the Reserve Banks is to exempt daylight overdrafts caused either by check transactions or all non-Fedwire transactions from counseling. The Board believes, however, that separate treatment under the PSR policy of different types of payment transactions is not desirable. For example, daylight overdrafts caused by book-entry securities transfers and ACH transactions were initially excluded from counseling under the PSR policy. The Board decided in 1992 that all transactions should be treated alike for daylight overdraft measurement purposes. In addition, counseling institutions for some daylight overdrafts and not for others may lead to confusion, both within the Reserve Banks and at depository institutions.

Nonetheless, some degree of counseling flexibility may be appropriate. As noted above, the Reserve Banks have had in place since October 1993 a policy of administering daylight overdraft counseling on a flexible basis, depending upon whether cap breaches were attributable to the new posting rules. Continued counseling flexibility appears to be desirable largely in dealing with institutions that have a zero daylight overdraft net debit cap as well as relatively small institutions that, by the nature of their business, will continue to exceed a positive net debit cap even after appropriate adjustments have been made. These institutions may have few alternatives for eliminating non-Fedwire daylight overdrafts. The institutions that have zero caps for reasons related to their financial condition are typically already on the real-time monitor in reject or pend mode. In addition, in some cases, zero cap institutions are also required by the Reserve Banks to prefund certain payments or collateralize any daylight overdrafts. Routinely counseling such institutions for overdrafts caused by non-Fedwire transactions lessens the credibility of the daylight overdraft counseling program and appears to do little to lessen the actual risk to Reserve Banks. The Board has approved such administrative counseling flexibility on an on-going basis.

Posting Procedures

Modifications to the intraday posting procedures would be another way to address the frequency of cap breaches by small depository institutions. The Board believes any such modifications should be carefully weighed. The check posting rules were adopted by the Board following a lengthy process involving two requests for public comment and many discussions with the banking industry, as noted above. For example, the principle of the elimination of intraday float for checks was specifically addressed through public comment in 1989. The new posting rules have now been in place about one year and it is possible that institutions may still be adapting to those rules. In addition, changes to these rules after such a short period of time may impose unanticipated costs associated with changing computer programs on a large number of depository institutions.

Further changes to the check posting rules may also lead to the creation of intraday float. As an example, a scheme whereby check credits are posted at 11:00 a.m. Eastern Time and check debits continue to be posted on the clock hour at least one hour following presentment would generate as much as $23 billion in debit float at 11:00 a.m., and an average of $6 billion in float over the course of the day. However, even this radical a change to the posting rules would not eliminate a significant fraction of cap breaches caused by the implementation of the new posting rules. Many non-Fedwire-caused cap breaches would continue due to the posting of ACH debit transactions, at 11:00 a.m. Eastern Time, and net settlement entries from private clearing houses, as determined by the individual settlement arrangements. Many small depository institutions may continue to encounter difficulties in funding these transactions on a timely basis during the day.

Another possible change to the check posting rules would be to shift the first check debiting time from 11:00 a.m., Eastern Time to 11:00 a.m., Local Time. It was initially believed that such an approach might make the fractional check crediting option more feasible for many institutions in the Central, Mountain, and Pacific time zones. Upon further analysis, however, the Board determined that because of the later debiting times in western time zones, the corresponding crediting times would shift later in the day as well,

[1] For institutions with other net debit cap categories, any daylight overdraft that exceeds the net debit cap would be subject to administrative counseling by the Reserve Banks.

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thereby lessening any positive benefit of the delayed check debits.

A final alternative is to establish a new set of posting rules for cap administration different from the posting rules for the assessment of daylight overdraft fees. The Board does not believe such an approach would be desirable, as it would likely lead to more, rather than less, of an administrative burden on small institutions and could create a significant amount of confusion in the banking industry about the focus of the PSR initiative.

The Board has, therefore, not elected to make any changes to the established intraday posting procedures at this time.

By order of the Board of Governors of the Federal Reserve System, October 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-27122 Filed 11-1-94; 8:45am]

BILLING CODE 6210-01-P

Richard J. Irving; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Richard J. Irving, Eaton, Indiana; to acquire an additional .02 percent, for a total of 10.015 percent, of the voting shares of Community Bancshares, Inc., Noblesville, Indiana, and thereby indirectly acquire Community Bank, Noblesville, Indiana.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27154; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

Mid Am of Michigan, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summafizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 25, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am of Michigan, Inc., Bowling Green, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of ASB Bankcorp, Inc., Adrian, Michigan, and its wholly-owned subsidiary, Adrian State Bank, Adrian, Michigan. Mid Am of Michigan, Inc., will be a subsidiary of Mid Am, Inc., Bowling Green, Ohio. Comments regarding this application must be received not later than November 21, 1994.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Babbscha Company, Fridley, Minnesota, and thereby indirectly acquire Fridley State Bank, Fridley, Minnesota.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27155; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

Summit Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Summit Financial Corporation, Greenville, South Carolina; to acquire

Academy Finance, Inc., Kingstree, South Carolina, and thereby indirectly acquire E-Z Loans, Inc., Lake City, South Carolina, and engage in making and servicing consumer finance loans; acting as agent for insurance to borrowers that is directly related to the extension of credit by the finance company, including credit life and accident and health insurance; and acting as agent for insurance related to ensuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral for the extension of credit, pursuant to § 225.25(b)(1)(i); (8)(i), and (8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 27, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27156; Filed 11-1-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION, BETWEEN: 100394 AND 101494

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
General Electric Company, Thomas R. Roos, Island Development Corporation, Inc	94-2247	10/03/94
Sterling Software, Inc., KnowledgeWare, Inc., KnowledgeWare, Inc	94-2143	10/04/94
ONEOK Inc., Nelson Bunker Hunt Trust Estate, Creston Partners, L.P	94-2195	10/04/94
TransCanada PipeLines Limited, Northridge Canada Inc., Northridge U.S. Inc	94-2160	10/05/94
Corning Incorporated, J. Richard Fennell, Bioran Medical Laboratory	94-2174	10/05/94
Harvest States Cooperatives, H.J. Heinz Company, Portion Pac, Inc	94-2204	10/05/94
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Texas, Inc./Beverly California Corp	94-2209	10/05/94
Klaus J. Jacobs, Brock Candy Company, Brock Candy Company	94-2220	10/05/94
Amoco Corporation, John M. Fox, MarkWest Energy Partners, Ltd	94-2226	10/05/94
Beverly Enterprises, Inc., Eckerd Corporation, Insta-Care Holdings, Inc	94-2229	10/05/94
Arrow Electronics, Inc., Anthem Electronics, Inc., Anthem Electronics, Inc	94-2235	10/05/94
Philip F. Anschutz, Trammell Crow Equity Partners, The Tabor Group Ltd./Tabor Acquisition #31, Inc	94-2244	10/05/94
Adam Young, Nationwide Mutual Insurance Company, WATE-TV, WBAY-TV, and WRIC-TV	94-2133	10/06/94
Donald H. Gales, Griffith Consumers Company Voting Trust, Griffith Consumer Company	94-2127	10/07/94
Dawson Holdings, PLC, The Faxon Company, Inc., The Faxon Company, Inc	94-2246	10/07/94
Motorola, Inc., John Moussouris, MicroUnity Systems Engineering, Inc	94-2155	10/09/94
RBX Investors Inc., Halstead Industries, Inc., Halstead Corporation	94-2163	10/09/94
Mr. Robert Alpert, Aviall, Inc., Aviall Services, Inc	94-2173	10/09/94
Mobil Corporation, Mr. Irwin B. Singer, The Atlas Oil Company	94-2159	10/12/94
The Clayton & Dubilier Private Equity Fund IV L.P., The Travelers Inc., American Capital Management & Research, Inc	94-2182	10/12/94
Liberty Brokerage Investment Corp., Liberty Brokerage Investment Corp., Patriot Securities, L.P	94-2196	10/12/94
ANTEC Corporation, Keptel, Inc., Keptel, Inc	94-2214	10/12/94
Airgas, Inc., Post Welding Supply Company, Post Welding Supply Company	94-2239	10/12/94
Jerry Zucker, W.R. Grace & Co., W.R. Grace & Co.-Conn	94-2240	10/12/94
David J. McGrath, Jr., c/o TAD Resources Int'l., Inc., Thomas L. Kirk, Kirk-Mayer, Inc. (KMI)	94-2245	10/12/94
Charles Schusterman, Oryx Energy Company, Sun Operating Limited Partnership	94-2249	10/12/94
David H. Jacobs Trust (The), Jacobs Properties, Inc., Jacobs Properties, Inc	94-2253	10/12/94
Jacobs Realty Limited Partnership, Jacobs Properties, Inc., Jacobs Properties, Inc	94-2254	10/12/94
Jacobs Realty Limited Partnership, Richard E. Jacobs, Mall A Limited Partnership	94-2255	10/12/94
CGW Southeast Partners I, L.P., The BOC Group plc, Ohmeda, Inc	94-2258	10/12/94
Lincolnshire Equity Fund, L.P., TRW Inc., TRW Inc	94-2259	10/12/94
Clear Channel Communications, Inc., Mario F. Iacobelli, Heritage Broadcasting Company of New York	94-2267	10/12/94
Creative Technology Ltd., Digicom Systems, Inc., Digicom Systems, Inc.	94-2270	10/12/94
The NWNL Companies, Inc., USLICO Corporation, USLICO Corporation	94-2281	10/12/94
AmeriQuest Technologies, Inc., Jonathan O. Lee, Ross White Enterprises, Inc	94-2282	10/12/94
Ford Motor Company, Amoco Corporation, Amoco Oil Company	94-2284	10/12/94
Citicorp, Ground Round Restaurants, Inc., Ground Round Restaurants, Inc,	94-2285	10/12/94
Foundation Health Corporation, Thomas-Davis Medical Centers, P.C., Thomas-Davis Medical Centers, P.C	94-2184	10/13/94
K-III Communications Corporation, Irvin J. Borowsky, North American Publishing Company	94-2286	10/13/94
The Methodist Hospital, St. Luke's Episcopal Hospital, St. Luke's Episcopal Hospital	94-2289	10/13/94
St. Luke's Episcopal Hospital, The Methodist Hospital, The Methodist Hospital	94-2290	10/13/94
IBP, inc., Lakeside Farm Industries Ltd., Lakeside Farm Industries Ltd	94-2210	10/14/94
Loral Corporation, K & F Industries, Inc., K & F Industries, Inc	94-2236	10/14/94
American Premier Underwriters, Inc., Principal Mutual Life Insurance Company, Principal Casualty Insurance Company	94-2273	10/14/94

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TRANSACTIONS GRANTED EARLY TERMINATION, BETWEEN: 100394 AND 101494—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Japan Nuclear Fuel Company, Ltd., NEWCO, NEWCO	94-2279	10/14/94
Central Life Assurance Company, American Mutual Life Insurance Company, American Mutual Life Insurance Company	94-2288	10/14/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Director of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-26930 Filed 11-1-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting; International Scientific Conference on "Prevention: FAS and Alcohol-Related Birth Defects

An international scientific conference on alcohol abuse among pregnant women and women in childbearing years will be held on November 8 and 9, 1994 at the Hutzel Hospital Auditorium, Wayne State University-Detroit Medical Center, Detroit, Michigan, U.S.A. This conference is jointly sponsored by the National Institute on Alcohol Abuse and Alcoholism and the Fetal Alcohol Research Center (FARC), Wayne State University School of Medicine.

Leading scientists from the United States, Canada, Germany and England will present and discuss the latest research on prevention, surveillance, epidemiology, intervention, and risk factors as well as issues in diagnosis, barriers to treatment, and the effects of alcohol on birth weight, growth, and behavior.

Expert panels will discuss the implications for research on the prevention of fetal alcohol syndrome and alcohol-related birth defects. Federal, state and local public health officials as well as representatives from other countries and the private sector will participate.

Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Division of Continuing Medical Education, Wayne State University School of Medicine in Detroit, Michigan at (313) 577-1180 or fax (313) 577-7560.

Dated: October 28, 1994.

Enoch Gordis,

Director, National Institute on Alcohol Abuse and Alcoholism.

[FR Doc. 94-27234 Filed 11-1-94; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1994.

The meeting of the CMHS National Advisory Council will focus on minorities in supervisory positions; information on personnel with disabilities; children's mental health services sites; prevention; criminal justice and mental health. In addition there will be an overview of the Center's programs, and a discussion of administrative announcements and program developments.

A summary of the meeting and/or a roster of council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C-07, Parklawn Building, Rockville, Maryland 20857, telephone number (301) 443-7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Dates: December 8-9, 1994.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: December 8-9, 9:00 a.m.—5:00 p.m.

Contact: Anne Mathews-Younes, Ed.D., Room 11C-26, Parklawn Building, Telephone (301) 443-3606.

Dated: October 27, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94-27120 Filed 11-1-94; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-795993

Applicant: David Roberts, Madison, Wisconsin.

The applicant requests a permit to purchase in interstate commerce 2 pair of captive-bred Cabot's tragopans (*Tragopan caboti*) from Jack Donaldson of Findlay, Ohio, for the purpose of enhancement of the survival of the species through breeding.

PRT-795533

Applicant: Robert Landis, Fountain City, Indiana.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Gerhard Rabe, "Wydgelegen", Wakkerstroom, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-795769

Applicant: Clifford Senter, Phistow, New Hampshire.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by the Ciskei government at Tsolwana Reserve, Queenstown, Ciskei, Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: October 27, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94-27081 Filed 11-1-94; 8:45 am]

BILLING CODE 4310-55-P

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92-463) that the Maine Acadian Culture Preservation Commission will meet on Thursday, November 17, 1994. The meeting will convene at 7 p.m. at the Madawaska High School, Madawaska, Aroostook County, Maine. The school is located at 80 7th Avenue in Madawaska.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101-543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held September 22, 1994.
2. Reports of Maine Acadian Culture Preservation Commission working groups.
3. Report of the National Park Service planning team.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609-0177; telephone (207) 288-5472.

Dated: October 26, 1994.

Chrysandra L. Walter,

Deputy Regional Director.

[FR Doc. 94-27088 Filed 11-1-94; 8:45 am]

BILLING CODE 4310-70-P

Notice of Intent To Repatriate Cultural Items in the Possession of the USDA Forest Service

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under provisions of the Native American Graves Protection and Repatriation Act of the intent to repatriate cultural items in the possession of the Cibola National Forest, USDA Forest Service, that meet the definition of "sacred object" under Section 2 of the Act.

The items consist of 30 essentially complete prayer sticks of aspen and willow, 5 fragments of prayer sticks, one red flicker feather, one cornhusk, and a small amount of deteriorating organic matter. The items were reportedly gathered in 1977 or 1978 by an anonymous collector from a cairn/shrine on Mt. Taylor, NM. The items were returned to the possession of the USDA Forest Service in 1991 or 1992. The precise location of the cairn/shrine is not known.

The objects in this collection resemble the prayer sticks described and illustrated in Leslie A. White's *The Acoma Indians* (Smithsonian Institution, 1932: 126-129). Representatives of the Pueblo of Acoma have inspected the items and confirm their identification as prayer sticks. The representatives of the Pueblo of Acoma indicate that prayer sticks are left as offerings at a cairn/shrine located on Mt. Taylor as part of their traditional religious practice. Once left as an offering, the Acoma religion requires that such prayer sticks not be disturbed.

Reginald T. Pasqual, governor of the Pueblo of Acoma, has claimed the prayer sticks and associated materials as sacred objects and requested their repatriation to the Pueblo of Acoma. The Hopi Tribe and the Navajo Nation have been consulted and both support the claim of the Pueblo of Acoma to this particular collection of prayer sticks from Mt. Taylor.

Based on the above mentioned information, officials of the USDA Forest Service have determined, pursuant to 25 U.S.C. 3001 (3)(C), that these items are specific ceremonial objects needed by the traditional religious leaders of the Pueblo of Acoma for the practice of their traditional religion by its present day adherents. Officials of the USDA Forest Service have further determined, pursuant to 25 U.S.C. 3001 (2), that there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Acoma.

This notice has been sent to officials of the Pueblo of Acoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these cultural items should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, NM 87102, telephone: (505) 842-3238, before December 2, 1994. Repatriation of these sacred objects to the Pueblo of Acoma may begin after that date if no additional claimants come forward.

Dated: October 12, 1994.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Acting Chief, Archeological Assistance Division.

[FR Doc. 94-27078 Filed 11-1-94; 8:45 am]

BILLING CODE 4310-70-F

Notice of Inventory Completion for Native American Human Remains From Blossvale, NY, in the Possession of the Rome Historical Society, Rome, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains from a site near Blossvale, NY, that are presently in the possession of the Rome Historical Society, Rome, NY.

A detailed inventory and assessment of these human remains has been made by Historical Society curatorial staff, a contracted specialist in physical anthropology, and representatives of the Oneida Indian Nation (of New York)

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and the Oneida Tribe of Indians of Wisconsin.

In 1958, Mr. Willard Teelin discovered the human remains along with some associated funerary objects following a flash flood in Fish Creek near Blossvale, NY. The director of the Fort Stanwix Museum, operated by the Rome Historical Society, identified the human remains and associated funerary objects as belonging to the Owasco culture. Mr. Teelin donated the human remains to the Rome Historical Society and retained possession of the associated funerary objects. Mr. Teelin's descendants are not aware of the whereabouts of the associated funerary objects. Osteological examination by Dr. Richard G. Wilkinson, Department of Anthropology, State University of New York-Albany, revealed that two individuals are represented by the human remains. The first individual was approximately 35–40 years old at the time of death. The second individual was approximately 16–20 years old at the time of death. Both are Native American males from the prehistoric period.

Inventory of the human remains and review of the accompanying documentation indicates that no known individuals were identifiable. The Owasco culture is generally recognized in the archeological literature as being ancestral to the five historically known Indian tribes of the Iroquois Confederacy: Mohawk, Oneida, Onondaga, Cayuga, and Seneca. The Blossvale, NY, area in which the human remains were discovered is well within the historical boundaries of lands claimed as Oneida territory. The Oneida Indian Nation (of New York) considers itself to be the descendant of Native Americans who occupied central New York since time immemorial. Oneida Tribe of Indians of Wisconsin has declined to submit a claim for repatriation of these human remains.

Based on the above mentioned information, officials of the Rome Historical Society have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Oneida Indian Nation (of New York).

This notice has been sent to officials of the Oneida Indian Nation (of New York) and the Oneida Tribe of Indians of Wisconsin. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Jon Austin, Executive Director, Rome Historical Society, 200 Church Street, Rome, NY 13440, telephone: (315) 336–5870, before December 2, 1994. Repatriation of these human remains to the Oneida Indian Nation (of New York) may begin after that date if no additional claimants come forward.

Dated: October 11, 1994.

Francis P. MacManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 94–27079; Filed 11–1–94; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Thomas Morrison, D.P.M.; Revocation of Registration

On March 2, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order on Show Cause to John Thomas Morrison, D.P.M., of Port Orchard, Washington, proposing to revoke his DEA Certificate of Registration, AM2446006, and to deny any pending applications for registration as a practitioner. 21 U.S.C. 823(f) (1992). The basis for the Order to Show Cause was that Dr. Morrison lacked authority to handle controlled substances in the State of Washington. 21 U.S.C. 824(a)(3).

The Order to Show Cause was personally served on Dr. Morrison by DEA investigators on March 2, 1994. More than thirty days have passed since the Order to Show Cause was served on Dr. Morrison. The Drug Enforcement Administration has received no response from Dr. Morrison or anyone purporting to represent him. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Morrison has waived his opportunity for a hearing on the issues raised by the Order to Show Cause. The Deputy Administrator has carefully considered the investigative file in this matter and enters his final order based on the provisions of 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on May 7, 1993, the State of Washington Department of Health Podiatric Medical Board (Podiatric Board) found that Dr. Morrison had engaged in unprofessional conduct. As a result the Podiatric Board revoked Dr. Morrison's privilege to practice podiatric medicine and surgery in the State of Washington and revoked his privilege to prescribe controlled substances. Accordingly, Dr. Morrison is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances in the State of Washington wherein he is registered with the DEA.

The Deputy Administrator has consistently held that DEA cannot maintain the registration of a practitioner who is without State authority to handle controlled substances. *Nathaniel S. Lehrman, M.D.*, 59 FR 44780 (1994) and *Franz A. Arakaky, M.D.*, 59 FR 42074 (1994); *see also Elliot Monroe, M.D.*, 57 FR 23246 (1992) and *Bobby Watts, M.D.*, 53 FR 11920 (1987).

Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration concludes that Dr. Morrison's DEA registration must be revoked. 21 U.S.C. 824(a)(3). Accordingly, the Deputy Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AM2446006, previously issued to John Thomas Morrison, D.P.M., be, and it hereby is, revoked, and that any pending applications for renewal of such registration, be, and they hereby are, denied.

This order is effective November 2, 1994.

Dated: October 26, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–27077 Filed 11–1–94; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 18, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas, 78720, made written request to the Drug Enforcement Administration to be registered as an importer of Heroin (9200) a basic class of controlled substance in Schedule I.

The firm plans to import a small quantity of this compound to make DEA exempt deuterated and non-deuterated drug reference standards which will be sold to analytical and forensic laboratories for use in drug testing programs.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 2, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.402 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 26, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27149 Filed 11–1–94; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Peter Karasik, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 9, 1994, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 24, 1994 for the following applications:

Ms. Anne Kershaw, Permit Number: 95WM2–ANI

Adventure Network International

Effective Date: October 24, 1994

Expiration Date: October 24, 1995

Michael K. Egan, Permit Number: 95WM3–POL

Captain, PolarFliteTM

James M. Conn

Pilot, PolarFliteTM

Effective Date: November 10, 1994

Expiration Date: December 15, 1994

Robert S. Cunningham,

Permit Office.

[FR Doc. 94–27105 Filed 11–1–94; 8:45 am]

BILLING CODE 7555-01-M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 23, 1994, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 21, 1994 for the following applicants:

William R. Fraser, Permit #95–019

William R. Fraser, Permit #95–020

William R. Fraser, Permit #95–021

Arthur L. DeVries, Permit #95–022

Nadene G. Kennedy,

Permit Office.

[FR Doc. 94–27104 Filed 11–1–94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter Reconsideration of Nuclear Power Plant Security Requirements for an Internal Threat

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity of public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter to notify all holders of operating licenses or construction permits for nuclear power reactors that NRC is reconsidering its positions about certain security measures to protect against an internal threat at nuclear power plants. NRC expects recipients to review the information for applicability to their facilities and consider actions, as appropriate. However, suggestions contained in this draft generic letter are not NRC requirements; therefore, recipients are not required to take specific action or make a written response to the NRC. NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented herein.

NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter and will review the technical position and, when appropriate, analyze the value/impact on licensees. If NRC issues this generic letter, it will become available for public inspection in the Public Document Rooms.

The comment period expires December 2, 1994. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert F. Skelton, (301) 504–3208.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter XXXX: Reconsideration of Nuclear Power Plant Requirements Associated With an Internal Threat.

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Addressees

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to notify you that it is reconsidering its positions concerning certain security measures to protect against an internal threat at nuclear power plants. It is expected that recipients will review the information for applicability to their facilities and consider actions, as appropriate. However, suggestions contained in this generic letter are not NRC requirements; therefore, no specific action or written response is required.

Background

The fitness-for-duty rule (10 CFR Part 26) published on June 7, 1989, required power reactor licensees to implement fitness-for-duty programs. The access authorization rule (10 CFR 73.56) published on April 25, 1991, required power reactor licensees to implement access authorization programs. One objective of these regulations was to ensure the reliability and trustworthiness of persons granted unescorted access to protected areas at power reactor facilities. In light of these regulations, the NRC evaluated security requirements for protection against the insider threat at nuclear power plants to verify that they remain appropriate. The staff discussed the initial results of this review in SECY 92–272, "Re-examination of Nuclear Power Plant Security Requirements Associated With the Internal Threat," of August 4, 1992. The staff then recommended reducing or eliminating certain security requirements that gave marginal protection against the insider threat.

The Commission reviewed SECY 92–292 and asked the staff to re-visit the subject and explore alternatives for allowing reductions in unnecessary or marginally effective security measures. The staff discussed the results of this re-evaluation in SECY 93–326, "Reconsideration of Nuclear Power Plant Security Requirements Associated with an Internal Threat," December 2, 1993.

Description of Circumstances

In a staff requirements memorandum of February 18, 1994, the Commission endorsed staff recommendations to (1) issue generic correspondence informing licensees of the opportunity to revise certain commitments in their security plan and (2) proceed with rulemaking regarding specific changes to reduce or eliminate certain security requirements. This generic letter discusses those areas in which licensees may choose to revise their plans.

Discussion

NRC may accept changes to a licensee security plan in the following four areas:

(I) Vital Area Access Control Measures

NRC may accept the changes to vital area (VA) access control measures in security plans discussed below upon confirmation that (1) certain other site-specific measures are in place or will be implemented to demonstrate (e.g., through contingency drills) a capability, including a protective strategy, to protect against an external adversary after making any of the changes and (2) measures are in place to examine hand-carried packages for explosives using equipment specifically designed for that purpose.

A. Compensatory Measures

1. Eliminate compensatory measures for failure of vital area mechanical lock hardware if the access control hardware and alarms are operable.

2. Extend the timeliness requirements for implementing compensatory measures for *any* malfunctioning element of the vital area access control system from 10 minutes to a period similar to that which technical specifications permit for safety equipment to be out of service while the plant is in Mode 1 until required to be in Mode 3.

The licensee could extend the time to implement compensatory measures only if either the VA door lock or alarms are operable. The most restrictive limiting condition for the timeliness of the compensatory measure(s) would be the most restrictive safety equipment in the vital areas accessed by the VA door needing compensatory measures.

B. Maintenance of Discrete Vital Area Access Lists

Eliminate separate access authorization lists for *each* vital area of the facility. As an alternative, maintain a single list of persons who have access to any vital area. This list would have to be revised as status of persons changes in order to maintain its accuracy, especially for removing vital area access authorization from individuals.

C. Alarm Response

Modify the response to vital area access control alarms (doors). Response would only be needed to vital area access control alarms that coincide with an unresolved alarm at the protected area perimeter, a known intrusion, or a constant alarm, such as that caused by an open door.

D. Locked Condition of Door

Although locking mechanisms and access control systems, including door alarms, would be retained, doors to vital areas could be left unlocked. A licensee choosing this option would be expected to have the capability to remotely lock the door(s) from both alarm stations, as necessary, in response to an external threat. Licensees choosing this option would be expected to demonstrate, as part of the demonstration of their capability to protect against an external adversary, the ability to remotely lock doors in time to delay the adversary where delay was essential in the protective strategy. Access control systems retained on vital area doors would continue to maintain a record of personnel access and generate alarms if the door was open without a proper access.

The process for licensees to revise their security plans to implement the changes to security measures in vital areas will depend on the content of their present security plans. Since these changes would reduce slightly the effectiveness of the security program, most changes would need to be processed in accordance with the provisions of 10 CFR 50.90. Some of the changes may be processed by an exemption request or in accordance with 10 CFR 50.54(p). If appropriate, changes in security plans should include commitments to the measures described in paragraph (I) above. To ensure unrestricted emergency access, the NRC staff notes the advantages of (1) having the ability to remotely unlock doors to vital areas from each alarm station, (2) ensuring that malfunctions result in doors failing unlocked rather than locked, and (3) allowing all operators and auxiliary operators to carry metal keys that can override keycard-operated lock mechanisms.

(II) Access Search of On-duty Armed Security Guards

NRC may accept changes to allow armed security officers who (1) are on duty and carry a weapon in accordance with assigned duties, (2) have already been searched during their current shift, and (3) have left the protected area on official business, to reenter the protected area without being subject to the metal detector searches (but still be subjected to explosive searches). If search equipment is a single unit containing both metal and explosive detection equipment, alarms from the metal detector may be disregarded. This change could be made to security plans in accordance with 10 CFR 50.54(p).

(III) Containment Access Control Measures

NRC may accept changes to allow persons other than security personnel, provided they are appropriately trained in access control procedures in accordance with the security plan, to control access for personnel and materials entering the containment any time frequent access is permitted to the containment. This change could be made to security plans in accordance with 10 CFR 50.54(p).

(IV) Alternative Measures for Control of Security Badges

NRC may accept changes to allow for alternative approaches for accountability of picture badges used for unescorted access so that certain types of badges may be taken outside the protected area. Alternative approaches need to include the ability to ensure positive identification of individuals upon entry to the protected area and to ensure the badge is disabled of its access function when taken out of the protected area. For employees, such changes can be made under 10 CFR 50.54(p) because the regulations currently allow licensee employees to take badges off site. Changes to security plans to allow contractors to take security picture badges off site would require a request for exemption from the provisions of 10 CFR 73.55(d)(5). Coincident with receiving approval of the exemption request, the licensee would be able to implement the change in accordance with 10 CFR 50.54(p).

This generic letter requires no specific action or written response.

Dated at Rockville, Maryland, this 24th day of October, 1994.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulations.

[FR Doc. 94–27127 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 69th meeting on November 10, 1994, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Thursday, November 10, 1994—8:30 A.M. until 6:00 P.M.

During this meeting the Committee plans to consider the following:

A. *Meet with the Commission*—The Committee will talk with the Commission about ACNW reports on:

- The Department of Energy's Proposed Program Approach in the Civilian Radioactive Waste Management Program.
- The NRC staff's Research Program in the Area of High-Level Radioactive Waste.
- The NRC staff's Capability in Nuclear Waste Disposal Facility Performance Assessment,

and will discuss other items raised by Commissioners during the meeting.

B. *Meet with the Director, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will provide information to the Committee on current waste management issues.

- C. *Low-Level Waste Research*—Representatives of the NRC Office of Nuclear Regulatory Research (RES) will provide information on NRC staff user needs in the area of low-level radioactive waste (LLW) research. Topics may include the status of the LLW RES Program Plan (NUREG–1380) and the status of the current user need statement. Other LLW research issues may be considered.

D. *Preparation of ACNW Reports*—The Committee will consider preparation of ACNW reports on:

- The Uses and Limitations of Groundwater Dating Methods,
- NRC Research in the Low-Level Radioactive Waste Area,
- Substantially Complete Containment and the Feasibility for Trade Offs,
- LLW Disposal Site Ownership,

among other issues raised during this and previous meetings.

E. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: October 27, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–27130 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Probabilistic Risk Assessment (PRA) Implementation Plan Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a public workshop on December 2, 1994, to discuss the Commission's

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Probabilistic Risk Assessment (PRA) Implementation Plan. The PRA Implementation Plan was developed to ensure that the increased use of PRA methods and technology in nuclear regulatory activities would be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. The purpose of the workshop is to inform the public of NRC activities related to increasing the use of PRA methods and techniques in regulatory applications and receive public comments on these activities. The principal focus of this workshop will be PRA applications for commercial power reactors and while the NRC presentations will be broad in nature, NRC staff representatives will be present to address specific areas of concern or specific line items in the PRA Implementation Plan.

DATES: November 28, 1994—Advance notification of intent to attend the workshop, desire to comment or make a presentation during the workshop, or both, is requested by the NRC. Participants are encouraged to submit written comments, presentation summaries, or both to the staff by this date.

December 2, 1994—The workshop will be held at the NRC Auditorium from 8:30 am to 4:30 pm.

January 20, 1995—All written comments on matters covered by the workshop received by this date will be considered by the staff. Written comments received after January 20, 1995, will be considered to the extent practical.

Written comments on the PRA Implementation Plan will be accepted before, during, and after the workshop. Advance comments, which could serve to enhance the effectiveness of the workshop are particularly solicited.

ADDRESSES: The workshop will be held in the NRC Auditorium. The NRC Auditorium is located on an underground level between the One White Flint North Building and the Two White Flint North Building at 11545 Rockville Pike, Rockville, Maryland 20852. The NRC buildings are located across from the entrance to the White Flint Metro Station.

Notification of intent to attend, desire to make a statement or presentation should be sent to Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop O–11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. These notifications can also be transmitted via facsimile or telephone. The facsimile number is (301) 504–2279 and the telephone number is (301) 504–1105. The facsimile cover sheet should contain the address information listed above.[1]

Copies of documents cited in the supplementary Information section are available for inspection and/or for reproduction for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20037. Copies of NUREGs cited in this document may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

In addition, copies of the following documents can be obtained electronically by accessing the NRC electronic bulletin board system (BBS) Tech Specs Plus:

(1) SECY–94–218, "Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities";

(2) SECY–94–219, "Proposed Agency-Wide Implementation Plan for Probabilistic Risk Assessment (PRA)";

(3) the Commission's Staff Requirements Memorandum (SRM) of September 13, 1994 concerning the August 30, 1994 Commission meeting; and

(4) the Commission's SRM of October 4, 1994 on SECY–94–218.

These four WordPerfect 5.1 documents are located in the BBS MISC library directory under the single filename "PRAPLAN.ZIP". The BBS operates 24 hours a day and can be accessed through a toll-free number, 1–800–679–5784, at modem speeds up to 9600 baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and using ANSI terminal emulation.

Written comments may be sent to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received and relevant reference documents may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC, between the hours of 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Thomas G. Hiltz, Office of Nuclear Reactor Regulation, Mail Stop OWFN 11–F–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 504–1105.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Tentative Agenda.
III. Workshop Content and Structure.

I. Background

The Proposed PRA Policy Statement

To establish top-level guidance on the use of PRA in nuclear regulatory activities and aid in development of a detailed PRA Implementation Plan, the NRC staff proposed a policy statement regarding the use of PRA in regulatory activities. The policy statement would articulate the Commission's position on the role of PRA in various regulatory programs and would communicate that position to the NRC staff, the public, licensees, and applicants for licenses.

The NRC staff discussed its recommendations for a PRA policy statement in SECY–94–218, "Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities." In SECY–94–218, the staff stated that an overall policy on the use of PRA in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. In addition, the staff stated that the use of PRA technology in NRC regulatory activities should be increased. The increased use of PRA methods and technology is intended to complement and enhance deterministic-based regulations by using PRA technology in activities where methods and data are well understood. The staff believes the increased use of PRA technology would lead to improved risk-effective safety decisions and more focused and efficient use of NRC staff and industry resources.

The Commission concludes that increased use of PRA techniques as an integral part of the regulatory decision-making process is now justified. Consequently, the Commission has proposed a policy to encourage the use of PRA and to expand the scope of PRA applications in nuclear regulatory matters to the extent supported by the state-of-the-art methods and data. An important aspect of the expanded use of PRA technology would be a strengthening of NRC's defense-in-depth philosophy by helping to identify and address weaknesses or overly conservative regulatory requirements for the physical and functional barriers. In its Staff Requirements Memorandum of October 4, 1994, the Commission directed the staff to revise the proposed policy statement and publish the proposed policy statement for public comment. The proposed PRA Policy Statement is scheduled to be published in the **Federal Register** in November 1994 for a 60-day public comment period.

The PRA Implementation Plan

The PRA Implementation Plan was developed in parallel with the Proposed PRA Policy Statement to ensure that the increased use of PRA methods and technology in nuclear regulatory activities would be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. This PRA Implementation Plan is a "living" document that provides the framework for NRC management oversight of the use of PRA methods and technology in regulatory activities.

As previously discussed, PRA methods have been applied successfully in numerous nuclear regulatory activities and have proven to be a valuable complement to deterministic engineering approaches. However, the increased use of PRA in nuclear regulatory activities has broad implications and could result in changes in many areas associated with our current regulatory framework. These areas, considered by the staff in developing the draft PRA Implementation Plan, may include: Changes to regulations, guidance documents and inspection programs, a substantial shift in staff resources including recruiting and training programs to provide the necessary PRA expertise, an increased emphasis on continued development of PRA methods and decision-making tools, and enhanced reliability data collection. As discussed in SECY–94–218, the expanded use of PRA in nuclear regulatory activities may raise additional policy, technical, and legal issues that will be considered in subsequent modifications to the PRA Implementation Plan.

Principal Issues Related to Increasing Use of Risk Assessment

Four principal issues associated with applying risk assessment methods and techniques to regulatory applications are highlighted in the PRA Implementation Plan. These issues included development of regulatory decision-making criteria, collection and analysis of equipment and human performance data, development and use of consistent PRA models and methods, and development of a systemic PRA training program.

To ensure consistent and appropriate decision-making that incorporates PRA methods and results, it is crucial that coherent and clear criteria are applied. As part of this plan, decision criteria will be established that address the interdependence of probabilistic risk and deterministic engineering principles. The process of developing these criteria will involve communications among the NRC, the nuclear industry, and the public to ensure an understanding by all parties of the role of PRA methods and results in NRC's risk management efforts.

The NRC staff uses equipment performance data in the conduct of PRAs, reliability analyses, component failure studies, plant aging studies, identification and resolution of generic issues, preparation for inspections, and reviews of technical specifications change requests. For these purposes, the staff uses generic data supplemented with a limited amount of plant-specific data. The use of the generic data can be problematic because the data have not been verified or updated and do not differentiate between plant-to-plant variations in performance or changes in performance as reactor plants age. The ad hoc collection of plant-specific data is costly and inefficient.

The availability of human performance data is even more problematic. One reason is the lack of established and accepted human performance analysis methods and models upon which to base the collection of human performance data. This is particularly important in the analysis of operator performance in response to events during which both acts of omission and commission may occur. Human reliability methods and data are currently the focus of research and limited evaluations of human performance issues raised by analysis of operating reactor events.

As the NRC and the nuclear reactor industry move toward greater use of PRA, the need for better data on human performance, plant-specific safety system availability data (at the system train level), and equipment reliability data will be required to continue to increase the role of PRA in the regulatory decision-making process. Increased availability of data on equipment and human performance is very important to implementing many risk-based regulation initiatives. For example, this information is essential for implementing the maintenance rule and in supporting the development of risk-based technical specifications.

The NRC staff recognizes the need to collect equipment and human performance data. This information, derived largely from operating experience, will continue to provide a source of credible performance data for NRC use in the regulatory process.

The NRC PRA Working Group identified the need for the development and use of consistent PRA models and methods. Several tasks that are now being undertaken include the development of more user-friendly computer interfaces; the development of low-power and shutdown models, external events models, and Level 2/3 PRA models compatible with the needs of NRC events assessment staff; and the development of methods for consistently identifying the appropriate detailed PRA model for use in the analysis of individual events or issues.

It is important to note that not all of the NRC's risk management activities lend themselves to a risk analysis approach that uses a probabilistic, fault free methodology. The NRC recognizes that a single approach to risk management is not appropriate. As part of the PRA Implementation Plan the NRC will develop and validate risk assessment models and methods.

Another issue is the training of the staff who will not be directly working with PRA methods. As the NRC shifts to grater use of, and reliance on, PRA methods and risk-based regulation, all technical staff members, including inspectors, will need to develop an understanding of the strengths and weaknesses of PRA methods and their use. The PRA Implementation Plan includes an extensive training program. This training program is based on the systems approach to training, which includes completing job task analyses, developing learning objectives, developing and delivering courses, evaluating trainee mastery of objectives, and modifying the PRA training program as necessary. Because the number of NRC staff members who will need training is large, a large resource commitment over the next several years will be required.

The PRA Implementation Plan will require users and developers of the new

[1] Letter or facsimile notifications should contain, and people giving notification via telephone should be prepared to provide, the following pre-registration information: full name of participants/attendees, name of organization or business, mailing address, daytime telephone, facsimile number, a statement concerning whether the person or organization will provide comments or a presentation during the workshop, a statement concerning whether the person or organization intents to provide written comments before or after the workshop, and any specific questions or comments that the participant or organization would like to be considered and/or addressed at the workshop.

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methods to have significant experience in PRA methods and statistics. It will take time for these staff members to gain the necessary experience. Some of the knowledge and skills needed to do this work can be obtained though traditional training. However, on-the-job training, classroom instruction, and industrial experience will be needed in order to acquire some of the required knowledge and experience. Recruiting of outside experts and intensified development of current staff members will likely be necessary to gain this staff experience. This process will take several years to accomplish and will be a major factor in the success of the PRA Implementation Plan and in establishing the pace of its implementation.

II. Tentative Agenda

December 2, 1994

7:30 am Registration
8:30 am Introduction
8:45 am PRA Policy Statement Overview (NRC)
9:15 am Implementation Plan Overview (NRC)
10:00 am Break
10:15 am Industry Interactions (NRC/Industry)
11:45 am Lunch
1:00 pm Participant Presentations/Panel Discussion in Response to Participant Comments
2:45 pm Break
3:00 pm Participant Presentations/Panel Discussion in Response to Participant Comments (cont'd)
4:00 pm Summary and Conclusions
4:30 pm Adjourn

III. Workshop Content and Structure

The workshop is structured to include NRC staff presentations during the morning and to allow interested parties to make presentations during the afternoon. An opportunity for questions and comments following presentations is planned.

In the afternoon session, participants will be allowed to express their views and make presentations. Participants who will be making presentations will be scheduled in the order in which they notified the staff of their intention to make a presentation. Comments will be taken from parties in the order in which they notified the staff of their intent to comment. The order of comment will be:

(1) Parties who notified the staff by November 28, 1994;

(2) Parties registering to comment before 8:30 a.m. the day of the workshop; and

(3) Parties who have not given prior notice.

Organizations that notify the staff by November 28, 1994, of their intent to give a presentation will be limited to 20 minutes. Otherwise organization and individual presentations and comments will be limited to 5 minutes. These time limits may be adjusted depending on the number of presentations and comments. The workshop will be transcribed, and the transcript will be available in the NRC Public Document Room.

To foster meaningful discussions during this session and to aid participants in preparing their presentations and comments, participants should consider the following set of questions:

- What additional areas should be considered regarding the increased use of PRA in regulatory applications?
- What areas currently in the PRA Implementation Plan require additional emphasis? What areas are emphasized too much?
- Is the overall impact of the PRA Policy Statement on regulatory activities clearly evident by the activities in the PRA Implementation Plan?
- What impact will the PRA Policy Statement and the PRA Implementation Plan have on those organizations that the NRC regulates?

Dated in Rockville, Maryland, this 27th day of October 1994.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Chief, Probabilistic Safety Assessment Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27125 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 30 of Regulatory Guide 1.84, "Design and Fabrication code Case Acceptability, ASME Section III," and Revision 30 of Regulatory Guide 1.85, "materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 11 of Regulatory Guide 1.147, "Inservice Inspection code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inserve inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 11th day of October, 1994.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–27182 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Turkey Point Unit Nos. 3 and 4; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC) has denied a portion of an amendment request by the Florida Power and Light Company (FPL or the licensee) for an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to the licensee for operation of the Turkey Point Plant, Units 3 and 4, located in Dade County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 30, 1994 (59 FR 14889).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) to delete the frequencies from the audits performed under the cognizance of the Company Nuclear Review Board (CNRB) and remove the audit of the emergency and security plans and implementing procedures from TS. The audits would be performed at the frequency specified in the FPL Topical Quality Assurance Report (TQAR). Some audits would be performed less frequently (biennial rather than annual in most cases).

The NRC staff has concluded that the portion of the licensee's request regarding audits of the Fire Protection Program cannot be granted for the reasons stated in letter dated October 26, 1994. The licensee was notified of the Commission's denial of the proposed change by letter dated October 26, 1994.

By December 2, 1994, the licensee may demand a hearing with respect to the denial described above. Any person affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. A copy of any petitions should also be sent to the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated February 18, 1994, as supplemented by letter dated August 5, 1994, and (2) the Commission's letter to the licensee dated October 26, 1994. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Florida International University, University Park, Miami, Florida 33199. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27129 Filed 11–1–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mark D. Reinhold, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606–2420.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James B. King,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Lorraine A. Green, Deputy Director.
Michael C. Cushing, Chief of Staff.
William E. Flynn, III, Associate Director, Retirement and Insurance Group.
Mary Lou Lindholm, Associate Director, Administration Group.
Leonard R. Klein, Associate Director, Career Entry Group.
Steven R. Cohen, Regional Director, Chicago Region.
Barbara L. Fiss, Associate Director, Personnel Systems and Oversight Group.
Patricia W. Lattimore, Associate Director, Investigations Group.
Carol J. Okin, Director, Human Resources Development Group.

[FR Doc. 94–27106 Filed 11–1–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34899; File No. SR–CBOE–94–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Storage of Customer Account Records

October 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on September 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend paragraph (c) of[4] CBOE Rule 9.8, "Supervision of Accounts," and Interpretation and Policy .03[3] to CBOE Rule 9.8 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.[4]

The proposal was published for comment in Securities Exchange Act Release No. 34711 (September 23, 1994), 59 FR 50304 (October 3, 1994). No comments were received on the proposal.

Currently, CBOE Rule 9.8(c) provides that background and financial information of customers who have been approved for options transactions must be maintained at both the branch office servicing the customer's account and at the principal supervisory office with jurisdiction over the branch office. In addition, copies of options customer account statements over the most recent six months must be maintained at both the branch office supervising the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Interpretation and Policy .03 requires members to maintain, at the principal supervisory office with jurisdiction over the office servicing a customer's account, information to permit review of each customer's account to determine (1) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (2) the size and frequency of options transactions; (3) commission activity in the account; (4) profit or loss in the account; (5) undue concentration in any options class or classes and (6) compliance with the provisions of Regulation T of the Federal Reserve Board.

[4] On October 25, 1994, the CBOE submitted a letter indicating that the Exchange generally expects to receive a hard copy of any document maintained at an off-site location on the business day following the request. *See* Letter from Lawrence J. Brenahan, Assistant Vice President, Department of Compliance, CBOE, to Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, Commission, dated October 24, 1994 ("October 24 Letter").

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accounts and at the principal supervisory office with jurisdiction over that branch. The CBOE proposes to amend CBOE Rule 9.8(c) and Interpretation and Policy .03 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.

The CBOE states that the substance of CBOE Rule 9.8(c) appears uniformly in the rules of the other options exchanges and in the options account rules of the National Association of Securities Dealers, Inc. ("NASD"). According to the CBOE, on-site storage in major financial centers is expensive, and, in today's market environment, automated and secure facilities for data storage and retrieval make it unnecessary to require on-site storage. The CBOE states that, given those realities, the Options Self-Regulatory Council ("OSRC")[5] has recommended that record retention requirements be relaxed and that the exchanges and the NASD amend their rules to permit supervisory offices to store customer records off-premises as a matter of routine practice.[6] The CBOE concurs with the OSRC's recommendation and believes that its proposal will provide the CBOE's members with the opportunity to discharge their supervisory responsibilities more efficiently and more cost-effectively.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[7]

Specifically, by allowing off-site storage of customer account information maintained at supervisory offices, the Commission believes that the proposal should provide the CBOE's members with a cost-effective means to utilize computers, facsimile machines, optical disks, and other technology to store the required customer account information off-site while ensuring that member firms will continue to have easy access to all of the customer account information necessary to discharge their supervisory responsibilities. In this regard, the proposal provides that options customer account information stored off-site must be "readily accessible and promptly retrievable,"[8] thereby preserving the Exchange's ability to access and investigate customer account records. The Commission notes that the designated options examining authorities, including the CBOE, have agreed to make periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements. Thus, the Commission believes that the proposal strikes a reasonable balance between the CBOE's interest in allowing member organizations to reduce the cost of storing customer account information and ensuring that the information continues to be available for supervisory purposes.

In addition, the Commission believes that it is reasonable for the CBOE to allow off-site storage of customer account information maintained at supervisory offices, but not of account information stored at branch offices, because branch offices are responsible for the day-to-day administration of customer accounts and require immediate access to account information. For example, by continuing to require branch offices to store customer account information on-site, the proposal facilitates broker compliance with the suitability requirements applicable to options customers.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-CBOE-94-30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27166 Filed 11-1-94; 8:45 am]

BILLING CODE 8010-01-M

[5] The OSRC, which was created pursuant to a plan submitted by the options exchanges under Rule 17d-2 ("17d-2 plan") under the Act, includes representatives from each of the registered options exchanges and the NASD. The 17d-2 plan was developed by the exchanges and approved by the Commission to reduce regulatory duplication and to coordinate solutions to options-related sales practice issues common to firms which are members of two or more self-regulatory organizations.

[6] In connection with the OSRC's recommendation, the designated options examining authorities, including the CBOE, have committed to periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] *See* October 24 Letter, *supra* note 4.

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1993).

[11] 15 U.S.C. § 78s(b)(1) (1988).

[Release No. 34-34095; File Nos. SR-MCC-94-10 and SR-MSTC-94-11]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securities Trust Company; Notices of Filing and Immediate Effectiveness of Proposed Rule Changes That Modify Certain MST Communications System Fees

October 25, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 16, 1994, the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR-MCC-94-10 and SR-MSTC-94-11) as described in Items I, II, and III below, which Items have been prepared mainly by MCC and MSTC, self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. § 78s(b)(1) (1988).

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to amend the portions of their services and schedules of charges relating to the MST Communications System[2] by: (1) changing the name of the system from the "MST Communications System" to the "MST Link"; (2) merging and repricing the services previously available and priced under the MSTC Link Service into the general list of services and fees under the MST Link Service; [3] and (3) imposing a charge for terminal IDs of $25 per terminal ID for all terminal IDs after the initial ID.[4] Refer to Exhibit A for the text of the proposed fee changes.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

MCC and MSTC state that the purpose of the proposed changes is to change the pricing structure of portions of the MST Communications System Service. MCC and MSTC further state that the proposed rule changes are consistent with Section 17A(b)(3)(D) of the Act because they provide for the equitable allocation of reasonable fees and other charges among participants using their facilities.[5]

(B) Self-Regulatory Organizations' Statement on Burden on Competition

MCC and MSTC believe that the proposed rule changes will not have any impact on competition and that they will not impose any burden on competition.

(C) Self-Regulatory Organizations' Statment on Comments on the Proposed Rule Change From Members, Participants or Others

MCC and MSTC have not solicited or received any comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b-4(e)(2) thereunder[7] because the proposals establish or change dues, fees, or other changes imposed by the self-regulatory organizations. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commisison, 450 Fifth Street, N.W., Washington D.C. 120549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR-MCC-94-10 and SR-MSTC-94-11 and should be submitted by November 23, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Exhibit A

The text of the proposed rule changes are as follows:

(Additions *italicized;* deletions [bracketed])

MST [COMMUNICATIONS SYSTEM] *LINK*

Participants may use the MST [Communications System] *Link* to obtain information regarding current MCC/MSTC positions (Inquiry); retrieve MST System reports in house (Report Retrieval); and input instructions to MCC/MSTC. Participants may use the MST [Communications System] *Link* either via a Leased Line or a Dial Up interface.

[2] The MST Communications System is a combined computer system used by MCC and MSTC and is their primary computer system. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Thomas C. Etter, Jr., Senior Counsel, Division of Market Regulation, Commission (September 19, 1994).

[3] The MSTC Link Service, part of an existing telecommunications system, will be consolidated into the new MST Link. *Id.*

[4] The abbreviation "ID" in this context refers to computer identification numbers. *Id.*

[5] 15 U.S.C. § 78q-1(b)(3)(D) (1988).

[6] 15 U.S.C. § 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b-4(e)(4) (1994).

[8] 17 CFR 200.30-3(a)(12) (1994).

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Services:		
[Full Access Service:]	Leased Line	Dial Up
Dedicated Line Charge	$440.00/month	[$86.00/mo.]
Dial Up [Additional Port Charge[s]		$86.00/mo.
Dial Up [Back Up] Connect Time [Charge]		$5.25/hr.
Terminal ID (first ID free—included with access)	*$25.00/term ID*	*$25.00/term ID*
[MSTC Link		
Access Fee (Dial Back Up incl.)		$494.00
Line Charge		$440.00
Long Distance Line Charge		$0.43/road mile
Terminal Charge		$200.00/terminal]

All Printer IDs are included in the price of the access fee. Multiple User IDs may be associated with Terminal ID. However, simultaneous access is restricted to the number of Terminal IDs.

[FR Doc. 94–27167 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34900; File Nos. SR–Amex–94–40, SR–NYSE–94–33, and SR–Phlx–94–44]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange and the Philadelphia Stock Exchange and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange Relating to an Extension of Certain Market-Wide Circuit Breaker Provisions

October 26, 1994.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on October 5, 1994, the American Stock Exchange, Inc., on September 22, 1994, the New York Stock Exchange, Inc. ("NYSE"), and on September 12, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx"), respectively (each individually referred to herein as an "Exchange" and two or more collectively referred to as "Exchanges"), submitted to the Securities and Exchange Commission ("Commission") proposed rule changes relating to extending certain market-wide circuit breaker provisions. On September 30, 1994, the NYSE and the Phlx each filed an Amendment No. 1 to their respective proposals.[3] The NYSE proposal was published for comment in the **Federal Register** on October 14, 1994,[4] and the Phlx proposal was published for comment in the **Federal Register** on October 14, 1994.[5] No comments were received on either of these proposed rule changes. This order approves the Exchanges' proposals and the Exchanges' Amendments.

II. Description of Proposals

In 1988, the Commission approved circuit breaker proposals by the Exchanges.[6] In general, the Exchanges' circuit breaker rules provide that trading would halt for one hour if the Dow Jones Industrial Average (DJIA") were to decline 250 points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if the DJIA were to decline 400 points from its previous day's close.[7] These circuit breaker mechanisms are an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break.

The Commission approved the Amex, Boston Stock Exchange, Inc. ("BSE"), Midwest Stock Exchange, Inc. ("MSE"), NYSE, Phlx and National Association of Securities Dealers' ("NASD")[8] circuit breaker proposals on a pilot program basis. Circuit breaker proposals by the Chicago Board Options Exchange, Inc. ("CBOE"),[9] the Pacific Stock Exchange, Inc. ("PSE")[10] and the Cincinnati Stock Exchange, Inc. ("CSE")[11] were approved by the Commission on a permanent basis rather than as a pilot program. In 1989, the Exchanges and the NASD filed, and the Commission approved, proposals to extend their respective pilot programs.[12] Subsequently, in 1990, 1991, 1992, and 1993, the Amex, NYSE, and Phlx filed, and the Commission approved, proposals to extend their respective pilot programs.[13] In 1993, the BSE and Chicago Stock Exchange, Inc. ("CHX") (formerly MSE) filed, and the Commission approved, proposals to extend their respective pilot programs.[14] In 1990, 1992, and 1993, the NASD filed, and the Commission approved, proposals to extend its pilot program.[15] The proposals for the Exchanges are nearing their expiration dates and the Amex, NYSE, and Phlx have filed with the Commission proposals to extend further their respective pilot program until October 31, 1995.

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the Report of the Presidential Task Force on Market Mechanisms ("Brady Report") and the Working Group's Interim Report[16] recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large, rapid market declines.[17] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakersthat were approved by the CFTC on a permanent basis.

III. Discussion

The Commission believes that the Exchanges' proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission believes the Exchanges' proposals are consistent with the requirements of section 6(b)(5) of the Act[18] in that they are designed to remove impediments to, and perfect the mechanism of, a free and open market, and to protect investors and the public interest.

Since the Commission approved these proposals in October 1988, the DJIA has not experienced a one day, 250-point decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid, one day market decline that can have a destabilizing effect on the nation's financial markets and participants in these markets.

Accordingly, the Commission finds that the proposed rule change filed by the Exchanges, including NYSE Amendment No. 1 and Phlx Amendment No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable the pilots to continue on an uninterrupted basis. Due to the importance of these circuit breakers for market confidence, soundness, and integrity, it is necessary and appropriate that these procedures continue on an uninterrupted basis. Therefore, the Commission believes that granting accelerated approval of the proposed rule changes is appropriate and consistent with sections 6 and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal offices of the above-mentioned exchanges. All submissions should refer to File Nos. SR–AMEX–94–40, SR–NYSE–94–33, or SR–Phlx–94–44, and should be submitted by November 23, 1994.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the Amex, NYSE, and Phlx proposed rule changes (SR–Amex–94–40, SR–NYSE–94–33 and SR–Phlx–94–44), including NYSE Amendment No. 1 and Phlx Amendment No. 1, are approved until October 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27160 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20663; International Series Release No. 737; File No. 812–8060]

Banque Paribas and Ottoman Bank, A.S.; Notice of Application October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Banque Paribas and Ottoman Bank, A.S.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] NYSE Amndment No. 1 requests that the Commission approve the NYSE's proposal on an accelerated basis pursuant to section 19(b)(2) of the Act to allow its circuit breaker provision to continue uninterrupted. In addition, NYSE Amendment No. 1 corrects a typographical error appearing in Section I of Exhibit 1 to its filing by replacing 1994 with 1995. *See* letter from Brian M. McNamara, Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 29, 1994 ("NYSE Amendment No. 1"). In Phlx Amendment No. 1, the Phlx also requests accelerated approval of its proposal pursuant to Section 19(b)(2) of the Act. *See* letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Division, Commission, dated September 30, 1994 ("Phlx Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 34709 (October 6, 1994), 59 FR 52204.

[5] *See* Securities Exchange Act Release No. 34800 (October 6, 1994), 59 FR 52205.

[6] *See e.g.*, Securities Exchange Act Release Nos. 26386 (December 22, 1988), 53 FR 52904 (Phlx); and 26106 (October 19, 1988), 53 FR 41637 (Amex and NYSE).

[7] If the 250-point trigger were reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger were reached within two hours of the scheduled close of the trading day, trading would halt for the remainder of the day. If, however, the 250-point trigger were reached between one hour and one-half hour before the scheduled closing, or if the 400-point trigger were reached between two hours and one hour before the scheduled closing, the Exchanges would have the authority to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

[8] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41673 (order granting temporary approval to Amex, NASD, and NYSE circuit breaker rules); 26357 (December 14, 1988), 53 FR 51102 (order granting temporary approval to BSE circuit breaker rule); 26216 (October 26, 1988), 53 FR 44137 (order granting temporary approval to MSE circuit breaker rule); and 26386 (December 22, 1988), 53 FR 52904 (order granting temporary approval to Phlx circuit breaker rule).

[9] *See* Securities Exchange Act Release No. 26198, *supra* note 7.

[10] *See* Securities Exchange Act Release No. 26388 (December 16, 1988), 53 FR 51942.

[11] *See* Securities Exchange Act Release No. 26440 (January 10, 1989), 54 FR 1830.

[12] *See* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881 (order approving extension of Amex, BSE, MSE, NASD, NYSE and Phlx circuit breaker rules).

[13] *See* Securities Exchange Act Release Nos. 25580 (October 25, 1990), 55 FR 45905; 29866 (October 28, 1991), 56 FR 56535; 31367 (October 30, 1992), 57 FR 53157; and 33120 (October 29, 1993), 58 FR 59503 (orders approving extensions of Amex, NYSE, and Phlx circuit breaker rules).

[14] *See* Securities Exchange Act Release No. 33120 *supra* note 13 (extending the BSE's and CHX's respective circuit breaker pilot programs until October 31, 1995).

[15] *See* Securities Exchange Act Release No. 28694 (December 12, 1990), 55 FR 52119; 30304 (January 29, 1992), 57 FR 4658; and 33292 (December 6, 1993), 58 FR 65214 (orders approving extension of NASD circuit breaker rules, the most recent order approving the pilot through December 31, 1994).

[16] The Working Group in Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the Chairmen of the Commission, Board of Governors of the Federal Reserve System and the Commodity Futures Trading Commission ("CFTC"), and the Under Secretary for Finance of the Department of the Treasury.

[17] In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

[18] 15 U.S.C. 78f(b)(5) (1988).

[19] 15 U.S.C. 78s(b)(2) (1982).

[20] 17 CFR 200.30–3(a)(12) (1993).

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exempt applicants from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Ottoman Bank to act as custodian in the Republic of Turkey for registered investment companies.

FILING DATE: The application was filed on June 30, 1994, and amended on September 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Ottoman Bank, A.S., Bankalar Cad. No.: 35–37, 80000 Karakoy—Istanbul/Turkey; Banque Paribas, 3, rue d'Antin, 75002 Paris, France; c/o Anthony F. Essaye, Rogers & Wells, 607 14th Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Bradley W. Paulson, Staff Attorney, at (202) 942–0147 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Banque Paribas is a French banking institution that provides a complete range of banking services. It is regulated by the *Comité de la Réglementation Bancaire* (the Bank Regulation Committee), the *Comité des Etablissments de Crédit* (the Credit Establishment Committee), and the *Commission Bancaire* (the Banking Commission), all of which are agencies of the French Government. As of December 31, 1993, Banque Paribas had consolidated shareholders' equity of U.S. $2.7 billion (excluding minority interests).

2. Ottoman Bank is a Turkish banking organization. It is regulated by the Turkish Treasury and Turkish Central Bank, both of which are agencies of the Turkish Government.[1] As of December 31, 1993, Ottoman Bank had shareholders' equity of approximately U.S. $45 million. Banque Paribas owns a 49.9% interest in Compagnie Financiere Ottomane, S.A., a Luxembourg holding company, which, in turn, owns a 99.9% interest in Ottoman Bank.

3. Applicants request on order to permit Ottoman Bank to maintain custody of assets ("Assets") of investment companies registered under the Act other than those registered under section 7(b) of the Act ("Investment Companies"). As used herein, the term "Assets" does not include securities issued by the United States Government, any state or political subdivision thereof, or any agency thereof, and does not include securities issued by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidence of indebtedness, or other securities issued or guaranteed by such an entity that have been issued and sold outside the United States).

4. Ottoman Bank would accept deposits of Assets in Turkey pursuant to a written, three-party agreement (the "Agreement"). The Agreement would be entered into by (a) Ottoman Bank, (b) Banque Paribas, and (c) an Investment Company or its custodian. The Agreement would provide that Ottoman Bank would act as custodian or subcustodian, and Banque Paribas would be liable for any loss to the same extent as if Banque Paribas had been required to provide custody services under such agreement. Banque Paribas would not be liable for losses resulting from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risks of loss (excluding bankruptcy or insolvency of Ottoman Bank) for which neither Banque Paribas nor Ottoman Bank would be liable (*e.g.*, loss despite the exercise of reasonable care, due to an act of God, or resulting from a nuclear incident).

[1] Under a prior SEC order, Ottoman Bank has been acting as a subcustodian of investment company assets for which Bankers Trust Company, N.A. acts as custodian. *In the Matter of Bankers Trust Company, N.A.*, Investment Company Act Release Nos. 18046 (April 9, 1991) (notice) and 18085 (April 9, 1991) (order).

Applicants' Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines "bank" to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Ottoman Bank does not fall within the definition of "bank" as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodian for investment company assets. One such entity is a banking institution or trust company that is incoroprated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency thereof, and that has shareholders' equity in excess of U.S.$200 million. Banque Paribas qualifies as an eligible foreign custodian under rule 17f–5. Ottoman Bank, however, does not qualify as an eligible foreign custodian because it does not meet the minimum shareholders' equity requirement.

3. Applicants request an order under section 6(c) of the Act that would exempt them from the provisions of section 17(f) to the extent necessary for Ottoman Bank to maintain custody of Investment Company Assets. Applicants believe that the exemption should be granted because it is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the Agreement provides Investment Companies with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f–5.

Applicants' Conditions

1. The foreign custody arrangements with Ottoman Bank will comply with the provisions of rule 17f–5 in all respects, except those provisions relating to the minimum shareholders' equity requirement for eligible foreign custodians.

2. Banque Paribas currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. An Investment Company or a custodian for an Investment Company will deposit Securities with Ottoman Bank only in accordance with a three-party contractual agreement that will remain in effect at all times during which Ottoman Bank fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity. Each agreement will be a three-party agreement among (a) Banque Paribas, (b) Ottoman Bank, and (c) the Investment Company or custodian of the Securities of the Investment Company. Under the agreement, Ottoman Bank will undertake to provide specified custodial or sub-custodial services. The agreement will further provide that Banque Paribas will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Ottoman Bank of its responsibilities under the agreement to the same extent as if Banque Paribas had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27162 Filed 11–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20665; File No. 812–9128]

Dean Witter Variable Investment Series, et al.

October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act" or "Applicants").

APPLICANTS: Dean Witter Variable Investment Series (the "Fund") and Dean Witter Intercapital Inc. (together, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on July 28, 1994 and amended on October 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state, the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, c/o Sheldon Curtis, Esq., Dean Witter Variable Investment Series, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, on (202) 942–0683 or C. Gladwyn Goins, Associate Director on (202) 942–0665, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund is a Massachusetts business trust registered under the Act as an open-end diversified management investment company. The Fund is composed of eleven separate portfolios. Currently, shares of the Fund are sold only to Northbrook Life Insurance Company and Allstate Life Insurance Company of New York (the "Companies") to fund flexible premium variable annuity contracts issued through certain of their separate accounts. Dean Witter InterCapital Inc. ("InterCapital"), a wholly owned subsidiary of Dean Witter, Discover & Co., is the investment manager for the Fund. InterCapital and the Companies were previously under common control (ultimately owned by Sears, Roebuck and Co.).

2. The Fund intends to offer its shares to separate accounts of various insurance companies to fund variable annuity contracts and variable life insurance contracts (collectively, "variable contracts"). Insurance companies whose separate accounts do or will own shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on rules 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts.

3. The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund a variable annuity separate account of one insurance company and the variable annuity separate accounts of other affiliated and unaffiliated insurance companies. Rule 6e–2(b)(15) precludes mixed and shared funding while Rule 6e–3(T)(b)(15) permits mixed funding but precludes shared funding. Applicants request an order of the Commission exempting variable life insurance separate accounts (and, to the extent necessary, any principal underwriter and depositor of such an account) from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit mixed and shared funding.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemption from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company ("mixed funding"). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies ("shared funding"). Accordingly, Applicants seek an order exempting scheduled premium variable life

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insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(6)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account from sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rule 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management company.

4. The application states that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 of the Act limits the amount of monitoring necessary to ensure compliance with section 9 of that which is appropriate in light of the policy and purposes of section 9. The Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in (or invested in by) that organization. Applicants state that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts. Applicants argue that applying the requirements of section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. The application states that the participating insurers are not expected to play any role in the management or administration of the Fund and that those individuals who participate in the management or administration of the Fund will remain the same regardless of which separate accounts or insurance companies use the Fund. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners.

5. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through privileges will be provided with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners. However, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Voting instructions may also be disregarded by the insurance company if the contract owners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser provided that disregarding such voting instructions is reasonable and based on a specific good faith determination as required under the Rules. Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard contract owners' voting instructions are not inconsistent with mixed or shared funding. According to the Applicants, there is no reason why the investment policies of any portfolio of the Fund would or should be materially different from what it would or should be if it funded only annuity contracts or only scheduled or flexible premium life contracts and that there is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. Applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

7. The Application states that mixed and shared funding should provide several benefits to variable contract holders. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting a greater diversification, and making the addition of new portfolios more feasible. The Applicants believe that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

8. The Applicants see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. The Fund does not believe that mixed and shared funding will have any adverse federal income tax consequences.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the board of trustees of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill a vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon Application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the life owners and annuity owners and any future owners in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority; (2) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (3) an administrative or judicial decision in any relevant proceeding; (4) the manner in which the investments of any portfolio are being managed; (5) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners.

3. Participating insurance companies and InterCapital will report any potential or existing conflicts to the Board. Participating insurance companies and InterCapital will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and these responsibilities will be carried out with the view only to interests of the contract owners.

4. If it is determined by a majority of the Board, or a majority of its disinterested Trustee, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflicts, but in no event will the Fund or InterCapital be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all participating insurance companies.

6. Participating insurance companies will pass through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Accordingly, participating insurance companies will vote shares of the Fund held in their separate accounts in a manner consistent with timely voting instructions received from contract owners. Each participating insurance company will vote shares of the Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. The Fund will comply with all provisions of the Act requiring voting by Shareholders, and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings), or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in the section 16(c) of the Act) as well as with section 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

8. The Fund shall disclose in its prospectus that (1) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies, (2) material irreconcilable conflicts may possibly arise, and (3) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflict. The Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Fund and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

10. The participating insurance companies shall at least annually submit to the Board such reports, materials or data as the Board may

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reasonably request so that the Board or the Fund may fully carry out the obligations imposed upon them by the conditions contained in the application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligation of the participating insurance companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

11. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Applicants' Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c) of the 1940 Act, are appropriate in the pubic interest and are consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27163 Filed 11-1-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. IC-20664; 812-8166]

Equity Securities Trust (Series 1, Signature Series, Gabelli Communications Income Trust and Subsequent Series), et al.; Notice of Application

October 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("ACT").

APPLICANTS: Equity Securities Trust (Series 1, Signature Series, Gabelli Communications Income Trust and Subsequent Series), Mortgage Securities Trust (CMO Series 1 and Subsequent Series), Municipal Securities Trust (Series 1 and Subsequent Series) (including Insured Municipal Securities Trust, Series 1 and Subsequent Series, and 5th Discount Series and Subsequent Series), New York Municipal Trust (Series 1 and Subsequent Series), A Corporate Trust (Series 1 and Subsequent Series) (collectively, the "Trusts"); Bear, Stearns & Co. Inc. ("Bear Stearns"); and Gruntal & Co., Incorporated ("Gruntal").

RELEVANT ACT SECTIONS: Sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Applicants request an order to permit unitholders of the Trusts of exchange their units for units in other Trusts at a reduced sales charge. The order would supersede a prior order and include the Equity Securities Trust in the exchange program.

FILING DATES: The application was filed on November 12, 1992, and amended on January 26, 1994 and October 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549; Bear, Sterns & Co. Inc. and the Trusts, 245 Park Avenue, New York, New York 10167; Gruntal & Co. Incorporated, 14 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942-0579, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trusts are registered under the Act as unit investment trust, and their units of interest are registered under the Securities Act of 1933. Bear Stearns, one of the cosponsors of the Equity Securities Trust, sponsors the Trusts and numerous other unit investment trusts. Gruntal, also a cosponsor of the Equity Securities Trust, sponsors various other unit investment trusts with Bear Stearns (Bear Stearns and Gruntal are collectively referred to as the "Sponsors"). Each Trust is organized under a Trust Indenture and Agreement between the Trust, the Sponsors, and United States Trust Company of New York or Bank of New York, as trustee, which varies from Trust to Trust.

2. On August 28, 1991, the SEC issued an order (the "Prior Order")[1] permitting unitholders of the Trusts, except the Equity Securities Trust, to exchange their units for units in another available Trust or Trusts, except the Equity Securities Trust, upon payment of a reduced sales charge. The Prior order also permits a conversion offer in which the unitholders of any registered unit investment trust for which there is no active secondary market may redeem their units with their respective trustees and apply the proceeds to the purchase of units of one or more of the Trusts, except the Equity Securities Trust, upon payment of the same reduced sales charge.

3. The Equity Securities Trust is a newly formed unit investment trust consisting of a portfolio of common stock, convertible securities, American Depository Receipts, and contracts and funds for the purchase of such securities. The Equity Securities Trust deposits its securities with the trustee, in exchange for certificates representing undivided interests or units in the principal and net income of the Equity Securities Trust in the ratio of one hundred units for the indicated initial aggregate value of securities of the Equity Securities Trust.

4. During the initial public offering period, units of the Trust are sold at a sales charge ranging from 3.5% to 5.5%, depending on the Trust, subject to certain specified volume discounts for purchases exceeding a certain number of units.

5. The Sponsors, although not obligated to do so, maintain a secondary market for the units of all the existing Trusts after the initial public offering has been completed. The Sponsors also

[1] Investment Company Act Release Nos. 18254 (Aug. 1, 1991) (notice) and 18290 (Aug. 28, 1991) (order). The Prior Order amended two previous orders: Investment Company Act Release Nos. 11143 (Apr. 29, 1980) (notice) and 11184 (May 23, 1980) (order); and Investment Company Act Release Nos. 11715 (Apr. 1, 1981) (notice) and 11754 (Apr. 29, 1981) (order).

intend to maintain a secondary market for any new Trusts after the initial public offering has been completed. The secondary market repurchase and reoffer price, both during and after the initial public offering period, will be based on the bid prices of the Trust's portfolio securities. Any units repurchased by the Sponsors in the secondary market may be redeemed by the Sponsors if the Sponsors deem such redemption to be in their best interest. If a market for the units is not maintained, unitholders will be able to redeem their units with the trustee at a price based on the aggregate bid side evaluation of the Trust's portfolio securities.

6. Applicants propose to offer unitholders of the Trusts the ability to exchange any or all of their units for units in one or more available series of the Trusts at a reduced sales charge (the "Exchange Privilege"). Pursuant to the Exchange Privilege, the Sponsors' repurchase price during the initial offering period of the units being surrendered will be based on the aggregate offer price of the Trust's portfolio securities, and, if the initial offering period has been completed, will be based on the aggregate bid price of the Trust's portfolio securities. Units in a Trust then will be sold to the unitholder at a price based on the aggregate offer price of the securities in the Trust portfolio during the initial public offering period of the Trust (or based on the aggregate bid price of the securities in the Trust portfolio if the initial public offering period has been completed) plus accrued interest and a reduced sales charge.

7. The Sponsors reserve the right to suspend, modify, or terminate the Exchange Privilege. The Sponsors will provide unitholders with 60 days prior written notice of any termination or material amended to the Exchange Privilege, except as provided in condition 3 below.

8. Applicants also propose to offer a conversion offer (the "Conversion Offer") to all unitholders of any registered unit investment trust in which there is no active secondary market (a "Redemption Trust"). Pursuant to the Conversion Offer, unitholders may elect to redeem units of a Redemption Trust at the redemption drive determined as set forth in the relevant Redemption Trust's prospectus and apply the proceeds of the redemption to the purchase of available units of one or more series of the Trust. The purchase price for units of a series of a Trust will be based on the aggregate offer of the Trust's portfolio securities during its initial offering period, or at a price based on the aggregate bid price of the Trust's portfolio securities if the initial public offering period of the Trust has been completed, and will include accrued interest and a reduced sales charge.

9. The Sponsors reserve the right to modify, suspend, or terminate the Conversion Offer at any time without prior notice to unitholders of a Redemption Trust.

10. The Exchange Privilege and Conversion Offer are substantially similar in all respects to the exchange privilege and conversion offer already approved by the SEC in the Prior Order, except the Equity Securities Trust, as a newly formed Trust, was not in existence at the time that order was issued. The requested relief is necessary to enable the Equity Securities Trust to offer the same exchange privilege to its unitholders as is already permitted to unitholders of the other Trusts pursuant to the Prior Order, and to revise the reduced sales charge under the Exchange Privilege and Conversion Offer to be an amount equal to a percentage of the public offering price for each unit (or per 1,000 units for Mortgage Securities Trust or per 100 units for Equity Securities Trust). The requested relief will supersede the Prior Order in its entirety.

Applicants' Legal Analysis

1. Section 11(a) of the Act requires SEC approval of an offer to exchange securities between open-end investment companies of the exchange occurs on any basis other than the relative net asset values of the Securities to be exchanged. Section 11(c) of the Act makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange.

2. Applicants believe that the Exchange Privilege provides investors with a convenient means of transferring their interests at a reduced sales charge, as their individual investment objectives change, into series of the Trust that are better suited to meet these changing investment objectives. Applicants also state that the Conversion Offer provides investors with a means by which unitholders of a unit investment trust in which there is no active secondary market can redeem those units and invest the proceeds therefrom, at a reduced sales charge, into units of the trusts.

Applicants' Conditions

The Applicants agree to the following conditions in any order granting the requested relief.

1. Participants in the Exchange Privilege and Conversion Offer for the Trusts will, in the purchase and sale of units of the Trusts, be subject to the same portfolio pricing terms as are set forth in the prospectus for each Trust and will purchase and sell units of the Trusts based on the same portfolio pricing terms as all other investors who purchase and sell units of the Trusts through the Sponsors or the underwriters in regular transactions.

2. The prospectus for each Trust and any sales literature or advertisement that mentions the existence of the Exchange Privilege will disclose that the Exchange Privilege is subject to termination and that its terms are subject to change.

3. Whenever the Exchange Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at last 60 days prior to the date of termination or the effective date of the amendment, *provided that:*

(a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new series eligible for the Exchange Privilege, or to delete a series which has terminated, and

(b) No notice need be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of units of a Trust under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) A Trust temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

4. During the 60 day period described in condition 3 above, the Sponsors will maintain a secondary market in units that could be acquired by affected unitholders.

5. The applicable sales charge for the purchase of units of a Trust for Trust unitholders who wish to exercise the Exchange Privilege within the first five months from the date of their purchase of units of a Trust, where the applicable public offering price for the Trust units being purchased includes higher sales charges than the sales charges applicable to the units being exchanged, will be the greater of the reduced sales charge (up to 1.5% of the public offering price of each unit (or per 1,000 units for

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Mortgage Securities Trust or per 100 units for the Equity Securities Trust)), or an amount which, when coupled with the sales charge actually paid on purchase of the units being exchanged, would equal the sales charge applicable to direct purchases of the quantity of Trust units being acquired, determined as of the date of the exchange.

6. The applicable sales charge for the purchase of units of a Trust for Redemption Trust unitholders who wish to exercise the Conversion Offer within the first five months from the date of their purchase of units of a Redemption Trust, where the applicable public offering price for the Trust units being purchased includes higher sales charges than the sales charges applicable to the units being converted, will be the greater of the reduced sales charge (up to 1.5% of the price of each unit (or per 1,000 units for Mortgage Securities Trust or per 100 units for the Equity Securities Trust)), or an amount which, when coupled with the sales charge actually paid on purchase of the units being converted, would equal the sales charge applicable to direct purchases of the quantity of Trusts units being acquired, determined as of the date of the conversion.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27164 Filed 11-1-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 20661; 811-5592]

Fund Alabama, Inc.; Notice of Application

October 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("the Act").

APPLICANT: Fund Alabama, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company under the Act.

FILING DATES: The application for deregistration was filed on December 18, 1991, amended on March 31, 1992 and October 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1994 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Fund Alabama, Inc., 1901 Sixth Avenue North, Suite 2100, Birmingham, Alabama 35203.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney at (202) 942-0570, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end management investment company that was incorporated under the laws of the State of Delaware. On May 27, 1988, applicant filed a Notification of Registration on Form N-8A, pursuant to section 8(a) of the Act. On June 8, 1988, applicant filed a registration statement on Form N-2 pursuant to both the Securities Act of 1933 and section 8(b) of the Act. On August 11, 1988, this registration statement became effective registering 700,000 shares of common stock, $.01 par value per share, and applicant commenced the initial public offering of the stock as soon as practicable thereafter.

2. On March 29, 1991, the applicant's board of directors adopted a resolution recommending liquidation and dissolution of applicant. On or about April 26, 1991, a proxy statement describing the proposed Plan of Complete Liquidation and Dissolution ("the Plan") and relating to the annual meeting of shareholders to be held on May 20, 1991, was mailed to all shareholders of record. Applicant's shareholders approved the Plan at the annual meeting of shareholders.

3. On May 21, 1991, applicant commenced the sale of its portfolio securities, and sold all of its securities by June 30, 1991. Applicant's common stock ceased trading on the NASDAQ National Market System as of the close of business on May 20, 1991, the date its shareholders approved the Plan.

4. As of May 20, 1991, applicant's 700,100 shares of common stock outstanding were held by 405 record shareholders. As of May 17, 1991, applicant's common stock had a net asset value per share of $10.0365 ($7,026,553.65 in the aggregate).

5. On July 23, 1991, in accordance with the Plan, applicant's board of directors authorized, and applicant deposited with AmSouth Bank N.A., of Birmingham, Alabama ("the Liquidating Agent"), the amount of $6,825,975.00 for payment, at $9.75 per share, of the first liquidating distribution to all shareholders of record as of May 20, 1991. The Liquidating Agent paid this first liquidating distribution to applicant's shareholders upon receipt of their respective stock certificates or satisfactory lost share affidavits and indemnity agreements.

6. On November 4, 1991, applicant's board of directors authorized a final liquidating distribution in the amount of $88,842.69, representing $.1269 per share, for payment to those shareholders entitled to receive the first distribution. On November 8, 1991, the Liquidating Agent made this final distribution. Six shareholders, owning a total of 440.4062 shares delivered their stock certificates and properly executed letters of transmittal after November 8, 1991 and received their distributions ($4,349.85 in the aggregate, $9.8769 per share) at various times after November 8, 1991.

7. Pursuant to a resolution of the board of directors, the Fund created a liquidating trust to pay off its creditors. $67,340.55 was transferred to the trust shortly after its creation. All expenses of liquidation have been paid, however, and no funds remain in the liquidating trust.

8. Applicant's expenses for liquidating were approximately $24,549 in legal fees and costs, $11,608 in accounting fees and costs, $4,125 in printing fees and costs, and $4,000 in directors' fees, all of which expenses were allocated to applicant.

9. Applicant paid $12,143.92 in brokerage commissions following approval of the Plan. Of that amount, $11,743.92 was paid to Sterne, Agee & Leach, Inc. of Birmingham, Alabama. Sterne, Agee & Leach, Inc. is an "affiliated person" as that term is defined in section 2(a)(3) of the Act, of applicant and of Sterne, Agee & Leach Investment Advisors, Inc., applicant's investment adviser. $400.00 in brokerage commissions was paid to Porter, White & Yardley, Inc. which is not an "affiliated person" of applicant or Sterne, Agee & Leach Investment Advisors, Inc. Applicant represents that the commissions charged by Sterne, Agee & Leach Investment Advisors, Inc. and by Porter, White and Yardley, Inc. were competitive with the brokerage commissions and fees charged by other brokers for similar transactions and were consistent with section 17(e) of the Act.

10. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-27107 Filed 11-1-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974 DOT/ALL 10 Debt Collection File

The Department of Transportation (DOT) proposes to add a new record system to its inventory of systems of records notices.

Any person or agency may submit written comments on the proposed system to the Department of Transportation, Office of the Secretary, B-30, Attn: Steve Swanson, 400 Seventh Street SW, Washington, DC 20590. Comments to be considered must be received by December 6, 1994.

If no comments are received, the proposed system will become effective on the above mentioned date. If comments are received, the comments will be considered and where adopted, the document will be republished with the change.

Issued in Washington, DC, October 24, 1994.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement for the Department of Transportation

Office of the Secretary

The Office of the Secretary of Transportation proposes to add the record system, DOT/ALL-10, Debt Collection File. The purpose of the system is the administrative management and collection of delinquent debts. The debts include past due loan payments, overpayments, fines, penalties, fees, damages, interest, leases, sales of real or personal property, etc., due to the Department of Transportation and debts due to other Federal departments and agencies that may be referred to the Department of Transportation for collection to the extent the Department of Transportation controls funds due the debtor.

The authority for the maintenance of this system is the Federal Claims Collection Act of 1966, Pub. L. 89-508; Debt Collection Act of 1982, Pub. L. 97-365; and Executive Orders 9397 and 11222.

Individuals receiving benefits in the form of salary and/or other forms of compensation already have disclosed the subject information to a federal agency; therefore this system presents no undue threat to privacy rights of individuals.

A description of the steps taken to safeguard these records is given under the appropriate heading of the Federal Register system of records notice.

No changes to existing procedural or exemption rules are required for this proposed new system.

The purpose of this report is to comply with the Office of Management and Budget Circular, A-130, Appendix I, dated June 25, 1993.

DOT/ALL-10

SYSTEM NAME:

Debt Collection File

SYSTEM LOCATION:

Federal Aviation Administration, General Ledger Branch, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons currently or formerly associated with the Department of Transportation (DOT) who are financially indebted to the U.S. Government under some particular service or program of the DOT other than under a contract. Individuals may include current, retired; or formerly employed DOT personnel or personnel from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the individual debtor, and includes the history of debt collection activity on the individual. Normally, the name, Social Security Number (SSN), address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, collection efforts, credit reports, debt collection letters and correspondence to or from the debtor relating to the debt. Correspondence with employing agencies of debtors or Office of Personnel Management or Department of Defense, as appropriate, requesting that action begin to collect the delinquent debt through voluntary or involuntary offset procedures against the employee's salary or compensation due a retiree.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub.L. 89-508), 31 U.S.C. Chapter 37, Subchapter I (General), and Subchapter II (Claims of the United States Government); Debt Collection Act of 1982 (Pub.L. 97-365); 5 U.S.C. 5514, Installment Deduction for Indebtedness (salary offset); section 206 of Executive Order 11222; Executive Order 9397; and 49 CFR part 92, Salary Offset (DOT).

PURPOSES:

For the administrative management and collection of all delinquent debts, including past due loan payments, overpayments, fines, penalties, fees, damages, interest, leases, sales of real or personal property, etc., due to the DOT and debts due to other Federal departments and agencies that may be referred to the DOT for collection to the extent DOT controls funds due the debtor.

This system provides for the implementation of the salary offset provisions of 5 U.S.C. 5514, the administrative offset provisions of 31 U.S.C. 3716 and the provisions of the Federal Claims Collection Standards (FCCS). It applies to personal rather than contract debts. Guidance regarding contract debts is contained in the Federal Acquisition Regulation. Records in this record system are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To the U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

b. To a debt collection agency for the purpose of collection services to recover monies owed to the U.S. Government under certain programs or services administered by the DOT.

c. Debtor's name, Social Security Number, the amount of debt, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or

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receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the U.S. Government on DOT's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub.L. 97–365).

d. To the Internal Revenue Service (IRS) by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by DOT against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.G. 3711, 3217, and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DOT purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

e. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed DOT by the debtor arising out of any administrative or program activities or services administered by DOT.

f. Disclosure of personal and financial information from this system on current, retired, or former employees of DOT or U.S. Coast Guard members may be made to any creditor Federal agency seeking assistance for the purpose of that agency requesting voluntary repayment or implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the U.S. Government from an individual affiliated with the DOT. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure, once determined to be valid and overdue, is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage for records on personal computers is kept on floppy disks. Storage on microcomputers is first downloaded onto a floppy disk and then locked in a file cabinet. Data kept in paper file folders are locked in file cabinets.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Computers provide privacy and access limitation by requiring a user name and password match. These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of when ten years old except documents needed for an ongoing investigation in which case the record will be retained until no longer needed for the investigation. Data tracks on floppy disks are overwritten a minimum of three times.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Director, Office of Financial Management (B–30), 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the particular DOT operating administration or component in care of the "system location" above. Individual should furnish full name, Social Security Number, current address and telephone number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual, creditor agencies, Federal employing agency of debtor, collection agencies, Federal, state or local agencies furnishing identifying information and/or address of debtor, as well as other internal DOT records such as payroll information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27123 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–85; Notice 1]

Receipt of Petition for Decision That Nonconforming 1993 BMW 840Ci Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 BMW 840Ci passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 BMW 840Ci that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1993 BMW 840Ci passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 BMW 850Ci. Champagne has submitted information indicating that Bayerische-Motoren Werke A.G., the company that manufactured the 1993 BMW 850Ci, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 840Ci to the 850Ci, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1993 model 840Ci, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1993 model 850Ci that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1993 model 840Ci is identical to the certified 1993 model 850Ci with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 112 *Headlamp Concealment Devices,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windsheld Retention,* 214 *Side Door Strength,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the 1993 BMW 840Ci complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of factory-supplied driver's and passenger's side knee bolsters to augment the vehicle's passive restraint system. The petitioner states that the remaining components of the vehicle's passive restraint system, consisting of driver's and passenger's side air bags, control unit, and impact sensor, have part numbers identical to those found on the U.S. certified 1993 model 850Ci.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27147 Filed 11–1–94; 8:45 am]

BILLING CODE 4910–59–M

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[Docket No. 94-84; Notice 1]

Receipt of Petition for Decision That Nonconforming 1993 Mercedes-Benz 300CE Convertible Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Mercedes-Benz 300CE convertible passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Mercedes-Benz 300CE convertible that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993 Mercedes-Benz 300CE convertible passenger cars (Model ID 124.061) are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 Mercedes-Benz 300CE convertible that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Mercedes-Benz 300CE convertible to its U.S. certified counterpart, and found the two vehicle to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1993 Mercedes-Benz 300CE convertible complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt warning symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarkers; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) Installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag with a U.S.-model component; (d) installation of a U.S.-model driver's side knee bolster, passenger side air bag, passenger side knee pad, dual air bag control/sensor unit, and dual air bag wiring harness.

The petitioner stated that each of the passive restraint system components that are to be added to the vehicle will have part numbers that are identical to those found on the U.S. certified 1993 Mercedes-Benz 300CE convertible.

Standard No. 214 *Side Door Strength;* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27146 Filed 11–1–94; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94–87; Notice 1]

Receipt of Petition for Decision That Nonconforming 1972 MG–B GT Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1972 MG–B GT Coupe passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1972 MG–B GT Coupe that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1972 MG–B GT Coupe passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1972 MG–B GT Coupe that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, British Leyland Motor Corp., Ltd., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1972 MG–B GT Coupe to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1972 MG–B GT Coupe, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1972 MG–B GT Coupe is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarkers; (c) installation of U.S.-model taillamp assemblies.

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Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch and warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch in the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-27145 Filed 11-1-94; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 94-88; Notice 1]

Receipt of Petition for Decision That Nonconforming 1991 BMW 325i 4-Door Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 BMW 325i 4-Door passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 BMW 325i 4-Door passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 2, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590 [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90-007) has petitioned NHTSA to decide whether 1991 BMW 325i 4-Door passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1991 BMW 325i 4-Door passenger car that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren-Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 BMW 325i 4-Door passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 BMW 325i 4-Door passenger car, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 BMW 325i 4-Door passenger car is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt symbol on the seat belt warning lamp lens; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of a Type 1 seat belt in the rear center designated seating position; (c) installation of a passive restraint system consisting of a driver's side air bag and knee bolster, as used in the U.S. certified 1991 BMW 325i 4-Door passenger car.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1991 BMW 325i must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581. The petitioner also states that because the 1991 BMW 325i is part of a line that is subject to the Federal Motor Vehicle Theft Prevention Standards found in 49 CFR Part 541, a theft prevention certification label must be installed on the vehicle, and its VIN must be inscribed on fourteen major car parts.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-27144 Filed 11-1-94; 8:45 am]

BILLING CODE 4910-59-M

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 11:00 A.M.–1:00 P.M.

PLACE: ADF Headquarters.

DATE: Friday, November 4, 1994.

STATUS: Open.

Agenda

11:00 Chairman's Report
11:10 President's Report
11:30 New Business/Action Items:
- Rwanda
- Burundi
- National Performance Review (NPR)
- Advisory Council Nominees
- Board Meeting Dates

12:00 Special Reports:
- Report of ADF's 10th Anniversary Celebration
- Preliminary Report on the Ten-Year Assessment
- Report on the CLO Meeting in Nairobi
- Report on the Persons with Disabilities Workshop in Entebbe

12:40 Executive Session (Closed)
1:00 Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.
[FR Doc. 94–27226 Filed 10–28–94; 4:47 pm]
BILLING CODE 6116–01–P–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Friday, October 14, 1994, 10:00 a.m., by telephone conference call.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting:

One appeal to the Commission from a decision by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. This case was originally heard by an examiner panel wherein the individual applied for parole consideration.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: October 5, 1994.

Michael A. Stover,
General Counsel, U.S. Parole Commission.
[FR Doc. 94–27333 Filed 10–31–94; 3:09 pm]
BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53702.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on November 4, 1994. The meeting will commence at 8:30 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Hilton Back Bay Hotel, 40 Dalton Street, The Washington Room, Boston, MA 02115, (617) 236–1100.

CHANGES IN THE MEETING:

TIME: The meeting has been canceled.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: October 31, 1994.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 94–27332 Filed 10–31–94; 2:49 pm]
BILLING CODE 7050–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 3:00 p.m., Monday, October 17, 1994.

PLACE: Board Conference, Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(9)(B) disclosure would significantly frustrate implementation of proposed agency action.

MATTERS TO BE CONSIDERED: FOIA request.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1940.

Dated, Washington, DC., October 28, 1994.
By direction of the Board:

John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 94–27279 Filed 10–31–94; 12:01 pm]
BILLING CODE 7545–01–M

Corrections

Federal Register
Vol. 59, No. 211
Wednesday, November 2, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-397-000]

K N Interstate Gas Transmission Co., Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-23436 appearing on page 48624 in the issue of Thursday, September 22, 1994, the docket number is corrected as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-055-04-4210-03; AZA 25991]

Arizona; La Paz County, Notice of Realty Action Lease/Conveyance, Yuma District, AZ

Correction

In notice document 94-23935 beginning on page 49417 in the issue of Wednesday, September 28, 1994, make the following corrections:

On the same page, in the second column, under the heading "**Gila and Salt River Meridian, Arizona**" in the fourth line, "Sec. 19" should read "Sec. 15"and in the third column, in the fifth line, the description "S½S½SW¼" should read "S½S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1313

Implementation of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103-200)

Correction

In proposed rule document 94-25071 beginning on page 51887in the issue of Thursday, October 13, 1994, make the following corrections:

1. On page 51892, in footnote 3, after "trafficking patterns." insert a missing paragraph, "2 hours for travel to and from the applicant's location."

2. On page 51894, under "**Regulatory Flexibility and Small Business Impact,**" in the second paragraph, in the tenth line, word "not" should read "now".

3. On page 51898, in the second column, in the undesignated center heading, "Action of" should read "Action on".

§ 1309.51 [Corrected]

4. On page 51899, in the second column, in § 1309.51(a), in the tenth line, "§§ 1309.51–1309.57" should read §§ 1309.52–1309.57".

§ 1309.54 [Corrected]

5. On the same page, in the second column, in 1309.54(b), in the second line, after "1309.43, delete the comma and insert "may,".

§ 1309.55 [Corrected]

6. On the same page, in the third column, in 1309.55(a), in the second line, the word "Administrator" should read "Administration".

§ 1313.15 [Corrected]

7. On page 51907, in the first column, in 1313.15(c), in the sixth line, "the chemical" should read "a controlled".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Executive Order 12933 of October 20, 1994

Nondisplacement of Qualified Workers Under Certain Contracts

Correction

In Presidential document 94-26516 beginning on page 53559 in the issue of Monday, October 24, 1994, the file line at the end of the document on page 53561 should read: "Filed 10-21-94; 12:13 pm".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 23-C, Revision 3]

Inspector General; Delegation of Authority and Line of Succession

Correction

In notice document 94-23524 appearing on page 48928 in the issue of Friday, September 23, 1994, make the following correction:

On page 48928, in the second column, in the date immediately preceding the signature line, "April" should read "September".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12-04]

Delegation of Authority for Budget Execution in the Departmental Offices; Authority Delegation

Correction

In notice document 94-26221 appearing on page 53511 in the issue of Monday, October 24, 1994, make the following correction:

On page 53511, in the second column, in the third line, "three" should read "there".

BILLING CODE 1505-01-D

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Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1030 et al.
Milk in the Chicago Regional and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076 and 1079

[Docket Nos. AO–361–A31, etc.; DA–92–27]

Milk in the Chicago Regional and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1030	Chicago Regional	AO–361–A31
1065	Nebraska-Western Iowa	AO–86–A50
1068	Upper Midwest	AO–178–A48
1076	Eastern South Dakota	AO–260–A32
1079	Iowa	AO–295–A44

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends changes in the Federal milk marketing orders for five north-central marketing areas based on industry proposals considered at a public hearing. The decision recommends adopting a plan for pricing milk on the basis of its protein and other nonfat solids, as well as butterfat, components. The proposed plan includes adjustments per hundredweight of all producer milk based on the somatic cell count of the milk. The intended effect of this rule is to better reflect the value of the nonfat solids components in the skim portion of milk.

DATES: Comments are due on or before December 2, 1994.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 22, 1993; published January 4, 1994 (59 FR 260).

Extension of Time for Filing Briefs: Issued April 22, 1994; published April 24, 1994 (59 FR 22138).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Chicago Regional and certain other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Bloomington, Minnesota, on January 25–27, 1994, pursuant to a notice of hearing issued December 22, 1993; (59 FR 260).

The material issues on the record of hearing relate to:

1. Adoption of multiple component pricing.
2. Orders to be included.
3. Components and component prices.
   a. Protein.
   b. Other nonfat solids.
   c. Butterfat.
   d. Miscellaneous issues.
4. Somatic cell adjustment.
5. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Adoption of Multiple Component Pricing

Proposals to incorporate multiple component pricing in the Chicago Regional (Order 30), Nebraska-Western Iowa (Order 65), Upper Midwest (Order 68), Eastern South Dakota (Order 76) and Iowa (Order 79) Federal milk marketing orders (the five orders) should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan proposed by National All-Jersey, Inc. and other dairy organizations. Producers would be paid on the basis of the pounds of butterfat, protein and other nonfat solids (solids-not-fat other than protein) in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total butterfat, the protein and other nonfat solids used in Classes II and III, skim milk used in Class I, and the hundredweight of total product used in Classes I and II. A somatic cell adjustment, per hundredweight, would also apply to payments for all producer milk.

At the present time, milk received by handlers under the five orders is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price at test, also as reported by the U.S. Department of Agriculture, multiplied by .0028.

The multiple component pricing (MCP) plan was originally proposed for Orders 30, 68 and 79 by National All-Jersey, Inc. (NAJ) and other dairy organizations. In addition, Land O'Lakes, Inc., proposed that the multiple component plan be considered for Orders 65 and 76. Most other proposals considered at the hearing were modifications of the NAJ proposal and are discussed below.

The first NAJ witness stated that the current milk pricing system used in the five orders does not meet current marketing needs and should be replaced with a multiple component pricing system. Much of the general NAJ testimony in favor of multiple component pricing was later reiterated by witnesses expert in the field of economics and dairy chemistry testifying for NAJ, and a representative for Land O'Lakes. Also testifying in favor of the NAJ proposal were two dairy farmer members of the cooperative association Swiss Valley Farms Company, a representative of the Brown Swiss Cattle Breeders Association of U.S.A., Inc., and a representative of Tri-State Milk Cooperative. It was indicated in testimony that Alto Dairy Cooperative also supported the NAJ proposal.

The representative for the proponents said the intent of their proposal was to:

1. Use the M-W price as the base;
2. Pay all producers on four factors—pounds of butterfat, pounds of protein, pounds of other solids, and each producer's share of the fluid differential on a per hundredweight basis;
3. Leave Class I handler obligations on a skim-butterfat basis;
4. Determine Class II and III handlers' obligations on the basis of pounds of butterfat, protein, and other solids; and
5. Change only the order provisions needed to implement the NAJ proposal.

The NAJ witness said that there were five reasons for replacing the current milk pricing system with a multiple component pricing system. The first reason, according to the NAJ witness, is that the current skim-butterfat pricing system does not give dairy farmers economic incentives to produce milk high in nonfat solids, especially protein. He stated that under the current pricing system a pound of water receives the same price as a pound of protein or other solids, yet it is these solids that give milk its functional and nutritional value.

The second reason given by the NAJ witness for adopting MCP was that over a period of years much of the value of milk has shifted from butterfat to the skim portion of milk. The proponent's witness said that in 1960, butterfat represented 77% of the value of the M-W price, and skim represented 23%. By 1993, he testified, these values were reversed, with butterfat representing only 23% of the value of the M-W, while the skim portion of the milk represented 77%.

According to the NAJ witness, the shift in value from butterfat to skim was partially caused by the USDA decision to decrease the support price for butter and increase the support price for nonfat dry milk. The support price for butter declined from $1.53 per pound in 1981 to 65¢ per pound in 1993, with most of the decrease occurring since 1989. Nonfat dry milk purchase prices under the support program increased from 72.75¢ per pound in 1988 to $1.034 per pound in 1993. In addition, the witness said, the butterfat differential under Federal orders has been dropping since the mid-1980s because of a decline in the market price for butter. This drop was accelerated by a change in the method of computing the butterfat differential, implemented in 1990, that had the impact of reducing the butterfat differential even more.

The third reason the witness gave for implementing multiple component pricing was the shift in types of dairy products consumers are purchasing. According to the witness, some of the decline in butterfat value relative to skim value has been caused by a shift in consumption from whole milk to lowfat and skim fluid milk products. The witness presented data to show that from 1970 to 1991, national fluid milk sales of lowfat and skim milk increased 232%, while sales of whole milk declined 50%. In addition, he stated, consumption of lowfat manufactured products is growing faster than consumption of relatively high-fat manufactured products.

The NAJ witness discussed equity in Federal orders as the fourth reason for implementing multiple component pricing. He said that the current skim-butterfat pricing system is equitable for neither producers nor handlers since it does not properly recognize the value of protein, especially in manufactured products such as cheese. The witness provided examples to show how a producer with high protein milk may currently receive the same Federal order minimum price as a producer with low protein milk. Similarly, a cheese maker who purchases high protein milk could have a cost advantage at minimum order prices over a cheese maker who purchases low protein milk.

The fifth reason presented by the NAJ witness was the existence of a number of voluntary multiple component pricing plans in the areas covered by the five orders. Data were presented to show that nearly all producers in the five orders currently are eligible to be paid under one of these voluntary multiple component pricing plans. The witness stated that many of the plans have inadequacies which contribute to disorderly marketing. According to the witness, these inadequacies would be addressed by adopting the NAJ proposal.

A witness from Land O'Lakes, Inc. (LOL), testified in support of the adoption of MCP in the five orders in general, and the NAJ proposal specifically. He discussed how the NAJ multiple component pricing proposal would better reflect the market value of nutrients in the milk to the farmer. He stated that the proposed system, compared with the current system, would essentially eliminate the value of milk used in manufacturing that is currently associated with water which, he said, has very little market value in dairy products. The witness said that MCP would affect the cost of milk to LOL as a handler in that it will come closer to equalizing the cost of milk relative to the value of the products derived from the milk.

The LOL witness also described four major weaknesses in the existing voluntary MCP plans. The first weakness, he said, was that the current plans emphasize component test instead of component yield. He said that the price paid to each producer should be tied more directly to the value of the

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products that can be produced from the producer's milk.

The second weakness described by the LOL witness is that many existing plans do not provide for deductions for milk with low component levels. This, he said, indicates that the plans recognize the higher value of milk with more pounds of components, but do not recognize that milk with fewer pounds of components is worth less. He said that competitive, rather than economic, factors are the reason deductions for low component levels generally do not exist, as many producers do not like to see deductions on their milk checks.

According to the LOL witness, an inequitable feature of the voluntary MCP plans is that they generally pay no component premiums when the somatic cell count of the milk is above a fixed level, resulting in high test producers losing their component premium because of high somatic cells, while low test producers with high somatic cell counts lose nothing.

The fourth weakness described by the witness is that some existing MCP plans pay premiums for protein, while others pay premiums for solids-not-fat. He said that most producers in Wisconsin receive premiums based on protein, while most producers in Minnesota, Iowa, Nebraska and South Dakota receive premiums based on solids-not-fat. The witness claimed that the variety of payment plans currently in existence do a poor job of transmitting market signals to the producers, are not economically consistent, and lead to confusion among farmers. He said that the NAJ proposal would address the deficiencies in the current situation.

Most participants at the hearing advocated the introduction of MCP for payments to producers and for milk delivered to handlers for Class II and Class III use in the five orders. There was no support for pricing Class I milk on other than the current butterfat and skim basis.

In addition to NAJ and LOL, adoption of some form of multiple component pricing in the five orders was supported by Central Milk Producers Cooperative (CMPC), the Trade Association of Proprietary Plants (TAPP), Farmers Union Milk Marketing Cooperative (FUMMC), National Farmers Organization (NFO), Kraft General Foods (Kraft), Associated Milk Producers, Inc., North Central Region (AMPI North Central), Wisconsin Cheese Makers Association (WCMA), Dean Foods, and National Cheese Institute (NCI).

The CMPC witnesses strongly supported the need for implementing multiple component pricing in the five orders and proposed a plan very similar to that of NAJ. The fundamental difference between the two plans is that the CMPC proposal would result in lower protein prices than the NAJ proposal. The appropriate level of the protein price is discussed under Issue 3a below.

The CMPC proposal was supported in testimony and in a post-hearing brief by NFO. A witness for WCMA testified in support of the CMPC proposal for multiple component pricing. A witness for Dean Foods testified in support of the concept of MCP, and in response to a question about which proposal he favored, he expressed support for the CMPC proposal. AMPI North Central Region submitted a brief in support of the CMPC proposal for multiple component pricing.

A witness for NCI testified in support of the CMPC multiple component pricing proposal with one primary modification. The NCI proposal would calculate a "residual fluid price", instead of an other solids price. This proposal is discussed further under Issue 3b below in this decision. Kraft testified and submitted a brief in support of the NCI proposal for multiple component pricing.

A witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) testified in support of the TAPP proposal, a variation of the CMPC proposal that would price both butterfat and protein on a differential basis, rather than on a per pound basis.

The five north central Federal milk orders included in this proceeding should be amended to include multiple component pricing. On the basis of the record of this proceeding, multiple component pricing would entail pricing milk on the basis of the pounds of butterfat, protein and other nonfat solids contained in the milk, with a somatic cell adjustment to the hundredweight price paid to producers. The record indicates that a large percentage of the producers pooled under these orders are already eligible for or receive some form of multiple component pricing and that many of these component pricing plans use protein as a pricing component.

The record also shows that the diverse component pricing programs that currently exist promote disorderly and inefficient marketing conditions in the procurement of milk supplies by competing handlers. The different programs establish non-uniform bases of payments to producers. The adoption of multiple component pricing will allow the Orders to recognize the additional value of milk with a higher-than-average solids content.

In the five orders included in this proceeding, the vast majority of the milk pooled is utilized in manufactured products. The total solids in the milk used for manufacturing are the primary determinants of product yield. In addition, it is the solids in fluid milk that give it its nutritional value and taste. In both types of products, the current pricing system used in the five orders does not properly recognize the value of nonfat milk solids, nor encourage producers to increase the quantity of nonfat milk solids in the milk they produce.

As a result of the shift in value in recent years from the butterfat portion of milk to the skim portion, most of the value of milk is determined on a volume basis without any consideration of the value of the skim components. Adoption of the multiple component pricing plan recommended in this decision will enable the market to reflect the value of the skim components in milk to producers.

In addition to butterfat, protein is clearly the most appropriate component of milk on which payment should be based. Most of the milk pooled under these five orders is used for manufacturing, and 86% of the milk used in manufacturing is used to produce cheese. Because protein is a main determinant of cheese yield, and it is cheese that determines the profitability for most of the dairy industry in the 5-market area, the milk pricing system should recognize the value of the protein component of milk as it is used in the manufacture of cheese.

Record evidence clearly shows that protein has a higher demand than other components of milk because of its functional, nutritional and economic value in the marketplace. The functional characteristics of protein allow it to form the matrix in the production of cheese and yogurt. Protein is also important to the air formation in the manufacture of certain products and provides some required nutrients in the human diet. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Additionally, handlers receiving milk that results in greater volumes of finished products such as cheese and cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished products deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less

product yield. Thus, sending an economic signal to dairy farmers will encourage them to maximize the production of those components which have the greatest demand in the marketplace.

According to analysis of the record, proponents are correct that attribution of all of the skim value of the M-W price to protein would result in an overstatement of the value of protein used in cheese and most other uses. In order to maintain fairly uniform prices between orders for milk used in manufactured products, it is necessary to assign the residual value of the M-W price minus the butterfat and protein values to either other nonfat solids or a fluid carrier price. The discussion of this residual component may be found in Issue 3b below.

A witness for the Galloway Company testified in support of TAPP and Galloway's own proposals to exclude sweetened condensed milk, ice cream and ice cream mix from pricing under a multiple component pricing system. The witness stated that such products should continue to be priced under the current pricing system.

The Galloway witness said that some Class II manufactured products, together with other products such as sour cream, whipping cream, half and half, eggnog, yogurt, nonfat dry milk and butter, are not affected in yield by the protein content of the milk from which the products are manufactured. Instead, according to the witness, it is total skim solids that affect the yield of these products. Accordingly, the witness stated, it would not be equitable to price such products under a multiple component pricing system which prices protein at a level higher than the remaining skim solids in the milk. The witness argued that these products should be left out of any MCP plan adopted.

The Galloway witness testified, and post-hearing briefs filed on behalf of Anderson-Erickson (A–E) and Galloway asserted, that yields are affected by the level of total skim solids rather than protein, making the pricing of protein irrelevant for Class II pricing. The Galloway witness testified that there have been months in which the monthly average protein level and other nonfat solids level of milk moved in opposite directions. In addition, the A–E and Galloway briefs asserted that MCP would significantly increase the cost of Class II milk, which would put them at an even greater disadvantage than currently with respect to products made from nonfat dry milk priced at the Class III-A price.

The Galloway witness stated that the primary product manufactured by the Galloway Company is sweetened condensed milk. According to the witness, this product competes on a national basis with other manufacturers who do not have to procure their milk under Federal orders with MCP provisions. The witness stated that it would be unfair to force his organization to procure milk under a set of regulations that differ from those regulating his competitors.

A portion of the TAPP proposal would require a classification change for sweetened condensed milk from Class II to Class III. Although the Galloway witness expressed strong concern over the impact of multiple component pricing on his company, the effect of the classification of sweetened condensed milk on the Galloway company is not part of the MCP issue. Reclassification of this product is a separate issue that was discussed thoroughly at a previous hearing, and in the decision issued as a result of that hearing (58 FR 27774). No new evidence was presented at this hearing that would justify reclassifying sweetened condensed milk.

Milk used to produce sweetened condensed milk, or any other Class II product, should not be exempted from multiple component pricing. The MCP plan recommended for adoption will cover all Class II and Class III products.

Testimony at the hearing indicated that there are essentially two groups of Class II products that differ with respect to the impact of multiple component pricing on the handlers that make these products. The first group of Class II products are those in which there generally seemed to be agreement in the hearing record that yields are greatly affected by the level of protein in the milk. These products include the various cottage cheeses and other similar soft, high-moisture cheeses. The handlers that make these products benefit directly from higher levels of protein in milk and should be accountable to the pool for this added benefit.

The second group of Class II products are those where there was some disagreement in the record about the affect of protein on the yield. These products include ice cream and frozen desserts and mixes, fluid creams, sour creams, yogurt, sweetened condensed milk and others. Considerable debate took place on whether it was appropriate to include these products in a multiple component pricing system.

Occurrences of average protein level and other nonfat solids level of milk moving in opposite directions appears to be an exception rather than the rule. Evidence presented in "Analysis of Component Levels and Somatic Cell Counts in Individual Herd Milk at the Farm Level, 1992, Upper Midwest Marketing Area", indicates that about 60% of the variation in solids-not-fat is caused by variation in protein, and that higher protein levels are positively correlated with higher solids-not-fat levels. Data presented in this and other documents show that the level of other solids in milk tends to be relatively constant with, generally, small month-to-month variation. Thus, when a handler purchases milk with higher than average protein levels, he will also, generally, be purchasing milk with higher than average levels of solids-not-fat.

In addition, the sum of the value of the protein and other solids under this recommended pricing plan equals the value of the total nonfat solids. The value of total nonfat solids, therefore, is a weighted average of the quantity and price of the protein and the quantity and price of the other nonfat solids contained in the milk. Analysis based on the average tests of the five markets shows that under the recommended pricing plan, the value of total nonfat solids would range from approximately $.002 per pound below the current value to approximately $.008 per pound above the current value.

This estimated price difference is certainly not the significant increase that is claimed in the briefs. In hearing testimony, the Galloway witness stated that an analysis of the effect of the CMPC proposal on the Galloway Company showed a nine-cent increase per hundredweight in the cost of Galloway's milk only when the CMPC somatic cell adjustment was included. Without the somatic cell adjustment, the analysis showed that the cost of milk to Galloway would be reduced under the CMPC multiple component pricing plan.

It is appropriate to include all Class II products in the multiple component pricing system being proposed here. All Class II products derive benefit from butterfat, protein and/or other solids in the milk. The benefit may be in enhanced yield, such as protein for cottage cheese, or a combination of protein and other solids (i.e. the solids-not-fat in the milk) in many of the other Class II products. Or, the benefit may be in some other area. For example, the NAJ dairy chemist witness testified about the importance of protein in the functionality of many of these products, such as in ice cream, whipping cream, and yogurt. Some testimony even went so far as to discuss the importance of protein in fluid milk, in terms of the

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nutrient content and the mineral carrying content of the milk. However, since there was no substantial support for including Class I milk in the multiple component pricing system being proposed here, only Class II and Class III products will be priced on multiple components.

2. Orders To Be Included

A proposal to incorporate the multiple component pricing plan adopted in this proceeding in the Nebraska-Western Iowa and Eastern South Dakota Federal milk orders as well as in the Chicago Regional, Iowa, and Upper Midwest orders should be adopted.

The witness for Land O'Lakes (LOL), proponent of the proposal, listed a number of reasons for including the multiple component pricing plan in the Nebraska-Western Iowa and Eastern South Dakota orders as well as in the orders proposed by NAJ. The witness explained that all five orders are similar in that their predominant use of milk is for manufacturing Class III products. He testified that the primary organizations that supply the Nebraska-Western Iowa and Eastern South Dakota markets also are major participants in one or more of the Chicago Regional, Iowa, and Upper Midwest order marketing areas. The witness stated that inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing plan would allow those organizations that have producers and market milk in multiple orders to standardize their payrolls and billings, thus maintaining uniformity and reducing confusion among producers and handlers.

The decision to include additional orders in this decision should not be made entirely on the basis of convenience to the parties marketing milk on the various orders. The decision is based on whether inclusion of the two orders would tend to effectuate the policy of the Agricultural Marketing Agreement Act. Certainly, including the Nebraska-Western Iowa and Eastern South Dakota orders in this decision will contribute to orderly marketing.

The data supplied by the market administrators' offices describing the milksheds of the various orders shows a considerable overlap of milksheds. For example, many South Dakota counties have milk pooled on three of the five orders during the same month. In the absence of uniform pricing provisions between the five orders, disorderly marketing could occur, particularly when orders have overlapping milksheds, if one order were pricing milk on a skim and butterfat basis while another order was pricing milk on the basis of its components. If a producer's milk tests high for nonfat components but is pooled under an order that prices milk on a skim-butterfat basis, the producer would attempt to maximize returns by changing the market under which his milk is pooled to benefit from his high component levels. The opposite situation would occur if the milk of a producer testing below average for nonfat components is pooled under an order with MCP provisions. Such a producer would maximize returns by changing the order under which his milk is pooled to one with skim-butterfat pricing. This shuffling of producers in the same geographic area because of nonuniform pricing provisions would not constitute orderly marketing.

Since the inclusion of the Nebraska-Western Iowa and Eastern South Dakota orders in the multiple component pricing decision would tend to reduce disorderly marketing in the region, benefit handlers by allowing a standardized payroll, and there was no opposition to their inclusion, multiple component pricing should be adopted for these two orders as well as the other three.

3. Components and Component Prices

Unlike the multiple component pricing plans adopted previously in other Federal milk marketing orders, this decision recommends the adoption of a pricing plan for milk based on three components rather than two. Under the five orders involved in this decision, milk should be priced on the basis of its protein, other nonfat solids, and butterfat components.

The protein price contained in this decision is based on the value of protein in the manufacture of cheese, as determined by cheese market prices, and is not a residual of the Minnesota-Wisconsin (M-W) price minus butterfat value as is the case in other MCP plans. The butterfat price would be based on the butter market, as it is in other multiple component pricing systems. "Other nonfat solids" will be priced as a residual of the M-W price minus protein value and butterfat value. The butterfat, protein, and other nonfat solids prices shall be expressed in dollars per pound carried to the fourth decimal place. In addition, payments to each producer should reflect the value of participation in the marketwide pools on a hundredweight basis.

As in other orders for which multiple component pricing has been adopted, this decision maintains the relationship of the value of producer milk to the M-W price. If the sum of the butterfat value and the protein value is greater than the M-W price, a situation which would result in a negative other nonfat solids price, the protein price will be adjusted such that the other nonfat solids price will be zero.

In testimony and brief a witness for the Trade Association of Proprietary Plants (TAPP) and Farmers Union Milk Marketing Cooperative (FUMMC) presented a plan that would pay producers for protein above a neutral zone of 3.00% to 3.29%, and provide deductions for protein levels below the neutral zone. The level of adjustment would be tied to the price of barrel cheddar cheese on the National Cheese Exchange, and would be used to adjust pay prices to producers in a manner similar to the current butterfat differential.

The witness said that milk traditionally has been purchased on a per hundredweight basis, with differential adjustments for levels of components. According to the witness, not only are producers usually paid on a per hundredweight basis, but milk is measured on a per hundredweight basis for purposes of plant accounting, payments between plants and to haulers, and by breed associations and DHIA with adjustments for percentages of components where necessary. The witness also claimed that using differential pricing would be revenue neutral.

The TAPP/FUMMC witness is correct that switching payments to producers from a per hundredweight system to one of pounds of components, as adopted in this decision, is not a minor change. Some expense will be incurred by handlers and producers in adapting to the new system. However, the benefits to the industry in the affected areas of adopting a uniform multiple component pricing system outweigh the one-time costs of its adoption. The implication that everyone connected with the dairy industry must adopt this system is not correct. Pounds of milk must still be accounted for under the multiple component pricing system. For example, nothing in this decision would prevent a handler from continuing to pay haulers on a hundredweight basis. No testimony at the hearing from witnesses that have producers pooled under Federal orders that have already adopted multiple component pricing indicated that moving to a pricing system that prices milk component by the pound was an onerous burden. The transcript does reveal disagreement with the level of the protein price under some Federal orders with multiple component pricing, but little

dissatisfaction with the system itself, nor complaints about the difficulty of switching to a component pricing system.

As to the argument that pricing protein and butterfat on the basis of price differentials would be revenue neutral, the multiple component pricing system recommended for adoption is designed neither to enhance nor reduce total producer returns. The only changes in the total pool value that may occur because of the recommended changes would result from differences in the protein and other nonfat solids content between milk pooled under the orders included in this proceeding and the milk included in the Minnesota-Wisconsin survey. In addition, some redistribution of the dollars involved in each pool can be expected between producers, and between handlers.

The proposal by TAPP and FUMMC to leave butterfat on a differential pricing basis and to price protein on a differential basis with a neutral range is not included in this decision. To continue to pay producers for butterfat and to add payment for protein on the "traditional" differential system would confuse and frustrate producers in the understanding of their milk checks. Continued use of differentials would perpetuate the volume-based pricing system with a high value on water, and would fail to give producers a true price signal of what the marketplace wants.

The use of differentials in pricing milk components is not widely understood. There is no valid reason to continue an outmoded and confusing pricing system in valuing milk components. Pricing components on a per-pound basis will allow producers to see clearly what components have the most value, a result which plainly fits the goal of encouraging producers to produce those components which have the highest value in the market place. Per-pound pricing also makes clear to producers that it is the pounds of components that result in payment, rather than the percentages of those components in milk. Producers would be better able to look at the cost of producing pounds of components, and compare those costs with possible returns. Application of a neutral zone would discourage producers from increasing protein production marginally unless such an increase would raise the protein level above the neutral range.

A. Protein

The protein price for milk pooled under the five north central Federal milk orders should be calculated by multiplying the monthly average of 40-pound block cheese prices on the Green Bay Cheese Exchange by 1.32, without including a value for whey protein.

No opposition was expressed at the hearing to pricing protein on the basis of its value in the manufacture of cheese. The differences between participants came in determining the appropriate level of the protein price.

A proposal submitted and supported by National All-Jersey, Inc. (NAJ), and supported by a number of cooperative associations and other dairy organizations, would calculate the protein price in two parts: (1) Multiply the National Cheese Exchange monthly average 40-pound block cheese price by 1.32, and (2) add the monthly average whey protein concentrate price multiplied by .735. The sum of these two values would equal the protein price.

The NAJ proponent witness explained that one of the objectives of the NAJ proposal was to establish a protein price that was high enough to give producers an incentive to produce protein. He added that a second objective was to determine the protein price from market forces rather than as a residual value, as is used in other Federal orders. The witness explained that the 1.32 factor used in the NAJ proposal comes from the modified Van Slyke cheese yield formula that is commonly used by the industry. The 1.32 factor represents the pounds of 38-percent moisture Cheddar cheese obtained from one pound of protein with 75 percent of the protein going into the cheese.

The witness gave four reasons for using the National Cheese Exchange 40-pound Cheddar block price (block price): (1) The majority of the cheese in the five Federal orders is priced using the block price as the base price, (2) the block price is used in determining the somatic cell adjustment in the Eastern Ohio-Western Pennsylvania, Indiana, and Ohio Valley orders, as well as being used in the computation of the Class II price in all Federal orders, and in the determination of the Class 4a price in California, (3) since there is over twice as much American cheese manufactured in blocks as is made in barrels, and the Wisconsin assembly point barrel cheese price is within one cent of the block price, the block price represents a minimum cheese price, and (4) the protein price determined pursuant to this proposal gives a greater incentive to producers to produce protein and is more equitable to handlers and producers than the (lower) protein price contained in the other proposals.

The NAJ witness continued by explaining that the proposal includes the value of whey protein in the protein price so that all of the protein in the milk would be accounted for. As explained by the proponent witness, the .735 factor was determined by dividing 25 percent, which is the protein left in whey after making cheese, by 34 percent, which is the percent of protein in whey protein concentrate. The resulting value, .735, is multiplied by the monthly average 34 percent whey protein concentrate price to yield the whey contribution to the protein price. The witness stated that the whey protein concentrate price was selected because it is a better indicator of the value of the protein contained in whey than is dry whey or animal feed whey.

An economist supporting the NAJ proposal testified that even though the butterfat price is determined at its marginal value, that is, the value of butterfat in butter, the protein price should be determined by the value of protein in the most common use of protein in the five markets included in this proceeding. The witness pointed out that the most common use of protein is in the manufacture of cheese, with 85.9 percent of the milk marketed in 1992 in Wisconsin being used in the manufacture of cheese. The witness testified that the appropriate cheese price to be used in computing the protein price was the block price because it is a "conservative estimate of the price actually received for block cheddar cheese". The witness went on to explain that the reported block price is closer to what manufacturing plants receive for barrel cheese than is the reported barrel price because when the customary premiums are added to the reported barrel cheese price the result is approximately equal to the block price.

The academic NAJ witness reiterated the NAJ position that the value of whey protein should be included in the protein price because the total value of the protein in producer milk would thus be reflected in the protein price, giving producers an incentive to produce more protein.

A witness for Central Milk Producers Cooperative (CMPC) explained that the CMPC proposal would use the monthly average Green Bay Cheese Exchange barrel price (barrel price) instead of the block price, and would not include the value of whey protein. The witness for CMPC testified that the barrel price better represents the value of cheese than the block price because there is a greater volume of trading in barrel cheese than in block cheese. The resulting protein price would be lower than the protein price computed under the NAJ proposal. A witness for CMPC explained that their proposed protein price was based on the understanding

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that Federal order prices are minimum prices, and that the CMPC proposal, using the barrel cheese price and not including a value for whey protein, would result in a minimum price for protein.

The CMPC protein price proposal was supported at the hearing by other hearing participants, including National Farmers Organization (NFO), Kraft, Inc., Galloway Co., Wisconsin Cheese Makers Association (WCMA), National Cheese Institute (NCI), Farmers Union Milk Marketing Cooperative (FUMMC), and the Trade Association of Proprietary Plants (TAPP). A witness for NCI explained that if the protein price is set at too high a level, cheese manufacturers would experience a declining gross margin as the price for protein increases above the return the plant can obtain from additional protein. He explained that this would be the case with the protein price as proposed by NAJ, but not with the NCI and CMPC proposed protein price.

Other witnesses supporting a lower protein price than that proposed by NAJ explained that protein should not be priced at a high level because the higher price may disadvantage handlers who do not manufacture cheese. They testified that the higher protein price would not be recoverable in certain products such as nonfat dry milk, condensed milk, or certain Class II products, and that even though the lower protein price still may not be recoverable, it offers the best alternative.

The Galloway witness stated that if a multiple component pricing plan that derives a protein price from a cheese market value were adopted, the protein price should represent a minimum value, should be based on the barrel cheese market, and should not include a value for whey protein concentrate. He argued that such a price would have the impact of minimizing the difference between the protein and other solids prices.

The TAPP/FUMMC witness testified that protein should be priced at a level somewhat below its full value in cheddar cheese and whey for several reasons. He said that too high a protein price could invite the use of non-dairy protein, whey solids, and casein, and thereby cause an increase in the production of imitation cheese. He also said that since some Class II and III products do not recoup as much value from high protein milk as cheese and cottage cheese, the protein price should be set at a level less than its full value for cheese. The witness expressed concern that too high a protein price could result in a zero value for the residual component, or other solids. According to the witness, a zero value for the residual would fail to reflect a realistic value, and would not cover a make allowance.

In the post-hearing brief filed by NAJ, the position of using a "justifiably high" protein price to send a signal to producers that protein is the most valuable component in milk was reiterated. In post hearing briefs filed by CMPC, NFO, Kraft, NCI, TAPP and FUMMC, Anderson-Erickson (A-E), and AMPI North Central Region, the computation of the protein price as proposed by CMPC was supported. The reasons given in testimony for using a lower protein price than that proposed by NAJ were reiterated in briefs. In addition, A-E, Kraft and AMPI North Central Region argued that the difference between the barrel cheese price and the block cheese price is due to the cost of packaging and other nonmilk factors, and therefore the barrel cheese price should be used for determining the protein price.

In pure economic terms the price of a product represents the supply and demand for that product as affected by place, form, and time. The problem with determining a price for protein contained in milk is that the protein is not marketed as a separate unique product, but is marketed as an integral part of both fluid and manufactured dairy products. Therefore, in determining an appropriate protein price, the value of protein in dairy products is determined by using the value of a product whose yield is a function of the protein content of the milk. At this point in time no attempt is made to reflect the protein content of milk in the value of milk used for fluid use. For this reason, the component pricing plan recommended in this decision does not apply to milk used for Class I purposes.

The level of protein in milk does have a measurable affect on the value of milk used for manufacturing. This value varies among the diverse manufactured products because of differences in the market values of manufactured dairy products and in the contribution made by protein to various finished products. For instance, testimony at the hearing showed that for a one-pound change in protein in the manufacture of cheddar cheese there is a 1.32 pound change in the quantity of cheese produced, whereas in the production of milk powder a one-pound change in the level of protein would change the amount of powder produced by approximately one pound. Since the vast majority of milk in the five orders included in this hearing is used to manufacture cheese, the protein price will be based on the contribution made by protein in the manufacture of cheese.

The 1.32 factor used in both methods proposed for the computation of the protein price for these five orders is derived from a modified Van Slyke cheese yield formula, where the casein is assumed to be 75 percent of the protein and the moisture content of the cheese is 38 percent. Assuming the butterfat is constant, a change of protein by one pound in this formula will change cheese yield by 1.32 pounds. Therefore, the 1.32 factor is appropriate for determining the order protein price.

In determining the level of the protein price, the question of whether to use the average block price versus the average barrel price is a lesser issue than the question of whether or not whey protein should be included in the computation of the protein price, as proposed by NAJ. The average difference between the Green Bay Cheese Exchange average block price and average barrel price during 1992 and 1993 was $.0388 per pound. Multiplying this difference by the 1.32 factor results in an average difference of $.05 per pound of protein between the protein prices derived from the barrel and the block cheese prices. Over the same 2 years the inclusion of whey protein in the computation of the protein price would have increased the protein price by an average of $.4265.

The principal issues that must be addressed in determining the computation of the protein price are the factors that must be included to arrive at a price that most accurately reflects the value of protein in milk. In addition, the effect of the level of the protein price on the other nonfat solids price must be considered. Since the other nonfat solids price is computed as a residual of the Minnesota-Wisconsin price, the other nonfat solids price is inversely related to the protein price. In determining an appropriate protein price and other nonfat solids price, the effects of both prices on payments to producers and margins to handlers buying milk must be determined.

Inclusion of a protein price and an other solids price in determining payments to producers gives producers an incentive to increase their production of nonfat solids, especially protein. There was no evidence in the hearing record to indicate the cost to producers of increasing the protein content of milk. It is therefore difficult to determine what the absolute level of the protein price, or its relative level to the butterfat and other solids prices, must be to encourage producers to increase the protein content of milk.

On average for the 21 months of data available in the record the protein price

recommended for adoption in this decision, at $1.6851 per pound of protein, is twice both the $.6379 per pound average other solids price and the $.8374 per pound average butterfat price. Certainly, pricing protein at double the price of the other components in milk gives producers a clear message that protein is the component most desired in the marketplace without over-valuing that component. The significant difference in prices between protein and the other nonfat solids and butterfat components should give producers an incentive to increase protein output.

Testimony by several proponents of component pricing explained that component pricing would be more equitable to handlers than the current skim-butterfat pricing system. The proponents explained that the increased equity would be due to handlers paying for milk based more closely on its economic value to them. This increased equity is reflected in a narrower spread in margins between handlers making cheese from low protein-low solids milk versus handlers making cheese from high protein-high solids milk. Several exhibits showed that handlers using "average" milk would experience little if any change in their net margins. However, handlers using low-testing milk would experience a higher net margin than under the present pricing plan, while handlers using high-testing milk would experience a lower net margin. This result, the narrowing of handlers' net margins when compared to the skim-butterfat pricing system, would occur no matter which of the proposed pricing plans is used to price the components.

Analysis of data presented at the hearing, using price computations based on each of the proposals and averaged over the 21 months of data included in exhibits, shows a range of net manufacturing margins for cheese using the recommended pricing system of $1.57 per hundredweight compared with the $3.34 range in cheese manufacturing margins per hundredweight of milk purchased attributable to the current skim-butterfat pricing system. The three component pricing plans discussed at the hearing would result in ranges in net cheese manufacturing margins of $1.16 per hundredweight for the NAJ proposal, $1.62 per hundredweight for the CMPC proposal, and $1.70 per hundredweight for the NCI proposal.

Even though the NAJ proposal yielded the smallest spread in net margins, further analysis of the NAJ results shows that the net margins increase and then start to decline. The decline in margins occurs when there is not enough butterfat in the milk to fully utilize the protein available, thus reducing the increase in cheese yield as protein content continues to increase. Accordingly, if the price of protein is greater than the increased return from cheese, the net return will start to decline.

The decline in net returns under the NAJ proposal indicates that the NAJ proposal would overprice protein, at least when there is not enough butterfat to fully utilize the protein. The result is that the marginal return using the NAJ proposal peaks within the protein and butterfat range of average milk while the marginal return using the protein and other solids price as recommended in this decision continues to increase, although at a decreasing rate. A mandated pricing system should not set prices at levels that result in a declining marginal return, particularly when the decline occurs at or near average market component levels. Therefore, the whey protein factor should not be included in the computation of the protein price.

The monthly average price for 40-pound block cheddar cheese on the National Cheese Exchange in Green Bay, Wisconsin, is the appropriate price to use for determining the protein price. Use of the block price results in producers receiving a higher price for protein than if the barrel price were used without handlers incurring any significantly higher cost for milk. In addition, although the record showed that more cars of barrel cheese were sold on the Exchange than block cheese, the predominant cheese form in which American cheese is manufactured in the five-market region is in 40-pound or 640-pound blocks.

The price difference between block and barrel cheese may be due to packaging and other nonmilk factors. However, the protein price must be established at a level that best meets the needs of all concerned. The block cheese price should be more effective than the barrel price in establishing a sufficiently high protein price to accomplish the goal of encouraging producers to produce protein without having a detrimental impact on handlers, and does result in a narrower range of manufacturing margins for cheese.

Over the period January 1992 through September 1993, a protein price computed by multiplying the block price by 1.32 would have resulted in an average protein price of $1.6851 per pound. The CMPC and NCI proposals, using the barrel cheese price, would have resulted in an average protein price of $1.6337 per pound of protein over the same time period. A comparison of the net margins resulting from the recommended protein price versus the CMPC and NCI proposals shows that the slightly higher protein price and correspondingly lower other solids price recommended herein have a negligible affect on net margins. In fact, the spread between the highest and lowest cheese manufacturing margin declines slightly while the margin per pound of cheese remains virtually unchanged. At the same time, the producer is paid a higher protein price and thereby has a greater incentive to increase protein production.

B. Other Nonfat Solids

The balance of the M-W price, after the values of protein and butterfat are removed, should be priced on the basis of "other nonfat solids." The other nonfat solids price per pound will be computed by subtracting from the Class III price the sum of the butterfat price times 3.5 and the protein price times the test of the Minnesota-Wisconsin price survey milk. The result will be divided by the other nonfat solids test of the Minnesota-Wisconsin price survey milk. Because the computation of the other solids price is based on a residual value, the other solids price could be negative without further adjustments. Therefore, if computation of the other solids price results in a negative price, the protein price will be adjusted (downward) to result in a zero value for the other solids price.

As a residual, a NAJ witness stated, the other nonfat solids price would represent the value of lactose and ash, which are the primary constituents of the other nonfat solids, and the difference in value between a competitively set price for milk, the Minnesota-Wisconsin price, and the value of that milk based strictly on product prices.

An expert witness for NAJ testified that a higher price for other solids than would be computed by using a protein price lower than that proposed by NAJ was not justified because a higher other nonfat solids price would defeat the purpose of multiple component pricing: To give producers an economic incentive to increase the protein content of their milk. The witness also explained that since the "other nonfat solids" consist primarily of lactose, for which there is a limited market and cheaper substitutes, there is no reason to have a high other nonfat solids price.

A witness for CMPC explained that the CMPC proposal would result in a higher price for other nonfat solids than the NAJ proposal. The witness testified that reduced emphasis on the protein

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price and increased emphasis on the other solids price would reduce the impact of multiple component pricing on handlers and producers. The witness observed that the average difference in handlers' cost of milk between the current skim-butterfat pricing system and the CMPC proposal was less than one cent per hundredweight, while the NAJ proposal would result in a difference of slightly over three cents per hundredweight.

The CMPC witness pointed out that the same relationship was applicable to returns to producers. In fact, the witness stated, when comparing the effect of the current skim-butterfat pricing system on handlers' obligations with both the NAJ proposal and the CMPC proposal, there is a narrower spread from the highest difference to the lowest difference and a smaller standard deviation with the CMPC proposal than the equivalent comparisons with the NAJ proposal.

An alternative residual price was proposed by NCI and supported by Kraft. A witness for NCI testified that instead of placing the residual value on the other nonfat solids, the residual value should be placed on the remaining pounds of fluid milk. The witness explained that this residual fluid price would be calculated by subtracting the value of 3.5 pounds of butterfat and the value of the protein based on the protein test of the milk in the Minnesota-Wisconsin price survey from the Minnesota-Wisconsin price. The resulting value would be divided by 100 minus 3.5 minus the protein test of the milk in the Minnesota-Wisconsin price survey.

The NCI witness testified that placing the residual value on other nonfat solids would yield an "other nonfat solids" price that could not be recovered in the marketplace. In addition, he stated, although the butterfat price is based on the butter market and the protein price would be based on the return to cheese manufacture, the other nonfat solids price would have no relationship to any particular established market or component. The witness also testified that since an other nonfat solids test would not be needed for the NCI proposal, administration of the pricing plan would be easier and less expensive than the other pricing proposals.

The proposal by NCI to place the residual value on a "fluid carrier" component has some merit in that it does not try to apply the residual value to a component such as other solids, on which the market may not place a value. The major drawback to the NCI proposal is that it ignores one of the components of milk, other nonfat solids, which is composed of lactose and ash.

Although the other nonfat solids do not have as much market value as either butterfat or protein, they are an important component of milk. If a multiple component pricing system is to be effective it should price as many of the components in milk as possible, preferably based on the value of those components in the marketplace. There is, however, no readily available measure of the market value of the other nonfat solids. Since there was no testimony or any justification in the record for departing from the Minnesota-Wisconsin price as a basic price for milk, at least one of the components in the payment plan must represent the difference between a competitively-set pay price (the M-W) and the product-derived component prices. This residual value therefore represents not only the value of the lactose and ash, but also equates the component values, some of which are determined by their market value, with a competitively set producer pay price.

The prospect of lactose being added to milk by producers for the purpose of benefitting from the other solids price was discussed by several hearing participants. The incentive to adulterate milk with added lactose should be no more of a problem than the current incentive to adulterate milk with water. Testing to determine whether lactose has been added should, in fact, be easier than testing for water since it would be part of the testing necessary to determine producers' payments. In addition, added lactose can be detected during normal testing procedures currently conducted on milk.

NCI's concern that testing for total solids would increase handlers' costs and difficulty of testing was not established in the hearing record. In fact, testimony indicated that many handlers are already testing for total solids. Hearing testimony also showed that the testing for total solids is as accurate or more accurate than testing for butterfat or protein. In addition, the infrared machines that are used by most laboratories will test for total solids at the same time the butterfat and protein tests are done. Therefore, there should be no significant increase in testing cost or testing difficulty with the implementation of the component pricing plan incorporated in this decision.

C. Butterfat

The value of butterfat in the amended orders will be the same as under the current orders. There was no proposal or testimony to change the way butterfat currently is valued. One expert witness testified that the current system of basing the value of butterfat on the value of butter is proper.

This decision continues the historical relationship of the values of butterfat and butter. The difference between the pricing of butterfat in the amended order and the current order is due to the way that value is expressed. Currently the value of butterfat is expressed as a differential; that is, the difference in value between 0.1 pound of butterfat and 0.1 pound of skim milk. The amended order will express the value of butterfat on the basis of a price per pound. Whichever method is used, the total value of butterfat in milk is the same. However, by expressing the value on a per pound basis instead of a differential, the objective of demonstrating clearly to producers where the value is in milk is easily achieved.

As proposed, the butterfat price per pound in the amended order will be determined by multiplying the butterfat differential by 965 and adding the Class III price. The resulting price per hundredweight would then be divided by 100 to give a price per pound of butterfat.

D. Miscellaneous

The three component prices: butterfat, protein, and the other solids, will be expressed on a per pound basis with four places to the right of the decimal. Analysis has shown that by expressing these prices to the nearest one-hundredth of a cent, the accuracy of the prices is significantly enhanced over expressing the prices to the nearest cent. Additionally, the difference between what is paid into the producer settlement fund and what is drawn from the producer settlement fund is much closer to zero than when prices are rounded to the nearest full cent.

In contrast to other orders that have multiple component pricing provisions, this decision incorporates only one protein price as well as one other nonfat solids price. The pooling of the components to include the Class I skim portion is incorporated within the computation of the producer price differential. This feature of the pricing plan allows for the elimination of separate handler and producer protein prices and separate handler and producer other solids prices, and resulting confusion over which price, handler or producer, should be used when. In addition, a handler's per pound price for protein or other solids is the same whether the handler is buying milk from producers or from other handlers.

The producer price differential, which represents the additional value of Class I and Class II milk in the pool and any positive or negative effect of Class III–A, will be determined by computing for each handler, and then accumulating for all handlers, the differential value (from Class III) of the Class I, Class II, and Class III–A product pounds. The differential value is adjusted, when appropriate, for shrinkage and overage, inventory reclassification, receipts of other source milk allocated as Class I, receipts from unregulated supply plants, location adjustments, and, in the Chicago Regional order, transportation and assembly credits.

For the purpose of eliminating differences between handler and producer component values, the value of the Class I skim milk and the values of the protein and other solids contained in the skim milk allocated to Class II and Class III will be added to, and the values of the protein and other solids contained in all producer milk subtracted from, the differential pool. The accumulated total for all handlers is then adjusted by total producer location adjustments and one-half the unobligated balance in the producer settlement fund. The resulting value is then divided by the total pounds of producer milk in the pool, and an amount not less than four cents nor more than five cents is deducted. The result is the producer price differential to be paid to producers on a per hundredweight basis.

It is possible for the producer price differential to be negative. A negative producer price differential can result for two reasons. Any of the Class I, II, or III–A differential prices may be negative and/or the minus adjustments may be large enough to offset any positive contribution from the differential price. A negative producer price differential would be equivalent to a uniform price less than the Class III price.

An issue that was not directly addressed in this proceeding concerned testing for protein. The five orders included in this hearing currently base protein testing on the standard Kjeldahl method, which tests for nitrogen and then converts the nitrogen result to protein. Since there is a certain amount of free nitrogen in milk this test somewhat overstates the protein content of milk. Recent developments in testing allow for testing for true protein which is a more accurate reflection of protein content. In no way does this decision mandate a specific testing procedure. However, when (or if) the industry does move to testing for true protein, this decision should not be viewed as a hindrance to that conversion. At the time a change to testing for true protein may occur, a change in the 1.32 factor may be necessary.

4. Somatic Cell Adjustment

The producer price differential paid to each producer should be adjusted on the basis of the somatic cell content of the producer's milk no matter how the milk is used by a handler. The value adjustment per hundredweight for each 1,000 somatic cells would be determined by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. Each producer's monthly average somatic cell count (SCC), in thousands, would be subtracted from 350 and multiplied by the value adjustment per 1,000 SCCs. Somatic cell adjustments will not be included in the computation of the producer price differential.

A wide range of somatic cell or quality plans were included in the notice of hearing and at the hearing itself. In general, all parties agreed that high-quality milk is important to all segments of the dairy industry. The major differences between the parties arose over the questions of how and whether quality and/or somatic cell adjustments should be included in the Federal order program.

A witness expert in the field of milk testing and quality testified about the influence somatic cells have on milk and the resulting affect on products made from milk. The witness explained that in normal healthy cows the somatic cell count is around 50,000. When an infection occurs in the udder of the cow white blood cells enter to fight the bacterial infection. The SCC thus increases with the increasing number of white blood cells. In fact, white blood cells and somatic cells are synonymous in this context. The witness continued by explaining that white blood cells contain enzymes that are designed to break down the cell walls of the bacteria that are infecting the udder, but do not distinguish between milk protein and bacteria. As a result, milk protein is also degraded. The witness also stated that the enzyme causes some deterioration in milkfat. The witness continued by explaining that these white blood cells also cause to be activated a proteolytic enzyme that is present in all milk.

The expert witness went on to explain that casein, which is the functionally important protein in milk, is broken down into smaller protein chains that cannot perform the same functions as the casein. In fact, the witness explained, the destruction of the casein affects all dairy products that rely on casein for structure or function. These products include cheeses, whipped cream, yogurt, ice cream, and condensed and dry products used in the manufacture of other products in which casein is a functional necessity. The witness also explained that higher SCC milks have a tendency to have a faster increase in "acid degree value", which is a measure of rancidity and off flavors, than milks with low SCCs. The witness testified that most of the damage occurs in the udder of the cow, where conditions are ideal for the various enzymes to work. Once the milk is removed from the udder and cooled and stored properly, further deterioration does not stop but is slowed down significantly, and further damage is minimized.

The expert witness discussed the effect that somatic cell counts have on the manufacture of various dairy products, specifically cheese. He explained that high SCC milk results in lower cheese yields as well as problems with moisture control and the activity of the starter culture. The increased somatic cells result in less casein in relationship to the total protein so that less cheese is produced than would be indicated by the amount of protein present. The degraded protein ends up in the whey with the rest of the whey proteins. The witness explained that in studies using individual cow's milk cheese yield would drop dramatically as the somatic cell count went above 100,000, with the yield staying fairly constant as the somatic cell count climbed to 1,000,000.

The witness pointed out that the cheese yield effect of somatic cells differs when bulk tank milk is used instead of an individual cow's milk. He explained that in the case of bulk tank milk the relationship between cheese yield and somatic cell counts would be linear, with cheese yields declining as SCCs increase. The witness stated that the linear relationship is caused by the weighting of the SCCs in the bulk tank. Bulk tank tests are weighted averages rather than simple averages. For example, if 100 pounds of milk with a somatic cell count of 50,000 and 400 pounds of milk with a somatic cell count of 250,000 are added to the bulk tank the somatic cell count would be a weighted average of 210,000 and not the simple average of 150,000.

The witness also testified that the effect of somatic cell levels on fluid milk products is reflected in higher acid degree values that indicate rancidity and off flavors, resulting in shorter shelf life.

The expert witness testified that routine testing for somatic cells is conducted using a Foss-O-Matic infrared analyzer. The reference method for testing is the direct microscope

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somatic cell count in which the sample is stained and the somatic cells are counted using a microscope. The witness explained that if the electronic instruments are calibrated to the same reference samples the resulting test values and standard deviations should be in close agreement. The witness concluded that on a relative basis the results should be close to what would be obtained using other analytical tests.

The notice of hearing contained a proposal by CMPC to include an adjustment for somatic cells. However at the hearing, a witness for CMPC explained that CMPC had decided neither to support nor oppose the inclusion of a somatic cell adjuster in the amended orders. The CMPC witness testified that the individual members of CMPC were free to support or oppose any of the somatic cell proposals as they saw fit.

As originally proposed by CMPC, the somatic cell adjustment would be computed by multiplying the National Cheese Exchange barrel price times .0005. The resulting quantity would be multiplied by 500 minus the somatic cell count of the milk, in thousands. The resulting value would be applied on a per hundredweight basis. As explained by a witness for CMPC, the proposed somatic cell adjuster would apply to all producer milk, including that purchased by Class I handlers. The witness went on to explain that the effect of somatic cells on the value of producer milk and milk used in Class II and Class III would be included in the computation of the producer price differential. A somatic cell adjustment on Class I milk would not be included in the pool, and therefore would not affect Class I handlers' cost of milk.

A witness for WCMA quoted extensively from the MCP recommended decisions for the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania milk marketing orders, and for the Michigan milk order, supporting the inclusion of an adjustment for somatic cells in Federal orders. The witness supported the CMPC proposal, but suggested that the somatic cell adjustment be applied to all milk; that is, Class I milk would not be exempted from a somatic cell adjustment. In addition, he proposed that the somatic cell adjustment be applied to the protein price rather than on a hundredweight basis.

A witness for TAPP and FUMMC expressed support for including a somatic cell adjustment in the amended orders. The TAPP–FUMMC brief also supported such a provision. The witness stated that a somatic cell adjustment would benefit producers, handlers, and consumers by increasing the volume of milk marketed, improving yield, and supplying consumers with more nutritious, better quality dairy products. The TAPP/FUMMC witness explained that their proposal would have a neutral range of 301,000 to 400,000 somatic cells with a one-cent positive adjustment for each 50,000 somatic cell count below the neutral range up to a maximum of a six cents as the somatic cell count declined, and a one cent negative adjustment for each 50,000 somatic cell count above the neutral range up to a maximum of ten cents as the somatic cell count increased. The TAPP/FUMMC witness testified that under their proposal the somatic cell adjustment would apply to all producer milk, milk used in Class III, and, if the plan is to be revenue neutral, also to milk used in Class II.

A witness for Swiss Valley Farms Company (Swiss Valley) testified in support of including additions and subtractions for somatic cells in the amended order. The Swiss Valley witness explained that somatic cells add proteolytic and lipolytic enzymes to the milk, as well as a plasmin enzyme that is extremely heat stable, such that it is not deactivated during pasteurization. Therefore, the enzyme continues to degrade the milk during storage. The witness added that low SCC milk is important to the Swiss Valley bottling operations because it results in fluid milk products of improved flavor, and to their cheese-making operations because of the resulting higher casein and lower whey protein content of the milk, which increases manufacturing returns.

The Swiss Valley witness proposed that the somatic cell adjustment begin at 400,000, with a positive adjustment as the SCC declines, and a negative adjustment as the SCC increases, from that level. The adjustment would be five percent of the National Cheese Exchange block price per 100,000 somatic cells. The Swiss Valley witness explained that the adjustment for somatic cells should apply to all producer milk and that Swiss Valley would support a somatic cell adjustment on Class II and Class III milk for the handler.

In its post-hearing brief, Swiss Valley reiterated the testimony of its witness in favor of including an adjustment for somatic cells in the amended order. Besides supporting the position of the Swiss Valley witness, Swiss Valley expressed general support for a somatic cell adjustment.

Testimony by a fluid processor witness indicated that the handler pays a quality premium when buying milk from producers and specifies minimum quality standards on purchased tanker milk.

A witness for Mid-America Dairymen, Inc. (Mid-Am), testified that Mid-Am favored the inclusion of an adjustment for somatic cells in the amended order. The witness quoted from the Final Decision of the Indiana, Ohio Valley, and Eastern Ohio-Western Pennsylvania proceeding to support the position of Mid-Am that an adjustment for somatic cells should be included based on the effect somatic cells have on all milk. The witness explained that quantifying the adjustment on an incremental basis was difficult, and since not all milk is used in the manufacture of cheese a moderate adjustment rate should be used. The witness explained that the Mid-Am proposal would apply the somatic cell adjustment to all producer milk, on a hundredweight basis, with a positive adjustment for a somatic cell count below 400,000 and a negative adjustment for SCCs above 400,000.

The witness explained that under the Mid-Am proposal, the somatic cell adjustment would be computed by subtracting the monthly average somatic cell count (in thousands) of the producer from 400 and then multiplying the result by the National Cheese Exchange monthly average barrel cheese price multiplied by .0005. He stated that since the somatic cell adjustment would be included in the computation of the producer price differential, on the producer side only, the total size of the pool would not change but individual producers would receive more or less, depending on whether their milk had a somatic cell count above or below the average SCC of the market. The Mid-Am witness continued by explaining that the Mid-Am proposal would be a redistribution of money from high somatic cell testing producer milk to the lower somatic cell testing milk, since there would be no additional money in the pool from the somatic cell adjustments.

Instead of supporting the inclusion of somatic cell adjustment provisions in the five Federal orders, witnesses testifying on behalf of Land of Lakes, Inc., and NCI supported those organizations' proposals to allow each handler to submit a somatic cell or quality adjustment plan for payments to its own producers to the market administrator.

A witness for LOL testified that with the LOL proposal a handler could reduce a producer's payment by up to ten percent from that required by the order if other producers of the handler received positive adjustments to their payments, as long as the total payments were equal to at least the minimum total order payment requirements. The witness explained that LOL's proposal does not contain specific criteria for quality and/or volume adjustments. Each handler would submit an individual quality and/or volume adjustment plan to the market administrator which the handler would be required to adhere to until a new plan would be submitted. The witness testified that there is general agreement among handlers for the need to adjust payments for milk based on quality and volume. The witness continued by arguing that since the industry has not yet reached a consensus on how to adjust for quality and volume, it would be appropriate to allow each handler to develop its own quality and volume plan with the approval of the market administrator.

A witness for NCI testified that even though somatic cells affect the quality of milk, particularly in the manufacture of cheese, it is difficult to place a value on their effect. The witness explained that the variability in somatic cell levels from day to day and producer to producer makes determining an appropriate payment adjustment imprecise. In addition, the witness pointed out that other factors affect milk quality, and that placing a precise value on their effect is even more difficult than in the case of somatic cells. The NCI witness explained that the NCI proposal would allow each handler to establish and apply its own somatic cell adjustment schedule, with the approval of the market administrator, as long as the total payments to producers met or exceeded the Federal order minimum value. The witness explained that each handler could change its payment plan as conditions warranted.

A witness for Kraft emphasized the earlier testimony on the effect of somatic cells on milk quality and cheese yields. The witness listed several studies supporting the results testified to by the NAJ expert witness. The Kraft witness testified that Kraft has, since the early 1980's, employed a quality payment program as part of its producer payroll. The witness went on to state that the plethora of somatic cell payment programs in use in the industry is strong evidence of the industry's recognition that somatic cells play a major role in milk quality. The Kraft witness explained that, in order of preference, Kraft supports the proposal submitted by NCI, followed by LOL's proposal and the TAPP/FUMMC proposal.

Kraft, in its post-hearing brief, reiterated its support for a somatic cell adjustment to be included in the amended order. Kraft's brief did not support a particular adjustment plan but preferred the LOL–NCI concept. If that plan were not adopted, Kraft expressed support for the proposal by Mid-Am or the original CMPC proposal. A brief filed largely reiterative of NCI testimony was filed on behalf of NCI with the Dairy Division rather than the Hearing Clerk, and was received more than 3 weeks after the extended due date for filing briefs. The brief is not considered in this decision.

In the Anderson-Erickson Dairy Company (A–E) post-hearing brief, A-E opposed the application of an adjustment for somatic cells to Class I milk. They contended that the Class I handler is unable to recover the added cost of lower somatic cell count milk from the retail market. This position was supported in the post-hearing brief filed by Lamers Dairy and Hansen Dairy (Lamers). Lamers pointed to testimony that indicated that the monetary effect of somatic cells on Class I milk could not be quantified as it could be with the manufacture of cheese.

NFO, in its post-hearing brief, opposed the inclusion of any somatic cell adjuster in the recommended order. NFO expressed the opinion that support for a somatic cell adjuster was rather weak, with none of the positions presented having strong support. As an example, the NFO brief pointed to the neutral position taken by CMPC at the hearing after including a somatic cell adjuster in the original CMPC proposal. The NFO brief continued by explaining that testimony at the hearing indicated that the relationship between somatic cell levels and economic return is not a clear and definite relationship. The NFO brief went on to point out that there was no consensus at the hearing on how to apply a somatic cell adjuster.

There is ample testimony and evidence to support the inclusion of a somatic cell adjuster in these amended orders. The somatic cell adjuster per hundredweight per 1,000 somatic cells will be calculated by multiplying .0005 times the monthly average National Cheese Exchange 40-pound block cheese price. To determine the value for an individual producer, the producers monthly average somatic cell count (in thousands) will be subtracted from 350 and multiplied by the somatic cell adjuster. The value of the somatic cell adjustment will be applied on a per hundredweight basis in the handlers' payment to producers. Somatic cells will not be included in the computation of the producer price differential.

The application of the somatic cell adjustment contained herein will promote orderly marketing. As pointed out by several witnesses testifying at the hearing, producers in these markets are faced with a wide array of quality premium programs. These programs have no standard basis or standard value that is applied between handlers. Therefore a producer is faced with trying to decide which premium program will give the producer the greatest return without a standard with which to compare. Inconsistent premium programs also result in producers with identical milk receiving different prices for that milk depending on which handler is procuring the milk. The inclusion of this recommended somatic cell adjustment will tend to effectuate the declared policy of the Act by encouraging orderly marketing through the standardization of the basis for payment on the level of somatic cells in the milk and the standardization and checking of the testing and test procedures used for determining the somatic cell counts.

As was stated earlier, all parties agreed that high quality milk is important to all segments of the dairy industry. In fact, there was little opposition to the inclusion of an adjustment for quality in the amended orders. Even though testimony indicated that there are other quality factors that are important in overall milk quality, there was no determination of their effect on milk quality or any attempt to compute a relevant associated value. Therefore, somatic cell count will be used as the quality adjustment factor in this decision.

There are two basic reasons to apply the somatic cell adjustment rate on a hundredweight basis rather than to adjust the protein price. First, the somatic cell adjustment reflects the quality of milk in all uses rather than just cheese, and second, application of the somatic cell adjustment on a hundredweight basis makes it very clear to producers and to handlers that quality affects milk used in all products. Although testimony clearly showed that somatic cells affect the quality of milk in all uses, a value determined on the basis of the effect of somatic cells on cheese reflects the most prevalent use of milk in these markets and is the easiest way to determine a value for payment to producers.

A lack of agreement among hearing participants occurred in trying to determine the application of a somatic cell adjustment. There was a general consensus that an adjustment should be made in the producer pay price for quality and/or somatic cells. The rate at which such adjustment should be made varied by proposal, but was tied to the reduction in cheese yield that occurs as

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somatic cell counts increase. Several witnesses testified that the somatic cell adjustment rate should be set at a moderate level. Testimony indicated that most of the decline in cheese yield occurs as the SCC increases from below 100,000 to above 100,000, with a much slower decline in yield as the somatic cell count increases to one million. However, testimony also showed that declines in yield are much more linear when somatic cell tests and cheese yield studies are done with bulk tank milk than with the milk of individual cows. Several proposals suggested using a factor of .0005 times the cheese price in determining the value of the somatic cell adjustment per 1,000 somatic cells. This factor is derived from the approximately four percent decline in cheese yield as the somatic cell count increases from 100,000 to one million. This is the same adjustment that is used in other Federal orders in which a somatic cell adjuster is included.

The formula used to determine the somatic cell adjuster reflects the changes in the yield of cheese as the levels of somatic cells change. The formula also ties the adjustment to the value of the milk by using the block cheese price to determine the value per 1,000 somatic cells. However, since record evidence clearly shows that the affect of somatic cells on Class I and Class II products is related more to the quality of the finished product than to the yield of the product, the formula should reflect less than the full value of the affect of somatic cells on cheese yield. Using the recommended formula, the somatic cell adjustment for the average producer under the Chicago Regional order would be three cents per hundredweight, far below the 25 cents per hundredweight average quality premium that is shown in hearing exhibits as being paid currently.

The corresponding somatic cell adjustments for average producers under the four orders in addition to Chicago are: Upper Midwest, zero cents; Iowa, minus one cent; Nebraska-Western Iowa, minus six cents; and Eastern South Dakota, minus three cents. The formula results in an estimated range of forty-eight cents per hundredweight from a somatic cell count of 1,000 to a somatic cell count of 750,000, or a positive twenty-two cents to a minus twenty-six cents, although there is no limit on the deduction that may be made since there is no limit on the maximum SCC in this decision.

The use of a neutral point was supported by various proponents of a somatic cell adjuster. Several others suggested a neutral range. The record contains numerous references to a neutral range or point around a somatic cell count of 400,000. One witness expressed the opinion that the base level for the somatic cell adjustment should be near the average for the five markets. Another witness explained that their proposal used 400,000 SCC because that is where their present quality program begins. Based on data included in the hearing record, the average SCC for producers whose milk is pooled under the five orders is 367,000. Therefore, a neutral point of 350,000 is appropriate. It is close to the average for the markets, and not substantially different from the values that witnesses found appropriate. Also, by using the formula included herein, proponents of both a neutral point or a neutral range are accommodated because the formula yields no value adjustment for approximately plus or minus 7,000 SCC around 350,000.

The formula will give producers an incentive to reduce their SCCs while minimizing the effect of the somatic cell adjuster on those products in which somatic cells have a quality effect rather than a yield effect. The argument that a somatic cell adjuster will negate the forward pricing of Class I and Class II milk is also minimized by the proposed formula. Analysis shows that the month-to-month variation in the somatic cell adjustment at a particular somatic cell level is no more than one cent per hundredweight, with an approximate change of 1 cent for every increment of 15,000 somatic cells. This small variation from month to month should allow handlers to determine accurately the cost of milk for forward pricing. In fact, the variation in the somatic cell adjustment is significantly less than the month-to-month variation in the current butterfat differential, which is not known until after the end of the month.

Since this decision applies an adjustment for somatic cells to all milk, there is no need to include the somatic cell adjustment in the computation of the producer price differential. There are only two reasons to include somatic cells in the producer price differential computation: (1) To exclude a particular class or classes of milk from being affected by a somatic cell adjustment, or (2) to redistribute the somatic cell adjustment money among all of the producers in the market. Since this decision applies the somatic cell adjustment to all milk the first reason is not relevant.

There may be some merit for redistributing money from high somatic cell producers to low somatic cell producers marketwide. However, if such a provision were adopted, the producer price differential would also be affected with changes in the market average SCC. In fact, as the market average SCC decreased, the producer price differential would decline below the level of the producer price differential in the absence of a somatic cell count adjustment, decreasing the incentive for producers to reduce the somatic cell counts of their milk and defeating the objective of a somatic cell count adjustment. Therefore the somatic cell adjustment will be applied to all producer milk without being included in the pool or producer price differential computation.

Neither the quality proposal by LOL nor the somatic cell proposal by NCI, in which each handler would be allowed to submit an individual quality or somatic cell payment plan to the market administrator, is included in this decision. Although the Agricultural Marketing Agreement Act in 7 U.S.C. 608c(5) does allow for adjustments to minimum pay prices on the basis of quality, such adjustments should be at a uniform rate for all producers in the market. Allowing each handler to have its own payment schedule would defeat the concept of uniform pricing to producers, eliminate the purpose of allowing quality adjustments under the order, and lead to disorderly marketing Producers with identical milk shipping to different handlers within the same market could, and probably would, have different minimum order pay prices if each handler had its own quality or somatic cell payment plan.

A number of witnesses testified that the profusion of payment plans currently in effect in the market today are causing disorderly marketing, and that one of the benefits of incorporating multiple component pricing with a somatic cell adjustment in the five orders would be to reduce or at least standardize the vast array of producer payment plans currently in effect in the region. In view of such testimony, adoption of the LOL or NCI quality adjustment proposals would serve no purpose.

5. Conforming Changes

To accommodate multiple component pricing a number of changes need to be made in the current order provisions of the five orders in this decision. To compute a handler's obligation and the producer price differential, several prices need to be defined. The Class I differential price should be defined as the difference between the current month's Class I price and the current month's Class III price. The Class II differential price should be defined as the difference between the current month's Class II price and the current month's Class III price. These differential prices should not be confused with the fixed value that is added to the Minnesota-Wisconsin price for the second preceding month to arrive at the Class I price for the current month, or the computed value that is used in the computation of the Class II price. It should also be pointed out that these differential prices may be negative, which currently happens when the Minnesota-Wisconsin price is greater than the Class I or Class II price. The skim milk price will be calculated by subtracting from the Class III price the value determined by multiplying the butterfat differential by 35. The skim milk price will be expressed on a per hundredweight basis with four places to the right of the decimal.

Since producer location adjustments are not changed in this decision, the application of such adjustments to the producer price differential remains unchanged. In some of the orders the uniform price is "snubbed" at the Class III price when producer location adjustments are applied. In these orders, the producer price differential will be adjusted for location until the producer price differential is zero if the producer price differential at the zero zone is zero or greater. However, if the producer price differential is negative, no minus producer location adjustment will be applied. Plus adjustments to a negative producer price differential would be made. In those orders in which the uniform price is not "snubbed" to the Class III price, producer location adjustments will be applied as they are currently.

For the Market Administrator to compute the producer price differential handlers will need to supply additional information on their monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers will be required to report pounds of protein and pounds of other solids. This information will be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers, and receipts of bulk milk received by transfer or diversion.

For the Upper Midwest Order only, the due date for handlers to submit reports of receipts and utilization should be changed, from the 10th of the month to the 8th of the month. Currently, the Upper Midwest Order requires handlers to submit reports by the 10th of the month, and the Uniform Price to be announced by the 11th of the month, allowing only one day for the pooling process. The other four orders involved in this decision allow a longer period of time for the processing of data and the announcement of the Uniform Price. In the Chicago Regional Order, handler reports are due on the 10th, and the Uniform Price is announced on the 14th, a period of 4 days. In the Iowa Order, handler reports are due on the 8th, and the Uniform Price is announced on the 12th, a period of 4 days. In the Nebraska-Western Iowa Order, handler reports are due on the 7th, and the Uniform Price is announced on the 12th, a period of 5 days. In the Eastern South Dakota Order, handler reports are due on the 8th, and the Uniform Price is announced on the 12th, a period of 4 days.

The order changes recommended in this decision will require the market administrator of each order to carry out a more comprehensive review and analysis of the data than is required currently. As noted at the hearing, the pooling process will become somewhat more complicated because data submitted will involve not only skim and butterfat pounds, but also pounds of protein and other solids. Thus, it is appropriate to allow the market administrator for the Upper Midwest Order a period of 3 days to compute and announce the producer price differential and the statistical uniform price. By changing the due date for handler reports from the 10th to the 8th, but retaining the 11th as the day the producer price differential and statistical uniform price are to be announced, the pooling process will be better accommodated.

For purposes of allocation of producer receipts the assumption will be made that the protein and other solids cannot easily be separated from skim milk. The protein and other solids will therefore be allocated proportionately with the skim milk based on the percentage of protein and other solids in the skim milk received from producers.

The implementation of this multiple component pricing decision will require several changes in the way handlers pay for milk. Partial payment at the Class III price for the previous month for milk deliveries during the first 15 days of a month was proposed by both NAJ and CMPC. Although no objections to the proposal were expressed, there was no testimony supporting or opposing the proposal. Therefore, there is no basis in the record of the proceeding to make substantive changes in the payment provisions of the orders that provide for partial payments at a significantly different level.

Currently, the Nebraska-Western Iowa order, the Upper Midwest order, and the Iowa order require partial payments to be based on the prior month's uniform price. Since this component pricing plan does not contain a uniform price, these three orders will be changed to require the partial payments to be made at the "statistical uniform price", announced by the market administrator on or before the 14th day of the month for which partial payment is to be made.

The Chicago Regional order will also be changed from the current requirement that the partial payment be based on the lowest class price for the prior month to a partial payment based on the prior month's Class III price. The Eastern South Dakota order does not need to be changed.

Final payment to producers will be determined by the total hundredweight of milk times the producer price differential adjusted by the applicable location adjustment, plus or minus the total hundredweight of milk times the adjustment for somatic cells, plus the pounds of protein times the protein price, plus the pounds of other solids times the other solids price, plus the pounds of butterfat times the butterfat price, minus any authorized deductions currently allowed.

Handlers purchasing milk from cooperative pool plants will pay for Class I milk at the Class I differential price plus the pounds of skim milk in Class I at the skim milk price plus the pounds of butterfat at the butterfat price; for Class II milk at the Class II differential price plus the pounds of protein at the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price; and for Class III milk at the protein pounds times the protein price, plus the pounds of other solids at the other solids price, plus the pounds of butterfat at the butterfat price. All milk purchased will be adjusted by the appropriate somatic cell adjustment. Payment for 9(c) milk will be based on the producer price differential adjusted for location at the plant of receipt and somatic cells, plus the value of protein, other solids, and butterfat contained in the milk.

Since producers will be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler will be required to supply the producer not only with the information currently supplied, but also: (a) The pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rate that is required for

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payment for each component and, if a different rate is paid, the effective rate also.

The handler's value of milk will be determined by combining: (a) The pounds of producer milk in Class I times the Class I differential price, (b) the pounds of producer milk in Class II times the Class II differential price, (c) the value of overage, (d) the value of inventory reclassification, (e) the value, at the Class I minus Class III price difference, of other source receipts and receipts from unregulated supply plants allocated to Class I, (g) the value of handler location adjustments, (h) Class III–A credits, (i) the pounds of skim milk in Class I times the skim milk price, (j) the pounds of protein in Class II and Class III times the protein price, and (k) the pounds of other solids in Class II and Class III times the other solids price.

The pounds of protein and other solids in Class II and Class III will be determined by multiplying the percent protein or percent other solids in the skim milk of the total producer milk received by the handler times the pounds of skim milk allocated to Class II and Class III.

Handler's obligations to the producer settlement fund will be determined by subtracting from the handler's value of milk the following: (a) The total pounds of each handler's producer milk times the producer price differential adjusted for location, (b) the total pounds of protein contained in the producer milk times the protein price, (c) the total pounds of other solids contained in the producer milk times the other solids price, and (d) the value of other source milk at the producer price differential with any applicable location adjustment at the plant from which the milk was shipped deducted from the handler's value of milk.

The amendments to order language accompanying this recommended decision are based on the current language of the five orders. There are two national amendatory proceedings in process (the M-W replacement and Class II pricing) that may result in changes to some of the provisions that will also be changed by this proceeding. No attempt has been made in drafting the order language amendments accompanying this decision to accommodate any of the changes that may result from the other two proceedings. Any adjustments needed will be made on the basis of the order language in effect at the time a final decision is issued.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforementioned orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforementioned marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1030, 1065, 1068, 1076 and 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1030, 1065, 1068, 1076 and 1079 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 1030, 1065, 1068, 1076 and 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1030.9(a) shall report for each plant of the handler (except if a handler requests and the request is approved by the market administrator, a handler may file a consolidated report for supply plants and a consolidated report for distributing plants); and each handler described in § 1030.9 (b) and (c) shall report the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(ii) Receipts of milk from handlers described in § 1030.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants, including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(4);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products

required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1030.31 is amended by revising paragraph (a) to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1030.73(e).

* * * * *

3. Section 1030.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1030.50 Class and component prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.40.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1030.50(b).

5. The section heading in § 1030.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9 (a), (b), and (c), as follows:

(a) Calculate the following values:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1030.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1030.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1030.61 is amended by revising the section heading, introductory text, and paragraph (a) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for

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Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1030.60 (a)(1), (a)(2) and (b) through (k) for all handlers;

(2) Add values computed pursuant to § 1030.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III–A price times the pounds of product determined pursuant to § 1030.43(e);

* * * * *

7. Section 1030.62 is revised to read as follows:

§ 1030.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein test and other solids test of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1030.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted pursuant to § 1030.52.

* * * * *

9. Section 1030.73 is amended by revising paragraphs (a), (c), and (d) and adding paragraph (e), to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk received from such producer and for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to §§ 1030.75 and 1030.86;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of butterfat received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer; and

(3) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a) of this section;

(vii) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

10. Sections 1030.74 and 1030.75 are revised to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The producer price differential applicable to other source milk shall be reduced at the rates set forth in § 1030.52(a).

11. Section 1030.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1030.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1065.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1065.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1065.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1065.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1065.31 is amended by revising paragraph (a) to read as follows:

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1065.73(e).

* * * * *

3. Section 1065.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k), to read as follows:

§ 1065.50 Class and component prices.

Subject to the provisions of § 1065.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.75.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the

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difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1065.50(b).

5. The section heading in § 1065.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

Producer Price Differential

§ 1065.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1065.9(a) with respect to each of its pool plants and each handler described in § 1065.9(b) and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1065.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1065.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1065.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1065.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1065.43(d) and § 1065.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1065.44(a)(11) and the corresponding steps of § 1065.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1065.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (f), to read as follows:

§ 1065.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers, as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1065.60(a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1065.60(a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III–A price times the pounds of product determined pursuant to § 1065.43(e);

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "producer price differential."

7. Section 1065.62 is revised to read as follows:

§ 1065.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III

price and the producer price differential.

8. Section 1065.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1065.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk determined pursuant to § 1065.44(c) by the producer price differential as adjusted pursuant to § 1065.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1065.60(f) by the producer price differential as adjusted pursuant to § 1065.52.

* * * * *

9. Section 1065.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(f) for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1065.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to 1065.86 and for advertising and promotion pursuant to § 1065.107; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1065.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1065.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1065.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer or diversion from a pool plant operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 26th day of the month during which the milk was received at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 17th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

* * * * *

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10. Sections 1065.74 and 1065.75 are revised to read as follows:

§ 1065.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the producer price differential shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

11. Section 1065.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii), to read as follows:

§ 1065.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1065.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.30 is amended by revising the introductory text and paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1068.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler described in § 1068.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1068.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1068.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1068.31 is amended by revising paragraph (a) to read as follows:

§ 1068.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1068.73(f).

* * * * *

3. Section 1068.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1068.50 Class and component prices.

Subject to the provisions of § 1068.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.20.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month's Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids-not-fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1068.50(b).

5. The section heading in § 1068.60 and the undesignated centerheading preceding it, the introductory text and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1068.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1068.9 (a), (b), and (c).

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined pursuant to § 1068.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined pursuant to § 1068.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1068.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.44(a) by the average protein content of producer skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1068.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1068.43(e) and § 1068.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1068.44(a)(11) and the corresponding steps of § 1068.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for a handler described in § 1068.9(c), the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1068.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1068.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk as follows:

(a) Combine into one total for all handlers:

(1) The estimated values computed pursuant to § 1068.60 (a)(1), (a)(2) and (b) through (j) for all handlers;

(2) Add the estimated values computed pursuant to § 1068.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the estimated value obtained by multiplying the difference between the Class III price and the Class III-A price times the pounds of product determined pursuant to § 1068.43(f);

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential" for milk received from producers.

7. Section 1068.62 is revised to read as follows:

§ 1068.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1068.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1068.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler described in § 1068.9(c). In the case of a handler described in § 1068.9(c), less the amount due from other handlers pursuant to § 1068.73(d). The value of producer milk shall be computed as follows:

(A) An amount obtained by multiplying the total hundredweight of producer milk by the producer price differential as adjusted pursuant to § 1068.75;

(B) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(C) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(ii) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was

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computed pursuant to § 1068.60(f) by the producer price differential as adjusted pursuant to § 1068.52.

* * * * *

9. Sections 1068.73, 1068.74, and 1068.75 are revised to read as follows:

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers or cooperative associations as follows:

(a) On or before the 25th day of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a cooperative association:

(1) That is a handler pursuant to § 1068.9(a), at not less than the Class I price for the month at the location of the transferee or transferor plant, whichever is higher, adjusted by the butterfat differential for the preceding month;

(2) That is a handler pursuant to § 1068.9(c), at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month; and

(3) That is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(b) On or before the 4th day after the end of the month, each handler shall pay for skim milk and butterfat received during the first 15 days of the month from a producer for whom payment is not being made pursuant to paragraph (a) of this section and who has not discontinued shipping to such handler, at not less than the statistical uniform price at its plant location for the preceding month, adjusted by the butterfat differential for the preceding month.

(c) On or before the 11th day after the end of the month, each handler shall pay for milk received during the month from a cooperative association which is a handler pursuant to § 1068.9(a) adjusted at the location of the transferee or transferor plant, whichever is higher, payment shall be determined as follows:

(1) The hundredweight of Class I milk received times the Class I differential price for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(2) The hundredweight of Class II milk received times the Class II differential price for the month;

(3) The pounds of butterfat received times the butterfat price for the month;

(4) The pounds of protein received in Class II and Class III times the protein price for the month;

(5) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(6) The hundredweight of milk received times the somatic cell adjustment; and

(7) Less any payment made pursuant to paragraph (a)(1) of this section.

(d) On or before the 18th day after the end of the month:

(1) Each handler shall make payment as described in this paragraph to:

(i) A cooperative association that is a handler pursuant to § 1068.9(c);

(ii) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate;

(iii) A producer for whom payment is not being made pursuant to paragraphs (d)(1)(i) and (ii) of this section.

(2) Payment shall be determined by:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1068.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (a) or (b) of this section.

(e) In making payments pursuant to paragraphs (a) (2) and (3), (b) and (d) of this section, deductions may be made for marketing services pursuant to § 1068.86 and for any proper deductions authorized by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1068.72 by the 18th day of the month, he may reduce pro rata his payments to producers pursuant to paragraph (d) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(f) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom it received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and producer;

(2) The total pounds of milk received from the producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this section;

(8) The rate that is used in making payment if such rate is other than the applicable minimum;

(9) The amount, or the rate per hundredweight, or rate per pound of component, of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(10) The net amount of the payment to the producer.

§ 1068.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk received at a pool plant or delivered to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1068.52.

(b) The producer price differential applicable to other source milk shall be reduced at the rates set forth in § 1068.52, except that the adjusted producer price differential shall not be less than zero.

10. Section 1068.76 is amended by revising paragraph (a)(4) and the third sentence of paragraph (b)(1)(ii) to read as follows:

§ 1068.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1068.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

1. Section 1076.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d) to read as follows:

§ 1076.30 Reports of receipts and utilization.

* * * * *

(a) Each handler described in § 1076.9 (a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1076.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1076.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1076.31 is amended by revising paragraph (a) to read as follows:

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1076.73(e).

* * * * *

3. Section 1076.50 is amended by revising the section heading, introductory text and paragraph (a), adding and reserving paragraph (d), and adding paragraphs (e), (f), (g), (h), (i), (j), and (k) to read as follows:

§ 1076.50 Class and component prices.

Subject to the provisions of § 1076.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

(d) [Reserved]

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965 less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) [Reserved]

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1076.50(b).

5. The section heading in § 1076.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a) and (f) are revised to read as follows:

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Producer Price Differential

§ 1076.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1076.9(a) with respect to each of its pool plants and each handler described in § 1076.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from handler described in § 1076.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1076.43(a) and § 1076.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1076.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1076.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1076.43(d) and § 1076.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1076.44(a)(11) and the corresponding steps of § 1076.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

* * * * *

6. Section 1076.61 is amended by revising the section heading, introductory text, and paragraphs (a) and (e), to read as follows:

§ 1076.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight of milk received from producers as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1076.60 (a)(1), (a)(2), and (b) through (i) for all handlers;

(2) Add values computed pursuant to § 1076.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "producer price differential."

7. Section 1076.62 is revised to read as follows:

§ 1076.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1076.71 is amended by revising paragraph (a)(2) to read as follows:

§ 1076.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1076.9(c) by the producer price differential as adjusted pursuant to § 1076.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1076.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1076.9(c) by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1076.60(f) by the producer price differential as adjusted pursuant to § 1076.52.

* * * * *

§ 1076.72 [Amended]

9. Section 1076.72 is amended by removing the last sentence.

10. Section 1076.73 is amended by revising paragraphs (a), (c), (d) and (e) to read as follows:

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1076.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1076.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1076.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments

pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1076.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by the cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 28th day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1076.62(f) for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 15th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month,

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, or the rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

11. Sections 1076.74 and 1076.75 are revised to read as follows:

§ 1076.74 . Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1076.52; and

(b) For the purpose of computations pursuant to §§ 1076.71 and 1076.72 the producer price differential shall be adjusted at the rates set forth in § 1076.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

12. Section 1076.76 is amended by revising paragraphs (a)(4) and the last sentence of (b)(1)(ii) to read as follows:

§ 1076.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both price to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1076.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.30 is amended by revising paragraphs (a) and (c) and removing paragraph (d), to read as follows:

§ 1079.30 Reports of receipts and utilization.

* * * * *

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(a) Each handler described in § 1079.9(a), (b), and (c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler;

(ii) Receipts of milk from handlers described in § 1079.9(c); and

(iii) Receipts by transfer or diversion of bulk fluid milk products from pool plants;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in paragraph (a)(1) of this section and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

(3) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

* * * * *

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

2. Section 1079.31 is amended by revising paragraph (a) to read as follows:

§ 1079.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler described in § 1079.9(a), (b), or (c) shall report to the market administratof its producer payroll for such month in the detail prescribed by the market administrator, showing for each producer the information described in § 1079.73(e).

* * * * *

3. Section 1079.50 is amended by revising the section heading, introductory text and paragraph (a), and adding paragraphs (e) through (k) to read as follows:

§ 1079.50 Class and component prices.

Subject to the provisions of § 1079.52, the class prices per hundredweight of milk containing 3.5 percent butterfat and the component prices for the month shall be as follows:

(a) *Class I price.* The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the basic formula price for the second preceding month plus $1.55.

* * * * *

(e) *Class I differential price.* The Class I differential price shall be the difference between the current month Class I and Class III prices (this price may be negative).

(f) *Class II differential price.* The Class II differential price shall be the difference between the current month Class II and Class III prices (this price may be negative).

(g) *Skim milk price.* The skim milk price per hundredweight, rounded to the nearest cent, shall be the Class III price less an amount computed by multiplying the butterfat differential by 35.

(h) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the Class III price plus an amount computed by multiplying the butterfat differential by 965 and dividing the resulting amount by one hundred.

(i) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(j) *Other solids price.* Other solids are herein defined as solids not fat other than protein. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the skim milk price times .965, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of the basic formula price as reported by the Department. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

(k) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight shall be computed by subtracting the monthly average somatic cell count, in thousands, of the producer's milk from 350 and multiplying the remaining quantity by .0005 times the monthly cheddar cheese price as defined in paragraph (i) of this section.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class and component prices.

(a) On or before the 5th day of the month, the market administrator shall announce the following prices:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The Class III–A price for the preceding month;

(4) The skim milk price for the preceding month;

(5) The butterfat price for the preceding month;

(6) The protein price for the preceding month;

(7) The other solids price for the preceding month; and

(8) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1079.50(b).

5. The section heading in § 1079.60 and the undesignated centerheading preceding it, the introductory text, and paragraphs (a), (f), and (g), are revised to read as follows:

Producer Price Differential

§ 1079.60 Handler's value of milk.

For the purpose of computing a handler's obligation for milk the market administrator shall determine for each month the value of milk of each handler described in § 1079.9(a) with respect to each of its pool plants, and each handler described in § 1079.9 (b) and (c).

(a) The handler's obligation for producer milk and milk received from a handler described in § 1079.9(c) shall be computed as follows:

(1) Multiply the total hundredweight of milk in Class I as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class I differential price for the month;

(2) Add an amount obtained by multiplying the total hundredweight of milk in Class II as determined pursuant to § 1079.43(a) and § 1079.44(c) by the Class II differential price for the month;

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1079.44(a) by the skim milk price;

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.44(a) by the average protein content of the skim milk received by the handler, and multiplying the resulting pounds of protein by the protein price; and

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1079.44(a) by the average other solids content of the skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price;

* * * * *

(f) Add the amount obtained from multiplying the Class I differential price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1079.43(d) and § 1079.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding steps of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract for a handler described in § 1079.9(c) the amount charged the preceding month for the skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month;

* * * * *

6. Section 1079.61 is amended by revising the heading, introductory text, and paragraphs (a) and (e) to read as follows:

§ 1079.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1. If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1079.60 (a)(1), (a)(2), and (b) through (j) for all handlers;

(2) Add values computed pursuant to § 1079.60 (a)(3), (a)(4), and (a)(5) and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices; and

(3) Subtract the value obtained by multiplying the difference between the Class III price and the Class III-A price times the pounds of product determined pursuant to § 1079.43(e);

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the "producer price differential."

7. Section 1079.62 is revised to read as follows:

§ 1079.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

8. Section 1079.71 is amended by revising paragraph (a)(2) and adding and reserving paragraph (b), to read as follows:

§ 1079.71 Payments to the producer-settlement fund.

(a) * * *

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk and milk received from a handler described in § 1079.9(c) by the producer price differential as adjusted by § 1079.75. In the case of a handler described in § 1079.9(c), less the amount due from handlers pursuant to § 1079.73;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk and milk received from a handler described in § 1079.9(c) by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk and milk received from a handler described in § 1079.9(c) by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1079.60(f) by the producer price differential as adjusted pursuant to § 1079.52.

(b) [Reserved]

9. Sections 1079.73, 1079.74 and 1079.75 are revised to read as follows:

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay for milk received from producers for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the last day of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f) for the preceding month and adjusted pursuant to § 1079.75, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of the month, payment for producer milk received during such month shall not be less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential adjusted pursuant to § 1079.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper authorized deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer;

(viii) Less deductions for marketing services pursuant to § 1079.86; and

(ix) If by such date the handler has not received full payment from the market administrator pursuant to § 1079.72 for such month, it may reduce pro rata its payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative

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association is authorized to collect payment:

(1) On or before the last day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 18th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for milk received by the handler from a cooperative association acting as a handler described in § 1079.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f), applicable at the location of the receiving handler's plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential applicable at the location of the receiving handler's plant;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Less any payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received by transfer from pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the last day of the month during which the milk was received at a rate per hundredweight not less than the statistical uniform price computed pursuant to § 1079.62(f), applicable at the transferee plant, for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 18th day after the end of the month during which the milk was received, as follows:

(i) The hundredweight of Class I milk received times the Class I differential price for the month applicable at the transferee plant, plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential price for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and Class III times the protein price for the month;

(v) The pounds of other solids received in Class II and Class III times the other solids price for the month;

(vi) The hundredweight of milk received times the somatic cell adjustment; and

(vii) Less any payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The somatic cell count of the producer's milk;

(7) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(8) The rate that is used in making payment if such rate is other than the applicable minimum rate;

(9) The amount, rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(10) The net amount of payment to such producer or cooperative.

§ 1079.74 Butterfat differential.

The butterfat differential, rounded to the nearest one-tenth cent, shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The producer price differential for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the producer price differential shall be adjusted at the rates set forth in § 1079.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted producer price differential shall not be less than zero.

10. Section 1079.76 is amended by revising paragraph (a)(4) and the last sentence of paragraph (b)(1)(ii) to read as follows:

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

* * * * *

(a) * * *

(4) Multiply the remaining pounds by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant, with the difference to be not less than zero; and

* * * * *

(b) * * *

(1) * * *

(ii) * * * Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the statistical uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such statistical uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

* * * * *

Dated: October 25, 1994.

Lon Hatamiya,

Administrator.

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Part III

Department of Housing and Urban Development

Environmental Protection Agency

24 CFR Part 38
40 CFR Part 745
Lead; Proposed Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 38

[Docket No. R-94-1756; FR-3483-P-01]

RIN 2501-AB58

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62130; FRL-4637-4]

RIN 2070-AC75

Lead; Proposed Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing

AGENCIES: Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directs EPA and HUD to jointly issue regulations requiring disclosure of certain information by persons selling or leasing (leasing includes renting) housing that may contain lead-based paint or lead-based paint hazards. Under that authority, EPA and HUD propose the following requirements. Sellers and lessors, or any agent acting on their behalf, of most residential housing built before 1978 would be required to provide purchasers and lessees with all information known to the seller, lessor, or agent on the presence of lead-based paint and lead-based paint hazards, as well as an EPA pamphlet on lead-based paint hazards. In addition, sellers would be required to grant purchasers 10 calendar days to conduct an inspection or risk assessment for lead-based paint hazards before being obligated under any contract to purchase that housing. Finally, the regulation would require that a standard warning, disclosure, and acknowledgement form be attached to all leases and sales contracts involving target housing. The rule would require the completion of these disclosure activities before the purchaser or lessee had become obligated under any contract to purchase or lease the target housing.

DATES: Written comments in response to this proposed rule must be received on or before January 3, 1995. If persons request time for oral comment, EPA and HUD will consider holding an informal hearing in Washington, DC. Requests for oral comment must be received by December 2, 1994. EPA and HUD will decide whether to hold such a hearing by December 19, 1994. The exact date, time, and location of any such hearing will be made available by telephoning EPA's Environmental Assistance Division at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** For further information regarding the submission of information claimed as confidential business information (CBI), see Unit XI of this preamble.

ADDRESSES: Please submit three copies of all written comments on this joint HUD/EPA proposed rule, including any comments directed specifically to HUD, to: TSCA Document Receipts (7407), Rm. E-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments on this proposed rule should be identified by the docket number OPPTS-62130A. In order to reduce the burden on the commenters, receipt of all comments will be centralized at EPA.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the proposed rule, contact Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551. For technical information: At HUD, contact Conrad C. Arnolts, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410, Telephone: (202) 755-1810. At EPA, contact Charles Franklin, Program Development Branch, Chemical Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1781.

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, [42 U.S.C. 4852(d)]. The Residential Lead-Based Paint Hazard Reduction Act is Title X of the Housing and Community and Development Act of 1992, Public Law 102-550.

II. Background

A. Legal Background

In 1992, Congress, recognizing the need to control exposure to lead-based paint hazards, passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act). The main purpose of the Act was to develop the infrastructure and standards necessary to reduce lead-based paint hazards in housing (section 1003 of the Act). Congress recognized that lead poisoning is a particular threat to children under age 6, and particularly emphasized the needs of this vulnerable population within various sections of the Act. Section 1021 of the Act amends the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 et seq., by adding a new Title IV entitled "Lead Exposure Reduction."

Actions under some sections of the Act are to be implemented and administered by HUD, some by EPA, and some jointly by both agencies, often in consultation with other federal agencies.

This proposed rule is issued under the authority of section 1018 of the Act. Section 1018 requires EPA and HUD to jointly promulgate regulations for disclosure of lead-based paint or lead-based paint hazards in target housing which is offered for sale or lease. Target housing is defined in section 1004(27) of the Act and in Unit V. of this preamble. Specifically, section 1018 requires: (1) Sellers or lessors to provide the purchaser or lessee of target housing with a lead information pamphlet to be developed under section 406(a) of TSCA; (2) sellers and lessors of target housing to disclose any known lead-based paint or lead-based paint hazard in such housing; (3) sellers of target housing to permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazards; and (4) attachment of a lead warning statement to each contract for purchase and sale of target housing. Violation of section 1018 may result in civil and criminal penalties and potential triple damages in a private civil suit. Section 1018 provides that regulations under this section must be promulgated no later than 2 years after the date of enactment of the Act and must take effect 3 years after enactment of the Act. Thus, Congress intended that the section 1018 regulations must be published as final by October 28, 1994, and must take effect on October 28, 1995. Although 1018 specified that final regulations should be promulgated no later than October 28, 1994, EPA/HUD will not be able to meet this deadline. It appears that Congress' intent in section 1018 was to provide a year between the promulgation of the final rule, and the effective date of the rule. Congress reasonably could have

believed that this year was necessary in order that the real estate industry, landlords, sellers, etc. could become familiar with the rule requirements and set up procedures for compliance. For this reason, EPA and HUD believe that the effective date of the rule should be no earlier than 1 year after promulgation of the final rule, even if this occurs later than October 28, 1995. EPA and HUD believe that this interpretation is the one most consistent with Congressional intent.

Several related provisions of the Act and of the new Title IV of TSCA, added by section 1021 of the Act, are briefly discussed below to further clarify this proposed rule.

The section most closely related to section 1018 is section 406 of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, a lead hazard information pamphlet on lead and lead-based paint hazards in the home. EPA has developed the draft pamphlet in consultation with HUD and the Centers for Disease Control and Prevention (CDC), and published a notice in the **Federal Register** of March 9, 1994 (59 FR 11119), announcing the pamphlet's availability for public review and comment. As required under section 1018 of the Act, the section 406 pamphlet will be given to purchasers and lessees under the EPA/HUD disclosure regulations proposed today.

Sections 1004(15), 1004(16), and 1004(17) of the Act generally define lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Congress charged EPA under section 403 of TSCA to issue regulations identifying more specifically the meaning of these three terms, for the purposes of other provisions of TSCA and the Act. Thus, EPA is in the process of defining more precisely what constitutes a lead-based paint hazard, including lead-contaminated dust and lead-contaminated soil. However, EPA and HUD believe that the provisions of this proposed section 1018 rule can be carefully considered on their own merit and independent of decisions made under the section 403 rulemaking.

Therefore, EPA and HUD are soliciting public comment on this proposed rule prior to the availability of proposed or final regulations under section 403. EPA and HUD believe the public has adequate information and opportunity to comment on the contents of this proposed rule and on the relationship between regulations promulgated under sections 1018 and 403 for the following reasons:

(1) While known lead-based paint hazards must be disclosed, this requirement is only one of a number of requirements for which sellers and lessors of target housing are responsible. Therefore, EPA's definition of "lead-based paint hazards" does not change the affected population, although that definition has clear implications for the extent of disclosure.

(2) The requirements under section 1018 will apply to all target housing regardless of the presence of lead-based paint hazards in that housing. That is, all owners, sellers, and lessors of target housing will be on notice that EPA and HUD are issuing disclosure requirements, and that they will be required to retain and disclose certain types of information and to allow for the 10-day inspection period, regardless of whether their housing contains lead-based paint or a lead-based paint hazard.

(3) The Act clearly specifies the requirements of this proposed rule. Therefore, regardless of the standards proposed and issued in the section 403 regulations, EPA and HUD do not have flexibility to change the basic provisions specified by Congress.

(4) Section 403, on the other hand, does give EPA flexibility to consider a number of factors in developing health-based standards. Comments specifically concerning the implications of EPA's section 403 standards, given the concrete legislative requirements of section 1018, will be most appropriately addressed by EPA during the development of the section 403 rule.

Section 402 of TSCA requires that EPA (in consultation with HUD, the Department of Labor, and the Department of Health and Human Services) promulgate regulations to ensure that individuals engaged in certain lead-based paint activities are trained, that such training programs are accredited, and that contractors engaging in such activities are certified. This section also requires that EPA, in consultation with the above agencies, shall develop standards for performance of lead-based paint activities. Pursuant to section 402, EPA is in the process of developing regulations which would require that detailed reports be written at the completion of any lead inspection or risk assessment, whether voluntary or required. Such reports would have to be disclosed as information known to the seller or lessor under the proposed section 1018 disclosure requirements being proposed today.

B. Lead Background

1. *Lead and lead-based paint.* Lead is a soft, bluish metallic element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is nonbiodegradable, and has been known since antiquity for its adaptability in making various useful items. In modern times it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. From the turn of the century through the 1940's, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 60's as latex paints (which are generally lead-free) became more widespread. Although the Consumer Product Safety Commission (CPSC) banned lead-based paints from residential use in 1978 (paint currently may not have greater than .06 percent lead by weight) (Ref. 1), HUD estimates that 75 percent of the houses built in the United States before 1978 contain some lead-based paint (Ref. 2). By current estimations, approximately 57 million homes may contain lead-based paint (Ref. 2). Thus lead-based paint may pose a potential hazard to the occupants under some conditions.

2. *Lead hazards.* Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure is especially harmful to children, fetuses, and women of childbearing age. Results of recent studies suggest that lead's adverse effects occur at blood-lead levels previously thought to be safe; in fact, there does not yet appear to be a discernable threshold for the adverse effects of lead on the young (Ref. 3).

Lead poisoning has been referred to as "the silent disease" because its effects often occur gradually and imperceptibly, showing no obvious symptoms. Over time, low levels of lead in the bloodstream can cause learning disabilities, interfere with growth, cause permanent hearing and visual impairment, and cause other damage to the brain and nervous system. In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also affect fetal development and cause miscarriages (Ref. 3).

In 1991, the Secretary of the Department of Health and Human Services characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 4).

Although the percentage of children with elevated blood-lead levels has declined over the last 20 years with the reduction of lead in gasoline, millions of U.S. children still have levels of lead in their blood high enough to seriously threaten their health (Ref. 5).

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Lead-based paint poses a health threat through various routes of exposure. Children under age 6 may ingest lead-based paint chips from flaking walls, windows, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. In some cases, cleaning and renovation activities can actually increase the threat of lead-based paint exposure by dispersing fine lead dust particles in the air and over accessible household surfaces. Both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities.

III. Purpose

The purpose of this proposed rule is to ensure that families are aware of: (1) The existence of lead-based paint or lead-based paint hazards in target housing, (2) the hazards of exposure to lead-based paint, and (3) ways to avoid such exposure before they become obligated to purchase or lease housing that may contain lead-based paint. EPA and HUD are proposing identical rules to appear in both Title 40 of the Code of Federal Regulations (CFR) where other EPA lead rules will appear and in Title 24 of the CFR where other HUD lead rules appear.

IV. Scope and Applicability

Section 1018 of the Act applies to contracts for sale or lease of target housing as defined in section 1004(27) of the Act. Therefore, this rulemaking would apply to virtually all transactions involving a written contract to sell or lease target housing. EPA and HUD have identified the following several specific areas that would be excluded or where coverage would be limited in the proposed rule.

A. Foreclosure Sales

EPA and HUD have identified both legal and policy reasons to exclude the sale of properties at foreclosure from the section 1018 requirements. First, when a property is sold at foreclosure, the sale is conducted at public auction by or on behalf of a secured lender, and the property is sold to the highest bidder without any form of arms-length negotiation and without a sales contract. In most of these cases, the lender is not in possession of the property being sold and never has been; the property is controlled by the owner, who is often hostile to the lender and to any potential purchaser.

For this reason, the lender (or the party conducting the sale for the lender) is often not in a position to provide a potential purchaser with access to the property for a risk assessment or inspection, nor are they usually in possession of information concerning the existence of lead-based paint, as required by section 1018(a)(1)(B). In fact, lenders typically know very little about the history of single-family properties in their portfolios, and those make up the vast majority of the properties being foreclosed.

HUD's experience in foreclosure sales suggests that most properties sold at foreclosure are not sold to private investors or people attempting to purchase a residence for themselves. Rather, the secured lender, acting to protect its security for the defaulted loan, is the successful bidder in nearly all foreclosure sales, purchasing the property at auction. When the lender is the purchaser, the lender will typically attempt to recover its investment by selling the property to a third party and, at that point, the protections of section 1018 would clearly apply.

B. Informal Rental Agreements

Because this proposed rulemaking only applies to transactions to lease housing which involve a written contract, EPA and HUD have concluded that it should not apply to informal rental agreements which do not involve a lease. Such arrangements, by virtue of their informality, make the administration and enforcement of these requirements extremely difficult. To the extent practicable, however, EPA and HUD encourage individuals engaging in such informal arrangements to obtain available information on lead-based paint before occupying target housing.

C. Renewals of Existing Leases

EPA and HUD do not believe that individuals would significantly benefit from multiple receipt of previously disclosed information during renewals of existing leases and see no justification for placing repetitive disclosure requirements on lessors. For that reason, renewals of existing leases would only be covered by this proposed regulation if the tenant has not previously received the lead-based paint hazard information required under section 1018. If, however, the lessor becomes aware of additional information about the property concerning lead-based paint or lead-based paint hazards during the term of the lease, he or she would be required to disclose this information prior to renewal of the lease.

V. Definitions

In order to implement section 1018 of the Act, certain terms need to be defined. This section will provide the regulatory definition followed by an explanation of the definition's source. Where possible, EPA and HUD have drawn definitions directly from section 1004 of the Act. In cases where the statute either failed to define terms for the rulemaking or where the definition lacked sufficient detail, EPA and HUD are proposing appropriate definitions, along with an explanation of the reasons for their choices. EPA and HUD are accepting comment on all definitions not taken directly from the statute.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes: (1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and (2) all preparation, clean up, disposal, and post abatement clearance testing activities associated with such measures.

This definition appears in section 1004(1) of the Act. In accordance with the development of standards for the performance of abatements by EPA under section 402 of TSCA, EPA may propose modifications to this definition in a separate proposed rule. If such a revision is proposed, EPA and HUD would consider including the revised definition in the final rule for these requirements.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

This definition is based on the statutory wording of section 1018(a)(4) of the Act, which states that "Whenever a seller or lessor *has entered into a contract with an agent for the purpose of selling or leasing a residential dwelling of target housing*, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section" [emphasis added]. This provision clearly identifies an agent as a party who has entered into a contract

for the purpose of selling or leasing target housing.

State statutory provisions and common law may vary on the topic of real estate contracts and the concept of agency. In response to this diversity in state law, EPA and HUD propose a definition of "agent" which does not seek to differentiate various real estate agent activities. The agencies believe that this proposed definition provides necessary flexibility regarding which parties could be defined as "agents" who have entered into a contract to sell or lease target housing and, as a consequence, would be covered by the requirements of this regulation.

For example, it is EPA's and HUD's understanding that in many states, it is typical for a seller or lessor to enter into a contract to sell or lease target housing with a licensed "real estate broker," who may or may not perform the actual duties of an "agent" associated with selling or leasing housing. In these states, individuals working for the licensed broker, typically called "real estate agents," may perform some or all of the duties of an "agent" but may be treated as an employee of the broker or independent contractor. If the "real estate agent" were to fail to ensure compliance with the requirements of the rulemaking, the broker would assume liability for that failure, just as if the broker had performed all agent duties themselves. In other states, the real estate agent is considered an independent contractor rather than an employee of the broker, and the agent, rather than the broker, is held liable for negligence under common law. Because of these variations in state law, EPA/HUD propose a flexible definition of agent, one that could include broker and/or agent, depending on the particular circumstance. If state law does not recognize the difference between a real estate agent and a real estate broker, the party identified in the contract, and in any subcontract to perform those duties, would be liable for any failure to comply, regardless of whether they were called brokers or agents.

Specifically excluded from the requirements of this regulation, however, would be agents or brokers who operate solely on behalf of the buyer(s) or lessee(s) and who receive all remuneration from the buyer/lessee (so called "buyers' agents"). This exclusion is based on the language of section 1018(a)(4) which focuses on agents entering into a contract with a seller or lessor.

Common Area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

EPA and HUD are proposing this definition to maintain consistency with the definition of "common area" proposed in a separate notice in the **Federal Register** of March 9, 1994 (59 FR 11108), pursuant to the requirements of section 406 of TSCA. This definition is purposefully broad to allow for its use in other EPA and HUD regulations that might also cover commercial and public buildings.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

This definition appears in section 1004(4) of the Act.

Evaluation means a risk assessment and/or inspection.

This definition appears in section 1004(6) of the Act.

Inspection means (1) a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and (2) the provision of a report explaining the results of the investigation.

This definition appears in section 1004(12) of the Act.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (1) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or (2) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

This definition appears in section 401 of TSCA. Title IV of TSCA was added by the Act, and, given the close relationship between the section 1018 requirements and the provisions of TSCA Title IV, EPA and HUD believe it is consistent to use the Title IV definition for section 1018 purposes.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

This definition appears in section 1004(15) of the Act. The exact levels of lead in dust, paint, and soil that would be defined as a hazard will be addressed in a separate rulemaking, mandated by section 403 of TSCA. For the purposes of this rulemaking, however, the statutory definition is sufficient to provide the public with notice to comment on the rulemaking's requirements and structure. Parties who wish to provide comments specifically on what levels of lead in dust and soil (or what conditions or locations of lead-based paint) should be considered a hazard, should do so separately in the section 403 rulemaking process.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This proposed definition is based on the agencies' interpretation of the intent of the Act in identifying individuals entering into a contract to lease target housing.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This definition is based on the agencies' interpretation of the Act's intent in identifying entities entering into an agreement to lease target housing.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

This definition is based on the agencies' interpretation of the intent of the Act relating to owners of target housing.

Purchaser means any entity that submits a written offer to purchaser an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

EPA and HUD are proposing to limit the scope of this regulation to parties that demonstrate a real interest in purchasing target housing, so that sellers or agents representing sellers need not provide all parties who view a property with a 10 calendar-day opportunity to inspect for lead-based

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paint hazards. This definition is based on the agencies' interpretation of the Act's intent in identifying purchasers of target housing.

Residential dwelling means (1) a single-family dwelling, including attached structures such as porches and stoops; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

This definition is provided in section 1004(23) of the Act.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate, and; (5) provision of a report explaining the results of the investigation.

This definition is provided in section 1004(25) of the Act.

Secretary means the Secretary of the Department of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes: (1) An entity which transfers shares in a cooperatively-owned project and (2) an entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

EPA and HUD have proposed this definition to cover the range of entities and arrangements that may be involved in the "sale" of target housing and that the agencies interpret to be covered by the Act. The second part of the proposed definition describes sellers who have legal title to the improvements (residential dwellings) on property that is leased from another person.

Target housing means any housing constructed prior to 1978, except 0-bedroom dwellings, or housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the dwelling). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

This definition appears in section 1004(27) of the Act. The Act excludes housing constructed after 1978 since the allowable lead in paint was reduced to .06 percent by CPSC after that date (Ref. 1).

EPA and HUD interpret the term "0-bedroom dwelling" to mean any dwelling in which the living area is unseparated from the sleeping area. Under this definition, efficiency, studio apartments, loft space, and single-room dormitory units would be exempt from the requirements of the rule unless children under 6 years of age reside or may reside in the unit.

EPA and HUD interpret the term "housing for the elderly," to mean retirement communities or similar types of housing reserved for persons 62 years of age or older. EPA and HUD request comment on what additional specificity might be necessary for identifying housing for the elderly.

EPA and HUD also considered whether Congress meant to include hotels, motels, inns, and other commercial lodging facilities in the term "housing." Most hotels, motels, inns, and other commercial lodging are 0-bedroom dwellings, and would typically be exempt from the requirements of this proposed rule. In addition, EPA and HUD believe it is reasonable to interpret that Congress' intent was to distinguish residential housing from commercial lodging facilities.

Specifically, the definition of target housing intended to capture housing designed for long-term or continuous residence, as opposed to lodging facilities offering temporary accommodations. Given the high frequency and short duration of transactions, EPA and HUD believe it is impractical to apply the requirements of this proposed rule to rental transactions in motels, hotels, and other commercial lodging facilities.

As directed in the statute, the exclusions for 0-bedroom dwelling, elderly housing, and handicapped housing do not apply to any housing in which children under 6 years old reside or are expected to reside. Similarly, in cases where families with children under 6 might enter into a contract to purchase or lease commercial housing as long-term residences, however, EPA and HUD believe it is consistent with the statute that such establishments be considered target housing under this proposed rule's requirements.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

EPA and HUD are proposing this definition to clarify the term used in the Act's definition of target housing. Under this definition, efficiency, studio apartments, loft space, and single-room dormitory units would be considered 0-bedroom dwellings.

VI. Proposed Regulatory Requirements

Section 1018 requires EPA and HUD to promulgate joint regulations for disclosure of lead-based paint hazards in target housing which is offered for sale or lease. Specifically, section 1018 requires that before purchasers or lessees become obligated under any purchase or lease contract, sellers or lessors must provide the purchaser or lessee with a lead information pamphlet (being developed by EPA under TSCA section 406) and disclose any lead-based paint or lead-based paint hazards known to the seller or lessor in such housing. In addition, before obligating purchasers under a contract to purchase the housing, sellers must permit purchasers a 10-day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards, and must attach a specific lead warning statement and acknowledgement, signed by the purchaser, to each contract. Violation of Section 1018 may result in civil and criminal penalties, and potential triple damages in a private civil suit. In this unit, EPA and HUD present a more detailed discussion of these requirements as proposed in the EPA and HUD regulations. As noted above, EPA and HUD are proposing joint and equivalent regulations that would appear in Title 40 of the CFR with other EPA lead regulations and in Title 24 of the CFR with other HUD lead regulations. Including the joint regulations in both CFR locations will help ensure that sellers, lessors, agents, buyers, and lessees are informed of their existence.

A. Disclosure Requirement

Section 1018(a)(1)(B) of the Act requires the seller or lessor of target housing to provide all information known to the seller or lessor on lead-based paint and lead-based paint hazards in the housing to the purchaser or lessee before the purchaser or lessee is obligated under any contract to purchase or lease target housing. EPA and HUD are proposing such a disclosure requirement in 24 CFR 38.20 and 40 CFR 745.107. Under the proposed regulations, the seller or lessor, or the agent acting on behalf of the seller or lessor, is required to provide the purchaser or lessee with written documentation of all information known to the seller or lessor, or the agent regarding the presence of lead-based paint or lead-based paint hazards associated with the housing being sold or leased. Consistent with the statute, records of this information must be provided to the purchaser or lessee before they become obligated under any contract to purchase or lease the target housing.

For the purposes of this proposed rule, EPA and HUD propose that "information known to the seller or lessor" comprise, at minimum, the information described in 24 CFR 38.20 and 40 CFR 745.107 of these regulations. The proposed information would include, but not be limited to, the following items:

1. Reports from all lead-based paint inspections, risk assessments, and abatement activities known to the seller or lessor and conducted on or in the target housing, including any known reports completed before the effective date of the final rule if such reports are available to the seller or lessor on or after the effective date. Section 1018(a)(1)(B) requires sellers or lessors of target housing to "provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor." EPA and HUD recognize that reports from some lead-based paint activities conducted before the effective date of the final rule may no longer be available to the seller or lessor given that the seller or lessor had not been put on notice that disclosure of such records would be required. However, those reports in the possession of the seller or lessor on or after November 2, 1994 would become part of the permanent record for that unit of target housing.

2. Records of lead-based paint inspections, assessments, and abatement activities conducted for current or past sellers or lessors in common areas of target housing containing more than one residential dwelling. EPA and HUD are concerned that lead-based paint in common areas may pose an additional exposure risk to occupants, especially in buildings where lead-based paint chips and dust are allowed to accumulate. Also, the presence of lead-based paint in common areas of buildings containing target housing may signal the presence of lead-based paint within the residential dwellings. For these reasons, EPA and HUD are proposing to require the disclosure of records and reports of lead-based paint in common areas.

3. Information known to the seller or lessor regarding whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards. This would only apply to target housing containing more than one residential dwelling, and would be of primary value in cases where information on lead-based paint and lead-based paint hazards only exists for some, but not all residential dwellings. The presence of lead-based paint in some of the residential dwellings may suggest a greater likelihood of lead-based paint existing in the residential dwellings that have yet to be tested.

To balance the indirect value of the information with the disclosure burden of providing such information during transactions, EPA and HUD propose to require that sellers/lessors disclose only whether or not lead-based paint is or has been present in other residential dwellings within the target housing, rather than requiring that sellers and lessors provide specific reports on those residential dwellings. The seller or lessor would, of course, retain the option of providing more detailed information, but would not be required to provide specific data on each residential dwelling.

EPA and HUD believe that such information will help potential occupants make more informed decisions when considering leasing or purchasing target housing. For example, such information could persuade purchasers to exercise their option to conduct an inspection or risk assessment before purchasing the property. Similarly, knowledge of lead-based paint on the premises could prompt lessees to take greater precautions to guard against exposure. EPA and HUD request comment on whether requiring disclosure of information regarding other residential units is warranted and, if so, whether a more stringent disclosure standard is needed.

4. Other available information that may indicate lead-based paint or a lead-based paint hazard in the unit. This proposed requirement is directed at other relevant information on lead-based paint hazards that may be known by the seller or lessor.

EPA and HUD request information and comment on other appropriate information that may be commonly available to owners of target housing and which should be itemized in the final rule. For example, should information on past cases of lead-poisoning of occupants be disclosed to purchasers or lessees? If such information is to be considered, what level of detail would be appropriate given the privacy implications of medical records?

In addition, EPA and HUD request comment on whether the final rule should impose specific recordkeeping requirements on owners of target housing to retain information known to the owner on lead-based paint and lead-based paint hazards, as identified in proposed 24 CFR 35.20 and 40 CFR 745.107. If promulgated, the time period for such a recordkeeping requirement for owners of target housing could range in length from the length of ownership to a discrete number of years (3 years, 5 years, 10 years, etc), based on its feasibility and utility in ensuring compliance with the regulations. In evaluating the value of an owner record retention requirement, EPA and HUD will consider its potential value both in aiding and supporting Agency enforcement efforts as well as its potential value in supporting civil actions for damages taken under section 1018(b)(3).

B. Lead-Hazard Information Pamphlet

Section 1018(a)(1)(A) requires that sellers and lessors of target housing provide the purchaser or lessee with a copy of the EPA pamphlet *Lead Paint: Protect Your Family* before the purchaser or lessee is obligated under any contract to purchase or lease the housing. A primary function of the pamphlet is to educate families on the potential health risks associated with lead exposure and ways to avoid such exposure. By requiring that families receive the pamphlet at the beginning of the real estate transaction, Congress ensured that families would be informed about lead-based paint issues during the transaction process. Therefore, the joint provisions of these regulations (located in §§ 38.20(a) and 745.107(a) of the proposed regulatory text) would require that purchasers and lessees receive the pamphlet before becoming obligated under any contract.

The draft pamphlet was developed by EPA in consultation with HUD and CDC and was released to the public for a 60-day comment period and announced in the **Federal Register** of March 9, 1994, (59 FR 11119). In addition, EPA has conducted a series of focus tests and interviews in different regions of the country to ensure that the pamphlet meets both high technical and editorial standards.

The final pamphlet will be made available to the public through the Government Printing Office (GPO) for a nominal fee. In addition, EPA will make a limited number of camera-ready copies of the final pamphlet available to organizations that wish to print copies for private distribution, and the pamphlet will be available in electronic form through the GPO Bulletin Board. EPA and HUD are continuing to explore methods for printing and distributing the pamphlet in a quick and

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inexpensive way to the regulated community and the general public at large. EPA and HUD welcome comment on other potential distribution methods for the pamphlet.

C. Disclosure and Acknowledgment Form

In addition to requiring written documentation of the information known by the seller or lessor, defined in proposed 24 CFR 38.20(b) and 40 CFR 745.107(b) of the regulatory text, EPA and HUD have developed disclosure and acknowledgement forms to be attached to all sales and leasing contracts for target housing. Form A for sellers and Form B for lessors are included as Appendix A to the proposed HUD regulatory text. EPA and HUD believe that the forms will help ensure that (1) All information known to the seller or lessor on lead-based paint and lead-based paint hazards is disclosed and documented, (2) all purchasers and lessees are aware of their rights under the provisions of section 1018, and (3) sellers, lessors, and agents are aware of their obligations under their rule. In addition, these forms would be an important enforcement tool by providing a record of compliance with the rule. By maintaining completed forms after a transaction to purchase or lease target housing, the seller, lessor, and agents would have documentation of their compliance with the disclosure activities and of the purchaser's/lessee's receipt and acknowledgement. Because sellers and lessors have different obligations under the requirements mandated by section 1018, EPA and HUD believe that it is appropriate to provide two separate and distinct forms for the two types of transactions.

EPA and HUD initially considered including the elements in the forms as separate provisions for inclusion in the leasing or purchase contracts themselves. Ultimately, that concept was rejected because it would be more burdensome and confusing. By creating one form covering all regulated parties for each type of transaction, EPA and HUD hope to minimize confusion over the new requirements, decrease the recordkeeping burden, and ensure a greater level of compliance.

1. Form for Transactions to Sell Target Housing

For the reasons discussed above, EPA and HUD are proposing in §§ 745.107(a)(4) and 38.20(a)(4), respectively, that each contract to sell property defined as target housing contain a signed and dated copy of the joint HUD/EPA form entitled *Disclosure and Acknowledgement of Lead-Based Paint Before Sale.*

The form is divided into four distinct parts: a general notice statement, a certification of compliance statement by the seller, a certification of compliance statement by the agent (where applicable), and an acknowledgement statement by the purchaser. Each part is discussed below.

a. *Notice to purchasers of target housing.* Section 1018(a)(3) of the Act provides a specific "lead warning statement" to be included in all contracts involving the purchase and sale of any interest in target housing. The statute states that the lead warning statement shall contain the required language printed in large type on a separate sheet of paper attached to the contract. Because the disclosure and acknowledgement form would serve as an attachment to the contract, EPA and HUD propose to include this lead warning statement as the first part of the form, and to print it in a larger type than the rest of the form to ensure its prominence. The required text would read:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

In addition, EPA and HUD propose that, in cases where the sales contract is written in a language other than English, the lead warning statement must be included in the language of the contract as well, based on a translation of the English-version lead warning statement. While this is not expressly required by the statute, such a requirement would be consistent with Congress' intent of ensuring that families be fully aware of the potential hazards of lead-based paint before purchasing target housing. EPA and HUD request comment on this proposed requirement.

b. *Certification of compliance statement by the seller.* The second part of the form would require the seller to list all information known to the seller on lead-based paint and lead-based paint hazards in the target housing. EPA and HUD believe that it is necessary to create a single record of the information provided by the lessor/owner. Completion of this part would ensure that at the time of the contract agreement, both the seller and the purchaser would be aware of the disclosure requirements under these regulations and the lead-based paint hazard information being disclosed.

If information described in Part II of the form is in the possession of the seller, the seller would be required to provide the information in written form to the purchaser, check the appropriate box, and note the dates and type of known information in the space provided. This information would be a necessary record during the disclosure process, both to inform the purchaser of the information the purchaser should have received, and as a later measure of compliance by the seller and the seller's agent.

c. *Certification of compliance statement by the agent.* The third part of the form would require an agent, if one is used, to certify that the requirements of section 1018 have been satisfied, either by the seller or by the agent.

d. *Acknowledgement of lead-based paint requirements in target housing by the purchaser.* Section 1018(a)(2) requires that contracts to purchase target property include an acknowledgement signed by purchasers. EPA and HUD propose that the purchaser indicate the following in the acknowledgement: That they have read and understood the lead warning statement, received any information on lead-based paint and lead-based paint hazards noted in the seller certification, received a lead hazard information pamphlet, and that they are aware that they must receive an opportunity for a 10–day inspection period before becoming obligated under a contract to purchase the property. In the fourth part of the form, EPA and HUD propose such an acknowledgement. The acknowledgement would state:

> I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form, received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.* In addition, I acknowledge that, pursuant to 42 U.S.C. 4852(d) and its implementing regulations, the attached contract entitles me to up to 10 calendar days to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase, unless I agree otherwise in writing.

2. Form for Transactions to Lease Target Housing

EPA and HUD are proposing in §§ 745.107(a)(5) and 38.20(a)(5), respectively, that each contract to lease target housing contain a signed and dated copy of the joint HUD/EPA form entitled *Disclosure and Acknowledgement of Lead-Based Paint Before Lease.*

The form is divided into four distinct parts: a general notice statement, a certification of compliance statement by the lessor, a certification of compliance statement by the agent (where applicable), and an acknowledgement statement by the lessee. Each part is discussed below; however, where statutory justifications and background are the same as that presented in the part on the form for sales of target housing, the repetitive elements have been omitted.

a. *Notice to residents of target housing.* EPA and HUD propose to include a tailored lead warning statement as the first part of the form, and to print it in a larger type than the rest of the form to ensure its prominence. Although not specifically required by section 1018, EPA and HUD believe that this statement provides a useful context for information disclosed to lessees, just as for purchasers, concerning the hazards of lead-based paint. The required text would read:

> A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

In addition, EPA and HUD propose that, in cases where the lease is written in a language other than English, a translation of this lead warning statement would be required to be attached in the language of the contract. EPA and HUD believe that this translation requirement may be even more critical in the case of leasing transactions than in purchases as many non-English speakers may be more likely to lease housing for themselves and their families. EPA and HUD request comment on this proposed requirement.

b. *Certification of compliance statement by the lessor.* The second part of the form would require the lessor to list all information known to the lessor on lead-based paint and lead-based paint hazards in the target housing.

If information listed in Part II of the form is in the possession of the lessor, the lessor would be required to provide it in written form to the lessee, check the appropriate box, and note the dates and type of known information in the space provided.

c. *Certification of compliance statement by the agent.* The third part of the form would require an agent, if one is used, to certify that the requirements of section 1018 have been satisfied, either by the lessor or by the agent.

d. *Acknowledgement of lead-based paint requirements in target housing by the lessee.* The fourth part of the form consists of an acknowledgement by the lessee that the necessary disclosure steps, as required by section 1018(a)(1), had been performed. The acknowledgement language reads:

> I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form and received the lead hazard information pamphlet *Lead Paint: Protect Your Family*

3. Request for Comment on the Forms

EPA and HUD request comments on all aspects of the disclosure and acknowledgement forms. Specific questions include: Are the forms effective in communicating the importance of lead-based paint hazard awareness and the rights of purchasers and lessees? Is there other information that should be included on the forms? Is some of the included information that is not required by the statute unnecessary?

4. Retention of Disclosure and Acknowledgment Form

The disclosure and acknowledgement form documents the fulfillment of the mandated disclosure requirements during the sale or lease of target housing. This record, if maintained by the seller or lessor after the completion of the transaction, would provide a valuable record of the fulfillment of these requirements to both the agencies and courts. If this record were not regularly maintained, EPA and HUD are concerned that they would have little ability to determine whether the necessary disclosure steps had occurred.

For that reason, proposed §§ 38.20 and 745.107 of the regulatory text would require that the signed notice and disclosure form be maintained by sellers, lessors, and agents for a full 3 years from: (a) The commencement of the lease period in the case of a transaction to lease target housing, or (b) the completion of the sale in the case of a sale of target housing. EPA and HUD chose 3 years as the retention period for the disclosure form in order to allow adequate time for enforcement action by HUD or EPA. If the regulation were to mandate a shorter period of time, Federal enforcement actions could be hampered, undermining the efficacy of the regulations mandated by statute. EPA and HUD are concerned that requiring a longer retention period would place an undue burden on the regulated community.

EPA and HUD have not identified any less burdensome alternative to support compliance monitoring and enforcement actions but are sensitive to the need to impose minimum recordkeeping burdens on the regulated community, especially given the large number of transactions affected. The agencies are willing to consider alternatives to the proposed requirements, including the reduction or omission of recordkeeping requirements, if the alternatives would still ensure the successful administration and enforcement of the provisions of section 1018 of the Act.

Such alternatives could include the imposition of a longer or shorter retention period for the disclosure form, or the addition or substitution of other records as part of a post-transaction recordkeeping requirement. EPA is also considering the potential efficacy of instituting recordkeeping requirements with a sunset provision, which would phase them out over time as the market increasingly embraced and institutionalized the disclosure process.

Regardless of what recordkeeping time limits the agencies impose, these limits would not effect time limits on lawsuits under section 1018(b)(3) by injured parties against former sellers, lessors, or agents who fail to comply with these regulations. For this reason EPA and HUD would encourage sellers, lessors, and agents to maintain signed, dated forms beyond the required recordkeeping period as proof of compliance.

D. 10-Day Inspection Period

Section 1018(a)(1)(C) of the Act requires that, before a party is obligated under any contract to purchase target housing, the seller shall grant the purchaser a 10–day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards in target housing.

EPA and HUD interpret the term "10–day period" to mean 10 calendar days. While the seller and purchaser may mutually agree to a shorter or longer period, without written proof of an agreed upon change to the time, the legally enforceable period would remain 10 calendar days. Given the diversity of

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definitions for "business" or "working" days, EPA and HUD believe that an alternative interpretation of the 10–day period would lead to confusion among the public. In cases where a 10 calendar-day inspection or assessment period would be insufficient, the purchaser would retain the option of negotiating in writing for a longer period.

Since known lead-based paint information may affect a purchaser's decision to utilize the 10–day inspection period option, EPA and HUD propose to require that sellers perform and document all disclosure activities required under this proposed rule before providing the purchaser with the opportunity for the 10–day period. EPA and HUD believe that the purchaser will be most able to determine whether a risk assessment or inspection is necessary or appropriate after receiving the disclosed information.

EPA and HUD also believe that reports from inspections conducted during the 10–day inspection/assessment period should become part of the permanent record retained by the owner of the housing. Therefore, EPA and HUD are also requesting comment on whether purchasers who conduct inspections or risk assessments during the 10–day period but who do not ultimately purchase the housing should be required, under this rulemaking, to provide a copy of any report to the owner for their records.

Some purchasers and sellers may prefer to conduct the 10–day inspection/assessment period before the parties have signed a contract for the purchase and sale of the target housing. Others may prefer to conduct the inspection period after the contract is signed. In implementing these requirements, EPA and HUD have considered several approaches to fulfilling the statutory provision that the purchaser receive the opportunity for a 10–day inspection period before becoming obligated under a contract to purchase the housing. These regulations propose several approaches to Federal implementation of the 10–day inspection period.

Option 1. Require Contract Language Addressing Outcome of Inspection (Preferred Option)

To insure that the purchaser receives the statutorily required 10–day opportunity to conduct a risk assessment or inspection *before* becoming obligated under the contract, the proposed regulation (24 CFR 38.21 and 40 CFR 745.110) requires that, if the parties elect to ratify the contract prior to completion of the 10–day opportunity, the seller or agent must include appropriate language in the contract to reflect that the contract shall be contingent on the condition that no lead-based paint hazard is found in the inspection or risk assessment. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser would mutually determine the terms under which the sale will or will not proceed.

Option 2. Base Regulatory Text on Statutory Language

The least prescriptive option for implementing section 1018(a)(1)(C) requirement for a 10–day inspection opportunity is to state in the regulation simply that "the seller shall provide the purchaser with an opportunity for a 10–day inspection period (unless the parties agree to a mutually agreed upon different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards." While this option would provide the regulated community with flexibility in determining how to comply, EPA and HUD are concerned that the lack of detail would provide inadequate guidance to the regulated community, regarding the measures needed for proper compliance.

Option 3. Mandate Specific Contingency Language for All Contracts Completed Before Inspection or Assessment Period

EPA and HUD are considering the merit of requiring that all contracts to purchase target housing include specific language mandated by HUD and EPA addressing the purchaser's opportunity for a 10–day inspection period. In addition to further informing the purchaser of his/her rights to the inspection/assessment period, EPA and HUD could provide specific language addressing the rights of the purchaser in cases where the inspection/assessment period was provided after the purchaser had signed a contract to purchase the target housing. These requirements have the advantage of providing a clear message regarding what the seller and agent must do to comply and regarding what rights the purchaser has in cases where the purchaser does not receive the inspection or assessment period until after having signed a contract.

Option 4. Require the Inspection/Assessment Period Before the Contract is Signed

EPA and HUD also requests comment on requiring that the 10–day opportunity for inspection or assessment be provided before the purchaser signs a contract for the purchase of target housing. This would ensure that all purchasers were aware of the presence of any lead-based paint and lead-based paint hazards before they entered into the contract to purchase the housing. EPA and HUD do not currently prefer to impose such a prescriptive requirement on the real estate community; however, recognizing that both purchasers and sellers may prefer, at times, to implement the inspection period after all parties have acknowledged serious interest in completing the transaction.

In addition, EPA and HUD request comment on whether more prescriptive regulations would be of value regarding exactly what level or conditions of lead-based paint or lead-based paint hazards would allow for purchasers to escape their obligation under a contract signed before the inspection. Alternatively, the agencies would also like comment on whether the regulatory language and safeguards being proposed may be overly prescriptive regarding implementation of the 10–day opportunity.

E. Role of Agent

As set forth in section 1018(a)(4) of the Act, agents entering into a contract with a seller or lessor to sell or lease target housing must ensure compliance with all requirements imposed upon the seller or lessor under section 1018. If the sale or lease of target housing was aided or accomplished by an agent who has entered into a contract with a seller or lessor, the agent can be held liable for their failure to comply with the requirements of section 1018 and the regulations and can be liable for all penalties, both criminal and civil.

EPA and HUD propose to impose an affirmative obligation on agents to advise the seller of the provisions of the rule, including the seller's obligation to inform the agent of lead-based paint or lead-based paint hazards in the target housing. The language of the disclosure form reflects this notification requirement.

As a method for demonstrating compliance, EPA and HUD have proposed a requirement that agents sign and maintain copies of the signed notice and disclosure forms from each sale or lease of target housing. As proposed for sellers and lessors, the agent would have to maintain these records for 3 years from the commencement of the leasing period or for 3 years from the completion of the sale.

In determining an appropriate recordkeeping requirement, EPA and HUD considered both the burden on the regulated community and the information and duration necessary to ensure adequate compliance monitoring and enforcement of the rule's provisions. EPA and HUD rejected the "no-recordkeeping requirement" for agents because it would hinder Federal compliance assurance activities and make it difficult to determine whether a disclosure had taken place. Similarly, a recordkeeping requirement of less than 3 years would provide inadequate time for inspection of records and initiation of appropriate enforcement actions.

If no agents were employed during the leasing or purchasing process, then all liability for failure to adhere to the proposed requirements would rest solely with the seller or lessor.

EPA and HUD request comment on the rule's proposed definition of agent (see Unit IV of the preamble and §§ 38.15 and 745.103 of the regulatory text) and on the interpretation of their compliance assurance provision in section 1018(a)(4).

F. Effective Date

Section 1018(a)(1) of the Act directs EPA and HUD to jointly issue these requirements as final regulations by October 28, 1994, and pursuant to section 1018(d), the regulations will take effect on October 28, 1995.

Although section 1018 specified that final regulations should be promulgated no later than October 28, 1994, EPA/HUD will not be able to meet this deadline. It appears that Congress' intent in section 1018 was to provide a year between the promulgation of the final rule, and the effective date of the rule. Congress reasonably could have felt that this year was necessary in order that the real estate industry, landlords, sellers, etc. could become familiar with the rule requirements and set up procedures for compliance. For this reason, EPA/HUD believe that the effective date of the rule should be no early than 1 year after promulgation of the final rule, even if this means occurring later than October 28, 1995, as mandated by section 1018. EPA and HUD believe that this interpretation is the one most consistent with Congressional intent.

VII. Non-Compliance and Penalties

In addition to civil liability under section 1018(b)(3), section 1018 provides both EPA and HUD with other enforcement authority for these requirements. The enforcement authority is discussed below.

A. HUD Authority

Section 1018(b)(1) of the Act authorizes HUD to impose civil monetary penalties on any person who knowingly violates section 1018. HUD interprets this authority to apply to violators of the regulations under section 1018 as well. HUD shall impose penalties under section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545]. These penalties may be up to $10,000 for each violation. In addition, section 1018(b)(2) of the Act authorizes the Secretary of HUD to "take such lawful action as may be necessary to enjoin any violation" of the rule's provisions. Section 1018(b)(5) provides that any violation of section 1018 will be a violation of section 409. Section 412(a) of TSCA provides that the U.S. district courts have jurisdiction to restrain any violation of section 409 of TSCA. Thus, the district courts will have jurisdiction over violations of section 1018.

B. EPA Authority

1. Civil

Section 1018(b)(5) of the Act provides that failure or refusal to comply with section 1018 or its implementing regulations is a violation of TSCA section 409. Violations of TSCA section 409 are subject to TSCA section 16 penalties. Thus, a violator of section 1018 will be subject to penalties under TSCA section 16 of up to $10,000 for each violation.

2. Criminal

Since TSCA section 16 includes violations under section 409, TSCA section 16(b) provides that any person who knowingly or willfully violates section 409 (and thus section 1018) would, in addition to or instead of any civil penalty, be subject, upon conviction, to a fine of not more than $10,000 for each day of violation or to imprisonment for not more than 1 year, or both. As violations of each provision can only occur one time during each transaction (as opposed to on a daily basis), the $10,000 penalty may be interpreted as "for each violation."

C. Civil Liability

In addition to the EPA and HUD enforcement authority for the provisions of this proposed rule, under section 1018(b)(3) of the Act, "Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual." This provision allows the purchaser or lessee to seek direct compensation for any damages incurred based on the seller or lessor's noncompliance. Section 1018(b)(4) authorizes the court to award court costs, reasonable attorney fees, and expert witness fees to the plaintiff if the plaintiff prevails.

D. Validity of Contracts and Liens

Section 1018(c) provides that nothing in section 1018 (or implementing rules) shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien, made or arising in connection with a mortgage loan." It also provides that nothing in section 1018 (or its implementing rules) shall "create a defect in title." EPA and HUD have looked at section 1018(c) in the context of other section 1018 provisions, which outline specific clauses which must be attached to contracts for the purchase and sale of target housing, and specific procedural protections which must be given to the purchaser/lessee. EPA and HUD interpret section 1018 as a whole to provide that, once the contract is ratified, if certain attachments are not included in the ratified contract and if certain protections afforded in section 1018 were not given to the lessee/purchaser, the remedy available to the purchaser or lessee under section 1018 against the seller or lessor would be monetary damages.

It appears clear from the language of section 1018(c), that such an injured purchaser/lessee could not void or nullify the contract after ratification and could not void any transfer of real estate, through the use of section 1018 authority, even if it could be proven that the seller/lessor violated section 1018 provisions. Congress appears to have wanted to avoid upsetting real estate transactions once they were completed, and to have intended to limit the purchaser/lessee's remedies to civil damage suits. Also, Congress appears to have wanted not to create an independent cause of action for breach of contract or for any breach associated with real estate transfers through the use of section 1018. Of course, traditional causes of action under state law for misrepresentation/fraud would still exist, and possibly could be applied to some section 1018 violations. Also, violations of section 1018 would be subject to civil and criminal penalties administered by EPA and HUD under section 1018(b).

VIII. Procedures for Requesting a Public Hearing

The Act mandates Federal involvement in housing transactions at an unprecedented level. Recognizing the broad scope of these provisions, EPA and HUD will consider holding an informal hearing for public comment on this proposed rule in Washington, DC. To ensure adequate preparation for the

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hearing by all parties involved, persons or organizations desiring to participate in an informal hearing must file a written request for a hearing or to participate in any such hearing. The written request must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. The request must be received by December 2, 1994. Should a hearing be held, organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each one of the areas to be addressed. Organizations which do not file written comments in response to the proposed rule will not be allowed to participate at the hearing.

IX. Summary of Regulatory Impact Analysis

EPA has prepared a Regulatory Impact Analysis (RIA) examining the potential costs, benefits, and impacts of regulations for the disclosure of lead-based paint hazards in residential property upon the transfer of the property for sale or rental. The analysis is presented in five sections:

- Framework for Analyzing the Costs of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Profile of Sectors Affected by the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Estimated Costs to Private Parties from the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers
- Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses-Initial Regulatory Flexibility Analysis
- Assessment of the Benefits of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers.

1. *Framework for Analyzing the Costs of the Lead-Based-Paint Hazard Disclosure Rule for Real Estate Transfers*

Those parties directly affected by the proposed rule are the seller, lessor, agent, property manager, buyer, and tenant. EPA found the required activities which give rise to regulatory burden imposed on the affected parties to fall into four categories for cost estimation purposes:

- Start-up costs, which include learning the rule's requirements and establishing compliance procedures.
- Disclosure activities, which refers to the costs resulting from the actual transfer of information and obtaining of needed signatures.
- Recordkeeping, which results from the requirement that signed acknowledgement forms must be retained by the provider of the information.
- Materials, which are linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowedgement forms must also be duplicated). Costs may also be incurred for filing where a high number of acknowledgement forms are generated (e.g., agents), though such burden was estimated to be quite modest.

The requirements of section 1018 of the Act fall primarily on the seller or lessor of "target housing," which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0 bedroom dwelling. However, if an agent or property manager acts on behalf of the seller or lessor, which EPA has estimated to be the case in the great majority of transfers, the responsibilities fall to such agents or managers.

To estimate the cost impacts of the proposed rule, data were sought pertaining to the number of affected parties in each classification listed above, the frequency with which affected purchase and lease transactions are completed, and the incremental costs, in labor and materials, added to each transaction by the proposed regulations.

2. *Profile of Sectors Affected by the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

The larger of the two affected sectors expected to bear the principal effects of the proposed rule falls within Standard Industrial Classification (SIC) code 651, Real Estate Operators and Lessors. EPA estimates there to be 96,000 establishments potentially affected by the proposed rule. Also affected are business establishments falling within SIC code 653, Real Estate Agents and Managers; an estimated 72,000 establishments could be affected by the proposed rule.

Employment data for these industries were obtained for occupations most likely to be involved in transactions subject to the rule. EPA estimates that 339,000 real estate agents and 225,000 property managers will be affected.

With regard to transaction volume, EPA found that 2.9 million sales transactions and 9.3 million rental transactions occur annually in target housing.

3. *Estimated Costs to Private Parties from the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

Table 1 below presents a summary of the estimated annual compliance costs associated with the proposed rule. Each of the four cost categories appearing in the table are discussed briefly below.

The first category, start-up costs, represents about one-third of overall annual costs. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities which must be undertaken in order to comply; and the hourly compensation of affected employees.

As is evident from Table 1 below, disclosure event costs constitute the greatest portion of overall costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing the prospective purchaser/tenant with the required information and obtaining the required signatures; and the hourly compensation of all involved parties. EPA also took into account the fact that a number of States have similar requirements pertaining to information transfer regarding potential lead hazards in the sale of residential property. Thus, an allowance was made in the burden estimates for transactions occurring in such States to reflect a certain level of current compliance.

TABLE 1.—SUMMARY OF ANNUAL COSTS OF COMPLIANCE

Sales Transactions	
Start-up Costs*	$24.5 million
Disclosure Event Costs	18.6 million
Recordkeeping Costs	0.6 million
Materials Costs	1.1 million
Total for Sales Transactions:	$45.0 million
Rental Transactions	
Start-up Costs*	$ 0.9 million
Disclosure Event Costs	23.9 million
Recordkeeping Costs	1.8 million
Materials Costs	2.6 million
Total for Sales Transactions:	$29.2 million
Total Estimated Annual Costs:	$74.2 million

*First-year costs annualized at 3 percent rate.

Recordkeeping and materials costs comprise a relatively modest share of overall annual costs. Factors affecting the magnitude of these cost items include the number of affected parties per transaction; the frequency of transactions, the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgement forms; and costs to maintain documents.

4. *Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses - Initial Regulatory Flexibility Analysis*

EPA investigated the potential impacts of the proposed rule on small businesses, and has prepared an Initial Regulatory Flexibility Analysis (IRFA). While a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts. The IRFA is summarized separately below in Unit XI.C of this preamble.

5. *Assessment of the Benefits of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers*

The market imperfection that the proposed rule is intended to correct is the lack of information available to prospective home buyers and renters on lead-based paint hazards in homes they may be considering for purchase or rent. Under the proposed rule, general information about risks associated with lead-based paint will be provided (through the provision of a brochure) and, when available, information about the presence of or abatement of lead in the specific unit being considered for purchase or rent must also be disclosed (e.g., information concerning previous testing for the presence of lead-based paint, abatement history, evidence of previous poisoning, etc.). The failure of the marketplace to provide this information or to provide prospective home buyers and renters the opportunity to develop such information means that prospective buyers and renters might purchase or lease a property, or make pricing or rental payment decisions regarding properties, without understanding possible lead-related health risks or risk management costs accompanying the transaction.

EPA and HUD expect that this rulemaking will generate benefits by providing prospective home buyers and renters access to information which they otherwise may not have been able to acquire, such as information pertaining to abatement activities for a specific residence, or, in the case of more general information, which they may have been able to acquire only through their own effort at some cost. In addition, EPA believes the information will generate health benefits by leading many buyers and renters to modify their behavior in a way that will reduce risks from lead-based paint. For example, purchasers could undertake abatement activities subsequent to taking ownership of a dwelling, change household cleaning practices, or request professional assistance when undertaking renovation activities. The proposed rule may also prompt property owners, due to reluctance on the part of prospective buyers/renters to select housing containing lead-based paint, to act to reduce lead-related hazards associated with their residential dwellings. In cases where action is taken to remediate a lead-based paint hazard, additional costs would be incurred, and would have to be subtracted from the expected benefits associated with the remediation.

EPA and HUD note that the regulation does not require actions to be taken to reduce lead-based paint hazards in residential housing; thus, the extent to which health benefits accrue depends upon how transaction participants, that is, sellers/lessors and prospective buyers/renters, value and respond to the additional information.

In the RIA, three approaches are detailed that are evolving and can be seen as a starting point in an effort to expand the level of understanding of how benefits from information products can be valued. However, an information base and the associated accepted analytic methods necessary to predict consumer reaction to information products on lead-based paint hazards are not readily available; thus, quantifying the expected benefits of this proposed rule would be extremely difficult. Given the high level of uncertainty associated with the results from such a quantitative analysis, and given the prescriptive nature of section 1018 of the Act, EPA and HUD believe that the information provided in the qualitative analysis presented in the RIA served to inform decisionmaking. EPA invites comment, however, on its benefits analysis and on alternative approaches to assessing the benefits of the proposed rule.

X. Confidential Business Information

While EPA and HUD do not anticipate the receipt of much (if any) confidential business information (CBI) in connection with this rulemaking, a person may assert a claim of confidentiality for any information, including all or portions of written comments, submitted in connection with the proposed rule. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted. Persons must label information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. A determination of whether information will be disclosed will be made pursuant to the Freedom of Information Act. If a person does not assert a claim of confidentiality for information in comments at the time they are submitted to EPA, EPA will place the information in the public record for this rulemaking without further notice to that person.

XI. Rulemaking Record

A record for this proposed rule has been established under docket number "OPPTS–62130." The public version of this record (which does not contain any information claimed as CBI) is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Nonconfidential Information Center (NCIC), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

The following is a list of documents which EPA and HUD referred to in developing this regulation and which can be found in the docket. In addition, other documents, including those submitted with written comments from interested parties, will be included in the docket following the publication of this proposed rule in the **Federal Register**.

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The draft of the proposed rule submitted by EPA and HUD to the Office of Management and Budget (OMB) for review prior to proposal will also be contained in the docket. The drafts of the final rule submitted for review before promulgation will be placed into the docket as well.

1. CPSC, Notice Reducing Allowable Levels of Lead in Lead-Based Paint. Federal Register, [42 FR 44199, September 1, 1977].

2. U.S. Congress. The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 102–550).

3. HUD, Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing. Report to Congress, December 7, 1990.

4. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice. [55 FR 14556, April 18, 1990].

5. DOL, OSHA, Lead Exposure in Construction; Interim Final Rule. Federal Register [58 FR 26590, May 4, 1993].

6. EPA, Draft: Reducing Exposure to Lead in The Home; An Action Guide For Families. (January 1992).

7. HUD, Lead-Based Paint: A Threat to Your Children. U.S. GPO: 1993-351-568. January 1993.

8. EPA, Lead Poisoning and Your Children. EPA/800-B-920002, September 1992.

9. HHS, PHS, CDC, Preventing Lead Poisoning in Young Children; A Statement By the Centers for Disease Control. October 1991.

10. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. October 6, 7, and 8, 1991.

11. HHS, PHS, ATSDR, The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress. July 1988.

XII. References

1. CPSC, "Notice Reducing Allowable Levels of Lead in Lead-Based Paint. Federal Register. [42 FR 44199, September 1, 1977].

2. HUD, Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately-Owned Housing. Report to Congress, December 7, 1990.

3. HHS, PHS, CDC, Preventing Lead Poisoning in Young Children; A Statement By the Centers For Disease Control. October 1991, pp. 7–10.

4. Alliance to End Childhood Lead Poisoning, Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. October 6, 7, 8, 1991, p. A-3.

XIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grant, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is a "significant regulatory action" because it is raising novel policy issues arising out of its legal mandate. As such, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In an effort to identify and characterize the proposed rule's effects on small business, EPA and HUD have prepared an Initial Regulatory Flexibility Analysis (IRFA). This assessment has been included as part of the RIA, and is summarized below.

In preparing the IRFA, EPA and HUD first developed an establishment profile for each major sector (SIC 651 and SIC 653). This profile indicated that approximately 75 percent of all establishments in SIC 651 (Real Estate Operators and Lessors) and approximately 71 percent of all establishments in SIC 653 (Real Estate Agents and Managers) fell within the 1 to 4 employee size class. These proportions increased to 90 percent and 86 percent, respectively, when employee size class 1 to 9 was examined.

To measure the cost impacts of the proposed rule on these small establishments, representative, or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a real estate sales organization, regulatory costs were found to represent from 0.18 to 0.38 percent of labor and overhead costs. In the case of a rental establishment, impacts were slightly higher, ranging from 0.20 to 0.46 percent. An establishment engaged in both activities was projected to sustain impacts of 0.26 to 0.59 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and HUD (ICR No. 1710.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (MC-2136), Environmental Protection Agency, 401 M St., SW., Washington, DC or by calling (202) 260–2740.

The collection of information that would be associated with this proposed rule is estimated to have a public burden averaging 19.5 minutes per response (at 6.5 minutes per an average of 3 respondents), and to require 15.4 minutes per respondent, annually. This includes time for gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (MC-2136); Environmental Protection Agency; 401 M St., SW; Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

D. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19 and 50.20(o)(2) of the HUD regulations, the policies and procedures contained in this proposed rule relate only to information services and, therfore, are categorically excluded from the requirements of the National Environmental Policy Act.

E. HUD's Regulatory Agenda

This proposed rule was listed as Item No. 1517 in HUD's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20431), in accordance with Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects in 24 CFR Part 38

Environmental protection, Lead poisoning, Mortgage insurance, Recordkeeping and reporting requirements, and Rent subsidies.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: October 17, 1994.

Henry Cisneros,

Secretary, Housing and Urban Development.

Dated: October 21, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, it is proposed that 24 CFR subtitle A and 40 CFR Chapter I be amended as follows.

24 CFR Subtitle A

A new part 38 is added to 24 CFR subtitle A to read as follows:

PART 38—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subpart A—Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

Sec.

38.5 Purpose.
38.7 Scope and applicability.
38.10 Effective date.
38.15 Definitions.
38.20 Disclosure requirements.
38.21 Ten calendar-day opportunity to inspect.
38.22 Disclosure and acknowledgement forms.
38.25 Agent responsibilities.
38.30 Penalties.

Appendix A to Subpart A

Subparts B-G—[Reserved]

Authority: 42 U.S.C. 4852(d).

Subpart A—Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

§ 38.5 Purpose.

This subpart implements the provisions of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which imposes certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee all information known by the seller or lessor about lead-based paint and lead-based paint hazards, provide the purchaser with a lead hazard information pamphlet, and attach specific disclosure and warning language to the sales contract or lease. Sellers must also give the purchaser a 10–day opportunity to conduct an inspection or risk assessment, before the purchaser is obligated under a contract to purchase such housing.

§ 38.7 Scope and applicability.

This subpart does not apply to the sale of properties at foreclosure and informal rental agreements not involving a lease. Renewals of existing leases would be covered by the requirements of this subpart only if the lessor:

(a) Did not previously provide the lessee with the lead-based paint hazard information required under § 38.20; or

(b) If the lessor becomes aware of additional information concerning lead-based paint hazards during the term of the lease, in which case he or she is required to disclose this information prior to renewal of the lease.

§ 38.10 Effective date.

The requirements in this subpart shall apply to any transaction to sell or lease target housing on or after October 28, 1995.

§ 38.15 Definitions.

All definitions as set forth in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act apply in this part. In addition, the following definitions are provided for the purposes of this part.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, clean up, disposal, and post-abatement clearance testing activities associated with such measures.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550).

Administrator means the Administrator of the Environmental Protection Agency.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

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(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or

(1) In the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or

(2) In the case of any other paint or surface coatings, such other level as may be established by the Administrator.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Purchaser means any entity that submits a written offer to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6.

(2) Visual inspection.

(3) Limited wipe sampling or other environmental sampling techniques.

(4) Other activity as may be appropriate.

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes:

(1) An entity which transfers shares in a cooperatively owned project.

(2) An entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

§ 38.20 Disclosure requirements.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing.

(1) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with a copy of EPA's lead-hazard information pamphlet, entitled *Lead-Based Paint: Protect Your Family*, issued under section 406 of the Toxic Substances Control Act.

(2) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with written descriptions, or actual copies where available, of all information known by the seller or lessor or the agent on the presence of lead-based paint or lead-based paint hazards associated with the target housing being sold or leased. Such information includes, but is not limited to, the following items:

(i) Reports from all lead-based paint inspections, risk assessments, and abatement activities known by the seller or lessor, or agent.

(ii) If the target housing contains more than one residential dwelling:

(A) Records of lead-based paint inspections, assessments, and abatement activities conducted in common areas of the property.

(B) Records indicating whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards.

(iii) Other information known by the seller or lessor, or agent that may indicate the presence of lead-based paint or lead-based paint hazards in the residential dwelling.

(3) The seller shall make copies of the information required under paragragh (a)(2) of this section, accessible for inspection or copying by purchasers and lessees.

(4) Each contract or agreement to sell property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form A-Disclosure and Acknowledgement of Lead-Based Paint Before Sale* (Form A).

(5) Each contract or agreement to lease property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form B-Disclosure and Acknowledgement of Lead-Based Paint Before Lease* (Form B).

(b) The seller or lessor shall disclose to the agent, any information known to the seller or lessor regarding lead-based paint or lead-based paint hazards within the target housing, as defined in paragragh (a)(2) of this section.

(c) The seller, and any agent acting on behalf of the seller, shall retain a copy of the completed Form A required under paragraph (a)(4) of this section for 3 years from the completion date of the sale. The lessor, and any agent acting on behalf of the lessor, shall retain a copy of the completed Form B required under paragraph (a)(5) of this section for 3 years from the commencement of the leasing period.

§ 38.21 Ten calendar-day opportunity to inspect.

This section applies only to transactions to sell target housing. As described in this section, each purchaser of target housing shall be given a 10 calendar-day opportunity to conduct an inspection or risk assessment of the target housing for lead-based paint and lead-based paint hazards prior to being bound to purchase the target housing. Unless otherwise agreed in writing by the parties, the inspection period shall be provided in the following manner.

(a) The seller, or the agent acting on behalf of the seller, shall permit the purchaser 10 calendar days to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards.

(b) This opportunity shall be provided to the purchaser after the seller or the seller's agent has disclosed, in accordance with § 38.20(a)(2), all information known to the seller and agent regarding lead-based paint and lead-based paint hazards in the target housing and after the purchaser has received the lead hazard information pamphlet required under § 38.20(a)(1).

(c) The 10 calendar-day opportunity to inspect or assess shall commence at the time the purchaser signs a contract to purchase the target housing.

(d) The contract shall be contingent on finding no lead-based paint hazard in the inspection or risk assessment conducted by a certified firm. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser shall mutually determine the terms under which the sale will or will not proceed.

(e) The purchaser is not required to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards. The purchaser and seller may mutually agree in writing to lengthen, shorten, or eliminate the 10–day inspection period.

(f) The identity of the company performing the risk assessment or inspection and the results shall be provided to the seller.

§ 38.22 Disclosure and acknowledgement forms.

(a) *Availability of forms.* Form A–Disclosure and Acknowledgement of Lead-Based Paint Before Sale (GPO #XXX) and Form B–Disclosure and Acknowledgement of Lead-Based Paint Before Lease (GPO #XXX) are included for reference in Appendix A of this part. Copies are available from the Government Printing Office (GPO) by writing to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402–9328. In addition, persons may contact EPA's TSCA Hotline at 202–554–1404 for further information on obtaining copies.

(b) *Seller and purchaser requirements.* (1) Part I of Form A is a "Lead Warning Statement" required under section 1018(a)(3) of the Act. If the contract is written in a language other than English, the contract shall include a translation of the Lead Warning Statement in the language of the contract as an attachment to the contract. The statement shall consist of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) In Part II of Form A, the seller shall certify, by signing and dating the form, that he or she has:

(i) Disclosed to the purchaser any information known to the seller on lead-based paint and lead-based paint hazards in the target housing.

(ii) Given the purchaser the EPA lead pamphlet.

(iii) Provided the purchaser with a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(3) In Part III of Form A, the agent, if any, shall certify, by signing and dating the form, that the agent has:

(i) Informed the seller of the seller's obligation under this subpart.

(ii) Ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the purchaser.

(iii) Ensured that the EPA lead pamphlet has been provided to the purchaser.

(iv) Ensured that the purchaser has been or will be given a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(4) In Part IV of Form A, the purchaser shall acknowledge, by signing and dating the form, that he or she has:

(i) Read and understood the attached lead warning statement.

(ii) Received the disclosures in Part II of Form A.

(iii) Received the lead hazard information pamphlet.

(iv) Understands that he or she is entitled, by law, to a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(c) *Lessor and lessee requirements.* (1) Part I of Form B is a statement warning of the hazards of lead-based paint poisoning. The statement shall consist of the following language:

A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

(2) In Part II of Form B, the lessor shall certify that he or she has disclosed any information known to the lessor on lead-based paint and lead-based paint hazards in the target housing and provided the lessee with the EPA lead pamphlet. The lessor shall sign and date the form.

(3) In Part III of Form B, the agent, if any, shall certify that he or she has notified the lessor of the lessor's obligation under this subpart, ensured that any information known to the lessor and the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed, and ensured that the lessee has been given the EPA lead pamphlet. The agent shall sign and date the form.

(4) In Part IV of Form B, the lessee shall acknowledge that he or she received the disclosures in Part II of Form B and the EPA lead pamphlet. The lessee shall sign and date the form.

§ 38.25 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of their obligations under §§ 38.20, 38.21, and 38.22, and to disclose to the agent information known to the seller or lessor regarding lead-based paint and lead-based paint hazards.

(2) Either:

(i) Make certain that the seller or lessor has performed all activities required under §§ 38.20, 38.21, and 38.22.

(ii) Personally comply with the requirements of §§ 38.20, 38.21, and 38.22.

(b) If the agent has complied with § 38.25(a), the agent shall not be liable for the failure to disclose to a purchaser or lessee information regarding lead-based paint or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 38.30 Penalties.

(a) Under section 1018(b)(1) of the Act, any person who knowingly fails to comply with any provision of this

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subpart shall be subject to civil monetary penalties in accordance with the provisions of section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] and 24 CFR part 30.

(b) Under section 1018(b)(2) of the Act, the Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Under section 1018(b)(3) of the Act, any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to section 1018(b)(3) of the Act, the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) It is a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C. 2689] for any person to fail or refuse to comply with a provision of this subpart. For purposes of enforcing this subpart under the Toxic Substances Control Act, the penalty for each violation applicable under section 16 of that Act is not more than $10,000.

Appendix A to Subpart A of Part 38

Form A—Disclosure and Acknowledgment of Lead-Based Paint Before Sale

OMB #_____

Part I: Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessments or inspection for possible lead-based paint hazards is recommended prior to purchase.

Part II: Seller's Certification

Seller certifies to have disclosed to the purchaser and agent all information known to the seller regarding the presence of lead-based paint and lead-based paint hazards within this target housing (Seller initials box and insert date).

(a)

On _____
(insert date)
seller provided the purchaser with lead-hazard reports based on lead-based paint inspections, assessments, or abatements conducted on the following dates:

(b)

On _____
(insert date)
the seller provided the purchaser with the following information on lead-based paint hazards in common areas:

(c)

On _____
(insert date)
the seller provided the purchaser with following additional information that may indicate lead-based paint and lead-based paint hazards in the target housing.

(d)

On _____
(insert date)
Seller certifies that no additional information is known about this target housing. (Note: By selecting (d), seller does not avoid liability for lead-based paint and lead-based paint hazards known to the seller that are not noted under (a), (b), or (c).

(e)

On _____
(insert date)
the seller provided the purchaser with the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

The seller is aware that Federal laws requires the seller to permit the purchaser a 10 calendar day period to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase target housing (unless mutually agreed otherwise in writing). That opportunity was or will be provided between the following dates:

_____.

_____
Date

_____
Seller

_____
Seller

Part III: Agent's Certification (When Applicable)

Agent certifies to have informed the seller of his/her obligation to disclose to the purchasers and agent all information known to the seller regarding the presence of lead-based paint and lead-based paint hazards within this target housing and that all information known to the agent regarding the presence of lead-based paint and lead-based paint hazards within this target housing has been disclosed to the purchaser. Agent further certifies that the purchaser received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family* and that the purchaser has or will be given a 10 calendar-day period (unless otherwise agreed in writing) to conduct a risk assessment or inspection for the presence of lead-based paint before becoming obligated under the contract to purchase the target housing.

_____
Date

_____
Agent

_____
Date

_____
Agent

Part IV: Purchaser's Acknowledgment

I acknowledge that I have read and understood the attached lead warning statement in part I of this form and received all information noted in Part II of this form, including the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.* I further acknowledge that, pursuant to 42 U.S.C. 4852(d) and its implementing regulations, the attached contract entitles me to 10 calendar days to conduct a risk assessment or inspection for the presence of lead-based paint hazards before becoming obligated under a contract to purchase this target housing, unless mutually agreed otherwise, in writing.

_____
Date

_____
Purchaser

_____
Purchaser

Appendix A to Subpart A of Part 38

Form B—Disclosure and Acknowledgment of Lead-Based Paint Before Lease

OMB #_____

Part I: Lead Warning Statement

A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-base paint hazards.

Part II: Lessor's Certification

Lessor certifies to have disclosed to the lessee and agent all information known to the lessor regarding the presence of lead-based paint and lead-based paint hazards within this target housing. The information provided includes:

(a)

On _____
(insert date)
the lessor provided the lessee with lead-hazard reports based on lead-based paint inspections, assessments, or abatements conducted on the following dates:

(b)

On _____
(insert date)
the lessor provided the lessee with the following information on lead-based paint hazards in common areas:

(c)

On _____
(insert date)
the lessor provided the lessee with following additional information that may indicate lead-based paint and lead-based paint hazards in the target housing.

(d)

On _____
(insert date)
Lessor certifies that no additional information is known about this target housing.

Note: By selecting (d), lessor does not avoid liability for lead-based paint and lead-based paint hazards known to the lessor that are not noted under (a), (b), or (c).

(e)

On _____
(insert date)
the lessor provided the lessee with the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Lessor

_____
Lessor

Part III: Agent's Certification (When Applicable)

Agent certifies to have informed the lessor of his/her obligation to disclose to the lessee and agent all information known to the lessor regarding the presence of lead-based paint and lead-based paint hazards within this target housing and that all information known to the agent regarding the presence of lead-based paint and lead-based paint hazards within this target housing has been disclosed to the lessee. Agent further certifies that the lessee received the lead hazard information pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Agent

_____
Date

_____
Agent

Part IV: Lessee's Acknowledgment

I acknowledge that I have read and understood the attached lead warning statement in Part I of this form, received the information noted in Part II of this form, and received the materials noted above, including the pamphlet *Lead-Based Paint: Protect Your Family.*

_____
Date

_____
Lessee

_____
Date

_____
Lessee

BILLING CODE 6560-50-M

Subparts B–G—[Reserved]

40 CFR Chapter I

Part 745 of 40 CFR Chapter I which was proposed to be added on March 9, 1994, at 59 FR 11116 would be further amended as follows:

PART 745—LEAD EXPOSURE REDUCTION

1. The authority citation for part 745 would be revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852(d).

2. Subpart F would be added to read as follows:

Subpart F — Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

Sec.

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Subpart F — Disclosure of Information Concerning Lead-Based Paint Upon Transfer of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which imposes certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee all information known by the seller or lessor about lead-based paint and lead-based paint hazards, provide the purchaser with a lead hazard information pamphlet, and attach specific disclosure and warning language to the sales contract or lease. Sellers must also give the purchaser a 10–day opportunity to conduct an inspection or risk assessment, before the purchaser is obligated under a contract to purchase such housing.

§ 745.101 Scope and applicability.

This subpart does not apply to the sale of properties at foreclosure and informal rental agreements not involving a lease. Renewals of existing leases would be covered by the requirements of this subpart only if the lessor:

(a) Did not previously provide the lessee with the lead-based paint hazard information required under § 745.107; or

(b) If the lessor becomes aware of additional information concerning lead-based paint hazards during the term of the lease, in which case he or she is required to disclose this information prior to renewal of the lease.

§ 745.102 Effective date.

The requirements in this subpart shall apply to any transaction to sell or lease target housing if the transaction is completed on or after October 28, 1995.

§ 745.103 Definitions.

All definitions as set forth in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act apply in this subpart. In addition, the following definitions are provided for the purposes of this subpart.

Abatement means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, clean up, disposal, and post-abatement clearance testing activities associated with such measures.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X of the Housing and Community Development Act of 1992, Pub. L. 102–550).

Administrator means the Administrator of the Environmental Protection Agency.

Agent means any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Evaluation means a risk assessment and/or inspection.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

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Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or

(1) In the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4822], or

(2) In the case of any other paint or surface coatings, such other level as may be established by the Administrator.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate Federal Agency.

Lessee means any entity that enters into an agreement to lease or rent target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Lessor means any entity that offers target housing for lease, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Purchaser means any entity that submits a written offer to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6.

(2) Visual inspection.

(3) Limited wipe sampling or other environmental sampling techniques.

(4) Other activity as may be appropriate.

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that sells an interest in target housing, including but not limited to individuals, partnerships, corporations, trusteeships, government agencies, Indian tribes, or nonprofit organizations. The term seller also includes:

(1) An entity which transfers shares in a cooperatively owned project.

(2) An entity which transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

0-Bedroom dwelling means any residential dwelling in which the living area is unseparated from the sleeping area.

§ 745.107 Disclosure requirements.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing.

(1) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with a copy of EPA's lead-hazard information pamphlet, entitled *Lead-Based Paint: Protect Your Family*, issued under section 406 of the Toxic Substances Control Act.

(2) The seller or lessor, or the agent acting on behalf of the seller or lessor, shall provide the purchaser or lessee with written descriptions, or actual copies where available, of all information known by the seller or lessor or the agent on the presence of lead-based paint or lead-based paint hazards associated with the target housing being sold or leased. Such information includes, but is not limited to, the following items:

(i) Reports from all lead-based paint inspections, risk assessments, and abatement activities known by the seller or lessor, or agent.

(ii) If the target housing contains more than one residential dwelling:

(A) Records of lead-based paint inspections, assessments, and abatement activities conducted in common areas of the property.

(B) Records indicating whether other residential dwellings in the target housing contain or have contained lead-based paint or lead-based paint hazards.

(iii) Other information known by the seller or lessor, or agent that may indicate the presence of lead-based paint or lead-based paint hazards in the residential dwelling.

(3) The seller shall make copies of the information required under paragraph (a)(2) of this section accessible for inspection or copying by purchasers and lessees.

(4) Each contract or agreement to sell property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form A-Disclosure and Acknowledgement of Lead-Based Paint Before Sale* (Form A).

(5) Each contract or agreement to lease property defined as target housing shall contain a completed, signed, and dated copy of the joint HUD/EPA form entitled *Form B-Disclosure and Acknowledgement of Lead-Based Paint Before Lease* (Form B).

(b) The seller or lessor shall disclose to the agent, any information known to the seller or lessor regarding lead-based paint or lead-based paint hazards within the target housing, as defined in paragraph (a)(2) of this section.

(c) The seller, and any agent acting on behalf of the seller, shall retain a copy of the completed Form A required under paragraph (a)(4) of this section for 3 years from the completion date of the sale. The lessor, and any agent acting on behalf of the lessor, shall retain a copy of the completed Form B, required under paragraph (a)(5) of this section, for 3 years from the commencement of the leasing period.

§ 745.110 Ten Calendar-Day Opportunity to Inspect.

This section applies only to transactions to sell target housing. As described in this section, each purchaser of target housing shall be given a 10 calendar-day opportunity to conduct an inspection or risk assessment of the target housing for lead-based paint and lead-based paint hazards prior to being bound to purchase the housing. Unless otherwise agreed in writing by the parties, the inspection period shall be provided in the following manner.

(a) The seller, or the agent acting on behalf of the seller, shall permit the purchaser 10 calendar days to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards.

(b) This opportunity shall be provided to the purchaser after the seller or the seller's agent has disclosed, in accordance with § 745.107(a)(2), all information known to the seller and agent regarding lead-based paint and lead-based paint hazards in the target housing and after the purchaser has received the lead hazard information pamphlet required under § 745.107(a)(1).

(c) The 10 calendar-day opportunity to inspect or assess shall commence at the time the purchaser signs a contract to purchase the target housing.

(d) The contract shall be contingent on finding no lead-based paint hazard in the inspection or risk assessment conducted by a certified firm. If a lead-based paint hazard is found during the inspection or risk assessment, the seller and purchaser shall mutually determine the terms under which the sale will or will not proceed.

(e) The purchaser is not required to conduct a risk assessment or inspection of the target housing for the presence of lead-based paint or lead-based paint hazards. The purchaser and seller may mutually agree in writing to lengthen, shorten, or eliminate the 10–day inspection period.

(f) The identity of the company performing the risk assessment or inspection and the results shall be provided to the seller.

§ 745.113 Disclosure and acknowledgement forms.

(a) *Availability of forms.* Form A–Disclosure and Acknowledgement of Lead-Based Paint Before Sale (GPO #XXX) and Form B–Disclosure and Acknowledgement of Lead-Based Paint Before Lease (GPO #XXX) are included for reference in Appendix A of this part. Copies are available from the Government Printing Office (GPO) by writing to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402–9328. In addition, persons may contact EPA's TSCA Hotline at 202–554–1404 for further information on obtaining copies.

(b) *Seller and purchaser requirements.* (1) Part I of Form A is a "Lead Warning Statement" required under section 1018(a)(3) of the Act. If the contract is written in a language other than English, the contract shall include a translation of the Lead Warning Statement in the language of the contract as an attachment to the contract. The statement shall consist of the following language:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) In Part II of Form A, the seller shall certify, by signing and dating the form, that he or she has:

(i) Disclosed to the purchaser any information known to the seller on lead-based paint and lead-based paint hazards in the target housing.

(ii) Given the purchaser the EPA lead pamphlet.

(iii) Provided the purchaser with a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(3) In Part III of Form A, the agent, if any, shall certify, by signing and dating the form, that the agent has:

(i) Informed the seller of the seller's obligation under this subpart.

(ii) Ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the purchaser.

(iii) Ensured that the EPA lead pamphlet has been provided to the purchaser.

(iv) Ensured that the purchaser has been or will be given a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(4) In Part IV of Form A, the purchaser shall acknowledge, by signing and dating the form, that he or she has:

(i) Read and understood the attached lead warning statement.

(ii) Received the disclosures in Part II of Form A.

(iii) Received the lead hazard information pamphlet.

(iv) Understands that he or she is entitled, by law, to a 10 calendar-day opportunity to conduct a risk assessment or inspection.

(c) *Lessor and lessee requirements.* (1) Part I of Form B is a statement warning of the hazards of lead-based paint poisoning. The statement shall consist of the following language:

> A residential structure built prior to 1978 may present exposure to lead from lead-based paint. This exposure may place young children at risk of developing lead poisoning. Lead poisoning in young children can produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The lessor of any residential dwelling is required to provide the lessee with any information on lead-based paint hazards from risk assessments or inspections in the lessor's possession and notify the lessee of any known lead-based paint hazards.

(2) In Part II of Form B, the lessor shall certify that he or she has disclosed any information known to the lessor on lead-based paint and lead-based paint hazards in the target housing and provided the lessee with the EPA lead pamphlet. The lessor shall sign and date the form.

(3) In Part III of Form A, the agent, if any, shall certify that the agent has informed the lessor of the lessor's obligation under this subpart, ensured that any information known to the agent on lead-based paint and lead-based paint hazards in the target housing has been disclosed to the lessee, and ensured that the EPA lead hazard information pamphlet has been provided to the lessee. The agent shall sign and date the form.

(4) In Part IV of Form B, the lessee shall acknowledge that he or she received the disclosures in Part II of Form B and the EPA lead pamphlet. The lessee shall sign and date the form.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of their obligations under §§ 745.107, 745.110, and 745.113 (including the seller or lessor's obligation to disclose to the agent any information known to the seller or lessor regarding lead-based paint and lead-based paint hazards; and,

(2) Either:

(i) Make certain that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113.

(ii) Personally comply with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee

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information regarding lead-based paint or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Penalties.

(a) Under section 1018(b)(1) of the Act, any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] and 24 CFR part 30.

(b) Under section 1018(b)(2) of the Act, the Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Under section 1018(b)(3) of the Act, any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to section 1018(b)(3) of the Act, the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) It is a prohibited act under section 409 of the Toxic Substances Control Act (15 U.S.C. 2689) for any person to fail or refuse to comply with a provision of this subpart. For purposes of enforcing this subpart under the Toxic Substances Control Act, the penalty for each violation applicable under section 16 of that Act is not more than $10,000.

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Part IV

Securities and Exchange Commission

17 CFR Part 240

Payment of Order Flow; Internalized/Affiliate Practices, Payment for Order Flow and Order Routing Practices; Final Rule and Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34902; File No. S7–29–93]

RIN 3235–AG00

Payment for Order Flow

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announces the adoption of Rule 11Ac1–3 and amendments to Rule 10b–10 under the Securities Exchange Act of 1934 which, together, require enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as upon opening new accounts. The new Rule and amendments to Rule 10b–10 are designed to provide relevant information to customers regarding factors influencing the routing of their orders. The new Rule and amendments to Rule 10b–10 also will serve to enhance investor protection and further competition for retail orders by enabling customers to evaluate more effectively the markets to which their orders are routed.

EFFECTIVE DATE: April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, Attorney, 202/942–3197, Branch of the National Market System, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549. For interpretation of Rule 10b–10 after March 1, 1996, please contact the Office of the Chief Counsel, 202/942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 7–10, Washington, DC 20549. For interpretation of Rule 11Ac1–3 please contact the Office of Market Supervision, Division of Market Regulation, 202/942–3197.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On October 6, 1993, the Securities and Exchange Commission ("SEC" or "Commission") proposed for comment amendments to Rule 10b–10 (17 CFR 240.10b–10) and new Rule 11Ac1–3 (17 CFR 240.11Ac1–3) under the Securities Exchange Act of 1934 ("Act") concerning payment for order flow practices.[1] Taken together, those proposals were designed to improve information available to investors about their broker-dealer's order routing practices, and whether the broker-dealer received market center[2] inducements for routing unspecified order flow to them. These disclosures would occur when the investor opened an account, annually thereafter, and on the required trade confirmations. In the Proposing Release, the Commission invited commenters to address issues related to the proposals as well as alternative approaches to payment for order flow, such as banning the practice outright, mandatory pass-through of payments to customers, and requiring exchanges, national securities associations and broker-dealers to convert to decimal pricing.

The Commission received 53 comment letters concerning the proposals. Of those commenters, 31 supported the disclosure approach and 17 opposed it.[3] Many of the commenters supporting the approach offered suggestions to improve the effectiveness of disclosure.

The Commission is adopting the proposed disclosure approach as discussed below. The Commission believes this approach will further the investor protection goals of the Act, and is consistent with the general philosophy underlying disclosure that "sunlight is the best disinfectant."[4] The Commission, in response to commenters' suggestions, has modified the proposed Rule and amendments to Rule 10b–10, as described below.

The Commission is modifying Rule 11Ac1–3 and amendments to Rule 10b–10 as proposed, to include Nasdaq Small-Cap and Over-The-Counter ("OTC") Bulletin Board securities. The Commission also is modifying the proposed amendments to Rule 10b–10 to limit the disclosure of payment for order flow on customer confirmations to a statement that the broker or dealer receives payment for order flow. In addition, the Commission is revising proposed Rule 11Ac1–3 regarding customer account statements by requiring disclosure of the broker-dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid or best offer ("NBBO").

In a parallel action, the Commission is proposing for comment amendments to Rule 10b–10 and Rule 11Ac1–3 that would extend those Rules to the options market.[5] In addition, the Commission is proposing for comment a requirement that broker-dealers disclose in writing, on confirmations, upon opening new accounts and on annual disclosure statements, ranges of payment for order flow received on a per share basis; and include, in new account documentation and on annual disclosure statements, an estimate of the aggregate amount of payment for order flow received on an annual basis.[6] The Commission also is proposing for comment a requirement that broker-dealers disclose whether they execute orders as principal ("internalize") or route orders to an affiliated broker-dealer or exchange specialist for execution and, a requirement that broker-dealers quantify and disclose information about internalized/affiliate practices.[7] The Commission further is proposing for comment a requirement that broker-dealers disclose their order routing practices regardless of whether the broker-dealer received payment for order flow or engaged in internalized/affiliate practices. The Companion Release also solicits comment on expanding the definition of payment for order flow.[8]

II. Basis and Purpose of the Rule

The practice of paying for order flow has generated much debate and controversy[9] regarding the potential benefits and harm to public investors and whether receipt and retention of payment for order flow compromises a

[1] Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934 (Oct. 13, 1993) ("Proposing Release").

[2] As used in this release, the term market center includes exchanges and dealers acting as market makers. *See* 17 CFR 240.11Ac1–2(a)(14) (defining "reporting market center").

[3] The Commission's staff has prepared a summary of the comments, a copy of which has been placed in the official file.

The Division of Market Regulation ("Division") also solicited comment on payment for order flow in its study of the equity markets. *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32507 (July 22, 1992) ("Market 2000 Concept Release"). *See also* Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994) ("*Market 2000*"). Many of the same parties commenting on this proposal commented on *Market 2000*. *Id.*, Appendix IV at 91–48.

[4] L. Brandeis, Other People's Money and How the Bankers Use It, 92 (Frederick A. Stokes Co. ed. 1932).

[5] *See* Securities Exchange Act Release No. 34903 (October 27, 1994) ("Companion Release").

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] For a detailed discussion of this controversy, see Note, *The Perils of Payment for Order Flow*, 107 Harv. L. Rev. 1675 (1994).

broker-dealer's duties to its customer.[10] Congress has shown continuing interest in the resolution of that controversy.[11] The history of that debate and other background information can be found in the Proposing Release.[12] In their response to the Proposing Release, few commenters suggested that the Commission not act at all regarding payment for order flow practices.[13] Most commenters supported the disclosure approach, with modifications. These commenters suggested that payment for order flow practices are a mechanism for competition among market centers for order flow. Many commenters argued that there is no harm in these practices. Others argued that disclosure to the customer adequately would address any perceived conflict of interest.

As noted in the Proposing Release, payment for order flow may result in lower execution costs, facilitate technological advances in retail customer order handling practices and facilitate competition among broker-dealers and securities markets. At the same time, however, the practice raises concern as to whether the customer is being treated fairly. Specifically, payment for order flow raises concerns about whether a firm is meeting its obligation of best execution to its customer. Not all market centers expose market orders to other order flow or attempt to improve the price at which market orders are executed. Thus, the decision to route an unpriced order to a market center offering immediate execution at the NBBO, could mean that the customer has lost an opportunity for execution at a superior price because of the lack of exposure to other order flow.[14] For the reasons discussed below, the Commission believes disclosure that payment for order flow has been received and a description of whether the customer's order has an opportunity for price improvement will enhance investor protection and provide customers with information to evaluate more effectively the markets to which their orders are routed.

III. Discussion

The Rules adopted today represent a tiered approach to disclosure of payment for order flow practices in the broader context of broker-dealer order handling practices and the special relationship that already exists between a broker-dealer and its customer.[15] The components of the Rules include disclosure at the time an account is opened, annually thereafter, and on the transaction confirmation.

First, the Rules adopted today require broker-dealers to inform customers in writing, when a new account is opened, about the dealer's policies regarding the receipt of payment for order flow, including whether payment for order flow is received; and a detailed description of the nature of the compensation received. As discussed in greater detail below, the new Rule and Rule amendments require that broker-dealers provide information in account opening documents about order routing decisions in orders subject to payment for order flow, including an explanation of the extent to which unpriced orders can be executed at prices superior to the displayed NBBO at the time the order is received. Second, the Rules adopted today require dealers to update this information and to provide such information annually to all customers. Taken together, this information should assist customers in assessing the quality of trade executions they receive and encourage broker-dealers to consider the opportunity for price improvement in establishing order routing arrangements. Finally, the Rules adopted today require broker-dealers to indicate on confirmations whether the broker or dealer receives payment for order flow, and the availability of further information on request. These are described in greater detail below, beginning with the scope of securities subject to the Rules and the types of inducements covered by the Rules.

A. Securities Subject to Disclosure Obligations and Definition of Payment for Order Flow

1. Securities Subject to Disclosure Obligations

As proposed, the obligations of both Rule 11Ac1–3 and the amendments to Rule 10b–10 were limited to orders in national market system securities. The Commission requested comment on whether both Rules should be extended to Nasdaq Small-Cap and OTC Bulletin Board Securities.[16] Commenters addressing this issue supported the inclusion of both and, accordingly, the Commission is expanding Rule 11Ac1–3 and amendments to Rule 10b–10 to include these securities. As revised, both Rules would include "any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act * * *."[17]

The Commission believes that inclusion of these securities provides customers with the best picture of a broker-dealer's policies regarding the routing of customer orders and the receipt of payment for order flow. As

[10] Private litigation in several state courts currently is pending regarding payment for order flow. *See, e.g., Investors' State Actions Against Brokers Seek Return of Cash Paid for Order Flow* (BNA), Special Report, Vol. 26, pp. 590–94 (April 22, 1994). Two cases were dismissed on grounds of federal preemption and are currently on appeal. *See Dahl* v. *Charles Schwab & Co., Inc.* (MC 93–106272, District Court, Fourth Judicial District, Hennepin County, Minnesota); *Orman* v. *Charles Schwab & Co., Inc.* (93 CH 7365, Circuit Court of Cook County, Illinois).

[11] *See* letter from John D. Dingell, Chairman, House Committee on Energy and Commerce, to Honorable Richard C. Breeden, Chairman, SEC, dated March 6, 1992. On May 13, 1993, the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce held a hearing regarding the future of the stock market and inducements for order flow. *See National Market System: Hearings Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy & Commerce*, 103d Cong., 1st Sess. (1993) ("National Market System Hearings").

[12] *See* Proposing Release, *supra* note 1, 58 FR at 52935.

[13] Some commenters believe that current disclosure requirements are adequate and additional disclosure is unnecessary.

[14] *See Market 2000*, *supra* note 3, Study V at 3–4.

[15] A broker-dealer's duty to seek to obtain best execution of customer orders derives, in part, from the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. Restatement 2d Agency section 387 (1958). Thus, when an agent acts on behalf of a customer in a transaction, the agent is under a duty to exercise reasonable care to obtain the most advantageous terms for the customer. Restatement 2d Agency section 424 (1958).

[16] *See* Proposing Release, *supra* note 1, 58 FR at 52940 n.44 and n.46. Two commenters support the inclusion of Nasdaq Small-Cap and OTC Bulletin Board securities in the Commission's proposal. One commenter states that if the goal of disclosure is to provide customers with as much information as possible to make an informed decision regarding where to place their orders, it does not make sense to limit the disclosure requirement to national market system securities but rather the requirement should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

Two exchanges support the inclusion of options in the confirmation disclosure requirements. One exchange suggests that the Commission consider the ramifications that payment for order flow may have on the options marketplace, especially once multiple trading of options is taken into consideration. *See* letter from Leopold Korins, Chairman and Chief Executive Officer, Pacific Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993. The Commission, therefore, is soliciting comment in a parallel action today on whether amendments to Rule 10b–10 and Rule 11Ac1–3 should extend to the options markets. *See* Companion Release, *supra* note 5.

[17] The OTC Bulletin Board is currently the only automated quotation system that has the characteristics set forth in Section 17B of the Act. *See* letter from Margaret H. McFarland, Deputy Secretary, SEC, to Richard Ketchum, Executive Vice President, National Association of Securities Dealers, Inc. ("NASD"), dated Dec. 30, 1992. The revision to Rule 11Ac1–3 is intended to cover securities included in any other automated quotation systems at such time as the Commission designates them under Rule 15g–3(c)(5).

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discussed in the Proposing Release,[18] the practice of payment for order flow originated in the OTC market, and since then has been routinely used as a competitive tool in that market. Payments for Nasdaq and OTC Bulletin Board stocks, moreover, are generally greater than for exchange-listed national market system securities.[19] Accordingly, the Commission believes that the disclosure protections should be extended to the OTC market.

2. Definition of Payment for Order Flow

As proposed, Rule 10b–10(e)(9) defined payment for order flow broadly, to include all forms or arrangements compensating for directing order flow. The Commission received 23 comment letters addressing the scope of the definition. The majority of these commenters were supportive of the Commission's efforts and agreed that non-cash inducements for order flow are economically equivalent to, and have the same effect as, cash payments for order flow. Opponents of the proposed definition, which include most of the exchanges, argued that rebates and fee reductions are structurally different from other cash payments and should be excluded from "monetary" payment for order flow.[20] The Commission has considered all the comments, and for the reasons discussed below, believes that the items enumerated in Rule 10b–10(e)(9) appropriately include arrangements involving payment for order flow.[21]

Rule 10b–10(e)(9) defines payment for order flow to include any monetary payment, service, property, or any other benefit that results in remuneration, compensation or consideration to a broker or dealer in return for the routing of customer orders. Broker-dealers should examine order routing arrangements carefully, with a view toward determining whether the firm has received some form of remuneration as a result of routing orders to that market. As noted, payment for order flow includes non-monetary compensation, such as clearing services or reciprocal order swapping arrangements. It is the Commission's view that monetary and non-monetary inducements are alternative methods of payment to attract order flow and are economically equivalent.[22] As such, non-cash remuneration is as likely to influence the broker's order routing decision as cash. In addition, as is the case with monetary payments, the customer is unlikely to be aware of many of these practices. Thus, the net effect of non-monetary arrangements is not appreciably different than that of monetary payment for order flow. Therefore, the Commission concludes that non-monetary payment for order flow should be included in the definition and should be subject to the regulatory treatment set forth in the proposal.

Payment for order flow also includes any credit, rebate, or discount against execution fees that exceeds the fee charged for executing the order.[23] It is the Commission's view that although SRO fee schedules are reviewed by the Commission under section 19(b) of the Act and appear in the Federal Register, the connection between these fee arrangements and a member firm's order routing practices may not be known or apparent to that firm's customers. Moreover, it is possible for an exchange to adjust its fee schedule for members routing orders to provide the economic equivalent of payment for order flow. The existence of such remuneration to the firm, whether in the form of monetary payments or other benefits, should be disclosed directly to customers.[24]

B. New Account and Annual Disclosures

The Commission is adopting Rule 11Ac1–3 to require broker-dealers to provide to customers information regarding their payment for order flow practices when a new account is opened and to all customers annually. The Commission is modifying the Rule to require a description of the broker-dealer's policies for determining where to route customer orders that are subject to payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the NBBO.

In sum, the revised Rule requires broker-dealers to disclose whether they receive payment for order flow. If any type of payment for order flow is received, the broker-dealer must provide a detailed description of the nature of the compensation received and, as discussed below, information about the routing of unspecified orders and whether those orders can be executed at prices better than the NBBO at the time the order is received.

1. Order Routing and Best Execution

To the extent that market center structures differ materially in the opportunity for unpriced orders to be executed at prices that are superior to the NBBO, the receipt of payment for order flow could be viewed as improperly affecting a dealer's determination regarding where to route customer orders and the dealer's ability to satisfy its best execution obligation, if the dealer does not provide as good an overall opportunity for best execution as it would without the payment for order flow.[25] In particular, this could happen when dealers decide to route orders to a market center which does not provide an opportunity for price improvement, although other factors such as the size of the order, speed of execution, and the costs and difficulty associated with achieving best execution in a particular market may negate this conclusion.[26]

[18] *See* Proposing Release, *supra* note 1, 58 FR at 52935.

[19] *See id.*, 58 FR at 52936 n.18.

[20] Several exchanges argue that, unlike cash payments, all exchange charges and fees are filed with the Commission pursuant to Rule 19b–4 under the Act and are a matter of public record. The New York Stock Exchange ("NYSE") added that unlike exchange fee structures, dealers do not charge fees to brokers for use of their services; because there is no "fee" to discount, the NYSE argues that it is disingenuous to suggest any similarity between the two practices. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated December 9, 1992.

[21] In the Companion Release, the Commission is soliciting comment on whether to expand the definition of payment for order flow.

[22] *See, e.g.*, "Inducements for Order Flow," A Report to the Board of Governors, NASD, July 1991; *see also* National Market System Hearings, *supra* note 11.

[23] Thus, payment for order flow would include a fee arrangement in which an exchange charges 50 cents per order but offers a $2.00 per order credit for agency orders, which can be used to offset other fees incurred on that exchange. *See e.g.*, Securities Exchange Act Release No. 32377 (May 27, 1993), 58 FR 31566 (Approving NYSE practice of offering a rebate on every small order (100–2099 shares) delivered via SuperDot and executed by the NYSE specialist). However, payment for order flow would not include fee arrangements in which the market's net charge for executing the order, after any discount, rebate, or credit, is greater than zero.

[24] As initially proposed, "payment for order flow" was defined as "any compensation received from any broker-dealer (including market makers), exchange members, or exchanges to which a broker-dealer routes customers orders for execution, including: Monetary payments, research, products or services * * * discounts and rebates, or any other reduction of or credit against any fee, expense or other financial obligation of the broker or dealer routing a customer order."

In response to comments, the Commission has clarified that the definition of payment for order flow includes discounts, rebates, credits, or other fee arrangements only to the extent that such discounts exceed the fee charged. In addition, the Commission has clarified that payment for order flow received from a registered securities association is also subject to the disclosure rules. The Companion Release solicits comment on whether the definition of payment for order flow should be expanded.

[25] *See Market 2000*, *supra* note 3, Study V at 4.

[26] As stated in the *Second Report on Bank Securities Activities*,

[While] brokers have not been held by the Commission, the self-regulatory organizations or the courts to an absolute requirement of achieving the most favorable price on each order [,] [w]hat has been required is that the broker endeavor, using due diligence, to obtain the best execution possible

The Commission noted in the Proposing Release that broker-dealers are under a duty to seek the "best execution" of their customer's orders.[27] Broker-dealers accepting remuneration from a market center for directing order flow to that market center are still obligated to fulfill their duty of best execution to their customers.[28] The Commission understands that most firms that pay for order flow guarantee, at a minimum, executions at the NBBO. As stated in the Proposing Release, such so-called quote-derived executions in many ways are not materially different from automated execution systems operated by the regional exchanges for years. While automated execution systems offer fast and assured executions to customers, orders sent to an exchange for manual handling and orders sent to an OTC dealer for manual (or in some cases automated) handling may have a greater opportunity for an execution between the spread than do orders that are routed to a quote-based automated execution system.[29]

The Commission traditionally has concluded that a broker-dealer routing customer orders for automated execution could satisfy its best execution obligations so long as the broker-dealer assesses periodically the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for its customers' orders.[30] Nevertheless, the Commission's staff recently has warned against presuming that guaranteed executions at the best bid or offer always will satisfy the broker-dealer's best execution duties for small orders in listed securities.[31] For example, as a general matter, trades in listed securities routed to an exchange will be exposed to other public orders or interest in the trading crowd, with the possibility that the order may receive a price that is better than the existing quotations (so-called "price improvement"). Most regional exchanges, for example, have incorporated order exposure features into their small order routing and execution systems with a view toward offering price improvement.[32]

The Commission believes that the possibility for price improvement, while not the exclusive factor, bears on the question of whether a broker-dealer is fulfilling its duty to seek best execution, especially when payment is received by the broker-dealer in return for guaranteeing order flow.[33] Although it may be impractical for a broker or dealer that handles a heavy volume of orders to make an individual determination regarding where to route each order it receives, the broker or dealer must use due diligence to seek the best execution possible given all facts and circumstances. The Commission believes a broker or dealer must assess whether the order flow in the aggregate, is receiving best execution and that a broker-dealer must not allow a payment or an inducement for order flow to interfere with its efforts to obtain best execution. Accordingly, in light of a broker-dealer's obligation to assess periodically the quality of the markets to which it routes packaged order flow absent specific instructions from customers, the Commission does not believe such a broker-dealer violates its best execution obligation merely because it receives payment for order flow.

In this connection, the Commission has taken several steps recently to expand the opportunity for customer market orders to be executed at prices better than the NBBO at the time of receipt, including proposal of a Rule to require limit order price protection in Nasdaq National Market securities.[34] Nevertheless, considerable differences among market centers exist today. Accordingly, consistent with these steps to help customers understand payment for order flow practices, and to facilitate fair competition among exchange and non-exchange market centers, the Commission believes that it is appropriate to require broker-dealers to disclose to customers their policies regarding where they route unspecified orders that are subject to payment for

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fee arrangements only to the extent that such discounts exceed the fee charged. In addition, the Commission has clarified that payment for order flow received from a registered securities association is also subject to the disclosure rules. The Companion Release solicits comment on whether the definition of payment for order flow should be expanded.

given all the facts and circumstances. These factors include, among other things, the size of the order, the trading characteristics of the security involved, the availability of accurate information affecting choices as to the most favorable market in which execution might be sought, the availability of technological aids to process such data, the availability of economic access to the various market centers and the costs and difficulty associated with achieving an execution in a particular market center.

See Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, n.233 (Feb. 3, 1977), *as reprinted in* H.R. Rep. No. 145, 95th Cong., 1st Sess. 2333 (Comm. Print 1977).

Furthermore, the Commission has stated that "the creation of [other] explicit obligation(s) upon broker-dealers would in no way limit a broker's existing duty to seek to obtain best execution of his customers' orders." SEC, Status Report on the Development of a National Market System, Securities Exchange Act Release No. 15671 (Mar. 22, 1979), 44 FR 20360 (April 4, 1979) ("Status Report") (citing Restatement 2d Agency section 424 (1958)).

[27] *See* Proposing Release, *supra* note 1 at n.24.

As a general matter, the duty of "best execution" refers to the duty of the broker to seek to execute a customer's order in the best available market. *See* Section 11A(a)(1)(C)(iv) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iv)(1988); Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963, 23966 n.51 (June 5, 1989 ("Multiple Trading of Standardized Options Release"). *See also Market 2000*, *supra* note 3, Study V. In its purest form, best execution can be thought of as executing a customer's order so that the customer's total cost or proceeds are the most favorable under the circumstances. *See* Market 2000 Concept Release, *supra* note 3, note 57 and accompanying text.

[28] A broker-dealer's duty to seek best execution of customer orders derives from, among other sources, the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. The Commission noted in the Proposing Release its concern that the availability of payments in return for order flow commitments may influence the evaluation by a broker-dealer of the most advantageous market or market maker to whom to route its customer order. Indeed, some opponents of the practice of payment for order flow believe that acceptance and retention of payments by brokers from market makers constitute a breach of duty not permitted under agency common law. *See* Restatement 2d Agency section 388 (1956). While the Commission is concerned about a broker-dealer's fiduciary duty to seek to obtain the best execution for its customer, it believes that bulk order routing based, in part, on the receipt of payment for order flow is not, in and of itself, a violation of those duties. Disclosure of payment for order flow, moreover, could help inform customers and negate the concern that customers are unable to evaluate whether they receive inferior executions due to undisclosed rebates. *See* Securities Exchange Act Release No. 19047 (Sept. 14, 1982), 47 FR 41096 (Sept. 21, 1982).

[29] *See* Proposing Release, *supra* note 1, 58 FR at 52941 n. 59. The footnote cites several studies in this regard: C. Lee, Purchase of Order Flow and Favorable Executions: An intermarket Comparison (1991); T. McInish and R. Wood, Price Discovery, Volume and Regional/Third Market Trading (Feb. 1992); M. Bloom and M. Goldstein, Displayed and Effective Spreads by Market (Dec. 1992).

[30] *See* Status Report, *supra* note 26. *See also Market 2000*, *supra* note 3, Study V at 1 n.8; Multiple Trading of Standardized Options Release, *supra* note 27, 54 FR at 23973 n. 127; and Securities Exchange Release Act Nos. 17583 (Feb. 27, 1981), 46 FR 15713, 15715 n. 16 (Mar. 9, 1981); and 15926 (June 15, 1979), 44 FR 36912, 36923 n.118 (June 6, 1979).

[31] *Market 2000*, *supra* note 3, Study V at 4.

[32] *Id.* This feature by itself, however, rarely provides an execution between the spread. Most regional exchanges program their automatic execution systems to ensure that customer orders receive a price at the NBBO or better, and the specialist is provided an opportunity to improve the price. The Philadelphia Stock Exchange ("Phlx") does not have such a feature in its automatic execution system, although the Commission has recommended for years that it be included. *See Market 2000*, *supra* note 3, Study V at 4 n.19; Proposing Release, *supra* note 1, 58 FR at 52936 n.28; Market 2000 Concept Release, *supra* note 3 57 FR at 32595 n.53; Securities Exchange Act Release Nos. 27013 (July 7, 1989) 54 FR 30298 n.2 (July 19, 1989); 22750 (Dec. 31, 1985), 51 FR 799, 801 (Jan. 8, 1986); 20350 (Nov. 4, 1983), 48 FR 51722, 71723 n.10 (Nov. 10, 1983); 19656 (June 9, 1983), 48 FR 27872, 27873 (June 17, 1983); and 19372 (Dec. 23, 1982), 47 FR 58287, Technical Appendix, n.12 (Dec. 30, 1982).

[33] Because executions of market orders for listed stocks in an exchange market include the possibility for a price between the quotes, the staff has concluded that the existence of this possibility, even if the price is not actually improved, can be a factor in determining whether best execution has been sought. *Market 2000*, *supra* note 3, Study V.

[34] *See* Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50866 (Oct. 6, 1994).

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order flow.[35] This provision requires a description of the extent to which orders so routed can be executed at prices superior to the NBBO at the time the order is received. Dealers should explain, in simple terms, whether the market center to which they route unspecified orders executes orders to purchase or sell at the NBBO and whether it provides an opportunity for execution at prices superior to the NBBO.[36]

2. Annual Disclosure

Several commenters opposed annual disclosure because it would duplicate the account opening disclosure and suggested that the Commission require additional disclosure only upon a material change in the firm's policies. The Commission is retaining the annual disclosure requirement because it believes this will serve to remind customers that evaluation of a dealer's services involves more than a comparison of commission rates and to encourage broker-dealers to continue to evaluate the quality of service they receive from market centers from which they receive payment for order flow.

3. Quantification of Monetary Payment for Order Flow

Over 20 commenters addressed the proposed requirement that broker-dealers inform customers annually about the aggregate amount of monetary compensation received for routing order flow. The majority oppose the inclusion of any aggregate value requirement.[37]

The Commission has determined to solicit further comment on this issue in the Companion Release because it believes that aggregate information provides useful information to customers to evaluate the magnitude of payment for order flow practices and whether such payments, taken as a whole, might affect adversely order routing determinations. As discussed in the Companion Release, the Commission has determined to solicit further comment on this issue in conjunction with its proposal to require valuation of all forms of payment for order flow because disclosure of monetary payment for order flow without similar disclosures regarding non-monetary payment for order flow and internalization could mislead investors or foster non-monetary payments or internalized/affiliate practices.

C. Customer Confirmation Statements

As proposed, amended Rule 10b–10(a)(7)(iii) [38] required customer confirmations to disclose whether any payment for order flow has been received for a national market system security and the amount of any monetary payment, discount, rebate or reduction of fee. More than 30 commenters expressed concern about the proposed requirement that broker-dealers disclose on customer order confirmations the amount of any monetary payment, discount, rebate or reduction of fee received in connection with a transaction in a national market system security. Most of these commenters considered this unworkable.[39]

In response to commenters' concerns, the Commission has modified the Rule to require a statement on order confirmations that payment for order flow is received by the broker or dealer and that the source and nature of the payment for order flow received in connection with the particular transaction will be furnished upon written request of the customer.[40] The Commission has determined to allow broker-dealers to conform the statement to the firm's practices, for instance, specifically noting that it limits the receipt of payment for order flow to market orders only, if applicable. Because the definition of payment for order flow includes non-monetary forms of payment for order flow, broker-dealers will be expected to include those forms of compensation in preparing confirmations and to provide the nature and source of the compensation upon written request. The Commission believes that the Rule, as modified, retains informative disclosure to investors.[41] The Commission recognizes that information on the confirmation may not communicate all information of interest to investors about payment for order flow or the quality of order execution. The role of the required disclosures on the confirmation is more limited and is intended to inform customers about the existence of payment for order flow practices and to confirm that which the customer, if interested, already should know about the broker's order handling practices as a result of the new account and annual disclosure statements.

IV. Alternative Proposals

The Commission also solicited comment in the Proposing Release on alternative approaches to regulating the practice of payment for order flow. The Commission invited commenters to address such alternatives as banning payment for order flow and requiring the broker-dealers to pass payment for order flow through to their customers,[42] and directing securities markets to convert quotations to decimal-based pricing from the current one-eigth fractions. The Commission, however, has determined that these approaches are not the appropriate regulatory response at this time.

A. Banning Payment for Order Flow

The Commission believes disclosure is the appropriate response to the issue raised by payment for order flow. The Commission does not believe that all payment for order flow arrangements are against the customer's best interest and must be banned *per se* as compromising a broker's duty to seek best execution of the customer's order.[43] For example, it is unclear what harm lurks in specialists' or market makers' payment for order flow practices if unpriced orders are subject to a meaningful opportunity for price improvement, or if other benefits are provided to the customer due to the dealer's ability to use the payments. Additionally, the disclosures required by the new Rule and Rule amendments should mitigate concerns opponents may have that investors are unaware of a broker-dealer's order routing practices.

An outright ban at this time, moreover, would represent a radical change to the industry where the payment of cash or its monetary equivalent has become widespread.[44] In addition, banning payment for order flow has associated workability problems.[45] If the practice of cash payment for order flow were banned, because it is only one of many forms of inducement for order flow, the Commission has every reason to believe that an attendant increase in related "soft" inducements for order flow or internalization of order flow would follow.[46] Moreover, it would be impractical to attempt to ban solely soft practices (everything except monetary payment for order flow); such practices are difficult to monitor and industry participants would find alternative avenues for accomplishing the same result. The Commission will continue to monitor developments and will consider additional regulatory steps if necessary to ensure the protection of investors.

B. Decimal Pricing

The Commission also solicited comment on adopting a decimal-based system for the pricing and reporting of all securities for which transactions are reported. Some commenters believe that payment for order flow is, in effect, a reduction in the spread that a market maker charges for executing a pre-determined package of order flow. Under this view, if the NBBO is 20 bid and 20¼ offered, these commenters view the payment of two cents a share for order flow as little more than an indication that, in effect, a market maker is willing to buy at 20.02 and willing to sell at 20.23. Accordingly, these commenters believe that if a decimal pricing system were adopted, market makers could more easily compete by narrowing their displayed quotes, resulting in reduced incentive to pay for order flow. Others question whether the availability of decimals would, in fact eliminate payment for order flow because market makers still only may want to pay for certain types of orders (*e.g.*, a diverse group of small market orders) and, as a result, may not lower their published quotes.

The Commission believes that decimal pricing is the logical next step for the markets to pursue to improve the transparency of the markets and provide opportunities for narrower spreads.[47] Indeed, as an interim measure, the Commission's staff called for the markets to move to pricing in ⅛ths in the near future.[48] In this regard, the Commission understands the markets have undertaken a study of the costs and benefits of changing the current display mechanisms.[49] The Commission looks forward to the prompt completion of the SRO study and the ultimate implementation of revised pricing procedures. While it is currently unclear how decimalization would affect payment for order flow practices, the Commission will monitor the progress of such endeavors and is prepared to reconsider the Rules adopted today, and even to rescind them if decimal pricing or other reforms render payment for order flow obsolete.

V. Implementation Date

The Commission is setting April 3, 1995 as the implementation date for both the amendments to Rule 10b–10 and Rule 11Ac1–3. Thus, for orders received or trades effected on or after April 3, 1995, all customer confirmation statements must contain the new disclosures required by Rule 10b–10, as modified today. For all new accounts opened on or after April 3, 1995, the disclosures required by Rule 11Ac1–3 will be in effect. For existing accounts, the disclosures required by Rule 11Ac1–3 should be made to customers beginning with the first commercially reasonable date after April 3, 1995, but in no event, later than April 3, 1996. For example, if a firm provides annual disclosure statements in January of each year, the disclosures should be made beginning with the January 1996 account statement. If the firm provides quarterly statements, the disclosures should be made beginning with the July 1995 account statement.

The April 3, 1995 date was selected to provide firms with four months to make the necessary systems and forms changes to prepare for the implementation.

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[35] As revised, paragraph (a)(2) of the Rule would require broker-dealers to provide information concerning the broker-dealer's policies for determining where to route customer orders that are subject to payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the NBBO.

[36] By the terms of the Rule, this disclosure would be limited to orders that are subject to payment for order flow.

[37] Several broker-dealers argue that disclosure of aggregate amounts of monetary order flow would be misleading to customers. One commenter voiced concerns that investors who transact business in mutual funds or options would be misled by disclosure which only derives from equity order flow. Others believe that even equity customers are likely to be misled because payment derives from large numbers of the broker's own or other customer's orders directed to various marketplaces which may be unrelated to that particular customer's business with the broker-dealer. Still others believe that such disclosure may lead to the misperception that investors are being disadvantaged.

It should be noted that the same commenters opposing aggregate disclosure of monetary compensation also oppose the Commission's proposal regarding confirmation disclosure of monetary compensation. *See infra* Section III.C. (Customer Confirmation Statements). In contrast, some commenters suggest quantification requirements extend to non-monetary inducements for order flow and to internalization.

[38] Currently, the Commission's confirmation disclosure rule, Rule 10b–10 under the Act, requires that confirmations sent to customers for agency transactions disclose the "price" of the security purchased or sold by the customer, as well as the remuneration paid to the broker-dealer by the customer in the trade. Rule 10b–10 also requires broker-dealers to disclose the source and amount of any other remuneration received in connection with a transaction. In most transactions, however, the Rule permits broker-dealers merely to state "whether any other remuneration has been or will be received," and to furnish the source and amount of such other remuneration on written request.

[39] Several commenters argue that specific confirmation disclosure is nearly impossible considering that brokers have a variety of arrangements with firms which often include conditions, such as requiring a minimum amount of order flow per month before payments begin; different rates for low-priced securities; and graduated payments based on dollar volume per month. Others argue that it would place an extreme burden on recipient broker-dealers to determine that amount of order flow received for each order in time for a confirmation. Several commenters also argue that specific disclosure would require broker-dealers to reprogram computer systems, perform tracking and report cash payments, and that such expenses are disproportionately high in relation to the potential benefits to customers. Some commenters recommend a generic disclosure statement which would eliminate the high cost of systems changes, yet still inform the customer as to the receipt of payment for order flow. Another concern raised by opponents of the Commission's proposal is that payment is given for an aggregation of orders directed to a particular market center and does not attach to a particular order.

[40] In the Companion Release, the Commission solicits comment on whether broker-dealers should be required to provide ranges, on confirmations, of monetary and non-monetary payment for order flow received and quantification of internalization/affiliate practices on a per share basis. *See* Companion Release, *supra* note 5.

[41] The Commission, however, is proposing in a parallel action, to require quantification of monetary and non-monetary compensation and internalization. *Id.*

[42] No commenters fully supported the alternative of passing payments through to customers. Three commenters, however, oppose the alternative and argue that the economic advantages of order flow payments already benefit customers of retail firms in the form of lower commission rates. Moreover, some argue compulsory remission of payments may be administratively burdensome for brokers and difficult to enforce due to the difficulty in allocating direct payments for particular orders.

[43] *See* NASD Rules of Fair Practice, Art. III, section 1, Interpretation of the Board of Governors on Execution of Retail Transactions in the Over-The-Counter Market; and Section 11A(a)(1)(D) of the Act, 15 U.S.C. § 78k–1(a)(1)(D) (1988). Broker-dealers also have obligations under the "shingle theory," which states that a dealer who engages in business impliedly represents that he will deal fairly with the public and in accordance with the standards of the profession. *See SEC v. Great Lake Equities Co.*, 755 F. Supp. 211 (E.D. Mich. Sept. 4, 1990); and N. Wolfson, R. Phillips & T. Russo, *Regulation of Brokers, Dealers and Securities Markets* ¶ 2.10, at 2–51 (1977).

[44] Some commenters favor a complete ban on payment for order flow; others favor a ban on cash payments only.

[45] Opponents of a ban argue that payment for order flow is not illegal or unethical and that banning payment for order flow would pose serious workability problems regarding banning some, but not all, practices.

[46] The Commission recognizes that in urging a complete ban, some commenters are looking to address a potential conflict of interest that they believe affects a dealer's ability to meet its fiduciary duties to customers and provide a level playing field for exchange and OTC markets in exchange listed stocks.

[47] *See Market 2000*, *supra* note 3, Study IV at 8–9.

[48] In January 1994, the Division recommended the adoption of a ⅛th of a dollar increment as a transitional step leading to decimal pricing. *See id.* at 9.

[49] On June 22, 1994, the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce held a hearing regarding decimal-based pricing and unlisted trading privileges. Panelists included: Richard Ketchum, Executive Vice President and Chief Operating Office, NASD; Edward Kwalwasser, Executive Vice President for Regulation, NYSE, Nicholas Giordano, President and Chief Executive Officer, Phlx; and Brandon Becker, Director, Division of Market Regulation, SEC. Congressman Markey and the panelists discussed decimal pricing and moving to sixteenths as an interim measure. Congressman Markey asked the self-regulatory organizations ("SROs") to undertake a joint study, to be completed by January 1995, of the implications of moving to sixteenths (as well as decimal pricing) and the costs and benefits associated with the move. All of the SRO panelists agreed to participate in the study. *The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearings Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 103d Cong., 2d Sess. (1994).

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VI. Competition Findings

Section 23(a)(2) of the Act[50] requires the Commission in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission believes the proposed Rules will enhance competition among brokers, dealers, and market centers, consistent with the goals of Section 11A and 23(a) of the Act. Several commenters raised concerns that the Rules, as proposed, would require substantial systems changes and therefore, would increase the costs of doing business which would be passed on to customers. The Commission has modified the portion of proposed Rule 10b–10(a)(7)(iii)(B) requiring individualized confirmation disclosure of and the amounts of monetary payment for order flow received. The Rule, as adopted, may eliminate the need for individualized disclosures and for the quantification of payment for order flow. The Commission intends to evaluate these issues further in connection with its Companion Release soliciting comment on amendments to Rule 10b–10 and Rule 11Ac1–3(a)(2).[51] The Commission has considered Rule 11Ac1–3 and amendments to Rule 10b–10 in light of the standard cited in Section 23(a)(2) and believes that adoption of the Rules, as modified, will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

VII. Conclusion

The Commission believes that Rule 11Ac1–3 and amendments to Rule 10b–10(a)(7)(iii) and 10b–10(e) will provide relevant, uniform disclosure to customers regarding details of their order executions. It is the Commission's view that the Rule and Rule amendments will enhance investor protection and further competition for retail orders by enabling customers to evaluate better the markets to which their orders are routed. The Commission further believes that broker-dealers can make the necessary systems and forms changes to comply with the Rules, as amended, with limited resource and systems changes. The Commission recognizes, however, that the extent and nature of the modifications depends upon the current capabilities of each firm. Nevertheless, the Commission recommends that, as necessary, broker-dealers that need to make systems changes evaluate their progress as the implementation date approaches and make adjustments as appropriate to ensure a smooth transition to the enhanced disclosure of payment for order flow.

VIII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rules 10b–10 and 11Ac1–3, in accordance with 5 U.S.C. 604. The FRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the Rule. A copy of the FRFA may be obtained by contacting Jill W. Ostergaard, Attorney, Branch of the National Market System, Office of Market Supervision, Division of Market Regulations, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Brokers and dealers, Registration and regulation, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78*m*, 78*n*, 78*o*, 78*p*, 78*q*, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

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2. By amending § 240.10b-10 by redesignating paragraph (a)(7)(iii) as paragraph (a)(7)(iv), adding paragraphs (a)(7)(iii) and (e)(9), and revising paragraph (a)(8) to read as follows:

§ 240.10b-10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii) For a transaction in any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; and

(8) If he is acting as principal for his own account. (i)(A) If he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, the amount of any mark-up, mark-down, or similar remuneration received in an equity security; or

(B) In any other case of a transaction in a reported security, the trade price reported in accordance with an effective transaction reporting plan, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(ii) In the case of a transaction in an equity security, whether he is a market maker in the security (otherwise than by reason of his acting as a block positioner in that security).

* * * * *

(e) * * *

(9) *Payment for order flow* shall mean any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.

* * * * *

3. Section 240.11Ac1–3 is added to read as follows:

§ 240.11Ac1–3 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q–2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow as defined in § 240.10b–10(e)(9), from any broker or dealer, national securities exchange, registered securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow as defined in § 240.10b–10(e)(9) absent specific instructions from customers, including a description of the extent to which orders can be executed prices superior to the best bid or best offer as defined in § 240.11Ac1–2.

(b) *Exemptions.* The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the pubic interest and the protection of investors.

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27109 Filed 11–1–94; 8:45 am]

BILLING CODE 8010-01-P-M

[50] 15 U.S.C. 78w(a)(2).

[51] *See* Companion Release, *supra* note 5.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–34003; File No. S7–30–94]

RIN 3235–AG00

Internalized/Affiliate Practices, Payment for Order Flow and Order Routing Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing to revise its rules governing disclosure to customers by broker-dealers of practices related to the routing of order flow, including payment for order flow, internalization of order flow, and affiliate practices. The proposed amendments are intended to provide customers with more useful information in evaluating the quality of executions.

DATES: Comments should be submitted on or before December 15, 1994.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File No. S7–30–94. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW., Washington DC 20549.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, 202/942–3197, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 5th Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("SEC" or "Commission") is proposing to amend its rules governing disclosure of broker-dealer payment for order flow and the practice of executing orders as principal or routing orders to an affiliated broker-dealer or exchange specialist ("internalized/affiliate practices"), Rule 10b–10 (17 CFR 240.10b–10) and Rule 11Ac1–3 (17 CFR 240.11Ac1–3) under the Securities Exchange Act of 1934 ("Act"). As described below and in a related release, both payment for order flow and internalized/affiliate practices have been the subject of extensive debate.[1]

The proposed Rule amendments regarding payment for order flow also are intended to enhance disclosure to customers of compensation their broker-dealer may receive from market centers[2] in return for routing customer orders to them for execution.[3] The amendments would require broker-dealers receiving payment for order flow to provide customers additional information regarding the value of the compensation received. The proposed additional disclosures would include, for monetary payment for order flow, the range of payments received on a per share basis and on an aggregate basis annually, and for non-monetary payment for order flow, an estimate of the range of payment for order flow on a per share basis and on an aggregate basis annually. These disclosures would be required when a customer opens an account, on an annual basis thereafter, and in abbreviated fashion on required confirmations. The proposed amendments would require similar disclosure with respect to the value of order flow subject to internalized/affiliate practices.

The Commission also is proposing that broker-dealers disclose to their customers information regarding their order routing practices generally, regardless of whether they receive payment for order flow or engage in internalized/affiliate practices.

The proposed amendments regarding internalized/affiliate practices are intended to address comments the Commission received in connection with its consideration of payment for order flow practices and to elicit further discussion regarding their implications. In connection with the Adopting Release, six commenters indicated that the internalization of order flow by broker-dealers presents issues similar to those commonly associated with payment for order flow. These commenters argued that the opportunity to capture the spread through internalized/affiliate practices encourages broker-dealers to execute orders in house or to send orders to an affiliated broker-dealer or exchange specialist. At the most basic level, under each practice the broker-dealer is influenced with respect to where it will route customer orders.

The proposed amendments would require broker-dealers to inform customers on new account and annual disclosure statements whether they execute orders as principal or route those orders to affiliated firms. These amendments are designed to provide customers with more information about firms' order routing decisions, especially in light of changes that might result from requiring additional disclosure of payment for order flow practices.

Finally, the proposed rule amendments would extend confirmation and account statement disclosure of payment for order flow to transactions in standardized options.

In the Adopting Release issued today, the Commission adopted requirements for additional disclosure of payment for order flow practices.[4] Commenters are encouraged to review the Adopting Release in considering the amendments proposed today. The discussion that follows describes the proposed amendments and solicits views regarding those amendments.

II. Discussion

A. Definition and Quantification of Payment for Order Flow

The proposed amendments would require broker-dealers to provide more detailed information to customers regarding payment for order flow. The proposed amendments would require broker-dealers receiving monetary payment for order flow to disclose the range of payments received on a per share basis and the aggregate amount of payment for order flow received on an annual basis, and, for non-monetary payment for order flow, to disclose an estimate of the range of non-monetary payment for order flow received by the broker-dealer on a per share basis and on an aggregate basis annually.

1. Definition of Payment for Order Flow

The Commission, in the Adopting Release, adopted a definition of payment for order flow that includes monetary payments, services, property or any other benefit offered for order flow that results in remuneration to the firm in return for the routing of customer orders for execution. As discussed below, the proposed amendments would establish definitions of monetary and non-monetary payment for order flow, defining monetary payment for order flow as any monetary payment,

[1] *See* Securities Exchange Act Release No. 34902 (October 27, 1994) ("Adopting Release").

[2] As used in this release, the term market center includes exchanges and dealers acting as market makers. *See* 17 CFR 240.11Ac1–2(a)(14) (defining "reporting market center").

[3] The Commission is also soliciting comment whether certain inducements to routing order flow should be included in the definition of payment for order flow.

[4] *See* Adopting Release, *supra* note 1.

discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged. At the same time, however, the Commission is concerned that other practices used by market centers are designed to induce broker-dealers to direct order flow, and, therefore, may present issues similar to those practices currently defined as payment for order flow in the Adopting Release. The Commission is soliciting comment on whether to expand the definition of payment for order flow. Specifically, the Commission is considering expanding the definition to include volume discounts, rebates, reductions or other inducements for order flow, even if not in excess of the execution fee charged by a market center.[5] Commenters should specifically indicate which practices should be included in the definition to provide the maximum benefit to investors and encourage equivalent regulatory treatment among competing market centers consistent with the purposes of the Act.

The Commission also requests the views of commenters as to whether a differential in fees between competing market centers should be considered as the economic equivalent of payment for order flow for either or both general disclosure and quantification purposes. This differential might be viewed as affecting the order routing determination of a broker-dealer in a manner similar to payment for order flow.

Commenters also are asked to address why payment for order flow should exist in certain instances, but not others, when the inducement for order flow to be routed to one market center or another is identical in both instances. For example, assume that one market center currently pays $.02 per share for order flow, while a competing market center charges a fee of $.05 per share to handle customer orders, resulting in an overall differential of $.07 per share. Under the current definition, the first market center would be deemed to be paying for order flow, quantified as $.02 per share. Why should payment for order flow be deemed to no longer exist where, as a result of a $.02 per share increase in costs uniformly incurred by all market centers, the first market center simply ceased paying for order flow in favor of handling customer orders without charge, while its competitor proportionately increased the fees charged for handling customer orders to $.07 per share? In this instance, the first market center maintains the identical differential in terms of the inducement to broker-dealers to direct order flow to the first market center, as opposed to the second.

In a related manner, commenters are requested to indicate whether the proposed quantification of payment for order flow (discussed more fully in the next Section) accurately reflects the inducement to a broker-dealer to route orders to a particular market center. For instance, in the example noted above, is the amount of the inducement that should be disclosed in connection with payment for order flow paid by the first market center $.02 per share, as would be the case under the current definition of payment for order flow in Rule 11Ac1–3, or does the $.07 per share differential more accurately reflect the level of inducement for order flow?

2. Quantification of Payment for Order Flow

The proposed amendments would establish definitions of "monetary payment for order flow" and "non-monetary payment for order flow." The term monetary payment for order flow would be defined in section 10b–10(e)(10) to mean "any monetary payment, discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged." The term non-monetary payment for order flow would be defined in section 10b-10(e)(11) to mean "any payment for order flow received other than monetary payment for order flow."

The Adopting Release, while requiring additional disclosure of payment for order flow practices, does not require disclosure of the amount of any payment for order flow. Certain of the proposed amendments to Rule 11Ac1–3 would focus on this disclosure. For monetary payment for order flow, the broker-dealer would be required by Rule 11Ac1–3(a) (3) and (4) to disclose the aggregate amount of monetary payment for order flow received annually, and the range of monetary payment for order flow received on a per share basis. The proposed amendments to Rule 11Ac1–3(a) (5) and (6) would require broker-dealers to disclose to customers at account opening and annually thereafter, an estimate of the aggregate value of non-monetary payment for order flow received by the broker-dealer in return for directing order flow on an annual basis, and an estimate of the range of non-monetary payment for order flow received on a per share basis.

The proposal calls for an estimate of non-monetary payment for order flow, recognizing that precision may not be possible. To the extent that a broker-dealer finds it difficult to estimate the per share value of non-monetary payment for order flow, the Commission would envision permitting the broker-dealer to assume the value of the non-monetary compensation was equal to the cash per share payment for order flow received from the same source, or, if none, similar sources. The assumption would be that a broker-dealer, in choosing the form of payment for order flow, would demand a value that is commensurate with the amount of cash that could be received from the same or competing market maker or specialist. Commenters are requested to identify alternative methods by which firms might arrive at an estimate of the value of non-monetary payment for order flow.[6]

The proposed rule would require an estimate of the range of non-monetary payment for order flow received by the broker-dealer expressed on a per share basis. To comply with this requirement, broker-dealers would be expected to use the estimate required by Rule 11Ac1–3(a)(5) in calculating the range of values to be disclosed. The proposed rule would recognize expressly that the calculation of values represents an estimate.[7]

The Commission also is proposing to require broker-dealers who receive payment for routing orders to include information on the confirmation. Proposed Rule 10b–10(a)(7)(B) would require, for any monetary payment for order flow received, confirmation disclosure of the range of payments received on a per share basis. Proposed Rule 10b–10(a)(7)(iii)(C) would require, for any non-monetary payment for order flow received, an estimate by the broker-dealer of the range in value of non-monetary compensation on a per share basis. Because it may not be possible to identify immediately after execution which orders are subject to payment for order flow arrangements or the *pro rata* value of a specific order, the Commission is proposing to require disclosure of an estimate of the range in

[5] Some commenters have suggested that there is no distinction between cash payment for order flow and these inducements. *See* "Inducements for Order Flow," A Report to the Board of Governors, NASD, July 1991.

[6] Commenters are also requested to indicate the extent to which valuations may vary depending on the form of non-monetary compensation or other factors, and whether this would pose problems for estimating and disclosing the valuations.

[7] One commenter believes that value estimates of non-monetary compensation may be based on fair value as determined in good faith by the management of the broker-dealer. *See* letter from Alan B. Levenson, Fulbright & Jaworski L.L.P. and Irving M. Pollack (on behalf of Herzog, Heine, Geduld, Inc.), to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993.

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value of compensation that may have been received, stated on a per share basis. Proposed Rule 10b–10(a)(7)(iii)(B) and (C) also would require, for any non-monetary payment for order flow received, a statement that the nature and source of such compensation will be furnished upon written request of the customer.

In crafting the proposed amendments, the Commission is mindful of the concern that requiring quantification of monetary but not non-monetary payment for order flow could result in broker-dealers moving toward potentially undisclosed compensatory practices, such as non-monetary payment for order flow.[8] Thus, it has sought to require disclosure of non-monetary payment for order flow similar to the disclosure requirements established for monetary payment for order flow. This is intended to provide customers with equivalent information to evaluate a broker-dealer's order routing arrangements, and to remove any regulatory disparity between monetary and non-monetary payments.

The Commission invites commenters to address whether the proposed amendments would accomplish these goals, and whether there are other ways to accomplish these goals. The Commission specifically requests comment on the ability of broker-dealers to determine whether a non-monetary payment is in return for order flow, and their ability to estimate the value of the various forms of non-monetary payments.

B. Internalized/Affiliate Practices

Rule 11Ac1–3, as adopted, requires broker-dealers who receive payment for order flow to disclose their policies for determining where to route orders that are subject to payment for order flow absent specific instructions from customers. That Rule would not expressly require broker-dealers to provide information about their order routing policies if instead of receiving payment for order flow in return for routing orders, they simply executed the orders for their own account.[9]

The Commission is concerned that internalized/affiliate practices may raise questions similar to payment for order flow practices regarding the obligations of brokers to their customers, such as whether firms that internalize order flow are providing best execution of customer orders.[10] In proposing Rule 11Ac1–3 in October 1993, the Commission invited comment on the implications of these practices and whether additional disclosure would be desirable.[11] Seven commenters addressed internalization/affiliate practices; six favored a regulatory response[12] and one opposed it.[13]

The Commission is proposing to amend Rule 11Ac1–3 to require broker-dealers who choose to internalize or route orders to affiliated organizations to provide information about this policy parallel to the information that Rule 11Ac1–3 requires them to provide concerning the routing of orders in return for payment for order flow. As defined in proposed Rule 10b–10(e)(12), internalized/affiliate order routing practices shall mean the execution of an order by a broker-dealer as principal, or the routing of an order by the broker-dealer to an affiliated broker-dealer or exchange member. Specifically, the amendment to Rule 11Ac1–3(a)(2) would require firms to disclose their policies for determining where to route customers' orders, absent specific instructions from customers, including whether orders are executed as principal, orders are routed to an affiliated broker-dealer, or to an unaffiliated broker-dealer or market center, including a description of the extent to which orders can be executed at prices superior to the NBBO.

The Commission also is proposing to extend the confirmation and account statement valuation requirements to internalized/affiliate order flow practices. The Commission requests comment on this aspect of the proposed rule and the ability of broker-dealers to estimate the value of internalized/affiliate order flow. The Commission realizes that, as in the case of non-monetary payment for order flow, precision in this area may not be possible. Therefore, the Commission seeks the views of commenters as to whether the value of internalized order flow may be reasonably approximated by reference to the monetary amount per share that a broker-dealer could have received for such order flow from a competing market center, or by other methods, such as by measuring the difference between the spread received by a broker-dealer engaging in internalized/affiliate practices and the amount that the broker-dealer could have received for the order flow from another market center.[14]

The Commission invites commenters to address whether the proposed amendment would provide customers with meaningful information and would further the goals of section 11A of the Act. To the extent that they believe

[8] Some commenters argue that treating monetary and non-monetary payment for order flow differently creates an incentive for dealers to restructure cash payment arrangements into payments in kind.

[9] In recent years, multi-service broker-dealers, clearing firms, and others have acquired interests in specialist units, particularly on regional exchanges, although several specialists on the New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") are affiliated with upstairs firms. These firms then route small customer orders for execution to their affiliated specialist. *See* Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994) ("*Market 2000*"), Study II at 9 and Exhibit 20.

The Commission recently discussed the potential implications of internalization for the structure of the national market system in the context of proposals by two national securities exchanges to establish or extend marketplace programs that might facilitate internalization practices. *See* Securities Exchange Act Release Nos. 34078 (May 18, 1994), 59 FR 27082 (May 25, 1994) (File No. SR–BSE–93–12); 34493 (August 5, 1994), 59 FR 41531 (August 12, 1994) (File No. SR–CSE–94–06). Internalized/affiliate practices also were discussed in Congressional hearings on market structure a few months ago and, earlier this year, the Division of Market Regulation discussed this topic in its Market 2000 Report. *See Market 2000*, Study II at 9 and Exhibit 20; *Oversight Hearing on the Structure of the Marketplace with a Focus on the Market 2000 Report and the Unlisted Trading Privileges Act of 1994 Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce*, 103d Cong., 2d Sess. (1994).

[10] An extensive discussion of the "best execution" obligation appears in the Adopting Release as well as the release proposing Rule 11Ac1–3 for comment. *See* Adopting Release, *supra* note 1 at nn.26–36 and accompanying text; Securities Exchange Act Release No. 33026 (October 6, 1993) 58 FR 52934, 52937–52938 (October 13, 1993) ("October 1993 Proposing Release").

[11] *See Id.* at n.38.

[12] Letters to Jonathan G. Katz, Secretary, SEC, from: Jules L. Winters, Chief Operating Officer, American Stock Exchange ("Amex"), dated December 21, 1993 ("Amex letter"); Robert F. Price, Managing Director, Alex. Brown & Sons, Inc., dated December 23, 1993; George A. Brown, Brown & Company, dated December 2, 1993; John N. Tognino, Executive Vice President, Capital Markets and Trading, Charles Schwab & Co. Inc., dated December 8, 1993; Chris A. Hynes, President, State Street Brokerage Services, Inc., dated December 1, 1993 ("State Street letter"); and Thomas W. Clegg, Sr., Vice President, Wheat First Securities, Inc., dated November 30, 1993.

The Amex stated that internalization impedes price discovery and makes best execution less likely, and because internalized order flow provides the executing market maker with a dealer spread on every internalized trade, there is little incentive for the dealer to narrow the quoted spread. *See* Amex letter. One brokerage firm argued that the failure to regulate internalization creates a competitive advantage for large integrated firms. *See* State Street letter.

[13] This commenter noted that in an exchange environment, "the continuous affirmative obligations imposed on exchange specialists and the auction-type trading process inherent in trading on exchanges limit the extent to which internalization can be accomplished." *See* letter from John I. Fitzgerald, Executive Vice President, Legal Affairs and Trading Services, Boston Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 10, 1993.

[14] The Commission is concerned that to the extent that the value of monetary and non-monetary payment for order flow are quantified but the value of orders subject to internalized/affiliate practices are not, broker-dealers may be encouraged to engage in the latter practices to a greater degree.

payment for order flow and internalized/affiliate practices should be treated differently for regulatory purposes, commenters are requested to indicate why concerns with respect to internalization are less compelling than those frequently associated with payment for order flow practices. Similarly, the Commission recognizes that the unequal regulatory treatment of internalized order flow may result in an increase in the amount of customer orders that are executed directly by a broker-dealer or its affiliates.

C. Order Routing Disclosure

As proposed, Rule 11Ac1–3(a)(2) would require all broker-dealers to disclose their policies for determining where to route customer orders absent specific instructions from the customer, as well as a description of the extent to which orders may receive price improvement. If adopted, this disclosure currently required under Rule 11Ac1–2 would be required for all orders, regardless of whether the broker-dealer received payment for order flow or engaged in internalized/affiliate order routing practices.

The Commission believes that the proposed disclosure of order routing practices is consistent with its goal of providing customers with information to enhance their ability to evaluate the quality of execution received, and to make informed decisions with respect to the selection of broker-dealers. Under Rule 10b–10 of the Act, the Commission currently requires broker-dealers to disclose their capacity as agent or principal with respect to customer transactions, the agency commission received in connection with a particular transaction, and the source and amount of any additional remuneration to be received in connection with a transaction, among other matters.[15] As a result of these disclosures, investors have a better understanding of commissions and other costs associated with the execution of a transaction. The Commission believes that proposed Rule 11Ac1–3(a)(2) will further facilitate the ability of investors to understand order routing possibilities and the decisions made by broker-dealers in this regard. The Commission believes that such information would be of significant benefit to investors.

For example, a broker-dealer's decision regarding the routing of orders involving securities listed for trading on national securities exchanges raises the issue of price improvement. Orders in such securities that are routed to certain exchange facilities typically will receive an opportunity for price improvement,[16] while similar orders routed to other market centers—and, currently, generally with respect to all non-listed securities—may forgo this possibility.

In addition to enhancing the ability of customers to evaluate the costs and benefits of a broker-dealer's order routing determinations, the Commission believes that the proposed amendment to Rule 11Ac1–3(a)(2) will help obviate some of the difficulty in identifying those practices that involve conflicts between the interests of broker-dealers and their customers. In light of the complexity and the perceived economic similarity between payment for order flow and other market practices designed to induce or influence order flow, or that present the same concerns—such as internalization practices—the Commission believes that the requirement that all broker-dealers disclose their order routing practices will help facilitate equal regulation, reduce investor confusion, and further empower investors to make informed decisions in their own best interests. Broker-dealers making disclosure under the proposed rule are encouraged to explain how their order routing determinations are in the overall best interests of their customers.

Finally, the Commission also solicits the views of commenters regarding whether the disclosure of broker and dealer order routing policies should be set forth in a standardized format on the confirmation involving, for example, general categories of order routing practices such as internalized/affiliate order flow, order flow subject to payment for order flow, and order flow routed to unaffiliated market centers, thereby facilitating customer understanding and ease of comprehension.

D. Expanding the Scope of Covered Securities to Include Standardized Options

Rule 11Ac1–3 does not apply to exchange-traded options. Although the October 1993 Proposing Release did not request comment on whether payment for order flow disclosures should be extended to these securities, two exchanges expressed support for such a change, but otherwise no comments were received on this subject.[17] In light of the favorable, albeit limited comments, the Commission proposes to amend Rules 11Ac1–3 and 10b–10 to include standardized options. The Commission particularly invites comment on whether the disclosure requirements would result in unique problems for firms effecting transactions in options.

III. Request for Comment

The Commission invites comment on all the issues raised in this release including expanding the definition of payment for order flow, the proposed amendments to Rule 10b–10, the amendments to Rule 11Ac1–3 regarding disclosure of the value of payment for order flow and internalization/affiliate practices, inclusion of standardized options, and other approaches that address internalization/affiliate practices and payment for order flow, including a requirement that broker-dealers describe their order routing practices for all orders.

The Commission also requests commenters to address the feasibility of adopting the proposed amendments to become effective on April 3, 1995, the date newly adopted Rule 11Ac1–3 and amendments to Rule 10b–10 are to take effect.

In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rule amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

IV. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. sec. 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. The Analysis notes that the proposed rule amendments would require at the time an account is opened and on an annual basis thereafter, broker-dealers to disclose their policies for routing customer orders in exchange listed securities, provide the range of monetary payment for order flow received on a per share basis on the

[15] 17 CFR 240.10b–10.

[16] *But see* Adopting Release, *supra* note 1, at n.33.

[17] One exchange suggested that the Commission consider the ramifications that payment for order flow may have on the options marketplace, especially once multiple trading of options is taken into consideration. *See* letter from Leopold Korins, Chairman and Chief Executive Officer, Pacific Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 9, 1993.

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confirmation, the aggregate value of monetary payment for order flow, an estimate of the aggregate value of non-monetary payment for order flow and internalized/affiliate orders, and an estimate of the range of non-monetary payment for order flow and internalized/affiliate orders received by the broker-dealer on a per share basis on the confirmation. The proposals could necessitate changes to broker-dealer confirmation systems that generally do not provide that specific information now. Broker-dealers would need to keep records of payment for order flow to fulfill the disclosure requirements of the proposed rule amendments. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jill W. Ostergaard, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, 202/942–3197.

V. Text of the Amendments

List of Subjects in 17 CFR Part 240

Brokers; Reporting and recordkeeping requirements; Securities.

For the reasons set out in the preamble, the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.10b–10 by revising paragraph (a)(7)(iii), and adding paragraphs (e)(10), (e)(11), and (e)(12) to read as follows:

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii) For a transaction in any subject security as defined in § 240.11Ac1–2, a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act (15 U.S.C. 78q–2), or a standardized option as defined in § 240.9b–1.

(A) A statement whether payment for order flow is received by the broker or dealer for transactions in such securities;

(B) For monetary payment for order flow received, the range of payments received for such securities on a per share basis and a statement that the source and amount received in connection with the particular transaction will be furnished upon written request of the customer;

(C) For non-monetary payment for order flow received, an estimate of the range of non-monetary payment for order flow received by the broker or dealer on a per share basis and a statement that the nature and source of such compensation will be furnished upon written request of the customer; and

(D) A statement whether transactions in such securities are subject to internalized/affiliate order routing practices and an estimate of the range in value of such order flow on a per share basis, and that additional information will be furnished upon written request of the customer; and

* * * * * *

(e) * * *

(10) *Monetary payment for order flow* shall mean any monetary payment, discount, rebate or reduction of fee to the extent that the payment, discount, rebate or reduction exceeds the fee charged.

(11) *Non-monetary payment for order flow* shall mean any payment for order flow received other than monetary payment for order flow.

(12) *Internalized/affiliate order routing practices* shall mean the execution of an order by the broker or dealer as principal, or the routing of an order by the broker or dealer to an affiliated broker, dealer, or exchange member.

* * * * *

3. By amending § 240.11Ac1–3 by revising the introductory text of paragraph (a), paragraph (a)(2) and adding paragraphs (a)(3) through (a)(8) to read as follows:

§ 240.11Ac1–3 Customer account statements.

(a) No broker acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any subject security as defined in § 240.11Ac1–2, a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q–2), or a standardized option as defined in 240.9b–1, unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) * * *

(2) The broker's or dealer's policies for determining where to route customers' orders, absent specific instructions from customers, including:

(i) A statement whether the broker or dealer executes orders as principal, routes orders to an affiliated broker, dealer, or exchange member, or to another broker, dealer, exchange member, or an exchange; and

(ii) A description of the extent to which orders in such securities can be executed at prices superior to the best bid or offer as defined in § 240.11Ac1–2(a)(15);

(3) The aggregate amount of monetary payment for order flow as defined in § 240.10b–10(e)(10) received by the broker or dealer in return for directing order flow on an annual basis;

(4) The range of monetary payment for order flow received by the broker or dealer on a per share basis;

(5) An estimate of the aggregate value of non-monetary payment for order flow, as defined in § 240.10b–10(e)(11), received by the broker or dealer in return for directing order flow on an annual basis;

(6) An estimate of the range of non-monetary payment for order flow, as defined in § 240.10b–10(e)(11), received by the broker or dealer on a per share basis;

(7) An estimate of the aggregate value of the order flow of internalized/affiliate order routing practices, as defined in § 240.10b–10(e)(12), on an annual basis; and

(8) An estimate of the range in value of the order flow of internalized/affiliate order routing practices, as defined in § 240.10b–10(e)(12) on a per share basis.

* * * * *

By the Commission.

Dated: October 27, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27108 Filed 11–1–94; 8:45 am]

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H.R. 3499/P.L. 103–425
To amend the Defense Department Overseas Teachers Pay and Personnal Practices Act. (Oct. 31, 1994; 108 Stat. 4369; 2 pages)

H.R. 3678/P.L. 103–426
To authorize the Secretary of the Interior to negotiate agreements for the use of Outer Continental Shelf sand, gravel, and shell resources. (Oct. 31, 1994; 108 Stat. 4371; 2 pages)

H.R. 4196/P.L. 103–427
To ensure that timber-dependent communities adversely affected by the Forest Plan for a Sustainable Economy and a Sustainable Environment qualify for loans and grants from the Rural Development Administration. (Oct. 31, 1994; 108 Stat. 4373; 2 pages)

H.R. 4455/P.L. 103–428
To authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense services the primary end use of which will be for civilian purposes. (Oct. 31, 1994; 108 Stat. 4375; 2 pages)

H.R. 4778/P.L. 103–429
To codify without substantive change recent laws related to transportation and to improve the United States Code. (Oct. 31, 1994; 108 Stat. 4377; 16 pages)

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To designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks, to establish the Mojave National Preserve, and for other purposes. (Oct. 31, 1994; 108 Stat. 4471; 55 pages)

S. 1146/P.L. 103–434
To provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes. (Oct. 31, 1994; 108 Stat. 4526; 40 pages)

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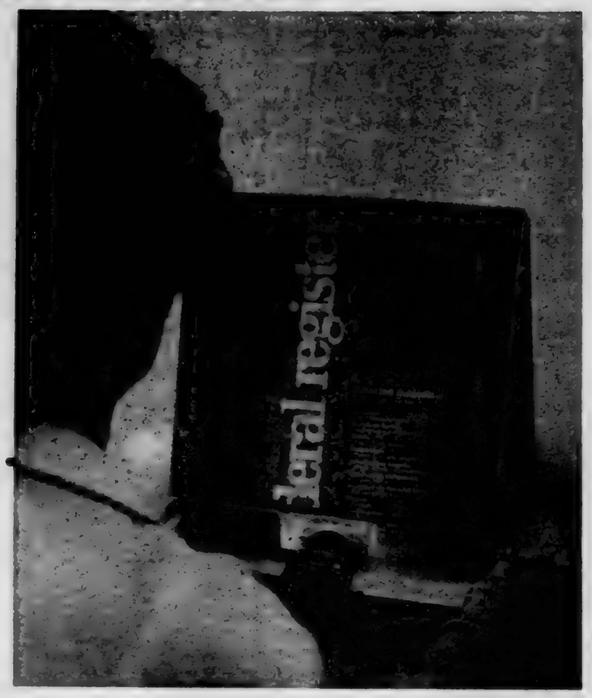
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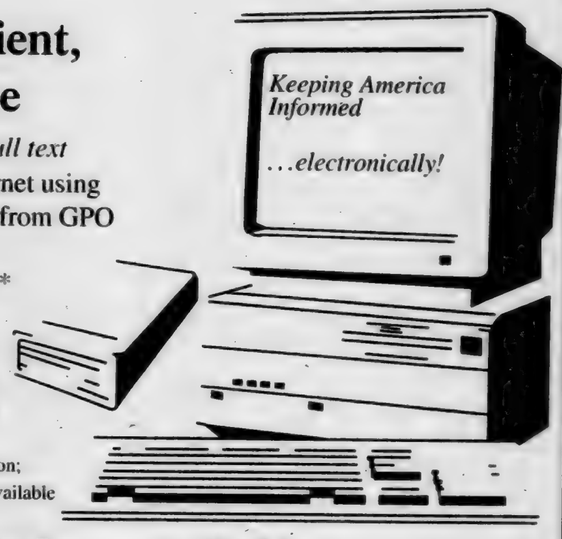
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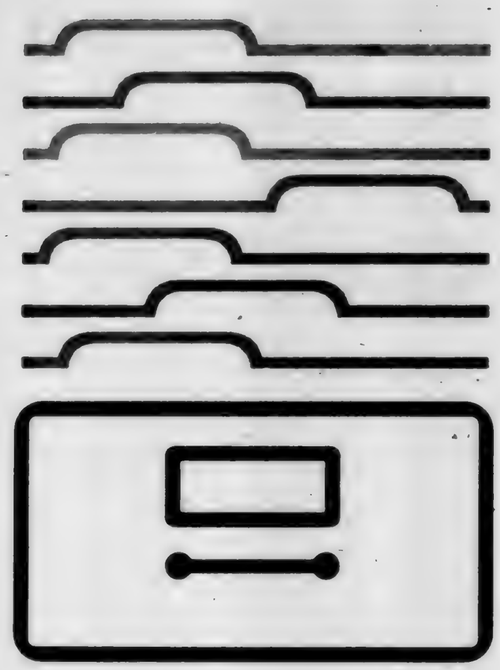
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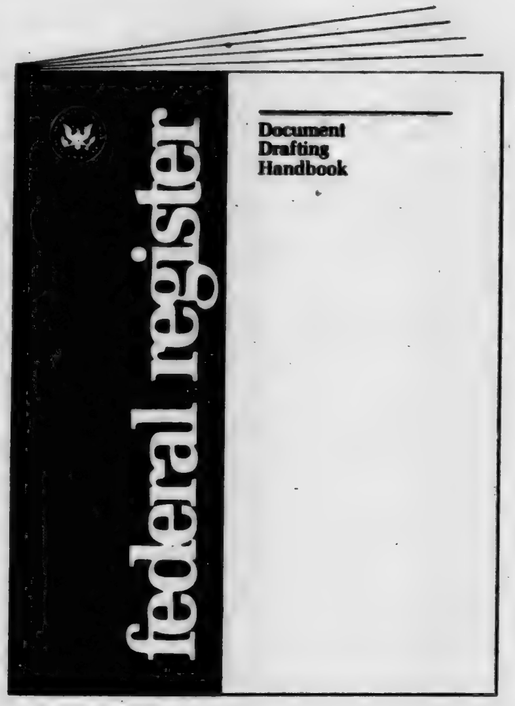
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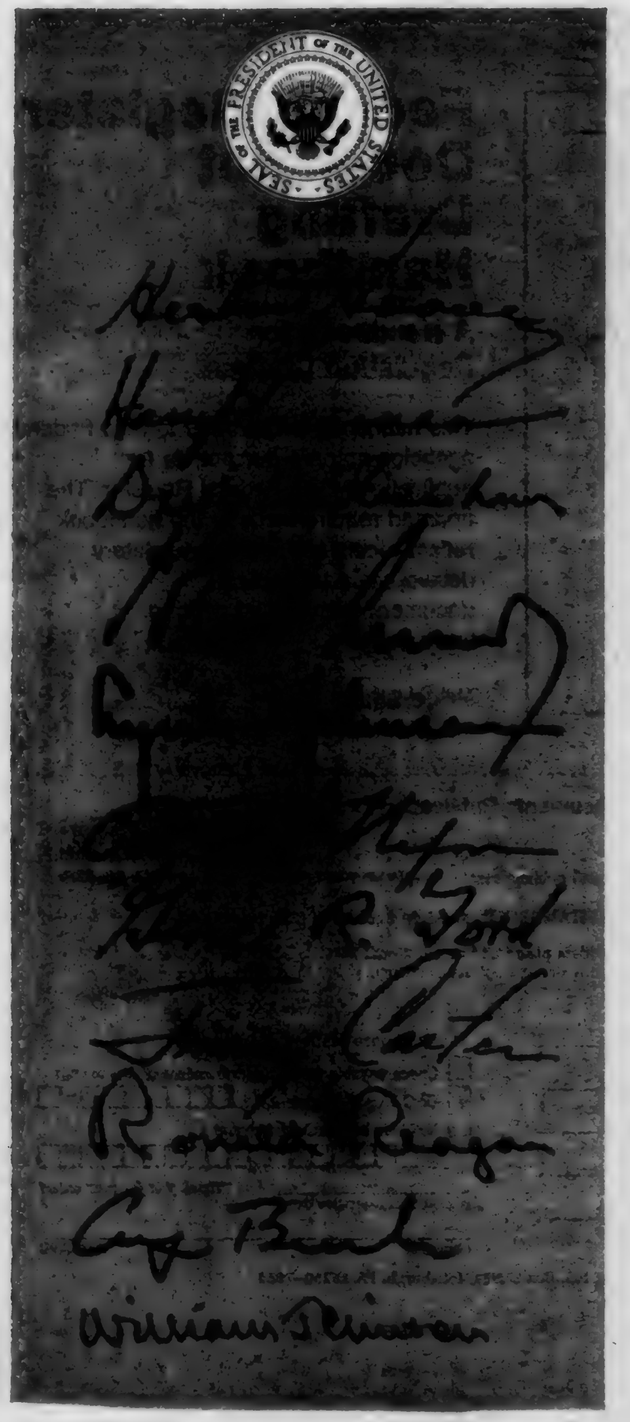
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV94-955-2FIR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: September 16, 1994, through September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994–95 fiscal period, which began September 16, 1994, and ends September 15, 1995. This final rule will not preempt any State or local law, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 14, 1994, and unanimously recommended a 1994–95 budget of $332,000, $69,050 more than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Travel & auto expenses, $6,000 ($4,000), liability insurance and bonds, $1,000 ($500), professional fees, $2,500 ($2,000), office supplies, $3,000 ($1,300), telephone, $4,000 ($3,500), Committee member expense, $1,000 ($500), contract management, wages, and salaries, $60,000 ($59,600), miscellaneous general and administrative, $1,000 ($500), research, $80,000 ($78,500), marketing, $132,000 ($82,500), and $4,250 for FICA employer, $13,500 for employee benefits, and $8,000 for contract outside labor, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Equipment purchases, $3,000 ($4,500), office overhead, $3,000 ($12,900), and $150 in interest, and

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$250 for petty cash, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 2,867,500 50-pound bags or equivalents of Vidalia onions, would yield $286,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional $5,000 in assessment income. This, along with $5,250 in interest income and $35,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of $167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on September 1, 1994 (59 FR 45188). That interim final rule added § 955.207 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 3, 1994. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on September 16, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Accordingly, the interim final rule amending 7 CFR part 955 which was published at 59 FR 45188 on September 1, 1994, is adopted as a final rule without change.

Dated: October 28, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27232; Filed 11–2–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV94–966–2IFR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 966 for the 1994–95 fiscal period. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1994, through July 31, 1995. Comments received by December 5, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1994–95 fiscal period, which began August 1, 1994, and ends July 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small orientation and compatibility.

There are approximately 250 producers of Florida tomatoes under this marketing order, and approximately 50 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 8, 1994, and unanimously recommended a 1994–95 budget of $2,215,000, $467,000 less than the previous year. Budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Office salaries, $297,300 ($276,000), depreciation, $18,200 ($16,200), communications, $12,000 ($10,000), employee's retirement program, $46,600 ($37,300), insurance and bonds, $7,000 ($5,000), office rent, $24,700 ($22,600), social security tax, $20,000 ($19,000), supplies and printing, $7,500 ($6,500), and audit, $2,500 ($2,300). Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Research expense, $192,100 ($200,000), and education and promotion expense, $1,500,000 ($2,000,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 55,000,000 25-pound containers, will yield $2,200,000 in assessment income. This, along with $15,000 in interest and other income, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and it is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 966.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 966.232 Expenses and assessment rate.

Expenses of $2,215,000 by the Florida Tomato Committee are authorized, and an assessment rate of $0.04 per 25-pound container of Florida tomatoes is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: October 28, 1994.

Larry B. Lace,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27233 Filed 11–2–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–067–2]

RIN 0579–AA50

Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to allow certain dry-cured pork products processed in a specified manner to be imported into the United States from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists. We are making this change because we have determined that certain dry-cured pork products, if processed in accordance with the regulatory requirements, can be imported into the United States without presenting a significant risk of introducing these specified diseases.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

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SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (the regulations) regulate, among other things, the importation into the United States of pork and pork products in order to prevent the introduction into the United States of foot-and-mouth disease (FMD), rinderpest, African swine fever (ASF), hog cholera (HC), and swine vesicular disease (SVD).

On April 18, 1994, we published in the **Federal Register** (59 FR 17999–18003, Docket No. 92–067–1) a proposal to amend the regulations by allowing the importation into the United States of certain dry-cured pork products that have been processed in accordance with procedures used in Spain to manufacture products known as Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins.

Comments on the Proposed Rule

We solicited comments concerning our proposal for a 60-day comment period ending June 14, 1994. We received four comments by that date. They were from the Department of Agriculture, Fisheries, and Nutrition of the Kingdom of Spain, a Spanish meat exporters association, and two organizations representing U.S. meat industries. We carefully considered all the comments we received. These comments are discussed below in detail.

In response to the comments, APHIS is making several changes to the proposed requirements.

Comment: The proposal would have amended various paragraphs of § 94.17 by adding the term "dry-cured" before "ham" or "hams." The term "dry cured" was incorrectly added in several places where the hams referred to would not yet have finished the curing process. The term "dry cured" should not be added before "ham" or "hams" in § 94.17, paragraphs (a) through (g).

Response: We agree, and are making the suggested change.

Comment: In the current regulations, § 94.17(a) requires that hams subject to the regulations must come from "a swine that was never out of the country in which the ham was processed." Because the proposal did not propose to amend this country of origin requirement, only hams, pork shoulders, and pork loins that originated in the country in which they were processed would be eligible to be imported under the proposed regulations. For example, products processed in accordance with the regulations in Spain could not be imported if they were derived from swine from other countries. However, the proposed processing would render the articles safe to import regardless of the country in which the swine originated. Paragraph (a) of § 94.17 should be amended to allow hams, pork shoulders, and pork loins derived from swine from any country to be eligible for importation, if the products are processed in accordance with the regulations.

Response: We agree that it is not necessary to limit the regulations to hams, pork shoulders, and pork loins that originate in the country where they are processed, as long as all the processing requirements are met. We are amending § 94.17(a) to eliminate the origin requirement for the articles. However, since processing facilities may frequently change suppliers, eliminating the origin requirement could result in the mixing at processing facilities of meat products originating from countries where SVD exists and meat products from countries free of SVD. Because of this, we are also amending proposed paragraphs (o)(2) (ii) and (iii) of § 94.17 to ensure that Serrano and Iberian hams processed under the regulations are processed for 560 days, the period necessary to destroy the SVD agent in Serrano and Iberian hams, if the hams are processed either in a country where SVD exists, or in a facility that may also process meat from countries where SVD exists (i.e., any facility other than one authorized by the veterinary services of the national government to process only meat from countries free of swine vesicular disease). This additional processing time only applies to Serrano and Iberian hams, not to Italian-type hams, Iberian pork shoulders, and Iberian pork loins, because the processing time already required for these latter products is sufficient to destroy the SVD agent.

Comment: The proposed requirements for importing hams, pork shoulders, and pork loins include a step where they are frozen to −40 °C and kept frozen at −18 °C for at least 30 days (§ 94.17, paragraphs (i)(2)(i), (i)(3)(i), (i)(4)(i), and (i)(5)(i)). In reviewing the research by the Foreign Animal Diseases Diagnostic Laboratory on which the proposal was based, it does not appear that this freezing step is necessary to eliminate disease risk. The freezing requirements should be removed, and the requirements describing how frozen hams, pork shoulders, and pork loins should be thawed should be reworded to make it clear that freezing is optional, not required.

Response: We agree, and are deleting the paragraphs cited above that contain the freezing requirement and are rephrasing the thawing requirements to indicate that they only apply if the hams, pork shoulders, or pork loins are received frozen. The freezing requirement was inadvertently included in the proposal because certain test hams were kept frozen at these temperatures, but the research did not indicate that freezing reduces disease risk for the products.

Comment: The relative humidity proposed for Serrano hams during the salt curing or pickling phase is 75 to 85 percent (proposed § 94.17(i)(2)(iii)); the range proposed for Iberian hams is 70 to 80 percent (proposed § 94.17(i)(3)(iii)); for Iberian pork shoulders, it is 75 to 95 percent (proposed § 94.17(i)(4)(iii)), and for Iberian pork loins, it is 75 to 85 percent (proposed § 94.17(i)(5)(iii)). The research [1] on which the proposal was based suggests that a range of 75 to 95 percent is appropriate for all four products.

Response: We agree. We are changing the processing requirements for all four products to require a range of 75 to 95 percent relative humidity during the salt curing or pickling stage. Because of the renumbering of paragraphs necessary due to our deletion of the freezing requirement (discussed above), the humidity requirements for the salt curing or pickling stage now appear in § 94.17(i)(2)(ii), (i)(3)(ii), (i)(4)(ii), and (i)(5)(ii). The humidity requirements for stages of processing other than the salt curing or pickling stage have not been changed from what was proposed.

Comment: In proposed § 94.17(j)(2), the requirement that each ham or pork shoulder bear a plastic tag stating the date the ham or pork shoulder entered the processing establishment is unnecessary. The same paragraph requires that the products bear an ink seal containing the date that salting began.

Response: We agree, and are deleting the requirement for the plastic tag. The ink seal records the date (day, month, and year) that salting begins, and this date is more useful for determining whether products have been properly cured than the less specific date requirement proposed for the plastic tag (the month and year that the ham or pork shoulder entered the processing establishment).

Comment: Proposed § 94.17(j)(3) would require that pork loins have packaging material that remains intact throughout processing and bears the identifying number of the processing establishment. This is not possible, since the packaging material must be removed when the pork loin is placed in the pickle preparation. The processing establishment number should instead be recorded on the plastic tag also required by this paragraph, which can remain on the product throughout processing.

Response: We agree, and are making the requested change.

Comment: Proposed § 94.17(m) (3), (4), and (5) would require that Iberian hams, pork shoulders, and pork loins would have to come from a swine of the Iberico breed of black pigs. The word "black" should be deleted, as Iberico breeds include pigs of several skin colors, all of which are equally suitable for processing under the regulations. The color of the skin of the Iberico breed does not alter the way in which viruses present in the meat respond to processing.

Response: We agree, and are making the suggested change.

Comment: No assurance has been given that the proposed requirements for the controlled curing and long-term drying of these products will in fact be followed. A failure to follow the proposed procedures could significantly increase the risk of introducing foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease into the United States.

Response: We believe that a number of controls exist to ensure that the regulatory requirements will be followed. The Spanish Ministry of Agriculture exercises supervision over all animal importation and meat processing in Spain, and will cooperate in enforcing the requirements. In addition, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and Food Safety and Inspection Service inspect establishments participating in this program and review their records. The official ink seals required on these products by the regulations provide a reliable check for some of the most important requirements—ensuring that the products come from an approved establishment and were processed for the required time period.

Comment: These products should not be imported until a procedure is available to test the products at the time of importation for freedom from the disease agents of concern.

Response: Such a test is not now available; currently, identifying the disease agents of concern requires extensive laboratory analysis. We do not expect early development of a practical test that could be used at the time of importation. We have instead developed procedures, based on research, that have proven effective in eliminating the disease agents, and have implemented regulatory controls to ensure that the procedures are followed. We do not believe that it is necessary to prohibit the proposed importations until a test is available.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed above.

[1] Copies of the research may be obtained from the office identified in the "For Further Information Contact:" section of this final rule.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

The Animal and Plant Health Inspection Service (APHIS) estimates that, under these regulations, between 5 and 15 metric tons of dry-cured hams, pork shoulders, and pork loins will be imported into the United States during the first year that importation is allowed. Products imported in accordance with the regulations will have an approximate retail value between $352,500 and $1,057,500. In Spain, these products sell for approximately $32 per pound. We anticipate the price per pound in the United States will be higher.

Over the next decade, we estimate annual imports will plateau as United States markets for the products are developed. These products are all high-value products, and not likely to be purchased for home consumption. Instead, we anticipate most of these products will be purchased for resale by delicatessens, restaurants, and caterers. Within the next 20 years, APHIS estimates that the retail value of imported dry-cured pork products described in this document will average between $33 and $66.1 million (50–100 metric tons) annually. This can be compared with the dry-cured pork products, all of which are hams, currently being imported into the United States. In 1990, approximately 429 metric tons of these hams were imported. These dry-cured hams retail in the United States for approximately $16 per pound.

Dry-cured pork products exactly like those allowed to be imported into the United States under the regulations are not produced in the United States. Certain dry-cured pork products produced in Virginia do resemble, in appearance, the products the final rule allows to be imported. However, the Virginia products have a significantly higher salt concentration and a significantly different taste.

Genuine Virginia dry-cured hams are produced by four producers in Smithfield, VA. Two of these producers are small entities. Wholesale production statistics and prices are not available due to propriety concerns. However, genuine Virginia dry-cured hams retail for approximately $4 per pound.

Based on these facts, we anticipate that competition between United States-produced dry-cured pork products and the proposed imported dry-cured pork products will be insignificant.

In 1990, the United States produced 9,652,933 metric tons of pork and pork products, valued at about $11.3 billion. Additionally, the United States imported about 232,253 metric tons of pork. Imports accounted for about 2 percent of the pork available in the domestic market during 1990. Figures for 1990 indicate that approximately 429 metric tons of dry-cured pork products were imported under the current regulations. This compares with 349,119 metric tons of all pork products imported during 1990, or 0.0012 percent. Potential imports of dry-cured pork products would therefore account for less than 1 percent of total annual pork imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with it; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

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PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 94.17 is amended as follows:

a. The heading is revised to read as set forth below.

b. The introductory text is amended by adding "dry-cured" before "ham" and by adding ", pork shoulder, or pork loin" after "ham".

c. Paragraph (a) is revised to read as set forth below.

d. Paragraphs (b), (c), (d), (e), (f), (g), (k), (l), and (n) are amended by adding ", pork shoulder, or pork loin" after "ham" each time it appears.

e. Paragraphs (f) and (g) are amended by adding ", pork shoulders, or pork loins" after "hams" each time it appears.

f. Paragraphs (k), (l), and (n) are amended by adding "dry-cured" before "ham" each time it appears.

g. Paragraph (h) is revised to read as set forth below.

h. Paragraph (i) is redesignated as paragraph (i)(1); redesignated paragraph (i)(1) is amended by adding, at the beginning of the paragraph, before the word "The", the heading "Italian-type hams.", and at the end of the paragraph, by removing the clause "; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was treated to at least 76 °C. (168.8 °F.) that may have been placed over the ham during curing;" and adding a period after the word "reached".

i. A new paragraph (i) introductory text and paragraphs (i)(2), (i)(3), (i)(4), and (i)(5) are added to read as set forth below.

j. Paragraph (j) is redesignated as paragraph (j)(1), and redesignated paragraph (j)(1) is amended by adding, at the beginning of the paragraph after the words "The ham", the phrase ", if it is Italian-type ham processed in accordance with paragraph (i)(1) of this section,".

k. New paragraphs (j)(2) and (j)(3) are added to read as set forth below.

l. Paragraph (m) is redesignated as paragraph (m)(1), and redesignated paragraph (m)(1) is amended by adding, at the beginning of the paragraph, after the words "The ham", the phrase ", if it is an Italian-type ham processed in accordance with paragraph (i)(1) of this section,".

m. A new paragraph (m) introductory text and paragraphs (m)(2), (m)(3), (m)(4), and (m)(5) are added to read as set forth below.

n. Paragraph (o) is revised to read as set forth below.

§ 94.17 Dry-cured pork products from countries where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists.

* * * * *

(a) Except for Italian-type hams, Serrano hams, Iberian hams, Iberian pork shoulders, and Iberian pork loins that have been processed in accordance with paragraph (j) of this subpart, the dry-cured ham, pork shoulder, or pork loin came from a swine that was never out of the country in which the dry-cured ham, pork shoulder, or pork loin was processed;

* * * * *

(h) Workers who handle fresh pork in the processing establishment where the dry-cured ham, pork shoulder, or pork loin was processed are required to shower and put on a full set of clean clothes, or to wait 24 hours after handling fresh pork, before handling hams, pork shoulders, or pork loins that have progressed in the aging/curing process as follows:

(1) In the case of Italian-type hams processed in accordance with paragraph (i)(1) of this section, those that have progressed beyond the final wash stage;

(2) In the case of Serrano hams or Iberian hams or pork shoulders processed in accordance with paragraphs (i)(2), (i)(3), or (i)(4) of this section, those that have progressed beyond salting; and

(3) In the case of Iberian pork loins processed in accordance with paragraph (i)(5) of this section, those that have progressed beyond being placed in a casing.

(i) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with this paragraph. Except for pork fat treated to at least 76 °C (168.8 °F), which may have been placed over the meat during curing, the dry-cured pork product must have had no contact with any other meat or animal product during processing.

(1) * * *

(2) *Serrano hams.* Serrano hams were processed as follows (190-day minimum curing process):

(i) If the ham is received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 12 °C to 13 °C (53.6 °F to 55.4 °F) for the first 24 hours, then at 13 °C to 14 °C (55.4 °F to 57.2 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 75 and 95 percent, for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham.

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with a relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days;

(v) The ham was placed for curing in a chamber with a relative humidity of 60 to 80 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F), maintained for a minimum of 45 days;

(B) A temperature of 16 °C to 24 °C (60.8 °F to 75.2 °F), maintained for a minimum of 35 days;

(C) A temperature of 24 °C to 34 °C (75.2 °F to 93.2 °F), maintained for a minimum of 30 days;

(vi) Finally, with the relative humidity unchanged at 60 to 80 percent, the temperature was lowered to 12 °C to 20 °C (53.6 °F to 68 °F) and maintained at that level for a minimum of 35 days, until at least 190 days after the start of the curing process; *Except that:* In a country where swine vesicular disease exists, the ham must be maintained at that level an additional 370 days, until at least 560 days after the start of the curing process.

(3) *Iberian hams.* Iberian hams were processed as follows (365-day minimum curing process):

(i) If the ham is received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 5.5 °C to 6.5 °C (41.9 °F to 43.7 °F) for the first 24 hours, then at 9.5 °C to 10.5 °C (49.1 °F to 50.9 °F) until the internal temperature of the ham reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 °C to 4 °C (32 °F to 39.2 °F), with relative humidity between 75 and 95 percent, and kept in the chamber for a period no less than 0.65 days per kg and no more than 2 days per kg of the weight of the ham;

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F), with relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days.

(v) The ham was placed for curing in a chamber with a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity reduced to 55 to 85 percent, for a minimum of 90 days.

(vii) Finally, with the relative humidity raised to 60 to 90 percent, the temperature was lowered to 12 °C to 22 °C (53.6 °F to 71.6 °F) and maintained at that level for a minimum of 115 days, until at least 365 days after the start of the curing process; *Except that:* In a country where swine vesicular disease exists, the ham must be maintained at that level an additional 195 days, until at least 560 days after the start of the curing process.

(4) *Iberian pork shoulders.* Iberian pork shoulders were processed as follows (240-day minimum curing process):

(i) If the pork shoulder is received frozen, it was thawed at a room temperature of 12 °C to 13 °C (53.6 °F to 55.4 °F), with the relative humidity between 75 and 85 percent, for approximately 24 hours, until the internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the blood vessels in the scapular region were massaged to remove any remaining blood.

(ii) The pork shoulder was covered in salt and placed in a chamber maintained at a temperature of 0 °C to 4 °C (32 °F to 39.2 °F) with the relative humidity between 75 and 95 percent, for a period of no less than 0.65 days per kg and no more than 2 days per kg of the weight of the pork shoulder.

(iii) The pork shoulder was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The pork shoulder was placed in a chamber maintained at a temperature of 0 °C to 6 °C (32 °F to 42.8 °F) and a relative humidity of 70 to 95 percent for not less than 40 days and not more than 60 days.

(v) The pork shoulder was placed for curing in a chamber at a temperature of 6 °C to 16 °C (42.8 °F to 60.8 °F) and a relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 °C to 26 °C (60.8 °F to 78.8 °F) and the relative humidity was changed to 55 to 85 percent, and those levels were maintained for a minimum of 90 days.

(vii) Finally, the temperature was reduced to 12 °C to 22 °C (53.6 °F to 71.6 °F) and the relative humidity was raised to 60 to 90 percent for a minimum of 45 days, until at least 240 days after the start of the curing process.

(5) *Iberian pork loins.* Iberian pork loins were processed as follows (130-day minimum curing process):

(i) If the pork loin is received frozen, it was thawed at a room temperature maintained at 11 °C to 12 °C (51.8 °F to 53.6 °F), with the relative humidity between 70 and 80 per cent for the first 24 hours, then between 75 and 85 percent, until the loin's internal temperature reached 3 °C to 4 °C (37.4 °F to 39.2 °F), at which point the external fat, aponeurosis, and tendons were cleaned from the loin.

(ii) The pork loin was covered in a pickle preparation (25–30 grams of salt for each kilogram of pork loin) and placed in a chamber where it was maintained at a relative humidity of 75 to 95 percent and a temperature of 3 °C to 4 °C (37.4 °F to 39.2 °F) for 72 hours.

(iii) The pork loin was removed from the pickle preparation (25–30 grams of salt for each kilogram of pork loin), externally cleaned (brushed or rinsed), placed in an artificial casing, and fastened shut with a metal clip.

(iv) The pork loin was placed for curing in a chamber with a relative humidity of 60 to 90 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 2 °C to 6 °C (35.6 °F to 42.8 °F), maintained for a minimum of 20 days;

(B) A temperature of 6 °C to 15 °C (42.8 °F to 59.0 °F), maintained for a minimum of 20 days;

(C) A temperature of 15 °C to 25 °C (59.0 °F to 77.0 °F), maintained for a minimum of 40 days;

(v) Finally, with the relative humidity unchanged at 60 to 80 percent and the temperature lowered to 0 °C to 5 °C (32.0 °F to 41.0 °F), the pork loin was vacuum-packed and maintained under those conditions for a minimum of 15 days, until at least 130 days after the start of the curing process.

(j)(1) * * *

(2) The dry-cured ham, if it is processed in accordance with paragraphs (i)(2) or (i)(3) of this section, or the dry-cured pork shoulder, if it is processed in accordance with paragraph (i)(4) of this section, bears an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and an ink seal (with the identifying number of the processing establishment and the date the salting began) which was placed thereon at the processing establishment, immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin; or

(3) The dry-cured pork loin, if it is processed in accordance with paragraph (i)(5) of this section, is packaged with material that bears a seal of the government of the country of origin which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and bears a tamper-proof plastic tag, securely attached to the pork loin itself, that states the identifying number of the slaughtering establishment and the date the pork loin was placed in the pickle preparation under the supervision of a person authorized to supervise such activity by the veterinary service of the national government of the country of origin.

* * * * *

(m) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with one of the following criteria:

(1) * * *

(2) The Serrano ham, processed in accordance with paragraph (i)(2) of this section, and came from any breed of large, white swine, including but not limited to Landrace, Pietrain, Duroc, Jersey, Hampshire, and Yorkshire breeds, and crosses of such breeds;

(3) The Iberian ham, processed in accordance with paragraph (i)(3) of this section, and came from a swine of the Iberico breed of pigs;

(4) The Iberian pork shoulder, processed in accordance with paragraph (i)(4) of this section, and came from a swine of the Iberico breed of pigs;

(5) The Iberian pork loin, if processed in accordance with paragraph (i)(5) of this section, and came from a swine of the Iberico breed of pigs.

* * * * *

(o) The dry-cured ham, pork shoulder or pork loin is accompanied at the time of importation into the United States by

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a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating:

(1) That all the provisions of this section have been complied with, including paragraphs (i) and (m) of this section;

(2) The paragraph of this section under which the dry-cured ham, pork shoulder, or pork loin was processed; and stating further that, if the product covered by the certificate:

(i) Is an Italian-type ham processed under paragraph (i)(1) of this section, it was processed for a minimum of 400 days;

(ii) Is a Serrano ham processed under paragraph (i)(2) of this section, it was:

(A) Processed for a minimum of 190 days in a country free of swine vesicular disease, in a facility authorized by the veterinary services of the national government of that country to process only meat from countries free of swine vesicular disease; or,

(B) Processed for a minimum of 560 days in any country, in a facility that may also process meat from countries where swine vesicular disease exists;

(iii) Is an Iberian ham processed under paragraph (i)(3) of this section, it was:

(A) Processed for a minimum of 365 days in a country free of swine vesicular disease, in a facility authorized by the veterinary services of the national government of that country to process only meat from countries free of swine vesicular disease; or,

(B) Processed for a minimum of 560 days in any country, in a facility that may also process meat from countries where swine vesicular disease exists;

(iv) Is a dry-cured pork shoulder, it was processed in accordance with paragraph (i)(4) of this section for a minimum of 240 days; or

(v) Is a dry-cured pork loin, it was processed in accordance with paragraph (i)(5) of this section for a minimum of 130 days.

Done in Washington, DC, this 27th day of October 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-27274; Filed 11-2-94; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R-0793]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) amends its Regulation K concerning the permissible activities of state-licensed branches and agencies of foreign banks. Section 202(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA or Act) provides that after December 19, 1992, a state-licensed branch or agency of a foreign bank may not engage in any activity that is not permissible for a federal branch of a foreign bank unless the Board has determined that the activity is consistent with sound banking practice, and in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC) has determined that the activity would pose no significant risk to the affected deposit insurance fund. This amendment to Regulation K sets forth the application procedures which state-licensed branches and agencies of foreign banks will be required to follow in order to request the Board's permission to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank and the requirements of divestiture and cessation plans. Insured branches are also required to seek the approval of the FDIC to engage in or to continue to engage in such an activity. The final rule also amends Regulation K to clarify that no application will be required in connection with the conversion by a foreign bank of its federally-licensed branch or agency into a state-licensed branch or agency.

EFFECTIVE DATE: This regulation is effective on January 1, 1995, except for § 211.21(e) which is effective December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452-3786), Ann E. Misback, Managing Senior Counsel (202/452-3788), John W. Rogers, Attorney (202/452-2798); Michael G. Martinson, Assistant Director (202/452-3640), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf [TDD], Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 202 of the Act amended section 7 of the International Banking Act (IBA) by adding several new subsections concerning the establishment and termination of foreign bank branches in the United States. New subsection 7(h) of the IBA provides that:

(1) IN GENERAL.— After the end of the 1-year period beginning on the date of enactment of the [Act] a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

(A) the [Federal Reserve] Board has determined that such activity is consistent with sound banking practice; and

(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

12 U.S.C. 3105(h)(1).

In order to implement this provision, the Board issued a proposed rule on January 6, 1993, with a request for public comment. (58 FR 513). In taking this action, the Board stated that it would consider revisions to the proposed rule as appropriate and on the basis of the comments received. The comment period ended on March 5, 1993. The Board indicated that it would accept and process applications under the statute during the pendency of the rulemaking. No applications have been received.

The proposed rule required a foreign bank operating a state-licensed branch or agency in the United States, which desires to engage in or continue to engage in an activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Office of the Comptroller of the Currency (OCC), to file an application in letter form to the Board for permission to conduct or to continue to conduct such activity. The proposed regulation set forth the required contents of the application and a procedure for divestiture or cessation of impermissible activities not approved by the Board.

The Board specifically requested comment on several items, including the contents of the application, whether prior notice rather than an application might be appropriate for certain classes of activities, and whether the conduct of activities permitted by the OCC pursuant to informal rather than formal interpretation, opinion or advice should require the filing of an application.

In addition, the Board requested comment on another provision of Regulation K which requires that a foreign bank wishing to convert from a federal branch or agency license to a state branch or agency license file for approval to do so with the Board.

The Board received four public comments on the regulation. Comments were submitted by a state banking supervisor, an association of state banking supervisors, a trade association and a law firm. The commenters generally were supportive of the approach taken in the proposed rule. The comments focused on whether an activity-based approach rather than a bank-based approach would be preferable, whether the conduct of activities permitted by the OCC pursuant to informal rather than formal interpretation, opinion or advice should require an application and whether an application would be required to conduct an activity that the OCC permitted but only subject to quantitative restrictions. The commenters uniformly stated that no application should be required to convert from a federal branch or agency license to a state branch or agency license.

On March 2, 1993, the FDIC issued its own proposed regulation implementing section 7(h) of the IBA. See 58 FR 11992. The Board has consulted with the FDIC concerning the response to its proposed rule. Both the Board and the FDIC have attempted to make their final rules as consistent with one another as possible and thereby to reduce the burden that might be imposed on applicants. A description of the final rule and an analysis of the relevant comments follows.

Determining if an Activity is Permissible for a Federal Branch

The commenters generally stated that no application should be required from a state-licensed branch or agency for the conduct of an activity that is permitted for a federal branch pursuant to interpretation, opinion or advice issued in writing by the OCC or its staff, as well as by statute, regulation official bulletin, circular or order. The commenters argued that a stricter requirement would result in a competitive disadvantage to state licensed offices and thereby would be inconsistent with the intent of the statute. The Board agrees with that argument. Accordingly, the conduct of activities permitted for a federal branch pursuant to interpretation, opinion or advice issued in writing by the OCC or its staff would not require an application, so long as such interpretation, opinion or advice is still considered valid, *i.e.*, it has not been overruled by the OCC or found invalid by a court of competent jurisdiction. In addition, because national banks and federal branches may rely on a written opinion of counsel that an activity is permissible under the National Bank Act or other applicable statutes, in the Board's view, it would be appropriate to permit state-licensed branches and agencies also to rely on such opinions, provided the opinion of counsel is based on a reasoned analysis of applicable statutes, regulations, official bulletins, circular, orders, or interpretations, opinions or advice of the OCC or its staff. The Board plans to consult with the OCC when questions arise as to the permissibility of any particular activity. Insured branches of foreign banks also should consult with the FDIC as to the permissibility of particular activities.

Bank Approach Versus Activity Approach

The Board's proposed rule took a bank-based approach to implementing the statute; that is, an application was required from each bank wishing to conduct or continue to conduct an activity not permissible for a national bank. The comments suggested that the Board instead take an activity based approach, at least with respect to activities which the commenters believed presented minimal risk. One commenter suggested that the Board entertain applications from industry trade groups with respect to the conduct of such activities.

The Board has determined that a combination of the two approaches is the appropriate way to proceed and has modified the proposed rule accordingly. As described in further detail below, the final rule provides that certain categories of activities are consistent with sound banking practice and that no application should be required to conduct such activities. The fact that the Board's prior consent is not required does not preclude the Board from taking any appropriate action within its authority with respect to such activities if the facts and circumstances warrant such action.

Application Not Required in Certain Instances

The first category of activities exempted from the application requirement are certain activities already determined by the FDIC not to pose a significant risk to the Bank Insurance Fund pursuant to § 362.4(c)(3) of the FDIC's regulations (12 CFR part 362). The Board has determined not to require an application under this part for the conduct of any such activity that the FDIC would permit an insured state bank to conduct directly, provided the activity is permissible for the branch or agency under applicable state law and any other applicable federal law or regulation. The Board believes the conduct of these activities, with proper controls, is consistent with safe and sound banking. As set forth in 12 CFR 362.4(c)(3)(i)–(ii)(A), the exempted activities include guarantee activities and activities found by the Board by regulation or order to be closely related to banking. In addition, the Board has determined to exempt from the application requirement any activity conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state as the branch or agency is licensed. Of course, all activities of the branches and agencies remain subject to examination. If any particular activity is found to be improperly conducted, the Board retains enforcement authority to require conformance to safety and soundness requirements.

Finally, like the proposed rule, the final rule provides that an application under this section normally shall not be required where an activity is permissible to a federal branch but the OCC imposes a quantitative restriction on the conduct of such activity by the federal branch. The commenters were supportive of this exemption. The Board believes appropriate quantitative restrictions can be addressed on a case-by-case basis as part of the ongoing supervisory process.

Contents of Application

Section 211.29(b) of the proposed regulation provided that the application shall be in letter form and shall contain certain information, including among other things, a description of the activity in which the branch or agency desires to engage or in which it is already engaged, the foreign bank's financial condition, the assets and liabilities of the branch or agency, the projected effect of the proposed activity on the financial condition of the foreign bank and the branch or agency, and in the case of an application by a state-licensed insured branch, a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

The commenters suggested that applicants not be required to provide information already available to the Federal Reserve through its general examination and supervisory process. Accordingly, the Board has deleted from the final rule the requirement to provide certain financial information. The Board may request such information in individual cases if the information in its

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possession is either out of date or otherwise deemed insufficient.

The Board and the FDIC have consulted concerning the type of information which each agency will need in order to make an informed judgment and have agreed on a common list of information in order that applicants will need to prepare only one application which, in the case of insured branches, may be submitted to both agencies. It is contemplated that the Board and the FDIC will review such applications simultaneously.

Standards To Be Examined

Section 211.29(d) of the final rule sets forth the standards that the Board will examine in order to determine whether a particular activity is consistent with sound banking practice. These factors are:

- What types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization;
- If the activity poses any such risks, the magnitude of each risk; and
- If a risk is not *de minimis*, the actual or proposed procedures to control and minimize such risk.

Each of these factors shall be evaluated in light of the ability of the foreign bank to provide financial and managerial support to the branch or agency, the performance record of the foreign bank in general and the branch or agency in particular, and the volume of the proposed activity. The Board may also determine that a particular activity, after consideration of the above factors and subject to any conditions or limits imposed by the Board, may be conducted by any other state-licensed branch or agency without further application to the Board.

This section remains unchanged from the proposed rule.

Cessation or Divestiture

In the event that a state branch or agency is required to cease conducting an activity pursuant to the final regulation, § 211.29(f) sets forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the state branch or agency shall submit a written plan of divestiture or cessation within 60 days of (1) being notified by the Board or the FDIC that an application to continue to conduct the activity has been denied, (2) the effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity, and (3) any change in statute, regulation, order or OCC interpretation that renders the activity impermissible. Divestiture or cessation shall be completed within one year, or sooner if the Board so directs. The Board requested comment on whether or not this period of time should be longer or shorter.

No comments were received on this portion of the proposed rule. Accordingly, no substantive changes were made.

Conversion From Federal to State License

As suggested by the commenters, the Board has determined not to require an application under the Foreign Bank Supervision Enhancement Act in connection with the conversion of: (1) a federally-licensed branch to a state licensed-branch; or (2) a federally licensed-agency to a state-licensed agency. Applications are not considered necessary in light of the fact that state-licensed branches and agencies must restrict their activities to those permissible for a federal branch or receive the Board's approval to engage in the activity. Section 24 of Regulation K will be amended accordingly.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and record-keeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for Part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 1843 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. In § 211.21, paragraph (e) is revised to read as follows:

§ 211.21 Definitions.

* * * * *

(e) *Change the status* of an office means convert a representative office into a branch or agency, or an agency into a branch, but does not include renewal of the license of an existing office.

* * * * *

3. In § 211.29, the text is added to read as follows:

§ 211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches.

(a) *Scope.* A state-licensed branch or agency shall file with the Board a prior written application for permission to engage in or continue to engage in any type of activity that:

(1) Is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency; or

(2) Is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction.

(b) *Exceptions.* No application shall be required by a state-licensed branch or agency to conduct any activity that is otherwise permissible under applicable state and federal law or regulation and that:

(1) Has been determined by the FDIC pursuant to 12 CFR 362.4(c)(3)(i)–(c)(3)(ii)(A) not to present a significant risk to the affected deposit insurance fund;

(2) Is permissible for a federally-licensed branch but the OCC imposes a quantitative limitation on the conduct of such activity by the federal branch;

(3) Is conducted as agent rather than as principal, provided that the activity is one that could be conducted by a state-chartered bank headquartered in the same state in which the branch or agency is licensed; or

(4) Any other activity that the Board has determined may be conducted by any state-licensed branch or agency of a foreign bank without further application to the Board.

(c) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the U.S. operations of the foreign bank in general and of the branch or agency in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(4) If the activity is to be conducted by a state-licensed insured branch, a statement by the applicant of whether or not it is in compliance with 12 CFR 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively;

(5) If the activity is to be conducted by a state-licensed insured branch, statements by the applicant:

(i) That it has complied with all requirements of the Federal Deposit Insurance Corporation concerning an application to conduct the activity and the status of the application, including a copy of the FDIC's disposition of such application, if available; and

(ii) Explaining why the activity will pose no significant risk to the deposit insurance fund; and

(6) Any other information that the Reserve Bank deems appropriate.

(d) *Factors considered in determination.* (1) The Board shall consider the following factors in determining whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the U.S. operations of the foreign banking organization in general and the branch or agency in particular;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize the risk.

(2) Each of the factors set forth in paragraph (d)(1) of this section, shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(e) *Application procedures.* Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(f) *Divestiture or cessation.* (1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or, if applicable, the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1), of this section within 60 days of January 1, 1995 or of such change or decision.

By order of the Board of Governors of the Federal Reserve System, October 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27121 Filed 11–2–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 27297; Amendment No. 71–25]

Amendment to the South Florida Low Offshore Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: This action amends the description of the South Florida Low airspace area to exclude the airspace within the Grand Bahama terminal control area (TCA) and the Nassau TCA. At the present time, the South Florida Low airspace area is correctly depicted on aeronautical charts as excluding the airspace of the underlying Grand Bahama and Nassau TCAs. However, the current airspace description of this airspace area is erroneous in that it inadvertently includes the Grand Bahamas and the Nassau TCAs as part of the South Florida Low airspace area. This action corrects this error.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Reginald C. Matthews, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–6783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993 (58 FR 12128), amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas. The offshore areas were divided into high and low areas and an effort was made to establish a uniform floor of controlled airspace for certain air traffic operations. Through that rule, the South Florida control area was revised and redesignated as the South Florida Low offshore airspace area. The rule also extended the airspace of the South Florida Low airspace area from 2,700 feet mean sea level (MSL) up to, but not including, 18,000 feet MSL.

The lateral boundaries of the South Florida Low were further revised, by amendment (58 FR 33907; June 22, 1993), to extend from latitude 28°00'00" North to latitude 34°00'00" North. However, both amendments to the South Florida Low airspace area inadvertently included the underlying airspace within the Grand Bahama TCA and the Nassau TCA, both of which have airspace segments extending above 2,700 feet MSL. The South Florida Low is correctly depicted on aeronautical charts as excluding the airspace of the underlying TCAs. However, the airspace description does not reflect this exclusion as was intended.

The Amendment

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the airspace description of the South Florida Low airspace area by excluding the Grand Bahama TCA and the Nassau TCA.

The FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6007—Offshore Airspace Areas

* * * * *

South Florida Low, FL [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00'00"N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santo Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR; excluding the Grand Bahama TCA and the Nassau TCA.

* * * * *

Issued in Washington, DC, on October 28, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–27286 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 94–ASW–12]

Change Time of Designation for Restricted Areas R–5103A, B, C, and D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM. The U.S. Army has determined that the present published time of designation for the restricted areas does not accurately reflect their actual times of use. This action lessens the burden on the public by amending the published time of designation to reflect limited weekend activity in these areas by the military.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations amends the time of designation for Restricted Areas R–5103A, B, C, and D, McGregor, NM, from "0700–2000 local time; other times by NOTAM" to "0700–2000 local time Monday-Friday; other times by NOTAM." Following a review of its special use airspace the U.S. Army, Fort Bliss, TX, determined that it has a continuing requirement for the restricted areas; however, the current published time of designation does not accurately reflect the time the airspace is required for military use. This action amends the published time of the restricted areas but does not change the existing boundaries or the types of activities currently conducted within R–5103A, B, C, or D. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. § 73.51 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the time of designation of the restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73' continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.51 [Amended]

2. Section 73.51 is amended as follows:

R–5103A McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103B McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103C McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

R–5103D McGregor, NM—[Amended]

By removing the current "Time of designation. 0700–2000 local time; other times by NOTAM." and substituting the following: "Time of designation. 0700–2000 local time, Monday-Friday, other times by NOTAM."

Issued in Washington, DC, on October 25, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–27289 Filed 11–2–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement

Issued: October 26, 1994.

AGENCY: Department of Energy, Federal Energy Regulatory Commission.

ACTION: Final rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this policy statement to announce a general policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act.

The new policy is designed to allow much greater transmission pricing flexibility than was allowed under previous Commission policies.

EFFECTIVE DATE: This policy statement is effective as of October 26, 1994.

FOR FURTHER INFORMATION CONTACT:

James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143 (legal issues)

Stephen J. Henderson, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0100 (technical issues)

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.E–1

Policy Statement

Issued: October 26, 1994.

The Federal Energy Regulatory Commission (Commission) announces a new policy regarding the pricing of transmission services provided by public utilities and transmitting utilities under the Federal Power Act (FPA).[1] The new policy is designed to allow much greater transmission pricing flexibility than was allowed under previous Commission policies.

Greater pricing flexibility is appropriate in light of the significant competitive changes occurring in wholesale generation markets, and in light of our expanded wheeling authority under the Energy Policy Act of 1992 (EPAct).[2] These recent events underscore the importance of ensuring that our transmission pricing policies promote economic efficiency, fairly compensate utilities for providing transmission services, reflect a reasonable allocation of transmission costs among transmission users, and maintain the reliability of the transmission grid. The Commission also recognizes that advances in computer modeling techniques have made possible certain transmission pricing methods that once would have been impractical.

Based on the record developed in this proceeding, the Commission concludes that there appears to be a variety of workable, non-traditional transmission pricing methods that offer potential improvements in fairness, practicality and economic efficiency. For instance, the Commission believes that distance-sensitive rates using contract path or flow-based methods will be acceptable if properly supported.

Accordingly, the Commission will permit more flexibility to utilities to file innovative pricing proposals that meet the traditional revenue requirement and will allow such proposals to become effective 60 days after filing,[3] as long as they satisfy certain pricing principles discussed below. We refer to this category of proposals as conforming proposals. We will also permit utilities to file pricing proposals that deviate from the traditional revenue requirement, as long as they meet certain requirements discussed below. We refer to these filings as non-conforming proposals. Non-conforming proposals will be permitted to go into effect only prospectively from the date the Commission determines that such a pricing proposal meets the statutory requirements of the FPA, *i.e.*, is just and reasonable and not unduly discriminatory or preferential.

In addition to the guidance in this Policy Statement regarding conforming and non-conforming transmission pricing proposals, there are two specific subject areas for which we have instituted separate proceedings, and which may require transmission pricing flexibility. *See* Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking, IV FERC Stats. & Regs. ¶ 32,507, 59 FR 35274 (July 11, 1994); Alternative Power Pooling Institutions under the Federal Power Act, Notice of Inquiry, FERC Stats. & Regs. ¶ _____ (1994). In those proceedings, we are examining what type of pricing policy is appropriate. We intend to examine whether any special procedural mechanisms are necessary to coordinate our pricing policy and filings proposing alternative power pooling institutions.

I. Introduction

The Commission will consider a broad range of rate design methods, within a utility's embedded original cost revenue requirement, as discussed in Section IV. We will also consider proposals that deviate from a utility's embedded original cost revenue requirement (subject to certain filing procedures and evaluation criteria), as discussed in Section V. The U.S. Supreme Court has recognized the Commission's broad latitude to fix rates. There is no single valid theory of ratemaking. Under the statutory standard of "just and reasonable" it is the result reached, not the method employed, which is controlling. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 316 (1989) (*Duquesne*); *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope*). As the Court observed in *Duquesne*:

> The designation of a single theory of ratemaking as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors.

[1] 16 U.S.C. 824(e), 796(23).

[2] *See* 16 U.S.C. 824j, 824k.

[3] Whether to suspend such a filing and impose a refund condition will be decided on a case-by-case basis. *See* West Texas Utilities Company, 18 FERC ¶ 61,189 (1982).

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488 U.S. at 316. Consistent with our broad ratemaking authority, in this Policy Statement we announce that we will consider various ratemaking methods to encourage proposals that will produce consumer benefits.

The Commission's traditional transmission pricing policy has permitted a public utility providing firm transmission service to charge rates designed to yield annual revenues equal to the rolled-in embedded cost [4] of the utility's integrated transmission grid on a postage stamp basis (*i.e.*, not distance sensitive), including the rolled-in costs of any new facilities or upgrades that become part of the integrated system. For non-firm transmission service, the Commission has permitted rates to reflect, in addition to the variable costs of providing the service, a charge up to a 100 percent contribution to the fixed costs of providing the service, with the proviso that pricing must reflect the characteristics of the service provided, *e.g.*, the degree of interruptibility. Traditionally, transmission rates have been based on a "contract path" model, *i.e.*, an assumed transmission path from point A to point B, that may or may not represent the actual flows of power on the grid.

In recent years, the Commission attempted to address the industry's changing needs by modifying its historical transmission pricing policy [5] to allow a type of incremental cost pricing.[6] In order to provide new or expanded transmission service, a utility may be required to add expensive transmission assets, which can result in an increase in rolled-in embedded cost rates. To address this possibility, the Commission has allowed a utility to charge transmission-only customers the higher of embedded costs (for the system as expanded) or incremental expansion costs, but not the sum of the two.[7] When the transmission grid is constrained and the utility chooses not to expand its system, the Commission has allowed a utility to charge the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two. The opportunity costs, in turn, are capped by incremental expansion costs. This type of pricing has been referred to as "or" pricing or *Northeast Utilities* pricing.[8] While "or" pricing will continue to be allowed under the Commission's pricing policy, the Commission is prepared to move beyond "or" pricing to consider other pricing alternatives.

[4] Embedded cost is generally viewed as including a fair rate of return on the original cost of facilities, less depreciation, plus operation and maintenance expenses, and taxes. Embedded costs are those costs reflected in the utility's books of account.

[5] *See* Northeast Utilities Service Company (Re: Public Service Company of New Hampshire), Opinion No. 384–A, 58 FERC ¶ 61,070, *reh'g denied*, Opinion No. 384–B, 59 FERC ¶ 61,042, *order granting motion to vacate and dismissing request for rehearing*, 59 FERC ¶ 61,090 (1992), *affirmed in part and remanded in part sub nom.* Northeast Utilities Service Company v. FERC, Nos. 92–1165, *et al.*, 993 F.2d 937 (1st Cir. 1993), *order on remand*, 66 FERC ¶ 61,332, *reh'g denied*, 68 FERC ¶ 61,041 (1994), *appeal pending* No. 94–1949 (1st Cir. Sept. 6, 1994); Pennsylvania Electric Company, 58 FERC ¶ 61,278, *reh'g denied and pricing policy clarified*, 60 FERC ¶ 61,034, *reh'g denied*, 60 FERC ¶ 61,244 (1992), *affirmed sub nom.* Pennsylvania Electric Co. v. FERC, 11 F.3d 207 (D.C. Cir. 1993) (*Penelec*).

[6] Incremental cost is the cost of increasing the level of service provided. In practice, it typically refers to the cost of additional facilities needed to provide the requested service.

[7] This current pricing policy is based on three goals that the Commission adopted in the *Northeast Utilities* case: (1) to hold native load customers harmless, (2) to provide the lowest reasonable cost-based price to third-party firm transmission customers, and (3) to prevent the collection of monopoly rents by transmission owners and promote efficient transmission decisions.

[8] *See supra* note 5.

[9] Appendix A will not appear in the Code of Federal Regulations.

II. Request for Comments

On June 30, 1993, the Commission issued a notice of technical conference and request for comments concerning these policies and other transmission pricing issues. *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, IV FERC Stats. & Regs., Notices ¶ 35,024 (1993) (Pricing Inquiry). The Commission received comments and reply comments from 165 entities, representing a broad cross-section of parties that participate in, or are affected by, the electric utility industry. The Commission also held technical conferences on April 8 and 15, 1994, that provided further opportunity for public comment and discussion. A summary of the comments received in this proceeding that included proposals for change is presented in Appendix A.[9]

Those commenting expressed a variety of opinions on many transmission pricing issues, including whether transmission rates should reflect distance sensitivity and whether and how to compensate for flows over parallel paths. The commenters were nearly unanimous in their call for the Commission to provide further guidance concerning acceptable pricing methods. Some commenters indicated that such guidance would assist the formation of regional transmission groups (RTGs) by indicating what pricing policies will be acceptable to the Commission.

While many of the comments expressed dissatisfaction with the Commission's current pricing policy, the comments indicated no consensus for any one alternative pricing method. However, the commenters expressed general agreement that some type of transmission pricing reform by the Commission is needed. There was a strong consensus that such reform should: (1) Allow greater pricing flexibility; (2) provide pricing that is "transparent" [10] and easy to administer; (3) promote economic efficiency, that is, allow transmission customers to make informed decisions as to the economic consequences of their choices, and encourage transmission owners to make efficient use of, and investment in, the transmission grid; (4) ensure equity and fairness; and (5) facilitate the development of RTGs.[11]

However, there was disagreement regarding the degree to which reform of transmission pricing should stress administrative simplicity versus accuracy. Some commenters advocated the continued use of traditional contract path and postage stamp rates, in part because these rates are simple to administer. Other commenters proposed methods, such as distance sensitive and flow-based rates, that may give better price signals but involve more complexity.

In response to the comments received, the Commission has decided to revise its policies to permit utilities much greater flexibility. We are prepared to accept a variety of pricing methods in addition to *Northeast Utilities* pricing. *Northeast Utilities* pricing will still be acceptable because it fully comports with the pricing principles we adopt today. However, based on the record developed herein, a variety of other pricing methods will also be acceptable.

The Commission concludes that greater pricing flexibility is now required for several reasons. First, exclusive use of methods that worked reasonably well in the past does not provide sufficient flexibility to accommodate the evolving needs of transmission owners and users in a more competitive era.[12] It is important

[10] We interpret the commenters to mean that transmission pricing would be identified separately from generation pricing, that transmission pricing would identify all cost components of the transmission service (*e.g.*, identify ancillary service costs) and that pricing information would be readily available to all bulk power participants.

[11] Two RTG agreements recently filed with the Commission postpone dealing with the transmission pricing issue by simply providing that pricing shall be consistent with the Commission's transmission pricing policy. *See* Pacificorp *et al.* (on behalf of Western Regional Transmission Association), 68 FERC ¶_____ (1994); Southwest Regional Transmission Association, 69 FERC ¶_____) (1994).

[12] *See* American Electric Power Service Corporation, 67 FERC ¶ 61,168 at 61,490 (1994).

to gain practical experience with alternative transmission pricing approaches in order to assess how best to accommodate the current and future needs of the industry in providing efficient and reliable power supply as the industry becomes increasingly competitive. Second, our existing "or" pricing policy may not always encourage the most efficient investments in and use of the transmission grid. Third, regional differences (*e.g.*, power flow patterns and population densities) justify a more flexible policy that can account for such differences. Fourth, a more flexible pricing policy may be necessary to implement effectively our RTG policy, which encourages RTGs to deal with a broad range of issues, including pricing, and which suggests that the Commission, in appropriate circumstances, will defer to RTG decision-making.[13] The Commission is convinced that a more flexible pricing policy can help to achieve broader policy goals and be implemented in a manner that is just and reasonable and not unduly discriminatory or preferential.

In developing a more flexible transmission pricing policy, the Commission's basic premise is that comparable access to efficiently priced transmission services is critical to the continued development of a competitive wholesale power market. With this fundamental underpinning in mind, the Commission has developed several pricing principles that new pricing proposals should follow. Some of these principles reflect existing pricing requirements that any new proposal must continue to follow. Other principles, while important, may have to be balanced against one another.

Before discussing the pricing principles and specific new methodologies that may be acceptable, there are several points we would like to make. First, the Commission believes that improving price signals is an important goal, but recognizes that trade-offs between improved price signals and simplicity are inevitable. On one hand, transmission service is typically a small component of the total cost of electric service and, therefore, arguably does not merit overly complex pricing methods.[14] On the other hand, in many cases transmission capacity is a scarce and valuable resource, and its pricing can send signals that promote the efficient siting of generation facilities and efficient decisions as to the dispatch of generation. In addition, new technological advances, particularly in computer technology, have made certain innovative pricing methodologies workable in practice. We therefore must balance the sometimes competing goals of better price signals and simplicity when evaluating any new pricing methodologies.

Second, the Commission also recognizes that it must move beyond certain precedent in order to entertain alternative pricing proposals. For example, instead of requiring a single postage stamp rate for transmission over the integrated transmission system of a corporation, such as a holding company system with several affiliated operating companies,[15] we will now entertain proposals such as zonal rates [16] that take distance within the corporation into account, provided that such proposals are consistent with the pricing principles that we adopt today.[17] Having analyzed new methodologies presented in the record, we believe that some departures from our traditional integrated system pricing requirement will be supportable under the FPA if appropriately developed.

Third, as previously noted, several commenters urged the Commission to provide a framework for reforming pricing that would supplement the Commission's RTG Policy Statement. The Commission continues to believe that it would be appropriate for RTGs to address transmission pricing. We anticipate that the pricing flexibility provided herein, and our willingness to give appropriate deference to RTG decisions, will not only encourage the development of RTGs, but will also encourage RTGs to address transmission pricing, including regional issues affecting such pricing.

Finally, we do not want our policy to be so rigid that utilities will be prohibited from proposing pricing alternatives that may deviate from the traditional revenue requirement. Because transmission remains a natural monopoly, we believe it will be difficult for transmission owners to support such pricing under the FPA, particularly market-based transmission rates. However, we believe that it would be shortsighted to foreclose completely consideration of such non-conforming proposals. The electric utility industry of today is very different from the electric utility industry that existed only 20 years ago and even five years ago. Just as we today change our policies to reflect recent changes, we must remain flexible if we are to respond to future changes. Accordingly, we detail procedures and standards below that will be used in evaluating transmission pricing proposals that do not conform to the traditional revenue requirement.

We now turn to the requirements of the FPA and the pricing principles that we have developed consistent with those requirements.

III. Transmission Pricing Principles

Transmission pricing must adhere to the FPA requirement that transmission rates be just and reasonable and not unduly discriminatory or preferential. This requirement is found in sections 205, 206, and 212. In addition, section 212(a) requires that wholesale transmission rates for services ordered under section 211 must:

- Permit the recovery of all costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities;
- Promote the economically efficient transmission and generation of electricity; and
- To the extent practicable, ensure that costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for the 211 order and not from a transmitting utility's existing

[13] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993) III FERC Stats. & Regs. ¶ 30, 976 (July 30, 1993) (RTG Policy Statement).

[14] Historically, transmission plant has represented less than 12 percent of total electric plant in service for major investor-owned Electric Utilities and generally less than 6 percent of the cost of electricity to end users. (Derived from cost data in *1992 Energy Information Administration Financial Statistics of Major Investor-Owned Electric Utilities.*)

[15] *See, e.g.*, Southern Company Services, 55 FERC ¶ 61,173 (1991), *order on reh'g*, 58 FERC ¶ 61,093 (1991), *aff'd. Alabama Power Company* v. *FERC*, 993 F.2d 1557 (D.C. Cir. 1993).

[16] Under zonal rates, a utility's facilities are divided (disaggregated) into a number of zones. The total cost assigned to any request for transmission service would depend on the number of zones traversed and the rate for each zone.

[17] If a utility, or public utility holding company system, proposes to disaggregate its integrated transmission system into distinct components (or zones) for purposes of developing transmission rates for third parties, it must apply the same approach consistently and uniformly across the entire system for all uses of the system, including its own uses.

We caution that any such zonal approach or other disaggregated approach would also need to appropriately recognize all flows on the system. For example, if flows are used to allocate costs on some lines, flows should be used to allocate costs for all remaining lines in the same way; *e.g.*, it would not be acceptable to presume that each transmission customer proportionally uses and relies upon all remaining lines of the integrated system.

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wholesale, retail, and transmission customers.

Consistent with these statutory requirements, which give the Commission discretion in setting rates within the zone of reasonableness, and in light of the comments received in response to the Pricing inquiry, we have formulated five principles that will guide our approval of pricing for both firm and non-firm transmission services in the future. The Commission believes these principles comport with the statutory requirements of sections 205, 206 and 212 of the FPA, and, in the interest of developing a uniform transmission pricing policy, we will apply these same principles to the pricing of transmission service whether that service is provided under section 205, 206, or 211 of the FPA.

The first two principles reflect fundamental requirements previously established by the Commission. A conforming proposal is one that meets the first principle, *i.e.*, it proposes pricing that meets the traditional revenue requirement. A conforming proposal must also meet the second principle, *i.e.*, it must reflect comparability. As to the other three principles, however, these reflect goals that an applicant with a conforming proposal must try to meet, but that ultimately may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable.

A non-conforming proposal is one that does not meet the first principle, *i.e.*, it does not propose pricing that meets the traditional revenue requirement. However, a non-conforming proposal must meet the second principle, *i.e.*, it must reflect comparability. If a non-conforming proposal does not clearly demonstrate that the comparability requirement is met, it will be rejected. As to the remaining three principles, these reflect goals that an applicant with a non-conforming proposal must try to meet, but that may need to be balanced against one another. In addition, as part of its balancing, the Commission will consider the extent to which the first principle is not met.[18]

We discuss these principles in detail below.

1. Transmission Pricing Must Meet the Traditional Revenue Requirement

For conforming proposals, transmission prices must be based on the costs of the transmission service provided. The process of determining transmission prices involves three distinct steps. First, a utility must determine its total company revenue requirement, the capital component of which traditionally has been measured by embedded (depreciated original) cost. Second, a utility must allocate among individual customers or classes of customers that portion of the total revenue requirement that is attributable to providing transmission services, in a manner which appropriately reflects the costs of providing transmission service to such customers or classes of customers. Finally, the utility must design rates to recover those allocated costs from each customer class.

Different customers may pay different rates if they use the system in different ways. In the aggregate, however, rates are designed so that a transmission owner meets, but does not exceed, its revenue requirement. That is, it should be able to collect revenues from all its customers equal to the sum of its prudently incurred embedded costs, including return on capital.

There are two reasons for requiring transmission pricing to meet the traditional revenue requirement. First, it appears that transmission will remain a natural monopoly for the foreseeable future. It is unlikely that market-based prices for monopoly services, especially for firm transmission service, could be justified under the FPA at the present time, under the current industry structure. However, it is clear that there is no single appropriate ratemaking method under the FPA. The end result is the appropriate yardstick against which to measure the legality of a rate order, not the ratemaking method. Thus, although no single ratemaking method is necessarily favored by the FPA, this pricing principle will ensure that transmission users pay a just and reasonable price for transmission services and that transmission owners, while being appropriately and adequately compensated,[19] will not be able to exercise their market power to collect exorbitant rates.

Second, we believe that pricing within an embedded cost revenue requirement provides adequate incentives for transmission owners to provide comparable transmission services, as long as the transmission owner has the opportunity for full cost recovery. When upgrades are required, the transmission owner may incur significant expenses related to planning and siting new facilities. For example, a utility may be required to pay for environmental mitigation associated with the construction of new transmission facilities. Such costs will be recoverable by the transmission owner if they are prudently incurred.

In addition, under the traditional revenue requirement principle, transmission owners clearly may, with appropriate support,[20] recover the legitimate and verifiable costs of services they provide that are ancillary to transmission services, such as load following, reactive power compensation, and backup power services. However, transmission customers should also be permitted to provide these services themselves or to obtain them from someone else if this is feasible.

Finally, as discussed in Section IV below, we intend to allow significant latitude and a wide variety of non-traditional rate design proposals, within a cost cap based on the total company revenue requirement.

2. Transmission Pricing Must Reflect Comparability

Any new transmission pricing proposal, conforming or non-conforming, must meet the Commission's recently announced comparability standard. In *American Electric Power Service Corporation (AEP)*, 67 FERC ¶ 61,168 (1994), the Commission articulated a new standard for judging whether access to transmission services is unduly discriminatory, or anticompetitive. The Commission noted that "[a]n open access tariff that is not unduly discriminatory or anticompetitive should offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's uses of its system."[21] This principle has been applied to all open access tariffs filed since *AEP*, as well as to transmission services provided by RTGs.[22]

There is a relationship between price and quality of service (*i.e.*, in general, higher quality service costs more). In Florida Municipal Power Agency v. Florida Power & Light Co., 67 FERC ¶ 61,167 at 61,482 (1994) (*FMPA*), the Commission stated, "[s]ince FMPA wants to be able to use the transmission system as freely as does Florida Power, it must pay a rate that reflects that equality." As a result of the relationship between quality of service and price discussed most recently in *FMPA*, and the growing importance of service comparability, we will require that pricing be comparable. Comparability of service applies to price as well as to terms and conditions. Comparability of transmission pricing involves a "golden rule of pricing"—a transmission owner should charge itself on the same or comparable basis that it charges others for the same service.[23]

This golden rule has several implications. First, for purposes of setting FERC-jurisdictional rates, costs must be allocated between jurisdictional and non-jurisdictional customers in a consistent way, to determine the cost responsibility of the two sets of customers.[24]

Second, when a utility uses its own transmission system to make off-system sales, it should "pay" for transmission service at the same price that third-party customers pay for the same service, and credit the transmission revenues to its native load customers. This treatment restricts the transmission owner's ability to gain an unfair advantage in the bulk power market by selling itself transmission service at a discount that would be subsidized by native load and transmission-only customers.[25]

Pricing comparability does not mean that the Commission is endorsing an end result in which there are no differences in prices paid by various customers. For example, the Commission is not suggesting that prices must be based on highly aggregated costs so that all customers face a uniform rate per kWh of service. Rather, we are receptive to pricing proposals that disaggregate costs in order to give better price signals to all users of the system—third parties and the transmission owner itself. Such disaggregation still permits different customers to pay different prices. Pricing comparability does not rule out such a result.

Finally, comparability of pricing includes certainty of pricing. A transmission customer should have pricing certainty comparable to that of the transmitting utility, *e.g.*, the same transmission pricing certainty for long-term power contracts as the transmitting utility has.

3. Transmission Pricing Should Promote Economic Efficiency

Section 212(a) of the FPA, as amended by EPAct, states that transmission pricing should promote economically efficient generation and transmission of electricity.[26] In our view, this means that transmission pricing should promote good decision-making and foster:

- Efficient expansion of transmission capacity;
- Efficient location of new generators and new load;
- Efficient use of existing transmission facilities, including the efficient allocation of constrained capacity through appropriate market clearing mechanisms; and
- Efficient dispatch of existing generating resources.

To the extent practicable, transmission rates should be designed to reflect marginal costs,[27] rather than embedded costs, in a manner consistent with the remaining principles. We favor marginal cost prices in order to promote efficient decision-making by both transmission owners and users.[28] In the short-run, marginal transmission costs are primarily line losses and, when lines are congested, opportunity costs. In the long-run, marginal transmission costs include all the costs of the transmission system and support services. The Commission recognizes the complexity of estimating marginal cost on the transmission grid and of implementing pricing that follows marginal transmission costs, but we encourage experimentation in this area.[29] On a case-by-case basis, we will balance the desirability of more economically efficient price signals against the additional complexity of implementing such pricing.

4. Transmission Pricing Should Promote Fairness

As a general matter, transmission pricing should be fair and equitable. This has two important implications. First, the EPAct requires that, to the extent practicable, existing wholesale, retail and transmission customers should not pay for the costs incurred in providing wholesale transmission services ordered under section 211. Similarly, we do not believe that third-party transmission customers should subsidize existing customers. We believe this principle should apply equally to transmission services under both section 211 and sections 205 and 206.

A second implication of the fairness principle is that economic harm that could be created during a period of transition from one pricing approach to another should be mitigated to the extent practicable. Solutions to any transition problems arising from pricing reform should balance fairness considerations associated with any reform against the potential efficiency improvements, and should mitigate the hardships arising from any reform. The major purpose of transmission pricing reform should be to provide more efficient price signals, particularly for new transmission uses, and not simply to reallocate sunk costs.

5. Transmission Pricing Should Be Practical

Transmission pricing should be practical and as easy to administer as appropriate given the other pricing principles. A user should be able to calculate how much it will be charged for transmission service. Some pricing proposals may be so complex that they are difficult to understand and analyze. Such complexity, while not fatal, should be balanced by efficiency gains or other advantages produced by such complexity.

IV. Guidance Regarding Pricing Proposals That Conform to the Traditional Revenue Requirement

In addition to the five general principles above, the Commission provides guidance on specific pricing proposals, including examples of acceptable pricing approaches and clarification of limitations on pricing flexibility.

It is important for those involved in transmission pricing discussions and negotiations to have a common understanding of the attributes of

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[18] A pricing proposal that deviates from cost only slightly may be easier to justify than one that results in prices several times cost.

[19] *Duquesne*, 488 U.S. at 316; Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679 (1923); *Hope*, 320 U.S. at 602.

[20] *See* Northern States Power Company (Minnesota and Wisconsin) Opinion No. 383, 64 FERC ¶ 61,324 (1993), *reh'g pending* (reactive power).

[21] 67 FERC at 61,400.

[22] *See* PacifiCorp, *et al.* (on behalf of Western Regional Transmission Association), 69 FERC ____; Southwest Regional Transmission Association, 69 FERC at ____.

[23] There is a similar "golden rule or access"—provide the same or comparable services to others as you provide yourself.

[24] The Commission is not in any way suggesting any interference with state authority to determine the appropriate ratemaking methodology for bundled retail sales.

[25] In *PSI*, for example, the Commission required that PSI take transmission service under its own transmission tariff when making market-based power sales. The Commission adopted this approach to prevent PSI from using its transmission ownership to exercise an unfair competitive advantage in wholesale power markets. Public Service Company of Indiana, Inc., Opinion No. 349, 51 FERC ¶ 61,367 at 62,201 (1990), *order on rehearing*, PSI Energy, Inc., 52 FERC ¶ 61,260, *order granting clarification*, 53 FERC ¶ 61,131 (1990), *appeal dismissed sub nom.* Northern Indiana Public Service Co. v. FERC, 954 F.2d 736 (D.C. Cir. 1992).

[26] 16 U.S.C. 824k(a).

[27] Alfred Kahn, *infra* n.28, defines marginal cost as "[t]he cost of producing one more unit; it can equally be envisioned as the cost that would be saved by producing one less unit."

[28] *See* 1 Alfred E. Kahn, The Economics of Regulation 63–86.

[29] Such proposals should be fully supported, with as much detail as possible. *See* New England Power Company, Opinion No. 352, 52 FERC ¶ 61,090 (1990), *reh'g denied*, Opinion No. 352–A, 54 FERC ¶ 61,055 (1991), *aff'd sub nom.* Town of Norwood, Massachusetts v. FERC, 962 F.2d 20 (D.C. Cir. 1992).

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various pricing proposals. For example, various parties advocate the use of "megawatt mile" pricing. Several distinct pricing proposals carry the same "megawatt mile" label. Therefore, those proposing transmission pricing reform must provide a clear explanation of their proposal.

As the industry considers possible pricing reform, the following three attributes of any transmission pricing method should be specified to provide a common framework for analysis:

- The method for measuring cost for purposes of rate design: embedded cost, incremental cost, the Commission's current "or" policy, long-run marginal cost, or short-run marginal cost;
- The method for treating power flows: contract path or flow-based approach; and,
- The method for grouping transmission facilities: corporate postage stamp versus more disaggregated approaches, such as zones, or line-by-line methods.[30]

We anticipate that a wide variety of pricing proposals may be reconciled with the traditional revenue requirement. In theory, acceptable cost-based pricing that satisfies our principles could be designed for many combinations of these possible attributes. For example, prices could reflect incremental cost (the first attribute), be based on flow (the second attribute), and be allocated on a line-by-line basis (the third attribute). A different approach is taken by changing any one of the attributes, *e.g.*, zones instead of lines. Therefore, many varieties of cost-based pricing are possible.

We fully intend to be flexible and to consider innovative, conforming pricing approaches that accommodate the changing needs of the competitive bulk power market. This applies to pricing for firm as well as non-firm transmission services. The pricing principles set out in the prior section are intended to guide RTGs and individual utilities in their consideration of new approaches. To provide further guidance, we discuss below examples of new cost-based pricing methods that we believe can be made consistent with our principles. These examples are intended to be illustrative. Other approaches also may be consistent with the principles. In all cases, we emphasize that pricing reform must have a purpose consistent with the principles. We want transmission pricing that supports good and consistent decisionmaking by transmission system users and owners.

A. Examples of Specific Pricing Methods That Conform to the Traditional Revenue Requirement

The following pricing approaches are examples of methods that the Commission would find acceptable, assuming an adequate showing by the utility. In this context, a conforming method is one that clearly meets the first two fundamental requirements and demonstrates that it is capable of satisfying the other three pricing principles (which ultimately may need to be balanced against one another in the Commission's determination of whether the proposed rates are just and reasonable). Of course, the rates resulting from its use must be shown to be just, reasonable and not unduly discriminatory or preferential.

(1) Examples of Acceptable Transmission Pricing by an Individual Utility

A variety of pricing proposals from an individual utility could be acceptable under the five pricing principles. The range of possible approaches includes various combinations of: (1) a traditional contract path approach or a flow-based approach; (2) costs aggregated at the utility level, at a zonal level, or at the line-by-line level; and (3) various cost concepts for rate design, such as embedded cost, "or" cost, incremental cost, or short-run marginal cost. Not all of these possible combinations, however, would necessarily satisfy our principles.

Examples of pricing reform that the Commission would approve if proposed by an individual utility and if they satisfy our principles include:

- Zonal "or" pricing based on power flows from zone to zone within a utility, or within the members of a holding company system. Zonal rates should be supported by showing the use made of separate zones by an individual transaction. Such rates should be supported by an explanation of the data base required and the computer modeling needed to implement it.
- Flow-based line-by-line rates, based on embedded costs "or" pricing. Such rates should be supported by an explanation of the data base required and the computer modeling needed to implement it.
- "Or" pricing, at the corporate level using the traditional contract path approach. This is the current Commission standard and remains an acceptable pricing policy that satisfies our pricing principles.

(2) Examples of Acceptable Transmission Pricing by an RTG

The Commission will provide substantial latitude for innovative, conforming pricing proposals by a regional transmission group that meets the requirements of our RTG Policy Statement.[31] We will give more latitude to RTGs than to individual utilities. This is for two reasons. First, an RTG represents the combined interests of both transmission owners and transmission users, as well as the appropriate participation of state authorities, so pricing proposals are likely to represent an appropriate balancing of those interests. Second, the more attractive proposals for treating regional loop flow problems work better if all the utilities in the region use the same method.

An RTG could propose any pricing reform that is open to an individual utility and also other reforms that address the loop flow issue. Many approaches to reforming transmission pricing that were suggested in the record of the Pricing Inquiry address the loop flow issue and appear to require a regional approach. From the comments, the Commission discerns two major alternatives to traditional contract path pricing that RTGs could choose for dealing with loop flow:

- "Enhanced" contract path pricing, which improves the contractual institutions underlying traditional contract path trading;[32] and
- Flow-based pricing, which refers to pricing designed to reflect the actual or projected power flows associated with a transaction.

Cost-based pricing could be designed to accommodate either of these alternatives. Examples of pricing reform based on a flow-based approach that the Commission would look approvingly on if proposed by an RTG and if consistent with our principles include:

- A MW-mile method, which could be implemented in one of several ways. For example, it could be based on "or" pricing and line-by-line power flows. Alternatively, a MW-mile approach could be based on embedded cost for the whole company, allocated as the ratio of transaction-specific megawatt-miles to total megawatt-miles.

[30] Under a line-by-line pricing method, the costs of each transmission line, or segment, are allocated to individual transmission transactions, based on the usage each transaction makes of each line or segment.

[31] Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993), III FERC Stats. & Regs. ¶30,976 (July 30, 1993); *See also* PacifiCorp, *et al.* (on behalf of Western Regional Transmission Association), 69 FERC at _____; Southwest Regional Transmission Association, 69 FERC at _____.

[32] "Enhanced contract path" refers to any approach intended to reconcile capacity rights between points of receipt and delivery and actual power flows on a network of lines.

- Postage-stamp "or" ratemaking at the utility level that is combined with power flow analysis to determine the compensation due to all transmission owners on the parallel paths. This would be a departure from the current contract path approach.
- Zonal "or" pricing based on power flow analysis to determine the use a transaction makes of the facilities in each zone.
- Short-run marginal cost pricing with transmission prices based on line-by-line losses and opportunity costs caused by power flow constraints.

RTGs may be able to design a pricing approach that combines elements of flow-based pricing with elements of contract path pricing. An example might be contract-path pricing for capacity rights to engage in long-term firm transactions combined with flow-based pricing for short-term, nonfirm transactions that are not covered by such rights. As can be seen from these examples, the Commission will provide RTGs substantial flexibility in choosing among a wide range of pricing approaches.

(3) Examples of Unacceptable Transmission Pricing

As discussed above, any pricing proposal, even a proposal that does not conform to the traditional revenue requirement, must meet the just and reasonable standard of the FPA. Below we list two types of pricing proposals which we find unacceptable.

- Postage-Stamp "And" Pricing: Some utilities have proposed so-called "and" pricing, which would add an embedded cost rate to an incremental cost rate for the same service over the same facilities. The proposals have been based on traditional postage stamp ratemaking for which costs are aggregated at the utility level. This type of pricing has been found by the Commission to be unjust and unreasonable.[33] We cannot see how such an approach is consistent with either our fairness principle or our efficiency principle.[34]
- Pricing by Individual Utilities to Account for Loop Flow: While individual utilities may propose new and innovative pricing methods that seek to apportion transmission costs on the basis of scheduled flows (*e.g.*, zonal or line-by-line methods), we also believe that it would be inappropriate for individual utilities to reform their own approach to transmission pricing in a way that is inconsistent with regional practices regarding unscheduled or inadvertent flows (loop flow).[35] We are concerned that individual public utilities may propose approaches to loop flow pricing that lead to a patchwork of mutually inconsistent loop flow pricing methods within a region. Accordingly, a utility's proposal to use flow-based pricing generically to recover the costs of unscheduled inter-utility power flows will be treated as a non-conforming proposal if it is inconsistent with regional loop flow practices, such as use of a contract path convention.[36]

V. Pricing Proposals That Do Not Conform to the Traditional Revenue Requirement

The Commission clearly prefers pricing proposals that are designed not to exceed the traditional revenue requirement. As noted, we believe that given the current industry structure it will be difficult to justify non-conforming proposals. In addition, we believe that the flexibility permitted under this revised transmission pricing policy should be adequate to satisfy the needs of today's electric utility industry, particularly given the current structure of the industry. Nevertheless, the electric utility industry is continuing to evolve[37] and we must ensure that our policies do not impede the continued development of competitive bulk power markets, or the development of new market structures and transmission arrangements. The Commission will consider pricing proposals necessary to accommodate such developments. Some of the proposals discussed in this proceeding may exceed the traditional embedded cost revenue requirement. Such proposals will be considered *provided* they meet certain filing procedures and evaluative criteria. We will provide two procedural avenues for considering non-conforming proposals. We will also provide guidance on the type of evidentiary showing necessary to support such proposals.

A. Procedures for Proposals That Do Not Conform to the Traditional Revenue Requirement

Any public utility that seeks non-conforming pricing must have on file with the Commission an open access transmission tariff offering comparable services. Such comparability tariff must have been accepted for filing by the Commission before a non-conforming pricing proposal will be considered. Moreover, utilities proposing non-conforming transmission pricing must submit such pricing proposals either: (a) in conjunction with a section 205 conforming transmission pricing proposal (the non-conforming proposal would be reflected as alternative "pro forma" rate sheets to the conforming proposal); or (b) in a petition for declaratory order.

(1) Alternative "Pro Forma" Rate Sheets

Under this procedure, the Commission and interested parties would review the non-conforming proposal in conjunction with review of a companion conforming pricing proposal.[38] The conforming proposal would be subject to the notice and suspension procedures of section 205. The non-conforming proposal would not. The non-conforming proposal would be litigated at the same time as the conforming proposal, but could not take effect, if at all, until the end of the proceeding. If, at the end of the proceeding, the Commission determines that the alternative, non-conforming rate proposal is acceptable under the FPA, the Commission will allow the utility to make a compliance rate filing, and the rates will be put into effect prospectively.

This procedure will permit the Commission to determine the extent to which the proposal deviates from the traditional revenue requirement, which may be necessary in determining whether the other features of the proposal are sufficient to offset this. It

[33] *See* Penelec, *supra* n.5.

[34] The flexibility that we endorse in this Policy Statement regarding cost disaggregation, among other things, addresses the industry's underlying concerns regarding "or" pricing. That is, while we cannot justify pricing that purports to recover two measures of a single cost, allowing the entity to account for costs on a disaggregated basis would permit separate pricing for separate facilities or small groupings of facilities. Hence, we would entertain proposals for flow-based line-by-line "or" pricing. This would permit the use of embedded costs for some lines when this is the higher of embedded or incremental costs, and the use of incremental cost for other lines when this is the higher of embedded or incremental costs.

[35] Of course, such individual utility pricing may be appropriate if there are no objections to the loop flow solution from any affected neighboring utilities or transmission customers.

[36] However, a public utility may seek on a case-by-case basis relief from the Commission, including appropriate compensation, in situations in which it is experiencing severe unscheduled loop flows on its system because of specific power transactions by other neighboring utilities and it has been unable to resolve the problem through existing industry mechanisms. *See American Electric Power Service Corp., et al.*, 49 FERC ¶61,377 at 62,381 (1989).

[37] In recent months, the pace of change in the electric industry has increased dramatically. Certain state proceedings on industry restructuring, as well as proceedings before this Commission, have contributed to the development of innovative proposals by both industry participants and academicians. These evolutionary changes support the need for flexibility and the need to permit non-conforming pricing proposals.

[38] *See* Pacific Gas Transmission, 66 FERC ¶61,384, *reh'g denied*, 67 FERC ¶61,247 (1994), *reh'g pending*.

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will also permit an examination of how risk, and hence cost of capital, will vary under the conforming and non-conforming proposals. Another benefit of the alternative "pro forma" rate sheets procedure is that the utility would be able to implement the non-conforming pricing, assuming it was just and reasonable, immediately following the Commission's final order.

(2) Declaratory Order Petition

A utility that wishes to have the Commission consider a non-conforming pricing proposal separate from a rate proceeding may bring the matter to the Commission via a petition for declaratory order. Of course, if the Commission found that the utility's proposal met the statutory criteria, the utility would still need to file a rate reflecting the proposal pursuant to FPA section 205. Presumably the section 205 proceeding would be straightforward (*i.e.* akin to a compliance filing), however, since the Commission would have already addressed the merits of the proposal in the declaratory order.

B. Criteria for Evaluating Proposals That Do Not Conform to the Traditional Revenue Requirement

Utilities proposing non-conforming transmission pricing must fully support such proposals. The utility must supply a complete discussion of how the proposal is intended to take account of the pricing principles. The Commission will consider the relative weight of each pricing principle as applied to the facts of each case. We will hold the comparability principle inviolate, however. Absent such support, the Commission will summarily reject the non-conforming proposal even if the utility has agreed to the procedural requirements set forth above.

We will also summarily reject non-conforming proposals that do not submit information showing that the proposal can be expected to:

(a) Produce greater overall consumer benefits than a conforming proposal; and

(b) Promote competitive bulk power markets.[39]

At a minimum, utilities proposing non-conforming transmission pricing must make a showing of benefits to a broad cross-section of consumers which achieve the following:

(i) Greater access and customer choice;

(ii) Projected price decreases to customers of delivered power; and

(iii) Service flexibility and available products to meet customer needs.

As noted, utilities should also explain how the non-conforming proposal promotes competitive bulk power markets.

C. Guidance Regarding Proposals That Do Not Conform to the Traditional Revenue Requirement

We believe that a non-conforming proposal that results from a diverse group such as an RTG, with fair and nondiscriminatory governance and decisionmaking procedures, would more easily be found just and reasonable than a non-conforming proposal from an individual utility, for the same reason we would afford more deference to a conforming RTG transmission pricing proposal than an individual utility conforming proposal.

Although the Commission has been willing, under appropriate circumstances, to permit market-based pricing for sales of generation, the Commission intends to treat market-based transmission rate proposals as non-conforming. Such rates obviously are not cost-based and the Commission does not believe market-based transmission pricing is appropriate at this time. Although the transmission system has multiple owners, the basic provision of firm transmission service is not competitive in most, if not all, circumstances. Rather, each owner can exert considerable market power by controlling the access, pricing and expansion of its portion of the grid. In addition, regulatory approval for new transmission lines is increasingly difficult to obtain and franchised owners are typically the only entities that possess rights of eminent domain. In these circumstances, unlike for sales of generation, the Commission cannot rely on competitive market forces to discipline prices for firm transmission service. Accordingly, any transmission owner advocating a market-based transmission pricing method must demonstrate how it has alleviated these serious concerns.

Some cost-based pricing approaches adhere to a traditional embedded (depreciated original) cost revenue requirement more closely than others. Replacement cost methods and long-run marginal cost methods of pricing, for example, may result in revenue levels that would exceed the traditional revenue requirement. Pricing methods designed to allow a transmission owner to recover more than its traditional revenue requirement (depreciated original cost) are non-conforming and would need to satisfy the procedures and criteria for non-conforming proposals.

VI. Alternative Institutions and Associated Pricing

The Commission is aware that industry participants have begun to discuss alternative institutional arrangements, such as "pool companies" and "transmission companies." Some of these institutions apparently are intended to facilitate efficient wholesale power trading, and may require alternative approaches for the pricing of transmission services. We believe that these alternative institutions hold great potential. They may assist in the resolution of some difficult federal-state jurisdictional issues and in developing mechanisms for resolving or minimizing stranded cost issues. While we are encouraged that such ideas are under discussion, and are open to considering the particular pricing needs of alternative institutions, these concepts are currently in an early, formative stage. The concepts associated with these ideas have not been adequately explored in this pricing docket or in any other Commission forum. Therefore, concurrent with issuing this Policy Statement, we are opening a separate docket to initiate an inquiry regarding alternative power pooling institutions and their particular pricing needs.[40]

VII. Conclusion

The transition to a competitive wholesale bulk power market depends on the availability of comparable transmission services. Comparable transmission service, in turn, must have appropriate prices, terms and conditions. To that end, the Pricing Inquiry has provided the basis for a productive dialogue among the various entities affected by and participating in the transition to a post-EPAct competitive bulk power market, including transmission owners, transmission users, and Federal and state regulators.

It is critical that transmission services be priced in a manner that appropriately compensates transmission owners and creates adequate incentives for system expansion when such expansion is efficient. Of course, any transmission pricing proposal will have to be evaluated under the standards of the FPA. The Commission must ensure that any such proposal is just, reasonable, and not unduly discriminatory or preferential. A great many of the approaches discussed in this proceeding have the potential to provide better (*i.e.*, more efficient) price signals. But they also have the potential to complicate and prolong the process of determining appropriate rates for transmission services.

This Policy Statement provides a framework for understanding these competing interests, as well as a basis for continuing the transmission pricing dialogue. The Commission has consciously avoided endorsing any particular commenter's specific pricing methodology. Instead, the Policy Statement attempts to provide guidance while still encouraging industry efforts at innovation. Indeed, a great many of the proposals that were submitted during the Pricing Inquiry are highly theoretical and would need to be tested and evaluated in the context of individual cases.

The commenters in the Pricing Inquiry almost unanimously requested that the Commission allow flexibility. To that end, the Commission has attempted to provide pricing principles and general guidance that allow broad experimentation consistent with federal law and the physics of transmission. Certain experiments, particularly pricing methods that attempt to recognize loop flow, clearly require regional involvement and cooperation if they are to be effective. RTGs are encouraged to address such issues as pricing reform and loop flow.

The Commission encourages filing utilities and new groups that may form, such as RTGs and pool companies, to work closely with state regulatory authorities in developing transmission pricing policy. The Commission is committed to cooperating with all affected parties, especially state regulatory authorities, to ensure that any such pricing reform is implemented in an equitable manner and facilitates an orderly transition to a fully competitive bulk power market. Our pricing principles are expected to provide the foundation for the industry to continue its exploration of transmission pricing reform.

Finally, the Commission in this Policy Statement has proposed procedures under which non-conforming pricing proposals will be considered. We believe these procedures are flexible enough to permit utilities to propose non-conforming pricing innovations which they believe will benefit ratepayers and promote the development of a competitive bulk power market.

The Commission is making this Policy Statement effective immediately. It is based on the voluminous record developed to date in the Pricing Inquiry. We will accept motions for reconsideration submitted within 30 days in order to help us refine the principles established herein and to provide an opportunity to respond to any questions or clarify any ambiguity. We will apply the Policy Statement to transmission pricing proposals submitted in individual cases filed after the date of this Policy Statement.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.22, to read as follows:

§ 2.22 Pricing Policy for Transmission Services Provided Under the Federal Power Act.

(a) The Commission has adopted a Policy Statement on its pricing policy for transmission services provided under the Federal Power Act. That Policy Statement can be found at 69 FERC 61,086. The Policy Statement constitutes a complete description of the Commission's guidelines for assessing the pricing proposals. Paragraph (b) of this section is only a brief summary of the Policy Statement.

(b) The Commission endorses transmission pricing flexibility, consistent with the principles and procedures set forth in the Policy Statement. It will entertain transmission pricing proposals that do not conform to the traditional revenue requirement as well as proposals that conform to the traditional revenue requirement. The Commission will evaluate "conforming" transmission pricing proposals using the following five principles, described more fully in the Policy Statement.

(1) Transmission pricing must meet the traditional revenue requirement.

(2) Transmission pricing must reflect comparability.

(3) Transmission pricing should promote economic efficiency.

(4) Transmission pricing should promote fairness.

(5) Transmission pricing should be practical.

(c) Under these principles, the Commission will also evaluate "non-conforming" proposals which do not meet the traditional revenue requirement, and will require such proposals to conform to the comparability principle. Non-conforming proposals must include an open access comparability tariff and will not be allowed to go into effect prior to review and approval by the Commission under procedures described in the Policy Statement.

Note: This Appendix will not appear in the Code of Federal Regulations

Appendix A—Summary of Comments on the Inquiry Concerning the Commission's Pricing Policy for Transmission Services in Docket No. RM93–19–000

The request for comments for the inquiry concerning the Commission's pricing policy for transmission services in Docket No. RM93–19–000 was issued on June 30, 1993. The date for filing responses was extended to November 8, 1993 and reply comments to January 24, 1994. Technical conferences were held on April 8 and 15, 1994. The first day of the conference covered current policy issues. The second day was devoted to advanced pricing concepts and implementation issues.

Comments were received from 165 individual commenters. Five categories of commenters are investor-owned utilities (IOUs, 67 commenters), municipal and cooperative utilities (Muni/Coop, 39 commenters), non-utility generators and independent power producers (NUGs/IPPs, 15 commenters), Regulatory/Government entities (25 commenters), and Others (19 commenters). A list of the commenters is at the end of this appendix; it shows the categories under which their comments are summarized and the acronyms used in this appendix.

A summary of the comments is provided here. The summary is organized in the same manner as the two-day conference (current policy and advanced pricing concepts). The current policy issues are subdivided into eight comment areas and advanced pricing into four comment areas as follows:

Current Policy Issues

(1) General Criteria for Transmission Service Pricing
(2) "And" Versus "Or" Pricing and Related Incentives
(3) Incremental Pricing
(4) Network Service
(5) Ancillary Services
(6) Direction Aspects of Power Flows
(7) Non-Firm Transmission Pricing
(8) Regional Transmission Groups

[39] The reason we are providing flexibility to consider non-conforming transmission pricing proposals is because we do not want to reject out of hand innovative proposals that could benefit ratepayers. However, we do not intend to waste resources considering proposals whose *sole* purpose is to provide more revenue to the transmitting utilities. We will summarily reject such proposals.

[40] *See* Alternative Power Pooling Institutions under the Federal Power Act, Notice of Inquiry, FERC Stats. and Regs. ¶ _____.

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Advanced Pricing Concepts/Implementation Issues

(1) Alternative Pricing Concepts
(2) Distance/Flow-Based Rates
(3) Contract Path versus Measured Power Flows
(4) Spot Market Pricing

The Commission also received comments on stranded costs in the course of this Inquiry, but these are not addressed in this Pricing Policy Statement because stranded cost is the subject of a proposed rule.[41]

Current Policy Issues

1. General Criteria for Transmission Service Pricing

The first comment area deals with the proposed criteria for assessing transmission pricing reform. Commenters generally find the criteria proposed in Staff's Discussion Paper[42] acceptable. However, certain criteria are more readily agreed upon than others. Most commenters uniformly agree that the proposed criteria should: (1) Be simple to carry out and to administer; (2) promote efficient use of and investment in the transmission grid; (3) provide appropriate price signals to transmission customers; and (4) ensure equity and fairness during and beyond the transition period.

Other proposed criteria by commenters include that transmission pricing policy should:

- Ensure system reliability;
- Be flexible (*i.e.*, no "one size fits all" pricing methodology) and specifically recognize regional differences;
- Encourage the formation of Regional Transmission Groups (RTGs) and give substantial deference to pricing methodologies developed by RTGs;
- Provide for coordination between state and Federal pricing policies and encourage collaborative policy development;
- Provide for grandfathering of existing contracts and arrangements when implementing any new policies;
- Promote competition in *generation;*
- Unbundle rates for transmission services;
- Ensure nondiscriminatory rates, terms, and conditions;
- Not allow native load customers to subsidize firm wheeling;
- Give deference to negotiated agreements (with some commenters adding, where equal bargaining power is involved);
- Ensure rate predictability and transparency of rate derivation; and,
- Allow customers an option to have stable prices over time (although this would not limit parties to fixed rate contracts).

One criterion emphasized by most commenters is that the Commission should exercise maximum flexibility in pricing transmission service. Specifically, many commenters stress that the Commission should not attempt to rigidly apply a single transmission pricing methodology in all cases, to all entities, or to all regions. A general concern raised is that the Commission must recognize the substantial differences present between customer groups, utilities, state and local regulatory bodies, and regional differences. Accordingly, the Commission must resist the temptation to apply one pricing methodology in all cases.

One common view expressed by many Muni/Coops commenters is that the industry must move from a structure where multiple transmission system pricing occurs to a structure where transmission is viewed on a regional basis in conjunction with the development of large, regional power markets. Many commenters advocate the regional transmission grid approach but differ in how the industry and the Commission should advance toward this goal. Some appear to take a more cautious approach. For example, some commenters note that the Commission can only obtain meaningful answers to the questions posed in its transmission pricing inquiry if it first determines the shape of the industry it envisions (such as the regional transmission grid approach or the traditional model based on individually owned and operated transmission systems). APPA[43] contends that before considering changes in traditional transmission pricing, the Commission should develop and articulate a clear statement of its "vision" for the electric industry and specify "where the industry is going, how it will get there, likely impediments, and what steps are necessary for that vision to be fulfilled." Many Muni/Coops commenters also argue that the Commission must first determine if the benefits of transmission pricing reform will outweigh the costs of such reform.

Several Regulatory/Government entities commenters recommend that the following general principles be included in addition to the Commission's proposed criteria:

- The Commission's pricing policies should reflect differences between the rights and responsibilities of native load customers (including retail and wholesale requirements customers) and other users of the transmission system; any transmission pricing policy must ensure that native load customers will be held harmless; and,
- The Commission should seek to promote voluntary resolution of case-specific pricing issues by giving appropriate deference to consensual agreements produced through arms-length negotiations involving all affected parties.

NARUC proposes a consultative process to develop complimentary policies that truly coordinate and render coherent regulation of transmission service. The general goals include coherence of public policy, economic efficiency and reliability in electricity markets, efficiency of processes and decision-making, dialogue between federal and state decision-makers and appropriate input from constituent groups and affected parties as necessary. The Pennsylvania Commission concludes that without careful consideration of the role of state agencies and their interest in economic and environmental impacts, bulk power wheeling as envisioned by the Commission is, and will remain, a theoretical, economic model.

2. "And" Versus "Or" Pricing and Related Incentives

The "and" versus "or" issue dominated the pricing comments. While arguments on all sides of the issue were expressed, the commenters generally opposed the Commission's current corporate "or" policy and alternatively advocated either some form of the "and" pricing method or corporate-average embedded cost-based rates. The positions of the commenters are described below:

The "And" Method: Most IOUs, most Regulatory/Government entities and some Other entities support the "and" methodology. These commenters state that the Commission's "or" pricing policy does not hold the native load customers harmless and violates FPA section 212(a) (because native load customers and shareholders subsidize third party wheeling customers). When additional facilities are needed to serve third party wheeling load, and incremental (or opportunity) costs are greater than average embedded cost, native load customers subsidize that service (because no cost recognition is given to the third party's use of the existing transmission system, without which the transmission service could not be provided). Additionally, if incremental expansion cost related to third party transmission requests are not allowed by state regulators in retail rates, the transmitting utility will not be made whole. Finally, the Commission's policy on opportunity cost which applies the "higher of" test over the entire transaction period instead of an hourly basis precludes opportunity cost recovery in most cases, sends the wrong hourly price signals to transmission customers, and is overly burdensome administratively.

The "Or" Method: Most NUGs/IPPs commenters agree that the Commission's current corporate "or" policy sends the correct price signal for third-party transmission (as long as opportunity costs are "legitimate and verifiable" and continue to be capped at incremental expansion costs). However several commenters oppose pricing based on opportunity costs (as monopoly rents for a constrained system).

The Average Embedded Cost Method: Most of the Muni/Coops, some NUGs/IPPs, and some Other entities generally support the return to traditional corporate-average embedded cost-based rates. The majority of the Muni/Coops commenters and some of the Other commenters oppose both the "or" and the "and" transmission pricing methods (as yielding excessive rates and impeding the competitive generation market that EPAct permits). Such commenters recommend the traditional policy of charging average embedded cost-based transmission rates. Many of these commenters argue that a transmission-dependent utility (TDU) cannot be considered a "marginal" customer, subject to incremental and opportunity cost pricing, because the transmission system was designed to accommodate the TDU's use and has been paid for proportionally by the TDU.

[41] Docket No. RM94-7-000, Notice of Proposed Rulemaking, June 29, 1994.

[42] Staff appendix to *Inquiry Concerning the Commission's Pricing Policy for Transmission Service Provided by Public Utilities Under the Federal Power Act*, FERC Stats. & Regs. ¶ 35,024 (1993).

[43] Commenters are referred to by acronym here; acronyms are defined in a list at the end of this appendix.

Furthermore, these commenters argue that applying incremental pricing to TDUs is anticompetitive and inconsistent with the EPAct because (1) it forces TDUs to favor power purchases from the host utility over those from a competing power supplier, and (2) TDUs compete with the host utility for requirements customers (who are charged an average embedded cost rate by the host utility).

Commenters views regarding the incentives and disincentives inherent in corporate "or" pricing primarily fall into three basic positions:

(1) Although groups disagreed among themselves on how to calculate various cost-based transmission rates, most Muni/Coops, most Regulatory/Government entities, most NUGs/IPPs, and some others do not believe in allowing any incentives, or premiums above cost-based rates, properly calculated. Most of these commenters agreed that, when a monopoly resource is involved, such incentives amount to allowing "monopoly rents." Transmission is and will remain a natural monopoly, therefore, no incentive is needed beyond recovery of the transmitting utility's prudently-incurred costs and a fair return on its invested capital. Premiums allow the transmission monopolist a competitive advantage in the generation market. Furthermore, there is no need for incentives with the passage of the transmission provisions of the Energy Policy Act; the legal requirement to provide transmission service is sufficient incentive.

(2) Most NUGs/IPPs believe the current incentives provided by the incremental pricing part of the "or" policy are appropriate. However, many of these commenters oppose pricing based on opportunity costs (as monopoly rents for a constrained system).

(3) Those advocating "and" pricing, such as most IOUs and some Others, believe that further incentives are needed. The current "or" policy does not sufficiently compensate utilities for all costs of providing service, thus effectively requiring native load customers to subsidize transmission customers. If utilities are forced to absorb potential cost underrecovery and the risk associated with the "or" pricing methodology, then the rate of return should be adjusted to reflect greater risks assumed by engaging in third party wheeling transactions.

3. Incremental Cost Pricing

Under the Commission's current corporate "or" policy, third-party transmission users may be required to pay the incremental cost of a grid expansion if the incremental cost of the expansion is greater than corporate-average embedded cost. Such incremental pricing can be structured in one of two ways—a *contract* approach in which each user pays the incremental cost of the upgrade it occasions, and an *average* incremental price based on the average cost of all upgrades to the transmission system for a group of users.

Most, though not all, commenters believe that contract pricing is the preferred pricing model. IOUs in particular favor contract pricing because it provides more certainty that a utility's revenue requirements are fully recovered. If incremental pricing increases the risk of less than full revenue recovery, either shareholders or residual customers will bear the extra risks. Most wholesale customers also appear to favor contract pricing, though some have concerns that contract pricing, with different prices for each user, may result in price discrimination. These commenters suggest that similarly situated customers should have the same price, but have different notions of what this would mean.

For many of the difficult practical issues associated with incremental pricing, there is no consistent position taken by all or even most members of any interest group that supports incremental cost pricing. For example, many commenters believe that average incremental cost pricing gives the wrong price signal to both the transmission owner and user. These commenters are concerned that the average incremental cost price does not signal the true cost of the transmission service. A few commenters argue that this will result in underbuilding of the transmission system. Others suggest that this may result in overbuilding, although IOUs in particular doubt this result, given the difficulties inherent in siting, certification and construction of new transmission facilities.

Additionally, commenters are split on the issue of administrative costs and other implementation problems that may result under each pricing model. Some commenters argue that contract pricing entails maintaining separate contracting provisions for each user, with attendant high costs. Other commenters suggest that average incremental cost pricing is more difficult, given the need to estimate incremental costs, and the problems associated with changing average incremental rates as a result of incremental cost changes. One commenter suggests that it is simply not possible to reconcile average incremental pricing with an embedded cost transmission revenue requirement.

Several commenters suggested that it would be appropriate to allow utilities some flexibility to adopt either incremental cost pricing approach. The challenge for the Commission would be to determine under what conditions such flexibility would be warranted, in order to protect both the third-party transmission users and the remaining wholesale and retail customers from being charged for inappropriate costs. Other commenters suggest that some experimentation may be in order. If the Commission chooses to allow such experimentation, it may learn a great deal about the magnitude of the practical problems, as well as potential solutions for those problems.

4. Network Service

The Staff Discussion Paper defined network service as allowing the user to vary its schedule and points of delivery and receipt without paying additional charges for each change. Commenters were asked to discuss the reasonableness of this definition and to provide recommendations on pricing network service. Most IOUs assert that utilities cannot provide third party transmission users with unlimited flexibility in choosing and switching points of receipt and delivery. Unless the transmission customer specifies the points of receipt and delivery, the nature of the generation, and the loads to be served, the transmitting utility will have no way to determine the impact of the proposed network arrangement on its system in terms of either reliability or cost. Unlimited flexibility could require transmission upgrades and make long term planning more difficult (with the potential for overbuilding). If network service is to include unlimited scheduling flexibility, it should be considered a premium service (priced higher than point-to-point service) since it requires higher transmission capacity margins to ensure reliability.

Most Muni/Coops, Regulatory/Government entities, NUGs/IPPs and some Other commenters agree with the Commission's definition of network service. Most Muni/Coops, NUGs/IPPs and some Other commenters insist that network service should be priced on an average embedded cost basis (with no non-cost-based network rate premiums or percentage adders). These commenters argue that such premiums would place network customers at a permanent competitive disadvantage in obtaining economical generation sources and in generation sales, compared to the transmitting utility. Many commenters agree that network access should not be totally flexible, nor be unduly rigid with reservation requirements and excessively advanced scheduling requirements; rather, they believe it should be subject to the same conditions faced by the transmitting utility, and provide access to transmission on an "as if owned" basis.

APPA asserts that it is not aware of any party that is seeking network access without regard to the control area utility's own transmission needs, or that is requesting network service with total flexibility, *i.e.*, no scheduling or backup requirements. APPA adds that it agrees with EEI on two points concerning utilities receiving network service: "they should state in *planning models* the sources of power that most probably will be used to serve loads, and they should schedule generation to serve load with the transmitting utility."

Regulatory/Government entities generally agree that accurate pricing of network service will depend on the nature of the network and any revenue pooling between transmission providers. Therefore, Regulatory/Government entities urge the Commission to be flexible and not mandate any particular method for pricing network service.

5. Ancillary Services

The Staff Discussion Paper gave examples of ancillary services and requested comments on other examples (including how such services should be priced). Most IOUs recommend that unless third party customers obtain ancillary services elsewhere, they should compensate the wheeling utility for the services provided to prevent the native load customers from subsidizing these services. IOUs note that as bulk power markets are becoming more competitive and

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independent power producers are supplying ever increasing amounts of generation, these support type services that were once provided on a reciprocal basis among utilities are not being provided by many suppliers because they are either unwilling or unable to provide such service.

One of the main concerns of the Muni/Coops commenters is that costs associated with ancillary services should not already be included in the average cost-based transmission rate. Additionally, several commenters insist that transmission customers should be given the option to provide such services themselves, or obtain them from other utilities, and receive full credit. These commenters also express concern regarding discriminatory pricing. Such commenters urge that any charges for ancillary services assessed to a transmission customer should be the same as the costs faced by the transmitting utility for the same service.

NUGs/IPPs, Regulatory/Government entities and Others generally did not address this issue.

Other claimed ancillary services include: Backup and Standby Service; Loss Service; Redispatch Costs; Control Center Service; Emergency Services; fast starts, "BlackStart" capability (starting up a generating station with no external power supply), regulation, and stability.

Graves, *et al.* proposed that ancillary services could be provided by an independent entity, which they call a "Poolco" (*e.g.*, an existing power pool, an RTG, NERC subregion, or consortium of independent generators). Their version of a Poolco would not participate directly in real power MW brokerage or energy supply; rather, it would own and operate a relatively small collection of generation and flow control assets sufficient to assure the integrity of the system, relying on tieline flows, voltage measurements at a few key load centers, and forecast control-area load changes (over the next few hours).

6. Direction Aspects of Power Flows

The power flows caused by a transmission transaction may be either with, or counter to, the prevailing flows. The incremental effects of transmission transactions may also raise issues with respect to the use of multiple parallel paths and the incremental effects on transmission losses.

A. Directional Flows

Most commenters (most IOUs, some Muni/Coops, and some Regulatory/Government entities) suggest that charges should be applied for all power flows on a system (regardless of direction). Several commenters indicate that reverse flows exist only under some system conditions and that changes in transmission system configuration (due to line outages) and changes in generating unit dispatch, may eliminate any reverse flows. Such commenters also claim that all transmission elements support all power flows. Accordingly, reverse flows should only be credited if they provide a direct economic benefit to the utility.

Other commenters (some Muni/Coops, some Regulatory/Government entities, and most Others) argue that it is important for the Commission to adopt a transmission pricing method which recognizes flow direction and discounts transmission service which "unloads" the system and helps to relieve constrained transmission lines. These commenters suggest that this type of pricing signal encourages the most efficient use of the transmission system.

B. Loop Flows

Few comments on this issue were received from Muni/Coops, NUGs/IPPs, Regulatory/Government entities and Others. There did not appear to be any consensus among the IOUs on the best method to address loop flow problems.

Southern Companies indicates that loop flows were often short-lived and were viewed as part of the normal interconnected operations among utilities. It was once commonly viewed that loop flows on one utility's system would most likely be offset by loop flows on its neighboring systems. In instances where the flows were a problem, negotiated solutions were reached. LG&E notes that bulk power transactions were once predominantly multi-directional and covered shorter distances so that transactions evened out over time.

However, in today's marketplace transactions are more numerous, over longer distances, and unidirectional. As a result, loop flows do not even out over time. In the new competitive environment, Southern Companies, AEP and Northern States claim the situation has changed. In the emerging bulk power market, many more long term firm transactions in a single direction are contemplated which will more adversely impact flows over interconnected systems. These commenters state that it also may be more difficult in a competitive environment to negotiate solutions to parallel flow problems. Consumers believes that uncertainty about loop-flow compensation may be a significant potential barrier to the more rapid development of competition among new generators.

C. Losses

Many commenters (some IOUs, most Muni/Coops, some Others) argue that losses vary in proportion to the distance over which the energy is moved, and accordingly, contend that incremental losses send a more appropriate price signal to the customer (by more closely linking cost causation and cost recovery). Tabors claims that efficiency requires pricing losses at the margin, which can be accomplished using load flow calculations and Optimal Power Flow modeling techniques. On the other hand, many commenters recommend average system line losses. Several of these commenters insist that they should be charged for line losses on the same cost basis that the transmitting owners use for their own dispatch and charge their native load customers.

7. Non-Firm Transmission Pricing

A fundamental issue of non-firm transmission service pricing is whether or not a contribution to capital costs over and above the variable cost of transmission (losses and opportunity costs) should be made for non-firm service. One view is that users of non-firm service should not pay for capacity costs since capacity is not built for them and their service can always be interrupted. On the other end of the spectrum are those that advocate a contribution of up to 100 percent of fixed costs, since firm customers need to be compensated for the use of the transmission system that they support in its entirety.

Most IOUs indicate that non-firm users of the transmission system should contribute to the capital costs of the system. They believe the Commission should rely on its historical precedent, which allows a contribution of up to 100 percent of fixed costs for non-firm service with the revenues being credited to native load customers. Some believe the shareholders should receive some of the revenues from non-firm transactions. Other commenters suggest minimal regulation of non-firm transactions as long as the price does not exceed a cap equal to its fully allocated transmission costs.

Many of the Muni/Coops commenters state that there are no fixed costs associated with providing non-firm transmission services and note that groups in different parts of the country (*e.g.*, PJM, NEPOOL, MAPP and ERCOT) do not include contributions to fixed costs in non-firm transmission pricing. Many commenters believe that no demand charges for non-firm transmission are necessary and argue that such demand charges may have a negative impact on the efficiencies of the economy energy market for short term transactions. For example, Consumer Working Group recommends:

Limiting non-firm rates to real costs (*i.e.* losses) would eliminate the artificial dead zone created by the incentive transmission rates now allowed. By granting all market participents (and not just transmission owners) access at cost to non-firm transactions, all consumers would benefit from increased coordination. Such nondiscriminatory, cost-based pricing of non-firm transmission would serve the EPAct's purpose of stimulating competition in bulk power markets and would promote economically efficient generation of electricity as expressly mandated by Section 212(a). (Consumer Working Group Reply at 21)

8. Regional Transmission Groups

All segments of the industry supported the Commission's encouragement of the development of such groups. Many commenters believe that RTGs represent the best method available to deal with the difficult transmission pricing issues presented in Staff's Discussion Paper. Some commenters cautioned that to be successful, RTGs must be certified by the Commission to ensure proper representation of all groups within the electric utility industry. Many commenters anticipate RTGs will facilitate coordinated regional planning, regional measurement of power flows and regional methodologies to determine the price of any firm wheeling transaction within the region. The information available on a regional basis will allow planning to alleviate current and future transmission constraints within the region as well as send a clear price signal to third party customers requesting service.

RTG's will also provide information as to what transmission capacity is available and the need for any transmission enhancements within the region to accommodate the requested transaction.

Advanced Pricing Concepts/Implementation Issues

1. Alternative Pricing Concepts

Numerous commenters proposed alternative pricing methods, other than those pricing methods normally permitted by this Commission. The methodologies advanced by these commenters varied from conceptual ideas to detailed formulas. Certain concepts and methods were advocated by more than one and in some cases several commenters, including:

- Combinations of, or hybrids between, the "or" and the "and" policies, many of which advocated recovery of all incremental costs and *some* contribution (but not necessarily 100%) to average embedded system costs.
- Variations of recovering strictly incremental or marginal cost pricing; *i.e.*, rates based on long-run incremental cost pricing for long-term firm transmission service and short-run marginal costs for other transactions. Another commenter proposed short-run marginal costs for transactions not requiring upgrades.
- Numerous proposals for a single transmission owner and for regional pricing, planning and operating approaches; for example: (1) The forced divestiture of all utilities' transmission assets and formation of a single transmission owning national grid company or "gridco"; (2) joint ownership, operation and pricing of all transmission within an established region with all transmission users obtaining load ratio shares of the regional grid and paying on an average embedded load ratio basis; (3) a proposal simply to price trahsmission in a region as if there were a single transmission owner; and (4) many suggestions for the Commission to further examine the companies formed in Norway, Sweden, New Zealand, Victoria (Australia), India, Argentina, England and Wales.
- Establishing a secondary market in transmission rights—transmission purchasers having the capacity to contractually broker, resell, trade, partially assign, or assign firm purchase entitlements as they choose. Capacity trading will provide for the repackaging of capacity rights to fit market needs, thereby creating a market mechanism to "price" and "clear" transmission services as a commodity.
- Numerous proposals advocating that the Commission require the unbundling of rates for transmission and sales services. Unbundling would require transmission owners to include a separate (transparent) transmission charge in any use of the utility's transmission system for the delivery of power in the wholesale market, including that utility's own wholesale sales. Transmission terms and conditions should be the same for all wholesale transactions, regardless of whether the seller is the owner of the transmission facilities used for the transaction.

2. Distance/Flow-Based Rates

Alternatives to postage stamp rates would make rates sensitive to the transmission distance involved in providing the service. Alternatives suggested include various "MW-mile" approaches and other methods based on load flows (such load flow methods can also treat issues involving multiple parallel paths and transmission losses associated with particular transmission transactions). Commenters' support is split between distance-based pricing and postage stamp rates.

Regulatory/Government commenters express a clear preference for distance-sensitive rates (over postage stamp rates). Most Regulatory/Government entities, some IOUs, some NUGs/IPPs, and some Others argue that distance-based rates would compensate the transmitter for increased transmission costs as more of its system is used. This encourages more efficient use of the transmission system. Where more miles of the transmission system are utilized, distance-sensitive rates reflect the proper cost causation. Several commenters believe that simplified distance-sensitive pricing methods, such as some MW-mile methods, used in conjunction with approaches such as zonal pricing that reflects system constraints, would be appropriate. Numerous commenters advocating distance-based rates recommend zonal pricing as a compromise between the administrative simplicity of postage stamp rates and more appropriate price signals of certain distance-based rate methods.

Most Muni/Coops, some IOUs, and some NUGs/IPPs support postage stamp rates and criticize distance-sensitive pricing due to its dependence upon power flow studies involving a base and a change case. Many commenters note that power flows on a transmission system are in constant change, thereby creating a very large number of possible system parameters that could be included in load flow analyses and therefore requiring many simplifying assumptions. Consequently, any attempt to derive a normal base case power flow on which to model an incremental power flow would be flawed and unreliable, particularly for individual utilities located in heavily interconnected networks. Therefore, these commenters prefer the administrative convenience of postage stamp rates over the complexity and questionable accuracy of distance-sensitive rates based on power flow studies.

3. Contract Path Versus Measured Power Flows

The mismatch between the contract path for a transaction and the actual flows creates pricing and equity concerns. Utilities are split regionally on whether to adopt loop flow, or parallel path, pricing reform or retain contract path pricing. Most Western utilities favor retaining contract path pricing. Western utilities maintain that the topology of the WSCC makes it well suited to the use of phase shifters to control the loop flow problem. In addition, the development of Flexible AC Transmission technology may provide additional devices to augment existing control strategies.

Many utilities in the Midwest and the East favor adopting loop flow pricing because over time contract path pricing has left many systems uncompensated for parallel flows. These utilities argue that contract path pricing is outmoded because (1) transmission services have become long-term single direction transactions, (2) many new market entities do not own transmission so that reciprocity is not possible, and (3) negotinted solutions are less possible as competition expands.

Many utilities in favor of loop flow pricing are concerned that the associated transition costs are formidable. Parallel flows constantly change with changes in the dispatch of generation. In addition, some utilities urge the development of RTGs first before implementing loop flow pricing. In fact, there is general agreement that RTGs are an appropriate institution for addressing many of the industry's problems including pricing issues and the siting and construction of transmission facilities.

While there is widespread dissatisfaction with contract path pricing outside of the West, there is considerable uncertainty about how to address the parallel flow problem effectively. Many parties believe that contract path pricing and loop flow pricing can be combined to address the problem, while other parties believe that these two methods are incompatible. Still other parties offer an array of variations on the contract path pricing and loop flow pricing methods. For example, Hogan's "contract network" approach and PacifiCorp's proposal are variations on the contract path pricing method. The GAPP experiment, which the Interregional Transmission Coordination Forum stresses as the way to identify the pricing method to compensate for parallel flows, is a preliminary type of loop flow pricing. The Texas Planned Capacity Wheeling Service and Southern Company's Transmission Cost Actual Path Pricing are also examples of loop flow pricing. Finally, many parties argue that alternatives to contract path pricing should be pursued on a voluntary basis.

4. Spot Pricing for Non-firm Transmission

Few commenters express outright opposition to spot pricing, but most advocate a cautious approach to implementation. Those in the latter category comprise a diverse group of IOUs (including EEI), coops, state commissions and industrial groups. Many suggest that spot pricing schemes should continue to be studied, but not considered for implementation at this time. Some encourage the Commission to conduct experiments similar to the Southwest Bulk Power Experiment and the WSPP.

Those opposed to spot pricing generally believe that the benefits are not worth the costs. Some argue that the successful implementation of spot pricing for transmission requires a competitive market in generation that does not now exist. However, some commenters that see promise in spot pricing argue that the necessary market institutions and technology exist today. They cite the operation of tight power pools, electronic bulletin boards, and the WSCC experiment as evidence of this fact.

Some commenters argue that the "up to" transmission rates that many utilities now

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use for non-firm transmission service effectively approximate spot transmission pricing. However, others believe that rate design for spot transmission pricing raises a number of difficult issues, such as the use of one-part versus two-part rates, and the appropriate definition of the cost of transmission service.

Several commenters offer highly developed policy proposals or technical models for use in implementing spot pricing. In particular, Hogan and Putnam believe that all participants in the power market should have access to economic dispatch with marginal cost pricing. Hogan argues that transmission rights cannot be built on the traditional wheeling model that assumes that specific power moves to specific customers. He claims that only by stepping away from such misleading assumptions can the Commission design a set of pricing and access reforms that are consistent with the underlying economics and will support an efficient competitive electricity market.

List of Commenters in the Transmission Pricing Policy Inquiry

The following parities filed either initial or reply comments. Acronyms used in this appendix are defined here.

Investor-Owned Electric Utilities and Associations

1. Allegheny Power Service Corporation
2. American Electric Power System Companies (AEP)
3. Arizona Public Service Company
4. Association of Electric Companies of Texas
5. Atlantic City Electric Company
6. Bangor Hydro-Electric Company
7. Caroline Power and Light Company
8. Centerior Energy Corporation
9. Central and South West Services, Inc.
10. Central Illinois Public Service Company
11. Central Louisiana Electric Company
12. Commonwealth Edison Company
13. Consumers Power Company/CMS Energy (Consumers)
14. Dayton Power and Light Company
15. Detroit Edison Company
16. Dominion Resources, Inc.
17. Duke Power Company
18. Duquesne Light Company
19. Edison Electric Institute (EEI)
20. Entergy Services, Inc.
21. Florida Power Corporation
22. Florida Power Corporation, Wisconsin Electric Power Company, and Wisconsin Public Service Corporation
23. Houston Lighting & Power Company
24. Idaho Power Company
25. Indianapolis Power & Light Company
26. Iowa-Illinois Gas and Electric Company
27. LG&E Energy Corp.
28. Long Island Lighting Company
29. Louisville Gas and Electric Company
30. Midwest Power Systems, Inc.
31. Montana Power Company
32. New England Power Service
33. New York State Electric & Gas Corporation
34. Niagara Mohawk Power Corporation (Niagara Mohawk)
35. Northeast Utilities System Companies
36. Northern States Power Company (Northern States)
37. Ohio Edison Company
38. Otter Tail Power Company
39. PacifiCorp
40. Pacific Gas and Electric Company
41. Pennsylvania-New Jersey-Maryland Interconnection
42. Pennsylvania Power & Light Company
43. Philadelphia Electric Company
44. Portland General Electric Company
45. PSI Energy Inc. and Cincinnati Gas & Electric Company
46. Public Service Company of Colorado
47. Public Service Company of New Mexico
48. Public Service Electric and Gas Company
49. Puget Sound Power & Light Company
50. San Diego Gas & Electric Company
51. Sierra Pacific Power Company
52. South Carolina Electric & Gas Company
53. Southern California Edison Company
54. Southern California Gas Company
55. Southern Companies
56. Southwestern Public Service Company
57. Tampa Electric Company
58. Texas Utilities Electric Company
59. Tucson Electric Power Company
60. Union Electric Company
61. United Illuminating Company
62. Unitil Power Corporation
63. Utility Working Group
64. Washington Water Power Company
65. Western Resources, Inc. and Kansas Gas and Electric Company
66. Wisconsin Electric Power Company
67. Wisconsin Public Service Corporation

Municipals, Cooperatives and Government-Owned Electric Utilities and Related Associations

1. Alabama Electric Cooperative, Inc. and South Mississippi Electric Power Association
2. Allegheny Electric Cooperative, Inc.
3. American Public Power Association (APPA)
4. Arizona Power Authority
5. Associated Electric Cooperative, Inc.
6. Basin Electric Power Cooperative
7. Bonneville Power Administration
8. California Department of Water Resources
9. City of Anaheim, California
10. City of Vernon, California
11. Colorado Association of Municipal Utilities
12. Colorado Joint Transmission Principles Participants
13. Consumer Working Group
14. East Kentucky Power Cooperative, Inc., Saluda River Electric Cooperative, Inc., and Wolverine Power Supply Cooperative
15. East Texas Cooperatives
16. Florida Municipal Power Agency, Michigan Municipal Cooperative Group and Wolverine Power Supply Cooperative
17. Indiana Municipal Power Agency
18. Irrigation and Electrical Districts Association of Arizona
19. Large Public Power Council
20. Lincoln Electric System
21. Massachusetts Municipal Power Systems
22. Missouri Basin Municipal Power Agency
23. Municipal Electric Authority of Georgia
24. National Rural Electric Cooperative Association
25. Northern California Power Agency
26. Oglethorpe Power Corporation
27. Old Dominion Electric Cooperative, Inc.
28. Public Generating Pool
29. Sacramento Municipal Utility District
30. South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc.
31. Tennessee Valley Authority
32. Transmission Access Policy Study Group
33. Transmission Agency of Northern California
34. Transmission Dependent Systems
35. Turlock Irrigation District
36. Utah Associated Municipal Power Systems
37. Wabash Valley Power Association, Inc.
38. Wisconsin Public Power, Inc. SYSTEM
39. Wisconsin Wholesale Customers

Non-Traditional Utility Generators (NUGs, IPPs, EWGs and Qfs), Power Marketers Foreign Entities and Related Associations

1. American Wind Energy Association
2. British Columbia Power Exchange Corporation (POWEREX)
3. California Independent Energy Producers Association
4. Electric Generation Association
5. Enron Power Marketing, Inc.
6. Fuel Managers Association
7. Geothermal Resources Association
8. Hydro-Quebec
9. InterCoast Power Marketing Company
10. Kvaener Energy Development Inc. and Citizens Power & Light Co.
11. LG&E Power, Inc.
12. National Independent Energy Producers
13. National Power Plc
14. Ontario Hydro
15. Torco Energy Marketing, Inc.

State Regulatory Commissions and Other Government Agencies

1. Alabama Public Service Commission
2. California Energy Commission
3. California Public Utilities Commission
4. Florida Public Service Commission
5. Georgia Public Service Commission
6. Idaho Public Utilities Commission
7. Illinois Commerce Commission
8. Indiana Utility Regulatory Commission
9. Kansas Corporation Commission
10. Maine Public Utilities Commission and the Vermont Department of Public Service
11. Massachusetts Department of Public Utilities
12. Michigan Public Service Commission
13. National Association of Regulatory Utility Commissioners (NARUC)
14. Nevada Public Service Commission
15. New York State Department of Public Service
16. Ohio Public Utilities Commission the Ohio Sitting Board
17. Pennsylvania Public Utility Commission
18. Sharp, The Hon. Philip R., Chairman, Subcommittee on Energy and Power
19. Texas Public Utility Commission
20. United States Department of Energy
21. United States Department of Justice
22. Virginia State Corporation Commission
23. Wallop, The Hon. Malcolm, Senate Committee on Energy and Natural Resources
24. Washington State Energy Office
25. Wisconsin Public Service Commission

Others

1. American Forest and Paper Association (American Forest & Paper)
2. Burns, Robert E.
3. Committee on Regional Electric Power Cooperation
4. Direct Electric Inc. (Direct Electric)
5. Drazen-Brubaker & Associates, Inc.
6. Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association
7. Electric Power Research Institute
8. Ernst & Young Utilities Consulting/ Frederick L. McCoy
9. Hogan, William W. (Hogan)
10. Incentives Research, Inc., and Massachusetts Institute of Technology (Graves, *et al.*)
11. Institute of Electrical and Electronic Engineers
12. Interregional Transmission Coordination Forum
13. Joint Consumer Advocates
14. Lively, Mark B.
15. New York Mercantile Exchange
16. Ohio Office of the Consumers' Counsel
17. Putnam, Hayes & Bartlett, Inc. (Putnam)
18. SASY Inc.
19. Tabors Caramanis & Associates (Tabors)

[FR Doc. 94–27091 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 40

[Public Notice 2110]

Refusal of Diversity Immigrants

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: On March 31, 1994, the Department published a final rule to implement the provisions of sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, relating to Diversity Immigrants. There was an inadvertent omission in that publication. This final rule rectifies that omission by promulgating a new section 40.105.

EFFECTIVE DATE: December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Bureau of Consular Affairs, (202) 663–1184.

SUPPLEMENTARY INFORMATION: Public Notice 1925 at 58 FR 68791, December 29, 1993, proposed amendments to 22 CFR Parts 40 and 42 to implement section 201(a)(3), 201(e), 203(c), 203(e)(2), and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, relating to Diversity Immigrants. Public Notice 1973 at 59 FR 15298, March 31, 1994, published the final rule. The Department has belatedly realized that one proposed amendment was not included in the final rule.

In the proposed amendments the Department included a proposal to establish a new § 40.104 incorporating into regulation the statory authority to refuse an application for a diversity immigrant visa under section 203(c) if the applicant does not meet either the education or work experience requirement. Section 203(c)(2) specifies that an alien is not eligible to receive a visa under section 203(c) unless he or she has either at least a high school education or its equivalent or, within the last five years, has had at least two years work experience in an occupation requiring at least two years of training or experience.

There is thus a clear statutory mandate to refuse an application for a diversity immigrant visa if the applicant does not meet that requirement, even though this is couched in terms of eligibility requirements that must be met, rather than in terms of a refusal ground. For this reason, the Department proposed to add a new section 40.104 for this purpose. None of the commenters on the proposed regulations commented on this proposed new section, presumably because it was correctly understood to be merely a technical refinement without substantive effect on the interpretation and application of the underlying statutory provisions.

For reasons not now clear, proposed section 40.104 was not included in the final rule. Since then the Department has recently promulgated a different new section 40.104 in connection with the implementation of section 506 of Public Law 103–317, an unrelated provision. As a result, the Department is now publishing the text of what was originally proposed to be section 40.104 as section 40.105.

List of Subjects in 22 CFR Part 40

Aliens, Documentation, Immigrants, Refusals, Visas.

Accordingly, 22 CFR Part 40 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec 109(b)(1), Sec. 131 of Public Law 101–649, 104 Stat. 4997.

2. Part 40 is amended by adding a new § 40.105 to subpart K to read as follows:

§ 40.105 Applicant for immigrant visa under INA 203(c).

An alien shall be ineligible to receive a visa under INA 203(c) if the alien does not have a high school education or its equivalent, as defined in 22 CFR 42.33(a)(2), or does not have, within the five years preceding the date of application for such visa, at least two years of work experience in an occupation which requires at least two years of training or experience.

Dated: October 25, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–27118 Filed 11–2–94; 8:45 am]

BILLING CODE 4710–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME13–1–6645; A–1–FRL–5076–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Enhanced Inspection and Maintenance in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is conditionally approving a revision to the Maine Department of Environmental Protection (DEP) State Implementation Plan (SIP) for Inspection and Maintenance (I/M). This SIP revision was originally submitted to EPA for approval on November 1, 1993. This submittal was supplemented by a letter from the Commissioner of DEP dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994 and to address issues relating to the low mileage waiver by specified dates. On July 21, 1994, the State of Maine submitted a revised SIP submittal. The SIP revision includes Chapter 128 of an amended State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented.

EPA is conditionally approving the SIP revision on I/M, under section 110(k)(4) of the CAA, based on commitments made by Maine in its May 26, 1994 letter and reiterated in the July 21, 1994 submittal. Maine's commitments pertain to the "low

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mileage" waiver described in III.F below as well as the owner-performed repair issue described in III.J below. Section 110(k)(4) provides that, if a state fails to comply with its commitments by a date certain, but no later than one year after EPA approval, EPA's conditional approval will convert to a disapproval. The content of the May 26, 1994 letter, and the July 21, 1994 revised SIP submission are described in detail in this notice.

EFFECTIVE DATE: This final rule is effective on December 5, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3233.

SUPPLEMENTARY INFORMATION: On July 8, 1994 (59 FR 35072), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed conditional approval or, in the alternative, disapproval of Maine's enhanced inspection and maintenance program in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties. This SIP revision was originally submitted to EPA for approval on November 1, 1993.

This submittal was supplemented by a letter from the Commissioner of DEP dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994 and to address issues relating to the low mileage waiver by specified dates. On July 21, 1994, the State of Maine submitted a revised SIP submittal.

Specific requirements of EPA's I/M regulations and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. This rulemaking explains how the State fulfilled the requirements articulated in the May 26, 1994 letter from DEP as they were described in the NPR. While no public comments were received on this NPR, substantial public comments were received on a related NPR published on June 23, 1994 (59 FR 32390). In that package, EPA proposed approval of a voluntary I/M program in Kennebec, Knox, Lincoln and Sagadahoc counties, without evaluating whether or not it met any requirements of the federal I/M rule. One hundred seventy-four comment letters were received on that package. Comments centered on a potential emissions trade, which would have allowed nitrogen oxide emission reductions from the I/M program, not reqired by federal law, to be traded to promote industrial growth. Though it was reported by the local media as such, the NPR did not propose approval of an emissions trade. In addition, while many supported I/M, some of the commenters questioned the need for I/M in Maine. Each of the letters which had a return address was responded to in writing individually from Region 1's Air Director, with the exception of comments received from the Natural Resources Council of Maine and the American Lung Association of Maine. A summary of all these comments, and EPA's response is included in section IV of this document. Again, no comments were received on the July 8, 1994 NPR to which this final action specifically pertains.

The I/M SIP includes Chapter 128 of an amended State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. Maine submitted this SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 184(b)(1)(A) of the Clean Air Act, and the federal I/M rule codified at 40 CFR part 51, subpart S. This SIP revision will require vehicle owners to comply with the Maine I/M program in the seven moderate ozone nonattainment counties in Maine. This revision applies to the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York. At the time the NPR was prepared, the State was proposing revisions to its I/M regulations and was undergoing rulemaking action to address outstanding deficiencies in the rules submitted as part of the November 1, 1993 SIP revision. The July 21, 1994 submittal includes those revised adopted rules and a detailed narrative description of the program. EPA is taking final action to conditionally approve the program because the state has met the requirements of the I/M rule except for the items which provide the basis for the conditional approval.

The NPR stated that the only outstanding issue which could not be resolved in time for the July 21, 1994 submission (and which therefore formed the basis of the conditional approval) was the "low mileage" waiver (LMW). Conditional approval for the LMW issue is necessary because the number of vehicles to be granted low mileage exemptions is uncertain and EPA is concerned that the use of LMWs may result in the State's failing to meet the minimum enhanced I/M performance standard in actual practice. Coincident with EPA's processing of the NPR, however, Maine adopted a change to the regulation that is inconsistent with the federal I/M rule. Specifically, Maine allowed for owner-performed repairs for select emission control devices for 1980 and newer vehicles to count toward the minimum waiver expenditure provided by section 51.360 of the federal I/M rule. Section 51.360 does not allow the cost of parts for these newer vehicles to count toward the waiver limit. However, the state committed in its May 26, 1994 letter and reiterated in the July 21, 1994 submittal that it would issue waivers only when the requirements of EPA's waiver requirements are met. EPA construes this as a commitment to adopt the necessary corrective measures which in turn provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. EPA believes this deviation in the area of owner-performed repairs, referred to herein as the "OPR issue," provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. Such conditional approval is appropriate because of the State's commitment to meet all of EPA's waiver requirements in its May 26, 1994 letter and in the July 21, 1994 submittal.

By proposing conditional approval on this action, EPA is agreeing to defer final, full approval on the revised SIP until the State has conducted a study of the impact of the LMW on the I/M program's emission reductions. The May 26, 1994 letter and the July 21, 1994 submittal commit to completing this evaluation no later than January 31, 1995. It should be noted that the State's authorizing legislation currently sets a deadline of January 15, 1996 for completion of this evaluation, and the State's commitment to complete the report by January 31, 1995 represents a significantly expedited schedule. In the event that the above evaluation shows that the State's use of LMWs causes it to fall short of the enhanced I/M performance standard in actual practice, the State has further committed to securing the necessary legal and regulatory changes to eliminate LMWs in time to submit a corrected I/M SIP no later than September 1, 1995. To fulfill its commitment to meet all requirements of 40 CFR 51.360 Maine must also make the necessary regulatory changes to address the OPR issue no later than September 1, 1995. Should the State fail to meet the above commitments, the conditional approval will convert to a disapproval.

I. Clean Air Act Requirements

Background

Maine is part of the Ozone Transport Region (OTR). Section 184(b)(1)(A) of the Clean Air Act (CAA) requires areas of the OTR defined in EPA's final I/M rule (57 FR 52950, November 5, 1992) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. In addition, the I/M rule requires that all moderate ozone nonattainment areas containing urbanized areas must implement a program meeting the basic I/M performance standard. Maine is affected by these provisions in some areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs are required in the Portland area, and the Maine portion of the Portsmouth, New Hampshire area. Basic I/M would be required in the Lewiston-Auburn area. This program is being submitted to fulfill Maine's obligations to implement basic and enhanced I/M. Enhanced I/M is a more stringent program and includes all of the required components of basic I/M.

EPA has reviewed the November 1, 1993, May 26, 1994 and July 21, 1994 State submittals against the requirements of the Act and EPA's final I/M rule. A summary of EPA's analysis is provided below.

II. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to sections 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. State Submittal

On November 1, 1993, May 26, 1994, and July 21, 1994, the State of Maine submitted various elements which, taken together, constitute an I/M SIP revision for seven ozone nonattainment counties classified as moderate or above. A public hearing for the November 1, 1993 submittal was held on October 26, 1992. As stated in the May 26, 1994 letter from the DEP, a public hearing also was held on May 25, 1994. The amended rules submitted on July 21, 1994, were effective on June 28, 1994. EPA submitted comments during both of those hearings. In addition, EPA has worked closely with the DEP to ensure that the I/M program meets EPA requirements identified in the I/M rule.

The I/M SIP submittal provides for the implementation of enhanced I/M in the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York beginning on July 1, 1994. Maine will be implementing a biennial, test-only I/M program. With the changes the State made in its July 21, 1994 submittal, the program will meet the requirements of EPA's performance standard and other requirements contained in the federal I/M rule, in the above-listed counties. Testing will be overseen by the DEP and implemented by an I/M contractor. Other aspects of the Maine I/M program include: transient testing of 1968 and later light duty vehicles and trucks and heavy duty trucks (although only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met), evaporative emission testing for specified model year vehicles, a test fee to ensure adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, requirements for testing convenience, quality assurance, data collection, minimum expenditures prior to time extensions and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties based on inspector incompetence, an on-road testing program, and emission recall enforcement. A section-by-section analysis of the federal I/M rule, Maine's demonstration of how the I/M program meets the federal SIP requirements, as well as the changes to the Maine I/M program as submitted on July 21, 1994, is provided below.

A. Applicability

The SIP describes in detail the areas subject to the enhanced I/M SIP revision and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program boundaries.

The Maine I/M regulations and authorizing legislation specify that the enhanced I/M program be implemented in the counties described above. The Maine I/M program is being implemented in areas beyond those required by the Clean Air Act and EPA's rule. Maine is implementing the enhanced I/M program throughout its moderate ozone nonattainment areas, in part, to meet requirements of Section 182(b)(1)(A) of the CAA that requires reasonable further progress (RFP). EPA intended to take separate rulemaking action on the portion of the Maine submittal expanding the geographical scope of the I/M program to counties not otherwise required to adopt I/M. Those counties include Kennebec, Knox, Lincoln, and Sagadahoc. Although these areas are not required to implement enhanced or basic I/M, the State of Maine had requested expedited approval for those areas in order to make the resultant emission reductions federally enforceable. Therefore, EPA moved forward to approve I/M in these areas as strengthening the SIP in Knox, Kennebec, Lincoln, and Sagadahoc Counties. EPA proposed separate action on that optional I/M program in the event that EPA took final action disapproving this SIP. However, by this action, Maine's I/M program is conditionally approved and the revised SIP requirements will apply to all I/M areas including the optional areas. Once Maine has fulfilled its commitments regarding the "low mileage" waiver and the owner-performed repair issues, EPA will withdraw the separate rulemaking action approving the optional I/M program since that action would be superseded by such final (unconditional) approval in the context of this rulemaking.

B. Enhanced I/M Performance Standard

Today's proposal discusses the I/M program designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in Maine. Maine's program was designed to meet the performance standard for volatile organic compounds (VOC) and nitrogen oxides (NO_x). EPA's performance standard establishes an emission reduction target that must be met by a program in order for the SIP to be approvable. The program, as documented in the SIP, must meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State submitted a modeling demonstration using the EPA computer model, MOBILE5a, showing that the enhanced performance standard will be met in the area. The impact of the allowed program exemptions (for example, street rods and stock race cars) has been incorporated into the estimate of the program's effectiveness. In addition, in its May 26, 1994 and July 21, 1994 submittals, the DEP provided a commitment to maintain the level of compliance and waivers assumed in the

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modeling. The DEP also provided additional detail on this modeling effort, including justification for the modeling inputs assumed in the revised submittal. The effect of the "low mileage" waiver (LMW) was not evaluated in this modeling effort. One reason this action is a conditional approval is to allow the State to demonstrate that the effect of the LMW is negligible, or to fulfill its commitment to make necessary legislative and regulatory changes if such LMW affects the ability of the State to meet the performance standard.

C. Network Type and Program Evaluation

Under the Act and EPA's I/M rule the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, as well as the legal authority establishing the evaluation program.

Maine has chosen to implement a test-only I/M network program design utilizing contractors to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design, and has provided evidence that precludes conflicts of interest by the contractor, as described in the "test-only" requirements in the I/M rule. In its July 21, 1994 letter, the Maine DEP states, in its SIP revision narrative, that it will institute a continuous ongoing evaluation program consistent with the federal I/M rule. The results of the evaluation program will be reported to EPA on a biennial basis (40 CFR 51.353). In addition, Maine commits to developing and submitting the annual reports described by 40 CFR 51.366. Legal authority, already contained in Maine state law, authorizes the DEP to implement this contractor operated, test-only program and conduct the program evaluation, as necessary, to implement I/M consistent with federal requirements.

D. Adequate Tools and Resources

Under the Act and EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met, including: (1) A detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and for other requirements discussed throughout the I/M rule, for the period prior to the next biennial self-evaluation required by the federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

The current Maine legislation was effective July 12, 1993. The legislation authorizes the DEP to collect a fee from the I/M contractors to cover the costs of administrating, overseeing, and enforcing the I/M program, and provides for allocation of certain highway funds for implementation. As Maine committed in the May 26, 1994 letter, the July 21, 1994 submittal includes additional detail on the funding and description of resources to be used for implementation of the enhanced I/M program. This narrative describes the budget, staffing support, and equipment needed to implement the program. The revised regulations provide between a $2.00 and $4.00 fee per inspection to be used to administer the program.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must include a detailed test schedule, including the test year selection scheme if testing is other than annual. The SIP must also include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP needs to demonstrate that the network of stations providing testing services is sufficient to ensure consumer convenience by providing short waiting times to get a test, and short driving distances to get to the test center.

The Maine SIP revision requires biennial inspections for all subject motor vehicles that are at least two years old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process. This is described in more detail in the July 21, 1994 submittal. The authority for enforcing the testing frequency is contained in the revised Maine I/M rule. Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its contractor, and in the Maine rules. The contract requires an average waiting time of 15 minutes or less per test (except for 7 days per month) and inspection facility locations which ensure that 85% of the vehicle population is within a fifteen mile drive of each facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed description of the number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority necessary to implement and enforce the vehicle coverage requirement.

Maine's I/M program covers all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the nonattainment areas (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met). Vehicles will be identified through the State Department of Transportation vehicle registration database. Special classes, which are exempt from the emission testing program, include vehicles weighing more than 10,000 pounds (GVWR), street rods, stock race cars, and motorcycles. Based on information provided by the State, Maine has shown that such exemptions will not prevent the program from achieving the performance standard. Additional detail supporting this conclusion was submitted by the State on July 21, 1994. Legal authority for the vehicle coverage requirement is contained in the Maine I/M rule and the July, 1993 authorizing legislation. The revised rules submitted by Maine on July 21, 1994 include a low-mileage waiver (LMW) which exempts vehicles driven less than 5000 miles per year. The authorizing legislation requires the LMW and also requires that the DEP prepare a report on its effect on Maine's ability to meet the performance standard. The May 26, 1994 letter and the July 21, 1994 submittal from the DEP commit to provide the legislature with this information by January 31, 1995, and to secure revised legislation if the data shows that Maine cannot achieve the performance standard required by EPA's I/M rule. If necessary, the DEP also commits to revising its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the LMW by September 1, 1995. At present, there is inadequate information for EPA to determine how this waiver will affect the performance standard. For this reason, EPA is conditionally approving the submission based on the above-referenced commitments by DEP. Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the applicable milestone. Under no circumstances will the September 1, 1995 date for final submittal be revised.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure used. The SIP also must include the rule, ordinance or law describing and establishing the test procedures.

The Maine I/M SIP revision obligates the State to perform transient exhaust emission testing using the IM240 driving cycle. In addition, the State of Maine has stated that it will follow procedures in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications." The State will be requiring IM240 tests on 1968 and later model year vehicles in the area. This model year coverage complies with EPA's I/M regulation. In addition, the State of Maine will require evaporative emission testing of fuel system integrity and functionality for 1981 and newer vehicles. The test procedures are set forth with specificity in the I/M Request For Proposal (RFP) which the Maine I/M contractor is required to abide by. In approving this action, EPA expects Maine to amend these procedures to ensure that the latest EPA procedures will be used in the program, if the EPA guidance is revised in the future.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and address each of the requirements set forth at 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

In its July 21, 1994 submission, Maine provided written equipment specifications as contained in EPA's IM240 Guidance and the appendices of EPA's I/M rule. The Maine SIP submissions and their appendices address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by the RFP and contract.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP also must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The Maine I/M SIP narrative, the RFP, and the contract included as part of the Maine July 21, 1994 submittal contain descriptions and requirements establishing the quality control procedures described in accordance with the federal I/M rule and are consistent with EPA guidance. These requirements will help ensure that equipment calibrations are properly performed and recorded and that the necessary compliance document security is maintained. The Maine SIP complies with all specifications for quality control set forth in § 51.359 and appendix A of the federal I/M rule, and EPA's technical guidance.

J. Waivers and Compliance Via Diagnostic Inspection

Under EPA's I/M rule the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Corrective action must be taken if the waiver rate exceeds that estimated in the SIP, or the state must revise the SIP and claim emission reductions accordingly. The SIP also must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance(s), or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and federal I/M rule. Expenditures for repairs of at least $450, adjusted annually for the consumer price index (CPI), must be spent in order to qualify for a waiver in the enhanced I/M program. Maine has demonstrated that it can meet the enhanced I/M performance standard testing only 1981 and newer vehicles. In addition, Maine is requiring I/M on vehicles as old as 1968 model year. These vehicles will not be included as part of the "enhanced I/M" program, despite being subject to the same type of exhaust emission testing because the state does not require such vehicles to meet the $450 waiver minimum. Nevertheless, the testing of these additional vehicles will achieve additional emission reductions which will be used, in part, as a means of achieving additional emission reductions required for Reasonable Further Progress, and anticipated by Maine to be necessary for attainment. Accordingly, these older vehicles will be subject to a lower waiver expenditure of $125, adjusted for CPI, prior to receiving a waiver.

The Maine program includes a waiver rate of 3% of initially failed vehicles, Model Year 1981 and newer. This waiver rate is used in the modeling demonstration. The DEP has committed in the July 21, 1994 submittal, that if the waiver rate is higher than estimated as determined by its program reports, the State will take corrective action to address the deficiency. Furthermore, the SIP describes the three types of waivers the State will allow including: a minimum expenditure, a time extension, and a one-time hardship waiver provisions. These issues are dealt with in a manner consistent with the federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers, consistent with EPA's I/M rule, will be ensured by the DEP and its contractors and are detailed in the SIP narrative, submitted on July 21, 1994.

One portion of the revised Maine rule represents a deviation from the requirements of EPA's final rule (57 FR 52950). This provision allows for owner-performed repairs for select emission control devices (specifically, the catalytic converter, exhaust pipes and hardware, fuel filler cap, PCV valve, thermostatic air cleaner, and air pump) for 1980 and newer vehicles to count toward the minimum waiver expenditure set forth in section 51.360 of the federal I/M rule. However, as mentioned above, section 51.360 also requires that the State commit to maintaining a maximum level of waivers in this program. The State has committed to a 3 percent waiver limit, and to taking necessary steps to ensure that this rate is not exceeded. It is the level of waivers that greatly affects the level of emission reductions achieved

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from the program. Maine's deviation in the area of owner-performed repairs is very narrow since the list of emission control devices for which costs can count toward the waiver is expressly limited. Based on these considerations and the State's commitment to ensuring an allowable maximum waiver rate, EPA believes that a specified and clearly limited deviation from the federal I/M rule in the area of owner-performed repairs will not significantly affect the level of reductions achieved from the I/M program.

The State committed in its May 26, 1994 letter, reiterated in the July 21, 1994 submittal, that Maine would issue waivers only when the requirements of EPA's waiver requirements were met. In its May 26, 1994 letter, the State committed to amend the SIP to not allow owner repair costs to count toward the $450 waiver amount for 1980 and later model year vehicles. The July 21, 1994 submittal stated that Maine would issue waivers "only when the requirements of 40 CFR 51.360 are met." EPA construes this as a commitment to adopt the necessary corrective measures, which in turn provides an additional basis for the conditional approval proposed in the July 8, 1994 NPR. EPA has commented previously on the waiver provisions, including the OPR issue and the NPR proposed a conditional approval so that public notice on these issues was sufficient. For these reasons, EPA is conditionally approving this SIP revision. Accordingly, this notice requires the DEP to revise its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the OPR waiver allowance for 1980 and newer cars by September 1, 1995. Of course, the State's failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the applicable milestone. The September 1, 1995 date for final submittal will not be revised under any circumstances.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning motorist enforcement, including: (1) A description of the existing compliance mechanism if it will continue to be used for this program, and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, such as those operated (but not necessarily registered) in the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system including an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism must be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level and minimum compliance level used for modeling purposes and to be maintained, at a minimum, in practice.

The State of Maine has chosen to use a program of registration suspension whereby subsequent registration is denied to anyone who fails to meet emission testing requirements. The motorist compliance enforcement program will be implemented primarily by the Maine Bureau of Motor Vehicles (BMV). The enforcement strategy is described in Maine's July 21, 1994 submittal. The enforcement strategy is designed to ensure a 90 percent compliance rate for all vehicles within 4 months of the compliance deadline. As described in the July 21, 1994 submittal, this will be accomplished by a computer matching program that will identify registered vehicles tested prior to registration, as well as those receiving their emission inspection within a 60 day period after registering. Those not receiving the emissions test will be notified of such failure, and put on notice that their registration will be suspended if they do not comply. Those that still fail to comply will either receive a summons to appear in court, or be subject to confiscation of their license plate by BMV personnel who would physically remove the plate from the vehicle. In addition, the Maine legislation authorizing I/M provides that vehicles operating with a suspended registration must be fined at least $450 for 1981 model year or newer vehicles, or $125, for older than 1981 model year vehicles.

The only classes of vehicles exempt from the I/M program are described above under vehicle coverage. Fleet vehicles, rental car fleets, and leased vehicles will be required to meet the same program requirements as all other vehicles that receive annual registration. The compliance rate for the program was estimated at 98%. The legal authority to implement and enforce the program is included in the Maine law and in DEP and BMV rules as supplied on July 21, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The Maine I/M SIP revision provides for regular auditing of its enforcement program and adherence to effective management practices, including adjustments to improve the program when necessary. These program oversight and information management activities were described in the July 21, 1994 SIP narrative, and include: establishing procedures for personnel engaged in I/M document handling and processing, supporting a communications network for the State's oversight and management requirements, and establishing an I/M database to compare to the registration database for purposes of determining program effectiveness. In addition, the SIP describes the procedures to be followed in identifying noncomplying vehicles, timeframes for confiscation of suspended vehicle registration certificates and plates, timeframes for issuing summonses to appear in court, and the associated fines for failure to comply.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedure manuals covering both overt and covert performance audits, record audits, and equipment audits.

The July 21, 1994 submittal from Maine includes a description of the quality assurance program. According to that submittal, the program will include operation and progress reports and overt and covert audits of all emission inspectors and emission inspection facilities to be conducted by the DEP. Written procedures and techniques for overt and covert performance, record, and equipment audits will be prepared and provided to auditors and updated as needed. The July 21, 1994 submission also includes a commitment to conduct a minimum of two (2) covert audits per lane per year.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include a penalty schedule and legal authority for establishing and imposing penalties, civil fines, station and inspector license suspension, and revocations. In the case of state constitutional impediments precluding immediate authority to suspend licenses, the state Attorney General shall furnish an official opinion within the SIP explaining the constitutional impediment as well as relevant case law. The SIP also must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including the agencies, courts, and jurisdictions involved, personnel to prosecute and adjudicate cases, and other aspects of the enforcement of the program requirements, the resources to be allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Maine I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on its SIP submittal dated July 21, 1994, the State's enforcement procedures can be pursued through contractual or regulatory action. The DEP has the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the contract. The DEP is planning to assign employees to covert and overt auditing and commit additional resources required for enforcement oversight. These audits and oversight functions will be funded by the inspection fee.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The Maine I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. As outlined above and described in the May 26, 1994 and July 21, 1994 submittals, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the program. The state has also committed to collecting all data necessary for the quality assurance and enforcement reports, as required by 51.366 of the federal I/M rule.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The May 26, 1994 and July 21, 1994 submittals from the DEP provide detail on the inspector training program. The Maine I/M SIP provides for implementation of training, licensing, and refresher programs for emission inspectors. The SIP describes the program and curriculum including written and hands-on testing at least once every two years. All inspectors will be required to be licensed to inspect vehicles in the Maine I/M program.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

In the July 21, 1994 submittal, Maine provided additional detail and a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The SIP revision provides for regularly informing repair facilities about changes to the inspection program, training course schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. As described in the July 21, 1994 submittal, the DEP has also ensured that a repair technician hotline be available for repair technicians, and issued a contract to accomplish this. Performance monitoring statistics of repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State has committed to ensure that adequate repair technician training exists by establishing training courses at technical schools in the area, and has secured necessary funding under the Intermodal Surface Transportation Efficiency Act. Further, the SIP includes a detailed public information and consumer protection plan consistent with the requirements of EPA's I/M Rule at § 51.368.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to ensure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Maine I/M SIP ensures that vehicles subject to the enhanced I/M program that are included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA have had the appropriate repairs made prior to the inspection. The contractor will identify vehicles that have not completed recall repairs through an electronic database, updated on a quarterly basis. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The revised rules of June 28, 1994 address this issue, and were submitted on July 21, 1994.

S. On-road Testing

Under the Act and EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The I/M SIP submitted on July 21, 1994 includes a detailed description of its on-road testing program. The testing program will include 0.5% of the subject vehicles. Vehicles with emission readings measured by remote sensing devices exceeding limits defined in the revised rules will be required to obtain an out-of-cycle inspection at a vehicle emission inspection facility. This

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program will be staffed by the DEP. Data collection and reporting will be done using the general record-keeping and reporting provisions of the I/M program. The legal authority for this program is contained in the Maine I/M rule and the authorizing legislation. The State did not include additional modeling credit for this portion of the program as part of the modeling used to demonstrate that EPA's performance standard was met.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the federal requirements is contained in the EPA's technical support document prepared for this action. The TSD is available from the EPA New England Regional office listed above. The criteria used to review the submitted SIP revision are based on the requirements set forth in Section 182 of the CAA and in the federal I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist states the federal requirements, referenced by section of the rule, whether or not the Maine program meets such requirements, and where in the Maine SIP submittal the requirements are met. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Maine I/M SIP revision submitted to the EPA using the criteria stated above. The Maine regulations and accompanying materials contained in the SIP submittals from the State represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to conditionally approve the SIP.

Due to recent, well-publicized criticism of initial I/M testing in Maine, an agreement appears to have been reached between representatives of the Governor's Office, the Maine Legislature, the DEP, and Systems Control, Maine's I/M contractor. The agreement calls for a suspension of mandatory vehicle testing until March, 1995 so that improvements can be made to ensure a fair and equitable program. Since EPA's I/M rule permits the phase-in of emissions testing in areas implementing new test-only programs (See 40 CFR 51.373(c)(2)), the agreement in no way precludes EPA from conditionally approving the Maine I/M SIP as set forth in this notice.

IV. Response to Comments

While no public comments were received on this NPR, substantial public comments were received on a related NPR published on June 23, 1994 (59 FR 32390). That package proposed approval of an I/M program in Kennebec, Knox, Lincoln and Sagadahoc, with no judgement as to whether or not it met any requirements of the federal I/M rule. One hundred seventy-four comment letters were received on that package. Comments centered on a proposed trade which would have allowed nitrogen oxide emission reductions not required by federal law from the I/M program to be traded to promote industrial growth. Though it was reported by local media as such, EPA's notice did not propose to approve such a trade. In addition, while many commenters supported I/M, some questioned the need for I/M in Maine. The Maine Lung Association commented in support of expanding the program to the four optional counties. Each of the letters which had a return address were responded to in writing individually from Region I's Air Director, with the exception of the Natural Resources Council of Maine and the American Lung Association of Maine. A summary of these comments, and EPA's response is included in this package. No comments were received on the July 8, 1994 NPR to which this final action specifically pertains.

The Natural Resources Council of Maine and the American Lung Association of Maine commented the EPA should wait to approve the use of NO_X credits for trading purposes until an attainment demonstration has been submitted by the state and approved by EPA. This would allow both parties to determine if any credits generated by expanding the program area were surplus and available for trading to meeting offset requirements. Surplus credits are credits beyond those mandated by CAA requirements and necessary for attainment or Reasonable Further Progress. EPA agrees with this comment and will continue to work with the state of Maine to ensure that any credits generated by the I/M program used to meet offset requirements are surplus credits.

Final Action

EPA is conditionally approving the Maine I/M program submitted by the State, on November 1, 1993, May 26, 1994, and July 21, 1994.

Pursuant to section 110(k)(4) of the CAA, EPA is conditionally approving Maine's submission based on the commitments of the DEP. Specifically, by January 31, 1995 the DEP will submit a report outlining the effect of the "low mileage" waiver to the legislature; by June 1, 1995, if necessary, will hold a public hearing on revised regulation changes; and by September 1, 1995, if necessary, will submit a revised SIP revision removing the "low mileage" waiver from the regulations. The state must also address the above described issues related to owner performed repairs according to the same schedule. Section 110(k)(4) provides that, if a state fails to comply with its commitment, such conditional approval will convert to a disapproval.

Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date, in writing, by no later than the date of the applicable milestone. Under no circumstances will the September 1, 1995 date for final submittal be revised.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

Conditional approvals of SIP submittal under sections 110 and 301 subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing or has committed to impose in the future. Therefore, because the federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. 7410(a)(2).

If EPA issues a final disapproval or if this conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event EPA disapproves the state submittal, such disapproval would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor would it substitute a new federal requirement.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision is based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 15, 1994.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1019 is added to subpart U to read as follows:

§ 52.1019 Identification of plan—conditional approval.

(a) The following plan revisions were submitted on the dates specified.

(1) On November 1, 1993 the Maine Department of Environmental Protection submitted a revision to the State Implementation Plan (SIP) for an enhanced Inspection and Maintenance (I/M) program in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York counties. This submittal was supplemented by a letter dated May 26, 1994 describing additional changes Maine is making to the I/M program, and a commitment to provide additional material by July 22, 1994. On July 21, 1994, Maine submitted a revised submission. In these submissions, the State submitted adequate legal and regulatory authority to establish and implement an I/M program which meets the requirements of the Clean Air Act by September 1, 1995.

(i) Incorporation by reference.

(A) Letters from the Maine Department of Environmental Protection dated November 1, 1993, May 26, 1994 and July 21, 1994 submitting a revision to the Maine State Implementation Plan.

(B) The "Motor Vehicle Emission Inspection Program" regulation at Chapter 128 of the Department of Environmental Protection regulations effective June 28, 1994.

(C) Title 38, Chapter 28, Motor Vehicle Inspection Program, and Title 29, Section 102–C, Motor Vehicle Inspection Requirement for Vehicle Registration, which are state law citations authorizing the above regulation, both effective June 30, 1992 and revised effective October 13, 1993.

(ii) Additional materials.

Nonregulatory, administrative portions of the November 1, 1993, May 26, 1994, and July 21, 1994 submissions to the Maine State Implementation Plan.

(b) [Reserved].

[FR Doc. 94–27312 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[KY–069–6105a; FRL–5089–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O_3). The marginal nonattainment areas include the following counties: Lexington (Fayette and Scott), Owensboro (Daviess and a portion of Hancock), Paducah (Livingston and a portion of Marshall), and Edmonson County. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the Clean Air Act. In this action, EPA is approving the redesignation to attainment of the Owensboro and Edmonson County areas and the associated maintenance plans because they meet the maintenance plan and redesignation requirements. EPA will act on the request to redesignate to attainment the Lexington and Paducah areas in a future document. In this action, EPA is also approving the 1990 base year inventory for the Owensboro and Edmonson County marginal O_3 nonattainment areas.

DATES: This final rule will be effective January 3, 1995 unless adverse or critical comments are received by December 5, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347–3555 extension 4207 and at the Region IV address.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Owensboro and Edmonson County areas as nonattainment because the areas violated the O_3 standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318.)

The Owensboro and Edmonson County marginal O_3 nonattainment areas (nonattainment areas) more recently have ambient monitoring data

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that show no violations of the O_3 National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O_3 seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O_3 maintenance SIP for the nonattainment areas and requested redesignation of the nonattainment areas to attainment with respect to the O_3 NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990–2004 as an amendment to the SIP. On January 15, 1993, the Cabinet submitted revisions addressing public comments on the request to redesignate the nonattainment areas to attainment. On July 16, 1993, February 28, 1994, and August 29, 1994, the Cabinet submitted revisions to the redesignation request, maintenance plan, and projection inventories.

On May 7, 1993, Region IV determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on January 27, 1994, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the O_3 NAAQS in the marginal nonattainment areas. (See 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 O_3 seasons. Because the nonattainment areas have complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the areas have met the first statutory criterion of attainment of the O_3 NAAQS. The Commonwealth of Kentucky has committed to continue monitoring in the nonattainment areas in accordance with 40 CFR 58.

2. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for O_3. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

A. Section 110 Requirements

Although section 110 was amended by the CAA of 1990, the Kentucky SIP for the marginal nonattainment areas meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before the nonattainment areas may be redesignated to attainment, they must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). The Owensboro and Edmonson County nonattainment areas were classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment areas prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O_3 nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment areas. Therefore, the Commonwealth of Kentucky was not required to meet these requirements for purposes of redesignation. The Owensboro and Edmonson County areas currently have a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of these areas to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978, September 1, 1989, November 6, 1989, November 13, 1989, November 28, 1989, February 7, 1990, and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 488887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for these submittals has not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Owensboro and Edmonson County metropolitan statistical areas (MSA) were designated as marginal O_3 nonattainment. Because these areas are marginal, the areas must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has met the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Owensboro and Edmonson County area.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O_3 nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O_3. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Owensboro and Edmonson County areas were not designated nonattainment prior to 1990 and were classified as marginal O_3 nonattainment pursuant to the 1990 CAA. Therefore, these areas are not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992, October 20, 1992, February 17, 1993, and March 4, 1993. Action was taken December 12, 1993, on the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, on the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_X) and VOCs to provide the state with a statement showing actual emission each year. This request to redesignate was submitted prior to the November 15, 1992 emissions statement deadline. Therefore, the emissions statement program is not a requirement for the Owensboro and Edmonson County areas.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992 NSR deadline. Therefore, the NSR program is not a requirement for the Owensboro and Edmonson County areas.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the nonattainment areas violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference

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between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn. The technical support documents (TSD) contain additional information on these reductions.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

MSA	VOCs (tpd)		
	1988	1990	1988–1990
Owensboro	35.01	31.26	3.75
Edmonson Co	3.05	1.88	1.17

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS or at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Owensboro and Edmonson County marginal nonattainment areas because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_X, and CO emissions from the marginal nonattainment areas. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the O_3 NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories for the Owensboro and Edmonson County areas are included in this notice for VOCs and NO_X. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory. Refer to the TSD for more in-depth details regarding the base year inventory for the marginal nonattainment areas.

CO EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Point	Area	Mobile	Non-Road	Total
Owensboro	39.69	2.49	39.80	21.05	99.83
Edmonson Co	0.0	0.66	4.48	2.37	7.53

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990

[Tons per day]

	Biogenic
Owensboro 1990 Emissions	52.6
Edmonson Co. 1990 Emissions	29.3

B. Demonstration of Maintenance—Projected Inventories

Below, totals for VOC and NO_X emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's TSD for more in-depth details regarding the projected inventory for the nonattainment areas.

OWENSBORO VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	16.52	16.43	16.34	16.25	16.17	16.11
Area	5.37	5.33	5.30	5.27	5.23	5.21
Mobile	9.37	8.84	8.22	8.53	8.38	8.29
Total	31.26	30.61	30.36	30.05	29.78	29.60

OWENSBORO NO_X EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	82.05	81.82	81.58	81.34	81.11	80.96
Area	0.22	0.22	0.22	0.22	0.21	0.21
Mobile	8.27	7.50	7.08	6.88	6.66	6.62
Total	90.54	89.54	88.88	88.45	87.99	87.78

EDMONSON COUNTY VOC EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.74	0.76	0.77	0.79	0.80	0.82
Mobile	1.14	1.16	1.12	1.05	1.08	1.10
Total	1.88	1.92	1.89	1.84	1.88	1.92

EDMONSON NO_X EMISSION INVENTORY SUMMARY

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.04	0.04	0.04	0.04	0.04	0.04
Mobile	1.14	1.02	1.03	0.92	0.93	0.95
Total	1.18	1.06	1.07	0.96	0.98	0.99

As indicated in the following table, an emissions decrease in VOCs and NO_X in the Owensboro nonattainment area and an emissions decrease in NO_X in the Edmonson County nonattainment area are projected throughout the maintenance period. There is an increase in VOC emissions in the Edmonson County nonattainment area. However, the emissions increase of 0.04 tpd is not expected to affect maintenance of the O_3 NAAQS in this rural area. EPA believes that these emissions projections demonstrate that the nonattainment areas will continue to maintain the O_3 NAAQS.

VOC AND NO_X PROJECTED EMISSIONS CHANGES

	VOCs (percent)	NO_X (percent)
Owensboro	−5.31	−3.04
Edmonson Co	3.17	−15.76

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the marginal nonattainment areas depend, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment. Refer to the TSD for a more complete discussion of the indicators the Commonwealth is tracking and the contingency measures.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment areas will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for these nonattainment areas because they were designated marginal nonattainment pursuant to the CAA. A complete description of this contingency measure and its trigger can be found in the TSD. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this final action, EPA is approving the nonattainment areas' O_3 maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Owensboro and Edmonson County nonattainment areas to attainment for O_3 because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition EPA is approving the 1990 base year emission inventories for the Owensboro and Edmonson County nonattainment areas. Nothing in this action should be construed as permitting or allowing or

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establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 3, 1995 unless, by December 5, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 3, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, Hydrocarbons, Carbon monoxide, Nitrogen oxides, National parks, Wilderness areas.

Dated: September 20, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(70) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(70) The maintenance plan for the Owensboro and Edmonson County Areas which include Daviess, a portion of Hancock, and Edmonson Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Owensboro and Edmonson County areas which include Daviess, a portion of Hancock, and Edmonson Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for All Areas Designated Marginal Nonattainment for Ozone. The effective date is December 28, 1992.

(B) Attachment A—Demonstration of Permanent and Enforceable Reductions and Calculations of Interim Year Emission Projections. The effective date is August 26, 1994.

(C) Attachment B—VOC Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(D) Attachment C—CO Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(E) Attachment D—NO_X Emissions Summary for Kentucky's Marginal Ozone Nonattainment Areas. The effective date is August 26, 1994.

(F) Table 6–12 Biogenic Emissions Hancock County, Kentucky. The effective date is December 28, 1992.

(G) Table 6–11 Biogenic Emissions Daviess County, Kentucky. The effective date is December 28, 1992.

(H) Table 6–1. Biogenic Emissions Edmonson County, Kentucky. The effective date is December 28, 1992.

(ii) Other material.

(A) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(B) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, USEPA Region IV.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.318 the Kentucky-Ozone table is amended by revising the entries for "Edmonson County", "Daviess County", and "Hancock County" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Edmonson County	1/3/95	Unclassifiable/Attainment		
Daviess County	1/3/95	Unclassifiable/Attainment		
Hancock County	1/3/95	Unclassifiable/Attainment		

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–27071 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[WV23–1–6421a, WV23–2–6422a, A–1–FRL–5099–9]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; West Virginia; Rescission of Final Rule Pertaining to Redesignation of the Huntington West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of Direct final rule.

SUMMARY: On September 6, 1994, EPA published approval of a redesignation request and maintenance plan for the Huntington, West Virginia Ozone Nonattainment Area (59 FR 45980). This action approved a maintenance plan for the area to assist in maintaining the ozone standard and redesignated the Huntington, West Virginia area to attainment for ozone. The intended effect of the action was to provide for continued attainment of the ozone NAAQS by means of a maintenance plan and to reclassify the area to attainment. The effective date of this action was October 21, 1994.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (59 FR 45980). At the same time, EPA announced that this final rule would convert to a notice of proposed rule (NPR) (59 FR 46019) in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register**. The effective date of this action has passed.

Notice of intent to adversely comment was submitted to EPA within the prescribed comment period. Therefore, EPA is rescinding the September 6, 1994, final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule entitled Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Redesignation of the Huntington, West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp at (215) 597–8375 or Todd Ellsworth at (215) 597–2906.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Dated: October 14, 1994.

Stanley Laskowski,

Acting Regional Administrator, Region III.

Chapter I, title 40 of the code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

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Subpart XX—West Virginia

§ 52.2520 [Amended]

2. Section 52.2520 is amended by removing paragraph (c)(30).

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

4. In § 81.349 the ozone table is amended by revising the entries for "Cabell County" and "Wayne County" under Huntington-Ashland Area to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Huntington-Ashland Area:				
Cabell County		Nonattainment		Moderate.
Wayne County		Nonattainment		Moderate.
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 94–26968 Filed 11–2–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Amendment of Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) amends the final flood elevation determination published on April 14, 1994, and removes the final flood elevation determination published for the Town of Clarence, New York. A new final flood elevation determination for that community will be made at a later date.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: FEMA published a notice of final flood elevation determination for the Town of Clarence, New York on April 14, 1994 at 59 FR 17718. An engineering review of that determination concluded that the final flood elevation determination should be, and is hereby, rescinded in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104. Following an engineering analysis and review, a new final flood elevation determination will be made for the Town of Clarence, and will be published in the **Federal Register**.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended under New York by removing the entry for Town of Clarence, Erie County.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 25, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27158 Filed 11–2–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 931078–4286; I.D. 100593C]

RIN 0648–AF42

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a voluntary pilot program that will allow limited retention of undersized swordfish, in excess of the trip allowance, for scientific purposes critical to proper stock assessment. Swordfish so collected must be donated through the Second Harvest National Foodbank Network to needy individuals. The intended effects are to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size, while investigating the potential for avoiding waste of swordfish that would otherwise be discarded dead.

EFFECTIVE DATE: December 5, 1994.

ADDRESSES: Copies of documents supporting this action may be obtained from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the information collection requirements should be sent to Richard H. Schaefer and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, Chief, Highly Migratory Species Division; telephone: (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan (FMP) for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of the ATCA carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

Background

In June 1991, NMFS implemented swordfish regulations, consistent with the ICCAT recommendations, that included a minimum size limit of 41 lbs. (18.6 kg) dressed weight or 31 inches (78.7 cm) carcass length. The regulations include a trip allowance for undersized swordfish in an amount not exceeding 15 percent of the total number of swordfish landed. NMFS and the majority of the swordfish industry recognize the importance of minimizing the catch and mortality of undersized swordfish and remain committed to that objective.

Although large swordfish are the preferred target of U.S. swordfish vessels, harvest of some undersized swordfish is unavoidable in most cases. Under current regulations, undersized swordfish in excess of the trip allowance must be discarded, despite the fact that many of these fish are dead prior to being brought aboard the vessel. This results in waste of the resource. Further, if discards are not accurately reported, loss of information critical to proper stock assessment, in general, and to evaluation of the minimum size limit, in particular, also occurs.

NMFS, in cooperation with Blue Water Fishermen's Association, other members of the swordfish industry, National Fisheries Institute, and Second Harvest National Foodbank Network (Second Harvest), proposed implementing a pilot program to address these issues. Under the pilot program, voluntary participants selected by NMFS will be allowed to land, in excess of the 15 percent allowance, undersized swordfish that were dead prior to being brought aboard the vessel. Reporting and marking requirements will ensure the integrity of the program. Undersized fish retained in excess of the trip limit would be donated through Second Harvest to needy individuals.

At the November 1992 ICCAT meeting, the U.S. delegation discussed the proposed pilot program. It was agreed that the program was consistent with current ICCAT recommendations for swordfish and that it would be useful for evaluating the effectiveness of the minimum-size regulation. The United States will provide ICCAT with all data collected from the program.

Second Harvest is a tax-exempt organization that solicits surplus products and distributes them through a network of more than 45,000 qualified recipient organizations that provide food to millions of needy, ill, or infant Americans.

Further information is available from the **Federal Register** notice of the proposed rule on the Atlantic Swordfish Fishery (58 FR 68109, Dec. 23, 1993). This final rule makes some modifications to the proposed rule. The modifications are made after consideration of public comments, to make the responsibilities of program participants more clear and to ensure the enforceability of the regulations. These minor modifications are explained in the Description of the Program section of this preamble. NMFS realizes that there is a need to develop guidelines for donation programs for bycatch. A task force will be formed by NMFS to look into this issue. Information obtained from this pilot study, and task force meetings will begin the process of addressing NMFS standards for bycatch donation programs.

Program Objectives

1. Improve Scientific Information Regarding Catch, Mortality, Discard Rate, and Biological Characteristics of Undersized Swordfish

The program will provide an alternative source of data for estimating discards in excess of the trip allowance for undersized swordfish; discourage unreported discarding of dead undersized swordfish; and provide an opportunity to obtain additional information (e.g., age, size, sex) about undersized swordfish. This is important in maintaining catch per unit of effort indices for small swordfish, which are critical to ICCAT stock assessments.

2. Avoid Waste of a Valuable Resource

Dead fish that would have been discarded will be donated, through an organized, controlled program, to needy individuals.

3. Encourage Tagging and Release of All Live Undersized Swordfish by the Participants

The regulations require the owner or operator of a vessel to make a reasonable effort to tag and release live swordfish. In addition, the regulations encourage the participants to tag small bluefin tuna, bigeye tuna, yellowfin tuna, and sharks when possible.

4. Implement the Program in a Manner That Will Not Jeopardize or Undermine the Broader Management Objective of Minimizing the Mortality of Undersized Swordfish

The regulations implementing the program contain every practicable safeguard to ensure this.

Description of the Program

Non-profit

Although participants will incur costs associated with donated fish (harvesters—handling and processing, dealers—storage, Second Harvest—distribution), they will receive no direct economic benefit from landing and donating the undersized swordfish. Any purchase, sale, trade, or barter of undersized swordfish in excess of a vessel's trip allowance for undersized swordfish landed under the pilot program is prohibited.

Selection Process

NMFS will select participants (dealers and vessels) from among volunteers. Factors that will be considered in the selection process include: (1) History of voluntary participation in NMFS cooperative scientific programs, e.g., tag and release, sea sampling, collection of biological samples; (2) whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish; (3) representative coverage of the fishery to the extent possible; and (4) possible exclusion from the program of vessels and dealers with Magnuson Act, Lacey Act, or ATCA violations. Item (4) was expanded from the proposed rule, because NMFS does not want participants in the program who have serious violations, but NMFS wants to retain discretionary authority to include participants that have only minor violations.

Scope of the Program

The pilot program is divided into seven geographic regions: Gulf of Mexico, Florida East Coast, South Atlantic Bight, Mid-Atlantic Bight,

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Northeast Coastal, Northeast Distant Waters, and Caribbean. Initial efforts will be directed at establishing the program in the Gulf of Mexico region and then along the Atlantic seaboard. NMFS will select only one or two vessels initially, with only six vessels selected in the first year. NMFS intends to have 100 percent observer coverage of these vessels. After the logistics are worked out and any unforeseen problems are resolved, additional vessels/regions will be gradually added during the second year until the pilot program is established in all seven regions. Ultimately, two to four vessels and cooperating dealers will be selected to participate in each region.

Responsibilities of Participating Fishermen

A selection letter from NMFS, identifying the vessel as a participant in the program, is required to be maintained aboard the vessel and made available for inspection. Non-participating vessels remain subject to the current limits on the retention of undersized swordfish. Participants will be required to accommodate on board observers.

Undersized swordfish that are dead when brought on board the vessel and that will be donated are required to be properly prepared and stored. All live undersized swordfish to the extent possible must be tagged, released, and reported to NMFS on logbook and tagging records. Participants are required to handle properly, record, and transfer to selected dealers all undersized swordfish in excess of the trip allowance, i.e., such swordfish or parts thereof may not be retained for the crew, purchased, sold, bartered, traded, or given to anyone other than a selected dealer for transfer to an authorized recipient (Second Harvest).

The vessel owner or operator is required to notify the NMFS Office of Enforcement, at the phone number listed in the selection letter, and the dealer, 24 hours in advance, or as otherwise specified by NMFS, of landing information, including date, approximate time, location, and estimated number of fish to be donated. Specific instructions will be provided by NMFS to address logistics and to facilitate shorter notification in areas where the fishing grounds, such as the Florida Straits, are close to the landing locations. The advance notification and landing requirements were modified from the proposed rule to allow better enforcement and tracking of the donated swordfish.

The vessel owner or operator, prior to offloading, must tag donated swordfish with individually numbered tags provided by NMFS. Dealers may specify more than one facility where they expect to off-load vessels in the program. All fish must be in whole or dressed form through off-loading, and all swordfish from a vessel's trip must be off-loaded at the same facility. A list of selected dealers will be provided by NMFS to participating vessels.

The individual carcass weights of all donated fish must be clearly indicated, using a NMFS-specified code, on the tally (weigh-out) sheets that must be submitted to NMFS, as specified in the current regulations.

Transfer of swordfish between vessels is prohibited, as currently specified in the regulations.

Responsibilities of Participating Dealers

A selection letter from NMFS, identifying the dealer as a participant in the program, must be maintained at the dealer's place of business and be made available for inspection.

Donated swordfish may be received only from vessels selected by NMFS. A list of selected vessels will be provided by NMFS to participating dealers.

Dealers are responsible for weighing all undersized swordfish to be donated and recording the individual carcass weights, using a NMFS-specified code, on the dealer reports currently required. Information regarding vessel and dealer identification and the date that fish were received must be included on those reports. Reports must be submitted twice monthly to NMFS, as currently required by the regulations.

Swordfish for donation must be separated from swordfish eligible for sale and maintained without removal of the donation tag.

The dealer is required to obtain a bill of lading from Second Harvest, its affiliate, or agent for all swordfish donated. A copy of the bill of lading and weigh-out sheet must be submitted to the vessel that landed the swordfish (along with normal dealer weigh-out/trip settlement sheets). The types of forms to be used are more specific than indicated in the proposed rule, but no additional forms have been required.

Responsibilities of Second Harvest

Donated swordfish or any part thereof cannot be purchased, sold, bartered, or traded.

Donated swordfish must be made available for use as soon as possible to ensure the greatest freshness and palatability.

Second Harvest, its affiliates or agents, assume responsibility for donated swordfish upon receipt from the dealer, including transportation, quality control of product, processing, and distribution to the needy.

Transportation is to be provided by Second Harvest to ensure timely collection and distribution of donated swordfish.

Upon pickup of swordfish, Second Harvest, its affiliate or agent must provide dealers with bills of lading that include, or have attached, the names and permit numbers of fishing vessels and dealers involved in donating the swordfish, date of pickup, and tag number with individual carcass weight of each swordfish received. Second Harvest, its affiliates, or agents must provide copies of bills of lading with attachments to Second Harvest headquarters, which will provide duplicate copies to NMFS.

Second Harvest's affiliates or agents are responsible for distributing donated swordfish to local charities, which will process and prepare the swordfish for consumption by needy individuals. During discussions with Second Harvest representatives on processing and preparation, the matter of liability was considered. No modification was necessary in this final rule because the Good Samaritan laws in each state adequately cover the issue.

Implementation

The pilot program could continue for 2 years, subject to review and evaluation. NMFS will monitor the program and prepare an annual report evaluating the results. Results from this study will be presented to ICCAT. If the program is achieving its purposes, and there is concurrence from ICCAT, the program could be continued beyond 2 years. If the program is not achieving its purpose or is no longer in conformance with the recommendations of ICCAT, NMFS will terminate the program.

Comments and Responses

Comment 1: This program would provide the industry and NMFS data on the real numbers of live and dead fish caught, which are needed to manage the fishery. At the same time, the program would feed the hungry children of our Nation while not changing the catch or the quota.

Response: NMFS agrees. Current estimates of the mortality for fish hooked on longline are from observation data that 70 percent of hooked fish are dead when brought alongside the vessel. This pilot program provides that all small swordfish brought alongside must either be tagged and released alive, landed dead as part of the 15 percent tolerance, or tagged dead for transfer to Second Harvest. This ensures that accurate information will be collected on live and dead small swordfish, with accurate length frequency data on all swordfish less than the minimum size. In addition, this program will increase the number of tagged and released small fish that potentially can provide more information on the growth and movement of small swordfish.

Comment 2: This program would provide much-needed protein to the needy. Food banks are always short of nutritious, high-protein foods. While this small pilot program would only supply a small amount against a tremendous need, it would make a difference.

Response: If current estimates of catch, tolerance, number of discards, and average weights are correct, the pilot program in full operation could supply the Second Harvest network about 42,000 lbs. (19.05 metric tons) landed weight per year.

Comment 3: This is a good, small-scale program to be closely monitored by NMFS that would deal with the problem of dead bycatch. It would serve as an excellent pilot, because if it is abused NMFS has the authority to terminate the program.

Response: NMFS agrees.

Comment 4: This project would promote understanding of the benefits of fish to the needy, who currently underutilize fish as a protein source. At the same time, it would not change the number of swordfish caught or killed, only the number of dead swordfish thrown overboard.

Response: Second Harvest is working closely with NMFS on this program; every opportunity will be taken to promote the benefits of seafood consumption. Further, every effort has been made in the final rule to ensure that only those fish already dead will be retained for contribution to the Second Harvest.

Comment 5: Placing requirements on times and locations of landings will reduce the number of volunteers who are willing to participate in the pilot program.

Response: The landing requirements will be examined in the pilot program along with other aspects of the process. Provisions in the final rule allow the Assistant Administrator for Fisheries to modify landing requirements after consultation with the industry and law enforcement officials.

Comment 6: Observers must be placed on all participating vessels to ensure that the vessels' crews comply with the provisions of the pilot program.

Response: NMFS intends to have 100 percent observer coverage on the vessels the first year and then evaluate whether 100 percent coverage is necessary for the entire pilot study.

Comment 7: NMFS must ensure that this pilot program is not used as an excuse to violate tolerance laws.

Response: In the final rule, landing restrictions, record keeping requirements, selection of participants, and enforcement are all used to help ensure against abuse of the tolerance regulations. In addition, as previously stated, the participating vessels are required to notify NMFS Enforcement 24 hours prior to each landing of the expected time and location of arrival.

Comment 8: This program is not necessary for swordfish management.

Response: ICCAT has sanctioned this program as part of its overall international research program. Reliable data on small fish are necessary to manage Atlantic swordfish adequately. Knowledge of stock distribution will have wide implications for stock analysis and future management options. Increased tagging of live fish and their subsequent recovery, with all the analytical implications, will benefit the NMFS pelagic tagging program, management decisions (e.g., information for possible time/area closures), and the ICCAT statistical data base. This program also can help fulfill a social need, and provides a logical disposition of the specimens taken for scientific purposes.

Comment 9: Indirect economic benefit will accrue through tax advantages; NMFS must ensure against economic motive for killing small swordfish.

Response: Information from IRS indicates that this is not a problem because in general the fishermen will not get any additional tax benefit beyond that which already exists.

Comment 10: In order for this program to work, NMFS must provide enough enforcement to overcome the incentive to kill small juveniles. Small swordfish will be killed to "high-grade" the 15 percent tolerance on participating pilot program vessels.

Response: The final rule specifically forbids killing small juveniles, and requires that all participating vessels notify enforcement 24 hours prior to landing. All live fish less than the minimum size must be tagged and released alive by participating vessels. Some "high-grading" may occur, but it will be no more than current regulations allow, since all donated dead fish less than the minimum size must be tagged prior to landing and weigh-out. The regulations specifically prohibit the removal of a donation tag; vessel owners or operators must account for all tags.

Comment 11: This program would divert scarce resources from NMFS Highly Migratory Species (HMS) program's more urgent needs.

Response: Data collection and analysis of any kind require an investment of program resources. For the HMS Division, the requirements of collecting the data and giving the specimens to the needy take no more effort than collecting the data and disposing of the specimens after the data are collected.

Comment 12: NMFS must address Executive Order 12898 to insure that minorities will not be adversely affected by mercury contamination of swordfish.

Response: Mercury is cumulative with size and age in swordfish. The Food and Drug Administration has set 1.0 parts per million (ppm) as the action level for methyl mercury in fish products. Swordfish at the minimum size and lower test in the 0.2 ppm to 0.6 ppm range. Based on available data, swordfish consumed through charitable programs will not result in a contamination problem. Additionally, NMFS will test for methyl mercury levels in donated swordfish each semester throughout the first year.

Comment 13: This pilot program would take away any incentive for longline fishermen to reduce the incidence of juvenile swordfish being hooked and killed.

Response: The pilot program volunteers will encompass less than 3 percent of the longline fleet when fully in operation. Restrictions and requirements are included in the program to prevent any increase in juvenile swordfish mortality beyond what would have occurred without the program.

Changes From the Proposed Rule

Changes in this final rule from the proposed rule include some operational changes. The responsibility for tagging donated fish now rests with the owner or operator of the volunteer vessel, and all donated fish must be tagged prior to offloading. Volunteer vessel owners or operators must notify NMFS enforcement 24 hours prior to landing and offloading the donated fish. NMFS plans in the first year of operation to place observers on all participating vessels. The number of vessels selected in the first year is not expected to exceed six vessels. Volunteer vessels who have been issued a Notice of Violation and Assessment may be excluded from the program. All unused tags must be accounted for by the vessels owners or operators. In addition to operational changes some minor changes were made in wording of the text to make the meaning of certain passages more clear.

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Classification

This final rule is published under the authority of the ATCA. The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this final rule is consistent with the recommendations of ICCAT and is necessary for management of the Atlantic swordfish fishery.

This final rule has been determined to be not significant for purposes of E.O. 12866.

This final rule contains four new collection-of-information requirements subject to the Paperwork Reduction Act, specifically, application to participate in the donation program, 24-hour advance notice of landing donated swordfish, tagging and reporting of undersized fish for voluntary participants, and submission of bills of lading and landing receipts by Second Harvest headquarters to dealers and to NMFS. The public reporting burdens for these collections of information are estimated to average 10, 3, 2, and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Requests to collect this information have been approved by OMB (OMB Control number 0648–0277). This final rule also involves three collections of information subject to the Paperwork Reduction Act that have previously been approved by OMB, specifically, fishing vessel reports (OMB Control Number 0648–0016), dealer reports (OMB Control Number 0648–0013), and tagging requirements (OMB Control Number 0648–0247). The public reporting burdens for these collections of information are estimated to average 6, 30, and 2 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to NMFS or OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: October 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.7, paragraph (q) is revised and paragraph (y) is added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(q) Land a swordfish smaller than the minimum size specified in § 630.23(a), except for the trip allowance for undersized swordfish, as specified in § 630.23(b), and except as authorized in § 630.51.

* * * * *

(y) Purchase, sell, trade, or barter, or attempt to purchase, sell, trade, or barter, any swordfish or part thereof that is subject to the donation program in subpart D of this part, as specified at § 630.51(b)(9), § 630.51(c)(4), or § 630.51(d)(5).

3. A new subpart D is added to part 630 to read as follows:

Subpart D—Donation Program

630.50 Purpose.
630.51 Participation.
630.52 Termination.

§ 630.50 Purpose.

This subpart implements a program under which swordfish from the North Atlantic swordfish stock that are retained in excess of the trip allowance for undersized swordfish specified in § 630.23(b) must be retained for donation through the Second Harvest National Foodbank Network to the needy. This program is intended to obtain additional information regarding the harvest, mortality, and biological characteristics of swordfish less than the minimum size limit and to avoid waste of swordfish that would otherwise be discarded dead.

§ 630.51 Participation.

(a) *General.* Owners of vessels and dealers permitted under § 630.4 may volunteer to participate in the swordfish donation program by contacting the Chief, Highly Migratory Species Division, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2347, facsimile (301) 588–4967. The Chief, Highly Migratory Species Division, will select owners of vessels and dealers who may participate in the donation program and will keep selected vessel owners advised of the selected dealers.

(1) Factors that will be considered in the selection process include:

(i) History of voluntary participation in NMFS cooperative scientific programs;

(ii) Whether both vessel and dealer volunteers can be matched in an area throughout the year (including truck routes) to ensure distribution of donated fish;

(iii) Representative coverage of the fishery, to the extent possible; and

(iv) Compliance record of volunteers. Specifically, any person who has been issued a Notice of Violation and Assessment (NOVA) for violating any provision of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*), or who is currently under investigation for such a violation, may be excluded from the program.

(2) Selected dealers will also be advised of the selected vessel owners and of authorized Second Harvest recipients of donated swordfish.

(3) Second Harvest is the Second Harvest National Foodbank Network, 116 South Michigan Avenue, Suite 4, Chicago, IL 60603–6001. Second Harvest affiliates are Certified Affiliate Food Banks throughout the United States that have a contract with Second Harvest and are officially part of their National Foodbank Network. Agents of Second Harvest are the individual charities that distribute or serve food to the needy from the Affiliate Food Banks, or a business designated by letter from Second Harvest to transport donated food between the foodbank and the charity.

(b) *Vessels.* The owner, or their operator, of a vessel that has been selected to participate in the donation program and so notified in writing by the Chief, Highly Migratory Species Division, may retain swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. No person may land a swordfish in excess of the trip allowance for undersized swordfish other than in accordance with these terms and conditions; any such landing constitutes a violation of the prohibition specified in § 630.7(q).

(1) The vessel's selection letter from the Chief, Highly Migratory Species Division, must be carried on board the fishing vessel and the operator must present it for inspection upon the request of an authorized officer.

(2) The vessel's owner or operator must release any swordfish that is less than the minimum allowable size specified in § 630.23(a) and that is alive when brought aboard the vessel, in a manner that will ensure maximum probability of survival. If caught by hook, such fish must be released by cutting the line near the hook without removing the swordfish from the water. The owner or operator must make a reasonable effort to tag each swordfish released under this paragraph (b)(2). In addition, participants are encouraged to tag all released small bluefin tuna, big eye tuna, yellowfin tuna and sharks where possible. Tags will be provided by the Science and Research Director. A record of each tag and release must be maintained and submitted to the Science and Research Director on forms provided with the tags.

(3) The vessel's owner or operator must retain any swordfish that is dead when brought aboard the vessel.

(4) The vessel's owner or operator must tag any swordfish that is retained under the donation program of this subpart prior to its off-loading from a vessel at the facility of a selected dealer, using a non-reusable, individually numbered donation tag provided by the Chief, Highly Migratory Species Division. The donation tag is not to be removed by the vessel crew, dealer, or Second Harvest until the carcass is processed.

(5) All tags assigned to a vessel by NMFS Highly Migratory Species Division, used or unused, must be accounted for by the owner/operator at the request of any authorized officer.

(6) The vessel's owner or operator must off-load any swordfish that is retained under the donation program of this subpart only at a specified facility of a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program. Off-loading must begin between the hours of 8 a.m. and 6 p.m. local time. An owner or operator must notify the Chief, NMFS Office of Enforcement, by telephone at numbers given in the vessel owner's selection letter, and a selected dealer, at least 24 hours prior to off-loading swordfish under the donation program, unless stated otherwise in the vessel owner's selection letter.

(7) The Assistant Administrator, upon consulting with industry representatives and NMFS Office of Enforcement, may change the requirements for off-loading by notification in the **Federal Register**.

(8) All swordfish harvested during a trip by a vessel participating in this pilot program must be off-loaded at the same facility to a dealer participating in this donation program.

(9) No vessel owner or operator may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(c) *Dealers.* A dealer who has been selected and so notified in writing by the Chief, Highly Migratory Species Division, to participate in the donation program may receive and retain swordfish from the North Atlantic swordfish stock that are in excess of a vessel's trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of an undersized swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Dealers must have available on their premises, or facility, the dealer selection letter from the Chief, Highly Migratory Species Division, and must present it for inspection upon the request of an authorized officer.

(2) A dealer may receive swordfish in excess of a vessel's trip allowance for undersized swordfish only from a vessel that has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(3) A swordfish that is received under the donation program must be kept separate from other swordfish possessed by the dealer. The donation tag on such swordfish may not be removed.

(4) No dealer may sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish, or any part thereof, that is retained under the donation program of this subpart.

(5) A dealer may transfer any swordfish that is received under the donation program only to Second Harvest, and such swordfish may be transported only by Second Harvest or their designated agent. The dealer must obtain the receipt specified in paragraph (d)(3) of this section from Second Harvest or their designated agent. A copy of the receipt must be furnished by the dealer to the harvesting vessel.

(6) The dealer must include individual swordfish tag numbers along with the associated individual carcass weights of swordfish received under the donation program in the twice-monthly reports required by § 630.5(b).

(d) *Second Harvest.* Second Harvest, or its affiliates or agents, may receive and distribute swordfish from the North Atlantic swordfish stock that are in excess of the trip allowance for undersized swordfish specified in § 630.23(b) under the following terms and conditions. Possession of a swordfish other than in accordance with these terms and conditions constitutes a violation of the prohibition specified in § 620.7(a) of this chapter.

(1) Second Harvest may receive swordfish that are in excess of the trip allowance for undersized swordfish only from a dealer who has been selected by the Chief, Highly Migratory Species Division, to participate in the donation program.

(2) Second Harvest may receive only undersized swordfish with donation tags attached.

(3) Upon receiving swordfish under the donation program, Second Harvest must provide a bill of lading receipt that shows, or has affixed, individual carcass weights and associated tag numbers of swordfish received, the names and permit number(s) of the vessel(s) that harvested the swordfish, the name and permit number of the dealer, and the date of receipt. Such receipt must be distributed as follows: Original and one copy (for the vessel owner or operator) to the dealer, one copy to the Chief, Highly Migratory Species Division, and one copy retained by Second Harvest to accompany the carcass shipment until it is processed.

(4) All tags received by Second Harvest affiliates or agents must be returned to Second Harvest and accounted for by Second Harvest at the request of any authorized officer, or Chief, Highly Migratory Species Division.

(5) Second Harvest, its affiliates or agents, may not sell, trade, or barter, or attempt to sell, trade, or barter, any swordfish or any part thereof that is retained under the donation program of this subpart.

(e) *Duration of selection.* A selection letter remains valid for the period specified therein, provided the permit issued to the participating vessel or dealer under § 630.4 remains valid, except that such selection letter may be revoked by the Chief, Highly Migratory Species Division—

(1) Upon the request of the participating vessel owner or dealer;

(2) Upon issuance of a Notice of Violation and Assessment against the participating vessel owner or dealer for a violation of the Magnuson Act (16 U.S.C. 1802 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), or the ATCA (16 U.S.C. 971 *et seq.*); or

(3) For actions not consistent with the requirements of the pilot program of this subpart.

(f) *Transfer.* A selection letter issued under this subpart is not transferable or assignable. Such letter is valid only for the vessel or dealer for which it was issued.

§ 630.52 Termination.

Upon a finding by the Assistant Administrator that the intended

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purposes of the program are not being achieved, or that the program is no longer in conformance with the recommendations of the International Commission for the Conservation of Atlantic Tunas, the Assistant Administrator may terminate the program by notification in the **Federal Register**.

[FR Doc. 94-27188 Filed 11-2-94; 8:45 am]
BILLING CODE 3510-22-W

50 CFR Part 672

[Docket No. 931109-4042; I.D. 102894C]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the 1994 Pacific halibut prohibited species catch (PSC) limit for trawl gear in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final 1994 initial specifications for the GOA (59 FR 7647, February 16, 1994) established the 1994 Pacific halibut PSC limit for vessels using trawl gear at 2,000 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 1994 Pacific halibut PSC limit. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure is effective from 12 noon, A.l.t., October 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-27222; Filed 10-28-94; 4:14 pm]
BILLING CODE 3510-22-F

50 CFR Part 678

[Docket No. 920409-3047; I.D. 102594A]

Atlantic Shark Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the Federal commercial fishery for large coastal sharks in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary to prevent exceeding the semiannual quota for the period July 1 through December 31, 1994.

EFFECTIVE DATE: 11:30 p.m. local time November 4, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301-713-2347; Kevin B. Foster, 508-281-9260; or Michael Justen 813-893-3161.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The second semiannual quota is available for harvest from July 1 through December 31, 1994.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests reach, or are projected to reach, a quota established under § 678.23(b)(1), the AA is further required under § 678.24 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period July 1 through December 31, 1994, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained by the closure date. After 11:30 p.m. on November 4, 1994, for vessels issued a permit under § 678.4, possession of large coastal sharks from the management unit is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks. However, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter, of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel that has been issued a permit under § 678.4(a)(4), is prohibited, except for those sharks that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, regardless of where harvested, except as provided by § 678.24(a)(2). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-27221; Filed 10-28-94; 4:14 pm]
BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Fees for Beltsville Commodity Testing Laboratory Services

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), under authority of the Agricultural Marketing Act (AMA) of 1946, is proposing to increase service fees charged by the FGIS Commodity Testing Laboratory at Beltsville, Maryland. FGIS is also proposing to establish a test and unit fee for vomitoxin testing at the Laboratory.

These revisions are necessary to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity laboratory testing services.

DATES: Written comments must be submitted on or before December 5, 1994.

ADDRESSES: Written comments must be submitted to George Wollam, Federal Grain Inspection Service, USDA, Room 0624 South Building, P.O. Box 96454, Washington DC 20090-6454; or FAX (202) 720-4628.

All comments received will be made available for public inspection during regular business hours in room 0623 South Building, 1400 Independence Avenue SW., Washington, DC. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720-0292.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget.

This proposed increase in the service fees is necessary to recover operating losses at the Beltsville Commodity Testing Laboratory. These fees were last increased on December 17, 1984 (57 FR 59887), and due to increases in operating costs, revenue is not covering operating costs. The overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percent. This cost increase occurred simultaneously with a more than 17 percent downturn in revenue due to fewer service requests. Revenue of $1,035,411 did not cover the operating cost of $1,192,669 for FY 93, resulting in a 1-year operating loss of $157,228. Given FY 93 volume, the proposed fee increase will generate revenue of $1,394,577 or an increase of $355,224.

Under these circumstances, the Administrator of the Federal Grain Inspection Service has determined that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This proposed rule will not pre-empt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act Certification

David R. Shipman, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official commodity laboratory testing services do not meet the requirements for small entities. In addition, FGIS is required by statute to recover the costs of providing official commodity laboratory testing services, as nearly as practicable.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements concerning applications for inspection services, including official commodity laboratory testing services, have been approved by the Office of Management and Budget under control number 0580-0013.

Background

The fees for commodity laboratory testing services were last increased August 1, 1984, (49 FR 26547). Subsequent adjustments were made on April 17, 1991, (56 FR 15483), adding several new laboratory test services and consolidating others for clarity and efficiency. Currently, these fees appear in section 68.90, Table 4 of the regulations (7 CFR 68.90, Table 4).

FGIS is adding a vomitoxin laboratory testing service to the current list of fees, 7 CFR 68.90, Table 4. The new test is required to accommodate frequent grain and food industry requests for this service.

FGIS continually strives to contain operating costs through program efficiencies and streamlining. In fiscal year 1992, FGIS took specific action to reduce chemical disposal costs by implementing new technology. FGIS further enhanced laboratory procedures to improve overall efficiency. While these changes proved successful in reducing certain costs, the overall cost of operating the laboratory increased between FY 92 and 93 by more than 8 percentum. This cost increase occurred simultaneously with a more than 17 percentum downturn in revenue due to fewer service requests. Revenue of $1,035,441 did not cover the operating cost of $1,192,669 for fiscal year 1993, resulting in a 1-year operating loss of $157,228.

Given fiscal year 1993 volume, the proposed fee increase will generate revenue of $1,394,577 or an increase of $355,224.

Proposed Action

Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable, and as nearly as practicable,

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to cover the costs of the services rendered.

These fees cover the FGIS administrative and supervisory costs for the performance of official services. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 68.90, Table 4 (as currently shown in section 68.90, Table 4 of the regulations) is revised to provide for the increase in laboratory commodity testing fees and the addition of the vomitoxin laboratory testing as outlined in the background.

The increased fees for laboratory tests are: Aflatoxin test (other than TLC or Minicolumn), Aflatoxin (TLC), Aflatoxin (Minicolumn), Appearance & Odor, Ash, Bacteria count, Baking test (cookies), Bostwick (uncooked/cook test/dispersibility), Brix, Calcium, Carotenoid Color, Cold test (oil), Cooking test (other than corn soy blend), Crude fat, Crude fiber, Dough handling (baking), E. coli, Falling number, Fat (acid hydrolysis), Fat-stability (A.O.M.), Flash point (point & closed cup), Free fatty acid, Hydrogen ion activity (pH), Iron enrichment, Linolenic acid (fatty acid profile), Lovibond color, Moisture, Moisture & volatile matter, Performance test (prepared bakery mix), Peroxide value, Pesticide residue (carbon tetrachloride, methyl bromide, ethylene dibromide), Phosphorus, Popcorn kernels (total defects), Popping ratio/value popcorn, Potassium bromate, Protein, Salmonella, Salt or sodium content, Sanitation (light filth), Sieve test, Smoke point, Solid fat index, Unsaponifiable matter, Urease activity, Visual exam (hops pellet), Visual exam (insoluble impurities, oils, and shortening), Visual exam (pasta), Visual exam (processed grain products), Vitamin enrichment, and Water activity.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agriculture commodities.

For the reasons set out in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURE COMMODITIES AND THEIR PRODUCTS.

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

§ 68.90 [Amended]

2. Section 68.90 is amended by revising the section heading, paragraph (a), Table 4, and paragraphs (b) and (c) to read as follows: *Fees for Official Laboratory Test Services Performed at the FGIS Commodity Testing Laboratory at Beltsville, Maryland. For Processed Agricultural Products.*

(a) In addition to the fees, if any, for sampling or other requested service, a fee will be assessed for each laboratory test (original, retest, or appeal) as follows:

TABLE 4.—LABORATORY FEES [1]

Laboratory tests	Fees
(1) Alpha monoglycerides	$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Lovibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Pesticide residue (carbon tetrachloride, methyl bromide & ethylene dibromide)	50.00
(39) Phosphorus	14.00
(40) Popcorn kernels (total defects)	19.00
(41) Popping ratio/value popcorn	19.00
(42) Potassium bromate	20.00
(43) Protein	7.50
(44) Rope spore count	31.50
(45) Salmonella	40.00
(46) Salt or sodium content	12.50
(47) Sanitation (filth light)	24.00
(48) Sieve test	5.00
(49) Smoke point	22.00
(50) Solid fat index	85.00
(51) Specific volume (bread)	21.80
(52) Staphylococcus aureus	24.50
(53) Texture	6.50
(54) Tilletia controversa kuhn (TCK)	25.20
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities, oils & shortening)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxin (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50
(68) Other laboratory tests	[2]

[1] When laboratory test service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.

[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.

(c) Laboratory tests referenced above will be charged at the applicable laboratory fee listed in Table 4 when performed at field locations other than at the applicant's facility.

Dated: October 25, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 94–27110 Filed 11–2–94; 8:45 am]

BILLING CODE 3410–EH–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Request for Comments Regarding Potential Modifications of NRC's Therapy Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments regarding potential modification of NRC's medical therapy regulations.

SUMMARY: A major revision of the regulations governing the medical use of byproduct material, and associated licensing and inspection guidance is planned, to more easily accommodate changes in current technology and patterns of medical use. The staff discussed the need for additional regulations and guidance for brachytherapy (in particular, high-dose-rate brachytherapy) with NRC's Advisory Committee for the Medical Uses of Isotopes (ACMUI). The ACMUI advised the staff to solicit additional information from the regulated community to sufficiently identify and evaluate the problems and determine what additional regulations and guidance are necessary to further prevent errors. The NRC seeks input from the medical community with regard to the adequacy of existing standards and procedures for brachytherapy and radiopharmaceutical therapy and would like to discuss the future direction of guidelines and regulations. As one aspect of these objectives, NRC is publishing this list of issues and questions for comment and response by members of the medical community and any other interested parties.

DATES: Submit comments by March 3, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: Send written comments, responses, or suggestions to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Obtain individual copies of the list of issues and questions from Patricia K. Holahan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7847.

FOR FURTHER INFORMATION CONTACT: Patricia K. Holahan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7847.

SUPPLEMENTARY INFORMATION: Because of several recent incidents, the NRC has increasingly focussed on the medical use of byproduct material for manual and remote afterloading brachytherapy and radiopharmaceutical therapy. The NRC has been notified of brachytherapy errors that have included computer errors (treatment planning and data entry), misplaced sources, dislodged sources, patient intervention, and human error. In particular, several incidents have been reported involving an error in fractionated doses for brachytherapy and radiopharmaceutical therapy. In addition, there has been an increased use of beta-emitting radiopharmaceuticals for therapeutic purposes in both nuclear medicine and radiation oncology.

This list of issues and questions is being provided to allow the medical community to voluntarily provide comments and responses regarding those areas of medical use of byproduct material that are currently being reviewed by NRC, to determine if additional or revised regulations are warranted. Any party interested in providing input regarding these issues may provide a written response to the address above.

1. What constitutes a significant error, for a given fraction (for fractionated doses), that would require you to make an adjustment in the prescribed treatment regimen or that might result in unexpected clinical consequences?

High-Dose-Rate Brachytherapy

___ 10 percent
___ 20 percent
___ 30 percent

All Other Brachytherapy

___ 10 percent
___ 20 percent
___ 30 percent

Radiopharmaceutical Therapy

___ 10 percent
___ 20 percent
___ 30 percent

2. Should the error tolerance for overdoses be different than that for underdoses? Please explain.

___ Yes ___ No

3. At your facility, how is the accuracy of your computer treatment planning system verified?

High-Dose-Rate Brachytherapy

4. NRC regulations require that the written directive for high-dose-rate remote afterloading (HDR) brachytherapy include the radioisotope, treatment site, and total dose. What additional information do you typically include in your written directives and why?

___ Dose per fraction
___ Number of fractions
___ Treatment volume
___ Other (please specify)

5. If more than one fraction is to be administered, should the written directive be prepared to include the specifics for the entire course of therapy or should a written directive be prepared for each individual fraction?

6. Should there be quality assurance checks and measurements for remote afterloading brachytherapy devices, in 10 CFR Part 35, as there are for teletherapy?

___ Yes ___ No

If no, why not?

7. Are there existing standards on calibration of brachytherapy sources?

___ Yes ___ No

If yes, or yes in part, what are these standards?

8. What types of tests/checks do you perform at source exchange?

9. a. Should there be training and experience criteria established for brachytherapy physicists involved with HDR treatment planning?

___ Yes ___ No

b. Should there be training and experience criteria established for brachytherapy physicians performing HDR treatments?

___ Yes ___ No

10. What procedures do you follow to ensure proper placement of brachytherapy implants (e.g., do you use X-ray films for verification)? What is the standard of care with respect to proper placement of brachytherapy implants?

Manual Brachytherapy

11. NRC regulations require that the written directive for all brachytherapy, other than high-dose-rate remote afterloading brachytherapy, include: (i) prior to implantation: the radioisotope, number of sources, and source strengths; and (ii) after implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or equivalently, the total dose). What additional information do you typically include on the written directive and why?

Prior to implantation:

After implantation:

12. a. Do you order sources in writing?

___ Yes ___ No, ordered by _____

b. Who usually orders sources at your facility?

13. a. Do you verify the activity of sources:

___ Upon receipt
___ Prior to implantation
___ Not at all

b. If yes, how is the activity verified?

c. Who typically verifies the source activity at your facility?

14. a. What procedures do you follow to ensure proper placement of brachytherapy implants?

b. What actions do you take to prevent or minimize the likelihood of brachytherapy sources moving after implantation?

15. Are existing standards and procedures adequate to ensure that the

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source is positioned and, consequently, the treatment is in accordance with the direction of the authorized user?

16. In your experience, what is the most effective means for accomplishing training of nurses as required in 10 CFR 35.410 and 35.25?

17. Do you believe that all nurses handling brachytherapy patients at your facility have received adequate training?

___ Yes ___ No

18. For permanent prostate implants, what do you consider to be an acceptable percentage of implanted seeds outside the target volume?

___ percent

What is the current accepted standard of practice?

Radiopharmaceutical Therapy

19. NRC regulations require that the written directive, for radiopharmaceutical therapy, include the radiopharmaceutical, dosage, and route of administration. What additional information do you typically include in your written directives, and why?

20. If more than one fraction is to be administered, should the written directive be prepared to include the specifics for the entire course of therapy or should a written directive be prepared for each individual fraction?

21. Do you typically prepare separate written directives for fractionated radiopharmaceutical therapy?

___ Yes ___ No

22. Where would you seek guidance (if needed) on the radiation safety aspects of radiopharmaceutical therapy (use of unsealed sources)?

23. Do you have any additional comments or specific issues regarding NRC's regulation of therapeutic uses of byproduct material?

Dated at Rockville, Maryland, this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-27250 Filed 11-2-94; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. 94-ANE-50; Notice No. 35-ANE-01]

Special Conditions; Hamilton Standard Model 247F Propeller

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Hamilton Standard Model 247F propeller with electronic propeller and pitch control system. The applicable regulations currently do not contain adequate or appropriate safety standards for constant speed propellers with electronic propeller and pitch control. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 35 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before December 19, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-50, 12 New England Executive Park, Burlington, Massachusetts, 01803-5299. Comments must be marked: Docket No. 94-ANE-50. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803-5229; telephone (617) 238-7112; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-ANE-50." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Special Condition

Any person may obtain a copy of this Notice of Special Condition by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-50, 12 New England Executive Park, Burlington, Massachusetts, 01803-5299.

Discussion

Background

On March 8, 1993, Hamilton Standard applied for an amendment to the type certificate of Model 247F propeller. This propeller uses a new electronic propeller and pitch control system in place of the primary governor control and synchrophaser unit.

The existing propeller pitch control is normally monitored by a governor which senses propeller speed and adjusts the pitch to absorb the engine power and thus keeps the propeller at the correct RPM. When the primary governor fails, the propeller pitch is controlled by an overspeed governor.

This type of system is conventional and its airworthiness considerations are addressed by part 35 of the FAR's.

Hamilton Standard requests special conditions to install an electronic propeller and pitch control in place of the primary governor control and synchrophaser unit for the Model 247F propeller. This control is designed to operate with existing mechanical and hydraulic interface of the engine and propeller.

Electronic propeller and pitch controls introduce potential failures that can result in unsafe conditions. These types of failures are not addressed by the requirements of part 35. These failures can lead to the following possible unsafe conditions:

(1) Loss of control of the propeller

(2) Instability of a critical function

(3) Unwanted change in propeller pitch causing improper thrust/overspeed

(4) Unwanted action of a critical control function resulting in propeller flat pitch or reverse.

Certification issues that must be addressed are possible loss of aircraft-supplied electrical power, aircraft supplied data, failure modes, environmental effects including lightning strikes and high intensity radiated fields (HIRF) and software design.

The FAA finds that under the provisions of § 21.16 of the FAR, additional safety standards must be applied to the Hamilton Standard electronic propeller control for Model 247F propellers to demonstrate that it is capable of acceptable operation.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Hamilton Standard must show that the Model 247F propeller meets the requirements of the applicable regulations in effect on the date of the application. Those FAR's are § 21.21 and part 35, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations in part 35, as amended, do not contain adequate or appropriate safety standards for the Model 247F propeller. Therefore, the Administrator proposes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR's after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Features

Because of the unusual design features of the Hamilton Standard 247F propeller with electronic propeller and pitch control, the FAA proposes special conditions under § 21.16 of the FAR.

Conclusion

This action affects only the Hamilton Standard Model 247F propeller with a new system of electronic propeller and pitch control. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); and 14 CFR 11.49 and 21.16.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Hamilton Standard 247F Model propeller with electronic propeller and pitch control system.

Considering that electronic propeller and pitch controls introduce potential failures that can result in unsafe conditions, the following special conditions are proposed:

(a) Each propeller and pitch control system which relies on electrical and electronic means for normal operation must:

(1) Be designed and constructed so that any failure or malfunction of aircraft-supplied power or data will not result in an unacceptable change in propeller pitch setting or prevent continued safe operation of the propeller.

(2) Be designed and constructed so that no single failure or malfunction, or probable combination of failures of electrical or electronic components of the propeller control system, result in an unsafe condition.

(3) Be tested to its environmental limits including transients (variations) caused by lightning and high intensity radiated fields (HIRF) and demonstrate no adverse effects on the control system operation and performance or resultant damage. These tests shall include, but not be limited to, the following:

(i) Lightning strikes, such as multiple-stroke and multiple-burst

(ii) Pin-injected tests to appropriate wave forms and levels

(iii) HIRF susceptibility tests

(4) Be demonstrated by analysis/tests that associated software is designed and implemented to prevent errors that would result in an unacceptable change in propeller pitch or an unsafe condition.

(5) Be designed and constructed so that a failure or malfunction of electrical or electronic components in the propeller control system will not prevent safe operation of any remaining propeller that is installed on the aircraft.

Issued in Burlington, Massachusetts, on October 27, 1994.

Jay Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-27291 Filed 11-2-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N-0445]

Financial Disclosure by Clinical Investigators; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of September 22, 1994 (59 FR 48708). The document proposed to require that the sponsor of any drug, biological product, or device submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting clinical studies to determine whether that product meets the marketing requirements specified by the agency. The document was published with an error. This document corrects that error.

DATES: Written comments on or before December 21, 1994. The agency is proposing that any final rule that may issue based on this proposed rule become effective 6 months after the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY-22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301-443-1382.

In FR Doc. 94-23414, appearing on page 48708 in the **Federal Register** of Thursday, September 22, 1994, the following correction is made:

§ 54.4 [Corrected]

On page 48717, in § 54.4 *Disclosure requirements*, in the first column, in paragraph (a), in the last line, the phrase "(a)(2) of this section" is corrected to read "(a)(3) of this section."

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Dated: October 28, 1994.
William K. Hubbard,
Interim Deputy Commissioner for Policy.
[FR Doc. 94-27316; Filed 11-2-94; 8:45 am]
BILLING CODE 4160-01-F

21 CFR Part 182

[Docket No. 80N-0381]

Thiodipropionic Acid and Dilauryl Thiodipropionate; Proposed Removal of GRAS Status; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposal to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are generally recognized as safe (GRAS). FDA proposed to remove these substances because it had not, at that time, received any reports that these substances were in use as direct human food ingredients. The agency is withdrawing the proposal because of a report that these substances are being directly used in food.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS-207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: Thiodipropionic acid and dilauryl thiodipropionate are listed in §§ 182.3109 and 182.3280 (21 CFR 182.3109 and 182.3280), as GRAS for direct food use as chemical preservatives at levels not exceeding 0.02 percent of the fat or oil content. Thiodipropionic acid and dilauryl thiodipropionate are listed in § 181.24 (21 CFR 181.24) as prior-sanctioned ingredients for use as antioxidants in food-packaging material, and are permitted for use as antioxidants in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300). In addition, indirect use of thiodipropionic acid is listed in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010).

In the **Federal Register** of August 13, 1982 (47 FR 35240), FDA proposed to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are GRAS. FDA stated that it was proposing to take this action because FDA had not, at that time, received any reports that these substances were in use as direct human food ingredients.

FDA received three comments in response to its proposal. All three comments opposed the removal of these substances from the list of direct human food ingredients that are GRAS. One of the comments contained information on the direct use of these ingredients in food. In addition, two of the comments expressed concern that removing these compounds from the list of direct GRAS ingredients would cause confusion about the GRAS or prior-sanctioned status of these substances for indirect uses. Finally, two of the comments stated that the fact that the agency had not received any reports of these substances being used in food was not an adequate reason to remove them from the list of direct food ingredients that are GRAS.

FDA has considered all of these comments. In view of the comment that these substances are being directly used in food, we have concluded that the orginal basis for the agency's proposal to remove these substances from the GRAS list is not valid. FDA also wishes to clarify that its proposal to remove these substances from the list of direct human food ingredients that are GRAS would not have affected their allowed indirect uses under §§ 175.300, 178.2010, or 181.24, as suggested by two of the comments.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the agency announces that it is withdrawing the proposal that it published in the **Federal Register** of August 13, 1982 (47 FR 35240), to remove thiodipropionic acid and dilauryl thiodipropionate from the list of direct human food ingredients that are GRAS.

Dated: October 24, 1994.
William K. Hubbard,
Interim Deputy Commissioner for Policy.
[FR Doc. 94-27315; Filed 11-2-94; 8:45 am]
BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-088-81055; FRL-5099-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet approving the redesignation to attainment and maintenance plan of the Owensboro and Edmonson County areas because they meet the maintenance plan and redesignation requirements. EPA also proposes to approve the 1990 baseline emissions inventory of the two areas. In the final rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by December 5, 1994.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick of the EPA Region IV Air Programs Branch at (404) 347-3555 extension 4207 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: September 20, 1994.
Patrick M. Tobin,
Acting Regional Administrator.
[FR Doc. 94-27072 Filed 11-2-94; 8:45 am]
BILLING CODE 8560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Brake Hoses and Motor Vehicle Brake Fluids; Termination of Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This document terminates a rulemaking proceeding that commenced in March 1985 when NHTSA granted a petition for rulemaking from the United States Army Tank-Automotive Command. The petition requested that NHTSA amend Standard No. 106, *Brake Hoses*, to require brake hose compatibility with a brake fluid with DOT 5 characteristics, and amend Standard No. 116, *Motor Vehicle Brake Fluids*, to require compatibility of DOT 3, DOT 4, and DOT 5 test fluids with elastomeric seals and cups in hydraulic brake system master and wheel cylinders. After receiving further information from the petitioner and after reviewing its own data base, NHTSA has concluded there is no safety need to amend the standards.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Mr. Tinto's telephone number is (202) 366-5229.

SUPPLEMENTARY INFORMATION:

Background and Grant of Petition

On March 20, 1985, NHTSA published a **Federal Register** document (50 *FR* 11213) granting a petition for rulemaking submitted by the United States Army Tank-Automotive Command (ATAC), to amend Federal Motor Vehicle Safety Standards Nos. 106, *Brake Hoses*, and 116, *Motor Vehicle Brake Fluids*. The petitioner requested NHTSA to expand the number and type of "referee materials" used to test samples of brake hose (Standard No. 106) and brake fluid (Standard No. 116) for compliance with the requirements of those standards.

Referee materials are used in the test procedures of Standards Nos. 106 and 116 to represent typical fluids and components that are present in real-world brake systems. The referee materials are combined with the test sample of brake hose or fluid to determine the compatibility of the referee material and the test sample. At the time the petition was filed, Standard No. 106 referenced a referee material called RM-1 SAE Compatibility Fluid to test hydraulic brake hose and hose assemblies.[1] Standard No. 116 also referenced RM-1 SAE Compatibility Fluid to test samples of DOT 3, DOT 4, and DOT 5 brake fluid. In addition, Standard No. 116 referenced another referee material, "SAE referee cups" made of styrene butadiene rubber (SBR), to test the compatibility of test samples of DOT 3, DOT 4, and DOT 5 brake fluid with the material. In all cases involving the use of referee materials, the referee materials are combined with the test sample of hose or fluid to see the effect of the combination. For example, in Standard No. 116's test evaluating the effect of brake fluid on cups (S5.1.12), the referee SBR cups are immersed in the test fluid, heated, then examined for disintegration, hardness changes and diametrical changes.

ATAC requested that Standard Nos. 106 and 116 be amended in two primary ways. First, the petitioner suggested that Standard No. 106 be amended to require brake hose compatibility with a fluid with DOT 5 (silicone) brake fluid characteristics. ATAC stated that the U.S. Army adopted DOT 5 silicone brake fluid as its standard operating fluid for its motor vehicles with hydraulic brake systems. After replacing the brake fluid with DOT 5 fluid in some of its vehicles, the Army had operational problems with aftermarket procured hydraulic brake system components. The Army believed it had traced the problem to excessive swelling of elastomeric seals and cups within the hydraulic brake system master cylinder. The swelling appeared to be caused by incompatibility problems between the DOT 5 brake fluid and brake system components made of rubber. Since Standard No. 106 does not test brake hose and hose assemblies with a referee material brake fluid representing DOT 5 (silicone) fluid, ATAC suggested amending Standard No. 106 to require brake hose compatibility with a silicone fluid.

Second, ATAC suggested that Standard No. 116 be amended to require that master and wheel cylinder cups made of ethylene propylene diene monomer rubber (EPDM) be compatible with a DOT 3, DOT 4 and DOT 5 brake fluid referee material, and to include specifications for these EPDM and other rubber components. The tests in Standard No. 116 that measure the effect of brake fluid with rubber are run with SAE referee material SBR cups only. ATAC believed that the aftermarket EPDM brake system components it encountered were incompatible with the DOT 5 brake fluid in its vehicles.

The agency believed that the issues raised by ATAC warranted further consideration. Thus, NHTSA granted ATAC's petition.

Rationale for Termination

Subsequent to its petition, ATAC provided further information to NHTSA indicating that its problem had been resolved. Tests conducted by the Army at Fort Belvoir, Virginia, implied that there was some confusion as to what actually caused the problem in the braking systems of the vehicles in question. Nevertheless, ATAC informed NHTSA that it solved its problem by using only military specification (MIL spec) brake components and brake fluid in ATAC vehicles. ATAC indicated that EPDM and SBR components that met the Army's MIL-C-14055, "Cup, Hydraulic Brake Actuating Cylinder, Synthetic Rubber" specification perform satisfactorily with silicone brake fluid. ATAC further indicated that if MIL spec MIL-C-14055 were used for parts procurement, it would avoid any problems of component deterioration in the future.

NHTSA supplemented this information with data for non-military motor vehicles. NHTSA believed that if brake fluid compatibility problems similar to those experienced by ATAC were occurring in non-military vehicles, the public would have reported some of these incidents to NHTSA's Auto Safety Hotline. The Hotline is a comprehensive database that encompasses over 250,000 consumer calls, dating back to 1981, relating to vehicle and component performance and complaints. Approximately 35,000 of these calls are about brake-related performance. NHTSA conducted a database search for all complaints relating to brake fluid in passenger cars, light trucks, buses and heavy trucks, and found no evidence of a safety problem. The agency found only 17 complaints that referred to "brake fluid" as the basis for the complaint.

[1] In 1986, Standards No. 106 and 116 were amended to replace RM-1 SAE compatibility fluid with RM-66-03 fluid. (See 51 *FR* 16694.) In October 1992, NHTSA published a notice of proposed rulemaking to update the referee fluid to RM-66-04, effective January 1, 1995, as RM-66-03 is no longer readily available. (See 57 *FR* 49162.)

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The majority of the complaints referred to contamination problems (water, fuel, and other fluid intrusion into the brake fluid).

Moreover, approximately 8 of the 17 complaints concerned vehicles that had traveled fewer than 50,000 miles. Because of their relatively low mileage, NHTSA does not believe these vehicles had anything other than the original brake fluid in them. Given the preponderance of vehicles manufactured with DOT 3 fluid over vehicles manufactured with DOT 5 fluid, the agency believes the original brake fluid in the vehicles in question was DOT 3 fluid, not DOT 5 fluid. There was one complaint referring to a problem with "silicone" brake fluid and brake system components, involving an antique Jaguar car and a certain brand of silicone fluid. A single complaint in a database as encompassing as the Hotline complaint file does not indicate the possible existence of a significant safety problem.

In conclusion, there is no evidence of a safety problem regarding the compatibility of silicone fluid and brake system components. NHTSA believes that if there were a safety problem with brake fluid and component compatibility, evidence of the problem would have appeared in the ten years since ATAC's petition was received by NHTSA. No such evidence has manifested. Accordingly, the agency is terminating this rulemaking action.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: October 27, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-27261 Filed 11-2-94; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AC93

Opening of Humboldt Bay National Wildlife Refuge to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to open Humboldt Bay National Wildlife Refuge in California to sport fishing and proposes pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703-358-1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Humboldt Bay National Wildlife Refuge in Loleta, California, to sport fishing.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 30-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges and allowing recreational uses not directly related to the purposes and functions for which an area was established, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a fishing plan; an environmental assessment; a compatibility determination; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that this opening will have no effect on a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations to administer the fishing program. From a review of the totality of these documents, the Secretary has determined that the opening of Humboldt Bay National Wildlife Refuge to sport fishing is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for sport fishing is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Humboldt Bay National Wildlife Refuge

Humboldt Bay National Wildlife Refuge was established by authority of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended, and the Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934, as amended. The refuge is a part of the San Francisco Bay

National Wildlife Refuge Complex, but has a full-time project leader and staff. The purposes of the refuge are (1) for use as an inviolate sanctuary, or for any other management purpose, for migratory birds; (2) for suitable incidental fish and wildlife-oriented recreational development; (3) the protection of natural resources; and (4) conservation of endangered species or threatened species.

Humboldt Bay is situated 280 miles north of San Francisco and 85 miles south of the Oregon border. Humboldt Bay lies on a narrow coastal plain. It is a natural land-locked harbor ½ to 4 miles wide and 14 miles long, separated from the ocean by well-developed coastal dunes and a sand beach. Humboldt Bay is a vital link in the coastal section of the Pacific Flyway for migratory waterfowl, shorebirds, and other waterbirds.

Sport fishing in Humboldt Bay is a popular form of recreation. Well established fisheries for perch, smelt, salmon, rockfish, crabs and clams provide for local enthusiasts as well as tourists. Declines in salmon stocks on the north coast have resulted in sharply reduced seasons and shifts in fishing effort to other species. Fisheries gaining rapidly in popularity are dungeness crab (*Cancer magister*), leopard shark (*Triakis semifasciata*), California halibut (*Paralichthys californicus*), and various clams. Sport fishing within the bay accounts for more than 30,000 angler-days each year. Most of the fishing in South Humboldt Bay occurs on the South Jetty and at Buhne's Point.

Public sport fishing will be permitted on navigable waters of Humboldt Bay that fall within the existing refuge boundary. Most fishing in Humboldt Bay will occur from boats on the navigable waters. Fishing will also be permitted from the outer levee of Hookton Slough, west of the designated parking lot. The non-tidally influenced areas (levees and seasonal wetlands) will be closed to fishing to provide disturbance-free resting and foraging areas for migratory birds. Anglers will be monitored on an opportunistic basis to determine if any wildlife disturbance is occurring. Fishing will be permitted within the framework of applicable State and Federal regulations. The California Department of Fish and Game will be consulted if any changes are planned in the refuge fishing program.

Opening the refuge to sport fishing has been found to be compatible in a separate compatibility determination. This determination noted time and zone restrictions. A Section 7 evaluation pursuant to the Endangered Species Act was conducted, and it was determined that the proposed action would not adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the fishing program. Numerous contacts were made throughout the area of the refuge soliciting comments on the proposed fishing plan. The California Department of Fish and Game concurs and fully supports the regulated sport fishing program proposed at the refuge.

The Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act. The cost of establishing and managing the fishing program will be minimal, and will consist primarily of posting and maintaining "Public Fishing Area" signs and including fishing information in the refuge brochure. There are necessary funds within the annual budget of the San Francisco Bay National Wildlife Refuge Complex for this work. There will be no facilities developed or managed specifically for the use of anglers.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that this action would have no effect on any identified threatened or endangered species.

Primary Author: Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.24 *California* is amended by adding text to paragraph D. of Humboldt Bay National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Humboldt Bay National Wildlife Refuge

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D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing from the designated shoreline trail along Hookton Slough is permitted during daylight hours only.
2. Only the use of pole and line or rod and reel is permitted from the Hookton Slough Shoreline trail fishing area.

* * * * *

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-27284 Filed 11-2-94; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[I.D. 092694A]

RIN 0648-AF02

Groundfish of the Bering Sea and Aleutian Islands Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to proposed regulations (I.D. 092694A), published Monday, October 17, 1994. The proposed rule would implement Amendment 21a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area, and would prohibit the use of trawl gear in specified areas surrounding the Pribilof Islands.

FOR FURTHER INFORMATION CONTACT: William D. Chappell, 301-713-2341.

SUPPLEMENTARY INFORMATION: On October 17, 1994 (59 FR 52277), NMFS published a proposed rule to implement Amendment 21a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands. The action proposes to prohibit the use of trawl gear in specified areas of the exclusive economic zone surrounding the Pribilof Islands. Comments on the proposed rule must be submitted by November 28, 1994. In the preamble to the proposed rule in the third column of page 52278, the geographic coordinates of the area around the Pribilof Islands are correctly described. However, in the regulatory language in the third column of page 52279, the last geographic position, which would add a straight line closing the circuit of the Pribilof Islands and complete a description of the closed area, was inadvertently omitted.

Correction of Publication

Accordingly, the publication on October 17, 1994 (59 FR 52277) of the proposed regulations (I.D. 092694A), which were the subject of FR Doc. 94-25616, is corrected as follows:

§ 675.22 [Corrected]

On page 52279, in the third column, § 675.22(i) is corrected by adding at the end of the latitude column, the coordinates "57°57.0' N." and at the end of the longitude column the coordinates "168°30.0' W."

Dated: October 28, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries.

[FR Doc. 94-27223 Filed 11-2-94; 8:45 am]

BILLING CODE 3510-22-W

Notices

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 28, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Extension

- Agricultural Stabilization and Conservation Service

7 CFR 1423.1 Processed Commodities Standards
CCC-560, 55, 33, 33A, 34, 34-1, 29, 29-1, 29-2, 29-3, 56, 56-1, 56-2, KC-140, 269A
Recordkeeping; On occasion; Annually
Businesses or other for-profit; Small businesses or organizations; 13,955 responses; 16,784 hours
Barry Klein (202) 720-4647

- Agricultural Marketing Service

Marketing Agreement for Domestically Produced Peanuts—No. 146
FV-121, FV-122, FV-123, and FV-123A
Recordkeeping; On occasion; Weekly; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 9,698 responses; 2,417 hours
James B. Wendland (202) 720-2170

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR 780 Appeal Regulations
ASCS-19
On occasion
Farm; 50,000 responses; 100,000 hours
Carolyn Burchett (202) 720-5533

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94-27231 Filed 11-2-94; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Bear Valley Ski Area Expansion, Stanislaus National Forest, Alpine County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement, delay in filing final environmental impact statement.

SUMMARY: The Notice of Intent to prepare an environmental impact statement for the expansion of the Mt. Reba Ski Area was published in the **Federal Register** on Friday, October 30, 1981, 46 FR 53734. A Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Thursday, September 23, 1982, 47 FR 42011. Another Revised Notice of Intent setting new dates for the release of the draft environmental impact statement (DEIS) and the final environmental impact statement (FEIS) was published in the **Federal Register** on Friday, July 7, 1989, 54 FR 28704.

The scoping process included numerous public meetings and Forest Service interdisciplinary team analysis. The DEIS was released on December 20, 1990. Five alternatives were identified, including a No Action Alternative, a Full Development Alternative, and a Preferred Alternative which would authorize a 450 acre expansion. The primary issues addressed include transportation system, parking, and local community services effects. The decision to be made is to select an Alternative or modify an Alternative(s) in response to the ski area expansion proposal. The comment period for the DEIS ended March 4, 1991. In June of 1991, a change of ownership of the permitted facilities occurred and a new Special Use Permit was issued to the Bear Valley Ski Company.

Due to planning priorities on the Forest, and in order for the new Bear Valley Ski Company to have time to evaluate the expansion proposal, the expansion planning project was put aside until the fall of 1992. During the latter part of 1992 and early 1993, the planning process was once again put on hold when the Forest Service was developing a policy and program to address management of spotted owl habitat in California. In the summer of 1993, the Forest Service made a decision that any spotted owl potential habitat would be evaluated prior to final approval of actual habitat disturbing activity. This cleared the continuation of the planning process.

The estimated date for filing the FEIS is August, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Clarey, Recreation Officer, Calaveras Ranger District, P.O. Box 500, Hathaway Pines, CA 95233. Phone (209) 795-1381.

Responsible Official: Jan Wold, Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370.

Dated: September 15, 1994.

Jan Wold,

Forest Supervisor.

[FR Doc. 94-27206 Filed 11-2-94; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

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Title: Secrecy/License to Export.
Agency Approval Number: 0651–0034.
Type of Request: Reinstatement of a previously approved collection for which the approval has expired.
Burden: 1,020 hours.
Number of Respondents: 1,957.
Avg Hours Per Response: 0.5212 minutes.
Needs and Uses: In order to apply for a patent in a foreign country for a U.S. patented invention that affects our national interest, approval from appropriate U.S. officials must be obtained. Various means may be used to obtain this approval, such as recision of a secrecy order or a modification thereto. This collection also contains information relating to petitions to obtain a license to export such inventions.
Affected Public: Individuals or households, state or local governments, farms, businesses or other for–profit institutions, Federal agencies or employees, non–profit institutions, and small businesses or organizations.
Frequency: When petitioning for consideration.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–27308 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of the Census

[Docket No. 941004–4304]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with Title 13, United States Code, Sections 131, 182, 224, and 225, I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: John Govoni, Manufacturing and Construction Division, Bureau of the Census, Washington, DC 20233, on (301) 763–5850.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

These surveys have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0607–0392, 0607–0395, 0607–0476, 0607–0560, 0607–0625, and 0607–0650 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

MA22F—Yarn Production
MA22K—Knit Fabric Production
MA22Q—Carpets and Rugs
MA23D—Gloves and Mittens
MA24T—Lumber Production and Mill Stocks
MA28A—Inorganic Chemicals
MA28B—Inorganic Fertilizer Materials and Related Products
MA28C—Industrial Gases
MA28F—Paint and Allied Products
MA28G—Pharmaceutical Preparations, except Biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, Scientific, Technical, and Industrial Glassware
MA33A—Ferrous Castings
MA33B—Steel Mill Products
MA33E—Nonferrous Castings
MA33L—Insulated Wire and Cable
MA34K—Steel Shipping Drums and Pails
MA35A—Farm Machinery and Lawn and Garden Equipment
MA35D—Construction Machinery
MA35F—Mining Machinery and Mineral Processing Equipment
MA35J—Selected Industrial Air Pollution Control Equipment
MA35L—Internal Combustion Engines
MA35M—Air-conditioning and Refrigeration Equipment
MA35N—Fluid Power Products
MA35P—Pumps and Compressors
MA35Q—Antifriction Bearings
MA35R—Computers and Office and Accounting Machines
MA36A—Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA36E—Electric Housewares and Fans
MA36F—Major Household Appliances
MA36H—Motors and Generators
MA36K—Wiring Devices and Supplies
MA36M—Consumer Electronics
MA36P—Communication Equipment
MA36Q—Semiconductors and Printed Circuit Boards
MA37D—Aerospace Orders
MA38B—Selected Instruments and Related Products
MA38R—Electromedical Equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour Milling Products
MQ22D—Consumption on the Woolen System and Worsted Combing
MQ23A—Apparel (short form)
MQ23X—Sheets, Pillowcases, and Towels
MQ32A—Flat Glass
MQ32D—Clay Construction Products
M32G—Glass Containers
M33D—Aluminum Producers and Importers
M33J—Inventories of Steel Producing Mills
MQ34E—Plumbing Fixtures
MQ36B—Electric Lamps
MQ36C—Fluorescent Lamp Ballasts
M37G—New complete Aircraft and Aircraft Engines, except Military
M37L—Truck Trailers

Annual Survey of Manufacturers

The Annual Survey of Manufacturers collects industry statistics such as total value of shipments, employment, payroll, workers hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

This survey has been approved by the OMB under OMB control number 0607–0449 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

This survey has been approved by the OMB under OMB control number 0607–0175 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and for comparative purposes, the total net sales and receipts and the total employment of the company.

This survey has been approved by the OMB under OMB control number 3145–0027 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Pollution Abatement Costs and Expenditures

The Annual Survey of Pollution Abatement Costs and Expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities. A supplemental data collection covers capital expenditures to abate air and water pollution and solid waste in petroleum, electric utility, and mining industries.

This survey has been approved by the OMB under OMB control number 0607–0176 in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Conclusion

I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: October 26, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–27276; Filed 11–2–94; 8:45 am]

BILLING CODE 3510–07–P

Minority Business Development Agency

Business Development Center Applications; Shreveport, LA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Shreveport, Louisiana Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Shreveport, Louisiana Area. The award number of the MBDC will be 06–10–95004–01.

DATES: The closing date for applications is December 5, 1994. Applications must be received in the Dallas Regional Office on or before December 5, 1994. A pre-application conference will be held on November 17, 1994, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from March 1, 1995 to March 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this

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project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities," Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: October 28, 1994.

Mel A. Jackson,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27243 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–21–M

National Telecommunications and Information Administration

Universal Service and Open Access to Telecommunications and Information Networks; Electronic Virtual Public Conference; Meetings

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Virtual Public Conference on "Universal Service and Open Access to Telecommunications and Information Networks."

SUMMARY: The National Telecommunications and Information Administration (NTIA) and the Universal Service Working Group of the Information Infrastructure Task Force (IITF) will host an electronic Virtual Conference during the week of November 14–18, 1994. The Virtual Conference will culminate a year-long effort by the Clinton Administration to gather information and opinions about the issues of universal service and open access with respect to telecommunications and information networks.

The Conference is part of the Administration's initiative to promote the development of a National Information Infrastructure (NII) and Global Information Infrastructure (GII). The Administration's report entitled the National Information Infrastructure: Agenda for Action, released on September 15, 1993, describes the benefits of networking technology and the potential for using the NII to create an electronic commons. The report includes the Administration's goals of extending universal service to the information infrastructure and using the NII to conduct government business. In addition, the Administration will be issuing in December, the Global Information Infrastructure Agenda for Cooperation, which will address universal service issues in the global arena, among other issues.

The Virtual Conference will be conducted entirely through electronic networks—using the Internet, dial-up bulletin board access, public information service providers, and commercial service providers. Although participants may use their own computers, NTIA and the Universal Service Working Group seek to facilitate nationwide access by encouraging public institutions to make their computer facilities available to the public during the week of the conference.

Information collected during this conference and previously through field hearings will assist the Administration's ongoing policy deliberations and may be used in future reports on universal service and open access.

How the Conference Will Be Conducted

During the week of November 14–18, 1994, NTIA will create a series of electronic discussion groups on specific topics. Each topic will have an Internet mailing list and USENET newsgroup devoted to discussion of the specific topics and hosted by an expert in the field. Any comments submitted as part of this electronic discussion will become part of a publicly available electronic archive. Topics to be discussed at the Virtual Conference are:

—*Redefining Universal Service and Open Access:* What is the minimum "basket" of telecommunications or information services or capabilities that all Americans should be able to obtain today? Which services or capabilities, if any, should be available to all Americans on an optional basis? What is the relationship between universal service and open access?

—*Affordability and Availability:* Who lacks telecommunications services and why? Should training in the use of more advanced network services be available to all who wish it? Who should pay for such training? How can rural concerns and inner city concerns best be accommodated under a new universal service concept? How can government balance the need for universal service with the benefits of a competitive environment for the telecommunications industry?

—*Intellectual Property:* Does the traditional legal framework for intellectual property work with digital technology? What are the respective roles of the government and the private sector in determining how authors and others who hold intellectual property rights are reimbursed? Does the current legal framework for intellectual property rights help or hinder accessibility to telecommunications and information networks?

—*Privacy:* What potential is there for telecommunications and information networks to compromise personal privacy? To what extent will perceptions of reduced privacy hinder widespread, seamless access to telecommunications and information networks?

—*Interoperability:* What is the relationship between interoperability and the concepts of universal service and open access? What are the respective roles of the marketplace and the government in determining standards and protocols for interoperability? What lessons can be learned from past efforts in standards setting, both domestically and internationally?

—*Universal Service and Open Access for Individuals with Disabilities:* What is the current state of access to telecommunications and information services for the disabled? How can such services help the disabled participate more fully in society? What design concepts for the disabled are transferable to all users to improve overall network functionality?

Participants in the Virtual Conference are encouraged to review the following two documents recently issued by NTIA and to comment on these documents electronically during the conference: (1) NII Field Hearings on Universal Service and Open Access: America Speaks Out, and (2) Notice of Inquiry (NOI) on Universal Service and Open Access Issues. Comments written on paper in response to this NOI are being received by NTIA and should be filed on or before December 14, 1994, to receive full consideration. Both documents already are available through NTIA's IITF Gopher Server at iitf.doc.gov, dial in to (202) 501–1920, and NTIA's Bulletin Board Service at (202) 482–1199, ntiabbs.ntia.doc.gov (telnet, gopher or world-wide web).

Call for "Public Access Points"

Libraries and universities, as well as state and local governments, are encouraged to make their facilities available to the public during the week of the Conference. Providing these public gateways will demonstrate the power of networking and facilitate access for those who might not otherwise be able to participate. In order to register as a site, please see the contact information below.

DATES: The Conference will start at 9:00 a.m. Eastern Standard Time (EST) on November 14 and conclude at 11:59 p.m. EST on November 18, 1994. During this time period, the conference will be open for comments 24 hours a day.

FOR FURTHER INFORMATION CONTACT: For technical assistance, please contact Charles Franz at (202) 482–1835 (cfranz@ntia.doc.gov). For general information, or to receive a "Public Access Point" registration form, please contact Roanne Robinson at (202) 482–1551 (rrobinson@ntia.doc.gov). Fax inquiries should be directed to (202) 482–1635.

Additional information about the Virtual Conference, including instructions on how to join a topic, may be found on the Conference Gopher: gopher-virtconf.ntia.doc.gov. This information can also be e-mailed directly to you; send a message to info@virtconf.ntia.doc.gov and you will receive an automatic reply.

Dated: October 31, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–27309 Filed 11–2–94; 8:45 am]

BILLING CODE 3510–60–P

Minority Business Development Agency

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Shreveport, Louisiana MBDC. This solicitation was originally published in the **Federal Register**, Wednesday,

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January 26, 1994, and later published Wednesday, March 30, 1994, 59 FR 14837.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: October 28, 1994.

Mel A. Jackson,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94-27242 Filed 11-2-94; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased by application of swing and special shift, reducing the current limits for Categories 338/339 and Categories 225 and 314 in the Fabric Group to account for the increases. The adjusted level for Categories 340/640 also includes an increase for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 55046, published on October 25, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding dated April 29, 1994, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 19, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on October 31, 1994, you are directed to adjust the limits for the following categories, pursuant to the current bilateral agreement and the Memorandum of Understanding dated April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt:

Category	Adjusted limit [1]
Levels not in a group	
338/339	1,808,550 dozen.
340/640	1,113,600 dozen.
Fabric Group	
218-220, 224-227, 313-317 and 326, as a group.	76,146,629 square meters.
Sublevels in the group	
225	17,189,075 square meters.
314	17,536,815 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27246; Filed 11-2-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

October 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 326 is being increased by application of swing, reducing the limit for Category 225 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 28, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber

apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on October 31, 1994, you are directed to amend the directive dated December 9, 1993, to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Sublevels in the Fabric Group	
225	25,607,093 square meters.
326	3,807,260 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27245; Filed 11-2-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing. In addition, Category 369-S is being increased for carryforward. As a result, the limits for Categories 334/634, 335/635/835 and 363, which are currently filled, will re-open. The limits for Categories 369-S and 369-O will remain closed.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 2827, published on January 19, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 27, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during various periods, including March 1, 1993 through December 31, 1994 (Categories 226/313), October 28, 1993 through December 31, 1994 (Categories 326, 335/635/835 and 369-S) and January 1, 1994 through December 31, 1994.

Effective on November 4, 1994, you are directed to amend the directive dated January 14, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted level [1]
226/313	3,271,645 square meters.
326	1,979,177 square meters.
334/634	212,096 dozen.
335/635/835	171,529 dozen.
351/651	162,607 dozen.
352	135,213 dozen.
363	5,600,000 numbers.
369-S [2]	91,836 kilograms.
369-O [3]	560,640 kilograms.
647/648	304,005 dozen.
847	152,956 dozen.

[1] The limits have not been adjusted to account for any imports exported after February 28, 1993 (Categories 226/313), October 27, 1993 (Categories 326, 335/635/835, 369-S) and December 31, 1993.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27244; Filed 11-2-94; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Structured Group Interviews Regarding the Use of Baby Walkers and the Acceptability of Alternate Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a series of structured interviews of parents and adult caretakers of young children concerning use of baby walkers and the acceptability of alternative products. The requested expiration date is April 1, 1995.

A baby walker is a device that supports a child so that the child can use its feet to move about before or while learning to walk. Typically, a baby walker consists of a fabric seat which has leg openings and is mounted to a rigid plastic deck. The deck is attached to a base which usually is mounted on wheels to allow mobility.

Earlier this year, the Commission published an advance notice of proposed rulemaking to announce that the agency is considering whether mandatory design, performance, or labeling requirements may be needed to eliminate risks of death and injuries to young children associated with baby walkers. In 1993, an estimated 25,000

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children were treated in emergency rooms for injuries associated with baby walkers. The majority of these injuries resulted from falls down stairs or steps.

To issue a mandatory safety rule for baby walkers, the Commission is required by law to make and support findings about the expected effects of the rule on the cost, utility, and availability of the products which would be subject to those requirements.

The Commission plans to interview six groups of approximately 12 persons each. The individuals in these groups will be parents or adult caretakers of young children. The participants will be asked to describe their perceptions of the benefits, if any, and disadvantages, if any, of conventional baby walkers. Participants will also be asked about the acceptability of various products which might be substituted for conventional baby walkers.

The Commission will use this information to assess the utility of baby walkers to consumers; to determine if mandatory performance, design, or labeling requirements would diminish the utility of baby walkers, and if so, to what extent; and to evaluate consumer acceptance of alternatives to baby walkers.

The Commission has requested clearance of this request for approval of a collection of information within 30 days in accordance with provisions of regulations implementing the Paperwork Reduction Act (5 CFR 1320.18).

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Structured Group Interviews Regarding the Use of Baby Walkers and the Acceptability of Alternate Products.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Parents and adult caretakers of young children.

Total number of respondents: 69.

Number of responses per respondent: 1.

Hours per response: 2.

Total hours for all respondents: 138.

Comments: Comments about this request for approval of a collection of information should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2245.

This is not a proposal to which 44 USC 3504(h) is applicable.

Dated: October 31, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27314 Filed 11–2–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Change of Address

AGENCY: Department of the Army, DOD.

ACTION: Public notice.

This is a notice to the general public of a change of address for the U.S. Army Freedom of Information/Privacy Act Office.

Old Address: U.S. Army Information Systems Command-Pentagon, (ASOK–OP–F), Crystal Square No. 2, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

New Address: U.S. Army Freedom of Information/Privacy Act Office, (SAIS–IDP–F/P), Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202–4102. This change is effective immediately.

FOR FURTHER INFORMATION CONTACT: Rose Marie Christensen, (703) 607–3452, telfax: (703) 607–3450.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27205 Filed 11–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Department of Justice.

Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988 (now designated as section 421(a)(1) of the Controlled Substances Act (20 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of federal benefits. Section 5301 authorizes federal and state judges to deny certain federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The current computer matching agreement expired on September 5, 1994. The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR at 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Names of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny federal benefits to any individual against whom a federal or state court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) is a federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

The President's Denial of Federal Benefits

Implementation Procedures of August 30, 1989 direct DOJ to act as the clearinghouse for federal agencies. While DOJ provides information about

section 5301 individuals who are ineligible to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurement and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ data base would be more efficient and effective than access to the GSA List. The DOJ data base has specific information about the Title IV, HEA programs for which individuals are ineligible and has more complete identifying information about those individuals than does the GSA List. Both of these elements are essential for a successful match.

4. Categories of Records and Individuals Covered

A. Department of Education Records

Federal Student Aid Application File (18–40–0014): Composed of records of students applying for federal student financial assistance under Title IV of the HEA. The social security number and the first two letters of an applicant's last name will be used by ED for the match.

B. Department of Justice Records

Denial of Federal Benefits Clearinghouse System (DEBAR) (OJP–0013): Contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of federal or state offenses involving drug trafficking or possession of a controlled substance who have been denied federal benefits by federal or state courts. This system of records also contains information concerning the specific program(s) for which benefits have been denied. The Department of Justice will make available for the matching program the records of only those individuals who have been denied federal benefits under one or more of the Title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 522a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Ms. Edith Bell, Program Specialist, Policy Development Division, U.S. Department of Education, 600 Independence Avenue SW, (Room 4318, ROB–3), Washington, DC 20202, Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: October 27, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–27228 Filed 11–2–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact for Operation of the Glass Melter Thermal Treatment Unit at the U.S. Department of Energy's Mound Plant, Miamisburg, OH

AGENCY: Department of Energy.

ACTION: Proposed Finding of No Significant Impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (DOE/EA–0821) for the proposed operation of the Glass Melter thermal treatment unit ("Glass Melter") at DOE's Mound Plant in Miamisburg, Ohio. The Glass Melter would thermally treat mixed waste (hazardous waste contaminated with radioactive constituents, largely tritium, plutonium-238, and/or thorium-230) that was generated at the Mound Plant and is now in storage by stabilizing the waste in glass blocks. Depending upon the radiation level of the waste, the Glass Melter may operate for as short a time as one year, but not longer than six years. DOE considered two onsite alternatives to the proposed action and seven offsite alternatives.

Based on the analysis presented in the environmental assessment, DOE believes that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, DOE proposes to issue a finding of no significant impact. This proposed finding of no significant impact is being made available for public review. DOE will consider any comments received in making a final determination on whether to issue a finding of no significant impact or to prepare an environmental impact statement for the proposed operation of the Mound Plant glass melter thermal treatment unit.

DATES: Comments on the proposed finding of no significant impact should be postmarked by December 5, 1994 to assure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: This proposed finding of no significant impact is being distributed to those persons and agencies known to be interested in or affected by the proposed action or alternatives. Comments or requests for copies of the environmental assessment should be addressed to: James Johnson, Miamisburg Area Office, U.S. Department of Energy, Mound Plant, Box 66, Miamisburg, OH 45342, (513) 847–5234 FAX: (513) 865–4489.

FOR FURTHER INFORMATION CONTACT: For further information on the Glass Melter project, contact James Johnson at the above address. For further information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed action would bring the Mound Plant Glass Melter out of cold shutdown mode and use it for treating mixed waste that was generated at the Mound Plant and is now in storage. The Glass Melter, housed in an annex of the Liquid Waste Disposal Building, consists of a burn chamber of stainless steel (lined with refractory material) with an exhaust (offgas) system connected to a system of pipes and scrubbers ending in a stack. (Scrubbers are devices that remove small particles, gasses, and airborne radionuclides generated during thermal treatment.) Waste in sealed drums would be transported by truck from the Mound Hazardous Waste Storage Building or Radioactive Mixed-Waste Storage Building to the annex, staged on a concrete loading dock adjacent to the annex, and then moved individually to a fume hood in the annex where the contents would be transferred into a feed system for processing in the melter. The waste would be added to molten soda-lime silica glass in the burn chamber of the Glass Melter. Ash from the combustion process would fall to the glass surface, where it would be incorporated into the melt. When the molten glass would reach a prescribed chemical mix (or a prescribed level of

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radioactivity), it would be discharged from the melter into 19 liter (five gallon) containers. The containers would then be transferred to a storage area in the building using mechanical aids (e.g., hoists and a roller conveyor system) to cool and to await transport by truck to existing onsite storage facilities.

The Glass Melter would have an estimated annual capacity of approximately 48,000 kg (106,000 lb) of wastes, based on an average throughput of 23 kg/hour (51 lb/hr) and a 2,080-hour work year. As originally proposed by the Department, and as analyzed in the environmental assessment, operating at this capacity would have enabled DOE to eliminate the existing backlog of approximately 43,000 kg (95,000 lb) of mixed waste in approximately six years, while processing hazardous and mixed wastes (approximately 39,000 kg (86,000 lb) annually of nonradioactive solvents and mixed wastes) as generated.

Since the environmental assessment was written, DOE has decided to close the Mound Plant. DOE proposes, therefore, to use the Glass Melter only for the mixed waste backlog. DOE has not yet fully characterized this waste for radioactive contamination levels. The radiation level of the waste feed would be limited by the need to comply with the Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants and by internal Mound limitations. If, after characterization, the radiation level of the waste is determined to be low enough that the capacity of the Glass Melter would be the factor controlling the processing rate, then the schedule for treatment of the backlog waste could be as short as one year.

The environmental impacts of the proposed treatment of only the mixed waste backlog are adequately covered, and are bounded by, the analysis in this environmental assessment, because calculations of radiological exposures and impacts were based on assumptions of waste radioactivity content that would exceed the actual content under the current proposed action. (According to the environmental assessment, the mixed waste backlog is estimated to have a total activity of 211 curies of tritium and 0.42 curies of plutonium-238; the calculations for Glass Melter operations, however, are based on a total waste activity content of 240 curies/yr of tritium and 0.48 curies/yr of plutonium-238.) The discussion below, which is based on the environmental assessment, therefore, would apply equally to the new proposed action. If the Department later proposes to use the Glass Melter to treat other than mixed waste backlog, it will undertake appropriate further review under the National Environmental Policy Act.

Routine operation of the Glass Melter would generate treated offgas, scrubber sludge, scrubber liquid effluent, and several solid waste streams. The sludge generated by the scrubbing operations (approximately 770 kg (170 lb) per year) would be transferred by pipeline (1) back to a Glass Melter feed port for reprocessing, (2) to an existing cementation process for immobilization in concrete, or (3) to container storage for any subsequent additional treatment required under the Resource Conservation and Recovery Act (RCRA) land disposal restrictions. Filtered liquid scrubber effluent (approximately 36,000 kg (79,000 lb) per year), depending on its composition, would be (1) pumped to an existing wastewater treatment facility, (2) pumped to the cementation process for immobilization as concrete (if the waste processed involved significant tritium concentrations), or (3) packaged for any subsequent additional treatment required under RCRA land disposal restrictions. Most liquid effluent would be treated at Mound's existing radioactive wastewater treatment facility and released via an existing outfall permitted under the National Pollutant Discharge Elimination System.

The Glass Melter would generate, per year, approximately 3,200 kg (7,000 lb) of glass block (mixed waste); 8,900 kg (20,000 lb) of cementized scrubber effluent and sludge (also mixed waste); and 1,900 kg (4,200 lb) of maintenance wastes (filters, replacement parts, etc.). (The maintenance wastes will generally be considered mixed waste, although certain of the replacement parts may have only surface radioactive contamination or may not be hazardous waste.) The mixed wastes would be stored onsite until a mixed waste disposal facility is available.

The immediate result of Glass Melter treatment would be the conversion of waste that is primarily liquid and combustible to a stable, inorganic form that would present very little environmental concern in storage. Most of the waste would eventually require transport to a radioactive mixed waste land disposal facility. (Any waste that is not mixed waste would be disposed of with other, similar Mound wastes, e.g., hazardous waste is shipped offsite for disposal.)

Environmental Impacts: In a series of test burns conducted in January 1985, the Glass Melter demonstrated the capability to thermally treat hazardous wastes in compliance with regulatory requirements. In June 1987, the Glass Melter was further tested and demonstrated effective treatment of low-level radioactive waste while meeting applicable regulatory requirements. Proposed future treatment of wastes using the Glass Melter would also meet all applicable environmental requirements. The Glass Melter is considered a "thermal treatment unit," not an "incinerator" under the Environmental Protection Agency regulations (40 CFR 260.10). Under the regulations for miscellaneous treatment, storage, and disposal units (40 CFR Part 264, Subpart X), any permit for the glass melter may include appropriate conditions from the incinerator regulations (Subpart O). Thermal treatment is one of the limited options DOE currently has to meet the requirement for site treatment plans under the Federal Facility Compliance Act.

The Environmental Protection Agency issued a Draft Strategy for Combustion of Hazardous Waste in Incinerators and Boilers on May 18, 1993, initiating a reexamination of its existing regulations and policies on waste combustion. In the draft strategy the Environmental Protection Agency indicates that, "if conducted in compliance with regulatory standards and guidance, combustion can be a safe and effective means of disposing [of] hazardous wastes." To the extent that the Glass Melter would destroy hazardous wastes it would effectively "dispose" of that portion of the mixed waste backlog. Nevertheless, the thermal treatment of mixed wastes would necessitate the disposal of treatment residues as a mixed waste, which would be stored pending final disposal in an approved location.

Emissions of nonradiological pollutants to the air during routine operations of the Glass Melter would include arsenic, cadmium, chromium, lead, carbon monoxide, hydrogen chloride, nitrogen oxides, and particulates. Predicted concentrations of nonradiological pollutants would meet applicable National Ambient Air Quality Standards and the maximum acceptable ground-level concentrations established by the Ohio Environmental Protection Agency. During routine operations of the Glass Melter the effective dose equivalent of radiation to the maximally exposed individual at the Mound Plant boundary (approximately 470 meters (510 yd) north-northeast from the Glass Melter stack) would be 0.07 mrem/year (tritium, plutonium-238, and thorium-230) from inhalation and ingestion pathways. These emissions would not cause the Mound Plant to exceed the individual effective dose equivalent limit of 10 mrem/year in the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants. Based on the 1990 population distribution surrounding the Mound Plant, the collective effective dose equivalent to the total population residing within 80 km (50 mi) of the facility would be 2.6 person-rem/year. The environmental assessment shows that the health risk from such exposures would be very small.

Onsite personnel would not be exposed to unique hazards and would be adequately protected from potential exposure to radionuclides or other hazards by the existing health and safety programs. Existing facility design features would reduce direct worker contact with radioactive materials.

The formation of dioxins from Glass Melter operation would be virtually precluded due to specific technological design features of the equipment. For instance, the elevated operating temperatures of the Glass Melter would result in a high destruction and removal efficiency (99.9999% in test burns). In addition, the rapid cooling of the offgases below dioxin-forming temperatures, as recommended by the Environmental Protection Agency for municipal waste incinerators, would also be used to preclude dioxin formation.

The worst reasonably foreseeable accident involving the Glass Melter would be a fire on the loading dock that would result in the complete vaporization of the contents of ten mixed waste storage drums. The estimated frequency of such an accident is once every 100,000 years. The effective dose equivalent to the maximally exposed individual (approximately 200 m (220 yd) downwind) would be 0.2 mrem, well below Environmental Protection Agency standards. The environmental assessment shows that the health risk from such exposures would be very small. Predicted concentrations of nonradiological pollutants would meet the Ohio Environmental Protection Agency's maximum acceptable ground-level concentrations. Taking account of the low probability of such an event and the small magnitude of the consequences, the health risk posed by the accident is insignificant.

No endangered species, critical habitats, floodplains, wetlands, or historical or archaeological resources would be affected by the proposed action.

Alternatives Considered: In the environmental assessment, DOE considered two onsite alternatives to the proposed action and seven offsite alternatives in the context of the original proposed action (i.e., assuming the continuing operation of the Mound Plant). The discussion below, however, while being based on the environmental assessment, reflects the current proposed use of the Glass Melter following DOE's decision to close the Plant, which is to treat only mixed waste backlog.

- *No Action.* The present practices of waste storage and disposal would continue and the Glass Melter would not be used. Most of the mixed waste backlog is liquid, and much of it is combustible. Storage of the untreated waste, therefore, could adversely impact human health and the environment, especially in the case of a fire in the storage facility.
- *Administrative Action.* Another alternative would be to rely upon the established Mound Waste Minimization and Pollution Prevention program to identify, screen, and analyze options to reduce the generation of waste. Waste that is in storage would not be affected by this program. The need for treatment options would persist.
- *Offsite Treatment and Disposal.* These alternatives would involve the transportation of mixed wastes to designated sites. DOE considered seven options for offsite treatment. All of the offsite treatment alternatives (i.e., all offsite alternatives except the Nevada Test Site) would involve thermal treatment.

—*Quadrex HPS, Inc. (Gainesville, FL).* This commercial facility cannot accept certain of the Mound mixed wastes, so this alternative would not, by itself, address the need to treat such wastes.

—*Diversified Scientific Services, Inc. (Kingston, TN).* This commercial facility could accept most of the mixed waste from Mound. Treatment, however, may be restricted by air permit conditions limiting the type of waste used for fuel and by Environmental Protection Agency regulations for boilers and industrial furnaces (40 CFR 266.100–112 and Appendices I–IX).

—*Idaho National Engineering Laboratory (INEL).* INEL has a permitted incinerator facility, the Waste Experimental Reduction Facility (WERF), capable of burning radioactive material and hazardous waste. WERF is currently shut down, and its operation is contingent upon completion of National Environmental Policy Act review and DOE approval of a Safety Analysis Report. The current waste acceptance criteria for WERF limit the radioactive and chloride content of wastes and prohibit receipt of any free liquids. These criteria would prohibit the acceptance at WERF of almost all of the waste proposed for treatment in the Glass Melter. The criteria could not be changed without substantial upgrades to WERF.

—*Los Alamos National Laboratory.* The proposed Controlled Air Incinerator is currently being permitted and undergoing National Environmental Policy Act review for operation at production capacity. Current operational plans do not include acceptance of offsite wastes, and the draft RCRA permit proposes to prohibit treatment of offsite waste.

—*Savannah River Site.* DOE is currently constructing the Consolidated Incinerator Facility under a construction permit from the State of South Carolina that does not allow out-of-state waste to be treated in the facility. DOE is preparing an environmental impact statement on waste management at the Savannah River Site, which will include further analysis of operation of the Consolidated Incinerator Facility and other volume reduction alternatives. Trial burns and operation of the facility are being deferred until the completion of the environmental impact statement process.

—*Oak Ridge Gaseous Diffusion Plant.* The incinerator at the Oak Ridge Gaseous Diffusion Plant currently treats mixed waste. The primary sources of waste treated at this incinerator are the Paducah Gaseous Diffusion Plant, the Portsmouth Gaseous Diffusion Plant, and the Oak Ridge Reservation. A substantial backlog of waste exists that will take several years to treat. Thus, this alternative would not be available to Mound for several years and would not meet Mound's immediate needs.

—*Nevada Test Site.* Disposal of mixed waste at the Nevada Test site is considered a possible alternative to treatment in the Glass Melter. Land disposal restrictions under the Resource Conservation and Recovery Act would require, however, that any mixed waste be treated before disposal. The Nevada Test Site would only, therefore, be a reasonable alternative for Mound waste already treated at another facility. DOE has not yet decided to what extent the Nevada Test Site would be used for future disposal of offsite waste; such decisions will be made after completion of the Environmental Restoration and Waste Management Programmatic Environmental Impact

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Statement and the Nevada Test Site Sitewide Environmental Impact Statement.

Proposed Determination

Based on the information and the analysis in the environmental assessment, DOE believes the proposed action (operation of the Glass Melter for treatment of backlog mixed waste only) does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act. Therefore, DOE proposes to issue a finding of no significant impact and not require the preparation of an environmental impact statement. DOE will make a final determination after considering the comments received during a 30-day public comment period.

Issued at Washington DC, this 27th day of October 1994.

Peter Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94-27307 Filed 11-2-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket Nos. QF83-333-002 and QF83-333-003]

Cal Ban Corp.; Notice of Amendment to Filing

October 28, 1994.

On October 26, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by November 18, 1994, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27254 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-389-001, et al.]

Tenaska Power Services Co., et al.; Electric Rate and Corporate Regulation Filings

October 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Tenaska Power Services Co.

[Docket No. ER94-389-001]

Take notice that on September 23, 1994, Tenaska Power Services Company (TPS) filed certain information as required by the Commission's May 26, 1994, letter order in Docket No. ER94-389-001. Copies of TPS's informational filing are on file with the Commission and are available for public inspection.

2. Eastern Power Distribution, Inc.

[Docket No. ER94-964-003]

Take notice that on October 11, 1994, Eastern Power Distribution, Inc. (EPD) filed certain information as required by the Commission's April 5, 1994, letter order in Docket No. ER94-964-002. Copies of EPD's informational filing are on file with the Commission and are available for public inspection.

3. Portland General Electric Co.

[Docket No. ER94-1420-000]

Take notice that on October 24, 1994, Portland General Electric Company (PGE) tendered for filing supplemental information relating to its July 1, 1994, filing in the above-captioned Docket of a service agreement under PGE-1 with City of Redding, California. The information consists of language for PGE FERC Electric Tariff, Original Volume No. 1 (PGE-1), as accepted by the Commission on October 14, 1994 in Docket Nos. ER93-462-000, ER93-703-000, and ER94-1295-000. Copies of the filing have been served on the parties listed in the Certificate of Service attached to the filing letter.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER94-1681-000]

Take notice that on October 21, 1994, Arizona Public Service Company tendered for filing, at Staff's request, an amendment to its filing in this Docket.

A copy of this filing has been served on the Arizona Corporation Commission.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Co.

[Docket No. ER95-26-000]

Take notice that on October 6, 1994, PECO Energy Company tendered for filing a Notice of Succession indicating that Philadelphia Electric Company had changed its name to PECO Energy Company.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Tucson Electric Power

[Docket No. ER95-36-000]

Take notice that on October 13, 1994, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of the 1992 short term power sale agreement between Tucson and Citizens Utilities Company.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER95-52-000]

Take notice that on October 20, 1994, New England Power Company (NEP) tendered for filing a Notice of Termination for Rate Schedule No. 373 between NEP and Bangor Hydro Electric Company.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27256 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. CP94-267-000 and CP94-267-001]

NorAm Gas Transmission Co.; Availability of the Environmental Assessment for the Proposed Line F Replacement Project

October 28, 1994.

The staff of the Federal Energy Regulatory Commission (FERC of Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by NorAm Gas Transmission Company (NGT) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed Line F Replacement Project including:

- Construction of about 90.9 miles of 20-inch-diameter pipeline to replace about 87 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, Lincoln, Union, and Ouachita Parishes, Louisiana;
- Rerouting a portion of Line F included in the above 90.9 miles of replacement pipeline to connect Line F directly to the Ruston Compressor Station in Lincoln Parish, Louisiana;
- Reclassification of about 8.2 miles of Line F as a low-pressure gas supply line and operate it as part of Line F-1-F in Caddo Parish, Louisiana;
- Abandonment of Line 1-F in Lincoln Parish, Louisiana, a 0.8-mile-long, 20-inch-diameter storage line no longer needed after the reroute of Line F;
- Abandonment of Line FT-5 in Lincoln Parish, Louisiana, a 0.9-mile-long, 10-inch-diameter gas supply line, no longer needed after the reroute of Line F;
- Construction of 10 new metering and regulating facilities at various locations on Line F;
- Abandonment of 66 delivery taps on Lines F, 1-F, and FT-5 installed to deliver gas to rural customers served by Arkansas Louisiana Gas Company;
- Construction of about 2.2 miles of 20-inch-diameter pipeline (Line ACT-4) in Hot Spring County, Arkansas;
- Installation of one 2,200-horsepower compressor unit and the rearrangement and upgrading of existing facilities at the existing Ruston Compressor Station in Lincoln Parish, Louisiana;
- Abandonment of about 0.4 mile of Line S in Harrison County, Texas; and
- Uprating the maximum allowable operating pressure on NGT's Line S from 880 pounds per square inch gauge (psig) to 930 psi in Harrison County, Texas; Caddo, Bossier, and Webster Parishes, Louisiana; and Columbia County, Arkansas.

NGT indicates that the Line F Replacement Project would enhance the safety, reliability, and efficiency of its pipeline system.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, (202) 208-1371.

Copies of this EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Lauren O'Donnell, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, Room 7312, PR-11.1, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208-0325.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP94-267-000 and -001 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than November 28, 1994 to ensure consideration before a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Lauren O'Donnell, Environmental Project Manager, Room 7312 at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Lauren O'Donnell, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27220 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11367-001]

Peak Power Corp., Kvaerner Venture, Inc., and Las Vegas Energy Storage Limited Partnership; Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings and a Site Visit

October 28, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application to construct and operate the proposed Sheep Mountain Pumped Storage Project, FERC Project No. 11367. The off-stream project would be located approximately 19 miles south of Las Vegas in Clark County, Nevada. This proposed project would involve federal lands managed by the Bureau of Land Management (BLM).

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the FERC staff intends to direct a third-party contractor in the preparation of an Environmental Impact Statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190. 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), September 13, 1982). The EIS will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analysis. BLM will be a cooperating agency on the EIS.

The Draft EIS (DEIS) will be circulated for review and comment by all interested parties, and FERC will hold a public meeting for the DEIS. FERC and BLM will consider and respond to comments received on the DEIS in the Final EIS. The FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision. BLM will use the information in the EIS to make its decision on issuing a right-of-way grant for the project.

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Scoping: Affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the environmental issues that should be analyzed in the EIS. Scoping will help ensure that all significant issues related to this proposal are addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

The FERC will conduct two scoping meetings on November 15 and 16, 1994. A scoping meeting oriented towards the public will begin at 7:30 p.m. on November 15, 1994, at the Clark County Library located at 1401 E. Flamingo Road, Las Vegas, Nevada. A scoping meeting oriented towards the agencies will begin 1:30 p.m. on November 16, 1994, at the BLM offices located at 4765 Vegas Drive, Las Vegas, Nevada. (The public and the agencies may attend either or both meetings, however.)

Objectives: At the scoping meetings FERC staff will (1) identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staffs' preliminary views.

Procedures: The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the official record of the Commission proceedings for the Blue Diamond South Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

To help focus discussions at the scoping meeting, FERC will mail a Scoping Document I, outlining subject areas to be addressed in the EIS, to agencies and interested individuals on the project mailing list. Copies of the scoping document will also be available at the scoping meetings.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 until December 12, 1994. All written correspondence should clearly show the following caption on the first page: Sheep Mountain Pumped Storage Project, FERC No. 11367–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit: A site visit to the Sheep Mountain Project is planned for November 15, 1994. Attendees will meet at the parking lot of the Gold Strike Casino, located in Joan, Nevada (east side of route 15) at 9 a.m. Those who wish to attend should contact Mike Strzelecki at (202) 219–2827.

For Further Information Contact: Mike Strzelecki, FERC–OHL, (202) 219–2827 or Roy Lee, BLM Las Vegas Resource Area, (702) 647–5040.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27215 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–32–000, et al.]

CNG Transmission Corporation, et al.; Natural Gas Certificate Filings

October 27, 1994.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP95–32–000]

Take notice that on October 21, 1994, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–32–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipelines, measurement and regulating stations, compressor stations, and rights-of-way as well as certain firm transportation points, all located within Boone, Kanawha and Raleigh Counties, West Virginia by sale to Cabot Oil and Gas Corporation (Cabot), all as more fully set forth in the application on file with the Commission and open to public inspection.

The facilities that CNGT proposes to abandon were transferred to CNGT from its predecessor, (now Hope Gas, Inc.) effective January 1, 1964. The transfer and classification of assets was approved by the Commission in Docket No. CP80–346–000 on December 20, 1983. Facilities constructed since 1984 have been added under CNGT's blanket certificate granted at 21 FERC 62,172 (1982) in Docket No. CP82–537–000.

The facilities are currently used to gather and transport gas for CNGT's system supply and to render interruptible transportation service for various shippers. In addition, CNGT provides firm transportation for Hope Gas, Inc. (Hope), an affiliate of CNGT. Hope makes sales to individual consumers along the facilities and has its own distribution facilities connected to the facilities. No interruption of Hope's consumer service will occur.

Cabot or a subsidiary will provide non-jurisdictional gathering service for the transportation provided by CNGT to producers on the pipelines to be sold to Cabot. Associated with this filing, Cabot or a Cabot subsidiary will file a Petition for Declaratory Order Disclaiming Jurisdiction relating to the facilities being abandoned and transferred to Cabot.

Comment date: November 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Gas Processing—Kansas Hugoton Co.

[Docket No. CP95–12–000]

Take notice that on October 5, 1994, Williams Gas Processing—Kansas Hugoton Company (WGP–KHC), P. O. Box 3102, Tulsa, Oklahoma 74101, filed in Docket No. CP95–121–000 a petition for declaratory order requesting that the Commission declare that the facilities to be acquired from Williams Natural Gas Company (WNG) are gathering facilities exempt from the Commission's Regulations pursuant to Section 1(b) of the Natural Gas Act (NGA, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

WGP–KHC states that it would, pursuant to a Transfer and Assignment Agreement dated October 3, 1994, between WGP–KHC and WNG, acquire at net book value, all of WNG's Kansas Hugoton gathering facilities located in Finney, Grant, Hamilton, Haskell, Kearny, Seward, Stanton and Stevens Counties, Kansas.

WGP–KHC states that WNG would convey the Kansas Hugoton gathering system which consists of two operationally separate sub-systems, namely the A&B sub-system, located west of the Hugoton compressor station, and the C sub-system located east of the Hugoton compressor station. The Kansas Hugoton A&B sub-system consists of the following facilities, all of which are currently classified as gathering:

(1) North Ulysses station—Located in the NE/4 of Section 16, Township 26 South, Range 38 West, Kearny County, Kansas. The station operates both single and two stage and consists of five 2,000 HP Cooper-Bessemer engine compressors for a total of 10,000 HP.

(2) North Ulysses "A" station—Located in the SE/4 of Section 4, Township 25 South, Range 37 West, Kearny County, Kansas. The station consists of one 1,100 HP White Superior engine compressor.

(3) North Ulysses "B" station—Located in the NW/4 of Section 25, Township 24 South, Range 37 West, Kearny County, Kansas. The station consists of one 1,320 HP Cooper-Bessemer engine compressor.

(4) North Ulysses "C" station—Located in the SW/4 of Section 17, Township 24 South, Range 36 West, Kearny County, Kansas. The station consists of one 1,320 HP Cooper-Bessemer engine compressor.

(5) West Ulysses station—Located in the SW/4 of Section 28, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of three 2,000 HP Cooper-Bessemer compressors, one 1,800 HP Cooper-Bessemer compressor, three 1,350 Cooper-Bessemer compressors for a total of 11,850 HP.

(6) West Ulysses "A" station—Located in the NE/4 of Section 20, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior compressor.

(7) West Ulysses "B" station—Located in the NE/4 of Section 8, Township 28 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(8) West Ulysses "C" station—Located in the SW/4 of Section 9, Township 27 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP compressors, for a total of 1,320 HP.

(9) South Ulysses station—Located in the SE/4 of Section 5, Township 30 South, Range 38 West, Grant County, Kansas. South Ulysses consists of two 2,000 HP Cooper-Bessemer engine compressors, for a total of 4,000 HP.

(10) South Ulysses "A" station—Located in the SE/4 of Section 5, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(11) South Ulysses "B" station—Located in the NE/4 of Section 19, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(12) South Ulysses "C" station—Located in the SW/4 of Section 30, Township 30 South, Range 38 West, Grant County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(13) South Ulysses "D" station—Located in the SW/4 of Section 29, Township 30 South, Range 39 West, Stanton County, Kansas. The station consists of one 660 HP White Superior engine compressor.

(14) South Ulysses "E" station—Located in the NW/4 of Section 8, Township 32 South, Range 39 West, Morton County, Kansas. The station consists of two 660 HP White Superior engine compressors, for a total of 1,320 HP.

(15) Pipeline—Approximately 1,247.1 miles of 2" to 30" pipeline consisting of:

1.8 miles of 2"
2.9 miles of 3"
558.4 miles of 4"
3.1 miles of 5"
293.8 miles of 6"
0.3 miles of 7"
131.3 miles of 8"
71.5 miles of 10"
51.6 miles of 12"
0.7 miles of 14"
31.9 miles of 16"
12.8 miles of 20"
9.5 miles of 22"
2.3 miles of 24"
31.5 miles of 26"
0.2 miles of 28"
43.5 miles of 30"

The Kansas Hugoton C sub-system consists of the following facilities, all of which are currently classified as gathering:

(1) Sublette station—Located in the NE/4 of Section 2, Township 29 South, Range 33 West, Haskell County, Kansas. The station operates in two stages and consists of one 2,000 HP compressor, one 1,800 HP compressor, and one 1,350 HP compressor for a total of 5,150 HP.

(2) North Sublette station—Located in the NE/4 of Section 26, Township 25 South, Range 33 West, Finney County, Kansas. The station consists of two 660 HP White Superior engine compressors for a total of 1,320 HP.

(3) Pipeline—Approximately 457.6 miles of 2" to 20" pipeline consisting of:

0.2 miles of 2"
0.1 miles of 3"
202.0 miles of 4"
117.5 miles of 6"
8.6 miles of 7"
27.0 miles of 8"
9.2 miles of 10"
20.9 miles of 12"
48.9 miles of 16"
0.1 miles of 18"
17.4 miles of 20"
5.7 miles of 22"

Other facilities to be conveyed within the Kansas Hugoton system include two types of facilities that are not included in the A&B or C sub-systems. The first of these "other" facilities are minor line segments physically connected to gathering systems or pipelines owned by others. All of these line segments are currently classified as gathering and include:

9.8 miles of 4"
2.4 miles of 5"
2.3 miles of 6"

The second type of "other" facilities include one compressor station and approximately 10 miles of pipeline that currently are classified as transmission but which serve a gathering function and are proposed to be reclassified as gathering. These facilities are used to move gas for certain shippers, and consist of:

(1) United Station—Located in Section 3, Township 29 South, Range 35 West, Grant County, Kansas. United station consists of three 2,000 HP Cooper-Bessemer compressors, one 1,440 HP Cooper-Bessemer compressor, and one 3,500 HP Ingersoll-Rand gas turbine engine, for a total of 10,940 HP

(2) Pipeline—Approximately 10.3 miles of 20" and 26" pipeline consisting of:

2.3 miles of 20
8.0 miles of 26

WGP–KHC states that it intends to assume ownership and control of the subject facilities as a non-regulated, independent, and separately managed business and is seeking a Commission declaratory order to confirm that the subject facilities are wholly exempt from the Commission's jurisdiction under the NGA. Petitioner also states that the Amoco Production Company, the largest producer in the Kansas-Hugoton field will operate the Kansas Hugoton gathering system as an independent contractor, subject to a long-term operating agreement including, inter alia, an obligation to operate the facilities in an open access and non-discriminatory manner.

Comment date: November 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Ozark Gas Transmission System

[Docket No. CP95–30–000]

Take notice that on October 21, 1994, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP95 30–000 an application pursuant to

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Section 7(b) of the Natural Gas Act, for permission and approval to abandon one lateral compressor and related facilities, known as the Turkey Flat Compressor Station located in Haskell County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Ozark is proposing to abandon all of the facilities at the Turkey Flat Station, including the compressor unit, dehydration, measuring and regulating equipment, 10,364 feet of 6 inch line, and metering equipment at the Turkey Flat #1 well site. Ozark was authorized in Docket No. CP78–532,et al., inter alia, to construct and operate the Turkey Flat Compressor Station. Ozark asserts that gas supply produced from the well located behind this compressor is being delivered to another pipeline and therefore production will not be interrupted upon abandonment of the station. Ozark further states that it proposes to reclassify the facilities proposed to be abandoned herein, for future use.

Comment date: November 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27255; Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–17–000, et al.]

Western Gas Interstate Co., et al.; Natural Gas Certificate Filings

October 26, 1994.

Take notice that the following filings have been made with the Commission:

1. Western Gas Interstate Company

[Docket No. CP95–17–000]

Take notice that on October 21, 1994, Western Gas Interstate Company (Western), 504 Lavaca Street, Suite, 950, Austin, Texas 78701, filed in Docket No. CP95–17–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate 2.5 miles of a 4" lateral and a tap off its East Line for Seaboard Farms of Oklahoma (Seaboard) with an average annual consumption of 15,000 Mcf, at Guymon County, Oklahoma, under the blanket certificate issued in Docket No. CP82–441, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Western asserts that the proposed facilities will permit gas to be delivered to Seaboard's sow farrowing units in Guymon County Oklahoma. The total estimated construction cost of the facilities is approximately $115,630, including overhead and contingency. Western states that it will finance the costs associated with the construction through the use of funds contributed by Seaboard.

Comment date: December 12, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP95–29–000]

Take notice that on October 20, 1994, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP95–29–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct the Burro Canyon facility to deliver gas to Primero Gas Gathering Company, (Primero), under the blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct a new delivery facility to provide purge gas and start up gas for Primero's compression facility in Las Animas County, Colorado. CIG relates the new facility will consist of a two-inch meter run and appurtenant facilities and will be located in Section 27, Township 33 South, Range 65 West, Las Animas County, Colorado. CIG explains the cost will be about $3,000, which will be financed from funds on hand. CIG says Primero will require approximately 1,000 Mcf per day which CIG will transport on an interruptible basis.

Comment date: December 12, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP95–33–000]

Take notice that on October 24, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95–33–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon two natural gas exchange services between Tennessee and Koch Gateway Pipeline Company (Koch), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it proposes to abandon two exchange services initiated pursuant to agreements dated December 6, 1962, and January 9, 1970. Tennessee indicates that it provided its service under its Rate Schedules X–16 and X–27, respectively. Tennessee further states that the services were authorized in Docket Nos. CP63–181 and CP70–175, respectively. It is indicated that on April 30, 1993, Tennessee requested that Koch advise whether the services authorized in Docket Nos. CP63–181 and CP70–175 were still required and that, if no response was received by May 13, 1993, Tennessee would proceed with abandonment. It is further indicated that Tennessee has received no such response, and, therefore, requests abandonment. Tennessee also states that there has been no activity under either service agreement since 1986. No facilities are proposed to be abandoned.

Comment date: November 16, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP95–34–000]

Take notice that on October 24, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–34–000 an application pursuant to Section 7(c) and 7(b) of the Natural Gas Act requesting authority to construct and operate certain replacement natural gas facilities and permission to abandon the facilities being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace approximately 1.3 miles of deteriorating 18-inch pipeline located in Greene and Madison Counties, Ohio and designated as Columbia's Line A, with approximately 1.3 miles of 20-inch pipeline. Columbia states that the sections proposed here for replacement were constructed in 1944 and 1948, using coupled pipeline and are the last coupled sections of Line A between Howell and Mt. Sterling Stations to be replaced. Columbia reports that recent examinations of Line A have confirmed general corrosion to the extent that replacement is required in order to maintain service to Columbia's existing customers.

Columbia states that it has concluded that since 18-inch pipeline is a non-standard size and the cost difference in using 20-inch pipe in place of 18-inch pipe is minimal, it will use 20-inch pipe for all future age and condition replacements on this line. Columbia asserts that the change in pipeline size will create a *de minimus* increase of less than 300 Dth/d of added capacity. Columbia estimates the cost of the proposed construction to be $557,200.

Comment date: November 16, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27210; Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MG95–1–000]

Algonquin LNG, Inc.; Notice of Filing

October 28, 1994.

Take notice that on October 26, 1994, Algonquin LNG, Inc. (Algonquin LNG) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Algonquin LNG states that it is revising its standards of conduct to incorporate the changes required by Order Nos. 566 and 566–A.

Algonquin LNG states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions to intervene or protest should be filed on or before November 28, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27218 Filed 11–2–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, order on rehearing, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, order extending sunset date, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, order extending sunset date, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991); rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, order on remand and extending sunset date, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, order on rehearing and extending sunset date, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, order denying rehearing and granting clarification, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, order extending sunset date, 59 FR 32884 (June 27 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, order on rehearing, 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994).

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[Docket No. TQ94-6-23-001]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1994.

Take notice that on October 25, 1994, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheet included in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1994, September 1, 1994, October 1, 1994 and November 1, 1994, respectively.

On July 1, 1994, Eastern Shore filed revised tariff sheets in Docket No. TQ94-6-23-000, et al. (its regularly scheduled quarterly PGA filing) proposed to be effective August 1, 1994. (Such revised tariff sheet were approved by FERC letter order dated July 27, 1994. Eastern Shore, however, inadvertently used as its starting point the cumulative transportation gas cost adjustment contained in Docket No. TF94-3-23-000, et. al. effective May 1, 1994, (an interim PGA filing) instead of the proper cumulative transportation gas costs adjustment as contained in Docket No. TQ94-5-23-000, et. al. (its regularly scheduled quarterly PGA filing) also effective May 1, 1994, in its July 1, 1994, filing.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All protests should be filed on or before November 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27211 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4715-006-NY]

Felts Mills Energy Partners, L.P.; Public Meeting Scheduled for Licensing of Felts Mills Hydroelectric Project

October 28, 1994.

The Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing will hold a Public Meeting to present findings and solicit comments on the Draft Environmental Impact Statement (DEIS) for the relicensing of the Felts Mills Hydroelectric project within the Black River Basin, New York.

The public meeting will be held November 16, 1994, in Watertown, New York at 7:00 p.m. in the Large Group Instruction Room of the Watertown High School, 1335 Washington Street, Watertown, New York.

Participants wishing to make oral comments at the meeting are asked to keep them brief.

Statements made at the public meeting will not constitute official DEIS comments pursuant to the National Environmental Policy Act. Official DEIS comments must be filed in writing with: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Reference should be made to the Felts Mills Project No. 4715.

The comment period ends November 28, 1994.

Questions regarding the relicensing of the projects can be addressed to Tom Camp, Task Monitor, FERC, (202) 219-2832.

Lois D. Cashell,

Secretary.

[FR Doc. 94- 27217 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-18-000]

Florida Gas Transmission Co.; Notice of Transition Cost Recovery Report

October 28, 1994.

Take notice that on October 26, 1994, Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, approved by the Commission's September 17, 1993, order in Docket No. RS92-16, *et al.*

FGT states that the Transition Cost Recovery Report filed summarizes the activity which has occurred in its TCR Account and Order 636 Account through October 31, 1994, and includes $4,850,000 of recoverable transition costs not previously reported. Because the currently effective surcharge rates are at the maximum levels permitted by FGT's tariff, no tariff revisions are required as a result of this filing.

FGT states that copies of the report were mailed to all customers serviced under the rate schedules affected by the report and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27213 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11092-002 California]

Sacramento Municipal Utility; District & El Dorado County; Water Agency; Notice of Surrender of Preliminary Permit

October 28, 1994.

Take notice that Sacramento Municipal Utility District & El Dorado County Water Agency, Permittees for, the Upper American River Project No. 11092, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 11092 was issued May 19, 1992, and would have expired April 30, 1995. The project would have been located in El Dorado National Forest, on the South Fork American River, Silver Fork American River, and Silver Creek, in El Dorado County, California.

The Permittees filed the request on October 11, 1994, and the preliminary permit for Project No. 11092 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following the day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27216 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-67-073; Phase II/PCBs]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

October 28, 1994.

Take notice that on October 25, 1994, in compliance with the Stipulation and Agreement filed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-captioned docket (Settlement),[1] and Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern submitted for filing the tariff sheets listed in Appendix A to the letter as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a decrease in the PCB component of Texas Eastern's currently effective rates.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27214 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[1] The Settlement was filed on December 17, 1991, and approved without modification by the Commission on March 18, 1992.

[Docket No. CP95-28-000]

Transcontinental Gas Pipe Line Corp.; Notice of Request Under Blanket Authorization

October 28, 1994.

Take notice that on October 20, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95-28-000 a request pursuant to §§ 157.205, 157.216 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.212) for authorization to abandon certain facilities and to construct and operate upgraded replacement facilities, under TGPL's blanket certificate issued in Docket No. CP82-426-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposed to expand its existing Gordonsville, Louisa County, Virginia Delivery Point (Gordonsville) by removing and retiring the existing meter station and constructing a new meter station and two twelve-inch taps at milepost 1523.38 on its "B" and "C" main lines. TGPL states that it currently delivers up to 2,000 Mcf of gas per day, on a firm basis, to Commonwealth Gas Services, Inc. (Commonwealth) at Gordonsville. TGPL asserts that the new facilities would enable it to deliver an additional 67,000 Mcf of gas per day, on an interruptible basis, to Commonwealth. TGPL mentions that Commonwealth would deliver up to 66,500 Mcf/day of this gas to a new cogeneration plant to be owned by Gordonsville Energy Limited Partnership and up to 500 Mcf/day to the City of Gordonsville. TGPL avers that it has sufficient system delivery flexibility to accomplish these additional deliveries at Gordonsville without detriment to its other customers and that it is not proposing to alter the total volumes of gas authorized for delivery to Commonwealth.

TGPL states that the estimated cost of the proposed facilities is $1,333,537 and the Commonwealth would reimburse TGPL for all costs associated with these facilities. TGPL also asserts that it would obtain all required environmental clearances prior to the commencement of any abandonment or construction work in the vicinity of Gordonsville.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27219 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-19-000]

Trunkline Gas Co.; Notice of Storage Report

October 28, 1994.

Take notice that on October 26, 1994, Trunkline Gas Company (Trunkline) tendered for filing with the Commission its report pursuant to the Commission's Order on Compliance with Restructuring Rule dated March 2, 1993, in Docket Nos. RS92-25, *et al.*, which required Trunkline to file a study within 60 days after the end of its first year of operations under restructured services that indicates the amount of storage capacity and deliverability that was used to accommodate imbalances on Trunkline's system.

Trunkline states that it has been operating under Order No. 636 since September 1, 1993, the day restructuring was approved to be effective by the Commission in Docket Nos. RS92-25, *et al.* Trunkline states that the last day of the first year of restructured operations was August 31, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 18, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

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inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27212 Filed 11-2-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $100,697.87, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a June 21, 1982 Remedial Order issued to Beacon Bay Enterprises, Inc. (Beacon Bay), Case No. LEF-0074. The OHA has determined that the funds obtained from Beacon Bay, plus accrued interest, will be distributed to customers who purchased gasoline from Beacon Bay during the period August 1, 1979 through March 31, 1980.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "Beacon Bay Special Refund Proceeding," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W. Washington, D.C. 20585.

Applications should display a prominent reference to case number "LEF-0074" and be postmarked by May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION:

In accordance with 10 C.F.R. 205.282 (b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $100,697.87, plus accrued interest, obtained by the DOE pursuant to a June 21, 1982 Remedial Order. In the Remedial Order, the DOE found that, during the period August 1, 1979 through March 31, 1980, Beacon Bay had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from Beacon Bay in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from Beacon Bay who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Beacon Bay.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund must be postmarked by May 1, 1995. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Beacon Bay Enterprises, Inc.
Date of Filing: July 20, 1993.
Case Number: LEF-0074.

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which Beacon Bay Enterprises, Inc. (Beacon Bay) remitted to the DOE pursuant to a June 21, 1982 Remedial Order. Beacon Bay has remitted $100,697.87 pursuant to the order, to which $3,919.39 in interest has accrued as of September 30, 1994. In accordance with the provisions of procedural regulations at 10 C.F.R. part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

During the period relevant to this proceeding, Beacon Bay operated 11 retail service stations in Southern California. The ERA issued a Proposed Remedial Order (PRO) to Beacon Bay on July 29, 1980. The PRO alleged that, during the period August 1, 1979 through March 31, 1980, Beacon Bay sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. The DOE amended the PRO and issued a Final Remedial Order on June 21, 1982, after considering Beacon Bay's objections to the PRO. Beacon Bay Enterprises, 9 DOE ¶ 83,039 (1982). On August 23, 1982, Beacon Bay appealed the DOE's Final Remedial Order to the Federal Energy Regulatory Commission (FERC). The FERC issued a Proposed Order on November 15, 1982, Beacon Bay Enterprises, 21 FERC ¶ 62,295 (1982), and an Order on January 25, 1983, Beacon Bay Enterprises, 22 FERC ¶ 61,059 (1983), both of which affirmed and adopted the DOE's Final Remedial Order. Beacon Bay has since remitted $100,697.87 to the DOE, in compliance with the Remedial Order (the Beacon Bay Remedial Order fund), which is now available for distribution through Subpart V.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 *et seq.*; Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Beacon Bay Remedial Order fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Refund Procedures

On August 19, 1994, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Beacon Bay Remedial Order fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 59 FR 44720 (August 30, 1994). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Beacon Bay Remedial Order fund. Consequently, the procedures will be adopted as proposed.

We will implement a two-stage refund procedure for distribution of the Beacon Bay Remedial Order Fund. In the first stage, purchasers of gasoline from Beacon Bay during the period covered by the Remedial Order may submit Applications for Refund. From our experience with Subpart V proceedings, we expect that potential applicants generally with fall into the following categories: (i) End-users; (ii) regulated entities, such as cooperatives; and (iii) resellers and retailers.

A. First-Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from Beacon Bay during the period covered by the Remedial Order—August 1979 through March 1980. If the gasoline was not purchased directly from Beacon Bay, the claimant must establish that the gasoline originated with Beacon Bay. Additionally, a reseller or retailer claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Beacon Bay's overcharges. This showing will generally consist of two distinct elements. First, a reseller or retailer claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[1] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must also provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the overcharges. See Vaqueros Energy Corp./Hutches Oil Co., Inc., 11 DOE ¶ 85,070 at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Beacon Bay. See *National Helium Co./Atlantic Richfield Corp.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v DOE*, 618 F. Supp. 1199 (D. Del. 1985).

Our experience also indicated that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, *e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable subpart V regulations at 10 C.F.R. § 205.282 (e). Accordingly, we will adopt the presumptions set forth below.

1. *Calculation of Refunds.* First, we will adopt a presumption that the overcharges were dispersed equally in all of Beacon Bay's sales of gasoline during the period covered by the Remedial Order. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[2] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the Remedial Order fund is equal to the number of gallons purchased from Beacon Bay during the period covered by the Remedial Order times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0690. We derived this figure by dividing the amount of the Remedial Order fund, $100,697.87, by 1,460,321 gallons, the volume of gasoline which Beacon Bay sold from August 1, 1979 through March 31, 1980. A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[3]

In addition to the volumetric presumption, we will also adopt a number of presumptions regarding injury for claimants in each category listed below.

2. *End-Users.* In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from Beacon Bay whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, *e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,269 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.*

Accordingly, end-users of gasoline purchased from Beacon Bay need only document their purchase volumes from Beacon Bay during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

3. *Regulated Firms and Cooperatives.* In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, i.e. a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member-purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514-15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[4]

4. *Resellers and Retailers.* a. *Small Claims Presumption.* We will adopt a "small claims" presumption that a firm which resold gasoline purchased from Beacon Bay and requests a small refund was injured by the overcharges. Under the small claims presumption, a reseller or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of gasoline it purchased from Beacon Bay during the period covered by the Remedial Order. See *TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claimants the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, the use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[5]

b. *Mid-Level Claim Presumption.* In addition, a reseller or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share.[6] The use of this

[1] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from any cost banks submitted in this refund proceeding. See Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090, at 88,170 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for gasoline) or for any prior month. See Standard Oil Co., (Indiana)/Suburban Propane Gas Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986). If a claimant no longer has records showing its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. See, e.g., Gulf Oil Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986).

[2] If a claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Beacon Bay's overcharges. See, *e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 15 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed these overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[3] As in previous cases, we will establish a minimum refund amount of $15. In this proceeding, any potential claimant purchasing less than 211 gallons of gasoline from Beacon Bay would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

[4] A cooperative's purchases of gasoline from Beacon Bay which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

[5] In order to qualify for a refund under the small claims presumption, a reseller or retailer must have purchased less than 72,471 gallons of gasoline from Beacon Bay during the settlement agreement period.

[6] Under the mid-level presumption, a claimant which purchased between 72,471 gallons and 101,177 gallons from Beacon Bay would be eligible to receive a principal refund, exclusive of interest, of $5,000. A claimant purchasing more than 101,177 gallons of petroleum products would be

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presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the overcharges. See *Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analyses in order to determine product-specific levels of injury. See, e.g., *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we will therefore adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of gasoline from Beacon Bay during the Remedial Order period in order to be eligible to receive a refund of 40 percent of its total allocable share or $5,000, whichever is greater.[7]

c. *Spot Purchasers.* Finally, we will adopt a rebuttable presumption that a reseller or retailer that made only spot purchases from Beacon Bay did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and location of their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, e.g., *Vickers*, 8 DOE at 85,396–07. Accordingly, a spot purchaser claiment must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Beacon Bay.[8]

B. Refund Application Requirements

To apply for a refund from the Beacon Bay Remedial Order fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[9] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names;

(2) The applicant's use of gasoline purchased from Beacon Bay: e.g., consumer (end-user), reseller, cooperative, or public utility;

(3) A monthly purchase schedule covering the period August 1, 1979 through March 31, 1980. The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Beacon Bay, it should provide its customer number. If the applicant was an indirect purchaser from Beacon Bay (i.e., it purchased Beacon Bay gasoline through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the gasoline was originally sold by Beacon Bay;

(5) If the applicant is a regulated utility or cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, or other regulatory agency, or membership body of the receipt of any refund, and a brief description of how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $5,000 (i.e., whose purchases equal or exceed 72,471 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Beacon Bay's overcharges. See Section III.A.4 *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Beacon Bay refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) A statement as to whether the applicant is or was in any way affiliated with Beacon Bay. If the applicant was so affiliated, it should explain this affiliation, including the time period in which it was affiliated; [10]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the Remedial Order period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sales Agreements, if available. If such written documents are not available, the applicants should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Beacon Bay Special Refund Proceeding, Case No. LEF–0074." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than May 1, 1995, and sent to: Beacon Bay Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., Washington, D.C. 20585.

[7] In addition, we will adopt the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Each such filing service shall, contemporaneously with its first filing in the Beacon Bay proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[11] This statement should contain the following information: [12]

(1) A description of the procedures used to solicit refund applications in the Beacon Bay proceeding and copies of any solicitation materials mailed to prospective Beacon Bay applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR Part 205 and this proceeding.

Second, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Third, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. The certification should state that the applicant has not filed and will not file any other Application for Refund in the Beacon Bay proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourth, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to the applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HG–13, Chief, Docket & Publications Branch, Department of Energy, Washington, D.C. 20585.

Finally, the OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information in this Decision and Order.

C. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. The PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated those responsibilities to the OHA, and any funds in the Beacon Bay Remedial Order fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of the PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Departement of Energy by Beacon Bay Enterprises, Inc. pursuant to the Remedial Order issued on June 21, 1982, may now be filed.

(2) Applications for Refund must be postmarked no later than May 1, 1995.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27304 Filed 11–2–94; 8:45 am]

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eligible for a principal refund equal to 40 percent of its allocable share.

[8] A claimant that attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the overcharges, or that it was injured in an amount less than the presumptive level refund, may not necessarily receive a full presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application.

[9] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrated that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (2) they were forced by market conditions to resell the product at a loss that was not subsequently recouped through the draw down of banks. See, e.g., Texaco Inc., 20 DOE ¶ 85,147 at 88,321 (1990); Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,465 (1986).

[9] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[10] Affiliates of firms that have resulted overcharge funds to the DOE are generally not entitled to share in those funds. If an affiliate of Beacon Bay were granted a refund, Beacon Bay would be indirectly compensated from a Remedial Order fund resulted to settle its own violations. See *Propane Industrial, Inc.* v. *Department of Energy*, No. 8–23, slip op. at 3 (Temp. Emer. Ct. App. January 8, 1993). In addition, Beacon Bay presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See *Marathon Petroleum Co./Pilot Oil Corp.*, 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,228 (1990).

[11] This statement should be submitted under separate cover and reference the Beacon Bay refund proceeding, Case No. LEF–0074.

[12] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of this Decision and Order need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)–(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that have been made.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of the total amount of $5,982.32 in crude oil overcharges obtained by the DOE under the terms of a Remedial Order that DOE issued to Doma Corporation (DOMA) and Don Martin (Martin), Case No. LEF–0049. OHA has determined that the funds obtained from DOMA and Martin, plus accrued interest, will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that DOE has formulated to distribute to eligible claimants $5,982.32, plus accrued interest, obtained under the terms of a Remedial Order that DOE issued to Doma Corporation and Don Martin on July 25, 1985. The Remedial Order found that Doma Corporation and its President, Don Martin, both violated provisions of the Federal petroleum price and allocation regulations involving the sale of crude oil during the period of November 1973 through June 1977.

OHA will distribute the Remedial Order funds in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (the MSRP). 51 FR 27899 (August 4, 1986). Under the MSRP, crude oil overcharge monies are divided between the Federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states are distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers are based on the total volume of petroleum products purchased and the degree to which they can demonstrate injury.

Because the June 30, 1994 deadline for crude oil refund applications has passed, no new applications for purchasers of refined petroleum products will be accepted for these funds. Instead, the share allocated to these purchasers will be added to the general crude oil overcharge pool used for direct restitution.

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Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

October 27, 1994.

Name of Firm: Doma Corporation and Don Martin

Date of Filing: September 17, 1992

Case Number: LEF–0049

This Decision and Order considers a Petition for the implementation of Special Refund Procedures (Petition) filed by the Economic Regulatory Administration (ERA) for crude oil overcharge funds. Under the procedural regulations of the Department of Energy (DOE), ERA may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. See Petition for Implementation of Special Refund Procedures, 10 CFR 205.281. These procedures are used to refund monies to those persons who were injured by actual or alleged violations of the DOE price regulations. We have considered ERA's September 17, 1992, request to implement Subpart V procedures with respect to the monies received from Doma Corporation (DOMA) and Don Martin (Martin) and have determined that such procedures are appropriate.

The Petition filed by ERA seeks to implement special refund procedures for monies that were remitted by DOMA and Martin pursuant to Final Remedial Order No. HRO–0209 (the Order) issued on July 25, 1985, by OHA. Under this Order, DOMA and Martin were found to have violated provisions of the Federal petroleum price and allocation regulations during the period November 1973 through June 1977 (the audit period). A total amount of $5,982.32 has been remitted to the DOE.[1] This Decision and Order sets forth OHA's plan to distribute these funds.

I. Background

DOMA was incorporated in the state of Texas on May 31, 1973, and was headed by Don Martin, President. Its crude oil trading activities, during the audit period, were based in Abilene, Texas and consisted primarily of purchasing and reselling crude oil (without substantially changing its form) to purchasers other than ultimate consumers. DOMA was, therefore, a reseller as that term is defined at 10 CFR 212.31.

On June 13, 1979, ERA issued a Notice of Probable Violation (NOPV) alleging that during the audit period DOMA committed violations of DOE regulations in its sales of crude oil. On February 7, 1984, ERA issued an Amended Proposed Remedial Order (APRO) Case No. 6A0X00111. The APRO alleged that both DOMA and Martin charged prices in excess of the maximum legal selling price; purchased uncertified barrels of bottoms oil and sold them as new or stripper oil; and miscertified various petroleum products as new or stripper crude oil in violation of the following statutory provisions: 10 CFR 205.202, 210.62(c), 212.10, .93, .131.

This Office issued the APRO as a Final Remedial Order to DOMA and Martin on July 25, 1985. See Final Remedial Order at 29. DOMA and Martin have remitted $5,982.32, plus interest, to the Office of Controller, of the Department of Energy. These funds are available for distribution through Subpart V and currently are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR Part 205, Subpart V. These procedures apply in situations where DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. The Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The monies remitted by DOMA and Martin will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 FR 27899 (August 4, 1986). This policy has been utilized in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specified that any monies remaining after all valid claims by injured purchasers are paid will be disbursed to the federal government and the states in equal amounts. See, *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement) for a more detailed discussion of the MSRP.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the Subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981, crude oil price control period; and (2) prove they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil overcharges and would not be required to submit proof of injury. *See City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. The Proposed Decision and Order

On November 12, 1992, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the crude oil violation amount that had been obtained from DOMA and Martin. The amount of money covered by the PDO is $5,982.32, plus accrued interest. OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, OHA proposed to reserve 20 percent of these funds ($1,196) for direct refunds to applicants who claim that they were injured by the crude oil violations. We stated that the remaining 80 percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury.

The PDO proposes evaluating claims for the DOMA and Martin crude oil refund proceeding in exactly the same manner as OHA has evaluated claims submitted in other crude oil proceedings. Claimants generally will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. The PDO proposed that the refunds be calculated on the basis of a volumetric refund amount which has been calculated in accordance with the description in the April Notice. We further stated that the crude oil overcharges were presumed to have been absorbed, rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury. *See Shell*, 17 DOE at 88,406.

We provided a period of 30 days from the date of the PDO's publication in the **Federal Register** in which the public could submit comments regarding the tentative refund procedures. More than 30 days have elapsed, and OHA has received no comments concerning the proposed procedures. Accordingly, the OHA will finalize the PDO as set forth below.

Under the terms of the MSRP, 80 percent of the crude oil violation amounts subject to this Decision or $4,785.86 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $2,393.00, plus interest, into an interest bearing subaccount for the states, and one-half, or $2,393.00, plus interest, into an interest bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursement to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil funds received by the states in accordance with the Stripper Well Agreement.

We must also determine the appropriate method for disbursing the 20 percent of the fund available for direct restitution ($1,196). The application period for crude oil overcharge refunds ended on June 30, 1994. As we discussed in *King Petroleum, Inc.*, Case No. LEF–0125, August 8, 1994 (Proposed Decision and Order), we will not hold a separate refund proceeding for monies that become available for direct restitution after the June 30, 1994 closing date. 59 Fed. Reg. 41755 (August 15, 1994). Therefore, the funds in this case ($1,196) will be added to the general crude oil overcharge pool for direct restitution to those applicants who applied by the June 30, 1994 deadline.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $5,982.32, plus accrued interest, from the DOMA and Martin escrow account Number 6A0X00111Z, as specified in Paragraphs (2), (3) and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $2,393, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $2,393, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $1,196, plus accrued interest, of the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

(5) This is a final Order of the Department of Energy.

Dated: October 27, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27305 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

[1] The alleged violations referred to in this Proposed Decision and Order involve the sales of both crude oil and refined petroleum products. However, in view of the size of the payment and the fact that most of the overcharges relate to crude oil, the OHA has determined that the interests of administrative efficiency would best be served by considering all monies received to be the result of crude oil violations.

Western Area Power Administration

Salt Lake City Area/Integrated Projects Notice of Rate Order No. WAPA–63

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order "Salt Lake City Area/Integrated Projects (Integrated Projects) Firm Electric Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–63 and Rate Schedule SLIP–F5 placing firm power rates for capacity and energy from the Integrated Projects of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates.

The provisional firm power rates to be effective from December 1, 1994, through November 30, 1999, consist of an energy charge of 8.90 mills per kilowatthour (mills/kWh) and a capacity charge of $3.83 per kilowatt month (kW-month), which result in a composite rate of 20.17 mills/kWh. This is a 7.9-percent increase over the current energy charge of 8.40 mills/kWh and the current capacity charge of $3.54/kW-month which results in a composite rate of 18.70 mills/kWh. A comparison of existing and provisional rates follows:

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF EXISTING AND PROVISIONAL FIRM POWER RATES

	Existing rates (effective 10/92)	Provisional rates (effective 12/94)
Firm Power Service Rate Schedule.	SLIP–F4	SLIP–F5
Firm Capacity Charge ($/kW/month).	$3.54	$3.83
Firm Energy Charge (mills/kWh).	8.40	8.90
Composite Rate (mills/kWh).	[1]18.70	20.17

[1] The rates calculated at a 58.2-percent load factor can be expressed as a Combined Rate of 16.72 mills/kWh.

DATES: Rate Schedule SLIP–F5 will be placed into effect on an interim basis on the first day of the first full billing period beginning on/or after December 1, 1994, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis through November 30, 1999, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth G. Maxey, Area Manager, Salt Lake City Area Office, Western Area Power Administration, 275 East 200 South, Suite 475, Salt Lake City, UT 84111, (801) 524–6372

Ms. Deborah M. Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1618

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These power rates are established pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments; particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary.

The main issues raised at public meetings and in written comments included (1) cost projections used in the Power Repayment Study (PRS), (2) water depletion schedules assumed for future power projections, and (3) estimated future prices for purchased power. Western has considered all

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comments in preparation of the provisional rates.

Rate Order No. WAPA–63, confirming, approving, and placing the proposed Integrated Projects rate adjustment into effect on an interim basis, is issued, and the new Rate Schedule SLIP–F5 will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, D.C. October 24, 1994.

William H. White,

Deputy Secretary.

Order Confirming, Approving, and Placing the Salt Lake City Area/Integrated Projects Firm Power Service Rates Into Effect on an Interim Basis

In the Matter of Western Area Power Administration Rate Adjustment for Salt Lake City Area/Integrated Projects October 24, 1994.

[Rate Order No. WAPA–63]

These power rates are established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW/month: Monthly charge for capacity (i.e., $ per kilowatt (kW) per month).

AF: Acre-foot. The amount of water necessary to cover 1 acre of land to a depth of 1 foot.

Basin Fund: That account in the U.S. Department of the Treasury, established by the Colorado River Storage Project (CRSP) Act.

Billing Demand: The greater of (1) the highest 30-minute demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract or (2) the contract rate of delivery.

Capacity Component: Part of a firm power rate; shown in the power repayment study (PRS) as a dollar per kW per year charge. Billed on a dollar per kW per month basis. Applied each billing period to each kW which each contractor is entitled by contract.

Categorical Exclusion: Characterizes an action which does not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect in procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

CME: Capitalized movable equipment.

Collbran: Collbran Project.

CREDA: Colorado River Energy Distributors Association.

CROD: Contract rate of delivery. Capacity the supplier of electric service agrees to have available for delivery. It may or may not be accompanied by energy.

CRSM: Colorado River Simulation Model.

CRSP: Colorado River Storage Project.

CRSP Act: Act of April 11, 1956, ch. 203, 70 Stat. 105, as amended, 43 U.S.C. 620–620o.

CWIP: Construction work in progress.

Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal.

Demand: The rate at which electric capacity is delivered to or by a system over any designated period of time.

DOE: U.S. Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

EA: Environmental assessment.

EIS: Environmental impact statement.

Energy Component: Part of a firm power rate; expressed in mills per kilowatthour (kWh). Applied to each kWh made available to each customer.

Exception Criteria: An agreement between Reclamation and Western setting forth conditions for operating the Glen Canyon Dam outside of test flows and subsequent interim operating criteria, including system regulation, emergency situations, and for the specific purpose of avoiding high-cost replacement power purchases.

FERC: Federal Energy Regulatory Commission.

FPOD: Federal point of delivery.

FY: Fiscal year.

Glen Canyon Dam: The dam on the Colorado River which forms Lake Powell.

Glen Canyon Dam EIS: Glen Canyon Dam Environmental Impact Statement.

GCPA: Grand Canyon Protection Act of 1992.

IDC: Interest during construction.

Integrated Projects: The Salt Lake City Area/Integrated Projects, which encompass the combined sales and resources of the CRSP, Collbran, and Rio Grande Projects.

Interior: U.S. Department of the Interior.

kW: Kilowatt; 1,000 watts.

kWh: Kilowatthour; the common unit of electric energy, equal to one kW taken for a period of 1 hour.

Load: The amount of capacity or energy delivered or required at any specified point or points on a system. Load originates primarily with a customer's energy-consuming equipment.

M&I: Municipal and industrial.

Mill: Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent. Used to express wholesale energy and composite electric rates.

Mills/kWh: Mills per kilowatthour.

MW: Megawatt; 1,000 kW; 1,000,000 watts.

NEPA: National Environmental Policy Act of 1969.

OMB: Office of Management and Budget.

O&M: Operation and maintenance.

Pinch-Point: The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.

PMA: Power marketing administration.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Regional Office: Bureau of Reclamation's Regional Office.

RGP: Rio Grande Project.

SLCA: Salt Lake City Area.

SLCAO: Salt Lake City Area Office.

Upper Basin States: Colorado, New Mexico, Utah, and Wyoming.

UCRC: Upper Colorado River Commission.

Watt: The electrical unit of power or rate of doing work. It is analogous to horsepower or foot-pounds per minute of mechanical power. One horsepower is equivalent to approximately 746 watts.

Western: Western Area Power Administration, U.S. Department of Energy.

WSCC: Western Systems Coordinating Council.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after December 1, 1994, and will be in effect pending FERC's approval of them or substitute rates on a final basis through November 30, 1999, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of this firm power rate. The provisional firm power rate represents an increase of more than 1 percent in total Integrated Projects revenues; therefore, it is a major rate adjustment as defined at 10 CFR §§ 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A preliminary **Federal Register** notice (FRN), published July 1, 1993 (58 FR 35449), invited interested parties to participate in the determination of whether an Integrated Projects' firm power rate increase was necessary. Western also invited participation in deciding the issues that should be addressed in the process.

2. Several informal meetings were held between the publication of the July 1, 1993, FRN and the beginning of the public rate adjustment process. These meetings, involving personnel from Western, Reclamation, and representatives from organizations of interested parties, produced many issue papers that identified and discussed the items which should be considered in a firm power rate adjustment. Agreement as to how to approach many of the issues was reached during this time, considerably reducing the number of unresolved issues and easing the later formal public process.

3. On December 27, 1993, letters were mailed from Western's Loveland, Phoenix, and Salt Lake City Area Offices to all Integrated Projects customers and other interested parties announcing an informal public meeting to be held on January 31, 1994.

4. At the informal meeting held on January 31, 1994, Western and Reclamation representatives explained the need for a rate increase and answered questions.

5. An FRN was published on April 21, 1994 (59 FR 19008), officially announcing the proposed firm-power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

6. On April 22, 1994, a rate announcement package was mailed from Western's Salt Lake City Area Office to all Integrated Projects customers and other interested parties announcing the publication of the FRN of April 21, 1994, and the beginning of the formal public process to adjust firm power rates. The package contained (1) a letter announcing the upcoming public information and comment forums, (2) a copy of the April 21 FRN, and (3) a copy of the April 1994 Integrated Projects Firm Power Rate Adjustment brochure. Rate announcement packages were mailed to customers served by Western's Loveland and Phoenix Area Offices on April 25, 1994.

7. At the public information forum held on May 24, 1994, Western and Reclamation representatives explained the need for the rate increase in greater detail and answered questions.

8. The comment forum was held on June 30, 1994, to give the public an opportunity to comment for the record. Four persons representing customers and customer groups made oral comments.

9. Nine comment letters were received during the 97-day consultation and comment period. The consultation and comment period was originally scheduled to end on July 20, 1994. A letter was sent to all interested parties from the SLCAO on July 19, 1994, stating that Western would continue to accept written comments through July 27, 1994. Letters were mailed from the Loveland and Phoenix Area Offices on July 20, 1994. All comments submitted by the end of the comment period have been considered in the preparation of this rate order.

Project History

The Integrated Projects consist of the CRSP and the Rio Grande and Collbran Projects. The projects were integrated for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources, simplify contract and rate development and project administration, assure repayment of Collbran and Rio Grande Projects' costs, and create a common rate. The projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for ratemaking.

Power Repayment Studies

PRSs are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to power. Repayment criteria are based on law, policies, authorizing legislation, and DOE Order RA 6120.2.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

SALT LAKE CITY AREA INTEGRATED PROJECTS COMPARISON OF EXISTING AND PROVISIONAL FIRM POWER RATES

	Existing rates (effective 10/92)	Provisional rates (effective 12/94)
Firm power service rate schedule.	SLIP–F4	SLIP–F5
Firm capacity charge ($/kW/month).	$3.54	$3.83
Firm energy charge (mills/kWh).	8.40	8.90
Composite rate (mills/kWh).	16.70 [1]	20.17

[1] The rates calculated at a 58.2-percent load factor can be expressed as a combined rate of 16.72 mills/kWh.

Certification of Rate

Western's Administrator has certified that the Integrated Projects firm power rate placed into effect on an interim basis herein is the lowest possible consistent with sound business principles. The rate has been developed in accordance with agency administrative policies and applicable laws.

Discussion

Many factors influenced this rate adjustment. The items having an impact upon the proposed Integrated Projects firm power rates are summarized in the table below. Because rates must earn sufficient revenues to pay for estimated future costs, the table compares the change in the average annual projections used in the FY 1991 Rate Order PRS (which set the rate effective

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October 1, 1992) and the ratesetting PRS prepared for this rate adjustment.

MAJOR FACTORS AFFECTING THE INTEGRATED PROJECTS' FIRM POWER RATE

Event	Change in average annual revenue requirement ($000,000)	Estimated rate effect (mills/kWh)
Increase in Colorado River Storage Project (CRSP) Transmission and Other Miscellaneous Revenues: primarily, compensation for new Phase-Shifter services (for Western System Coordinating Council loop-flow mitigation)	$-2.6	-0.33
Increase in CRSP Operation & Maintenance (O&M) Expense: $2.8 million per year due to inclusion of CME interest (inadvertently omitted from current rate); Remainder due to shifting of field crews from construction to maintenance work	0.2	1.05
Increase in Small Project O&M Expense: Rio Grande Project is one of Western's oldest projects, and O&M increases with age; Colbran has many small irrigation dams needing repair	1.1	0 14
Increase in Purchased Power and Transmission Expense: The environmentally-related flow restrictions already in place at CRSP powerplants require Western to purchase additional power to meet contractual delivery obligations	1.6	0.20
$51.2 million in historical environmental expenses made nonreimbursable by Grand Canyon Protection Act (plus $9.1 million associated with deferred interest expense); Applied to outstanding deficits	-0.5	-0.06
Passage of Grand Canyon Protection Act made certain future environmental costs nonreimbursable	-1.0	-0.13
Increase in Interest on Project Investment: The increase in power investment and unpaid deficits since the October 1992 rate adjustment resulted in an increase in annual interest due	2.1	0.27
Increase in Project Additions and Replacements: As noted on page 13 of Rate Brochure, $80.5 million was omitted from CWIP in the October 1992 rate adjustment	1.2	0.15
Increase in aid to CRSP irrigation and participating projects: Investment is very similar to October 1992 rate adjustment; however, there are 63 total years to pay for the investment, rather than the 65 years used previously since both studies have the pinch-point year of 2057. The change in the divisor results in the annual increase	1.4	0.18
Totals	$11.5	1.47

The existing and proposed revenue requirements for the Integrated Projects are as follows:

INTEGRATED PROJECTS AVERAGE ANNUAL FIRM-POWER REVENUE REQUIREMENTS

	Estimated average annual FY 1995–99 firm power revenue ($000)	
	SLIP–F4	SLIP–F5
Firm power revenue	[1] $109,265	[2] $122,413

[1] From FY 1991 Rate Order PRS.
[2] From Ratesetting PRS.

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order No. RA 6120.2. This rate schedule, which will be effective on an interim basis beginning December 1, 1994, replaces Rate Schedule SLIP/F4 which FERC approved through September 30, 1996 at 62 FERC ¶61,159 (February 18, 1993).

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period.

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES ($1,000)

Revenues	Ratesetting PRS 1995–1999	FY 1991 rate order PRS 1995–1999	Difference
Revenue Distribution:			
O&M	$237,483	$218,540	$18,943
Environmental	19,295	37,223	-17,928
Net purchased power [2]	972	-1,953	2,925
Transmission	35,785	31,695	4,090
Interest	229,029	188,103	40,926
Miscellaneous expenses [3]	45,976	20,430	25,546
Investment repayment	102,255	99,189	3,066

SALT LAKE CITY AREA/INTEGRATED PROJECTS COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES ($1,000)—Continued

Revenues	Ratesetting PRS 1995–1999	FY 1991 rate order PRS 1995–1999	Difference
Total [4]	[1] 670,795	[5] 593,227	[6] 77,568

[1] To be comparable with the FY 1991 Rate order PRS, the ratesetting PRS' "Other Miscellaneous Revenues" (from sales of surplus off-peak energy) were deducted from the total revenues and were combined with total purchased power expense.
[2] Net Purchased Power Expenses (Ibid.). Negative net purchase power expense figures imply surplus sales in excess of total purchase power expenses. Likewise, positive net purchase power expense figures imply total purchase power expenses in excess of total power sales.
[3] Interest on undepreciated CME, annual liability for the Civil Service Retirement System, and annual gross power-related requirements for the Colbran, Provo River, Rio Grande, and Seedskadee Projects.
[4] Includes repayment of capitalized deficits.
[5] Does not equal Total Revenues due to rounding.
[6] Ibid.

Basis for Rate Development

The provisional Integrated Projects rate was designed to continue to maintain an approximate 50/50 split between revenue earned from demand charges and that earned from energy charges. The cost to individual customers will vary because of differences in the amounts of capacity and energy they purchase from the Integrated Projects.

The provisional rate contains a $3.83/kW/month firm-capacity charge and an 8.90 mills/kWh firm-energy charge in FY 1995. The necessary composite rate is 20.17 mills/kWh, which is an increase of 7.9 percent above the existing rate. The rate terminates on November 30, 1999.

Comments

During the 97-day comment period, Western received nine letters commenting on the rate adjustment. One letter was received after the close of the comment period. Additionally, four persons commented during the June 30, 1994, public comment forum. All comments received by the end of the comment period were reviewed and considered in the preparation of this rate order. Written comments were received before the comment deadline from the following sources:

Bountiful City Light and Power (Utah)
Bridger Valley Electric Association (Wyoming)
Colorado River Energy Distributors Association (Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming)
Energy Strategies, Inc. (Utah)
Garkane Power Association, Inc. (Arizona and Utah)
Intermountain Consumer Power Association (Nevada and Utah)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Upper Colorado River Commission (Colorado, New Mexico, Utah, and Wyoming)
Utah Municipal Power Agency (Utah)

Representatives of the following organizations made oral comments:

Colorado River Energy Distributors Association (Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming)
Intermountain Consumer Power Association (Nevada and Utah)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Platte River Power Authority (Colorado)

Most of the comments received at the public meetings and in correspondence dealt with cost, purchased power, and water depletion projections.

The comments and responses, paraphrased for brevity when it does not affect the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are: (1) Depletion-related issues, (2) purchased power expense, (3) future flow restrictions at Glen Canyon Dam, (4) O&M-related issues, (5) construction-related projections, (6) environmentally-related expenses, (7) miscellaneous comments, and (8) issue paper resolution.

1. Depletion-Related Issues

Extensive comments were made regarding the deferred recognition of water depletions for water projects in the Colorado River Basin after FY 2010. Western's responses are listed sequentially:

a. Comment: Western is being guided solely by RA 6120.2 in the rate-setting process without paying sufficient attention to the CRSP Act of 1956 and other relevant legislation. The rate does not accurately reflect the intent of the CRSP Act, which is to produce rates that result in full repayment of the power system costs.

Response: Western disagrees. Western complies with requirements of the CRSP Act of 1956, other relevant legislation, and DOE Order RA 6120.2 in assuring repayment of all CRSP costs assigned to power. Legislation takes precedence when there is conflict with DOE Order RA 6120.2.

Treatment of depletions in the same manner has been approved by FERC twice prior to the present rate adjustment. Two of FERC's criteria for rate approval are whether the proposed rate will repay all obligations assigned to power in full and on time consistent with requirements of the CRSP Act and whether the methodology which achieves this result is in compliance with DOE Order RA 6120.2. The requested FY 1995 rate adjustment meets these criteria and satisfies all repayment requirements.

b. Comment: If power rates are set without providing for future depletions, it will affect Upper Basin development under the (Colorado River and Upper Colorado River Basin) compacts. Every time someone wants to build a project or open a business that will deplete water, the power rates will have to go up if those increased depletions have not already been factored into the rates.

Can full repayment be truly represented by rates derived assuming water is available for release through powerplants when that water will not be available because of depletions by the Upper Division States above the powerplants?

Response: Total depletions forecasted by the Basin States for the use of Colorado River water have been included in the proposed rate. The water has been allocated by compacts for use by the Upper Basin States. Furthermore, Western is obligated to assure that funds are available on schedule to meet repayment requirements regardless of depletion schedules.

In its proposed treatment (deferral) of uncertain depletions, Western assumes that greater amounts of Colorado River water will be available for release through CRSP powerplants than would be suggested by current rapid-growth forecasts of water development projects and their associated depletions.

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Western's experience has been that out-year depletion estimates are subject to frequent revision. It is reasonable, therefore, to give more weight to near-term projections. Western prepares an annual PRS for every project to assure that repayment is proceeding satisfactorily. Thus, there will be many future opportunities to revise the Integrated Projects rate appropriately as the near-term projections are changed and more accurate long-term estimates are made available.

Western has determined that depletions affect the firm power rate, at most, by 0.32 mills/kWh (composite). The impact is small enough so that power rates could (and would) be adjusted to assure full repayment, if more rapid depletions take place in the Upper Basin States. It is not likely that this small impact on power rates would constrain water depletions.

c. Comment: By its own terms the 1983 Agreement between Reclamation and Western does not apply to State and private projects or developments and that the agreement reveals the parties' intent to use full depletion levels in setting rates under the terms of the Agreement.

Response: Western disagrees that the intent of the 1983 Agreement was for Western to use "full" (or ultimate) depletion levels in setting rates. Rather, a provision of the agreement that addresses depletions only requires that water depletion schedules used for power repayment studies ". . . be consistent with construction schedules for participating projects."

Western agrees that provisions of the 1983 Agreement between Western and Reclamation did not explicitly address State and private projects or developments. In defining a "reasonable expectation standard," the 1983 Agreement establishes necessary steps by Reclamation to demonstrate the potential for construction of future Federal participating projects before the costs of these projects would be included in the ratesetting years. This reasonable expectation standard has been applied to the future development of all water development projects for ratesetting purposes by Western in setting the lowest possible rates consistent with sound business principles.

Therefore, Western has included total depletions forecasted by the Upper Basin States for the use of Colorado River water for all projects, with deferral of less-certain water developments (depletions) beyond the ratesetting period in the proposed rate. Future rate adjustments will allow for movement of depletions into the rate- setting years.

d. Comment: Western arbitrarily suppressed depletions from 2010 through 2090 only justified by the fact that such a method of suppression (capping) was utilized in the 1990 study and did so without adequate consultation with Reclamation.

Response: The decision by Western to defer uncertain depletions beyond the ratesetting period is not arbitrary. In the 1990 rate process, Western gave considerable attention to the reasonableness of the then-proposed depletion deferral and to the associated rate effect when applied. Further, Western has given renewed and heightened attention to the treatment of depletions in the proposed rate through preparation of numerous issue papers, informal discussions with both customer and water user representatives, and in Western's April 1994 rate brochure.

Figure 1, on page 12–5 of the rate brochure, shows that Western presently assumes full development (full depletions) of all Upper Basin water projects by FY 2090.

Projects with uncertain schedules have been placed in the PRS so that they do not impact the rate at this time, in accordance with Western's practice to set the lowest possible rate consistent with sound business principles.

Western also disagrees with the claim that inadequate consultation occurred with Reclamation in the past on this deferral treatment. Reclamation, along with other interested parties, has either participated in or has attended many of the public forums scheduled in the development of all Integrated Projects rate proposals. In these public forums, Western has detailed the components of the rate adjustment, including the treatment of depletions. Reclamation and interested parties have been and will continue to be afforded ample notice and opportunity to comment on future rate proposals.

e. Comment: Five comments said: DOE RA 6120.2 seems to require the use of operation studies based on historical streamflows including hydrologic data current to within 5 years.

Response: Western believes that it is in compliance with DOE RA 6120.2. This requirement is valid for most projects. However, exceptions, as discussed in DOE RA 6120.2, Section 10.a.(4), are provided for those projects which are anticipated to have extensive water development in the future. CRSP operation studies are based on historic streamflows, which are then reduced by projected water depletions supplied by the Upper Basin States and modified by Reclamation.

f. Comment: Western suggests that its departure from the 1990 depletion schedule represents better data than utilized by Reclamation in its energy and capacity studies.

Response: Both Reclamation and UCRC staff have told Western informally that the depletion schedule used in this process is a more accurate reflection of the current situation than the earlier "Energy and Capacity Studies" which was available when the ratesetting PRS was prepared.

g. Comment: The 1990 cap at 2010 resulted in an approximate 11-percent reduction of Basin States' depletions and an artificially low power rate. The proposed super-imposition of a 1990 mentality beginning in 2010 to a substantially revised 1992 unofficial depletion schedule results in excess of 20-percent reduction of depletions and does not even fully recognize the future depletions of projects currently under construction.

Response: Western agrees that the deferral of some estimated deple- tion effects until 2060 suggests a significant (20-percent) reduction from the 1992 depletion schedule contained in the CRSM demand data. Western believes there should be greater certainty of development regarding this 20-percent prior to including the associated reduction in hydrogeneration in the PRS in a way that affects the firm power rates. Also, Western agrees that its deferral postpones future depletions of projects currently under construction, based on the principles of the 1983 agreement. Again, because the timing of the development of the associated consumptive use is uncertain, Western chooses to not include future depletions within the ratesetting years. As more current information is supplied by the UCRC to Reclamation, Western will apply the "reasonable expectation" standard to these updated depletions.

h. Comment: Western did not use the depletion schedule dated July 1994 which was received in draft form in April 1994.

Response: Western was provided a draft work-in-progress depletion schedule by UCRC representatives in April 1994. This latest unofficial schedule demonstrated a reduced and delayed schedule for development of Upper Basin projects. However, the schedule had yet to be approved by the Basin States and, once received by Reclamation, would still have required considerable work by Reclamation staff to modify depletion (demand) data used by the CRSM. In addition, subsequent analysis by Western's power resources and rates staff would have taken considerable time and effort before new

information could be verified and supported for inclusion in any revised PRS for this proposed rate process. For example, the final PRS used for the April 1994 rate brochure was created in March of 1994. Its power projections were the end result of several months of work by Western and Reclamation resources staff. An official depletion schedule ready for use in July of 1994 would have delayed the public process for the current rate adjustment by several additional months.

Western is responsible for seeing that the Integrated Projects earn sufficient revenues to pay all of their obligations on time. Such a lengthy delay in implementing the rate adjustment would have resulted in increased interest cost to customers, lost revenues, and, as a result, higher firm power rates.

Western has assured UCRC that when official depletion information is available, has been incorporated into Reclamation's CRSM data files, and there is a common understanding of the reasonable certainty of future water projects, the associated generation effects will be weighed and a decision made by Western regarding their inclusion in any future PRS.

i. Comment: The attorney for a customer stated:

. . . the treatment of depletions in this rate case has nothing to do with the water rights of the Upper Basin States. Nor does it have anything to do with how those rights will be exercised in the future. Western has no power over the water rights of the Upper Basin States. Conversely, the power users should not be punished because of delays in Upper Basin water use development and fears of Upper Basin water users that such development may ultimately not occur.

Response: Western agrees with this comment.

2. Purchased Power Expense

Four large customer organizations all commented extensively on purchased power expense:

a. Comment: A customer organization stated:

The assumed lower prices for surplus energy sales are, in fact, at odds with recent experience for the SLCA/IP.

It is clear that experience does not support Western's pricing assumptions, which were based on combining various pricing and cost data in an inconsistent and somewhat arbitrary fashion. (The commentor) recommends that Western modify its pricing assumptions by setting prices for surplus sales at the same levels as those used for purchases.

Response: Western agrees, in part, with comments that assumed nonfirm surplus sales pricing in the estimation of future-year net purchased power expenses does not reflect an extension of historic pricing trends. This fact is supported in documentation prepared by Western on the methodology and assumptions developed in previous rate proceedings and consistently applied again in this proposed rate adjustment. The imposed restrictions at Glen Canyon Dam have caused Western to sell off-peak surplus energy. The impact of these sales is based upon the market conditions. Western has explained that the basis for assumptions of future surplus sales pricing is based upon consideration of the potential market conditions. Western assumes that there will be a need to dispose of limited onpeak surpluses in southern markets, which will mean competing against low-cost sales from the Navajo Generating Station. Western will also try to sell significant surpluses in northern markets, competing against low-cost sales from regional northern utilities. Certain general conclusions may be drawn: (1) average nonfirm surplus energy prices, both offpeak and onpeak, will be less than historic conditions, this also implies that period pricing (onpeak or offpeak) will be less than recent experience, (2) historic pricing differentials, onpeak versus offpeak, winter versus summer season, will continue, and (3) Western's hourly modeling of constrained operations at Glen Canyon is reasonable.

Though the method developed is believed to be a reasonable tool for forecasting future surplus sales pricing, Western acknowledges that some merit exists in comments that suggest a closer link to recent historic trends is reasonable. Western will continue to refine the methods for forecasting future market conditions, both purchases and surplus sales, and will continue to give greater weight to recent historic pricing trends in future pricing projections.

Western disagrees with the comment which suggests that surplus sales and purchase pricing should be identical, without consideration of the nature of the constraint condition at Glen Canyon. The methods developed by Western for assessment of conditions with and without interim release constraints at Glen Canyon currently predict (a) that higher, but acceptable, average purchase prices will result in the near future from deliveries under several long-term purchase agreements and (b) lower average surplus sale prices will occur due to significant "forced sales" during offpeak and shoulder onpeak hours. However, should additional operation experience suggest modification to this base assumption, Western will consider future improvements in the methods used.

b. Comment: Western applied the hourly modeling of net purchased power expense to only 3 years. The other years between and beyond the 3 years modeled were estimated based on a regression analysis of the 3 years' results . . . regression analysis using three data points to interpolate and extrapolate results may be unreliable and is certainly less than ideal. (The commentor) recommends that the hourly model be used to calculate annual net expense at least through the year 2002, when the recovery of the hydrosystem and increases in firm load . . . have stabilized.

Response: Western disagrees with the suggestion that additional years of hourly modeling in its current form would significantly improve the reliability of forecasted net purchase power expenses.

The methodology developed by Western to forecast the net purchase power expense considers several significant variables such as hourly firm load and available hourly hydrogeneration in determination of hourly deficits or surpluses. The method then considers seasonal variation in purchase and surplus sales pricing structures in estimation of the net purchase power expense. Given the simplifying assumptions made in the methods, Western recognizes a significant correlation between deficit (or surplus) hydrogeneration and the associated net purchase power expense.

In balancing the limited time required to complete the analysis and the precision required for the net expense estimate, Western determined that modeling all hours within each month for 3 years (i.e., 36 months) would be adequate and that hourly modeling for additional years would not significantly improve the reliability of the forecasted net purchase power expense.

Western continues to support the general application of these methods to express the causal relationship between deficit (or surplus) hydrogeneration and annual net purchase power expenses. However, Western acknowledges that some future modifications may be beneficial, such as (1) additional refinements of the model, (2) validation of key assumptions, and (3) application of refined methods and assumptions to additional future periods (i.e., months, years) to increase the sample size. Such changes will be considered in future net purchase power expense forecasts.

c. Comment: A large customer organization says that it has been unable to understand or replicate Western's results.

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Response: Western has made a conscientious effort to provide all of the information needed to develop the purchased power expense analysis in a timely manner. Western's staff has provided explanations to customers and their consultants and are available and willing to provide additional clarification as needed.

3. Future Flow Restrictions at Glen Canyon Dam

a. Comment: A large customer organization expressed concern that Western has overstated revenues of $3 to $8 million per year from short-term capacity sales through 2004.

Response: It is improbable that flows restricted for environmental reasons will ever again provide enough firm power from the Glen Canyon Unit to reach levels used in past power projections. Western does not know which of many possible flow regimes will finally be imposed at the Glen Canyon Unit. The treatment of short-term sales has been consistent with the firm power assumptions. Therefore, it is impossible to modify power projections for the proposed rate adjustment to recognize the reduced power output. The only course of action Western is able to follow is to stay with historic power projection figures, using the methodology already used in previous processes, until the Glen Canyon regime is finally determined.

Western will evaluate the firm power rate then in place when the new flow regimes from the Glen Canyon Dam are decided. If it is needed, a firm power rate adjustment will be proposed then.

b. Comment: An organization of several customers stated: While it is understood that a degree of uncertainty surrounds the exact level of flows at Glen Canyon, Western should conduct a sensitivity analysis predicated on the alternative flow assumptions identified in the Operation of Glen Canyon Dam Environmental Impact Statement. Such sensitivity analysis (sic) would give customers a range of possible replacement power costs.

Response: Western has done extensive analyses of the power and rate impact of every flow regime identified for study in the GCD–EIS. Detailed descriptions of the studies and their results are reported in the draft GCD–EIS, and will be contained in the final GCD–EIS when it is published.

In the meantime, Western is specifically required, by law and by regulation, to use known or statistically probable estimates of future activity in creating rates. The level of uncertainty still existing with the GCD–EIS prevents the use of any of its data at this time. As is noted above, when a decision about environmentally related flows through Glen Canyon Dam is made, a revised PRS will be prepared, and a new rate will be proposed, if needed.

4. O&M-Related Issues

a. Western O&M: CREDA signed an agreement with Western and Reclamation dated September 24, 1992, which states:

Western shall utilize the Work Program Information made available to its Customers by Western and Reclamation (including adjustments thereof which may result from reviews, from internal corrections or the dispute resolution process provided for in these Joint Procedures but excluding the costs of future transmission system additions in a Planning Year or Out Year which are conceptual in nature), to prepare the power repayment studies upon which it relies to promulgate any interim or final rates proposed or adopted for SLCAIP firm power or transmission services.

Several customers and their member organizations are concerned about the implementation of the 1992 Agreement.

(1) Comment: (One commentor) continues to be concerned with Western's inconsistent use of budgeted information in the preparation of the PRS . . . (the commentor) has been some-what frustrated in its attempts in this rate adjustment process to reconcile certain information used in the 1994 Rate Brochure PRS with the information previously provided in the Work Program review process.

Response: The FY 1995 Work Program is merely a copy of the proposed FY 1994 Congressional Budget Submission. It was used as the starting point in planning expenditures for the FY 1995 congressional budget.

CREDA's September 1992 agreement with Western and Reclamation allows power customers to have meaningful input to the new congressional budget. However, this work program document is prepared too early in the planning process for either customers or Western to say that no further changes will be made. Western feels that the timing and use of documents stated in the agreement should be revisited. Western is willing to continue to work with the customers in improving the budget and work plan review process in the future.

To illustrate the process, the transformation of the FY 1995 Work Program into the final FY 1995 Budget is outlined below:

(a) (The commentor) reviewed the FY 1995 Work Program and had opportunity to make suggested changes.

(b) The revised FY 1995 Work Program became the FY 1995 Internal Review Budget. At this point, more changes were made. Those changes then were reviewed by Western. Further changes, usually a lowering of spending projections, are common in this stage of budget preparation.

(c) The FY 1995 Internal Review Budget was then sent to Washington to be approved by DOE. There are usually reductions in spending estimates at this stage, as well, dictated by DOE's spending priorities. The DOE-approved budget was called the FY 1995 OMB Budget Request and was sent to that agency for review and approval. Any changes were then incorporated into a document called the FY 1995 Congressional Budget Submission.

(d) Finally, the FY 1995 Congressional Budget Submission went before Congress, where any final changes desired by the legislative branch of Government were made. Only after it was approved by Congress after public debate was the final FY 1995 Budget determined.

The FY 1994 Congressional Budget Submission was officially sent to Congress in January 1993. When the April 1994 rate brochure PRSs were being prepared, the data in the FY 1994 Congressional Budget Submission/1995 Work Program was already more than 2 years old (having begun as the FY 1994 Work Program in early 1992). Because of this timing, most of the information was outdated.

Western had completed turning the FY 1995 Work Program into the FY 1995 Congressional Budget Submission by that time. As is usually the case, some of the planned expenditures had been deleted in the process. Further, because of extra impetus to keep costs down, a Western-wide decision was made in which O&M costs would be allowed to rise only 2-percent per year between FYs 1994 and 1996.

In keeping with Western's policy to set rates at the lowest possible level consistent with sound business principles, Western used data from the lower-cost (and more current) FY 1995 Congressional Budget Submission rather than that in the customer-reviewed FY 1995 Work Program in the Rate Brochure PRS.

When Reclamation, Western, and CREDA entered into the September 1992 agreement, the parties did not anticipate that expenditure plans would change significantly between the Work Program review and the congressional budget submission. Events have proved otherwise.

COMPARISON OF FY 1995 WORK PLAN WITH FY 1995 CONGRESSIONAL BUDGET SUBMISSION O&M EXPENSES $000

	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Totals
1995 Work Plan:						
Reclamation	$17,898	$18,408	$17,403	$17,884	$16,739	$88,332
Western	30,894	30,379	30,743	31,461	33,905	157,402
Total	48,792	48,787	48,146	49,365	50,644	245,734
1995 Budget:						
Reclamation	$15,856	$15,925	$16,041	$16,262	$16,631	$80,715
Western	29,307	27,635	27,971	28,724	28,984	142,621
Total	45,163	43,560	44,012	44,986	45,615	223,336
Decreased Cost to Customers	−3,629	−5,227	−4,134	−4,379	−5,029	−22,398

(2) Comment: Two comments expressed concern that: Western's projected O&M expenses for 1994 are more than 25-percent higher than actual O&M expenses in 1993 and more than 20-percent higher than the 1994 O&M expenses included in the 1995 Work Program documents.

Response: Western has been unable to duplicate the analysis in this comment. Some of the figures in the commentor's table are incorrect. This gives the impression of a problem where Western believes none exists. Most significantly, Western's actual FY 1993 CRSP O&M expense of $17.964 million shown in the commentor's tables is incorrect. The proper amount, from the Results of Operations (financial statements) as shown below, is $21.418 million. This should be the basis for the commentor's percentage calculations.

Below is a table comparing the table submitted by the commentors, the FY 1995 Work Program, and the amounts used in the PRS.

WESTERN'S CRSP O&M ($000)

	1993	1994	1995	1996	1997	1998
Commentor's Table [1]	17,964	18,628	20,888	21,070	21,437	21,923
Annual Change (%)	0	4	12	1	2	2
FY 1995 Work Program [2]	26,449	24,555	23,895	24,202	24,882	27,245
Annual Change (%)	0	−7	−3	1	3	10
Rate Brochure PRS [3]	21,418	22,530	20,888	21,070	21,437	21,993
Annual Change (%)	0	5	−7	1	2	3

[1] From comment letter dated July 27, 1994; source of data identified as FY 1995 Work Program.
[2] From FY 1995 Work Program (i.e., FY Congressional Budget submission), according to CRSP records.
[3] Using the FY 1995 Congressional Budget submission.

The average annual growth rate in the rate brochure PRS from 1993 through 1996 is a negative 0.33 percent. This is considerably below the 2-percent maximum annual growth rate which is Western's goal.

5. Reclamation O&M

a. Comment: Reclamation explained the increase in Regional Office expense in 1995 O&M expenses over the level shown in the 1995 Work Program (which was $564,000) as the inclusion of the Dolores Project O&M expense. The O&M expenses for the Dolores Project are shown in the 1995 Work Program as $301,000 for 1995, leaving $263,000 of the increase in this account category unexplained.

Response: The statement that the Regional Office expense in 1995 included the Dolores Project is incorrect. The Regional Office expense category applies only to the initial CRSP units (i.e., Aspinall, Flaming Gorge, Glen Canyon, and Navajo), and not to the Dolores Project. Dolores Project costs are shown in their own, separate PF–3 budget document.

Regional Office expenses shown in the initial units (CRSP) work plan differ from those included in the PRS because Western inadvertently used an unofficial version of Reclamation's PF–3. This document did not differ from the official budget in total costs for the CRSP initial units. An adjustment within the program was made, which increased the Regional Office expense by $564,000. This was made to balance to the FY 1995 Budget Submission funding amount.

b. Comment. The O&M figures (for the Rio Grande Project) in the PRS appear to double count capitalized moveable equipment (CME) expenses for the years 1995, 1997, and 1998 . . . .

Response: Western agrees with the comment and has rerun the RGP study to eliminate this error.

c. Comment: For 1994, the difference in expenses between the Work Program and the PRS appears to be comprised of the $35,000 for CME less a $20,500 expense reduction, which is unexplained.

Response: Western's numbers were correct and have been used in the PRS The commentor's table shows a difference of $28,885. There are four reasons for the difference: (1) O&M expenditures planned for FY 1993 on the Elephant Butte Dam of $67,548 (portion assigned to power = $67,548 X 20.8% = $14,050) were not spent in FY 1993, but were obligated and actually spent in 1994; (2) expenditures planned on the Elephant Butte Powerplant ($30,854, of which 100-percent is repayable by power revenues) were not spent in FY 1993, but were obligated and actually spent in FY 1994; (3) the $35,000 referred to as CME for FY 1994 is not CME, but miscellaneous tools which is charged off to O&M and is properly includable in the total O&M for the year; and (4) item number (2) was further complicated by the fact that both the Work Program and the FY 1995 Budget Congressional Submission are based on an incorrect version of the summarized report. A line item (which

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should be included in the Other Expense line) which appears on the detailed report was coded incorrectly so that it does not appear on the summarized reports, but is included in the totals of both reports. Thus, the totals are $40,000 higher in the Work Program than the total of the numbers shown and $23,921 higher than the total of the numbers shown in the FY 1995 Congressional Budget Submission. The $40,000 budgeted Other Expense item was later reduced to $23,921, which matches the $1,141,775 figure shown in the FY 1995 Congressional Budget Submission. Following is a table which recaps the above information starting with the figures shown in the commentor's table:

ELEPHANT BUTTE POWERPLANT

	1995 Work Program	1995 congressional budget submission
Salaries	$532,000	$532,000
Office General Expense	262,000	262,000
CPA	173,000	173,000
Other Expense[1]	120,000	150,854[2]
Subtotal[3]	1,087,000	1,117,854
Missing Line Item[4] (other expenses)	40,000	23,921
Total[5]	1,127,000	1,141,775

[1] Other expenses should have been higher by $40,000 in both the FY 1995 Work Program and the FY 1995 Congressional Budget Submission.
[2] When summed, includes $30,850 carry-over from FY 1993.
[3] Actual summation of figure shown.
[4] This amount should have been included in the "other expense" line of both the FY 1995 work program and the FY 1995 Budget Justifications.
[5] As displayed in the FY 1995 Work Program and the FY 1995 Congressional Budget Submission.

Subtotal—Elephant Butte Powerplant O&M	$1,141,775
Less amount shown on commentor's table	1,127,000
Subtotal	14,775
Add allocated carry-over amount from item (1) above	14,050
Total difference shown on commentor's table	28,825

6. CRSP-Wide O&M

a. Comment. A customer organization stated:

The average annual increase in projected O&M expenses which results in a $8.2 million annual revenue requirement is troublesome. How this figure was obtained in the modeling effort undertaken at Western is not explained in detail in the brochure. If the projected figure is based upon an extrapolation of historical data adjusted for inflation, the cost figure may not reflect all of the possible areas of cost reduction available to both Western and the Bureau of Reclamation.

Response. Only two projections used in the Integrated Projects and/or CRSP PRS are based on computer modeling: the water available for power production and the ultimate power-related revenue requirements for the participating projects. Estimates for future O&M expenses are taken directly from official budgets; the budgets include modest approximations of labor cost increases. All equipment spending in the 5-year budget window is made up of actual projections received from workers in the field, reporting which equipment is likely to need replacement and when. Miscellaneous revenue and expense projections are based on historical averages and known future commitments.

b. Comment. A customer organization said:

The Energy Policy Act of 1992 (EPACT) has served as the catalyst for increasing competition in wholesale generation. They would anticipate that Western begin to streamline its operations in order that it position itself competitively in the new electricity market.

Response. Western's management is presently looking for ways to improve customer service while cutting costs through Western's Strategic Planning initiative. Some of the decisions made to date include:

(1) Delayering. This is a reduction in the number of supervisory employees, to reduce red tape and inertia while increasing customer service. The emphasis will be on empowering the employees. The initiative is already under way.

(2) Western will limit increases in annual operating expenses to less than 2-percent per project per year through FY 1996. Thereafter, increases in annual operating expenses will not exceed the annual rate of inflation.

(3) As the marketing agent for Federal power, Western will participate in the decision making process with other resource agencies whose operating decisions significantly affect Federal power rate and repayment obligations whenever possible.

(4) Proposals for construction of new facilities will be assessed using integrated resource planning principles and must meet at least one of three criteria before construction may begin:

(a) Increased revenues from new facilities must exceed their annual cost over the cost-evaluation period.

(b) Customers must benefit sufficiently to support new facilities in spite of a possible rate increase.

(c) The new facilities will be funded by non-Western sources.

7. Construction-Related Projections

A customer organization has a series of questions about construction-related cost projections.

a. Comment: Some of the commentators said: . . . they have been unable to find support in the 1995 Work Program for a majority of the significant (>$100,000) additions and replacements included in the 1994 rate brochure and rate brochure PRS . . . .

Response: For a detailed outline of the budget process, Western refers the reader to earlier replies to questions about O&M. To reiterate, the FY 1995 Work Program had, in many instances, higher cost projections than the FY 1995 Congressional Budget Submission. Western has used the lower figures in the ratesetting PRS.

In the case of CRSP construction, this change dramatically reduced the cost projections. Table VI on pages 12 and 13 of the April 1994 Rate Brochure shows a $276 million decrease in budgeted power-related construction costs through FY 1998 between the FY 1995 Work Program (referred to in the brochure as the FY 1994 Congressional Budget Submission) and the FY 1995 Congressional Budget Submission. Western has used the lower figure where it is considered reliable.

b. Comment: (The commentor) has been unable to find support for the investments included in the Collbran/Rate Brochure PRS.

Response: It is not possible to find the correlation between the investments in a budget document or work program and those in a PRS without some intermediate steps.

The annual figures in the 1995 Work Program are only planned cash expenditures. Investments are large items, often taking more than 1 year to complete. The total spent on any one investment, then, is the sum of the annual expenditures shown in the work programs, plus any applicable IDC.

Western is required to record an investment in a PRS in the year that it becomes operational. This permits the establishment of the proper repayment period and begins the annual payment of interest on investment (due until the investment's cost is completely repaid). Future investments appear in a PRS in the year they are planned to be in-service, if that is within the 5-year budget window. Future investments (excluding future replacements) planned for completion at some time after the 5-year window are normally excluded from a PRS, unless legislation directs otherwise (as is the case with the CRSP's participating projects). Annual cash outlays for an investment that takes more than 1 year to complete have no counterpart in a PRS. Indeed, there may be several years of investment costs shown in work programs and budgets which do not appear in PRSs. However, the total sum, plus IDC, will appear in the PRS in the year when the item is anticipated to be operational.

It is not unusual for the first future year in a budget document to show projections higher than those shown in the previous budget document for that same year. It is common to have obligated amounts at the end of the year just closed that do not get paid in that year. They are then carried over and added to the next year. Also, CWIP that has been completed, but that did not get moved to plant-in-service in the financial records, is carried over to the next year (with the assumption that it will be moved to plant-in-service at that time). This also adds to the total amount shown in the subsequent year.

c. Comment: (The commentor's) Table 7 below uses information provided in response to WAPA/CREDA–76 to illustrate the differences between the 1995 Work Program and the PRS.

(The commentor) believes that some or all of the decrease may result from elimination or reduction of dam repair work described in Reclamation's response to (the commentor's) comments on the 1995 Work Program review. The increases (i.e., increases over and above the amounts shown in the 1995 Work Program) are unexplained, however, by changes presented in the 1995 Work Program. Therefore, (the commentor) recommends use of the investments shown in line 31 of table 7 in the Collbran/Rate PRS.

Response: Table 7 in the commentor's July 27 comment letter displays Collbran investment as shown in the FY 1995 Work Program. Western agrees with the commentor's figures for FY 1994 through FY 1998, except that carry-over from FY 1993 must also be added to FY 1994's total number. Western's brochure study also contained some figures from the FY 1995 Congressional Budget Submission. There have since been changes to that budget that have reduced some of those costs by approximately $450,000. Western has rerun the Collbran ratesetting PRS using these changes.

The following table illustrates how incremental investment in budget figures is transformed into a PRS entry. Figures from Reclamation's FY 1995 Work Program are used. The Collbran Project was used for this example because it contains no IDC or multipurpose investment, thereby simplifying the illustration.

COLLBRAN PROJECT EXTRAORDINARY MAINTENANCE ($000)

Dam Repair Description	Thru FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	Total
Per FY 1995 Work Plan:							
Big Meadows Dam	200	.....	.....	.....	.....	.....	200
Cottonwood Dam #2	72	440	370	.....	.....	.....	882
Atkinson Dam	.....	.....	.....	400	161	152	713
Big Creek Dam	69	440	.....	.....	.....	.....	509
Lambert Dam	.....	.....	.....	.....	500	715	1,215
Total	341	880	370	400	661	867	3,519
Per PRS/Financial Statement Entries							
Big Meadows Dam	.....	200	.....	.....	.....	.....	200
Cottonwood Dam #2	.....	.....	882	.....	.....	.....	882
Atkinson Dam	.....	.....	.....	.....	.....	713	713
Big Creek Dam	.....	509	.....	.....	.....	.....	509
Lambert Dam	.....	.....	.....	.....	.....	1,215	1,215
Total	0	709	882	0	0	1,928	3,519

d. Comment: All years in the (Rio Grande) PRS except 1994 match the values from the 1995 Work Program. In 1994, the difference is $619,806. (The values shown in line 14 of Table 9 should be used in the PRS.)

Response: The commentor is correct. An additional $619,806 has been added to the work program amount shown in FY 1994. Not all of the work in the Work Program for FY 1993 was completed or posted in that year. The amounts not completed, including those obligated but not spent in 1993, were carried over into FY 1994. This was the case with the $619,806 noted by the commentor. This is necessitated because of Western and Reclamation's accounting procedures (as explained in the previous section on the Collbran Project), which require the total investment (including IDC) to be moved to the plant-in-service account in the year it becomes operational, rather than recording incremental amounts of annual spending.

Western has used the figures recommended by the commentor. The figures are the basis for the projected investment through the cost evaluation period (FY 1994–98). However, these amounts do not appear in the PRS in those years. As previously explained (see the example of the Collbran Project above), these amounts (plus IDC, where applicable) are shown in the PRS in the year the particular investment is scheduled to go into service.

e. Comment: Commentor stated that:

The intent of the work program review was to provide a less formal process through which customers could receive information and provide input regarding Western's and Reclamation's programs, allowing for this same information to then be used in determining the adequacy of rates. In departing in the rate process from data developed in the FY 1995 Work Program, the principal benefit of the process is effectively undone. Moreover, the departures were not trivial. For Western's O&M expenses, the 1994 figure used in the Rate Brochure PRS exceeds that contained in the FY 1995 Work Program by almost $4 million, or 20 percent.

In new construction projects, the commentor identified over $45 million

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in additional investment included in the PRS that was not identified or had been excluded in the work program review.

Response: Western has given a detailed explanation of the changes in the 1994 O&M figures between the FY 1995 Work Program and the 1993 ratesetting PRS earlier in this Rate Order. Construction cost modifications are also listed in detail.

Western disagrees with the thrust of the commentor's statement. As Western follows its policy to develop the lowest rate to consumers consistent with sound business principles, all power customers, including the commentor's members benefit.

For example, the FY 1995 Work Program includes over $527 million in construction costs for the SLCAO alone. Deducting what would normally be excluded from the PRS because it is not planned for completion by FY 1998 leaves $284 million. This figure ($284 million) is still more than double what Western finally included in the Rate Brochure PRS as new investment $131 million. The difference between these two figures (the $284 million in the FY 1995 Work Program and the $131 million in the Rate Brochure PRS) equals approximately 0.75 mills/kWh in the composite rate. In other words, following the commentor's instructions would have resulted in a ¾ mills/kWh higher firm power rate than Western is proposing. Finally, Western will continue to work with its customers to identify and correct problems with the work program review process.

8. Environmentally Related Expenses

a. Comment: The sum of environmental costs in the 1994 Rate Brochure is more than $0.5 million greater in 1993 and 1994 than contained in the FY 1995 Work Program. Western's response to CREDA's information request (WAPA/CREDA 67) indicated that the additional costs in 1994 were explained by about $6.0 million in "unliquidated obligation" in 1993. While actual costs were indeed lower than planned in 1993, the reduction does not explain the still greater increase indicated in the 1994 rate brochures. Environmental study costs should be limited to the amounts (with some allowance for carryover from prior years) developed in the work program process.

Response: To compare environmental costs spent and budgeted for FYs 1993 and 1994 in the 1995 budget and work plan, the unliquidated obligations must be taken into consideration, as shown below:

ENVIRONMENTAL EXPENSES ($000)

	FY 1993	FY 1994	Total	New Total
1994 Rate Brochure Appendix	$11,885	$20,935	$32,820	$32,820
Adjustment	0	490	490	33,310
FY 93 Unliquidated Obligations	−2,391	0	−2,391	30,919
FY 94 Unliquidated Obligations	6,005	−6,005	0	30,919
Total Obligations	15,499	15,420	30,919	30,919
FY 1995 Work Program	16,788	15,463	32,251	32,251
FY 93 Unliquidated Obligations	−2,391	0	−2,391	29,860
Total Obligations	14,397	15,463	29,860	29,860
Difference	1,102	−43	1,059	1,059

b. Comment: A customer organization says:

It is clear that environmental expenses associated with Glen Canyon Dam have gotten out of hand, are not under control, and are not being subjected to any sort of cost-control analysis or audit. They urge Western to do what it can to urge the Bureau of Reclamation to limit environmental study expenditures to those that are calculated to produce necessary, credible information.

Response: As a part of Western's Strategic Planning initiative: Western will, as the marketing agent for Federal power, participate in the decision making process whenever possible with other resource agencies whose operating decisions significantly affect Federal power rate and repayment obligations. Western will do so to sustain the marketability of the Federal hydroelectric resource.

9. Miscellaneous Comments

Long-term Capacity Sales:

(1) *Comment:* (The commentor) notes that there is a discrepancy between the projection of capacity sales shown in Western's "1993 Power Projections" and the values in the PRS. Upon inspection of the two set of values, it appears that the values used in the PRS may have been misentered 1 year below the proper year. This causes the amount of capacity sales to be slightly understated in several years.

Response: Western agrees. Western has checked these data and has found a disconnect between the kW of capacity sales estimate found in the work papers and that in the PRS. It appears that the data from FYs 1993 through 2003 in the work papers were put into the PRS in FYs 1994 through 2004. The error has been corrected.

(2) Comment: Western calculates the PRS for Integrated Projects such that replacements are repaid up to the rate-setting year. In part, this is due to the assignment of a lower repayment priority (to irrigation) in the PRS. Assigning the lower priority (to irrigation) causes a less than optimal rate calculation, since the rate could be lowered by allowing for some replacements to remain unpaid beginning 9–10 years prior to the ratesetting year.

Response: Western recognizes that some replacements have been paid earlier in the PRS than required. Western conducted a test to determine if forcing payments to irrigation obligations would postpone early payment of replacements, thus lowering the rate. Forcing payments reduces the composite rate 0.13 mills/kWh. This change has been made in the ratesetting PRS.

10. Untimely Responses to Data Requests

a. Comment: Three commentors stated that their consultant did not receive all the information needed to reconcile certain key portions of the proposed rate and did not have adequate time to verify all the data underlying the rate adjustment.

Response: The consultant submitted five official data requests. Responses were as follows:

Data request received by western's SLCAO	Items of data requested	Information mailed by western's SLCAO
May 13, 1994	18	May 20, 1994.
June 3, 1994	9	June 23, 1994.
June 24, 1994	9	June 30, 1994.
July 1, 1994	38	July 19, 1994.
July 8, 1994	8	July 14, 1994.
Total	82	

Customers originally had 97 days to submit comments and request information; 56 of those days were after the public information forum. The largest and most detailed request for data was received by Western on July 1, 1994, which was 19 days before the original close of the comment period. The final response to this request was faxed to the consulting firm, on July 19, 1994, 1 day before the original end of the comment period. Western then extended the date it would accept comments to July 27, 1994, to provide commentors extra time to prepare a reply. Western believes that ample time has been allowed for public comment and that information was furnished to requestors in a timely manner. However, Western also recognizes that there could be confusion and misunderstanding regarding the information needed by the commentators and that some of the information received may not be what was needed. Western will continue to work with customers and interested parties to find a more efficient and acceptable process to respond to data requests and meet the commentors' needs.

b. Comment: A customer organization said:

Given the backdrop of structural changes in the industry and increasing environmental concerns over hydro power generation, it would seem that Western should develop a pricing policy based upon a firm understanding of price sensitivity. The lack of any such analysis is a major omission.

Response: One of Western's primary concerns is the impact the prices for its products have on possible sales. Based on knowledge of the electrical power market, Western's proposed combined rates for firm power are below other sources of firm electrical power available to Integrated Projects customers. For this reason, Western has not undertaken a specific study to analyze price effects on the electrical power purchased by Western's Integrated Projects customers.

There may be reductions of Integrated Projects energy usage in the short-term by Western's customers as a result of the proposed increase in the energy rate. Some of Western's Integrated Projects customers with their own electrical power generating resources may be faced with variable costs that allow them to produce energy more cheaply than purchasing from Western at the proposed new rate. Information on the cost of generation is considered sensitive and is not available to Western. However, published sources of information which relate to coal prices and other components of the variable costs of power generation indicate that the proposed energy rate is less than Western's estimate of their cost of generating thermal energy. Western has received no comments to indicate otherwise.

c. Comment: To help customers respond more completely to Western's proposals, a customer organization suggests that, in the future, when Western entertains the thought of extending the time for commenting as done here, tie the extension to a period of time following completion of responses to requests for information.

Response: Western believes that the existing customer review process and the public rate process sufficiently provide for both flexibility for input and measurability of the progress toward the completion of a rate.

d. Comment: Several customers concur with changing the expression of the firm power rate from a 'combined rate' to a 'composite rate'.

Response: Western agrees with the customer comment and believes that the composite rate will make the price of Integrated Projects power more easily comparable with that from other sources.

e. Issue: A customer states that they believe it is very unfair to continue to increase the burden on the ratepayers to fund (environmental) studies which will result in further increases in costs and/or reductions in the amount of power available.

Response: As noted earlier, Western is working with Reclamation to more closely monitor these costs.

11. Issue Papers Resolution: Several issues which Western believes would have caused considerable protracted comment were discussed in detail during the pre-rate-adjustment process of informal meetings between various stakeholders and the exchange of issue papers. The stakeholders liked the process. The issues which were resolved in this process are summarized below:

a. Identifying historic expenses related to the CRSP's Glen Canyon Unit that became nonreimbursable with the passage of the Grand Canyon Protection Act of 1992 (GCPA).

b. Agreement about which future Glen Canyon Dam environmental costs have the potential to become nonreimbursable.

c. General understanding of the functioning of the budget neutrality stipulations in the GCPA, stating that environmentally related expenses will be nonreimbursable for FY 1993 through FY 1997 only to the extent that offsetting revenues are received by the Treasury from other GCPA provisions.

d. The timing of the reallocation of the construction costs of the Glen Canyon Unit.

e. Identification of those costs of the Central Utah (participating) Project which are properly excluded from influencing the Integrated Projects firm power rate.

f. Implementation of a procedure to assure that the Basin Fund has sufficient cash on hand to pay all operating costs for the CRSP.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental

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assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memoranda, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the following locations.

Salt Lake City Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, Suite 475, Salt Lake City, UT 84111

Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, CO 80401

Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

Submission to Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective December 1, 1994, Rate Schedule SLIP–F5. The rate schedule shall remain in effect on an interim basis, pending FERC confirmation and approval of it or a substitute rate on a final basis, through November 30, 1999.

Issued in Washington, D.C., October 24, 1994.

William H. White,

Deputy Secretary.

Salt Lake City Area Integrated Projects; Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming; Schedule of Rates for Firm Power Service

Effective

Beginning December 1, 1994, through November 30, 1999, or until superseded by another rate schedule, whichever occurs earlier.

Available

In the area served by the Salt Lake City Area Integrated Projects.

Applicable

To the wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $3.83 per kilowatt of billing demand.

Energy Charge: 8.90 mills per kilowatthour of use.

Billing Demand

The billing demand will be the greater of:

1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or
2. The contract rate of delivery.

Adjustment for Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor

The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Adjustment for Purchased Resources

Purpose of Adjustment

To ensure that Western Area Power Administration (Western) has sufficient revenues to support resource purchases made necessary because of restricted generation from Glen Canyon Dam as the result of restrictions on water releases from the dam.

Applicability

To those contractors who are not receiving service under an Interim Purchase Amendment to the firm power sales contract.

Adjustment

If Western finds it necessary to purchase resources to replace generation lost at Glen Canyon Dam because of the above-listed restrictions, Western will, beginning on the first month that such purchases are made, include in the contractor's monthly power bill an estimate of that contractor's proportionate share of net capacity purchase costs. The cost of purchasing these resources will be offset by the revenue that Western receives for the sale of energy, if any, associated with the purchased resources.

In its October bill each year, Western will reconcile the previous fiscal year's actual purchased power expenses and the monthly estimated costs paid by the contractor. If the contractor has paid more than its proportionate share of actual purchased power expenses, the excess amount will be shown as a credit to the contractor's October power bill. If the contractor has paid less than its proportionate share of actual power purchase expenses, Western will add such amount to the contractor's October power bill.

Notification

If Western finds it necessary to implement this adjustment, it will give a one-time notification to the contractor and the Federal Energy Regulatory Commission at least 10 days before initially adding purchased power cost to the contractor's monthly bill.

[FR Doc. 94–27306 Filed 11–2–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5101–6]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain Program permitting and monitoring requirements to 55 utility units at 32 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on December 13, 1994 unless significant, adverse comments are received by December 5, 1994. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Iowa: EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101; and at the Iowa Department of Natural Resources (attn: Wayne Wicksell) Henry A. Wallace Building, 900 E. Grand, Des Moines, IA 50319, (515) 281–9012.

For plants in Kansas: EPA Region 7 (address above) and at the Kansas Department of Health and Environment (attn: Harish Agarwal) Forbes Field Building 283, Topeka, KS 66620, (913) 296–1572.

For plants in Missouri: EPA Region 7 (address above) and at the Missouri Department of Natural Resources (attn: Paul Brooks), Jefferson State Office Building, P.O. Box 176, Jefferson City, MO 65102, (314) 751–4817.

For plants in Nebraska: EPA Region 7 (address above) and at the Nebraska Department of Environmental Quality (attn: Todd Ellis) State House Station, P.O. Box 94877, Lincoln, NE 68509–4877, (402) 471–4561.

For plants in Michigan and Wisconsin: EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to the following addresses:

For plants in Iowa, Kansas, Missouri, and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, (address above).

For plants in Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5, (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Iowa, Kansas, Missouri, and Nebraska, Jon Knodel, (913) 551–7599, EPA Region 7; for plants in Michigan and Wisconsin, Beth Valenziano, (312) 886–2703, EPA Region 5.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions effective from January 1, 1995 through December 31, 1999, to the following new units:

Algona Municipal Utilities units 1 and 2 in Iowa, owned and operated by the Algona Municipal Utilities. The Designated Representative for Algona is Nick R. Scholer.

Bellevue Municipal Utilities unit 2 in Iowa, owned and operated by the City of Bellevue. The Designated Representative for Bellevue Municipal Utilities is Gary A. Swanson.

Hopkinton Municipal Utilities unit 2 in Iowa, owned and operated by the City of Hopkinton. The Designated Representative for Hopkinton is Norman W. Parsons.

Graettinger Municipal Light Plant unit 2 in Iowa, owned and operated by the City of Graettinger. The Designated Representative for Graettinger Municipal Light Plant is Gary A. Swanson.

Grand Junction Municipal Light & Power unit 2 in Iowa, owned and operated by the City of Grand Junction. The Designated Representative for Grand Junction Municipal Light & Power is Gary A. Swanson.

Lamoni Municipal Utilities unit 6 in Iowa, owned and operated by Lamoni Municipal Utilities. The Designated Representative for Lamoni Municipal Utilities is Robert A. Moore.

Primghar Municipal Light Plant unit 5 in Iowa, owned and operated by the City of Primghar. The Designated Representative for Primghar is Robert L. Mulder.

Story City Municipal Electric Utility unit 5 in Iowa, owned and operated by the City of Story City. The Designated Representative for Story City is Bruce Twedt.

Vinton Municipal Power Plant unit 1 in Iowa, owned and operated by the City of Vinton. The Designated Representative for Vinton Municipal is Maynard P. Stief.

Waverly Light & Power North Plant unit 10 in Iowa, owned and operated by Waverly Light & Power. The Designated Representative for the North Plant is Glenn S. Cannon.

Wilton Municipal Light & Power System, units 2, 3, and 4 in Iowa, owned and operated by Wilton Municipal Light & Power System. The Designated Representative for Wilton Municipal Light & Power System is Collin K. Proctor.

Chanute 3 units 12 and 13 in Kansas, owned and operated by the City of Chanute. The Designated Representative for Chanute 3 is Robert Walker.

The City of Girard Power Station units 2101–1119, 2012–1147, VO3572, and VO3393 in Kansas, owned and operated by the City of Girard. The Designated Representative for Girard is William W. Crawford.

Holton Municipal Power Plant unit 11 in Kansas, owned and operated by the City of Holton. The Designated Representative for Holton is Bradley J. Mears.

Horton Power Plant units 1 and 2 in Kansas, owned and operated by the City of Horton. The Designated Representative for Horton is Theodore M. Hauser.

Kingman Power Station unit 9 in Kansas, owned and operated by the City of Kingman. The Designated Representative for Kingman is Ira M. Hart, III.

The City of Mulvane units 7 and 8 in Kansas, owned and operated by the City of Mulvane. The Designated Representative for Mulvane is Gary Rambo.

Osborne Municipal Light Plant units 4–CAT and 5–CAT in Kansas, owned and operated by the city of Osborne. The Designated Representative for Osborne is Norman B. Christie.

Russell Municipal Power and Light units 11 and 12 in Kansas, owned and operated by the City of Russell. The Designated Representative for Russell is Earl Homewood.

Sabetha Municipal Power Plant unit 11 in Kansas, owned and operated by the City of Sabetha. The Designated Representative for Sabetha is Ted L. Hayden.

Campbell Municipal Utilities unit 7 in Missouri, owned and operated by the City of Campbell. The Designated Representative for Campbell is Wendell Thompson.

Marshall Municipal Utilities unit 11 in Missouri, owned and operated by the

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Marshall Municipal Utilities. The Designated Representative for Marshall is Kyle Gibbs.

Palmyra Municipal 2 units 9 and 10 in Missouri, owned and operated by the Palmyra Board of Public Works. The Designated Representative for Palmyra Municipal 2 is James Church.

The City of Shelbina units G3, G4, and G5 in Missouri, owned and operated by the City of Shelbina. The Designated Representative for Shelbina is Dennie Fowler.

The Unionville Power & Light unit 9 in Missouri, owned and operated by the City of Unionville. The Designated Representative for Unionville Power & Light is Dennie Sheehan.

Vandalia Power Plant units 2 and 3 in Missouri, owned and operated by the City of Vandalia. The Alternate Designated Representative for Vandalia is Aaron Rentfro.

Auburn Municipal Power Plant unit 4 in Nebraska, owned and operated by the Auburn Board of Public Works. The Designated Representative for Auburn is James P. Dietz.

Laurel Power Plant unit 7 in Nebraska, owned and operated by the City of Laurel. The Designated Representative for the Laurel Power Plant is Jim Recob.

Additionally under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements.

While the exempt retired units have been allocated allowances under 40 CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA proposes to issue written exemptions, effective from January 1, 1995 through December 31, 1999, unless otherwise noted below, to the following retired units:

B C Cobb units 1, 2, and 3 in Michigan, owned and operated by Consumers Power Company. The Designated Representative for B C Cobb is Robert J. Nicholson.

Bluffs unit 4 in Nebraska at the Scottsbluff Generating Station owned and operated by the Nebraska Public Power District. The Designated Representative for Bluffs is Clinton Johannes.

Kramer units 1, 2, 3, and 4 in Nebraska at the Harold Kramer Generating Station, owned and operated by the Nebraska Public Power District. The Designated Representative for Kramer is Clinton Johannes.

North Oak Creek units 1, 2, 3, and 4 in Wisconsin, owned and operated by Wisconsin Electric Power Company. The exemption from Phase I permitting requirements is effective from January 1, 1995 through December 31, 1999. The exemption from monitoring requirements is effective from November 15, 1993 through December 31, 1999. The Designated Representative for North Oak Creek is Paul D. Schumacher.

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-27297 Filed 11-2-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5101-7]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 55 utility units at 32 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

DATES: Comments on the exemptions proposed by this action must be received on or before December 5, 1994.

ADDRESSES: *Comments.* Send comments to the following addresses:

For plants in Iowa, Kansas, Missouri, and Nebraska, William A. Spratlin, Director, Air and Toxics Division, EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101.

For plants in Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: For plants in Iowa, Kansas, Missouri, and Nebraska, Jon Knodel, (913) 551-7599, EPA Region 7; for plants in Michigan and Wisconsin, Beth Valenziano, (312) 886-2703, EPA Region 5.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption will be addressed in a subsequent issuance or denial of exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register**.

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-27298 Filed 11-2-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5101-5]

Acid Rain Program; Notice of Final Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is approving 5-year Phase I Acid Rain permits or permit modifications including sulfur dioxide (SO_2) and/or nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76), for the following five utility plants: La Cygne in Kansas; E W Brown in Kentucky; Iatan and Montrose in Missouri; and South Oak Creek in Wisconsin.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about a permit listed in this notice: for plants in Kansas and Missouri, Jon Knodel, (913) 551-7622, EPA Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101; for plants in Kentucky, Brian Beals (404) 347-5014, EPA Region 4, 345 Courtland Street NE, Atlanta, GA 30365; and for plants in Wisconsin, Beth Valenziano, (312) 886-2703, EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604.

Dated: October 31, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-27299; Filed 11-2-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5101-9]

Common Sense Initiative Council Federal Advisory Committee; Establishment

AGENCY: Environmental Protection Agency.

ACTION: Establishment of advisory committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, EPA is giving notice of the establishment of an advisory committee to develop recommendations for improvements in the regulatory and statutory environmental protection framework that EPA administers. This advisory committee will be known as the "Common Sense Initiative Council" (CSI Council). EPA has determined that the establishment of this advisory committee is in the public interest and will assist the Agency in performing its duties under its various statutes. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The membership of the CSI Council has not yet been appointed by the Administrator. Consistent with the objectives of the Initiative and the requirements of FACA, the membership of both the CSI Council and its sector subcommittees will be balanced among the Agency's various outside stakeholder interests. The first meeting of the CSI Council will be announced separately in a **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Anyone wanting information about substantive matters that will be considered by the CSIC, or information about the procedural aspects of CSIC operation, should contact: Steve Harper, Office of Air and Radiation, at 202-260-8953, or Vivian Daub, Office of Water, at 202-260-6790.

Background

The Administrator announced the creation of the Common Sense Initiative (CSI) in November 1993. The Initiative reflects the Administration's commitment to setting strong environmental standards while encouraging common sense, innovation, and flexibility in how the standards are met. The goal is cleaner and cheaper environmental protection for entire industries. The Administrator's objective in establishing the CSI is to bring together federal, state, and local government representatives, environmental and environmental justice leaders, industry representatives, and other stakeholders to examine the full range of environmental requirements affecting industry.

The six industries the Agency has chosen to begin the pilot phase of this initiative are auto assembly, computers and electronics, iron and steel, metal finishing, petroleum refining, and printing. EPA will be convening multi-stakeholder teams for each of these industries. These teams will look for opportunities to change complicated and inconsistent environmental requirements into comprehensive strategies for environmental protection. Reflecting the importance of this effort, each of these teams will be chaired by an EPA Assistant Administrator and/or a Regional Administrator. The anticipated tangible results of this project will include recommendations for administrative, regulatory, and statutory changes that will permit us to achieve the cleaner, cheaper, smarter results we seek.

The creation of the CSI Council will provide the necessary federal advisory committee framework for the Common Sense Initiative. The Council will be constituted largely from the membership of the six industry-specific teams, which in turn will be constituted as subcommittees of the Council. The Council and its sector subcommittees will each have approximately 25 members, all appointed by the Administrator. EPA will ensure that there is balanced membership among affected stakeholder groups.

Dated: October 28, 1994.

Stephen Harper,

Office of Air and Radiation.

[FR Doc. 94-27311 Filed 11-2-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5101-2]

Public Meeting of the Common Sense Initiative Printing Sector

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: The Environmental Protection Agency is announcing an organizational meeting of the Common Sense Initiative Printing Sector. The meeting is open to the public with advance registration. There will be opportunities for the public to speak at the meeting and caucus as a group. Information concerning registration is provided below.

PURPOSE: During this meeting, the group will: discuss organizational protocols for the functioning of the sector group; have opportunities to caucus; identify and prioritize issues and potential tasks and projects for study concerning printing; begin identifying what information and other stakeholders may be needed to study and address issues; and begin scoping data needs.

DATES: The meeting will be held on November 9 and 10, 1994, from 8:00 am to 5:00 pm Eastern Time.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202, (703) 486-1111.

FOR FURTHER INFORMATION CONTACT: Persons wanting to register or needing further information concerning this meeting, such as an agenda, should contact Ginger Gotliffe, U.S. Environmental Protection Agency, 401 M St., S.W., Washington D.C. 20460, (202) 564-7072 by November 7, 1994.

Dated: October 28, 1994.

Eric Schaeffer,

Deputy Director, Office of Compliance.

[FR Doc. 94-27295 Filed 11-2-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 27, 1994.

The Federal Communications Commission has submitted the

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following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0349
Title: Section 76.73 and 76.75 Cable TV EEO policy and programs
Action: Extension of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 5,550 responses; 25.05 hours burden per response; 139,038 hours total annual burden
Needs and Uses: Section 76.73 and 76.75 require each cable employment unit to establish maintain and carry out a program to assure equal employment opportunity in every aspect of a cable entity's policy and practice. The data is used by the cable entities in preparation of the Cable Television Annual Employment Report (FCC Form 395–A). FCC staff also uses the data in field investigations involving equal employment opportunity. If this program was not maintained their could be no assurance that efforts are being made to afford equal opportunity in employment.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27265 Filed 11–2–94; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 27, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0050
Title: Application for Ship Radio Inspection or Survey
Form Number: FCC Form 801
Action: Revision of a currently approved collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: Annually and once every five years
Estimated Annual Burden: 4,000 responses; .25 hours average burden per response; 1,000 hours total annual burden
Needs and Uses: The FCC rules require the periodic inspection of the radio installations aboard United States vessels that are required to carry radio installations for safety purposes. The FCC Form 801 is used to apply for these required inspections. It is also used to advise the FCC local office staff to plan necessary travel and allocate resources to accomplish the task. The information is provided by ship radio station licensees to request an inspection of the radio installation aboard their vessels by FCC field office personnel. The information enables FCC personnel to identify the particular vessel to be inspected, determine the vessel's location, the date and time it will be available for inspection, and the particular regulatory requirements applicable to that particular vessel. If the information were not collected, FCC personnel would be unable to perform the required inspection due to lack of information about the vessel including ports of call, sailing schedule, and ports where the inspection could be performed. The form is being revised to provide for new payment options available to applicants (payments by credit card, electronic funds transfer, and by Western Union) and to make the form compatible with the new FCC Form 159, Fee Remittance Advice. We are also removing four questions requesting information which is no longer needed in advance of the inspection. The instructions for completing the form have been revised to conform to the revised format mandated by the new FCC Form 159.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27266 Filed 11–2–94; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 31, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0508.
Title: Rewrite and Update of Part 22 of the Public Mobile Service Rules (CC Docket No. 92–115).
Action: Revision of a currently approved information collection.
Respondents: Businesses of other for-profit (including small businesses).
Frequency of Response: Recordkeeping, quarterly, semi-annually and annual reporting requirements.
Estimated Annual Burden: 20,860 responses, 600 hours average burden per response, 212,766 hours total per response; 800 recordkeepers, 56.06 hours average burden per recordkeeper, 44,850 hours total burden per recordkeeper; 257,616.
Hours Total Annual Burden:
Needs and Uses: The Federal Communications Commission has completely revised its Rules governing Part 22, Public Mobile Services. These changes are needed to improve the organization and clarity of the Commission's Rules by eliminating outdated provisions and unnecessary information collection requirements, streamlining and expediting licensing and processing procedures, and affording licensees greater flexibility in providing service to the public. The intent of these revisions is to stimulate economic growth and expand access to mobile radio networks and services. The Commission published a summary of these actions in a *Report and Order*, CC Docket Nos. 92–115, 94–46, and 93–116, adopted August 2, 1994, and released September 9, 1994.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–27428 Filed 11–2–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 17, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to acquire at least 50 percent, and up to 100 percent, of the voting shares of The Providence Group Investment Advisory Company, Providence, Rhode Island, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to acquire EquiCredit Corporation, Jacksonville, Florida, and thereby engage in the origination of consumer finance home equity loans secured by first or second mortgages, and unsecured consumer finance loans; the servicing of consumer finance home equity loans secured by first or second mortgages, and unsecured consumer finance loans; the securitization of consumer finance home equity loans via sale to the secondary market; acting as principal, agent, or broker for insurance that is directly related to an extension of credit, and is limited to ensuring the repayment of an outstanding balance due (up to certain limits) on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor; pursuant to §§ 225.25(b)(1)(i) and (b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–27247; Filed 11–2–94; 8:45 am]
BILLING CODE 6210–01–F

Walter Nehrkorn; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Walter Nehrkorn, Savanna, Illinois; to acquire 100 percent of the voting shares of Savanna Bancorp, Inc., Savanna, Illinois, and thereby indirectly acquire Savanna State Bank, Savanna, Illinois.

Board of Governors of the Federal Reserve System, October 28, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–27248; Filed 11–2–94; 8:45 am]
BILLING CODE 6210–01–F

Tilden Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 28, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Tilden Bancshares, Inc., Tilden, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Tilden State Bank, Tilden, Nebraska.

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Board of Governors of the Federal Reserve System, October 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27249; Filed 11-2-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0392]

Fujisawa USA, Inc; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) held by Fujisawa USA, Inc.; Parkway North Center, Three Parkway North, Deerfield, IL 60015-2548 (Fujisawa). FDA is withdrawing approval of this application because of questions raised about the reliability of the data and information submitted to FDA in support of the application. Marketing of the drug has been discontinued, and Fujisawa has voluntarily requested withdrawal of approval of the application and has waived its opportunity for a hearing.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies in the data used to support approval of the following NDA held by Fujisawa:

NDA 18-440, M.V.C. 9+3.

Fujisawa has identified discrepancies in data submitted to obtain approval of the application listed above, which have raised questions about the reliability of the data. In a letter dated February 22, 1994, Lyphomed requested withdrawal of this NDA.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA listed above, and all amendments and supplements thereto, is hereby withdrawn, effective November 3, 1994. Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: October 24, 1994.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 94-27196; Filed 11-2-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94N-0395]

Drug Export; Vitinoin (Tretinoin) Gel 0.025% and Vitinoin (Tretinoin) Cream 0.025%, 0.05%, 0.1%

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Penederm, Inc., has filed an addendum application requesting approval for the export of the human drug Vitinoin (tretinoin) Gel 0.025% and Vitinoin (tretinoin) Cream 0.025%, 0.05%, 0.1% to Canada. The FDA had received a previous application on March 7, 1994, from Penederm, Inc., which was published in the **Federal Register** of May 13, 1994, requesting approval for the export of the human drug Acticin (tretinoin) Gel 0.025% to Canada. This notice announces a product name change, the addition of the cream formulations and a change in the manufacturing site.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Penederm, Inc., 320 Lakeside Dr., suite A, Foster City, CA 94404, has filed an addendum application requesting approval for the export of the human drug Vitinoin (tretinoin) Gel 0.025% and Vitinoin (tretinoin) Cream 0.025%, 0.05%, 0.1%. This product is indicated for topical application in the treatment of acne vulgaris, primarily where comedones, papules and pustules predominate. The addendum application was received and filed in the Center for Drug Evaluation and Research on September 9, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 14, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 21, 1994.

Raymond E. Hamilton,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94-27317; Filed 11-2-94; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1994.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: November 30, 1994; 9:00 am-5:00 pm; December 1, 1994; 9:00 am-11:45 am.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The full Commission will meet commencing at 9:00 a.m. on Wednesday, November 30 until 5:00 p.m., and from 9:00 a.m. to 11:45 p.m. on Thursday, December 1. Agenda items will include, but not be limited to: a review of the proposed changes to the Vaccine Injury Table based on the Institute of Medicine's report entitled "Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality" (the Section 313 report); a report from the Task Force on Safer Childhood Vaccines, including an update on the acellular pertussis vaccine; a vaccine safety update from the Centers for Disease Control and Prevention; a report on the National Vaccine Program; and routine Program reports.

Public comment will be permitted before noon and at the end of the full Commission meeting on November 30; and before the Commission adjourns on the second day on December 1. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A-35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443-1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10:00 a.m. on November 30 and December 1. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Room 8A-35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443-1533.

Agenda Items are subject to change as priorities dictate.

Dated: October 28, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94-27195 Filed 11-2-94; 8:45 am]

BILLING CODE 4160-15-P

National Institutes of Health

Consensus Development Conference on Effect of Indirect Markers of Infectious Diseases on Blood Transfusion Safety

Notice is hereby given of the NIH Consensus Development Conference on "Effect of Indirect Markers of Infectious Diseases on Blood Transfusion Safety," which will be held January 9-11, 1995, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on January 9 and 10 and at 9 a.m. on January 11.

In the approximately 50 years since the U.S. has had an organized national blood collection and distribution system, an increasing number of tests have been mandated, recommended by regulatory authorities, or adopted voluntarily to minimize the transmission of infectious diseases and make blood transfusion as safe as possible.

In the last 10 years alone, blood collection agencies have implemented five new tests on all donated blood—Human Immunodeficiency Virus (HIV) antibodies (later expanded from HIV-1 to HIV-1 and -2); hepatitis B core antibody (HBcAb); serum alanine aminotransferare (ALT); antibodies to Human T-cell Lymphotrophic Virus (HTLV) 1 and 2; and, most recently, antibodies to Hepatitis C Virus (HCV). And there are pressures to add tests for emerging diseases—most recently, for example, Chagas' Disease.

Most of the newer tests have been improved since they were introduced, adding to transfusion safety and reducing false positive tests and the unnecessary loss of donors. However, several of the tests that are now performed are not specific for the diseases they are targeting. Some (ALT, HBcAb) were introduced as surrogates for diseases now subject to more specific testing. Another (Serological Test for Syphilis-STS) was introduced to protect against one disease, but is being retained as much as a sign of lifestyle as for evidence of disease.

The contribution some of these tests make to transfusion safety is uncertain. This issue is important if they do not, in fact, improve safety. It has become increasingly difficult to locate donors to replace those lost to false positive tests, which results in more frequent and severe blood shortages. And the cost of the tests themselves needlessly makes blood processing and blood transfusions more expensive.

The purpose of this consensus conference is to evaluate the continued use of the syphilis, hepatitis B core antibody, and alanine aminotransferase (ALT) tests, as well as to examine the process for adding new infectious disease screening tests to improve transfusion safety. This conference will bring together specialists from the fields of hematology, cardiology, transfusion medicine, infectious disease, and nursing as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

- What are the indications for the introduction of an infectious disease screening test to improve transfusion safety and what should be the requirements of such a test?
- To what extent do the following contribute to transfusion safety: tests for syphilis and for hepatitis B core antibody; should they continue to be used as now or should their use be modified?
- To what extent does the alanine aminotransferase (ALT) test contribute to transfusion safety; should it continue to be used as now or should its use be modified?
- What are the appropriate ways to manage potential threats to transfusion safety from emerging infectious diseases such as, for example, Chagas' disease?
- What are the highest priorities for research to improve transfusion safety by reducing the transmission of infectious disease?

The primary sponsors for this conference are the National Heart, Lung, and Blood Institute and the NIH Office

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of Medical Applications of Research. The conference is cosponsored by the Transfusion Medicine Branch of the NIH Clinical Center. This is the 99th Consensus Development Conference held by NIH since the establishment of the Consensus Development Program in 1977.

Advance information on the conference program and conference registration materials may be obtained from: Debra Steward, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning January 11, 1995, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: October 26, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–27241 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Cancer Institute for November and December 1994.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should contact the contact person listed for that particular meeting.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, site visit report and recommendations, and site visit review. These applications, site visit report and recommendations, and site visit review, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and the laboratories, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, 6130 Executive Blvd. MSC 7405, Bethesda, Maryland 20892–7405, (301–496–5708) will provide summaries of the meetings and rosters of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated for each meeting.

Committee Name: Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers.

Contact Person: Dr. Ihor J. Masyuk, Room 3A11, Building 31A, Telephone: (301) 496–3251.

Date of Meeting: November 14, 1994.

Place of Meeting: Conference Room 6, NIH Campus—Building 31C, 9000 Rockville Pike, Bethesda, MD 20892.

Open: November 14, 1994 8:30 am to adjournment.

Agenda: Program review and concept review of proposed research projects.

Committee Name: Subcommittee B, Cancer Research Manpower and Education Review Committee.

Contact Person: Dr. Neil West, Room 611D, Executive Plaza North, Telephone: (301) 402–2785.

Date of Meeting: November 16, 1994.

Place of Meeting: Galt House Hotel, 141 N. 4th Street, Louisville, KY.

Closed: November 16, 1994 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: President's Cancer Panel.

Contact Person: Dr. Maureen Wilson, Building 31, Room 4B43, 9000 Rockville Pike, Telephone: (301) 496–1148.

Date of Meeting: November 30, 1994.

Place of Meeting: San Francisco Hilton and Towers, 333 O'Farrell Street, San Francisco, CA 94102.

Open: November 30, 1994 8 am to adjournment.

Agenda: Cancer and the Cultures of America.

Committee Name: Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. David E. Maslow, Room 643A, Executive Plaza North, Telephone: (301) 496–2330.

Date of Meeting: December 1–2, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814.

Closed: December 1, 1994 11 am to recess; December 2, 1994 8 am to adjournment.

Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Acrylonitrile Study Advisory Panel.

Contact Person: Dr. David McB. Howell, Building 31A, Room 11A06, Telephone: (301) 496–6927.

Date of Meeting: December 1, 1994.

Place of Meeting: Conference Room G, 6130 Executive Blvd., Rockville, MD 20852.

Open: December 1, 1994 10:30 a.m. to adjournment.

Agenda: Review and discussion of the study's progress.

Committee Name: Frederick Cancer Research and Development Center Advisory Committee.

Contact Person: Dr. Cedric W. Long, Frederick Cancer Research and Development Center, Telephone: (301) 843–1106.

Date of Meeting: December 8–9, 1994.

Place of Meeting: Building 549, Executive Board Room 10, NCI Frederick Cancer Research and Development Center, Frederick, MD 21702.

Open: December 8, 1994 8:30 a.m. to 11 a.m.

Agenda: Discuss administrative matters such as future meetings, budget, and informational items related to the operation of the NCI Frederick Cancer Research and Development Center.

Closed: December 8, 1994 11 a.m. to recess; December 9, 1994 8:30 a.m. to adjournment.

Agenda: Discussion of site visit report and response for the Mammalian Genetics Laboratory under contract with Advanced BioScience Laboratories—Basic Research Program and site visit review of the Laboratory of Molecular Virology and Carcinogenesis.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27236 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 2, 1994, in Building 31, Room 2A52. This meeting will be open to the public from 9:00 a.m. to 12 noon on December 2 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 2 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27235 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute on December 8–9, 1994, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N234, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 5 p.m. on December 8 and from 9 a.m. to 1 p.m. on December 9 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. to adjournment on December 9, 1994 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27240 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: November 30, 1994.

Time: 12 noon to 3 p.m.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Branch, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate a grant application.

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27237 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 9, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 439A—Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 5333 Westbard Ave., Room 439A, Bethesda, MD 20892, (301) 594–7216.

Name of SEP: Behavioral and Neurosciences.

Date: November 17, 1994.

Time: 2 p.m.

Place: NIH, Westwood Building, Room 303—Telephone Conference.

Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7141.

Name of SEP: Biological and Physiological Sciences.

Date: November 22, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 209—Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 5333 Westbard Ave., Room 209, Bethesda, MD 20892, (301) 594–7332.

Name of SEP: Behavioral and Neurosciences.

Date: December 1, 1994.

Time: 1 p.m.

Place: NIH, Westwood Building, Room 232—Telephone Conference.

Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 5333 Westbard Ave., Room 232—Bethesda, MD 20892, (301) 594–7123.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: December 6, 1994.

Time: 3 p.m.

Place: NIH, Westwood Building, Room 2A11—Telephone Conference.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11, Bethesda, MD 20892, (301) 594–7276.

The meetings will be closed in accordance with the provisions set forth in sec. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty

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of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27238 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: November 9–11, 1994.
Time: 8 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Daniel McDonald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 10, 1994.
Time: 1 p.m.
Place: NIH, Westwood Building, Room A1—Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 5333 Westbard Ave., Room A1, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Behavioral and Neurosciences.
Date: November 25, 1994.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 325C—Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Behavioral and Neurosciences
Date: November 30, 1994.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 325C—Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Chemistry and Related Sciences.
Date: November 29, 1994.
Time: 10 a.m.
Place: NIH, Westwood Building, Room 435—Telephone Conference.
Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 5333 Westbard Ave., Room 435, Bethesda, MD 20892, (301) 594–7120.

Name of SEP: Biological and Physiological Sciences.
Date: November 30, 1994.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 353—Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 353, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Behavioral and Neurosciences.
Date: December 1, 1994.
Time: 2 p.m.
Place: NIH, Westwood Building, Room 325C—Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 5333 Westbard Ave., Room 325C, Bethesda, MD 20892, (301) 594–7198.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 9, 1994.
Time: 9 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Gilbert Meier, Scientific Review Admin., 5333 Westbard Ave., Room A1, Bethesda, MD 20892, (301) 594–7118.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 12, 1994.
Time: 1 p.m.
Place: NIH, Westwood Building, Room 238—Telephone Conference.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 13, 1994.
Time: 12 Noon.
Place: NIH, Westwood Building, Room 238—Telephone Conference.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27239 Filed 11–2–94; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU–LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810.

Center for Laboratory Services, a Division of LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093.

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535, (formerly: Damon Clinical Laboratories).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert St., Norfolk, VA 23511–2587, 804–444–8099 ext. 317.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609, (moved 6/16/93).

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414, (formerly: HealthCare/Preferred Laboratories).

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051.

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835.

Med-Chek/Damon, 4900 Perry Hwy., Pittsburgh, PA 15229, 412–931–7200, (formerly: Med-Chek Laboratories, Inc.).

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199.

MetPath, Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888.

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000.

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293.

National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.).

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784, (formerly: Med Arts Lab).

National Health Laboratories Incorporated, 2540 Empire Dr., Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.

National Health Laboratories Incorporated, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100.

National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250.

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute).

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.

Occupational Toxicology Laboratories, Inc., 2002 20th St., Suite 204A, Kenner, LA 70062, 504–465–0751.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177.

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory).

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272.

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–6378.

Regional Toxicology Services, 15305 N.E. 40th St., Redmond, WA 98052, 206–882–3400.

Roche Biomedical Laboratories, Inc., 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286.

Roche Biomedical Laboratories, Inc., 69 First Ave., Raritan, NJ 08869, 800–437–4986.

Roche CompuChem Laboratories, Inc., A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory).

Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (Formerly: CompuChem Laboratories, Inc.—Special Division).

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Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 32748, 904–787–9006 (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

The following laboratory withdrew from the Program on October 22, 1994:

Bioran Medical Laboratory, 415 Massachusetts Ave., Cambridge, MA 02139, 617–547–8900.

The following laboratory withdrew from the Program on October 31, 1994:

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–27080 Filed 11–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3487; FR–3630–N–03]

Notice of Funding Availability for FY 1994 Congregate Housing Service Program: Re-Opening of Application Deadline for Certain Applicants

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD; Office of the Administrator, Farmers Home Administration (FmHA).

ACTION: Notice of re-opening of application deadline for certain applicants.

SUMMARY: HUD is re-opening the application deadline for Congregate Housing Services Program applicants that were adversely affected in their application preparation because of flooding in the State of Georgia due to Tropical Storm Alberto.

DATES: For qualified applicants, the application deadline is re-opened. The new deadline date is November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jerold S. Nachison, Chief, Services Branch, Office of Elderly and Assisted Housing, 451 Seventh Street S.W., Room 6122, Washington, DC 20410; (202) 708–3291.

SUPPLEMENTARY INFORMATION: On April 29, 1994 (59 FR 22236), HUD published a Notice of Funding Availability (NOFA) (April 29, 1994 NOFA) announcing the availability of FY 1994 funds for Congregate Housing Services Programs, and an application deadline date of July 13, 1994.

This notice announces the re-opening of the application deadline set forth in the April 29, 1994 NOFA for eligible applicants that were adversely affected in the preparation or submission of applications because of flooding in the State of Georgia due to Tropical Storm Alberto. Eligible applicants are those whose projects are located in the jurisdiction of the Atlanta, Georgia Field Office and who were adversely affected by the flooding. Eligible applicants must certify in writing that they were adversely affected in the preparation or submission of applications due to the flooding. For those applicants that qualify under this criteria, and that otherwise meet all other criteria contained in the April 29, 1994 NOFA, the application deadline is re-opened for a period of fourteen (14) days from the date of publication of this notice.

Accordingly, for all eligible applications, as described in this notice, applications are due at 3:00 p.m., local time on November 17, 1994. The applications must be sent to: Director of Housing, Atlanta State Office, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388. All guidance and criteria contained in the April 29, 1994 NOFA applies to applications submitted under this re-opened application deadline.

Dated: October 31, 1994.

Nicolas P. Retsinas,

Assistant Secretary For Housing—Federal Housing Commissioner.

[FR Doc. 94–27293 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–94–3832]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Proposed Requirements for Disclosure of Lead-Based Paint Hazards in Residential Housing.

Office: Lead-Based Paint Abatement and Poisoning Prevention.

Description of the Need for the Information and its Proposed Use: HUD is requesting approval of recordkeeping requirements to ensure compliance for persons selling, leasing, or acting as agents in transactions to sell or lease target housing. This rulemaking is being issued under the authority of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The records will acknowledge that the seller, leaser, and agents complied with the HUD/EPA requirements.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, Federal Agencies or Employees, and Small Businesses or Organizations.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	15,441,000		1		.26		3,957,210

Total Estimated Burden Hours: 3,957,210.

Status: New.

Contact: Conrad C. Arnolts, HUD, (202) 755–1810; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 28, 1994.

Proposal: Outline Specifications.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This form is prepared by architects employed by Public Housing Authorities (PHAs) or by Turnkey Developers' specifications to establish quality and the kind of materials and equipment to be incorporated into housing developments. The information is used by the PHA and HUD to determine that specified items comply with HUD standards and codes that are appropriate for the project.

Form Number: HUD–5087.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5087	240		3.4		3		2,448
Recordkeeping	816		1		.25		204

Total Estimated Burden Hours: 2,652.

Status: Reinstatement, no changes.

Contact: William Thorson, HUD, (202) 708–4703; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 28, 1994.

[FR Doc. 94–27258 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–94–3831; FR–3794–N–01]

Privacy Act of 1974; Proposed Amendment to a Systems of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend its system of records entitled "Single Family Computerized Homes Underwriting Management System (CHUMS), HUD/H–5" in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Notice of this system was last published at 55 FR 17676, April 26, 1990.

EFFECTIVE DATE: This action will be effective without further notice on December 5, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendment to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/H–5 contains a variety of records relating to HUD's single-family underwriting process. This system aids the Department in the processing of mortgagee applications for property appraisal and commitment for HUD/FHA mortgage insurance, and in the subsequent administration of HUD/FHA mortgage insurance programs. Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) as amended, notice is given that HUD proposes to add a new routine use category to reflect the fact that the records will be utilized in a computer matching program. This new routine use identifies the categories of users (i.e.,

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the Department of Agriculture, Education, Veteran Affairs, the Small Business Administration, and other agencies) to whom records may be disclosed pursuant to authorized and approved computer matching programs undertaken for debt collection purposes.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the "Federal Register Privacy Act Issuances, 1991 Compilation, Volume I."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., September 26, 1994.

Marilynn A. Davis,

Assistant Secretary for Administration.

HUD/H–5

SYSTEM NAME: Single Family Computerized Homes Underwriting Management System (CHUMS)

Routine uses of records maintained in the system, including categories of users and the purposes for such uses.

See routine uses paragraph in prefatory statement. Other routine uses include:

a. To other agencies; such as, Departments of Agriculture, Education and Veterans Affairs, and the Small Business Administration—for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government.

[FR Doc. 94–27257 Filed 11–2–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1610–00; AZA 28783]

Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Exchange of Approximately 14,000 Acres of Public Land Near Safford, AZ, for Other Private Lands of Similar Value in Southeastern Arizona

AGENCY: Bureau of Land Management, Safford District, AZ.

ACTION: Notice of intent to prepare an environmental impact statement for the exchange of public lands near Safford, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental impact statement to analyze the impacts of exchanging approximately 14,000 acres of public land near Safford, Arizona for private lands of similar value in southeastern Arizona.

1. Identification of the geographic area involved: The proposed land exchange involves approximately 14,000 acres of public lands currently managed by the Safford District, Bureau of Land Management that are located near Safford, Arizona.

2. The no action alternative and alternatives that consider various combinations of selected and offered lands will be analyzed.

3. General types of issues anticipated: The proposed land exchange involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on water resources, native vegetation, riparian areas, wildlife, recreation, Wild and Scenic Rivers, socioeconomics, public access, grazing allotments, county tax base, minerals, and cultural resources.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Public open houses/scoping meetings will be held at the following locations and times:

December 6, 1994, 4–8 p.m., Safford District BLM Office, 711 14th Avenue, Safford, Arizona 85546, (602) 428–4040

December 7, 1994, 5–9 p.m., Greenlee County Offices, 4th Street & Leonard Avenue, 2nd Floor Conference Room, Clifton, Arizona 85533, (602) 865–2072

December 13, 1994, 4–8 p.m., BLM Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014, (602) 650–0200

December 15, 1994, 4–8 p.m., Udall Center, Room 2 and 3, 7200 East Tanque Verde Road, Tucson, Arizona 85715, (602) 791–4931

Public input may be submitted during the public meeting or in writing to the address given in the below section. Public comments will be accepted until January 17, 1995.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Margaret Jensen, Gila Resource Area Manager, Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, Arizona 85546. Phone (602) 428–4040.

Dated: October 25, 1994.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 94–27204 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–1610–00; AZA 28780]

Notice of Intent To Prepare an Environmental Impact Statement Analyzing the Impacts of the Proposed Exchange of Approximately 3,800 Acres of Public Land Near Morenci, AZ, for Other Private Lands of Similar Value in Southeastern Arizona

AGENCY: Bureau of Land Management, Safford District, AZ.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Exchange of Public Lands near Morenci, Arizona.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental impact statement to analyze the impacts of exchanging approximately 3,800 acres of public land near Morenci, Arizona for private lands of similar value in southeastern Arizona.

1. Identification of the geographic area involved: The proposed land exchange involves approximately 3,800 acres of public lands currently managed by the Safford District, Bureau of Land Management that are located near Morenci, Arizona.

2. The no action alternative and alternatives that consider various combinations of selected and offered lands will be analyzed.

3. General types of issues anticipated: The proposed land exchange involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on water resources, native vegetation, riparian areas, wildlife, recreation, Wild and Scenic Rivers, socioeconomics, public access, grazing allotments, county tax base, minerals, and cultural resources.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Public open houses/scoping meetings will be held at the following locations and times:

December 6, 1994 4–8 p.m., Safford District BLM Office, 711 14th Avenue, Safford, Arizona 85546, (602) 428–4040

December 7, 1994 5–9 p.m., Greenlee County Offices, 4th Street and Leonard Avenue, 2nd Floor Conference Room, Clifton, Arizona 85533, (602) 865–2072

December 13, 1994 4–8 p.m., BLM Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014, (602) 650–0200

December 15, 1994 4–8 p.m., Udall Center, Room 2 and 3, 7200 East Tanque Verde Road, Tucson, Arizona 85715, (602) 791–4931

Public input may be submitted during the public meeting or in writing to the address in the section below. Public comments will be accepted until January 17, 1995.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Margaret Jensen, Gila Resource Area Manager, Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, Arizona 85546. Phone (602) 428–4040.

Dated: October 25, 1994.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 94–27198 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–32–M

[CO–017–1610–00; DES 94–43]

Availability of the Draft White River Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of the Draft White River Resource Management Plan and Environmental Impact Statement.

SUMMARY: In compliance with CFR 40 1503.1, the Bureau of Land Management is inviting comments on a draft resource management plan (RMP) and environmental impact statement (EIS) for the White River Resource Area. The White River Resource Area is located in northwest Colorado. It encompasses 2,675,300 acres of federal, state, and private lands. The draft RMP and EIS incorporates decisions made in earlier land use plans and also proposes management to resolve issues not addressed in the earlier plans.

DATES: Comments on the draft RMP and EIS will be accepted during a 90-day comment period. All comments must be received by February 10, 1995. Public hearings will be held in Meeker, Denver, Grand Junction, and Rangely, Colorado, on January 9, 10, 11, and 12, 1995, respectively.

ADDRESSES: Address for written comments: Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, CO 81641; Fax 303–878–5717. Addresses for public hearings: BLM, White River Resource Area Office, 73544 Highway 64, Meeker, Colorado (January 9); Best Western Denver West, 11595 West Sixth Avenue, Denver, Colorado (January 10); BLM, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado (January 11); and Chevron O&M Building, 100 Chevron Road, Rangely, Colorado (January 12).

FOR FURTHER INFORMATION CONTACT: Joann Graham, Project Manager, Bureau of Land Management, White River Resource Area, Meeker, CO 81641; Telephone 303–878–3601; Fax 303–878–5717.

SUPPLEMENTARY INFORMATION: All hearings will begin at 7:30 p.m. An informal open house will be held prior to each hearing. Open houses will run from 6:30 p.m. to 7:15 p.m. BLM specialists will be present at open houses to answer questions. Please include your name and complete mailing address on all written and oral comments submitted.

Dated: October 20, 1994.

Robert W. Schneider,

Acting District Manager.

[FR Doc. 94–27199 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–JB

National Park Service

National Capital Region, Public Affairs; Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1994 Christmas Pageant of Peace, which opens December 7 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive SW., Room 234, at 10:30 a.m., November 22, 1994.

Persons who would like to comment at the meeting should notify the National Park Service by November 18, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619–7225. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, D.C. 20242. Written comments will be accepted until November 25, 1994.

Dated: October 13, 1994.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 94–27310 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–70–M

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Alp. I), this notice announces a workshop which is designed to resolve growing conflicts over protected species restoration. This meeting is sponsored by the Sport Fishing and Boating Partnership Council. The meeting is open to the public, pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b). Interested persons may make oral statements to the Council or may file written statements for consideration. Summary minutes of the workshop will be maintained by the Coordinator for the Sport Fishing and Boating Partnership Council at 4401 North Fairfax Drive, Arlington, VA 22203, and will be available for public inspection during regular business hours (7:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

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DATES: The Sport Fishing and Boating Partnership Council's meeting will be held on November 29, 1994, beginning at 8:30 a.m.

PLACE: The meeting will be held in the Potowmack Landing Restaurant at the Washington Sailing Marina, Number 1 Marina Drive, Alexandria, Virginia 22314.

AGENDA: The Council will receive reports from the Initiatives, Boating, Ethics, and Education Committees. The Council will present recommendations from the Recreational Fisheries Stewardship Initiative to the Director of the Fish and Wildlife Service and the Secretary.

CONTACT PERSON FOR MORE INFORMATION: For further information individuals may contact Chris Dlugokenski at 703 358–2156.

Dated: October 26, 1994.

Bruce Blanchard,

Deputy Director.

[FR Doc. 94–27203 Filed 11–2–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32592]

Edward M. Berntsen; Continuance in Control Exemption; Tacoma Eastern Railway Co.

Edward M. Berntsen (petitioner) has filed a notice of exemption to continue in control of Tacoma Eastern Railway Co. (TE), upon TE becoming a class III rail carrier.

TE, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32591, *Eastern Railway Co.—Lease and Operation Exemption—City of Tacoma, Washington*, to lease and operate approximately 124.9 miles of rail lines owned by the City of Tacoma (City) or leased by the City from Weyerhaeuser Co., in Pierce, Thurston and Lewis Counties, WA. That transaction was expected to be consummated on or after October 11, 1994.

Petitioner also controls a nonconnecting class III rail carrier, Lewis & Clark Railway Company (LC).[1] It appears that LC leases and operates a 29.5-mile line owned by Chelatchie Prairie Railroad, Inc., between Rye and Chelatchie, in Clark County, WA.[2]

Petitioners state that: (1) the properties operated by TE and LC do not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue NW., Washington, DC 20005–3934

Decided: October 25, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27264 Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32600]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Southern Electric Railroad Co.

Southern Electric Railroad Company (SERCO) has agreed to grant approximately 3,600 feet of overhead trackage rights to Burlington Northern Railroad Company (BN) over SERCO's rail line,[1] located in Jefferson County, AL. The trackage rights extend from BN's main line at milepost 715.1 to milepost 0.77 near Alabama Power Company's (APC) Plant Miller at West Jefferson, AL. The purpose of the grant of trackage rights is to permit BN to provide transportation service to APC's Plant Miller.[2] The trackage rights were to become effective on or after October 21, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janice G. Barber, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27262 Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32591]

Tacoma Eastern Railway Co.; Lease and Operation Exemption; City of Tacoma, WA

Tacoma Eastern Railway Co. (TE), a noncarrier, has filed a notice of exemption to lease and operate certain rail lines owned by the City of Tacoma (City) or leased by the City from Weyerhaeuser Co., in Pierce, Thurston and Lewis Counties, WA, as follows: (1) From milepost 2192.01 (−1.89) at Tacoma Jct. to milepost 2193.9 (0.0) at Tacoma; (2) from milepost 0.0 at Tacoma to milepost 64.5 at Morton; (3) from milepost 0.0 at Frederickson to milepost 36.8 at Maytown; (4) from milepost 0.0 at Maytown to milepost 18.2 at Chehalis; and (5) from milepost 0.0 at Park Junction to milepost 3.5 at National, totalling approximately 124.9 miles. The transaction was expected to be consummated on or after October 11, 1994.

This proceeding is related to *Edward M. Berntsen—Continuance in Control Exemption—Tacoma Eastern Railway Co.*, Finance Docket No. 32592, wherein Edward M. Berntsen seeks to continue in control of TE and the Lewis & Clark Railway Company (LC), upon TE becoming a class III rail carrier.[1]

Any comments must be filed with the Commission and served on: Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 25, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27263; Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32578]

RailTex, Inc.; Continuance in Control Exemption; New England Central Railroad, Inc.

RailTex, Inc. (RailTex), a noncarrier, has filed a verified notice under 49 CFR 1180.2(d)(2) to continue to control New England Central Railroad, Inc. (NECR), upon the latter's becoming a class II carrier.

NECR has concurrently filed a verified notice of exemption in *New England Central Railroad, Inc.—Acquisition Exemption—Lines between East Alburgh, VT and New London, CT*, Finance Docket No. 32432, for NECR's acquisition and operation of 325 miles of rail line owned by Central Vermont Railway, Inc., a wholly-owned subsidiary of Grand Trunk Corporation, between milepost 15.6 in East Alburgh, VT, and milepost 0.24 in New London, CT. Consummation of the continuance in control transaction is intended to occur upon commencement of operations by NECR, on or after the effective date of the exemption, in Finance Docket No. 32432.[1]

RailTex currently controls 13 class III railroads: Chesapeake & Albemarle Railroad Company, Inc.; Indiana Southern Railroad, Inc.; North Carolina & Virginia Railroad Company, Inc.; Mid-Michigan Railroad, Inc.; Missouri & Northern Arkansas Railroad Company, Inc.; Austin & Northwestern Railroad Company, Inc.; South Carolina Central Railroad Company, Inc.; Dallas, Garland & Northeastern Railroad, Inc.; San Diego & Imperial Valley Railroad Company, Inc.; New Orleans Lower Coast Railroad Company, Inc.; Michigan Shore Railroad Company, Inc.; Salt Lake City Southern Railroad Company, Inc.; and Grand Rapids Eastern Railroad, Inc. RailTex also controls two Canadian rail carriers.

The continuance in control transaction is exempt from the prior approval requirements of 49 U.S.C. 11343 under 49 CFR 1180.2(d)(2) because: (1) NECR does not connect with any other railroads in the corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect NECR with any other railroad in its corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Decided: October 27, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27294; Filed 11–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Michigan Materials and Processing Institute

Notice is hereby given that, on August 22, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as Members in MMPI: Akemi, Inc., Eaton Rapids, MI; Haworth Corporation, Holland, MI. The following University was recently accepted as a Member in MMPI: University of Michigan-Dearborn, Dearborn, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on May 3, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 25, 1994, 59 FR 27033.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27202 Filed 11–2–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Owen M. Babbe, Jr., Revocation of Registration

On March 3, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Owen M. Babbe, Jr., D.D.S. of Coeur D'Arlene, Idaho, proposing to revoke his DEA Certificate of Registration AB7962891, and to deny any pending applications for registration as a practitioner. 21 U.S.C. 823(f) (1992). The Basis for the Order to Show Cause was that Dr. Babbe lacked authority to handle controlled substances in the State of Idaho, 21 U.S.C. 824(a)(3), and that his continued registration is inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Babbe's registered location in Coeur D'Arlene, Idaho by registered mail on March 3, 1994, but was returned to DEA unclaimed. Based on information obtained from the Washington State Department of Licensing, on April 26, 1994, the Order to Show Cause was sent registered mail to the address provided on Dr. Babbe's driver's license. On May 2, 1994, a signed receipt was returned to DEA indicating a delivery date of April 28, 1994. Thereafter, on June 10, 1994, the Order to Show Cause, in its original envelope, was returned marked unclaimed. More than thirty days have passed since the Order to Show Cause was delivered at Dr. Babbe's last known address. The DEA has received no response from Dr. Babbe or anyone purporting to represent him.

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[1] Edward M. Berntsen is President of both TE and LC.

[2] *See, Lewis & Clark Railway Company—Exemption Operation—Chelatchie Prairie Railroad, Inc.*, Finance Docket No. 31042 (ICC served May 22, 1987).

[1] Construction of the involved line was authorized in Finance Docket No. 31972, *Southern Electric Railroad Company—Construction Exemption—Jefferson County, AL* (ICC served Mar. 17, 1992).

[2] BN will operate its own trains with its own crews over the SERCO line.

[1] Edward M. Berntsen is President of both TE and LC.

[1] The exemption in Finance Docket No. 32432 was scheduled to take effect on October 28, 1994, but was stayed by decision of the Commission served on October 27, 1994.

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Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that Dr. Babbe has waived his opportunity for a hearing on the issues raised by the Order to Show Cause. The Deputy Administrator has carefully considered the investigative file in this matter and enters his final order based on the provisions of 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that on October 10, 1991, the Idaho State Board of Pharmacy suspended Dr. Babbe's controlled substance registration. On June 24, 1992, the Idaho State Board of Dentistry (Dentistry Board) revoked Dr. Babbe's license to practice dentistry for a period of five (5) years. The Dentistry Board concluded that on four occasions Dr. Babbe's treatment acts and dental practices constituted gross malpractice and on four other occasions his actions constituted malpractice.

The Deputy Administrator has consistently held that DEA cannot maintain the registration of a practitioner who is without State authority to handle controlled substances. *Nathaniel S. Lehrman, M.D.*, 59 FR 44780 (1994) and *Franz A. Arakaky, M.D.*, 59 FR 42074 (1994); *see also Elliott Monroe, M.D.*, 57 FR 23246 (1992) and *Bobby Watts, M.D.*, 53 FR 11920 (1987). Dr. Babbe is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances in the State of Idaho wherein he is registered with the DEA. In light of this, the Deputy Administrator concludes that it is not necessary to address whether Dr. Babbe's continued registration is otherwise consistent with the public interest.

Based on the foregoing, the Deputy Administrator of the Drug Enforcement Administration concludes that Dr. Babbe's DEA registration must be revoked. 21 U.S.C. 824(a)(3). Accordingly, the Deputy Administrator pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AB7962891, previously issued to Owen M. Babbe, Jr., D.D.S., be, and it hereby is, revoked, and that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective on November 3, 1994.

Dated: October 28, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94-27208 Filed 11-2-94; 8:45 am]

BILLING CODE 4410-09-M

Office of Community-Oriented Policing Services

FY 1995 Community Policing Discretionary Grants

AGENCY: Office of Community-Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community-Oriented Policing Services ("COPS") announces the availability of grants for the hiring of law enforcement officers under COPS Accelerated Hiring, Education and Deployment ("COPS AHEAD") and the COPS Funding Accelerated for Smaller Towns Application ("COPS FAST Application"). Eligible applicants under COPS AHEAD are those state, local and other public law enforcement agencies, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia that employ sworn law enforcement officers and that serve a population of 50,000 or more individuals. Eligible agencies under the COPS FAST Application are those agencies serving populations of fewer than 50,000 persons.

DATES: Letters of intent to participate in COPS AHEAD must be sent to the COPS Office postmarked no later than November 10, 1994. COPS FAST Applications will be available by November 1, 1994 and completed applications must be received by the COPS Office no later than December 31, 1994.

ADDRESSES: Letters of intent to participate in COPS AHEAD and completed applications should be addressed to Director, COPS Program, P.O. Box 14440, Washington, DC 20044. Letters of intent may be sent by telecopier to (202) 514-9272.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307-1480 or 1-800-421-6770, or David Hayeslip or Craig Uchida, Office of Community-Oriented Policing Services, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 514-2058.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to participate in community policing. COPS AHEAD and the COPS FAST Application are approaches developed by the Department of Justice to speed the deployment of new officers devoted to community policing on the streets and rural routes of this nation.

COPS AHEAD for Populations of 50,000 and Over

The COPS AHEAD program permits eligible agencies serving a population of 50,000 or more individuals to select and train up to a maximum of 3 percent of their actual level of sworn officers as of October 1, 1994, prior to submission and approval of a COPS grant application. Funding will begin once the new officers have been sown and a satisfactory grant application has been submitted and approved. Grants will be made for up to 75 percent of the total salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. If funding requests exceed the funds available under COPS AHEAD, the maximum amount or starting date of grants may be adjusted to accommodate demand.

A law enforcement agency interested in participating in COPS AHEAD must send a letter of intent to the address identified above postmarked no later than November 10, 1994. The COPS Office expects to confirm the eligibility of applicants and proposed funding levels no later than November 21, 1994. Officers proposed to be funded under COPS AHEAD must be hired no later than the agency's first class starting in 1995.

At the time that proposed funding levels are confirmed, a formal grant application will be sent which will request information concerning the agency's strategic community policing plan for the use of the officers that have been approved to be hired, budget plans and projections, and other information to enable the COPS Office to confirm compliance with grant conditions.

An application or grant award under COPS AHEAD will not affect the consideration of an agency's application for a grant under any other COPS program. An agency that receives funding under COPS Phase I is eligible to receive additional funding under COPS AHEAD if the combined hiring under both programs does not exceed 3 percent of the actual October 1, 1994 force level.

COPS FAST Application for Populations Under 50,000

The COPS FAST Application dramatically simplifies the process of applying for a federal grant. The FAST Application is a one-page, fill-in-the-blank form that requests basic identifying information about the agency, the number of police officers currently on the force and the number of new officers requested, basic financial information and an agreement to abide by standard legal requirements. Applications will be available by November 1, 1994, and will be mailed to all eligible agencies. Completed applications will be due to the COPS Office by December 31, 1994. The COPS Office will advise applicants of an authorized hiring level by February 1, 1995. Before funding may begin, jurisdictions designated for funding will be required to submit necessary budget information and a brief description of community policing plans. Technical assistance with the development of policing plans will be provided to jurisdictions in need of such assistance. Funding will begin once the new officers have been sworn. Grants will be made for up to 75 percent of the total salary and benefits of each officer over three years, subject to a maximum of $75,000 per officer.

Through the COPS FAST Application, the COPS program will provide up to $165 million in grants this fiscal year to state, local and other public law enforcement agencies. If requests exceed the funds available, the amount or starting date of grants may be adjusted to accommodate demand. An award under COPS FAST will not affect the consideration of an agency's application for a grant under any other COPS program. An agency that receives funding under COPS Phase I is eligible to receive additional funding under COPS FAST.

General Comments

COPS grant funds may not be used to replace funds that eligible agencies otherwise would have devoted to future office hiring. In other words, any hiring under COPS AHEAD or the COPS FAST Application must be addition to, and not in lieu of, officers that otherwise would have been hired. In hiring new officers, agencies may not reduce the scope of their customer screening and training procedures, and must include community policing principles and methods in their training curricula. In addition, to the extent practicable, COPS grant funds should be used to increase the representation of women and racial and ethnic minorities within the ranks of sworn officers.

In light of the expedited nature of these approaches, the time frames responses from interested agencies are relatively short. A complete description of program requirements will be contained in the application kits. Additional COPS grant programs will be announced in the near future.

Dated: October 21, 1994.

John R. Schmidt,

Associate Attorney General.

[FR Doc. 94-27201 Filed 11-2-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III—Job Development Broker Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to identify job development brokers that will link specific job opportunities with the development of appropriate curricula and support mechanisms for eligible dislocated workers to be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA).

This notice describes the process that eligible entities must use to apply for demonstration funds, the subject area for which applications will be accepted for funding, how grantees are to be selected, and the responsibilities of grantees. Up to $2 million will be made available for funding the approximately three to five demonstration projects covered by this solicitation.

Everything needed to apply is contained in this announcement.

DATES: Applications for grant awards will be accepted commencing November 6, 1994. The closing date for receipt of applications will be December 16, 1994, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Brenda Banks, Reference: SGA/DAA 94-23, Constitution Avenue, NW., Room S-4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 219-7300 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program, and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. There is no separate application package. Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications. Part V describes the reporting requirements.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Part B of Title III for demonstration programs. The Secretary shall conduct or provide for an evaluation of the success of each demonstration program.

B. Purpose of the Demonstration

Job Development Broker Demonstration Projects funded through this solicitation are to provide reemployment and retraining services—as described in sections 314(c) and 314(d) JTPA—to eligible dislocated workers. The goals of this retraining program are to:

—Expand the retraining resources available to dislocated workers being served under Title III of the Job Training Partnership Act; and

—Support the development of a job development marketplace where brokers with retraining and employment opportunities can compete to provide assistance to dislocated workers on the basis of performance and customer satisfaction.

The purpose of this demonstration is to identify brokers that will link specific job opportunities with the development of appropriate curricula and support mechanisms so that eligible dislocated workers who successfully complete the program will get those jobs, at a cost that will be competitive with other program options available for the dislocated worker substate grantees and their customers.

C. Demonstration Policy

1. Awards

DOL will select approximately three to five applicants, making awards up to $2.0 million in total, to conduct demonstrations for job development brokers. It is anticipated that individual grant awards will be approximately $300,000 to $500,000 each; however, in no case will an award exceed $750,000.

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2. Evaluation

Under a separate announcement, DOL will select and fund an evaluation contractor to: (1) Provide technical assistance to selected grantees in establishing appropriate data collection methods and processes; and (2) conduct an independent evaluation of the outcomes, impacts and benefits of the demonstration projects. Grantees will be expected to make available participant records and access to personnel, as specified by the evaluation contractor.

In addition, DOL will establish, for each demonstration project site, an oversight group made up of federal, State and substate staff.

3. Eligible Participants

Workers eligible for assistance under these demonstration grants are those eligible dislocated workers who are participants in Title III funded programs operated by State and substate grantees.

4. Allowable activities

Grant funds awarded under this demonstration may be used to provide the services described in JTPA Section 314(c) and Section 314(d). The establishment of linkages with employers, development of appropriate training curricula, and negotiation of agreements with the Title III State and substate grantees will be critical parts of this demonstration, but they must be combined with delivery of services and placement of participants in unsubsidized employment.

5. Grant Period

Projects must be completed not later than June 30, 1996. Applications must clearly describe project activities to be undertaken during the proposed grant period. Funding of project activity subsequent to the approved period of performance will be the responsibility of the applicant. Additional grant funds will not be available under this demonstration.

6. Cost Limitations

Demonstration grants are not subject to the cost limitations for formula-funded Title III grants at Section 315 of the JTPA. However, any offeror proposing administrative costs higher than 15 percent of the budget and supportive services higher than 25 percent of the funds requested in the application shall provide a narrative justification.

D. Demonstration Topic

DOL is soliciting applications for demonstration projects to test the ability of brokers to market services that link specific job opportunities with appropriate training and support mechanisms so that eligible dislocated workers who successfully complete the program will get those jobs, at a cost which will be competitive with other program options available for Title III substate grantees and their participants.

Part II. Application Process

A. Eligible Applicants

Eligible applicants under this demonstration include (1) employers and associations of employers, (2) unions and organizations representing workers, and (3) education and training institutions. Consideration will be given to awarding at least one grant in each of the three categories of eligible applicants. While matching funds will not be required, applicants will have to demonstrate the ability to market their services to dislocated worker program grantees that have training resources, including Title III formula-allotted funds to States and substate grantees, or Title III National Reserve Account funds.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Proposal

The Financial Proposal shall contain the SF–424, "Application for Federal Assistance" (three ink signed originals) Appendix No., and SF 424–A, "Budget Information" (Appendix No. 2). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages: a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each of the Title III cost categories at Section 314 of JTPA for funds requested through this grant; an identification of the amount of each budget line item which will be covered by other funds, and the sources of those funds (including other Title III funds, employer funds, in-kind resources secured and unsecured loans, grants, and other forms of assistance, public and private); and an analysis of the cost effectiveness in terms of unit costs for the delivery of services to individual dislocated workers in comparison with similar services available to dislocated workers through Title III, and in terms of the scope of the effort with regard to the projected number of placements available and the number of different dislocated worker program operators (States and substate grantees) which will be involved.

Federal funds cannot be used to support training which an employer is in a position to, and would otherwise, provide.

Federal funds may not be used for acquisition of production equipment. The only type of equipment that may be acquired with Federal funds is equipment necessary for the operation of the grant. Grant funds may cover only those costs which are appropriate and reasonable. In the instance of a purchase, the cost of the equipment is to be prorated over the projected life of the equipment to determine the cost to the grant. Awardee must receive prior approval from the Department of Labor/Employment and Training Administration's Property Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of $5,000 or more, and a useful life of more than one year as defined in OMB Circulars A–102 and A–110. This includes the purchase of ADP equipment. The request must be directed through your Grant Officer's Technical Representative (GOTR) and must include a detailed description and cost of the items to be acquired.

Applicants may budget limited amounts of grant funds to work with technical expert(s) to provide advice and develop more complete project plans.

2. Technical Proposal

The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work/Project Summary as described in Part III of this announcement. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

3. Page Count Limit

Applications are to be limited to 30 single-side pages, single-spaced. The technical proposal should include a 2 to 3 page executive summary.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time by December 16, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it—

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 15th of the month must have been mailed by the 10th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees to the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person or by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before an award.

F. Period of Performance

The period of performance will be from the date of grant execution through not later than June 30, 1996.

G. Funding

DOL has set aside up to $2.0 million to be awarded, based on receipt of meritorious proposals consistent with the criteria identified in this announcement. It is expected that grant awards will be approximately $300,000 to $500,000 each. However, in no case shall an award exceed $750,000.

Part III. Statement of Work

Each application must include in the appropriate section(s): (1) Information that indicates adherence to the provisions described in Part I of this announcement; (2) information that responds to the requirements in this part; and (3) other information the offeror believes will address the selection criteria identified in Part IV. Each application should follow the format outlined here:

A. Target Group

A description of the qualifications or criteria for participation in the demonstration project, and the process to be used to identify and select participants to be served through this demonstration project from among the total number of eligible individuals served by the Title III program in the area covered by the demonstration application.

B. Components of the Job Development Broker Demonstration Program

An identification of the major elements of the job development broker demonstration project and a description of how the project works in terms of enrolling eligible workers and placing them in agreed upon unsubsidized employment. Specifically, applicants must demonstrate:

The availability of specific jobs or occupations for which training will be provided and the relevance of the training to the jobs into which participants will be placed;

A commitment from the employers to hire dislocated workers who successfully complete the training into those jobs; and

Agreements with dislocated workers programs under Title III of the Job Training Partnership Act that will identify eligible dislocated workers and refer them to the broker for service.

C. Administration and Management

Identify the management structure for the project and demonstrate the means to ensure accountability for performance. Provide a description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

D. Use of Existing Services and Resources

An identification of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project.

The application must include information on any other JTPA funds and non-JTPA resources committed to this project, including employer funds, secured and unsecured loans, grants, and other forms of assistance, public and private. The application shall also describe the relationship of this project to the ongoing assistance to dislocated workers through the formula-funded JTPA Title III program(s) in the service area.

E. Coordination and Linkages

A description of the consultation with relevant parties in developing the project design and of the role of these parties in implementing the project, especially with regard to employer involvement in the development of appropriate training. Suggested consultation shall include: State JTPA Dislocated Worker Unit, Substate Title III grantee(s) and administrative entity(ies), as well as organized labor, employers, and organizations providing education, training and supportive services.

F. Participant Services

A description of the services to be available and/or provided to participants. The services supported with funds under this grant must be allowable under Section 314 of the Act. This description should include a participant service flowchart indicating the sequence in the participant service process and the criteria/decision points which are used to determine the appropriateness of specific services for individual participants, and the support

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provided to ensure that each participant will receive the appropriate assistance from the point of enrollment until 90 days after placement.

G. Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures should include, but are not limited to:

- The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs;
- Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;
- Average wages of participants prior to and at completion of project;
- Customer satisfaction with the project services, and of critical points in the service delivery process; and
- Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of service and comparison with other available service strategies, and acceptance and agreements with Title III grantees. [Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.]

The proposal shall also describe how outcomes achieved by individuals in the retraining program will be compared to outcomes achieved by individuals not receiving such assistance at the same Title III grantee.

H. Replicability

Provide a description of the applicant's plans for continuing the project or how it might be replicated.

I. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel of specialists selected by DOL. Panelists will evaluate the proposals for acceptability with emphasis on the various factors enumerated below. The panel results are advisory in nature and not binding on the Grant Officer.

Evaluations will be made on the basis of both what the proposed offeror intends to do during the grant period, and on the usefulness of the demonstration after the end of the grant period.

A. Technical Evaluation (Possible Total: 75 Points)

Services and Target Group. The demonstrated relationship between the services to be provided and the jobs into which participants are to be placed, and the degree to which the services appear to meet the needs of the target population. The scope of the project in terms of the number of jobs available, the number of participants to be enrolled, and the number and geographic dispersion of Title III grantees to be served. The geographical area served by the project (substate area, multiple substate areas, regionwide, industrywide, or national). The mechanism that will ensure appropriate training and support for each participant from enrollment to 90 days following placement. (20 points)

Job Development Broker Project Design. The completeness of the description of the retraining, including the jobs for which the training is being provided, a demonstration of employer involvement in the design, and the commitment by employers to hire participants who successfully complete the program. The extent to which the project is cost competitive with other service strategies available to Title III grantees and their participants. The agreements with Title III grantees for referral of qualified participants, and the procedures to establish additional agreements with other Title III grantees. The program specifications and planned outcomes that will be used to monitor and measure performance. (30 points)

Coordination and Linkages; Utilization of Resources. The extent to which the proposal defines the roles and responsibilities of the applicant and its partners including representatives of the employer(s), the workers and the unions, the Title III grantees, the training providers and others. The number and scope of commitments with employers, and Title III grantees. The extent to which the project will be integrated with other resources and will leverage other resources to increase marketability. (15 points)

Management and Continuity. The extent to which the management structure monitors performance and customer satisfaction and includes procedures for continuous quality improvement, and which reports that performance to the substate grantees for use in informing the customer about available service options. The viability of the project, if successful, to be continued and expanded, including a description of efforts to negotiate agreements with additional Title III grantees for referral of participants. (10 points)

B. Cost Evaluation (25 Points)

The cost effectiveness of the project as indicated by the relationship of proposed costs to number of participants to be served, the range of services to be provided and the planned outcomes, as compared to other service strategies available for the Title III grantees. The extent to which the budget is justified, and which it supports the planned outcomes.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer.

Part V. Reporting Requirements

1. Dislocated Worker Special Project Reports as required.
2. Standard Form 269, Financial Status Report Form.
3. Quarterly Progress Reports.
4. Final Project Report.

Signed at Washington, DC, this 28th day of October 1994.

Janice E. Perry,

Grant Officer.

BILLING CODE 4510-30-M

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE SUBMITTED	Applicant Identifier
		5. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 17.246

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	
c. State	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
d. Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

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INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*
2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*
3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*
4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*
5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*
6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*
7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*
8. ***Total, Direct Costs:*** *Add lines 1 through 7.*
9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*
10. ***Training /Stipend Cost:*** *(If allowable)*
11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 94-27275 Filed 11-2-94; 8:45 am]
BILLING CODE 4810-30-C

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Announcement of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on November 30, 1994 to December 2, 1994. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 30-December 1 and from 9:00 a.m. to 4:00 p.m. on December 2 in Room M-09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. In addition to the open application review held on November 29-December 2 an overview policy discussion will be held from 2:00 p.m. to 4:00 p.m. on December 2.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: October 25, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-27207 Filed 11-2-94; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-0005 (which should be mentioned in all correspondence concerning this draft guide), is a second proposed revision 2 to Regulatory Guide 10.5, "Applications for Licenses of Broad Scope." This guide is being revised to provide guidance on the type and extent of information needed by the NRC staff to evaluate applications for a specific license of broad scope for byproduct material.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by January 25, 1995.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of October, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94-27004 Filed 11-2-94; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-424, 50-425]

Georgia Power Company; (Vogtle Electric Generating Plant, Units 1 and 2)

Exemption

I

Georgia Power Company (GPC or the licensee) is the holder of Facility Operating License Nos. NPF-68 and NPF-81, which authorize operation of the Vogtle Electric Generating Plant, Units 1 and 2 (the facilities) at steady-state reactor power level not in excess of 3411 megawatts thermal, each. The license providers, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. Each unit at the facility consists of a pressurized water reactor located at the licensee's site in Burke County, Georgia.

II

Section 50.54(q) of Title 10 of the Code of Federal Regulations requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR 50. Section IV.F.2 of Appendix E requires that each licensee annually exercise its emergency plan. Section IV.F.3 of Appendix E requires that each licensee shall exercise with offsite authorities such that the State and local government emergency plans are exercised biennially.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). Special circumstances also exist when the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation (10 CFR

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50.12(a)(2)(v)). The underlying purpose of 10 CFR 50, Appendix E, Sections IV.F.2 and IV.F.3, is to demonstrate that the emergency plans are adequate and capable of being implemented, and that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

III

By letter dated July 21, 1994, the licensee requested an exemption from the requirements of 10 CFR 50.47 and Appendix E to conduct an annual exercise of the Vogtle Emergency Plan in 1994. The licensee had planned to conduct a full-participation exercise involving both the states of Georgia and South Carolina and local response organizations on July 27, 1994. The licensee requested that an exemption be granted because the state of Georgia requested to delay the 1994 annual exercise from July 27, 1994, to January 11, 1995. The request to move the exercise date was originated by the Georgia Emergency Management Agency (GEMA) because they would be unable to participate on July 27, 1994, as GEMA personnel were required to respond to a federally-declared flood disaster in South Georgia. This proposed delay will prevent Vogtle from meeting the annual requirement to exercise the Vogtle emergency plan as specified in Appendix E to 10 CFR 50, and therefore, GPC requested a schedular exemption.

The previous emergency preparedness exercise at Vogtle was successfully conducted on August 4, 1993, and no violations, deviations or exercise weaknesses were identified. Offsite participation was limited to receiving Emergency Notification Messages. A joint plume and ingestion exposure pathway exercise involving the States of Georgia and South Carolina and the four local governmental agencies was conducted on May 19, 1992.

The licensee had scheduled, planned and coordinated the 1994 exercise with participating Federal, State, and local agencies for mid-July. The scope and objectives, and the final scenario documentation for the July 1994 exercise were submitted to the NRC on April 14, 1994, and May 17, 1994, respectively, which is within the time frames established for their submittal in support of a July 1994 exercise. Thereby, the licensee demonstrated good faith effort in attempting to comply with the regulation.

The schedule for future exercises will not be affected by this exemption. GPC has stated it will conduct the previously scheduled 1995 exercise the week of July 10, 1995, as planned. The licensee states that concurrence for the proposed date of January 11, 1995, has been received from FEMA, NRC Region II, and the affected State and local agencies. FEMA confirmed its support for the revised exercise date on September 1, 1994.

The most recent NRC Systematic Assessment of Licensee Performance (SALP) report for Vogtle, issued on August 12, 1994, for the period January 3, 1993, through July 2, 1994, indicates that the performance of the emergency preparedness program was strong; weaknesses observed during the previous assessment period (relating to state and local staff notification and protective action recommendations) were effectively addressed and observed to be corrected during the 1993 annual exercise; performance during the conversion to new emergency action levels was effective and well controlled; training of shift supervisors and off-site personnel was excellent; attention to emergency response facility and equipment material condition continued to be effective; and overall, excellent emergency preparedness program performance was demonstrated by proper classification and reporting of three events.

IV

Based upon a review of the licensee's request for an exemption from the requirement to conduct an exercise of the Vogtle emergency plan in1994, the NRC staff finds that the underlying purpose of the regulation will not be adversely affected by the rescheduling of the July 27, 1994 exercise to January 11, 1995. The effective response capability demonstrated by the licensee during the 1993 emergency preparedness exercise, the activities in preparation for the 1994 exercise, including a table top exercise with the states and counties and the readiness of the licensee's emergency preparedness program as reflected in its SALP rating and the most recent inspection report, provide assurance that the resources and personnel necessary for proper emergency response are in place to respond to a nuclear emergency at the Vogtle site. Thus, an exercise in 1994 is not necessary to achieve the underlying purpose of the rule and the requested exemption from the requirement in 10 CFR Part 50, Appendix E, Section IV.F, to defer the performance of an exercise of the Vogtle emergency plan until January 11, 1995, will not adversely affect the overall state of emergency preparedness at the Vogtle site.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter of July 21, 1994, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and that special circumstances are present as set forth in 10 CFR 50.12(a)(2) (ii) and (v).

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (59 FR 52841 dated October 20, 1994).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of October, 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27251 Filed 11–2–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34906; File No. SR–NYSE–94–30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Its Allocation Policy and Procedures

October 27, 1994.

I. Introduction

On August 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of revisions to its Allocation Policy and Procedures that were implemented on a one year pilot basis.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34644 (September 7, 1994), 59 FR 47192 (September 14, 1994). No comments were received on the proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 33121 (October 29, 1993) (approving such changes on a one-year pilot basis to expire October 28, 1994) ("Pilot Release").

II. Description of the Proposal

The NYSE Allocation Policy and Procedures ("Policy") governs the allocation of equity securities to NYSE specialist units.[4] The intent of the Policy is to ensure that each equity security listed on the Exchange is allocated in the fairest manner possible to the best specialist unit for that security. In its continuing efforts to enhance allocation decisions, the Exchange conducts periodic reviews of the allocation process.[5] In October of 1993 the NYSE amended its Policy on a one-year pilot basis to revise, among other things, the allocation criteria, the composition of the Allocation Committee ("Committee")[6] and Allocation Panel ("Panel"),[7] and the Committee's disclosure policy.

The Exchange fully implemented the changes to the Policy, detailed in the Pilot Release, in February of 1994. The Exchange states that it has reviewed the changes to the Policy as they have impacted on the allocation process and it believes that there has been a beneficial effect in terms of the way in which stocks are allocated. The Exchange further maintains that it continues to subject this vital function to rigorous scrutiny, looking to refine the process, as is evidenced by the filing of further changes to the Policy cited earlier.

[4] The NYSE Allocation Policy applies to the allocation of equity securities under the following circumstances: (1) when an equity security is to be initially listed on the NYSE; (2) when an equity security is to be reallocated as a result of disciplinary or other proceedings under NYSE Rules 103A, 475 and 476; or (3) when a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement action. *See* NYSE Allocation Policy and Procedures.

[5] Subsequent to the implementation of the pilot program pursuant to the Pilot Release, the Exchange conducted another comprehensive review of the allocation process and further revised the Policy (see SR–NYSE–94–18). These revisions include, among other things, the composition of the Allocation Committee and the Allocation Panel, the quorum requirement for the Committee, and allocation of merging companies.

[6] Under the Policy, the NYSE Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors ("Board"). The Allocation Committee renders decisions based on the allocation criteria specified in the Allocation Policy.

[7] The composition of the Panel reflects the Committee structure and includes floor brokers, allied members, and floor broker Governors. The Panel comprises the pool of individuals from which the Committee is formed. The Panel members are selected through an annual appointment process that utilizes input from the membership. Panel members are appointed to serve a one-year term; Governors, however, remain on the Panel for as long as they are Governors.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.[8] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[9] and Rule 11b–1 thereunder,[10] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. For the reasons set forth below, the Commission believes that the amended Policy should enhance the Exchange's allocation process, encourage improved specialist performance and, thereby, protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[11] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an incentive to strive for optimal performance. The Commission fully supports and encourages the NYSE's continuing effort to develop meaningful and effective allocation policies that encourage improved specialist performance and market quality.

The Commission believes that the proposed revisions to the NYSE's Policy should refine the Exchange's allocation process and, thereby, encourage improved specialist performance. As discussed in more detail in the Pilot Release, the NYSE's Policy emphasizes that the most significant allocation criterion is specialist performance. In the Commission's view, performance-based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.

The Commission believes that the use of Specialist Performance Evaluation Questionnaire ("SPEQ")[12] ratings, objective performance measures, and the Committee's professional judgment under the revised Policy should enable the Committee to review specialist performance in a more precise and comprehensive fashion. Specifically, the Commission believes that it is appropriate to limit the weight that the SPEQ may be given in allocation decisions to one-third and to increase the emphasis given to objective measures of performance. Although the SPEQ remains a useful tool to measure performance, the Commission has long believed that objective indications of performance should play an important role in allocation decisions. In particular, the Commission believes that objective performance measures can identify poor market making performance that otherwise may not be reflected in a unit's SPEQ survey results.[13]

The Commission believes that the NYSE's proposal to require that SPEQ performance data be presented to the Committee in four tiers, with units listed alphabetically in each comparable group, is a reasonable means of ranking units for comparison. In this regard, the Commission recognizes that a unit might not have SPEQ scores which, from a statistical perspective, are significantly different from the next higher or lower unit. The presentation of the SPEQ results in four tiers that differ significantly should provide the Committee with appropriate groupings of specialist units for its use in allocation decisions. This should help the Committee in its evaluation of applicants for a new listing.

The Commission believes that the Exchange's proposal to amend its Policy to state that in the case of spin-offs, listings of related companies and relistings of securities, the NYSE will honor a listing company's request that it not be allocated automatically to its

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] 15 U.S.C. 78k(b) (1988).

[10] 17 CFR 240.11b–1 (1994).

[11] *See e.g.*, Rule 11b–1, 17 CFR 240.11b–1 (1994); NYSE Rule 104.

[12] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

[13] The Commission believes that it is appropriate to delete the objective performance measure pertaining to the Opening Automated Report Service ("OARS") contained in the Policy. Because this performance measure was deleted from NYSE Rule 103A in 1990, deleting the reference to the OARS would update and remove an obsolete performance measure from the Policy.

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former specialist unit or the specialist in the parent or related company, should provide an opportunity for the listed company to provide input into the allocation of an affiliated listing. However, a listing company's preference should not be allowed to take significance over or negate specialist performance. A listing company's preference is a minor, supplemental factor and only should be used to distinguish between the best qualified units based on performance related criteria.[14] In this regard, the listing company's request would serve only to open the allocation to all units.

The Commission believes that the Exchange's proposal to delete the reference to specific aspects of trading foreign issues on the Exchange floor should provide the NYSE with additional flexibility in allocating foreign issues. Again, the foreign listing considerations in the Policy are supplemental in that specialist performance remains the key factor in allocation decisions.

The Commission believes that the NYSE's proposal to eliminate specialist representation on the Committee will solve the appearance of a conflict of interest on the Committee and, thereby, enhance confidence in the allocation process. The Commission concurs with the NYSE's conclusion that floor brokers and allied members are in a better position to judge the relative strengths and weaknesses of specialist units. The Commission also agrees that an effort should be made to appoint individuals that have not yet served on the Committee before reappointing past Committee members. This should ensure that a broader segment of the trading floor community will have an opportunity to serve on the Committee. In this regard, the Commission also agrees with the NYSE in that the Panel should consist of a core group of experienced, senior professionals and supports its proposal to select a significant number of floor members on the Panel from among the Exchange's senior floor officials, floor governors and former allocation committee chairmen. Accordingly, the Commission believes that the revised mix of both Committee and Panel members is appropriate and consistent with the Act.

The Commission believes that the NYSE's proposal to require that the list of Committee members be kept confidential and prohibit members and investment bankers from initiating contact with Committee members regarding pending allocations should minimize potential conflicts in allocation decisions. Under the revised Policy, Committee members still would be permitted to initiate contact with any specialist if they believe it would be beneficial when making an allocation decision. The Commission believes that this revision to the Policy should help to ensure that specialist performance, rather than subjective recommendation, is the most significant criterion in allocation decisions.

The Commission believes that the NYSE's proposal to amend the Policy to discontinue the practice of distributing a summary of reasons for each allocation decision to Exchange floor members provides for more efficient resource allocation and reduces unnecessary paperwork. At the same time, the Commission emphasizes, however, that the Exchange will make such information available to those who are interested by continuing to publish[15] allocation decisions for its membership and listing companies.

The Commission believes that the Exchange's proposal to permit all current Committee members, including outgoing members, to vote for an incoming Committee Chairman is reasonable in that outgoing Committee members have gained valuable experience with candidates with whom they have been serving. Therefore, the Commission believes that outgoing members' input should broaden the scope of the election of the NYSE's Committee Chairman, and help to ensure the selection of the best qualified Chairman of the Committee.[16]

The Commission believes that the proposed amendments to the allocation application procedure to require information about a specialist unit's contacts with listed companies and NYSE member organizations should help to facilitate compliance with NYSE Rule 105. NYSE Rule 106(c) requires each specialist to report to the Exchange semi-annually, a record of their contacts with senior officials of their listed companies, their off-floor contacts with representatives of each of the 15 largest Exchange member organizations, their off-floor contacts with each other member organization that is a significant customer of the specialist unit, and their off-floor contacts with any other member organization that requests such contact. Because the revised application would specify the Exchange's current specialist contact requirement, the proposal should assist specialists in their responsibilities under the rules of the Exchange.

Finally, the Commission believes that it is appropriate for the NYSE to implement the revised Policy on a permanent basis. The Commission believes that the pilot period has provided the Exchange and the Commission with an opportunity to study the effects of the revised Policy on the NYSE's allocation process. During the pilot period, the Exchange has monitored carefully the effects of the revised Policy and has reported its findings to the Commission. The Commission has reviewed and analyzed the reports submitted by the Exchange and on that basis, and for the reasons discussed above, believes that the revised Policy is consistent with the Act and furthers the objectives of the Exchange to develop an efficient and reliable allocation procedure.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–94–30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27229 Filed 11–2–94; 8:45 am]

BILLING CODE 8010-01-M

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[14] *See* Securities Exchange Act Release No. 27803 (March 14, 1990), 55 FR 10748 (March 22, 1990) (order approving File No. SR–NYSE–88–32).

[15] The term "publish" in this context refers to: (1) a posting on a bulletin board on the floor of the Exchange giving notice to all floor members of each allocation; and (2) a notification to the issuer whose security was allocated.

[16] The Commission believes that the NYSE's proposal to standardize the agenda used to educate Committee Chairmen and members should encourage Committee Chairmen and members to maintain quality performance in their allocation responsibilities.

[17] U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[Release No. 34–34909; File No. SR–PHLX–94–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Storage of Option Customer Account Information for Supervisory Purposes

October 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on July 5, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend paragraph (d), "Maintenance of Customer Account Records," of PHLX Rule 1025, "Supervision of Accounts," to allow member organizations to maintain customer information and account statements off-site, rather than at the principal supervisory office, as long as the records are readily accessible and promptly retrievable.[3]

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34561 (September 12, 1994), 59 FR 47660 (September 16, 1994).[4] No comments were received on the proposal.

Currently, PHLX Rule 1025(d) requires member organizations to maintain at the branch office servicing the customer's account and at the principal supervisory office background and financial information of customers who have been approved for options transactions. In addition, Commentary .03 to PHLX Rule 1025 requires member organizations to maintain, at the principal supervisory office with jurisdiction over the office servicing the customer's account, information to permit review of each customer's options account to determine the compatibility of options transactions with investment objectives, the size and frequency of options transactions, commission activity in the account, profit or loss in the account, undue concentration in any options class or classes, and compliance with the provisions of Regulation T of the Federal Reserve Board. The PHLX proposes to amend PHLX Rule 1025(d) and Commentary .03 to allow member organizations to maintain the required customer information and account statements off-site, rather than at the principal supervisory office, as long as the records are readily accessible and promptly retrievable. However, branch offices must continue to maintain customer account information on site.

The PHLX states that the increasing use of computers, fax machines, optical disk and other technology, coupled with the expense of storing records on-site, have resulted in more member organizations storing records away from their principal supervisory offices.[5] In view of technological advances, the Exchange believes that it is appropriate to permit the off-site storage of customer records previously required to be maintained at a principal supervisory office. The Exchange also believes that offsite storage should not compromise the supervisory obligations of member/participant organizations because, under the proposal, the customer information necessary to fulfill those responsibilities must be easily accessible and promptly retrievable.

Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular with Section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[6]

Specifically, by allowing off-site storage of customer account information maintained at supervisory offices, the commission believes that the proposal should provide the PHLX's members with a cost-effective means to utilize computers, facsimile machines, optical disks, and other technology to store the required customer account information off-site while ensuring that member firms will continue to have easy access to all of the customer account information necessary to discharge their supervisory responsibilities. In this regard, the proposal provides that options customer account information stored off-site must be "readily accessible and promptly retrievable,"[7] thereby preserving the Exchange's ability to access and investigate customer account records. Thus, the Commission believes that the proposal strikes a reasonable balance between the PHLX's interest in allowing member organizations to reduce the cost of storing customer account information and ensuring that the information continues to be available for supervisory purposes.

In addition, the Commission believes that it is reasonable for the PHLX to allow off-site storage of customer account information maintained at supervisory offices, but not of account information stored at branch offices, because branch offices are responsible for the day-to-day administration of customer accounts and require immediate access to account information. For example by continuing to require branch offices to store customer account information on-site, the proposal facilitates broker compliance with the suitability requirements applicable to options customers.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–PHLX–94–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27230 Filed 11–2–94; 8:45 am]

BILLING CODE 8010-01-M

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[3] On October 27, 1994, the PHLX submitted a letter indicating that "readily accessible and promptly retrievable" generally means that the records will be available on the business day following the request. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Branch, Division of Market Regulation, Commission, dated October 26, 1994 ("October 26 Letter").

[4] On August 26, 1994, the PHLX submitted Amendment No. 1 to the proposal to clarify that the purpose of the proposal is to allow members to maintain required customer information and account statements off-site, rather than at the member's principal supervisory office, as long as the records are readily accessible and promptly retrievable.

[5] In June 1993, the Division of Market Regulation ("Division") issued a no-action letter permitting broker-dealers to maintain certain records required by Rules 17a–3 and 17a–4 under the Act on optical disk technology, under certain conditions. *See* Letter from Michael A. Macchiaroli, Associate Director, Division, Commission, to Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association, dated June 18, 1993.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *See* October 26 Letter, *supra* note 3.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20666; 812–9294]

Select Strategies Trust, et al.; Notice of Application

October 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Select Strategies Trust, Series 1 and subsequent series and any successor unit investment trust (the "Trust" and, each series, separately, the "Series"), NYLIFE Distributors, Inc. (the "Distributor"), NYLIFE Depository Corporation (the "Sponsor"), MacKay-Shields Financial Corporation (the "Adviser") and any open-end management investment company (or portfolio thereof), that may now or in the future be advised by the Adviser, whose shares are distributed by the Distributor, or that holds itself out to investors as part of a "group of investment companies" (the "Funds"), as that term is defined in rule 11a–3 under the Act.

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[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

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RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder; under sections 11 (a) and (c) of the Act to permit certain offers of exchange; and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants request an order: (a) permitting the respective Series to invest in shares of an open-end investment company and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting certain offers of exchange involving the Trust; and (e) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on October 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: 51 Madison Avenue, New York, New York 10291.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a unit investment trust, organized in series form and registered under the Act. Units of each Series will be registered under the Securities Act of 1933 ("Securities Act") and will be offered to the public. Each Series will be organized pursuant to a trust indenture that will incorporate a master trust agreement relating to the entire Trust (the agreement and indenture are collectively referred to as the "Trust Agreement"). The Trust Agreement will name a qualified bank as trustee (the "Trustee").

2. Each unit of a Series will represent an undivided interest in an unmanaged portfolio consisting of (i) U.S. Treasury bonds or notes paying no current interest (zero coupon obligations) and (ii) shares of a Fund. Each Series will acquire an amount of zero coupon obligations that, upon termination of the Series, will be sufficient to pay each initial investor purchasing units of the Trust Series on the first date such units are offered for sale, the total amount that the investor originally invested in the Series, plus sales charges incurred. The remainder of the Series' proceeds will be invested in shares of a single Fund.

3. The Sponsor will deposit in each Series zero coupon obligations at a price determined by an independent evaluator and shares of a Fund at their net asset value. With the deposit of the zero coupon obligations and Fund shares in a Series, the Sponsor will have established a proportionate relationship between the principal amount of zero coupon obligations and Fund shares so that the initial investors will receive at least their original purchase price, including sales charges, upon termination of the Series. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units in each Series which will represent the entire ownership of the Series. The units of a Series will be offered for sale to the public by the Sponsor through the final prospectus after the registration statement of Form S–6 under the Securities Act has been declared effective and clearance with the applicable state authorities has been obtained.

4. The units will be offered initially at a price based on the net asset value of the shares of a Fund selected for deposit in that Series, the offering side value of the zero coupon obligations deposited in the Series, plus a sales charge. An independent evaluator will charge each Series an evaluation fee for the cost of determining the value of zero coupon obligations that are deposited in the Series. No such fee will be charged on Fund shares deposited in the Series because the value of those securities is readily available. Upon redemption, each Series will redeem units in that Series at prices based on the aggregate bid side value of the zero coupon obligations plus the net asset value of the Fund's shares.

5. Although it will not be obligated to do so, the Sponsor will contract with a registered broker-dealer (the "Market Maker"), initially expected to be an organization unaffiliated with the Sponsor, to maintain a secondary market for the units. The Market Maker will repurchase the units at a price based on the aggregate bid side value of the zero coupon obligations plus the net asset value of the Fund's shares (excluding sales loads on Fund shares) and will reoffer the units at this price plus a sales charge. The extent to which the Market Maker maintains a secondary market for the units will reduce the number of units presented to the Series for redemption and thus obviate the need for the Series to sell zero coupon obligations or Fund shares to meet redemption requests. In the event that the Sponsor does not enter into or maintain a contract with the Market Maker, or the Market Maker does not maintain a secondary market in the units, the Sponsor will instruct the Trustee to sell Fund shares or zero coupon obligations, the latter only if after the sale the original proportional relationship between zero coupon obligations and unit value is maintained.

6. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a potential corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of a prospectus. The Sponsor anticipates that any additional securities deposited in the Series subsequent to the initial date of deposit in connection with the sale of these additional units will maintain the proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Series.

7. Each Fund will be an open-end management investment company that is registered under the Act. Each Fund will be advised by the Adviser, have its shares distributed by the Distributor, or otherwise be a fund within the same group of investment companies, within the meaning of rule 11a–3 under the Act. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934.

8. Some of the Funds may impose front-end sales loads ("FESL"), contingent deferred sales charges ("CDSC"), in accordance with an

exemptive order (the "CDSC Order"),[1] or rule 12b–1 fees. Any FESL or CDSC will be waived by the Fund on purchases by a Series and any rule 12b–1 fees will either be waived or rebated immediately to the Trustee of a Series by the Fund. In the event that a rule 12b–1 fee is rebated in this manner, the Series will use the rebated fee to pay for that Series' expenses and distribute to unit holders any remainder. If rule 12b–1 fees are not charged by the Fund, the Series will pay for its expenses from any income received from distributions paid on Fund shares and, if necessary, will sell Fund shares to pay for expenses. Zero coupon obligations held by a Series will not be sold to pay for Series or Trust expenses.

9. Each Series will terminate after a stated period of years, initially expected to be approximately 10 to 15 years. At the termination of a Series, unitholders will have a choice of receiving (1) their pro rata share of the underlying Fund shares in kind and the cash proceeds from the zero coupon obligations, (2) their pro rata share of cash upon the liquidation of the Fund shares and zero coupon obligations or (3) their pro rata share of the underlying Fund shares in kind and investing the amount of cash proceeds from the zero coupon obligations in additional Fund shares without paying a FESL or CDSC, if any. After termination of a Series, unitholders electing the first or last option will become shareholders of the particular Fund and will be subject to their pro rata share of any rule 12b–1 fees charged by the Fund, as are all other shareholders of the Fund.

Applicants' Legal Conclusions

1. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. As the Sponsor intends to sell all of the Trust Series' units to the public, thereby withdrawing certificates representing the entire beneficial ownership of the Trust, applicants request exemptive relief from the net worth requirement of section 14(a). Applicants will comply in all respects with rule 14a–3, which provides an exemption from section 14(a), except that the Trust will not restrict its portfolio investments to "eligible trust securities."

2. Section 19(b) and rule 19b–1 thereunder make it unlawful for a registered investment company to distribute long-term capital gains more often than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit any capital gains resulting from the redemption of Fund shares to be distributed to unitholders along with the Trust's regular quarterly distributions. In all other respects, applicants intend to comply with rule 19b–1 under the Act.

3. Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter for such company to make or cause to be made certain offers of exchange on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Upon termination of the Trust, unitholders will have the option, which could be viewed as an exchange offer, to receive their pro rata share of the underlying Fund shares in kind and invest the amount of cash proceeds from the zero coupon obligations in additional Fund shares without the imposition of a FESL or CDSC (although rule 12b–1 fees will be imposed on the Fund shares ultimately held by the unitholder) (the "Exchange Option"). The "exchange" of Series' unit proceeds for Fund shares will be at relative net asset value since the Fund will waive any FESL or CDSC that it might otherwise impose if a unitholder selects the Exchange Option. As such, aside from a rule 12b–1 fee, if any, that would be imposed on unitholders once they became shareholders of a Fund that imposed such a fee, there will be no economic incentive for a broker to encourage a unitholder to select the Exchange Option at the termination of the Series. Applicants believe that the terms of the Exchange Option are fair and reasonable to the unitholders and consistent with the policy and purpose of section 11.

4. Section 17(d) and rule 17d–1 under the Act make it unlawful for any affiliated person or principal underwriter for a registered investment company, and any affiliated person of such persons, acting as principal, to effect any transaction in which such registered company is a joint or a joint and several participant with such person, unless the SEC has granted an order approving of the transaction. Applicants believe that the conditions imposed in any order granted will ensure that the proposed arrangement is consistent with the provisions, policies and purposes of the Act, and that neither the Trust nor the Fund will participate in the arrangement on a different or less disadvantageous basis than other participants.

5. Applicants do not request relief under section 12(d)(1) of the Act. Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies. Section 12(d)(1) (E) provides, however, that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only "investment securities" held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not "investment securities" for purposes of section 12(d)(1) (E)[2] and that the Fund shares are the only "investment securities" which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions and rebated rule 12b–1 fees received on Fund shares prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor or the Distributor in connection with the distribution of Fund shares to the Trust will be immediately rebated to the Trustee.

3. All Trust Series investing in shares of the same Fund will be structured so that their maturity dates will be at least thirty days apart from one another.

4. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustees will vote all shares of a Fund held in a Trust in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. No sales charge or redemption fee will be imposed on shares of a Fund which are held by any Series of the Trust or on any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination.

7. The prospectus of each Trust Series and any sales literature or advertising

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[1] Investment Company Act Release Nos. 20284 (May 9, 1994) (notice) and 20336 (June 6, 1994) (order).

[2] Equity Securities Trust, (pub. avail. Jan. 19, 1994).

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that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee if the Fund imposes a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27270 Filed 11–2–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0220]

Piper Jaffray Healthcare Capital, L.P. (SBIC); Notice of Issuance of a Small Business Investment Company License

On September 2, 1994, a notice was published in the **Federal Register** (59 FR 45745) stating that an application had been filed by Piper Jaffray Healthcare Capital, L.P. (SBIC) of Minneapolis, Minnesota, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business on September 16, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/75–0220 on September 26, 1994, to Piper Jaffray Healthcare Capital L.P., (SBIC) to operate as a small business investment company.

The Licensee will be owned by Piper Jaffray Healthcare Fund, L.P. (99.0%) and Piper Ventures Management IV, L.P. (1.0%). Investors holding more than 10.0% of Piper Jaffray Healthcare Fund, L.P. include Piper Jaffray Companies, Inc. through its Piper Jaffray Investors Fund VIII, and St. Jude Medical, Inc. a publicly-traded medical devices firm based in St. Paul, Minnesota. The Licensee will begin operations with $7.5 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27271 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

Senior Executive Service Performance Review Board List of Members

AGENCY: Small Business Administration.

ACTION: Listing of Personnel Serving as Members of this Agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires Federal agencies to publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Lawrence E. Barrett, Assistant Administrator for Information Resources Management
2. John R. Cox, Associate Administrator for Financial Assistance
3. Calvin Jenkins, Assistant Administrator for Administration (Substitute member, if required)
4. Janis F. Kearney, Assistant Administrator for Public Communications
5. Bernard Kulik, Associate Administrator for Disaster Assistance (Substitute member, if required)
6. Francisco A. Marrero, District Director, Newark
7. George H. Robinson, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance
8. Aubrey Rogers, District Director, New York (Substitute member, if required)
9. Carolyn J. Smith, Assistant Administrator for Personnel
10. John L. Smith, District Director, Chicago
11. John T. Spotila, General Counsel
12. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs
13. Janice E. Wolfe, Associate Deputy Administrator for Economic Development

The following is a listing of those individuals currently serving as members of this Office of Inspector General PRB:

1. Michael Zimmerman, Deputy Inspector General, Department of Commerce
2. Craig Beauchamp, Assistant Inspector General for Investigations, Department of Agriculture
3. Carolyn J. Smith, Assistant Administrator for Personnel

Dated: October 27, 1994.

Cassandra Pulley,

Administrator (Acting).

[FR Doc. 94–27270 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 09000006]

Shenandoah Venture Capital Limited Partnership; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1944)) by Shenandoah Venture Capital Limited Partnership, 208 Capitol Street, Suite 300, Charleston, West Virginia 25301, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder. Shenandoah Venture Capital Limited Partnership is a West Virginia limited partnership.

DM Associates, Inc. II is the general partner of the Applicant. Thomas Loehr owns 100 percent of the general partner. The officers and directors of DM Associates, Inc. II are:

Name	Title
Thomas E. Loehr, 1 Chatwood Road, Charleston, WV.	Director and President.
Anthony W. Mazelon, 344 Roxalana Hills Drive, Dunbar, WV.	Director and Secretary.
Richard A. Rubin, 5 Wild Acre Road, Charleston, WV.	Director.
Arno J.S. Paas, 4 Winding Wood Road, Charleston, WV.	Director.
Frederick L. Russell, Jr., Edgewood Farm Rt. 714, Middleburg, VA.	Director.

The following limited partner owns or controls 10 percent or more of the proposed SBIC's Regulatory Capital:

Name	Ownership percentage
Hope Gas, Inc., Bank One Center West, Third and Main Streets, Clarksburg, WV 26301	99

Shenandoah Venture Capital Limited Partnership will be managed by Fourth Venture Investment Group, Inc. The officers, directors, and shareholders of Fourth Venture Investment Group, Inc. are:

Name	Title	Ownership percentage
Thomas E. Loehr.	President and Director.	100
Anthony W. Mazelon.	Secretary and Director.	0
Frederick L. Russell, Jr.	Director	0
Richard A. Rubin.	Director	0
Arno J.S. Paas	Director	0

The applicant will have capitalization of $2,500,000, and will be a source of debt and equity capital for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Charleston, West Virginia.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27273 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/79–0399]

Walden-SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 12, 1994, a notice was published in the **Federal Register** (59 FR 41549) stating that an application had been filed by Walden-SBIC, L.P. of San Francisco, California, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business September 12, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0399 on September 19, 1994, to Walden-SBIC, L.P. to operate as a small business investment company.

The Licensee will be owned by Walden Capital Partners II, L.P. (99.0%) and the Walden partners (1.0%). Walden Capital Partners II, L.P. is a venture fund consisting of some 75 different individuals and entities. The Licensee will begin operations with $10.0 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27272 Filed 11–2–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) PFC at Jackson Hole Airport, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jackson Hole Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA a the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Manager, Jackson Hole Airport, Jackson, Wyoming, at the following address: P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Braden, (303) 286–5530; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jackson Hole Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 25, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Hole Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1995

Proposed charge expiration date: October 31, 2000

Total estimated PFC revenues: $2,100,000

Brief description of proposed project: Terminal building expansion; Acquisition of safety equipment; Terminal baggage improvements; Runway safety project.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

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issued in Renton, Washington, on October 25, 1994.

David A. Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94-27287 Filed 11-2-94; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Sarasota Bradenton International Airport, Sarasota, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Sarasota Bradenton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard M. Vacar, Executive Director of the Sarasota Manatee Airport Authority at the following address: Sarasota Manatee Airport Authority, 6000 Airport Circle, Sarasota, Florida 34243.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sarasota Manatee Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pegy Jones, Airport Plans & Programs Manager, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397, (407) 648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Sarasota Bradenton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation regulations (14 CFR Part 158).

On October 27, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the Sarasota Manatee Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 31, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Actual charge effective date: September 1, 1992
Estimated charge expiration date: September 1, 2005
Total approved PFC revenue: $38,715,000
Total estimated PFC revenue to be used on projects in this application: $5,395,493

Brief Description of Proposed Project(s)

Project 101 Federal Aviation Regulation (FAR) Part 150 Program Funding
Project 105 Environmental Assessment Runway Extension
Project 106 Acquire Runway Protection Zone Land
Project 113 Rehabilitate Taxiway F
Project 114 Rehabilitate Taxiway A

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commerical Operators (ATCO) filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sarasota Manatee Airport Authority.

Issued in Orlando, Florida, on October 27, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94-27290 Filed 11-2-94; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: In 1988, this agency granted Volkswagon of America, Inc.'s (Volkswagen) petition for exemption from the parts marking requirements of the vehicle theft prevention standard for the Audi 100 and Audi 200 lines. The lines have been redesignated for model year 1995 as, respectively, the Audi A6 and Audi S6. This notice grants Volkswagen's petition for a modification of the exemption originally granted in 1988, and modified in 1992. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in Volkswagen's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective at the beginning of model year 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: In February 1988, NHTSA published in the **Federal Register** a notice granting the petition from Volkswagen of America, Inc. (Volkswagen) for an exemption from the parts marking requirements of the vehicle theft prevention standard for two model year (MY) 1989 Volkswagen car lines, the Audi 100 and Audi 200. (See 53 FR 4095, February 11, 1988). The agency determined that the antitheft device which Volkswagen intended to install on the two car lines as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the theft prevention standard.

Subsequently, on April 29, 1992, NHTSA published a notice granting Volkswagen's petition for a modification of the 1988 exemption so that company could begin installing a new version of its antitheft device (See 57 FR 18203). The new device was placed as standard equipment on the MY 1992 Audi 100 and S4 (formerly the 200) lines. Volkswagen stated that the MY 1992 antitheft device included a modified central locking system, and included, on the higher priced models in the 100 line, a remote control signaling unit.

In a letter dated May 11, 1994, Volkswagen informed NHTSA of contemplated changes to the antitheft device to be placed as standard equipment on the MY 1995 Audi A6 and S6 car lines, and requested that the modified antitheft device be permitted. In a letter dated July 14, 1994, Volkswagen submitted a letter showing "good cause" why NHTSA should make the grant of the petition for modification applicable to MY 1995. In a letter dated August 3, 1994, Volkswagen provided supplemental information addressing section 543.6(a)(4), reasons for the petitioner's belief that the antitheft device will be effective in reducing motor vehicle theft, and section 543.6(a)(5), reasons for the petitioner's belief that NHTSA should determine that the antitheft device is likely to be as effective as parts marking. Together, Volkswagen's submissions of May 11, July 14, and August 3 constitute a complete submission, as required by 49 CFR 543.9(c)(2), in that the petition meets the general content requirements of section 543.5 paragraphs (b) (1) through (3) and (7); and the specific content requirements under section 543.6.

In a letter dated May 23, 1994 to Volkswagen, the agency granted the petitioner's request for confidential treatment of bracketed information in its May 11, 1994 letter. On September 6, 1994, Volkswagen informed NHTSA in writing that the names of the A6 and S6 car lines and the model year of their introduction, had been publicly released, and therefore, Volkswagen no longer requested confidential treatment for this information.

Volkswagen's petition contains a detailed description of the identity, design, and location of the components of the antitheft device, including the electrical schematics of the device. There are locks on the trunk, the driver's door, and the front passenger door. Volkswagen stated that the antitheft device planned for MY 1995 is activated by removing the key from the ignition and locking the driver's door or trunk. When the operator removes the ignition key, exits from the vehicle and locks the driver's door with the key, the central locking system is activated. Activation of the central locking system renders the starter motor nonfunctional and arms an audible alarm. The alarm is triggered by sensors in the light contact switches for the doors and engine compartment, by a sensor located in the trunk key cylinder, and by disconnection of the ground wire between the radio housing and the antitheft alarm unit.

The theft deterrent system of the antitheft device planned for MY 1995 has an engine starter interrupt function. While the system is armed, any breach of it will automatically interrupt the starter relay. Once the alarm has been triggered, the engine cannot be started until the alarm has been deactivated with the key in one of the front doors or the trunk lock.

Volkswagen states that the antitheft device planned for the MY 1995 car lines differs somewhat from the device on the MY 1992 lines. Volkswagen states that the differences in the planned MY 1995 device are a revision in the central locking system, the addition of an LED activation indicator, and changes in the audible and visible warning devices.

With the MY 1992 antitheft device, once the central locking system and alarm are activated, the operator could choose to open only a specific door lock or the trunk lock by turning the key and quickly releasing it. Holding the key for more than 0.5 seconds in the open position deactivates the alarm, and opens both door locks and the trunk lock. Additionally, when the key is inserted and turned counterclockwise to open the trunk lock, the central locking system also opens both door locks and deactivates the alarm system. Turning the key in either front door lock or in the trunk lock rearms the device and locks both doors and the trunk. Tampering with the device will cause both the horn and lights to activate for up to 4 minutes.

For MY 1995, Volkswagen plans to modify the antitheft device so that when the key is inserted into a front door lock or trunk lock, the key will only open the lock being turned. However, an operator can open all the door locks and the trunk lock simultaneously if, within 5 seconds of the first turn of the key, the operator turns the key a second time to the open position. Tampering with the MY 1995 system would cause the horn to sound for 30 seconds, instead of sounding for up to 4 minutes, as the MY 1992 system does. In addition, the device planned for MY 1995 will utilize the hazard warning flashers, which operate up to 5 minutes. For MY 1995, an LED activation indicator light will be added on the front dashboard. A flashing light shows that the antitheft device is activated.

For the planned MY 1995 device, Volkswagen provided a drawing indicating that all the switches and wiring activating the device are protected. The door, trunk, and engine hood contact switches are all hidden within the vehicle. Additionally, the control unit for the antitheft device is located in the passenger-side dashboard, with the battery being protected under the hood. If an unauthorized attempt should be made to open the hood, an audible signal and flashing of the hazard warning lamps will be triggered via the contact switch for the engine compartment light when it is opened. The alarm system horn is located in the trunk compartment and can only be reached after the trunk lock is opened.

Volkswagen addressed the reliability and durability of its antitheft device by providing a list of Volkswagen's internal performance and durability tests that were conducted on the device. Among these tests were tests for: Material requirements; operating voltages; temperature stability; mechanical properties; electrical requirements; electromagnetic compatibility; environmental compatibility; and service life. With its petition, Volkswagen included a certification that the antitheft device was tested according to Volkswagen's standard, including those tests relating to electrical and mechanical durability, and passed all the performance requirements of the tests.

As further evidence of the antitheft device's reliability and durability, Volkswagen stated that the functions of the antitheft device are to be handled by a specially developed microchip manufactured with the latest complementary metal oxide semiconductor (C-MOS) technology. Volkswagen asserts that among the advantages of this method are that it reduces the number of discrete components by about 60 percent compared with conventional antitheft devices; it has better reliability, as there are fewer solder joints; it has a high degree of parameter stability; and by the use of a chip, the suggestion of contact bounce and interference on input signals from the protected areas can be digitalized. Volkswagen further states that in addition to a high degree of protection (the unit will withstand −150 V to +100 V pulses without damage), this achieves a high degree of resistance to interference.

Volkswagen stated that the antitheft device planned for the MY 1995 A6 and S6 car lines is, except for the changes noted earlier, almost identical to the devices on the Audi 100, S4, 500 and Quattro car lines that have been granted exemptions from parts marking requirements of the theft prevention standard.

The agency has reviewed the theft experience of the Audi 100 and 200 car lines equipped with the antitheft device as standard equipment, for 1989, 1990, and 1991. The data from the FBI's National Crime Information Center, NHTSA's official source of theft data, show that for 1990/91 the most recent year for which theft data is available, the Audi 100/200 had a theft rate of 1.3564 (per thousand vehicles

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produced), a rate that is below the 1990/91 median theft rate of 3.5826. For 1990/91, out of 235 vehicle lines, the Audi 100/200 line was ranked 204, far lower than the median rank of 116.

In discussing why it believes the antitheft device will be effective in reducing and deterring motor vehicle theft, Volkswagen compared its MY 1995 antitheft device to similar devices for which NHTSA has previously granted exemptions from parts marking. Volkswagen stated that the theft rates of these comparable lines decreased when the antitheft device was made standard equipment, and have remained, for the most part, below 1983/84 median theft rate of 3.2712 (per thousand vehicles produced). (See 50 FR 46666, November 12, 1985). Volkswagen stated its belief that its device proposed for MY 1995 is equivalent to all of these comparable devices previously granted an exemption by the agency. The agency believes that the MY 1995 Volkswagen antitheft device is comparable to the devices on the car lines cited below.

Based on data from the FBI's National Crime Information Center, Volkswagen showed that the theft rate of the Toyota Cressida went from 4.7 (all figures provided are for thefts per thousand vehicles produced) in 1985 to 4.26 in 1986; the theft rate of the Toyota Supra went from 10.39 in 1985 to 2.79 in 1986; the theft rate of the Nissan Maxima went from 4.18 in 1984 to 1.99 in 1985; the theft rate of the Nissan 300ZX went from 8.74 in 1983/84 to 5.14 in 1989; and the theft rate of the Mazda RX-7 went from 12.11 in 1984 to a theft rate of 6.09 in 1989.

For these reasons, Volkswagen believes that the antitheft system planned for installation on its MY 1995 A6 and S6 lines is likely to be as effective in reducing thefts as compliance with the parts marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft system planned to be installed as standard equipment on the MY 1995 Audi A6 and S6 car lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information that Volkswagen submitted with its petition and on other available information. The agency believes that the modified device will continue to provide the types of performance listed in section 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR section 543.6(a)(4), the agency also finds that Volkswagen has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information Volkswagen provided on its device. This information included a description of reliability and functional tests conducted by Volkswagen for the antitheft device and its components.

In 49 CFR 543.9, paragraph (h)(2)(ii) permits the agency to establish an effective date for the modification of the exemption earlier than "the model year following the model year in which NHTSA issued the modification decision" upon a showing of good cause by the manufacturer that an earlier effective date for modifying its exemption is consistent with the public interest and purposes of 49 U.S.C. section 33106. In its petition, Volkswagen stated that making the modification of its antitheft system effective beginning with MY 1995 is in the public interest since it would permit expeditious manufacture and sale of vehicles with the modified antitheft system as standard equipment. Volkswagen cited the 1990/91 theft data published by NHTSA in the **Federal Register** (59 *FR* 12400, March 16, 1994) shows that the Audi 100/200 car lines had a theft rate of 1.3564 (per thousand vehicles stolen), substantially below the 1990/91 theft rate of 3.5826. Volkswagen stated its belief that the antitheft device proposed for the MY 1995 Audi A6 and S6 car lines, with essentially the same device, will continue to have a theft rate well below the median. NHTSA has reviewed this showing of "good cause" and finds that making the modification of Volkswagen's petition effective beginning with the 1995 model year is consistent with the public interest and 49 U.S.C. section 33106.

For the foregoing reasons, the agency hereby exempts the Volkswagen Audi A6 and S6 car lines that are the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If, in the future, Volkswagen decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes also that if Volkswagen wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

However, the agency wishes to minimize the administrative burden which section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on October 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94-27260 Filed 11-2-94; 8:45 am]

BILLING CODE 4910-59-P

Research and Special Programs Administration

Pipeline Safety Advisory Bulletin ADB-94-05; Pipelines Affected by Flooding

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to each owner or operator of a hazardous liquid or natural gas transmission pipeline operating in areas that may be subject to severe flooding.

SUMMARY: This advisory is for all operators of pipelines which may be affected by flooding. It provides observations from RSPA, Texas Railroad Commission (TRC), and other federal and state agencies as a result of the recent floods near Houston. This advisory also includes actions that operators should consider taking to assure the integrity of pipelines in case of flooding.

Background

As the result of unprecedented flooding of rivers and streams in the Houston area, seven natural gas and hazardous liquid pipelines failed in or near the San Jacinto River over the three day period October 19–21, 1994. These failures included: an Exxon 8-inch diameter LPG line; an Exxon 8-inch diameter fuel line; an Exxon 20-inch diameter hazardous liquid line; a Colonial 40-inch diameter products (gasoline) line; a Colonial 36-inch diameter products (heating oil) line; a Texaco 20-inch diameter crude oil line; and a Valero 12-inch diameter natural gas line. While no determination of cause of failure has been made for any of these lines, RSPA and the TRC believe that the extreme flooding by the San Jacinto River was probably a substantial contributing factor in each of the failures.

The damage to pipelines caused by the flood may have resulted either from the extreme force of the flowing water, as the San Jacinto carved new temporary channels, or from pipelines being struck by heavy debris that was reported as having flowed down river at the height of the flooding. Because RSPA and the TRC cannot at this time determine the exact effects of the flooding, operators should consider the potential effects of flooding as posing a possible threat to the integrity of their lines.

Advisory

As the result of seven natural gas and hazardous liquid pipeline flood-related failures in or near the San Jacinto River in Texas on October 19–21, 1994, operators should consider the actions recommended in this Advisory Bulletin for application to pipelines located in any area of the United States subject to widespread flooding.

RSPA pipeline safety regulations in 49 CFR 192.613 for natural gas pipelines, and 49 CFR 195.401 for hazardous liquid pipelines, require an operator to maintain continuing surveillance of its facilities and to correct damage to its pipeline that could affect the safe operation of the pipeline (such as damage that may result from extreme flood conditions). If the operator of a natural gas pipeline determines that the pipeline is in unsatisfactory condition and no immediate hazard exists, the operator must recondition or phase out the segment involved, or reduce the maximum allowable operating pressure. For hazardous liquid pipelines, if the condition presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until the unsafe condition is corrected. In summary, if the operator has reason to believe that flooding has adversely affected, or will adversely affect, its pipeline, the operator must take corrective or preventative action.

In addition, operators must consider the application of RSPA's reporting requirements in 49 CFR Part 191, and subpart B of 49 CFR Part 195, as well as applicable state requirements, that require operators to submit telephonic and written reports when natural gas or hazardous liquids are released causing damages meeting the reporting thresholds. Finally, RSPA regulations also require operators to submit reports of safety-related conditions involving potentially unsafe conditions on natural gas and hazardous liquid pipelines (49 CFR 191.23 and 191.25, and 49 CFR 195.55 and 195.56).

Operators need to direct their resources in a manner that will enable them to determine the potential effects of the flooding on their systems, and take the following actions as appropriate:

- Deploy personnel so that they will be in position to take emergency actions, such as shut down, isolation, or containment.
- Extend regulator vents and relief stacks above the level of anticipated flooding, as appropriate.
- Evaluate the accessibility of pipeline facilities that may be in jeopardy, such as valve settings, needed to isolate water crossings or other sections of a pipeline.
- Perform frequent patrols, including overflights as appropriate, to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Determine if flooding has exposed or undermined pipelines as a result of new river channels cut by the flooding or by erosion or scouring.
- Coordinate with emergency and spill responders on pipeline location and condition, and provide maps and other relevant information to them.
- Coordinate with other pipeline operators in the flood area and establish emergency response centers to act as liaison for pipeline problems and solutions.
- Determine if facilities which are normally above ground (e.g., valves, regulators, relief sets, etc.) have become submerged and are in danger of being struck by vessels or debris; if possible, such facilities may be marked with an appropriate buoy with Coast Guard approval.
- Perform surveys to determine the depth of cover over pipelines and the condition of any exposed pipelines, such as those crossing scour holes. Where appropriate, surveys of underwater pipe should include the use of visual inspection by divers or instrumented detection. Information gathered by these surveys should be shared with landowners. Agricultural agencies may help to inform farmers of the potential hazard from reduced cover over pipelines.
- Assure that line markers are still in place or are replaced in a timely manner, and notify contractors, highway departments, and others involved in post-flood restoration activities of the presence of pipelines and the risks posed by reduced cover.

If a pipeline operator has suffered damage to its line, or has shut in the line, or has operated at a reduced pressure as a precautionary measure during the flood, the operator should advise the State Pipeline Safety Office (for intrastate lines), or RSPA's Regional Pipeline Safety Office (interstate lines) prior to returning the line to service, on increasing the operating pressure, or otherwise changing the operating status of the line. The State Safety Division or the RSPA Regional Pipeline Safety Office, as appropriate, will advise on a case-by-case basis whether, and under what conditions, a line can safely be returned to full service.

Issued in Washington, D.C. on October 28, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94-27227; Filed 11-2-94; 8:45 am]

BILLING CODE 4910-60-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Meeting of the Investment and Services Policy Advisory Committee

AGENCY: Office of the United States Trade Representatives.

ACTION: Notice of meeting on November 17, 1994 of the Investment and Services Policy Advisory Committee.

SUMMARY: The Investment and Services Policy Advisory Committee will hold a meeting on November 17, 1994 from 10:00 a.m. through 2:00 p.m. The

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meeting will be closed to the public from 10:00 a.m. to noon because there will be a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this part of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions. The meeting will be open to the public and press from noon to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for November 17, 1994, unless otherwise notified.

ADDRESSES: The meeting will be held at the Carlton Hotel, located at 923 16th Street NW., Washington, DC 20006, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94–27303 Filed 11–2–94; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Internal Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

Notice is hereby given that the Department of Veterans Affairs (VA) proposes to conduct an internal computer matching program. The Veterans Benefits Administration (VBA) and the Office of the Assistant Secretary for Finance and Information Resources Management (FINANCE) are the components responsible for managing the systems of records that will be subject to the matching program. The purpose of the program is to identify and locate VA employees who owe delinquent debts to the Federal Government as a result of their participation in benefit programs administered by VA. Once identified and located, the debtors may become subject to involuntary offset of their pay under the provisions of the Debt Collection Act of 1982.

The legal authority for undertaking this matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government, 31 U.S.C. 3711 (Collection and Compromise) and 5 U.S.C. 5514 (Installment Deduction for Indebtedness). These statutes authorize Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed the United States. VBA and FINANCE have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1972, as amended (5 U.S.C. 552a(o)).

VBA is the recipient component and will perform the computer match. FINANCE will provide VBA with an abstract file from the Personnel Accounting Integrated Data system (PAID). The records entered on this abstract are limited to those employees who are identified as veterans by an indicator in the original PAID record. Each PAID abstract record includes the employee's full name, social security number and duty station identifier. The records in the PAID abstract are, then, matched to the Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS) file by comparing social security numbers in both PAID and BIRLS records. In those instances where a PAID abstract record and a BIRLS record have identical social security numbers, the BIRLS file number is entered on the abstract file. In many instances, the file number will be the same as the employee's social security number. After the abstract file is updated with file numbers from BIRLS, the file is compared to the Centralized Accounts Receivable System (CARS) file. In each instance where a file number from the PAID/BIRLS match is identical to the file number in a CARS record, the CARS record will be updated with the employee's duty station identifier.

If the abstract tape was not updated with the employee's file number, the employee's social security number in the PAID abstract will be compared to the CARS file number. If those numbers are an identical match, the employee's CARS record will be updated with his or her duty station identifier from the PAID abstract.

Records to be Matched: The systems of records maintained by the respective components from which records will be disclosed for the purpose of this computer match are as follows: FINANCE: Personnel Accounting Integrated Data (PAID) Master Records in the Personnel and Accounting Pay System-VA, 27VA047, which appears at page 942 of the document entitled Privacy Act Issuances, 1991 Compilation, Volume II. This system contains records of approximately 220,000 active VA employees. VBA: (a) "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22) appearing at page 967 of the document entitled Privacy Act Issuances, 1991 Comp., Volume II. (b) "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26), appearing at page 962 of the document entitled Privacy Act Issuances, 1991 Comp., Volume II. (c) Veterans and Beneficiaries Identification and Records Location Subsystem-VA (BIRLS), 38VA23, which appears at page 952 of the document entitled Privacy Act Issuances, 1991 Compilation, Volume II. Exchange of data pursuant to this matching program is consistent with 5 U.S.C. 552a(b)(1) and 38 U.S.C. 5701(b)(6). The debtor records actually used to perform the match are maintained in the Centralized Accounts Receivable System (CARS). CARS records, which number about 414,000, are a subset of those found in Privacy Act system of records 58VA21/22. In some instances, data in an individual's record in the Privacy Act system of records 58VA21/22 include certain data extracted from the same individual's record maintained under 55VA26. This would occur, for instance, where an individual has a delinquent debt as the result of his or her participation in the VA loan guaranty program.

The matching program is expected to begin on or about December 5, 1994, and continue in effect for 18 months. Matching activity will begin no sooner than 30 days after publication of this notice or 40 days after a report of this is matching program has been provided to Congress and the Office of Management and Budget (OMB), whichever is later. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the approval of VA's Data Integrity Board. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to conduct the matching program to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit at the above address, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays, until December 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: October 26, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–27267 Filed 11–2–94; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; New System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Accounts Receivable Records—VA" (88VA20A6).

DATES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records. All relevant materials received before December 5, 1994, will be considered. All written comments received will be available for public inspection in Room 119 of the address given below, only, between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until December 13, 1994. If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by VA, the new system of records, and the routine use statements included therein, are effective December 5, 1994.

ADDRESSES: Written comments concerning the proposed routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Daniel D. Osendorf, Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: The Veterans Benefits Administration is responsible for collecting debts resulting from individuals' participation in certain programs administered by VA. These programs include—but are not limited to—compensation, pension, educational allowance, guaranteed and direct home loans as well as education loans. VA established the Centralized Accounts Receivable System (CARS) in 1975 as a pilot project for automation of debt collection and indebtedness record retrieval. At the time, and for a number of years after, collection activity was shared among the Centralized Accounts Receivable Division (CARD)—a division of the VA Regional Office and Insurance Center in St. Paul, Minnesota—and the 58 individual VA regional offices. Generally, collection techniques were limited to written requests for payment and referral for litigation to the United States Attorneys. CARD collected only certain categories of debts while the regional offices had responsibility for the remaining categories. Methods of locating delinquent debtors were relatively expensive and labor-intensive.

Since the inception of the CARS pilot project, additional means of automated collection and locating debtors have either been authorized or made available by new technologies. Chief among the vehicles broadening the scope of debt collection authority was the Debt Collection Act of 1982 (Pub. L. 97–365). The Act authorized disclosure of personal information to consumer reporting agencies, made possible disclosure of taxpayer mailing addresses to creditor agencies and authorized disclosure of debtor information for purposes of administrative and Federal salary offset. Since the enactment of Pub. L. 97–365, new technologies have enabled creditor agencies to pursue authorized collection activities with increased efficiency and innovative methods. These methods, in many cases, involve some form of computer matching. Among the new technologies is the Credit Alert Interactive Voice Response System (CAIVRS). This is an automated telephone system enabling participating Government agencies to verify information provided by new loan applicants. Information for CAIVRS is retrieved from an automated data base.

In 1990 and 1991, VBA debt collection activities for major benefit programs were, for the most part, consolidated under one automated system—CARS—and one organization—Debt Management Center (DMC). The Director, DMC, reports directly to the VBA Chief of Staff. CARS is, now, the system of record for indebtedness accounts resulting from participation in all major VBA programs, except the All-Volunteer Force Educational Assistance Program (38 U.S.C. ch. 30 and 10 U.S.C. ch. 106). While that program's indebtedness records are maintained on a personal computer system, certain ch. 30/106 debt-related computer matching services are performed by DMC through CARS.

With the new means of collection and locating debtors developed over the years, computer matching with other Government agencies has become a significant part of the routine activity conducted by DMC. Computer matching using CARS data is performed in accordance with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Disclosures are made as routine uses under Privacy Act systems of records 58VA21/22, "Compensation, Pension, Education and Rehabilitation Records-VA", and 55VA26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA". Typically, the responsibility for revising or introducing new routine uses associated with debt collection falls upon program staff who are not directly responsible for debt collection operations.

This new system of records is being established to reflect the centralized environment VBA continues to build for collection activity as well as to provide the public with one reference for routine use disclosures related to debt collection. The debt collection program adheres to VA security and reporting requirements under title 38, Code of Federal Regulations and other Federal regulations, as well as the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the appropriate provisions of the Internal Revenue Code, title 26, United States Code.

Approved: October 27, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

88VA20A6

SYSTEM NAME:

Accounts Receivable Records-VA.

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SYSTEM LOCATION:

Automated indebtedness records for compensation, pension, educational assistance, survivors' and dependents' educational assistance and home loan debts are maintained at the VA's Austin Automation/Systems Development Center in Texas. Extracts of those automated records are maintained in the Benefits Delivery Network for accounting and adjudication purposes. The Benefits Delivery Network is administered by the Benefit Delivery Center, Hines, Illinois. Certain paper records, microfilm and microfiche are maintained at the VA Debt Management Center (DMC), Ft. Snelling, Minnesota. Education loan automated, paper, microfilm and microfiche records are maintained at DMC. Automated and paper indebtedness records related to the All-Volunteer Force Educational Assistance Program are also maintained at DMC. Paper records related to accounts receivable may be maintained in individual file folders located at the VA regional office having jurisdiction over the domicile of the claimant or the geographic area in which a property securing a VA guaranteed, insured or direct loan is located. Generally, such papers maintained at regional offices are not used directly in the debt collection process unless they are forwarded by conventional mail, electronic mail or facsimile to DMC. Records provided to the Department of Housing and Urban Development (HUD) for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are located at the HUD Data Processing Center in Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States Government as a result of their participation in benefit programs administered by VA under title 38, United States Code, chapters 11, 13, 15, 21, 30, 31, 34, 35, 36 and 37, including persons indebted to the United States Government by virtue of their ownership of property encumbered by a VA-guaranteed, insured, direct or vendee loan. Persons indebted to the United States Government as a result of their participation in a benefit program administered by VA under 10 U.S.C. ch. 106. Persons who received benefits or services under 38 U.S.C. or 10 U.S.C. ch. 106, but who did not meet the requirements for receipt of such benefits or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the benefit or home loan program from which the debt arose. Identifying information, including VA claim number, Social Security number, name and address and, when appropriate, loan reference number obtained from the "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22) and "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA" (55VA26) systems of records. Initial indebtedness amount, type of benefit from which the debt arose, identifying number of the VA regional office with jurisdiction over the underlying benefit claim or property subject to default or foreclosure, name of co-obligor and property address of the defaulted home loan from 58VA21/22 and 55VA26. History of debt collection activity on the individual, including correspondence, telephone calls, referrals to other Government agencies, VA district counsel, private collection and credit reporting agencies. Payments received, refunds made, interest amount, current balance of debt and indication of status of current VA benefit payments. Federal employment status obtained by computer matching with Government agencies and the United States Postal Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a), 5314 and 5315. Federal Claims Collection Act of 1966 (Pub. L. 89–508), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711, Collection and Compromise, 31 U.S.C. 3716, Administrative Offset; Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514, Installment Deduction for Indebtedness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For purposes of the following routine uses:

(a) The term, *veteran*, includes present, former or retired members of the United States Armed Forces, the reserve forces or national guard; and,

(b) The term, *debtor*, means any person falling within the categories of individuals covered by this system, as set forth above. A *debtor* may be a veteran, as defined above, a veteran's dependent entitled to VA benefits in his or her own right or a person who is neither a veteran nor a veteran's dependent for benefit purposes.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer or an employee; the issuance of a security clearance: the letting of a contract or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed, by computer matching or otherwise, in connection with any proceeding for the collection of an amount owed the United States by virtue of a person's participation in any benefit program administered by VA when in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper in accordance with 38 U.S.C. 5701(b)(6).

4. The name and address of a veteran or the dependent of a veteran and other information as is reasonably necessary to identify such veteran or dependent may be disclosed to a consumer reporting agency for the purpose of locating the veteran or dependent indebted to the United States under a VA benefit program or to obtain a consumer report in order to assess the ability of a veteran or dependent to repay an indebtedness, provided the disclosure is consistent with 38 U.S.C. 5701(g)(2).

5. The name and address of a veteran or dependent, other information as is reasonably necessary to identify such persons, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the person's indebtedness to the United States by virtue of the person's participation in a VA benefit program may be disclosed to a consumer reporting agency for purposes of making such information available for inclusion in consumer reports regarding that person and for purposes of locating that person, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

6. Any information is this system, including available identifying information regarding a person, such as the person's name, address, Social Security number, VA insurance number, VA claim number, VA loan number, date of birth and employment information, may be disclosed, except to consumer reporting agencies, to a third party in order to obtain current name, address and credit report in connection with any proceeding for the collection of an amount owed the United States by virtue of the person's participation in a VA benefit program. Such disclosure may be made in the course of computer matching having the purpose of obtaining the information indicated above. Third parties may include other Federal agencies, State probate courts, State drivers' license bureaus, State automobile title and license bureaus and private commercial concerns in the business of providing the information sought.

7. Identifying information, including the debtor's name, Social Security number and VA claim number, along with the amount of indebtedness, may be disclosed to any Federal agency, including the U.S. Postal Service, in the course of conducting computer matching to identify and locate delinquent debtors employed by or receiving retirement benefits from those agencies. Such debtors may be subject to offset of their pay or retirement benefits under the provisions of 5 U.S.C. 5514.

8. Any information in this system, including the nature and amount of a financial obligation as well as the history of debt collection activity against a debtor, may be disclosed to the Federal agency administering salary or retirement benefits to the debtor to assist that agency in initiating offset of salary or retirement benefits to collect delinquent debts owed the United States under VA benefit programs.

9. The name(s) and address(es) of a veteran or beneficiary may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting Government research or oversight necessary to accomplish a statutory purpose of that agency.

10. Any information in the system, including the amount of debt, may be disclosed at the request of a debtor to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid persons indebted to VA in the preparation, presentation and prosecution of debt-related matters under the laws administered by VA. The name and address of a debtor will not, however, be disclosed to these individuals under this routine use if the debtor has not requested the assistance of an accredited service organization, claims agent or any attorney.

11. Any information in this system such as the amount of indebtedness and collection history may be disclosed in the course of presenting evidence to a court, magistrate or administrative authority in matters of guardianship, inquests and commitments, to private attorneys representing debtors rated incompetent in conjunction with issuance of Certificates of Incompetence and to probation and parole officers in connection with court-required duties.

12. Any information in this system, including the amount of indebtedness and history of collection activity, may be disclosed to a VA- or court-appointed fiduciary or a guardian ad litem in relation to his or her representation of a debtor only to the extent necessary to fulfill the duties of the fiduciary or guardian ad litem.

13. Any relevant information in this system may be disclosed to the Department of Justice and United States Attorneys in the defense or prosecution of litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733 and other similar claims statutes.

14. Any information concerning a person's indebtedness to the United States by virtue of that person's participation in a benefit program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures may be to (a) assist VA in collection of title 38 and 10 U.S.C. ch. 106 program debts and/or costs of services, and (b) initiate legal actions for prosecuting individuals who willfully or fraudulently obtain title 38 or 10 U.S.C. ch. 106 benefits without entitlement.

15. The debtor's name, address, Social Security number and the amount (excluding interest) of any indebtedness waived, compromised or written off may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

16. The name of a debtor, any other information reasonably necessary to identify such individual and any other information concerning the individual's indebtedness under a VA program, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of that indebtedness by offset of Federal income tax refunds pursuant to 31 U.S.C. 3720A.

17. Debtors' social security numbers, VA claim numbers, loan account numbers and other information as is reasonably necessary to identify individual VA indebtedness accounts may be disclosed to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS). Information in CAIVRS may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Records are disclosed to participating agencies and private-sector lenders by an ongoing computer matching program.

18. Name, Social Security numbers and any other information reasonably necessary to ensure accurate identification may be disclosed to the Department of the Treasury, Internal Revenue Service, to obtain the mailing address of taxpayers who are debtors under this system of records. Disclosure is made by computer matching and pursuant to 26 U.S.C. 6103(m)(2).

19. Any information in a record under this system of records may be disclosed to the United States General Accounting Office (GAO) to enable GAO to pursue collection activities authorized to that office or any other activities within their statutory authority.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security number), the amount, status and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report. 38 U.S.C. 5701(g) governs the release of names and addresses of any person who is a present or former member of the Armed Forces, or who is a dependent of such a person, to consumer reporting agencies under certain circumstances.

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Routine uses, above, provide for disclosure under those circumstances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape and disk, microfilm, microfiche, optical disk and paper documents. DMC does not routinely maintain paper records of individual debtors in file folders with the exception of correspondence, and replies thereto, from Congress, the White House, members of the Cabinet and other similar sources. The finance division of VARO St. Louis maintains certain debtor correspondence in folders by terminal digit. Paper records related to accounts receivable may be maintained in individual file folders located at VA regional offices. Generally, such papers maintained outside of DMC are not used directly in the debt collection process unless they are first forwarded to DMC. Information stored on magnetic media for most benefit debts may be accessed through a data telecommunications terminal system designated as CAROLS (Centralized Accounts Receivable On-Line System). Most CAROLS terminals are located in DMC; however, VA regional offices generally each have one terminal for inquiry purposes. Information stored on magnetic media and related to the All-Volunteer Force Educational Assistance or education loan debt collection programs may be accessed through personal computers. Records provided to the Department of Housing and Urban Development for inclusion in the Credit Alert Interactive Voice Response System (CAIVRS) are maintained on magnetic media at the HUD Data Processing Center in Lanham, Maryland. Identifying information, the amount of the debt and benefit source of the debt may be stored on magnetic media in records that serve as the database for the VA Benefits Delivery Network (BDN). The BDN is operated for the adjudication of claims and the entry of certain fiscal transactions. The identifying information, the amount of the debt and benefit source of the debt are transmitted to the Centralized Accounts Receivable System (CARS) or a personal computer local area network system before collection activity commences. When a debtor is awarded gratuitous benefits under VA programs, the BDN may operate to offset all or part of retroactive funds awarded, if any, to reduce the balance of the indebtedness.

RETRIEVABILITY:

Paper documents, microfilm and microfiche are indexed by VA file number or date of receipt. Automated records are indexed by VA claim number, Social Security account number, name and loan account number in appropriate circumstances. Records in CAIVRS may only be retrieved by Social Security number.

SAFEGUARDS:

1. Physical Security: (a) Access to working spaces and document storage areas in DMC is restricted by cipher locks and to VA employees on a need-to-know basis. Generally, document storage areas in VA offices other than DMC are restricted by VA employees on a need-to-know basis. VA offices are generally protected from outside access by the Federal Protective Service or other security personnel. Strict control measures are enforced to ensure that access to and disclosure from documents, microfilm and microfiche are limited to a need-to-know basis. (b) Access to CAROLS data telecommunications terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution. (c) Access to data processing centers is generally restricted to center employees, custodial personnel Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other personnel gaining access to computer rooms are escorted.

2. CAROLS and Personnel Computer Local Area Network (LAN) Security: (a) Usage of CAROLS and LAN terminal equipment is protected by password access. Electronic keyboard locks are activated on security errors. (b) At the data processing centers, identification of magnetic media containing data is rigidly enforced using labeling techniques. Automated storage media which are not in use are stored in tape libraries which are secured in locked rooms. Access to programs is controlled at three levels: programming, auditing and operations.

3. CAIVRS Security: Access to the HUD data processing center from which CAIVRS is operated is generally restricted to center employees and authorized contact employees. Access to computer rooms is restricted to authorized operational personnel through locking devices. All other persons gaining access to computer rooms are escorted. Records in CAIVRS use Social Security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a need-to-know basis.

RETENTION AND DISPOSAL:

Microfilm and microfiche are retained in metal cabinets in DMC for 25 years. CARS records are retained until termination of debt collection (payment in full, write off, compromise or waiver). All other automated storage media retained and disposed of in accordance with disposition authorization approved by the Archivist of the Untied States. DMC generally forwards all substantive paper documents to VA regional offices for storage in claims files or loan files. Those documents are retained and disposed of in accordance with the appropriate system of records. Information provided to HUD for CAIVRS is stored on magnetic tape. The tapes are returned to VA for updating each month. HUD does not keep separate copies of the tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Debt Management Center (389/00), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to the system manager indicated above.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

See record access procedures, above.

RECORD SOURCE CATEGORIES:

The records in this system are derived from two other systems of records as set forth in "Categories of records in the system", above, persons indebted to the United States by virtue of their participation in programs administered by VA, dependents of those persons, fiduciaries for those persons (VA or court appointed), other Federal agencies, States and local agencies, private collection agencies, consumer reporting agencies, State, local and county courts and clerks, other third parties and other VA records.

[FR Doc. 94–27268 Filed 11–2–94; 8:45 am]
BILLING CODE 8320–01

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 212
Thursday, November 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 8, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, November 10, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Regulations:
MCFL Rulemaking: Summary of Comments and Draft Final Rules (continued).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,
Administrative Assistant
[FR Doc. 94-27414 Filed 11-1-94; 2:49 pm]
BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53868, October 26, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, October 31, 1994.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Federal Reserve Bank and Branch director appointments.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 31, 1994.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94-27386 Filed 11-1-94; 8:45 am]
BILLING CODE 6210-01-P

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 53702.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors will be held on November 5, 1994. The meeting will commence at 9 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Hilton Back Bay Hotel, 40 Dalton Street, The Washington Room, Boston, MA 02115, (617) 236-1100.

CHANGES IN THE MEETING:

MATTERS TO BE CONSIDERED: Agenda item 9(a) has been amended to read as follows:

a. Consider and Act on Committee Recommendation to Publish 45 C.F.R. 1607 as a Final Rule in the **Federal Register**.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date Issued: October 31, 1994.

Patricia D. Batie,
Corporate Secretary.
[FR Doc. 94-27355 Filed 10-31-94; 8:45 am]
BILLING CODE 7050-01-M

federal register

Thursday
November 3, 1994

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.
Cargo Tanks; Miscellaneous Requirements; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 178, and 180

[Docket No. HM–183C; Amdt. Nos. 171–129, 173–240, 178–105, 180–7]

RIN 2137–AC37

Cargo Tanks; Miscellaneous Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. These regulatory actions are based on petitions for rulemaking, exemptions, National Transportation Safety Board recommendations, and RSPA initiative. The intended effect of these actions is to relax certain regulatory requirements and to reduce unnecessary economic burdens on industry where there will be no adverse effect on safety.

DATES: *Effective date:* January 5, 1995.

Compliance date: Compliance with the regulations, as amended herein, is authorized immediately.

Incorporation by reference: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1993, RSPA published in the **Federal Register** a notice of proposed rulemaking (NPRM) [Docket No. HM–183C; Notice No. 93–7; 58 FR 12316] proposing to amend certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles. Most issues raised in the NPRM relate to requirements that were adopted in final rules published under Docket No. HM–183/HM–183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872). The final rules established three new cargo tank specifications designated as DOT 406, DOT 407 and DOT 412, and revised the structural design requirements for MC 331 and MC 338 cargo tanks. Voluntary compliance for manufacture of cargo tanks to these new or revised specifications was authorized beginning on October 1, 1990.

As manufacturers began modifying their manufacturing operations to construct cargo tanks to the new requirements, they encountered certain technical problems which caused them to question changes they had endorsed several years ago. They raised issues relating to structural integrity, accident damage protection, use of dual function pressure relief devices, and certification by the American Society of Mechanical Engineers (ASME). Also RSPA received several petitions for rulemaking addressing certain issues not previously raised. In the NPRM, RSPA pointed out these concerns and other issues based on petitions for rulemaking, exemptions, and National Transportation Safety Board (NTSB) recommendations. The NPRM also announced a public meeting that was held in Chicago on March 24 and 25, 1993, to address issues raised in the NPRM.

On March 8, 1993, RSPA published a final rule [Docket HM–183, 58 FR 12904] granting an extension until April 21, 1994, for the continued construction of cargo tank motor vehicles to the MC 306, MC 307, MC 312, MC 331, and MC 338 specifications. This action was granted to allow additional time for RSPA and industry to address certain technical issues concerning the manufacture of cargo tank motor vehicles to the DOT 406, DOT 407 and DOT 412 specifications, and to resolve certain concerns about the structural design requirements in the MC 331 and MC 338 specifications.

At the March 24–25 public meeting, several significantly different views of design engineers and cargo tank manufacturers were identified. Additionally, preliminary results were presented of an advanced structural evaluation (using finite element analysis) of the MC 331 cargo tank which raised questions in regard to stress levels in areas of concentrated loadings.

On January 12, 1994, RSPA published a final rule [Docket HM–183, 58 FR 1784] granting another extension until August 31, 1995, for continued construction of cargo tank motor vehicles to the MC specifications. The final rule also announced a public meeting in Washington, D.C. on February 7–8, 1994.

At the February public meeting, RSPA obtained clarification of certain comments received in response to the NPRM and also obtained additional supporting data on certain alternate proposals offered by industry. In addition, RSPA sought information to resolve the remaining issues on structural integrity, accident damage protection, use of dual function pressure relief devices, and ASME certification of low pressure cargo tank motor vehicle manufacturers.

II. Summary of Comments

RSPA received over 50 written comments in response to the proposals contained in the NPRM from trade associations, cargo tank manufacturers and repairers, manufacturers of cargo tank parts and equipment, and Federal, State and local agencies. RSPA has considered all comments, public meeting transcripts and petitions in the development of this final rule.

In the NPRM, RSPA informed industry that the following items would be open for discussion at the March public meeting:

1. Application of the ASME Code to DOT 400-series specification cargo tank motor vehicles.

a. The feasibility of citing all sections of the ASME Code that must be met in construction of DOT specification cargo tank motor vehicles as opposed to citing only those sections that do not apply.

b. The development of a consensus standard containing procedures for quality control, welding and design as an alternative to the procedures contained in the ASME Code.

2. The progress of the industry on development and testing of dual function vents, reclosing pressure relief devices capable of reseating with the loss of less than one gallon of lading, and self-closing systems for vacuum-loaded hazardous waste tanks.

3. The regulatory proposals contained in the NPRM.

Most commenters supported application of the ASME Code. One commenter stated that his company, which had initially opposed becoming ASME certified, has benefited from the expertise of the National Board inspector.

The ASME Code is an internationally recognized consensus standard for the design and construction of pressure vessels. It is also the only proven quality control standard for pressure vessels and cargo tanks.

The Cargo Tank Manufacturing Association (CTMA) submitted a draft quality control manual for review. CTMA recommended that RSPA recognize the manual, which includes

quality control procedures, as an alternative to requiring manufacturers to have an ASME "U" stamp or National Board "R" stamp. The use of the alternative standard recommended by CTMA is not equivalent in scope and detail to the ASME Code and is not included in this final rule.

It has also been brought to RSPA's attention that some "U" stamp and "R" stamp holders may believe they are not required to apply all provisions of the ASME or National Board quality control program for work on non-ASME DOT specification cargo tanks. When the regulations requiring cargo tank manufacturers and repair facilities to hold "U" and "R" stamps were promulgated, RSPA stated in the preamble discussions of the final rules and at public meetings that major provisions of the ASME or National Board quality control programs would apply to all work on DOT specification cargo tanks. Such provisions include welder qualifications, welding techniques, and quality control procedures. For instance, refer to the preamble discussions in the following final rules: "B. Cargo Tank: Manufacturer Qualification, Registration, Quality Control, and Certification," (June 12, 1989, 54 FR 24984); "Section 180.413 [Repair, Modification, Stretching, and Rebarrelling]," (September 7, 1990, 55 FR 37044).

One commenter stated that specifying all applicable sections of the ASME Code, rather than providing exceptions to sections that are not applicable, would provide greater assurance to engineers and designers that they have not overlooked an obscure section of the ASME Code. The commenter did not provide RSPA with any suggested wording for implementation of the recommendation.

The National Propane Gas Association (NPGA) submitted a report on the structural integrity of the MC 331 specification cargo tank. NPGA recommended uniformity in design loading requirements for all DOT specification cargo tanks. RSPA will consider the design loading requirements for MC 331 and MC 338 specification cargo tanks in a future rulemaking. The report is available for review in the public docket.

III. Section-by-Section Review

This review by section discusses only significant comments received to the proposals in the NPRM, changes made based on alternative proposals offered by commenters, and clarifications to certain provisions based on RSPA's initiatives. For those provisions that are adopted as proposed, readers are referred to the preamble discussion in the NPRM.

Section 171.7

The Truck Trailer Manufacturers Association [TTMA] submitted a petition for rulemaking (P–1236) requesting RSPA to incorporate by reference the latest editions of the ASME Code from the 1986 Edition and Addenda through 1985 to the 1992 edition and Addenda through 1993, and to update the National Board inspection Code from the 1983 Edition to the 1992 Edition. RSPA has reviewed these updated standards and agrees the latest editions should be referenced. The table in paragraph (a)(3) has been revised accordingly.

Section 173.33

Consistent with changes made in § 180.405(h) in this final rule, a new sentence is added to paragraph (d) stating that the venting requirements of the original DOT cargo tank specification must be met whenever a pressure relief valve is modified to a more recent specification. See preamble discussion for § 180.405(h). Similarly, in view of changes made in §§ 178.337–11 and 178.338–11 in this final rule, a new paragraph (h) is added to inform shippers that certain MC 331 and MC 338 cargo tanks manufactured after August 31, 1995, must have remotely controlled, internal, self-closing stop valves. See preamble discussion for § 178.337–11.

Section 173.225

Commenters supported the proposal to revise paragraph (e)(2) to authorize the use of MC 307 and DOT 407 cargo tank motor vehicles for certain organic peroxides. However, one commenter opposed allowing the use of MC 307 cargo tanks for all organic peroxides. This commenter misunderstood the proposal. Note 14 to the § 173.225(h) Table authorizes bulk packagings for only a few organic peroxides. Therefore, paragraph (e)(2) is adopted as proposed in the NPRM.

Section 173.315

For cargo tank motor vehicles in chlorine service, changes in requirements for hose, piping or tubing to be carried on the vehicle and in requirements for testing angle valves, as proposed in the NPRM, are adopted as paragraphs (o)(1) and (o)(2) respectively.

Section 178.337–1

Paragraphs (a)(3) and (e)(1) are revised to correct certain section references and paragraph (e)(2) is revised to authorize the use of ceramic fiber/fiberglass insulation for cargo tanks in chlorine service as proposed in the NPRM.

Section 178.337–9

As proposed in the NPRM, the restriction is removed against mounting or carrying on a cargo tank motor vehicle any hose, piping or tubing used in loading or unloading; paragraphs (b)(7) (ii) and (iii) are redesignated as (b)(7) (i) and (ii) respectively.

Section 178.337–11

In response to NTSB recommendation H–90–91 dealing with release of sulfur dioxide from an MC 331 cargo tank during unloading, RSPA proposed revision of requirements for remotely controlled self-closing stop valves on liquid or vapor discharge lines on newly constructed MC 331 cargo tank motor vehicles. Currently found at paragraph (a)(2), this requirement applies only to equipment intended for transportation of a flammable liquid, a flammable compressed gas, hydrogen chloride (refrigerated liquid) or anhydrous ammonia. RSPA proposed to broaden the requirement to include all compressed gases. This revision also was proposed for MC 338 cargo tanks.

Both the NTSB and the Compressed Gas Association (CGA) commented on RSPA's proposal to require remotely controlled internal self-closing stop valves. While supportive of RSPA's proposal, NTSB stated:

> Although the Safety Board is aware that MC 331 cargo tanks are predominantly used for the transportation of flammable and nonflammable compressed gases, the hazardous materials regulations (49 CFR Parts 171 through 180) do authorize these tanks to be used for the transportation of other classes of hazardous materials such as flammable liquids and poisons. The Safety Board believes that remote controls for internal shut-off valves should be required for any hazardous material that is authorized to be transported in an MC 331 cargo tank. Further the Safety Board believes that all MC 331 and MC 338 cargo tanks currently in hazardous materials service, and not just newly constructed tanks, should also be equipped with remote controls for the internal shut-off valves. The Safety Board has consistently urged the DOT to eliminate "grandfathering" clauses that permit hazardous materials to be transported indefinitely in containers or vehicles that fail to meet current minimum safety standards. The Safety Board believes that RSPA should require all MC 331 and MC 338 highway cargo tanks in hazardous materials service to be equipped with remote controls for internal shut-off valves by a specific date.

On the other hand, the CGA believes that remotely controlled shut-off valves should not be required for nonflammable ladings. CGA stated that

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"operating experience for the nonflammable compressed gases does not warrant the addition of this restriction which would add cost without providing additional safety benefit."

After consideration of both comments, RSPA has revised the wording in §§ 178.337–11 and 178.338–11 to require the use of remotely controlled internal self-closing stop valves on any cargo tank motor vehicle certified after August 31, 1995, that is intended for the transportation of hazardous materials other than argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon. RSPA has excepted these particular gases because they pose a lesser degree of risk to public health, safety, and the environment in the event of their release during transportation. Many of the nonflammable refrigerant gases presently transported in cargo tanks are ozone depleters; some other nonflammable gases are toxic or noxious. RSPA will address the retrofit of existing cargo tanks with remotely controlled internal self-closing stop valves in a separate rulemaking action.

Section 178.338–9

As proposed in the NPRM and adopted in this final rule, paragraph (c)(2) is amended by removing the definition of "same design" and by adding a reference to the definition of "same design" contained in § 178.320. By referencing the definition in § 178.320, minor design variations are allowed for MC 338 cargo tanks.

Section 178.338–11

NTSB and CGA submitted comments to this section which were similar to their comments to proposed § 178.337–11. As stated in the preamble discussion to § 178.337–11 above, RSPA has revised the wording in §§ 178.337–11 and 178.338–11 to require the use of remotely controlled internal self-closing stop valves on any MC 338 cargo tank motor vehicle certified after August 31, 1995, that is intended for the transportation of hazardous materials other than argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon.

Section 178.345–1

In paragraph (c), definitions for "normal operating loading" and "extreme dynamic loading" are added. These terms are used in revised § 178.345–3 in this final rule.

Paragraph (i)(2) requires that the void space within the connecting structure of a cargo tank motor vehicle composed of multiple cargo tanks must be vented to the atmosphere by a drain of at least 1 inch in diameter. In the NPRM, RSPA proposed to remove the drain hole size restriction. RSPA also solicited information on suitable dimensional controls for these drains, how often these areas need to be inspected, the conditions revealed during such inspections, and the availability of equipment for inspecting these areas.

Commenters expressed diverse views on the need to inspect these areas. The California Highway Patrol (CHP) strongly supported the need for periodic inspection of the connecting structures on cargo tanks used to transport all hazardous materials. CHP related information about three separate catastrophic failures of molten sulfur trailers that occurred due to fatigue cracking in the void space. All three cargo tank motor vehicles had been insulated, thus preventing any external visual inspection for shell cracks. CHP believes that if an internal visual inspection of the void space had been performed, evidence of cracking may have been detected prior to the catastrophic failures. CHP noted that equipment, such as fiber optics, borescopes and video cameras, is readily available for inspecting closed areas and is being used for pipeline, aircraft, oil well, and boiler inspections. Also, numerous contractors offering inspection and non-destructive testing services are available throughout the U.S.

NTSB also concurred that regular and effective inspections of void spaces are essential. NTSB, however, expressed concern that HM–183C did not address the configuration of other appurtenances that could conceal corrosion that might lead to a failure of the tank wall. The NTSB recommendation H–83–30 called for periodic external visual inspection of surfaces obscured by appurtenances, structural members, etc.

Several commenters who opposed inspecting these areas stated that double bulkheads and void spaces on MC 306 or DOT 406 cargo tanks in non-corrosive service do not experience the same degree of deterioration as MC 312 or DOT 412 cargo tanks in corrosive service. They stated that cargo tanks in non-corrosive service should not be subject to the same inspections. One commenter submitted to RSPA samples taken from bulkheads adjacent to void spaces of two scrapped MC 306 carbon steel cargo tanks used in gasoline service for 14 and 15 years. The commenter stated that neither tank showed evidence of corrosion at this location; the samples confirm this statement.

TTMA stated there is little possibility of corrosion occurring in the void space of any tank, except on carbon steel cargo tanks in corrosive service. TTMA recommended that the connecting structure on self-supporting cargo tanks be thickness tested every two years for signs of corrosion. Several other commenters supported TTMA's comments. One commenter also suggested that the wording be revised to eliminate reference to the inspection opening but continue to provide for a drain. The commenter stated that the minimum acceptable size of any drain opening should be 0.5 inches diameter, which is large enough to insert a borescope or equivalent device.

RSPA agrees with commenters that there has been no evidence of corrosion occurring in the void space of any tank, except a carbon steel cargo tank in corrosive service. Corrosion in connecting spaces has serious structural implications for self-supporting cargo tanks. The failure reported in the NTSB investigative report, containing recommendation H–83–30, involved a carbon steel MC 312 cargo tank semi-trailer carrying hydrochloric acid; the failure occurred due to severe corrosion in the tank shell under a circumferential reinforcing ring. Therefore, paragraph (i)(2) is revised to require that the connecting structure in a carbon steel, self-supporting multi-tank cargo tank motor vehicle must have a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inches diameter, 6 inches apart, one of which is located on the bottom centerline. In addition, § 180.407(i) is revised to require thickness testing of these areas as suggested by TTMA.

RSPA believes that NTSB recommendation H–83–30, which calls for periodic external visual inspection of cargo tank surfaces obscured by appurtenances and structural attachments, is adequately addressed in current § 180.407(d). Paragraph (d) requires that a periodic external visual inspection must be conducted of all major appurtenances and structural attachments on a cargo tank to detect signs of corrosion or damage.

Section 178.345–3

Commenters expressed concern over the lack of flexibility in calculating compressive stresses for non-ASME DOT 400-series cargo tanks. They recommended that RSPA provide alternatives to ASME Code Section VIII, Division 1 UG–23(b) for calculating the maximum allowable compressive buckling stress in tank walls for low pressure cargo tanks. The static design and construction of all DOT 400-series cargo tanks must be in accordance with Section VIII of the ASME Code. Any DOT 400-series cargo tank which is required to be certified to the ASME Code also must be designed in accordance with the Code's requirements for dynamic loading, including UG–23(b). This applies to DOT 407 cargo tanks with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum, and to DOT 412 cargo tanks having a MAWP greater than 15 psig.

TTMA stated manufacturers believe the requirements in § 178.345–3(b) should be modified to allow several methods of analysis as appropriate for the cargo tank under consideration. Using the methods outlined in the ASME Code produces lower allowable compressive stress values, resulting in substantially thicker sheets for the DOT 400-series tanks as compared with the MC 300-series cargo tanks.

One commenter stated that while the UG–23(b) calculations may be appropriate for DOT 407 cargo tank with MAWP ratings between 25 and 35 psig, this formula will rarely yield reasonable results for DOT 406 or DOT 412 cargo tanks having a MAWP of 15 psig or less. Commenters recommended two alternatives to the ASME UG–23(b) design calculations, both of which are formulas from engineering texts. One is from the "Alcoa Structural Handbook," 1960, page 156 and Table 23; the other is from "Formulas for Stress and Strain," Fifth Edition, by Roark and Young, pages 554 and 555 and Table 35. The "Alcoa Structural Handbook" formula is as follows:

$$S_c = \frac{S_{bA}}{1.5} = \frac{\left(\frac{\pi}{4}\right)^2 E}{1.5\left(\frac{R_i}{t_s}\right)\left(1+\frac{\left(\frac{R_i}{t_s}\right)^{3/2}}{35}\right)^2}$$

where:

R_i/t_s is greater than 200

E = modulus of elasticity of material at design temperature

R_i = inside radius of the shell (largest radius of non-circular cross-section)

t_s = minimum thickness of shell less corrosion allowance

S_{bA} = critical compressive buckling stress per the Alcoa formula

S_c = allowable compressive stress due to static bending loads

The Roark and Young formula is as follows:

$$S_c = \frac{S_{bY}}{1.5} = \frac{Et_s}{(1.5)2(3)^{1/2}\left[1-\nu^2\right]^{1/2}R_i}$$

where:

R_i/t_s is greater than 10

S_{bY} = critical compressive buckling stress per Roark and Young

ν = Poisson's ratio

Other symbols are the same as in the Alcoa formula, above.

Based on the merit of these comments, RSPA is revising paragraph (b) to allow alternative methods for determining compressive buckling stress for DOT 400-series cargo tanks which are not required to be certified in accordance with the ASME Code. This allows manufacturers more freedom in the design of DOT 400-series cargo tank motor vehicles, particularly the DOT 406 cargo tank.

RSPA solicited information on the structural integrity of cargo tanks and, in particular, the loading combinations that may be encountered during operation of cargo tank motor vehicles as prescribed in paragraph (c). Information was received from several commenters which indicated that the loadings from normal operating conditions are different from loadings experienced in extreme dynamic events. The normal operating loadings are more frequent in occurrence, but much lower than the extreme dynamic loadings.

The requirement contained in current paragraph (c) only specifies extreme dynamic loadings. A cargo tank designer must determine which loadings, if any, should be considered as acting simultaneously. TTMA stated it is unlikely that extreme dynamic loadings will occur and highly unlikely that such loadings will occur at the same time. TTMA reported that if the extreme dynamic loadings are considered by the cargo tank designer as acting simultaneously, the resulting weight of a DOT 406 cargo tank would increase significantly. TTMA went on to state that such an increase in tank weight would have an adverse effect on public safety because it would cause a decrease in the number of gallons delivered each trip, increasing the number of trips and miles driven, thus increasing the probability of more accidents, personal injuries and fatalities.

During discussions on structural integrity issues at the February 1994 public meeting, the potential for changes in loading due to liquid movement was addressed. Commenters generally agreed that while significant lading movement can occur during partially loaded conditions and that such movement cannot be disregarded by cargo tank designers and vehicle operators, the variables involved are more than can be comprehensively dealt with at this time. The general agreement was that the highest stress conditions on most cargo tank configurations occur when the cargo tanks are full. Discussions on how to combine the loadings in calculating the structural integrity requirements have been going on for a number of years. RSPA agrees with commenters that the loadings currently in the HMR are based on extreme conditions that would be realized only on a rare occasion, if ever. Thus, based on recent information presented at the public meetings and written comments received in response to the NPRM, RSPA concludes that, for the design and construction of cargo tanks, it is best to consider separately the effects of normal operating loadings, which are known to act in combination, and the effects of extreme dynamic loadings, which are not expected to act in combination with each other. Therefore, in this final rule, RSPA is revising paragraph (c) to provide structural design requirements that will be more reflective of conditions encountered by cargo tank motor vehicles. These revisions will require cargo tank designers to consider normal operating loadings to be acting simultaneously, except that longitudinal acceleration and deceleration cannot occur at the same time. Also, extreme dynamic loadings must be considered in separate calculations; these loadings may be considered to be acting independently.

Paragraph (d) prescribes design calculations that should be considered to account for stresses due to impact in an accident. For consistency, the accident damage requirements contained in current paragraph (d) are moved to § 178.345–6(e) where other accident damage protection requirements appear. Also, consistent with other changes made to this section, paragraphs (a) (1) and (3) are amended by removing the reference to paragraph (d) of this section.

Paragraph (e) is editorially revised, for clarity and consistency, by changing the word "wall" to read "shell and heads", and paragraphs (e) through (g) are redesignated as paragraphs (d) through (f).

Section 178.345–5

Commenters supported the proposed change in paragraph (b) that all fittings and devices mounted on a manhole cover must withstand the same static internal fluid pressure as that required for the manhole. However, commenters requested a revision to clarify that fitting and device manufacturers are

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responsible for testing and certifying the structural integrity of their products. RSPA agrees with the commenters that the fitting and device manufacturers should be responsible for ensuring the integrity of their components. Therefore, the proposed provision is revised for clarity and added as new paragraph (f).

Another commenter suggested that paragraph (e) be revised to require that each manhole cover must be marked with the date of certification. RSPA will consider this comment in a future rulemaking action.

Section 178.345–6

A minor editorial change is adopted as proposed in the NPRM.

Section 178.345–8

Commenters recommended several changes to the accident damage protection requirements. They requested that all accident damage protection devices be designed so that calculated stress under the conditions prescribed not exceed the ultimate strength of the material of construction. They pointed out certain inconsistencies in the design criteria specified in this section. For example, in paragraph (d), the design stress for accidents involving longitudinal deceleration is based on "the lesser of the yield strength or 75 percent of the ultimate strength"; the general requirement for accident damage protection in paragraph (a)(3), is based on "75 percent of the ultimate strength"; while bottom damage and rollover damage protection, in paragraphs (b) and (c), both are based on the "ultimate strength." RSPA agrees there is merit in using the same criteria whenever possible. Therefore, in this final rule, the design of all accident damage protection devices is based on the ultimate strength of the material of construction.

The primary purpose of accident damage protection is to prevent the release of hazardous lading from a cargo tank in the event of an accident. For example, during an accident involving the maximum level of longitudinal deceleration expected, if the front head of a cargo tank experiences stress levels above the yield point of the material of construction, the head will bulge or distort. However, if that deformed head continues to contain the lading, the intent of this requirement has been met. In a practical sense, good engineering practice provides for factors of safety when analytical methods are not well established and when safety considerations call for reducing the probability of failures.

When an accident imposes loads on the cargo tank wall, the material of the wall, however, must be stronger than the accident damage protection device. For example, in a rollover accident, the portion of the cargo tank wall to which a rollover protection device is attached should not fail before the rollover protection device fails. The design stresses in the protection device itself can be based on the ultimate strength of the material, but the loads transmitted to the cargo tank wall must be based on a more conservative value. This can be achieved by use of factors of safety.

Accordingly, paragraph (a)(3) is revised to base design stresses on the ultimate strength of the material with a 1.3 safety factor (i.e., the reciprocal of 0.75 times ultimate, rounded).

Commenters have stated that most impacts on bottom damage protection devices in accidents occur directly from the side of the vehicle. TTMA has stated that any piping at the bottom of a tank is protected fore and aft by the running gear of the cargo tank motor vehicle or its towing vehicle. Contending that reduced forces of impact can be expected from front and rear, TTMA petitioned for a reduction from 155,000 pounds to 27,000 pounds fore and aft along the longitudinal axis of the vehicle. RSPA believes, however, that the possibility of impacts from the front is very real for trailers; for example, during turning maneuvers, or in the event that the towing vehicle rides over an obstacle such as a guard rail. On the other hand, impacts from the rear are less likely on trailers because of the rear suspension. Therefore, RSPA has revised paragraph (b)(1) to recognize that suspension components and structural mounting members can provide all, or part, of bottom damage protection. Additionally, in paragraph (b) introductory text, a second sentence is added to clarify that a single protection device may be used to protect outlets, projections and piping grouped or clustered together.

Commenters stated that in the general rollover damage protection requirements, in paragraph (c), the wording "enclosed inside" could be misunderstood to require that closures and fittings must be protected from rollover damage on all sides—front, sides, rear and top. They also suggested that the protection devices be located no more than 48 inches from the closure or fitting. RSPA never intended to require that the component being protected be fully enclosed by the protective device. Also, RSPA does not agree with adding a dimensional location requirement. Rather than dimensional controls, one of RSPA's overall objectives is to provide performance requirements when appropriate. Therefore, paragraph (c) is revised to clarify the ambiguous wording.

Commenters requested that in paragraph (c)(1), the tangential design load for rollover protection be reduced from 2 "g" to 0.5 "g" or 1 "g." A commenter stated that "neither industry nor government have any data to support what this rollover protection device strength should be", contending that MC 306 accident damage protection has performed well, even considering findings of the NTSB study of overturn accidents. A commenter provided analytical data that indicated the internal bulkheads would be overstressed under 2 "g" tangential loads using the current MC 306 design.

A February 4, 1992 NTSB investigation report on rollover accidents involving MC 306 and MC 312 cargo tanks recommended several actions by both RSPA and the Federal Highway Administration (FHWA). The NTSB report supported the earlier RSPA decision to increase the rollover design load in the horizontal plane from one-half the weight of the loaded cargo tank motor vehicle prescribed in the MC 306, MC 307 and MC 312 specifications, to twice the weight of the loaded cargo tank motor vehicle prescribed in the DOT 406, DOT 407 and DOT 412 specifications. NTSB also noted that at this time, test results are not available to support this four-fold increase, but limited testing performed under RSPA and FHWA sponsorship for studies of release from dome covers indicate forces can easily exceed 2 "g". Additionally, NTSB questioned whether the load specified for the DOT 406, DOT 407 and DOT 412 specifications are adequate in a typical rollover accident.

RSPA agrees with comments that in some rollover accidents, cargo tank rotation is limited to 120 degrees or less, so that these horizontal forces do not come into play unless a roadside obstacle is struck. In such incidents, the side of the cargo tank absorbs most of the energy of the rollover. However, in other rollover incidents, cargo tank motor vehicles have rotated 180 degrees or more and rollover protection devices have failed.

RSPA performed simple calculations to estimate the forces that would be expected to bring a sliding overturned cargo tank motor vehicle to a halt, at a variety of speeds and stopping distances. From the calculations performed regarding stopping distances, RSPA concludes that the design loads should not be decreased. FHWA will initiate a study aimed at developing a more refined understanding of the forces involved in cargo tank rollover accidents.

For these reasons, RSPA rejects requests to lower the tangential design load. In many cases, manufacturers will find it necessary to develop new designs for overturn protection devices, perhaps with associated short-term increased cost, but with enhanced safety benefits. Several manufacturers already have developed satisfactory protection devices which meet these design criteria. In addition, RSPA has made several minor editorial revisions in paragraph (c)(1) to improve clarity.

Paragraph (d)(3) prescribes that each cargo tank rear-end protection device and its attachment to the vehicle must be designed to satisfy the conditions specified in paragraph (d)(1) when subject to an impact of the cargo tank at rated payload, at a deceleration of 2 "g". Such an impact must be considered as being uniformly applied in a horizontal plane at an angle of 30 degrees or less to the longitudinal axis of the vehicle. Commenters requested elimination of the 30 degree angle for this impact load. They stated that most rear-end collisions of trucks and trailers involve other vehicles and are "in line", i.e., the longitudinal centerlines of the two vehicles are parallel at impact. TTMA pointed out that the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking [Docket No. 1–11, Notice 9; January 3, 1992], containing a proposal for rear impact guards and protection. The NHTSA proposal specified an impact only in the direction of the longitudinal centerline of the struck vehicle; it did not address angular impact. NHTSA's rear impact requirements are intended for the design of underride guards that will minimize impacts in occurrences where automobiles underride (i.e., slide under) the rear-end of large trucks and trailers. These requirements are intended to protect passenger occupants while RSPA's requirement for cargo tank rear-end protection is intended to prevent impacts to lading retention components that could result in the loss of hazardous material lading. Upon further review, RSPA agrees that requiring rear-end protection devices to withstand impacts at an angle of 30 degrees to the longitudinal axis of the vehicle is excessive. Therefore, paragraph (d)(3) is revised to reduce the angle of impact to 10 degrees.

A requirement contained in current paragraph (d) of § 178.345–3 specifying design stress for accidents involving longitudinal deceleration is revised and moved to new paragraph 178.345–8(e) in this final rule. The specified design stress is based on the ultimate strength of the material with a factor of safety of 1.3 (i.e., the reciprocal of 0.75 times ultimate, rounded). The use of 2 "g" as a reasonable maximum level for longitudinal deceleration in accident situations generally has been accepted by industry but commenters have stated that the reliability of strain gauge testing and finite element analysis is questionable when structures are loaded above the yield point. For this reason, cargo tank manufacturers who choose to design at this level may use performance testing to prove that tank heads and shell can withstand this 2 "g" loading condition. Alternate analytical methods or combinations of test and analysis may be used if they are accurate and verifiable.

Section 178.345–10

This section specifies requirements for the pressure relief and vacuum systems on DOT 400-series cargo tank motor vehicles. It also specifies lading retention requirements for the pressure relief system in the event of an overturn. Numerous commenters suggested alternative provisions for pressure relief systems on DOT 400-series cargo tanks. Pressure relief valve manufacturers stated that they have found it very difficult to attain "no loss of lading" with valve designs capable of withstanding the characteristic dynamic pressure surge required by the regulation, especially at low design pressures.

For these reasons, commenters requested that RSPA allow the loss of one liter of lading. If adopted, a properly functioning pressure relief valve could be expected to release no more than one liter of hazardous material in an overturn accident. This amount of liquid would be so widely dispersed by the motion of the vehicle as to cause minimal danger of fire or environmental damage.

Cargo tank shipments of poisonous-by-inhalation (PIH) materials in Hazard Zones A and B are subject to special provisions which result in high working pressures, thicker tank walls and thermal insulation. Insulation moderates thermal gain, thus increasing the pressure differential between valve pressure settings and dynamic pressure; also, it cushions the impact of accidents. The net effect of these features makes it unlikely that even small releases of PIH lading will occur.

RSPA believes allowing a minute release of other types of ladings in overturn accidents has greater safety benefits when compared with possible loss of an entire cargo tank load. Therefore, paragraph (b)(3)(ii) is revised to specify that after August 31, 1995, DOT 400-series cargo tanks must be equipped with a pressure relief valve that will release no more than one liter of lading in an emergency situation before reclosing to a leak-tight position. In addition, editorial changes are made in paragraph (b)(3)(i) for clarity.

Section 178.345–13

A paragraph heading, *"Leakage test."* is added to paragraph (c) as proposed in the NPRM.

Section 178.345–14

This section specifies cargo tank marking requirements. The California Highway Patrol recommended several substantial changes throughout this section that were not proposed in the NPRM. While RSPA believes some of these changes may have merit, they will have to be considered in a future rulemaking.

Proposed paragraph (d) is revised to clarify that each cargo tank on a multi-tank cargo tank motor vehicle must have a separate nameplate, unless each cargo tank is made by the same manufacturer with the same materials, manufactured thickness, and minimum thickness.

Section 178.345–15

RSPA proposed to add a new paragraph (e) to allow affixing a metal certification plate to cargo tanks which do not meet all of the applicable specification requirements. This would be indicated by not stamping a compliance date on the plate. A commenter pointed out that the proposed wording does not specifically require the Registered Inspector to stamp the date of compliance on the specification plate when the cargo tank is brought into full conformance with the specification. RSPA agrees with the commenter and has clarified the requirement.

Another commenter requested a revision to clarify that, for ASME tanks, the cargo tank motor vehicle manufacturer must furnish a manufacturer's data report to the cargo tank owner as required by the ASME Code, in addition to other required documents. The ASME Code requires a cargo tank manufacturer to prepare a manufacturer's data report for each tank. RSPA agrees with the commenter and has added a provision in paragraph (b)(2) specifying that the manufacturer must supply the cargo tank owner with a copy of the manufacturer's data report, at the time of delivery.

Section 178.346–1

RSPA proposed to add a new paragraph (d)(9) specifying provisions for the use of a single full fillet lap weld joint without plug welds for

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longitudinal seams on the top 25 percent of the cargo tank. For the most part, commenters agreed in principal with the proposal; however, they recommended that the use of single fillet weld lap joint not be limited to the top one-fourth of the cargo tank.

Several manufacturers stated that they have used single full fillet lap welded joints for longitudinal seams on both the top and bottom areas of thousands of low-pressure cargo tank motor vehicles. They stated their service experience with these joints over many years of operations has been very good.

Advantages cited by the manufacturers for using this type of weld include the ability to achieve excellent fit between the shell and head flanges, and reduction in the amount of time personnel must work in confined spaces. However, because the ASME Code does not recognize this joint configuration, it may not be used on ASME certified vessels.

Industry submitted reports of tensile tests of the typically used single full fillet lap joints to RSPA. Test results indicate that failure occurs at stress levels of about 70 to 75 percent of the ultimate strength of adjacent material. One commenter opposed the use of such joints but provided no supporting test data.

RSPA believes the satisfactory performance of these joints over the years serves as a persuasive argument for their continued use on DOT 406 cargo tank motor vehicles. However, because a major reason for establishing the DOT 400-series specifications is enhanced quality assurance, the joints may be used only when subject to certain conditions. Therefore, new paragraph (d)(9) specifies the conditions for use of these joints in longitudinal seams, requirements for periodic compliance testing, and design requirements for determining weld joint efficiency. In addition, a new paragraph (d)(10) is added to clarify that requirements of paragraph UW–9(d), of Section VIII, Division 1, ASME Code do not apply.

Section 178.346–2

Minor editorial changes are made to paragraph (a).

Section 178.346–10

Valve manufacturers stated that, during prototype testing, they have encountered substantial problems in obtaining adequate flow under emergency conditions with pressure relief valves designed for the comparatively low MAWP levels typical of DOT 406 cargo tank motor vehicles. These problems have been resolved for current valves; however, the valve manufacturers continue to believe the emergency flow capacities, which are permitted to release up to one gallon of lading under the dynamic pressure surges characteristic of rollover accidents, are still marginal in some cases. Because of the problems encountered by valve manufacturers, RSPA will allow an additional year for product development and manufacturing start-up. This extension is added in a new paragraph (b)(3).

RSPA proposed to revise paragraph (c)(1) to permit DOT 406 cargo tanks to have the same set pressure and test pressure as allowed in § 178.345–10(d)(1), and as prescribed for DOT 407 and 412 cargo tanks except that the reclosing pressure would remain at no less than MAWP. Commenters stated that while the proposed language would be helpful in increasing the venting capacity to a limited extent and providing a similar difference between opening and closing pressures over a range of MAWP values, it would not eliminate the need for supplementary venting capacity. Commenters requested that the flow rate be determined at a higher pressure, specifically at 125 percent of the tank test pressure. This would provide more pressure differential across the valve seat and provide higher venting capacities. As discussed in the preamble for 178.346–10(b) above, pressure relief valve manufacturers reported that they have found it difficult to obtain adequate emergency flow capacities in valves designed for DOT 406 cargo tank motor vehicles.

Based on comments received, RSPA believes the problem can be relieved by implementing two measures. The first measure is to increase the tolerance on the valve set pressure to allow the valve to begin opening at a lower set pressure and to be fully open at a higher pressure. The second measure is to increase the venting capacity rating pressure to 125 percent of the tank test pressure, and not greater than 3 psi above the tank's MAWP. Because the pressure relief valves are required to be removed from the cargo tank during periodic pressure testing, the tank itself will not be exposed to pressures above its normal test pressure (see § 180.407(g)(1)(i)). This increase in the venting capacity rating pressure will still provide a satisfactory margin of safety with respect to tank bursting pressure, even in the event of exposure to fire. The combined effect of these changes can be expected to significantly raise the pressure differential across the valve seat, thus increasing flow. Accordingly, both paragraphs (c)(1) and paragraph (d)(1) have been revised to include these two measures.

Section 178.346–13

In the NPRM, RSPA proposed to increase the emergency flow capacity of DOT 406 pressure relief valves by raising the test pressure of the cargo tank. This was intended to alleviate problems reported by valve manufacturers by increasing the differential pressure across the valve seat, thus increasing flow. However, commenters requested that RSPA not make this change because of the increased danger of deformation of heads at pressure levels above 5.0 psig, especially for internal heads in which the pressure is applied to the convex side. One commenter stated that pressures above 5.0 psig would require increased head thickness or bracing, thus increasing the weight of the tank resulting in lower payload and higher manufacturing cost.

As an alternative means of increasing emergency flow, commenters suggested that the set pressure and the flow rating pressure of the pressure relief valve itself be changed while retaining the existing tank test pressure. RSPA agrees with this alternative. Therefore, RSPA has revised paragraphs 178.346–10(c)(1) and (d)(1) instead of revising the tank test pressure requirements.

Shortly before publication of the NPRM, TTMA petitioned RSPA to use the Environmental Protection Agency (EPA) test for vapor-tightness for all DOT 406 cargo tanks. TTMA requested that Method 27 be authorized for all DOT 406 cargo tanks, regardless of whether they are: (a) used in gasoline delivery, (b) fitted with vapor collection equipment, or (c) subject to this test under EPA rules. Method 27, is found in appendix A. to 40 CFR Part 60. Section 1.1 of Method 27 is applicable for the determination of vapor tightness of a gasoline delivery tank which is equipped with vapor collection equipment. Requirements for applying the initial pressure-vacuum and test criteria are contained in 40 CFR Part 60, Subpart XX—Standards of Performance for Bulk Gasoline Terminals. In § 60.501, the definition of vapor tight gasoline tank truck reads:

> Vapor-tight gasoline tank truck means a gasoline tank truck which has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 750 pascals (75 mm of water) within 5 minutes after it is pressurized to 4,500 pascals (450 mm of water). This capability is to be demonstrated using the pressure test procedure specified in Reference Method 27.

It should be noted that 750 pascals = 0.109 psi = 3.0 inches of water and 4,500 pascals = 0.653 psi = 18.1 inches of water. Similar provisions for benzene are prescribed in 40 CFR Part 60, Subpart BB—National Emission Standard for Benzene Emissions from Benzene Transfer Operations, at § 60.601.

RSPA authorized this alternative leakage test in the June 12, 1989 final rule published under HM–183 to relieve burdens of duplicate test requirements for cargo tanks intended for use in locations where, based on established standards of air quality, EPA has decided that release of gasoline vapors constitutes a hazard to the environment. TTMA stated that a cargo tank motor vehicle manufacturer may not know the local air pollution requirements to which the motor vehicle may be subject. RSPA recognizes TTMA's concerns and is permitting this alternative test when a cargo tank is equipped with vapor recovery equipment without qualification regarding the materials transported. RSPA also has revised paragraph (c) and § 180.407(h)(2) to reference appropriate acceptance criteria in EPA's regulation contained in 40 CFR 60.

Section 180.403

Commenters supported the proposal to add a definition for the term "replacement of a barrel." TTMA recommended that, in the definition of "replacement of a barrel" the wording "unused tank" should be clarified to mean a "new tank." RSPA agrees and the word "new" is added parenthetically after the word "unused."

Commenters also supported the proposal to revise the definition of rebarrelling. However, for the reasons contained in the preamble discussion for § 180.413 the proposed revision is not being adopted in this final rule. A commenter recommended that the definition of "repair" be modified to include the replacement of components such as valves, vents and fittings. RSPA believes this suggested change would be confusing because a "repair" is specifically defined to mean "any welding done to the cargo tank wall to return it to the original specification or a later equivalent specification." Replacement of valves, vents and fittings is considered maintenance. Therefore, the current definition is retained.

Section 180.405

Minor editorial changes are made in subparagraphs (f)(1)(iii) and (f)(4) as proposed in the NPRM.

In paragraph (g)(2), RSPA proposed to clarify that fittings and devices mounted on a manhole cover are part of the manhole assembly and must meet all performance standards required for the manhole cover. A commenter stated that the current requirement is adequate and recommended that RSPA not adopt the proposed change. The commenter stated that any concern or problem is due to a lack in verifying the continued proper securement of these fittings and devices to the manhole cover. The commenter said that the annual leakage test and inspection requirements in § 180.407 should be sufficient to assure that these in-service fittings and devices remain securely mounted and properly sealed on in-service manholes. RSPA agrees with the commenter and the proposed changes are not adopted in this final rule.

Another commenter recommended that paragraph (g)(2)(i) be revised to add "month and year" to the certification marking on manhole assemblies. Although RSPA believes that such a requirement may have merit, an opportunity should be provided for public comment; therefore, it will be considered in a future rulemaking action.

Paragraph (h) specifies that replacement for any reclosing pressure relief valve must be capable of re-seating to a leak-tight condition after a pressure surge. Section 180.405(c) authorizes modifying the reclosing pressure relief valves of an MC 306 cargo tank by installing the dual function pressure relief valves which are required for DOT 406 cargo tank motor vehicles. Commenters pointed out that this replacement could result in an MC 306 cargo tank having lower emergency venting capacity than its specification requires; because it is difficult to produce a valve that achieves the comparatively high flow rates of the MC 306 units, withstands the pressure surges specified in the DOT 406 specification, and recloses with minimal loss of lading. A reduced flow capacity is less likely to be encountered in fitting an MC 307 with a DOT 407 valve replacement, and in fitting an MC 312 with a DOT 412 valve replacement, because of the larger pressure differentials which are commonly used in these cargo tanks. Regardless of the equipment installed, the venting requirements specified in the particular cargo tank specification must be met whenever a pressure relief valve is replaced. For this reason, in this final rule, RSPA is authorizing replacement of defective MC 306 pressure relief valves with new or refurbished MC 306 pressure relief valves until August 31, 1998. After this date, any valve replacements must be the surge resistant pressure relief valves required for DOT 400-series cargo tanks. This allows three years for implementation of this safety approvement.

Section 180.407

In the table in paragraph (c), chlorine cargo tanks must be leakage tested annually. These cargo tanks are also required to be pressure tested every two years. Based on a comment, RSPA has extended the frequency for conducting the leakage test to two years to coincide with the pressure test. Certain minor editorial changes are made in paragraph (d)(1)(i) for clarity. Paragraph (e)(1) is revised to clarify that when a particular tank design such as a cargo tank with a lining, coating or internal baffles, precludes an internal visual inspection, the tank must be hydrostatically or pneumatically tested. Paragraph (e)(4), which is duplicative with the requirements in paragraph (f)(3), is removed as proposed in the NPRM.

RSPA proposed to revise paragraph (g)(1)(iv), covering the pressure test of specification cargo tanks for consistency with the proposed changes to § 178.346–10; however, commenters who initially sought this change recommended that the proposal be withdrawn and the current provisions retained. Therefore, no change is made in this final rule.

Paragraph (h)(2) is revised to permit the use of the EPA Method 27 vapor tightness test on any cargo tank fitted with a vapor recovery system and used in gasoline or benzene service, as discussed earlier under the preamble discussion to § 178.346–13(c)(2). A commenter suggested that paragraph (h)(2) require the use of oil or soap to detect leaks in cargo tank seams, piping, valves and accessories when performing the Method 27 test. RSPA believes that oil or soap can be very useful in locating leaks, but that it would be an unnecessary burden if required for all Method 27 tests. Accordingly, RSPA has not adopted the suggested change.

Paragraph (i) prescribes that the heads and shell of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be thickness tested. Consistent with changes made to § 178.345–1(1)(2) in this final rule, a new paragraph (i)(4)(x) is added to specify that thickness testing must be performed on connecting structures of a carbon steel, self-supporting multi-tank cargo tank motor vehicle.

Requirements for continuing qualification and maintenance of cargo tank motor vehicles include periodic measurement of the thickness of heads and shells. This has focused attention

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on interpretation of specification requirements for minimum thickness, especially of specification MC 306, MC 307, MC 312 cargo tanks and their predecessors.

In the specifications for MC 306, MC 307 and MC 312 cargo tanks constructed of steel, minimum thickness requirements for heads and shells were expressed in terms of U. S. Standard Gauges for sheet material or, for some MC 312 units where plate material was specified, in terms of fractions of an inch. These data were found at Table I and Table II in specifications for each of the respective types. Although not explicitly stated in the regulatory text, the tabulated values were the minimum nominal sheet and plate sizes permitted for these cargo tanks. For aluminum, values in Table I and Table II were the minimum nominal thickness expressed in decimals. The tolerances on mill thickness and the minimum thickness after forming were not covered. Although major steel purchase orders and steel mill production controls for sheet stock and thin plate are based on specific thicknesses and tolerances rather than on standard gauges, manufacturing tolerances have been established by the American Society for Testing and Materials (ASTM) for standard gauges and plate. For example, ASTM A480/A480M provides general specifications for stainless steels and heat-resisting steel plate, sheet and strip; Tables A1.2 and A1.17 in this specification are of special interest to manufacturers of DOT specification cargo tanks. For MC 307 and MC 312 cargo tanks which were required to be designed and constructed in accordance with the ASME Code, minimum mill undertolerances are set forth in Section VIII, Division 1 at UG–16(c). The ASME values are more restrictive than those of ASTM A480/A480M.

In January 1991, the National Tank Truck Carriers, Inc. (NTTC) published a revision to their "Cargo Tank Maintenance Manual" which included a table of minimum thicknesses for U.S. steel gauges ranging from 3 through 30. The accompanying narrative stated that the basic information was "provided by DOT." A table, contained in § 173.24(c)(2) of the 1990 edition of the HMR was cited for gauges 12 through 30 with extrapolation being used to complete the other gauges. The values presented in that table were intended for relatively severe cold-working operations such as those experienced in forming the top and bottom chimes of steel drums, not for cargo tank construction. However, since adopting 49 CFR 180 Subpart E—Qualification and Maintenance of Cargo Tanks, the values published in the NTTC manual have been used for thickness testing as required by § 180.407(i). In the NPRM, RSPA proposed to add a new paragraph (i)(5) containing a minimum thickness table for steel and aluminum for the sizes of sheet and plate which have been authorized for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 heads and shells. The way in which minimum thickness has been set forth over the years has varied. For example, steel thicknesses generally have been expressed in terms of U.S. Standard Gauge (USSG), but, in the case of the MC 303 specification, both USSG values and decimal values were used. Thickness values for aluminum more often have been expressed in decimals. However, in the case of the MC 302 specification, both USSG values and decimal values were tabulated; and in the case of the MC 304 specification, the values for aluminum were required to be calculated by multiplying the USSG values listed for mild steel by a factor of 1.44.

TTMA suggested several changes to the table for clarity. TTMA also recommended that the table be divided into two separate tables: one for steel and one for aluminum. RSPA agrees with TTMA's recommendation. Therefore, in this final rule, current paragraphs (i)(5) through (1)(7) are redesignated as paragraphs (i)(6) through (i)(8), and a new paragraph (i)(5) containing two minimum thickness tables has been added. The tables include all thicknesses found in the eleven specifications cited above, plus USSG number 7 which has been used by a number of manufacturers. For steel, nominal thicknesses range from USSG number 19 to 3/8" plate; for aluminum, nominal thicknesses range from 0.078" to 0.540".

Section 180.413

RSPA proposed to revise requirements on the repair, modification, stretching or rebarrelling of cargo tanks. A commenter requested a revision to the record requirements contained in proposed paragraph (b) to require that the National Board "R–1" report be completed for all repairs on ASME Code stamped cargo tanks. The commenter stated that completing the document will ensure that the repair and method of repair conforms to the National Board Inspection Code and is approved by an Authorized Inspector. RSPA believes this revision is unnecessary because § 180.413 requires that any repair or modification involving welding on the tank head must be certified by a Registered Inspector, and that any repair or modification to an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code. The National Board requires the use of the "R–1" forms for repairs and modifications. Therefore, this commenter's recommendation is not adopted in this final rule.

RSPA proposed to require that any repair, modification, stretching or rebarrelling of an ASME Code-stamped cargo tank must be performed by a repair facility holding a National Board "R" stamp. The National Board allows a facility other than a National Board "R" stamp holder to make repairs and modifications to ASME Code cargo tanks when authorized within a governmental jurisdiction. Jurisdictional authorization is only recognized within state boundaries where the repair facility is located. Therefore, because most cargo tank motor vehicles are operated in interstate commerce, RSPA has adopted the proposal requiring repairs on DOT specification cargo tanks certified to the ASME Code to be performed only by a facility holding a valid "R" stamp.

Based on a letter from TTMA stating that the regulations provide no distinction between a "100 percent rebarrel" and the manufacture of a new cargo tank, RSPA proposed to clarify the rebarrelling requirements and to differentiate between "rebarrelling a cargo tank" and "manufacturing a cargo tank". It was never RSPA's intent to imply that a repair facility holding only a National Board "R" stamp would be allowed to manufacture a new cargo tank or to perform a "100 percent rebarrel" of a cargo tank. Such work can be performed only by a manufacturer who is registered with DOT and holds an ASME "U" stamp. RSPA proposed adding a provision disallowing a repair facility from replacing an entire cargo tank by performing a "100 percent rebarrel."

However, based on comments received in the proposed clarification, the reference to a "100 percent rebarrelled cargo tank" has also caused confusion. Therefore, the proposed change is not adopted in this final rule, but RSPA will seek to clarify this provision in a future rulemaking.

CGA urged RSPA to add a new paragraph (e)(3)(v) specifying that modifications of MC 338 cargo tanks must conform to the specification in effect at the time of manufacture or at the time of modification. CGA pointed out that many cryogenic cargo tanks were operating under DOT exemption prior to adoption of the MC 338 cargo tank specification. Some of these units

do not conform to the design criteria in §§ 178.338–3 and 178.338–10. CGA stated that engineering and manufacturing costs to upgrade these cargo tanks to this new design criteria would be too restrictive. Yet, CGA also stated that "to encourage continuous modification and improvement, modifications to MC 338 cargo tanks must be performed in accordance with the specifications in effect at the time of manufacture or at the time of modification."

Proposed § 180.413 provides for a cargo tank to be modified in accordance with a current specification in effect at the time the work is done. For example, a feature on an MC 305 cargo tank may be modified in accordance with the MC 306 specification until August 31, 1995, and after that date in accordance with the DOT 406 specification; an MC 330 cargo tank may be modified in accordance with the MC 331 specification. Similarly, a cargo tank authorized under an exemption issued before October 1, 1984 for transportation of a cryogenic liquid must be marked as a "DOT MC 338" cargo tank in accordance with § 180.405(d). The only cryogenic cargo tank specification is the MC 338. Thus, no feature of an MC 338 cryogenic cargo tank can be modified in accordance with any other specification. However, an MC 338 cryogenic cargo tank may be repaired in accordance with either its original design specified in the exemption under which it was manufactured or the MC 338 specification requirements in effect at the time of the repair. Therefore, CGA's suggested change is not adopted in this final rule.

CGA recommended a revision to paragraph (e)(6) to clarify that a cargo tank manufacturer who welds attachments and appurtenances which have no affect on the structural integrity or lading retention capability of a tank is not required to have a National Board "R" or ASME "U" stamp. CGA also suggested a revision to paragraph (e)(7) to clarify that mounting specifications should be governed by welding to the cargo tank "shell and head" rather than the cargo tank "wall". RSPA agrees and paragraphs (e)(6) and (e)(7) are revised for clarity.

IV. Docket HM–183D

On September 3, 1993, RSPA published an interim final rule that amended requirements concerning the registration of Registered Inspectors and Design Certifying Engineers for certification of cargo tank motor vehicles. RSPA extended the closing of the registration period from December 31, 1991 to December 31, 1995. This action was in response to a petition for rulemaking, P–1167, filed by NTTC. RSPA stated in the rule that although an opportunity for public comment had not been provided, RSPA was seeking public comment to the action. RSPA further stated that any comments received would be addressed along with comments received to the NPRM under Docket HM–183C. The effective date of this rule was September 3, 1993. The comment period closed on October 13, 1993; RSPA received no comments in regard to this action. Therefore, that extension remains in effect.

V. Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

2. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous material. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule will be 90 days after publication in the Federal Register.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

4. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

5. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

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49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in paragraph (a)(3) table, the first entry for the ASME Code and the entry for the National Board Inspection Code are revised to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
. . . . .	
American Society of Mechanical Engineers:	
ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1992 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Addenda through December 31, 1993.	173.32; 173.306; 173.315; 173.318; 173.420; 178.245; 178.255; 178.270; 178.271; 178.272; 178.337; 178.338; 178.345; 178.346; 178.347; 178.348; 179.400; 180.407; 180.417
National Board of Boiler and Pressure Vessel Inspectors:	
. . . . .	
National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, NB–23, 1992 Edition	180.413
. . . . .	

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

4. In § 173.33, a new paragraph (h) is added to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(h) Each liquid or vapor discharge opening in an MC 330 or MC 331 cargo tank and each liquid filling and liquid discharge line in an MC 338 cargo tank must be provided with a remotely controlled internal self-closing stop valve, except when an MC 330 or MC 331 cargo tank is marked and used exclusively to transport carbon dioxide, or except when an MC 338 is used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon. However, if the cargo tank motor vehicle was certified before January 1, 1995, this requirement is applicable only when an MC 330 or MC 331 cargo tank is used to transport a flammable liquid, flammable gas, hydrogen chloride (refrigerated liquid), or anhydrous ammonia; or when an MC 338 cargo tank is used to transport flammable ladings.

§ 173.33 [Amended]

5. In addition, in § 173.33, in paragraph (d)(3), a second sentence is added at the end of the text preceding the table to read "The venting capacity requirements of the original DOT cargo tank specification must be met whenever a pressure relief valve is modified.".

§ 173.225 [Amended]

6. In § 173.225, in paragraph (e)(2), the phrase "MC 310, MC 311, MC 312 and DOT 412" is revised to read "MC 307, MC 310, MC 311, MC 312, DOT 407, and DOT 412".

7. In § 173.315, paragraph (o)(1) and the first sentence in paragraph (o)(2) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(o) * * *

(1) Any hose, piping, or tubing used for loading or unloading that is mounted or carried on the motor vehicle may not be attached to any valve and must be capped at all ends to prevent the entry of moisture, except at the time of loading or unloading. Except at the time of loading and unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter every 2 years when performing the required periodic retest in § 180.407(c) of this subchapter. * * *

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

8. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

9. In § 178.337–1, paragraph (e)(2) is amended by revising the last sentence to read as follows:

§ 178.337–1 General requirements.

* * * * *

(e) * * *

(2) * * * Insulating material used on tanks for chlorine must be corkboard or polyurethane foam, with a minimum thickness of 4 inches, or 2 inches minimum thickness of ceramic fiber/fiberglass of 4 pounds per cubic foot minimum density covered by 2 inches minimum thickness of fiber.

* * * * *

§ 178.337–1 [Amended]

10. In addition, in § 178.337–1, the following changes are made:

a. In paragraph (a)(3), the reference "173.33(i)" is revised to read "178.337–1(e)(2)" and the reference "173.315(a) Table Note 11" is revised to read "173.315(a) Table".

b. In paragraph (e)(1), the reference "173.315(a) Table, Note 11" is revised to read "173.315(a) Table".

§ 178.337–8 [Amended]

11. In § 178.337–9, paragraph (b)(7)(i) is removed, and paragraphs (b)(7)(ii) and (b)(7)(iii) are redesignated as paragraphs (b)(7)(i) and (b)(7)(ii), respectively.

12. In § 178.337–11, paragraph (a)(2) introductory text is revised to read as follows:

§ 178.337–11 Emergency discharge control.

(a) * * *

(2) Except for a cargo tank marked "For carbon dioxide only", each liquid or vapor discharge opening in a cargo tank must be equipped with a remotely controlled internal self-closing stop valve. This requirement does not apply to a cargo tank motor vehicle certified before January 1, 1995, unless intended for use to transport a flammable liquid, flammable gas, hydrogen chloride, refrigerated liquid, or anhydrous ammonia. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

* * * * *

13. In § 178.338–9, paragraph (c)(2) is revised to read as follows:

§ 178.338–9 Holding time.

* * * * *

(c) * * *

(2) *Same design.* The term "same design" as used in this section means cargo tanks made to the same design type. See § 178.320(a)(3) for definition of "design type".

* * * * *

14. In § 178.338–11, in the introductory text in paragraph (c), the first sentence is removed and two new sentences are added to read as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Except for a cargo tank used to transport the following refrigerated liquids: argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon; each liquid filling and liquid discharge line must be provided with a remotely controlled internal self-closing stop valve. This requirement does not apply to a cargo tank motor vehicle certified before January 1, 1995, unless intended for use to transport flammable ladings. * * *

* * * * *

15. In § 178.345–1, in paragraph (c), definitions for "Extreme dynamic loading" and "Normal operating loading" are added, in appropriate alphabetical order and paragraph (i)(2) is revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) * * *

* * * * *

Extreme dynamic loading means the maximum single-acting loading a cargo tank may experience during its expected life, excluding accident loadings.

* * * * *

Normal operating loading means the loading a cargo tank may be expected to experience routinely in operation.

* * * * *

(i) * * *

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be vented to the atmosphere and have a drain located on the bottom centerline. Each drain must be accessible and must be kept open at all times. The drain in any void within the connecting structure of a carbon steel, self-supporting cargo tank may be either a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inch diameter, 6.0 inches apart, one of which is located on the bottom centerline.

* * * * *

16. In § 178.345–3, paragraphs (b) and (c) are revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(b) *ASME Code design and construction.* The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code. The tank design must include calculation of stresses generated by the MAWP, the weight of the lading, the weight of structures supported by the cargo tank wall and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in the calculation of thermal stresses.

(1) Stress concentrations in tension, bending and torsion which occur at pads, cradles, or other supports must be considered in accordance with Appendix G of Section VIII, Division 1 of the ASME Code.

(2) Longitudinal compressive buckling stress for ASME certified vessels must be calculated using paragraph UG–23(b), Section VIII, Division 1 of the ASME Code. For cargo tanks not required to be certified in accordance with the ASME Code, compressive buckling stress may be calculated using alternative analysis methods which are accurate and verifiable. When alternative methods are used calculations must include both the static loads described in this paragraph and the dynamic loads described in paragraph (c) of this section.

(c) *Shell design.* Shell stresses resulting from static or dynamic loadings, or combinations thereof, are not uniform throughout the cargo tank motor vehicle. The vertical, longitudinal, and lateral normal operating loadings can occur simultaneously and must be combined. The vertical, longitudinal and lateral extreme dynamic loadings occur separately and need not be combined.

(1) *Normal operating loadings.* The following procedure addresses stress in the tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under the combination of static and normal operating loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by the MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = The following net longitudinal stress generated by the following static and normal operating loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The tensile or compressive stress resulting from normal operating longitudinal acceleration or deceleration. In each case, the forces applied must be 0.35 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances

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supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from normal operating vertical accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by the following static and normal operating loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by a normal operating accelerative force equal to 0.35 times the vertical reaction at the suspension assembly of a trailer; or the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by a normal operating lateral accelerative force equal to 0.2 times the vertical reaction at each suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(1)(iv)(C) of this section.

(2) *Extreme dynamic loadings.* The following procedure addresses stress in the tank shell resulting from extreme dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_s^2]^{0.5}$$

Where:

(i) S = effective stress at any given point under a combination of static and extreme dynamic loadings that can occur at the same time, in psi.

(ii) S_y = circumferential stress generated by MAWP and external pressure, when applicable, plus static head, in psi.

(iii) S_x = the following net longitudinal stress generated by the following static and extreme dynamic loading conditions, in psi:

(A) The longitudinal stresses resulting from the MAWP and external pressure, when applicable, plus static head, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the tank wall;

(B) The tensile or compressive stress resulting from extreme longitudinal acceleration or deceleration. In each case the forces applied must be 0.7 times the vertical reaction at the suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer during deceleration; or the horizontal pivot of the tractor or converter dolly fifth wheel, or the drawbar hinge on the fixed dolly during acceleration; or the anchoring and support members of a truck during acceleration and deceleration, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(*1*) The axial load generated by a decelerative force;

(*2*) The bending moment generated by a decelerative force;

(*3*) The axial load generated by an accelerative force; and

(*4*) The bending moment generated by an accelerative force; and

(C) The tensile or compressive stress generated by the bending moment resulting from an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or the anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(iv) S_s = The following shear stresses generated by static and extreme dynamic loading conditions, in psi:

(A) The static shear stress resulting from the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(B) The vertical shear stress generated by an extreme vertical accelerative force equal to 0.7 times the vertical reaction at the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(C) The lateral shear stress generated by an extreme lateral accelerative force equal to 0.4 times the vertical reaction at the suspension assembly of a trailer, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly of a trailer, and the horizontal pivot of the upper coupler (fifth wheel) or turntable; or anchoring and support members of a truck, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(D) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(2)(iv)(C) of this section.

* * * * *

§ 178.345–3 [Amended]

17. In addition, in § 178.345–3, the following changes are made:

a. In paragraph (a)(1), the phrase at the beginning of the sentence "Except as provided in paragraph (d) of this section, the" is removed and replaced with the word "The".

b. In paragraph (a)(3), the wording "paragraphs (b), (c), and (d) of this section" is revised to read "paragraphs (b) and (c) of this section" each place it appears.

c. Paragraph (d) is removed.

d. Paragraphs (e) through (g) are redesignated as paragraphs (d) through (f), and in redesignated paragraph (d) the wording "cargo tank wall" is revised to read "cargo tank shell and heads".

18. In § 178.345–5, a new paragraph (f) is added to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(f) All fittings and devices mounted on a manhole cover, coming in contact with the lading, must withstand the same static internal fluid pressure and contain the same permanent compliance markings as that required for the manhole cover. The fitting or device manufacturer shall verify compliance using the same test procedure and frequency of testing as specified in § 178.345–5(b).

§ 178.345–6 [Amended]

19. In § 178.345–6, in paragraphs (a) and (b), the second sentence of each paragraph is revised to read "The design calculations of the support elements must include the stresses indicated in § 178.345–3(b) and as generated by the loads described in § 178.345–3(c).".

20. In § 178.345–8, paragraphs (a)(3), (b) introductory text, (b)(1), (c) introductory text, (c)(1), and (d)(3) are revised; and a new paragraph (e) is added to read as follows:

§ 178.345–8 Accident damage protection.

(a) * * *

(3) Accident damage protection devices attached to the wall of a cargo tank must be able to withstand or deflect away from the cargo tank the loads specified in this section. They must be designed, constructed and installed so as to maximize the distribution of loads to the tank wall and to minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Accident induced stresses resulting from the appropriate accident damage protection device requirements in combination with the stresses from the tank operating at the MAWP may not result in a tank wall stress greater than the ultimate strength of the material of construction using a safety factor of 1.3. Deformation of the protection device is acceptable provided the devices being protected are not damaged when loads specified in this section are applied.

* * * * *

(b) Each outlet, projection or piping located in the lower ⅓ of the tank circumference (or cross section perimeter for non-circular tanks) that could be damaged in an accident that may result in the loss of lading must be protected by a bottom damage protection device, except as provided by paragraph (a)(1) of this section and § 173.33(e) of this subchapter. Outlets, projections and piping may be grouped or clustered together and protected by a single protection device.

(1) Any bottom damage protection device must be able to withstand a force of 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over each surface of the device, over an area not to exceed 6 square feet, and a width not to exceed 6 feet. Suspension components and structural mounting members may be used to provide all, or part, of this protection. The device must extend no less than 6 inches beyond any component that may contain lading in transit.

* * * * *

(c) Each closure for openings, including but not limited to the manhole, filling or inspection openings, and each valve, fitting, pressure relief device, vapor recovery stop valve or lading retaining fitting located in the upper ⅔ of a cargo tank circumference (or cross section perimeter for non-circular tanks) must be protected by being located within or between adjacent rollover damage protection devices, or by being 125 percent of the strength that would be provided by the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand loads equal to twice the weight of the loaded cargo tank motor vehicle applied as follows: normal to the tank shell (perpendicular to the tank surface); and tangential (perpendicular to the normal load) from any direction. The stresses shall not exceed the ultimate strength of the material of construction. These design loads may be considered to be uniformly distributed and independently applied. If more than one rollover protection device is used, each device must be capable of carrying its proportionate share of the required loads and in each case at least one-fourth the total tangential load. The design must be proven capable of carrying the required loads by calculations, tests or a combination of tests and calculations.

* * * * *

(d) * * *

(3) The structure of the rear-end protection device and its attachment to the vehicle must be designed to satisfy the conditions specified in paragraph (d)(1) of this section when subjected to an impact of the cargo tank motor vehicle at rated payload, at a deceleration of 2 "g". Such impact must be considered as being uniformly applied in the horizontal plane at an angle of 10 degrees or less to the longitudinal axis of the vehicle.

(e) *Longitudinal deceleration protection.* In order to account for stresses due to longitudinal impact in an accident, the tank shell and heads must be able to withstand the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the allowable stress value used may not exceed the ultimate strength of the material of construction using a safety factor of 1.3. Performance testing, analytical methods, or a combination thereof, may be used to prove this capability provided the methods are accurate and verifiable. For cargo tanks with internal baffles, the decelerative force may be reduced by 0.25 "g" for each baffle assembly, but in no case may the total reduction in decelerative force exceed 1.0 "g".

21. In 178.345–10, paragraphs (b)(3)(i) and (ii) are revised to read as follows:

§ 178.345–10 Pressure relief.

* * * * *

(b) * * *

(3) * * *

(i) Each pressure relief device must be able to withstand dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one gallon before the relief device recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This capability must be demonstrated by testing. An acceptable test procedure is outlined in TTMA RP No. 81—"Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) After August 31, 1995, each pressure relief device must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the design set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one liter before the relief valve recloses to a leak-tight condition This requirement must be met regardless of vehicle orientation. This

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capability must be demonstrated by testing. TTMA RP No. 81, cited in paragraph (b)(3)(i) of this section, is an acceptable test procedure.

* * * * *

§ 178.345–13 [Amended]

22. In § 178.345–13, a heading is added to paragraph (c) to read "*Leakage test.*".

§ 178.345–14 [Amended]

23. In § 178.345–14, in paragraph (d), the following changes are made:

a. The paragraph heading "*Multi-cargo tank cargo tank motor vehicle*" is revised to read "*Multi-tank cargo tank motor vehicle*".

b. At the end of the second sentence, the phrase "unless all of the cargo tanks are identical" is revised to read "unless all cargo tanks are made by the same manufacturer with the same materials, manufactured thickness, minimum thickness and to the same specification".

24. In § 178.345–15, a sentence is added in the beginning of paragraph (b)(2) and a new paragraph (e) is added to read as follows:

§ 178.345–15 Certification.

* * * * *

(b) * * *

(2) For each ASME tank, a tank manufacturer's data report as required by the ASME Code. * * *

* * * * *

(e) *Specification shortages.* If a cargo tank is manufactured which does not meet all applicable specification requirements, thereby requiring subsequent manufacturing involving the installation of additional components, parts, appurtenances or accessories, the cargo tank manufacturer may affix the name plate and specification plate, as required by § 178.345–14 (b) and (c), without the original date of certification stamped on the specification plate. The manufacturer shall state the specification requirements not complied with on the manufacturer's Certificate of Compliance. When the cargo tank is brought into full compliance with the applicable specification, the Registered Inspector shall stamp the date of compliance on the specification plate. The Registered Inspector shall issue a Certificate of Compliance stating details of the particular operations performed on the cargo tank, and the date and person (manufacturer, carrier, or repair organization) accomplishing the compliance.

25. In § 178.346–1, new paragraphs (d)(9) and (10) are added to read as follows:

§ 178.346–1 General requirements.

* * * * *

(d) * * *

(9) Single full fillet lap joints without plug welds may be used for arc or gas welded longitudinal seams without radiographic examination under the following conditions:

(i) For a truck-mounted cargo tank, no more than two such joints may be used on the top half of the tank and no more than two joints may be used on the bottom half. They may not be located farther from the top and bottom centerline than 16 percent of the shell's circumference.

(ii) For a self-supporting cargo tank, no more than two such joints may be used on the top of the tank. They may not be located farther from the top centerline than 12.5 percent of the shell's circumference.

(iii) *Compliance test.* Two test specimens of the material to be used in the manufacture of a cargo tank must be tested to failure in tension. The test specimens must be of the same thicknesses and joint configuration as the cargo tank, and joined by the same welding procedures. The test specimens may represent all the tanks that are made of the same materials and welding procedures, have the same joint configuration, and are made in the same facility within 6 months after the tests are completed. Before welding, the fit-up of the joints on the test specimens must represent production conditions that would result in the least joint strength. Evidence of joint fit-up and test results must be retained at the manufacturers' facility.

(iv) *Weld joint efficiency.* The lower value of stress at failure attained in the two tensile test specimens shall be used to compute the efficiency of the joint as follows: Determine the failure ratio by dividing the stress at failure by the mechanical properties of the adjacent metal; this value, when multiplied by 0.75, is the design weld joint efficiency.

(10) The requirements of paragraph UW–9(d), of Section VIII, Division 1, ASME Code do not apply.

§ 178.346–2 [Amended]

26. In § 178.346–2, the paragraph (a) designation is removed; the phrase "DOT 406 cargo tanks" is revised to read "DOT 406 cargo tank motor vehicles"; and in Table II, the heading "Rated capacity (gallons)" in the first column is revised to read "Cargo tank motor vehicle rated capacity (gallons)".

27. In § 178.346–10, the word "and" at the end of paragraph (b)(1) is removed, the period at the end of paragraph (b)(2) is removed and "; and" is added in its place, a new paragraph (b)(3) is added and paragraphs (c)(1) and (d)(1) are revised to read as follows:

§ 178.346–10 Pressure relief.

* * * * *

(b) * * *

(3) Notwithstanding the requirements in § 178.345–10(b), after August 31, 1996, each pressure relief valve must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one liter before the relief valve recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This capability must be demonstrated by testing. TTMA RP No. 81, cited at § 178.345–10(b)(3)(i), is an acceptable test procedure.

(c) * * *

(1) Notwithstanding the requirements in § 178.345–10(d), the set pressure of each primary relief valve must be not less than 110 percent of the MAWP or 3.3 psig, whichever is greater, and not more than 138 percent of the MAWP. The valve must close at not less than the MAWP and remain closed at lower pressures.

* * * * *

(d) * * *

(1) Notwithstanding the requirements in § 178.345–10 (e) and (g), the primary pressure relief valve must have a venting capacity of at least 6,000 SCFH, rated at not greater than 125 percent of the tank test pressure and not greater than 3 psig above the MAWP. The venting capacity required in § 178.345–10(e) may be rated at these same pressures.

* * * * *

28. In § 178.346–13, paragraph (c) is revised to read as follows:

§ 178.346–13 Pressure and leakage tests.

* * * * *

(c) *Leakage test.* Cargo tanks equipped with vapor collection equipment may be leakage tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR Part 60, Appendix A. Acceptance criteria are found at 40 CFR 60.501 and 60.601.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

29. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

30. In § 180.403, a new definition "Replacement of a barrel" is added, in the appropriate alphabetical order, to read as follows:

§ 180.403 Definitions.

* * * * *

Replacement of a barrel means to replace the existing tank on a motor vehicle chassis with an unused (new) tank. For the definition of *tank*, see § 178.345–1(c), § 178.337–1, or § 178.338–1 of this subchapter, as applicable.

* * * * *

31. In § 180.405, paragraph (h) is revised to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(h) *Pressure relief system.* Properly functioning reclosing pressure relief valves and frangible or fusible vents need not be replaced. However, replacement of reclosing pressure relief valves on MC-specification cargo tanks is authorized subject to the following requirements:

(1) Until August 31, 1998, the owner of a cargo tank may replace a reclosing pressure relief device with a device which is in compliance with the requirements for pressure relief devices in effect at the time the cargo tank specification became superseded. If the pressure relief device is installed as an integral part of a manhole cover assembly, the manhole cover must comply with the requirements of paragraph (g) of this section.

(2) After August 31, 1998, replacement for any reclosing pressure relief valve must be capable of reseating to a leak-tight condition after a pressure surge, and the volume of lading released may not exceed one liter. Specific performance requirements for these pressure relief valves are set forth in § 178.345–10(b)(3) of this subchapter.

(3) As provided in paragraph (c)(2) of this section, the owner of a cargo tank may elect to modify reclosing pressure relief devices to more recent cargo tank specifications. However, replacement devices constructed to the requirements of § 178.345–10 of this subchapter must provide the minimum venting capacity required by the original specification to which the cargo tank was designed and constructed.

* * * * *

§ 180.405 [Amended]

32. In addition, in § 180.405 the following changes are made:

a. In paragraph (f)(1)(iii), the phrase "prescribed in § 178.345–3 of the specification" is revised to read "prescribed in § 178.345–3 of this subchapter or the specification".

b. In paragraph (f)(4) introductory text, the phrase "and an outlet is equipped" is revised to read "and except that an outlet is equipped".

33. In § 180.407, in the table in paragraph (c), immediately under the subheading "Leakage Test" in the first column, the following entry is added and the wording "All cargo tanks except MC 338" is revised to read "All other cargo tanks except MC 338"; paragraph (e)(1) is revised; paragraph (h)(2) is revised; paragraphs (i)(5) through (i)(7) are redesignated as paragraphs (i)(6) through (i)(8), respectively; the word "and" is removed at the end of paragraph (i)(4)(viii); the period at the end of paragraph (i)(4)(ix) is removed and "; and" is added in its place; and new paragraphs (i)(4)(x) and (i)(5) are added, to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(c) * * *

COMPLIANCE DATES—INSPECTIONS AND RETESTS UNDER § 180.407(c)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see note 1)	Interval period after first test
[Add]		
Leakage Test:		
MC 330 and MC 331 cargo tanks in chlorine service	Sept. 1, 1991	2 years

Note 1: If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on December 30, 1990, and the due date (as specified by a requirement in effect on December 30, 1990) for completing the required inspection or test occurs before the compliance date listed in Table I, the earlier date applies.

* * * * *

(e) * * * (1) When the cargo tank is not equipped with a manhole or inspection opening, or the cargo tank design precludes an internal inspection, the tank shall be hydrostatically or pneumatically tested in accordance with 180.407(c) and (g).

* * * * *

(h) * * *

(2) Cargo tanks equipped with vapor collection equipment may be leakage tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR Part 60, Appendix A. Acceptance criteria are found at 40 CFR 60.501 and 60.601.

* * * * *

(i) * * *

(4) * * *

(x) Connecting structures joining multiple cargo tanks of carbon steel in a self-supporting cargo tank motor vehicle.

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are shown in the tables below. The columns headed "Specified Manufactured Thickness" tabulate the minimum values required for new construction, generally found in Tables I and II of each specification. "In-Service Minimum Thicknesses" are based on 90 percent of the manufactured thickness as specified in the DOT specification, rounded to three places.

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TABLE I.—MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS

Specified manufactured thickness (US gauge or inches)	Nominal decimal equivalent for reference (inches)	In-service minimum thickness (inches)
19	0.0418	0.038
18	0.0478	0.043
17	0.0538	0.046
16	0.0598	0.054
15	0.0673	0.061
14	0.0747	0.067
13	0.0897	0.081
12	0.1046	0.094
11	0.1196	0.106
10	0.1345	0.121
9	0.1495	0.135
8	0.1644	0.148
7	0.1793	0.161
3/16	0.1875	0.169
1/4	0.2500	0.225
5/16	0.3125	0.281
3/8	0.3750	0.338

TABLE II.—MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311 AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Specified manufactured thickness (inches)	In-service minimum thickness (inches)
0.078	0.070
0.087	0.078
0.096	0.086
0.109	0.098
0.130	0.117
0.141	0.127
0.151	0.136
0.172	0.155
0.173	0.156
0.194	0.175
0.216	0.194
0.237	0.213
0.270	0.243
0.360	0.324
0.450	0.405
0.540	0.486

* * * * *

§ 180.407 [Amended]

34. In addition, in § 180.407, the following changes are made:

a. In paragraph (d)(1)(ii), the wording "and the cargo tank is not equipped" is revised to read "or the cargo tank is not equipped".

b. In paragraph (e)(2)(ii), the wording "as specified § 180.407(f)." is revised to read "as specified in § 180.407(f).".

c. Paragraph (e)(4) is removed, and paragraph (e)(5) is redesignated as paragraph (e)(4).

d. In paragraph (g)(1)(iv), the word "minimum" is removed.

35. Section 180.413 is revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(a) *General.* For purposes of this section, "stretching" is not considered a "modification" and "rebarrelling" is not considered a "repair." Any repair, modification, stretching, or rebarrelling of a cargo tank must be performed in conformance with the requirements of this section.

(b) *Repair—(1) Non-ASME Code stamped cargo tanks.* Any work involving repair on an MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME Code stamped must be performed by:

(i) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered with DOT; or

(ii) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered with DOT.

(2) *ASME Code stamped cargo tanks.* Any work involving repair on any ASME Code stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter.

(3) The following provisions apply to cargo tank repairs:

(i) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect either at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the original specification or with the DOT 406 specification in effect at the time of repair;

(iii) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the original specification or with the DOT 407 specification in effect at the time of repair;

(iv) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the original specification or with the DOT 412 specification in effect at the time of the repair;

(v) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect either at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code—Provisions for Repair of Pressure Vessels. Each cargo tank having cracks or other defects requiring welded repairs must meet all of the requirements of § 178.337–16 of this subchapter (in effect at the time of the repair), except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(4) Prior to any repair work, the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(5) Any repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(6) The suitability of any repair affecting the structural integrity of the cargo tank must be determined by testing as prescribed in § 180.407.

(c) *Maintenance or replacement of piping, valves, hoses or fittings.* In the event of repair, maintenance or replacement, any piping, valve, or fitting must be properly installed in accordance with the provisions of the applicable specification before the cargo tank is returned to hazardous materials service. After maintenance or replacement which does not involve welding on the cargo tank wall, the repaired piping, valves or fittings, the replaced segment of the piping must be leak tested. After repair or replacement of piping, valves or fittings which involves welding on the cargo tank wall, the entire cargo tank, including the repaired or replaced piping, valve or fitting, must be pressure tested in accordance with the applicable specification. Hoses permanently attached to the cargo tank must be tested either before or after installation.

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank must conform to the following provisions:

(1) *Non-ASME Code stamped cargo tanks.* If the modification, stretching, or rebarrelling will result in a design type change, then it must be approved by a Design Certifying Engineer. Any work involving modification, stretching, or rebarrelling on an MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME stamped must be performed by:

(i) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered with DOT; or

(ii) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered with DOT.

(2) *ASME Code stamped cargo tanks.* The modification, stretching, or rebarrelling on any ASME Code stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter. If the modification, stretching, or rebarrelling will result in a design type change, then it must be approved by a Design Certifying Engineer.

(3) All new material and equipment, and equipment affected by the modification, stretching or rebarrelling must conform with requirements of the specification in effect at the time of such work. In addition, the modification, stretching or rebarrelling must be performed such that the cargo tank, as modified, stretched or rebarrelled, meets the applicable structural integrity requirements (§ 178.337–3, § 178.338–3, or § 178.345–3 of this subchapter) of the specification in effect at the time of such work. The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only; and

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331.

(4) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's structural integrity, venting, and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for any newly installed safety equipment;

(iv) Perform all retest procedures on each cargo tank in accordance with the applicable specification and § 180.407;

(v) Change the existing specification plate to reflect the cargo tank as modified, stretched or rebarrelled. This must include the name of the person doing the work, his DOT registration number, date, retest information, etc. A supplemental specification plate may be installed immediately adjacent to the existing plate(s), or the existing specification plate may be removed and replaced with a new plate; and

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate, and replace the specification listed on the original specification plate with the words "see variable specification plate".

(5) The design of the modified, stretched, or rebarrelled cargo tank must be approved by a Design Certifying Engineer registered in accordance with subpart F of part 107 of subchapter B of this chapter. The Design Certifying Engineer must certify that the modified, stretched, or rebarrelled cargo tank meets the structural integrity requirements of the applicable specification. The person performing the modifying, stretching or rebarrelling and a Registered Inspector must certify that the cargo tank is in compliance with this section and the applicable specification by issuing a supplemental manufacturer's certificate. The registration number of the Registered Inspector and the person performing the modification, stretching, or rebarrelling must be entered on the certificate. When a cargo tank is rebarrelled, it must be designed, constructed and certified in accordance with a cargo tank specification currently authorized for construction in Part 178 of this subchapter.

(6) If the mounting of the cargo tank on the cargo tank motor vehicle involves welding on the cargo tank head or shell, then the mounting must be performed as follows:

(i) *Non-ASME Code stamped cargo tanks.* For a non-ASME Code stamped cargo tank—

(A) By a cargo tank manufacturer holding an ASME "U" stamp, registered with DOT, and under the direction of a Design Certifying Engineer; or

(B) By a repair facility holding an ASME "U" stamp or a National Board "R" stamp, registered with DOT, and under the direction of a Design Certifying Engineer.

(ii) *ASME Code stamped cargo tank.* For an ASME Code stamped cargo tank, by a repair facility holding a National Board "R" stamp, registered in accordance with subpart F of part 107 of subchapter B of this chapter, and approved by a Design Certifying Engineer.

(7) If the mounting of a cargo tank on a cargo tank motor vehicle does not involve welding on the cargo tank head or shell, or a change or modification of the methods of attachment, then the mounting shall be in accordance with the original specification or with the specification in effect at the time of the mounting. If the mounting involves any change or modification of the methods of attachment, then the mounting must be approved by a Design Certifying Engineer.

(8) Prior to any modification, stretching, or rebarrelling a cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(9) Any modification, stretching, or rebarrelling on the cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(10) The suitability of modification, stretching, or rebarrelling affecting the structural integrity of the cargo tank must be determined by testing as prescribed for new manufacture in the applicable specification.

(e) *Records.* Each owner of a cargo tank must retain at its principal place of business all records of repair, modification, stretching, or rebarrelling made to each tank during the time the tank is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, who is not the owner of the cargo tank, at its principal place of business during the period the tank is in the carrier's service. The seller of a cargo tank shall provide the purchaser a copy of the cargo tank Certificate of Compliance, and all repair, inspection and test

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reports upon sale as an MC or DOT cargo tank.

Issued in Washington, DC on October 21, 1994, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrotor, Research and Special Programs Administration.

[FR Doc. 94–26625 Filed 10–28–94; 1:21 pm]

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November 3, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32
Refuge-Specific Hunting and Fishing Regulations; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC59

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

EFFECTIVE DATE: The effective date of this rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq. at the above address; Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate.

Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Request for Comments

A proposed rule was published in the July 20, 1994, issue of the **Federal Register** (59 FR 37134) and comments from the public were solicited. The only comments received were from the Region 3 Office (Service) to point the omission of "Kirtland's Warbler Wildlife Management Area" under the State of Michigan. This unit had been opened to hunting on July 27, 1987, but was inadvertently dropped from the listing of open areas. The administrative change has been made to correct this omission.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rule would have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. The changes made in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 is amended by adding the alphabetical listings of "Kirtland's Warbler Wildlife Management Area" under the State of Michigan, "Fergus Falls Wetland Management District" and "Morris Wetland Management District" under the State of Minnesota, "North Platte National Wildlife Refuge" under the State of Nebraska, and "Lake Ilo National Wildlife Refuge" under the State of North Dakota.

3. Section 32.20 *Alabama* is amended by revising paragraphs B., D.2., D.3., D.4., D.5., and adding new paragraphs D.6., D.7. and D.8. of Choctaw National Wildlife Refuge; and by revising paragraphs A. and B. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted year-round unless otherwise marked by signs as closed to public entry or fishing.

3. Only fish, according to State regulations, may be taken or possessed. Bowfishing is not permitted.

4. Taking, possessing, or attempting to take frogs and turtles is prohibited.

5. The use of trotlines, snag lines, soap lines, set lines, drops, gigs and jugs is not permitted.

6. Entry and use of airboats, hovercraft, and personalized watercraft such as jet skis, watercycles or waterbikes are prohibited.

7. All gill nets must be actively attended at all times.

8. A refuge permit is required for commercial fishing of all nets, traps, baskets, boxes and seine used in refuge waters. Information on harvest data is required.

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

4. Section 32.22 *Arizona* is amended by adding paragraph B.3. to Bill Williams River National Wildlife Refuge; by revising paragraph B. of Buenos Aires National Wildlife Refuge; by adding paragraph B.4. to Cibola National Wildlife Refuge; by revising paragraphs B.2. and C. of Havasu National Wildlife Refuge; by revising introductory language of paragraph B., and by revising paragraphs B.3. and B.5. of Imperial National Wildlife Refuge; and by revising paragraph B. of Kofa National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

* * * * *

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B. Upland Game Hunting. * * *

* * * * *

3. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of cottontail rabbit, coyote, and skunks is permitted on designated areas of the refuge.

* * * * *

Cibola National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunting of cottontail rabbits is permitted from September 1 to the end of the State quail season.

* * * * *

Havasu National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunting of cottontail rabbits is permitted from September 1 to the close of the State quail season, except in Pintail Slough where rabbit hunting is permitted only during September.

* * * * *

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge with a valid State permit.

* * * * *

Imperial National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

3. Cottontail rabbit hunting is permitted September 1 to the close of the State quail season.

* * * * *

5. Coyote and fox hunting is permitted only during the State quail season, except that it is not permitted during the State general deer season.

* * * * *

Kofa National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of coyote, fox, and cottontail rabbit is permitted during the State quail season only, except as provided below.

2. Hunting of coyote and fox is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B, and 45C deer permits may take these predators until a deer is taken.

3. Allowed method of take of cottontail rabbits is shotgun only.

* * * * *

5. Section 32.23 *Arkansas* is amended by revising paragraph C. of Big Lake National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Holla Bend National Wildlife Refuge; and by revising paragraphs A., B., and C. of Overflow National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Holla Bend National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

6. Section 32.24 *California* is amended by adding paragraphs A.3. and B.3. to Colusa National Wildlife Refuge; by revising paragraphs A.2. and A.4., and adding new paragraph B.4. to Delevan National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.2. and A.7. of Lower Klamath National Wildlife Refuge; by adding new paragraphs A.6 and B.4. to Sacramento National Wildlife Refuge; by removing paragraph A.6. and revising paragraph D.1. of San Francisco Bay National Wildlife Refuge; by removing paragraph A.5. from San Pablo Bay National Wildlife Refuge; by adding paragraphs A.3. and B.3. to Sutter National Wildlife Refuge; by revising paragraphs A.2. and A.3. of Tule Lake National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunting is only permitted in the free roam areas.

* * * * *

4. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns legal for refuge hunts are permitted, and shotguns must be unloaded while en route to, or from, parking areas or blinds.

2. Vehicles may stop only at designated parking areas; the dropping off of passengers or equipment, or stopping between designated parking areas is prohibited.

3. Hunters may not possess more than 25 shells while in the field.

4. Within the speed blind area, hunters are restricted to their originally assigned, speed blind, except while traveling to or from the parking area, placing decoys, or when shooting to retrieve crippled birds.

5. The Freitas Unit is open to waterfowl, coot, and moorhen hunting only.

6. On the Freitas Unit, only portable or temporary blinds are permitted; construction of permanent blinds is prohibited, and portable blinds must be removed from the refuge following each day's hunt.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4b and 4c.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Access to the hunt area is by foot traffic only. Bicycle and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

San Francisco Bay National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton Pier is permitted during the hours posted at the pier and refuge headquarters.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

B. Upland Game Hunting. * * *

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until 1:00 p.m. each day, except that up to three one-day special youth or disabled hunter hunts per season may be designated by the refuge manager after 1:00 p.m.

3. In the designated spaced blind areas, possession of any loaded firearms more than 200 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

* * * * *

7. Section 32.28 *Florida* is amended by revising paragraph A. of Arthur R. Marshall Loxahatchee National Wildlife Refuge; by revising paragraphs A., B. and C. of Chassahowitzka National Wildlife Refuge; and by revising paragraph C. of Lake Woodruff National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Lake Woodruff National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

8. Section 32.29 *Georgia* is amended by revising paragraph D.1. of Blackbeard Island National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from September 1 through February 28 from sunrise to sunset, except during managed deer hunts. *

* * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D.1. of Chautauqua National Wildlife Refuge; by adding a new sentence to the end of paragraph D.1. and revising paragraph D.3, and removing paragraphs D.4. and D.5. and redesignating paragraphs D.6. and D.7. as paragraphs D.4. and D.5, respectively, of Crab Orchard National Wildlife Refuge; by revising paragraph A., the introductory language of paragraph B., and paragraphs B.1. and C. of Cypress Creek National Wildlife Refuge; and by revising paragraph C.2. and adding new paragraph C.3. to Mark Twain National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on all refuge waters during daylight hours from January 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

Crab Orchard National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. * * * It is unlawful to use jug or trot-lines with any flotation device that has previously contained any petroleum based materials or toxic substances.

* * * * *

3. It is unlawful to jug or trot-line fish in Devils Kitchen or Little Grassy Lakes.

Cypress Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Dove hunting on sunflower fields south of Hogue Woods is allowed by permit only.

2. Duck hunting is not permitted on the Brushy Bottoms moist soil unit which is south of Century School, nor on the Frank Bellrose Waterfowl Reserve.

3. Goose hunting is only allowed in the Frank Bellrose Waterfowl Reserve following the closure of the regular duck hunting season. Special goose hunting conditions for this unit are posted and made available by refuge staff.

4. Boats, decoys and blinds must be removed from the refuge at the conclusion of each day's hunt.

B. Upland Game Hunting. Hunting of bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox and grey fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must report daily harvests if hunter check-in/check-out post is provided.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunters must report harvest at State deer check station and indicate approximate location of deer killed by shotgun on map provided.

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. Hunting of white-tailed deer on the Delair Division is allowed by permit only. Hunters must check in and out of the refuge each day. Stands must be removed each day; the construction or use of permanent blinds, platforms, or ladders is not permitted.

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Hunting is permitted from one half hour before sunrise to 3 o'clock p.m.

3. Hunting of white-tailed deer on the Clarence Cannon unit is allowed by permit only.

* * * * *

10. Section 32.33 *Indiana* amended by revising paragraph D.3. of Muscatatuck National Wildlife Refuge to read as follows:

§ 32.33 Indiana.

* * * * *

Muscatatuck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Ice fishing is permitted only when indicated by refuge signs.

* * * * *

11. Section 32.34 *Iowa* is amended by revising paragraph A. of De Soto National Wildlife Refuge; and by revising paragraph D.1 of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

De Soto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted only as posted.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through November 15.

* * * * *

12. Section 32.37 *Louisiana* is amended by revising paragraphs D.1., D.2., D.3., D.4., D.5., and D.6 of Bayou Sauvage National Wildlife Refuge; by revising paragraph B. of Catahoula National Wildlife Refuge; by revising paragraph C.1. of D'Arbonne National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Delta National Wildlife Refuge; and by revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Bayou Sauvage National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted during daylight hours only.

2. Sport fishing and shellfishing are permitted year round on all refuge lands south of the Intracoastal Waterway; from the banks of U.S. Highway 11; and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10.

3. Only sport fishing with hand-held rod and reel or hand-held rod and line is permitted. Gait shrimp may be taken with cast nets 8 feet in diameter or less. Crawfish and crabs can be taken (up to 100 pounds per person) with wire nets up to 20 inches in diameter. All fishing, crabbing and crawfishing equipment must be attended at all times.

4. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited on the refuge.

5. Only outboard motors 25 horsepower or less are permitted in waterways inside the hurricane protection levee.

6. Airboats, aircraft, motorized pirogues and go-devils are prohibited in refuge waters.

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Recreational fishing and crabbing are permitted only from sunrise to sunset.

2. The use of trotlines, limblines, slat traps, gar sets, nets or alligator lines is prohibited.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the second either-sex season in Union Parish and two consecutive days beginning with the third either-sex season.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraph C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions: Hunting will be conducted in compliance with a refuge issued permit and State hunting regulations, as applicable.

* * * * *

14. Section 32.41 *Michigan* is amended by adding the alphabetical listing of Kirtland's Warbler Wildlife Management Area to read as follows:

§ 32.41 Michigan.

* * * * *

Kirtland's Warbler Wildlife Management Area

A. Hunting of Migratory Game Birds. Hunting is pursuant to State regulation.

B. Upland Game Hunting. Hunting is pursuant to State regulation.

C. Big Game Hunting. Hunting is pursuant to State regulation.

D. Sport Fishing. [reserved.]

* * * * *

15. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Fergus Falls Wetland Management District; by revising paragraph B. of Minnesota Valley National Wildlife Refuge; and by adding the alphabetical listing of the Morris Wetland Management District to read as follows:

§ 32.42 Minnesota.

* * * * *

Fergus Falls Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on the Townsend, headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on the Townsend, Headquarters, or Mavis Waterfowl Production Areas in Otter Tail County.

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Only shotguns and bows and arrows are permitted.

* * * * *

Morris Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

D. Sport Fishing. Sport fishing is permitted throughout the district except that no fishing is permitted on designated portions of the Edwards-Long Lake Waterfowl Production Area in Stevens County.

* * * * *

16. Section 32.43 *Mississippi* is amended by revising paragraphs A., B., C., D.4., D.5., D.6., and adding paragraph D.7 to Noxubee National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Noxubee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required except for woodcock.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns with shot size no larger than #4 and rifles larger than .22 standard caliber are permitted.

2. Only non-toxic shot is permitted in greentree reservoirs.

3. Squirrel and rabbit dogs are permitted after the last day of the refuge deer hunt.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required except for turkey.

D. Sport Fishing. * * *

* * * * *

4. All trotline material must be cotton twine. Each trotline must have floats attached at each end with the name and address of the owner. One trotline per person and no more than two trotlines per boat. Trotlines must be tended every 24 hours and removed when not in use.

5. Jug fishing is permitted. Each jug must have the name and address of the owner attached and jugs must be removed after 48 hours.

6. The length limit for largemouth bass taken from Bluff and Loakfoma lakes is 14 inches. Largemouth bass less than 14 inches must be immediately released unharmed.

7. Boats are restricted to a no-wake, idle speed only on all refuge waters. Boats are not permitted in spillways.

* * * * *

17. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State fishing regulations.

* * * * *

18. Section 32.49 *New Jersey* is amended by adding paragraph C.5. to Supawna Meadows National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Supawna Meadows National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. Single projectile ammunition may only be used when hunting from a stand elevated at least six feet above ground level and only in shotguns equipped with adjustable sights or a scope.

* * * * *

19. Section 32.52 *North Carolina* is amended by revising the introductory language of paragraph A. and adding new paragraph A.4. to Cedar Island National Wildlife Refuge; by revising paragraph D.3. of Mattamuskeet National Wildlife Refuge; and by revising the introductory language of paragraph A. and adding new paragraph A.4. to Swanquarter National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Herring (alewife) dipping is permitted from March 1 to May 15 only from ½ hour before sunrise to ½ hour after sunset or as posted.

* * * * *

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. Ducks and coots may be taken only during the State waterfowl seasons occurring during November, December and January.

* * * * *

20. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Lake Ilo National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Lake Ilo National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. [Reserved.]

D. Sport Fishing. Designated areas of the refuge are open to sport fishing in accordance with State regulations.

* * * * *

21. Section 32.55 *Oklahoma* is amended by revising paragraph D.2. of Tishomingo National Wildlife Refuge and by revising paragraph C. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Tishomingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. The use of trotlines and other set tackle is permitted only in the Cumberland Pool and between the natural banks of the Washita River, except that the set tackle used in the Cumberland Pool must be attached to anchored floats and may not be attached to sticks, poles, trees, or other fixed objects.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas subject to the following condition: Permits and payment of a fee is required.

* * * * *

22. Section 32.56 *Oregon* is amended by revising paragraph D.1. of Upper Klamath National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Upper Klamath National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in Pelican Bay, Recreation Creek, Crystal Creek, Odessa Creek, Pelican Cut and that portion of Upper Klamath Lake located on the east side of the refuge.

* * * * *

23. Section 32.57 *Pennsylvania* is amended by adding paragraph B.4. to Erie National Wildlife Refuge to read as follows:

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§ 32.57 Pennsylvania.

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Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant hunting is not permitted on the Sugar Lake Division.

* * * * *

24. Section 32.60 *South Carolina* is amended by revising paragraphs B. and C. of Cape Romain National Wildlife Refuge; and by revising paragraphs A. and D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Cape Romain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 31.

* * * * *

25. Section 32.62 *Tennessee* is amended by revising paragraph D. of Lower Hatchee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Lower Hatchee National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

26. Section 32.63 *Texas* is amended by revising paragraph C.9. of Aransas National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

9. Firearm hunters must wear a total of 400 square-inches of hunter orange including 144 square-inches visible in front and 144 square-inches visible in rear. Some hunter orange must appear on head gear.

* * * * *

27. Section 32.67 *Washington* is amended by removing paragraph A.1., redesignating paragraphs A.2. and A.3. as A.1. and A.2., respectively, by revising redesignated paragraph A.1., revising introductory language of paragraph B., revising paragraphs B.1. and D.2., removing paragraph D.3. and redesignating paragraph D.4. as paragraph D.3. to Columbia National Wildlife Refuge; by revising paragraph D. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs C. and D. of Little Pend Oreille National Wildlife Refuge; and by revising paragraph A.1. of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In Marsh Unit 1, hunting is permitted only on Wednesdays, Saturdays and Sundays.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, quail, and partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is permitted only during State seasons that run concurrently with the State waterfowl season.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Motorized boats and nonmotorized boats are permitted on all other refuge waters open to fishing.

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Little Pend Oreille National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. In the designated blind areas, hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

* * * * *

28. Section 32.70 *Wyoming* is amended by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Designated areas of the refuge are open to upland game hunting.

* * * * *

29. Section 32.71 *Pacific Islands Territory* is amended by revising the introductory language of paragraph D., revising paragraph D.2., and adding new paragraphs D.4., D.5. and D.6. to Johnston Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnston Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, lobstering, and shell collecting are permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. The use of traps or nets, except throw nets, is prohibited.

* * * * *

4. The collecting or taking of all forms of live or dead coral is prohibited.

5. The export of coral by any means will be prohibited after September 11, 1994.

6. It is prohibited to export any fish or invertebrates except for the following: members of the tuna fish family known as *Scombridae*, dolphin fish family known as *Coryphaenidae*, and sailfish family known as *Istiophoridae*

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-27292 Filed 11-2-94, 8:45 am]

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November 3, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

List of Open Areas for Hunting in North Dakota; Addition of Rock Lake National Wildlife Refuge; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AC50

Addition of Rock Lake National Wildlife Refuge to the List of Open Areas for Hunting in North Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds Rock Lake National Wildlife Refuge to the list of areas open for big game hunting in North Dakota along with pertinent refuge-specific regulations for such activity. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

EFFECTIVE DATE: The effective date of this rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens Rock Lake National Wildlife Refuge to deer hunting. The hunt will be in accordance with State regulations pertaining to archery and firearms deer hunting, and as illustrated in the North Dakota Hunting Guide (1993).

A proposed rule was published in the **Federal Register** on July 15, 1994 (59 FR 36348) and public comments were solicited. No comments were received.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; and a letter of concurrence from the affected States. From a review of the totality of these documents, the Secretary has determined that the opening of the Rock Lake National Wildlife Refuge to deer hunting is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that this opening for deer hunting is compatible and consistent with the primary purposes for which the refuge was established, and that funds are available to administer the programs. A brief description of the hunting program is as follows:

Rock Lake National Wildlife Refuge

Rock Lake National Wildlife Refuge (NWR) is a 5,587 acre easement refuge located in Towner County, North Dakota. The refuge was established in 1939 by an Executive Order as a refuge and breeding ground for migratory birds and other wildlife. The refuge is administered by the Service's Devils Lake Wetland Management District, located in Devils Lake, North Dakota. Rock Lake NWR occupies lands that were formed by glacial activity several million years ago. The glacial drift moraine running through North Dakota is characterized by rolling grasslands interspersed with small closed basins. Devils Lake is typical of this area. Principal wildlife found on Rock Lake NWR includes geese, ducks, various non-game bird species, white-tailed deer, muskrat, mink and fox. Bald eagles, whooping cranes, and peregrine falcons use the area on an occasional basis.

Since hunting has been prohibited on Rock Lake NWR, deer from the surrounding area are drawn to the refuge during the State firearms deer season. Unfortunately, following the close of the deer season they do not return to the areas from which they came until the following spring. Heightened winter deer concentrations are destructive to refuge habitat and lead to serious depredation problems on neighboring private lands, particularly during severe winters. This refuge is the only large closed-to-hunting area for many miles.

The primary objective of this hunt is to reduce the degradation of habitat used by nesting waterfowl and other wildlife, migratory wildlife, rare and endangered wildlife, and native (resident) wildlife. The hunt will also reduce depredation problems on privately owned land, redistribute deer, improve the health of the herd, reduce the risk of deer/vehicle collisions, and provide recreational opportunities. A designated area of the refuge will be opened to deer hunting only during the State firearms deer season and archery hunting will be open from the opening of the firearms season until the close of the State archery season. All state regulations pertaining to archery and firearms deer hunting will apply. Deer hunting will be monitored by refuge officers and State game wardens. Hunter numbers, number of deer taken, and refuge deer populations will be monitored. The refuge will be open to all holders of a North Dakota 2E deer hunting permit and all those with a valid North Dakota deer archery permit. The Service projects that 100–150 deer hunting visits will occur each year. If excessive harvest or winter mortality problems are evident, alternative management would be proposed.

Opening the refuge to the hunting of deer has been found to be compatible in a separate compatibility determination. This determination noted also that most migratory birds will have migrated south prior to the opening of the State deer hunting season. A Section 7 evaluation pursuant to the Endangered Species Act was conducted and it was determined that the hunt is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the hunt. All neighbors and farm operators in the local area were contacted about the hunt and they concurred with the proposed hunt. The environmental assessment was prepared by the Devils Lake Wetland Management district and Wetland Habitat Office, Bismarck, North Dakota, and with the assistance of the North Dakota Game and Fish Department. As the deer hunt will be monitored cooperatively by refuge personnel and State game wardens, no special funding will be required to monitor and control the hunt. Refuge monitoring would be a collateral duty of certain refuge personnel. No special refuge permits will be required. Therefore, the Service has determined that there would be sufficient funds to administer the proposed hunt pursuant to the requirements of the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rule would have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rock Lake National Wildlife Refuge" under the state of North Dakota.

3. Section 32.53 *North Dakota* is amended by adding the alphabetical listing of Rock Lake National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Rock Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. The refuge is open to the hunting of deer only during the State firearms deer season. Archery hunting is open from the opening of the firearms season until the close of the State archery season. All State regulations pertaining to archery and firearms deer hunting apply.

D. Sport Fishing. [Reserved.]

* * * * *

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–27285 Filed 11–2–94; 8:45 am]

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November 3, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations; Addition of Two National Wildlife Refuges; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AC58

Addition of Two National Wildlife Refuges to the List of Open Areas for Hunting and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds two national wildlife refuges (NWR(s)) to the list of areas open for migratory game bird hunting, upland game hunting, and/or big game hunting and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

EFFECTIVE DATE: The effective date of this Final Rule is December 5, 1994.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens two refuges to hunting. The hunting programs included in this openings document have refuge-specific hunting regulations which are included in this rulemaking.

A proposed rule was published in the Federal Register on July 15, 1994 (59 FR 36342) and comments from the public were solicited. No comments were received. However, the proposed rule indicated that big game hunting at Columbia National Wildlife Refuge and sport fishing at Delevan National Wildlife Refuge may be closed. After consulting further with the Regional Office, a decision has been made to not close these refuges to those activities.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

Openings Packages

In preparation for these openings, the refuge units have included in their "openings packages" for Regional review and approval from the Washington Office the following documents: a hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI), or an Environmental Impact Statement and Record of Decision; a Section 7 evaluation or statement, pursuant to the Endangered Species Act, that these openings are not likely to adversely affect a listed species or critical habitat; a letter of concurrence from the affected States; and refuge-specific regulations, as provided herein. From a review of the totality of these documents, and for each refuge unit specifically, the Secretary determines that the opening of the areas to hunting are compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that these openings for hunting are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting programs will be generally within State and Federal (migratory game bird) regulatory frameworks. A brief description of the hunting programs follows:

1. Rydell National Wildlife Refuge

The Service will open Rydell National Wildlife Refuge to the hunting of white-tailed deer. Rydell was established in 1992 to preserve and enhance important wildlife habitat in western Minnesota and provide a regional wildlife and fish management education center. The 2,120-acre refuge is located in Grove Park and Woodside Townships in Polk County, just south of U.S. Highway 2 between the communities of Mentor and Erskine, Minnesota. The refuge is situated in the Prairie Pothole Region of western Minnesota between the flat Red River Valley flood plain on the west and the rolling hardwood forest and lake region on the east. The refuge is administered as a unit of the Detroit Lakes Wetland Management District (DLWMD). The DLWMD, which has its headquarters near Detroit Lakes, Minnesota, also currently administers 155 Waterfowl Production Areas, 322 perpetual wetland easements and 14 Farmers' Home Administration (FmHA) Conservation Easements in the five northwestern Minnesota counties of Becker, Clay, Mahnomen, Norman and Polk. Diverse habitat on the refuge attracts an impressive variety and abundance of wildlife. Besides a large white-tailed deer population, refuge habitat is used by both dabbler and diver waterfowl species, moose, mink, ruffed grouse, cormorants, herons, rabbits, raccoon, otter, beaver, muskrat, various hawk and owl species, and more than 100 neotropical, water and other migratory bird species.

Opening the refuge to the hunting of white-tailed deer has been found to be compatible in a separate compatibility determination. This finding was based on findings that (1) hunting is widely recognized by wildlife managers as an integral part of a comprehensive wildlife conservation management plan; (2) the deer population of the refuge and surrounding area has become so large that habitat damage and excessive crop depredation is occurring; (3) reducing the deer population would improve the health and condition of the deer herd, eliminate the damaging effects of over-population on refuge habitat and reduce the depredation damage caused by deer on crops that surround the refuge; and (4) deer hunting would provide wildlife-oriented recreational opportunities in an area of Minnesota where hunting and fishing are important recreational activities.

Historically, this area of Minnesota has attracted large numbers of deer, especially in winter, because both prairie and woodland habitat were available. Over the past 25 years, the previous owner actively encouraged deer to use the area by planting many acres of lure crops, limiting hunting pressure and providing a high degree of protection for the deer herd. Because of this, the deer population has increased and been concentrated in the relatively small refuge area. Today, the refuge and surrounding area host a white-tailed deer population of about 300 during the spring and fall and up to 500 in the winter. Preliminary surveys indicate that winter densities range from 18 to 20 deer per square mile of the total land area of the refuge and 100 deer per square mile of forested habitat in the 27 square-mile area that includes and surrounds the refuge. A large proportion of these deer use the three square-mile area of the refuge extensively throughout the year. The refuge winter deer population is estimated at 60 to 70 deer per square mile of the total land area of the refuge and more than 200 per square mile of forested habitat. Over-population by deer is evident by the presence of browse lines in the refuge woodlands. The goal of the hunt is to lower the deer population to within the statewide density range (1–15 per square mile of the total land area and 5–80 per square mile of forested habitat). Field studies will be conducted to monitor habitat conditions and population dynamics to determine what the appropriate deer population should be for the refuge and surrounding area.

The Special Permit Area (SPA) will be hunted during the State's 4A and 4B firearms seasons. The SPA covers approximately 2,000 acres, excluding refuge facilities and occupied building sites. About 1,200 acres of the SPA are deemed huntable during a normal hunting season. Initially, until the herd is reduced and under control, only antlerless deer would be taken. As many as 60 permits will be issued for the two-day 4A season and up to 80 permits would be issued for the four-day 4B season. The maximum hunter density would be one hunter per 15 acres. Hunter and Service personnel safety will determine the actual number of permits that are issued each season.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the hunt. The refuge is in the breeding range of bald eagles. Eagles also use the refuge regularly for feeding; however, they will have migrated south by the time the firearms deer season opened in November. The refuge is in the peripheral range of the gray wolf; however, no wolves have ever been seen on the refuge. The tight controls of the hunt will make the chance illegal take of a gray wolf unlikely. While western prairie fringed orchids have been found in Polk County, no populations have been identified on the refuge. Even if such a population were discovered, they would be dormant during the hunting season. The proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was conducted and a Finding of No Significant Impact (FONSI) was made regarding the proposed hunt. Detroit Lakes Wetland Management District and refuge staff, along with input from local Minnesota Department of Natural Resources representatives, were primarily responsible for the development of the alternatives reviewed in making the FONSI conclusion. Refuge objectives and Service concerns guided the process. Public needs and expectations were also taken into consideration during the development of the alternatives.

The annual cost of this hunting program will be approximately $3,000. Within the annual DLWMD budget of $676,000, the necessary funds will be available for the development, operation and maintenance of this program pursuant to the Refuge Recreation Act.

2. Ohio River Islands National Wildlife Refuge

The Service will open Ohio River Islands National Wildlife Refuge to the hunting of migratory game birds, upland game hunting, and big game hunting. Established in 1990, the refuge became the first national wildlife refuge in West Virginia. The refuge consists of 9 islands in the Ohio River. The acquisition boundary stretches 362 river miles from Shippingport, Pennsylvania to Manchester, Ohio and includes four states (Pennsylvania, Ohio, West Virginia and Kentucky). The refuge was established under the authority of the Fish and Wildlife Act of 1956. The refuge's primary purpose is for the development, advancement, management, conservation, and protection of fish and wildlife resources. This purpose was further defined by the objectives stated in the refuge's management plan to include (1) the management and protection of wildlife habitat, (2) the management and protection of wildlife populations, and (3) to allow appropriate public uses including, but not limited to, hunting, fishing, trapping, wildlife observation and environmental education.

Twenty species of waterfowl have been recorded using the islands and associated riverine habitats of the Ohio River. The majority of these waterfowl are migratory, using the river and island habitats as feeding and resting areas. More than 5,800 individual waterfowl were observed using the islands during the 165 island visits from February 1992 to September 1993. The take of migratory game birds will include waterfowl, coots, gallinules, rails, snipe, woodcock and mourning dove. Seasons on the refuge will coincide with the appropriate State seasons. The take of all other migratory birds will be prohibited. The migratory game bird hunting program will currently encompass 7 islands and 429 acres. Aside from woodcock hunting, all migratory game bird hunting will, in reality, occur only on the shoreline perimeter of the islands, which constitutes approximately 80 acres (15% of the current refuge acreage).

Cottontail rabbits and fox squirrels are present on the Ohio River islands, with current numbers variable depending on specific islands and their habitats. Much of the island habitats have succeeded beyond the early to late oldfield habitats preferred by cottontail rabbits, and food available for fox squirrels is limited mostly to soft mast. However, it is felt that these species are present in huntable populations. The refuge season for these species will coincide with the appropriate State seasons. Method of take will be restricted to shotgun only for safety reasons. The take of all other upland game, including turkey, grouse, pheasant, and quail, will be prohibited.

White-tailed deer are found in varying numbers on the Ohio River islands. The size and habitat conditions on each island are different and deer utilization reflects this. Deer move freely from the mainland to the islands, depending on surrounding public use pressures, season, etc., tying island deer densities to surrounding deer populations. Deer hunting on the refuge will follow applicable State regulation. Method of take will be restricted to archery only for safety reasons and season lengths

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will correspond to State archery deer seasons.

A separate compatibility determination was made for the hunt program, and the program was found to be compatible. The hunt program must be monitored and adjusted as necessary to reduce or eliminate adverse impacts to the refuge resources and refuge operations.

A Section 7 evaluation pursuant to the Endangered Species Act was conducted for the hunts. The listed species considered in this evaluation are pink mucket pearly mussel, fanshell mussel, bald eagle and peregrine falcon. The pink mucket pearly mussel and fanshell mussel occur on sand and gravel substrate found on the river bottom. Hunting on the island terrestrial habitats and from boats around the island perimeters will not impact these mussels or freshwater mussel habitat. Areas having concentrated eagle use will be zoned to prohibit hunting. The peregrine falcon is a rare visitor to the Ohio River Valley, and hunting activity is not expected to have any impact on this species. Accordingly, it was concluded that the hunts are not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats.

An environmental assessment was developed pursuant to the National Environmental Policy Act (NEPA) and a Finding of No Significant Impact (FONSI) was made with respect to the hunts. During the planning stages of developing the hunt proposal, the refuge was in direct contact with a variety of government agencies, conservation organizations, landowners, and interested members of the public. Alternatives were developed that highlighted all concerns and the alternative for safe management of a hunting program was deemed appropriate. In December 1993, the refuge announced the availability of the environmental assessment to the general public. Public comment was solicited through news releases, radio interviews, writing to area conservation organizations, and contacting individuals who had expressed an interest in the hunting program. The conclusion of the environmental assessment stated that hunting pressure is expected to be low and wildlife disturbance should be minimal. Hunting conditions will be monitored, however, and appropriate actions taken if necessary to protect the biological resources of the refuge.

In addition to staff expenses, estimated at $4,616, the refuge will incur costs for signs, vehicle maintenance, leaflet printing, and miscellaneous supplies at an estimated annual cost of $1,500. These cost estimates bring the total cost for the hunt program to approximately $6,000. Therefore, it is determined that funds are available for the development, operation and maintenance of this hunt program pursuant to the Refuge Recreation Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule will have minimal effect on such entities.

Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these openings. Based upon the Environmental Assessments, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Rydell National Wildlife Refuge" under the State of Minnesota and "Ohio River Islands National Wildlife Refuge" under the State of West Virginia.

3. Section 32.42 *Minnesota* is amended by adding the alphabetical listing of Rydell National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Rydell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved.]

B. Upland Game Hunting. [Reserved.]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt white-tailed deer in the Special Permit Area of the refuge.

2. Hunting in the Special Permit Area is permitted with firearms only.

3. Antlerless deer only may be taken in the Special Permit Area.

4. Construction or use of permanent blinds, permanent platforms, or permanent ladders is prohibited. Portable stands are permitted but must be removed from the refuge at the end of each day's hunt.

5. Deer taken from the Special Permit Area must be taken to the refuge check station.

D. Sport Fishing. [Reserved.]

* * * * *

4. Section 32.68 *West Virginia* is revised to read as follows:

§ 32.68 West Virginia.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is permitted on designated areas of the refuge subject to the following condition: Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The take of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Baiting for deer on refuge lands is prohibited.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

D. Sport Fishing. [Reserved.]

Dated: October 15, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–27283 Filed 11–2–94; 8:45 am]

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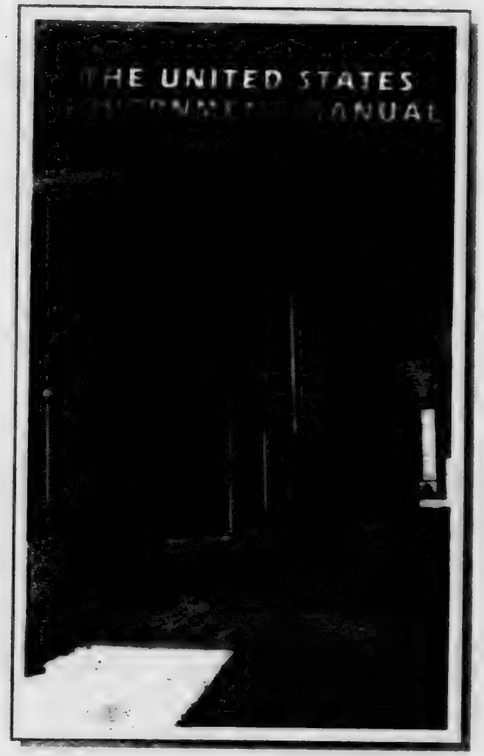
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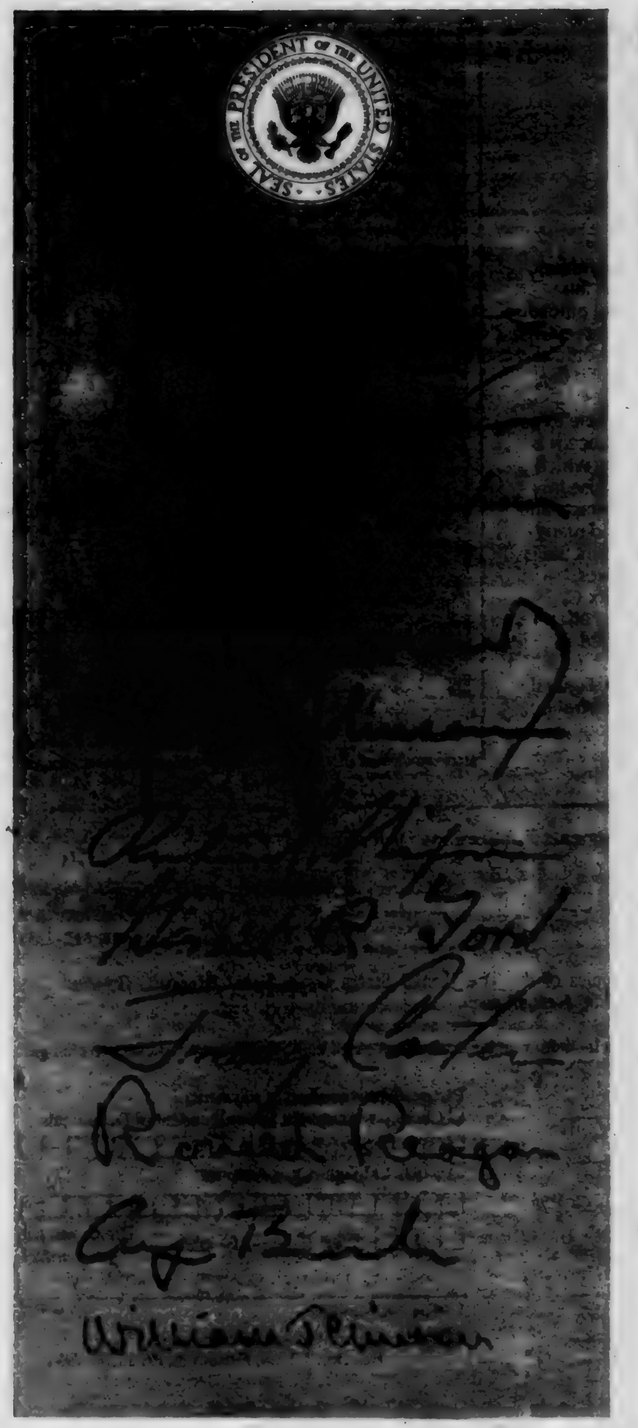
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–26; Amendment 39–9062; AD 94–22–12]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, that currently requires initial and repetitive inspections of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. This amendment increases the repetitive inspection interval from 500 to 1,500 hours time in service (TIS) since last inspection for propellers that have a ballscrew quill damper installed. This amendment is prompted by the availability of improved hardware that restricts quill motion and enhances the lubrication of the BIS and significantly reduces BIS wear. The actions specified by this AD are intended to prevent inability to control the propeller blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Effective December 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–16–02, Amendment 39–8659 (58 FR 44441, August 23, 1993), which is applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, was published in the **Federal Register** on May 27, 1994 (59 FR 27510). That action proposed to increase the repetitive inspection interval from 500 to 1,500 hours time in service (TIS) since last inspection for propellers that have a ballscrew quill damper installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Seven commenters concur with the rule as proposed.

One commenter concurs with the proposal to extend the repetitive inspection interval from 500 to 1,500 hours TIS, but also states that paragraph (a)(5) of the NPRM requires inspection at 1,500 hours TIS if a damper is installed, but previously "new" PCU's were not required to be inspected until 1,800 hours TIS since new. The commenter further states that this interval is not consistent since it is a decrease of 300 hours with the improved hardware, and recommends the interval to be extended to 1,800 hours TIS for new PCU's. The FAA concurs and has revised this final rule accordingly.

The commenter also recommends the following changes to Appendix 1 of the NPRM:

The commenter states that the date of the damper installation should not be required since those receiving a "new" PCU or one from a repair station where the damper was installed may not have access to the actual installation date. What should be required is an answer to the question, "Damper installed?" (answer either "Yes" or "No"), and if "Yes", and the indication of whether it was installed "at this inspection" or "previously." The FAA concurs and has revised this final rule accordingly.

The commenter states that the requirement to list the aircraft model is not required provided the PCU part number is complete with the dash or "A" number. The FAA concurs and has revised this final rule accordingly.

The commenter states that blanks are not needed for the items "Estimated Time on PCU" and "Actual Time on PCU." What is needed is an indication as to which one of those statements applies to the following: "Time Since New (hours)" and "Time Since Last Ballscrew Inspection/Repair (hours)." The FAA concurs and has revised this final rule accordingly.

The commenter states that there is no requirement to indicate (a reminder to complete) completion of the "pull check" of the PCU quill after it is reinstalled. The FAA concurs and has added this item to Appendix 1 of this final rule.

Two commenters indicate that the installation of the damper had merit and should reduce the PCU's vulnerability to wear. However, the commenters believe that the inspection interval should not be extended to 1,500 hours TIS for the following reasons:

The first commenter states that the root cause or single reason for the ballscrew internal spline wear has not been identified. The Original Equipment Manufacturer (OEM) bench test of the modified ballscrew internal spline quill installation does not demonstrate a test that duplicates actual operation; e.g., there is retaining wire wear due to axial preload from the damper. Also, currently there is inadequate scientific basis for reliance on the test data as there is insufficient field experience data.

The second commenter also states that the specific cause of wear has not been positively identified. The proposed modification does not correct the negative failure modes in the PCU should a wear induced failure occur. Finally, this commenter expresses concern that the field data used to

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justify the increased inspection interval is being collected only from a small percentage of units in operation.

The FAA does not concur with these comments. The FAA has researched these issues and reviewed the data from numerous tests and investigations that have been conducted to determine the cause of extreme wear when it occurs on a very small number of splines in service. The FAA has determined that by these tests and investigations a number of factors contribute to how or if the spline joint will wear. These factors include:

Magnitude and direction of vibratory environment.

How well the spline joint is lubricated.

Motion of elements within the joint due to stack up of clearances.

Thickness of chrome plating on spline teeth.

The FAA has therefore determined that there is no single factor for wear of this complex joint. However, the major contributors of the listed factors have been found to be lubrication and axial motion. Laboratory tests and controlled field service data has proven the damper reduces the wear factor by well over 20 times the rate before its installation.

The retaining wire wear is not a phenomenon associated with the damper introduction. The retaining wires generally show some degree of marking (mainly dents in the wire) from the flat end of the ballscrew spline teeth bearing on the round wire. This marking occurs on retaining wires on PCU's with and without dampers installed. After an initial "Seating" of the parts, the retaining wire continues to operate without distress.

Currently, the FAA has reported data from high time controlled field service units in multiple model installations to have accumulated over 2,138 hours TIS with the same damper installed. In addition, the damper modification has been available to operators since January 1, 1994. The manufacturer has shipped over 2,800 modification kits and has conservatively estimated that over 300,000 hours of field time has been logged by operators with the modification installed.

Based on the investigative reports, satisfactory field inspection data, and improved wear factors resulting from the installed damper modification, the FAA has determined that a negative failure mode should not occur within the new inspection interval of 1,500 hours TIS. The FAA has therefore adopted the inspection interval stated in the NPRM.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,506 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,150 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per propeller to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, and on the average utilization rate of 2,000 hours TIS per year equating to 4 inspections, the total cost impact of the current AD per year on U.S. operators is estimated to be $379,500. However, based on an average utilization rate of 2,000 hours TIS per year, this superseding AD will eliminate 2.7 inspections per year per propeller, resulting in an approximate yearly cost savings to U.S. operators of $256,163.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8659 (58 FR 44441, August 23, 1993) and by adding a new airworthiness directive, Amendment 39–9062, to read as follows:

94–22–12 Hamilton Standard: Amendment 39–9062. Docket 94–ANE–26. Supersedes AD 93–16–02, Amendment 39–8659.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14RF–23; 247F–1; 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120RT; SAAB-SCANIA SF340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72, ATR72–210; DeHavilland DHC–8–100 series, DHC–8–300; Construcciones Aeronauticas SA (CASA) CN–235 and CN–235–100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly, accomplish the following:

(a) Inspect the PCU servo BIS assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated April 7, 1994, as applicable: No. 14RF–9–61–A53, Revision 5; No. 14RF–19–61–A25, Revision 4; No. 14RF–21–61–A38, Revision 4; No. 247F–61–A3, Revision 3; No. 14SF–61–A59, Revision 4; and No. 6/5500/F–61–A11, Revision 4; as follows:

(1) For a PCU with unknown time in service (TIS), and unknown TIS since the last inspection, on the effective date of this airworthiness directive (AD), and that does not have a ballscrew quill damper installed, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and either has not been inspected, or has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD; and that does not have a ballscrew quill damper installed; inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and that has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, and that does not have a ballscrew quill damper installed, inspect within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD.

(4) For a PCU with less than 1,800 hours TIS on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(5) For a PCU that has a ballscrew quill damper installed in accordance with the following applicable Hamilton Standard Service Bulletins (SB), or previous revisions: No. 14SF–61–67, Revision 2, dated September 27, 1994; No. 14RF–9–61–61, Revision 1, dated September 27, 1994; No. 14RF–19–61–29, Revision 2, dated September 27, 1994; No. 14RF–21–61–48, Revision 2, dated September 27, 1994; No. 247F–61–6, Revision 2, dated September 27, 1994; and No. 6/5500/F–61–19, Revision 2, dated September 27, 1994; inspect within 1,500 hours TIS since installation of the ballscrew quill damper.

(6) Thereafter, inspect at intervals described as follows:

(i) For propellers that have a ballscrew quill damper installed in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, or previous revisions, inspect at intervals not to exceed 1,500 hours TIS since the last inspection required by this AD.

(ii) For propellers that do not have a ballscrew quill damper installed in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, and thereafter reinspect in accordance with paragraphs (a)(6) and (a)(7) of this AD.

(b) Report the results of the initial and repetitive inspections required by paragraph (a) of this AD by utilizing Appendix 1, "Ballscrew Inspection Data," within 7 days of the inspection to the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803–5299; fax (617) 238–7199. The reporting requirements of this AD terminate on December 31, 1995. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Appendix 1—Ballscrew Inspection Data

The following information must be reported and sent as soon as possible but no later than 7 days after inspection to: Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, Fax: (617) 238–7199.

Operator/Repair Station _____

Date of Inspection _____

PCU Part Number _____

PCU Serial Number _____

Date Damper Installed _____

Damper Installed (please circle one): YES NO

If "YES," please circle one: This inspection Previously

Aircraft Serial Number _____

Position (please check one): Left Engine_____ Right Engine_____

PCU Times (please circle one): Estimated Actual

Time Since New (Hours) _____

Time Since Last Ballscrew Inspection/Repair (Hours)_____

Inspection (please check one): Accepted_____ *Rejected_____

*Please indicate in comments if unit was rejected as part of the functional check.

No. of left side teeth with steps_____

No. of right side teeth with steps_____

Comments: _____

Ballscrew Quill Pull Check Completed (please circle one): YES NO

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The requirements of this AD shall be done in accordance with the following Hamilton Standard service documents:

Document No.	Pages	Revision	Date
ASB No. 14RF–9–61–A53	1	5	April 7, 1994.
	2–7	4	March 1, 1994.
	8	3	July 26, 1993.
	9	5	April 7, 1994.
	10–12	4	March 1, 1994.
	13	5	April 7, 1994.
	14–20	4	March 1, 1994.
	21	5	April 7, 1994.
Total pages: 21			
SB No. 14RF–9–61–61	1–2	1	September 27, 1994.
	3–10	Original	December 9, 1993.
	11	1	September 27, 1994.
	12–14	Original	December 9, 1993.
Total pages: 14			
ASB No. 14RF–19–61–A25	1	4	April 7, 1994.
	2–7	3	March 1, 1994.
	8	2	July 26, 1993.
	9	4	April 7, 1994.
	10	3	March 1, 1994.
	11	4	April 7, 1994.
	12–20	3	March 1, 1994.
	21	4	April 7, 1994.

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Document No.	Pages	Revision	Date
Total pages: 21			
SB No. 14RF–19–61–29	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
Total pages: 14	14	1	May 6, 1994.
ASB No. 14RF–21–61–A38	1	4	April 7, 1994.
	2–7	3	March 1, 1994.
	8	2	July 28, 1993.
	9–10	4	April 4, 1994.
	11–20	3	March 1, 1994.
Total pages: 21	21	4	April 7, 1994.
SB No. 14RF–21–61–48	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
Total pages: 14	14	1	May 6, 1994.
ASB No. 247F–61–A3	1	3	April 7, 1994.
	2–7	2	March 1, 1994.
	8	1	July 28, 1993.
	9–10	3	April 7, 1994.
	11–19	2	March 1, 1994.
Total pages: 20	20	3	April 7, 1994.
SB No. 247F–61–6	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
Total pages: 14	14	1	May 6, 1994.
ASB No. 14SF–61–A59	1	4	April 7, 1994.
	2–7	3	March 1, 1994.
	8	2	July 28, 1993.
	9–10	4	April 7, 1994.
	11–20	3	March 1, 1994.
Total pages: 21	21	4	April 7, 1994.
SB No. 14SF–61–67	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–9	Original	December 9, 1993.
	10	1	May 6, 1994.
	11	Original	December 9, 1993.
	12	2	September 27, 1994.
	13–15	Original	December 9, 1993.
Total pages: 16	16	1	May 6, 1994.
ASB No. 6/5500/F–61–A11	1	4	April 7, 1994.
	2–9	3	March 1, 1994.
	10–11	4	April 7, 1994.
	12	2	July 28, 1993.
	13	3	March 1, 1994.
	14	2	July 28, 1993.
	15–20	3	March 1, 1994.
Total pages: 21	21	4	April 7, 1994.
SB No. 6/5500/F–61–19	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 6, 1993.

Document No.	Pages	Revision	Date
	11	2	September 27, 1994.
	12	Original	December 6, 1993.
	13–14	1	May 6, 1994.
Total pages: 14			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 5, 1994.

Issued in Burlington, Massachusetts, on October 26, 1994.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–26983 Filed 11–3–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–SW–10–AD; Amendment 39–9059; AD 94–17–07]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 94–17–07 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company Model R22 series helicopters by individual letters. This AD requires an inspection and repetitive visual checks for slippage of the tail rotor (T/R) drive and replacement of the T/R gearbox, if necessary. This amendment is prompted by two incidents in which the T/R output key (key) was not installed between the output shaft and the output pinion during assembly of the T/R gearbox. The actions specified by this AD are intended to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter.

DATES: Effective on November 21, 1994, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 94–17–07, issued on August 25, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21,1994.

Comments for inclusion in the Rules Docket must be received on or before January 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd., Torrance, CA 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, Propulsion Branch, FAA, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5265, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On August 25, 1994, the FAA issued Priority Letter AD 94–17–07, applicable to Robinson Helicopter Company R22 series helicopters, which requires an inspection and repetitive visual checks for slippage of the tail rotor (T/R) drive, and replacement of the T/R gearbox, if necessary. That action was prompted by two incidents in which the T/R output key (key) was not installed between the output shaft and the output pinion during assembly of the T/R gearbox. The key is required to prevent the output gear from rotating on the output shaft. Both incidents resulted in slippage of the T/R drive. On June 2, 1994, Registro Aeronautico Italiano (RAI), the Airworthiness Authority of Italy, issued RAI AD No. 94–131 to require a daily inspection to determine if there had been any slippage of the T/R drive between the output shaft and the output pinion. This condition, if not corrected, could result in slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company R22 Service Bulletin (SB) #74, dated July 18, 1994, that describes procedures for determining slippage of the T/R drive using a 35-lb. load on the T/R blade and checking for correct alignment of dots that have been marked in accordance with SB #74, dated July 18, 1994. The FAA is issuing this AD to require the initial marking of dots and an inspection prior to further flight, rather than within the next 20 hours time-in-service (TIS) as specified by SB #74, dated July 18, 1994.

Since the unsafe condition described is likely to exist or develop on other Robinson Helicopter Company Model R22 series helicopters of the same type design, the FAA issued Priority Letter AD 94–17–07 to prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter. The AD requires the installation of alignment marks, an initial inspection prior to further flight, daily pre-flight visual checks for slippage of the T/R drive, and replacement of the T/R gearbox, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD is considered to be an interim action. The FAA is considering further rulemaking to require opening the T/R gearbox and verifying installation of the key as the terminating action to this AD.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 25, 1994, to all known U.S. owners and operators of Robinson Helicopter Company Model R22 series helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not

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preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–10–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 94–17–07 Robinson Helicopter Company: Amendment 39–9059. Docket No. 94–SW–10–AD.

Applicability: Model R22 series helicopters, certificated in any category with tail rotor (T/R) gearboxes that were manufactured or overhauled by Robinson Helicopter Company prior to June 8, 1992. The following gearbox S/N's have been determined to have the T/R output key (key) installed and are therefore exempt from this AD: 0012, 0013, 0014, 0020, 0021, 0040, 0054, 0062, 0091, 0095, 0098, 0108, 0121, 0134, 0137, 0153, 0169, 0179, 0185, 0191, 0201, 0205, 0227, 0228, 0235, 0248, 0258, 0262, 0272, 0277, 0280, 0321, 0333, 0342, 0365, 0432, 0439, 0444, 0503, 0504, 0525, 0548, 0558, 0559, 0565, 0574, 0576, 0592, 0594, 0597, 0603, 0604, 0605, 0615, 0632, 0641, 0644, 0650, 0656, 0662, 0663, 0674, 0686, 0689, 0696, 0697, 0700, 0702, 0707, 0722, 0734, 0735, 0736, 0742, 0759, 0767, 0777, 0778, 0805, 0832, 0836, 0839, 0842, 0850, 0862, 0866, 0868, 0887, 0892, 0937, 0939, 0983, 0986, 0996, 0998, 1018, 1021, 1029, 1030, 1035, 1072, 1081, 1087, 1104, 1116, 1121, 1126, 1129, 1132, 1141, 1151, 1176, 1186, 1187, 1199, 1205, 1208, 1217, 1222, 1228, 1233, 1245, 1249, 1269, 1274, 1290, 1293, 1299, 1301, 1307, 1311, 1323, 1330, 1333, 1339, 1341, 1350, 1361, 1379, 1385, 1388, 1392, 1404, 1412, 1428, 1438, 1442, 1450, 1460, 1468, 1494, 1499, 1505, 1509, 1512, 1514, 1526, 1541, 1544, 1578, 1586, 1593, 1595, 1597, 1605, 1610, 1627, 1628, 1636, 1643, 1647, 1648, 1652, 1654, 1686, 1687, 1698, 1701, 1702, 1706, 1710, 1724, 1731, 1732, 1738, 1741, 1750, 1752, 1757, 1759, 1769, 1783, 1800, 1803, 1808, 1814, 1816, 1830, 1844, 1846, 1851, 1852, 1861, 1866, 1871, 1886, 1889, 1901, 1911, 1912, 1927, 1928, 1946, 1959, 1961, 1963, 1965, 1992, 2025, 2034, 2037, 2051, 2071, 2100, 2101, 2103, 2126, 2129, 2136, 2160, 2166, 2170, 2180, 2193, 2203, 2242, 2254, 2265, 2269, 2272, 2279, 2280, 2283, 2294, 2298, 2299, 2304, 2314, 2357, 2377, 2380, 2381, 2395, 2406, 2420, 2421, 2422, 2423, 2425, 2431, 2435, 2436, 2459, 2479, 2492, 2498, 2531, 2539, 2574, 2579, 2582, 2587, 2627, 2634, 2672, 2683, 2697, 2716, 2719, 2721, 2731, 2797, 2863, 2937, 2945.

Compliance: Required as indicated, unless accomplished previously.

To prevent slippage of the T/R drive, loss of directional control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, install the alignment dots and perform an inspection in accordance with Part A of Robinson Helicopter Company R22 Service Bulletin (SB) #74, dated July 18, 1994. Apply the 35-lb. weight very gently to avoid overstressing the T/R blade or T/R drive. Any slippage detected must be reported within 10 days after the inspection to the Manager, Los Angeles Manufacturing Inspection District Office, FAA, Northwest Mountain Region, 3229 E. Spring St., Long Beach, California 90806–2425, telephone (310) 988–5290, fax (310) 988–5293. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(b) Before the first flight of each day, check for misalignment of the alignment dots installed on the tail cone skin and the drive shaft flange by rotating the T/R blade so that the alignment dot is visible in the inspection window and the tip of the T/R blade leading edge aligns with the dot on the tail cone skin. Next, ensure that the drive shaft flange dot is aligned with the dot on the centerline of the tail cone skin at the edge of the inspection window. If any misalignment is detected, before further flight, conduct the inspection required by paragraph (a) of this AD. The checks required by this AD may be performed by an owner/operator holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD, in accordance with section 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(c) Verification of the presence of the key through disassembly and reassembly of the T/R gearbox in accordance with FAA-approved procedures constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The installation, inspection, and checks shall be done in accordance with Robinson Helicopter Company R22 Service Bulletin #74, dated July 18, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd. Torrance, CA 90505. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 21, 1994, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 94–17–07, issued August 25, 1994, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on October 24, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–26879 Filed 11–3–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 27942; Amdt. No. 1630]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a) 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

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Issued in Washington, DC, on October 21, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective February 2, 1995*

Little Rock, AR, North Little Rock Muni, VOR RWY 35, Amdt 4
Bermuda Dunes, CA, Bermuda Dunes, VOR RWY 28, Orig CANCELLED
Palm Springs, CA, Bermuda Dunes, VOR RWY 28, Orig
Millville, NJ, Millville Muni, VOR/DME RNAV RWY 28, Amdt 1

****Effective January 5, 1995*

Monterey, CA, Monterey Peninsula, NDB OR GPS RWY 10R, Amdt 12
Kountze/Silsbee, TX, Hawthorne Field, NDB RWY 13, Amdt 2

****Effective December 8, 1994*

Crescent City, CA, Jack McNamara Field, VOR RWY 11, Amdt 9
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 11, Amdt 11
Crescent City, CA, Jack McNamara Field, VOR/DME OR GPS RWY 35, Amdt 10
Crescent City, CA, Jack McNamara Field, ILS/DME RWY 11, Amdt 5
Santa Barbara, CA, Santa Barbera Muni, ILS RWY 7, Amdt 3
Thomaston, GA, Thomaston-Upson County, LOC RWY 30, Orig
Thomaston, GA, Thomaston-Upson County, NDB RWY 30, Orig
Thomaston, GA, Reginald Grant Memorial, NDB RWY 3, Amdt 1, CANCELLED
Washington, IA, Washington Muni, VOR/DME–A, Amdt 3A, CANCELLED
Washington, IA, Washington Muni, VOR/DME RWY 36, Orig
Washington, IA, Washington Muni, NDB RWY 31, Amdt 1
Washington, IA, Washington Muni, VOR/DME RNAV RWY 31, Amdt 4
Wichita, KS, Wichita Mid-Continent, VOR RWY 14, Amdt 1
Wichita, KS, Wichita Mid-Continent, LOC BC RWY 19L, Amdt 15
Wichita, KS, Wichita Mid-Continent, NDB RWY 1R, Amdt 15
Wichita, KS, Wichita Mid-Continent, ILS RWY 1R, Amdt 16
Wichita, KS, Wichita Mid-Continent, MLS RWY 19L, Amdt 1
Wichita, KS, Wichita Mid-Continent, VOR/DME RNAV RWY 1L, Amdt 1
Wichita, KS, Wichita Mid-Continent, VOR/DME RNAV RWY 19R, Amdt 1
Old Town, ME, Dewitt Fld, Old Town Muni, VOR–A, Amdt 10, CANCELLED
St Cloud, MN, St Cloud Muni, VOR RWY 31, Amdt 10
St Cloud, MN, St Cloud Muni, VOR/DME RWY 13, Amdt 7
St Cloud, NM, St Cloud Muni, NDB RWY 31, Amdt 1
St Cloud, MN, St Cloud Muni, ILS RWY 31, Amdt 1
Miller, SD, Miller Muni, NDB RWY 13, Amdt 2
Carthage, TX, Panola County-Sharpe Field, NDB OR GPS RWY 35, Amdt 1
Bluefield, WV, Mercer County, VOR RWY 23, Amdt 8
Bluefield, WV, Mercer County, VOR/DME OR GPS RWY 23, Amdt 3

****Effective November 10, 1994*

St Louis, MO, Spirit of St Louis, VOR RWY 8R, Amdt 7
St Louis, MO, Spirit of St Louis, VOR RWY 26L, Amdt 5
St Louis, MO, Spirit of St Louis, LOC RWY 26L, Amdt 4
St Louis, MO, Spirit of St Louis, NDB RWY 8R, Amdt 11
St Louis, MO, Spirit of St Louis, NDB RWY 26L, Amdt 1
St Louis, MO, Spirit of St Louis, ILS RWY 8R, Amdt 13
Johnstown, PA, Johnstown-Cambria County, ILS RWY 33, Amdt 3
Chesapeake, VA, Chesapeake Muni, LOC RWY 5, Orig

****Effective Upon Publication*

Concord, NC, Concord Regional, VOR/DME–A, Amdt 1

[FR Doc. 94–27393 Filed 11–3–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27943; Amdt. No. 1631]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination.—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase.—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription.—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the

amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, 1. is not a "significant regulatory action" under Executive Order 12866; 2. is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and 3. does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 21, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows: Effective upon publication.

FDC Date	State	City	Airport	FDC No.	SIAP
9/29/94	NY	PLATTSBURGH	CLINTON COUNTY	4/5836	ILS RWY 1, AMDT 2...
10/12/94	WA	SEATTLE	SEATTLE-TACOMA INTERNATIONAL	4/5853	EFF OCT 13, 1994. ILS RWY 16R /CAT I/, /CAT II/, /CAT III/, AMDT 11A...
10/12/94	WA	SEATTLE	SEATTLE-TACOMA INTERNATIONAL	4/5854	EFF OCT 13, 1994. VOR OR GPS RWY 16L/R, AMDT 12...
10/12/94	WA	SEATTLE	SEATTLE-TACOMA INTERNATIONAL	4/5855	EFF OCT 13, 1994. NDB RWY 16R, AMDT ORIG-A...
10/12/94	WA	SEATTLE	SEATTLE-TACOMA INTERNATIONAL	4/5856	EFF OCT 13, 1994. VOR OR GPS RWY 34L/R, AMDT 8...
10/12/94	WA	SEATTLE	SEATTLE-TACOMA INTERNATIONAL	4/5857	EFF OCT 13, 1994. NDB RWY 34R, AMDT 7...
10/13/94	AZ	PHOENIX	WILLIAMS GATEWAY	4/5880	ILS RWY 30C ORIG...
10/13/94	CA	FRESNO	FRESNO-CHANDLER DOWNTOWN	4/5904	NDB-B AMDT 7...

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[FR Doc. 94-27302 Filed 11-3-94; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Parts 121, 125, and 135

[Docket No. 27926; Amendment Nos. 121-242, 125-22, 135-53]

RIN 2120-AF37

Protective Glove Requirement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [FR Doc. 94-24498] published on October 18, 1994 (59 FR 52640). The published list of items to be included in the kit inadvertently listed an item that previously had been deleted. This document corrects that error and one editorial omission.

EFFECTIVE DATE: December 2, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel V. Meier, Jr., Regulatory Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3749.

SUPPLEMENTARY INFORMATION: On October 18, 1994, the FAA published a final rule amending the regulations that list the items required in the first aid kits carried on board aircraft operated in air carrier, air taxi, and commercial operations (59 FR 52640). In the list published in the final rule, the item "Burn compound, ⅛ oz or an equivalent of other burn remedy" appeared in the listing under §§ 125.207 and 135.177. The inclusion of burn compound was in error. Burn compound was removed by an earlier amendment (59 FR 1780, January 12, 1994).

Further, in the amendment to § 121.309, a period was omitted at the end of paragraph (d)(1).

Correction of Publication

Accordingly, the publication on October 18, 1994 of the final rule that was the subject of FR Doc. 94-24498 is corrected as follows:

§ 121.309 [Corrected]

1. On page 52642, in the third column, in § 121.309, in paragraph (d)(1), in the last line, add a period after the words "of this part".

§ 125.207 [Corrected]

2. On page 52643, in the first column, in § 125.207, in the table in paragraph (a)(1)(iii), in the column titled "Contents" remove the entry that reads "Burn compound, ⅛ oz or an equivalent of other burn remedy"; in the column titled "Quantity" remove the entry "6" that corresponds to the burn compound entry.

§ 135.177 [Corrected]

3. On page 52643, in the third column, in § 135.177, in the table in paragraph (a)(1)(iii), in the column titled "Contents" remove the entry that reads "Burn compound, ⅛ oz or an equivalent of other burn remedy"; in the column titled "Quantity" remove the entry "6" that corresponds to the burn compound entry.

Issued in Washington, DC on October 31, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 94-27390 Filed 11-3-94; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA51

Permit-Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule: technical amendment to preamble.

SUMMARY: On January 14, 1993 at 58 FR 4462, the Occupational Safety and Health Administration (OSHA) published a final rule on Permit-Required Confined Spaces, 29 CFR 1910.146 in the **Federal Register**. On June 29, 1993 at 58 FR 34844, OSHA published a corrections document for that final rule which contained corrections to the regulatory text and to several appendices of the final rule. Another document was published on May 19, 1994 at 59 FR 26114 which added a metric equivalent in paragraph (k)(3)(ii) and further revised the "Atmospheric monitoring" section of Appendix E, "Sewer System Entry", of the final rule. This document revises one paragraph of the preamble discussion of the definition of confined space in the January 14, 1993 document.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Information, Division of Consumer Affairs, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 219-8151.

SUPPLEMENTARY INFORMATION: OSHA published its final rule on Permit-Required Confined Spaces (PRCS), 29 CFR 1910.146, on January 14, 1993 at 58 FR 4462. Corrections to the regulatory text and to several appendices were published on June 29, 1993 at 58 FR 34844. A technical amendment was published on May 19, 1994 at 59 FR 26114.

Amendment to Preamble of 29 CFR 1910.146

In the Permit-Required Confined Spaces standard, on pages 4477 and 4478 of the January 14, 1993 **Federal Register** document preamble, OSHA made the following statement:

> As indicated in the preamble to the proposal [54 FR 24089], OSHA notes that doorways and other portals through which a person can walk are not to be considered limited means for entry or exit.

This sentence was intended to limit the application of the definition of confined spaces to those areas where an employee would be forced to enter or exit in a posture that might slow self-rescue, or make rescue more difficult. These spaces warrant additional consideration as to whether they pose a hazard to entrants and would, therefore, be regulated as permit-required confined spaces (permit spaces). For example, even if the door or portal of a space is of sufficient size, obstructions could make entry into or exit from the space difficult. The Agency intended that spaces which otherwise meet the definition of confined spaces, and which have obstructed entry or exits even though the portal is a standard size doorway, be classified as confined spaces. OSHA acknowledges that the preamble to the final rule did not clearly express that intent.

Accordingly, OSHA is adding preamble language to follow the above-mentioned statement. This text will make OSHA's original intent clear, without changing the PRCS standard.

Exemption From Notice and Comment Procedures

With regard to this action, OSHA has determined that it is not required to follow procedures for public notice and comment rulemaking under either section 4 of the Administrative Procedure Act (5 U.S.C. 553) or under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)). This action does not affect the substantive requirements or coverage of the standards themselves. This technical amendment does not modify or revoke existing rights or obligations, nor does it establish new ones. This action simply provides additional information on the existing regulatory burden. OSHA, therefore, finds that notice and public procedure are impracticable and unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, OSHA also finds that, in accordance with 29 CFR 1911.5, good cause exists for dispensing with the public notice and comment procedures prescribed in section 6(b) of the Occupational Safety and Health Act.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that is good cause for making this technical amendment effective upon publication in the **Federal Register**. This technical amendment simply provides additional information on the existing regulatory burden without increasing that burden.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of November 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, in the January 14, 1993, Final Rule for Permit-Required Confined Spaces for General Industry (58 FR 4462), the preamble section on page 4477, column 3 and page 4478, column 1, is revised to read as follows:

As indicated in the preamble to the proposal [54 FR 24089], OSHA notes that doorways and other portals through which a person can walk are not to be considered limited means for entry or exit. However, a space containing such a door or portal may still be deemed a confined space if an entrant's ability to escape in an emergency would be hindered.

[FR Doc. 94-27413 Filed 11-3-94; 8:45 am]
BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Termination of Residual Blocking of Government of Panama Assets

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Panamanian Transactions Regulations to terminate the residual blocking of Government of Panama assets, effective November 4, 1994. This action terminates the Panamanian program of the Office of Foreign Assets Control. Authority to take enforcement action for sanctions violations is not affected by this action.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

Executive Order 12710 of April 5, 1990, 3 CFR, 1990 Comp., p. 282, terminated the national emergency declared on April 8, 1988, with respect to Panama, and lifted sanctions imposed against the Noriega regime. Pursuant to section 207(a)(2) of the International Emergency Economic Powers Act, 50 U.S.C. 1706(a)(2), however, the order continued the blocking of certain Government of Panama assets in the United States, with the understanding of the Government of Panama, to facilitate resolution of claims of U.S. persons. Because all such claims known to the Office of Foreign Assets Control ("FAC") and arising prior to the lifting of sanctions have either been settled or provided for by the Government of Panama, including its agencies, instrumentalities, and controlled entities such as Air Panama, the residual blocking has fulfilled its purpose. Therefore, FAC is revising § 565.510 of the Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations"), to authorize, November 4, 1994, all transactions otherwise prohibited by the Regulations with respect to property and property interests in which the Government of Panama has an interest.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 565

Blocking of assets, Foreign claims, Panama, Penalties, Reporting and recordkeeping requirements, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 565 continues to read as follows:

Authority: 50 U.S.C. 1701-1706, E.O. 12635, 53 FR 12134 (April 12, 1988), 3 CFR, 1988 Comp., p. 563; E.O. 12710, 55 FR 13099 (April 6, 1990), 3 CFR, 1990 Comp., p. 282.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. The heading and text of § 565.510 are revised to read as follows:

§ 565.510 Government of Panama assets unblocked.

(a) Effective November 4, 1994, all transactions involving property in which the Government of Panama has an interest that would otherwise be prohibited by this part are authorized.

(b) Nothing in this section shall authorize transactions prior to November 4, 1994, that were prohibited by this part when transacted. Enforcement actions with respect to violations of this part are not affected by this section.

Dated: October 11, 1994.

Steven I. Pinter,

Acting Director, Office of Foreign Assets Control.

Approved: October 11, 1994.

R. Richard Newcomb,

Acting Deputy Assistant Secretary (Law Enforcement).

[FR Doc. 94-27345; Filed 11-3-94; 8:45 am]
BILLING CODE 4810-25-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90-314; DA 94-1197]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

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SUMMARY: This document contains a correction to the final regulations, which were published on August 11, 1993 (58 FR 42681). The regulations related to the frequency allocation and service rules for Narrowband Personal Communications Services.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: John Reed, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation contains an error that needs to be corrected to ensure that the Commission's decision is properly implemented.

Correction of Publication

Accordingly, the publication on August 11, 1993 of the final regulations, is corrected as follows:

§ 99.411 [Corrected]

On page 42686, in column 1, paragraph (d) is corrected to read as follows:

(d) A minimum spectrum analyzer resolution bandwidth of 300 Hz shall be used when showing compliance with paragraphs (a)(1) (i) and (ii) and (a)(2) (i) and (ii).

This rule was subsequently renumbered as § 24.411.

List of Subjects in 47 CFR Part 24

Communications equipment.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27259 Filed 11–3–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 59, No. 213

Friday, November 4, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AG16

Retirement; Alternative Forms of Annuity

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing changes in our current regulations on alternative forms of annuity to implement the changes in sections 8343a and 8420a of title 5, United States Code, made by the Omnibus Budget Reconciliation Act of 1993. These regulations provide for the termination of the alternative form of annuity for employees whose annuities commence on or after October 1, 1994, except for employees who have a life-threatening affliction of other critical medical condition. They would also revise the list of critical medical conditions considered *prima facie* evidence of eligibility. The regulations are necessary to conform the current regulations with current law.

DATES: Comments must be received on or before January 3, 1995.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement Policy Development; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Since 1986, some individuals retiring under the Civil Service Retirement System or the Federal Employees Retirement System have been eligible to elect an alternative form of annuity. The alternative form of annuity consisted of a lump-sum payment of the individual's retirement deductions plus reduced monthly benefits. The amount of the reduction was determined so that the present value of the future unreduced annuity would be actuarially equivalent to the present value of the lump sum plus the future reduced annuity payments.

The Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, amended sections 8343a and 8420a of title 5, United States Code, to limit eligibility for the alternative form of annuity for individuals whose annuities commence on or after October 1, 1994, to those with a "life-threatening affliction or other critical medical condition." These regulations would change sections 831.2203(h) and 842.703(d) to reflect this new statutory eligibility requirement.

Our proposed change in sections 831.2207 and 842.707 refines the list of medical conditions that constitute *prima facie* evidence of a "life-threatening affliction or other critical medical condition." We are removing two conditions from the list (ventricular tachycardia and ventricular flutter). We are also clarifying the severity required for four other medical conditions before we will accept those conditions as *prima facie* evidence. Of course, this change in no way affects a claimant's right to show that medical conditions, not on the list, are qualifying conditions under sections 831.2207(c)(3)(iv) and 842.707(c)(3)(iv) of Title 5, Code of Federal Regulations.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air Traffic Controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Reporting and recordkeeping, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347, * * * subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

2. In section 831.2203, paragraphs (h)(1), (h)(1)(i), and (h)(1)(ii) are redesignated as paragraphs (h)(1)(i), (h)(1)(i)(A), and (h)(1)(i)(B), respectively, and a new paragraph (h)(1)(ii) is added to read as follows:

§ 831.2203 Eligibility.

* * * * *

(h)(1) * * *

(ii) An individual whose annuity commences on or after October 1, 1994, may elect an alternative form of annuity only if that individual is an employee or Member who meets the conditions and fulfills the requirements described in § 831.2207(c) (2) and (3).

* * * * *

3. In section 831.2207, paragraph (c)(3)(ii)(G) is removed and reserved, paragraph (c)(3)(ii)(V) is removed, and paragraphs (c)(3)(ii) (B), (H), (K), and (M) are revised to read as follows:

§ 831.2207 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1988, and before October 1, 1989.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) Aortic stenosis (severe).

* * * * *

(H) Severe cardiomyopathy—Class IV

* * * * *

(K) Cardiac aneurysm not amenable to surgical treatment.

* * * * *

(M) Severe hepatic failure.

* * * * *

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PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

4. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.101 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

5. In section 842.703, paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) are redesignated as paragraphs (d)(1)(i), (d)(1)(i)(A), (d)(1)(i)(B), respectively, and a new paragraph (d)(1)(ii) is added to read as follows:

§ 842.703 Eligibility.

* * * * *

(d)(1) * * *

(ii) An individual whose annuity commences on or after October 1, 1994, may elect an alternative form of annuity only if that individual is an employee or Member who meets the conditions and fulfills the requirements described in § 842.707(c) (2) and (3).

* * * * *

6. In section 842.707 paragraph (c)(3)(ii)(G) is removed and reserved, paragraph (c)(3)(ii)(V) is removed, and paragraphs (c)(3)(ii) (B), (H), (K), and (M) are revised to read as follows:

§ 842.707 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1968, and before October 1, 1980.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) Aortic Stenosis (severe).

* * * * *

(H) Severe cardiomyopathy—Class IV.

* * * * *

(K) Cardiac aneurysm not amenable to surgical treatment.

* * * * *

(M) Severe hepatic failure.

* * * * *

§§ 831.2203, 831.2208, 842.703, 842.708 [Amended]

7. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
831.2203	newly designated (h)(1)(i)	1995	1994
831.2203	(h)(2) introductory text	(h)(1)(ii)	(h)(1)(i)(B)
831.2208	(a) introductory text	1995	1994
831.2208	(b)	1995	1994
831.2208	(c)(2)(ii)	831.2203 (h)(1)(i)	831.2203 (h)(1)(i)(A)
842.703	newly designated (d)(1)(ii)	1995	1994
842.703	(d)(2) introductory text	(d)(1)(ii)	(d)(1)(i)(B)
842.708	(a) introductory text	1995	1994
842.708	(b)	1995	1994
842.708	(c)(2)(ii)	842.703(d)(1)(i)	842.703(d)(1)(i)(A)

[FR Doc. 94–27363 Filed 11–3–94; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930

RIN 3206–AG18

Federal Staffing Provisions Supporting Sunset of the Federal Personnel Manual

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This proposed rule places into regulation a limited number of Federal staffing provisions that were formerly in the Federal Personnel Manual (FPM). The remaining "provisionally retained" portions of the FPM will be abolished by December 31, 1994. This proposed rule deletes or replaces regulatory language which references the FPM. Its provisions also define or clarify terms and describe procedures used in veterans' preference, reductions in force, veterans' readjustment appointments, term appointments, seasonal and intermittent employment, noncompetitive term appointments based on Peace Corps service, exemption of certain employees from coverage of the Part-time Career Employment Act, physical requirements for employment, and actions taken during a national emergency (including the possible appointment of relatives). They extend delegations to agencies for assigning persons serving under excepted appointments to the work of positions in the competitive service; making temporary appointments of worker trainees pending establishment of a register (TAPER); and extending time limits for overseas temporary appointments. The proposed provisions also delete requirements for a number of regular reports. In the case of part 351, Reduction in Force, and part 353, Restoration to Duty From Military Service or Compensable Injury, sections are reworded for clarity and consistency with decisions of the Merit Systems Protection Board.

DATES: Comments must be submitted on or before December 5, 1994.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415–0001 (FAX 202–606–2329).

FOR FURTHER INFORMATION CONTACT: Diane Bohling, (202) 606–0960 with questions concerning the changes in 5 CFR 330; Thomas Glennon, (202) 606–0960 concerning the changes in 5 CFR 351; Raleigh Neville, (202) 606–0830 concerning the changes in 5 CFR 340, 5 CFR 353 and 5 CFR 930; and Mike Carmichael or Karen Jacobs, (202) 606–0830, concerning the other changes.

SUPPLEMENTARY INFORMATION:

The Vice President's National Performance Review (NPR) recommended that the Office of Personnel Management (OPM) "phase

out the entire 10,000 page Federal Personnel Manual (FPM)." The President endorsed the NPR recommendations.

In planning to abolish the FPM, OPM met over an extended period with representatives of agencies and employee unions to identify which FPM policies should be dropped, which should be continued in regulation, and which should be available as a helpful reference in an alternative format. The resulting recommendations were reviewed and endorsed by the Interagency Advisory Group of agency personnel directors and by the National Partnership Council.

This proposed rule carries out the recommendations of those groups to retain selected current policies. Regulations to establish new policies, including implementation of Pub. L. 103–353 (veterans' reemployment rights), will be proposed separately.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Personnel Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 211

Government employees, Veterans.

5 CFR Part 230

Civil defense, Government employees.

5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

5 CFR Part 301

Government employees.

5 CFR Part 307

Government employees, Veterans.

5 CFR Part 310

Government employees.

5 CFR Part 316

Government employees.

5 CFR Part 330

Armed forces reserves, Government employees.

5 CFR Part 333

Government employees.

5 CFR Part 339

Equal employment opportunity, Government employees, Health, Individuals with disabilities.

5 CFR Part 340

Government employees.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 353

Administrative practice and procedure, Government employees.

5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

James B. King,

Director, Office of Personnel Management.

Accordingly, OPM proposes to amend 5 CFR parts 211, 230, 300, 301, 307, 310, 316, 330, 333, 339, 340, 351, 353, and 930 as follows:

PART 211—VETERAN PREFERENCE

1. Part 211 is revised to read as follows:

Sec.
211.101 Purpose
211.102 Definitions
211.103 Administration of preference.

Authority: 5 U.S.C. 1302.

§ 211.101 Purpose.

The purpose of this chapter is to define veterans' preference and the administration of preference in Federal employment. (5 U.S.C. 2108)

§ 211.102 Definitions.

For the purposes of preference in Federal employment the following definitions apply:

(a) *Veteran* means a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or,

(3) During the period beginning April 28, 1952, and ending July 1, 1955; or,

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976.

(b) *Disabled veteran* means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(c) *Preference eligible* means veterans, spouses, widows, or mothers who meet the definition of "preference eligible" in 5 U.S.C. 2108. Preference eligibles are entitled to have 5 or 10 points added to their earned score on a civil service examination (see 5 U.S.C. 3309). They are also accorded a higher retention standing in the event of a reduction in force (see 5 U.S.C. 3502). Preference does not apply, however, to inservice placement actions such as promotions.

(d) *Armed forces* means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) *Uniformed services* means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(f) *Active duty or active military duty* means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(g) *Separated under honorable conditions* means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

§ 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for preference based on a common law marriage. Such a claim should be referred to OPM's General Counsel for decision.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

2. The authority citation for Part 230 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; sec. 230.402 also issued under 5 U.S.C. 1104.

3. In § 230.402, paragraphs (a) through (h) are redesignated as paragraphs (b) through (i), respectively; a new paragraph (a) is added; and newly redesignated paragraph (b) is revised to read as follows:

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *When a national emergency exists—*

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(1) *Definition.* A national emergency must meet *all* of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) *Termination of a national emergency.* A national emergency no longer exists if it is officially terminated by the President or Congress, or if the *specific* circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) *Basic authority.* Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by paragraphs (c) and (d) of this section, agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

* * * * *

PART 300—EMPLOYMENT (GENERAL)

4. The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Sec. 300.301 also issued under 5 U.S.C. 1104 and 3341.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

5. In § 300.201, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively and a new paragraph (b) is added to read as follows:

§ 300.201 Examinations.

* * * * *

(b) The Office maintains control over the security and release of testing and examination materials which it has developed and made available to agencies for initial competitive appointment or inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in (a)(1) and (a)(2) of this section.

* * * * *

6. A new subpart C, consisting of § 300.301, is added to read as follows:

Subpart C—Details of Employees

Sec.
300.301 Authority.

§ 300.301 Authority.

(a) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or the Veterans Readjustment Act, to a position in the competitive service.

(c) Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under a delegated agreement between the agency and OPM.

7. In § 300.407, paragraph (b) is revised to read as follows:

§ 300.407 Documentation.

* * * * *

(b) When requested by the Office of Personnel Management, agencies will provide reports on the use of commercial recruiting firms, based on the records required in (a) above.

PART 301—OVERSEAS EMPLOYMENT

8. The authority citation for part 301 continues to read in part as follows:

Authority: 5 U.S.C. 3301, 3302; * * *

9. In § 301.203, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 301.203 Duration of appointment.

* * * * *

(c) An agency may make an overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend such an appointment for up to a maximum of 1 additional year.

(d) Upon request from the headquarters level of a Department or agency, OPM may approve, or delegate to agencies the authority to approve, exceptions to the time limits set out in paragraph (c) of this section.

PART 307—VETERANS READJUSTMENT APPOINTMENTS

10. The authority citation for part 307 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.102 [Amended]

11. In § 307.102, paragraph (c) is removed.

12. Section 307.103 is revised to read as follows:

§ 307.103 Appointing authority.

(a) Agency may appoint any veteran who served on active duty after August 4, 1964, who meets the basic veterans readjustment eligibility provided by law.

(b) Appointments are subject to investigation by OPM. A law, Executive order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

13. Section 307.104 is added to read as follows:

§ 307.104 Appeal rights.

A veterans readjustment appointment is an excepted appointment to a position otherwise in the competitive service. Veterans readjustment appointees have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter, except the appointees are also entitled to limited appeal protection during their 1st year of service as set forth in § 315.806 of this chapter.

PART 310—EMPLOYMENT OF RELATIVES

14. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 3302, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306.

15. Section 310.202 is revised to read as follows:

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a 2nd month if the emergency need still exists.

PART 316—TEMPORARY AND TERM EMPLOYMENT

16. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302 and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 22 U.S.C. 2506 (94 Stat. 2158); 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

17. Section 316.201 is revised to read as follows:

§ 316.201 Purpose and duration.

(a) *General.* OPM may authorize an agency to fill a vacancy by temporary appointment pending establishment of a register (TAPER appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last that the vacancy be filled before eligibles can be certified. The agency must follow the provisions of part 333 of this chapter when making a TAPER appointment.

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1, and WG–2 and may reassign or promote the appointees to other positions through grade GS–3, WG–4, or equivalent grades in the Federal Wage System.

18. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

An agency may make a term appointment for a period of more than 1 year but not more than 4 years when the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, or contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

19. In § 316.302, paragraph (c)(3) is revised to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(c) * * *

(3) A person eligible for career or career-conditional employment under sections 315.601, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703 of this chapter.

* * * * *

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

20. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR, 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under sec. 4432 of Pub. Law 102–484.

21. Section 330.201 is revised to read as follows:

§ 330.201 Establishment and maintenance of RPL.

(a) The reemployment priority list (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. The RPL is a required component of agency positive placement programs. In filling vacancies, the agency must give RPL registrants priority consideration over certain outside job applicants and, if it chooses, also may consider RPL registrants before considering internal candidates.

(b) Each agency is required to establish and maintain a reemployment priority list for each commuting area in which it separates eligible competitive service employees by RIF or when a former employee recovers from a compensable injury after more than 1 year, except as provided in paragraph (c) of this section. For purposes of this subpart, "agency" means "Executive agency" as defined in 5 U.S.C. 105. All components of an agency within the commuting area utilize a single RPL and are responsible for giving priority consideration to the RPL registrants.

(c) An agency need not maintain a distinct RPL for employees separated by reduction in force if the agency operates a placement program for its employees and obtains OPM concurrence that the program satisfies the basic requirements of this subpart. The intent of this provision is to allow agencies to adopt different placement strategies that are effective for their particular programs yet satisfy legal entitlements to priority consideration in reemployment.

22. In § 330.202, paragraph (a)(1) is revised and paragraph (c) is added to read as follows:

§ 330.202 Application.

(a)(1) To be entered on the RPL, an eligible employee under § 330.203 must complete an application prescribed by the employing agency and inform the agency of any significant changes in the information provided. This application must provide for the employee to specify the conditions under which he or she will accept employment, including grade, occupation, and minimum hours of work per week, in addition to positions at the same representative rate and type of work schedule (e.g., full-time, part-time, seasonal, intermittent, on-call, etc.) as the position from which the employee was or will be separated. Registration may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued. The employee must submit the application within 30 calendar days after the RIF separation date. An employee who fails to submit a timely application is not entitled to be placed on the RPL. If an agency has components scattered throughout a large commuting area, the agency may allow eligibles to indicate their availability only for certain sub-areas within the commuting area. However, the agency cannot deny consideration throughout the entire commuting area if the eligible wants it.

* * * * *

(c) Agencies should assist employees to identify positions within the agency for which they qualify and these positions should be listed on the RPL application.

23. In § 330.203, paragraphs (a)(4) and (c) are revised and paragraphs (d), (e), (f), and (g) are added to read as follows:

§ 330.203 Eligibility due to reduction in force.

(a) * * *

(4) Have not declined an offer under subpart G of part 351 of this chapter of a position with the same type of work schedule and a representative rate at least as high as that of the position from which the employee was or will be separated.

* * * * *

(c) A tenure group I employee is eligible for the RPL for 2 years, and a tenure group II employee is eligible for 1 year, from the date the employee is entered on the RPL.

(d)(1) When an individual declines an offer of career, career-conditional, or

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excepted appointment without time limit or fails to reply to an inquiry, under this subpart, and the position meets the acceptable conditions shown in his or her application, he or she loses RPL consideration for all positions with a representative rate at or below that grade. However, subject to paragraph (d)(2)(iii) of this section, the individual retains eligibility for positions with a higher representative rate up to the last grade held.

(2) Also, an individual is taken off the RPL before the period of eligibility expires when the individual:

(i) Requests removal.

(ii) Receives a career, career-conditional, or excepted appointment without time limit in any agency.

(iii) Declines an offer of career, career-conditional, or excepted appointment without time limit or fails to reply to an inquiry, under this subpart, by the employee's former agency, concerning a specific position having a representative rate at least as high, and with the same type of work schedule, as that of the position from which the person was or will be separated.

(iv) Separates for some other reason before the RIF separation takes effect (such as retirement, resignation, etc.). An employee who retires the day after separation by RIF, or later, does not lose RPL eligibility.

(v) Declines an interview or fails to appear for a scheduled interview only if notified in advance of this requirement and the subsequent consequences.

(vi) In the case of an individual enrolled on an RPL for Alaska or overseas, leaves the area covered by that RPL or becomes disqualified for overseas employment because of previous service or residence.

(3) When an agency removes an individual from the RPL because of failure to reply to a specific permanent job offer or an inquiry of availability for a specific permanent vacancy, the agency must have evidence to show that a written offer or inquiry was made and received. The written offer or inquiry to the individual must clearly state that failure to respond will result in loss of RPL consideration for all grades or for lower grades, as appropriate.

(e) Declination of nonpermanent employment has no effect on RPL eligibility or continuation of RPL consideration.

(f) Consideration for all jobs (whether permanent or nonpermanent) is suspended for any individual who cannot be reached by the agency. Submission of an updated application can reinstate consideration, but the period of eligibility is not extended beyond the original time set in paragraph (c) of this section.

(g) Eligibles who had agreed to transfer with their function but were separated by RIF from the gaining competitive area are registered on the RPL of the gaining competitive area.

24. In § 330.204, paragraphs (a) and (b)(3) are revised and paragraph (c) is added to read as follows:

§ 330.204 Eligibility due to compensable injury.

(a) A competitive service employee in tenure group I or II who is separated (or who accepts a lower graded position in lieu of separation) because of a compensable injury or disability (as defined in part 353 of this chapter) who has fully recovered more than 1 year after compensation began is entitled to be placed on the RPL provided the individual applies within the timeframes addressed in § 330.202. Part 353 of this chapter contains information on eligibility.

* * * * * *

(b) * * *

(3) Declines an offer or fails to respond to an inquiry of availability about a specific position that is the same as or equivalent to the position from which separated.

(c) A former employee must request reemployment consideration within the time limits set in § 330.202.

25. Section 330.205 is revised to read as follows:

§ 330.205 Employment restrictions.

(a) The restrictions in paragraph (b) of this section apply to the filling of all competitive service vacancies, regardless of whether an agency plans to make a temporary, term, or permanent appointment. This means an agency must consider RPL registrants for nonpermanent as well as permanent positions when they have indicated such interest on their RPL application.

(b) When a qualified individual is available on an agency's RPL, the agency may not make a final commitment to an individual not on the RPL to fill a permanent or temporary competitive service position by:

(1) A new appointment, unless the individual appointed is a qualified 10-point preference eligible; or

(2) Transfer or reemployment, unless the individual appointed is a preference eligible, is exercising restoration rights under part 353 of this chapter based on return from military service or recovery from a compensable injury or disability within 1 year, or is exercising other statutory or regulatory reemployment rights.

(c) Paragraph (b) of this section does not apply to actions involving employees on an agency's rolls, as authorized below, or in filling a specific position:

(1) When all qualified individuals on the RPL decline an offer of a specific position or fail to respond to an official agency inquiry about their availability for it; or

(2) By a current, qualified employee of the agency through:

(i) Detail or position change (promotion, demotion, reassignment); or

(ii) Conversion to competitive appointment of employees currently serving under appointments that carry a noncompetitive conversion eligibility (e.g., Veterans Readjustment Appointee, 30 percent disabled veterans, disabled employees under Schedule A appointment, Presidential Management Interns, cooperative education students under Schedule B appointment, and TAPERS); or

(iii) Reappointment without a break in service to the same position currently held by an employee serving under a temporary appointment of 1 year or less (only to another temporary appointment not to exceed 1 year or less and not to a permanent appointment); or

(iv) Extension of an employee's temporary appointment up to the maximum permitted by the appointment authority or as authorized by OPM.

(3) By a 30-day special needs appointment or 700 hour temporary appointment of a severely disabled or mentally retarded individual, when the agency's staffing policies provide for these exceptions.

(d) An agency must clear the RPL at the grade level at which it fills a position (regardless of the full performance level). Similarly, if an agency advertises a position at multiple grade levels, it must clear the RPL only at the grade level at which the position is ultimately filled.

(e) Once an agency has cleared its RPL and made a final employment commitment to an individual, the later registration of another employee on the RPL does not prevent the fulfillment of the original commitment, regardless of when the individual actually enters on duty.

(f) An agency may make an exception to this section and appoint an individual not on the RPL as authorized by § 330.207(d).

(g) When submitting a request for referral of eligibles, an agency is required to indicate that no qualified RPL registrant is available for the vacancy and therefore the agency may make a new appointment. Similarly, an agency must clear its RPL before making appointments under a direct-hire

authority, which includes the Outstanding Scholar provision, or delegated examining authority.

26. In § 330.206, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 330.206 Job consideration.

(a) (1) An eligible employee under § 330.203 is entitled to consideration for positions in the commuting area for which qualified and available that are at no higher grade (or equivalent), have no greater promotion potential than the position from which the employee was or will be separated, and have the same type of work schedule. In addition, an employee is entitled to consideration for any higher grade previously held on a nontemporary basis in the competitive service from which the employee was demoted under part 351 of this chapter.

(2) An employee is considered for positions having the same type of work schedule as the position from which separated except that the agency, at its discretion, may adopt provisions permitting empoyees to request consideration for other work schedules in addition to that formerly held.

* * * * *

(b) (1) An eligible employee under § 330.204 is placed on the RPL for reemployment consideration for his or her former position or an equivalent one. If the individual cannot be placed in such a position in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency at the time and in a manner as the agency determines will provide the individual with maximum opportunities for consideration.

(2) In lieu of expanded consideration in other locations, an individual who cannot be placed in his or her former or equivalent position in the former commuting area may elect to be considered for the next best available position in the former commuting area.

27. In § 330.207, paragraphs (a), (b), (c)(1), and (d) are revised to read as follows:

§ 330.207 Selection from RPL.

(a) *Options.* An agency must adopt one of the selection methods in paragraphs (b) and (c) of this section for use in operating a single RPL. The agency may adopt the same method for each RPL it establishes or may vary the method by location, but it must adopt a written policy for each RPL it establishes and maintains. After a method is adopted, the agency uses that method in filling all positions. While an agency may not vary the method used by individual vacancy, it may at any time switch selection methods for employees enrolled on the RPL.

(b) *Retention standing order.* For each vacancy to be filled, the agency shall place qualified individuals in group and subgroup order in accordance with part 351 of this chapter. In making a selection, an agency may not pass over an individual in group I to select from group II and, within a group, may not pass over an individual in a higher subgroup to select from a lower subgroup. Within a subgroup, an agency may select an individual without regard to order of retention standing. A person has no greater priority for the grade or position from which separated than any other person on the list who is qualified for the vacancy. An agency may make an exception to this selection order only in accordance with paragraph (d) of this section.

(c) *Rating and ranking.* (1) For each vacancy to be filled, the agency rates qualified individuals according to their job experience and education. To do this, an agency shall develop job-related evaluation procedures capable of distinguishing differences in qualifications measured, which shall be applied in a fair and consistent manner. Based on these procedures, the agency shall assign qualified individuals a numerical score of at least 70 on a scale of 100. The agency shall grant 5 additional points to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10 additional points to preference eligibles under section 2108(3) (C) through (G) of that title.

* * * * *

(d) *Exceptions.* An agency may make an exception to this subpart and appoint an individual who is not on the RPL or has lower standing than others on the RPL only when necessary to obtain an employee for duties that cannot be taken over without undue interruption (as defined in § 351.203 of this chapter) to the agency by an individual who is on the RPL or has higher standing than the one appointed. The agency shall notify, in writing, each individual on the RPL who is adversely affected by an appointment under this paragraph of the reasons for the exception and of the right of appeal to the Merit Systems Protection Board.

28. In § 330.208, paragraphs (a)(1) and (b) introductory text are revised and paragraph (a)(4) is added to read as follows:

§ 330.208 Qualification requirements.

(a) * * *

(1) Meets OPM-established qualification standards and requirements for the position, including any minimum educational requirements, and any selective placement factors established by the agency;

* * * * *

(4) Meets any other applicable requirement for appointment to the competitive service.

(b) An agency may make an exception to the qualification standard and adopt an alternative standard under the following conditions (this provision does not authorize waiver of the selection order required by § 330.207):

* * * * *

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

29. The authority citation for part 333 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5).

29a. Section 333.101 is revised to read as follows:

§ 333.101 Standards for temporary and term appointments outside the register.

Except as OPM may otherwise specify, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by OPM and that he is not disqualified for any of the reasons listed in § 339.101 and § 731.201 of this chapter. Candidates found to be qualified shall be assigned either an eligible rating or a numerical score of at least 70 on a scale of 100.

30. Section 333.102 is revised to read as follows:

§ 333.102 Public notice for temporary and term appointments outside the register.

An agency recruiting outside the register must send a vacancy announcement to the OPM job information center(s) and place an order with the State Employment Service office(s) that have geographic jurisdiction over the position(s). The notices must describe the qualifications required and application deadline; must include equal opportunity and veterans preference provisions; and must follow other OPM instructions for preparing notices.

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

31. The authority citation for part 339 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 5112; E.O. 9830, February 24, 1947.

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31a. In § 339.102, paragraph (b) is revised to read as follows:

§ 339.102 Purpose and effect.

* * * * *

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with appropriate parts of this title.

* * * * *

PART 340—OTHER THAN FULL-TIME CAREER EMPLOYMENT (PART-TIME, SEASONAL, AND INTERMITTENT)

32. The authority citation for part 340 continues to read as follows:

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

33. In § 340.202, paragraph (c) is revised to read as follows:

§ 340.202 General.

* * * * *

(c) *Mixed Tours of Duty.* The provisions of this subpart and the term "part-time career employment" do not apply to employees with appointments in tenure groups I or II who work under mixed tours of duty. For this purpose, a mixed tour of duty consists of annually recurring periods of full-time, part-time, or intermittent service as long as the employee does not work part-time more than 6 pay periods per calendar year.

34. Subpart D of part 340 is revised to read as follows:

Subpart D—Seasonal and Intermittent Employment

Sec.
340.401 Definitions.
340.402 Seasonal employment.
340.403 Intermittent employment.

Authority: 5 U.S.C. 3401 et seq., unless otherwise noted.

Subpart D—Seasonal and Intermittent Employment

§ 340.401 Definitions.

(a) *Seasonal employment* means annually recurring periods of work less than 12 months each year. Seasonal employees are permanent employees who are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) *Intermittent employment* means employment without a regularly scheduled tour of duty.

§ 340.402 Seasonal employment.

(a) *Appropriate use.* Seasonal employment allows an agency to develop an experienced cadre of employees under career appointment to perform work which recurs predictably year-to-year. Consistent with the career nature of the appointments, seasonal employees receive the full benefits authorized to attract and retain a stable workforce. As a result, seasonal employment is appropriate when the work is expected to last at least 6 months during a calendar year. Recurring work that lasts less than 6 months each year is normally best performed by temporary employees. Seasonal employment may not be used as a substitute for full-time employment or as a buffer for the full-time workforce.

(b) *Length of the season.* Agencies determine the length of the season, subject to the condition that it be clearly tied to nature of the work. The season must be defined as closely as practicable so that an employee will have a reasonably clear idea of how much work he or she can expect during the year. To minimize the adverse impact of seasonal layoffs, an agency may assign seasonal employees to other work during the projected layoff period. While in nonpay status, a seasonal employee may accept other employment, Federal or non-Federal, subject to the regulations on political activity (part 733 of this title) and on employee responsibilities and conduct (part 735), as well as applicable agency policies. Subject to the limitation on pay from more than one position (5 U.S.C. 5533), a seasonal employee may hold more than one appointment.

(c) *Employment agreement.* An employment agreement must be executed between the agency and the seasonal employee prior to the employee's entering on duty. At a minimum, the agreement must inform the employee:

(1) That he or she is subject to periodic release and recall as a condition of employment,

(2) The minimum and maximum period the employee can expect to work,

(3) The basis on which release and recall procedures will be effected, and

(4) The benefits to which the employee will be entitled while in a nonpay status.

(d) *Release and recall procedures.* A seasonal employee is released to nonpay status at the end of a season and recalled to duty the next season. Release and recall procedures must be established in advance and uniformly applied. They may be based on performance, seniority, veterans' preference, other appropriate indices, or a combination of factors. A seasonal layoff is not subject to the procedures for furlough prescribed in parts 351 and 752 of this title. Reduction in force or adverse action procedures, as applicable, are required for a seasonal layoff that is not in accordance with the employment agreement, for example, if an agency intends to have an employee work less than the minimum amount of time specified in the employment agreement. However, an agency may develop a new employment agreement to reflect changing circumstances.

(e) *Noncompetitive movement.* Seasonal employees serving under career appointment may move to other positions in the same way as other regular career employees.

§ 340.403 Intermittent employment.

(a) *Appropriate use.* An intermittent work schedule is appropriate only when the nature of the work is sporadic and unpredictable so that a tour of duty cannot be regularly scheduled in advance. When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time to ensure proper service credit.

(b) *Noncompetitive movement.* Intermittent employees serving under career appointment may move to other positions in the same way as other regular career employees.

PART 351—REDUCTION IN FORCE

35. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; § 351.801 also issued under E.O. 12828, 58 FR 2965.

36. Section 351.202(c)(7) is added to read as follows:

§ 351.202 Coverage.

* * * * *

(c) * * *

(7) A change in an employee's work schedule from other-than-full-time to full-time. (A change from full-time to other-than-full-time for a reason covered in 351.201(a)(2) is covered by this part.)

37. Section 351.203 is amended by adding alphabetically the definitions of "Furlough" and "Undue interruption" to read as follows:

§ 351.203 Definitions.

* * * * *

Furlough under this part means the placement of an employee in a temporary nonduty and nonpay status for more than 30 consecutive calendar days, or more than 22 workdays if done on a discontinuous basis, but not more than 1 year.

* * * * *

Undue interruption means a degree of interruption that would prevent the completion of required work by the

employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to preform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.

38. In § 351.301, the current paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 351.301 Applicability.

* * * * *

(b) In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area (i.e., in the gaining competitive area, the function continues to be carried out by competing employees rather than by noncompeting employees).

39. In § 351.302, paragraphs (f) and (g) are added to read as follows:

§ 351.302 Transfer of employees.

* * * * *

(f) An agency may not separate an employee who declines to transfer with the function any sooner than it transfers employees who chose to transfer with the function to the gaining competitive area.

(g) Agencies may ask employees in a canvass letter whether the employee wishes to transfer with the function when the function transfers to a different local commuting area. The canvass letter must give the employee information concerning entitlements available to the employee if the employee accepts the offer to transfer, and if the employee declines the offer to transfer. An employee may later change an initial acceptance offer without penalty. However, an employee may not later change an initial declination of the offer to transfer.

40. In § 351.303, paragraph (a) is revised and paragraph (c)(3) is added to read as follows:

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. A competing employee is identified with the transferring function on the basis of the employee's official position. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

* * * * *

(c) * * *

(3) In determining what percentage of time an employee performs a function in the employee's official position, the agency may supplement the employee's official position description by the use of appropriate records (e.g., work reports, organizational time logs, work schedules, etc.).

* * * * *

41. In § 351.403, paragraph (a) is revised, paragraph (b)(5) is removed, and paragraph (b)(6) is redesignated as (b)(5) to read as follows:

§ 351.403 Competitive level.

(a) (1) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

(2) Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

(3) Sex may not be the basis for a competitive level determination, except for a position OPM designates that certification of eligibles by sex is justified.

(4) A probationary period required by subpart I of party 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

* * * * *

42. In § 351.501, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 351.501 Order of retention-competitive service.

* * * * *

(b) * * *

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.) The following employees are in group I as soon as the employee completes any required probationary period for initial appointment:

(i) An employee for whom substantial evidence exists of eligibility to immediately acquire status and career tenure, and whose case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors);

(ii) An employee who acquires competitive status and satisfies the service requirement for career tenure when the employee's position is brought into the competitive service;

(iii) An administrative law judge;

(iv) An employee appointed under 5 U.S.C. 3104, which provides for the employment of specially qualified scientific or professional personnel, or a similar authority; and

(v) An employee who acquires status under 5 U.S.C. 3304(c) on transfer to the competitive service from the legislative or judicial branches of the Federal Government.

(2) Group II includes each career-conditional employee, and each employee serving a probationary period under subpart H of part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by subpart I of part 315 of this title is in group II if the employee has not completed a probationary period under subpart H of part 315 of this title.) Group II also includes an employee when substantial evidence exists of the employee's eligibility to immediately acquire status and career-conditional tenure, and the employee's case is pending final resolution by OPM (including cases under Executive Order 10826 to correct certain administrative errors).

* * * * *

43. Section 351.502 is revised to read as follows:

§ 351.502 Order of retention-excepted service.

(a) Competing employees shall be classified on a retention register in tenure groups on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as set forth under section 351.501(a) for competing employees in the competitive service.

(b) Groups are defined as follows:

(1) Group I includes each permanent employee whose appointment carriers no restriction or condition such as conditional, indefinite, specific time limit, or trial period.

(2) Group II includes each employee:

(i) Serving a trial period; or

(ii) Whose tenure is equivalent to a career-conditional appointment in the

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competitive service in agencies having such excepted appointments.

(3) Group III includes each employee:

(i) Whose tenure is indefinite (i.e., without specific time limit), but not actually or potentially permanent;

(ii) Whose appointment has a specific time limitation of more than 1 year; or

(iii) Who is currently employed under a temporary appointment limited to 1 year or less, but who has completed 1 year of current continuous service under a temporary appointment with no break in service of 1 workday or more.

44. In § 351.506, paragraph (b) is revised to read as follows:

§ 351.506 Effective date of retention standing.

* * * * *

(b) The retention standing of each employee retained in a competitive level as an exception under section 351.607 or section 351.608 is determined as of the date the employee would have been released from the competitive level had the exception not been used. The retention standing of each employee retained under either exception remains fixed until completion of the reduction in force action which resulted in the temporary retention.

* * * * *

45. In § 351.701, paragraph (a) is revised to read as follows:

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency shall offer assignment, rather than furlough or separate, in accordance with paragraphs (b), (c), and (d) of this section to another competitive position which requires no reduction, or the least possible reduction, in representative rate. The employee must be qualified for the offered position. The offered position shall be in the same competitive area, last at least 3 months, and have the same type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) as the position from which the employee is released. Upon accepting an offer of assignment, or displacing another employee under this part, an employee retains the same status and tenure in the new position. The promotion potential of the offered position is not a consideration in determining an employee's right of assignment.

* * * * *

46. In § 351.702, paragraph (a)(4) is revised to read as follows:

§ 351.702 Qualifications for assignment.

(a) * * *

(4) Has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption. This determination includes recency of experience, when appropriate.

* * * * *

47. In § 351.704, paragraph (b)(5) is added to read as follows:

§ 351.704 Rights and prohibitions.

* * * * *

(b) * * *

(5) Authorize or permit an agency to displace an employee or to satisfy a competing employee's right to assignment by assigning the employee to a position with a different type of work schedule (e.g., full-time, part-time, intermittent, or seasonal) than the position from which the employee is released.

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

48. Part 353 is revised to read as follows:

Subpart A—General Provisions

Sec.
353.101 Scope.
353.102 Definitions.
353.103 Persons covered.
353.104 Notification of rights and obligations.
353.105 Maintenance of records.
353.106 Personnel actions during employee's absence.
353.107 Status upon reemployment.
353.108 Effect of performance and conduct on restoration rights.
353.109 Transfer of function to another agency.
353.110 OPM placement assistance.
353.111 Restoration rights of TAPER employees.

Subpart B—Military Service

353.201 Leaves of absence.
353.202 Mandatory restoration.
353.203 Physical disqualification.
353.204 Retention protection.
353.205 Prohibition against discrimination.

Subpart C—Compensable Injury

353.301 Restoration rights.
353.302 Status upon reemployment.

Subpart D—Appeal Rights

353.401 Appeals to the Merit Systems Protection Board.

Authority: 38 U.S.C. 4301, et seq., and 5 U.S.C. 8151.

Subpart A—General Provisions

§ 353.101 Scope.

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 4301 et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part. Subpart A covers those provisions that are common to both of the above groups of employees. Subpart B deals with provisions that apply just to military duty and subpart C covers provisions that pertain just to injured employees. Subpart D covers the appeal rights of both groups.

§ 353.102 Definitions.

In this part:

Agency means:

(1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and

(2) With respect to military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military duty means a period of:

(1) Active duty for training or for service in the Armed Forces of the United States;

(2) Inactive duty training in the Armed Forces of the United States; and

(3) Active duty in the Public Health Service that is covered by 38 U.S.C. 4304(b). For the purpose of coverage under 38 U.S.C. 4304 (c) and (d), full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. For the purpose of 38 U.S.C. 4304(d), inactive duty training performed by that member under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training.

Partially recovered means an injured employee, though not yet able to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1) (i) For medical reasons the employee is unable to *perform* the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent with little likelihood for improvement or recovery.

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment without time limitation in a position outside the competitive service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.111 covers the restoration rights of employees serving under temporary appointments pending establishment of a register (TAPER).

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of military duty or compensable injury can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of military duty or compensable injury shall be considered for that position in accordance with the provisions in part 335 of this chapter.

§ 353.107 Status upon reemployment.

Upon reemployment, an employee who was absent on military duty or because of compensable injury is generally entitled to be treated as though he or she had never left. This means the entire period from the time the employee entered military service or was injured until he or she was reemployed is creditable for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure, completion of probation, and leave rate accrual.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or military duty. However, separation for cause that is substantially unrelated to the injury or to the performance of military duty negates restoration rights. If during the period of injury or military duty the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent on military duty or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be reinstated to a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

(a) *Employee returning from military duty.*

(1) OPM will provide placement assistance to an employee with restoration rights in the executive or legislative branch, who either has competitive status, or if in the legislative branch is able to acquire competitive status under 5 U.S.C. 3304(c), provided—

(i) The employee's executive branch agency is abolished and its functions are not transferred, or it is not possible for the agency to restore the employee, or

(ii) It is not possible for a legislative branch employee to be restored in the legislative branch.

(2) If OPM determines the individual is qualified for a position in the executive branch which is either vacant or filled under temporary appointment, the returning employee will be offered the position.

(b) *Employee returning from compensable injury.* OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(c). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Priority Placement Program under part 330 of this chapter.

(c) This section does not apply to employees serving under a temporary

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appointment pending establishment of a register (TAPER).

§ 353.111 Restoration rights of TAPER employees.

An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under section 316.201 of this chapter (other than an employee serving in a position classified above GS–15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

Subpart B—Military Service

§ 353.201 Leave of absence.

(a) *Entitlement.*

(1) The following employees are entitled under 38 U.S.C. 4304 to a leave of absence in connection with military duty:

(i) A member of a Reserve component (Reserve or National Guard) who performs active duty for training or inactive duty (38 U.S.C. 4304(d)), or

(ii) An employee who reports for enlistment, induction or physical examination (38 U.S.C. 4304(e)).

(2) There is no limitation in law as to the timing or duration of leaves of absence, nor is there any authority for an agency to deny a leave of absence. If an agency has concerns about the timing, frequency, or length of an employee's requests for a leave of absence, it should contact the commander of the military unit to determine if the duty can be changed.

(b) *Authorization required.* To be eligible for a leave of absence, the employee must be under military orders. Any of the following is acceptable evidence of orders:

(1) Written military orders,

(2) An inactive duty training or "drill schedule" published by the employee's military command or unit, or

(3) Verbal confirmation of such orders from the employee's military command or unit or military superior.

(c) *Work schedules.* An agency is not required to reschedule an employee's work in order to accommodate his or her Reserve obligation, and may not require the employee to reschedule his or her work in order to perform military duty on his or her own time.

(d) *Return to duty.*

(1) An employee on a leave of absence for military duty is required to report for work at the beginning of the first regularly scheduled workday following release, rejection for service or completion of physical examination. If hospitalized incident to training or examination, the employee is required to report at the beginning of the first regularly scheduled workday following discharge from hospitalization, or within 1 year of release from military duty, whichever is earlier. In all cases, necessary travel time or other delays beyond the individual's control may extend the reporting date. An employee who fails to report within these time limits is subject to normal agency disciplinary procedures related to absences from work.

(2) An employee on a leave of absence returns to the position he or she left, or if applicable, to the position to which reassigned or promoted while absent. The employee is entitled to the same seniority, status, pay and vacation he or she would have had if not absent on military duty.

(3) An employee returning from a leave of absence has no special protections against discharge without cause. However, the employee may not be disadvantaged where vacation leave is concerned. Thus, insofar as possible, the employee is entitled to have an annual vacation period of extended leave for rest and recreation approved for the same time as it would ordinarily have been granted.

§ 353.202 Mandatory restoration.

(a) *Basic entitlement.* An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 4301 (inducted) or 4304 (a), (b), or (c) (enlisted, called to active duty, Reservist entered on active duty, or Reservist serving basic training), must be restored as soon as possible after making application, but in no event later than 30 days after the individual's release from military duty.

(b) *Conditions.* To be eligible for restoration, the employee must have left his or her employment for the purpose of entering the military, must satisfactorily complete his or her period of service, and apply for restoration—

(1) Within 90 days of release from active duty (or from hospitalization continuing after discharge for a period of no more than 1 year) in the case of employees returning under 38 U.S.C. 4304 (a) or (b); and

(2) Within 31 days of release from active duty (or from hospitalization incident to the military service, or 1 year after the employee's scheduled release from military training, whichever is earlier), in the case of employees returning under 38 U.S.C. 4304(c).

(c) *Length of military duty.* Each time an employee leaves his or her employment to enter military service, he or she is subject to the time limits prescribed in 38 U.S.C. 4304 (a) and (b) for purposes of restoration rights. Generally, these are as follows:

(1) *Regular active duty* soldiers have 4 years plus 1 additional year if the additional duty was "at the request and for the convenience of the Federal Government." (Their orders or DD Form 214 must so state.) Also, in the event of a Presidential call-up such as Operation Desert Storm, numerous active duty troops in key positions may be held over beyond their enlistments. This additional duty is covered because it is "additional service imposed pursuant to law."

(2) *Reserves and National Guard* are covered under 38 U.S.C. 4304(b)(2). Normally, their restoration rights are limited to 4 years. (They do not get the extra 5th year "at the request and for the convenience of the Federal Government.") To go beyond 4 years, their service has to be other than for training, it is limited by the time period that the President is authorized to call up troops (currently 180 days), and, if voluntary, their orders or DD Form 214 must say that the additional duty was at the request and for the convenience of the Government.

(3) *Mobilization authority.* (i) Since 1978, 10 U.S.C. 673b has authorized the President to call up as many as 200,000 members of the Selected Reserve for up to 90 days. In 1986, this authority was broadened to allow the President to extend the call-up for an additional 90 days, if necessary, without regard to a state of national emergency or war, for the purpose of augmenting the active component forces for an operational mission.

(ii) The President is also authorized by 10 U.S.C. 673a to call up as many as one million members of the Ready Reserves for not longer than 24 months in a national emergency.

(iii) Under 10 U.S.C. 672, with a declaration of war or national emergency by the Congress, all Reserve components, including Standby and Retired, could be ordered to active duty for the duration of the war, plus 6 months.

§ 353.203 Physical disqualification.

An individual who is physically disqualified for the former position or an equivalent one because of disability sustained during military service shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case.

§ 353.204 Retention protection.

(a) *While on military duty.* An employee with restoration rights under 38 U.S.C. 4301 or 4304 (a), (b), or (c) may not be demoted or separated (other than military separation) while on military duty. He or she is not a "competing employee" under section 351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay. An employee on a leave of absence under 38 U.S.C. 4304 (d) or (e) has no special protections in a reduction in force.

(b) *Upon reemployment.* Upon reemployment, an employee with a restoration right under 38 U.S.C. 4301 or 4304 (a) or (b) may not be discharged for a period of 1 year except for cause. A member of a Reserve component returning from an initial period of active duty for training under 38 U.S.C. 4304 (c) may not be discharged for a period of 6 months except for cause. (Reduction in force is not considered "for cause.") Employees returning from a leave of absence under 38 U.S.C. 4304 (d) or (e) have no special protections against discharge.

(c) *TAPER employees.* This section does not apply to employees serving under a temporary appointment pending establishment of a register.

§ 353.205 Prohibition against discrimination.

A person who seeks or holds a position in the Federal Government may not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who was separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency may offer the employee a position (as described above) in another location. This paragraph also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) *Fully recovered after 1 year.* An employee who was separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.

(c) *Physically disqualified.* An individual who is physically disqualified for the former position or equivalent because of a compensable injury, is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility for compensation begins. After 1 year, the individual is entitled to the rights accorded individuals who fully or partially recover, as applicable.

(d) *Partially recovered.* Agencies must make every effort to restore, according to the circumstances in each case, an individual who has partially recovered from a compensable injury and who is able to return to limited duty. At a minimum, this would mean treating these employees substantially the same as other handicapped individuals under the Rehabilitation Act of 1973, as amended. (See 29 U.S.C. 791(b) and 794.) If the individual fully recovers, he or she is entitled to be considered for the position held at the time of injury, or an equivalent one. A partially recovered employee is expected to seek reemployment as soon as he or she is able.

§ 353.302 Status upon reemployment.

An individual who is restored following a compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, leave rate accrual, and completion of probation. However, an injured employee enjoys no special protections in a reduction in force. Separation by reduction in force or for cause while on compensation terminates entitlement to credit for the subsequent period the individual continues to receive compensation, and also means the individual has no restoration rights.

Subpart D—Appeal Rights

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and the Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore, improper restoration, or failure to return an employee following a leave of absence. All appeals are to be submitted in accordance with MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

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PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart A—Motor Vehicle Operators

49. The authority citation for subpart A of part 930 continues to read as follows:

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107.)

50. In § 930.105, paragraph (a) is revised to read as follows:

§ 930.105 Minimum requirements for competitive and excepted service positions.

(a) An agency may fill motor vehicle operator positions in the competitive or excepted services by any of the methods normally authorized for filling positions. Applicants for motor vehicle operator positions and incidental operators must meet the following requirements for these positions:

(1) Possess a safe driving record;

(2) Possess a valid State license;

(3) Except as provided in section 930.107, pass a road test; and

(4) Demonstrate that they are medically qualified to operate the appropriate motor vehicle safely in accordance with the standards and procedures established in this part.

* * * * *

51. Section 930.106 is revised to read as follows:

§ 930.106 Details in the competitive service.

An agency may detail an employee to an operator position in the competitive service for 30 days or less when the employee possesses a State license. For details exceeding 30 days, the employee must meet all the requirements of section 930.105 and any applicable OPM and agency regulations governing such details.

52. Section 930.108 is revised to read as follows:

§ 930.108 Periodic medical evaluation.

At least once every 4 years, each agency will ensure that employees who operate Government-owned or leased vehicles are medically able to do so without undue risk to themselves or others. When there is a question about an employee's ability to operate a motor vehicle safely, the employee may be referred for a medical examination in accordance with the provisions of part 339 of this chapter.

53. In § 930.109, paragraph (b) is revised to read as follows:

§ 930.109 Periodic review and renewal of authorization.

* * * * *

(b) An agency may renew the employee's authorization only after the appropriate agency official has determined that the employee is medically qualified and continues to demonstrate competence to operate the type of motor vehicle to which assigned based on a continued safe driving record.

[FR Doc. 94–27382 Filed 11–3–94; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning; Workshop on Site-Specific Advisory Boards

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: On August 22, 1994, the Nuclear Regulatory Commission published for comment a proposed rule on Radiological Criteria for Decommissioning (59 FR 43200). Section 20.1406(b) of this proposed rule requires that a Site Specific Advisory Board (SSAB) be convened in cases where a licensee proposes to request restricted release of the site. The objective of this workshop is to conduct an informed discussion among affected interests on the implementation of this requirement. The workshop will be facilitated by an independent facilitator and will involve approximately fifteen to twenty invited participants representing a broad range of affected interests including, for example, government (local, State, tribal, Federal), industry, and environmental and citizen groups. The workshop will be open to the public with sufficient time being provided for public comment and questions throughout each day of the workshop. The workshop proceedings will be transcribed and the transcript will be available for public review.

An Issues Paper containing a detailed description of the SSAB implementation issues is being developed by the NRC staff for use as a background discussion document for the workshop. This Issues paper will be distributed to participants in advance of the workshop. A detailed agenda and list of participants for the workshop is also being developed for distribution to participants in advance of the workshop. Copies of the Issues Paper, the Workshop Agenda, and the list of workshop participants will be made available to the public at the workshop. Copies of these documents will be placed in the NRC Public Document Room and will also be available for downloading and viewing on the NRC bulletin board as described below.

DATES: The workshop will be held in Washington, DC, on December 6, 7, and the morning of December 8, 1994. The location of the workshop will be in the National Governor's Association Conference Room, Room 333, Hall of the States, 444 North Capitol Street NW., Washington, DC.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format, by calling the NRC Enhanced Participatory Rulemaking on Radiological Criteria for Decommissioning Electronic Bulletin Board, 1–800–880–8091 (58 FR 37760; July 13, 1993). The bulletin board may be accessed using a personal computer, a modem, and most commonly available communications software packages. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N, 8, 1). Use ANSI or VT–100 terminal emulation. Copies of the Issues Paper, the Workshop Agenda, and the list of, workshop participants will also be available for downloading and viewing on the bulletin board. For more information call Ms. Christine Daily, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 415–6026; FAX (301) 415–5385.

FOR FURTHER INFORMATION CONTACT: James C. Malaro, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6201.

SUPPLEMENTARY INFORMATION: In situations where a licensee proposes to decommission a site under restricted release conditions, proposed Section 20.1407 would require the licensee to establish a SSAB for the purpose of obtaining advice from affected interests on the proposed decommissioning.

There are many important issues related to the SSAB concept that must be further developed before the final rule is promulgated to facilitate implementation of the SSAB concept at NRC licensed sites. These include

determining the exact scope and functions of an SSAB and the appointment and composition of an SSAB. A national workshop will be extremely useful in developing information on how these issues should be addressed, as well as for developing the final NRC position on the SSAB concept. The objective of the workshop will not be to develop a consensus on the implementation of an SSAB but will rather be a discussion of information, ideas, and concerns about SSAB implementation issues, as well as identifying areas of agreement and disagreement on the implementation issues.

Dated at Rockville, Maryland, this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–27378 Filed 11–3–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 27344; Notice No. 93–71A]

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Notice of Proposed Rulemaking

AGENCY: FAA, Transportation.

ACTION: Reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the Notice of Proposed Rulemaking (NPRM) Occupant Protection Standards for Commuter Category Airplanes. The comment period for this NPRM is being reopened for 120 days to allow the public and industry the opportunity to evaluate additional supporting data and to allow the Joint Aviation Authorities additional time to comment on the NPRM.

DATES: Comments must be received on or before March 4, 1995.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–19), Docket No. 27344, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26269. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE–7, Federal Aviation Administration; Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Downs, ACE–111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with the substance of this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27344." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify NPRM 93–71A.

Background

On July 14, 1993, the FAA issued NPRM 93–71 (58 FR 38028), and the comment period closed November 12, 1993. The NPRM proposed to amend the airworthiness standards for commuter category airplanes by upgrading the seat restraint and seat cushion flammability requirements. On September 17, 1993, GAMA requested the FAA withdraw the proposal until additional supporting documentation was made available to the public. By letter dated October 4, 1993, the Joint Aviation Authority requested that the comment period be extended to enable the JAA Study Group additional time to review the proposal and prepare a recommendation.

The FAA received an additional report on commuter airplane accident data analysis in October 1994. This report is the additional information that GAMA requested be available before the Notice of Proposed Rulemaking was made available to the public for comment.

Conclusion

In view of the possibility of obtaining additional technical information and to provide for a more consistent set of airworthiness standards, the FAA agrees that it would be in the public's best interest to reopen the comment period.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Issued in Washington, DC, on October 28, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 94–27391 Filed 11–3–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–8–91]

RIN 1545–AQ42

Distributions of Stock and Stock Rights; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

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SUMMARY: This document provides notice of cancellation of a public hearing on proposed amendments to regulations relating to constructive distributions on preferred stock.

DATES: The public hearing originally scheduled for Monday, November 14, 1994, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 305 of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Wednesday, June 22, 1994, (59 FR 32160), announced that the public hearing on the proposed regulations would be held on Monday, November 14, 1994, beginning at 10:00 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

The public hearing scheduled for Monday, November 14, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–27344 Filed 11–3–94; 8:45 am]

BILLING CODE 4830–01–P

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 9

[Notice No. 801]

RIN 1512-AA07

The St. Helena Viticultural Area (94F-015P)

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is considering the establishment of a viticultural area in the State of California to be known as "St. Helena." The proposed area is located totally within Napa County. This proposal is the result of a petition submitted by Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

DATES: Written comments must be received by February 2, 1995.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 801). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Charles A. Carpy, Chairman of the St. Helena Appellation Committee, proposing to establish a new viticultural area in Napa County, California, to be known as "St. Helena." The St. Helena Appellation Committee is composed of various vineyard and winery owners located throughout the St. Helena area. The proposed St. Helena viticultural area is located approximately 16 miles northwest of the city of Napa. It is located totally within the larger and previously established Napa Valley viticultural area. As stated in the petition, the St. Helena viticultural area covers approximately 9,060 acres, and is densely planted to vines. There are over 30 wineries within the area. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed previously. Mr. Charles Sullivan, Napa Valley historian, has provided the petitioner with most of the historical information concerning the St. Helena area that is covered in the petition whereas Dr. Deborah Elliott-Fisk of the University of California has provided the petitioner with most of the information in the petition concerning soils, geology and physical geography of the St. Helena area.

Evidence That Viticultural Area Name Is Widely Known

Data prepared by Mr. Sullivan in support of the petition provides the following historical information.

The town of St. Helena was founded by Henry Still, who bought land from the Edward Bale family in 1855. By 1858 there was a school house and a little Baptist church. Four years later Professor William Brewer of the Whitney party called it a "pretty little village with fifty or more houses * * * nestled among grand old oaks." Early winemakers in the St. Helena area included Charles Krug and George Belden Crane. At the end of the 1879 vintage the *San Francisco Post* ran an article on northern California wines which noted the flavor characteristics of Napa clarets. This article was copied by the *St. Helena Star* which predicted that there would be 2,000 acres of grapes planted in the Napa Valley in 1880.

According to Mr. Sullivan, the final total was closer to 3,000, and concentrated in the St. Helena area.

As early as 1869, San Francisco's *Alta California* was making reference to a "St. Helena district," as did the *Pacific Rural Press*. These were references to vineyard plantings in the area. In 1872 the Napa Reporter made reference to the boom in vineyard land around St. Helena. The *Alta California* ran an article on the area in 1878, treating St. Helena as a specific district with a great reputation. By then Charles Krug, the Beringers, Crane, John Lewelling, H. A. Pellet, and 14 other producers had built cellars in the St. Helena area.

In 1875 Krug and Pellet organized the producers and growers in the district, a move that culminated in the formation of the St. Helena Viticultural Club on January 22, 1876. According to Mr. Sullivan, others outside the district could join, but it was a local St. Helena organization. In 1880 the Club constructed Vintners Hall, a two story building with a reading room, meeting rooms, and a social hall upstairs.

Mr. Sullivan states that by the end of the 1870s there was no question concerning Napa's special reputation as a winegrowing region, or about St. Helena's as a discrete district in that region. As support for this statement, Mr. Sullivan cites the *Alta California* which concluded in an article published in 1880 that "Napa is now the leading wine-growing county of California, and * * * St. Helena has become the center of the most prosperous wine district in the State."

According to Mr. Sullivan, by the turn of the century Napa prices were still higher than those of other districts, but the special position accorded St. Helena wines had ceased to exist. The popular image of the wines of Oakville, Rutherford, Larkmead, and Howell Mountain had ended the perception of St. Helena wines standing above all others. After Prohibition, the regional association of the leading Napa Valley producers was far from foremost in consumers' minds and in the minds of wine writers according to Mr. Sullivan. However, Mr. Sullivan states that more recently there has been a tendency for wine writers to make reference to the St. Helena "district" and to its wines, particularly to its Cabernet Sauvignons.

In addition to the historical name information mentioned above, the "St. Helena" name appears on a U.S.G.S. 7.5 minute series map entitled "St. Helena Quadrangle" which includes the city of St. Helena and much of its surrounding area.

Evidence of Boundaries

According to the petition, there have never been precise historic boundaries for the St. Helena viticultural district. However, the petitioner states that history does provide an imprecise "St. Helena District" within the geographic structure of State winegrowing established by the first Board of State Viticultural Commissioners in the 1880s. According to the petition, the State was divided into districts, one being Napa, which included Napa, Solano, and Contra Costa Counties. Charles Krug was the first commissioner for the district in 1880. Napa County was then divided into administrative districts: Napa (City), Yountville, St. Helena, and Calistoga. According to the petition, these were not considered viticultural districts at the time. The St. Helena District included the vineyards of Howell Mountain, most of Rutherford, and Larkmead. This is discussed in E.C. Priber's report to the Board in 1893. Even Chiles and Conn Valleys were included in the St. Helena District, although Priber gave separate statistics for these areas.

Although the wineries and vineyardists in the Priber report are listed in administrative districts, Priber's man in the field, A. Warren Robinson, asked each where his or her operation was located, and the answer was given as a place, not necessarily a post office. Bernard Ehlers said he lived at Lodi Station. Mrs. Lillie Coit listed Larkmead. According to the petitioner, such data make it possible to make an attempt to draw historically accurate lines.

The petitioner states that a more accurate listing of viticultural districts was given by Charles Krug in his report of 1887. In it he traces the development of each district in Napa County since 1881, by acreage, production, and type of grape vines. Krug listed Yountville, Oakville, Rutherford, St. Helena, Spring Mountain, Howell Mountain, Calistoga and five others. Although he did not include a map, the precision of his statistics indicates that he and others had the limits of these districts in mind.

From the information discussed above, the petitioner has tried to plot the northern and southern boundaries of the St. Helena viticultural area. From a historical point of view, the petitioner states that any one of three landmarks could be used as the northern boundary of the St. Helena viticultural area. These landmarks include Ritchie Creek, Bale Lane, and Big Tree Road. However, the petitioner feels that from a practical, as well as historical point of view, Bale Lane is the best choice.

The petitioner states that the southern boundary of the St. Helena viticultural area was discussed at length during the December 9, 1992, ATF public hearing held in Napa, California, concerning the northern boundary of the Rutherford viticultural area. From the information submitted at that hearing, it was determined that Zinfandel Avenue, known locally as Zinfandel Lane, was the best northern boundary for the Rutherford viticultural area. Consequently, the petitioner states that Zinfandel Avenue (Zinfandel Lane) should also be used as the southern boundary of the adjacent St. Helena viticultural area.

The petitioner states that the southeast boundary of the St. Helena appellation should include the Spring Valley area since this area was included in the St. Helena area on the 1895 "Official Map of the County of Napa." On this map, the properties of George Mee and Antonio Rossi (Spring Valley) were listed as being in the St. Helena district whereas Charles Scheggia, just to the south, listed himself as being in Rutherford.

According to the petitioner, the western boundary of the St. Helena viticultural area is not strictly delineated by historical custom. The petitioner states that this western boundary should be dictated by the eastern boundary of the adjacent Spring Mountain District viticultural area which utilizes the 400-foot contour line. The petitioner states that although some people might draw the western boundary of the St. Helena viticultural area at the 500 or 600-foot contour line, the 400-foot contour line defies no historical precedent and prevents the overlapping of the St. Helena viticultural area with the Spring Mountain District viticultural area.

In regard to the eastern boundary, the petitioner states that the historical records indicate that Conn Valley is a separate area and should not be included in the St. Helena viticultural area. The records indicate, however, that Pratt Valley is clearly part of the St. Helena area from the location of the Pratt and Chabot winegrowing properties, according to the petitioner. In addition, the Crystal Springs Road area and Dago Valley should be included, according to the petitioner, due more to recent developments there rather than earlier history. However, the petitioner states that the old Rossini property, where the historic Burgess-Souverain Winery is located today, and the Leunenberger property, where the original Sutter Home-Ballantine Winery was located (today Deer Park Winery), should not be included because they are

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located on the lower slopes of Howell Mountain rather than in the St. Helena area.

The petitioner uses mostly the 400-foot contour line and a short portion of Howell Mountain Road and a longer portion of Conn Valley Road to delineate the eastern boundary of the proposed St. Helena viticultural area.

Geographical Features

Data prepared by Dr. Elliott-Fisk in support of the petition provides the following geographical information.

Climate. The proposed St. Helena viticultural area lies within a relatively narrow and constricted portion of the upper Napa Valley proper. There exists a subtle interaction of climatic factors which affect grapes grown in this valley floor area. These subtle climatic influences are part of a continuum across the entire floor of the Napa Valley.

The Napa Valley proper is classified as a coastal valley. Along the valley floor from Napa to Calistoga, there are pronounced mesoclimatic variations which relate to the penetration of marine influences from San Pablo Bay and, to a lesser extent, to the rise in elevation as one proceeds up Napa Valley. This marine air incursion is caused by warming of the valley floor and surrounding hillsides during the daylight hours of the growing season. This warming land mass causes the air in the area to rise, creating pressure gradients which draw in marine air off of San Pablo Bay to the south. During the growing season, this phenomenon generally begins in the early afternoon and continues into the evening. Due to proximity to the bay, the areas in the southern portion of the valley receive the most direct impact of these pressure gradient winds. These winds have a cooling effect throughout the Napa Valley.

During the grape growing season, this cooling plays an important role in the development of the grapes by allowing them to better retain their natural acidity which is critical in the production of high quality wines, according to the petitioner. In the proposed St. Helena viticultural area, this cooling effect is moderated compared to the areas further south. However, while the St. Helena area has relatively warm conditions, it is the daily maximum extremes, for which the area to the north (Calistoga) is better known, that distinguish the St. Helena and Calistoga areas.

Traditionally, the dividing line between the area of Calistoga's higher daily extremes and St. Helena's warm coastal climate has been the section of land around Bale Lane. It is at this point that the Napa Valley and Napa River take a pronounced directional change of course from north/northwesterly to more westerly. To the north of Bale Lane, the exposure of the valley floor to the sun also is more directly aligned than to the south where there is more shading.

The area to the north of the proposed St. Helena viticultural area, particularly around the city of Calistoga, is also affected by a secondary marine air incursion, far less dramatic than that off of San Pablo Bay, which penetrates the upper Napa Valley through the Knights Valley area. This marine influence, according to the petitioner, does not typically penetrate as far south as the St. Helena viticultural area. When present, these moist, cooling winds serve to moderate the generally hotter temperatures in Calistoga, making this area ideal for growing premium wine grapes.

Dr. Elliott-Fisk also finds that there are significant climatic differences between the St. Helena viticultural area and the surrounding mountains. To the east of St. Helena lies Howell Mountain and to the west is Spring Mountain. These mountain areas range in elevation from 400 to 2,600 feet for Spring Mountain and from 1,400 to 2,400 feet for Howell Mountain. On average, temperatures fall along the valley floor approximately 2.8 degrees Fahrenheit for each 1,000 foot fall in elevation.

The mountain areas with south or southwest slopes, such as those generally found in the Howell Mountain viticultural area, receive approximately 20 percent more solar radiation during the growing season compared to the valley floor. Northeast and northwest slopes, such as those that typically occur in the Spring Mountain District viticultural area, receive approximately 20 percent less solar radiation than those found on the valley floor in the proposed St. Helena viticultural area. In addition to these differences related to aspect, the relative absence of fog in the higher altitudes increases the solar radiation there compared to the valley floor which often is covered by early morning fog.

According to the petitioner, precipitation has been more important in the formation of topography and soils in the Napa Valley than in the definition of distinct climate zones. Outside of annual physiological water needs which are almost exclusively augmented by irrigation, precipitation directly affects grape vines during late spring and early fall, which are the critical periods of the growing and harvest seasons. Cooler areas, those generally found to the south of the St. Helena appellation, are more negatively affected by such conditions.

Soils, Geology, and Physical Geography

The proposed St. Helena viticultural area is in the northern Napa Valley and is defined by the petitioner as the valley floor area and lower mountain slopes (i.e., toe-slopes) from Zinfandel Lane in the south to Bale Lane in the north.

According to Dr. Elliott-Fisk, the geology of the St. Helena area is characterized by steep mountain fronts composed of the (1) Franciscan Formation (largely sandstones, mudstones and various metamorphic inclusions) overlain by the moderate thicknesses of Sonoma Volcanics on the west side in the Mayacamas Range, and (2) deep flows of Sonoma Volcanics, volcanic vents, and volcanic domes over Great Valley sandstones on the east side in the Vaca Range. Both mountain slopes have been faulted and heavily eroded, with much of this activity believed to be synonymous with the formation of the Sonoma Volcanics in the last 2-5 million years.

Dr. Elliott-Fisk further states that the topography of the Napa Valley floor is largely the product of (1) the marine incursion of San Pablo Bay, and consequent marine erosion and deposit, (2) tectonic uplift and land displacement along faults and fold structures (e.g., anticlines), (3) bedrock resistance to erosion, (4) slope stability, and (5) discharge volumes of the Napa River and its tributaries. The proposed St. Helena viticultural area, extending from Bale Lane on the north to Zinfandel Lane on the south, has a fairly uniform, steep gradient (as compared to the entire Napa Valley floor), indicating that it is a zone of erosion of a former more powerful Napa River. The valley in this area is narrow and is almost entirely the product of river erosion, unlike any other stretch of the valley floor. The one break in gradient occurs where the river turns southward near Big Tree Road (just south of Bale Lane) and exerts more force to cut through bedrock. Thus, although alluvial fans extend across the valley floor from their tributary canyons to the Napa River, the fans are small and relatively young compared to the rest of Napa Valley. Sulphur Creek fan is the largest of the group, as it issues from a very large drainage basin. Fans of the eastern side of the proposed appellation are very small, largely due to the resistance of obsidian (i.e., volcanic glass) bedrock here and small tributary basin size.

The topographic uniformity of the proposed St. Helena viticultural area is further substantiated by climatological data and bioclimatic maps. Growing degree-days (i.e., temperature regime), according to Dr. Elliott-Fisk, are very uniform along this stretch of the valley floor and lower slopes, averaging just under 3600 degree-days. Mean annual precipitation is 35-38 inches. Just north of the proposed northern boundary of the St. Helena viticultural area (e.g., around Dunaweal Lane), the vegetation changes from Valley Oak Savanna to Mixed Hardwood Woodland. These gradients of climate and vegetation from south to north up Napa Valley, according to the petitioner, further support the designation of viticultural areas, as climate is an important factor influencing vine growth and fruit characteristics, with natural vegetation telling the viticulturalist what vine production will be like.

Soils and Geomorphology of the Napa Valley

Dr. Elliott-Fisk states that soils can be consistently identified and mapped in Napa Valley through knowledge of the geomorphology (i.e., landforms and landform history) of the area. These soil differences are relevant viticulturally and can be used in the delimitation of viticultural areas. This soil and geomorphic mapping, which is based on very detailed field and laboratory studies, produces soil units that are similar to those shown in the Napa County Soil Survey (USDA-Soil Conservation Survey), but with more detail, precision, and most importantly, a different classification scheme, according to the petitioner. The resolution of the mapping of Napa Valley's soils has increased from the 1938 survey (and the old Marbut soil classification scheme) to the newer 1977 survey (using the new 7th Approximation system of soil classification) to a more detailed depiction of Napa Valley's soils based on an increased understanding of (1) the geomorphological history of the Napa Valley, and (2) the importance of soil parent material and time as soil-forming factors. There are many more soil types (or potential soil series) in Napa County than the Napa County Soil Survey depicts according to the petitioner.

Dr. Elliott-Fisk further notes that a geomorphic (landscape) surface of a given age will have soils of the same type across it. This is because soil formation is controlled by five factors (known as the soil-forming factors): climate, biota (plants and animals), parent material, relief (topography) and time. The petitioner states that much of the variation of soil types in Napa County is due to variation in the parent material and time factors. Different soil types will be derived from sedimentary bedrock versus volcanic bedrock, whether or not these soils are upland residual soils (with weathering and soil formation in place or *in situ*) or transportation/depositional soils (with soil formation beginning once river or other sediments are deposited). Alluvial soils of different ages (old versus young) will also differ significantly.

On any particular geomorphic surface (such as the Sulphur Creek fan), the parent material, relief and time factors are held constant, with the soils very similar (if not identical) across this surface. For depositional landforms (e.g., mudflow lobes, river terraces, alluvial fan units, etc.), the older deposits will have more strongly formed soils. If a geomorphic surface is disturbed by erosion or deposition, its soil will be altered (if not destroyed), with a new soil then forming.

In Napa Valley, distinct differences are seen between hillside soils and valley floor soils, at least in most situations. Hillside soils tend to be formed from bedrock and are shallow, whereas valley floor soils tend to be formed from alluvium, colluvium or bay deposits and are often deep. As Napa Valley has been tectonically active, however, these deeper, depositional soils are occasionally found up on the hillsides, uplifted above the valley floor. It is important to separate these depositional hillside soils from residual bedrock soils. They have much higher water-holding capacities and deeper rooting depths, influencing vine growth significantly.

Dr. Elliott-Fisk further indicates that the floor of Napa Valley (excluding the bedrock "islands" which form small hills) has soils formed on (1) alluvial fans of various lithologies, textures, and sizes emerging from tributary watersheds towards the Napa River, (2) alluvial floodplains of various ages along the Napa River and the lower reaches of its tributaries (such as Sulphur Creek), and (3) bay deposits of various types, formed when San Pablo Bay extended into the valley proper. The alluvial fans in particular show marked contrasts in soil types north-south and east-west in the valley as a function of their (1) watershed or drainage basin geology and (2) stream gradient (i.e., topography). Dr. Elliott-Fisk concludes that the soils scientist then expects to find one soil series on fans derived from sedimentary bedrock and another on fans derived from volcanic bedrock.

Geomorphic Units of the Proposed St. Helena Viticultural Area

The valley floor of the proposed St. Helena viticultural area is covered by a series of small fans and contains important areas of Napa River floodplain. Dr. Elliott-Fisk has described the geomorphic units as follows:

North to South on West Side of Valley

(1) Ritchie Creek Fan (the southern edge of it extending south of Bale Lane into the proposed viticultural area); principally in the area north of St. Helena;
(2) Mill Creek Fan;
(3) Hirsch Creek Fan;
(4) York Creek Fan;
(5) Sulphur Creek Fan; and
(6) Bear Canyon Fan Complex (in approved Rutherford viticultural area).

North to South on East Side of Valley

(1) Simmons Canyon Fan (north of the proposed St. Helena viticultural area);
(2) Dutch Henry and Biter Creek Fan Complex (north of the proposed St. Helena viticultural area, reaching almost to Bale Lane);
(3) Unnamed Fan west of Bell Canyon Reservoir and Crystal Springs Road;
(4) Base of Pratt Valley (very small fan);
(5) Base of Deer Park (unnamed tributary; small fan);
(6) Base of Spring Valley (very small fan; mostly within Spring Valley); and
(7) Conn Creek Fan Complex (in approved Rutherford viticultural area).

Napa River Floodplain and River Terraces

(1) Current incised channel of the Napa River;
(2) Current floodplain of the Napa River; and
(3) Older floodplains of the Napa River at higher elevations.

[These landforms follow the channel of the Napa River, except for older terraces along the hillsides, which are largely obscured by dense hillside woodland and forest; these terraces are discovered through intensive field studies.]

Dr. Elliott-Fisk notes that the geomorphic depositional units (i.e., landforms) in the proposed St. Helena viticultural area are composed almost exclusively of volcanic lithologies (around 85–90 percent volcanics typically, occasionally dropping to 70 percent on parts of the Sulphur Creek fan, with the remainder sedimentary and metamorphic inclusions from the bedrock underlying the Sonoma Volcanics). The upper part of the Sulphur Creek Basin contains small units of sandstone and metamorphic

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lithologies exposed at the surface through faulting and slope failure. Despite this, volcanic rhyolitic tuff, rhyolite, dacite and andesite are by far the dominant surficial geologies, compared to the Bear Canyon Fan Complex to the south which is 30 percent or less volcanics and the remainder sedimentary.

Dr. Elliott-Fisk further observes that although several types of volcanic rocks compose the St. Helena hillside, the most widespread (and as such, ubiquitous) units are volcanic ash-flows, referred to as tuffs, with occasional volcanic mudflows. The matrix is rhyolitic in composition, with incorporated clasts of obsidian, rhyolite, andesite, dacite and tuff. Occasional metamorphic clasts of cobble or smaller size are seen. This geologic parent material is slightly acidic to acidic, with water-holding capacity of tuffaceous bedrock units moderate. This potential soil parent material is brought down both slopes to the west and east of the valley floor by hillside erosion, runoff, and tributary streamflow.

According to Dr. Elliott-Fisk, the Napa River has incised through these fan deposits discharging on the valley floor and migrated as a consequence of the resistance of these deposits versus its own stream power. The Napa River floodplain, and its associated recent terraces, varies in width throughout this section of Napa Valley but has formed important terraces along the eastern valley edge. Distinct breaks in the natural vegetation are seen at the terrace/alluvial fan transition, as the terraces have more fertile soils with a greater water-holding capacity. As the width of the valley floor in the St. Helena area is on the average less (e.g., more narrow) than anywhere else in the Napa Valley, these terraces form less viticultural acreage than in the southern or middle sections of Napa Valley.

The lower hillside slopes below the 400-foot elevation are difficult to map on a broad scale depicting geomorphic surfaces. This is largely a function of abrupt changes in slope angle and vegetation type, which influence long-term slope stability. Small areas of uplifted depositional surfaces (alluvial fans and stream floodplain terraces) were found across these lower slopes in the proposed St. Helena area, however.

Soils of the Proposed St. Helena Viticultural Area

With regard to the soils within the proposed viticultural area, Dr. Elliott-Fisk states that the Sonoma Volcanics rim all sides of the valley in the St. Helena area, and as such the depositional valley floor soils (which may be very bouldery deposits across alluvial fans or finer, but still gravelly deposits along the Napa River proper, all principally Xerolls) are volcanic in origin, and deep, very gravelly sandy loams to sandy clay loams to clay loams, with low to moderate water holding capacities. Sediments have been transported relatively short distances from their origins, as this is the headwater area of the Napa River system, and as such the soils contain a higher percentage of coarse clasts (especially boulders), with sand dominating the fine fraction of almost every soil. Dr. Elliott-Fisk notes that small sections of the upper stream basins of Sulphur Canyon and the Spring Mountain region contain the massive Franciscan marine sandstone and conglomerate, with its affiliated volcanic and metamorphic inclusions. The lithology of the fine clasts that compose the alluvial fans in this immediate region (i.e., Sulphur Creek fan) include a higher portion of non-volcanic clasts (up to 15 percent, to occasionally 30 percent) than alluvial fans to the north, such as the Ritchie Creek fan below Diamond Mountain, located largely north of the proposed northern St. Helena viticultural area boundary. However, the percentage of non-volcanic clasts is much higher to the south of the St. Helena viticultural area (i.e., Bear Canyon fan). The lower toe-slopes of the mountain slopes in the St. Helena area (below the 400-foot elevation) contain both Xerolls and Xeralfs, depending on slope stability and age.

Dr. Elliott-Fisk states that she has excavated an additional 17 soil trenches in the process of her scientific investigation in this area. She states that she has done previous soils work in this region and has excavated over 350 soil trenches in Napa Valley. She has provided, as part of the petition, profile drawings, descriptive field, and analytical laboratory data for 17 soils by horizon. Four of these soils are from property outside of the proposed boundaries of the St. Helena viticultural area and were chosen to be representative of those areas.

Soil Summary

The soils of the proposed St. Helena viticultural area, according to the petition, are deep alluvial soils of moderate age, with well-formed horizonation, textural B horizons, sandy clay loam to clay loam textures, reddish colors, high gravel content (primarily of cobbles), and near neutral pH. In this erosional zone of the valley floor, where the width is restricted, groundwater and the groundwater table have a significant influence, bringing in additional dissolved minerals and increasing the pH (and nutritional content) above the valley floor soils to the north (Calistoga region) and south (Rutherford and Oakville), as well as the hillsides (Spring Mountain, Diamond Mountain, Howell Mountain and Pritchard Hill). The soil drainage in the St. Helena area is typically good since the water table drops in the spring, summer and fall to allow the vines an adequate root zone with free oxygen and carbon dioxide, thus providing vigorous conditions for grape growing. The moderate climate, with warm summer temperature, balances well with this soil environment, and allows the wine grower to manipulate the vines to extract what the winemaker desires from a particular varietal. As such, Dr. Elliott-Fisk concludes that this provides a stable and predictable environment for grape growing, and the physical geography of the region has promoted the production of fine wines in the St. Helena area for many decades.

Conclusion

According to the petitioner, the proposed St. Helena viticultural area is uniform topographically and can be distinguished from the steeper hillsides to the east (Howell Mountain) and west (Spring Mountain District) as well as from the valley floor areas to the south (Rutherford) and north (Calistoga). This is an area where the valley floor narrows from around 19,000 feet at Oakville Cross Road and 11,000 feet at Zinfandel Lane to around 3,500 feet at Lodi Lane and Bale Lane. The area is marked by a uniform, steep gradient and significant river erosion. The bedrock geology is primarily volcanic, in contrast to the sedimentary soils to the south.

The petitioner states that along the eastern edge of the proposed St. Helena area, geologic and geographic evidence support the inclusion of Spring Valley and Pratt Valley and the exclusion of Conn Valley and the higher mountain slopes.

Proposed Boundary

The boundary of the proposed St. Helena viticultural area may be found on three United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in proposed § 9.149.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no

requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.149 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.149 St. Helena.

(a) *Name.* The name of the viticultural area described in this section is "St. Helena."

(b) *Approved maps.* The appropriate maps for determining the boundary of the St. Helena viticultural area are three U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) "St. Helena Quadrangle, California," edition of 1960, photorevised 1980.

(2) "Calistoga Quadrangle, California," edition of 1958, photorevised 1980.

(3) "Rutherford Quadrangle, California," edition of 1951, photorevised 1968, photoinspected 1973.

(c) *Boundary.* The St. Helena viticultural area is located in Napa County in the State of California. The boundary is as follows:

(1) Beginning on the Rutherford Quadrangle map at the point of intersection between State Highway 29 and a county road shown on the map as Zinfandel Avenue, known locally as Zinfandel Lane, the boundary proceeds in a southwest direction along Zinfandel Avenue to its intersection with the north fork of Bale Slough (blueline stream) near the 201 foot elevation marker;

(2) Thence in a northwesterly direction approximately 2,750 feet along the north fork of Bale Slough to a point of intersection with a southwesterly straight line projection of a light duty road locally known as Inglewood Avenue;

(3) Thence in a straight line in a southwesterly direction along this projected extension of Inglewood Avenue approximately 2,300 feet to its intersection with the 500 foot contour line in Section 7, Township 7 North (T7N), Range 5 West (R5W);

(4) Thence along the 500 foot contour line in a generally northwesterly direction through Sections 7, 1 and 2, to its intersection of the western border of Section 2, T7N, R6W;

(5) Thence northerly along the western border of Section 2 approximately 500 feet to its intersection with Sulphur Creek in Sulphur Canyon in the northwest corner of Section 2, T7N, R6W;

(6) Thence along Sulphur Creek in an easterly direction approximately 350 feet to its intersection with the 400 foot contour line;

(7) Thence along the 400 foot contour line in a generally easterly, then northwesterly, direction past the city of St. Helena (on the St. Helena Quadrangle map) to a point of intersection with a southwesterly straight line projection of the county road shown as Bale Lane in the Carne Humana Rancho on the Calistoga Quadrangle map;

(8) Thence along the projected straight line extension of Bale Lane in a northeasterly direction approximately 700 feet to the intersection of State Highway 29 and Bale Lane and continuing northeasterly along Bale Lane to its intersection with the Silverado Trail;

(9) Thence in a northwesterly direction along the Silverado Trail approximately 1,500 feet to an unmarked driveway on the north side of the Silverado Trail near the 275 foot elevation marker;

(10) Thence approximately 300 feet northerly along the driveway to and beyond its point of intersection with another driveway and continuing in a straight line projection to the 400 foot contour line;

(11) Thence in a northeasterly and then generally southeasterly direction along the 400 foot contour line through Sections 10 (projected), 11, 12, 13, 24 and 25 in T8N, R6W, Section 30 in T8N, R5W, Sections 25 and 24 in T8N, R6W, Sections 19, 30, and 29 in T8N, R5W to a point of intersection with the county road shown as Howell Mountain Road in Section 29, T8N, R5W, on the St. Helena Quadrangle map;

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(12) Thence in a northeasterly direction approximately 900 feet along Howell Mountain Road to its intersection with Conn Valley Road;

(13) Thence northeasterly and then southeasterly along Conn Valley Road to its intersection with the eastern boundary of Section 28, T8N, R5W;

(14) Thence south approximately 5,200 feet along the eastern boundary of Sections 28 and 33 to a point of intersection with the 380 foot contour line near the southeast corner of Section 33, T8N, R5W, on the Rutherford Quadrangle map;

(15) Thence in a northwesterly direction along the 380 foot contour line in Section 33 to a point of intersection with a northeasterly straight line projection of Zinfandel Avenue;

(16) Thence in a southwesterly direction approximately 950 feet along this straight line projection of Zinfandel Avenue to its intersection with the Silverado Trail;

(17) Thence continuing along Zinfandel Avenue in a southwesterly direction to its intersection with State Highway 29, the point of beginning.

Signed: October 24, 1994.

Daniel R. Black,

Acting Director.

[FR Doc. 94-27397 Filed 11-3-94; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 94-010]

RIN 2115-AE75

Standards for Damage Stability of New Domestic Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting; re-opening of comment period.

SUMMARY: On August 10, 1994 (59 FR 40855), the Coast Guard proposed to amend the rules, on standards for damage stability, that it adopted on December 10, 1992. Amended rules are necessary to relieve certain vessels of an unforeseen regulatory burden. The proposed rules would relieve those vessels of that burden and yet minimize the potential for capsizing and other casualties caused by inadequate damage stability. To obtain further information from members of the regulated community and the general public, the Coast Guard will conduct a second public meeting and re-open the comment period on the amended rules.

DATES: The meeting will be held December 1, 1994, from 1:30 p.m. to 4:00 p.m. Written material must be received not later than December 16, 1994.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC 20593-0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia L. Carrigan, Marine Technical and Hazardous Materials Division (G-MTH-3), U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC 20593-0001, telephone: (202) 267-2988, telefax: (202) 267-4816.

SUPPLEMENTARY INFORMATION:

Request for Comments

The comment period for the amended rules is being extended to allow sufficient time for the public to review the report of the Department of Transportation Volpo Transportation Systems Center on the effect of the new damage stability rules on the domestic passenger vessel fleet. This detailed analysis of twenty-one domestic vessel designs was released in late September 1994, and a copy has been placed in this docket. Information on obtaining a copy of this report may be obtained by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT.**

This notice extends the period for submission of comments on the proposed changes to 46 CFR 171.080(e) described in the Notice of Proposed Rulemaking published on August 10, 1994 (59 FR 40855). It is the Coast Guard's goal to implement regulations that will best address both the safety and the operational needs of all vessels. These standards were based on one developed by the International Maritime Organization (IMO) for any passenger vessel allowed to carry 12 or more passengers on an international voyage (under a "SOLAS Passenger Ship Certificate").

The Coast Guard again seeks advice from owners and operators of vessels and shipyards, and from naval architects, its own inspectors, classification societies' inspectors, consumers, crews of vessels, and others involved in the affected vessels' compliance with § 171.080(e) as this proposed rule would amend it. Interested persons are invited and encouraged to participate by submitting written data views and arguments.

Persons submitting comments should include their names and addresses, identify this notice [CGD 94-010], identify the specific paragraph of the section to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. The Coast Guard will acknowledge receipt of comments if a stamped, self-addressed post card or envelope is enclosed with the comments.

Public Meeting Date

The Coast Guard has determined that the opportunity to make further oral presentations will aid the rulemaking process and will hold a second public meeting from 1:30 p.m. to 4:00 p.m. on December 1, 1994, in room 2415 of Coast Guard Headquarters, Washington, DC 20593-0001. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under the **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: October 27, 1994.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-27319 Filed 11-3-94; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 94-07]

Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; reply comments.

SUMMARY: The Commission is seeking reply comments to its Notice of Proposed Rulemaking concerning financial reporting requirements and the rate of return methodology in the domestic offshore trades. The Commission has received seven comments on the proposed rule which have raised issues which require further comment. Comments are requested on, and are to be limited to, the calculation of the cost of capital, working capital, the selection of proxy groups, and the deletion of alternative methodologies.

DATES: Reply comments due December 5, 1994.

ADDRESSES: Comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, 202-523-5725.

FOR FURTHER INFORMATION CONTACT:

Richard R. Speigel, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, 202-523-5845

C. Douglass Miller, Office of the General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, 202-523-5740.

SUPPLEMENTARY INFORMATION: On April 7, 1994, the Federal Maritime Commission ("FMC" or "Commission") published a Notice of Proposed Rulemaking ("NPR") (59 FR 16592) which proposed to amend its regulations governing financial reporting requirements and rate of return methodology applicable to vessel-operating common carriers by water in the domestic offshore trades. Among other things, the proposed rule would change the method of determining the reasonableness of a carrier's return on rate base from the comparable earnings test to the weighted average cost of capital methodology. At the request of Matson Navigation Company, the Commission extended the comment period for interested parties to file until July 20, 1994 (59 FR 27002). Seven parties filed comments on the NPR. Commenters include: American President Lines ("APL"), Crowley Maritime Corporation ("Crowley"), Matson Navigation Company, Inc. ("Matson"), Puerto Rico Maritime Shipping Authority ("PRMSA"), United States Department of Transportation ("DOT"), Marsoft Incorporated ("Marsoft"), and the State of Hawaii ("Hawaii").

Based on its review of the comments, the Commission has determined that reply comments on four issues would be beneficial. In order that the Commission have the most complete information available to enable it to make an informed judgment in these matters, interested persons are invited to submit comments on the issues discussed below.

Issue 1: Calculation of the Cost of Capital

PRMSA addresses the issue of the calculation of the before-tax weighted average cost of capital ("BTWACC") and its relationship to the projected rate of return on rate base. PRMSA states that the formula for the BTWACC contained in the proposed rule is correct.[1] PRMSA asserts, however, that since the projected rate of return in the proposed rule is computed on an after-tax basis—with return on rate base being computed by dividing net income plus interest expense by the trade rate base—the proposed before-tax weighted average cost of capital is being compared to the after-tax projected return on rate base. PRMSA suggests, therefore, that either the weighted average cost of capital should be changed to an after-tax basis so it can be compared to the after-tax projected return on trade rate base currently specified, or the BTWACC should be retained and the projected return on trade rate base should be changed to a before-tax basis.

PRMSA's comments appear to have merit. Therefore, the Commission is proposing to retain the before-tax weighted average cost of capital contained in the proposed rule and change the calculation of the projected rate of return on rate base to a before-tax basis. Retention of the BTWACC seems appropriate because it is employed by a large majority of regulatory commissions. The before-tax weighted average cost of capital would be calculated as it is in the proposed rule. However, the projected rate of return on rate base stated in the proposed rule would be changed to:

$$\frac{\text{Net Income + Interest Expense + Provision for Income Taxes}}{\text{Rate Base}}$$

The Commission thus proposes to amend section 552.6(d)(2) to read:

(2) *Return on Rate Base.* The return on rate base will be computed by *dividing* Trade net income *plus* interest expense *plus* provision for income taxes *by* Trade rate base.

The Commission requests comments on this amendment to the proposed rule

Issue 2: Working Capital

The proposed rule adopted Hawaii's suggestion in FMC Docket No. 91-51, *Financial Reports of Common Carriers by Water in the Domestic Offshore Trades*, that insurance expense be treated in the same manner as other operating expenses in calculating working capital, i.e., include that amount applicable to the duration of an average voyage. In its comments on this proposed rule, Hawaii suggests an additional modification of the calculation of working capital, namely, the exclusion of interest expense.

In support of its proposal, Hawaii states that interest expense is a source of working capital funds, and is not paid to the bond holder until after related revenue is received. Hawaii concludes, therefore, that interest expense does not create a need for working capital. Comments are requested on the validity of the proposal to exclude interest expense from the calculation of working capital.

Issue 3: The Selection of Proxy Groups

A number of parties commented on the selection of the proxy group. Hawaii indicates a concern with the criteria prescribed in selecting a comparable group of companies when the proxy group is used in determining the cost of common-stock equity. Hawaii believes that the companies in the *Value Line Investment Survey* which satisfy the Commission's criteria for the proxy group do not have business risks similar to those of Matson. Hawaii claims that these companies are generally

[1] The proposed rule states the before-tax weighted average cost of capital will be calculated using the following equation:

$$BTWACC=(D/D+P+E)K_d+(P/D+P+E)K_p(1/1-T)+(E/D+P+E)K_e(1/1-T)$$

where:

K_d is the regulated firm's cost of long-term debt capital;

K_p is the regulated firm's cost of preferred stock capital;

K_e is the regulated firm's cost of common stock equity capital;

D is the value of the regulated firm's long-term debt outstanding;

P is the value of the regulated firm's preferred stock outstanding;

E is the value of the regulated firm's common-stock equity outstanding;

T is the corporate income tax rate

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consolidated companies; are not dominant in their trades; and do not have statutory barriers to entry.

Marsoft states that according to its research only three marine transportation companies and four trucking companies meet the proposed guidelines for the proxy group. Marsoft does not believe that airlines, railroads, or full-load trucking companies should be included in the proxy group, because they do not provide comparable services. Marsoft states that in many cases large, geographically and operationally diverse companies will be compared to small, highly specialized private carriers. Marsoft believes that the comparison may not be credible in some cases.

PRMSA comments that the proxy group should not be restricted to the freight transportation business. PRMSA asserts that equity capital in the regulated carrier competes against the broad spectrum of companies in the economy, not just against companies involved in freight transportation. The nature of a business is said to be only one ingredient of business risk, not the sole determinant. PRMSA notes that as of June 1994, there were a total of 39 companies listed in *Value Line Investment Survey* which were involved in air transport, trucking, maritime, and railroading. Allegedly, not all of these companies were involved in freight transportation as required by the proposed rule. PRMSA concludes from this that the potential list of comparable companies is highly limited.

Under the proposed rule, the proxy group is selected from companies which operate and derive a major portion of their gross revenues primarily as common carriers in the business of freight transportation, and own and operate transportation vehicles or vessels. The Commission requests specific suggestions on industries other than freight transportation covered by the *Value Line Investment Survey* which have business and financial risks similar to those of the domestic carriers that may be added to the current proxy group criteria.

Issue 4: Deletion of Alternative Methodologies

The proposed rule revises paragraph (b) of section 552.1 by deleting the provision that the methodology employed in each case will depend on the nature of the relevant carrier's operations and financial structure. Also, the proposed rule adds language to that paragraph that specifies the extent of possible alternative methodologies. Paragraph (b) reads:

(b) In evaluating the reasonableness of a VOCC's overall level of rates, the Commission will use return on rate base as its primary standard. A carrier's allowable rate of return on rate base will be set equal to its before-tax weighted average cost of capital. However, the Commission may also employ the other financial methodologies set forth in § 552.6(f) in order to achieve a fair and reasonable result.

Paragraph (d) of the same section has been deleted. That paragraph provided that the Commission may use some other basis for allocation and calculation and may consider other operational factors in any instance where it is deemed necessary to achieve a fair and reasonable result.

APL informs that these provisions are at the heart of a major dispute in FMC Docket No. 89–26, *The Government of the Territory of Guam, et al. v. Sea-Land Service, Inc. and American President Lines, Ltd.* It points out that the NPR does not give any reasons for the proposed changes to section 552.1 and contends that the changes cannot be legally adopted unless and until the FMC identifies its reasons for such a change and allows opportunity for comment.

In the abbreviated comments it did provide, APL contends that the proposed changes can have no substantive effect on a pending complaint docket focused on a prior time period. APL further urges the Commission to "make clear, as a general matter, that its decision in the prospective rulemaking proceeding is not intended to pre-judge issues in the retrospective complaint proceeding." APL contends that sections 552.1(b) and 552.1(d) merely make explicit an agency's authority that is implicit in any regulatory scheme. Further, APL questions why the FMC would want to amend a regulation in a way that might imply that it was denying itself the ability to do something necessary to achieve a fair and reasonable result.

The Guam trade is unique in that the trade is a very small portion of the carriers' overall service. However, whether the current method of allocation is appropriate in such a case need not be decided here, because the two carriers serving Guam, APL and Sea-Land Service, Inc., currently file most, if not all, of their rates with the Interstate Commerce Commission. Neither carrier files full financial reports under 46 CFR Part 552. In the event an FMC-regulated carrier initiates such a service in the future, the Commission will address the need for any change in 46 CFR Part 552 in a separate rulemaking proceeding. Paragraph (d) was eliminated because the Commission did not want such determinations to be made on an *ad hoc* basis during a rate investigation. It is essential that significant issues relating to the underlying methodology to be employed in determining the reasonableness of rates be settled prior to any rate investigation. The 180-day limit specified by section 3 of the Shipping Act, 1933, 46 U.S.C. app. 845, cannot be met if parties are permitted to change methodologies during the course of a rate case. Moreover, it is unfair; parties to a rate proceeding are entitled to rely on the Commission's rules. They should not have to respond to ever-changing methodologies proposed by other parties.

It is understandable that APL is concerned that the Commission's decision here may affect the outcome in Docket No. 89–26. However, any changes that may be made to Part 552 as a result of this proceeding will only be applied prospectively. They will have no application in pending cases such as Docket No. 89–26.

Conclusion

The Commission will permit reply comments to be filed by any interested person, not only those that commented on the proposed rule. Those parties who filed comments are on the attached list. All previous commenters are directed to provide copies of their comments to anyone upon request, so as to facilitate timely comments. Copies of comments are also available for inspection and copying at the Commission's Office of the Secretary. Pursuant to Commission Rule 53, 46 CFR 502.53, parties shall serve reply comments on initial round participants.

By the Commission.

Joseph C. Polking,

Secretary.

Robert T. Basseches, David B. Cook, Eric C. Jeffrey, Cynthia Gurnee Pugh, Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036, (Counsel for American President Lines, Ltd.)

Michael G. Roberts, Vice President, Government Relations, Crowley Maritime Corporation, 1500 K Street, NW., Suite 425, Washington, DC 20005

Stephen Todd Rudman, Assistant General Counsel, Matson Navigation Company, Inc., P.O. Box 7452, San Francisco, CA 94120

Amy Loeserman Klein, Klein, Bagileo, Silverberg & Goldman, 1101 30th St., NW.—Suite 120, Washington, DC 20007, (Counsel for Puerto Rico Maritime Shipping Authority)

Rosalind A. Knapp, Deputy General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590

Arlie G. Sterling, President, Marsoft, Inc., One Financial Center, 25th Floor, Boston, MA 02111

Charles W. Totto, Executive Director, Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 541, Honolulu, HI 96809

[FR Doc. 94–27373 Filed 11–3–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Resolutions, Agenda Items, and Species Changes Proposed by the United States for the Convention on International Trade in Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision on U.S. submissions to the Convention on International Trade in Endangered Species.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. The United States as a Party to the Convention may (1) propose amendments to the appendices for consideration by the other Parties at the biennial meetings of the Conference of the Parties, (2) submit topics for inclusion in the agenda of these meetings, and (3) submit resolutions to improve the implementation of the Convention for consideration at these meetings.

In this notice, the U.S. Fish and Wildlife Service (Service) announces the species proposals to amend Appendices I and II, agenda items, and resolutions submitted by the United States for consideration at the ninth regular meeting of the Conference of the Parties to CITES (COP9) scheduled for November 7–18, 1994, in Ft. Lauderdale, Florida.

ADDRESSES: Requests for information concerning species proposals discussed in this notice may be directed to Chief, Office of Scientific Authority; Mail Stop: ARLSQ Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. The fax number is 703–358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia. Information relative to agenda items and proposed resolutions should be submitted to Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 420C, Arlington, Virginia 22203. The fax number is 703–358–2280. Any information received is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

Copies of resolutions and species proposals submitted by the United States are available on request by contacting the Office of Scientific Authority or Office of Management Authority, as appropriate, at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, telephone 703–358–1708, or Marshall Jones, Chief, Office of Management Authority, telephone 703–358–2095.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the Convention. Currently, 122 countries, including the United States, are CITES Parties. The Convention calls for biennial meetings of the Conference of the Parties that review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention. COP9 will be held in Fort Lauderdale, Florida, November 7–18, 1994.

This is part of a series of notices that, together with public meetings, encourage the public to participate in the development of the U.S. positions for COP9. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832) requested additional comments from the public on animal or plant species that the United States was considering submitting as proposed amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096): (1) Published the time and place for COP9; (2) announced a public meeting for February 22, 1994, to discuss the 31st meeting of the CITES Standing Committee; (3) detailed the provisional agenda for COP9; and (4) requested information and comments from the public on possible COP9 agenda items and resolutions that the United States might submit. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

After review of public comments and all available information, the proposals, agenda items, and draft resolutions announced in this notice were submitted by the Service and received by the Convention's Secretariat on June 10, 1994, the deadline for consideration at COP9.

Any proposed amendments to the Appendices adopted by the Parties will become effective on February 16, 1995, unless the United States enters a reservation before that time. The Service will publish a notice of proposed rulemaking to implement such amendments.

Public Comments and Decisions on Possible Species Proposals

Decisions about suggested U.S. proposals discussed in the previous notice of January 27, 1994 (59 FR 3832) are as follows:

Species Proposals Not Submitted

1. Narwhal (*Monodon monoceros*). The Environmental Investigation Agency (EIA) proposed that the narwhal be transferred from Appendix II to Appendix I of CITES. The range of the narwhal is circumpolar in Arctic waters, mostly north of 65 degrees North Latitude, although it occurs in greater densities in waters north of the Atlantic than in waters north of the Pacific Ocean. There is some north-south seasonal movement in response to climate and ice development. Between Canada and Greenland, narwhals summer in high densities in the eastern Canadian Arctic and off northwest Greenland, with smaller summering groups occurring in many other locations. Narwhals also occur in some concentration along the east coast of Greenland. There is evidence suggesting

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that the populations on the east and west coasts of Greenland belong to separate stocks.

Three populations of narwhals were reviewed in 1992 by the Small Cetacean Sub-Committee of the Scientific Committee of the International Whaling Commission (IWC): (1) Hudson Bay, including northern Hudson Bay and western Hudson Strait; (2) Baffin Bay, including the eastern Canadian Arctic Archipelago and western Greenland; and (3) East Greenland and the Barents Sea. The Hudson Bay stock has been conservatively estimated at 1300 animals. The Small Cetacean Sub-Committee estimated the Baffin Bay stock at 27,580 to 42,520. No good estimates are available for the East Greenland/Barents Sea population, although it is considerably smaller than the other stocks. Relatively small numbers of narwhals are reported from other parts of the species' range. Because of the difficulty in surveying narwhals, most abundance estimates for the species have large variances and require careful interpretation.

Narwhals are hunted for maktag (blubber/skin), meat, and their tusks. Maktag is consumed by the Inuit, and meat is (or has been in the past) used as dog food, although both commodities are also sold on a limited basis. The tusks are utilized domestically for carving, and are sold as souvenirs, either as carved products or as intact tusks. (Females only occasionally develop tusks.) The majority of tusks taken in Canadian waters apparently remain in the country, while the bulk of narwhal ivory taken in Greenland is shipped to Denmark (perhaps as much as 90 percent annually) where much is exported to other countries in the European Union (EU).

In 1976, Canada imposed quotas on the take of narwhals, which it regulates by issuing tags to be affixed to each animal taken. Tusks from these animals that enter trade must have the tag attached to show that the animal from which it was removed was legally taken under the quota system. The Greenland Home Rule Government sets no quotas for narwhals and no tracking except for those animals that enter international trade, and, therefore, require CITES permits. Since 1985 Greenland has not been a member of the EU, therefore a no detriment finding is necessary for the issuance of CITES export permits by the Greenland Home Rule Government, and for import permits by EU countries under EU regulations, even though the narwhal is an Appendix II species. However, Greenland sets restrictions on who is allowed to hunt and the manner in which hunts are conducted.

Eight comments were received during the comment period, five favoring amending the listing of narwhal from Appendix II to Appendix I, and three opposed to this change.

The Society for Animal Protective Legislation (SAPL), The Humane Society of the United States (HSUS), the American Humane Association (AHA), the Defenders of Wildlife (Defenders), and EIA all expressed support for an Appendix I listing of the narwhal.

The HSUS indicated that Canada and Greenland continue to hunt narwhals and export tusks in large numbers (Greenland being the largest exporter), and that the annual net trade in tusks nearly doubled from 1985–1990. (Prior to 1985 when Greenland began issuing its own CITES export permits, the movement of tusks from Greenland to Denmark was not considered international trade, therefore pre- and post-1985 trade figures cannot be compared equally). They also state that trade figures do not reflect the total numbers of narwhals taken because for each actual take there are three to four injured or killed animals lost. Even though information is limited, HSUS believe that reproductive rates among narwhals is low, and that in 1981 the world population was estimated at approximately 20,000 animals and declining. HSUS asserted that narwhals should be listed in Appendix I as a precautionary measure because status information is limited, information on reproduction and natural mortality is lacking, and information on actual numbers hunted is unavailable.

The AHA indicated that new export markets have caused narwhal ivory prices to increase in Canada following a price decline in the mid-1980's, which has returned ivory prices to about the same prices as existed in the early 1980's. This increase in the price of narwhal ivory prices has suggested that ivory rather than maktag and meat has become the basis of modern hunting in eastern Canada. AHA noted that take quotas have not been imposed by Greenland, and that there are no controls on trade in ivory. However, as previously mentioned, since 1985 a no detriment finding is necessary for the issuance of CITES export permits by Greenland and for an import permit by Denmark.

Defenders also asserted that the prime motivation for the take of narwhal in recent years has been the ivory, stimulated by new export markets and a resurgence in the price of ivory since the mid-1980's, which has biased take to the adult males. They feel that this could jeopardize narwhal population structure by the removal of a larger number of males. They contended that the current CITES listing of the narwhal in Appendix II does not provide adequate monitoring of take because there is not a substantial domestic market for narwhal tusks in Canada, and yet export permits were issued for fewer than half the tusks obtained in Canadian narwhal hunts between 1975 and 1990. From this, Defenders concluded that a large number of tusks must have been exported without CITES permits, but presented no evidence for this conclusion. Therefore, due to the uncertainty and concern surrounding the catch levels of narwhals for the ivory market, Defenders supported an Appendix I listing.

The EIA submitted comments that supported their original proposal that the narwhal be included in Appendix I. They provided an estimate of 28,000 narwhal in the combined Canada-Greenland High Arctic population. They discussed the utilization of maktag and meat, the demand for narwhal ivory in Canada, and the export of Greenland ivory to Denmark and on into the EU. The decline in ivory prices of the early 1980's has, according to EIA, now returned to about those same levels. EIA pointed out the absence of quotas on take of narwhal in Greenland, suggested that the application of quotas in Canada is inadequate, and that the number of narwhal taken does not reflect actual take numbers because of the loss of wounded or killed animals before they are landed. They also pointed out the difficulty of assessing the relationship between the market demand for ivory and hunting intensity. EIA believed that additional information on life history, distribution, abundance, and hunting loss rates was needed to assess the stocks and the impacts of trade in the various parts derived from narwhal in order to properly manage the stocks.

The Greenland Home Rule Government and the Fisheries Agency of Japan (FAJ) objected to transferring the narwhal to Appendix I. Greenland did not agree that narwhals should be placed in Appendix I due to unsustainable hunting pressures caused by the international trade in narwhal ivory. They argued that recent population estimates did not adequately take into account submerged whales, which would give corrected estimates sufficient to sustain hunting pressures greater than current harvest levels. They also maintained that low levels of ivory export reported for Greenland before 1985 are partially an artifact of the change in their political designation at that time, prior to which the shipment of ivory to Denmark was not considered as an export. They noted that, even though there are no catch quotas for Greenland, there are strict regulations on catch reporting, vessel sizes, etc., and that there are two reserve areas in Greenland waters where narwhal are protected. Generally, the FAJ felt that a listing in Appendix I should be based only on scientific evidence that there is a threat to extinction and that trade control is necessary for the protection of the species. Furthermore, the FAJ noted that the narwhal is already in Appendix II, providing some control of trade and a mechanism for collecting trade data, and that in the absence of new information indicating a deterioration in the status of the species there is no need for consideration of a change to Appendix I.

The Government of Canada also does not agree with an Appendix I proposal for the narwhal. They feel that recent estimates of the Canadian High Arctic stocks are low by as much as 50 percent due to an underestimation of the time narwhals spend under water (as indicated in the 1992 Report of the Sub-Committee on Small Cetaceans of the International Whaling Commission), and that this larger population size can sustain current catch levels. They also feel that their catch quotas are adequate.

The U.S. Marine Mammal Commission (MMC) does not support an Appendix I listing for the narwhal at this time, but noted that Canada and Greenland should be encouraged to obtain additional and better information on the status and trends of narwhal stocks, and on harvest levels (particularly regarding animals that are struck and lost during hunting).

In developing its position, the National Marine Fisheries Service (NMFS) took note of the continuing question about the sustainability of the take of narwhal, particularly noting the difficulties in obtaining data, such as population levels, catch levels and loss rates, and in obtaining trade data for narwhals. Because of this uncertainty, NMFS decided not to recommend that the United States propose this species for Appendix I. The Service assessed all information available and concluded that there was no sufficient information to support listing this species in Appendix I. The United States will continue to monitor information on this species as it becomes available in order to better assess possible recommendations at a later date.

2. Musk deer (*Moschus* species). The EIA requested that the Service propose including all species in the genus *Moschus* in Appendix I. There are at least four species in the genus, which is widely distributed across eastern and central Asia. Currently all *Moschus* species are included in Appendix II except those populations in Afghanistan, Bhutan, Burma, India, Nepal, and Pakistan, which are included in Appendix I. Musk deer were listed in the Appendices due to the trade in musk, a substance taken from the musk gland of the male and used in traditional medicines in Asia and in the manufacture of perfumes.

Five comments were received in response to the January 27, 1994, **Federal Register** notice. Four commenters (including SAPL) favored the transfer of all Appendix II populations of musk deer to Appendix I. TRAFFIC USA, while neither supporting nor opposing an Appendix I listing, relayed information from TRAFFIC France that the French perfume industry is using a synthetic musk in some cases, but that France continues to import 5 to 15 kilograms of musk per year, primarily from the Russian Federation. The AHA suggested that musk deer "farming" operations in China are inadequate to satisfy demands for musk, and that the existence of a legal musk trade creates a loophole for illegal trade. Defenders and HSUS reiterated this claim. The AHA stated that current levels of exploitation of musk deer in Russia, China and the Himalayas are reported to be unsustainable. Defenders reported that the price of musk in Hong Kong can be as high as US$84,000 to US$119,000 per kilogram. They also indicated that there is not much information available on population numbers of musk deer, but that it is known that illegal and undocumented trade in musk is occurring. They state that, "Estimates indicate that some populations have been halved during the past five years due to uncontrolled hunting," but no specific information or documented reports were provided. The HSUS noted the high cost of musk, and stated that this has led to wide-scale poaching of musk deer. They also reported that an 80 percent decline has occurred in one population of musk deer in Russia. The HSUS claimed that in China musk deer populations are declining rapidly due to over-exploitation.

Comments received provided little additional or substantive information on the distribution and status of musk deer, or on international trade in musk, aside from anecdotal reports of increased poaching and the high cost of musk. The People's Republic of China claims that there are 500,000 to 1 million musk deer in China, and plans a comprehensive survey. Russia indicated there are about 150,000 musk deer in Russia, and harvests are not allowed in areas where populations are decreasing. In Russia, musk deer are protected in 18 reserves and other federal and local preserves, and the Sakhalin musk deer is listed in the Red Data Book. Based on these protective measures, the Russian Management Authority felt that it is premature to amend the listing of the musk deer to Appendix I. Mongolia provided conflicting remarks; they indicated support for an Appendix I listing of the musk deer in their cover letter, but in their attached discussion of the species they stated that the Mongolian musk deer should be kept in Appendix II.

The Service does not believe that population or trend data are sufficient to support a proposal to transfer the Appendix II populations of musk deer to Appendix I, and did not submit such a proposal.

3. Copperbelly water snake (*Nerodia erythrogaster*). The Service has proposed to list the northern subspecies of the copperbelly water snake, *N. e. neglecta*, as a threatened species under the Endangered Species Act, 58 FR 43860 (August 18, 1993). The species is restricted to the lower Ohio River Valley and the lower Wabash River Valley in Indiana, Illinois and Kentucky, and in southern Michigan, Indiana, and Ohio. There have been recent population declines and it now exists in isolated pockets of suitable habitat.

Only the HSUS provided comments, and supported the listing of the species in Appendix II. Although the proposed rule suggested that removal from the wild by amateur collectors posed some threat to this species, no additional information on trade in the species was received, and existing reports of international trade are several years old. Therefore, on the basis of this record the Service is not persuaded that the available information on trade would warrant a proposal to include this species in Appendix II.

4. Bluefin tuna (*Thunnus thynnus*). The Service received a draft proposal from ICCAT Watch, a coalition consisting of the National Audubon Society (NAS), the Center for Marine Conservation (CMC), and the World Wildlife Fund- US (WWF-US), to list the bluefin tuna throughout the Atlantic Ocean on Appendix II and additionally, the western Atlantic population on Appendix I. Later, ICCAT Watch withdrew its request to list the western Atlantic population in Appendix I.

The January 27, 1994, **Federal Register** notice gave current information about the Atlantic bluefin tuna including management by the International Commission on the Conservation of Atlantic Tunas (ICCAT), recent stock assessments for the western

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and eastern stocks, recent estimates of fishing mortality rates, reductions in harvest quotas recommended at the 1993 Regular Meeting of ICCAT for the years 1994 and 1995, and plans for the implementation of a Bluefin Statistical Document to be required for the import of bluefin tuna by ICCAT countries. The next Regular Meeting of ICCAT will be held in December 1994.

It was noted in the FR notice that according to the Standing Committee on Research and Statistics of ICCAT (SCRS) and NMFS scientists there is uncertainty about an appropriate boundary between the western and eastern populations of bluefin tuna. At the request of the Department of Commerce, the National Academy of Sciences has conducted an independent review on the "Scientific Basis of Management of the Fisheries for Atlantic Bluefin Tuna," which evaluated information on stock structure as well as recent population assessments. The report was presented to the Department of Commerce on August 31, 1994. The National Oceanic and Atmospheric Administration (NOAA) has named a team of experts to evaluate the findings and make recommendations about policy and management issues.

Within the comment period, the Service received a total of 83 comments on the possible CITES listing of this species from the general public, commercial and recreational fishers and fishing organizations, conservation organizations, and foreign governments. Of these, 73 supported a listing of the Atlantic bluefin tuna in Appendix II, 8 opposed any listing under CITES, and 2 did not specifically oppose or support a listing. (Comments from the Russian Government were received after the comment period closed.)

The Executive Secretary of ICCAT conveyed the comments of the Chairman of ICCAT. While not commenting on the appropriateness of a CITES listing, the Chairman drew attention to steps that ICCAT had recently taken to improve the conservation of Atlantic bluefin tuna, including:

1. Drastically reducing the allowable catch for western Atlantic bluefin tuna;
2. Introducing an effective measure for monitoring international trade through the Bluefin Tuna Statistical Document Program;
3. Undertaking or developing other methods to improve data collection;
4. Encouraging expansion of research and analysis with a goal of having the basis to develop a program at the Commission meeting in 1995 aimed at achieving a 50 percent increase from current levels in the spawning stock biomass of the western stock by the year 2008; and
5. Adopting an amendment to ICCAT that would allow the European Union to be a Contracting Party to ICCAT and hence expand the number of countries adhering to the ICCAT recommendations.

Commenters opposed to an Appendix II listing for Atlantic bluefin tuna (including the Global Guardian Trust, the National Fisheries Institute, Inc., and the International Coalition of Fisheries Associations) generally believed that measures recommended by ICCAT are being implemented according to schedule, and that the steps taken by ICCAT represent significant progress in improving reporting requirements and management measures. Therefore, they felt that it is not necessary or appropriate to consider a CITES listing until the effectiveness of these steps can be evaluated.

The Japan Fisheries Association contended that international organizations for the management of living resources, such as ICCAT, are designed to conserve and manage resources that are at higher stock levels than are resources that would be listed under CITES, and that species listed under CITES are being protected from possible "extinction." Therefore, they believe that listing species such as the Atlantic bluefin tuna under CITES would require a digression from the objectives of CITES, and would also go against "the principle of sustainable development."

The Federation of Japan Tuna Fisheries Cooperative Associations felt that a CITES listing of Atlantic bluefin tuna would not ensure its conservation because CITES does not have authority to limit harvest. They suggested that no conclusions should be drawn concerning the status of the species until a peer review of information about the existence of two stocks of Atlantic bluefin tuna is completed. The Federation also contends that the species is not currently threatened with extinction, nor is it likely to become so, therefore it does not meet criteria for listing under CITES.

The East Coast Tuna Association maintained that recent assessments and future projections concerning the western stock of Atlantic bluefin tuna are "extraordinarily controversial," to the extent that the NMFS has requested the National Academy of Sciences to conduct a peer review of data and information supporting these assessments as well as the two-stock hypothesis. They believed that a CITES listing would be redundant and would likely penalize only those fishermen who now participate in the ICCAT program.

The FAJ felt that it is essential that any CITES listing be based on scientific evidence that there is a threat of extinction to a species and that trade control is necessary for the protection of the species. They contended that a species should not be listed only for the purpose of collecting trade data, especially if an international organization is already collecting such data. They believed that an Appendix II listing of Atlantic bluefin tuna would impose undue burdens on the enforcement capabilities of many countries. They also state that protection of wildlife cannot be accomplished through regulation of trade alone, but harvesting should be regulated, and that CITES is not capable of harvest regulation. Also, they believed that the interests of range states should be considered based on consultations, and range states have not been contacted. The First Secretary (Fisheries), Embassy of Japan, essentially supported these contentions.

As an ICCAT member, the Russian Ministry of Protection of the Environment and Natural Resources felt that ICCAT's regulation of take by annual quota and the Statistical Documentation Program provide strict controls for use of the Atlantic bluefin tuna. They also did not think that the species is threatened with extinction and therefore was not eligible for a CITES listing.

TRAFFIC USA submitted a detailed analysis of international trade in all species of bluefin tuna, including species not recommended in the proposal for listing. The data indicated that a large quantity of bluefin tuna is traded by countries that are not parties to ICCAT, although not all the bluefin tuna analyzed by the document are caught in the Atlantic. However, the basis for this analysis was import data from three countries that report customs data in a uniform way, Japan, New Zealand, and the United States. Although Japan is identified in the report as importing the majority of bluefin tuna (perhaps two-thirds), statistics for other major consuming nations, including some non-ICCAT countries, are not available.

The NAS felt that adding Atlantic bluefin tuna to Appendix II would help provide information needed for population assessment models and effective management, but would not alter or reduce current traffic in tuna. Although they were encouraged by ICCAT's catch-quota recommendations, they were discouraged by the lack of

data from non-ICCAT countries, such as Italy and Mexico. They believe that a CITES listing would elicit data from non-ICCAT countries, which would facilitate assessment of fishing by non-ICCAT countries, particularly in spawning areas. The Wisconsin Audubon Council, the Audubon Council of New York State, the Napa-Solano Audubon Society, the Cape Arago Audubon Society, the New York Sportfishing Federation, ICCAT Watch, the New York Zoological Society, Environment Liaison Centre International, the Connecticut Coastal Fishermen's Association, the HSUS, Defenders, the CMC, and the EIA all reiterated these sentiments. The Animal Protection Institute indicated a lack of faith in ICCAT's ability to manage the Atlantic bluefin tuna, and felt that a CITES listing would provide a better opportunity to monitor the effects of trade, especially because it would include all non-ICCAT countries.

NMFS does not believe that Atlantic bluefin tuna should be proposed for inclusion in Appendix II of CITES at this time, and has concluded that ICCAT members should be given adequate time to implement appropriate fishery controls, to implement fully the Bluefin Statistical Document Program, and to develop procedures for the use of enforcement-enhancing trade measures with respect to ICCAT's conservation program. After that time the incremental benefits of a CITES listing could be assessed. NMFS feels that preliminary analysis of data collected through the Bluefin Tuna Statistical Document will allow evaluation of the effectiveness of this program in calculating and monitoring trade in Atlantic bluefin tuna.

Given the possibility of ecological extinction, and/or the vulnerability to significant population losses due to trade or overexploitation, the Atlantic bluefin tuna would qualify biologically for listing in Appendix II of CITES. However, based on available information on management measures to conserve the species, the Service believes that a listing should not be proposed at this time. Significant quota reductions have occurred in 1994 and additional reductions are planned for 1995. The eastern Atlantic population of bluefin tuna appears to be more productive than its western counterpart. Eastern Atlantic bluefin tuna mature at about age 5 while western Atlantic bluefin tuna reach maturity at about age 8, and recruitment is relatively much higher in the eastern Atlantic. However, fishing mortality rates on immature fish in the eastern Atlantic are exceedingly high, with 30–60 percent of the landings in recent years comprising fish less than the minimum size of 6.4 kg. recommended by ICCAT in 1975. The most recent estimate of a overall fishing mortality is 4–6 times the levels that would be expected to produce the maximum sustainable yield. An assessment of the eastern Atlantic and Mediterranean stocks is scheduled by the SCRS in preparation for discussions at the 1994 Regular Meeting of ICCAT.

Implementation of the Statistical Document Program now required for all imports into ICCAT countries will provide more information on Atlantic bluefin tuna harvests than would CITES certificates or export permits, although ICCAT has not yet required the collection of such information for imports/landings in non-ICCAT countries. Harvest information would be further enhanced if non-ICCAT countries, and the European Union, became members.

The decision of the Service to forgo proposing a CITES listing is significantly influenced by the Atlantic bluefin tuna conservation measures adopted at the 1993 annual ICCAT meeting in Madrid. In opposing the listing of the Atlantic bluefin tuna at the 1992 CITES meeting of the Conference of the Parties (COP8) in Kyoto, Japan, representatives for ICCAT argued that ICCAT, not CITES, was the appropriate international vehicle for implementing necessary conservation measures for Atlantic bluefin tuna. In response to this approach, the United States delegation to the 1993 ICCAT meeting proposed and secured significant quota reductions for the western population of Atlantic bluefin tuna.

Another factor supporting the decision of the Service is the progress made by the Permanent Working Group of ICCAT in April 1994 in fashioning a proposal (to be discussed further at the ICCAT plenary meeting in late 1994) for trade measures to be used as an ICCAT enforcement tool.

From the point of view of NMFS, the adoption of quota reductions for 1994 and 1995 demonstrated ICCAT's resolve to maintain the leadership role in the conservation of the bluefin tuna. However, in the event that appropriate conservation measures are not adopted by ICCAT or prove to be inadequate, the Service will reconsider proposing this species for listing in a CITES Appendix, through a postal procedure if listing is thought to be necessary prior to the next Conference of the Parties.

5. Requiem (*Carcharhinidae*) and hammerhead (*Sphyrnidae*) sharks. Requiem and hammerhead shark species occur in pelagic and/or coastal waters worldwide, mostly in tropical to temperate regions. Sizes range from the white, mako, and great hammerhead at over 3 m, to smaller coastal species as the sandbar and scalloped hammerhead sharks. They are predators of various types. Fertilization and development of young is, in most species, internal, and young are born as active, fully developed, and relatively large individuals. The number of young in a brood is usually small (about 2 to 25), but the relative maturity at birth usually results in high survival rates. Often gestation periods are long (up to 1 year). There are no population size estimates over large areas for sharks.

Eight responses concerning these sharks were received within the comment period; four favored their listing in Appendix II, and four were opposed to a listing.

The CMC, NAS, and HSUS, along with other commenters, stated that because large sharks are slow to reach sexual maturity and reproduce at long intervals, they must be managed more conservatively than other commercial fisheries. They cite the demand for shark fins as probably the largest factor in the presumed global decline of sharks, although meat is also in demand, and a new market for shark cartilage as a cancer treatment has developed. The NAS pointed out that most shark experts question whether sustainable exploitation of sharks is even possible and that over 90 percent of the shark fisheries in this century have failed.

TRAFFIC USA submitted an unpublished paper from the World Conservation Monitoring Centre on shark fin trade, entitled, "International Trade in Shark Fins." The study was undertaken to quantify the volume and value of shark fins in international trade, and to identify the main producer and consumer nations. However, due to the limited availability of trade data, statistics from only nine countries were analyzed. The paper calls for closer attention to studies of trends in shark populations, in order to protect sharks from overexploitation.

In opposition to a CITES listing, the International Coalition of Fisheries Associations and the National Fisheries Institute commented that the lack of available information on population structure, distribution, abundance, and population trends for these species limit the presentation of scientific evidence to support a proposal for listing. They expressed concern that an Appendix II listing might encourage unilateral actions, such as the U.S. Atlantic coast shark fishery management plan, that could provide a basis for CITES nations to determine that their shark production

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was non-detrimental, rather than participating in regional cooperative management programs.

The Japan Fisheries Association and the FAJ indicated that available scientific information does not support listing these shark species, and that a listing would impose an excessive burden on the management and scientific authorities of concerned parties to CITES.

NMFS took note of the lack of specific information in many comments received, and based on this limitation, combined with the lack of research cross-referencing trade statistics with population trends, NMFS decided that they would not recommend proposing any shark species for listing in the CITES Appendices. The Service agrees with this view, and also feels that the data available on the status of shark species worldwide are not sufficient to support the listing of all species in these two families at this time.

6. Whale shark (*Rhincodon typus*). The whale shark is the only species in the genus *Rhincodon*, and occurs worldwide mainly in tropical and subtropical waters (except in the Mediterranean). It is a large (8–10 m, and up to 4.5 metric tons), slow, mainly surface dwelling, plankton-feeder. Historically it appears to have been infrequent in occurrence; no reliable population estimates seem to exist, and they are nowhere abundant. The meat is eaten, but it is soft and apparently brings a low price in most markets. Whale sharks are taken commercially in a few places around the world (mostly in Asia), especially during seasons when other more valuable fish species are not available. Although fins are removed for the shark fin soup trade, some are considered second grade.

The EIA proposed to the Service that the whale shark be considered for inclusion in Appendix II of CITES. The Service received nine comments on the whale shark within the comment period; five supported a listing and four were opposed. (Most comments were directed to all sharks, not specifically to the whale shark.)

TRAFFIC USA indicated that TRAFFIC Oceania has undertaken the collection and analysis of shark species in trade globally, and enclosed a TRAFFIC USA Newsletter on sharks as well as an unpublished report entitled, "International Trade in Shark Fins." The CMC noted that commercial shark fishing is increasing worldwide as the demand for shark meat and fins continues to expand, and invoked the slow growth rates, late maturation, and small number of young produced as being characteristics of sharks in general that also apply to whale sharks and increase their vulnerability. They indicated that there are commercial fisheries for whale sharks in waters off India, Pakistan, China, Senegal, and the Philippines that appear to be expanding, and noted that the generally coastal habitat of whale sharks and their slow movements make them vulnerable to boat collisions and harpooning. The AHA and the NAS reiterated these comments, adding that, as a precautionary principle, the species should be listed rather than waiting until additional data and information is accumulated. The HSUS noted that shark populations in general are considered overexploited, at least in parts of their range, and, although data are lacking, they believed that trade in whale shark fins is probably increasing. They supported a listing in order that data on trade and exploitation might be collected for the species.

In opposition to the listing of the whale shark, the International Coalition of Fisheries Associations and the National Fisheries Institute, Inc. suggested that an Appendix II listing would probably not affect the limited subsistence fisheries in parts of Asia, but that it might limit or undermine a more coordinated international approach that could effectively control mortality. They repeated the comments from others that there is little or no information on the whale shark's population structure, distribution, abundance, population trends, or trade. The Japan Fisheries Association stated that available scientific information on sharks does not warrant listing these species in any CITES Appendix. The FAJ essentially agreed with this assessment, adding that a listing would add an excessive burden to the Management and Scientific Authorities of the CITES Parties concerned.

NMFS took note of the lack of specific information in many of the comments received, and, based on this limitation, combined with the lack of research cross-referencing trade statistics with population trends, NMFS decided that they would not recommend proposing the whale shark for listing in a CITES Appendix. NMFS will continue to monitor work being done in this area in order to better assess possible recommendations at a later date.

At this time the Service feels that there is insufficient information on status and international trade to support a proposal to list the whale shark in Appendix II of CITES. A better understanding of the possible threats to this species is needed before such a proposal could be considered. There does not appear to be firm evidence suggesting that the whale shark has ever been other than infrequent in occurrence, or that there has been a significant increase in the catch of this species by the traditional fisheries in Asia.

In lieu of proposals to list the whale shark, requiem sharks, and hammerhead sharks in the Appendices of CITES, the United States has submitted an agenda item on trade in shark products for COP9, which is discussed later in this notice.

7. Bigleaf mahogany (*Swietenia macrophylla*). American mahogany is the genus *Swietenia*, which is native to the neotropics. Two of the three species are in CITES Appendix II: *Swietenia humilis* (Pacific Coast mahogany) including its parts and derivatives, which occurs in Mexico and Central America; and *Swietenia mahagoni* (Caribbean mahogany) including only its logs, sawn wood and veneer, which occurs on some Caribbean islands and extends to southern Florida. The unlisted species, Swietenia macrophylla (bigleaf mahogany), occurs from South America to Mexico; in Costa Rica it evidently forms hybrids naturally with *S. humilis*. The United States has become the main importer of wood from bigleaf mahogany.

During the comment period the Service received 22 responses relating to the January 27, 1994, **Federal Register** notice; 17 organizations or individuals favored the United States submitting a proposal to include *Swietenia macrophylla*, including only logs, sawn wood, veneer sheets, and plywood, in Appendix II, and 2 organizations were opposed.

The favorable responses, sometimes in detail or with substantial enclosures, were from the company A & M Wood Specialty (Cambridge, Ontario, Canada); on behalf of the architects of the American Institute of Architects (AIA) from the Rainforest and Natural Resources Task Group of the AIA Committee on the Environment; the Fauna and Flora Preservation Society (London, U.K.); Greenpeace USA; the Natural Resources Defense Council of Washington, D.C. (NRDC); the Woodworkers Alliance for Rainforest Protection; some students and staff of Los Altos High School (Los Altos, California); and the general public (six letters). In addition, the following persons with particular research or conservation experience with the species individually supported the submission of a proposal: Mr. J. Beavers (Schaghticoke, New York); Sr. L. Quevedo-H. (Santa Cruz, Bolivia); Dr. L.K. Snook (Westport, Connecticut); and Sr. A. Szwagrzak (La Paz, Bolivia).

Moreover, Dr. J.O. Browder, an Associate Professor in the Department of Urban Affairs and Planning of Virginia Polytechnic Institute and State University, provided a copy of his recent study on the feasibility of small-holder mahogany-planting in Rondônia, Brazil; and TRAFFIC USA advised the Service that it was collaborating with a graduate student of public policy at Harvard University who was studying the relative importance of illegal trade in the total trade in the species and the potential effectiveness of a CITES listing in achieving sustainable harvest and trade. Subsequently, TRAFFIC USA advised the Service that instead the study had evolved into hypothetical policy ramifications, and consequently they did not have such new data and information to provide.

The responses opposed to the submission of a proposal were from the U.S. Forest Service (USFS) and the International Wood Products Association (IHPA). At the Service's public meeting held on February 22, 1994, the IHPA inquired concerning the responsibilities and process used by the CITES Plants Committee (CPC) in recommending that proposals be considered, and the intention of the Service with regard to circulating potential proposals to the range States for comments, and whether those comments would be reflected in final positions of the United States on the species. The Service representatives responded that the CPC had advisory and technical roles, that the Service intended to communicate with the range States, and that the views of range States would be seriously considered. In comments submitted March 14, 1994, IHPA stated that they share a belief that the species does not qualify for Appendix II. They provided a broad and detailed commentary of opposition (with enclosures), which covered the three potential proposals for the several mahoganies. The Service has noted the particular comments on the genera of African mahoganies in the section on those genera below.

At COP8, during an informal meeting on whether to include *Swietenia macrophylla* in Appendix II, most range States favored the Costa Rica or U.S. proposals—except Bolivia, Peru, and Honduras. Ultimately the preferred U.S. proposal was withdrawn because of continuing disagreement. In keeping with Resolution Conf. 8.21, the Service provided a draft of the new proposal to the range States in mid-April 1994 and solicited their comments. Prior to the June 10, 1994, deadline for submission of proposals for COP9, Brazil, Bolivia, and Peru expressed opposition to the potential proposal, whereas Colombia and El Salvador expressed support.

The Service has been discussing this topic with the USFS, particularly regarding concerns about ecological extinction of the species, and with the U.S. Department of State, regarding the positions of range States and the effective role of CITES. The Service recognizes that some have argued that the purchase of CITES-approved mahogany wood could support sustainable use of this species, since listing requires the countries where a species is native to find that its export would not be detrimental to the survival of the species before they issue export permits.

On June 9, 1994, the Service became aware that The Netherlands had submitted a proposal for inclusion of this species in Appendix II. The United States decided not to submit another proposal and to address unresolved issues, in an effort to reach a consensus on the proposal that The Netherlands had already submitted for this species. The Service is now seeking comments on that proposal; see the September 6, 1994, **Federal Register** notice (59 FR 46023).

8. African mahoganies (*Entandrophragma* and *Khaya*). The genera *Entandrophragma* (about 11 species) and *Khaya* (about 6 species) are native to the tropics of Africa, with *Khaya* extending to the Comoros Islands and Madagascar. All the species have been declining from habitat conversion and selectively varied commercial exploitation, and nearly all have been reported to be threatened in various countries and significant portions of their ranges. The majority of the 17 species have some legal protection in one or more countries, generally with respect to their export. Within the comment period the Service received six comments, with three in favor of submitting proposals for the species and two against.

The Fauna and Flora Preservation Society (London, U.K.) supported the inclusion of all species of both genera in Appendix II. They stated that "Due to the nature of the mahogany trade, it is important to appreciate that equal and parallel attention and protection must be afforded to *Khaya* spp. and *Entandrophragma* spp. as to *Swietenia macrophylla* * * *. There are only a few areas of Africa where * * * African mahoganies have [not] already suffered massive decline * * *." The NRDC also expressed support for including both genera in Appendix II and concern about the inter-relationships of trade in wood of the three genera. The AIA chair of its Rainforest and Natural Resources Task Group, who is also a member of the Steering Group of the AIA Committee on the Environment, wrote, on behalf of the architects of the AIA, in favor of the inclusion of the genera. He stated that he understood Appendix II listing would not constitute a trade ban, and that inclusion of the species would help architects and designers to make responsible and objective decisions concerning their use [since they could purchase from the CITES-approved exports].

At the Service's public meeting held on February 22, 1994, an individual representing IHPA inquired concerning the responsibilities and process used by the CPC in recommending that proposals be considered, and the intention of the Service with regard to circulating potential proposals to the range States for comments, and whether those comments would be reflected in final positions of the United States on the species. Service representatives responded that the CPC had advisory and technical roles, that Germany had the lead with African mahoganies and was communicating with the range States, and that the views of range States would be seriously considered.

In early May 1994, the Service received copies of the replies Germany had received by April 26, from 13 of the 31 range States; 6 supported inclusion of the genera in Appendix II, 3 were against proposals, and 4 were neutral.

In its comments submitted March 14, 1994, IHPA stated that they do not believe that these genera qualify for Appendix II. They provided a broad and detailed commentary of opposition (with enclosures), which covered the three potential proposals for the several mahoganies. Regarding in particular the African mahoganies, the IHPA stated that the volumes of traded wood listed in the proposals are not clearly linked to total reductions in standing volumes of the species across their ranges. They also stated that much is in protected areas and gave as an example that 20 percent of rainforest in Ghana is in totally protected reserves. In addition, IHPA enclosed a letter of February 18, 1994, to them from the Planning Branch of the Ghana Forestry Department, which stated that listing under CITES is not necessary for the protection of these species in Ghana, and provided details on Ghana forest management and these species; see the similar statement below from the Ghana Timber Export Development Board.

The Trade and Investment Office of the Embassy of Ghana in the United States expressed opposition to including *Entandrophragma* and *Khaya* in Appendix II. However the basic

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differences in controls between Appendix II and Appendix I may not have been fully understood by them or the Ghana Forestry Department, as the Embassy included a statement from the Ghana Timber Export Development Board (Takoradi, Ghana), similar to the letter of the Forestry Department, both of which expressed the view that "A ban [sic] on exploitation of these species in the case of Ghana is rather likely to undermine current efforts to protect them * * *" The Embassy stated that the timber industry is a very important contributor to foreign-exchange earnings, those two genera constitute about 50 percent of their production and exports, and the country has made great strides (giving details) towards sustainable management of Ghana forests. They stated that forest management in Ghana now is recognized as being the best in sub-Saharan Africa.

The Embassy included a detailed statement from the Timber Export Development Board which stated that Ghana has made forest-management reforms and has conservative forest-exploitation controls and protective strategies that provide adequate regulatory measures to ensure sustainable utilization, which are being enforced. The Board provided details about the four *Entandrophragma* species and three *Khaya* species that are native, indicating that four of the seven species are quite widely distributed and some of the species occur nationally at very low densities, and giving thorough estimated inventories of the seven species (for the high-forest region of southern Ghana). The Board noted that there are few remaining large trees for exploitation, but that "* * * this implies commercial extinction of the species only, as there is plenty of regeneration and the present management system has been designed to protect the species."

The Service was advised that Germany would submit proposals to include the two genera in Appendix II, and decided that the United States would evaluate the German proposal objectively without being a co-proponent.

9. Non-native Aloes (*Aloe* spp.). All species of *Aloe* are in the CITES appendices, with nearly all in Appendix II, including *Aloe vera* (synonym *Aloe barbadensis*). The genus is essentially African. Plants regarded as *Aloe vera* have been used by people for millennia and the yellow-flowered species may be extinct in its native range—it may have been native to the southern Arabian Peninsula or northeastern Africa (e.g., Ethiopia) where similar species occur (but perhaps instead was native to the Canary Islands).

The parts and derivatives of artificially propagated *Aloe vera* are unregulated. The whole plants commonly in trade as aloe vera are of artificially propagated (or also naturalized) origin, and they have become an enforcement burden. On January 27, 1994 (59 FR 3832), the Service announced that it was considering submission of a proposal to remove the non-native population of *Aloe* that is geographically distinct from the general African area. All species of *Aloe* where they may be native thus would have continued to be regulated by CITES, including those on the Arabian Peninsula and the islands neighboring Africa, such as the Canary Islands, Socotra, and Madagascar.

Although no written comments were received during the comment period, Mr. Gary W. Lyons (of Gary Lyons Garden & Horticultural Consultant & Design), a member of the IUCN/SSC Cactus and Succulent Specialist Group and past chair of the Conservation Committee of the Cactus and Succulent Society of America, renewed (by telephone within the comment period) the concerns in his written commentary provided to the Service for the September 1993 CPC Meeting, and in August 1994 provided a copy of his analysis written for consideration during the 23rd Congress of the International Organization for Succulent Plant Study. On April 12, 1994, the United States discussed the subject at the 17th CITES North American Region Meeting near Ottawa, Canada. That group recommended that a proposal not be submitted, because of the risk it would create for illegal import of rare *Aloe taxa*, possibly including native wild *Aloe vera*.

The Service considered whether exclusion of the plants from the non-native (non-African) population of *Aloe* would significantly increase risk to the survival in its native range of any *Aloe* (i.e., species, subspecies, botanical variety, or significant population). The United States decided not to submit a proposal. The subject was discussed at the CPC meeting in May 1994; Switzerland has since submitted a proposal for the removal of *Aloe barbadensis* [sic] [i.e., *Aloe vera*] from Appendix II.

The Service is now seeking comments on that proposal; see the September 6, 1994, **Federal Register** notice (59 FR 46023). The Service is considering whether the artificially propagated whole plants of *Aloe vera* can be dealt with in a different way, without putting wild *Aloe taxa* at increased risk.

10. Port-Orford-cedar (*Chamaecyparis lawsoniana*). Port-Orford-cedar (POC) is endemic to southwestern Oregon as well as northwestern California, in an area that is generally coastal, mostly from about Coos Bay to Arcata. The species has been significantly reduced in natural standing volume, and is now logged almost entirely for export (primarily to Japan). An introduced pathogen (*Phytophthora lateralis*) has been spreading particularly as a side effect of soil transport by vehicles and logging equipment. Within the comment period the Service received 28 comments, 17 in favor of submitting a proposal to include this species in CITES Appendix II, and 11 against.

Dr. D.B. Zobel, a plant ecologist and professor at Oregon State University, who has studied and/or observed the species and its situation since 1972 and is senior author of the monograph Ecology, Pathology, and Management of Port-Orford-Cedar (1985), considered that an attempt to control POC harvest through CITES would not be appropriate or effective, and could be counterproductive. He provided a detailed review that sometimes questioned whether assertions of threat, management, or protection were unproven belief or fact.

Dr. T.T. Lawson, a forest pathologist of Lawson-Rasor Associates, who has spent several years monitoring research and control efforts on the POC disease, submitted a detailed evaluation and concluded that listing POC in Appendix II is appropriate and needed to reduce spread of the root pathogen. Dr. E.M. Hansen, Professor of Forest Pathology at Oregon State University, has worked with POC and *Phytophthora lateralis* for 22 years. He submitted detailed information and data about research on the root-rot disease and assessments of its present status and potential effects. While continuing to be seriously concerned about the impact of the disease on POC, he opposed listing because he believed that [even] halting log exports would not slow the spread of the disease, and might indirectly lead to a reduction in the management efforts to protect POC.

The Oregon Natural Resources Council provided additional information on POC and its situation, including the report (*In press*) by T.T. Lawson, Port-Orford-Cedar: A Species Under Siege.

The Siskiyou Regional Education Project and Siskiyou Audubon Society supported proposed inclusion of the species in Appendix II, providing a detailed analytical report. They stated that POC has been found to be a keystone species in riparian forests,

enhancing their biodiversity (including fisheries), and that this species also is sometimes a critical riparian colonizer. They questioned various relatively recent regional and local USFS administrative plans, decisions, and activities. They detailed concerns and evidence about spread of the disease, even into areas designated as wilderness, wild-and-scenic rivers, and botanical areas, consequent to salvage-logging and new logging operations as well as travel on back-country roads inadequately restricted or not closed. They included and endorsed a statement also sent separately by Mr. J. Rogers, a professional forester of Rogers & Associates who since 1968 has been familiar with the species and consequences of the root-rot disease from logging. He stated that unless export is halted, most of what remains of the species will be logged and/or infected, including the largest known individual of the species.

The NRDC expressed support for inclusion of this species in Appendix II, and supplied detailed additional information and data on its situation. They stated that this species is the only Pacific Northwest conifer that can still be exported from Federal lands in log form legally since it had been designated a surplus commodity, and because of high foreign demand for logs—almost exclusively from old-growth trees. They noted concerns about genetic erosion, and provided details regarding the water mold and its potential and likelihood of spreading. The NRDC believes that a halt to logging has become necessary.

Greenpeace USA supported the proposal to include the species in Appendix II, stating among other concerns that continued logging of the best POC stocks could further reduce the genetic reserves of the species and the possibility of finding potential genotypes that could resist or overcome the disease.

The Fauna and Flora Preservation Society (London, U.K.) indicated that the export appeared to clearly warrant inclusion of the species in Appendix II. The chair of the AIA Rainforest and Natural Resources Task Group, who is also a member of the Steering Group of the AIA Committee on the Environment, wrote on behalf of the architects of the AIA, in favor of inclusion of this species. He stated that he understood CITES Appendix II listing would not constitute a trade ban, and that inclusion of the species could help architects and designers to make more responsible and objective decisions concerning its use [since they could purchase from the CITES-approved supplies]. During the comment period eight letters from the general public supported submission of a proposal to include POC in Appendix II.

Fletchcraft Mfg. and Stahl's Traditional Archery supported restriction or stopping of export of the species. Both companies advocate an ecologically sustainable supply of POC wood for arrow manufacturing.

Other letters of opposition to the potential CITES proposal were received within the comment period from Arcata Redwood Company, Douglas Timber Operators, Reservation Ranch, Weyerhaeuser Company, Woodland Management Professional Foresters, and the Association of Consulting Foresters of America. Also, Mr. D. Brattain of Reservation Ranch coordinated and led a POC Alliance mostly comprised of about 20 timber, lumber, and/or exporting companies and also the Oregon International Port of Coos Bay, Coos Chapter of the Society of American Foresters, and Coos County Forestry Department, which submitted an extensive document including a detailed response against the potential proposal to list the POC in Appendix II, with supplementary materials on POC and its situation, including additional usually detailed letters of opposition from the Coos County Forestry Department, the Coos-Curry Electric Cooperative, the [Coos] Bay Area Chamber of Commerce, a private POC landowner who also is a State Director for the Oregon Small Woodlands Association, The Agnew Company, Georgia-Pacific Corporation, Moore Mill & Lumber Company, Rough & Ready Lumber Company, South Coast Lumber Company, Spalding & Son Lumber Manufacturers and Wholesalers, Westbrook Land and Timber, Stuntzner Engineering & Forestry, a USFS silviculturist—acting in a private capacity—with 15 years of responsibility for POC management to minimize spread and impact of the root-rot disease in a major National Forest Ranger District, the Oregon Chapter of the Association of Consulting Foresters of America, the Oregon Society of American Foresters, and the Natural Resource Group (Birmingham, Alabama).

The Oregon Department of Forestry expressed opposition to inclusion of this species in Appendix II. They stated that virtually all of the commercially valuable timber of the species is on Federal lands, that there is ample protection due to the extensive acreage of land set aside for various conservation purposes, and that there is a program in place that will limit damage caused by the root disease on Federal lands and it is adequate to protect the species. They also found that the ecosystem-based direction of management taken by Federal land-management agencies under the President's "Option 9" plan is sufficient to protect this species in its ecosystems, and they expect that the volume of the type of material demanded in the export market will be reduced because of implementation of this plan.

The California Department of Forestry and Fire Protection stated that they advise private landowners on precautions to be taken to prevent spread of the root rot, and that they generally have as a mitigation requirement of timber harvesting that the landowner follow the USFS policies and procedures. They asked that the decision for or against a proposal to list under CITES be made to protect or prolong the biological and ecological viability of the species in its natural range.

The USFS recommended that the species not be added to Appendix II. The USFS provided detailed information (with detailed maps) about the species, its utilization, the water mold that infects POC and causes a virulent root disease, and the interagency program for Port-Orford-cedar conservation and management [through the Interregional POC Coordinating Committee], which the USFS chairs. The USFS stated that over 40 percent of the tree species' range is in reserves protected from harvesting, that harvests have substantially declined and growth now exceeds harvest and mortality, and that they have an active range-wide interagency effort underway [and the Interregional Port-Orford Cedar Action Plan] to manage the species and the infectious fungus.

The Service carefully evaluated whether *Chamaecyparis lawsoniana* qualified for CITES Appendix II, and could benefit from export regulation by means of an Appendix II listing, which included a discussion of its situation at the CITES Plants Committee meeting held in Mexico in May 1994. The Service recognized that a significant portion of POC is in reserves that for various reasons are protected from harvesting (in some cases except for thinning and salvage cutting), that most of the species is on public lands under Federal management, and that there are meaningful efforts to harvest sustainably and to curtail the *Phytophthora* disease. The Service concluded that Federal and State regulatory mechanisms, governmental and private conservation actions, and endeavors particularly through the U.S. Forest Service to

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understand and to control the introduced disease now affecting some populations, were able to cope with this endemic species' present circumstances without the need for additional regulatory authority through use of this international treaty.

Species Proposals Submitted

1. Saiga antelope (*Saiga tatarica*). The EIA sent the Service a proposal to list both subspecies of the saiga antelope in Appendix I. The horns of the saiga antelope have been used in Asian traditional medicines. Saiga have also been utilized as a food source at varying levels of intensity depending on location and availability. The Mongolian Ministry of Nature and Environment provided a rather detailed account of the status and biology of *S. t. mongolica*, which now exists in two small disjunct populations in Mongolia, one estimated at about 1400 individuals in 1993 and the other estimated at 125 animals in 1983. They recommended that this subspecies be listed in Appendix I.

Saiga tatarica tatarica occurs in two major populations, one in Kazakhstan and a second south of the Volga River and northwest of the Caspian Sea in the Kalmykian Republic, Russian Federation. By the end of World War I this subspecies was near extinction, but began to recover in the 1920's so that by the late 1950's the population in Kazakhstan was reported to have reached nearly 2,000,000, and in Kalmykia saiga had reportedly increased to about 800,000. In the last two decades these numbers have been reduced again, fluctuating around 150,000 in Kalmykia and down to about 450,000 in Kazakhstan in the last few years. These reductions are reportedly the result of a combination of factors including weather, land-use changes, and poaching for horns.

Four comments were received within the comment period. Three comments favored listing saiga antelope in Appendix I, while the fourth supported only an Appendix II listing.

The AHA was in favor of an Appendix I listing "until trade in the species can be shown to be non-detrimental to the survival of the species." They stated that researchers indicate that saiga hunting in Russia has been nearly out of control over the last 3–4 years, implying that this increase is due to poaching for horns.

Defenders supported an Appendix I listing, suggesting that saiga, like the rhino, are being threatened by poaching and overhunting for the horn trade, and that saiga horn is the most expensive fever-reducing substance used in traditional medicines after rhino horn. They stated that saiga are also hunted for their meat, fat, and hides. They admitted that status and trade data are extremely limited, but that recent aerial surveys indicated a rapid rate of decline of saiga populations. They also pointed out the dramatic population reductions that can occur among saiga due to extreme weather conditions or food shortages.

The HSUS favored an Appendix I listing for the saiga, also indicating the similarity between the use and demand for rhino and saiga horn. From an estimated 2 million animals in the 1960's, *S. t. tatarica* has plummeted to about 800,000 individuals according to HSUS, due apparently to uncontrolled hunting in Russia and Kazakhstan for the horns. The HSUS noted that the use of saiga horn as a substitute for rhino horn in traditional Chinese medicine has been and is likely to increase as pressures to control the trade in rhino horn intensify.

The World Conservation Union's (IUCN) Sustainable Use of Wildlife Programme questioned the long-term benefits to saiga to be derived from an Appendix I listing. Such a listing for the Russian subspecies would technically prohibit commercial trade in the species, thus eliminating its value. Local and regional authorities currently would find it nearly impossible to implement the controls necessary to sustain saiga populations in the absence of obvious and immediate value to the local economy. They suggested that the local rural population would probably increase livestock numbers in saiga habitat to supplement and replace the value lost from saiga as a result of an Appendix I listing, eventually resulting in extirpation of the saiga. An Appendix II listing would require the Governments of Russia (for the Kalmykia population), Kazakhstan, and Mongolia to implement administrative and management procedures that, if adequate, could be beneficial to the species. The IUCN group was concerned about the demand for saiga horn and possible illegal trade.

Comments received from the Russian Ministry of Protection of the Environment and Natural Resources described the existence of the two major populations of *S. t. tatarica*, one in Kalmykia of about 150,000 animals and one in Kazakhstan consisting of "several tens of thousands." Hunting of saiga has been increasingly reduced since about 1984, with only limited sport-hunting now allowed in Kalmykia, and protected reserves have been established. The diminished status of the saiga is due to habitat modifications, changes in land use, and illegal hunting. The Ministry favored a listing of saiga antelope in Appendix II of CITES. Also, by personal communication, the Chinese Ministry of Forestry indicated that they could support an Appendix II listing.

In addition, the U.S. Fish and Wildlife Service funded a visit in the Spring of 1994 to Moscow and Kalmykia by Dr. James Teer, Welder Wildlife Foundation, Sinton, Texas, and Dr. Fred Lindzey, Wyoming Cooperative Fish and Wildlife Research Unit, University of Wyoming, Laramie, Wyoming, to report on the status of the saiga. Teer and Lindzey opined that the Kalmykian saiga population can no longer sustain itself when harvests for horns, meat, and hides are permitted for export, but that it can sustain a small offtake from hunting. Even so, they were concerned about poaching and the ease of movement of saiga parts across borders. They also felt that the Kalmykian population might rebound due to the great fecundity of saiga, along with a reduction in livestock, habitat improvement, and the control of poaching, all factors the Kalmykian authorities claim they are implementing. While realizing that an Appendix II listing would not prohibit exports, Teer and Lindzey suggested that the United States might delay proposing a CITES listing to allow time for current management measures and the population status in Kalmykia to be evaluated, and to give Kazakhstan time to become a Party to CITES.

As a result of comments and information received concerning the amount of poaching of saiga antelope and the illegal trade in saiga horns, the use of saiga horns in combination with or as a substitute for rhinoceros horns in traditional medicines in conjunction with intensified pressures to stop the trade in rhinoceros horn, and the evidence of considerable declines in populations of *S. t. tatarica* over the last two decades for various reasons, the Service has proposed that populations of *S. t. tatarica* be included in Appendix II of CITES. The numbers of *S. t. mongolica* are so low in the wild that the full protective potential of CITES seems warranted, therefore the Service has proposed that the Mongolian population be included in Appendix I of CITES.

2. Urial (*Ovis vignei*). The Service requested information and comments to help clarify which populations of the urial should be included in Appendix I as a result of the 1973 listing of *Ovis vignei* by India. Confusion regarding the intended inclusiveness of the original listing of 1973 arose as a result of (1) actions considered at COP2 in 1979; (2) range information presented in the CITES-adopted check list for mammals, Mammal Species of the World, 1982, edited by Honacki, Kinman, and Koeppl; and, (3) distribution and synonymy given in Mammal Species of the World, 2nd Edition, 1993, edited by Wilson and Reeder. The issue was whether the original listing implies a conservative application of the name, thereby restricting the listing to only populations in the Ladakh region of Jammu and Kashmir, or there was a broader intent, as presented in Honacki, Kinman, and Koeppl, 1982?

Five comments were received within the comment period on this problem. TRAFFIC USA passed on information from TRAFFIC India attesting to the endangered status of the urial sheep in India, and from TRAFFIC France indicating that urial hunting trips in central Asia are being organized by French companies. Dr. Steve Edwards, IUCN, supported the submission of a proposal to clarify which populations of *O. vignei* are to be included in Appendix I.

The three remaining comments were from Safari Club International, Dr. Richard Mitchell, and Mr. Ron Young of Expeditions by Ron. The first two commenters argued that the intent of the original listing was to include only the population in the Ladakh region of Jammu and Kashmir, while the latter noted that, according to his observation, the Transcaspian urial, the Afghan urial, the Blandford urial, and the Punjab urial are all abundant in the wild.

The Government of Pakistan indicated that the shapu (*O. orientalis vignei* (= *O. v. vignei*)), the gad (*O. o. blanfordi* (= *O. v. blanfordi*)), and the Punjab urial (*O. o. punjabiensis* (= *O. v. punjabiensis*)) are in fair numbers in Pakistan and that there is no need to list them under CITES.

Also, Mr. Earl Baysinger, U.S. Fish and Wildlife Service, who attended the Convention's Plenipotentiary Meeting and COP2, provided a detailed account of the discussions that took place at that meeting of the Parties concerning the proposal and ultimate listing of the urial, and claimed that the Parties intended to include only *O. vignei vignei* in Appendix I.

The Service is, therefore, proposing that only *O. vignei vignei* of the Ladakh region of Jammu and Kashmir be retained in Appendix I, and that all other populations of *O. vignei* be included in Appendix II for biological and similarity of appearance purposes.

3. Box turtles (*Terrapene* spp.). Prior to COP8, the New York Zoological Society recommended listing box turtles in Appendix II. However, the Service did not have sufficient information on trade in these species, and did not submit a proposal for consideration at COP8. Since then the Service has accumulated data in its Law Enforcement Management Information System (LEMIS) on exports and imports of box turtles in an effort to obtain appropriate trade information.

The genus *Terrapene* includes the four species (*T. carolina*, *T. coahuila*, *T. nelsoni*, and *T. ornata*), with 11 subspecies recognized among them. *Terrapene coahuila* is currently listed in Appendix I of CITES. *Terrapene nelsoni* occurs in a small fragmented range on the west coast of Mexico, while *T. ornata* is found over a large area of the midwestern United States. *Terrapene carolina* has the largest range, occurring from Canada to Mexico as far as Yucatan, and from the Atlantic coast west into approximately the eastern edge of the prairie in the Midwest.

Box turtles are long-lived, sexual maturity is late, and annual reproduction is low. They exhibit high site fidelity, which tends to amplify the impacts of habitat fragmentation. The removal of adult turtles from the wild can have a significant impact on the status of populations.

A large number of comments were received in response to the January 27, 1994, notice. Twenty-two States responded, in 16 of which box turtles are protected by State law. None of these responses objected to a proposal to list the box turtle in Appendix II. Comments from the States noted the continued loss of habitat, illegal collecting, negative impacts of the pet trade in box turtles, some indications of international trade, and suggestions of declines in some populations. Of the 298 comments received from individuals, only one did not support the proposal to list box turtles under CITES, and this one negative comment was made pending the collection of more data. Many of these comments included anecdotal accounts and observations of population declines, and the occurrence of box turtles for sale in pet stores in the United States and abroad. Supporting comments were also received on behalf of 23 non-governmental organizations, although 2 of these supported the listing of box turtles conditioned on proper treatmen of pet-trade turtles, and more rapid processing of permit applications. Most of these responses focused on the impacts of the pet trade and poor shipping conditions.

Based on (1) the large number of box turtles exported from the United States since 1988; (2) an apparent increase in the demand for box turtles in the international pet trade, particularly since 1984 when the EU banned trade in Mediterranean land tortoises (*Testudo* spp.); (3) the reported decline in numbers throughout the range of *T. ornata* and *T. carolina*; (4) an increase in fragmentation of box turtle habitat; (5) the difficulties of implementing State protective laws, especially when similar protection is not provided in other States; and (6) the increased negative impact of these factors on species exhibiting low reproductive rates and high site fidelity; the Service has proposed to include all the populations of box turtles in the genus *Terrapene* in Appendix II of CITES, except *T. coahuila*, which will remain in Appendix I.

4. Tarantulas (*Brachypelma* species). The Service received a proposal from Dr. Robert Wolff of Trinity Christian College, Palos Heights, Illinois to list all the species in the genus *Brachypelma* (also known as *Euathlus*) in Appendix II. There are about nine species in the genus, and one, *B. smithi* the red-kneed tarantula, is presently included in Appendix II. Members of this genus are usually colorful and among the most sought after tarantulas for the pet trade. The taxonomy of the genus is not well known and identification of species is often difficult.

Four responses to the possible listing of *Brachypelma* species were received. Although one commenter only supported the inclusion of the genus in Appendix II by implication, the other three commenters specifically supported this action. The HSUS noted the popularity of *Brachypelma* species in the pet trade and the enhanced support of enforcement efforts that this action would provide. TRAFFIC USA claimed that there is increasing evidence for widespread trade in several species of the genus. TRAFFIC France reported to TRAFFIC USA increased trade in tarantula species throughout western Europe involving at least four other species in addition to *B. smithi*. The Mexican Government supported the addition of all species of *Brachypelma* in Appendix II. The Service has therefore proposed the inclusion of all taxa in the genus *Brachypelma* in Appendix II, including but not limited to the following species: *B. albopilosum*, *B. angustum*, *B. auratum*, *B. boehmei*, *B. emilia*, *B. fossorium*, *B. pallidum*, *B. sabulosum*, *B. vagans*. Any taxa discovered subsequent to this listing and included in the genus *Brachypelma* would also be automatically included in Appendix II under this proposed listing action.

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5. Freshwater mussels (family Unionidae). Members of this family occur in their greatest variety throughout the Southeast and the Midwest of the United States in major river drainage systems including the upper Mississippi River.

Many species in the family have become extinct or reduced to very low numbers largely as a result of habitat destruction and/or degradation. A few species have been collected commercially, initially as a source of raw material for the button industry, but, since the advent of synthetic button materials and the artificial pearl industry in Japan, as a source of spherical blanks around which nacre is deposited by living bivalves during the production of pearls. These species, which are sought commercially, are generally characterized by their thick, white shells, and they occur most often in large rivers and reservoirs. Most states where they are harvested regulate their collection, usually with prohibitions on collection in waters known to contain populations of endangered or threatened unionid species. Although endangered and threatened unionids may occasionally be taken incidentally along with the commercial forms, there does not appear to be compelling evidence indicating any significant export of endangered mussels with commercial shipments for the pearl industry.

Other species are harvested, although in smaller numbers, for the natural freshwater pearls used in jewelry. Still others, those with colorful nacre, are utilized directly in the production of jewelry. Shell collecting alone is believed to be a threat to some species, especially those that are rare or unique. Trade in these products and/or shells may constitute a threat to many species, especially those most endangered.

Three comments were received during the comment period concerning a possible proposal to list unionids in the Appendices of CITES; one from the Fisheries Agency of Japan, one from the State of Missouri, and one from the Tennessee Shell Company, Inc.

The FAJ voiced a general concern about listing species in the absence of sufficient scientific evidence to show that there is a threat to extinction for an Appendix I listing, or that they may become threatened with extinction unless such species are subject to strict regulation for an Appendix II listing. Specifically, they felt that no scientific data have been presented demonstrating the degree of extinction and the presence of threats from trading for each of the more than 200 species of freshwater mussels. Furthermore, they stated that listing all the species of this taxon because some are potentially threatened by collectors could also be similarly applied to all other groups of species, which would pose a serious obstacle to the effective use of living resources. They indicated that it would be inappropriate to enforce such regulations without justifiable reasons.

The Tennessee Shell Company, Inc. expressed concern for the plight of freshwater mussels in general, citing such threats as water pollution, cold or hot water discharges into mussel habitat, sediment deposition, dredging, bridge construction, natural die-offs, etc. They offered support of efforts directed at the protection and conservation of freshwater mussels from habitat destruction resulting from these kinds of hazards.

The Missouri Department of Conservation generally supported the listing of Unionid mussels in CITES Appendices, with the exception of four species that are of commercial value.

After considering comments received, and the level of trade information available, along with the difficulties of species identification and the separation of look-alikes, the Service has proposed that the Appendices to CITES be revised by:

1. Transferring *Epioblasma sulcata (=obliquata) perobliqua*, and *Lampsilis satura* from Appendix I to Appendix II;

2. Labeling *Epioblasma sampsoni* (now in Appendix I) as pe (probably extinct);

3. Deleting all the species now included in Appendix II, since they will be included in the following broader listing; and

4. Including all other North American populations of mussels in the family Unionidae in Appendix II, with the exception of the shells and the artificial pearls presumed to contain blanks from the taxa listed below.

Amblema plicata, Ellipsaria lineolata, Fusconaia ebena, F. flava, Ligumia recta, Megalonaias nervosa, Obliquaria reflexa, Pleurobema cordatum, Quadrula apiculata, Q. metanevra, Q. nodulata, Q. pustulosa, Q. quadrula, and *Tritogonia verrucosa.*

The Service believes that these species are easily distinguishable from the species listed as endangered or threatened under the Endangered Species Act.

Public Comments and Decisions on Possible Resolutions

In response to the November 18, 1993, and the January 28, 1994, **Federal Register** notices (58 FR 60973 and 56 FR 4096) comments were received from numerous organizations regarding a resolution to amend the criteria for listing species in the CITES Appendices (see discussion of listing criteria resolution below).

In addition, several non-governmental organizations, in writing and at the public meeting on February 22, 1994, requested that the Service submit a resolution for consideration at COP9 establishing a Law Enforcement Network. The Service supported the establishment of a Law Enforcement Network, both at the Standing Committee meeting of March, 1994, and in writing to the CITES Secretariat. The Service remains strongly supportive of increasing the role of law enforcement in the CITES context, both through networks among the Parties and through increased training of appropriate enforcement officials. It is the Service's understanding that the item is already on the agenda for COP9, and that one or more Parties may have already submitted resolutions on the subject.

Comments on the possible resolutions that the Service may consider submitting were also received from the Center for International Environmental Law (CIEL), the Hawthorn Corporation, and one private individual. The CIEL requested that the United States submit a resolution that clarifies the relationship between CITES and other international agreements related to the management of species. The CIEL's suggestions can be considered to be incorporated into the resolution discussed below, regarding the implementation of Article XIV of the Convention, which deals with the relationship between CITES and treaties regulating the management of marine species. The Hawthorn Corporation provided comments on the issue of trade in tiger parts and products, and requested that trade in captive-bred tigers for circuses and other live animal exhibitions be differentiated from concerns about trade in tiger parts and products and related poaching of wild tigers. The Service agrees that tigers that are part of a U.S. traveling circus are not part of the trade problem related to the poaching of wild specimens. Circus tigers, born in the United States, are certified as captive-bred under CITES by the Service and are eligible for a certificate from the Service's Office of Management Authority. The private individual provided comments on various issues related to trade in artificially propagated plants, which the Service will take into consideration when reviewing resolutions pertaining to that trade, upon their receipt from the CITES Secretariat. In addition, the Service's Office of Scientific Authority has been working with the CITES Nomenclature Committee to consolidate and update the previous resolutions dealing with nomenclatural issues.

The following presents the background and sense of the three resolutions submitted by the United States for consideration at COP9. (The Service's tentative positions on resolutions and agenda items, including those discussed in this notice as well as on the establishment of a Law Enforcement Network, were presented in a **Federal Register** notice of October 4, 1994 (59 FR 50609)).

Resolutions Submitted

1. Article XIV Implementation. The provisions of CITES apply to all species of wild fauna and flora, including marine species. The management of many marine species comes under the jurisdiction or competence of another international treaty, convention, or agreement. International trade in any species of marine fauna or flora is also within the purview and competence of CITES. Therefore, even if a marine species is subject to management under another international treaty, convention, or agreement, and if it is listed in any CITES Appendix, then international trade and introduction from the sea in the species is also regulated by CITES. CITES made special provisions for Appendix II marine species that are regulated under another treaty extant when CITES came into force.

Article XIV, paragraph 4, of the Convention provides that a State party to CITES, which is also a party to any other treaty, convention, or international agreement which was in force at the time of the coming into force of CITES, and under the provisions of which protection is afforded to marine species included in Appendix II, is relieved of the obligations imposed on it under CITES with respect to trade in specimens included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention, or international agreement.

However, Article XIV, paragraph 5 requires that Parties exempted from the usual CITES obligations under Article XIV, paragraph 4, must nevertheless issue certificates stipulating that the specimen was taken in accordance with the provisions of the other treaty, convention, or international agreement in question. This provision of the Convention has never been used, and standards for its implementation have not been developed. Currently no marine species whose management is under the competence of another treaty, convention, or agreement is listed in Appendix II (this relief from CITES obligations does not apply to specimens of species included in Appendix I).

The Service has determined that it would be wise to plan for the need to implement Article XIV, by specifying requirements for certificates issued pursuant to Article XIV, paragraph 5, of the Convention, even if its use is not necessary at this time. The Service notes that Appendix II allows for international commercial trade. The draft resolution was written in consultation with NMFS. The Service's goal in submitting this resolution is to clarify how an Appendix II listing could be implemented expeditiously for a marine species whose management was under the competency of a pre-CITES treaty. The draft resolution would provide for the utilization, as a valid certificate under Article XIV, paragraph 5, of a certificate of origin or statistical document issued on the authority of the other treaty, convention, or international agreement, with certain stipulations of minimum information and validation as required by CITES. Such certificates would only be an option for CITES Parties that are also parties to the other treaty, convention, or agreement, and if the specimens are taken by ships registered by the Party country. Export permits or introduction from the sea certificates are required in all other situations.

2. Criteria for Amendments of Appendix I and II. The existing CITES listing criteria, known as the "Berne Criteria," were developed at the first CITES Conference in 1976 in Berne, Switzerland. The move to revise them originated at COP8 in Japan. At COP8 the Parties agreed to start a process, coordinated by the Standing Committee, to develop a scientifically sound revision for consideration at COP9. The World Conservation Union (IUCN) was asked to do a first draft, which would be revised at a joint meeting of the CITES Standing, Animals, and Plants Committees, and put into CITES resolution form. The United States participated in the joint meeting in Brussels in September 1993, which reviewed the IUCN draft and produced a draft resolution that was circulated to the Parties.

Prior to the September 1993 joint committee meeting, the Service received comments from 46 organizations and private individuals regarding the proposed revised listing criteria. After the September 1993 Standing Committee meeting, in response to the **Federal Register** notice of November 18, 1993, the Service received comments from 18 organizations. The Service carefully reviewed and analyzed all comments received. Five organizations basically supported the new criteria. The Service received comments from 13 organizations that either opposed the new criteria, opposed parts of the new criteria, or recommended that the United States submit an alternative to the joint committee draft resolution. All comments were taken into consideration by the Service in formulating comments to the draft resolution.

The Service submitted comments for the United States to the Standing Committee, after consultation with other Federal agencies and after reviewing the extensive public comments received. Comments received by the CITES Secretariat from other governments were also reviewed. The U.S. comments maintained that much of the draft resolution was not valid scientifically, and was not acceptable from conservation, management or practical perspectives. The United States believed that the criteria as proposed met neither the CITES treaty's requirements for the conservation of species in their ecosystems, nor the diverse needs of the CITES Parties. The U.S. comments and those of other Parties were discussed at the 31st meeting of the Standing Committee, in Geneva in March 1994. Some of the U.S. comments were taken into consideration in developing the final Standing Committee draft resolution. The final Standing Committee resolution was not available to the United States or other CITES Parties until after the June 10, 1994, deadline for submission of resolutions and proposals to the CITES Secretariat.

The Standing Committee resolution contains six annexes, several of which the United States looks forward to discussing further with the CITES Parties at COP9. In particular, the United States believes the Standing Committee draft is an improvement on the Berne Criteria as regards precautionary measures. However, the United States believes that Annex 1 (Biological criteria for Appendix I) and Annex 2 (Criteria for inclusion of species in Appendix II) are in need of revision, particularly from a scientific perspective. The United States is particularly concerned about the utility and scientific validity of arbitrary numerical cutoffs for decision-making regarding the appendix within which a species should be included. After detailed review of the scientific literature and consultations with NMFS and other Federal agencies, the Service has submitted alternatives to these Annexes to the Secretariat, along with some additional material for inclusion in the resolution. With regard to the five comments referred to previously as supporting the joint committee's draft

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resolution, there was nothing in these comments that was inconsistent with the revised Annexes 1 and 2 submitted by the Service.

The United States could have waited to present these alternative Annexes 1 and 2 at COP9. However, the United States preferred to provide ample time for this review by the CITES Parties.

The proposed Annex 1 lists a series of interdependent factors to be included in an assessment of the status of a species, and thereby the determination that it is threatened with extinction. The criteria for inclusion of species in Annex 2 (in accordance with Article II paragraph 2(a)), involve a determination of whether a species may become threatened with extinction, and in order to avoid utilization incompatible with its survival.

3. Standard nomenclature. This resolution was submitted at the request of the CITES Nomenclature Committee, and deals with nomenclature and taxonomy of CITES species. The resolution submitted was discussed and agreed upon by the Nomenclature Committee at its May 1994 meeting in Beijing, China. The Service is aware that the names of genera and species in several families are in need of standardization, and that the current lack of standard references with adequate information decreases the effectiveness of the implementation of CITES in conserving the many species that are listed in the Appendices. The Service also recognizes that the taxonomy used in the appendices to the Convention will be most useful to the Parties if standardized by nomenclatural references.

This resolution consolidates recommendations from several previous resolutions and clarifies or updates previous recommendations. The resolution discusses inclusion of subspecies in the Appendices, use of references in proposals, synonyms, other naming conventions, and the role of the Scientific Authorities in nomenclatural issues. The resolution also recommends several standard references for species listed in the CITES Appendices, i.e., for mammals, birds, amphibians, cacti, cycads, ferns, and other plants.

Agenda Items Submitted by the United States

The Service submitted the following two items for inclusion in the COP9 agenda, but did not submit a resolution or discussion paper. The Service intends to submit a discussion paper on both items to the Secretariat, for transmission to the Parties, prior to the COP.

Items Submitted

1. Shark trade. There is information about a recent increase in international trade in shark parts and products, particularly in fins for the food market. However, there are insufficient biological and trade data on which to base a listing proposal at this time. Data on these species are difficult to obtain and will require the cooperation of all Parties and organizations interested in conserving these species. The Service believes that this is an important issue for the Parties to discuss. The Service is considering requesting that the Animals Committee assess methods for obtaining information on the biological and trade status of shark species in international trade, and providing advice to the Parties on possible approaches toward conservation efforts for these taxa. No international body is currently responsible for the management of shark species, including recommendations of catch quotas, minimum sizes, time and area closures, gear restriction, etc. By placing this item on the agenda for COP9, it is not the intent of the United States to propose that CITES take on this responsibility. However, because CITES is the international treaty responsible for trade in wildlife, it provides an ideal forum for the discussion of collection of data on this trade. The Service, in consultation with NMFS, will develop a background paper on this agenda item for submission before COP9.

2. Illegal trade in whale meat. There was extensive discussion at the May, 1994 meeting of the IWC regarding illegal international trade in whale meat, including involvement by CITES Parties. All whales subject to the IWC moratorium on commercial harvest are listed in CITES Appendix I. A resolution on this topic was introduced by the United States and other Parties, and was adopted by IWC at its 1994 meeting. The issue is discussed in the IWC Infractions Report. The Service submitted the information in the IWC Infractions Report on international trade in whale meat to the CITES Secretariat. The Service in consultation with NMFS, will develop a background paper on this agenda item for submission to the Parties before COP9.

Continuing Actions

In mid July, the Service received proposals made by other CITES Parties to amend the appendices. Resolutions and a list of other agenda items that were submitted by other Parties are expected to be received at intervals in September and October. The Service's tentative negotiating position on the species proposals was announced in the Federal Register on September 6, 1994, (59 FR 46023) and a comment period initiated. The Service also held two public meetings on September 14 and 16, 1994, as announced in September 1 and 7, 1994 Federal Register (59 FR 45307 and 59 FR 46023). These meetings provided an opportunity for the public to comment on the species proposals submitted by other countries and on any resolution or agenda item. In the October 4, 1994, Federal Register (59 FR 50609), the Service presented information and tentative negotiating positions on resolutions and agenda items, especially those for which official documents have been received.

The Service will consider all information presented at the public meetings and in writing during the comment period, as well as all other available information, in developing a negotiating position on each species proposal, resolution, and agenda item. These positions will be announced in the Federal Register(s) in late October or early November just prior to COP9. Also in this pre-COP notice the Service plans to request comments on any reservations that should be taken on any species amendments, i.e., species changes to the CITES Appendices, should any of the proposed amendments be adopted by the Parties. Immediately after COP9, the Service will announce the species amendments to the appendices adopted by the Parties; under CITES, these changes will become effective on February 16, 1995.

Reservations

Article XV of CITES enables any party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species in accordance with the terms and limitations of the treaty. In the case of a country that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days following the meeting at which the Parties voted to place the species in Appendix I or II. Just before COP9, the Service will solicit comments with regard to entering reservations. If the United States enters any reservation, such action would be announced in the same Federal Register notice that incorporates the listing decisions of the Parties into the Code of Federal Regulations (50 CFR part 23).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended). It was prepared by

Drs. Charles W. Dane, Wayne L. Milstead, and Bruce MacBryde, Office of Scientific Authority, and Dr. Susan Lieberman, Office of Management Authority.

Dated: September 27, 1994.

Bruce Blanchard,

Acting Director.

[FR Doc. 94-27313 Filed 11-3-94; 8:45 am]

BILLING CODE 4310-55-P

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Notices

Federal Register
Vol. 59, No. 213
Friday, November 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-052-2]

Availability of Determination of Nonregulated Status for Genetically Engineered Canola

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that certain Laurate canola lines are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Calgene, Inc., in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a June 1994 notice announcing our receipt of the Calgene petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690-2817.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Chief, Microorganisms Branch, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 436-7601.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1994, the Animal and Plant Health Inspection Service (APHIS) received a petition from Calgene, Inc., of Davis, CA, seeking a determination that certain Laurate canola lines and their progeny do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On June 14, 1994, APHIS published a notice in the **Federal Register** (59 FR 30569, Docket No. 94-052-1) announcing the receipt of the Calgene petition and stating that the petition was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the Laurate canola lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether the Laurate canola lines posed a plant pest risk. The comments were to have been received by APHIS on or before August 15, 1994.

APHIS received a total of 17 comments on the Calgene petition. The comments were submitted by farmers, associations, universities, a farm cooperative, State officials, a seed company, and an environmental organization. Most of the comments were in favor of the petition; none were critical of this particular petition. APHIS has provided a discussion of the comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Analysis

Laurate canola has been described by Calgene as any *Brassica napus* cultivar or its progeny containing the 12:0 ACP thioesterase (TE) gene from California bay (*Umbellularia californica*) (referred to below as the bay TE gene) with its associated napin promoter and napin terminator regions. The bay TE gene encodes the 12:0 ACP thioesterase enzyme. Activity of the bay TE enzyme results in the accumulation of the 12-carbon saturated fatty acid, laurate, in the canola seed. Laurate canola may also contain a kanamycin resistance (nptII) gene, 35S promoter from cauliflower mosaic virus, *tml* 3′ terminator, *ori* (origin of replication) pRi from *Agrobacterium rhizogenes*, a segment of the transposable element Tn*5*, right and left T-DNA border sequences from *Agrobacterium tumefaciens*, and a Lac Z′ polylinker sequence. The bay TE gene is expressed only in the seed by a seed-specific napin promoter from *Brassica rapa*.

The Laurate canola lines have been considered "regulated articles" under APHIS' regulations in 7 CFR part 340 because their noncoding regulatory sequences were derived from the plant pathogens *A. tumefaciens* and cauliflower mosaic virus. However, 22 field tests of the Laurate canola lines have been conducted at approximately 21 sites in California, Georgia, and Michigan under permits issued by APHIS, and the field reports from those tests indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the Laurate canola lines' release into the environment.

Determination

Based on its analysis of the data submitted by Calgene, a review of other scientific data, the comments received from the public, and a review of field tests of the original transformant lines pCGN3828-212/86-18 and pCGN3828-212/86-23 and other lines derived from those two transformants, APHIS has determined that the subject Laurate canola lines: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become weeds than their nonengineered parental varieties; (3) are unlikely to increase the weediness potential of any other cultivated plant or native wild species with which the organisms can interbreed; (4) will not cause damage to processed agricultural commodities; and (5) are unlikely to harm other organisms, such as bees or earthworms, that are beneficial to agriculture. APHIS has also concluded that there is a reasonable certainty that new progeny varieties bred from the Laurate canola lines pCGN3828-212/86-18 and pCGN3828-212/86-23 will not exhibit new plant pest properties, i.e., properties substantially different from any observed in the field-tested Laurate canola lines, or those observed in standard canola in traditional breeding programs.

The effect of this determination is that the two original transformant Laurate canola lines designated pCGN3828-212/86-18 and pCGN3828-212/86-23, and all other lines bred from those two transformants by sexual or asexual reproduction involving Mendelian inheritance, are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject Laurate canola lines or their progeny. However, the importation of the Laurate canola lines and any Laurate canola nursery stock or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the Laurate canola lines designated as pCGN3828-212/86-18 and pCGN3828-212/86-23, and other lines bred from those two transformants by sexual or asexual reproduction involving Mendelian inheritance, are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 31st day of October, 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-27405 Filed 11-3-94; 8:45 am]

BILLING CODE 3410-34-P

Rural Telephone Bank

Determination of the 1994 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1994 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank fiscal year 1994 cost of money rates have been established as follows: 6.15% and 6.40% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987 through December 21, 1987 where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 1994 under bank loans approved prior to fiscal year 1992 shall bear interest at the rate of 6.15% (the liquidating account rate). All loan advances made during fiscal year 1994 under bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.40% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 1994 for the liquidating account and the financing account are provided in Tables 1a and 1b. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.15% and 6.40%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, Rural Electrification Administration, room 2832, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720-0530.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 ("Credit Reform") (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two costs of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 1994 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 1994 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

Sources and Costs of Funds—Liquidating Account

During fiscal year 1994, the Bank was authorized to pay the following dividends: The dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1994. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $2,110,537. Rescissions of loan funds advanced for Class B stock amounted to $1,679,067. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $431,470 ($2,110,537-1,679,067). The total amount received by the Bank from the issuance of Class C stock was $16,590.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 1994. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 1994 loan advances from the liquidating account over amounts received from issuances of stocks, debentures, and other obligations amounted to $54,082,837. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. § 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is provided in Table 2a. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100-203, and are listed in 7 CFR 1610.10(c) and Table 2a herein.

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Sources and Costs of Funds—Financing Account

During fiscal year 1994, the Bank was authorized to pay the following dividends: The dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; on dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1994. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $2,714,191. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,714,191. No amounts were received in fiscal year 1994 from the issuance of Class C stock associated with the financing account.

During fiscal year 1994, issuances of debentures or any other obligations related to the financing account were $17,346,446 at an interest rate of 6.65% and $34,478,473 at an interest rate of 6.77%.

The excess of fiscal year 1994 loan advances from the financing account over amounts received from issuances of stocks, debentures, and other obligations amounted to $2,299,792. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(V). The calculation of the Bank's historical cost of money rate for advances from the financing account is provided in Table 2b. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: October 31, 1994.

Wally B. Beyer,

Governor, Rural Telephone Bank.

TABLE 1A.—LIQUIDATING ACCOUNT RURAL TELEPHONE BANK COST OF MONEY RATE

Source of bank funds	Amount	Cost rate (percent)	Amount × cost rate	(Amount × rate)/advances (percent)
FY 1994 Issuance of Class A Stock	$0	2.00	$0	0.0000
FY 1994 Issuance of Class B Stock	431,470	0.00	0	0.0000
FY 1994 Issuance of Class C Stock	16,590	7.50	1,244	0.0023
FY 1994 Issuance of Debentures and Other Obligations	0		0	0.0000
Excess of Total Advances Over FY 1994 Issuance	54,082,837	6.20	3,353,136	6.1491
Total FY 1994 Advances	54,530,897	(1)	(1)	6.15
		(2)	(2)	5.00

[1] Calculated cost of money rate.
[2] Minimum cost rate allowable.

TABLE 1B.—FINANCING ACCOUNT RURAL TELEPHONE BANK COST OF MONEY RATE

Source of bank funds	Amount	Cost rate (percent)	Amount × cost rate	(Amount × rate)/advances (percent)
FY 1994 Issuance of Class A Stock	$0	2.00	$0	0.0000
FY 1994 Issuance of Class B Stock	2,714,191	0.00	0	0.0000
FY 1994 Issuance of Class C Stock	0	7.50	0	0.0000
FY 1994 Issuance of Debentures and Other Obligations	17,346,446	6.65	1,153,539	2.0295
	34,478,473	6.77	2,334,193	4.1067
Excess of Total Advances Over 1994 Issuances	2,299,792	6.50	149,486	0.2630
Total FY 1994 Advances	56,838,902	(1)	(1)	6.40
		(2)	(2)	5.00

[1] Calculated cost of money rate.
[2] Minimum cost rate allowable.

TABLE 2a.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY LIQUIDATING ACCOUNT

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances × cost rate	(Advances × cost rate)/total advances (percent)
1974	5.01	$111,022,574	5,562,231	0.254
1975	5.85	130,663,197	7,643,797	0.349
1976	5.33	99,915,065	5,325,473	0.243
1977	5.00	80,907,425	4,045,371	0.184
1978	5.87	142,297,190	8,352,845	0.381
1979	5.93	130,540,067	7,741,026	0.353
1980	9.10	199,944,235	16,195,483	0.736
1981	9.46	148,599,372	14,057,501	0.641
1982	8.39	112,232,127	9,416,275	0.429
1983	6.99	93,402,836	6,528,858	0.298
1984	6.55	90,450,549	5,924,511	0.270
1985	5.00	72,583,394	3,629,170	0.165

TABLE 2a.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY LIQUIDATING ACCOUNT—Continued

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances × cost rate	(Advances × cost rate)/total advances (percent)
1986	5.00	71,852,383	3,592,619	0.164
1987	5.00	51,974,938	2,598,747	0.118
1988	5.00	119,488,367	5,974,418	0.272
1989	5.00	97,046,947	4,852,347	0.221
1990	5.00	107,694,991	5,384,750	0.245
1991	5.43	163,143,075	8,858,669	0.404
1992	6.14	84,940,822	5,215,366	0.238
1993	6.05	84,605,366	5,118,625	0.233
Total advances		2,193,304,921	(1)	6.20

[1] Cost of money rate.

TABLE 2b.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY FINANCING ACCOUNT

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances × cost rate	(Advances × cost rate)/total advances (percent)
1992	7.38	$4,056,250	$299,351	1.073
1993	6.35	23,839,200	1,513,789	5.427
Total advances		27,895,450	(1)	6.50

[1] Cost of money rate.

[FR Doc. 94–27403 Filed 11–3–94; 8:45 am]
BILLING CODE 3410–15–M

Soil Conservation Service

Dry Hydrant Installation/ Demonstration; Resource Conservation and Development (RC&D) Project; Bonner County, ID

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, Room 124, Boise, Idaho 83705, telephone (208) 334–1601.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40) CFR Part 650; the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dry Hydrant Installation/Demonstration RC&D Measure, Bonner County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the Measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The RC&D Project will upgrade existing fire-fighting capabilities for the Sagle Fire District. Five dry hydrants will be installed to increase the fire fighting capabilities by decreasing the distance travelled and time needed to access water during a fire.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: October 26, 1994.

Rodney M. Alt,

Acting State Conservationist.

[FR Doc. 94–27343 Filed 11–3–94; 8:45 am]
BILLING CODE 3410–16–M

Spring Valley Picnic Shelter; Resource Conservation and Development (RC&D) Project; Latah County, ID

AGENCY: Soil Conservation Service, United States Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, Room 124, Boise, Idaho, 83705, telephone (208) 334–1601.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Spring Valley Picnic Shelter RC&D Project, Latah County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national

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impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The RC&D Project will upgrade an existing picnic area with the addition of a picnic shelter and a concrete walkway for better handicap access. These measures will attract people away from high impact areas along the edge of the reservoir, causing less soil erosion and reducing conflict with other users.

This Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: October 15, 1994.

Paul H. Calverley,

State Conservationist.

[FR Doc. 94–27342 Filed 11–3–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Restructuring

ACTION: Notice.

SUMMARY: The Department of Commerce is well underway toward completing the largest modernization and restructuring of the National Weather Service in history. This will result in substantial improvements to weather services provided nationwide. The Department of Commerce requests comments on service areas where it is believed that current weather services may be degraded as existing radars are decommissioned or as field offices are closed, consolidated, automated or relocated during the modernization of the Weather Service.

DATES: Comments are due by January 3, 1995.

ADDRESSES: Julie Scanlon, National Weather Service, 1325 East-West Highway #9372, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413 or Nick Scheller at 301–713–0454.

SUPPLEMENTARY INFORMATION: In this notice, including the Study Guidelines in Appendix 1, the following terms and acronyms have the meaning indicated:

Field office means any National Weather Service Office or National Weather Service Forecast Office.

MTC means the Modernization Transition Committee established by Section 707 of the Act.

NEXRAD means the Next Generation Radar also referred to as the WSR-88D radar.

NIP means the National Implementation Plan for the modernization of the Weather Service required by Section 703 of the Act.

NRC means the National Research Council of the National Academy of Sciences.

NWS means the National Weather Service.

Secretary means the Secretary of Commerce and, with respect to a function under the Act, an officer or employee of the Department of Commerce authorized to perform the function.

Service Area means the geographical area for which an existing field office provides weather services or conducts observations.

Weather service means a service or product provided to a service area by a field office.

WSMA or *Act* means the Weather Service Modernization Act (Pub. L. 102–567, 15 U.S.C. 313n.)

Pursuant to the WSMA, the Secretary has established procedures to ensure that the modernization of the Weather Service will not result in degradation of weather services currently provided. See 15 C.F.R. part 946 (58 FR 18317; 59 FR 9921).

To strengthen public confidence in these procedures, without unnecessarily delaying the modernization process, the Department of Commerce has adopted and will apply the Study Guidelines of Appendix 1. These guidelines expand the opportunity for public participation in the modernization process as provided in these guidelines. The Secretary has also contracted with the NRC to develop additional independent scientific criteria to identify where weather services could be degraded as existing radars are decommissioned. The Secretary will apply these additional criteria as well as other criteria previously recommended by the NRC to ensure that services will not be degraded as radars are decommissioned or as field offices are closed, consolidated, relocated or automated.

The Department of Commerce requests comments where commentors believe that current weather services may be degraded as existing radars are decommissioned or as field offices are closed, consolidated, automated or relocated.

Commentors are requested to state the basis for their belief as fully as possible, and include a description of local weather characteristics (including unique weather phenomena) and weather related concerns which involve a substantial threat to public safety which they believe affect the weather services provided.

Comments received prior to the deadline will be forwarded promptly to the NRC. The full procedures the Secretary will follow regarding reviewing the adequacy of the nation's overall NEXRAD coverage, to ensure a solid scientific and technical basis for the decision making process, and to assure meaningful participation by the public are set forth in the Study Guidelines in Appendix 1.

Dated: October 31, 1994.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

Appendix 1—Study Guidelines

Section 1:

(a) Modernization of the NWS is essential to public safety and should proceed without unnecessary delay.

(b) The WSMA establishes procedures that assure that the modernization of the NWS will not result in the degradation of weather services currently provided to the public but these procedures do not provide for the independent review of decisions until shortly after the actual event; and

(c) It is appropriate to review the adequacy of the nation's overall NEXRAD coverage, to ensure a solid scientific and technical basis for the decision making process, and to assure meaningful participation by the public.

Section 2:

The purposes of this document are to provide the fullest opportunity for public participation in the modernization process without unduly delaying this process; and to ensure, through the application of independent scientific criteria that weather services provided in each service area will not be degraded as obsolete radars are decommissioned or as field offices are closed, consolidated, relocated or automated.

Section 3:

The definitions contained in section 702 of the WSMA shall apply to the terms in this document. In addition, the term "area of concern" means a service area identified in a timely public comment in response to the **Federal Register** notice required by section 4 of this document.

Section 4:

Within 30 days the Secretary shall publish a notice in the **Federal Register** requesting comments on service areas where it is believed that current weather services may be degraded as existing radars are decommissioned or as field offices are closed, consolidated, automated or relocated. The notice shall allow 60 days for the submission of comments. Persons submitting comments shall state the basis for their belief as fully as possible, and shall include a description of local weather characteristics (including unique weather phenomena) and weather related concerns which involve a substantial threat to public safety which they believe affect the weather services provided in areas of concern. All comments received by the Secretary shall be provided promptly to the NRC.

Section 5:

(a) Within 30 days the Secretary shall contract with the NRC, or amend an existing contract as necessary, to conduct an independent scientific assessment of proposed NEXRAD radar coverage and consolidation of Field Offices in terms of "no degradation of services" and to establish criteria for identifying service areas where the decommissioning of existing radars could degrade service to affected users.

(b) Within 180 days, but not earlier than 60 days after the close of the comment period provided in the **Federal Register** notice of section 4, the NRC shall furnish to the Secretary the assessment and criteria required by subsection (a) together with recommendations regarding the need and timing for any future independent studies by the NRC.

Section 6:

(a) After receipt of the NRC report, the Secretary shall apply the NRC criteria and other applicable criteria previously approved by the NRC pursuant to the WSMA to areas of concerns and, taking into account the comments received in response to the **Federal Register** notice of section 4, identify those where he/she believes that actions to decommission a radar or to close, consolidate, relocate, automate a field office noted in the current version of the NIP are not likely to satisfy the requirements of the WSMA. The Secretary shall report the results of his/her review to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space and Technology of the House of Representatives. If the Secretary believes that additional radars are needed to satisfy the requirements of the WSMA, he/she shall also identify the number and location of the radars needed.

(b) Submission of a report under this section shall not relieve the Secretary from the requirement of section 706(b) of the WSMA to certify no degradation of service when she/he restructures a field office. If the field office is located in an area of concern, the Secretary shall provide all comments relating to that area of concern received pursuant to section 4 of the MTC during the certification process.

Section 7:

(a) The Secretary shall not close, consolidate, relocate, or automate any field office or decommission any NWS radar until the public has had an opportunity to identify areas of concern.

(b) Regardless of the contents of the most recent NIP, the Secretary shall not decommission a radar or close, consolidate, automate or relocate a field office in an area of concern unless—

(1) The Secretary has reported to the Congress as provided in section 6 that he/she believes that the action contemplated would not result in a degradation of service; and

(2) 30 days have expired from the date the report was submitted to Congress.

[FR Doc. 94–27364 Filed 11–3–94; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 5, 12 and September 16, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 40010, 41434 and 47615) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Kit, Lever, Door Knob Conversion
5340–00–NIB–0003 thru –0058
(Brushed Aluminum, Polished Chrome, Brass, Polished Brass, Antique Brass, Satin Bronze, Oil Rubbed Bronze, Black)

Paper, Copying, Xerographic
7530–01–200–2203
7530–01–085–5225
7530–01–200–2204
7530–01–146–3361
7530–01–148–1766
7530–01–156–4689
7530–01–147–6812
7530–01–150–0334
7530–01–147–6811
7530–01–200–2207
7530–01–200–2206

Box, Shipping
8115–00–117–9529
8115–00–598–5807

Service, Janitorial/Custodial, Social Security Administration Building, 50 North Third Street, Chambersburg, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–27406 Filed 11–3–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

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SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services, Corps of Engineers, U.S. Army Engineer District, Louisville, Kentucky, NPA: Custom Manufacturing Services, Inc., Louisville, Kentucky

Janitorial/Custodial, United States Mint, Denver, Colorado, NPA: Platte River Industries, Inc., Denver, Colorado

Janitorial/Custodial, Naval Ordnance Center, Pacific Division, Detachment Port Hadlock, Port Hadlock, Washington, NPA: Skookum Educational Programs, Port Townsend, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–27407 Filed 11–3–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 5, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 31, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Indicators and Data Requirements for Projects with Industry Grants.
Frequency: Annually.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 126
Burden Hours: 2,520
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: Program compliance indicators were developed in response to requirements contained in the 1986 Amendments to the Rehabilitation Act. The Department will use these indicators to determine if Projects With Industry grants will be continued.

[FR Doc. 94–27396 Filed 11–3–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award: Carlsbad Department of Development

AGENCY: Department of Energy.

ACTION: Notice of Intent to Award a Grant Based Upon Acceptance of an Unsolicited Application.

SUMMARY: The U.S. Department of Energy, Albuquerque Operations Office through the Carlsbad Area Office, pursuant to DOE Financial Assistance Rules 10 CFR 600.14(F) announces its intent to award a grant to the Carlsbad Department of Development. The purpose of the grant is to analyze and define training needs for DOE Environmental Management Staff in conjunction with the needs of the community in southeastern New Mexico.

SUPPLEMENTARY INFORMATION: The Carlsbad Department of Development (DOD) will lead a coalition of regional stakeholders and resource centers to evaluate and define the human resources and training needs of the Department of Energy, other federal agencies, and the private sector in southeast New Mexico. The DOD will develop viable training plans which will address DOE's regional training needs as well as other federal agencies and the private sector. The training plans will also address job retraining, technology transfer/commercialization, and regional economic development. The DOD will use business planning and market assessments of needs and capabilities.

The unsolicited application for support of this activity has been accepted by DOE because of what was deemed to be the project's overall merit. DOE will benefit by having its training requirements identified and integrated with available regional resources. This activity will cause the community to properly research and plan for future business opportunities, and to diversify the existing economic base in preparation of completion of Waste Isolation Plant operations.

The project period for the award is nine months, expected to begin 15 days after publication to allow for public comment. DOE plans to fund the project in the amount of $300,000.

FOR FURTHER INFORMATION CONTACT: Dennis Hurtt, U.S. Department of Energy, Carlsbad Area Office, P.O. Box 3090, Carlsbad, New Mexico 88221, 505/234–7327.

Richard A. Marquez,

Assistant Manager, Office of Management and Administration, Albuquerque Operations Office.

[FR Doc. 94–27408 Filed 11–3–94; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Human Radiation Experiments

AGENCY: U.S. Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the Advisory Committee on Human Radiation Experiments.

DATES: November 21, 1994, 9:00 a.m.–5:30 p.m.

ADDRESSES: WestCoast Ridpath Hotel, West 515 Sprague, Spokane, WA.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, November 21

9:00 a.m. Call to Order and Opening Remarks
9:15 a.m. Public Comment
12:30 p.m. Lunch
1:30 p.m. Public Comment (continues)
5:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make an oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–27410 Filed 11–3–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by December 5, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

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ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–515
3. 1902–0079
4. Hydropower License—Declaration of Intention
5. Extension
6. On occasion
7. Mandatory
8. Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
9. 4 respondents
10. 1 response
11. 80 hours per response
12. 320 hours
13. To carry out requirements of Part I, Section 23(b)(1) of the Federal Power Act (Act), a Declaration of Intention is to be filed by a prospective developer to construct, operate, or maintain a hydroelectric project. Commission must investigate and determine if project is subject to Commission's jurisdiction.

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506(a) and (c)(1)).

Issued in Washington, D.C., October 31, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–27411 Filed 11–3–94; 8:45 am]

BILLING CODE 6450–01–P

Form EIA–1605, Voluntary Reporting of Greenhouse Gases

AGENCY: Energy Information Administration.

ACTION: Notice of proposed new Form EIA–1605, "Voluntary Reporting of Greenhouse Gases," and its short version, Form EIA–1605EZ, "Short Form for Voluntary Reporting of Greenhouse Gases," and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the effect of collection requirements on respondents can be properly assessed.

Currently, EIA is soliciting comments concerning the proposed Form EIA–1605, "Voluntary Reporting of Greenhouse Gases" and its short version Form EIA–1605EZ, "Short Form for Voluntary Reporting of Greenhouse Gases."

DATES: Written comments should be received by December 5, 1994. EIA will endeavor to consider any comments submitted after this deadline to the extent possible prior to submission of the forms and instructions to the Office of Management and Budget for clearance.

ADDRESSES: Send comments to Mr. Arthur Rypinski, Greenhouse Gases Voluntary Reporting Program, Office of Integrated Analysis and Forecasting, Energy Information Administration, EI–81, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, or via e-mail (internet) to infoghg@eia.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the draft form and instructions have been sent to all those parties who commented on the Department of Energy's DRAFT—Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines and Supporting Documents. In addition, copies will be provided to the administrative heads of the "Green" programs (voluntary emission reduction programs) sponsored by the Department of Energy and the Environmental Protection Agency. To determine if you will be receiving a copy or to request a copy of the proposed form and instructions, please call 1–800–308–1898. You may also send your request via fax to 1–800–542–1956, or via internet to: infoghg@eia.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Public Law No. 93–275) and the Department of Energy Organization Act (Public Law No. 95–91), EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy.

Legislative authority

The legislative authority for this voluntary program is section 1605(b) of the Energy Policy Act of 1992 (Public Law 92–486) which states:

(b) VOLUNTARY REPORTING—

(1) ISSUANCE OF GUIDELINES. Not later than 18 months after the date of the enactment of this Act, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

(i) voluntary reductions;

(ii) plant or facility closings; and

(iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) REPORTING PROCEDURES. The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

(3) CONFIDENTIALITY. Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552 (b)(4) of title 5, United States Code.

(4) ESTABLISHMENT OF DATABASE. Not later than 18 months after the date of the enactment of this Act, the Secretary through the Administrator of the Energy Information Administration shall establish a database comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

II. Current Actions

Form EIA–1605 and its shorter version Form EIA–1605EZ are consistent with the Guidelines established by the Secretary of Energy under Section 1605(b), entitled *Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines and Supporting Documents.*

III. Request for Comments

Prospective reporters and other interested parties should comment on the actions discussed in Items I and II above. The following general questions are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Assuming the typical long-form reporter files only domestic data and uses Schedules I, III, IV and three sections of Schedule II, the reporting burden for Form EIA–1605 is estimated to average 20 hours per response. The estimate for the typical EZ reporter is 2 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you and/or the typical reporter described above to complete and submit Form EIA–1605? Please answer this same question for the typical reporter using Form EIA–1605EZ.

D. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information. Please provide separate cost estimates for Form EIA–1605, "Voluntary Reporting of Greenhouse Gases," and Form EIA–1605EZ, "Short Form for Voluntary Reporting of Greenhouse Gases."

E. How can the forms be improved?

F. Do you know of any other Federal, state, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the form. Written comments received in response to this notice will be available for public inspection in the Department of Energy's Freedom of Information Office.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Public Law No. 96–511), which amended Chapter 35 of Title 44 of the United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, D.C., October 31, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–27409; Filed 11–3–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 2323–012, 2334–001]

Deerfield River, VT, MA; Notice of Site Visits

October 31, 1994.

The Federal Energy Regulatory Commission has scheduled site visits in November to help prepare an environmental impact statement (EIS) for licensing the Deerfield River Hydroelectric Project No. 2323 in Vermont and Massachusetts, and the Gardners Falls Hydroelectric Project No. 2334 in Massachusetts.

The projects are located on the Deerfield River, Windham and Bennington Counties, Vermont, and Franklin and Berkshire Counties, Massachusetts.

Interested individuals, organizations, and agencies are invited to attend the site visits to help staff in identifying the scope of the environmental issues that should be analyzed in the EIS.

For those that wish to attend the site visits the schedule is as follows:

Monday, November 14, 1994

Site: Gardners Falls Hydroelectric Station
Meeting location: Old County Road, Buckland, MA
Meeting time: 2:00 p.m.
Contact: Ken Hodge, Northeast Utilities, (203) 665–3367

Tuesday, November 15, 1994

Sites: Deerfield River Project (Deerfield No. 2, No. 3, No. 4, Fife Brook Dam, Deerfield No. 5, and Sherman Development)
Meeting location: New England Power's Shelburne Falls Office, Conway Street, Buckland, MA
Meeting time: 8:30 a.m.
Contact: Mark Slade, New England Power, (508) 389–2859

Wednesday, November 16, 1994

Sites: Deerfield River Project (Harriman, Searsburg, Somerset)
Meeting location: Center of Readsboro, VT, Route 100
Meeting time: 8:30 a.m.
Contact: Mark Slade, New England Power, (508) 389–2859

All those that are formally recognized by the Commission as intervenors in the Deerfield and Gardners Falls projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, which require parties filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list, including agents of the applicants.

Written comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, until December 9, 1994.

All correspondence should clearly show the following caption on the first page: Deerfield River/Gardners Falls EIS, Project Nos. 2323–012 and 2334–001.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27385 Filed 11–3–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95-22-000]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

October 31, 1994.

Take notice that on October 27, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, proposed to be effective November 1, 1994:

Second Revised Sheet No. 51
Second Revised Sheet No. 59
Second Revised Sheet No. 61
Second Revised Sheet No. 62
First Revised Sheet No. 110
Original Sheet No. 110A

ANR states that the above-referenced tariff sheets are being filed to implement certain enhancements to its restructured services under Order Nos. 636 et seq. ANR is requesting Commission approval of a shortened notice period so that these changes will become effective at the commencement of the 1993–1994 winter heating season.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 7, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27351 Filed 11–3–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM95-1-32-000, TM94-4-32-000, and TM94-4-32-001]

Colorado Interstate Gas Company; Technical Conference

October 31, 1994.

Take notice that at 10:00 a.m. on Wednesday, November 9, 1994, the Commission staff will convene a technical conference pursuant to the Commission's order issued September 30, 1994, in the above-captioned proceedings. Colorado Interstate Gas Company (CIG) has indicated that, to the extent it will be submitting materials to be treated as confidential under the Commission's regulations, it will work with the parties to maintain confidentiality.

The technical conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27350 Filed 11–3–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-367-001]

Southern Natural Gas Company; Proposed Changes to FERC Gas Tariff

October 31, 1994.

Take notice that on October 27, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective November 1, 1994:

Third Revised Sheet No. 136
Third Revised Sheet No. 138
Second Revised Sheet No. 212c
First Revised Sheet No. 212d

In compliance with the Commission's order issued in this proceeding on September 29, 1994, Southern has revised its new procedures regarding eligible deliveries for industrial customers behind Small Shipper delivery points and has reinstated its previous procedure of reallocating IT volumes to a Small Shipper's one-part, firm transportation agreement on days when it is not fully utilized. These revisions reflect that Small Shippers must use their one-part, firm transportation agreements prior to using any IT or capacity release services. Southern has requested all waivers necessary to make these sheets effective November 1, 1994.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 7, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27349 Filed 11–3–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-21-000]

Southern Natural Gas Company; One-Year Status Report

October 31, 1994.

Take notice that on October 27, 1994, Southern Natural Gas Company (Southern) tendered for filing a one-year status report as required by the Commission's September 3, 1993 order in Docket Nos. RS92–10, et al. Southern states that the filing reports on (1) Southern's progress in implementing intraday nominations, and (2) the operation of its penalty waiver provision during the first year of operations.

Southern states that it is making a transportation tariff filing today in a separate docket which will implement intra-day nomination procedures effective December 5, 1994. Southern's report also discusses the systemwide and shipper-specific penalty waivers granted during its first year and concludes that the waiver provision operated effectively to avoid penalizing Shippers who were trying to take appropriate actions, but incurred penalties as a result of late or faulty information.

Southern states that copies of the filing will be served on parties to Docket Nos. RS92–10, et al., and all shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 21, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27348 Filed 11–3–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-20-000]

Southern Natural Gas Company; Proposed Changes to FERC Gas Tariff

October 31, 1994

Take notice that on October 27, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective December 5, 1994:

Second Revised Sheet No. 123
Second Revised Sheet No. 126
Second Revised Sheet No. 128
First Revised Sheet No. 129
Second Revised Sheet No. 131
First Revised Sheet No. 132
First Revised Sheet No. 133
First Revised Sheet No. 175
First Revised Sheet No. 181
Second Revised Sheet No. 182
First Revised Sheet No. 184
First Revised Sheet No. 186
Second Revised Sheet No. 187
Second Revised Sheet No. 236
Second Revised Sheet No. 237

Southern states that the purpose of this filing is to (1) revise the nomination procedures in its transportation tariff to implement midday nomination procedures, (2) allow parties submitting receipt point predetermined allocations (PDAs) to revise the PDA's during the confirmation period on the day of flow, and (3) allow a shipper releasing firm transportation capacity to restrict bids on its capacity to delivery points in specified upstream zones so that the shipper can continue to utilize the downstream segment. With respect to midday nominations, shippers may submit a revised daily nomination to be effective at 7:00 p.m. Central Time for scheduling purposes on the day of the nomination, and the nominations will be scheduled according to the transportation queue. If a firm Shipper's midday nomination causes an interruptible service to be interrupted at a receipt or delivery point, Southern will not interrupt the corresponding delivery or receipt for the interruptible shipper if Southern's system operations can handle the potential imbalance.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests should be filed on or before November 7, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27346 Filed 11–3–94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-2-17-000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

October 31, 1994.

Take notice that on October 27, 1994 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is December 1, 1994.

Texas Eastern states that the tariff sheets are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and (ii) pursuant to Texas Eastern's Docket No. RP85–177–119, *et al.* Stipulation and Agreement (Settlement) filed January 31, 1994 and approved by Commission orders issued May 12, 1994 and July 13, 1994.

Texas Eastern states that the filing constitutes Texas Eastern's second regular annual ASA filing under Section 15.6 for the purpose of reflecting changes in its requirement to retain gas in-kind in compensation for the quantities of gas used to provide service for its customers and Texas Eastern's first annual filing pursuant to the Settlement to (i) calculate revised reductions to its shrinkage factors to reflect projected purchases under Appendix C contracts under the Settlement, (ii) calculate revised Spot Fuel Components as provided in Section 5.08 of the Settlement, and (iii) report the annual reconciliation of the interruptible revenues under Rate Schedules IT–1, PTI and ISS–1 as well as for Rate Schedule LLIT and for Rate Schedule VKIT. In addition, this filing provides information with respect to certain elements of the Settlement which Texas Eastern believes to be of interest to its customers and the Commission.

Texas Eastern states that the changes proposed to become effective beginning December 1, 1994 consist of (1) revised ASA Percentages designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers for each seasonal calendar period, Winter (December 1, 1993–March 31, 1994), Spring Shoulder (April 1, 1994–May 31, 1994), Summer (June 1, 1994–September 30, 1994) and Fall Shoulder (October 1, 1994–November 30, 1994) and (2) the ASA Surcharge designed to recover the net monetary value recorded in the Applicable Shrinkage Deferred Account as of August 31, 1994 and (3) Spot Fuel Components designed to recover the Spot Costs, as defined in the Settlement, projected to be incurred over the twelve month period beginning December 1, 1994 and the balance recorded in the Spot Fuel Deferred Account as of August 31, 1994.

Texas Eastern states that the filing reflects an overall average decrease of approximately 12.3 percent in its in-kind retention factors and an average increase in usage rates of approximately 2 cents due to the revised ASA Surcharges and the revised Spot Fuel Components.

Texas Eastern states that the filing also includes, for information purposes only detailed supporting information for the balances as of August 31, 1994 in the Non-Spot Fuel Deferred Account and the Account No. 858 Costs Deferred Account established pursuant to the Settlement.

Texas Eastern states that copies of its filing have been served on all Firm Customers of Texas Eastern and Interested State Commission, as well as all current interruptible shippers and all parties to the Settlement in Docket No. RP85–177–119, *et al.* Texas Eastern states that in accordance with the Settlement, with respect to those elements of the tariff sheets pursuant to the Settlement, Texas Eastern's filing is subject to refund or adjustment only to the extent not in compliance with the Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

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file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27347 Filed 11–3–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5095–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: EPA ICR 1732.01). This ICR requests approval of a new collection.

Abstract: Under the authority of the Indoor Radon Abatement Act of 1988 EPA has established voluntary radon proficiency programs for both organizations and individuals who provide indoor radon abatement services; periodically conducts training seminars; and collects user fees to recover the annual costs of administering the proficiency programs. EPA uses the information voluntarily obtained through the application procedures to monitor compliance with program requirements, to publish Proficiency Reports listing proficient organizations or individuals, schedule examinations, and to assist States and consumers in identifying radon service providers who are capable of measuring and/or reducing radon levels in homes.

Burden Statement: Public reporting burden for this collection of information is estimated to average 50 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 25 hours per respondent.

Respondents: Individuals and organizations providing indoor radon abatement services to the public.

Estimated Number of Respondents: 5,200.

Estimated Total Annual Burden on Respondents: 315,000 hours.

Frequency of Collection: Annually and biennially.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reduing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: October 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27399; Filed 11–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5096–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 5, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: National Survey of Radiological Laboratory Capability (EPA ICR No. 1731.01).

Abstract: This ICR is a new information collection to survey the capabilities of radio-analytical laboratories in support of EPA's responsibilities under the Federal Radiological Emergency Response Plan. The plan tasks EPA with providing radio-analyses of environmental samples collected during a Federal Radiological Monitoring and Assessment Center (FRMAC) response to a radiological accident. The information is needed to ensure that, in the event that EPA's capabilities become overburdened during a FRMAC response, an outside laboratory can be expeditiously identified and their analytical support voluntarily enlisted.

EPA will distribute questionnaires and subsequently follow-up with telephonic instructions to participating laboratories. Recipients will be asked to provide information that includes: (1) Name, address, location and point of contact information, (2) fixed/mobile capabilities, (3) radionuclide/sample type analysis capabilities, and (4) response time and availability.

The EPA will store the information on a database, designed to be transported to radiological accident sites and used by FRMAC for selecting laboratories to augment EPA's capabilities.

Burden Statement: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including reviewing instructions, searching existing information sources, completing and reviewing the collection of information, and submitting the information to EPA.

Respondents: Government and private radio-analytical laboratories.

Estimated Number of Respondents: 350.

Frequency of Collection: One time.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 175 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: October 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27404; Filed 11–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5102–5]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year sulfur dioxide (SO_2) compliance plans which either amend previously issued Phase I Acid Rain Permits, or will, if approved, result in the issuance of a Phase I Acid Rain Permit to sources not previously required to have one. These actions are taken in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the draft permits and modifications must be received no later than 30 days after the date of this notice (December 5, 1994) or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at EPA Region 4, 345 Courtland St., NE, Atlanta, GA, 30365.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 4, Air, Pesticides, and Toxics Management Division, Attn: Brian Beals (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting an SO_2 compliance plan.

FOR FURTHER INFORMATION CONTACT: Call Scott Davis, (404) 347–5014.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. On January 11, 1993, EPA promulgated final rules implementing the SO_2 portion of the program. Subsequently, several parties filed petitions for review of the rules with the U.S. Court of Appeals for the District of Columbia Circuit. On May 4, 1994, EPA and other parties signed a settlement agreement addressing the substitution and reduced utilization issues. In today's action, EPA is issuing to the following utility plants draft SO_2 compliance plans that allocate SO_2 emission allowances and approve SO_2 compliance plans, consistent with the May 4, 1994 settlement:

Phase I Units Designating Substitution Units

E C Gaston in Alabama: one conditional substitution plan for 1995–1999, in which unit 5 designates Gadsden units 1 and 2, Gorgas units 6, 7, 8, and 9, and James H. Miller, Jr. unit 4 as substitution units.

Crist in Florida: one conditional substitution plan for 1995–1999, in which unit 7 designates Crist units 4 and 5, Scholz units 1 and 2, and Lansing Smith units 1 and 2 as substitution units.

Bowen in Georgia: one conditional substitution plan for 1995–1999, in which the following units at Bowen designate the following units at Harllee Branch as substitution units: unit 1BLR designates Harllee Branch unit 1, unit 2BLR designates Harllee Branch unit 2, unit 3BLR designates Harllee Branch unit 3, and unit 4BLR designates Harllee Branch unit 4.

Hammond in Georgia: one conditional substitution plan for 1995–1999, in which the following units at Hammond designate the following units at Arkwright as substitution units: unit 1 designates Arkwright unit 1, unit 2 designates Arkwright unit 2, unit 3 designates Arkwright unit 3, and unit 4 designates Arkwright unit 4.

Jack McDonough in Georgia: one conditional substitution plan for 1995–1999, in which unit MB2 designates Mitchell unit 3 as a substitution unit.

Wansley in Georgia: one conditional substitution plan for 1995, in which unit 1 designates Scherer units 1 and 2 as substitution units, and unit 2 designates Scherer units 3 and 4 as substitution units.

Yates in Georgia: one conditional substitution plan for 1995–1999, in which the following units at Yates designate the following units as substitution units: Y2BR designates Port Wentworth unit 1, Y3BR designates Port Wentworth unit 2, Y4BR designates Port Wentworth unit 3, and Y5BR designates McIntosh unit 1.

Jack Watson in Mississippi: one conditional substitution plan for 1995–1999, in which unit 5 designates Victor J Daniel units 1 and 2 as substitution units.

Phase II Substitution Units

Gadsden in Alabama: 5,158 conditional substitution allowances for each year 1995–1999 to unit 1; 5,374 conditional substitution allowances for each year 1995–1999 to unit 2 (See E C Gaston description above).

Gorgas in Alabama: 4,752 conditional substitution allowances for each year 1995–1999 to unit 6; 5,323 conditional substitution allowances for each year 1995–1999 to unit 7; 9,620 conditional substitution allowances for each year 1995–1999 to unit 8; 9,501 conditional substitution allowances for each year 1995–1999 to unit 9 (See E C Gaston description above).

James H Miller, Jr. in Alabama: 0 conditional substitution allowances for each year 1995–1999 to unit 4 (See E C Gaston description above).

Crist in Florida: 9,953 conditional substitution allowances for each year 1995–1999 to unit 4; 9,374 conditional substitution allowances for each year 1995–1999 to unit 5 (See Crist description above).

Lansing Smith in Florida: 6,079 conditional substitution allowances for each year 1995–1999 to unit 1; 7,239 conditional substitution allowances for each year 1995–1999 to unit 2 (See Crist description above).

Scholz in Florida: 8,282 conditional substitution allowances for each year 1995–1999 to unit 1; 8,572 conditional substitution allowances for each year 1995–1999 to unit 2 (See Crist description above).

Arkwright in Georgia: 2,437 conditional substitution allowances for each year 1995–1999 to unit 1; 2,240 conditional substitution allowances for each year 1995–1999 to unit 2; 3,944 conditional substitution allowances for each year 1995–1999 to unit 3; 3,159 conditional substitution allowances for each year 1995–1999 to unit 4 (See Hammond description above).

Harllee Branch in Georgia: 19,221 conditional substitution allowances for each year 1995–1999 to unit 1; 22,735 conditional substitution allowances for each year 1995–1999 to unit 2; 31,280 conditional substitution allowances for each year 1995–1999 to unit 3; 31,042 conditional substitution allowances for each year 1995–1999 to unit 4 (See Bowen description above).

McIntosh in Georgia: 7,146 conditional substitution allowances for each year 1995–1999 to unit 1 (See Yates description above).

Mitchell in Georgia: 10,792 conditional substitution allowances for

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each year 1995–1999 to unit 3 (See Jack McDonough description above).

Scherer in Georgia: 11,234 conditional substitution allowances for 1995 to unit 1; 14,106 conditional substitution allowances for 1995 to unit 2; 0 conditional substitution allowances for 1995 to unit 3; 0 conditional substitution allowances for 1995 to unit 4 (See Wansley description above).

Port Wentworth in Georgia: 2,265 conditional substitution allowances for each year 1995–1999 to unit 1; 2,137 conditional substitution allowances for each year 1995–1999 to unit 2; 4,121 conditional substitution allowances for each year 1995–1999 to unit 3 (See Yates description above).

Victor J Daniel in Mississippi: 9,427 conditional substitution allowances for each year 1995–1999 to unit 1; 9,851 conditional substitution allowances for each year 1995–1999 to unit 2 (See Watson description above).

Dated: November 1, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–27400 Filed 11–3–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140226; FRL–4916–7]

Science Applications International Corporation (SAIC) and Clement International Corporation (ICF) Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Science Applications International, Inc. (SAIC) of Falls Church, Virginia and SAIC's subcontractor, Clement International Corporation (ICF) for access to information which has been submitted to EPA under sections 4, 5, 6, 8, 12, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D2–0157, contractor SAIC of 7600–A Leesburg Pike, Falls Church, VA 22043 and its subcontractor Clement International Corp. (ICF) of 9300 Lee Highway, Fairfax, VA 22031 will assist the Office of Pollution Prevention and Toxics (OPPT) in developing material in support of economic, statistical, engineering and scientific reviews and analyses and various other briefings, meetings, and teleconferences.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D2–0157, SAIC and ICF will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 12, and 21 of TSCA to perform successfully the duties specified under the contract. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 12, and 21 of TSCA that EPA may provide SAIC and ICF access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at SAIC's headquarters.

In a previous notice published in the **Federal Register** of November 10, 1992 (57 FR 53501), SAIC and ICF were authorized for access to CBI submitted to EPA under section 8 of TSCA until September 15, 1994. This notice is being issued to extend the period of performance of the present contract and to add authorization to sections 4, 5, 6, 12, and 21 of TSCA. SAIC and ICF are currently authorized access to TSCA CBI at SAIC's facility under the EPA *TSCA Confidential Business Information Security Manual.* EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, SAIC and ICF will return all transferred materials to EPA. No TSCA CBI will be transferred to ICF's facility under this contract.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

SAIC and ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: October 21, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–27398 Filed 11–3–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5102–3]

EPA Region III Comprehensive Environmental Response, Compensation, and Liability Act Program; Transfer and Disclosure of Information to Contractors and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region III intends to authorize certain contractors and subcontractors access to information submitted to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and informational gathering sections of other environmental statutes. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Contractor access to this information will occur after September 5, 1994. Comments concerning CBI access will be accepted for thirty days from the date of this notice.

ADDRESSES: Comments should be submitted to Wayne Walters (3RC21), Senior Assistant Regional Counsel, Office of Regional Counsel, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Wayne Walters, (215–597–1833).

SUPPLEMENTARY INFORMATION: The contractors and subcontractors listed below will provide certain services to EPA Region III, including: (1) Organizing, reviewing, tracking and summarizing litigation information; (2) providing computerized database systems, customized reports and software systems; and (3) assisting with document management. In performing these tasks, employees of the contractors and subcontractors listed below will have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. under CERCLA and other environmental statutes. Some of these documents may contain information claimed as confidential business information ("CBI").

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that these contractors and subcontractors require access to CBI to perform the work required under the contracts and subcontracts. These regulations provide for five days' notice before contractors are given CBI. This notice is intended to provide notice of all future disclosures of such information by EPA Region III to the contractors listed below.

All of the listed contractors and subcontractors are required by contract to protect confidential information. When the contractors' and subcontractors' need for the documents is completed, the contractors and subcontractors will return them to EPA. The contractors and subcontractors to which this notice applies are as follows:

Contractor/subcontractor	Contract No.
CACI	3C–G–ENR–0051
Acumenics Research and Technology, Inc..	3C–G–ENR–0052
Aspen Systems Corporation	3C–G–ENR–0053

Marcia E. Mulkey,

Regional Counsel.

[FR Doc. 94–27334 Filed 11–3–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 94–1098]

Direct Telecommunications Services Between United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Cuban Democracy Act of 1992, the Commission approved the applications of five U.S. carriers to provide direct telecommunications services between the United States and Cuba. The services authorized include both switched voice and private line services. The companies whose applications were granted are WilTel International, Inc., MCI Telecommunications Corp., LDDS Communications, Inc., Sprint Communications Company L.P. and IDB WorldCom Services, Inc. This will allow these carriers to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, these carriers are required to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

In the matter of WilTel International, Inc., File No. I–T–C–94–227; Application for authority to acquire and operate satellite and cable facilities for the provision of direct services between the United States and Cuba; MCI Telecommunications Corp., File No. I–T–C–94–228; LDDS Communications, Inc., File No. I–T–C–94–229; Sprint Communications Company L.P., File No. I–T–C–94–247; IDB WorldCom Services, Inc., File No. I–T–C–94–260. Applications for authority to acquire and operate satellite facilities for the provision of direct services between the United States and Cuba.

Memorandum Opinion, Order, Authorization & Certification

Adopted: October 4, 1994

Released: October 5, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned applications filed by WilTel International, Inc. ("WilTel"), MCI Telecommunications Corporation ("MCI"), LDDS Communications, Inc. ("LDDS") , Sprint Communications Company L.P. ("Sprint"), and IDB WorldCom Services, Inc. ("IDB") requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to establish channels of communication between the United States and Cuba for the provision of direct services. The applications were placed on the Commission's public notice. AT&T filed petitions to deny against all of the applications. For the reasons stated below, we grant the applications.

Background

2. WilTel requests authority to acquire by lease from Comsat and operate 120 64-kbps digital satellite voice-grade circuits, and up to two satellite video transmission circuits on an occasional use basis, provided via the INTELSAT Atlantic Ocean Region (AOR) satellite at 335° E.L., for the provision of international message telephone service ("IMTS") and other switched services [1] and for international private line service between the United States and Cuba. In an amendment to its application, WilTel also requests the flexibility to use either the INTELSAT and/or an Intersputnik satellite. WilTel states the proposed satellite facilities will be located between an appropriately authorized U.S. international fixed-satellite earth station and the appropriate satellite.[2]

3. MCI requests authority to acquire by lease from Comsat and operate 150 64-kbps satellite circuits [3] between the Mount Jackson, Virginia earth station and an appropriate INTELSAT–AOR satellite, together with the necessary connecting facilities between the Mt. Jackson earth station and MCI's operating centers at Pottstown, Pennsylvania and San Antonio, Texas, for the provision of all of MCI's authorized services, including IMTS, between the United States and Cuba.

4. LDDS requests authority to acquire by lease from Comsat and operate 150 64-kbps satellite circuits between an appropriately authorized east coast earth station and an appropriate INTELSAT–AOR satellite for the provision of IMTS and private line services between the United States and Cuba. In an amendment to its application, LDDS also requests authority to use interchangeably the 150 circuits with the Intersputnik, or Columbia Communication Corporation ("Columbia") satellites in addition to the INTELSAT satellites.

5. Sprint requests authority to acquire by lease from Comsat and operate 120 voice-grade satellite circuits [4] between the Orion international Standard A earth station located at Shenandoah, Virginia and the INTELSAT–AOR satellite at 335° E.L., connecting with its operating center in New York, New York, by using its own facilities. Sprint proposes to use these facilities to furnish all of Sprint's authorized services, including IMTS, between the United States and Cuba.

6. IDB requests authority to acquire by lease from Comsat and operate 120 voice-grade satellite circuits [5] between an appropriately authorized international earth station in the United States and either an INTELSAT–AOR satellite or the Intersputnik satellite located at 14° W.L. ("Statsionar 4").

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[1] These services include facsimile, data and video transmission services.

[2] WilTel also requests authority to provide service to Cuba via the fiber optic undersea cable, CUBUS–1, that has been proposed in the application for a cable landing license of WilTel Undersea Cable, Inc., FCC File No. SCL–94–002. Because this cable landing license has yet to be granted, we will defer acting on WilTel's request to use these facilities until such time that we are assured the cable facilities will be available for WilTel's use.

[3] MCI states these circuits are bearer circuits with a compression ratio ability of 5:1, thereby allowing MCI to potentially derive as many as 750 circuits.

[4] Sprint initially requested 30 digital satellite circuits, but clarified its request in a letter to the Commission on October 3, 1994, stating that the circuits are equivalent to one E–1 circuit which, in turn, can derive 120 virtual voice-grade circuits.

[5] IDB states these are the number of circuits derived from one 2 Mbps channel (an E–1 circuit) operating at a compression ratio of 4:1.

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together with the necessary connecting facilities between the earth station and an operating center in New York, New York, for the provision of IMTS between the United States and Cuba.

7. All of the applicants state that they have reached an agreement with EMTELCUBA of Cuba, to provide the matching facilities from the satellite's mid-point to an earth station in Cuba. Initially, under the terms of the agreements, EMTELCUBA agreed with each applicant to a 50/50 split of a $1.20 per minute accounting rate for switched traffic, and a $4.85 surcharge per call for collect calls to be paid to the originating carrier. All of the applicants state that this rate is consistent with the U.S. Department of State's policy guidelines ("Policy Guidelines").[6] They also state that they will initiate service within one year.

8. The applicants state that that public interest would be served by a grant of their applications because it will result in the rapid introduction of new lines of telecommunications between the United States and Cuba. They state that an immediate and large demand exists for direct telecommunications services between the United States and Cuba, and their proposed services will help meet that demand within the regulatory framework established by the Cuban Democracy Act of 1992 (22 U.S.C. § 6002 et seq.).

9. AT&T filed a petition to deny against each of these applications stating that because of the $4.85 surcharge per call for collect calls, the applicants' accounting rate agreements with EMTELCUBA conflict with the International Settlements Policy ("ISP") and with the directive of the Commission that U.S. carriers negotiate to achieve cost-based accounting rates with foreign administrations.[7] All of the applicants individually filed oppositions to AT&T's petition. They unanimously agreed that an ISP waiver under § 64.1001 of the Commission's Rules is not required because AT&T's operating agreement with the Cuban administration expired nearly four years ago. Therefore, the applicants argue that because AT&T's operating agreement is no longer in force, their proposed arrangements do not depart from any current arrangements, and no ISP waiver is required. In addition, WilTel, MCI, and LDDS argue that the Policy Guidelines do not prohibit collect surcharges, and that the $4.85 surcharge per call is appropriate and not excessive for collect calls.

[6] *See Infra* ¶10.

[7] *See Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991) (expansion of traditional focus of the ISP of preventing whipsawing to include the adverse effect of above-cost levels of accounting rates on U.S. carriers and consumers).

Discussion

10. In a letter dated July 22, 1993, the U.S. Department of State informed us of the Executive Branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act, which provides that "telecommunication services between the United States and Cuba shall be permitted."[8] Among the policy guidelines are the following requirements: (1) the proposals must have the potential to be operational within a year; (2) settlements must not be more favorable to Cuba than the current 50/50 split of the $1.20 per minute accounting rate; (3) proposals must be limited to equipment and services necessary to deliver a signal to Cuba; (4) proposals must utilize modes of communications already in place between the United States and Cuba; and (5) carriers shall report the number of circuits activated by facility on June 30 and December 31 of each year and on the one-year anniversary of the notification by the Commission in the Federal Register.

11. In accordance with the Policy Guidelines, we forwarded copies of the above-captioned applications to the Department of State and requested that it advise us as to its views. Pursuant to our request, the Department of State issued a follow-up letter dated May 23, 1994.[9] The Department of State found the IMTS portions of the applications to be fully consistent with the Policy Guidelines except for the $4.85 surcharge per call for collect calls. The Department found that the proposed surcharge was unreasonable and unjustified. It observed that the proposed surcharge far exceeded the approximately $.60 average rate for all countries in the region and the prevalent $1.00 rate for those countries having a surcharge. Therefore, the Department of State had no objection to our approval of the IMTS applications without the $4.85 surcharge provision. The Department of State, however, did state that it would favorably consider a surcharge provision that is determined by us to be based on costs, other international norms and practices, relevant ITU Recommendations, and our ISP.

12. In light of the Department of State's letter, and our own review of the applications, we concluded that we would not process the applications as filed because of the agreements with EMTELCUBA for the $4.85 surcharge. Rather than dismiss the applications, we gave the applicants the opportunity to amend their applications to reflect a new agreement renegotiated with EMTELCUBA that provides for either no surcharge for collect calls, or a surcharge that was reasonable and justified.[10]

13. On September 6, 1994, LDDS amended its application to include a new operating agreement with EMTELCUBA that reflected a reduction in the proposed surcharge of $4.85 per call for collect calls to $1.00 per call. A week later, the other four applicants similarly amended their applications to reflect a $1.00 per call surcharge. We sent copies of these amendments to the Department of State, and requested their advice as to whether these new surcharges were in compliance with the Policy Guidelines.[11] On October 3, 1994, we received a letter from the Department of State expressing its view that the new $1.00 per call surcharge was in compliance with the Policy Guidelines.[12] The Department of State stated that the new proposed surcharge of $1.00 per call appears consistent with international norms and practices, relevant ITU Recommendations, and current surcharge rates in the region. The Department of State notes, however, that it hopes that this and other surcharge rates will generally be reduced or eliminated in the future.

14. Upon our own review of the applications, we agree with the Department of State that the five applicants' amended operating agreements with EMTELCUBA are in compliance with the Policy Guidelines. The $1.00 per call surcharge for collect calls is within the range of surcharges that other countries in the Caribbean region have for these types of calls, and reflects the cost to the originating country of providing the service.

[8] Letter dated July 22, 1993, from Richard C. Beaird, Acting U.S. Coordinator and Director, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman James H. Quello.

[9] Letter dated May 23, 1994, from Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman Reed Hundt.

[10] *See* Letter dated July 29, 1994 from Wendell Harris, Assistant Bureau Chief/International, Common Carrier Bureau, to all five applicants.

[11] *See* Letters dated September 9 and 16, 1994 from Wendell Harris, Assistant Bureau Chief/International, Common Carrier Bureau, to Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State.

[12] Letter dated October 3, 1994, from Richard C. Beaird, Senior Deputy U.S. Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State to FCC Chairman Reed Hundt.

Accordingly, we find that this new surcharge is reasonable and justified. It is our desire, however, as it is the Department of States's, that this surcharge eventually be reduced or eliminated in the future.

15. In addition, we find AT&T's arguments that the $4.85 per call surcharge is in violation of the ISP to be inapposite. AT&T's arguments were based on the original $4.85 per call surcharge, not the amended $1.00 per call surcharge. Further, we note that AT&T's petition stated that a $1.00 surcharge would be consistent with industry practices. Finally, we have not received any additional pleadings from AT&T arguing that the amended operating agreements are in violation of our ISP.

16. We find that a grant of the above-captioned five applications will serve the public interest subject to the conditions set forth below. These applications are consistent with the Executive Branch's Policy Guidelines. The applicants state that they will initiate service within one year, and expect to initiate service shortly after all requisite regulatory approvals have been obtained. To the extent the applicants propose to use the INTELSAT, Intersputnick, and Columbia satellite facilities and appropriately authorized existing earth station facilities, we find these proposals satisfy the requirement that facilities already be in existence and be limited to equipment and services necessary to deliver a signal to Cuba.

17. Accordingly, it is ordered that application File No. I–T–C–94–227 is granted and WilTel is authorized to:

a. Lease from Comsat and operate up to 120 64-kbps satellite circuits, and up to two satellite video transmission circuits on an occasional use basis, between an appropriately authorized U.S. international fixed-satellite earth station and the INTELSAT–AOR satellite at 335° E.L., together with the necessary domestic connecting facilities between the earth station and WilTel's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or

b. In lieu of the INTELSAT circuits, establish up to 120 64-kbps satellite circuits between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate Intersputnik satellite, together with the necessary domestic connecting facilities between the earth station and WilTel's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. Use the facilities in either (a) or (b) above to provide IMTS and other switched services (including facsimile, data and video transmission services), and international private line services, between the United States and Cuba.

18. It is further ordered that application File No. I–T–C–94–228 is granted and MCI is authorized to:

a. Lease from Comsat and operate 150 64-kbps satellite circuits between the Mount Jackson, Virginia earth station and an appropriate INTELSAT–AOR satellite, together with the necessary connecting facilities between the Mt. Jackson earth station and MCI's operating centers at Pottstown, Pennsylvania and San Antonio, Texas, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

b. Use the above facilities to provide all of MCI's authorized services, including IMTS, between the United States and Cuba.

19. It is further ordered that application File No. I–T–C–94–299 is granted and LDDS is authorized to:

a. Lease from Comsat and operate 150 64-kbps satellite circuits between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate INTELSAT–AOR satellite, together with the necessary domestic connecting facilities between the earth station and LDDS's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or

b. In lieu of the INTELSAT circuits, establish up to 150 64-kbps satellite circuits, between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate Intersputnik or Columbia satellite, together with the necessary domestic connecting facilities between the earth station and LDDS's operating center, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. Use the facilities in either (a) or (b) above to provide IMTS and private line services between the United States and Cuba.

20. It is further ordered that application File No. I–T–C–94–247 is granted and Sprint is authorized to:

a. Lease from Comsat and operate one E–1 circuit (30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between the Orion international Standard A earth station located at Shenandoah, Virginia and the INTELSAT–AOR satellite at 335° E.L., together with the necessary connecting facilities between its operating center in New York, New York, and the Orion earth station, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

b. Use the above facilities to provide all of Sprint's authorized services, including IMTS, between the United States and Cuba.

21. It is further ordered that application File No. I–T–C–94–260 is granted and IDB is authorized to:

a. Lease from Comsat and operate one 2 Mbps channel (an E–1 circuit or 30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between an appropriately authorized U.S. international fixed-satellite earth station and an appropriate INTELSAT–AOR satellite, together with the necessary connecting facilities between the earth station and an operating center in New York, New York, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; or

b. In lieu of the INTELSAT circuits, establish up to one 2 Mbps channel (an E–1 circuit or 30 64-kbps circuits), which can derive 120 virtual voice-grade circuits, between an appropriately authorized U.S. international fixed-satellite earth station and the Intersputnik satellite located at 14° W.L. ("Statsionar 4"), together with the necessary connecting facilities between the earth station and an operating center in New York, New York, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by EMTELCUBA; and

c. Use the facilities in either (a) or (b) above to provide IMTS services between the United States and Cuba.

22. It is further ordered that the service authorized herein must be implemented within one year from the date of release of this order.

23. It is further ordered that WilTel, MCI, LDDS, Sprint and IDB shall split 50/50 with EMTELCUBA the $1.20 per minute accounting rate for the IMTS services.

24. It is further ordered that the surcharge agreed to between the applicants and EMTELCUBA for received collect calls shall be no greater than $1.00 per call.

25. It is further ordered that the applicants shall submit reports on or before June 30, and December 31 of each year, and on the one-year anniversary of the notification of the grant of these applications in the Federal Register indicating the numbers of circuits activated by facility.

26. It is further ordered that this authorization is subject to the

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applicants' obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

27. It is further ordered that this order is subject to revocation without a hearing in the event the Department of State or the Federal Communications Commission determines that the continuation of communications between the United States and Cuba is no longer in the national interest.

28. It is further ordered that our authorization for the applicants to provide private lines is limited to the provision of such private lines only between the United States and Cuba—that is, private lines which originate in the United States and terminate in Cuba or which originate in Cuba and terminate in the United States. In addition, the applicants may not—and applicants' tariffs must state that their customers may not—connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that its correspondents afford resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 57 FR 646, January 8, 1992 7 FCC Rcd 559 (1991), *Order on Reconsideration and Third Further NPRM*, 57 FR 57455, December 4, 1992 7 FCC Rcd 7927 (1992), *petition for reconsideration pending*.

29. It is further ordered that, pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, and Part 61 of the Commission's Rules, 47 CFR Part 61, the applicants shall file and have in effect a tariff for the services authorized in this order before offering services to the public.

30. It is further ordered that the applicants shall file copies of any operating agreements entered into by themselves or their parent/affiliates with their correspondents within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 CFR 43.51.

31. It is further ordered that the applicants shall file annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules 47 CFR 43.61.

32. It is further ordered that the applicants shall file a Section 214 application for any additional circuits they propose to establish between the United States and Cuba.

33. Acceptance of this authorization shall be deemed acceptance of the conditions set forth herein.

34. It is further ordered that the Petitions to Deny against each applicant filed by AT&T are denied.

35. This authorization is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

Federal Communications Commission.

George S. Li,

Chief, International Facilities Division, Common Carrier Bureau.

[FR Doc. 94–27331 Filed 11–3–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–25]

International Shipping Agency, Inc. v. Puerto Rico Ports Authority; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by International Shipping Agency, Inc. ("Complainant") against Puerto Rico Ports Authority ("Respondent") was served October 31, 1994. Complainant alleges that Respondent violated sections 10(a)(3), (b)(11), (b)(12), (d)(1), (d)(2) and (d)(3) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709 (a)(3), (b)(11), (b)(12), (d)(1), (d)(2) and (d)(3) and sections 15, 16 First, and 17 of the Shipping Act of 1916, 46 U.S.C. app §§ 814, 815 First, and 816, in connection with its allocation and lease of marine terminal facilities in Puerto Rico.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 31, 1995, and the final decision of the Commission shall be issued by March 4, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27372 Filed 11–3–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Mediation Assistance in the Federal Sector, Notice of Request of Approval of Form 53's Extension Submitted to Office of Management and Budget

October 31, 1994.

The Federal Mediation and Conciliation Service has submitted the following Form 53, "Mediation Assistance in the Federal Service" to the Office of Management and Budget for review and expedited approval by November 16, 1994. This request for OMB review is under the provisions of 5 C.F.R. 1320.18. A copy of Form 53 with instructions follows.

For further information about this submission, please contact Eileen B. Hoffman, General Counsel, FMCS, 2100 K Street, N.W., Washington, D.C. 20427. (202) 653–5305. Persons wishing to comment should write to Mr. Dan Chenok, Desk Officer for FMCS, Office of Management and Budget, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503 before November 16, 1994.

Title: Mediation Assistance in the Federal Sector, Form 53.

Action: Request for 3 Year Extension of Present Form.

Respondents: Parties to federal sector disputes (federal agencies and unions).

Frequency of Response: On occasion (for renewal, reopening, new contracts, grievance mediation requests).

Estimated Annual Burden: Approximately 600 responses per year; approximately 10 minutes per response; approximately 100 reporting hours per year.

Needs and Uses: The information is needed to advise FMCS of federal sector disputes pursuant to 29 C.F.R. part 1425, § 1425.3. It is used to make assignments of cases to FMCS mediators.

The agency has consulted with federal sector users to determine if the form is helpful and whether any changes were necessary. Since the present form expires on November 30, 1994, the agency requests a 3-year extension of the existing form to enable it to continue its case assignment and data collection activities.

Dated: October 31, 1994.

John Calhoun Wells,

Director, FMCS.

BILLING CODE 6732–01–M

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FMCS FORM F-53
REVISED 5-92

Form Approved
OMB No. 3076-0005
Exp. XXX

FEDERAL SECTOR LABOR RELATIONS
NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE

MAIL TO: NOTICE PROCESSING UNIT
FEDERAL MEDIATION AND CONCILIATION SERVICE
2100 K STREET N.W.
WASHINGTON D.C. 20427

THIS NOTICE IS IN REGARD TO: (MARK "X")

① ☐ AN INITIAL CONTRACT (INCLUDE FLRA CERTIFICATION NUMBER) #_____
☐ A CONTRACT REOPENER REOPENER DATE ____/____/____
☐ THE EXPIRATION OF AN EXISTING AGREEMENT EXPIRATION DATE: ____/____/____

② ☐ *OTHER REQUESTS FOR THE ASSISTANCE OF FMCS IN BARGAINING* *(MARK "X")*
SPECIFY TYPE OF ISSUE(S):

③ ☐ *REQUEST FOR GRIEVANCE MEDIATION (SEE ITEM # 10)* *(MARK "X")*
ISSUE(S):

④ NAME OF FEDERAL AGENCY | NAME OF SUBDIVISION OR COMPONENT, IF ANY
STREET ADDRESS OF AGENCY | CITY | STATE | ZIP
AGENCY OFFICIAL TO BE CONTACTED | AREA CODE & PHONE NUMBER

⑤ NAME OF NATIONAL UNION OR PARENT BODY | NAME AND / OR LOCAL NUMBER
STREET ADDRESS | CITY | STATE | ZIP
UNION OFFICIAL TO BE CONTACTED | AREA CODE & PHONE NUMBER

LOCATION OF NEGOTIATIONS OR WHERE MEDIATION WILL BE HELD
⑥ STREET ADDRESS | CITY | STATE | ZIP

⑦ APPROX. # OF EMPLOYEES IN BARGAINING UNIT(S) >> | | IN ESTABLISHMENT >> | |

⑧ THIS NOTICE OR REQUEST IS FILED ON BEHALF OF (MARK "X") ☐ UNION ☐ AGENCY

⑨ NAME AND TITLE OF OFFICIAL(S) SUBMITTING THIS NOTICE OR REQUEST | AREA CODE & PHONE NUMBER
STREET ADDRESS | CITY | STATE | ZIP

*FOR GRIEVANCE MEDIATION, THE SIGNATURES OF BOTH PARTIES ARE REQUIRED:**

⑩ SIGNATURE (AGENCY) | DATE | SIGNATURE (UNION) | DATE

*Receipt of this form does not commit FMCS to offer its services. Receipt of this form will not be acknowledged in writing by FMCS. While use of this form is voluntary, its use will facilitate FMCS service to respondents. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FMCS Division of Administrative Services, Washington, D.C. 20427, and to the Office of Management and Budget, Paperwork Reduction Project Washington, D.C. 20503

For instructions, see back

BILLING CODE 6732-01-C

Instructions

Complete this form, please follow these instructions.

In *item #1.* Check the block and give the date if this is for an existing agreement or reopener. The FLRA Certification number should be provided if available. If not known, please leave this item blank. Absence of this number will not impede processing of the Form.

In *item #2.* If other *assistance* in bargaining is requested please specify: e.g; impact and implementation bargaining (I&I) and/or mid-term bargaining and provide a brief listing of issues, e.g. Smoking, Alternative Work Schedules (AWS), ground rules, office moves, or if desired, add attached list. This is only if such issues are known at time of filing.

In *item #3.* Please specify the issues to be considered for grievance mediation. Please refer to FMCS guidelines for processing these requests. Please make certain that both parties sign this request!

In *item #4.* List the name of the agency, as follows: The Department; and the subdivision or component. For example: U.S. Dept. of Labor, BLS, or U.S. Dept. of Army, Aberdeen Proving Ground, or Illinois National Guard, Springfield Chapter. If an independent agency is involved, list the agency, e.g. Federal Deposit Insurance Corp. (FDIC) and any subdivision or component, if appropriate.

In *item #5.* List the name of the union and its subdivision or component as follows: e.g. Federal Employees Union, Local 23 or Government Workers Union, Western Joint Council.

In *item #6.* Provide the area where the negotiation of mediation will most likely take place, with zip code, e.g., Washington, D.C. 20427. The zip code is important because our cases are routed by computer through zip code, and mediators are assigned on that basis.

In *item #7.* Only the *approximate* number of employees in the bargaining unit and establishment are requested. The establishment is the entity referred to in item 4 as name of subdivision or component, if any.

In *item #8.* The filing need only be sent by one party unless it is a request for grievance mediation. (See item 9.)

In *item #9.* Please give the title of the official, phone number, address, and zip code.

In *item #10.* Both labor and management signatures are required for grievance mediation requests.

NOTICE

SEND ORIGINAL TO F.M.C.S.

SEND ONE COPY TO OPPOSITE PARTY

RETAIN ONE COPY FOR PARTY FILING NOTICE

[FR Doc. 94-27480 Filed 11-3-94; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Charter Bancorporation, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Charter Bancorporation, Inc., Scottsdale, Arizona; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies: (i) consumer finance; (ii) credit card; (iii) mortgage; (iv) commercial finance; and (v) factoring, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27387; Filed 11-3-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 21, 1994.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of request).

1. MEDWATCH: FDA's Medical Product Reporting Program—0910-0291 (Extension, no change)—This form is used for reporting adverse events and product problems with medications, devices, and other products (such as dietary supplements) that are regulated by the agency. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 83,694; *Number of Responses per Respondent:* 3.8; *Average Burden per Response:* .93 hour; *Estimated Annual Burden:* 296,719 hours.

2. Application for Participation in the Indian Health Service Scholarship Program—0917-0006 (Reinstatement)—The information to be collected will be used to select the Indian Health Service pregraduate, preparatory, and/or health professions scholarship grantees and to monitor progress of award. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 11,730; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .46 hours; *Estimated Annual Burden:* 5,395 hours.

3. Community Health Center User and Visit Survey—New—A two-part study will be conducted of Community Health Centers (CHCs) funded under Section 330 of the PHS Act. Personal interviews

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with CHC users will provide information on health status, utilization of and satisfaction with services, and sources of care. Data will also be abstracted from medical records for a sample of visits. *Respondents:* Individuals or households, Non-profit institutions.

Title	No. of respondents	No. of responses per respondent	Average burden per response (hours)
User survey	2,000	1	2
Medical visit abstraction	50	1	30
CHC induction interview	50	1	3

Estimated Total Annual Burden . . . . 5,650 hours.

4. Transmittal of Periodic Reports and Promotional Material for New Animal Drugs—0910–0019 (Reinstatement)—These records and reports are used to facilitate a determination as to whether there may be grounds for suspending or withdrawing approval of the application, or whether any applicable regulation should be amended or repealed. The respondents are the sponsors of approved New Animal Drugs Applications whose numbers have increased over the years. Respondents: Businesses or other for-profit.

Title	No. of respondents	No. of responses per respondent	Average burden per response (hours)
Reporting, 21 CFR 510.302(a)	1,500	2.3	.5
Recordkeeping, 21 CFR 510.300(a)	1,500	1	10.35

Estimated Total Annual Burden . . . 17,275 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Dated: October 27, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–27269 Filed 11–3–94; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

1994 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994 Advisory Council on Social Security (the Council).

DATES: November 18, 1994, 8:30 a.m. to 5:00 p.m. and November 19, 1994, 9:00 a.m. to 12:00 noon.

ADDRESSES: The Sheraton Washington Hotel, 2660 Woodley Road, at Conn. Ave., N.W., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994 Advisory Council on Social Security, Room 639H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; By telephone—(202) 205–4661; By telefax—(202) 260–6101.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs; and
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146) and October 21–22 (59 FR 51451).

II. Agenda

The following topics will be presented and discussed:

- Household equivalency scales and a comparison of relative well-being of the elderly;
- Analysis of the Consumer Price Index and its effect on Social Security benefit adjustments;
- Adequacy and equity of Social Security benefits, particularly as they affect women;
- Personal Earnings and Benefit Estimate Statements; and
- Disability insurance benefits.

The agenda items are subject to change as priorities dictate.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance)

Dated: November 1, 1994.

David Lindeman,

Executive Director, 1994 Advisory Council on Social Security.

[FR Doc. 94–27538 Filed 11–3–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–94–3833; FR–3816–N–01]

The Performance Review Board

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of Appointment.

SUMMARY: The Department of Housing and Urban Development announces the appointment of Dwight P. Robinson as Chairperson to the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC, 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Marcella E. Belt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC, 20410, telephone (202) 708–1381. (This is not a toll free number.)

Dated: October 31, 1994.

Henry G. Cisneros,

Secretary, Department of Housing and Urban Development.

[FR Doc. 94–27365 Filed 11–3–94; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3778–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the

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following addresses: GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM–20, Forrestal Bldg., room 6H–058, Washington, DC 20585; (202) 586–1191; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: October 28, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/04/94

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point,
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94.

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point,
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94.

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point,
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 879430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94.

Unsuitable Properties

Buildings (by State)

Arkansas

Silver Hill Cabin
Buffalo National River
St. Joe Co: Newton AR 72675–
Landholding Agency: Interior
Property Number: 619440003
Status: Unutilized
Reason: Extensive deterioration.

Maryland

5 Training Facilities
Interagency Training Center
10530 Riverview Road
Ft. Washington Co: Prince Georges MD 20744–
Landholding Agency: GSA
Property Number: 549440002
Status: Excess
Reason: Secured Area.

New Jersey

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 879440002
Status: Unutilized
Reason: Other
Comment: Skeletal tower.

Ohio

Bldg. 16
RMI Environmental Services
Ashtabula Co: Ashtabula OH 44004–
Landholding Agency: Energy
Property Number: 419440002
Status: Excess
Reason: Other
Comment: Contamination: Radioactive materials.

Washington

Control Tower Bldg.
U.S. Coast Guard Air Station
Port Angeles Co: Clallam WA 98362–
Landholding Agency: DOT
Property Number: 879440001
Status: Underutilized
Reason: Within airport runway clear zone Secured Area.

[FR Doc. 94–27165 Filed 11–3–94; 8:45 am]

BILLING CODE 4210–29–M

[Docket Nos. N–94–3659; FR–3540–N–03; N–94–3682; FR–3615–N–02]

Announcement of FY 1993 and FY 1994 Funding Awards for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards made under the Historically Black Colleges and Universities (HBCU) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help HBCUs expand their role and effectiveness in addressing community development needs.

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street SW., room 7253, Washington, DC 20410. Telephone number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This program is authorized under Section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act). The program is governed by regulations contained in 24 CFR 570.400, 570.404 and 24 CFR Part 570, subparts A, C, J, K and 0. Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

The objectives of this program are to help HBCUs expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of the 1974 Act; and to help HBCUs address the priority needs of their localities in meeting HUD priorities.

A Notice of Funding Availability (NOFA) announcing HUD's FY 1993 funding of $4.5 million for the Historically Black Colleges and Universities (HBCU) Program was published on September 17, 1993 (58 FR 48716). In a Notice of Funding Availability (NOFA) published in the **Federal Register** on January 12, 1994 (59 FR 1882), the Department announced the availability of $6.5 million of FY 1994 funding for the HBCU Program plus an additional $2 million of FY 1993 funding. The total amount of FY 1993 and FY 1994 funding, $13 million, was combined into a single competition and the application due date of the FY 1993 NOFA was extended to run concurrently with the FY 1994 NOFA. The applications received for funding were reviewed, evaluated and scored based on the criteria in the NOFAs. As a result, HUD has awarded grants to 28 Historically Black Colleges and Universities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of these awards, as follows:

Historically Black Colleges and Universities (HBCU) Program Grants

1. Xavier University of Louisiana

President: Dr. Norman C. Francis, Harris-Stowe State College, Laclede

Street, St. Louis, MO 63103, Telephone: (504) 482–2801.

Project Director: Brenda B. Davillier, (504) 483–7510, ext. 3680.

Project Funds: HUD Grant Award: Up to $500,000.

Proposal Description: The project will increase resident participation in the revitalization of the area. It also will assist them in planning to address the physical, social, and economic needs and infrastructure needed to support housing and economic development.

2. Mississippi Valley State University

President: Dr. William W. Sutton, Mississippi Valley State University, Highway 82 West, Itta Bena, MS 38941, Telephone: (601) 254–9041.

Project Director: Mr. Robert E. Moore, (601) 254–7552.

Project Funds: HUD Grant Award: $500,000.

Proposal Description: Grant will be awarded subject to successful negotiations with HUD's Office of Procurement and Contracts.

The proposed project will provide a partnership opportunity that will attract private lenders and in-kind funds as well as non-profit outreach and technical assistance. A unique "public/private" partnership is planned to provide decent, safe and sanitary housing to low-income homeowners.

Proposed Features:

(1) The project activities will include the code standard rehab of homeowner housing units;

(2) Acquisition of substandard rental property;

(3) Relocation of low-income renter families;

(4) Construction of new replacement housing; and

(5) Demolition of substandard units.

3. Grambling State University

President: Dr. Harold W. Lundy, P.O. Box 607, Grambling, LA 71245, Telephone: (318) 274–2211.

Project Director: Ms. Rosetta H. Days, Telephone: (318) 274–2660.

Project Funds: HUD Grant Award: $500,000.

Proposal Description: The project will assist in the economic revitalization and restoration of a predominantly black college town through renovation of Main Street business district.

Proposed Features:

(1) Provide provision for education, job skills training and employment;

(2) Establishment of a community economic development center;

(3) Development of an anti-drug and crime prevention program;

(4) Improve the quality of family life through intergovernmental recreational activities; and

(5) Create a functional partnership with the City of Grambling.

4. Lincoln University

President: Dr. Wendell G. Rayburn, Lincoln University, 830 Chestnut Street, Jefferson City, MO 65101, Telephone: (314) 681–5042.

Project Director: Sherrie Koechling-Andrae, (314) 681–5487.

Project Funds: HUD Grant Award: $500,000.

Proposal Description: This grant is a joint venture between the Community Development Corporation of Kansas City and Lincoln University, Jefferson City, Missouri. This proposed project will attempt to meet the economic development needs of the Central Core Enterprise Zone in Kansas City, Missouri.

Proposed Features:

(1) Conduct two ten-week entrepreneurial institutes to teach the basic skills necessary to start-up and operate a small minority business, including attitude and empowerment topics;

(2) Development of an entrepreneurial empowerment scale as a tool to assist in the measurement of the potential successful business and as a diagnostic tool in analysis of areas of the entrepreneurial needs development;

(3) Provide a revolving loan program for businesses to be located in the enterprise zone;

(4) Conduct two different types of workshops, one set on business and home maintenance topics, and then an eight-week certified course for real estate; and

(5) Dissemination of information to keep the public informed as to the available programs and opportunities with the intention of maintaining and developing the entrepreneurial network already established.

5. Lemoyne-Owen College

President: Dr. Burnett Joiner, Lemoyne-Owen College, 807 Walker Avenue, Memphis, TN 38126, Telephone: (901) 774–9090.

Project Director: Dr. McKinley C. Martin, (901) 775–3485.

Project Funds: HUD Grant Award: $320,000.

Proposal Description: The project will establish a program for community service and create an infrastructure to support and strengthen economic development activities.

Proposed Features:

(1) Provide transitional living facilities to clients of the Memphis Homeless Shelter Center who have been placed on jobs or in a training/educational program;

(2) Provide facility for a day/night child care program to serve clients and a limited number of other persons using space available criteria;

(3) Establish a laboratory to co-locate services and agencies to enhance the economic activity within the community surrounding LeMoyne-Owen College of the LeMoyne Garden Community;

(4) Provide a facility to co-locate college and community development support elements; and

(5) Provide facilities for agencies that will facilitate the development of the infrastructure to support and strengthen economic activities in the localities of Memphis and Shelby County Tennessee.

6. Spelman College

President: Dr. Johnetta B. Cole, Spelman College, 350 Spelman Lane, SW. Atlanta, GA 30314, Telephone: (404) 681–3643.

Project Director: Ms. Olivia Scriven, (404) 223–7514.

Project Funds: HUD Grant Award: $253,450.

Proposal Description: The project will implement an Entrepreneurial Business Development Program dedicated to expand opportunities for local business owners. Also, it will further contribute to the stability of the area and the ability of Spelman College to assume a more pivotal role in the area's growth and development.

Proposed Features:

(1) Provide technical assistance and special support services for existing local business owners, including one-on-one consultations;

(2) Provide individualized courses and general instruction in the areas of finance, accounting, strategic marketing and small business management.

(3) Provide in-business training for community residents in establishing a small business, including counseling, skills assessment, mentoring;

(4) Provide hands-on training through employment with an existing entrepreneur, as well as courses in business plan writing, venture capital, financing, marketing and advertising.

7. Wiley College

President: Lamore J. Carter, Wiley College, Marshall, TX 75670, Telephone: (903) 927–3201.

Project Director: Karen Dismukes, (919) 335–3702.

Project Funds: HUD Grant Award: $499,007.

Proposal Description: The project will stimulate neighborhood revitalization through affordable fair housing and economic development.

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Proposed Features:
(1) Rehabilitate a building that will be used to provide tutoring, counseling to low- and moderate-income residents;
(2) Provide counseling to marginally profitably small businesses which might otherwise be forced to close;
(3) Expand its cooperation with existing community organizations to provide anti-gang, anti-drug, and anti-crime programs for the locality; and
(4) Implement a program for low-income unwed mothers aimed toward achieving meaningful employment and independence.

8. University of Arkansas at Pine Bluff

Chancellor Dr. Lawrence A. Davis, Jr., University of Arkansas at Pine Bluff, North Cedar Street, Pine Bluff, AR 71601, Telephone: (501) 543–8980.
Project Director: Mr. Mack H. Talley, (501) 543–8000.
Project Funds: HUD Grant Award: $500,000.
Proposal Description. The project will expand UAPB's ability to impact the problems of Pine Bluff and furnish the City with a community facility that will serve as a conference and training center. Also, it will complement existing public and private business and/or community economic development efforts within the City.
Proposed Features:
(1) Acquire and renovate a facility to serve as a center for community training, economic development plus CDC and business incubation;
(2) Provide research and development assistance to a university-connected CDC in the formation of for-profit business enterprises to create jobs;
(3) Provide training and technical assistance to empower two public housing resident councils; and
(4) Provide grants to support CDC-owned business development and public housing resident council projects.

9. Fort Valley State College

President: Dr. Oscar L. Prater, Fort Valley State College, 1005 State College Drive, Fort Valley, GA 31030.
Contact Person: Dorothy L. Crumbly, (912) 825–6397.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: Fort Valley State College and the City of Fort Valley have formed a cooperative agreement to address neighborhood revitalization in the areas of housing, community development, and economic development.
Proposed Features:
(1) Contribute to neighborhood revitalization by acquiring and demolishing the dilapidated rental property of six adjacent units on State College Drive and Carver Drive;
(2) Construct two single-family units for low-/moderate-income families;
(3) Utilize Department of Criminal Justice, Sociology and Social Work, to help residents in the locality expand their commitment to community, family, and economic lift; and
(4) Conduct informational programs designed to stimulate business and economic development in selected rural communities.

10. Harris-Stowe State College

President: Dr. Henry Givens, Jr., Harris-Stowe State College, Laclede Street, St. Louis, MO 63103, Telephone: (314) 340–3381.
Project Director: Dr. James W. Gorham, Jr., (314) 340–3381.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: Harris-Stowe State College in cooperation with the City of St. Louis will implement the initial phase of an ongoing, long-term revitalization and redevelopment program. The completion of this work will result in a significant increase in the College's capacity to make a meaningful contribution to comprehensive revitalization/redevelopment efforts not only in its own neighborhood, but also elsewhere in the City of St. Louis.
Proposed Features:
(1) Assist in the development of a center for child development, parent education and self-sufficiency building; and
(2) Assist in the construction of a green space/playing field.

11. Fisk University

President: Dr. Henry Ponder, Fisk University, 1000 17th Avenue, North Nashville, TN 37208, Telephone: (615) 329–8715.
Project Director: Dr. Jerry M. Shelton, III, (615) 329–8555.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The project will enable Fisk University to take a leading role in addressing community development needs in the residential and commercial areas adjacent to the campus.
Proposed Features:
(1) Fisk University will design and develop a neighborhood commercial center on Jefferson Street adjacent to the campus;
(2) Implement a business incubator operated by the students and faculty of the Fisk Business Administration Department;
(3) Fisk University is proposing through a nonprofit to build eight housing units as rental properties to be available to low- and moderate-income individuals or families; and
(4) Fisk University will implement a public service component which will promote a linkage between the Boys and Girls Club, youth of the Andrew Jackson Courts public housing project and students and faculty of Fisk University

12. Bennett College

President: Dr. Gloria Scott, Bennett College, 900 E. Washington Street, Greensboro, NC 27401, Telephone: (919) 370–8626.
Project Director: Dr. Ulysses Bell, (910) 370–8602.
Project Funds: HUD Grant Award: $500,000.
Proposal Description. Bennett College will operate an intensive and extensive early intervention program to remove women and their families off public welfare and to help them become viable economical families producing tax contributions.
(1) Bennett College will construct a low-income 24-unit housing complex and a child care center for low-income families on college-owned land—land received to help enhance the commitment to improve the Southeast area as part of community redevelopment; and
(2) Provide social workers, nutrition specialists (including food preparation) economic development specialists, child and family development specialists to support the project participants.

13. Morgan State University

President Dr. Earl S. Richardson, Morgan State University, Cold Spring Lane and Hillen Road, Baltimore, MD 21239.
Contact Person: Dr. Robert B. Hill, (410) 319–3200.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The project will provide important educational, training and information services to welfare recipients and their public housing resident councils that would expand on the existing programs of Morgan State University (MSU) that are targeted to residents of CDBG and other low-income areas in Baltimore City.
Proposed Features:
(1) Conduct Workforce Competency and Entrepreneurship (WCE) courses that will permit public housing residents to enhance their employment and entrepreneurial skills and to obtain associate certificates over a two to three year period that can be credited toward a bachelor's degree; and

(2) Conduct a series of on-site Technical Assistance (TA) workshops for public housing resident councils and residents on how to assess community needs, how to build and use a data-collection system for more effective planning and community revitalization, etc.

14. Voorhees College

President Dr. Leonard E. Dawson, Voorhees College, Denmark, SC 29041, Telephone: (803) 793–3544.
Project Director Willie B. Owens, (803) 793–3351, ext. 7247.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The purpose of this project is to empower low-income female heads of household to become self sufficient.
Proposed Features
(1) Renovation of five (5) townhouses and one (1) bungalow to house eleven (11) low-income families;
(2) Renovation of T. H. Moore Student Center to accommodate a HeadStart Program that will complement the Bamberg Future 2000 Project; and
(3) Recruit thirty (30) eligible program participants and enroll them in Voorhees College as matriculating students.

15. Morris Brown College

President. Dr. Samuel D. Jolley, Jr., Morris Brown College, 643 Martin Luther King Jr. Drive, Atlanta, GA 30314, (404) 220–0100.
Project Director: Dr. Wilton E. Heyliger, (404) 220–0233.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The purpose of this project is to create a visible community development presence in the immediate neighborhood of Morris Brown College and to leverage community development activities of the College to maximize its impact on the locals.
Proposed Features:
(1) Establish a small business assistance center to augment the current services of the Small Business Development Center;
(2) Renovate the first floor of Jordan Hall to provide space for a child and family resource center; and
(3) Develop and conduct a workplace skills component for low- and moderate-income residents to improve their skills to become more competitive in the job market.

16 Kentucky State University

President: Dr. Mary L. Smith, Kentucky State University, East Main Street, Frankfort, KY 40601, (502) 227–6260.
Project Director: Dr. Gus T. Ridgel, (502) 227–6688.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The project will assist in upgrading and improving housing conditions in neighborhoods around the school. It also will construct a community interaction center which will provide services to residents of Douglas Avenue and the City of Frankfort.
(1) Acquisition of five vacant dilapidated structures which will allow Kentucky State University to construct a community interaction center and rebuilding of a 7-unit apartment building; and
(2) Construction of three new single-family dwellings.

17. Benedict College

President: Dr. David Swinton, Benedict College, Harden & Blanding Streets, Columbia, SC 29204
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The project will implement activities that will substantially expand its role and effectiveness in addressing community development needs in the Read Street area of Columbia, South Carolina.
Proposed Features:
(1) Proposed activities include job development and placement;
(2) Training for commercial janitorial service for entrepreneurs and prospective staff;
(3) Training for child development associates;
(4) Case management and counseling based on needs and analyses based on the Myers-Briggs Type Indicator instrument;
(5) Provide workshops/seminars to include tutoring for adults and children; and
(6) Provide workshops on financial planning and credit counseling, family preservation, conflict resolution, negotiation skills and self-esteem enhancement.

18. Elizabeth City State University

President: Dr. Jimmy R. Jenkins, Elizabeth City State University, Box 790, Elizabeth City, NC 27909, Telephone: (919) 335–3230
Project Director: Mr. Morris Autry, (919) 335–3702.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: The project will conduct activities to address rural community development needs.
Proposed Features: This project will conduct activities to address rural community development needs.
(1) Increase affordable and decent housing opportunities for low-/moderate-income persons by the rehabilitation of 10 homes in the Oak Grove Neighborhood;
(2) Expand business and employment opportunities for low-/moderate-income persons;
(3) Implement fair housing education and outreach activities; and
(4) Implement special programs to prevent drug abuse and trafficking in public housing and other targeted areas of the city.

19 Texas Southern University

President: Dr. Joann Horton, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004, Telephone: (713) 527–7033.
Project Director: Ella Nunn, (713) 527–7033.
Project Funds: HUD Grant Award: $500,000.
Proposal Description The project will expand the role of Texas Southern University in the Houston community through a proposed program providing assistance in business planning and development, management and technical assistance, education and training for the creation and expansion of small businesses. This program is a planned linkage with the City of Houston's funded Small Business Development Center
Proposed Features.
(1) Creation of linkage through a Memorandum of Agreement between Texas Southern University and City of Houston's Small Business Development Center;
(2) Development of programs which provide a continuum of care for the homeless; and
(3) Assistance to implement a program which aggressively provides opportunities for the creation and expansion for small and disadvantaged businesses.

20. Norfolk State University

President: Dr. Harrison B. Wilson, Norfolk State University, 2401 Corprew Avenue, Norfolk, VA 23504, Telephone: (804) 683–8670.
Project Director: Carolyn Bell, (804) 683–8236.
Project Funds: HUD Grant Award: $500,000.
Proposal Description: Norfolk State's proposed activities in phase two will implement a holistic approach and relate to affordable housing, crime, training, employment, economic development, health, reducing social barriers caused by income, and family stability.
Proposed Features.

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(1) Build five (5) new homes in the Brambleton community for low-income persons.

(2) Sponsor home affordability and fair housing workshops for an expanded number of persons;

(3) Provide paid apprenticeship training to five (5) low-income adults targeting Brambelton residents;

(4) Sponsor career education and job information workshops targeting Brambelton and Norfolk's other low-income areas;

(5) Develop a health education and fitness program;

(6) Develop a mentoring program for fifteen (15) Brambelton youth, ages 7–15;

(7) Conduct parenting workshops for low-income persons, targeting Brambelton residents and open to other Norfolk low-income areas; and

(8) Reduce crime in Brambelton, especially drug trafficking.

21. Saint Paul's College

President: Dr. Thomas M. Law, Saint Paul's College, 406 Windsor Avenue, Lawrenceville, VA 23868.

Project Director: Dr. Stanley W. Johnson, (804) 848–3355.

Project Funds: HUD Grant Award: $500,000.

Proposal Description: This project will provide an access road to the 212-acre lake, resources and facilities for public fishing, and limited recreational use of a five-acre tract adjacent to Great Creek, and appropriate parking.

Proposed Feature:

(1) Provide child care for the children of single parents in a model program whereby they can get a college education and become independent of public assistance: and

(2) Build two (2) small shelters in the Brunswick Community Park.

22 Johnson C Smith University

Interim President. Dr. Dorothy Cowser Yancy, Johnson C. Smith University, 100 Beatties Ford Road, Charlotte, NC 28216.

Project Director: Mr. Isaac Heard, Jr., (704) 378–1272.

Project Funds: HUD Grant Award: $499,974

Proposal Description The project will support activities undertaken by the Johnson C. Smith University. Community Development Corporation.

Proposed Features:

(1) Build new affordable housing and stabilize the existing housing stock within the corridor through a program of rehabilitation.

(2) Plan, market and build a community-based office complex into which local entrepreneurs can be "graduated" from the West Charlotte Business Incubator;

(3) Attract jobs to the area of the Corridor which are appropriate for the skill and experience levels of the unemployed and underemployed residents of the corridor; and

(4) Implement a Neighborhood Leadership Training Program that will work to provide corridor residents with the skills necessary to advocate for their own needs and desires in the corporate, government and not-for-profit arenas.

23. Prairie View A&M Research Foundation

President: General Julius Becton, Prairie View, TX 77446, Telephone: (409) 857–2111, HUD Grant Award: $499,945.

Project Director Mr. Bruce Cunningham, (409) 845–0605.

Proposal Description The project will build a Community Center for utilization by the neighborhood residents.

Proposed Features. The Community Center will serve as a meeting place for senior citizens, youth and families It also will provide necessary services to the community and the family opportunities for economic uplift—job training, business seminars and educational activities.

24. Clark Atlanta University

President. Dr Thomas W. Cole, Clark Atlanta University, James P. Brawley Drive, at Fair Street, SW., Atlanta, GA 30314, Telephone: (404) 880–8500.

Project Director Dr. Edward R. Davis (404) 880–8461

Project Funds. HUD Grant Award: $490,000.

Proposal Description

(1) The project will provide for the acquisition cost for up to five units of deteriorated and/or vacant single- or two-family houses in the Clark Atlanta University target area;

(2) Rehabilitate these houses and sell each unit, at a cost not to exceed $55,000 to low- and moderate-income facilities; and

(3) The School of Social Work will deliver comprehensive social services and job training assistance to selected low-moderate-income families.

25. Albany State College

President Dr Billy C Black, 504 College Drive, Albany, GA 31705, Telephone: (912) 430–4604.

Project Director. Lois B Hollis (912) 430–4604

Project Funds HUD Grant Award: $500,000

Proposal Description The project will conduct activities that impact positively on the Washington Homes neighborhood. It is in support of efforts to promote home ownership of the Albany Housing Authority which operates the public housing facilities in the City of Albany, Georgia.

Proposed Features:

(1) Provide technical assistance and support services for non-profit housing groups and community organizations who have already become partners with Albany Community Development in building low- and moderate-income housing;

(2) Develop a curriculum to train non-profit housing groups and community organizations that wish to build low- and moderate-income housing;

(3) Develop a course to train prospective low- and moderate-income home buyers in the responsibilities and obligations of home ownership.

(4) Develop a Comprehensive Housing Services Curriculum to train trainers in how to provide human residential services in transitional housing;

(5) Conduct a series of workshops designed to introduce aspiring low- and moderate-income entrepreneurs in the target neighborhood to basic business ownership ideas; and

(6) Establish a Minority Business Mentorship Program that will match fledgling entrepreneurs in Economic Development Uplift program with established business entrepreneur for mentorship.

26. Hamption University

President: Dr. William R. Harvey, Hampton University, East Queen Street, Hampton, VA 23504, Telephone: (804) 727–5231.

Project Director: Mr. Robert C. Askew, (804) 727–5570.

Project Funds: HUD Grant Award: $500,000.

Proposal Description: The project will provide a vehicle for outreach into the locality of Phoebus and the City of Hampton.

Proposed Features:

(1) Create a partnership with the City of Hampton and the Hampton Redevelopment and Housing Authority to assist in preserving and rehabilitating existing inventory of low-income housing;

(2) Create a partnership to provide down payment assistance for home ownership opportunities, for eligible low- and moderate-income persons, through Fannie Mae's Community Home Buyer's Program 3/2 component;

(3) Create a small business incubator to stabilize the community, strengthen the family and provide economic uplift;

(4) Support small and disadvantaged business owners, unemployed and underemployed persons;

(5) Create Partnerships with the City of Hampton and the private sector to address the physical, social and economic needs of the Phoebus community in a comprehensive manner; and

(6) Conduct a Fair Housing Conference to provide and disseminate information regarding homeownership opportunities, mortgage credit, insurance and fair housing laws and regulations.

27. Shaw University

President: Dr Talbert O Shaw, Shaw University, 118 E South Street, Raleigh, NC 27611, Telephone (919) 546–8200.

Project Director. Dr. Arlease G. Salley, (919) 546–8375

Project Funds HUD Grant Award: $500,000.

Proposal Description The project activities are designed to determine the economic impact of implementing programs to enhance the economic viability of southeast Raleigh, a low-to-moderate-income community that surrounds Shaw University.

Proposed Features

(1) Establish a Neighborhood Economic Empowerment Center where technical assistance will be available to current, new, and prospective business owners,

(2) Conduct economic and business seminars for residents and business owners.

(3) Develop a Community Education Outreach Program to provide practical economic and business information seminars to residents and business owners in order to increase participation in their own economic growth.

(4) Expand Southeast Raleigh Community Development Corporation's Homeownership Counseling Program as they continue their housing construction program, and

(5) Develop a comprehensive data base of southeast Raleigh to be used by the City of Raleigh and others as they continue to identify funds for economic development in the area.

28. Coppin State College

President Dr Calvin W. Burnett, Coppin State College, 200 West North Avenue, Baltimore, MD 21239, Telephone: (410) 383–5910.

Project Director: Mr. Melvin A. Bilal, (410) 290–0280.

Project Funds. HUD Grant Award: $500,000.

Proposal Description The proposed project will conduct activities to improve the physical redevelopment of the Coppin Heights Neighborhood adjacent to the College.

Proposed Features:

(1) Renovation of existing residential structures for conversion to a neighborhood health clinic;

(2) The School of Nursing and the Coppin State College Development Foundation will jointly develop a neighborhood health clinic run by nurses and other school of nursing support personnel;

(3) Coppin State College will develop an innovative mixed development for the entire 2500 block of North Avenue, redeveloping existing 3-story row houses for low/mod income rental housing on the two (2) upper levels, with neighborhood retail on the lower or street levels.

Dated: October 31, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–27367 Filed 11–3–94; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. N–94–3734; FR–3581–N–02]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Awards for FY 1993 and FY 1994

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Years 1993 and 1994 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Acting, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants for housing assistance and supportive services by two types of projects: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families; and (2) grants for projects that are part of long-term comprehensive strategies for providing housing and related services for low-income persons living with HIV/AIDS and their families.

The assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). The funding was appropriated by the HUD Appropriations Act of 1993 (Pub. L. 102–389, approved October 6, 1992) and by the HUD Appropriations Act of 1994 (Pub. L. 103–124, approved October 28, 1993). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1994 (59 FR 17186). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $25,026,043 was awarded to 31 applicants under two categories of assistance: $12,678,826 in 15 grants for special projects of national significance: and $12,347,217 in 16 grants for projects that are part of long-term comprehensive strategies for providing housing and related services. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub L. 101–235, approved December 15, 1989), the Department is publishing the grantees and amounts of the awards as follows:

Chart 1. Special Projects of National Significance:

San Francisco Black Coalition on AIDS San Francisco, CA—$718,372

Tarzana Treatment Center, Inc. Tarzana, CA—$1,000,000

State of Connecticut Department of Social Services—$1,000,000

City of Key West, FL, Housing Authority—$997,672.

The AIDS Project, Inc., Portland ME—$669,260.

Baltimore County, MD, Department of Community Development—$838,354

AIDS Housing Corporation, Boston MA—$461,590.

Patterson Residential Care, Inc., Detroit MI—$572,442.

New Jersey Housing and Mortgage Finance Agency—$1,000,000

Housing Works, Inc., New York City NY—$1,000,000.

Southside Community Mission, Brooklyn, NY—$437,740

New York State Department of Health—$985 724

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Municipality of San Juan, PR, Department of Housing and Community Development—$997,672.

Houston Regional HIV/AIDS Resource Group, Inc., Houston, TX—$1,000,000.

City of San Antonio, TX, Department of Community Initiatives—$1,000,000.

Chart 2. Projects that are part of long-term comprehensive strategies for providing housing and related services:

State of Alaska, Housing Finance Corporation—$997,672.

Pima County Community Services, AZ—$698,598.

State of Arkansas, Department of Health—$997,251.

City of Savannah, GA, Bureau of Public Development—$988,415.

County of Maui, HI, Department of Housing and Human Concerns—$250,000.

Lexington-Fayette Urban County Government, Division of Community Development, KY—$1,000,000.

City of Lansing, MI, Department of Planning and Neighborhood Development—$152,540.

State of Mississippi, Department of Health—$1,000,000.

State of Missouri, Department of Health—$998,653.

City of Eugene, OR, Planning and Development Department—$689,700.

State of Rhode Island, Housing and Mortgage Finance Corporation—$833,421.

Utah Department of Community and Economic Development—$389,534.

Washington State Department of Community, Trade and Economic Development—$1,000,000.

Spokane County, WA, Community Services Department—$695,250.

State of West Virginia, Governor's Cabinet on Children and Families—$657,183.

City of Madison, WI, Department of Planning and Development—$999,000.

Total Grants Allocated in Charts 1 and 2: $25,026,043

Dated: October 31, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94-27366 Filed 11-3-94; 8:45 am]

BILLING CODE 4210-29-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

U.S. Bureau of Mines Advisory Board; Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the U.S. Bureau of Mines Advisory Board. The purpose of the board shall be to provide the Director of the U.S. Bureau of Mines with expert advice on policy and program direction.

Further information regarding the advisory board may be obtained from the Director, U.S. Bureau of Mines, Department of the Interior, 810 7th Street, NW., Washington, DC 20241.

The certification of establishment is published below.

Certification

I hereby certify that establishment of the U.S. Bureau of Mines Advisory Board is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 30 U.S.C. 1-8.

Dated: July 8, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94-27412 Filed 11-3-94; 8:45 am]

BILLING CODE 4310-RJ-M

Bureau of Land Management

[CO-920-05-1320-01; COC 56447]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 56447; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease 2,769.67 acres of federal coal in Gunnison County, Colorado.

DATES: The public hearing will be held at 7 p.m., December 5, 1994. Written comments should be received no later than December 15, 1994.

ADDRESSES: The public hearing will be held in the Paonia Town Hall, Paonia Community Center Room, 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Bureau of Land Management, Uncompahgre Basin Resource Area Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Allan Belt, Area Manager, Uncompahgre Basin Resource Area Office at the address above, or by telephone at (303) 249-6047.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on December 5, 1994, at 7 p.m., in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado.

An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 13 S., R. 90 W., 6th P.M.
Sec. 10, SE¼SE¼;
Sec. 11, lots 9 to 12, inclusive, and SW¼SW¼;
Sec. 14, lots 1 to 16, inclusive;
Sec. 15, lots 1 to 4, inclusive, and E½W½SW¼;
Sec. 22, lots 1 to 16, inclusive;
Sec. 23, lots 1 to 16, inclusive;
Sec. 26, lots 1 to 16, inclusive.
Containing 2,769.67 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the December 5, 1994, public hearing should be received at the Uncompahgre Basin Resource Area Office prior to the close of business December 5, 1994. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Uncompahgre Basin Resource Area Office at the above address prior to close of business on December 15, 1994.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Basin Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado.

Dated: October 31, 1994.

James E. Edwards, Jr.,

Management Team Resource Services.

[FR Doc. 94-27368 Filed 11-3-94; 8:45 am]

BILLING CODE 4310-JB-M

[MT-070-05-1430-00; MTM82585]

Notice of Realty Action: Exchange

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of realty action MTM82585, Exchange of public and private lands in Madison and Beaverhead Counties.

SUMMARY: The following described BLM lands have been determined to be suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, as amended.

Montana Principal Meridian

	Acres
T13S, R5W	
Section 19:	
Lots 1-4	152.72
E2, E2W2	480.00
Section 20:	
SW	160.00
NWSE	40.00
S2SE	80.00
Section 29:	
N2N2	160.00
SENW	40.00
Section 30:	
N2NE	80.00
T5S, R4W	
Section 34:	
SE4NW4, S2	360.00

Containing about 1,552.72 acres of public lands.

In exchange for these lands, the United States will acquire the following described land from Mr. Jack Thomas:

Montana Principal Meridian

	Acres
Section 10:	
NW4NW4	40.00
S2NW4	80.00
SW4	160.00
SW4SE4	40.00

Containing 320 acres of private lands.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the Exchange, including the Environmental Assessment, is available for review at the Dillon Resource Area Office, 1005 Selway Drive, Dillon, MT 59725.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. Right-of-way MTM80640 to the United States for a road 33 feet in width in Sections 19, 20, and 29, T13S, R5W.

3. An RS2477 right-of-way 66 feet in width for a county road in Section 29, T13S, R5W.

4. An RS2477 right-of-way 66 feet in width for a county road in Section 34, T5S, R4W.

5. Right-of-way (MTM020357) 100 feet in width to Vigilante Electric Cooperative for an electric transmission line in Sections 20 and 29, T13S, R5W.

6. Right-of-way (MTM48933) 20 feet in width to Montana Power Company for an electrical distribution line in section 34, T5S, R4W.

7. Right-of-way (MTM81388) 12 feet in width for a road to a local residence in Section 34, T5S, R4W.

8. A reservation to the United States for the saleable minerals in the NW¼ SW¼, Section 34, T5S, R4W.

9. All other valid existing rights (e.g., rights-of-way, easements, and leases of record).

10. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated intended completion date for the exchange is December 1994. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values and will increase management efficiency of public lands in the area.

Dated: October 26, 1994.

Orval L. Hadley,

Associate District Manager.

[FR Doc. 94-27335 Filed 11-3-94; 8:45 am]

BILLING CODE 4310-DN-M

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Fish and Wildlife Service

Availability, Oil Spill Restoration Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) herein releases the draft *Apex Houston* Oil Spill Restoration Plan (Plan) for public review. The Plan covers the Service proposal to restore natural resources injured as a result of the 1986 *Apex Houston* barge oil spill.

DATES: Written comments must be submitted on or before December 5, 1994.

ADDRESSES: Requests for copies of the Plan may be made to: U.S. Fish and Wildlife Service, Ecological Services, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825.

Written comments or material regarding the Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Daniel Welsh, Natural Resource Damage Assessment Branch Chief, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento CA 95825.

Interested parties may also call (916) 978–5603 for further information.

Restoration of Nearshore Breeding Seabird Colonies on the Central California Coast

Executive Summary

Between January 28 and February 4, 1986 the transportation barge *Apex Houston* discharged an undetermined amount of San Joaquin Valley crude oil while in transit from San Francisco Bay to the Long Beach Harbor. The oil spill caused damage to natural resources from San Francisco to the Big Sur coast. Approximately 9,000 seabirds were killed, including 6,000 common murres (*Uria aalge*), in addition to other aquatic life in and around the coastal waters of central California. State and Federal personnel responded to the spill and assessed damages as a result of the spill.

The State and Federal natural resource trustees commenced litigation in this matter against potentially responsible parties in January 1989. The complaints alleged claims for natural resource damages, costs, and penalties pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq., Title III of the National Marine Sanctuaries Act, 16 U.S.C. § 1431 et seq. (formerly the National Marine Protection, Research and Sanctuaries Act, "MPRSA"), the California Harbors & Navigation Code §§ 293 and 294, and other State Law.

In August, 1994 the parties settled this matter in a Consent Decree entered by the Federal District Court for the Northern District of California for $6.4 million. As part of this natural resources damage settlement, approximately $4.92 million has been allocated for the restoration of common murres. An additional $500,000 has been allocated for the acquisition of habitat for the Federally endangered marbled murrelet (*Brachyramphus marmoratus*), another species impacted by the spill. The marbled murrelet project will be the subject of future restoration planning efforts in this case and is not included in this plan. The remainder of the $6.4 million collected in the settlement is for penalties and costs incurred as a result of the spill. A Trustee Council, comprised of representatives of each Trustee (California Department of Fish and Game, National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service) was established to review and select restoration actions. This Trustee Council will meet regularly during the duration of the project to review progress and make necessary changes.

The goal of this effort is to restore common murres in areas where colonies were extirpated or severely depleted by the *Apex Houston* oil spill. Social attractants (decoys and recorded vocalizations of common murres) will be used to attract common murres to nest at historic nearshore colonies in the vicinity of San Francisco and Monterey. Behavior and phenology of common murres will be monitored at these sites and at reference sites at Point Reyes and the Farallon Islands to determine when the goal has been met. This project may take approximately 10 years to achieve success because common murres have inherently low reproductive rates and do not breed until they are several years old.

Restoration of Nearshore Breeding Seabird Colonies on the Central California Coast

Introduction

Nearshore breeding colonies of common murres (*Uria aalge*) throughout central coastal California decreased by 60% between 1980 and 1986 (Takekawa et al. 1990). This population decline was attributed to high mortality from gill-net fishing, oil spills (including the Apex Houston spill), and a severe El Nino-Southern Oscillation event in 1982–1983 (Takekawa et al. 1990, Swartzman and Carter 1991). The *Apex Houston* oil spill, which occurred principally between San Francisco and the Monterey Peninsula, killed nearly 9,000 seabirds in February 1986 (Siskin et al. 1993). These mortalities included approximately 1,293 rhinoceros auklets (*Cerorhinca monocerata*), 180 small alcids, 12 marbled murrelets (*Brachyramphus marmoratus*), and 1,206 other birds (including loons, grebes, scoters, cormorants, shorebirds, and gulls) killed as a result of the spill (Siskin et al. 1993). In addition, approximately 6,000 common murres were killed (Siskin et al. 1993). The common murre colony at Devil's Slide Rock was found to be abandoned, subcolonies at Castle Rocks disappeared, and other central coastal breeding sites (e.g., Hurricane Point Rocks, Point Reyes) were greatly reduced after the spill (Takekawa et al. 1990, Swartzman and Carter 1991)(Figure 1).

In the early 1900's, common murres bred at Prince Island in southern California (Carter et al. 1992). However, the central coastal California population currently represents the southernmost range for breeding common murres in the Pacific. Future oil spills and other catastrophic events (e.g., disease, predation, climate change) could result in the extirpation of this population as well as a reduction in the species' geographic range. The restoration of former common murre colonies would aid in securing the central coastal California common murre population and would spread the risk of future disasters among colony sites over a wider range of the California coast.

The goal of this project is to recolonize common murres at historic breeding colonies in central California. The project will be conducted over approximately 10 years. A total of $4.92 million is available for this project.

Purpose

The restoration funds were recovered under the Clean Water Act, the National Marine Sanctuaries Act, the California Harbors & Navigation Code §§ 293 and 294, and other State law. A Trustee Council, comprised of representatives of each Trustee, was established to review and select restoration actions. As part of the settlement in the *Apex Houston* litigation, approximately $4.92 million has been allocated for the restoration of common murre colonies that suffered damage from the *Apex Houston* oil spill. This project should protect the central California common murre populaton. This will be achieved by restoring this population to a larger part of its historic range and spreading the risk of future catastrophic events (e.g. oil spills, disease, storms) between more colony sites and over a broader section of the California coast.

Proposed Restoration Alternatives

Alternatives Considered

Numerous studies have shown that oil spills impact coastal marine ecosystems by decreasing the species diversity, reducing genetic variability, disrupting food chains, and modifying community structure. However, human intervention in the form of restoration projects can promote the recovery of resources impacted by oil spills. Therefore, the Trustees concentrated their damage assessment and restoration efforts on the recovery of seabird populations, especially alcids, impacted by the *Apex Houston* oil spill.

Alternatives considered for seabird restoration included active recolonization/restoration projects and habitat acquisition projects. Alternatives were compared based on their monetary costs, benefits to local populations of the impacted species, and location relative to impacted areas.

Recolonization/restoration efforts were considered for common murres and rhinoceros auklets, two seabird species that suffered high mortality as a result of the spill. The rhinoceros auklet project involved use of artificial nest sites to enhance breeding populations along the central California coast. The common murre recolonization project (described herein for public comment) was given higher priority because its potential benefits were linked more closely to the injuries caused by the spill. Most of the impacted common murres came from local colonies, whereas many of the dead auklets were wintering birds that nest north of the impacted area. A third restoration project involving construction of a seabird breeding and rehabilitation facility was rejected because its cost was prohibitive relative to settlement funds.

Four habitat acquisition projects were considered: purchase of Cape Vizcaino in northern Mendocino County to protect nesting seabirds, purchase of coastal land near Castle Rock to protect a mainland colony of common murres, purchase of lands within San Francisco Bay, and purchase of marbled murrelet nesting habitat along the central California coast. The first three projects were given lower priorities because they were outside of the area impacted by the spill (Cape Vizcaino), were too costly (mainland site near Castle Rock), or were beneficial primarily to species that were not affected by the spill (sites in San Francisco Bay). A restoration plan describing the marbled murrelet habitat acquisition project will be made public at a later date.

Preferred Alternative: Recolonization of Impacted Common Murre Colonies

The project the Trustee's prefer and on which public comment is invited is the recolonization of common murre colonies at Devil's Slide and San Pedro rocks in San Mateo County and Castle and Hurricane Point Rocks in Monterey County.

A. Devil's Slide and San Pedro Rocks Common Murre Recolonization: Recolonize Common Murres at Devil's Slide and San Pedro Rocks (San Mateo County, California) Using Social Attraction Methods (Decoys and Recorded Vocalizations) and Develop Reference Information Needed To Evaluate and Refine Restoration Efforts

Location(s): Devil's Slide and San Pedro Rocks, San Mateo County, California; Point Reyes area (Point Reyes, Point Resistance, Double Point, and Miller Point rocks), Marin County, California; Farallon Islands, San Francisco County, California

Justification: The recolonization of abandoned common murre colonies in central California will contribute to the restoration of this seabird's historic geographic range. This population sustained severe losses from commercial and subsistence egging in the 1800's and early 1900's, from chronic oil pollution and spills in the early to mid 1900's, and from chronic oil spills and gill-netting in the 1980's and 1990's. Common murres were last recorded breeding at San Pedro Rock in 1909, when the colony was in the process of being extirpated by egg collectors (Ray 1909). The *Apex Houston* spill in 1986 contributed significantly to the loss of the Devil's Slide Rock colony near San Francisco. The San Pedro and Devil's Slide Rocks colonies are in close proximity and constitute the only common murre colonies between San Francisco and Monterey. This is a large portion of the range of the central California common murre population.

Given the current depleted condition of the common murre population, extirpated colonies are not likely to be reestablished in the foreseeable future without human assistance. The San Pedro Rock colony has not recolonized over the past 85 years and the Devil's Slide Rock colony has not been recolonized in the 8 years following the *Apex Houston* spill. Similarly, the Prince Island colony in southern California has not been recolonized since extirpation in the early 1900's (Carter et al. 1992). Furthermore, all six nearshore colonies in central California have remained severely depleted since the mid-1980's. The reduction of the geographic range and small numbers of common murres in central California increases the risk for extinction for the central California population.

Studies of seabird colony formation in Maine demonstrated that recolonization can be achieved using social attractants (Kress 1978, Kress and Nettleship 1988, and Kress et al. 1991). The use of decoys and tape recordings has attracted prospecting seabirds, which have bred once a threshold has been reached. These techniques have assisted in the recolonization by several species of colonial nesting seabirds (Podolsky 1985; Podolsky and Kress 1989, 1991). Preliminary efforts at recolonizing common murres in Maine in 1992–1994 have attracted common murres during the breeding season (S. Kress, pers. comm.). However, social attraction techniques must be applied for many years before breeding begins and a self-sustaining breeding colony can be attained.

In order to refine recolonization methods and evaluate their success, reference information will be needed on the reproductive biology, behavior, and phenology of common murres at an unmanipulated near-shore site in the local area. However, little information is available from near-shore colonies in central California. Monitoring attendance patterns, arrival dates, reproductive success, and behavior of breeding and nonbreeding common murres at accessible colonies in the Point Reyes area will provide a comparison to evaluate recolonization of Devil's Slide and San Pedro rocks. The Point Reyes colonies (i.e., Point Reyes, Point Resistance, Double Point, and Miller Point rocks) are the closest to the recolonization sites, are the most ecological similar, and should provide a reference for what would normally be expected in a near-shore common murre colony as well as a good comparison with the recolonization site. The monitoring conducted at these unmanipulated colonies will be used to assess recolonization responses and common murre activity patterns at recolonization sites, as well as support refinement of recolonization methods.

In addition, unique information will be needed from the common murre colony at the South Farallon Islands at Farallon National Wildlife Refuge in order to evaluate recolonization responses and refine techniques. Common murre reproductive success, diet, and breeding biology have been studied for over 20 years at the South Farallon Islands as part of long-term monitoring of seabird populations required for the Farallon National Wildlife Refuge and other research

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conducted by the Point Reyes Bird Observatory (Ainley and Boekelheide 1990, Ainley et al. 1994). As a result of these studies, a small number of individually marked birds of known age and sex exist at the Farallon Islands. Little information is available concerning the attendance of breeding and nonbreeding common murres at breeding sites, especially during winter. Information obtained on individually-marked birds, where age and sex are known, would give a better understanding of expected time-in-attendance and behavior at breeding sites for adult and subadult common murres during the breeding and nonbreeding seasons. Detailed information on common murre attendance and prospecting in the winter will make it possible to evaluate the significance of winter attendance at the recolonization sites. If winter attendance is crucial to successful breeding, social attraction methods may have to be deployed for a longer period. In addition, all accessible subcolonies of common murres at the South Farallon Islands would be examined for more general attendance patterns throughout the year.

Attendance, breeding biology, and behavior will be monitored during the breeding season in marked and unmarked birds in plots at the South Farallon Islands so that recolonization responses at recolonization sites can be more effectively evaluated. Certain colonies with potential for future intensive monitoring efforts may be examined in greater detail, including reproductive success. This information will be important in evaluating and modifying the social attraction methods used at the restoration sites. Information that is only available at this larger, more accessible, and closely monitored common murre colony, including known-aged common murre information, will be used to refine and assess recolonization efforts.

Proposed Actions: Social attraction techniques will be used to recolonize common murres at Devil's Slide and San Pedro rocks. The use of decoys and tape-recordings, similar to those used elsewhere to encourage recolonization by several seabird species, is proposed (Podolsky and Kress 1989, Kress 1990, Podolsky 1985). Preliminary work will consist of selecting observation points to view recolonization sites, constructing and installing observation blinds, obtaining access permits, and purchasing needed equipment. Periodic observations of winter attendance of colonies will also be conducted in fall and winter 1994–1995. Aerial surveys of central California breeding seabird colonies and periodic observations of breeding colonies from vantage points will be conducted in the spring and summer of 1995. Additional aerial reconnaissance of Devil's Slide and San Pedro rocks will be conducted to obtain photographs for mapping the restoration sites. Reconnaissance trips to Devil's Slide and San Pedro rocks will take place to determine equipment and procedures needed to deploy social attraction equipment. Ladders may be installed to allow safe access onto the colonies for project personnel.

Decoys and audio equipment will be placed on the rocks in fall 1995 before common murres begin to frequent nesting islands. Recordings of common murre breeding vocalizations will be made at the Farallon NWR. Life-size common murre decoys will be positioned on suitable nesting habitat. The decoys will be secured to the rock in a fashion that simulates occupied common murre colonies. Several omnidirectional weather resistant loudspeakers will be positioned at the recolonization sites. Endless tape loops or compact disks of California common murre vocalizations will be played throughout the breeding season from December to August. Daily observations of the recolonization sites will begin once decoys have been deployed and will continue through July. Devil's Slide Rock will be observed from the mainland using a portable blind and telescope. San Pedro Rock observations will occur from a blind located on the rock, from a boat, and/or from the mainland.

Data collected will include common murre arrival date, number of common murres present, behavior of common murres, interaction with other species (e.g., Brandt's Cormorants (*Phalacrocorax penicillatus*)), location on rock, attendance patterns, and presence of predators. Prospecting common murres will be plotted by location on maps of the recolonization site. One or more aerial photographic censuses of the central California common murre colonies will be conducted annually between May and June. The censuses will be used to calculate annual breeding population sizes at the recolonization sites and nearby reference colonies in central California, compare trends between years, and assist in determining numbers of common murres not visible from the mainland or boats. Social attractants will be displayed through the breeding season until after common murres normally leave the breeding sites, usually in August. The decoys and audio equipment will be collected after all bird breeding on the rock has been completed. Equipment will be checked, cleaned, and replaced as necessary. The equipment will be redeployed during the following fall before common murres begin to frequent nesting islands. Monitoring of recolonization sites will continue annually after the first social attractants are deployed. The restoration efforts will be evaluated annually and revised as necessary.

The breeding behavior and colony attendance of common murres will be monitored at four nearby colonies in the Point Reyes National Seashore and/or the Gulf of the Farallones National Marine Sanctuary: Point Reyes, Point Resistance, Double Point Rocks, and Miller Point Rocks. Several variables will be monitored to allow comparison to recolonization sites, including population size and status, attendance patterns, timing, breeding phenology and success, behavior, interaction with other species, impacts of predators, and human and other disturbances. The population size and status would be determined using similar methods employed by Birkhead and Nettleship (1980), Gaston et al. (1983), Mudge (1988), and Hatch and Hatch (1989). Only subcolonies that can be viewed from a safe location will be selected. Reconnaissance work and preliminary observations and logistics would begin in spring-summer 1995. This work would consist of obtaining access permits to conduct work, selecting subcolonies to be studied, selecting plots within subcolonies, and conducting aerial surveys of the colony. The monitoring period would parallel that followed at Devil's Slide and San Pedro rocks.

Winter and summer attendance, and selected aspects of breeding biology of banded and unbanded common murres will be monitored at breeding sites at the South Farallon Islands at Farallon NWR. Established and new study plots, individually-banded birds, blinds, and other facilities will allow for the study of summer and winter attendance in more detail than at nearshore locations. Monitoring would include determining arrival dates, winter attendance patterns (breeding versus nonbreeding common murres), winter behavior of nonbreeding and breeding common murres, site fidelity of breeding common murres, reproductive success, population size, and impacts of predation. Monitoring at the South Farallon Islands will continue for at least two years and may be extended beyond two years if needed to support refinement of recolonization methods or to facilitate interpretation of data at other colonies.

Schedule: Fall and winter 1994–1995: Begin preliminary work, including contracting, planning, logistics, permits, and purchasing.

Spring-summer 1995: Conduct aerial surveys of seabird colonies in central California to obtain baseline data, conduct aerial flights of Devil's Slide and San Pedro rocks to obtain aerial photos for mapping purposes, and record breeding common murre vocalizations at the Farallon NWR for use in the recolonization project. Select colonies and study plots to be monitored in the Point Reyes area. Conduct safety training for personnel as required.

Fall and winter 1995–1996: In fall 1995, conduct reconnaissance trips to recolonization sites in preparation for deployment of social attractants. Before December 1995, deploy social attractants and initiate daily observations of recolonization sites. Initiate daily observations of study plots in December 1995. Complete field season in August when common murres generally leave breeding colonies. Observations of study plots will continue from December through August for a minimum of 5 years to 10 years in order to provide necessary information to adequately evaluate the recolonization project. Work at the South Farallon Islands will begin the winter of 1995–1996 and will continue for a minimum of two years. Regular progress reports and an annual report will be submitted by the contractor performing the work at the South Farallon Islands.

B. Castle and Hurricane Point Rocks Restoration: Restore Common Murres at Castle and Hurricane Point Rocks Using Social Attraction Methods (Decoys and Recorded Vocalizations)

Location: Castle and Hurricane Point rocks, Monterey County, California.

Justification: As described above, the recolonization of historic common murre colonies in central California will contribute to the reversal of the dramatic reduction of this seabird's historic geographic range. The 1986 *Apex Houston* spill severely affected the breeding colonies that make up the southern half of the central California breeding range. Two breeding colonies near Monterey, Castle and Hurricane Point rocks, were hard hit by the *Apex Houston* spill and are in serious danger of perishing entirely. The remaining subcolonies on these rocks are very small and disjunct. These colonies are particularly important because they are at the current southern end of the central California population as well as the southern extreme of the species' range in the Pacific Ocean. These colonies are in close proximity to each other and constitute the only active common murre colonies south of San Francisco, a large portion of the range of the central California common murre population. Given the current fragile condition of the overall common murre population and the lack of recovery over time, colonies once lost are not likely to be reestablished in the foreseeable future without human assistance. If the colonies at Castle and Hurricane Point rocks are lost, the resulting reductions in the geographical range, numbers, and productivity of common murres further increase the risk of extinction of the entire central California population.

Proposed Action: The common murre colonies at the Castle and Hurricane Point rock complexes will be evaluated to determine the best means of employing social attractants at these locations. A minimum of two years would be required to determine appropriate methods. Both of these colonies are composed of several subcolonies on different rocks. Subcolonies will be examined to obtain a comprehensive understanding of colony dynamics in a severely depleted condition. Breeding population levels, reproductive success, attendance patterns, behavioral observations, and nesting locations will be determined at as many subcolonies as possible. Particular attention will be paid to prospecting birds within established subcolonies and at unoccupied rocks. In addition, all unoccupied rocks and potential mainland breeding habitats will be assessed for the use of social attractants to encourage common murre breeding. Habitat will be assessed for suitability to support a common murre subcolony, including such factors as slope, size, protection from human and other disturbance, surf conditions, and predation threats. The unoccupied rocks will be regularly monitored to detect prospecting common murres.

A phased approach to employing social attractants may be used to refine the use of social attractants on the colony. Criteria to be used to determine the use of social attractants include: loss of subcolonies or colonies, below normal reproductive success, lack of colony growth, limited availability of breeding sites in existing subcolonies, high numbers of prospecting common murres in existing subcolonies, presence of prospecting common murres in areas with no breeding, and population status at each colony. The use of social attractants would be employed at sites where it was deemed necessary to encourage common murres to recolonize lost subcolonies or prospect and nest on unoccupied rocks. The goal would be to prevent colony loss and/or restore the breeding colony to historic numbers without negatively impacting existing subcolonies. If, for any reason, social attractants are not deemed advisable after two years, the colonies at these sites will be monitored for three more years to insure adequate reproductive success, activity, colony survival, and recovery and, if necessary, to develop alternative restoration techniques.

Schedule: Fall and winter 1994–1995: Preliminary work will begin, including selection of observation points, obtaining access permits, planning, and purchasing. In December 1994, observations of breeding colonies will begin in order to obtain necessary baseline information.

Spring and summer 1995: Aerial surveys of breeding common murre colonies will be conducted in May-June to obtain baseline data. These surveys will be conducted in conjunction with aerial common murre surveys for central California. Observations of breeding colonies will continue each year from December 1994 until August 1997, at a minimum. In August 1997, the use of social attractants will be assessed to restore these common murre colonies. In fall 1997, social attractants will be deployed where suitable.

Goals

The *Apex Houston* oil spill killed an estimated 6,000 common murres, eradicated the Devil's Slide Rock colony, and damaged colonies at Castle and Hurricane Point Rocks. If the latter two colonies are lost, over 75% of the recent range of the central California common murre population will have been lost. The Trustee Council has selected restoration alternatives designed to restore common murres to colonies in the areas most severely affected by the spill. An important goal is to make significant progress toward the establishment of 100 breeding pairs of common murres at Devil's Slide Rock and San Pedro Rock colonies. The time frame needed for common murres to become established at extirpated colonies is unknown but is suspected to be many years. If possible, the project will attempt to restore the colonies to pre-spill population levels. The time frame needed for common murres to reach pre-spill population levels is unknown but is suspected to take several generations. Ultimately, the long-term goal is to restore the common murre colonies to historic breeding levels, although this would probably require funds in addition to those currently budgeted.

The Trustee Council plans to review the common murre restoration project at least annually at which time the

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effectiveness of the project and possible improvements will be considered. The annual review process may result in revisions to the plan. Revisions will be reviewed by the Trustee Council. Revisions to the plan will be guided by documented evidence, scientific literature, and best professional judgement.

Environmental Compliance

The U.S. Fish and Wildlife Service has determined that the project is categorically excluded from the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, according to the Department of Interior's Departmental Manual, 516 DM 6, Appendix I, 516 DM 2, Appendix I. Resource management activities such as the type described for this project, which include research, reintroduction of established species into their historic range, and small structures or improvements, are categorically excluded from NEPA. The U.S. Fish and Wildlife Service has prepared an Environmental Action Memorandum setting forth the basis for the categorical exclusion of this project.

The State of California has determined that the project is categorically exempt from the California Environmental Quality Act (CEQA), Cal. Pub. Resources Code 21000 et seq., and has filed a Notice of Exemption with the State Clearinghouse.

The Trustee Council is submitting a Consistency Determination pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1456(c) with the California Coastal Commission. The Trustee Council has concluded that the proposed project will have no impact on California's coastal zone.

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Dated: October 28, 1994.

Thomas Dwyer,

Acting Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 94–27374 Filed 11–3–94; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Establishing the Closing Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Competitive Cooperative Agreements Program for Fiscal Year (FY) 1995

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for competitive cooperative agreement awards for fiscal year 1995.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Competitive Cooperative Agreements Program is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that will promote more cost-effective production, ready availability, and greater use of high quality geospatial data. The NSDI Competitive Cooperative Agreements Program is intended to encourage resource-sharing projects, between and among the public and private sector through the use of technology, networking, and enhanced interagency coordination efforts. Proposals must involve two or more organizations and participants are expected to cost share in the project. Activities initiated under this program will promote access to data sets that are needed for national, regional, state, and local analyses. Authority for this program is contained in the Department of the Interior and Related Agencies Appropriations Act of 1995.

Applications may be submitted by State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or state-recognized Native American tribes or groups.

DATES: The program announcement and applications forms are expected to be available on or about November 15, 1994. Applications must be received on or before February 15, 1995.

ADDRESSES: Copies of Program Announcement 8110 may be obtained by writing to Nedra Stallone, U.S. Geological Survey, Office of Procurement and Contracts, Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 648–7364.

FOR FURTHER INFORMATION CONTACT: Jennifer Snyder, FGDC, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone number (703) 648–5514; facsimile (703) 648–5755. Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Under this FY 1995 program announcement, proposals are to be directed towards two components of the NSDI. The first component deals with creation of a distributed clearinghouse for finding and accessing geospatial data. The second component involves development and promulgation of the use of standards in data collection, documentation, transfer, and search and query. The following list of efforts is considered within the scope of the two aforementioned activities. Development and implementation of the National Geospatial Data Clearinghouse: Create (inventory, evaluate, catalog data, and establish Internet access) and manage a node on the National Geospatial Data Clearinghouse that provides users with a means for finding, accessing, and sharing data; establish, develop, or expand programs or projects, through development of training programs, information guides and other explanatory materials, that increase the contributions of local, regional, or national data sets to the National Geospatial Data Clearinghouse; and, design, develop, or implement tools to assist in the inventory, evaluation, documentation, cataloging, serving, maintaining, and sharing of geospatial data. Develop and further the implementation of FGDC-endorsed standards: Conduct programs to increase user comprehension and adoption of the FGDC Content Standards for Digital Geospatial Metadata and the Spatial Data Transfer Standard; and, stimulate the development of applicable geospatial data standards in partnership with the FGDC Subcommittees and Working Groups. Develop software tools or techniques to aid the evaluation of geospatial metadata or data through the National Geospatial Data Clearinghouse; develop means of displaying the quality of geospatial data; and, develop means of speeding comparison and evaluating data for using metadata.

Dated: October 26, 1994.

William Gossman,

Acting Assistant Director for Administration.

[FR Doc. 94–27322 Filed 11–3–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Draft Environmental Impact Statement for Elwha River Ecosystem Restoration, Olympic National Park, WA

ACTION: Notice of Availability on the draft environmental impact statement.

SUMMARY: This notice announces the availability of a draft environmental impact statement (DEIS) for the restoration of the Elwha River Ecosystem in Olympic National Park, Washington. This notice also announces public meetings for the purpose of receiving comments on the draft document.

DATES AND LOCATIONS: There will be a 60-day public review period for comment on this document. Comments on the DEIS should be received no later than December 23, 1994. Public meetings will be held in Port Angeles, Washington on Monday, November 14, 1994, from 1:30–4:00 p.m. and 5:30–9:00 p.m. at the Vern Burton Community Center, 308 E. 4th Street; and in Seattle, Washington on Tuesday, November 15, 1994, from 5:30–9:00 p.m. at The Mountaineer's Building, Rhododendron Room, 300 3rd Ave. West.

ADDRESSES: Comments on the DEIS should be submitted to: Sarah Bransom, National Park Service, TWE, P.O. Box 25287, Denver, CO 80225–0287.

Public reading copies of the DEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th & C Streets NW., Washington, DC 20240, Telephone: 202–208–6843.

Pacific Northwest Regional Office, National Park Service, Regional Office Library, Rm. 650, 909 First Ave., Seattle, WA 98104–1060, Telephone: 206–220–4070.

Olympic National Park, National Park Service, 600 E. Park Ave., Port Angeles, WA 98362, Telephone: 206–452–4501.

North Olympic Library System, Port Angeles Branch, 207 S. Lincoln St., Port Angeles, WA, Telephone: 206–452–9253.

Government Documents, Seattle Public Library, 1000 4th Ave., Seattle, WA 98104–1193, Telephone 206–386–4686.

Government Publications, Suzzallo Library, University of Washington, Seattle, WA 98195, Telephone: 206–543–1937.

FOR FURTHER INFORMATION CONTACT: Brian Winter, Elwha River Restoration Coordinator, Olympic National Park, 600 E. Park Ave., Port Angeles, WA 98362, Telephone: 206–452–0302. A limited number of copies of the DEIS are available on request.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement, Elwha River Ecosystem Restoration, Olympic National Park, Washington describes and analyzes a proposed action and four alternatives for restoration of the Elwha River ecosystem and its native anadromous fish runs. Under the DEIS's proposed action, the Secretary of the Interior would remove both the Elwha and Glines Canyon Dams to accomplish the above restoration objectives. The other alternatives are no action—continuing to operate the dams without anadromous fish mitigation; dam retention—operating the dams with the addition of mitigation; remove only Elwha Dam; and remove only Glines Canyon Dam.

This document and analysis have resulted from the passage of Public Law 102–495, the Elwha River Ecosystem and Fisheries Restoration Act of 1992. The DEIS has been completed by the National Park Service in cooperation with the U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs, and the Lower Elwha S'Klallam Tribe. Impacts are analyzed on the following topics: sediment, anadromous fish, marine resources, vegetation, wildlife, threatened and endangered species, cultural resources, recreation, socioeconomics, dam safety, flooding, and hazardous materials.

Dated: October 14, 1994.

Willie R. Taylor,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–27356; Filed 11–3–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 487X)]

CSX Transportation, Inc.—Abandonment Exemption—In Polk County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 8.93 miles of rail line in Polk County, FL, extending between milepost AX–855.3 at Eaton Park and milepost AX–864.23 at Bartow, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 4, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 14, 1994; petitions to stay must be filed by November 21, 1994; requests for a public use condition must be filed by November 25, 1994; and petitions to reopen must be filed by November 29, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 487X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423, and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: October 25, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27395 Filed 11–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32557]

Missouri Pacific Railroad Company, Southeast Kansas Railroad Company, and South Kansas and Oklahoma Railroad Company—Joint Relocation Project Exemption—in Kansas and Oklahoma

Missouri Pacific Railroad Company (MP), Southeast Kansas Railroad Company (SEKR), and South Kansas and Oklahoma Railroad Company (SKOL) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate lines of railroad. The joint project involves 68.1 miles of SKOL's line and involves: (1) SKOL's granting trackage rights to MP and SEKR over SKOL's line (a) between milepost 155.8 at Cherryvale, KS, to milepost 165.7 at Independence, KS, and between milepost 0.0 at Independence, KS, to milepost 37.6 at D.Y. Junction (Dewey), OK, a total distance of 47.5 miles (the Tulsa Subdivision); and (b) between milepost 16.9 at Coffeyville, KS, and milepost 0.0 at Cherryvale, KS, in Montgomery County, KS, a total distance of 16.9 miles (the Coffeyville Subdivision); (2) SKOL's granting MP trackage rights over SKOL's line between milepost 37.6 at D.Y. Junction, OK, to milepost 41.3 at Bartlesville, OK, a distance of 3.7 miles (SEKR holds rights over this trackage based on an assignment from MP at the time SEKR leased the Bartlesville Subdivision); and (3) MP's incidental abandonment and discontinuance of operations and SEKR's incidental discontinuance of lease operations over the line beginning at milepost 171.0 near South Coffeyville, OK, and ending at milepost 191.15 near Dewey, a distance of approximately 20.15 miles in Nowata and Washington Counties, OK. The transaction was to have been consummated on, or soon as possible after, October 12, 1994.

MP is a class I rail carrier. SEKR and SKOL are class III carriers.

SEKR operates a line of railroad known as the Bartlesville Subdivision from milepost 171.0 at South Coffeyville, OK, to milepost 200.0 near Bartlesville, OK. SEKR has not conducted train service over the segment of line between mileposts 171.0 and 191.15 (near Dewey, OK) for more than two years. SEKR uses haulage via SKOL to move its cars from Coffeyville to Dewey or Bartlesville and the cars are then interchanged to an SEKR crew for placement to SEKR customers in Dewey or Bartlesville. SKOL will grant trackage rights to SEKR and MP between Coffeyville, KS, and Dewey so that SEKR and MP can provide service to Dewey. SKOL's grant of these trackage rights will permit SEKR to discontinue its lease operation and MP to abandon and discontinue its operation on the out of service trackage from mileposts 171.0 to 191.15.

The joint relocation project involving MP's and SEKR'S rail operations will result in an alternate and satisfactory continuation of rail service to customers. There will be no new traffic generated by the proposed transaction, there will be no extension of rail service into new territory, and there will be no adverse effect on shippers. In addition, there will be no change in the competitive situation of the rail carriers in the area.

The Commission will exercise jurisdiction over the abandonment and/or discontinuance component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN*, 4 I.C.C.2d 95 (1987). Under these standards, the abandonment and discontinuance under consideration here is not subject to the Commission's jurisdiction. The Commission has determined that line relocations embrace trackage rights transactions such as the ones proposed here. *See D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

As a condition to use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Jeanna L. Regier, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179, and Karl Morell, Ball, Janik & Novack, 1101 Pennsylvania Avenue, N.W., Washington, DC 20004.

Decided: October 27, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–27394 Filed 11–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collection Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Permit to Export Controlled Substances.

(2) DEA Form 161. Drug Enforcement Administration.

(3) On occasion.

(4) Businesses or other for-profit. 21 CFR Section 1312.22 requires individuals who export controlled substances in Schedules I and II to obtain a permit from the Drug Enforcement Administration. The information collected is used to issue export permits and exercise control over the exportation of controlled substances and compile data for submission to the United Nations for treaty requirements.

(5) 67 annual respondents at .247 hours per response.

(6) 215 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: November 1, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27389 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–05–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) 280,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

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Public comment on this item is encouraged.

Dated: November 1, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27389 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–05–M

Information Collections Under Review

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(1) The title of the form/collection;

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(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Application for Asylum and for Withholding of Deportation.

(2) Form I–589. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The information provided on this form is used by the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) to determine whether an alien applying for asylum and for withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) 80,000 annual respondents at 3.5 hours per response.

(6) 280,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: October 31, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27354 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

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Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Supplementary Statement for Graduate Medical Trainees.
(2) Form I–644, Immigration and Naturalization Service.
(3) Annually.
(4) Individuals or households. This form is used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.
(5) 3,000 annual respondents at .083 hours per response.
(6) 249 annual burden hours.
(7) Not applicable under Section 3504(h) of Public Law 96–511.
Public comment on this item is encouraged.

Dated: October 31, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27353 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability.
(2) Form I–690, Immigration and Naturalization Service.
(3) Other. One-time only.
(4) Individuals or households. The information on the I–690 application is used by INS in considering eligibility for legalization under sections 210 and 245A of the Immigration and Naturalization Act, during the processing of both the application for temporary resident status and for permanent resident status.
(5) 52,000 annual respondents at .250 hours per response.
(6) 13,000 annual burden hours.
(7) Not applicable under Section 3504(h) of Public Law 96–511.
Public comment on this item is encouraged.

Dated: October 31, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27352 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act; Atlantic Richfield Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Atlantic Richfield Co. and Snyder Oil Corp.*, Civil Action No. 94CV0246D, was lodged on October 7, 1994 with the United States District Court for the district of Wyoming. The proposed consent decree with defendants Atlantic Richfield Company ("ARCO") and Snyder Oil Corporation ("Snyder") sets a civil penalty of $875,000.00 for violations of the prevention of significant deterioration (PSD) provisions, 42 U.S.C. 7471 et seq., and the regulations promulgated thereunder, 40 CFR 52.51 (b) through (w). The violations occurred at the Riverton Dome Gas Plant located on the Wind River Indian Reservation in Fremont County, Wyoming. A PSD permit was issued for the sources to be effective August 5, 1994 and the decree provides that Snyder must bring the facility into compliance within six weeks after the effective date of the permit.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Atlantic Richfield Co. and Snyder Oil Corp.*, DOJ Ref. #90–5–2–1–1896.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Wyoming, J.C. O'Mahoney Federal Building, 2120 Capitol Avenue, Room 402, Cheyenne, Wyoming, or at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Suite 700 South, Denver, Colorado 80202. A copy may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 94–27339 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act; Hercules, Inc.

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on October 17, 1994, a proposed Consent Decree in *United States v. Hercules Incorporated*, Civil Action No. 94–30236–MAP, was lodged with the United States District Court for the District of Massachusetts resolving the matters alleged in a complaint filed simultaneously with the Consent Decree. The proposed Consent Decree concerns violations by Hercules of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251, *et seq.*, at Hercules' chemicals and emulsions manufacturing facility in Chicopee, Massachusetts. The CWA violations alleged in the complaint include discharges of pollutants in excess of federal Categorical Pretreatment Standards, National Prohibited Discharge Standards, and local limitations established by the Chicopee wastewater treatment plant.

Under the terms of the Consent Decree, the defendant will pay a civil penalty of $250,000 to the United States for past violations of the CWA, and complete supplemental environmental projects at a projected cost of $375,000. In addition, Hercules will be required to comply with federal and local pretreatment standards and the National Prohibited Discharge Standard for pH, as well as comply with monitoring, sampling, and reporting requirements.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Hercules Incorporated*, D.J. Ref. 90–5–1–1–4061.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts, and at the Office of the United States Attorney, District of Massachusetts, 1003 J.W. McCormick P.O. & Courthouse, Boston, MA 02109, c/o George B. Henderson and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost excluding attachment) payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–27340 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act

In accordance with Department of Justice Policy, 28 C.F.R. § 50.7, 38 Fed. Reg. 19029, notice is hereby given that on October 14, 1994, a complaint was filed and proposed consent decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Maruha Corp., et al.*, Civil No. 94–1537. The proposed consent decree settles claims asserted by the United States at the request of the United States Coast Guard, National Oceanic and Atmospheric Administration and Department of the Interior, and by the State of Washington and Makah Indian Tribe, for an oil spill off the coast of Washington in July 1991. The defendants are Maruha Corp., Japan Ship Owners' Mutual Protection & Indemnity Association, Tianjin Ocean Shipping Company, China Ocean Shipping Company, United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd. and the M/V TUO HAI.

In the complaint, the United States, State of Washington and Makah Indian Tribe asserted claims against the defendants pursuant to sections 1002 and 1015 of the Oil Pollution Act, 33 U.S.C. § § 2702 and 2715, as well as the maritime tort law, for recovery of cleanup costs and natural resource damages. The United States also sought a civil penalty under section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b). The State of Washington asserted claims under Ch. 90.48 and 90.56 RCW for cleanup costs, injury to resources of the State and civil penalties.

Pursuant to the consent decree, the settling defendants have agreed to pay $9 million to the plaintiffs. The U.S. Coast Guard will receive $3 million in reimbursement of cleanup costs and a $500,000 civil penalty. The United States, State of Washington and Makah Indian Tribe will receive over $5.5 million for natural resource damages and reimbursement of damage assessment costs.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Maruha Corp., et al.*, D.J. Ref. No. 90–11–3–829.

A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce Gelber,

Acting Chief, Environment & Natural Resources Divison.

[FR Doc. 94–27338 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, MTP Industries, Inc.

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *MTP Industries, Inc.*, Civil Action No. 94–7559, was lodged on October 19, 1994 with the United States District Court for the Southern District of New York. Defendant MTP is a printer for flexographic packaging based in New York, New York. The complaint alleges that the flexographic printing processes at the MTP facility are subject to Parts 201 (permit and certificate) requirements and 234 (Volatile Organic Compounds ("VOC") emissions standards) of Title 6, Chapter III, of the Code of Rules and Regulations of the State of New York ("6 NYCRR") and approved by the Environmental Protection Agency pursuant Section 110 of the Clean Air Act (ACT) as part of the New York State Implementation Plan. The complaint alleges that MTP for two years violated 6 NYCRR Part 234 by using non-compliant inks which contained excessive VOC emissions and operated since 1984 without required operating permits and certificates in violation of 6 NYCRR Part 201. Under the terms of the proposed consent decree, MTP will pay civil penalties in the amount of $120,025, and undertake steps necessary to be in full compliance with the Act within a prescribed time period, or face stipulated penalties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *MTP Industries, Inc.*, D.O.J. reference #90–5–2–1–1906.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of New York, 100 Church Street, 19th floor, New York, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street.

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NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–27321 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act; South Essex Sewerage District, et al.

In accordance with 28 CFR 50.7, notice is hereby given that on October 25, 1994, a proposed Modified Consent Decree as to Defendant South Essex Sewerage District ("Modified Decree") in *United States of America* v. *South Essex Sewerage District, et al.*, Civil Action No. 83–2814–Y, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint sought relief under the Clean Water Act, 33 U.S.C. 1251, *et seq.* The Modified Decree revises the existing consent decree as to the South Essex Sewerage District ("SESD") entered by the Court in 1991. The Modified Consent Decree provides for a revised residuals disposition approach by SESD, under which SESD is required to enter into primary long-term and backup contracts for disposition of its sludge residuals and to design and obtain permits for a backup residuals landfill which it is to construct in the event of difficulties with contractual disposition. The Modified Decree also adds a construction schedule for an outfall effluent diffuser, which is to be constructed by February 28, 1997.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *South Essex Sewerage District, et al.*, D.J. Ref. 90–5–1–1–2049A.

The proposed consent decree may be examined at the office of the United States Attorney, 1003 J.W. McCormack P.O. & Courthouse, Boston, Massachusetts 02109, and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $14.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–27337 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 95–94]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published October 5, 1993 (58 FR 51853):

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), Justice/INS–001A

Specifically, INS has clarified and combined routine uses D. and H. into one routine use, now identified as D., which relates to law enforcement disclosure. It has removed routine use E. which had proposed disclosure during discovery proceedings, and has added a routine use, also designated as E., which permits disclosure to a court during litigation. Finally, INS has revised routine uses G. and L. Revised routine use G. clarifies the users and uses by adding language which had been inadvertently omitted. Revised routine use L., redesignated as K., clarifies that information may be disclosed not only to assist the United States in collecting its debts but also to assist foreign governments in collecting their debts. Affected routine uses have been italicized for public convenience.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on any new routine use of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposed changes.

Therefore, please submit any comments by December 5, 1994. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: October 6, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICEANS—001A

SYSTEM NAME:

The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS).

SYSTEM LOCATION:

Central, Regional, District, and other INS file control offices in the United States as detailed in JUSTICE/INS—999. Remote access terminals will also be located in other components of the Department of Justice and in the Department of State on a limited basis.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals covered by provisions of the Immigration and Nationality Act of the United States.

B. Individuals who are under investigation, were investigated in the past, or who are suspected of violating the criminal or civil provisions of treaties, statutes, Executive Orders, and Presidential proclamations administered by INS, and witnesses and informants having knowledge of such violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. The computerized indexing system contains personal identification data such as A-File number, name, date and place of birth, date and port of entry, as well as the location of each official hardcopy paper file known as the "A-file." Microfilm records contain naturalization certificates and any supporting documentation prior to April 1, 1956; however, after that date, this type of information is maintained in the "A-File" which is described in B below.

B. The hard copy A-file *(prior to 1940 were called Citizenship File (C-File))* contains all the individual's official record material such as naturalization certificates; various forms, applications and petitions for benefits under the immigration and nationality laws; reports of investigations; statements; reports; correspondence; and memorandums on each individual for whom INS has created a record under the Immigration and Nationality Act.

AUTHORITY FOR MAINTENANCE OF RECORDS:

Sections 103 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 8 U.S.C. 1360), and the regulations pursuant thereto.

PURPOSE:

The system is used primarily by INS and other Department of Justice employees to administer and enforce the immigration and nationality laws, and related statutes, including the processing of applications for benefits under these laws, detecting violations of these laws, and the referral of such violations for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of courts exercising naturalization jurisdiction for the purpose of filing petitions for naturalization and to enable such courts to determine eligibility for naturalization or grounds for revocation of naturalization.

B. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws, including treaties and reciprocal agreements.

C. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

D. To a Federal, State, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

E. A record, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which INS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS to be arguably relevant to the litigation: (i.) INS, or any subdivision thereof, or (ii.) any employee of INS in his or her official capacity, or (iii.) any employee of INS in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv.) the United States, where INS determines that the litigation is likely to affect it or any of its subdivisions.

F. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

G. To a Federal, State, local *or foreign government* agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, *the reporting of an investigation of an employee,* the letting of a contract, or the issuance of a license, grant or other benefit.

H. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in the Circular.

I. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

J. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

K. To a Federal, State, or local government agency to assist such agencies in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to them or to the United States government, and/or to obtain information that may assist INS in collecting debts owed to the United States Government; to a foreign government to assist such government in collecting the repayment of loans, or fraudulently or erroneously secured benefits, grants, or other debts owed to it provided that the foreign government in question (1) provides sufficient documentation to establish the validity of the stated purpose of its request, and (2) provides similar information to the United States upon request.

L. To student volunteers whose services are accepted pursuant to 5 U.S.C. 3111 or to students enrolled in a college work study program pursuant to 42 U.S.C. 2751 *et seq.*

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

N. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

O. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most A-file *and C-file* records are paper documents and are stored in file folders. Some microfilm and other records are stored in manually operated machines, file drawers, and filing cabinets. Those index records which can be accessed electronically are stored in a data base on magnetic disk and tape.

RETRIEVABILITY:

These records are indexed and retrieved by A-file *or C-file* number, name, and/or date of birth.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

A-file records are retained for 75 years from the closing date or date of last

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action and then destroyed. *C-file records are to be destroyed 100 years from March 31, 1956.* Automated index records are retained only as long as they serve a useful purpose and then they are deleted from the system disk and/or tape.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Director, Records Management Branch, Records Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, the nearest INS office, or the INS office maintaining desired records, if known, by using the list of principal offices of the Immigration and Naturalization Service Appendix: JUSTICE/INS–999, published in the **Federal Register.**

RECORD ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) officer at one of the addresses identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name, date and place of birth, and notarized signature of the individual who is the subject of the record, and any other information which may assist in identifying and locating the record, and a return address. For convenience, INS Form G–639, FOIA/PA Request, may be obtained from the nearest INS office and used to submit a request for access.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelop "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information contained in INS records is supplied by individuals on Department of State and INS applications and forms. Other information comes from inquiries and/or complaints from members of the general public and members of Congress; referrals of inquiries and/or complaints directed to the White House or Attorney General; INS reports to investigations, sworn statements, correspondence and memorandums; official reports, memorandums, and written referrals from other entities, including Federal, State, and local governments, various courts and regulatory agencies, foreign government agencies and international organizations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g) of the Privacy Act. These exemptions apply to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** and codified as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

[FR Doc. 94–27320 Filed 11–3–94; 8:45 am]

BILLING CODE 4410–10–M

Immigration and Naturalization Service

[INS No. 1679–94]

Immigration and Naturalization Service User Fee Advisory Committee: Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee holding meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: November 18, 1994, at 9:30 a.m.

Place: The Holiday Inn Dulles International Airport, 1000 Sully Road, Sterling, Virginia, telephone number: (703) 471–7411.

Status: Open. Eleventh meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the contact person will be considered for discussion at the meeting.

Contact person: Elaine Schaming, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 7223, 425 I Street, NW, Washington, DC 20536, telephone number (202) 514–9587 or fax number 202–514–8345.

Dated: November 1, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–27432 Filed 11–1–94; 4:27 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended,

40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public commept procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume II

Maryland
MD940053 (Nov. 04, 1994)

Volume III

Florida
FL940095 (Nov. 04, 1994)

Volume IV

Oklahoma
OK940033 (Nov. 04, 1994)
OK940034 (Nov. 04, 1994)
OK940035 (Nov. 04, 1994)
OK940036 (Nov. 04, 1994)

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME940034 (Aug. 12, 1994)
ME940035 (Aug. 12, 1994)
New Jersey
NJ940004 (Feb. 11, 1994)
NJ940015 (Mar. 18, 1994)
New York
NY940002 (Feb. 11, 1994)
NY940008 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940025 (Feb. 11, 1994)

Volume II

Maryland
MD940001 (Feb. 11, 1994)
MD940006 (Feb. 11, 1994)
Pennsylvania
PA940005 (Feb. 11, 1994)
PA940008 (Feb. 11, 1994)
PA940009 (Feb. 11, 1994)
PA940010 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940014 (Feb. 11, 1994)
PA940016 (Feb. 11, 1994)
PA940019 (Feb. 11, 1994)
PA940020 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940025 (Feb. 11, 1994)
PA940026 (Feb. 11, 1994)
PA940029 (Feb. 11, 1994)
PA940030 (Feb. 11, 1994)
PA940031 (Feb. 11, 1994)
PA940040 (Feb. 11, 1994)

Volume III

Alabama
AL940010 (Feb. 11, 1994)
Florida
FL940014 (Feb. 11, 1994)
FL940016 (Feb. 11, 1994)
FL940066 (Feb. 11, 1994)
FL940067 (Feb. 11, 1994)
FL940084 (Feb. 11, 1994)
FL940090 (Feb. 11, 1994)
Georgia
GA940003 (Feb. 11, 1994)
GA940004 (Feb. 11, 1994)
GA940023 (Feb. 11, 1994)
GA940031 (Feb. 11, 1994)
GA940033 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940044 (Feb. 11, 1994)
GA940050 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940073 (Feb. 11, 1994)
North Carolina
NC940032 (Feb. 11, 1994)
NC940050 (Feb. 11, 1994)

Volume IV

Indiana
IN940017 (Feb. 11, 1994)
Wisconsin
WI940003 (Feb. 11, 1994)
WI940004 (Feb. 11, 1994)
WI940008 (Feb. 11, 1994)
WI940009 (Feb. 11, 1994)
WI940010 (Feb. 11, 1994)
WI940012 (Feb. 11, 1994)
WI940013 (Feb. 11, 1994)
WI940016 (Feb. 11, 1994)
WI940018 (Feb. 11, 1994)
WI940019 (Feb. 11, 1994)
WI940020 (Feb. 11, 1994)
WI940021 (Feb. 11, 1994)
WI940024 (Feb. 11, 1994)
WI940030 (Feb. 11, 1994)

Volume V

Arkansas
AR940003 (Feb. 11, 1994)
Kansas
KS940006 (Feb. 11, 1994)
Oklahoma
OK940001 (Feb. 11, 1994)
OK940023 (Feb. 11, 1994)
Nebraska
NE940001 (Feb. 11, 1994)
NE940003 (Feb. 11, 1994)
Texas
TX940040 (Feb. 11, 1994)
TX940052 (Feb. 11, 1994)
TX940071 (Feb. 11, 1994)
TX940074 (Feb. 11, 1994)
TX940076 (Feb. 11, 1994)
TX940078 (Feb. 11, 1994)
TX940084 (Feb. 11, 1994)
TX940086 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Feb. 11, 1994)
AK940002 (Feb. 11, 1994)
Arizona
AZ940013 (Feb. 11, 1994)
Colorado
CO940001 (Feb. 11, 1994)
Hawaii
HI940001 (Feb. 11, 1994)
Missouri

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MO940009 (Feb. 11, 1994)
North Dakota
ND940002 (Feb. 11, 1994)
ND940026 (Apr. 01, 1994)
ND940049 (Apr. 01, 1994)
ND940050 (Apr. 01, 1994)
Oregon
OR940001 (Feb. 11, 1994)
Utah
UT940007 (Feb. 11, 1994)
Washington
WA940002 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 28th Day of October 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–27163 Filed 11–3–94; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: October 25, 1994

Patricia W. Silvey

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–85–127–C
FR Notice: 50 FR 48281
Petitioner: Utah Power and Light Company
Reg Affected: 30 CFR 75.326 (now 75.350)
Summary of Findings: Petitioner's proposal to use two entries in longwall panel development and retreat mining at its Deer Creek and Cottonwood Mines, with the belt entry used as a return air course during longwall development considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–92–C
FR Notice: 57 FR 38328
Petitioner: Consolidation Coal Company
Reg Affected: 30 CFR 75.305 (now 75.364(b)(2))
Summary of Findings: Petitioner's proposal to establish four designated checkpoints for examining hazardous conditions in the Harvey Run area of the Loveridge No. 22 Mine due to hazardous roof falls, other blockages, and impassable conditions of entries considered acceptable alternate method. Granted with conditions.

Docket No.: M–92–175–C
FR Notice: 57 FR 62390
Petitioner: Peabody Coal Company
Reg Affected: 30 CFR 75.360(b)(6)
Summary of Findings: Petitioner's proposal to have qualified persons examine portions of the intake air courses daily at its Martwick Mine until traveled in its entirety once a week and to take methane tests during the pre-shift examination at an evaluation point or points in the main split of air inby the point where the air passed previously developed places considered acceptable alternate method. Granted with conditions for the rooms and room necks driven off the Northwest main and the Southwest Submain entries.

Docket No.: M–93–5–C
FR Notice: 58 FR 8065
Petitioner: Energy West Mining Company
Reg Affected: 30 CFR 75.350
Summary of Findings: Petitioner's proposal to use belt air in two-entry mining systems during longwall development at its Trail Mountain Mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–20–C
FR Notice: 58 FR 13805
Petitioner: Carter-ROAG Coal Company
Reg Affected: 30 CFR 75.364(b)(1)
Summary of Findings: Petitioner's proposal to establish evaluation checkpoints at its No. 1A Mine to monitor the air velocity and quality of air outby the intake air course due to deteriorating roof conditions considered acceptable alternate method. Granted with conditions for entries No. 3 and No. 4 of the Mains intake air course.

Docket No.: M–93–23–C
FR Notice: 58 FR 13805
Petitioner: Monterey Coal Company
Reg Affected: 30 CFR 75.1002
Summary of Findings: Petitioner's proposal to use high-voltage cables to power longwall equipment at its No. 1 Mine considered acceptable alternate method. Granted with conditions.

Docket No.: M–93–45–C
FR Notice: 58 FR 18419
Petitioner: Windsor Coal Company
Reg Affected: 30 CFR 75.380(d)(4)
Summary of Findings: Petitioner's proposal to maintain the longwall power center in the intersection of the entry to offset the pump and water cars and to maintain a clear 4-foot wide walkway to allow for passage in an emergency at its Windsor Mine considered acceptable alternate method. Granted subject to the conditions and terms set forth in the Consent Agreement.

Docket No.: M–93–46–C
FR Notice: 58 FR 18420
Petitioner: Laurel Run Mining Company
Reg Affected: 30 CFR 75.364(b)(1)
Summary of Findings: Petitioner's proposal to establish evaluation checkpoints at its Potomac Mine to monitor the quantity and quality of air entering and leaving certain areas of the intake air course due to deteriorating roof conditions considered acceptable alternate method. Granted with conditions for the 2B East and 2B West intake air courses.

Docket No.: M–93–51–C
FR Notice: 58 FR 26166
Petitioner: U.S. Steel Mining Company
Reg Affected: 30 CFR 75.1700
Summary of Findings: Petitioner's proposal to plug and mine through oil and gas wells at its Gary No. 50 Mine considered acceptable alternate method. Granted with conditions.

[FR Doc. 94–27325 Filed 11–3–94; 8:45 am]

BILLING CODE 4510–43–P

Petitions for Modification

This notice amends the document published in the **Federal Register** on October 19, 1994 (59 FR 52839), to correct the standard section number in the following petition.

The Pittsburg and Midway Coal Mining Company (Amendment)

[Docket No. M–94–145–C]

The Pittsburg and Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires; trolley feeder wires, high-voltage cables and transformers) to its North River No. 1 Mine (I.D. No. 01–00759) located in Fayette County, Alabama. The petitioner proposes to use high-voltage (2,400 volts) cable to power longwall equipment in by the last open crosscut and at least 150 feet from pillar workings. The petitioner states that all electrical personnel required to perform maintenance on the longwall will receive training in high-voltage safety and maintenance procedures before the proposed alternate method is implemented.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. OLAF Coal Company, Inc.

[Docket No. M–94–150–C]

OLAF Coal Company, Inc., 1475 Scott Street, Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–07469) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Webster County Coal Corporation

[Docket No. M–94–151–C]

Webster County Coal Corporation, 1758 State Rt. 874, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Dotiki Mine (I.D. No. 15–02132) located in Webster County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Rosebud Mining Company

[Docket No. M–94–152–C]

Rosebud Mining Company, Box 324 B, R.D. 2, Parker, Pennsylvania 16049 has filed a petition to modify the application of 30 CFR 75.333(b)(2) (ventilation controls) to its Roaring Run Mine (I.D. No. 36–08329) located in Armstrong County, Pennsylvania. The petitioner requests a modification of the mandatory safety standard to permit the use of temporary ventilation controls in the room necking procedure for rooms developed less than 600 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Clean Energy Mining Company

[Docket No. M–94–153–C]

Clean Energy Mining Company, 15400 Bent Mountain Road, P.O. Box 267, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.388(a)(3) (boreholes in advance of mining) to its Mine No. 1 (I.D. No. 15–10753) located in Pike County, Kentucky. The petitioners mining operation owned by Sidney Coal Company, is now approaching some old mine workings of an adjacent mine which is operated by Aero Energy Mining Company a contractor for Sidney Coal Company. The petitioner proposes to mine within 100 feet of Aero mining without drilling boreholes. The petitioner states that the use of boreholes would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Flat Broke Coal Company, Inc.

[Docket No. M–94–154–C]

Flat Broke Coal Company, Inc., HC81, Box 630, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 1 Mine (I.D. No. 15–17300) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Whitaker Coal Corporation

[Docket No. M–94–155–C]

Whitaker Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its EAS Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to use belt air to ventilate active working faces for better dust control and dilution of methane gas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Whitaker Coal Corporation

[Docket No. M–94–156–C]

Whitaker Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its EAS Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to install a low-level carbon monoxide monitoring system as a early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

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8. Arch of Illinois

[Docket No. M–94–157–C]

Arch of Illinois, P.O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. The petitioner proposes to use belt air to ventilate active working faces to maintain and to better control the air ventilating the belt entries and the mining faces. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Lafarge Corporation

[Docket No. M–94–41–M]

Lafarge Corporation, P.O. Box 160, Paulding, Ohio 45879 has filed a petition to modify the application of 30 CFR 56.14130(e)(2) (roll-over protective structures (ROPS) and seat belts) to its Cement Plant (I.D. No. 33–00069) located in Paulding County, Ohio. Due to the 69 inch clearance from the concrete to the shell; the 63 inch clearance from the concrete floor to the rib on the mill; the 61 inch clearance to the door; and given the weight of the steel balls and magnitude of the task, the petitioner requests a modification of the mandatory safety standard to allow the use of a 310 Bobcat that has been modified so that the height of the machine is 66.5 inches that would perform the necessary task of screening the mill safely and efficiently. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Specialty Minerals, Inc.

[Docket No. M–94–42–M]

Specialty Minerals, Inc., P.O. Box 558, Lucerne Valley, California 92356 has filed a petition to modify the application of 30 CFR 56.13020 (use of compressed air) to its Marble Canyon Mine (I.D. No. 04–00219) located in San Bernardino County, California. The petitioner proposes to establish blow-off stations at various locations in the plant where employees can clean their clothes with forced or compressed air that has an OSHA approved nozzle with pressure not greater than 2 to 6 psi at normal average line pressure. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 5, 1994. Copies of these petitions are available for inspection at that address.

Dated: October 24, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–27324 Filed 11–3–94; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–364]

Information Meeting on the Remediation of Babcock and Wilcox's Parks Township Shallow Land Disposal Area in Armstrong County, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice is to inform the public of a meeting to share information concerning the decommissioning of Babcock and Wilcox's Shallow Land Disposal Area (SLDA) located on the Parks Township Facility in Armstrong County, Pennsylvania. The SLDA is an area which was used by B&W in the 1960's and 1970's to dispose of radioactively contaminated materials in accordance with the regulations found in the now rescinded 10 CFR Section 20.304. On September 28, 1994, B&W submitted to the NRC a remediation proposal for the remediation of the SLDA. Interested individuals are invited to observe a meeting between the NRC, Pennsylvania Department of Environmental Resources (PADER), B&W, Atlantic Richfield Company (ARCO), local officials, and citizen groups to share information concerning the remediation proposal and future actions related to the remediation of the SLDA.

Background

The Parks Township site is located in Armstrong county, approximately 20 miles northeast of Pittsburgh, Pennsylvania, along the Kiskiminetas River and Route 66. The former owners of the Parks Township site (NUMEC) disposed of radioactive (primarily uranium and thorium) and non-radioactive waste in the SLDA during the 1960's and early 1970's. In 1967, the Atlantic Richfield Company (ARCO) purchased stock in NUMEC and sold the stock to B&W in 1971.

The materials placed in the trenches by NUMEC, consisted of process wastes, scrap, and trash from the nearby Apollo nuclear fuel fabrication facility. This material contained enriched, depleted and natural uranium and lesser quantities of thorium. At the time, disposals were authorized under 10 CFR 20.304. This provision has since been rescinded and at least some of the waste is known to exceed NRC's existing radiological criteria for decommissioning. Therefore, NRC is requiring the licensee to remediate the SLDA to met the NRC's decommissioning criteria, as described in the Site Decommissioning Management Plan Action Plan (April 16, 1994, 57 FR 3389).

The current owners, B&W and ARCO have performed characterization activities for the SLDA and submitted a Site Characterization Report (SCR) for the SLDA, dated October 1993. The NRC reviewed and commented on the SCR by letter dated March 24, 1994 and received a response to those comments from B&W by letter dated September 28, 1994.

B&W also submitted for NRC review a proposed method for remediating the SLDA which involves capping and stabilizing the waste disposal area. The NRC is currently reviewing this proposal.

Conduct of Meeting

The NRC will conduct the first in a series of meetings on November 10, 1994 in the Leechburg Area High School Cafeteria, 215 First Street, Leechburg, PA. The meeting will begin at 7 p.m. and will end at 10 p.m. The meeting will be facilitated by F. X. Cameron, Special Counsel for Public Liaison at the Nuclear Regulatory Commission. The purpose of this meeting is to share, with representative stakeholders and the public, information concerning the status of current actions at the Parks Township Shallow Land Disposal Area, projected schedules and plans for the remediation of the site, and the responsibilities of the NRC and other regulatory Agencies in the remediation of the site. The meeting will involve invited representatives from the following groups: NRC, PADER, the Licensee, state and local officials, and local citizen groups.

These representatives will participate in a facilitated round-table discussion and will present information and views on upcoming actions concerning the remediation of the SLDA. An agenda for each meeting will be prepared and distributed to all invited representatives, as well as placed in the local public document room in advance of the meeting. The public will be present during the meeting, and time will be provided for public comment at the end of the meetings. Comments and questions will be limited to the remediation of the SLDA. An agenda for the meeting follows. Future Information Meetings will be held periodically concerning other issues of the remediation of the SLDA.

Agenda

7:00 Opening and Welcome
7:05 Overview of Process and Groundrules
7:15 Overview of NRC's Role and Future Actions concerning SLDA and Participants' comments
8:00 Overview of PADER's Role and Future Actions concerning the SLDA and Participants' comments
9:00 Overview of B&W and ARCO's Role and Future Actions concerning the SLDA and Participants' comments
9:30 Future Meetings
9:40 Open Floor for Questions and Comments
10:30 Adjournment

FOR FURTHER INFORMATION CONTACT: Heather Astwood, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F27, Washington, DC 20555, telephone (301) 415–5819.

Dated at Rockville, MD this 27th day of October, 1994.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27375 Filed 11–3–94; 8:45 am]

BILLING CODE 7590–01–M

Draft NUREG; Issuance, Availability

The Nuclear Regulatory Commission has issued a draft report entitled "Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station" (NUREG/CR–6174). This draft report, prepared for the NRC by Battelle Pacific Northwest Laboratories (PNL), is available for review and comment.

The draft report presents the results of a review and reevaluation of the original boiling water reactor (BWR) decommissioning study (NUREG/CR–0672), and subsequent addenda which addressed technology, safety and cost issues associated with decommissioning a large nuclear power plant. This reevaluation was performed to update the current cost estimates to decommission the reference BWR from NUREG/CR–0672, which was Washington Public Power Supply System's Washington Nuclear Plant Two (WNP–2).

This report and the recently released draft NUREG/CR–5884, entitled "Revised Analyses of Decommissioning for the Reference Pressurized Water Reactor Power Station" should be viewed as a first step in developing a more parametric approach to estimating decommissioning costs. The results of these studies, including input from the public, will be utilized by the NRC staff as part of its effort to determine if revisions of the decommissioning regulations are warranted.

A separate draft report, NUREG/CR–6270, entitled "Estimating Boiling Water Reactor Decommissioning Costs" will be issued shortly for public comment and it will be noticed in the Federal Register when it becomes available. It is a user's manual for a computer program developed by PNL that was used to calculate the decommissioning cost estimates presented in NUREG/CR–6174.

Comments and suggestions on the Draft NUREG/CR–6174 should be sent to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street NW., Washington, DC. Comments and suggestions will be most helpful if they are received by December 23, 1994.

Copies of NUREG/CR–6174 may be purchased from the Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Single copies of draft NUREG/CR–6174 may also be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further information contact George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 15th day of September 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–27376 Filed 11–3–94; 8:45 am]

BILLING CODE 7590–01–P

Toll-Free Number

The Nuclear Regulatory Commission (NRC) is establishing a toll-free number to be used by the public for general inquiries. The system will be available for a 6-month trial period, during which public comments will be sought.

The toll-free number will be answered by an operator at the main Switchboard and then forwarded to appropriate internal offices. Callers may also contact individual employees when their telephone numbers are known.

The NRC also maintains various other toll-free numbers for a variety of specific information purposes, such as electronic bulletin boards and meeting notifications. These numbers will remain unchanged.

The new toll-free number, 1–800–368–5642, will become effective on November 1, 1994. A small sample of the callers may be asked to evaluate the trial program, and to provide their area code and business association with the NRC.

Written comments on the toll-free service may be addressed to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland this 31st day of October 1994.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Director, Office of Information Resources Management.

[FR Doc. 94–27377 Filed 11–3–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

1995 Railroad Experience Rating Proclamations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of

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section 8(c) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The Board is further required by section 8(c)(2) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c)(2), the Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1995:

(1) The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1994, is $226,102,650.55;

(2) The balance of any new loans to the Account, including accrued interest, is zero;

(3) The system compensation base is $2,722,326,256.53;

(4) The system unallocated charge balance is −$162,586,016.71;

(5) The pooled credit ratio is zero;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1994. The balance in notice (2) is based on data as of September 30, 1994. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4567.

Dated: October 27, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–27323 Filed 11–3–94; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: Richard T. Redfearn, (202) 942–8800

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Extension:

Rule 6c–7—File No. 270–269

Rule 11a–2—File No. 270–267

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("SEC") has submitted for extension of OMB approval Rule 6c–7 and Rule 11a–2 under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act").

Rule 6c–7 provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 183 registrants governed by Rule 6c–7, with an estimated compliance time of 30 minutes per registrant.

Rule 11a–2 permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. There are approximately 550 registrants governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant.

Direct general comments to the Clearance Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and Clearance Officer for the Securities and Exchange Commission, Officer of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 3235–0267 (Rule 11a–2) and 3235–0269 (Rule 6c–7), Room 3208 New Executive Office Building, Washington, D.C. 20503.

Dated: October 26, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27358 Filed 11–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34913; File No. SR–Amex–94–37]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Off-Site Storage of Customer Options Account Information

October 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on September 12, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend paragraph (b), "Maintenance of Customer Records," of Amex Rule 922, "Supervision of Accounts," to provide that the customer information and account statements currently maintained at the principal supervisor office may be maintained at a location other than the principal supervisory office if the documents and information are readily accessible and promptly retrievable.[3]

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34811 (October 7, 1994), 59 FR 52323 (October 17, 1994). No comments were received on the proposal.

Currently, Amex Rule 922(b) requires that background and financial information of customers who have been approved for options transactions be maintained at both the branch office servicing the customer's account and at the principal supervisory office with jurisdiction over the branch office. Amex Rule 922(b) also requires that copies of account statements be maintained at both the branch office supervising the accounts and at the principal supervisory office with jurisdiction over the branch for the most recent six-month period. The Amex proposes to amend Exchange Rule 922(b) to provide that the customer information and account statements currently maintained at the principal supervisory office may be maintained at a location other than the principal supervisory office if the documents and information are readily accessible and promptly retrievable.

The Amex states that the rules of all the options exchanges and the National Association of Securities Dealers, Inc. ("NASD") uniformly require that both the branch office servicing an options customer's account and the principal supervisory office having jurisdiction over the branch office retain account statements and other financial and background information for the account for supervisory purposes. With the advances in data storage and retrieval capability available through optical disks, fax machines, microfiche and computers, coupled with the escalating costs of storing records on-site, many Amex member organizations prefer to store documents away from their principal supervisory offices. In this connection, an increasing number of member organizations have asked and received permission from the self-regulatory organizations ("SROs") to store the required customer option account documents off-site so long as they are readily accessible and promptly retrievable. In view of the number of requests received by the SROs to store customer options information off-site, the Options Self-Regulatory Council ("OSRC")[4] has asked each of the options exchanges and the NASD to consider amending their rules to permit the principal supervisory office to store customer account information off-site.

The Exchange believes that these off-site storage arrangements are consistent with the record retention requirement rules, provided the documents are readily accessible and promptly retrievable. In this regard, the Amex states that the proposed rule will not compromise the supervisory obligations of a member firm since the firm will still be required to maintain customer option account documents and information at the branch office servicing the customer's account. To ensure compliance with the provisions of the rule, the Amex states that it will periodically examine the document retrieval capabilities of member firms using off-site document storage arrangements.

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[5]

Specifically, by allowing off-site storage of customer account information maintained at supervisory offices, the Commission believes that the proposal should provide the Amex's members with a cost-effective means to utilize computers, facsimile machines, optical disks, and other technology to store the required customer account information off-site while ensuring that member firms will continue to have easy access to all of the customer account information necessary to discharge their supervisory responsibilities. In this regard, the proposal provides that options customer account information stored off-site must be "readily accessible and promptly retrievable,"[6] thereby preserving the Exchange's ability to access and investigate customer account records. The Commission notes that the Amex plans to periodically examine the document retrieval capabilities of member firms using off-site storage arrangements. Thus, the Commission believes that the proposal strikes a reasonable balance between the Amex's interest in allowing member organizations to reduce the cost of storing customer account information and ensuring that the information continues to be available for supervisory purposes.

In addition, the Commission believes that it is reasonable for the Amex to allow off-site storage of customer account information maintained at supervisory offices, but not of account information stored at branch offices, because branch offices are responsible for the day-to-day administration of customer accounts and require immediate access to account information. For example, by continuing to require branch offices to store customer account information on-site, the proposal facilitates broker compliance with the suitability requirements applicable to options customers.

The Commission finds good cause for approving the Amex's proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal is identical to proposals submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and the Philadelphia Stock Exchange, Inc., which were subject to the full notice and comment period. The Commission received no comments on those proposals, and the Commission has approved the CBOE's proposal.[7] Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the Amex's proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Amex–94–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27359 Filed 11–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34914; File No. SR–CBOE–94–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating To Exercise Price Intervals on Government Security Yield Options

October 28, 1994.

I. Introduction

On June 30, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 23.5(a) to reduce from $2.50 to $1.00 the fixed interval between strike prices. The proposed rule change was published for comment in the **Federal Register** on July 20,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] On October 27, 1994, the Amex submitted a letter indicating that "readily accessible and promptly retrievable" means that the requested information will be available within 24 hours. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Division of Market Regulation, Commission, dated October 24, 1994 ("October 24 Letter").

[4] The OSRC is a committee comprised of representatives from each of the options exchanges and the NASD.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See October 24 Letter, *supra* note 3.

[7] See Securities Exchange Act Release No. 34899 (October 26, 1994) (order approving File No. SR–CBOE–94–30).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

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1994.[3] No comments were received on the proposed rule change. This order approves the proposal.

II. Description of Proposal

Currently, the CBOE lists government security yield options at strike price intervals of $2.50.[4] The CBOE proposes to amend its rules to reduce the interval between exercise prices on such contracts from $2.50 to $1.00,[5] which will establish a minimum spread of $100 ($1.00 times the multiplier of 100) between series. The Exchange believes that its proposal will improve the value and utility of government security yield options by, among other things, enabling investors to construct hedges that correlate closely with interest rates and changes in interest rate measures underlying government security yield options. According to the CBOE, the $2.50 minimum strike price interval is wider than the typical increments of change in interest rates, even during periods of high interest rate volatility.[6]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[7] Specifically, the Commission believes that reducing from $2.50 to $1.00 the interval between exercise prices on government security yield option contracts will further the public interest by providing investors with more flexibility in the trading of such options, and allowing investors to establish government security yield option positions that are better tailored to meet their investment objectives.[8]

The Commission also believes that the CBOE's proposal sets a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. In this regard, we note the specialized nature of the trading of government security yield options. For example, the CBOE indicates that the current relationship between yield changes in securities underlying government security yield options and the applicable $2.50 strike price interval requirement allows for instances where significant market yield movement would not result in the trading of government security yield options through existing strikes, thus preventing the availability of additional "at-the-money" strikes, which are necessary for the effective implementation of certain hedging trading strategies.[9] The Commission accordingly believes that a $1.00 strike price interval will allow for at-the-money strikes to be more readily available, without causing an excessive proliferation of strikes in such options.[10]

Finally, the Options Price Reporting Authority ("OPRA") has stated that the additional traffic that will be generated by changing the strike price interval for government security yield options to $1.00 is within OPRA's capacity.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–CBOE–94–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27360 Filed 11–3–94; 8:45 am]

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[3] See Securities Exchange Act Release No. 34366 (July 13, 1994), 59 FR 37107.

[4] See CBOE Rule 23.5(a). CBOE Rule 23.5 (Terms of Interest Rate Option Contracts) applies to government security yield options. Currently, government security yield options are based on the 13-week T-bill, 5-year T-note, 10-year T-note, and 30-year T-bond.

[5] See Proposed Amendment to Rule 23.5(a).

[6] In its filing, the Exchange indicated that during a recent highly volatile week, the yield on the 30-year U.S. Treasury bond changed by less than 15 basis points (or $150), while strike price intervals were necessarily set at the minimum of $250 apart.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] The Exchange maintains that a consequence of the minimum strike price interval of $2.50 is to make at- or near-the-money positions unavailable, thereby limiting the ability of investors to construct tight hedges or to use combination orders such as straddles effectively.

[9] See supra note 6.

[10] Moreover, it should be noted that CBOE Rule 23.5, Interpretation and Policy .01 provides an outer limit with respect to the number of strike prices for new options series. This limit is eight strike prices under normal circumstances, and up to twelve strike prices when unusual market conditions exist.

[11] See letter from Joseph P. Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, CBOE, dated October 20, 1994.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34912; File No. SR–NASD–94–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Excess Spread Parameters for CQS Securities

October 28, 1994.

On September 9, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change amends Schedule D to the NASD By-Laws to provide that the calculation methodology used to determine the excess spread parameters for CQS securities shall include quotations from national securities exchanges. In addition, to avoid confusion concerning the application of the excess spread parameters to CQS securities, the NASD is moving the excess spread parameters for CQS securities, as amended by this filing, to Section 2 of Part VI of Schedule D to the NASD By-Laws[3] from Section 2 of Part V of Schedule D.[4]

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register**.[5] No comments were received in response to the Commission release. This order approves the proposed rule change.

Currently, Section 2(d) of Part V of Schedule D to the NASD By-Laws provides that registered market makers in CQS securities may not enter quotations in CQS securities that exceed the NASD's parameters for maximum allowable spreads. The maximum allowable spread presently is 125 percent of the average of the three narrowest market maker spreads in each security, with the limitation that the maximum allowable spread can never be less than 1/4 of a point.[6]

The calculation of "average dealer spreads" in CQS securities, however, does not include quotations (*i.e.*,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] NASD Manual, Schedules to the By-Laws, Schedule D, Part V, Sec. 2(d) (CCH) ¶ 1816.

[4] *Id.*, Schedules to the By-Laws, Schedule D, Part VI, Sec. 2(c) (CCH) ¶ 1829.

[5] Securities Exchange Act Release No. 34682 (Sept. 19, 1994), 59 FR 48920 (Sept. 23, 1994).

[6] If there are fewer than three market makers in a security, the maximum allowable spread is 125% of the average of all market makers' spreads in the security.

spreads) from national securities exchanges trading those securities. Accordingly, to have the excess spread parameters for CQS securities be more reflective of and related to the quotations disseminated by all market centers trading CQS securities, the NASD proposed to include quotations from the exchanges into its "average dealers spread" calculation. As a result, to the extent that the spread reflected in the best bid and offer disseminated by an exchange(s) is narrower than any of the three narrowest spreads quoted by CQS market makers, the proposed rule change may contribute narrower spreads by CQS market makers. Narrower spreads by CQS market makers, in turn, will enhance the continuity and quality of the markets provided by CQS market makers, to the ultimate benefit of investors.

In addition, to avoid confusion concerning the application of the excess spread parameters to CQS securities, the NASD is proposing to move the excess spread parameters for CQS securities, as amended, to Section 2 of Part VI of Schedule D to the NASD By-Laws from Section 2 of Part V of Schedule D. Part V of Schedule D imposes obligations on all Nasdaq market makers and Part VI pertains to trading of CQS securities on Nasdaq. By placing the excess spread parameters for CQS securities in Part VI of Schedule D instead of Part V, CQS market makers will be less likely to overlook the parameters.

The Commission believes that the rule change is consistent with the requirements of Sections 15A(b)(6) and 15A(b)(11) of the Act and, therefore, has determined to approve the NASD's proposal. Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principle of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Section 15A(b)(11) requires, among other things, that the rules of a national securities association must be designed to produce fair and informative quotations.

By including exchange quotations in the calculation for determining maximum allowable spreads in CQS securities, the excess spread parameter may contribute to narrower spreads in CQS securities, which, in turn, will promote the efficiency, continuity, and quality of Nasdaq's market in CQS securities. In addition, more stringent excess spread parameters will compel market makers to maintain quotes that are reasonably related to the prevailing market, reinforcing their obligations to make continuous markets.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act. In the instances where the spread reflected in the best bid and offer disseminated by an exchange(s) is narrower than any of the three narrowest spreads quoted by CQS market makers, this rule change may contribute narrower spreads by CQS market makers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–50 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27361 Filed 11–3–94; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–34911; File No. SR–PSE–94–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Incorporated, Relating to a One Year Extension of Municipal Bond Trading Pilot Program

October 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1994, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend the municipal bond trading pilot program for an additional year until November 2, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 7, 1994, the Commission approved an Exchange proposal to establish new rules for the listing and trading of municipal securities on the Exchange.[1] The Commission approved the pilot for an interim period of 120 days through July 5, 1994.[2] On July 5, 1994, the Commission granted an additional 120 day extension of the pilot through November 2, 1994.[3] The Exchange has not yet begun to trade any municipal securities. The Exchange is now requesting a one year extension of the pilot in order to allow for proper evaluation of the program in the event that it lists any municipal securities during that period.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities, and, in general will contribute to the protection of investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] See Exchange Act Release No. 33721 (March 7, 1994), 59 FR 11636 (March 11, 1994) (granting temporary accelerated approval to File No. SR–PSE–94–05).

[2] *Id.* at 59 FR 11638.

[3] Exchange Act Release No. 34317, 59 FR 35546 (July 12, 1994).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice in the **Federal Register**. PSE believes it appropriate to approve the proposed rule change so that its authority to list municipal securities does not lapse. The Commission finds that the proposed rule change extending the PSE pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the PSE and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of the notice of filing thereof in that the pilot program will expire on November 2, 1994, without reauthorization. The Commission believes that extension of the pilot is desirable in that it will permit the exchange to evaluate its program prior to filing a request for permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–94–32 and should be submitted by November 25.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved through November 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,

Secretary.

[FR Doc. 94–27357 Filed 11–3–94; 8:45 am]

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[Release No. 35–26151]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

October 28, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 21, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–7674)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration under Sections 6(a) and 7 of the Act.

By Commission order dated November 21, 1989 (HCAR No. 24988), National was authorized, among other things, to issue and deliver from time-to-time up to one million shares of its authorized but unissued common stock, $1.00 par value ("Additional Common Stock"), to the trustee of its two qualified 401(k) plans, in lieu of the required matching cash contributions. The two plans are the National Fuel Gas Company Tax-Deferred Savings Plan ("TDSP") and the National Fuel Gas Company Tax-Deferred Savings Plan for Non-union Employees ("Non-union TDSP") (together, "Plans"). As of September 30, 1994, 508,000 shares had been issued to the Plans.

National now proposes to increase the total number of shares of Additional Common Stock that it may issue and deliver to Vanguard Fiduciary Trust Company ("Vanguard"), trustee for the Plans, to two million shares including the previously issued shares, but no more than one million shares to the TDSP and Non-union TDSP, respectively. National further proposes to extend the time in which it may issue and deliver the Additional Common Stock through December 31, 1999.

National states that any Additional Common Stock delivered to Vanguard will be valued at fair market value. Fair market value, as defined in the Plans, is the average of the high and low market price for National's Common Stock on the date on which the Additional Common Stock is issued.

Tri-County Rural Electric Cooperative, Inc., et al. (70–8108)

Tri-County Rural Electric Cooperative, Inc. ("Tri-County"), a member-owned rural electric cooperative not currently subject to the Act, and Wilderness Area Utilities ("Wilderness"), a wholly owned subsidiary of Tri-County, both of 22 North Main Street, Mansfield, Pennsylvania 16933–0448, have filed an application requesting an order: (1) approving the indirect acquisition by Tri-County through Wilderness, under Sections 9(a)(2) and 10 of the Act, of 92.6% of the common stock ("Common Stock") of Wellsborough Electric Company ("WECo"); and (2) granting Tri-County and its subsidiary companies, upon consummation of the proposed transaction, an exemption under Section 3(a)(1) of the Act from all of the provisions of the Act, except Section 9(a)(2).

WECo, a public-utility company, is principally engaged in the acquisition and distribution of electricity to approximately 5,200 customers in and around the Borough of Wellsboro, Tioga County, Pennsylvania. For the fiscal year ended December 31, 1993, WECo's operating revenues, net income and total assets were $5,630,440, $93,455 and $4,786,896, respectively.

Tri-County is a member-owned rural electric cooperative incorporated under the Pennsylvania Electric Cooperative Corporation Act of 1937. Tri-County purchases electric energy at wholesale and distributes and sells it to approximately 16,400 customers in north-central Pennsylvania. Tri-County's service territory encircles WECo's service territory. For the fiscal year ended December 31, 1993, Tri-County's operating revenues, net margins and total assets were $14,726,428, $977,580 and $34,328,648, respectively.

Wilderness is a business corporation incorporated under the laws of the Commonwealth of Pennsylvania and is a wholly owned subsidiary of Tri-County. Wilderness was incorporated specifically for the purpose of acquiring and holding shares of WECo.

On June 28, 1994, Wilderness, WECo, and Robert B. McCarthy and Nina M. McCarthy (the two McCarthys collectively, "McCarthy") entered into a share purchase agreement ("Agreement"). The Agreement provides for the sale by McCarthy and purchase by Wilderness of 986–¾ shares (92.6%) of the Common Stock of WECo for a total consideration of $7,150,000 ($7,246 per share). Wilderness also agreed to purchase, under certain conditions, the remaining 78–¾ shares (7.4%) of the Common Stock from the remaining shareholders. If any remaining shareholder offers, during the two-year period after the date of the closing on the proposed acquisition, to sell to Wilderness any or all of such shareholder's Common Stock, Wilderness is required to purchase such shares at a price not less than $7,246 per share. Following the proposed transaction, Tri-County will own 100% of Wilderness, which will own 92.6% of the Common Stock of WECo.

Applicants state that there are three reasons for the proposed corporate structure (i.e., whereby Wilderness, instead of Tri-County, will acquire WECo). First, Applicants state that, under Pennsylvania law, Tri-County could not directly own and operate WECo because a cooperative can "transmit, distribute, sell, furnish, and dispose of electric energy to its *members only*."[1] In addition, only "persons in rural areas[2] * * * who are not receiving central station service"[3] can be members. Many of WECo's customers are not located in rural areas; consequently, Tri-County is prohibited by law from directly supplying WECo's consumers. Therefore, under Pennsylvania law, Tri-County could not own and operate WECo; however, Tri-County can, through a subsidiary, serve WECo's consumers.

Second, all of Tri-County's assets are currently pledged to the Rural Electrification Administration of the U.S. Department of Agriculture ("REA") as collateral for outstanding long term debt. This lien also applies to after-acquired assets. If Tri-County were to acquire the WECo Common Stock directly, it would automatically be subject to REA lien and would not be available to secure the acquisition financing. However, by interposing Wilderness, the WECo Common Stock is not directly owned by Tri-County and is, therefore, not included in the lien. Wilderness obtained the acquisition loan only by pledging the WECo Common Stock as security.

Third, the REA loan documents limit Tri-County's investments in certain assets without REA approval, including securities such as WECo Common Stock, to an aggregate of 15% of its total utility plant. Because Tri-County's total utility plant is approximately $37 million, Tri-County could not invest more than approximately $5.5 million in WECo Common Stock. This limitation could prevent Tri-County from directly purchasing the WECo Common Stock. However, Wilderness could make the acquisition without such limitation since it is a separate corporation.

[1] Pennsylvania Electric Cooperative Law of 1990, at 15 P.S. Section 7321(a)(1) (emphasis supplied).

[2] "Rural areas" is defined as areas not within boundaries of any incorporated city, town, village or borough, having a population in excess of 2,500 inhabitants.

[3] *Id.* at 15 P.S. Section 7323.

Southwestern Electric Power Company (70–8123)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, a wholly owned electric utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment to its application-declaration filed under Sections 9(a) and 10 of the Act.

By order dated March 31, 1993 (HCAR No. 25776) ("March 1993 Order"), SWEPCO was authorized to sell environmental laboratory services, including analysis of water, oils, soil and waste characterization, to nonaffiliates.

SWEPCO now requests an extension, through December 31, 1997, of the authority previously granted in the March 1993 Order.

Connecticut Light and Power Co., et al. (70–8451)

Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, both public-utility subsidiary companies of Northeast Utilities ("NU"), a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45, 53, and 54 thereunder.

Each company proposes to organize a special-purpose limited partnership ("Issuing Partnership") to issue limited partnership interests. Each company will act as the general partner of its Issuing Partnership, and either Northeast Utilities Service Company, a wholly-owned subsidiary of NU, will act as the initial limited partner of the Issuing Partnerships, or each company will organize a special-purpose, wholly-owned corporation to act as the initial limited partner. The initial limited partners will withdraw from the Issuing Partnerships upon issuance of preferred limited partnership interests.

Each company will make an equity contribution to its Issuing Partnership when first formed and thereby acquire all of the general partnership interest therein. The equity contributions of each general partner to its Issuing Partnership will at all times constitute at least 3% of the equity contributions by all partners. In addition, each company will, indirectly through the initial limited partner, make an equity contribution to its Issuing Partnership when first formed and thereby acquire all of the initial limited partnership interest in its Issuing Partnership. Upon the withdrawal of the initial limited partner from each of the Issuing Partnerships, each initial limited partner will be entitled to withdraw its equity contribution.

The Issuing Partnerships will issue and sell through August 31, 1996, preferred limited partnership interests ("Preferred Partnership Interests"), $25 per share stated liquidation preference, in an aggregate amount of, in the case of CL&P, up to $150 million, and, in the case of WMECO, up to $100 million. The holders of the Preferred Partnership Interests will be the limited partners of the Issuing Partnerships, and the amounts paid for the Preferred Partnership Interests will be treated as capital contributions.

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Each company will issue and sell subordinated debentures ("Subordinated Debentures") to its Issuing Partnership. Each Issuing Partnership will use the proceeds from the sale of its Preferred Partnership Interests, plus the equity contributions made to it by its general partner, to purchase the CL&P Subordinated Debentures or the WMECO Subordinated Debentures.

Each series of the Subordinated Debentures will mature within 50 years. Prior to maturity, the companies will pay interest only, at a fixed rate set forth in the Indentures, on the Subordinated Debentures. The distribution rates, payment dates, redemption, and other similar provisions of each series of Preferred Partnership Interests will be substantially identical to the interest rates, payment dates, redemption, and other provisions of the related Subordinated Debentures. The interest paid by the companies on their respective Subordinated Debentures will constitute the only income of the Issuing Partnerships and will be used by the Issuing Partnerships to pay monthly distributions on the Preferred Partnership Interests.

Each company may also enter into a guaranty ("Guaranty") pursuant to which it will unconditionally guarantee (i) payment of distributions on the Preferred Partnership Interests, (ii) payments to the holders of Preferred Partnership Interests of amounts due upon liquidation of its Issuing Partnership or redemption of the Preferred Partnership Interests, and (iii) certain additional "gross up" amounts that may be payable in respect of the Preferred Partnership Interests.

Each company's Subordinated Debentures and related Guaranty will be subordinate to all other existing and future indebtedness for borrowed money of the company. Each company will have the right to defer payment of interest on its Subordinated Debentures for up to 60 months. However, neither company will be permitted to declare and pay dividends on any class of its equity securities unless all payments due under its Subordinated Debentures and Guaranty have been made.

Distributions on the Preferred Partnership Interests will be made monthly, will be cumulative, and will be mandatory to the extent that the Issuing Partnership has legally available funds and sufficient cash for such purposes. The availability of such funds will depend on the Issuing Partnership's receipt of the amounts due under the related Subordinated Debentures. The Issuing Partnerships will have the right to defer distributions on the Preferred Partnership Interests for up to 60 months to the extent that the related company defers the interest payments on the Subordinated Debentures. If distributions on the Preferred Partnership Interests are deferred for 18 consecutive months, then the holders of Preferred Partnership Interests will have the right to appoint a special representative to enforce the Issuing Partnership's rights under the related Subordinated Debentures and Guaranty.

It is expected that the interest payments by each company on its Subordinated Debentures will be deductible for federal income tax purposes and that its Issuing Partnership will be treated as a partnership for federal income tax purposes. Consequently, the holders of Preferred Partnership Interests and the general partners will be deemed to have received partnership distributions, not dividends, from the Issuing Partnerships and will not be entitled to any "dividend received deduction" under the Internal Revenue Code.

The Preferred Partnership Interests will be subject to redemption in whole or part on and after a specified date ("Earliest Redemption Date") at the option of the Issuing Partnership, with the consent of its related company, at a price equal to their stated liquidation preference plus any accrued and unpaid distributions. The Earliest Redemption Date will be not later than 10 years after the date of issuance. The Preferred Partnership Interests may also be subject to other optional and mandatory redemption provisions. The companies also expect that, upon the occurrence of certain events, each company may also have the right to exchange its Subordinated Debentures for the Preferred Partnership Interests or to otherwise distribute the Subordinated Debentures to the holders of Preferred Partnership Interests.

If, as a result of the Subordinated Debentures not being treated as indebtedness for federal income tax purposes or the Issuing Partnership not being treated as a partnership for federal income tax purposes, the Issuing Partnership is required by applicable tax laws to withhold or deduct from payments on the Preferred Partnership Interests amounts which would not otherwise be required to be withheld or deducted, the Issuing Partnership may also have the obligation, if the Preferred Partnership Interests are not redeemed or replaced, to "gross up" such payments so that the holders of Preferred Partnership Interests will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required.

In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Issuing Partnership, holders of Preferred Partnership Interests will be entitled to receive, out of the assets of the Issuing Partnerships available for distribution to its limited partners, before any distribution of assets to the general partner, an amount equal to the stated liquidation preference of the Preferred Partnership Interests plus any accrued and unpaid distributions.

Each of the companies proposes to use substantially all of the proceeds of the proposed transactions to lower their after-tax cost of capital and/or improve the quality of their respective capital structures by redeeming or otherwise reacquiring a portion of their outstanding fixed-rate preferred stock and/or Dutch Auction Rate Transferable Securities.

The Preferred Partnership Interests will initially be marketed and sold pursuant to underwriting agreements ("Underwriting Agreements") to be entered into by each company, its Issuing Partnership, and an underwriter or underwriters to be selected by each company. Under the terms of the Underwriting Agreements, each underwriter will purchase the Preferred Partnership Interests directly from the Issuing Partnership and then sell the Preferred Partnership Interests to the public. Each company will pay an underwriting fee of up to 3.50% of the principal amount of its Issuing Partnership's Preferred Partnership Interests to be purchased by such underwriter.

Based on market conditions, tax laws, and the views of the rating agencies, the companies may conclude that they can substantially obtain the benefits of the proposed transactions by directly issuing their Subordinated Debentures in a public offering. In such event, the companies may elect to undertake such public offerings directly without organizing the Issuing Partnerships and causing the issuance of the Preferred Partnership Interests.

Central and South West Corp., et al. (70–8469)

Central and South West Corporation ("CSW"), a registered holding company, and CSW Energy, Inc. ("CSW Energy"), a wholly owned nonutility subsidiary company of CSW, have filed an application-declaration under sections 6, 7, 9(a), 10, and 12(b) of the Act and rules 45 and 51 thereunder.

CSW and CSW Energy seek to invest in a qualifying cogeneration facility and

form related project entities, in connection with their program to develop sources of energy and capacity from qualifying cogeneration facilities, qualifying small power production facilities, and independent power facilities, including exempt wholesale generators.

By orders dated September 28, 1990 (HCAR No. 25162), November 22, 1991 (HCAR No. 25414), and December 31, 1992 (HCAR No. 25728) ("Orders"), CSW and CSW Energy obtained authorization to spend $150 million to conduct preliminary studies of, to investigate, to research, to develop, to consult with respect to, and to agree to construct qualifying cogeneration facilities, qualifying small power production facilities, and independent power facilities, and to finance such activities through capital contributions, open account advances, and loans in an aggregate amount not to exceed $150 million.

CSW and CSW Energy, in accordance with the Orders, seek authorization to invest in and develop, construct, own, and operate a qualifying cogeneration facility—the Sweeny Cogeneration Project ("Project"), which consists of an approximately 320 megawatt (net) gas-fired cogeneration facility to be located in or near Sweeny, Texas. The requested time limit of the authorization is one year from the date of receipt of the order. CSW and CSW Energy presently anticipate closing this transaction on or before December 31, 1996.

It is proposed that CSW Energy invest in and develop the Project through a special purpose limited partnership, the Sweeny Cogeneration Limited Partnership ("Partnership"). CSW Energy proposes to organize and invest in a special-purpose, wholly owned corporation, CSW Sweeny GP, Inc. ("Energy GP"), which will hold, either directly or through a special-purpose, wholly owned corporation, CSW Sweeny GP II, Inc. ("Sweeney GP"), a general partnership interest in the Partnership, as well as a special-purpose, wholly owned corporation, CSW Sweeny LP, Inc. ("Energy LP"), which will hold, either directly or through a special-purpose, wholly owned corporation, CSW Sweeny LP II, Inc. ("Sweeny LP"), a limited partnership interest in the Partnership.

Energy GP and Energy LP, and Sweeny GP and Sweeny LP, each will be incorporated with authorized capital of up to 1,000 shares of common stock (no par value). CSW Energy will subscribe to all of the common stock of Energy GP and Energy LP, Energy GP will subscribe to all of the common stock of Sweeny GP, and Energy LP will subscribe to all of the common stock of Sweeny LP, each for $1.00 per share.

Energy GP will be a wholly owned subsidiary of CSW Energy, and Sweeny GP will be a wholly owned subsidiary of Energy GP. Energy GP will hold, directly or through Sweeny GP, a 20% general partnership interest in the Partnership. Energy GP, or Sweeny GP, will be initially the sole general partner of the Partnership. Energy LP will be a wholly owned subsidiary of CSW Energy, and Sweeny LP will be a wholly owned subsidiary of Energy LP. Energy LP will initially hold, directly or through Sweeny LP, an 80% limited-partnership interest in the Partnership. Energy LP, or Sweeny LP, will be initially the sole limited partner of the Partnership.

After formation of the Partnership but before operation of the Project, between 50% and 75% of the interest in the Partnership will be acquired by nonaffiliated nonutility entities ("Equity Partner"). After the acquisition of an interest in the Partnership by the Equity Partner, Energy GP, directly or through Sweeny GP, will hold a 1% to 10% general partnership interest in the Partnership, Energy LP, directly or through Sweeny LP, will hold the remainder of the aggregate indirect 25% to 50% interest of CSW Energy in the Partnership as a limited partner, and the Equity Partner will hold between 50% and 75% interest in the Partnership as a general partner, limited partner, or combination thereof.

CSW Energy and the Partnership might incur certain expenses in connection with the development of the Project ("Development Expenses"), the total amount of which will not exceed $20 million. CSW and CSW Energy propose to fund the Development Expenses by capital contributions, loans, or open account advances from CSW to CSW Energy, from CSW Energy to Energy GP and Energy LP, and from Energy GP, directly or through Sweeny GP, and Energy LP, directly or through Sweeny LP, to the Partnership. All loans to the Partnership would have a final maturity not to exceed 25 years and would bear interest at a rate per annum not in excess either of the weighted cost of capital for CSW while CSW Energy indirectly holds all of the interests in the Partnership or the prime commercial lending rate as in effect from time to time at Mellon Bank plus 4%.

The prime rate plus 4% approximates the current market rate that the Partnership would be able to secure from nonassociate third-party lenders for loans of this type. CSW and CSW Energy state that to make loans or open account advances through Energy GP, Energy LP, Sweeny GP and Sweeny LP to the Partnership in the manner and on the terms described herein, they will avoid granting the nonassociate third party partners to the Partnership the windfall that would otherwise accompany an interest rate to such third parties set artificially low instead of an interest rate tied to the market.

Central and South West Corporation, et al. (70–8483)

Central and South West Corporation ("CSW"), a registered holding company, and its nonutility subsidiary, CSW Energy, Inc. ("Energy"), both located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202 ("Applicants"), have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 32 of the Act and Rules 45 and 53 thereunder.

CSW and Energy propose to invest in, develop, construct, own and operate, jointly with KVA Resources, Inc., a nonassociate company engaged in the business of independent power development ("KVA"), a facility that will qualify as an eligible facility under Section 32(a) of the Act and be known as the Northwest Regional Power Facility ("Project") and to form various Project entities. The Project will consist of an approximately 838 megawatt (net) generation facility to be located in or near Creston, Washington. It will be certified as an exempt wholesale generator ("EWG"), as defined in Section 32(e) of the Act by the Federal Energy Regulatory Commission ("FERC").

The Applicants propose that Energy, indirectly, make investments in and develop the Project through a special purpose limited partnership anticipated to be known as Northwest Regional Power Limited Partnership ("Partnership"). To acquire and hold a general and limited partnership interest in the Partnership, respectively, Energy will organize and invest in: (1) a special purpose, wholly owned corporation anticipated to be known as CSW Northwest GP, Inc. ("Energy Sub GP"), which will hold, either directly or through a special purpose, wholly owned corporation anticipated to be known as CSW Northwest GP II, Inc. ("Northwest GP"); and (2) a special purpose, wholly owned corporation anticipated to be known as CSW Northwest LP, Inc. ("Energy Sub LP"), which will hold, either directly or through a special purpose, wholly owned corporation anticipated to be known as CSW Northwest LP II, Inc. ("Northwest LP").

Energy Sub GP and Energy Sub LP, and Northwest GP and Northwest LP, if

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formed, each will have authorized capital of up to 1,000 shares of common stock, without par value. Energy will subscribe to all of the common stock of Energy Sub GP and Energy Sub LP, and, if formed, Energy Sub GP will subscribe to all of the common stock of Northwest GP and Energy Sub LP will subscribe to all of the common stock of Northwest LP at a subscription price of $1.00 per share.

Energy Sub GP will hold, either directly or through Northwest GP, a 1% general partnership interest in the Partnership. Energy Sub GP or Northwest GP and KVA will be initially the sole general partners of the Partnership. Energy Sub LP will initially hold, either directly or through Northwest LP, a 74% limited partnership interest in the Partnership and KVA will initially hold a 1% general partnership interest and a 24% limited partnership interest in the Partnership. Energy Sub LP, or Northwest LP, and KVA will be initially the sole limited partners of the Partnership.

CSW and Energy are not seeking Commission authority to finance the construction of the Project at this time. However, the Partnership may incur certain expenses in connection with the development of the Project ("Development Expenses"). The total amount of the Development Expenses will not exceed $12 million. CSW and Energy propose to fund the Development Expenses by capital contributions, loans or open account advances through the various subsidiaries to the Partnership. Loans or open account advances would have a final maturity not to exceed 25 years and would bear interest at a rate per annum not in excess of the prime commercial lending rate as in effect from time-to-time at Mellon Bank plus 4%. The Applicants believe that this rate approximates the current market rate that the Partnership would be able to secure from nonassociate third party lenders for loans of this type.

Maine Yankee Atomic Power Company (70–8493)

Maine Yankee Atomic Power Company ("Maine Yankee"), 329 Bath Road, Brunswick, Maine 04011, an indirect subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application under Sections 9(a) and 10 of the Act.

Maine Yankee proposes to acquire nuclear fuel in amounts of up to $90 million, through December 31, 1998, in connection with the operation of its pressurized water nuclear powered electric generating plant in Wiscasset, Maine. Maine Yankee will use the proceeds from certain previously authorized short-term debt lines and bank revolving credit facilities to finance the acquisitions (HCAR No. 25973, January 25, 1994). The nuclear fuel would be acquired through long-term contracts and by purchases on the spot market, in either case on terms that are commercially reasonable at the time of such contract or spot market purchase.

Jersey Central Power & Light Company (70–8495)

Jersey Central Power & Light Company, 300 Madison Avenue, Morristown, New Jersey 07962 ("JCP&L"), a subsidiary of General Public Utilities Corporation, Parsippany, New Jersey 07054, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 54 thereunder.

JCP&L proposes to organize a limited partnership ("JCP&L Capital") and a special purpose wholly-owned subsidiary ("Investment Sub") for the sole purpose of acting as the general partner of JCP&L Capital. JCP&L will acquire all of the common stock of Investment Sub for a nominal consideration and will capitalize Investment Sub with: (1) A capital contribution in the amount of approximately 3% of the total capitalization of JCP&L Capital, or up to $4 million; and (2) a demand promissory note in the principal amount of approximately 10% of the total capitalization of JCP&L Capital, or up to $13 million, such note to accrue interest, compounded semi-annually, at a rate equal to the Citibank, N.A. base rate as in effect from time-to-time. JCP&L Capital would then issue and sell from time-to-time, in one or more series through December 31, 1996, up to $125 million aggregate stated value of preferred limited partner interests, in the form of monthly income preferred securities, $25 per security stated value ("Preferred Securities").

Investment Sub will acquire all of the general partner interests of JCP&L Capital for up to $4 million, representing up to a 3% interest in JCP&L Capital ("Equity Contribution"). JCP&L Capital will apply the proceeds from the sale of the Preferred Securities, together with the Equity Contribution, to purchase JCP&L's deferrable interest subordinated debentures ("Subordinated Debentures").

JCP&L will also guarantee ("Guarantees"), on a limited basis to the extent set forth in the Payment and Guarantee Agreement: (1) Payment of distributions on the Preferred Securities to the extent JCP&L Capital has sufficient cash on hand to permit such payments and legally available funds; (2) payments to the holders of the Preferred Securities of amounts due upon redemption of the Preferred Securities to the extent JCP&L Capital has sufficient cash on hand to permit such payments and legally available funds; (3) payment of the lesser of (a) the liquidation preference of the Preferred Securities or (b) the amount of assets available for distribution to the holders of the Preferred Securities in liquidation, upon a liquidation of JCP&L Capital other than in connection with a distribution of Subordinated Debentures, as discussed below; and (4) certain additional amounts that may be payable in respect of the Preferred Securities. JCP&L will also covenant in the Guarantees to cause Investment Sub to perform timely all of its duties as general partner of JCP&L Capital, including the general partner's duty to pay all of the costs and expenses of JCP&L Capital.

Each Subordinated Debenture will be issued under an indenture to be entered with United States Trust Company of New York, as trustee, and will have an initial term of up to 50 years. Prior to maturity, JCP&L will pay only interest on the Subordinated Debentures at a rate equal to the distribution rate on the related series of Preferred Securities. Such interest payments will constitute JCP&L Capital's only income and will be used by it to pay monthly distributions on the Preferred Securities and distributions on the general partner interests of JCP&L Capital held by Investment Sub. Distributions on the Preferred Securities will be made monthly, will be cumulative and must be made to the extent that JCP&L Capital has legally available funds and cash sufficient for such purposes. However, JCP&L will have the right to defer payment of interest on the Subordinated Debentures for up to five years, in which event JCP&L Capital may similarly defer payment of distributions on the Preferred Securities. If distributions on the Preferred Securities are not paid for eighteen consecutive months, then the holders of the Preferred Securities will have the right to appoint a special representative to enforce JCP&L Capital's rights under the Subordinated Debentures and the rights of the holders of the Preferred Securities under the Guarantees. JCP&L and JCP&L Capital, as the case may be, may be required to pay interest on any deferred interest or distributions, to the extent permitted by applicable law. The interest rates, payment dates, redemption and other similar provisions of each series of Subordinated Debentures will be identical to the distribution rates, payment dates, redemption and other similar provisions of the related series of Preferred Securities.

Each Subordinated Debenture and related Guarantee will be subordinate to all other existing and future indebtedness of JCP&L and will have no cross-default provisions with respect to other JCP&L indebtedness. However, JCP&L may not declare or pay dividends on its outstanding Cumulative Preferred Stock or Common Stock unless all payments then due under the Subordinated Debentures and the Guarantees have been made.

It is expected that JCP&L interest payments on the Subordinated Debentures will be deductible for income tax purposes and that JCP&L Capital will be treated as a partnership for federal income tax purposes. Consequently, it is represented that the holders of the Preferred Securities and Investment Sub will receive partnership distributions in respect of their distributions from JCP&L Capital and will not be entitled to any "dividend received deduction" under the Internal Revenue Code.

The Preferred Securities may be redeemable at the option of JCP&L Capital at a price equal to their stated value plus any accrued and unpaid distributions: (1) at any time after five years from their date of issuance; or (2) in the following events: (a) JCP&L Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, (b) JCP&L Capital is subject to federal income tax with respect to interest received on the Subordinated Debentures or is otherwise not treated as a partnership for federal income tax purposes, (c) it is determined that the interest payments by JCP&L on the Subordinated Debentures are not deductible for federal income tax purposes, (d) JCP&L Capital is subject to more than a *de minimis* amount of other taxes, duties or other governmental charges, or (e) JCP&L Capital becomes subject to regulation as an "investment company" under the Investment Company Act of 1940, as amended. Upon occurrence of any of the events set forth in clause (2), above, JCP&L Capital may also have the right to dissolve and distribute the Subordinated Debentures to the holders of the Preferred Securities in liquidation of their interests in JCP&L Capital.

In the event that JCP&L Capital is required by applicable tax laws to withhold or deduct certain amounts in connection with distributions or other payments, JCP&L Capital may also have the obligation, if the Preferred Securities are not redeemed or Subordinated Debentures are not distributed to the holders, to "gross up" such payments so that the holders of the Preferred Securities will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In the latter event, JCP&L's obligations under the Subordinated Debentures and the Guarantees would also cover any such "gross up" obligations.

JCP&L expects to apply the net proceeds from the sale of Subordinated Debentures to JCP&L Capital, to the repayment of outstanding short-term debt, for construction purposes, and for other general corporate purposes, including the redemption of outstanding senior securities pursuant to their optional redemption provisions. JCP&L represents that it will not so redeem such outstanding securities unless the estimated present value savings derived from the difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is on an after-tax basis greater than the estimated present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate. Such discount rate will be based on meeting JCP&L's long-term capital structure goals, with appropriate adjustments for income taxes. JCP&L will not use any of the net proceeds from the sale of Subordinated Debentures to acquire, either directly or indirectly, any interest in any exempt wholesale generators ("EWG") or foreign utility companies ("FUCO"), as those terms are defined in Sections 32 and 33 of the Act, respectively.

New England Electric System (70–8497)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under Section 12(b) of the Act and Rule 45 thereunder.

By orders dated December 11, 1992 and June 18, 1993 (HCAR Nos. 25701 and 25832, respectively), NEES was granted the authority to make capital contributions to its wholly owned electric-utility subsidiaries through December 31, 1994.

NEES now proposes to make, from time to time from January 1, 1995 through December 31, 1996, one or more capital contributions to New England Power Company ("NEP"), Massachusetts Electric Company ("Mass. Electric"), The Narragansett Electric Company ("Narragansett"), and Granite State Electric Company ("Granite"), each a wholly owned electric-utility subsidiary of NEES. Such capital contributions shall not exceed an aggregate of $50 million each for NEP, Mass. Electric and Narragansett, and $3 million for Granite. NEP, Mass. Electric, Narragansett and Granite will credit their capital contributions to "Other Paid-In Capital," and NEES will record such capital contributions as "Investments in Subsidiaries, Consolidated." NEES will obtain the funds for such capital contributions from dividends paid to it by its subsidiaries, repayment of notes from subsidiaries or through short-term borrowings.

NEP, Mass. Electric, Narragansett and Granite will apply the funds received from the capital contributions toward the cost of, or the reimbursement of the treasury for, or the payment of short-term borrowings incurred for, retirement of outstanding general and refunding and first mortgage bonds and preferred stock, capitalizable additions and improvements to plant and property or other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27384 Filed 11–3–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 28, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

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Docket Number: 49833

Date filed: October 27, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 25, 1994
Description: Application of Air Canada, pursuant 49 U.S.C. Section 41306 and Subpart Q of the Regulations, requests amendment of its Foreign Air Carrier Permit to add the Route Ottawa, Ontario-New York, New York.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-27369 Filed 11-3-94; 8:45 am]

BILLING CODE 4910-62-P

Aviation Proceedings; Agreements Filed During the Week Ended October 28, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49841

Date filed: October 25, 1994
Parties: Members of the International Air Transport Association
Subject:
TC23 Reso/P 0661 dated October 18, 1994
Africa-TC3 Expedited Reso 003a—r-1
*TC23 Reso/P 0662 dated October 18, 1994
Middle East-TC3 Expedited Reso 003h—r-2
TC23 Reso/P 0663 dated October 18, 1994
Africa-TC3 Expedited Reso 002a—r-3
TC23 Reso/P 0664 dated October 18, 1994
Africa-TC3 Expedited Resos—r-4 to r-11
r-4—002c r-6—015v r-8—071r r-10—076gg
r-5—003d r-7—024j r-9—072aa r-11—076h
TC23 Reso/P 0665 dated October 18, 1994
Africa-TC3 Expedited Reso 085x—r-12
Proposed Effective Date: December 15, 1994

Docket Number: 49842

Date filed: October 25, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1604 dated October 4, 1994, Mexico-Europe Resos—r-1 to r-21
Proposed Effective Date: April 1, 1995

Docket Number: 49843

Date filed: October 25, 1994
Parties: Members of the International Air Transport Association
Subject:
TC12 Reso/P 1608 dated October 21, 1994—r-1
TC12 Reso/P 1609 dated October 21, 1994—r-2
TC12 Reso/P 1610 dated October 21, 1994—r-3
TC12 Reso/P 1611 dated October 21, 1994—r-4
TC12 Reso/P 1612 dated October 21, 1994—r-5
TC12 Reso/P 1613 dated October 21, 1994—r-6
TC12 Reso/P 1614 dated October 21, 1994—r-7
TC12 Reso/P 1615 dated October 21, 1994—r-8 to r-15
North/Mid/South Atlantic-Africa Expedited Resos
Proposed Effective Date: Expedited Dec. 31/January 1, 1995

Docket Number: 49852

Date filed: October 27, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0667 dated October 25, 1994, Europe-Southwest Pacific Expedited Reso 003r (Summary attached.)
Proposed Effective Date: Expedited December 15, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-27370 Filed 11-3-94; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

[Summary Notice No. 94-38]

Exemption Petitions; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for waiver received.

SUMMARY: This notice contains the summary of a petition requesting a waiver from the interim compliance date required of 14 CFR part 91, §§ 91.867. Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by November 25, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27986, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Trapani, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7624.

Issued in Washington, DC on October 27, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Waiver

Docket No. 27906.
Petitioner: Frontier Airlines, Inc.
Regulations Affected: 14 CFR 91.867.
Description of Waiver sought: To allow Frontier Airlines, Inc., to operate for six months after December 31, 1994, without the required number of Stage 3 aircraft in its fleet.

[FR Doc. 94-27286 Filed 11-3-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Santa Fe and San Miguel Counties, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation improvement project in Santa Fe and San Miguel Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo, Santa Fe, NM 87505. Telephone: (505) 820-2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on three alternative alignments for connecting NM 50 to I-25 in the vicinity of the Glorieta Unit of the Pecos National Historical Park.

Alternatives under consideration are: 1. No build, including, a. Do nothing, b. Resurfacing of NM 50 through the Glorieta Unit and c. Widening within the existing right-of-way through the Glorieta Unit; 2. West Ridge Alignment. This would be a new alignment beginning approximately 12,500 feet east of the Glorieta Unit east boundary on NM 50, bending southwest to old US 85, then extending west along the interstate to tie in to the existing Glorieta interchange, and 3. La Joya Underpass Alignment. This alignment would begin approximately 1500 feet east of the Glorieta Unit east boundary on NM 50. It would proceed south to I-25, utilizing the existing La Joya underpass location. A new interchange with I-25 would be required.

Public involvement to date has included two "open house" public meetings. The first was held August 12, 1993 in Pecos, NM, and the second was held October 28, 1993, also in Pecos, NM Comments received at those public meetings were incorporated into the planning process.

The draft EIS will be made available for Native American, public and agency review and comment. A public hearing will be advertised and held after document distribution and review. To ensure that a full range of issues related to this project are addressed and all significant issues and impacts identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the alternatives and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on June 30, 1994.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 94-27341 Filed 11-3-94; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on November 9 in Room 600, 301 4th Street, SW., Washington, D.C. from 10:00 a.m.–12 noon.

The Commission will meet with Ambassador Charles W. "Chas" Freeman, Jr., U.S. Institute of Peace, former Assistant Secretary of Defense, and former U.S. Ambassador to Saudi Arabia; Dr. Barry Fulton, Associate Director, Bureau of Information, U.S. Information Agency; and Mr. Michael Beschloss, writer, historian, Senior Fellow and Director of the Annenberg Washington Program's Project on Television and U.S. Foreign Policy. Participants will discuss the value, purposes, and goals of public diplomacy.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619-4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: November 1, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94-27402 Filed 11-3-94; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 213
Friday, November 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, November 1, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency) and Chairman Ricki R. Tigert, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: November 1, 1994.

Federal Deposit Insurance Corporation.

E. Elizabeth Hayes,

Acting Assistant Executive Secretary.

[FR Doc. 94–27497 Filed 11–2–94; 11:25 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., November 9, 1994.

PLACE: Room 100 (Hearing Room)—800 North Capitol St., N.W., Washington, D.C. 20573–0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 94–14—*Update of Existing Filing and Service Fees* and Docket No. 94–15—*New Filing Fees*—Consideration of Comments.
2. Docket No. 93–23—*Advance Notice of Proposed Rulemaking Concerning Section 6(g) of the Shipping Act of 1984*—Consideration of Comments.
3. Proposed Rule on Information Form and Reporting Requirements for Carrier Agreements.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27514 Filed 11–2–94; 1:06 pm]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 9, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27496 Filed 11–2–94; 11:24 am]

BILLING CODE 6210-01-P

Corrections

Federal Register
Vol. 59, No. 213
Friday, November 4, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—34792; File No. SR—CBOE—94—33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Reporting by the Exchange to the Central Registration Depository ("CRD") of Information Concerning Pending Formal Exchange Disciplinary Proceedings

Correction

In notice document 94-25279 beginning on page 52014 in the issue of Thursday, October 13, 1994, make the following correction:

On page 52015, in the third column, the signature and title lines preceding the file line were omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—20612; File No. 812—9038]

The Woodward Funds et al.; Notice of Application

Correction

In notice document 94-25644 beginning on page 52575 in the issue of Tuesday, October 18, 1994, the Release Number should read as set forth above.

BILLING CODE 1505-01-D

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Part II

Department of the Interior

Bureau of Indian Affairs

Coushatta Tribe of Louisiana; Liquor Control Ordinance; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Coushatta Tribe of Louisiana Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that the Coushatta Tribe of Louisiana Liquor Control Ordinance was duly adopted by the Coushatta Tribe of Louisiana on August 30, 1994. The Ordinance provides for the regulation, distribution, possession, sale, and consumption of liquor on lands held in trust belonging to the Coushatta Tribe of Louisiana.

DATES: This ordinance is effective as of November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street N.W., MS 2611–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Coushatta Tribe of Louisiana Liquor Control Ordinance is to read as follows:

Coushatta Tribe of Louisiana Liquor Control Ordinance

An application to sell alcoholic beverages within the boundaries of all lands used for the purpose of gaming that are subject to the provisions of the Indian Gaming Regulatory Act and the Compact between the Coushatta Tribe of Louisiana and the State of Louisiana, belonging to the Coushatta Tribe of Louisiana, shall be submitted to the Coushatta Tribe of Louisiana Gaming Commission, in triplicate; and an application to sell alcoholic beverages within the boundaries of all lands held in trust and not used for the purpose of gaming belonging to the Coushatta Tribe of Louisiana, shall be submitted to the Coushatta Tribe of Louisiana Tribal Council, in triplicate; and both application forms shall consist of the following:

(a) The application shall set forth the name of the applicant organization.

(b) The application shall attach the ordinance(s) and resolution(s) under which the applicant organization is chartered and regulated.

(c) The applicant shall describe specifically the land or building where the applicant organization will sell intoxicating beverages or beer.

(d) The application shall conform to the requirements of the laws of the State of Louisiana as they relate to the obtaining of liquor licenses elsewhere in the State of Louisiana.

1. Licenses for the sale of intoxicating beverages and beer may be issued by the Tribal Council of the Coushatta Tribe of Louisiana to subordinate organizations of the Tribe if the Tribal Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Tribal Council may deem relevant, that such issuance is in the interest of the Tribe.

2. Licenses for the sale of intoxicating beverages and beer issued by the Tribal Council of the Coushatta Tribe of Louisiana shall contain the following requirements:

(a) Each license shall require its holder to conform its operations to the laws of the State of Louisiana that relate to the sale or possession of intoxicating beverages or beer.

(b) No license shall be effective for a term more than one year from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.

(c) Each license shall explicitly state that its continued validity is dependent upon the compliance of its holder with all provisions of this Ordinance and of the laws of the State of Louisiana that relate to the sale or possession of intoxicating beverages or beer.

3. The Tribal Council of the Coushatta Tribe of Louisiana shall have the authority to revoke any license issued under this Ordinance, under the following procedures:

(a) Upon receiving information suggesting that the holder of a license under this Ordinance may have violated the terms of the license or applicable law, the Tribal Council shall give the license holder written notice that the Tribal Council intends to suspend or revoke the holder's license. Such notice shall be sent by certified mail, return receipt requested, to the license holder, and shall specify the grounds for the proposed suspension or revocation.

(b) Any license holder who receives notice of a proposed suspension or revocation may request a hearing by the Tribal Council, by sending a written request therefore, by certified mail, return receipt requested, to the Chairman of the Coushatta Tribe of Louisiana at the Tribal Office, within seven (7) days of the license holder's receipt of the notice.

(c) Upon receipt of a request for hearing under this Ordinance, the Tribal Council of the Coushatta Tribe of Louisiana shall set a date for a hearing, which shall be not later than thirty days from the date of the receipt of the hearing request.

(d) At a hearing held under this Ordinance, the holder of a license under this Ordinance shall be permitted to present evidence with respect to its compliance with the terms of its license and applicable law. In reaching its decision, the Tribal Council of the Coushatta Tribe of Louisiana may consider such evidence, together with all other evidence it deems relevant. Following a hearing, if in the judgment of the Tribal Council the license holder has not complied with the terms of its license and applicable law, the Tribal Council shall suspend or revoke its license; and if in the judgment of the Tribal Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. In either case, the decision of the Tribal Council shall be final.

4. The Tribal Council of the Coushatta Tribe of Louisiana may reject any application for a license, or for a renewal of a license, under this Ordinance, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance.

Dated: October 21, 1994.

Hilda A. Manuel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–27318; Filed 11–3–94; 8:45 am]

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federal register

Friday
November 4, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Distribution of Fiscal Year 1995 Contract Support Funds; Notice

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DEPARTMENT OF THE INTERIOR

Distribution of Fiscal Year 1995 Contract Support Funds

October 28, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide information to Indian tribes and tribal organizations contracting under the Indian Self-Determination and Education Assistance Act, as amended, about the distribution and use of Contract Support Funds (CSF) Fiscal Year (FY) 1995.

DATES: The CSF Needs Reports for ongoing/existing contracts are due on December 1, 1994, and July 10, 1995. The CSF Needs Reports for new and expanded contracts are due on December 1, 1994, and February 2, 1995. All new or expanded contracts starting between October 1, 1994, and January 1, 1995 will be considered to have a January 1, 1995 start date. Current proposals for FY 1995 indirect costs rates must be pending before the Inspector General on or before June 30, 1995. The final distribution of CSF will be on or about July 31, 1995.

ADDRESSES: Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, NW, MS–4627–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION: Please contact Daisy West (202) 208–3708.

SUPPLEMENTARY INFORMATION: The information detailed herein has been developed to comply with the following language in the Appropriations Act for the Department of the Interior and related agencies for FY 1995, Public Law 103–332:

"* * * and of which not to exceed $95,823,000 shall be for payments to tribes and tribal organizations for contract support costs associated with ongoing contracts or grants or compacts authorized by the Indian Self-Determination Act of 1975, as amended: *Provided*, That tribes and tribal contractors may use their tribal priority allocations for unmet contract support costs of ongoing contracts, grants or compact agreements * * *

"* * * *Provided further*, That of the funds provided, $7,500,000 shall remain available until expended, for the Indian Self-Determination Fund, which shall be available for the transitional cost of initial or expanded tribal contracts, grants or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act."

In addition, the Conference Report accompanying the FY 1995 Interior Appropriations Act states:

"Modified language proposed by the Senate to place a cap on the amount of funding to be made available for fiscal year 1995 and to separate the amount of contract support for ongoing self-determination agreements entered into prior to fiscal year 1995 from that provided for new awards first entered into during fiscal year 1995. The purpose of separating the amount available for ongoing agreements from that for new and expanded agreements is to stabilize the fund for ongoing awards and still provide contract support funding for new and expanded contracts. The Bureau is expected to implement procedures for administering the new Indian Self-Determination Fund, for which $7,500,000 is provided, consistent with those of the Indian Health Service. The Bureau should fund new contracts at the 100 percent level.

"The Bureau is expected to begin developing procedures for eventual transfer of contract support into each tribe's tribal priority allocation. Once this has been accomplished, the tribes will be able to manage their total program costs within their overall funding allocation.

"The cap is not intended to limit the flexibility of tribes to reprogram within tribal priority allocations to obtain full recovery of indirect costs if a shortfall in contract support were to occur. Accordingly, the managers anticipate that tribes, individually or in agreement with other tribes may reprogram within tribal priority allocations without regard to the contract support ceiling. Reprogramming on a Bureau-wide basis is not authorized for this purpose."

Summary Statement

A total of $103,125,653 is available for contract support requirements (excluding construction contracts) during FY 1995. Of this amount $95,639,978 is available for contract support requirements associated with the FY 1995 costs of ongoing self-determination and self-governance awards for programs under contract prior to FY 1995. The balance of $7,485,675 is provided to establish an Indian Self-Determination (ISD) Fund to provide contract support for new and expanded contracts first entered into in FY 1995. These amounts include the general reduction of 0.191 percent, in accordance with the Title III General Provisions § 313, Public Law 103–332. Each BIA Area Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective area to work with the tribes in identifying existing and new and expanded contracts and reporting this information to the Division of Self-Determination Services as specified in this announcement. CSF shall be added to awards made under § 102 and Title III of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under the authority of § 103 of this Act shall not receive CSF to meet indirect costs, as contract support provisions do not apply to § 103 grants.

Basis for Payment of CSF

The Bureau of Indian Affairs (BIA) will utilize tribal indirect cost rates to determine the amount of CSF to be paid to eligible contracting tribes and tribal organizations. In determining legitimate FY 1995 indirect cost requirements each office should fund only those contracting or compacting tribal organizations that have approved FY 1994 or 1995 indirect cost rates or current indirect cost proposals being considered by the Bureau or to be negotiated by the Inspector General. Current proposals means proposals for FY 1995 scheduled for active consideration which are pending before the Inspector General on or before June 30, 1995.

Ongoing/Existing Contracts

Each office will be suballotted 75 percent of the total amount reported as contract support needs for FY 1994 as soon as funds become available. Each office is to award 75 percent of required contract support to each award meeting the criteria established below as of the beginning date of the annual funding period for such awards. Contractors with approved FY 1994 indirect cost rates, but without current proposals pending before the Inspector General, are eligible for 50 percent of the required contract support for such awards. Additional CSF shall not be provided until such time as a current proposal is received by the Inspector General.

Each office will submit the first CSF needs report to the Central Office for ongoing § 102 and Title III awards by December 1, 1994. CSF will be provided for 75 percent of the reported amount to each office from the available $95,639,978, based on these reports. Each office will submit the second CSF needs report to the Central Office for ongoing § 102 and Title III awards as of June 30, 1995. The second report is due on or before July 10, 1995. A final distribution of contract support will be made on or about July 31, 1995, on the basis of these reports. If the reports indicate that $95,639,978 will not be sufficient to cover the entire need, this amount will be distributed so that all offices receive the same percentage of their reported need for distribution at this same percentage. Also, should the amount provided for these existing contracts prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies made necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds for programs only within the Tribal Priority Allocation (TPA) portion of the budget. A new program code (39010) was established under TPA in the Federal Finance System (FFS) to accommodate the contract support tribal reprogrammings.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program. Congressional language specifically precludes the Bureau from requesting a reprogramming of funds on a Bureauwide basis to meet any CSF shortfalls.

An ongoing/existing contract is defined as a BIA program operated by the tribe or tribal organization on an ongoing basis which has been entered into prior to the current fiscal year. An increase or decrease in the level of funding from year to year for such contracts would not affect the designation of such contracts as being ongoing. Rather, an assumption of additional BIA program responsibilities would be required to trigger a change in designation as explained below.

New and Expanded Contracts

Each office will submit CSF need reports to the Central Office for new and expanded § 102 and Title III contracts. The reports are due in the Central Office on December 1, 1994, and February 2, 1995. Contract support funds will be provided at the 100 percent level to new and expanded contracts on a first-come-first-served basis until the fund is exhausted. The unfunded requests will be given first priority in the subsequent fiscal year, from funds appropriated for this purpose.

Priority of Funding for New and Expanded Contracts

Contract support will be awarded from the ISD fund to all new and expanded contracts/compacts on a priority basis, based on the start date of the award, the application date, and then the approval date, on a first-come-first-served basis. An Indian Self-Determination Fund "applicant roster" shall be maintained, which shall list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the approval date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of the approved Indirect Cost Rate Agreement, or the date the indirect cost proposal was received by the Inspector General.

Start date means the date or commencement of operation of the new or expanded portion of the contract or compact by the tribe or tribal organization. However, the Self-Determination Act provides that contracts will be on a calendar year unless otherwise provided by the tribe, any start date on or prior to January 1 of each year shall be considered a January 1 start date.

Application date shall be the date of the request by the tribe which includes: (1) a tribal resolution requesting a contract or compact; (2) a summary of the program or portion thereof to be operated by the Tribe or Tribal organization; and (3) a summary identifying the source and amount of program or services funds to be contracted or compacted and contract support requirements. In the event that two tribes or tribal organizations have the same start date, application date, and approval date, then the next date for determination of priority shall be the date the fully complete application was received by the Bureau of Indian Affairs. If all of the above are equal, and if funds remaining in the ISD fund are not adequate to fill the entire amount of each awards contract support requirement, then each will be awarded a proportionate share of its requirement and shall remain on the Indian Self-Determination Fund Roster in appropriate order of priority for future distributions.

A new contract is defined as the initial transfer of a program, during the current fiscal year, previously operated by the BIA to the tribe or tribal organization.

An expanded contract is defined as a contract which has become enlarged during the current fiscal year, through the assumption of additional programs previously operated by the BIA.

Criteria for Determining CSF Need for Ongoing/Existing Contracts

CSF for ongoing and existing contracts will be determined using the following criteria:

1. All TPA contracted programs in FY 1994 and continued in FY 1995, including contracted programs moved to TPA in FY 1995, such as New Tribes, HIP, and Road Maintenance.

2. Direct program funding increases due to inflation adjustments and general budget increases.

3. TPA programs started or expanded in FY 1995 that are a result of a change in priorities from other already contracted programs.

4. CSF differentials associated with tribally operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated in accordance with the criteria prescribed in the Choctaw decision dated September 18, 1992, issued by the Contracting Officer, Eastern Area Office. Tribes that received differential funding under this category in FY 1994 are eligible to receive funding from this account in FY 1995. Tribes that did not receive differential funding under this category in FY 1994 are eligible for funding from the ISD fund.

5. CSF will be distributed to the Office of Self-Governance for a portion of the funding needs for new Self-Governance compacts. The FY 1995 level of funding provided to the Office of Self-Governance will be at the same level the tribes were funded by the area office(s) in FY 1994. The level of FY 1995 CSF provided to the Office of Self-Governance for any new compacts will be reduced to the extent that CSF requirements are being met by the Area Office(s) for continued/residual 638 contracting activity. All additional CSF requirements will be met from the ISD fund in accordance with the criteria established below.

6. Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for the purpose of payment of contract support costs.

7. The FY 1995 Appropriation Act does not authorize the use of CSF to pay prior year shortfalls.

8. Programs funded from sources other than those listed above that were contracted in FY 1994 and are to be contracted in FY 1995.

Criteria for Determining CSF Need for New and Expanded Contracts

CSF for new and expanded contracts will be determined using the following criteria:

1. All contracts initially entered into in FY 1995 that transfer the operation of a program that was operated by the BIA in the previous fiscal year to the tribe, and does not fall under the definitions described in numbers 3 and 6 above.

2. All expansions of existing contracts that call for the tribe to assume more or additional programs previously operated by the BIA.

3. CSF differentials associated with a grant school operated by the tribe that did not receive differential funding for the school in FY 1994.

4. New and expanded program assumptions under Self-Governance compacts.

Hilda A. Manuel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–27388 Filed 11–3–94; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 271
Washington: Final Authorization of State Hazardous Waste Management Program Revisions; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-5099-5]

Washington: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Washington has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State of Washington's application and has reached a decision that the State of Washington's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State of Washington to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the State of Washington shall be effective November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Springer, U.S. EPA, M/S: HW-107, 1200 Sixth Avenue, Seattle, Washington 98101, Phone (206) 553-2858.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 to RCRA (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260-266, 268 and 270.

B. State of Washington

The State of Washington initially received final authorization on January 31, 1986. The State of Washington received authorization for revisions to its program on November 23, 1987 (52 FR 35556, 9/22/87) and on October 16, 1990 (55 FR 33695, 8/17/90). On January 12, 1994, the State of Washington submitted a program revision application for additional program approvals. On March 30, 1994, EPA published a proposal to approve the State of Washington's application for program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed the State of Washington's application, and has made a final decision that Washington's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications to Washington's hazardous waste program. Attachments 1, 2, 5, 6, 8-17 and Appendices 1-4 of the State's application are provided for information only.

C. Washington's Corrective Action Program

The State of Washington's authorized RCRA program is set forth in Chapter 173-303 of the Washington Administrative Code (WAC), entitled "Dangerous Waste Regulations". The Dangerous Waste Regulations include both authorized and non-authorized requirements. Washington has amended the Dangerous Waste Regulations to include corrective action requirements; however, Washington may also rely on its existing state "superfund-like" cleanup authority, Model Toxics Control Act (MTCA), and its implementing regulations in Chapter 173-340 entitled "Model Toxics Control Act Cleanup Regulation", to implement corrective action requirements and to compel corrective actions.

The statutory authority for the Dangerous Waste Regulations is found in the Revised Code of Washington (RCW), Chapters 70.105 and 70.105D. RCW 70.105D.030(1)(d) is the statutory provision which allows the State of Washington Department of Ecology (Ecology) to carry out all state programs authorized under the federal RCRA statute. RCW 70.105.130 designates Ecology as the agency tasked with implementing the authorized RCRA program and provides Ecology with the authority to establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous waste. RCW 70.105.020 authorizes Ecology to revise and modify the Dangerous Waste Regulations. Statutory authority for MTCA is also found in RCW Chapter 70.105D. RCW 70.105D.030(2) authorizes Ecology to adopt rules to set cleanup standards for remedial actions taken under MTCA authority. RCW 70.105D.050(1) explicitly grants Ecology the authority to issue orders under MTCA to direct potentially liable parties to conduct remedial action.

Washington may compel corrective action by issuing orders pursuant to MTCA to owners and operators of facilities seeking or required to have a permit to manage dangerous waste. Such orders are referred to as "state corrective action orders". State corrective action orders will be somewhat hybrid, presenting RCRA corrective action requirements in the context of a state "superfund-like" cleanup. EPA emphasizes that corrective action requirements are not being deferred to a state superfund-like authority; rather, the state authority will be used to compel RCRA corrective action requirements. In order to fulfill the RCRA Section 3004 (u) and(v) requirement that all RCRA permits must include corrective action permit conditions, state corrective action orders will be incorporated into RCRA permits issued pursuant to the authorized State program permitting regulations.

Washington's corrective action program would allow corrective action to be specified through the terms of a State-issued order which is incorporated by reference into operating or post-closure permits issued to facilities. The State could: 1) issue the order in advance of the permit; 2) modify the permit to incorporate the order; or 3) simultaneously issue the order and the permit with the order incorporated into the permit. Under the Washington program, a State order would be considered to be part of the authorized RCRA program only when the order is incorporated into an existing RCRA permit, or when the order is issued simultaneously with and incorporated by reference into a new RCRA permit.

D. Comparison of Washington's Corrective Action Program to the Federal Program

Ordinarily, States await promulgation of Federal regulations prior to submitting their applications. However, there is no impediment under the RCRA statutory provisions which would bar a State from seeking authorization of a program in advance of Federally promulgated regulations provided the State bases its program on existing Federal statutory language. An existing Federal counterpart is the critical nexus in the authorization program.

Washington's corrective action program goes slightly beyond the EPA-promulgated regulations (see 40 CFR 264.100 and 264.101) which implement the statutory provisions of sections 3004(u) and (v) of RCRA, 42 U.S.C. 6924(u) and (v), in which facilities seeking a permit are required to undertake corrective action for all releases of hazardous waste or constituents from any solid waste management unit (SWMU) and to undertake such corrective actions beyond the property boundary where necessary. Washington's program will instead utilize its existing Superfund-like cleanup order authority (the Model Toxics Control Act) through the State's authorized RCRA program by linking the cleanup order authority with the State's authorized RCRA program permitting requirements to fulfill the mandates of sections 3004(u) and (v) of RCRA, 42 U.S.C. 6924(u) and (v).

The statutory language of Section 3004(u) of RCRA applies to corrective action at solid waste management units. Although no statutory or regulatory definition of "solid waste management unit" has been promulgated, EPA's proposed Subpart S corrective action rule, published in the Federal Register on July 27, 1990 (55 FR 30798), contains EPA's most current interpretation of key terms in section 3004(u) of RCRA. This is and will be the controlling interpretation against which Washington's regulatory definition of solid waste management unit shall be measured until EPA codifies a statutory or regulatory definition.

The statutory language of section 3004(u) of RCRA also applies to "facilities seeking a permit." Such facilities include those hazardous waste management facilities which are required to obtain permits to operate and to those subject to post-closure permits. EPA has interpreted this language to mean that corrective action must be specified in operating or post-closure permits issued to such facilities.

State corrective action orders will be issued to facilities subject to the Washington State Dangerous Waste Regulations, codified in the Washington Administrative Code (WAC) in Chapter 173-303, but these orders will rely in part on the State of Washington's Model Toxics Control Act (MTCA) statutory and regulatory provisions and will require current owners and operators of SWMUs to conduct corrective action at those units in accordance with the Dangerous Waste Regulations.

EPA is not delegating RCRA section 3008(h) authority [42 U.S.C. 6928(h)] as part of this authorization. No Federal enforcement authorities are delegated when EPA authorizes state programs under section 3006 of RCRA.

Any orders issued to a facility under MTCA will not be considered to be part of the EPA-authorized corrective action program unless and until they are incorporated into a RCRA permit. Terms of the orders which go beyond the scope of the authorized Dangerous Waste regulations will be considered broader in scope, and thus not Federally enforceable. Federal enforceability does not affect the ability of the State to impose requirements pursuant to their legitimate State statutory authorities or to enforce those requirements in lawfully-issued orders or permits.

Some portions of Washington's revised program are broader in scope than the Federal program, and thus are not Federally enforceable. Due to Washington's statutory mandate to address all releases of hazardous substances, Washington has developed corrective action requirements which are, in part, broader in scope than the Federal corrective action requirements in RCRA Section 3004(u), in that dangerous waste management facilities in Washington will be required to conduct corrective action as necessary to protect human health and the environment for all releases of dangerous waste and dangerous constituents at or from the facility, regardless of the source of the release.

Some portions of Washington's revised program are more stringent than the Federal program. The requirement to implement corrective action for releases which have migrated beyond the facility boundary is more stringent than the Federal requirement, in that it is not limited by the "best efforts" language in the Federal requirement.

To clarify, Washington will be authorized for the following provisions as part of this authorization (see State Authorization Checklists 17L, 36, 44A, 44B, 121):

Federal requirement	State authority
RCRA Corrective Action Program	
Corrective Action (50 FR 28702, 7/15/85):	
Applicability: SWMU, 40 CFR §264.90(a)	WAC 173-303-645(1)(a)(ii).
SWMU, 40 CFR §264.101(a)	WAC 173-303-646.
Specified in permit, 40 CFR §264.101(b)	WAC 173-303-646(2)(c).
Permits by rule: UIC permits issued after 11/8/84, 40 CFR §270.60(b)(3)	WAC 173-303-802(3).
NPDES permits issued after 11/8/84, 40 CFR §270.60(c)(3)	WAC 173-303-802(4)(c)(viii).
Permit Application [52 FR 23447 (6/22/87)]; [52 FR 33936 (9/9/87)]; [52 FR 45788 (12/1/87)]:	
Contents of Part B 40 CFR §270.14(c)	WAC 173-303-806(4)(a)(xx).
40 CFR §270.14(c)(7)	WAC 173-303-806(4)(a)(xx)(G).
40 CFR §270.14(c)(8)(v)	WAC 173-303-806(4)(a)(xx)(H)(III).
40 CFR §270.14(d)	WAC 173-303-806(4)(a)(xxiii).
Corrective action beyond the facility boundary [52 FR 45788 (12/1/87)]:	
40 CFR §264.100(e)	WAC 173-303-645(11)(e).
40 CFR §264.101(c)	WAC 173-303-646(2)(b).
Corrective Action Management Units (CAMU) [58 FR 8658 (2/16/93)]:	
Definitions:	
Facility to include all contiguous property, 40 CFR §260.10	WAC 173-303-040.
CAMU, 40 CFR §§260.10, 264.101, 270.2	WAC 173-303-040.
Landfill and miscellaneous unit to include CAMU, 40 CFR §260.10	WAC 173-303-040.
Remediation wastes to include all solid and hazardous waste and all media and debris, 40 CFR §260.10.	WAC 173-303-040.
Land disposal facility, 40 CFR §268.2(c)	WAC 173-303-040.

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Federal requirement	State authority
Interim Status standards apply in lieu of 40 CFR 264 standards, 40 CFR §264.3	WAC 173-303-400(2)(a).
Corrective action for SWMU will be specified in permit, including schedules of compliance, 40 CFR §264.101.	WAC 173-303-646(2)(a) & (c).
Designation Requirements for CAMU:	
Designated for implementing remedies, 40 CFR §264.552	WAC 173-303-646(2) & (4)(a).
Designation of regulated unit as CAMU, 40 CFR §264.552	WAC 173-303-646(6).
Designation will facilitate implementation, 40 CFR §264.552	WAC 173-303-646(5)(a).
O/O provides sufficient information, 40 CFR §264.552	WAC 173-303-646(5)(e).
Rationale documented and made available to public, 40 CFR §264.552	WAC 173-303-646(5)(f).
Permit modification requirements must be followed to incorporate CAMU into permit, 40 CFR §264.552	WAC 173-303-646(5)(g); WAC 173-303-830.
Requirements for Temporary Units (TU) [58 FR 8658 (2/16/93)]:	
Standards may be replaced by alternative requirements, 40 CFR §264.553	WAC 173-303-646(7)(a) & (b).
Factors for establishing standards, 40 CFR §264.553(c)	WAC 173-303-646(7)(c).
Length of time TU may operate, 40 CFR §264.553(e)	WAC 173-303-646(7)(d) & (e).
Incorporation of TU in permit, 40 CFR §264.553	WAC 173-303-646(7)(f); WAC 173-303-830
Rationale documented and made available to the public, 40 CFR §264.553.	WAC 173-303-646(7)(g).

In order to approve the State of Washington to use orders issued under MTCA to compel RCRA corrective action, it was necessary to identify the essential elements of a RCRA corrective action program and to determine that the State had the necessary authorities to meet these substantive RCRA requirements. The following table identifies those substantive RCRA corrective action requirements and demonstrates that the corresponding State authorities exist which allow the State to meet these requirements. Whereas certain of the state authorities listed are already authorized or are being authorized in today's action, this table only serves to demonstrate that orders issued under MTCA can compel corrective action which would meet all substantive RCRA corrective action requirements and is provided here for information only. As stated above, orders issued by the state are not part of the RCRA authorized program until such order is incorporated into a RCRA permit.

Federal requirement	State authority
RCRA Corrective Action Using Existing State Cleanup Authority:	
Corrective action at SWMUs for all releases, 40 CFR §264.101	RCW 70.105.130(1), (2)(a–b), (2)(c)(ii–iii) and (2)(e); RCW 70.105D.030(1)(a,b,d,f); WAC 173–303–400(3)(a)(i), –646(2)(a–b), –802(3–4).
Enforcement authorities, 40 CFR §271.16	RCW 70.105.080,.085, .095(1–2), .097, .120; RCW 70.105D.030(2)(c), .050(1),(4),(5)(a).
Permitting requirements: 40 CFR §§270.30, 270.32, 271.14 and 271.16.	RCW 70.105.130(2)(a), (b), and (c)(ii–iii); RCW 70.105D.030(1)(a); WAC 173–303–646(2)(a–c), –646(3)(a–c), –400(3)(a)(i), –806(4)(a)(xxi)(A) & (B).
Permitting requirements, schedules of compliance and assurances of financial responsibility, 40 CFR §§270.33 and 271.14.	RCW 70.105.130(2)(a); RCW 70.105D.030(1)(a–b), (2)(c); WAC 173–303–646(2)(c) & (3)(c), –802(3) & (4).
Corrective action beyond the facility boundary, 40 CFR §264.101	RCW 70.105.130(2)(c)(iii); RCW 70.105D.030(1)(a) & (b); WAC 173–303–646(2)(b) & (3)(a).
Definition of facility, 40 CFR §§260.10 and 264.101	RCW 70.105.101(11); RCW 70.105D.020(3); WAC 173–303–040.
Implement and complete corrective action, 40 CFR §264.101	RCW 70.105.130(2)(b), (c)(ii–iii) & (e); RCW 70.105D.030(1)(a), (b), & (f); WAC 173–303–646(2)(a) & (b).
Financial responsibility for completing corrective action, 40 CFR §§264.101 and 271.14.	RCW 70.105.130(1) & (2)(c)(iii); RCW 70.105D.030(1)(d); WAC 173–303–646(2)(a–c).
Public participation, 40 CFR §§270.42 and 271.16(d)	RCW 70.105.130(2)(a); RCW 70.105D.030(2)(a); WAC 173–303–830.

E. Indian Lands

Washington is not seeking authorization to operate on Indian lands.

F. Public Hearing and Comments

Although EPA received three requests for a public hearing, EPA did not find that the bases for the requests warranted a public hearing, since the issues raised were outside the scope of this authorization action.

EPA received a number of comments during the public comment period. A detailed Response to Comments has been prepared and is available upon request. The following is a summary of the comments received and EPA's responses to those comments.

One commenter was concerned about the interaction between regulation of radioactive materials under the Atomic Energy Act (AEA) and of hazardous wastes under RCRA, specifically that EPA's authorization of the State of Washington for RCRA corrective action under the State's Hazardous Waste Management Act (HWMA) would allow the Washington Department of Ecology to "preempt" the State Department of Health's regulatory authority (delegated by the Nuclear Regulatory Commission) over the operation of their facility. The commenter was also concerned about certain conflicting state regulatory and statutory provisions regarding the regulatory authority of the Department of Health.

In response, the State of Washington has not asked that the statutory provision cited by the commenter [RCW 70.105.240(2)] be authorized as part of the federally authorized RCRA program. As such, RCW 70.105.240(2) will not be part of the federally-authorized state RCRA corrective action program which will operate in lieu of the federal RCRA corrective action program. This will remain a "state-only" provision and EPA will not enforce it.

The State of Washington is today being authorized to implement its corrective action program in lieu of the federal RCRA corrective action program. The RCRA corrective action program seeks to address releases of hazardous waste and constituents from solid waste management units at a facility. "Regulated units" are units such as landfills, waste piles, surface impoundments, and land treatment units used to treat, store, or dispose of RCRA-regulated hazardous wastes and are subject to full regulation under subtitle C of RCRA. *See* 40 CFR 264.90. "Solid waste management units," or "SWMUs," are any discernable units at which "solid wastes" may have been placed at any time. *See* 55 FR 30798, 30874, July 27, 1990 (proposed RCRA Subpart S Rule). If EPA determines that the presence of solid or hazardous waste at either a regulated unit or a solid waste management unit has led to a release or a threatened release of a hazardous waste or constituent from such units, EPA can require the owner or operator of a unit to address such releases by taking necessary "corrective action" at the unit.

EPA's ability to require corrective action at such units does *not* mean that SWMUs are "regulated" under the RCRA "base program" and therefore subjected to RCRA permitting requirements. The RCRA "base program" consists, in part, of those provisions of RCRA that govern the generation, transport, treatment, storage and disposal of hazardous wastes. The RCRA "base program" is considered to be those provisions of the RCRA program before the passage of the Hazardous and Solid Waste Amendments ("HSWA") of 1984 to RCRA. HSWA introduced the corrective action requirements into the RCRA statute. In contrast and in general, only "regulated units" and generator accumulation areas are subject to the operational requirements of the RCRA "base program." These operational requirements are separate and apart from any corrective action requirements that might be imposed by the State of Washington under the authorized state corrective action program.

Therefore, the commenter's concern that EPA's authorization of the State of Washington for RCRA *corrective action* will allow the Department of Ecology to "preempt" the Department of Health's regulatory authority over the *operation* of the commenter's facility is unfounded. If the State of Washington wanted to regulate the daily operations of the facility's radioactive waste management activities under RCRA, it would have to do so under the state's dangerous waste "base" RCRA program.

One commenter stated that "Given that EPA has stated that it will interpret Washington's regulatory definition of SWMU against its discussion in the proposed corrective action rule, [the commenter] requests that the State of Washington through its authorized program will not be allowed to assert jurisdiction over mixed waste activities prior to July 3, 1986, as well." The commenter cites the State of Washington's recent definition of "solid waste management unit" which was added to the State's Dangerous Waste regulations, which "means any discernable location at a facility, as defined for the purposes of corrective action, where solid wastes *have been placed at any time.* . . ." (emphasis added). The commenter further states that "the preamble to EPA's corrective action rule did not attempt to retroactively apply EPA's jurisdiction over mixed waste prior to July 3, 1986."

In response, EPA has consistently interpreted the radioactive mixed waste to be a solid waste under RCRA for the purposes of RCRA corrective action (*see* 55 FR 30798 at 30860, July 27, 1990 and 51 FR 24504 Footnote #1, July 3, 1986). Therefore, it is clear that EPA considers radioactive mixed waste to be a solid waste under RCRA for purposes of RCRA corrective action. Corrective actions under RCRA which address releases from solid waste management units are not limited to releases of hazardous waste or constituents after any certain date. EPA's proposed definition of a "solid waste management unit" in EPA's proposed Subpart S rule (*see* 55 FR at 30808-30809) and the State of Washington's promulgated definition of a "solid waste management unit" in its Dangerous Waste Regulations (*see* WAC 173-303-646(2)(a)) both define a SWMU to include in part (state regulatory language differences are in brackets):

> Any discernable unit [location at a facility] . . . at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous [dangerous] waste.

Thus, EPA's determination that the hazardous component of radioactive mixed waste was *regulated* and subject to permitting requirements of Subtitle C of RCRA in 1986 does not affect EPA's ability (or a state's ability, when that state has been authorized for corrective action under RCRA) to require *corrective action* for the hazardous component of radioactive solid waste at SWMUs where such waste was disposed of before 1986.

EPA, in its authorization of the State of Washington for RCRA corrective action, is not authorizing the State to "'regulate' mixed waste disposed of prior to 1986" as suggested by the commenter. Rather, the authorization will allow the State to assert *corrective action* (cleanup of past releases) jurisdiction, which is not RCRA *operational* (day-to-day waste handling and management) jurisdiction, over solid waste (which includes the hazardous component of radioactive mixed waste) at solid waste management units at facilities seeking permits under RCRA. The State of Washington received final authorization for RCRA operational jurisdiction over radioactive mixed wast on November 23, 1987.

A commenter pointed out that EPA was not authorizing the State of Washington at this time for the "omnibus" authority of section 3005(c)(3) of RCRA, yet the State corrective action program and regulations indicate that the State will assert authority over releases of hazardous waste and constituents from "non-SWMU" units and areas. The commenter then asks whether EPA will assert its omnibus authority along with the State authority over corrective action for non-SWMU releases, and if so, how will EPA conduct such action.

In response, EPA cannot disregard its statutory obligations under RCRA to require corrective actions where EPA deems such actions to be necessary to protect human health and the environment. However, EPA also does not intend to require duplicative efforts under two separate statutory or regulatory schemes at any given facility. EPA is not authorizing the state of Washington for RCRA "omnibus" authority as part of today's authorization. As such, State regulations which allow the State to require corrective action for releases from non-SWMUs are "broader in scope" than the corrective action program for which the State is currently seeking authorization and, as such, are not federally enforceable.

In addition, EPA's statutory obligations under sections 3008(h), 3013, and 7003 of RCRA, 42 U.S.C. 6928(h), 6934, and 6973, to ensure protection of human health and the environment, empower EPA to ensure that all releases of hazardous waste are addressed. These statutory authorities are independent from EPA's oversight of the authorized state corrective action program. Should EPA decide that assertion of EPA statutory authority is necessary, such action will be coordinated with any ongoing State action to ensure that duplicative actions are not taken unless necessary to protect human health or the environment. However, EPA does not anticipate that

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it will have to exercise such authority very often, given the protectiveness embodied in the State's MTCA statute and the manner in which the State has implemented the MTCA program.

A commenter questioned that once a State-issued order is incorporated by reference into the facility's RCRA permit, can that order be amended without a corresponding modification of the RCRA permit.

In response, at the time the State order is incorporated by reference into a RCRA permit, the order becomes subject to all permitting requirements, including public participation requirements required for permit modifications. This includes any State-issued orders designating a corrective action management unit (CAMU) or temporary unit (TU). Therefore, if at some time after incorporation by reference into a RCRA permit, it is determined that the incorporated order must be changed, such a change will require a permit modification as well. The class of permit modification required, along with the extent of public participation required by such a modification, will be determined using the State regulations.

A commenter requested clarification of the public participation process to be used by the State under the authorized corrective action program. Specifically, the commenter pointed out that MTCA orders have their own public participation process. The commenter queried whether there would be a second public participation process at the time such order would be incorporated into a RCRA permit. The commenter also queried to what extent the public would be able to comment on the previously issued order at the time of permit issuance or modification; and to what extent the existing State regulations governing public participation would operate in lieu of the federal regulations codified at 40 CFR 124.11 through 124.17.

In response, the commenter is referred to the Program Description contained in this application for authorization, wherein Washington's Department of Ecology explains how public participation goals and requirements will be met. In brief, the State will follow only the existing MTCA public participation requirements (which are extensive) when a MTCA order is issued prior to permit issuance. Since that is not a RCRA permit action, there are no RCRA permit public participation requirements which apply. At the time the order is incorporated into a RCRA permit through permit modification, or if the order is issued concurrently with the RCRA permit, the permit issuance or modification will be under the State's authorized corrective action program. The RCRA public participation requirements would govern the public participation process at that time. However, public comment at that time will be limited to whether the incorporated MTCA terms, schedules and conditions appropriately fulfill corrective action requirements of the authorized State RCRA program. Public comment on the MTCA terms, schedules and conditions will not affect the ability of the state to enforce the MTCA order under MTCA authority, independent of the authorized RCRA corrective action program. At the time the MTCA order is incorporated into a RCRA permit, and at any time thereafter for the life of the RCRA permit, Ecology will ensure that the public participation procedures under RCRA and MTCA are coordinated to eliminate duplication of effort and fulfill RCRA requirements.

A commenter questioned how authorization of the State program would be affected by EPA's promulgation of a final federal rule regarding corrective action. The commentor also questioned whether EPA intended to use the proposed subpart S corrective action rules to measure the State's "consistency" with the federal corrective action program; and what EPA intended when EPA stated in its Notice of Proposed Rulemaking that EPA's proposed definition of a SWMU "will be the controlling interpretation against which Washington's regulatory definition of a solid waste management unit will be measured until EPA codifies a statutory or regulatory definition."

In response, should EPA finalize a federal rule regarding corrective action at some point after the State has received corrective action authorization, the State will be required to submit an application for a revision of the State corrective action program, in accordance with 40 CFR 271.21(e)(1) and 271.25. Until EPA promulgates a final federal corrective action rule, EPA intends to use its proposed subpart S rules (55 FR 30798, July 27, 1990) as the measure of consistency in order to determine whether the State's authorized corrective action program is at least as stringent as the federal corrective action program would be under the proposed Subpart S rule. Since the proposed subpart S rule has not yet been finalized, EPA cannot authorize nor enforce the provisions of Subpart S. However, EPA is currently using the provisions contained in the proposed Subpart S rule as guidance when conducting federal corrective actions.

Two commenters raised concerns regarding the State of Washington's siting criteria for new hazardous waste facilities. In response, the proposed approval and authorization of Washington's hazardous waste program revision is for a corrective action program. Since the corrective action program under RCRA is intended to address clean up of releases of hazardous waste at existing hazardous waste facilities, the commenters' concerns regarding siting of new facilities are outside the scope of this current authorization action. The State's siting criteria are State regulations which have no federal counterpart, and as such are not part of the federal RCRA program.

A commenter raised concerns regarding Hanford, specifically with respect to the burial of decommissioned reactor cores, and regarding incinerator standards. In response, EPA today is approving and authorizing the state for a RCRA corrective action program. EPA's authorization today does not directly address cleanup decisions at Hanford, the disposal of decommissioned reactor cores, nor EPA's incinerator standards found in the Boiler and Industrial Furnace Regulations (40 CFR part 266). Therefore, these concerns are considered to be outside the scope of today's authorization action, and would be addressed by the State RCRA base program.

Therefore, it is EPA's determination that there are no changes required to this authorization action as a result of the comments received.

G. Status of Federal Permits

Upon the effective date of authorization, the State of Washington will begin to administer and enforce corrective action requirements. EPA actions which fall under the federal omnibus authority of section 3005(c)(3) of RCRA, 42 U.S.C. 6925(c)(3), and/or which are federal enforcement authorities, including actions issued pursuant to sections 3008(h), 3013, or 7003 of RCRA, 42 U.S.C. 6928(h), 6934 or 6973, will continue to be administered by EPA. In addition, HSWA amendments for which the State has not been authorized will continue to be administered and enforced by EPA.

Due to recent legal developments in the national RCRA hazardous waste program, the discussion that appeared in the proposed rule (March 30, 1994, 59 FR 14827) concerning permits with automatic transfer provisions has been revised. All permits issued by U.S. EPA Region 10 prior to final authorization of the State for corrective action will continue to be administered by U.S. EPA Region 10 until the issuance, or reissuance after modification, of the State RCRA permit. Upon the effective date of the issuance, or reissuance after modification, of the State RCRA permit to incorporate authorized State requirements, those EPA-issued permit provisions for which the State is authorized to administer and enforce will expire. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit.

H. Decision

I conclude that the State of Washington's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of Washington is granted final authorization to operate its hazardous waste program as revised. The State of Washington now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. The State of Washington also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, 42 U.S.C. 6927, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA, 42 U.S.C. 6928, 6934 and 6973.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the State of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 17, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94-27170 Filed 11-2-94; 8:45 am]

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H.R. 4709/P.L. 103–435

To make certain technical corrections, and for other purposes. (Nov. 2, 1994; 108 Stat. 4566; 11 pages)

H.R. 4757/P.L. 103–436

Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Nov. 2, 1994; 108 Stat. 4577; 4 pages)

H.R. 4777/P.L. 103–437

To make technical improvements in the United States Code by amending provisions to reflect the current names of congressional committees. (Nov. 2, 1994; 108 Stat. 4581; 16 pages)

H.R. 4781/P.L. 103–438

International Antitrust Enforcement Assistance Act of 1994 (Nov. 2, 1994; 108 Stat. 4597; 10 pages)

H.R. 4814/P.L. 103–439

Central Midwest Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1994 (Nov. 2, 1994; 108 Stat. 4607; 8 pages)

H.R. 4867/P.L. 103–440

To authorize appropriations for high-speed rail transportation, and for other purposes. (Nov. 2, 1994; 108 Stat. 4615; 14 pages)

H.R. 4967/P.L. 103–441

To designate the United States courthouse located at 231 West Lafayette Street in Detroit, Michigan, as the "Theodore Levin United States Courthouse" and to designate the postal facility located at 1401 West Fort Street in Detroit, Michigan, as the "George W. Young Post Office". (Nov. 2, 1994; 108 Stat. 4629; 1 page)

H.R. 5102/P.L. 103–442

To amend title 18, United States Code, with respect to certain crimes relating to Congressional medals of honor. (Nov. 2, 1994; 108 Stat. 4630; 1 page)

H.R. 5161/P.L. 103–443

To amend the Omnibus Budget Reconciliation Act of 1993 to permit the prompt sharing of timber sale receipts of the Forest Service and the Bureau of Land Management. (Nov. 2, 1994; 108 Stat. 4631; 1 page)

H.R. 5200/P.L. 103–444

Crow Boundary Settlement Act of 1994 (Nov. 2, 1994; 108 Stat. 4632; 12 pages)

H.R. 5220/P.L. 103–445

To provide for the acceptance by the Secretary of Education of applications submitted by the local educational agency serving the Window Rock Unified School District, Window Rock, Arizona, under section 3 of the Act of September 30, 1950 (Public Law 874, 81st.Congress) for fiscal years 1994 and 1995. (Nov. 2, 1994; 108 Stat. 4644; 1 page)

H.R. 5244/P.L. 103–446

Veterans' Benefits Improvements Act of 1994 (Nov. 2, 1994; 108 Stat. 4645; 46 pages)

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International Narcotics Control Corrections Act of 1994 (Nov. 2, 1994; 108 Stat. 4691; 8 pages)

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Healthy Meals for Healthy Americans Act of 1994 (Nov. 2, 1994; 108 Stat. 4699; 53 pages)

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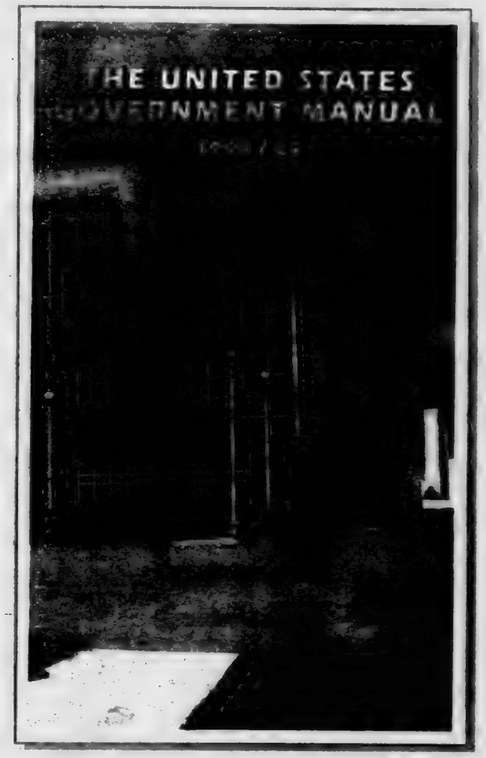
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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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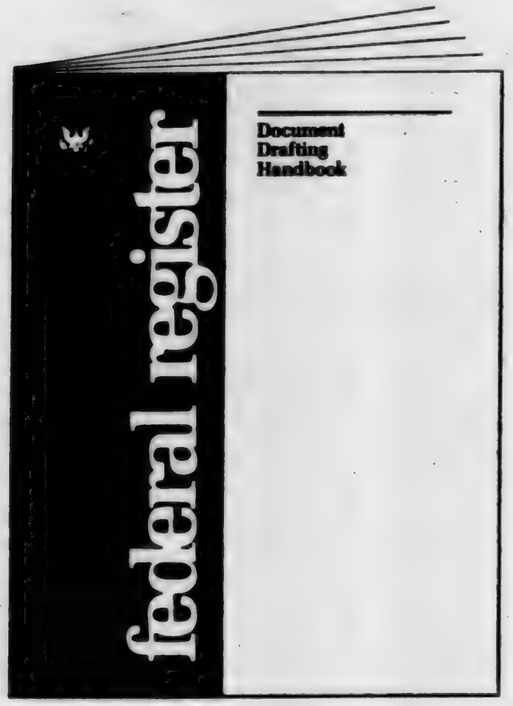
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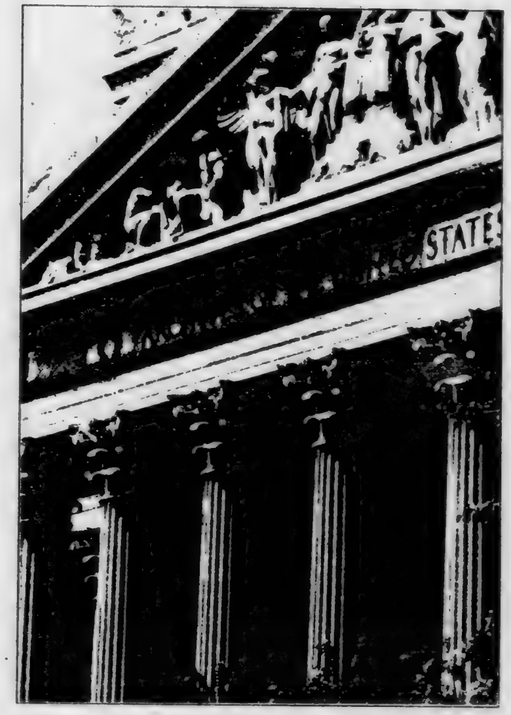
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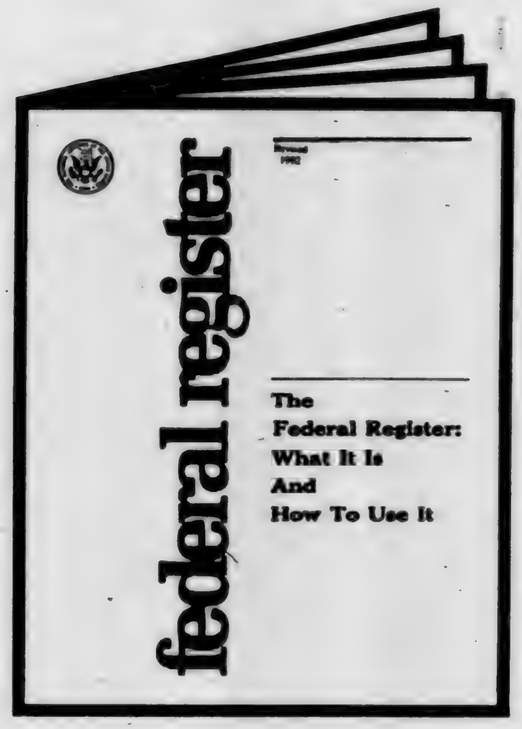
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6753 of November 3, 1994

National Family Caregivers Week, 1994

By the President of the United States of America

A Proclamation

The number of Americans aged 65 or older is increasing steadily. In 1992, seniors represented 12.7 percent of the U.S. population—about one in every eight Americans. Americans are living longer, healthier lives than at any other time in our history, yet one-third of older people evaluate their health as only fair or poor. About 6.1 million senior citizens have disabilities that leave them in need of regular care and help with their daily tasks.

When someone we love becomes ill, has an accident, or needs assistance, we can all become caregivers at a moment's notice. Care is usually provided by family members, often wives, daughters, and daughters-in-law, who may sacrifice their own employment opportunities to bring joy and comfort into the lives of loved ones. Selflessly offering their energy and love to those in need, family caregivers have earned our heartfelt gratitude and profound respect.

Caregivers understand how much we need and depend on one another. Indeed, Americans understand that our strength as a Nation has always flowed from the sturdy bonds of family. In recognition of this fact, we all must work harder to ensure that our Nation's caregivers receive the support and assistance they deserve.

The Congress, by Public Law 103–319, has designated November 20, 1994 through November 26, 1994, as "National Family Caregivers Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 20–26, 1994, as National Family Caregivers Week and call upon all government agencies and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc 94–27672
Filed 11–3–94; 2:15 pm]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Elections To Contribute to the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations that describe the periods within which employees may make certain elections in regard to contributions to the Thrift Savings Plan (TSP). This amendment will establish a permanent schedule of TSP open seasons, thereby eliminating the regulatory requirement that the Board publish an advance notice in the **Federal Register** announcing the beginning and ending dates of each open season.

DATES: This amendment is effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Hutner at (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board published a notice of proposed rulemaking in the **Federal Register** on August 16, 1994 (59 FR 41990). No comments were received. After further review the Board has decided that no changes in the proposed rule are necessary. Accordingly, the proposed rule is published as a final rule.

Each year, there are two open seasons during which participants may elect to commence contributions to the TSP, change the amount of their contributions or the allocation of their contributions among the TSP investment funds, or terminate contributions without forfeiting the ability to resume contributing during the next open season. The regulatory notice requirement for open seasons was established by the Board in 1987 shortly after the Thrift Savings Plan came into existence. At that time, it was not clear whether open seasons would occur at the same time and for the same duration each year. However, since then there have been two open seasons each year: May 15–July 31 and November 15–January 31. The last month of each open season has been designated the "election period", which is defined in 5 CFR § 1600.1. Since the open seasons have not varied since 1988, the Board is now amending its regulations to establish a permanent schedule for the beginning and ending dates and to eliminate the requirement that an advance notice of each open season be published in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect Board procedures relating to the requirement to publish advance notice of each open season.

EO 12291

I certify that this is not a major rule.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1600

Employment benefit plans, Government employees, Retirement, Pensions.

Dated: October 27, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, part 1600 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

PART 1600—[AMENDED]

1. The authority citation for 5 CFR part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(b)(1)(A), 8474(b)(5) and (c)(1).

2. Section 1600.2 is amended by revising paragraph (b) to read as follows:

§ 1600.2 Periods for making elections.

* * * * *

(b) *Subsequent open season.* An open season will begin on November 15 of each year and end on January 31 of the following year and another open season will begin on May 15 of each year and end on July 31 of the same year. If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season shall be extended through the next business day.

* * * * *

[FR Doc. 94–27526 Filed 11–4–94; 8:45 am]

BILLING CODE 6760-01-M

5 CFR Parts 1605, 1630, 1631, 1632, and 1650

Thrift Savings Plan Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) is amending its regulations to correct its address and telephone number. The Board relocated from 805 Fifteenth Street NW., Washington, DC to 1250 H Street NW., Washington, DC 20005, effective December 20, 1992.

EFFECTIVE DATE: This amendment is effective November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662.

SUPPLEMENTARY INFORMATION:

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days.

Accordingly, and under the authority of 5 U.S.C. 8474, the Board hereby amends 5 CFR Parts 1605, 1630, 1631, 1632, and 1650 as set forth below:

PARTS 1605, 1630, 1631, 1632, and 1650—[AMENDED]

§§ 1605.8, 1630.4, 1630.13, 1631.3, 1631.4, 1631.6, 1631.10, 1632.4, 1632.11, 1650.28, and 1650.32 [Amended]

1. In the sections indicated below, removed the words "805 Fifteenth Street" wherever they appear, and add in their place the words "1250 H Street":

a. Section 1605.8(b)(2);

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b. Section 1630.4(b);
c. Section 1630.13(a);
d. Section 1631.3(b);
e. Section 1631.4(a);
f. Section 1631.6(a);
g. Section 1631.10(a);
h. Section 1632.4(c);
i. Section 1632.11(b);
j. Section 1650.28(c);
k. Section 1650.32(b).

§ 1650.51 [Amended]

2. Remove the words "805 15th Street" and add in their place the words "1250 H Street" in section 1650.51(b).

§§ 1631.4 and 1650.28 [Amended]

3. Remove the location designation "Suite 500" as it appears in § 1631.4(a) and add in its place the location designation "Room 4306"; and remove the telephone number "(202) 523–5066" as it appears in § 1650.28(c), and add in its place the telephone number "(202) 942–1600".

Dated: November 1, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–27512 Filed 11–4–94; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV94–905–1FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the 1994–95 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimental, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, as amended, [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1994–95 fiscal year, beginning August 1, 1994, through July 31, 1995. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushel) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met June 21, 1994, and unanimously recommended expenses of $210,000 for the 1994–95 fiscal year, with an assessment rate of $0.003 per ⅘ bushel carton of fresh fruit shipped.

In comparison, 1993–94 budget expenses were $200,000 with an approved assessment of $0.00285. This represents increases of $10,000 in expenses and of $0.00015 in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $198,000 in assessment income. Interest income for 1994–95 is estimated at $2,000. This, along with $10,000 from the Committee's authorized reserve fund, will be adequate to cover additional expenses. Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $125,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the current fiscal year include $98,300 for salaries, $36,000 for the Manifest department, and $12,600 for insurance and bonds.

An interim final rule was issued on August 8, 1994, and published in the **Federal Register** [59 FR 41378, August 12, 1994]. A 30-day comment period was provided for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began April 1, 1994. The marketing orders require that the rates of assessment apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action without change as a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS, GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR Part 905 which was published at 59 FR 41378 on August 12, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 94–27518 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 927

[Docket No. FV94–927–1FIR]

Expenses and Assessment Rate for the 1994–95 Fiscal Year; Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Winter Pear Control Committee (Committee) under Marketing Order No. 927 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC. 20090–6456, telephone: (202) 720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, Room 369, Portland, Oregon, telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable pears handled during the 1994–95 fiscal year, which began July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

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unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of pears. Because this rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on June 3, 1994, and unanimously recommended total expenses of $6,835,926 for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expense amount was $6,933,615, which is $97,689 more than the amount recommended for the current fiscal year.

The Committee also unanimously recommended an assessment rate of $0.43 per standard box, or equivalent for winter pears. The Committee did not recommend a supplemental assessment rate for Anjou variety pears this fiscal year. In comparison, the 1993–94 winter pear assessment rate was $0.45 per standard box, or equivalent and $0.04 for the supplemental assessment rate on Anjou variety pears. This represents a $0.02 decrease in the assessment rate recommended for this fiscal year.

This rate, when applied to anticipated winter pear shipments of 13,817,000 boxes or equivalent, will yield a total of $5,941,310 in assessment income. Assessment income, along with $401,324 from other income sources, and $493,292 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The $493,292 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1994–95 fiscal period.

Major expense categories for the 1994–95 fiscal year include $5,572,500 for advertising, $276,340 for SOPP data research, $276,340 for winter pear improvement, $142,310 for salaries and benefits, and $612,442 for unshared contingency.

An interim final rule was issued on August 22, 1994, and published in the **Federal Register** [59 FR 44023, August 26, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began July 1, 1994. The marketing order requires that the rate of assessment apply to all assessable winter pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 927 which was published at 59 FR 44023 on August 26, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27521 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 928

[Docket No. FV94–928–4FR]

Papayas Grown in Hawaii; Final Rule to Change the Membership of the Papaya Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the membership of the Papaya Administrative Committee (committee), the agency responsible for local administration of the Hawaiian papaya marketing order. This rule increases the number of grower members on the committee from six to nine and reduces the number of handler members from six to three. The number of growers in the industry has increased in recent years, during the same period the number of handlers has remained constant.

EFFECTIVE DATE: This final rule becomes effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2526–S, Washington, DC 20090–6456; telephone (202) 690–3670; or Martin J. Engeler, Assistant Officer-In-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 928 [7 CFR Part 928], as amended, regulating the handling of papayas grown in Hawaii, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or an exemption therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities.

The purpose of the RFA is to fit regulatory rules to the scale of business subject to such rules in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 papaya handlers subject to regulation under the marketing order covering fresh papayas grown in Hawaii, and approximately 400 producers of papayas in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

Pursuant to § 928.120, the committee currently consists of 13 members. Each member has an alternate. Six members are growers, six are handlers, and one is a public member. The six handler members and alternates are nominated from the production area at large. Grower membership on the committee is apportioned among three districts. District 1 (the Island of Hawaii) is represented by four members and alternates, and District 2 (the Islands of Kauai, Niihau, Maui, Molokai, Lanai, Kahoolawe; and Kalawao county), and District 3 (the Island of Oahu) by one member and alternate each. Any grower organization is limited to two members on the committee. Any handler organization is limited to one member on the committee.

Section 928.20 also allows the number of grower and handler members and alternate members on the committee and the composition of the committee between growers and handlers to be changed as provided in § 928.31(o). Paragraph (o) of § 928.31 also authorizes the committee, with the approval of the Secretary, to redefine the districts into which the production area is divided, reapportion membership on the committee. Any such changes are required to reflect, insofar as practicable, structural changes within the industry and shifts in papaya production within the production area.

This final rule changes the composition of the committee by increasing grower representation on the committee from six grower members to nine and reducing handler representation from six members to three. This change was recommended by the committee on April 22, 1994, by a vote of 7 in favor, 3 opposed, and 2 abstentions.

The papaya industry has historically demonstrated a policy of maintaining equitable representation among handlers and growers. In 1989, committee membership was changed by allocating three grower member positions from District 1 to handlers in the State of Hawaii. This resulted in an increase from three to six handler members and a decrease in grower members from District 1 from seven to four. The committee indicated that the number of growers in the industry has increased from 325 to 400 since 1989, while the number of handlers has remained constant. The committee contends that these factors support their recommendation to change committee membership. This action is intended to provide increased grower representation on the committee consistent with the increased number of growers. This rule will not impose any additional costs on growers or handlers.

Members supporting this change stated that the marketing order is designed to primarily benefit growers and for that reason growers should have a majority on the committee. Members supporting the recommendation also stated that this change will increase growers' influence in matters concerning amendments to the marketing order, and market research and development and promotion activities. The majority of that increase occurred in District 1. Members opposed to the change in the current committee membership stated that the marketing order should benefit the entire industry, and believe the current composition of the committee provides a good balance for the industry.

The committee indicated that the increase in the number of growers producing papayas in District 1, justified increasing from four to seven the number of growers representing District 1 on the committee. Committee members supporting this change contend that the vast majority of growers and the highest level of papaya production are located in District 1. District 1 is expected to produce 55.6 million pounds during the 1993–94 season. Over the last four years District 1 has had an average annual production of 54.1 million pounds of papayas. For the same period District 2 has an average production of 760,000 pounds, and District 3 has an average production of 1,020,000 pounds of papayas.

The proposed rule concerning this action was published in the September 2, 1994, **Federal Register** [59 FR 45630], with a 30-day comment period ending October 3, 1994. No comments were received.

Based on the available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

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For the reasons set forth in the preamble, 7 CFR Part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.120 is revised to read as follows:

§ 928.120 Committee reapportionment

The Papaya Administrative Committee shall consist of 13 members and alternate members. Nine of the members shall represent growers, and three shall represent handlers. Seven grower members and their alternates shall represent District 1, one grower member and alternate shall represent District 2, and one grower member and alternate shall represent District 3. No grower organization shall have more than two members on the committee. The three handler members shall be nominated from the production area at large. No handler organization is permitted to have more than one handler member on the committee. One voting public member and alternate shall also be included on the committee. The eligibility requirements and nomination procedures for the public member and alternate are specified in § 928.122.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director; Fruit and Vegetable Division.

[FR Doc. 94–27519 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 929

[Docket No. FV94–929–2FIR]

Expenses and Assessment Rate for the 1994–95 Fiscal Year for the Marketing Order Covering Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1994, through August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brenda D. Hill or Mark Hessel, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries during the 1994–95 fiscal year beginning September 1, 1994, through August 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York who are subject to regulation under the cranberry marketing order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of cranberry producers and handlers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee conducted a mail vote and unanimously recommended 1994–95 marketing order expenses of $164,690 and an assessment rate of $0.03 per 100-pound barrel of cranberries. In comparison, 1993–94 budgeted expenses were $155,000, with an approved assessment rate of $0.03 per 100-pound barrel of cranberries. This represents an increase of $9,690 in expenses recommended for this fiscal year, with the assessment rate remaining unchanged.

Assessment income for 1994–95 is estimated to total $122,580 based on anticipated fresh domestic shipments of 4,086,000 barrels of cranberries. The assessment income, plus $3,750 in interest income and a withdrawal of $38,360 from the Committee's authorized reserve fund will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1994–95 fiscal year are estimated to be $150,000. The reserve fund will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1994–95 fiscal year include $70,110 for operating expenses, $40,500 for travel expenses, and $33,241 for administrative expenses.

An interim final rule was published in the **Federal Register** [59 FR 44025, August 26, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began September 1, 1994. The marketing order requires that the rate of assessment apply to all assessable cranberries handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 59 FR 44025 on August 26, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27518 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 931

[Docket No. FV94–931–1FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended (7 CFR Part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1994–95 fiscal year beginning July 1, 1994, and ends June 30, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity

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is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 2, 1994, and unanimously recommended total expenses of $96,410 with an assessment rate of $0.02 per standard box or equivalent for the 1994–95 fiscal year. In comparison, 1993–94 budgeted expenses were $112,425, with an approved assessment rate of $0.025 per standard box or equivalent. This represents a $16,015 decrease in expenses and a $0.005 decrease in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 2,721,886 standard boxes or equivalent, will yield $54,438 in assessment income. Assessment income, combined with $4,000 from other income sources, and $37,972 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $37,972 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1994–95 fiscal year.

Major expense categories for the 1994–95 fiscal year include $42,683 for salaries, $17,597 for unshared contingency, and $4,695 in employee health benefits.

An interim final rule was published in the **Federal Register** on [59 FR 44311, August 29, 1994] and provided a 30-day comment period for interested persons. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the program began July 1, 1994. The marketing order requires that the rate of assessment apply to all assessable Bartlett pears handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR Part 931 which was published at 59 FR 44311 on August 29, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27520 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket No. FV93–932–3FIR]

Olives Grown in California and Imported Olives; Revisions of Outgoing Inspection Requirements and Size Requirements for Whole Pitted Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with changes, the provisions of an interim final rule amending outgoing inspection regulations under the California olive marketing order to authorize handlers to use in-plant Quality Assurance Programs (QAPs) in lieu of continuous in-line inspection. This rule also permits handlers to size whole pitted olives by diameter as an alternative to the requirement that such olives be sized by weight prior to pitting. Conforming changes are made to the size requirements for imported whole pitted olives so that the requirements for domestic and imported olives are applied similarly. The changes in the California olive requirements are designed to result in more efficient handling operations. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: Effective on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey

Street, Suite 102B, Fresno, California 93721, telephone 209–487–5901; or Caroline Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 [7 CFR Part 932], both as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule is also issued pursuant to section 8e of the Act, which provides that whenever certain specified commodities, including olives, are subject to grade, size, quality, or maturity requirements under a Federal marketing order, the same or comparable requirements shall be applied to imports of those commodities.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of olives regulated under the order, and approximately 1,350 producers in the regulated area. In addition, there are approximately 25 importers of olives subject to the requirements of the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include olive handlers and importers, are defined as those whose annual receipts are less than $5,000,000. The majority of the olive producers and importers may be classified as small entities. None of the olive handlers may be so classified.

The interim final rule was issued on July 21, 1994, and published in the **Federal Register** [59 FR 38104, July 27, 1994], with an effective date of July 27, 1994. That rule amended §§ 932.152, and 932.401 of regulations in effect under the order. That rule provided a 30-day comment period which ended August 26, 1994. No comments were received.

The California Olive Committee (committee), the agency responsible for local administration of the order, met on December 14, 1993, and unanimously recommended revising outgoing inspection procedures to permit handlers to establish a QAP in lieu of maintaining continuous in-line outgoing inspection of processed olives. Outgoing inspection is the assignment of a final grade to the product after processing is completed, according to the requirements of the U.S. Standards for Grades of Canned Ripe Olives (Standards) [7 CFR 52.3751 to 52.3764]. The committee also recommended that handlers be allowed to size whole pitted olives by diameter after pitting, as an alternative to the requirement that such olives be sized by weight prior to pitting.

Prior to the interim final rule, § 932.52 of the order and § 932.152 of the regulations required handlers to maintain continuous in-line outgoing inspection for the handling of processed olives. Also, pursuant to § 932.53, such outgoing inspection is performed by the Processed Products Branch (PPB) of the Department. Continuous in-line outgoing inspection consists of inspection and grading services in an approved plant whereby one or more PPB inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products and to assure compliance with sanitary requirements. However, costs for continuous in-line outgoing inspection have increased in recent years. Thus, the PPB is prepared to develop QAP inspection procedures which will provide quality assurance certification for California olive handlers, thereby reducing handlers' inspection costs.

Currently, most handlers employ their own quality-control personnel. The PPB is prepared to establish QAPs with individual handlers as provided in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products" [7 CFR Part 52.2]. As established, handlers will be permitted to use a QAP inspection procedure rather than continuous in-line outgoing inspection. Under a QAP, the PPB provides training for the handler's quality-control personnel. The handler's quality-control personnel will be trained in the same procedures currently used by the PPB inspectors. Once the handler's quality-control personnel are trained to properly perform the same duties and responsibilities as a PPB inspector, a period of evaluation of the reliability of the handler's quality control responsibilities begins. This is the reliability evaluation period. At such time as the handler's quality-control personnel successfully complete the reliability evaluation period, a QAP will begin operation with oversight provided by the PPB. The PPB inspectors will continue to issue certificates of inspection. Certificates of inspection will be based on outgoing inspection records maintained by the handler's QAP personnel. These will be verified through spot-checks and sample regrading by PPB inspectors. A QAP will continue to assure safe, wholesome, and uniformly high-quality processed products.

Under a QAP, each handler and the PPB will develop an individually

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written plan tailored to each handler's facility. A contract between the handler and the PPB will also be developed based upon the terms of the QAP. The contract will be signed at the beginning of the reliability evaluation. Once a handler's QAP is approved, the handler is notified in writing and the PPB begins verifying the work of the handler's QAP personnel. Such verification may include reviews of plant sanitation, quality and non-quality product analyses, procedures and/or techniques, case-stamping, checkloading, condition of container, or other types of procedures normally performed by the PPB. Inclusion of any or all of these verification procedures will be determined by the operating characteristics of each handler's facility or facilities.

In the event deviations from proper QAP procedures are detected by the PPB during the reliability verification process, the handler will be informed of the problem and corrective action required. If corrective action is taken, the QAP continues in operation. Continued deviations may result in suspension of QAP approval. The suspension may be permanent or temporary and may only be restored upon concurrence by the PPB. During any suspension, the handler would be required to use continuous in-line inspection.

Establishing a QAP inspection procedure meets marketing order inspection requirements, and provides handlers with an alternative to continuous in-line inspection (which requires the presence of a PPB inspector during final processing prior to the packaging of olives). To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either the QAP process or continuous in-line inspection.

Section 932.52 authorizes sizing of whole pitted olives based upon count-per-pound designations (the actual weight of individual fruit) or modifications recommended by the committee and approved by the Secretary. Prior to the interim final rule, § 932.152 specified that all processed olives must be sized in accordance with the count-per-pound designations established for canned whole ripe olives, and further required that such sizing be done prior to pitting. This final rule provides an alternative method for sizing whole pitted olives to provide handlers with more flexibility in their operations while ensuring that appropriate size standards are continued for whole pitted olives.

The Standards provide a method for sizing whole pitted fruit on the basis of illustrations and approximate diameter ranges (§ 52.3754, Table I). For example, olives that are "Jumbo" in size are those that are approximately 22 to 24 millimeters in diameter and conform closely with the applicable illustration in Table I. The committee believes that this sizing method may be more appropriate for whole pitted olives, which now account for a substantial majority of the California olives packaged in the whole form. Thus, this rule authorizes the sizing of whole pitted olives after pitting in accordance with the illustrations and approximate diameter ranges provided in the Standards.

The Standards also provide allowances for size variances for whole pitted olives in § 52.3756. The requirements of U.S. Grade C (the minimum allowed under the order), provide that of the 60 percent, by count, of the olives that are most uniform in size, the diameter of the largest olive cannot exceed the diameter of the smallest olive by more than 4 millimeters. These variances will be applied to whole pitted olives when handlers choose to have their pitted olives sized by diameter, after pitting. The committee believes that these guidelines for sizing whole pitted olives are sufficient and that no additional specifications relating to size are needed at this time.

To provide for this change in whole pitted olive sizing requirements, paragraph (f) of § 932.152 is revised to add authority for sizing by diameter as provided in the Standards. In addition, paragraph (b)(1) of § 932.152 is revised by deleting the sentence which requires sizing prior to pitting. Also, paragraph (b)(2) is revised to reflect the elimination of the in-line inspection and sizing prior to pitting requirements.

This rule changes the interim final rule published in the **Federal Register** July 27, 1994 [59 FR 38104]. That rule modified Table II in § 932.152, paragraph (g)(1), to conform to rule changes made in 1991. However, further changes were made to Table II in an interim final rule published in the **Federal Register** on September 13, 1994 [59 FR 46907]. This final rule therefore conforms with the changes in the most recent interim final rule.

In accordance with section 8e of the Act, olives imported into the United States are subject to comparable size requirements as established for domestically grown olives under the order. Those requirements are found in Olive Regulation 1 [7 CFR 944.401].

Under the import regulation, canned pitted ripe olives are subject to minimum size requirements in terms of a minimum diameter and a specific tolerance for undersized fruit. The undersize tolerances set forth in the import regulation are based upon those established for canned whole olives under the California olive marketing order.

As previously explained, this final rule establishes size requirements for canned pitted olives under the order in terms of illustrations, approximate diameter ranges, and size variances which are set forth in the Standards. Thus, in accordance with section 8e of the Act, conforming changes are made in the minimum size requirements for imported canned pitted olives so that such requirements are applied in a manner similar to that under the order.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is found that finalizing the interim final rule, with changes, as published in **Federal Register** [59 FR 38104], will tend to effectuate the declared policy of the Act.

Lists of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR Parts 932 and 944 are amended as follows:

1. The authority citation for both 7 CFR Parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR Part 932 which was published at 57 FR 38104 on July 27, 1994, is adopted as a final rule with the following change:

Table II in § 932.152(g)(1) is revised to read as follows:

§ 932.152 Outgoing regulations.

* * * * *

(g) * * *

(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	76–90, inclusive.
Group 1, Ascolano, Barouni, and St. Agostino.	106–140, inclusive.
Group 2, except Obliza.	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

* * * * *

PART 944—FRUITS, IMPORT REGULATIONS

3. Accordingly, the interim final rule amending 7 CFR Part 944 which was published at 59 FR 38104 on July 27, 1994, is adopted as a final rule without change.

Dated: November 1, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27517 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–08–AD; Amendment 39–9058; AD 94–22–09]

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F and TH–1L Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. restricted category military Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters, that currently requires an inspection before the first flight of each day of certain tail rotor drive shafts and the tail rotor drive shaft hanger bearings (bearings) for grease leakage, security, overheat conditions, binding, or roughness until the bearings are replaced. This amendment requires the same inspection of the bearings, but also requires replacement of the affected bearings within the next 100 hours time-in-service and extends the requirements of this AD to the Model UH–1P and TH–1F helicopters that were recently type certificated. This amendment is prompted by an accident involving a bearing failure, and by the certification of two additional affected helicopter models. The actions specified by this AD are intended to prevent failure of the bearing, failure of the tail rotor drive shaft, and subsequent loss of control of the helicopter.

DATES: Effective November 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before January 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–08–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: On February 5, 1992, the FAA issued Priority Letter (PL) AD 92–03–14, applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and TH–1L helicopters, to require an inspection before the first flight of each day of certain tail rotor (T/R) drive shafts and T/R drive shaft hanger bearings (bearings) for grease leakage, security, overheat conditions, binding, or roughness until the affected bearings are replaced. That action was prompted by an accident involving a BHTI Model 412 helicopter that experienced a bearing failure. Inspections performed as part of the accident investigation found metal particles from the manufacturing process in the bearings. Contaminated bearings can seize and stop rotating, causing the spline coupling shaft to rotate inside the bearing and overheat. That condition, if not corrected, could result in failure of the bearing, failure of the T/R drive shaft, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected bearings need to be replaced within the next 100 hours time-in-service in lieu of continued inspections before the first flight of each day as required by the PL AD. In addition, Type Certificate No. H12NM was issued March 30, 1993, to Western International Aviation, Inc. for Model UH–1F, UH–1P, and TH–1F helicopters that use the same bearings. Therefore, this AD should be applicable to these model helicopters. Also, some editorial changes were made to the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of the same type design, this AD supersedes PL AD 92–03–14 to require the same inspection of the affected bearings, but also to require replacement of the affected bearings within the next 100 hours time-in-service. Due to the critical need to ensure the integrity of the bearings that maintain control of the T/R drive shaft through which power is provided to the T/R system, to comply with the requirements of this AD before the first flight of each day, and to start the required inspections on the additionally-affected model helicopters, this rule must be issued immediately to correct an unsafe condition in the affected helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

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summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–08–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to reed as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9058, to read as follows:

AD 94–22–09 California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; Hercules; International Helicopters, Inc.; Offshore Construction; Oregon Helicopters; Pilot Personnel International, Inc.; Smith Helicopters; Southern Aero Corporation; Southwest Florida Aviation; West Coast Fabrications; and Western International Aviation Inc.: Amendment 39–9058. Docket Number 93–SW–08–AD. Supersedes Priority Letter AD 92–03–14, Docket No. 91–ASW–32.

Applicability: Bell Helicopter Textron, Inc.—manufactured Model UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of a tail rotor (T/R) drive shaft hanger bearing (bearing), failure of the T/R drive shaft, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, after the effective date of this AD, determine the serial number (S/N) etched on the seal area of the bearing, part number (P/N) 204–040–623–005. If the bearing has a S/N with a prefix of T or N, accomplish the inspection specified in paragraph (b) until the affected bearing is replaced in accordance with paragraph (d) of this AD.

Note: Bearings with a S/N prefix of NC are not required to comply with this AD.

(b) Before the first flight of each day, until the affected bearings are replaced in accordance with paragraph (d) of this AD, accomplish the following inspections of the T/R drive shaft and bearings:

(1) Visually inspect the bearings for grease leakage that continues for more than 10 hours time-in-service after installation of a zero-time bearing.

(2) Visually inspect the T/R drive shaft and the bearings and housing for security and damage.

(3) Visually inspect the bearings for an overheat condition and inspect overheat indicator stripes for discoloration.

(4) Rotate the T/R drive shaft by hand while feeling the bearing housing for bearing binding or roughness.

(c) Before further flight, replace any bearings that exhibit signs of continued grease leakage, overheating, binding, roughness, or are otherwise unairworthy, and secure any insecure bearings and housings in accordance with the applicable maintenance, repair, and overhaul manuals.

(d) Within the next 100 hours time-in-service after the effective date of this AD, remove from further service any bearing, P/N 204–040–623–005, that has a S/N with a prefix of T or N, and replace with a bearing, P/N 204–040–623–005, that has a S/N without a prefix of T or N. Remove and replace the bearings in accordance with the procedures in the applicable Bell Helicopter Textron, Inc. maintenance, repair and overhaul manuals.

(e) Installation of bearings containing a prefix other than T or N constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on November 22, 1994.

Issued in Fort Worth, Texas, on October 24, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–26880 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–34922; File No. S7–16–94]

RIN 3235–AG11

Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting new Rule 3a12–11 under the Securities Exchange Act of 1934 ("Exchange Act") and amending certain Exchange Act rules to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter market. The Commission also is simplifying registration procedures under the Exchange Act for listed debt securities. The new rule and amendments will: exempt listed debt securities from restrictions on borrowing and from most of the proxy and information statement rules; provide for the automatic effectiveness

of Form 8–A registration statements for listed debt securities; and eliminate the filing fee associated with Form 8–A registration statements for listed debt securities.

DATES: *Effective Date:* The rule and amendments are effective December 7, 1994.

Compliance Date: However, any registrant or broker-dealer may choose to comply with the new rules at the time of publication in the **Federal Register**. Registrants with proxy statements or Forms 8–A pending with the Commission should see the transition provisions set forth in Section V.

FOR FURTHER INFORMATION CONTACT: With regard to the exemption from restrictions on borrowing, Beth A. Stekler, at (202) 942–0190, Branch of Exchange Regulation, Division of Market Regulation; with regard to questions concerning the definition of debt securities, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900; with regard to issues relating to the proxy rules or Form 8–A, Joseph P. Babits, at (202) 942–2910, Office of Disclosure Policy, Division of Corporation Finance; Securities and Exchange Commission (Mail Stops 5–1, 3–3 and 3–12, respectively), 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Under the Exchange Act,[1] the Commission is adopting new Rule 3a12–11[2] and revisions to Rules 12b–7,[3] 12d1–2,[4] and Form 8–A.[5]

I. Introduction

In June 1994, the Commission published for comment proposed new Exchange Act Rule 3a12–11 and certain revisions to current Exchange Act rules ("Proposing Release").[6] The proposals were designed to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter ("OTC") market by exempting listed debt securities from restrictions on borrowing[7] and proxy and information statement regulation.[8] The Commission also proposed to simplify registration procedures under the Exchange Act for listed debt securities. Finally, comment was solicited as to whether it would be advisable to extend reporting requirements to issuers of debt securities that are traded in the OTC market under certain circumstances where the issuer is not otherwise subject to periodic reporting requirements.

The Commission received 27 letters of comment from a variety of professional associations, securities firms, corporations and self-regulatory organizations.[9] Most commenters supported the proposed exemptive relief and the simplified Exchange Act registration procedures. In addition, most commenters supported, or agreed that consideration should be given to, the extension of periodic reporting requirements to debt issuers in certain circumstances. The issue of extending periodic reporting is still under consideration by the Commission; the proposed rule and amendments are being adopted as proposed, except for minor changes as discussed below.

II. New Exchange Act Rule 3a12–11 and Amendments to Exchange Act Rules

A. Background

Section 12 of the Exchange Act[10] requires all securities listed on a national securities exchange to be registered under the Exchange Act.[11] Registration subjects the securities, whether debt or equity, to a number of regulatory provisions, including restrictions on borrowing,[12] periodic reporting by the issuer,[13] and proxy and information statement regulation.[14] In contrast, debt securities traded in the OTC market are not required to be registered under the Exchange Act,[15] and, therefore, such securities are not subject to the restrictions on borrowing or proxy and information statement regulation. These regulatory distinctions may have unnecessarily and unintentionally affected the structure and development of the debt markets.

The New York Stock Exchange ("NYSE") has advised the Commission that the additional regulatory requirements imposed on listed debt securities create significant disincentives for issuers to list their debt on the national securities exchanges and urged that exemptive action be taken to eliminate this disparity. To address this disparate regulatory treatment between listed and OTC-traded debt, the Commission is adopting new Exchange Act Rule 3a12–11 to exempt listed debt securities from the borrowing restrictions and most of the proxy and information statement rules. Listed debt securities, however, will remain subject to the registration and reporting requirements of the Exchange Act. The Commission also is amending current Exchange Act rules in order to simplify the Exchange Act registration process by providing for the immediate effectiveness of Form 8–A registration statements pertaining to the listing of debt securities on a national securities exchange and eliminating the filing fee associated with the form.

B. Exemption from the Borrowing Restrictions of the Exchange Act

Under Section 8(a), a broker-dealer can pledge a listed security, other than an exempted security, only to a limited group of lenders: a member bank of the Federal Reserve System; a non-member bank that has filed with the Board of Governors of the Federal Reserve System ("Federal Reserve Board") an agreement to comply with those provisions of the federal securities and banking laws that apply to member banks;[16] or another broker-dealer if such a loan is permissible under the rules and regulations of the Federal Reserve Board.[17] There is, however, no comparable limitation on the available lenders for OTC securities. As a result, a broker-dealer can use bonds that are not listed on an exchange as collateral to secure financing from any lender.

The Commission proposed Rule 3a12–11(a) in response to concerns voiced by various market participants that Section 8(a) is overly restrictive and competitively unfair.[18] According to

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[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.3a12–11.

[3] 17 CFR 240.12b–7.

[4] 17 CFR 240.12d1–2.

[5] 17 CFR 249.208a.

[6] Release No. 34–34130 (June 1, 1994) [59 FR 29396].

[7] Section 8(a) of the Exchange Act [15 U.S.C. 78h(a)].

[8] Section 14(a), (b), and (c) of the Exchange Act [15 U.S.C. 78n(a), (b), and (c)].

[9] The comment letters as well as the comment summary prepared by the staff are available for inspection and copying at the Commission's Public Reference Room (*see* File No. S7–16–94).

[10] 15 U.S.C. 78*l*.

[11] Section 12(a) of the Exchange Act [15 U.S.C. 78*l*(a)] prevents any member, broker or dealer from effecting any transaction in any security listed on a national securities exchange unless the security is registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)].

[12] Section 8(a) of the Exchange Act.

[13] Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)].

[14] Sections 14 (a), (b) and (c) of the Exchange Act.

[15] See Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)], which only requires registration of *equity* securities.

[16] Regulation U [12 CFR 221.1 *et seq.*] requires that a non-member bank file an agreement that conforms to the requirements of Section 8(a) prior to extending any credit secured by any nonexempt security registered on a national securities exchange to broker-dealers who are borrowing in the ordinary course of business. *See* 12 CFR 221.4(a).

[17] For example, Regulation T [12 CFR 220.1 *et seq.*] authorizes a broker-dealer to clear or finance transactions for a specialist's market functions account. *See* 12 CFR 220.12(b).

[18] *See, e.g.*, letter from Donald J. Solodar, Executive Vice President, Fixed Income, Options & Administration, NYSE, to Brandon Becker, Director, Division of Market Regulation, Securities and Exchange Commission, and Linda C. Quinn, Director, Division of Corporation Finance, Securities and Exchange Commission, dated July

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these participants, broker-dealers' discretion in financing their positions is unduly constrained once a debt security is traded on an exchange. In addition, at least one national securities exchange was informed by its members that they may advise an issuer against listing bonds due to the restrictions in Section 8(a).[19] In the Proposing Release, the Commission questioned whether existing regulatory distinctions may have unnecessarily affected the structure and development of the corporate bond market, without any benefit to investors.

After careful consideration of the issues raised in the Proposing Release and in the comment letters, the Commission has concluded that differential treatment of listed and OTC debt securities for loan purposes is no longer warranted, given developments in the OTC market since Congress amended the Exchange Act in the 1960s,[20] the current structure of the bond market,[21] and the nature of debt financing. The Commission believes that it is appropriate to eliminate this disparity by exempting listed debt securities from the borrowing restrictions of Section 8(a).[22] Accordingly, Rule 3a12–11(a) will enable a broker-dealer to pledge listed debt securities, like debt securities traded exclusively in the OTC market, to any lender.

All 15 commenters that address the restrictions on borrowing, including staff of the Federal Reserve Board, support an exemption for listed debt securities. Several commenters state that Rule 3a12–11(a) will provide broker-dealers with greater flexibility and help them to obtain inventory financing on the most favorable terms. For instance, one commenter predicts that the new exemption will result in lower financing rates due to an increase in competition among sources of credit, such as corporations, insurance companies and other currently ineligible lenders.[23] Others note that broker-dealers will be able to enter into repurchase agreements and other arrangements with non-bank institutional investors.[24] Commenters also believe that Rule 3a12–11(a) will reduce the current disincentive for issuers to list their debt on a national securities exchange. For these reasons, commenters strongly support exempting listed debt securities from Section 8(a)'s restrictions on borrowing. Certain commenters, moreover, recommend that the potential benefits of the exemption be extended to all listed securities, including listed equity securities.

Finally, several commenters suggest that further action may be needed to eliminate the restriction in Regulation T that parallels the statutory restriction in Section 8(a).[25] Commenters recommend that the Commission work with the Federal Reserve Board to clarify this matter, and suggest modifications to the text of the proposed rule to resolve the uncertainty.[26]

The Commission agrees with the commenters that exempting listed debt securities from the Exchange Act's borrowing restrictions will eliminate an unwarranted regulatory disparity, with possible benefits to the corporate bond market. First, the Commission believes that Rule 3a12–11(a) should provide broker-dealers with flexibility in financing their inventory positions. Specifically, the new rule will enable a broker-dealer borrowing against a listed debt security to choose among prospective lenders based solely upon the terms of the credit they offer. This should facilitate, among other things, repurchase agreements with non-bank institutional investors. As a result, adoption of Rule 3a12–11(a) may reduce the cost of dealer operations and may encourage broker-dealers to take positions in listed debt securities, thereby adding depth and liquidity to the corporate bond market.

Second, the Commission finds that Rule 3a12–11(a) should eliminate one competitive barrier to the exchange-trading of debt securities. As noted in the comment letters, current Section 8(a), among other factors, may provide underwriters or investment bankers with an incentive to recommend that debt securities be traded in the OTC market, rather than listed on an exchange. The Commission believes that such an impact on the structure of the debt market is unwarranted. By equalizing the credit treatment of corporate bonds, adoption of Rule 3a12–11(a) may provide a greater opportunity for exchanges to compete with the OTC market for debt listings.

The Commission has concluded that the modifications suggested by the commenters to conform Regulations T and U with Rule 3a12–11(a) are not necessary. In this regard, staff of the Federal Reserve Board has confirmed that the section of Regulation T discussed by the commenters[27] and the section of Regulation U governing agreements by non-member banks[28] were adopted pursuant to Section 8(a).[29] Federal Reserve Board staff agrees with the Commission that consequently Rule 3a12–11(a), as proposed and as adopted, will have the effect of exempting listed debt securities from those provisions of the Federal Reserve Board's rules.[30] Federal Reserve Board staff supports the Commission granting such an exemption. Listed debt securities will continue to be nonexempted securities for all other purposes under Regulations T and U.[31]

Further, the Commission has considered the commenters' suggestion that the exemption from Section 8(a) apply to all listed securities, debt and equity. The new rules and amendments being adopted today, however, were designed to achieve competitive balance for the corporate bond market. Consistent with that goal, the Commission proposed and, at this time, has decided to adopt a rule that is limited to debt securities, rather than significantly change the exemptive rule by broadening it to cover equity securities. Nevertheless, the treatment of listed equity securities for loan purposes may warrant further exploration by the Commission and other appropriate regulatory organizations.

With respect to the definition of the term "debt security" for purposes of new Rule 3a12–11, the Proposing Release solicited comment as to whether the term should include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder,[32] or whether the term should be more specifically defined.[33] Commenters supported the broader definition primarily because of the risk that certain innovative securities may not fit squarely within pre-conceived categories. Given this concern, as well as the desire of the Commission to simplify an issuer's determination as to whether a debt or equity security is at issue, new Rule 3a12–11 provides that the term "debt security" will include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder.[34]

The Proposing Release also solicited comment as to whether hybrid debt securities should be considered as debt or equity securities for purposes of new Rule 3a12–11. The Commission received limited comment. After further consideration, the Commission believes that no further clarification regarding hybrid securities is necessary; if a security is not an equity security as defined by the Exchange Act and the rules thereunder, then the security will be considered a "debt security" for purposes of Rule 3a12–11.[35]

C. Exemption from Compliance with the Proxy Rules

As discussed above, debt securities listed on a national securities exchange are subject to proxy regulation while debt securities traded in the OTC market, the principal trading market for debt securities,[36] are not. The disparate application of the proxy rules between listed debt securities and OTC-traded debt securities reflected the nature of the debt markets in the 1960s when Congress amended the Exchange Act;[37] this difference in regulatory treatment is cited by some as a significant disincentive for corporate issuers to list their debt securities on a national securities exchange.[38]

To eliminate the disparity, the Commission proposed Rule 3a12–11(b) to exempt debt securities listed on a national securities exchange from proxy regulation, but solicited comment as to whether the antifraud proscriptions[39] and the Exchange Act rules governing the transmission to beneficial owners of proxy and consent materials and information statements should be excluded from the proposed exemption.[40] The majority of commenters favored the proposed rule. With respect to listed debt securities, the proxy rules largely cover solicitations to amend the terms of an indenture contract.[41] Commenters who supported the exemption noted that debtholders often negotiate specific provisions governing the amendment of the indenture contract, and therefore, unlike shareholders, debtholders do not need the protection of the proxy rules.[42]

In addition to the protections supplied by the indenture contract and the Trust Indenture Act, debtholders will continue to be protected by the proxy rules' antifraud proscriptions and the Exchange Act rules that facilitate the transmission of materials to beneficial owners. The Commission has determined that any exemptive relief from the proxy rules should not encompass the antifraud proscriptions or the rules relating to the transmission of materials to beneficial owners. The antifraud proscriptions provide protection to investors without placing any undue burden upon the issuer. Further, the rules relating to the transmission of materials to beneficial owners not only provide protection to investors but also benefit the issuer by

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19, 1993 ("NYSE letter"); letter from Marc E. Lackritz, President, Securities Industry Association ("SIA"), to William W. Wilse, Secretary, Federal Reserve Board, dated December 23, 1992 ("SIA letter").

[19] *See* NYSE letter, n. 18, above.

[20] *See* 1968 Amendments to the Securities Exchange Act of 1934, Pub. L. No. 90–437, 82 Stat. 452 (1968).

[21] Most secondary trading in debt securities (including listed debt securities) currently takes place in the OTC market; exchange trading of corporate bonds accounts for a relatively small percentage of the daily trading volume in such securities and is often in "odd-lot" size. United States Securities and Exchange Commission, Division of Market Regulation, *The Corporate Bond Markets: Structure, Pricing and Trading* 1, 13 (January 1992). Although these circumstances may change as a result of Rule 3a12–11(a), the Commission believes that, at this time, Section 8(a) places a competitive burden on exchange markets by subjecting them to more restrictive regulation than the primary market for the trading of debt securities, the OTC market.

[22] Section 8(a) specifically excludes exempted securities from the restrictions on the sources of credit available to broker-dealers borrowing against listed securities. Under Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)], the term "exempted securities" includes such securities as the Commission may exempt from the operation of any one or more provisions of the Exchange Act.

[23] *See* letter from Laura L. Inman, Vice President and Senior Counsel, Debt Markets Group, Office of General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 17, 1994. Merrill Lynch also states that the permissible counterparties under Section 8(a) are not viable lenders, because broker-dealers are reluctant to disclose their inventory positions to competitors and because banks have higher financing rates than other kinds of lenders. *Id.*

[24] *See, e.g.*, letter from Goldman Sachs to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 12, 1994.

[25] Under Regulation T, a broker-dealer may not borrow in the ordinary course of business using as collateral any registered nonexempted security, except from a member bank of the Federal Reserve System; a non-member bank that has filed an agreement that conforms to the requirements of Section 8(a); or another broker-dealer if the loan is permissible under Regulation T. *See* 12 CFR 220.15(a). For purposes of Regulation T, "nonexempted security" means any security other than an exempted security as defined in Section 3(a)(12) of the Exchange Act. *See* 12 CFR 220.2(r). In addition, Regulation U requires that a non-member bank file an agreement conforming to the requirements of Section 8(a) before extending credit on any nonexempt security registered on an exchange. *See* 12 CFR 221.4(a).

[26] In particular, commenters suggest that the Commission should expressly designate listed debt securities as "exempted securities" for purposes of Section 8(a) and any rules thereunder. *See, e.g.*, letter from Anthony J. Leitner, Co-Chairman, Ad Hoc Committee on Regulation T, SIA, and Robert F. Price, Chairman, Federal Regulation Committee, SIA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 17, 1994.

[27] As noted above, Section 220.15 of Regulation T parallels Section 8(a)'s restrictions on the sources of credit available to broker-dealers borrowing against listed securities. *See* n. 25, above, and accompanying text.

[28] Section 221.4 of Regulation U requires a non-member bank to file an agreement conforming to the requirements of Section 8(a). *See*, n. 16 and 25, above.

[29] *See* letter from Scott Holz, Senior Attorney, Division of Banking Supervision and Regulation, Federal Reserve Board, to Beth Stekler, Attorney, Division of Market Regulation, Securities and Exchange Commission, dated September 19, 1994.

[30] *Id.*

[31] Specifically, listed debt securities will continue to be nonexempted securities for purposes of Regulation T's margin requirements. Accordingly, a broker-dealer who extends credit secured by such collateral must comply with the applicable rules and regulations of the Federal Reserve Board.

[32] The term "equity security" is defined in Section 3(a)(11) [15 U.S.C. 78c(a)(11)] and Rule 3a11–1 [17 CFR 240.3a11–1] thereunder. Equity securities would include, among other items, stock or similar security, certificates of interest or participation in any profit sharing agreement, voting trust certificate or certificate of deposit for any equity security, limited partnership interest, any security that is convertible, with or without consideration, into an equity security or any warrant or right to subscribe or purchase an equity security.

[33] The Proposing Release provided an example of a definition that enumerated specific characteristics of securities that would be considered "debt securities" under the proposed rule.

[34] Exchange Act Rule 3a12–11(c).

[35] Specific questions regarding whether a security is a debt security for purposes of Rule 3a12–11 may be brought to the attention of the Division of Corporation Finance, Office of Chief Counsel at (202) 942–2900.

[36] The OTC market is the principal trading market for debt (*see* n. 21, above). Of the more than 13,000 publicly traded domestic corporate bond issues in 1989, fewer than 20% (2,135 on the NYSE and 280 on the American Stock Exchange ("AMEX")) were listed on the NYSE and AMEX. *See* Colloton, "Bondholder Communications—The Missing Link in High Yield Debt," Hill and Knowlton, Inc. at 17 (August 1990).

[37] In 1963, the Commission submitted a report to Congress that set forth its recommendations as to the scope of regulations needed for the OTC market. *See, Report of Special Study of Securities Markets*, ("1963 Special Study") U.S. Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. pt. 3, 34 (1963). These recommendations led to the adoption of Section 12(g) in 1964. The Commission concluded that proxy regulation should not be required with respect to debt securities since Section 14 was designed to protect shareholders and the solicitation of proxies was "rarely [a] problem[ ] related to debt securities and, then, most probably in insolvency cases where other protections are available." *Id. See also* Section I.C of Release No. 34–34130.

[38] *See, e.g.*, letter from Jeffrey S. Werner, Senior Vice President, General Electric Capital Corporation to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 5, 1994 ("GE Capital letter").

[39] Exchange Act Rules 14a-9 [17 CFR 240.14a-9] and 14c-6 [17 CFR 240.14c-6].

[40] Exchange Act Rules 14a-13, [17 CFR 240.14a-13], 14b-1 [17 CFR 240.14b-1], 14b-2 [17 CFR 240.14b-2] and 14c-7 [17 CFR 240.14c-7]. All terms used in these rules have the same meanings as in the Exchange Act and Exchange Act Rules 14a-1 [17 CFR 240.14a-1] and 14c-1 [17 CFR 240.14c-1]. Additionally, the exemption afforded by Rule 14a-2(a) [17 CFR 240.14a-2(a)] will continue to be available.

[41] Solicitations of debtholders are infrequent. For example, between 1990 and 1993, 18 have occurred with respect to NYSE-listed issuers. *See* letter from Fred Sissel of NYSE to David Sirignano of the Division of Corporation Finance dated May 12, 1994.

[42] *See* letter from John F. Olson, Chair, Committee on Federal Regulation of Securities, American Bar Association ("ABA"); John J. Huber, Chair, Subcommittee on 1933 Act, ABA; and Richard E. Gutman, Chair, Subcommittee on Reporting Companies under the 1934 Act, ABA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 4, 1994 ("ABA letter"). *See also* letters from Karl R. Barnickol, Chairman of Securities Law Committee, American Society of Corporate Secretaries, Inc. to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated July 26, 1994; Earle Mauldin, Chief Financial Officer, BellSouth Corporation to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 4, 1994; GE Capital letter, n. 38, above.

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facilitating its ability to communicate directly with its debtholders. Accordingly, new Rule 3a12–11(b) will exempt exchange-listed debt securities[43] from proxy regulation, except that the antifraud proscriptions and the rules adopted under the Exchange Act to facilitate the transmission of materials to beneficial owners will continue to apply. The foregoing provisions, coupled with the issuer's reporting obligation under the Exchange Act, should ensure that investors remain protected.

The Proposing Release solicited comment as to whether the application of the proxy rules was part of the expectations of the parties negotiating the indenture contract, or of investors purchasing a listed debt security, and if so, whether the proxy rule exemption should be applied prospectively. Only one commenter addressed the issue.[44] That commenter believed that there is no need for a prospective application of the exemption since debtholders do not normally expect the proxy rules to apply. Since the Commission desires to eliminate unnecessary regulatory disparity as expeditiously as possible and given the other protections afforded debtholders as discussed above, the proxy rule exemption is not limited to issues of debt offered subsequent to the adoption of the exemption.

D. Automatic Effectiveness of Form 8–A and Elimination of Filing Fee

The Commission also is adopting amendments to Rule 12d1–2 and Form 8–A to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange.[45]

[43] The term "debt securities" will be defined in the same manner as in the exemption from the restrictions on borrowing. *See* Exchange Act Rule 3a12–11(c).

[44] *See* ABA letter, n. 42, above.

[45] On June 1, 1994, the Commission also made practical modifications to filing procedures. *See* Section I.D of Release No. 34–34139. The Division of Corporation Finance will accept requests from national securities exchanges that wish to file a combined Form 8–A/Listing Application with the Commission on behalf of an issuer listing debt securities on their exchange. Any national securities exchange that is interested in filing a combined Form 8–A/Listing Application should have its representative contact Joseph P Babits at (202) 942–2910.

A national securities exchange using such a procedure may wish to make Form 8–A filings with the Commission in paper, whether or not the registrant is subject to mandated electronic filing via the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Accordingly, the Division of Corporation Finance will consider requests for a continuing hardship exemption pursuant to Rule 202 of Regulation S–T [17 CFR 232.202] from any national securities exchange filing Forms 8–A on behalf of electronic filers. Continuing hardship exemptions will be available only through December 31, 1996.

Commenters unanimously supported the proposed automatic effectiveness of Forms 8–A and the elimination of the associated filing fee.[46]

All Forms 8–A, including amendments, pertaining to the registration of a class of debt securities to be listed on a national securities exchange will be automatically effective if certification by the national securities exchange has been received by the Commission on or before the filing of the form.[47] However, where a Form 8–A is registering a class of debt securities and securities from that class are being concurrently registered under the Securities Act, the Form 8–A will not automatically become effective upon filing, so that the debt securities will not become subject to any obligations under the Exchange Act prior to the related Securities Act registration statement being declared effective. Instead, as proposed, where there is a concurrent Securities Act registration statement pending, the Form 8–A will become effective simultaneously with the effectiveness of the Securities Act registration statement. Acceleration requests no longer will be needed for either of these categories of Form 8–A.[48]

National securities exchanges that intend to use a combined Form 8–A/Listing Application that will become effective upon filing must confirm that the combined Form has been in fact filed with the Commission prior to the commencement of trading in the class of securities. The issuer, however, may choose to file the Form 8–A itself. Regardless of whether the issuer or the national securities exchange files the Form 8–A/Listing Application, the issuer is solely responsible for the filing and its contents.

[46] Several commenters, while supporting these proposals, stated that the Commission should go further and not require Section 12 registration for issuers of debt securities subject to the reporting requirement of Section 13(a) of the Exchange Act. *See, e.g.*, letter from Richard T. Chase, Senior Vice President, Chief Counsel, Lehman Brothers to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated September 8, 1994.

[47] If an issuer elects to file the Form 8–A (or Form 8–A/Listing Application) itself, it must ensure that the Commission has received certification from the exchange on or before the date of filing the Form if automatic effectiveness is requested, or, if concurrent effectiveness is requested, on or before the date the Securities Act registration statement has been declared effective. An issuer may contact the Office of Quality Control at (202) 942–8970 (ext. 4475) to verify that certification has been received by the Commission.

If multiple debt issues are being registered on a single Form 8–A, certification for each issue must be received by the Commission prior to effectiveness. Where a Form 8–A relates to debt securities to be listed on multiple national securities exchanges (*e.g.*, the NYSE and the Boston Stock Exchange), then certifications must be received by the Commission from each exchange prior to effectiveness.

Forms 8–A that register both debt and equity securities are not encompassed by the amendments.

[48] Similarly, no effectiveness orders will be issued for Forms 8–A, as is the case with other registration statements that are effective automatically (*e.g.*, Form S–8 [17 CFR 239.16b]).

In addition, the Commission is amending Rule 12b–7 to eliminate the $250 filing fee for registering a class of debt securities on Form 8–A.[49] Form 8–A has been revised to add two new boxes, one of which the issuer would check to signify it is a debt registration requiring no fee and that the Form 8–A: (1) Is to be effective automatically upon filing, as no debt securities of the class being registered on the form are being registered concurrently under the Securities Act; or (2) is to be effective simultaneously with the effectiveness of a related Securities Act registration statement. In order to receive automatic or concurrent effectiveness, the appropriate box must be checked.[50]

III. Cost-Benefit Analysis

No empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed new Exchange Act rule and Exchange Act rule revisions. The rule and amendments should decrease the net costs to investors associated with listing debt securities on a national securities exchange, without materially diminishing the benefits to investors.

Currently, an issuer is not required to register debt securities under the Exchange Act in order for those securities to be traded in the OTC market. Consequently, OTC-traded debt securities are not subject to either the restrictions on borrowing or proxy regulation. New Rule 3a12–11 is designed to eliminate the disparity

[49] Given the de minimis nature of the filing fee, it is of little significance in an issuer's decision to list securities. However, its elimination is consistent with the Commission's goal of eliminating regulatory disparity between listed and unlisted debt securities where not necessary for the protection of investors. The NYSE requires a listing fee for debt securities of $50 per million and minimum of $2,500 for new issues and $25 per million and minimum of $1,250 for issue outstanding one year or more. The fee does not apply if the company or its affiliate already has a class of equity securities listed on the NYSE.

[50] Registrants that are mandated electronic filers registering debt securities on Form 8–A should file in paper format until the necessary form types are available through the EDGAR system. The necessary form types are expected to be available with the release of the EDGARLink software version 4.10 in January 1995. Notice will be provided in the SEC Digest and the **Federal Register** and on the EDGAR Bulletin Board when the new EDGAR form types for Form 8–A are available. When available, registrants will use one of three new EDGAR form types: 8A12BEF (Form 8–A and amendments to Form 8–A registering debt securities that will be automatically effective upon filing), 8A12BT (Form 8–A registering debt securities that will be effective contemporaneously with the effectiveness of an associated Securities Act registration statement), or 8A12BT/A (amendment to Form 8–A registering debt securities that will be effective contemporaneously with the effectiveness of an associated Securities Act registration statement).

between exchange-listed debt securities and OTC-traded debt securities by exempting listed debt securities from the restrictions on borrowing and proxy regulation.

The amendments to the Exchange Act rules are expected to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange. It is anticipated that the costs to investors associated with this new rule and amendments will be minimal.

IV. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604 for Rule 3a12–11 and amendments to Rule 12b–7, 12d1–2, and Form 8–A. The analysis notes that the rule and amendments are expected to reduce regulatory costs for small entities.

As discussed more fully in the analysis, the new rule and amendments will affect persons that are small entities, as defined by the Commission's rules. The exemptions provided by Rule 3a12–11 and revisions to Rules 12b–7, 12d1–2, and Form 8–A are expected to decrease the compliance burdens of small entities.

A copy of the analysis may be obtained by contacting Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

V. Effective Date and Transition Provisions

The rule and amendments are effective 30 days after publication in the **Federal Register**, in accordance with the Administrative Procedures Act; however, any registrant or broker-dealer may choose to comply with the new rules at any time after publication in the **Federal Register**. To provide for a smooth transition for use of the new rule and amendments, the following transition provisions will be permitted. First, registrants that have proxy statements relating to a solicitation of debtholders pending with the Commission should contact the registrant's Branch Chief in the Division of Corporation Finance if they intend to rely on the proxy exemption afforded by the rule, so that the staff may stop processing the filing. Second, issuers that have Form 8–A registration statements for listed debt securities pending with the Commission should continue to follow the current procedures regarding acceleration of effectiveness of Forms 8–A. As is currently the case, those issuers or the national securities exchange on which the debt securities are to be listed must provide the staff with an acceleration request prior to the desired effective date of the Form 8–A. The staff will then notify the issuer and the national securities exchange once effectiveness has been granted.

VI. Statutory Basis for Rules

New Rule 3a12–11 and amendments are being made pursuant to Exchange Act Sections 3(a)(12),[51] 9,[52] 10,[53] 12,[54] 14,[55] and 23,[56] as amended.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and record keeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p. 78q. 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80e-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By adding § 240.3a12–11 to read as follows:

§ 240.3a12–11 Exemption from Sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of Section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of Section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall be exempt from Sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)), *except that* §§ 240.14a-1, 240.14a-2(a), 240.14a-9, 240.14a-13, 240.14b-1, 240.14b-2, 240.14c-1, 240.14c-6 and 240.14c-7 shall continue to apply.

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not "equity securities" as defined in Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 thereunder.

3. By adding a sentence to the end of § 240.12b-7 to read as follows:

§ 240.12b-7 Filing fee.

* * * No fee, however, shall be paid to the Commission for the registration of debt securities, as defined in § 240.3a12–11(c), on Form 8–A (17 CFR 249.208a) pursuant to Section 12(b) of the Act (15 U.S.C. 78*l*(b)).

4. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 240.12d1–2 to read as follows:

§ 240.12d1–2 Effectiveness of registration.

(a) * * *

(b) A registration statement on Form 8–A (17 CFR 249.208a) that only pertains to the listing of a class or classes of debt securities, as defined in § 240.3a12–11(c), on a national securities exchange for which certification has been received by the Commission shall become effective upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); and otherwise, upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By amending § 249.208a by adding paragraph (c) to read as follows:

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in § 240.3a12–11(c) of this chapter and certification from the national securities exchange has been received by the Commission, it shall become effective either:

(1) Upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); or

(2) Upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

7. By amending Form 8–A (referenced in § 249.208a) by adding two check

[51] 15 U.S.C. 78c(a)(12).

[52] 15 U.S.C. 78i.

[53] 15 U.S.C. 78j.

[54] 15 U.S.C. 78*l*.

[55] 15 U.S.C. 78n.

[56] 15 U.S.C. 78w.

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boxes to the cover page immediately before "Securities to be registered pursuant to Section 12(g) of the Act," and by adding paragraph (c) to General Instruction A to read as follows:

Note: The text of Form 8–A does not and the amendments will not appear in the Code of Federal Regulations.

Form 8–A—For Registration of Certain Classes of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

If this Form relates to the registration of a class of debt securities and is effective upon filing pursuant to General Instruction A.(c)(1), please check the following box. [ ]

If this Form relates to the registration of a class of debt securities and is to become effective simultaneously with the effectiveness of a concurrent registration statement under the Securities Act of 1933 pursuant to General Instruction A.(c)(2), please check the following box. [ ]

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 8–A

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) (17 CFR 240.3a12–11(c)) and certification from the national securities exchange has been received by the Commission, it shall become effective:

(1) upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 78a *et seq.*) ("Securities Act"); or

(2) simultaneously with the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate. *See* Rule 12d1–2(b) (17 CFR 240.12d1–2(b)).

By the Commission.

Dated: November 1, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27445 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has revised its Privacy Act Instruction. This final rule re-establishes the Navy's Privacy Program and incorporates the changes made to the revised Instruction.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (703) 697–1459 or DSN 227–1459.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy previously published its proposed rule on June 1, 1994, at 59 FR 28304. No comments were received that resulted in a contrary determination, therefore, the Department of the Navy is publishing this final rule.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701, subparts F and G are revised as follows:

PART 701 - AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart F - Department of the Navy Privacy Act Program

701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending, and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.

Subpart G - Privacy Act Exemptions

701.116 Purpose.
701.117 Exemption for classified records.
701.118 Exemptions for specific Navy record systems.
701.119 Exemptions for specific Marine Corps records systems.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart F - Department of the Navy Privacy Act Program

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11 [1], and DoD 5400.11–R [2], (see 32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 701.100.

§ 701.101 Applicability.

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42E [3], "Department of the Navy Freedom of Information Act Program."

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

(a) *Access.* The review or copying of a record or parts thereof contained in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(g) *Individual.* A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

(h) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(i) *Maintain.* Includes maintain, collect, use, or disseminate.

(j) *Member of the public.* Any individual or party acting in a private capacity.

(k) *Minor.* Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

(l) *Official use.* Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(m) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(n) *Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(o) *Record.* Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

(p) *Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(M&RA)), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

(q) *Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

(r) *Routine use.* Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

(s) *Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

(t) *System manager.* An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

(u) *System of records.* A group of records under the control of a Department of the Navy activity from

[3] Copies available from Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

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which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211[4].

(v) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

(w) *Word processing system.* A[4] combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

(x) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code MI)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing

[4] See footnote 3 to § 701.101.

procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) *Department of the Navy.* Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) *For the shore establishment.*

(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C)[5], to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) *In the Operating Forces.* All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211[6], "Current Privacy Act Issuances") shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

§ 701.105 Systems of records.

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

[5] Copies available from the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

[6] See footnote 3 to § 701.101.

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(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

(iii) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in § 701.105(e).

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and § 701.105(h).

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5[7], "Disposal of Navy and Marine Corps Records."

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors.* (1) Applicability to Federal government contractors.

(i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with Parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) Contracting procedures. The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) Contractor compliance. Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) Disclosing records to contractors. Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (i.e., such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (e.g., printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with § 701.106(b)(1).

§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the

[7] Copies available from OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350–2000.

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system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register.** When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the **Federal Register**. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

§ 701.108 Collecting information about individuals.

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual* must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (i.e., forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (i.e., E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (i.e., to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

*Copies available from the Office of Personnel Management, 1900 E Street, Washington, DC 20415.

§ 701.109 Access to records.

(a) *Individual access to records.* (1) Right of access. Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) Notification of record's existence. Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) Individual request for access. Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances").

(4) Verifying identity.

(i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of American that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by § 701.109(d).

(5) Blanket requests not honored. Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) Granting individual access to records.

(i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) Illegible or incomplete records. Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) Access by parents and legal guardians.

(i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) Access to information compiled in reasonable anticipation of a civil proceeding.

(i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Section 701.109(9)(i) and (ii) do not prohibit access to records compiled

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or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) Personal notes or records not under the control of the Department of he Navy.

(i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) Relationship between the Privacy Act and FOIA. In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances", simply because he or she failed to cite the appropriate statute or instruction.

(12) Time Limits. Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) *Notifying the individual.* Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) Right to amend. An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) In writing. Amendment requests shall be in writing, except for routine

administrative changes, such as change of address.

(3) Content of amendment request. An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.* (1) Notify the requester. To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2) Notify previous recipients. Notify all previous recipients of the information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.111 Privacy Act appeals.

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (i.e., ASN (M&RA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (M&RA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in

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accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, Washington, DC 20360–5110.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program," before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) Disclosures within the Department of Defense. For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: Personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) Disclosures required by the FOIA.

(i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy

interests against the qualifying public interest. Numerous factors must be considered such as: The nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (i.e., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (i.e., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program", but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series, present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(D) In response to FOIA requests, information concerning special and general courts-martial results (e.g., records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (MI–3) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) Disclosures for established routine uses.

(i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register**.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

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(v) In addition to the routine uses established by the Department of the Navy for each system of records, common "Blanket Routine Uses," applicable to all record systems maintained with the Department of the Navy, have been established. These "Blanket Routine Uses" are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances." Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(4) Disclosures to the Bureau of the Census. Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) Disclosures for statistical research or reporting. Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals.

(6) Disclosures to the National Archives and Records Administration.

(i) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal Records Center is considered the agent of Department of the Navy and the disclosure is made under § 701.112(b)(1).

(7) Disclosures when requested for law enforcement purposes.

(i) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established "Blanket Routine Uses," routine uses published in the individual record system notice, or to other governing authority.

(8) Disclosure to protect the health or safety of an individual. Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (i.e., when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) Disclosures to Congress.

(i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a "Blanket Routine Use" has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) Disclosures to the Comptroller General for the General Accounting Office (GAO). Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) Disclosures under court orders.

(i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A [9], "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel."

(12) Disclosures to consumer reporting agencies. Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of Health Care Records to the Public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) Disclosures without the individual's consent. Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42E and OPM Regulations and the Federal Personnel Manual, as well as the information listed in § 701.112(b)(2)(v) for military personnel and in § 701.112(b)(2).

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) Disclosures with the individual's consent. With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) *Disclosure of Personal Information on Group/Bulk Orders.* Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure Accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under § 701.112(b)(7); or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of Disclosure Accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally

[9] Copies available from the Judge Advocate General, Navy Department, (Code 34), 200 Stovall Street, Alexandria, VA 22332-2400.

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maintained with the record, as this will ensure compliance with § 701.112(f).

§ 701.113 Exemptions.

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register**. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**, at least 30 days prior to the effective date, describing the system. This allows interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions*—(1) *Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)-(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) (k)(1) exemption: Information properly classified under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" and E.O. 12356, in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information (other than that information within the scope of § 701.113(f)(2) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see § 701.113(h), "confidential source"). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. (See § 701.113(h), "confidential source"). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source. (See § 701.113(h), "confidential source".)

(h) *Confidential Source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

§ 701.114 Enforcement actions.

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) Denial of an amendment request. The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) Denial of access. The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) Failure to meet recordkeeping standards. The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) Failure to comply with Privacy Act. The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) Wrongful disclosure. Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) Maintaining unauthorized records. Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(3) Wrongful requesting or obtaining records. Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(b) The record comparison must be a computerized one. Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

Subpart G - Privacy Act Exemptions

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of

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the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) *System Identifier and Name:* N01070–9, White House Support Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons: Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System Identifier and Name:* N01131–1, Officer Selection and Appointment System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System Identifier and Name:* N01133–2, Recruiting Enlisted Selection System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System Identifier and Name:* N01640–1, Individual Correctional Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(e) *System Identifier and Name:* N01754–3, Navy Child Development Services Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System Identifier and Name:* N03834–1, Special Intelligence Personnel Access File.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1) and (5).

Reasons: Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System Identifier and Name:* N04060–1, Navy and Marine Corps Exchange Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) *System Identifier and Name:* N04385–1, IG Investigatory System.

Exemption: Portions of this system or records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j) (2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justice, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of 5 U.S.C. 552a.

(i) *System Identifier and Name:* N04385–2, Hotline Program Case Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), (6) and (7).

Reasons: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: is currently and properly classified pursuant to E.O. and must be kept secret in the interest of national defense or foreign policy, is confidentially provided information located in investigatory records compiled for the purposed of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided information used to determine potential for promotion in the armed services.

(j) *System Identifier and Name:* N05300–3, Faculty Professional Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System Identifier and Name:* N05354–1, Equal Opportunity Information Management System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System Identifier and Name:* N05520–1, Personnel Security Eligibility Information System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System Identifier and Name:* N05520–4, NIS Investigative Files System.

Exemption (1): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority (1): 5 U.S.C. 552a(j)(2).

Reason (1): Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

Exemption (2): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

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Authority (2): 5 U.S.C. 552a(k) (1), (3), (4), (5) and (6).

Reason (2): The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record. The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system containing screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System Identifier and Name:* N05520–5, Navy Joint Adjudication and Clearance System (NJACS).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

Authority: 5 U.S.C. 552a(k)(1) and (k)(5).

Reasons: Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System Identifier and Name:* N05527–1, Security Incident System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System Identifier and Name:* N05527–4, Naval Security Group Personnel Security/Access Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).Authority: 5 U.S.C. 552a(k)(1) through (k)(5).

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System Identifier and Name:* N05800–1, Legal Office Litigation/ Correspondence Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

Reasons: Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the "exparte" correction of such materials.

Subsection (e)(1) because it is not possible in all instances to determine

relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

Subsection (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System Identifier and Name:* N05819–3, Naval Clemency and Parole Board Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System Identifier and Name:* N06320–2, Family Advocacy Program System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System Identifier and Name:* N12930–1, Human Resources Group Personnel Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5) and (k)(6).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

§ 701.119 Exemptions for Specific Marine Corps Record Systems.

(a) *System Identifier and Name:* MMN00018, Base Security Incident Reporting System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System Identifier and Name:* MIN00001, Personnel and Security Eligibility and Access Information System.

Exemption: Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2), (k)(3). and (k)(5), as applicable.

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: October 28, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27326 Filed 11–04–94; 8:45 am]

BILLING CODE 3810-01-F

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN39-2-6702; FRL-5102-4]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; removal.

SUMMARY: On August 18, 1994, (59 FR 42506) the United States Environmental Protection Agency (USEPA) approved a revision to the Indiana State Implementation Plan (SIP) for the Employee Commute Options (ECO) program without prior proposal. The rule approved an ECO program for the severe ozone nonattainment area that includes Lake and Porter Counties. The USEPA is removing this final rule due to the adverse comments received on this rule. In a subsequent final rule, USEPA will summarize and respond to the comments received and announce final rulemaking action on this requested Indiana SIP revision on ECO.

EFFECTIVE DATE: November 7, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illionois 60604.

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Environmental Scientist, Regulation Development Section, Regulation Development Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-3198.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by removing paragraph (c)(92).

[FR Doc. 94-27449; Filed 11-4-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-5102-6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final Authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act. The Environmental Protection Agency (EPA) reviewed Louisiana's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Louisiana's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Louisiana's application for the program revision is available for public review and comment.

DATES: This Final Authorization for Louisiana shall be effective on January 23, 1995 unless EPA publishes a prior Federal Register (FR) action withdrawing this Immediate Final Rule. All comments on Louisiana's program revision application must be received by the close of business December 22, 1994.

ADDRESSES: Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, phone (504) 765-0617 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 665-6444. Written comments, referring to Docket Number LA-95-1, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665-8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. Louisiana

Louisiana initially received Final Authorization, effective February 7, 1985 (see 50 FR 3348), to implement its base hazardous waste management program. Louisiana received authorization for revisions to its program effective January 29, 1990 (see 54 FR 48889), and October 25, 1991 (see 56 FR 41958, and Corrections at 56 FR 51762). On September 22, 1994, Louisiana submitted a final complete program revision application for additional program approvals. Today, Louisiana is seeking approval of its program revision in accordance with § 271.21(b)(3).

In 1983, the Louisiana Legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 et seq., the Environmental Affairs Act. This Act created the Louisiana Department of Environmental Quality (LDEQ), which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State.

EPA reviewed LDEQ's application, and made an immediate final decision that LDEQ's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Final Authorization for the additional program modifications to the State. The public may submit written comments on EPA's final decision until December 22, 1994. Copies of LDEQ's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of LDEQ's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Louisiana's program revision application includes State regulatory changes that are at least equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266 and 270, that were published in the **Federal Register** through June 30, 1987. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Dioxin Waste Listing and Management Standards, [50 FR 1978] January 14, 1985. (Checklist 14).	Louisiana Revised Statutes (LRS) 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §109- Empty Container.1–2, as amended October 20, 1994, effective October 20, 1994; LHWR §4901.A.2; Chapter 49, Appendix A, Table 10; §4901.B, Table 1; §4901.F; Chapter 49, Appendix A, Table 8; §4901 Appendix C; §4901.G, Table 6; §2317.A&B; §2723.A&B; §2917.A&B; §2523.A&B; §3105, Table 1; §3111.A.1; §4301.G; §4522.A&B; and §4534.A&B, all amended September 20, 1994, effective September 20, 1994; LHWR §2111.C&D; §525.J; §527.J; §531.H; and §533.J, all amended March 20, 1990, effective March 20, 1990; LHWR §517.I, and §523.G, both amended November 20, 1992, effective November 20, 1992.
2. HSWA Codification Rule; Small Quantity Generators [50 FR 28702] July 15, 1985. (Checklist 17A).	The changes addressed by this Checklist were superseded by RCRA Revision Checklist 23. LDEQ made the changes required by Checklist 23 rather than those addressed by this Checklist. LHWR do not recognize EPA's category of Conditionally Exempt Small Quantity Generators. Instead, all Small Quantity Generators (SQGs) in Louisiana are subject to the State's SQG regulations and most LHWR applicable to Generators other than SQGs. This makes the State's SQG regulations More Stringent than EPA's.
3. HSWA Codification Rule; Delisting [50 FR 28702] July 15, 1985. (Checklists 17B and 17B.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §105.M.1–5, as amended September 20, 1994, effective September 20, 1994.
4. HSWA Codification Rule; Household Waste (Resource Recovery Facilities), [50 FR 28702] July, 15, 1985. (Checklist 17C).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR, §105.D.10, as amended September 20, 1994, effective September 20, 1994.
5. HSWA Codification Rule; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, [50 FR 28702] July 15, 1985. (Checklist 17E).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4322, as amended March 20, 1990, effective March 20, 1990; LHWR 1503.B.7, as amended November 20, 1992, effective November 20, 1992.
6. HSWA Codification Rule; Liquids in Landfills I, [50 FR 28702] July 15, 1985 (Checklist 17F).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §533.H, as amended March 20, 1990, effective March 20, 1990; LHWR §4507, as amended March 20, 1984, effective March 20, 1984; LHWR §2515; §2515.A&B; §2515.E; and §2515.E.1–2, all amended September 20, 1994, effective September 20, 1994.
7. HSWA Codification Rule; Dust Suppression, [50 FR 28702] July 15, 1985. (Checklist 17G).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4139.B.3&4, as amended September 20, 1994, effective September 20, 1994.
8. HSWA Codification Rule; Double Liners, [50 FR 28702] July 15, 1985. (Checklist 17H).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4476, as amended March 20, 1990, effective March 20, 1990; LHWR §2903.A, and I-K; §4462.A-E; §2503.A, C-G, and K-M; §4512.A-E, all amended September 20, 1994, effective September 20, 2994.
9. HSWA Codification Rule; Ground-Water Monitoring, [50 FR 28702] July 15, 1985. (Checklist 17I).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §2521.C; §2911.E; §2905; §2305; and §3301.C, all amended September 20, 1994, effective September 20, 1994; LHWR §2505; §2507.C.3; §2907.C.4; and §2911.B.3, all amended March 20, 1984, effective March 20, 1984; and LHWR §2309.B.2, and §2521.B.3, both amended July 20, 1984, effective July 20, 1984.
10. HSWA Codification Rule; Cement Kilns, [50 FR 28702] July 15, 1985. (Checklist 17J).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4141.F.1–3 and §4141.D.1–6, all amended December 20, 1992, effective December 20, 1992; and LHWR §4105.C and 4901.D, both amended September 20, 1994, effective September 20, 1994.
11. HSWA Codification Rule: Fuel Labeling, [50 FR 28702] July 15, 1985. (Checklist 17K).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4141.F.1–3 and §4141.D.1–6, all amended December 20, 1992, effective December 20, 1992; and LHWR §4105.C and 4901.D, both amended September 20, 1994, effective September 20, 1994.
12. HSWA Codification Rule; Corrective Action, [50 FR 28702] July 15, 1985. (Checklist 17L).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §3301.A and §3322.A&B, both amended September 20, 1994, effective September 20, 1994; and LHWR §305.D.1.b and §305.D.2.h, both amended October 20, 1994, effective October 20, 1994.
13. HSWA Codification Rule; Pre-Construction Ban, [50 FR 27802] July 15, 1985. (Checklist 17M).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §303.H.1, as amended July 20, 1991, effective July 20, 1991; LHWR §303.H.3, as amended September 20, 1994, effective September 20, 1994.
14. HSWA Codification Rule; Permit Life, [50 FR 28702] July 15, 1985. (Checklist 17N).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §315, as amended September 20, 1994, effective September 20, 1994; and LHWR §323.B.2.d, as amended October 20, 1994, effective October 20, 1994.

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Federal citation	State analog
15. HSWA Codification Rule; Omnibus Provision, [50 FR 28702] July 15, 1985. (Checklist 17O).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §311.E, as amended September 20, 1994, effective September 20, 1994.
16. Interim Status, [50 FR 28702] July 15, 1985. (Checklist 17P).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §501.C.2, as amended March 20, 1990, effective March 20, 1990; LHWR §501.A; §503; §4305.A.1&2; 4305.B-D, all amended October 20, 1994, effective October 20, 1994; LHWR §501.C.2, as amended March 20, 1991, effective March 20, 1991; and LHWR §4301.A-F; §309.J.2; §501.C.1., all amended September 20, 1994, effective September 20, 1994.
17. HSWA Codification Rule; Research and Development Permits, [50 FR 28702] July 15, 1985. (Checklist 17Q).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §329; §303.A.1, both amended September 20, 1994, effective September 20, 1994.
18. HSWA Codification Rule; Exposure Information, [50 FR 28702] July 15, 1985. (Checklist 17S).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §303.M and §303.P, both amended September 20, 1994, effective September 20, 1994.
19. Listing of TDI, TDA, and DNT Wastes, [50 FR 42936] October 23, 1985. (Checklist 18).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.C; §4901.F; Chapter 49, Appendix A, Tables 8–10; §4901.G, Table 6; and §3105, Table 1, all amended September 20, 1994, effective September 20, 1994.
20. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, [50 FR 49164] November 29, 1985, and [52 FR 11819], as amended on April 13, 1987. (Checklists 19 and 19.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §109, as amended October 20, 1994, effective October 20, 1994; LHWR §105.D.33.b; §4105.C.5; §4105.B.3, and 10–14; §3105.A.2; 4513.B; §4147.A-E, all amended September 20, 1994, effective September 20, 1994; and LHWR §4141.A-F, effective December 20, 1992, effective December 20, 1992.
21. Listing of Spent Solvents, [50 FR 53315] December 31, 1985, and [51 FR 2702] as amended on January 21, 1986. (Checklists 20 and 20.1).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.B, Table 1, as amended September 20, 1994, effective September 20, 1994.
22. Listing of EDB Waste, [51 FR 5327] February 13, 1986. (Checklist 21).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR Chapter 49, Appendix A, Tables 8–10; §4901.C, Table 2; §4901.G, Table 6, all amended September 20, 1994, effective September 20, 1994.
23. Listing of Four Spent Solvents, [51 FR 6537] February 25, 1986. (Checklist 22).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.B, Table 1; §4901.F, Table 4; §4901.G, Table 6; Chapter 49, Appendix A, Tables 8–10; and §3105, Table 1, all amended September 20, 1994, effective September 20, 1994.
24. Generator of 100 to 1000 kg Hazardous Waste, [51 FR 10146] March 24, 1986. (Checklist 23).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR, §105; §4901.F, Table 4; §303.E.1, all amended September 20, 1994, effective September 20, 1994; LHWR §109–Small Quantity Generator; §1109.E.1; §1109.E.7–9; §1307.I; §305.C.2, all amended October 20, 1994, effective October 20, 1994; and Louisiana Notification of Hazardous Waste Activity Form HW–1. LHWR do not recognize EPA's category of Conditionally Exempt Small Quantity Generators. Instead, all Small Quantity Generators (SQGs) in Louisiana are subject to the State's SQG regulations and most LHWR applicable to Generators other than SQGs. This makes the State's SQG regulations More Stringent than EPA's.
25. Codification Rule, Technical Correction (Paint Filter Test), [51 FR 19176] May 28, 1986. (Checklist 25).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §533.H, as amended March 20, 1990, effective March 20, 1990; LHWR §4507, as amended March 20, 1984, effective March 20, 1984; LHWR §2515; §2515.A&B; §2515.E; and §2515.E.1–2, all amended September 20, 1994, effective September 20, 1994.
26. Biennial Report; Correction [51 FR 28556] August 8, 1986. (Checklist 30).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4361, as amended March 20, 1984, effective March 20, 1984; LHWR §1529.D.7, and 9–10, all amended September 20, 1994, effective September 20, 1994; Louisiana Notification of Hazardous Waste Activity Form HW–1.
27. Standards for Generators; Waste Minimization Certifications, [51 FR 25190] October 24, 1986. (Checklist 32).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; Louisiana Notification of Hazardous Waste Activity Form HW–1.
28. Listing of EBDC, [51 FR 37725] October 24, 1986. (Checklist 33).	LRS 30: §2180 et seq, as amended June 14, 1991, effective June 14, 1991; LHWR §4901.C; Chapter 49, Appendix A, Tables 8–10; §4901.G, Table 6, all amended September 20, 1994, effective September 20, 1994.

Louisiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that LDEQ's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, LDEQ is granted Final Authorization to operate its hazardous waste program as revised. Louisiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize LDEQ's program and for incorporation by reference of those provisions of its Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart L until a later date.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Louisiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 27, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–27544 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7098

[AZ–930–1430–01; AZA–28652]

Partial Revocation of Presidential Proclamation of March 21, 1917; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes the Presidential Proclamation of March 21, 1917, insofar as it affects 375.74 acres of public land withdrawn for classification purposes. The withdrawal is no longer needed, and the revocation is needed to permit disposal of the land. This action will open the land to surface entry and nonmetalliferous mining, unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: December 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988) as amended, it is ordered as follows:

1. The Presidential Proclamation of March 21, 1917, which withdrew land for classification purposes, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

T. 1 N., R. 15 E.,
Sec. 31, lots 1 to 4, inclusive, N½NE¼, and E½W½.

The area described contains 375.74 acres in Gila County.

2. At 10 a.m. on December 7, 1994, the land will be opened to settlement, location, sale, or entry under the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 7, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on December 7, 1994, the land will be opened to location and entry under the United States nonmetalliferous mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27422; Filed 11–4–94; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7099

[ID–943–1430–01; IDI–15685 01]

Partial Revocation of Geological Survey Order Dated May 19, 1950; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 74.98 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 408. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated May 19, 1950, which withdrew public land for the Bureau of Land Management's Powersite Classification No. 408, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 55 N., R. 2 E.,
Sec. 13, NE¼NE¼.
T. 56 N., R. 2 E.,
Sec. 29, lot 13.

The area described contains 74.98 acres in Bonner County.

2. At 9 a.m. on December 7, 1994, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 7, 1994, shall be considered as simultaneously filed at that time.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27423; Filed 11–4–94; 8:45 am]

BILLING CODE 4310–GG–P

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 24

[GEN Docket No. 90–314, RM–7140, RM–7175, RM–7618; FCC 94–255]

New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: By this action the Commission addressed ten petitions for reconsideration that seek revisions to various service rules governing broadband Personal Communications Services (PCS). The changes adopted are limited to revisions in the cross-ownership restrictions, that will serve to expand participation in the broadband PCS spectrum auction scheduled to commence December 5, 1994, and to revisions of technical rules governing PCS radio signal transmission. The expanded auction participation will serve to increase the number of potential PCS licensees, while the latter, technical changes will enhance the flexibility of equipment manufacturers in designing products that comply with Commission regulations, and so reduce the ultimate cost of service to PCS consumers.

EFFECTIVE DATE: Amendments to 47 CFR 24.204, are November 7, 1994. Other amendments adopted in this order shall be effective December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Stanley P. Wiggins, Common Carrier Bureau at (202) 418–1322.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Memorandum Opinion and Order in GEN Docket No. 90–314, RM–7140, RM–7175, RM–7618, adopted October 19, 1994, and released October 19, 1994. By this action the Commission addresses ten petitions for reconsideration of Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, 59 Fed. Reg. 32820 (June 24, 1994), *erratum*, GEN Docket No. 90–314, Mimeo No. 44006 (released July 22, 1994) (hereinafter jointly "*Broadband PCS Reconsideration*"). The petitions were filed by: the Association of Maximum Service Television *et al*; the Association of Independent Designated Entities (AIDE); Cellsat, Inc.; the Cellular Telecommunications Industry Association; Comcast Corporation; Omnipoint Corporation; the Personal Communications Industry Association; Point Communications Company; Puerto Rico Telephone Company; Spatial Communications, Inc. and ArrayComm, Inc. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The full text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

By this order, the Commission amends in minor respects its broadband Personal Communications Services ("PCS") regulatory structure to better achieve the four primary goals of this proceeding: competitive delivery, a diverse array of services, rapid deployment, and wide-area coverage. The Commission takes this action in response to ten petitions for reconsideration or clarification of policies and rules adopted in the *Broadband PCS Reconsideration* order. The Commission denies those petitions in major part because they principally raise issues the Commission has considered at length in previous orders in this Docket.

By this action, the Commission modifies existing rules in only limited respects. First, the Commission permits entities with non-controlling, attributable cellular interests to bid on "in-market" 30 MHz PCS licenses, conditioned on post-auction compliance with existing cellular/PCS cross-ownership rules within 90 days of PCS license grant. Second, the Commission clarifies the requirements for isochronous devices operating in the 1920–1930 MHz sub-band. Third, the Commission clarifies its rule governing broadband PCS emission limits. Fourth, the Commission makes certain housekeeping amendments to the Table of Frequency Allocations.

In denying the reconsideration petitions in principal part, the Commission: (1) Affirms existing license eligibility and ownership attribution rules in principal part; (2) denies without prejudice a proposal to require PCS licenses to share the costs of relocating microwave licensees from the 1850–1990 MHz PCS Band; (3) declines to change PCS service area definitions; (4) affirms an existing rule that divides Puerto Rico into two Basic Trading Areas for licensing purposes; (5) declines a request to interpret the meaning of correspondence between AIDE and Rand McNally Corporation regarding the latter's agreement to license the terms Metropolitan Trading Area and Basic Trading Area; (6) determines that the question whether to impose Open Network Architecture regulation on PCS licensees is outside the scope of this proceeding; (7) denies requests to modify the emission mask for licensed PCS bands and to make other changes to technical PCS rules; (8) determines that it is unnecessary to impose special technical requirements on PCS licensees in Block C in order to prevent their operations from interfering with adjacent Broadcast Auxiliary Service licensees; and (9) defers to a pending Mobile Satellite Service (MSS) proceeding the question whether to establish a secondary allocation of MSS in PCS Blocks F and C (1970–1990 MHz).

Ordering Clauses

Accordingly, it is ordered, that the petitions for reconsideration addressed in this order *are granted* to the extent described above, and *Denied* in all other respects.

It is further ordered, the Parts 2, 15, and 24 of the Commission's Rules *are amended* as specified below, effective 30 days after publication in the **Federal Register**, except that amendments to 47 CFR 24.204 as specified below *shall be effective* immediately upon publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Frequency allocation and radio treaty matters; General rules and regulations, Radio.

47 CFR Part 15

Communications equipment, Radio, Radio frequency devices.

47 CFR Part 24

Communication common carriers, Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary

Final Rules

47 CFR Parts 2, 15, and 24 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of this Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. In the 1650–1990 MHz band, revise columns 4 through 7;

b. In the 2110–2200 MHz band, revise columns 4 through 7 to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * * * *

International table			United States table		FCC use designators	
Region 1-allocation MHz	Region 2-allocation MHz	Region 3-allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			1850–1990	1850–1990 FIXED MOBILE	PERSONAL COMMUNICATIONS SERVICES (24). PRIVATE OPERATIONAL-FIXED MICROWAVE (94). RADIO FREQUENCY DEVICES (15)	
			US331	US331.		
			2110–2200	2110–2150 FIXED MOBILE	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94).. PUBLIC MOBILE (22)	EMERGING TECHNOLOGIES.
				US111 US252 NG 23 NG153		
				2150–2160 FIXED	MULTI-POINT DISTRIBUTION (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94)	
				2160–2200 FIXED MOBILE	DOMESTIC PUBLIC FIXED (21). PRIVATE OPERATIONAL-FIXED MICROWAVE (94). PUBLIC MOBILE (22)	EMERGING TECHNOLOGIES.
			US111 US252	NG 23 NG153.		

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.323 is amended by revising paragraphs (c)(1), (c)(5), and (e) to read as follows:

§ 15.323 Specific requirements for isochronous devices operating in the 1920–1930 MHz sub-band.

* * * * *

(c) * * *

(1) Immediately prior to initiating transmission, devices must monitor the combined time and spectrum windows in which they intend to transmit for a period of at least 10 milliseconds for systems designed to use a 10 milliseconds or shorter frame period or at least 20 milliseconds for systems designed to use a 20 milliseconds frame period.

* * * * *

(5) If access to spectrum is not available as determined by the above, and a minimum of 40 duplex system access channels are defined for the system, the time and spectrum windows with the lowest power level below a monitoring threshold of 50 dB above the thermal noise power determined for the emission bandwidth may be accessed. A device utilizing the provisions of this paragraph must have monitored all access channels defined for its system

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within the last 10 seconds and must verify, within the 20 milliseconds (40 milliseconds for devices designed to use a 20 milliseconds frame period) immediately preceding actual channel access that the detected power of the selected time and spectrum windows is no higher than the previously detected value. The power measurement resolution for this comparsion must be accurate to within 6 dB. No device or group of cooperating devices located within 1 meter of each other shall occupy more than three 1.25 MHz channels during any frame period. Devices in an operational state that are utilizing the provisions of this section are not required to use the search provisions of paragraph (b) of this section.

* * * * *

(e) The frame period (a set of consecutive time slots in which the position of each time slot can be identified by reference to a synchronizing source) of an intentional radiator operating in these sub-bands shall be 20 milliseconds or 20 milliseconds/X where X is a positive whole number. Each device that implements time division for the purposes of maintaining a duplex connection on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 50 parts per million (ppm). Each device which further divides access in time in order to support multiple communication links on a given frequency carrier shall maintain a frame repetition rate with a frequency stability of at least 10 ppm. The jitter (time-related, abrupt, spurious variations in the duration of the frame interval) introduced at the two ends of such a communication link shall not exceed 25 microseconds for any two consecutive transmissions. Transmissions shall be continuous in every time and spectrum window during the frame period defined for the device.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, and 332, unless otherwise noted.

2. Section 24.204 is amended by revising the introductory text of paragraph (f), and by adding a new sentence at the end of paragraph (f)(3)(i), to read as follows:

§ 24.204 Cellular eligibility.

* * * * *

(f) *Cellular Divestiture.* Parties holding controlling or attributable ownership interests in cellular licenses may be a party to a broadband PCS application (i.e., have a controlling or attributable interest in a broadband PCS applicant), and such PCS applicant will be eligible for more than one 10 MHz broadband PCS license and/or MHz PCS license(s) pursuant to the divestiture procedures set forth in paragraphs (f) (1) through (3) of this section; Provided, however, that these divestiture procedures shall be available only to: parties with controlling or attributable ownership interests in cellular licenses where the CGSA(s) covers 20 percent or less of the PCS service area population; and parties with non-controlling attributable interests in cellular licenses, regardless of the degree to which the CGSA(s) covers the PCS service area population. For purposes of this paragraph, a "non-controlling attributable interest" is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

* * * * *

(3) * * *

(i) * * * The trustee must divest the property within six months from grant of license.

* * * * *

3. Section 24.238 is revised to read as follows:

§ 24.238 Emission limits.

(a) On any frequency outside a licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB.

(b) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(d) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(e) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

[FR Doc. 94–27558 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–321; RM–8400]

Radio Broadcasting Services; Ocean Isle Beach, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Wednesday, October 12, 1994 (59 FR 51518).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 12, 1994 of the final regulations, which were the subject of FR Doc. 94–25088 is corrected as follows:

On page 51518, in the third column, in the **DATES** section, the close-window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27380 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–22; RM–8438]

Radio Broadcasting Services; Jackson, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51866).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close-window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994 of the final regulations, which were the subject of FR Doc. 94–25308 is corrected as follows:

On page 51866, in the third column, in the **DATES** section, the close window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27381 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 73–275; RM–8373]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51868).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close-window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994 of the final regulations, which were the subject of FR Doc. 94–25307 is corrected as follows:

On page 51868, in the second column, in the **DATES** section, the close window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission.

William F. Caton;

Acting Secretary.

[FR Doc. 94–27383 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–248; RM–8105]

Radio Broadcasting Services; Southern Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation document which was published Thursday, October 13, 1994 (59 FR 51868).

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Chappelle, Publications Branch, (202) 418–0310.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final regulation document contains an error in calculating the close window filing date and is in need of clarification.

Correction of Publication

Accordingly, the publication on October 13, 1994 of the final regulations, which were the subject of FR Doc. 94–25306 is corrected as follows:

On page 51868, in the third column, in the **DATES** section, the close window period for filing applications should be "December 23, 1994" in lieu of "December 7, 1994".

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94–27382 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–83; RM–8494]

Radio Broadcasting Services; Cascade, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 285C to Cascade, Montana, as that community's first local FM broadcast service in response to a petition filed by Stephen D. Dow. Canadian concurrence has been received for this allotment at coordinates 47–28–43 and 111–27–13. There is a site restriction 29.7 (18.4 miles) kilometers northeast. With this action this proceeding is terminated.

DATES: Effective December 16, 1994. The window period for filing applications for Channel 285C at Cascade, Montana, will open on December 16, 1994, and close on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 94–83, adopted October 20, 1994, and released November 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Cascade, Channel 285C.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27329 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–318; R–8364]

Radio Broadcasting Services; Clinton, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: The Commission, at the request of Thunderbolt Broadcasting Company, Inc., allots Channel 271C3 at Clinton, Kentucky, as that community's first local aural transmission service. See 59 FR 2343, January 14, 1994. Channel 271C3 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid short-spacings to Station WCMT–FM, Channel 269A, Martin, Tennessee, Station KIYS (formerly KJBR), Channel 270C, Jonesboro, Arkansas, and Station KDEX–FM, Channel 272A, Dexter, Missouri. The coordinates for Channel 271C3 at Clinton are North Latitude 36–44–30 and West Longitude 88–54–30. With this action, this proceeding is terminated.

DATES: Effective: December 16, 1994. The window period for filing applications for Channel 271C3 at Clinton, Kentucky, will open on December 16, 1994, and close on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–318, adopted Oct. 20, 1994, and released November 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Clinton, Channel 271C3.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27330 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–95–02]

Milk in the Tennessee Valley Marketing Area; Proposed Temporary Revision of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This document invites comments on a proposal to reduce the supply plant shipping requirement of the Tennessee Valley Federal milk order (Order 11) for the months of March through July 1995. The proposed action was requested by Armour Food Ingredients Company (Armour), which operates a proprietary supply plant pooled under Order 11. Armour contends the action is necessary to prevent the uneconomical movement of milk and to ensure that producer milk associated with the market in the fall will continue to be pooled in the spring and summer months.

DATES: Comments are due no later than December 7, 1994.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1011.7(b) of the order, the proposed revision of certain provisions of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered for the period of March 1, 1995, through July 31, 1995.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed revision would reduce the supply plant shipping requirement from 40 to 30 percent for the period of March through July 1995. The Tennessee Valley order requires that a supply plant ship a minimum of 60 percent of the total quantity of milk physically received at the supply plant during the months of August through November, January, and February, and 40 percent in each of the other months. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments of milk or to prevent uneconomic shipments.

Armour states that it would have to make uneconomical shipments of milk to meet the 40 percent supply plant shipping requirement to continue its pool status. Additionally, the proponent states that the 40 percent requirement could jeopardize the continued association of producers who have supplied the Order 11 market in the fall.

Armour anticipates that marketing conditions in 1995 will mirror those in 1993 and 1994, when the shipping percentage was also reduced. It expects milk supplies to be adequate to meet the Class I needs of the market.

In view of the current supply and demand relationship, it may be necessary to reduce the supply plant shipping percentage as proposed to provide for the efficient and economic marketing of milk during the months of March 1 through July 31, 1995.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

The authority citation for 7 CFR Part 1011 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 1, 1994.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 94–27522 Filed 11–4–94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD42

1995 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage used in administering the acreage reduction program (ARP) for the 1995 crop of extra long staple (ELS) cotton. This action is required by section 103(h)(5) of the Agricultural Act of 1949 as amended (the 1949 Act).

DATES: Comments must be received on or before November 18, 1994 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Wayne Bjorlie, Farm Services Agency, U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Farm Service Agency, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 103(h)(5) of the 1949 Act, an ARP may be established for the 1995 crop of ELS cotton if it is determined that the total supply of ELS cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency.

Land diversion payments also may be made to producers of ELS cotton, whether or not an ARP for ELS cotton is in effect, if needed to assist in adjusting the total national acreage of ELS cotton to desirable goals. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (including a zero percentage reduction) to the ELS crop acreage base for each ELS cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm are ineligible for CCC ELS cotton price support loans and payments with respect to that farm.

Based on 1995 supply/use estimates as of September 1994, four options are considered. However, because of changes in the 1995 supply/use situation that may develop between now and the announcement date for the acreage reduction percentage, the actual percentage may be different from the options discussed in this proposed rule.

The 1995 ARP options considered are:

Option 1. 10-percent acreage reduction percentage.

Option 2. 15-percent acreage reduction percentage.

Option 3. 20-percent acreage reduction percentage.

Option 4. 25-percent acreage reduction percentage.

The estimated impacts of the ARP options are shown in the following table.

EXTRA LONG STAPLE COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3	Option 4
Acreage Reduction Percentage (%)	10	15	20	25
Participation (%)	50	45	40	35
Planted Acres (thousand)	190	185	180	175
Production (thousand bales)	386	376	365	355
Domestic Use (thousand bales)	75	75	75	75
Exports (thousand bales)	345	340	335	330
Ending Stocks (thousand bales)	128	123	117	112
Stocks to Use Ratio	0.304	0.296	0.285	0.276
Deficiency Payments ($ million)	0	0	0	0

Accordingly, comments are requested with respect to the 1995 ARP for ELS cotton. The final acreage reduction percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended as follows by:

A. Revising paragraphs (a)(5)(iii) and (a)(5)(iv),

B. Adding paragraph (a)(5)(v),

C. Adding paragraph (d)(5):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(iii) 1993 ELS cotton, 20 percent;

(iv) 1994 ELS cotton, 15 percent; and

(v) 1995 ELS cotton shall be within the range of 10 to 25 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i) - (iii) [Reserved]

(iv) Shall not be made available to producers of ELS cotton.

* * * * *

Signed at Washington, DC, on November 1, 1994.

Richard E. Rominger,

Executive Vice President Commodity Credit Corporation.

[FR Doc. 94–27539 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

Hearings on the Federal Home Loan Bank (FHLBank) System and Recommendations for FHLBank Legislation

AGENCY: Federal Housing Finance Board.

ACTION: Notice of public hearing and request for comment.

SUMMARY: The Federal Housing Finance Board (Finance Board) is hereby announcing a public hearing and requesting comment on the FHLBank System's (System) contribution to housing and community lending, the FHLBank System's potential for improving its support of community lenders and recommendations for legislation to modernize the FHLBank System.

DATES: The public hearing will be held on December 8 and December 9, 1994, beginning at 9 a.m. on both days. Written requests to participate in the hearing must be received no later than November 16, 1994.

ADDRESSES: The hearing will be held at the Office of Thrift Supervision Amphitheater, 1700 G Street NW, Washington, DC 20552. Send requests to participate in the hearing, written statements of hearing participants, or other written comments to Elaine L. Baker, Executive Secretariat, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006. The submissions may be mailed, hand delivered or sent by facsimile transmission to (202) 408–2895. Submissions must be received by 5 p.m. on the day they are due in order to be considered received by the Finance Board. Late filed, misaddressed, or misidentified submissions may affect eligibility to participate in the hearing.

FOR FURTHER INFORMATION CONTACT: Kerrie Ann Sullivan, External Affairs Specialist, (202) 408–2515, or K. Scott Baker, Manager, Congressional Affairs, (202) 408–2980. Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to a request by Nicolas P. Retsinas, the Department of Housing and Urban Development Secretary's Designee to the Finance Board, the 12 Federal Home Loan Banks conducted public forums in August and September of 1994 to seek comment on three topics: (1) The contribution of the System and its members to housing and community development lending; (2) the capacity for the System to support community lenders and community-based lending; and, (3) appropriate System governance structure. Each FHLBank public forum discussed several related questions:

(1) How can the System facilitate housing and community development lending through the existing network of community-based lenders?

(2) How should the community development mission of the System be defined with regard to the types of lending and collateral requirements compatible with the safety and soundness requirements of the System?

(3) How is the changing membership base affecting the System?

(4) Building on the success of the Affordable Housing and the Community Investment programs, how can we demonstrate the contribution that member institutions make through the regular advances program.

(5) What type of System governance structure would enable the System to better realize its public purpose potential, while ensuring continued safety and soundness?

The Finance Board is interested in the views of System members, community groups, trade associations, government sponsored enterprises, federal and state agencies and others on the topics addressed in the 12 FHLBank forums. To assist interested persons in responding, summaries of the sessions held by the FHLBanks will be made available prior to the public hearing. Requests for this material may be made by writing or calling (refer to the information listed in the ADDRESSES portion of this notice). Most of these issues were also addressed in five reports on the FHLBank System submitted to Congress pursuant to the Housing and Community Development Act of 1992. Congressionally-mandated reports were submitted by the Finance Board, the Department of Housing and Urban Development, the General Accounting Office, the Congressional Budget Office and a FHLBank Shareholder Study Committee.

Additionally, the Finance Board invites testimony regarding potential FHLBank legislation. Specifically, the Finance Board welcomes testimony on what should be contained in a comprehensive FHLBank legislative package addressing the following four areas: (1) The structure of FHLBank capital; (2) the statutory definition of the FHLBank System's mission; (3) FHLBank membership and borrowing requirements; and, (4) the appropriate structure of FHLBank System regulation and governance.

On December 8, the Finance Board hearing will be directed at the topics that were the subject of the FHLBank public forums and on the issues to be addressed in legislation. On December 9, the Finance Board will arrange panels on each of four specific legislative issue areas. Witnesses should indicate a preference for either testifying during the more general discussion on December 8 or identify a specific topic panel on which they would like to participate on December 9.

Persons wishing to participate in these hearings should send a written

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request to the address listed in the ADDRESSES portion of this notice, to be received no later than November 16, 1994. A request to participate in the hearing must include the following information:

(A) The name, title, address, business telephone and fax number of the participant;

(B) The entity or entities that the participant will be representing;

(C) An indication as to the witnesses' preference to testify on the more general topics of December 8 or on one of the following specific panels planned for December 9: (1) The structure of FHLBank capital; (2) the statutory definition of the FHLBank's mission; (3) statutory FHLBank membership and borrowing requirements; and, (4) the appropriate structure of FHLBank regulation and governance.

Depending on the number of requests received, participants may be limited in the length of their oral presentations. However, the Finance Board will provide time at the end of the December 8 hearing for brief general comments from the public. The Finance Board will notify participants of the date and time scheduled for their presentation. In establishing panels of participants for presentations, the Finance Board reserves the right to limit the number of participants and to select, at its discretion, those persons who may make oral presentations if more requests are received for participation than may be accommodated in the time available.

Participants will be required to submit written statements in advance of the hearing date. These written statements should incorporate the major points to be presented at the hearing and should be accompanied by an executive summary of no more than three to five pages. Written statements must be received no later than November 28, 1994, and should be sent to the address listed in the ADDRESSES portion of this notice.

By the Federal Housing Finance Board.

Nicolas P. Retsinas,

HUD—Secretary Designee to the Board.

[FR Doc. 94-27451 Filed 11-4-94; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-157-AD]

Airworthiness Directives; British Aerospace Model Avro 146-RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146-RJ series airplanes. This proposal would require inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. This proposal is prompted by reports of cracking of the upper main fitting of the NLG. The actions specified by the proposed AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-157-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041-6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM-113, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-157-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-157-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On August 23, 1993, the FAA issued AD 93-17-04, amendment 39-8674 (58 FR 47036, September 7, 1993), applicable to all British Aerospace Model BAe 146 series airplanes, to require repetitive eddy current or ultra high sensitivity penetrant inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. That action was prompted by reports of cracking in the main fittings of the NLG. The actions required by that AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

AD 93-17-04 is applicable only to British Aerospace Model BAe 146 series airplanes. Since issuance of that AD, however, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has advised that additional airplanes may be subject to the same unsafe condition addressed by the existing AD action. Further analysis has indicated that cracking of the upper main fitting of the NLG may occur on all British Aerospace Model Avro 146-RJ series airplanes.

British Aerospace has issued Revision 2, dated July 10, 1993, of Service Bulletin S.B. 32-131. The inspection procedures described in this revision are identical to those described in Revision 1 of the service bulletin (which was referenced in AD 93-17-04). This revision only expands the effectivity listing to include additional airplanes. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current or ultra high sensitivity penetrant inspections, and replacement or repair of cracked parts. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposed rule would be applicable only to Model Avro 146-RJ series airplanes.

(Note: The FAA's normal policy is that when an AD requires a substantive change, such as a change (expansion) in its applicability, the "old" AD is superseded by removing it from the system and a new AD is added. In the case of this AD action, the FAA normally would have proposed superseding AD 93-17-04 to expand its applicability to include Model Avro 146-RJ series airplanes as the additional affected airplanes. However, in reconsideration of the entire fleet size that would be affected by a supersedure action, and the consequent workload associated with revising maintenance record entries, the FAA has determined that a less burdensome approach is to issue a separate AD applicable only to these additional airplanes. This AD does not supersede AD 93-17-04; airplanes listed in the applicability of AD 93-17-04 are required to continue to comply with the requirements of that AD. This proposed AD is a separate AD action, and is applicable to all British Aerospace Model Avro 146-RJ series airplanes.)

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $450, or $150 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft, Limited): Docket 94-NM-153-AD.

Applicability: All Model Avro 146-RJ series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the main fitting, which could lead to collapse of the nose land gear (NLG) during landing, accomplish the following:

(a) For airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32-131, Revision 2, dated July 10, 1993.

Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings.

(b) For airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32-131, Revision 2, dated July 10, 1993. Repeat the inspection thereafter at intervals not to exceed 6,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 6,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27479 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–163–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A Series Airplanes Equipped With Certain Air Cruisers Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes. This proposal would require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. This proposal is prompted by a report that, during operational checks of evacuation slides on in-service airplanes, the inflation valves failed to deploy the evacuation slide properly. The actions specified by the proposed AD are intended to prevent failure of the evacuation slide to deploy automatically on demand, which would necessitate the flight crew to manually deploy the slide; this situation could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041–6039; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes equipped with certain Air Cruiser evacuation slides. The CAA advises that, during operational checks of evacuation slides on these airplanes, the inflation valves failed to deploy the evacuation slide properly. Subsequent investigation, conducted by Air Cruisers (the manufacturer of the evacuation slides), revealed that the existing design of the inflation valves requires excessive operating pull force to activate deployment of the evacuation slide. This condition, if not corrected, could result in failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide. This situation could delay or impede the evacuation of passengers during an emergency.

British Aerospace has issued Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993, which describes procedures for repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. The CAA classified this service bulletin as mandatory.

Addditionally, Air Cruisers Company has issued Service Bulletin S.B. 201–25–17, dated June 4, 1992, which describes procedures for modification of the inflation valve of the evacuation slide. This modification entails replacing the existing valve with a new, improved valve. The new valve has a lower maximum operating pull force, which will permit the evacuation slide to deploy automatically on demand.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to verify proper deployment of the evacuation slide at each door position, and various follow-on actions to correct discrepancies. The proposed AD would also require modification of the inflation valve of the evacuation slide, which would terminate the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,610, or $210 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the follqwing new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 94–NM–163–AD.

Applicability: Model British Aerospace BAe 146–100A, –200A, –300A and Model Avro 146–RJ70A, –RJ85A, and –RJ100A series airplanes; equipped with Air Cruisers Company evacuation slides, as listed in British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the evacuation slide to deploy automatically, which necessitates the flight crew to manually deploy the slide and subsequently could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform an inspection to verify proper deployment of the evacuation slide at each door position, in accordance with British Aerospace Service Bulletin S.B. 25–328, Revision 2, dated July 10, 1993.

(1) If the slide deploys properly, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any slide fails to deploy properly, prior to further flight, conduct the actions specified in paragraphs 2.A.3 through 2.A.6 of the Accomplishment Instructions of the service bulletin.

(b) Within 8 months after the effective date of this AD, modify the inflation valves of the evacuation slide, in accordance with Air Cruisers Company Service Bulletin S.B. 201–25–17, dated June 4, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service,

[FR Doc. 94–27476 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–132–AD]

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A and –RJ85A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes. This proposal would require an inspection to identify and remove certain cable terminals on the auxiliary power unit (APU) starter circuit and installation of certain new cable terminals. This proposal is prompted by a report that, during an inspection of the cable terminals on the APU starter circuit, incorrect cable terminals were found installed on these airplanes. The actions specified by the proposed AD are intended to ensure the installation of correct starter cable terminals in the APU; incorrect cables could lead to the inability of the pilot to start the APU when needed in a situation of loss of other electrical power sources.

DATES: Comments must be received by January 4, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–132–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–132–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model Avro 146–RJ70A and –RJ85A series airplanes. The CAA advises that, during an inspection of the cable terminals in the auxiliary power unit (APU) starter circuit, incorrect cable terminals were found installed on these airplanes. Investigation revealed that nickel-plated copper terminals were installed during production instead of aluminum/copper terminals. Nickel-plated copper terminals that contact APU starter cables having an aluminum core result in dissimilar metal corrosion. Such corrosion could lead to the loss of power to the APU, and the consequent inability of the pilot to start the APU when necessary in a situation where an airplane's primary or other electrical power sources are lost. If this were to occur, all electrical power on the airplane may be lost.

Avro has issued Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994, which describes procedures for a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9. This service bulletin also describes procedures for removing the cable terminals identified as part number (P/N) S1007–042 and installing new cable terminals having P/N S1006–040. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 on the APU starter circuit at terminal block KA9, removal of certain cable terminals, and installation of certain new cable terminals. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $997.50, or $332.50 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 94–NM–132–AD.

Applicability: Model Avro 146–RJ70A and –RJ85A series airplanes; as listed in Avro International Aerospace Service Bulletin 49–40, Revision 1, dated March 17, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the auxiliary power unit (APU), accomplish the following:

(a) Within 5 months after the effective date of this AD, perform a detailed visual inspection to identify the cable terminals fitted to cables KA47 and KA48 in the APU starter circuit at terminal block KA9, in accordance with Avro International Aerospace Service Bulletin S.B. 49–40, Revision 1, dated March 17, 1994. If the cable terminals are identified as part number (P/N) S1007–042, prior to further flight, remove the cable terminals and install new cable terminals having P/N S1006–040, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27475 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, 240, and 274

[Release Nos. 33–7106; 34–34923; IC–20670; File No. S7–31–94]

RIN 3235–AE14

Disclosure Concerning Legal Proceedings Involving Management, Promoters, Control Persons and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment amendments that would expand the types of legal proceedings required to be disclosed in Commission filings, add such disclosure to certain investment company filings, and increase to 10 years the reporting period for such legal proceedings disclosure.

DATES: Comments must be submitted on or before January 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comment letters should refer to File No. S7–31–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, (202) 942–2910, Division of Corporation Finance (Mail Stop 3–12); with regard to investment company issues, Kathleen K. Clarke, Office of Disclosure and Investment Adviser Regulation, (202) 942–0721, Division of Investment Management (Mail Stop 10–6), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed amendments to paragraphs (f) and (g) of Item 401 [1] of Regulation S-K [2] and paragraph (d) of Item 401 [3] of Regulation S-B [4] under the Securities Act of 1933 ("Securities Act") [5] and the Securities Exchange Act of 1934 ("Exchange Act").[6] The Commission also proposes to conform legal proceedings disclosure items in Form 1–A [7] under the Securities Act, and Schedules 13D,[8] 13E–3,[9] 14A [10] and 14D–1 [11] under the Exchange Act. The Commission also is proposing to add legal proceedings disclosure requirements to various forms used by registered investment companies under the Securities Act or the Investment Company Act of 1940 ("Investment Company Act"),[12] including Forms N–1A,[13] N–2,[14] N–3,[15] N–4,[16] N–5,[17] N–8B–2,[18] N–8B–3[19] and N–8B–4.[20]

I. Executive Summary

The Commission's current regulations require disclosure of legal proceedings [21] involving executive officers, directors, persons nominated to become directors, promoters, significant shareholders, participants in proxy contests, and other specified persons ("designated persons").[22] The principal provisions

[1] 17 CFR 229.401(f) and (g).
[2] 17 CFR Part 229.
[3] 17 CFR 228.401(d).
[4] 17 CFR Part 228.
[5] 15 U.S.C. 77a *et seq.*
[6] 15 U.S.C. 78a *et seq.*
[7] 17 CFR 239.90.
[8] 17 CFR 240.13d–101.
[9] 17 CFR 240.13e–100.
[10] 17 CFR 240.14a–101.
[11] 17 CFR 240.14d–100.
[12] 15 U.S.C. 80a–1 *et seq.* As discussed in Section IV, below, investment companies currently are specifically required to disclose legal proceedings only in proxy statements related to the election of directors and not in registration statements or other disclosure documents.
[13] 17 CFR 274.11A.
[14] 17 CFR 274.11a–1.
[15] 17 CFR 274.11b.
[16] 17 CFR 274.11c.
[17] 17 CFR 274.5.
[18] 17 CFR 274.12.
[19] 17 CFR 274.13.
[20] 17 CFR 274.14.
[21] The term "legal proceeding," as used in this release and in current Item 401, includes criminal convictions, as well as findings, orders or sanctions in civil and administrative actions, that have not been reversed, suspended or vacated. It also includes criminal actions pending at the time a disclosure document is filed, and the initiation of bankruptcy or similar proceedings. With respect to proposed Item 401, the term also encompasses sanctions issued by securities and commodities self-regulatory organizations that have not been reversed or otherwise rendered of no effect.
[22] As used in this release, "designated person" includes the persons identified in the following disclosure provisions, forms and schedules: *S-K Item 401 (f) and (g) and S-B Item 401(d)*—executive officers, directors, persons nominated to become directors, as well as promoters and control persons of newly public companies; *Schedules 13D, 13E–3, and 14D–1*—the person filing the schedule. In addition, if the filer is a general or limited partnership, syndicate or other group—the individual general partners of general or limited partnerships, each member of such syndicate or group and each person controlling such partner or member; if such general partner, member or person controlling such partner or member is a corporation, or if the filer is a corporation—the corporation's directors and executive officers, persons controlling such corporation, and directors and executive officers of any corporation ultimately in control of such corporation; *Proxy statements relating to election contests*—any participant in an

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are found in Items 401 (f) and (g) of Regulation S-K and Item 401(d) of Regulation S-B,[23] but a number of forms and schedules require similar disclosure, as discussed below.[24] A review of current requirements has raised questions about the adequacy of the five-year period for reporting such proceedings. In light of these questions, as well as the enactment of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act"),[25] the Commission proposes to expand the disclosure provisions and the time frame of the current requirements and to eliminate the differences in requirements among various forms.

The amendments proposed today would consolidate and clarify existing legal proceedings disclosure provisions, as well as add requirements to disclose the following:

- Federal and state agency receivership appointments involving a designated person, any partnership in which such person was a general partner, and any corporation in which such person served as an executive officer;[26]
- All judicial and administrative findings, orders and sanctions based on alleged violations of federal or state securities, commodities, banking and insurance laws and regulations;[27]
- Civil and administrative proceedings resulting from a designated person's involvement in mail fraud, wire fraud, and fraud in connection with activities related to a business entity;[28]
- Civil and administrative actions relating to a designated person's breach of a fiduciary duty owed to a corporation, partnership, business trust or similar entity;[29]
- Administrative orders restricting a designated person's business practices;[30]
- Disciplinary sanctions imposed against a designated person by securities and commodities self-regulatory organizations ("SROs"); and
- Comparable foreign legal proceedings.[31]

Disclosure would be required for 10 years following the specified event, expanding the current five-year provision.

The proposals would rescind the general provisions that currently permit disclosure to be omitted if the registrant believed that the information would be neither material to investors in evaluating the ability and integrity of management, nor to a voting or investment decision; provisions relating to bankruptcy or insolvency proceedings, however, would retain the materiality language. In addition, the provision limiting disclosure to administrative orders that restrict activities for periods of more than 60 days would be deleted.[32]

The proposals also conform the requirements in various forms and schedules under the Securities Act and the Exchange Act. Finally, the Commission is proposing to add legal proceedings disclosure to investment company registration statement forms.

II. Background of Legal Proceedings Requirements

Disclosure of information regarding legal proceedings involving directors, executive officers, control persons, promoters and others has been required in various filings under the federal securities laws for many years. In 1956, the Commission adopted the current provisions requiring participants in proxy contests involving the election or removal of directors to disclose criminal convictions (other than traffic violations or similar misdemeanors) that occurred within the past 10 years.[33] Since their adoption in 1968, large shareholder beneficial ownership reports[34] also have required disclosure of criminal convictions with respect to the person or persons filing the report.[35]

More than 20 years ago, the Commission began requiring disclosure of legal proceedings involving directors in registration statements and annual reports filed under the Exchange Act.[36] In 1970, Exchange Act registration statements[37] and annual reports[38] were amended to require disclosure of the initiation of bankruptcy or other insolvency proceedings, court appointments of receivers, criminal convictions and pending criminal

election contest, as defined by Instruction 3 to Item 4 of Schedule 14A (in addition to the Item 401 disclosure generally required in a proxy statement involving an election of directors, contested or otherwise); *Regulation A Offering Circular (Model B)*—executive officers, directors and persons nominated to become directors; *Prospectuses Relating to Oil and Gas Programs (Securities Act Industry Guide 4)*—management and operating companies (in addition to the disclosure required by the appropriate registration form); *Registration Statements Relating to Interests in Real Estate Limited Partnerships (Securities Act Industry Guide 5)*—the persons making investment decisions (in addition to the disclosure required by the appropriate registration form).

[23] In order to simplify references to the legal proceedings disclosure requirements, references to Item 401(f) or 401(g) hereafter should be read to include the comparable provisions in Regulation S-B Item 401(d).

[24] In addition to provisions requiring disclosure of legal proceedings involving designated persons, Regulation S-K Item 103 [17 CFR 229.103] requires disclosure of material pending legal proceedings involving the registrant.

[25] Pub. L. 101-429, 104 Stat. 931 (1990). The Remedies Act amended the federal securities laws to provide for: civil money penalties in civil actions for violations of the federal securities laws; Commission authority to issue cease-and-desist orders; court enforcement of cease-and-desist orders and imposition of civil money penalties for failure to comply; affirmation of power of federal courts to order officer and director bars and suspensions; and civil money penalties, disgorgement, and orders of accounting in Commission administrative proceedings. Congress granted these new judicial and administrative remedies to increase both the Commission's ability to deter those who violate the securities laws and its flexibility to adapt remedies to the varying circumstances of particular conduct and violators.

[26] Current requirements limit disclosure to court-appointed receiverships.

[27] Existing provisions require disclosure of court orders restricting certain business activities subject to federal or state securities, commodities, banking and insurance laws, administrative restrictions on such activities that exceed 60 days, and court limitations on any business practice. Disclosure also is required of judicial and administrative findings of violations of federal or state securities or commodities laws.

[28] Disclosure of fraud-related legal proceedings currently is limited to criminal fraud actions and to the types of proceedings listed in n.27, above, that involve fraud.

[29] Disclosure currently is required if the breach of fiduciary duty resulted in one of the restrictions identified in n.27, above.

[30] Administrative restrictions on business practices currently must fall within one of the categories identified in n.27, above, before disclosure is required.

[31] Current provisions do not distinguish between criminal and civil proceedings brought within the United States and those pursued in foreign jurisdictions. The proposals would make it clear that disclosure is required of any foreign criminal or civil proceeding if its domestic counterpart would be required to be disclosed and would add provisions requiring disclosure of foreign administrative and bankruptcy actions.

[32] The provisions of paragraphs (f) and (g) of Regulation S-K Item 401 would be consolidated into a single paragraph (f).

[33] Release No. 34-5276 (January 17, 1956) [21 FR 577]. This originally was adopted as a provision of Schedule 14B, and a summary of this information was required to be furnished in election contest proxy statements. In October 1992, the Commission eliminated the Schedule 14B filing requirement and moved the legal proceedings disclosure provision from that Schedule into Item 5(b)(1)(iii) of Schedule 14A. *See* Release No. 34-31326 (October 16, 1992) [57 FR 48276]. That provision currently requires disclosure of any criminal conviction of a "participant" in the election contest that has occurred in the last 10 years.

[34] Schedule 13D. Release No. 34-6370 (July 30, 1968) [33 FR 11015].

[35] The ten year disclosure requirement originally found in the Schedule 13D was revised to a five-year requirement in 1977. Release No. 33-5808 (February 24, 1977) [42 FR 12342].

[36] In March 1969, the Commission's Disclosure Policy Study recommended increased disclosure of legal proceedings involving management in Securities Act registration statements and Exchange Act registration statements, proxy statements and annual reports. *Disclosure to Investors: A Reappraisal of Administrative Policies under the '33 Act and '34 Act*, Report and recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, March 1969, pp. 93-95.

[37] Form 10, 17 CFR 249.210, Release No. 34-8066 (October 14, 1970) [35 FR 16537].

[38] Form 10-K, 17 CFR 240.310, Release No. 34-9000 (October 21, 1970) [35 FR 16919].

actions if these actions involved a director of the registrant and were material to an evaluation of the director's ability and integrity. Disclosure also was required if a court restricted activities involving the purchase or sale of securities or certain activities in the securities, commodities, banking and insurance industries.[39] In the administrative context, disclosure of similar restrictions was required if a suspension or bar exceeded 60 days. Disclosure was required if the action was taken within the past 10 years.

In 1973, the legal proceedings disclosure provisions were expanded to include executive officers.[40] Comparable requirements were added at that time to the general form for registration under the Securities Act[41] and the registration form used for certain development stage companies.[42]

In July 1978, the legal proceedings disclosure requirements for Securities Act registration statements, as well as those in the Exchange Act registration statement and annual report, were consolidated into Regulation S-K, and the individual provisions were replaced with references to the Regulation S-K Item.[43] The disclosure requirements also were extended to real estate company registration statements and proxy and information statements.[44] The disclosure requirements were expanded at that time to include information relating to persons nominated to become directors and to require disclosure of court orders imposing restrictions on any business practice, as well as injunctions prohibiting future violations of federal or state securities laws.[45] Disclosure of findings of securities law violations by a court or by the Commission also was added. Finally, the time period for the disclosure was reduced from 10 to five years from the time the action was taken.[46]

Substantive revisions to the legal proceedings disclosure requirements were made most recently in 1984.[47] The amendments required disclosure of legal proceedings involving federal commodities laws[48] and applied the disclosure requirements to promoters and control persons of newly public companies.[49]

In 1992, the Commission adopted Regulation S-B as part of its small business initiatives, which included an Item 401(d), governing legal proceedings disclosure, patterned on the requirements of Item 401 (f) and (g) of Regulation S-K.[50] This disclosure is required in connection with Securities Act registration statements on Form SB-2,[51] Exchange Act registration statements on Form 10-SB,[52] and Exchange Act annual reports filed by small businesses.[53]

Other disclosure documents include legal proceedings disclosure requirements separate from those found in Regulation S-K or Regulation S-B. Schedule 14D-1,[54] the tender offer

[39] Specifically, disclosure was required if the director had been restricted from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company. Disclosure also was required if the court imposed any other restriction on activities associated with the position.

[40] Release No. 33-5395 (June 1, 1973) [38 FR 17202].

[41] Form S-1 [17 CFR 239.11]. At the same time, prospectuses relating to interests in oil and gas programs also were required to include disclosure of legal proceedings involving management and operating companies, because the Industry Guide applicable to such programs contained a provision requiring disclosure of the background information called for by Form S-1 with respect to those persons. *See* Release No. 33-5036 (January 19, 1970) [35 FR 1233], adopting Guide 55, subsequently redesignated Guide 4 [17 CFR 229.801(d)]. In 1976, through the operation of a newly adopted Securities Act Industry Guide for registration statements relating to interests in real estate limited partnerships, comparable disclosure was required in such registration statements respecting individuals responsible for a partnership's investment decisions. *See* Release No. 33-5692 (March 17, 1976) [41 FR 17403], adopting Guide 60, subsequently redesignated Guide 5 [17 CFR 229.801(e)].

[42] In 1973, the then Form S-2 was used for development stage companies (other than insurance, investment or mining companies) that had not had any substantial gross returns from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past five years, had not succeeded to any business that had such returns or net income, and did not have any subsidiaries (other than inactive subsidiaries with no more than nominal assets).

[43] Regulation S-K Item 401 [17 CFR 229.401]; Release No. 33-5949 (July 26, 1978) [43 FR 34402]. The disclosure requirements originally were included in Regulation S-K Item 3 (Directors and executive officers), subsequently redesignated Item 401. Release No. 33-6383 (March 3, 1982) [47 FR 11380].

[44] Provisions requiring the disclosure called for by Regulation S-K Item 401 were added to Form S-11 (for registration of securities of real estate companies) [17 CFR 239.18] and the proxy statement requirements in Schedule 14A. This new provision did not replace the requirement to disclose criminal proceedings involving participants in an election contest, discussed above in n.33, but rather, was included as an additional requirement.

The amended proxy statement requirements also applied to information statements prepared in accordance with Schedule 14C [17 CFR 240.14c-101] of the Exchange Act, which incorporates many of the proxy statement requirements, and to proxy statements under Rule 20a-1 of the Investment Company Act [17 CFR 270.20a-1], which makes the Schedule 14A disclosure requirements applicable to investment companies.

[45] Section 3(a)(47) of the Exchange Act [15 U.S.C. 78c(a)(47)] defines "federal securities laws" to mean the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935 [15 U.S.C. 79a *et seq.*], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa *et seq.*], the Investment Company Act, the Investment Advisers Act of 1940 ("Investment Advisers Act") [15 U.S.C. 80b-1 *et seq.*], and the Securities Investor Protection Act of 1970 [15 U.S.C. 78aaa *et seq.*].

[46] Subsequent to these changes, the Commission incorporated the Item 401(f) requirements into other disclosure documents. In April 1980, the Commission amended Form S-8 (17 CFR 239.16b), for securities issued pursuant to employee benefit plans, to require the incorporation by reference of the issuer's latest Exchange Act annual report, including its legal proceedings disclosure, into the registration statement. Release No. 33-6202 (April 2, 1980) [45 FR 23653].

In March 1982, Securities Act Industry Guides 4 and 5 were amended to require the information specified in Regulation S-K Item 401, replacing the reference to the requirements of Form S-1. Release No. 33-6384 (March 3, 1982) [47 FR 11476]. *See* n.41, above, and current Item 11 of Guide 4 and Item 9.A. of Guide 5.

At that time, the Commission also adopted current Form S-2 [17 CFR 239.12], for registration under the Securities Act of securities of certain issuers, and Form S-3 [17 CFR 239.13], for registration under the Securities Act of securities of certain issuers offered pursuant to certain types of transactions. Release No. 33-6383 (March 3, 1982) [47 FR 11380]. These forms incorporate by reference information required in the Form 10-K, including the legal proceedings disclosure.

In the same year, the Commission adopted Form S-18 [17 CFR 239.28] (optional registration form for small issuers) Release No. 33-6406 (June 4, 1982) [47 FR 25126] and Form S-20 [17 CFR 239.20] (optional registration form for standardized options), Release No. 33-6426 (September 16, 1982) [47 FR 41950]. Both forms required disclosure of the legal proceedings specified in Regulation S-K Item 401. Form S-18 was rescinded in connection with the small business initiatives in 1992. Release No. 33-6949 (July 30, 1992) [57 FR 36442]. For information relating to the adoption of Form S-4 [17 CFR 239.25], *see* n.49, below.

[47] Release No. 33-6545 (August 9, 1984) [49 FR 32762].

[48] Specifically, Regulation S-K Item 401(f) was amended to require disclosure of judicial and administrative restrictions on activities regulated by the Commodity Futures Trading Commission ("CFTC"), as well as court restrictions on engaging in activities involving the purchase or sale of a commodity or the violation of federal commodities laws. A provision requiring disclosure of findings of federal commodities law violations by courts or the CFTC also was added.

[49] The amendments added Item 401(g) [17 CFR 229.401(g)], which provided that registrants that have not been subject to the reporting requirements of Exchange Act Sections 13(a) [15 U.S.C. 78m(a)] or 15(d) [15 U.S.C. 78o(d)] for the 12 months immediately prior to the filing of the registration statement, report or other document to which Item 401 is applicable, are required to disclose the Item 401(f) information with regard to control persons if the event occurred within the past five years and was material to a voting or investment decision. In cases where such registrants were organized within the past five years, the Item 401(f) disclosure is to be included with respect to promoters as well.

In April 1985, the Commission adopted Form S-4 (for registration of securities issued in business combination transactions), which requires disclosure of the Item 401 information. Release No. 33-6578 (April 23, 1985) [50 FR 18990].

[50] Release No. 33-6949 (July 30, 1992) [57 FR 36442].

[51] 17 CFR 239.10.

[52] 17 CFR 249.210b.

[53] Form 10-KSB [17 CFR 249.310b].

[54] 17 CFR 240.14d-100.

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schedule adopted in 1977,[55] requires disclosure if during the last five years the person filing the schedule was convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or was the subject of a judicial or administrative order that enjoined future violations of, or prohibited activities subject to, federal or state securities laws, or that included findings of violations of those laws. In 1978, Schedule 13D was amended to include legal proceedings disclosure provisions comparable to those included in Schedule 14D–1,[56] and when Schedule 13E–3, for going private transactions,[57] was adopted in 1979, the same disclosure was required.[58] Unlike the Regulation S–K Item 401(f) requirements, disclosure is required of the enumerated proceedings without regard to the filer's determination as to their materiality, and disclosure of administrative proceedings is not limited to suspensions or bars exceeding 60 days.

The offering circular furnished to investors at or prior to the offer or sale of securities made in reliance upon an exemption under Regulation A was amended in 1981 to require legal proceedings disclosure.[59] Issuers are required to disclose in the circular criminal convictions, the initiation of bankruptcy or other insolvency proceedings, and appointments of receivers if those actions involved any director, person nominated to become a director or executive officer, if the information is material to an evaluation of the person's ability or integrity, and if the action was taken within the past five years.[60]

III. Proposed Amendments

The amendments proposed today would retain and clarify current legal proceedings disclosure requirements, expand the scope of existing provisions, and lengthen the time period for which disclosure is required. With one exception,[61] the proposals also would delete the provisions permitting a registrant to omit disclosure where it concludes that the information would not be material to investors in evaluating the ability and integrity of management,[62] or would not be material to a voting or investment decision.[63] Consequently, under the proposals, like other line item disclosure requirements, information concerning legal proceedings would be required if specified by the item.[64]

The proposed amendments would require disclosure of any identified legal proceeding unless it was subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect,[65] and would codify the current staff interpretation that disclosure is not required if a conviction is reversed. The proposals also would make it clear that disclosure is required while a legal proceeding is pending appeal.[66]

Currently, it is the practice to disclose legal proceedings background information for each general partner of a partnership and each trustee of a real estate investment trust. A new instruction would be added to codify this practice and to expand the requirement to provide such disclosure with respect to trustees of any registrant that is a trust, as well as any other persons providing comparable services to such entities. Disclosure also would be required relating to any person who performs, either directly or indirectly, director or executive officer functions pursuant to a management contract, service contract, such as those used by asset-backed pools, or otherwise.[67]

While specific requests for comment are made throughout with respect to the proposals discussed in detail below, commenters are requested to comment generally on the need for revision of the legal proceedings disclosure requirements. Is the approach proposed adequate to address investor concerns about the background of those who direct the affairs of public companies, or would some other method be more effective?

A. Disclosure of Judicial and Administrative Proceedings

1. Bankruptcy and Insolvency Proceedings

The current provision requiring disclosure of the court appointment of a receiver, fiscal agent or similar officer with respect to a business in which a designated person served as an executive officer would be expanded to include a similar appointment made by a federal or state agency.[68] For example, disclosure would be required where a state insurance commissioner appointed a conservator to take control of the business and assets of an insurance company for which a designated person had served as an executive officer within two years prior to such appointment.[69] Disclosure also would be required of the appointment by a bank regulatory authority of a receiver or conservator to operate, sell or liquidate a financial institution.[70]

[55] Release No. 33–5844 (July 21, 1977) [42 FR 36341].

[56] Release No. 33–5925 (April 21, 1978) [43 FR 18484].

[57] 17 CFR 240.13e–100.

[58] Release No. 33–6100 (August 2, 1979) [44 FR 46736].

[59] Release No. 33–6340 (August 7, 1981) [46 FR 41766]. This requirement currently is found in Offering Circular Model B, Part II of Form 1–A, the Regulation A Offering Statement [17 CFR 230.90].

On April 28, 1993, the Commission adopted Form SB–1 [17 CFR 239.9], an optional registration form for use by certain small businesses. *See* Release No. 33–6990 (April 28, 1993) [58 FR 26509]. Form SB–1 affords filers the option of providing the disclosure required by the Model B offering circular found in Form 1–A, including its legal proceedings disclosure requirements.

[60] Issuers not subject to Exchange Act reporting obligations that sell securities pursuant to an exemption in accordance with Section 230.505 or Section 230.506 of Regulation D (governing the limited offer and sale of securities without registration under the Securities Act [17 CFR 230.501–230.508]) to a purchaser that is not an accredited investor must provide the disclosure, including legal proceedings information, required by Regulation A (if the issuer is eligible to rely on that exemption) or by the prospectus requirements of the registration statement the issuer is eligible to use.

[61] *See* discussion of bankruptcy and insolvency disclosure in Section III.A.1, below.

[62] Current Item 401; current Item 8(d) of Part II, Offering Circular (Model B), Form 1–A.

[63] Current Item 401(g) (1) and (2). The provisions of Item 401(g) requiring disclosure of legal proceedings involving promoters and control persons of newly public companies would be incorporated into proposed Item 401(f). *See* proposed Item 401(f)(2).

[64] Current Instruction 2 to Item 401(f), which states that registrants may voluntarily advise the staff that the disclosure was not required based on a determination that it is not material to an investment or voting decision, would be inapplicable to most disclosure requirements. The substance of the instruction would be moved to a note to the bankruptcy provisions found in proposed Item 401(f)(1)(i).

[65] *See* proposed Item 401(f)(1), representing a consolidation of similar provisions found in paragraphs (3), (4), (5) and (6) of current Item 401(f).

Under current and proposed rules, an order or sanction need not be disclosed if it has been reversed or otherwise set aside on the basis of the underlying law or facts. However, a registrant must disclose a permanent injunction involving a designated person during the entire disclosure period even if equitable relief from the injunction has been granted before the close of such period.

[66] Instruction 1 to Item 401(f) would be amended to indicate that disclosure of final convictions, orders, judgments, decrees or sanctions is required from the date of entry. If appealed, disclosure would continue to be required. If ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, disclosure no longer would be required. Disclosure of preliminary orders, judgments, decrees and sanctions would be required from the date that any right to appeal the preliminary action expired.

[67] *See* proposed Instruction 5 to Item 401(f).

[68] Proposed Item 401(f)(1)(i).

[69] *See, e.g.*, Ariz. Rev. Stat. Ann. § 20–160 (authorizing the director of insurance to take possession of, or to appoint a conservator for, an insolvent insurance company); Texas Insurance Code Ann. § 21.28A (authorizing the commissioner of insurance to undertake supervision of or to appoint a conservator for, an insolvent insurance company).

[70] *See, e.g.*, Section 203 of the Bank Conservation Act [12 U.S.C. 203] (authorizing the Comptroller of the Currency of the United States to appoint a conservator for a national bank), and Cal. Financial Code § 8250 (authorizing the California Savings and Loan Commissioner to appoint a receiver for a savings and loan association).

While in most instances the provisions allowing registrants to omit disclosure of legal actions based on their materiality would be eliminated under the proposals, as discussed elsewhere in this release,[71] the Commission proposes to retain a provision permitting filers to weigh the materiality of bankruptcy and insolvency proceedings involving designated persons prior to disclosure.[72] Unlike the other legal proceedings to be disclosed under Item 401, bankruptcy. proceedings include proceedings as to which the designated person's responsibility could vary considerably. Comment is solicited as to whether this materiality provision should be retained with respect to bankruptcy and insolvency proceedings, as proposed, or whether such actions should be disclosed without exception.

The Commission also solicits commenters' views on whether the current provisions should be expanded to require disclosure where the designated person served as a director of a company within two years before the initiation of bankruptcy or insolvency proceedings or the appointment of a receiver or conservator with respect to that company. Currently, disclosure is required only if the person was an executive officer of the entity. Commenters should identify the reasons for or against such an expansion.

Further, comment is sought as to whether the current provision requiring disclosure where the designated person served as an executive officer within two years of the identified bankruptcy or insolvency actions should be retained, as proposed, or whether the two-year time period should be shortened or lengthened, for example, to one year, or three or five years. Commenters also should address whether disclosure should be required where a designated person was an executive officer of a financial institution whose operation or sale is supervised by an administrative authority in the absence of the formal appointment of a receiver or conservator.[73]

2. Criminal Proceedings

Like the current Item, the proposals would require disclosure where a designated person was convicted in a criminal proceeding or was the named subject of a pending criminal action (excluding traffic violations and other minor offenses).[74] However, the proposal clarifies that the Item requires disclosure of a criminal conviction resulting from a designated person's entry of a plea of nolo contendere.

3. Civil and Administrative Proceedings

a. *Money penalty consent decrees and other orders or sanctions.* Disclosure concerning civil and administrative proceedings involving designated persons now is limited to judicial orders restricting specified business activities,[75] administrative orders restricting such activities for more than 60 days,[76] and judicial or administrative findings of securities or commodities law violations.[77] As proposed, any judicial or administrative finding, order or sanction relating to violations of federal and state securities and commodities laws and regulations, or laws and regulations respecting financial institutions or insurance companies, would trigger disclosure.[78] The exemption from disclosure of administrative proceedings that impose restrictions for periods of less than 60 days would be eliminated. Comment is solicited as to whether this exemption should be retained, but with a shorter time period, such as 20, 10 or five days.

As a result of the proposed amendments, disclosure would be required of any order or sanction resulting from proceedings brought under the federal securities laws, including court-imposed civil money penalties and judicial orders temporarily barring an individual from serving as an officer or director of a public company, as authorized by the Remedies Act.[79] Disclosure of such orders or sanctions would be required, whether or not the court makes a finding that securities laws were violated.[80]

Similarly, disclosure explicitly would be required of any judicial or administrative finding, order or sanction issued or imposed against the designated person under the enforcement provisions of the federal laws and regulations governing financial institutions, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"),[81] as well as under similar state statutes and regulations.[82] For example, the proposed disclosure requirements would reach a civil money penalty imposed pursuant to a settlement agreement between a designated person and a bank regulator, where the final order neither included findings of violations of the law nor imposed any limitation on that person's acting in any capacity related to banks or savings and loan associations.

b. *Fraud in connection with a financial institution, insurance company, or other business entity.* The proposals would expand current provisions by requiring disclosure of legal proceedings involving alleged violations by a designated person of any law or regulation prohibiting fraud in connection with a financial institution, insurance company or other business entity. Disclosure of legal proceedings involving fraud currently is limited to criminal fraud proceedings, civil and administrative actions involving fraud in connection with violations of securities or commodities laws, and orders restricting the designated person from acting as a director, employee or affiliated person of a bank, savings and loan association or insurance company or from engaging in related activities based on that person's fraudulent conduct. Consequently, in addition to the actions for which disclosure is

[71] *See* Section III.A, above, and Section III.E, below.

[72] Proposed Item 401(f)(1)(i).

[73] *See, e.g.*, Tex. Rev. Civ. Stat. Ann. art. 342–801a (authorizing the Texas Banking Commissioner to supervise the activities of a bank) and N.Y. Banking Law § 606 (authorizing the New York Superintendent of Banks to take possession of, operate or liquidate a banking organization).

As used in this release, "financial institution" means any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution. *See* proposed Instruction 3 of Item 401(f).

[74] Current Item 401(f)(2) and proposed Item 401(f)(1)(ii).

[75] Current Item 401(f)(3).

[76] Current Item 401(f)(4).

[77] Current Item 401(f) (5) and (6).

[78] Proposed Item 401(f)(1)(iii)(A) (1) and (2).

[79] *See, e.g.*, Section 20(d) and 20(e) of the Securities Act [15 U.S.C. 77t(d) and (e)].

[80] While courts may issue orders upon a proper showing without finding securities law violations, all administrative orders issued by the Commission contain findings of a violation or violations of securities laws and regulations, even when the order is the result of a settlement agreement. Consequently, disclosure of all orders or sanctions issued by the Commission, such as cease-and-desist orders, pursuant to the enforcement provisions added by the Remedies Act would be required under both current and proposed provisions.

[81] Pub. L. No. 101–73, 103 Stat. 183 (1989). FIRREA amended the enforcement provisions of the Federal Deposit Insurance Act ("FDIA") [12 U.S.C. 1811 *et seq.*], the Federal Reserve Act [12 U.S.C. 221 *et seq.*], the Home Owner's Loan Act of 1933 [12 U.S.C. 1461 *et seq.*], the Bank Holding Company Act of 1956 [12 U.S.C. 1841 *et seq.*], the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 *et seq.*], the Bank Protection Act of 1968 [12 U.S.C. 1881 *et seq.*], and the Federal Credit Union Act [12 U.S.C.A. 1751 *et seq.*]. The enforcement provisions relating to the Farm Credit Administration are found in the Farm Credit Act of 1971 [12 U.S.C. 2001 *et seq.*].

[82] *E.g.*, Cal. Financial Code §§ 5000–12000 (California laws governing savings and loan associations); N.Y. Banking Law §§ 10–46 (New York laws establishing the New York Banking Department, the Superintendent of Banks, and their supervisory and regulatory powers).

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currently required, the proposals would require disclosure of a court order enjoining the designated person from knowingly defrauding a financial institution, whether or not the court imposed restrictions on the person's future business relationship with the institution.[83] Another example of required disclosure would be a court judgment against a designated person for violating consumer fraud statutes in connection with that person's business.[84]

c. *Civil mail and wire fraud.* The proposals also would require disclosure of civil and administrative proceedings relating to mail and wire fraud.[85] Thus, for example, court orders enjoining violations of mail or wire fraud statutes,[86] as well as U.S. Postal Service orders requiring a designated person to cease and desist from conducting a scheme or device for obtaining money or property through the mail by false representations,[87] would be disclosed.

d. *Fiduciary duties.* The proposed amendments would extend disclosure to legal actions involving laws and regulations governing fiduciary obligations owed to corporations, partnerships, business trusts and similar business entities.[88] If, for example, a designated person was subject to a court order resulting from a breach of a fiduciary duty imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"),[89] or had been found to have breached a fiduciary duty as a director of a corporation, in violation of state corporation or common law, disclosure would be required.

e. *Restrictions on any business practice.* The current provision requiring disclosure where a court enjoins or otherwise limits the designated person from engaging in any business practice[90] would be expanded to require disclosure of similar orders issued by administrative authorities.[91] Under the proposals, for example, Federal Communications Commission orders requiring a designated person to cease and desist from engaging in activities that violate regulations governing telecommunications,[92] International Trade Commission orders restricting such person from engaging in unfair practices in the importation of articles into the United States,[93] Federal Trade Commission orders requiring the person to cease and desist from engaging in unfair methods of competition,[94] and other similar federal or state administrative actions would be required to be disclosed.

f. *Request for comment concerning civil and administrative proceedings.* The proposed provisions discussed above relating to civil and administrative proceedings require disclosure if a finding, order or sanction relates to an alleged violation by a designated person of securities, commodities, banking and insurance laws and regulations and other designated laws and regulations, as well as orders restricting a designated person from engaging in any business practice. Comment is requested as to whether the requirement to disclose restrictions on any business practice is sufficient to apprise investors of the backgrounds of those who direct the affairs of public companies.

Comment also is sought as to whether disclosure relating to violations of laws governing corporations, partnerships or other entities should be restricted to violations of a fiduciary duty provision, as proposed, or restricted further to violations of a fiduciary duty involving fraud. Commenters also are requested to address whether those proposals should be expanded to require disclosure of findings, orders and sanctions entered in proceedings involving alleged violations of any laws respecting such business entities. Finally, comment is requested as to whether there is any category of civil or administrative proceeding that should be excluded from the disclosure requirements and the reason for the recommended exclusion.

B. Disclosure of Disciplinary Actions by Self-Regulatory Organizations

Under the proposals, a requirement would be added to describe disciplinary sanctions imposed by any securities or commodities industry self-regulatory organization ("SRO") that oversees the business conduct and sales practices of its members.[95] The Commission requests comment as to whether there are any classes of SRO disciplinary proceedings that should be excluded, such as summary proceedings by an SRO wherein the designated person is fined not more than $2500 for minor or technical violations of the SRO's rules and procedures.[96]

C. Disclosure of Comparable Foreign Legal Proceedings

While current provisions relating to disclosure of a designated person's involvement in criminal and civil actions do not distinguish between foreign legal actions and those taken within the United States, the proposed amendments explicitly would require disclosure of foreign criminal convictions and civil proceedings before foreign courts. Moreover, provisions would be added requiring disclosure of actions by foreign administrative authorities. Thus, disclosure would be required of any foreign legal proceeding that is comparable to a domestic legal proceeding requiring disclosure.

These proposals reflect the ever-increasing international character of financial transactions and the important role played by foreign authorities in assuring safe and efficient financial markets world-wide.[97] Comment is requested as to whether there are any other types of legal proceedings before foreign authorities that should be specifically required, as well as whether any foreign legal proceedings should be excluded from the disclosure requirements.

D. Other Legal Proceedings

1. Arbitration Proceedings

While not specifically included in the amendments proposed today, the Commission requests comment on whether disclosure should be required concerning the results of arbitration proceedings arising out of allegations of violations of securities or commodities laws and regulations, or breaches of the laws and regulations relating to other commercial transactions. Given the widespread use of arbitration clauses, as well as statutes and court rules that require or permit claims to be submitted to arbitration rather than to courts, investors may consider information regarding a designated person's involvement in arbitration proceedings material to their investment decisions.

The Commission invites comment on whether disclosure should be required concerning arbitration awards where the action would have been disclosed had the claim been pursued before a court, administrative body or SRO. In addition, commenters should address whether there are other types of alternative dispute resolution that should trigger disclosure. Comment also is requested as to whether there are any arbitration proceedings that should be exempt from disclosure in light of the nature of the issues involved or the insignificant dollar amount of the award. Finally, comment is solicited as to whether there should be dollar amount thresholds that govern disclosure and whether such thresholds should be cumulative figures based on multiple arbitration awards.

2. Rule 2(e) Proceedings

The Commission also solicits comment as to whether filers should be required to disclose all administrative actions brought by the Commission against a designated person pursuant to Rule 2(e) of the Commission's Rules of Practice.[98] Rule 2(e) provides for the suspension or disbarment of certain professionals, usually attorneys and accountants, from practicing before the Commission.[99] Where Rule 2(e) orders relate to violations of the federal securities laws,[100] disclosure would be required under both the current and proposed rules. Should the requirements be expanded to encompass Rule 2(e) orders based on lack of professional qualifications,[101] lack of character or integrity, or unethical or improper professional misconduct,[102] the conviction of a felony or of a misdemeanor involving moral turpitude, or the disbarment or revocation of a license to practice as an attorney, accountant, engineer or other expert?[103] If not, commenters should provide specific reasons for any recommended exclusions. If it is determined that all Rule 2(e) orders should be disclosed, should disclosure of disciplinary sanctions imposed by other federal and state authorities or non-government professional associations, such as bar associations, for violations of standards of professional conduct also be required?

E. Disclosure Period Expansion to 10 Years

The Commission proposes to expand the time during which disclosure is required from five to 10 years,[104] and to delete in most instances the provisions allowing registrants to omit information they determine is neither material to an evaluation of the ability or integrity of the designated person[105] nor to a voting or investment decision.[106] Based on its experience since 1978, when the original disclosure period was reduced from 10 to the current five years,[107] the Commission believes that many legal proceedings remain material beyond five years.[108] Of course, the inclusion of the information would continue to be required beyond 10 years where necessary to render statements otherwise made in the registration statement, report or document not misleading.[109]

Since some types of legal proceedings may have a greater impact on voting and investment decisions than others, the Commission requests comment as to whether there are specific actions that should be disclosed for periods less than 10 years. For example, should misdemeanors be described for a lesser period than felony convictions? Commenters favoring that approach should specify the types of proceedings to which the current five-year provision should continue to apply. On the other

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[83] *See* 18 U.S.C 1345 (allowing civil actions by the United States to enjoin the execution of a scheme or artifice to knowingly defraud a financial institution, as prohibited by 18 U.S.C. 1344 (Bank fraud)).

[84] *See, e.g.*, Del. Code. Ann. tit. 6, §§ 2513 *et seq.*

[85] Proposed Item 401(f)(iii)(A)(3).

[86] Generally, legal actions involving mail or wire fraud would be criminal proceedings (*see* 18 U.S.C. 1341, providing criminal penalties for fraud and swindles accomplished through the mails and 18 U.S.C. 1343, providing criminal penalties for schemes and artifices to defraud by means of wire, radio or television); however, the Attorney General of the United States may commence a civil action in any federal court to enjoin ongoing or prospective violations of federal mail or wire fraud statutes. 18 U.S.C. 1345.

[87] *See* 39 U.S.C. 3005.

[88] Proposed Item 401(f)(1)(iii)(A)(2). One type of a "similar business entity" under the proposed rule is a limited liability company, which strictly speaking is neither a corporation nor a partnership, but has characteristics of both. *See* Del. Code Ann. tit. 6, § 18–101 *et seq.*, for an example of a state statute (Delaware) providing for the organization of limited liability companies.

[89] *See* Section 409 of ERISA [29 U.S.C. 1109] (providing for equitable remedies against fiduciaries who breach fiduciary duties imposed by ERISA).

[90] Current Item 401(f)(3)(ii).

[91] Proposed Item 401(f)(1)(iii)(B).

[92] *See* 47 U.S.C. 312.

[93] *See* 19 U.S.C. 1337.

[94] *See* 15 U.S.C. 45.

[95] Proposed Item 401(f)(1)(iv). Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)] defines self-regulatory organization as any national securities exchange registered under Section 6 of the Exchange Act [15 U.S.C. 78f] (*e.g.*, the New York Stock Exchange), any securities association registered under Section 15A of the Exchange Act [15 U.S.C. 78o–3] (*e.g.*, the National Association of Securities Dealers ("NASD")), and any clearing agency registered under Section 17A of the Exchange Act [15 U.S.C. 78q–1] (*e.g.*, the National Securities Clearing Corporation). The Municipal Securities Rulemaking Board ("MSRB") also falls within the statutory definition of a self-regulatory organization, but the MSRB refers all disciplinary actions to the NASD.

Regulations under the Commodity Exchange Act [7 U.S.C. 1 *et seq.*] define self-regulatory organization as contract markets registered under Section 5 of the Commodity Exchange Act [7 U.S.C. 7] (*e.g.*, the Chicago Board of Trade) and futures associations registered under Section 17 [7 U.S.C. 21] of that Act (*e.g.*, the National Futures Association). 17 CFR 1.3(ee). Clearing organizations, as defined in 17 CFR 1.3(d) (*e.g.*, the Commodity Clearing Corporation), also are included in the definition of self-regulatory organization found in 17 CFR 1.59(a)(1).

[96] Such proceedings would include action taken pursuant to an SRO minor rule violation plan or similar plan. *See* Rule 19d–1(c)(2) [17 CFR 240.19d–1(c)(2)].

[97] The International Securities Enforcement Cooperation Act of 1990 ("ISECA") [Sections 201–207 of the Securities Acts Amendments of 1990, Pub. L. No. 101–550, 104 Stat. 2713 (1990)] granted the Commission the authority to sanction regulated entities and associated persons if they have been convicted of certain crimes by a foreign court of competent jurisdiction within 10 years of filing an application with the Commission, or have been found by a foreign financial regulatory authority to have violated laws and regulations that are substantially equivalent to federal securities and commodities laws. *See* Sections 203 and 205 of ISECA, amending Section 15(b) (4) and (6) of the Exchange Act [15 U.S.C. 78o(b) (4) and (6)], Section 9(b)(4) of the Investment Company Act [15 U.S.C. 80a–9(b)(4)], and Section 203(e)(7) of the Investment Advisers Act [15 U.S.C. 80b–3(e)(7)].

[98] 17 CFR 201.2(e).

[99] "Practicing before the Commission" is defined in Rule 2(g) [17 CFR 201.2(g)] to include "transacting any business with the Commission" as well as "the preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other expert."

[100] *See* Rule 2(e)(1)(iii) [17 CFR 201.2(e)(1)(iii)], allowing the Commission to suspend or disbar a professional that has been found by the Commission in a Rule 2(e) proceeding to have violated federal securities laws, and Rule 2(e)(3) [17 CFR 201.2(e)(3)], which provides for a summary disbarment or suspension by the Commission where a court has enjoined the professional from future violations of the federal securities laws, or where the person has been found by a court or by the Commission in a separate proceeding to have violated those laws.

[101] Rule 2(e)(1)(i) [17 CFR 201.2(e)(1)(i)].

[102] Rule 2(e)(1)(ii) [17 CFR 201.2(e)(1)(ii)].

[103] Rule 2(e)(2) [17 CFR 201.2(e)(2)].

[104] Proposed Item 401(f)(1).

[105] Current Item 401 and Item 8(d) of the Regulation A offering circular (Model B).

[106] Current Item 401(g) (1) and (2). As discussed in Section III.A.1, above, the materiality provision would be retained with respect to bankruptcy and insolvency proceedings.

[107] *See* Section II, above, for background relating to this requirement.

[108] This comports with the President's Commission on Organized Crime's 1986 recommendation that disclosure of all legal proceedings required by Item 401 of Regulation S–K be extended to at least 10 years to provide adequate notice to investors and government agencies as to the background of corporate officials. *See* President's Commission on Organized Crime, *THE EDGE: Organized Crime, Business, and Labor Unions; Report to the President and the Attorney General* p. 345 (March 1986).

[109] Rule 408 [17 CFR 230.408] under the Securities Act, Rule 12b–20 [17 CFR 240.12b–20] under the Exchange Act, and Rule 8b–20 under the Investment Company Act [17 CFR 270.8b–20] require registrants to disclose, in addition to the information expressly required to be included in a registration statement or report, any further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. *Cf.* Releases No. 33–5758 (November 2, 1976) [41 FR 49493] and No. 33–5949 (July 28, 1978) [43 FR 34402] stating that information regarding events occurring outside the five-year period may be material and should be disclosed. For examples of civil actions finding legal proceedings over five years old to be material, *see SEC v. Scott*, 565 F.Supp. 1513 (S.D.N.Y. 1983) (prospectus deemed materially false and misleading, in part because 1961 Canadian fraud conviction not disclosed in 1980 prospectus); *Bertoglio v. Texas Int'l Co.*, 488 F.Supp. 630 (D. Del. 1980) (1964 Commission bar should have been disclosed in 1979 proxy materials notwithstanding five-year disclosure requirement). *See also Calderon v. Tower Associates Int'l*, Civil No. 88–1240–FR (D. Ore. March 28, 1989) (order compelling answers to interrogatories) (criminal securities law violations occurring in 1977 and 1979 deemed material and discoverable notwithstanding Item 401(f) five-year provisions).

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hand, disclosure may be appropriate for periods longer than 10 years with respect to certain types of legal proceedings—for example: criminal fraud convictions; civil, administrative and SRO actions based on fraud involving securities, commodities, financial institutions, insurance companies or other businesses; actions involving mail and wire fraud; and, proceedings resulting in the removal or bar from acting in a decision-making capacity in connection with a financial institution or other business. Should these types of legal proceedings be disclosed for longer periods, such as 15 or 20 years, or indefinitely? Should disclosure be required so long as the designated person is subject to the order? Commenters should provide an analysis in support of any specific time period recommended.

Many legal proceedings based on violations of federal, state or other laws or rules or SRO rules result in orders or sanctions that remain in place for indefinite periods. For example, many injunctions, cease-and-desist orders and industry bars are imposed permanently and remain in force until further judicial or administrative action is taken to vacate the order.[110] Should the current five-year disclosure period be maintained, with the exception that any injunction, cease-and-desist order, industry bar or other continuing order or bar would be required to be disclosed for as long as the designated person is subject to the order or sanction, even when the order or sanction was imposed more than five years ago? Would that have the effect of providing sufficient disclosure of the conduct most relevant to investors' voting decisions? If such a provision were adopted, would it be appropriate to provide some outer limit (such as 10 or 15 years) after which disclosure could be discontinued?

F. Form and Schedule Amendments

As outlined above,[111] legal proceedings disclosure requirements vary among certain forms and schedules. The Commission proposes to amend the requirements found in Schedules 13D, 13E–3, 14A[112] and 14D–1 and the Regulation A offering circular (Model B) to conform with those of Regulation S–K Item 401.[113] The Commission solicits comment as to whether any schedule or form identified above should not be conformed with proposed legal proceedings requirements, and requests that commenters provide the specific rationale for any exclusion recommended.

As discussed above, the Item, forms and schedules identify persons for whom the legal proceedings disclosure is required;[114] the proposed amendments would specify that disclosure is required where the function performed by a designated person is performed by others, directly or indirectly, pursuant to a management or service contract, or otherwise.[115] Comment is requested as to whether there is any class of persons not currently subject to legal proceedings disclosure that should be. For example, should disclosure relating to promoters or control persons be required beyond the current 12 month period following an initial public offering, thus requiring disclosure in Exchange Act annual reports? Is there any class of persons currently identified as designated persons that should not be? Should the Regulation S–K Item 401 provisions be expanded to require disclosure relating to persons participating in the offering of a penny stock if the disclosure document is furnished in connection with such an offering?[116]

Finally, the Commission solicits comment as to whether legal proceedings disclosure provisions should be added to any forms, schedules or other documents where not required currently. For example, should legal proceedings involving persons issuing securities pursuant to an exemption under Regulation B,[117] relating to fractional undivided interests in oil and gas rights, be required to be disclosed in the offering sheet delivered to investors?

IV. Investment Company Act Disclosure

The Commission is proposing to add legal proceedings disclosure, as proposed to be amended, to investment company registration statement forms and to expand the scope of legal proceedings disclosure in proxy statements. Currently, legal proceedings disclosure is specifically required only in investment company proxy statements related to the election of directors.[118] Investment Company Act disclosure documents are intended, among other things, to inform investors and investment company shareholders about matters that concern the background and qualifications of those persons who oversee (such as directors) or manage (such as investment advisers) an investment company and its assets. The Commission believes that disclosure of information concerning legal proceedings may be material to investors and shareholders and is, therefore, proposing to require this disclosure in investment company disclosure documents.

The proposed amendments would require Item 401(f) disclosure in investment company prospectuses.[119] Because most investment companies are externally managed by investment advisers, the Commission also is proposing to require disclosure concerning not only directors and officers of the investment company, but also "managerial persons" of the investment adviser.[120] For the purposes of the legal proceedings disclosure, "managerial persons" would mean "affiliated persons" of the investment adviser as that term is defined in section 2(a)(3) of the Investment Company Act[121] who are engaged in the management, direction, supervision, or performance of any activities related to the investment company.[122] This definition would include, for example, officers or employees of the investment adviser whose duties are related to the management of an investment company.[123] On the other hand, the definition is not intended to require disclosure with respect to persons affiliated with the investment adviser who have no managerial or similar responsibilities with respect to the investment company.[124] The Commission requests comment on whether the proposed definition of "managerial persons" will result in appropriate disclosure that will provide material information to investment company investors and shareholders.[125]

The Commission also is proposing to conform the legal proceedings disclosure in proxy statements to the registration statement forms, as proposed to be amended. The proposed disclosure in proxy statements for officers and directors of the investment company and managerial persons of the investment adviser would be required *both* in connection with the election of directors, as currently required, and in proxy statements seeking approval of an investment advisory contract.[126] Legal proceedings disclosure may be as relevant to a shareholder's assessment of an investment advisory contract as it is to the election of directors.

V. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form amendments or suggest additional changes or comment on other matters that might have an impact on the amendments set out in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comment is requested on the impact of the proposals from the point of view of the public, the entities or persons making filings affected by the proposals, and the persons with respect to whom disclosure would be made. The Commission further requests comment on any competitive burdens that might result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act,[127] Section 23(a) of the Exchange Act,[128] and Section 38(a) of the Investment Company Act.[129] Comment letters should refer to File No. S7–31–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

VI. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes to disclosure requirements contained in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that the enhanced legal proceeding disclosure provisions will modestly increase most registrants' costs and compliance burdens. A requirement to provide additional information for longer periods of time than currently required in documents filed under the Securities Act, Exchange Act and Investment Company Act should not significantly increase the burden on company resources, since many registrants and others already are required to gather information regarding the backgrounds of directors, officers and others. It appears, however, that any additional expense may be justified in view of the material information that would be made available to investors.

VII. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments to Item 401 of Regulations S–K and S–B, the Regulation A offering circular (Model B), Schedules 13D, 13E–3, 14A and 14D–1, Forms N–1A, N–2, N–3, N–4, N–5, N–8B–2, N–8B–3 and N–8B–4, and Regulation E. The analysis notes that the proposed amendments are intended to provide investors with more information regarding the background of those who exercise control over the affairs of public companies.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised legal proceedings disclosure provisions.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, the alternatives were either addressed in the proposals, inconsistent with the purposes of the federal securities laws, or otherwise without justification.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A

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[110] For a discussion of disclosure where a court grants relief from a permanent injunction based on conduct occurring after imposition of the order, *see* n. 65, above.

[111] Section II, above.

[112] This proposed change would only affect disclosure relating to participants in election contests, which currently requires disclosure only of criminal convictions within the past 10 years. *See* current Item 5(b)(1)(iii) of Schedule 14A. Of course, all proxy statements involving the election of directors would be affected by the rule proposals generally because Item 7(b) requires that the information specified in Item 401 be included with respect to directors, officers and director nominees.

[113] The changes to these forms and schedules are found in proposed Item 2(d) of Schedule 13D; proposed Item 2(e) of Schedule 13E–3; proposed Item 5(b)(1)(iii) of Schedule 14A; proposed Item 2(e) of Schedule 14D–1; and proposed Part II, Offering Circular Model B, Item 6(d) of Form 1–A.

[114] *See* n. 22, above.

[115] For a discussion of disclosure obligations relating to registrants that are partnerships or trusts, or whose management services are provided by outside parties pursuant to management contracts, service agreements or otherwise, *see* introduction to Section III, above.

[116] Section 504 of the Penny Stock Reform Act [Title V of the Securities Enforcement Remedies and Penny Stock Reform Act, Pub. L. No. 101–429] amended Section 15(b)(6) of the Exchange Act [15 U.S.C. 78o(b)(6)] to authorize the Commission to bar or take other administrative action against a "person participating in the offering of penny stock." As amended, Section 15(b)(6) defines a person participating in the offering of a penny stock to include "any person acting as any promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock."

[117] 17 CFR 230.300–230.346.

[118] Item 22(b)(4) of Schedule 14A. Prior to the recent amendments to the proxy rules applicable to investment companies, which consolidated the disclosure requirements in Item 22 of Schedule 14A (Release No. IC–20614 (October 13, 1994) [59 FR 52689]), Rule 20a–1 under the Investment Company Act required legal proceedings disclosure by reference to Item 7 of Schedule 14A.

[119] Proposed amendments to: Item 5 of Form N–1A (open-end investment companies); Item 9 of Form N–2 (closed-end investment companies) Item 6 of Form N–3 (separate accounts that offer variable annuity contracts that are registered under the Investment Company Act); Form N–4 (separate accounts that offer variable annuity contracts which are registered under the Investment Company Act as unit investment trusts); Items 11, 12, and 16 of Form N–5 (small business investment companies); Item 28 of Form N–8B–2 (unit investment trusts); Items 26, 27, and 28 of Form N–8B–3 (investment companies issuing periodic payment plan certificates); Items 29 and 34 of Form N–8B–4 (face amount certificate companies).

The Commission also is proposing amendments to Schedules A and B of Regulation E [17 CFR 230.610a] under the Securities Act which would require offering circulars used by small business investment companies and business development companies relying on the Regulation E exemption to include the information specified in proposed Item 401(f) as to each director, executive officer and advisory board member of the issuer and as to managerial persons of the investment adviser of the issuer.

[120] In the case of an investment company registered as a separate account on Forms N–3, N–4 or N–8B–2, disclosure would be required of legal proceedings involving the directors, officers and employees of the sponsoring insurance company, or its affiliates, who participate directly in the management or administration of the separate account.

[121] 15 U.S.C. 80a–2(a)(3). An affiliated person is: (i) a person who directly or indirectly owns or controls more than 5% of the voting securities of a person; (ii) a person of which more than 5% of the voting securities is owned or controlled by a person; (iii) a person that is controlled, controlled by, or under common control with, a person; (iv) any officer, director, partner, or employees of a person; (v) if such person is an investment company, the investment adviser or any member of the advisory board thereof; and (vi) if the person is an unincorporated investment company without a board of directors, the depositor thereof.

[122] The term "managerial persons" is similar to, but not the same as, the term "management person" used in Rule 206(4)–4 under the Investment Advisers Act [17 CFR 275.206(4)–4]. Rule 206(4)–4 requires investment advisers to disclose to their clients certain financial and disciplinary information about the investment adviser or a management person of the adviser. For purposes of Rule 206(4)–4, a management person is defined as a person who controls the adviser or determines the general investment advice given to clients.

[123] This disclosure would include a fund's portfolio manager as well as any member of a portfolio management committee.

[124] For a large company with investment advisory services and other types of businesses, monitoring and reporting legal proceedings about all persons affiliated with the company could be costly and result in lengthy disclosure.

[125] The proposed legal proceeding disclosure would require information concerning persons, otherwise barred under section 9(a) of the Investment Company Act [15 U.S.C. 80a–9(a)], who have been permitted by the Commission under section 9(c) of the Investment Company Act [15 U.S.C. 80a–9(c)] to be associated with an investment company.

[126] Proposed Item 22(a)(3)(vii).

[127] 15 U.S.C. 77s(a).

[128] 15 U.S.C. 78w(a).

[129] 15 U.S.C. 80a–37(a).

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copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009.

VIII. Statutory Basis for Rules and Forms

The Commission is proposing amendments to Item 401 of Regulations S–K and S–B, Regulation A and Regulation E pursuant to Sections 3(b), 6, 7, 8, 10, and 19 of the Securities Act. Other amendments to Item 401 and amendments to Schedules 13D, 13E–3, 14A and 14D–1 are proposed pursuant to Sections 12, 13, 14, 15(d) and 23 of the Exchange Act. The Commission also is proposing amendments to the proxy rules applicable to investment companies and to investment company registration statement forms pursuant to Sections 8(b), 20(a) and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 228, 229, 230, 239, 240, and 274

Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. Section 228.401 (Item 401) is amended by revising paragraph (d) to read as follows:

§ 228.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the small business issuer:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-regulatory organization proceedings. The imposition of a sanction against such person by:*

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

(2) *Control persons and promoters.* Any small business issuer that has not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable also shall describe any action enumerated in this paragraph (d), for the time period specified herein, that involved a control person of the small business issuer. If any such issuer was organized within the past five years, comparable disclosure is required with regard to any promoter of the small business issuer.

Instructions to Paragraph (d) of Item 401

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The small business issuer is permitted to explain any mitigating circumstances associated with actions reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. If the information called for by this paragraph is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

5. If the small business issuer is a partnership or a trust, the information required by this paragraph shall be provided with respect to each general partner of the partnership, each trustee of the trust, and any other person providing services to such entities that are comparable to those provided by the persons identified in this paragraph. Where management services are provided the small business issuer by outside parties pursuant to a management or service contract or otherwise, the information called for by this paragraph shall be disclosed with respect to the persons identified in this paragraph, as well as any other person providing comparable services on behalf of the small business issuer.

6. Paragraph (d)(2) shall not apply to any subsidiary of a small business issuer that has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report or statement.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11, unless otherwise noted.

* * * * *

4. The authority citation following § 229.401 is removed.

5. Section 229.401 (Item 401) is amended by revising paragraph (f) and by removing paragraph (g) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(f) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the registrant:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3[a](26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

(2) *Control persons and promoters.* Any registrant that has not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable also shall describe any action enumerated in this paragraph (f), for the time period specified herein, that involved a control person of the registrant. If any such registrant was organized within the past five years, comparable disclosure is required with regard to any promoter of the registrant.

Instructions to Paragraph (f) of Item 401

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The registrant is permitted to explain any mitigating circumstances associated with actions reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. If the information called for by this paragraph is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

5. If the registrant is a partnership or a trust, the information required by this paragraph shall be provided with respect to each general partner of the partnership, each trustee of the trust, and any other person providing services to such entities that are comparable to those provided by the persons identified in this paragraph. Where management services are provided the registrant by outside parties pursuant to a management or service contract or otherwise, the information called for by this paragraph shall be disclosed with respect to the persons identified in this paragraph, as well as any other person providing comparable services on behalf of the registrant.

6. Paragraph (f)(2) shall not apply to any subsidiary of a registrant that has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the 12 months immediately prior to the filing of the registration statement, report or statement.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

6. The general authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w,

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78ll(d), 79t, 80a–6, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. By amending § 230.610a by adding paragraph (g) to Item 4 of Schedule A of Regulation E, to read as follows:

§ 230.610a Schedule A: Contents of offering circular for small business investment companies; Schedule B: Contents of offering circular for business development companies.

Schedule A—Contents of Offering Circular for Small Business Investment Companies

* * * * *

Item 4. Management and Certain Security Holders of the Issuer

* * * * *

(g) Provide the information required by Item 401(f)(1) of Regulation S–K [17 CFR 229.401(f)(1)] as to each director, officer, and advisory board member of the issuer, and each managerial person of the investment adviser of the issuer.

Instruction. For the purposes of this Item 4(g), *managerial person* means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(3)]) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the issuer.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The general authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30, and 80a–37 unless otherwise noted.

* * * * *

9. By revising Part II, Model B, Item 8, paragraph (d) of Form 1–A (referenced in § 239.90) to read as follows:

Note.—The text of Form 1–A does not and the amendment will not appear in the Code of Federal Regulations.

Form 1–A.—Regulation A Offering Statement Under the Securities Act of 1933

* * * * *

PART II—OFFERING CIRCULAR

* * * * *

OFFERING CIRCULAR MODEL B

* * * * *

Item 8. Directors, Executive Officers and Significant Employees

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any executive officer, director or person nominated to become a director of the issuer:

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (d)

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The issuer is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The general authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

11. § 240.13d–101 (Schedule 13D) is amended by: revising row 5 of the cover page and instruction 5 for the cover page; revising the introductory text of Item 2; revising paragraph (d) of Item 2; removing paragraph (e) of Item 2; and redesignating paragraph (f) of Item 2 as paragraph (e), to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

Schedule 13D

* * * * *

(5) Check if disclosure of legal proceedings is required pursuant to Item 2(d).

* * * * *

Instructions for Cover Page

* * * * *

(5) If disclosure of legal proceedings is required pursuant to Item 2(d), row 5 should be checked.

* * * * *

Item 2. Identity and Background.

If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by (d) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (e) of this Item with respect to such person(s).

* * * * *

(d) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (d).

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any Federal or State credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

* * * * *

12. § 240.13e–100 (Schedule 13E–3) is amended by: revising the section heading; revising the introductory paragraph of Item 2; revising paragraph (e) of Item 2; removing paragraph (f) of Item 2; and redesignating paragraph (g) of Item 2 as paragraph (f), to read as follows:

§ 240.13e–100 Schedule 13E–3, Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [§ 240.13e–3] thereunder.

Rule 13e–3 Transaction statement

* * * * *

Item 2. Identity and Background. If the person filing this statement is the issuer of the class of equity securities which is the subject of the Rule 13e–3 transaction, make a statement to that effect. If this statement is being filed by an affiliate of the issuer which is other than a natural person or if any person enumerated in Instruction C to this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal executive offices and provide the information required by paragraph (e) of this Item. If this statement is being filed by an affiliate of the issuer who is a natural person or if any person enumerated in Instruction C of this statement is a natural person, provide the information required by paragraphs (e) through (f) of this Item with respect to such person(s).

* * * * *

(e) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-

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and-desist order, or removal or prohibition order; or

(3) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-regulatory organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (e)

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. While negative answers to Item 2(e) are required in this schedule, they need not be furnished to security holders.

* * * * *

13. § 240.14a–101 (Schedule 14A) is amended by revising paragraph (b)(1)(iii) of Item 5 and by adding Item 22 by adding a new paragraph (a)(3)(vi) and revising paragraph (b)(4) to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. Interest of certain Persons in Matters to be Acted Upon

* * * * *

(b) Solicitation subject to Rule 14a–11 (§ 240.14a–11 of this chapter). * * *

(1) * * *

(iii) State the information required by Item 401(f) of Regulation S–K (§ 229.401(f) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(a) * * *

(3) * * *

(vi) If action is to be taken with respect to the election of directors or the approval of an advisory contract, provide the information required by Item 401(f)(1) of Regulation S–K (§ 229.401(f)(1)) as to each director, officer, and advisory board member of the Fund, and each managerial person of the investment adviser of the Fund.

Instruction. For the purposes of this Item 22(a)(3)(vi), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the issuer.

* * * * *

(b) * * *

(4) Provide in tabular form, to the extent practicable, the information required by Items 401 (except the information required by paragraph (f) of Item 401, which is required pursuant to paragraph (a)(3)(vi) of this Item 22), 404 (a) and (c), and 405 of Regulation S–K (§§ 229.401, 229.404, and 229.405 of this chapter.

* * * * *

14. § 240.14d–100 (Schedule 14D–1) is amended by: revising row 5 of the cover page and instruction 5 for the cover page; revising the introductory paragraph of Item 2, revising paragraph (e) of Item 2, removing paragraph (f) of Item 2; and redesignating paragraph (g) of Item 2 as paragraph (f), to read as follows:

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Schedule 14D–1

* * * * *

(5) Check if disclosure of legal proceedings is required pursuant to Item 2(e).

* * * * *

Instructions for Cover Page

* * * * *

(5) If disclosure of legal proceedings is required pursuant to Item 2(e) of Schedule 14D–1, row 5 should be checked.

* * * * *

Item 2. Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal business, the address of its principal office and the information required by paragraph (c) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in paragraphs (a) through (f) of this Item with respect to such person(s).

* * * * *

(e) *Involvement in certain legal proceedings.*

(1) Describe any of the actions listed below, not subsequently reversed, suspended, vacated, annulled or otherwise rendered of no effect, taken during the past 10 years that involved any such person(s):

(i) *Bankruptcy or other insolvency proceedings.* The initiation of any federal, state or foreign bankruptcy or insolvency proceeding by or against, or the appointment of a receiver, conservator, fiscal agent or similar officer for the business or assets of any such person, any partnership in which such person was a general partner at or within two years before the time of such initiation or appointment, or any corporation or business association of which such person was an executive officer at or within two years before the time of such initiation or appointment. The foregoing shall be described if material to an investment or voting decision.

(ii) *Criminal proceedings.* The conviction of such person in a federal, state or foreign criminal proceeding (including convictions entered on a plea of nolo contendere), or the naming of any such person as the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses).

(iii) *Civil and administrative proceedings.* The issuance in a federal, state or foreign civil or administrative proceeding of:

(A) A finding, order, judgment, decree or sanction to which such person was subject, relating to an alleged violation of:

(*1*) Any securities or commodities law or regulation, or

(*2*) Any law or regulation respecting financial institutions, insurance companies, or fiduciary duties owed to a partnership, corporation, business trust or similar business entity, including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(*3*) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity;

(B) An order enjoining or otherwise limiting such person from engaging in any type of business practice.

(iv) *Self-Regulatory Organization proceedings.* The imposition of a sanction against such person by:

(A) A self-regulatory organization, as defined in Section 3(a)(26) of the Exchange Act [15 U.S.C. 78c(a)(26)];

(B) A contract market designated pursuant to section 5 of the Commodity Exchange Act [7 U.S.C. 7];

(C) A futures association registered under section 17 of such Act [7 U.S.C. 21]; or

(D) Any substantially equivalent foreign authority or organization.

Instructions to Paragraph (e).

1. For purposes of computing the 10 year period referred to in this paragraph, the disclosure period applicable to a final conviction, order, judgment, decree or sanction shall begin with its date of entry. The disclosure period applicable to a preliminary order shall commence when the rights of appeal from such order have lapsed. Any conviction, order, judgment, decree or sanction that is appealed shall continue to be disclosed until ultimately reversed, suspended, vacated, annulled or otherwise rendered of no effect, at which time disclosure shall no longer be required. With respect to bankruptcy and insolvency proceedings, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final. In the case of receiverships and conservatorships, the computation date shall be the date the receiver or conservator was appointed.

2. The person filing this schedule is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

3. For purposes of this paragraph, the term *financial institution* includes any bank, bank holding company, savings association, or savings and loan holding company, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], any federal or state credit union, as defined in Section 101 of the Federal Credit Union Act [12 U.S.C. 1752], or any system institution of the Farm Credit System, as defined in Section 5.35 of the Farm Credit Act of 1971 [12 U.S.C. 2271], or any substantially equivalent foreign institution.

4. While negative answers to Item 2(e) are required in this schedule, they need not be furnished to security holders.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

16. By amending Item 5 of Form N–1A (referenced in §§ 239.15A and 274.11A) to revise the introductory text, to redesignate paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) and to add paragraph (d) to read as follows:

Note: The text of Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 5 Management of the Fund

Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) * * *

d. Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 5(d), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

* * * * *

17. By amending Item 9 of Form N–2 (referenced in §§ 239.14 and 274.11a–1) to revise the introductory text of paragraph 1, to redesignate paragraphs 1.d, 1.e, 1.f, and 1.g as paragraphs 1.e, 1.f, 1.g, and 1.h, to add a paragraph 1.d, and to add "9.3" after the word "item" in the first clause of the Instruction to paragraph 3 to read as follows:

Note: The text of Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 9. Management

1. *General:* Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) * * *

d. Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 1.d, "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

* * * * *

18. By amending Item 6 of Form N–3 (referenced in §§ 239.17a and § 274.11b) to revise the introductory text, to redesignate paragraphs (c) and (d) as (d) and (e), and to add paragraph (c) to read as follows:

Note: The text of Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 6. Management

Describe concisely the management and business of the Registrant, including:

(a) * * *

(b) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, executive officer and advisory board member of the Registrant, and each managerial person of the investment adviser.

Instruction. For the purposes of this Item 6(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the Registrant.

* * * * *

19. By amending Item 5 of Form N–4 (referenced in §§ 239.17b and 274.11c) to redesignate paragraph (f) as (g) and to add paragraph (f) to read as follows:

Note: The text of Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–4

* * * * *

Item 5. General Description of Registrant, Depositor, and Portfolio Companies

* * * * *

(f) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director, officer and employee of the depositor, or its affiliates, who participates directly in the management or administration of the separate account.

* * * * *

20. By amending Form N–5 (referenced in §§ 239.24 and 274.5) to designate the text of Item 11 as paragraph (a) and to add paragraph (b), to designate the text of Item 12 as paragraph (a) and to add paragraph (b), and to add paragraph (d) to Item 16 to read as follows:

Note: The text of Form N–5 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–5

* * * * *

Item 11. Directors and Executive Officers

(a) * * *

(b) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each director and executive officer of the Registrant.

Item 12 Members of Advisory Board of Registrant

(a) * * *

(b) Provide the information required by Item 401(f)(1) of Regulation S–K [229.401(f)(1)] as to each member of the registrant's advisory board.

* * * * *

Item 16. Investment Advisers.

* * * * *

(d) Provide the information required by Item 401(f)(1) of Regulation S–K [229.401(f)(1)] as to each managerial person of each investment adviser.

Instruction: For the purposes of this Item 16(d), "managerial person" means any

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affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

21. By amending Item 28 of Form N–8B–2 (referenced in § 274.12) to add paragraph (c) to read as follows:

Note: The text of Form N–8B–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–2

* * * * *

Officials and Affiliated Persons of Depositor

28. (a) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of the depositor.

Instruction: For the purposes of this Item 28(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

22. By amending Item 27 of Form N–8B–3 (referenced in § 274.13) to add paragraph (c) to read as follows:

Note: The text of Form N–8B–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–3

* * * * *

Officials and Affiliated Persons of Depositor

26. (a) * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of the depositor.

Instruction: For the purposes of this Item 26(c), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

23. By amending Form N–8B–4 (referenced in § 274.14) to add paragraph (d) to Item 29 and to add paragraph (c) to Item 34 to read as follows:

Note: The text Form N–8B–4 does not and the amendments will not appear in the Code of Federal Regulations.

Form N–8B–4

* * * * *

Item 29. Investment Advisers and Agreements Therewith

* * * * *

(d) Provide the information required by Item 401(f)(f) of Regulation S–K [§ 229.401(f)(1)] as to each managerial person of each investment adviser of the registrant.

Instruction: For the purposes of this Item 29(d), "managerial person" means any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of the investment adviser who is engaged in the management, direction, supervision, or performance of any activities related to the registrant.

* * * * *

Item 34. Directors, Officers and Advisory Board Members

* * * * *

(c) Provide the information required by Item 401(f)(1) of Regulation S–K [§ 229.401(f)(1)] as to each person named pursuant to paragraph (a).

* * * * *

By the Commission.

Dated: November 1, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27486 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–20–1–6628; FRL–5102–7]

Transportation Conformity; Approval of Petition for Exemption From Nitrogen Oxides Provisions, Nonclassifiable Ozone Nonattainment Areas, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of a petition from the State of Louisiana requesting that the nonclassifiable ozone nonattainment areas in the State be exempted from the requirement to perform the oxides of nitrogen (NO_x) portion of the build/no-build test required by the new Federal transportation conformity rule. This petition for exemption was submitted on August 5, 1994.

DATES: Comments on this proposed action must be received in writing by December 7, 1994.

ADDRESSES: Comments should be mailed to Guy R. Donaldson, Acting Chief, Air Planning Section (6T–AP), US EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, TX 75202–2733.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, P.O. Box 82135, Baton Rouge, LA 70884–2135.

Anyone wishing to review this petition at the US EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

Background

The transportation conformity final rule entitled "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under title 23 U.S.C. or the Federal Transit Act," was published in the **Federal Register** on November 24, 1993 (58 FR 62188). This action was required under section 176(c)(4) of the Clean Air Act (CAA) as amended in 1990.

The transportation conformity rule requires each ozone nonattainment area and maintenance area to perform a regional analysis of motor vehicle volatile organic compound and NO_x emissions from any planned transportation project. This analysis must demonstrate that the emissions which would result from the proposed transportation system, if the transportation plan were implemented, are within the total allowable level of emissions described in the motor vehicle emissions budget.

Until an attainment demonstration or maintenance plan is approved by the

EPA, this emissions analysis must pass the build/no-build test. This analysis must demonstrate that the emissions from the planned transportation project, if implemented, would be less than the emissions without the planned transportation project. Thus, the build/no-build test is intended to ensure that the transportation plan contributes to annual emissions reductions consistent with the CAA until such time as the attainment demonstration or maintenance plan is approved. For further information concerning the Federal transportation conformity requirements, see 40 CFR part 51, subpart T and 40 CFR part 93, subpart A.

Transportation Conformity and Section 182(f) Exemptions

On June 17, 1994, the EPA published a national interpretation of transportation conformity and Section 182(f) exemptions entitled "Transportation Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions" (59 FR 31238) (General Preamble). This General Preamble clarifies and interprets how ozone nonattainment areas classified as less than marginal, which have air quality monitoring data demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, may be exempted from certain NO_x requirements.

As discussed in the General Preamble, both the transportation conformity rule and CAA section 182(f)(1)(A) state that NO_x requirements shall not apply in nonattainment areas if the Administrator determines that additional reductions of NO_x would not contribute to attainment of the NAAQS for ozone in the area. The EPA also issued two guidance documents on section 182(f) exemptions. These two documents, "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992" dated September 17, 1993, and "Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f)" dated December 1993, state that if an area has attained the ozone standard, additional NO_x reductions would not contribute to attainment.

As explained in the General Preamble, the EPA believes that a demonstration of attainment made through adequate air quality monitoring data, consistent with 40 CFR part 58 and recorded in the EPA's Aerometric Information Retrieval System (AIRS), can qualify an area as a "clean data area". Further, the EPA believes these "clean data areas" can request an exemption from the NO_x provisions of transportation conformity. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after an exemption is granted. If the EPA determines that an exempted area has violated the ozone standard, the section 182(f) exemption will be rescinded. Any decision to rescind the NO_x exemption would be based on an evaluation of the air quality data recorded in AIRS. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would be subject to the NO_x provisions of the conformity rule.

Analysis of State Submittal

The State of Louisiana has ten parishes designated as nonclassifiable ozone nonattainment areas. Nonclassifiable ozone nonattainment areas had air quality data which demonstrated attainment of the ozone standard, but had not petitioned the EPA for redesignation to attainment before the Clean Air Act Amendments (CAAA) were passed. These parishes were nonattainment prior to the 1990 CAAA, and retained their ozone nonattainment designations with the passage of the CAAA. Transitional areas possessed the required three years of air quality data, while incomplete data areas had less than the required three years of data.

Beauregard, Grant, Lafourche, St. James and St. Mary Parishes were classified as incomplete data areas for ozone on November 6, 1991 (56 FR 56694). The New Orleans Consolidated Metropolitan Statistical Area contained four parishes which were designated as transitional ozone nonattainment areas on November 6, 1991: Jefferson, Orleans, St. Bernard and St. Charles. Lafayette Parish was also classified as a transitional ozone nonattainment area on November 6, 1991.

On August 5, 1994, the State of Louisiana submitted a petition to the EPA requesting that the ten parishes listed above be exempted from the requirement to perform the NO_x portion of the build/no-build test required by the new transportation conformity rule. This exemption request is pursuant to the recently published General Preamble for transportation conformity NO_x exemptions.

The exemption request was based on air monitoring data which demonstrated that the NAAQS for ozone was attained in each of these nonclassifiable ozone nonattainment areas for the three years prior to the petition. The Air quality data was verified as quality assured in accordance with monitoring requirements specified in 40 CFR part 58, and demonstrates that the ozone standard has been maintained in these areas.

Proposed Rulemaking Action

The EPA has evaluated the State's exemption request for consistency with the CAA, EPA regulations, and EPA policy. The EPA believes that the exemption request and monitoring data qualifies the parishes of Beauregard, Grant, Lafayette, Lafourche, Jefferson, Orleans, St. Bernard, St. Charles, St. James, and St. Mary as "clean data areas". In addition, the EPA has determined that the exemption request meets the requirements and policy set forth in the General Preamble for NO_x exemptions from the build/no-build test for transportation conformity, and today is proposing approval of Louisiana's request for exemption from the NO_x build/no-build test of transportation conformity for these parishes. The section 182(f) exemption will be conditioned upon the area's monitoring data continuing to demonstrate attainment after the exemption has been granted. If the EPA later determines that any of these parishes has violated the ozone standard, the section 182(f) exemption will be rescinded for that parish. Past conformity determinations and transportation plans would not be affected, but new conformity determinations would then be subject to the NO_x provisions of the conformity rule.

The EPA has reviewed this request for exemption from the NO_x provisions of the Federal transportation conformity rule for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Because an exemption from the Federal transportation conformity rule does not impose any new requirements,

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I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (Union Electric Co. v. U.S.E.P.A., 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 26, 1994.

William B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94–27541 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–123; FCC 94–266]

Radio Broadcast Services; Television Program Practices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its initiation of a rulemaking proceeding to assess the legal and policy justifications, in light of current economic and technological conditions, for the Prime Time Access Rule, and to consider the continued need for the rule in its current form.

DATES: Comments are due on or before January 6, 1995, and reply comments are due on or before February 6, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz and Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 94–123, adopted October 20, 1994, and released October 25, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, D.C. 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission initiated a rulemaking proceeding to assess, in light of current economic and technological conditions, the legal and policy justifications for the Prime Time Access Rule ("PTAR"), Section 73.658(k) of the Commission's Rules, and to consider the continued need for the rule in its current form. The rule generally prohibits network-affiliated stations in the top 50 television markets from broadcasting more than three hours of network or former network ("off-network") programs during the four prime time viewing hours (*i.e.*, 7 to 11 p.m. Eastern and Pacific times; 6 to 11 p.m. Central and Mountain times). The rule also contains exemptions for certain types of programming (*e.g.*, special news, documentary, children's and sports programming).

2. PTAR was initially promulgated in 1970 in response to the concern that the three major television networks—ABC, CBS and NBC—dominated the program production market, controlled much of the video fare presented to the public, and inhibited the development of competing program sources. The Commission believed that PTAR would increase the level of competition in the independent production of programs, reduce the networks' control over their affiliates' programming decisions, and increase the diversity of programs available to the public.

3. The Commission believes that as the video marketplace has developed and the major networks' power has declined in the years since PTAR was established, an overall review of the rule is now appropriate. In this regard, on April 12, 1994, the Commission issued a *Public Notice* soliciting public comment on various filings seeking modification or elimination of PTAR. Parties filing comments thus far, however, have failed to present a rigorous economic framework for analysis, supported by adequate data, that will enable the Commission to assess the competitive effects of the rule and its efficacy in achieving both competition and non-competition-based public interest goals. Therefore, this *Notice of Proposed Rule Making* proposes a framework to evaluate the continued efficacy of the rule.

4. The analytical framework set forth by the Commission recognizes that in 1970, there was a strong cast for taking government action to correct the effects of a competitively unbalanced market. Accordingly, the FCC established PTAR. However, with the development of alternative forms of video distribution, the growth of the broadcast industry (including increased competition among networks for affiliates), and the increase in the number and types of entities creating nationally distributed video programming, the case for PTAR must be revisited. The analytical framework proposed in this *Notice* provides a means for evaluating the factual and economic assumptions underlying PTAR, to ascertain whether the rule operates to achieve its intended effects, and what unintended effects it may also cause. In addition, the Commission will use the framework to evaluate whether the intended and unintended effects further the attainment of legitimate goals in today's world. The ultimate decision to retain, modify or eliminate the rule will turn on a weighing of its costs against its benefits.

5. More specifically, the analytical framework seeks comment on the validity of the following three basic ways PTAR is said to alter the competitive opportunities in the relevant markets for the public good. First, by carving out a portion of prime time to be used for non-network use, the rule made it easier for independent producers to sell their programming to the more successful stations in the top markets (*i.e.*, affiliates of the three major networks). Among the intended effects was the goal of strengthening existing independent producers and encouraging entry of new ones. From an economic perspective, the Commission had anticipated that the decrease in supply of programming available to affiliates (caused by PTAR's ban on network and off-network programming) would increase prices paid for independently produced programming, thus acting as a spur for greater production and new entry. Thus, the Commission had predicted that the rule would increase the net amount of diverse programming available to the viewing public and create new competitors to the existing three networks. The *Notice* asks commenters to assess this dynamic, raising such questions as: (1) Whether this enhanced opportunity increases the net amount of independently produced programs available to the public; (2) whether this opportunity increases the net number of independent program producers serving the market; and (3) whether the limit placed by this opportunity on an affiliate's ability to carry network or off-network programming during the access period reduces the economic value of network programming aired during the other parts of prime time, by limiting the potential buyers for these programs after the network run is complete, thereby depressing the total return on these programs.

6. Second, the rule sought to reduce the networks' role in dictating their affiliates' programming choices, by forbidding the affiliates in the top 50 markets from running more than three hours of network or off-network programming during the four-hour prime time period. Thus, the rule was viewed as a way to increase affiliate autonomy and reduce network dominance. The immediate effect was to ensure that not all of an affiliate's prime time programming came through the same network filter. The *Notice* asks commenters to provide evidence regarding the bargaining positions of affiliates *vis-a-vis* their networks. For example, during hours other than the PTAR access period, do affiliates in the top 50 markets carry programs other than network programs? To what extent does the market dynamic in the top 50 markets dictate performance in the less populated markets? Are the recent affiliation switches indicative of a change in the relative bargaining power of the networks and their affiliates, or are these switches due to other factors? To the extent that the behavior of affiliates might change in some way if PTAR were modified or repealed, how would that affect the programs ultimately available to viewers? The *Notice* solicits comment on these and other related issues.

7. Third, the rule has come to be viewed as a mechanism for strengthening independent stations, with the result of increasing the strength and number of the primary buyers of independently produced programming. The argument is that, with this increase, not only are the number of independent program producers increasing, but the opportunity for new networks to emerge and compete with the existing networks is enhanced (by the presence of a healthy pool of independent stations). Thus, by strengthening independent stations overall, the rule has been considered to further both diversity and competition goals. Moreover, the independent stations themselves produce some degree of original programming, which contributes to the overall levels of diverse programming available in the market. The *Notice* thus invites comment on whether, given the current level of program diversity, the competitive alteration that PTAR causes with respect to a segment of the market is warranted. Similarly, the *Notice* asks commenters to address the degree to which, from economic and public interest perspectives, PTAR leads to misallocated resources, limits viewers' programming choices, and alters the optimal prices paid. The *Notice* seeks comment on its analysis of this issue in general, and in particular raises questions such as: (1) whether regulatory measures designed to encourage the introduction into the broadcast industry of increased competition in the form of new networks remain necessary when the established networks and their affiliates are also competing against nonbroadcast video services; and (2) whether any inefficiencies of encouraging entry of new networks by placing limits on incumbents are outweighed by real benefits, and if so, what types and what number of inefficiencies and benefits.

8. In addition to seeking comment on the above-described ways in which PTAR alters the competitive opportunities in the relevant markets, the Commission framed certain overarching issues going to the public interest basis for PTAR, including, but not limited to, whether non-broadcast media should be considered in assessing the rule, whether PTAR is the appropriate mechanism to ensure diversity for those who do not avail themselves of technological alternatives to broadcast television, and whether other regulatory responses other than PTAR would be more effective or efficient to achieve the stated goals of the rule.

9. To the extent that the record to be developed might support retaining PTAR in whole or part, the Commission seeks public comment on the incidental elements of the rule—the definition of a "network" for purposes of the rule, and the various program categories that are exempted from application of PTAR. Moreover, although the policy examinations to be undertaken in this proceeding may make it unnecessary to address specific constitutional questions raised by the rule, if the rule is to be retained in some form, the Commission seeks comment on various constitutional implications of the rule and any proposed alternatives.

10. The Commission seeks comment on these issues, as well as specific economic analysis and supporting data favoring either retention, modification or repeal of the rule. If the Commission chooses to modify or eliminate the rule, we must then determine when to do so and whether to adopt transition measures. A modification to the rule might be appropriately enacted immediately after such a decision is made, or through a timetable that allows industry participants to adjust to the changing economic conditions that might result from modifications to PTAR. Elimination of the rule might be tied to technological developments or the timing might be tied to regulatory developments such as the scheduled expiration of the fyn/syn rules of some time thereafter. Similarly, a transition mechanism could be based on a variety of different considerations, focusing on defining the stages of that transition if one is adopted. For example, one possible transition would entail initial repeal of the off-network restriction followed by later repeal of the remainder of the rule. The *Notice* questions whether such a staggered repeal of the rule would further the public interest by reducing marketplace disruption or would delay the realization of benefits that could otherwise be realized from immediate form. In summary, should the record support elimination or modification of the rule, the Commission will require a record regarding the timing of any action and whether specific transition measures are necessary or appropriate.

11. Initial Regulatory Flexibility Analysis

Reason for the Action

This proceeding was initiated to review and update the provisions of PTAR.

Objective of the Action

The actions proposed in this *Notice* are intended to reexamine and perhaps modify or eliminate the prime time access rule, 47 C.F.R. § 73.658(k), in response to changes in the communications marketplace, and to better adjust to the needs of the public.

Reporting, Record Keeping, and Other Compliance Requirements Inherent in the Proposed Rule.

None.

Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

Description of Potential Impact and Number of Small Entities Involved

Approximately 416 existing television broadcasters of all sizes may be affected by the proposals contained in this *Notice*.

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Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

The proposals contained in this *Notice* are meant to simplify and ease the regulatory burden currently placed on network affiliates in the top 50 markets.

12. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this *Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981)).

Ex Parte

13. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

Comment Dates

14. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 6, 1995, and reply comments on or before February 6, 1995. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27425 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 92–20; Notice 4]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of Final Denial.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) denies the petition submitted by the State of Florida for approval of alternate odometer disclosure requirements. Only one comment was submitted in response to NHTSA's preliminary determination that Florida's proposed procedures threaten the integrity of the current disclosure system. The agency reaffirms that determination, and Florida must conform its procedures to the odometer disclosure requirements of 49 CFR Part 580.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C., 20590 (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Background

To address the problem of odometer fraud, 49 U.S.C. Chapter 327 (previously 15 U.S.C. 1981 *et seq.*) (the Act) provides that each person transferring ownership of a motor vehicle must disclose the mileage on the vehicle's title. The Act requires the States to conform their procedures to ensure that the titles they issue contain odometer disclosure statements. Section 32705(d) of the Act directs NHTSA to approve alternate methods of odometer disclosure submitted by a State, provided that those methods are consistent with the purposes of the disclosure required by the Act.

NHTSA's implementing regulation, 49 CFR Part 580, identifies specific elements to be included in the odometer disclosure statement (49 CFR 580.5 and 580.7). The elements of central importance to the instant petition are the name and current address of both the transferor and the transferee. The regulation also sets forth procedures a petitioning State must follow to seek approval of alternate requirements to those otherwise required of the State (49 CFR 580.11). In accordance with this latter provision, the State of Florida submitted a petition for approval of alternate disclosure requirements.

Basis for the Petition

Florida seeks approval for alternative procedures to those contained in 49 U.S.C. 32705(b) (previously 15 U.S.C. 1988(d)) and 49 CFR 580.5 (c)(3) and (c)(4). (The petition identifies paragraphs (c)(2) and (c)(3) of the regulation, but it is clear from its context that paragraphs (c)(3) and (c)(4) were intended.) These provisions require odometer disclosure statements to be made on a title produced by means of a secure printing process and to include the name and current address of the transferor and transferee.

Florida currently uses two motor vehicle title forms, copies of which were submitted with the petition. In all aspects of relevance here, the forms are identical. Both forms contain one block for transfer of title by the seller on the front and three blocks for dealer reassignment and one block for application for title on the back. Florida states that the transfer of title and the dealer reassignment blocks appear as prescribed by 49 CFR 580.5, except that they do not contain a space for the address of the transferor and transferee. Notwithstanding the absence of address spaces in these locations, Florida asserts that its titles comply with the Federal requirements in all cases except those involving reassignment by a licensed motor vehicle dealer.

Florida explains that State law (Florida Statutes, Chapter 319) precludes the assignment of a motor vehicle title by anyone other than the person in whose name the title was issued, unless the person is a dealer. Consequently, in a sale between non-dealers, Florida points out that the required addresses will be available because the transferor's address appears on the front of the title and the transferee's address will eventually appear in the block for "Application for Title by Purchaser." Citing NHTSA's determination (53 FR No. 151 at 29470, Aug. 5, 1988) that information located elsewhere on the title need not be repeated in the disclosure statement, Florida argues that its titles comply with Federal requirements related to transfers between non-dealers.

The alternate procedures for which Florida seeks approval apply to transfers by or between licensed dealers. Florida acknowledges that its titles do not make accommodation for the address of a dealer. Instead, the dealer is required to include its license number in the reassignment block appearing on the back of the title, when effecting a subsequent transfer. According to Florida, the Department of Highway Safety and Motor Vehicles (DHS) maintains records of all licensed dealers in the State, indexed by both license number and name, from which current address information is freely available upon request. Florida asserts that this system is superior to the requirement of NHTSA's regulation, because the State records contain the latest available address information, and because consumers can be informed by the DHS of avenues of relief through the State's consumer complaint process and its $25,000 dealer license bond. Accordingly, Florida concludes that the odometer disclosure procedures it imposes on dealers are fully consistent with the purposes behind the Federal odometer disclosure requirements, and that its petition should therefore be granted.

Notice of Preliminary Determination

On August 29, 1994, NHTSA published a notice in the **Federal Register** (59 FR 44397) preliminarily denying Florida's petition. NHTSA determined that an odometer disclosure statement that does not include the addresses of transferors and transferees threatens the integrity of the current system, and that Florida's proposed alternative does not properly accommodate the purposes which these addresses serve.

NHTSA rejected the procedures Florida would impose on transactions in which at least one party is a dealer as inconsistent with the purposes of the Federal requirements. Noting that the DHS would be unable to provide the required address information from its records if an out-of-state dealer were involved in the chain of transfer on a Florida title, NHTSA determined that Florida's approach failed to accommodate interstate motor vehicle transfers. NHTSA further noted that it would be extremely difficult to ascertain the location of an out-of-state dealer without any identifying information beyond a license number from an unknown State.

NHTSA concluded that Florida's proposed procedures would hinder enforcement efforts, which rely on readily available address information for all transferors and transferees in order to trace the sales histories of motor vehicles. The agency also noted that title blocks lacking a common information element accepted by most States as the norm for compliance with odometer disclosure requirements are more likely to be questioned or rejected in interstate transactions, thereby hindering the flow of commerce in motor vehicles.

With respect to motor vehicle transfers in which no party is a dealer, NHTSA agreed that Florida's odometer disclosure procedures satisfy Federal odometer disclosure requirements. However, NHTSA recommended that the purchaser's address appear in the transfer block on the front of the title for improved clarity.

Comments

In response to the Notice of Preliminary Determination, The agency received only one comment, which was submitted by the California Department of Motor Vehicles after the close of the comment period. Despite its lateness, NHTSA has considered the comment.

According to California, national title standards developed by the American Association of Motor Vehicle Administrators and accepted by the States set forth requirements for title document size and contents. California asserts that these standards and State statutes often preclude the inclusion of additional information on the title document. Due to these title size limitations, California is concerned that mandating the address information might reduce the space available for dealer reassignment blocks and therefore lead to increased paperwork in title transfers.

As a preliminary matter, NHTSA would point out that neither State statutes nor association standards may act to preclude the disclosure of information required by Federal law. Moreover, California fails to acknowledge that all other States (except Florida) have properly accommodated the requirement for including address information in the odometer disclosure statement, and many of these States' titles include multiple dealer reassignment blocks. Hence, California's concern is not reflected in real world problems. California has only recently begun to conform its titling procedures with Federal odometer requirements, and should consult other States for guidance in this matter.

Final Determination

The agency is in possession of no information that would suggest that a change in the preliminary determination is appropriate. Accordingly, NHTSA reaffirms its preliminary determination and denies Florida's petition for approval of alternate odometer disclosure requirements. Florida must conform its procedures to the odometer disclosure requirements of 49 CFR Part 580. Additionally, the agency urges Florida to include a block for the purchaser's address on the front of the title, for improved clarity.

Issued on: November 2, 1994.

Philip R. Recht,

Chief Counsel.

[FR Doc. 94–27523 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 941002–4302; I.D. 092794B]

RIN 0648–AG23

Stone Crab Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). This rule would establish a temporary moratorium, ending not later than June 30, 1998, on the Federal registration of stone crab vessels by the Director, Southeast Region, NMFS (Regional Director), and would invalidate any Federal numbers and color codes issued by the Regional Director after July 1, 1994, for use on stone crab vessels and gear. In addition, NMFS proposes changes to correct and clarify the regulations, conform them to current standards, and enhance enforcement.

DATES: Written comments must be received on or before December 19, 1994.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

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Requests for copies of Amendment 5, which includes a regulatory impact review and an environmental assessment, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR part 654 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The stone crab fishery managed under the FMP is located entirely off the coast of Florida, with the majority of harvest from Florida's waters. Florida has actively managed the fishery since 1929. The FMP was implemented in 1979, principally to regulate the activities of shrimp vessels registered in states other than Florida to resolve gear conflicts with stone crab fishermen. Other FMP objectives included managing the stone crab resource for optimum yield, conserving the stocks while attaining full utilization, establishing an effective reporting system, and promoting uniformity of the regulations throughout the management area. The FMP, as amended addressed the gear conflicts and adopted Florida's rules for stone crab in the exclusive economic zone (EEZ).

The biological condition of the stone crab fishery is stable, with landings of claws averaging about 3 million lb (1.36 million kg) annually. During the early development of the fishery, annual landings increased as fishing effort increased; however, landings since 1985 have not increased while fishing effort has doubled. The fishery currently has more participants and stone crab traps than are necessary to harvest efficiently the optimum yield.

Florida is considering a moratorium on the issuance of State permits for the stone crab fishery while alternatives for a possible effort limitation or controlled access system are considered. The current regulations provide for the issuance by the Regional Director of Federal numbers and color codes for stone crab fishing in the EEZ when an applicant is unable to obtain a State permit. However, the Regional Director has not issued any Federal numbers/color codes under the current regulations. Amendment 5 would place a temporary moratorium ending not later than June 30, 1996, on the issuance by the Regional Director of Federal numbers and color codes for use on stone crab vessels and gear, and would invalidate any permits issued between July 1, 1994, and the effective date of the regulations implementing Amendment 5. This moratorium would end no later than June 30, 1996, and would discourage speculative entry into the fishery while potential effort or access controls are considered by the industry, Florida, and the Council.

NMFS published notification of the proposed moratorium on July 1, 1994 (59 FR 33947), which advised fishermen that, if Amendment 5 is approved and implemented, any Federal numbers/color codes issued between July 1, 1994, and the effective date of the implementing regulations would no longer be valid.

During the 4-year moratorium period, it is reasonably expected that the Council will propose further management measures that would revise the provisions for the issuance of Federal numbers/color codes. Accordingly, NMFS proposes to remove the current provisions regarding Federal issuance of numbers/color codes at this time rather than suspend their effectiveness for the 4-year period. If needed, any such provisions will be implemented by a subsequent rulemaking to be effective when the moratorium actually expires.

Additional Measures in Amendment 5

Amendment 5 proposes a procedure whereby the Florida Marine Fisheries Commission (FMFC) may request the Regional Director to implement in the EEZ by regulatory amendment, with the Council's review and concurrence, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet. The regulatory amendment process requires publication of a proposed rule in the **Federal Register**, a public comment period, and, if the rule is approved, publication of a final rule in the **Federal Register**. The specific steps of the regulatory amendment procedure under the enhanced cooperative management system proposed in Amendment 5 are contained on pages 8–10 of the amendment.

Under Amendment 5, the Council FMFC, and NMFS would adopt a protocol that describes the roles and positions of the Federal and State governments in the management of the stone crab fishery. The provisions of the protocol would be as follows:

1. The Council and NMFS acknowledge that the fishery is a State fishery (which extends into the EEZ) in terms of current participants in the directed fishery, major nursery, fishing, and landing areas, and historical regulation; and it is a fishery requiring cooperative State/Federal efforts for effective management through an FMP.

2. The Council and NMFS acknowledge that the State is managing, and will continue to manage the resource to protect and increase the long-term yields and prevent depletion of the stone crab stocks and that the State Administrative Procedure Act and rule implementation procedures, including final approval of the rules by Governor and Cabinet, provide ample and fair opportunity for all persons to participate in the rulemaking procedure.

3. The FMFC acknowledges that rules proposed for implementation under this amendment must be consistent with the management objectives of the FMP, the national standards, other provisions of the Magnuson Act, and other applicable Federal law. Federal rules will be implemented in accordance with regulatory amendment procedures.

4. The Council and NMFS agree that, for any of the rules defined within this amendment, the State may propose the rule directly to NMFS, concurrently informing the Council of the nature of the rule, and that NMFS will implement the rule within the EEZ, provided it is consistent under protocol number 3. If the Council informs NMFS of its concern that the rule may be inconsistent with the FMP and Federal law (protocol number 3), NMFS will not implement the rule until the Council, FMFC, and NMFS, or their representatives, meet and resolve the issue.

5. The State will have the responsibility for collecting and developing the information upon which to base the fishing rules, with assistance by NMFS, as needed, and will cooperatively share the responsibility for enforcement with the Federal agencies.

6. The FMFC will provide NMFS and the Council written explanations of its decisions related to each of the rules (including a statement of the problem that the rulemaking addresses, how the rule will solve the problem, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant

7. The rules will apply to the management area (the EEZ off the west coast of Florida and off the south side of the Florida Keys).

8. NMFS agrees that its staff will prepare the proposed (and final) Federal rule. The Council agrees that its staff, with assistance by the staffs of FMFC and NMFS, will prepare the environmental assessment, regulatory impact review, and/or other documents required in support of the rule.

The Council believes that using a regulatory amendment procedure under the protocol would provide more flexible, responsive, and cost-effective management of the stone crab fishery. The following rules or regulatory changes could be implemented under the protocol: Limiting the number of traps that may be fished by each vessel; the construction characteristics of traps; gear and vessel identification requirements; gear that may be used or prohibited in a directed fishery; bycatch levels in non-directed fisheries; seasons; soak/removal periods and requirements for traps; use, possession and handling of stone crabs aboard vessels; and minimum legal sizes.

Concomitant with the proposed regulatory amendment procedure, Amendment 5 proposes to add to the objectives of the FMP the following: "Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative state and federal management of the fishery."

These additional measures in Amendment 5 do not require implementing regulations.

Additional background and rationale for the measures discussed above are contained in Amendment 5, the availability of which was announced in the **Federal Register** on September 30, 1994 (59 FR 49908).

Additional Measures Proposed by NMFS

In a significant number of sections, the stone crab regulations do not conform to current standards applicable to other federally managed fisheries in the Gulf of Mexico and off the southern Atlantic states. Accordingly, NMFS proposes to revise the entire part 654. The substantive changes proposed by NMFS are discussed below.

The purpose and scope section, § 654.1, would be revised to clarify the geographical scope of the regulations.

In § 654.2, unused definitions would be removed and the address of the Director, Southeast Region, NMFS, would be corrected.

The vessel and gear identification requirements, currently in § 654.4, are essentially identical to Florida's requirements. Since all required identification markings would be issued by Florida, separate Federal vessel and gear identification requirements would no longer be necessary. Accordingly, this rule would refer to pertinent rules of Florida for such requirements.

In § 654.7, the prohibitions would be restated and prohibitions would be added: (1) On using fishing gear in a manner to obstruct fishing or damage vessels and gear; (2) on making a false statement to an authorized officer; and (3) regarding interference with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

For uniformity and clarity, NMFS proposes to restate the seasonal trawl closures in the area off the southwestern coast of Florida and in the shrimp/stone crab separation zones in terms of "trawling." Currently the regulations at § 654.23 state these closures in terms of "trawl gear" and "fish(ing) for shrimp." For the southwestern Florida closure, the change in terminology is not substantive. For the shrimp/stone crab separation zones, the change would ease a restriction, in that fishing for shrimp by traps would not be prohibited in the zones/times in which fishing for shrimp is currently prohibited. In terms of gear separation, which is the purpose of the shrimp/stone crab separation zones, fixed gear and trawling would continue to be separated. In addition, the description of the area of the southwestern Florida seasonal trawl closure, and its depiction currently in figure 1, would be clarified to describe and show only the area that is in the EEZ.

The current regulations at § 654.23(b)(2) prohibit intentional/willful interference with fishing or obstruction or damage of a fishing vessel or fishing gear. The placement of this prohibition in the paragraph dealing with the shrimp/stone crab separation zones creates an inference that it applies only in such zones. However, the rules that originally implemented the prohibition stated that it applied "in the FCZ" (49 FR 30713, August 1, 1984). The former FCZ (fisheries conservation zone) is now the EEZ. Because such interference, obstruction, or damage is reprehensible wherever it occurs, NMFS proposes to clarify that these acts are prohibited throughout the management area. The inclusion of the phrase "with intent to" and the word "willfully" in the current language regarding these acts significantly reduces their effectiveness—proof of intent or willfulness is difficult. To enhance enforceability, NMFS proposes to remove "with intent to" and "willfully" and substitute "knowingly" in each case. Proof of a violation would then hinge on the placement, or use of articles or gear that cause obstruction or damage, if such placement or use was other than by accident.

The procedures for creation or modification of the shrimp/stone crab separation zones to prevent gear conflicts, currently at § 654.24 would be removed. These procedures apply to Florida regulatory agencies, the Council, and NMFS and are contained in the FMP. However, they are not regulatory in nature; that is, they do not control the behavior of fishermen. Therefore, their inclusion in the regulations is not necessary.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 5 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed moratorium on Federal registration of stone crab vessels operating in the EEZ would not: (1) Reduce the number of current participants in the fishery, harvest levels, or annual gross revenues of participants; (2) affect production or compliance costs of participants; (3) require capital investment to comply with the rule; or (4) require a current participant to cease business. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: October 28, 1994.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries.

For the reasons set out in the preamble, 50 CFR part 654 is proposed to be revised to read as follows:

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PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

Subpart A—General Measures

Sec.
654.1 Purpose and scope.
654.2 Definitions.
654.3 Relation to other laws.
654.4 Permits and fees. [Reserved]
654.5 Recordkeeping and reporting. [Reserved]
654.6 Vessel and gear identification.
654.7 Prohibitions.
654.8 Facilitation of enforcement.
654.9 Penalties.

Subpart B—Management Measures

654.20 Seasons.
654.21 Harvest limitations.
654.22 Gear restrictions.
654.23 Southwest Florida seasonal trawl closure.
654.24 Shrimp/stone crab separation zones.
654.25 Prevention of gear conflicts.
654.26 Specifically authorized activities.

Appendix A to part 654—Figures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Measures

§ 654.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, prepared by the Gulf of Mexico Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of stone crab and restricts the trawl fishery in the management area.

(c) "EEZ" in this part 654 refers to the EEZ in the management area, unless the context clearly indicates otherwise.

§ 654.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management area means the EEZ off the west coast of Florida and off the south side of the Florida Keys.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813–570–5301; or a designee.

Stone crab means *Menippe mercenaria, M. adina,* or the hybrid, *M. adina X M. mercenaria,* or a part thereof.

§ 654.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) and (c) of this section.

(b) The regulations in this part are intended to be compatible with, and do not supersede, similar regulations in effect for the Everglades National Park (36 CFR 7.45).

(c) The regulations in this part are intended to be compatible with similar regulations and statutes in effect in Florida's waters.

§ 654.4 Permits and fees. [Reserved]

§ 654.5 Recordkeeping and reporting. [Reserved]

§ 654.6 Vessel and gear identification.

(a) An owner or operator of a vessel that is used to harvest stone crabs by traps in the management area must comply with the vessel and gear identification requirements applicable to the harvesting of stone crabs by traps in Florida's waters, as specified in Rule 16N–8.001 and Rule 46–13.002(2) (e) and (f), Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N.; St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., room 700, Washington, DC 20002.

(b) A stone crab trap or buoy in the EEZ that is not in compliance with the gear identification requirements specified in paragraph (a) above is illegal. Such trap or buoy, and any connecting lines, will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap or buoy remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to display and maintain vessel and gear identification, as required by § 654.6(a).

(b) Possess a stone crab in the management area during the period specified in § 654.20(a).

(c) Possess a stone crab trap in the management area during the period specified in § 654.20(c).

(d) Remove from a stone crab in or from the management area, or possess in the management area, a claw that is less than the minimum size limit specified in § 654.21(a).

(e) Fail to return immediately to the water unharmed an egg-bearing stone crab, or strip eggs from or otherwise molest an egg-bearing stone crab; as specified in § 654.21(b).

(f) Hold a stone crab in or from the management area aboard a vessel other than as specified in § 654.21(c).

(g) Use or possess in the management area a stone crab trap that does not have a biodegradable panel, as specified in § 654.22(a).

(h) Pull or tend a stone crab trap in the management area other than during daylight hours, as specified in § 654.22(b).

(i) Willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area, as specified in § 654.22(c).

(j) Trawl in a closed area or during a closed season, as specified in §§ 654.23 or 654.24, or as may be implemented under § 654.25(b).

(k) Place a stone crab trap in a closed area or during a closed season, as specified in § 654.24, or as may be implemented under § 654.25(b).

(l) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 654.25(a).

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of stone crab.

(n) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 654.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 654.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 654.20 Seasons.

(a) *Closed season.* No person may possess a stone crab in the management area from 12:01 a.m., local time, May 16, through 12:00 midnight, local time, October 14, each year. Holding a stone crab in a trap in the water during a soak period or during a removal period (see paragraph (b) of this section), or during any extension thereto, is not deemed possession, provided that, if the trap is removed from the water during such period, such crab is returned immediately to the water with its claws unharvested.

(b) *Placement of traps.* (1) Prior to the fishing season, the period of October 5 through October 14 is established as a trap soak period. A stone crab trap may be placed in the management area not earlier than 1 hour before sunrise on October 5.

(2) After the fishing season, the period of May 16 through May 20 is established as a trap removal period. A stone crab trap must be removed from the management area not later than 1 hour after sunset on May 20, unless an extension to the removal period is granted by Florida in accordance with Rule 46–13.002(2)(b), Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20002. The extension authorization must be carried aboard the fishing vessel. The operator of a fishing vessel must present the authorization for inspection upon request of an authorized officer.

(c) *Possession of stone crab traps.* A stone crab trap may not be possessed in the management area from the end of the trap removal period, or an extension thereto, to the beginning of the trap soak period, as specified in paragraph (b) of this section. A stone crab trap, float, or rope in the management area during this period will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties.

§ 654.21 Harvest limitations.

(a) *Claw size.* No person may remove from a stone crab in or from the management area, or possess in the management area, a claw with a propodus measuring less than 2.75 inches (7.0 cm), measured in a straight line from the elbow to the tip of the lower immovable finger. The propodus is the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body when the entire appendage is extended. (See Appendix A, Figure 1.)

(b) *Egg-bearing stone crabs.* An egg-bearing stone crab in or from the management area must be returned immediately to the water unharmed—without removal of a claw. An egg-bearing stone crab may not be stripped of its eggs or otherwise molested.

(c) *Holding stone crabs.* A live stone crab in or from the management area may be held aboard a vessel until such time as a legal-sized claw is removed, provided it is held in a container that is shaded from direct sunlight and it is wet with sea water as necessary to keep it in a damp condition. Containers holding stone crabs must be stacked in a manner that does not compress the crabs. A stone crab body from which a legal-sized claw has been removed must be returned to the sea before the vessel reaches shore or a port or dock.

§ 654.22 Gear restrictions.

(a) *Biodegradable panels.* A stone crab trap used or possessed in the management area must have a panel constructed of wood or cotton and located on a side of the trap at least two slats above the bottom, or on the top of the trap, which, when removed, will leave an opening in the trap measuring at least 2.5 inches by 5 inches (6.35 cm by 12.7 cm).

(b) *Daylight hours.* A stone crab trap in the management area may be pulled or tended during daylight hours only, that is, from 1 hour before sunrise to 1 hour after sunset.

(c) *Gear belonging to others.* No fisherman may willfully tend, open, pull, or otherwise molest another fisherman's trap, buoy, or line in the management area without the prior written consent of that fisherman.

§ 654.23 Southwest Florida seasonal trawl closure.

From January 1 to 1 hour after sunset (local time) May 20, each year, the area described in this section is closed to trawling, including trawling for live bait. The area is that part of the management area shoreward of a line connecting the following points (see Appendix A, Figure 2):

Point	North latitude	West longitude
B[1]	26°16′	81°58.5′
C	26°00′	82°04′
D	25°09′	81°47.6′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

§ 654.24 Shrimp/stone crab separation zones.

Five zones are established in the management area and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. The zones are as shown in Appendix A, Figure 3. Although Zone II is entirely within Florida's waters, it is included in this paragraph and Appendix A, Figure 3, for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Florida Marine Fisheries Commission, 2540 Executive Center Circle, West, Suite 106, Tallahassee, FL 32301; telephone 904–487–0554. Copies may be inspected at the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, or the Office of the Federal Register, 800 North Capitol Street, NW., Room 700, Washington, DC 20002. Geographical coordinates of the points referred to in this paragraph and shown in Appendix A, Figure 3, are as follows (loran readings are unofficial and are included only for the convenience of fishermen):

Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
A	28°59′30″	82°45′36″	14416.5	31409.4	45259.1	62895.3
B	28°59′30″	83°00′10″	14396.0	31386.3	45376.8	63000.0
C	28°26′01″	82°59′47″	14301.5	31205.9	45103.2	63000.0
D	28°26′01″	82°56′54″	14307.0	31212.2	45080.0	62981.3
E	28°41′39″	82°55′25″	14353.7	31300.2	45193.9	62970.0
F	28°41′39″	82°56′09″	14352.4	31298.6	45199.4	62975.0
G	28°48′56″	82°56′19″	14372.6	31337.2	45260.0	62975.0
H	28°53′51″	82°51′19″	14393.9	31371.8	45260.0	62938.7

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Point	North latitude	West longitude	Loran Chain 7980			
			W	X	Y	Z
I	28°54'43"	82°44'52"	(1)	(1)	(1)	(1)
J	28°51'09"	82°44'00"	(2)	(2)	(2)	(2)
K	28°50'59"	82°54'16"	14381.6	31351.8	45260.0	62960.0
L	28°41'39"	82°53'56"	14356.2	31303.0	45181.7	62960.0
M	28°41'39"	82°38'46"	(3)	(3)	(3)	(3)
N	28°41'39"	82°53'12"	14357.4	31304.4	45176.0	62955.0
O	28°30'51"	82°55'11"	14323.7	31242.4	45104.9	62970.0
P	28°40'00"	82°53'08"	14352.9	31295.7	45161.8	62955.0
Q	28°40'00"	82°47'58"	14361.3	31305.4	45120.0	62920.0
R	28°35'14"	82°47'47"	14348.6	31280.6	45080.0	62920.0
S	28°30'51"	82°52'55"	14327.7	31247 0	45086.6	62955.0
T	28°27'46"	82°55'09"	14315.2	31225.8	45080.0	62970.0
U	28°30'51"	82°52'09"	14329.1	31248.6	45080.0	62949.9

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(a) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ during the period October 5 through May 20, each year.

(b) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(c) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ during the period October 5 through May 20, each year.

(d) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(1) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ during the periods October 5 through December 1, and April 2 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone IV that is in the EEZ during the period December 2 through April 1, each year.

(e) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(1) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ during the periods October 5 through November 30, and March 16 through May 20, each year.

(2) It is unlawful to trawl in that part of Zone V that it is in the EEZ during the period December 1 through March 15, each year.

(f) A stone crab trap, float, or rope in the management area during a period not authorized by this section will be considered unclaimed or abandoned property and may be disposed of in any manner considered appropriate by the Secretary or an authorized officer. An owner of such trap, float, or rope remains subject to appropriate civil penalties. A stone crab trap will be presumed to be the property of the most recently documented owner.

§ 654.25 Prevention of gear conflicts.

(a) No person may knowingly place in the management area any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, the Regional Director may modify or establish separation zones for shrimp trawling and the use of fixed gear as may be necessary and appropriate to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 654.26 Specifically authorized activities.

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

Appendix A to Part 654—Figures

Figure 1—Stone Crab Claw
Figure 2—Southwest Florida Seasonal Trawl Closure
Figure 3—Shrimp/Stone Crab Separation Zones

BILLING CODE 3510-22-P

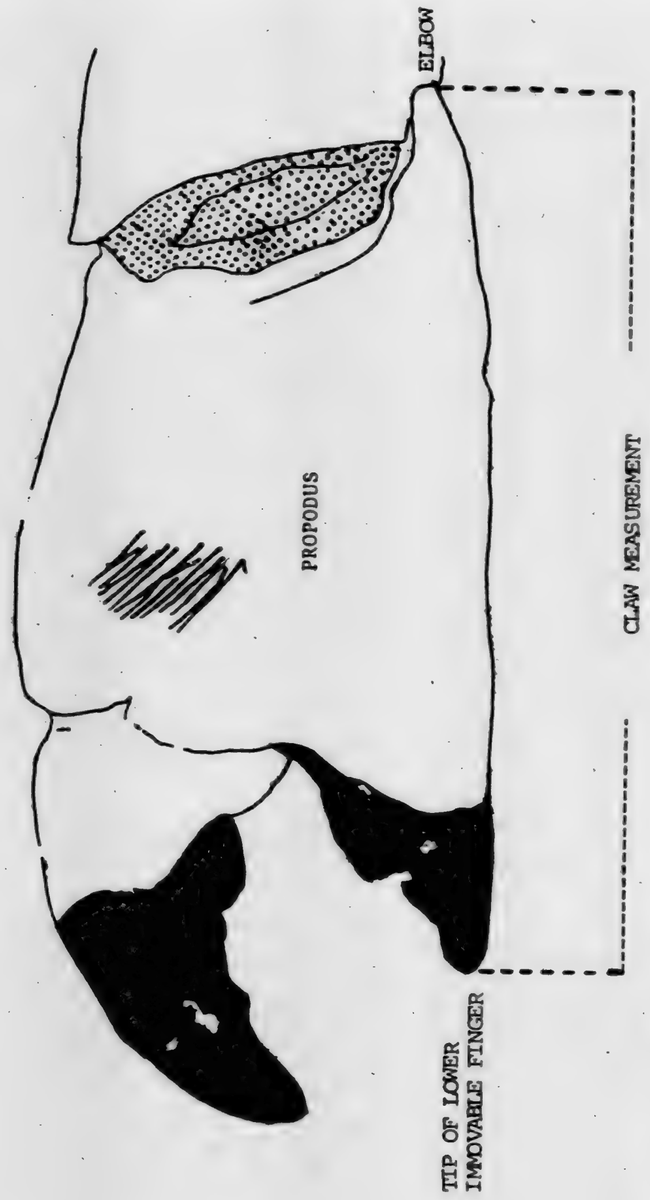


FIGURE 1. STONE CRAB CLAW

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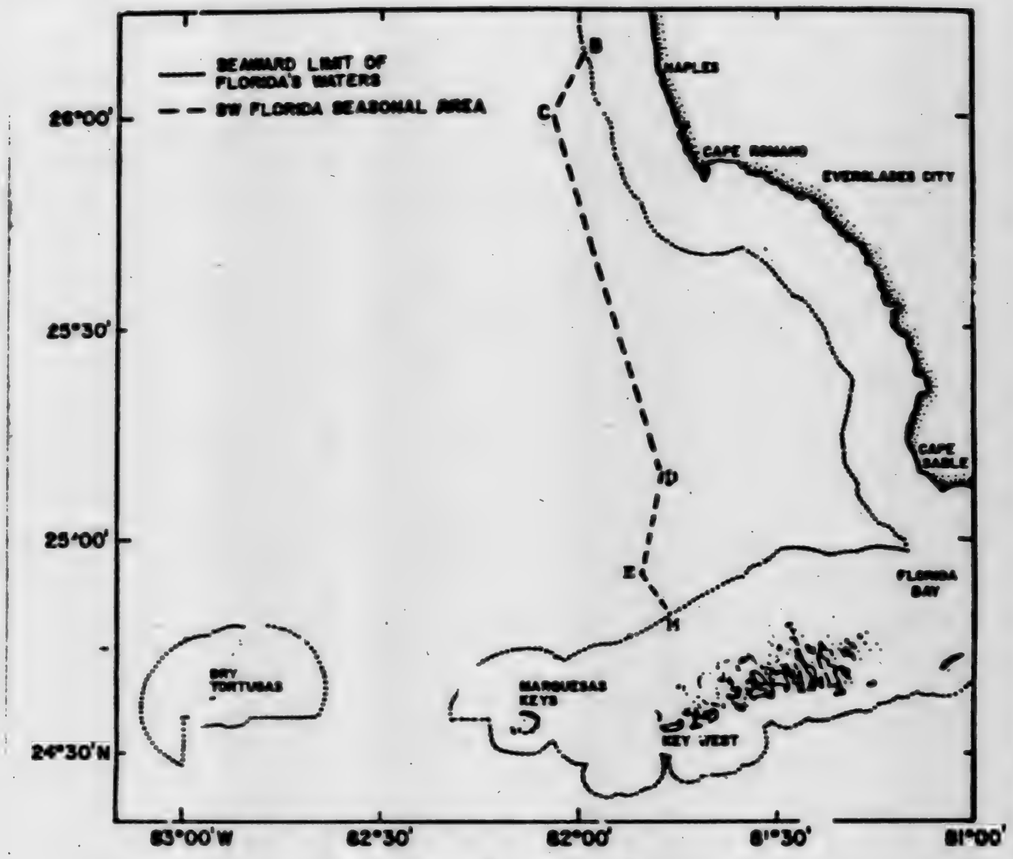


FIGURE 2. SOUTHWEST FLORIDA SEASONAL TRAWL CLOSURE

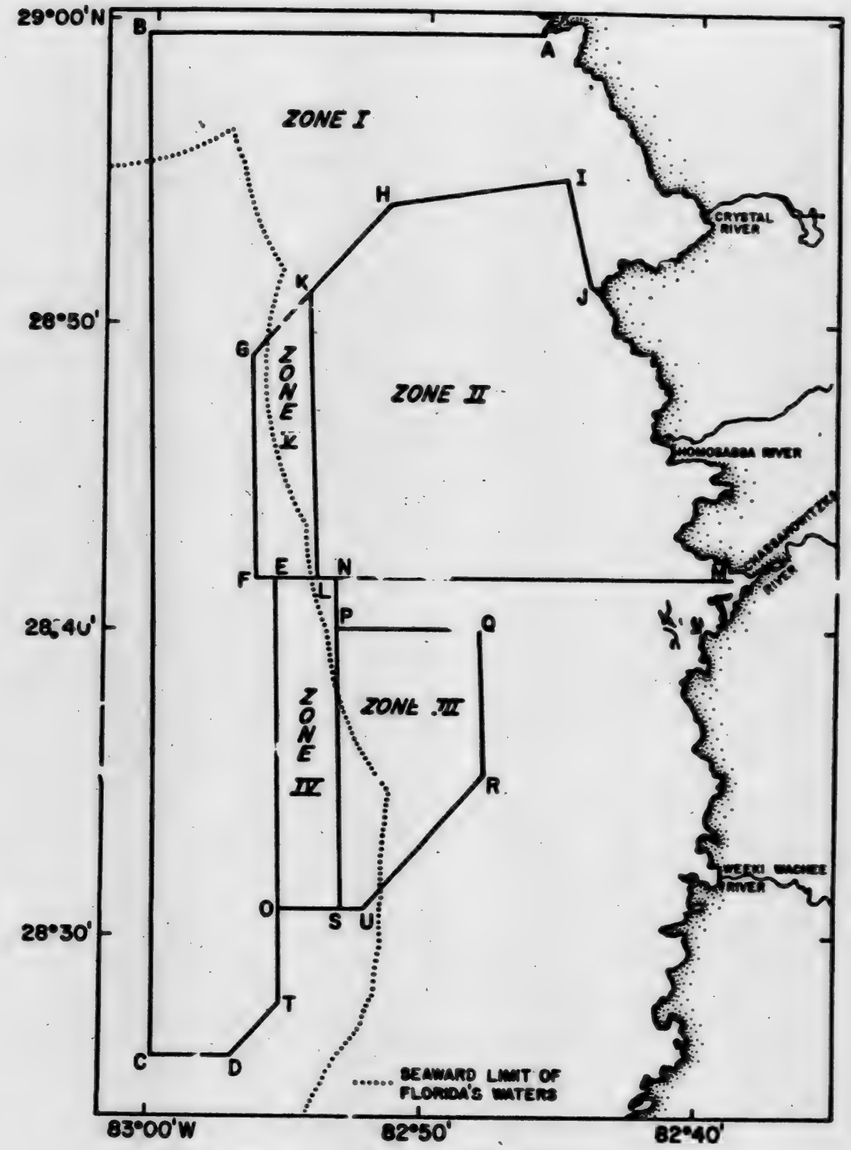


FIGURE 3. SHRIMP/STONE CRAB SEPARATION ZONES

[FR Doc. 94-27371 Filed 11-2-94; 4:28 pm]
BILLING CODE 3510-22-C

VOL 59 ISS 214 NO 7 1994 UMI

Notices

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking, Committee on Regulation, and Committee on Governmental Processes

ACTION: Notice of Public Meetings and Rescheduling of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of three committees of the Administrative Conference of the United States: Committee on Rulemaking, Committee on Regulation, and Committee on Governmental Processes. The meeting of the Committee on Governmental Processes is a rescheduling of a meeting previously announced for December 2, 1994.

AGENCY: Committee on Rulemaking

DATES: Monday, December 5, 1994, from 2–4 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Regulation.

DATES: Friday, November 18, 1994, from 10 am to 12:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Governmental Processes.

DATES: Wednesday, November 30, 1994 at 3:30 p.m.

LOCATION: Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to continue its discussion of Exemption 8 of the Freedom of Information Act. The Conference's consultant for this project is Professor Roy Schotland of the Georgetown University Law Center.

The Committee on Regulation will meet to consider a new draft report by Professor Douglas Michael of the University of Kentucky College of Law on self-enforcement as a regulatory alternative to direct enforcement. This draft follows an earlier study by Professor Michael, which led to Recommendation 94–1, The Use of Audited Self-Regulation as a Regulatory Technique, adopted by the Administrative Conference in June 1994.

The Committee on Governmental Processes meeting, previously announced for December 2, 1994, has been rescheduled. It will take place on November 30, 1994. The committee will meet to continue its discussion of the restrictions on the ability of government employees to engage in uncompensated public service. The Conference's consultant for this project is Professor Lisa G. Lerman, Columbus School of Law, the Catholic University of America.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: November 2, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–27529 Filed 11–4–94; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahalt, J. Dawson
Alexander, Michael L.
Allen, Richard Dean
Allen, Richard F.
Alspach, David B.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Ashworth, Warren R.
Atienza, Mary E.
Babcock, Stephen L.
Backiel, Adele
Bagley, Edward B.

Bange, Gerald A.
Barnes, Donald K.
Barrett Jr., Fred S.
Bartuska, Ann M.
Bauer III, Henry A.
Bay, Donald M.
Beasley, Joseph L.
Beauchamp, Craig L.
Berg, Joel S.
Berry, Robert M.
Betschart, Antoinette A.
Beyer, Wally
Blackburn, Wilbert H.
Blackley, Ronald H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Brewster Walker, Sandra J.
Bristow II, William M.
Brooks, Howard J.
Buchanan, Robert L.
Buisch, William W.
Buntrock, Grant B.
Burke, Thomas G.
Burns, Denver P.
Burse Sr., Luther
Burt, John P.
Callstrom, Raymond C.
Carey, Ann E.
Carlson, William D.
Carnevale, Richard A.
Carpenter, Barry L.
Carter, Mary E.
Cartwright Jr., Charles W.
Cherry, John P.
Clark, Cynthia Z.F.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen H.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Coulter, Kyle Jane
Crain, W. Bruce
David, Irwin T.
Dawson, Deborah A.
Deavers, Kenneth L.
Dewhurst, Stephen B.
Donald, James R.
Dornbusch Jr., August J.
Duesterhaus, Richard L.
Duncan, Charles N.
Duncan III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fawbush, Wayne H.
Fenton, Robert
Finney Jr., Essex E.
Fishman, Michael E.
Fitzgerald, Oleta G.
Fitzpatrick Jr., Martin F.
Flieger, Neal H.
Foxworthy, Darold D.
Franco, Robert
Franks Jr., William Jesse
Gardner Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Giles, Jane L.
Gillam, Bertha C.
Gilliland, James S.
Gillum, Charles R.
Glavin, Margaret Agnes
Golden, John
Golodner, Adam M.
Gonter, Robert W.
Greene, Frank C.
Greenshields, Bruce L.
Hadlock, Earl C.
Hagy III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Harcharik, David A.
Hardy Jr., Leonard
Harrington Jr., Rube
Harris, Sharron L.
Haas, Ellen A.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Herbert, Thomas R.
Hefferan, Colien J.
Henneberry, Thomas J.
Hessel, David L.
Hicks, Vicki J.
Hill, Ronald W.
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Holman, Pred Dwight
Horn, Floyd P.
Hornsby Jr., Andrew P.
Houser, Norman D.
Hudnall Jr., William J.
Husnik, Donald F.
Jackson, Ruthie F.
Jakub, Lawrence M.
Janik, Philip J.
Jennings, Vivan M.
Jensen, Patricia A.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jolly, David F.
Jordan, John P.
Joslin, Robert C.
Kaiser Jr., Harold F.
Kaplan, Dennis L.
Keeffe, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Kennedy, Eileen T.
King, Lonnie J.
King, R. Alan
King Jr., Edgar G.
Kling, Lou Anne
Knipling, Edward B.
Kronenberger Jr., Donald R.
Krugman, Stanley L.
Larson, Paul F.
Laster, Danny B.
Laverty Jr., Robert L.
Lavin, Mary Jo
Lee, Benjamin Glen
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Levinson, Sharon
Lewis, David N.
Lewis, Sherman L.
Lewis Jr., Robert
Lilja, Janice Grassmuck
Long, Richard D.
Lowe, John E.
Luchsinger, Donald W.
Ludwig, William E.
Lugo, Ariel E.
Lyons, James R.
Luken, Bonnie L.
Mackie, Philip L.
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Marita, Floyd J.
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McKee, Richard M.
Medley, Terry L.
Mengeling, William L.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Miranowski, John A.
Montoya, David F.
Montrey III, Henry M.
Moon, Harley W.
Moos, Eugene
Moreland, Donald E.
Mosley, Everett L.
Murrell, Kenneth D.
Nash, Bobby J.
Nelson, Robert D.
Nervig, Robert M.
Newsome, Conrad Merlain
Nies, Arthur H.
Norcross, Marvin A.
Novotny, Donald J.
Nuri, K.R.
O Brien, Patrick Michael
Oberlander, Herbert
Ohler, Barry A.
Okay, John L.

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Oltjen, Robert R.
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Schwindaman, Dale F.
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Shaw, Robert R.
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Stewart, Ronald E.
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Stuber, Charles W.
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Taylor, Michael R.
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Thomas, Jack W.
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Unger, David G.
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Van Schilfgaarde, Jan
Viadero, Roger C.
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Weber, Bruce R.
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Williams, Anthony A.
Williams, John W.
Williamson, Robert L.
Wilson, Edward M.
Wilson Jr., Larry
Witt, Timothy Blaine
Woods, Monroe
Wright, Lloyd E.
Zellers, Phillip
Dayton Watkins

Dated: October 31, 1994.

Richard Rominger,

Deputy Secretary.

[FR Doc. 94–27515 Filed 11–4–94; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 941005–4305]

Proposed Redefinition of the BEA Economic Areas

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Notice of proposed changes and request for comments.

SUMMARY: In a previous notice in the **Federal Register** (56 FR 13040, March 9, 1993), BEA announced its "Intent to Revise the Boundaries of the BEA Economic Areas" and presented the procedures used to define the current economic areas. This notice presents for public comment a proposed redefinition of the economic areas, which reduces their number from 183 to 174. Any additional changes to the proposed economic areas will be based largely on the comments received. The resulting new economic areas, along with a summary of the comments received, will be presented in a later notice. At that time, the new economic areas will supersede the current 183 BEA economic areas.

DATES: Persons who wish to comment on the proposed redefinition of the BEA economic areas should do so in writing no later than December 22, 1994.

ADDRESSES: Written comments should be submitted to Kenneth Johnson, U.S. Department of Commerce, Bureau of Economic Analysis BE–61, Regional Economic Analysis Division, Washington, DC 20230; fax (202) 606–5321. Comments also may be sent by electronic mail on the Internet to Kenneth Johnson at ken.johnson@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 606–9219; fax (202) 606–5321.

SUPPLEMENTARY INFORMATION:

Part I: Background

Under authority granted in 15 U.S.C. 175 *et seq.*, BEA develops and presents geographically detailed economic data and facilitates regional economic analysis. As part of this obligation, BEA defined the 183 current economic areas in 1977. The economic areas cover the entire nation. The redefinition now underway is necessary to maintain the analytical usefulness of the areas in light of the substantial changes in area commuting patterns shown by the 1990 Census of Population.

Each economic area consists of one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes. (Metropolitan areas include metropolitan statistical areas (MSA's), primary metropolitan statistical areas (PMSA's), and New England county metropolitan areas (NECMA's).) Commuting patterns are the main factor used in determining the economic

relationships among counties. The economic-area definition procedure requires that, as far as possible, each area include both the place-of-work and the place-of-residence of its labor force.

For some analyses, government agencies and businesses need data that are more geographically detailed than economic-area data. Government agencies often use relatively small areas for design of their program regulations or implementation of their licensing programs. Businesses need such detail for determining plant locations and for defining sales and marketing territories. BEA is responding to these needs as part of the economic-area redefinition by first defining a set of 348 "Component Economic Areas" (CEA's) and then using these as building blocks for redefining the larger economic areas.

Each CEA consists of a single economic node and the surrounding counties that are economically related to the node. Of the nodes, 90 percent are metropolitan, and 10 percent are nonmetropolitan. Each metropolitan area is the node of a different CEA; with minor exceptions, the nonmetropolitan nodes are nonmetropolitan counties where newspapers widely read in these areas are published.

In general, the procedure to redefine the economic areas is similar to that used to define the current economic areas. First, nodes are identified. Then, non-nodal counties are assigned to nodes, mainly based on commuting patterns and on newspaper circulation. A procedural difference is that now node identification and the assignment to nodes of non-nodal counties are done in a more systematic way and at a more geographically detailed level. The procedure results in the definition of 348 CEA's; these are then aggregated to form 174 BEA economic areas.

Part II: Detailed Procedures

I. Identification of Nodes

With the exception of New England MSA's, each metropolitan area in the nation is identified as a node of a CEA. Metropolitan areas consist of 240 MSA's, 59 PMSA's, and 11 NECMA's. Thus, metropolitan areas serve as nodes for 310 of the 348 CEA's.

Each of 38 nonmetropolitan counties is identified as a node of a CEA in parts of the nation remote from metropolitan areas. Identification of most of the nonmetropolitan nodes follows a four-part process. First, analysis of commuting patterns for the nation's 2,305 nonmetropolitan counties shows that 1,112 of these are not closely related to metropolitan areas. Second, analysis of newspaper publication data for the 1,112 counties shows that 130 of these are locations of newspapers whose circulations are recorded by the Audit Bureau of Circulations, an organization whose membership includes approximately 98% of U.S. newspaper circulation. Third, further analysis of newspaper circulation and of population for the 130 counties shows that 68 of these have populations of more than 50,000, or are locations of newspapers widely read in at least five counties, or both. Fourth, a preliminary test attempting to use all 68 of these counties as CEA nodes shows that only 35 of these qualify as nodes of CEA's that contain at least five counties. These 35 counties are identified as nonmetropolitan nodes.

The CEA associated with each of the 35 nonmetropolitan nodal counties selected by the four-step process is named for the city in which the county's major newspaper is published. The cities are: Flagstaff, AZ; Jonesboro, AR; Idaho Falls, ID; Twin Falls, ID; Quincy, IL; Manhattan, KS; Paducah, KY; Bowling Green, KY; Salisbury, MD; Traverse City, MI; Marquette, MI; Mankato, MN; Worthington, MN; Hattiesburg, MS (identified by the Office of Management and Budget as a new MSA as of July 1, 1994); Meridian, MS; Tupelo, MS; Greenville, MS; Missoula, MT; Butte, MT; Grand Island, NE; North Platte, NE; Norfolk, NE; Scottsbluff, NE; Lebanon, NH; Hobbs, NM; Farmington, NM; Minot, ND; Pendleton, OR; Aberdeen SD; Watertown, SD; Cookeville, TN; Lufkin, TX; Staunton, VA; Clarksburg, WV; and Bluefield, WV.

Three CEA's, each of which consists of a group of closely related nonmetropolitan counties in very remote parts of the country, do not have newspaper-based nodes. These CEA's are named by their locations and include a 7-county group defined by the Alaskan panhandle, a 13-county group in northern Michigan, and an 11-county group in western Oklahoma. The county containing the largest city in each of these areas is the node for the CEA.

2. Assignment of Non-Nodal Counties to Nodes

Of the nation's 3,141 counties, 836 counties are in metropolitan nodes and 38 counties are nonmetropolitan nodes. Each of the remaining 2,267 non-nodal counties is analyzed to determine the node to which it is most closely related. The initial assignment of about 75 percent of the non-nodal counties is based on journey-to-work data from the 1990 Census of Population. These counties are assigned to nodes based on their largest county-to-county commuting flows. In many instances, the association between a county and a particular node is based, not on direct commuting ties to a nodal county, but on commuting ties to a non-nodal county that is tied to the node. The initial assignment of most of the other non-nodal counties is based on newspaper circulation data. These counties are assigned to nodes based on the locations of the regional newspapers that are most widely read in these counties. In all cases, contiguity of a non-nodal county to a node or to another non-nodal county already assigned to the node is required before the initial assignment is made. The initial assignment of a few of the non-nodal counties requires special procedures. These usually apply in counties with very small populations or unusual contiguity problems.

The initial assignments of non-nodal counties are based on the strongest county-to-county relationships; these need not reflect the strongest county-to-CEA relationships. Following the initial definitions of the CEA's, 373 counties are reassigned to ensure that, to the extent possible, each county is assigned to the CEA with which it has the strongest commuting ties. (Six counties do not meet this objective because they are not contiguous with the CEA's to which they have the most commuting.)

3. Aggregation to Economic Areas

The 348 CEA's are used as building blocks for the proposed 174 BEA economic areas. CEA's are aggregated so that (1) as far as possible, the labor force of each resulting economic area works and resides in that area and (2) each resulting economic area is large enough economically to be part of BEA's local-area economic projections program. In general, aggregation to economic areas has two parts. In the first part, the 59 CEA's with PMSA's as nodes are combined into 17 economic areas corresponding to the 17 consolidated metropolitan statistical areas (CMSA's) that comprise the PMSA's. (A CMSA is an MSA that has more than 1 million residents and is subdivided into two or more PMSA's.) In the second part of the aggregation, each of 141 CEA's that do not meet size and commuting criteria is combined with the CEA to which it has the most commuting.

Part III: Map and List of the Proposed 174 BEA Economic Areas

Codes from 1 to 174 are assigned to the proposed economic areas in approximate geographic order, beginning with 1 in northern Maine, continuing south to Florida, then north to the Great Lakes, and continuing in a serpentine pattern to the West Coast.

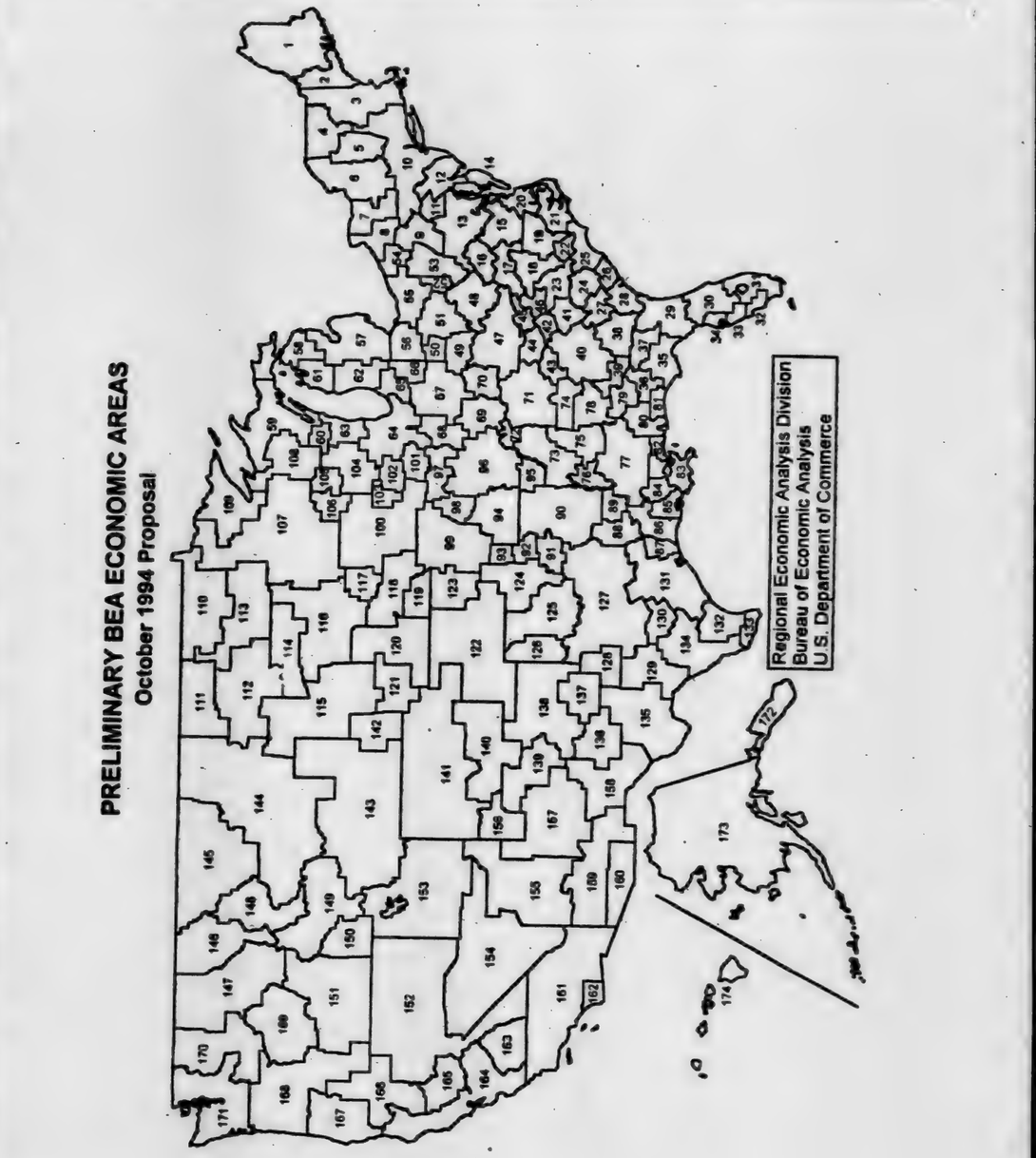
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With the exception of three special-node areas (Alaskan Panhandle, Western Oklahoma, and Northern Michigan), each economic area is named for the node of its largest CEA. The following list provides economic-area codes and names. Economic-area boundaries and codes are shown on the map following the list.

EA Code	Name
001	Bangor, ME
002	Portland, ME
003	Boston-Worcestar-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY
009	State College, PA
010	@New York-No. New Jersey-Long Island, NY-NJ-CT-PA (CMSA–70)
011	Harrisburg-Lebanon-Carlisle, PA
012	@Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD (CMSA–77)
013	@Washington-Baltimore, DC-MD-VA-WV (CMSA–97)
014	*Salisbury, MD
015	Richmond-Petersburg, VA
016	*Staunton, VA
017	Roanoke, VA
018	Greensboro-Winston-Salem-High Point, NC
019	Raleigh-Durham-Chapel Hill, NC
020	Norfolk-Virginia Beach-Newport News, VA-NC
021	Greenville, NC
022	Fayetteville, NC
023	Charlotte-Gastonia-Rock Hill, NC-SC
024	Columbia, SC
025	Wilmington, NC
026	Charleston-North Charleston, SC
027	Augusta-Aiken, GA-SC
028	Savannah, GA
029	Jacksonville, FL
030	Orlando, FL
031	@Miami-Fort Lauderdale, FL (CMSA–56)
032	Fort Myers-Cape Coral, FL
033	Sarasota-Bradenton, FL
034	Tampa-St. Petersburg-Clearwater, FL
035	Tallahassee, FL
036	Dothan, AL
037	Albany, GA
038	Macon, GA
039	Columbus, GA-AL
040	Atlanta, GA
041	Greenville-Spartanburg-Anderson, SC
042	Asheville, NC
043	Chattanooga, TN-GA
044	Knoxville, TN
045	Johnson City-Kingsport-Bristol, TN-VA
046	Hickory-Morganton, NC
047	Lexington, KY
048	Charleston, WV
049	@Cincinnati-Hamilton, OH-KY-IN (CMSA–21)
050	Dayton-Springfield, OH
051	Columbus, OH
052	Wheeling, WV-OH
053	Pittsburgh, PA
054	Erie, PA
055	@Cleveland-Akron, OH (CMSA–28)
056	Toledo, OH
057	@Detroit-Ann Arbor-Flint, MI (CMSA–35)
058	*Northern Michigan, MI
059	Green Bay, WI
060	Appleton-Oshkosh-Neenah, WI
061	*Traverse City, MI
062	Grand Rapids-Muskegon-Holland, MI
063	@Milwaukee-Racine, WI (CMSA–63)
064	@Chicago-Gary-Kenosha, IL-IN-WI (CMSA–14)
065	Elkhart-Goshen, IN
066	Fort Wayne, IN
067	Indianapolis, IN
068	Champaign-Urbana, IL
069	Evansville-Henderson, IN-KY
070	Louisville, KY-IN
071	Nashville, TN
072	*Paducah, KY
073	Memphis, TN-AR-MS
074	Huntsville, AL
075	*Tupelo, MS
076	*Greenville, MS
077	Jackson, MS
078	Birmingham, AL
079	Montgomery, AL
080	Mobile, AL
081	Pensacola, FL
082	Biloxi-Gulfport-Pascagoula, MS
083	New Orleans, LA
084	Baton Rouge, LA
085	Lafayette, LA
086	Lake Charles, LA
087	Beaumont-Port Arthur, TX
088	Shreveport-Bossier City, LA
089	Monroe, LA
090	Little Rock-North Little Rock, AR
091	Fort Smith, AR-OK
092	Fayetteville-Springdale-Rogers, AR
093	Joplin, MO
094	Springfield, MO
095	*Jonesboro, AR
096	St. Louis, MO-IL
097	Springfield, IL
098	Columbia, MO
099	Kansas City, MO-KS
100	Des Moines, IA
101	Peoria-Pekin, IL
102	Davenport-Moline-Rock Island, IA-IL
103	Cedar Rapids, IA
104	Madison, WI
105	La Crosse, WI-MN
106	Rochester, MN
107	Minneapolis-St. Paul, MN-WI
108	Wausau, WI
109	Duluth-Superior, MN-WI
110	Grand Forks, ND-MN
111	*Minot, ND
112	Bismarck, ND
113	Fargo-Moorhead, ND-MN
114	*Aberdeen, SD
115	Rapid City, SD
116	Sioux Falls, SD
117	Sioux City, IA-NE
118	Omaha, NE-IA
119	Lincoln, NE
120	*Grand Island, NE
121	*North Platte, NE
122	Wichita, KS
123	Topeka, KS
124	Tulsa, OK
125	Oklahoma City, OK
126	*Western Oklahoma, OK
127	@Dallas-Fort Worth, TX (CMSA–31)
128	Abilene, TX
129	San Angelo, TX
130	Austin-San Marcos, TX
131	@Houston-Galveston-Brazoria, TX (CMSA–42)
132	Corpus Christi, TX
133	McAllen-Edinburg-Mission, TX
134	San Antonio, TX
135	Odessa-Midland, TX
136	*Hobbs, NM
137	Lubbock, TX
138	Amarillo, TX
139	Santa Fe, NM
140	Pueblo, CO
141	@Denver-Boulder-Greeley, CO (CMSA–34)
142	*Scottsbluff, NE
143	Casper, WY
144	Billings, MT
145	Great Falls, MT
146	*Missoula, MT
147	Spokane, WA
148	*Butte, MT
149	*Idaho Falls, ID
150	*Twin Falls, ID
151	Boise City, ID
152	Reno, NV
153	Salt Lake City-Ogden, UT
154	Las Vegas, NV-AZ
155	*Flagstaff, AZ
156	*Farmington, NM
157	Albuquerque, NM
158	El Paso, TX
159	Phoenix-Mesa, AZ
160	Tucson, AZ
161	@Los Angeles-Riverside-Orange County, CA (CMSA–49)
162	San Diego, CA
163	Fresno, CA
164	@San Francisco-Oakland-San Jose, CA (CMSA–84)
165	@Sacramento-Yolo, CA (CMSA–82)
166	Redding, CA
167	Eugene-Springfield, OR
168	@Portland-Salem, OR-WA (CMSA–79)
169	*Pendleton, OR
170	Richland-Kennewick-Pasco, WA
171	@Seattle-Tacoma-Bremerton, WA (CMSA–91)
172	*Alaskan Panhandle, AK
173	Anchorage, AK
174	Honolulu, HI

The "*" denotes a nonmetropolitan-node name, the "@" denotes a CMSA name; all other names are MSA's or NECMA's.

BILLING CODE 3510-06-M



BILLING CODE 3510-06-C

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Part IV: Availability of Additional Information

The text for this Notice and a detailed data file with county, CEA, and economic-area codes is available, for downloading only, from the New England Electronic Economic Data Center. Connect to the Data Center's Internet node at neeedc.umesbs.maine.edu using the anonymous FTP (username="anonymous" with no password) and "get" the binary file EADATA.EXE from the node's root directory. (Do not use GOPHER or MOSAIC Internet technologies at this node.) This file decompresses into self-explanatory text files when the DOS command EADATA is used. Counts of the number of counties in each CEA and economic area and of the number of CEA's in each economic area are included to assist in understanding and evaluating the proposed economic areas. The file EADATA.EXE also is available through the Commerce Department's Economic Bulletin Board (EBB). First-time users of the EBB may access it with their personal computer and modem by dialing (202) 482–3870 and following instructions. The user's cost is an annual fee of $45 and per-minute connect charges, which vary by time of day; users will be billed by the Department of Commerce. (The EBB is also available through the Internet.) A hard-copy listing of the records in the detailed data file is available for public review at the U.S. Department of Commerce, Bureau of Economic Analysis, Public Information Office, Room 1026, 1441 L Street, NW., Washington, DC. The hours of availability are 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. Monday through Friday.

Part V: Summary of Comments and Responses

In the previous **Federal Register** Notice (56 FR, 13049, March 9, 1993) interested persons were invited to provide comments regarding methodology for the economic area definitions. Two formal comments were received. One suggested that greater clarity in the explanation of the means by which nodes for the economic areas are selected would be useful; a description of the selection process is included above. The second comment specifically requested that the two-county region defined by Nassau and Suffolk counties in New York be treated as separate from the New York MSA in the redefinition procedures. Nassau-Suffolk is a separate PMSA in the larger CMSA surrounding New York, so it is treated separately in defining the CEA's. However, no counties other than Nassau and Suffolk are in the Nassau-Suffolk CEA, and it was grouped with other CEA's to form its economic area.

Public Review Procedure

All comments received in response to this notice will be available for public inspection at the U.S. Department of Commerce, Bureau of Economic Analysis, Public Information Office, Room 1026, 1441 L Street, NW., Washington, DC. Hours of availability are 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. Monday through Friday. A summary of the comments and the set of final BEA economic areas will appear in a **Federal Register** notice in early 1995.

Carol S. Carson,
Director.
[FR Doc. 94–27471 Filed 11–4–94; 8:45 am]
BILLING CODE 3510–06–M

Foreign-Trade Zones Board

[Order No. 714]

Grant of Authority; Establishment of a Foreign-Trade Zone Port Hueneme and Oxnard, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board of Harbor Commissioners, Oxnard Harbor District (the Port of Hueneme) (the Grantee), has made application to the Board (FTZ Docket 41–93, 58 FR 44490, 8/23/93, as amended, 58 FR 65329, 12/14/93), requesting the establishment of a foreign-trade zone at sites in Port Hueneme and Oxnard, California, within the Port Hueneme Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 205, at the sites described in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of October 1994.

Foreign-Trade Zones Board.

Ronald H. Brown,
Secretary of Commerce, Chairman and Executive Officer.

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 94–27434 Filed 11–4–94; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A–823–806]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium From Ukraine

AGENCY: Import Administration, International trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the Untied States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of pure magnesium from Ulkraine. The ITC also determined in the companion investigation of alloy magnesium from Ukraine that there is not a likelihood that a U.S. domestic industry is materially injured, or threatened with material injury, by reason of imports of alloy magnesium from Ukraine, thereby terminating that investigation.

On June 13, 1994, we sent the antidumping questionnaire to the Ukrainian Embassy and the two Ukrainian manufacturers of pure magnesium, Concern Chlorvinyl and Zaporozhye Titanium and Magnesium Plant. (The antidumping questionnaire was divided into three sections: section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure magnesium.) We requested the Embassy's assistance in forwarding the questionnaire to all exporters and producers of pure magnesium from Ukraine and submitting complete questionnaire responses on their behalf.

On August 8, 1994, the Department postponed its preliminary determination until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for consideration in valuing factor inputs. Petitioners submitted information on September 7, 1994; respondents submitted information on September 22, 1994.

Respondent Selection

In addition to sending the Ukrainian Embassy the questionnaire, the Department independently attempted to identify other possible exporters of Ukrainian pure magnesium to the United States during the POI based on information obtained from petitioners, and through examination of PIERS data and other sources of information. Our efforts consisted of issuing an August 8, 1994, survey requesting information on exports to the United States of the subject merchandise; issuing the antidumping questionnaires (limited to Sections A and C) to trading companies operating in various European countries (on August 19, September 7, and September 13, 1994); and a September 15, 1994, follow-up letter to unresponsive questionnaire recipients.

We sent either the survey, the questionnaire, or both documents to 56 companies, with the following results.

- Two companies, Gerald Metals and MG Metals, provided responses to Sections A and C of the questionnaire.
- Twenty-five other companies, meanwhile, indicated that they did not export the subject merchandise to the United States during the POI. The companies that did not export were Intreid; Kemokomplex; Nobel Trading; Raba Company; Alamet; Compagnie de Mines et Metals; Expromptorg; Fred Lonner & Co., Inc.; Metal Exchange Corporation; Minmeta S.A., Minmetals Canada, Inc.; Scandinavian Steel AB; Stena Metall Atervinning AB; Sinex AG; Maks Trade Kft.; Sassoon Metals and Chemicals; Seleb; Weko Food Trading; IMEX Consulting Sprl; W&O Bergmann; Steinweg Handelsveem; A. Hartrodt; C. Steinweg Handelsveem B.V.; J. Oosterom & Zoom; and Siegfried Kahn AG.
- Seven companies indicated that they were related to companies who had provided information as to whether or not they had made U.S. sales.
- Eighteen companies provided either no response or an inadequate response. The Department received no response from the following 16 contacted companies: Derek Raphael & Co. Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and 11 other companies whose names cannot be disclosed in this notice because their identities has been deemed business proprietary information. We have designated these 11 companies as companies "A" through "K" in the "Suspension of Liquidation" section of this notice, below. We will, however, identify them to the Customs Service for enforcement of this determination. Additionally, F&S and Alusuisse-Lonza indicated that they made POI sales to the United States, but provided inadequate responses to our requests for information.
- Finally, surveys or questionnaires sent to four companies were returned as undeliverable.

From July to October 1994, the Department received responses to sections A and D from Concern Chlorvinyl, which indicated that it had made no sales of the subject merchandise directly to the United States during the POI. Zaporozhye responded to section A but did not reply to subsequent deficiency letters.

During September and October 1994, the Department also requested clarifications of the information submitted by Concern Chlorvinyl, Gerald Metals, MG Metals, and Alusuisse-Lonza. Alusuisse-Lonza did not respond to the supplemental request. Because of the deadlines established for responses to these supplemental requests, certain information submitted by Gerald Metals and MG Metals was not considered for this preliminary determination.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on October 24, 1994, Gerald Metals, a reseller accounting for a significant proportion of the merchandise in this proceeding, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination in the **Federal Register**. Concern Chlorvinyl, a producer accounting for a significant proportion of merchandise in this proceeding, made a similar request on October 26, 1994. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**.

Scope of Investigation

The product covered by this investigation is pure primary magnesium, regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Pure primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium.

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Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2 mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Nonmarket Economy Status

Ukraine has been treated as a nonmarket economy ("NME") country in all past antidumping proceedings (*see, e.g., Final Determination of Sales at Less Than Fair Value: Uranium from Ukraine* (58 FR 36640, July 8, 1993)). No information has been provided in this proceeding that would lead us to overturn this designation. Therefore, in accordance with section 771(18)(c) of the Act, we have treated Ukraine as an NME for purposes of this investigation.

Period of Investigation

The POI is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales by Gerald Metals and MG Metals of pure magnesium from Ukraine to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

B. Non-Participating Respondents

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. We consider those mandatory respondents that did not respond to the questionnaire to be uncooperative respondents and have based the less-than-fair-value margin for those companies on the best information available ("BIA"). We consider the following companies to be uncooperative respondents: Alusuisse-Lonza; Derek Raphael & Co. Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; F&S; and the 11 companies whose names cannot be disclosed because their identities are deemed business proprietary information. Accordingly, we have based these companies' LTFV margin on an uncooperative BIA rate.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since these companies failed to respond to our questionnaire, we are deeming them uncooperative and are assigning them a BIA margin of 53.99 percent. This margin represents the highest margin in the petition, as recalculated by the Department at the time of the initiation to account for errors in arithmetic and/or methodology.

C. All Other Companies

We are basing the LTFV margins for all other companies, including those companies which reported that they did not sell the subject merchandise to the United States during the POI, on a simple average of the rates calculated for the mandatory respondents, including rates based on BIA but excluding zero and *de minimis* margins, if any.

United States Price

We based USP on purchase price sales, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF or FOB foreign-port prices to unrelated purchasers in the United States. In addition, for CIF prices, we made the following deductions (where appropriate): for MG Metals, we deducted foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance and U.S. brokerage and repacking cost; for Gerald Metals, we deducted foreign brokerage, ocean freight, U.S. Duty, U.S. inland freight, U.S. insurance and U.S. brokerage.

From each exporter's U.S. price, we calculated and then deducted foreign inland freight between the factory and the reported intermediate destination. We based our calculation on the per-ton foreign inland freight amount reported in the petition as best information available because the exporters failed to report information on this area in their questionnaire responses.

Foreign Market Value

A. Surrogate Country Selection

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. There are no countries economically comparable to Ukraine that are significant producers of magnesium. Accordingly, we considered as potential surrogates countries that are economically comparable that produce comparable merchandise. In these investigations, we have determined that aluminum should be considered comparable merchandise. Although the material inputs used to produce magnesium and aluminum are different, according to both U.S. Bureau of Mines and Department of Commerce experts, aluminum is comparable to magnesium in that both (1) are light metals in terms of molecular weight; (2) are electricity-intensive products; (3) are produced using an electrolytic process, and (4) share some common end uses (*e.g.*, dye casting).

We have determined that Indonesia and Egypt are both economically comparable to Ukraine (*see* October 21, 1994, Memorandum from the Office of Policy to the File.) In addition, both countries are significant producers of aluminum. Because we were able to obtain more information from Indonesia than from Egypt, we have used Indonesia as our primary surrogate. However, we have resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. We have obtained and relied upon published, publicly available information, wherever possible.

B. Factors of Production

In accordance with section 773(c)(1), we used factors of production as the fair value benchmark for the U.S. price of sales of Concern Chlorvinyl-produced merchandise by Gerald Metals and MG Metals. In the case of U.S. sales of Zaporozhye-produced merchandise for which we did not receive factors of production data, a BIA margin was assigned using the higher of (a) the highest adjusted alleged margin cited in our initiation notice or (b) the highest margin calculated for a sale of Concern Chlorvinyl-produced merchandise. The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, *see* our calculation memorandum.) We then added amounts for factor overhead, general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value the raw materials, we used publicly available information from Indonesia in the *UN Trade Commodity Statistics ("UN Trade Statistics")* for January through December 1993 and the 1992 *Indonesia Foreign Trade Statistics*. No adjustment for inflation was necessary since the 1993 *UN Trade Statistics* for Indonesia reported data for a portion of the POI. For values taken from *Indonesian Foreign Trade Statistics*, we made appropriate adjustments to account for inflation. For one energy input, we used data from the 1992 *UN Trade Statistics* for Egypt since the unit value from the 1993 *UN Trade Statistics* for Indonesia was based on an extremely small quantity and appeared to be aberrational. The 1992 Egyptian value for this input was inflated to the POI. For one raw material, we used information from the petition as best available information because we were unable to find a value in either Indonesia or Egypt.

To adjust material input values to account for source-to-factory freight, we used Indonesia freight rates from a 1991 cable from the U.S. Embassy in Jakarta. (*See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* (57 FR 21058, May 18, 1992).

To value labor amounts for production and packing, we used labor data for Egypt, as reported in the International Labor Office's *1993 Yearbook of Labor Statistics* because the labor value available for Egypt was more up-to-date (1987) than was the labor value available for Indonesia (1986). We adjusted labor wage rates to account for inflation using world price indices for Egypt as reported in the International Monetary Funds' *International Financial Statistics (IFS)*.

To value heavy oil and diesel fuel, we used 1993 data for Indonesia from the Energy Information Administration's *International Energy Annual*. Although we are unable to adjust these values for taxes included in the published prices, they are the only data found for heavy oil and diesel fuel in Indonesia.

To value electricity, we used information for Indonesia from the Asian Development Bank's 1993 *Electric Utilities Data Book for Asian and Pacific Region*.

Because we were unable to find surrogate values for factory overhead from either Indonesia or Egypt, we used factory overhead rates from the petition.

We used the statutory minima of ten percent for selling, general and administrative expenses and eight percent for profit because no surrogate country information reflected percentages for those amounts that were above the statutory minima.

To value packing materials, we used data from the 1993 *UN Trade Statistics* for Indonesia. Because information for certain packing materials was incompletely reported, we were unable to calculate a unit factor value for these materials. Therefore, we included data from the petition to account for the cost of these packing materials.

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all imports of the subject merchandise that are entered, or withdrawn from warehouse, from consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. We will also inform Customs of the identities of those companies, identified below by a code letter, whose names we are unable to disclose. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Gerald Metals	52.21
MG Metals	36.05
Alusuisse Lonza	53.99
Derek Raphael & Co., Ltd.	53.99
Marco Trading	53.99
Wogen Group Ltd.	53.99
Alex	53.99
Mages	53.99
F&S	53.99
Company A	53.99
Company B	53.99
Company C	53.99
Company D	53.99
Company E	53.99
Company F	53.99
Company G	53.99
Company H	53.99
Company I	53.99
Company J	53.99
Company K	53.99
All Others	53.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 10, 1995, and rebuttal briefs, no later than February 17, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing

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will be held on February 21, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by the 135th day after the date of publication of the affirmative preliminary determination in the Federal Register.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27435 Filed 11–4–94, 8:45 am]

BILLING CODE 3510–DS–P

[A–570–832 and A–570–833]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure Magnesium and Alloy Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce ("the Department") of its preliminary determination that there is a reasonable indication that industries in the United States are materially injured by reason of imports of pure and alloy magnesium from the PRC that are alleged to be sold at less than fair value.

On June 13, 1994, the Department sent the antidumping questionnaire to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the China Chamber of Commerce of Metals, Minerals and Chemical Products, and seven PRC companies. (The antidumping questionnaire was divided into three sections: section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure or alloy magnesium). We requested MOFTEC's assistance in forwarding the questionnaire to all exporters and producers of pure magnesium and alloy magnesium and submitting complete questionnaire responses on their behalf.

On August 8, 1994, the Department postponed its preliminary determinations in these antidumping duty investigations until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for the Department to consider when valuing the factor inputs. Petitioners and respondents submitted information on September 7, 1994.

In August and September 1994, we received responses to the questionnaire from Min He Magnesium Smelter (Min He), a producer and exporter of the subject merchandise.

On September 1, 1994, the Government of the PRC advised us that Min He was the only exporter of the subject merchandise during the period of investigation (October 1, 1993, through March 31, 1994). As Min He's Section A response indicated that it made no sales of alloy magnesium during this period, on September 2, 1994, we requested all PRC exporters, through counsel, to provide information concerning sales of all magnesium for the 12 months prior to the six-month period of investigation (POI) in order to reconcile the small number of reported sales with the much larger number of magnesium entries from the PRC reported by U.S. Customs. The PRC exporters replied to this request on September 9, 1994, identifying several sales of pure magnesium and alloy magnesium between April and September 1993. These sales were made by Xiamen Xing Xia Company Ltd. (Xing Xia) and Xiamen Jinda International Trade Associated Corp. (Jinda). Accordingly, on September 16, 1994, the Department expanded the POI to encompass the twelve-month period April 1, 1993, through March 31, 1994, and requested supplemental questionnaire responses for that period.

On October 5, 1994, counsel for the PRC companies advised us that the information in its September 9, 1994, letter was in error and that all additional magnesium sales were made prior to the twelve-month POI. The exporters noted in the letter that their sales of alloy magnesium were pursuant to sales contracts for pure magnesium, but were classified as alloy magnesium by U.S. Customs upon their entry into the United States. On October 13, 1994, we again expanded the POI for alloy magnesium to a nineteen-month period of September 1, 1992, to March 31, 1994, in order to cover the most recent sales of magnesium entered into the United States as alloy magnesium. On the same date, we advised the PRC companies to provide questionnaire responses for alloy magnesium based on this POI. During October 1994, we received a supplemental questionnaire response from Min He, and a questionnaire response from Xing Xia, as well as a statement from Jinda that it did not make any sales during the POI.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on October 19, 1994, the PRC exporters which account for all of the exports of the subject merchandise in each investigation requested that, in the event of affirmative preliminary determinations in these proceedings, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the Federal Register.

Scope of Investigations

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The product subject to this investigation is currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

This investigation covers alloy primary magnesium products which contain 50% or greater, but less than 99.8%, primary magnesium, by weight. Products with the aforementioned primary magnesium content that do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of this investigation. In addition to primary magnesium, "alloy" magnesium generally contains one or more of the following items in amounts less than the primary magnesium itself: (1) Other elements deliberately added to the primary magnesium; (2) magnesium scrap or secondary magnesium; (3) oxidized magnesium; and (4) other elements present as impurities.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under HTSUS subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The product subject to this investigation is currently classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is April 1, 1993, through March 31, 1994 for pure magnesium, and September 1, 1992, through March 31, 1994, for alloy magnesium.

Nonmarket Economy Country Status

The PRC has been treated as a nonmarket economy country (NME) in all past antidumping investigations (see, *e.g.*, Final Determination of Sales at Less than Fair Value: Sebacic Acid from the PRC, 59 FR 28053, May 31, 1994). No information has been provided in this proceeding that would lead us to overturn this designation. Therefore, in accordance with section 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of these investigations.

Surrogate Country

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. Accordingly, we considered potential surrogates that produce comparable merchandise. Although the material inputs used to produce magnesium and aluminum are different, according to both U.S. Bureau of Mines and Department of Commerce experts, both (1) are light metals in terms of molecular weight; (2) are electricity-intensive

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products; (3) are produced using an electrolytic process, and (4) share some common end uses (e.g., dye casting). Therefore, in these investigations, we have determined that aluminum constitutes comparable merchandise in the context of surrogate selection.

The Department has determined that India and Indonesia are the countries most comparable to the PRC in terms of being significant producers of comparable merchandise (aluminum) and of overall economic development. (See October 21, 1994, Memorandum from the Office of Policy to the File.) However, our research indicates that electricity rates in India are relatively high as compared to other countries which produce electricity-intensive products. Because high industrial electricity rates normally are inconsistent with significant production of electricity-intensive products such as aluminum, we do not believe that India is an appropriate surrogate country for valuing the factors of production for these products.

Accordingly, we have based foreign market value (FMV) on the values of the appropriate factors of production in Indonesia. We have obtained and relied upon published, publicly available information, wherever possible.

Fair Value Comparisons

In cases involving the PRC, the Department assigns a single rate to all PRC exporters unless a company establishes that it is entitled to a separate rate (see, for example, Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC (59 FR 22585, May 2, 1994)). In these investigations, we have assigned a single rate to all PRC exporters in each investigation.

To determine whether sales of pure magnesium and alloy magnesium from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For both pure magnesium and alloy magnesium, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporter to unrelated parties in the United States prior to importation into the United States.

We calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, loading, and port handling expenses, valued in a surrogate country. To value freight, we used Indonesian freight rates from a 1991 cable from the U.S. Embassy in Jakarta (see, Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the PRC 56 FR 66831, December 26, 1991). We were unable to obtain loading and port handling expenses valued in Indonesia. For purposes of the preliminary determinations, we valued these expenses based on Indian port charges quoted by an international shipping company.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV for both pure magnesium and alloy magnesium based on factors of production reported by the factory in the PRC which produced the subject merchandise. The factors used to produce pure magnesium and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for the different inputs. In determining which surrogate value to use for valuing each factor of production, we used, where possible, publicly available, published information.

We used surrogate transportation rates to value inland freight between the source of the production factor and the magnesium factories, and between factories and exporters/ports. Where the producer failed to provide the information on transportation distances for a raw material input, we applied the average of the distances reported for other raw materials.

To value raw materials, we used public information from United Nations Trade Commodity Statistics and Indonesia Foreign Trade Statistics.

To value electricity, we used public information on Indonesia from the Electric Utilities Data Book for the Asian and Pacific Region (January 1993) published by the Asian Development Bank. As the data dated from 1990, we adjusted the electricity values to the appropriate POI using wholesale price indices published in International Financial Statistics (IFS) by the International Monetary Fund. Min He did not report the consumption factor for water and coal. For purposes of these determinations, we estimated these factors based on the ratio of non-electricity energy inputs to the total of material, labor, and energy inputs stated in the petition.

To value hourly labor rates in Indonesia, we used data obtained from the U.S. Department of Labor, Bureau of Labor Statistics on hourly compensation costs in Indonesia's manufacturing sector for 1986, and adjusted the labor rates to the appropriate POI using consumer price indices published in the IFS by the International Monetary Fund, and adjusted for inflation in the same manner identified for electricity.

We were unable to obtain an appropriate factory overhead percentage based on Indonesian experience. Accordingly, for purposes of these determinations, we calculated factory overhead based on information in the petition concerning the experience of a U.S. magnesium producer. For selling, general and administrative (SG&A) expenses, we used the statutory minimum of ten percent of material, labor, energy, and factory overhead because we could not obtain information based on Indonesian industry experience. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses because we could not obtain information on Indonesian industry experience. We added packing based on the surrogate values obtained for the raw materials and labor in Indonesia.

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pure magnesium and alloy magnesium from the PRC, that are entered, or withdrawn from warehouse for consumption on the date of this notice for publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
A. Pure Magnesium	
All manufactureres/producers/exporters	108.26
B. Alloy Magnesium	
All manufacturers/producers/exporters	79.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If one or both of our final determinations is affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 26, 1995, and rebuttal briefs, no later than February 2, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 10:00 a.m. on February 6, 1994, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations by the 135th day after the date of publication of these determinations in the **Federal Register**.

These determinations are published putsuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27437 Filed 11–4–94; 8:45 am]

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[A–821–805 and A–821–806]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure and Alloy Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of pure magnesium and alloy magnesium from the Russian Federation are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on April 20, 1994, (59 FR 21748, April 26, 1994), the following events have occurred.

On May 16, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determinations that there was a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of pure and alloy magnesium from the Russian Federation.

On June 13, 1994, we sent the antidumping questionnaire to the Embassy of the Russian Federation and the two Russian manufacturers (which were identified in the petition). (The antidumping questionnaire was divided into three sections: Section A requesting general information on each company; section C requesting information on, and a listing of, U.S. sales made during the period of investigation ("POI"); and, section D requesting information on the production process, including specific amounts of each input used in manufacturing pure or alloy magnesium.) We requested the Embassy's assistance in forwarding the questionnaire to all exporters and producers of pure or alloy magnesium from the Russian Federation and submitting complete questionnaire responses on their behalf.

In addition to sending questionnaires to the Russian Embassy, during July and August, the Department independently attempted to identify other possible exporters of pure magnesium and alloy magnesium from Russia to the United States during the POI based on information obtained from petitioners, and through examination of PIERS data and other sources of information. Our efforts consisted of issuing an August 8, 1994, survey requesting information on exports to the United States of the subject merchandise; issuing the antidumping questionnaire (limited to Sections A and C) to trading companies operating in various European countries (on August 19, September 7, and September 13, 1994); and a September 15, 1994, follow-up letter to unresponsive questionnaire recipients.

We sent either the survey, the questionnaire, or both documents to 56 companies, with the following results.

Six companies in the pure magnesium proceeding, AIOC, Gerald Metals, Hunter Douglas, Interlink, MG Metals, and Razno Alloys; and two companies in the alloy magnesium proceeding, Gerald Metals and SMW, provided information in response to Sections A and C of the questionnaire.

Twenty-two companies in the pure magnesium proceeding and 27 companies in the alloy magnesium proceeding indicated that they did not sell the subject merchandise to the United States during the POI. The companies that did not export were (a) alloy only: AIOC; HDM; Interlink; MG Metals; Razno and F&S; (b) pure only: SMW (except for a small-quantity trial sale) and (c) both pure and alloy: Intreid; Kemokomplex; Raba Company; Alamet; Compagnie de Mines et Metals; Expromptorg; Fred Lonner & Co., Inc.; Metal Exchange Corporation; Minmets S.A.; Minmetals Canada, Inc.; Scandinavian Steel AB; Stens Metall Atervinning AB; Sinex AG; Sesoon Metals and Chemicals; IMEX Consulting Sprl; A&L; Steinweg Handelsveem; A. Hartrodt; C. Steinweg Handelsveem B.V.; J. Oosterom & Zoom; and Siegfried Kahn AG.

In each of the two proceedings, seven companies indicated that they were related to companies that had provided information as to whether or not they had made U.S. sales.

Fifteen companies in the pure magnesium proceeding and 14 companies in the alloy magnesium proceeding provided either no response or an inadequate response. The Department received no response from the following 13 companies in both

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proceedings: Derek Raphael & Co., Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and 8 companies that cannot be named in this notice because their identities are deemed business proprietary information. We have designated these 8 companies as companies "A" through "H" in the "Suspension of Liquidation" section of this notice, below. We will, however, identify them to the Customs Service for enforcement of these determinations. Additionally, both F&S (pure only) and W&O Bergmann (both pure and alloy) indicated that they had made POI sales of subject merchandise to the United States, but otherwise ignored our requests for information.

Finally, surveys sent to six companies were returned as undeliverable.

On August 8, 1994, the Department postponed its preliminary determinations until October 27, 1994 (59 FR 42200, August 17, 1994).

On August 10, 1994, the Department provided interested parties with the opportunity to submit published, publicly-available information for the Department to consider when valuing the factor inputs. Petitioners and respondents submitted information on September 7, 1994.

From July through October 1994, the Department received responses to questionnaire sections A and C for pure magnesium from AIOC, Gerald Metals, HDM, Interlink, MG Metals, Razno and SMW. (Note that SMW's trial sale of pure magnesium were not considered by the Department because these sales represent an insignificant portion of the total volume of U.S. sales. Therefore, for the preliminary determination, the Department has not considered SMW to be an exporter of pure magnesium and did not calculate a margin for SMW's trial sales of pure magnesium.)

For alloy magnesium the Department received responses to Sections A and C from Gerald Metals and SMW.

The Department received responses to sections A and D from the following manufacturers: Berezniki Titanium and Magnesium Works (Avisma) and SMW.

On September 12, 1994, Avisma and SMW requested that the Russian Federation be reclassified as a market economy country. They also contended that, if the Department did not revoke the Russian Federation's non-market economy (NME) designation, the Department should determine that the magnesium industry in the Russian Federation is a market-oriented industry (MOI). (See the "Foreign Market Value" section of this notice, below.)

During September and October 1994, the Department requested clarifications of the submitted questionnaire responses from AIOC, Avisma, Gerald Metals, HDM, Interlink, MG, Razno, and SMW. Avisma, Interlink, MG, Razno, and SMW submitted additional response information. Gerald Metals' and HDM's responses to this supplemental information request are not due until after the deadline for these preliminary determinations.

On October 10, 1994, petitioners alleged that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. The Department accepted this allegation and requested that Gerald Metals and SMW provide historical information on shipments of alloy magnesium.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on October 24, 1994, Gerald Metals, a reseller accounting for a significant proportion of the merchandise in these proceedings, requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Avisma and SMW, producers accounting for a significant proportion of merchandise in these proceedings, made a similar request on October 27, 1994. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register**.

Scopes of Investigation

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Pure primary magnesium encompasses all products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium), as well as products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium). Products that have the aforementioned primary magnesium content, but that do not conform to ASTM specifications or other industry or customer-specific specifications, are included in the scope of this investigation.

Pure primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these investigations are currently classifiable under subheadings 8104.11.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

This investigation covers alloy primary magnesium products which

contain 50% or greater, but less than 99.8%, primary magnesium, by weight. Products with the aforementioned primary magnesium content that do not conform to ASTM specifications or other industry or customer-specific specifications are included in the scope of this investigation. In addition to primary magnesium, "alloy" magnesium generally contains one or more of the following items in amounts less than the primary magnesium itself: (1) Other elements deliberately added to the primary magnesium; (2) magnesium scrap or secondary magnesium; (3) oxidized magnesium; and (4) other elements present as impurities.

Alloy primary magnesium is cast and sold in various physical forms and sizes, including ingots, slabs, rounds, billets and other shapes.

Excluded from the scope of this investigation are primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope include products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to these investigations are currently classifiable under subheadings 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The POI in both proceedings is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales to the United States of pure magnesium by AIOC, Gerald Metals, HDM, Interlink, MG Metals, and Razno, and sales to the United States of alloy magnesium by Gerald Metals and SMW, were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

B. Non-participating Respondents

All companies to which a questionnaire was issued are considered mandatory respondents in these proceedings. We consider those mandatory respondents that did not respond to the questionnaire to be uncooperative respondents, and we have based the less-than-fair-value margin for those companies on the best information available ("BIA"). For these preliminary determinations, we consider F&S (pure magnesium only) and W&O Bergmann (both pure and alloy magnesium) to be uncooperative respondents, as well as: Derek Raphael & Co., Ltd.; Marco Trading; Wogen Group Ltd.; Alex; Mages; and the eight companies whose names cannot be disclosed because their identities are deemed business proprietary information. Accordingly, we have based these companies' LTFV margins on an uncooperative BIA rate.

F&S's responses to our inquiries indicated sales of pure magnesium but not sales of alloy magnesium. Therefore, only F&S's sales of pure magnesium are subject to a BIA deposit rate.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents which did not cooperate in an investigation. As outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since these companies failed to respond to our questionnaire, we are assigning as BIA to uncooperative exporters a margin of 64.12 percent for pure magnesium and 107.89 percent for alloy magnesium. These margins represent the highest margin in each petition for each product, as recalculated by the Department for the initiation.

C. All Other Companies

We are basing the LTFV margins for all other companies, including those companies which reported that they did not sell the subject merchandise to the United States during the POI, on a simple average of the rates calculated for the mandatory respondents, including rates based on BIA but excluding zero and *de minimis* margins, if any.

United States Price

We based USP for AIOC, Interlink, Gerald Metals, MG Metals (where appropriate), Razno, and SMW on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For Interlink, Gerald Metals, MG Metals, Razno and SMW, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. We made the following deductions (where appropriate): for Razno and SMW, ocean freight and marine insurance; for AIOC, Interlink, Gerald Metals, and MG Metals, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. duty, U.S. inland freight, and U.S. inland insurance.

We based USP for HDM and, where appropriate, MG Metals, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated exporter's sale price based on packed delivered prices, where appropriate. For HDM, we made deductions, where appropriate. for

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ocean freight, marine insurance, U.S. inland freight, U.S. duties, and U.S. brokerage and handling. For MG Metals, we made deductions for foreign brokerage, ocean freight, marine insurance, U.S. duties, inland freight, inland insurance, and U.S. brokerage and handling.

From each exporter's U.S. price, we deducted foreign inland freight between the factory and the reported intermediate destination (*e.g.*, Rotterdam) as follows: For AIOC, SMW, and Razno, we used reported distances and transport modes to calculate an appropriate surrogate factory-to-border freight amount on the basis of surrogate freight rates in Brazil; for Interlink, Gerald Metals, HDM and MG Metals, we deducted the per-ton foreign inland freight amount reported in the petition as best information available because those exporters failed to report in their questionnaire responses information with respect to such charges. We made no deduction from USP to account for either export taxes paid by Russian companies to the Russian government or commissions paid by Russian companies to other Russian companies because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. Finally, we adjusted reported marine insurance and ocean freight charges for Razno as follows: a reported figure that appeared to be an extended value (*i.e.*, an amount applicable to the entire transaction) was adjusted to reflect a per-unit amount; for transactions where no figure was reported, we used as the highest reported non-aberrational per-unit amount.

Foreign Market Value

A. Market Reforms in the Russian Federation

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate foreign market value when the country involved is an NME country and the Department determines that it cannot determine foreign market value based on the respondent's prices or costs. An NME-country respondent may argue that market-driven prices characterize its particular industry and, therefore, despite NME status, that foreign market value should be calculated by using actual home market prices or costs.

In these investigations, the Russian manufacturers, Avisma and SMW, make such a market-oriented-industry ("MOI") claim. Alternatively, the two companies claim that economic conditions now prevalent throughout Russia warrant revocation of Russia's NME-country status, effective January 1, 1994.

The Department's analysis with respect to such claims centers around a government's role in economic activity. Consistent with the factors described in section 771(18), the Department considers the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, it would be difficult to conclude that home market prices or costs should be used to calculate fair value.

Evidence provided in these proceedings indicates that Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy. The freeing of most prices in December 1991 and the privatization of most enterprises formerly within the state-planning system are important steps in moving Russia towards a market economy.

We cannot conclude, however, based on the information in this record that Russia should be treated as a market economy for purposes of the antidumping duty law. The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned, but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.

Information on the record also suggests that the government continues to be involved in the Russian magnesium sector. For example, the Russian Federal Committee on Metallurgy, a successor to the Ministry of Industry (Metallurgy Department), indicated in an official statement that it controls activity in the magnesium industry in Russia, noting particularly that it coordinates production, exports, and prices. Also, although the two producers under investigation have been privatized, this same statement indicates that the Committee may be using the remaining government interest in these companies to carry out its intentions with respect to pricing and production. For these reasons, we have determined that the prices or costs of producing magnesium in Russia should not be used to calculate fair value.

B. Surrogate Country Selection

In accordance with section 773(c)(4) of the Act, we must, to the extent possible, value the factors of production in one or more market economy countries that (1) are at a level of economic development comparable to that of the non-market economy country, and (2) are significant producers of comparable merchandise. Thus, we have considered as possible surrogates those countries that are economically comparable to Russia and that produce identical or comparable merchandise. Of those countries that we have determined to be economically comparable, Brazil is the only country that is a significant producer of the identical merchandise, magnesium. (See October 21, 1994, Memorandum from the Office of Policy to the file.) Accordingly, we have based FMV on the values of the appropriate factors of production as valued in Brazil. We have obtained and relied upon published, publicly available information, wherever possible.

C. Factors of Production

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the above-mentioned exporters. The factors used to produce pure and alloy magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, *see* our calculation memorandum.) We then added amounts for general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value the raw materials, we used publicly available information for Brazil from the United Nations Trade Commodity Statistics (*UN Trade Statistics*) for January–December 1992. We did not attempt to adjust raw material factor values to account for inflation between 1992 and the POI because the figures were reported in dollars, and we had no indication as to how exchange rates, currency reforms, and hyperinflation could properly be taken into account. For those raw materials for which we were unable to obtain publicly available information from Brazil, we used data provided in the petition.

To value heavy oil, we used 1993 data for Brazil from the Energy Information Administration's International Energy Annual. Although this value for heavy oil is tax-inclusive, it is the only data found for heavy oil in Brazil.

Natural gas was valued using information from the petition on prices in Brazil because we could find no other source for prices of this product.

To value electricity for industrial use, labor, and freight rates for both truck and rail, we used information reported by the U.S. Consulate in Belo Horizonte, Brazil.

To value factory overhead, we calculated percentages based on elements of constructed value data reported in the Antidumping Investigation of Silicomanganese from Brazil (see public version of respondents' June 17, 1994, submission in that proceeding). We adjusted the figure to reflect an energy-exclusive overhead percentage.

For selling, general and administrative (SG&A) expense and profit percentages, we used statutory minimum of 10 percent, of materials, labor, and factory overhead. For profit we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses. No surrogate country information reflected percentages for SG&A and profit that were above the statutory minima.

To value packing materials, we also used information provided in the UN Trade Statistics for Brazil for January through December 1992. We added surrogate freight costs for the delivery of inputs and packing materials to the factories producing pure and alloy magnesium. For SMW, we used the actual cost for one factor, plastic, because it had been imported from a market economy country and paid for in convertible currency.

Verification

As provided in section 776(b) of the Act, we will verify information determined to be acceptable for use in making our final determinations.

Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation. Under 19 CFR 353.16(a), critical circumstances exist if (1) there is a history of dumping in the United States or elsewhere of the same class or kind of merchandise as the merchandise subject to the investigation; *or* the importer knew or should have known that the producer or reseller was selling the merchandise at less than its fair value; and (2) there have been massive imports of the merchandise over a relatively short period of time.

In determining whether imports were massive, 19 CFR 353.16(f)(1) instructs consideration of:

(i) The volume and value of the imports;
(ii) Seasonal trends; and
(iii) The share of domestic consumption accounted for by the imports.

Further, 19 CFR 353.16(f)(2) states that imports will not generally be considered massive unless they have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration.

With respect to the question of whether there is a history of dumping, we consider whether there has been an antidumping order covering the imports of the investigated product into the United States or another country. To determine whether the importers of alloy magnesium from Russia knew, or should have known, that the products were being sold at less than fair value, we considered the company-specific preliminary margins in these investigations. We consider margins of 25 percent or more (when USP is purchase price) and 15 percent (when USP is ESP) sufficient to impute knowledge. See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37078, July 9, 1993).

For all exporters except Gerald Metals and SMW, the margin calculated with respect to alloy magnesium exceeds 25 percent. However, for Gerald Metals and SMW, the company-specific margins do not exceed 25 percent. Accordingly, we must also consider whether there is a history of dumping in the United States or elsewhere with respect to alloy magnesium from Russia in order to determine whether critical circumstances exist with respect to those companies. We are aware of no outstanding antidumping duty orders with respect to alloy magnesium from the Russian Federation. For those companies with estimated margins that exceed 25 percent, we determine that importers knew or should have known that sales were at LTFV prices.

The Department's official import statistics show that the volume of Russian alloy magnesium entries during the post-petition period of April through June 1994 (79.0 metric tons) exceeds that of the January through March 1994 pre-petition period (31.1 metric tons) by 154 percent. Nothing on the record indicates that this increase observed was the result of seasonal trends. With respect to share of domestic consumption, the information available to us at this time does not allow us to evaluate whether the increase can be accounted for by a change in domestic consumption

Therefore, we find that imports were massive over a relatively short period.

Accordingly, we preliminarily determine that critical circumstances exist with respect to imports of alloy magnesium from the Russian Federation except with respect to imports of alloy magnesium sold by Gerald Metals and SMW.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pure magnesium from the Russian Federation (except those that represent sales by AIOC, Gerald Metals, Hunter Douglas, Interlink, or MG Metals) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also directing the Customs Service to suspend liquidation of all entries of alloy magnesium from the Russian Federation (except those that represent sales by Gerald Metals or SMW) entered, or withdrawn from warehouse, for consumption on or after either (a) the date that is 90 days prior to the date of publication of this notice in the **Federal Register** or (b) the date of publication of this notice in the **Federal Register**, as appropriate. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have, in each of the two proceedings, calculated a single rate applicable to all exporters in the Russian Federation. The record in these investigations indicates that all Russian exporters of magnesium responded to our questionnaire. Although SMW requested a separate rate, we have not addressed the request because, in each proceeding, the rate for SMW and all other exporters in Russia is the same irrespective of whether or not SMW warrants a separate rate.

The weighted-average dumping margins are as follows:

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Manufacturer/Producer/Exporter	Weighted-average margin percentages		Critical circumstance (alloy)
	Pure	Alloy	
AIOC	0.00	[1] 107.89	Yes.
Gerald Metals	.00	.00	No.
Hunter Douglas	.00	[1] 107.89	Yes.
Interlink	.00	[1] 107.89	Yes.
MG	[2] .13	[1] 107.89	Yes.
Razno and all Russian Exporters [3]	5.06		
SMW and all Russian Exporters [4]		.00	No.
F&S	64.12	[1] 107.89	Yes.
W&O	64.12	107.89	Yes.
Derek Raphael & Co., Ltd	64.12	107.89	Yes.
Marco Trading	64.12	107.89	Yes.
Wogen Group Ltd	64.12	107.89	Yes.
Alex	64.12	107.89	Yes.
Mages	64.12	107.89	Yes.
Company A	64.12	107.89	Yes.
Company B	64.12	107.89	Yes.
Company C	64.12	107.89	Yes.
Company D	64.12	107.89	Yes.
Company E	64.12	107.89	Yes.
Company F	64.12	107.89	Yes.
Company G	64.12	107.89	Yes.
Company H	64.12	107.89	Yes.
All others not located in Russia	60.43	107.89	Yes.

[1] Represents the "all others rate" for this product; does not denote a company-specific margin percentage.
[2] *De Minimis.*
[3] Pure Magnesium Only.
[4] Alloy Magnesium Only.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If one or both of our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 17, 1995, and rebuttal briefs, no later than February 24, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 28, 1995, at 10:00 a.m. at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If these investigations proceed normally, we will make our final determinations by the 135th day after the date of publication of the affirmative preliminary determinations in the **Federal Register**.

These determinations is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27436 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–824]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Kullman or John Brinkmann, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.; Washington; DC 20230; telephone: (202) 482–1279 or (202) 482–5288, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994, (59 FR 14852, June 17, 1994), the following events have occurred:

On June 16, 1994, the U.S. Department of Commerce (the Department) received the response of Companhia Paulista de Ferro-Ligas and Sibra Eletro-Siderurgica Brasileira S/A (collectively "Paulista") to the Department's cost of production (COP) and constructed value (CV) questionnaire. The Department sent a COP/CV deficiency questionnaire to Paulista on July 8, 1994, which the company answered on July 29, 1994. On August 3, 1994, the Department sent a letter requesting additional clarification, which the company responded to on August 23, 1994.

The Department conducted verification in Brazil of Paulista's COP/CV response in August 1994.

On September 2, 1994, Paulista informed the Department that it would no longer be participating in the investigation. Paulista cited a lack of personnel and the fact that the company was operating under the Brazilian equivalent of U.S. Chapter 11 bankruptcy protection as reasons why it was withdrawing from the investigation. Paulista requested that all of its proprietary information be removed from the record.

The petitioners (Elkem Metals Company and the Oil, Chemical & Atomic Workers, Local 3–639) submitted a case brief on September 23, 1994. Paulista submitted a rebuttal brief on September 28, 1994. At petitioners' request, a public hearing was held on September 30, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We have determined that the merchandise subject to this investigation constitutes two such or similar categories, lumps and fines.

Best Information Available (BIA)

As noted in the "Case History" section of this notice, Paulista withdrew from the investigation after completion of the COP/CV verification and requested that all of its proprietary data be removed from the record. Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA as a basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions to those respondents found to be uncooperative in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied Signal v. United States*, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)).

When a company refuses to cooperate or otherwise significantly impedes an investigation, the Department normally uses as BIA the highest of: (1) the highest margin in the petition; (2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or (3) the estimated margin found for the affected firm in the preliminary determination. (*See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19033 (1989)).

As detailed in the DOC position in Comment 1 below, we consider Paulista to have been uncooperative. Under our standard practice, we would have selected as the most adverse BIA for this investigation the estimated margin found for Paulista in the preliminary determination. However, because Paulista withdrew all of its proprietary data from the record, we cannot rely on the preliminary determination. *Smith Corona Corp. v. United States*, 796 F.Supp. 1532 (CIT 1992) (*Smith Corona*). It would be inappropriate to allow Paulista to thwart proper administration of the law and reward its uncooperative behavior by selecting as BIA the highest rate in the amended petition, which is less adverse than the preliminary rate. Therefore, we assigned to Paulista a BIA margin by comparing United States price (USP) to CV, based on information in the record. (For a discussion of this BIA calculation see the "Fair Value Comparisons" section of this notice and Comment 2 below).

In calculating the "All Others" rate, the Department normally weight averages all positive margins found in the investigation, including BIA rates. As discussed above, as an uncooperative respondent, Paulista will receive an adverse BIA margin. Because Paulista's margin is the only margin found in the investigation, under our normal practice, its margin would become the "All Others" rate. The Department notes, however, that in *Smith Corona*, the Court of International Trade (CIT) held that the Department may assign a rate lower than the highest available rate to nonparticipants in an investigation, when those parties (1) had no control over the sole respondent's withdrawal of documentation, (2) had no reason to believe that an adverse rate would be selected for the respondent as a result of the withdrawal of information, and (3) had no opportunity to offer their own data.

In the present case, as in *Smith Corona*, producers/exporters who were not respondents had no control over Paulista's withdrawal of its information, had no reason to believe that Paulista would receive an adverse rate as a result of withdrawing information, and by virtue of the point at which Paulista withdrew its information from the record, had no opportunity to submit their own data for analysis and verification. We have concluded that, under these circumstances, assigning an adverse BIA rate to all other producers/exporters would be inappropriately punitive. Therefore, the Department has based the "All Others" rate in this investigation on the dumping margin which formed the basis for the initiation of this investigation.

Fair Value Comparisons

As BIA, we have calculated a margin for Paulista based on a comparison of

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USP and foreign market value (FMV). USP was based on information contained in the petition, as fully described in the notice of initiation of this investigation (58 FR 64553, December 8, 1993). FMV was based on CV, using data submitted by petitioners and relied upon by the Department in its initiation of the COP investigation (*See*, Memorandum from Richard W. Moreland to Barbara R. Stafford, May 13, 1994, on file in Room B–099 of the Main Commerce Building), adjusted for interest expense and profit. In accordance with section 773(e)(1)(B)(ii), we added the statutory minimum of eight percent for profit and recalculated interest expense based on the consolidated results of the operations of Paulista for the year ending December 31, 1993, as reflected in its public financial statements. Since FMV is based on a CV, which is exclusive of any value added taxes (VAT), we have adjusted USP to exclude the VAT adjustment that was made for purposes of this initiation.

Interested Party Comments

Comment 1: Petitioners argue that the Department should find Paulista uncooperative because it withdrew its participation from the investigation and removed all of its proprietary information from the record.

Paulista states that the company devoted significant time and resources to provide the information requested by the Department during the course of the investigation, allowed verification of its cost response and provided additional information to the Department after the cost verification.

DOC Position: We agree with petitioners. By withdrawing from the investigation, Paulista significantly impeded the completion of the Department's investigation. Moreover, in light of Paulista's removal of all of its proprietary information from the record, the Department has no choice but to treat Paulista as an uncooperative respondent. This action has the consequence of expunging from the administrative record the basis for showing, either now or on appeal, that Paulista had been cooperative during this investigation. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Italy*, 58 FR 37153 (July 9, 1993); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6205 (January 27, 1993)).

Comment 2: Petitioners argue that Paulista withdrew from the investigation only after recognizing that the results of the investigation would be more favorable if based on the petition or initiation rate. Consequently, petitioners argue that the Department must look beyond the pool of rates identified in its two-tier BIA policy, since none of those rates was sufficiently adverse to compel Paulista's cooperation. Petitioners contend that, as BIA, the Department should use data in petitioners' COP allegation and Paulista's financial statements to calculate FMV, and data provided in Paulista's own ranged public submissions of its questionnaire response to calculate USP. In addition, the petitioners contend that because Paulista was uncooperative, the Department should "de-range" USP information provided in the public version of Paulista's response by reducing gross prices by 10 percent and increasing the foreign movement charges and U.S. selling expenses by 10 percent.

Paulista agrees that BIA is warranted in this investigation. However, Paulista contends that the company's ranged public data should not be used to calculate USP. Paulista argues that the use of its ranged public data as BIA would be unprecedented and contrary to the intent of the Department's public summary requirements, which is to provide meaningful summaries of data for the public. Additionally, Paulista asserts that there is sufficient information on the record in this investigation to establish a BIA dumping rate without resorting to the use of ranged data.

DOC Position: We agree with the petitioners that Paulista should not be rewarded for withdrawing from the investigation. In order to assign Paulista an adverse BIA rate, the Department cannot rely on the margin calculated in the preliminary determination because the use of such a rate would not comport with the CIT's decision in *Smith Corona*. While the Department might otherwise rely on the amended petition for purposes of BIA, given the circumstances of this case and the intent of the statute, we do not find that the rates contained in that petition provide an adequate basis for BIA. Section 776(c) of the Act provides for the use of BIA to compel participation. Further, a more adverse BIA is required where a respondent fails to cooperate or significantly impedes the investigation, as in this case. The preliminary margin was substantially higher than the rate found in the amended petition for purposes of initiation. To use the petition rate would, in effect, reward the respondent for refusing to cooperate. Moreover, a precedent could be set which would encourage a respondent to withdraw from a proceeding and remove its proprietary information from the record whenever the margin found in the preliminary determination exceeded that which formed the basis of the initiation (*e.g., Krupp Stahl A.G. v. United States*, Slip Op. 93–84, May 26, 1993).

We disagree, however, with petitioners' proposed selection of BIA. Although the Department has used such ranged data as a basis for BIA in the past, the use of such information is a last resort. In this instance, we are not compelled to use the ranged data in order to calculate an adverse final determination rate. There is sufficient data available in petitioners' COP allegation and Paulista's public financial statement to calculate a FMV based on CV. This methodology is consistent with both past practice (*see, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), and with the CIT's holding that respondents should not realize a benefit from noncooperation

Continuation of Suspension of Liquidation

In accordance with Section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Brazil that are entered, or withdrawn from warehouse, for consumption on or after June 17, 1994, the date of publication in the **Federal Register** of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The dumping margins are as follows:

Producer/manufacturer exporter	Antidumping margin
Paulista	64.93
All Others	17.60

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27546 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–828]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Kullman or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW; Washington, DC 20230; telephone: (202) 482–1279 or (202) 482–0186, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination (59 FR 31199, June 17, 1994) the following events have occurred: On June 28, 1994, counsel withdrew its representation for the two responding firms in this investigation; and on July 28, 1994, at the request of two non-responding firms with significant silicomanganese exports, the final determination was postponed (59 FR 40008, August 5, 1994). No further comments were submitted.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1993.

Best Information Available

As detailed in our preliminary determination, the Department sent antidumping questionnaires to 18 producers and exporters that may have sold silicomanganese to the United States during the POI. Further, we sent an antidumping questionnaire to the PRC Ministry of Foreign Economic Trade and Cooperation (MOFTEC) and requested that MOFTEC: (1) Furnish the questionnaire to any silicomanganese producers and exporters with U.S. sales during the POI that were not on our list of 18 companies, and (2) provide a comprehensive list of those additional companies that received the questionnaire from MOFTEC. Two companies, a PRC producer of silicomanganese and a Hong Kong export company that purchased silicomanganese from that company and sold it to the United States, were found by the Department not to have had any sales during the POI. Further, we did not receive responses from MOFTEC and the remaining potential respondents. Accordingly, given that no information was submitted by potential respondents with respect to sales during the POI, we have based our final determination on best information available (BIA), in accordance with section 776(c) of the Act.

The BIA methodology is described in the notice of preliminary determination. In this case, BIA is the information contained in the petition, as amended on November 24, 1993 (*See Initiation of Antidumping Duty Investigations: Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela*, 58 FR 64553, December 8, 1993). The amended petition provides only one margin, listed below, for all PRC producers and exporters of silicomanganese.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of silicomanganese from the PRC. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology. Because no additional information was submitted since the preliminary determination, the Department is using the same analysis as explained in its preliminary finding and determines that critical circumstances exist for imports of silicomanganese from the PRC.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). The Customs Service shall require a cash deposit or posting of a bond equal to 150.00 percent *ad valorem* on all entries of silicomanganese from the PRC. This suspension of liquidation will remain in effect until further notice.

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International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27545 Filed 11-4-94; 8:45 am]

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[A-307-811]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5288 or (202) 482-2336, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994, (59 FR 31204, dated June 17, 1994), the following has occurred:

On June 27, 1994, Hornos Electricos de Venezuela, S.A. de C.V. (Hevensa) submitted its response to Section D of the Department of Commerce's (the Department) questionnaire. (Section D of the questionnaire requests information on the cost of production (COP) and constructed value (CV).) On June 29, 1994, Hevensa submitted a revised version of this response correcting bracketing errors. On July 12, 1994, Hevensa also submitted supplemental responses to its March 1, 1994, and April 19, 1994, submissions.

The Department requested additional information regarding Section D of the questionnaire on July 14, 1994. Hevensa submitted this information on August 15, 1994.

Verification of Hevensa's sales and COP/CV questionnaire responses was conducted in July and September 1994, respectively.

Hevensa and petitioners submitted case briefs on October 3, 1994, and rebuttal briefs on October 6, 1994. At Hevensa's request, the Department held a public hearing on October 7, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We made fair value comparisons using the following such or similar categories: (1) lumps and (2) fines. Where we were not able to compare U.S. sales to sales of identical merchandise, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, on file in Room B-099 of the main building of the Department.

Fair Value Comparisons

To determine whether Hevensa's sales to the United States of silicomanganese were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination.

Foreign Market Value

As noted in our preliminary determination, we initiated a COP investigation on May 9, 1994, based on an allegation by the petitioners (*see* decision memorandum from Richard Moreland to Barbara Stafford, dated May 9, 1994). On the basis of petitioners' allegations, we gathered and verified data on production costs. Because Hevensa's COP response was not due until after the date of the preliminary determination, this information was not considered for the preliminary determination.

A. *Calculation of COP*

In order to determine whether prices were above the COP, we calculated the COP in accordance with 353.51(c) of the Department's regulations. Our calculations of COP were based on the sum of Hevensa's submitted costs of materials, fabrication, general expenses, and packing, except in the following instances where we determined that the costs were not appropriately quantified or valued. Specifically, we:

1. Recalculated depreciation expense based on the restated value of Hevensa's fixed assets;
2. Disallowed Hevensa's claimed foreign exchange gains on client accounts receivable;
3. Reclassified foreign exchange gains and losses on the purchase of input materials from financing expense to cost of manufacturing;
4. Recomputed general and administrative expense and interest expense using a cost of sales figure adjusted for depreciation expense and exchange losses on material purchases as noted in 1 and 3 above;
5. Included the same amount of value-added tax (VAT) in home market COP as is included in the domestic sales prices; and
6. Added the additional charge incurred by Hevensa for the production of the Grade C product, as negotiated with its contractor.

B. *Test of Home Market and Third Country Sale Prices*

After calculating COP, we tested whether home market and third country sales of silicomanganese were made at prices below COP.

We compared product-specific COP to reported prices that were net of movement charges, discounts, rebates, direct and indirect selling expenses, and inclusive of VAT. If over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that product and calculated FMV based on constructed value (CV).

In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: 1) if a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or 2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. *Results of COP Test*

We found that more than 90 percent of Hevensa's third country sales of Grade C fines were sold at below-COP prices over an extended period of time. Hevensa provided no indication that these below-COP sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. Therefore, we disregarded all third country sales of Grade C fines. For U.S. sales left without a match as a result of disregarding these below-COP sales, we based FMV on CV.

We found that more than ten percent but less than 90 percent of Hevensa's sales of Grade B silicomanganese lump, size 5" x 1", were sold at below-COP prices over an extended period of time. Therefore, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's cost of production.

Price-to-Price Comparisons

We calculated FMV using the methodology described in our notice of preliminary determination, with the following exceptions:

1. We matched the 5" x 2" material sold in the United States to the 5" x 1" material sold in the home market instead of to the 4" x 2" material sold in the home market.
2. We matched 30mm x 6mm Grade C lump material to CV (*see* concurrence memorandum, dated October 31, 1994).
3. We matched the 6mm x 1mm Grade C fines sold in the United States to CV because more than 90 percent of respondent's sales of this product were at prices below the COP and were sold over an extended period of time.

Price to CV Comparisons

In the instances noted above and where there was otherwise no matching home market or third country sale, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We made all adjustments described in the COP section (except for the inclusion of VAT) in calculating CV. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture. For profit, we used the actual profit earned by Hevensa where the actual figure was greater than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by Hevensa by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Hevensa asserts that its home market sale of Grade C lump silicomanganese during the POI was outside the ordinary course of trade and, therefore, should not be used to calculate FMV for the 30mm x 6mm Grade C merchandise. Hevensa asserts that the home market sale was the only such sale made during the POI, that the amount of the sale was smaller than those made in Hevensa's ordinary home market sales, and that the sale was made on a trial basis to a trader who had requested a different product that was not available at the time.

Petitioners assert that the sale was a legitimate one and the fact that it was for a smaller than usual amount is not enough to indicate that it was outside the ordinary course of trade.

DOC Position: We agree with Hevensa. During verification, we satisfied ourselves that the home market sale of 30mm x 6mm Grade C material was a trial amount sold outside the ordinary course of trade. This was the only sale of a trial amount during the 16 months examined at verification. Moreover, Hevensa did not make any other sales to this customer during that period of time.

Comment 2: Hevensa contends that the Department should use monthly or bi-monthly weighted-average FMVs, rather than the normal six-month average FMV, to calculate whether there is a margin of dumping in this investigation. Hevensa argues that, during the POI, the interplay among the Venezuelan rate of inflation, the U.S. dollar-based prices of the subject merchandise, and the changes in the exchange rate for U.S. dollars and Venezuelan bolivars, could create a margin of dumping if a weight-averaged FMV were used for the entire POI.

Petitioners argue that Hevensa is requesting that the Department adopt a methodology that is inconsistent with its practice in hyperinflationary

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economy cases. Additionally, the petitioners assert that, if Hevensa's monthly FMVs were adopted, any comparison between the FMV and the U.S. price would be distorted. Specifically, the petitioners argue that Hevensa is requesting that the Department apply, in effect, only that part of its methodology for hyperinflationary economies calling for the use of monthly FMVs, not the part of the methodology calling for the submission of costs on a replacement basis.

DOC Position: We disagree with respondent's argument that the Department should use monthly or bi-monthly weighted-average FMVs because of the high rate of inflation in Venezuela during the POI. However, it should be noted that the Department has calculated two weighted-average FMVs to accommodate the introduction of VAT in Venezuela during the last two months of the POI. Because Hevensa's U.S. sales were only invoiced during the last two months of the POI, it happens that Hevensa's U.S. sales of the merchandise in question were compared only to a two-month VAT-inclusive weighted-average FMV.

We agree with the petitioners that it would be inappropriate to apply only the averaging portion, and not the replacement cost portion, of our hyperinflationary economy methodology. Although information on the record of this investigation would permit the Department to calculate the FMV on a monthly or bi-monthly basis, if we were to find the Venezuelan economy to be hyperinflationary during the POI, our methodology for hyperinflationary economies also requires us to calculate the cost of production on a replacement cost basis. It is not possible for us to calculate Hevensa's replacement costs because Hevensa has insisted, and we have accepted, that the Venezuelan economy during the POI was not hyperinflationary. Accordingly, Hevensa has not supplied the Department with its replacement costs, and we have applied our standard non-hyperinflationary methodology in this final determination.

Comment 3: Hevensa argues that the Department should revise its level-of-trade analysis from the preliminary determination. During the POI, all of Hevensa's U.S. sales were made to Mannesmann, who resold the silicomanganese. Hevensa contends that, in the preliminary determination, it was inappropriate for the Department to compare Hevensa's sales to Mannesmann to Hevensa's home market sales to a home market trader because its home market trader does not perform the same role as Mannesmann. Rather, Hevensa claims that Mannesmann functions as a commission agent, while the home market trader functions as a wholesaler.

Petitioners assert that the Department focuses on the customer's function in the distribution chain to classify sales by level of trade and that Mannesmann functions as any trader does, *i.e.*, it takes title to the material and then resells it. Accordingly, the petitioners argue that both Mannesmann and Hevensa's home market trader "have the same place in the chain of distribution—to sell to end-users and, therefore, they are at the same level of trade."

DOC Position: We agree with the petitioners. We view the level of trade of the sales between Hevensa and its home market trader as being functionally equivalent to the level of trade of Hevensa's sales to Mannesmann. Both Mannesmann and the home market trader are wholesalers, and both are taking title to the merchandise prior to reselling it (see Concurrence Memo for this final determination).

Comment 4: The petitioners argue that the Department should compare Hevensa's U.S. sales of 5" x 2" Grade B lump silicomanganese with home market sales of 5" x 1" Grade B lump silicomanganese to Hevensa's home market trader/wholesaler (*i.e.*, at the same level of trade).

Hevensa argues that, if the Department decides that its U.S. sales to Mannesmann are at the same level of trade as its home market sales to the trader (*see* Comment 3, above), the Department should not take level of trade into account when making comparisons. Hevensa contests comparisons based on level of trade because there was no correlation between its prices and selling expenses on the one hand, and levels of trade on the other. Hevensa asserts both that its average prices for 5" x 1" Grade B lump material were higher to its home market trader than to its home market end users, and that its selling expenses were roughly equivalent for both traders and end users. Moreover, Hevensa asserts that its sales to both categories of customers were made by the same sales department, within the same sales process, and that no additional technical support or additional services were provided to either category of customer.

DOC Position: We agree with Hevensa. Level of trade can be an important distinction where respondents charge different prices and incur different selling expenses at the different levels of trade. Here, where the home market trader operates at an intermediate level between Hevensa and the end users, Hevensa's prices to the trader logically would be lower than its prices to end users if there were a relationship between Hevensa's prices and level of trade. Instead, Hevensa has demonstrated that its average prices to the trader were marginally higher than its prices to end users.

The Department also verified that direct selling expenses, with the exception of certain differences in the average credit days for the home market trader and some home market end users, were similar. During verification, we did not note any differences between home market and end-user sales processes or sales services. Furthermore, there is no other information on the record that indicates differences existed for indirect selling expenses. Accordingly, the Department has not taken the level of trade into account but, rather, has compared Hevensa's U.S. sales of 5" x 2" Grade B material to Mannesmann to the home market sales of 5" x 1" grade material to both the home market trader and the home market end users.

Comment 5: Hevensa argues that the Department should include the amount that the customer was required to pay for VAT when calculating Hevensa's imputed credit expenses on its home market sales. It contends that when it extends credit to its home market customers, it necessarily agrees to a delay in the payment of the full amount owed by the customer, including the VAT. Therefore, the Department must calculate an imputed cost for the full amount of the delayed payment.

The petitioners argue that the Department should not consider VAT in calculating imputed credit. The petitioners assert that Hevensa does not necessarily owe VAT at the time it ships to the purchaser and, in some instances, it may not owe the tax until after it has received payment from the purchaser. The petitioners also state that if the Department were to allow an imputed credit adjustment for the VAT tax, the date of invoice would not be the proper date for calculation. Moreover, the petitioners argue that in cases where the purchaser had paid Hevensa the purchase price, including VAT, prior to the date on which Hevensa owed VAT to the government, the Department would have to calculate a credit revenue for Hevensa.

DOC Position: The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR 31204, 31205, June, 17, 1994.) Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

Comment 6: Hevensa argues that the VAT methodology employed by the Department in its preliminary determination distorted the Department's calculations by inflating—and possibly creating—the dumping margins found on Hevensa's sales.

The petitioners argue that the VAT methodology employed in the preliminary determination is consistent with the Department's practice.

DOC Position: We agree with petitioners. As we explained in our preliminary determination, we multiplied the foreign VAT rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market VAT was applied to foreign market sales, and we added this product to the U.S. price. The Department also deducted from the USP and FMV those portions of the respective home market tax and the USP tax adjustments attributable to expenses. This methodology was adopted by the Department to comply with *Federal-Mogul Corp. and Torrington Co.* v. *United States*, 834 F. Supp. 1391 (CIT 1993) and has been the Department's practice since this ruling. See also, *Avesta Sheffield, Inc.* v. *United States*, 838 F. Supp. 608 (CIT 1993).

Comment 7: The petitioners argue that the Department should calculate duty drawback on only those export shipments of silicomanganese that correspond to valid "Admission Temporal par Perfectionsmiento Activo (ATPA)" permits of the Venezuelan government.

Hevensa concedes that its ATPA had lapsed for the period from June 29, 1993, through November 2, 1993. However, it argues that it is eligible for duty drawback on all exports after November 2, 1993, and that it has the right to request the Venezuelan authorities to modify its documents to apply other shipments against the ATPA.

DOC Position: We agree with the petitioners. The record demonstrates that Hevensa was only authorized duty drawback on the particular export sales for which an ACTA was in effect at the time the silicomanganese was exported. Accordingly, we have calculated duty drawback adjustments for only such sales.

Comment 8: The petitioners argue that the Department should base the adjustment of FMV for royalties on the amount of the fee for services that had been established between Hevensa and the provider of the technical services and which Hevensa had accrued during the POI.

Hevensa argues that the fee it had agreed to with the provider of the technical services and which it had been accruing during the POI was not approved by the Venezuelan Superintendent of Foreign Investments (SIGHTS) and that the accrued rate had been adjusted subsequently because the original amount had not been authorized by SIGHTS. Hevensa asserts that the adjustment must be based on the amount that SIGHTS approved.

DOC Position: We agree with Hevensa. We have adjusted the royalty expense to reflect the amount that the Venezuelan government permitted Hevensa to pay for the POI.

Comment 9: Petitioners assert that the silicomanganese slag further processed into Grade C silicomanganese by Hevensa is a co-product of Grade B silicomanganese. The petitioners also state that because the silicomanganese slag should be considered a co-product to the Grade B silicomanganese, the Department should allocate Hevensa's production costs equally between Grade B silicomanganese and silicomanganese slag. The petitioners support the argument that the slag should be classified as a co-product by noting that both the Grade B silicomanganese and the slag share a single common production process. The petitioners also argue that inasmuch as only minor processing is necessary to process the slag into Grade C silicomanganese, the value of the Grade C silicomanganese is representative of the value of the slag, and that this value is significant because of the percentage of total sales that Grade C silicomanganese accounted for during the POI.

Hevensa argues that the silicomanganese slag generated in the production of its Grade B silicomanganese is a waste product and, therefore, should not be treated as a co-product. Hevensa cites to the petition in this investigation in which silicomanganese slag was classified as a waste product that received no assignment of costs as support for its treatment of the silicomanganese slag. Hevensa also argues that the silicomanganese slag is not a finished product and cannot be sold without substantial further processing.

DOC Position: We disagree with the petitioners. In determining how to allocate costs among various products manufactured during the course of producing the merchandise subject to the investigation, the Department, pursuant to Section 773(e) of the Act, looks to the value of the other products relative to the value of all products produced during, or as a result of, the process of manufacturing the product under investigation. *See, e.g., Final Determination of Sales at Less Than Fair Value (SLTFV): Sebacic Acid From the People's Republic of China*, 59 FR 28053, 28056 (May 31, 1994). *See also IPSCO, Inc. v. U-Stat*, 965 F.2d 1056 (Fed Cir. 1992). If the value of the joint product is significant, the Department will treat such product as a co-product, with the result that all costs incurred in the production process are allocated based on the relative quantity of output of the joint products. *Id.*, 965 F.2d at 1060.

In this case, the silicomanganese slag further processed into Grade C silicomanganese is not a co-product of the Grade B silicomanganese, because its value is not significant in relation to the Grade B product. The petitioners' conclusion that the total value of Grade C silicomanganese sales revenue during the POI was significant compared to the total value of Grade B silicomanganese sales revenue during the POI is not accurate. The petitioners fail to take into account that the sales revenue data used in their analysis reflects the disproportionate production and sales quantities of Grade B silicomanganese and silicomanganese slag during the POI. That is, a significant amount of silicomanganese slag which was used to produce the Grade C product sold during the POI was generated from slag produced in prior years. Petitioners' analysis also fails to take into account the additional costs incurred to recover the Grade C material from the slag. These additional costs should be deducted from the gross revenues received for the sales of Grade C silicomanganese to perform a net realizable value comparison. After these adjustments, the net realizable value of silicomanganese slag produced during the POI is insignificant when compared to the net realizable value of all products produced during the POI. *See, e.g., Final Determination of SLTFV Polythylene Terephthalate Film, Sheet and Strip From the Republic of Korea*, 56 FR 16305, 16316 (April 22, 1991), concerning the accounting of recycled scrap film. Accordingly, no allocation of costs is appropriate.

Comment 10: The petitioners assert that the Department should calculate

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depreciation expense on the restated value of Hevensa's fixed assets. The petitioners state that although Hevensa's use of historical cost based depreciation in its submissions to the Department is consistent with Venezuelan Generally Accepted Accounting Principles (GAAP), the resulting depreciation expense is distorted by the high level of inflation in Venezuela during the POI.

Although Hevensa revalued its assets in its financial statements for the fiscal year ending October 31, 1993, Hevensa argues that Venezuelan GAAP did not permit this revaluation of assets. Hevensa further states that because its calculation of depreciation expense on the basis of the historical value of its fixed assets for its submissions to the Department is in accordance with the home-market country's GAAP, it should be accepted by the Department.

DOC Position: We agree with the petitioners that the depreciation expense should be based on the restated value of Hevensa's fixed assets. Normally, the Department does calculate costs in accordance with the GAAP of the home market country (*see NTN Bearing Corp. of America v. U-State*, 826 F. Supp. 1435, 144–42 (CIT 1993). However, the Department will not use a country's GAAP if it does not accurately recognize a company's actual costs or distorts those costs (*see Id.*). This case is unusual because the accounting authorities in the home market country itself changed their position on the restatement of fixed assets, allowing it for fiscal years beginning after October 31, 1993, after having not approved it in prior years. This decision to revise Venezuelan GAAP was made on the basis of an on-going analysis of the impact of economic conditions on the reporting of financial data.

Depreciation enables companies to spread large expenditures on purchases of machinery and equipment over the expected useful lives of these assets. Not adjusting for the devaluation of currency due to high inflation results in the depreciation deferred to future years being understated in constant currency terms, and, therefore, distorts the Department's COP and CV calculations.

For these reasons, we have adjusted Hevensa's depreciation expense to reflect amounts based on the restated value of Hevensa's fixed assets.

Comment 11: The petitioners assert that the Department should not deduct Hevensa's net exchange gain on financial assets and liabilities nor its net exchange gain on client accounts in its calculation of Hevensa's interest expense. The petitioners argue that because the net exchange gains on financial assets and liabilities are not related to the production of silicomanganese, the Department should not offset Hevensa's interest expense with these gains. With respect to exchange gains and losses on accounts receivable, the petitioners argue that Department policy does not permit such items to be used as an offset to interest expense.

Hevensa argues that its net exchange gain on financial assets and liabilities should be treated in a manner similar to interest income on short-term financial assets. The respondent also states that the exchange gain or loss relates to a foreign deposit in which the total return is equal to the sum of the interest to be paid and the exchange gains and losses.

DOC Position: We agree with the petitioners, in part. It is Department practice not to include exchange gains and losses on client accounts receivable because the exchange rate we use to convert third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. (*See* 19 CFR 353.60.) Accordingly, we have disallowed Hevensa's claimed foreign exchange gains on client accounts receivable.

It is Department practice to include foreign exchange gains and losses on financial assets and liabilities in our COP and CV calculations where they are related to the company's production of the subject merchandise. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. Therefore, we disagree with the petitioners and have included foreign exchange gains and losses on financial assets and liabilities in COP and CV.

Comment 12: The petitioners assert that late payment penalties paid to suppliers and net exchange losses on purchases from suppliers should be reclassified as costs of manufacturing. The petitioners cite prior Department policy in which all costs directly associated with the purchasing of materials were included in material costs.

Hevensa argues that because money is fungible, late payment penalties and net exchange losses on purchases from suppliers should be classified as a general expense, not as a cost of manufacturing. Hevensa notes that by borrowing working capital from its suppliers (by delaying its payments), it freed up its remaining cash to be used in other operations, and thus borrowing from these suppliers helped finance Hevensa's overall operations.

DOC Position: We agree with the petitioners, in part. Foreign exchange gains and losses on the purchase of raw materials used in production of subject merchandise relate directly to the acquisition of the input materials and should be included in the cost of manufacture. Late payment penalties, which represent interest charges for late payment to suppliers, are directly related to management's decision on the usage of capital. Because the Department considers the cost of acquiring capital to be fungible, we believe these late payment penalties are classified appropriately as interest expense.

Comment 13: The petitioners assert that Hevensa misallocated the cost of silicomanganese fines and manganese ore used in the production of Grade B lump silicomanganese. Hevensa divided the total costs of fines and manganese ore for the month by the total volume of Grade B lump and fines produced during the same month to obtain a monthly cost of fines and ore per unit of silicomanganese produced. Petitioners also assert that because Hevensa reported no sales of Grade B fines during the POI, Hevensa should have allocated the fines and ore cost only over the volume of Grade B lump and silicomanganese slag produced.

Hevensa contends that it properly allocated cost to the Grade B silicomanganese fines produced, even though none were sold during the POI. The costs assigned to the fines are included in the inventory value of the fines, and then included in the submitted costs of manufacture when the fines are used in production. If no cost is assigned to fines generated during production, then no cost for fines used in production should be included in the submitted cost of manufacturing.

DOC Position: We disagree with the petitioners. Hevensa did not misallocate the cost of silicomanganese fines and manganese ore. The costs assigned to the silicomanganese Grade B fines generated in the production process are the same costs assigned to silicomanganese Grade B fines reintroduced into the furnace. In our view, this methodology does not distort costs. Accordingly, no adjustment is necessary.

Comment 14: The petitioners argue that Hevensa should include VAT on raw materials as part of its production costs for months that were subject to VAT. To exclude VAT on cost of materials from COP and CV would be contrary to Department practice.

Hevensa argues that if the Department includes the value added taxes paid on inputs in the cost of production, it must also include the VAT received from its customers in the price for purposes of the sales below cost test.

DOC Position: We agree with the respondent. The amount of VAT included in the home market COP should be the same as the amount that is included in the home market sales prices. For CV and third-country sales, no VAT on raw materials should be included. If the VAT is rebated by the government upon export, no VAT is added to CV on third country sales price in any event, pursuant to Section 773(e)(1)(a).

Comment 15: Hevensa argues that the Department should perform the sales below cost test by comparing the sales price to a monthly weighted-average COP. It asserts that comparing sales prices at the beginning of the POI to a weighted-average COP for the POI would be distortive, given the high rate of inflation experienced in Venezuela during the POI.

The petitioners argue that Hevensa's proposed comparison of monthly COPs, calculated on a historical cost basis, to monthly selling prices would be contrary to Department practice and highly distorted. Petitioners assert that as a consequence of the erosion of the value of the Venezuelan currency between the date the inputs were purchased and the date of shipment of the silicomanganese produced using inventoried inputs, Hevensa's proposed methodology understates Hevensa's production costs.

DOC Position: Department practice is to compute a single POI weighted-average cost of production for each different model or product of subject merchandise. Monthly COPs are computed in situations where the country under investigation is experiencing "hyperinflation." When a country is experiencing hyperinflation, we require respondents to report monthly COPs using the replacement cost methodology. In this investigation, the Department determined that the Venezuelan economy was not experiencing hyperinflation during the POI. Indeed, this was the position taken by Hevensa during the investigation. As a consequence, Hevensa submitted its historical costs rather than the replacement costs required by the Department's hyperinflation methodology. Accordingly, monthly weighted average COPs were not used in the calculations for the final determination.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Venezuela that are entered, or withdrawn from warehouse, for consumption on or after June 17, 1993, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Hevensa	8.81
All others	8.81

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27547 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–405–071]

Viscose Rayon Staple Fiber From Finland; Termination of Administrative Review and Revocation of Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: In accordance with the decision of the United States Court of International Trade (the Court), in *Kemira Fibres Oy* v. *United States*, 18 CIT_____, Slip Op. 94–139 (September 8, 1994), the Department of Commerce (the Department) is now revoking the antidumping finding on viscose rayon staple fiber (the fiber) from Finland, terminating the 1993–94 antidumping duty administrative review of the finding, and ending the suspension of liquidation of entries of all imports of the fiber. The Department is taking these actions, rather than suspend liquidation of the subject merchandise during the pendency of appeal, because the instant decision was issued pursuant to 28 U.S.C. 1581(i), the Court's residual jurisdictional authority, rather than pursuant to 19 U.S.C. 1516a, the Court's general jurisdictional authority.

EFFECTIVE DATE: November 7, 1994.

FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 1979, the United States Treasury Department published in the **Federal Register** the antidumping finding on the fiber from Finland (44 FR 17156). The Department conducted administrative reviews of the fiber until 1988. However, no reviews of the fiber were conducted for the next five consecutive years (*i.e.*, for the period March 1988 through February 1993) because no interested party requested an administrative review.

On June 3, 1993, the Department published in the **Federal Register** a notice of intent to revoke the finding. See Rayon Staple Fiber from Finland; Intent to Revoke Antidumping Finding (58 FR 31504). On June 28, 1993, two U.S. domestic producers of the fiber objected to the proposed revocation

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within the time specified in the foregoing **Federal Register** notice.

On March 4, 1994, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" for the period March 1, 1993 through February 28, 1994 (59 FR 10368). On March 29, 1994, two domestic producers requested that the Department conduct an administrative review of Kemira Fibres Oy (Kemira).

On July 13, 1994, Kemira filed an action to enjoin the Department from conducting the review, claiming that the Department was required to revoke the finding as of April 1, 1993, pursuant to 19 CFR 353.25(d)(4)(iii), because the Department did not publish in the **Federal Register** a notice of "Intent to Revoke Finding" by March 1, 1993, the first day of the fifth consecutive anniversary month in which no administrative reviews were requested and no interested party objected to revocation or requested an administrative review by the last day of the fifth consecutive anniversary month.

On September 8, 1994, in the case of *Kemira Fibres Oy* v. *United States*, the Court ruled that the Department was required to revoke the antidumping finding on April 1, 1993. The Court, citing "the language and character" of 19 CFR 353.25(d)(4), concluded that "as no interested party requested an administrative review of the fiber by the last day of the Finding's fifth anniversary month although Commerce solicited requests for administrative review, it was incumbent upon Commerce to conclude that the domestic industry was not interested and to revoke the Order on April 1, 1993. Commerce is now required to: (a) Revoke the Order on the fiber, (b) terminate the administrative review of the fiber for 1993–94, and (c) end the suspension of liquidation of entries of Kemira's imports." *Kemira Fibres Oy* v. *United States*, 18 CIT at_____, Slip Op. 94–139 at 16.

Scope of the Order

Imports covered by the revocation are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This product is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and Customs purposes. The written description of the scope of the finding remains dispositive.

Actions Pursuant to Court's Judgment

The Department will instruct the U.S. Customs Service to end the suspension of liquidation of entries of Kemira's imports. The Department will take no further action with respect to any administrative review under section 751(a) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a), relating to the fiber from Finland. Finally, the Department hereby revokes the antidumping finding on the fiber from Finland (44 FR 17156, March 21, 1979), revocation being effective April 1, 1993.

This revocation applies to all unliquidated entries of the fiber from Finland entered, or withdrawn from warehouse, for consumption on or after April 1, 1993. The Department will instruct the U.S. Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1993, without regard to antidumping duties with respect to those entries.

This notice is in accordance with Section 751(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(c), and 19 CFR 353.25(d) (1993).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27433 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

University of Missouri-Kansas City, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–085. *Applicant:* University of Missouri-Kansas City, Kansas City, MO 64110. *Instrument:* X-Ray Photoelectron Spectrometer, Model M1201. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 59 FR 38585, July 29, 1994. *Reasons:* The foreign instrument provides: (1) electron analyzer efficiency of 3,000 counts per second and (2) most effective and uniform charge neutralization. *Advice Received From:* National Institutes of Health, September 9, 1994.

Docket Number: 94–093. *Applicant:* The University of Georgia, Athens, GA 30602. *Instrument:* Muscle Response System, Model TELEMEG. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 59 FR 46963, September 13, 1994. *Reasons:* The foreign instrument provides: (1) compatibility with an ELITE motion analysis system and (2) a 100Hz data collection rate. *Advice Received From:* National Institutes of Health, September 29, 1994.

Docket Number: 94–094. *Applicant:* United States Department of Energy, Washington, DC 20585. *Instrument:* Fuel Cell. *Manufacturer:* Fuji Electric Company, Japan. *Intended Use:* See notice at 59 FR 46964, September 13, 1994. *Reasons:* The foreign instrument provides a liquid-cooled phosphoric acid fuel cell with a net power output of 47.5kW that is suitable for propulsion of a passenger bus prototype. *Advice Received From:* The Jet Propulsion Laboratory, November 10, 1993.

Docket Number: 94–096. *Applicant:* Southern Methodist University, Dallas, TX 75275–0395. *Instrument:* IR Mass Spectrometer System, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 48420, September 21, 1994. *Reasons:* The foreign instrument provides: (1) sensitivity to 1,000 molecules of CO_2 per mass 44 ion and (2) an internal precision of 0.005 per mil for 3 bar μl samples of CO_2. *Advice Received From:* National Institutes of Health, September 29, 1994.

The National Institutes of Health and The Jet Propulsion Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–27548 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–029]

Certain Castor Oil Products From Brazil: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton or Vincent Kane, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0176 or 482–2815, respectively.

Preliminary Results

The Department of Commerce is conducting an administrative review of the countervailing duty order of certain castor oil products from Brazil. We preliminarily determine the net subsidy to be 0.03 percent *ad valorem*, which is *de minimis*, for the period January 1, 1992, through December 31, 1992. We invite interested parties to comment on these preliminary results.

Background

Since the publication of the notice of initiation in the **Federal Register** (58 FR 26960, May 6, 1993), the following events have occurred.

On October 13, 1993, we issued a questionnaire to the Brazilian Embassy in Washington, D.C., concerning the subsidy programs under review. We received a response from the Government of Brazil (GOB) on December 29, 1993, on behalf of itself and the respondent's companies. After reviewing the GOB's response, we issued a supplemental questionnaire to the GOB on January 28, 1994. We received a supplemental response from the GOB on February 23, 1994. From March 7 to 18, 1994, we verified the government and companies' responses in Brazil.

Scope of Review

The merchandise subject to this review is hydrogenated castor oil and 12-hydroxystearic acid. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 1516.20.90 and 1519.19.40. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers six companies, the period January 1 through December 31, 1992, and 12 programs: (1) Preferential Export Financing under Resolution 950/1009; (2) Income Tax Exemption for Export Earnings; (3) Preferential Export Financing Under CIC–OPCRE 6–2–6; (4) Preferential Financing for Industrial Enterprises by the Bank of Brazil; (5) Reduction of Industrial Products Tax (IPI) and Import Duties Under Decreto No. 77.065 through BEFIEX; (6) Preferential Financing for National Trading Companies under Resolution 883 of the Banco Central do Brasil; (7) Accelerated Depreciation for Brazilian-Made Capital Goods; (8) Preferential Financing under Resolution 68 through FINEX; (9) Preferential Financing under Resolution 578/83 through FUNPAR; (10) Preferential Financing under Resolution 579/83 through PROEX and PROSIM; (11) Preferential Financing for the Storage of Merchandise Destined for Export under Resolution 330/Portaria 130 of the Banco Central do Brasil; and (12) Green Yellow Drawback (Portaria 68/83).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in 19 CFR 355.20(d)(1) (53 FR 52325, December 27, 1988). Using this methodology we calculated a country-wide rate of 0.03 percent which is de minimis.

Analysis of Program

(1) Income Tax Exemption for Export Earnings

Under this program, exporters of the subject merchandise were eligible for an exemption from income tax on the portion of their profits attributable to exports. On April 12, 1990, Decree Law 8,034 eliminated this exemption by establishing a 30 percent income tax rate for export profits, which equaled the normal corporate income tax rate. Boley, however, was authorized to use the income tax exemption on export earnings under the terms of a contract with the Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX) until its contract expired. Therefore, despite the fact that the income tax exemption for export earnings was eliminated, Boley received residual benefits from the program during the review period. No other company under review used this program.

To calculate the income tax savings realized by Boley during the review period, we multiplied the income tax deduction taken by the firm under this program by 30 percent, the corporate income tax rate during the review period. We then used the amount of Boley's income tax savings to calculate a country-wide rate. We calculated the country-wide rate by dividing the total income tax savings realized by Boley by the total exports of all products by all of the companies under review. On this basis, we calculated a subsidy rate of 0.03 percent *ad valorem*, which is *de minimis*.

Programs Preliminarily Found To Be Terminated

We examined the following programs and preliminarily determine these programs to be terminated. Further, we verified that the respondents did not receive any residual benefits under them during the period of review.

a. Preferential Export Financing Under Resolution 950/1009 Through CACEX (Carteira de Comercio Exterior) of the Bank of Brazil

We verified that this program was terminated on August 30, 1990, by Banco Central Bank do Brasil Resolution No. 1,744. See, also, Final Affirmative Countervailing Duty Determination: Silicon Metal from Brazil, June 12, 1991 (56 FR 26988).

b. Preferential Export Financing Under CIC–OPCRE 6–2–6

We verified that on May 10, 1990, the functions of CACEX of the Bank of Brazil, which administered these export financing loans, were absorbed by the Secretariat of Foreign Trade (SECEX). SECEX was not empowered to perform banking operations and the export financing was discontinued. See, also, Certain Round-Shaped Agricultural Tillage Tools from Brazil; Preliminary Results of Countervailing Duty Administrative Review, March 31, 1992 (57 FR 10885) (Tillage Tools).

c. Reduction of Industrial Products Tax (IPI) and Import Duties Under Decreto No. 77.065 Through BEFIEX (Comissao par a Concessao de Beneficios a Programas Especials de Exportacao) and CIEX (Comissao para Incentivos a Exportacao)

We verified that on April 12, 1990, Decree Law 8,032 limited this program exclusively to imports made by the federal, state, and municipal governments, territories, and other political entities, and scientific institutions, thereby eliminating the benefit to commerical enterprises. See, also, Tillage Tools.

d. Preferential Financing for National Trading Companies Under Resolution 883 of the Banco Central do Brasil

We verified that Banco Central do Brasil Resolution 1,744 revoked

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Resolution 883 on August 30, 1990, thereby terminating this program. See, also, Tillage Tools.

e. Preferential Financing Under Resolution 68 Through FINEX

We verified that this program was terminated on April 5, 1988, by Article 4 of Brazil's new constitution, which provided that all programs requiring funding from the national treasury had to be reenacted within a two-year period or cease to exist. Legislation to reenact preferential financing through FINEX was not passed and the program ceased to exist.

f. Preferential Financing Under Resolution 579/83 Through PROEX and PROSIM

We verified that preferential financing through PROSIM was terminated on February 4, 1985, by BNDES Resolution 607, and that preferential financing through PROEX was terminated in 1991 by BNDES Resolution 762.

g. Preferential Financing for the Storage of Merchandise Destined for Export Under Resolution 330/Portaria 130 of the Banco Central do Brasil

We verified that this program was terminated on August 21, 1984, by Central Bank Resolution 950.

Programs Preliminarily Found To Be Not Used

We also examined the following programs and preliminarily determine that the respondents did not use them during the review period:

a. Preferential Financing for Industrial Enterprises by the Bank of Brazil

b. Preferential Financing Under Resolution 578/83 Through FUNPAR

c. Accelerated Depreciation for Brazilian Made Capital Goods

d. Green Yellow Drawback (Portaria 68/83)

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.03 percent, which is de minimis, for the period January 1, 1992 through December 31, 1992.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service not to assess countervailing duties on shipments of the subject merchandise from all companies, exported on or after January 1, 1992 and on or before December 31, 1992. Further, as provided by section 751(a)(1) of the Act, the Department will instruct Customs not to collect cash deposits on shipments of this merchandise from all companies entered or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to agruments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Requests for a hearing should be made within ten days of the publication of these preliminary results. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e) of the Department's regulations. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 28, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–21549 Filed 11–4–94; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel meeting in the areas of management and organization, budget status, strategic and tactical issues, law and policy, new technology and research, economic development, outreach for enhancement of Department of Commerce goals, and new business.

DATES: The announced meeting is scheduled during 2 days: Thursday, November 17, 1994, 8:00 a.m. to 5:00 p.m. and Friday, November 18, 1994, 8:00 a.m. to 3:30 p.m.

ADDRESSES: Holiday Inn—Silver Spring 8777 Georgia Avenue Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, Director, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1315 East-West Highway, Room 11618, Silver Spring, Maryland 20910, (301) 713–2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Thursday, November 17, 1994, 8:00 a.m.–5:30 p.m.

8:00 Opening Remarks
8:15 Logistics
8:30 OSB/NRC Report
9:15 Legislative Activities
9:45 BREAK
10:00 Panel Position Papers
1. Potential Changes to Sea Grant Legislation
2. Response to OSB Critique of Panel Role and Responsibility of Panel Panel Review of National Office
12:15 Working Lunch
1:15 Small Business Innovation Research
2:15 National Sea Grant Office Report
- Regionalization
- Multiple Entities
- Performance Criteria
- Economic Impact Publication
- SG Making a Difference
- Poster
- Industrial Fellows
- Aquaculture

3:45 National Media Communicator Report
4:15 Council of Sea Grant Directors Report
5:00 Adjourn

Friday, November 18, 1994

8:00 Biennium Reports

9:00 Evaluation of Grants & Proposals
9:45 BREAK
10:00 Positioning Sea Grant for the 21st Century
- Business/International Environment
- Technical/Scientific Environment

10:30 Two Imaginative Visions
- Ocean Thermal Energy Conversion
- Autonomous Underwater Vehicles

11:30 Review of Vision and Strategic Plan
12:00 Working Lunch
1:00 Long Range Planning Committee Report
1:30 Management for Achievement
- Office of Ocean & Earth Sciences, NOS NOAA/SG Interface Improvement

2:20 Business and Economic Development
2:40 1994 Review Panel Accomplishments
3:00 Changing of the Guard
3:10 Election of Vice Chair
- New Business
- Date of Next Meeting

3:30 Adjourn

The meeting will be open to the public.

Dated: November 1, 1994.

Ned A. Ostenso,

Assistant Administrator for Oceanic and Atmospheric Research.

[FR Doc. 94–27469 Filed 11–4–94; 8:45 am]

BILLING CODE 3510-08-P

[I.D. 102794A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit No. 873 (P772#63).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has requested a modification to Permit No. 873.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 873, issued on July 28, 1993 (58 FR 34038) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222). Permit No. 873 authorizes the Permit Holder to biopsy several species of bow-riding cetaceans off the coasts of Washington, Oregon, California, and Mexico, and to import biopsy tissues collected outside of U.S. waters. The Permit Holder requests authorization to add two additional species to the permit authority, (hourglass dolphin, *Lagenorhynchus cruciger*, and Southern right whale dolphin, *Lissodelphis peronii*), to import biopsy tissues from these additional species, to expand the study area to include the Southern Ocean, and to extend the effective date of the permit through December 31, 1997.

Dated: October 31, 1994.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27528 Filed 11–4–94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 314, 340, 440, 440–M (sublimit), 617, 634 and 636 are being increased, variously, for carryforward, swing and carryover. As a result, the limits for Categories 314, 340, 617, 634 and 636, and sublimit 440–M, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

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Effective on November 8, 1994, you are directed to amend further the directive dated January 24, 1994 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
314	48,673,541 square metres.
340	866,813 dozen of which not more than 434,406 shall be in Category 340–Z [2].
440	39,729 dozen of which not more than 22,702 dozen shall be in Category 440–M [3].
617	16,748,547 square metres.
634	604,152 dozen.
638	556,625 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2060 and 6205.20.2065.

[3] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27554 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Silk-blend and Other Non-Cotton Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 2, 1994, you are directed to amend further the directive dated January 24, 1994 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	648,992 kilograms.
218	11,087,152 square metres.
219	2,169,447 square metres.
237	1,693,680 dozen.
300/301	3,664,235 kilograms.
331	4,956,245 dozen pairs.
333	87,221 dozen.
341	651,920 dozen of which not more than 385,749 shall be in Category 341–Y [2].
342	256,196 dozen.
345	134,136 dozen.
351	485,835 dozen.
359–C [3]	569,748 kilograms.
360	5,754,306 numbers of which not more than 4,844,606 numbers shall be in Category 360–P [4].
369–H [5]	4,498,006 kilograms.
369–L [6]	2,952,449 kilograms.
410	1,958,533 square meters of which not more than 1,569,975 square meters shall be in Category 410–A [7] and not more than 1,569,975 square meters shall be in Category 410–B [8].
433	23,048 dozen.
434	13,777 dozen.
436	15,891 dozen.
438	27,551 dozen.
442	41,810 dozen.
444	210,655 numbers.
445/446	305,374 dozen.
447	80,357 dozen.
448	22,589 dozen.
607	360,955 kilograms.
631	1,203,625 dozen pairs.
638/639	2,504,056 dozen.
641	1,306,759 dozen.
642	314,758 dozen.
643	508,623 numbers.
645/646	882,227 dozen.
650	109,052 dozen.
652	2,227,631 dozen.
659–C [9]	382,228 kilograms.
659–H [10]	2,694,988 kilograms.
659–S [11]	563,376 kilograms.
670–L [12]	15,496,354 kilograms.
833	25,077 dozen.
842	250,768 dozen.
846	165,545 dozen.
Level not in a group	
369–S [13]	619,880 kilograms.
863–S [14]	8,617,258 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[7] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[8] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[9] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[12] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[13] Category 369–S: only HTS number 6307.10.2005.

[14] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27551 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 482–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338–B/339–B/638–B/639–B is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 16, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Lesotho and exported during the twelve-month period which began on December 1, 1993 and extends through November 30, 1994.

Effective on November 8, 1994, you are directed to amend the directive dated November 16, 1993 to increase the limit for Categories 338–B/339–B/638–B/639–B [1] to 853,278 dozen [2], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Kingdom of Lesotho.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27552 Filed 11–4–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

November 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

[1] Category 338–B: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2065, 6110.90.0068, and 6114.20.0005; Category 339–B: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2075, 6110.90.0070, 6114.20.0010 and 6117.90.0022; Category 638–B: only HTS numbers 6103.23.0075, 6103.29.1050, 6105.20.2010, 6105.20.2030, 6105.90.3030, 6109.90.1049, 6110.30.1050, 6110.30.2050, 6110.30.3050, 6110.90.0076 and 6114.30.1010; Category 639–B: only HTS numbers 6104.23.0036, 6104.29.1050, 6104.29.2055, 6106.20.2010, 6106.20.2030, 6106.90.2030, 6106.90.3030, 6109.90.1090, 6110.30.1060, 6110.30.2060, 6110.30.3055, 6110.90.0078, 6114.30.1020 and 6117.90.0026.

[2] The limit has not been adjusted to account for any imports exported after November 30, 1993.

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The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62845, published on November 29, 1993). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 8, 1994, you are directed to amend the directive dated December 9, 1993, to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 20, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Other specific limits	
300/301	2,284,405 kilograms.
336/636	348,609 dozen.
340/640	1,099,561 dozen.
341/641	1,221,356 dozen.
347/348	439,474 dozen.
351/651	223,289 dozen.
645/646	275,263 dozen.
647/648	1,296,657 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27553 Filed 11-4-94; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Product Identification; Notice of Inquiry; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission frequently warns the public about unsafe products or works with industry to conduct recalls or other corrective actions on such products that are in the hands of consumers. However, these products can be difficult for the Commission and consumers to identify because they often lack markings that specify the name and address of the manufacturer or importer.

To address this problem, the Commission is considering requiring firms to put identifying information on their products. The Commission will also consider alternative ways to address the problem. Therefore, the Commission is issuing this notice of inquiry to solicit comments from industry, consumers and all other interested parties. The Commission is particularly interested in receiving specific information on the expected economic effects of this proposal.

After evaluating all comments received and all information available, the Commission will decide whether to propose for additional public comment a product identification rule.

DATES: Written comments in response to this notice of inquiry must be received by the Commission no later than January 6, 1995.

ADDRESSES: Comments, preferably in five (5) copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001 or delivered to room 502, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Room 700, at the above address; telephone 301-504-0980.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has the authority to order firms to repair, replace or refund the purchase price of unsafe consumer products, *see* 15 U.S.C. 1274(b) and 2064(d), and to give public notice of the hazards. 15 U.S.C. 1274(a) and 2064(c). In addition, the Commission frequently reaches agreements with firms to give public notice and take corrective actions voluntarily to remove unsafe products from the marketplace. In this notice we will refer to the corrective actions of notice and repair, replacement and refund generally as "recalls."

The Commission consistently works to improve the effectiveness of recalls of unsafe consumer products by making more consumers aware of recalls and by encouraging more consumers to respond when they have a recalled product. The most effective recalls occur when consumers can be told that a recall applies to a particular brand and model of a product that was manufactured at a particular time, and when all of this information is displayed on the product.

Sometimes, however, the Commission cannot even seek a recall of an unsafe product because the Commission does not know what firm manufactured, imported or distributed the product to consumers. For example, since 1984 the Commission knows of more than 20 children who choked to death on toys that could not be identified. These toys had no identifying information on them—except perhaps the country of manufacture—and the place of purchase was unknown.

In other cases, the Commission is able to identify the firm that made or imported the product and is able to negotiate a recall. However, the absence of identifying information on the product makes it extremely difficult for consumers to know whether they have the recalled product.

A recent example of this situation is a pacifier that failed to comply with the Commission's safety requirements. The Commission and firm negotiated a recall and attempted to describe the pacifier in a joint press release. However, this pacifier was virtually indistinguishable from many other pacifiers unaffected by the recall, and therefore was difficult to describe meaningfully to consumers. The press release described the affected pacifier as "consist[ing] of a pink, yellow, or blue guard or shield and ring with a rubber nipple."

A similar situation arises when nearly identical products are distributed by different firms, and many brands are recalled. For example, numerous brands of metal tubular bunk beds were recalled earlier this year, but the beds had no identifying marks. Many consumers did not know whether their beds were involved in the recall. And, even if consumers knew that their beds were recalled, they could not easily determine what firm was responsible for manufacturing particular beds. This problem occurs frequently with a variety of products. The problem of describing recalled products to consumers is compounded because the media often shorten, and may reword, the description contained in the press release announcing a recall.

Even when recalled products are still in the hands of retailers, it can be difficult to identify the products. The manufacturer or importer of a recalled product may not notify its retail customers because it is no longer in business, is unwilling to do a recall or lacks complete records of its customers. In such situations, the Commission publicizes the recall, usually by issuing a press release. When the identifying information provided in the release is on the packaging of the recalled product, retailers can quickly remove the affected product from their shelves.

Finally, the Commission knows from experience that recalls sometimes have to include products that do not present a safety problem because the products are not marked in a way that allows those that present the risk to be distinguished from the same model of products that do not. For example, a quality control problem during a particular week may have caused a defect in only a few thousand toys. If those toys cannot be distinguished from the same toys manufactured during different weeks, they would all require recall. On the other hand, if the defective toys are marked with a code that pinpoints the problem week, the scope of the recall can be limited and its expense reduced. This result may be helpful to industry, consumers and the Commission.

B. Scope

The Commission enforces safety rules for thousands of different consumer products, and products that fail to comply are generally recalled. Even if no specific rule applies to a product, all consumer products are subject to recall if they present a substantial hazard.

Many of the Commission's safety rules and recalls involve children's and fireworks products. Moreover, these products often place at risk children who are less able to protect themselves from unsafe products than are adults. Accordingly, at this time the Commission is considering a product identification rule only for children's and fireworks products.

C. A Possible Product Identification Proposal

This section discusses the specific provisions of a possible product identification proposal. The provisions are all subject to change, particularly if information received from the public during the comment period supports different provisions that would accomplish the Commission's objectives while imposing smaller economic burdens on industry.

1. Marking Provisions

Different types of permanent marking would be acceptable. Industry members would be able to choose the type that is most suitable for the product, and least expensive, so long as the appropriate information is communicated and will remain on the product permanently.

The retail packaging of consumer products already contains a great deal of information and the amount of required information has been kept to a minimum. The name and location of a manufacturing, importing or private labeling firm located in the United States are the most important pieces of identifying information to help the Commission trace a product. (As discussed in section 2(a) below, a code on file with the Commission may be sufficient.) If there is a recall, it is also important to have products identified according to their model and their production run, or according to similar categories that will help pinpoint the particular products that are unsafe. (As discussed in section 2(b) below, this information could also be in code.) This helps limit recalls to just the products that are unsafe.

The size and conspicuousness of the marking are less significant in this type of proposal than they would be in one designed to provide information to consumers at the time of purchase. Here, it would be sufficient if the information can be read without disassembly of the product or magnification.

2. Exceptions

The proposal could include various exceptions to minimize its economic impact:

(a) Firms might prefer to mark products with a code such as a registered trademark or a corporate symbol or logo in place of its name and address. The proposal could permit this if the firm notifies the Commission and waits ten working days after receipt of the notification for the Commission to object. An objection would be made, for example, if some other firm was already using the same or a too similar code.

(b) The model and date of production information could be provided in code, as well. If the Commission needed to know that information, it would obtain the code or the information from the firm.

(c) Because consumer products vary greatly in size and material, the Commission recognizes that it may be impracticable to permanently mark some limited number of products. The proposal would therefore give firms some leeway in complying. As examples, it is impracticable to mark modeling clay because of its texture, and it is probably impracticable to mark small glass marbles. However, the containers of any products that qualify for an exception might have to be permanently marked or printed with the same identifying information. While containers may be discarded or lost, this provision is intended to afford a reasonable alternative for products which cannot practicably be permanently marked.

(d) Products consisting of more than one piece, such as a set or collection, may not have to be permanently marked on every piece. The largest piece might have to be so marked—as well as any container that comes with the product. For example, the board in a board game (assuming it is the largest piece) and the box would be marked, but not the dice, markers or other pieces in the game. If all pieces in a set or collection are essentially the same size, they might all have to be permanently marked. In addition, if many pieces would fall into the category of "the largest," all of those pieces might have to be marked. While requiring every piece in a set or collection to be permanently marked would be preferable from a safety standpoint, such a broad provision might be unduly burdensome.

3. Effective Date

The Commission solicits all available relevant information on an appropriate effective date, including industry cycling schedules for replacing capital equipment.

4. Text of Possible Provisions

To obtain specific public comments and specific information, the Commission is providing the text of the possible product identification provisions that it is considering. Again, the Commission emphasizes its willingness to consider alternative approaches for accomplishing its objectives.

The text of the possible provisions is:

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Purpose

If an unsafe product is found with no identifying information on it, the Commission may be unable to determine its manufacturer, private labeler or importer. Corrective action may therefore not occur, and consumers will remain at risk. One purpose of this proposal is to assure that the Commission will be able to identify the firms responsible for all unsafe products, and be able to pursue corrective actions.

When firms do take corrective actions, such as warning the public and recalling unsafe products, the lack of inadequacy of identifying information may prevent consumers from knowing whether they have the product in question. Many products look the same or similar, and their markings may be the only practicable way to identify them. A second purpose of this proposal is to assure that consumers will be able to identify products that are the subject of warnings and recalls.

If a product has been coded by date and/or production run, the scope of any recall of that product can be limited and its cost reduced. A third purpose of this proposal is to achieve this result.

Scope

This proposal applies to every children's product and fireworks product that is first introduced into interstate commerce on or after its effective date.

Definitions

"Children's product" means "any toy or other article intended for use by children," as the phrase is used in the Federal Hazardous Substances Act at 15 U.S.C. 1261(f)(1)(D) and (q)(1)(A).

"Fireworks product" means all fireworks products that are subject to the requirements at 16 CFR 1500.14(b)(7); 1500.17(a) (3), (8) and (9); or Part 1507.

"Manufacturer" means any person who manufactures, produces, assembles or imports a children's product.

"Private labeler" means an owner of a brand or trademark on the label of a children's product which bears a private label, as the term "bears a private label" is defined in the Consumer Product Safety Act at 15 U.S.C. 2052(a)(7)(B).

"U.S. firm" means a business entity that is incorporated in a state or territory of the United States or that has officers or employees who work full-time in a state or territory within the United States and who have authority to speak for the firm on matters related to product recalls.

"Permanently marked" means paint-stenciled, die-stamped, molded, indelibly stamped or otherwise permanently affixed, fastened or attached to a product by means of a tag, token or other suitable method, including securely sown on, so that the marking cannot be readily removed or obliterated during normal use or reasonably foreseeable damage, abuse or misuse of the product.

"Set or collection" means a product that consists of varied items which are intrinsically complementary to its function, purpose or use. Examples of sets or collections include jigsaw puzzles, bags of marbles, boxes of crayons or colored pencils, building sets and board games.

Marking Provisions

Every children's product and fireworks product shall be permanently marked to indicate: the name of the U.S. firm that is the manufacturer or private labeler of the product; the location or business address in the United States, including the city, state and zip code, of the U.S. firm; a number (such as a model number or stock number) or symbol that identifies the product and distinguishes it from all other products which are not of identical construction, composition and dimensions; and a date or number or symbol that identifies the production run or date of manufacture of the product. The packaging of every product shall also be marked or printed with the same information.

The information described above must be in letters and numbers that are at least one-sixteenth inch high and must be able to be read without any disassembly of the product.

Exceptions

A U.S. firm that would be identified on a product may notify the Commission's Office of the Secretary that it intends to use a registered trademark, a corporate symbol or some other unique code instead of the firm's name and address. If the Commission does not object within ten working days after receiving such notification on grounds that the chosen code would not adequately distinguished the firm from another company, the firm nay use that code.

The model and production run information may also be coded if the code and/or the uncoded information is available to any Consumer Product Safety Commission representative immediately upon request at the specified address.

If it is physically or technologically impracticable to permanently mark a children's product or fireworks product, the required information shall be permanently marked or printed on (1) the immediate container of the product, (2) any container sold with and intended to be used with the product, and (3) any container sold with and intended to be used for storage of the product after purchase.

If a children's product or fireworks product is as set or collection, only the largest component must be permanently marked. If all of the components are the same size, or if multiple components are "the largest," all such components must be marked. Unless every component of a set or collection is marked, the containers of the product must also be marked.

All comments on this notice of inquiry should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to that office at Room 502, 4330 East West Highway, Bethesda, Maryland 20814, and received no later than January 6, 1994.

Dated: November 1, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27416 Filed 11–4–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; Notice to Delete and Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete three and amend seven systems of records in its inventory of record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions will be effective November 7, 1994.

The amendments will be effective December 7, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force Privacy systems of records notices have been published in the **Federal Register** and are available from the address above.

The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety, as amended.

Dated: October 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

F011 PACAF A

SYSTEM NAME:

General and Colonel Personnel Data Action Records *(February 22, 1993, 58 FR 10294).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

F035 AFCC A

SYSTEM NAME:

Scope Leader Program *(February 22, 1993, 58 FR 10338).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

F176 AFCC A

SYSTEM NAME:

Individual Earning Data *(February 22, 1993, 58 FR 10476).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

AMENDMENTS:

F030 AF JA A

SYSTEM NAME:

Confidential Statement of Affiliations and Financial Interests *(February 22, 1993, 58 FR 10298).*

CHANGES:

* * * * *

SYSTEM NAME:

Change system name to 'Confidential Financial Disclosure Report.'

SYSTEM LOCATION:

Delete entry and replace with 'Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740;

Office of The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420; and

Headquarters of major commands and at all levels down to and including Air Force installations, and unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change first part of entry to read 'Air Force civilian personnel paid at a level of GS–15 or below; Air Force military personnel in the rank of Colonel or below whose basic...'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, and 5 CFR part 2634.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained for six years after which they shall be destroyed, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be destroyed when no longer needed in the investigation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'The Assistant General Counsel for Civilian Personnel and Fiscal Law, Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–174; and

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.'

* * * * *

F030 AF JA A

SYSTEM NAME:

Confidential Financial Disclosure Report.

SYSTEM LOCATION:

Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740;

Office of The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420; and

Headquarters of major commands and at all levels down to and including Air Force installations, and unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian personnel paid at a level of GS–15 or below; Air Force military personnel in the rank of Colonel or below whose basic duties and responsibilities require the exercise of judgment on Government decision making or taking action on (1) the administering or monitoring of grants or subsidies, (2) contracting or procurement, (3) auditing, or (4) any other government activity in which the final decision or action has a significant economic impact on the interest of any non-federal enterprise; and special Government employees who are 'advisors' or 'consultants.' Army, Navy, Air Force, and Marine Corps active duty personnel and civilian employees in the same categories when assigned to headquarters of unified and specified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the title of the individual's position, date of appointment in present position, agency and major organization segment of the position, employment and financial interests, creditors, interest in real property, a list of persons from whom information can be obtained concerning the individual's financial situation, supervisor's evaluation, and Standards of Conduct Counsellor/Deputy Counsellor review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.); E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, and 5 CFR part 2634.

PURPOSE(S):

The review of the statements by the individual's supervisor and deputy counselor to determine the existence of or potential for a conflict of interest in the performance of official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

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552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained for six years after which they shall be destroyed, unless needed in an ongoing investigation. Those records retained for an ongoing investigation will be destroyed when no longer needed in the investigation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant General Counsel for Civilian Personnel and Fiscal Law, Office of the General Counsel, Office of the Secretary of the Air Force, 1740 Air Force Pentagon, Washington, DC 20330–1740; and

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the system manager or Deputy Standards of Conduct Counsellor at any system location.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the system manager or Deputy Standards of Conduct Counsellor at any system location.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual or from personnel designated by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP L

SYSTEM NAME:

Unfavorable Information File (UIF) *(November 23, 1993, 58 FR 61870).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Complete Unfavorable Information Files (UIF) are maintained in the Unit Orderly Room or the Military Personnel Flight (MPF). A copy of the UIF summary sheet is maintained at individual's unit of assignment; geographically separated units not collocated with a servicing MPF. For officers only at major command level; for colonel, colonel select, and general officers at the Headquarters Air Force level, and at the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program; and E.O. 9397.'

* * * * *

RETRIEVABILITY:

Add to end of entry 'or Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete last sentence and insert 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff/ Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Personnel for whom optional UIFs exist are routinely notified of the existence of a file.

In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file.

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

* * * * *

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF).

SYSTEM LOCATION:

Complete UIFs are maintained in the Unit Orderly Room or the Military Personnel Flight (MPF). A copy of the UIF summary sheet is maintained at individual's unit of assignment; geographically separated units not collocated with a servicing MPF.

For officers only at major command level; for colonel, colonel select, and general officers at the Headquarters Air Force level, and at the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel who are the subject of an UIF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by;

as implemented by Air Force Instruction 36–2907, Unfavorable Information File Program; and E.O. 9397.

PURPOSE(S):

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets and in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Computer records are protected by computer software.

RETENTION AND DISPOSAL:

UIFs are maintained for one year from the effective date of the most recent correspondence, except when the file contains documentation pertaining to Articles 15, Court-Martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. Files are automatically destroyed upon separation or retirement, and on an individual basis when the individual's commander so determines. Destroy by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/ Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Personnel for whom optional UIFs exist are routinely notified of the existence of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file.

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing Military Personnel Flight or Unit Orderly Room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisory reports or censures and documented records of poor performance or conduct.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC C

SYSTEM NAME:

Chaplain Personnel Action Folder *(February 22, 1993, 58 FR 10354).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'This is a grouping of information for each active duty United States Air Force Chaplain. Items of information in these folders include, but not limited to current official photograph, current career brief, summary of education, officer career objective statement, chaplain services personnel evaluation, copy of chaplain's ecclesiastical endorsement, copy of appointment orders, copy of initial extended active duty orders, copies of assignment action documents, correspondence between the Chaplains and Headquarters USAF/ Chief of Chaplains, requests for special personnel actions and dispositions curtailments.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions.'

PURPOSE(S):

Delete 'Personnel Division' and insert 'Chaplain Support Element.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

* * * * *

F035 HC C

SYSTEM NAME:

Chaplain Personnel Action Folder.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Chaplains.

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CATEGORIES OF RECORDS IN THE SYSTEM:

This is a grouping of information for each active duty United States Air Force Chaplain. Items of information in these folders include, but not limited to current official photograph, current career brief, summary of education, officer career objective statement, chaplain services personnel evaluation, copy of chaplain's ecclesiastical endorsement, copy of appointment orders, copy of initial extended active duty orders, copies of assignment action documents, correspondence between the Chaplains and Headquarters USAF/Chief of Chaplains; requests for special personnel actions and dispositions curtailments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions.

PURPOSE(S):

The documents maintained in these folders are utilized by the Resource Manager in Headquarters United States Air Force/Chief of Chaplains, Chaplain Support Element, assignment selection of chaplains. Because of the necessity to insure an equitable denominational spread of chaplains on an installation and to insure the proper placement of specially qualified chaplains, it is necessary to maintain current information on each chaplain.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to endorsing agents concerning the qualifications of their chaplains for continued duty as representatives of their denominations.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained for 2 years after separation then destroyed by macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's personnel action requests/preferences and information retrieved from the Advanced Personnel Data System (ADPS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC D

SYSTEM NAME:

Chaplain Applicant Processing Folder *(November 23, 1993, 58 FR 61872).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Forms and information used by the Chaplain Support Element, Headquarters United States Air Force, in processing chaplains to active duty includes information worksheets; letters of recommendation; interview summary sheets; application for appointment as reserve of the Air Force; application for extended active duty with the United States Air Force; drug abuse certificate; statement of personal history; national agency check request; report of medical examination; report of medical history; fingerprint card; checklist for chaplain appointment; ecclesiastical endorsement; certificate of continuance of ecclesiastical endorsement; certificate of seminary graduation and ordination; official transcripts of college education, and personal correspondence between resource manager and applicant regarding status of his application.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Once applicant is accessed, forms are sent to Air Force Military Personnel Center (AFMPC) for entry into the Master Personnel Records Group. Items not needed by AFMPC are destroyed. If applicant does not qualify for appointment, file is destroyed or returned to the applicant. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.'

* * * * *

F035 HC D

SYSTEM NAME:

Chaplain Applicant Processing Folder.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chaplaincy applicants and Reserve Chaplains applying for active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms and information used by the Chaplain Support Element, Headquarters United States Air Force, in processing chaplains to active duty includes information worksheets; letters of recommendation; interview summary sheets; application for appointment as reserve of the Air Force; application for extended active duty with the United States Air Force; drug abuse certificate; statement of personal history; national agency check request; report of medical examination; report of medical history; fingerprint card; checklist for chaplain appointment; ecclesiastical endorsement; certificate of continuance of ecclesiastical endorsement; certificate of seminary graduation and ordination; official transcripts of college education, and personal correspondence between resource manager and applicant regarding status of his application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8067, Designation: Officers to perform certain professional functions, and 8293, Commissioned officers; chaplains: Original appointment; examination; as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories Reserve of the Air Force and United States Air Force (Temporary).

PURPOSE(S):

The documents maintained in these transitory folders are used by the resource manager in processing chaplain applicants to active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Once applicant is accessed, forms are sent to Air Force Military Personnel Center (AFMPC) for entry into the Master Personnel Records Group. Items not needed by AFMPC are destroyed. If applicant does not qualify for appointment, file is destroyed or returned to the applicant. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 HC E

SYSTEM NAME:

Assignment Action File *(January 26, 1994, 58 FR 3670).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Forms used by the Chaplain Support Element, Headquarters United States Air Force, for accession and assignments of Chaplains on active duty and other chaplain personnel actions. They also contain information and actions pertaining to individuals in the areas of duty Air Force Specialty Code (AFSC) change requests, tour length change requests, humanitarian reassignments and copies of messages directing such actions.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'Chief of Chaplains' and insert 'Chaplain Support Element.'

NOTIFICATION PROCEDURE:

Delete 'Office of the Chief of Chaplains' and insert 'Chaplain Support Element.'

RECORD ACCESS PROCEDURES:

Delete 'Office of the Chief of Chaplains' and insert 'Chaplain Support Element.'

* * * * *

F035 HC E

SYSTEM NAME:

Assignment Action File.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms used by the Chaplain Support Element, Headquarters United States Air Force, for accession and assignments of Chaplains on active duty and other chaplain personnel actions. They also contain information and actions pertaining to individuals in the areas of duty Air Force Specialty Code (AFSC) change requests, tour length change requests, humanitarian reassignments and copies of messages directing such actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and 10 U.S.C. 8067, Designation: Officers to perform certain professional functions, as implemented by Air Force Instruction 36–2110, Officer Assignments.

PURPOSE(S):

Records are used to answer requests for assignment changes, tour length changes, duty AFSC requests, special assignment consideration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chaplain Support Element, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application and information retrieved from the Personnel Data System (PDS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 AFSPACECOM A

SYSTEM NAME:

Space Command Operations Training *(February 22, 1993, 58 FR 10394).*

CHANGES:

SYSTEM LOCATION:

Delete entry and replace with 'Operations flights at all units within Air Force Space Command, and training flights at all operations support squadrons within 20th Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Air Force Space Command military personnel currently assigned to operational duties with space, spacelift, intercontinental ballistic missile, warning and surveillance systems equipment.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'proficiency rating' between the words 'scores and name.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Air Force Space Command Instruction 36–2202, Operations Training and Standardization and Evaluation Programs.'

PURPOSE(S):

Delete entry and replace with 'To develop a record source of operations personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. The files will provide a source of data to help ensure weapon system currency and adequacy of future training requirements.'

* * * * *

STORAGE:

Add to end of entry 'in computers and on computer output products.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Manual files are forwarded to gaining unit upon permanent change of station to another Space Command unit. If individual separates or transfers to another USAF major command, the file is returned to the individual. Computer records are deleted from the data base upon individual's departure from unit.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command.

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission.

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to determine existence of record should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after 1 Sep 1983, or intercontinental ballistic missile duties after 1 July 1993

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to access records should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.'

* * * * *

F050 AFSPACECOM A

SYSTEM NAME:

Space Command Operations Training *(February 22, 1993, 58 FR 10394).*

SYSTEM LOCATION:

Operations flights at all units within Air Force Space Command, and training flights at all operations support squadrons within 20th Air Force. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Space Command military personnel currently assigned to operational duties with space, spacelift, intercontinental ballistic missile, warning and surveillance systems equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to qualifications, training/evaluation accomplishment, staff/crew alphanumeric identifier, type training/evaluation, scores, proficiency rating, name, grade, unit assigned, and dates of training or evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Air Force Space Command Instruction 36–2202, Operations Training and Standardization and Evaluation Programs.

PURPOSE(S):

To develop a record source of operations personnel qualifications, capabilities and historical data for analysis by unit and operations support squadrons to determine individual overall job qualifications. The files will provide a source of data to help ensure weapon system currency and adequacy of future training requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Manual files are forwarded to gaining unit upon permanent change of station to another Space Command unit. If individual separates or transfers to another USAF major command, the file is returned to the individual. Computer records are deleted from the data base upon individual's departure from unit.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command.

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission.

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to determine existence of record should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Director of Operations and Operations Training, Testing Standardization and Evaluation, and Configuration Control Division at Headquarters Air Force Space Command;

Operations officers at Air Force Space Command units with a space, spacelift, intercontinental ballistic missile, warning, or surveillance mission; or

Operations officers at 20th Air Force operations support squadrons. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests to access records should include full name, grade and approximate dates individual was assigned to Air Force Space Command, space, warning and surveillance duties after Sep. 1, 1983, or intercontinental ballistic missile duties after July 1, 1993.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be obtained from the individual and from instructors or Standardization Evaluators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F110 AF JA A

SYSTEM NAME:

Legal Assistance Administration *(April 25, 1994, 59 FR 19699).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 8072' and insert '10 U.S.C. 8037.'

* * * * *

F110 AF JA A

SYSTEM NAME:

Legal Assistance Administration.

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SYSTEM LOCATION:

Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113.

Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military personnel, and their dependents and Air Force civilian personnel stationed overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Numbers, and personal letters and documents furnished by person seeking advice and legal assistance record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8037, Judge Advocate General: Appointment and duties; and E.O. 9397.

PURPOSE(S):

Records kept to render proper advice for continuing assistance. Used by attorney and client with attorney-client relationship to assist in personal legal problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Computers must be accessed with a password.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Legal Services Agency, 172 Luke Avenue, Suite 343, Washington, DC 20332–5113.

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113; or to

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Air Force Legal Services Agency, Legal Assistance Division, 172 Luke Avenue, Washington, DC 20332–5113; or to

Legal Assistance Officers at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information furnished by client.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27282 Filed 11–04–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Intent to Prepare a Draft Programmatic Environmental Impact Statement (DEIS) for the Everglades Construction Project, Palm Beach, Martin, Okeechobee, Hendry, Collier, Broward and Dade Counties, Florida

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, along with the South Florida Water Management District (SFWMD) and certain cooperating agencies, intends to prepare a Draft Programmatic Environmental Impact Statement (DEIS) on the feasibility of implementing the under the State of Florida's Everglades Forever Act of 1994, the Everglades Construction Project in Palm Beach, Martin, Okeechobee, Hendry, Collier, Broward and Dade Counties, Florida.

ADDRESSES: U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232–0019.

FOR FURTHER INFORMATION CONTACT: Mr. William Porter, (903) 232–2259.

SUPPLEMENTARY INFORMATION: a. The Everglades Forever Act of 1994 (Chapter 373.4592, F.S.) requires the SFWMD to obtain authorization for the construction, operation and maintenance of the Everglades Construction Project. The U.S. Army Corps of Engineers participation will include Section 404 permitting activities, NEPA documentation of this project, and participation in the implementation of several components of the project. The project involves the creation of six (6) Stormwater Treatment Areas (STAs) and three (3) Hydroperiod Restoration elements. It also includes changes in the operation of Lake Okeechobee and other features of the Central and Southern Florida Project. The magnitude and duration of the plan is such that the U.S. Army Corps of Engineers determined that a programmatic EIS should be prepared for the entire plan pursuant to Section 404 of the Clean Water Act.

b. Scoping: The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies; and other interested persons and organizations. A scoping letter will be sent to interested Federal, State, and local agencies requesting their comments and concerns regarding issues they feel should be addressed in the EIS. Interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address above. Significant issues anticipated include concern for; local groundwater recharge, water quality, water supply, recreation, wetlands, fish and wildlife, and land use. Public scoping meetings will be held in the near future, the exact location, dates, and times will be announced in public notices and local newspapers.

c. It is estimated that the DEIS will be available to the public in July 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27499 Filed 11–4–94; 8:45 am]

BILLING CODE 3710–AJ–M

Update of Abiquiu Reservoir Master Plan and National Environmental Policy Act (NEPA) Compliance

AGENCY: U.S. Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers, Albuquerque District (COE) is updating the Master Plan for Abiquiu Reservoir in Rio Arriba County, New Mexico. The purpose of the plan is to provide a comprehensive guide for the use and development of the natural and manmade resources at Abiquiu Reservoir. The existing plan was prepared in 1976 and changes that have occurred since have made it necessary to update that plan.

The COE will prepare a Master Plan/NEPA document and initiate the scoping process for this action. Scoping meetings will be scheduled in the December 1994-January 1995 time frame following completion of a resource demand survey/analysis.

ADDRESSES: Commander, U.S. Army Corps of Engineers, Albuquerque District, CEWSWA-CO-O, P.O. Box 1580, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Spurgeon or Mr. Mark Harberg, (505) 766–1970.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–27424 Filed 11–4–94; 8:45 am]

BILLING CODE 3710–KK–M

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Subregional Long-Term Wastewater Project by the City of Santa Rosa in Sonoma County, California

AGENCY: U.S. Army Corps of Engineers, San Francisco District, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers will prepare a Draft Environmental Impact Statement (EIS) for the proposed Santa Rosa Subregional Long-Term Wastewater Project (Project). The purpose of the Project is to provide for effluent disposal from the Subregional Sewerage System wastewater treatment facilities operated by the City of Santa Rosa. The Project would implement a program to dispose of tertiary treated wastewater from system members and customers through the year 2010. The City of Santa Rosa has applied for a Department of Army (DA) permit for authorization to discharge dredged and fill material, and to work in navigable waters of the United States in association with construction of the Project. The DA permit application process, scoping process, and preparation of the Draft EIS will be conducted by the Regulatory Branch of the San Francisco District.

ADDRESSES: U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 211 Main Street, San Francisco, California 94105–1905.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Wade Eakle at the Corps of Engineers (Telephone 415–744–3325, ext. 222).

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers has received an application for a Department of the Army permit from the City of Santa Rosa to discharge dredged and fill material, and to work in navigable waters of the United States in association with construction of a Subregional Long-Term Wastewater Project. Project implementation could include construction of embankments to create a wastewater storage reservoir; construction of a groundwater infiltration basin; construction of pipelines to distribute reclaimed water; construction of irrigation drainage facilities; and construction of berms of create or restore wetlands.

The Laguna Wastewater Treatment Plant operated by the City of Santa Rosa provides tertiary treatment for approximately 16 million gallons of wastewater per day (mgd) average dry weather flow (ADWF) from the Subregional Sewerage System. This results in an average annual flow of 7,000 million gallons (mg). Wastewater flows are projected to increase to approximately 22.5 mgd ADWF by the year 2010, including consideration for lower flows due to water conservation. This results in an average annual flow of 9,800 mg.

Disposal of treated wastewater from the Laguna plant is through agricultural irrigation, created wetlands, urban irrigation, and discharge to the Russian River through the Laguna de Santa Rosa. Ordinarily, discharge to the Russian River is limited to a maximum of 1 percent of river flow (5 percent with the permission of the California Regional Water Quality Control Board), and storage is provided to hold treated wastewater so that maximum legal discharge is not exceeded. However, due to a combination of conditions which may occur during the October 1–May 14 discharge season, discharge to the Russian River may exceed the legal maximum.

These conditions can occur during winters characterized by periodic light rain but overall drier-than-normal conditions. As a result, the current Subregional System is weather-dependent, leaving it without a reliable, legally sanctioned wastewater disposal option. By 1999 the City of Santa Rosa must put in place a disposal solution to meet future capacity needs, no matter what weather conditions occur. The purpose of the Santa Rosa Subregional Long-Term Wastewater Project is to provide this solution.

The DA permit application will be processed by the Regulatory Branch of the San Francisco District, Corps of Engineers, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) the Corps of Engineers has determined that the proposed action may have a significant impact on the quality of the humen environment and therefore requires the preparation of an Environmental Impact Statement. A combined EIS/EIR (Environmental Impact Report) will be prepared with the Corps of Engineers as the Federal lead agency and the City of Santa Rosa as the lead agency for the EIR.

2. Alternatives

The Project alternatives under consideration are:

a. No Project/No Action
b. South County Reclamation
c. Community Separator/South County Reclamation
d. West County Reclamation
e. Geysers Recharge
f. 20% Maximum Russian River Discharge

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g. Other project proposals that are identified as feasible during the public scoping process

Components of the alternatives to be analyzed for the Project may include: water conservation through compliance with state regulations and an expanded subregional retrofit program; expanded agricultural irrigation; flow augmentation of existing streams during periods of low flow; increased storage capacity, including new reservoir sites or use of below ground aquifers; expanded urban irrigation reuse; injection and reuse of treated wastewater at the Sonoma Geysers; and increased discharge to the Russian River (up to a maximum of 20 percent of river flow) either directly, through rapid infiltration in the river plain, or through the Laguna de Santa Rosa.

3. Scoping Process

Pursuant to the National Environmental Policy Act, as amended, agency planning for Federal or Federally permitted projects must include a "scoping" process. Scoping primarily involves determining the scope of issues to be addressed, and identifying the significant issues for in-depth analysis in the Draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

The Corps of Engineers and the City of Santa Rosa will hold public scoping meetings on November 17, 1994 at 3 pm and 7 pm at the Steele Lane Recreation Center, 415 Steele Lane, Santa Rosa, California 95403. A formal presentation will precede the request for public comment. Representatives from the Corps of Engineers, the City of Santa Rosa, and Harland Bartholomew & Associates (the consultant preparing the EIS/EIR) will be available at these meetings to receive comments from the public regarding issues of concern that should be addressed in the environmental document. Further public participation is planned, but not currently scheduled.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meetings. To be most helpful, the scoping comments should clearly describe specific environmental issues or topics which the commentator believes the document should address. Written comments should be mailed no later than December 1, 1994 to the District Engineer, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California, 94105 ATTN: Wade Eakle.

a. Significant Issues

The following issues have been identified as potentially significant and will be evaluated in the Draft EIS/EIR. However, the scope of analysis is not limited to these issues.

(1) Geologic conditions
(2) Hydrology, water quality and supply
(3) Traffic and transportation
(4) Air quality
(5) Noise conditions
(6) Biological resources, including endangered species, and fish and wildlife habitat
(7) Visual resources
(8) Cultural and historic resources
(9) Land use, including agricultural activity
(10) Public services and utilities
(11) Public health and safety hazards
(12) Recreational opportunities
(13) Socioeconomics
(14) Energy

b. Environmental requirements

Environmental review and other consultation requirements applicable to the proposed action include:

(1) National Environmental Policy Act of 1969, 42 U.S.C. 4371 et seq., 40 CFR Parts 1500–1508, and all implementing regulations.
(2) Clean Water Act, as amended, 33 U.S.C. 1344.
(3) Rivers and Harbors Act of 1899, 33 U.S.C. 403.
(4) Endangered Species Act of 1973, as amended, 16 U.S.C. 1536, 50 CFR 402.
(5) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470.
(6) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667.
(7) Coastal Zone Management Act of 1972, 16 U.S.C. 1456.
(8) Final Rule for Regulatory Programs of the Corps of Engineers, 33 CFR Parts 320–330.
(9) Environmental Protection Agency's Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230.
(10) California Environmental Quality Act of 1970, Public Resources Code, Section 21000 et seq., and all subsequent implementing regulations.
(11) Chapter 1600 of the Fish and Game Code.

4. Availability of EIS

The Draft EIS should be available for public review in October 1995.

Michael J. Walsh,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 94–27421 Filed 11–4–94; 8:45 am]

BILLING CODE 3710-FS-M

Problems in Tender Filing—New Policy

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is proposing a policy governing carrier's responsibility for tender filings. This policy gives MTMC authority to reject and correct mistakes in rate tender filings, and provides carriers with rate filing procedures for correcting mistakes in rate.

DATES: Comments must be received not later than December 15, 1994.

ADDRESSES: Comments should be mailed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–ND, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara McGinnis, (703) 756–1103.

SUPPLEMENTARY INFORMATION: The proposed policy will be included as an enclosure to all future MTMC Guaranteed and Non-Guaranteed Traffic solicitations.

Problems in Tender Filings

1. Authority.

As indicated in the solicitation, the Assistant Deputy Chief of Staff for Operations-Transportation Services retains the authority to reject and correct mistakes in rate tender filings.

2. Procedures for Filing Tenders

a. General

(1) Carriers are solely responsible to ensure tender submissions are legible and typed. Handwritten or illegibly typed submissions or submissions having typed strikeovers will be returned as being nonresponsive.

(2) If a rate(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive.

(3) If a minimum charge(s), if applicable, is omitted, the tender submission will be returned as being nonresponsive. If a carrier does not want to make a minimum charge, if applicable, that carrier must insert a "0". Tender submission will be returned as being nonresponsive for failure of carrier to insert a "0".

(4) Tender submission may be returned as being nonresponsive for failure of the carrier to submit a properly signed and executed Certificate of Independent Pricing with tender submission.

(5) Tender formats cannot be altered by carriers in any manner. If altered, the tender submission may be returned as being nonresponsive.

b. Carrier Responsibility for Tender Filings

Carriers are solely responsible for the proper preparation, accuracy, and timely submission of their tenders. Carriers are responsible for establishing quality control procedures that will include review of tenders prior to their submission to Headquarters, Military Traffic Management Command. Tenders found to contain errors such as typographical may be granted relief based on justification in support of alleged errors.

c. Administrative Errors

Administrative errors which can be corrected include, but are not limited to, mistakes in the following:

(1) Carrier street address and Standard Carrier Alpha Code.
(2) Carrier telephone number.
(3) Mode, if applicable.
(4) Tender number or series.
(5) Interstate Commerce Commission, and/or intrastate operating authority certificate number.
(6) Typed name of company official authorized to submit rates, address, and telephone number. Tender submission will be returned as being nonresponsive for failure of a carrier to sign its tender.
(7) Tender and rate sheet not corresponding that can be evaluated on an equal basis with other carriers. If a rate sheet varies the material terms (e.g., change in rate qualifier, mileage groups, or minimum weights) of the solicitation so that the rates cannot be evaluated on an equal basis with other carriers, the tender submission will be returned as being nonresponsive.
(8) Failure to submit the required number of original signature copies of the rate tender.

3. Mistakes in Rate Filing Procedures (MIRF)

a. *General.* (1) Carriers discovering a mistake(s) before bid closing time can correct such mistake(s) by submission of a new tender prior to closing. The last tender received before closing governs. Identification of a rate error(s) in a bid submission after opening may be initiated by either HQMTMC or in writing by the carrier. After opening, carriers may either withdraw or seek to correct rate error(s).

(2) Correction is allowed for clerical error(s) where the intended rate is obvious from the bid submission itself, as in the case of misplaced decimal.

(3) Correction is allow in other cases (except in the case of a downward correction which would displace a low bidder) only if the carrier proves the mistake and the rate actually intended by providing HQMTMC (MTOP-T-N) clear and convincing written evidence. If the evidence supports the existence of the mistake, but not the rate actually intended, the carrier will be permitted to withdraw its tender (or MTMC will reject it). Carriers must submit evidence to arrive HQMTMC (MTOP-T-N) within a reasonable time after notification by MTMC of a suspected mistake.

(4) Where a downward correction would displace a low bidder, it is permitted only if the mistake and the intended rate can be determined from the solicitation and the tender itself.

(b) *Evidence.* The following evidence must, at a minimum, be submitted by the carrier when the carrier seeks to correct a mistake in rate other than a clerical error(s):

(1) Original source documents pertinent to the error, including, but not limited to, working papers, spread sheets, transcription sheets, adding machine tapes, tariffs, cost data sheets, memorandum for records, written procedural guidance on determining rate levels, internal rate printouts, and other such papers which will provide a clear audit trail for tracing the mistake.

(2) Other documents deemed by the carrier to be relevant to error validation can also be used as evidence.

(3) To protect their interests, carriers are encouraged to retain original source data until it is certain that no further use for it exists.

4. *Rate Errors*

Rate regression mistakes may be considered for relief under the MIRF procedure. Correction of rate regression mistakes cannot affect other rates already in normal regression. Two examples of correctable rate regression mistakes are shown below:

BILLING CODE 3710-08-M

Example 1:

	Minimum Weights				
Mileage	1,000	2,000	5,000	10,000	20,000
100 or less	$9.60	$4.80	$1.92	$1.20	$.90
101 to 200	$9.60	$4.80	$1.92	$1.20	$.90
201 to 300	$14.30	$7.15	$2.86	$3.00	$1.50
301 to 400	$21.90	$10.95	$4.38	$3.09	$1.55

BILLING CODE 3710-08-C

The error in the above example is the underlined rate which is not in proper rate regression for the higher minimum weight. It can be corrected without affecting the regression for the mileage groups. If the carrier intended a different rate, the carrier may seek correction under the MIRF procedure, provided that the intended rate itself falls within normal regression.

BILLING CODE 3710-08-M

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Example 2:

	Minimum Weights				
Mileage	200	500	1,000	2,000	5,000
400 or less	$400	$160	$100	$30	$24
401 to 500	$400	$160	$100	$30	$24
501 to 600	$ 4	$160	$100	$30	$24
601 to 700	$400	$160	$100	$30	$24

BILLING CODE 3710-08-C

The error in the above example is the underlined rate which is not in proper rate regression for the distance. It can be correct without affecting the regression for the minimum weight groups.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-27336 Filed 11-4-94; 8:45 am]

BILLING CODE 3710-08-C

Defense Logistics Agency

Privacy Act of 1974; Alteration of a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Alteration of a record system.

SUMMARY: The Defense Logistics Agency proposes to alter an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The Defense Logistics Agency proposes to add an additional routine use for the system as follows: 'To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the DVA) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).'

DATES: The alteration will be effective without further notice on December 7, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 18, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: October 28, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (September 19, 1994, 59 FR 47847).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph as follows: 'To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414)'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location - W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93943-5000.

Decentralized segments - Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax I.D. of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DOD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT-1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL-1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and Duties; 10 U.S.C. 2358; Research Projects; 5 U.S.C. App. 3 (Pub. L. 95-452, as amended (Inspector General Act of 1978)); and E.O. 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions, to perform longitudinal statistical analyses, identify current and former DOD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veteran Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veteran Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to register eligible veterans and their dependents for DVA programs.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006-3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 106 - Selected Reserve and Title 38 U.S.C., Chapter 30 - Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006-3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83-598, 84-356, 86-724, 94-455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct

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computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DOD to insure that annuities of DOD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DOD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DOD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DOD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Pub. L. 94–505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

6. To HHS for the purpose of conducting studies concerned with the health and well being of the active duty and veteran population.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

To DOD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DOD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.–

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DOD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DOD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DOD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center - Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location - Tapes are stored in a bank-type vault; buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, Personal Privacy and Rights of Individuals Regarding Their Personal Records; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94-27327 Filed 11-4-94; 8:45am]

BILLING CODE 3800-04-F

Privacy Act of 1974; Notice to Add a Record System

AGENCY: Defense Logistics Agency, DoD.

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ACTION: Notice to add a record system.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective without further notice on November 7, 1994, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Privacy Act Officer, Programs and Analysis Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Christensen at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and may be obtained from the address above.

A system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 18, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994).

Dated: October 25, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S800.10 MM

SYSTEM NAME:

Federal Property End Use Files.

SYSTEM LOCATION:

Records are maintained by the Defense Reutilization and Marketing Service, 74 Washington Avenue North, Battle Creek, MI 49017–3092; by the Defense Reutilization and Marketing Service National Sales Office, 2163 Airways Boulevard, Memphis, TN 38114–5052; and by the Commanders of the Defense Contract Management Districts. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, businesses, and organizations who bid on or participate in the DoD surplus personal property sales program or the excess contractor inventory sales program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, address, date and place of birth, Social Security Number, telephone number, company affiliation, nature of business, firms identification/tax number, and information on the intended end use of the property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136 (Assistant Secretaries of Defense); 22 U.S.C. 2751–2799 (Arms Export Control); 40 U.S.C. 471–484 (Federal Property Management); 50 App. U.S.C. 2401 et seq. (Export Administration); E.O. 9397; E.O. 12738 (Export Controls); 22 CFR part 122 (International Traffic in Arms Regulations); 41 CFR part 101 (Federal Property Management); DoD Regulation 2030.1; DoD Instruction 2030.6; DoD Directive 2030.7; and DoD Directive 4160.21.

PURPOSE(S):

Records are used in the management of the property disposal programs to determine bidder eligibility to participate in the programs and to ensure that property recipients comply with the terms of the sale regarding end use of the property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of the Treasury to ensure that recipients comply with U. S. Customs rules and regulations regarding movement of the property.

To the Department of Transportation to ensure compliance with rules regarding Federal Aviation Administration airworthiness certificates for surplus military aircraft.

To the General Services Administration to determine the presence of debarment proceedings against a bidder.

To the Department of State to ensure compliance with the International Traffic in Arms regulations.

To the Department of Commerce to ensure compliance with the Export Administration regulations.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, company name, or sales number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Records pertaining to foreign excess personal property are destroyed 6 years after completion of trade security controls on individual transaction; records pertaining to other surplus items are destroyed 7 years after bid award date.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Director for Material Management, DLA-MM, Cameron Station, Alexandria, VA 22304–6100.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to or visit the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject and by Federal agencies monitoring arms trafficking, property movement, and export control regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–27281 Filed 11–4–94; 8:45 am]
BILLING CODE 5000–04–F

Privacy Act of 1974; Computer Matching Program Between the Department of Labor and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Department of Labor (DOL) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DOL and DoD that their records are being matched by computer. The record subjects are DOL delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by DOL so as to permit DOL to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 7, 1994, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and DOL have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that DOL can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between DOL and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Collection Officer, Department of Labor, Office of the Secretary, Office of Financial Management MS 7258 MIB, Washington, DC 20240. Telephone (202) 208–4703.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on October 21, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: October 27, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Labor and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Department of Labor (DOL) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DOL is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the DOL will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. The DOL will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the DOL of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 29 CFR 20.74 - 20.90 Salary Offset (Department of Labor).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for

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the purpose of this computer match are as follows:

OWCP will use personal data from the record system identified as DOL/GOVT–1, entitled 'Office of Workers' Compensation Programs, Federal Employees' Compensation File,' published in the **Federal Register** at 58 FR 49548 on September 23, 1993 with amendments published at 59 FR 47361 on September 15, 1994.

DMDC will use personal data from the record systems identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* The DOL, as the source agency, will provide DMDC with a magnetic computer tape which contains the names of delinquent debtors in programs the DOL administers. Upon receipt of the magnetic computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the DOL file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the DOL. The DOL is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the DOL source file and for resolving any discrepancies or inconsistencies on an individual basis. The DOL will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The magnetic computer tape provided by DOL will contain data elements of the debtor's name, Social Security Number, debtor status and debt balance, internal account numbers and the total amount owed on approximately 1,000 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the DOL magnetic computer tape by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DOL and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–27280 Filed 11–4–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 17–19, 1994.

TIME: November 17, 1994—Subject Area Committee #2, 4:00 p.m.–4:30 p.m. (open), 4:30 p.m.–6:00 p.m. (closed); Achievement Levels Committee, 4:00 p.m.–6:00 p.m. (open). November 18, 1994—Executive Committee, 7:00 a.m.–8:30 a.m. (open); Full Board, 8:45 a.m.–10:00 a.m. (open); Subject Area Committee #1, 10:00 a.m.–12:00 noon (open); Reporting and Dissemination Committee, 10:00 a.m.–12 noon (open); Design and Analysis Committee, 10:00 a.m.–12 noon (open); Full Board, 12:00 noon–1:30 p.m. (closed), 1:30 p.m.–5:15 p.m. (open). November 19, 1994—9:00 a.m. until adjournment, approximately 12:00 noon (open).

LOCATION: The Madison Hotel, 15th and M Streets, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On November 17, two committees will be in session. Subject Area Committee #2 will meet from 4:00 p.m. to 6:00 p.m. The committee will meet in open session from 4:00 p.m. until 4:30 p.m. to hear a report on the National Endowment for the Arts survey of school arts programs. From 4:30 p.m.–6:00 p.m. the meeting will be closed to the public to permit the committee to review field test items for the arts assessment. This meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. The Achievement Levels Committee will meet in open session from 4:00 p.m. until 6:00 p.m. The committee will discuss a report from American College Testing (ACT) on the following topics: Research results from geography and history pilots and the final design for and types of judges that should be participants in the achievement levels-setting meetings scheduled for November and December.

On November 18, the Executive Committee will meet in open session from 7:00 a.m. until 8:30 a.m. The agenda includes a discussion of principles to guide the NAEP assessment schedule through the year 2000; implications of the reauthorization legislation; and matters related to the FY 1995 budget.

Also on November 18, the full Board will convene in open session at 8:45 a.m. The morning session of the full Board meeting, to 10:00 a.m., includes approval of the agenda, the Executive Director's report, and an update on NAEP activities. From 10:00 a.m. until 12:00 noon, three of the Board's standing committees, Subject Area #1, Reporting and Dissemination, and Design and Analysis will meet in open session.

Beginning at 12:00 noon, until 4:30 p.m., the full Board will meet in partially closed session. From 12:00 noon until 1:30 p.m., the meeting will be closed to the public. The Board will hear a report on the 1992 NAEP Report of the Integrated Reading Performance Record which will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. From 1:30 p.m. until 5:15 p.m., the meeting will be open to the public. The Board will hear reports on the National Education Goals, and States as NAEP Partners, a panel discussion on the NCES/NAGB Joint Conference on Standard Setting. Also, the Board will receive an ethics briefing provided by the Office of General Counsel.

On November 19, at 9:00 a.m., the full Board will reconvene. The agenda for this session includes a report from the Ad Hoc Committee on NAEP Background Questionnaires, and from each of the standing committees: Subject Area Committees #1 and #2, Reporting and Dissemination, Design and Analysis, Achievement Levels, and Executive. This meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 noon.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: November 2, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–27513 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES: Saturday, November 19, 1994: 8:30 am–2:30 pm.

ADDRESSES: November 19, 1994 meeting: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, TX 79106.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Environmental Management Site Specific Advisory Board, Pantex Plant provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

8:30 am Welcome, Agenda Review and Introductions, Greetings from Co-Chairs
8:45 am Updates
- •occurrence report by DOE (questions regarding the October report and presentation of the November report)
- •preparation for November 19, 1994 News Conference
- •liability of Board Members—Sam Goodhope
- •Other

9:15 am Emergency Response preparations and discussions
12:15 pm Lunch (A modest lunch will be provided at the meeting. Participating board members and guests will be asked to contribute to cover the costs.)
1:15 pm Working Group Reports
- Nominations and Membership Working Group
- •draw straws for Environmental Management Site Specific Advisory Board, Pantex Plant terms
- •report on replacement for Alisa Sell
- Budget and Finance Working Group—status of work
- Community Outreach Working Group—status of work
- Policy and Personnel Working Group—status of work
- Training and Program Working Group
- •action plans (approach/proposal)
- •financial support for speakers

2:00 pm Discussion regarding the creation of task forces
2:10 pm Nomination of individual to serve on national Environmental Management Site Specific Advisory Board evaluation committee
2:20 pm Next Meeting dates and locations discussion

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the

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presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806)371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806)537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on November 2, 1994.

Rachel Murphy Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–27531 Filed 11–4–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–075]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–075) granting a Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Rheem's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GRA upflow, and GSA downflow condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Rheem has been granted a Waiver for its GRA upflow, and GSA downflow condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 1, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Rheem filed a "Petition for Waiver," dated July 15, 1994, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on September 15, 1994, Rheem's petition and solicited comments, data and information respecting the petition. 59 FR 47317. Rheem also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on September 7, 1994. 59 FR 47317, September 15, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Rheem.

Assertions and Determinations

Rheem's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Rheem requests the allowance to test using a 20-second blower time delay when testing its GRA upflow, and GSA downflow condensing gas furnaces. Rheem states that since the 20-second delay is indicative of how these models actually operate, and since such a delay results in an average of approximately 3.0 percent improvement in energy efficiency, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5 minute delay. Rheem indicates that it is unable to take advantage of any of these exceptions for its GRA upflow, and GSA downflow condensing gas furnaces.

Since the blower controls incorporated on the Rheem furnaces are designed to impose a 20-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 20-second blower time delay when testing the Rheem GRA upflow, and GSA downflow condensing gas furnaces. Accordingly, with regard to testing the GRA upflow, and GSA downflow condensing gas furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 20-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company. (Case No. F–075) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company, shall be permitted to test its GRA upflow, and GSA downflow condensing gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GRA upflow, and GSA downflow condensing gas furnaces manufactured by Rheem Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective November 1, 1994, this Waiver supersedes the Interim Waiver granted the Rheem Manufacturing Company on September 7, 1994. 59 FR 47317, September 15, 1994 (Case No. F–075).

Issued In Washington, DC, on November 1, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–27533 Filed 11–4–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–5–000, et al.]

General Electric Capital Corp., et al.; Electric Rate and Corporate Regulation Filings

October 28, 1994.

Take notice that the following filings have been made with the Commission:

1. General Electric Capital Corporation

[Docket No. EL95–5–000]

Take notice that on October 18, 1994, General Electric Capital Corporation (GE Capital), the principal place of business of which is 260 Long Ridge Road, Stamford, Connecticut, 06927, filed with the Federal Energy Regulatory Commission (Commission) a Petition for a Declaratory Order. GE Capital has requested that the Commission find that GE Capital's proposed acquisition of a foreign utility company, as defined in Section 33 of the Public Utility Holding Company Act of 1935, as amended, will not cause it or any of its subsidiaries to be deemed "primarily engaged in the generation or sale of electric power" for purposes of the restrictions on ownership of qualifying cogeneration or small power production facilities contained in Sections 3(17) and 3(18) of the Federal Power Act and Part 292 of the Commission's regulations.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER95–50–000]

Take notice that on October 20, 1994, Louisville Gas and Electric Company (LG&E) tendered for filing an amendment to the Agreement between LG&E, The Cincinnati Gas and Electric Company (CG&E), and Tennessee Valley Authority (TVA). The original Agreement between LG&E, CG&E and TVA was dated September 23, 1957, and amended effective October 8, 1983.

The purpose of this filing is to amend the transmission toll charged by LG&E for energy transactions between CG&E and TVA and to require advance scheduling for such transactions. The proposed toll charge, as well as the scheduling requirement, was negotiated and agreed to by the affected parties.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

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3. Gulfstream Energy, LLC

[Docket No. ER94-1597-000]

Take notice that on September 29, 1994, Gulfstream Energy, LLC tendered for filing an amendment in the above-referenced docket.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Narragansett Electric Company

[Docket No. ER94-1610-000]

Take notice that The Narragansett Electric Company on October 14, 1994, tendered for filing an amendment to its filing in this docket.

Comment date: November 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power & Light Company

[Docket No. ER95-49-000]

Take notice that Arkansas Power & Light Company (AP&L) filed on October 19, 1994, a proposed joint Stipulation with Arkansas Electric Corporation (AECC). The proposed Joint Stipulation would modify the rate formulas currently applicable to AECC. The proposed changes to the rate formulas would result in the formulas tracking AP&L's costs more accurately and would also streamline the administrative process associated with the annual redetermination of AECC's rates utilizing the rate formulas.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Thermo Cogeneration Partnership, L.P.

[Docket Nos. QF87-552-003 and EL95-1-000]

On October 25, 1994, Thermo Cogeneration Partnership, L.P. tendered for filing additional information in support of its request for waiver of the technical standards relating to its cogeneration facility.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27458 Filed 11-4-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. EF95-5171-000, et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF95-5171-000]

Take notice that on October 25, 1994, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-63, did confirm and approve on an interim basis, to be effective on December 1, 1994, the Western Area Power Administration's (Western) Rate Schedule SLIP-F5 for firm power service from the Salt Lake City Area Integrated Projects.

The rate in Rate Schedule SLIP-F5 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval of these or of substitute rates on a final basis, ending November 3, 1999.

The fiscal year (FY) power repayment study indicated that the existing rate does not yield sufficient revenue to satisfy the cost-recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates consistent with sound business principles. The Deputy Secretary of the Department of Energy states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period beginning December 1, 1994, and ending November 30, 1999, pursuant to authority vested in FERC by Delegation Order No. 0204-108, as amended.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. SEI Holdings IX, Inc.

[Docket No. EG95-5-000]

On October 28, 1994, SEI Holdings IX, Inc., 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 (the "Applicant"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged indirectly, through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 ("PUHCA"), in owning and operating eligible facilities located in Trinidad and Tobago: the 236 MW Penal Plant, located at Penal, in the ward of Siparia, County of St. Patrick, consisting of two simple cycle gas turbines and a combined cycle generating unit comprised of two gas turbines, one heat recovery steam generator, and one steam turbine; the 634 MW Point Lisas Plant, located at Point Lisas Industrial Estate in the ward of Couva, County of Caroni, consisting of ten simple cycle turbines; and the 308 MW Port of Spain Plant, located in the city of Port of Spain, consisting of four steam turbine and two simple cycle gas turbine generator units. The facilities are all in commercial operation. The facilities are gas fired; the Port of Spain Plant also has the capability to use fuel oil as a back-up.

Comment date: November 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. EL94-34-001]

Take notice that on October 24, 1994, Western Resources, Inc. tendered for filing its compliance report in the above-referenced docket.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems, Inc.

[Docket No. EL95-3-000]

Take notice that on October 14, 1994, Midwest Power Systems, Inc. (Midwest Power) tendered for filing a Petition for Declaratory Order permitting Midwest Power to reduce its annual composite rate of depreciation from 3.54 percent to 3.49 percent.

5. Equitable Resources Marketing Co., Equitable Power Services Co.

[Docket Nos. ER94-1029-001, ER94-1539-001]

Take notice that on October 17, 1994, Equitable Power Services Company (EPSC) filed certain information, on behalf of Equitable Resources Marketing Company (ERMC) and itself, as required by the Commission's June 7, 1994 letter order in Docket No. ER94-1029-001 and the Commission's September 8, 1994, letter order in Docket No. ER94-1539-000. Copies of ERMC and EPSC's informational filing are on file with the Commission and are available for public inspection.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Rainbow Energy Marketing Corporation

[Docket No. ER94-1061-002]

Take notice that on October 19, 1994, Rainbow Energy Marketing Corporation (REMC) filed certain information as required by the Commission's June 10, 1994, letter order in Docket No. ER94-1061-000. Copies of REMC's informational filing are on file with the Commission and are available for public inspection.

7. Northeast Utilities Service Company

[Docket No. ER94-1125-000]

Take notice that on October 27, 1994, Northeast Utilities Service Company (NUSCO), submitted for filing, on behalf of the Northeast Utilities (NU) System Companies, a revised FERC Electric Tariff No. 6—System Power Sales and Exchanges in response to concerns raised by FERC staff on the initial filing. NUSCO requests that the proposed tariff be made effective on the day following the date of receipt of this amendment by the Commission, or, in the alternative, the earlier of (i) sixty days following the filing of this amendment or (ii) the earliest requested effective date for a subsequently filed Service Agreement under Tariff No. 6.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. MidCon Power Services Corporation

[Docket No. ER94-1329-001]

Take notice that on October 26, 1994, MidCon Power Services Corporation (MPS) filed certain information as required by the Commission's August 11, 1994, letter order in Docket No. ER94-1329-000. Copies of MPS's informational filing are on file with the Commission and are available for public inspection.

9. R. J. Dahnke & Associates

[Docket No. ER94-1352-001]

Take notice that on October 17, 1994, R. J. Dahnke & Associates (RJD&A) filed certain information as required by the Commission's August 13, 1994, letter order in Docket No. ER94-1352-000. Copies of RJD&A's informational filing are on file with the Commission and are available for public inspection.

10. Valero Power Services Company

[Docket No. ER94-1394-001]

Take notice that on October 26, 1994, Valero Power Services Company (VPS) filed certain information as required by the Commission's August 24, 1994, letter order in Docket No. ER94-1394-000. Copies of VPS's informational filing are on file with the Commission and are available for public inspection.

11. TexPar Energy, Inc.

[Docket No. ER95-62-000]

Take notice that on October 24, 1994, TexPar Energy, Inc. (TexPar), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulation of the Commission and for an order accepting its FERC Electric Rate Schedule No.1.

TexPar intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where TexPar sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. TexPar is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Indiana Michigan Power Company

[Docket No. ER94-1495-000]

Take notice that on October 26, 1994, American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company, tendered for filing an amendment to its original filing in the above referenced docket.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Power Service Commission, and all parties of record.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER94-1505-000]

Take notice that on October 1, 1994, Illinois Power Company (Illinois) tendered for filing an amendment in the above-referenced docket.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER95-46-000]

Take notice that on October 19, 1994, New England Power Company (NEP) tendered for filing a Notice of Termination for a Supplement to the Service Agreement between NEP and Fitchburg Gas and Electric under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. The Montana Power Company

[Docket No. ER95-57-000]

Take notice that on October 21, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, Supplements to Montana Rate Schedule FERC No. 45, the Pacific Northwest Coordination Agreement: Energy Storage Agreements between Montana and each of Chelan County PUD No. 1, Colockum Transmission Co., Inc., Cowlitz County PUD No. 1, PUD No. 1 of Douglas County, PUD No. 1 of Grant County, PUD No. 1 of Pend Oreille County, PUD No. 1 of Snohomish County, and Tacoma City Light.

A copy of the filing was served upon each of the utilities listed above.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Power and Light Company West Texas Utilities Company

[Docket No. ER95-58-000]

Take notice that on October 21, 1994, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) tendered for filing a CPL/WTU Electric Reliability Council of Texas (ERCOT) Coordination Transmission Service Tariff (CST); a revised index of customers taking service under the CST; unexecuted service agreements under which CPL and WTU will provide service under the CST; a revised version of WTU's ERCOT Transmission Service Tariff; a revised version of CPL's ERCOT Transmission Service Tariff; a revised Attachment A to WTU's Master ERCOT Transmission Facility Charge Rate Schedule and a revised Attachment A to CPL's Master ERCOT Transmission Facility Charge Rate Schedule. The filing would allow CPL and WTU to begin to collect facility charges in connection with the transmission of Economy "A" Energy and Emergency Power for other ERCOT utilities. CPL and WTU explain that such changes are necessary to being their tariffs into

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conformance with recent changes in ERCOT operating practices.

CPL and WTU have requested a waiver of the Commission's regulations to allow the changed rate schedules to become effective as of October 22, 1994.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Pennsylvania Electric Company

[Docket No. ER95-60-000]

Take notice that on October 24, 1994, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) an amendment to its existing rate schedule for transmission and supplemental power services to Allegheny Electric Cooperative, Inc. (Allegheny Cooperative). Under such existing rate schedule, Penelec has been providing such services to Allegheny Cooperative through 173 delivery points in Pennsylvania and one delivery point in New Jersey.

Allegheny Cooperative has requested, and Penelec has agreed, that the Penelec demand rates for service supplied by Penelec to Allegheny Cooperative be revised, on a revenues neutral basis, to provide for billing by Penelec to Allegheny Cooperative on a coincident peak basis. Allegheny Cooperative would like to make that change effective as of November 1, 1994, the start of Allegheny Cooperative's next fiscal year, and Penelec has requested that effective date for the subject amendment.

The proposed amendment will also increase, by approximately 5%, the billing credit that Allegheny Cooperative receives for its 10% undivided joint ownership interest in the Susquehanna Steam Electric Station and will resolve two disputes between Penelec and Allegheny cooperative relating to the scope of Penelec's supply to Allegheny Cooperative. Penelec has requested a waiver of Section 35.3(a) of the Commission's Regulations (18 CFR 35.3(a) to the extent required to permit the proposed amendment to go into effect not later than November 1, 1994.

Copies of the filing have been served on the Pennsylvania Public Utility Commission and Allegheny Cooperative.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Company of New Mexico

[Docket No. ER95-61-000]

Take notice that on October 24, 1994, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Termination of two letter agreements providing for the banking of energy under Service Schedule C to the Interconnection Agreement between PNM and the City of Anaheim, California (Anaheim), Supplements 1 and 2 to Supplement 1 to PNM Rate Schedule FERC No. 96. Termination of the letter agreements is to be effective as of October 18, 1994. PNM requests waiver of the applicable notice requirements.

Copies of this filing have been served upon Anaheim and New Mexico Public Utility Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Public Service Company

[Docket No. ER95-63-000]

Take notice that on October 24, 1994, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Louis Dreyfus Electric Power Inc. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on October 17, 1994 and requests waiver of the Commission's regulations regarding filing.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. South Carolina Electric & Gas Company

[Docket No. ER95-64-000]

Take notice that on October 24, 1994, South Carolina Electric & Gas Company (SCE&G), tendered for filing proposed changes in its FERC Electric Service Tariff (Volume Nos. 1-1V).

The proposed changes would increase revenues from jurisdictional sales and service by $1,928,000 based on the 12 month period ending December 31, 1995. The Company also proposes a revised wholesale electric tariff designated as Third Revised Volume No. 1, to supersede Second Revised Volume No. 1.

SCE&G states that the proposed increased rates are necessitated by the fact that it is realizing an unreasonable low rate of return on sales to its jurisdictional customers.

Copies of this filing were served upon the public utility's jurisdictional customers and the South Carolina Public Service Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Portland General Electric Company

[Docket No. ER95-71-000]

Take notice that on October 25, 1994, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE-1), with Rainbow Energy Marketing Corporation (Rainbow), and British Columbia Power Exchange Corporation (POWEREX). PGE has requested that the Service Agreements be accepted by the Commission, effective October 24, 1994. Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Power Company

[Docket No. ER95-76-000]

Take notice that on October 26, 1994, Consumers Power Company, tendered for filing a new wholesale service agreement providing for the sale of firm and non-firm power to Alpena Power Company.

Copies of the filing were served upon Alpena Power Company and the Michigan Public Service Commission.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. The Washington Water Power Company

[Docket No. ER95-77-000]

Take notice that on October 26, 1994, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a rate revision for the Transmission Agreement between The Washington Water Power Company, City of Spokane, and Puget Sound Power & Light Company. WWP states that this rate schedule is related to transmission wheeling service for the City of Spokane to Puget Sound Power and Light Company. WWP requests that the Commission accept the rate revision to be effective at 2400 hours December 31, 1994.

A copy of this filing was served upon the City of Spokane and Puget Sound Power and Light Company.

Comment date: November 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. The Dayton Power and Light Company

[Docket No. ER95-83-000]

Take notice that The Dayton Power and Light Company (Dayton) tendered for filing on October 27, 1994, executed Power Services Agreements (PSA) between Dayton and The Village of Arcanum, The Village of Jackson Center, The Village of Lakeview, The Village of Mendon, The Village of New Bremen, and The Village of Waynesfield, Ohio (Municipals).

Pursuant to Rate Schedules A through E attached to the PSA, DP&L will provide to Municipals, on an unbundled basis, long-term firm and short-interruptible transmission services and a variety of power supply services, all subject to flexible notice and scheduling provisions and fixed long-term prices. Dayton and Municipals are currently parties to a Service Agreement for partial requirements service pursuant to Dayton's FERC Electric Tariff, Original Volume No. 2, filed pursuant to and governed by the Settlement Agreement accepted for filing in Docket No. ER83-333-000. The Agreements will replace the existing Partial Requirements Service Agreements in place for these municipals. Dayton and Municipals request an effective date of January 1, 1995.

A copy of the filing was served upon The Village of Arcanum, The Village of Lakeview, The Village of Mendon, The Village of New Bremen, and The Village of Waynesfield, Ohio and The Public Utilities Commission of Ohio.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Green Mountain Power Corporation

[Docket No. ER95-84-000]

Take notice that on October 27, 1994, Green Mountain Power Corporation (GMP) tendered for filing revisions to the definition of "Public Utility" eligible to purchase power under its FERC Electric Tariff, Original Volume No. 2 (the "Tariff"). GMP states that these revisions were intended to permit power marketers regulated by the Federal Energy Regulatory Commission under Part II of the Federal Power Act to purchase power under the Tariff, and to clarify that the New York Power Authority is a municipal corporation eligible to purchase power from GMP under the Tariff. GMP also tendered for filing service agreements with two power marketers desiring to purchase power under the Tariff: Louis Dreyfus Electric Power Inc. and ENRON Power Marketing. GMP has requested that these filings be made effective as of January 1, 1995.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27535; Filed 11-4-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP95-39-000]

Cavallo Pipeline Co.; Notice of Petition for Declaratory Order

November 1, 1994.

Take notice that on October 26,1994, Cavallo Pipeline Company (Cavello), 1700 First City Tower, 1001 Fannin Street, Houston, Texas 77002, filed a petition for a declaratory order in Docket No. CP95-39-000, requesting that the Commission declare that its facilities are production and gathering facilities exempt from regulation by the Commission under Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Cavello states that it is an intrastate pipeline company performing transportation in interstate commerce under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Cavello claims that it owns and operates a natural gas pipeline located in offshore Texas state waters to a point onshore. Cavallo seeks a declaratory order holding that the facilities meet the physical criteria for determining gathering and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA.

In support of its claim that the primary function of the proposed facility is gathering, Cavallo points out the following: (1) the length and diameter (16.4 miles of 20-inch and 21.3 miles of 16-inch) are comparable to other offshore lines previously determined to be gathering, (2) the system lacks compression because it relies on wellhead pressure to move the gas, (3) there is no central point in the field given the nature of the offshore operations, (4) location of the wells are in the producing area and the lines are designed to gather gas from the platforms to the nearest pipeline, and (5) the geographic configuration of the line is an inverted "Y". Finally, Cavello states that its facilities are very similar to other facilities that the Commission has found to be gathering facilities.

Any person desiring to be heard or to make a protest with reference to said petition should, on or before December 1, 1994, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27464 Filed 11-4-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-229-000]

Granite State Gas Transmission, Inc.; Notice of Informal Settlement Conference

November 1, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on November 7, 1994, at 11:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the

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Commission's regulations (18 FR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602, or Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27463 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–15–001]

Mid Louisiana Gas Co.; Notice of Proposed Change of Rates

November 1, 1994.

Take notice that on October 28, 1994, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following Tariff Sheets to be effective October 1, 1994:

Fourth Revised Sheet No. 4
Fourth Revised Sheet No. 4A

Superseding

Second Revised Sheet No. 4
Second Revised Sheet No. 4A

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to correct a tariff sheet pagination error contained in Mid Louisiana's September 1, 1994, filing in this docket.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27430 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–343–000; RP94–237–000]

NorAm Gas Transmission Co.; Arkansas Gas Consumers v. NorAm Gas Transmission Co.; Notice of Technical Conference

November 1, 1994.

Take notice that on Thursday, November 17, 1994, at 10:00 a.m., the Commission's Staff will convene a technical conference to allow parties to address the issues outlined in the Commission's August 31, 1994, order in Docket Nos. RP94–343–000 and RP94–237–000.[1] The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27462 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–23–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 1, 1994.

Take notice that on October 31, 1994, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective November 1, 1994.

First Revised Sheet No. 150
First Revised Sheet No. 151
First Revised Sheet No. 152

Northern states that such tariff sheets are being submitted to reflect the termination of CD service.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27461 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–24–000]

Wyoming Interstate Co., Ltd.; Notice of Tariff Filing

November 1, 1994.

Take notice that on October 31, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariffs, First Revised Volume No. 1 and Second Revised Volume No. 2, revised tariff sheets, as listed in the attached Appendix A, to be effective December 1, 1994.

WIC proposes revisions to:

- Clarify and conform its capacity release program.
- Correct omission concerning nominations utilizing Electronic Bulletin Board.
- Revise hydrocarbon dew point specification.
- Correct errors in billing section of tariff and revise from "3 months" to "2 months" the estimate of charges for performing service, WIC may require Shipper to maintain.
- Remove contract entitlement for interruptible transportation service.
- Change or correct other minor items.

WIC states that copies of this filing were served upon all WIC transportation customers and State Commissions where WIC provides transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before November 8, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

Appendix A

WIC First Revised Volume No. 1
- First Revised Sheet No. 14
- First Revised Sheet No. 15
- First Revised Sheet No. 16
- First Revised Sheet No. 17
- First Revised Sheet No. 18
- First Revised Sheet No. 19
- First Revised Sheet No. 24
- First Revised Sheet No. 25
- Second Revised Sheet No. 26
- First Revised Sheet No. 27
- First Revised Sheet No. 28
- First Revised Sheet No. 29
- Original Sheet No. 29A
- Original Sheet No. 29B
- Original Sheet No. 29C
- Original Sheet No. 29D
- Original Sheet No. 29E
- Original Sheet No. 29F
- Original Sheet No. 29G
- Original Sheet No. 29H
- First Revised Sheet No. 30
- First Revised Sheet No. 31
- First Revised Sheet No. 41
- First Revised Sheet No. 42
- First Revised Sheet No. 43
- First Revised Sheet No. 45
- First Revised Sheet No. 46
- First Revised Sheet No. 51
- First Revised Sheet No. 58

WIC Second Revised Volume No. 2
- Second Revised First Revised Sheet No. 4
- First Revised Sheet No. 19
- First Revised Sheet No. 25
- First Revised Sheet No. 27
- First Revised Sheet No. 28
- First Revised Sheet No. 29
- First Revised Sheet No. 31
- First Revised Sheet No. 32
- First Revised Sheet No. 36
- First Revised Sheet No. 37
- First Revised Sheet No. 38
- First Revised Sheet No. 39
- First Revised Sheet No. 42
- First Revised Sheet No. 43
- First Revised Sheet No. 45
- First Revised Sheet No. 46
- First Revised Sheet No. 47
- First Revised Sheet No. 48
- First Revised Sheet No. 53
- First Revised Sheet No. 54
- Second Revised Sheet No. 55
- First Revised Sheet No. 56
- First Revised Sheet No. 57
- First Revised Sheet No. 57A
- First Revised Sheet No. 57B
- First Revised Sheet No. 57C
- First Revised Sheet No. 57D
- First Revised Sheet No. 57E
- First Revised Sheet No. 57F
- First Revised Sheet No. 57G
- First Revised Sheet No. 57H
- First Revised Sheet No. 57I
- First Revised Sheet No. 57J
- First Revised Sheet No. 58
- First Revised Sheet No. 59
- First Revised Sheet No. 64
- First Revised Sheet No. 70
- First Revised Sheet No. 80
- First Revised Sheet No. 81

[FR Doc. 94–27460 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

[1] NorAm Gas Transmission Co., 68 FERC ¶61,272 (1994).

[Docket No. CP95–27–000]

Trunkline Gas Co. Notice of Application

November 1, 1994.

Take notice that on October 20, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–27–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation services provided to Chevron Chemical Company (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline specifically requests authority to abandon firm transportation service, effective December 1, 1994, provided to Chevron pursuant to an agreement (Agreement) embodied in Rate Schedule T–96 of Trunkline's FERC Gas Tariff, Original Volume No. 2. Trunkline indicates that under Rate Schedule T–96, Trunkline utilizes its capacity in the system of Stingray Pipeline Company (Stingray) to receive up to 1,250 Mcf per day for Chevron's account from West Cameron Blocks 532, 533 and 534, Offshore Louisiana. According to Trunkline, Chevron gave Trunkline written notice of its intent to terminate the Agreement by letter dated October 17, 1994, and Trunkline accepted Chevron's termination letter. Trunkline indicates in its application that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27465 Filed 11–4–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5096–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 7, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Reference or Equivalent Method Determination (OMB Control No. 2080–0005; EPA ICR No. 0559.05).

Abstract: This ICR is an extension of an existing information collection to support the establishment of, or

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modification to, reference or equivalent method determinations for candidate air monitoring methods. Under the Clean Air Act (CAA), as set forth at 40 CFR part 53, entities seeking to have an ambient air pollutant monitoring method designated by the EPA as a reference or equivalent method must conduct required tests of the candidate method and must apply to EPA by submitting test results and other information. The information is necessary to determine whether specific methods intended for air pollution monitoring are adequate for determining attainment or non-attainment with the National Ambient Air Quality Standards established under the CAA, as set forth at 40 CFR part 50.

Applicants must provide EPA with information that includes: (1) Identification and detailed method description; (2) comprehensive operation or instruction manuals that include procedures for field use of method; (3) test data, records and calculations to support performance specifications; (4) a statement that the method has been evaluated in accordance with required procedures; (5) a description of their quality assurance program; and (6) identification of confidential or proprietary information. Applicants must maintain records for seven years on the names and ultimate purchasers of methods sold as designated reference or equivalent methods.

Upon receiving the application, EPA will publish a Notice of Receipt in the **Federal Register**, and technically evaluate the information in order to approve or disapprove of the application. EPA may request auxiliary tests or additional information as necessary to assist in making a determination of the application. Upon determination, EPA will publish a Notice of Determination in the **Federal Register** and add the method to a list provided to EPA regions and the public.

Burden Statement: Public reporting burden for this collection of information is estimated to average 150 hours per response, with an average of 434 hours per response for new methods and 20 hours per response for modifications to methods, including time for reviewing regulations, searching existing information sources, completing and reviewing the collection of information, and submitting the information to the EPA. Public recordkeeping burden is estimated to average 5 hours per recordkeeper, including time to store and maintain records.

Respondents: Applicants for reference or equivalent method determinations.

Estimated Number of Respondents: 9 reporters, 20 recordkeepers.

Frequency of Collection: On occasion.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1522 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2316), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: October 28, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27543 Filed 11–4–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–614; FRL–4920–9]

E.I. DuPont De Nemours & Co., Inc.; Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.I. DuPont De Nemours & Co., Inc., a petition to establish a pesticide tolerance for the herbicide rimsulfuron to be used on various raw agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6800.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from E.I. DuPont de Nemours & Co., Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19800-0038, a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 1F4005 to amend 40 CFR part 180 to establish a tolerance for residues of the herbicide rimsulfuron (*N*-((4,6-dimethyoxyprimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide) in or on the raw agricultural commodities corn, field, forage at 0.1 part per million (ppm), corn, field, fodder at 0.1 ppm, corn, field, grain at 0.1 ppm, and potatoes, tubers at 0.1 ppm. The analytical method is HPLC with UV detection. (PM-25)

Authority: 21 U.S.C. 346a and 348.

Dated: November 1, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–27629 Filed 11–3–94; 1:10 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 31, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0034.

Title: Application for Construction Permit for Noncommercial Educational Broadcast Station.

Form Number: FCC Form 340.

Action: Revision of a currently approved collection.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 269 responses; 89.38 hours average burden per response; 24,043 hours total annual burden.

Needs and Uses: FCC Form 340 is used to apply for authority to construct a new noncommercial educational AM, FM and TV broadcast station, or to make changes in the existing facilities of such a station. On 9/18/92, the Commission adopted a Memorandum Opinion and Order (MO&O) in the matter of Policy Regarding Character Qualifications in Broadcast Licensing which eliminated the requirement that broadcast applicants report pending litigation. The form is being revised to reflect the new policy. The form is also being revised to add a column to the terrain and coverage data for applicants who apply for a noncommercial educational station on a commercial channel. Additionally, a paragraph has been added to the environmental question in the engineering sections of the form to clarify the information needed by the Commission. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27429; Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–F

FCC Announces Establishment of Dockets for Materials Filed in Connection With State Petitions for Authority To Regulate Commercial Mobile Radio Service Rates

September 22, 1994.

Pursuant to the Omnibus Budget Reconciliation Act of 1993,[1] eight states filed petitions for the authority to continue regulating the intrastate rates of mobile radio service providers. Because of the high volume of responsive comments, dockets have been established for pleadings regarding the state petitions. All future pleadings, including replies, regarding these state petitions, should reference the docket number assigned to the state petition in issue and should be filed with the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

The petitions, together with their corresponding new docket numbers (and, for reference, the former file numbers), are as follows:

1. Petition of Public Utilities Commission, State of Hawaii, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, formerly PR File No. 94–SP1, now PR Docket No. 94–103.

2. Petition to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services, filed by the Arizona Corporation Commission, formerly PR File No. 94–SP2, now PR Docket No. 94–104.

3. Petition of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates (accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority over Intrastate Cellular Service Rates), formerly PR File No. 94–SP3, now PR Docket No. 94–105.

4. Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut (filed August 9, 1994), formerly PR File No. 94–SP4, now PR Docket No. 94–106.

5. Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, formerly PR File No. 94–SP5, now PR Docket No. 94–107.

6. Petition to Extend Rate Regulation Filed by the New York State Public Service Commission, formerly PR File No. 94–SP6, now PR Docket No. 94–108.

7. Statement of the Public Utilities Commission of Ohio's Intention to Preserve its Right for Future Rate and Market Entry Regulation of Commercial Mobile Radio Services, formerly PR File No. 94–SP7, now PR Docket No. 94–109.

8. State Petition for Authority to Maintain Current Regulation of Rates and Market Entry (Sect. 20.12), filed by the Public Service Commission of Wyoming, formerly PR File No. 94–SP8, now PR Docket No. 94–110.

By the action of the Acting Chief, Land Mobile and Microwave Division, Private Radio Bureau. For further information contact Gina Harrison or Julia Kogan, Private Radio Bureau, (202) 632–7125.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27431 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

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[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, § 6002(b)(2), 107 Stat. 312, 392 (1993) amending Section 332(c)(3) of the Communications Act.

[DA 94–1203]

Comments Invited On Florida Public Safety Plan Amendment

October 28, 1994.

On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On August 3, 1994, Region 9 submitted a proposed amendment to its plan that would, in part, revise the current channel allotments and extend the current application benchmark date. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before December 7, 1994 and reply comments on or before December 22, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to Gen. Docket 90–119 Florida-Public Safety Region 9.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27427; Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–F

[Report No. 2039]

Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 2, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section

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1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed November 22, 1994. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Mamou and Jonesville, Louisiana) (MM Docket No. (94–51, RM–8466).

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27430 Filed 11–4–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Rayburn Jerome Fisher, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Rayburn Jerome Fisher, Jr., Atlanta, Georgia; to acquire an additional 6.67 percent, for a total of 10.54 percent, of the voting shares of Metro Financial Corporation, Atlanta, Georgia, and thereby indirectly acquire Metro Bank, Atlanta, Georgia.

Board of Governors of the Federal Reserve System, November 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27498 Filed 11–4–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Open Season; Thrift Savings Plan Elections

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: The Federal Retirement Thrift Investment Board (Board) in its regulation at 5 CFR 1600.2 provides that notice will be given of the beginning and ending dates of all open seasons (as defined at 5 CFR 1600.1) which are subsequent to the open season ending on July 31, 1987. The Board's next open season will commence on November 15, 1994, and will end on January 31, 1995. The election period (as defined at 5 CFR 1600.1) covered by this open season extends from January 1, 1995 through January 31, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

Dated: October 27, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–27527 Filed 11–4–94; 8:45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Renovation of the U.S. Plaza at the Rainbow Bridge, Niagara Falls, New York; Notice of Draft Environmental Impact Statement Availability and Public Hearing

AGENCY: General Services Administration (GSA).

ACTION: Notice of Draft Environmental Impact Statement (DEIS) Availability and Public Hearing.

SUMMARY: A DEIS concerning the proposed renovation of the U.S. plaza at the Rainbow Bridge has been prepared by the GSA under Section 102(2)(C) of the National Environmental Policy Act (NEPA). The DEIS has been released for public review and comment, and a public hearing is scheduled.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Sneed, Director, Planning Staff, U.S. General Services Administration, Public Buildings Service, 26 Federal Plaza, Room 1609, New York, NY 10278, (212) 264–3581.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement (DEIS) has been prepared to evaluate the potential impacts of the proposed renovation of the U.S. plaza at the Rainbow Bridge in Niagara Falls, New York. The GSA is acting as NEPA lead agency in this project, which will be funded and constructed by the Niagara Falls Bridge Commission (NFBC). The construction of new inspection and toll booths, new office spaces, and a widened bridge approach at the existing site are proposed. Existing plaza facilities, which do not provide sufficient space for tenant agencies, will be demolished. Upon its completion, the new plaza would provide approximately 49,800 net square feet (nsf) of interior and exterior space, which will be leased to GSA for the essential functions of the U.S. Immigration and Naturalization Service (INS) and the U.S. Customs Service.

The DEIS for this project contains detailed background information, an overview of the alternatives considered, a description of the affected environment, and a discussion of the project's potential environmental impacts. Potential impacts identified include visual impacts to the Niagara Reservation—a National Historic Landmark, the demolition of National Register-eligible plaza buildings, and higher peak hour traffic volumes on streets within the City of Niagara Falls. Mitigation measures have been proposed for these potential impacts. Impacts to the Reservation will be mitigated through adherence to review procedures outlined in Section 106 of the National Historic Preservation Act of 1966 and Section 6(f) of the Land and Water Conservation Fund (L&WCF) Act. The demolition of National Register eligible plaza buildings will be mitigated by recording the buildings to Historic American Buildings Survey (HABS) standards prior to demolition, as documented in the National Park Service's "Schedule of Documentation for Recording of Rainbow Toll Plaza." Increasing the maximum green time at two intersections near the bridge has been recommended to accommodate traffic volumes associated with the renovated plaza. More importantly, the elimination of bridge queues from city streets will significantly improve traffic operations at intersections adjacent to the bridge.

The DEIS for the project was released on November 2, 1994, to Federal, state, and local agencies, interested persons, and community groups. The DEIS and supporting documents are available for public review at the locations listed below:

Niagara Falls Public Library, Earl W. Brydges Library Building, 1425 Main Street, Niagara Falls, NY

General Services Administration, Public Buildings Service, 26 Federal Plaza, Room 1609, New York, NY 10278

Written comments are invited and may be submitted to GSA at the informational contact listed in this notice December 19, 1994. A public hearing will be held to formally present the DEIS to the public and to provide an additional opportunity for public comment.

Public Hearing

Date: November 29, 1994.

Time: 7:00 p.m.

Place: Orin Lehman Visitor's Center, Niagara Reservation, Niagara Falls, NY.

Purpose: To receive comments concerning the potential environmental impacts of the proposed plaza renovation.

Instructions: Those interested in commenting orally at the public hearing may register at the desk outside the auditorium on the night of the hearing. Speakers will be heard in the order they register. Each speaker will be allotted a maximum of five (5) minutes to allow all who are interested the opportunity to speak. Oral comments may be accompanied by written statements or by an additional oral presentation after the list of registered speakers is complete. A verbatim transcript will be prepared and will be summarized in the Final Environmental Impact Statement.

Dated: October 26, 1994.

Karen R. Adler,

Regional Administrator.

[FR Doc. 94–27420 Filed 11–4–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0243]

Certification for Exports; Revised Compliance Policy Guide; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of September 7, 1994 (59 FR 46257). The document announced the availability of a revised Compliance Policy Guide (CPG) 7150.01 entitled, "Certification for Exports." The document was published with a incorrect docket number in the heading. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20879, 301–443–2994.

In FR Doc. 94–22033, appearing on page 46257 in the Federal Register of Wednesday, September 7, 1994, the following correction is made:

On page 46257, in the first column, the docket number "94N–0243" is corrected to read "94D–0243".

Dated: November 1, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27555 Filed 11–4–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Kansas State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 30, 1994, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106–2808, to reconsider our decision to disapprove Kansas SPA 93–25.

CLOSING DATES: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Stan Katz, Presiding Officer, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decision to disapprove Kansas State plan amendment (SPA) number 93–25.

Section 1116 of the Social Security Act (the Act) and 42 CFR, Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The State of Kansas submitted SPA 93–25 to increase the copayment amount for general hospital inpatient services and inpatient free standing psychiatric facility services from $25 to $325 per admission.

The issues are whether Kansas SPA 93–25 adheres to the Federal law at section 1902(a)(14) of the Act (referencing section 1916 of the Act), as implemented in the regulations at 42 CFR section 447.54(c) and section 1902(a)(19) of the Act.

Section 1902(a)(14) of the Act requires a Medicaid State plan to provide that premiums, deductions, cost sharing or similar charges be imposed only as provided in section 1916 of the Act. Pursuant to section 1916 of the Act, a State may impose nominal cost-sharing payments, such as deductibles, coinsurance, copayments, or similar cost-sharing charges on certain Medicaid recipients for some services. Current Medicaid regulations at 42 CFR section 447.54(c) define "nominal" for institutional services, as the maximum deductible, coinsurance, or copayment charge for each admission that does not exceed 50 percent of the payment the State makes for the first day of care in the institution.

HCFA believes the State's proposed copayment does not conform to the regulation because the copayment is not institution and admission specific. Furthermore, the proposed $325 copayment amount is a fixed Statewide amount. The regulation limits the State plan to the *maximum* copayment amount per admission. Kansas believes that the regulations do not require institution and admission specific copayments. In addition, Kansas indicates that Federal regulations at 42 CFR 447.55(a) specifically allow the State to set a standard, or fixed, copayment amount for any service.

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Section 1902(a)(19) of the Act provides that the State plan must include safeguards to assure that services will be provided in a manner consistent with the best interests of the recipients. HCFA believes the State has neglected to include any analysis or data which determines whether any Medicaid recipients were dissuaded from even seeking the services because of the proposed copayment. Further, if recipients are deterred from seeking necessary medical services because they are unable to pay the copayment amount, regardless of the fact that such services could not be denied, a copayment amount such as Kansas proposed cannot be in the best interests of the Medicaid recipients. Kansas believes there is no regulatory requirement that a State undertake studies or surveys of the recipient population before it implements a copayment.

The notice to Kansas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Donna L. Whiteman,
Secretary, Kansas Department of Social and Rehabilitation Services,
6th Floor, North Wing,
915 S.W. Harrison St.,
Topeka, KS 66612

Dear Ms. Whiteman: I am responding to your request for reconsideration of the decision to disapprove Kansas State Plan Amendment (SPA) 93–25.

Kansas submitted SPA 93–25 which would increase the copayment amount for the general hospital inpatient services and inpatient free standing psychiatric facility services from $25 to $325 per admission.

The issues are whether Kansas SPA 93–25 adheres to the Federal law at section 1902(a)(14) of the Social Security Act (the Act) (referencing section 1916 of the Act), as implemented in the regulations at 42 C.F.R. section 447.54(c), and section 1902(a)(19) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 30, 1994, in Room 111, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri, 64106–2808. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 597–3013.

Sincerely,
Bruce C. Vladeck,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 31, 1994.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 94–27495 Filed 11–4–94; 8:45 am]
BILLING CODE 4120–01–P

Public Health Service

National Toxicology Program; Chemicals (6) Nominated for Toxicological Studies; Request for Comments

SUMMARY: The National Toxicology Program (NTP) is soliciting public comments on six chemicals nominated for toxicological studies. These comments will assist the NTP in making informed decisions about whether to perform toxicological testing on these chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Errol Zeiger, AO–01; National Toxicology Program, NIEHS, P.O. Box 12233, Research Triangle Park, NC 127709; (919) 541–4482.

SUPPLEMENTARY INFORMATION: The NTP was established in 1978 as a cooperative effort within the Public Health Service of the Department of Health and Human Services to coordinate toxicology research and testing activities within the Department to provide information about potentially toxic chemicals to regulatory and research agencies and the public, and to strengthen the science base in toxicology. The chemical nomination and selection process remains integral to the effective operation and success of the NTP with respect to the testing of chemicals using current methodologies, the validation of new testing methodologies, and the evaluation of mechanisms of toxicity.

As part of the nomination and selection process, the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) (formerly the Chemical Evaluation Committee [CEC]), composed of representatives from Federal agencies participating in the NTP, evaluates chemicals nominated to the Program and makes recommendations for study. Nominated chemicals which have been reviewed by the ICCEC are published in the **Federal Register** with request for comment. The purpose is to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this announcement will be reviewed by NTP technical staff for use in the further evaluation of the nominated chemicals. The NTP chemical nomination and selection process is summarized in the NTP FY 1993 Annual Report, pages 17–19.

On September 22, 1994, the ICCEC met to evaluate six chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the ICCEC.

Chemical	CAS registry No.	Committee recommendations
1. Dimethyl adipate.	627–93–0	-Carcinogenicity -Genotoxicity -Sensory irritation -Dermal subchronic -Reproductive and developmental effects (other than rat) -Neutrotoxicity -Metabolism and toxicity (using human upper respiratory tissues)
2. 2,3-Butanedione.	431–03–8	-Carcinogenicity -Metabolism -*In vivo* genotoxicity
3. 2,2'-Dipyridyl.	366–18–7	-No testing
4. Methyl styryl.	122–57–6	-Metabolism -Pharmacokinetics -*In vivo* genotoxicity -Mechanistic studies
5. N-Bromosuccinimide.	128–08–5	-No testing
6. 5-Nitroindazole.	5401–94–5	-No testing

The ICCEC also recommended that two chemicals, ecdysterone and 2,3-dichloropropylene, be removed from consideration for testing at this time based on lack of evidence of human exposure with the understanding that these chemicals may be reconsidered at a later date if actual human exposure is demonstrated.

Interested parties are requested to submit pertinent information on all of the nominated chemicals. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicological testing in the public or private sector including detailed experimental protocols and results; and

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing (by 30 days after date of publication) to Dr. Zeigler by mail or by FAX, (919) 541–4704. Any submissions received after the above date will be accepted and utilized if possible.

Dated: October 31, 1994.

Richard A. Griesemer,
Deputy Director, NIEHS.

[FR Doc. 94–27468 Filed 11–4–94; 8:45 am]
BILLING CODE 4140–01–M

National Toxicology Program

National Toxicology Program (NTP) Board of Scientific Counselors' Meetings; Announcement of NTP Draft Technical Reports Projected for Public Review From November 1994 Through Summer 1996.

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselor's Technical Reports Review Subcommittee during their next four meetings from November 1994 through the summer of 1996. We plan to continue updating the listing with announcements in the **Federal Register** once or twice a year. The next meeting date is November 29, 1994. Specific dates for 1995 and 1996 meetings will be established at a later time.

The attached Table 1 lists draft Technical Reports for long-term studies on chemicals within known or approximate dates of reviews and includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

Technical Reports of short-term toxicity studies are currently reviewed by mail; however, when necessary may be reviewed in opening meetings. The attached Table 2 lists the draft Technical Reports of short-term toxicity studies tentatively projected for review by mail during 1994 and also includes Chemical Abstracts Service (CAS) registry numbers, primary use, route of administration, species, exposure levels, and NTP report numbers (if assigned).

Those interested in having more information about any of the studies listed in this announcement, should contact Central Data Management as early as possible by telephone or by mail to: MD–A0–01, NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709 (919–541–3419). The program would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone 919/541–3971, will furnish final agendas and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Attachments.

Dated: October 31, 1994.

Richard Griesemer,
Deputy Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM NOVEMBER 29, 1994 THROUGH SUMMER 1996

Chemical name/CAS number	Use	Route	Species	Exposure Levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review November 29, 1994					
2,2-BIS (BROMOMETHYL)-1,3-PROPANEDIOL 3296-90-0.	FLAM	FEED	RM	R: 0, 2500, 5000, OR 10000 PPM; 70/GROUP M: 0, 312, 625, OR 1250 PPM; 60/GROUP.	452
ISOBUTYL NITRITE 542-56-3	INTR	INHAL	RM	R&M: 0, 37, 75, OR 150 PPM	448
NICKEL (II) OXIDE 1313-99-1	INTR	INHAL	RM	R: 0, .62, 1.25, OR 2.5 M: 0, 1.25, 2.5, OR 5.0 MG/M3; 50/GROUP.	451
NICKEL SULFATE HEXAHYDRATE 10101-97-0.	INTR	INHAL	RM	P: 0, 0.125, 0.25, OR 0.5 M: 0, .25, .5, OR 1.0 MG/M3; 50/GROUP.	454
NICKEL SUBSULFIDE 12035-72-2	ENVH	INHAL	RM	R: 0, 0.075, OR 0.15 M: 0, 0.6, OR 1.2 MG/M3; 50/GROUP.	453
TRIETHANOLAMINE 102-71-6	DTRG	SP	RMM	MR: 0, 32, 63, OR 125; FR: 0, 63, 125, OR 250; MM: 0, 200, 630, OR 2000; FM: 0, 100, 300, OR 1000 MG/KG; 60/GROUP.	449
Chemicals Tentatively Scheduled for Peer Review Summer 1995					
BUTYL BENZYL PHTHALATE 85-68-7	PLAS	FEED	RR	MR: 0, .3%, .6%, OR 1.2%; 60/GROUP FR: 0, .6%, 1.2%, OR 2.4%; 60/GROUP.	
T-BUTYLHYDROQUINONE 1948-33-0	FOOD	FEED	RMR	R&M: 0, 0.125, 0.25, OR 0.5% IN FEED; 70 RATS, 60 MICE.	
CODEINE 76-57-3	PHAR	FEED	RM	R: 0, 400, 800, OR 1600 M: 0, 750, 1500, OR 3000 PPM; 60/GROUP.	

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TABLE 1.—SUMMARY DATA FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE FROM NOVEMBER 29, 1994 THROUGH SUMMER 1996—Continued

Chemical name/CAS number	Use	Route	Species	Exposure Levels	NTP TR No.
1,2-DIHYDRO-2,2,4-TRITMETHYL-QUINOLINE (MONOMER) 147-47-7.	RUBR	SP	RMM	RATS: 0, 60, OR 100 MG/KG MICE: 0, 6, OR 10 MG/KG (CORE).	
1,2-DIHYDRO-2,2,4-TRIMETHYL-QUINOLINE (MONOMER) 147-47-7.	RUBR	SP	RM	RATS: 0, 36, 60, OR 100 MG/KG MICE: 0, 3.6, 6.0, OR 10.0 MG/KG.	
SALICYLAZOSUL-FAPYRIDINE 599-79-1 .	PHAR	GAV	RM	R: 84, 168, OR 337.5 MG/KG; 70/GROUP M: 675, 1350, OR 2700 MG/KG; 60/GROUP.	
SCOPOLAMINE HYDROBROMIDE TRIHYDRATE 6533-68-2.	PHAR	GAV	RMM	R&M: 0, 1, 5, OR 25 MG/KG; 70/GROUP DIET RESTRICTION MICE: 0 OR .25 MG/KG; 70/GROUP.	
Chemicals Tentatively Scheduled for Peer Review Fall 1995					
D & C YELLOW NO. 11 8003-22-3	DYE	FEED	R	RATS: 0, 0.05, 0.17, OR 0.5%; 60/GROUP.	
ETHYLBENZENE 100-41-4	RUBR	INHAL	RM	R&M: 0, 75, 250, OR 750 PPM (50/SEX/SPECIES/GROUP).	
MOLYBDENUM TRIOXIDE 1313-27-5	METL	INHAL	RM	R&M: 10, 30, OR 100 MG/M3; 50/SEX/SPECIES/GROUP.	
NITROMETHANE 75-52-5	FUEL	INHAL	RM	R: 0, 94, 188, OR 375 PPM; 50/GROUP M: 0, 188, 375, OR 750 PPM; 50/GROUP.	
TETRAFLUOROETHYLENE 116-14-3	FOOD	INHAL	RM	MICE & FR: 0, 312, 625, OR 1250 MR: 0, 156, 312, OR 625 PPM; 50/GROUP.	
Chemicals Tentatively Scheduled for Peer Review Summer 1996					
1-CHLORO-2-PROPANOL, TECHNICAL 127-00-4.	INTR	WATER	RM	R: 0, 150, 325, OR 650 PPM M: 0, 250, 500, OR 1000 PPM (50/SEX/GROUP).	
DIETHYANOLAMINE 111-42-2	TEXL	SP	RM	MR: 0, 16, 32, OR 64 MG/KG; FR: 0, 8, 16, OR 32 MG/KG; MICE: 0, 40, 80, OR 160 MG/KG (50/SEX/SPECIES/GROUP).	
INTERFERON AD + AZT (AIDS INITIATIVE) INTAZTCOMB.	PHAR	SC&GV	MM	DUEL ROUTES WITH BOTH COMPOUNDS; AZT: 0, 30, 60, OR 120 (GAV) MG/KG; IFN: 500 OR 5000 UNITS 3X/WEEK.	
OXAZEPAM 604-75-1	PHAR	FEED	R	0, 625, 1250, 2500, 5000, OR 10000 PPM; 50/SEX/GROUP.	
PHENOLPHTHALEIN 77-09-8	PHAR	FEED	RM	R: 0, 1.2, 2.5, OR 5%; M: 0, 0.3, 0.6, OR 1.2% IN FEED (50/SEX/SPECIES/GROUP).	
PYRIDINE 110-86-1	SOLV	WATER	RMR	R: 0, 100, 200, OR 400 PPM MM: 0, 250, 500, OR 1000 PPM FM: 125, 250, OR 500 PPM MWR: 0, 100, 200, OR 400 PPM (50/SEX/GROUP).	
SODIUM XYLENESULFONATE 1300-72-7	DTRG	SP	RM	R: 0, 60, 120, OR 240 MG/KG M: 0, 182, 364, OR 727 MG/KG (50/SEX/GROUP).	
TETRAHYDROFURAN 109-99-9	SOLV	INHAL	RM	R&M: 0, 200, 600, OR 1800 PPM (50/SEX/SPECIES/GROUP).	
THEOPHYLLINE 58-55-9	PHAR	GAV	RM	R: 7.5, 25, OR 75 MG/KG; 50/GROUP FM: 7.5, 25, OR 75 MG/KG; 50/GROUP MM: 15, 50, OR 150 MG/KG; 50/GROUP.	

Abbreviations used in this report:
USE Primary Use Category:
COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Preparations
DTRG Detergents and Cleansers
DYE As or in Dyes, Inks, and Pigments
ELEC In Electrical and/or Dielectric Systems
ENVH Environmental (Air/Water) Pollutants
FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil products
HERB Herbicide(s)
IND Industrial Uses
INTR Chemical Intermediate or Catalyst
METL Metals or in Metal Products
PAPR as or in Paper or Paper Products
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
PNT Paint Ingredient
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TEXL In Manufacture of Textiles
ROUTE Route of Administration:
FEED Dosed-Feed
GAV Gavage
INHAL Inhalation
IP/IJ Intraperitoneal Injection
IVAG Intravaginal
MICRO Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical

WATER Dosed-Water
WB Whole Body Exposure
SPEC Species:
R = Rats
M = Mice

TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULED FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING FY 1995

CHEMICAL NAME/ CAS NO.	USE	ROUTE	SPECIES	EXPOSURE LEVEL	NTP TOX NO.
Short-Term Toxicity Studies Scheduled for Peer Review October 1994					
M-CHLOROANILINE 108-42-9/C61529B	INTR	GAV	RM	R&M 0, 10, 20, 40, 80, 160 MG/KG, 20/GRP (RATS); 10/GRP (MICE).	43
O-CHLOROANILINE 95-51-1/C91001	DYE	GAV	RM	R&M 0, 10, 20, 40, 80, & 160 MG/KG; 20/GRP (RATS); 10/GRP (MICE).	43
O-NITROTOLUENE 88-72-2/C82340C	RUBR	FEED	R	MALE R: 0, 0 ALTERED MICROFLORA 20/GRP; 5000 RPM 60/GRP; 5000 PPM ALTERED MICROFLORA 40/GRP.	44
O-TOLUIDINE HYDROCHLORIDE 636-21-5/C02335B.	DYE	FEED	R	O AND O ALTERED MICROFLORA; 20/GRP; 5000 PPM; 60/GRP.	44
1,1,1-TRICHLOROETHANE (Superfund Chemical) 71-55-6/C04626C.	SOLV	MICRO	RM	R&M: 0, 0.5, 1.0, 2.0, 4.0, AND 8.0% (10/S/S).	
Short-Term Toxicity Studies Scheduled for Peer Review November 1994					
CYCLOHEXANONE OXIME 100-64-1/C88047	PLAS	WATER	M	0, 625, 1250, 2500, 5000, OR 10000 PPM; 10/GROUP.	50
Halogenated Ethanes Class Study: 1,2-DICHLORO-1,1-DIFLUOROETHANE 1649-08-7.	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,2-DIFLUROR-1,1,2,2-TETRA CHLOROETHANE 76-12-0.	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRAP.	45
HEXACHLOROETHANE 67-72-1	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
PENTABROMOETHANE 75-95-6	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
PENTACHLOROETHANE 76-01-7	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP; FEMALE RATS 0, 1,24 MMOL/KG/DAY;.	45
1,1,1,2-TETRA BROMOETHANE 630-16-0 ...	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,2,2-TETRA BROMOETHANE 79-27-6	FLAM	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1,2-TETRA CHLOROETHANE 630-20-6 .	INTR	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,2,2-TETRACHLOROETHANE 79-34-5	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1-TRICHLOROETHANE 71-55-6	SOLV	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
1,1,1-TRICHLORO-2,2,2-TRIFLUOROETHANE 354-58-5.	IND	GAV	R	MALE RATS 0, 0.62, 1.24 MMOL/KG/DAY; 5/GRP.	45
METHYL ETHYL KETOXIME 96-29-7/C88009.	PNT	WATER	RM	R&M: 0, 625, 1250, 2500, 5000, OR 10000 PPM; 10/GROUP.	51
3,3',4,4'-TETRACHLOROA ZOBENZENE 14047-09-7/C88148.	HERB	GAV	RM	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG BODY WEIGHT (M&F; 10/GROUP).	
3,3',4,4'-TETRACHLO- ROAZOXYBENZENE 21232-47-3/C88149.	COMT	GAV	RM	R&M: 0, 0.1, 1.0, 3.0, 10, OR 30 MG/KG BODY WEIGHT (M&F 10/GROUP).	
Short-Term Toxicity Studies Scheduled for Peer Review January 1995					
CIS & TRANS 1,2-DICHLOROETHYLENE (Superfund Chemical) 540-59-0/C56031.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 (5/SEX/SPECIES/GROUP).	
CIS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156-59-2/C51581B.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 (5/SEX/SPECIES/GROUP).	
TRANS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156-60-5/C54591B.	SOLV	MICRO	RM	R&M: 0, 3175, 6250, 12500, 25000, OR 50000 PPM (5/SEX/SPECIES/GROUP).	

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TABLE 2.—SHORT-TERM TOXICITY STUDIES SCHEDULED FOR PEER REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE DURING FY 1995—Continued

CHEMICAL NAME/ CAS NO.	USE	ROUTE	SPECIES	EXPOSURE LEVEL	NTP TOX NO.
TRANS-1,2-DICHLOROETHYLENE (Superfund Chemical) 156–60–5 /C54591C.	SOLV	GAV	RM	R: 0, 125, 250 OR 500 MG/KG M: 0, 320, 640, OR 1280 MG/KG (5/SEX/SPECIES/GROUP).	
DIPROPYLENE GLYCOL 25265–71–8/C88031	INTR	WATER	RM	R&M: 0, 0.5, 1.0, 2.0, 4.0 OR 8.0% (10/S/S).	
GLYOXAL DIHYDRATE 107–22–2/C88038	PAPR	WATER	RM	R&M: 0, 1, 2, 4, 8, OR 16 MG/ML (10S/S).	
1,1,2,2-TETRACHLOROETHANE (Superfund Chemical) 79–34–5/C03554B.	SOLV	MICRO	RM	R&M: 0, 0.625, 1.25, 2.5, 5.0, OR 10.0% (5/SEX/SPECIES/GROUP).	
1,1,2,2-TETRACHLOROETHANE (Superfund Chemical) 79–34–5/C03554C.	SOLV	GAV	RM	R: 0, 135, 270, OR 540 MG/KG M: 0, 337.5, 675, OR 1350 MG/KG (50/S/S).	
Short-Term Toxicity Studies Scheduled for Peer Review April 1995					
METHAPYRILENE HYDROCHLORIDE 135–23–9/C55550E.	PHAR	FEED	R	MALE RATS: 0, 50, 100, 250, 1000 PPM; 40/GRP.	46

Abbreviations used in this report:
USE Primary Use Category:
COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Preparations
DTRG Detergents and Cleaners
DYE As or in Dyes, Inks, and Pigments
ELEC In Electrical and/or Dielectric Systems
ENVH Environmental (Air/Water) Pollutants
FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil Products
HERB Herbicide(s)
IND Industrial Uses
INTR Chemical Intermediate or Catalyst
METL Metals or in Metal Products
PAPR As or in Paper or Paper Products
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
PNT Paint Ingredient
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TEXL In Manufacture of Textiles
ROUTE Route of Administration:
FEED Dosed-Feed
GAV Gavage
INHAL Inhalation
IP/IJ Intraperitoneal Injection
IVAG Intravaginal
MICRO Microencapsulation in Feed
SC&GV Subcutaneous Inj. + Gavage
SP Topical
WATER Dosed-Water
WB Whole Body Exposure
SPEC Species:
R=Rats
M=Mice

[FR Doc. 94–27467 Filed 11–4–94; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–94–1078; FR–3812–D–01]

Redelegation and Designation of Authority

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Notice of redelegation an designation of authority.

SUMMARY: This notice redelegates authority from the Assistant Secretary for Housing—Federal Housing Commissioner to the Associate Deputy Assistant Secretary for Single Family Housing, who retains and redelegates this authority to the Director, Officer of Insured Single Family Housing, who retains and redelegates it to the Deputy Director, Office of Insured Single Family Housing, who retains and redelegates it to the Director, Single Family Servicing Division, who retains and redelegates it to O. Thomas Miles, William C. Ingleton, Richard E. Harrington, Mary Louis Hinchey, and James Sorrentino. Each of the named positions and individuals is redelegated the authority to sign limited powers of attorney whereby, in each case, they grant on behalf of the Department of Housing and Urban Development (HUD), to a specified party, the power and authority to carry out certain functions on behalf of HUD pertaining to the sale and assignment of a mortgage by HUD.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph C. Bates, U.S. Department of Housing and Urban Development, 451 7th Street, SW, room 9178, Washington, DC 20410, telephone (202) 708–3680. A telecommunications device for the hearing-impaired (TDD) is available at 202–708–4594. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: On occasion, HUD sells Secretary-held single family mortgages that it has acquired pursuant to various statutes and regulations. When a mortgage is sold by HUD, the mortgage must be assigned to the purchaser and the assignment must be recorded in one of the approximately 650 jurisdictions throughout the country where the sale has taken place. In addition, there are other responsibilities which must be carried out on behalf of HUD. HUD needs assistance in carrying out these functions incident to each mortgage sale. To obtain such assistance, HUD provides individuals, corporations and other entities throughout the country with limited powers of attorney so that they may execute and record each assignment on behalf of HUD, and engage in other responsibilities as specified.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The Associate Deputy Assistant Secretary for Single Family Housing is redelegated the power and authority to grant in writing to individuals, corporations or other entities the limited power of attorney to act on HUD's behalf, in signing documents and carrying out other duties as described in the limited power of attorney, relating to the sale of Secretary-held single family mortgages from HUD to those person(s) or other entities listed in the limited power of attorney. The Associate Deputy Assistant Secretary for Single Family Housing retains this power and authority, and redelegates it to the director, Office of Insured Single Family Housing, who retains and redelegates it to the Deputy Director, Office of Insured Single Family Housing, who retains and redelegates it to the Director, Single Family Servicing Division, who retains and redelegates it to O. Thomas Miles, William C. Ingleton, Richard E. Harrington, Mary Louis Hinchey, and James Sorrentino.

Section B. No Authority To Redelegate

The authority granted pursuant to Section A., above, may not be further redelegated pursuant to this redelegation.

Authority: Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: October 26, 1994.

Nicolas P. Retsinas,
Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–27530 Filed 11–4–94; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–05–1610–00]

Arizona: Availability of the Proposed Yuma District (Havasu) Resource Management Plan Amendment and Final Environmental Assessment, Yuma District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Yuma District (Havasu) Resource Management Plan Amendment and Final Environmental Assessment, Yuma District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Yuma District Resource Management Plan.

The management actions prescribed in the preferred alternative include (a) additional lands open for terminal utility distribution line right-of-way applications; (b) additional lands available for disposal; (c) an additional off-highway vehicle area; and (d) native plant salvage.

The document contains procedures for protesting the Amendment or any part of it. These procedures can also be found in the Code of Federal Regulations 43 CFR 1610.5–2.

SUPPLEMENTARY INFORMATION: A limited number of copies of the Amendment and Environmental Assessment are available upon request to the Yuma District Manager, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365. There are also copies available for review at the above location.

EFFECTIVE DATE: The protest period will begin upon publication of this notice in the **Federal Register** and run for 30 days, after which the decision will become final. Except for any portions under protest, the BLM's Arizona State Director may approve the Amendment 30 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Planning and Environmental Coordinator Dave Curtis, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300.

This notice is published under authority found in 43 CFR 1610.2(c).

Dated: October 27, 1994.

Michael A. Taylor,
Associate District Manager.

[FR Doc. 94–27501 Filed 11–4–94; 8:45 am]
BILLING CODE 4310–32–P

Fish and Wildlife Service

The Silvio Conte National Fish and Wildlife Refuge Advisory Committee: Establishment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Director of the Northeast Region of the Fish and Wildlife Service is announcing the establishment of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee. The purpose of the Committee is to assist the Secretary on community outreach and education programs that further the purposes of the Refuge.

DATES: The Charter was filed on March 1, 1993, under The Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Further information regarding the Committee may be obtained from Mr. Lawrence Bandolin, Fish and Wildlife Service, 38 Avenue A, Turners Falls, MA 01376, telephone 413/863–0209.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act. Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Silvio Conte National Fish and Wildlife Refuge Advisory Committee.

The Committee will consist of no more than 15 voting members appointed by the Secretary of the Interior to assure a balanced, cross-sectional representation of public and private sector organizations. The Committee shall consist of representatives from the following organizations:

(1) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing the cities or towns bordering the Connecticut River and its tributaries;

(2) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing State agencies with responsibility for conservation or water quality programs;

(3) four members, including one from each of the affected States, to be appointed from recommendations made by the Governor of that affected State, who shall represent nonprofit conservation organizations or citizen groups with direct interest in the purposes of the refuge;

(4) one member of the Long Island Sound Management Conference; and

(5) two members to be designated by the Secretary, including one who represents the energy and commerce interests associated with the Connecticut River.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act.

CERTIFICATION: I hereby certify that the establishment of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to the Silvio O. Conte

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National Fish and Wildlife Refuge Act, The Fish and Wildlife Act of 1956, the Land and Water Conservation Fund Act, the Migratory Bird Conservation Act, the Emergency Wetlands Resource Act, the North American Wetlands Conservation Act, the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, the Federal Advisory Committee Act and in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the Fish and Wildlife Service mission to conserve, protect, and enhance fish, wildlife, and habitats for the continuing benefit of the American people (Fish and Wildlife Act of 1956). The Committee will assist the Secretary and the Department of the Interior by providing advice on community outreach and education projects that further the purposes of the refuge.

Dated: October 31, 1994.

Cathy Short,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 94-27477 Filed 11-4-94; 8:45 am]

BILLING CODE 4310-55-P

Silvio Conte National Fish and Wildlife Refuge Advisory Committee Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of The Federal Advisory Committee Act, this notice announces a meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee established under the authority of The Silvio O. Conte National Fish and Wildlife Refuge Act.

The meetings are open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. Summary minutes of meeting will be maintained in the office of the Coordinator for the Silvio Conte National Fish and Wildlife Refuge Advisory Committee at 38 Avenue A, Turners Falls, MA 01376 , and will be available for public inspection during regular business hours (8:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATE: The Silvio Conte National Fish and Wildlife Refuge Advisory Committee will meet from 10:00 a.m. to 2:00 p.m., Tuesday, December 6, 1994.

PLACE: The meeting will be held at the Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts.

AGENDA: This will be the initial meeting of the Silvio Conte National Fish and Wildlife Refuge Advisory Committee since the Secretary of the Interior signed the Committee Charter. Committee members will elect a chairperson, establish operating procedures, and discuss outreach and education strategies.

FOR FURTHER INFORMATION CONTACT: For further information individuals may contact the Committee Coordinator Lawrence Bandolin at 413/863–0209, Coordinator, Silvio Conte National Fish and Wildlife Refuge Advisory Committee, Fish and Wildlife Service.

Dated: October 31, 1994.

Cathy Short,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 94-27478 Filed 11-4-94; 8:45 am]

BILLING CODE 4310-55-P

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 14 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be ranked and submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: December 14, 1994, 9:00 a.m.

ADDRESSES: The meeting will be held in the Dirkson Senate Office Building, 1st and C Streets, NE., Room 562, Washington, DC 20510. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (P.L. 101–233, 103 Stat. 1968, December 13, 1989), the North American Wetlands Conservation Council is a Federal-State-Private body which meets three times each year to consider wetland acquisition, restoration, and enhancement conservation projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: October 21, 1994.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-27500 Filed 11-4-94; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32195]

Southern Electric Railroad Company—Construction Exemption—Effingham County, Georgia

The Southern Electric Railroad Company (SER) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 2.5 mile rail line in Effingham County, Georgia. The Commission's Section of Environmental Analysis (SEA) has prepared its Environmental Assessment (EA) which concludes that this proposal would not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Southern Electric Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider any comments received in response to the EA in making its final recommendation to the Commission.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, the attention of John O'Connell (202) 927–6228. Requests for copies of the EA should also be directed to Mr. O'Connell.

Date made available to the public: November 4, 1994.

Comment due date: December 5, 1994.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 94-27494 Filed 11-4-94; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32804]

Southern Pacific Transportation Company—Trackage Rights Exemption—San Mateo County Transit District

San Mateo County Transit District (Sam Trans) has agreed to grant overhead trackage rights to Southern Pacific Transportation Company (SPT) over 10.83 miles of rail line of its Dumbarton Branch, from milepost 26.16 at Redwood Jct., CA, to milepost 36.99 at Newark, CA.[1] The trackage rights will permit SPT to continue providing common carrier freight service on the Dumbarton Branch. The trackage rights were to become effective on or after October 31, 1994.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 31, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94-27493 Filed 11-4-94; 8:45 am]

BILLING CODE 7035-01-P

[1] Sam Trans acquired the line from SPT pursuant to an exemption granted in *San Mateo County Transit District—Purchase Exemption—Southern Pacific Transportation Company*, Finance Docket No. 32551 (ICC served Sept. 19, 1994).

[2] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until October 24, 1994, consummation should take place on or after October 31, 1994, rather than October 30, 1994, as indicated in the verified notice of exemption. Applicant's representative has confirmed that the correct consummation date is on or after October 31, 1994.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS Fast Application.

(2) Office of Community Oriented Policing Services.

(3) On Occasion.

(4) State or local governments. The application will be used to apply for police hiring grants by state and local law enforcement agencies serving populations under 50,000.

(5) 5,000 respondents @ .91 hour per response.

(6) 4,950 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: October 25, 1994.

Don Wolfrey,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 94-26881 Filed 11-4-94; 8:45 am]

BILLING CODE 4410-21-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Fuels and Lubricants for Clean Heavy Duty Diesel Engines

Notice is hereby given that, on September 1, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Chevron Research & Technology Company, Richmond, CA; Elf Antar France, Lyon, FRANCE; Lubrizol Corporation, Wickliffe, OH; Texaco, Inc., Glenham, NY and its general areas of planned activities are to determine the fuel and lubricant sensitivities in terms of emissions, reliability and durability characteristics of current, developing and future fuels and lubricants in 1998 and beyond engines through (1) testing fuels representative of current and future diesel fuels in two different heavy duty diesel engine to evaluate the interaction of the fuels, the lubricants, the emissions control technologies and the engine technologies; (2) performing detailed hydrocarbon composition analyses of the test fuels; (3) performing lubricant studies to determine the effect of advanced engine and emissions control technologies on lubricant degradation as well as the effects of lubricant properties on lube oil consumption rates in the two diesel engines.

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Membership in this venture remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-27418 Filed 11-4-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Clean Heavy Duty Diesel Engine Development (SwRI)

Notice is hereby given that, on August 15, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and project status of the Clean Heavy Duty Diesel Engine Development cooperative research project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the participants have agreed to extend the period of performance from April 1, 1993 to March 31, 1995; Isuzu Motors, Ltd. and Isuzu Advanced Engineering Center, Ltd. have withdrawn from participation in the project effective April 1, 1994; and the planned activities have been expanded to include research related to late cycle enhanced mixing in a heavy duty diesel engine being partially funded by the California Energy Commission.

No other changes have been made in either the membership or planned activity of the group research project. Membership in the project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 4, 1991, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 1991 (56 FR 64275-64276).

The last notification was filed with the Department on July 1, 1992. A notice was published in the **Federal Register** on August 19, 1992 (57 FR 37557-37558). Additionally, a correction notice was published on October 27, 1992 (57 FR 48635).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-27419 Filed 11-4-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on June 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of the Corporation: Electronic Book Technologies, Inc., Providence, RI; Megatek Corp., San Diego, CA; M3i Systems, Inc., Montreal, Quebec, Canada; VisiCom Laboratories, Inc., San Diego, CA; and X Inside, Inc., El Cerrito, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1993 (58 FR 59737). The last notification was filed with the Department on March 17, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 1994 (59 FR 32464).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-27417 Filed 11-4-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-30,223]

Brown Shoe Company (Trenton Warehouse) Trenton, TN; Notice of Negative Determination Regarding Application for Reconsideration

By applications dated September 27 and 28, 1994 and October 3, 1994, the petitioners and others requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on September 15, 1994 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners state that the workers should be certified because all of Brown Shoe company's facilities which have been closed are certified for TAA.

The worker adjustment assistance program is based on increased imports of articles that are like or directly competitive with those produced by the petitioning workers. The Department's denial of TAA for workers was based on the fact that they do not produce an article within the meaning of the Trade Act of 1974 and as such are out of scope from the worker adjustment assistance program.

Service workers (warehouse workers) are rarely certified for TAA when the company's manufacturing plants' certifications are based on company imports. The condition that must be met is that over half of the warehouse's activity must come from certified facilities. The findings, however, show that the major portion of Trenton's activity did not come from certified facilities but instead originated from company imports. Accordingly, increased company imports would have a positive employment effect on the subject workers, not an adverse one.

Other findings show that Trenton's warehousing was transferred to another domestic facility.

The worker adjustment assistance program was not intended to provide TAA to workers who are in some way related to import competition but only for those workers who produce an article and are adversely affected by increased imports of like or directly competitive articles which contributed importantly to sales or production and employment declines at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27510 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of October, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,901; C.H. Hartshorn, Inc., Gardner, MA

TA-W-30,220; Chock Full O'Nuts, Greenwich Mill Div., Mebane, NC

TA-W-30,285; Donahue Oil Co., Mt. Carmel, IL

TA-W-30,213; Electro Magnetic Processes, Inc., Chatsworth, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-30,209; Meridian Oil, Inc., Fort Worth, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,261; Allen Bradley Co., Fairfield, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-30,260; C & T Machine Shop, Inc., Comanche, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,232; Sealy & Sterns & Foster Mattress Co., Miami, FL

TA-W-30,252; Sealy Connecticut, Inc., Oakville, CT

The investigation revealed that criteria (a) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-30,411; Harmon Automotive, Inc., Sevierville, TN

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-30,058; Lederle Laboratories, A Div., of American Cyanamid Co., Pearl River, NY

A certification was issued covering all workers separated on or after June 25, 1993.

TA-W-30,117; Information Handling Services, Englewood, CO

A certification was issued covering all workers separated on or after July 6, 1993.

TA-W-30,270; Crystie Fashions, Wyoming, PA

A certification was issued covering all workers separated on or after July 8, 1993.

TA-W-30,052; American Exploration Co., Houston, TX & Operating at Various Other Locations: A; New York, NY, B; AL, C; AR, D; KS, E; NM, F; ND, G; OK, H; TX

A certification was issued covering all workers separated on or after May 20, 1993.

TA-W-30,263; M.M. Fashions, Inc., Veneto Originals, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after August 11, 1993.

TA-W-30,264; London Fog Corp. (Londontown Corp), 3310 Carlin Park Circle, Baltimore, MD

A certification was issued covering all workers separated on or after August 15, 1993.

TA-W-30,267; Romic Enterprises, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after August 5, 1993.

TA-W-30,248; Kloehn Co., Inc., Brea, CA

A certification was issued covering all workers separated on or after August 22, 1993.

TA-W-30,230; Ansewn Footwear Co., Bangor, ME

A certification was issued covering all workers separated on or after August 5, 1993.

TA-W-30,257; Morton International Special Chemical Group, Beverly, MA

A certification was issued covering all workers separated on or after August 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of October 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group

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eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00238; Aileen, Inc., Victoria & Flint Hill Plants Edinsburg, VA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from Aileen, Inc. to Mexico or Canada during the period under investigation, nor did Aileen, Inc. import any ladies' sportswear from Mexico or Canada. A decision was made to shut down its Victoria & Flint Hill Plants, Edinburg, VA & transfer the plants' production to other existing foreign facilities. These foreign facilities are not located in Mexico or Canada.

NAFTA-TAA-00239; Ball Glass Container Corp., Okmulgee Plant, Okmulgee, OK

The investigation revealed that criteria (3) and criteria (4) was not met. A survey of major customers that decreased their purchases from the Okmulgee Plant of Ball Glass Containers Corp. revealed that none of the respondents purchased any imported glass containers from Mexico or Canada during the periods under investigation.

NAFTA-TAA-00237; Alliedsignal, Inc., Fluorine Products Div., Danville, IL

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from AlliedSignal, Inc. to Mexico or Canada during the period under investigation, nor did AlliedSignal, Inc. import from Mexico or Canada any articles that are like or directly competitive with R-11 and R-12. AlliedSignal's imports of fluorocarbons, which are competitive with R-11 and R-12, are from foreign sources other than Mexico or Canada. Workers at the Fluorine Products Div of AlliedSignal, Inc., Danville, IL were certified eligible to apply from trade adjustment Assistance on September 30, 1994. That certification remains in effect until September 30, 1996.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00236; Oxford Industries, Inc., Oxford Dress Div. ("Oxford of Lincolnton"), Lincolnton, GA

A certification was issued covering all workers of the Oxford Dress Division of Oxford Industries, Inc., (also known as "Oxford of Lincolnton"), Lincolnton, GA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of October, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 31, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27508 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,286]

Dana Corporation; Pueblo, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

On October 24, 1994, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 11, 1994 and will soon be published in the **Federal Register.**

The company submitted additional information showing a worker separations and increased imports in 1994.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27506 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,942]

Fuelco; Denver, CO; Notice of Revised Determination on Reconsideration

On September 19, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the **Federal Register.**

The workers were previously certified eligible to apply for trade adjustment assistance under petition TA-W-27,295 which expired on July 22, 1994.

Findings on reconsideration show decreased sales in the first 10 months of 1994 compared to the same period in 1993. Substantial worker separations occurred in 1994. A further finding shows that the subject firm is expected to close in the first quarter of 1995 when all workers will be laid off.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments in the twelve month period beginning in April 1993 and ending in March 1994.

On reconsideration, the Department surveyed other customers of Fuelco and found that they reduced their purchases from Fuelco and increased their import purchases.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Fuelco workers in Denver, Colorado were adversely affected by increased imports of articles like or directly competitive with natural gas or crude oil produced by Fuelco in Denver, Colorado.

All workers of Fuelco in Denver, Colorado who became totally or partially separated from employment on or after July 22, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27505 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,996]

U.S. Steel Mining Co., Inc.; Washington, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at U.S. Steel Mining Co., Inc., Washington, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-29,996; U.S. Steel Mining Co., Inc., Washington, Pennsylvania (October 27, 1994)

Signed at Washington, DC, this 28th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27509 Filed 11-4-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Zenith Electronics Corp (IBEW)	Springfield, MO	10/24/94	09/27/94	30,416	TV cabinets, warehouse, truck drivers.
Zenith Electronics Corp (UEWA)	Chicago, IL	10/24/94	10/04/94	30,417	Sales Div., packaging, etc.
Toyota Vehicle Processors (Wkrs)	West Chicago, IL	10/24/94	10/10/94	30,418	Automobiles.
Stone Forest Industries (Wkrs)	Albany, OR	10/24/94	09/30/94	30,419	Plywood sheething, siding, flooring.
Spring City Knitting (Co)	Glendale, AZ	10/24/94	09/26/94	30,420	T-Shirts and men's underwear.
SRG Oil Corp (Wkrs)	Abilene, TX	10/24/94	10/11/94	30,421	Crude oil.
Rome Cable Corp (Wkrs)	Rome, NY	10/24/94	10/13/94	30,422	Copper wire and cable.
Penobscot Shoe Co (Co)	Old Town, ME	10/24/94	10/05/94	30,423	Women's casual shoes.
Tricon Timber, Inc (Wkrs)	Missoula, MT	10/24/94	10/12/94	30,424	Lumber.
Schoeneman Enterprises (ACTWU)	Belair, MD	10/24/94	10/14/94	30,425	Men's and ladies' rainwear.
Pro Group-Duckster Div. (Wkrs)	Lumberton, NC	10/24/94	10/11/94	30,426	Men's & ladies' knit golf shirts.
Keyes Kibre Co (UPW)	Hammond, IN	10/24/94	10/04/94	30,427	Rough molded products.
Kimberly-Clerk Corp (Wkrs)	Memphis, TN	10/24/94	09/29/94	30,428	Disposable diapers, kleenex & bath tissue.
Greenhill Petroleum Corp (Wkrs)	Lovington, NM	10/24/94	10/14/94	30,429	Oil and gas.
Flowline Div. (Co)	New Castle, PA	10/24/94	10/13/94	30,430	Stainless steel fittings.
Boben Manufacturing Co (Wkrs)	Boonville, MO	10/24/94	10/14/94	30,431	Shoe heels and toplifs.
CTV Garments (Wkrs)	Brooklyn, NY	10/24/94	10/11/94	30,432	Ladies coats.
IMC Magnetics (Wkrs)	Hauppauge, NY	10/24/94	10/12/94	30,433	Electric motors/fans.
Daytone Finishing (Wkrs)	Newark, NJ	10/24/94	10/07/94	30,434	Tin plated metal enclosures.
Abbott Co (UAW)	North Baltimore, OH	10/24/94	10/10/94	30,435	Wiring harnesses.
Amoco Corp (Wkrs)	Tulsa, OK	10/24/94	10/11/94	30,436	Oil and gas.
Solomon Sportswear (Wkrs)	East Tallassee, AL	10/24/94	10/04/94	30,437	Ladies' sportswear.
Flowline Division (Co)	Whiteville, NC	10/24/94	10/13/94	30,438	Stainless steel fittings.
Amoco Corp (Wkrs)	Houston, TX	10/24/94	10/11/94	30,439	Oil and gas.
Amoco Corp (Wkrs)	Denver, CO	10/24/94	10/11/94	30,440	Oil and gas.

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[FR Doc. 94-27511 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Certifications Under the Federal Unemployment Tax Act for 1994

On October 31, 1994, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 1994.

Doug Rees,

Assistant Secretary of Labor.

The Honorable Lloyd Bentsen
Secretary of the Treasury, Washington, DC 20220.

Dear Secretary Bentsen: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending on October 31, 1994. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by Section 3303 of the Code. Both certifications list all 53 jurisdictions.

In addition, due to the resolution of certain issues arising under section 3304(a) of the Internal Revenue Code of 1986, I hereby certify the State of New Jersey and its law for the 12-month periods ending on October 31 of 1990, 1991, 1992, and 1993.

Sincerely,

Robert B. Reich

Enclosures

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 [26 U.S.C. 3304(c)], I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1994, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1994.

Robert B. Reich,
Secretary of Labor.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1994, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94-27503 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-30-M

[NAFTA-00222]

Magnetek; Owosso, MI, Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification Regarding Eligibility to apply for NAFTA-Transitional Adjustment Assistance on October 7, 1994 for workers of Magnetek in Owosso, Michigan. The certification notice was published in the **Federal Register** on October 21, 1994 (59 FR 53212).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that there are two Magnetek facilities in Owosso, Michigan and that the certification should only cover the Main Street plant of Magnetek in Owosso, Michigan.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to NAFTA-00222 is hereby issued as follows:

All workers of the Main Street plant of Magnetek in Owosso, Michigan who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-27507 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on November 30, 1994, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 8:30 a.m. and last all day.

Agenda items will include overviews of activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH), as well as reports from workgroups on Workplace Violence, Safety and Health Surveillance (Data), and New Strategies. Presentations will also be made on the following subjects; State Programs, development of an Ergonomic Protection Standard, OSHA Reform, and the development of an OSHA Action List by the Standards Planning Committee.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Joanne Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by November 22 at the address indicated below.

An official record of the meeting will be available for public inspection through Tom Hall, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue, NW, Washington, DC, 20210, telephone 202–219–8615.

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC, 20210, telephone 202–219–8021.

Signed at Washington, DC, this 1st day of Nov., 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94-27504 Filed 11-4-94; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multi-disciplinary Section) to the National Council on the Arts will be held on November 29–December 2, 1994. The panel will meet from 9:15 a.m. to 6:00 p.m. on November 29; from 9:00 a.m. to 6:00 p.m. on November 30–December 1 and from 9:00 a.m. to 4:30 p.m. in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:15 a.m. to 10:30 a.m. on November 29 for opening remarks and a general overview from 3:00 p.m. to 4:30 p.m. on December 2 for a policy discussion.

Remaining portions of this meeting from 10:30 a.m. to 6:00 p.m. on November 29 and from 9:00 a.m. to 6:00 p.m. on November 30–December 1 and from 9:00 a.m. to 3:00 p.m. on December 2 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-27492 Filed 11-4-94; 8:45 am]
BILLING CODE 7537-01-M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk and Traditional Arts Advisory Panel (Folk Arts Projects Section) to the

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National Council on the Arts will be held on December 8–9, 1994. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 6–8 and from 9:00 a.m. to 3:30 p.m. on December 9 in Room 720, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 1:30 p.m. to 3:00 p.m. on December 8 for a policy review.

The remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on December 6–7; from 9:00 a.m. to 1:30 p.m. and 3:00 p.m. to 6:30 p.m. on December 8; and from 9:00 a.m. to 3:30 p.m. on December 9 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27490 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Design Challenge Section) to the National Council on the Arts will be held on November 29, 1994 from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:00 p.m. to 5:00 p.m. for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5429.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27489 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Commission Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 30–December 2, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on November 30; from 9:00 a.m. to 6:30 p.m. on December 1; and from 9:00 a.m. to 3:00 p.m. on December 2 in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 2 from 3:00 p.m. to 5:00 p.m. for a policy and guidelines review.

Remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on November 30; from 9:00 a.m. to 6:30 p.m. on December 1; and from 9:00 a.m. to 3:00 p.m. on December 2 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: November 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–27491 Filed 11–4–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Nominations for Medical Visiting Fellows Program

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The Nuclear Regulatory Commission is inviting nominations of physicians, having expert qualifications in the medical specialty field of Radiation Oncology (Therapy), to apply for positions as Medical Visiting Fellows (Fellows). Others having expert qualifications in related fields such as Therapeutic Radiological Physics are also invited to apply.

EFFECTIVE DATE: *Objectives.* NRC is seeking to expand its knowledge of the medical specialty of radiation oncology. Specifically, the therapeutic uses of radioisotopes in brachytherapy patient procedures. Recently, significant misadministrations have occurred involving errors in the delivery of the prescribed radiation dose to the patient during either manual or remote afterloading brachytherapy procedures. As a result of evaluating the circumstances surrounding these events, NRC has identified the need to re-evaluate certain aspects of its regulatory program to determine whether modifications are indicated.

NRC intends to keep abreast of this technology and future developments in the therapeutic uses of radioisotopes and believes that such a Fellow, with expertise in these uses, can assist NRC staff in meeting this goal. The program is open to physicians interested in seeking an appointment for individual sabbatical pursuits. Other radiation specialists on sabbatical, or those who wish to engage in post-doctoral research, will also be considered. Individuals participating as Fellows would join NRC for approximately one year, to undertake activities consistent with the interests and needs of NRC and with the individual's training and experience; and that will result in a clearly defined assignment useful to NRC's regulatory program. Ideally, each Fellow would be available to NRC on a full-time basis; however, NRC will consider nominees who are available only on a part-time basis. Additionally, the number of appointments made will depend on the range of skills embodied in the nominations, individuals' interests and needs of NRC.

In addition to a specific assignment, or research project, it is anticipated that the Fellow would attend meetings of NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI); Federal, State, and local agencies; professional organizations; and groups, to participate in discussions on issues related to medical affairs and the use of radiation in medicine. The selectee may also participate in public meetings and seminars sponsored by NRC for exchanging information and discussing issues, of mutual interest, that will benefit the regulation of medical practice. A collateral goal is to create a cadre of individuals with experience in the regulation of medical use of isotopes; therefore, it is likely that former Fellows may be asked to participate, from time to time, in NRC-sponsored meetings and seminars after their appointment ends, to provide advice and consultation about the regulated program.

Therefore, NRC is primarily soliciting nominations of physicians involved with the medical use of radioisotopes, but will be pleased to receive nominations of other radiation health professionals and medical radiation specialists to serve as Fellows.

Appointment Method. Appointments will be made by means of Intergovernmental Personnel Act assignment, reimbursable detail, or professional term appointment, depending on the selectee's situation.

Term of Appointment. The term of appointment will be approximately one year. Appointments may be lengthened, depending on the depth and scope of the Fellow's project, availability and the needs of the NRC, to approximately two years.

Compensation. Fellows will receive compensation commensurate with their experience, salary history, and federal pay guidelines while serving their appointment. Fellows will be reimbursed for official travel and relocation expenses.

Duty Location. Fellows may be assigned to any Office in NRC, including the Office of the Commissioners, consistent with the interests and needs of NRC and the individual's training and experience. The duty location is at NRC Headquarters, Rockville, Maryland. It is anticipated that there will be some travel associated with this position.

Eligibility Requirements. NRC is an equal opportunity employer. Nominees must be U.S. citizens. Nominees must also satisfy applicable, NRC security, conflict of interest, and drug-free work place standards. Eligibility is open to physicians specializing in Radiation Oncology (Radiation Therapy), or medical physicists specializing in Therapeutic Radiological Physics. Other nominees will also be considered based on the needs of NRC and the individual's interest.

How to Nominate. Candidates may be nominated by professional groups, medical societies, government agencies, or may be self-nominated. Nominations must provide the nominee's current address and telephone number and include a resume describing the educational and professional qualifications of the nominee. A brief statement of the individual's professional objectives should also be included.

Where to Submit Nominations. Submit nominations to: Secretary of the Commission. ATTN: Medical Visiting Fellows Program Manager, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Washington, DC 20555.

Date Nominations Are Due. Nominations are due to the Secretary of the Commission by January 15, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Schlueter, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Mail Stop: T8 F 5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7894, facsimile (301) 415–5369.

Dated at Rockville, Maryland, this 1st day of November 1994.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27481 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

Availability of Branch Technical Position on When to Remediate Inadvertent Contamination of the Terrestrial Environment

The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of a Branch Technical Position on "When To Remediate Inadvertent Contamination of the Terrestrial Environment."

Copies of this document may be obtained free of charge upon written request to Janette Copeland, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, MS T–7F27, Washington, DC 20555. Further information can be obtained from Jack D. Parrott, Hydrogeologist, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, MS T–7F27, Washington, DC 20555. Telephone 301/415–6700. Internet JDP1@NRC.GOV.

The purposes of this Branch Technical Position (BTP) are: (a) to provide licensees with the NRC staff's expectations for operational good practices and remediation methods and procedures following inadvertent contamination of the terrestrial

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environment by radioactive materials; (b) to inform licensees of the nature of an NRC response to an inadvertent contamination of the terrestrial environment; and, (c) to help insure consistency in NRC responses to instances of inadvertent contamination of the terrestrial environment. This guidance is also intended to address the timing of remediation (immediate or delayed) of inadvertent contamination of the terrestrial environment. This BTP does not supplant NRC's emergency (contingency) planning. The need for this BTP stems from the Division of Waste Management staff's concern with instances of inadvertent contamination of the terrestrial environment at NRC licensed facilities, and the delay that sometimes occurs in remediating this contamination.

Dated at Rockville, Maryland this 31st day of October 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27484 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Oyster Creek Nuclear Generating Station; License No. DPR–16; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by a "PETITION FOR EMERGENCY ENFORCEMENT ACTION UNDER PROVISIONS OF 10 CFR 2.206 WITH REGARD TO OYSTER CREEK NUCLEAR POWER STATION", dated September 19, 1994, Oyster Creek Nuclear Watch and Nuclear Information and Resource Service, request that the Nuclear Regulatory Commission take action with regard to the Oyster Creek Nuclear Generating Station of the GPU Nuclear Corporation.

The Petition requests that the U.S. Nuclear Regulatory Commission: (1) immediately suspend the Oyster Creek operating license until the licensee inspects and repairs or replaces all safety-class reactor internal component parts subject to embrittlement and cracking; (2) immediately suspend the Oyster Creek operating license until the licensee provides an analysis regarding the synergistic effects of through wall cracking of multiple safety-class components; (3) immediately suspend the Oyster Creek operating license until the licensee has analyzed and mitigated any areas of noncompliance with regard to irradiated fuel pool cooling as a single unit Boiling Water Reactor (BWR); and (4) issue a Generic Letter requiring other licensees of single unit BWRs to provide information regarding fuel pool boiling in order to verify compliance with regulatory requirements, and to promptly take appropriate mitigative action if the units are not in compliance.

As the bases for their requests concerning safety-class reactor internal components, Petitioners state that: the core shroud in General Electric BWRs is vulnerable to age-related deterioration; 12 domestic and overseas, BWRs have found extensive cracking on welds of the core shroud; only 10 of 36 U.S. BWRs have inspected their core shrouds and 9 were found to have cracks; 19 of 25 selected BWR internal components are susceptible to stress corrosion cracking and 6 of 19 are susceptible to irradiation assisted stress corrosion cracking; Oyster Creek is the oldest operating General Electric Mark I BWR and the third oldest operating reactor in the United Stats, and has been subjected to the longest period of operational conditions that cause embrittlement and cracking; the BWR Owners Group stated that cracking of the core shroud is a warning signal that additional safety-class reactor internals are increasingly susceptible to age-related deterioration; cracking of any single part or multiple components jeopardizes safe operation of the nuclear station; Oyster Creek did not inspect for core shroud cracking prior to the current refueling outage and other safety-class reactor internals have not been adequately inspected for cracking; and a safety analysis has not been performed on the potential synergistic effects of multiple component cracking.

As the bases for their requests concerning fuel pool cooling design deficiencies, Petitioners state that: various design defects in BWR fuel pool cooling systems pose a significant increase in risk to the public safety and are violations or 10 CFR 50.49; 10 CFR Part 50, App. A, Criterion 63; 10 CFR Part 50, Appendix B, Criterion III; and Reg. Guides 1.13, 1.89 and 1.97; Oyster Creek is a single unit facility with no adjacent units to rely upon in the event that a design basis were to disable the fuel pool cooling system; and Oyster Creek has not docketed any material with regard to BWR design deficiencies identified in the 10 CFR Part 21 Report of Substantial Safety Hazard (November 27, 1992) of Messrs. Lochbaum and Prevatte, and thus Oyster Creek may be in violation of NRC regulatory requirements.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time. By letter dated October 27, 1994, the Director denied Petitioners' requests for an immediate suspension of the operating license.

A copy of the Petition and the Director's letter are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Oyster Creek Nuclear Generating Station located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland this 27th day of October 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27483 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–277 and 50–278]

Philadelphia Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration, Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would clarify the minimum reactor steam pressure required for Surveillance Requirement 4.5C.1(e). The revised Surveillance Requirement will require the licensee to verify that the High Pressure Coolant Injection pump, with reactor pressure less than or equal to 175 psig, develop a flow rate of greater than or equal to 5000 gpm against a system head corresponding to reactor pressure. The current Surveillance Requirement specifies that the test be performed at 150 psig but does not provide a range of acceptable pressures.

This Technical Specifications (TS) change request (CR) is requested to be processed as an exigent TS change in accordance with 10 CFR 50.91(a)(6). Exigent processing is being requested

because the Peach Bottom Atomic Power Station (PBAPS) TS low pressure HPCI system testing requirements are ambiguous, and the licensee desires to accelerate the resolution of this ambiguity. The low pressure surveillance requirement (TS 4.5.C.1.e) requires that the test be performed at 150 psig. Prior to October 21, 1994, this 150 psig value was interpreted as a nominal value. During recent inspection activities surrounding the startup of PBAPS Unit 2 from refueling outage 2R010, the NRC revised a previous position and determined that this value could not be interpreted as a nominal value. The licensee could not have foreseen this event because they were conducting station activities in accordance with NRC guidance.

During the 1990 Safety System Functional Inspection (SSFI, Combined Inspection Report 90–200), the issue of the HPCI low pressure surveillance testing being performed at a nominal value was reviewed (Open item 90–200–12). In response to the SSFI open item, the licensee revised an existing Plant Operations Review Committee position, to document that the 150 psig was a nominal value, and committed to revising the TS to clarify the low pressure requirement. This commitment was incorporated into the licensee's September 29, 1994 improved Technical Specifications (ITS) submittal. The NRC accepted this position and closed the SSFI open item (Combined Inspection Report 50–277/90–80, 50–278/90–80, dated November 9, 1990). The anticipated effective date of the ITS is the fourth quarter of 1995. Because of the recently revised NRC position regarding TS 4.5.C.1(e), the licensee is pursuing the attached TSCR in advance of the overall conversion to the ITS, and requests that it be processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

These changes increase the maximum pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. For reason stated above, HPCI pump testing must be performed when the [electro-hydraulic control] EHC System for the main turbine is available and capable of regulating reactor pressure. Operating experience has demonstrated that reactor pressures as high as 175 psig may be required before the EHC system is capable of maintaining stable pressure during the performance of the HPCI test. The probability of an accident is not increased because the proposed changes will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, or inspected. In addition, the pressure at which the HPCI System is tested is not assumed to be an initiator of any analyzed event. The role of the HPCI System is in the mitigation of accident consequences. The consequences of an accident are not increased because a small increase in the pressure at which the HPCI pump performance to design specifications is verified will not significantly delay or otherwise affect the validity of the test to determine that the pump and turbine are still operating at the design specifications. In addition, it is overly conservative to assume a component is inoperable when a surveillance has not been performed. In fact, in most cases, it is a matter of component operability not yet being demonstrated since the utual outcome of the performance of a surveillance is the validation of conformance with surveillance requirements. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

These changes do not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, or inspected. These changes increase the pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. Therefore, these changes will not create the possibility or a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is not reduced. These changes increase the pressure for performing the low pressure test on the HPCI pump from approximately 150 psig to [less than or equal to] 175 psig. For reasons stated above, the ability of the HPCI pump to perform at the lowest required pressure of 150 psig has already been demonstrated. A small increase in the pressure at which the performance to design specifications is verified will not significantly delay or affect the validity of the test to determine that the pump and turbine are still operating at the design specifications. These changes effectively extend[s] the initial entry into the applicable condition prior to performing the surveillance. However, this is considered acceptable since the most common outcome of the performance of a surveillance is the successful demonstration that the acceptance criteria are satisfied. In addition, the change provides the benefit of allowing the surveillance to be postponed until plant conditions exist where performance of the surveillance is unlikely to result in a pressure transient. These changes do not affect the current analysis assumptions. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the

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amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 7, 1994, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Government Publications Section, state Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 25, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27485 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

The Toledo Edison Co., Centerior Service Company, and the Cleveland Electric Illuminating Co.; Exemption

I

The Toledo Edison Company, Centerior Service Company, and the Cleveland Electric Illuminating Company (the licensees) hold Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Ottawa County Ohio.

II

Section III.D.2(b)(ii) of 10 CFR Part 50, Appendix J requires that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required.

III

By letter dated October 21, 1994, the licensee requested an Exemption from the requirement of 10 CFR 50, Appendix J, Section III.D.2(b)(ii) identified in Section II above. If an air lock is opened during Modes 5 and 6, Section III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not-less-than the calculated peak containment pressure from a design-basis loss of coolant accident (Pa) be conducted before plant heatup and startup (i.e., before entering Mode 4).

- Instead, if no maintenance has been performed on the air locks that affects air lock sealing capabilities, the licensee would conduct an air lock seal leakage test (Section III.D.2(b)(iii) of 10 CFR 50, Appendix J), for the full pressure air lock test required by Section III.D.2(b)(ii).

If the periodic six-month test of Section III.D.2(b)(i) of Appendix J and the test required by Section III.D.2(b)(iii) of Appendix J are current, and no maintenance has been performed on the air lock that affects air lock sealing capabilities, there should be no reason to expect the air lock to leak excessively, just because it has been opened in Mode 5 or 6. If maintenance has been performed, which could affect air lock sealing capability, then a full-pressure air lock test will be performed following such maintenance.

The licensee's letter dated October 21, 1994, submitted information to identify the special circumstances for granting this exemption to Davis-Besse, pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR 50, is to assure that containment leak-tight integrity can be verified periodically, throughout service lifetime to maintain containment leakage, within the limits specified in the facility Technical Specifications. The purposed alternative test method, along with the six-month test requirement of Section III.D.2(b)(i) of Appendix J, and the testing requirements when maintenance is performed on the air lock that affects sealing capability, is sufficient to achieve this underlying purpose, in that it provides adequate assurance of continued leak-tight integrity of the air lock.

Based on the above discussion, the licensee's proposed substitution of an air lock seal leakage test described in III.D.2(b)(iii) for a full-pressure test, as discussed above, is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances described by 10 CFR 50.12(a)(2)(ii) exist, in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule, since the licensees have proposed an acceptable alternative method that accomplishes the intent of the regulation.

Accordingly, the Commission hereby grants the Exemption as described in Section III above from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (59 FR 54222).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27482 Filed 11–4–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notification of Placement Program Study

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management is initiating a study on the feasibility of establishing a mandatory interagency placement program for Federal employees separated by reduction in force. This advance notice invites written comments from all interested parties.

DATES: Written comments will be considered if received no later than January 6, 1994.

ADDRESSES: Send written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20145–0001.

FOR FURTHER INFORMATION CONTACT: Diane Bohling, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION: Public Law 103–337, the National Defense Authorization Act for Fiscal Year 1995, was signed into law by the President of the United States on October 5, 1994. Section 1066 of this law requires the Director of the Office of Personnel Management (OPM) to conduct a study on the feasibility of establishing a mandatory interagency placement program for Federal employees affected by a reduction in force and report the findings to Congress no later than April 5, 1995. This program would supplement the existing Interagency Placement Program and internal placement efforts conducted by

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individual agencies. For purposes of this study, the law defines an interagency placement program as one that requires an agency to offer a position to an employee of another agency affected by reduction in force if the position cannot be filled through a placement program of the agency in which the position is located, the employee to whom the offer is made is qualified for the offered position, and the geographic location of the offered position is within the commuting area of the residence of the employee or the employee's present or last-held position. Such a program would not affect internal agency placement programs including, but not limited to, merit promotion, upward mobility, and reassignments.

Under the law, the term "agency" means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the General Accounting Office. The term "Federal employees affected by reductions in force" means Federal employees who are separated, or are scheduled to be separated, from service under reduction in force pursuant to regulations prescribed under section 3502 of title 5, United States Code, or procedures established under section 3595 of such title. The law provides that OPM conduct this study in consultation with the Secretary of Defense and seek comments from the heads of all appropriate Federal agencies.

This notice is to request input from all interested parties on this issue and any other options to assist Federal employees affected by downsizing. Information gained during this study will be used to submit a report of findings to Congress and may result in proposals for regulatory or statutory changes.

James B. King,

Director.

[FR Doc. 94-27438 Filed 11-4-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34917; File No. SR-Amex-94-43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to New Organizational Structures for Member Organizations.

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 14, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to narrow the scope of the original filing.[3] The Amex has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to expand the categories of organizations which are eligible to become member organizations to include entities with new organizational structures. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Rules relating to the admission of entities with new organizational structures as member organizations. Specifically, the proposed amendment would permit the Exchange, in its discretion, and on such terms and conditions as the Exchange may prescribe, to approve limited liability companies ("LLCs"), business trusts or other organizational structures as member organizations so long as the characteristics of the entity in question are essentially similar to those of corporations or partnerships.

An LLC is a hybrid business entity, combining the limited liability characteristics of a corporation with the pass-through taxation attributes of a partnership. Currently, approximately 45 States and the District of Columbia have adopted LLC statutes. New York State recently adopted legislation, effective October 24, 1994, authorizing LLCs. The Exchange has been advised that a number of existing member organizations are considering altering their business structure to that of an LLC. Both the Chicago Board Options Exchange ("CBOE") and the Chicago Stock Exchange ("CHX") already permit membership by an LLC, and the New York Stock Exchange ("NYSE") recently received SEC approval to amend its rules to do so.[4]

The term "business trust" is generally used to describe a trust in which the managers are principals, and the shareholders are cestuis que trust. As stated in *Black's Law Dictionary*, "[t]he essential attribute [of a business trust] is that property is placed in the hands of trustees who manage and deal with it for use and benefit of beneficiaries."[5]

Accordingly, the Exchange proposes to adopt new Commentary .01 to Definition 2 of the Exchange Rules to provide that entities may be accepted as member organizations by the Exchange if they have characteristics essentially similar to partnerships, corporations or both. At the present time, the Exchange intends to consider both LLCs and business trusts as eligible to become member organizations. These entities would be subject to all rules applicable to member organizations, and existing references to member firm or member corporation, as appropriate, and member organization would be deemed to include any such entity which is approved as a member organization. Of course, in order to be a member organization, an entity must be able to qualify as a broker or dealer registered with the SEC pursuant to the Act. In addition, the Exchange staff would review applications on a case-by-case basis as it does with all member organization applicants. Prior to approving any such organization for membership, the staff would have to be satisfied that: (1) the Exchange would legally have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(2) in particular in that it is designed to ensure that the rules of the Exchange provide that any broker or dealer or natural person associated with a registered broker or dealer may become a member of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-43 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] Specifically, the Commission believes the Amex proposal is consistent with Section 6(b)(2) of the Act,[7] which requires that the rules of an exchange, subject to the provisions of Section 6(c) of the Act,[8] ensure that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of the exchange and any person may become associated with a member thereof.

The Amex currently allows individuals, partnerships, and corporations to become members of the Exchange.[9] The proposed rule change will enable entities with new organizational structures similar to corporations and partnerships to become Exchange members and be included in the Exchange's definition of a member organization. As in the case of a partnership or corporation applying for membership, the new entity will be subject to all other requirements for membership approval.

The Commission believes that the amendment to the Amex Rules reasonably balances the Exchange's interest in having the flexibility to approve entities with new organizational structures for Exchange membership, with the regulatory interests in protecting the financial and structural integrity of a member organization. For example, although the proposal will permit the Exchange to approve business trusts, LLCs, or other organizational structures with characteristics of corporations or partnerships as member organizations, the Amex staff will review each Exchange member organization application on a case-by-case basis, and, prior to approving any such organization for membership, the Exchange must be satisfied that: (1) the Exchange legally would have appropriate jurisdiction over such an entity; and (2) the permanency of the entity's capital is consistent with that required of other member organizations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the benefits of the proposed rule change to be realized as soon as possible. In addition, the Exchange's proposal is substantially identical to CHX and NYSE proposals that were published in the **Federal Register** for the full comment period and were approved by the Commission.[10]

It is therefore ordered, pursuant to Section 19(b)(2)[11] that the proposed rule change (SR-Amex-94-43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27440 Filed 11-4-94; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated October 31, 1994 ("Amendment No. 1"). The portions of this filing that were withdrawn in Amendment No. 1 have been submitted to the Commission as part of File No. SR-Amex-94-23.

[4] See Securities Exchange Act Release Nos. 33124 (November 1, 1993), 58 FR 59282 (November 8, 1993) (File No. SR-CBOE-93-40); 34604 (August 26, 1994), 59 FR 45316 (September 1, 1994) (File No. SR-CHX-94-17) ("CHX Approval Order"); and 34664 (September 13, 1994), 59 FR 48346 (September 20, 1994) (File No. SR-NYSE-94-01) ("NYSE Approval Order").

[5] *Black's Law Dictionary* 180 (5th ed. 1979).

[6] 15 U.S.C. § 78f (1988).

[7] 15 U.S.C. § 78f(b)(2) (1988).

[8] 15 U.S.C. § 78f(c) (1988).

[9] Article I, Section 3(f) of the Amex Constitution currently states that the term "member organization" includes "member firms" and "member corporations." The term "member firm" typically is used to refer to a partnership. *See, e.g.*, Article IV, Section 2 of the Amex Constitution. In File No. SR-Amex-94-23, the Amex has proposed to amend Article I, Section 3(f) to specify that the term "member organization" means a partnership, corporation, trust or such other entity as the Exchange may, by Rule, permit to become a member organization and which meets certain qualifications. The Amex also has proposed to delete all references in its Constitution and Rules to the terms "member firm" and "member corporation" and to make revisions thereto that reflect more comprehensively the admission of these new entities. If File No. SR-Amex-94-23 is not approved, the Commission would expect the Amex to submit a proposed rule change specifically addressing the definition of the term "member organization" and other issues related to the admission of new entities.

[10] No comments were received in connection with the proposed rule changes that amended the comparable CHX and NYSE rules. *See* CHX and NYSE Approval Orders, *supra*, note 4.

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30-3(a)(12) (1991).

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[Release No. 34-34919; File No. SR-BSE-94-14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Its Fee Schedule

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 21, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 31, 1994, the BSE filed Amendment No. 1 with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to rebate certain fees to its member firms for the month of September 1994.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from Karen Aluise, BSE, to Glen Barrentine, Division of Market Regulation, Commission, dated October 27, 1994. In Amendment No. 1 the BSE requested that the proposed rule change, which originally requested summary effectiveness pursuant to Section 19(b)(3) of the Act, be changed such that the request is one for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rebate to BSE member firms $.25 per trade on all non-self-directed, electronically routed, BSE executed, trades of any size for trades executed in the month of September 1994. For purposes of the per trade credit, "non-self-directed" shall mean entered by a BEACON subscriber in stocks in which the routing firm has no affiliation with or financial interest in the specialist operation registered in those stocks. The aggregate rebate per firm shall be limited to the total monthly layoff transaction fees charged to that firm in the month of September.

2. Statutory Basis

The statutory basis for this proposal is Section 6(b)(4) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-94-14 and should be submitted by November 28, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to rebate BSE member firms, as described above, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act[4] in that it establishes or changes a due, fee, or other charge imposed by the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the BSE to continue its billing cycle uninterrupted.

It is therefore ordered, Pursuant to Section 19(b)(2)[5] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27444 Filed 11-4-94; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. § 78f(b)(4) (1988).

[5] 15 U.S.C. § 78s(b)(2) (1988).

[6] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-34918; File No. SR-BSE-94-13]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to Procedures for the Handling of Market-on-Close Orders on Expiration Fridays and Quarterly Index Expiration Days

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 12, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 14, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to correct certain typographical errors and to specify the duration of the pilot extension.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the pilot program which provides a set of procedures for the handling of Market-on-Close ("MOC") orders[2] on Expiration Fridays[3] and Quarterly Index Expiration Days.[4] These procedures mirror the procedures in place on the New York Stock Exchange ("NYSE")[5] in order to ensure equal treatment of orders in both markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A,-B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot program under which the BSE has adopted certain procedures to mirror those of the primary market for the handling of MOC orders on Expiration Fridays and Quarterly Index Expiration Days so that the BSE does not become a haven for MOC orders that are prohibited on the NYSE.[6] In this way, all orders sent to the Exchange will receive equal treatment with orders sent to the NYSE. The proposed procedures include (a) prohibiting the cancellation or reduction of any MOC order in any NYSE stock after 3:40 p.m. on Expiration Fridays and Quarterly Index Expiration Days, (b) providing a 3:40 p.m. deadline for the entry of MOC orders, in all NYSE stocks, related to a strategy involving any stock index future, stock index option or option on stock index futures in expiring contracts, (c) publication of MOC order imbalances of 50,000 shares or more in the pilot stocks as soon as practicable after 3:40 p.m. and (d) providing for the entry of MOC orders after 3:40 p.m. in the pilot stocks only to offset published imbalances. With respect to item (a) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.[7] The Exchange is seeking a one-year extension of the current pilot program to expire on October 31, 1995.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The BSE believes that, if investors, whose orders are banned on the NYSE because of current market conditions, are able to reroute those orders to the Exchange for execution on the BSE without regard to current market conditions, there could be a negative impact on the overall market as a result of the execution of those orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-94-13

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated October 12, 1994 ("Amendment No. 1").

[2] The BSE defines an "at the close order" as a market order which is to be executed at or as near to the close as practicable. See Ch. I, Sec. 3 of the BSE Rules.

[3] The term "Expiration Friday" refers to the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently.

[4] The term "Quarterly Index Expiration Day" refers to the trading day, currently the last trading day of each calendar quarter, on which Quarterly Index Expiration ("QIX") options expire.

[5] The Commission approved the NYSE's current auxiliary closing procedures for Expiration Fridays and Quarterly Index Expiration Days (collectively, "expiration days") on a pilot basis in Securities Exchange Act Release No. 32868 (September 10, 1993), 58 FR 48687 (September 17, 1993) (File No. SR-NYSE-93-33) ("1993 Auxiliary Closing Procedures Approval Order"). The NYSE procedures establish, for all stocks, a 3:40 p.m. deadline for (1) the entry of MOC orders related to a strategy including any expiring stock index options, stock index futures or options on stock index futures and (2) the cancellation or reduction of any MOC order. In addition, for the pilot stocks (as defined below, see infra note 7), the NYSE specialist must, as soon as practicable after 3:40 p.m., disseminate any MOC order imbalance of 50,000 shares or more; thereafter, MOC orders in the pilot stocks may be entered only to offset a published imbalance.

[6] Commission approval of the BSE's MOC order procedures expires on October 31, 1994. See Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295 (February 25, 1994) (File No. SR-BSE-93-04) ("BSE Pilot Approval Order"). The Exchange has requested a one-year extension of the pilot program to expire on October 31, 1995. See Amendment No. 1, *supra*, note 1. The Exchange also has requested accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

[7] As designated by the NYSE, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. See 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 5. The Quarterly Index Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks. *Id.*

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and should be submitted by November 28, 1994.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b). In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations, with the support of the Commission, have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving expiring index derivative products. For instance, on expiration days, the NYSE utilizes auxiliary closing procedures[8] designed to help the specialist attract any contraside interest necessary to alleviate MOC order imbalances and dampen their effect on the closing price. Based on the NYSE's experience,[9] the Commission believes that these procedures work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system.[10] Accordingly, in its order initially approving the Exchange's pilot program,[11] the Commission concluded that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In its approval order, the Commission asked the BSE to study the effectiveness of its MOC order procedures. Specifically, the Commission requested the following information: (1) For all pilot stocks, the size of the MOC order imbalance on the BSE at 3:40 p.m. and at 4:00 p.m.; (2) for all pilot stocks, the price and time of the last regular-way trade on the BSE and the closing price; and (3) for each pilot stock with a MOC order imbalance of 50,000 shares or more at 3:40 p.m., an appropriate measure of volatility at the close on the BSE.

On October 5, 1994, the Exchange submitted to the Commission its first monitoring report on its MOC order pilot program. The Commission finds that, although this monitoring report provides certain useful information concerning the operation of the pilot program, the BSE must provide further data before the Commission can fairly and comprehensively evaluate the BSE's use of its auxiliary closing procedures. To allow such additional information to be gathered and reviewed, without compromising the benefits that market participants might receive, the Commission finds that it is reasonable to extend the pilot program until October 31, 1995.

In this regard, the Commission continues to believe that the pilot procedures should allow the BSE to obtain an accurate view of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof. The BSE pilot program establishes a simultaneous 3:40 p.m. deadline for the entry of expiration-related MOC orders and for the cancellation or reduction of any MOC order. Substantial MOC order imbalances in the pilot stocks are required to be disseminated promptly thereafter.[12] Based on the Exchange's monitoring report, the pilot procedures, specifically the requirement that MOC orders included in imbalances be irrevocable and the restrictions on further MOC order entry, appear to have operated effectively on all expiration days covered by the report. Accordingly, the Commission is satisfied that any BSE imbalance publications should reflect actual investor interest.

In addition, although the BSE's monitoring report does not reveal any unusual market conditions, the Commission continues to believe that, in the event of such conditions, the BSE should have sufficient time to attract contra-side interest to help alleviate imbalances created by the unwinding of index derivative related positions. As noted above, the pilot procedures require both the early submission of expiration-related MOC orders and, for the pilot stocks, prompt dissemination of substantial MOC order imbalances. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission believes that deadline strikes a reasonable balance between the need to provide the investing public with timely and reliable notice of expiration-related order flow and the need to avoid unduly infringing upon legitimate trading strategies.

The Commission is approving the proposed rule change on a pilot basis until October 31, 1995. As long as some index derivative products continue to expire based on the closing stock prices on expiration days, the Commission agrees with those self-regulatory organizations that argue that such procedures are necessary to provide a mechanism to handle the potentially large stock imbalances engendered by the unwinding of index derivative related positions. During this pilot program, the Commission expects the BSE to monitor the effectiveness of its MOC order procedures.

The Commission therefore requests that the BSE submit a report to the Commission, by August 31, 1995, describing its experience with the pilot program. At a minimum, this report should contain, for each Expiration Friday and Quarterly Index Expiration Day, the following data: (1) for each pilot stock that had a MOC order imbalance on the BSE, the size of that imbalance at 3:40 p.m. and at 4:00 p.m.; (2) for each pilot stock listed in (1) above, the consolidated closing price and the number of shares of MOC orders printed on the BSE; and (3) for each pilot stock that had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., an appropriate measure of volatility at the close for the BSE (for example, the change in price of the closing transaction, measured as a

[8] See *supra*, note 5.

[9] The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, see 1993 Auxiliary Closing Procedures Approval Order, *supra*, note 5.

[10] For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually large MOC order imbalances on the regional exchange could contribute to overall market volatility.

[11] See BSE Pilot Approval Order, *supra*, note 6.

[12] The BSE has indicated that it would disseminate imbalances to its floor, its member firms and the investing public in a manner which is substantially similar to that utilized by the NYSE. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on February 10, 1994.

percentage, from the last trade and/or the change in the specialist's position) and a description of how the pilot procedures influenced market conditions. Any request to modify this pilot program, to extend its effectiveness or to seek permanent approval of the pilot procedures also should be submitted to the Commission, by August 31, 1995, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue without interruption. In addition, the procedures the Exchange proposes to continue using are identical to the procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[14] that the proposed rule change (SR–BSE–94–13) is hereby approved on a pilot basis until October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27442 Filed 11–4–94; 8:45 am]

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[13] No comments were received in connection with the proposed rule change which initiated the BSE's MOC order pilot program. See BSE Pilot Approval Order, *supra*, note 6.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34921; File No. SR–MCC–94–12]

Self-Regulatory Organization; the Midwest Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change Enabling Midwest Clearing Corporation To Enter Into Contracts With Participants To Provide Custodial, Transactional, and Related Services on Behalf of Participants

October 31, 1994.

On October 11, 1994, The Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MCC–94–12) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on October 19, 1994.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description of the Proposal

The purpose of the proposed rule change is to permit MCC to enter into contracts with any of its participants whereby MCC will provide transactional processing and data-entry services for a participant with respect to the participant's certificated securities which are not depository eligible. MCC will not be obligated to enter into such contracts with any participant, and if it chooses to enter into such a contract, it will not be obligated to do so on similar terms available to any other participant.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3) (A) and (F).[3] Sections 17A(b)(3) (A) and (F) require that the rules of a clearing agency be designed to assure the safeguarding of funds and securities in the custody and control of the clearing agency or for which it is responsible. The Commission believes that MCC's service is consistent with this obligation.

The service provides custodian, transaction processing, and related data-entry services with respect to certificated securities not eligible for book-entry processing. Participants have been experiencing a continual decline in their activity associated with the processing of physical securities primarily due to the increase in book-entry eligibility of securities at the clearing agency level. These participants no longer find it desirable to maintain their own custodial operations and have requested MCC provide such custodial and processing services as part of MCC's operations.

The Commission believes that MCC's proposed rule change should help to minimize inefficient procedures employed by individual participants by concentrating these operations in one centralized facility. As a result, the individual participants will be able to eliminate their own operations and the high fixed costs associated with them while maintaining the required safeguarding of these securities.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow MCC to implement the service more expediently and thereby should provide saving and efficiency to those participants that enter into such service contracts with MCC.

III. Conclusion

For the reasons stated above, the Commission finds that MCC's proposal is consistent with the Act,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–MCC–94–12) be, and hereby is, approved on an accelerated basis.

For the Commission of the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27441 Filed 11–4–94; 8:45 am]

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[1] 15 U.S.C. 78q–1 (1988).

[2] Securities Exchange Act Release No. 34834 (October 13, 1994), 59 FR 52851 [File No. SR–MCC–94–12] (notice of proposed rule change).

[3] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–34916; File No. SR–NYSE–94–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to a One-Year Extension of the Pilot for Auxiliary Closing Procedures for Expiration Days

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the purposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. While the NYSE has not requested accelerated approval of the proposal, the auxiliary closing procedures are scheduled to expire on October 31, 1994. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

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comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot for auxiliary closing procedures for market-at-the-close ("MOC") orders utilized on expiration Fridays and quarterly expiration days until October 31, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Special procedures regarding the entry of market-at-the-close ("MOC") orders on expiration Fridays were originally adopted in 1986 for quarterly triple expiration of derivative instrument products.[3] Since November 1988, these procedures have been used for each monthly expiration and apply to the so-called "pilot stocks" (the 50 most highly capitalized S&P 500 stocks and any component stocks of the Major Market Index that are not included in this group of 50).[4] In April 1992, the Exchange modified the pilot procedures and included additional special procedures for handling MOC orders in all stocks on expiration Fridays. In March 1993, the Exchange extended the expiration Friday auxiliary closing procedures to days on which quarterly index expiration ("QIX") options expire.[5] In September 1993, the Exchange again modified the pilot procedures to change the cut-off time for entry, cancellation or reduction of MOC orders to 3:40 p.m.

The current procedures require that MOC orders in any stock related to a strategy involving derivative index products be entered for execution by 3:40 p.m. and that no cancellation or reduction of any MOC order in any stock take place after 3:40 p.m. In addition, Floor brokers representing orders related to a strategy involving derivative index products must indicate their MOC interest to the specialist by 3:40 p.m. However, a Floor broker who is handling a working order that is not derivative-related, may continue to work that order until just before the close, and if so instructed by his or her customer, may turn the unfilled balance over to the specialist for execution at the market at the close.

For the pilot stocks, a single publication of imbalances of 50,000 shares or more is made as soon as practicable after 3:40 p.m. After the imbalance publication, MOC orders in the pilot stocks may be entered only to offset a published imbalance. The entry of MOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted even if such orders might offset published imbalances.

The auxiliary procedures utilized for expiration days have been approved as a pilot on a yearly basis and are due to expire on October 31, 1994. These procedures have been effective in minimizing excess volatility on the close on expiration days. The Exchange recommends that the procedures described above be extended to October 31, 1995.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for the proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–32 and should be submitted by November 28, 1994.

[3] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. Triple expirations are the four times a year during the months of March, June, September, and December when all stock index futures, stock index options, options on stock index futures and individual equity options expire.

[4] The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November, 1988 and extending through October, 1989. The pilot has since been extended each year between October 1989 through October 1994 on a one-year pilot basis. See Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599; 26406 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); 27446 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–36); 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30); and 32858 (September 10, 1993), 58 FR 48687 (approving File No. SR–NYSE–93–33) ("1993 Approval Order").

[5] On QIX expiration days, the "pilot stocks" include the ten highest weighted stocks of the S&P MidCap 400 Index (in addition to the fifty highest weighted stocks underlying the S&P 500 Index, any component stocks of the Major Market Index not included in that group).

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend the pilot for auxiliary closing procedures on expiration days through October 1995, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that an extension of the pilot for auxiliary closing procedures on expiration days is consistent with section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among the other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal furthers the objectives of section 6(b)(5) of the Act.

The NYSE's auxiliary closing procedures were initially adopted in September 1986 to apply to triple expirations.[7] The Commission has extended these procedures to all monthly expiration Fridays on a yearly pilot basis since 1988.[8] These procedures resulted from efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with the underlying component stocks as part of index derivative related trading strategies.

In our 1993 Approval Order, the Commission extended the NYSE's MOC pilot program procedures through October 31, 1994, and requested that the NYSE provide the Commission with specific data by July 31, 1994, detailing the NYSE's experience with the pilot program and containing an analysis of the effectiveness of the expiration Friday procedures in reducing volatility. Specifically, the Commission requested data covering expiration Fridays from October 1993 through June 1994. The Commission requested that the report include: (1) The names of the pilot stocks and the imbalance (if any) at 3:40 and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3:40; (2) for those stocks with an imbalance of 50,000 shares or more at 3:40, the names of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to cancellations of MOC orders; (3) for all pilot stocks, all MOC order imbalances (of any size) as of 4:00 p.m.; (4) the change in price of the closing transactions from the previous trade for all pilot stocks; (5) the change in price of the closing transactions from the price of transactions at 4:00 p.m. (if there were no transactions precisely at 4:00 p.m., the NYSE was to use the price from the transaction effected closet in time to 4:00 p.m.) for all pilot stocks; and (6) for each pilot stock, the number of shares in MOC orders submitted by 3:40 p.m. that were canceled for any reason prior to the close. The Commission also stated that the report should include: (1) The change in the Dow Jones Industrial Average ("DJIA") at the close on each expiration Friday; (2) opening prices and daily trading ranges of the pilot stocks on expiration Fridays, as well as the following Mondays; and (3) price volatility as measured by the change in price from the last regular way trade to the closing price, including historical data analyzing price volatility at the close prior to the implementation of the prohibition on canceling MOC orders after 3:45 p.m. and the other MOC procedures. Finally, in our approval order regarding QIX auxiliary closing procedures, the Commission requested that the Exchange also include in its report all of the above requested data for QIX expiration days which expire at the en of the calendar quarter. The Commission requested that the NYSE provide the Commission with a report by July 31, 1994 covering expirations through June 1994.

The NYSE submitted a report to the Commission on July 26, 1994. The report covers expiration Fridays for the period November 1993 through June 1994 and the December 31, 1993 and March 31, 1994 quarterly expirations. For that period, the NYSE reports that there were 117 (out of 413 total) stocks with buy imbalances greater than 50,000 shares at 3:40 p.m. Of these, 84 still had MOC buy imbalances greater than 50,000 at the close and three had reversed to sell imbalances under 50,000. In contrast, there were only 10 stocks with sell imbalances over 50,000 at 3:40 p.m., of which five still had sell balances over 50,000 shares at the close. In general, both the number of stocks with imbalances over 50,000 shares and the average number of shares in the imbalance declined between 3:40 p.m. and the close.

The report also discusses MOC prices and price changes at 4:00 p.m. and at the close. The data show very little volatility at the close. Over half the stocks had no change at the close, 89.3% changed one-eighth point or less, and j96.1% changed one-quarter point or less. The stocks with large imbalances also did not exhibit much volatility at the close. The stocks with buy imbalances over 50,000 shares at the close averaged an increase of slightly more than one-eighth; the stocks with sell imbalances over 50,000 shares at the close averaged less than one-eighth point decline.

With respect to QIX expiration procedures, the Exchange states that there were only 4 stocks with buy imbalances greater than 50,000 shares at 3:40 p.m., only one of which still had an MOC buy imbalance greater than 50,000 shares at the close. In contrast, there were 26 stocks with sell imbalances over 50,000 at 3:40 p.m., 17 of which still had sell balances over 50,000 shares at the close.

The report also discusses quarterly expiration prices and price changes at 4:00 p.m. and the close. The data show very little volatility at the close. Nearly half the stocks had no change at the close, 79% changed one-eighth point or less, and 92% changed one-quarter point or less. The stocks with sell imbalances over 50,000 shares at the close on average declined more than one-eighth; the stocks with buy imbalances over 50,000 shares at the close increased 0.3125 points on average.

As noted above, pursuant to the NYSE pilot program, the auxiliary closing procedures for expiration Fridays and QIX expiration days (cumulatively, "expiration days") place limitations on MOC order-entry with regard to orders related to any strategy involving an expiring derivative index product. The auxiliary closing procedures also restrict the cancellation of MOC orders and provide for the dissemination of MOC order imbalances of 50,000 shares or more in certain pilot securities. The present proposal would extend the existing pilot procedures for a one year pilot period through October 1995. MOC order cancellations for bona fide errors would continue to be accepted. Once a publication of an imbalance in a pilot stock has been made, any MOC orders subsequently entered in such pilot stock will be accepted only to trade on the opposite side of the market in relation to such published imbalance. The entry of a MOC order to establish or liquidate positions related to a strategy involving derivative instruments, however, would not be permitted even if such orders might offset published imbalances.

The Commission believes that the auxiliary closing procedures should enable market participants to gain a more accurate picture of the buying and

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] *See supra* note 3.

[8] *See supra* notes 3–4.

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selling interest in MOC orders at expiration. The Commission continues to believe that, by requiring early submission of MOC orders and disseminating significant imbalances (50,000 shares or more) in certain specified stocks, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. In this regard, the NYSE's most recent report concerning expiration Friday volatility and the expiration Friday closing procedures indicates that the procedures have worked relatively well and may have resulted in more orderly markets at the close on expiration Fridays.

The Commission is approving an extension of the pilot program through October 1995. As long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potential large imbalances that can be engendered by firms unwinding index derivative related positions. During the pilot extension, the Commission expects the NYSE to continue to monitor closely the effectiveness of the procedures, and to submit a report with all of the same data previously requested for prior periods. The report should cover all expirations through June 1995, and must be submitted to the Commission no later than July 31, 1995[9] along with a proposed rule change which should either request an additional extension of the pilot program or permanent approval of the pilot procedures.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the procedures to continue on an uninterrupted basis. Further, on September 9, 1994, the NYSE issued an Information Memo to its members notifying them of the auxiliary closing procedures. Finally, special auxiliary closing procedures have been utilized by the NYSE since 1986, and the procedures are intended to reduce excessive market volatility at the close.

It is therefore ordered, pursuant to Section 19(b)(2)[10] that the proposed rule change is hereby approved on a pilot basis through October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27443 Filed 11-4-94; 8:45 am]

BILLING CODE 8010-01-M

[9] The Commission notes that this request for information is not exclusive and that the NYSE should add any additional data and analysis to the report in order to assess the effectiveness of the procedures in reducing excess market volatility on expiration Fridays.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-34820; File No. SR-Phlx-94-40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Index Option Orders

October 31, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to codify the eligibility of index options for its Automated Options Market ("AUTOM") System and its automatic execution feature ("Auto-X").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

[1] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Autom is the Exchange's electronic order routing, delivery, execution, and reporting system for options. Orders are routed from member firms directly to the appropriate specialist post on the Exchange's trading floor. Certain market and marketable limit orders are eligible for AUTOM's automatic execution feature, AUTO-X. These AUTO-X designated orders are automatically executed at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders not eligible for AUTO-X are manually handled by the specialist.

The AUTOM system has operated on a pilot basis since 1988, when it first was approved by the Commission for market orders of up to five contracts for twelve Phlx near-month equity options.[2] AUTOM has been extended and amended several times since.[3] Most recently, the pilot program was approved to operate until December 31, 1994.[4] In 1991, the Commission approved the use of AUTO-X as part of the AUTOM pilot program.[5] Orders for up to 100 contracts are eligible for AUTOM and orders for up to 25 contracts are eligible for AUTOM-X.[6]

At this time, the Phlx proposes to codify its existing practice of accepting index option orders for execution through AUTOM and AUTO-X. Currently, AUTOM and AUTO-X are available for all Phlx options, including both equity options and index options. Although the term "index options" was not specifically employed by the Phlx throughout the AUTOM pilot program, Exchange research indicates that index options became AUTOM-eligible in June 1990, and AUTO-X-eligible in March 1991. Since then, the Exchange has included index options trading when it reports volume information and makes capacity representations to the Commission as part of the AUTOM pilot. Accordingly, codifying index options into the AUTOM pilot does not raise new systems capacity concerns, as AUTOM has operated without problems since index options have been included in AUTOM; specifically, the Exchange has not experienced systems problems or received formal customer complaints related to index options trading on AUTOM.

Moreover, the Exchange frequently uses the term "options" to include both equity and index options. For example, the "Options Committee" governs both equity options and index options trading, and "options trading volume" includes index options as well. In addition, the use of the phrase "equity options" to include index options is not limited to AUTOM. For instance, "equity options floor"[7] and "equity options examination"[8] are common terms. Furthermore, the date when AUTO-X was extended to index options corresponds to Commission approval of the use of AUTO-X for "all Phlx equity options."[9] Accordingly, it appears that index options were added to AUTOM as part of the extension of both AUTOM and AUTO-X to "all Phlx equity options."

Although Commission orders approving various amendments to and extensions of the AUTOM pilot refer to "equity options," the proposed rule changes filed by the Exchange generally describe AUTOM as an order routing and delivery system for "options." In addition, the Phlx has issued memoranda to the trading floor regarding the use of AUTOM/AUTO-X for index options on many occasions, including periodic lists of the maximum size eligibility for AUTO-X. The Phlx also notes that other exchanges permit the use of automatic order delivery and executions systems for index options.[10]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by codifying index options into the AUTOM pilot program. The Exchange believes that index option orders benefit from the advantages of AUTOM, including efficient and prompt order delivery and execution.

[2] See Securities Exchange Act Release No. 25840 (March 31, 1988), 53 FR 11390.

[3] See Securities Exchange Act Release Nos. 25866 (June 30, 1988), 53 FR 25563; 25854 (December 13, 1988), 53 FR 53185; 26522 (February 3, 1989), 54 FR 6485; 27599 (January 9, 1990), 55 FR 1751; 28265 (July 26, 1990), 55 FR 31274; 28978 (March 15, 1991), 56 FR 12050; 29662 (September 9, 1991), 56 FR 46816 (permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 51247 (permitting AUTO-X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 55146 (permitting AUTO-X orders up to 20 contracts in all options); 32368 (June 30, 1993), 58 FR 36496; 32806 (September 15, 1993), 58 FR 15168 (permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790.

[4] See Securities Exchange Act Release No. 33405, *supra* note 3.

[5] See Securities Exchange Act Release No. 28978, *supra* note 3.

[6] See Securities Exchange Act Release No. 32000 (March 15, 1993), 58 FR 15168.

[7] There is no separate "index options floor."

[8] This floor member qualification examination tests trading rules applicable to index options as well.

[9] See Securities Exchange Act Release No. 28978, *supra* note 3.

[10] See e.g., CBOE Rule 24.17.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. Specifically, the Exchange is proposing to codify the eligibility of index options, an existing Exchange practice, for an existing Commission-approved system. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Phlx-94-40 and should be submitted by November 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27487 Filed 11-4-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20667; File No. 812-8154]

DFA Investment Dimensions Group Inc. et al.

October 31, 1994.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: DFA Investment Dimensions Group Inc. (the "Fund"), Dimensional Fund Advisors Inc. ("DFA"), and certain life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts")—the Fund, DFA, the Participating Insurance Companies, and the Separate Accounts are referred to herein collectively as the "Applicants."

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be offered and sold to variable annuity and variable life insurance separate accounts issued by both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on August 10, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and by serving the Applicants (in care of the Fund or DFA) with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 25, 1994, and should be accompanied by proof of service on the Fund or DFA, in the form of an affidavit or, for lawyers, a certificate of

[11] 17 CFR 200.30-3(a)(12) (1992).

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service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Stradley, Ronon, Stevens & Young, Great Valley Corporate Center, 30 Valley Stream Parkway, Malvern, PA 19355, Attn: Stephen W. Kline, Esq.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. DFA is a corporation organized under the laws of Delaware, and is registered as an investment adviser under the Investment Advisers Act of 1940. DFA serves as investment adviser for the Fund.

2. The Fund is a Maryland corporation registered under the 1940 Act as an open-end, diversified management investment company. The Fund currently consists of, and offers shares of common stock ("shares") in, nineteen separate investment portfolios, each of which has its own investment objectives and policies. Shares of two of those portfolios presently are offered only to a separate account of National Home Life Assurance Company which, in connection with its issuance of variable annuity contracts, is registered as a unit investment trust under the 1940 Act.

3. The Fund intends to offer shares of its portfolios to Separate Accounts of additional insurance companies—including insurance companies that are not affiliated with National Home Life Assurance Company—and to serve as the investment vehicle for various types of insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively referred to herein as "variable contracts"). Such Participating Insurance Companies will establish their own separate accounts and design their own variable annuity or variable life insurance contracts. It is anticipated that Participating Insurance Companies will rely on Rules 6e–2 or 6e–3(T) under the 1940 Act, as appropriate, with respect to their scheduled premium and flexible premium variable life insurance contracts; some Participating Insurance Companies may rely on individual exemptive orders as well.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to herein as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Applicants submit that making the Fund available for "mixed" and "shared" funding will encourage more insurance companies to offer variable contracts, and that this should result in increased competition with respect to both variable contract design and pricing, which, in turn, can be expected to result in more product variation and lower charges. Applicants submit that "mixed" and "shared" funding should provide several benefits to variable contract owners, including, among other things: elimination of a sufficient portion of the costs of establishing and administering separate funds; and making a greater amount of assets available for investment, thereby promoting economies of scale, permitting increased safety through greater diversification, and making the addition of new portfolios more feasible.

6. Applicants see no significant legal impediment to permitting "mixed" and "shared" funding. Nor do Applicants believe that "mixed" and "shared" funding will have any adverse federal income tax consequences. Applicants represent that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Accordingly, Applicants request an order of the Commission exempting the Participating Insurance Companies and their Separate Accounts (and, as necessary, any principal underwriter and depositor of each such Separate Account) from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit "mixed" and "shared" funding.

Applicants' Legal Analysis

1. Applicants request relief under Section 6(c) of the 1940 Act for the class of insurers and Separate Accounts investing in the Fund (and principal underwriters and depositors of such Separate Accounts). Applicants represent that there is ample precedent, in a variety of contexts, for granting exemptive relief not only to applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Applicants further represent that such class relief has been granted from a number of the provisions of the 1940 Act. Applicants note that the Commission staff will have an opportunity to review the compliance by Participating Insurance Companies with the conditions of the requested order at the time each Separate Account files its registration statement.

2. Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, only if the separate account is organized as a unit investment trust, all of the assets of which consist of the shares of one or more registered investment companies ("underlying fund(s)") which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company" (emphasis supplied). The exemptions are not available to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same insurance company or any unaffiliated insurance company. Nor is the relief granted by Rule 6e–2(b)(15) available if the underlying fund also offers its shares to separate accounts funding variable contracts of unaffiliated life insurance companies. In short, Rule 6e–2 permits neither "mixed" nor "shared" funding.

3. Rule 6e–3(T)(b)(15) provides exemptions similar to those provided by Rule 6e–2(b)(15), only if the separate account is organized as a unit investment trust, all of the assets of which consist of shares of underlying funds which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account" (emphasis supplied). In short, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, but it does not permit shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open–end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2) of the 1940 Act.

5. Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on "mixed" and "shared" funding imposed by the 1940 Act and the rules promulgated thereunder. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that participate directly in the management of the underlying registered management investment company.

6. Applicants state that the partial relief from the requirements of Section 9 of the 1940 Act granted in Rules 6e–2(b)(15) and 6e–3(T)(B)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that neither the protection of investors nor the purposes fairly intended by the policy and provisions of the 1940 Act requires the application of the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants further state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is unnecessary to apply Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts.

7. Applicants assert that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the event of "mixed" or "shared" funding. In this regard, Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Fund; those individuals who currently participate in the management or administration of the Fund will remain the same regardless of which Separate Accounts or insurance companies use the Fund. For these reasons, Applicants submit that applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Applicants further submit that increased monitoring costs would reduce the net rates of return realized by contract owners.

8. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the Participating Insurance Companies the right to disregard voting instructions of contract holders. More specifically, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemption from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

9. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that the insurance company may disregard the voting instructions of it owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

10. Rules 6e2(b)(15)(iii)(B) and 6e3(T)(b)(15)(iii)(A)(*2*)[1] provide that the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such insurance company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B) or (b)(7)(ii)(C) of Rules 6e–2 and 6e–3(T)).

11. Applicants represent that in the case of a change in the insurance company's investment policies, the insurance company, in order to disregard contract owner voting instructions, must make a good-faith determination that such a change would violate state law, or would result in investments that either would be inconsistent with the investment objectives of the separate account or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Applicants represent that in the case of a change of an investment adviser, the insurance company, in order to disregard contract owners' voting instructions, must make a good-faith determination that either: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed adviser may be expected to employ investment techniques that either (i) would vary from the general techniques used by the current adviser, or be used to manage the investments in a manner inconsistent with the investment objectives of the Separate Account, or (ii) would result in investments that vary from certain standards.

12. Applicants submit that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Applicants also state that the potential for disagreement is limited by the requirements in Rule 6e–2 and 6e–3(T) that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the directors of the Fund shall consist of persons who are not "interested persons" of the Fund (as defined in Section 2(a)(19) of the 1940 Act, the rules promulgated thereunder, and as modified by any applicable orders of the Commission). If this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director(s), then the operation of this condition shall be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the directors; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The board of directors of the Fund will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or

[1] Applicants represent that the application will be amended during the notice period to refer to Rule 6e–3(T)(15)(b)(iii)(A)(*2*), rather than 6e3(T)(b)(15)(iii)(B), in the discussion under the heading "Pass-Through Voting."

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securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund portfolio are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. Participating Insurance Companies and DFA will report any potential or existing conflicts to the board of directors. Participating Insurance Companies and DFA will provide the directors with all information reasonably necessary for them to consider any issues raised by such conflicts and, more generally, will be responsible for assisting the directors in carrying out their responsibilities under these conditions. In addition, each Participating Insurance Company will inform the directors whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts to, and to assist, the directors will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interests of the contract owners.

4. If a majority of the board of directors, or a majority of the disinterested directors, determines that a material irreconcilable conflict exists, then the relevant insurance companies, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps may include: (a) Establishing a new registered management investment company or managed separate account; or (b) withdrawing from the Fund or any of its portfolios the assets allocable to some or all of the Separate Accounts, and reinvesting such assets in a different investment medium (including another portfolio of the Fund), or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group *i.e.*, annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering the affected contract owners the option of making such a change.

5. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the Fund's election, to withdraw the investment in the Fund by that insurer's Separate Account; no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of the directors' determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participating in the Fund. These responsibilities will be carried out with a view only to the interests of contract owners.

6. For purposes of the condition set forth in paragraphs 4 and 5 above, a majority of the disinterested directors shall determine whether the proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund or DFA be required to establish a new funding medium for any variable contract. The condition (paragraphs 4 and 5) will not be construed to require a Participating Insurance Company to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the contract owners adversely affected in a material way by the material irreconcilable conflict.

7. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a majority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Fund's election, to withdraw the investment in the Fund by the insurer's Separate Account; no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of the determination (by the directors of the Fund) of a material irreconcilable conflict, and to bear the costs of such remedial action, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interest of contract owners.

8. For purposes of the condition set forth in paragraph 7 above, a majority of the disinterested directors shall determine whether any proposed action adequately remedies any material irreconcilable conflict. The Fund and the Fund's investment adviser will not be required to establish a new funding medium for any variable contract. Moreover, no Participating Insurance Company shall be required by that condition (paragraph 7) to establish a new funding medium for any variable contract if any offer to do so has been declined by vote of a majority of the contract owners adversely affected in a material way by the material irreconcilable conflict.

9. The determination by the directors of the Fund of the existence of a material irreconcilable conflict and the implications of that conflict shall be made known promptly, in writing, to all Participating Insurance Companies.

10. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners as long as the Commission continues to interpret the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund held in their respective Separate Accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Insurance Company will vote shares of the Fund held in its respective Separate Accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. Each Participating Insurance Company shall be responsible for assuring that its Separate Accounts participating in the Fund calculate voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

11. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders. More specifically, the Fund will either: (a) Provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings); or (b) comply with Sections 16(a) and 16(c) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic election of directors, and with whatever rules the Commission may promulgate with respect thereto.

12. The Fund shall disclose in its prospectus that: (a) It is intended as a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies; (b) material irreconcilable conflicts between the interests of contract owners of all Separate Accounts investing in the Fund may arise; and (c) the directors of the Fund will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. The Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of "mixed" and "shared" funding may be appropriate.

13. If and to the extent that Rules 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder with respect to "mixed" or "shared" funding on terms and conditions materially different from any exemptions granted in the order requested in this application, the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2, 6e–3(T), or Rule 6e–3, as such rules are applicable.

14. At least annually, the Participating Insurance Companies and/or DFA shall submit to the directors of the Fund such reports, materials, or data as the directors reasonably may request so that the directors may fully carry out the obligations imposed upon the board of directors by the conditions contained in this application; said reports, materials, and data shall be submitted more frequently if deemed appropriate by the directors. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the directors of the Fund upon reasonable request shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

15. All reports of potential or existing conflicts received by the directors of the Fund, and all actions by the directors with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the directors or other appropriate records. Such minutes and other records shall be made available to the Commission upon request.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2 and 6e–3(T) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Accordingly, Applicants submit that the requested exemptions meet the applicable statutory standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27446 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20668; 812–8888]

Fidelity Investment Life Insurance Company, et al.

October 31, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Fidelity Investments Life Insurance Company ("FILI"), Fidelity Investments Variable Annuity Account I (the "Variable Account"), and Fidelity Brokerage Services, Inc. ("FBSI") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting, on a prospective basis, the deduction of mortality and expense risk charges from (1) the assets of the Variable Account with respect to certain flexible premium deferred variable annuity contracts ("Contracts") and contracts offered in the future that are substantially similar in all material respects to the Contracts ("future contracts") and (2) the assets of similar separate accounts established and maintained by FILI ("FILI Accounts") with respect to future contracts. Applicants also request that the exemptive relief granted to FBSI extend to any other broker-dealer that is a member of the National Association of Securities Dealers and controlling, controlled by, or under common control with FILI ("FILI Broker-Dealers"), that may serve in the future as principal underwriter for the Contracts or future contracts offered through the Variable Account or the FILI Accounts.

FILING DATE: The application was filed on March 11, 1994 and amended on October 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 25, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Fidelity Investments Life Insurance Company, 82 Devonshire Street, Mail Zone F5E, Boston, Massachusetts 02109, Attention: David J. Pearlman, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel at (202) 942–0670 or C. Gladwyn Goins, Associate Director at (202) 942–0665, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FILI is a stock life insurance company organized under the laws of the State of Utah. FILI is a wholly-owned subsidiary of FMR Corp., the parent company for the group of financial services companies known as Fidelity Investments.

2. The Variable Account was established by FILI as a separate account under the laws of the state of Pennsylvania on July 22, 1987 for the purpose of funding certain variable annuity contracts issued by FILI. FILI may, in the future issue other contracts funded by the Variable Account or other FILI Accounts and deduct mortality and expense risk charges under those contracts in reliance upon the requested exemptive order, if granted. Applicants undertake that such future contracts

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will be substantially similar in all material respects to the Contracts.

3. FBSI is the principal underwriter for the Contracts. In 1988, FILI, the Variable Account and Fidelity Distributors Corp. ("FDC"), which at that time served as principal underwriter for the Contracts, obtained an exemptive order (the "1988 Order") permitting the deduction of mortality and expense risk charges under the Contracts.[1] On January 1, 1990, as part of an internal consolidation, the activities of FDC and FBSI were combined and FBSI became principal underwriter for the Contracts. All aspects of the Contracts have remained precisely the same as was represented in the application pursuant to which the 1988 Order was granted and Contract owners have continued to pay precisely the same fees as they paid (or would have paid) when FDC served as principal underwriter.

4. The Contracts are flexible premium deferred variable annuities. Annuity payments can be on a fixed basis, a variable basis, or a combination of both. If the Annuitant dies prior to the annuity date and prior to age 70, FILI will pay a death benefit equal to the greater of (1) the purchase payments made, less any withdrawals and charges thereon and (2) the Contract value as of the end of the valuation period in which proof of death is received at the service center.

5. On each Contract anniversary before the annuity date, FILI imposes an annual maintenance charge of $30. FILI currently waives this charge for any Contract under which total payments, less withdrawals, equals at least $25,000 and for contracts purchased after May 1, 1990 in exchange for a Fidelity Variable Annuity contract (another contract formerly issued by FILI). FILI reserves the right to increase this annual charge to not more than $50, if warranted by expenses, and to assess the charge against all contracts other than those issued in exchange for a Fidelity Variable Annuity. The charge assessed after the annuity date for a particular contract will never be greater than the charge in effect just before the annuity date. FILI also deducts a daily charge from the assets of the subaccounts of the Variable Account equivalent to an effective annual rate of .25%. Applicants state that the administrative charges contain no element of anticipated profit and their deduction meets the standard specified in Rule 26a–1 under the 1940 Act.

[1] *See Fidelity Investments Life Insurance Co., et al.*, Release Nos. IC–16615 (Oct. 28, 1988) (Notice) and IC–16656 (Nov. 28, 1988) (Order).

6. FILI deducts an asset charge, computed daily, for its assumption of mortality and expense risks. This charge is made by deducting daily from the assets of each subaccount attributable to the Contracts a percentage of those assets equal to an effective annual rate of .75%. Of this .75% charge, .65% is estimated to be for assuming mortality risks and .10% is estimated to be for assuming expense risks. The mortality risk FILI bears is that of making annuity payments for the life of an annuitant no matter how long that may be. FILI also bears a mortality risk by guaranteeing the death benefit if the annuitant dies prior to the annuity date. The expense risk is the risk that the costs of issuing and administering the Contracts will be greater than expected when setting the administrative charge. FILI will realize a gain from the charge for these risks to the extent that such charge is not needed to provide for benefits and expenses under the Contracts.

7. A surrender charge is assessed on purchase payments withdrawn from the Contract within the first five Contract years and may be assessed on annuitizations within the first three Contract years. The surrender charge is 5% during the first Contract year and declines one percent per year thereafter. No surrender charge is imposed on total withdrawals in each Contract year of up to 10% of purchase payments (less amounts previously withdrawn that were subject to a surrender charge). Applicants expect that the surrender charge will not be sufficient to cover the expenses incurred in selling the Contracts. To the extent that the surrender charge is not sufficient, FILI will pay these expenses from its general assets which may include proceeds from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request exemptive relief on a prospective basis from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of the mortality and expense risk charges under the Contracts and any future contracts offered through the Variable Account or through similar separate accounts established and maintained by FILI, whether currently existing or created in the future. Applicants also request that such exemptive relief extend to any other National Association of Securities member broker-dealer controlling, controlled by or under common control with FILI, whether existing or created in the future, that may serve in the future as principal underwriter of the Contracts or of future contracts offered through the Variable Account or other FILI Accounts.

2. Section 27(c)(2) of the 1940 Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificate unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges.

3. Applicants submit that their request for an order that applies to (1) contracts offered in the future by the Variable Account or other FILI Separate Accounts that are substantially similar in all material respects to the Contracts described in the application, and (2) other FILI Broker-Dealers which may serve in the future as principal underwriter in respect of the Contracts or of future contracts offered by the Variable Account or other FILI Separate Accounts, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for FILI to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing its use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair FILI's ability to effectively take advantage of business opportunities as they arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If FILI were required to repeatedly seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby.

4. Applicants submit that FILI is entitled to reasonable compensation for its assumption of mortality and expense risks and that the change in principal underwriter in no way affects the findings the SEC made in granting the 1988 Order. Applicants represent that the charge of .75% made under the Contracts for mortality and expense risks is consistent with the protection of investors because it is a proper insurance charge.

5. FILI further represents that the charge of .75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon FILI's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. FILI will maintain at its executive office, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants represent that prior to making available any future contracts, they will make a determination that the mortality and expense risks under any such contract will be within the range of industry practice for comparable contracts. Applicants will also maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such determination. Further, such mortality and expense risk charge would not exceed 1.25% of the daily assets of the Variable Account or other FILI Separate Account.

7. Applicants acknowledge that if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be viewed as being used to cover distribution expenses. Notwithstanding the foregoing, FILI has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by FILI at its executive office and which will be made available to the Commission upon request.

8. FILI represents that the Variable Account and other FILI Separate Accounts will invest only in a management investment company which has undertaken, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of such open-end management investment company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants submit that the exemptive relief requested in the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27447 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20674; 812–9240]

Government Securities Equity Trust, et al.; Notice of Application

November 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Government Securities Equity Trust (the "Trust"), Prudential Securities Incorporated (the "Sponsor"), Prudential Equity Fund, Inc., Prudential Mutual Fund Management, Inc. ("PMF"), Prudential Mutual Fund Distributors, Inc. ("PMFD"), and any open-end management investment companies (including any portfolios or series thereof), other than money market or no-load funds, presently advised by PMF or having as their distributor PMFD or the sponsor, or that may in the future be advised by PMF or have as their distributor PMFD or the Sponsor or any entity controlling, controlled by, or under common control with PMF or PMFD or the Sponsor (the "Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act to grant an exemption from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder; under sections 11(a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants request an order: (a) Permitting the respective Series to invest in shares of an open-end investment company and U.S. Treasury zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting certain offers of exchange involving the Trust; and (e) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on September 22, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Prudential Securities Incorporated, Prudential Equity Fund, Inc., Prudential Mutual Fund Management, Inc., and Prudential Mutual Fund Distributors, Inc., One Seaport Plaza, 199 Water Street, New York, New York, 10292.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Law Clerk, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Each Fund has entered into an investment advisory or management agreement with PMF, and distribution agreements with PMFD and the Sponsor under which PMFD acts as principal underwriter for Class A Shares of the Fund and the Sponsor acts as principal underwriter for Class B and Class C Shares of the Fund. Shares of the Funds are offered with front-end sales loads and, in certain instances, with contingent deferred sales charges ("CDSC") imposed in accordance with the terms of an exemptive order (the "CDSC Order").[1] Each of the existing Funds has adopted a rule 12b–1 plan.

2. The Trust will be registered under the Act as a unit investment trust and will offer units in series ("Trust Series"), each of which will contain shares of one Fund that is normally

[1] Investment Company Act Release Nos. 19400 (Apr. 12, 1993) (notice) and 19464 (May 10, 1993) (order).

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offered with a sales load, and U.S. Government zero coupon obligations. The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a reference trust agreement that will incorporate a trust indenture and agreement relating to the entire Trust (collectively, the "Trust Agreement") and that will name a qualified bank as trustee ("Trustee").

3. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors. These functions will include depositing Fund shares in the Trust; acquiring zero coupon obligations and depositing them in the Trust; arranging for the evaluation of the zero coupon obligations; offering units to the public; and maintaining a secondary market in units. The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares.

4. Trust units will be offered for sale to the public through the final prospectus by the Sponsor. Trust Series are intended to be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge. The Trust will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares.

5. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus.

6. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the Trust and/or had any value at the maturity of the Trust Series.

7. The Sponsor intends to maintain a secondary market for Trust units, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value. The Trust Agreement also provides that zero coupon obligations cannot be sold to meet Trust expenses.

8. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming such shares. Second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in Fund shares at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Fund and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

9. The sales load that normally would be applicable on sales of underlying Fund shares will be waived, whether an upfront or deferred sales charge. In accordance with the CDSC Order, applicants will waive any otherwise applicable CDSC where: (a) the Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust, and distributions from a Trust made during the existence of the Trust, have been reinvested by a unitholder in additional Fund shares; and (c) a Trust at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust to a registration in the unitholder's name in lieu of redeeming such shares. Any waiver will comply with the conditions in paragraphs (a) through (d) of rule 22d–1 of the Act. Moreover, the Sponsor will rebate to the Trustee any payments it receives in respect of units under any rule 12b–1 plans adopted by the Funds.

Applicants' Legal Analysis:

1. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. The Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and Fund shares. Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants believe that an exemption is appropriate. Applicants also intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

2. Section 19(b) of the Act and rule 19b–1 thereunder provide that, except under limited circumstances, no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants request an exemption from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust's regular distributions. Applicants believe that the requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust. The Trust and its Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of units for redemption). Moreover, because principal distributions are clearly indicated in accompanying reports to unitholders as a return of principal, applicants believe that the danger of confusion is not present in the operations of the Trust.

3. Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter for such company to make certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants request an order pursuant to section 11 (a) and (c) approving the termination option. At the termination of the Trust, unitholders still holding units at maturity will have the option of either transferring the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name, or receiving a cash distribution. Such unitholders also will have the option of either reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or receiving a cash distribution. The exchange will be made on the basis of the net asset value of the Fund shares.

4. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants' proposed arrangements may be a joint transaction under these provisions. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and the participation by each registered investment company is not on a basis less advantageous than that of other participants.

5. Applicants do not request relief under section 12(d)(1) of the Act. Section 12(d)(1) limits purchases by registered investment companies of securities issued by other investment companies. Section 12(d)(1)(E) provides, however, that section 12(d)(1) shall not apply to securities purchased by a registered unit investment trust if the securities are the only "investment securities" held by the trust. Applicants believe that the U.S. Treasury zero coupon obligations are not "investment securities" for purposes of section 12(d)(1)(E)[2] and that the Fund shares are the only "investment securities" which the Trust will hold. Accordingly, they do not believe relief from section 12(d)(1) is necessary.

[2] Equity Securities Trust, (pub. avail. Jan. 19, 1994).

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on Fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

4. Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

5. Shares of a Fund which are held by a Series of the Trust will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

6. Any shares of the Funds deposited in any Trust Series or any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

7. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27488 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20669; No. 812–9202]

The Travelers Life and Annuity Company, et al.

October 31, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Travelers Life and Annuity Company ("Travelers"), The Travelers Fund VA For Variable Annuities ("Fund VA") and Other Separate Accounts ("Other Accounts") (collectively, "Separate Accounts"), and Travelers Equities Sales, Inc. ("Sales") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Accounts of a mortality and expense risk charge in connection with the offer and sale of certain flexible premium deferred variable annuity contracts and certificates offered by Travelers.

FILING DATE: The application was filed on August 29, 1994. An amended and restated application was filed on October 18, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Julie E. Rockmore, Counsel and Assistant Secretary, The Travelers Life and Annuity Company, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Travelers is a stock life insurance company currently licensed to conduct a life insurance and annuity business in all states except Alabama, Hawaii, Kansas, Maine, New Hampshire, New Jersey, North Carolina, Tennessee, Texas, Wyoming and New York. Travelers currently is seeking to obtain

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licensure in the remaining states, except New York. Travelers is a wholly owned subsidiary of The Travelers Insurance Company, an indirect wholly owned subsidiary of The Travelers, Inc. ("Travelers, Inc.").

2. Fund VA is a separate account established by Travelers to fund certain individual and group flexible premium deferred variable annuity contracts and certificates ("Current Contracts"). Travelers also may issue through Fund VA, or Other Accounts established in the future, other individual or group flexible premium deferred variable annuity contracts and certificates that are substantially identical in all material respects to the Current Contracts ("Future Contracts," together with Current Contracts, the "Contracts").

3. Fund VA has filed with the Commission on Form N–8A a Notification of Registration as a unit investment trust under the 1940 Act and a registration statement on Form N–4 under the Securities Act of 1933 in order to register as securities the Current Contracts. Future Contracts issued through Fund VA or any Other Accounts will be registered as securities under the 1933 Act. Other Accounts established in the future by Travelers to fund the Future Contracts will be registered with the Commission as unit investment trusts.

4. Fund VA currently is subdivided into twenty-one subaccounts ("Subaccounts"), each investing exclusively in shares of corresponding registered open-end management investment companies ("Underlying Funds"). Other Subaccounts may be created in the future to invest in additional Underlying Funds which may now or in the future be made available. Each Subaccount of any Other Account established by Travelers in the future will invest exclusively in the shares of a specific corresponding open-end management investment company registered with the Commission. Shares of the Underlying Funds will be sold to Fund VA at net asset value. Each Underlying Fund is responsible for all of its own expenses, including applicable investment advisory fees.

5. Sales, an indirect wholly-owned subsidiary of Travelers, Inc. and an affiliate of Travelers, will be the principal underwriter of the Contracts. Sales is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940.

6. The Contracts are designed for use in connection with retirement plans that may qualify for favorable federal income tax treatment under Sections 408, 403(b), 401(a), 401(k) and 457 of the Internal Revenue Code of 1986, as amended, and for non-qualified group and/or individual contracts.

7. The Contracts provide for the allocation of purchase payments to the Subaccounts and/or to a fixed account funded by the general assets of Travelers. Certain minimum purchase payments are required under the Contracts, which also provide for annuity payments on a fixed or variable basis. Fixed payments are based on the tables shown in the Contracts. Variable annuity payments will increase or decrease during the payment period. The first payment is based on the tables shown in the Contracts. Subsequent payments will increase or decrease depending on the net investment performance of the underlying funds chosen for investment during the annuity payment period relative to the 3.5% assumed interest rate used to determine the tables shown in the Contracts.

Prior to annuitization, Contract owners may transfer all or part of the Contract Value between Subaccounts at no cost. Currently, there are no restrictions on the frequency of transfers, but the right is reserved to limit transfers to no more than one in any six-month period. Currently, no charge is made for transfers among the Portfolios. The death benefit paid under individual Contracts and certain group Contracts for a death of the Annuitant prior to age 75 will equal the greatest of: (a) Contract Value, less applicable premium tax or outstanding cash loans; (b) total purchase payments under the Contract, less prior surrenders or cash loans; or (c) Contract Value on the most recent fifth contract date anniversary on or immediately preceding the date of receipt of proof of death by Travelers, less applicable premium tax, outstanding cash loans or prior surrenders not previously deducted. In the event of the death of an Annuitant on or after age 75, the death benefit will be Contract Value, less applicable premium tax or outstanding cash loans.

8. Certain charges and deductions are assessed under the Contracts. An administrative charge of $15 will be deducted from Contract Value semi-annually for each individual Contract and for each participant account under a group Contract, and *pro rata* upon full or partial surrender or other termination, death of the annuitant, or commencement of the annuity payment period. This charge is to reimburse Travelers for its actual administrative costs expected to be incurred over the life of the Contracts. Administrative charges are guaranteed not to increase during the life of the Contracts.

9. Applicable premium taxes, currently ranging from 0.5% to 5%, will be deducted from Contract Value upon death, surrender, annuitization, or from Purchase Payments at the time they are made under the Contract, but no earlier than when Travelers incurs a tax liability under state law.

10. Contract owners may elect to participate in an asset allocation program ("CHART Program") provided under the Contracts by entering into a separate investment advisory agreement ("Agreement") with Copeland Financial Services, Inc. ("Copeland"). Copeland, an affiliate of Travelers, is an investment adviser registered under the Investment Advisers Act of 1940.

Under the CHART Program, purchase payments and Contract values may be allocated among certain Subaccounts. Travelers will be authorized under the Agreement to redeem, in a non-taxable transaction, a sufficient number of units from a Contract owner's Contract Value to pay a quarterly fee, which will be paid directly to Copeland. In addition to a $30 initial fee, Copeland charges for its advisory services a maximum of 1.50% of the assets subject to the CHART Program. This fee currently is reduced by 0.25%, the amount of the fee paid to the investment manager of the relevant Underlying Funds, and further reduced for assets over $25,000 and for certain plans. Applicants represent that the fee payment arrangement will be operated in a manner substantially identical to that described in a no-action letter, *Travelers Insurance Company, et al.* (IP–7–93, avail. Sept. 3, 1993).

11. No sales charge is deducted from premium payments under the Contracts. However, to pay Travelers for its costs of distributing the Contracts, a contingent deferred sales charge ("CDSC") equal to 5% of a purchase payment will be assessed in the first five years following such payment for certain full or partial surrenders. After the first contract or certificate year, Contract owners may surrender up to 10% of their contract value as of the first valuation date of any given contract year without incurring a CDSC ("Free Withdrawal"). Free Withdrawals do not apply to full surrenders, and, under IRA plans, are only available after the annuitant has attained age 59½. Additionally, the CDSC is not assessed on Contract earnings which equal (a) Contract Value, minus (b) the sum of all purchase payments not previously surrendered, and minus (c) the amount of the Free Withdrawal, if applicable.

For purposes of determining the CDSC, surrenders will be deemed to be taken first from any applicable Free Withdrawal amount, then from purchase payments on a first-in, first-out basis, and finally from Contract earnings in excess of any 10% Free Withdrawal. The CDSC cannot be increased during the life of the Contracts and may be waived under certain circumstances.

Travelers does not expect that revenues from the CDSC will be sufficient to cover sales and distribution expenses incurred in connection with the Contracts. In that event, the excess distribution costs would have to be paid out of Travelers' general assets, which may include profits, if any, from the mortality and expense risk charges assessed under the Contracts. In some cases, where Travelers may expect to incur lower sales and administrative expenses or perform fewer services, it may, in its discretion, reduce or eliminate certain administrative and CDSC charges.

12. A charge equal to an effective annual rate of 1.25% of net asset value of the Subaccounts will be imposed to compensate Travelers for bearing certain mortality and expense risks. Of this amount, .625% is for mortality and .625% is for expense risks. This charge cannot be increased during the life of the Contracts.

13. The mortality risk arises from Travelers' contractual obligation to make Annuity Payments for the life of the annuitant under annuity options involving life contingencies, regardless of the annuitant's longevity and any improvement in life expectancy generally. Thus, Travelers assumes the risk that the annuitants, as a class, may live longer than has been estimated by its actuaries, so that payments guaranteed for the life of the Contracts will continue for longer than had been anticipated.

14. Travelers assumes additional mortality and certain expense risks under the Contracts by its contractual obligation to pay the death benefit in a lump sum (or in the form of an annuity option) upon the death of the annuitant before annuity or income payments commence. Also, no CDSC will be assessed if the Contract Value is paid as a death benefit. Travelers also assumes an expense risk under the Contracts because the administrative charges may be insufficient to cover actual administrative expenses.

15. In the event that the administrative charge and the mortality and expense risk charge are more than sufficient to cover Travelers' costs and expenses, any excess will be a profit to Travelers. While Travelers does not expect to profit from the administrative charges, it does expect a profit from the mortality and expense risk charge. Any profit realized from this charge would be available for any proper corporate purpose, including the payment of distribution expenses for the Contracts not reimbursed by the CDSC.

Applicants Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of: (a) Fund VA in connection with the offering of Current Contracts; (b) Fund VA in connection with the offering of Future Contracts; and (c) any Other Accounts established in the future by Travelers in connection with the offering of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that the terms of the relief requested with respect to any Future Contracts funded by Fund VA or the Other Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts will be substantially identical in all material respects to the Current Contracts. Applicants state that without the requested relief, Travelers would have to request and obtain exemptive relief for Fund VA, or each new Other Account, to fund Future Contracts. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Further, if Travelers were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit and could be disadvantaged by increased overhead of Travelers. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Travelers to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants believe that both the delay and the expense of repeatedly seeking exemptive relief would impair Travelers' ability to effectively take advantage of business opportunities as they arise.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the 1.25% mortality and expense risk charge is reasonable in relation to the risks assumed by Travelers under the Contracts and is within the range of industry practice for comparable annuity contracts. This representation is based upon Traveler's analysis of publicly available information about similar industry products, taking into consideration such factors as guaranteed minimum death benefits, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options, and availability of the contract for use in qualified and non-qualified plans. Travelers represents that it will maintain at its principal office, available to the Commission, memoranda setting forth in detail the variable annuity products analyzed in the course of, and the methodology used in, and the results of, its comparative review.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and investors in the Contracts. The basis for that conclusion is set forth in a memorandum which will be maintained by Travelers at its principal office and will be available to the Commission.

7. Travelers also represents that the Separate Accounts will invest only in underlying mutual funds which have

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undertaken, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the such fund within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27448 Filed 11–4–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Portland District Advisory Council; Public Meeting

The U.S. Small Business Administration Portland District Advisory Council will hold a public meeting on Thursday, December 8, 1994 from 1. p.m. to 4:30 p.m. and Friday, December 9, 1994 from 8 a.m. to 12 noon at the Surf Sand Motel, Gower & Rock Court Street, Cannon Beach, Oregon to discuss such matter as may be presented by members, staff of the U.S. Administration, or others present.

For further information, write or call Ms. John L. Gilman, District Director, U.S. Small Business Administration, 222 SW., Columbia, Suite 500, Portland, OR 97201–6695, (503) 326–5221.

Dated: October 31, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–27466 Filed 11–4–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000145]

Pioneer Ventures Limited Partnership II; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Pioneer Ventures Limited Partnership II, 60 State Street, Boston, MA 02109, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Pioneer Ventures Management, L.P. 60 State Street, Boston, MA 02109	1.0
Limited Partners:	
City of Cambridge Contributory Retirement System, 795 Massachusetts Avenue, Cambridge, MA 02139	14.1
MBTA Retirement Fund, 99 Summer St., Suite 1700, Boston, MA 02110	17.7
Middlesex County Contributory Retirement System, New Superior Courthouse, East Cambridge, MA 02141	14.1
The Pioneer Group, Inc., 60 State Street, Boston, MA 02109	21.2
Worcester County Contributory Retirement System, Courthouse Room 3, 2 Main Street, Worcester, MA 01608	14.1
Limited Partners owning less than 10% each	17.8
	100.0

Pioneer Ventures Limited Partnership II will be managed by Pioneer Capital Corporation. The principal shareholder and officers of Pioneer Capital Corporation who will be responsible for management of the Applicant are:

Name	Relationship to manager	Percentage ownership of manager
Frank M. Polestra.	President	0.0
Christopher W. Dick.	Vice President	0.0
Chrisopher W. Lynch.	Vice President	0.0
Leigh M. Michl	Assistant V.P.	0.0
The Pioneer Group, Inc.	Shareholder	100.0

The applicant will begin operations with committed capital of approximately $14.1 million and will be a source of debt and equity financings for qualified small business concerns. The applicant will invest primarily in technology, industrial products, and consumer businesses located in the New England States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Boston, MA.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27534 Filed 11–4–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2111]

Waiver of Missile Technology Proliferation Sanctions on Foreign Persons

AGENCY: Department of State.

ACTION: Determination of notice.

On November 1, 1994, the Under Secretary of State for Arms Control and International Security Affairs executed the following determination:

On August 24, 1993, I determined that the Chinese Ministry of Aerospace Industry, to include China Precision Machinery Import/Export Corporation (CPMIEC), had engaged in missile technology proliferation activities that required the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 279b(a)(2)(A)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)). Accordingly, the required sanctions were imposed.

Pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 22797b(e)) and section 11B(b)(5) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(5)), I hereby determine that it is essential to the national security of the United States to waive these sanctions with respect to the foreign person named above.

This waiver shall take effect immediately, 20 working days having elapsed since my intention to waive these sanctions was notified to the Congress. The waiver shall remain in effect unless revoked.

Signed:

Lynn E. Davis,

Under Secretary for Arms Control and International Security Affairs.

SUPPLEMENTARY INFORMATION: This waiver also applies to the divisions, subunits, and any successor entities of the Chinese Ministry of Aerospace Industry, to include China Precision Machinery Import/Export Corporation (CPMIEC). Such additional entities include, but are not limited to: China National Space Administration, China Aerospace Corporation, China Precision Machinery Import-Export Corporation, China Great Wall Industrial Corporation or Group, Chinese Academy of Space Technology, Beijing Wan Yuan Industry Corporation (a/k/a Wanyuan Company or China Academy of Launch Vehicle Technology), China Haiying Company, Shanghai Astronautics Industry Bureau, and China Chang Feng Group (a/k/a China Changfeng Company).

As a result of this waiver, the U.S. government will no longer be required to deny licenses for exports to the entities described above or to activities of the Chinese government relating to missile development or production or affecting the development or production of electronics, space systems, or equipment, and military aircraft of Missile Technology Control Regime (MTCR) Annex equipment or technology. In addition, U.S. government contracts related to MTCR Annex items no longer are prohibited with these entities.

The waiver takes effect as of November 1, 1994, and shall remain in effect unless revoked.

The waiver does not apply to the Pakistani Ministry of Defense (and its divisions, subunits or successors), which also was sanctioned on August 24, 1993. Those sanctions remain in place. (See Public Notice 11857, **Federal Register** Vol. 58, No. 165, 9/27/93.)

Dated: November 1, 1994.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 94–27470 Filed 11–4–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 49844]

RIN 2105–AC19

Statement of United States International Air Transportation Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Request for comments on U.S. international air transportation policy statement.

SUMMARY: This notice sets forth a statement of U.S. international air transportation policy. This notice is being published to provide interested persons an opportunity to comment on the statement.

DATES: Comments must be received no later than December 16, 1994.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket 49844, Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, DC 20590. To facilitate consideration of the comments, we ask commenters to file twelve copies of each comment. We encourage commenters who wish to do so also to submit comments to the Department through the Internet; our Internet address is dot__dockets@postmaster.dot.gov.[1] Note, however, that at this time the Department considers only the paper copies filed with the Docket Clerk to be the official comments. Comments will be available for inspection at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. Commenters who wish the Department to acknowledge the receipt of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: William Boyd, Office of International Aviation, Office of the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation, 400 7th Street SW, Room 6412, Washington, DC 20590, (202) 366–4870; or Patricia N. Snyder, Office of International Law, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW, Room 10105, Washington, DC 20590. (202) 366–9179.

SUPPLEMENTARY INFORMATION: This statement of U.S. international air transportation policy, which was developed by the Department of Transportation in consultation with the Department of State and other executive agencies, sets forth objectives and guidelines for use by U.S. Government officials in carrying out U.S. international air transportation policy. Before this statement is finalized, we will carefully consider any comments that are received.

United States International Air Transportation Policy

Introduction

The availability of efficient international air transportation will greatly enhance the future expansion of international commerce and the development of the emerging global marketplace. Worldwide, travelers and shippers are demanding more and better quality service to more places. U.S. and foreign airlines are responding to this demand by expanding traditional forms of service and by developing new and innovative services. Increased demand and the variety of carrier responses to it challenge the existing intergovernmental system's ability to ensure the development of a competitive air transportation system that meets the needs of the rapidly evolving, expanding and increasingly integrated international aviation marketplace. In many cases, existing bilateral agreements impede the growth of the marketplace.

We must address the challenges presented by these rapid changes to meet our future air transportation needs, and to provide our aviation industry with the environment and the opportunities that will enable it to grow and compete effectively in the world market. This policy statement outlines our approach to addressing those challenges.

Our Goal: Safe, Affordable, Convenient and Efficient Air Service for Consumers

As established in our last aviation policy statement in 1978, our overall goal continues to be to foster safe, affordable, convenient and efficient air service for consumers. We continue to believe that the best way to achieve this goal is to rely on the marketplace and unrestricted, fair competition to determine the variety, quality, and price of air service. We believe that this approach will provide consumers and shippers with more and better service options at costs that reflect economically efficient operations and work best to:

- Expand the international aviation market;
- Increase airlines' opportunities to expand their operations;

[1] Our X.400 e-mail address is S=dotdockets/OU1=qmail/O=bq/p=gov+dot/a=attmail/c=us.

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- Increase productivity and high-quality job opportunities within the aviation industry; and
- Promote aerospace exports and general economic growth.

Changing Environment

Growing economic interdependence among nations—the "globalization" of the world economy—has expanded demand for convenient, reliable and affordable international air service. Demand for international service is growing faster than demand for U.S. domestic service, and most major U.S. airlines are now providing and planning to expand international operations. Between 1983 and 1993, the international component of U.S. airlines' route networks, measured in revenue passenger miles (RPMs), grew from around 16% to over 27%. U.S. airline revenues from international air service nearly tripled from $6.3 billion to $17.6 billion. Moreover, forecasts indicate that U.S. carrier international traffic, measured by RPMs, will increase to almost one-third of their total system traffic by the year 2000.

Just as important, the pattern of demand for international service has changed considerably. First, the regional distribution of U.S. carriers' international revenues has changed dramatically, as the primary focus of carriers' expansion moved beyond Europe to meet new demand in the emerging markets of Asia, the Pacific Rim and Latin America. In 1983, the Atlantic accounted for 48% of our carriers' international revenues, while the Pacific accounted for 32%. By 1993, the Pacific had grown to 46% while the Atlantic was only 37%. The fastest growing sectors of the international aviation market are new and relatively undeveloped markets. During this same period, revenues in the Pacific grew 286%, in Latin America 151% and in Europe 116%. Second, from 1983 to 1993, the number of international aviation city-pair markets in which U.S. airlines participate has grown by more than a third, reflecting the major expansion of air service and carrier networks throughout the world and the increased dispersion of demand. Many of these city-pair markets are relatively small, generating only a few passengers per day.

Towards a Globalized Aviation Industry

The rapid growth of demand for international air service and the wider dispersion of traffic in city-pair markets are primary factors influencing the development of the air service industry. Carriers are increasingly finding that they cannot remain profitable unless they can respond to this changed demand. To compete effectively, carriers today must have unrestricted access to as many markets and passengers as possible.

To meet demand and to improve their efficiency, many carriers are developing international hub-and-spoke systems that permit them to combine traffic flows from many routes (the "spokes") at a central point (the "hub") and transport them to another point either directly or through a hub in another region. Just as U.S. carriers developed hub-and-spoke systems to tap the broad traffic pool in the domestic market and to provide the most cost-efficient service for hundreds of communities that could not support direct service, international air carriers are developing world-wide hub-and-spoke systems to tap the substantial pool of international city-pairs. Internationally, an even larger portion of traffic moving over hub-and-spoke systems will require the use of at least two hubs (*e.g.*, a hub in both the U.S. and Europe for a passenger moving from an interior U.S. point to a point beyond the European hub). This increases the complexity and interdependence of the components of the system (both the spokes and hubs) and the importance of multinational traffic rights to the success of the system.

As a result, carriers wishing to establish global networks require a higher quality and quantity of supporting route authority than they have sought in the past. Airlines will become increasingly concerned with every market that enables them to flow passengers over any part of their system network. These airlines will be looking for broad, flexible authority to operate beyond and behind hub points, in addition to the hub-to-hub market between two countries. At present, governments operating in a bilateral context naturally focus on opportunities for their respective carriers to serve the local market between their two countries. In a bilateral context, services destined for or coming from third countries receive less consideration. In the future, governments will have to adjust their focus to bargain for the bundles of rights that will permit airlines to develop global networks.

Carriers can either serve markets themselves (direct service) or provide service through commercial arrangements with other carriers (indirect service), whether on a traditional interline connecting basis or under a closer commercial agreement between the carriers, such as code sharing. Carriers will develop service products—single-plane, on-line connecting, interline connecting, joint service—that respond to the preferences of the traveling public as measured by passenger willingness to pay for differences in the quality of service and that take into account their cost structure and market strategy. To the greatest extent possible, airlines should be free to set prices and offer various service products in response to passenger preferences.

Significant challenges face carriers wishing to develop international networks using their own direct services. They need:

- Substantial access not only to key hub cities overseas, but also through and beyond them to numerous other cities, mostly in third countries. This type of access is not readily obtainable in today's bilateral system of negotiating air rights, since governments can only exchange access rights to their own countries and cannot, between themselves, deliver access to third countries, thus requiring piecemeal negotiating efforts to build the necessary package of rights;
- Access to a large number of gates and takeoff/landing slots, frequently at some of the world's most congested airports. It may become increasingly difficult for carriers to gain effective, direct access to certain airport facilities, including some in the United States;
- Considerable financial resources to establish and sustain commercially successful overseas hub systems; and
- The ability to obtain infrastructure and establish market presence in a new region quickly. Existing foreign investment laws can effectively preclude airlines from entering new markets in one of the most efficient means available: merger or acquisition.

Some carriers are taking on these challenges directly and are striving to develop their own global systems of direct service. Other carriers have chosen to side-step the obstacles, turning instead to a new network-building technique: cross-border marketing alliances that link traffic flows between established hub-and-spoke systems in key cities of the Western Hemisphere, Europe and Asia. Some of these alliances involve cross ownership, while others do not. Under this strategy, the linking of hubs requires indirect market access through code-sharing or other cooperative marketing arrangements. Although code sharing has become a widely-used marketing device for airlines and is currently the most prevalent form of commercial arrangement, further evolution of the industry and its regulatory environment may lead to new marketing practices that could supplement or supplant code sharing.

Code sharing and other cooperative marketing arrangements can provide a cost-efficient way for carriers to enter new markets, expand their systems and obtain additional flow traffic to support their other operations by using existing facilities and scheduled operations. Because these cooperative arrangements can give the airline partners new or additional access to more markets, the partners will gain traffic, some stimulated by the new service, and some diverted from incumbents. In this way, cooperative arrangements can enhance the competitive positions of both partners in such a relationship.

Increased international code-sharing and other cooperative arrangements can benefit consumers by increasing international service options and enhancing competition between carriers, particularly for traffic to or from cities behind major gateways. By stimulating traffic, the increased competition and service options should expand the overall international market and increase overall opportunities for the aviation industry. U.S. airlines should be major beneficiaries of this expansion and the concomitant increased service opportunities, given their competitive advantages.

Moreover, code sharing should also enhance domestic competition. Many international passengers traveling to or from U.S. interior cities use domestic services for some portion of their international journey. Code sharing should increase competition among domestic carriers to carry those passengers on the domestic segment of their international journey.

Although we expect the expansion of cooperative arrangements to be largely beneficial, there may be some negative effects. The greater traffic access of participants may give them considerable competitive muscle, and we may need to watch for harmful effects on competition.

Global systems and the growing use of code sharing may put significant competitive pressure on carriers whose strategy does not include participation in such systems or in code-sharing alliances, or whose options to participate may be limited due to the lack of potential partners. Such carriers will have to develop other commercial responses to compete effectively. We expect these pressures and responses to lead to a restructuring of service and airlines, similar to the U.S. domestic experience in the 1980s. Overall, cities and consumers will probably enjoy improved service and access to the international transportation system, although some cities may have fewer or less convenient service options in some markets than they have today. Similarly, although some airlines will grow and prosper, others will not. Overall, this evolution should expand the level and quality of international air service for consumers.

Code-sharing arrangements are designed to address the preference of passengers and shippers for on-line service from beginning to end through coordinated scheduling, baggage- and cargo-handling, and other elements of single-carrier service. However, innovative service products, such as code sharing, can only respond to consumer preferences accurately, and thereby enable the marketplace to function efficiently, if consumers make choices based on full information.

Therefore, we must ensure that airlines give consumers clear information about the characteristics of their service product, and that consumers can distinguish between code sharing and other forms of service.

In addition to the two types of global networks (sole-carrier systems and joint carrier systems), there will continue to be a role for air services outside of global networks. The U.S. experience with deregulation indicates that—absent legal barriers to entry—specialized competitors will enter the market and discipline the pricing and service behavior of the larger network operators. The introduction of technologically advanced aircraft such as the B–767, the MD–11 and the B–777 make direct service on longer or thinner routes economically viable. Moreover, airlines can viably serve heavily traveled routes with point-to-point service.

In short, as indicated by our domestic experience, a variety of service forms—global networks with carriers participating either as the sole provider or as participant in a joint network, and regional niche carriers—can exist in the international aviation market and the competition among these services will enhance consumer benefits through efficient operations and low fares. Thus, our international aviation strategy should provide opportunities for all of these forms of service so that we realize the benefits from maximum competition among them.

Our airlines are well positioned to be primary participants in all aspects of the future global marketplace. In recent years, our largest domestic carriers have become our primary international carriers, replacing specialized international operators. After operating in a deregulated domestic market for more than 15 years, our carriers have developed operating efficiencies that give them a cost advantage over their major foreign competitors. Moreover, the financial positions of our carriers are improving due to their cost-cutting measures and improving economic conditions. Coupled with their cost efficiencies, their improving financial status will further enhance their competitive capabilities. Over time, however, trends toward privatization and increased productivity of major foreign competitors may affect the current cost advantage U.S. airlines enjoy. We must try to provide our carriers with the flexible rights and economic environment that will enable them to respond to the dynamics of the marketplace.

Intergovernment Aviation Relations

International air services between two nations have traditionally been conducted pursuant to bilateral agreements. The U.S. National Commission To Ensure a Strong Competitive Airline Industry and the European Union's Comité des Sages for Air Transport have both recognized that the bilateral system is limited in its ability to encompass the broad, multinational market access required by the new global operating systems. Consequently, progress in developing global networks has been and will be extremely fragmented and may preclude or limit the development of efficient operations. We must consider alternative forums for international aviation negotiations and agreements in which we can obtain the necessary broad access rights. We should examine the feasibility of achieving multilateral air service agreements among trading partners. Although such negotiations may be more complex and difficult because of the number of parties involved, they should be undertaken when they present a reasonable prospect for further liberalization.

Moreover, some governments are taking steps to enhance their airlines' position both by restricting the development of new, competitive services and by trying to overcome, through government fiat, their carriers' cost disadvantages that make it difficult for them to compete against U.S. airlines in a free market. These efforts underlie many of the disputes we face in international negotiations today.

Such countries are responding to the highly competitive integrated and global air transportation market, in which their airlines may not be fully prepared to compete. Most foreign airlines are only beginning to adapt to the more competitive operating environment through such mechanisms as streamlining costs and realigning their

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operations to achieve greater productivity and operating economies. For state-owned airlines, privatization is an important initial step as it will lead those airlines to develop cost-efficient operations and, in the longer term, to expand their markets. These governments also may be reacting to the U.S. airlines' recent operating successes in the international aviation market, which are largely attributable to the U.S. airlines' productivity and competitive gains.

Some national governments continue to give their national airlines financial aid. Some also distort the marketplace by permitting their national airlines to maintain ground-handling and other monopolies, by denying airlines access to necessary airport facilities, or by allowing user fees that equalize cost differentials between carriers. These actions distort competition and deprive the aviation system and consumers of the benefits that greater cost efficiency and lower prices would encourage. In the long run, these efforts will work against the overall best interest of the world economy. Moreover, they will be unsuccessful in providing long-term protection against the developing global aviation systems because no individual government can control all facets of its airlines' marketplace.

U.S. Objectives

We have outlined above our expectations about the future of the world air transportation industry and the role of U.S. airlines. We expect that international operations will depend more on traffic flows from multiple countries. In light of our goals, recent developments in the market and industry, and the positions and actions of our trading partners, we have designed our international aviation strategy to meet the following objectives:

- Increase the variety of price and service options available to consumers.
- Enhance the access of U.S. cities to the international air transportation system.
- Provide carriers with unrestricted opportunities to develop types of service and systems based on their assessment of marketplace demand:
  - —These opportunities should include unrestricted rights for airlines to operate between international gateways by way of any point and beyond to any point, at the discretion of airline management. Carriers should be able to pursue both direct service using their own equipment and indirect service through commercial relationships with other carriers;
  - —Service opportunities should not be restricted in any manner, such as restrictions on frequencies, capacity or equipment, so that carriers may provide levels of service commensurate to market demand;
  - —Carriers' ability to set prices should also be unrestricted to create maximum incentives for cost efficiencies and to provide consumers with the benefits of price competition and lower fares;
  - —These opportunities should apply not only to scheduled services, but also to cargo and charter opportunities, because of their growing importance to the world's economy.
- Ensure that competition is fair and the playing field is level by eliminating marketplace distortions, such as government subsidies, restrictions on carriers' ability to conduct their own operations and ground-handling, and unequal access to infrastructure, facilities, or marketing channels.
- Encourage the development of the most cost-effective and productive air transportation industry that will be best equipped to compete in the global aviation marketplace at all levels and with all types of service:
  - —Infrastructure needs should be addressed and unnecessary regulatory barriers eliminated.
  - —Privately held airlines have better incentives to reduce costs and respond to public demand. Therefore, as we have in the past, we will be supportive of governments wishing to privatize their airlines so that their privatization efforts will be successful; and
  - —Reduce barriers to the creation of global aviation systems such as limitations on cross-border investments wherever possible.

Plan of Action

We recognize that considerable time and effort will be required to achieve an open aviation regime worldwide. We can get there by making a concerted effort to eliminate the obstacles to that regime and by taking a more strategic and long-term approach to our overall international aviation policies. At a minimum, we must increase our focus on emerging markets and their contribution to global networks; build a coalition of like-minded trading partners committed to the principles of free trade in aviation services; work closely with our trading partners to address their concerns; develop new incentives for encouraging market reform, such as increased opportunities for cross-border investment in airlines; and devise alternatives to the bilateral aviation system for achieving our objectives. We are launching our new initiatives to create freer trade in aviation services by taking the following steps:

- Extend invitations to enter into open aviation agreements to a group of countries that share our liberalization vision and offer important flow traffic potential for our carriers even though they may have limited Third and Fourth Freedom traffic potential. This would assist the development of global systems and increase the momentum for further worldwide liberalization.
- Give priority to building aviation relationships between the United States and potential growth areas in Asia, South America and Central Europe. This recognizes the importance of these trading partners and the need to provide air transportation to support those developing trade markets. It will also make available new markets to build global networks.
- Renew efforts to achieve liberal agreements with trading partners with which our aviation relationships lag behind those of our general trade advancements, such as Canada and the United Kingdom.
- Emphasize the importance of economic analysis in developing policies and strategies for achieving our overall aviation goals. This will enable us to remain focused on the overall strategic objectives, understand developments in the industry and market, and plan for the future.
- Seek changes in U.S. airline foreign investment law, if necessary, to enable us to obtain our trading partners' agreements to liberal arrangements.
- Increase our efforts to reach out to Congress and constituent groups, such as consumers, multinational corporations (aircraft manufacturers, telecommunications, travel and hotel industries), cities, airlines, labor and travel agents to learn their anticipated needs over a 3–5 year period. This will provide us with valuable information for developing our positions, as well as enlisting their support in pushing for greater liberalization.
- Establish stronger connections with U.S. government agencies whose functions are to promote U.S. business and trade interests (e.g., Department of Commerce and the Export/Import Bank) to ensure that we share a single vision of the future global marketplace.

Given the diverse positions of our trading partners and their varying degrees of willingness to liberalize aviation relations, we must also have a strategy for dealing with countries that are not prepared or willing to join us in moving quickly to an unrestricted air service regime. Our approach is a practical one: it proposes to advance the liberalization of air service regimes as far as our partners are willing to go, and to withhold benefits from those countries that are not willing to move forward. Specifically, we will pursue the following strategy:

1. We will offer liberal agreements to a country or group of countries if it can be justified economically or strategically. We will view economic value more broadly than we have in the past, in terms of both direct and indirect access and in terms of potential future development. Moreover, there may be strategic value in adopting liberal agreements with smaller countries where doing so puts competitive pressure on neighboring countries to follow suit.

2. We recognize that some countries believe that they can resist the trend of economic forces and continue to control access to their markets tightly. We believe that they cannot, and that attempts to do so will ultimately fail. Nevertheless, we will work with these countries to develop alternatives that address their immediate concerns where this will advance our international aviation policy objectives. We will examine alternative approaches that may include departing from established methods of negotiation (perhaps negotiations with two or more trading partners); try to develop service opportunities for the foreign airline to make service to the U.S. more economically advantageous for it; and continue our efforts to help those governments and their constituencies appreciate the benefits that unrestricted air services can bring to their economies and industries.

While we work with such countries, we can consider, in the interim, transitional or sectoral agreements.

Transitional agreements—Under this approach, we would agree to a specified phased removal of restrictions and liberalization of the air service market. This approach contemplates that both sides would agree, from the beginning, to a completely liberalized air service regime at the end of a certain period of time.

Sectoral agreements—Traditionally, aviation agreements have covered all elements of air transportation between two countries. However, as a first step, we can consider agreements that eliminate restrictions only on services in specific aviation sectors, such as air cargo or charter services.

3. For countries that are not willing to advance liberalization of the market, we will maintain maximum leverage to achieve our procompetitive objectives. We can limit their airlines' access to the U.S. market and restrict commercial relations with U.S. airlines. When airlines request authority to serve restricted bilateral markets that is not provided for under an international agreement, we will consider their requests on a case-by-case basis in light of all our policy objectives, including, *inter alia*:

- Whether approval will increase the variety of pricing and service options available to consumers;
- Whether approval will improve the access of cities, shippers and travelers to the international air transportation system;
- The effect of the proposed transaction on the U.S. airline industry and its employees. In this regard, we will ascribe greater value to code-sharing arrangements where U.S. airlines provide the long-haul operations. We will also recognize the greater economic value of such arrangements where the services connect one hub to another; and
- Whether the transaction will advance our goals of eliminating operating and market restrictions and achieving liberalization.

If aviation partners fail to observe existing U.S. bilateral rights, or discriminate against U.S. airlines, we will act vigorously, through all appropriate means, to defend our rights and protect our airlines.

Conclusion

We are living through a period in which international aviation rules must change. Privatization, competition, and globalization are trends fueled by economic and political forces that will ultimately prevail. Governments and airlines that embrace these trends will far outpace those that do not. The U.S. government will be among those that embrace the future.

(Authority Citation: 49 U.S.C. 40101, 40113, 41102, 41302, and 41310.)

Dated: October 31, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs, Department of Transportation.

[FR Doc. 94–27450 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the November 8, 1994, meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues (59 FR 53509) has been canceled.

FOR FURTHER INFORMATION CONTACT: Ms. Carolina E. Forrester, Office of Rulemaking (ARM–206). Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, telephone (202) 267–9690.

Issued in Washington, DC, on November 1, 1994.

Chris A. Christie,

Director, Office of Rulemaking.

[FR Doc. 94–27524 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Bethel, AK; Notice of Change in Facility Operation

Notice is hereby given that on or about November 5, 1994, the Flight Service Station at Bethel, Alaska, will be closed. Services to the general aviation public formerly provided by this facility will be provided by the Automated Flight Service Station at Kenai, Alaska. This information will be reflected in the FAA Organization Statement the next time it is reissued. Section 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska, on October 18, 1994.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 94–27525 Filed 11–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 1, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

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Special Request: In order to meet print and distribution dates the Department of the Treasury, on behalf of the Internal Revenue Service, is requesting Office of Management and Budget (OMB) review and approval of the form described below by December 2, 1994. All comments must be received by close of business November 30, 1994.

Internal Revenue Service (IRS)

OMB Number: 1545–1158
Form Number: IRS Form 8828
Type of Review: Revision
Title: Recapture of Federal Mortgage Subsidy
Description: Form 8828 is needed to compute the section 143(m) tax on recapture of the Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is provided after 1990 and the home subject to the financing is sold during the first 9 years after financing was provided. IRS uses the information to determine that the proper amount of Federal subsidy is recaptured.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—23 minutes
Preparing the form—1 hour, 30 minutes
Copying, assembling and sending the form to the IRS—20 minutes
Frequency of Response: Other (for year of sale of home)
Estimated Total Reporting/ Recordkeeping Burden: 1,882 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–27536 Filed 11–4–94; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 26, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms [BATF]

OMB Number: 1512–0118
Form Number: ATF F 2148 (5200.17)
Type of Review: Extension
Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers or Tubes
Description: The bond is necessary to secure payment for tobacco articles on which a drawback (refund on tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to a description of what the bond covers.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 50
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50 hours

OMB Number: 1512–0233
Form Number: ATF REC 5130/1
Type of Review: Extension
Title: Usual and Customary Business Records Maintained by Brewers
Description: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 535
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour

OMB Number: 1512–0390
Form Number: ATF F 5020.29
Type of Review: Extension
Title: Request for Disposition of Offense
Description: The information provided on this form determines whether an applicant is eligible to receive a Federal license or permit. If an applicant applies for a license or permit and has an arrest record charged with a violation of Federal or State law and there is no record present of the disposition of the case(s), the form is sent to the custodian or records to ascertain the disposition of the case.
Respondents: State or local governments
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,500 hours

OMB Number: 1512–0476
Form Number: ATF REC 5130/3 and ATF REC 5130/4
Type of Review: Extension
Title: Marks on Equipment and Structures (5130/3), Marks and Labels on Containers of Beer (5130/4)
Description: Marks, signs, and calibrations are necessary on equipment and structures for identifying major equipment, for accurate determination of tank contents, and segregation of taxpaid and untaxpaid beer. Marks and labels on containers of beer are necessary to inform consumers of containers contents, and to identify the brewer and place of production.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 535
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 1 hour
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 94–27537 Filed 11–4–94; 8:45 am]
BILLING CODE 4810–31–P

Customs Service

[T.D. 94–88]

License Cancellation

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker license has been cancelled due to the death of the broker. This license was issued in the Los Angeles District.

Delores C. Hand—license no. 6320

Dated: November 1, 1994.

Philip Metzger,
Director, Office of Trade Operations.
[FR Doc. 94–27426 Filed 11–4–94; 8:45 am]
BILLING CODE 4820–02–P

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, November 18, 1994 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of October Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- The Retention of Minority Students in Colorado Public Institutions of Higher Education: Fort Lewis and Adams State Colleges (Colorado)
- Race Relations in Western Nebraska (Nebraska)
- Hate Crime in Ohio (Ohio)

VI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105 (TDD 202-376-8116 at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Dated: November 3, 1994.

Emma Monroig,

Solicitor.

[FR Doc. 94-27631 Filed 11-3-94 1:03 pm]

BILLING CODE 6335-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, November 10, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314-3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
3. Appeal of Denial of Field of Membership Expansion Request by Steel Works Community Federal Credit Union, Weirton, West Virginia.
4. Final Rule: Amendments to Part 707, NCUA's Rules and Regulations, Truth in Savings, and Addition of Appendix C to Part 707, Official Staff Interpretations.
5. Proposed Interpretative Ruling and Policy Statement on the Establishment of a Supervisory Review Committee.
6. Central Liquidity Facility Bylaws.
7. Central Liquidity Facility Investment Policy.
8. Overhead Transfer Rate Fiscal Year 1995, 1996 and 1997.
9. Fiscal Year 1995 Operating Fee Scale.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94-27696 Filed 11-3-94; 3:49 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 59, No. 214
Monday, November 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940816-4216]
RIN 0693-AA70

Approval of Federal Information Processing Standards Publication 189, Portable Operating System Interface (Posix); Part 2: Shell and Utilities

Correction

In notice document 94-25049 beginning on page 51415 in the issue of Tuesday, October 11, 1994, make the following corrections:

1. On page 51416, in the 2d column, in the first full paragraph, in the 17th and 18th lines, the words "the associated" should read "compliant with the".

2. On the same page, in the third column, in the third and fourth lines, "c-1" should read "c|1".

3. On page 51417, in the first column, under the heading "Recommendations", in paragraph 2, in the second line, "interference" should read "interface".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

Correction

In rule document 94-21510 beginning on page 45588 in the issue of Thursday, September 1, 1994 make the following corrections:

§ 20.104 [Corrected]

1. On page 45592, in § 20.104, in the Atlantic Flyway table, in the ninth line, in the fifth column, "Sept. 25" should read "Sept. 15".

2. On page 45593, in the same section, in the Mississippi Flyway table, in the sixth line, in the fourth column, "Sept. 27" should read "Sept. 17".

3. On the same page, in the same section, in the same table, in the 12th line, in the 3rd column, "Oct. 25" should read "Oct. 15".

4. On the same page, in the same section, in the same table, in thelast line, in the fourth column, "Sept. 27"should read "Sept 17".

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Part II

Department of Education

Office of Special Education and Rehabilitative Services; Training Personnel for the Education of Individuals With Disabilities, et al.; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notices

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary announces a final priority to provide a competitive preference to applications funded under the Individuals with Disabilities Education Act (IDEA) that serve communities that have been designated as Empowerment Zones or Enterprise Communities under section 1391 of the Internal Revenue Code, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993. This priority is intended to focus resources on the needs of infants, toddlers, children, and youth with disabilities and their families who live in these communities and who are often underserved. For 1995, the Secretary anticipates using this priority with competitions for Parent Training and Information Centers under the Training Personnel for the Education of Children and Youth with Disabilities program, and Outreach Projects under the Early Education for Children with Disabilities program.

EFFECTIVE DATE: This priority takes effect on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4615, Washington D.C. 20202–2732. Telephone: (202) 205–8166. Individuals who use a telecommunications device for deaf (TDD) may call the TDD number at (202) 205–8170.

SUPPLEMENTARY INFORMATION: On July 26, 1994, the Secretary published a notice of proposed priority for projects funded under the Individuals with Disabilities Education Act in the **Federal Register** (59 FR 38082).

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to nine areas as Empowerment Zones and up to 95 areas as Enterprise Communities in accordance with Internal Revenue Code section 1391, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). To be eligible for designation, an area must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program, communities have been invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Community Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. The Department of Education also intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well-suited for inclusion in a comprehensive approach to economic and community development. In addition to the programs under IDEA, the Department intends to give preferences to Empowerment Zones and Enterprise Communities in the Rehabilitation Act Projects with Industry program, the Rehabilitation Act Special Demonstration Projects program, the Urban Community Service program, and a variety of discretionary programs under the Elementary and Secondary Education Act.

The discretionary programs funded under IDEA are well suited to play a role in Empowerment Zones and Enterprise Communities because of the close relationship between poverty and disabilities. While the risk factors associated with disabilities are highest in low income areas, these areas often serve the lowest numbers of children with disabilities. Under the authority of IDEA, the Department supports a wide range of programs related to providing special education, related, and early intervention services to infants, toddlers, children, and youth with disabilities and their families. Coordinated and comprehensive approaches to services, such as those under the Empowerment Zone and Enterprise Community program, can be effective tools in addressing the needs of these children.

For FY 1995, the Secretary expects to use this priority in conjunction with priorities under the following programs:

Parent Training and Information Centers (funded under IDEA Part D, Training Personnel for Education of Children and Youth with Disabilities program); and Outreach Projects (funded under IDEA Part C, Early Education for Children with Disabilities program).

Parent Training and Information Centers projects provide training and information to parents of infants, toddlers, children, and youth with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

Outreach projects build the capacity of educational and other agencies to adopt and implement proven models and components of models to improve services for children under the age of eight with disabilities and their families.

Note: This notice of final priority does not solicit applications. Notices inviting applications under these competitions are published in a separate notice in this issue of the **Federal Register**.

On July 26, 1994, the Secretary published a notice of proposed priority in the **Federal Register** (59 FR 38082). The comments, and the Secretary's responses to them, are discussed in appendix 1 to this notice. A listing of areas for which applications have been made for designation as Empowerment Zones and Enterprise Communities is contained in appendix 2.

Priority

Under 34 CFR 75.105(c)(2) the Secretary gives a competitive preference to applications that are otherwise eligible for funding under appropriate discretionary programs under the Individuals with Disabilities Education Act and that meet the following priority. The Secretary will implement this priority for fiscal year 1995 and may implement it for any later fiscal year:

Propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will:

- Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprises Communities; or,
- Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

As appropriate, the proposed project under the Individuals with Disabilities Education Act must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities.

Empowerment Zones and Enterprise Communities are not expected to be designated by the time proposals must be prepared for fiscal year 1995 competitions. In order to obtain a competitive preference under this priority for FY 1995, applicants must choose one of the following options. First, an applicant may indicate that it will serve a specific area or areas that have applied for designations as Empowerment Zones or Enterprise Communities within the geographic area that the applicant proposes to serve. Alternatively, the applicant may simply state that it would serve one or more Empowerment Zones or Enterprise Communities that may be designated within the geographic area that the applicant proposes to serve. In the first case, additional points will be awarded only if one or more of the areas specified in the application are designated as Empowerment Zones or Enterprise Communities. In the second case, additional points will be awarded only if one or more Empowerment Zones or Enterprise Communities are designated within the geographic area that the project proposes to serve.

Intergovernmental Review

One or more of the programs that may be affected by this priority are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Program authority: 20 U.S.C. Sections 1421 through 1462.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix 1—Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 14 parties submitted comments. Six of the 14 commenters generally supported the priority. The 8 remaining commenters objected to the priority for a variety of reasons. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Six commenters expressed concern that services would be reduced for families in general that are not located in Empowerment Zones or Enterprise Communities, or that poor, isolated, and underserved populations not included in these areas would receive fewer services. Most of these commenters also did not see a relationship between the purposes of IDEA programs and the Empowerment Zones and Enterprise Communities.

Discussion: The discretionary programs funded under IDEA program are well suited to play a role in Empowerment Zones and Enterprise Communities because of the close relationship between poverty and disabilities. Because residents of low income areas are often underserved, an important goal of the IDEA discretionary programs is to improve services for this population. Providing preferences for applications serving Empowerment Zones and Enterprise Communities will assist in meeting this goal. While the risk factors associated with disabilities are highest in low income areas, these areas often serve the lowest numbers of children with disabilities. In addition, the coordinated and comprehensive approaches to services, such as those under the Empowerment Zone and Enterprise Community program, can be effective tools in addressing the needs of these children. The priority is expected to both target resources on areas of greatest need and to increase the effective use of resources.

Changes: None.

Comment: Three commenters were concerned that the competitive preference would lead to some areas not receiving any services because they would not be able to compete effectively with applicants serving Empowerment Zones or Enterprise Communities. This comment was made most often with regard to the Parent Training and Information Center (PTI) program, which is intended to ensure coverage of services throughout the States to the greatest extent possible, and from small States.

Discussion: The Secretary agrees that it is important in some programs to serve all areas of the country. Specifically, with regard to the PTI program, section 631(e)(4)(A) of IDEA and regulations at 34 CFR 316.24 place a priority on projects that ensure widespread geographic coverage.

Changes: While no change is being made in this priority, a 15-point competitive preference will be given to applications under the Parent Training and Information Centers competition that would provide parent training and information in a State that would be unserved by an existing PTI center in 1995. The Secretary believes that this additional competitive preference will help ensure that all areas of the country receive services. This competitive preference is announced in the Notice inviting applications that is published separately in this issue of the **Federal Register**.

Comment: One commenter indicated that the priority would give grant applications from Empowerment Zones and Enterprise Communities priority for funding.

Discussion: The priority would give applications proposing to serve Empowerment Zones and Enterprise Communities priority for funding, not applications from the zones and communities themselves.

Changes: None.

Comment: Two commenters proposed replacing the competitive preference with a requirement that Parent Training and Information Center applicants be required to consult and collaborate with the Empowerment Zones and Enterprise Communities on activities which would serve families of children with disabilities who are poor, unemployed or in general distress.

Discussion: Parent Training and Information Centers are already required to collaborate with other agencies that would include Empowerment Zones and Enterprise Communities.

Changes: None.

Comment: One commenter noted that designation of the Empowerment Zones and Enterprise Communities would not occur until later this year and the information would not be available for applicants in time for this competition. The commenter suggested postponing action until fiscal year 1996.

Discussion: It is important to begin links between IDEA programs and Empowerment Zones and Enterprise communities as early as possible. However, the Department agrees that much of the pertinent information will not be available to applicants at the time their applications are prepared. Depending on the timing of the Empowerment Zone and Enterprise Community designations, applicants will not know the designations for Empowerment Zones and Enterprise Communities at the time they prepare their proposals.

Changes: The priority has been revised to indicate that, in order to obtain the

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competitive preference, applicants must propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. If no zones or communities are designated within an applicant's proposed project areas, applicants would not receive the competitive preference.

Comment: Two commenters indicated a concern that the competitive preference would interfere with the ability of projects to serve children with disabilities and their families in accordance with the intent of IDEA, because of conflicts with the multiple purposes of the Empowerment Zones and Enterprise Communities that emphasize economic development.

Discussion: While the scope of the Empowerment Zone and Enterprise Community initiative is significantly broader than that of IDEA, the Secretary does not believe that there is a fundamental conflict between the purposes or operation of IDEA programs and the Empowerment Zones and Enterprise Communities. However, it is important to clarify that project activities are limited to carrying out the purpose of IDEA and do not extend to broader purposes of the Empowerment Zones and Enterprise Communities that extend beyond IDEA. Language in the priority states that projects must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities. This language might incorrectly be construed to require projects to participate in activities that are not consistent with IDEA, or that are inappropriate or infeasible within the context of a particular IDEA program. For example, an Outreach project under the Early Education for Children with Disabilities program that serves the entire Nation would find it infeasible to become an integral part of the activities of 104 Empowerment Zones and Enterprise Communities.

Changes: In order to clarify that projects activities related to Empowerment Zones and Enterprise Communities must be appropriate within the context of IDEA while participating in broader community empowerment strategies, the words "as appropriate" have also been added with regard to the inclusion of the projects in the planning and activities of the Empowerment Zones or Enterprise Communities.

Appendix 2—Areas for Which Applications Have Been Submitted for Designation as Empowerment Zones and Enterprise Communities

Note: Areas for which more than one application are submitted are repeated.

Urban Applications—State, Type of Application, and City/County

Alabama
- Empowerment Zone
  - Anniston
  - Mobile/Pritchard
- Enterprise Community
  - Auburn
  - Birmingham
  - Huntsville
  - Opelika

Alaska
- Empowerment Zone
  - Fairbanks

Arizona
- Empowerment Zone
  - Phoenix
  - Tucson
- Enterprise Community
  - Avondale/Maricopa

Arkansas
- Empowerment Zone
  - Pine Bluff
- Enterprise Community
  - Fort Smith
  - Pulaski County

California
- Empowerment Zone
  - Fresno, Fresno County
  - Los Angeles City and County
  - Oakland
  - Sacramento
  - San Diego
- Enterprise Community
  - Anaheim
  - Bell
  - East Palo Alto
  - Huntington Park
  - Long Beach
  - Los Angeles
  - Los Angeles
  - National City
  - Pomona
  - Richmond
  - Riverside
  - Sacramento
  - Salinas
  - San Bernardino
  - San Francisco/Chinatown
  - San Francisco/Bayview
  - San Jose
  - Santa Ana
  - Santa Barbara County
  - Santa Cruz
  - Sanislause County, Modesto
  - South El Monte

Colorado
- Empowerment Zone
  - Denver City and County
  - Greeley, Weld County
- Enterprise Community
  - Aurora
  - Commerce City
  - Pueblo

Connecticut
- Empowerment Zone
  - Bridgeport
  - Hartford
- Enterprise Community
  - New Haven

Delaware
- Empowerment Zone
  - Wilmington, New Castle

District of Columbia
- Empowerment Zone
  - Washington

Florida
- Empowerment Zone
  - Dade County, Miami
  - Fort Lauderdale, Broward County
  - Jacksonville
- Enterprise Community
  - Brevard County
  - Daytona Beach
  - Gainesville
  - Hillsborough County
  - Hollywood
  - Lee County, Fort Myers
  - Manatee County
  - Orange County
  - Orlando
  - Polk County
  - Saint Petersburg
  - Seminole County
  - Tallahassee
  - Tampa
  - West Palm Beach

Georgia
- Empowerment Zone
  - Atlanta
  - Savannah
- Enterprise Community
  - Albany
  - Athens, Clark County
  - Augusta
  - Dekalb County
  - Macon

Illinois
- Empowerment Zone
  - Chicago
  - East Saint Louis
  - Peoria
- Enterprise Community
  - Alton
  - Chicago/Calumet Consortium
  - Chicago/New Englewood
  - Chicago/Westside
  - Cook County
  - Joliet
  - Kankakee
  - Maywood
  - Rockford
  - Springfield
  - Waukegan

Indiana
- Empowerment Zone
  - Gary
- Enterprise Community
  - Bloomington
  - Evansville
  - Fort Wayne
  - Indianapolis
  - Muncie
  - South Bend

Iowa
- Empowerment Zone
  - Sioux City
- Enterprise Community
  - Cedar Rapids
  - Des Moines

Kansas
- Empowerment Zone
  - Kansas City (with Kansas City, Missouri)
- Enterprise Community
  - Topeka
  - Wichita

Kentucky
- Empowerment Zone
  - Louisville, Jefferson County
- Enterprise Community
  - Lexington-Fayette

- Paducah
- Richmond

Louisiana
- Empowerment Zone
  - Lake Charles
  - New Orleans
  - Ouachita
  - Shreveport
- Enterprise Community
  - Baton Rouge
  - Lafayette Parish
  - New Iberia
  - Terrebonne

Maryland
- Empowerment Zone
  - Baltimore
- Enterprise Community
  - Hagerstown

Massachusetts
- Empowerment Zone
  - Boston
- Enterprise Community
  - Chelsea
  - Brockton
  - Cambridge
  - Fall River
  - Holyoke
  - Lawrence
  - Lowell
  - Lynn
  - New Bedford
  - Springfield
  - Worcester

Michigan
- Empowerment Zone
  - Benton Harbor, Benton
  - Detroit
  - Flint
- Enterprise Community
  - Detroit
  - Grand Rapids
  - Highland Park
  - Inkster
  - Jackson
  - Kalamazoo
  - Lansing
  - Muskegon
  - Pontiac
  - Royal Oak
  - Saginaw
  - Taylor

Minnesota
- Empowerment Zone
  - Minneapolis
  - Saint Paul
- Enterprise Community
  - Hennepin County

Mississippi
- Empowerment Zone
  - Gulfport
- Enterprise Community
  - Jackson

Missouri
- Empowerment Zone
  - Kansas City (with Kansas City, Kansas)
  - Saint Louis, Saint Louis County, Wellston
- Enterprise Community
  - Joplin
  - Kinloch
  - Pagedale
  - Saint Joseph

Nebraska
- Enterprise Community
  - Lincoln
  - Omaha

Nevada
- Enterprise Community
  - Clark County

New Hampshire
- Enterprise Community
  - Manchester

New Jersey
- Empowerment Zone
  - Newark
  - Camden (with Philadelphia, Pennsylvania)
- Enterprise Community
  - Asbury Park
  - Atlantic City
  - East Orange
  - Elizabeth
  - New Brunswick
  - Plainfield
  - Jersey City
  - Passaic
  - Paterson
  - Trenton
  - Vineland

New Mexico
- Enterprise Community
  - Albuquerque
  - Las Cruces

New York
- Empowerment Zone
  - Buffalo
  - New York, Bronx County
  - Rochester
  - Syracuse
- Enterprise Community
  - Albany
  - Auburn
  - Binghamton
  - Brooklyn Navy Yard
  - New York City/SW Brooklyn
  - New York City/So. Bronx
  - New York City/Jamaica
  - Kingston/Newburgh
  - New York City/Brooklyn
  - Utica
  - Yonkers

North Carolina
- Empowerment Zone
  - Asheville
- Enterprise Community
  - Charlotte
  - Durham
  - Fayetteville
  - Greensboro
  - Raleigh
  - Wilmington
  - Winston-Salem

Ohio
- Empowerment Zone
  - Cleveland
  - Kent
  - Steubenville (with Weirton, West Virginia)
- Enterprise Community
  - Akron
  - Canton
  - Cincinnati
  - East Cleveland
  - Columbus
  - Dayton
  - Mansfield
  - Toledo
  - Urbancrest
  - Warren
  - Youngstown

Oklahoma
- Empowerment Zone
  - Oklahoma City
- Enterprise Community
  - Oklahoma City
  - Tulsa

Oregon
- Empowerment Zone
  - Portland
- Enterprise Community
  - Eugene

Pennsylvania
- Empowerment Zone
  - Chester
  - Philadelphia (with Camden, New Jersey)
  - Pittsburgh, Allegheny County
- Enterprise Community
  - Altoona
  - Beaver Falls
  - Erie
  - Harrisburg
  - Johnstown
  - Lancaster
  - Philadelphia
  - Philadelphia
  - Philadelphia/NC
  - Philadelphia/SC
  - Reading
  - Scranton
  - Sharon/Farrell
  - Washington County
  - York

Rhode Island
- Enterprise Community
  - Providence
  - Pawtucket/Central Falls

South Carolina
- Enterprise Community
  - Charleston
  - North Charleston
  - Columbia
  - Florence
  - Greenville
  - Spartanburg
  - Sumter

Tennessee
- Empowerment Zone
  - Knoxville
  - Memphis
- Enterprise Community
  - Chattanooga
  - Jackson
  - Nashville

Texas
- Empowerment Zone
  - Austin
  - Dallas
  - El Paso
  - Fort Worth, Lake Worth
  - Houston
  - Longview, Gregg County
  - Orange
  - Port Arthur
  - San Antonio
  - Waco
- Enterprise Community
  - Beaumont

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Brownsville
Corpus Christi
Denton
Harlingen
Galena Park
Laredo
Lubbock
Galveston
Garland
Temple
Texarkana

Utah

Enterprise Community
Ogden
Salt Lake City

Virginia

Empowerment Zone
Hampton
Norfolk
Richmond

Enterprise Community
Danville
Lynchburg
Portsmouth
Roanoke
Suffolk

Vermont

Enterprise Community
Burlington

Washington

Empowerment Zone
Tacoma

Enterprise Community
Pierce County
Seattle
Spokane
Yakima

West Virginia

Empowerment Zone
Charleston
Weirton (with Steubenville, Ohio)

Enterprise Community
Huntington
Parkersburg
Wheeling

Wisconsin

Empowerment Zone
Milwaukee

Enterprise Community
Beloit
Kenosha
La Crosse
Madison
Racine

Rural Applications—State, Type of application, and City/County

Alabama

Empowerment Zone
Butler, Lowndes
Bullock
Wilcox
Hale
Macon

Enterprise Community
Tuscaloosa
Bibb
Chambers
Perry
Greene, Sumter

Alaska

Empowerment Zone
Nome Census Area

Enterprise Community
Matanuska-Susitna Borough
Bethel Census Area, Wade Hampton Census Area

Arizona

Empowerment Zone
Pinal
Coconino
Cochise, Santa Cruz, Yuma

Arkansas

Empowerment Zone
Cross, Lee, Monroe, Saint Francis
Chicot (with East Carroll Parish, Louisiana, and Washington, Mississippi)
Phillips (with Coahoma and Quitman, Mississippi)

Enterprise Community
Poinsett
Mississippi
Crittenden, Cross
Woodruff
Newton
Columbia, Ouachita, Union
Lee, Monroe, Phillips
Ashley, Chicot, Desha, Drew
Lee, Saint Francis

California

Empowerment Zone
Riverside
San Diego

Enterprise Community
Imperial
Kern
Santa Cruz
Hanford, Kings
Merced
Riverside
San Benito
Humboldt
Fresno

Colorado

Enterprise Community
Otero

Connecticut

Enterprise Community
Windham

Florida

Empowerment Zone
Collier
Putnam
Palm Beach

Enterprise Community
Highlands
Jackson
Hillsborough

Georgia

Empowerment Zone
Baker, Mitchell
Troup
Crisp, Dooly
Burke, Hancock, Jefferson, McDuffie, Taliaferro, Warren
Bryan
Clay, Quitman, Randolph, Stewart

Enterprise Community
Macon
Lowndes, Tift
Floyd

Idaho

Empowerment Zone
Bannock

Illinois

Empowerment Zone
Kankakee

Enterprise Community
Adams
Hamilton, Saline, White
Jackson
Pulaski
Alexander
Hamilton, Saline, White
Vermillion

Iowa

Enterprise Community
Webster

Kansas

Empowerment Zone
Cherokee

Kentucky

Empowerment Zone
Carter, Lewis, Rowan
Bath, Menifee, Morgan, Rowan, Wolfe
Clay, Leslie, Owsley, Perry
Breathitt, Knott, Lee, Letcher, Perry
Fulton (with New Madrid and Pemiscot, Missouri, and Lake, Tennessee)
Floyd, Magoffin, Martin, Pike
Breathitt, Knott, Lee, Letcher, Perry
Elliott, Lawrence
Casey, Pulaski, Wayne
Clinton, Jackson, Wayne
Bell (with Hancock, Tennessee, and Cumberland, Virginia)
Bell, Whitley (with Campbell, Tennessee)
McCreary (with Scott, Tennessee)

Enterprise Community
Knox
Warren

Louisiana

Empowerment Zone
East Carroll Parish (with Chicot, Arkansas, and Washington, Mississippi)
Grant Parish, Natchitoches Parish, Rapides Parish
Saint Landry Parish
Madison Parish
Plaquemine, Iberville Parish
Saint Landry Parish
Iberville Parish, Pointe Coupee Parish, West Feliciana Parish
Catahoula Parish, Concordia Parish, Franklin Parish, Morehouse Parish, Tensas Parish

Enterprise Community
Thibodaux, Assumption Parish, Saint Charles Parish, Saint James Parish, Saint John the Baptist Parish, Terrebonne Parish
Rapides Parish
Saint Tammany Parish
East Carroll Parish
Saint Mary Parish
Acadia Parish, Saint Landry Parish
Webster Parish
Sabine Parish
Saint Tammany Parish
Saint Mary Parish

Maine

Enterprise Community
Androscoggin

Michigan

Enterprise Community

Lake

Minnesota

Enterprise Community
Beltrami
Pennington
Todd
Wadena

Mississippi

Empowerment Zone
Washington (with Chicot, Arkansas, and East Carroll Parish, Louisiana)
Bolivar, Holmes, Humphreys, Leflore, Sunflower, Washington
Coahoma, Quitman (with Phillips, Arkansas)
Claiborne, Jefferson
Panola, Quitman, Tallahatchie
Yazoo

Enterprise Community
Hinds
Marshall
Madison
Lauderdale
Holmes, Humphreys, Madison
Washington
Leflore
Forrest
Hinds
Adams
Bolivar, Sunflower
Kemper
Tunica

Missouri

Empowerment Zone
Dent
East Prairie
Adair
Scott
New Madrid, Perniscot (with Fulton, Kentucky, and Lake, Tennessee)

Enterprise Community
Bates
Dunkin
Benton
Butler, Ripley

Nebraska

Empowerment Zone
Scotts Bluff
Buffalo

Enterprise Community
Dawes

New Jersey

Enterprise Community
Cumberland

New Mexico

Empowerment Zone
Curry, Roosevelt
Guadalupe, San Miguel
Dona Ana
Luna
Dona Ana

Enterprise Community
Lea
Hidalgo
Mora
Cibola, McKinley
Chaves
Torrance
Lea

New York

Empowerment Zone
Sullivan

Enterprise Community
Steuben
Chenango
Chautauqua

North Carolina

Empowerment Zone
Edgecombe, Halifax, Wilson

Enterprise Community
Harnett
Robeson
Columbus
Anson
Bertie, Hertford, Martin, Pasquotank, Tyrrell
Halifax, Northampton, Warren
Madison, Watauga

Ohio

Empowerment Zone
Montgomery

Enterprise Community
Athens
Adams, Lawrence, Scioto
Scioto

Oklahoma

Empowerment Zone
Pontotoc
Jackson
Logan
Harmon, Tillman
Choctaw, McCurtain
Okfuskee

Enterprise Community
Logan
Muskogee

Oregon

Enterprise Community
Josephine

Pennsylvania

Enterprise Community
Clarion
Lawrence
Venango
Clinton
Fayette

South Carolina

Enterprise Community
Bamberg
Beaufort
Florence, Williamsburg
Allendale, Barnwell
Orangeburg
Clarendon, Lee, Sumter
Marion
Orangerburg
Beaufort, Colleton, Hampton, Jasper
Horry

South Dakota

Enterprise Community
Beadle, Spink

Tennessee

Empowerment Zone
Hancock (with Bell, Kentucky, and Cumberland, Virginia)
Campbell (with Bell and Whitley, Kentucky)
Lake (with New Madrid and Pemiscot, Missouri, and Fulton, Kentucky)
Scott (with McCreary, Kentucky)

Enterprise Community
Johnson
Tipton
Hardeman
McMinn
Henry
Fayette, Haywood
Claiborne, Grainger, Union

Texas

Empowerment Zone
Pecos
Kaufman
Mitchell
Marion
Uvalde, Val Verde, Zavala
Duval
Webb
Wood
Dimmit
Maverick
Pecos
Cameron, Hidalgo, Starr, Willacy
Presidio
El Paso

Enterprise Community
Hardeman
Jim Wells
Caldwell
Brazos, Grimes, Washington
Gonzales
Harrison, Panola
Burnet
Frio, Medina
Brazos, Madison, Robertson
Ector

Virginia

Empowerment Zone
Cumberland (with Bell, Kentucky, and Hancock, Tennessee)

Enterprise Community
Montgomery, Radford City
Accomack, Northampton

Washington

Enterprise Community
Yakima
Grant

West Virginia

Empowerment Zone
Braxton, Clay, Fayette, Nicholas, Roane
Mingo
McDowell

Enterprise Community
Wyoming
Marion
Logan
Nicholas, Webster
Monongalia
Lincoln

[FR Doc. 94–27455 Filed 11–4–94; 8:45 am]
BILLING CODE 4000–01–P

[CFDA No.: 84.029M]

Training Personnel for the Education of Individuals With Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purpose of this program is to support training and information centers for

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parents of children with disabilities and persons who work with parents. The purpose of the Centers is to enable parents to work more effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

The Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals.

ELIGIBLE APPLICANTS: Only parent organizations are eligible to receive grants under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATION: January 10, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: February 10, 1995.

APPLICATIONS AVAILABLE: November 15, 1994.

AVAILABLE FUNDS: $2,700,000.

RANGE OF AWARDS: $100,000 to $300,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $150,000.

ESTIMATED NUMBER OF AWARDS: 18.

Note: The Department is not bound by any of the estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 74, 75, 77, 79, 81, 82, and 85; (b) The regulations for this program in 34 CFR Part 316; and (c) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITIES: Under 34 CFR 75.105(c)(3) and section 631(e)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Absolute Priority: Parent Training and Information Centers (34 CFR 316.10(a)).

Competitive Priorities: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities:

(a) Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. Applicants to this competition may receive an additional 5 points if they address the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

(b) To assist the Secretary in ensuring that awards are distributed geographically on a State or regional basis, throughout all the States, the Secretary awards 15 additional points to an application that provides parent training and information in a State that would be unserved by an existing Parent Training and Information center in FY 1995. These points are in addition to any points the application earns under the selection criteria for the program and competitive preference (a).

Invitational Priorities:

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications that expand outreach to minority parents, who have been underserved in the past.

FOR APPLICATIONS OR INFORMATION CONTACT: Norm Howe, U.S. Department of Education, 60 Independence Avenue, S.W., Washington, D.C. 20202–2651. Telephone: (202) 205–9068. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1431.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27452 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.024D]

Early Education Program for Children With Disabilities—Outreach Projects for Young Children With Disabilities; Notice Inviting Applications for New Awards Under the Early Education Program for Children With Disabilities for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: To provide Federal financial assistance (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

The Early Education Program for Children with Disabilities supports the National Education Goals by helping to ensure that children enter school ready to learn.

ELIGIBLE APPLICANTS: Public agencies and nonprofit private organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 17, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: March 17, 1995.

APPLICATIONS AVAILABLE: November 30, 1994.

AVAILABLE FUNDS: $2,000,000.

ESTIMATED RANGE OF AWARDS: $120,000–140,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $130,000.

ESTIMATED NUMBER OF AWARDS: 15.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR Part 309; (c) The priority in the notice of final priority for this program, as published on September 16, 1993 at 58 FR 48548; and (d) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITY: Under 34 CFR 75.105(c)(3) and section 623 (a)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Early Education Program for Children with Disabilities.

Absolute Priority: Outreach Projects for Young Children with Disabilities (published on September 16, 1993 at 58 FR 48548).

Competitive Priorities: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applicants that meet one or more of the following competitive priorities:

(a) Applicants to this competition may receive an additional 5 points if they meet the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

(b) Applicants may receive an additional 10 points if they meet the following competitive priority (as published on September 16, 1993 in 58 FR 48548): projects that provide evidence that they are designed to build the capacity of educational and other agencies to adopt and implement proven models or components of models that (1) address the needs of groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups; or (2) address the unique needs of young children with low-incidence disabilities, such as deaf-blindness. These points are in addition to any points the application earns under the selection criteria and competitive preference (a).

FOR TECHNICAL INFORMATION CONTACT: Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4615, Switzer Building, Washington, D.C. 20202–2644. Telephone (202) 205–8166. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Sonya Jenkins, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4617, Switzer Building, Washington, D.C. 20202–2644. Telephone (202) 205–9077; Fax telephone (202) 205–8971. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m. Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1423.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27453 Filed 11–4–94; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.029P]

Training Personnel for the Education of Individuals With Disabilities—Experimental Parent Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purpose of this program is to support training and information centers for parents of children with disabilities and persons who work with parents. The purpose of the Centers is to enable parents to work more effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

This priority supports both urban and rural experimental parent centers. Experimental urban centers must serve large numbers of parents of children with disabilities located in high density areas. Experimental rural centers must serve large numbers of parents of children with disabilities located in rural areas. The centers may focus on particular aspects of parent training and information services, including but not limited to those activities required under 34 CFR 316.10(a). Experimental projects may include a planning and development phase. (See 34 CFR 316.10(b)).

The Training Personnel for the Education of Individuals with Disabilities program supports the National Education Goals by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals.

ELIGIBLE APPLICANTS: Only parent organizations are eligible to receive grants under this program.

DEADLINE FOR TRANSMITTAL OF APPLICATION: January 10, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: February 10, 1995.

APPLICATIONS AVAILABLE: November 15, 1994.

AVAILABLE FUNDS: $200,000.

RANGE OF AWARDS: $25,000 to $50,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $40,000.

ESTIMATED NUMBER OF AWARDS: 5.

Note: The Department is not bound by any of the estimates in this notice.

PROJECT PERIOD: Up to 36 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 74, 75, 77, 79, 81, 82, and 85; (b) The regulations for this program in 34 CFR Part 316; and (c) The priority in the notice of final priority for empowerment zones, as published elsewhere in this issue of the **Federal Register**.

PRIORITIES: Under 34 CFR 75.105(c)(3) and section 631(e)(1) of the Individuals with Disabilities Education Act the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority under the Parent Training and Information Centers program.

Absolute Priority: Experimental Parent Centers (34 CFR 316.10(b)).

Competitive Priority: Within this priority, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority.

Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. Applicants to this competition may receive an additional 5 points if they address the competitive priority relating to Empowerment Zones or Enterprise Communities published in the final priority elsewhere in this issue of the **Federal Register**.

FOR APPLICATIONS OR INFORMATION CONTACT: Norm Howe, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–2651. Telephone: (202) 205–9068. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C. 1431.

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Dated: November 1, 1994.
Howard R. Moses,
Acting Assistant Secretary for Special Education and Rehabilitative Services.
[FR Doc. 94–27454 Filed 11–4–94; 8:45 am]
BILLING CODE 4000–01–P

federal register

Monday
November 7, 1994

Part III

Department of Education

Educational Media Research, Production, Distribution, and Training Programs; Notice

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DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priorities.

SUMMARY: The Secretary announces funding priorities for fiscal year 1995 and subsequent years under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned daytime television programming, provide cultural experiences to deaf and hard of hearing individuals, continue to provide educational books on audiotapes to people who are visually or print disabled, continue the operation of the captioned films and video distribution system, and support video description of national television programming.

EFFECTIVE DATES: These priorities take effect on December 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ernest E. Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4629, Washington, D.C. 20202–2731. Telephone: (202) 205–0172; Individuals who use a telecommunications devices for the deaf (TDD) may call (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains five priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under Part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

The priorities in this notice would ensure the continued availability of closed-captioned daytime television programming. In addition, the priorities would support activities that provide cultural experiences to enrich the lives of deaf and hard-of-hearing individuals, including children and youth, as well as adults. The priorities would provide educational reading materials and textbooks on audiotape to persons who are visually or print disabled.

Additional priorities would support a captioned films and videos distribution system to provide hearing impaired and other qualified individuals with access to captioned educational and general interest films and videos on a nonprofit free loan basis, and video description of national television programming in order to make television more accessible to persons with visual impairments.

This program supports the National Education Goals by assisting those with disabilities in school readiness and adult literacy.

On July 28, 1994 the Secretary published a notice of proposed priorities in the **Federal Register** (59 FR 38516).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, seven parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Three commenters expressed general support for all of the proposed priorities. Two of the three had additional comments as follows under respective priorities.

Proposed Absolute Priority 1—Closed-Captioned Daytime Television Programs

Comment: One commenter suggested that the priority for Closed-Captioned Daytime Television Programs be modified to require by law that television networks caption all television programming.

Discussion: Priorities cannot be used to impose mandates on third parties such as television networks.

Changes: None.

Comment: One commenter suggested that private sector support for daytime programming should be required while another commenter indicated that a targeted level of private sector funding should not be required for the first project year.

Discussion: The Secretary cannot require private sector funding for captioning of television programming. However, projects are encouraged to seek any support that might become available.

Changes: None.

Comment: One commenter expressed a concern that the priority should be defined in such a way as to not give undue competitive advantage to nonprofit organizations.

Discussion: The priority as written gives no competitive advantage to nonprofit organizations.

Changes: None.

Comment: One commenter indicated that significant weight should be given to consumer preference and how effectively that preference is measured.

Discussion: The Secretary acknowledges the importance of consumer preference and believes that the issue of consumer preference is adequately addressed in the priority.

Changes: None.

Comment: One commenter expressed a concern that cost-effectiveness should be weighed heavily in the criteria.

Discussion: The Secretary believes that sufficient weight is given to cost effectiveness.

Changes: None.

Comment: One commenter indicated an interest in support for closed-captioned basic cable television programming.

Discussion: The Secretary recognizes the importance of access to programs shown on local stations, national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally. In making awards the Secretary will continue to support the closed-captioning of basic cable television programming under existing priorities.

Change: The priority has been clarified by adding the word "cable" to part (6) of the project requirements.

(6) Demonstrate the willingness of major national television networks and *cable* companies to permit captioning of their programs; and

Comment: One commenter urged the Department to make more than one award in order to generate private section support.

Discussion: In announcing proposed priorities, the Secretary does not establish numbers of awards for projects. Information about anticipated number of awards will be provided when the Secretary invites applications for specific competitions.

Changes: None.

Proposed Absolute Priority 2—Cultural Experience for Deaf and Hard of Hearing Individuals

Comment: Two commenters jointly recommended that the priority be expanded to include both school and community based educational interventions.

Discussion: The Secretary acknowledges the value of intervention at the school and community levels. The Secretary believes that this topic should be addressed under other IDEA program authorities.

Changes: None.

Proposed Absolute Priority 3—Captioned Films and Video Distribution System

Comment: One commenter suggested that distribution, outreach and circulation methods incorporate recommendations which grow out of the soon-to-be awarded Department of Education grant to hold a symposium on the future of captioning.

Discussion: The Secretary deems it improper to mention recommendations that are yet to be made.

Changes: None.

Comment: One commenter suggested that the annual meeting of depository managers and other related personnel should include representatives from the major educational media distribution companies.

Discussion: The Secretary appreciates the commenter's suggestion. Although not a requirement under this priority, the Secretary encourages applicants to consider this as a viable option.

Changes: None.

Comment: One commenter proposed that the priorities include a mandate to study alternative Captioned Films and Video (CFV) catalog and delivery systems, and that a national survey of consumer needs be conducted.

Discussion: The Secretary agrees that a study of alternative approaches and strategies is important to assure that we are making best use of our resources in serving our constituents. We expect that recommendations from the upcoming symposium on the future of captioning will provide us with suggested alternate approaches as information on consumer needs.

Changes: None.

Comment: One commenter proposed that a study be required to explore ways in which the CFV catalog might also incorporate information regarding captioned materials available from sources other than the CFV network.

Discussion: It is not the intent of this priority to advertise materials other than those we distribute through the CFV program.

Changes: None.

Proposed Absolute Priority 4—Recorded Audio Cassettes for Visually and Print Disabled Students

Comment: One commenter proposed that the priority be expanded to include the research and development, production, and distribution of books in computerized form (electronic digital text files). The commenter also suggested that the priority consider for funding the "establishment of a national Clearinghouse for post-secondary education materials in audio and digital text form" and the "establishment of a national repository of electronic text files for accessible text format."

Discussion: The suggested activities go beyond the purpose of the priority announced under section 652(d) of IDEA and are not included within the activities authorized under this section.

Changes: None.

Comment: The commenter suggested inserting professional as one of the classifications under "students" to be served.

Discussion: The Secretary feels that by adding professionals to the population of students to be served under this priority would be going beyond the intent of this project, as originally visioned.

Change: None.

Proposed Absolute Priority 5—Video Description Project

Comment: One commenter recommended that funds be made available for the description of programming designed specifically for classroom instruction or broadcast programs, particularly documentaries, that will be distributed to educational institutions.

Discussion: The Secretary believes that general access to national television programming is of greater importance at this time. However, the type of programs to be described under this priority may include programming that can be used for classrooms.

Changes: None.

Comment: One commenter suggested that the Department should encourage distribution of video described programming through public and educational libraries.

Discussion: The Department believes that the most effective use of resources is to concentrate on national television programming at this time.

Changes: None.

Comment: One commenter expressed the concern that outreach was not identified as an important goal in the priority for video description.

Discussion: The Secretary agrees that outreach (marketing and dissemination) is a necessary component to approved projects for video description. All applications submitted to the Secretary under this priority are evaluated under the established evaluation criteria at 34 CFR 332.32, which includes information related to marketing and dissemination.

Changes: None.

Comment: One commenter suggested that private sector support for video description should be encouraged but not required.

Discussion: The Secretary recognizes the importance of private sector support, although he cannot require it in this priority.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Closed-Captioned Daytime Television Programs

Background

This priority would continue and expand closed-captioning of a variety of daytime television programs broadcast nationally for persons who are deaf or hard of hearing during this segment of the day that has proven to be the most difficult in terms of private sector support.

Priority: To be considered for funding under this priority, a project must—

(1) Include the criteria used to determine which programs are proposed for captioning. These criteria must take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national television networks and cable companies to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

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Absolute Priority 2—Cultural Experiences for Deaf and Hard of Hearing Individuals

Background

This priority supports a variety of cultural activities designed to enrich the lives of deaf and hard of hearing individuals, including children and youth, as well as adults. These activities must use an integrated approach that mixes children, youth, and adults, who are deaf and hard of hearing with those who can hear while conducting cultural experiences that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals.

During FY 1992 the Department funded projects that: (1) Provided theatrical experiences for deaf and hard of hearing individuals, and (2) used integrated approaches by having among cast members a mixture of deaf, hard of hearing and hearing performers. During FY 1993 cultural experiences were extended specifically to younger people with hearing impairments and to the creation of art as well as theatrical experiences, using the same approaches. Projects under this proposed priority can include a variety of artistic approaches such as the creation of works of art (painting, drawing, designing, etc.), dance, and storytelling, as well as developing and performing dramatic productions. A grantee *may not* use funds under this priority for passive activities such as viewing a play or video, or passively watching a storyteller or artist at work.

Priority

To be considered for funding under this priority, a project must—

(1) Use an integrated approach that mixes children, youth, and adults who are deaf and hard of hearing, with those who are hearing in carrying out project activities; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Invitational Priority

Within this absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(i), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, and ethnic backgrounds.

Absolute Priority 3—Captioned Films and Videos Distribution System

Background

This priority would support the operation of a captioned films/videos distribution system which provides deaf and hard of hearing individuals, as well as other eligible individuals with disabilities, with access to captioned educational and general interest films and videos on a nonprofit free-loan basis. Activities under this priority include, but are not limited to: (1) A computerized user-registration process; (2) circulation of captioned films and videos; (3) development or updating of a catalog of captioned films and videos in the collection; and (4) outreach activities. This priority would provide students and other eligible individuals with disabilities with captioned films and videos so they may benefit from the same educational media used to enrich the educational experiences of students and other individuals who do not have disabilities.

Priority

To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be implemented in operating a distribution system, consisting of local and regional centers including depositories, and one central general interest and educational films/video center. Local and regional centers may include State schools for disabled individuals, public or private school systems, public libraries, colleges or universities, or other distribution points that distribute captioned films/videos.

(2) Ensure that the system permits interdepository circulation of captioned films/videos, allows individuals, depositories, and local and regional centers to access booking information from the computerized depositories and the general interest and educational films/video center via modem and *generic* communication software, and provides immediate confirmation or denial of a request;

(3) Establish and describe the computerized registration procedures that will be used to register users. The current computerized system configuration may be used as a basis;

(4) Develop and implement criteria and procedures for replacing irreparable films/videos;

(5) Prepare, update, and distribute copies of a catalog listing all captioned films/videos available under this project, including copies of the lesson guides as they become available;

(6) Convene an annual meeting of depository managers, librarians, and audiovisual and other personnel from local, regional, and State education agencies for the purpose of training, planning, sharing, brainstorming, and other activities related to improving the access of eligible individuals to audiovisual materials. The Washington, D.C. metropolitan area will be the site of the meeting;

(7) Implement outreach activities, especially activities that reach out to local school systems to make them aware of the open and closed captioned materials that are available to them under this program and from other sources; and

(8) Submit quarterly progress reports to the grants and project officers.

Absolute Priority 4—Recorded Audio Cassettes for Visually and Print Disabled Students

Background

This priority would support recording, producing, duplicating, and distributing 15/16 ips (inch per second) four-track cassette versions of textbooks and other educational reading materials for students (elementary, secondary, postsecondary & graduate) who are visually or print disabled. These cassette tapes will help provide equal educational opportunities to target students and lessen some of the barriers they face in classrooms.

Priority

To be considered for funding under this priority, the project must—

(1) Handle all requests for materials, including confirmation of eligibility by disability;

(2) Arrange for use of copyrights from publishers of supplied textbooks;

(3) Record or duplicate the books on 15/16 ips (inch per second), four-track cassettes of one hour per track recording time. (Publishers must be provided rights to copies of the master tape and rights to market the cassettes as they see fit);

(4) Mail the cassettes on a free-loan, postage paid basis;

(5) Handle returned cassettes, preservative re-recording, and all other associated administrative and circulation functions; and

(6) To the extent that funds are not sufficient to meet the demand for free materials, place a priority on providing free materials that are not otherwise required to be provided by educational agencies or institutions.

Absolute Priority 5—Video Description Project

Background

This priority supports the description of national television programming in order to make television more accessible to persons with visual impairments. The intent of this priority is to provide access to a diversity of programming available in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired. The range of programs proposed for description may include, but is not limited to, children's programs, prime time programming, emergency broadcasts, sports programs, and documentaries.

Priority

To be considered for funding under this priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experience of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national television networks and cable companies to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations 34 CFR Parts 330, 331, and 332.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

[FR Doc. 94-27456; Filed 11-4-94; 8:45 am]

BILLING CODE 4000-01-P

Educational Media Research, Production, Distribution, and Training Program; Notice Inviting Applications for new awards under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: The purposes of this program are to promote the general welfare of the deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

This program supports the National Education Goals by assisting those with disabilities in school readiness and adult literacy.

ELIGIBLE APPLICANTS: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

APPLICATIONS AVAILABLE: November 30, 1994

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 332.

PRIORITIES: The priorities in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to these competitions.

FOR TECHNICAL INFORMATION CONTACT: Dr. Ernest Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4629, Washington, D.C. 20202-2644. Telephone (202) 205-9172. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-8169; or the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

FOR APPLICATION OR GENERAL INFORMATION CONTACT: Jeffrey Payne, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4627, Washington, D.C. 20202-2644. Telephone (202) 205-8894. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Daytime Television Program (CFDA 84.026S).	2/17/95	4/17/95	$1,112,000	$371,000-556,000	$371,000	2 to 3	Up to 36.
Cultural Experiences for Deaf and Hard of Hearing Individuals (CFDA 84.026T).	3/15/95	5/15/95	$400,000	$100,000-400,000	$100,000	1 to 4	Up to 36.
Captioned Films/Video Distribution System (CFDA 84.026N).	3/31/95	5/30/95	$1,500,000	$900,000-1,500,000	$1,500,000	1	Up to 36.
Recorded Audio Cassettes for Visually and Print Disabled Students (CFDA 84.026K).	2/15/95	4/17/95	$3,600,000	$3,600,000	$3,600,000	1	Up to 36.

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EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING—Continued

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Video Description Project (CFDA 84.026Q).	2/17/95	4/17/95	$500,000	$250,000–500,000	$250,000	1 to 2 .	Up to 36.

NOTE: The Department is not bound by any estimates in this notice.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice of a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: November 1, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27457; Filed 11–4–94; 8:45 am]

BILLING CODE 4000-01-P

federal register

Monday
November 7, 1994

Part IV

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act; Availability of Funds: Southern California Earthquake; Notice

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DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 940963–4263]

Economic Development Assistance Programs Under the Dire Emergency Supplemental Appropriations Act, FY 1994; Availability of Funds—Southern California Earthquake

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces the policies and the application procedures for economic adjustment assistance as authorized by Public Law 103–211. These funds are designed to support the emergency requirements of economic adjustment assistance for local communities arising from the consequences of the January 17, 1994, earthquake in Southern California.

DATES: This notice is effective November 7, 1994. Funds shall remain available until expended.

ADDRESSES: Interested parties should contact the EDA Disaster Field Office for a proposal package. The EDA Disaster Field Office is located at 150 East Colorado Boulevard, Suite 101, Pasadena, California 91105–6831; telephone (818) 583–6831; and Fax (818) 583–6832.

FOR FURTHER INFORMATION CONTACT: Potential applicants should contact the EDA Disaster Field Office at the address noted above, or the Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–2659.

SUPPLEMENTARY INFORMATION:

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

Refer to the Notice published on March 30, 1994, in the **Federal Register** (59 FR 14996) for information on EDA's general policies and other requirements.

Authority

Support for this program is authorized under the contingency fund provided to the President under Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994.

Catalog of Federal Domestic Assistance (CFDA)

The Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED) is listed under CFDA 11.307.

Program Objectives

Funds will be used for the creation of a local Infrastructure Development Fund that will make funds available to repair or upgrade local infrastructure damaged by the earthquake which is not eligible for Federal Emergency Management Agency (FEMA) assistance. The Infrastructure Development Fund will be capitalized by EDA and will be administered by the City of Los Angeles and other local jurisdictions. These funds will be used to leverage existing financing through matching grants, loans, and subordinated debt. Local communities will identify the infrastructure projects to receive assistance. Eligible projects would include earthquake damaged non-public infrastructure ineligible for FEMA assistance, such as a privately-owned water system, and repair projects in which it makes economic sense to upgrade the infrastructure beyond pre-earthquake specifications.

Additional program objectives are described in the **Federal Register** of March 30, 1994 (59 FR 15005) announcing the policies and application procedures for EDA's Fiscal Year 1994 programs.

Funding Availability

Funds in the amount of $50 million are available for this disaster recovery program and shall remain available until expended.

Funding Instrument

Funds will be awarded through grants under the Sudden and Severe Economic Dislocation (SSED) program under Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136; 42 U.S.C. 3121 *et seq.*) (PWEDA).

Eligible Applicants

Eligible applicants include the city, town, or subdivision of the State of California, or a consortium of such political subdivisions.

Application Procedures

Application procedures, competitive selection criteria grant rates and post-approval project implementation information for the SSED program are applicable to the award of disaster adjustment assistance and are described in the **Federal Register** of March 30, 1994 (59 FR 15005), that announces EDA's FY 1994 Notice of Availability of Funds, or such subsequent annual Notices of the Availability of Funds. EDA will respond with direct technical support of the recovery by assisting local and state officials with the assessment of the economic injury caused by the disaster and the development of an economic recovery plan.

Implementation projects must be consistent with and preferably and outgrowth of the recovery plan.

Evaluation Criteria

As described in EDA's **Federal Register** Notice of Availability of Funds for FY 1994, proposals will be evaluated by EDA based upon conformance with statutory and regulatory requirements, the economic adjustment needs of the area, leveraging of program funds, the merits of the proposed project in addressing those needs and the potential applicants' ability to manage the grant effectively. In the case of a Presidentially declared natural disaster, the customary area eligibility job loss threshold criteria is waived.

Proposal Submission Procedures

Proposals for economic adjustment assistance authorized under Public Law 103–211, will be submitted to EDA's Pasadena Field Office, as noted in the **ADDRESSES** section of this Notice.

Dated: October 13, 1994.

William W. Ginsberg,

Assistant Secretary for Economic Development.

[FR Doc. 94–27550 Filed 11–4–94; 8:45 am]

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federal register

Monday
November 7, 1994

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guideline for Isolation Precautions in Hospitals; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Isolation Precautions in Hospitals: Part I. "Evolution of Isolation Practices" and Part II. "Recommendations for Isolation Precautions in Hospitals"; Notice of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for review and comment of the draft Guideline for Isolation Precautions in Hospitals. The Guideline consists of two parts, "Evolution of Isolation Practices" and "Recommendations for Isolation Precautions in Hospitals," and was prepared by the Hospital Infection Control Practices Advisory Committee (HICPAC) and the National Center for Infectious Diseases (NCID), CDC.

DATES: Written comments on the draft document must be received on or before January 6, 1995.

ADDRESSES: Comments on this document should be submitted in writing to the CDC, Attention: Isolation Guideline Information Center, Mailstop A07, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: The Isolation Guideline Information Center, telephone (404) 332–2569.

SUPPLEMENTARY INFORMATION: This document updates and replaces the previously published CDC Guideline for Isolation Precautions in Hospitals (Infect Control 1983;4:245–325, Am J Infect Control 1984;12:103–163, and HHS Publ. No. (CDC) 83–8314). Part I, "Evolution of Isolation Practices," reviews the evolution of isolation practices in U.S. hospitals including their advantages, disadvantages, and controversial aspects and provides the background for the HICPAC-consensus recommendations contained in Part II, "Recommendations for Isolation Precautions in Hospitals."

HICPAC was established in 1991 to provide advice and guidance to the Secretary, DHHS; the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, NCID, regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals. The committee also advises the CDC on periodic updating of guidelines and other policy statements regarding prevention of nosocomial infections.

The Guideline for Isolation Precautions in Hospitals is the second of a series of CDC guidelines being revised by HICPAC and NCID, CDC.

Dated: November 1, 1994.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC).

Guideline for Isolation Precautions in Hospitals

Executive Summary

The Guideline for Isolation Precautions in Hospitals was revised to meet the following objectives: (1) to be epidemiologically sound, (2) to recognize the importance of all body fluids, secretions, and excretions in the transmission of nosocomial pathogens, (3) to contain adequate precautions for infections transmitted by the airborne, droplet, and contact routes of transmission, (4) to be as simple and user friendly as possible, and (5) to use new terms to avoid confusion with existing infection control and isolation systems.

The revised guideline contains two tiers of precautions. In the first, and most important, tier are those precautions designed for the care of all patients in hospitals regardless of their diagnosis or presumed infection status. Implementation of these "Standard Precautions" is the primary strategy for successful nosocomial infection control. In the second tier are precautions designed only for the care of specified patients. These additional "Transmission-based Precautions" are used for patients known or suspected to be infected or colonized with epidemiologically important pathogens that can be transmitted by airborne or droplet transmission or by contact with dry skin or contaminated surfaces.

Standard Precautions synthesize the major features of Universal (Blood and Body Fluid) Precautions (designed to reduce the risk of transmission of bloodborne pathogens) and Body Substance Isolation (designed to reduce the risk of transmission of pathogens from moist body substances). Standard Precautions apply to (1) blood, (2) all body fluids, secretions, and excretions regardless of whether or not they contain visible blood, (3) nonintact skin; and (4) mucous membranes. Standard Precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in hospitals.

Transmission-based Precautions are designed for patients documented or suspected to be infected or colonized with highly transmissible or epidemiologically important pathogens for which additional precautions beyond Standard Precautions are needed to interrupt transmission in hospitals. There are three types of Transmission-based Precautions: Airborne Precautions, Droplet Precautions, and Contact Precautions. They may be combined together for diseases that have multiple routes of transmission. When used either singularly or in combination, they are to be used in addition to Standard Precautions.

The revised guideline also lists specific clinical syndromes or conditions in both adult and pediatric patients that are highly suspicious for infection and identifies appropriate Transmission-based Precautions to use on an empiric, temporary basis until a diagnosis can be made; these empiric, temporary precautions are also to be used in addition to Standard Precautions.

A working draft of this guideline was reviewed by experts in infection control. However, all recommendations in the guideline may not reflect the opinions of all reviewers.

Introduction

To assist hospitals in maintaining up-to-date isolation practices, HICPAC[1] has updated the CDC recommendations for isolation precautions for use in hospitals. The recommendations are based on the latest epidemiologic information on transmission of infection in hospitals; they supersede previous CDC recommendations for isolation precautions for use in hospitals.[2–4]

The recommendations are intended primarily for use in the care of patients in acute-care hospitals, although some of the recommendations may be applicable for some patients receiving care in extended-care facilities. The recommendations are not intended for use in day care, well care, or domiciliary care programs. Because (1) there have been few studies to test the efficacy of isolation precautions, and (2) gaps still exist in the knowledge of the epidemiology and modes of transmission of some diseases, disagreement with some of the recommendations is expected.

HICPAC recognizes that the goal of preventing transmission of infections in hospitals can be accomplished by multiple means, and that hospitals will modify the recommendations according to their needs and circumstances and as directed by federal, state, or local regulations. Modification of the recommendations is encouraged if (1) the principles of epidemiology and disease transmission are maintained, and (2) precautions are included to interrupt spread of infection by all routes that are likely to be encountered in the hospital.

Part I. Evolution of Isolation Practices

Early Isolation Practices

The first published recommendations for isolation precautions in the United States appeared as early as 1877, when a hospital handbook recommended placing patients with infectious diseases in separate facilities,[5] which ultimately became known as infectious disease hospitals. Although this practice segregated infected patients from noninfected patients, nosocomial transmission continued to occur because infected patients were not separated from each other according to their disease, and few, if any, aseptic procedures were practiced. Personnel in infectious disease hospitals began to combat problems of nosocomial transmission by setting aside a floor or ward for patients with similar diseases[6] and by practicing aseptic procedures recommended in nursing textbooks published from 1890 to 1900.[5]

In 1910, isolation practices in U.S. hospitals were altered by the introduction of the cubicle system of isolation which placed patients in multiple-bed wards.[6] With the cubicle system, hospital personnel used separate gowns, washed their hands with antiseptic solutions after patient contact, and disinfected objects contaminated by the patient. These nursing procedures, designed to prevent transmission of pathogenic organisms to other patients and personnel, became known as "barrier nursing." Use of the cubicle system of isolation and barrier nursing procedures provided general hospitals with an alternative to placing some patients in infectious disease hospitals.

During the 1950s, U.S. infectious disease hospitals, except those designated exclusively for tuberculosis, began to close. In the mid-1960s, tuberculosis hospitals also began to close, partly because general hospital or outpatient treatment became preferred for patients with tuberculosis. Thus, by the late 1960s patients with infectious diseases were housed in wards in general hospitals, either in specially designed, single-patient isolation rooms or in regular single or multiple-patient rooms.

CDC Isolation Systems

CDC Isolation Manual

In 1970, CDC published a detailed manual entitled *Isolation Techniques for Use in Hospitals* to assist general hospitals with isolation precautions;[2] a revised edition appeared in 1975.[3] The manual could be applied in small community hospitals with limited resources as well as in large metropolitan university-associated medical centers.

The manual introduced the category system of isolation precautions. It recommended that hospitals use one of seven isolation categories (Strict Isolation, Respiratory Isolation, Protective Isolation, Enteric Precautions, Wound and Skin Precautions, Discharge Precautions, and Blood Precautions). The precautions recommended for each category were determined almost entirely by the epidemiologic features of the diseases grouped in the category, primarily their routes of transmission. Certain isolation techniques, believed to be the minimum necessary to prevent transmission of all diseases in the category, were indicated for each isolation category. Because all diseases in a category did not have the same epidemiology (i.e., were not spread by exactly the same combination of modes of transmission), with some requiring fewer precautions than others, more precautions were suggested for some diseases than were necessary. This disadvantage of "over-isolation" for some diseases was offset by the convenience of having a small number of categories. More importantly, the simple system required personnel to learn only a few established routines for applying isolation precautions. To make the system even more user friendly, instructions for each category were printed on color-coded cards and placed on the doors, beds, and/or charts of patients on isolation precautions.

By the mid-1970s, 93% of U.S. hospitals had adopted the isolation system recommended in the manual.[7] However, neither the efficacy of the category approach in preventing spread of infections nor the costs of using the system were evaluated by empirical studies.

By 1980, hospitals were experiencing new endemic and epidemic nosocomial infection problems, some caused by multidrug-resistant microorganisms and others caused by newly recognized pathogens, which required different isolation precautions from those specified by any existing isolation category. There was increasing need for isolation precautions to be directed more specifically at nosocomial transmission in special-care units, rather than at the intrahospital spread of infectious diseases acquired in the community.[8] Infection control professionals and nursing directors in hospitals with particularly sophisticated nursing staffs were increasingly calling for new isolation systems that would tailor precautions to the modes of transmission for each infection and avoid the over-isolation inherent in the category-specific approach. Further, new facts about the epidemiology and modes of transmission of some diseases made it necessary for CDC to revise the isolation manual. Toward that end, during 1981–1983, CDC Hospital Infections Program personnel consulted with infectious disease specialists in medicine, pediatrics, and surgery; hospital epidemiologists; and infection control practitioners about revising the manual.

CDC Isolation Guideline

In 1983, the CDC Guideline for Isolation Precautions in Hospitals[4] (hereafter referred to as the isolation guideline) was published to take the place of the 1975 isolation manual; it contained many important changes. One of the most important was the increased emphasis on decision-making on the part of users. Unlike the 1975 manual, which encouraged few decisions on the part of users, the isolation guideline encouraged decision-making at several levels.[9–10] First, hospital infection control committees were given a choice of selecting between category-specific or disease-specific isolation precautions or using the guideline to develop a unique isolation system appropriate to their hospital's circumstances and environment. Second, personnel who placed a patient on isolation precautions were encouraged to make decisions about the individual precautions to be taken, (e.g., whether the patient's age, mental status, or condition indicated that a private room was needed to prevent sharing of contaminated articles). Third, personnel taking care of patients on isolation precautions were encouraged to decide whether they needed to wear a mask, gown, or gloves based on the likelihood of exposure to infective material. Such decisions were deemed necessary to isolate the infection but not the patient and to reduce the costs associated with unnecessary isolation precautions.

In the category-specific section of the guideline, existing categories were modified, new categories were added, and many infections were reassigned to different categories. The old category of Blood Precautions, primarily directed toward patients with chronic carriage of hepatitis B virus (HBV), was renamed Blood and Body Fluid Precautions and expanded to include (1) patients with AIDS and (2) body fluids other than blood. The old category of Protective

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Isolation was deleted because of studies demonstrating its lack of efficacy in general clinical practice in preventing the acquisition of infection by the immunocompromised patient for whom it had originally been described.[11-12] The 1983 guideline contained the following categories of isolation: Strict Isolation, Contact Isolation, Respiratory Isolation, Tuberculosis (acid-fast bacilli [AFB]) Isolation, Enteric Precautions, Drainage/Secretion Precautions, and Blood and Body Fluid Precautions. As with the category approach in the former CDC isolation manuals, these categories tended to over-isolate some patients.

In the disease-specific section of the guideline, the epidemiology of each infectious disease was considered individually by advocating only those precautions (e.g., private room, mask, gown, and gloves) needed to interrupt transmission of the infection. In place of the categories and signs of the category-specific approach, a chart listed all diseases posing the threat of in-hospital transmission with checks in columns indicating which precautions were required for each. Because precautions were individualized for each disease, hospitals using the system were encouraged to provide more initial training and in-service education and to encourage a much higher level of attention from patient-care personnel. Although disease-specific isolation precautions eliminated "over-isolation," personnel might be prone to mistakes in applying the precautions, especially if the disease was not regularly seen in the hospital,[9-10] if there was a delay in diagnosis, or if there was a misdiagnosis. Placing disease-specific isolation precautions in a hospital computerized information system resulted in more accurate use of the system.[13]

Since gaps existed in the knowledge of the epidemiology of some diseases, disagreement was expected, and occurred, regarding the placement of individual diseases within given categories, especially diseases with a respiratory component of transmission.[14] Placing measles in Respiratory Isolation (designed to prevent transmission of large-particle droplets) rather than in a category that had provisions for preventing transmission by airborne droplet nuclei and placing rubella and respiratory syncytial virus (RSV) infection in Contact Isolation were controversial.[15] There was also disagreement about the lack of a recommendation for adult patients with influenza, the need for a private room for pediatric patients with RSV infections, and the length of time that precautions should be maintained.[15] The lack of empiric studies on the efficacy and costs of implementing the recommendations contributed to the disagreements.

As new epidemiologic data became available, several subsequent CDC reports[16-19] updated portions of the isolation guideline. Upouted recommendations for management of patients with suspected hemorrhagic fever were published in 1988.[16] The recommendation for Respiratory Isolation for acute erythema infectiosum was superseded by a 1989 report that recommended Respiratory Isolation for human parvovirus B19 (the causative agent for erythema infectiosum) only when infected patients were in transient aplastic crisis or had immunodeficiency and chronic human parvovirus B19 infection.[17]

Recommendations for Tuberculosis (AFB) Isolation were updated in 1990[18] because of heightened concern about nosocomial transmission of multidrug-resistant tuberculosis,[19-20] particularly in settings where persons with human immunodeficiency virus (HIV) infection were receiving care. The 1990 tuberculosis guidelines emphasized (1) placing a hospital patient with confirmed or suspected tuberculosis in a private room that has lower, or negative, air pressure compared with surrounding areas, (2) reducing mycobacterial contamination of air by dilution and removal of airborne contaminants, and (3) wearing particulate respirators, rather than standard surgical masks, when hospital personnel shared air space with an infectious tuberculosis patient. Subsequent recommendations reemphasized the importance of early diagnosis and treatment of tuberculosis.[21] In 1993, a second edition of the guidelines for preventing the transmission of tuberculosis in health care facilities was published in draft for public comment.[22] After review of written comments, the guidelines were modified and published.[23]

Universal Precautions

In 1985, largely because of the HIV epidemic, isolation practices in the United States were dramatically altered by the introduction of a new strategy for isolation precautions, which became known as Universal Precautions (UP). Following the initial reports of hospital personnel becoming infected with HIV through needlesticks and skin contamination with patients' blood, a widespread outcry created the urgent need for new isolation strategies to protect hospital personnel from bloodborne infections. The subsequent modification of isolation precautions in some hospitals produced several major strategic changes and sacrificed some measures of protection against patient-to-patient transmission in the process of adding protection against patient-to-personnel transmission. In acknowledgment of the fact that many patients with bloodborne infections are not recognized, the new UP approach placed emphasis for the first time to applying Blood and Body Fluid Precautions universally to all persons regardless of their presumed infection status.[24] Until this time, most patients placed on isolation precautions were those for whom a diagnosis of an infectious disease had been made or was suspected. This provision led to the new name of Universal Precautions.

In addition to emphasizing prevention of needlestick injuries and the use of traditional barriers such as gloves and gowns, UP expanded Blood and Body Fluid Precautions to include use of masks and eye-coverings to prevent mucous membrane exposures during certain procedures and the use of individual ventilation devices when the need for resuscitation was predictable. This approach, and particularly the techniques for preventing mucous membrane exposures, was reemphasized in subsequent CDC reports that contained recommendations for prevention of HIV transmission in health care settings.[25-28]

In 1987, one of these reports[27] stated that implementation of UP for all patients eliminated the need for the isolation category of Blood and Body Fluid Precautions for patients known or suspected to be infected with bloodborne pathogens; however, the report stated that other category- or disease-specific isolation precautions recommended in the CDC isolation guideline[4] should be used as necessary if infections other than bloodborne infections were diagnosed or suspected.

The 1987 report was updated by a 1988 report[28] that emphasized two important points: (1) blood was the single most important source of HIV, HBV, and other bloodborne pathogens in the occupational setting, and (2) infection control efforts for preventing transmission of bloodborne pathogens in health care settings must focus on preventing exposures to blood as well as on delivery of HBV immunization. The report stated that UP applied to blood, body fluids that had been implicated in the transmission of bloodborne infections (semen and vaginal secretions), body fluids from which the risk of transmission was unknown (amniotic, cerebrospinal, pericardial, peritoneal, pleural, and synovial fluids),

and to any other body fluid visibly contaminated with blood, but not to feces, nasal secretions, sputum, sweat, tears, urine, or vomitus unless they contained visible blood. Although HIV and HBV surface antigen (HBsAg) had been found in some of the fluids, secretions, or excretions to which UP did not apply, epidemiologic studies in the health care and community setting had not implicated these substances in the transmission of HIV and HBV infections. However, the report noted that some of the fluids, secretions, and excretions not covered under UP represented a potential source for nosocomial and community-acquired infectious with other pathogens and referred readers to the CDC isolation guideline.

Body Substance Isolation

In 1987, a new system of isolation, called Body Substance Isolation (BSI), was proposed, after 3 years of study by infection control personnel at the Harborview Medical Center in Seattle and the University of California at San Diego, as an alternative to diagnosis-driven isolation systems.[29] BSI focused on the isolation of all moist and potentially infectious body substances (blood, feces, urine, sputum, saliva, wound drainage, and other body fluids) from all patients, regardless of their presumed infection status, primarily through the use of gloves. Personnel were instructed to put on clean gloves just before contact with mucous membranes and nonintact skin, and to wear gloves for anticipated contact with moist body substances. In addition, a "Stop Sign Alert" was used to instruct persons wishing to enter the room of some patients with infections transmitted exclusively or in part by the airborne route to check with the floor nurse, who would determine whether a mask should be worn; personnel were to be immune to or immunized against selected infectious diseases transmitted by airborne or droplet routes (measles, mumps, rubella, and varicella) or they were not to enter the rooms housing patients with these diseases. Other issues related to implementing BSI in a university teaching hospital were described.[30]

Among the advantages cited for BSI were that it was a simple, easy to learn and administer system, and that it avoided the assumption that (1) individuals without known or suspected diagnoses of transmissible infectious diseases were free of risk to patients and personnel, and (2) that only certain body fluids were associated with transmission of infection. The disadvantages of BSI included the added cost of increased use of barrier equipment, particularly gloves;[31] the difficulty in maintaining routine application of the protocol for all patients; the uncertainty about the precautions to be taken when entering a room with a "Stop Sign Alert"; and the potential for misapplication of the protocol to overprotect personnel at the expense of the patient.[32]

In a prospective study,[33] a combination use of gown and glove protocols similar to BSI led to lower infection rates in a pediatric intensive care unit (ICU), and in other studies similar combinations of barriers were associated with lower rates of nosocomial RSV infection in a pediatric ICU[34] and of resistant gram-negative organisms in an acute-care hospital.[35] However, in none of these studies, initiated before publication of BSI, were the authors attempting to evaluate BSI, nor were they able to separate the effect of gloves from that of gowns or from gloves and gowns used in combination.

Controversial aspects of BSI have been summarized.[15, 16] BSI appeared to replace some, but not all, of the isolation precautions necessary to prevent transmission of infection. BSI did not contain adequate provisions to prevent (1) droplet transmission of serious infections in pediatric populations (e.g., invasive *Haemophilus influenza, Neisseria meningitides* meningitis and pneumonia, and pertussis), (2) direct or indirect contact transmission of epidemiologically important microorganisms from dry skin or environmental sources (e.g., *Clostridium difficile* and vancomycin-resistant enterococci), or (3) true airborne transmission of infections transmitted over long distances by floating droplet nuclei. Although BSI emphasized that a private room was indicated for some patients with some diseases transmitted exclusively or in part by the true airborne route, it did not emphasize the need for special ventilation for patients known or suspected of having pulmonary tuberculosis or other diseases transmitted by airborne droplet nuclei. The lack of emphasis on special ventilation was of particular concern to CDC in the early 1990s because of multidrug-resistant tuberculosis.[18-19]

BSI and UP shared many similar features designed to prevent the transmission of bloodborne pathogens in hospitals. However, there was an important difference in the recommendation for glove use and handwashing. Under UP, gloves were recommended for anticipated contact with blood and specified body fluids and hands were to be washed immediately after gloves were removed.[27-28] Under BSI, gloves were recommended for anticipated contact with any moist body substance but handwashing after glove removal was not required unless the hands were visibly soiled.[29] The lack of emphasis on handwashing after glove removal was cited as one of the theoretical disadvantages of BSI.[15, 37-38] Using gloves as a protective substitute for handwashing may have provided a false sense of security, resulted in less handwashing, increased the risk of nosocomial transmission of pathogens because hands can become contaminated even when gloves are used[39] and are easily contaminated in the process of removing gloves, and contributed to skin problems and allergies associated with the use of gloves.[40-41] On the other hand, proponents of BSI have noted that studies of handwashing have indicated relatively low compliance by hospital personnel,[42-43] that glove use may have been easier to manage than handwashing, and that frequent handwashing may have led to eczema, skin cracking, or, in some persons, clinical damage to the skin of the hands.[44] Although use of gloves may have been better than no handwashing, the efficacy of using gloves as a substitute for handwashing has not been demonstrated.

OSHA Bloodborne Pathogens Regulations

In 1989, the Occupational Safety and Health Administration (OSHA) published a proposed rule regarding occupational exposure to bloodborne pathogens in hospitals and other health care settings.[45] The proposed rule, based on the concept of UP, raised concerns in the infection control community. Among them were concerns about the use of "visibly bloody" as a marker for the infectious risk of certain body fluids and substances, the imbalance toward precautions to protect personnel and away from protection for patients, the lack of proven efficacy of UP, and the costs for implementing the proposed regulations.[46-50] After a series of OSHA public hearings and review of written comments, the proposed rule was modified and the final rule on occupational exposure to bloodborne pathogens was published in 1991.[51] Although the final rule was expected to improve occupational safety in the care of patients infected with bloodborne pathogens, its impact on the cost of patient care and on nosocomial infection control has remained undefined. Information on complying with the OSHA final rule has been made

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available by the American Hospital Association[52] and others.[53]

The Need for a New Isolation Guideline

By the early 1990s, isolation had become an infection control conundrum.[54] Although many hospitals had incorporated all or portions of UP into their category- or disease-specific isolation system and others had adopted all or portions of BSI,[55-56] there was much local variation in the interpretation and use of UP and BSI and a variety of combinations was common. Further, there was considerable confusion about which body fluids or substances required precautions under UP and BSI. Many hospitals espousing UP were really using BSI and vice-versa. Moreover, there was continued lack of agreement about the importance of handwashing when gloves were used [14-15,27-29,37-38,57-58] and the need for additional precautions beyond BSI to prevent airborne, droplet, and contact transmission.[14-15,27-29,31,36,59-60] Some hospitals had not implemented appropriate guidelines for preventing transmission of tuberculosis, including multidrug-resistant tuberculosis.[61] As other multidrug-resistant microorganisms[62-63] were emerging, some hospitals failed to recognize them as new problems and to add appropriate precautions that would contain them.

In view of these problems and concerns, no simple adjustment to any of the existing approaches—UP, BSI, the CDC isolation guideline, or other isolation systems—appeared likely to solve the conundrum. Clearly what was needed was a new synthesis of the various systems that would provide a guideline with logistically feasible recommendations for preventing the many infections that occur in hospitals through diverse modes of transmission. To achieve this, the new guideline would have to be (1) epidemiologically sound, (2) recognize the importance of all body fluids, secretions, and excretions in the transmission of nosocomial pathogens, (3) contain adequate precautions for infections transmitted by the airborne, droplet, and contact routes of transmission, (4) be as simple and user friendly as possible, and (5) use new terms to avoid confusion with existing systems.

Based on these considerations, a new guideline was subsequently developed. It contains three important changes from previous recommendations. First, it synthesizes the major features of UP [27-28] and BSI [29-30] into a single set of precautions to be used for the care of all patients in hospitals regardless of their presumed infection status. These precautions, called Standard Precautions, are designed to reduce the risk of transmission of bloodborne and other pathogens in hospitals. As a result of this synthesis, a large number of patients with diseases or conditions that previously required category- or disease-specific precautions in the 1983 CDC isolation guideline [4] are now covered under Standard Precautions and do not require additional precautions. Second, it collapses the old categories of isolation precautions (Strict Isolation, Contact Isolation, Respiratory Isolation, Tuberculosis Isolation, Enteric Precautions, and Drainage/Secretion Precautions) and the old disease-specific precautions into three sets of precautions based on routes of transmission for a smaller number of specified patients known or suspected to be infected or colonized with highly transmissible or epidemiologically important pathogens; these Transmission-based Precautions, designed to reduce the risk of airborne, droplet, and contact transmission in hospitals, are to be used in addition to Standard Precautions. Third, it lists specific syndromes in both adult and pediatric patients that are highly suspicious for infection and identifies appropriate Transmission-based Precautions to use on an empiric, temporary basis until a diagnosis can be made; these empiric, temporary precautions are also designed to be used in addition to Standard Precautions. The details of the guideline recommendations are presented in Part II, "Recommendations for Isolation Precautions in Hospitals."

In summary, the new guideline is another step in the evolution of isolation practices in U.S. hospitals. It is now recommended for review and use by hospitals with the following provision. No guideline can address all of the needs of the more than 6,000 U.S. hospitals, which range in size from 5 beds to more than 1,500 beds and serve very different patient populations. Hospitals are encouraged to review the guideline and to modify it according to what is possible, practical, and prudent.

Part II. Recommendations for Isolation Precautions in Hospitals

Rationale for Isolation Precautions in Hospitals

Spread of infection within a hospital requires three elements: a source of infecting microorganisms, a susceptible host, and a means of transmission for the microorganism.

Source

Human sources of the infecting microorganisms in hospitals may be patients, personnel, or, on occasion, visitors and may include persons with acute disease, persons in the incubation period of a disease, persons who are colonized by an infectious agent but have no apparent disease, or persons who are chronic carriers of an infectious agent. Other sources of infecting microorganisms can be the patient's own endogenous flora, which may be difficult to control, and inanimate environmental objects that have become contaminated, including equipment and medications.

Host

Resistance among persons to pathogenic microorganisms varies greatly. Some persons may be immune to infection or be able to resist colonization by an infectious agent; others exposed to the same agent may establish a commensal relationship with the infecting microorganism and become asymptomatic carriers; still others may develop clinical disease. Host factors such as age; underlying diseases; certain treatments with antimicrobials, corticosteroids or other immunosuppressive agents; irradiation; and breaks in the first line of defense mechanisms caused by such factors as surgical operations, anesthesia, and indwelling catheters may render patients more susceptible to infection.

Transmission

Microorganisms are transmitted in hospitals by several routes, and the same microorganism may be transmitted by more than one route. There are five main routes of transmission—contact, droplet, airborne, common vehicle, and vectorborne. For the purpose of this guideline, common vehicle and vectorborne transmission will be discussed only briefly since neither play a significant role in typical nosocomial infections.

1. *Contact Transmission*, the most important and frequent mode of transmission of nosocomial infections, is divided into two subgroups: direct-contact transmission and indirect-contact transmission.

a. Direct-contact transmission involves a direct body surface-to-body surface contact and physical transfer of microorganisms between a susceptible host and an infected or colonized person, such as occurs when a person turns a patient, gives a patient a bath, or performs other patient-care activities that require direct personal contact. Direct-contact transmission can also occur between two patients with one serving as the source of the infectious microorganisms and the other as a susceptible host.

b. Indirect-contact transmission involves contact of a susceptible host with a contaminated intermediate object, usually inanimate, such as contaminated instruments or dressings, or contaminated gloves that are not changed between patients.

2. *Droplet transmission*, theoretically, is a form of contact transmission. However, the mechanism of transfer of the pathogen to the host is quite distinct from either direct- or indirect-contact transmission. Therefore, droplet transmission will be considered a separate route of transmission in this guideline. Droplets are generated from the source person primarily during coughing, sneezing, and talking, and during the performance of certain procedures such as suctioning and bronchoscopy. Transmission occurs when droplets containing microorganisms generated from the infected person are propelled a short distance through the air and deposited on the host's conjunctivae, nasal mucosa, or mouth. Transmission of this nature must not be confused with airborne transmission.

3. *Airborne Transmission* occurs by dissemination of either airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air for long periods of time) or dust particles containing the infectious agent. Microorganisms carried in this manner can be widely dispersed by air currents and may become inhaled by a susceptible host within the same room or over a longer distance from the source patient depending on environmental factors.

4. *Common Vehicle Transmission* applies to microorganisms transmitted by contaminated items such as food, water, medications, devices, and equipment.

5. *Vectorborne Transmission* occurs when vectors such as mosquitoes, flies, rats, and other vermin transmit microorganisms; this route of transmission is of less significance in hospitals in the United States than in other regions of the world.

Isolation precautions are designed to prevent transmission of microorganisms by these routes in hospitals. Since agent and host factors are more difficult to control, interruption of spread of infection is directed primarily at transmission. The recommendations presented in this guideline are based on this concept.

Placing a patient on isolation precautions, however, often presents certain disadvantages to the hospital, patients, personnel, and visitors. Isolation precautions may require specialized equipment and environmental modifications that add to the cost of hospitalization. Isolation precautions may make frequent visits by nurses, physicians, and other personnel inconvenient, and they may make it more difficult for personnel to give the prompt and frequent care that is sometimes required. The use of a multi-patient room for one patient uses valuable space that might otherwise accommodate several patients. Moreover, forced solitude deprives the patient of normal social relationships and may be psychologically harmful, especially to children. These disadvantages, however, must be weighed against the hospital's mission to prevent the spread of serious and epidemiologically important microorganisms in the hospital.

Fundamentals of Isolation Precautions

A variety of infection control measures are used for decreasing the risk of transmission of microorganisms in hospitals. These measures make up the fundamentals of isolation precautions.

Handwashing and Gloving

Handwashing is frequently called the single most important measure for preventing spread of infection. The scientific rationale, indications, methods, and products for handwashing have been delineated in other publications.[64-71]

Washing hands as promptly and thoroughly as possible between patient contacts and after contact with blood, body fluids, secretions, excretions, and equipment or articles contaminated by them is an important component of infection control and isolation precautions. In addition to handwashing, gloves play an important role in the prevention of the spread of infection.

Gloves are worn for three important reasons in hospitals. First, gloves are worn to provide a protective barrier and prevent gross contamination of the hands when touching blood, body fluids, secretions, excretions, mucous membranes, and nonintact skin; [27-29] the wearing of gloves in specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51] Second, gloves are worn to reduce the likelihood that microorganisms present on the hands of personnel will be transmitted to patients during invasive or other patient-care procedures that involve touching a patient's mucous membranes and nonintact skin. Third, gloves are worn to reduce the likelihood that hands of personnel contaminated with microorganisms from a patient or a fomite can transmit these microorganisms to another patient; in this situation, gloves must be changed between patient contacts and hands washed after gloves are removed.

Wearing gloves does not replace the need for handwashing because (1) gloves may have small inapparent defects or be torn during use, and (2) hands can become contaminated during removal of gloves.[14-15,39,72-75] Failure to change gloves between patient contacts is an infection control hazard.[52]

Patient Placement

Appropriate patient placement is an important component of isolation precautions. When possible, patients with highly transmissible or epidemiologically important microorganisms are placed in a private room with handwashing and toilet facilities to reduce opportunities for transmission of microorganisms. A private room is also important to prevent direct- or indirect-contact transmission when the source patient has poor hygienic habits, contaminates the environment, or cannot be expected to assist in maintaining infection control precautions to limit transmission of microorganisms (i.e., infants, children, and patients with altered mental status).

When a private room is not available, infected patients are placed with appropriate roommates. Patients infected by the same microorganism can usually share a room provided (1) they are not infected with other potentially transmissible microorganisms, and (2) the likelihood of reinfection with the same organism is minimal. Such sharing of rooms, also referred to as cohorting patients, is especially useful during outbreaks or when there is a shortage of private rooms. When a private room is not available and cohorting is not achievable or recommended,[23] it is very important to consider the epidemiology and mode of transmission of the infecting pathogen and the patient population being served in determining patient placement. Under these circumstances, consultation with infection control professionals is advised before patient placement. Moreover, when an infected patient shares a room with a noninfected patient, it is also important that patients, personnel, and visitors take precautions to prevent the spread of

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infection and that roommates are carefully selected.

Guidelines for construction, equipment, air handling, and ventilation for isolation rooms have been delineated in other publications.[76-78] A private room with appropriate air handling and ventilation is particularly important for reducing the risk of transmission of microorganisms from a source patient to susceptible patients and other persons in hospitals when the microorganism is spread by airborne transmission. Some hospitals use an isolation room with an anteroom as an extra measure of precaution to prevent airborne transmission. Adequate data regarding the need for anterooms, however, is not available. Ventilation recommendations for isolation rooms housing patients with pulmonary tuberculosis have been delineated in other CDC guidelines.[23]

Transport of Infected Patients

Limiting the movement and transport of patients infected with virulent or epidemiologically important microorganisms and ensuring that such patients leave their rooms only for essential purposes reduce opportunities for transmission of microorganisms in hospitals. When patient transport is necessary, it is important that (1) appropriate barriers (e.g., masks, impervious dressings) are worn or used by the patient to reduce the opportunity for transmission of pertinent microorganisms to other patients, personnel, and visitors and to reduce contamination of the environment, (2) personnel in the area to which the patient is to be taken are notified of the impending arrival of the patient and of the precautions to be used to reduce the risk of transmission of infectious microorganisms, and (3) patients are informed of ways by which they can assist in preventing the transmission of their infectious microorganisms to others.

Masks, Respiratory Protection, Eye Protection, Face Shields

Various types of masks, goggles, and face shields are worn alone or in combination to provide barrier protection. A mask that covers both the nose and mouth and goggles or a face shield are worn during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, or excretions to provide protection of the mucous membranes of the eyes, nose, and mouth from contact transmission of pathogens. The wearing of masks, eye protection, and face shields in specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51] A surgical mask is generally worn to provide protection against spread of infectious large-particle droplets that are transmitted by close contact and generally travel only short distances (up to 3 feet) from infected patients who are coughing or sneezing.

An area of major concern and controversy over the last several years has been the role and selection of respiratory protection equipment and the implications of a respiratory protection program for prevention of transmission of tuberculosis in hospitals. Traditionally, although the efficacy was not proven, a surgical mask was worn for isolation precautions in hospitals when patients were known or suspected to be infected with pathogens spread by the airborne route of transmission. In 1990, however, the CDC tuberculosis guidelines [18] stated that surgical masks may not be effective in preventing the inhalation of droplet nuclei and recommended the use of disposable particulate respirators despite the fact that the efficacy of particulate respirators in protecting persons for the inhalation of *Mycobacterium tuberculosis* had not been demonstrated. By definition, particulate respirators include dust-mist (DM), dust-fume-mist (DFM), or high-efficiency particulate air (HEPA) filter respirators certified by the CDC National Institute for Occupational Safety and Health (NIOSH); since the generic term particulate respirator was used in the 1990 guidelines, the implication was that any of these respirators provided sufficient protection.[79]

In 1993, a draft revision of the CDC tuberculosis guidelines [22] outlined performance criteria for respirators and stated that some DM or DFM respirators might not meet these criteria. After review of public comments, the guidelines were finalized in October 1994 [23] with the draft respirator criteria unchanged. The only class of respirators that currently are (1) known to consistently meet or exceed the performance criteria outlined in the 1994 tuberculosis guidelines, and (2) certified by NIOSH (as required by OSHA) are HEPA filter respirators. However, recently NIOSH has announced that they will change their respirator certification process.[80] The proposed changes should enable users to select from a broader range of certified respirators for use in hospitals for protection against *M. tuberculosis*. Additional information on the evolution of respirator recommendations, regulations to protect hospital personnel, and the role of various federal agencies in respiratory protection for hospital personnel has been prepared for publication.[79]

Gowns and Protective Apparel

Various types of gowns and protective apparel are worn to provide barrier protection and reduce opportunities for transmission of microorganisms in hospitals. Gowns are worn to prevent contamination of clothing and protect the skin of personnel from blood and body fluid exposures. Gowns especially treated to make them impermeable to liquids, leg coverings, boots, or shoe covers provide greater protection to the skin when splashes or large quantities of infective material are present or anticipated. The wearing of gowns and protective apparel under specified circumstances to reduce the risk of exposures to bloodborne pathogens is mandated by the OSHA bloodborne pathogens final rule.[51]

Gowns are also worn by personnel during the care of patients infected with epidemiologically important microorganisms to reduce the opportunity for transmission of pathogens from patients or items in their environment to other patients or environments; when gowns are worn for this purpose, they are removed before leaving the patient's environment and hands are washed. Adequate data regarding the efficacy of gowns for this purpose, however, is not available.

Patient-Care Equipment and Articles

Many factors determine whether special handling and disposal of used patient-care equipment and articles are prudent or required, including the likelihood of contamination with infective material; the ability to cut, stick, or otherwise cause injury (needles, scalpels, and other sharp instruments [sharps]); the severity of the associated disease; and the environmental stability of the pathogens involved.[27,51,81-83] Some used articles are enclosed in containers or bags to prevent inadvertent exposures to patients, personnel, and visitors and to prevent contamination of the environment. Used sharps are placed in puncture-resistant containers; other articles are placed in a bag. One bag is adequate if the bag is sturdy and the article can be placed in the bag without contaminating the outside of the bag; [84] otherwise two bags (double bagging) are used.

The scientific rationale, indications, methods, products, and equipment for reprocessing patient-care equipment have been delineated in other publications.[48,83,85-90] Contaminated, reusable critical medical devices or patient-care equipment (i.e., equipment that enters normally sterile tissue or through which blood flows) or semicritical medical devices or patient-care equipment (i.e., equipment that touches mucous membranes) are sterilized or disinfected (reprocessed) after use to reduce the risk of transmission of microorganisms to other patients; the type of reprocessing is determined by the article and its intended use, the manufacturer's recommendations, hospital policy, and any applicable guidelines and regulations.

Noncritical equipment (i.e., equipment that touches intact skin) contaminated with blood, body fluids, secretions, or excretions is cleaned and disinfected after use according to hospital policy. Contaminated disposable (single-use) patient-care equipment is handled and transported in a manner that reduces the risk of transmission of microorganisms and decreases environmental contamination in the hospital; the equipment is disposed of according to hospital policy and applicable regulations.

Linen and Laundry

Although soiled linen may be contaminated with pathogenic microorganisms, the risk of disease transmission is negligible if it is handled, transported, and laundered in a manner that avoids transfer of microorganisms to patients, personnel, and environments. Rather than rigid rules and regulations, hygienic and commonsense storage and processing of clean and soiled linen are recommended.[27,82,91] The methods for handling, transporting, and laundering of soiled linen are determined by hospital policy and any applicable regulations.

Dishes, Glasses and Cups, and Eating Utensils

No special precautions are needed for dishes, glasses and cups, or eating utensils. Either disposable or reusable dishes and utensils can be used for patients on isolation precautions. The combination of hot water and detergents used in hospital dishwashers is sufficient to decontaminate dishes, glasses and cups, and eating utensils.

Routine and Terminal Cleaning

The room or cubicle and bedside equipment of patients on isolation precautions are cleaned using the same procedures used for other patients unless the infecting microorganism(s) and the amount of environmental contamination indicates special cleaning. The methods, thoroughness, and frequency of cleaning and the products used are determined by hospital policy.

HICPAC Isolation Precautions

There are two tiers of HICPAC isolation precautions. In first, and most important, tier are those precautions designed for the care of all patients in hospitals regardless of their diagnosis or presumed infection status. Implementation of these "Standard Precautions" is the primary strategy for successful nosocomial infection control. In the second tier are precautions designed only for the care of specified patients. These additional "Transmission-based Precautions" are for patients known or suspected to be infected by epidemiologically important pathogens spread by airborne or droplet transmission or by contact with dry skin or contaminated surfaces.

Standard Precautions

Standard Precautions synthesize the major features of Universal (Blood and Body Fluid) Precautions [27-28] (designed to reduce the risk of transmission of bloodborne pathogens) and Body Substance Isolation [29-30] (designed to reduce the risk of transmission of pathogens from moist body substances) and applies them to all patients receiving care in hospitals regardless of their diagnosis or presumed infection status. Standard Precautions apply to (1) blood, (2) all body fluids, secretions, and excretions regardless of whether or not they contain visible blood, (3) nonintact skin, and (4) mucous membranes. Standard Precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in hospitals.

Transmission-Based Precautions

Transmission-based Precautions are designed for patients documented or suspected to be infected with highly transmissible or epidemiologically important pathogens for which additional precautions beyond Standard Precautions are needed to interrupt transmission in hospitals. There are three types of Transmission-based Precautions: Airborne Precautions, Droplet Precautions, and Contact Precautions. They may be combined together for diseases that have multiple routes of transmission. When used either singularly or in combination, they are to be used in addition to Standard Precautions.

Airborne Precautions are designed to reduce the risk of airborne transmission of infectious agents. Airborne transmission occurs by dissemination of either airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets that may remain suspended in the air for long periods of time) or dust particles containing the infectious agent. Microorganisms carried in this manner can be widely dispersed by air currents and may become inhaled by or deposited on a susceptible host within the same room or over a longer distance from the source patient, depending on environmental factors. Airborne Precautions apply to patients known or suspected to be infected with epidemiologically important pathogens that can be transmitted by the airborne route.

Droplet Precautions are designed to reduce the risk of droplet transmission of infectious agents. Droplet transmission involves contact of the conjunctivae, or the mucous membranes of the nose or mouth of a susceptible person with large-particle droplets (larger than 5 microns in size) containing microorganisms generated from a person who has a clinical disease or is a carrier of the microorganism. Droplets are generated from the source person primarily during coughing, sneezing, or talking, and during the performance of certain procedures such as suctioning and bronchoscopy. Transmission via large-particle droplets requires close contact between source and recipient persons since droplets do not remain suspended in the air and generally travel only short distances, usually 3 feet or less, through the air. Droplet Precautions apply to any patient known or suspected to be infected with epidemiologically important pathogens that can be transmitted by infectious droplets.

Contact Precautions are designed to reduce the risk of transmission of epidemiologically important microorganisms by direct or indirect contact. Direct-contact transmission involves skin-to-skin contact and physical transfer of microorganisms to a susceptible host from an infected or colonized person, such as occurs when personnel turn a patient, give a patient a bath, or perform other patient-care activities that require physical contact. Direct-contact transmission can also occur between two patients (e.g., by hand contact), with one serving as the source of infectious microorganisms and the other as a susceptible host. Indirect-contact transmission involves contact of a susceptible host with a contaminated intermediate object, usually inanimate, in the patient's environment. Contact Precautions apply to specified patients known or suspected to be infected or colonized (presence of microorganism

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in or on patient but without clinical signs and symptoms of infection) with epidemiologically important microorganisms than can be transmitted by direct- or indirect-contact.

A synopsis of the types of precautions and the patients requiring the precautions is listed in Table 1.

Empiric Use of Airborne, Droplet, or Contact Precautions

In many instances, the risk of nosocomial transmission of infection may be highest before a definitive diagnosis can be made and precautions based on that diagnosis implemented. The routine use of Standard Precautions for all patients should greatly reduce this risk for conditions other than those requiring Airborne, Droplet, or Contact Precautions. While it is not possible to prospectively identify all patients needing these enhanced precautions, certain clinical syndromes and conditions carry a sufficiently high risk to warrant the empiric addition of enhanced precautions while a more definitive diagnosis is pursued. A listing of such conditions and the recommended precautions beyond Standard Precautions is presented in Table 2.

The organisms listed under the column "Potential Pathogens" are not intended to represent the complete or even most likely diagnoses, but rather possible etiologic agents that require additional precautions beyond Standard Precautions until they can be ruled out. Infection control professionals are encouraged to modify or adapt this table according to local conditions. To ensure that appropriate empiric precautions are always implemented, hospitals must have systems in place to routinely evaluate patients according to these criteria as part of their preadmission and admission care.

Immunocompromised Patients

Immunocompromised patients vary in their susceptibility to nosocomial infections depending on the severity and duration of immunosuppression. They are generally at increased risk for bacterial infections from both endogenous and exogenous sources. The use of Standard Precautions for all patients and Transmission-based Precautions for specified patients as recommended in this guideline should reduce the acquisition by these patients of institutionally acquired bacteria from other patients and environments.

It is beyond the scope of this guideline to address the various measures that may be used for immunocompromised patients to delay or prevent acquisition of potential pathogens during temporary periods of neutropenia. Rather, the primary objective of this guideline is to prevent transmission of pathogens from infected or colonized patients in hospitals. Users of this guideline, however, are referred to the *Guideline for Prevention of Nosocomial Pneumonia*[22,23] for the HICPAC recommendations for prevention of nosocomial aspergillosis and Legionnaires' disease in immunocompromised patients.

HICPAC Recommendations for Isolation Precautions in Hospitals

The HICPAC recommendations presented below are categorized according to the scheme outlined in Table 3. The recommendations are limited to the topic of isolation precautions. Therefore, they must be supplemented by hospital policies and procedures for other aspects of infection and environmental control, occupational health, administrative and legal issues, and other issues beyond the scope of this guideline.

I. Education

Develop a system to ensure that hospital patients, personnel, and visitors are educated about use of precautions and their responsibility for adherence to them. *Category IB*

II. Standard Precautions

Use Standard Precautions, or the equivalent, for the care of all patients. *Category IB*

A. Handwashing

1. Wash hands after touching blood, body fluids, secretions, excretions, and contaminated items, whether or not gloves are worn. Wash hands immediately after gloves are removed, between patient contacts, and when otherwise indicated to avoid transfer of microorganisms to other patients or environments. *Category IB*

2. Use a plain (nonantimicrobial) soap for handwashing except for specific circumstances (e.g., control of outbreaks or hyperendemic infections) as defined by the infection control program. *Category II*

B. Gloves

Wear gloves (clean nonsterile gloves are adequate) when touching blood, body fluids, secretions, excretions, and contaminated items; put on clean gloves just before touching mucous membranes and nonintact skin. Remove gloves promptly after use, before touching noncontaminated items and environmental surfaces, and before going to another patient, and wash hands immediately to avoid transfer of microorganisms to other patients or environments. *Category IB*

C. Mask, Eye Protection, Face Shield

Wear a mask and eye protection or a face shield to protect mucous membranes of the eyes, nose, and mouth during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, and excretions. *Category IB*

D. Gown

Wear a gown (a clean nonsterile gown is adequate) to protect skin and prevent soiling of clothing during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, or excretions or cause soiling of clothing. Select a gown that is appropriate for the activity and amount of fluid likely to be encountered. Remove a soiled gown as promptly as possible and wash hands to avoid transfer of microorganisms to other patients or environments. *Category IB*

E. Patient-Care Equipment

Handle used patient-care equipment soiled with blood, body fluids, secretions, and excretions in a manner that prevents skin and mucous membrane exposures, contamination of clothing, and transfer of microorganisms to other patients and environments. Ensure that reusable equipment is not used for the care of another patient until it has been appropriately cleaned and reprocessed and single use items are properly discarded. *Category IB*.

F. Linen

Handle, transport, and process used linen soiled with blood, body fluids, secretions, and excretions in a manner that prevents skin and mucous membrane exposures, contamination of clothing, and avoids transfer of microorganisms to other patients and environments. *Category IB*

G. Occupational Health and Bloodborne Pathogens

1. Take care to prevent injuries when using needles, scalpels, and other sharp instruments or devices; when handling sharp instruments after procedures; when cleaning used instruments; and when disposing of used needles. Never recap used needles or otherwise manipulate them using both hands, or any other technique that involves directing the point of a needle toward any part of the body; rather, use either a one-handed "scoop" technique or a mechanical device designed for holding the needle sheath. Do not remove used needles from disposable syringes by hand, and do not bend, break, or otherwise manipulate used needles by hand. Place used disposable syringes and needles, scalpel blades, and other sharp items in appropriate puncture-resistant containers located as close as practical to the area in which the items were used, and place reusable syringes and needles in a puncture-resistant container for transport to the reprocessing area. *Category IB*

2. Use mouthpieces, resuscitation bags, or other ventilation devices as an alternative to mouth-to-mouth resuscitation methods in areas where the need for resuscitation is predictable. *Category IB*

H. Patient Placement

Place a patient who contaminates the environment or who does not (or cannot be expected to) assist in maintaining appropriate hygiene or environmental control in a private room. If a private room is not available, consult with infection control professionals regarding patient placement or other alternatives. *Category IB*

III. Airborne Precautions

In addition to Standard Precautions, use Airborne Precautions, or the equivalent, for patients known or suspected to be infected with microorganisms transmitted by airborne droplet nuclei (small-particle residue [5 microns or smaller in size] of evaporated droplets containing microorganisms that remain suspended in the air and can be widely dispersed by air currents within a room or over a long distance). *Category IB*

A. Patient Placement

Place the patient in a private room that has (1) monitored negative air pressure in relation to the surrounding areas, (2) a minimum of six air changes per hour, and (3) appropriate discharge of air outdoors or monitored high-efficiency filtration of room air before the air is circulated to other areas in the hospital.[23] Keep the room door closed and the patient in the room. When a private room is not available, place the patient in a room with a patient who has active infection with the same microorganism, unless otherwise recommended,[23] but with no other infection. When a private room is not available and cohorting is not desirable, consultation with infection control professionals is advised before patient placement. *Category IB*

B. Respiratory Protection

Wear respiratory protection when entering the room of a patient with known or suspected infectious tuberculosis.[23] Do not enter the room of patients known or suspected to have measles (rubeola) or varicella (chickenpox) if susceptible to these infections. *Category IB*

C. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If transport or movement is necessary, minimize patient dispersal of droplet nuclei by placing a surgical mask on the patient, if possible. *Category IB*

D. Additional Precautions for Preventing Transmission of Tuberculosis

Consult CDC Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities[23] for additional prevention strategies.

IV. Droplet Precautions

In addition to Standard Precautions, use Droplet Precautions, or the equivalent, for a patient known or suspected to be infected with microorganisms transmitted by droplets (large-particle droplets [larger than 5 microns in size] that can be generated by the patient during coughing, sneezing, talking, or the performance of procedures). *Category IB*

A. Patient Placement

Place the patient in a private room. When a private room is not available, place the patient in a room with a patient(s) who has active infection with the same microorganism, but with no other infection (cohorting). When a private room is not available and cohorting is not achievable, maintain spatial separation of at least 3 feet between the infected patient and other patients and visitors. *Category IB*

B. Mask

In addition to standard precautions, wear a mask when working within 3 feet of the patient. (Logistically, some hospitals may want to implement the wearing of a mask to enter the room.) *Category IB*

C. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If transport or movement is necessary, minimize patient dispersal of droplets by masking the patient, if possible. *Category IB*

V. Contact Precautions

In addition to Standard Precautions, use Contact Precautions, or the equivalent, for specified patients known or suspected to be infected or colonized with epidemiologically important microorganisms that can be transmitted by direct contact with the patient (hand or skin-to-skin contact that occurs when performing patient-care activities that require touching the patient's dry skin) or indirect contact (touching) with environmental surfaces or patient-care items in the patient's environment. *Category IB*

A. Patient Placement

Place the patient in a private room. When a private room is not available, place the patient in a room with a patient(s) who has active infection with the same microorganism, but with no other infection (cohorting). When a private room is not available and cohorting is not achievable, consider the epidemiology of the microorganism and the patient population when determining patient placement; consultation with infection control professionals is advised before patient placement. *Category IB*

B. Gloves and Handwashing

In addition to wearing gloves as outlined under Standard Precautions, wear gloves (clean nonsterile gloves are adequate) when entering the room. During the course of providing care for a patient, change gloves after having contact with infective material that may contain high concentrations of microorganisms (fecal material and wound drainage). Remove gloves before leaving the patient's room and wash hands immediately with an antimicrobial agent. After glove removal and handwashing, ensure that hands do not touch potentially contaminated environmental surfaces or items in the patient's room to avoid transfer of microorganisms to other patients or environments. *Category IB*

C. Gown

In addition to wearing a gown as outlined under Standard Precautions, wear a gown (a clean nonsterile gown is adequate) when entering the room if you anticipate that your clothing will have substantial contact with the patient, environmental surfaces, or items in the patient's room, or if the patient is incontinent, or has diarrhea, an ileostomy, a colostomy, or wound drainage not contained by a dressing. Remove the gown before leaving the patient's environment. After gown removal, ensure that clothing does not contact potentially contaminated environmental surfaces to avoid transfer of microorganisms to other patients or environments. *Category IB*

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D. Patient Transport

Limit the movement and transport of the patient from the room to essential purposes only. If the patient is transported out of the room, ensure that precautions are maintained to minimize the risk of transmission of microorganisms to other patients and contamination of environmental surfaces or equipment. *Category IB*

E. Environmental Control

Ensure that patient-care items, bedside equipment, and frequently touched surfaces receive daily cleaning. *Category IB*

F. Patient-Care Equipment

When possible, dedicate the use of noncritical patient-care equipment and items such as a stethoscope, sphygmomanometer, bedside commode, or electronic rectal thermometer to a single patient (or cohort of patients infected or colonized with the pathogen requiring precautions) to avoid sharing between patients. If use of common equipment or items is unavoidable, then adequately clean and disinfect them before use for another patient. *Category IB*

G. Additional Precautions for Preventing the Spread of Vancomycin Resistance

Consult the HICPAC report on preventing the spread of vancomycin resistance for additional prevention strategies.[94]

VI. Adherence to Precautions

Periodically evaluate adherence to precautions, and use findings to direct improvements. *Category IB*

TABLE 1.—SYNOPSIS OF TYPES OF PRECAUTIONS AND PATIENTS REQUIRING THE PRECAUTIONS*

Standard Precautions
Use Standard Precautions for the care of all patients

Airborne Precautions
In addition to Standard Precautions, use Airborne Precautions for patients known or suspected to have serious illnesses transmitted by airborne droplet nuclei. Examples of such illnesses include:
(1) Measles
(2) Varicella (including disseminated zoster)†
(3) Tuberculosis§

Droplet Precautions
In addition to Standard Precautions, use Droplet Precautions for patients known or suspected to have serious illnesses transmitted by large particle droplets. Examples of such illnesses include:
(1) Invasive *Haemophilus influenzae* type b disease, including meningitis, pneumonia, epiglottitis, and sepsis
(2) Invasive *Neisseria meningitidis* disease, including meningitis, pneumonia, and sepsis
(3) Invasive multidrug-resistant *Streptococcus pneumoniae* disease, including meningitis, pneumonia, sinusitis, and otitis media
(4) Other serious bacterial respiratory infections spread by droplet transmission, including:
(a) Diphtheria (pharyngeal)
(b) Mycoplasma pneumonia
(c) Pertussis
(d) Pneumonic plague
(e) Streptococcal pharyngitis, pneumonia, or scarlet fever in infants and young children
(5) Serious viral infections spread by droplet transmission, including:
(a) Adenovirus†
(b) Influenza
(c) Mumps
(d) Parvovirus B19
(e) Rubella

Contact Precautions
In addition to Standard Precautions, use Contact Precautions for patients known or suspected to have serious illnesses easily transmitted by direct patient contact or by contact with items in the patient's environment. Examples of such illnesses include:
(1) Gastrointestinal, respiratory, skin, or wound infections or colonization with multidrug-resistant bacteria judged by the infection control program, based on current state, regional, or national recommendations, to be of special clinical and epidemiologic significance
(2) Enteric infections with a low infectious dose or prolonged environmental survival, including:
(a) *Clostridium difficile*
(b) For diapered or incontinent patients: enterohemorrhagic *Escherichia coli* O157:H7, *Shigella*, hepatitis A, or rotavirus
(3) Respiratory syncytial virus, parainfluenza virus, or enteroviral infections in infants and young children
(4) Skin infections that are highly contagious or that may occur on dry skin, including:
(a) Diphtheria (cutaneous)
(b) Herpes simplex virus (neonatal or mucocutaneous)
(c) Impetigo
(d) Major (noncontained) abscesses, cellulitis, or decubiti
(e) Pediculosis
(f) Scabies
(g) Staphylococcal furunculosis in infants and young children
(h) Staphylococcal scaled skin syndrome
(i) Zoster (disseminated or in the immunocompromised host)†
(5) Viral/hemorrhagic conjunctivitis
(6) Viral hemorrhagic fevers (Lassa fever or Marburg virus)

*See Appendix A for a complete listing of infections requiring precautions, including appropriate footnotes.
†Certain infections require more than one type of precaution.
§See CDC *Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities.*[23]

TABLE 2.—CLINICAL SYNDROMES OR CONDITIONS WARRANTING ADDITIONAL EMPIRIC PRECAUTIONS TO PREVENT TRANSMISSION OF EPIDEMIOLOGICALLY IMPORTANT PATHOGENS PENDING CONFIRMATION OF DIAGNOSIS*

Clinical syndrome or condition†	Potential Pathogens §	Empiric Precautions
DIARRHEA:		
(1) Acute diarrhea with a likely infectious cause in an incontinent or diapered patient.	Enteric pathogens ¶	Contact.
(2) Diarrhea in an adult with a history of broad spectrum or long-term antibiotics	*Clostridium difficile*	Contact.
MENINGITIS	*Neisseria meningitidis*	Droplet.
RASH OR EXANTHEMS, GENERALIZED, ETIOLOGY UNKNOWN:		
(1) Petechial/ecchymotic with fever	Neisseria meningitidis	Droplet.
(2) Vesicular	Varicella	Airborne and Contact
(3) Maculopapular with coryza and fever	Rubeola (measles)	Airborne.
RESPIRATORY INFECTIONS:		
(1) Cough/fever/upper lobe pulmonary infiltrate in an HIV-negative patient and a patient at low risk for HIV infection.	*Mycobacterium tuberculosis*	Airborne.
(2) Cough/fever/pulmonary infiltrate in any lung location in a HIV-infected patient and at high risk for HIV infection[23].	*Mycobacterium tuberculosis*	Airborne.
(3) Paroxysmal or severe persistent cough during periods of pertussis activity	*Bordetella pertussis*	Droplet.
(4) Respiratory infections, particularly bronchoitis and croup, in infants and young children.	Respiratory syncytial or parainfluenza virus.	Contact.
RISK OF MULTIDRUG-RESISTANT MICROORGANISMS:		
(1) History of infection or colonization with multidrug-resistant organisms**	Resistant bacteria	Contact.
(2) Skin, wound, or urinary tract infection in a patient with a recent hospital or nursing home stay in a facility where multidrug-resistant organisms are prevalent.	Resistant bacteria	Contact.
SKIN OR WOUND INFECTION:		
Abscess or draining wound that cannot be covered	*Staphylococcus aureus*, Group A streptococcus.	Contact.

*Infection control professionals are encouraged to modify or adapt this table according to local conditions. To ensure that appropriate empiric precautions are always implemented, hospitals must have systems in place to routinely evaluate patients according to these criteria as part of their preadmission and admission care.
†Patients with the syndromes or conditions listed below may present with atypical signs or symptoms (e.g., pertussis in neonates and adults may not have paroxysmal or severe cough). The clinician's index of suspicion should be guided by the prevalence of specific conditions in the community as well as clinical judgement.
§The organisms listed under the column "Potential Pathogens" are not intended to represent the complete or even most likely diagnoses, but rather possible etiologic agents that require additional precautions beyond Standard Precautions until they can be ruled out.
¶These pathogens include enterohemorrhagic *Escherichia coli* O157:H7, *Shigella*, hepatitis A, and rotavirus.
**Resistant bacteria judged by the infection control program, based on current state, regional or national recommendations, to be of special clinical or epidemiological significance.

Table 3—Categorization of HICPAC Recommendations

Category IA. Strongly recommended for all hospitals and strongly supported by well-designed experimental or epidemiologic studies.

Category IB. Strongly recommended for all hospitals and viewed as effective by experts in the field and a consensus of HICPAC based on strong rationale and suggestive evidence, even though definitive scientific studies have not been done.

Category II. Suggested for implementation in many hospitals. Recommendations may be supported by suggestive clinical or epidemiologic studies, a strong theoretical rationale, or definitive studies applicable to some but not all hospitals.

No recommendation; unresolved issue. Practices for which insufficient evidence or consensus regarding efficacy exists.

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS

Infection/Condition	Precautions	
	Type*	Duration†
Abscess:		
Draining, major[1]	C	DI
Draining, minor or limited[2]	S	
Acquired immunodeficiency syndrome (AIDS)[3]	S	
Actinomycosis	S	
Adenovirus infection, in infants and young children	D, C	DI
Amebiasis	S	
Anthrox:		
Cutaneous	S	
Pulmonary	S	
Antibiotic-associated colitis (see *Clostridium difficile*):		
Arthropodborne viral encephalitides (eastern, western, Venezuelan equine encephalomyelitis; St. Louis, California encephalitis).	S[4]	
Arthropodborne viral fevers (dengue, yellow fever, Colorado tick fever)	S[4]	
Ascariasis	S	
Aspergillosis	S	
Babesiosis	S	

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Blastomycosis, North American, cutaneous or pulmonary	S	
Botulism	S	
Bronchiolitis (see respiratory infections in infants and young children):		
Brucellosis (undulant, Malta, Mediterranean fever)	S	
Campylobacter gastroenteritis (see gastroenteritis)		
Candidiasis, all forms including mucocutaneous	S	
Cat-scratch fever (benign inoculation lymphoreticulosis)	S	
Cellulitis, uncontrolled drainage	C	DI
Chancroid (soft chancre)	S	
Chickenpox (varicella)	A, C	F[5]
Chlamydia trachomatis:		
Conjunctivitis	S	
Genital	S	
Respiratory	S	
Cholera (see gastroenteritis)		
Closed-cavity infection:		
Draining, limited or minor	S	
Not draining	S	
Clostridium:		
C. botulinum	S	
C. difficile	C	DI
C. perfringens		
Food poisoning	S	
Gas gangrene	S	
Coccidioidomycosis (valley fever):		
Draining lesions	S	
Pneumonia	S	
Colorado tick fever	S	
Congenital rubella	C	F[6]
Conjunctivitis:		
Acute bacterial	S	
Chlamydia	S	
Gonococcal	S	
Acute viral (acute hemorrhagic)	C	DI
Coxsackie virus disease (see enteroviral infection):		
Creutzfeldt-Jakob disease	S[7]	
Croup (see respiratory infections in infants and young children):		
Cryptococcosis	S	
Cryptosporidiosis (see gastroenteritis)		
Cysticercosis	S	
Cytomegalovirus infection, neonatal or immunosuppressed	S	
Decubitus ulcer, infected:		
Major[1]	C	DI
Minor or limited[2]	S	
Dengue	S[4]	
Diarrhea, acute-infective etiology suspected (see gastroenteritis):		
Diphtheria:		
Cutaneous	C	CN[8]
Pharyngeal	D	CN[8]
Echinococcosis (hydatidosis)	S	
Echovirus (see enteroviral infection)		
Encephalitis or encephalomyelitis (see specific etiologic agents)		
Endometritis	S	
Enterobiasis (pinworm disease, oxyuriasis)	S	
Enterococcus species (see multidrug-resistant organisms if epidemiologically significant or vancomycin resistant):		
Enterocolitis, *Clostridium difficile*	C	DH
Enteroviral infections:		
Adults	S	
Infants and children	C	DI
Epiglottitis, due to *Haemophilus influenzae*	D	U[24 HRS]
Epstein-Barr virus infection, including infectious mononucleosis	S	
Erythema infectiosum (also see Parvovirus B19)	S	
Escherichia coli gastroenteritis (see gastroenteritis)		
Food poisoning:		
Botulism	S	
Clostridium perfringens or *welchii*	S	
Staphylococcal	S	
Furunculosis—staphylococcal:		
Infants and young children	C	DI
Gangrene (Gas gangrene)	S	

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Gastroenteritis:		
Campylobacter species	S[9]	
Cholera	S[9]	
Clostridium difficile	C	DI
Cryptosporidium species	S[9]	
Escherichia coli:		
Enterohemorrhagic O157:H7	S[9]	
Diapered or incontinent	C	DI
Other species	S[9]	
Giardia lamblia	S[9]	
Rotavirus	S[9]	
Diapered or incontinent	C	DI
Salmonella species (including *S. typhi*)	S[9]	
Shigella species	S[9]	
Diapered or incontinent	C	DI
Vibrio parahamolyticus	S[9]	
Viral (if not covered elsewhere)	S[9]	
Yersinia enterocolitica	S[9]	
German measles (rubella)	D	DI
Giardiasis (see gastroenteritis)		
Gonococcal ophthalmia neonatorum (gonorrheal ophthalmia, acute conjunctivitis of newborn)	S	
Gonorrhea	S	
Granuloma inguinale (donovaniasis, granuloma venereum)	S	
Guillain-Barre syndrome	S	
Hand, foot, and mouth disease (see enteroviral infection)		
Hemorrhagic fevers (for example, Lassa fever)[10]	C	DI
Hepatitis, viral:		
Type A	S	
Diapered or incontinent patients	C	F[11]
Type B—HBsAg positive	S	
Type C and other unspecified non-A, non-B	S	
Type E	S	
Herpangina (see enteroviral infection)		
Herpes simplex (*Herpesvirus hominis*):		
Encephalitis	S	
Neonatal[12]	C	DI
Mucocutaneous, disseminated or primary, severe	C	DI
Mucocutaneous, recurrent (skin, oral, genital)	S	
Herpes zoster (varicella-zoster):		
Localized in immunocompromised patient, or disseminated	A, C	DI
Localized in normal patient	S	
Histoplasmosis	S	
Hookworm disease (ancylostomiasis, uncinariasis)	S	
Human immunodeficiency virus (HIV) infection[3]	S	
Impetigo	C	U[24 HRS]
Infectious mononucleosis	S	
Influenza	D[13]	DI
Kawasaki syndrome	S	
Lassa fever[10]	C	DI
Legionnaires' disease	S	
Leprosy	S	
Leptospirosis	S	
Listeriosis	S	
Lyme disease	S	
Lymphocytic choriomeningitis	S	
Lymphogranuloma venereum	S	
Malaria	S	
Marburg virus disease[10]	C	DI
Measles (rubeola), all presentations	A	DI
Melioidosis, all forms	S	
Meningitis:		
Aseptic (nonbacterial or viral meningitis)	S	
Bacterial, gram-negative enteric, in neonates	S	
Fungal	S	
Haemophilus influenzae, known or suspected	D	U[24 HRS]
Listeria monocytogenes	S	
Neisseria meningitidis (meningococcal) known or suspected	D	U[24 HRS]
Pneumococcal	S	
Tuberculosis[14]	S	
Other diagnosed bacterial	S	

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APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Meningococcal pneumonia	D	U[24 HRS]
Meningococcemia (meningococcal sepsis)	D	U[24 HRS]
Molluscum contagiosum	S	
Mucormycosis	S	
Multidrug-resistant organisms, infection or colonization[18]:		
Gastrointestinal	C	CN
Respiratory	C	CN
Pneumococcal	D	CN
Skin, wound, or burn	C	CN
Mumps (infectious parotitis)	D	F[16]
Mycobacteria, nontuberculosis (atypical):		
Pulmonary	S	
Wound	S	
Mycoplasma pneumonia	D	DI
Necrotizing enterocolitis	S	
Nocardiosis, draining lesions or other presentations	S	
Norwalk agent gastroenteritis (see viral gastroenteritis)		
Orf	S	
Parinfluenza virus infection, respiratory in infants and young children	C	DI
Parvovirus B19	D	F[17]
Pediculosis	C	U[24 HRS]
Pertussis (whooping cough)	D	F[19]
Pinworm infection	S	
Plague:		
Bubonic	S	
Pneumonic	D	U[72 HRS]
Pleurodynia (see enteroviral infection)		
Pneumonia:		
Adenovirus	D, C	DI
Bacterial not listed elsewhere (including gram-negative bacterial)	S	
Chlamydia	S	
Fungal	S	
Haemophilus influenzae:		
Adults	S	
Infants and children (any age)	D	U[24 HRS]
Legionella	S	
Meningococcal	D	U[24 HRS]
Multidrug-resistant bacterial (see multidrug-resistant organisms)		
Mycoplasma (Primary atypical (pneumonia)	D	DI
Pneumococcal	S	
Multidrug-resistant (see multidrug-resistant organisms)		
Pneumocytis carinii	S[19]	
Pseudomonas capacia in cystic fibrosis (CF) patients, including respiratory tract colonization	C[20]	DH
Staphylococcus aureus	S	
Streptococcus, Group A:		
Adults	S	
Infants and young children	D	U[24 HRS]
Viral:		
Adults	S	
Infants and young children (see respiratory infectious disease, acute)		
Poliomyelitis	S	
Psittacosis (ornithosis	S	
Q fever	S	
Rabies	S	
Rat-bite fever (*Streptobacillus moniliformis* disease, *spirillum minus* disease)	S	
Relapsing fever	S	
Resistant bacterial infection or colonization (see multidrug-resistant organisms)		
Respiratory infectious disease, acute (if not covered elsewhere):		
Adults	S	
Infants and young children[3]	C	DI
Respiratory syncytial virus infection, in infants and young children, and immunocompromised adults	C	DI
Reye syndrome	S	
Rheumatic fever	S	
Rickettsial fevers, tickborne (Rocky Mountain spotted fever, tickborne typhus fever)	S	
Rickettsialpox (vesicular rickettsiosis)	S	
Ringworm (dermatophytosis, dermatomycosis, tinea	S	
Ritter's disease (Staphylococcal scalded skin syndrome	C[21]	DI
Rocky Mountain spotted fever	S	
Roseola infantum (exanthem subitum)	S	
Rotavirus infection (see gastroenteritis)		

APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Rubella (German measles) (also congenital rubella)	D	F[22]
Salmonellosis (see gastroenteritis)		
Scabies	C	U[24 HRS]
Scalded skin syndrome, staphylococcal (Ritter's diease)	C[21]	DI
Schistosomiasis (bilharziasis)	S	
Shigellois (see gastroenteritis)		
Sporotrichosis	S	
Spirillium minus disease (rat-bite fever)	S	
Staphylococcal disease (S. aureus):		
Skin, wound, or burn:		
Major[1]	C	DI
Minor or limited[2]	S	
Enterocolitis	S	
Multidrug-resistant (see multidrug-resistant organisms)		
Pneumonia	S	
Scalded skin syndrome	C	DI
Toxic shock syndrome	S	
Streptobacillus moniliformis disease (rat-bite fever)	S	
Streptococcal disease (group A *Streptococcus):*		
Skin, wound, or burn:		
Major[1]	C	U[24 HRS]
Minor or limited[2]	S	
Endometritis (puerperal sepsis)	S	
Pharyngitis in infants and young children	D	U[24 HRS]
Pneumonia in infants and young children	D	U[24 HRS]
Scarlet fever in infants and young children	D	U[24 HRS]
Streptococcal disease (group B *Streptococcus*), neonatal	S	
Streptococcal disease (not group A or B) unless covered elsewhere	S	
Multidrug-resistant (see multidrug-resistant organisms)		
Strongyloidiasis	S	
Syphilis:		
Skin and mucous membrane, including congenital, primary, secondary	S	
Latent (tertiary) and seropositivity without lesions	S	
Tapeworm disease:		
Hymenolepis nana	S	
Taenia solium (pork)	S	
Other	S	
Tetanus	S	
Tinea (fungus infection dermatophytosis, dermatomycosis, ringworm)	S	
Toxoplasmosis	S	
Toxic shock syndrome (Staphylococcal disease)	S	
Trachoma, acute	S	
Trench mouth (Vincent's angina)	S	
Trichinosis	S	
Trichomoniasis	S	
Trichuriasis (whipworm disease)	S	
Tuberculosis:		
Extrapulmonary, draining lesion (including scrofula)	S	
Extrapulmonary, meningitis[14]	S	
Pulmonary, confirmed or suspected or laryngeal disease	A	F[23]
Skin-test positive with no evidence of current pulmonary disease	S	
Tularemia:		
Draining lesion	S	
Pulmonary	S	
Typhoid (*Salmonella typhi*) fever (see gastroenteritis)		
Typhus, endemic and epidemic	S	
Urinary tract infection (including pyelonephritis), with or without urinary catheter	S	
Varicella (chickenpox)	A, C	F[5]
Vibrio parahaemolyticus (see gastroenteritis)		
Vincent's angina (trench mouth)	S	
Viral diseases:		
Respiratory (if not covered elsewhere):		
Adults	S	
Infants and young children (see respiratory infectious disease, acute).		
Whooping cough (pertussis)	D	F[19]
Wound infections:		
Major[1]	C	DI
Minor or limited[2]	S	
Yersinia enterocolitica gastroenteritis (see gastroenteritis)		
Zoster (varicella-zoster):		

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APPENDIX A.—TYPE AND DURATION OF PRECAUTIONS NEEDED FOR SELECTED INFECTIONS AND CONDITIONS—Continued

Infection/Condition	Precautions	
	Type*	Duration†
Localized in immunocompromised patient, disseminated	A, C	F[5]
Localized in normal patient	S	
Zygomycosis (phycomycosis, mucormycosis)	S	

[1] No dressing or dressing does not adequately contain drainage.
[2] Dressing covers and adequately contains drainage.
[3] Also see syndromes or conditions listed in Table 2.
[4] Install screens in windows and doors in endemic areas.
[5] Maintain precautions until all lesions are crusted. Use varicella zoster immune globulin (VZIG) when appropriate, and discharge exposed susceptible patients before the 10th day after exposure, if possible. Place remaining exposed susceptible patients on precautions beginning 10 days after exposure and continue until 21 days after last exposure (up to 28 days if VZIG has been given). Susceptible persons should stay out of room of patients on precautions.
[6] Place infant on precautions during any admission until 1 year of age unless nasopharyngeal and urine cultures are negative for virus after age 3 months.
[7] Additional special precautions are necessary for handling and decontamination of blood, body fluids and tissues, and contaminated items from patients with confirmed or suspected disease. See latest College of American Pathologists (Northfield, Illinois) guidelines or other references.
[8] Until two cultures taken at least 24 hours apart are negative.
[9] Use contact precautions for diapered or incontinent children <6 years of age for duration of illness.
[10] Call state health department and CDC for advice about management of a suspected case.
[11] Maintain precautions in infants and children <3 years of age for duration of hospitalization; in children 3–14 years of age, until 2 weeks after onset of symptoms; and in others, until 1 week after onset of symptoms.
[12] For infants delivered vaginally or by C-section and if mother has active infection and membranes have been ruptured for more than 4–6 hours.
[13] This recommendation is made recognizing the logistic difficulties and physical plant limitations that may face hospitals admitting multiple patients with suspected influenza during community outbreaks. If sufficient private rooms are unavailable, consider cohorting patients, or at the very least, avoid room-sharing with high risk patients. See Guideline for Prevention of Nosocomial Pneumonia[92-93] For additional prevention and control strategies.
[14] Patient should be examined for evidence of current (active) pulmonary tuberculosis. If evidence exists, additional precautions are necessary (see tuberculosis).
[15] Resistant bacteria judged by the infection control program, based on current state, regional, or national recommendations, to be of special clinical and epidemiologic significance.
[16] For 9 days after onset of swelling.
[17] Maintain precautions for duration of hospitalization when chronic disease occurs in an immunodeficient patient. For patients with transient aplastic crisis or red cell crisis, maintain precautions for 7 days.
[18] Maintain precautions until 5 days after patient is placed on effective therapy.
[19] Avoid placement in the same room with an immunocompromised patient.
[20] Avoid cohorting or placement in the same room with a CF patient who is not infected or colonized with P. CEPACIA.
[21] Blistering is due to the hematogenous dissemination of toxin, not to presence of organisms in the blisters. However, such patients may be heavily colonized with staphylococci because of their skin problems; thus, contact precautions are recommended.
[22] Until 7 days after onset of rash.
[23] Discontinue precautions only when TB patient is on effective therapy, is improving clinically, and has 3 consecutive negative sputum smears collected on different days, or TB is ruled out. Also see CDC Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities.[23]

*Type of Precautions
A—Airborne.
C—Contact.
D—Droplet.
S—Standard.
When A, C, and D are specified, also use S.

†Duration of Precautions
CN—Until off antibiotics and culture negative.
DH—Duration of hospitalization.
DI—Duration of illness (with wound lesions, DI means until they stop draining).
U—Until time specified in hours (HRS) after initiation of effective therapy.
F—See footnote number.

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H.R. 1348/P.L. 103–449
To establish the Quinebaug and Shetucket Rivers Valley National Heritage Corridor in the State of Connecticut, and for other purposes. (Nov. 2, 1994; 108 Stat. 4752; 14 pages)

H.R. 3050/P.L. 103–450
To expand the boundaries of the Red Rock Canyon National Conservation Area. (Nov. 2, 1994; 108 Stat. 4766; 3 pages)

H.R. 3059/P.L. 103–451
National Maritime Heritage Act of 1994 (Nov. 2, 1994; 108 Stat. 4769; 14 pages)

H.R. 3313/P.L. 103–452
Veterans Health Programs Extension Act of 1994 (Nov. 2, 1994; 108 Stat. 4783; 7 pages)

H.R. 3984/P.L. 103–453
To designate the building located at 216 Coleman Avenue in Waveland, Mississippi, for the period of time during which it houses operations of the United States Postal Service, as the "John Longo, Jr. Post Office". (Nov. 2, 1994; 108 Stat. 4790; 1 page)

H.R. 4180/P.L. 103–454
To provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes. (Nov. 2, 1994; 108 Stat. 4791; 6 pages)

H.R. 4193/P.L. 103–455
To designate the building located at 100 Vester Gade, in Cruz Bay, Saint Thomas, Virgin Islands, for the period of time which it houses operations of the United States Postal Service, as the "Ubaldina Simmons Post Office". (Nov. 2, 1994; 108 Stat. 4797; 1 page)

H.R. 4452/P.L. 103–456
To designate the United States Post Office building located at 115 North Chester in Ruleville, Mississippi, as the "Fannie Lou Hamer Post Office". (Nov. 2, 1994; 108 Stat. 4798; 1 page)

H.R. 4497/P.L. 103–457
To award a congressional gold medal to Rabbi Menachem Mendel Schneerson. (Nov. 2, 1994; 108 Stat. 4799; 2 pages)

H.R. 4551/P.L. 103–458
To designate the United States Post Office building located at 301 West Lexington Street in Independence, Missouri, as the "William J. Randall Post Office". (Nov. 2, 1994; 108 Stat. 4801; 1 page)

H.R. 4571/P.L. 103–459
To designate the United States Post Office building located at 103-104 Estate Richmond in Saint Croix, Virgin Islands, as the "Wilbert Armstrong Post Office". (Nov. 2, 1994; 108 Stat. 4802; 1 page)

H.R. 4595/P.L. 103–460
To designate the building located at 4021 Laclede in St. Louis, Missouri, for the period of time during which it houses operations of the United States Postal Service, as the "Marian Oldham Post Office". (Nov. 2, 1994; 108 Stat. 4803; 1 page)

H.R. 4598/P.L. 103–461
To direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System, and to authorize appropriations to carry out the Coastal Barrier Resources Act. (Nov. 2, 1994; 108 Stat. 4804; 1 page)

H.J. Res. 271/P.L. 103–462
Designating the month of November in each of the calendar years 1993 and 1994 as "National American Indian Heritage Month". (Nov. 2, 1994; 108 Stat. 4805; 2 pages)

H.J. Res. 326/P.L. 103–463
Designating January 16, 1995, as "National Good Teen Day". (Nov. 2, 1994; 108 Stat. 4807; 1 page)

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[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV94-905-4-IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the minimum size requirement for domestic shipments of Florida red seedless grapefruit and for red seedless grapefruit imported into the United States to $3^{5}/_{16}$ inches in diameter (size 56) through November 12, 1995. Unless relaxed, the minimum size requirement will increase under current requirements to $3^{9}/_{16}$ inches in diameter (size 48) on November 7, 1994. This rule enables handlers in Florida and importers to continue to ship size 56 red seedless grapefruit for the entire 1994–95 season.

DATES: Effective November 7, 1994; comments received by December 8, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770; or Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–1755.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order". This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 110 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, about 11,970 producers of these citrus fruits in Florida, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR

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121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, importers, and producers may be classified as small entities.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designated to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Citrus Administrative Committee (committee), which administers the order locally, makes recommendations to the Secretary of Agriculture as to the grade and size of fruit that should garner consumer acceptance. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The committee met September 13, 1994, and unanimously recommended that the minimum size requirement for domestic shipments of fresh red seedless grapefruit be relaxed from size 48 to size 56 for the period November 7, 1994, to November 12, 1995. Size 56 (3$^{9}/_{16}$ inches diameter) is the minimum size until November 6, 1994. At that time, absent this revision of the rules and regulations under the order, the minimum size will revert to size 48 (3$^{9}/_{16}$ inches diameter).

Section 905.52, Issuance of regulations, authorizes the committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the committee considered estimated supply and current shipments. The committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1994–95 season.

The committee recommended this relaxation in size to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This is consistent with current and anticipated demand in those markets for the 1994–95 season, and will provide for the maximization of shipments to fresh market channels.

There are several exemption provisions under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale under these provisions. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for red seedless grapefruit as specified. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs consistent with this season's crop and market conditions.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3$^{9}/_{16}$ inches in diameter (size 56) for the period November 7, 1994, through November 12, 1995, to reflect the relaxation being made under the order for grapefruit grown in Florida.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) This rule relaxes the minimum size requirement currently in effect for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States;

(2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed size requirement;

(3) shipment of the 1994–95 season Florida red seedless grapefruit crop is expected to be well underway by November 7, 1994; and

(4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. Section 905.306 is amended by revising the entries in Table I of paragraph (a) for seedless, red grapefruit to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety (1)	Regulation Period (2)	Minimum Grade (3)	Minimum Diameter (Inches) (4)
Grapefruit.			
Seedless, red	11/07/94–11/12/95	Improved No. 2 External U.S. No. 1 Internal.	3$^{9}/_{16}$
	On and after 11/13/95	Improved No. 2 External U.S. No. 1 Internal.	3$^{9}/_{16}$

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.106 is amended by revising paragraph (a) to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to section 8e [7 U.S.C. Section 608e-1] of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
Seeded	On and after 07/26/93	U.S. No. 1	3$^{12}/_{16}$
Seedless, red	11/07/94–11/12/95	Improved No. 2 External U.S. No. 1 Internal.	3$^{9}/_{16}$
	On and after 11/13/95	Improved No. 2 External U.S. No. 1 Internal.	3$^{9}/_{16}$
Seedless, except red	On and after 07/26/93	Improved No. 2 External U.S. No. 1 Internal.	3$^{9}/_{16}$

* * * * *

Dated: November 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27752 Filed 11–4–94; 2:27 pm]

BILLING CODE 3410-02-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release Nos. 35–26153; IC–20675; International Series Release No. 740; File No. S7–32–94]

Request for Comments on Modernization of the Regulation of Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Concept release; request for comments.

SUMMARY: The Commission is soliciting comments on modernization of the regulation of public-utility holding companies under the Public Utility Holding Company Act of 1935. Developments in recent years require reexamination of the need for, and role of, a federal holding company statute. Accordingly, the Commission is requesting comment on a number of specific issues summarized in this release, and generally on any other issues that commenters believe relevant to the regulation of public-utility holding companies.

DATES: Comments are to be received on or before February 6, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–32–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Office of Legal & Policy Analysis, Martha Cathey Baker, Assistant Director, Office of Applications, Robert P. Wason, Chief Financial Analyst, Office of Public Utility Regulation, or C. Hunter Jones, Special Counsel, Office of the General Counsel, all at (202) 942–0545.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is soliciting comments in connection with a comprehensive study ("Study") of

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regulation under the Public Utility Holding Company Act of 1935 ("Holding Company Act" or "Act"). The Holding Company Act was complex and far-reaching New Deal legislation, enacted by Congress to eliminate abuses that had plagued the U.S. electric and gas utility industry and threatened the interests of investors and consumers. The public-utility holding companies subject to this statute operate across the United States, serving a vast number of utility consumers.[1] Although in the past sixty years there have been fundamental changes in the industry, as well as significant legal and regulatory developments, the Holding Company Act has remained largely unchanged.

The Commission is undertaking a thorough evaluation of the Act, to review the regulatory framework in light of developments in recent years and to consider how federal regulation of utility holding companies can best serve the interests of investors, consumers, and the general public in the years to come. The Commission inaugurated the Study with a roundtable discussion, in Washington, D.C. on July 18 and 19, 1994 ("Roundtable"), in which representatives of the utility industry, consumer groups, trade associations, investment banks, rating agencies, economists, state, local and federal regulators, and others participated.[2]

The participants discussed a number of issues facing the industry today. They noted that deregulation and increased competition have created risks, as well as potential benefits, for public utilities. Many participants stated that utilities are experiencing little or no earnings growth in their core utility business. A number of possible responses, including reorganization of the industry along functional lines, diversification, and investment in foreign projects, were mentioned. Although the participants had widely divergent views on the future of the Act, all agreed that the statute poses some impediments to change. Recommendations ranged from selective reform of the Act to outright repeal.

Those favoring repeal have argued that the Act is redundant or outmoded as a result of changes in the industry, the capital markets, accounting standards, state and other federal regulation, and the disclosure required under other federal securities laws. Although the Commission has previously supported proposals to repeal or transfer administration of the Act,[3] these proposals have not succeeded. Commenters who favor continued efforts for repeal should describe in particular the protections that would be afforded consumers by state and other federal law, in the absence of a Holding Company Act.

At the Roundtable, Commissioner Richard Y. Roberts expressed the view, and the Commission concurs, that the most valuable contributions to the Study may consist of concrete proposals for reforms on which it is likely that the industry, the regulators and other interested parties can agree.[4] The objective of such proposals would be to modernize and simplify regulation, reduce the delay inherent in the current administration of the Act, and minimize regulatory overlap, while protecting the interests of consumers and investors.

As a point of departure, the existing regulatory framework is summarized below. Also identified are a number of specific topics on which the Commission is seeking comment. Commenters are encouraged to address the overall regulatory structure for public-utility holding companies, and to consider the appropriate role of a federal holding company statute, particularly in view of the work of the Federal Energy Regulatory Commission ("FERC") and state and local regulators. In addition, commenters are urged to address any general topics or issues that they believe merit examination in the Commission's study of holding company regulation.

The Commission requests that commenters provide specific statutory or rulemaking language, where possible, to implement their recommendations. It may also be helpful to compare the costs and benefits of various proposals, to companies as well as to consumers and investors. In addition, if commenters argue that regulatory or market protections outside the Holding Company Act suffice to protect investors and consumers on a particular issue, they should describe the operation of these other safeguards.

II. The Existing Regulatory Structure

A. Background: Passage of the Holding Company Act

The Holding Company Act[5] was intended to address the practices by which small groups of investors, by means of the holding company structure, were able to exploit vast networks of utility companies, to the detriment of utility consumers and other security holders. The specific problems identified by Congress included inadequate disclosure, excessive leverage, abusive affiliate transactions, use of the holding company to evade state regulation, and the growth and extension of holding companies without regard to the economy of management and operation of system utility companies.[6] These aggressive practices harmed investors who owned the securities of the utility companies and captive utility consumers who were forced to pay inflated rates for gas and electric energy.

The multistate character of the holding companies prevented effective control by state regulators. Holding company ownership shifted management and control from the operating utilities, which were subject to state regulation, to a parent company organized under the laws of another state and beyond the jurisdiction of utility regulators in any state. During the early years of this century, the federal government played a very limited role in the regulation of the utility industry.[7] At the time the Holding Company Act was passed, jurisdiction over holding companies consisted largely of nascent, indirect regulation under the Securities Act of 1933[8] and the Securities Exchange Act of 1934.[9]

Extensive studies that preceded the Act found "a number of almost inherent incidental abuses in the holding-company system which cannot be

[1] At present, there are fourteen active registered holding companies and several hundred exempt holding companies.

[2] A transcript of the Roundtable discussion, which was open to the public, will soon be available for inspection and copying at the Commission's Public Reference Room in File No. S7-19-94.

[3] See, e.g., Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[4] Several commenters provided specific proposals for Commission consideration. See, e.g., Comments by Joan T. Bok, Chairman, New England Electric System; Summary of Comments of Clinton Vince, Special Counsel to the Council of the City of New Orleans; Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994) (available in Public Comment File No. S7-19-94).

[5] Pub. L. No. 74-333, 49 Stat. 803 (1935) (codified as amended at 15 U.S.C. 79a-79z-6). The Holding Company Act was enacted as Title I of the Public Utility Act of 1935. Title II amended the Federal Water Power Act of 1920 to create the Federal Power Act. See Pub. L. No. 74-333, 49 Stat. 838 (1935) (codified as amended at 16 U.S.C. 791a-828c).

[6] Holding Company Act section 1(b) (15 U.S.C. 79a(b)).

[7] The jurisdiction of the Federal Power Commission was then narrowly defined. Prior to 1935, most transactions involving interstate transmission of electricity were not regulated by the federal government. See Richard Lowitt, *Federal Power Commission*, in *Government Agencies* 233, 235 (Donald R. Whitnah ed., 1983). See *infra* section II.C.1. (discussing developments in federal energy regulation).

[8] Pub. L. No. 73-22, 48 Stat. 74 (1933) (codified as amended at 15 U.S.C. 77a *et seq.*).

[9] Pub. L. No. 73-290, 48 Stat. 881 (1934) (codified as amended at 15 U.S.C. 78a *et seq.*).

reached by direct regulation of the operating company," [10] and concluded that "[t]he only practical control over public-utility holding companies will be one which can directly reach the holding company itself and supervise its security structure and its use of capital * * *. Only in that way can Government protect the investors who supply that capital and the consumers who must bear its cost." [11]

The Holding Company Act was intended to curb the abusive practices of public-utility holding companies by bringing these companies under effective control.[12] Thus, the Commission, as the agency with expertise in financial transactions and corporate finance, was charged with regulation of the corporate structure and financings of public-utility holding companies and their affiliates.[13]

Any company that owns 10 percent or more of the outstanding voting securities of a public-utility company is presumptively a holding company for purposes of the Act.[14] The burden of regulation under the Act falls most heavily on holding companies that have significant interstate utility operations, and are thereby not readily susceptible to effective state regulation. These companies must register and comply with the myriad requirements of the Act.[15]

Section 11, which the Supreme Court has described as the "very heart" of the Act,[16] generally limits registered holding companies to a single integrated public-utility system and such other businesses as are "reasonably incidental, or economically necessary or appropriate" to the operations of that system.[17] Companies in a registered holding company system must obtain Commission approval for a wide range of transactions, including financings,[18] acquisitions,[19] and intrasystem transactions.[20] These companies are also subject to various accounting and reporting requirements.[21]

Although most public-utility holding companies are largely exempt from pervasive regulation under the Holding Company Act, they nonetheless remain subject to the requirement of prior Commission approval for utility acquisitions. In addition, the Commission may challenge the continued availability of an exemption under the "unless and except" clause of section 3.[22]

B. Legislative and Regulatory Developments Related to the Holding Company Act

The Commission's early administration of the Act was largely directed toward the reorganization of existing holding companies. By the 1950s, this work was largely completed.[23] Since then, the Commission has acted to ensure that the abuses that gave rise to the Act do not recur.[24]

Although the basic framework of the Act remains unchanged, Congress has created a number of statutory exceptions to the regulatory scheme. Beginning in the 1970s, Congress enacted the Public Utility Regulatory Policies Act of 1978 (PURPA)[25] to stimulate alternative energy production. To that end, PURPA granted "qualifying facilities" (QFs) significant regulatory advantages over traditional generating facilities. Among other things, most QFs are exempted from the Holding Company Act,[26] and a registered holding company can acquire interests in QFs that are unrelated to its core utility operations.[27] In addition, Congress enacted the Gas Related Activities Act of 1990 (GRAA), which permits gas registered holding companies to acquire significant production and transportation assets that do not directly serve the needs of their retail distribution systems.[28]

Congress accelerated the pace of change in the industry with the Energy Policy Act of 1992,[29] which enables companies to invest in "exempt wholesale generator" [30] and "foreign utility company" [31] operations throughout the United States and abroad. The Energy Policy Act represented the first major change in the pattern of regulation under the

[10] *Summary Report of the Federal Trade Commission to the Senate, Utility Corporations*, S. Doc. No. 92, 70th Cong., 1st Sess., pt. 73-A, at 3 (1935) (in 101 volumes) ("For example, no matter how strict the regulation of an operating company, improper payments of dividends and of other items still can be made by the holding company out of surplus other than earned surplus. Excessive capital issues can be floated by the holding company, with an important indirect effect upon rates charged by the operating company to the public.").

[11] *Report of National Power Policy Committee on Public-Utility Holding Companies*, S. Doc. No. 137, 74th Cong., 1st Sess. 8 (1935). *See also SCEcorp*, Holding Co. Act Release No. 25564 (June 29, 1992), citing *Arkansas Louisiana Gas Co.*, 36 S.E.C. 121, 137 (1954) (the Act was intended to address "evils * * * which because of holding company action or control, cannot be effectively dealt with by other regulatory agencies").

[12] *Gulf States Utilities Co. v. FPC*, 411 U.S. 747, 758 (1973).

[13] At the same time, Congress amended the Federal Power Act to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce. Congress entrusted the administration of this statute to the Federal Power Commission (now the Federal Energy Regulatory Commission), as the agency with the technical expertise necessary to regulate the transmission of energy. *See Arcadia v. Ohio Power Co.*, 498 U.S. 73, 87 (1990) (Stevens, J., concurring). The role of the FERC is discussed *infra* at section II.C.1.

[14] Holding Company Act section 2(a)(7)(A) (15 U.S.C. 79b(a)(7)(A)). For purposes of the Act, a public-utility company means either an electric or a gas utility company. Holding Company Act section 2(a)(5) (15 U.S.C. 79b(a)(5)). An electric utility company is broadly defined as any company that owns or controls assets used for the generation, transmission or distribution of electricity. Holding Company Act section 2(a)(3) (15 U.S.C. 79b(a)(3)). A gas utility company is more narrowly defined as any company that owns or controls assets used for the retail distribution of gas for heat, light or power. Holding Company Act section 2(a)(4) (15 U.S.C. 79b(a)(4)).

[15] Holding Company Act section 5 (15 U.S.C. 79e).

[16] *SEC v. New England Elec. System*, 384 U.S. 176, 180 (1966), *citing North American Co. v. SEC*, 327 U.S. 686, 704 n.14 (1946).

[17] Holding Company Act section 11(b)(1) (15 U.S.C. § 79k(b)(1)).

[18] Holding Company Act sections 6, 7 and 12 (15 U.S.C. §§ 79f, g and *l*).

[19] Holding Company Act sections 9 and 10 (15 U.S.C. §§ 79i and j).

[20] Holding Company Act section 13 (15 U.S.C. § 79m).

[21] *See* Holding Company Act sections 14 and 15 (15 U.S.C. § 79n and o) and rules thereunder.

[22] Section 3(a) of the Act (15 U.S.C. § 79c(a)) authorizes the Commission in certain circumstances to exempt any holding company and subsidiary company thereof from any provision of the Act, "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers."

[23] *See* Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[24] Section 1(c) of the Holding Company Act (15 U.S.C. 79a(c)) directs the Commission to administer all the provisions of the Act to prevent practices the Congress found detrimental to the interests of investors, consumers and the general public (the "protected interests" under the Act).

[25] Pub. L. No. 95-617, 92 Stat. 3117 (1978).

[26] Most qualifying facilities are deemed to be nonutilities for purposes of the Holding Company Act. *See* 18 CFR § 292.602.

[27] See Pub. L. No. 99-186, 99 Stat. 1180 (1985) (investments in cogeneration by registered gas systems); Pub. L. No. 99-553, 100 Stat. 3087 (1986) (investments by registered electric systems); Pub. L. No. 102-486, § 713, 106 Stat. 2776, 2911 (1992) (section 713 of Energy Policy Act of 1992, investments by registered holding companies in small power production).

[28] Pub. L. 101-572, 104 Stat. 2810 (1990). Gas production and transportation activities are nonutility businesses for purposes of the Holding Company Act. See Holding Company Act section 2(a)(4) (15 U.S.C. § 79b(a)(4)) ("gas utility company" includes only companies owning or controlling assets used for retail gas distribution).

[29] Pub. L. No. 102-486, 106 Stat. 2776 (1992).

[30] An exempt wholesale generator is any person determined by the FERC to be engaged exclusively in owning or operating facilities used for the generation of electricity for sale at wholesale. *See* Holding Company Act section 32(a)(1) (15 U.S.C. § 79z-5a(a)(1)); *see also* Holding Company Act section 32(b) (15 U.S.C. § 79z-5a(b)) (permitting certain foreign retail sales).

[31] Briefly stated, any company can claim status as a foreign utility company by notifying the Commission that it owns or operates gas or electric utility facilities outside the United States. *See* Holding Company Act section 33(a)(3) (15 U.S.C. §§ 79z-5b(a)(3)) (such company cannot derive any utility income from within the United States, and cannot be, or have a subsidiary that is, a public-utility operating in the United States).

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Holding Company Act. Congress did not dispense with the need for Commission approval of activities under PURPA and GRAA: Holding Company Act section 10(b)(3) continues to require that an acquisition not be detrimental to the public interest or the interests of investors or consumers. In contrast, the Energy Policy Act broadly exempts certain wholesale generators from all provisions of the Holding Company Act and expressly authorizes a registered holding company to acquire an exempt wholesale generator without the need for Commission approval. Congress sought to promote this type of diversification and made the Commission primarily responsible for protecting consumers of registered holding companies from any adverse effects of these new ventures. The Commission's authority in this area, however, is limited; the Commission can regulate investments in exempt wholesale generators only indirectly, through its jurisdiction over holding company financings and other related transactions. This hybrid regulation has proved troublesome, and the Commission has strongly recommended that Congress not duplicate the model developed under the Energy Policy Act.[32]

C. Other Regulatory Factors

1. FERC Regulation

The work of the Commission under the Holding Company Act was intended to complement the work of the Federal Power Commission (now the FERC) in the regulation of the electric and gas utility industry.

a. *Electricity.* The Holding Company Act was enacted as Title I of the Public Utility Act of 1935.[33] Title II of the legislation [34] gave the Federal Power Commission (FPC) broad authority over the transmission and sale of electricity in interstate commerce.

Congress's decision to entrust administration of the Holding Company Act to the SEC and administration of the Federal Power Act to the FPC reflected two differing goals. The Holding Company Act was intended to curb abusive practices of public-utility subsidiaries of holding companies by bringing them under effective control. The Federal Power Act was intended to provide effective federal regulation of the transmission and sale of electricity in interstate commerce.[35]

The primary focus in the administration of the Federal Power Act has been the protection of ratepayers against excessive electric rates.[36] Utilities must file wholesale rate schedules with the FERC, which may then suspend any rate increase for up to five months, order refunds for rates that it finds exceed a "just and reasonable" level, and prescribe rates to be charged prospectively.

Under the Public Utility Regulatory Policies Act, the FERC adopted rules concerning qualifying facilities. These rules require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs.[37]

Following the enactment of PURPA, other independent generators began to seek entry into bulk power markets. The FERC, which had traditionally required cost-based rates for electric power, began to permit market-based rates for nontraditional sellers that could not exercise market power, where there was no evidence of affiliate abuse or reciprocal dealing.[38] As traditional, investor-owned utilities began to seek market-based rates for their existing excess capacity, the FERC extended its market power analysis to these companies. In these matters, the FERC required that the utility mitigate its transmission market power by opening its transmission system to other wholesale sellers and buyers.[39] The FERC has also relied on open access transmission tariffs to mitigate the anticompetitive effects of proposed mergers.[40]

In the Energy Policy Act of 1992, Congress gave the FERC additional authority to promote competition in wholesale bulk power markets by ordering transmission,[41] if it finds that to do so is in the public interest and will not unreasonably impair the continued reliability of affected electric systems.[42] The FERC is also responsible for determining exempt wholesale

[32] *Hearings on Proposals to Lift the Current Diversification Restrictions on Telecommunications Activities of Registered Holding Companies Before the Subcomm. on Telecommunications and Finance and the Subcomm. on Energy and Power of the House Comm. on Energy and Commerce*, 103d Cong., 2d Sess. (1994) (statement of Richard Y. Roberts, Commissioner, SEC).

Although the Commission has adopted rules 53 and 54 (17 CFR 250.53 and 54) that are intended to protect consumers and investors from any substantial adverse effect that may be associated with investments in exempt wholesale generators, these rules are currently the subject of litigation in the U.S. Court of Appeals for the District of Columbia Circuit. *NARUC* v. *SEC*, No. 93–1778 (D.C. Cir. filed Nov. 22, 1993). The Court of Appeals has been asked to consider the extent to which the Commission must ensure the protection of consumers of registered holding companies from any detriment associated with investments in exempt wholesale generators.

The Commission is currently engaged in a related rulemaking with respect to investments in foreign utility companies. *See* Holding Co. Act Release No. 25757 (Mar. 8, 1993), 58 FR 13710 (Mar. 15, 1993) (notice of proposed rulemaking).

[33] Pub. L. No. 74–333, 49 Stat. 803 (1935).

[34] Pub. L. No. 74–333, 49 Stat. 838 (1935) (codified as amended at 16 U.S.C. §§ 791a–828c).

[35] *See Gulf States Utilities Co.* v. *FPC*, 411 U.S. 747, 758 (1973). The Federal Power Act represented a response to the gap in state regulation of utility rates and services that arose in the wake of the decision of the United States Supreme Court in *Public Utilities Comm'n of Rhode Island* v. *Attleboro Steam & Elec. Co.*, 273 U.S. 83, 86–90 (1927), *overruled in part, Arkansas Elec. Coop. v. Ark. Public Service Comm'n*, 461 U.S. 375, 390–96 (1983). The Court in *Attleboro* held that interstate wholesale sales of electricity were beyond the reach of state regulation. *See New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982). *See generally* Note, *Federal Regulation of Holding Companies: The Public Utility Act of 1935*, 45 Yale L.J. 468 (1936).

[36] The Federal Power Act also gives the FERC jurisdiction over accounting practices and over facilities used for the transmission of electricity in interstate commerce. Section 204 authorizes the FERC to regulate the issuance of securities or assumption of obligations or liabilities by public utilities, but only if such issuance or assumption is not regulated by a state utilities commission. 16 U.S.C. § 824c. The FERC has interpreted this authority narrowly. *See* Michael Small, *A Guide to FERC Regulation and Ratemaking of Electric Utilities and Other Power Suppliers*, 18 (3d ed. 1994).

[37] Congress in PURPA also gave the FERC direct authority to order wholesale transmission services by public utilities and by certain other entities. There were significant procedural and substantive limitations on this authority, however, and FERC issued only one order pursuant to this authority. *See Central Power and Light Co.*, 17 FERC ¶ 61,078 (1981), *order on reh'g*, 18 FERC ¶ 61,100 (1982), *further order, Texas Utilities Elec. Co.*, 40 FERC ¶ 61,077 (1987).

[38] *See, e.g., Commonwealth Atlantic Ltd. Partnership*, 51 FERC ¶ 61,368 (1990).

[39] *See, e.g., Public Service Co. of Indiana*, 51 FERC ¶ 61,367 (1990).

[40] Open access transmission tariffs have been a central feature of recent combinations involving FERC-regulated utilities. Major combinations involving FERC-regulated utilities have included the mergers of Utah Power & Light Company and PacifiCorp; Northeast Utilities and Public Service of New Hampshire; Kansas Power & Light Company and Kansas Gas & Electric Company; Entergy Corporation and Gulf States Utilities Company; Cincinnati Gas & Electric Company and PSI Energy, Inc.; and the proposed merger of Central and South West Corporation and El Paso Electric Company. With the exception of the Utah Power & Light merger, each of these mergers also is subject to the requirement of approval by the SEC.

[41] "Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale" may apply to the FERC for an order requiring a utility to provide "transmission services (including any enlargement of transmission capacity necessary to provide such services)." Federal Power Act section 211(a) (16 U.S.C. § 824j(a)).

[42] As of September 22, 1994, the FERC had granted six applications for mandatory services (three proposed orders and three final orders). *See, e.g., City of Bedford, Virginia*, 68 FERC ¶ 61,003 (1994).

Since enactment of the Energy Policy Act, the FERC has undertaken a number of initiatives with respect to the development of competitive bulk power markets. These measures include a policy statement on regional transmission groups, a rulemaking on transmission information availability, and an inquiry on transmission pricing policy. In a series of cases, the FERC has also interpreted the Federal Power Act's prohibition on undue discrimination to require that transmission owners offer services to others comparable to those they provide to themselves.

generator status under the Energy Policy Act.[43]

b. *Natural gas.* FERC regulation of the natural gas industry has changed significantly since 1938, when the Natural Gas Act gave the FPC authority to set "just and reasonable" rates for pipelines selling natural gas for resale in interstate commerce.[44] Under the Natural Gas Act, the FPC had jurisdiction over both the price and the allocation of natural gas sold at the wellhead for resale in interstate commerce. During the late 1960s and the early 1970s, the FPC kept the wellhead price for interstate natural gas artificially low, thereby encouraging consumption. At the same time, the federal price restraints discouraged producers from dedicating reserves to the pipelines that served the interstate market. The result was a series of gas shortages in the mid-1970s.

In reaction to these shortages, Congress enacted the Natural Gas Policy Act of 1978, which provided for partial decontrol of natural gas at the wellhead.[45] Over the next decade, Congress and the FERC worked to encourage competition in the natural gas industry. Pursuant to the Natural Gas Wellhead Decontrol Act of 1989, the FERC implemented full producer deregulation, effective January 1, 1993.[46]

The latest of the FERC's major natural gas rulemakings, Order No. 636, significantly changed the structure of the services provided by interstate pipelines.[47] Among other things, the order requires that pipelines provide open access transportation service that is equal in quality for all gas supplies, regardless of whether the customer purchases gas from the pipeline or from another supplier.

2. State and Local Regulation

Regulation of electric and gas utilities varies among state and local governments. Most state commissions have authority to issue licenses, franchises or permits for the initiation of service, for construction or abandonment of facilities and related matters. With respect to retail rates, state commissions generally have the power to require prior authorization of rate changes, to suspend proposed rate changes, to prescribe interim rates and to initiate rate investigations. Most state commissions also have authority to control the quantity and quality of service; to require uniform systems of accounting, and to regulate the issuance of securities.[48]

Congress intended that the Commission's work be coordinated with, and complement, the work of state and local regulators.[49] In recent years, the Commission has worked in consultation with these regulators on a number of matters.

3. Other Considerations

Registered holding companies are subject to extensive reporting requirements under the Act. In addition, the securities of these companies are publicly held and are registered under the Securities Act of 1933 ("Securities Act"), and the companies must comply with the continuous disclosure requirements of the Securities Exchange Act of 1934 ("Exchange Act"). When Congress passed the Holding Company Act, these laws were still in their infancy. Congress has amended the Securities Act and the Exchange Act several times since 1935, in order to expand and strengthen the disclosure and reporting requirements, as well as the Commission's ability to enforce these provisions.[50] Thus, it appears that investors today have far greater access to information concerning their investment decisions.

The Commission requests comment on these and other factors, including the development of generally accepted accounting principles and the role of nationally recognized statistical rating organizations (NRSROs)[51] in protecting consumers and investors against holding company abuses.

III. Conceptual Issues

The electric and gas utility industry is in transition. The rapid growth that characterized the industry in the early part of this century has diminished. In addition, companies must adapt to an increasingly competitive environment. The present model of regulation under the Act, which strictly limits the size of a system's utility operations and the scope of its nonutility businesses, was intended to focus the attention of the registered holding company on the needs of its operating utilities, and thereby protect consumers and investors from the risks that might be associated with unrelated businesses. Some have suggested that this model is no longer appropriate and that market conditions require a broader focus on energy services and other nonutility activities. The Act, as currently administered, does not afford the degree of flexibility that many believe will be necessary to meet these changes.

One purpose of the study is to explore a new approach to regulation in this area. The Act was intended to protect the public interest and the interests of investors and consumers. The phrase "public interest" has been used in connection with the policy of curing evils that result "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties."[52]

The need for adequate disclosure for investors has largely been addressed by developments in the federal securities laws and in the securities markets themselves.[53] With respect to consumer interests, it appears that retail distribution will continue to be a monopoly for at least the next decade, thus justifying the continued protection of captive consumers.

The Commission has noted that there is an inherent tension between the drive toward competitive markets, and the need to protect captive utility

[43] An exempt wholesale generator is exempt from all provisions of the Holding Company Act. *See* Holding Company Act section 32(e) (15 U.S.C. § 79z–5a(e)).

[44] Pub. L. No. 75–688, 52 Stat. 821 (1938) (codified as amended at 15 U.S.C. §§ 717–717w). In 1954, the U.S. Supreme Court ruled that sales by independent producers were also subject to regulation under the Natural Gas Act. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[45] Pub. L. No. 95–621, 92 Stat. 3351 (1978) (repealed in 1987).

[46] Pub. L. No. 101–60, 103 Stat. 157 (1989) (codified as amended at 15 U.S.C. § 3331).

[47] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (Apr. 16, 1992).

[48] *See* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice* 136 (1993).

[49] Numerous sections of the Act refer to regulation at the state and local level. *See, e.g.*, Holding Company Act sections 2(a)(26), 6(b), 8, 9(b), 10(f), 18, 19 and 20(b) (15 U.S.C. §§ 79b(a)(26), f(b), h, i(b), j(f), r, s and t(b)).

[50] *See, e.g.*, Securities Acts Amendments of 1964, Pub. L. No. 88–467, 78 Stat. 565 (1964) (extending Securities Exchange Act registration requirements to over-the-counter securities); Williams Act, Pub. L. No. 90–439, 82 Stat. 454 (1968) (additional disclosure requirements in situations of control acquisitions); Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101–429, 104 Stat. 931 (1990) (increasing Commission's authority to seek and impose remedies against securities law violations).

The courts have also permitted private litigants to bring actions for violations of certain provisions of the securities laws. *See, e.g., Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, *reh'g denied*, 423 U.S. 884 (1975) (implied private right of action for securities fraud).

[51] *See* Securities Act Release No. 7085 (Aug. 31, 1994), 59 FR 46314 (Sept. 7, 1994) (concept release concerning the definition and status of NRSROs).

[52] Holding Company Act section 1(b)(4) (15 U.S.C. 79a(b)(4)), cited in *North American Co.*, 11 S.E.C. 194, 218–219 (1942), *aff'd*, 133 F.2d 148 (2d Cir. 1943), *aff'd*, 327 U.S. 686 (1946).

[53] *See* section 1(b)(1) of the Holding Company Act (15 U.S.C. § 79a(b)(1)) (investor interests may be adversely affected "when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers").

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customers.[54] The magnitude of the anticipated change in the utility industry raises concerns whether any regulator can effectively protect ratepayers.[55] While some believe that market forces will ultimately result in lower prices for consumers, others suggest that there will be losers as well as winners along the way.[56] At a minimum, any new approach must carefully balance the competing interests, and provide safeguards against detriment to consumers.

Reform of existing regulation also calls into question the roles of the respective regulators. The Commission requests comments on these topics, especially on the need to adjust responsibilities among the regulators. It would be helpful, in this regard, for commenters to provide specific information concerning the various regulatory approvals that may be required for a transaction under present law.

The studies that preceded the Act found "wide differences in the extent and effectiveness of the regulatory policies of the various States."[57] Although there has been a significant increase in the reach of state utility regulation, the Commission has noted that the pattern of state control over operating utilities and their relationships with affiliates remains uneven.[58] There are concerns that the states remain unable to regulate interstate holding companies directly in a comprehensive fashion.[59]

The Commission seeks comment on the current status of the regulation of electric and gas utilities by the states. In particular, descriptions of the regulatory systems of each state would be helpful in determining the extent to which state regulators would be able to provide regulatory protection in the absence of a federal holding company statute. Comment is requested on the problems inherent in the regulation of a multistate system, including the possibility of conflict among the various state and local regulators.

Comment is also sought on the role of the FERC in regulating utility holding companies. Would the FERC's existing authority, combined with that of the states, suffice to protect consumers? In the absence of the Holding Company Act, it appears that there would be little direct regulation of the nonutilities that may ultimately comprise a significant part of a registered system's business activities. If there is a continuing need for a federal holding company statute, should the FERC rather than the SEC administer it?

IV. Specific Topics to Be Addressed

To facilitate the identification of issues, paragraphs in which comments are specifically requested in this section are numbered consecutively. Commenters are encouraged to refer to these numbers in their comments, but are also welcome to comment on any issues not contained in numbered paragraphs.

A. Financings and Intrasystem Transactions

Under the Holding Company Act, the Commission has broad authority over financings and intrasystem transactions involving companies in a registered holding company system. As discussed above, FERC and state regulatory approval is also required for certain transactions. In addition, the FERC and state regulators, in the exercise of ratemaking authority, may determine whether the costs associated with such transactions will be passed on to utility consumers.

1. Financings

Prior Commission approval is generally required for the issuance and sale of securities by a company in a registered system.[60] The Commission can refuse to authorize the issuance of a security that is not reasonably adapted to the capital structure of the issuer and other companies in the holding company system, or to the earning power of the issuer, or that "is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest."[61] The Act also requires Commission approval for various intrasystem financing transactions, including, among other things, loans from the parent to a subsidiary company, and guarantees by the parent of the obligations of a subsidiary company.[62]

1. Comment is sought on the Commission's review of financing transactions. As a general matter, are the protections provided by such review still necessary in view of developments in state and federal regulation? If this review is still needed, how could it be made more effective and efficient?

2. At the Roundtable, many participants emphasized the need to streamline Commission review and liberalize the standards for financings. Regulatory delay was described as an impediment to the companies' ability to access the capital markets. How critical a role does timing play in financial decisions? To what extent is regulatory delay an obstacle to desirable financing opportunities?

3. The Commission has adopted an approach, similar to the shelf-registration provisions of rule 415 under the 1933 Act,[63] under which a registered company may obtain authorization for all short-term debt financings contemplated for a two-year period.[64] Could this approach be expanded or altered to meet the companies' need for greater flexibility and speed of approval? Could a safe harbor for routine financings be properly tailored to balance a company's need for flexibility and speed with the need to protect ratepayers? What should be the parameters of a safe harbor (*e.g.*, minimum capitalization, dividend payout ratios, third-party credit ratings)? How should such routine financings be defined for the purpose of a safe harbor rule?

4. At the Roundtable, some suggested that utilities would like to issue a greater variety of securities in order to reduce capital costs. Under current administration of the Act, registered companies are generally limited to conventional securities, such as common stock, preferred stock, and first mortgage bonds. Should the financing standards be eased to permit companies in registered systems to issue different types of securities? What are the perceived risks and benefits of allowing such companies to issue innovative types of securities? What limitations, if any, would be appropriate in this regard? For example, should the Commission modify requirements such as minimum capitalization and coverage ratios to reflect current financing practices?

5. Some of the concerns described above could be addressed through Commission rulemaking. For example, the Commission has eased regulatory burdens in this area by adopting rule 52, which provides a safe harbor for certain routine utility financings that have been approved by the relevant state commission.[65] Has this rule been effective? Should other routine utility financings be similarly exempted? To what extent do state regulators currently regulate utility financings, or rely on the Commission's review of these transactions? Do the states have sufficient resources and authority to undertake more extensive reviews in this area?

6. The Commission has proposed further amendments to rule 52 that would unconditionally exempt many nonutility financings.[66] Should different standards apply to financings by system nonutility companies? For example, nonrecourse obligations are not counted toward the overall limit on a system's aggregate investment in exempt wholesale generators and foreign utility companies for purposes of rule 53 under the Act.

7. Under present law, intrasystem financings must mirror the terms of a system's external financings.[67] This requirement is intended to protect the system's operating companies, by ensuring that the holding company does not profit from intrasystem transactions. Is this restriction still needed, particularly with respect to nonutility financings?

8. The Commission regulates the ability of registered holding companies to declare and pay dividends.[68] Should the Commission ease the limitations imposed upon this activity?

9. Some have suggested that rating agencies perform a valuable service in highlighting potential financial instabilities. The Commission's administration of other securities statutes relies in some circumstances on the existence of investment grade ratings by nationally recognized statistical rating organizations.[69] Should the Commission pursue a regulatory approach that would utilize NRSRO credit ratings of utility companies in a registered holding company system?

2. Intrasystem Transactions

Under the Holding Company Act, the Commission also has broad authority over transactions among companies in a registered system. Section 13, in particular, was intended to eliminate abusive practices whereby utility subsidiaries were forced to pay grossly inflated costs for services and goods provided by an affiliate company. The profits from these transactions flowed to the holding company's controlling investors; the inflated costs were passed on as higher rates to consumers.[70]

The central provision, section 13(b), prohibits holding company subsidiaries from entering into or performing any service, sales, or construction contracts for associate companies unless the terms and conditions of the contract comply with Commission rules, regulations and orders.[71] Under the Commission's rules, interaffiliate transactions must generally be conducted at cost.[72]

10. Some commenters have suggested that the concerns about intrasystem transactions reflected in the Holding Company Act are no longer relevant. To what extent should the federal government regulate such transactions to prevent affiliate abuses?

11. Under current law, affiliate transactions may be subject to multiple regulatory reviews. Companies in a registered system generally must obtain Commission approval to enter into affiliate contracts. The costs associated with these transactions may be subject to further review by the FERC and state regulators. The possibility of inconsistent determinations by the various regulators was highlighted by the recent Ohio Power decision, in which the U.S. Court of Appeals for the District of Columbia Circuit held that the FERC was precluded from reexamining costs established pursuant to a Commission order under section 13(b) of the Act.[73] There are concerns that the Ohio Power decision can be interpreted to challenge the ability of the FERC, as well as state and local regulators, to protect consumers through traditional ratemaking proceedings. How can these concerns best be addressed?[74] Should responsibility in this area continue to be apportioned between the SEC and the FERC?

12. Several commenters at the Roundtable emphasized the need for a single federal arbiter, either the SEC or the FERC, in order to avoid inconsistent state determinations and any potential tendency among states to shift costs to

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[54] Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51468 (Oct. 1, 1993).

[55] At present, registered holding companies can readily invest up to 50 percent of their consolidated retained earnings, or approximately $7 billion, in exempt wholesale generators and foreign utility companies. See rule 53(a) under the Holding Company Act (17 CFR 250.53(a)).

[56] The introduction of competition in the natural gas industry, for example, was not without its costs. Many producers went out of business when wellhead prices collapsed. *See* Donald F. Santa, Jr. and Patricia J. Beneke, *Federal Natural Gas Policy and the Energy Policy Act of 1992*, 14 Energy L.J. 1, 8 (1993). The Columbia Gas System, a registered gas utility holding company, has filed for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*) in large part as a result of uneconomic take-or-pay contracts.

[57] Summary Report of the Federal Trade Commission to the Senate, Utility Corporations, S. Doc. No. 92, 70th Cong., 1st Sess., pt. 73–A, at 2 (1935).

[58] *See, e.g.*, Statement of the U.S. Securities and Exchange Commission Concerning Proposals to Amend or Repeal the Public Utility Holding Company Act of 1935 (June 2, 1982).

[59] *See* The National Energy Security Act of 1991: Hearings on S. 341 Before the Senate Comm. on Energy and Natural Resources, 102d Cong., 1st Sess. (1991) (statement of Edward H. Fleischman, Commissioner, SEC).

[60] *See* Holding Company Act section 6(a) (15 U.S.C. § 79f(a)). The Act permits the Commission to grant exemptions in certain situations, such as the issuance and sale of securities by a subsidiary if the transaction is expressly authorized by a state regulatory commission. *See* section 6(b) (15 U.S.C. § 79f(b)).

[61] Holding Company Act section 7 (15 U.S.C. § 79g). This standard has been modified for financings by registered holding companies for the purpose of acquiring interests in exempt wholesale generators. Holding Company Act section 32(h)(3) (15 U.S.C. § 79z–5a(h)(3)) provides that

> the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system[.]

See also rule 53 (17 CFR 250.53).

[62] *See* Holding Company Act section 12 (15 U.S.C. § 79*l*) and rules thereunder.

[63] 17 CFR 230.415.

[64] *See, e.g., Northeast Utilities*, Holding Co. Act Release No. 25710 (Dec. 16, 1992), 53 SEC Dkt. 0190 (Jan. 5, 1993).

[65] 17 CFR 250.52 (Commission approval is not required for a utility subsidiary of a registered holding company to issue or sell common stock, preferred stock, and mortgage bonds, or to issue a note to its parent company, for the purpose of financing its business as a public-utility company, where the financing transaction has been expressly approved by the relevant state commission). The Commission has requested comment on an amendment that would exempt additional types of utility financings. *See* Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992).

[66] *See* Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992) (requesting comment on, among other things, an exemption for nonutility transactions that "are solely for the purpose of financing the [company's] existing business").

[67] *See, e.g., Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26072 (June 27, 1994), 57 SEC Dkt. 0067 (July 26, 1994).

[68] *See, e.g.*, Holding Company Act rule 46 (17 CFR 250.46).

[69] *See, e.g.*, 17 CFR 240.15c3–1 (net capital rule for broker-dealers); 17 CFR 239.13(b)(2) (instructions for Securities Act Registration Form S–3). The Commission recently issued a release in which it posed questions regarding the Commission's reliance on NRSRO ratings. *See* Securities Act Release No. 7085 (Aug. 31, 1994), 59 FR 46314 (Sept. 7, 1994). Comments on the release are available for public inspection in File No. S7–23–94.

[70] Section 13 of the Act

> is designed to free public-utility companies of the tribute heretofore extracted from them in the performance of service, sales, and construction contracts by their holding companies and by servicing, construction, and other companies controlled by their holding companies. Such contracts when made freely and openly by parties dealing at arms' length are subject to the checks incident to our competitive system, but when dictated by holding companies sitting on both sides of the transaction are one of the most abused devices of the public-utility holding company system.
>
> S. Rep. No. 621, 74th Cong., 1st Sess. 36 (1935).

[71] 15 U.S.C. § 79m(b).

[72] *See* rules 90–92 under the Holding Company Act, 17 CFR 250.90–92.

[73] *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 113 S. Ct. 483 (1992).

[74] The Commission staff is working on a rulemaking to address these concerns. In addition, Congress has considered legislation to clarify the regulatory roles of the Commission and the FERC with respect to the approval of contracts and rates related to intra-system transactions. *See* S. 544, 103d Cong., 1st Sess. (1993); H.R. 4645, 103d Cong., 2d Sess. (1994).

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other jurisdictions. Should federal oversight of these transactions be consolidated under a single regulator?

13. What role, if any, should states play in regulating such transactions? What additional powers do state regulators need to be able to protect consumers against affiliate abuses? Some states, for example, may not have access to all relevant books and records.[75] Should state access be enhanced if Holding Company Act restrictions are to be relaxed?

14. Should transactions between utilities in a holding company system be regulated differently than transactions between a utility and a nonutility company in a holding company system?

B. Utility Acquisitions

The Commission is charged with overseeing the growth and extension of holding companies to avoid recreating, by acquisition, the problems that the Act was intended to undo or eliminate.[76] The Holding Company Act addresses these concerns by requiring Commission approval for most utility acquisitions. The standards for acquisition approval relate to the overall structure of the resulting system, and the effect of the acquisition upon the public interest and the interests of investors and consumers, the "protected interests" under the Act.

15. There have been suggestions that the Commission's work in this area has been largely superseded by the FERC's review of utility mergers.[77] In recent matters, the Commission has relied upon the FERC's analysis of certain issues that are closely linked to operations. The Commission requests comment on the extent to which its review under the standards of section 10 may duplicate the efforts of other regulators.

16. Comment is also requested on the issue of takeover attempts of utility operating companies or their parent holding companies. What has been the effect of the Holding Company Act on such takeover attempts in the past? Should the Commission devise special rules for such takeovers?[78]

1. Integration

Under section 11 of the Act, a registered holding company is generally limited to a single integrated public-utility system. The integration requirement was intended to ensure economical and efficient utility operations in the context of a monopoly environment. Some critics have challenged the continuing usefulness of this requirement, given the movement towards greater competition in the industry.

17. Does the integration requirement still serve the interests of investors and consumers? What effect does geographic proximity have on a utility's efficiency of operation, particularly in view of open access transmission policies?[79] Has the requirement of geographic integration hindered the development of creative solutions to the production and delivery of energy?

18. One of the assumptions underlying the Act was that utilities were essentially local institutions that should be locally controlled and owned.[80] Is this premise still valid, in view of the technological and regulatory developments of the past 60 years?

19. The definition of an "integrated public-utility system" gives the Commission flexibility to respond to technological advances and other changes in the industry.[81] Should the definition be read to accommodate nontraditional systems? For example, one commenter has suggested that, as a result of open access policies, all gas companies in the United States could be deemed to comprise a single integrated system.[82]

2. Combination Systems

The Commission and the courts have previously interpreted section 11 of the Holding Company Act to prohibit a registered holding company from owning both gas and electric facilities.[83] There is a tension between this precedent and section 8 of the Act, which appears to contemplate the combination of gas and electric properties.[84]

[75] Access to books and records is discussed further below. *See* Section IV.E *infra*.

[76] *Public Service Co. of Oklahoma*, 45 S.E.C. 878, 882 (1975).

[77] *See* section 203 of the Federal Power Act. 16 U.S.C. § 824b. The legislative history indicates that section 203 was intended to complement the Holding Company Act. *See* S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935) ("In this way the [FERC] would have authority to keep the same kind of check upon the creation of spheres of influence among operating companies that the Securities and Exchange Commission has over holding companies under [the Holding Company Act].").

Until recently, the FERC did not exercise jurisdiction over the merger of holding companies. *See Missouri Basin Municipal Power Agency v. Midwest Energy Co.*, 93 FERC ¶ 61,368 (1980). The agency, however, has revised its position and announced that such mergers are presumptively subject to FERC approval. *See Illinois Power Co.*, 67 FERC ¶ 61,136 (1994).

[78] Rule 51 provides that a tender offer is subject to the section 9(a) restrictions on acquisitions of utility securities by utility affiliates, unless the tender offer meets certain conditions. 17 CFR 250.51.

[79] Although the Energy Policy Act of 1992 permits registered holding companies to acquire exempt wholesale generators and foreign utility companies without regard for physical interconnection and geographic proximity, the rationale for this type of exemption appears to be that there are no "captive" U.S. consumers associated with these new entities.

[80] *See, e.g.*, 79 Cong. Rec. 8369 (1935) (statement of Sen. Wheeler).

[81] Section 2(a)(29) (15 U.S.C. 79b(a)(29)) defines an "integrated public-utility system" as follows:

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

[82] *See* Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994) (available in Public Comment File No. S7–19–94).

[83] *See SEC v. New England Elec. System*, 384 U.S. 176, 183 (1966); *Northeast Utilities*, Holding Co. Act Release No. 14908 (June 22, 1989), 43 SEC Dkt. 2115, 2135–37 (July 5, 1989). These decisions focused largely on the anticompetitive effects of dual electric and gas ownership.

[84] Section 8 (15 U.S.C. 79h) provides:

Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

In addition, the Commission has permitted combination systems under the so-called "A-B-C clauses" of section 11(b)(1), which permit a registered holding company to control additional integrated public-utility systems if (A) each additional system cannot be operated as an independent system without the loss of substantial economies, (B) all additional systems are located in one state, or in adjoining states, or in a contiguous foreign country, and (C) the continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation. *See* 15 U.S.C. § 79k(b)(1). *See also UNITIL Corp.*, Holding Co. Act Release No. 25524 (Apr. 24, 1992), 51 SEC Dkt. 0764 (May 12, 1992).

20. What are the perceived risks and benefits of allowing registered holding companies to own and operate a combination of gas and electric properties?[85] Specifically, are gas and electric utilities sufficiently similar in operation and management that ownership by a single holding company could lead to gains in efficiency? Are there adequate protections against the potential anticompetitive effects of such combination systems?

3. Foreign Ownership

Congress in 1935 did not consider the question of foreign ownership of U.S. public-utility companies. The Energy Policy Act of 1992 authorized foreign ownership of U.S. exempt wholesale generators which, by definition, have no retail customers. The legislation did not address the further issue of foreign ownership of a U.S. utility with captive retail customers. The Commission has been asked to consider this issue in a pending administrative proceeding, *Noverco, Inc.*, Admin. Pro. File No. 3–7097.[86]

Federal law imposes various restrictions on foreign ownership of other regulated industries. Some laws specifically restrict foreign ownership,[87] while others provide for such ownership subject to certain conditions. The Federal Aviation Act, for example, establishes percentage limitations on board membership and voting interests in determining whether an air carrier is considered a United States citizen.[88]

21. At the Roundtable, many commenters expressed the view that foreign investors should be permitted, subject to appropriate conditions, to acquire U.S. utilities. Should the law permit such foreign ownership? What conditions should be placed on foreign ownership?

22. Is there a national security interest in restricting foreign ownership of U.S. utilities?[89] Are there difficulties in obtaining information from foreign companies that would support limitations on foreign ownership? What types of safeguards or limitations on ownership might prevent or minimize such risks?

23. United States companies have acquired significant interests in foreign utilities over the past several years. Would restrictions on foreign ownership of U.S. utilities be likely to lead to restrictions on investment in foreign utilities by U.S. investors?

C. Diversification

Among other things, the Holding Company Act was intended to simplify the structure of the utility industry by confining holding companies to the management of a single system of operating companies, without entanglement in extraneous lines of business. Section 11(b)(1) provides that nonutility businesses must be "reasonably incidental, or economically necessary or appropriate" to a system's core utility operations. The Commission and the courts have interpreted the "other business" provisions to require a "functional relationship" between a nonutility business and the utility operations of a registered holding company system.[90] The functional relationship requirement was intended to focus the attention of the registered holding company on its operating utilities in order to protect consumers and investors from risks associated with unrelated businesses.

24. At the Roundtable, many commenters expressed the opinion that additional latitude is necessary. To what extent do utilities hope to improve their economic position through diversification? How can the applicable standards be made more flexible while retaining appropriate consumer protections?

25. What are the risks and benefits of diversification for consumers? What are the risks and benefits for investors? Under what circumstances would the risks associated with diversification outweigh the potential benefits? Is low earnings growth in the core utility business the primary justification for further diversification? Do other factors, such as the cyclical business patterns of other industries, also support diversification?

26. Should there be limits on diversification by registered holding companies? If so, what types of limits are most appropriate (*e.g.*, investment caps, ratios based on retained earnings or income, regulatory veto authority)? If not, how would increased diversification affect the ability of the FERC and state regulators to protect the interests of consumers?

27. Has the requirement that nonutility interests be "functionally related" to a system's core utility operations demonstrably benefited investors and consumers of registered holding companies? What has been the experience of companies that were not similarly constrained?[91] Are there limits on diversification by these companies? Are these experiences likely to be repeated in the future, or did they result from unique circumstances? Do these companies face other types of limitations?

28. If constraints on diversification were eased, would there be a need for additional safeguards against cross-subsidization? What are the major issues in this area? For example, does a nonutility's use of proprietary information such as an associate utility's customer information raise cross-subsidization concerns?

29. Should there be different limitations on foreign and domestic diversification by registered holding companies?

30. To what extent should a utility's past experience in a particular type of business affect its ability to engage in similar activities in the future?

D. Exemptions

There are a number of exemptions from, or exceptions to, regulation under the Act for certain companies. Each reflects a legislative determination that the purposes and policies of the Act are not implicated. Certain entities do not come within the ambit of the Act.[92] Other entities are subject to limited regulation under the Act because they

[85] In a recent matter, the Commission reserved jurisdiction, pending the completion of the Study, over the ownership of electric and gas properties by a registered holding company. *See CINergy Corp.*, Holding Co. Act Release No. 26146 (Oct. 21, 1994).

[86] At issue in that matter is the acquisition of a Vermont gas utility by a Canadian holding company. The Division of Investment Management opposed the acquisition, arguing that the Holding Company Act does not permit foreign ownership of a domestic public-utility company.

[87] *See, e.g.*, 16 U.S.C. 797 (power production on land and water controlled by the U.S. government); 42 U.S.C. 2131 - 2134 (prohibition of foreign ownership or control of facilities that produce or use nuclear materials); 42 U.S.C. § 6506 and 43 U.S.C. § 1701 *et seq.* (oil and gas leases within the National Petroleum Reserve).

[88] *See* 49 U.S.C. § 1301(16) (air carrier considered U.S. citizen if president and two-thirds of board of directors and other managing officers are U.S. citizens and at least 75% of voting interest is owned or controlled by U.S. citizens).

[89] Congress has authorized the President to investigate the national security effects of "foreign control of persons engaged in interstate commerce in the United States," and to suspend or prohibit any acquisition, merger, or takeover of such persons in order to protect the national security. 50 U.S.C. App. section 2170. The President has established the Committee on Foreign Investment in the United States to administer this authority. *See* 31 CFR 800.101 *et seq.*

[90] *See Michigan Consol. Gas Co. v. SEC*, 444 F.2d 913 (D.C. Cir. 1971); *CSW Credit, Inc.*, Holding Co. Act Release No. 25995 (Mar. 2, 1994), 56 SEC Dkt. 0521 (Mar. 22, 1994).

[91] Some analysts have observed that utilities that diversified in the past decade did not fare as well economically as the registered holding companies, which were unable to diversify. *See, e.g.*, Charles M. Studness, *Earnings from Utility Diversification Ventures*, Pub. Util. Fort., Sept. 1, 1992, at 28–29.

[92] For example, the Commission has authority to declare that an entity is not an electric utility company, gas utility company, holding company, or subsidiary company within the meaning of the Act. *See* Holding Company Act sections 2(a)(3), 2(a)(4), 2(a)(7) and 2(a)(8) (15 U.S.C. §§ 79b(a)(3), b(a)(4), b(a)(7) and b(a)(8)) and rules thereunder.

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are presumptively subject to effective state regulation,[93] or because there is limited regulatory concern.[94] In each instance, the exemption may be revoked by the Commission on a finding of detriment to the interests of investors or consumers.

31. The Commission generally exempts holding companies from all provisions of the Act except section 9(a)(2), which requires Commission approval for subsequent utility acquisitions. What has been the experience of exempt holding companies? Is there a continuing need to review utility acquisitions by exempt holding companies? Conversely, is there a need for increased Commission oversight in some areas?

32. Do the theories underlying these exemptions remain valid? What other types of companies should be exempted from the Act? Should the Commission adopt safe harbors in this area? Should state certification be a condition for exemption?[95]

E. The Audit Function

The Act gives the Commission broad authority to impose reporting and accounting requirements for registered holding companies. Among other things, the Commission may require the filing of annual, quarterly, and other periodic reports by registered holding companies, and may require such reports to be certified by an independent public accountant.[96] The Commission can establish the form of accounts and prescribe uniform methods of keeping accounts for registered system companies.[97]

1. Books and Records

33. As companies increasingly engage in activities not directly related to their core utility operations, it becomes more important for ratemakers to have access to the information necessary to protect utility consumers from the potential adverse effects of these new ventures. Under the Act, the Commission has broad access to the books and records of companies in a registered system.[98] What books and records do state regulators and the FERC currently have authority to examine? What additional access is needed? How can the Commission facilitate access by other regulators? How can the Commission address confidentiality concerns raised by the companies?

2. Auditing

34. In recent years, the Commission's audits have focused on service companies and nonutility subsidiaries of registered holding companies, including exempt wholesale generators and foreign utility companies. Among other things, these audits are intended to detect cross-subsidization and other affiliate abuses. Is there a need for an enhanced audit function? Is there duplication between FERC and SEC review? Between state and federal review? How can the Commission's audit program better facilitate state and FERC regulation?

3. Reporting

Registered, and many exempt, holding companies are required to file annual reports under the Holding Company Act.[99] In addition, service company subsidiaries of the registered holding companies are required to file annual reports. Further, registered holding companies must also file reports under the other federal securities laws.

35. Under the Act, registered holding companies must disclose financial information concerning each system company.[100] What additional information should be required if, for example, registered holding companies were permitted to diversify more freely? Should this requirement be extended to exempt holding companies?

F. Miscellaneous

1. Investment Company Issues

36. Questions have arisen in recent years concerning investment companies and investment advisers that acquire the securities of public-utility companies. Should these entities be subject to regulation as utility affiliates[101] or public-utility holding companies[102] under the Act?

2. Other Issues

The Holding Company Act authorizes the Commission to regulate many registered holding company activities that are also regulated today by other federal laws. For example, with respect to registered holding companies and subsidiaries, the Commission has broad regulatory authority over proxy solicitations, powers of attorney, and other types of authorizations;[103] sales of utility securities and assets;[104] officers and directors;[105] political participation by officers and directors of commercial and investment banks as officers and directors of companies in registered systems. *See* Holding Company Act section 17(c) (15 U.S.C. § 79q(c)).

contributions;[106] and lobbying.[107] Comments are sought on the continued need for regulation under the Holding Company Act specifically directed at these various activities.

V. Administrative Policy During the Period of Reexamination

During the pendency of the review of comments elicited by this release, and while awaiting adoption of such legislative or administrative amendments as may result therefrom, the Commission intends to continue its past practice of administering the Holding Company Act to accommodate changes in the industry and the regulatory environment, within the guidelines of the statute and past interpretations by the courts and the Commission.

VI. Conclusion

In reexamining the regulation of public-utility holding companies, the Commission is seeking comment on a number of specific regulatory issues. Commenters are encouraged, however, to address any other matters that they believe merit reexamination.

By the Commission.

Dated: November 2, 1994.

Jonathan G. Katz,

Secretary.

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[93] *See* Holding Company Act section 3(a)(1) (15 U.S.C. § 79c(a)(1)) ("predominantly intrastate" holding company); section 3(a)(2) (15 U.S.C. 79c(a)(2)) (holding company that is "predominantly a public-utility company").

[94] *See* Holding Company Act section 3(a)(3) (15 U.S.C. § 79c(a)(3)) (utility operations functionally related to holding company's primary nonutility business); section 3(a)(4) (15 U.S.C. § 79c(a)(4)) (company is only temporarily a holding company); and section 3(a)(5) (15 U.S.C. § 79c(a)(5)) (U.S. company holds essentially foreign utility operations).

[95] Columbia Gas System, Inc., for example, has suggested that Congress should amend section 3(a)(1) to exempt a holding company of which each utility subsidiary is predominantly intrastate in character and carries on its business substantially in a single state subject to regulation by a state authority as to rate and financial matters. Columbia Gas System, *Initial Comments on the Need for Legislative Reform* (Aug. 10, 1994). *See also Post-Round Table Comments of Central and South West Corporation* (Oct. 5, 1994).

[96] Holding Company Act section 14 (15 U.S.C. § 79n).

[97] Holding Company Act section 15 (15 U.S.C. § 79o).

[98] *See* Holding Company Act section 15(f) (79 U.S.C. § 79o(f)); *see also* rule 53 under the Holding Company Act (17 CFR 250.53).

[99] Holding companies seeking exemption under sections 3(a)(1) or 3(a)(2) of the Holding Company Act may apply for a Commission order or, in the alternative, file a claim of exemption pursuant to rule 2 under the Act (17 CFR 250.2). This claim of exemption, Form U-3A-2, must be renewed annually.

[100] *See* Form U5S, which requires disclosure on a consolidating basis. In contrast, consolidated financial statements are required for registration statements and reports under other federal securities laws. *See* Article 3 of Regulation S-X (17 CFR 210.3-01 *et seq.*).

[101] *See* Holding Company Act section 2(a)(11)(A) (15 U.S.C. § 79b(a)(11)(A)) (any person owning 5 percent or more of the outstanding voting securities of a company is an affiliate of that company). Under section 9(a)(2), an affiliate of a public-utility company may need to obtain prior Commission approval for any subsequent acquisition of utility securities. 15 U.S.C. § 79i(a)(2).

[102] *See* Holding Company Act section 2(a)(7) (15 U.S.C. § 79b(a)(7)). Among other things, a holding company may be required to divest any unrelated nonutility interests. *See* Holding Company Act section 11(b)(1) (15 U.S.C. § 79k(b)(1)).

[103] *See* section 12(e) (15 U.S.C. § 79l(e)). Under rules 60 through 65 (17 CFR 250.60-65), the Commission can review solicitation materials prior to their effectiveness and require the disclosure of funds spent to compensate persons who conduct solicitations. Rule 61 also provides that the solicitation of proxies is subject to the rules promulgated under section 14(a) of the Securities Exchange Act (15 U.S.C. § 78n(a)). 17 CFR 250.61.

[104] *See* Holding Company Act section 12(d) (15 U.S.C. § 79l(d)). This provision was enacted to prevent the piecemeal evasion of the reorganization accomplished under section 11 of the Act, and to prevent the sacrifice of investors' equity. S. Rep. No. 621, 74th Cong., 1st Sess. 35 (1935).

Under rule 44 (17 CFR 250.44), registered holding companies are required to submit proposed sales of securities or assets to the Commission by a declaration and to obtain an order from the Commission permitting such sales. The rule exempts holding companies from submitting such declarations regarding the sale of securities or of utility assets up to $5,000,000 during any calendar year if the acquisition does not also require Commission approval.

[105] Officers and directors of registered holding companies are subject to certain reporting requirements and trading limitations that are similar to those imposed by section 16 of the Securities Exchange Act of 1934 (15 U.S.C. § 78p). *See* Holding Company Act section 17 (15 U.S.C. § 79q). The Commission has adopted rules intended to minimize duplicative regulation. *See* rule 72 under the Holding Company Act (17 CFR 250.72) (section 17(a) deemed satisfied by statements of beneficial ownership filed under section 16(a) of the Securities Exchange Act). The Act also restrict

[106] Registered holding companies and their subsidiaries are prohibited from making campaign or political party contributions. Holding Company Act section 12(h) (15 U.S.C. § 79l(h)). The Federal Election Campaign Act of 1971, however, permits registered holding companies to make contributions through political committees. *See* Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. §§ 431-55).

[107] Holding Company Act section 12(i) (15 U.S.C. § 79l(i)) requires a registered holding company or subsidiary that engages in lobbying efforts before the Congress, the SEC or the FERC or any of its members, officers, or employees to file certain forms with the Commission providing information such as the subject matter of and compensation for the lobbying efforts.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-94-090]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the permanent regulations for the New Year's Eve Celebration Fireworks Display. This regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area to provide for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11 p.m., Saturday, December 31, 1994 until 1 a.m., Sunday, January 1, 1995. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. until 10 p.m., on January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Norfolk Festevents, Ltd. submitted an application requesting a permit to sponsor a fireworks display on March 16, 1994 to take place at 12 a.m., on January 1, 1995. The fireworks display will be launched from barges anchored in the Elizabeth River off Town Point Park, Norfolk, Virginia. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented to provide for the safety of life and property. The waterway will be closed during the fireworks display. This notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels, both during, and for one hour before and after, the effective period under 33 CFR 100.501, expect that the Coast Guard Patrol Commander may order the draw opened for commercial vessels.

Dated: October 21, 1994.

M.K. Cain,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 94-27675 Filed 11-7-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Jacksonville Regulation 94-027]

RIN 2115-AA97

Safety Zone Regulations; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone in the St. Johns River around barges launching fireworks located between the Hart and Acosta Bridges. The permanent safety zone relieves the need to establish temporary safety zones for the purpose of regularly scheduled fireworks displays. The zone will be placed into effect during fireworks displays to protect vessels in the vicinity from safety hazards associated with the storage, preparation and launching of fireworks. Entry into this zone is prohibited, unless authorized by the Captain of the Port. It will automatically terminate at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port or District Commander.

EFFECTIVE DATE: December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Varamo, at Coast Guard Marine Safety Office, Jacksonville, Florida, tel: (904) 232-2648.

SUPPLEMENTARY INFORMATION: On May 5, 1994 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for this regulation (59 FR 23179). Interested persons were requested to submit comments and no comments were received.

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Drafting Information

The drafters of this regulation are Lieutenant A. Varamo, project officer for the Captain of the Port Jacksonville, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation consistent with section 2.B.2.C of Commandant Instruction M16475.1B and the establishment of safety zones has been determined to be categorically excluded from further environmental documentation.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be in effect during the preparation and launching of fireworks. The Coast Guard will notify the public of the activation of the safety zone by transmitting a Broadcast Notice to Mariners on appropriate VHF–FM radio frequencies in advance of each fireworks display. The exact time of each safety zone will be included in the Broadcast Notice to Mariners. Each safety zone is expected to last for approximately one hour, which includes the time immediately prior to, during, and after the fireworks display.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.721 is added to read as follows:

§ 165.721 Safety Zone: St. Johns River, Jacksonville, FL

(a) *Location.* The following area is established as a safety zone during the specified conditions: The waters within a 500 yard radius of the fireworks barge or barges during the storage, preparation, and launching of fireworks in the St. Johns River between the Hart and Acosta Bridges.

(b) *Effective dates.* This section becomes effective upon activation by the Captain of the Port by the broadcasting of a local Notice to Mariners on appropriate VHF–FM radio frequencies. It terminates at the conclusion of the fireworks display unless terminated earlier by the Captain of the Port.

(c) *Regulations. (1) In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Captain of the Port or District Commander.*

(2) This regulation does not apply to authorized law enforcement agencies operating within the Safety Zone.

Dated: October 28, 1994.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 94–27674 Filed 11–7–94; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO37–1–6688; FRL–5096–5]

Conditional Approval and Promulgation of Air Quality Implementation Plans; Colorado; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a vehicle inspection and maintenance (I/M) State Implementation Plan (SIP) revision based on the Governor's June 24, 1994 commitment to adopt final regulations for dealership self-testing within one year of the conditional approval. If this commitment is not met, the conditional approval will automatically convert to a disapproval. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance (I/M) program in the Denver and Boulder urbanized areas, including all or part of the Colorado counties of Adams, Arapahoe, Boulder, Denver County, Douglas, Jefferson. On January 14, 1994, and on June 24, 1994, Roy Romer, Governor of the State of Colorado, submitted to EPA enhanced I/M SIP revisions for the Denver and the Boulder urbanized areas. Public hearings were held on November 12, 1993, and December 16, 1993, for the January 14, 1994 SIP submittal, and are to be held on September 15, 1994, for the June 24, 1994, SIP submittal, as detailed in the Governor's June 24, 1994 letter. More detailed analyses of the State's submittals are contained in the NPR action as published July 14, 1994. Other specific requirements of the enhance I/M program and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is conditionally approving the Colorado enhanced motor vehicle I/M program. Conditional approval is based on the State's commitment to adopt final regulations for dealership self-testing within one year of final conditional approval. If such conditions are not met by this date, the conditional approval will automatically become a disapproval.

III. Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

OMB has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 1994.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(69) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(69) On January 14, 1994 and on June 24, 1994, Roy Romer, the Governor of Colorado, submitted SIP revisions to the Implementation Plan for the Control of Air Pollution. This revision establishes and requires the implementation of an enhanced motor vehicle inspection and maintenance program in the Denver and Boulder urbanized areas as required by section 187(a)(6) of the Clean Air Act Amendments of 1990. This material is being incorporated by reference for the enforcement of Colorado's enhanced I/M program only.

(i) Incorporation by reference.

(A) Colo. Rev. Stat. Sections 42–4–306.5—42–4–316 adopted June 8, 1993 as House Bill 93–1340, effective July 1, 1993.

(B) Regulation No. 11 (Inspection/Maintenance Program) as adopted by the Colorado Air Quality Control Commission (AQCC) on March 17, 1994.

(ii) Additional materials.

(A) SIP narrative and technical appendices 1–20 as corrected and approved by the AQCC on June 21, 1994. The narrative is entitled "State of Colorado Motor Vehicle Inspection and Maintenance State Implementation Plan", dated December 16, 1993 with technical corrections.

[FR Doc. 94–27602 Filed 11–7–94; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[UT6–1–5684; MT15–1–5691; A–1–FRL–5091–7]

Approval and Promulgation of Air Quality Implementation Plans; States of Montana and Utah; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the States of Montana and Utah. The Montana and Utah revisions implement oxygenated gasoline programs in Missoula, Montana, and in the Provo-Orem and Salt Lake City-Ogden, Utah, Metropolitan Statistical Areas. These SIP revisions were submitted to satisfy the requirement of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act), which requires all carbon monoxide nonattainment areas with a design value of 9.5 parts per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATES: This final rule is effective December 8, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency Region 8, Air, Radiation & Toxics Division, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, Air Programs Branch, State Implementation Plan Section (8ART-AP), US Environmental Protection Agency, Region 8, Denver, Colorado 80202, (303) 293–1887.

SUPPLEMENTARY INFORMATION: On October 20, 1993 (58 FR 54081–54086), EPA published a notice of proposed rulemaking (NPR) for the State of Montana and the State of Utah. The NPR proposed approval of oxygenated gasoline programs in both states. On November 6, 1992, Stan Stephens, Governor of Montana, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 25, 1992. On November 9, 1992, Norman H. Bangerter, Governor of Utah, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 30, 1992. On May 19, 1994, Governor Michael O. Leavitt submitted to EPA final regulations for Utah's Oxygenated Gasoline Program. Utah's regulations contained no substantive changes from the draft regulations on which EPA proposed approval (58 FR 54081) of Utah's Oxygenated Gasoline Program using EPA's "parallel processing" procedure. The State adopted these regulations on July 1, 1993 and on July 19, 1993, both with effective dates of September 1, 1993.

Since September 1993, the State adopted a revised version of the oxygenated gasoline regulations, effective December 16, 1993, requiring the Salt Lake City-Ogden MSA to implement an oxygenated gasoline program beginning November 1, 1994. The State exempted this MSA for the 1993–94 season pending a decision on a waiver request submitted to EPA. EPA will address the waiver request issue in

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a separate document. The waiver decision will be forthcoming in the **Federal Register**. The certified copy of the regulations, effective December 16, 1993, contain no substantive changes from EPA's proposed approval. More detailed analyses of the States' submittals were prepared as part of the NPR action and are contained in a Technical Support document (TSD) dated July 20, 1993, which is available from the Region 8 office listed in the Addresses section of this document.

Other specific requirements of the oxygenated gasoline programs and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the revisions to the Montana SIP and the revisions to the Utah SIP as proposed, for both oxygenated gasoline programs meeting the requirements of section 211(m) of the Act.

Administrative Review

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

OMB has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 5, 1994.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(32) On November 6, 1992, Stan Stephens, the Governor of Montana, submitted a SIP revision to the Implementation Plan for the Control of Air Pollution. This revision establishes and requires the implementation of an oxygenated fuels program in Missoula County as required by section 211(m) of the Clean Air Act Amendments of 1990.

(i) Incorporation by reference.

(A) Missoula City-County Rule 1429, which establishes and requires the implementation of an oxygenated fuel program, as adopted June 9, 1992.

(ii) Additional materials.

(A) Letter dated November 6, 1992, from Governor Stan Stephens submitting the oxygenated gasoline program SIP revision.

(B) Stipulation signed June 12, 1991 between the Montana Department of Health and Environmental Sciences and the Missoula City-County Air Pollution Control Board, which delineates the responsibilities and authorities between the two entities.

(C) Board order issued September 25, 1992 by the Montana Board of Health and Environmental Sciences approving amendments to Missoula City-County Air Pollution Control Program, adopting Rule 1429 establishing and implementing an oxygenated fuels program.

* * * * *

Subpart TT—Utah

3. Section 52.2320 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(26) On November 9, 1992, Norman Bangerter, the Governor of Utah, submitted a SIP revision to the Utah Implementation Plan and Utah Air Conservation Regulations. This revision establishes and requires the implementation of oxygenated fuel programs in Provo-Orem and Salt Lake-Ogden Metropolitan Statistical Areas as required by section 211(m) of the Clean Air Act Amendments of 1990.

(i) Incorporation by reference.

(A) R307–8; Oxygenated Gasoline Program, of the Utah Air Conservation Regulations as adopted by the State, effective December 16, 1993.

(ii) Additional materials.

(A) Letter dated November 9, 1992, from Governor Norman Bangerter submitting the oxygenated gasoline program SIP revision.

(B) Letter dated May 19, 1994, from Governor Michael O. Leavitt submitting the oxygenated gasoline program SIP revision.

[FR Doc. 94–27603 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–24–1–6670; FRL–5102–9]

Approval and Promulgation of Implementation Plan: Texas 1990 Base Year Ozone Emissions Inventories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA today fully approves the 1990 base year ozone emission inventories submitted by Texas for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for ozone. The inventories were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area ozone State Implementation Plan (SIP) for the Houston/Galveston, Beaumont/Port Arthur, El Paso, and Dallas/Fort Worth areas of Texas.

EFFECTIVE DATE: This final rule is effective on December 8, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, Emissions Inventory Branch, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Herbert R. Sherrow, Jr., Planning Section (6T–AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7237.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA require ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce volatile organic compounds (VOC) emissions by 15 percent within six years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of title I of the CAAA. The EPA has issued a General Preamble describing the EPA's preliminary views on how the EPA intends to review SIP revisions submitted under title I, including requirements for the preparation of the 1990 base year inventory (see 57 FR 13502; April 16, 1992, and 57 FR 18070; April 28, 1992). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble (57 FR 18070, Appendix B, April 28, 1992) for a more detailed discussion of the interpretations of title I advanced in today's action and the supporting rationale.

Those States containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the 1990 CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the base year inventory. It includes both anthropogenic and biogenic sources of VOC, nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during a peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Emission inventories are first reviewed under the completeness criteria established under section 110(k)(1) of the CAAA (56 FR 42216, August 26, 1991). According to section 110(k)(1)(C), if a submittal does not meet the completeness criteria, "the State shall be treated as not having made the submission." Under sections 179(a)(1) and 110(c)(1), a finding by the EPA that a submittal is incomplete is one of the actions that initiates the sanctions and Federal Implementation Plan processes (see David Mobley memorandum, November 12, 1992).[1]

The State of Texas submitted the 1990 base year inventories for Houston/Galveston (HGA), Beaumont/Port Arthur (BPA), El Paso (ELP), and Dallas/Fort Worth (DFW) on November 17, 1992, as a SIP revision by cover letter from the Governor. The inventories were reviewed by the EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated January 15, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The State of Texas subsequently held public hearings to entertain public comment on the 1990 base year emission inventories. The State provided evidence to EPA Region 6 that the public hearings were held and that the State responded to comments. The inventories were approved by the Texas Air Control Board (TACB) on November 10, 1993.

On September 1, 1993, the TACB merged with the Texas Water Commission to form the Texas Natural Resource Conservation (TNRCC), and is now called the Office of Air Quality within the TNRCC. The merger did not abrogate, void, or rescind any rules, regulations, orders, permits, or any other action previously taken by the former TACB.

Response to Comments

The EPA, Region 6, proposed approval of the Texas 1990 Base Year ozone emissions inventories on September 6, 1994 (59 FR 46015–46019) and received no adverse comments regarding the proposed approval. The State of Texas submitted a letter to Region 6 on September 30, 1994, which recognized a typographical error in the El Paso VOC point source emissions. The correct emissions from point sources are 9.47 tons per day instead of 11.88 tons per day and the total VOC emissions are 100.40 tons per day instead of 102.81 tons per day. The tables in this document have been corrected to reflect this change.

Final Action

In today's action, the EPA is fully approving the SIP 1990 base year ozone emission inventories submitted to the EPA for the Houston/Galveston, Beaumont/Port Arthur, El Paso, and Dallas/Fort Worth areas on November 17, 1993, as meeting the requirements of section 182(a)(1) of the Act.

The State has submitted complete inventories containing point, area, biogenic, on-road mobile, and non-road mobile source data, and accompanying documentation. Emissions from these sources are presented in the following tables:

[1] Memorandum from J. David Mobley, Chief, Emission Inventory Branch, to Air Branch Chiefs, Region I–X, "Guidance on States' Failure to Submit Ozone and CO SIP Inventories," November 12, 1992.

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VOC—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	480.34	229.01	251.72	195.11	335.47	1491.65
BPA	245.60	32.48	31.61	32.47	91.95	434.11
ELP	9.47	27.43	39.00	11.88	12.62	100.40
DFW	66.64	174.25	306.60	97.44	126.09	771.02

NO_X—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	780.65	14.37	337.03	236.92	NA	1368.97
BPA	221.01	1.44	41.09	60.72	NA	324.26
ELP	33.43	2.43	36.90	15.02	NA	87.78
DFW	108.86	19.99	293.03	166.05	NA	587.93

CO—OZONE SEASONAL EMISSIONS

[In Tons Per Day]

NAA	Point source emissions	Area source emissions	On-Road mobile emissions	Non-Road mobile emissions	Biogenic	Total emissions
HGA	334.38	28.03	2412.68	1269.55	NA	4044.64
BPA	117.16	16.08	282.69	162.64	NA	578.57
LP	7.41	2.64	327.10	112.01	NA	449.16
DFW	13.33	4.47	2837.88	1116.99	NA	3972.67

Based on Region 6's review of the inventories, Texas has satisfied all of the EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 CAAA of November 15, 1990. The EPA has determined that this action conforms with those requirements.

This final action on the Texas 1990 Base Year emissions inventories is unchanged from the September 6, 1994, proposed approval action, other than the El Paso point source VOC correction. The discussion herein provides only a broad overview of the proposed action that the EPA is now finalizing. The public is referred to the September 6, 1994 proposed approval **Federal Register** action for a full discussion of the action that the EPA is now finalizing.

This action makes final the action proposed at 59 FR 46015–46019 (September 6, 1994). As noted elsewhere in this document, the EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from table two to table three under the processing procedures established at 54 FR 2214, January 19, 1989, and revised via memorandum from the Assistant Administrator for Air and Radiation to the Regional Administrators dated October 4, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, in relation to relevant statutory and regulatory requirements.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not by challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order 12866

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 26, 1994.

William B. Hathaway,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–767lq.

Subpart SS—Texas

2. Section 52.2309 is added to read as follows:

§ 52.2309 Emissions inventories.

(a) The Governor of the State of Texas submitted the 1990 base year emission inventories for the Houston/Galveston (HGA), Beaumont/Port Arthur (BPA), El Paso (ELP), and Dallas/Fort Worth (DFW) ozone nonattainment areas on November 17, 1992 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for each of these areas.

(b) The inventories are for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventories cover point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The HGA nonattainment area is classified as Severe-17 and includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; the BPA nonattainment area is classified as Serious and includes Hardin, Jefferson, and Orange Counties; the ELP nonattainment area is classified as Serious and includes El Paso County; and the DFW nonattainment area is classified as Moderate and includes Collin, Dallas, Denton, and Tarrant Counties.

[FR Doc. 94–27604 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3649, 9F3703, 0F3880/R2088; FRL–4920–1]

RIN 2070–AB78

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities celery, tomatoes, and strawberries. This regulation to establish maximum permissible levels for residues of the insecticide was requested in petitions submitted by the Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc.

EFFECTIVE DATE: This regulation becomes effective November 8, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3649, 9F3703, 0F3880/R2088], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, Rm. 204, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305–6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1994 (59 FR 49370), EPA issued a proposed rule that gave notice pursuant to petitions from from Merck Sharp & Dohme, Division of Merck & Co., Hillsborough Rd., Three Bridges, NJ 08887, that it proposed pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to establish tolerances for residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities celery, tomatoes, and strawberries. Section 180.449(b) (40 CFR 180.449(b)) would be amended to establish a tolerance of 0.05 part per million (ppm) in or on celery, 0.02 ppm in or on strawberries, and 0.01 in or on tomatoes.

Merck & Co. (now Merck Research Laboratories) has submitted to EPA a letter stating, among other things, that the common name "abamectin B_1" that appeared in the proposal should be corrected to "abamectin" or "avermectin B_1." EPA acknowledges the error and notes that the current heading in the Code of Federal Regulations to 40 CFR 180.449 correctly states "Avermectin B_1."

There were no other comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of

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the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by amending paragraph (b) by revising the table therein, to read as follows:

§ 180.449 Avermectin B, and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Celery	0.05
Strawberry	0.02
Tomatoes	0.01

[FR Doc. 94–27653 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable

standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Walton County (Unincorporated Areas) (FEMA Docket No. 7097)	
Apalachee River:	
At State Route 186 bridge	*624
Approximately 125 feet upstream of the westbound U.S. Highway 78 bridge	*692
Maps available for inspection at the Code Enforcement Building, Courthouse Annex 1, Court Street, Monroe, Georgia.	
INDIANA	
Allen County (Unincorporated Areas) (FEMA Docket No. 7097)	
Maumee River:	
Approximately 3.7 miles downstream of U.S. Route 24	*750
Approximately 1.1 miles downstream of U.S. Route 24	*752
St. Joseph River:	
Approximately 1,600 feet upstream of confluence of Becketts Run	*768
Approximately 0.7 mile upstream of confluence of Becketts Run	*768
Maps available for inspection at the City-County Building, Room 200, One East Main Street, Fort Wayne, Indiana	
NEW HAMPSHIRE	
Bedford (Town), Hillsborough County (FEMA Docket No. 7091)	
McQuade Brook:	
Approximately 925 feet downstream of Beals Road	*241
Approximately 265 feet upstream of North Amherst Road	*292
McQuade Brook Split Flow:	
At divergence from McQuade Brook	*262
Approximately 300 feet upstream of Grafton Drive	*254
Pointer Club Brook:	
Upstream of Bach River Road	*214
Approximately 50 feet upstream of Forest Drive	*227
Maps available for inspection at the Town Manager's Office, Hillsborough County, 24 North Amherst Road, Bedford, New Hampshire.	
Gorham (Town), Coos County (FEMA Docket No. 7091)	
Peabody River:	
At downstream corporate limits	*760
Approximately 300 feet upstream of confluence of Townline Brook	*1,060
Maps available for inspection at the Gorham Town Manager's Office, 20 Park Street, Gorham, New Hampshire.	
NORTH CAROLINA	
Craven County (Unincorporated Areas) (FEMA Docket No. 7097)	
Mills Branch:	
Approximately 2,500 feet downstream of Wildlife Road–SR 1431	*9
Approximately 1,100 feet upstream of U.S. Highway 17	*17
Maps available for inspection at Craven County Planning Department, 406 Craven Street, New Bern, North Carolina.	
OKLAHOMA	
Osage County (Unincorporated Areas) (FEMA Docket No. 7091)	
Arkansas River:	
Approximately 2.0 miles downstream of U.S. Route 60	*922
At Kaw Lake Dam	*951
Bird Creek:	
Approximately 1.3 miles upstream of State Route 20	*637
Approximately 1.5 miles upstream of U.S. Route 60 and State Route 11	*823
Sand Creek:	
At county boundary approximately 0.9 mile downstream of State Route 123	*670
Approximately 1.8 miles upstream of confluence with Panther Creek	*690
Hominy Creek:	
Approximately 600 feet downstream of Texas and Pacific Railroad	*624
At confluence of Quapaw Creek	*642
Clear Creek:	
At the downstream corporate limits approximately 0.3 mile upstream of U.S. Highway 60 and State Highway 11	*820
At the upstream corporate limits approximately 0.35 mile upstream of U.S. Highway 60 and State Highway 11	*820
Delaware Creek:	
At county boundary approximately 3.7 miles downstream of County Road	*619
Approximately 5 miles upstream of county boundary at the most upstream crossing at County Road	*637
Flat Rock Creek:	
Approximately 1,200 feet downstream of confluence of Flat Rock Creek Tributary B	*648
Approximately 1,500 feet upstream of Osage Drive	*717
Quapaw Creek:	
At confluence with Hominy Creek	*643
Approximately 1.5 mile upstream of confluence of East Prong Creek	*701
Butler Creek:	
At Sunset Boulevard	*677
Approximately 5.4 miles upstream of Sunset Boulevard	*707
Rock Creek:	
At confluence with Hominy Creek	*625
Approximately 2.5 miles upstream of County Road	*643
Javine Creek:	
Approximately 600 feet downstream of 144th Street	*641
Approximately 0.7 mile upstream of 144th Street	*655
Penn Creek:	
Approximately 300 feet downstream of corporate limits	*781
Approximately 0.5 mile upstream of confluence of "B" Creek	*791
Claremore Creek:	
Approximately 150 feet downstream of Missouri-Kansas-Texas Railroad (abandoned)	*782

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*793
Euchee Creek:	
At downstream county boundary	*691
At confluence of Euchee Creek Tributary	*699
Euchee Creek Tributary:	
At confluence with Arkansas River	*699
Approximately 950 feet upstream of Willow Street	*719
Eliza Creek:	
At downstream county boundary	*670
At U.S. Route 60	*715
B-Creek:	
At confluence with Penn Creek	*784
Approximately 0.9 mile upstream of confluence with Penn Creek	*794
Flat Rock Creek Tributary C:	
At confluence with Flat Rock Creek Tributary B	*653
Approximately 1.3 miles upstream of confluence with Flat Rock Creek Tributary B	*689
Flat Rock Creek Tributary B:	
At confluence with Flat Rock Creek	*649
Approximately 1.5 miles upstream of confluence of Flat Rock Creek Tributary C	*696
Flat Rock Creek Tributary D:	
At confluence with Flat Rock Creek	*675
Approximately 1.6 miles upstream of confluence with Flat Rock Creek	*727

Maps available for inspection at the Osage County Soil and Land Conservation Office, 628 Kihekah, Pawhuska, Oklahoma.

PENNSYLVANIA

Briar Creek (Borough), Columbia County (FEMA Docket No. 7097)

Briar Creek:	
At the upstream side of CONRAIL	*492
Approximately 1,170 feet upstream of Rittenhouse Road bridge	*512
East Branch Briar Creek:	
At the confluence with Briar Creek	*502
Approximately 0.4 mile upstream of State Route 93	*511

Maps available for inspection at the Borough Hall, RR #3, Berwick, Pennsylvania, and at 2606 West Front Street, Berwick, Pennsylvania.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upper Dublin (Township), Montgomery County (FEMA Docket No. 7097)	
Pine Run:	
At the confluence with Sandy Run	*172
Approximately 250 feet upstream of Dreaher Town Road bridge	*232

Maps available for inspection at the Code Enforcement Office/Upper Dublin Township Building, 801 Loch Alsh Avenue, Fort Washington, Pennsylvania.

TEXAS

Carrollton (City), Dallas, Denton, and Collin Counties (FEMA Docket No. 7082)	
Stream 6D–5:	
Approximately 300 feet upstream of the confluence with Hutton Branch	*494
Approximately 0.6 mile upstream of Carmel Drive	*546
Elm Fork Trinity River:	
Just downstream of Beltline Road	*440
Approximately 200 feet upstream of the confluence of Denton Creek	*446

Maps available for inspection at the City of Engineering Department, 1945 Jackson Road, Carrollton, Texas.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 1, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27634 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services: General Operating Support, Conservation Project Support

AGENCY: Institute of Museum Services, NFAH.

ACTION: Technical amendment to regulations.

SUMMARY: The Institute of Museum Services issues a technical amendment to regulations governing the audit requirement for applicants to the General Operating Support and the Conservation Project Support grant programs. The amendment raises the level of a museum's annual operating budget from $50,000 to $250,000 to be eligible to request a deferral of the submission of the audited financial statements. The amendment to the regulations implement the Museum Services Act. They state the conditions for an applicant to be eligible for a deferral of the audit requirement.

DATES: This regulation is effective November 8, 1994.

ADDRESSES: Institution of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director, Telephone (202) 606–8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act" which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985 and 1990.) The purpose of the Act is stated in section 202 as follows:

It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Service Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens' of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grant under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 101–512 Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations.

The Need for the Amendment

Section 1180.11(c)(4) states that a museum that has received a prior grant from IMS must submit its audited financial statement for the last fiscal year immediately preceding the fiscal year in which application is made or the immediately preceding fiscal year. § 1180.11(c)(4) authorizes the Director to defer the audit requirement for a museum that has an annual operating Budget of $50,000 or less, exclusive of non-cash contributions.

The purpose of § 1180.11(c)(4) is to ease the burden of the audit requirement for small museums, currently those with an annual operating income of up to $50,000, exclusive of non-cash contributions. The level of operating income of a museum eligible to request a deferral has not been increased since the regulation was originally set forth in 1984. In 1990, IMS conducted a needs assessment of small museums and in the process defined small museums as those with annual operating budgets of $250,000 or less, exclusive of non-cash contributions. This technical amendment to regulation is to reflect the definition of small museums used by IMS in other grant programs and in formulating policy.

Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Director has assessed the potential costs and benefits for the standards, criteria and procedures in this notice.

The potential costs associated with the contents of this notice are those determined by the Institute to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Institute has determined that the benefits of these standards, criteria and procedures justify the costs.

The Institute has determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Director certified that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have a significant economic impact on the entities affected, because it does not impose excessive regulatory burden or require unnecessary Federal supervision and because it permits a larger number of museums to seek deferral of the existing requirement regarding financial statements.

Paperwork Reduction Act of 1980

The amendment does not add any information collections requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 190–511) and provides a larger number of museums may seek deferral of the requirements of the current regulation.

List of Subjects in 45 CFR Part 1180

Government contracts, Grant programs—education, Museums, National boards, Nonprofit organizations, reporting and recordkeeping requirements, Sunshine Act.

(Catalog of Federal Domestic Assistance No 45–301 Museum Services Program).

Dated: October 11, 1994.

Diane B. Frankel,

Director, Institute of Museum Services.

The Institute of Museum Services amends subchapter E of chapter XI of title 45 of the Code of Federal Regulations as set forth below:

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 USC 961 et seq.

2. Section 1180.11(c)(4) is revised to read as follows:

§ 1180.11 Basic requirements which a museum must meet to be considered for funding.

* * * * *

(c) * * *

The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) of this section in the case of a museum with non-federal operating income of $250,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested) if the Director finds that circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. If the museum receives an award, the museum must submit audited financial statements no later than the end ot the grant period for which the deferral is requested.

* * * * *

[FR Doc. 94–27659 Filed 11–7–94; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–158; RM–8239 and RM–8317]

Radio Broadcasting Services; Hazlehurst, Utica and Vicksburg, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 265C2 for Channel 225A at Utica, Mississippi, and modifies the license for Station WJXN(FM) to specify operation on Channel 265C2 in response to a petition and counterproposal filed by St. Pe' Broadcasting. *See* 58 FR 34025, June 23, 1993. The coordinates for Channel 265C2 at Utica are 32–04–01 and 90–20–14. To accommodate the upgrade at Utica we shall also substitute Channel 255A for Channel 265C3 at Hazlehurst; Mississippi, and modify the license for Station WMDC–FM and substitute Channel 267A for Channel 266A at Vicksburg, Mississippi, and modify the license for Station WBBV–FM. The coordinates for Channel 225A at Hazlehurst are 31–53–34 and 90–24–08. The coordinates for Channel 267A at Vicksburg are 32–21–34 and 90–50–08.

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–158, adopted October 26, 1994, and released November 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M

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Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 225A and adding Channel 265C2 at Utica, removing Channel 265C3 and adding Channel 225A at Hazlehurst, and removing Channel 266A and adding Channel 267A at Vicksburg.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27557 Filed 11–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–131; RM–7702, RM–7840 and RM–7841]

Radio Broadcasting Services; Flora and Kings, MS and Newellton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses the petition filed by St. Pe' Broadcasting for reconsideration of the *Report and Order* in MM Docket No. 91–131, 57 FR 39363, August 31, 1992. St. Pe' Broadcasting, licensee of Station WJXN(FM), Channel 225A, Utica, Mississippi, was granted an upgrade to Channel 265C2 in MM Docket No. 93–158, adopted October 26, 1994. Therefore, St. Pe' Broadcasting's petition for reconsideration is now moot.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27559 Filed 11–7–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 59, No. 215

Tuesday, November 8, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–147–AD]

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped with General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200 and –300 series airplanes. This proposal would require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. This proposal is prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which has revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by December 9, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

In May 1991, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser deployed inadvertently during flight. While the investigation of the accident has not revealed the cause of that deployment, it has identified a number of possible failure modes in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane.

The FAA and the aviation industry are conducting an in-depth investigation of the thrust reverser systems installed on various types of large transport airplanes. In particular, this investigation has focused on airplane controllability in the event of an in-flight deployment of a thrust reverser, and thrust reverser reliability in general. Based on the data gathered from this ongoing investigation, the FAA issued several airworthiness directives (AD) to require periodic inspections and tests of the thrust reverser systems on certain Boeing Model 757 and 767 series airplanes [for example, reference AD 91–20–09, amendment 39–8043 (56 FR 46725, September 16, 1991) for certain Model 757 series airplanes; and AD 92–24–03, amendment 39–8408 (57 FR 53258, November 9, 1992) for certain Model 767 series airplanes]. In addition, the FAA has issued or proposed several AD's to require an additional locking device on thrust reversers that are installed on Model 737–300/–400/–500, 757, and 767 series airplanes [for example, reference AD 94–14–02, amendment 39–8954 (59 FR 33646, June 30, 1994) for certain Model 757 series airplanes; and AD 94–16–03, amendment 39–8993 (59 FR 41229, August 11, 1994) for certain Model 767 series airplanes]. These actions were taken to enhance the level of reliability on airplane models that were determined to have unacceptable flight characteristics following an in-flight deployment of a thrust reverser.

Until now, the investigation of thrust reverser system reliability on Boeing Model 747 series airplanes has not been given as high a priority as the other Boeing models because Model 747 series airplanes have never experienced control problems as a result of an in-

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flight thrust reverser deployment. Based on this long safety record and the available evidence up to this time, it has been accepted generally that all Model 747 series airplanes would be shown to be controllable throughout the flight envelope following an in-flight thrust reverser deployment.

Boeing has responded to an FAA request for further investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment. The investigation results indicate that Model 747–100, –200, –300, –400, SP, and SR series airplanes could experience certain control problems in the event of a thrust reverser deployment occurring during high-speed climb or during cruise.

In light of that information, the FAA determined that certain inspections and functional tests of the thrust reverser control and indication system on all Model 747 series airplanes, similar to those required previously for Model 757 and 767 series airplanes, are necessary as precautionary actions to provide an acceptable level of safety for Model 747 series airplanes. Subsequently, on July 13, 1994, the FAA issued AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), to require inspections and functional tests of the thrust reverser control and indication system on all Model 747–400 series airplanes.

In the preamble to the notice of AD 94–15–05, the FAA indicated that it was considering similar rulemaking action for Model 747–200 and –300 series airplanes. The FAA now has determined that such rulemaking action is indeed necessary, and this proposed AD follows from that determination. The FAA has determined that inspections and functional tests of the thrust reverser control and indication system, similar to those currently required by AD 94–15–05 for Model 747–400 series airplanes, are necessary for Model 747–200 and –300 series airplanes in order to reduce the exposure of these airplanes to potential undetected single failures in the thrust reverser control system. The presence of an undetected failure in the thrust reverser control system, in some cases, can increase the likelihood of an uncommanded thrust reverser deployment in the event of an additional thrust reverser control system failure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, which describes procedures for various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. The alert service bulletin recommends that these initial inspections and tests be accomplished no later than 1,500 flight hours or four months after release of the service bulletin. The alert service bulletin also recommends a repetitive interval of 1,300 flight hours for tests of the center drive unit (CDU) and inspections of the bullnose seal on each thrust reverser, and a repetitive interval of 18 months for other inspections and tests of the thrust reverser control and indication system.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various inspections and functional tests of the thrust reverser control and indication system on certain Model 747–200 and –300 series airplanes, and would require the correction of any discrepancy found during the inspections and tests. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

This proposed AD also would require that operators submit a report of initial inspection and test results to the FAA.

In developing appropriate compliance times for the initial inspections and tests contained in this proposed AD, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the proposed actions. In consideration of these items, the FAA determined that 90 days (for the initial test of the CDU and inspection of the bullnose seal on each thrust reverser) and 9 months (for the initial inspections and tests of the thrust reverser control and indication system) represent the maximum intervals of time allowable wherein those actions can reasonably be accomplished and an acceptable level of safety can be maintained. Further, the FAA has determined that the proposed repetitive intervals of 1,000 flight hours and 18 months, respectively, are appropriate, based on the service history of similar components and on an analysis of the system design to predict the reliability of the system during the service life of the aircraft.

The compliance times proposed in this AD correspond to those specified in AD 94–15–05 for Model 747–400 series airplanes. The thrust reverser control and indication system on Model 747–400 series airplanes is similar to the system installed on the airplanes addressed in this proposed AD.

This notice addresses only Model 747–200 and –300 series airplanes equipped with General Electric CF6–80C2 series engines with Power Management Control (PMC) engine controls. The FAA may consider additional rulemaking action for other Model 747–200 and –300 series airplanes and Model 747–100, SP, and SR series airplanes as service information becomes available for accomplishment of inspections and functional tests of the thrust reverser control and indication systems on those airplanes.

There are approximately 9 Model 747–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 33 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,630, or $1,815 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–147–AD.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric CF6–80C2 series engines with Power Management Control (PMC) engine controls, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(b) Within 9 months after the effective date of this AD, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

(d) Within 10 days after performing each initial inspection and test required by this AD, submit a report of the inspection and/or test results, both positive and negative, to the FAA, Seattle Aircraft Certification Office (ACO), ANM–100S, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 2, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27597 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA.

DATES: The Committee will have meetings as shown below:

Tuesday, November 29, 1994—10:00 a.m.–5:00 p.m.

Wednesday, November 30, 1994—8:00 a.m.–5:00 p.m.

Thursday, December 1, 1994—8:00 a.m.–2:00 p.m.

ADDRESSES: The meetings will be held at the Denver Marriott West, 1717 Denver West Parkway, Golden, Colorado 80401, at Exit 263 from Interstate I–70, telephone (303) 279–9100.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3150, Denver, Colorado 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: November 2, 1994.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 94–27594 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed amendment.

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SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of revisions to 23 parts of Title 62 of the Illinois Administrative Code (IAC) pertaining to permit fees, definitions, financial interests, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. Illinois is withdrawing this amendment because it needs more time to complete additional revisions prior to formal review by OSM.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION: By letter dated September 23, 1994 (Administrative Record No. IL–1600), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16 (s), (t), (u), and (v), and at its own initiative.

On October 18, 1994 (Administrative Record No. IL–1605), OSM announced receipt of and solicited public comment on the proposed amendment in the **Federal Register** (59 FR 52487). On October 25, 1994 (Administrative Record No. IL–1607), Illinois requested that the proposed amendment be withdrawn. Illinois intends to revise the amendment prior to resubmitting it for formal review and approval by OSM. Therefore, the proposed amendment announced in the October 18, 1994, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–27628 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD05–94–088]

RIN 2115–AA98

Anchorage Regulations; Anchorage Grounds: Anchorage 7 off Marcus Hook; Delaware River, Southeast Side of the Channel Along Marcus Hook Range

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the boundaries of Anchorage 7 off Marcus Hook on the southeast side of the channel along the Marcus Hook Range of the Delaware River. There currently exists a discrepancy between the charted anchorage, the Army Corps of Engineers maintained anchorage, and the anchorage coordinates published in 33 CFR 110.157(a)(8). This proposal will correct all discrepancies.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, Room 116. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn, Chief, Planning and Waterways Management Section, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004, (804) 398–6285.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD05–94–088) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed because of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are LCDR Tom Flynn, project officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District and LT Andy Norris, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

Section 7 of the Act of March 4, 1915, as amended (33 U.S.C. 471), authorizes the establishment of anchorage grounds for vessels in the navigable waters of the United States whenever it is apparent that such grounds are required by the maritime or commercial interests of the United States for safe navigation. A Coast Guard initiated Waterways Analysis and Management System Study (WAMS) of the Delaware River, conducted in 1989, determined that a discrepancy exists between the charted anchorage, the Army Corps of Engineers maintained anchorage, and the anchorage coordinates published in 33 CFR 110.157(a)(8). WAMS was developed to serve as the basis for a systematic analysis and management of the aids to navigation in our nation's waterways. WAMS is intended to identify the navigational needs of the users of a particular waterway, the present adequacy of the aids system in terms of those needs, and what is required in those cases where the users' needs are not being met. The WAMS process also looks into the resources—physical, financial, and personnel—needed to carry out the Aids to Navigation program responsibilities. The analyses of each waterway and the attendant resources are then integrated to provide documentation for both day to day management and future planning within the Aids to Navigation program. Anchorage 7, off Marcus Hook, as defined in 33 CFR 110.157(a)(8), does not correctly delineate the anchorage as currently maintained by the Army Corps of Engineers nor as charted by the National Ocean Service. The preferential area in this anchorage designated for the use of vessels awaiting quarantine inspection is vaguely defined and may not provide adequate room for modern, large vessels. This proposal will correct those discrepancies. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The basis for this finding is that Anchorage 7 is already being utilized within the boundaries set forth in this proposal.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this proposal is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this proposed rulemaking will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475 1B. It has been determined that a Categorical Exclusion Determination statement is not required (see 59 FR 38654, July 29, 1994).

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 110—[REVISED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.157 is amended by revising paragraph (a)(8) to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(a) * * *

(8) *Anchorage 7 off Marcus Hook.* (i) On the southeast side of the channel along Marcus Hook Range, bounded by a line connecting the following points:

Latitude	*Longitude*
39°49'17.254" N	75°22'50.0994" W
39°48'39.984" N	75°23'17.238" W
39°47'45.309" N	75°25'01.278" W
39°47'43.111" N.	75°26'00.186" W

(DATUM: NAD 83)

(ii) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities shall anchor in the preferential area of this anchorage designated for the use of vessels awaiting quarantine inspection, this area being the waters bounded by the arc of a circle with a radius of 366 yards and with the center located at:

Latitude	*Longitude*
39°48'46.334" N	75°23'26.881" W

(DATUM: NAD 83)

(iii) Should the remainder of the anchorage be in use, the preferential area, when available, may be used by vessels not subject to quarantine inspection.

* * * * *

Dated: October 24, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District

[FR Doc. 94–27669 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14

33 CFR Part 117

[CGD08–94–026]

RIN 2115–AE47

Drawbridge Operation Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: With the completion of locks and dams 4 and 5 in December 1994 by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in January 1995. The present regulation requiring all bridges up to mile 177.9, to open on signal with at least 48-hours advance notice, would severely restrict the movement of prospective commercial navigation on the waterway and would create a burden on the bridge owners. The anticipated vessel count for calendar year 1995 is approximately 370, but is expected to increase significantly for calendar year 1996. At the request of the Red River Valley Association, the Coast Guard is considering a change to the regulation governing the operation of six drawbridges across the Red River located between mile 59.5 and mile 105.8. Bridges located between mile 105.8 and mile 234.4 will remain on 48-hours advance notice. Bridges located above mile 234.4 need not be opened for the passage of vessels. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 23, 1994.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. As a result of the imminent completion of the locks and dams on the Red River allowing commercial navigation by January 1995, only 45 days are being allowed for comments to ensure a final rule is published in time to be effective.

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Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

With the completion of locks and dams 4 and 5 in December 1994, by the U.S. Army Corps of Engineers, the Red River will be open for commercial navigation in January 1995. As a result of that project, the mileage of the Red River has changed. All mileages referred to in this regulation are post-project mileages. The entire stretch of the Red River flowing through Louisiana is presently regulated by Section 117.135, which is cross referenced in Section 117.491. With the finalization of this regulation, the Red River in Louisiana will be governed by § 117.491. Section 117.135 will be amended in the near future to reflect this change. The present regulation requiring all bridges up to mile 177.9 to open on signal with at least 48-hours advance notice would severely restrict the movement of prospective commercial navigation on the waterway. Thus, the reason for the proposed rule change. The anticipated vessel count for calendar year 1995 is approximately 370, but is expected to increase significantly in year 1996. Existing operating regulations for bridges from mile 105.8 to the Arkansas border at approximately mile 276 remain unchanged.

Discussion of Proposed Rules

Six bridges in Louisiana across the Red River are affected by the proposed rules:

(1) The Louisiana Department of Transportation (LDOTD), vertical lift span bridge, mile 59.5 on SR LA 107, at Moncla, Louisiana.

(2) The Kansas City Southern Railroad swing span bridge, mile 88.0, at Alexandria, Louisiana.

(3) The LDOTD vertical lift span bridge, mile 88.1, on SR 28 (Fulton Street), at Alexandria, Louisiana.

(4) The LDOTD vertical lift span bridge, mile 88.6, on US 165 (Jackson Street), at Alexandria, Louisiana.

(5) The Union Pacific Railroad swing span bridge, mile 90.1, at Alexandria, Louisiana.

(6) The LDOTD swing span bridge, mile 105.8, on SR 8, at Boyce, Louisiana.

All of these drawbridges will be required to open on signal for passage of vessels with at least 8 hours advance notice.

An exception to the 8 hours notice requirement exists for two of the bridges, the Kansas City Southern Railroad swing span bridge, mile 88.0, at Alexandria, and the Louisiana Department of Transportation and Development (LDOTD) vertical span bridge, mile 88.6, on US 165 (Jackson Street), at Alexandria.

For openings of the Kansas City Southern Railroad swing span bridge at mile 88.0, on a Saturday or Sunday (or Monday if it is a federal holiday), notice must be given by 4 p.m. on the Friday afternoon prior to the desired draw opening. Additionally, when a federal holiday falls on a weekday, for openings on that holiday, notice must be given by at least 4 p.m. on the day prior to the holiday. Mariners can request an opening of the draw by calling 1–800–227–7028 at any time. This opening schedule is temporary. A new highrise railroad bridge is under construction and is scheduled to be completed in mid-1995. At that time, the old railroad drawbridge will be removed from the waterway.

As for the LDOTD vertical span bridge, mile 88.6, on US 165, the draw will not be required to open between the hours of 7 and 9 a.m., and from 4 to 6 p.m., Monday through Friday, excluding holidays. The purpose of this closure is to allow rush hour vehicular traffic to cross the bridge. Data provided by LDOTD show that approximately 2070 vehicles cross the bridge between 7 and 9 a.m. and approximately 2300 vehicles cross the bridge between the hours of 4 and 6 p.m. During the past 12 months approximately 123 vessels passed the bridge. That breaks down to about 10 per month or about 1 vessel every three days.

Mariners can request an opening of the draws of the LDOTD bridges located at river miles: 59.5, 88.1, 105.8 and 177.9 by calling 1–800–642–3509 at any time. Openings of the Union Pacific Railroad swing span bridge, mile 90.1, at Alexandria, can be requested by calling (402) 636–7442 at any time.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)(3); section 117.255, also issued under the authority of Pub. L. 102–587, 102 Stat. 5039.

2. Section 117.491 is revised to read as follows:

§ 117.491 Red River.

(a) The draws of the following bridges shall be opened on signal if at least eight hours notice is given:

(1) S107 bridge, mile 59.5, at Moncla,

(2) S28 (Fulton Street) bridge, mile 88.1, at Alexandria,

(3) Union Pacific Railroad bridge, mile 90.1, at Alexandria,

(4) S8 bridge, mile 105.8, at Boyce.

(b) The Kansas City Southern Railroad bridge, mile 88.0, at Alexandria shall open on signal if at least eight hours notice is given; except that, for openings on Saturday or Sunday and Monday if it is a federal holiday, notice must be given for an opening of the draw by 4 p.m. on Friday; and in the event a federal holiday falls during a weekday other than Monday, notice must be given by 4 p.m. the day prior to that holiday.

(c) The draw of the US 165 (Jackson St.) bridge, mile 88.6, at Alexandria, shall open on signal if at least eight hours notice is given; except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. the draw need not be opened Monday through Friday except holidays.

(d) The draws of the bridges from mile 105.8 through mile 234.4 shall open on signal if at least 48 hours notice is given.

(e) The draws of the bridges from mile 234.4 to mile 276 need not be opened for passage of vessels.

(f) When a vessel which has given notice fails to arrive at the time specified in the notice, the drawtender shall remain on duty for up to two additional hours to open the draw if that vessel appears. After that time, a new notice of the appropriate length of time is required.

Dated: October 24, 1994.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–27676 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–076]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Scotts Hill, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations that govern the operation of the Figure Eight Island swingbridge, across the Atlantic Intracoastal Waterway, mile 278.1, located in Scotts Hill, North Carolina, by restricting recreational vessels to bridge openings every half hour. This change is being considered due to the increased volume of vehicular traffic crossing this bridge. The proposed changes to these regulations are, to the extent practicable and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–076) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Bill H. Brazier, Project Officer, and LCDR C. A. Abel, Project Attorney, Fifth Coast Guard District.

Background and Purpose

The Figure Eight Beach Homeowners Association, Inc. has requested that openings of the swingbridge across the Atlantic Intracoastal Waterway, mile 278.1, located in Scotts Hill, North Carolina, be restricted for recreational vessels due to the increase in vehicular traffic. Currently, this bridge opens on signal at all times. The Coast Guard is proposing to reduce the required bridge openings for recreational vessels from "on demand" to every half hour. The bridge will continue to open on signal at all other times for all other vessels.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

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Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In Section 117.821, paragraph (b)(4) and (5) are redesignated as (b)(5) and (6) respectively and new paragraph (b)(4) is added to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

* * * * *

(b) * * *

(4) Figure Eight Swing Bridge, mile 278.1, at Scotts Hill, NC, must open if signaled on the hour and half hour.

* * * * *

Dated: October 18, 1994.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 94–27671 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–94–094]

RIN 2115–AE48

Regulated Navigation Area; Tampa Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations requiring certain vessels to make security broadcasts when approaching or reaching reporting points within Tampa Bay. The required security broadcasts are expected to minimize the hazards associated with navigation in Tampa Bay and enhance safety by making vessel operators aware of the movements of other vessels in the area. This action proposes to establish permanent regulations governing vessel security broadcasts previously followed on a voluntary basis. Required participation in the security broadcast program will help prevent collisions. A permanent rule will provide the widest availability possible to the public and maritime community.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33606–3598. The comments and other materials referenced in this notice will be available for inspection and copying at 155 Columbia Drive, Tampa, FL, telephone (813) 228–2189. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade K.R. Slotten, Coast Guard Marine Safety Office Tampa at (813) 228–2189.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–94–094] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The proposed rules may be changed in light of the comments received. The Coast Guard plans no public hearing, but one may be held if written requests for a hearing are received. The requests should include reasons why a hearing would be beneficial. If a determination is made that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of the notice are Lieutenant Commander Janet B. Gammon, project officer, Coast Guard Marine Safety Office Tampa, and Lieutenant Jacqueline M. Losego, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

As the result of marine casualties occurring in the Tampa Bay entrance channels, the Greater Tampa Bay Marine Advisory Council has proposed that the existing voluntary security broadcast program established in the Coast Pilot be made mandatory. This security broadcast program gives masters, pilots, and persons in charge of vessels real-time information on the density of marine traffic in Tampa Bay as required by 33 CFR 164.11(p)(5). The security broadcast program also supplements the Vessel Bridge to Bridge Radiotelephone Regulations contained in 33 CFR 26. The Captain of the Port has determined that these requirements are necessary to reduce the likelihood of

any adverse incidents while transiting Tampa Bay. The chance of a collision will be further minimized by requiring masters, pilots or persons in charge of all vessels over 50 meters in length to make security broadcasts when approaching or reaching the broadcast/report points specifically listed under "Proposed Regulations."

Nothing in these procedures would supersede the Navigation Rules or relieve the Master or person in charge of a vessel of responsibility for the safe navigation of the vessel.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The security broadcast system has been followed on a voluntary basis by primary users for at least five (5) years, and all vessels affected are required by 33 CFR 26 to have radiotelephone equipment.

Since the impact of this is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), has determined this action to be categorically excluded from further environmental documentation. A Categorical Exclusion has been prepared in accordance with Section 2.B.2.c. of COMDTINST M16475.1B, NEPA Implementing Procedures.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.753 is added to read as follows:

§ 165.753 Tampa Bay, FL; Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area (RNA): All of the navigable waters of Tampa Bay, Hillsborough Bay and Old Tampa Bay, including all navigable waterways tributary thereto. Also included, are the waters of Egmont Channel, Gulf of Mexico, from Tampa Bay to the sea buoy, Tampa Bay Lighted Whistle Buoy T. LLNR 18465.

(b) *Regulations.* The master, pilot, or person in charge of any vessel of 50 meters or greater in length shall give a security broadcast on VHF–FM Channel 13 at the broadcast/reporting points listed below:

(1) Prior to getting underway from any berth or anchorage.

(2) Prior to entering Egmont Channel from seaward.

(3) Prior to passing Egmont Key in any direction;

(4) Prior to transiting the Sunshine Skyway Bridge in either direction;

(5) Prior to transiting, in any direction, the intersection of Tampa Bay Cut F Channel, Tampa Bay Cut G Channel and Gadsden Point Cut Channel;

(6) Prior to anchoring or approaching a berth for docking.

(7) Prior to tending hawser.

(8) Prior to passing Point Pinellas Channel Light 1 in either direction.

(c) Each security call required by this section shall be made in the English language and will contain the following information:

(1) Name of vessel;

(2) If engaged in towing, the nature of the tow;

(3) Present location;

(4) Direction of Movement; and,

(5) The nature of any hazardous conditions as defined by 33 CFR 160.203.

(d) Nothing in these regulations shall supersede either the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules, as applicable, or relieve the Master or person in charge of a vessel of responsibility for the safe navigation of the vessel.

Dated: October 18, 1994.

P.J. Cardaci,

Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 94–27673 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–153]

RIN 2115–AA97

Safety Zone; South Street Seaport, New Years Eve Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to establish a temporary safety zone for a fireworks program located in the East River, New York. If adopted, this event will take place from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995. This proposed regulation would close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. This safety zone would preclude all vessels from transiting this portion of the East River and is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: Comments must be received on or before December 8, 1994.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Planning and Readiness Division, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person wishing to visit the office must contact the Planning and Readiness Division at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Planning and Readiness Division Officer, Coast Guard Group New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30-day comment period is deemed to be sufficiently reasonable, notice to all interested persons. Since this proposed rulemaking is neither complex nor

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technical, a longer comment period is deemed to be unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–94–153) and the specific section of the proposal to which their comments apply, and given reasons for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Planning and Readiness Division at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

South Street Seaport, Inc., submitted an application to hold a fireworks program in the waters of the East River, New York, between Pier 16, Manhattan and Pier 1, Brooklyn. If adopted, this regulation would establish a temporary safety zone in the waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995. This safety zone would preclude all vessels from transiting this portion of the East River and is needed to protect boaters from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. If adopted, this safety zone will close a portion of the East River to all vessel traffic between 11:30 p.m. on December 31, 1994, and 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Captain of the Port, New York. Although this regulation would prevent traffic from transiting this area, the effect of this regulation would not be significant for several reasons. Due to the limited duration of the event; the late hour of the event; the extensive, advance advisories that will be made to the affected maritime community to allow for the scheduling of transits before and after the event; and that pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–153, is added to read as follows:

§ 165.T01–153 Safety Zone; South Street Seaport, New Years Eve Fireworks, East River, NY.

(a) *Location.* All waters of the East River, New York, south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 11:30 p.m. on December 31, 1994, to 12:45 a.m. on January 1, 1995, unless extended or terminated sooner by the Coast Guard, Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 27, 1994.

T. H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–27670 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300366; FRL–4919–4]

RIN 2070–AC18

Pesticide Tolerances for 2,3–Dihydro-2,2–Dimethyl-7–Benzofuranyl-N-Methylcarbamate

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate (common name "carbofuran") and its metabolites in or on canola at 1.00 part per million (ppm) with an expiration date of 2 years after the beginning of the effective date of a final rule based on this proposal. EPA is issuing this proposal on its own initiative.

DATES: Comments, identified by the document control number, [OPP–300366], must be received on or before December 8, 1994.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1128, CM #2, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by the EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305–6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA is proposing a time-limited, regionally restricted tolerance for the residues of carbofuran on canola at 1.00 ppm. EPA is proposing the tolerance because at the present time, canola treated with carbofuran may not be processed in the U.S. and must be exported to Canada. There are currently three Special Local Need registrations under section 24(c) of the Federal Insecticide Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c). Registrations will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A 2-year chronic feeding/oncogenicity study in the rat with a no-observed-effect level (NOEL) of 1.0 milligram (mg)/kilogram (kg) of body weight (bwt) per day (20 ppm) for cholinesterase-inhibition (CHE) and systemic effects, negative for oncogenic effects at the levels tested (0, 10, 20, and 100 ppm).

2. A 2-year chronic feeding/oncogenicity study in the mouse with a NOEL of 3.0 mg/kg bwt/day (20 ppm) for CHE, a NOEL of 18.75 mg/kg bwt/day (125 ppm) for systemic effects, and negative for oncogenic effects at all levels tested (0, 20, 125, and 500 ppm).

3. A 1-year dog feeding study with a NOEL of 0.5 mg/kg (20 ppm).

4. A three-generation rat reproduction study with a NOEL of 1.0 mg/kg (20 ppm).

5. Two rat teratology studies which were negative for teratogenic effects at up to 1.2 mg/kg bwt/day and 160 ppm and NOEL's for fetotoxicity of 1.2 mg/kg and 60 ppm.

6. A rabbit teratology study which was negative for teratogenic and fetotoxic effects at 2.00 mg/kg and mutagenicity testing which showed carbofuran not to be mutagenic.

There is no cancer risk associated with the use of this chemical. Carbofuran has not been shown to produce carcinogenic effects in two species.

The reference dose (RfD), based on a 1-year dog feeding study with a NOEL of 0.5 mg/kg bwt/day and an uncertainty factor of 100, is calculated to be 0.005 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the current tolerances is 0.005183 mg/kg/day. The percent reference dose (RfD) for the overall U.S. population is 104%, for nonnursing infants it is 263%, and for children, ages 1–6, it is 238%. The proposed tolerance will add 0.000077 mg/kg/day to the TMRC and 1.5% to the overall RfD. The dietary risk from all uses of carbofuran is overestimated since it was assumed that all residues are at tolerance level (anticipated residues were not used) and 100% of all crops were treated. Before any additional permanent tolerances will be considered, the RfD must be refined by use of anticipated residues and realistic percent crop treated values. The Agency will not establish any new tolerances for carbofuran until the TMRCs for the overall U.S. population and its subgroups are below the reference dose.

The tolerance would be established for 2 years, with an expiration date of 2 years after the beginning of the effective date of a final rule based on this proposal. The Interregional Research Project No. 4 (IR–4) is currently conducting new residue trials and plans to submit a petition for a permanent tolerance in early 1995. However, because of the known hazard to carbofuran to birds and wildlife, EPA will not establish a permanent tolerance until the Agency has fully evaluated risks to wildlife.

The nature of the residue in plants and animals is adequately understood for the purposes of this time-limited tolerance. Adequate analytical methods for enforcement are available in the Pesticide Analytical Manual, Volume II (PAM II). Carbofuran, per se, is recovered under FDA's multiresidue protocols A and D.

This pesticide is considered useful for the purposes for which the tolerance is sought. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP–300366]. All written comments filed in response to this document will be available in the Public Docket and Freedom of Information Section, at the address

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given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 27, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.254, by adding new paragraph (c), to read as follows:

§ 180.254 2,3-Dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate; tolerances for residues.

* * * * *

(c) A time-limited tolerance (of 2 years) with regional registration, as defined in § 180.1(n), is established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite-2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodity	Parts per million
Canola (of which no more than 0.2 ppm is carbamate)	1.00

[FR Doc. 94–27704 Filed 11–3–94; 4:47 pm]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5090–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to delete Kent City Mobile Home Park Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Kent City Mobile Home Park Site ("the Kent City Site") from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action to delete the Kent City Site from the NPL is proposed because EPA, in consultation with the State of Michigan, has determined that no further remedial action under CERCLA is appropriate at the Site.

DATES: Comments concerning the proposed deletion of the Kent City Site from the NPL may be submitted by December 8, 1994.

ADDRESSES: Comments may be mailed to: Betty G. Lavis, Remedial Project Manager (HSRW–6J); Waste Management Division; Remedial Response Branch WI/MI; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3590.

FOR FURTHER INFORMATION CONTACT: Betty G. Lavis, Remedial Project Manager, at (312) 886–4784; or Derrick Kimbrough, Community Relations Coordinator at (312) 886–9749 or toll-free at (800) 621–8431, 9 a.m. to 4:30 p.m. Central Time.

SUPPLEMENTARY INFORMATION: Comprehensive information on the Kent City Site is available for public review in the docket EPA Region 5 has prepared, which contains the documents and information EPA reviewed in the decision to propose to delete the Kent City Site from the NPL. The docket is available for public review during normal business hours at the EPA docket room and at the Kent City Library located at 43 South Main Street in Kent City, Michigan. To obtain copies of documents in the docket contact Betty G. Lavis, Remedial Project Manager, at (312) 886–4784 or Derrick Kimbrough, Community Relations Coordinator at (312) 886–9749 or toll-free at (800) 621–8431.

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Deletion of the Kent City Site.

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Kent City Mobile Home Park Site ("the Kent City Site") from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and requests public comment on this action.

The EPA identifies sites that may present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Response Trust Fund (Fund) or responsible parties. Pursuant to 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for further Fund-financed responses, and for re-listing on the NPL, if conditions at the site ever warrant such action.

The EPA will accept comments concerning the proposal to delete the Kent City Site from the NPL for thirty (30) days after publication of this notice in the **Federal Register**.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further responses under CERCLA are appropriate. In making this determination, EPA typically considers: whether responsible or other parties have implemented all appropriate response actions; whether all appropriate Fund-financed responses under CERCLA have been implemented and no further response action by responsible parties is appropriate; or whether the release of hazardous substances poses no significant threat to public health or the environment, thereby eliminating the need for remedial action.

Prior to deciding to delete a site, EPA must first determine that the remedy, or existing site conditions at the sites where no action is required, is protective of public health, welfare, and the environment. In addition, § 300.425(e)(2) of the NCP provides that

no site shall be deleted from the NPL until the state in which the site is located has concurred on the proposed deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.42(e)(3) provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the hazard ranking system (HRS).

Deletion of sites from the NPL does not in itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

The NCP, at 40 CFR 300.425(e), specifies the procedures to be followed in deleting sites from the NPL. It directs that notice and an opportunity to comment must be given before deleting sites from the NPL. By this notice, EPA notifies the public of its intent to delete the Kent City Site from the NPL and will accept comments from the public on this proposal for a period of thirty (30) days after the date of publication in the **Federal Register**.

EPA will accept and evaluate public comments before making a final decision, and will address them in a Responsiveness Summary, if necessary, which EPA will place in the docket for this decision. If, after consideration of these comments, EPA decides to proceed with the deletion, EPA will publish a Notice of Deletion in the **Federal Register**. In addition, the following procedures are being used for the intended deletion of the Kent City Site:

(1) The State of Michigan has concurred with this decision to conduct No Further Action at the Kent City Site.

(2) Concurrent with this Notice of Intent to Delete, a local notice will be published in the local newspaper and will be distributed to appropriate federal, state and local officials and other interested parties. This local notice will specify a 30-day public comment period.

(3) The Region has made all relevant documents available in the Regional Office and local site information repository.

IV. Basis for the Intended Deletion of the Kent City Site

The Kent City Site is a 2-acre mobile home park located in Kent City, in west-central Michigan. In December of 1982, sampling of the 65-foot deep drinking water supply well located in the mobile home park revealed the presence of volatile organic compounds. In January and October of 1983, the contaminated well was replaced with two 130-foot wells five hundred feet west and upgradient of the contaminated well. In November of 1983, the State of Michigan placed the Site on the Michigan Act 307 List.

The source of the release, discovered in April of 1984, was a buried 55-gallon storage drum upgradient of the well. The storage drum collected floor drainage from a dry cleaning facility that formerly operated at the site. The drum and surrounding soil were removed and the area backfilled with clean soil.

In April and May of 1984, the Michigan Department of Public Health (MDPH) sampled the four monitoring wells and twenty-nine nearby private wells. No contamination was detected in any of these wells. The new water supply wells are sampled every three years by MDPH; results have consistently shown no detectable contaminants. Once the source was removed and groundwater sampling showed no evidence of contamination, the State of Michigan delisted the site from their Michigan Act 307 List in November of 1985.

EPA continued to evaluate the site and, based on contaminant levels and routes of exposure present before the removal, placed it on the NPL on July 21, 1987. No further activities were undertaken by EPA until April 20, 1994, when EPA performed another round of groundwater sampling. The results showed no detectable contaminants.

Following the 1994 sampling and after completing an evaluation of all available data for the Site, EPA concluded that previous removal activities and construction of an alternative water supply at the site have eliminated existing and potential risks to human health and the environment such that no further action was required. Historical and recent sampling events indicated that the contamination was localized and there are no longer any health risks from site-related contaminants present in the groundwater, soil, or in nearby Ball Creek.

A Proposed Plan recommending no further action and subsequent deletion of the Site was distributed for public comment from July 1 to August 1, 1994. The Proposed Plan noted that the source of the contamination was removed; subsequent groundwater and surface water sampling events that included the monitoring wells, the two new water supply wells, and Ball Creek Drain, have not revealed the presence of contaminants that exceed any state or federal drinking water standards or criteria. It also noted that carbon tetrachloride above federal maximum contaminant levels for drinking water is still present in the old water supply well but appears to be having no impact on the ground water or surface water. The Proposed Plan recommended that the contaminated well, which is not available as a water source, be properly abandoned and grouted.

A Record of Decision (ROD) was signed on September 13, 1994 which approved the "No Action" remedy.

The State of Michigan concurred with the No Action remedy on September 6, 1994.

Dated: September 26, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–27647 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7116]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of

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the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Orange (Town), New Haven County.	Race Brook	Approximately 0.14 mile upstream of Orange Center Road.	*107	*108
			At upstream corporate limits (approximately 0.6 mile upstream of State Route 114).	None	*172
Maps available for inspection at the Department of Public Works, Town Hall, 617 Orange Center Road, Orange, Connecticut.					
Send comments to Ms. Dorothy L. Berger, First Selectman for the Town of Orange, Town Hall, 617 Orange Center Road, Orange, Connecticut 04677.					
Georgia	Gainesville (City), Hall County.	Flat Creek	At upstream of State Route 13	None	*1,166
			At upstream corporate limits	None	*1,172
		Flat Creek Tributary	At confluence with Flat Creek	None	*1,171
			Approximately 170 feet upstream of Pine Street.	None	*1,195
		Limestone Creek	At upstream side of Limestone Road.	None	*1,089
			At upstream corporate limits	None	*1,109
			At upstream corporate limits	None	*1,109
		Limestone Creek Tributary.	At confluence with Limestone Creek.	None	*1,089
			At Downstream side of Brenau Lake Dam.	None	*1,115
Maps available for inspection at the Joint Administration Building/Public Works Department, 300 Green Street, Room 302, Gainesville, Georgia.					
Send comments to The Honorable John Morroy, Mayor of the City of Gainesville, Hall County, P.O. Box 2496, Gainesville, Georgia 30503					
Indiana	Monroe County (Unincorporated).	Jacks Defeat Creek	Approximately 0.7 mile downstream of Harbison Road.	None	*695

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary One	Approximately 0.3 mile upstream of CSX Transportation Railroad.	None	*768
			At confluence with Jacks Defeat Creek.	None	*707
			Approximately 0.7 mile upstream of Nursery Road.	None	*779
Maps available for inspection at the Monroe County Courthouse, Courthouse Square, Bloomington, Indiana.					
Send comments to Mr. Tim Tilton, President of the Monroe County Commission, County Courthouse, Room 322, Courthouse Square, Bloomington, Indiana 47404.					
Maine	Skohegan (Town), Somerset County.	Kennebec River	At downstream Corporate limits	*126	*127
			At Approximately 1.6 miles upstream of the confluence of Whitten Brook.	*165	*174
		Wesserunsett Stream.	At confluence with Kennebec River	*130	*132
			Approximately 800 feet upstream of confluence with West Branch Wesserunsett Stream.	*159	*160
		West Branch Wesserunsett Stream.	At confluence with Wesserunsett Stream.	None	*159
			Approximately 1,900 feet upstream of State Route 150.	None	*218
		Cold Brook	At confluence with West Branch Wesserunsett Stream.	None	*180
		Currier Brook	At confluence of Unnamed Brook	None	*225
			At confluence with Kennebec River	*153	*159
			At the downstream crossing of Bigelow Hill Road.	*223	*224
		Unnamed Brook	At confluence with Cold Brook	None	*225
			Approximately 360 feet upstream of Private Drive.	None	*267
		Whitten Brook	At confluence with Kennebec River	*162	*173
			At downstream face of culvert near Whitten Court.	*171	*173
		Kennebec River (North Channel).	At confluence with Kennebec River	*153	*159
			At divergence from Kennebec River.	*162	*173
Maps available for inspection at the Town Office Building, Planning Department, 90 Water Street, Skohegan, Maine.					
Send comments to Ms. Patricia Dickey, Skohegan Town Manager, Somerset County, 90 Water Street, Skohegan, Maine 04976.					
Mississippi	Marion (Town), Lauderdale County.	Sowashee Creek	Approximately 0.8 mile upstream of confluence of Nanabe Creek.	*345	*344
			Approximately 1.3 miles upstream of U.S. Highway 45 Bypass.	*373	*372
Maps available for inspection at the Marion Town Hall, 6021 Dale Drive, Marion, Mississippi.					
Send comments to The Honorable Malcom Threatt, Mayor of the Town of Marion, P.O. Box 35 Marion, Mississippi 39342.					
New Jersey	Allendale (Borough), Bergen County.	Ho-Ho-Kus Brook	Approximately 75 feet upstream of the confluence of Allendale Brook (downstream corporate limits).	*236	*238
			Approximately 2,300 feet upstream of the confluence of Valentine Brook (upstream corporate limits).	*299	*298
		Allendale Brook	Approximately 850 feet downstream of New Street.	*247	*248
			Upstream corporate limits (approximately 1.2 miles upstream of Franklin Turnpike).	None	*281
		Ramsey Brook	At confluence with Ho-Ho-Kus Brook.	*257	*255
			Approximately 550 feet upstream of Lake Side Drive.	None	*353

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Valentine Brook	Approximately 150 feet upstream of confluence with Ho-Ho-Kus Brook.	*293	*292
			Approximately 3,500 feet upstream of Forest Drive (upstream corporate limits).	*326	*325

Maps available for inspection at the Allendale Borough Hall, 500 West Crescent Avenue, Allendale, New Jersey.

Send comments to The Honorable Albert H. Klomburg, Mayor of the Borough of Allendale, 500 West Crescent Avenue, Allendale, New Jersey 07401.

New Jersey	Alpine (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*8
			Downstream corporate limits	None	*9

Maps available for inspection at the Alpine Borough Hall, 100 Church Street, Alpine, New Jersey.

Send comments to The Honorable Walter A. Duke, Mayor of the Borough of Alpine, 100 Church Street, Alpine, New Jersey 07620.

New Jersey	Carlstadt (Borough), Bergen County.	Newark Bay	At intersection of State Route 17 and Bread Street.	None	*8

Maps available for inspection at the Borough Hall, 500 Madison Street, Carlstadt, New Jersey.

Send comments to The Honorable Dominick Presto, Mayor of the Borough of Carlstadt, 500 Madison Street, Madison Street, Carlstadt, New Jersey 07620.

New Jersey	East Rutherford (Borough), Bergen County.	Newark Bay	At intersection of State Route 17 and Orchard Street.	None	*8

Maps available for inspection at the Borough Hall, 1 Everett Place, East Jersey.

Send comments to The Honorable James L. Piosia, Mayor of the Borough of East Rutherford, 1 Everett Place, East Rutherford, New Jersey 07073.

New Jersey	Englewood Cliffs (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*9

Maps available for inspection at the Municipal Building, 10 Kahn Terrace, Englewood Cliffs, New Jersey.

Send comments to The Honorable Joseph C. Parisi, Mayor of the Borough of Englewood Cliffs, 10 Kahn Terrace, Englewood Cliffs, New Jersey 07632–2986.

New Jersey	Fair Lawn (Borough), Bergen County.	Saddle River	Approximately 1,750 feet downstream of Red Mill Road.	*44	*45
			Approximately 300 feet downstream of the confluence of Ho-Ho-Kus Brook.	*57	*56

Maps available for inspection at the Borough of Fair Lawn, Municipal Building, 8–01 Fair Lawn Avenue, Fair Lawn, New Jersey.

Send comments to Mr. Bertrand N. Kendall, Borough Manager, 8–01 Fair Lawan Avenue, Fair Lawn, New Jersey 07410.

New Jersey	Fort Lee (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*10

Maps available for inspection at the Code Enforcement Office, 309 Main Street, Fort Lee, New Jersey.

Send comments to The Honorable Jack Alter, Mayor of the Borough of Fort Lee, 309 Main Street, Fort Lee, New Jersey 07024.

New Jersey	Franklin Lakes (Borough), Bergen County.	Pond Brook	At downstream corporate limits	*324	*326
			Approximately 40 feet downstream of High Mountain Road.	*325	*326
		Ho-Ho-Kus Brook	Downstream of Wyckoff Avenue (downstream corporte limits).	*311	*307
			Approximately 120 feet downstream of Edison Road.	*312	*311

Maps available for inspection at the Building Department, DeKorte Drive, Franklin Lakes, New Jersey.

Send comments to The Honorable William J. Vichiconti, Mayor of the Borough of Franklin Lakes, Municipal Building, DeKorte Drive, Franklin Lakes, New Jersey 07417.

New Jersey	Glen Rock (Borough), Bergen County.	Ho-Ho-Kus Brook	At confluence with Saddle River	*55	*57
		Saddle River	Approximately 1,700 feet downstream of the confluence of Ho-Ho-Kus Brook.	*54	*56
			At the confluence with Ho-Ho-Kus Brook.	*55	*57

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Borough of Glen Rock, Borough Hall, Harding Plaza, Glen Rock, New Jersey.

Send comments to The Honorable Jacqueline Kort, Mayor of the Borough of Glen Rock, Harding Plaza, Glen Rock, New Jersey 07652.

New Jersey	Hackensack (City), Bergen County.	Coles Brook	At Main Street	None	*15
			At Essex Street	None	*39

Maps available for inspection at the City Office, 65 Central Avenue, Hackensack, New Jersey.

Send comments to The Honorable John F. Zisa, Mayor of the City of Hackensack, 65 Central Avenue, Hackensack, New Jersey 07601.

New Jersey	Hackensack Meadowlands District, Bergen County.	Overpeck	Approximately 800 feet north of intersection of Victoria Terrace and Hendricks Causeway.	*9	*7

Maps available for inspection at the HMDC Engineering Department, 1 De Korte Park Plaza, Lyndhurst, New Jersey.

Send comments to Mr. Anthony Sacrdino, Jr., Executive Director, 1 De Korte Park Plaza, Lyndhurst, New Jersey 07071.

New Jersey	Harrington Park (Borough), Bergen County.	Oradell Reservior	At upstream corporate limits (approximately 0.5 mile upstream of Harrington Avenue).	*25	*28
			At upstream face of CONRAIL bridge.	*25	*26

Maps available for inspection at the Harrington Park Borough Hall, 85 Harriot Avenue, Harrington Park, New Jersey.

Send comments to The Honorable Paul A. Hoelscher, Mayor of the Borough of Harrington Park, Municipal Center, 85 Harriot Avenue, Harrington Park, New Jersey 07640.

New Jersey	Hasbrouck Heights (Borough), Bergen County.	Newark Bay	Approximately 200 feet southeast of intersection of Ravine Avenue and State Route 17.	None	*5

Maps available for inspection at the Borough Clerk's Office, 248 Hamilton Avenue, Hasbrouck Heights, New Jersey.

Send comments to The Honorable Rose Marie Heck, Mayor of the Borough of Hasbrouck Heights, 248 Hamilton Avenue, Hasbrouck Heights, New Jersey 07604–1898.

New Jersey	Ho-Ho-Kus (Borough), Bergen County.	Saddle Brook	At East Saddle River Road	*93	*92
			At Mills Road	*158	*159
		Saddle River	Approximately 900 feet downstream of Bogert Road.	*92	*91
			At a point approximately 1,350 feet upstream of Hollywood Avenue (upstream corporate limits.	*103	*105

Maps available for inspection at the Ho-Ho-Kus Borough Hall, 333 Warren Avenue, Ho-Ho-Kus, New Jersey.

Send comments to The Honorable Richard M. Sayers, Mayor of the Borough of Ho-Ho-Kus, 333 Warren Avenue, Ho-Ho-Kus, New Jersey 07423.

New Jersey	Little Ferry (Borough), Bergen County.	Newark Bay	Along East Riser Ditch south of intersection of Huyler Street and U.S. Route 46.	None	*5

Maps available for inspection at the Borough Hall, One Katherine Street, Little Ferry, New Jersey.

Send comments to The Honorable Louis A. Tedesco, Jr., Mayor of the Borough of Little Ferry, One Katharine Street, Little Ferry, New Jersey 07643–1800.

New Jersey	Lodi (Borough), Bergen County.	Saddle River	Approximately 640 feet upstream of Outwater Lane.	*38	*37
			At Market Street (Essex Street)	*40	*39

Maps available for inspection at the Lodi Municipal Building, One Memorial Drive, Lodi, New Jersey.

Send comments to The Honorable Philip V. Toronto, Mayor of the Borough of Lodi, Municipal Building, One Memorial Drive, Lodi, New Jersey 07644.

New Jersey	Mahwah (Township) Bergen County.	Ho-Ho-Kus Brook	Approximately 140 feet downstream of Edison Road.	*312	*311
			Approximately 100 feet upstream of the confluence of Valentine Brook.	*292	*293
		Valentine Brook	Approximately 150 feet upstream of confluence with Ho-Ho-Kus Brook.	*293	*292

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 3,800 feet upstream of Forest Drive (at the upstream corporate limits).	*322	*321
		Darlington Brook Tributary.	Approximately 2,480 feet downstream of Shadyside Road.	None	*329
			Approximately 3,180 feet downstream of Shadyside Road.	None	*329
		Masonicus Brook	West side of CONRAIL at Mahwah/Ramsey corporate limits.	None	*331
			East side of CONRAIL at Mahwah/Ramsey corporate limits.	None	*332

Maps available for inspection at the Municipal Building, 300 B Route 17 South, Mahwah, New Jersey.

Send comments to The Honorable David Dwork, Mayor of the Township of Mahwah, 300 B Route 17 South, Mahwah, New Jersey 07430.

New Jersey	Maywood (Borough), Bergen County.	Coles Brook	Downstream corporate limits	None	*26
			At Essex Street	None	*39

Maps available for inspection at the Borough of Maywood, 459 Maywood Avenue, New Jersey.

Send comments to The Honorable William O. Schwanewede, Borough Engineer, P.O. Box 626, Teaneck, New Jersey 07666.

New Jersey	Moonachie (Borough), Bergen County.	Newark Bay	At intersection of West Park and Albert Streets.	None	*9
			North of intersection of Moonachie Avenue and Moonachie Road.	None	*5

Maps available for inspection at the Municipal Building, 70 Moonachie Road, Moonachie, New Jersey.

Send comments to The Honorable Frederick J. Dressel, Mayor of the Borough of Moonachie, 70 Moonachie Road, Moonachie, New Jersey 07074–1199.

New Jersey	North Arlington (Borough), Bergen County.	Newark Bay	Approximately 800 feet east of intersection of Schuyler Avenue and Carrie Road.	None	*9
			Approximately 400 feet east of intersection of Schuyler Avenue and Eckhardt Terrace.	None	*8

Maps available for inspection at the Borough Hall, 214 Ridge Road, North Arlington, New Jersey.

Send comments to The Honorable Leonard R. Kaiser, Mayor of the Borough of North Arlington, 214 Ridge Road, North Arlington, New Jersey 07031.

New Jersey	Old Tappan (Borough), Bergen County.	Hackensack River	At downstream corporate limits (approximately 1,200 feet downstream of Westwood Avenue).	*30	*26
			At upstream face of Lake Tappan Dam.	*58	*56
		Lake Tappan	Entire shoreline within community	*58	*56
		Dorotockeys Run	At downstream corporate limits (approximately 1,480 feet downstream of Central Avenue).	*41	*44
			Approximately 400 feet downstream of Central Avenue.	*43	*44

Maps available for inspection at the Old Tappan Borough Hall, 227 Old Tappan Road, Old Tappan, New Jersey.

Send comments to The Honorable Edward J. Gallagher, Mayor of the Borough of Old Tappan, 227 Old Tappan Road, Old Tappan, New Jersey 07675.

New Jersey	Palisades Park, (Borough), Bergen County.	Wolf Creek	Approximately 240 feet upstream of Maple Avenue.	None	*57
			Approximately 410 feet upstream of Maple Avenue.	None	*65

Maps available for inspection at the Building Inspector's Office, 275 Broad Avenue, Palisades Park, New Jersey.

Send comments to The Honorable William Maresca, Mayor of the Borough of Palisades Park, 275 Broad Avenue, Palisades Park, New Jersey 07650.

New Jersey	Paramus (Borough), Bergen County.	Sprout Brook	Downstream corporate limits (approximately 270 feet downstream of Roosevelt Avenue).	*42	*43
			Approximately 1,200 feet downstream of State Route 4.	*42	*43

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Paramus Borough Hall, Engineer's Office, Jockish Square, Paramus, New Jersey.

Send comments to The Honorable Cliff Gennarelli, Mayor of the Borough of Paramus, Borough Hall, Jockish Square, Paramus, New Jersey 07652.

New Jersey	Ramsey (Borough), Bergen County.	Valentine Brook	Downstream corporate limits	*322	*321
			At confluence of Valentine Brook Tributary No. 2.	*330	*331
		Ramsey Brook	Approximately 325 feet downstream of Lakeside Drive.	*338	*341
			Just downstream of Lakeside Drive.	*342	*343
		Valentine Brook Tributary 2	At confluence with Valentine Brook	*330	*331
			Approximately 10 feet downstream of East Oak Street.	*330	*331

Maps available for inspection at the Borough of Ramsey, Engineering Department, 33 North Central Avenue, Ramsey, New Jersey.

Send comments to The Honorable John L. Scerbo, Mayor of the Borough of Ramsey, 33 North Central Avenue, Ramsey, New Jersey 07446–1897.

New Jersey	Ridgewood (Village), Bergen County.	Ho-Ho-Kus Brook	Approximately 250 feet upstream of Dam No. 2.	*205	*206
			Approximately 950 feet upstream of Dam No. 2.	*209	*208

Maps available for inspection at the Village of Ridgewood Department of Public Works, Engineering Division, 131 North Maple Avenue, Ridgewood, New Jersey.

Send comments to Mr. Rodney H. Irwin, Village Manager, 131 North Maple Avenue, Ridgewood, New Jersey 07450–3287.

New Jersey	River Vale (Township), Bergen County.	Cherry Brook	At confluence with the Hackensack River.	*42	*41
			Approximately 500 feet downstream of Popular Road.	*42	*41
		Hackensack River	Approximately 600 feet downstream of Westwood Avenue.	*27	*26
			Approximately 1,250 feet downstream of Old Tappan Road.	*39	*38

Maps available for inspection at the River Vale Town Hall, 406 Rivervale Road, River Vale, New Jersey.

Send comments to The Honorable Walter V. Jones, Mayor of the Township of River Vale, 406 Rivervale Road, River Vale, New Jersey 07675.

New Jersey	Rutherford (Borough), Bergen County.	New Bay	Approximately 450 feet east of intersection of State Route 17 and Pierrepont Avenue.	None	*8

Maps available for inspection at the Rutherford Municipal Building, 176 Park Avenue, Rutherford, New Jersey.

Send comments to The Honorable Andrew E. Bertone, Mayor of the Borough of Rutherford, Municipal Building, 176 Park Avenue, Rutherford, New Jersey 07070.

New Jersey	Saddle River (Borough), Bergen County.	Saddle River	Approximately 1,350 feet upstream of Hollywood Avenue (downstream corporate limits).	*104	*105
			Approximately 2,150 feet downstream of Lower Cross Road.	*111	*113

Maps available for inspection at the Saddle River Municipal Building, 100 East Allendale Road, Saddle River, New Jersey.

Send comments to The Honorable Theodore E. Anthony, Mayor of the Borough of Saddle River, 100 East Allendale Road, Saddle River, New Jersey 07458–3096.

New Jersey	South Hackensack (Township), Bergen County.	Saddle River	At the CONRAIL bridge	*18	*19
			At downstream side of River Drive	*18	*19

Maps available for inspection at the Township Hall, 227 Phillips Avenue, South Hackensack, New Jersey.

Send comments to The Honorable Angelo Cerbo, Mayor of the Township of South Hackensack, 227 Phillips Avenue, South Hackensack, New Jersey 07606–1600.

New Jersey	Teaneck (Township), Bergen County.	Metzlers Creek	At West Hudson Avenue	*59	*57

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 60 feet upstream of West Hudson Avenue.	*59	*58

Maps available for inspection with Mr. Howarth Gilmore, Township Engineer, Municipal Building, 818 Teaneck Road, Teaneck, New Jersey.

Send comments to Mr. Gary Saage, Manager of the Township of Teaneck, Municipal Building, 818 Teaneck Road, Teaneck, New Jersey 07666–4509.

New Jersey	Tenafly (Borough), Bergen County.	Hudson River	Upstream corporate limits	None	*9
			Downstream corporate limits	None	*9

Maps available for inspection at the Tenafly Building Department, 401 Tenafly Road, Tenafly, New Jersey.

Send comments to The Honorable Walter W. Hemberger, Mayor of the Borough of Tenafly, 401 Tenafly Road, Tenafly, New Jersey 07670–2085.

New Jersey	Waldwick (Borough), Bergen County.	Allendale Brook	At confluence with Ho-Ho-Kus Brook.	*236	237
			Approximately 850 feet downstream of New Street (at the upstream corporate limits).	None	*247
		Ho-Ho-Kus Brook	Approximately 60 feet downstream of Dam No. 3.	*229	*228
			Approximately 1,500 feet upstream of the confluence of Allendale Brook (upstream corporate limits).	*247	*246
		Saddle River	Approximately 1,350 feet upstream of Hollywood Avenue.	*103	*105
			Approximately 2,150 feet downstream of Lower Cross Road (upstream corporate limits).	*111	*113

Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.

Send comments to Mr. Gary Kratz, Waldwick Borough Administrator, 16 East Prospect Street, Waldwick, New Jersey 07463.

New Jersey	Washington (Township), Bergen County.	Pine Brook	Approximately 230 feet upstream of confluence with Musquapsink Brook.	*61	*60
			Approximately 160 feet upstream of Ridgewood Boulevard North.	*85	*86

Maps available for inspection at the Town Clerk's Office, 350 Hudson Avenue, Washington, New Jersey.

Send comments to The Honorable Rudolph J. Wenzel, Jr., Mayor of the Township of Washington, 350 Hudson Avenue, Washington, New Jersey 07675–4799.

New Jersey	Wood-Ridge (Borough), Bergen County.	Newark Bay	At intersection of Blum Boulevard and Union Street.	None	*6

Maps available for inspection at the Borough Hall, 85 Humboldt Street, Wood-Ridge, New Jersey.

Send comments to The Honorable Paul Calocino, Mayor of the Borough of Wood-Ridge, 85 Humboldt Street, Wood-Ridge, New Jersey 07075.

New Jersey	Wyckoff (Township), Bergen County.	Ho-Ho-Kus Brook	Approximately 2,300 feet upstream of confluence of Valentine Brook (downstream corporate limits).	None	*298
			Approximately 50 feet downstream of Wyckoff Avenue.	None	*307
		Ho-Ho-Kus Brook Tributary.	Approximately 550 feet downstream of Old Post Road[6] (at downstream corporate limits).	None	*320
			Approximately 20 feet upstream of Clinton Avenue.	None	*341
		Goffle Brook	Approximately 75 feet downstream of Newtown Road.	*268	*269
			Approximately 150 feet upstream of Carlton Road.	None	*349
		Demarest Avenue Tributary.	At confluence with Goffle Brook	*288	*289
			Approximately 100 feet upstream of Jacqueline Drive	None	*318
		Deep Voll Brook	At county boundary	*204	*205
			Approximately 1,000 feet upstream of Sicomac Avenue.	None	*417

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Township Engineer's Office, Memorial Town Hall—Scott Plaza, Wyckoff, New Jersey.

Send comments to The Honorable Anthony Avia, Mayor of the Township of Wyckoff, Memorial Town Hall—Scott Plaza, Wyckoff, New Jersey 07481.

New York	Ellicottville (Town), Cattaraugus County.	Holiday Valley Creek	Approximately 1,025 feet downstream of Chessie System.	None	*1,521
			At the upstream crossing of Holiday Valley Road	None	*1,649
		Shallow Flooding Area.	Between Chessie System and U.S. Route 219.	None	#2
		South of intersection of U.S. Route 219 and Holiday Valley Road.	None		#2

Maps available for inspection at the Town Hall, 1 West Washington, Ellicottville, New York.

Send comments to Mr. John Widger, Supervisor for the Town of Ellicottville, P.O. Box 610, Ellicottville, New York 14731.

Ohio	Highlands Heights (City), Cuyahoga County.	Tributary C	Approximately 300 feet upstream of Leverett Road.	*935	*936
			Approximately 0.3 mile downstream of Highland Road	*941	*943

Maps available for inspection at Steven Hovancek & Associates, 2 Merit Drive, Richmond Heights, Ohio

Send comments to The Honorable Virginia Swanson, Mayor of the City of Highland Heights, Cuyahoga County, 5827 Highland Road, Highland Heights, Ohio 44143.

Pennsylvania	Derry (Township), Westmoreland County.	Loyalhanna Creek	Approximately 0.9 mile downstream of Ligonier Street.	None	*970
			Approximately 0.4 mile downstream of Ligonier Street	None	*970
		McGee Run	Approximately 420 feet downstream of North Ligonier Street.	*1,131	*1,130
			Approximately 270 feet downstream of North Ligonier Street.	*1,134	*1,133
		Garlane Mills Run	At a point approximately 1,110 feet upstream of West 5th Avenue.	None	*1,291
			At a point approximately 1,080 feet upstream of West 5th Avenue.	None	

Maps available for inspectin at the Derry Township Municipal Building, 650 Derry Road, Derry, Pennsylvania.

Send comments to Mr. Lon Sinemus, Chairman of the Derry Township Board of Supervisors, 650 Derry Road, Derry, Pennsylvania 15627.

Pennsylvania	Donora (Borough), Washington County.	Monongahela River	At approximately 0.72 mile downstream of Donora-Webster bridge (10th Street) (downstream, corporate limits).	None	*758
			At approximately 1,100 feet upstream of Donora-Monesson bridge, (upstream coporate limits).	None	*760

Maps available for inspection at the Donora Municipal Complex—Administrative Office, 603 Meldon Avenue, Donora, Pennsylvania.

Send comments to Mr. Robert G. Paraschak, Manager for the Borough of Donora, 603 Meldon Avenue, Donora, Pennsylvania 15033.

Pennsylvania	Fallowfield (Township), Washington County.	Monongahela River	Downstream corporate limits	None	*761
			Upstream corporate limits (approximately 1,000 feet downstream of the North Charleroi bridge)	None	*761

Maps available for inspection at the Fallowfield Township Building, 9 Memorial Drive, Fallowfield, Pennsylvania.

Send comments to Mr. Donn Henderson, Secretary for the Township of Fallowfield, 9 Memorial Drive, Charleroi, Pennsylvania 15022.

Pennsylvania	Jefferson (Township), Fayette County.	Monongahela River	At the downstream corporate limits	None	*767
			At the upstream corporate limits	None	*774
		Redstone Creek	At the confluence with Monongahela River	None	*774
			Approximately 0.83 mile upstream of CONRAIL bridge.	None	*774

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Jefferson Township Building, Rural Route 2, Jefferson, Pennsylvania.					
Send comments to Mr. Larry L. Stuckslager, Supervisor for the Township of Jefferson, R.D. 2, Box 142 B, Perryopolis, Pennsylvania 15473.					
Pennsylvania	Monongahela (Township), Greene county.	Monongahela River ..	At the confluence of Little Whiteley Creek.	None	*794
			At the confluence of Dunkard Creek	None	*805
Maps available for inspection at the Jefferson Township Building, Rural Route 2, Jefferson, Pennsylvania.					
Send comments to Mr. Anthony Corso, President of the Township of Monongahela Board of Supervisors, R.D. 1, Box 77–C, Greensboro, Pennsylvania 15338.					
Pennsylvania	Orange (Township), Columbia County.	Fishing Creek	Approximately 280 feet downstream of State Route 487.	*582	*581
			Approximately 0.46 mile upstream of State Route 487.	*590	*591
Maps available for inspection at the Township Municipal Building, By appointment—call Suzanne Moore (717) 683–5554.					
Send comments to Mr. John Buck, Supervisor of the Township of Orange, R.D. 2, Box 0045, Orangeville, Pennsylvania 17859.					
Tennessee	Hendersonville (City), Sumner County.	Drakes Creek	Approximately 1.31 miles upstream of Gallatin Pike.	*516	*460
			At the downstream side of Long Hollow Pike.	*516	*515
		Drakes Creek, Right Bank Tributary No. 2.	Approximately 50 feet upstream of Louisville and Nashville Railroad.	*456	*455
			Approximately 0.20 mile upstream of Forest Retreat Road	*523	*522
		Drakes Creek, Right Bank, Tributary No. 3.	At confluence with Drakes Creek ..	*466	*467
			Approximately 0.15 mile upstream of Goshen Town Road.	None	*527
		Drakes Creek, Left Bank, Tributary No. 1.	At confluence with Drakes Creek ..	*464	*466
			At upstream side of Stop Thirty Road	None	*533
		Drakes Creek, Unnamed Tributary.	At confluence with Drakes Creek, Right Bank, Tributary No. 1.	*451	*452
			Approximately 0.29 mile upstream of Wessington Place.	None	*522
Maps available for inspection at the Hendersonville City Hall, One Executive Park Drive, Hendersonville, Tennessee.					
Send comments to The Honorable R. J. Thompson, Mayor of the City of hendersonville, City Hall, One Executive Park Drive, P.O Box 1570, Hendersonville, Tennessee 37077–1570.					
West Virginia	Monongalia (County), (Unincorporated Areas).	Dents Run	Approximately 200 feet downstream of Dents Run Boulevard.	None	*818
			Approximately 0.46 mile upstream of Dents Run Boulevard	None	*836
		Monongahela River ..	At the downstream county boundary (West Virginia State boundary).	*807	*809
			At the upstream county boundary .	*861	*862
		Cobun Creek	Approximately 1,360 feet upstream of confluence with Monogahela River.	None	*824
			Approximately 1,740 feet upstream of confluence with Monongahela River.	None	*830
Maps available for inspection at the Office of Emergency Management, University of West Virginia, Health Science Center, Room G252A, Morgantown, West Virginia.					
Send comments to Ms. Elizabeth M. Martin, President of the Monongahela County Commission, 243 High Street, Morgantown, West Virginia 26505.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 1, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27635 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–30–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals to Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to CITES. Any country that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service (Service) on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered at the ninth regular meeting of the Conference of the Parties (COP9) to be held in Fort Lauderdale, Florida, November 7–18, 1994. It also announces a deadline for public recommendations regarding potential reservations that should be taken by the United States on any listing decisions by the Parties at COP9.

DATES: Proposals mentioned in this notice are scheduled to be discussed along with preliminary votes by Party countries in committee on the weekdays from approximately November 9 to 15, 1994. Final votes in plenary sessions are likely on November 16 and 17, 1994, without discussion unless one-third of the Parties support the reopening of discussion on specific proposals. Any of these proposals that are adopted will enter into effect 90 days after the close of COP9 (i.e., on February 16, 1995). Public comments regarding potential reservations to be taken by the United States on listings adopted by the Parties at COP9 need to be received by the Service's Office of Scientific Authority by January 17, 1995.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, D.C. 20240. The fax number is (703) 358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. telephone: (703) 358–1708; fax: (703) 358–2276.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those other species). Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

Any Party country may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Proposals submitted to the Secretariat are subsequently distributed to all Parties. After preliminary review of proposals received for consideration at COP9, the Service announced the proposals and invited comments on tentative negotiating positions in the September 6, 1994, **Federal Register** (59 FR 46023).

This notice announces the negotiating positions to be taken by the United States delegation on proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties. The decisions announced in this notice represent formal guidance to the delegation. Although it is neither practical nor in the best interests of the United States to establish inflexible negotiating positions, the delegation will seek to obtain agreement of the Conference of the Parties with these positions unless new information becomes available (see Summary of Positions).

Report of the Nomenclature Committee

The Nomenclature Committee, in conjunction with the World Conservation Monitoring Centre, has been working to review and resolve numerous ambiguities in the appendices that arose from the listing of taxa at the plenipotentiary and first meetings of the Conference of the Parties. Supporting documents were not a matter of record at these initial meetings; similar names may have had more than one interpretation, or the scientific name used may not have been the preferred or commonly accepted name. The Nomenclature Committee has submitted a list of such clarifications for consideration by the Parties at COP9. These include (a) the addition of taxonomic authority references for all Appendix I species included in the appendices prior to 1977, (b) revision of various spellings and the addition of taxonomic notes to certain Appendix I species included in the appendices prior to 1977, and (c) changes in some names of listed taxa in accordance with the latest taxonomic revision. The United States supports these changes except for the name changes recommended for unionid mussels, because those names are inconsistent with the U.S List of Endangered and Threatened Wildlife. The report also identifies taxa that require such substantial taxonomic clarification that a regular amendment to the appendices is warranted. A copy of this report is available from the Office of Scientific Authority (see Addresses).

Comments Received

Public meetings held on September 14 and 16, 1994, provided opportunities for comments from organizations and the general public on the tentative positions

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published in the September 6, 1994, **Federal Register** (59 FR 46023). These meetings were attended by 48 non-Federal-government individuals, representing 27 non-government organizations, three embassies, one news service, and one private business. Some of these attendees did not comment, and some followed up their verbal comments with written statements. Twelve additional organizations provided only written comments during the comment period on species proposals.

With respect to proposals on animal listings, 15 non-government organizations and one private individual provided substantive written comments, and three additional organizations provided oral comments only. Most of the animal proposals received comment from at least one organization. Norway's minke whale proposal (eight comments) and South Africa's elephant proposal (nine comments) generated the most interest, followed by the leopard cat, black-crowned crane, Goffin's cockatoo, and black caiman (five comments each). Although there were few comments on the box turtle listing proposal from the Netherlands, a similar proposal from the United States generated considerable public comment.

Written comments on plant species were received from 12 organizations, 17 commercial businesses, five members of Congress, two foreign governments, one foreign government agency, three specialists in certain aspects of plants, and over 300 members of the general public; no organization provided only oral comments. Proposals on timber-tree species and succulents received the most comments, and no comments were received regarding orchids and some of the medicinal species.

The Service has prepared a summary of public comments entitled "Assessment of Comments on Species Listing Proposals," which includes notes on the negotiating positions of the United States. The separate development of this document, in keeping with past practice of the Service, allows for more timely and less expensive publication in the **Federal Register**. Although biological and trade information received from individuals and organizations after the comment period expired is not referenced in this document, all such information was considered on the basis of its scientific and/or quantitative merit. The "Assessment of Comments on Species Listing Proposals" is available upon request from the Office of Scientific Authority.

Summary of Positions

As a consequence of (a) careful review and analysis of public comments and (b) new information that has become available from a variety of other sources since publication of tentative positions in the earlier **Federal Register** (59 FR 46023), some positions have been changed. Seven changes involve animal listing proposals. Four of these (related to tinamous, Udzungwa forest partridge, black-crowned crane, and black caiman) were made as a result of reviewing new information. Three (related to the Tanzanian Nile crocodile, tuataras, and Asian bonytongue fish) were made to clarify the U.S. position in cases where the original proposals contained ambiguities. Four changes involve plant listing proposals and were made as a result of receiving new information on *Pachypodium brevicaule*, *Berberis aristata*, *Coptis teeta*, and *Dactylanthus taylorii*.

The negotiating positions presented in the following table are based upon (a) the best available biological and trade information available to the Service at this time, (b) the criteria for listing species in the Appendices (Conf. 1.1 and 1.2 of the first meeting of the Conference of Parties to the Convention, as interpreted by past listing discussions and actions of the Parties), and (c) other provisions for listing species, including Conf. 2.19 on extremely rare species, Conf. 2.23 and Conf. 3.20 on delistings under special 10-year review procedures, Conf. 3.15 and 8.22 on ranching, Conf. 5.14 on uplisting plant species, Conf. 5.21 and 7.14 on special criteria for the transfer of taxa from Appendix I to Appendix II with concurrent establishment of export quotas, and Conf. 2.12 and 8.15 on captive-breeding facilities. Rationale for (and/or commentary on) each current position is presented in footnotes referenced in the table. In some cases, only the rationale for a position has changed from that presented in the previous notice. The bases for some positions, particularly those that have changed since the previous notice, are further explained in the separate "Assessment of Comments on Species Listing Proposals."

Although this notice sets forth the negotiating positions of the United States at COP9, new information that becomes available during a COP can often lead to modifications in positions. Support or opposition to particular proposals may depend on whether certain questions about them are answered satisfactorily at the meeting. At COP9, the U.S. delegation will disclose all position changes and the rationale for them.

Species	Proposed amendment	Proponent	U.S. position
Mammals:			
Order Chiroptera.			
Acerodon jubatus (Golden-capped fruit bat)	Transfer from II to I	Philippines	Support.[1]
Acerodon lucifer (Panay giant fruit bat)	Transfer from II to I	Philippines	Support.[1]
Order Edentata.			
Euphractus spp. (Armadillos)	Add to II	Chile	Oppose.[2]
Order Pholidota.			
Manis spp. (Pangolins)	Add to II	Switzerland	Support.[3]
Manis temminckii (Cape pangolin)	Transfer from I to II	Switzerland	Support.[4]
Order Rodentia.			
Chinchilla spp. (Chinchillas)	Remove from I (domesticated specimens in South America).	Chile	Oppose.[5]
Order Cetacea.			
Balaenoptera acutorostrata (Minke whale)	Transfer from I to II (Northeast Atlantic and the North Atlantic central stocks).	Norway	Oppose.[6]
Order Carnivora.			
Felis bengalensis bengalensis (Leopard cat)	Transfer from I to II	Switzerland	Support.[1,7]
Hyaena brunnea (Brown hyena)	Transfer from I to II	Switzerland	Support.[1]
Conepatus spp. (Hog-nosed skunks)	Add to II	Chile	Oppose.[8]
Ailurus fulgens (Red panda)	Transfer from II to I	Netherlands	Support.[1]
Order Proboscidea.			

Species	Proposed amendment	Proponent	U.S. position
Loxodonta africana (African elephant)	Transfer from I to II (South Africa's population)	South Africa	Under review.[9]
Loxodonta africana (African elephant)	Transfer from I to II (Sudan's population)	Sudan	Oppose.[10]
Order Perissodactyla.			
Ceratotherium simum simum (White rhinoceros)	Transfer from I to II (South Africa's population)	South Africa	Oppose.[11]
Order Artiodactyla.			
Megamuntiacus vuquanghensis (Giant muntjac)	Add to I	Vietnam	Support.[1]
Pseudoryx nghetinhensis (Vu Quang Ox)	Add to I	Denmark	Support.[1]
Vicugna vicugna (Vicuna)	Transfer from I to II (remaining Peruvian Appendix I populations).	Peru	Oppose.[12]
Vicugna vicugna (Vicuna)	Amend annotation for Appendix II populations to allow the trade in wool sheared from live vicuñas.	Chile	Support.[13]
Hippopotamus amphibius (Hippopotamus)	Add to II	Belgium, Benin, and France.	Support.[1]
Birds:			
Order Apterygiformes.			
Apteryx spp. (Kiwis)	Add to I	New Zealand	Support.[1,3]
Order Tinamiformes.			
Rhynchotus rufescens maculicollis (Red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Rhynchotus rufescens pallescens (Southern red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Rhynchotus refescens rufescens (Western red-winged tinamou).	Remove from II	Uruguay	Support.[4]
Order Anseriformes.			
Anas aucklandica (currently listed as *Anas aucklandica aucklandica*).	Transfer from II to I	New Zealand	Support.[14]
Anas chlorotis (currently listed as *Anas aucklandica chlorotis*).	Transfer from II to I	New Zealand	Support.[14]
Anas nesiotis (currently listed as *Anas aucklandica nesiotis*).	Retain in I	New Zealand	Support.[14]
Order Galliformes.			
Xenoperdix udzungwensis (Udzungwa forest partridge).	Add to I	Denmark	Support.[1]
Order Gruiformes.			
Balearica pavonina (Black-crowned crane)	Transfer II to I	Netherlands	Support.[1,3]
Order Psittaciformes.			
Cacatua goffini (Goffin's cockatoo)	Transfer from I to II	Indonesia	Oppose.[15]
Eos histrio (Red and blue lory)	Transfer from II to I	Indonesia	Support.[1]
Cyanoramphus malherbi (Orange-fronted parakeet)	Transfer from II to I	New Zealand	Support.[16]
Cyanoramphus novaezelandiae (New Zealand or Red-crowned parakeet).	Transfer I to II	New Zealand	Oppose.[17]
Psittacus erithacus princeps (African gray parrot)	Transfer from I to II	United Kingdom.	Support.[4]
Psittacus erithacus (Sao Tome/Principe populations of African gray parrot).	Retain in I in lieu of *Psittacus erithacus princeps*	United Kingdom.	Support.[18]
Order Cuculiformes.			
Musophagidae spp. (Turacos)	Add to II	Netherlands	Support.[3]
Order Apodiformes.			
Collocalia spp. (Edible-nest swiftlets)	Add to II	Italy	Support.[1]
Order Passeriformes.			
Agelaius flavus (Saffron-cowled blackbird)	Add to I	Uruguay	Support.[1]
Reptiles:			
Order Crocodylia.			
Melanosuchus niger (Black caiman)	Transfer from I to II (Ecuador's population pursuant to Conf. 3.15 on ranching).	Ecuador	Oppose.[19]
Crocodylus niloticus (Nile crocodile)	Change basis of maintenance of Malagasy population on II from Conf. 7.14 to Conf. 3.15.	Madagascar	Oppose.[20]
Crocodylus niloticus (Nile crocodile)	Change basis of maintenance of South Africa's population on II from Conf. 7.14 to Conf. 3.15.	South Africa	Support.[21]
Crocodylus niloticus (Nile crocodile)	Transfer from II to I (Madagascar and Somalia populations..	Switzerland	Support.[22]
Crocodylus niloticus (Nile crocodile)	Maintain in II with significant increase in export quota pursuant to Conf. 7.14.	Tanzania	Oppose.[23]
Crocodylus porosus (Saltwater crocodile)	Change basis of maintenance of Indonesia population on II from Conf. 7.14 to Conf. 3.15.	Indonesia	Oppose.[20]
Crocodylus porosus (Saltwater crocodile)	Transfer from II to I (Indonesian population)	Switzerland	Support.[22]
Crocodylus porosus (Saltwater crocodile)	Change basis of maintenance of Australian population on II from Conf. 3.15 to Conf. 1.2.	Australia	Support.[1]
Order Testudinata.			
Lissemys puncata (Indian flap-shelll turtle)	Add to II	Switzerland	Support.[1]
Lissemys punctata punctata Indian flap-shell turtle)	Remove from I	Switzerland	Support.[4,24]
Terrapene spp. (Box turtles)	Add to II (retain *T. coahuila* in I)	Netherlands	Support.[25]
Testudo kleinmanni (Egyptian tortoise)	Transfer from II to I	Egypt	Support.[26]

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Species	Proposed amendment	Proponent	U.S. position
Order Rhynchocephalia			
Sphenodon spp. (Tuataras) or *Sphenodon guntheri* (Brother's Island tuatara).	Add to I	New Zealand	Support.[27]
Order Sauria			
Phymaturus flagellifer (Racerunner lizard)	Add to II	Chile	Oppose.[2]
Pristidactylus alvaroi	Add to II	Chile	Support.[1]
Pristidactylus torquatus	Add to II	Chile	Support.[1]
Prestidactylus valreisae	Add to II	Chile	Support.[1]
Pristidactylus volcanensis	Add to II	Chile	Support.[1]
Callopistes palluma	Add to II	Chile	Support.[26]
Varanus bengalensis (Indian monitor)	Transfer from I to II (Bangaledesh population)	Bangladesh	Oppose.[28]
Varanus flavescens (Yellow monitor)	Transfer from I to II (Bangladesh population)	Bangladesh	Oppose.[28]
Amphibians:			
Order Anura			
Bufo periglenes (Monte Verde or Golden toad)	Add to I	Netherlands	Support.[29]
Mantella aurantiaca (Malagasy golden frog)	Add to I	Netherlands and Germany.	Support.[26]
Fish:			
Order Osteoglossiformes			
Scleropages formosus (Asian bonytongue)	Transfer from II to I (Indonesian population)	Indonesia	Support.[30]
Scleropages formosus (Asian bonytongue)	Transfer from II to I Indonesian population	Switzerland	Support.[22]
Mollusca:			
Charonia tritonis (Giant triton)	Add to II	Australia	Support.[1]
Placostylus spp. (New Zealand flax snails)	Add to II (New Zealand population)	New Zealand	Support.[1]
Powelliphanta spp. (New Zealand land snails)	Add to II (New Zealand population)	New Zealand	Support.[3]
Insects:			
Colophon spp. (Cape stage beetles	Add to I	Netherlands	Support.[1]
Arachnids:			
Pandinus dictator (Emperor scorpion)	Add to II	Ghana	Support.[3]
Pandinus gambiensis (scorpion)	Add to II	Ghana	Support.[3]
Pandinus imperator (scorpion)	Add to II	Ghana	Support.[26]
Plants:			
Family Apocynaceae			
Pachypodium ambondgenese	Transfer from II to I	Madagascar & Switzerland.	Support.[1]
P. brevicaule	Transfer from I to II	Madagascar & Switzerland.	Oppose.[17,31,32]
P. namaquanum	Transfer from I to II	Switzerland	Support.[2]
Family Araceae			
Alocasia sanderiana	Remove from II	Switzerland	Support.[1]
Family Balanophoraceae			
Dactylanthus taylorii	Add to I	New Zealand	Support.[33,2]
Family Berberidaceae			
Berberis anstata de Candolle	Add to II	India	Oppose.[34,17 31]
Family Cactaceae			
Astrophytum asterias	Transfer from I to II	Mexico & Switzerland.	Oppose.[17]
Leuchtenbergia principis	Transfer from I to II	Mexico & Switzerland.	Support.[1]
Mammillaria plumosa	Transfer from I to II	Mexico & Switzerland.	Support.[2]
Family Ebenaceae			
Diospyros mun	Add to II	Germany	Support.[2]
Family Euphorbiacae			
Euphorbia cremersii	Transfer from II to I	Madagascar & Switzerland.	Support.[1]
Euphorbia primulifolia	Transfer from I to II	Madagascar & Switzerland.	Oppose.[36]
Family Gentianaceae			
Gentiana kurroo	Add to II	India	Oppose.[17,31,2]
Family Leguminosae (Fabaceae)			
Dalbergia melanoxylon	Add to II	Germany; Kenya.	Support.[2,36]
Pterocarpus santalinus	Add to II	India	Support.[2,37]
Family Liliaceae			

Species	Proposed amendment	Proponent	U.S. position
Aloe albiflora	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe alfredii	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe bakeri	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe barbadensis (syn. A. vera [sic])	Remove from II	Switzerland	Under review.[30]
Aloe bellatula	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe calcairophila	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe compressa (inc. var. *rugosquamosa* and var. *schistophila*).	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe delphinensis	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe descoingsii	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe fragilis	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe haworthioides (inc. var. *aurantiaca*)	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe helenae	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe laeta (inc. var. *maniensis*)	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe parallelifolia	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Aloe parvula	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe rauhii	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe suzannae	Transfer from II to I	Madagascar & Switzerland.	Support.[2,38]
Aloe versicolor	Transfer from II to I	Madagascar & Switzerland.	Support.[2]
Colchicum luteum	Add to II	India	Oppose.[17,31]
Family Meliaceae			
Entandrophragma spp	Add to II	Germany	Support.[2,40]
Khaya spp	Add to II	Germany	Support.[2,40]
Swietenia macrophylla of the neotropics, incl. natural hybrid with *S. humilis*, and *sic* with *S. mahagoni*.	Add to II	Netherlands	Under review.[41]
Family Orchidaceae			
Cattleya skinneri	Transfer from I to II	Switzerland & Mexico.	Support.[1]
Cypripedium cordigerum	Transfer from II to I	India	Oppose.[17,31]
Cypripedium elegans	Transfer from II to I	India	Oppose.[17,31]
Cypripedium himalaicum	Transfer from II to I	India	Oppose.[17,31]
Cypripedium tibeticum	Transfer from II to I	India	Oppose.[31]
Dendrobium cruentum	Transfer from II to I	Thailand	Support.[2,42]
Didiciea cunninghamii	Transfer from I to II	Switzerland	Support.[1]
Lycaste skinneri var. *alba*	Transfer from I to II	Switzerland & Mexico.	Support.[1]
Family Polygonaceae			
Rheum australe	Add to II	India	Oppose.[17,31,2]
Family Ranunculaceae			
Aconitum deinorrhizum	Add to II	India	Oppose.[2]
Aconitum ferox	Add to II	India	Oppose.[2]

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Species	Proposed amendment	Proponent	U.S. position
Aconitum heterophyllum	Add to II	India	Oppose.[2]
Coptis teeta	Add to II	India	Oppose.[2]
Family Rosaceae			
Prunus africana	Add to II	Kenya	Support.[1,2]
Family Scrophulariaceae			
Picrorhiza kurroos	Add to II	India	Oppose.[17,31,2]
Family Taxaceae			
Taxus wallichiana	Add to II	India	Support.[2,43]
Family Theaceae			
Camellia chrysantha	Remove from II	Switzerland	Support.[1]
Family Thymelaeaceae			
Aquilaria malaccensis (syn. *A. agallocha*)	Add to II	India	Support.[2]
Family Valerianaceae			
Nardostachys grandiflora	Add to II	India	Oppose.[17,31,2]
Parts and Derivatives Proposal		Germany	Support.

With respect to Appendix II plant taxa replace the standard exclusions:

"tissue cultures and flasked seedling cultures" with

"seedlings or tissue cultures obtained *in vitro* in sterile culture media, either liquid or solid, transported in containers commonly used for these types of cultures, with different shapes and made of different materials".

The bases for the final U.S. negotiating positions on the proposals are:

[1] The listing, uplisting, downlisting, or delisting of the taxon, as proposed, appears to be justified by the biological status and trade information in the proposal or currently available to the Service.

[2] Limited population status and trade information is given, but the United States will give strong consideration to the statements of range State(s) and looks forward to discussions with them at the COP.

[3] The listing of this taxon, as proposed, appears to be justified by the trade information and/or the similarity of appearance concern.

[4] Although this proposal was not formally submitted pursuant to the ten-year review resolution for downlisting, this action appears to be justified under such provisions.

[5] These species of chinchillas are presently listed in Appendix I in South America and are classified as rare, vulnerable, or endangered by IUCN. Complete removal of protection for captive-bred forms of these species potentially places wild populations at risk. However, a downlisting of the captive populations in South America to Appendix II, at least until it is determined that there is no risk to wild forms, would be both appropriate and consistent with the position of the CITES Standing Committee on proposed changes in listing criteria (Annex 4).

[6] The United States continues to support the 1978 request from the International Whaling Commission (IWC) to take all possible measures to support the IWC ban on commercial whaling for certain species and stocks of whales and opposes the transfer of the minke whale from Appendix I to Appendix II.

[7] The United States will support the position of India (where the status of the subspecies may be more precarious) that the subspecies remain in Appendix I within india.

[8] Trade and population information is considered insufficient, and neither population status nor trade levels of species occurring in the United States appears to warrant listing the entire genus. Five species are identified in *Mammals Checklist of the World* by Wilson and Reeder (1993) including two (*C. leuconotus* and *C. mesoleucus*) that occur in the southwestern part of the United States. The United States will give strong consideration to the opinions of range States regarding listing of those species not occurring in the United States.

[9] The Service believes that, under intensely managed and enforced conditions, consumptive use of African elephants can be sustainable and, in certain cases, may be a key component of effective conservation strategies. Rigorous controls on trade are an important part of management. The United States opposes reopening of the ivory trade and is concerned that the South African proposal as originally submitted did not appear to eliminate the possibility of legal trade being resumed or of illegal trade being escalated. A Panel of Experts established under the provisions of Conf. 7.9 is reviewing in country trade controls. The U.S. will not finalize its position until it has had the opportunity to review the Panel's report in detail along with any revisions of the proposal submitted by South Africa.

[10] This proposal does not meet trade control provisions outlined in Conf. 7.9.

[11] This proposal would allow legal trade in rhino horn products, albeit with strict in-country controls; such trade is premature until illegal trade is under control. The United States supports decisions of the Standing Committee that illegal trade in rhinoceros specimens or product undermines the effectiveness of CITES. The United States continues to support decisions from previous meetings of the Conference of the Parties and the Standing Committee regarding rhinoceros conservation and trade in rhinoceros horn. The United States is highly supportive of efforts by major consumer states to ban the importation and sale of rhinoceros parts and products and to cooperate in enforcement efforts.

[12] The information received does not demonstrate that Peruvian Appendix II populations subjected to managed take and trade have fared better than Appendix I populations. Given that, and pending clear demonstration that sustainable use programs are working, downlisting of Appendix I populations is premature. Trade controls for wool of Appendix II animals (similar to those proposed by Chile to ensure that illegal wool does not enter trade) are encouraged and would receive positive consideration.

[13] Export of fiber and re-import of processed fiber would be monitored to control inclusion of illegal fiber in any significant amount. U.S. support is contingent upon strong assurances that adequate trade controls are in place and that native communities receive maximum economic incentive to manage Appendix II populations sustainably.

[14] These entities are considered populations of one species, *Anas aucklandica*, in the current CITES-adopted check list. By recommending the uplisting of the two subspecies (according to some authorities) currently on Appendix II, the net result of this proposal is to list the entire species, *Anas aucklandica*, on Appendix I. Recommendations of the Nomenclature Committee regarding this proposal will be considered.

[15] The Service is concerned with the methodology used in the study on which this proposal is based and is not convinced that the resulting population estimates are realistic. In addition, the Service is concerned about the implications for trade in other island populations of this species.

[16] If a valid taxon, the transfer of *Cyanoramphus malherbi* to Appendix I seems justified on biological and trade grounds. However, this "species" is now considered to be a color morph of *C. auriceps* in the CITES-adopted checklist. Therefore, support will be contingent upon recommendation of the Nomenclature Committee as to the validity of the listing.

[17] The population-status information is not sufficient to warrant the listing, uplisting, downlisting, or delisting as proposed.

[18] The Service supports the above proposal submitted by the United Kingdom to downlist *Psittacus erithacus princeps* from Appendix I to Appendix II (thereby placing the entire species, *P. erithacus*, on Appendix II). If the Parties adopt the above downlisting proposal, the Service understand that the United Kingdom will withdraw this alternative proposal. However, if the Parties reject the downlisting proposal, the Service will support the alternative proposal in the interest of clarifying the taxonomy of *P. erithacus*.

[19] The Service opposes this proposal until (a) effective population monitoring, trade controls, and licensing procedures are in place, and (b) evidence is presented that the wild population can sustain the initial level of harvest of eggs and hatchlings proposed for initiating the ranching program.

[20] The Service is concerned about management and enforcement, including but not limited to the considerations presented in footnote 21.

[21] The transfer of certain crocodilian populations from Appendix I to II was proposed pursuant to Conf. 3.15 (ranching) or Conf. 5.21 and 7.14 (export quota). The Service's initial support of these proposals is contingent upon assurance that (1) annual and other required reports are being filed regularly by the proponent with the CITES Secretariat, (2) there is an adequate basis to monitor the status of wild populations, (3) animals will be returned to the wild in numbers as appropriate, and (4) there is an implementable limit on the harvest of wild juveniles and adults.

[22] Switzerland, as depositary government, proposed the transfer from Appendix II to Appendix I of those species that were downlisted from Appendix I to Appendix II under the provisions of Conf. 5.21. If ranching or export quota proposals are adopted by the Parties, Switzerland will withdraw its proposal for those populations.

[23] The Service opposes expansion of export quotas for wild-harvested animals beyond currently authorized levels without further justification. The Service agrees with the IUCN Crocodile Specialist Group that Conf. 7.14 is inappropriate in this case and that wild harvest should be conducted only on a limited basis as "reasonable cropping" in conjunction with ranching programs under Conf. 8.22.

[24] Support for this proposal is conditioned upon the inclusion of the entire species *L. punctata* in Appendix II.

[25] The United States submitted a similar proposal for this genus but was able to include more recent information in its proposal, a copy of which is available from either the Office of Management Authority or Office of Scientific Authority.

[26] Support for this proposal is based on trade levels and the historical effects of trade on other populations or the reproductive characteristics of the species. However, the Service will consider any new population information.

[27] The Service supports the inclusion of *Sphenodon* spp. (tuataras) as opposed to *S. guntheri* on Appendix I, but considers all tuataras to have been included in Appendix I already, based on the present listing of *S. punctatus*. The Nomenclature Committee agrees with the latter and recommends that the listing be changed to *Sphenodon* spp., now that *S. punctatus* has been split into more than one species. If the Committee's report is adopted by the Parties, it will render the New Zealand proposal redundant.

[28] Although this is proposed as a temporary transfer to Appendix II until the next COP, the Service's long-standing position has been to oppose commercial sale of confiscated specimens of Appendix I species.

[29] The Service would support listing of this taxon in Appendix I on the basis of Conf. 2.19 (i.e., due to the taxon's rarity, and because any trade in this taxon would be detrimental).

[30] Malaysia has had a captive breeding facility registered for this species in accordance with Article VII paragraph 4 and pursuant to /conf. 8.15. Indonesia is proposing to register similar facilities but to date these have not been accepted by the CITES Secretariat. In the absence of the registration of one or more facilities in Indonesia, this proposal by Indonesia would preclude commercial trade in this species. Therefore, Indonesia may wish to consider modifying its proposal to continue the present downlisting to Appendix II pursuant to Conf. 5.21, under which there is an export quota for captive-reared fish and a zero quota for wild fish.

[31] Trade information is considered insufficient to support the proposal.

[32] The United States recognizes that the downlisting of this species should be linked with the need for an export quota or sustainable-harvest system, which is expressed in the proposal, the analysis by IUCN, and the position of the TRAFFIC Network. The United States believes that a management plan and appropriate quota should be in place before downlisting. This quota should take into account the population structure (including age structure) of the species, so that there is not excessive pressure to remove the large (and much older) wild individuals, for which artificially propagated specimens presently do not substitute. Furthermore, the establishment of artificial propegation program in Madagascar would be an important consideration. Trade of artificially propagated Appendix I specimens can be facilitated by means of multiple-shipment export permits that have validity for 6 months and are renewable.

[33] The concern is export of the "wood-rose", which the United States believes would be properly included by listing *Dactylanthus tayloriI* (puao-te-reinga) because the wood-rose is an essential derivative of *D. taylorii* that is induced by its interaction with its host. Each wood-rose may be completely the substance (root-tissue) of an individual of several common host trees or shrubs, which has been wholly transformed at and near the host-*Dactylanthus* interface by *D. taylorii*.

[34] *Berberis aristata* of some authors but not de Candolle is *B. chitria and* (and/or *B. floribunda*).

[35] The downlisting of this species is unjustified, because of similar appearance of other dwarf taxa of subgenus *Lacanthis* that are in Madagascar and are all in Appendix I. Moreover, no management plan is in place for the two varieties of this popular species—especially for the less common var. *begardii*. Trade in artificially propagated Appendix I specimens can be facilitated by means of multiple-shipment export permits that have validity for 6 months and are renewable.

[36] The United States will seek amendment of this proposal to exclude the non-African (non-native) population, and to exclude finished musical instruments. This species is often called African blackwood; although in the proposal one of the common names mentioned is African ebony, true ebonies—including African ebony—normally are regarded to be species of *Diospyros*.

[37] The United States will seek amendment of this proposal to exclude both finished musical instruments and chemical derivatives.

[38] The United States is tentatively in support of the uplisting all 17 of the *Aloe* species; however, in an effort to determine which appendix would provide more net benefit to the wild populations, the United States is evaluating which of these species can be easily propagated, are readily available as propagated specimens, and may become less available under Appendix I trade controls [Conf. 5.14(b)(iii)].

[39] The proposal is in error in not treating *Aloe barbadensis* as a synonym of *Aloe vera*. The parts and derivatives of artificially propagated *Aloe vera* already are not regulated by CITES. The service is considering whether unregulated trade in whole plants of *Aloe vera* would place wild populations of threatened aloes at increased risk.

[40] The listing of this taxon appears to be justified; similarity of appearance also is a concern.

[41] The United States received information regarding this species and its trade at a meeting of the Linnean Society of London on September 8, 1994. Note that hybrids between *Swietenia macrophylla* and *S. mahagoni* are spontaneous but are not natural hybrids in terms of Conf. 2.13; they sometimes occur where people have introduced *S. macrophylla* into proximity with *S. mahagoni*. If the United States were to support this proposal, it would want it amended to exclude parts and derivatives other than logs, sawn wood, veneer sheets, and plywood sheets.

[42] The problem of identification of this species when not in flower is recognized, as the remainder of this genus of about 900 species would remain in Appendix II.

[43] The United States is evaluating whether to seek an amendment of this proposal to exclude chemical derivatives (i.e., the end-product medicine).

Future Actions

Amendments are adopted by a two-thirds majority of the Parties present and voting. All species amendments adopted will enter into effect 90 days after the close of COP9 (i.e., on February 16, 1995) for the United States, *unless* a reservation is entered. Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species, if it enters a reservation with respect to that species. A Party desiring to enter a reservation must do so during the 90-day period immediately following the close of the meeting at which the Parties voted to include the species in Appendix I or II. Soon after COP9, the Service plans to publish a notice in the **Federal Register** announcing the final vote of the Parties on these listing proposals. If the United States should decide to enter any reservation, this action must be transmitted to the Depositary Government (Switzerland) by February 16, 1995.

The Service invites comments and recommendations from the public concerning reservations to be taken by the United States on any amendments to the appendices adopted by the Parties at COP9. The Service's past practice has been to solicit public comments only after the COP, in the notice that announces the actions of the Parties at the COP on the proposed species amendments. However, because of the short time available for taking reservations, the Service is now soliciting comments on possible reservations on any proposed species amendment that may be adopted. Although the Service will re-solicit comments after COP9 *if time is available*, this present notice may be the only request for such comments. Recommendations or comments regarding reservations must be received by January 17, 1995. If the United States should enter any reservations, they will be announced in the same **Federal Register** notice that incorporates the listing decisions of the Parties into the

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Code of Federal Regulations (50 CFR Part 23).

Reservations, if entered, may do little to relieve importers in the United States from the need for foreign export permits, because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If a foreign country has enacted CITES as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States (even if it had taken a reservation on a species) would continue to require CITES documents as a condition of import.

Any reservation by the United States would provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to CITES would generally require CITES-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all the information required in CITES permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II according to Conf. 4.25, thereby still requiring CITES documents for export of these species.

The United States has never entered a reservation to a CITES listing. It is the policy of the United States that commercial trade in Appendix I species for which a country has entered a reservation undermines the effectiveness of CITES.

This notice was prepared by Drs. Marshall A. Howe, Bruce MacBryde, and Charles W. Dane, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-27731 Filed 11-4-94; 12:20 pm]

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Notices

Federal Register

Vol. 59, No. 215

Tuesday, November 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-827]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3798 or (202) 482-5055, respectively.

Final Determination

The Department of Commerce ("the Department") determines that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on June 8, 1994, (59 FR 30911, June 16, 1994), the following events have occurred.

From July 4 through 15, 1994, Department officials conducted verification of the responses of the responding exporters, Shanghai Foreign Trade Corporation (SFTC), Shanghai Lansheng Corporation (Lansheng), Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), and China First Pencil Co., Ltd. (China First), a responding exporter and manufacturer; and the responding manufacturers Shanghai Three Star Stationery Industry Corporation (Three Star), and Anhui Stationery Company (Anhui).

On July 22, 1994, petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from the PRC. On August 10, 1994, the Department published in the **Federal Register** a notice of postponement of the final determination (59 FR 40865). On August 26, 1994, the Department published in the **Federal Register** a preliminary affirmative determination of critical circumstances (59 FR 44128).

Petitioner and respondents submitted case and rebuttal briefs on September 21 and October 3, 1994, respectively. A public hearing was held on October 5, 1994.

Scope of Investigation

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Class or Kind of Merchandise

At the time of our initiation, the Department solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents first argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils.

In addition, the Asia Pencil Association, an interested party in this investigation, argued that specialty pencils (*e.g.*, carpenter and art pencils) constitute a separate class or kind of merchandise. However, the information submitted in support of its claim was insufficient to allow us to make a preliminary determination that specialty pencils are a separate class or kind of merchandise and no new information on specialty pencils has been submitted since the preliminary determination.

Based on the information provided the Department preliminarily determined that neither specialty pencils nor raw blanks constituted a separate class or kind of merchandise.

In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. Those arguments were filed too late to be considered for the preliminary determination and were to have been addressed fully in this determination. However, in their case brief of September 21, 1994, respondents argued that there are three classes or kinds of merchandise: Commodity, colored and designer. The Department will therefore address only respondents' most recent argument about the appropriate number of classes or kinds of merchandise under investigation.

In order to establish whether cased pencils represent a single class or kind of merchandise, we examine below each of the criteria used by the Department to determine class or kind as described in 19 CFR 353.29(i) (1) and (2) and *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F.Supp. 883 (1983).

Physical Characteristics

Respondents argue that commodity pencils are invariably hexagonal with a graphite core and a plain paint finish, colored pencils have a chemical-intensive core and designer pencils are round with a graphite core and "proprietary artwork" designs.

Petitioner argues that, while the outward physical form of pencils sometimes differs, the production process is identical, except for the finishing. Petitioner submits that some commodity pencils are round while some designer pencils are hexagonal as well as triangular; that graphite pencils come in varying degrees of hardness due

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to varying chemical composition; and that the chemical core for colored pencils does not distinguish it from all other "disposable, delible, portable marking instruments that require sharpening to renew the core."

The cased pencils described in the scope of this proceeding are disposable writing instruments. Two essential elements are present in all cased pencils. These are (1) a core which contains the material that, when the pencil is put to use, leaves a mark on a surface and (2) the casing in which the core rests. As such, we conclude that the physical characteristics of all pencils within the scope are similar.

Regarding respondents' argument that the chemical-intensive cores of colored pencils should serve to distinguish them from other pencils in the scope, we note that the core composition of commodity pencils also varies based on the desired hardness and blackness of the pencil. Hence, we do not find this to be a basis for distinguishing colored from other pencils.

With regard to shape, petitioner and respondents have submitted conflicting arguments. Based on the evidence on this record, the Department determines that commodity and designer pencils do not always have different shapes. Finally, with regard to the proprietary artwork on designer pencils, the difference from commodity pencils includes the application of foil, paint, ferrules, erasers, or some form of eye-catching topper. While these add-ons make the pencils physically different from commodity pencils, they do not change the basic physical characteristics of the product, *i.e.*, a core encased in wood or other material).

Customer Use and Expectations

Respondents argue that commodity pencils are used in schools and businesses for writing; colored pencils are usually for children and always for coloring (not writing); and designer pencils are for collecting. In addition, respondents argue that marks made by most colored pencils are not able to be erased, while those of graphite pencils are. Petitioner contends that the customer use and expectation of all pencils is to make a mark on a surface.

We agree that the expectations and uses of colored pencils are various and may differ from the expectations and uses of commodity and designer pencils. With respect to designer pencils, however, there is no evidence to support respondents' claim that these pencils are solely for collecting. While they are collectable, they are also used as writing instruments. Therefore, we have no basis to distinguish designer pencils from commodity pencils in terms of customer use and expectations.

Channels of Trade

The channels of trade for PRC pencil sales are similar for all pencil types. The producer and/or exporter sells either directly to retail customers or distributors in the United States. The distributors then sell to either retailers or end-users in the United States. According to petitioner, U.S. produced pencils are also sold by manufacturers to retail customers or distributors. These distributors may also sell to retailers, businesses or schools. Hence, we find that all pencils within the scope of this proceeding are sold in the same channels of trade.

Manner in Which Pencils Are Advertised and Displayed

There is conflicting evidence on the record in this investigation with respect to the manner in which pencils are advertised and displayed. Petitioner points to a China First catalog submitted in response to section A of our questionnaire. Petitioner argues that since all types of pencils are included in the China First catalog (some individual pages include a number of different types of pencils), we should conclude that the manner in which pencils are displayed is similar regardless of pencil type. Petitioner also submits that different types of pencils are often displayed together in retail outlets.

Conversely, respondents submit that the manner of displaying and advertising pencils is particular to the type of pencil being offered for sale. Respondents contend that colored pencils are not offered for sale in office supply stores and commodity pencils cannot be found in toy stores and party shops. Respondents contend that even in the unusual event that commodity, colored, and designer pencils were offered for sale in the same store, they would not be displayed together.

Based on our research, both petitioner and respondents are correct. Specialty stores such as party shops do not usually stock commodity pencils. On the other hand, office supply stores or pharmacies such as "Staples" or "CVS" carry all three pencil types (commodity, colored and designer). In some instances they are displayed together, in other instances they are displayed separately.

Conclusion

Based on the arguments presented and our own research and analysis, the Department is not persuaded that a determination of three separate classes or kinds of merchandise is warranted in this investigation. Although the products differ in certain respects, on the whole the similarities greatly outweigh the dissimilarities. In its *Notice of Final Determination of Sales at Less Than Fair Value: Antifriction Bearings from West Germany*, 54 FR 18992 (May 3, 1989), the Department stated that "the real question is whether the differences are so material as to alter the essential nature of the product, and therefore, rise to the level of class or kind differences." In this instance, the differences do not alter the essential nature of the product. In addition, although such a finding is not dispositive to this analysis, the ITC recently issued its report on Cased Pencils from Thailand stating that "all cased pencils . . . have similar physical characteristics and uses." (ITC Publication 2816, at I–8). Therefore, we conclude that commodity, colored and designer pencils are a single class or kind of merchandise.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Separate Rates

The four participating exporters, SFTC, Guangdong, China First, and Lansheng have each requested a separate rate. SFTC and Guangdong are companies owned by "all the people." China First and Lansheng are shareholding companies, both of which were previously owned by "all the people." China First issued shares in 1992 and Lansheng issued shares in September 1993. In the preliminary determination, Guangdong, SFTC, and Lansheng received separate rates. With respect to China First, we preliminarily determined that, due to the lack of information on the record regarding China First's ownership structure, we could not grant China First a separate rate at that time.

In the *Final Determination of Sales at Less Than Fair Value: Compact Ductile Iron Works from the People's Republic of China*, 58 FR 37909 (July 14, 1993) (*CDIW*), the Department determined that state-owned companies, *i.e.*, those owned by the central government, were not eligible for separate rates. In the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) (*Silicon Carbide*), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for individual rates, if they met the criteria developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*.

In this investigation, and in the recent final determination involving paper clips from the PRC (59 FR 51170, October 7, 1994), we have examined companies that had been "owned by all the people," but are now shareholding companies with varying levels of government ownership. When these companies were "owned by all the people," the central government devolved control of them. Hence, we focused our examination on whether the change in ownership form to shareholding companies altered that devolution of control. We found that it did not. Significantly, we found that the government (whether the central government or the Government of Shanghai) did not vote the shares. (*See*, verification reports of Lansheng and China First.) Although the government held its shares on behalf of the people, in one case those shares were voted by the company's former general manager (Mr. Lansheng), and in the other by the workers (China First).

Because we have found that the government has, in effect, severed the voting rights from the shares it holds in trust on behalf of the people and bestowed those rights on the enterprises themselves, we determine that Lansheng and China First do not fall within the prohibition set out in *CDIW*. Hence, the Department has applied the criteria developed in *Sparklers* and amplified in *Silicon Carbide* to determine whether these companies, as well as the companies "owned by all the people," should receive separate rates. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (*1988 Law*); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (*Export Provisions*). The *1988 Law* states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the *1992 Regulations* (see Article IX).

While the PRC government has devolved control over state-owned enterprises, the government has continued to regulate certain products through export controls. The *Export Provisions* list designates those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the constraints of these provisions.

Consistent with *Silicon Carbide*, we determined that the existence of these laws demonstrates that Guangdong and SFTC, companies owned by "all the people," are not subject to *de jure* control.

Since Lansheng and China First were initially companies owned by "all the people," the laws cited above establish that the government devolved control over such companies. The only additional law that is pertinent to the *de jure* analysis of Lansheng and China First as share companies is the *Company Law* (effective July 1, 1994). While Lansheng and China First indicated that they were organized consistent with the *Company Law*, the law did not enter into force until seven months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the companies were owned "by all the people." Therefore, we have determined that Lansheng and China First are not subject to *de jure* control.

In light of reports[3] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

[3] *See* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess)

De Facto Control Analysis

We analyze below the issue of *de facto* control based on the criteria set forth in *Silicon Carbide*.

Guangdong

In the course of verification, we confirmed that Guangdong's export prices are not set, or subject to approval, by any government authority. This point was supported by Guangdong's sales documentation, company correspondence, and confirmed through questioning of a Shanghai Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. pencil sales, we also noted that Guangdong is able to negotiate prices with its customers without government interference or influence.

We confirmed, through an examination of bank documents, that Guangdong has the authority to borrow freely, independent of government authority. We further found that, although required to exchange 20 percent of its foreign exchange proceeds at the official exchange rate, Guangdong retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. Guangdong's financial and accounting records supported this conclusion.

Finally, we have determined that Guangdong has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that management is elected by the Employee's Congress, which is made up of 60 percent workers and 40 percent department chiefs. First candidates are nominated by the workers in each department. The Employee's Congress then reviews the qualifications of potential candidates and elects them. A review of the documentation of the election process indicated that COFTEC then confirms Guangdong's election of management. Based on an analysis of all these factors, we have determined that Guangdong is not subject to *de facto* control by governmental authorities.

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SFTC

During verification, we established that SFTC's export prices are set by the company and do not require approval by any governmental authority. SFTC has the authority to negotiate and sign contracts and other agreements independent of any government authority as evidenced by our examination of correspondence and written agreements and contracts. We also confirmed that SFTC retained proceeds from its export sales and made independent decisions regarding disposition of profits by examining bank account records, financial records, and purchase contracts.

Based on our examination of management appointment announcements and other correspondence, we have determined that SFTC had autonomy from the government in making decisions regarding the selection of management. Management was elected by 50 departmental staff representatives. These representatives were themselves elected by workers in each department. Documentation provided by SFTC demonstrated that the provincial government merely acknowledged SFTC's election of management. In light of the above evidence of the lack of *de facto* government control, we have concluded that SFTC is entitled to a separate rate.

Lansheng

In conducting a *de facto* analysis of Lansheng, we have examined the factors set forth in *Silicon Carbide*, and whether the change in corporate structure alters our conclusion regarding those factors. Lansheng's sales documentation and correspondence support the conclusion that no government entity exercises control over Lansheng's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that Lansheng has the authority to negotiate and sign contracts and other agreements without interference from any governmental entity. We confirmed during verification that this situation did not change after Lansheng became a share company.

Before Lansheng became a share company, the general manager of its predecessor company, Shanghai Stationery & Sporting Goods Import and Export Company (Shanghai Stationery), was elected on February 27, 1993. The election proceeded in the following manner.

First, for every ten employees, there was one elected representative. Second, the representatives then elected the general manager. Third, once the general manager was elected, the company sent a letter, announcing the election to COFTEC. COFTEC then approved the election process and sent a letter of congratulations to the company. While COFTEC technically had the authority to reject an elected manager, it reportedly had never done so.

After Lansheng became a share company, the same manager continued to lead the company. At the first general shareholders' meeting, when Lansheng's Board of Directors was elected, the shares held by the State Asset Management Bureau (SAMB) were voted by the general manager of the former company, Shanghai Stationery. Subsequently, the newly elected Board of Directors appointed the former general manager as Chairman of the Board for Lansheng. The evidence on the record regarding the election of management indicates that no representative of the SAMB was present at, or participated in, the election of the Board of Directors or the decision to retain current management. Moreover, the chairman's authority to vote the shares held by the government supports the conclusion that the chairman and the board, rather than the government, have the authority to appoint the company's management.

We also found that Lansheng retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through examination of Lansheng's bank account records and bank loan applications.

As indicated above, the record indicates that Lansheng's change to a share company did not have any effect on the government's devolution of control over Lansheng. The evidence shows that, following its conversion to a share company, 25.1 percent of Lansheng's shares were sold publicly, with the proceeds returning to the company as new capital investment. The remaining 74.9 percent of the shares represents the value of the assets in the original company, Shanghai Stationery (which was owned "by all the people"). Evidence on the record indicates that these remaining shares are held in trust by the SAMB, just as its assets were held in trust when Lansheng was owned "by all the people." The company's management, which has remained the same throughout its transition to a share company, votes these shares at the general shareholders' meetings of Lansheng. This evidence supports the conclusion that, under the new corporate structure, the government has not exerted control over Lansheng through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

China First

China First has been a public company since 1992. China First's shareholders include both the state and individual PRC and foreign investors. At verification, through an examination of the minutes from the 2nd Annual Shareholders Meeting, company records, and discussions with government and company officials, we found that the holder of the state-owned shares was the "Office for State Assets Administration of the Shanghai Municipality" (SAASM) and that SAASM's shares are voted by the company's employee shareholders. We also note the record shows that, as of verification, more than 50 percent of China First's shares were held by private, individual investors, both foreign and Chinese.

In conducting a *de facto* analysis of China First, we have examined the factors set forth in *Silicon Carbide*. China First's sales documentation and correspondence supports the conclusion that no government entity exercises control over China First's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that China First has independent authority to negotiate and sign contracts and other agreements, such as joint ventures.

China First holds a general shareholders meeting annually. At this meeting the shareholders elect the Board of Directors, each of whom serves a three year term. Employees vote the shares held by the government in selecting the Board. The Board of Directors in turn selects the company's management. Because the state-owned shares represent a minority interest and because those shares are, in fact, voted by employee shareholders, the evidence supports the conclusion that the government does not control selection of the Board of Directors or other members of management.

We also found that China First retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through an examination of China First's financial and accounting records, and bank accounts. The evidence supports the conclusion that, under the corporate structure of China First, the government has not exerted control through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

Conclusion

In the case of Guangdong, SFTC, Lansheng and China First, the record demonstrates an absence of *de jure* and *de facto* government control. Accordingly, we determine that each of these exporters should receive a separate rate.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (*See, e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 511680 (October 7, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, the Department has treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, respondents have urged the Department to employ the alternative methodology provided in section 773(c)(2) of the Act, *i.e.*, the export price of a pencil from a comparable market economy. In particular, they have argued that because the primary input into PRC pencils, lindenwood, cannot be valued exactly, the Department is compelled to employ the alternative valuation of FMV. Petitioner argues against using the alternative methodology for FMV. Instead, petitioner suggests that prices for jelutong wood be used to value lindenwood, as the Department did in the preliminary determination.

We have determined that the absence of a price for lindenwood in the surrogate country does not preclude us from using the factors of production methodology. However, we have not used the jelutong prices relied upon in our preliminary determination. For further discussion of the arguments regarding the alternative methodology, *see*, Comment 1, below.

Surrogate Country

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) significant producers of comparable merchandise. Of the countries that have been determined to be economically comparable to the PRC, evidence on the record of this case indicates that India, Pakistan and Indonesia are significant producers of pencils (see, Calculation Memorandum, attachment 1, October 31, 1994). In order to select the surrogate from among these countries that meet the statutory criteria, we have reviewed the data that has been submitted and that we have been able to develop on factor values from these countries.

With respect to Pakistan, we have not located data for a significant number of the Chinese production factors. Among the missing factors are: certain packing materials, polyvinyl acetate, semi-skilled labor, SG&A, profit, and all transportation rates except trucking for a distance of 1000 km. For Indonesia, we have data for even fewer factors. In India, we have factor values for all inputs (other than wood, as discussed below, and tallow). Moreover, we have obtained 1993 values for India, the most recent time period available for data from any surrogate country. Because India meets the statutory criteria for surrogate country selection, and because we have more complete Indian data, we determine that India is the preferred surrogate market in the instant investigation. Therefore, except for certain inputs described below, we have relied on Indian prices to value the Chinese factors of production.

Fair Value Comparisons

To determine whether sales of pencils from the PRC to the United States by China First, Guangdong, SFTC, and Lansheng were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We do not have verified factors of production for a portion of SFTC's U.S. sales discovered at verification. For these sales, we have applied best information available (BIA). (*See* "Best Information Available" section of this notice.)

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country. In two instances, sales were made on a C&F basis. For these sales, we adjusted for freight expenses.

Foreign Market Value

As discussed above, we calculated FMV, based on the factors of production reported by the factories which produced the subject merchandise for the three exporters. The factors used to produce pencils include materials, labor, and energy. We made adjustments to materials usages to account for the resale of scrap materials, where applicable.

In determining the appropriate surrogate value to assign to each factor of production, we used publicly available published information (PAPI), where possible. The PAPI used was: (1) an average non-export value; (2) most current; (3) product-specific; and (4) tax-exclusive.

The following materials were not valued in India:

Wood

The wood used by the Chinese producers in pencil production (Chinese lindenwood) has been the subject of much debate in this investigation. Wood is the most significant input into a finished pencil. (For the domestic industry, it accounts for approximately 50 percent of the cost.)

Prior to the preliminary determination, we consulted industry experts who told us that jelutong was "quite similar" to lindenwood and that "in price, property and uses, American basswood is nearly indistinguishable from lindenwood." Although we had this information at the time of the preliminary determination, we did not have a surrogate value for basswood. Instead, we used a basket category of woods imported into India to assign a value to lindenwood. This category did not include lindenwood or basswood,

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but did include jelutong, which the record indicated was used to produce pencils in Indonesia.

Since the preliminary determination, both respondents and petitioner have provided information on the price and quality of basswood, the most similar wood to lindenwood. The prices are those charged by U.S. producers to U.S. customers. Despite extensive research, no surrogate market or world prices for basswood have been found.

Having determined that basswood is most similar to lindenwood, we have used U.S. basswood prices to value the wood input. Although section 773(c)(4) directs the Department to value the NME factors of production in a comparable surrogate country that is a significant producer of comparable merchandise, this is required only to the extent possible. In this case, where wood is such a significant input and where the only alternative to the basswood price, a price for jelutong, is so much higher than the most comparable wood, we have determined that it is appropriate to use the most comparable wood even though we can only find prices for this input in the United States.

Erasers, Ferrules and Paint

Respondents provided information which led us to question the quality of the Indian PAPI for erasers, ferrules, paint, animal glue and foil. Based on a comparison of the Indian values to the Pakistani values and the values provided in the petition for these inputs (the only other sources of prices for these inputs), we determine that the Indian values for ferrules, erasers and paint were aberrational. Therefore, we valued these factors using Pakistani import statistics (see, Calculation Memorandum, October 31, 1994).

Tallow

Tallow is not imported or, to the best of our knowledge, sold in India or Pakistan. Therefore, we have valued this input in Indonesia. As discussed above, Indonesia has been found to be economically comparable to the PRC and to be a significant producer of pencils.

Non-material Inputs

We used Indian transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as BIA, the most expensive distance/modes combination (*i.e.*, the longest truck rates) that was available in India. We were unable to obtain values for two modes of transportation (man-drawn carts, inland water transport). Therefore, we assumed that these forms were competitive with trucking rates over similar distances.

To value electricity, we used PAPI from the Asian Development Bank on Indian rates. To value coal and natural gas, we used Indian Import Statistics for 1993, the Monthly Statistics of Mineral Production, and the Indian Bureau of Mines dated November 1992, respectively. To value water, we used the Indian industrial schedule from the *Water Utilities Data Book*.

For all material and energy values that were for a period prior to the POI, we adjusted the factor values to account for inflation between the applicable time period and the POI using wholesale price indices published in *International Financial Statistics* (*IFS*) by the International Monetary Fund.

To value labor amounts, we used the International Labor Office's *1993 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor values to account for inflation between the applicable time period and the POI using the consumer price indices published in *IFS*.

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin* (RBI), December 1993. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. However, we used the statutory minimum of eight percent for profit because the profit percentage derived from the RBI data was less than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. Packing materials were valued using Indian PAPI. These prices were adjusted to include the freight costs for the delivery of packing materials to the factories producing pencils.

Best Information Available

Because information has not been presented to the Department to prove otherwise, only SFTC, Guangdong, China First and Lansheng are entitled to separate dumping margins. Other exporters identified by the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. Lacking responses from these companies, we are basing the PRC country-wide rate on BIA in accordance with section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina* (*Argentina Steel*), 58 FR 7066, 7069–70 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Here, the non-responding companies failed to cooperate. Therefore, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and on the basis of petitioner's updated information submitted in May 1994. Also, in recalculating the petition rate, we substituted the U.S. basswood price discussed above for the wood value used by petitioner. In making this change we relied on PRC wood usage factors because of the possibility that the amount of wood used to produce a pencil will vary depending on wood type.

We are also applying BIA to a portion of SFTC's sales. SFTC was cooperative in this investigation. However, we are lacking the necessary data for FMV calculations for three sets of pencil sales. We do not find these deficiencies sufficient to call into question the overall reliability of SFTC's data. Therefore, we are applying partial BIA to these sales. As partial BIA, we applied the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the examination of relevant sales and financial records, and original source documentation.

Continuation of Suspension of Liquidation

For China First and Guangdong we calculated a zero margin. Therefore, in accordance with 19 CFR 353.21 and consistent with *Jia Farn Manufacturing Co., Ltd.* v. *United States*, Slip Op. 93–42 (March 26, 1993), we will exclude from the application of any order issued imports of subject merchandise that are sold by either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin. Under the NME methodology, the zero rate for each exporter is based on a comparison of the exporter's U.S. price and FMV based on the factors of production of a specific producer (which may be a different party). The exclusion, therefore, applies only to subject merchandise sold by the exporter and manufactured by that specific producer. Merchandise that is sold by the exporter but manufactured by other producers will be subject to the order, if one is issued. This is consistent with *Jia Farn* which held that exclusion of merchandise manufactured and sold by respondent did not cover merchandise sold but not manufactured by respondent. Therefore, merchandise that is sold by China First or Guangdong but produced by another producer is subject to suspension of liquidation at the "all others" cash deposit rate.

In accordance with sections 733(d)(1) and 735(c)(4) (A) and (B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994, (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**), except entries of the excluded merchandise described above. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	Weighted-average margin percentage
China First/Company A	0.00
China First/Any other manufacturer	44.66
Guangdong/Company B	0.00
Guangdong/Any other manufacturer	44.66
SFTC	8.31
Shanghai Lansheng	17.45
All Others	44.66

Critical Circumstances

On August 22, 1994, the Department issued its preliminary determination that critical circumstances exist in this investigation with respect to pencils exported by SFTC, China First, Lansheng, and "all others."

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (1) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Because we have determined that Guangdong and China First in connection with their responding suppliers have not sold cased pencils to the U.S. at less than fair value during the POI, we determine that critical circumstances do not exist with respect to these companies. Therefore, we have limited our analysis of critical circumstances to SFTC and Lansheng.

History of Dumping

As stated in our preliminary determination of critical circumstances, in April 1994, the Government of Mexico published an antidumping duty order on certain cased pencils produced and exported from the PRC. On this basis, we determine that there is a history of dumping elsewhere of the class or kind of merchandise under investigation.

Massive Imports

In accordance with 19 CFR 353.16(f) and 353.16(g), to determine whether imports have been massive over a relatively short period of time, we consider: 1) the volume and value of the imports; 2) seasonal trends (if applicable); and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

The U.S. volume and value information submitted by the respondents in this investigation and used by the Department in its preliminary determination of critical circumstances is unchanged. Based on this information, we find that imports of pencils from the PRC have been massive over a relatively short period of time for both SFTC and Lansheng. Also, for the non-responding exporters, we have assumed as BIA that imports have been massive.

Therefore, the statutory criteria for finding critical circumstances have been met for SFTC and Lansheng and all non-responding PRC exporters of pencils.

Interested Party Comments

Comment 1: Respondents argue that section 773(c)(1) of the Act requires the Department to value the specific input used by the PRC producer based on the best available information regarding values in the surrogate country or countries. Absent an acceptable surrogate value for each factor, the Department must consider the use of the exception provided for in the statute at section 773(c)(2) of the Act. This is especially so where, as here, the Department lacks a surrogate value for the single most significant input, lindenwood.

Respondents submit that the Conference Report to what became the Trade and Competitiveness Act of 1988 shows Congress' recognition that in some cases the Department will be unable to develop adequate and usable sources of surrogate factor values (which, in turn, will deprive nonmarket economy producers and exporters of any notion of fairness), requiring resort to the alternative provided in the statute, *i.e.*, export prices of comparable merchandise from an economically comparable country. *See*, Omnibus Trade & Competitiveness Act of 1988—Conference Report, Rep. No. 100–576, 100th Cong., 2d Sess. at 592 (1988). Respondents assert that this Conference Report reflects Congress' desire to provide nonmarket economy countries with some semblance of realism and reasonableness in the determination of their foreign market values.

Petitioner argues that the statute provides a clear preference for the factors of production methodology over the alternative, export prices of

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comparable merchandise from an economically comparable country. Petitioner asserts that the Department can only use the export price alternative if the Department finds that the available information is inadequate for purposes of determining the FMV of the subject merchandise. In this case, the price of jelutong is acceptable for valuing the Chinese wood price.

Petitioner claims further that the Indian export data regarding pencils provided by respondents covers too few pencils and provides no information with respect to the quality of those pencils. Therefore, petitioner contends, the Indian export data provide an inadequate basis for determining FMV. The Department should not reject the adequate and detailed surrogate value data in favor of deficient export data.

DOC Position: The statute states that the Department shall "determine the foreign market value of the merchandise on the basis of the value of the factors of production utilized in producing the merchandise," and furthermore that, "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." *See* section 773(c)(1) of the Act. The Act further provides that, if the Department finds the available information inadequate for purposes of determining foreign market value based on the factors of production, the Department shall base FMV on the price at which comparable merchandise is produced and exported in one or more market economy countries at a comparable level of economic development to that of the nonmarket economy. *See*, section 773(c)(2).

In this investigation, we have determined that we have sufficient information on factor values to rely on the factors of production methodology. Although we do not have a value for the specific wood used by PRC producers, the Department may exercise its discretion in selecting a comparable input by which to value this factor. In *Ceiling Fans From the People's Republic of China: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Reviews; and Amended Final Determination and Order* (59 FR 9956, March 2, 1994), the Department stated that "... section 773(c)(1) of the Act provides for valuation of factors of production on the best available information from an appropriate surrogate country, not on the basis of perfectly conforming information." In this instance, we have evidence that basswood is virtually indistinguishable from lindenwood. Therefore, as explained in FMV section of this notice, we have used basswood as a surrogate value for lindenwood.

Moreover, we are not persuaded that the use of the statutory exception in this investigation would increase the accuracy of our calculations. The comparison of an average Indian export price with each of the several different pencil types exported to the U.S. by the PRC respondents could lead to significant distortions and inherent unfairness. Because the Indian export price may reflect a wide variety of pencil types, PRC exporters selling lower value-added pencils, *e.g.*, raw or semi-finished, could be severely penalized by such an approach. Similarly, PRC exporters of higher value-added pencils, *e.g.*, colored, foil, or designer, could profit.

Absent some workable method for adjusting the average Indian export price to reflect the differences in merchandise exported by the respondents, we cannot agree that the export price methodology yields a better measure of FMV in this case.

Comment 2: Respondents argue that, if the Department does not use the export price of Indian pencils as FMV, then it must reject the use of jelutong as a surrogate for lindenwood.

Wood is the single most significant input used in the production of wooden cased pencils, as petitioner's own figures demonstrate. All respondents use lindenwood exclusively in the production of pencils. Respondents submit that lindenwood is a very low-quality wood with little alternative commercial use. The basket of woods chosen by the Department in its preliminary determination as a surrogate value for lindenwood is a group of tropical timbers, whereas lindenwood is a temperate hardwood. Respondents submit that, at the very least, the basket of woods should include lindenwood. Therefore, respondents argue that the basket category is unacceptable for use as a surrogate for lindenwood.

Petitioner argues that the Department properly relied upon the price of jelutong for valuing the wood input. Based on the evidence developed by the Department, jelutong is "quite similar" to lindenwood. Also, petitioner asserts that jelutong is used to produce pencils.

Petitioner submits that the Department has previously found it appropriate to rely on available information for the price of a similar input material when surrogate information for the identical material is not available. *See, Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China*, 59 FR 28053, 28058 (May 31, 1994). Thus, according to petitioner, because the record demonstrates that jelutong and lindenwood are similar types of wood, jelutong is an adequate surrogate and meets the statutory requirement.

DOC Position: All parties agree that wood is the single most significant input used in the production of wooden cased pencils. Thus, the Department has taken great care in its determination of the appropriate surrogate value for PRC lindenwood. In light of information submitted by both petitioner and respondents and the Department's own research after the preliminary determination, we determine that the value of jelutong and/or the Indian basket category of tropical woods used in the preliminary determination is not an adequate surrogate for lindenwood. We find the jelutong value inappropriate because our research indicates that, although jelutong is used in pencil production, it is an entirely different genus of wood. Jelutong is a tropical soft timber and lindenwood is a temperate hardwood. Simply because both woods are used to produce pencils does not, in our estimation, indicate that they are comparable in quality or value. Indeed, when the price of jelutong is compared to the price of basswood, the wood identified as most comparable to lindenwood, it reveals that the value of jelutong is not comparable.

Moreover, we note that the Indian import value used for logs in the preliminary determination was based on a basket category. The basket category is made up of seven types of wood; three of these are similar in properties and use to lindenwood, four are not as similar. Therefore, even if we were to agree with petitioner that jelutong is an acceptable surrogate for lindenwood, it is questionable whether this basket price even reflects a value for jelutong.

The price used in the preliminary determination for sawn jelutong, in contrast to the price for logs, is a world market price. Therefore, the problem of jelutong is twofold: it is less similar to lindenwood than is basswood and it is reported in a basket category for one of the two forms in which PRC producers purchased lindenwood.

Comment 3: Petitioner argues that, should the Department decide to use a U.S. price for basswood, it should not use the price provided by respondents. Petitioner argues that the type of basswood described in respondents' submission is not suitable for pencil production. Specifically, the information submitted by respondents is for grade 4/4 FAS+ (FAS+ indicates highest quality) basswood, whereas pencil production requires at least grade 12/4. In support of this, petitioner points to a study which it submitted which shows that U.S. producers would use 12/4 and 16/4 basswood.

DOC Position: One PRC producer who supplies pencils to a PRC exporter purchases wooden slats, rather than logs or sawn timber, to produce pencils. Slats are thin pieces of wood that are further processed than logs. The U.S. prices we have for basswood which has been processed beyond the log stage (*i.e.*, sawn lumber) are for grade 4/4 (submitted by respondents) and for grades 12/4 and 16/4 (obtained by the Department). None of these grades corresponds to the actual input purchased by the PRC company in question (e.g. slats).

Lacking information on the specific input used by the PRC producer, we have relied on petitioner's study as indicative of the grades of sawn lumber that would be used to produce pencils. Moreover, we also note that the prices submitted by respondents were for September 1994, after the POI.

Petitioner's submission also indicated that U.S. producers would use FAS+ and 1C (number 1 common) quality wood. Therefore, we averaged the prices during the POI of 12/4 and 16/4 basswood at FAS+ and 1C quality levels.

The other PRC producers in this investigation purchase logs of lindenwood for their pencil production. We obtained basswood log price listings during the POI from another publication (*see*, Calculation Memorandum, October 31, 1994) and we used POI prices for log basswood for these producers.

Comment 4: Respondents argue that the Department should review its determination of India as the most appropriate surrogate, and in light of new information, determine that Pakistan is the most appropriate surrogate. Specifically, a comparison of revised 1994 World Bank statistics in the *World Development Report* shows that Pakistan's economy is more comparable to that of the PRC than India's, based on per capita GNP and growth rates. Moreover, the Pakistani factor value data is more timely, *i.e.*, closer to the POI, and reflects larger, "commercially viable" import quantities.

Petitioner claims that India should remain the preferred surrogate because the Department has consistently determined it to be the appropriate surrogate for the PRC, based on the criteria set forth in section 773(c)(4) of the Act. Furthermore, according to petitioner, the statute does not require that the Department choose the *most* comparable surrogate, but rather only that the Department base its surrogate determination on a country: (1) whose economy is comparable to that of the PRC, and (2) which is a significant producer of comparable merchandise. In petitioner's view, Pakistan does not meet the second criterion. Finally, petitioner argues that the Pakistani factor values placed on the record by respondents do not cover all the inputs.

DOC Position: Based on World Bank data, the Department has identified a number of countries that are at a level of economic development comparable to the PRC. Among these comparable countries are Pakistan, India, and Indonesia. We have also determined that Pakistan, India, and Indonesia are significant producers of pencils (see, Concurrence Memorandum, October 31, 1994). Therefore, all three countries meet the statutory criteria for being selected as the surrogate in this investigation.

In this case, India is the country where, in comparison to other potential surrogates, we have been able to obtain values for the overwhelming majority of factors. (Pakistani values were available for approximately half the factors, Indonesia less than that.) Therefore, we have chosen India as our primary surrogate and we are valuing most of the factors there. This is consistent with our practice of attempting to use a single country, where possible, for valuing factors. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 29705 (July 6, 1992).

We also note that we have been able to obtain Indian data that is contemporaneous with the Pakistani data submitted by respondents. Therefore, while we agree that "timeliness" of the data may be a reason to select one potential surrogate over another, that issue does not arise in this case. (Respondents' comment regarding "commercially viable" amounts is addressed in the context of the Department's decisions with respect to specific factors.)

Comment 5: If the Department continues to use India as the surrogate country, respondents argue that certain Indian factors data are skewed. Therefore the Department should reject these Indian factors in favor of more reasonable, commercially justifiable and current data submitted by respondents. Specifically, they contend that Pakistani factor values for erasers, ferrules, plastic foil, animal glue and paint represent more reasonable surrogate values than the information used by the Department in its preliminary determination. They state that the time period covered by the Pakistani data is broader and more recent, the Pakistani values are based on more commercially viable import volumes, and for erasers, ferrules and animal glue, the Pakistani values are more aligned with the U.S. industry cost data submitted by petitioner.

Petitioner argues that Pakistani data represent a larger volume of merchandise simply because Pakistani tariff categories are broader than Indian tariff categories, which are based on the HTS. Petitioner further asserts that it is the Department's practice to use data from a single country where possible in valuing factors of production. Finally, petitioner claims that it is meaningless that some of the Pakistani data are closer to the costs of the U.S. pencil industry. The United States is not a surrogate country, therefore, U.S. prices are irrelevant to the calculation of FMV.

DOC Position: Although we have selected India as the appropriate surrogate country in this investigation, this does not mean that we are required to use those Indian factor values that we find to be aberrational. We have analyzed the Indian factor values for erasers, ferrules, paint, animal glue, and plastic foil. We compared these factor values with Pakistani and U.S. values based on U.S. costs taken from the petition and found the Indian factor values for erasers, ferrules and paint to be aberrational. (*See*, Calculation Memorandum, October 31, 1994.) Therefore, we have used import statistics from Pakistan, another country which is economically comparable to the PRC and which is a significant producer of comparable merchandise, in order to value these three factors as accurately as possible.

We agree with petitioner that, when possible, the Department's preference is to use a single surrogate market to value the factors of production. However, as stated above, when the facts of a case indicate that this will not permit accurate valuation of the input, we are not required to do so. Where necessary, we have used factor values from muitiple countries in a number of recent NME investigations. *See, Final Determination of Sales at Less Than Fair Value: Paper Clips from the People's Republic of China* 59 FR 51168 (October 7, 1994); *Final Determination of Sales at Less Than Fair Value: Headwear from the People's Republic of China* 54 FR 11983 (March 23, 1989); and *Final Determination of Sales at Less Than Fair Value: Shop Towels from the*

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People's Republic of China 55 FR 34307 (August 22, 1990).

We disagree with petitioner's claim that U.S. prices are irrelevant. Where, as here, questions have been raised about PAPI with respect to particular material inputs in the chosen surrogate, it is the Department's responsibility to examine that PAPI. To make this examination, we relied on the data on the record—Pakistani and U.S. values. For these inputs, U.S. values served to corroborate the claim that certain Indian PAPI for these factors was unreliable.

Comment 6: Petitioner argues that the Department should use nitrocellulose-based lacquer classified under HTS item number 3208.90.09 to derive a value for the lacquer used by respondents in pencil production. Petitioner submits that given the properties of the two HTS categories of lacquer that have been considered by the Department to value the PRC producer's lacquer, nitrocellulose-based lacquer is the most appropriate.

DOC Position: As stated above, we have found the Indian price for paint (lacquer) to be aberrational and have, therefore, used Pakistani data to value paint. Pakistani import statistics are reported in the Standard International Trade Classification (SITC) format which is a United Nations sanctioned nomenclature. Due to the nature of the SITC system, there are fewer product categories, which means that a greater variety of items is included in each category. Pakistani data on specific subcategories of lacquers are unavailable. The SITC subheading we used was 5334202 which encompasses both the HTS subheading proposed by petitioner and the one used by the Department in the preliminary determination. The description of SITC subheading 5334202 is "lacquers."

Comment 7: Petitioner argues that the Department should rely on the actual expense and profit percentages for the Indian pencil industry, rather than the amounts in the petition, for the calculation of the "all others" rate. The actual data concerning expense and profit percentages is the best available information and, therefore, would provide an "all others" FMV that better reflects the actual surrogate values for these items.

Petitioner further states that the Department should adjust the "all others" rate to reflect transportation costs reported by the Chinese respondents. Petitioner suggests that the Department apply the highest transportation cost, port handling and loading charge, and containerization fee reported by respondents. Petitioners submit that non-responding PRC exporters should not be rewarded for their non-cooperation by receiving the benefit of a margin that does not reflect all costs.

DOC Position: We disagree with petitioner. We do not believe it is appropriate to adjust petition data only where the values would increase. Although an adverse inference is drawn when exporters do not cooperate, this does not mean that the BIA rate should be as high as possible.

In this case we have made one adjustment to the petition data based on surrogate values developed in the course of this investigation. This adjustment was to revalue the wood input using basswood prices. We made this adjustment because, based on what we have learned, the most similar wood to lindenwood is basswood. Having rejected jelutong as a surrogate for lindenwood, it would not be appropriate to use jelutong even in a BIA situation.

Comment 8: Petitioner argues that the Indian import data do not convey the full value of the materials in India because they exclude Indian customs tariffs applicable to these materials. In valuing the imported materials, the Department should apply the *ad valorem* tariff rate imposed by the Indian government.

Respondents argue that both India and Pakistan have drawback schemes whereby exporters are reimbursed for or exempted from the payment of import duties collected on inputs. Thus, the added cost of import duties is not one which would be incurred, and it should not be added to the already inflated values represented in surrogate values derived from Indian import statistics.

DOC Position: We disagree with petitioner. The purpose of the factors methodology is to construct the FMV of NME-produced goods using values in the surrogate country. Theoretically two costs could be calculated—the cost for a domestically sold pencil and the cost of an exported pencil—if the country permits duty free importation of inputs for exports. We are constructing the value of the exported merchandise, therefore, it is appropriate to use the costs the surrogate producer would face in producing exported merchandise. Consistent with our standard practice in this regard, we are not adding the Indian import duties to the values reported in the published Indian import statistics as those duties would have been rebated upon export of the finished products. *See, Final Determination of Sales at Less than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833, 48841–42 (September 20, 1993).

Comment 9: Petitioner claims that respondents belatedly submitted Pakistani import data covering certain of the raw materials used in pencil production on September 13, 1994. Petitioner argues that this information should be rejected by the Department because (1) the time for submitting surrogate value information had long since passed, and (2) under the Department's regulation, factual information submitted after the commencement of verification is untimely and should be rejected. *See* 19 CFR §§ 353.31(a)(1)(i),(b)(3). Petitioner contends that the information was not submitted in response to a current request by the Department, and respondents did not request or receive an extension of the long-expired previous requests for surrogate information. Thus, this information does not fall into one of the narrow exceptions for late submissions included in 19 CFR §§ 353.31(b)(2), (b)(3), of the Department's regulation.

DOC Position: Contrary to petitioner's contention, respondents requested and received an extension by telephone (*See,* Memorandum to File from Team dated September 28, 1994), for the submission of PAPI. Petitioner, in fact, was also granted an extension for the submission of PAPI once an extension was requested.

Comment 10: At verification, it was discovered that a U.S. producer provided one manufacturer with a material input free of charge. Petitioner argues that the Department should assign a value to this input, regardless of whether it was provided free of charge. The Department is required by the statute to include all inputs in the construction of FMV for comparison to U.S. sales.

Respondents contend that the situation in the instant investigation is analogous to a situation where a U.S. customer has a tolling arrangement with a foreign producer. Respondents argue that in such situations the Department has consistently compared the price charged to the U.S. customer—exclusive of materials supplied by the customer to the price charged for similar arrangements in the home market. *See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* 52 FR 812 (January 9, 1987). Respondents point out that in *Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip from Korea* 51 FR 40834 (November 10, 1986), the Department stated that "[i]f we were to compare the prices of tolled to non-tolled sales, extensive adjustments would have to be made. For example, if the U.S. transaction is a non tolled sale, we would have to adjust home market prices for non-tolled sales so that they would reflect in addition the cost of the customer supplied inputs. In the opposite situation, home market prices for non-tolled sales would somehow have to be adjusted downward." Respondents conclude that in this case the Department is constructing a value and not adjusting a price; therefore, any materials supplied by a U.S. customer should not be included in the constructed FMV.

DOC Position: We agree with respondents. The factors of production methodology constructs the value of the subject merchandise as exported. We verified that a certain input in one of the pencils sold to a certain customer was provided free of charge to the producer/exporter. If we were comparing a constructed FMV inclusive of this free input to a U.S. sale to a different customer who had not provided the input, it is possible that an adjustment to FMV would have been warranted. However, this is not the case. We compared the constructed factor value for this pencil type with U.S. sales of this type of pencil to only the customer that provided the input. Therefore, contrary to petitioner's argument, we have correctly valued the NME producers factors of production for this merchandise.

Comment 11: Petitioner argues that the verification report shows numerous substantive material errors in SFTC's questionnaire response. These serious deficiencies warrant the application of comprehensive BIA for SFTC.

Respondents argue that the Department should not resort to total BIA for SFTC as it did in the preliminary determination in this investigation. Respondents argue that SFTC has cooperated fully throughout this investigation and, therefore, the Department should calculate a margin based on the data supplied by the company and verified by the Department.

Respondents argue that where information is either missing or unavailable, the Department should not seek unnecessarily to punish SFTC given the company's cooperative approach in this investigation. The following paragraphs outline the specific data problems and respondents' suggested treatment of these problems.

Prior to verification, the company discovered that it had misreported the pencil producers for a number of transactions. Respondents point out that, upon the commencement of verification, the verifier was informed of this issue. Since, as a result of this misreported information, SFTC was unable to provide factors data for the actual producers for certain transactions, respondents contend that BIA, if applied, should be the highest calculated margin for any of SFTC's pencil sales of similar merchandise, if available. Respondents contend that in the case where similar merchandise is not available, BIA, if applied, should be the highest calculated margin for any SFTC sale.

In addition, at verification the Department found that SFTC incorrectly reported two different suppliers for one transaction. Respondents argue that this discrepancy is minor because SFTC reported and the Department verified data from both suppliers. Therefore, the Department should simply use the verified factors data for the correct supplier, rather than resorting to BIA.

Respondents argue that the discovery at verification that two of SFTC's shipments to the U.S. were shipped C&F, and not FOB, is an oversight of little significance. The data were collected at verification and can now be used to calculate the correct freight for these sales. Similarly, it was discovered that two invoice numbers were incorrect, as reported. Respondents submit that these were typographical errors of no significance.

Finally, at verification it was discovered that SFTC inadvertently excluded a sale of yellow pencils it thought was produced and supplied by a producer whose pencils it was previously permitted to exclude from the sales listing (*See* Memorandum from Elizabeth Graham to Barbara Stafford, dated April 7, 1994). Respondents argue that the Department should use the actual producer's factors data to calculate the margin for this sale. Respondents submit that the Department has paint usage for this supplier, that whether the paint is white or yellow is of no consequence, and that the Department has the appropriate usage rates for ferrules and erasers.

In its supplemental questionnaire response dated May 17, 1994, SFTC notified the Department that portions of reported raw pencil sales had been supplied by a factory previously thought to have supplied only yellow pencils. Respondents submit that, as BIA, the Department should use the highest margin calculated for other sales of raw pencils.

A small number of sample shipments not reported in SFTC's sales response were noted in the sales verification report (*See* SFTC Verification Report, at 5 and Exhibit 11). These shipments were never sold. Therefore, in respondents' view, these invoices should be considered properly excluded from SFTC's sales listing.

DOC Position: Although we found at verification that SFTC had a number of misreported pieces of information, SFTC has made every effort to cooperate in this investigation. In addition, as noted above, we do not find that these deficiencies are sufficient to call into question the overall reliability of SFTC's data. Therefore, contrary to petitioner's assertion, we determine that SFTC's response does not warrant the application of total BIA and we applied partial BIA as described in the BIA section of this notice. However, the partial BIA methodology suggested by respondents would result in assigning a zero margin for sales for which we are missing the necessary factors data. Because such BIA would not be adverse, we find it inappropriate. We are, therefore, applying as partial BIA the petition rate.

With respect to our finding at verification that two U.S. sales were made on C&F terms rather than FOB as reported, we simply adjusted SFTC's freight expenses accordingly.

At both the SFTC verification and the verification of its U.S. sales office, we noted sample shipments of raw pencils. It is the Department's practice to exclude sample sales from its calculations, if evidence exists that the sample sales were not made in substantial quantities. *See, e.g., Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan,* 58 FR 30144 (May 26, 1993), and *Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes from the United Kingdom* 58 FR 3253, (January 8, 1993). In this case, we found no evidence that SFTC routinely offers samples to its U.S. customer. Rather, at verification, we established that only a small quantity of raw pencils were provided to the U.S. customer for quality testing. Therefore, we have not treated these sample shipments as U.S. sales.

Comment 12: Respondents argue that the Department was incorrect in its preliminary determination of critical circumstances with respect to imports of pencils into the U.S. from China First, SFTC, and Lansheng. Respondents argue that critical circumstances are not present.

Respondents assert that, on their face, the Mexican dumping findings relied on by the Department are incredible (451 percent) and should be disregarded with respect to the requirement that a history of dumping be found. Furthermore, the Mexican finding was based on BIA, and

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the only Chinese producer identified was Guangdong. According to the ITC record, none of the other PRC respondents in the instant investigation was named or participated in the Mexican case or exported significant quantities of pencils to Mexico. Accordingly, China First, SFTC or Lansheng have no history of dumping.

Absent history of dumping, importer knowledge of dumping is required in order for the Department to find critical circumstances. Respondents assert that the final determination in this investigation will reflect dumping margins much lower than those established in the preliminary determination, thus eliminating any suggestion that importers had the required knowledge of dumping.

Finally, respondents contend that the statutory phrase "relatively short period of time" was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison. By comparing equivalent periods of time prior to and after the filing of the petition, the Department has exceeded its statutory authority. Therefore, the Department should modify its methodology for the final determination.

Petitioner argues that respondents have not explained why Mexican antidumping proceedings are inherently suspect. The size of the margins found in the Mexican proceeding is not relevant; what is relevant is that Mexico, a signatory to the General Agreement on Tariffs and Trade (GATT) Antidumping Code, issued an affirmative finding of dumping. This meets the statutory standard for history of dumping. It is immaterial whether a particular foreign exporter is named in a third country antidumping finding, or does not export to that third country.

Petitioner takes issue with respondents' claim that the "relatively short period of time" phrase "was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison." Congress identified the statutory "relatively short period" as that between the commencement of an investigation and the preliminary determination. H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 63 (1979). The Department's regulation comports with the legislative purpose. *See*, 19 CFR 353.16(g). Respondents have failed to demonstrate that the regulation is neither reasonable nor a proper exercise of the Secretary of Commerce's discretion. *See Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983). Petitioner argues that in order to make its determination, Commerce must compare the post-filing period with a similar "normal" period before the case began.

Finally, petitioner submits that the statute directs the Department to determine whether "there have been massive imports of the merchandise which is the subject of investigation over a relatively short period." *See* section 735(a)(3) of the Act. Petitioner argues that the Department is directed to analyze the subject merchandise as a whole, and that there is no provision for the exception of individual exporters when the massive imports criterion is met. Thus an affirmative final critical circumstances determination is warranted for all exporters, including Guangdong in this investigation.

DOC Position: We disagree with respondents' assertion that the Mexican antidumping determination with respect to pencils from the PRC should be disregarded by the Department. On the contrary, the Mexican determination meets exactly the statutory requirement under section 733(e)(1) of the Act with respect to a history of dumping of the class or kind of merchandise under investigation in the United States or elsewhere. Moreover, with respect to respondents' assertion that the Mexican finding identified only one respondent, we note that the order exists as to pencils from the PRC and not as to one particular respondent. Therefore, we do not believe that we should single out only those producers specifically mentioned in the Mexican finding.

We disagree with respondents' contention that the Department exceeded its statutory authority in selecting an equal period of time before and after the filing of the petition in this investigation. The Department acted in accordance with the requirements of the statute and past practice by examining equal time periods to determine whether or not imports of pencils from the PRC have been massive over a relatively short period of time. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China*, 59 FR 39727 (August 4, 1994) and *Final Determination of Sales at Less Than Fair Value: Industrial Belts from Italy*, 54 FR 15483 (April 18, 1989).

Finally, we disagree with petitioner's assertion that the Department is statutorily required to determine the existence of critical circumstances on an aggregate basis. When company-specific information is available, we conduct our analysis on a company-specific basis. In the event that such information is not available, we use the most specific information available in making our critical circumstances determination. In this investigation, we have reached our critical circumstances determination on a company-specific basis because respondents provided the information which permitted us to do so.

Comment 13: Petitioner argues that the Department should explicitly provide in its final determination that Chinese pencils transshipped through Hong Kong are within the scope of this investigation.

DOC Position: The scope of the order, if one is issued, will cover certain cased pencils produced in the PRC. The fact that the PRC pencils are transshipped through a third country en route to the U.S. would not alter the fact that they are PRC-produced pencils subject to the order. Therefore, Chinese produced pencils that are transshipped through Hong Kong (or any other country) are within the scope of this investigation and are subject to any antidumping duties imposed as a result of this proceeding.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing U.S. Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27667 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–796–601]

Carbon Steel Wire Rod From Zimbabwe; Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1994, the Department published in the **Federal Register** (59 FR 38584) its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27679 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–005]

Frozen Concentrated Orange Juice From Brazil; Intent To Terminate a Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Terminate a Suspended Countervailing Duty Investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil. Domestic interested parties who wish to object to the termination of the suspended countervailing duty investigation must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Linda Ludwig, Office of Agreements Compliance, Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 3833; telefax: (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department published in the **Federal Register** an agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 8839). The Department has not received a request to conduct an administrative review of the agreement suspending this countervailing duty investigation on frozen concentrated orange juice from Brazil for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii)(1994), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and will terminate the agreement and the underlying suspended investigation if no domestic interested party objects to termination or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by section 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to terminate this suspended countervailing duty investigation.

Opportunity to Object

No later than 30 days after the publication date of this notice, domestic interested parties, as defined in section 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to terminate this suspended countervailing duty investigation. Any submission objecting to a revocation must contain the name and case number of the proceeding and a statement explaining how the objecting party qualifies as a domestic interested party under section 355.2(k)(3), (4), (5), or (6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties object to the Department's intent to terminate the suspended investigation, we shall conclude that the suspension agreement is no longer of interest to interested parties and shall proceed with the termination.

This notice is published in accordance with 19 CFR 355.25(d)(4)(i).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27666 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–614–501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Determination Not To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand.

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance,

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Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1994, the Department published in the **Federal Register** (59 FR 38584) its intent to revoke the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation and no interested party requests an administrative review by the last day of the fifth anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke this countervailing duty order. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27678 Filed 11–7–94; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 102794B]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will hold separate meetings to discuss the Conch Fishery Management Plan (FMP).

The SSC will meet on November 22, 1994. The AP will meet on November 23, 1994. The meetings will be held at the Pierre Hotel, San Juan, PR. Both meetings will begin at 10 a.m. and will adjourn at 4 p.m.

The meetings are open to the public, and will be conducted in the English language. However, simultaneous translation (English-Spanish) will be available at the AP meeting.

Fishers and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: November 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27655 Filed 11–7–94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 102794C]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council and its Administrative Committee will hold separate meetings. The Council will hold its 83rd regular public meeting to discuss the Draft Queen Conch Fishery Management Plan, among other topics.

The Council will convene on November 30, 1994, from 9 a.m. until 5 p.m. and on December 1, from 9 a.m. until approximately 12 noon.

The Administrative Committee will meet on November 29, 1994 from 2 p.m. until 5 p.m., to discuss administrative matters regarding Council operation.

Both meetings will be held at the Conference Room of the Parador Villa Parguera, in La Parguera, Lajas, PR.

The meetings are open to the public, and will be conducted in English. However, simultaneous translation (Spanish-English) will be available during the Council meeting (November 30 through December 1). Fishermen and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918; telephone: (809) 766–5926, at least 5 days prior to the meeting date.

Dated: November 2, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27656; Filed 11–7–94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 102894B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit No. 813 (P523).

SUMMARY: Notice is hereby given that Mr. Adam S. Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, has requested a modification to permit No. 813.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 813, issued on February 1, 1993 (58 FR 7548), and modified on August 2, 1993 (58 FR 42300), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 813 authorizes the Permit Holder to potentially harass up to 1,000 humpback whales (*Megaptera novaeangliae*) during the course of playback experiments and photo-identification/observational studies through September 30, 1994. On September 20, 1994, notice was published (59 FR 48299) that the Permit Holder was requesting: An additional 1-year extension of the permit, authorization to conduct the research off the island of Kauai rather than Hawaii, and authorization to conduct playback experiments on sperm whales (*Physeter macrocephalus*). The Permit Holder is now amending that modification request for authorization to harass the following species incidental to the proposed playback experiments on humpback and/or sperm whales: Bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), green sea turtles (*Chelonia mydas*), leatherback turtles (*Dermochelys coriacea*), and hawksbill turtles (*Eretmochelys impricata*).

Dated: November 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27595; Filed 11–7–94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 101994A]

Small Takes of Marine Mammals Incidental to Specified Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Washington State Department of Corrections (WDOC) for authorization to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound. Under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the WDOC to incidentally take by harassment a small number of harbor seals in the vicinity of Gertrude Island for a period of 1 year, provided certain mitigation measures are incorporated into the project.

DATES: Comments and information must be received no later than December 8, 1994.

ADDRESSES: Comments on the application should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and the Environmental Assessment (EA) may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Brent Norberg, Northwest Regional Office at 206–526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if the Secretary finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> * * * any act of pursuit,torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Background of Request

The Still Harbor Dock Facility is utilized by the WDOC as a foul weather landing facility for the McNeil Island Corrections Center.[1] Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major renovation in order to maintain a safe, functional facility. The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 520 ft long by 20 ft wide and pierhead 165 ft long by 35 ft wide; a new 70 ft long by 30 ft wide concrete float with gangway and steel guide pile system; a new 50 ft long by 48 ft wide boathouse and concrete floats with gangway and steel guide pile system; and new waterlines, electrical power, and lighting. All new structures will be constructed within the footprint of the existing facility. Approximately 525 steel and timber pilings will be removed and replaced with approximately 152 new concrete, steel, and plastic piles. Additional information on the dock facility and the corrections center in general can be obtained by referring to the Final Environmental Impact Statement published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (Chapter 43.21C, Revised Code of Washington).

[1] The Quitclaim Deed which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population.

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Summary of Request

On August 18, 1994, the WDOC applied for an authorization under section 101(a)(5)(D) of the MMPA, for the take of a small number of harbor seals by harassment incidental to the demolition of the existing dock facility and the driving of approximately 152 concrete, plastic, and steel piles (90 concrete, 40 plastic, and 22 steel) of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound, WA. In an effort to minimize noise from these activities, no explosives will be used for demolition and each concrete and plastic pile will be water jetted several feet into the substrate, then driven the final 3 ft into the set position. The 22 steel piles must be driven the entire depth (30 ft) to meet load requirements. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile driving activities are anticipated to be completed in two season's specified work window from November 1 to February 15, 1994–95, for demolition and November 15 to February 15, 1995–96, for pile driving. However, because an authorization issued under section 101(a)(5)(D) of the MMPA is limited to a maximum of 1 year, a second application from the WDOC will be necessary to commence pile driving and construction of the dock facility. Therefore, this small take authorization, if granted, will only cover the demolition of the collapsed portion of the existing pier facility.

Alternatives to the Proposed Action

No alternative options for the foul weather dock and moorage have been identified by the WDOC for McNeil Island. Without the availability of the foul weather dock, prisoners, visitors, staff and supplies would be unable to land on the island until the weather cleared. In addition, management of McNeil Island by the state as a wildlife preserve and sanctuary prohibits any new road construction for an alternative dock location under the Wildlife Restriction terms in the Quitclaim Deed of the property.

Harbor Seals

The harbor seal (*Phoca vitulina*) is the only marine mammal species anticipated to be taken by the demolition of the Still Harbor Dock Facility. Gertrude Island is a low-tide, haulout, and rookery used by harbor seals of various ages. The southern part of the island is located approximately 1,100 ft from the Dock. The type of taking anticipated will be incidental harassment caused by the noise of demolition work. It is anticipated that the seals may be disturbed upon initiation of demolition activities on a daily basis, until they become acclimated to the activity. The number of seals disturbed will vary with tidal elevation at the time of initiation of the activity and is anticipated to be a subset of the peak total counts.

Harbor seals are the most abundant pinniped in Washington State. Since passage of the MMPA in 1972, harbor seal populations in the inland waters of Washington have increased significantly. From 1983 to 1992, the Washington inland waters stock of harbor seals increased at an annual rate of 6.1 percent (NMFS, 1994; Huber *et al.*, in prep.).[2] Boveng (1988) and NMFS (1991) estimated the minimum harbor seal population for the state's inland waters to be 6,062. More recently, NMFS (1994) estimates the inland population at 13,833 giving it a minimum population size estimate of 13,053. Puget Sound pup counts numbered 35 in 1977 and showed a +.22 annual rate of change to 142 pups in 1984 (NMFS, 1992). South Puget Sound pup counts are presently increasing at a +.58 annually from 365 total (25 pups) in 1984 to 706 total (78 pups) in 1992 (NMFS data). Harbor seals occupy all nearshore areas of Puget Sound, including McNeil and Gertrude Islands throughout the year. Current data from the Washington Department of Fish and Wildlife (WDFW) and NMFS on Gertrude Island total seal counts over the last 5 years (1988–1993) indicate peak use in September and the lowest use in February. The most current data on maximum numbers of harbor seals using the Gertrude Island haulout during the demolition work window varies from 215 to 634, depending on the month (NMFS data). Seasonal increases at Gertrude Island have been ascribed to the onset of pupping and molting seasons, and a movement of seals from other haulout sites as disturbances increase during the summer (Jones and Stokes, 1989). The pupping season for the Gertrude Island herd extends from late July to late September, and the molting season extends from early October to early December (Newby, 1971; Skidmore and Babson, 1981– both as cited in Jones and Stokes, 1989).

The impact to the harbor seal stock would be disturbance by sound which is anticipated to result in a negligible short-term impact to small numbers of harbor seals. When harbor seals are frightened by noise, or the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the waters. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981 both as cited in Jones and Stokes, 1989). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months as use of the dock facility increases as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed below) under an MMPA Incidental Harassment Authorization are expected to reduce any impacts to a negligible level.

There has been no known subsistence use of the McNeil Island area or Gertrude Island.

Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC and proposed for inclusion in the Incidental Harassment Authorization include:

1. A November 1—February 15 work schedule to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);
2. A 1,000-ft no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be delineated by floats);
3. Construction activities and seal behavior will be monitored by marine biologists to ensure that impacts on seals will be minimal;
4. The demolition will not utilize any explosives;
5. The removal of material and debris will be in the largest sizes possible and the removed materials will be transported off site for disposal; and
6. To mitigate noise levels and thereby impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency (EPA, 1974) and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

Monitoring

The Gertrude Island haulout has been the site of several research projects for a number of years. Current research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. A cooperative monitoring program by NMFS and WDFW is presently under discussion; alternatively, WDOC may contract with a private contractor to monitor activities. In addition, NMFS proposes to require WDOC to notify the Agency and the WDFW prior to work in order to coordinate monitoring of potential disturbance to seals.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for the demolition of the collapsed portion of the Still Harbor Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has preliminarily determined that the demolition of the Still Harbor Dock Facility would result in the harassment taking of only small numbers of harbor seals, will have a negligible impact on the harbor seal stock and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request.

Dated: November 1, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27654 Filed 11–7–94; 8:45 am]

BILLING CODE 3510–22–W

[2] Reference citations can be found in the EA on this action (see ADDRESSES).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps State and Direct Grant Program, Learn and Serve America K–12 Grant Program, and Learn and Serve America Higher Ed Grant Program 1995 Policies and Priorities

ACTION: Notice correction.

SUMMARY: The Corporation for National and Community Service (the Corporation) in the **Federal Register** of October 27, 1994 (59 FR 53963) has proposed changes and invited comments with regard to three of its main programs: AmeriCorps*USA, Learn & Serve America K–12, and Learn & Serve America Higher Education. The notice was divided into three parts corresponding to these programs. The proposed changes—which would apply to the FY 1995 grant cycle—were developed in response to lessons learned with the completion of the Corporation's first grant cycle and are non-regulatory in nature. The Corporation invited all interested parties to comment on the issues discussed in that notice. Any comments received will be given careful consideration in the development of final FY 1995 policies and grant applications. In that previous notice the 1994 issue area priorities for renewal proposals were incorrect. The purpose of this notice is to replace the published renewal priorities with the 1994 priorities previously established by the Corporation.

DATES: Comments on the Corporation's AmeriCorps State and Direct Grant Program, and Learn and Serve America Higher Ed Grant Program 1995 policies and priorities must be received no later than November 28, 1994. Due to application deadlines, comments on the Learn and Serve America K–12 Grant Program 1995 policies and priorities must be received no later than November 14, 1994.

ADDRESSES: Responses to this notice may be mailed to the Office of AmeriCorps Programs, The Corporation for National Service, 1110 Vermont Avenue, N.W. Washington, D.C. 20525, between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rusty Greiff, General Counsel's Office, at (202) 606–5000 x. 256 between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. For individuals with disabilities, information will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: In FR DOC. 94–26588 make the following correction on page 53965. In the first column (D of part I), the priority areas for renewal are corrected to read as follows:

1. Education
   a. School Readiness—Furthering early childhood development.
   b. School Success—Improving the educational achievement of school-age youth and adults who lack basic academic skills.
2. Public Safety
   a. Crime Control—Improving criminal justice services, law enforcement, and victim services.
   b. Crime Prevention—Reducing the incidence of violence.
3. Human Needs
   a. Health—Providing independent living assistance and home- and community-based health care.
   b. Home—Rebuilding neighborhoods and helping people who are homeless or hungry.
4. Environment
   a. Neighborhood Environment—Reducing community environmental hazards.
   b. Natural Environment—Conserving, restoring, and sustaining natural habitats.

Dated: November 3, 1994.

Terry Russell,

General Counsel.

[FR Doc. 94–27682 Filed 11–4–94; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Global Positioning System (GPS)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System (GPS) will meet in closed session on November 15–16, 1994 at the ANSER Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review and recommend options available to improve GPS jam resistance with particular emphasis on GPS tactical weapon applications. The main focus of the Task Force shall be the investigation of techniques for improving the resistance of GPS embedded receivers in tactical missiles and precision munitions and their delivery platforms.

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In accordance with section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27625 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program will meet in closed session on November 16–17, 1994 at the Lockheed Facilities, Marietta, Georgia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the concurrency and risk assessment of the F–22 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amendod (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27624 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS) Meeting.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the status of recommendations made by the Committee at the DACOWITS 1994 Fall Conference, review the Subcommittee Issues Agenda, and discuss other issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: December 5, 1994, 8:30–4:00 p.m.

ADDRESSES: PBC Conference Room 3A682, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Martha C. Gillette, USN, Office of DACOWITS and Military Women Matters, OUSD (Personnel and Readiness), The Pentagon, Room 3D769, Washington, DC 20301–4000, Telephone (703) 697–2122.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27623 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 179. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 180 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1994.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The Text of the Bulletin Follows:

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
06-01--09-15	147		64		211	06-01-94
09-16--05-31	81		57		138	05-01-94
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	105		83		188	11-01-93
BETHEL	76		67		143	02-01-94
BETTLES	65		45		110	12-01-90
COLD BAY	110		54		164	07-01-93
COLDFOOT	95		59		154	10-01-92
CORDOVA	60		81		141	01-01-94
CRAIG	67		35		102	07-01-91
DENALI NATIONAL PARK	113		68		181	05-01-94
DILLINGHAM	85		64		149	11-01-93
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
ELMENDORF AFB						
06-01--09-15	147		64		211	06-01-94
09-16--05-31	81		57		138	05-01-94
EMMONAK	62		61		123	10-01-93
FAIRBANKS						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
06-01--09-15	147		64		211	06-01-94
09-16--05-31	81		57		138	05-01-94
FT. WAINWRIGHT						
05-15--09-15	106		59		165	05-15-94
09-16--05-14	68		55		123	01-01-94
HOMER						
05-01--09-30	71		60		131	05-01-94
10-01--04-30	60		58		118	02-01-94
JUNEAU						
04-30--09-14	92		74		166	04-30-94
09-15--04-29	78		73		151	01-01-94

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KATMAI NATIONAL PARK	$ 89	$ 59	$148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	104	74	178	04-02-94
10-01--04-01	67	71	138	01-01-94
KETCHIKAN				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	74	65	139	01-01-94
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA				
06-01--10-01	95	58	153	06-01-94
10-02--05-31	72	56	128	02-01-94
MURPHY DOME				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG				
04-16--10-14	77	56	133	05-01-94
10-15--04-15	72	56	128	10-15-94
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	64	67	131	08-01-94
SEWARD				
05-01--09-30	90	65	155	05-01-94
10-01--04-30	52	62	114	01-01-94
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	79	71	150	01-01-94
SKAGWAY				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
SPRUCE CAPE	74	65	139	01-01-94
ST. GEORGE	100	39	139	06-01-91

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
ST. MARY'S	$ 77	$ 59	$136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
05-02--09-30	60	58	118	05-02-94
10-01--05-01	51	57	108	01-01-94
UMIAT	97	63	160	12-01-90
VALDEZ				
05-01--09-14	95	61	156	05-01-94
09-15--04-30	79	59	138	01-01-94
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
04-01--09-30	82	71	153	04-01-94
10-01--03-31	69	70	139	01-01-94
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	73	48	121	11-01-94
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	22	22	44	08-01-94
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	48	77	125	05-01-94
SAIPAN	89	80	169	05-01-94
TINIAN	50	72	122	05-01-94
OTHER	20	13	33	12-01-90

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO:				
BAYAMON				
05-01--11-24	$107	$ 75	$182	11-01-94
11-25--04-30	130	77	207	11-25-94
CAROLINA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--11-24	107	75	182	11-01-94
11-25--04-30	130	77	207	11-25-94
OTHER 7/	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.:				
ST. CROIX				
04-15--12-14	119	73	192	08-01-94
12-15--04-14	169	78	247	12-15-94
ST. JOHN				
06-01--12-14	255	78	333	11-01-94
12-15--05-31	370	90	460	12-15-94
ST. THOMAS				
04-17--12-17	141	106	247	08-01-94
12-18--04-16	220	114	334	12-18-94
WAKE ISLAND 2/	30	25	55	10-01-94
ALL OTHER LOCALITIES	20	13	33	12-01-90

BILLING CODE 3000-04-C

FOOTNOTES

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of Government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD personnel	$13
Non-DOD Personnel	$30

[7] (Eff 9–1–94) A per diem rate of $200 (lodging $148; M&IE $52) will be in effect for Las Croabas, Puerto Rico, during the Annual Conference of the National Association of State Boating Law Administrators (NASBLA) being held at the El Conquistador Resort and Country Club. This rate will be in effect from 4–12 September 1994 only for travelers attending the conference and only for travelers staying at the El Conquistador Resort.

Dated: November 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27626 Filed 11–7–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Patent Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,255,869	Self-Heating Group Meal Assembly and Method of Using Same.	Oct. 18, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the above listed patent, please contact either Mr. Vincent J. Ranucci, Patent Counsel or Ms. Jessica M. Niro, Paralegal Specialist at (508) 651–4510, FAX (508) 651–5167 or by writing to the U.S. Army Natick Research, Development and Engineering Center, Office of Chief Counsel, Attn: V. Ranucci/J. Niro, Natick, MA 01760–5035.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 94–27639 Filed 11–7–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Administrative Law Judges; Intent To Compromise Consolidated Claims; Washington State Library

AGENCY: Department of Education.

ACTION: Notice of Intent to Compromise Consolidated Claims.

SUMMARY: The U.S. Department of Education (the Department) intends to compromise consolidated claims against the Washington State Library (WSL) in a consolidated appeal which is now pending before the Department's Office of Administrative Law Judges (the OALJ), Docket Nos. 90–92–R (ACN: 10–83457) and 91–43–R (ACN:10–83572), under authority of section 452(j)(1) of the General Education Provisions Act (20 U.S.C. 1234a(j)(1) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before December 23, 1994.

ADDRESSES: Comments should be addressed to Ronald Petracca, Esq., Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5421, Washington, D.C. 20202. Telephone (202) 401–8316.

FOR FURTHER INFORMATION CONTACT: Ronald Petracca, Esq., at (202) 401–8316. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The consolidated claims in question initially arose from an organization-wide audit of the WSL conducted by the Washington State Auditor (State Auditor) for the periods July 1, 1985 to June 30, 1986 (ACN:10–83457) and July 1, 1986 to June 30, 1987 (ACN:10–83572). The audits were conducted pursuant to the Single Audit Act of 1984 and Office of Management and Budget Circular No. A–128.

In reviewing the State's administration of programs under Title I of the Federal Library Services and Construction Act (LSCA) (assistance to States for public library services), the State Auditor found that the WSL had failed to use an accurate method for allocating certain costs as among Title I LSCA programs and other programs, and had failed to keep accurate records sufficient to enable auditors to determine how those costs had in fact been allocated. The auditors determined that this failure to allocate costs properly was a violation of applicable Federal regulations (OMB Circular A–87, 34 CFR Part 74 Appendix C, Part I Section J (1986), now incorporated by reference in 34 CFR 80.22(b)). In an audit report dated August 29, 1988, the auditors questioned costs in the amount of $450,613, representing the amounts of the salaries of employees dividing their time between Title I LSCA and other programs. On October 16, 1990, the U.S. Department of Education's Assistant Secretary for Educational Research and Improvement (Assistant Secretary) issued a program determination letter (PDL) sustaining the State Auditor's finding, and demanding recovery of $450,613. The WSL timely appealed that

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determination to the OALJ pursuant to 20 U.S.C. 1234(f)(1).

In 1988, the State Auditor conducted a similar audit for the State fiscal year 1987; a final audit report was issued by the State Auditor on August 29, 1988. The State Auditor found that certain funds had not been expended by the WSL within the time period prescribed by 20 U.S.C. 1225(b) (the "Tydings Amendment") and the implementing regulations in 34 CFR 76.705. The questioned costs were $15,103. The State Auditor further found that the legal violations of Federal regulations governing cost allocation, which were discussed in connection with Docket No.90–92–R, above, had continued in fiscal year 1987, resulting in questioned costs of $675,961. The State Auditor also determined that an amount of $15,103 had been obligated in violation of 20 U.S.C. 1225 (prescribing the time limit for obligation of funds by the grantee). In a PDL dated April 25, 1991, the Assistant Secretary sustained these audit findings and demanded repayment of $691,064. The WSL timely appealed these determinations to the OALJ.

Because the issues in the two audit appeals were similar, the OALJ consolidated the two appeals. Subsequently the litigation was stayed at the joint request of the parties so that the facts could be clarified. At the Department's request, the State Auditor conducted special (supplemental) audits for both of the fiscal years in question, reviewing the same records which had been reviewed in the previous audits. The State Auditor issued a report of the special audit of fiscal year 1986 on July 28, 1992. In this report the State Auditor found that the recovery amount of $450,613 should be reduced to $164,540. The reasons for the revised finding were that the original recovery amount was found to have included $243,707 which were allowable costs for goods and services, and that the original recovery amount was found to have included $42,366 in allowable personnel costs.

With respect to fiscal year 1987, the State Auditor issued special audits on July 28, 1992. The State Auditor found that the originally determined questioned cost amount totalling $691,064 should be reduced. The $15,103 finding was reduced to $2,230. The other questioned costs pertaining to improper recordkeeping were determined to be $384,398. With respect to the latter finding, the original questioned cost amount was determined to have erroneously included $247,602 in allowable direct costs for goods and services. In addition, the original recovery amount was found to have included $43,961 in allowable personnel costs.

The Office of the Inspector General, U.S. Department of Education, verified the findings in the special audits after conducting a site visit and reviewing the State Auditor's workpapers. Based on the supplemental audit findings, the parties stipulated to the OALJ on February 1, 1993, that the questioned costs in issue for fiscal year 1986 should be reduced from $450,613 to $164,540; and that the questioned costs in issue for fiscal year 1987 should be reduced to $386,628.

In the course of ensuing settlement discussions, the WSL submitted documentary evidence that it had corrected the practices which had generated the State Auditor's findings of improper record-keeping. As a result of settlement discussions, the parties have tentatively agreed to a settlement under which the WSL has promised to repay a total of $49,362 for the findings pertaining to fiscal year 1986, and $186,740 for the findings related to fiscal year 1987—a total of $236,102 to the Department for both years, in full resolution of all issues.

In addition to the repayment of funds, the State has certified in the tentative settlement agreement that it is currently in compliance with all legal requirements pertaining to the practices and procedures that gave rise to the disallowances in question in this consolidated appeal.

In accordance with the authority provided in 20 U.S.C. 1234a(j)(1), the Department has determined that it would not be practical or in the public interest to continue litigation of this case. Rather, the Department has determined that a compromise of these two claims for a total amount of $236,102 would be appropriate. This decision takes into account the documented fact that the WSL has fully corrected the practices which were the basis of the claims of faulty record-keeping, and the estimated litigation risks and costs of proceeding through the appeal process. The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Ronald Petracca, Esq., at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j)(2).

Dated: November 2, 1994.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 94–27665 Filed 11–7–94; 8:45 am]

BILLING CODE 4000–01–P

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 8, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 2, 1994.

Ingrid Kolb,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Existing
Title: Request for Collection Assistance Under Federal Insured Student Loan Program ed Form 1249
Frequency: On occasion
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 900
Burden Hours: 297
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The ED Form 1249 is used by lenders in the Federal Insured Student Loan Program (FISLP) to request Skiptracing assistance from the Department of Education (ED) on delinquent student loans when the lender is unable to locate the borrower. The Department will use the information to contact the U.S. Postal Service and relatives of the borrower to request the borrower's current address so that it may resume collection activity on the loan.

[FR Doc. 94–27664 Filed 11–7–94; 8:45 am]

BILLING CODE 4000–01–P

National Advisory Committee on Institutional Quality and Integrity; Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Institutional Quality and Integrity. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: December 5–6, 1994—8:00 a.m. until 5:00 p.m.

ADDRESSES: The Ramada Plaza Hotel, 10 Thomas Circle, NW., Washington, D.C. 20002.

FOR FURTHER INFORMATION CONTACT: Carol F. Sperry, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, 600 Independence Avenue, SW., Room 3122A, ROB 3, Washington, D.C. 20202–7592. Telephone: (202) 260–3636. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Institutional Quality and Integrity is established under Section 1205 of the Higher Education Act (HEA) as amended by Public Law 102–325 (20 U.S.C. 1145). The Committee advises the Secretary of Education with respect to the establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA, the recognition of a specific accrediting agency or association, the preparation and publication of the list of nationally recognized accrediting agencies and associations, the eligibility and certification process for institutions of higher education under Title IV, HEA, and the functions of the Secretary under subpart 1 of part H of Title IV, HEA, relating to State institutional integrity standards. The Committee also develops and recommends to the Secretary standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies, in order to establish eligibility for such institutions on an interim basis for participation in federally funded programs.

Agenda

The meeting on December 5–6, 1994 is open to the public. The Advisory Committee will review petitions and interim reports of accrediting and State approval bodies relative to initial or continued recognition by the Secretary of Education. It also will review a petition by a Federal agency for master's degree-granting authority. In addition, the Committee will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. The National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation and preaccreditation of baccalaureate programs in environmental health science and protection).

Note: The petition submitted by the American Board for Accreditation in Psychoanalysis for initial recognition was scheduled for review during this meeting, but, at the agency's request, the review of the petition is being deferred until a future meeting of the Advisory Committee (date still to be determined).

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training, Accrediting Commission (requested scope of recognition: the accreditation of non-collegiate continuing education institutions and programs).

2. Distance Education and Training Council, Accrediting Commission [formerly the National Home Study Council, Accrediting Commission] (requested scope of recognition: the accreditation of distance education and training institutions offering non-degree and associate, baccalaureate, and master's degree programs primarily through distance learning).

Interim Reports (An interim report is a follow-up report on an agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admission to the Bar.

2. Accrediting Commission of Career Schools and Colleges of Technology (formerly the National Association of Trade and Technical Schools).

3. American Optometric Association, Council on Optometric Education.

4. American Psychological Association, Committee on Accreditation.

5. American Veterinary Medical Association, Committee on Veterinary Technician Education Activities.

6. American Veterinary Medical Association, Council on Education.

7. Council on Opticianry Association.

8. Middle States Association of Colleges and Schools, Commission on Secondary Schools.

9. National Council for Accreditation of Teacher Education.

10. North Central Association of Colleges and Schools, Commission on Schools.

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education

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2. Oklahoma State Regents of Higher Education
3. Utah State Board of Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Maryland State Board of Nursing

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed that would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at this meeting:

Proposed Master's Degree—Granting Authority

1. Command and General Staff College, Marine Corps University, Quantico, Virginia (for the Master of Military Studies).

A request for comments on all agencies whose petitions, interim reports, and request for degree-granting authority are being reviewed during this meeting was published in the **Federal Register** on September 7, 1994.

Requests for oral presentation before the Advisory Committee should be submitted in writing to Ms. Sperry at the address above by November 22, 1994. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Any written materials presenters may wish to give to the Advisory Committee must be submitted to Ms. Sperry by November 30 (one original and 25 copies). Only documents submitted by that date will be considered by the Advisory Committee. Presenters are requested not to distribute written materials at the meeting.

At the conclusion of the meeting, attendees may, at the discretion of the Committee chair, be invited to address the committee briefly on issues pertaining to the functions of the committee, as identified in the section above on Supplementary Information. Participants interested in making such comments should inform Ms. Sperry before or during the meeting.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 7th and D Streets, SW, room 3036, ROB 3, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Authority: 5 U.S.C.A. Appendix 2.

Dated: November 2, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-27605 Filed 11-7-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2320-005—NY; Project No. 2330-007—NY]

Niagara Mohawk Power Corp. Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Site Visits

November 2, 1994.

The Federal Energy Regulatory Commission (Commission) has received applications for new license (relicense) from the Niagara Mohawk Power Corporation (NIMO) for the following two existing hydropower projects owned an operated by NIMO on the Raquette River in St. Lawrence County, New York: the Middle Raquette River Project, FERC No. 2320, consisting of the Higley, Colton, Hannawa, and Sugar Island developments; and the Lower Raquette River Project, FERC No. 2330, consisting of the Norwood, East Norfolk, Norfolk, and Raymondville developments.

Upon review of the applications, supplemental filings, and intervener submittals, the Commission staff has concluded that relicensing these two projects would constitute a major federal action significantly affecting the quality of the human environment.

Moreover, given the location and interaction of the two projects, staff will prepare one multiple-project Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicant's proposed and alternative operating procedures, new generating facilities, environmental enhancement measures, and additional river access facilities for the eight developments that comprise the two hydropower projects.

The staff's EIS will consider both site specific and cumulative environmental impacts of relicensing the two projects and will include economic and financial analyses.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the FERC staff and considered in a final EIS.

One element of the EIS process is scoping and site visits. These activities are initiated early to:

- identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- identify significant environmental issues related to the operation of the existing projects;
- determine the depth of analysis for issues that will be discussed in the EIS; and
- identify resource issues that are of lessor importance and, consequently, do not require detailed analysis in the EIS.

Site Visits

Site visits to the eight developments that comprise the two projects will be held during the three-day period, November 28, 29, and 30, 1994. The purpose of these visits is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new facilities, and discuss project operational procedures with representatives of NIMO and the Commission.

For details concerning the site visits, please contact Tom Skutnick of NIMO in Syracuse, New York at (315) 428-5564.

Scoping Meetings

The FERC staff will conduct two scoping meetings: the evening meeting will be designed to obtain input from the general public, while the morning meeting will focus on resource agency concerns. These meetings will be held in Potsdam, New York, sometime in March, 1995. The dates and locations of these meetings will be the subject of a future announcement.

For further information, please contact Jim Haimes in Washington, D.C. at (202) 219-2780.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27577 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1578-000]

American Power Exchange, Inc.; Notice of Issuance of Order

November 2, 1994.

On August 22, 1994 and September 9, 1994, American Power Exchange Inc. (APEX) submitted for filing a rate schedule under which APEX will engage in wholesale electric power and energy transactions as a marketer. APEX also requested waiver of various Commission regulations. In particular, APEX requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by APEX.

On October 19, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulations, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by APEX should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, APEX is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some, lawful object within the corporate purposes of the applicant, and compatible with the'public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of APEX's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27578 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-1554-000]

CNG Power Services Corp.; Notice of Issuance of Order

November 2, 1994.

On August 12, 1994 and September 13, 1994, CNG Power Services Corporation (CNGPS) submitted for filing a rate schedule under which CNGPS will engage in wholesale electric power and energy transactions as a marketer. CNGPS also requested waiver of various Commission regulations. In particular, CNGPS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CNGPS.

On October 25, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CNGPS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CNGPS is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CNGPS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 25, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27580 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-219-003 and RP94-312-002]

Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Columbia Gulf Transmission Company (Columbia Gulf) filed a motion to place its suspended rates in this proceeding into effect on November 1, 1994, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, listed in Appendix A to the filing. The revised tariff sheets bear an issue date of October 31, 1994, and a proposed effective date of November 1, 1994.

Columbia Gulf states that the revised filing is being made in accordance with the Commission's order issued May 27, 1994, in these proceedings and Section 154.67(a) of the Commission's Regulations.

Columbia Gulf also filed a motion to place these tariff sheets into effect on November 1, 1994, along with (1) the tariff sheets submitted in the initial filing that have not been revised in this compliance filing, and (2) the tariff sheets submitted in Columbia Gulf's June 10, 1994, compliance filing in this docket. The tariff sheets submitted in the June 10 compliance filing were accepted by the Commission by letter order dated October 4, 1994. All of the tariff sheets being moved into effect are listed in the Appendix to the motion.

Columbia Gulf states that it is revising the throughput mix between firm and interruptible services to reflect actual demand determinants at the end of the test period and requests that the Commission recognize and grant any waivers necessary to establish the threshold for the 90/10 revenue sharing based upon the revised rates and determinants submitted in this filing.

Columbia Gulf also states that it reflected the effect of the new determinant levels on the negative surcharge attributable to an exit fee received from Texas Eastern Transmission Corporation. Columbia Gulf requests waiver of the 30-day notice requirement in order to place the revised rate into effect on November 1, 1994.

Columbia Gulf states that copies of the filing are being served by the company upon each of its firm shippers, interested state commissions and each of the parties set forth on the Official Service List in these proceedings.

Any person desiring to protest said filing should file a protest with the

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Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27579 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-229-001]

Granite State Gas Transmission, Inc.; Notice of Proposed Change in FERC Gas Tariff

November 2, 1994.

Take notice that on October 28, 1994, Granite State Gas Transmission, Inc., tendered filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effectiveness on November 1, 1994:

Substitute Third Revised Sheet No. 21
Substitute Fourth Revised Sheet No. 22
Substitute Third Revised Sheet No. 23

According to Granite State, the foregoing revised tariff sheets contain its Section 4(e) motion rates in this proceeding. Granite State further states that it filed revised Base Tariff Rates in Docket No. RP94-229-000 on April 29, 1994, and the filing was suspended until November 1, 1994 in an order issued May 26, 1994. (67 FERC 61,233). Granite State further states that the revised tariff sheets also reflect the Annual Charge Adjustments for the 1994 fiscal year, effective October 1, 1994.

Granite State states that its filing has been served on its customers, Bay State Gas Company and Northern Utilities, Inc., the intervenors in Docket No. RP92-229 and on the regulatory commissions of the States of Maine and New Hampshire and the Commonwealth of Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27581 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER95-65-000]

Green Mountain Power Corp.; Notice of Filing

November 1, 1994.

Take notice that on October 27, 1994, Green Mountain Power Corporation (GMP) tendered for filing two letter agreements with Louis Dreyfus Electric Power Inc. (Dreyfus) pursuant to which GMP sold a total of 300 MWH of System Power to Dreyfus on September 28 and September 29, 1994. GMP has requested that the Commission waive the notice requirements under the Federal Power Act in order to permit these letter agreements to be made effective as of the date on which service was rendered.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27582 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-30-000]

Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 1994:

Fourth Revised Sheet No. 20
Fourth Revised Sheet No. 21
Fourth Revised Sheet No. 22
Fourth Revised Sheet No. 24

Koch Gateway states that this filing is submitted pursuant to Section 32.3 of the General Terms and Conditions of Koch Gateway Pipeline Company's FERC Gas Tariff, Fifth Revised Volume No. 1., and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission") promulgated thereunder.

Koch Gateway states that the revised tariff sheets filed herewith implement the recovery of certain stranded costs by means of surcharges applicable to transportation Rate Schedules FTS, FTS-SCO, NNS, NNS-SCO and ITS. This filing represents a proposed recovery of the buy-out costs for two firm transportation agreements and the costs Koch Gateway incurred during the remaining term of two firm transportation agreements, totaling $5,440,442.

Koch Gateway states that the recovery of costs included in this filing is consistent with the requirements of Order No. 636 and Section 32.3 of the General Terms and Conditions of Koch Gateway's FERC Gas Tariff Fifth Revised Volume No. 1.

Koch Gateway states that the tariff sheets are being mailed to all of Koch Gateway's customers and interested state commissions.

any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27583 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-31-000]

National Fuel Gas Supply Corp.; Notice of General Rate Change

November 2, 1994.

Take notice that on October 31, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and First Revised Volume No. 2 revised sheets listed on the attached Appendix A.

National states that the proposed tariff sheets reflect changes in the level of National's rates to provide an annual increase in revenues from jurisdictional services of approximately $21.0 million when compared to the base rates contained in the Settlement in Docket Nos. RP92-73-000 and RP91-68-000, et al. The proposed rates are based on a test year cost-of-service for the 12 months ended June 30, 1994, as adjusted for known and measurable changes through march 31, 1995.

National states that the revised tariff sheets, which are listed at Appendix A hereto, are proposed to become effective on December 1, 1994.

National also states that its filing provides increased revenues which are required to permit National to adjust its rates to account for plant additions, tax rate changes (including Statement of Financial Accounting Standards No. 109), increased operation and maintenance expenses (including increases in Statement of Financial Accounting Standards No. 106 costs), and other changes.

In addition, National proposes to roll-in the rates for services formerly provided by the Penn-York Energy Corporation. With respect to the rate design issues, national requests the Commission sever the rate design issues for an expedited hearing and decision prior to the end of the suspension period.

National further states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

APPENDIX A

National Fuel Gas Supply Corporation
Docket No. RP95-31-000

Third Revised Volume No. 1:

Eighth Revised Sheet No. 5
First Revised Sheet No. 5A
Seventh Revised Sheet No. 6
Third Revised Sheet No. 6A
Third Revised Sheet No. 17
First Revised Sheet No. 17-A

First Revised Volume No. 2:

Eleventh Revised Sheet No. 281
Eleventh Revised Sheet No. 321
Eleventh Revised Sheet No. 341
Tenth Revised Sheet No. 538
Eighth Revised Sheet No. 690
Sixth Revised Sheet No. 796
Seventh Revised Sheet No. 857
Fourth Revised Sheet No. 880
Third Revised Sheet No. 881
Fourth Revised Sheet No. 914
Fourth Revised Sheet No. 915
Fourth Revised Sheet No. 935

[FR Doc. 94-27584 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-26-000]

Pacific Gas Transmission Co.; Notice of Change in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Pacific Gas Transmission Company (PGT) tendered for filing Original Sheet No. 6E to its FERC Gas Tariff, First Revised Volume No. 1-A, to adjust the Direct Bill Amount to be refunded to its former sales customer, Pacific Gas and Electric Company, as a result of the closeout of its Account No. 191. PGT requests an effective date of November 1, 1994, and requests waiver of applicable notice requirements.

PGT further states that a copy of its filing is being served on PGT's customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27585 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-74-016]

South Georgia Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheet, with a proposed effective date of December 1, 1994:

First Revised Sheet No. 9

South Georgia states that the aforesaid tariff sheet reflects the cancellation of Original Sheet No. 9 which South Georgia states reflected the final disposition of South Georgia's Account No. 191 balance as of July 1, 1993. South Georgia states that since it did make the subject refunds on September 28, 1994, to its former resale customers in accordance with Original Sheet No. 9, this tariff sheet is no longer applicable.

South Georgia states that copies of South Georgia's filing will be served upon South Georgia's former jurisdictional sales customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92-74-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (Section 385.211). All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing

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are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27586 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP95-27-000 and RP94-380-003]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

November 2, 1994.

Take notice that on October 31, 1994, Southern Natural Gas Company (Southern) submitted as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a decrease in its November 1, 1994, FT and FT-NN GSR surcharge:

Thirteenth Revised Sheet No. 15
First Alternate Thirteenth Revised Sheet No. 15
Thirteenth Revised Sheet No. 17
First Alternate Thirteenth Revised Sheet No. 17
Eleventh Revised Sheet No. 29
Eleventh Revised Sheet No. 30
Eleventh Revised Sheet No. 31

Southern submits alternate tariff sheets to comply with the Commission's September 29 Order requiring the removal of certain price differential costs from the period May 1, 1994 through July 31, 1994. Southern notes that the instant filing is made without prejudice to the position taken by Southern in its request for rehearing or clarification of the above mentioned Order.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27587 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-29-000]

Southern Natural Gas Co.; Notice of Proposed Tariff Changes

November 2, 1994.

Take notice that on October 31, 1994, Southern Natural Gas Company (Southern), tendered for filing a limited rate filing pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717(c) (1988) to recover Account No. 858 contract termination costs incurred as a consequence of restructured pipeline services under Order No. 636, *et seq.*

Section 32.1 of the Tariff authorizes Southern to collect costs attributable to Southern's former sales service. Section 32.2(b) directs Southern to file with the Commission a request to amortize contract termination fees, including carrying charges, over a thirty-six month period. Section 32.3(a) provides that the contract termination costs will be allocated to each customer based on that customer's percentage as shown on Tariff Sheet Nos. 32-34.

Accordingly, Southern states that this filing is being made to request that the Commission allow Southern to amortize a payment of $4,723,145.91 in order to terminate a transportation agreement between Trunkline Gas Company and Southern.

Southern states that copies of this filing are being made available in Southern's office in Birmingham, Alabama.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27588 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-105-007]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in Appendix A.

Texas Gas states that this filing is made to comply with the provisions identified in the "Order Approving Settlement" issued September 21, 1994. Texas Gas intends to implement the provisions of the settlement in the referenced docket.

Texas Gas further states that copies of the filing have been served upon Texas Gas's jurisdictional customers, all parties on the Commission's official restricted service list in this proceeding, and interested state commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

First Revised Volume No. 1

Tariff Sheets Effective November 1, 1993

Substitute Second Revised Sheet No. 10
Substitute Second Revised Sheet No. 11
Substitute Second Revised Sheet No. 12
Substitute First Revised Sheet No. 12A
Substitute First Revised Sheet No. 13
Substitute First Revised Sheet No. 15
Substitute First Revised Sheet No. 16
Substitute First Revised Sheet No. 17
First Revised Sheet No. 82
First Revised Sheet No. 101
Second Revised Sheet No. 235
First Revised Sheet No. 236
Sheet Nos. 237-244

Tariff Sheets Effective January 1, 1994

Substitute Third Revised Sheet No. 10
Substitute Third Revised Sheet No. 11
Substitute Third Revised Sheet No. 12
Substitute Second Revised Sheet No. 13

Tariff Sheets Effective March 1, 1994

Substitute Fourth Revised Sheet No. 10

Tariff Sheets Effective April 1, 1994

Substitute Fifth Revised Sheet No. 12

Tariff Sheets Effective May 1, 1994

Substitute Sixth Revised Sheet No. 12

Tariff Sheets Effective June 1, 1994

Third Substitute Fifth Revised Sheet No. 10
Substitute Seventh Revised Sheet No. 12

Tariff Sheets Effective September 1, 1994

Substitute Sixth Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 12
Second Revised Sheet No. 19

Tariff Sheets Effective October 1, 1994

Substitute Seventh Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 11
Substitute Ninth Revised Sheet No. 12
First Revised Second Revised Sheet No. 13

Tariff Sheets Effective November 1, 1994

First Revised Seventh Revised Sheet No. 10
First Revised Fourth Revised Sheet No. 11
Original Sheet No. 11.1
First Revised Ninth Revised Sheet No. 12
First Revised Fourth Revised Sheet No. 18
Fifth Revised Sheet No. 229
First Revised First Revised Sheet No. 230

Original Volume No. 2

Tariff Sheets Effective November 1, 1993

Third Substitute Fifteenth Revised Sheet No. 82
Third Substitute Sixteenth Revised Sheet No. 547
Third Substitute Eighteenth Revised Sheet No. 982
Third Substitute Sixteenth Revised Sheet No. 1005
Third Substitute Tenth Revised Sheet No. 1085

[FR Doc. 94-27589 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-15-000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of December 1, 1994:

Second Revised Seventh Revised Sheet No. 10
Second Revised Fourth Revised Sheet No. 11
First Revised Sheet No. 11.1
Second Revised Ninth Revised Sheet No. 12

Texas Gas States that the revised tariff sheets are being filed pursuant to § 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. The GSR costs, including applicable interest, proposed to be recovered by Texas Gas's fourth GSR recovery filing total $10,708,882.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27590 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-3-30-000]

Trunkline Gas Co.; Notice of Filing in Compliance With FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Trunkline Gas Company (Trunkline) tendered for filing the material required by Section 24 (Interruptible Revenue Credit Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that this filing contains the required computations and workpapers in accordance with Section 24 and that since the said computations of the Interruptible Revenue Credit Amount applicable to Rate Schedules FT, EFT, QNT and SST is less than the Base Interruptible Costs, no Interruptible Revenue Credit Surcharge Adjustment is required.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that copies of the filing are being served on all customers subject to Section 24 of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1, and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27591 Filed 11-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-28-000]

Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1994.

Take notice that on October 31, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 30, 1994:

Second Revised Sheet Nos. 227 and 228
First Revised Sheet No. 229
Original Sheet Nos. 229A-229C
First Revised Sheet No. 230

WNG states that this filing is being made to amend Article 9 of the General Terms and Conditions of its FERC Gas Tariff to provide for daily balancing penalties.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be

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filed on or before November 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27592 Filed 11–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

New Filing Deadline in Special Refund Proceeding Involving Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of reopening the period for filing Applications for Refund in the Crude Oil Overcharge Special Refund Proceeding [RF272 Case Nos.]

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has reopened the period for filing a timely Application for Refund from the escrow account established to distribute crude oil overcharge refunds.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Virginia Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 586–2390 (Wieker) (202) 586–2400 (Lipton).

SUPPLEMENTARY INFORMATION: On May 3, 1993, the Department of Energy issued a Notice which established June 30, 1994, as the final deadline for filing an Application for Refund from all crude oil funds. 58 FR 26318 (May 3, 1993). Although the DOE provided more than one year's notice of that closing date, the DOE did not request public comment on the selection of the closing date itself. The DOE has decided to reopen the period for filing crude oil overcharge refund claims and to take comments on the issue of the appropriate closing date. Accordingly, the DOE proposes a new closing date of June 3, 1996, for the crude oil overcharge refund proceeding. We solicit comments on this proposed closing date. Comments should be provided by April 3, 1995, to the Office of Hearings and Appeals at the address set out above.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27661 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals,

Final Filing Deadline in Special Refund Proceeding No. LFX–0002 Involving Good Hope Refineries

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Final Deadline for Filing Applications for Refund in Special Refund Proceeding No. LFX–0002, Good Hope Refineries.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Good Hope Refineries, Special Refund Proceeding No. LFX–0002. The previous deadline was July 31, 1992. The new deadline is January 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585 (202) 586–2094.

SUPPLEMENTARY INFORMATION: The Office of Hearings and Appeals of the Department of Energy is hereby setting a final deadline for the filing of Applications for Refund in the second Good Hope Refineries (Good Hope) refund proceeding. The first Good Hope refund proceeding, which distributed monies in the oil overcharge escrow account established in accordance with the terms of a consent order entered into by the DOE and Good Hope, is closed. Unclaimed funds were remitted to the States for indirect restitution under the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501 *et seq.* See 51 FR 43964, 43966 (December 5, 1986). On June 28, 1991, we issued a Decision and Order setting forth final refund procedures to distribute additional Good Hope funds. See Good Hope Refineries, 21 DOE ¶ 85,309 (1991), 56 FR 49475 (September 30, 1991). That Decision established June 30, 1992 as the filing deadline for purchasers of Good Hope refined products to submit refund applications.

Since June 30, 1992, we have routinely granted extensions of time to Good Hope customers who were unaware of the proceeding or were in the process of gathering information to support their refund claims. We have now received 22 refund applications. Given that the proceeding has been open for three years, we have concluded that eligible applicants have been provided with more than ample time to file. We will therefore not accept applications that are postmarked after January 31, 1995. All Applications for Refund from the Good Hope Refineries Consent Order Fund postmarked after the final filing date of January 31, 1995, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–27662 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of August 12 Through August 19, 1994

During the Week of August 12 through August 19, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Week of August 12 through August 19, 1994

Date	Name and location of applicant	Case No.	Type of submission
8/15/94	Major Oils Rochester, NY	RR321–165	Request for Modification/Rescission in the Texaco refund proceeding. If granted: The July 22, 1994 Decision and Order R321–4344 issued to Major Oils regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
8/15/94	Sound Oil Company Seattle, WA.	LEE–0152	Exception to the Reporting Requirements. If granted: Sound Oil Company would not be required to file Form EIA–782B "Resellers'/Retailers' Monthly Petroleum Product Sales Report:"
8/17/94	Martin Petroleum Corporation Fort Lauderdale, FL.	LEE–0153	Exception to the Reporting Requirements. If granted: Martin Petroleum Corporation would not be required to file form EIA–782 "Resellers'/Retailers' Monthly Petroleum Product Sales Report.
8/18/94	Consultec Bowie, MD	LFA–0412	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Office of Hearings and Appeals would be rescinded and Consultec would receive access to certain DOE information.
8/18/94	Martha L. Powers New York, NY	LFA–0411	Appeal of an Information Request Denial. If granted: The July 21, 1994 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Martha L. Powers would receive access to records that show Mr. George A. Egish's photographic-filming activities at a nuclear test site in order to enable Mrs. Gertrude Egish to file a Radiation Exposure Act claim. Martha L. Powers would receive a waiver of all fees incurred in the processing of the information requested above.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/12/94 thru 8/19/94	Texaco Refund Applications	RF321–21023 thru RF321–21025.
8/12/94 thru 8/19/94	Crude Oil Refund Applications	RC272–241 thru RC272–249.
8/12/94 thru 8/19/94	Crude Oil Refund Applications	FR272–99146 thru RF272–99147.

[FR Doc. 94–27663 Filed 11–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5103–7; ECAO–RTP–0843]

Workshop for External Peer Review of Working Paper on Methods for Health Assessment for Acute Inhalation Exposure to Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: An external review workshop will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment. Selected peer reviewers will discuss their comments on a preliminary working paper, "Methods for Exposure-Response Analysis and Health Assessment for Acute Inhalation Exposure to Chemicals". The results of the meeting will be used to develop a draft document describing the methodology for subsequent public comment and peer review.

DATES: The workshop will be held on Tuesday and Wednesday, November 15 and 16, 1994, at the North Raleigh Hilton Hotel at 3415 Old Wake Forest Road, Raleigh, NC. Registration begins at 8:00 A.M. on November 15; the meeting times are 10:00 a.m. to 5:00 p.m. On Wednesday, the meeting times are 9:00 a.m. to 4:00 p.m. The workshop is open to the public, and there will be time set aside for brief oral statements.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel J. Guth, project officer, U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711, telephone 919–541–4930.

SUPPLEMENTARY INFORMATION: In the development of this working paper, current methods for quantitative exposure-response analysis for health effects of acute inhalation exposure are reviewed and qualitative aspects of data evaluation are discussed. A method is proposed for quantitative exposure-response analysis using (1) a categorical regression model and (2) the benchmark concentration approach. Reviewers were selected on the basis of their recognized expertise and contributions to the scientific literature on risk assessment and for their specific expertise in the toxicological disciplines used to

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develop the working paper. The working paper will be available to the public at the time of the workshop, but public comments on the whole of the method will only be sought on a subsequent external review draft. The availability of the external review draft will be announced in the **Federal Register** at a later time.

Dated: November 1, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94-27650 Filed 11-7-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5103-6]

Workshop for External Peer Review of Draft Document on Ambient Sources and Noncancer Respiratory Effects of Inhaled Silica

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: An external peer review workshop will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment. Expert peer reviewers, recognized for their contributing to the scientific literature on silica, will discuss a review draft of the document entitled "Ambient Sources and Noncancer Respiratory Effects of Inhaled Silica." The results of the meeting will be used in the preparation of the final document.

DATES: The workshop will be held on Monday, November 14, 1994, from 9:00 a.m. to 5:00 p.m. in Classroom 2 at EPA's Environmental Research Center at the intersection of Alexander Drive and Highway 54, in Research Triangle Park, NC. The workshop is open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Gift, project officer, U.S. Environmental Protection Agency, ECAO, MD-52, Research Triangle Park, NC 27711 (telephone 919-541-4828; FAX 919-541-0245).

SUPPLEMENTARY INFORMATION: In the development of this assessment document, the scientific literature relating to ambient levels and noncancer respiratory effects of silica has been reviewed, and key studies evaluated. The main objective of the document is to assess the available data on effect levels and concentration-response relationships for inhaled silica and to place them in perspective with observed or estimated environmental silica levels. This document does not review the potential carcinogenicity of silica, nor does it extensively address effects of particulate matter exposures that are not silica-specific. The draft document will be made available to the public at the time of the workshop. Members of the public will have an opportunity at the workshop to make brief, oral statements. Interested parties also are invited to assist the EPA in developing and refining the scientific information base for silica by submitting new information on the topics covered. To be considered for inclusion in the review process, submitted information should be published or accepted for publication in a peer-reviewed, scientific journal. New information should be submitted through Dr. Jeffrey Gift at the address indicated above.

Dated: November 11, 1994.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94-27651 Filed 11-7-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5103-2]

California State Nonroad Engine and Equipment Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for Public Hearing and Public Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for exhaust emission standards and test procedures for utility and lawn and garden equipment engines (utility engines) for 1995 and subsequent calendar years. CARB has requested that EPA authorize CARB to enforce regulations pursuant to section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543. This notice announces that EPA has tentatively scheduled a public hearing to consider CARB's request and to hear comments from interested parties regarding CARB's request for EPA's authorization and CARB's determination that its regulations, as noted above, comply with the criteria set forth in section 209(e). In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by November 28, 1994. If no party notifies EPA that it wishes to testify on the nonroad emission amendments, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for December 6, 1994, beginning at 9:00 a.m., if any party notifies EPA by November 28, 1994 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's requests by January 11, 1995 (this extended written comment period allows 30 days plus an extra week for the holiday period). After November 28, 1994, any person who plans to attend the hearing may call David Dickinson of EPA's Manufacturers Operations Division at (202) 233-9256 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn (Captain's Room), 650 Water Street, SW., Washington, DC 20024. Parties wishing to present oral testimony at the public hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, any written comments regarding the waiver request, should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A-91-01. Copies of material relevant to the waiver request (Docket A-91-01) will be available for public inspection during normal working hours of 8 a.m. to 4 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260-7548. FAX Number: (202) 260-4000.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 233-9256.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. (B) New locomotives or new engines used in locomotives."

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may regulate such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—(i) the determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA has issued a final regulation titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule) that sets forth several definitions, as explained below, and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.[1] As described in the section 209(e) rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209 California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines.[2] Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (a) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (b) new locomotives or new engines used in locomotives. The section 209(e) rule defines construction equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites. The section 209(e) rule defines farm equipment or vehicle to mean "any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm. The section 209(e) rule defines "primarily used" to mean "used 51 percent or more." Therefore, California's proposed emission regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. California's nonroad standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated December 27, 1990, CARB submitted to EPA a request that EPA authorize California to adopt regulations for standards and test procedures for 1994 and subsequent calendar year utility and lawn and garden engines and vehicles. On September 6, 1991 EPA issued a "Proposed Decision of the Administrator; Opportunity for Public Hearing."[3] By today's action EPA is offering an additional opportunity for public hearing and written comment on CARB's utility engine authorization request. By a decision dated December 18, 1992, CARB changed the affected model year to 1995. By letter dated September 9, 1994, CARB submitted a revised authorization request for waiver of federal preemption describing, among other things, which categories of equipment would be subject to its regulations. These regulations which apply to all gasoline, diesel, and other fueled nonroad equipment engines 25 horsepower and under, with the exceptions noted in CARB's request:

a. Establish exhaust emission standards for engines produced between December 31, 1994 and the end of the 1998 model year, measured in grams per brake-horsepower-hour (g/bhp-hr), based on total engine displacement and whether the equipment is handheld or non-handheld.

b. Establish a second tier of exhaust emission standards for 1999 and subsequent model year utility engines.

c. Require certification of engines including compliance test procedures and assembly-line quality audit test procedures.

d. Require that commencing with the year 1999 replacement engines for equipment built prior to 1995 comply with the 1995 model emission regulations.

e. Establish a labeling requirement.

f. Require manufacturers to provide a two year emissions warranty.

Subsequent to CARB's adoption of its new utility and lawn and garden standards and test procedures, EPA proposed standards and test procedures for similar horsepower-sized equipment on May 16, 1994.[4] EPA expects this proposed rule to become final in May 1995. Under the proposed rule noted above EPA's standards and test procedures were proposed to commence on August 1, 1996. Because EPA's standards and test procedures are not yet final, EPA does not expect CARB's

[1] See 59 FR 36969, July 20, 1994 (to be codified at 40 C.F.R. part 85, subpart Q, §§ 85.1601-85.1606). This final rule titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" was proposed at 56 FR 45866, Sept. 6, 1991, along with a "Proposed Decision of the Administrator; Opportunity for Public Hearing" at 56 FR 45873, Sept. 6, 1991.

[2] EPA believes CARB's authorization request for utility and lawn and garden equipment engines below 25 horsepower does not raise an issue with regard to whether such engines are motor vehicles. EPA anticipates that in future CARB authorization requests involving larger horsepower engines EPA will utilize both its definitions of motor vehicles and nonroad engines to resolve this issue.

[3] 56 FR 45873, Sept. 6, 1991. A hearing was held on September 20, 1991 for both CARB's utility engine authorization request and EPA's proposed Section 209(e) regulation. No final EPA decision was made regarding CARB's utility engine authorization request.

[4] "Control of Air Pollution: Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts" at 59 FR 25399, May 16, 1994.

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utility and lawn and garden standards and test procedures to be compared to EPA's proposed standards and test procedures for purposes of this authorization request. However, EPA invites comment on this reasoning and comment on any comparison between CARB's utility engine regulation and EPA's proposed regulation regarding similar horsepower-sized equipment and how it may affect today's authorization consideration.

California states in its September 9, 1994 letter that it has determined that its standards for utility and lawn and garden equipment engines are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California, referencing its December 27, 1990 letter, states that it needs separate standards to meet compelling and extraordinary conditions. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e) regulation.[5] Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information regarding the issues as noted above and further explained in the section 209(e) rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than November 28, 1994. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until January 11, 1994.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to person making comments.

Dated: November 1, 1994.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–27648 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P

[5] "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" at 59 FR 36960, July 20, 1994 (to be codified at 40 C.F.R. part 86, subpart Q, §§ 85.1601–85.1606).

[FRL–5103–3]

Proposed Settlement; Source Category List Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Natural Resources Defense Council, Inc.*, v. *U.S. Environmental Protection Agency*, No.92–1415 (D.C. Cir.).

The case involves a challenge to the Initial List of Categories of Sources under section 112(c)(1) of the Clean Air Act Amendments of 1990 published by EPA in the **Federal Register** on July 16, 1992 at 57 FR 13,576 (1992). The proposed settlement relates to the exclusion of utility boilers from the Initial List.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before December 8, 1994.

Dated: November 1, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–27649 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1042–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1042–DR), dated October 19, 1994, and related determinations.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 10472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 19, 1994, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1994:

The counties of Bryan, Chatham, Decatur, Effingham, Grady, and Tift for Public Assistance (already designated for Individual Assistance.)

The counties of Brooks, Bulloch, Clinch, Colquitt, Thomas, Worth for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27636 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

[FEMA–1041–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

The counties of Fayette, Grimes, Harris, Jackson, Lavaca, Liberty, Matagorda, Montgomery, San Augustine, San Jacinto, Trinity, Walker, Waller, and Wharton for Public Assistance (Already designated for Individual Assistance.)

October 19, 1994, and related determinations.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 10472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated October 19, 1994, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1994:

The counties of Bryan, Chatham, Decatur, Effingham, Grady, and Tift for Public Assistance (already designated for Individual Assistance.)

The counties of Brooks, Bulloch, Clinch, Colquitt, Thomas, Worth for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27637 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

[FEMA–1041–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994.

Lavaca and DeWitt Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–27638 Filed 11–7–94; 8:45 am]

BILLING CODE 6718–02–P–M

FEDERAL RESERVE SYSTEM

Community Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 2, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Community Bancshares, Inc., Katy, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bancshares of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Community Bank, Katy, Texas. In connection with this application Community Banchares of Delaware, Inc., Wilmington, Delaware has applied to become a bank holding company.

2. Roxton Corporation Employees' Stock Ownership Plan, Whitesboro, Texas; to become a bank holding company by acquiring 27.42 percent of the voting shares of The Roxton Corporation, Whitesboro, Texas, and thereby indirectly acquire The First State Bank, Roxton, Texas.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27617; Filed 11–7–94; 8:45 am]

BILLING CODE 6210–01–F

First Grayson Bancshares, Inc., Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for

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processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Grayson Bancshares, Inc., Employee Stock Ownership Plan, Whitesboro, Texas; to acquire an additional 11.64 percent, for a total of 15.82 percent, of the voting shares of First Grayson Bancshares, Inc., Whitesboro, Texas, and thereby indirectly acquire Security Bank of Whitesboro, Whitesboro, Texas.

2. Metroplex North Bancshares, Inc., Employee Stock Ownership Plan, Whitesboro, Texas, to acquire and additional 3.01 percent, for a total of 17.54 percent, of the voting shares of Metroplex North Bancshares, Inc., Whitesboro, Texas, and thereby indirectly acquire The First Bank of Cleste, Cleste, Texas.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F. Preston Farmer, London, Kentucky; to retain 12.34 percent of the voting shares of First National London Bankshares Corp., London, Kentucky, and indirectly acquire First National Bank and Trust Company, London, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27618; Filed 11-7-94; 8:45 am]

BILLING CODE 6210-01-F

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York; Application to Engage in Nonbanking Activities

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibralter, and Republic New York Corporation, New York, New York, (together, Applicant), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, Republic New York Securities Corporation, New York, New York (Company), a futures commission merchant (FCM) registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), in executing and clearing, clearing without executing, executing without clearing, purchasing and selling through the use of omnibus trading accounts, and providing investment advisory services with regard to futures and options on futures on financial and nonfinancial commodities that previously have been approved by the Board and to engage in FCM activities only through omnibus trading accounts with regard to the following contracts that have not previously been approved by the Board: Copper Grade A Futures and Options on Copper Grade A Futures on the London Metal Exchange Limited. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984).

Applicant maintains that the proposed activities are closely related to banking or managing or controlling banks. Except as noted below, the Board previously has approved acting as a futures commission merchant in executing and clearing the proposed commodity contracts. *See Bank of Montreal*, 79 Federal Reserve Bulletin 1049 (1993); *J.P. Morgan & Company Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (*Morgan*); SR Letter No. 93027 (FIS)(May 21, 1993). The Board also has approved providing a combination of advisory services regarding nonfinancial commodity derivatives and acting as an FCM in the execution and clearance of these derivatives. *See Morgan*; *Caisse Nationale de Credit Agricole S.A.*, 80 Federal Reserve Bulletin 552 (1994); *Societe Generale*, 80 Federal Reserve Bulletin 649 (1994).

The Board has not approved the trading of any contracts on the London Metals Exchange Limited (LME). Applicant maintains that providing FCM services with regard to these contracts is closely related to banking because the Board has approved similar copper contracts on exchanges that operate in a manner similar to the LME.

Applicant proposes to conduct the proposed activities in a manner consistent with what the Board approved in the *Societe Generale* order in that Company's customers would include managed commodity funds (or commodity pools), but neither Applicant nor Company would sponsor, own, or otherwise be affiliated with a commodity fund (or commodity pool) in the United States without Federal Reserve approval.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 22, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27619; Filed 11-7-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 22, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut; to acquire Northeast Federal Corp., Hartford, Connecticut, and indirectly acquire Northeast Savings, F.A., Hartford, Connecticut, and thereby engage in owning, controlling and operating a savings association that engages only in deposit-taking activities and lending and other activities, pursuant to subpart C of § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Connecticut, Massachusetts, and upstate New York.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Lumberton, North Carolina; to acquire BB&T Financial Corporation, Wilson, North Carolina, and thereby engage in community development activities, in the form of equity investments in rental real estate projects which will qualify for the low-income housing credit under section 42 of the Internal Revenue Code of 1986, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Richland Bancorporation, Miles City, Montana; to engage in general insurance activities through the Hansen-Lawrence Agency, Inc., Worden, Montana, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. Applicant intends to conduct the following insurance activities: commercial property and casualty insurance, surety bonds, crop and hail insurance, workmen's compensation, individual property and casualty, federal crop insurance, and life, accident, and health insurance.

Board of Governors of the Federal Reserve System, November 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27616; Filed 11-7-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cyrus Tang, Usinor Sacilor, Interstate Steel Co	94-2189	10/17/94
Yarmouth Capital Partners, L.P., The Gates Corporation, Cheyenne Mountain Conference Resort, Ltd	95-0012	10/17/94

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Apollo Real Estate Investment Fund, L.P., Clark Holdings, Sugar House Development Partnership	95-0033	10/17/94
Genzyme Corporation, BioSurface Technology, Inc., Bio Surface Technology, Inc	94-2238	10/18/94
Cincinnati Gas & Electric Company (The), PSI Resources, Inc., PSI Resources, Inc	94-2262	10/18/94
PSI Resources, Inc., Cincinnati Gas & Electric Company (The), Cincinnati Gas & Electric Company (The)	94-2263	10/18/94
General Motors Corporation, NATIONAL Auto/Truckstops Holdings Corporation, TA Holdings Corporation	94-2268	10/18/94
Walker Drug Company, E. S. Albers, Jr., Albers, Inc	94-2293	10/18/94
Wellcome plc, Lynx Therapeutics, Inc., Lynx Therapeutics, Inc	95-0003	10/18/94
ARA Group, Inc. (The, Harry M. Stevens Holding Corp., Harry M. Stevens Holding Corp	95-0005	10/18/94
James E. Ferrell, Bell Atlantic Corporation, Vision Energy Resources, Inc	95-0008	10/18/94
Mosvold Shipping AS Kemper Corporation, Galaxy Offshore, Inc	95-0014	10/18/94
HSBC Holdings, plc, Robert E. Roth, R & H Development Corp	95-0015	10/18/94
Bahrain International Bank (E.C.), Grand Metropolitan Public Limited Company, Burger King Corporation	95-0017	10/18/94
Peter Munk, Chevron Corporation, Chevron U.S.A. Inc. and Chevron Pipe Line Company	95-0020	10/18/94
Atlantic Foundation (The), United Meridian Corporation, United Meridian Corporation	95-0021	10/18/94
Science Applications International Corporation, Ideas, Inc., Ideas, Inc	95-0026	10/18/94
Jannock Limited, Bird Corporation, Bird Incorporated	95-0057	10/18/94
HSBC Holdings plc, David J. Hunter, Jr., R & H Development Corp	95-0070	10/18/94
Plains Petroleum Company, Anadarko Petroleum Corporation, Anadarko Petroleum Corporation	95-0047	10/19/94
Centre Capital Investors L.P., Almac's Inc., Almac's	95-0053	10/19/94
Mr. Jean Coutu, Revco D.S., Inc., Hook-SupeRx, Inc	94-2251	10/20/94
California Energy Company, Inc., Magma Power Company, Magma Power Company	95-0035	10/20/94
Danaher Corporation, Samara Finance, S.A., DCI Consolidated Industries, Inc	95-0049	10/20/94
AT&T Corp., Sterling Cellular Holdings Limited Partnership, Arkansas Cellular Limited Partnership	95-0006	10/21/94
Jefferson Smurfit Group plc, Jefferson Smurfit Corporation, Jefferson Smurfit Corporation	95-0016	10/21/94
Martin J. Wygod, Merck & Co., Inc., Synetic, Inc	95-0022	10/21/94
Insignia Financial Group, Inc., American Express Company, Allegiance Realty Group, Inc	95-0025	10/21/94
Babbage's, Inc., Software Etc. Stores, Inc., Software Etc. Stores, Inc	95-0027	10/21/94
Software Etc. Stores, Inc., Babbage's Inc., Babbage's Inc.	95-0028	10/21/94
Leonard Riggio, SES/B Holdings, Inc., SES/B Holdings, Inc	95-0042	10/21/94
Vendex International N.V. (a Dutch company), SES/B Holdings, Inc., SES/B Holdings, Inc	95-0043	10/21/94
Chubb Corporation (The), Alexander & Alexander Services Inc., Alexander & Alexander Services Inc	95-0050	10/21/94
BMC West Corporation, Jack B. Curan and Irene W. Curran, husband and wife, Henry Bacon Building Materials, Inc	95-0058	10/21/94
Century Communications Corp., RSA Cellular Company, RSA Cellular Company	95-0040	10/24/94
RailTex Inc., Canadian National Railway Company, Central Vermont Railway Inc	95-0060	10/24/94
Coventry Corporation, Southern Health Management Corporation, Southern Health Management Corporation	95-0061	10/24/94
Casino SCA, Edward I. Sternlieb, Henry Lee Company	95-0064	10/24/94
Philips Electronics N. V., Island Settlement Trust (a Bahamian trust), Island Trading Company, Inc.	95-0071	10/24/94
AmeriHealth, Inc., Champion Healthcare Corporation, Champion Healthcare Corporation	95-0085	10/24/94
Lincolnshire Equity Fund, L.P., Scott Chinery, L & S Research Corporation	95-0088	10/24/94
Peter Kiewit Sons', Inc., Bark Lee Yee and Stella C. Yee, Twin County Trans Video, Inc	95-0096	10/24/94
Head Insurance Investors L.P., Integon Life Partners L.P., Marketing One Financial Corporation	95-0104	10/24/94
J.W. Family Trusts Nos. 1-20, Integon Life Partners L.P., Rubicon Asset Group Corporation	95-0105	10/24/94
EWI, Inc., AB Volvo, Volvo GM Heavy Truck Corporation	95-0106	10/24/94
WSFS Financial Corporation, Providential Corporation, Providential Corporation	95-0112	10/24/95
Iowa Health System, St. Luke's Methodist Hospital, St. Luke's Methodist Hospital	95-0052	10/25/94
Gannett Co., Inc., Arkansas Television Company, Arkansas Television Company	95-0052	10/25/95
Korea Mobile Telecommunications Corporation, Iridium, Inc., Iridium, Inc	95-0056	10/25/94
American Financial Corporation, Guaranty Reassurance Corporation, Western Pacific Life Insurance Company	95-0068	10/25/94
Ronald O. Perelman, Mark Goldman, M. G. Industries Inc., Eastpak Inc	95-0077	10/25/94
Jeffrey H. Smulyan, Gordon Gray Irrevocable Living Trust, Summit Broadcasting Holding Company	95-0079	10/25/94
Triarc Companies, Inc., CS Holding, Long John Silver's Restaurants, Inc	94-2250	10/26/94
Sisters of the Sorrowful Mother Generalate, Inc., Wheaton Franciscan Services, Inc., WFSI Fox Valley, Inc	94-2271	10/26/94
Wheaton Franciscan Services, Inc. Sisters of the Sorrowful Mother Generalate, Inc. Mercy Medical Center of Oshkosh, Inc	94-2272	10/26/94
Berjaya Group Berhad Charles and Mary Robins Dunham-Bush Inc	94-2295	10/26/94
Warburg Pincus Investors, L.P., Grubb & Ellis Company, Grubb & Ellis Company	95-0024	10/26/94
Southern National Corporation, Prime Rate Premium Finance Corporation, Inc., Prime Rate Premium Finance Corporation, Inc	95-0030	10/26/94
E-Z Serve Corporation, The Kroger Co, Time Saver Stores, Inc.	95-0089	10/26/94
Host Marriott Corporation, MRI Business Properties Fund, Ltd., Dallas Quorum Marriott Hotel	95-0102	10/26/94
Warburg Pincus Investors, L.P., PS Stores Acquisition Corp. (Joint Venture), PS Stores Acquisition Corp. (Joint Venture)	95-0111	10/26/94
Alexander M. Vik, Armco Inc., Northwestern National Holding Company, Inc	94-2256	10/26/97
Eaton Corporation, Walter S. McPhail, Lectron Products, Inc	94-2301	10/27/94
MLGA Fund II, L.P., Stuart Entertainment, Inc., Stuart Entertainment, Inc	95-0048	10/27/94
Longview Fibre Company, John Hancock Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company	95-0081	10/27/94
Hornbeck Offshore Services, Inc., Oil & Gas Rental Services, Inc., Oil & Gas Rental Services, Inc	95-0113	10/27/94
Allied Signal, Inc., Textron Inc., Avco Corporation	94-1440	10/28/94
Commercial Metals Company, Owen Steel Company, Inc., Owen Steel Company, Inc	94-2297	10/28/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/17/94 AND 10/28/94—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Owen Steel Company, Inc., South Carolina Steel Corporation, South Carolina Steel Corporation	94-2304	10/28/94
Sanyo Electric Co., Ltd., Newco, Newco	95-0032	10/28/94
Morgan Stanley Real Estate Fund, L.P. (The), Chase Manhattan Corporation (The), Chase Manhattan Bank, N.A. (The)	95-0126	10/28/94
USX Corporation, Unocal Corporation, Union Oil Company of California	95-0128	10/28/94
Unocal Corporation, USX Corporation, Marathon Oil Company	95-0129	10/28/94
AXA, The Equitable Companies Incorporated, The Equitable Companies Incorporated	95-0130	10/28/94
Frederick A. Landman, PanAmSat Corporation, PanAmSat Corporation	95-0133	10/28/94
Allen B. Shaw, Sumner M. Redstone, Viacom Broadcasting West Inc.	95-0134	10/28/94
Emilio Azcarraga Milmo, PanAmSat Corporation, PanAmSat Corporation	95-0139	10/28/94
Ralph J. Roberts, c/o Comcast Corporation, Joint Venture Corporation, Joint Venture Corporation	95-0153	10/28/94
R&B, Inc., Sun Distributors, L.P., Dorman Products Division	95-0155	10/28/94
Genstar Capital Corporation, Alcan Aluminum Limited Alcan Aluminum Corporation	95-0157	10/28/94
AT&T Corp. ("AT&T"), AT&T Monroe Cellular Limited Partnership ("Monroe")	95-0167	10/28/94
Corange Limited (a Bermuda-company), Gensia, Inc., Gensia, Inc	95-0169	10/28/94
Cellular Information Systems, Inc., Century Telephone Enterprises, Inc., Century Cellunet of Minnesota RSA #6, Inc.	95-0172	10/28/94
DynCorp, Cincinnati Bell Inc., CBIS Federal, Inc	95-0182	10/28/94
Legg Mason, Inc., Dean LeBaron, Batterymarch Financial Management	95-0191	10/28/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580 (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-27567 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3536]

Adobe Systems Incorporated, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits the consummation of the acquisition of Aldus Corporation by Adobe Systems Incorporated and requires, among other things, the two software firms to divest Aldus Corporation's FreeHand professional-illustration computer software and name to Altsys Corporation within six months. In addition, for ten years, the order requires the respondents to obtain Commission approval before acquiring any stock or other interest in any firm engaged in the development or sale of professional-illustration software for the Macintosh or Power Macintosh.

DATES: Complaint and Order issued October 18, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe, FTC/H-374, Washington, DC 20580. (202) 326-2556.

SUPPLEMENTARY INFORMATION: On Friday, August 5, 1994, there was published in the **Federal Register**, 59 FR 40023, a proposed consent agreement with analysis In the Matter of Adobe Systems Incorporated, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding in the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94-27568 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902-3304]

Bee-Sweet, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a North Carolina corporation and its officer from representing that bee pollen products are effective as a cure or in mitigating certain conditions and physical ailments, and from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Waldman, FTC/New York Regional, 150 William S., Suite 1300, New York, N.Y. 10038. (212) 264-1242.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of: Bee-Sweet, Inc., a corporation; and Benny G. Morgan, individually and as an officer and director of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Bee-Sweet, Inc., a corporation, and Benny G. Morgan, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents; and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between proposed respondents, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Bee-Sweet, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its office or principal place of business located at 10370 North, NC Highway 150, Clemmons, North Carolina 27012.

2. Proposed respondent Benny G. Morgan is an officer of said corporation. Individually and in concert with others, he formulates, directs, and controls the acts and practices of corporate respondent. Respondent Benny G. Morgan's business address is 10370 North, NC Highway 150, Clemmons, North Carolina 27012.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) issue its complaint corresponding in form and substance with the attached draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the following definitions shall apply:

A. "Bee pollen product" shall mean any product intended for human consumption or use consisting in whole or in part of bee pollen and/or bee propolis in any form.

B. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

It is ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any bee pollen product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Consumption of any bee pollen product is effective in the cure or mitigation of: (1) Allergies, (2) arthritis, (3) anorexia, (4) obesity, (5) fatigue, (6) arteriosclerosis, (7) anemia, (8) lack of sexual stamina, (9) back pain, (10) digestive disorders, (11) pulse irregularities, (12) acne, (13) bleeding, (14) burns, (15) colds, (16) sore throats, (17) tonsillitis, (18) ulcers, or (19) urinary infections.

B. Any bee pollen product is an effective antibiotic for human use.

II

It is further ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as officer of said corporation, subsidiary, division, or other device, in connection with manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or service for human consumption or use in or affecting commerce, as "commerce" is defined in Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that any such product or service for human consumption will have any effect on a user's health or physical condition, unless at the time of making such representation respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It is further ordered that respondents Bee-Sweet, Inc., a corporation, its successors and assigns, and its officer, Benny G. Morgan, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or service for human consumption or use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, to existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV

Nothing in this order shall prohibit respondents from making any representation that is specifically permitted in labeling for any bee pollen product by regulations promulgated by the Food and Drug Administration pursuant to the Nutritional Labeling and Education Act of 1990.

V

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VI

It is further ordered that respondents, or their successors and assigns, within thirty (30) days of the date of service of this order, shall send to each person or company that purchased for resale any bee pollen product from any respondent during the twelve (12) month period preceding the date of issuance of this order, a letter in the form set forth in Appendix I hereto. Each such letter shall be sent via the United States Postal Service, first class mail, postage prepaid, to the last known address of the intended recipient.

VII

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VIII

It is further ordered that:

A. Within thirty (30) days of the date of service of this order respondents shall distribute a copy of this order to respondents' officers, agents, representatives, and employees engaged in the marketing or sale of any bee pollen product.

B. For a period of seven (7) years from the date of service of this order respondents shall distribute a copy of this order to each of respondents' officers, agents, representatives, and employees who become engaged in the marketing or sale of any bee pollen product. Such distribution shall be made within three (3) days of each such person's becoming so engaged.

IX

It is further ordered that:

A. Respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, creation or dissolution of a subsidiary, or any other change in the corporation that may affect compliance obligations arising out of this order;

B. For seven (7) years from the date of service of this order, Benny G. Morgan shall notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his new business or employment the activities of which include the advertising, offering for sale, sale, or distribution of: (1) any bee pollen product or (2) any product or service advertised, offered for sale, sold, or distributed for effect on a user's health or physical condition. Each such notice shall include Benny G. Morgan's new business address and a statement of the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment.

X

It is further ordered that respondents shall, within sixty (60) days of the date of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Appendix I

(To be Printed On Bee-Sweet, Inc. Letterhead)

[Date]

Dear Customer, We at Bee-Sweet have voluntarily entered into an agreement with the Federal Trade Commission ("FTC"). We have agreed to a cease and desist order under which we are writing to each of our purchasers for resale of bee pollen products. The purpose of this letter is to inform you that according to the FTC, health claims previously made by Bee-Sweet for bee pollen products are unsubstantiated by competent and reliable scientific evidence and, according to the FTC, are false.

The FTC order requires that for any representation to be made that a product or service will affect a user's health or physical condition, we must have competent and reliable scientific evidence that substantiates the representation. Bee-Sweet's promotional literature must comply with these FTC requirements.

Sincerely, Benny G. Morgan, President, Bee-Sweet, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order from Bee-Sweet, Inc. and its principal, Benny G. Morgan.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising for Bee-Sweet's bee pollen and bee propolis products. The Commission's complaint charges that the respondent's advertising contained false and unsubstantiated claims, in violation of Sections 5 and 12 of the FTC Act.

In particular, the complaint alleges that the Bee-Sweet ads falsely claim that bee pollen is effective in the mitigation or treatment of: (1) Allergies, (2) arthritis, (3) anorexia, (4) obesity, (5) fatigue, (6) arteriosclerosis, (7) anemia, (8) lack of sexual stamina, (9) back pain, (10) digestive disorders, and (11) pulse irregularities. The Complaint further alleges that the ads falsely claim that competent and reliable scientific studies have proven that consumption of bee pollen is effective in the mitigation and

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treatment of numerous diseases and conditions, including: (1) Allergies, (2) athritics, (3) anorexia, (4) obesity, (5) fatigue, and (6) arteriosclerosis.

The Complaint also alleges that the Bee-Sweet ads contain false claims that bee propolis is effective in the mitigation or treatment of: (1) Acne, (2) allergies, (3) bleeding, (4) burns, (5) colds, (6) sore throats, (7) tonsillitis, (8) ulcers, and (9) urinary infections; that bee propolis is an effective antibiotic for human use; and that competent and reliable scientific studies have proven that consumption of bee propolis is effective in the mitigation and treatment of ulcers.

The Complaint finally alleges that Bee-Sweet implied that it had a reasonable basis for each of the above claims. According to the Complaint, Bee-Sweet did not have a reasonable basis for making these claims.

Paragraph I of the Order prohibits respondents from claiming that consumption of any bee pollen product is effective in the mitigation or treatment of the above conditions and ailments, or that any bee pollen product is an effective antibiotic for human use.

Paragraph II of the Order prohibits Bee Sweet from representing that a product or service will affect a user's health or physical condition unless, at the time of making the representation, it has and relies upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the Order requires respondents to cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Paragraph IV of the Order provides that nothing in the order shall prohibit respondents from making any representations specifically permitted in labeling for any bee pollen product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Paragraph V of the Order provides that nothing in the order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Paragraph VI of the order requires respondents to send, to each person or company that purchased respondent's bee pollen product for resale within the twelve month period preceding the date of issuance of the order, a notice regarding the FTC findings.

The remainder of the Order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-27569 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3535]

BPI Environmental, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits among other things, a Massachusetts-based corporation from making unsubstantiated degradability claims for its plastic grocery bags or any of its plastic products in the future. The order also requires the respondent to possess competent and reliable evidence to substantiate claims regarding any environmental benefit of its plastic products.

DATES: Complaint and Order issued October 17, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Gary Cooper, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114-4719. (617) 424-5960.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19422, a proposed consent agreement with analysis In the Matter of BPI Environmental, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Commnets were filed and considered by the Commission. The Commission has ordered the issuance of the complaint, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-27570 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3538]

Healthtrust, Inc.—The Hospital Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Tennessee-based corporation that provides acute care hospital services to divest Holy Cross Hospital of Salt Lake City to a Commission approved acquirer; to complete the divestiture within six months of the date of the order; and to consent to the appointment of a trustee, if the divestiture is not completed within six months. In addition, the consent order requires the respondent, for ten years, to obtain prior Commission approval before purchasing any acute care hospital or any hospital, medical or surgical diagnostic or treatment service or facility in the Utah counties of Weber, Davis, and Salt Lake.

DATES: Complaint and Order issued October 20, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Philip Eisenstat, FTC/S-3115, Washington, DC 205890. (202) 326-2756 or 326-2769.

SUPPLEMENTARY INFORMATION: On Wednesday, July 27, 1994, there was published in the **Federal Register** 59 FR 38176, a proposed consent agreement with analysis In the Matter of Healthtrust, Inc.—The Hospital Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94-27571 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3534]

L&S Research Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires among other things, the New Jersey corporation and its officer to pay $1.45 million to the United States Treasury, prohibits the respondents from making misrepresentations regarding the efficacy of their bodybuilding and weight loss products, and requires them to possess competent and reliable scientific evidence to substantiate future bodybuilding and weight loss claims. In addition, the order restricts the use of endorsements, including "before" and "after" pictures, which do not represent the typical experience of users.

DATES: Complaint and Order issued October 6, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Richard Cleland or Nancy Warder, FTC/S-4002, Washington, DC 20580. (202) 326-3088 or 326-3048.

SUPPLEMENTARY INFORMATION: On Wednesday, July 27, 1994, there was published in the **Federal Register**, 59 FR 38183, a proposed consent agreement with analysis In the Matter of L&S Research Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94-27573 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9255]

Trans Union Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order prohibits the Illinois-based credit bureau from distributing or selling target marketing lists based on consumer credit data, except under specific circumstances permitted by federal law. In addition, the final order requires the respondent to deliver a copy of this order to all present and future management officials having responsibilities with respect to the subject matter of this order.

DATES: Complaint issued December 15, 1992. Final order issued September 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Arthur Levin, FTC/S-4429, Washington, D.C. 20580. (202) 326-3040.

(15 U.S.C. 1681 *et seq.*)

Dolnald S. Clark,

Secretary.

[FR Doc. 94-27572 Filed 11-7-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Environmental Dose Reconstruction International Workshop

Name: International Workshop on Environmental Dose Reconstruction.

Times and Dates: 1 p.m.-5:30 p.m., November 15, 1994; 9 a.m.-5:30 p.m., November 16, 1994; 9 a.m.-5:00 p.m., November 17, 1994; 8:30 a.m.-12:30 p.m., November 18, 1994.

Place: Doubletree Hotel, Concourse Room, 7 Concourse Parkway, Atlanta, Georgia 30328, telephone 404/395-3900.

[1] Copies of the Complaint, Summary Decision, Opinion of the Commission, Final Order, and statements by Commissioners Azcuenaga, Steiger, and Starek are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Status: The proceedings of this technical workshop are open to the public, attendance limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The National Center for Environmental Health of CDC will sponsor a technical workshop regarding environmental dose reconstruction experiences in the United States and in the former Soviet Union. The objective of the workshop is to facilitate professional interaction and scientific exchange between notable international experts.

The primary focus of the workshop is to facilitate discussion among the participants on the topic of environmental dose reconstruction and obtain individual advice on how it may be used in support of epidemiologic studies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 404/488-7040, FAX 404/488-7044.

Dated: November 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-27596 Filed 11-7-94; 8:45 am]

BILLING CODE 4163-18-M

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in Cigarettes; Amendment

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice; amendment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is amending the ingredient list due date for 1994 and subsequent calendar years referenced in the "Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in Cigarettes" published in the **Federal Register** on Tuesday, December 3, 1985, [50 FR 49617].

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, telephone (404) 488-5701.

SUPPLEMENTARY INFORMATION: On December 3, 1985, CDC published a

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notice regarding the requirement for submission of the list of ingredients added to tobacco in cigarettes [50 FR 49617] and the following amendments are made to that notice:

On page 49617, second column, last sentence, under the heading "Dates:" change "December 31" to "March 31."

Dated: November 1, 1994.

Arthur C. Jackson,

Acting Deputy Director, Centers for Disease Control and Prevention (CDC).

Certified to be a true copy of the original.

Dated: November 11, 1994.

Carolyn D. Wilbur,

Certifying Officer.

[FR Doc. 94–27607 Filed 11–7–94; 8:45 am]

BILLING CODE 4163–18–P

Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products; Amendment

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice; amendment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is amending the ingredient list due date for 1994 and subsequent calendar years referenced in the "Notice Regarding Requirement for Submission of List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products" published in the **Federal Register** on Tuesday, February 1, 1994, [59 FR 4714].

FOR FURTHER INFORMATION CONTACT: Michael P. Eriksen, Sc.D., Director, Office on Smoking and Health, telephone (404) 488–5701.

SUPPLEMENTARY INFORMATION: On February 1, 1994, CDC published a notice regarding the requirement for submission of the list of ingredients added to tobacco in the manufacture of smokeless tobacco products [59 FR 4714] and the following amendments are made to that notice:

On page 4714, second column, under the heading "Dates:" change "December 31" to "March 31."

Dated: November 1, 1994.

Arthur C. Jackson,

Acting Deputy Director, Centers for Disease Control and Prevention.

[FR Doc. 94–27606 Filed 11–7–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 92N–0417]

Ashok Patel; Denial of Hearing and Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Mr. Ashok Patel's request for a hearing and is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Ashok Patel, 27 Ranch Rd., Upper Saddle River, NJ 07458, from providing services in any capacity to a person who has an approved or pending drug product application. FDA bases this order on a finding that Mr. Patel was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: November 8, 1994.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Ashok Patel, a former senior vice-president of Par Pharmaceuticals, Inc. (Par), pled guilty and was sentenced on October 18, 1989, for giving an unlawful gratuity to a public official, a felony offense under 18 U.S.C. 201(c)(1)(A). The basis for this conviction was Mr. Patel's payment of approximately $4,500 to an FDA chemistry review Branch Chief (public official) who was involved in the regulation of Par's drug products and who was specifically responsible for supervising the chemists who reviewed Par's applications to determine whether those applications met certain statutory standards for approval.

In a certified letter received by Mr. Patel on December 12, 1992, the Interim Deputy Commissioner for Operations offered Mr. Patel an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Mr. Patel from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Mr. Patel on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of Par's drug products.

The certified letter also informed Mr. Patel that his request for a hearing could not rest upon mere allegations or denials, but it must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Mr. Patel that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated January 7, 1993, Mr. Patel requested a hearing, and in a letter dated February 11, 1993, Mr. Patel submitted arguments and information in support of his hearing request. In his request for a hearing, Mr. Patel acknowledged that he was convicted of a felony under Federal law as alleged by FDA. However, Mr. Patel argued that FDA's findings based on that conviction are incorrect and that the agency's proposal to debar him is unconstitutional.

The Interim Deputy Commissioner for Operations has considered Mr. Patel's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Moreover, the legal arguments that Mr. Patel offers do not create a basis for a hearing (see 21 CFR 12.24(b)(1)).

Mr. Patel's arguments are discussed below in section II of this document.

II. Mr. Patel's Arguments in Support of a Hearing

A. Mr. Patel's Conduct

Mr. Patel first alleges that FDA's findings are incorrect because his conviction does not involve conduct relating to the development, approval, or regulation of a drug product under the act. Mr. Patel claims that the conviction was based on his giving an illegal gratuity in response to repeated requests of the public official for personal reasons unrelated to the drug approval process.

This argument is unconvincing and fails to raise a genuine and substantial issue of fact. Mr. Patel pled guilty to and was convicted of violating 18 U.S.C. 201(c)(1)(A) for his payment of approximately $4,500 to an FDA chemistry review Branch Chief who was involved in the regulation of Par's drug products (21 U.S.C. 335a(l)).

In order to be convicted under 18 U.S.C. 201(c)(1)(A), one must give, otherwise than as provided by law for the proper discharge of official duty, something of value to a public official because of an official act performed or to be performed by such official. "Official act" is defined by 18 U.S.C. 201(a)(3) as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." Hence, as a matter of law, Mr. Patel's conviction establishes that his action was intended to influence official action. The public official to whom the illegal gratuity was given was a Branch Chief of one of the four chemistry review branches within FDA's Division of Generic Drugs, whose sole responsibilities were the review of applications submitted by generic drug manufacturers seeking FDA's approval to market their products to the public, and the general regulation of generic drugs. Therefore, Mr. Patel's conviction under 18 U.S.C. 201(c)(1)(A) is alone sufficient to establish that his felony conviction was for conduct relating to the development and approval, including the process for development and approval, of a drug product, and for conduct relating to the regulation of a drug product.

Mr. Patel argues that the judge who sentenced him did not view the payments as affecting the development, approval, or regulation of a drug product. He supports this argument with the judge's statements, "It's not the question of improper handling * * *," and "There is no evidence that they did any favor * * *," (see sentencing transcript, pp. 7 and 17). However, the judge does not imply that the gratuities were unrelated to the development, approval, or regulation of a drug product. To the contrary, he compares the gratuities to insurance when he states, "* * * like insurance you got somebody who favors you as opposed to somebody who is against you, get somebody friendly towards you so when you do get the application[s] they don't hide them * * *" (see sentencing transcript, p. 6). While there is no evidence of a direct benefit to Mr. Patel, the fact that he paid the gratuities for "insurance" of his drug applications is sufficient to relate to the development, approval, and regulation of a drug product.

Finally, Mr. Patel had ample opportunity to contest the Government's allegations during the criminal case prior to his conviction. Thus, Mr. Patel is collaterally estopped from arguing that he did not provide the gratuity "for or because of any official act performed or to be performed."

B. Retroactive Application of the Act

Mr. Patel argues in his letter requesting a hearing that the debarment provisions are not retroactive, and therefore, because his crime predated the act, it does not fall under the act.

Mr. Patel's argument that section 306(a)(2) of the act should not be applied retroactively is unpersuasive. A commonly used rule of statutory construction states that where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion. (*I. N. S.* v. *Cardoza-Fonseca*, 107 S.Ct. 1207, 1213 (1987), citing *Russelo* v. *United States*, 104 S.Ct. 296, 300 (1983).) Under this rule of statutory construction, section 306(a)(2) of the act is clearly retroactive. Section 306(a) of the act treats mandatory debarment of business entities differently from mandatory debarment of individuals with respect to retroactivity. Mandatory debarment of business entities under section 306(a)(1) of the act is not retroactive because it only applies to convictions "after the date of enactment of this section." However, section 306(a)(2) of the act, which pertains to mandatory debarment of individuals, does not contain this limiting language. Therefore, if Congress had intended for section 306(a)(2) of the act not to be retroactive, it would have included the language "after the date of enactment of this section." The limitation does not apply where it was excluded.

Another appropriate application of this rule of statutory construction is with regard to section 306(l)(2) of the act, which sets out the effective dates for each provision of the act. Section 306(l)(2) of the act also indicates that section 306(a)(2) is retroactive. The only limitation section 306(l)(2) sets on section 306(a) of the act is that section 306(a) shall not apply to a conviction that occurred more than 5 years before the initiation of an agency action. This language indicates that any applicable conviction may be used as the basis for debarment, so long as it occurred no more than 5 years prior to the initiation of debarment proceedings. Certain other provisions covered in section 306(l) of the act are further limited by the statement that the section shall not apply to an action that occurred before June 1, 1992. Thus, when Congress intended that a certain section not be retroactive, it set a specific effective date or used specific limiting language as in section 306(a)(1) of the act. Congress' intentional omission of an effective date for section 306(a)(2) of the act indicates its intent that this section be retroactive.

Finally, because section 306(a)(2) of the act does not explicitly address the retroactivity issue, FDA's interpretation must be based on a permissible construction of the act. A permissible construction is one that is reasonable and consistent with the purpose of the statute. (See *Chevron* v. *N. R. D. C.*, 104 S. Ct. 2778 (1984), and *Schering Corp.* v. *Sullivan* (782 F. Suppl. 645 (1992).) The purpose of the Generic Drug Enforcement Act of 1992 (GDEA) is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) FDA's interpretation is consistent with this purpose. The GDEA was passed in response to the widespread fraud and corruption revealed by the generic drug investigations that began in the late 1980's. (See House Committee Report, October 24, 1991, at p. 11.) Congress clearly enacted the GDEA in order to take action against the wrongdoers of the 1980's, as well as current wrongdoers. FDA's interpretation that section 306(a)(2) of the act is retroactive is reasonable in that it is consistent with the purpose of the GDEA, which is to remedy past fraud and corruption.

C. The Ex Post Facto Clause

Mr. Patel also argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Mr. Patel's criminal conduct, and it changes the legal consequences of his violation of the law. On May 13, 1992, Congress amended the Federal Food, Drug, and Cosmetic Act to include section 306(a)(2), Mr. Patel was convicted on October 18, 1989.

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 110 S.Ct. 2715 (1990).)

Mr. Patel's claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive. Because the intent behind debarment under section 306(a)(2) of the act is remedial rather

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than punitive, this section does not violate the ex post facto clause.

The congressional intent with respect to actions under section 306(a)(2) of the act is clearly remedial. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is "to restore and ensure the integrity of the ANDA approval process and to protect the public health." (See section 1, Pub. L. 102–282, The Generic Drug Enforcement Act of 1992.) This is a remedial rather than punitive goal. (See *Manocchio* v. *Kusserow*, 961 F.2d 1539, 1542 (11th Cir. 1992) (exclusion of physician from participation in medicare programs because of criminal conviction is remedial, not punitive).) Supporting the remedial character of debarment is a statement by Senator Hatch in the Congressional Record of April 10, 1992, at S 5616, "* * * [t]he legislation * * * provides a much-needed remedy for the blatant fraud and corruption uncovered in the generic drug industry * * * during the last 3 years."

The Supreme Court has long held that statutes that deny future privileges to convicted offenders because of their previous criminal activities in order to ensure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the ex post facto prohibitions. (See e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960) (convicted felon's exclusion from employment as officer of waterfront union is not a violation of the ex post facto clause).)

In *DeVeau*, the court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to ensure against future corruption in the waterfront unions. The court in *DeVeau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * *.

As in *DeVeau*, the legislative purpose of the relevant statute is to ensure that fraud and corruption are eliminated from the drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are "incident to a regulation of a present situation" (*DeVeau*, 363 U.S. at 160) and necessary in order to remedy the past fraud and corruption in the industry.

C. The Double Jeopardy Clause

In his final argument, Mr. Patel claims that the proposal to debar him under section 306(a)(2) of the act violates the double jeopardy clause of the Fifth Amendment to the U.S. Constitution. The double jeopardy clause states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." Mr. Patel relies on *U.S.* v. *Halper*, 490 U.S. 435 (1989), to argue that the Fifth Amendment double jeopardy clause should prevent his debarment because "jeopardy" can attach even in a purely civil proceeding, so long as the civil sanction is punitive, not remedial. He further argues that his proposed permanent debarment is punitive because it would eliminate any opportunity to demonstrate that he would no longer be a threat to the integrity of the drug approval process.

Mr. Patel's argument is unpersuasive. First, "jeopardy" cannot attach because the effect of section 306(a)(2) of the act is remedial, not punitive. As discussed above, the legislative goal of this section is to restore and ensure the integrity of the drug approval process and to protect the public health by eradicating fraud and corruption from the drug industry. This is plainly a remedial rather than a punitive goal. (*Manocchio* v. *Kusserow*, 961 F.2d at 1542.)

The fact that Mr. Patel's debarment is permanent rather than temporary does not signify that the legislation is nonremedial or punitive. The Supreme Court has upheld laws which, for remedial purposes, permanently bar a class or group of individuals from certain occupations due to a prior criminal conviction. (See *Hawker* v. *New York*, 170 U.S. 189, 190 (1898); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960).)

Second, the double jeopardy clause is inapplicable to FDA's proposal to debar Mr. Patel because the sanctions imposed by section 306(a)(2) of the act are rationally related to the remedial governmental goal of eradicating fraud from the drug industry.

Due to the potentially serious consequences to the public health of fraud and corruption in the drug industry, the permanent debarment of convicted felons like Mr. Patel is not an excessive means to eliminate fraud from the industry. The legislative history of the GDEA is replete with statements, some cited above, that the act provides a reasonable means of ridding the generic drug industry of widespread corruption and restoring consumer confidence in generic drugs.

Mr. Patel acknowledges that he was convicted as alleged by FDA in its proposal to debar him and has raised no genuine and substantial issue of fact regarding this conviction. While Mr. Patel's legal arguments do not create a basis for a hearing, FDA has considered these arguments before taking final action and has found them unpersuasive. Accordingly, the Interim Deputy Commissioner for Operations denies Mr. Patel's request for a hearing.

III. Findings and Order

Therefore, the Interim Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Ashok Patel has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Ashok Patel is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 8, 1994 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Patel in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Patel, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with Mr. Patel's assistance during his period of debarment.

Mr. Patel may file an application to attempt to terminate his debarment, pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N–0417 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–27668 Filed 11–7–94; 8:45 am]

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National Institutes of Health

Office of Science Policy and Technology Transfer

Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) published a proposed draft of "Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts" (hereafter referred to as Considerations) in the **Federal Register** on June 27, 1994. The document is to provide recipients of NIH grants and contracts (hereafter referred to as Recipients) with issues and points to consider in developing sponsored research agreements with commercial entities, where such agreements may include research activities which are fully or partially funded by NIH. Comments on the document were requested by July 27, 1994. In response to that Notice, NIH received comments from 18 respondents, two of whom represented a large number of research intensive institutions.

In general, the comments were favorable and supportive of the NIH's action to assist its grantees and contractors in administering their activities in accordance with public law and the terms of their awards. There were a number of minor editorial comments that have been given consideration and for the most part accepted. A summary of the comments and the NIH response are presented below. The full text of the final document is also presented.

FOR FURTHER INFORMATION CONTACT: Theodore J. Roumel, Assistant to the Deputy Director for Science Policy and Technology Transfer, NIH, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804, (301) 496–7057, ext. 203 (not a toll-free number).

Summary of Comments

In response to the June 27 Notice, NIH received 18 comments, including two from organizations representing a large number of research intensive institutions. Below are the substantive comments offered and NIH's response, broken down by the section of the Considerations to which they pertain.

Introduction

In order to limit confusion as to requirements that may apply to grantees and contractors, the term Grantee has been replaced by the term Recipient.

One entity questioned the need for the issuance of the Considerations. As was stated in the document, the NIH, as a steward of Federal funds, has the responsibility to advise Recipients as to the requirements that attach to the receipt of NIH funds and to offer technical assistance in adhering to those requirements. Recipients have varying levels of sophistication in their technology transfer activities and the NIH is trying to assist those institutions in addressing substantive issues based on an extensive review of sponsored research agreements. In keeping with its belief that:

> Both the public and private sectors must work together to foster rapid development and commercialization of useful products to benefit human health, stimulate the economy, and enhance our international competitiveness, while at the same time protecting taxpayers' investment and safeguarding the principles of scientific integrity and academic freedom,

the NIH has developed the Considerations to encourage Recipients to address issues such as fair and open competition, dissemination and commercialization of research results, and the maintenance of academic freedom in developing sponsored research agreements with commercial entities.

Purpose

Several institutions sought greater clarification as to the universe to which the Considerations were addressed, e.g. NIH awards, all Federal awards, or any sponsored program agreement. The Bayh-Dole Act applies to all Federal agencies. However, the NIH can only provide guidance to Recipients within its jurisdiction. The INTRODUCTION and PURPOSE sections of the document have been modified to clearly indicate that the requirements of the Bayh-Dole Act and its implementing regulations apply to all NIH sponsored research, whether fully or partially funded. The document provides information on the Act and the regulations and guidance to institutions when situations arise where NIH has fully or partially funded research activities that may be included in a sponsored research agreement.

Three respondents commented on the definition of a sponsored research agreement. The existing definition in the INTRODUCTION section has been modified to more clearly state what is meant by the term. One respondent proposed that the definition be used with NIH funding only. This was not accepted because the term is one of general applicability while the guidance will deal with only those types of agreements that may involve NIH funded activities.

One respondent urged that NIH point out that sponsored research agreements differ from one another and must be viewed on a case by case basis. While it was our opinion that we had provided that sense, we have modified the last paragraph of the PURPOSE section to reflect that proposed sponsored research agreements should be reviewed on a case by case basis and that provisions of those documents should be reviewed both individually and in their totality.

Background

Several of the respondents raised concerns about individual situations and whether or not the Considerations should be used in those situations. In developing the Considerations, it was the intent of the NIH to provide some general guidance for developing agreements and not to specify how an agreement should be written, how an institution should respond in certain situations, or prescribe any special language that should be used other than that which is already required by law and existing policy applicable to NIH funded projects. In addition, it was not the intent of the guidance to interpret or otherwise explain the Bayh Dole implementing regulations, which were issued by the Department of Commerce. Issues regarding the regulations and its requirements need to be addressed to the Department of Commerce.

One respondent questioned how far the Federal rights extend to sponsored activities not specifically funded by the Federal government. If research results from an NIH funded activity or a piece of equipment purchased under an NIH funding agreement was later used in a sponsored research agreement which was being funded solely by the sponsor and this led to the development of a new invention, would Federal rights apply to any new invention made under

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that sponsored research agreement? In general, Federal rights attach only if an invention is conceived or first actually reduced to practice under a Federal funding agreement. Mere use of equipment, data, or pre-existing inventions does not mean that all work under the sponsored research agreement is subject to the requirements of the Bayh Dole Act.

Universal Points for Consideration

Dissemination of Research Results

Several respondents commented on the time frames related to possible delays in disclosure of research findings and the period for consideration of a license option. Comments were mostly supportive, however, there were several comments that the time frames offered might be too tight. It is of the utmost importance to the NIH to have research results disseminated and innovations brought to commercialization as rapidly as possible. Time frames were provided as guidance to institutions which need to exert their best efforts to accommodate this important objective. The Considerations recognize that different situations may dictate a shorter or longer period of time. To protect intellectual property it may be necessary to grant longer periods of time. However, each situation must be reviewed on a case by case basis and the institution must determine the appropriateness of the time frames for those particular circumstances.

On the basis of comments received, we have modified the time frame for review under Dissemination of Research Results to read thirty (30) to sixty (60) days, rather than thirty (30) days which was viewed by several respondents as being too constraining.

Utilization

One respondent agreed with the idea of providing a commercial sponsor of the research an option to license resulting intellectual property with no second chance to license. However, the respondent believes that it would seem appropriate that the sponsor should be given an equal opportunity with its competitors to make a bid on the license when the terms of the license offered to a competitor differed from the terms offered to the sponsor.

The rationale for the language in the Considerations was that if negotiations, within a reasonable period of time, do not end in a license with the sponsor, the Recipient should be free to negotiate with others to ensure the rapid transfer of technology to commercialization. This would not preclude a Recipient, at its discretion, from entering into new negotiations with the sponsor, especially when the Recipient has modified the terms of the license being offered to a competitor from that which it previously offered to the sponsor.

Notification Requirements and Records

In response to one comment, the listing of timeliness considerations has been revised to reflect more accurately the language in the Bayh-Dole Act and the implementing regulations. One additional consideration has been added, i.e., the specification in patent applications that the invention was made with government support. This is an important requirement which was omitted in the original document.

Two respondents expressed concern over the requirement that a Recipient disclose an invention to the NIH prior to the publication of any description of the invention. One of those respondents stated that the language was incorrect. The language cited in the Considerations is a grants policy requirement, has been in place for a number of years, and is consistent with the Bayh-Dole requirements for notification of inventions. However, since this appears to have raised a concern, we have deleted the subject sentence and inserted information stating the source of the requirement.

The comments related to notification requirements and records reinforce the need for institutions to have adequate systems to meet Federal requirements. Those institutions which have separated their technology transfer activities from their sponsored research administration activities may have difficulty in assuring coordination of actions, submission of reports, and retention of appropriate records. Institutions need to ensure that they have systems in place which coordinate actions involving technology transfer and sponsored research administration to preserve the rights of the government and be responsive to requests for information and reporting.

Points for Special Consideration

Three respondents commented on their concern regarding the suggestion that Recipients should avoid any other unusual practice or stipulation that might generate public concern or undermine rather the serve the public interest. With innovation and creativity being a major part of the evolving field of technology transfer, it is not possible for this document to cover every specific problem, concern or consideration that may occur in the future. Therefore, this language was written to encourage institutions to be constantly alert in their review of potential agreements with special attention to conformity with the Bayh-Dole Act, implementing regulations, and NIH funding requirements.

Other Points for Consideration by Nonprofit Recipients

Three respondents expressed concern regarding the language on small businesses. One had general concerns about the small business preference and offered some additional language. A second also had apprehensions with the small business preference being interpreted as a "must use" requirement. A third respondent was concerned that the form and level of documentation be specified.

In the section on special provisions for nonprofit organizations, the regulation states that such organizations will make efforts to execute a license with small businesses and, in certain circumstances, provide a preference for such businesses. However, the decision to give a preference in any specific case is at the discretion of the Recipient. Additionally, the regulation states that Recipients must be satisfied that the small business firms have the capability and resources to carry out plans or proposals. Having documentation sufficient to support its decisions on small business preferences is a key Recipient responsibility.

As noted above, these Considerations have been prepared for use by Recipients; the regulations implementing the Bayh-Dole Act are issued by the Department of Commerce and the NIH does not have authority to modify their content.

The NIH appreciates the effort taken to provide comments on this document and is pleased that the document is viewed as being a valuable technical assistance tool.

Dated: October 28, 1994.

Daryl A. (Sandy) Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer, National Institutes of Health.

Developing Sponsored Research Agreements: Considerations for Recipients of NIH Research Grants and Contracts

Introduction

The National Institutes of Health (NIH) is the principal biomedical and behavioral research agency within the Federal Government. Its mission is to improve human health by increasing scientific knowledge related to health and disease through the conduct and support of biomedical and behavioral research. The NIH advances its mission through intramural research activity and the award of research grants and contracts to institutions of higher education, research institutes and foundations, and other non-profit and for-profit organizations (hereafter referred to as Recipients). Whenever a Recipient's research work is funded either in whole or in part through NIH research grants, contracts, and cooperative agreements, that activity is subject to the requirements of Public Law 96–517, known as the Bayh-Dole Act of 1980 [1] (hereafter referred to as "Bayh-Dole" or "the Act"). Those Recipients are required to maximize the use of their research findings by making them available to the research community and the public at large and through their timely and effective transfer to industry for development.

Recipients also have interactions with industry which may take many forms, including industrial liaison programs, spinoff companies, consortia, commercial licenses, material transfers, consultations, and clinical trial agreements. This document addresses one form of Recipient/industry interaction, sponsored research agreements. The NIH has focused a substantial amount of its recent attention on this relationship when NIH funds may also be involved. The term sponsored research agreement means a written document which describes the relationship between Recipients and commercial entities in which Recipients receive funding or other consideration to support their research in return for preferential access and/or rights to intellectual property deriving from Recipient research results.

Although Recipients are primarily responsible for the implementation of the Bayh-Dole requirements, NIH, as a steward of Federal funds, has a responsibility to provide guidance on issues which may place Recipients at odds with Federal law and/or NIH funding requirements.

Purpose

The purpose of this document is to provide Recipients with issues and points to consider in developing sponsored research agreements with commercial entities, where such agreements may include research activities which are fully or partially funded by NIH. The intent is to assist Recipients in ensuring that those agreements comply with the requirements of the Bayh-Dole Act and NIH funding agreements while upholding basic principles of academic freedom.

This document represents the culmination of various activities, under the aegis of the NIH Task Force on Commercialization of Intellectual Property Rights from NIH Supported Extramural Research, which included the review and analysis of 375 sponsored research agreements from 100 Recipients, meetings with industry, academia, and other Government agencies, and a specially convened public forum involving subject matter experts from outside of the NIH.

The NIH recognizes that sponsored research agreements are unique, creative devices which reflect the needs and interests of the parties involved and require a delicate balance of risks and benefits to all of the parties. Although this document identifies a number of points to consider, with some necessitating more scrutiny than others, no single point or issue is so dominant that it is likely to be fatal to an agreement. Rather, the juxtaposition of multiple factors or clauses in an agreement and their synergy needs to be assessed. Therefore, Recipients should review each proposed sponsored research agreement on a case by case basis, and the provisions both individually and in the context of the entire agreement.

Background

While NIH policies on the use of research results have been in effect for some time, commercial development of research results took a major step forward with the passage of the Bayh-Dole Act. Congress passed the Act in response to significant concerns about the United States' competitiveness and data indicating that rights to many inventions developed under Federal grants and contracts and assigned to the Federal government were not being commercialized. In general, the Act authorizes Recipients to retain title to inventions resulting from their Federally funded research and to license such inventions to commercial entities for development.

Specifically, the Act states that:

It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from Federally supported research or development; to encourage maximum participation of small business firms in Federally sponsored research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used to promote free competition and enterprise; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect against nonuse or unreasonable use of inventions; and to minimize the costs of administering policies in this area.[2]

The provisions of the Act have been implemented through regulations issued by the Department of Commerce and adopted by the Department of Health and Human Services.[3]

The Act serves the public not only by encouraging the development of useful commercial products such as drugs and clinical diagnostic materials, but also by providing economic benefits, and enhancing U.S. competitiveness in the global market place.

Since its passage, the Bayh-Dole Act has been effective in promoting the transfer of technology from Recipients to industry as evidenced by the aggressive pursuit of patenting and licensing and the proliferation of university/industry collaborations.[4] In addition, the development of many new and important drugs and devices has been facilitated by increased industrial support for academic research [5] and the explosion in the licensing of university owned inventions.[6] Furthermore, statistics indicate that the Act has provided significant economic benefits which are projected as increasing between 25 to 30 percent per year.[7]

[1] Public Law 96–517, enacted December 12, 1980, Chapter 18—Patent Rights in Inventions Made with Federal Assistance.

[2] Public Law 96–517, Chapter 18, Patent Rights in Inventions Made With Federal Assistance, Sec. 200.

[3] The Department of Commerce regulations are at 37 Code of Federal Regulations (CFR) Part 401 and supersede applicable portions of 45 CFR Parts 6 and 8.

[4] Approximately one in every four university patents issued in the late 1980s was for a biomedical or health related invention. In the early 1970's, the ratio was one in eight. Source: Science and Engineering Indicators, 1993, National Science Foundation.

[5] While still representing less than 10 percent of the total funding for academic research, it is estimated that nearly 2 percent of United States industry's expenditures for R&D now goes to academic institutions, as compared with less than 1 percent in 1971. Source: Science and Engineering Indicators, 1993, National Science Foundation.

[6] Over 1000 licenses or options were executed in Fiscal Year 1992 by 260 academic institutions surveyed. The institutions also reported that they had over 5000 active licenses in place at the time of the survey. Source: Association of University Transfer Managers Licensing Survey FY 1991–1992, published October, 1993.

[7] In FY 1992 sales and employment attributable to the Act were estimated to be as follows: between $9 and $13 billion in sales and 50–100,000 jobs, with an annual increase of between 25 and 30 percent. Source: Dr. Ashley J. Stevens, Director, Office of Technology Transfer, Dana-Farber Cancer Institute, Association of University Technology Managers Winter Meeting, 1994.

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Recipient Responsibilities

In keeping with the objectives and policies of Bayh-Dole, it is incumbent upon Recipients to effectively and efficiently transfer technology to industry for commercial development. However, in doing so Recipients must also comply with the specific terms of the Act, its implementing regulations, and the terms and conditions of each NIH award and ensure that such compliance is reflected in their agreements with commercial entities.

In carrying out that responsibility, at a minimum, Recipients need to concern themselves with issues involving maintenance of academic freedom for institutions and investigators, fair access to information, timeliness of notification and reporting requirements, rational licensing to commercial entities, and adherence to the specific requirements of the Act and NIH funding agreements.

While sponsored research agreements frequently are used where basic research is involved and no invention exists to disclose nor intellectual property to license at the time the agreement is executed, Recipients should anticipate such issues and consider the following points in developing a sponsored research agreement.

The first section, Universal Points for Consideration, highlights several requirements and issues that Recipients should consider in all proposed sponsored research agreements. The second section, Points for Special Consideration, delineates circumstances which suggest heightened scrutiny. The third section, Other Points for Consideration by Nonprofit Recipients, contains additional considerations which apply only to nonprofit Recipients.

Universal Points for Consideration

Academic Freedom

Academic research freedom based upon social collaboration within the scientific community and the scrutiny of claims and beliefs by its members is at the heart of scientific advancement within the United States. Primarily through Federal funding, academic institutions have contributed to fundamental knowledge and techniques upon which current and future scientific discoveries and technological innovations depend. Therefore, the preservation of academic freedom for Recipient institutions and researchers is of considerable concern to the NIH.

Recipients should be aware that their interest in the scientific endeavor covered by a sponsored research agreement and the interest of the industrial sponsor may not be totally consonant. As a result, in general, Recipients should ensure that sponsored research agreements preserve the freedom for academic researchers to select projects, collaborate with other scientists, determine the types of sponsored research activities in which they wish to participate, and communicate their research findings at meetings, and by publication and through other means.[8] Academic researchers also should be made aware of any agreements executed by their institutions which may restrict their ability to pursue research activities and publish research results. Recipients also should maintain their independence to pursue their own mission without undue influence or restraint by their industrial sponsors. For example, an agreement which gives an industrial sponsor the ability to direct the research mission of a Recipient would be inappropriate.

Dissemination of Research Results

Recipients must ensure that the timely dissemination of research findings is not adversely affected by the conditions of a sponsored research agreement. For example, in the case of research grants, the PHS Grants Policy Statement, incorporated as a condition of each NIH research grant, details policies on publication of research results, responsibilities to disseminate information on unique research resources, and standards of conduct for the organization's employees.

Although an industrial sponsor's consideration of the commercial applicability of specific research findings and/or the filing of a patent application to secure intellectual property rights may justify a need to delay disclosure of research findings, a delay of thirty (30) to sixty (60) days is generally viewed as a reasonable period for such activity. Depending upon the individual circumstances, Recipients could consider a shorter or longer period of time, as they deem appropriate. In addition to the timing, a sponsored research agreement which requires the disclosure of inventions and research findings developed with NIH funds to an industrial sponsor prior to submission of the invention disclosure to the NIH, may be inconsistent with the terms and conditions of the NIH grant or contract.

[8] The NIH recognizes that there may be certain instances when it may be reasonable for a Grantee institution to agree to minimally restrict a researcher from collaborating with another industrial partner when the subject matter of such collaboration overlaps with that of the sponsored research agreement.

Utilization

The NIH also has a concern that Federally funded technology be developed and commercialized in an expedited and efficient manner. In deciding to enter into an agreement with a commercial entity, Recipients should consider whether the organization has the experience, capability, and commitment to bring its likely inventions to commercial status.

Additionally, Recipients should not enter into sponsored research agreements that permit a sponsor to tie up the development of a technology by acquiring exclusive licensing rights to the product of given research results before deciding whether or not it will actively develop and commercialize that product. Recipients could provide a sponsor with an option to pursue licensing rights. It is reasonable for such options to be limited to no more than six (6) months after disclosure to the authorized representative of the sponsor. However, individual circumstances may dictate a shorter or longer period of time. After the option period expires, the technology should become available for licensing to other entities. Moreover, once a sponsor decides not to exercise its option, normally, the agreement should not provide for a second opportunity to obtain licensing rights by matching other parties' offers for the rights. Such actions enable Grantees to license to companies presenting a bona fide commercialization plan, thus expediting the availability of products to the public.

In order to ensure that technology is developed rapidly and is not being subjected to delays, Recipients should also establish, maintain, and actively administer policies and procedures which ensure that licenses arising from sponsored research agreements contain due diligence requirements and benchmarks to monitor performance. When future rights to as yet undiscovered inventions are included in a sponsored research agreement, benchmarks for development of each such invention should be established as they become available for commercial development. In addition, Recipients should actively monitor licensees in accordance with those requirements and benchmarks to assure compliance with Recipient obligations under the Act.

Recipients also need to ensure that they have internal systems to provide required utilization reports to the NIH on each invention. Those reports are required by Department of Commerce regulation and include such items as the status of development, first commercial sale, and amount of gross royalties received. Detailed information about the precise utilization report requirements can be obtained from the NIH Office of Extramural Research.

U.S. Manufacture

The Bayh-Dole Act requires that products developed with Federal funds and used and sold in the United States, be substantially manufactured here. In granting exclusive rights to use or sell any subject invention in the United States, Recipients must ensure that each agreement requires that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. In individual cases, a request for waiver may be considered by the NIH. A determination will be made based upon a showing by the Recipient that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. In granting a waiver of the U.S. manufacture requirement, the NIH may consider other benefits conferred on the United States by the potential license including the rapid availability of a product of benefit to the health of the American people.

Notification Requirements and Records

In sponsored research agreements, as in other contexts, Recipients must also ensure that invention, patent and license notification requirements are adhered to in a timely manner. Timeliness considerations include prompt (1) employee notification to Recipient administrators of an invention made under NIH funding, (2) written disclosure to NIH in sufficient technical detail to adequately describe the invention, (3) written election to the NIH of whether or not the Recipient will retain title to such invention, (4) adherence to time frames for initial filing of patent applications in the United States and the filing of foreign patent applications, (5) execution and delivery of all instruments necessary to establish or confirm NIH rights throughout the world in the subject inventions to which the Recipient has elected to retain title, (6) notification to the NIH of any decision not to continue patent prosecution, pay fees, or defend the patent in a reexamination or opposition proceeding on a patent, in any country, (7) conveyance of title to NIH when requested, and (8) specification in any United States patent applications and any patent issuing thereon covering a subject invention that the invention was made with government support.[9]

Specifically, as conditions of NIH grants and cooperative agreements, Recipients must fully notify the NIH in a timely manner when an invention has been developed. In addition, PHS grants policy requires that when applying for continued funding in each subsequent funding period, the institution must also provide either a listing of all inventions made during the preceding budget period or a certification that no inventions were made during the applicable period. A final invention statement and certification listing all inventions that were conceived or first actually reduced to practice during the course of work under the funding agreement is required within ninety (90) days following the expiration or termination of support on an applicable project. Additionally, Recipients need to adhere to the specific requirements contained in the patent clauses of their contracts as well as the general provisions of the Federal Acquisition Regulations.

Furthermore, Recipients must also document their compliance with the requirements of the Act, regulations, and terms and conditions of NIH awards, generally and as related to sponsored research agreements. Recipient records must be available for review by authorized Federal officials in accordance with the terms and conditions of the award. For example, concerning access and retention of records under NIH grants and cooperative agreements, regulations require grantees to retain financial and programmatic records, supporting documents, statistical records, and all other grantee records which may reasonably be considered pertinent to a grant or subgrant.[10]

Points for Special Consideration

The NIH has identified several situations, outlined below, in which Recipients should exercise heightened sensitivity and scrutiny in the development of sponsored research agreements. Such an exercise should confirm that a sponsored research agreement does not adversely impact NIH funded activities and Recipient concerns such as academic freedom, or shift control of the Recipient's scientific activities, management, and independence into the hands of the sponsor. While there is no requirement that Recipients submit proposed sponsored research agreements to the NIH for review, at the discretion of the Recipient, the NIH Deputy Director for Extramural Research may be consulted for additional clarification in instances where special considerations warrant.

First, Recipients should subject their sponsored research agreements to heightened scrutiny when one or more of the following threshold criteria apply:

(a) The amount of financial support from the sponsor meets or exceeds $5 million in any one year, or, $50 million total over the total period of funding under the agreement;

(b) The proportion of funding by the sponsor exceeds 20 percent of the Recipient's total research funding;

(c) The sponsor's prospective licensing rights cover all technologies developed by a major group or component of the Recipient organization, such as a large laboratory, department or center, or the technologies in question represent a substantial proportion of the anticipated intellectual output of the Recipient's research staff; or

(d) The duration of the proposed agreement is for more than 5 years.

If one or more of these criteria apply, it is more likely that the proposed sponsored research agreement will adversely affect open commercial access, especially for small businesses, to a Recipient's Federally funded research activities and may delay or impede the rapid development and commercialization of technology.

Second, Recipients should be concerned if the scope of the sponsored research agreement is so broad that the subsequent exclusive licensing of technology under the agreement provides a single sponsor with access to a wide array of Recipient research findings and technologies that effectively exclude other organizations from reasonable access to a Recipient's technology. This type of arrangement can also delay commercialization if the sponsor does not have the interest or the capability to develop the technology.

Third, if the sponsor's contribution of funds is to support a Recipient's general operations rather than specifically defined research projects, the Recipient should consider the amount of the sponsor's general funding in relation to funds from other sources when determining what prospective intellectual property rights the sponsor will obtain from the results of the

[9] The regulation, 37 CFR 401.14(F)(4), requires that the following clause be used: "This invention was made with government support under (identify the grant, contract, or cooperative agreement) awarded by (identify the Institute or Center), National Institutes of Health. The government has certain rights in the invention."

[10] The regulations are set forth at 45 CFR Part 74, Subpart D and 45 CFR Part 92.42.

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Recipient research. There should be a reasonable relationship between the amount of money contributed by the sponsor and the rights that it is granted both to review and license resulting technology or inventions. Additionally, Recipients should also consider the level of risk that the sponsor will be assuming in order to obtain rights. In general, the greater the restrictions on a sponsor's rights, the higher the sponsor's risk in receiving benefit from its support. As an extreme example, a sponsor should not be able to provide 5 percent of the Recipient's total support, review 100 percent of the Recipient's inventions, and receive rights or a first option to 50 percent of the research results generated by the Recipient. Where general funding is involved, a Recipient may consider a number of alternative actions, including establishing some mechanism to limit the review and licensing rights of the sponsor to a particular segment or percentage of the inventions for a set period of time. For example, the Recipient may require the sponsor to select those research areas on projects to which its general funding rights would attach in advance, thereby freeing up research areas that may be of interest to other commercial entities. Because, by its nature, general funding is less directed and its results more imprecise, Recipients should carefully monitor the impact on open competition and fair access by small business of the sponsor's licensing practices for technology supported by general funding.

Fourth, Recipients should avoid any other unusual practice or stipulation that might generate public concern or undermine rather than serve the public interest.

Other Points for Consideration by Non-Profit Recipients

The following points are to aid non-profit Recipients in administering the Act and in complying with the requirements of NIH funding agreements.

First, Recipients must ensure that the rights to inventions resulting from Federal funding are not assigned without NIH approval. An exception to this is when the assignment is made to an organization which has as one of its primary functions the management of inventions, in which case, the assignee will be subject to the same provisions as the Recipient.

Second, Recipients must share royalties collected on NIH supported inventions with the inventors and the balance of any royalties or income earned, after payment of expenses, including payment to inventors and incidental expenses to the administration of subject inventions, must be utilized for the support of scientific research or education.

Third, Recipients must employ reasonable efforts to attract licensees of subject inventions that are small business firms. Additionally, Recipients must provide a preference to small business firms when licensing a subject invention if Recipients determine that small business firms have plans or proposals for marketing the invention which, if executed, are equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms. However, Recipients must be satisfied that the small business firms have the capability and resources to carry out plans or proposals. The decision whether to give a preference in any specific case is at the discretion of the Recipient. However, since sponsored research agreements typically provide exclusive licenses or options to such rights to the sponsor, Recipients should seriously consider and provide for these issues when negotiating such agreements.

Conclusion

Technology transfer is a vehicle through which the fruits of NIH funded research are transferred to industry to be ultimately developed into preventive, diagnostic and therapeutic products to advance human health. In a dynamic and multinational marketplace, if the United States is to remain a world leader in technological and scientific innovation, both the public and private sectors must work together to foster rapid development and commercialization of useful products to benefit human health, stimulate the economy, and enhance our international competitiveness, while at the same time protecting taxpayers' investment and safeguarding the principles of scientific integrity and academic freedom.

It is in this spirit that the NIH encourages Recipients to address the issues and apply the points for consideration identified in this document when developing sponsored research agreements with commercial entities.

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Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Fahner-Vihtelic, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804 (telephone 301/496-7735 ext. 285; fax 301/402-0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Artificial Network For Temporal Processing
Wang, L., Alkon, D.L. (NINDS)
Filed 24 Jun 93
Serial No. 08/082,003

This invention comprises a novel artificial network for learning, recognizing, and generating temporal (time-dependent) spacial processing that offers to improve simulations of natural and biologic systems including human learning processes. Previously developed artificial neural networks have limitations because they often do not recognize sequences for which they have not been pre-programmed and have great difficulty discriminating temporal spacial patterns. Furthermore, they have trouble processing images that are obscured by "noise." This newly developed system overcomes such limitations by incorporating time-delay signal circuits, comparator units, and a parallel array of subneural networks. It is capable of learning temporal-spacial sequences such as speech patterns, robotic and unmanned defense system control commands, and forecasts of multivariate stochastic processes (i.e., weather, stock market, etc.). The system is able to recall an entire sequence after being presented with only a small portion of the sequence, which may be obscured by noise and/or contain blank spacial patterns.

Automated Portrait/Landscape Mode Detection On A Binary Image
Le, D.X.D. (NLM)
Filed 5 Nov 93
Serial No. 08/147,798

A software program that simply, efficiently, and economically detects the orientation of text in a binary image containing non-textual information has been invented. Conventional page orientation systems often have problems determining the orientation (i.e., landscape or portrait) of images with a significant number of non-textual elements (i.e., graphics, etc.). One reason such systems have performance problems is due to their emphasis on global variations in the characteristics of the image. This new apparatus overcomes such limitations by classifying each region of the page as either textual or non-textual according to the characteristics it exhibits. For each of the smaller regions classified as textual, the system then determines its orientation. Thereafter, the system groups the regions into successively larger and larger regions, determining the orientation of the successively larger groups, until it determines the orientation of the overall page.

Lift Task Analyzer
Waters, T.R. (CDC)
Filed 30 Nov 93
Serial No. 08/159,284

Development of an apparatus for automatically determining the overall physical stress required for a particular lifting task is valuable for reducing work-related injuries. Back injuries due to lifting are one of the most common and costly work-related injuries in the U.S. today. There previously has been no method available to quickly and accurately determine if a particular lifting task is likely to result in injury. This newly developed lift task analyzer—which uses National Institute for Occupational Safety and Health (NIOSH) equations to determine the overall physical stress of a particular lifting task—can quickly determine the ability of a lifting task to cause injury, with little error. A single physical measurement is all that is needed to provide enough data for calculating all of the NIOSH equation multipliers.

High Dissociation Constant Fluorescent And NMR Sensitive Calcium Ion Indicators
London, R.E., Levy, L.A., Murphy, E., Gabel, S. (NIEHS)
Filed 30 Dec 93
Serial No. 08/175,590

Development of a novel class of calcium indicators offers to significantly improve understanding of the physiological role of this ion. Calcium is a key element in the regulation of numerous cellular processes, including contraction of muscle and excretion of hormones from gland cells and neurotransmitters from nerve synapses, as well as the regulation of cellular metabolism. Presently used methods for measuring calcium levels in the cytosol are not suitable for measuring calcium levels in organelles within cells. Also, conventional methods and agents do not work well at high levels of calcium ions, which are associated with some pathological conditions. The new class of calcium ion indicators, which are chromophoric or fluorescent dyes, are better able to measure high concentrations of calcium because they have high dissociation constants. Furthermore, because they can be measured by various techniques such as 19F NMR spectroscopy, flow cytometry, and quantitative fluorescence techniques, they are applicable to measuring calcium levels within organelles as well as in cytosol.

Solid-State Fluorescent Tipped Fiber Optic Dosimeter Probe With Isotropic Response For Measuring Light Levels In Tissue And Other Turbid Media
Merberg, G.N., Lilge, L. (FDA)
Filed 25 Jan 94
Serial No. 08/188,325

This invention offers a more efficient and accurate photodynamic therapy delivery system that offers to improve the treatment of certain cancers. Presently available spherical-tipped fiber optic systems have fairly large diameters, making it difficult to accurately deliver the laser light to tumor cells while sparing healthy tissue; such probes tend to be fragile, as well. Although standard fluorescent-tipped fiber optic dosimeter probe designs are much smaller and, thus, offer a size advantage, they cannot deliver as much radiation to the tumor as the spherical-tipped models. However, this new fluorescent-tipped fiber optic system produces a strong but narrow response emission, giving it the advantage of being selective as well as effective. It is also more rugged than earlier fiber optic systems.

Photochemotherapy Dosimeter
Landry, R.J., Matchette, S., Merberg, G.N. (FDA)
Filed 25 Jan 94
Serial No. 08/188,331

A newly developed device for measuring the dosage of photochemotherapy offers to significantly improve the effectiveness of such therapy. In photochemotherapy, a cancer patient is given a photosensitizing dye several days before treatment. Because the dye is retained for longer times in tumor tissue than normal tissue, by the time the optical radiation is administered, a far greater proportion of tumor cells will be killed by the radiation than normal cells; however, successful photochemotherapy is highly dependent upon the ability to deliver a sufficient amount of radiation to the entire tumor volume. Current dose-measuring devices, or dosimeters, have limitations because they do not provide a direct measure of the cumulative dose, or the intensity of the signal they produce for the purpose of measurement is often so low that it cannot be measured accurately. This newly developed dosimeter overcomes such limitations by attaching a chemical cell to the end of a fiber optic cable. This cell contains a photobleachable chemical that accurately measures the amount of energy being directed at the tumor and transmits a signal back through the fiber optic cable to a detection device. This system provides a direct measurement of cumulative dosages of optical radiation, making it easier to more accurately deliver a precise amount of radiation to the target cells.

Isolation Of Cellular Material Under Microscopic Visualization Liotta, L.A., Zhuang, Z., Buck, M.R., Stetler-Stevenson, W.G., Lubensky, I.A., Roth, M.J. (NCI)
Filed 1 Mar 94
Serial No. 08/203,780

A unique method has been developed for identifying and extracting pure cell populations from tissue samples. This method may be particularly useful in the study of tumor cells. Previously, accurate assays of enzyme or MRNA levels of human tumors have been complicated by the fact that homogenates of tumors typically have mixed cell populations (i.e., they contain tumor cells as well as healthy cells). This obscures an interpretation of the pathophysiologic processes that may be occurring in the tissue. This new method for cell extraction allows for visualization of a precise field of cells, which can be labeled for identification by a variety of labeling methods. Only the cells of interest are then circumscribed and automatically extracted. Assays of the extracted cells are more informative because the cell population is homogeneous.

Low Pressure, Low Volume Liquid Pump
Hanus, J.P. (FDA)
Filed 1 Mar 94
Serial No. 08/203,781

A new diaphragm pump may be particularly useful in automatic drug-release testing systems. The presently accepted apparatus for measuring drug release from topical ointments and creams has several limitations and drawbacks because it requires the use of

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high pressures, whereas accurate testing must be done under atmospheric pressures. This system also tends to leak and can use only small aliquots. This new diaphragm pump, because it has a minimal internal volume and operates at low pressures, can give much more accurate results and does not absorb any of the material.

Top Down Preprocessor For A Machine Vision System
Vogl, T.P., Blackwell, K.T., Alkon, D.L. (NINDS)
Filed 2 Mar 94
Serial No. 08/204,943

A novel image recognition and classification system has been developed that offers to improve the ability of researchers to develop models of human vision and other neural processes. Despite more than 40 years of research in artificial neural networks, present artificial vision systems are quite crude compared to the visual ability of humans. Most of these systems use a bottom-up approach in which an image (consisting of a collection of pixels) is examined and processed a small area at a time, and the system tries to recognize features within the image by ascertaining the relationship between small groups of pixels. Such systems are plagued by problems with translation, distortion, and noise; however, this new system, which uses a top-down (beginning with examining large areas of an image) hierarchy, provides a biologically realistic processing method for extracting features and more accurately simulates human vision.

Ultrafast Burst Imaging Using Shifting Of Excited Regions
Duyn, J.H. (NCRR)
Filed 4 Mar 94
Serial No. 08/205,434

This invention is a new three-dimensional magnetic resonance imaging device that will allow better imaging of biologic tissue. Conventional BURST technology excites a set of equally spaced, narrow strips in an object and creates an image from a single slice, perpendicular to the direction of the strips. In order to scan multiple slices or for three-dimensional imaging, repeated excitation of the same strips is required. For ultra-fast scanning, repetition times are short compared to longitudinal relaxation times, leading to saturation effects and, thus, inefficiency. In addition, when scanning in two-dimensional mode, the commonly used slice selective RF refocusing pulse also leads to additional saturation. This new device utilizes BURST RF excitation pulses and shifts the excitation region after successive excitation repetitions, thus, minimizing saturation and increasing efficiency while improving the signal to noise ratio. This instrument allows three-dimensional data sets on a human brain scan to be collected within a few seconds using a standard clinical scanner.

Method And System For Multidimensional Localization And Rapid Magnetic Resonance Spectroscopic Imaging
Posse, S., Le Bihan, D. (CC)
Filed 8 Apr 94
Serial No. 08/224,942

A newly developed method and system for multidimensional localization and rapid magnetic resonance spectroscopic imaging allows for quicker, more accurate imaging of metabolites in biologic tissue. Nuclear magnetic resonance (NMR) techniques have long been used to obtain spectroscopic information about substances in order to reveal the substance's chemical composition. More recently, spectroscopic imaging techniques have been developed that combine magnetic resonance imaging (MRI) with NMR spectroscopic techniques, thus providing a spacial image of the chemical composition; however, previously available techniques for making such measurements have been hampered by limitations in prelocalization of samples due to long echo times as well as long data acquisition times. Most of these systems often generate spectral as well as spacial data due to the long echo times, and their localization techniques are not applicable to acquiring multiple-volume data from nuclei that have short T_2 relaxation times. This new system circumvents these limitations by applying pulse sequence to a conventional MRI apparatus, which allows the rapid acquisition of data for generating spectroscopic images and greatly shortens the echo time. Spatial prelocalization of a volume of interest is achieved by providing a presuppression sequence before a stimulated echo (STE) sequence and a suppression sequence before the interval of the STE sequence.

Continuous Positive Airway System
Kolobow, T. (NHLBI)
Filed 22 Apr 94
Serial No. 08/231,718 (CIP of 08/085,948, CIP of 07/878,784, CIP of 07/758,824)

This invention is a novel method and apparatus for greatly improving and sustaining spontaneous breathing in patients with severe respiratory failure. Continuous positive airway pressure (CPAP) is widely used in the treatment of patients with mild respiratory failure. The constant back pressure in CPAP provides the force to expand some diseased parts of the lungs and, thus, improve oxygenation and carbon dioxide removal; however, presently available CPAP systems have limitations when used in patients with more severe respiratory failure who need endotracheal tubes, which have substantial airway resistance as compared to upper airway resistance. This resistance can lead to an increase in the work of breathing and cause fatigue. Too often, a patient with an ETT receiving CPAP treatment is eventually placed on a mechanical ventilator, increasing his or her risk of morbidity and mortality. The peak inspiratory and respiratory air flows in current CPAP systems also is severely limited. This contributes to patient discomfort and often becomes the motivation for switching a patient to a mechanical ventilator. This new CPAP system offers significant improvements over previous systems because it combines a passive CPAP apparatus with an intratracheal pulmonary ventilation (ITPV) system. The ITPV system has exceptionally low extrinsic resistance to air flow and greatly reduces dead-space ventilation. This system will permit a large fraction of the current patient population supported by assisted mechanical ventilation to switch to CPAP or a combination of CPAP and ITPV, significantly reducing the risk of morbidity and mortality.

Variable Axial Aperture Positron Emission Tomography Scanner
Green, M.V., Seidel, J., Gandler, W.R. (CC)
Filed 29 Apr 94
Serial No. 08/235,310

Development of a unique system that can operate as both a scintillation camera and a positron emission tomography (PET) scanner offers to significantly improve the visualization of physiological processes in the human body and other biological systems. Single photon emission computed tomography (SPECT) imaging—which utilizes one or more scintillation cameras rotated around a subject—is used in nuclear medicine facilities worldwide. More recently, an alternative to SPECT imaging has involved the development and use of positron emission tomography (PET) imaging, in which the subject is surrounded by rings of detectors that detect the emission of a pair of gamma rays from a radioisotopic tracer molecule after it is irradiated by positrons. One particular disadvantage associated with conventional PET ring designs is that they cannot image single-photon-emitting tracer compounds such as those used in SPECT imaging. On the other hand, scintillation cameras are effectively incapable of PET imaging. Previously, there has been no system available capable of both types of imaging. This newly developed system overcomes this problem by using a tiltable pair of scintillation cameras, which can be adjusted to be selectively sensitive to gamma rays of different energies, including those detected in PET imaging.

Dated: October 29, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–27593 Filed 11–7–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3834]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 2, 1994.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies—Performance Funding System: Modification on the Performance Funding System

Office: Public and Indian Housing

Description of the Need for the Information and its propsed use: The information is used by Public Housing Agencies (PHAs) for inclusion in budget submissions which are reviewed and approved by HUD Field Offices as the basis for obligation operating subsidies. The Information collection is necessary to assure that a PHA is not provided more subsidy than is needed for effective operation of the PHA.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: Annually and Recordkeeping

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Estimating and Reporting	1,900		1		2		3,800
Recordkeeping	1,900		1		5		9,500

Total Estimated Burden Hours: 13,300

Status: Extension, no changes

Contact: John T. Comerford, HUD, (202) 708–1872; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 2, 1994.

[FR Doc. 94–27643 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3755; FR–3622–N–05]

NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation Correction to Deadline

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA)—Correction.

SUMMARY: This notice changes the deadline requirements for the FY 1994 FHIP NOFA published on May 16, 1994 (59 FR 25532).

DATES: The application due date remains the postmark or delivery service receipt date originally specified in the application kit. However, the requirement that applications be received within 7 days after the postmark or delivery service receipt date is removed.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

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SUPPLEMENTARY INFORMATION: The Fiscal Year (FY) 1994 Fair Housing Initiatives Program (FHIP) Notice of Funding Availability (NOFA) published on May 16, 1994 (59 FR 25532) contained an application due date that provided:

> Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

Upon further consideration, the Department has determined to remove the "receipt within 7 days" requirement and to permit all applications with a U.S. postmark or a private commercial delivery service receipt, which is dated on or before the application due date, to compete for funding. In making this determination, the Department has taken into account the predicament of applicants who have spent many hours in preparing applications, only to be disqualified, through no fault of their own, because of a third party's failure to make timely delivery. The requirement that all applicants have the same amount of time (up to the postmark date) to prepare their applications is not affected by this determination.

Accordingly, the requirement in the FY 1994 FHIP NOFA, published on May 16, 1994 (59 FR 25532), that applications be received within 7 days after the postmark or delivery service receipt date is removed. Applications will not be disqualified as long as their postmark or delivery service receipt date meets the date originally specified in the application kit.

Dated: October 31, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–27641 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–28–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3720; FR–3617–N–04]

Announcement of Funding Awards for Indian Applicants Under the HOME Program for FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1993 Indian Applicants under the HOME Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to expand the supply of affordable housing.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, U.S. Department of Housing and Urban Development, Room B–133, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755–0032.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600–92.652) apply specifically to the Indian HOME program.

On March 10, 1994 (59 FR 11424), HUD published a Notice of Funding Availability announcing the availability of $12.75 million in FY 1994 funds for Indian Applicants under the HOME program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance Under the FY 94 Indian HOME Program Funding Competition

Cherokee Nation, PO Box 948, Tahlequah, OK 74465, Grant amount: $1,500,000

2. Tohono O'Odham Nation, PO Box 837, Sells, AZ 85634, Grant amount: $1,500,000
3. Choctaw Nation of Oklahoma, Drawer 1210, Durant, OK 74702–1210 , Grant amount: $1,500,000
4. Hughes Tribal Village Council, Box 45029, Hughes, AK 99745, Grant amount: $453,000
5. Blackfeet Tribe, PO Box 640, Browning, MT 59417, Grant amount: $1,500,000
6. Manzanita Band of Mission Indians, PO Box 1302, Boulevard, CA 91905, Grant amount: $130,000
7. Koyukuk Tribal Council, PO Box 109, Koyukuk, AK 99754, Grant amount: $454,000
8. Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001, Grant amount: $701,000
9. Red Lake Band of Chippewa Indians, Red Lake, MN 56671, Grant amount: $500,000
10. The Navajo Nation, PO Box 308, Window Rock, AZ 86515, Grant amount: $1,500,000
11. Seneca Nation of Indians, 1490 Route 438, Irving, NY 14081, Grant amount: $252,000
12. Taos Pueblo, PO Box 1846, Taos, NM 87571, Grant amount: $408,000
13. Muscogee (Creek) Nation, PO Box 580, Okmulgee, OK 74447, Grant amount: $244,000
14. Fort Belknap Comm. Council, RR1, Box 66, Harlem, MT 59526 Grant amount: $400,000
15. Miss. Band of Choctaw Indians, PO Box 6010, Philadelphia, MS 39350, Grant amount: $825,000
16. Salt River Pima Maricopa, Route 1, Box 216, Scottsdale, AZ 85256, Grant amount: $500,000
17. Bois Forte Reservation, PO Box 16, Nett Lake, MN 55772, Grant amount: $341,000

Total: $12,708,000

Dated: November 2, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27566 Filed 11–7–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Ninth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the United States negotiating positions on agenda items and resolutions for the ninth regular meeting of the Conference of the Parties (COP9) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Comments have been solicited and public meetings to discuss these negotiating positions have been held.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones or Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420–C, Arlington, VA 22203; telephone 703/358–2093; fax 703/358–2280.

SUPPLEMENTARY INFORMATION:

Background:

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to monitor and control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 124 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention. The ninth regular meeting of the Conference of the Parties to CITES (COP9) will be held in Fort Lauderdale, Florida, November 7–18, 1994.

A series of notices and public meetings provided the public with an opportunity to participate in the development of the U.S. positions for COP9. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832), requested additional comments from the public on animal or plant species the United States was considering submitting as amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096): (1) Published the time and place for COP9; (2) announced a public meeting for February 22, 1994, to discuss the 31st meeting of the CITES Standing Committee; (3) detailed the provisional agenda of the COP; and (4) requested information and comments from the public on possible COP9 agenda items and resolutions that the United States might submit. A **Federal Register** notice published on September 1, 1994 (59 FR 45307), announced a public meeting to take place on September 14, 1994. A **Federal Register** notice published on September 6, 1994 (59 FR 46023), set forth summaries of proposed U.S. negotiating positions on species proposals that were submitted by other countries to amend the CITES Appendices and requested public comment on these proposals. A **Federal Register** notice published on September 7, 1994 (59 FR 46266), announced an additional public meeting to take place on September 16, 1994. A **Federal Register** notice published October 4, 1994 (59 FR 50609) set forth summaries of the proposed U.S. negotiating positions on agenda items and resolutions for COP9 and requested public comments on these positions, which were also presented at the September 14 and 16 public meetings. The Fish and Wildlife Service's (Service) regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Negotiating Positions

In this notice, the Service summarizes the United States positions on agenda items and resolutions for COP9 and a summary of written information and comments received in response to the **Federal Register** notice of October 4, 1994. Numerals next to each agenda item correspond to the numbers used in the provisional agenda [COP9 Document 9.1 (revised)] received from the CITES Secretariat. However, documents for several of the agenda items have not been received from the CITES Secretariat. A list of documents received to date and copies are available to the public on request, from the Office of Management Authority.

When information and comments on the agenda items were submitted in writing to the Service or received at the September 14 or 16, 1994 public meetings, they are included with the proposed negotiating position, with a brief discussion. Each proposed position includes a brief rationale explaining the basis of the position. While this notice sets forth the negotiating positions of the United States at COP9, new information that becomes available during discussions at a COP can often lead to modifications in these positions. At COP9, the U.S. delegation will disclose all position changes and the rationale explaining them.

Comments were received from 28 organizations, 1 government, and two private individuals, both in writing and at the public meetings held September 14 and 16, 1994. Comments were received and are summarized from the following governments, organizations and private individuals: Government of Japan, Fisheries Agency (Japan), Africa Resources Trust (ART), State of Alaska Department of Fish and Game (Alaska), the American Orchid Society (AOS), Animal Welfare Institute (AWI), California Cactus Growers Association (CCGA), Center for International Environmental Law (CIEL), Center for Marine Conservation (CMC), Commercial Orchid Growers Guild (COGG), Defenders of Wildlife (DOW), Earth Island Institute (EII), Endangered Species Project (ESP), Environmental Investigation Agency (EIA), Greenpeace, Grigsby Cactus Gardens (Grigsby), Humane Society of the United States (HSUS), the International Association of Fish and Wildlife Agencies (IAFWA), International Wildlife Coalition (IWCo), International Wildlife Management Consortium (IWMC), International Wood Products Association (IHPA), IUCN Marine Turtle Specialist Group (MTSG), Monitor Consortium (Monitor), National Rifle Association (NRA), the Natural Resources Defense Council (NRDC), the Pleurothallid Alliance (PA), Safari Club International (SCI), SMT Guitars, Wildlife Management Institute (WMI), World Wide Fund for Nature, International (WWF), and Mr. John de Kanel and Mr. Gary Lyons.

Negotiating Positions: Summaries

I. Opening Ceremony by the Authorities of the United States of America

The United States is arranging for a suitable ceremony in cooperation with the CITES Secretariat.

II. Welcoming Addresses

The United States is arranging for welcoming addresses from appropriate officials in cooperation with the CITES Secretariat.

III. Adoption of the Rules of Procedure (Doc. 9.3)

Negotiating position: Oppose modifications to the Rules of Procedure that would simplify the procedure for invoking a secret ballot. Support retention of the Rules of Procedure that were in place at COP8 in Kyoto, Japan in 1992.

Information and Comments: Comments were received from DOW,

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HSUS, MTSG, and IWCo. Comments were received from DOW and MTSG at the September 16, 1994 public meeting. DOW supports the U.S. position and feels that the role of observers would be negated by a change in the balloting procedure. The MTSG noted that the secret ballot has seldom been used, but when it was used, it had really been needed. DOW urged the United States not to modify its position and to work to convince other Parties to support the U.S. position. It argues that allowing secret ballots so easily would facilitate the practice of announcing one position publicly and vote another position in secret balloting. HSUS supports the U.S. position and maintains that delegates should be accountable to their governments and citizens, that CITES procedures should be conducted in a democratic fashion by majority rule, and that secret ballots are overly time-consuming. IWCo supports the U.S. position, claiming that the proposed revisions to the Rules would permit a regional bloc of countries to dictate to the Convention. IWCo suggests that if the U.S. position to retain the COP8 Rules is not agreed upon, then one viable alternative would be to require at least one Party from each CITES Region to support a secret ballot.

Rationale: The Rules of Procedure must be adopted by the Plenary of the COP at the outset. Any modifications to the Rules of Procedure that were in place at COP8 must be approved by the Parties at the first Plenary session. The only difference between the Rules of Procedure for COP8 and the Provisional Rules of Procedure circulated by the Secretariat is in Rule 15, paragraph 3; that modification was approved by the Standing Committee (for submission to COP9) at its thirty-first meeting in Geneva, held March 21–25, 1994. Rule 15, paragraph 3, refers to secret ballots. According to the Rules of Procedure adopted at COP8, when a delegation proposes that a vote be taken by secret ballot, an open vote is required to approve this proposal; a majority of all Parties voting must approve a secret ballot before it is implemented. The Provisional Rules of Procedure recommended by the Standing Committee, amended at the suggestion of the observer from Zimbabwe at that meeting, require that only six parties (the proposer and five seconds) request a secret ballot for it to be implemented for a particular vote.

At the Standing Committee meeting, the U.S. delegation opposed modifying the Rules of Procedure. The COP9 position of the United States remains in opposition to this modification of the Rules of Procedure, which operated effectively at both COP7 and COP8. In numerous international fora (e.g., GATT, UNCED), it has been the position of the United States to promote openness in the dealings of intergovernmental organizations. In the U.S. view, it would be highly unusual in terms of international treaty practice for secret balloting, other than for the election of officers. The United States believes that since a delegation at a COP is accountable to its government, it should not need to vote in secret. The United States is also very concerned that making secret ballots too easy will unnecessarily delay the work of the COP. The United States also believes that it is inappropriate for the minority (possibly only six countries) to dictate to the majority how votes should proceed. The United States believes that a rule allowing a few countries to determine the use of the secret ballot could lead to excessive use of this option, as well as unnecessary dissension and ill will among countries. Secret ballots are extremely slow and time consuming. Regardless of how few or many secret ballots are taken at the COP, however, all U.S. positions and votes on issues will be publicly disclosed.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II and of the Budget Committee (No Documents Will Be Received)

Negotiating position: Support election of a Conference Chair from the United States, and highly qualified Committee and Vice Chairs representing the geographic diversity of CITES.

Information and Comments: Comments were received from HSUS, which supports the U.S. position.

Rationale: The Chair of the CITES Standing Committee (New Zealand) will serve as temporary Chair of the Conference until a permanent Conference Chair is elected. It is traditional for the host country to provide the Conference Chair, and the United States will propose a person with substantial executive skills and international negotiating experience to be nominated as Chair. This person, if elected by the parties, will serve as Presiding Officer of the Conference and also of the Conference Bureau, the executive body which manages the business of the Conference; other members of the Bureau include the Committee Chairs (discussed below), the nine members of the Standing Committee (see Agenda Item IX), and the Secretariat.

The major technical work of CITES is done in the Committees, and thus Committee chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support election of Committee Chairs and Vice Chairs of the Conference having requisite technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES. The United States is now consulting with the Secretariat and the Standing Committee regarding suitable candidates.

V. Adoption of the Agenda and Working Programme (Docs. 9.1, 9.2, 9.21, 9.2.2)

Negotiating Position: Support adoption of an agenda and working program that guarantee a smoothly operating meeting that addresses all species and implementation issues.

Information and Comments: Comments were received from HSUS, which supports the U.S. position.

Rationale: The U.S. nominee to serve as Conference Chair, if accepted by the Parties, will be responsible for management of the overall agenda, in consultation with the Bureau.

VI. Establishment of the Credentials Committee and Committees I and II (No Document Will Be Received From the CITES Secretariat).

Negotiating Position: Support the establishment of the Credentials Committee and Committees I and II.

Information and Comments: Comments were received from HSUS, which support the U.S. position.

Rationale: Establishment of the Credentials Committee is a *pro forma* matter. The Credentials Committee approves the credentials of delegates to the COP, by confirming that they are official representatives of their government, thereby affording them the right to vote in Committee and Plenary sessions. The United States supports the establishment of Committees I and II, provided most participating Parties have been able to send at least two delegates, or that the rules governing debate of the Committees ensure that most delegations will have an opportunity to debate recommendations before a final decision is made.

VII. Report of the Credentials Committee (No Document Will Be Received)

Negotiating position: Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. Representatives whose credentials are not in order should be afforded observer status as provided for under Article XI. If credentials have been delayed,

representatives should be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Information and Comments: HSUS supports the general comments of the Service on this issue.

Rationale: Adoption of the report is generally *pro forma*. Exclusion of Party representatives whose credentials are not fully in order could undermine essential cooperation among Parties.

VIII. Admission of Observers (No Document Will Be Received Before the COP)

Negotiating Position: Support admission to the meeting of all technically qualified national and international non-governmental organizations and support their full participation at COP9.

Information and Comments: Comments were received from HSUS and DOW. HSUS supports the Service's general comments on this issue. DOW supports the U.S. position to support the admission of all technically qualified non-governmental organizations and to oppose unreasonable limitations on the full participation of such groups during COP9.

Rationale: National and international non-governmental organizations representing a broad range of viewpoints and perspectives play an important role in CITES activities and have much to offer to the debates and negotiations at a COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at COPs. Each Party government approves its own national observer organizations, while the Secretariat approves international organizations. The Office of Management Authority approved the attendance of sixty-five U.S. observer organizations.

IX. Matters Related To the Standing Committee

This agenda item consists of three subitems:

1. Report of the Chairman (Doc 9.5)

Negotiating Position: The United States strongly supports the active role which the current Standing Committee, under the leadership of New Zealand, has played in carrying out the many functions given to it by resolutions adopted by Conferences of the Parties. This includes the review of compliance with these resolutions by the Parties and making decisions for appropriate action when Parties are not in compliance.

Information and Comments: Comments were received from HSUS, which supports the U.S. position regarding the current chair of the Standing Committee, who it feels has opened the Committee up to NGOs. HSUS urges the United States to oppose any attempt to exclude NGOs from making presentations at future Standing Committee meetings.

2. Regional Representation on the Standing Committee (Doc. 9.7)

Negotiating Position: Support an increase in Standing Committee membership if budgetary implications can be resolved.

Information and Comments: Comments were received from HSUS. HSUS opposes increasing the number of representatives to the Standing Committee because of the added expense and because it feels the addition of extra representatives would slow the deliberations of the Committee. HSUS does not believe that the representatives fully consult with the countries they theoretically represent.

Rationale: The Standing Committee is currently composed of six Regional voting representatives of North America (Canada), Central and South America and the Caribbean (Trinidad and Tobago, the Vice Chair), Asia (Thailand), Oceania (New Zealand, the Chair), Africa (Senegal), and Europe (Sweden). There are also three *ex officio*, nonvoting members: Switzerland (depositary country), Japan (past host country), and the United States (current host country). Each CITES Region currently has one representative on the Standing Committee, regardless of how large or small the number of Parties (Africa has 43 CITES parties, for example, while North America has 3 Parties and Oceania 4). A proposal submitted by Malawi would increase the number of Regional representatives from Regions having larger numbers of Parties. The United States will consider support for such a proposal only after full consideration by the Budget Committee of any financial effects.

3. Election of New Members and Alternate Regional Members

Negotiating Position: Encourage membership which will continue the active role of the Standing Committee.

Information and Comment: Comments were received from HSUS which supports the general comments of the Service on the election of new members of the Standing Committee.

Rationale: The Regional representatives of North America, Europe, and Oceania are open for review by their respective Regions at COP9. The United States, as host of COP9, will continue on the Standing Committee as past host country until COP10. A new Chair will be selected by the new Standing Committee during a meeting to be held at the close of COP9; while the United States will not have a vote, the U.S. position is to encourage selection of a Chair with a strong commitment to a proactive Standing Committee role in the management of CITES affairs, as New Zealand has done during the past two and one half years.

X. Report of the Secretariat: the Report Has Not Been Received

Negotiating Position: When received, the Service will carefully review issues pertaining to: success of procedures for Parties to set budgetary and work priorities; setting of new short-term and long-term objectives for the Secretariat; evaluation of the performance of the Secretariat; and progress in assisting Parties to more forcefully and effectively implement the Convention.

Information and Comments: Comments were received from HSUS which supports the Service's general comments on this issue.

Rationale: The biennial report provides the major way for the Secretariat, and the Secretary General, to report priorities, accomplishments, and problems to the Parties. These are critical management issues facing CITES which need to be addressed in the Secretariat's report.

XI. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

1. Financial Report for 1992–1993

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

2. Anticipated expenditures for 1994 and 1995

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The United States continues to advocate fiscal responsibility and accountability.

3. Budget for 1996–1998 and Medium-Term Plan for 1996–2000 (Doc. 9.10)

Negotiating Position: Oppose any substantial increase in the Secretariat's budget representing a significant increase in its work plan. Support

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budget increases requested by the Secretariat in cases where the growing membership is placing increasing burdens on staff, without any commitment to an increased U.S. contribution. Support an evaluation of priorities and possible reprogramming of currently funded budget items into underfunded or unfunded areas of higher priority. Review current expenditures and proposed budget items (both base and increases) in the context of priorities for implementation and enforcement of the Convention worldwide.

Information and Comments: Comments were received from HSUS, which supports the U.S. position of evaluating priorities and possible reprogramming of budget items. HSUS calls for a 75% reduction in the Nomenclature Committee budget and application of the savings to enforcement efforts. The United States agrees that the budget proposed for nomenclature appears somewhat excessive, and should be reviewed in the context of priorities for implementation of the Convention. HSUS calls for holding Plants and Animals Committee meetings in a centralized location to hold down costs. HSUS recommends that if a Party wishes to host a Committee meeting, it should pay the difference between the costs of holding the meeting at the distant location or holding it in the centralized location (which the United States presumes to mean Geneva). The United States considers this a useful recommendation, but believes that only travel costs of committee members should be covered by the host government.

Rationale: The United States cannot at present commit to a larger contribution to the CITES budget. The United States is the largest single contributor; under the United Nations scale, the United States is asked to provide 25 percent of the annual operating budget. In fiscal year 1994, the Department of State allocated approximately $1 million of the Congressional foreign aid appropriation to support CITES. However, the United States recognizes the heavier workload being imposed on the Secretariat, Standing Committee, and both the Animals and Plants Committees. The United States looks forward to a full review of current expenditures and proposed budget items (both base and increases) in the context of priorities for implementation and enforcement of the Convention worldwide.

4. External Funding

Negotiating Position: No document has been received from the CITES Secretariat; no specific position is possible at this time. The United States continues to strongly encourage national and international non-governmental organizations, intergovernmental organizations, and other governments, to support these projects.

Information and Comments: No comments were received.

Rationale: External funding refers to the financial support by Party governments and non-governmental organizations for projects that have been approved by the Standing Committee. The CITES Parties have established a process whereby the Standing Committee approves projects and approves donors, to avoid even the appearance of a conflict of interest. The Secretariat's report on this issue is expected to summarize approved donors, approved projects, projects that have been funded, and approved projects that are awaiting funding. The Service, the Department of State, and the National Marine Fisheries Service have made substantial contributions to externally funded projects, including travel of delegates from developing countries to COPs, support for committee meetings, facilitating a meeting of the Working Group on the Transport of Live Specimens, biological studies of significantly traded species, review of national laws for the implementation of the Convention, numerous enforcement-related projects, and other similar projects.

XII. Committee Reports and Recommendations

1. Animals Committee (Doc. 9.13)

Negotiating Position: The United States supports the active role of the Animals Committee in scientific and management issues pertaining to animal species listed in the CITES Appendices. Encourage membership which will continue the active role of the Animals Committee, and selection of a Chair with a strong commitment to a proactive Animals Committee.

Information and Comments: Comments were received from HSUS, which argues that the Animals Committee spends too much time on enforcement issues, which HSUS believes would be better dealt with by a special enforcement committee. According to HSUS, the Animals Committee should instead focus more intently on the biological status of species.

Rationale: The Animals Committee report may contain information or recommendations dealing with Appendix II species subject to significant trade, marking techniques, crocodilian tagging, sea turtle ranching, care for and reintroduction of seized live animals, and various other issues. The United States has actively participated in the work of the Animals Committee since its establishment at COP6, and will continue to be an active participant in Animals Committee functions. The United States is satisfied with the current jurisdiction and work priorities of the Animals Committee. The United States is supporting the establishment of a Law Enforcement Working Group to deal with specific implementation issues related to enforcement.

Regional Representation on the Animals Committee (Doc. 9.49)

Negotiating Position: Support the draft resolution submitted by Kenya proposing that the regions of Africa, South and Central America and the Caribbean, and Asia provide two representatives each to the Animals Committee, if the necessary financial support is provided by the Secretariat through the Secretariat's Budget. The United States notes that Europe, with a large number of Parties as well, would also have two representatives.

Information and Comments: No comments were received.

Rationale: The Animals Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Animals Committee. The Regional representatives are selected by the Party governments at their respective regional caucuses during the COP. A new Chair will be selected by the new Animals Committee, most likely during a meeting to be held at the close of COP9.

2. Plants Committee (Doc. 9.14)

Negotiating Position: The United States supports the continued activities of the Plants Committee to improve the effectiveness of CITES for plants, with a focus on the following: publication of checklists and identification guides; significant trade in orchids, succulents, and other species; review of the timber trade; and trade in artificially propagated plants. Encourage membership which will continue the active role of the Plants Committee, and selection of a Chair with a strong commitment to a proactive Plants Committee.

Information and Comments: No comments were received.

Rationale: The Plants Committee is currently composed of individuals representing the six CITES geographic regions: North America, Central and South America and the Caribbean, Asia, Oceania, Africa, and Europe. Each CITES Region currently has one representative on the Plants Committee. Dr. Bruce MacBryde of the Service's Office of Scientific Authority serves as Vice-Chair of the Plants Committee (representing North America). The Regional representatives are selected by the Party governments at their respective regional caucuses, at the COP. A Chair will be selected by the new Plants Committee, most likely during a meeting to be held at the close of COP9.

3. Identification Manual Committee (No Document Has Been Received)

Negotiating Position: Continue to support the work of the Identification Manual Committee and development of animal and plant identification manuals for use by port and border enforcement officers, in providing a standard of reference for the identification of CITES species. Consider the budget of the Identification Manual Committee in the context of available resources and priorities.

Information and Comments: Comments were received from DOW. DOW concurs with the U.S. support of the Identification Manual Committee and the development of plant and animal identification manuals for use by port and border enforcement officers. DOW believes it would aid the monitoring of imports by decreasing limitations in identifying species.

Rationale: The enforcement officers of the Parties must be equipped with guides which are accurate, realistic, and helpful in the identification of the many CITES species and products found in trade throughout the world.

4. Nomenclature Committee (Doc. 9.16)

Negotiating Position: Encourage the development and adoption of checklists for all taxa, within budgetary limits and priorities to be decided upon by the Parties. Support revisions of existing checklists for fauna prior to development of new ones. Consider the budget of the Nomenclature Committee in the context of available resources and priorities for the implementation and enforcement of the Convention worldwide. Oppose use of CITES funds for the start of a lizard checklist before other tasks are complete, and do not support proposed name changes for U.S. freshwater mussels. Ensure that the language of the resolution is consistent with comparable recommendations in whatever listing criteria resolution is adopted by the Parties.

Information and Comments: No comments were received.

Rationale: Because of the expense in developing checklists for taxa, the United States supports recognition of existing checklists for remaining taxa when suitable, and greater use of external funding when possible. Implementation of the Convention is strengthened by the use of uniform names of listed species.

XIII. Evolution of the Convention

1. Strategic Plan of the Secretariat

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time. The earlier version discussed at the last Standing Committee meeting had many elements the United States could support.

Information and Comments: No comments were received.

Rationale: The Secretariat submitted a provisional discussion document at the 31st meeting of the Standing Committee, discussing a long-term strategic plan for activities of the Secretariat. The United States considers such long-term management planning to be in the best interest of increasing the implementation, enforcement, and effectiveness of the Convention.

2. How to Improve the Effectiveness of the Convention

Negotiating Position: An informal document has been reviewed, but the revised document has not been received from Canada or the Secretariat; no final position is possible at this time.

Information and Comments: Comments were received from HSUS and SCI. HSUS supports the Service's general comments on this issue. SCI calls for a complete reevaluation of the basic concepts of CITES. It argues that the listing process is too vague and becomes too political. It further maintains that there has been the development of the precautionary principle which it believes is not in the treaty. It claims that the process as it stands has become abusive. It urges the United States to support an active, cooperative process to reform the mechanisms of CITES in the direction of cooperation between range states and importing states and to recognize the conservation role of tourist safari hunting and other forms of sustainable use.

Rationale: This agenda item was suggested by the delegate from Canada at the March 1994 Standing Committee meeting; the Standing Committee agreed that a review of the general evolution and implementation of CITES should be done by an independent body, and that a project proposal for this review should be developed by the Secretariat. The main concerns of the United States are: whether or not funding will be available for such a project; that such a project not impair the ability of other functions in the Secretariat budget to receive necessary and possibly higher priority funding; and that emphasis should be placed on how to improve the effectiveness of the Convention, including its enforcement and implementation, rather than in a costly study of whether or not the Convention is effective.

XIV. Interpretation and Implementation of the Convention

1. Review of the Resolutions of the Conference of the Parties (Doc. 9.19)

Negotiating Position: Support the effort begun by the Secretariat immediately following COP8, at the direction of the Standing Committee, to review all of the resolutions of the Conference of the Parties with the goal of assisting Parties in the effective utilization of the resolutions, in order to more effectively implement the Convention, by: (1) Deleting resolutions that have been superseded or whose purpose has been accomplished; and (2) consolidating resolutions that deal with the same subject.

Information and Comments: Comments were received from DOW, HSUS, and SCI. DOW commented at the September 16, 1994 public meeting that it was wise to consolidate and wise to be cautious in making deletions and called for all previous resolutions concerning ivory to be retained (see discussion under agenda item 1a). The United States notes that those resolutions or portions of resolutions proposed for deletion that pertain to the ivory trade have been superseded by the inclusion of all African elephant populations in CITES Appendix I. However, many parts of the resolutions have continuing validity as to the legality of imports and legal status of certain specimens. Additionally, important policies adopted by the Parties through these resolutions should be revived if any African elephant populations are transferred to Appendix II.

HSUS supports the deletion and consolidation of the resolutions that have been superseded or accomplished in general. SCI urged that care be taken not to change basic concepts of

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resolutions when consolidating overlapping resolutions, eliminating duplications, and clarifying cross-referencing. The Service agrees, and has worked consistently within the Standing Committee to ensure that consolidations do not in any way change basic concepts or the sense of resolutions.

Rationale: At every Standing Committee meeting since COP8, the United States delegation has strongly urged (and the Committee has adopted this recommendation of the United States) that any consolidation of resolutions retain the text of the original, including the preamble, so as to: (1) Assist the Parties, while retaining the original intent of the resolution; and (2) reduce unnecessary or unproductive debate at COP9 on "old" issues. Therefore, the United States supports deleting only out-of-date resolutions that are truly non-controversial, and retaining the text of the original for any consolidations. The Standing Committee reiterated its support for this approach at its March 1994 meeting. The United States supports an expedited approval of these consolidations in Plenary Session at COP9, which will only be possible if the original text of resolutions (preamble and operative paragraphs) are retained, so that any consolidations will be structural and not substantive.

(a) Deletion of Resolutions that are out of date (Doc. 9.19.1). Negotiating Position: Support the deletion of resolutions that are out of date, if they have been superseded by other resolutions or have been overtaken by events. However, they contain valuable historical information and should be available in some form should trade be reactivated for certain species. Essentially support the deletion of all resolutions proposed by the Secretariat and circulated to the Parties, with the following exceptions: Conf. 2.8, 3.13, and those relating to certain parts and derivatives of plants—Conf. 2.18, 4.24, 6.18, and 8.17 (b) and (c). Those resolutions or portions thereof proposed for deletion that pertain to the ivory trade have been superseded by the inclusion of all African elephant populations in CITES Appendix I. However, many parts of the resolutions have continuing validity as to the legality of imports and legal status of certain specimens. Additionally, important policies adopted by the Parties through these resolutions should be revived if any African elephant populations are transferred to Appendix II.

Information and Comments: Comments were received from EIA, AWI, DOW, HSUS, and IWCo. EIA, at the September 14, 1994 public meeting, urged that the following resolutions not be consolidated or deleted: Conf. 1.6, ivory control resolutions, and the European Union resolution. At the September 16, 1994 public meeting AWI urged that nothing be deleted that may be useful in the future. DOW and IWCo expressed concerns about the deletion of paragraph 5 of Resolution Conf. 1.6, adopted for the purpose of limiting the pet trade in wild animals to those bred in captivity. They disagree with the explanation provided by the Secretariat that this has virtually been achieved. DOW urges the United States to reconsider its approval of this deletion and also asks it to review the deletion of Resolution Conf. 6.5 on CITES implementation in the EC. It disagrees with the Secretariat's sentiments that the recommendation in Conf. 6.5 calling for the EC to monitor the movement of CITES specimens between Member States is no longer necessary. HSUS urges the U.S. to oppose the deletion of the following Resolutions: Conf. 1.6, paragraph 5, on the limitation of keeping pets to those that can be bred in captivity; Conf. 2.8 and 3.13, regarding the trade in whale products (this supports the U.S. position); Conf. 6.5 on CITES implementation in the EC; and Conf. 5.12, 6.11 through 6.16, and 7.8 on the ivory trade from African elephants. IWCo also opposes the deletion of any of the resolutions relating to control of the ivory trade.

The United States agrees that no resolution that remains useful or operative should be deleted. The United States agrees that problems remain with the implementation of CITES in the European Union, but also agrees with the Secretariat that the recommendations of this resolution have been fulfilled. The United States notes that those resolutions or portions of resolutions proposed for deletion that pertain to the ivory trade have been superseded by the inclusion in Appendix I of the African elephant, but recognizes the merit of retaining them for future application to any populations that may be transferred to Appendix II.

The United States agrees with the Secretariat that Resolution Conf. 1.6 paragraph 5 can be repealed because: it has become outdated; for many species wild caught animals already have been replaced by captive-bred specimens, while for others removal from the wild for the pet trade may indeed be sustainable; and it provides no direction for implementation by the Parties. The United States is not opposed to removal of animals from the wild for the pet trade, if such removal is part of an effective and enforced scientifically-based sustainable-use management plan.

IWCo opposes the deletion of the following additional resolutions proposed for deletion by the Secretariat: Conf. 2.23, 3.9, 3.20, and 6.8.

Rationale: Certain other resolutions on plants remain pertinent unless they are superseded by new resolutions coming from COP9, e.g., Conf. 5.15 in relation to Doc. 9.30 on nursery registration. Technical review of Doc. 9.19.1 is continuing and the United States may offer further comment on the affected resolutions before or during the COP.

The United States supports deletions of resolutions that are out of date or no longer relevant. However, recent discussions in the International Whaling Commission (IWC) highlight the fact that illegal trade in whale parts and products continues, in spite of the IWC's moratorium on commercial whaling. The United States has requested that this item be discussed at COP9 (see agenda item 15). The IWC has not yet completed an observation, inspection and enforcement program which would certify that the products of any commercial whaling which occurs in the future are taken in compliance with IWC regulations. Thus, these resolutions (Conf. 2.8 and 3.13) are neither out of date, nor have they been superseded.

The United States opposes deletion of certain aspects pertaining to plants in Conf. 2.18, 4.24, 6.18, and 8.17(b) and 8.17(c). These portions provide an important legal basis for the exemption from CITES provisions of certain specified parts and derivatives of certain plants, e.g., the cut flowers of artificially propagated Appendix I hybrids and the flasked seedlings of all artificially propagated orchids. The United States considers these paragraphs to articulate an important legal rationale. The United States supports these exemptions.

Future germane proposals on taxa for Appendix I simply can be directed by Conf. 8.17(b) and 8.17(c), without subsequent proposals on the standard exemptions. Future proposals to uplist orchid taxa thus would be routinely guided by Conf. 8.17(c) and their flasked seedlings would be exempt. A similar process has been in effect for the proposals on Appendix II plant taxa, where routinely certain parts or derivatives are standard exclusions, as specified through Conf. 4.24 (e.g., for tissue cultures) and Conf. 6.18 (e.g., for flasked seedling cultures).

(b) Consolidation of valid resolutions. Negotiating Position: No document has been received from the CITES Secretariat. However, documents have been received at several Standing Committee meetings. The United States essentially supports those consolidations prepared thus far by the Secretariat.

Information and Comments: EIA, at the September 14, 1994, public meeting, urged that the ivory control resolutions not be consolidated (see discussion above, of resolutions to be deleted or repealed).

Rationale: Proposed consolidations have been discussed at Standing Committee meetings and approved for transmission to the Parties on the following issues (final text has not been received from the Secretariat, however): Transport of live specimens (consolidate Conf. 3.16, 4.20, 5.18, 7.13, and 8.12); Disposal of illegally traded specimens (consolidate Conf. 2.15, 3.9, 3.14, 4.17, 4.18, 5.14, and 7.6); Trade in elephant ivory (consolidate Conf. 3.12, 6.12, 6.14, 6.15, 6.16, and 7.8); Annual reports and trade monitoring (consolidate Conf. 2.16, 3.10, 5.5, 5.6, 5.14, and 8.7); Trade in readily recognizable parts and derivatives (consolidate Conf. 4.8, 5.9, 5.22, and 6.22); Permits and certificates (consolidate Conf. 3.6, 3.7, 4.9, 4.16, 5.7, 5.8, 5.15, 6.6, 8.5); Trade in plants (12 prior resolutions: consolidate Conf. 2.13, 5.14, 5.15, 8.17, propose to repeal all or part of Conf. 2.16, 4.24, 5.14, 6.18, and 6.20, and deal with Conf. 2.14, 4.16, and parts of 5.14, 8.18, 8.19 in a separate consolidation); Trade with non-Parties and reserving Parties (consolidate Conf. 3.8, 8.8); and Transit and transhipment (consolidate Conf. 4.10, 7.4). The United States finds these proposals to be a diligent consolidation of a complex array of resolutions dealing with the same topic, subject to final review of the Secretariat's submission to the Conference of the Parties.

2. Establishment of a List of the Other Decisions of the Conference of the Parties

Negotiating Position: No document has been received from the CITES Secretariat. Support ongoing Standing Committee and Secretariat efforts to differentiate between Resolutions of the Conference of the Parties which provide guidance and interpretation of the Convention, or call for continuing activities of indefinite duration, and decisions of the COP that direct the Secretariat or permanent committees to perform certain specific activities of limited duration.

Information and Comments: Comments were received from HSUS, which supports the Service's general comments on this issue.

Rationale: The Standing Committee has recommended that decisions of the Parties at the COP be distributed in a manner similar to that for resolutions. The United States supports this procedure, utilizing guidelines to be adopted by the COP, that have been approved by the Standing Committee. Often, recommendations to the Secretariat or permanent committees are included in resolutions, when these recommendations are relevant for a particular committee only, or for a short time period between two COPs only. The United States supports separating these specific and/or short-term decisions from resolutions, wherein resolutions should refer to recommendations for implementation of the Convention, and interpretations of the Convention.

3. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

Negotiating Positions: No document has been received from the CITES Secretariat. Support efforts to encourage all Parties to submit annual reports for all species of flora and fauna, as required by the treaty. Support efforts whereby proposals for transfer of certain species from Appendix I to II with an export quota or pursuant to ranching only be considered for Parties that are current with their annual report submissions.

Information and Comments: Comments were received from HSUS. HSUS urges that proposals to transfer species from Appendix I to II with an export quota or pursuant to ranching, should be considered only when submitted by Parties that are current with their annual report submissions. It also supports measures to encourage Parties to submit their annual report on time.

Rationale: Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate report data are essential to measure the impact of international trade on species, and can be a useful enforcement tool.

4. Review of Alleged Infractions and Other Problems of Implementation of the Convention (Doc. 9.22)

Negotiating Position: Support the Secretariat's review of alleged infractions by the Parties, and necessary and appropriate recommendations to obtain wider compliance with the terms of the Convention. Support an open discussion at COP9 of major infractions, and a greater emphasis by the Parties on the enforcement of the laws and regulations implementing the Convention.

Information and Comments: Comments were received from DOW, HSUS, MTSG, and Monitor. At the September 14, 1994 public meeting Monitor commented that the United States should make the Infractions Report a high priority issue. DOW commented at the same public meeting that the Infractions Report should be linked to a follow-up process and that a Law Enforcement Network should review the report and assist countries with problems on a regular basis. MTSG commented that infractions are not receiving the attention they warrant and are being discussed less now than in the past. DOW supports expansion of the Infractions Report. It recommends that the Secretariat be directed, along with the Standing Committee, to undertake a more extensive review process and identify species, countries, or areas in which infractions and/or lack of legislation are so great they create a presumption of non-compliance. The Service considers this to be a useful suggestion that it will pursue. HSUS supports the expanded report and urges that it be a sign of a new emphasis on the importance of proper implementation and enforcement of the Convention. The United States always gives a high degree of attention and priority to the discussions of the Infractions Report at COP's, and will continue to do so. The United States agrees that a Law Enforcement Network (see agenda item 7, below) could assist Parties with dealing with these infractions, preventing their occurrence in the future, and in improving compliance with requirements of the Convention.

Rationale: Article XIII of the Convention provides for COP review of alleged infractions. The Secretariat prepares an Infractions Report for each COP, which details instances that the Convention is not being effectively implemented, or where trade is adversely affecting a species. The Infractions Report contains only infractions which were reported to the Secretariat. The first draft of the Infractions Report contained numerous such alleged infractions. The United States commented on the draft Infractions Report. A review of the alleged infractions indicates a great difference in the depth of the reporting on infractions over previous reports. The United States considers this to be an excellent, well- researched and well-prepared Secretariat document. A large number of infractions are caused by lack

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of training, lack of personnel, or lack of knowledge on the workings of CITES. The majority of the alleged infractions should be a major cause of concern to the Parties.

5. Implementation of the Convention in the European Community

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time.

Information and Comments: No comments were received.

6. National Laws for Implementation of the Convention (Doc. 9.24)

Negotiating Positions: Support adoption of the report on this topic, submitted by the Secretariat, including the recommendations contained therein. The United States supports the draft Decision of the Conference of the Parties submitted by the Secretariat in Doc. 9.24 concerning recommendations to the Parties on this issue.

Information and Comments: Comments were received from HSUS, which strongly supports the document's recommendation that strong action be taken against Parties in category 4 in the document, including trade restrictions if necessary to encourage CITES implementation.

Rationale: The United States was strongly supportive at COP8 of a review of national laws for the implementation of the Convention; such laws are required by Article VIII of the Convention. The United States believes that the Convention's effectiveness is undermined when Party states either do not have national laws implementing the Convention, or have inadequate legislation; this includes laws and regulations that authorize seizure and/or forfeiture of specimens imported or exported in contravention of the Convention, and laws and regulations that provide appropriate penalties for such violations.

The Secretariat contracted (with funding from the United States), as called for in Resolution Conf. 8.4, for analyses of national legislation to implement CITES. The first phase of that project involved analyses of legislation in 81 Parties, that had been selected based on high levels of trade in CITES-listed species. The Secretariat has developed a document that categorizes CITES-implementing legislation in those 81 Parties, based on the extent to which their national legislation provides for the implementation of the Convention. The United States supports recommendations in the document for assistance to the Parties in developing national legislation. The United States also supports the draft Decision of the Conference of the Parties (a new format for COP9), submitted by the Secretariat in Doc. 9.24 concerning recommendations to the Parties on this issue.

7. Enforcement of the Convention (Doc. 9.25 and 9.25.1)

Negotiating Position: Support establishment of a Law Enforcement Network.

Information and Comments: Comments were received from DOW, EII, ESP, HSUS, IWCo, SCI, and SMT Guitars. ESP commented at the September 14, 1994 public meeting in support of the U.S. position. EII supports the establishment of a Law Enforcement Network, and advocates supporting the proposals submitted by the United Kingdom and Ghana and working to achieve the strongest enforcement provisions possible to ensure that this issue receives top priority at the COP. IWCo supports the U.S. position, and prefers the Ghana to the United Kingdom resolution. DOW also strongly supports the establishment of a Law Enforcement Network and the proposals submitted by the United Kingdom and Ghana. It argued that the proposal from Ghana could be strengthened by additional amendments that would (1) establish a permanent consultative group or committee on law enforcement; (2) establish an international law enforcement network and a series of regional law enforcement agreements and networks; (3) extend enforcement efforts by CITES to other international government and nongovernment entities for assistance; and (4) provide for expanded law enforcement initiatives in the budget adopted at the each COP. EII further requests that the United States seek internal and external financial support for enforcement activities both within the United States and in countries which lack the technical and financial means to fully implement the Convention. HSUS considers enforcement to be one of the most important issues to be discussed at COP9, and recommends that the United States support the Ghana resolution. The United States does indeed consider effective enforcement of the provisions of the Convention to be a critical issue, and supports establishment of a Law Enforcement Network. The Service continues to review strengthening amendments to the draft Ghana resolution submitted by HSUS, which appear constructive. DOW called for CITES to study the impact of trade agreements such as NAFTA on enforcement. SMT Guitars said that there should be ways to get education about CITES out to the people. SCI argues that while it supports strong enforcement of CITES, care must be taken not to institutionalize a blanket negative attitude about wildlife trade.

Rationale: The Secretariat's Notification to the Parties number 776 asked the Parties for their comments on a proposal for establishment of a Law Enforcement Network. The United States supported establishment of such a network at that time. The United States will continue its strong support for the provision of law enforcement training to assist Parties in implementing and enforcing the Convention.

Although the Law Enforcement Network was not adopted by the Standing Committee, it was agreed that the Parties should discuss the issue at the COP. The United States considers effective enforcement of the Convention to be a critical element that is lacking for many countries, for a number of reasons, including: Lack of training, inadequate legislation or regulations, lack of funding, lack of infrastructure, and inadequate communications and networking with other countries and entities. The United States believes that establishment of a Law Enforcement Network, comparable to other committees or working groups established by the Parties, will begin the process of alleviating these deficiencies.

8. Trade in Hunting Trophies of Species Listed in Appendix I (Doc. 9.50)

Negotiating Position: The United States continues to support implementation of Resolution Conf. 2.11 by all Parties, coupled with recognition of the need for close consultation with other interested States and of any Party's right under Article XIV of the treaty to implement stricter domestic measures. The United States believes that its Scientific Authority finding, as it relates to importation of sport-hunted trophies, should be made after close consultation with the range State and with other importing States, and should take into consideration any assessment of national conservation programs for the species conducted by the Conference of the Parties or the Animals Committee.

Information and Comments: Comments were received from ART, HSUS, IAFWA, IWMC, SCI, and the NRA. ART, IAFWA, SCI, and the NRA support the draft resolution submitted by Namibia to amend Resolution Conf. 2.11, arguing that it has been used by some Parties to support duplicative findings by the importing country based on standards beyond those required by CITES and have been used to create barriers to wildlife use. IWMC supports the draft resolution and amendments to Conf. 2.11, claiming that Conf. 2.11 undermines basic principles of the Convention. ART advocates the sustainable use of wildlife as an important incentive for the conservation of wildlife. The United States agrees that the sustainable utilization of wildlife can be an incentive for wildlife conservation, whether that utilization is consumptive or non-consumptive. HSUS stated that it opposes any action which might promote or simplify the requirements for the trade in hunting trophies of species listed in Appendix I.

Rationale: This draft resolution, submitted by Namibia, seeks to amend Resolution Conf. 2.11, dealing with the international trade in sport-hunted trophies of species listed in Appendix I. Conf. 2.11 established the procedure whereby the Scientific Authority of the importing country should have the opportunity to conduct a comprehensive examination concerning the question of whether the importation of a trophy is serving a purpose which is not detrimental to the survival of the species. According to Conf. 2.11, this examination should, if possible, also cover the question of whether the killing of the animals whose trophies are intended for import would enhance the survival of the species. Conf. 2.11 recommends that the scientific examination by the importing country be carried out independently of the result of the scientific assessment by the exporting country, and vice versa. Doc. 9.50 takes issue with the scientific examination by the importing country, as regards both non-detriment to the species, and enhancement of its survival. It maintains that some countries have used this recommendation in Conf. 2.11 to refuse to allow imports of hunting trophies that are already approved by the range State. Doc. 9.50 would amend Conf. 2.11 so that the "Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country as to whether or not the exportation of the hunting trophy is detrimental to the survival of the species, and limit its examination to the purpose to which the specimen will be put, and whether it is lawfully taken. The Service notes that Article III of the treaty requires separate findings by the exporting and importing countries. The Service also notes that Conf. 2.11 was discussed and adopted in 1976 at COP2 in Costa Rica (after having been introduced by Germany), because many parties felt that Appendix I hunting trophy imports should be prohibited altogether, considering that all such trade is detrimental to the species, while others allowed them. The United States, Germany, Botswana, South Africa, Zambia, and the IUCN maintained that culling of Appendix I species might sometimes be necessary and so trade in trophies could be allowed if it was shown that "such culling could enhance the survival of the species." COP2 agreed to adopt the enhancement requirement. The United States acknowledges that the enhancement question was discussed at the Plenipotentiary meeting, and COP3 and COP8, but expressly disagrees that the issue was rejected by the Parties at any of these meetings.

The Service continues to support Conf. 2.11, but looks forward to working with exporting countries and other importing countries interested in facilitating sport hunting of species listed in Appendix I, to share management and scientific information in such a way as to expedite issuance of permits that meet the necessary requirements, based on national plans which address conservation of species and their habitats. The Service also continues to reserve the right, as does any Party, to impose stricter domestic measures, particularly for species listed under the U.S. Endangered Species Act.

9. Exports of Leopard Hunting Trophies and Skins (Doc. 9.26)

Negotiating Position: The United States supports adoption of this Secretariat document, and the recommendations contained therein, including a draft amendment to Resolution Conf. 8.10 regarding compliance with reporting requirements.

Information and Comments: Comments were received from SCI and HSUS. SCI argues that reasonable quotas should be continued, and all Parties should be encouraged to accept trade that is within the quotas and not use stricter domestic measures. It maintains that this sustainable use of wildlife generates significant conservation benefits. HSUS opposes any actions which might promote or simplify the requirements for the trade in leopard trophies or skins. It supports remedial measures being taken against Parties that have exceeded leopard trophy export quotas approved by the Parties.

Rationale: The Service has supported previous resolutions providing for the importation of leopard skins (*Panthera pardus*), including hunting trophies, under a quota system approved by the COP. However, although the United States supports the concept of such quotas, the listing of some populations as endangered under the U.S. Endangered Species Act and concerns about management capabilities in countries involved in civil wars, has precluded the issuance of permits to some countries with CITES-adopted quotas. Trade in leopard skins for noncommercial purposes is allowed under CITES Resolution Conf. 8.10, which recognizes killing in defense of life and property and to enhance the survival of the species. The United States notes that the Secretariat's paper on this topic provides a very good presentation of the issue. The Secretariat's report discusses the use of export quotas for leopards involving 11 African countries; some countries have not complied with the reporting requirements of Conf. 8.10. The Secretariat has submitted a draft amendment to Conf. 8.10 regarding compliance with these reporting requirements, which the Service supports.

10. Interpretation and Application of Quotas (Doc. 9.51)

Negotiating Position: The United States believes that properly managed harvest programs, including sport-hunting programs of non-endangered species that provide for the sustainable management of the utilized species and long-term preservation of its habitat benefit the wildlife species and the people protecting the resource. The United States also recognizes that CITES provides for Parties to establish stricter domestic measures, such as provided in the U.S. Endangered Species Act, and that in-country changes affecting the management of the hunted species may alter previous assessments of the Parties. In addition the United States is concerned about the reporting omissions discussed in other documents submitted by the CITES Secretariat and supports corrective steps. Nevertheless, the United States will endeavor to recognize quotas adopted by the Parties after an appropriate review process. The United States envisions that this process should involve review of national conservation programs for the affected species in those countries requesting specific export quotas. These reviews should include an assessment by the CITES Animals Committee not only of the population status of the hunted species, management regimes, and enforcement capabilities, but also habitat protection efforts. Based on this assessment, the Committee would recommend to the Parties appropriate biologically-based quotas.

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Information and Comments: Comments were received from ART, IAFWA, IWMC, SCI and the NRA which support the draft resolution submitted by Namibia, ART, IAFWA, SCI, and the NRA maintain that this draft resolution is a confirmation of the majority practices of CITES Parties that once quotas are set they should be honored by the importing countries as well as the exporting countries. They maintain that this resolution deals with critical aspects of sustainable use and the conservation and development benefits for Third World communities. IWMC recommends adoption of the draft resolution, and recommends that Parties not wishing to accept the quotas set up by the COP express their position at the COP to be recorded in the Proceedings.

Rationale: This draft resolution, submitted by Namibia, refers to export quotas that have been adopted by the meeting of the Conference of the Parties (COP), for Appendix I species. The draft resolution proposes that the Scientific Authority of the importing country accept the quota approved by the COP as satisfying the requirement that the import will not be detrimental to the survival of the species. The draft resolution therefore proposes that the quotas adopted by the COP serve in lieu of an independent importing country non-detriment finding. No resolution can remove the obligation of the Parties to make independent Scientific Authority findings under the plain language of Article III, Paragraph 3(a) of CITES. Certainly the adoption of quotas by the COP would be considered as persuasive information for the U.S. Scientific Authority as it determines whether the import of an Appendix I trophy would be for purposes that are detrimental to the survival of the species, provided such quotas were based on national conservation programs clearly showing benefit to the species. However, if the United States encounters a situation where hunting pursuant to a previously acceptable quota has in its judgement become detrimental to the species, it will enter into consultations with the affected range State, other importing countries, and the CITES Animals or Standing Committees (as appropriate), to communicate its concerns and seek resolution of the problems.

11. Trade in Specimens of Species Transferred to Appendix II Subject to Annual Export Quotas (Doc.9.27)

Negotiating Position: The United States supports adoption of this Secretariat document, and the recommendations and observations contained therein.

Information and Comments: No comments were received.

Rationale: This agenda item involves a Secretariat report discussing compliance with provisions of quota systems approved by the Conference of the Parties pursuant to Resolution Conf. 7.14, for crocodilians and *Scleropages formosus*. Under export quotas approved by the COP, Parties are required to submit special reports to the Secretariat; the document discusses these special reports and compliance with the export quotas for 10 countries (Ethiopia, Kenya, Madagascar, Somalia, South Africa, Sudan, Tanzania, Uganda, Congo, and Indonesia).

12. Trade in Rhinoceros Specimens (Doc. 9.28)

Negotiating Position: The United States supports decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES. The United States continues to support decisions of previous meetings of the Conference of the Parties and the Standing Committee regarding rhinoceros conservation and trade in rhinoceros horn.

Information and Comments: Comments were received from HSUS and SCI. HSUS strongly supports the Service's general comments on this issue and agrees that the illegal trade in rhino parts is undermining the effectiveness of CITES. It urges the United States to oppose any attempts to weaken previously passed resolutions condemning the rhino horn trade, such as Conf. 6:10, and urges the United States to oppose proposals that would encourage rhinoceros trade. SCI argues that while trade in rhinoceros specimens is a serious problem, too much emphasis is being placed on trade bans as solutions to this problem; it urges Parties to seek more innovative solutions. The United States is supportive of innovative solutions and partnerships designed to eliminate illegal trade in rhinoceros specimens and benefit the conservation of rhinoceros populations in the wild, as long as those solutions are consistent with the requirements of the treaty.

Rationale: This document is a report of the Secretariat discussing the status of rhinoceros populations, and the threat to their populations from poaching pressure for their horn to supply the international illegal trade in traditional medicines and dagger handles. The report reviews measures taken by the Standing Committee and activities of the Animals Committee between COP8 and COP9 regarding trade in rhinoceros horn, including decisions of the 29th, 30th, and 31st meetings of the Standing Committee. The report summarizes activities of technical assistance and high-level delegations regarding efforts to eliminate the illegal trade in rhinoceros horn. The report also discusses activities of the United Nations Environment Programme (UNEP), including the Lusaka Agreement on Cooperative Enforcement Operations Directed at International Illegal Trade in Wild Fauna and Flora, and the UNEP Elephant and Rhinoceros Conservation Facility. The report also discusses measures taken by China, Taiwan, Hong Kong, Zambia (as relates to the Lusaka Agreement), and the United States (as relates to the Pelly Amendment). The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in rhinoceros specimens undermines the effectiveness of CITES.

13. Conservation of Rhinoceros in Asia and Africa (Doc. 9.35)

Negotiating Position: The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, especially those that address trade in rhinoceros specimens in contravention of the Convention. Oppose any resolution that contradicts the requirements of the Convention. Oppose any text advocating commercialization of rhinoceros horn stockpiles.

Information and Comments: Comments were received from HSUS. It urges the United States to oppose Doc. 9.35, which they believe would greatly weaken CITES' resolve to eliminate the rhinoceros horn trade. It opposes the repeal of Resolutions Conf. 3.11 and 6.10 called for in Doc. 9.35.

Rationale: The United States continues to be supportive of efforts to benefit the conservation of rhinoceros species in Asia and Africa, while opposing any measures that contradict the requirements of the Convention or might lead to the commercialization of rhinoceros parts or products. The United States is highly supportive of efforts by major consumer states to ban the importation and sale of rhinoceros parts and products, and to cooperate in enforcement efforts.

14. Trade in Tiger Specimens (Doc. 9.29)

Negotiating Position: Support all possible measures to encourage countries to effectively implement the Convention with regard to trade in Tiger Specimens. Encourage discussion of cooperative efforts to benefit tiger conservation.

Information and Comments: Comments were received from HSUS and SCI. HSUS supports the U.S. position. SCI supports control of the illegal trade in tiger specimens, but feels that too much emphasis is being placed on trade bans as a solution to conservation problems. It calls on the Parties to seek other, more innovative solutions. The United States is supportive of innovative solutions and partnerships designed to eliminate illegal trade in tiger specimens and benefit the conservation of tigers in the wild, as long as those solutions are consistent with the requirements of the treaty.

Rationale: The United States continues to be an advocate for strong enforcement of the Convention, and use of all possible measures to encourage countries to effectively implement the Convention. The United States continues to support decisions of the Standing Committee that illegal trade in tiger specimens undermines the effectiveness of CITES.

The tiger (*Panthera tigris*) has been included in CITES Appendix I since CITES entered into force in 1975. Nevertheless, its numbers have continued to decline due to persistent poaching and smuggling to supply the illegal markets, mainly for traditional medicines. The first meeting of tiger range States on the conservation of the tiger was held March 3–4, 1994 in New Delhi, India. The meeting established an international framework for the conservation of tiger, the "Global Tiger Forum". The Global Tiger Forum produced a mission statement (see Annex, Doc. 9.29) calling for worldwide attention to and cooperation for the conservation of the species.

The United States is facilitating the presentation at COP9 of a special program by the Government of India at COP9, dealing with the conservation crisis facing the tiger.

15. Illegal Trade in Whale Meat

Negotiating Position: Trade for primarily commercial purposes in specimens of species listed in Appendix I by a non-reserving Party is in Contravention of the requirements of the Convention. Any commercial trade in parts and products of Appendix I species undermines the effectiveness of the Convention.

The United States supports a discussion at the COP of illegal trade in species of whales listed in Appendix I of CITES. The United States recommends discussion of the following recommendations at COP9, and their possible adoption as Decisions of the Conference of Parties: (1) Encourage IWC to continue to cooperate with CITES Parties and the CITES Secretariat; (2) Reaffirmation by the CITES Parties of their support for the IWC moratoria on commercial whaling; and (3) Urge IWC to continue to explore the issue of illegal trade in whale meat, and ask it to report to both the CITES Standing Committee in one year and the tenth meeting of the CITES Conference of the Parties (COP10) on any developments regarding this issue.

Information and Comments: Comments were received from Japan, CMC, ESP, HSUS, and Monitor. Monitor stated (at the public meeting) that there is a huge market for whale meat in Japan. ESP (at the public meeting) supported this agenda item for discussion at COP9 and stated that it is crucial to develop some sort of monitoring scheme. CMC and HSUS supports the U.S. position, particularly in the recommendation that IWC and CITES cooperate and share information about this trade, and that IWC explore the issue and report back to CITES on any developments. CMC states that Japan has not address its obligations on whales, due to its reservations and lack of compliance with Conf. 4.25; CMC urges IWC to develop a certificate or origin for all whales taken at sea.

Japan considers that IWC has all relevant information pertaining to this topic, and that it is more appropriate for IWC to discuss this issue than for CITES. Japan objects to the inclusion of this item on the COP9 agenda; the United States disagrees. The United States notes that IWC adopted a resolution (IWC/46/61) entitled "Resolution on International Trade in Whale Meat and Products", which: (1) Recognized that IWC has called upon CITES to take all possible measures to support the IWC ban on commercial whaling for certain species of whales; (2) discussed other past decisions of the CITES Conference of the Parties; (3) noted that all stocks of whales for which IWC has zero catch limits are listed in CITES Appendix I; and (4) called upon IWC members to strictly enforce their existing international obligations under both IWC and CITES. CITES is *the* international treaty dealing with trade in wild fauna and flora, and therefore, the United States considers it appropriate to discuss trade in whale meat during a meeting of the CITES Conference of the Parties.

Rationale: The United States requested that this item be included on the agenda for COP9. There was extensive discussion at the May, 1994 meeting in Mexico of the IWC regarding illegal international trade in whale meat, including involvement by CITES Parties. All whales subject to the IWC moratorium on commercial harvest are listed in CITES Appendix I. A resolution was adopted by IWC (introduced by the United States and other Parties) on this topic, and the issue is discussed in the IWC Infractions Report. The Service submitted the information in the IWC Infractions Report on international trade in whale meat to the CITES Secretariat. The United States is concerned that illegal trade in whale meat undermines the effectiveness of CITES for whale species, and submitted a paper on this topic for discussion at COP9. Several IWC member countries raised concerns at the IWC meeting that it was inappropriate to discuss trade in whale specimens outside of CITES. The United States believes that a CITES COP is the appropriate venue for such discussions, while reaffirming the current efforts of IWC regarding illegal trade of whale meat.

16. Trade in Shark Products

Negotiating Position: Encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to collect data that will provide the best information about the possible impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems of which they are a part.

Information and Comments: Comments were received from Japan, CMC, HSUS, and MTSG. HSUS supports the U.S. position and its recommendation that the Animals Committee review the trade in sharks and shark products between COP9 and COP10 and assess the biological and trade status of shark species traded internationally. CMC encourages the COP to provide an opportunity for leadership in international shark management and urges the United States to encourage comprehensive global data collection on sharks. CMC urges the Parties to ask IUCN, rather than the Animals Committee, to review the international trade in shark parts and products, between COP9 and COP10. MTSG inquired at the public meeting whether there has been consideration of developing a resolution on sharks. The United States prefers to have a discussion of the issue that will lead to a possible Decision of the Conference of the Parties, and direction

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being given to the Animals Committee to explore options to collect data on trade in shark parts and products. Japan agrees that there is need for more data regarding trade in sharks, but objects to inclusion of this item on the agenda because: (1) Sharks are not listed in the CITES Appendices, claiming that there is no precedent for such a discussion; (2) shark management should be promoted through regional and international fishery management organizations which have competence; (3) funds are not available for this issue; and (4) CITES Parties already face excessive workloads, and the Parties cannot require data collection through a Decision of the COP. Japan prefers that this issue be discussed by ICCAT or FAO. The United States does not wish to have a discussion of shark management, but rather wishes to facilitate a discussion at the COP of ways to collect data on trade in shark parts and products. The United States notes that there are, at this time, no regional or international organizations with competence for shark management. CITES is the treaty dealing with international trade in wildlife parts and products, and is therefore an appropriate venue for such a discussion. Furthermore, the United States believes that precedent does exist for discussion of non-CITES species, and that authority for such discussion is to be found both in the Convention and in Resolutions of the Conference of the Parties.

Rationale: The United States requested that this item be included on the agenda for COP9, and submitted a paper to the CITES Secretariat for discussion. The United States requests in the paper it submitted on this topic that this agenda item be renamed "Trade in Shark Parts and Products", in order to more accurately frame the debate. It is not the intent of that document to discuss shark management regimes, including catch quotas, minimum sizes, time and area closures, or gear restrictions.

As was discussed in the January 27, 1994 **Federal Register** notice, the United States considered whether or not to submit a proposal to COP9 to include several taxa (families or genera) of sharks in Appendix II. There is limited information about a recent increase in international trade in shark parts and products, particularly in fins for the food market. The United States considered there to be insufficient biological and trade data on which to base a listing proposal. The United States believes that this is an important issue for the Parties to discuss.

The intent of the United States in asking that this issue be discussed by the Conference of the Parties is twofold: (1) To encourage discussion of how best to collect data on international trade in shark parts and products, particularly how to document catches by species; and (2) to promote the collection of data that will provide the best information about the possible impact of international trade (including introduction from the sea) in shark parts and products on both shark populations and the ecosystems on which they depend.

17. Trade in Plant Secimens

(a) Nursery registration for artificially propagated Appendix I species (Doc. 9.30). Negotiating Position: Oppose establishment of a registration system, as proposed in the draft resolution, within the CITES Secretariat for plant nurseries artificially propagating specimens of species included in Appendix I. The United States supports a system that would improve the credibility of the existing system for determining which plant specimens are artificially propagated.

Information and Comments: Comments were received from COGG, Grigsby, PA, AOS, CCGA, Mr. John de Kanel and Mr. Gary Lyons. All these commenters opposed the draft CITES resolution and support the U.S. position. The commenters feel that the proposal is unworkable, burdensome, and illegal in its content. The commenters felt that most CITES Parties, particularly developing countries, do not have the resources to implement a nursery registration program. They also maintain that CITES should not attempt to regulate trade in "domestic" or artificially propagated plants or the domestic activities of individuals or businesses. They further argued that nursery registration will not impact the illegal trade in Appendix I plants and that there are no recognizable benefits to plant conservation or trade control from nursery registration. They also argue that annual inspections and inventory requirements under a nursery registration program are impossible for growers to meet. COGG and CCGA argued that all artificially propagated specimens of Appendix I species should be traded as Appendix II plants, either with Appendix II permits or with a phytosanitary certificate being considered as an Appendix II permit as long as a statement of artificial propagation accompanies the phytosanitary certificate.

Rationale: The registration system proposed in this draft resolution is complex and would be costly to implement by many Parties. Furthermore, it may place too much of a burden with nurseries themselves in determining what constitutes artificially propagated specimens, and thereby be counterproductive. The current draft of this resolution is an improvement over previous versions.

(b) Revision of the consolidated Resolution (Doc. 9.31). Negotiating Position: Support Doc. 9.31 Annex 1, on salvage, if amended, to exclude direct import to registered nurseries. Support Annex 2, on education, with some modifications. Only support Annex 3 on nursery registration if amended to separately indicate those nurseries trading in both wild-collected and artificially propagated plants and those dealing only in the latter. Oppose deletion of Conf. 5.15(b) (licensing).

Information and Comments: No comments were received.

Rationale: Doc. 9.31 Annex, No. 1 would allow the import of salvaged specimens for commercial propagation directly to registered nurseries. The key issue is whether salvaged wild specimens can be imported for propagation purposes, with only the artificially propagated offspring to be used for commercial purposes. Registering nurseries as in Doc. 9.30 (see above) does not appear to be a practicable solution. Instead, allowing such propagation by collaboration of the commercial nursery with an importing botanical garden or scientific institution would provide a feasible system. Regarding nursery registration and licensing, the United States opposes the deletion of Conf. 5.15(a). The United States agrees with the need not to penalize nurseries trading appropriately in wild specimens, but for enforcement purposes, it is necessary to distinguish between those nurseries that deal in wild-collected and artificially propagated specimens and those that deal only in the latter.

(c) Standard reference for Orchidaceae. Negotiating Position: No document has been received from the CITES Secretariat. The United States supports continued work toward a standard reference for traded orchid species, but believes that the financial commitment for such a compendium should be considered from external funding.

(d) Implementation of the Convention for timber species (Doc. 9.52). Negotiating Position: The United States supports the establishment of a Timber Species Working Group of the CITES Plants Committee. This Working Group would review the need and scope for modification of current administrative practices specific to the implementation of listings for timber species.

Information and Comments: No comments were received.

Rationale: The United States notes that the provisions of CITES apply to all species of wild fauna and flora, including tree species used as timber; some timber species are already listed in the CITES Appendices. CITES' purview is in addition to the fact that the trade in timber species may also come under the competence of another international treaty, convention, or agreement. Approximately 18 timber species are listed in CITES Appendices I, II, and III. There has been some listing activity with such species at nearly every COP, from 1973–1992. At COP8, four species were included in the Appendices for the first time: one species was added to Appendix I (Brazilian rosewood), and three were added to Appendix II. There is increasing attention being paid by the CITES Parties to commercially significant timbers.

Some complexities and the scale of the timber trade provide unique concerns to the CITES Parties in terms of the following: (1) Identification of products in trade; (2) pre-Convention concerns for species included in Appendix I (e.g. with heavily traded guitars); and (3) debate on what parts and derivatives should be excluded for Appendix II. Doc. 9.52 recommends the establishment of a small Working Group with both timber-trade and CITES expertise represented and a clear mandate to: (1) Review progress; and (2) consider what further action may be required to facilitate the Convention's future contribution to timber-species conservation. This document recommends that the Working Group be under the direction of the Standing Committee. The United States agrees with the CITES Secretariat in supporting the establishment of such a Working Group under the auspices of the Plants Committee.

(e) Ramin (Gonystylus bancanus) (Doc. 9.53). Negotiating Position: The United States supports cooperation in examining the issue of ramin (*Gonystylus spp.*) trade by interested Parties and Non-governmental Organizations (NGO'S) through a working group under the leadership of the Asian Regional Representative of the CITES Plants Committee. The United States opposes the recommendation as worded in Doc. 9.53, p.2.

Information and Comments: No comments were received.

Rationale: The recommendation is appropriate in calling for cooperative work by the range States and the importing States on whether and/or how ramin should be listed. The United States feels the recommendation is inappropriate, however, in asking the Parties to decide that the species needs conservation attention, and that it will qualify for either Appendix II or for Appendix III; the latter is a national judgment.

18. Significant Trade in Appendix II Species (Doc. 9.34)

Negotiating Position: The United States continues its long-standing support for the continued focus of the Parties on Appendix II species identified as subject to significant trade and the proper implementation of Article IV, as critical to the implementation of the treaty and species conservation. Support the provision of funding for the coordination and implementation of significant trade study projects, with oversight by the Animals, Plants, and Standing Committees. The United States supports extension of the significant trade process to species of plants listed in Appendix II.

Information and Comments: Comments were received from HSUS and DOW. HSUS supports the Service's general comments and strongly supports the continuation of the Resolution Conf. 8.9 process. DOW concurs with the U.S. support for the continued review of Appendix II species identified as subject to significant trade and the proper implementation of Article IV.

Rationale: This topic refers to the trade in those Appendix II species identified as subject to significant trade, for which a review is necessary to determine if there exists sufficient biological information to warrant trade at current levels. Many of these species may have been traded at levels detrimental to their survival. The CITES Parties have provided funds to the World Conservation Union (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species. The United States has provided funds for field projects involving several of these species.

This process has worked effectively since COP8, with the implementation of Conf. 8.9. The Animals and Standing Committees have taken a very active role in this process, with net benefit for the conservation of some species and for improvements in the implementation of the Convention. The United States supports continuation of this process, for both animals and plants, with a high priority being placed on implementation of studies by Parties, scientific assessments, development of management plans, implementation of scientifically-based quotas when appropriate, and effective implementation of CITES Article IV. The United States also looks forward to working with the Animals Committee, at COP9 and in the future, to include coral species subject to high levels of international trade, in the significant trade review process. Resolution Conf. 8.9 referred to animal species only, but extension of this useful process to plant species listed in Appendix II will facilitate effective implementation of CITES Article IV.

19. Standardization of CITES Permits and Certificates (Doc. 9.38, Annex 1 and 2)

Negotiating Position: The United States supports some of the provisions of the current proposal, but considers others to be impractical, burdensome, or unenforceable.

Information and Comments: No comments were received.

Rationale: The United States strongly supports a standardized CITES form for permits and certificates. However, the new proposed form has several provisions that are of concern. The United States would like to see the form simplified while still providing information and security measures necessary to ensure the legal movement of wildlife and plants.

20. Non-commercial Samples of Skins (Doc. 9.37)

Negotiating Position: The United States supports exploration of ways to facilitate legitimate trade in CITES-listed species that are in compliance with the provisions of the treaty, while noting that international trade in skin samples is commercial.

Information and Comments: Comments were received from HSUS. It urges the United States to oppose any attempt to weaken the treaty by simplifying the international trade in non-commercial samples of skins.

Rationale: CITES monitors trade in listed species to ensure that it is in compliance with the provisions of the treaty. The Parties have encouraged the ranching and farming of a number of species, particularly crocodilians; this has resulted in significant progress in protecting certain species and in species' recovery. The United States supports efforts to monitor and facilitate trade in ranched specimens. The United States supports setting up a system to allow skin samples to be transported to or through any CITES Party with a minimum of delay, and looks forward to discussing this with the Parties at COP9.

21. Marking of Crocodilian Specimens (Doc. 9.36)

Negotiating Position: The United States supports a tagging requirement

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for all Crocodilian species before being allowed to be traded by CITES Parties, if it is enforceable and practicable, regardless of any reservations by any CITES Party.

Information and Comments: Comments were received from HSUS and IWMC. HSUS commented that it supports improvements in the marking of crocodile skins as an aid to enforcement. IWMC supports the draft resolution of the Animals Committee.

Rationale: At COP8, the United States and Australia jointly submitted a resolution to require the skins of all crocodilian species to be tagged before being allowed to be traded by CITES Parties (whether or not a reservation has been entered by a Party). The resolution that was adopted, Conf. 8.14, established the framework for a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products. The Animals Committee was charged with setting up the system for the Parties. Due to problems with implementation of portions of Conf. 8.14, the Animals Committee has prepared a draft revision of Conf. 8.14.

22. Transport of Live Specimens (9.39)

Negotiating Position: Support the adoption by the COP of the report of the Chair of the Working Group on the Transport of Live Specimens (TWG). The United States will support the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. The United States will remain an active participant in the TWG, and with all aspects of the transport of live wild animals. The Service agrees with the Chair of the TWG that unless the Parties take these matters seriously, and put resources into the TWG, the TWG should not be continued. The United States supports continuation of the Transport Working Group in some form, with a key emphasis on training.

Information and Comments: Comments were received from EIA and HSUS. EIA commented at the public meeting that little progress had been made by the CITES Parties in improving the transport of live animals, and urged that the United States seek greater implementation of transport requirements by CITES Parties, and greater enforcement of CITES transport requirements. HSUS commended the Service for its work to improve the conditions for the transport of live specimens and recognized the strong leadership of the Chair of the Working Group, Dr. Susan Lieberman. It urged the United States to support the elevation of the Transport Working Group to Committee level so that it can receive proper funding.

Rationale: Dr. Susan Lieberman of the Service's Office of Management Authority has served as Chair of the TWG since COP8. Copies of all reports of the Chair of the TWG to the Standing Committee are available on request, including the Terms of Reference of the TWG. The Chair submitted a report to the Standing Committee Chair and to the Secretariat, for transmission to the Parties and discussion at COP9. That report makes recommendations for the future of the TWG. The Service fully supports the report, and recommends its adoption, while looking forward to an active discussion among the Parties at COP9 of budgetary and other recommendations in the report. Those budgetary recommendations would facilitate increased training efforts and greater involvement of exporting Parties in TWG activities and deliberations, which the Service supports. The Service supports the provision of time near the beginning of the first week of COP9 for those interested in the TWG to meet and discuss transport issues, prior to full discussion in Committee II. Several past participants in TWG activities have inquired as to whether such a meeting of the TWG would be possible; the Service believes that it would be in the best interest of CITES implementation and of the transport of live animals.

The humane transport of live wild animals remains a significant concern of the United States. The TWG's Terms of Reference with the Standing Committee include working to improve implementation of the Convention and relevant resolutions, training, improvement of international standards, coordination with the International Air Transport Association Live Animals Board, and the transport of live wild birds. The Service believes that improvements have been made in the conditions under which live CITES-listed species are transported, while recognizing that there remains much room for improvement. The report notes that in order to become a truly functioning Working Group, the TWG must have: (1) Regional Representation; (2) Decision-making by Parties; (3) Rules of Procedure as for the other committees; and (4) funding from the core budget. The Service does not recommend an increase in the Secretariat's Budget to support activities of the TWG; rather, the Service agrees that the Parties should discuss the three options identified in the Chair's report for the future of the TWG: (1) Establish a new permanent committee dealing with live animals issues; this would require re-programming from the Budget, possibly from the Nomenclature and Identification Manual Committee; or (2) Dissolve the Transport Working Group, and retain only a Transport Representative to the Standing Committee; or (3) retain the current arrangement, depending upon volunteers and external funding.

23. Implementation of Article XIV, Paragraphs 4 and 5 (Doc. 9.40)

Negotiating Position: Support adoption of the resolution submitted by the United States, which deals with the implementation of Article XIV, paragraphs 4 and 5 of the Convention.

Information and Comments: Japan, CMC and HSUS commented on this issue. Japan supports the U.S. resolution in principle, but recommends several revisions. Japan believes that the draft resolution runs counter to the movement within CITES to pursue stricter enforcement of permit issuance. The United States is concerned with this interpretation of the draft resolution, and looks forward to discussing these concerns with Japan and other Parties at the COP. HSUS supports the U.S. position. CMC is concerned that the U.S. draft resolution is being discussed without a proposal to include a marine species in Appendix II being discussed at the same Conference, and that given the time that is to be focussed on other issues at COP9, Parties will not be able to give it sufficient attention; CMC thus urges the United States to withdraw this resolution.

Rationale: The U.S. goal in submitting this resolution is to clarify how an Appendix II listing could be implemented expeditiously for a marine species whose management is under the competency of a pre-existing treaty.

The provisions of CITES apply to all species of wild fauna and flora, including marine species. The management of many marine species comes under the jurisdiction or competence of another international treaty, convention, or agreement. International trade in any species of marine fauna or flora is also within the purview and competence of CITES. Therefore, even if a marine species is subject to management under another international treaty, convention, or agreement, if it is listed in any CITES Appendix, international trade and introduction from the sea in the species is regulated by CITES.

CITES anticipated such situations when the treaty was written. Article XIV, paragraph 4, of the Convention

provides that a State party to CITES, which is also a party to any other treaty, convention, or international agreement which was in force at the time of the coming into force of CITES and under the provisions of which protection is afforded to marine species included in Appendix II, is relieved of the obligations imposed on it under CITES with respect to trade in specimens included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention, or international agreement.

This relief from CITES obligations does not apply to specimens of species included in Appendix I. For example, several whale species are managed under the competence of the International Convention for the Regulation of Whaling, but all those species are listed in Appendix I.

Currently no marine species whose management is under the competence of another treaty, convention, or agreement is listed in Appendix II (with the exception of the West Greenland stock of *Balaenoptera acutorostrata*). The United States does not believe that this provision of the Convention in Article XIV has been used, and standards for its implementation have not been developed. The United States has determined that it would be wise to plan for the need to implement Article XIV, by specifying requirements for certificates issued pursuant to Article XIV, paragraph 5, of the Convention, even if its use is not necessary at this time. The Service notes that Appendix II allows for international commercial trade. The resolution provides for the utilization as a valid certificate under Article XIV, paragraph 5, of a certificate of origin or statistical document issued on the authority of the other treaty, convention, or international agreement, with certain stipulations of minimum information and validation as required by CITES. Such certificates are only an option for CITES Parties that are also parties to the other treaty, convention, or agreement.

24. Disposal of Confiscated Live Animals (Doc. 9.55)

Negotiating Position: The United States supports the intent to establish uniform guidelines for the Parties on how to deal with confiscated live animals that will benefit both the welfare of the individual animals and the conservation of the species in the wild, while working to make minor modifications to the proposed guidelines.

Information and Comments: Comments were received from HSUS, which urges the United States to support the resolution. It is especially supportive of the resolution's call for Parties to have a plan of action for the short- and long-term care of confiscated live animals. It urges the United States to support changes to the resolution including: (1) A recognition that animals should be returned to the wild when its beneficial to conservation efforts and is in the best interest of the welfare of the animal; and (2) confiscated Appendix II specimens should not be sold to research facilities.

Rationale: This issue was discussed at the Animals Committee, and the Animals Committee prepared a draft resolution on this issue. The Service is supportive of uniform guidelines for the Parties on how to deal with confiscated live animals, that will benefit both the welfare of the individual animals and the conservation of their species in the wild. The Service is supportive of such guidelines, to the extent they are consistent with U.S. law. The Service is concerned about the risk of introduction of disease to wild populations from confiscated live animals being considered for reintroduction programs. The Service believes that transport and handling concerns for live animals should be coordinated with the Working Group on the Transport of Live Animals.

Interest in what Parties should do with confiscated specimens, particularly live animals, goes back to the drafting of the Convention. The re-export of Appendix II specimens does not require a Scientific Authority finding. The Parties have spoken quite clearly on the issue of return of confiscated specimens to the country of origin, when feasible.

25. Disposal of Skins of Illegal Origin

Negotiating Position: No document has been received from the CITES Secretariat; no position is possible at this time.

26. New Criteria for Amendment of Appendices I and II (Doc. 9.41, Annex 4, 9.41.1, 9.41.2)

Negotiating Position: Support adoption of the alternative Annexes submitted by the United States on this issue, rather than those prepared by the Standing Committee (as pertain to Annexes 1 and 2 of the draft resolution). The United States basically supports the other annexes of the Standing Committee resolution.

Information and Comments: Comments were received from Japan, Alaska, CIEL, CMC, DOW, EIA, HSUS, IWMC, IWCo, NRA, NRDC, SCI, WMI, and WWF. Japan supports adoption of the Standing Committee draft resolution, and supports inclusion of numerical criteria. IWMC, NRA, WMI and SCI oppose the alternative Annexes submitted by the United States, call for their withdrawal, and urge support of those prepared by the Standing Committee. SCI and WMI argue that the criteria proposed by the United States are not actual criteria, and claims that the U.S. proposal uses undefined scientific terms with a subjective and ill-defined process. NRA claims that the U.S. proposal does not provide objectivity, and are too arbitrary. NRA also objects to the inclusion of ecological extinction in the definition of "threatened with extinction" in the U.S. proposal. WMI supports the criteria prepared by the Standing Committee and recommends that they be adopted on a four-year provisional basis and used as the criteria for evaluating new listing proposals. WMI argues that listing determinations should be provisional until these criteria can be further validated. SCI recommends that the Standing Committee paper be used as a basis for further negotiations in which: (1) Appendix I should become a list of those species in danger of extinction in the near future; (2) Appendix II is a list of species in trade and threatened with extinction in the foreseeable future; (3) quotas should be employed as a mechanism to allow trade and to recognize the benefits of use; and (4) the use of "look-alike" listings should be severely limited. The United States supports the utilization of quotas in the transfer of species from Appendix I to II, on a case-by-case basis. Furthermore, Appendix I includes not only species that are endangered, but also species that are threatened with extinction. Appendix II includes species that may become threatened if trade is not regulated, and cannot be limited to species that will be threatened in the foreseeable future.

Alaska opposes the alternative Annexes submitted by the United States, urges their withdrawal, and support for the draft criteria prepared by IUCN and amended by the Standing Committee. It argues against the U.S. proposal as not providing any additional "criteria" or biological precision that will assist the listing process. While it recognizes the importance of providing adequate flexibility for those taxa which do not fit a process involving numerical guidelines, it calls for a compromise that separates the appropriate flora or fauna into applicable categories.

The United States, in response to the above commenters, notes that the alternative Annexes 1 and 2 that it submitted are indeed criteria, although

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they are not numerical thresholds. The United States notes that a criterion, as defined in Webster's Dictionary, is a "standard by which a judgment is based." The United States considers its alternative Annexes 1 and 2 to be legitimate, scientifically-based, useful standards by which to make a judgment as to whether or not to include a species in Appendix I. The United States considers the arbitrary numerical cut-offs in the Standing Committee document to be unfounded scientifically, and not found in the peer-reviewed scientific literature. IWMC recommends that the U.S. proposal be rejected, and criticizes the United States for preparing the document outside of the framework established for development of the criteria. The United States notes that the final document prepared by the Standing Committee was not available to it or the other Parties until after the June 10, 1994 deadline for submission of draft resolutions for consideration at COP9, and preparation of such a draft resolution is within the U.S. rights as a Party to the Convention. IWMC recommends adoption of the Standing Committee version, with modifications.

CMC supports the proposal submitted by the United States, while also noting that although the Standing Committee proposal is an improvement, it continues to reflect significant weaknesses. CMC particularly opposes the inclusion of hard numerical criteria to categorize all species and life history strategies, and supports the inclusion of ecological extinction in addition to biological extinction. While supporting the U.S. proposal, CMC urges the U.S. Delegation to ask that the issue be set aside and that no resolution be adopted on this issue at COP9.

CIEL, on behalf of the "New Listing Criteria Working Group" of the Species Survival Network supports the U.S. position in opposition to the numerical requirements of the Standing Committee proposal. CIEL considers Doc. 9.41 to be contrary to the text and spirit of CITES. CIEL considers the U.S proposal to be superior to the Standing Committee criteria, in large measure due to the removal of all numerical requirements. CIEL also supports the inclusion by the United States of factors relating to the ecological role of species, and the importance of genetic diversity. CIEL provided comments that suggested rewording of the background document submitted by the United States. While CIEL's suggestions are useful, the background document will not be part of an adopted resolution, but rather is meant to explain the rationale for the U.S. proposal. CIEL also included recommendations, submitted October 19, 1994, regarding Annexes 1 and 2, that are still under review, and will be given full consideration by the United States during deliberations at COP9.

NRDC, EIA and HSUS support the U.S. revisions to Annexes 1 and 2. NRDC called on the United States to remain steadfast in its opposition to the Standing Committee proposal. It argues that the drafting process has been secretive, inconsistent, and confused and believes that there will be considerable confusion about the proposals at COP9. NRDC argues that it is inappropriate to attempt to apply the same quantitative standards to all taxa. NRDC suggested that the United States re-think its acceptance of Annex 4 on precautionary principles; CIEL, HSUS and IWCo also strongly disagree with the U.S. support for this Annex. CIEL and IWCo prefer the precautionary language of the Berne Criteria, particularly in requiring a higher standard of proof for downlisting or deletion than for the reverse. IWCo also opposes the quota provisions of Annex 4 to the Standing Committee resolution, as both impractical and unenforceable. The United States will review the precautionary measures annex, and discuss it fully with the Parties at COP9, but at this time disagrees with these commenters, and supports the Annex; the United States believes that such quotas are enforceable.

HSUS noted that it was likely that the final version of listing criteria will be assigned to a Working Group of the COP, and urged the United States to insist that such a Working Group have a balanced membership and that NGOs be allowed to participate. The United States has always supported representation of non-governmental organizations in Working Groups of Committee I and II and meetings of the Conference of the Parties, as their expertise is helpful to the Parties. DOW prefers the U.S. proposal to the current Standing Committee draft because it does not rely on rigid numerical criteria. It urges the United States to oppose the proposed Standing Committee listing criteria. IWCo supports the approach in the U.S. proposal, and disagrees strongly with the view that numerical values should be retained in Appendix I criteria.

WWF urges the United States to support amendments to the Standing Committee draft resolution that have been jointly proposed by the WWF, the Traffic Network, and IUCN for the draft listing criteria. The Service received a 63-page document on October 18, 1994 from WWF, analyzing the Standing Committee document and proposing further revisions to it. Although the Service has not completed its review of that document, it does contain many useful suggestions. The United States may be able to support elements of the WWF document, and looks forward to detailed discussions at the COP. Many specific comments on the U.S. proposed alternatives are included in the WWF document, which the United States will address at the COP.

NRDC submitted a 25-page document to the Service, also on October 18, 1994, which analyzes the Standing Committee document, and proposes an alternative listing criteria resolution that incorporates elements of the Standing Committee and U.S. submissions. NRDC contends that the drafting process of the Standing Committee submission has been secretive, hurried, inconsistent, and confused; they claim that the numerical criteria have been changed repeatedly. They also note that Doc. 9.41 Annex 4 from the Animals Committee is presented as a third alternative, without any clarification as to whether it is to be considered an amendment to the Standing Committee draft resolution. They also strongly criticize the validation process that has taken place. NRDC also opposes the quota systems in Annex 4 of the Standing Committee proposal, and urges the United States to change its position on this annex. As with the WWF paper, the Service has not completed its review of the NRDC proposed alternative resolution. However, it contains many useful suggestions, and is an excellent attempt to synthesize the existing proposals, which the United States will take seriously into consideration during the deliberations at COP9.

Rationale: The existing CITES listing criteria, known as the "Berne Criteria" (Resolutions Conf. 1.1 and 1.2) were developed at the first CITES Conference in 1976 in Berne, Switzerland. The United States agrees that the Convention will be strengthened by reevaluating the Berne Criteria for listing species in the Appendices, and that the Berne Criteria need to be reviewed and adapted to address a broader array of taxa and to be more descriptive and definitive, to the extent possible. At the same time, the United States notes that an inherent strength of CITES, which must be safeguarded, is its ability to seek balanced conservation-based solutions for a broad range of species and populations being considered. Thus, if any revision of the Berne Criteria is to be adopted at COP9, the United States is supportive of retaining maximal flexibility while firmly maintaining scientific credibility.

The move to revise the Berne Criteria originated at the 1992 CITES Conference, in Japan (COP8). At COP8 the Parties agreed to start a process, coordinated by the Standing Committee, to develop a scientifically sound revision for consideration at COP9 in 1994. The World Conservation Union (IUCN) was asked to do a first draft, which would first be reviewed at a joint meeting of the Standing, Animals and Plants Committees, and put into CITES resolution form. The United States participated in a joint meeting of the Standing, Animals, and Plants Committees in Brussels in August–September 1993, which reviewed the IUCN draft and produced a draft resolution that was circulated to the Parties.

The Service submitted comments to the Standing Committee, after consultation with other Federal agencies and reviewing extensive public comments received. The U.S. comments maintained that much of the draft resolution was not valid scientifically, and was not acceptable from management or practical perspectives. The United States believed that the criteria as proposed met neither the CITES treaty's requirements for the conservation of species in their ecosystems, nor the diverse needs of the CITES Parties. The U.S. comments and those of other Parties were discussed at the 31st meeting of the Standing Committee, in Geneva in March 1994. Some of the U.S. comments were taken into consideration in developing the final Standing Committee draft resolution. The Standing Committee resolution contains six annexes, several of which the United States looks forward to discussing further with the CITES Parties at COP9. In particular, the United States believes the Standing Committee draft is an improvement on the Berne Criteria as regards to precautionary measures. However, the United States believes that Annex 1 (Biological criteria for Appendix I) and Annex 2 (Criteria for inclusion of species in Appendix II) are in need of major revision, particularly from a scientific perspective. The United States is particularly concerned about the utility and scientific validity of arbitrary numerical cutoffs for decision-making on which Appendix a species should be included in. After detailed review of the scientific literature and consultation with other Federal agencies, the Service has submitted alternatives to those Annexes to the Secretariat, along with some additional material for inclusion in the resolution. The United States intent is to urge the CITES Parties to substitute the Annexes 1 and 2 it submitted for those prepared by the Standing Committee.

The biological criteria submitted by the United States for inclusion of species in Appendix I (Annex 1) are grounded in the scientific literature, and are based on the concept that determination of whether a species is threatened with extinction should be risk averse, utilizing the best available scientific and trade information, and assessment of a series of biological factors and criteria. The proposed Annex 1 lists a series of interdependent factors to be included in an assessment of the status of a species, and thereby the determination that it is threatened with extinction. The criteria for inclusion of species in Annex 2 (in accordance with Article II paragraph 2(a)) of the Convention involve a determination of whether a species may become threatened with extinction, in order to avoid utilization incompatible with its survival.

The Service received numerous comments recommending that the United States submit an alternative to the Standing Committee draft resolution. Several comments provided detailed analyses of the IUCN submission to the Secretariat, and of the resolution submitted to the Parties prior to the 31st meeting of the Standing Committee. These comments were taken into consideration by the Service and other Federal agencies.

The United States stresses that a large number of versions of listing criteria will be available to the Parties at the outset of COP9 (submitted by the Standing Committee, United States, Animals and Plants Committee, IUCN/WWF, NRDC, and possibly others) and looks forward to discussing this complex yet important topic with the other CITES Parties. The United States regrets that its proposed criteria for Annexes 1 and 2, submitted on June 10, 1994, were not able to be circulated by the Secretariat to the Parties until October 12, 1994, and is concerned that Parties that have not been involved with this process through the Standing, Animals, or Plants Committees may be disadvantaged.

27. Inclusion of Species in Appendix III (Doc. 9.59)

Negotiating Position: The United States supports most of the provisions of the resolution drafted by the Animals Committee that: repeals older resolutions regarding Appendix III listings; proposes newer criteria and guidelines; and recommends that Parties withdraw from Appendix III any listed species that do not meet these criteria. However, the United States disagrees with some aspects of the draft resolution, shares concerns raised by the Secretariat, and encourages further discussion of this issue at the COP.

Information and Comments: Comments were received by DOW and HSUS. DOW agrees with the U.S. position that Appendix III listings should be made more judiciously, but believes that the resolution contained in Doc. 9.59 goes too far in restricting the Parties' existing rights under the treaty. It maintains that the proposed language would in effect bar a listing that is intended to prevent illegal trade before it has occurred. It argues that the proposed resolution would undermine the precautionary approach and protective goals of the treaty and would unduly limit the Parties' current rights under the treaty to use Appendix III simply as a vehicle for monitoring trade thought to be potentially problematic. It urges the United States to modify its position either by opposing proposed Doc. 9.59 in its current form or by actively seeking amendments that would address problems with the document. HSUS strongly disagrees with the U.S. position and does not believe that implementation or enforcement of the Convention will be enhanced by greater restrictions on the use of Appendix III. It maintains that the requirements in the resolution are stricter than those in the text of the treaty and places a burden of proof on Parties to demonstrate that illegal trade is taking place before they can place species on Appendix III. It argues that this provision is unnecessarily restrictive, not precautionary, and will hinder rather than enhance the objectives of the Convention. The United States agrees that Article II paragraph 3 of the treaty does not allow for limiting inclusion in Appendix III to species for which illegal trade is a problem. Parties can include species in Appendix III for the purpose of preventing or restricting exploitation and requiring the cooperation of other countries, even if illegal trade is not currently a factor. The Secretariat has noted that it cannot implement the draft resolution as written, since it limits the rights of Parties and the Secretariat's obligations under the treaty. The United States agrees, and will work with the Parties at COP9 to seek modifications to the document.

Rationale: The United States supports the intent of this resolution as a means of allowing more effective cooperation by importing CITES Parties, reducing administrative burdens, and improving the credibility of Appendix III listings. The United States is supportive of

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urging a more judicious use of Appendix III, and recommending direct consultation with the Animals or Plants Committee and a review of existing Appendix III listings. The CITES Secretariat has been working to screen Appendix III proposals and consult with the submitting Party.

28. Guidelines for Evaluating Marine Turtle Ranching Proposals (Doc. 9.42)

Negotiating Position: Portions of the draft guidelines in the Animals Committee proposal are unacceptable to the United States, although others are acceptable.

Information and Comments: Comments were received from Greenpeace, CMC, MTSG, IWMC, and HSUS. Greenpeace recommended at the public meeting on September 14, 1994 that the United States oppose the guidelines as written. The CMC commented at the September 16, 1994 public meeting and expressed its opposition to the draft guidelines, and called for strong regional management plans along with good trade controls. In their written comments, CMC urged the United States to oppose the draft resolution unless it is revised to address regional management plans and trade controls. They contend that the draft guidelines do not meet the requirements of Conf. 3.15 for benefits to the conservation of local populations. CMC faults the Standing Committee for not addressing these issues; the Service notes that it was the Animals Committee and not the Standing Committee that prepared these draft guidelines. In their detailed comments, CMC makes several recommendations, including suggesting that: (1) Ranching criteria should require that the proponents' domestic trade be regulated and controlled before approval by the COP for export; (2) criteria should require establishment of management programs in states throughout the population's range prior to submission to the COP, in recognition that all sea turtle conservation necessitates international cooperative management.

MTSG and HSUS support the need for regional management of sea turtle populations on the basis of genetically defined populations as a precondition for marine turtle ranching. MTSG strongly urges the United States to oppose the resolution in Doc. 9.42 because it does not contain a requirement for regional management, and because the resolution has been weakened from the consensus document produced at the 9th meeting of the Animals Committee. IWMC supports adoption of the proposed marine turtle ranching guidelines, in that they meet the requirements for effective sustainable utilization, but recommends less stringent criteria for proposals involving "doomed" eggs or hatchlings.

Rationale: At COP6 the Parties authorized formation of a Working Group to prepare guidelines for evaluation of marine turtle ranching proposals, although no document was produced for submission to the Parties by that process. The Animals Committee began developing such guidelines after COP8. The United States supports adoption of guidelines that adhere strictly to the requirements of Conf. 3.15, recognize the unique population biology and migratory behavior of marine turtles, and deal effectively with enforcement and implementation concerns. The United States cannot support adoption of the draft guidelines as proposed because they do not recognize that marine turtle populations are migratory, thus necessitating regional cooperation and/or management, and because they substitute mere suggestions of coordination among Parties for solid requirements, including enforcement, regarding most elements of the criteria. The United States participated in a Working Group at the ninth meeting of the Animals Committee in Brussels in September, 1993 which developed draft guidelines for recommendation to the Animals Committee on this issue. The ninth meeting of the Animals Committee adopted a requirement for "regional management on the basis of genetically defined populations", and that trade should be on the basis of fixed quotas between specifically identified countries. The United States strongly supported these elements, which were removed by a subsequent meeting of the Animals Committee, and which the United States believes should be included in some form. The United States remains supportive of regional cooperation in the management of such widely migratory endangered species as marine turtles.

29. Proposals to Register the First Commercial Captive-breeding Operation for an Appendix I Animal Species (Doc. 9.43)

Negotiating Position: The United States supports the registration of the captive-breeding operation for the Asian bonytongue fish (*Scleropages formosus*) on the basis of the species as a whole rather than its three or four recognized color varieties for the first breeding operation, unless there is reason to believe that such a policy could be detrimental to any of the varieties in the wild.

Information and Comments: No comments were received.

Rationale: This popular aquarium fish was listed on Appendix I in 1975, and the Indonesian population was downlisted to Appendix II in 1989 with export quotas under Res. Conf. 5.21. In 1992 the export quota for wild fish was reduced to zero and a quota established for captive-reared fish. The species has at least three color varieties, of which the red form is rarest and commands the highest market price. The first captive-breeding operation for this species, in Malaysia, was approved in part by the Secretariat in 1994, but not for the red variety which does not occur there.

The Secretariat has asked the COP to decide whether captive-breeding operations for the Asian bonytongue fish should be registered on the basis of the species as a whole or its three or four recognized color varieties. Given the likelihood that registering operations on the basis of the whole species will not threaten any of the varieties, and that the techniques to successfully rear or cultivate one variety can be transferred to another variety of the same species, the United States can support this rather than constraining the operators of such facilities by requiring registration by variety. However, the United States recognizes that varieties, especially endemic ones, may have been acquired illegally and thus possibly to the detriment of the species. Therefore, the United States urges the Parties to submit information on a varietal basis and the Secretariat to consider the source of the parental stock in deciding whether the specimens meet Conf. 2.12 standards.

30. Standard Nomenclature (Doc. 9.56)

Negotiating Position: Support adoption of the resolution submitted by the United States, which was submitted at the request of the Nomenclature Committee.

Information and Comments: Comments were received from IHPA at the September 14, 1994 public meeting. IHPA supports the timber nomenclature the United States provided in the resolution and called for standardized terms for different types of specimens of timber.

Rationale: This resolution was submitted at the request of the CITES Nomenclature Committee, and deals with nomenclature and taxonomy of CITES species. The resolution submitted was discussed and agreed upon by the Nomenclature Committee at its May, 1994 meeting in Beijing, China. The names of the genera and species of several families are in need of standardization and the current lack of a standard reference with adequate information creates an implementation problem for some species. The United States also recognizes that the taxonomy used in the Appendices to the Convention will be more useful to the Parties if standardized and correlated by nomenclatorial references.

This resolution makes several recommendations dealing with the inclusion of subspecies in the Appendices, use of references in proposals, synonyms, and the role of the Scientific Authorities in nomenclature issues. The resolution also recommends several standard references for species listed in the CITES Appendices, for mammals, birds, amphibians, cacti, cycads, tree ferns, and other plants.

XV. Consideration of Proposals for Amendment of Appendices I and II

The **Federal Register** notice published on September 6, 1994 (59 FR 46023) set forth summaries of the proposed U.S. negotiating positions on the proposals for amendment of the CITES Appendices for COP9 and requested information and comments from the public on these proposed U.S. positions. The Service intends to publish the U.S. negotiating positions on the proposals in a separate **Federal Register** notice before the start of COP9.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

Negotiating Position: No documents have been received indicating requests from possible host governments. Favor holding COP10 in a country where all Parties will be admitted without political difficulties. Support the holding of COPs on a biennial basis, or, as in the case of COP9, after an interval of two and one half years.

Information and Comments: No comments were received.

Rationale: COP meetings energize governmental and nongovernmental organizations concerned with CITES issues to examine its implementation, and the conservation of affected species. The United States recognizes that the financial burdens of hosting a COP may serve to discourage developing countries from offering to serve as host, unless innovative ways can be found to provide financial assistance.

General comments: HSUS noted that transmission of documents by the CITES Secretariat has been "unjustifiably slow", which will not provide Parties or NGOs with ample time to study the documents. HSUS requests the right to comment on those documents at a later time. HSUS also noted that an international NGO, the World Conservation Union (IUCN) received copies of all proposals and resolutions long before even the Parties did. The United States agrees that this is a concern, which it will discuss with the Secretariat and the Standing Committee. HSUS recommends additional funding be made available to the Secretariat from translators and document copying services, prior to COP10.

Author: This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095).

Dated: November 3, 1994.

Mollie Beattie,

Director.

[FR Doc. 94–27630 Filed 11–3–94; 2:24 pm]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–796053

Applicant: Dr. Donald L. Koehler, S.A. Garza Engineers, Inc., Austin, Texas

The applicant requests a permit to include take activities for the black-capped vireo (*Vireo atricapillus*) and golden-cheeked warbler (*Dendroica chrysoparia*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–27601 Filed 11–7–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–050–1430–01, N–57922]

Proposed Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and protest period.

SUMMARY: The Proposed White Sides Land Withdrawal Amendment and Environmental Assessment, which analyzes the U.S. Air Force's proposal for the withdrawal of approximately 1,607 hectares (3,972 acres) of public land in Lincoln County, Nevada, is available for public review. This Proposed Amendment addresses the amendment of the Caliente Management Framework Plan and the Nellis Air Force Range Resource Plan. The environmental assessment portion of this document analyzes the impacts that may result in the implementation of the proposed amendment. This document also contains a summary of the public comments received during the scoping period.

DATES: A 30-day public review and protest period begins on November 9, 1994. And protests must be postmarked on or before December 9, 1994.

ADDRESSES: Protests must be filed with the Director (760), Bureau of Land Management, Division of Planning and Environmental Coordination (406 LS), 1849 C Street NW., Washington, DC 20240.

Copies of the Proposed Amendment may be obtained by writing to: Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126. Copies may be picked up in person at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, at the above Las Vegas address or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The purpose of the withdrawal of the White Sides area is to provide a security and safety buffer to prevent a compromise of national security interests and assets of the adjacent withdrawn Nellis Air Force Range.

The Proposed Amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by the approval of the Proposed Amendment. A protest may raise only those issues which were submitted for the record during the planning process (see 43 CFR 1610.5–5).

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Protests must be filed with the National BLM Director at the above Washington, DC, address. All protests must be written and must be postmarked on or before December 9, 1994 and shall contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest.

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the document being protested.

(4) A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

(5) A concise statement explaining precisely why the Bureau of Land Management Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Decision Record (DR) will be issued. The Approved Plan Amendment/DR will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

Dated: November 2, 1994.

Ann J. Morgan,

State Director, Nevada.

[FR Doc. 94-27608 Filed 11-7-94; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 29, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by November 23, 1994.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Pueblo County

Pueblo Mountain in Park 1 mi. S of Co. Rd. 220 on S. Pine Dr. (CO 78) in the San Isabel NF, Beulah vicinity, 94001343

CONNECTICUT

New Haven County

Bigelow—Hartford Carpet Mills Historic District Roughly bounded by Lafayette St., Hartford Ave., Alden Ave., Pleasant, High, Spring, South and Prospect Sts., Enfield, 94001382

Hamden High School, 2040 Dixwell Ave., Hamden, 94001378

DELAWARE

Kent County

Building 1301, Dover Air Force Base Dover AFB, E. Dover Hundred, Dover vicinity, 94001377

Star Hill AME Church, Rt. 366 SE of Camden, Camden vicinity, 94001389

Zion African Methodist Episcopal Church, Center St., Camden, 94001388

GEORGIA

Cobb County

Bankston, J.C., Rock House, 901 Industrial Dr., Dobbins Air Reserve Base, Marietta vicinity, 94001387

IDAHO

Ada County

Spaulding, Almon H. and Dr. Mary E., Ranch, 3805 N. Cole Rd., Boise, 94001363

Bannock County

East Side Downtown Historic District Roughly including the 200 and 300 blocks E. Center St., 100 block N. Second Ave. and 100 block S. Second Ave., Pocatello, 94001361

Nez Perce County

Asposas, James, House, 1610 Fifteenth Ave., Lewiston, 94001366

Booth, Frank, House, 1608 Seventeenth Ave., Lewiston, 94001367

Hester, Patrick J. and Lydia, House, 1622 Fifteenth Ave., Lewiston, 94001365

Tambylyn, Agnes M., House, 1508 Seventeenth Ave., Lewiston, 94001364

Wyatt, W. R. and Louisa E., House, 1524 Eighteenth Ave., Lewiston, 94001362

INDIANA

Clinton County

Young, John, House, 9665 N Co. Rd. 250 E. Geetingsville, 94001348

Dearborn County

Hurlbert, Lewis, Sr., House, 412 Fifth St., Aurora, 94001350

Elkhart County

St. John's Lutheran Church, Jct. of Co. Rds. 15 and 32, NE corner, Goshen vicinity, 94001349

Hancock County

County Line Bridge, Co. Rd. 900 E over Big Blue R., Morristown vicinity, 94001356

Lake County

Gary Bathing Beach Auditorium, One Marquette Dr., Marquette Park, Gary, 94001354

Gary City Center Historic Districts, Roughly, Broadway from the Chicago, South Shore and South Bend RR tracks to 9th Ave., Gary, 94001352

Gary Public Schools Memorial Auditorium, 700-734 Massachusetts St., Gary, 94001356

Orange County

Paoli Historic District, Roughly bounded by W. Fifth, Railroad and NE. Third Sts. and Lick Cr., Paoli, 94001355

Owen County

Owen County Courthouse, Courthouse Sq., Spencer, 94001351

KENTUCKY

Hardin County

Fort Sands, Off I-65 of Lebanon Junction, above the CSX RR trestle over Sulfur Fork, Lebanon Junction vicinity, 94001379

Kenton County

Yeager, William A., and Edward Mohr Farmstead, 5002 Madison Pike, Independence vicinity, 94001380

Rowan County

Morehead State University, Bounded by University Blvd., Battson Ave. and Ward Oates Dr., Morehead, 94001381

MARYLAND

Baltimore Independent City

Faust Brothers Building (Cast Iron Architecture of Baltimore MPS), 307-309 W. Baltimore St., Baltimore, 94001383

MINNESOTA

Hennepin County

Twin City Rapid Transit Company Steam Power Plant, 12-20 Sixth Ave. SE., Minneapolis, 94001385

Houston County

Jefferson Grain Warehouse, Off MN 26, Jefferson Township, Jefferson vicinity, 94001386

Waseca County

Bailey, Philo C., House, 401 2nd Ave. NE., Waseca, 94001384

NEW YORK

Albany County

Ten Eyck, Tobias, House and Cemeteries, Old Ravena Rd. (Pictuny Rd.) N of jct. with US 9W, Coeymans, 94001375.

Columbia County

Witbeck, William A., House, Co. Rd. 26A, E of jct. with Gibbons Rd., Stuyvesant, 94001371

Delaware County

Hardenbergh, Isaac, House, NY 23 N of jct. with William Lutz Rd., Roxbury, 94001369

Madison County

Smithfield Presbyterian Church, Pleasant Valley Rd. between Elizabeth and Park Sts., Peterboro, 94001370

Ulster County

Camp Wapanachki, S. Plank Rd. (Old Co. Rt 28) at jct. with Miller Rd., Shandaken, Mt. Tremper, 94001372

DuBois—Deyo House, 437 Springtown Rd., Rosendale, 94001374

Westchester County

Romer—Van Tassel House, 212 Saw Mill River Rd., Greenburgh, 94001373

SOUTH DAKOTA

Brule County

Crawford, Robert A., House, 204 16th Ave. W., Chamberlain, 94001392

Minnehaha County

Milne, William G., House, 508 E. 9th St., Dell Rapids, 94001391

Sioux Falls Downtown Historic Districts, Roughly bounded by S. Dakota and S. First Aves., W. Ninth and W. Fourteenth Sts., Sioux Falls, 94001393

Moody County

Japanese Gardens Dance Pavilion, City Park, Flandreau, 94001390

TEXAS

Denton County

Jones Farm, Johnson Branch Park, Lake Ray Roberts, Sanger vicinity, 94001357

Tarrant County

Woolworth, F.W., Building, 501 Houston St., Fort Worth, 94001359

UTAH

Utah County

Johnson—Hansen House, 485 E. 400 South, Provo, 94001346

Wasatch County

Midway Town Hall, 120 W. Main St., Midway, 94001347

WEST VIRGINIA

Berkeley County

Smokestown School, Co. Rt. 45/4, E of Martinsburg, Martinsburg vicinity, 94001345

Tomahawk Spring, Co. Rt. 7/2, Tomahawk, 94001344

WISCONSIN

Portage County

Hardware Mutual Insurance Companies Building, 1421 Strongs Ave., Stevens Point, 94001358

Winnebago County

Algoma Boulevard Historic District, Roughly, Algoma Blvd. from Woodland Ave. to Hollister Ave., Oshkosh, 94001368.

[FR Doc. 94-27627 Filed 11-7-94; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-671-674; Final]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of the Brazilian and Ukrainian respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for November 3, 1994, *in camera*. The *in camera* portion of the hearing will be limited to discussion of (1) the condition of the domestic industry; and (2) "swap" transactions in the U.S. silicomanganese market. The remainder of the hearing will be open to the public. The Commission has further unanimously determined that the 7-day advance notice of the change to a meeting was not possible.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3090. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in these investigations to hold a short portion of the hearing *in camera*. The majority of the information collected by the Commission with respect to the condition of the domestic industry is business proprietary information (BPI) because there is only one domestic producer. Moreover, any discussion of the role of "swap" transactions in the U.S. silicomanganese market implicates the confidential business practices of individual companies. The *in camera* portions of the hearing will be for the purpose of addressing BPI as part of the parties' presentations, and therefore is properly the subject of an *in camera* hearing pursuant to Commission Rule 201.36(b)(4). *See* 19 C.F.R. § 201.36(b)(4). In making this decision, the Commission nevertheless reaffirms its belief that, whenever possible, its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition the hearing will include *in camera* sessions for short presentations by petitioner and by respondents with questions from the Commission with respect to BPI submitted by the parties, as necessary. For the *in camera* portions of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in these investigations. *See* 19 C.F.R. § 201.35(b)(1),(2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner also may be granted access to the closed session. *See* 19 C.F.R. § 201.35(b)(1),(2). In the alternative, if a particular respondent's BPI will be discussed in the *in camera* session, personnel of that respondent also may be granted access to the closed session. *See* 19 C.F.R. § 201.35(b)(1),(2). All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

AUTHORITY: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. § 201.39) that, in her opinion, a portion of the Commission's hearing in *Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela*, Inv. Nos. 731-TA-671-674 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: November 2, 1994

Donna R. Koehnke,

Secretary.

[FR Doc. 94-27561 Filed 11-7-94; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32185]

Southern Electric Railroad Company—Construction Exemption—Effingham County, GA

The Southern Electric Railroad Company (SER) has petitioned the Interstate Commerce Commission (Commission) for authority to construct and operate a 2.5 mile rail line in Effingham County, Georgia. The Commission's Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA). Based on the information provided and the environmental analysis conducted to

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date, this EA concludes that this proposal should not significantly affect the quality of the human environment if the recommended mitigation measures set forth in the EA are implemented. Accordingly, SEA preliminarily recommends that the Commission impose on any decision approving the proposed construction and operation conditions requiring Southern Electric Railroad Company to implement the mitigation contained in the EA. The EA will be served on all parties of record as well as all appropriate Federal, state and local officials and will be made available to the public upon request. SEA will consider all comments received in response to the EA in making its final environmental recommendations to the Commission. The Commission will then consider SEA's final recommendations and the environmental record in making its final decision in this proceeding.

Comments (an original and 10 copies) and any questions regarding this Environmental Assessment should be filed with the Commission's Section of Environmental Analysis, Office of Economic and Environmental Analysis, Room 3219, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of John O'Connell (202) 927–6228. Requests for copies of the EA should also be directed to Mr. O'Connell.

Date made available to the public: November 4, 1994.

Comment due date: December 5, 1994.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis, Office of Economic and Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27658 Filed 11–7–94; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Committee on Long Range Planning

AGENCY: Judicial Conference of the United States; Committee on Long Range Planning.

ACTION: Request for public comment. Notice of open hearings.

SUMMARY: The Committee on Long Range Planning has proposed a long range plan for the federal courts and submits the proposed plan for public comment. The committee requests that all comments be submitted no later than December 16, 1994. To request a copy of the plan send a self-addressed mailing label to: Long Range Planning Office, Administrative Offices of the United States Courts, Washington, D.C. 20544, Telephone (202) 273–1810.

In order that persons and organizations wishing to do so may comment on the proposed long range plan, hearings will be held by the Committee on Long Range Planning as follows:

Date: December 7, 1994.

Place: Courtroom No. 2 (Seventh Floor), United States Courthouse, 230 North First Avenue, Phoenix, Arizona.

Date: December 9, 1994.

Place: Media Auditorium, Thurgood Marshall Federal Judiciary Building, 1 Columbus Circle, N.E., Washington, D.C.

Date: December 16, 1994.

Place: Ceremonial Courtroom, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois.

Each hearing will start at 9:00 a.m. Oral testimony will be held to ten minutes plus a short question-and-answer period at the committee's discretion. Anyone interested in testifying at a particular hearing should contact Peter G. McCabe, Assistant Director, Administrative Office of the United States Courts, Washington, D.C. 20544 for scheduling at least 10 days before the hearing.

Written testimony for each hearing should be received by the Long Range Planning Office no later than 7 days before the hearing.

Public comment may also be submitted without testimony at a hearing. Those submitting written comments, including testimony for a public hearing, may submit documents of any length but *must* include an executive summary. An executive summary should contain the following: Name, title, date, Group represented, Hearing date (if applicable), Chapter, section of long range plan being reviewed, Summary of comments.

The committee prefers that written text be submitted on floppy diskette in either Macintosh Word 5.1 or DOS-compatible WordPerfect 5.1 format. All comments should be sent no later than December 16, 1994.

Dated: October 31, 1994.

Peter G. McCabe,

Assistant Director, Judges Programs.

[FR Doc. 94–27560 Filed 11–7–94; 8:45 am]

BILLING CODE 2210–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) School Crime Supplement
(2) a. National Crime Victimization Survey, Redesign Phase III, Basic Screen Questionnaire, Form NCVS 1(X).
b. Crime Incident Report, Redesign Phase III, National Crime Victimization Survey, Form NCVS 2(X).
c. Noninterview Record, Redesign Phase III, National Crime Victimization Survey, Form NCVS 7(X).
d. Phase III, Control Card, National Crime Victimization Survey, Form NCVS 500(X).

Bureau of Justice Statistics.

(3) Quarterly.
(4) Individuals or households. The School Crime Supplement is a program designed to gather, analyze, publish, and disseminate information on crimes that occur in school. Respondents include students between the ages of 12 through 19 who are living in 58,000 households throughout the United States.
(5) 17,000 annual respondents at .167 hours per response.
(6) 2,839 annual burden hours.
(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: November 3, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–27657 Filed 11–7–94; 8:45 am]

BILLING CODE 4410–18–M

Antitrust Division

U.S. v. Motorola, Inc. & Nextel Communications, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed in the United States District Court for the District of Columbia in *United States* v. *Motorola, Inc. and Nextel Communications, Inc.*, Civ. No. 1:94CV02331

The Complaint alleges that the agreement between Nextel and Motorola to transfer control of substantial portions of Motorola's SMR service business to Nextel, both through Nextel's purchase of a substantial portion of Motorola's SMR frequencies and its assumption of management control of most of Motorola's remaining SMR frequencies, violates section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that the two companies are each other's chief competitor and that the agreement between them is likely to substantially reduce competition in fifteen (15) major cities in the United States in the market for trunked SMR services. As a result of the transactions, Nextel would control virtually all of the service alternatives available for persons with a need for trunked SMR services in those cities and would be able to increase the prices of or reduce the quality or availability of such services.

The proposed Final Judgment enjoins Nextel and Motorola from holding or acquiring more than a limited number of 900 MHz channels in fourteen of the cities and requires Nextel and Motorola to divest themselves of channels they hold above that number. Nextel and Motorola are also required to terminate, at the request of the licensee, the management agreements of 900 MHz licensees whose channels they manage. Nextel and Motorola are also required to divest themselves of a certain number of 800 MHz SMR channels in the city of Atlanta, Georgia.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to George S. Baranko, Attorney, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Room 8104, Washington, D.C. 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc., Defendants, Civil Action No. 94–2331.

Stipulation

It Is Hereby Stipulated and Agreed, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: October 27, 1994.

For the Plaintiff:

Anne K. Bingaman,
Assistant Attorney General.
Steven C. Sunshine,
Deputy Assistant Attorney General.
Constance K. Robinson,
Director of Operations.
Donald J. Russell,
Chief, Telecommunications Task Force.
George S. Baranko,
Katherine E. Brown,
J. Philip Sauntry, Jr.,
Susanna M. Zwerling,
Attorneys, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20002, (202) 514–5640.

For Defendant Nextel Communications, Inc.

Jones, Day, Reavis & Pogue,
By:
Charles A. James,
A member of the Firm, 1450 G Street, N.W., Washington, D.C. 20005, 202–879–3675.

For Motorola, Inc.

David F. Hixson, Esquire,
Vice President and General Attorney, 1303 East Algonquin Road, Schaumburg, Illinois 60196, 708–576–3960.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc. Defendants. Civil Action No. 94 3221.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 27, 1994; the parties, by their respective attorneys, having consented to the entry of this Final Judgment; and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law; and upon the consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the parties and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

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II

Definitions

As used in this Final Judgment:

A. "Affiliate" means any person in which Motorola or Nextel separately or in combination hold (i) the right, contractual or otherwise, to direct the management decisions, or (ii) an ownership interest of 50 percent or greater, unless defendants do not have the right to direct the management decisions.

B. "Category A City" means any or all of the cities of Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Denver, Colorado, Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; and Washington, D.C.

C. "Category B City" means either or both of the cities of Detroit, Michigan or Seattle, Washington.

D. "Category C City" means the city of Atlanta, Georgia.

E. "Defendants" means Nextel and/or Motorola.

F. "800 MHz channel" means a trunked or conventional channel or frequency pair in the 800 MHz band within a 25 mile radius of the geographic center of Atlanta, capable of being used in providing trunked SMR service in accordance with the Federal Communications Act. Center coordinates are defined in 47 CFR 90.635 and in Federal Communications Commission Public Notice 43004, Private Radio 800 MHz Systems Application Waiting List, released May 27, 1994.

G. "900 MHz channel" means a trunked or conventional channel or frequency pair in the 900 MHz band within a 25 mile radius of the geographic center of any city identified in section II paragraphs B and C, capable of being used in providing trunked SMR service in accordance with the Federal Communications Act. Center coordinates are defined in 47 C.F.R. § 90.635 and in Federal Communications Commission Public Notice 43004, Private Radio 800 MHz Systems Application Waiting List, released May 27, 1994. For the purposes of this Final Judgment, the location of channels shall be determined as of September 1, 1994.

H. "Management agreement" means the SMR Systems Facilities Services Agreement, SMR User Acceptance Agreement and any and all such agreements relating to Motorola's and/or Nextel's management of an SMR license for any licensee.

I. "Motorola" means Motorola, Inc., each affiliate, subsidiary or division thereof, and each officer, director, employee, agent or other person acting for or on behalf of any of them.

J. "Nextel" means Nextel Communications, Inc., each affiliate, subsidiary or division thereof, and each officer, director, employee, agent or other person acting for or on behalf of any of them. Nextel shall include OneComm Corporation as provided for in the Agreement and Plan of Merger dated July 13, 1994 and Dial Page, Inc. as provided for in the letter of intent dated August 5, 1994.

K. "Person" means any natural person, corporation, association, firm, partnership or other legal entity.

L. "SMR infrastructure equipment" means equipment (e.g., switches, transmission equipment, and radio base stations) used by an SMR service provider in or for the provision of SMR service anywhere in North America and includes related software, maintenance and support and other equipment, products or services used to provide SMR service.

M. "Specialized Mobile Radio System" or "SMR" means a radio system in which licensees provide land mobile communication services (other than radio-location services) in the 800 MHz and 900 MHz bands on a commercial basis as defined and regulated in 47 C.F.R. Part 90.

III

Applicability

A. The provisions of this Final Judgment shall apply to defendants, to each of their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

Prohibited Conduct

Defendants are enjoined and restrained as follows:

A. Defendants as a group may not hold or acquire licenses for more than thirty (30) 900 MHz channels in any Category A City or more than ten (10) 900 MHz channels in any Category B City without the prior written permission of plaintiff. To the extent that defendants are currently the licensees for more than thirty (30) 900 MHz channels in any Category A City or more than then (10) 900 MHz channels in any Category B City, defendants shall divest fully and completely all licensed channels in excess of the relevant number and sell all SMR infrastructure equipment attributable to the divested channels to a person or persons approved by the plaintiff, provided, however, that the provisions of this Final Judgment shall have effect with respect to frequencies licensed under the authority of a foreign government.

B. Defendants shall not finance any portion of the purchase of any license pursuant to a sale mandated by section IV. paragraph A of this Final Judgment without plaintiff's prior written permission.

C. Except as permitted by paragraph E, defendants shall terminate management agreements relating to all 900 MHz channels in Category A and Category B Cities at the written request of the licensee. Further, defendants are prohibited from exercising, maintaining, enforcing or claiming any right of first refusal to purchase the system, license or operation relating to such channels, and are prohibited from exercising, maintaining, enforcing or claiming any right to select the SMR infrastructure equipment to be deployed on the systems.

D. Except as permitted by paragraph E, defendants are further enjoined and restrained from taking any action to prevent or inhibit a licensee's termination of its management agreement and/or affiliating with a network controlled by a third-party pursuant to section IV. paragraph C, above. Defendants may, however, require a licensee to provide 120 days notice of an intent to exercise its rights under section IV. paragraph C, and may solicit customers of a terminating system to purchase defendants' services. Nothing in this paragraph shall impose any express or implied duty on the part of defendants to conduct business with any person.

E. Notwithstanding the provisions of section IV. paragraphs C and D, above, defendants may (1) refuse to terminate a management agreement, (2) exercise, maintain, enforce or claim a right of first refusal to purchase, or (3) exercise, maintain, enforce or claim a right to select the SMR infrastructure equipment used by a 900 MHz channel in a Category A City when, including that channel, the defendants as a group control by license and by management agreement, combined, thirty (30) or fewer 900 MHz channels in that city. Further, defendants may (1) refuse to terminate a management agreement, (2) exercise, maintain, enforce or claim a right of first refusal to purchase, or (3) exercise, maintain, enforce or claim a right to select the SMR infrastructure equipment used by a 900 MHz channel in a Category B City when, including that channel, the defendants as a group control by license and by management agreement, combined, ten (10) or fewer 900 MHz channels in that city.

F. Defendants shall fully and completely divest forty-two (42) 800 MHz channels in the Category C City to a person or persons approved by the plaintiff. Defendants shall have the full discretion to designate the frequencies to be divested. The divestitures required by this paragraph shall be contingent upon closing of the transaction contemplated by the letter of intent between Nextel and Dial Page, Inc., dated August 5, 1994.

G. Defendants are enjoined and restrained from entering into new management agreements for 900 MHz channels in any Category A or Category B Cities, except to channels owned or managed by defendants as of August 4, 1994, without the prior written permission of plaintiff. Defendants are further enjoined and restrained from holding or acquiring, either directly or indirectly, more than a five percent ownership interest in any corporation or entity that itself owns, controls, or manages, either directly or indirectly, 900 MHz channels in any Category A or B Cities without the prior written permission of the plaintiff unless the corporation's or entity's ownership, control or management of 900 MHz channels in combination with that of defendants is less than or equal to thirty (30) 900 MHz channels if a Category A city and ten (10) 900 MHz channels if a Category B city.

H. For purposes of complying with the provisions of section IV. paragraphs A through F, defendants shall share information and enter agreements to the extent reasonably necessary to effect the allocation between them with respect to 900 MHz channels they will continue to license under the relevant number limit.

I. Defendants shall take all reasonable steps to complete the required divestitures no later than 180 days after entry of this Final Judgment. Defendants shall provide plaintiff notice when the divestitures have been completed in accordance with the terms of this Final Judgment with respect to each city. In its sole discretion, plaintiff may extend the date by which defendants are required to divest rights in 900 MHz frequencies; provided however, that plaintiff shall extend the divestiture period to accommodate proceedings by the Federal Communications Commission with respect to the transfer of any divested license.

J. Until the divestitures required by this Final Judgment have been accomplished, defendants shall refrain from taking any action that would jeopardize the economic viability of properties to be divested.

V

Agent

A. If defendants have not completed the required divestitures within 180 days of entry of this Final Judgment, the Court shall, upon application of the plaintiff, appoint an agent to effect the mandated sales. After the agent's appointment becomes effective, defendants immediately shall identify specific frequencies to be divested. Thereafter, only the agent, and not the defendants, shall have the right to sell excess licensed channels. The agent shall have the power and authority to effectuate the mandated sales at such price and on such terms as are then obtainable by the agent, to a purchaser acceptable to the plaintiff, subject to the provisions of this Final Judgment. The agent shall have such other powers as the Court deems appropriate. Defendants shall use all reasonable efforts to assist the agent in accomplishing the required sales. Defendants shall not object to a sale by the agent on any grounds other than malfeasance. Any such objection by defendants shall be conveyed to plaintiff and to the agent within fifteen (15) days after the agent has notified defendants of a proposed sale.

B. The agent shall be a business broker with experience and expertise in the disposition of telecommunications properties. Plaintiff shall provide defendants with the names of not more than two nominees for the position of agent for the required divestiture. Defendants will notify plaintiff within five days thereafter whether either or both such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as agent. If neither of such nominees is acceptable to defendants, defendants shall furnish to plaintiff within five days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two nominees for the position of agent for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as agent.

C. The agent shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of channels and all costs and expenses so incurred.

D. The agency shall have full and complete access to the personnel, books, records, and facilities of the defendants relevant to excess licensed channels and the defendants shall develop such financial or other information relevant to the channels to be sold as the agent may request. Defendants shall take no action to interfere with or impede the agent's accomplishment of the sale and shall use their best efforts to assist the agent in accomplishing the required sale.

E. After his or her appointment, the agent shall file monthly reports with the parties and the Court setting forth the agents' efforts to accomplish divestitures contemplated under this Final Judgment. If the agent has not accomplished such divestitures within six months after the agent's appointment, the agent shall thereupon promptly file with the Court a report setting forth (1) the agent's efforts to accomplish the required divestitures, (2) the reasons, in the agent's judgment, why the required divestitures have not been accomplished, and (3) the agent's recommendations. The agent at the same time shall furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the agency, which shall include, if necessary, extending the term of the agency and the term of the agent's appointment.

VI

Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against defendants or any person any relief available under any applicable provision of law.

VII

Plaintiff Access

A. To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the

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Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendant's office hours to inspect and copy all records and documents in their possession or control relating to any matters contained in this Final Judgment; and

2. to interview defendants' officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to defendants' reasonable convenience and without restraint or interference from defendants.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

C. No information or documents obtained by the means provided in this section VII shall be divulged by plaintiff to any person other than a duly authorized representative of the executive branch of the United States or a duly authorized representative of the Federal Communications Commission, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Further Elements of Decree

A. Defendants shall provide each licensee subject to a management agreement with a copy of this Final Judgment and notice of their rights under this Final Judgment in a form approved by plaintiff within seven days of the date this Final Judgment is entered.

B. This Final Judgment resolves issues with respect to: (1) defendants' consummated and proposed acquisitions of 800 MHz channels in the continental United States and Canada; (2) proposed mergers and acquisitions between Nextel, OneComm Corporation and Dial Page, Inc.; and (3) agreements between and among the defendants as of August 4, 1994 with respect to the financing and construction of SMR systems. Nothing in this Final Judgment, expressly or by implication, is intended to affect defendants' activities except as specifically required herein.

C. This Final Judgment shall expire ten years from the date of entry.

D. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to publish violations of its provisions.

E. Five years after the entry of this Final Judgment, any party to this Final Judgment may seek modification of its substantive terms and obligations, and neither the absence of specific reference to a particular event in the Final Judgment, nor the foreseeability of such an event at the time this Final Judgment was entered, shall preclude this Court's consideration of any modification request.

The common law applicable to modification of final judgments is not otherwise altered.

F. Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Motorola, Inc. and Nextel Communications, Inc. Defendants.

Case Number 1:94CV02331
Judge: Thomas F. Hogan
Deck Type: Antitrust
Date Stamp: 10/27/94

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA") or "Tunney Act"), 15 U.S.C. 16 (b)–(h), the United States, submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Nextel Communications, Inc. ("Nextel") and Motorola, Inc. ("Motorola") in this civil antitrust proceeding.

I

Nature and Purpose of Proceeding

On October 27, 1994, the United States filed a civil antitrust complaint, under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, against Nextel and Motorola, alleging that an agreement between Nextel and Motorola violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. That agreement would transfer ownership of a substantial portion of Motorola's specialized mobile radio ("SMB") business to Nextel and control of most of Motorola's remaining SMR business.

The complaint alleges that the Nextel/Motorola transactions are likely to reduce competition substantially in fifteen (15) major cities in the United States in the market for "trunked SMR services." SMR service is a form of dispatch service that enables a customer to communicate with a fleet of vehicles, such as delivery trucks, repair trucks and messenger services. SMR service also enables a vehicle to communicate with another member of the fleet. The transactions would allow Nextel to control virtually all the service alternatives available for persons with a need for trunked SMR services in those cities and increase the prices of or reduce the quality of such services. The complaint seeks, among other relief, to enjoin the combination of Nextel's and Motorola's trunked SMR operations and thereby to preserve competition in the relevant markets.

On October 27, 1994, the United States, Nextel and Motorola filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the transactions. Under the proposed Final Judgment, Nextel and Motorola will divest themselves of substantially all of their SMR channels in the 900 MHz radio band and release upon request of the license holder substantially all the 900 MHz SMR channels they manage in the cities of Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Detroit, Michigan; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; Seattle, Washington; and Washington, DC. In addition, Nextel's and Motorola's freedom in the future to acquire 900 MHz channels in these cities and in Denver, Colorado would be significantly constrained. In Atlanta, Georgia, either Nextel or Motorola will sell 42 800 MHz channels to an independent SMR service provider.

The United States, Nextel and Motorola have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction of construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II

Facts Giving Rise to the Alleged Violation

A. Product Market

SMR service is a type of land mobile communications service used by customers such as contractors, service companies and delivery services that have significant field operations and

need to provide their personnel with the ability to communicate directly with each other, either on a one-to-one or one-to-many basis. This type of service is commonly referred to as "dispatch" service. SMR service is provided pursuant to licenses granted by the Federal Communications Commission in the 800 MHz and 900 MHz radio bands.[1]

SMR services may be "conventional" or "trunked." Conventional SMR service is a method of operation in which one or more radio frequency channels are assigned to mobile and base stations on a non-exclusive, first come, first served, basis. Users listen to hear if the channel is being used by others and wait until other conversations on the channel are completed before using it themselves. Trunked SMR service allows a number of customers to share a number of channels by electronically assigning a channel to a customer when he or she wishes to use the system. Trunked SMR service affords customers greater privacy and more reliable channel availability than conventionally service.

SMR systems have historically utilized high-elevation based stations to receive signals from transmitting radios, to allocate the signals among available channels and to transmit the enhanced signal to the intended recipients. In this deployment, SMR base stations have had a broad range, allowing users to communicate within the area of broadcast. An 800 MHz SMR system will generally broadcast throughout the entire area of the license, which covers a radius of 35 miles from the base station transmitter. A 900 MHz SMR system will cover a designated filing area as defined in 52 FR 1302 (January 12, 1987). In contrast, cellular telephone companies "reuse" spectrum by dividing a licensed service area into "cells" and reusing a frequency within the same system. Several cells would have to be used to transmit a communication to reach a group of vehicles; consequently, this method of operation is not well suited for SMR customers who need the capability of sending frequent, short messages over a broad area to one or to many recipients. Moreover, the FCC prohibits cellular companies from providing one-to-many dispatch service.

The FCC initially allocated 280 800 MHz channels for trunked SMR service in every market.[2] In 1988 the FCC allocated an additional 200 900 MHz channels to trunked SMR services in 50 major cities across the country where allocated 800 MHz channels appeared inadequate to meet consumer demand for SMR service. In a few markets the FCC has taken back some 900 MHz channels because of the failure of licensees to construct their systems. Recently, the FCC has announced plans to auction the 900 MHz SMR spectrum it has taken back and the 900 MHz spectrum in markets where it had not previously been allocated. Even though the mobile radios used on 800 MHz and 900 MHz systems are not compatible with each other, 800 MHz and 900 MHz systems provide interchangeable service.

In 1991 the FCC announced its intent to allocate channels in the 220 MHz bandwidth for SMR services. The FCC allocated 100 channels for non-nationwide trunked use including private systems and SMR systems. Initiation of SMR service in the 220 MHz band, however, was delayed by litigation which was settled in March 1994. The delays led the FCC to extend the time holders of 220 MHz licenses had to construct their systems until April 4, 1995. If the systems are not constructed by that date, the licenses will revert to the FCC.

SMR service in the 220 MHz band will be a substitute for SMR services in the 800 MHz and 900 MHz bands at some point in the future. At present, however, the only constructed 220 MHz SMR systems are in California. Systems are planned for, among other cities, Atlanta, Boston, Chicago, Dallas, Houston, Los Angeles, New York, Philadelphia, San Francisco, and Washington DC, but the scope of expected implementation varies by city. Further, 220 MHz service will require some time to gain commercial acceptance, just as 800 MHz and 900 MHz services required when they were first implemented. As a result, when 220 MHz systems are constructed, they will not adequately discipline the parties' control of 800 MHz and 900 MHz systems in the 15 cities.

The product market consists of trunked SMR service in the 800 MHz, 900 MHz and 220 MHz bands. Conventional dispatch service is not a substitute for trunked SMR service because it affords lesser privacy and lower reliability. Cellular telephone service is not a substitute because it is significantly more expensive than SMR service, is significantly more difficult for customers to restrict communications to a defined fleet or group, and because it cannot be provided on a one-to-many dispatch basis.

B. Geographic Market

SMR channels in the 800 MHz band are licensed by the FCC for a 35 mile radius from a specific location. Subsequent applicants for licenses may apply for the same channel if they protect the coverage area of the first licensee. Channels in the 900 MHz band are licensed for designated filing areas, which generally approximate metropolitan statistical areas.

SMR service providers seek to place their broadcast antennas in locations that will afford their users geographic coverage that will correspond to the area served by their fleet of vehicles. Consequently, frequently used sites include centrally located skyscrapers and mountains that shadow metropolitan areas, such as Stone Mountain outside Atlanta. Antenna sites are also placed to ensure coverage of high traffic areas, particularly downtown areas and important traffic arteries.

The geographic markets consist of the license areas in which the FCC has authorized the provision of SMR service. In any particular city, the geographic market can be considered to include the twenty-five mile radius from city center because SMR service providers must be able to cover the high-traffic downtown area.

C. Developments in the 800 MHz Band

The FCC's early licensing policies of 800 MHz spectrum led to an industry of many small SMR service providers. Applicants could apply for up to five trunked channel pairs per market. To retain channels, an SMR provider had to build its facilities within one year and meet certain loading requirements. Trunked SMRs were required to be "loaded" to 70 radio units per channel within five years. Systems not meeting the standards would have unloaded channels reassigned to applicants on a waiting list. Initially, the FCC limited radio equipment manufacturers, like Motorola, to one 20 channel trunked system nationwide.

[1] The regulations allocating the spectrum and governing its use are contained in 47 CFR Part 90, Subpart S, §§ 90.601–90.659. A similar service is provided in the 220 MHz band, as discussed below.

[2] More than 280 800 MHz channels are currently being used for trunked SMR service in some cities through "intercategory sharing." Regulations permit SMR licensees to include in their SMR systems unallocated channels assigned to industrial, land transportation or other private dispatch use in the 800 MHz band under certain conditions. In metropolitan areas where all 800 MHz channels have been allocated, intercategory sharing involves an agreement between an SMR service provider and a license holder of a channel allocated to one of these other service categories. In exchange for providing trunked SMR service to the industrial or other licensee, the SMR service provider is able to use the remaining capacity of the channel in its commercial SMR operations. Most private systems, however, utilize virtually all of the capacity of their channels and are unwilling to participate in intercategory sharing arrangements.

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The FCC permitted Motorola and others to manage licenses held by other persons in exchange for a percentage of the revenues of the operation. Such "Management" agreements commonly assign the managing company responsibility for daily operations, grant the managing company the right to select the type of infrastructure equipment to be deployed by the system, and grant the managing company a right of first refusal in the event the licensee receives an offer to purchase the system. While the FCC requires that management agreements technically leave control of the operations in the hands of the licensee, managing companies generally have effective control of the channels they manage.

In the last five years Nextel has become the primary supplier of trunked SMR services in the United States through its acquisition of dozens of small SMR companies, principally in the 800 MHz band. Nextel has also assumed responsibility for many contracts providing for the management of SMR licenses held by others.

Nextel recently moved to establish a nationwide presence in the 800 MHz band through its agreements of July 13, 1994, to acquire OneComm Corporation, which had been accumulating 800 MHz spectrum in sixteen Western states, and of August 5, 1994 to acquire Dial Page, Inc., which had been accumulating 800 MHz spectrum in twelve Southeastern states. As a result, Nextel controls far more 800 MHz SMR channels in the United States than any other company. It also owns or manages a large number of 900 MHZ SMR channels in cities across the United States.

Nextel's numerous acquisitions of 800 MHz SMR service providers are part of a plan to replace the currently deployed analog technologies in those systems with the new Motorola Integrated Radio System ("MIRS") digital technology developed by Motorola. The technology will be deployed in a multi-site configuration, much like that employed by cellular services providers. Use of digital technology and frequency re-use on Nextel's 800 MHz channels will greatly increase each system's capacity and, Nextel believes, allow it to implement a variety of services, including a more reliable and better quality telephone interconnect service that would compete with the cellular providers, and to continue as a dispatch service provider in the market it serves.

Motorola is the second largest provider of trunked SMR services in the United States. It owns or manages a substantial number of 800 MHz and 900 MHz channels it has used to provide trunked SMR services.

On August 4, 1994, Motorola and Nextel signed an agreement providing that Motorola would sell and Nextel would buy Motorola's 800 MHz SMR business, including both owned (licensed) and managed channels. The agreement also provided that Nextel would manage Motorola's 900 MHz SMR business for three years; the agreement can be renewed for subsequent periods of two years. In return for its SMR business, Motorola would receive twenty-four percent (24%) of Nextel's voting securities. By agreements entered into the same day, Nextel committed to purchase Motorola equipment for its 800 MHz SMR business.

D. Harm to Competition Resulting from the Transactions

The combination of Nextel's and Motorola's owned and managed 800 MHz SMR channels as well as the parties' owned and managed 900 MHz channels would result in Nextel holding virtually all of the SMR spectrum in the markets of Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Denver, Colorado; Detroit, Michigan; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; Seattle, Washington; and Washington, DC. As a result of the consolidation, there would be few, if any, alternatives available to SMR customers in those areas, and the combined entity would have the ability to raise prices or reduce the quality or quantity of service.

III

Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the Nextel/Motorola transactions may be substantially to lessen competition in trunked SMR services in the relevant geographic markets in violation of Section 7 of the Clayton Act. The risk to competition posed by the transaction would be substantially eliminated by the relief provided in the proposed Final Judgment which will ensure that alternative trunked SMR service providers will be available in all the relevant geographic markets.

Nextel's planned acquisition of Motorola's 800 MHz channels, following its numerous acquisitions of other SMR service providers, and its planned management of Motorola's 900 MHz SMR services would have the effect of eliminating all but a few suppliers of trunked SMR services in a number of cities in the United States. In San Francisco, for example, within 25 miles of the center of the city, Nextel currently owns or manages approximately 209 800 MHz channels and 42 900 MHz channels. Motorola is the largest remaining provider of SMR services in San Francisco. It owns or manages approximately 45 800 MHz channels and 12 900 MHz channels there. The several other providers of trunked SMR services there currently hold, in total, licenses for approximately 35 800 MHz and 900 MHz channels on which they can provide trunked SMR service. While SMR service providers in the 220 MHz band have not yet completed construction of their systems, approximately half of the licensed 220 MHz channels are likely to be fully available service alternatives within the next two year.[3] Even allowing for entry by 220 MHz operators, the resulting market concentration exceeds the levels the Antitrust Division has generally found to indicate that a transition may be anticompetitive.[4]

Nextel's consolidation of SMR spectrum, however, may enable it to create a third mobile telephone service to compete with established cellular services. The result could be a wider variety of wireless services at a lower cost in the near future. The Department saw substantial benefits to new competition in another market (the cellular telephone market) if Nextel could obtain sufficient capacity at 800 MHz to enable it to enter that market. Thus, the Department decided to limit the relief sought in this action to the 900 Mhz band (with the single exception of Atlanta).

[3] The precise number of 220 MHz channels that will be operational in any particular city within the next two years cannot be determined. It is unlikely that all allocated 220 MHz channels that have been allocated for SMR services will be constructed in that time. However, even if all allocated 220 MHz channels in the fifteen cities are constructed and become operational within the next two years, given the overwhelming dominance of Nextel, those 220 MHz services and the few independent 800 MHz and 900 MHz services will be inadequate, without more, to discipline Nextel's services.

[4] The Antitrust Divison's Horizontal Merger Guidelines provide for the Division to consider the post-merger concentration and the increase in concentration resulting from a merger. The increase in concentration is measured by the Herfindahl Hirschman Index which is calculated by summing the squares of the individual market shares of all the participants. The HHI thresholds are exceeded in each of the 15 cities. Without considering the effect of 220 MHz channels, the HHI is current.y greater than 2200 in each city and the transaction will increase the HHI by more than 1400 points. If 220 MHz services are included, the premerger HHI will be more than 1550 in each city and the transaction will increase the HHI by more than 600 points.

MIRS technology cannot be deployed on 900 MHz spectrum, and Nextel's ownership or control of 900 MHz spectrum is not necessary to obtain the benefits of new competition to the cellular companies. Rather, Nextel's ownership and management of a significant portion of 900 MHz spectrum in cities where it will own and manage virtually all of the 800 MHz spectrum services to enhance its power over customers requiring trunked SMR services. Absent judicial intervention, Nextel will be able to raise prices and reduce the quality or quantity of services to such customers and inhabit the deployment of alternative technologies.

The proposed Final Judgment preserves competition for trunked SMR customers by limiting the 900 MHz spectrum Nextel and Motorola will own and control for the next ten years. Nextel and Motorola together will have the power to control, by license and by management agreement, no more than 30 900 MHz channels in Boston, Massachusetts; Chicago, Illinois; Dallas and Houston, Texas; Los Angeles and San Francisco, California; Miami and Orlando, Florida; New York, New York; Philadelphia, Pennsylvania; and Washington, DC.; or 10 900 MHz channels in Detroit, Michigan and Seattle, Washington.[5] Nextel and Motorola would be permitted to continue to own or manage a limited amount of spectrum indefinitely because: (1) Nextel's deployment of its 800 MHz digital mobile network will be facilitated by its control of a limited number of 900 MHz channels to use to transfer customers to the new service; (2) the number of channels required by the decree to be sold or released will be sufficient to permit the entry of new trunked SMR service providers for customers with a need for dispatch services; and (3) excluding Motorola from the 900 MHz band might foreclose its experimentation with new technologies there.

Where Nextel and Motorola together currently own more than the permitted number of 900 MHz channels, the proposed Final Judgment requires that the channels in excess of the permitted amount be sold to a purchaser approved by the plaintiff. If they are unable to complete the sales within 180 days of the entry of the Final Judgment, upon application by plaintiff, the Court would appoint an agent to effectuate the mandated sales.

[5] Nextel and Motorola would be limited to a combined 10 900 in Seattle and Detroit because those are border cities where, by international agreement, only half of the available spectrum may be licensed by the United States.

The proposed Final Judgment also requires that Nextel and Motorola release management agreements relating to 900 MHz channels in affected cities at the request of the licensee unless Nextel and Motorola hold fewer than a specified number of channels in that particular market.[6]

Channels to be divested or released are defined as those within 25 miles of the center point of each relevant city. This is to ensure that would-be competitors are able to secure spectrum in the central city areas where spectrum is most difficult to obtain and must be obtained in order to provide a competitive service.

The proposed Final Judgment prohibits Nextel and Motorola from acquiring, either directly or indirectly, any ownership interest in or entering into new management agreements for 900 MHz channels in affected cities without the plaintiff's prior written permission.[7] The Defendants may, however enter into new management agreements with respect to channels either Motorola or Nextel owned or managed as of August 4, 1994, provided that the new agreements are subject to section IV paragraphs C and D of the proposed Final Judgment. The proposed Final Judgment also prohibits the parties from acquiring, either directly or indirectly, more than a five percent ownership interest in any entity that itself owns, controls, or manages 900 MHz channels in those cities without the prior written permission of the United States, except that prior approval will not be required where the acquisition of ownership will not cause Motorola's and Nextel's combined channel position to exceed applicable thresholds.

In Atlanta, due to the existence of a viable purchaser, the parties are required to divest 42 800 MHz channels to a purchaser or purchasers acceptable to plaintiff.

The United States, Nextel and Motorola have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by either party as to an issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The term of the proposed Final Judgment is 10 years. It provides that the Court retains jurisdiction over this action, and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation and enforcement. Such a request will be subject to common law standards of decree modification for five years after entry of the judgment. Thereafter, a party seeking modification may rely upon events that were known and foreseeable at the time of entry of the proposed Final Judgment, provided the grounds for modification at common law are otherwise met. The parties contemplate that a complete extinguishment of Motorola's relationship with Nextel would be a significant changed circumstance under the decree.

[6] It is possible that Nextel and Motorola may control a greater number of 900 MHz channels in the relevant geographic markets if the licensees of managed systems do not request to be released from their management agreements. In any case, neither Nextel nor Motorola would be able to preclude the licensees from moving their licensed channels to other managers, networks or technologies.

[7] Neither Motorola nor Nextel own or manage any 900 MHz spectrum in Denver, Colorado and much of the 900 MHz SMR channels there reverted to the FCC because the license holders did not construct or load the systems. The proposed Final Judgment addresses the competitive problems in this market by limiting the amount of 900 MHz spectrum the defendants may obtain in the future to 30 channels.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The

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comments and response(s) of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to George S. Baranka, Attorney, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street NW., Room 8104, Washington, DC 20001.

VI

Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered litigation seeking to limit the number of 800 MHz channels Nextel held in each affected city. The United States rejected that alternative for two reasons: first, it is satisfied that the relief it has obtained relating to 900 MHz frequencies will adequately address the harm to competition alleged in the complaint; second, the Department did not want to inhibit Nextel's ability to offer cellular telephone service.

The United States also considered the desirability of requiring the modification of the ancillary equipment agreements under which Nextel will purchase from Motorola infrastructure and subscriber equipment to construct its digital network. The Untied States rejected that alternative because Motorola's equipment pricing practices are likely to be constrained by those of other wireless equipment suppliers to the cellular service providers and to the personal communications service providers, which are expected to be soon authorized by the FCC.

VII

Standard of Review Under the Tunney Act for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination,

the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). The courts have recognized that the term "public interest" "take(s) meaning from the purposes of the regulatory legislation." *NAACP* versus *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to "preserv(e) free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* versus *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the Tunney Act is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* versus *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* versus *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[8] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States versus *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public." *United States* versus *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* versus *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[9]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States versus *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a Final Judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[10]

VIII

Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgments. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

[8] 119 Cong. Rec. 24598 (1973). *See United States* versus *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[9] *United States* versus *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* versus *BNS, Inc.*, 858 F.2d at 463; *United States* versus *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* versus *Gillette Co.*, 406 F. Supp. at 716. *See also United States* versus *American Cyanamid Co.*, 719 F.2d at 565.

[10] *United States* versus *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C.), *affd sub nom Maryland* versus *United States*, 460 U.S. 1001 (1982) *quoting United States* versus *Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States* versus *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

Dated: October 27, 1994.

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[FR Doc. 94–27640 Filed 11–7–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 1, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" of all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received follows:

1. *Applicant:* David F. Parmelee, Marjorie Barrick Museum of Natural History, University of Nevada, P.O. Box 454009, Las Vegas, Nevada 89154–4009—Permit Application No. 95–027.

Activity for Which Permit is Requested

Taking; Import into the United States.

The applicant is a former Principal Investigator with the U.S. Antarctic Program who had banded and monitored numerous birds in the Palmer Station vicinity during the years 1972–1985. repeated monitoring of these banded individuals yields important scientific data. The applicant has taken every opportunity to carry on this monitoring, including those times such as now when traveling on cruise vessels as a lecturer on polar conservation and biology. The applicant requests permission to continue monitoring previous banded individuals. In addition, the applicant would like to salvage up to 4–10 dead birds each of penguins, albatrosses, petrels, storm-petrels, diving petrels, sheathbills, skuas, gulls and terns and import them into the U.S. for scientific study conducted at the Barrick Museum of Natural History, University of Nevada.

Location

Antarctic Peninsula regions, including Anvers Island, the South Shetland and South Orkney Islands and the Weddell Sea area.

Dated: November 20, 1994–December 20, 1994.

Nadene G. Kennedy,
Permit Office, Office of Polar Programs.

[FR Doc. 94–27556 Filed 11–7–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority Watts Bar Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion date specified in Construction Permit No. CPPR–91 issued to Tennessee Valley Authority (permittee) for Watts Bar Nuclear Plant (WBN), Unit 1. The facility is located at the permittee's site on the west bank of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–91 from December 31, 1994, to December 31, 1995. The proposed action is in response to the permittee's request dated September 19, 1994.

The Need for the Proposed Action

The proposed action is needed because the construction and modification of the facility is not yet fully completed. Following completion of hot functional testing, the permittee conducted an extensive review of the remaining scope of work required to complete the unit. The resulting detailed completion plan indicates fuel load for the unit will occur in the spring of 1995. The requested extension period includes contingency in case any adjustments to the schedule are needed.

The delays associated with the above efforts to ensure that WBN meets regulatory requirements and licensing commitments make it necessary for the permittee to request an extension of the expiration date for Construction Permit No. CPPR–91 until December 31, 1995.

Environmental Impacts of the Proposed Action

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in the staff's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units. The FES issued in December 1978 for the operating license stage addressed the environmental impacts of construction activities not addressed previously. The activities included: (1) construction of the new transmission route for the Watts Bar—Volunteer 500 kV line, (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the Final Environmental Statement—Construction Permit (FES–CP), (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the

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FES–CP. The staff addressed the terrestrial and aquatic environmental impacts in the Final Environmental Statement—Operating license (FES–OL) and concluded that the assessment presented in the FES–CP remains valid. The staff is currently reviewing updated environmental information and plans to issue findings in a supplement to the FES–OL in early 1995. The construction of Unit 1 is essentially 100 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred.

Since this action would only extend the period of construction, it does not involve impacts different from those described and analyzed in the original environmental impact statement. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the permittee more time to complete construction and modification in accordance with the previously approved construction permit. The activities related to the various corrective activities will result in additional workforce, being primarily engineering and technical personnel rather than construction personnel. At the present time, this workforce is basically dedicated to the completion of Unit 1. This previously increased workforce is declining as the corrective activities are completed and the unit approaches fuel loading. A large percentage of the additional workforce is contractors and consultants who do not live in the area and use only temporary quarters. While the current workforce level has caused a temporary, increased demand for services in the community and increased traffic on local roads, there are no major impacts due to the arrival of workers' families and demands for services necessary to support permanent residents (for example, housing and schools).

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the permittee would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Consulted

The NRC staff reviewed the permittee's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, the staff concludes that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated September 19, 1994, which is available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, D.C. and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 31st day of October 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27612 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

Order Prohibiting Involvement in Certain NRC-Licensed Activities; Effective Immediately

I

Thomas A. Nisbet was employed as a Radiographer for Western Industrial X-Ray Inspection Company, Inc. (Licensee or WIX), Evanston, Wyoming, from May 1993 to June 1994, when the WIX license was suspended. WIX is the holder of License No. 49–27356–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the Licensee to possess sealed sources to iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains in suspension while a hearing requested by the Licensee is pending. On September 27, 1994, the NRC issued an immediately effective Order to WIX to transfer material in its possession. In a provision that is not effective immediately, the Order also revoked the WIX license.

II

Between January and June 1994, an inspection (030–32190/94–01) and an Office of Investigations (OI) investigation (4–93–049R) of licensed activities were conducted in response to allegations that Mr. Thomas A. Nisbet, a Radiographer formerly employed by WIX, had deliberately allowed a Radiographer's Assistant employed by WIX and working with him, to perform radiographic operations on July 31, 1993, without supervision, and that the Licensee deliberately failed to evaluate a July 31, 1993, potential overexposure incident involving the Radiographer's Assistant. During the inspection and investigation, the Radiographer's Assistant informed the inspector and investigator that she and Mr. Nisbet falsified a written incident report provided to their employer that described the circumstances involving the potential overexposure incident. This potential overexposure incident occurred as the result of the Radiographer's Assistant not properly implementing radiography procedures while performing radiographic operations in that she failed to perform a survey to verify that the source was returned to its shielded position after a radiographic exposure was taken and she failed to lock the source in the exposure device prior to moving the device.

Based on its review of the available information, the NRC concludes that Mr. Nisbet violated provisions of 10 CFR 30.10, which prohibits individuals from deliberately causing a licensee to be in noncompliance with NRC requirements and from deliberately providing incomplete or inaccurate information to the NRC or to a licensee of the NRC which the individual knows is material in some respect to the NRC. Specifically, as discussed below in more detail, the NRC concludes that : 1) Mr. Nisbet deliberately failed to provide personal supervision of, including the failure to watch, his assistant, while she was performing radiographic operations on July 31, 1993, a violation of 10 CFR 34.44; and 2) Mr. Nisbet deliberately provided inaccurate information to the Radiation Safety Officer for WIX about the July 31, 1993, incident, a violation of 10 CFR 30.10.

During the inspection and investigation, Mr. Nisbet stated that he had allowed the Radiographer's Assistant to perform radiographic operations without his direct supervision. When questioned, Mr. Nisbet stated that he knew that allowing the Radiographer's Assistant to perform radiographic operations without his supervision was a violation of NRC requirements; however, during subsequent questioning, Mr. Nisbet stated that he knew that he was responsible for the Radiographer's Assistant but he did not know that he had to watch her perform radiographic operations 100 percent of the time. Mr. Nisbet stated that he was performing paperwork in his truck during the time that the Radiographer's Assistant was potentially overexposed while performing radiographic operations on July 31, 1993. Mr. Nisbet stated that his written report of the incident which he provided to the President and Radiation Safety Officer for WIX was not completely true in that he did not actually observe the Radiographer's Assistant conduct radiography when the incident occurred.

During an enforcement conference that was held on August 30, 1994, Mr. Nisbet stated that he and other WIX radiographers had allowed their assistants to perform radiographic operations without being observed once they were confident that their assistants could perform radiographic operations without direct supervision. Mr. Nisbet stated that this was a common practice and that the WIX President and Radiation Safety Officer, Mr. Larry D. Wicks, had provided guidance to conduct radiography in this manner. Mr. Nisbet stated that he knew that there was an NRC regulation which required radiographers to supervise radiographer's assistants, but he did not know specifically what this supervision entailed and the guidance that he received from Mr. Wicks relative to this requirement was that he could perform dark room activities and complete paperwork while the Radiographer's Assistant conducted radiographic operations once he was confident that the assistant could perform radiography without direct supervision. Mr. Nisbet also stated that he felt pressured to allow the Radiographer's Assistant to perform radiographic operations without direct supervision or observation in order to meet the schedule for accomplishing the number of contractually-specified daily radiographs.

Although 10 CFR 34.44 is explicit that personal supervision includes watching the radiogrpaher's assistant's performance of operations, Mr. Nisbet stated that he was provided guidance by his employer that is contrary to the requirements to that regulation. However, improper direction from management does not excuse failure to comply with regulatory requirements.

The following considerations raise significant questions about Mr. Nisbet's willingness to comply with the NRC regulation that governs the supervision of Radiographers' Assistants:

1. Mr. Nisbet initially told the investigators that he did not watch the Radiographer's Assistant operate the exposure device for a particular weld (three exposures) on July 31, 1993, which he knew was a violation of NRC requirements.

2. Mr. Nisbet initially told the investigators that he had told the Radiographer's Assistant that she violated NRC regulations when she operated the exposure device on July 31, 1993, without him observing.

3. Mr. Nisbet falsified the written report that described the July 31, 1993, incident so that the report indicated that he was observing the Radiographer's Assistant at the time that the potential overexposure of the Radiographer's Assistant occurred.

4. The Radiographer's Assistant told the investigators that she agreed to falsify the incident report because, knowing it was a violation of NRC requirements for her to perform radiographic operations without being observed by Mr. Nisbet, she believed that he would be fired if Mr. Wicks knew that Mr. Nisbet was not supervising her while she was performing radiography.

Mr. Nisbet also told NRC personnel during the enforcement conference that he and the Radiographer's Assistant agreed, at the suggestion of the Radiographer's Assistant's spouse, who was also a WIX radiographer and Assistant Radiation Safety Officer, to provide a false account of how the potential overexposure incident occurred. Mr. Nisbet stated that the Radiographer's Assistant's spouse told him and the Radiographer's Assistant that they were likely to be fired if they told Mr. Wicks what actually transpired. Upon further questioning by the NRC personnel during the enforcement conference, Mr. Nisbet stated that he was not coerced into falsifying the written incident report and it was his decision to do so. Mr. Nisbet stated that after Mr. Wicks became aware of what actually occurred, Mr. Wicks told him that he would be fired if a similar incident occurred again.

Based on its review of the evidence gathered during the OI investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Nisbet deliberately failed to personally supervise the Radiographer's Assistant while she conducted radiographic operations on July 31, 1993, and that Mr. Nisbet deliberately provided false information to the Licensee regarding the July 31, 1993 incident.

Based on the above, Thomas A. Nisbet has engaged in deliberate misconduct that caused the Licensee to be in violation of 10 CFR 34.44. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Nisbet's actions in causing the Licensee to violate 10 CFR 34.44 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Nisbet were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Thomas A. Nisbet be prohitied from any involvement in NRC-licensed activities for a period of one year from the date of this Order, and if he is currently involved with another NRC licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Nisbet is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nisbet's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR

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2 202, 10 CFR 30.10, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Thomas A. Nisbet is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. The first time Mr. Nisbet is employed in NRC-licensed activities following the one-year prohibition, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nisbet of good cause.

V

In accordance with 10 CFR 2.202, Mr. Nisbet must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Nisbet or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Nisbet if the answer or hearing request is by a person other than Mr. Nisbet. If a person other than Mr. Nisbet requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Nisbet or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Nisbet, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 31st day of October, 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 94–27609 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No.: 40–8027]

Sequoyah Fuels Corporation, Gore, Oklahoma; Consideration of Amendment to Source Material License and Opportunity for Hearing

This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1010, issued to Sequoyah Fuels Corporation, at the Sequoyah Facility, Gore, Oklahoma. The licensee requested the amendment in a letter dated October 3, 1994, to fully implement the Groundwater Interim Measures Workplan required by the Administrative Order on Consent issued by the Environmental Protection Agency, dated August 3, 1993. The license amendment would permit the plugging of specified groundwater monitoring wells specified by NRC license SUB–1010 that do not produce reliable data, and substitute reliable wells that are currently being monitored in accordance with the SFC letter to the NRC dated September 2, 1992.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings," of the NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, to the attention of Mr. John H. Ellis, President, P.O. Box 610, Gore, OK 74435; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for

Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings" in 10 CFR Part 2, subpart L.

For further details with respect to this action, see the application for amendment dated October 3, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Stanley Tubbs Memorial Library, 101 E. Cherokee, Sallisaw, Oklahoma 74955.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–27611 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric & Gas Co.; South Carolina Public Service Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 50–395 issued to South Carolina Electric & Gas Company (the licensee) for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would relocate the Seismic Monitoring Instrumentation (SMI) Limiting Condition for Operation (LCO), Surveillance Requirements (SRs), and associated tables and bases contained in Technical Specifications (TS) section 3/4.3.3.3 to the Final Safety Analysis Report (FSAR) or an equivalent controlled document. The change would also delete the requirement for a special report when a seismic instrument is inoperable for more than 30 days.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed Technical Specification (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The function of the SMI system is to record the motion and effect of a seismic event. SMI can not initiate or mitigate a previously evaluated accident. Furthermore, the proposed TS change to relocate the SMI requirements from TS to the FSAR or equivalent controlled document is in accordance with the criteria (specifically Criterion 1) for determining those requirements that may be relocated from TS as defined by the NRC in its policy statement, "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," dated July 22, 1993. The SMI LCO, SRs, and associated tables and bases proposed for relocation from TS will continue to be implemented by administrative controls that will satisfy the requirements of TS section 6 "Administrative Controls." These requirements include a review of changes to plant systems and equipment and to the applicable administrative controls in accordance with 10 CFR 50.59.

Criterion 2 of the July 22, 1993, NRC policy statement states, "A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The SMI system does not monitor a process variable that is an initial condition for accident or transient analysis. Also, the SMI is not a design feature or an operating restriction that is an initial condition since it only provides information regarding the motion of and the plant structure/equipment response to an earthquake. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 2 of the July 22, 1993, NRC policy statement.

Criterion 3 of the NRC policy statement states, "A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier." The VCSNS SMI system does not function or actuate in order to mitigate the consequences of a Design Basis Accident or Transient. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 3 of the July 22, 1993, NRC policy statement.

Criterion 4 of the NRC policy statement states, "A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety." Operating experience has shown that the VCSNS SMI system has no impact on public health and safety as defined by the NRC policy statement. Furthermore, VCSNS specific probabilistic risk assessment (PRA) does not credit the SMI system as a part of the plant response to an accident. Therefore, the current VCSNS SMI TS requirements do not meet Criterion 4 of the July 22, 1993, NRC policy statement for determining those requirements that should remain in TS.

The proposed TS change will maintain the current operation, maintenance, testing, and system operability controls for the SMI system. Furthermore, any future changes to the SMI system will be evaluated for the effect of those changes on system reliability and function as required by 10 CFR 50.59. The SMI system performance will not decrease due to the proposed TS change and the system will continue to be administratively controlled in accordance with TS section 6 (including the requirements of 10 CFR 50.59) thereby precluding a future decrease in SMI system performance/requirements.

The current TS Section 3.3.3.3, does not require plant shutdown if any SMI is inoperable and the provisions of TS Section 3.0.3 (i.e. plant shutdown) are not applicable. Therefore, the inoperability of this system and the consequences of an accident while this system is inoperable, were previously considered as not significant enough to require a change to the plant operating conditions.

Since the SMI system does not meet the criteria for instrumentation required in TS and since it will continue to be administratively controlled (including the requirements of 10 CFR 50.59), the

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proposed TS change will not involve an increase in the probability or consequences of an accident previously evaluated.

2. *The proposed TS change does not create the possibility of a new and different kind of accident previously evaluated.*

The function of the SMI system is to record the motion and effect of a seismic event. The proposed TS change to relocate the SMI requirements from TS to the FSAR or equivalent controlled document is in accordance with the criteria for determining TS candidates for relocation as defined by the NRC in the policy statement, dated July 22, 1993. The SMI system does not monitor a process variable that is an initial condition for an accident or transient analysis. The SMI is also not a design feature or an operating restriction that is an initial condition of a Design Basis Accident or Transient analysis since it only provides information regarding the motion of and the plant structure/equipment response to an earthquake.

The proposed TS change to relocate the TS requirements will not alter the operation of the plant, or the manner in which the SMI system will perform its function. Any future changes will continue to be administratively controlled in accordance with TS section 6, including the requirements of 10 CFR 50.59.

The proposed TS change will not impose new conditions or result in new types of equipment malfunctions which have not been previously evaluated. Therefore, the proposed TS change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. *The proposed TS change does not involve a significant reduction in a margin of safety.*

The proposed TS change to relocate the SMI requirements from TS is in accordance with the criteria for determining TS candidates for relocation as defined by the NRC in its policy statement, dated July 22, 1993.

Criterion 1 of the NRC final policy statement states, "Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." The NRC policy statement explains that ". . . This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g. loose parts monitor, seismic instrumentation, valve position indicators)." Based on this NRC guidance, the VCSNS FSAR, and TS bases 3/4.3.3.3, the SMI does not "detect and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary." Therefore, the current VCSNS SMI TS requirements do not meet Criterion 1. Operating experience has shown that the VCSNS SMI system has no impact on public health and safety as defined by the NRC policy statement. In addition, the VCSNS PRA does not credit the SMI system as a part of the plant response to accidents.

The SMI LCO, SRs, and associated tables and bases proposed for relocation to the FSAR or equivalent controlled document will continue to be covered by administrative controls that will satisfy the requirements of TS section 6 "Administrative Controls." Those requirements include a review of future changes to the system and applicable administrative controls in accordance with the provisions of 10 CFR 50.59.

Accordingly, based on NRC specific guidance, operating experience, and continued imposition of administrative controls, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comment received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically expalin the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Randolph R. Mahan, attorney for the licensee, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27610 Filed 11–7–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34924; File No. SR–NYSE–94–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 325

November 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend Rule 325 to require written notification to the Exchange within forty-eight hours of significant decreases in tentative net capital of members and member organizations. The text of the proposed rule follows (italics reflects proposed additions to the Rules):

Capital Requirements for Individual Members and Member Organizations

General Provisions

Rule 325(a) Each member or member organization subject to Rule 15c3–1 promulgated under the Securities Exchange Act of 1934 shall comply with the capital requirements prescribed therein and with the additional requirements of this Rule 325.

(b)(*1*) Each member or member organization subject to this Rule shall forthwith notify the Exchange if his or its net capital after deduction of all

[1] On October 27, 1994, the NYSE filed an amendment clarifying the term "tentative net capital." The amendment also referenced Rule 15c3–1 under the Act.

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capital withdrawals including maturities, if any scheduled during the next six months, falls below the pertinent percentage indicated below:

1. If the net capital minimum dollar amount requirement is applicable—150 percent thereof or some greater percentage as may from time to time be designated by the Exchange, or

2. If the ratio of aggregate indebtedness to net capital is applicable—10 percent of aggregate indebtedness, or

3. If the alternative net capital requirement percentage is applicable, the greater of 5% of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under SEC Rule 15c3–3, or, if registered as a Futures Commission Merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder.

(2) Each member or member organization shall within forty-eight hours notify the Exchange, in writing, whenever tentative net capital (net capital before application of haircuts and undue concentration charges), as computed under Securities Exchange Act Rule 15c3–1 has declined 20% or more from the amount reported in the most recent FOCUS Report with the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change concerns an amendment to Rule 325 that requires members and member organizations to provide written notification to the Exchange within forty-eight hours if tentative net capital (net capital before application of haircuts and undue concentration charges) has declined 20% or more from the amount reported in the most recent FOCUS Report filed with the Exchange.

Currently, some member organizations (*e.g.*, broker-dealers that carry customer accounts) file financial reports on a monthly basis and other member organizations file on a quarterly basis. In both instances, the filing dates are several weeks after the date that the financial information in the reports is prepared.

Consequently, the Exchange believes that there is a need for monitoring of significant changes in an organization's financial condition between the reporting dates through a requirement for more immediate notification of significant declines in tentative net capital.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it protects investors and the public interest by ensuring that member organizations comply with certain prescribed minimum financial standards.

The proposed change is also consistent with Section 6(c)(3)(A) of the Act which permits a national securities exchange to condition the membership of a broker or dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–31 and should be submitted by November 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27563 Filed 11–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34825; International Series No. 738; File No. SR–Phlx–94–18]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options

November 1, 1994.

I. Introduction

On April 12, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of customized foreign currency options ("FCOs"), specifically, customized

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

inverse FCOs ("Customized Inverses")[3] and customized cross-rate FCOs ("Customized Cross-Rates"). (Customized Inverses, Customized Cross-Rates, and Customized Strikes (as defined herein) are collectively referred to as "Customized FCOs".) Notice of the proposed rule change appeared in the **Federal Register** on July 12, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposal on August 15, 1994,[5] Amendment No. 2 on September 20, 1994,[6] and Amendment No. 3 on November 1, 1994.[7] This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

Pursuant to the proposed rule change, the Exchange will be able to offer the ability for its participants to trade: (1) Customized Strikes on any of the existing eight currencies on which the Exchange presently lists FCOs, *i.e.*, the British pound, Swiss frank, French franc, Deutsche mark, Japanese yen, Australian dollar, Canadian dollar, and European Currency Unit ("ECU") (collectively, "Approved Currencies"); (2) Customized Inverses on any Approved Currency; and (3) Customized Cross-Rates on any two Approved Currencies. Additionally, the proposed rule change will allow FCO participants[8] to express quotes for Customized FCOs as a percentage of the underlying currency,[9] in addition to the current method of quoting "regular" FCOs[10] in terms of the base currency[11] per unit of the relevant underlying currency.

A. Characteristics of Customized FCOs

The characteristics of and procedures for trading Customized FCOs are contained in new Phlx Rule 1069 (Customized Foreign Currency Options). Rule 1069(a) sets forth the parameters applicable to Customized FCOs. Specifically, Customized Strikes may be traded on any Approved Currency,[12] and Customized Cross-Rates may be traded on any two Approved Currencies, exclusive of the U.S. dollar. The contract size for Customized Strikes and Cross-Rates will be the same as those for non-Customized FCOs on the same underlying Approved Currency.

Additionally, Rule 1069(a) provides for the trading of Customized Inverses on any Approved Currency.[13] A Customized Inverse is a Customized FCO where the underlying currency is the U.S. dollar. When trading a Customized Inverse, bids and offers will be quoted in, and premium will be paid in, the base currency (*i.e.*, an Approved Currency other than the U.S. dollar), and the contract will be settled in the underlying currency (*i.e.*, U.S. dollars).[14] The contract size for a Customized Inverse will be US$50,000.

Rule 1069(a) further provides an alternative quote format for Customized FCOs. Presently, the Exchange's non-Customized FCOs are quoted in terms of the base currency per unit of underlying currency, in which case premium is quoted and paid in the base currency. The proposal provides an alternative quoting format whereby quotes for Customized FCOs may be quoted as a percentage of the underlying currency ("Percentage Quoting"). In Percentage Quoting, the contract will be quoted in, the premium will be paid in, and the contract will settle in, the underlying currency.

Finally, Rule 1069(a) provides that Customized FCOs (1) may be either put or call contracts, (2) must be European-style,[15] (3) must have a standardized expiration date as provided in Phlx Rule 1000(b)(21), and (4) may have any listed or non-listed exercise price determined by the requesting FCO participant.[16]

B. Procedures for Trading Customized FCOs

The procedures for requesting and obtaining quotes for Customized FCOs are provided in Phlx Rule 1069 (a) and (b). First, Rule 1069(a) provides minimum sizes for trades in Customized FCOs. Specifically, (1) the minimum size for an opening transaction in any series in which there is no open interest at the time a request for quote ("RFQ") is submitted will be 300 contracts, (2) the minimum size for an opening transaction in any series with open interest will be 100 contracts, and (3) the minimum size for a closing transaction will be the lesser of 100 contracts or the remaining number of contracts. The minimum size for quotes responsive to a RFQ will be the lesser of 100 contracts or the remaining number of contracts on a closing transaction, provided, however, that assigned registered options traders ("ROT") must provide responsive quotes for at least 300 contracts or the number of contracts requested, whichever is less.[17]

[3] *See infra* Section II.A (Characteristics of Customized FCOs).

[4] *See* Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551 (July 12, 1994).

[5] In Amendment No. 1 the Exchange proposed several substantive and clarifying amendments to the proposed rule change. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 12, 1994.

[6] The Exchange previously submitted a proposed rule change to list and trade FCOs with customized strike prices ("Customized Strikes"). Customized Strikes will provide FCO traders and their customers with the ability, within certain limits, to trade an FCO with any exercise price it chooses on a specific Approved Currency (as defined herein) even if that price does not correspond to an exercise price of a listed non-Customized FCO. *See* Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698 (May 2, 1994) ("File No. SR–Phlx–94–11"). Because of the overlap between that proposal and the current proposal, the Exchange withdrew File No. SR–Phlx–94–11 and, in Amendment No. 2, the Exchange incorporated the substance of File No. SR–Phlx–94–11, as amended and supplemented, into the current proposed rule change. In Amendment No. 2, the Exchange also established how bids and offers for Customized FCOs will be expressed pursuant to Phlx Rule 1033, and the minimum fractional changes that will be applicable to Customized FCOs pursuant to Phlx Rule 1034. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated September 20, 1994.

[7] Amendment No. 3 incorporates the substance of and withdraws Amendment Nos. 1 and 2. In Amendment No. 3, the Exchange also proposes several additional substantive and clarifying amendments to the proposed rule change, as discussed herein, that were not contained in Amendment Nos. 1 and 2. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated November 1, 1994 ("Amendment No. 3").

[8] FCO participants include Exchange members, and non-members who have been admitted to the Exchange as FCO participants. *See* Phlx Rule 13.

[9] The underlying currency is the currency in which an FCO settles. All non-Customized FCOs currently traded on the Exchange settle in one of the Approved Currencies.

[10] The terms regular FCOs and non-Customized FCOs, as used herein, refer to the standardized FCOs currently approved for listing and trading by the Exchange.

[11] Presently, the base currency is the currency in which premiums are quoted and paid. For the Exchange's existing non-Customized FCOs (other than regular cross-rate FCOs) the base currency is the U.S. dollar.

[12] The proposal also adds the U.S. dollar to list of Approved Currencies.

[13] The Exchange also sometimes refers to Customized Inverses as "European-Term" Customized FCOs.

[14] As the name suggests, a Customized Inverse merely inverts the terms of the Exchange's non-Customized FCOs (other than the regular cross-rate FCOs). For example, the existing non-Customized U.S. dollar/German mark contract is quoted in the base currency (cents) per unit of the underlying currency (marks), the premium is paid in U.S. dollars, and the contract is settled in German marks. In a Customized Inverse (*e.g.*, German mark/U.S. dollar), the U.S. dollar becomes the underlying currency and the German mark becomes the base currency. As a result, when trading this Customized Inverse, the premium would be quoted in German marks per U.S. dollar, the premium would be paid in German marks, and the contract would be settled in U.S. dollars.

[15] European-style options may only be exercised during a specified time period immediately prior to expiration of the option.

[16] *See* Amendment No. 3, *supra* note 7.

[17] Assigned ROTs are not specifically required to provide a responsive quote for each RFQ. The Phlx maintains, however, that an assigned ROT can be

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Rule 1069(b) provides that any FCO participant may request a quote for a Customized FCO from the trading crowd, with the characteristics as specified in Rule 1069(a). The FRQ may include the number of contracts for which the quote is being requested.[18] If neither the RFQ nor any responsive quote specifies the number of contracts for which it applies, responsive quotes will be firm only for the minimum transaction sizes discussed above.[19]

Once a RFQ has been submitted and disseminated, all FCO participants will be given a reasonable opportunity to request a response time period during which time any participant may provide a responsive quote.[20] If a response time period is requested, no trades may be executed until the response time period has elapsed, provided, however, that if two or more assigned ROTs provide responsive quotes prior to the end of the response time period, at the option of the party who submitted the RFQ or any other FCO participant, the order may trade at that time either in whole or in part.[21]

Rule 1069(b) further provides that responsive quotes which become the best bid (offer) are entitled to participate in resulting trades on a parity/priority basis in accordance with Rule 1014(h),[22] provided, however, that any assigned ROT who previously responded with a responsive quote which was thereafter improved upon during the response time period by another participant is entitled to participate on a parity basis with that other participant by announcing immediately thereafter, and prior to the execution of the order, that he or she is matching that best bid (offer). This ability to match on parity is available to assigned ROTs until the execution of the trade or the end of the response time period, whichever occurs first.[23] When a response time period is requested, the party submitting the RFQ may not cross any portion of the order until after the earlier of the end of the response time period, if any, or the receipt of responsive quotes from two or more assigned ROTs. An order may be executed after the response time period has elapsed regardless of how many assigned ROTs have previously responded. After the response time period has elapsed, Phlx Rule 1014(h) governs priority/parity except that priority and parity obtained during the response time period, as discussed above, are retained unless or until the best bid (offer) established during the response time period is improved.[24]

C. Additional Rules Contained in Phlx Rule 1069

Rule 1069 also contains additional rules applicable to the trading of Customized FCOs. Rule 1069(d) provides that ROTs must apply to the Exchange in order to obtain an assignment in Customized FCOs in one or more Approved Currencies. Further, all ROTs assigned to trade Customized FCOs are subject to the general obligations and restrictions applicable to ROTs as specified in Phlx Rule 1014(c).[25]

Rule 1069(d) sets forth the financial requirements for ROTs trading Customized FCOs. Specifically, assigned ROTs will be required to maintain a minimum of $1 million in net liquid assets. Further, non-assigned ROTs may not execute transactions in Customized FCOs unless the non-assigned ROT has a minimum of $250,000 in net liquid assets. All ROTs trading Customized FCOs, both assigned and non-assigned ROTs, will be required to immediately inform the Exchange's Examination Department whenever the ROT fails to be in compliance with these requirements.[26]

Phlx Rule 1069(e) specifies that ROTs may not effect a transaction in Customized FCOs unless a letter of guarantee has been issued by a Phlx clearing member organization and filed with the Exchange pursuant to Phlx Rule 703 specifically accepting financial responsibility for all Customized FCO transactions entered into by the ROT. Additionally, a ROT cannot engage in Customized FCO transactions if the letter of guarantee is revoked.

Phlx Rule 1069(f) provides that transactions in Customized FCOs may be effected during normal Exchange FCO trading hours on any business day. Rule 1069(f) further provides that there will be no trading rotations in Customized FCOs, either at the opening or at the close of trading.

Finally, Rule 1069(j) provides that for Customized Strikes, the quote spread parameters will be twice those specified in Phlx Rule 1014(c) for the relevant underlying Approved Currency. The rule further provides that Customized Inverses and Customized Cross-Rates will be exempt from quote spread parameters.[27]

D. Position and Exercise Limits

Phlx Rule 1001 (Position Limits) is being amended to provide position limits for Customized FCOs. Rule 1001 presently provides that the position limit for non-Customized FCOs on a particular Approved Currency, other than the U.S. dollar, is 150,000 contracts on the same side-of-the-market, provided that annual trading volume in FCOs on that Approved Currency is at least 3,500,000 contracts. In all other cases, the position limit for non-Customized FCOs is 100,000 contracts on the same side-of-the-market.[28]

Customized FCOs will be subject to these same position limits; however, positions in Customized FCOs will be aggregated with positions in non-Customized FCOs and, in some cases, with other Customized FCOs. Specifically, Customized Strikes will be aggregated with positions in regular FCO contracts having the same underlying currency.[29] For Customized Inverses, the position limit applicable to the base currency of the Customized Inverse will apply.[30] Except as provided below, position limits applicable to Customized Cross-Rates will be the same as position limits applicable to regular cross-rate FCOs pursuant to Phlx Rule 1001, Commentary 05. For aggregation purposes, positions in Customized Cross-Rates will be aggregated with positions in regular cross-rate FCOs and other Customized Cross-Rates (1) with the same base and underlying currencies and (2) where the base and underlying currencies are reversed.[31]

Additionally, Phlx Rule 1001, Commentary .05(c)(4), provides that for purposes of aggregating positions, long positions in Customized Inverse calls, short positions in Customized Inverse puts, short positions in non-Customized FCO calls, short positions in Customized Strike calls, long positions in non-Customized FCO puts, and long positions in Customized Strike puts will be aggregated. Similarly long positions in Customized Inverse puts, short positions in Customized Inverse calls, short positions in non-Customized FCO puts, short positions in Customized Strike puts, long positions in non-Customized FCO calls, and long positions in Customized Strike calls will be aggregated.[32] This is consistent with the aggregation procedures currently provided in Phlx Rule 1001, Commentary .02, for positions on the same side of the market.

Furthermore, for purposes of determining whether the 3,500,000 contract annual trading volume level has been satisfied for purposes of applying the 150,000 contract position limit pursuant to Rule 1001, Commentary .05(b), trading volume in Customized FCOs will not be considered.[33] Customized FCOs will be eligible for the 150,000 position limit level if: (1) In the case of Customized Strikes, non-Customized FCOs on the same underlying currency, when considered alone, would be so eligible; (2) in the case of Customized Inverses, if non-Customized FCOs on the same base currency, when considered alone, would be so eligible; and (3) in the case of Customized Cross-Rates, if regular cross-rate FCOs on the same base and underlying currencies, when considered alone, would be so eligible. The higher position limit will not be available for Customized Cross-Rates where there are no regular cross-rate FCOs trading on the same or the reverse base and underlying currencies.

Finally, Rule 1069(i) provides that the exercise limits set forth in Rule 1002 applicable to non-Customized FCOs also apply to Customized FCOs.[34] Moreover, when Customized FCOs are exercised, the lesser of 100 contracts or the remaining number of open contracts must be exercised.

E. Margin Requirements Applicable to Customized FCOs

Customized Inverses and Customized Strikes will be margined at the same levels as the Exchange's non-Customized FCOs.[35] Customized Cross-Rates, however, will be margined using a two tier system. Tier I will consist of all pairings of Approved Currencies (not involving the U.S. dollar) whose daily price changes have a correlation greater than or equal to .25, and Tier II will consist of all remaining pairings of Approved Currencies. The initial and/or maintenance margin requirements for Customized Cross-Rates will be 100% of the value of the underlying position plus: (1) 4% for Tier I Approved Currency pairings; and (2) 6% for Tier II Approved Currency Pairings.[36]

The Exchange will conduct a regular two-step review of the margin levels for Customized Cross-Rates. The first review, to be conducted at least monthly,[37] will determine the correlations between all of the possible combinations of Approved Currencies for the most recent 24 month period. If a monthly or any special review reveals that a combination of Approved Currencies should be in another tier based on the correlation of those Approved Currencies, the change will immediately be implemented and the membership, the public, and the Commission will be promptly notified.

The second review will determine whether the actual margin levels are adequate to cover seven day price changes for all possible cross-rate combinations within a tier. Frequency distributions of seven day price movements for all currency combinations will be reviewed on a monthly basis to determine whether the percentage of margin "add-on" is sufficient to cover 95% of all instances over the preceding two year period within the tier group for those combinations. If the percentage falls to less than 95%, the Exchange will take steps to increase the margin level for those pairings to one which will cover at least 97.5% of all instances. If the margin adequacy level is greater than 99%, the Exchange will take steps to lower the margin requirements for those pairings to one which will cover 99%. In no event, however, will the initial and/or maintenance margin levels for any pairing of Approved Currencies be reduced below the 4% and 6% levels discussed above.[38]

The OCC will clear and settle all trades in Customized FCOs. Because quotes in these options will not be continuously updated or otherwise priced by the Exchange, the OCC will generate a theoretical price based on the prices and quotes of the Customized FCOs, prices of non-Customized FCO series, and the closing value of the relevant underlying Approved Currency. The OCC will use this price to mark the Customized FCO contracts daily and calculate margin requirements.[39]

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required by a Floor Broker or Floor Official (each as defined in the Phlx's rules), pursuant to Phlx Rule 1014(c), to provide a responsive quote to a party submitting a RFQ. *See* Amendment No. 3, *supra* note 7, and Phlx Floor Procedure Advice B–1.

[18] All RFQs, in addition to all responsive quotes and completed trades, will be promptly reported to the Options Price Reporting Authority ("OPRA") and disseminated as administrative text messages. *See* Phlx Rule 1069(h). The Exchange has represented that the OPRA has the capacity to, and will, disseminate this information to vendors in a manner clearly indicating the type of Customized FCO involved (*i.e.*, Customized Strike, Cross-Rate, or Inverse), the quoting format (*i.e.*, either base currency per unit of underlying currency or Percentage Quoting), and the Approved Currency in which premiums are quoted and paid. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on October 31, 1994.

[19] *Id.*

[20] The length of the response time period will be fixed and set by the Exchange's Foreign Currency Options Committee and will be within a range between one and ten minutes. Neither the party submitting the RFQ nor any other FCO participant will have any ability to adjust the length of the response period. *See* Amendment No. 3, *supra* note 7.

[21] Responsive quotes cannot be made specific for acceptance by particular participants. *Id.*

[22] Phlx Rule 1014(h) generally sets forth the priority and parity rules applicable to FCOs traded on the Phlx.

[23] *See* Amendment No. 3, *supra* note 7.

[24] *Id.*

[25] ROTs will be subject to Exchange disciplinary actions for failing to meet their responsibility of making two-sided markets when requested to do so. *See* Phlx Rule 1014(c) and Phlx Floor Procedure Advice B–1. Additionally, Phlx ROTs are required to trade in person, and not through the use of orders, the greater of 1,000 contracts or 50% of their contract volume on the Exchange in each quarter. Also, at least 50% of a ROT's trading activity in each quarter must be in assigned options. *See* Phlx Floor Procedure Advice B–3. For purposes of determining whether these trading requirements have been satisfied, trading in Customized FCOs will be treated the same as non-Customized FCOs. Telephone conversation with Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on October 20, 1994.

[26] *See* Amendment No. 3, *supra* note 7. The Exchange represents that this affirmative obligation is being added to supplement the Exchange's current surveillance and monitoring procedures pursuant to which the Exchange monitors compliance with, among other things, the Exchange's financial requirements. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, OSM, Division, Commission, on October 17, 1994.

[27] The Exchange will conduct a study of the markets for Customized Inverses and Cross-Rates to build an historical pricing reference database on which to analyze whether quotation parameter rules should be imposed in the future for these Customized FCOs. *See* Amendment No. 3, *supra* note 7.

[28] *See* Phlx Rule 1001, Commentary .05(b).

[29] *See* Amendment No. 3, *supra* note 7.

[30] For example, if the position limit for the U.S. dollar/German mark non-Customized FCO is 150,000 contracts, the position limit for German mark/U.S. dollar Customized Inverses will also be 150,000 contracts. Further, positions in U.S. dollar/German mark non-Customized FCO contracts will be aggregated with positions in German mark/U.S. dollar Customized Inverse contracts on the same side of the market. In the case of the German mark, positions in the Exchange's cash/spot German mark FCOs must also be aggregated with the above positions and with positions in Customized Strikes where the German mark is the underlying currency. *See infra* note 32.

[31] For example, positions in the German mark/Japanese yen Customized Cross-Rate will be aggregated with positions in the non-Customized German mark/Japanese yen contracts and with positions in the Japanese yen/German mark Customized Cross-Rate.

[32] For example, the following positions related to the German mark would be aggregated for purposes of Rule 1001: (1) Long Inverse German mark/U.S. dollar calls; (2) short Inverse German mark/U.S. dollar puts; (3) short standardized U.S. dollar/German mark calls; (4) short Customized Strike U.S. dollar/German mark calls; (5) long standardized U.S. dollar/German market puts; and (6) long Customized Strike U.S. dollar/German market puts. In addition, positions in the Exchange's cash/spot U.S. dollar/German mark contract on the same side of the market as the foregoing positions must also be aggregated.

[33] *See* Amendment No. 3, *supra* note 7.

[34] *Id.*

[35] *See* Phlx Rule 722.

[36] The minimum margin for Tiers I and II will be reduced by the amount by which the position is out-of-the-money, subject to a floor of 100% of the value of the underlying position plus ¾% *Id.*

[37] The Exchange also has the ability to conduct more frequent reviews in the event of major price movements in any of the underlying currencies.

[38] *See* Amendment No. 3, *supra* note 7.

[39] *See infra* note 55.

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F. Other Applicable Exchange Rules

The Phlx is also amending certain other Exchange rules to accommodate the trading of Customized FCOs. Several of these amendments are necessary because of the fact that for purposes of trading Customized FCOs, the U.S. dollar is now included as an Approved Currency.[40]

Other rule amendments are also necessary in order to incorporate Customized FCOs into the Exchange's rules. First, Rule 1002 (Exercise Limits) is being amended to add a cross-reference to Rule 1069 to specify that when exercised, there is both a maximum and a minimum number of Customized FCOs that can be exercised pursuant to the Rule.[41] Second, Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) is being amended to add a cross-reference to Rule 1069(j) to indicate that separate bid/ask differentials are applicable to Customized FCOs. Third, Rule 1033 (Bids and Offers—Premium) and Rule 1034 (Minimum Fractional Changes) are being amended in order to provide rules for quoting Customized Inverses and Cross-Rates and for the minimum fractional changes applicable to Customized Inverses and Cross-Rates, respectively. Fourth, Rule 1047 (Trading Rotations, Halts and Suspensions) is being amended to specify that there will be no trading rotations for Customized FCOs. Additionally, because the proposed rule change will alter language in Rules 1009 (Criteria for Underlying Stocks) and 1033 (Bids and Offers—Premium), the Exchange is proposing to correct some inaccurate or redundant information presently contained in those rules.

Furthermore, except as modified or amended herein, Customized FCOs will be subject to all Exchange rules applicable to non-Customized FCOs and will be subject to all Exchange rules regarding surveillance and sale practices. Finally, unless specifically exempted, all floor trading procedures will also apply to the trading of Customized FCOs.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5)[42] and 11A[43] of the Act. In particular, the Commission believes that the proposed rule change is designed to provide institutional investors with exchange-traded customized FCOs that may be more suitable to their investment needs.[44]

Moreover, consistent with Section 11A of the Act, the proposal should encourage fair competition among brokers and dealers and exchange markets by allowing the Phlx to compete more effectively with the over-the-counter ("OTC") derivatives market in FCOs. For instance, as noted by the Phlx, FCO market participants traditionally have been able to customize FCOs in the OTC derivatives market, designating many if not all of the terms of the FCOs. By trading in the OTC derivatives market, however, these users, who are almost exclusively institutional investors, do not benefit from the advantages of an organized exchange. These benefits include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the OCC that will apply for all Customized FCOs traded on the Exchange. The Commission believes that the Phlx proposal will provide these benefits to investors. Accordingly, the Commission believes that Phlx proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who currently rely predominantly on the OTC derivatives market to satisfy their foreign currency hedging needs.

A. Proposed Framework for Trading Customized FCOs

In general, transactions in Customized FCOs will be subject to many of the same rules that apply to non-Customized FCOs traded on the Phlx. In order to provide investors with the flexibility to designate terms of the Customized FCOs and to accommodate the special trading of Customized FCOs, however, several new rules will apply solely to Customized FCOs.

Due to the customized nature of these options, Customized FCOs will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 1069 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in setting certain FCO terms. Accordingly, the Phlx proposed rules specific to Customized FCOs vary from the traditional procedures for trading non-Customized FCOs. The Commission believes that the Customized FCO auction process, as outlined above, appears reasonably designed to provide investors with the benefits of an exchange auction environment for FCOs with features of a negotiated transaction between investors. The Commission believes that this is particularly true in view of the fact that most participants in the FCO market are institutional investors and that the proposed rule change is geared specifically to these investors. Further, the auction process proposed for Customized FCOs is similar to that previously approved by the Commission for exchange-trading of FLEX Options.[45]

Moreover, the proposal offers flexibility to institutional investors in the FCO market without raising significant market manipulation concerns. First, as noted above, transactions in Customized FCOs will be subject to many of the same rules that apply to non-Customized FCOs traded on the Exchange, including all Exchange rules regarding surveillance and sales practices. Additionally, position limits for Customized FCOs, as described above, are the same as those for non-Customized FCOs with the additional protection that positions in Customized FCOs will be aggregated with positions in non-Customized FCOs.[46] The Commission believes that these provisions will help to ensure that the Exchange has the ability to adequately surveil the market for Customized FCOs and to take prompt actions (including timely communications with the Commission) should any unanticipated adverse market effects develop.

B. Customized Strikes and Inverses

The Commission believes that the listing and trading of Customized Strikes and Inverses does not raise any significant regulatory issues that were not addressed by the Phlx when the Commission originally approved the trading of non-Customized FCOs.[47] Specifically, while Customized Strikes and Inverses are new FCO products, they are very similar to non-Customized FCOs in that investors will still be taking positions based on their expectations of the future relationship between an Approved Currency (other than the U.S. dollar) and the U.S. dollar. The proposal, as with FLEX Options that currently trade on several of the other options exchanges,[48] merely allows investors to more closely tailor the current Exchange-traded FCOs to their particular investment needs. As a result, the Commission believes that the listing and trading of Customized Strikes and Customized Inverses, in the context of the framework described above, is appropriate and consistent with the Act.

C. Customized Cross-Rates

The discussion above regarding Customized Strikes and Inverses also applies to the listing of Customized Cross-Rates. Customized Cross-Rates, however, raise additional issues in that with Customized Cross-Rates, investors will be able to trade options on combinations of Approved Currencies that currently cannot be traded on the Exchange. The Exchange believes, however, that the concerns raised by this portion of the proposal are not any different from those that were raised and addressed by the Exchange when the Commission approved the listing and trading of regular cross-rate FCOs.[49] In the Cross-Rate Approval Order, the Commission stated that regular cross-rate FCOs are riskier and more complex than non-Customized FCOs where the U.S. dollar is the base currency. The Commission, however, found that those risks were adequately disclosed in the Options Disclosure Document ("ODD") which is required to be delivered to all options investors.[50] Similarly, the Commission notes here that the ODD was recently amended so that the discussion of FCOs now also discloses the risks of Customized Cross-Rates, in particular, and Customized FCOs, in general.[51]

Further, the Commission notes that the proposed margin levels for Customized Cross-Rates are more stringent than those approved for regular cross-rate FCOs. Specifically, for regular cross-rate FCOs, the Exchange requires a margin of 100% of the option premium plus 4% of the value of the underlying foreign currency, with an adjustment for out-of-the-money options of not less than 100% of the options premiums plus ¾% of the value of the underlying foreign currency. As described above, the proposed rule change provides two tiers for purposes of determining the applicable margin for Customized Cross-Rates based on historical correlation rates between particular combinations of Approved Currencies (other than the U.S. dollar). The lower tier requires margin of not less than 100% of the options premium plus 4% of the value of the underlying currency, and the higher tier requires margin of not less than 100% of the options premium plus 6% of the value of the underlying currency. The Commission notes that the Phlx must raise these levels, if during a review of margin levels and tier classifications,[52] the Phlx determines that the 4% and 6% margin levels for Tiers I and II, respectively, fail to meet certain specified criteria designed to ensure coverage of most expected market moves in the relevant currencies.[53] The Commission, therefore, believes that the proposed margin levels for Customized Cross-Rates will result in adequate coverage of contract obligations, and are designed to preclude systemic risks arising from excessively low margin levels.[54] Accordingly, the Commission believes that the listing and trading of Customized Cross-Rates, within the framework described above, is appropriate and consistent with the Act.

D. Percentage Quoting

The Commission also believes that allowing Customized FCOs to be quoted as a percentage of the particular underlying currency does not raise any significant regulatory issues. As in the discussion above with regard to Customized Strikes and Inverses, Percentage Quoting does not change the basic structure of non-Customized FCOs now trading on the Exchange. Investors currently can mathematically convert a premium expressed in terms of U.S. dollars per unit of underlying currency into a percentage of the underlying currency by applying a particular exchange rate. The real significance of percentage quoting is that it allows investors to quote, pay premium, and settle, Customized FCOS solely in the underlying currency instead of having to quote and pay premiums in the base currency, and settle the options in the underlying currency. Because the OCC has the ability to settle FCOs in any of the Approved Currencies, allowing investors to also pay the premiums in an Approved Currency does not raise any new market or investor protection concerns.[55]

E. Procedures for Trading Customized FCOs

As stated above, the Commission believes that the procedures outlined above for the trading of Customized FCOs are reasonably designed to provide the benefits of an exchange auction market with features of a negotiated transaction between investors. The Commission recognizes that the Phlx's proposal will permit the trading of FCO contracts of substantial value for which continuous quotation may be difficult to sustain. Accordingly, the Phlx has established procedures for quotes upon request which will be

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[40] *See* Phlx Rules 1000 (Applicability, Definitions and References), 1001 (Position Limits), 1009 (Criteria for Underlying Stocks), and 1034 (Minimum Fractional Changes).

[41] *See supra* Section II.C (Additional Rules Contained in Phlx Rule 1080).

[42] 15 U.S.C. 78f(b)(5) (1988).

[43] 15 U.S.C. 78k–1 (1982).

[44] The Commission notes that in many respects, the Phlx proposal to trade Customized FCOs raises many of the same issues that were raised and addressed inconnection with proposals by certain of the options exchanges to trade flexible exchange options on broad-based indexes ("FLEX Options"). *See* Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving the trading of FLEX Options on the S&P 100 and 500 stock indexes), 32894 (July 29, 1993) 58 FR 41814 (August 5, 1993) (order approving the trading of FLEX Options on the Russell 2000 stock index), 32781 (August 20, 1993), 58 FR 45360 (August 27, 1993) (order approving the trading of FLEX Options on the Major Market, Institutional, and S&P MidCap 400 stock indexes), and 34384 (July 13, 1994), 59 FR 36813 (July 19, 1994) (order approving the trading of FLEX Options on the Wilshire Small Cap and PSE Technology stock indexes) (collectively, "FLEX Options Approval Orders").

[45] *Id.* In addition, based on representations from the Phlx and the OPRA, the Commission believes that the Exchange and the OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with customized strike options. *See* Letter from Steven Watson, Data Processing, Phlx, to Richard Cangelosi, Director of New Products, Phlx, dated July 27, 1994, and letter from Joseph Corrigan, Executive Director, OPRA, to Richard Cangelosi, Director of New Products, Phlx, dated July 21, 1994. *See also, supra* note 18.

[46] The Commission notes that in contrast to FLEX Options which have position limits substantially higher than those applicable to non-FLEX Options on the same underlying indexes, positions in Customized FCOs will be aggregated with positions in non-Customized FCOs for position limit purposes. As a result, the Commission is not requiring that the trading of Customized FCOs be implemented as a pilot program nor will the Exchange be required to submit reports to the Commission similar to those required from the exchanges that are trading FLEX Options. *See* FLEX Options Approved Orders, *supra* note 44.

[47] *See* Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 (October 21, 1982).

[48] *See* FLEX Options Approved Orders, *supra* note 44.

[49] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991) ("Cross-Rate Approval Order").

[50] *Id.*

[51] *See* Securities Exchange Act Release No. 33582 (February 4, 1994), 59 FR 661 (February 11, 1994).

[52] *See supra* Section II.E (Margin Requirements Applicable to Customized FCOs).

[53] While the proposed margin levels cannot account for every unexpected market movement in each particular Approved Currency pairing, it is important that the margin levels contain some "add-on" provision to cover a short-term sharp movement beyond a two standard deviation coverage of expected movements. The Phlx has attempted to provide this "add-on" through the 4% and 6% margin floors. *Id.*

[54] *See* Cross-Rate Approval Order, *supra* note 49.

[55] The Commission notes that simultaneously with this approval order, the Commission is also approving rule changes proposed by the OCC by which the OCC is adopting the framework necessary to clear and settle Customized FCOs. *See* Securities Exchange Act Release No. 34926 (November 1, 1994) (order approving File Nos. SR–OCC–94–04, SR–OCC–94–05, and SR–OCC–94–07).

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publicly disseminated through the OPRA.[56]

Additionally, the Commission believes that allowing assigned ROTs who have previously provided responsive quotes to be able to achieve parity during a response period is a reasonable means by the Phlx of attempting to add liquidity to the market. By making this benefit available to assigned ROTs, the Phlx may be able to encourage ROTs to become assigned to trade Customized FCOs and, once assigned, to act in a manner to create liquid Customized FCO markets. Specifically, assigned ROTs will only be able to benefit from this feature if they act quickly to provide responsive quotes during the response time period which, in turn, may facilitate trading in the Customized FCOs.

In addition, the Commission believes that the requirement that assigned ROTs must respond to a RFQ and must honor their quoted markets for a certain minimum number of a contracts is appropriate. The Commission recognizes that although assigned ROTs are not required to respond to RFQs, the market making obligations under the Phlx's rules, as discussed above, in addition to the ability of Floor Officials and Floor Brokers to require a ROT to respond to RFQs, should help to ensure that assigned ROTs provide adequate liquidity in the market for Customized FCOs. In this regard, the Commission will expect the Phlx to take action against assigned ROTs that fail, on an on-going basis, to provide responsive quotes.[57]

In summary, the Commission believes that based on the unique nature of the FCO market (*i.e.*, that participants are largely institutional investors) that the Phlx has set forth a reasonable proposal that blends the customized nature of the OTC FCO derivatives market with exchange auction market principles. In approving the proposed rule change, the Commission recognizes that some of the procedures, such as the ability of assigned ROTs to establish parity, in some instances, during a request response time, and the minimum contract requirements, deviate from existing rules that apply to Phlx's non-Customized FCO market. Nevertheless, the Commission believes the proposal adequately balances the Exchange's need to attract liquidity to its trading floor with the specialized institutional characteristics of the FCO market. Moreover, to the extent that the Phlx proposal attracts transactions to the Exchange floor that would otherwise be completed in the OTC derivatives market, the investors participating in those transactions will receive the benefits of an exchange auction market, such as full transaction reporting and the clearance and settlement features provided by the OCC. Based on the above, the Commission finds that the proposed rule change is appropriate.

F. Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the Exchange to begin trading Customized FCOs, which have been under review by the Commission for several months, without further delay.[58] The Commission believes that the majority of the changes contained in Amendment No. 3 strengthen the Exchange's original proposal to trade Customized FCOs and serve to minimize the potential for confusion as to the application of the Exchange's rules regarding Customized FCOs. Additionally, each of these changes clarifies the Exchange's original proposal which, the Commission notes, was published for the full comment period without any comments being received.

The Commission also believes that the changes to Rule 1069 proposed in Amendment No. 3 do not raise any significant new issues that require notice prior to approval. Most of the changes to Rule 1069 contained in amendment No. 3 are nonsubstantive and are designed to reflect more clearly the intent of the Exchange's original proposal in order to minimize any potential for confusion among participants in the market for Customized FCOs. The amendment to subsection (d) requiring all ROTs to notify the Exchange's Examination Department immediately if they are not in compliance with the financial requirements of the rule should serve to strengthen the proposal and promote the creation of a fair and orderly market for Customized FCOs. The amendment withdrawing the request for spread margin treatment simply removes a potential reduction in margin for spread transactions.

Similarly, the amendment to Rule 1001 provides certainty as to the exclusion of trading volume in Customized FCOs when determining whether the 150,000 contract position limit is available. The remaining amendment to Rule 1001, Commentary .05, merely clarifies which positions are considered to be on the same side of the market for aggregation purposes.

The changes to Rule 722 contained in Amendment No. 3 are also more restrictive than the proposal as originally noticed. The original proposal provided for three margin tiers applicable to Customized Inverses with the margin for the lowest tier being only 2%. In Amendment No. 3 the Exchange provides that only two tiers will exist and that the lowest applicable margin level will be 4%. As discussed above, the Commission believes that this two-tiered structure and the margin levels proposed are appropriate.[59] The amendments to Rule 722 also merely codify this two-tier approach and clarify the manner by which applicable margin will be determined for each specific Approved Currency combination for Customized Cross-Rates.

The other substantive changes proposed in Amendment No. 3 are merely for the purpose of conforming existing Exchange rules to the procedures provided in new Rule 1069, thus eliminating inconsistencies in the Phlx's rules. The remaining changes contained in Amendment No. 3, as discussed above, correct inaccurate or redundant information presently contained in Phlx Rules 1009 and 1033 and thus raise no new issues.

Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR–Phlx–94–18 and should be submitted by November 29, 1994.

[56] *See supra* note 18. The Commission notes that the proposed procedures for disseminating RFQs, responsive quotes, and completed transactions, through OPRA as administrative text messages are the same procedures used by the options exchanges that trade FLEX Options (*see supra* note 44). By making these administrative text messages available to vendors, transparency in the market for Customized FCOs will be significantly greater than the transparency that exists in the OTC FCO derivatives market.

[57] In addition, the Commission notes that even if a ROT provides responsive quotes, the Exchange can take disciplinary action against the ROT pursuant to Phlx Rule 960 if the ROT quotes markets that the Exchange deems inconsistent with the maintenance of fair and orderly markets.

[58] As noted previously, Amendment No. 3 incorporates the substance of, and withdrew, Amendment Nos. 1 and 2. *See supra* note 7.

[59] *See supra* Section III.C (Customized Cross-Rates).

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and Sections 6 and 11A of the Act in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act that Customized FCOs are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[60]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[61] that the proposed rule change (SR–Phlx–94–18), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[62]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27632 Filed 11–7–94; 8:45 am]

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[60] As part of the original approval process of the FLEX Options framework (*see, e.g., supra* note 44), the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. *See* Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792 (March 1, 1993). On May 4, 1993, Chairman Breeden, pursuant to Public Law 87–592, 76 Stat. 394 [15 U.S.C. 78d–1, 78d–2], and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests [17 CFR 200.30–3], designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(a)(4). Accordingly, this subdelegation provides the necessary authority for Customized FCOs to be designated as "standardized options" by the Division of Market Regulation. *See* Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[61] 15 U.S.C. 78s(b)(2) (1988).

[62] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34926; International Series Release No. 739; File Nos. SR–OCC–94–04; SR–OCC–94–05; SR–OCC–94–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Changes Relating to Flexibly Structured Foreign Currency Options, Inverse Foreign Currency Options, Inverse Cross-Rate Foreign Currency Options, and Flexibly Structured Cross-Rate Foreign Currency Options

November 1, 1994.

On April 25, 1994, May 13, 1994, and June 6, 1994, The Options Clearing Corporation ("OCC") filed proposed rule changes (File Nos. SR–OCC–94–04, SR–OCC–94–05, SR–OCC–94–07) respectively with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals was published in the **Federal Register** on May 20, 1994, July 19, 1994, and July 20, 1994, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposed rule changes.

I. Description

The purpose of the proposed rule changes are to allow OCC to issue, clear, and settle customized strike options on foreign currencies, flexibly structured cross-rate foreign currency option contracts, inverse foreign currency options, and inverse cross-rate foreign currency options.

The first proposal, OCC File No. SR–OCC–94–04, enables OCC to accommodate the clearance and settlement of customized strike options on foreign currencies to be traded on the Philadelphia Stock Exchange ("Phlx").[3] Customarized strike options are a type of flexibly structured options where the underlying security is a foreign currency. Currently, the underlying security for flexibly structured options is an index group. Flexibly structured index options permit the parties to establish for each option trade the expiration date, the exercise style, the exercise price, the cap interval, and the method to be used for establishing the current index value for purposes of settling expiration date exercises. Customized strike options on foreign currencies extend to foreign currency options the ability of the trading parties to designate the exercise price of their choice. Customized strike options are available for all currently listed foreign currency options including cross-rate foreign currency options but excluding cash-spot foreign currency options.[4] The customized strike option contracts also may be either American style or European style options and may have any expiration dates currently available including cross rate dates of up to three years in the future as in long-term options.

To accommodate customized strike options, OCC is adding the definition of "flexibly structured options" to Section 1 of Article XV ("Foreign Currency Options") which will include customized strike options. OCC Rule 602(b) also is being amended to broaden the definition of premium margin to include flexibly structured index options, customized strike options, and other types of flexibly structured options. Currently, the definition only encompasses flexibly structured index options.

The term "FLEX option" in Section 1 ("Definitions") of Article XVII ("Index Options") is being changed to "flexibly structured option" in order to make that term more generic. For the same reason, all references to FLEX options in OCC's by-laws and rules are being changed to flexibly structured options. In addition, the definition of the term flexibly structured option in Section 1 of Article XVII is being modified to clarify that such definition is applicable only to flexibly structured index options. A separate definition of flexibly structured options applicable to foreign currency options is being added to Section 1 of Article XV.

The inverse foreign currency options and inverse cross-rate foreign currency options proposal, OCC File No. SR–OCC–94–05, will enable OCC to clear and settle inverse foreign currency options and inverse cross-rate foreign currency options. Currently, foreign currency option contracts are quoted in U.S. dollars ("USDs"), premium is paid in USDs, and the foreign currency is

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release Nos. 34064 (May 13, 1994), 59 FR 26535, [File No. SR–OCC–94–04] (notice of filing of proposed rule change relating to flexibly structured foreign currency options); 34351 (July 12, 1994), 59 FR 36811, [File No. SR–OCC–94–05] (notice of filing of a proposed rule change relating to inverse foreign currency options and inverse cross-rate options); and 34360 (July 13, 1994), 59 FR 37114, [File No. SR–OCC–94–07] (notice of filing of proposed rule change relating to flexibly structured cross-rate foreign currency options).

[3] Securities Exchange Act Release No. 33959 (April 25, 1994), 59 FR 22698, [File No. SR–Phlx–] (Notice of filing of Phlx's proposal relating to adoption of a customized strike facility for foreign currency options).

[4] The following currencies currently underlie foreign currency option contracts: (1) Australian dollars, (2) British pounds, (3) Canadian dollars, (4) German Deutsche marks, (5) European Economic Community currency units, (6) French francs, (7) Japanese yen, and (8) Swiss francs.

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delivered upon exercise. Under the proposed rule change, inverse foreign currency and cross-rate foreign currency option contracts will be quoted in the foreign currency, premium will be paid in the foreign currency, and USDs will be delivered upon exercise. For example, the existing French franc ("FF")/USDs foreign currency option contract is quoted in USDs, premium is paid is USDs, and FF are delivered upon exercise. Whereas, the inverse USDs/FF contract will be quoted in FF, the premium will be paid in FF, and USDs will be delivered upon exercise. The proposed inverse cross-rate foreign currency option contract will be the inverse of existing cross-rate foreign currency option contracts.

Inverse foreign currency and cross-rate foreign currency options will be processed and margined like existing foreign currency and cross-rate foreign currency option contracts and in accordance with existing banking arrangements. To accommodate these new foreign currency options only a few changes of OCC's by-laws and rules are needed.

To accommodate inverse for currency and cross-rate foreign currency options, a definition of "currency" is being added to Article I, Section 1 of OCC's By-laws.[5] The term currency will clarify that the price quote, the premium to be paid, and the deliverable or underlying currency for a foreign currency option contract will sometimes have terms of USDs and other times have terms of a foreign currency. Due to this change, where appropriate in OCC's by-laws and rules the references to foreign currency as the deliverable or as the underlying currency for a foreign currency option contract and references to USDs as the trading currency for foreign currency option contract are being changed to the general term currency.

A definition of "settlement time" is being added to the definition section of Article XV to accommodate inverse foreign currency options. Settlement time for foreign currency options will distinguish between foreign currency options settling in the United States and outside the United States.[6] Because of the difference in settlement times, the definition of settlement time in Article I, Section 1 is being amended to clarify that such time does not apply to foreign currency options settling outside the United States.

The definition of the term "class of options" in the definition section of Article XV and Article XXII is being amended to provide that with respect to foreign currency and cash-settled foreign currency options, a class of options means all option contracts of the same type and style covering the same underlying currency and having the same unit of trading and the same trading currency.[7]

The term "trading currency" in Article I, Section 1 of OCC's by-laws is being amended. Trading currency will be currency, rather than foreign currency, in which premium and/or exercise prices are denominated for a class of foreign currency options or cross-rate foreign currency options. The changes will clarify that the two components of the trading currency, the premium and the exercise price, may be either a foreign currency or USDs.

The amendments to Rule 1605(a)(2) concerning the netting scheme will clarify that netting will first occur within the same class of options. To accommodate the changes to the definition of class of options, the proposed changes to Rule 1605(a)(3) will clarify that following the netting of settlement obligations within a class, netting will occur across classes of foreign currency and inverse foreign currency options.

The Introduction of Chapter XVI, which governs foreign currency options, is being amended to clarify that Chapter XVI is applicable only to option contracts where either the trading currency or the underlying security is a foreign currency and the other side of the contract is USDs. The Introduction of Chapter XXIII, which governs cash-settled foreign currency options, is being amended to clarify that Chapter XXIII is applicable only to cash-settled option contracts where either the trading currency or the underlying security is a foreign currency. The Introduction to Chapter XXI, which governs cross-rate foreign currency options, is being amended to clarify that with the beginning of percentage quoting at the Phlx, premium and exercise prices of cross-rate foreign currency options will not always be in the same currency.

The flexibility structured cross-rate foreign currency options proposal, OCC File No. SR-OCC-94-07, enables OCC to issue, clear, and settle new flexibly structured cross-rate foreign currency option contracts proposed for trading by the Phlx through its customized option facility.[8] Under the proposal, options may be traded on any combination of currencies currently underlying foreign currency option contracts. Because these new products will be margined and settled like the existing cross-rate option contracts, OCC's by-laws and rules do not need to be revised.

II. Discussion

The Commission believes the proposals are consistent with the purposes and requirements of Section 17A of the Act.[9] Specifically, Section 17A(a)(2) of the Act[10] directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

The over-the-counter ("OTC") market for foreign currency options has developed, in part, to meet the needs of brokers and investors that require increased flexibility for the purpose of satisfying particular investment objectives. OCC's issuing, clearing, and settling of customized strike options should bring into the national clearance and settlement system options transactions that otherwise would be cleared and settled outside the system. Thus, brokers and investors will have the ability to tailor options transactions to meet their specific needs and at the same time, will have the benefit of having those transactions cleared and settled through OCC with its risk analysis and risk reduction procedures.

OCC has represented that flexibility structured foreign currency options can be treated and processed like the current foreign currency option products. Therefore, OCC may implement the clearance and settlement of flexibility structured foreign currency options with only minimal changes to its by-laws and rules. Since these proposed foreign currency products are a natural extension of the foreign currency products currently cleared by OCC, OCC should have little difficulty processing these products.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposals are consistent with Section 17A of the Act.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule changes (File Nos. SR-OCC-94-04, SR-OCC-94-05, SR-OCC-94-07) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27564 Filed 11-7-94; 8:45 am]

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[5] Currency is defined as any standard unit of the official medium of exchange of a sovereign government including the European Currency Unit ("ECU").

[6] Foreign currency options settling in the United States will settle at 9:00 A.M. Central Time on the first business day immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange on which such transaction was effected. Foreign currency options settling outside the United States will settle at 11:00 A.M. local time in the country of origin of the trading currency, or at such other time as OCC may specify, on the first business day in that country immediately following the day on which OCC receives a report of a matched trade with respect to such transaction from the exchange where the trade occurred.

[7] Under the amended definition, existing foreign currency contracts covering the same underlying foreign currency will be in one class, and the inverse contracts, which will have a different trading currency, will be in another class.

[8] For a description of the Phlx proposed rule change, refer to Securities Exchange Act Release No. 34308 (July 5, 1994), 59 FR 35551, [File No. SR-Phlx-94-18] (notice of filing of proposed rule change).

[9] 15 U.S.C. 78q-1 (1988).

[10] 15 U.S.C. 78q-1(a)(2) (1988).

[Rel. No. IC-20677; No. 812-8910]

Lexington Emerging Markets Fund, Inc., et al.

November 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lexington Emerging Markets Fund, Inc. ("Fund"), Lexington Natural Resources Trust ("Trust"), and Lexington Management Corporation ("LMC") (collectively "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

SUMMARY OF APPLICATION: Applicants seek an order exempting themselves and certain affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") and their separate accounts ("Separate Accounts") to the extent necessary to permit series of shares of any current or future investment series of the Trust and the Fund to be sold to and held by Separate Accounts funding variable annuity and variable life insurance contracts issued by the Participating Insurance Companies.

FILING DATE: The application was filed on March 22, 1994, and amended on September 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549.

APPLICANTS: Lawrence Kantor, Managing Director, Lexington Management Corporation, Park 80 West—Plaza Two, Saddle Brook, New Jersey 07662.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts Business Trust registered under the 1940 Act as an open-end management investment company (File No. 33-26116). The Trust's capitalization consists of an unlimited number of shares of beneficial interest, no par value, representing an interest in one underlying portfolio of investments. The Trust is managed by its Board of Trustees.

2. The Fund is registered under the 1940 Act as an open-end management investment company (File No. 33-73520). The Fund's capitalization consists of one billion shares of authorized common stock, of which five hundred million are designated "Lexington Emerging Market Fund Series" ("Existing Portfolio"), and five hundred million are unissued and unclassified. The Board of Directors of the Fund is authorized to classify or reclassify any unissued shares of the Fund ("New Portfolios") (together with Lexington Emerging Market Fund Series, "Portfolios").

3. The Portfolios will serve as investment vehicles for various types of variable annuity and variable life insurance contracts ("Variable Contracts"). Portfolio shares will be offered to Separate Accounts of certain affiliated and unaffiliated Participating Insurance Companies which enter into Participation Agreements with the Portfolios and LMC. The Applicants represent that Portfolio shares will be offered only to individual Separate Accounts issuing variable annuity contracts until the Commission issues its order granting the requested relief.

4. LMC serves as investment adviser to the Trust, the Fund and each Existing Portfolio. Lexington Funds Distributor, Inc. ("LFD") serves as distributor for the Existing Portfolios. LMC is a registered investment adviser under the Investment Advisers Act of 1940. LMC and LFD are each a wholly-owned subsidiary of Piedmont Management Company, Inc. ("Piedmont"), a publicly traded corporation.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15). Exemptive relief is sought by applicants and affiliated and unaffiliated Participating Insurance Companies and their Separate Accounts to the extent necessary to permit mixed and shared funding.

2. Rule 6e-2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as a unit investment trust to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the rule also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

3. The exemptions granted by Rule 6e-2(b)(15) are available only to a management investment company underlying a separate account ("underlying fund") that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e-2(b)(15) is not available to the separate account issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common underlying fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as "mixed funding."

[11] 15 U.S.C. 78q-1 (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1994).

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4. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the underlying fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered as a unit investment trust that is offering flexible premium variable life insurance contracts. The exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the underlying fund of the separate account offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *." Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

6. For these reasons, Applicants seek an order under section 6(c) of the 1940 Act. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15)(i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by subparagraph (b)(15(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

8. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in that organization. Applicants further submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various unaffiliated Participating Insurance Companies that may utilize the Portfolios as the funding medium for variable contracts because of mixed and shared funding.

9. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances.[1]

10. Under subparagraph (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T), the insurance company may disregard voting instructions of its contractowners in connection with the voting of shares of an underlying fund under certain limited circumstances. Voting instructions may be disregarded if they would cause the underlying fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the underlying fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

11. Under subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T), an insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in the underlying fund's investment objectives, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

13. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 63–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

14. Applicants submit that mixed funding and shared funding should benefit variable contractowners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) allowing for a greater amount of assets available for investment by the Portfolios and the Trust, thereby promoting economies of scale, permitting increased safety through greater diversification, and/or making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Portfolio will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

15. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that each of the Portfolios will be managed to attempt to achieve its investment objective and not to favor or disfavor any particular Participating Insurance Company, separate account, or type of insurance product. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

[1] Applicants request no relief for variable annuity separate accounts from the disqualification or pass-through voting provisions.

Applicants' Conditions:

The Applicants have consented to the following conditions:

1. A majority of the Board of each of the Fund and the Trust shall consist of persons who are not "interested persons" of either the Fund or the Trust, respectively, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director(s) or Trustee(s) then the operation of this conditions shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of each of the Fund and the Trust will monitor the Fund and the Trust for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in either of the Portfolios. A material irreconcilable conflict may arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of a Portfolio are being managed; (e) a difference among voting instructions given by variable annuity and variable life insurance contractowners; or (f) a decision by a Participating Insurance Company to disregard contractowners' voting instructions.

3. Participating Insurance Companies and LMC will report any potential or existing conflicts, of which they become aware, to the Board of either the Fund or the Trust, as appropriate. Participating Insurance Companies and LMC will be obligated to assist the relevant Board in carrying out its responsibilities under these conditions by providing the relevant Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the relevant Board will be a contractual obligations of all Participating Insurance Companies investing in a Portfolio under their Participation Agreements, and those Agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If a majority of the Board of the Fund or the Trust, or a majority of the Independent Directors or Trustees, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of Independent Directors or Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium (including another Applicant, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies that votes in favor of such segregation), or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of LMC (on behalf of one or more of the Portfolios), to withdraw its Separate Account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by the Board of the Fund or the Trust that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements, and these responsibilities will be carried out with a view only to the interests of the contractowners.

For purposes of condition "4.", a majority of Independent Directors or Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Portfolios or LMC be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition "4." to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the Fund or the Trust of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies in the Fund or the Trust, respectively.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, Participating Insurance Companies will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from

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contractowners. Each Participating Insurance Company also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from contractowners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their Separate Accounts participating in a Portfolio calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio shall be a contractual obligation of all Participating Insurance Companies under their Participating Agreements.

7. Each Portfolio will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Portfolio shall disclose in its Prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund annuity and life insurance contracts of Participating Insurance Companies that may or may not be affiliated with one another; (b) because of differences of tax treatment or other considerations, the interests of various contractowners might at some time be in conflict; and (c) a Board of the Fund or the Trust, as appropriate, will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of the Fund or the Trust regarding potential or existing conflicts, and all action of a Board with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of other appropriate records of the relevant Board, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3(T) is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Portfolios and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Portfolios will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Portfolios), and in particular each Portfolio either will provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or, as each Portfolio currently intends, comply with Section 16(c) (although neither the Fund nor the Trust are trusts described in this section) as well as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participating Insurance Companies and/or LMC, shall at least annually submit to the Board of the Fund and the Trust such reports, materials or data as each Board may reasonably request so that such Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligation of the Participating Insurance Companies to provide these reports, materials, and data upon reasonable request of a Board shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreements.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27633 Filed 11–7–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

License No. 10/10–0190]

Shaw Venture Partners III, L.P.; Issuance of a Small Business Investment Company License

On May 27, 1994, a notice was published in the **Federal Register** (59 FR 27645) stating that an application had been filed by Shaw Venture Partners III, L.P., 400 Southwest Sixth Ave., Suite 1100, Portland, OR 97204 with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 26, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 10/10–0190 on September 26, 1994, to Shaw Venture Partners III, L.P. to operate as a small business investment company.

The 99% limited partner of the Licensee will be U.S. Bancorp, and the Licensee will have $30 million of private capital.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: October 28, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–27614 Filed 11–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2113]

Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas

The Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on November 15, 1994, from 8:30 a.m. to 6:30 p.m. at the Sheraton International Hotel at Baltimore Washington International Airport in Linthicum, Maryland. The meeting will be open to all interested members of the public. The meeting will consider recommendations to the U.S. delegation to the Annual Meeting of the International Commission for the Conservation of Atlantic Tunas, which will be held in Madrid, Spain November 28–December 2, 1994. We regret the short notice in announcing this meeting, delayed by the late receipt of the Commission meeting agenda.

The Advisory Committee will also meet November 16, 1994 from 8:30 a.m. to 3:00 p.m. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the Annual Meeting of the International Commission for the Conservation of Atlantic Tunas, to be held in Madrid November 28—December 2, 1994. The members of the Advisory Committee will examine various options for the negotiating position at the Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the November 16 session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Marine Conservation (OES/OMC), Room 7820, U.S. Department of State, Washington, DC 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335 or by FAX (202) 736–7350.

Dated: November 1, 1994.

David A. Colson,

Deputy Assistant Secretary for Oceans Affairs.

[FR Doc. 94–27598 Filed 11–7–94; 8:45 am]

BILLING CODE 4710–09–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting, which will be held in two sessions, is open to the public.

DATES: The Affordable Housing Advisory Board will hold its meeting in two sessions on November 21 and 22, 1994, in Atlanta, Georgia:

1. November 21--Planning session.

2. November 22—General session.

ADDRESSES: The sessions of the meeting will be held at the following locations:

1. November 21 Planning Session—Atlanta Marriott Marquis, 265 Peachtree Center Avenue, 9 a.m. to noon.

2. November 22 General Session—Federal Reserve Bank of Atlanta, 104 Marrietta Street, Conference Center, third floor, 8:30 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board (AHAB) to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The AHAB's charter was issued March 9, 1994.

Agendas: An agenda will be available at each session of the meeting. At the November 21 planning session, the AHAB will review the following: its short- and long-term goals, as established at the October 3 planning session; Resolution Trust Corporation (RTC) and FDIC housing disposition processes; financing issues related to a unified RTC/FDIC affordable housing program, and bank participation in affordable housing programs. Members of the public who attend the planning session will be asked to reserve questions or comments until the second session of the meeting on the following day. At the November 22 general session, the AHAB will address principal issues on the transition of the RTC's affordable housing program into the FDIC and the National Advisory Board's affordable housing recommendations from the Series 17 Regional Advisory Board meetings held throughout the country from September 13 through September 29. In addition, the AHAB will hear from technical assistance advisors on the RTC's Affordable Housing Disposition Program, reports on FDIC sales and appraisal process and an update on the Housing Opportunity Hotline. The AHAB's chairperson or its Delegated Federal Officer may authorize a member or members of the public to address the AHAB during the public forum portion of the second session.

Statements: Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the November 22 general session of the meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: November 3, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–27645 Filed 11–7–94; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Civil Tiltrotor Development; Advisory Committee; Environment & Safety Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Environment & Safety Subcommittee will be on November 14, 1994 in Washington, D.C. at Airports Council International headquarters, 1775 K Street NW., Suite 500, Washington, D.C. The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the Environment & Safety Subcommittee meeting will include the following:

(1) Presentations on enviornmental and safety issues

(2) Review issue papers and draft report material.

(3) Review Subcommittee Assumptions.

(4) Review Subcommittee Work Plan/Schedule.

Persons who plan to attend the meeting should notify Mrs. Karen Braxton at 202–267–8759 or Ms. Deborah Ogunshakin on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

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Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Braxton or Ms. Ogunshakin at least three days prior to the meeting.

Issued in Washington, D.C., October 27, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94-27644 Filed 11-7-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Special Committee 182; Fourth Meeting; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 182 meeting to be held January 23-24, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Review and approval of minutes from third meeting held September 20-21, 1994; (4) Report on TMC response to terms of reference recommendation; (5) Identify and discuss attributes of the ACR which distinguish if from an "ordinary Computing Platform". Consider both "Basic" and "Discretionary" attributes; (6) Explanation of the FAA equipment qualification and aircraft certification procedures; (7) Establish timetable for the development of the MOPS document; (8) Refine the issues list begun at the second meeting; (9) Review and expand glossary of term unique to avionics computing resource; (10) Other business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on November 2, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94-27622 Filed 11-7-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Transit Administration

[Docket No. 94-D]

Notice of Request for Comments on the Inclusion of Security Data Reporting in the National Transit Database

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) proposes to revise its safety reporting form to include security information as part of its annual National Transit Database (Section 15) reporting system.

Among other things, the Omnibus Anti-Crime legislation (Pub. L. 103-322) signed by President Clinton on September 13, 1994, reinforces the need to fight crime and to increase security in existing and future transportation systems. Moreover, FTA's Strategic Plan includes a strategy to "Maximize Security and Safety of Transit Systems for Service Users". The first goal under this strategy is to improve personal security.

This Notice thus solicits comments from transit agencies on the proposed initiation of reporting of security data in the National Transit Database (Section 15) for the 1995 Report Year, including the existing availability of the data, costs involved, and the relationship of the proposed reporting requirements to other crime reporting systems, for example, the Federal Bureau of Investigation's Uniform Crime Reporting System (UCR), etc.

DATES: Written comments must be received on or before December 8, 1994.

ADDRESSES: Comments should be sent to Docket Number 94-D, Room 9316, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward Fleischman, Director, Office of Capital and Formula Assistance (202) 366-1662 or Marvin Futrell, Chief, Audit Review and Analysis Division, (202) 366-6471.

SUPPLEMENTARY INFORMATION:

A. Background

The National Transit Database (Section 15) Transit Safety Form (405) for Report Year 1995 is proposed to be expanded. The FTA seeks to collect security information as part of its annual National Transit Database reporting system, the Uniform System of Accounts and Records and Reporting System. Among other things, the Omnibus Anti-Crime legislation (Pub. L. 103-322), signed by President Clinton on September 13, 1994, reinforces the need to fight crime and to increase security in existing and future transportation systems.

Moreover, FTA's Strategic Plan includes a strategy to "Maximize Security and Safety of Transit Systems for Service Users". The first goal under this strategy is to improve personal security.

FTA's regulation regarding the Uniform System of Accounts and Records and Reporting System is at 49 CFR part 630. In particular, 49 CFR part 630(c) provides that the Reporting System is subject to periodic revision, and that a Notice of certain changes or revisions will be published in the **Federal Register**.

Accordingly, set forth below is a summary of the new data and draft of the proposed reporting form the FTA proposes to include in the information that must be sent to FTA as part of the Section 15 annual report. This information will be mailed to grantees early in 1995, and may include changes in response to comments to this Notice. FTA particularly seeks comments on the scope of the draft form and the adequacy of the information being sought. Comments are sought on how much the data should be stratified and whether there should be thresholds for reporting based on a transit system's size.

B. Description of New Security Elements for Section 15 Reporting

The Security data are proposed to be expanded to include security data reported by location, i.e., In Vehicle, In Station and In Other Transit Property; and by type of offense, i.e., Arson, Assault, Burglary, Homicide, Larceny/Theft, Motor Vehicle Theft, Robbery, Sex Offenses/Forcible, Vandalism, Loitering/Vagrancy, Disorderly Conduct, Driving Under the Influence (DUI), Drunkenness, Trespass, and Fare Evasion. The data would be reported by incidents, fatalities and injuries for each directly operated or purchased transportation mode and also by both patron and non-patron.

The proposed form is as follows:

BILLING CODE 4910-57-P

Section 15 ID | Transit Safety & Security Form (405A) - Safety | Mode

Line No.	a Items	b Incidents	c Fatalities: Patrons	d Fatalities: Others	e Injuries: Patrons	f Injuries: Others	Line No.
	COLLISIONS						
01	Collision with other vehicles						01
01a	(at grade crossing)	( )	( )	( )	( )	( )	01a
02	Collision with objects						02
02a	(at grade crossing)	( )	( )	( )	( )	( )	02a
03	Collision with people						03
03a	(at grade crossing)	( )	( )	( )	( )	( )	03a
03b	(attempt/successful suicide)	( )	( )	( )	( )	( )	03b
	NON-COLLISIONS						
	Derailments						
04	Derailment/bus going off road						04
	Personal Casualties						
05	Parking facility						05
06	Inside vehicle						06
07	On right-of-way						07
08	Boarding and alighting vehicle						08
08a	(associated with lift)	( )	( )	( )	( )	( )	08a
09	In station/bus stop						09
09a	(associated with escalator)	( )	( )	( )	( )	( )	09a
09b	(associated with elevator)	( )	( )	( )	( )	( )	09b
	Fires (no-thresholds)						
10	Inside vehicle						10
11	In station						11
12	On right-of-way						12
	EMPLOYEE CASUALTIES		Employee Fatalities		Employee Injuries		
13	Inside vehicle						13
14	On right-of-way						14
15	Maintenance facility/yard						15
16	Other						16
17	TOTAL OF EMPLOYEE SAFETY ITEMS						17
18	TOTAL OF OTHERS SAFETY ITEMS						18
19	TRANSIT PROPERTY DAMAGE		$				19

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Section 15 ID ———— Transit Safety & Security Form (4450) - Security ———— Mode ———

a		b	c	d	e	f	g	h	i	j
PATRON EMPLOYEE AND OTHERS SECURITY		In Vehicle			In Station			Other Tr. Property		
		Inc.	Inj.	Death	Inc.	Inj.	Death	Inc.	Inj.	Death
Group "A" Offenses										
20 Arson	Patrons									
	Employees									
	Others									
21 Assault	Patrons									
	Employees									
	Others									
22 Burglary	Patrons									
	Employees									
	Others									
23 Robbery	Patrons									
	Employees									
	Others									
24 Larceny/Theft	Patrons									
	Employees									
	Others									
25 Sex Offenses, Forcible	Patrons									
	Employees									
	Others									
26 Motor Veh. Theft	Patrons									
	Employees									
	Others									
27 Homicide	Patrons									
	Employees									
	Others									
28 Vandalism	Patrons									
	Employees									
	Others									
Group "B" Offenses										
29 Loitering	Patrons									
	Others									
30 Drunkenness	Patrons									
31 Disorderly Conduct	Patrons									
32 Fare Evasion	Patrons									
33 Trespassing	Others									
34 DUI	Employee									

Report Year 1995

BILLING CODE 4910-21-C

Definitions relating to location of an incident would be as follows:

In Vehicle—An incident occurring within a transit agency revenue vehicle.

In Station—An incident occurring at a transit station or stop.

Other Transit Property—An incident occurring at facilities which are directly controlled by a transit agency (agency is responsible for cleaning or maintaining) or provided to a transit agency for its use by another public or private entity (formal/informal agreement with the owner wherein services or facilities are provided to benefit the transit agency) other than stations and vehicles.

Definitions relating to type of incident would be as follows:

Incident—Security related occurrence involving fatalities, injuries or property damage.

Fatality—A death confirmed within 30 days directly related to a security incident.

Injury—Any physical damage or harm to a person which results in the need for medical treatment related to a security incident.

Definitions relating to type of offense would be as follows:

Group A—Offenses perpetrated against other individuals or property.

Arson—To unlawfully and intentionally damage, or attempt to damage, any real or personal property by fire or incendiary device.

Assault—An unlawful attack by one person upon another.

Burglary—The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Homicide—The killing of one or more human being(s) by another.

Larceny/Theft—The unlawful taking, carrying, leading or riding away of property from the possession, or constructive possession, of another person.

Motor Vehicle Theft—The theft of a motor vehicle. Note: A "motor vehicle" is a self-propelled vehicle that runs on the surface of land and not on rails, and which fits one of the following property descriptions: automobiles, buses, recreational vehicles, trucks, or other.

Robbery—The taking, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of another person by force or threat of force or violence and/or by putting the victim in fear of immediate harm.

Sex Offenses, Forcible—Any sexual act directed against another person, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent.

Vandalism—To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or person having custody or control of it.

Group B—Offenses not involving other individuals or property.

Loitering/Vagrancy—The violation of a court order, regulation, ordinance or law requiring the withdrawal of persons from the streets or other specified areas; prohibiting persons from remaining in an area or place in an idle or aimless manner; or prohibiting persons from going from place to place without visible means of support. Note: This offense includes "Begging" and "Vagabondage". Persons prosecuted on charges of being a "Suspicious Character", "Suspicious Person", etc., are also to be included.

Disorderly Conduct—Any behavior that tends to disturb the public peace or decorum, scandalize the community, or shock the public sense or morality.

Driving Under the Influence (DUI)—Driving or operating a motor vehicle or common carrier while mentally or physically impaired as the result of consuming an alcoholic beverage or using a drug or narcotic.

Drunkenness—To drink alcoholic beverages to the extent that one's mental faculties and physical coordination are substantially impaired. Note: This offense includes "Drunk and Disorderly", "Common Drunkard", "Habitual Drunkard", and "Intoxication".

Trespass—To unlawfully enter land, a dwelling, or other real property.

Fare Evasion—The unlawful use of transit facilities by riding without paying the applicable fare.

Issued on: November 3, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94-27677 Filed 11-7-94; 8:45 am]

BILLING CODE 4910-61-P

National Highway Traffic Safety Administration

[Docket No. 94-89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990 Porsche 944 S2 Cabriolet Convertible Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990 Porsche 944 S2 Cabriolet convertible passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1990 Porsche 944 S2 Cabriolet convertible that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 8, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Highway Traffic Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas

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("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1990 Porsche 944 S2 Cabriolet convertible passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1990 Porsche 944 S2 Cabriolet convertible that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power-Operated Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour, or replacement of the speedometer/odometer with the U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) replacement of the headlamp assemblies with the U.S.-model component and installation of U.S.-model retaining rings and wiring harness; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* required warning statement must be permanently etched onto the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the ignition switch.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's seat belt latch with one containing a seat belt warning microswitch and installation of a seat belt warning system; (b) installation of a U.S.-model passive restraint system. The petitioner states that the modifications necessary to install such a restraint system include replacement of the steering wheel with a U.S.-model component, installation of a control unit with wiring harness and contact support, installation of two vehicle impact sensors and driver's and passenger's side air bags, and replacement of the dashboard with one that incorporates driver's and passenger's side knee bolsters. The petitioner further states the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is designed so that an air bag system can be readily installed, without the need for structural modifications. The petitioner also notes that the non-U.S. certified 1990 Porsche 944 S2 Cabriolet convertible is equipped with Type II seat belts in all four seating positions, and that it complies with the standard's requirements for rear seating positions.

Additionally, the petitioner states that U.S.-model shock absorbers must be installed behind the front and rear bumpers to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Station, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 2, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27600 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–90; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Volvo 940 GL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Volvo 940 GL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for decision that a 1993 Volvo 940 GL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 8, 1994

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1993 Volvo 940 GL passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1993 Volvo 940 GL that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Volvo 940 GL to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Volvo 940 GL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Volvo 940 GL is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Level Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistence*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1993 Volvo 940 GL complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer, which is calibrated in kilometers, with a U.S.-model component calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a factory-supplied high mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) installation of a knee bolster to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–27599 Filed 11–7–94; 8:45 am]

BILLING CODE 4910–59–M

VOL 59 ISS 215 NO 8 1994 UMI

Sunshine Act Meetings

Federal Register
Vol. 59, No. 215
Tuesday, November 8, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: 10:00 a.m., November 9, 1994.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 619th Meeting—November 9, 1994, Regular Meeting (10:00 a.m.)

CAH-1.
Docket No. DI94-5-001, Cameron Sharpe
CAH-2.
Omitted
CAH-3.
Project No. 4632-018, Clifton Power Corporation
CAH-4.
Project No. 8066-027, American Hydro Power Company
CAH-5.
Project No. 10551-044, City of Oswego, New York
CAH-6.
Project Nos. 2391-002, 2425-002 and 2509-002, Potomac Edison Company
CAH-7.
Project No. 4055-017, Vernon F. Ravenscroft
CAH-8.
Project Nos. 10481-010 and 10482-013, Orange and Rockland Utilities, Inc.
CAH-9.
Project No. 10567-003, Barrish & Sorenson Hydroelectric Company, Inc.
CAH-10.
Omitted
CAH-11.
Project No. 2306-015, Citizens Utilities Company
CAH-12.
Project No. 10199-001, City of Klamath Falls
CAH-13.
Omitted

Consent Agenda—Electric

CAE-1.
Docket No. ER94-1474-000, Pepperell Power Association Limited Partnership
CAE-2.
Docket No. ER94-1673-000, PECO Energy Company
CAE-3.
Docket No. ER94-1156-001, Central Illinois Public Service Company
CAE-4.
Docket No. FA91-53-001, New England Power Company
CAE-5.
Docket Nos. ES94-29-004 and ES94-32-003, Robbins Resource Recovery Partners, L.P.
CAE-6.
Docket No. ER94-1448-001, Northeast Empire Limited Partnership #2
CAE-7.
Omitted
CAE-8.
Omitted
CAE-9.
Docket No. ER94-1370-001, Vermont Yankee Nuclear Power Corporation
CAE-10.
Docket No. EG94-105-000, The New World Power Company (Dyffryn Brodyn) Limited
CAE-11.
Docket No. EG94-106-000, The New World Power Company (4 Burrows) Limited
CAE-12.
Docket No. EG94-107-000, The New World Power Company Limited
CAE-13.
Docket No. EG94-108-000, The New World Power Company (Canton Moor) Limited
CAE-14.
Docket No. EG94-102-000, Vista Energy, L.P.
CAE-15.
Docket No. EG94-103-000, Crown Energy, L.P.
CAE-16.
Omitted
CAE-17.
Docket No. EG94-97-000, Wartsila Diesel Dominicana, S.A.
CAE-18.
Docket No. EG94-98-000, Netherlands Generating Trust I
CAE-19.
Docket No. EG94-99-000, Netherlands Generating Trust III
CAE-20.
Docket No. EG94-100-000, Netherlands Generating Trust IV
CAE-21.
Docket No. EG94-101-000, Netherlands Generating Trust II
CAE-22.
Omitted
CAE-23.
Docket No. EL94-81-000, Oglethorpe Power Corporation v. Georgia Power Company and Municipal Electric Authority of Georgia v. Georgia Power Company
CAE-24.
Docket No. EL92-12-000, Wisconsin Public Service Corporation
CAE-25.
Docket Nos. EL94-58-000 and QF87-249-004, L'Energia, Limited Partnership
CAE-26.
Docket No. ER94-975-000, New England Power Company
CAE-27.
Docket Nos. EL92-25-000 and EL93-30-000, Interstate Power Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP95-9-000, Canyon Creek Compression Company
CAG-2.
Docket No. TM95-3-21-000, Columbia Gas Transmission Company
CAG-3.
Docket No. RP95-11-000, K N Interstate Gas Transmission Company
CAG-4.
Docket No. RP95-13-000, El Paso Natural Gas Company
CAG-5.
Docket No. PR94-18-000, Cranberry Pipeline Corporation
CAG-6.
Docket Nos. RP93-147-005, RP94-201-000, RP94-175-000, RP91-203-000, (Phase III), CP94-153-000 and RP92-132-000, Tennessee Gas Pipeline Company
CAG-7.
Docket No. RP91-203-047, Tennessee Gas Pipeline Company
CAG-8.
Docket No. RP93-147-006, Tennessee Gas Pipeline Company
CAG-9.
Docket Nos. RP93-148-000, 001, 002, RP93-147-002 and RP93-151-005, Tennessee Gas Pipeline Company
CAG-10.
Docket Nos. RP94-197-000, RP93-151-007 and RP94-309-000, Tennessee Gas Pipeline Company
CAG-11.
Docket Nos. RP94-197-002 and RP93-151-013, Tennessee Gas Pipeline Company
CAG-12.
Docket No. RP94-203-000, Tennessee Gas Pipeline Company
CAG-13.

Docket No. RP94-340-000, Carnegie Natural Gas Company
CAG-14.
Docket Nos. RP93-99-000, 003 and 004, Colorado Interstate Gas Company
CAG-15.
Docket Nos. RP93-186-000 and 001, Carnegie Natural Gas Company
CAG-16.
Docket No. RP95-08-000, NorAm Gas Transmission Company
CAG-17.
Docket No. RP94-365-003, Willimns Natural Gas Company
CAG-18.
Docket No. RP94-374-001, Trunkline Gas Company
CAG-19.
Docket Nos. AC94-65-001 and AC94-121-001, Columbia Gulf Transmission Company
CAG-20.
Docket Nos. RP94-380-001 and RP94-67-013, et al., Southern Natural Gas Company
CAG-21.
Docket Nos. RP90-137-017, TM93-6-49-008, RP93-175-005 and RS92-13-000, Williston Basin Interstate Pipeline Company
CAG-22.
Docket No. RP91-168-026, Northwest Pipeline Corporation
CAG-23.
Docket Nos. TM91-6-37-005 and TM92-7-37-003, Northwest Pipeline Corporation
CAG-24.
Docket Nos. RP94-183-004, CP79-374-012 and CP79-382-014, Southern Natural Gas Company
CAG-25.
Docket No. RP85-122-023, Colorado Interstate Gas Company
CAG-26.
Docket Nos. RP94-309-002, RP93-151-014 and RP94-309-001, Tennessee Gas Pipeline Company
CAG-27.
Docket No. RP93-166-003, Tennessee Gas Pipeline Company
CAG-28.
Docket No. RP94-176-001, Tennessee Gas Pipeline Company
CAG-29.
Omitted
CAG-30.
Docket No. GP95-1-000, State of California, Division of Oil and Gas, Tight Formation Area Determination, FERC No. JD93-00526T (California-2)
CAG-31. Docket No. MG88-14-004, Black Marlin Pipeline Company
Docket No. MG88-3-009, Florida Gas Transmission Company
Docket No. MG88-7-006, Northern Natural Gas Company
Docket No. MG88-9-008, Transwestern Pipeline Company
CAG-32.
Docket No. CP89-2173-004, Arkla Energy Resources Company and Mississippi River Transmission Corporation
Docket No. CP89-2195-004, ANR Pipeline Company
CAG-33
Docket No. CP93-500-001, Natural Gas Pipeline Company of America
CAG-34.
Docket No. CP94-137-001, Tennessee Gas Pipeline Company
CAG-35.
Docket No. CP94-161-002, Avoca Natural Gas Storage
CAG-36.
Docket No. CP91-2206-009, Tennessee Gas Pipeline Company
CAG-37.
Docket Nos. CP92-498-004 and 000, Trunkline Gas Company
CAG-38.
Docket Nos. CP93-57-002 and CP92-189-002, Superior Offshore Pipeline Company
CAG-39.
Docket Nos. CP93-79-003 and 005, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG-40.
Docket No. CP93-281-001, Paiute Pipeline Company
CAG-41.
Docket No. CP93-306-001, Caprock Pipeline Company
Docket No. CP94-55-001, Transwestern Pipeline Company
Docket No. CP94-302-001, Northern Natural Gas Company
CAG-42.
Docket No. CP93-326-001, Eastern American Energy Corporation
Docket No. CP93-328-001, Columbia Gas Transmission Corporation
CAG-43.
Docket No. CP93-567-001, Texas Gas Transmission Corporation
CAG-44.
Docket No. CP94-36-001, Arkla Gathering Services Company
CAG-45.
Docket No. CP94-147-001, Williams Natural Gas Company Docket No. CP94-163-001, Kansas Gas Supply Corporation
CAG-46.
Docket No. CP94-201-001, BCF Gas, Ltd.
Docket No. CP94-107-001, NorAm Gas Transmission Company
CAG-47.
Docket Nos. CP93-232-000, CP93-256-000 and CP93-275-000, Alabama-Tennessee Natural Gas Company
CAG-48.
Docket No. CP94-214-000, Natural Gas Pipeline Company of America
CAG-49.
Docket No. CP94-219-000, Tennessee Gas Pipeline Company
CAG-50.
Docket No. CP94-656-000, General Services Administration
CAG-51.
Docket Nos. CP93-637-000 and 001, ANR Pipeline Company
CAG-52.
Docket No. CP94-79-000, Panhandle Eastern Pipe Line Company
CAG-53.
Docket No. CP94-550-000, Washington Natural Gas Company
CAG-54.
Docket No. CP94-145-000, Hobbs Processing Company
Docket No. CP94-162-000, Northern Natural Gas Company
CAG-55.
Docket No. CP94-20-000, Field Gas Gathering Inc.
Docket Nos. CP94-19-000 and RS92-82-000, Superior Offshore Pipeline Company
CAG-56.
Docket No. CP94-279-000, Minerals, Inc.
CAG-57.
Docket No. CP94-388-000, Texas Gas Transmission Corporation
Docket No. CP94-390-000, Enron Louisiana Energy Company
CAG-58.
Docket No. RS92-23-026, Tennessee Gas Pipeline Company
Docket No. RS92-33-010, East Tennessee Natural Gas Company
CAG-59.
Docket No. CP87-39-002, Granite State Gas Transmission, Inc.
CAG-60.
Docket No. CP92-184-010, Texas Eastern Transmission Corporation
CAG-61.
Docket No. CP94-68-001, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H-1. Project No. P-5797-002, B&C Energy, Inc.. Order on license application.

Electric Agenda

E-1.
Docket No. TX94-4-000, Tex-La Electric Cooperative, of Texas, Inc.
Docket No. ER94-1385-000, West Texas Utilities Company. Request for transmission service under section 211 of the Federal Power Act.

Miscellaneous Agenda

M-1.
Docket No. RM91-12-000, Alternative Dispute Resolution. Notice of Proposed Rulemaking

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Reserved

II. Restructuring Matters

RS-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP93-258-000, 001 and 003, Mojave Pipeline Company. Application for certificate authorizing major pipeline expansion.

Dated: November 2, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27700 Filed 11-3-94; 4:07 pm]

BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, November 10, 1994

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The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 10, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Private Radio—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253). Summary: The Commission will consider petitions for reconsideration of rules established for the entrepreneurs' blocks in the broadband Personal Communications Service.

2—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—("Going-Forward" Issues) (MM Docket Nos. 92–266 and 93–215). Summary: The Commission will consider revised "going forward" rules governing rates for regulated cable services and related issues.

3—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage (MM Docket No. 92–265). Summary: The Commission will consider petitions for reconsideration of the cable television program access rules other than issues raised in the National Rural Telecommunications Cooperative's (NRTC) petition relating to exclusive contracts with non-cable multichannel video programming (DBS) distributors.

4—Field Operations—Title: Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System (FO Docket Nos. 91–171 and 91–301). Summary: The Commission will consider replacing the Emergency Broadcast System with a new technical and operational structure.

5—Mass Media—Title: Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements. Summary: The Commission will consider action concerning broadcast station operator and transmitter control requirements.

6—Mass Media—Title: 4,295 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites; 96 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations. Summary: The Commission will consider 4,560 reconsideration petitions regarding applications for new MDS stations.

7—Mass Media—Title: Amendment of Parts and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253) Summary: The Commission will consider alternatives for streamlining the procedures by which applications for new Multipoint Distribution Service are filed and processed.

8—Common Carrier—Title: Policies and Rules Concerning Letters of Agency for Changing Long Distance Carriers ("Slamming"). Summary: The Commission will consider proposing rules concerning letters of agency for changing long distance carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 3, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27745 Filed 11–4–94; 1:19 pm]

BILLING CODE 6712–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, November 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6481—Safety Study: Commuter Airline Safety.

6247A—Railroad Accident Report: Collision and Derailment of Burlington Northern Train 01–111–10 and Union Pacific Train NPSEZ-09 in Kelso, Washington, November 11, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: November 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–27735 Filed 11–4–94; 10:53 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 7

Thursday, November 10

2:30 p.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

(Contact: John Larkins, 301–415–7360)

4:00 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Parts 30, 32, and 35: Preparation, Transfer of Commercial Distribution, and Use of Byproduct material for Medical Use (Tentative)

(Contract: Anthony Tse, 301–415–6233)

Week of November 14—Tentative

There are no meetings schedule for the Week of November 14.

Week of November 21—Tentative

There are no meetings schedule for the Week of November 21.

Week of November 28—Tentative

There are no meetings schedule for the Week of November 28.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. if there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. to verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: November 3, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–27730 Filed 11–4–94; 10:52 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 7, 1994.

A closed meeting will be held on Wednesday, November 9, 1994, at 10:00 a.m. An open meeting will be held on Thursday, November 10, 1994, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(1) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 9, 1994, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Formal order of investigation.

Opinion.

The subject matter of the open meeting scheduled for Thursday, November 10, 1994 at 10:00 a.m., will be:

1. Consideration of proposed Rule 15c2–13 and proposed amendments to Rule 10b–10 under the Securities Exchange Act of 1934, which would require brokers and dealers to provide customers immediate written notification of certain additional information relevant to their securities transactions. For further information, please contact C. Dirk Peterson at (202) 942–0073.

2. Consideration of whether to adopt amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 which require a broker, dealer, or municipal securities dealer underwriting municipal securities to reasonably determine that an issuer of municipal securities or an obligated person has agreed to make available annual financial information an event notices; and which impose requirements on brokers, dealers, and municipal securities dealers recommending the purchase or sale of municipal securities covered by the rule. For further information, please contact Janet W. Russell-Hunter at (202) 942–0073; or Amy Meltzer Starr at (202) 942–1875.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 3, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27744 Filed 11–4–94; 1:18 am]

BILLING CODE 8010–01–M

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federal register

Tuesday
November 8, 1994

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905
Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions; Final Rule

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby amends the regulatory provisions contained in Chapter 99 of Title 48. The amendments being promulgated today as a final rule apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations), and require that such educational institutions comply with certain specified CASB rules, regulations and Cost Accounting Standards (CAS).

EFFECTIVE DATE: This rule is effective on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised CAS, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a final rule.

This promulgation completes the four step process.

B. Background

Prior Promulgations: Based on information that some institutions of higher education were improperly allocating indirect costs to Federal research programs and charging unallowable costs to Federal awards (e.g., contracts, grants and cooperative agreements), the CASB published three Federal Register (FR) proposals requesting public comments from interested parties concerning the proposed application of the Board's rules, regulations and Standards to educational institutions. A Staff Discussion Paper was published on October 8, 1991 (56 FR 50737). After consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) on June 2, 1992 (57 FR 23189). On December 21, 1992, after consideration of the public comments received in response to the ANPRM, the CASB published a Notice of Proposed Rulemaking (NPRM) (57 FR 60503) concerning proposed amendments to Chapter 99 of Title 48 that, when issued as a final rule, would require educational institutions to comply with certain specified CASB rules, regulations and Standards.

Public Comments: Seventy sets of public comments were received in response to the NPRM from educational institutions, Government agencies, public accounting firms, a professional accounting association, other associations, and an individual.

Many commenters opposed the CASB's proposal to independently promulgate CAS coverage for application to colleges and universities. The commenters' concerns centered primarily on the premise that the Board's proposal would result in a "second" set of accounting rules that may conflict with the accounting principles specified in Office of Management and Budget (OMB) Circular A–21, Cost Principles For Educational Institutions. Establishment of a "single" set of accounting requirements in Circular A–21 was recommended. In the promulgations referenced above, the Board stated that its proposed requirements are intended to be compatible with the basic requirements of Circular A–21. No conflicting provisions were specifically identified by the commenters. The Board, in its promulgations, repeatedly stated that it expected OMB to extend the CAS coverage established for contracts to grants and other forms of financial assistance by formal revision of Circular A–21.

On July 26, 1993, OMB, in the preamble comments to a Federal Register proposal making certain final revisions to Circular A–21 (58 FR 39997), stated that "Consistent with the Board's stated expectations, OMB plans to extend the CASB's regulations and Standards applicable to educational institutions to all awards (contracts and grants) made to institutions that are major recipients of Federal research funds."

Consistent with the CASB's stated expectations and independent statutory rulemaking authority, the CASB is promulgating this final rule in today's Federal Register. The Board has purposefully delayed the effective date of this final rule by 60 days so that OMB, by separate action, can amend Circular A–21 to incorporate the Board's requirements. Once promulgated, the Circular A–21 amendments incorporating CAS should mitigate the basis for the commenters' concerns regarding "two" sets of rules.

A number of commenters expressed opposition to the Board's proposal from administration and cost of implementation viewpoints, but such commenters generally did not take issue with the technical aspects of the proposed coverage. Some commenters endorsed the Board's proposal. Several commenters provided constructive editorial and technical comments which, in their opinion, would improve and clarify the Board's proposed regulatory coverage.

The commenters' overall concerns and suggestions are addressed in greater detail under Section E., Public Comments. The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those offered to clarify and improve the proposed language in Parts 9903 and 9905, and the content of the proposed Disclosure Statement. Many of the commenters' suggested improvements have been incorporated into the final rule being promulgated today.

Benefits: After consideration of the public comments received, it is the Board's opinion that the application of the CAS provisions being promulgated today will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs under Federal awards, and that the incremental costs of compliance with the Board's specific requirements will be minimal. Costs associated with the initial preparation and maintenance of a Disclosure Statement should be offset by reductions in the recurring administrative costs currently associated with the preparation of cost accounting data being submitted routinely to the cognizant Federal agencies for informational support, evaluation and negotiation of the institutions' indirect cost rate proposals. Use of the Disclosure Statement being promulgated today should also reduce the potential for disagreements between the contracting parties regarding an institution's cost accounting practices.

The Board believes this final rule will promote uniformity and consistency in the educational institutions' cost accounting practices. The potential benefits accruing to the Government's audit, negotiation and general contract administration processes will be substantial and will greatly outweigh any added costs.

Proposed Amendments: A brief description of the proposed amendments follows:

Part 9903, Contract Coverage: In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting certain contracts awarded to educational institutions from CAS, is deleted. Subsections 9903.201–1 and 9903.201–2 are amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the particular Standards and associated contractual provisions to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish a unique contract clause for inclusion in CAS-covered contracts awarded to educational institutions. Subsection 9903.201–6 is amended to reference the new contract clause's provision permitting equitable adjustments when a change in cost accounting practice is found to be desirable and not detrimental. Section 9903.201–7 is added to specify cognizant Federal agency responsibilities for administering CAS-covered contracts. Section 9903.202 is amended to establish Disclosure Statement filing requirements for educational institutions (including temporary transition period filing requirements), prescribe the disclosure form to be submitted by educational institutions, and add new provisions requiring the cognizant Federal agency to establish policies and procedures for promptly determining the adequacy of submitted Disclosure Statements. In Subpart 9903.3, CAS Rules and Regulations, Section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms.

Part 9905, Cost Accounting Standards For Educational Institutions: A new Part 9905 is added to incorporate four new Standards applicable to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (Section 9903.501), one requiring consistency in allocating costs (Section 9903.502), one requiring contractor identification of specific unallowable costs (Section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (Section 9903.506).

Summary Description of Amended CAS Coverage: As amended, Part 9903 and Part 9905 apply to educational institutions. A prescribed CAS contract clause must be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving a CAS-covered award will be contractually required to (1) consistently follow its established cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, (3) identify unallowable costs and exclude from its billings, claims and proposals costs that are expressly unallowable or mutually agreed to be unallowable, and (4) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs. Institutions receiving CAS-covered contracts will also be required to formally disclose, in a prescribed Disclosure Statement, and consistently follow their disclosed cost accounting practices, when a business unit of an institution:

(a) receives a CAS-covered contract or subcontract of $25 million, or more,

(b) received more than $25 million of CAS-covered contracts and subcontracts in its preceding cost accounting period, of which at least one award exceeded $1 million, or

(c) receives a CAS-covered contract or subcontract in excess of $500,000 *and* is one of the major recipients of Federal funds that is listed in Exhibit A of OMB Circular A–21.

Transition period Disclosure Statement filing requirements and temporary agency waiver authority are provided so agencies can phase-in the basic disclosure requirements in an orderly manner.

The CAS contract clause further provides for equitable price and cost adjustments in the event an institution is required to or elects to change its established or disclosed cost accounting practices (including cost accounting practice changes mandated by future amendments, if any, to Circular A–21), fails to consistently follow its established or disclosed cost accounting practices, or fails to comply with applicable Standards.

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget, and assigned Control Number 0348–0055.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule affects educational institutions receiving negotiated Federal contracts or subcontracts in excess of $500,000. The economic impact on educational institutions resulting from this rule is expected to be minor. Therefore, the Board has determined that this is not a "major rule" under Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the NPRM published in the Federal Register on December 21, 1992, 57 FR 60503, wherein public comments were invited. Seventy commenters responded. Their comments were considered. The Board's actions taken in response thereto are summarized in the paragraphs that follow:

OMB Circular A–21

Comment: Many educational institutions opposed the CASB proposal to independently promulgate regulations for application to colleges and universities. Instead, they recommended that the Board "adopt" the provisions contained in the OMB Circular A–21 which they stated is also being revised to resolve the same type of problems cited as the reason for applying the proposed CAS provisions to educational institutions. Such commenters stated:

The proposed Standards duplicate A–21 requirements.
Extra Standards are unnecessary, A–21 is adequate with planned changes, etc.
CAS will increase the potential for conflicts between the two regulations.
The Government has failed to demonstrate the need for two sets of regulations.
The Board should work with OMB to develop a mutually acceptable single A–21 rule.

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Response: In the NPRM, the Board specifically responded to virtually identical concerns which were expressed by commenters in response to the ANPRM.

The Board strongly disagrees with the commenters' perceptions that the Board's proposal is duplicative of the accounting principles specified in Circular A–21 and therefore is unnecessary.

Circular A–21 does not require educational institutions to formally disclose the cost accounting practices they use to estimate, accumulate and report the costs of performing Federal awards. Information currently obtained by Federal officials concerning an institution's cost accounting practices is generally limited to data (1) indirectly reflected in an institution's individual cost proposals or reimbursement claims, (2) sampled, reviewed and reported on by auditors, and/or (3) provided in conjunction with the submission of the institution's indirect cost rate proposals to the extent specifically required by the Federal negotiator. Consequently, when such cost accounting information is obtained by Federal officials, it is acquired sporadically, in varying degrees of uniformity and thoroughness.

Circular A–21 does not contain the specific criteria and guidance provided in the four Standards under consideration. Proposed Standards 9905.501 and 9905.502 establish fundamental consistency requirements, define terms, detail techniques and provide illustrations for achieving compliance with the Standards' fundamental requirements. These two Standards constitute a significant expansion and clarification of the general consistency concepts specified in Circular A–21. Standard 9905.505 prescribes alternate methods that may be applied in meeting the fundamental requirement to identify and exclude costs that are not allowable under the terms of Federal awards. Standard 9905.506 requiring that a consistent cost accounting period be used, additionally specifies how an institution can comply with that requirement, including the use of specified transition periods in cases where a change in cost accounting periods is necessary or alternate methods where use of a twelve month period is not appropriate. Again, the specificity and detailed guidance contained in the four Standards is not contained in Circular A–21.

Accordingly, it is the Board's view that:

The commenters general objections appear to deal more with the form of regulatory coverage rather than the substance of the coverage.

Promulgation of the Board's proposal will provide for disclosure of an institution's cost accounting practices in a structured manner that is more efficient and effective than the current unspecified process.

Disclosure and application of the proposed Standards will facilitate and improve the administration of Federal payments to recipients of Federal funds and provide greater assurances that the educational institutions follow their cost accounting practices in a consistent manner.

The Board's statutory authority for promulgating cost accounting rules, regulations and Standards resides with the Board. Delegation of such authority to other Federal officials is not authorized under the statute.

The Board's proposed provisions augment, but do not duplicate, the requirements of Circular A–21. Thus, adoption of Circular A–21 requirements in lieu of the Board's proposal would be inappropriate.

Comment: Several commenters stated that CAS should be implemented after expected OMB Circular A–21 "accounting" changes go into effect. This would avoid the necessity for filing Disclosure Statement (DS) revisions and cost impact statements.

Response: The referenced accounting principle changes were incorporated in Circular A–21 on July 15, 1993. The Circular's amended provisions are to be "* * * implemented with the establishment of indirect cost rates for all fiscal years beginning on or after January 1, 1994." It is the Board's understanding that these amendments need not be implemented during any fiscal years where predetermined indirect cost rates have already been established. Thus, the date the Circular's provisions "go into effect" will vary from institution to institution. The CASB's provisions are designed to be compatible with existing and future amended A–21 accounting principles. Whenever an OMB Circular A–21 mandated accounting principle change requiring an institution to change its cost accounting practice(s) is actually implemented, only the page(s) in the DS pertaining to the changed practice(s) need be amended and filed prior to actual implementation of the change. In such cases, the institution, pursuant to provision (a)(4)(iv) of the contract clause at 9903.201–4(e), must also resolve with their cognizant Federal agency officials whether an equitable adjustment is or is not required under existing CAS-covered contracts. Guidance for effecting equitable price adjustments is contained in 9903.305, Materiality, and 9903.306, Interpretations.

Accordingly, it is not feasible, desirable or necessary for the Board to establish a concurrent effective date as suggested for implementation of this final rule.

Administrative Costs to Implement CAS

Comment: Many of the commenters stated that the CASB rules impose an administrative cost burden.

Response: The commenters various concerns that application of the Board's proposed CAS coverage will impose an administrative cost burden generally evolved into two basic questions:

1. What presently constitutes an adequate cost accounting system under the terms and conditions of existing Federal awards?
2. What are the additional costs imposed by CAS?

Educational institutions are required to maintain adequate records for the accumulation and identification of allowable costs under the existing regulatory requirements incorporated in their existing Federal awards. It is not altogether clear if the cited administrative cost concerns are solely attributable to the Board's proposal or a possible indication of a lack of compliance with the existing contractual requirements concerning the maintenance of adequate estimating and cost accounting systems. Educational institutions must presently administer their Federal awards and resolve any cost accounting issues raised by Federal officials in accordance with existing administrative processes. The administrative costs that were or are currently being incurred by some of the major universities to resolve the recent Federal challenges to proposed and claimed costs were not mentioned.

When several universities were recently subjected to increased Federal audit scrutiny, millions of dollars of claimed costs were questioned and recovered by Federal agencies. The basis for such Federal challenges were attributed to (1) differing interpretations regarding the propriety of the institutions' cost allocation processes and (2) the institutions' failure to identify and exclude unallowable costs from their proposals and cost-reimbursement claims. The CASB's proposal requires formal disclosure of the major institutions' cost accounting practices; and, provides Standards for attaining consistency and for identification and exclusion of unallowable costs. The additional costs imposed by CAS are the incremental costs required to complete and maintain Disclosure Statements. The CAS consistency and unallowable cost provisions are Standards for meeting existing contractual requirements. Thus, the Board views the administrative costs associated with the latter as part of the normal costs of compliance with the basic contractual requirements that are imposed under existing regulations.

Further, the Board believes the proposal will reduce the potential for after-the-fact disagreements over the educational institutions' cost allocation processes, establish a more structured process for resolving cost accounting issues and will, in the long run, benefit both the Government and the educational institutions.

The expressed concerns did not result in modification of the Board's proposed regulatory requirements. However, the content of the proposed CASB Form DS–2 was significantly reduced to minimize Disclosure Statement preparation costs, as discussed in Paragraph F.

Civilian Agencies are Not Staffed to Administer CAS

Comments: Several commenters stated that they would be adversely impacted because agencies are not staffed to administer Disclosure Statements (DSs) and routine changes in their accounting systems. The Department of Health and Human Services confirmed that it too was concerned about its abilities to immediately implement the proposed CAS requirements for all CAS-covered entities.

Response: In consideration of the expressed concerns, the Board concluded that delayed implementation of the DS submission requirements would benefit the contracting parties. Under the NPRM, educational institutions meeting specified criteria were required to submit a DS prior to receipt of a CAS-covered contract. It is not the Board's intent to preclude the award of a contract where an institution has not yet become familiar with the Board's new disclosure requirements or been provided a reasonable opportunity to disclose its cost accounting practices. Further, the Board views an orderly phased-in implementation period as preferable to the proposed requirement which could clearly strain cognizant Federal agency resources if concurrent receipt of a significant number of DSs occurred. Accordingly, the Board has delayed implementation of the basic requirement and established transition period requirements for the filing of new DSs, applicable exclusively to educational institutions, at 9903.202–1(f).

Under the cited transition period provisions, educational institutions are authorized to file completed DSs *after* receipt of a CAS-covered contract that is placed on or before December 31, 1995. Six month filing periods ending six, twelve, and eighteen months after receipt of such contracts were established to phase-in the basic disclosure requirement in order to minimize the impact on educational institutions and Federal agencies. The twenty largest recipients of Federal funds were expected to submit completed DSs first and are, therefore, subject to the six month after award filing requirement. The next largest group of Federal funds recipients are subject to the twelve month requirement, etc.

Implementation of the basic requirement that a completed DS be provided or be on file with the cognizant Federal agency prior to award applies to CAS-covered contracts placed on or after January 1, 1996. However, where the cognizant Federal agency and the educational institution have established a DS due date falling between January 1, 1996 and June 30, 1997 pursuant to 9903.202–1(f)(3) and (4), individual awarding agencies are provided authorization to waive the preaward filing requirement for contracts placed during that period when necessary to avoid any potential due date conflicts.

For those educational institutions required to disclose their cost accounting practices, the transition provisions are intended to permit the larger recipients of Federal funds to complete and file DSs on or before June 30, 1996 and the smaller recipients to complete and file DSs no later than June 30, 1997. Earlier compliance with the basic disclosure requirement is encouraged.

The Board has also established additional provisions at 9903.201–7 and 9903.202–6 requiring Federal agencies to establish appropriate policies and procedures to administer CAS and to determine the adequacy of submitted DSs in a timely manner.

Predetermined Indirect Cost Rates (PDICRs)

Background: Predetermined fixed rates or negotiated fixed rates are used by some agencies to reimburse educational institutions for indirect costs associated with their cost-reimbursement type contracts and grants. Generally, such PDICRs are negotiated in advance, and are applied to direct base costs incurred and billed in subsequent periods. PDICRs are final rates, i.e., the indirect costs so determined and paid under Federal awards are not subsequently adjusted to reflect the actual allowable indirect costs incurred during the subsequent periods of performance. At some locations where a civilian agency is the cognizant Federal agency, an institution's PDICR proposal may be based on actual costs *extrapolated* from the institution's fund accounting records that were maintained for a completed fiscal year, i.e., a prior base year (e.g., year 1). The base year's costs may be adjusted to reflect estimated base and pool costs for future fiscal years (e.g., PDICRs negotiated in year 2 may cover years 3, 4, etc.). Under the current Federal Acquisition Regulation (FAR), FAR 42.705–3(b) only permits the use of "predetermined final indirect cost rates" for contract awards when specified conditions are met. Predetermined rates covering more than a one year period are prohibited under FAR 42.705–3(b)(6).

Comment: The Department of Health and Human Services asked the Board to "* * * explicitly state that the standards do not preclude the use of * * *" PDICRs.

Response: The use of PDICRs is subject to agency procurement regulations. Where permitted by statute and implementing agency regulations, negotiated PDICRs can continue to be used *provided* that, in the completed base year and in subsequent cost accounting periods, (1) all costs incurred for the same purpose, in like circumstances, are consistently treated as either direct costs only or as indirect costs only and (2) the allocation base costs (e.g., Modified Total Direct Costs) and allowable indirect cost pool amounts are grouped, accumulated and allocated in a consistent manner. The base costs and pool costs used to calculate predetermined or negotiated fixed rates should be estimated by using the same cost accounting practices that were used to measure, assign, and allocate actual base costs and indirect pool costs for a completed fiscal year. If different cost accounting practices are used to estimate and accumulate base or pool costs of a future period, the change in cost accounting practice must be disclosed under the terms of CAS-covered contracts. The cost accounting practices used to determine estimated (predetermined) and actual indirect costs are subject to the Board's CAS and Disclosure Statement requirements.

The use of predetermined or negotiated fixed rates, for administrative convenience or for other reasons, should not be viewed as a CAS noncompliance issue, provided the institution maintains cost accounting records which clearly demonstrate that direct and indirect costs are determined in a consistent manner, when the institution estimates, accumulates and reports costs applicable to Federal awards (See 9905.501).

Comment: One university representative requested the Board to "* * * comment on the significance of

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* * *" PDICRs and compliance with CAS. The commenter believes that CAS compliance is achieved if the PDICR is "* * * multiplied by the applicable direct cost base. Any further inquiry into actual indirect costs would be inconsistent with the premise of predetermined rates * * *".

Response: The Board does not agree with the commenter's perceptions. Under existing Federal contractual audit and record keeping requirements, an institution must maintain a complete set of accounting records, supported by source documents, that adequately reflect all costs incurred and claimed under their Federal awards. Such records must also be made available for audit pursuant to applicable Federal audit requirements. Under the CAS being promulgated today, an educational institution is required to maintain cost accounting records which reflect the consistent application of the institution's established cost accounting practices, including those used to classify a cost either as a direct or indirect cost, when estimating, accumulating and reporting costs during *each cost accounting period.* Memorandum or work sheet records are acceptable.

Based on this comment, the Board is concerned that some institutions may not be maintaining annual cost accounting records that adequately identify how their total direct and indirect costs are treated during each cost accounting period. Without such annual records, the institution's internal controls and the "audit trail" (from source documents to final cost accumulation points) would be obscured. Consequently, the institution's ability to demonstrate the consist application of its established cost accounting practices when estimating, accumulating and reporting direct and indirect costs may be irreparably impaired.

Educational institutions are advised that failure to maintain adequate cost accounting records *for each cost accounting period* may be viewed as a violation of their existing contractual record keeping requirements and/or result in a determination that the institution has failed to comply with an applicable CAS or to consistently follow its established cost accounting practices.

Negotiated Fixed Rates and Carry-Forward Provisions (NFR–CFPs)

Background: OMB Circular A–21 provides that where NFR–CFPs are used, the over- or under-recovery in a particular year may be included as an adjustment to the indirect cost recognized as allowable and allocable in a subsequent year.

Comment: An accounting association expressed concerns that use of NFR-CFPs may result in significantly inaccurate measurements of cost for a particular cost accounting period.

Response: To some, this overall adjustment process may raise valid cost assignment and allocation issues. However, the carry forward provision is viewed by the Board as essentially an administrative expedient. It is the Board's understanding that the carry-forward provision is generally used where the number of Federal awards is significant but the volume of Federal activity is relatively stable and predictable. Rather than adjust the individual amounts billed for a large number of awards, necessary adjustments are effected in an overall manner by offsetting different amounts otherwise considered allowable. Such offsets made in a subsequent period for adjustments attributable to a prior period represent, in essence, the implementation of an administrative policy on how to best effect adjustments for any over- or under-payments after the actual allowable costs are determined for a prior period.

Where agency procurement regulations permit the use of NFR-CFPs, the resulting cost adjustment process should not be viewed as a CAS noncompliance issue *per se.* Necessary adjustments may be applied under CAS-covered contracts if the cost accounting practices used to initially determine forecasted or actual indirect costs and rates (exclusive of any carry forward adjustments) for each year comply with the Board's rules, regulations, and Standards. In such cases, however, a distinctive two step procedure must be followed. First, the forecasted or actual indirect expense pool(s) used to initially determine the forecasted rates and the actual prior year rates must be determined exclusive of any carry forward adjustments. The cost accounting practices used to do so must meet applicable CAS requirements. Then, after the rates are so determined, the institution and cognizant Federal negotiator may, if permitted by agency regulations, effect appropriate adjustments to a forecasted year rate to compensate for any over- or under-estimated indirect cost payments made in a prior year.

Part 9903 CAS Applicability Provisions

Comment: A commenter asked if a negotiated contract would be considered CAS-covered, where a contract initially awarded for $325,000 to cover a three year performance period were increased to $625,000 and the performance period were extended to five years.

Response: The CAS applicability threshold is determined at the time the basic contract is awarded based on the total negotiated price for the entire scope of work contemplated, including all options. If only a three year contract was contemplated, the described contract action totaling $325,000 would not incorporate a CAS contract clause. However, if the Government had initially contemplated a five year contract performance period but available funds were obligated to only cover the first three years, CAS applicability would be determined based upon the negotiated contract price for the full five year period. That is, where a negotiated contract is incrementally funded, the individual amounts of funding provided in the basic award and subsequent funding modifications are not to be used individually in determining CAS applicability. Rather, the entire estimated contract cost, plus fee, if any (for the entire period of performance), is used to determine CAS applicability.

Comment: A commenter asked if an existing negotiated contract in excess of $500,000 that is not currently CAS-covered would become CAS-covered after promulgation of this final rule if a contract modification increases the contract price by $100,000.

Response: No. The existing non-CAS-covered contract would not become CAS-covered even if the modification was in excess of $500,000.

Comment: A commenter asked if a $200,000 subcontract awarded under a CAS-covered prime contract would be CAS-covered?

Response: No. Only negotiated subcontracts in excess of $500,000 will be required to be CAS-covered.

Comment: Several commenters expressed opposition to the proposed CAS applicability provision that requires full coverage when an institution receives a single CAS-covered award in excess of $500,000 and the institution is listed in Exhibit A of OMB Circular A–21.

Response: Exhibit A of the Circular lists the 99 educational institutions that receive the preponderant amount of Federal research funds under their contracts and grants. The listed institutions receive Federal funds ranging from more than $25 million annually to amounts in excess of $250 million annually. Unlike commercial organizations, however, many of these educational institutions do not receive large individual dollar value contracts that could be used as an effective applicability threshold, e.g., to trigger a

Disclosure Statement requirement. Rather, they receive a large number of small dollar value contract and grant awards. The Board believes it would be beneficial to the contracting parties if the larger recipients of Federal research funds formally disclosed their cost accounting practices. Accordingly, use of only a $25 million contract threshold to initiate the disclosure requirement being promulgated today was not considered sufficient to meet the Board's objective.

Comment: There is an inconsistency in the proposed threshold coverage: Coverage is set at "$500,000 or more" and at "in excess of $500,000."

Response: The NPRM proposed language has been revised to consistently cite "in excess of $500,000."

Comment: If educational institutions are to be covered by CAS, whereas only their FFRDCs were covered previously, all future CAS-covered contracts awarded to educational institutions should be subject to the same coverage. The proposal to retain modified and full coverage for such FFRDCs should be eliminated.

Response: FFRDCs are generally treated as an independent segment of an educational institution and have been subject to full or modified CAS coverage prescribed by the CASB and incorporated in Part 9903 and Part 9904 by the Board. That prescribed coverage for FFRDCs is not modified or revised by this final rule.

Part 9905 Cost Accounting Standards

Standard 9905.501

Comment: If an institution installs a new accounting system with a new chart of accounts during the performance of a contract and it cannot report actual costs consistent with the way the costs were estimated, does this constitute a violation of the Fundamental Requirement at 9905.501–40(b)?

Response: Yes. Changes made in an institution's general accounting systems used for financial management and reporting purposes that result in a change in the institution's cost accounting practices or noncompliance with a Standard are subject to paragraphs (a)(4) and (a)(5), respectively, of the contract clause at 9903.201–4(e).

Comment: A commenter suggested that the Board clarify that the providing of estimated cost data in greater detail than the institution's accounting system can handle should not constitute a violation of Standard 9905.501.

Response: The Board's proposal was predicated on Standard 9904.401. However, the Interpretation at 9904.401–61 that addressed to what degree the costs for estimated scrap and shrinkage costs in a manufacturing production oriented environment should be accounted for in a contractor's cost accounting records was not included in 9905.501. Scrap and shrinkage costs were not considered a material cost item under research contracts performed by educational institution. The Board believes that the record keeping concepts expressed in the referenced Interpretation apply equally to this commenter's concern and that such guidance would facilitate implementation of 9905.501. Accordingly, the portions of the referenced Interpretation concerning the amount of detail required in accumulating and reporting costs have been incorporated at 9905.501–50(c).

Standard 9905.502

Comment: One commenter expressed difficulty in understanding the concepts of Standard 9905.502 where the university engages in cost sharing, where projects have multiple sponsors particularly in light of the university's desire to accommodate the different requirements imposed by Federal and private supporters and the different fund accounting methods it uses to account for restricted and unrestricted funds.

Response: The statements provided by this commenter infer that, in a university "fund" accounting system, direct and indirect costs for a particular project cannot always be allocated to final cost objectives on a consistent basis. Thus, the proposed Standard requires revision. If that was the commenters intent, the Board does not agree.

One of the Board's primary objectives is to prescribe rules and regulations that will result in the consistent and equitable allocation of direct and indirect costs to CAS-covered contracts. The purpose of Standard 9905.502 is to require consistency in the institution's cost accounting practices followed for determining the direct and indirect costs to be allocated to all final cost objectives. The Standard requires that the institution's cost accounting practices consistently treat costs incurred for the same purpose, in like circumstances, as either a direct cost or an indirect cost, without regard to the source or type of funds (restricted or unrestricted) involved. While multi-sponsored projects and cost-sharing arrangements are not specifically addressed, this Standard requires that direct and indirect costs be allocated to all final cost objectives established for each project on a consistent basis in the institution's cost accounting system. A project's costs may be accumulated under one final cost objective and be identified with individual sponsors on a pro rata basis, and/or project costs may be accumulated and recorded in sub-accounts or individual cost accumulation points (final cost objectives) associated with each sponsor. This Standard does not prescribe criteria for determining what constitutes a project or the number of final cost objectives required to accumulate costs for a project.

Comment: Where a large major research contract involves the management of major subcontracts, complex procurements and equipment fabrications, award and administration costs of such activities may be directly attributable to the research project and are charged directly. Conversely, procurements under smaller projects that are relatively simple to administer, may be administered by the department's general business manager, who is included in Departmental Administration indirect cost pool. The Board should recognize that this is not a violation of the Standard.

Response: Where an institution can demonstrate different circumstances, Standard 9905.502 permits the use of different allocation methods. However, the described circumstances appear identical to the illustration of costs that are incurred for the same purpose, at 9905.502–60(a)(1), where the institution elects to charge travel costs, normally treated as an indirect cost, directly to a contract. That illustration provides that similar travel costs incurred under other contracts may no longer remain in the indirect expense pool. The described subcontract administration costs appear to be incurred for the same purpose, regardless of the subcontracts' size, nature or complexity. Double counting may occur if the costs of administering other subcontracts under the smaller projects are not removed from the Departmental Administration indirect cost pool and charged directly. Determinations on whether different circumstances are or are not involved must be made on a case-by-case basis.

Comment: In 9905.502–30(a)(4), it should be made clear that the term "final cost objective" is not intended to mean each individual contract.

Response: The term "final cost objective" as defined in the Standards, applies to individual cost objectives, e.g., individually sponsored projects (contracts, grants, etc.), co-sponsored projects, in-house projects, and similar cost objectives. Normally, costs

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accumulated in a final cost objective are not allocated to other cost objectives.

Comment: A Federal agency recommended that, in 9905.502–60(a)(2), the proposed term "planning costs" be replaced with a more representative term such as "purchasing activity" which is a more significant cost item at universities.

Response: The illustration was appropriately revised.

Comment: A commenter suggested that certain prescribed OMB policies and procedures be illustrated as an acceptable practice in the Standard.

Response: The suggestion would result in the duplication and unnecessary proliferation of existing regulations. The commenter did not indicate if there was a potential conflict between CAS and OMB Circular A–21, accordingly the proposed Standard was not modified.

Standard 9905.505

Comment: A commenter from a major university stated that paragraph 9905.505–60(f) describes how to handle a cost overrun on a contract. However, it does not consider the way in which cost overruns must be handled in a fund accounting system. This paragraph should either be deleted or modified to recognize the requirement of a fund accounting contractor.

Response: The Board's Standards pertain to the complete set of cost accounting practices used by an institution to estimate, accumulate and report costs under negotiated Federal awards. Conceptually, the same cost accounting practices are applied to all activities of a segment performing CAS-covered contracts in order to ensure all costs are allocated on a consistent basis to all final cost objectives. The particular provision in question requires that an institution be able to identify the total costs incurred with respect to a particular contract or similar cost objective, regardless of available funding considerations. In cases of a contract cost overrun, the Standard does not prescribe how the cost overrun is to be treated in the educational institution's "fund" accounting system.

The commenter's statements remain a concern to the Board, as this issue was discussed in the preamble comments to the NPRM. The explanatory statements currently provided infer that cost overruns cannot be accumulated and reported in a university environment. Because all costs must be funded in order to be recorded in a fund accounting system, the commenter advised that the direct costs of an overrun contract must be transferred to other projects or to other indirect cost centers (e.g., from Research to Instruction). Within the set of cost accounting practices used for determining the costs of Federal awards, such transfers could result in the allocation of different indirect cost amounts to the same base costs and alter the amount of indirect costs allocated to other final cost objectives. If so, the described practices would not be in compliance with the consistency requirements being promulgated today. The commenting university is encouraged to review, and possibly modify, its cost accounting practices being followed under Federal awards to ensure that they will be in compliance with the Board's consistency requirements.

Comment: One commenter asked: After identifying an indirect cost that has been questioned by the auditor and sustained by the contracting officer, must the university also deduct it from subsequent proposals pending appeal?

Response: No. The type of costs under appeal must be identified in, but need not be excluded from, proposals and reimbursement claims. If, after the appeal is adjudicated, the Contracting Officer's final decision is not overturned and the costs remain unallowable, the Standard's identification and exclusion provisions would apply.

Comment: A commenter suggested that, in 9905.505–60(d), the phrase "interim bidding and billing rates" be replaced by a more commonly used term.

Response: The phrase was replaced by the generic term "indirect cost rates."

Standard 9905.506

Comment: Under paragraph 9905.506–50(a)(2), a commenter suggested adding the words "or cost group" after the words "indirect cost pool." By way of explanation, the commenter advised the only way one could handle a situation of an indirect cost function which exists for only part of a year is to set up a separate cost group *within* one of the A–21 specified indirect cost pools.

Response: This suggestion was partially adopted. The term "expense pool" was added instead of the suggested term.

The commenter's suggestion and rationale could be erroneously interpreted by some to mean that a separate pool and allocation base applicable to the partial period need not be established. This Standard requires the use of a full cost accounting period, e.g., normally the institution's fiscal year. An exception provision permits the use of a shorter period for the allocation of indirect costs that only exist during a portion of the cost accounting period. In such cases, 9905.506–50(a) requires the establishment of a separate allocation base, during the partial period, that is representative of the short term function. That provision also requires that the indirect costs associated with the unique short term function be accumulated in a separate indirect cost pool. The resultant allocation to final cost objectives of the short term period would generally be independent of the normal A–21 allocation process that is predicated on allocation bases and indirect cost pools applicable to all work performed during a full cost accounting period. The Board believes incorporation of the term "expense pool" will clarify that unique indirect costs that only exist during a portion of the cost accounting period may be accumulated in a separate pool and allocated to final cost objectives of that shorter period.

Comment: A commenter stated that, in the illustration at 9905.506–60(a), the proposed phrase "estimated amount of the Organized Research expense pool" was unclear and suggested use of the phrase "estimated amount of indirect costs allocated to Organized Research."

Response: The suggested change was adopted.

Disclosure Statement (DS)

Comment: One commenter recommended that the Board clarify that the different and special handling of direct vs. indirect costs of an FFRDC contract from all other CAS-covered contracts does not constitute a violation of Standard 9905.502.

Response: When the cost accounting practices of the FFRDC activity and other institutional activities differ, the FFRDC should be treated as a separate "segment" and file its own DS. Where costs of the institution are allocated to both FFRDC and non-FFRDC activities, the segments' DSs should appropriately detail how institution-wide costs are allocated to the segments. Each segment must then disclose its particular cost accounting practices.

Likewise, if two departments at a campus location follow different cost accounting practices, the institution must decide if the two departments should be treated as separate segments and file separate DSs for each or if the cost accounting practices of the two departments should be conformed.

Comment: A Federal agency and other commenters advised that the level of detailed cost accounting records maintained by educational institutions to accumulate costs may vary depending upon the indirect cost category or functional activity involved.

Response: In determining the costs of performing Federal awards, an institution's cost accounting records must be able to first identify and accumulate the total costs of each indirect cost category to be allocated to all major functions and activities of the institution. The accounting records maintained for this purpose must be sufficiently detailed to enable the contracting parties to reasonably establish base costs and indirect pool costs, applicable to all functions and activities, in a consistent manner. However, decisions on the level of detailed accounting records to be maintained should be influenced by the materiality of the costs being allocated to Federal awards. Reasonable approximations of costs may be used when the costs are immaterial or the resultant allocations to intermediate and final cost objectives will not differ materially from the amounts that would be obtained if more precise and detailed records were maintained. The level of accounting detail considered necessary in the circumstances must, therefore, be determined on a case-by-case basis and remains a matter subject to review and approval by the cognizant Federal agency.

In light of the commenter's statements, Item 3.1.0. of the Disclosure Statement was expanded to require disclosure of how the costs of the individual indirect cost categories are identified and accumulated. Where the costs associated with a particular indirect cost category are not formally accumulated and recorded in the institution's formal accounting system, the cost accounting practices followed to identify such costs for allocation to the major functions and activities of the institution must be fully described on a continuation sheet.

F. Additional Revisions—Disclosure Statement (DS) Form CASB DS–2

By memorandum dated February 1, 1994, the Deputy Administrator, Office of Information and Regulatory Affairs (OIRA), advised the Board that some representatives from OMB and the Department of Health and Human Services (HHS) had recently informed OIRA that the Board's proposed DS Form CASB DS–2 could be improved.

The Board advised OIRA that in order to meet its primary objective, the promulgation of a useful DS Form, it would consider any additional OMB suggestions or Federal agency elaborations regarding their previously submitted responses to the Board's NPRM. Representatives from OMB's Office of Federal Financial Management, HHS and the Department of Defense proceeded to develop a list of suggested changes which, in their view, would further clarify the proposed disclosure requirements or curtail the amount of disclosure needed for certain cost elements that were not considered to be significant or problematic. The list was informally coordinated with the CASB's staff. A revised CASB Form DS–2 was then prepared by the CASB staff and submitted to the Board. Most of the suggested changes were adopted by the Board and are reflected in the CASB Form DS–2 being promulgated today.

Essentially, a number of DS items contained in the NPRM were deleted and/or restated to facilitate disclosure. Consequently, the Board believes the DS being promulgated today is more useful and cost effective than that proposed in the NPRM. To that end, the Board expresses its appreciation for the assistance provided by OMB and agency representatives.

On July 21, 1994, OMB promulgated a Notice in the **Federal Register** (59 FR 37276) for paperwork clearance purposes and copies of the revised Form CASB DS–2 were made available to interested parties. Based on the public comments received, the promulgated Form CASB DS–2 was further revised as follows:

Item 2.4.0 was revised to clarify that the term "direct personal service costs" may include applicable fringe benefits costs consistent with OMB Circular A–21 provisions.

Item 3.1.0 was revised to include the word "other" to clarify that costs from one indirect cost category may be allocated to "other" indirect cost categories.

In Part VI, the instructions were expanded to provide the reporting unit with the option of completing the form for any costs incurred by another organizational entity where it has access to the necessary data or of requesting that entity to complete the pertinent items.

The Federal Acquisition Streamlining Act of 1994, in Section 2191 titled "Travel Expenses of Government Contractors" repealed Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420). Since proposed item 2.7.1. was predicated on the repealed statutory provisions, it was deleted.

In the General Instructions to the Disclosure Statement, Instruction Number 8, was modified to permit incorporation of written cost accounting polices and procedures by specific reference or alternatively by incorporation as appendices. As promulgated today, Instruction 8 is intended to facilitate full disclosure and minimize Disclosure Statement preparation costs whenever an established cost accounting practice is adequately described in an institution's formal accounting system.

List of Subjects in 48 CFR Parts 9903, 9905

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.1—General

2. Section 9903.102 is amended by revising the last sentence of this paragraph to read as follows:

9903.102 OMB Approval Under the Paperwork Reduction Act.

* * * OMB has assigned Control Numbers 0348–0051 and 0348–0055 to the paperwork, recordkeeping and forms associated with this regulation.

Subpart 9903.2—CAS Program Requirements

3. Section 9903.201–1 is amended by revising paragraph (a) and removing and reserving paragraph (b)(10) to read as follows:

9903.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201–2.

(b) * * *

(7)–(10) [Reserved]

* * * * * *

4. Section 9903.201–2 is amended by revising the first sentence in paragraph (a) and adding a new paragraph (c) to read as follows:

9903.201–2 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS specified in Part 9904 that are in effect on the date of the contract award and with any CAS that

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become applicable because of later award of a CAS-covered contract. * * *

* * * * *

(c) *Coverage for educational institutions*—(1) Regulatory requirements. Parts 9903 and 9905 apply to educational institutions except as otherwise provided in this paragraph (c) and at 9903.202–1(f).

(2) *Definitions.* (i) The following term is prominent in Parts 9903 and 9905. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection below requires otherwise.

Educational institution means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89–329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to educational institutions:

Business unit means any segment of an educational institution, or an entire educational institution which is not divided into segments.

Segment means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. Two schools of instruction operating under one division, campus location or other subdivision would not be separate segments unless they follow different cost accounting practices, for example, the School of Engineering should not be treated as a separate segment from the School of Humanities if they both are part of the same division's cost accounting system and are subject to the same cost accounting practices. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Developments Centers (FFRDCs), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) *Applicable Standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in Part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $500,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

(4) *FFRDCs.* Negotiated contracts awarded to an FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability and disclosure requirements for contracts other than those to be performed by the FFRDC.

(5) *Contract Clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $500,000. For CAS-covered contracts awarded to a FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4 (a) or (c), as applicable, shall be incorporated.

(6) *Continuity in Fully CAS-Covered Contracts.* Where existing contracts awarded to an educational institution incorporate full CAS coverage, the contracting officer may continue to apply full CAS coverage, as prescribed at 9903.201–2(a), in future awards made to that educational institution.

* * * * *

5. Section 9903.201–3 is amended by redesignating the introductory heading as the heading of paragraph (a); redesignating the existing introductory text and paragraphs (a) through (d) as paragraph (a)(1) introductory text and paragraphs (a)(1) (i) through (iv) respectively; adding a new paragraph (a)(2); revising the heading of the solicitation notice; adding a new paragraph at the end of the introductory "Note;" amending Part I of the basic provision by revising paragraph (e), the first and second sentences in paragraph (b) and paragraphs (c)(1) and (c)(2); and adding a new Alternate I at the end of the basic provision to read as follows:

9903.201–3 Solicitation provisions.

(a) Cost Accounting Standards Notices and Certifications.

(1) * * *

(2) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

Cost Accounting Standards Notices and Certification (Oct 1994)

Note: * * *

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201–2(c)(5) or 9903.201–2(c)(6).

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR, Chapter 99), except for those contracts which are exempt as specified in 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

* * * * *

(End of basic provision)

Alternate I (OCT 1994) Insert the following subparagraph (5) at the end of Part I of the basic clause:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (a) A Disclosure Statement filing Due Date of _____ has been established with the cognizant Federal agency.

☐ (b) The Disclosure Statement will be submitted within the six month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official where Disclosure Statement is to be filed: _____

_____

(End of Alternate I)

6. Section 9903.201–4 is amended by revising the text of paragraphs (a)(1) and (a)(2) preceding the clause and by adding a new paragraph (e) including a new clause to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in Part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

* * * * *

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in Part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards—Educational Institution (Oct 1994)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2

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is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

7. Section 9903.201–6 is amended by revising paragraph (a) to read as follows:

9903.201–6 Findings.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

* * * * *

8. A new section 9903.201–7 is added to read as follows:

9903.201–7 Cognizant Federal Agency Responsibilities.

(a) The requirements of Part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of Part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. *Procedures to be followed when an* agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

9. Section 9903.202–1 is amended by adding a new paragraph (f) to read as follows:

9903.202–1 General Requirements.

* * * * *

(f) *Educational institutions—disclosure requirements.* (1) Educational institutions receiving contracts subject to the CAS specified in Part 9905 are subject to the requirements of 9903.202, except that completed Disclosure Statements are required in the following circumstances.

(2) *Basic requirement.* For CAS-covered contracts placed on or after January 1, 1996, completed Disclosure Statements are required as follows:

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $500,000 and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $25 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $25 million or more in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

(3) *Transition period requirement.* For CAS-covered contracts placed on or before December 31, 1995, completed Disclosure Statements are required as follows:

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of the first 20 college or university locations (i.e., numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

(iv) For any other business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more, a Disclosure Statement shall be submitted within six months after the date of contract award.

(4) *Transition period due dates.* The educational institution and cognizant Federal agency should establish a specific due date within the periods prescribed in 9903.202–1(f)(3) when a Disclosure Statement is required under a CAS-covered contract placed on or before December 31, 1995.

(5) *Transition period waiver authority.* For a CAS-covered contract to be awarded during the period January 1, 1996 through June 30, 1997, the awarding agency may waive the preaward Disclosure Statement submission requirement specified in 9903.202–1(f)(2) when a due date for the submission of a Disclosure Statement has previously been established by the cognizant Federal agency and the educational institution under the provisions of 9903.202–1(f) (3) and (4). **CAUTION:** This waiver authority is not available unless the cognizant Federal agency and the educational institution have established a disclosure statement due date pursuant to a written agreement executed prior to January 1, 1996, and award is made prior to the established disclosure statement due date.

10. Section 9903.202–5 is revised to read as follows:

9903.202–5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant Federal agency (cognizant ACO or cognizant Federal agency official authorized to act in that capacity) or from the looseleaf version of the Federal Acquisition Regulation. When requested in advance by a contractor, the cognizant Federal agency may authorize contractor disclosure based on computer generated reproductions of the applicable Disclosure Statement Form.

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO or cognizant Federal agency official acting in that capacity, as applicable; and

(2) One copy with the cognizant Federal auditor.

(c) Amendments and revisions shall be submitted to the ACO or agency official acting in that capacity, as applicable, and the Federal auditor of the currently cognizant Federal agency.

11. Section 9903.202–6 is added to read as follows:

9903.202–6 Adequacy of Disclosure Statement.

Federal agencies shall prescribe regulations and establish internal procedures by which each will promptly determine on behalf of the Government, when serving as the cognizant Federal agency for a particular contractor location, that a Disclosure Statement has adequately disclosed the practices required to be disclosed by the Cost Accounting Standards Board's rules, regulations and Standards. The determination of adequacy shall be distributed to all affected agencies. Agencies are urged to coordinate on the development of such regulations.

12. Section 9903.202–10 is added to read as follows:

9903.202–10 Illustration of Disclosure Statement Form, CASB DS–2.

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB DS–2, which is illustrated below:

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the educational institution and its cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 of Title 48 CFR (48 CFR 9903).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segments, business units, and central system or group (intermediate administration) offices). Parts II through VI pertain to the types of costs generally incurred by the segment or business unit directly performing under Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). Part VII pertains to the types of costs that are generally incurred by a central or group office and are allocated to one or more segments performing under Federally sponsored agreements.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VI.

4. Each central or group office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing under Federally sponsored agreements should complete the Cover Sheet, the Certification, Part I and Part VII of the Disclosure Statement. Where a central or group office incurs the types of cost covered by Parts IV, V and VI, and the cost amounts allocated to segments performing under Federally sponsored agreements are material, such office(s) should complete Parts IV, V, or VI for such material elements of cost. While a central or group office may have more than one reporting unit submitting Disclosure Statements, only one Statement needs to be submitted to cover the central or group office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

8. Where the cost accounting practice being disclosed is clearly set forth in the institution's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference. In such cases, the reporting unit should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement item number. Any supplementary comments needed to fully describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when disclosed practices are changed to comply with a new CAS or when practices are changed with or without agreement of the Government (Also see 48 CFR 9903.202-3).

10. Amendments shall be submitted to the same offices to which submission would have to be made were an original Disclosure Statement being filed.

11. Each amendment should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date ____" in the Item Description block; and, insert "Revised" under each Item Number amended. Resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

ATTACHMENT - Blank Continuation Sheet

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	CONTINUATION SHEET
	NAME OF REPORTING UNIT

Item No.	Item Description

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

0.1 Educational Institution

(a) Name

(b) Street Address

(c) City, State and ZIP Code

(d) Division or Campus of (If applicable)

0.2 Reporting Unit is: (Mark one.)

A. ___ Independently Administered Public Institution
B. ___ Independently Administered Nonprofit Institution
C. ___ Administered as Part of a Public System
D. ___ Administered as Part of a Nonprofit System
E. ___ Other (Specify) _____

0.3 Official to Contact Concerning this Statement:

(a) Name and Title

(b) Phone Number (Include area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)

(a) ___ Original Statement
(b) ___ Amended Statement; Revision No. _____

B. Effective Date of this Statement: (Specify) _____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

A. Cognizant Federal Agency: _____

B. Cognizant Federal Auditor: _____

FORM CASB DS-2 (REV 10/94) C-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a Revision, is the complete and accurate disclosure as of the date of certification shown below by the above-named organization of its cost accounting practices, as required by the Disclosure Regulations (48 CFR 9903.202) of the Cost Accounting Standards Board under 41 U.S.C. § 422.

Date of Certification: _____

_____
(Signature)

_____
(Print or Type Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-2 (REV 10/94) C-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
	Part I
1.1.0	Description of Your Cost Accounting System for recording expenses charged to Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ Accrual B. ___ Modified Accrual Basis 1/ C. ___ Cash Basis Y. ___ Other 1/
1.2.0	Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Mark one. If B or C is marked, describe on a continuation sheet the costs which are accumulated on memorandum records.) A. ___ Integrated with financial accounting records (Subsidiary cost accounts are all controlled by general ledger control accounts.) B. ___ Not integrated with financial accounting records (Cost data are accumulated on memorandum records.) C. ___ Combination of A and B
1.3.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federally sponsored agreements are: (Mark one) A. ___ Specifically identified and recorded separately in the formal financial accounting records. 1/ B. ___ Identified in separately maintained accounting records or workpapers. 1/ C. ___ Identifiable through use of less formal accounting techniques that permit audit verification. 1/ D. ___ Combination of A, B or C 1/ E. ___ Determinable by other means. 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
1.3.1	Treatment of Unallowable Costs. (Explain on a continuation sheet how unallowable costs and directly associated costs are treated in each allocation base and indirect expense pool, e.g., when allocating costs to a major function or activity; when determining indirect cost rates; or, when a central office or group office allocates costs to a segment.)
1.4.0	Cost Accounting Period: _____ (Specify the twelve month period used for the accumulation and reporting of costs under Federally sponsored agreements, e.g., 7/1 to 6/30. If the cost accounting period is other than the institution's fiscal year used for financial accounting and reporting purposes, explain circumstances on a continuation sheet.)
1.5.0	State Laws or Regulations. Identify on a continuation sheet any State laws or regulations which influence the institution's cost accounting practices, e.g., State administered pension plans, and any applicable statutory limitations or special agreements on allowance of costs.

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part II Institutions should disclose what costs are, or will be, charged directly to Federally sponsored agreements or similar cost objectives as Direct Costs. It is expected that the disclosed cost accounting practices (as defined at 48 CFR 9903.302-1) for classifying costs either as direct costs or indirect costs will be consistently applied to all costs incurred by the reporting unit.
2.1.0	Criteria for Determining How Costs are Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For all major categories of cost under each major function or activity such, as instruction, organized research, other sponsored activities and other institutional activities, describe on a continuation sheet, your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. Particular emphasis should be placed on items of cost that may be treated as either direct or indirect costs (e.g., Supplies, Materials, Salaries and Wages, Fringe Benefits, etc.) depending upon the purpose of the activity involved. Separate explanations on the criteria governing each direct cost category identified in this Part II are required. Also, list and explain if there are any deviations from the specified criteria.)
2.2.0	Description of Direct Materials. All materials and supplies directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the principal classes of materials which are charged as direct materials and supplies.)
2.3.0	Method of Charging Direct Materials and Supplies. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)
2.3.1	Direct Purchases for Projects are Charged to Projects at: A. ___ Actual Invoiced Costs B. ___ Actual Invoiced Costs Net of Discounts Taken Y. ___ Other(s) 1/ Z. ___ Not Applicable
2.3.2	Inventory Requisitions from Central or Common, Institution-owned Inventory. (Identify the inventory valuation method used to charge projects): A. ___ First In, First Out B. ___ Last In, First Out C. ___ Average Costs 1/ D. ___ Predetermined Costs 1/ Y. ___ Other(s) 1/ Z. ___ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.4.0	Description of Direct Personal Services. All personal services directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the personal services compensation costs, including applicable fringe benefits costs, if any, within each major institutional function or activity that are charged as direct personal services.)
2.5.0	Method of Charging Direct Salaries and Wages. (Mark the appropriate line(s) for each Direct Personal Services Category to identify the method(s) used to charge direct salary and wage costs to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, fully describe on a continuation sheet, the applicable methods used.)

	Direct Personal Services Category			
	Faculty (1)	Staff (2)	Students (3)	Other 1/ (4)
A. Payroll Distribution Method (Individual time card/actual hours and rates)	—	—	—	—
B. Plan - Confirmation (Budgeted, planned or assigned work activity, updated to reflect significant changes)	—	—	—	—
C. After-the-fact Activity Records (Percentage Distribution of employee activity)	—	—	—	—
D. Multiple Confirmation Records (Employee Reports prepared each academic term, to account for employee's activities, direct and indirect charges are certified separately.)	—	—	—	—
Y. Other(s) 1/	—	—	—	—

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.6.1	Salary and Wage Cost Distribution Systems. Within each major function or activity, are the methods marked in Item 2.6.0 used by all employees compensated by the reporting unit? (If "NO", describe on a continuation sheet, the types of employees not included and describe the methods used to identify and distribute their salary and wage costs to direct and indirect cost objectives.) ___ Yes ___ No
2.6.2	Salary and Wage Cost Accumulation System. (Within each major function or activity, describe, on a continuation sheet, the specific accounting records or memorandum records used to accumulate and record the share of the total salary and wage costs attributable to each employee's direct (Federally sponsored projects, non-sponsored projects or similar cost objectives) and indirect activities. Indicate how the salary and wage cost distributions are reconciled with the payroll data recorded in the institution's financial accounting records.)
2.6.0	Description of Direct Fringe Benefits Costs. All fringe benefits that are attributable to direct salaries and wages and are charged directly to Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet all of the different types of fringe benefits which are classified and charged as direct costs, e.g., actual or accrued costs of vacation, holidays, sick leave, sabbatical leave, premium pay, social security, pension plans, post-retirement benefits other than pensions, health insurance, training, tuition, tuition remission, etc.)
2.6.1	Method of Charging Direct Fringe Benefits. (Describe on a continuation sheet, how each type of fringe benefit cost identified in Item 2.6.0. is measured, assigned and allocated (for definitions, See 9903.302-1); first, to the major functions (e.g., instruction, research); and, then to individual projects or direct cost objectives within each function.)
2.7.0	Description of Other Direct Costs. All other items of cost directly identified with Federally sponsored agreements or similar cost objectives. (List on a continuation sheet the principal classes of other costs which are charged directly, e.g., travel, consultants, services, subgrants, subcontracts, malpractice insurance, etc.)

FORM CASB DS-2 (REV 10/94) II-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.8.0	Cost Transfers. When Federally sponsored agreements or similar cost objectives are credited for cost transfers to other projects, grants or contracts, is the credit amount for direct personal services, materials, other direct charges and applicable indirect costs always based on the same amount(s) or rate(s) (e.g., direct labor rate, indirect costs) originally used to charge or allocate costs to the project (Consider transactions where the original charge and the credit occur in different cost accounting periods). (Mark one , if "No" , explain on a continuation sheet how the credit differs from original charge.) ___ Yes ___ No
2.9.0	Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be transferred to you from other segments of the educational institution. (Mark the appropriate line(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers of materials, supplies, and services to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, explain on a continuation sheet.)

	Materials (1)	Supplies (2)	Services (3)
A. At full cost excluding indirect costs attributable to group or central office expenses.	—	—	—
B. At full cost including indirect costs attributable to group or central office expenses.	—	—	—
C. At established catalog or market price or prices based on adequate competition.	—	—	—
Y. Other(s) 1/	—	—	—
Z. Interorganizational transfers are not applicable	—	—	—

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-4

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COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART III- INDIRECT COSTS
NAME OF REPORTING UNIT

Item No.	Item Description
3.1.0	**Indirect Cost Categories: Accumulation and Allocation.** This item is directed at the identification, accumulation and allocation of all indirect costs of the institution. (Under the column heading, "Accumulation Method," insert "Direct" or "No" to indicate if the cost pertains to a direct cost or indirect cost category. Under the column heading, "Allocation Base," insert "No" to indicate if the cost pertains to the institution's formal accounting system. If "No," describe on a continuation sheet, how the cost elements included in the indirect cost category are identified and accumulated. Under the column heading "Allocation Base," enter one of the allocation base codes A through P, Y, or Z, to indicate the basis used for allocating the accumulated costs of each indirect cost category to other applicable indirect cost categories, indirect cost pools, other institutional activities, specialized service facilities and other service centers. Under the column heading "Allocation Sequence," insert 1, 2, or 3 next to each of the first three indirect cost categories to indicate the sequence of the allocation process. If cross-allocation techniques are used, insert "CA." If an indirect cost category listed in this section is not used, insert "NA.") Indirect Cost Categories / Accumulation Method / Allocation Base Code / Allocation Sequence (a) Depreciation/Use Allowances/Interest Building Equipment Capital Improvements to Land 1/ Interest 1/ (b) Operation and Maintenance (c) General Administration and General Expense (d) Departmental Administration (e) Sponsored Projects Administration (f) Library (g) Student Administration and Services (h) Other 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-2

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART III- INDIRECT COSTS
NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part III Institutions should disclose how the segment's total indirect costs are identified and accumulated in specific indirect cost categories and allocated to applicable indirect cost pools and service centers within, each major function or activity, how service center costs are accumulated and "billed" to users, and the specific indirect cost pools and allocation bases used to calculate the indirect cost rates that are used to allocate accumulated indirect costs to Federally sponsored agreements or similar final cost objectives. A continuation sheet should be used wherever additional space is required or when a response requires further explanation to ensure clarity and understanding. The following Allocation Base Codes are provided for use in connection with Items 3.1.0 and 3.3.0. A Direct Charge or Allocation B Total Expenditures C Modified Total Direct Cost Basis D Salaries and Wages E Salaries, Wages and Fringe Benefits F Number of Employees (head count) G Number of Employees (full-time equivalent basis) H Number of Students (head count) I Number of Students (full-time equivalent basis) J Student Hours – classroom and work performed K Square Footage L Usage M Unit of Product N Total Production O More than one base (Separate Cost Grouping) 1/ P Other(s) 1/ Y Category or Pool not applicable Z 1/ List on a continuation sheet, the category and subgrouping(s) of expense involved and the allocation base(s) used.

FORM CASB DS-2 (REV 10/94) III-1

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART III- INDIRECT COSTS
NAME OF REPORTING UNIT

Item No.	Item Description
3.3.0	**Indirect Cost Pools and Allocation Bases** Identify all of the indirect cost pools established for the accumulation of indirect costs, excluding service centers, and the allocation bases used to distribute accumulated indirect costs to Federally sponsored agreements or similar cost objectives within each major function or activity. For all applicable cost pools, enter the applicable Allocation Base Code A through P, Y, or Z, to indicate the basis used for allocating accumulated pool costs to Federally sponsored agreements or similar cost objectives.) Indirect Cost Pools / Allocation Base Code A. Instruction On-Campus Off-Campus Other 1/ B. Organized Research On-Campus Off-Campus Other 1/ C. Other Sponsored Activities On-Campus Off-Campus Other 1/ D. Other Institutional Activities 1/ _____
3.4.0	Conversion of Indirect Cost Pools. (For each pool identified under items 3.1.0 and 3.2.0, describe on a continuation sheet the major organizational components, subgroupings of expenses, and elements of cost included.)

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-4

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART III- INDIRECT COSTS
NAME OF REPORTING UNIT

Item No.	Item Description	(1)	(2)	(3)	(4)	(5)	(6)
3.2.0	**Service Centers.** Service centers are departments or functional units which perform specific technical or administrative services primarily for the benefit of other units within a reporting unit. Service Centers include "recharge centers" and codes Identified "service facilities" defined in Section J of Circular A-21. (The center listed. The columns should be inserted on the appropriate line for each service provide the codes. Explain on a Continuation Sheet if any of the services are 1, if not applicable.)						
(a)	Scientific Computer Operations	—	—	—	—	—	—
(b)	Business Data Processing	—	—	—	—	—	—
(c)	Animal Care Facilities	—	—	—	—	—	—
(d)	Other Service Centers with Annual Operating Budgets exceeding $1,000,000 or charges to significant sponsored agreements either as a direct or indirect cost. (Specify below; use a Continuation Sheet, if necessary)						
	_____	—	—	—	—	—	—
	_____	—	—	—	—	—	—

(1) Category Code. Use code "A" if the service center costs are listed only as direct costs of the cost objectives it serves; use code "B" if the center costs are assigned to indirect cost pool(s); use code "C" if costs are listed in both direct and indirect cost categories.

(2) Billing Code. Code "A" – direct charging of all applicable indirect costs; Code "B" – billing on the basis of a standard rate; Code "C" – no allocation of indirect costs.

(3) Billing Rate Code. Code "A" – billing rates are based on historical costs; Code "B" – rates are based on budgeted costs; Code "C" – rates are based on a combination of historical and projected costs; Code "D" – billings are based on the actual costs of the billing period; Code "Y" – other basis (describe on a Continuation Sheet).

(4) Unit (Billing) Code. Code "A" – all users are charged at the same billing rates; Code "B" – same users are charged at different rates for the same or similar services; Code "C" – other basis.

(5) Actual Costs vs. Recovery Code. Code "A" – billings (revenues) are compared to actual costs periodically and adjustments are made currently; Code "B" – billings are compared to actual costs from time to time; Code "C" – other basis.

(6) Working Code. Code "A" – Annual historical billings and actual costs are compared to determine if billings are adequate to recover costs. Adjustments are carried forward to subsequent years' billings; Code "B" – billings are compared to actual costs periodically during the year and adjustments are made to billing rates for the remainder of the year; Code "C" – billings are compared to actual costs at the end of the year and losses carried forward as allowable costs or profits carried forward as a reduction in allowable costs in a future year; Code "D" – billings are adjusted to approximate actual costs based on experience of preceding years; Code "E" – other basis (describe on a Continuation Sheet).

FORM CASB DS-2 (REV 10/94) III-3

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COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART IV- DEPRECIATION AND USE ALLOWANCES
NAME OF REPORTING UNIT

Item No.	Item Description
	Part IV
4.1.0	**Depreciation Charged to Federally Sponsored Agreements or Similar Cost Objectives.** (For each asset category listed below, enter a code from A through C in Column (1) describing the method of depreciation; a code from A through D in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use allowances are applied to property units; and Code A or B in Column (4) indicating whether or not the estimated residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.) Asset Classes — Depreciation (1) — Useful Life (2) — Property Units (3) — Residual Value (4) (a) Land Improvements (b) Buildings (c) Building Improvements (d) Leasehold Improvements (e) Equipment (f) Furniture and Fixtures (g) Automobiles and Trucks (h) Tools (i) Enter Code Y on this line if other asset categories are used and describe each such asset category on a continuation sheet and the applicable codes: (Otherwise enter Code Z.) Columns (1)–Depreciation Method Code A. Straight Line B. Sum-of-the-Years-Digits C. Declining Balance D. All amounts for use allowances by Office of Management and Budget Circular No. A-21 Y. Other or more than one method used 1/ Columns (2)–Useful Life Code A. Asset guideline period B. Shorter than guideline period C. Longer than guideline period Y. Other or more than one method used 1/ Columns (3)–Property Unit Code A. Individual units are maintained for accounting purposes B. Applied to groups of assets with similar service lives C. Applied to groups of assets with varying service lives Y. Other or more than one method 1/ Columns (4)–Residual Value Code A. Residual value is deducted B. Residual value is not deducted Y. Other or more than one method 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-1

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART III- INDIRECT COSTS
NAME OF REPORTING UNIT

Item No.	Item Description
3.3.0	**Composition of Allocation Bases.** (For each allocation base used in items 3.1.0 and 3.1.0, describe on a continuation sheet the measure of the base. For example, if a modified total direct cost base is used, specify which of the following types of direct cost identified in Part II, Direct Costs, that are included, e.g., materials, salaries and wages, fringe benefits, travel costs, and excluded, e.g., subcontract costs over first $25,000. Where applicable, explain if service centers are included or excluded. Specify the benefitting functions and activities included. If any cost objectives are excluded from the allocation base, such cost objectives and the alternate allocation method used should be identified. If an indirect cost allocation is based on Cost Analysis Studies, identify the study, and fully describe the study methods and techniques applied, the composition of the specific allocation base used, and the frequency of each recurring study. **Allocation of Indirect Costs to Programs That Pay Less Than Full Indirect Costs.** Are appropriate direct costs of all programs and activities included in the indirect cost allocation bases, regardless of whether allocable indirect costs are fully reimbursed by the sponsoring organizations? A. ___ Yes B. ___ No 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-5

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART V- OTHER COSTS AND CREDITS
NAME OF REPORTING UNIT

Item No.	Item Description
	Part V
5.1.0	**Method of Charging Leave Costs.** Do you charge vacation, sick, holiday and sabbatical leave costs to sponsored agreements on the cash basis of accounting (i.e., when the leave is taken or paid), or on the accrual basis of accounting (when the leave is earned)? (Mark applicable item(s)) A. ___ Cash B. ___ Accrual 1/
5.2.0	**Applicable Credits.** The item is directed at the treatment of "applicable credits" as defined in Section C of OMB Circular A-21 and other incidental receipts (e.g., purchase discounts, insurance refunds, library fees and fines, parking fees, etc.). (Indicate how the principal types of credits and incidental receipts the institution receives are usually handled.) A. ___ The credits/receipts are offset against the specific direct or indirect costs to which they relate. B. ___ The credits/receipts are handled as a general adjustment to the indirect pool. C. ___ The credits/receipts are treated as income and are not offset against costs. D. ___ Combination of methods 1/ Y. ___ Other 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) V-1

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART IV- DEPRECIATION AND USE ALLOWANCES
NAME OF REPORTING UNIT

Item No.	Item Description
4.1.1	**Asset Valuations and Useful Lives.** Are the asset valuations and useful lives used in your indirect cost proposal consistent with those used in the institution's financial statements? (Mark one.) A. ___ Yes B. ___ No 1/
4.2.0	**Fully Depreciated Assets.** Is a usage charge for fully depreciated assets charged to Federally sponsored agreements or similar cost objectives? (Mark one. If yes, describe the basis for the charge on a continuation sheet.) A. ___ Yes B. ___ No
4.3.0	**Treatment of Gains and Losses on Disposition of Depreciable Property.** Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ Excluded from determination of sponsored agreement costs B. ___ Credited or charged currently to the same pools to which the depreciation of the assets was originally charged C. ___ Taken into consideration in the depreciation cost base of the new items, where trade-in is involved D. ___ Not accounted for separately, but reflected in the depreciation reserve account Y. ___ Other(s) 1/ Z. ___ Not applicable
4.4.0	**Criteria for Capitalization.** (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration, donation and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.) A. Minimum Dollar Amount ___ B. Minimum Life Years ___
4.5.0	**Group or Mass Purchases.** Are group or mass purchases (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Mark one.) A. ___ Yes 1/ B. ___ No 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part VI
	This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits) and insurance. Some organizations may incur all of these costs at the main campus level or for public institutions at the governmental unit level, while others may incur them at subordinate organization levels. Still others may incur a portion of these costs at the main campus level and the balance at subordinate organization levels.
	Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs. When the costs allocated to Federally sponsored agreements are material, and the reporting unit does not have access to the information needed to complete an item, the reporting unit should require that entity to complete the applicable sections of this Part VI. (See item 4, page III, General Instructions)
6.1.0	Pension Plans.
6.1.1	Defined-Contribution Pension Plans. Identify the types and number of pension plans whose costs are charged to Federally sponsored agreements. (Mark applicable line(s) and enter number of plans.)

	Type of Plan	Number of Plans
A. ___	Institution employees participate in State/Local Government Retirement Plan(s)	___
B. ___	Institution uses TIAA/CREF plan or other defined contribution plan that is managed by an organization not affiliated with the institution	___
C. ___	Institution has its own Defined-Contribution Plan(s) 1/	___

6.1.2	Defined-Benefit Pension Plans. (For each defined-benefit plan (other than plans that are part of a State or Local government pension plan) describe on a continuation sheet the actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
6.2.0	Post Retirement Benefits Other Than Pensions (including post retirement health care benefits) (PRBs). (Identify on a continuation sheet all PRB plans whose costs are charged to Federally sponsored agreements. For each plan listed, state the plan name and indicate the approximate number and type of employees covered by each plan.)
	Z. [ ] Not Applicable
6.2.1	Determination of Annual PRB Costs. (On a continuation sheet, indicate whether PRB costs charged to Federally sponsored agreements are determined on the cash or accrual basis of accounting. If costs are accrued, describe the accounting practices used, including actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)
6.3.0	Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)
A. ___	When assessed (basic accrual only)
B. ___	When contributions are made to a nonforfeitable fund
C. ___	When contributions are made to a forfeitable fund
D. ___	When the benefits are paid to an employee
E. ___	When amounts are paid to an employee welfare plan
V. ___	Other or more than one method 1/
Z. ___	Not Applicable
6.4.0	Self-Insurance Programs (Worker's Compensation, Liability and Casualty Insurance.)
6.4.1	Worker's Compensation and Liability. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)
A. ___	When claims are paid or losses are incurred (no provision for reserves)
B. ___	When provisions for reserves are recorded based on the present value of the liability
C. ___	When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability
D. ___	When funds are set aside or contributions are made to a fund
V. ___	Other or more than one method 1/
Z. ___	Not Applicable
	1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
6.4.2	Casualty Insurance. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)
A. ___	When losses are incurred (no provision for reserves)
B. ___	When provisions for reserves are recorded based on replacement costs
C. ___	When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the value of land and other indestructibles.
D. ___	Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves)
Y ___	Other or more than one method 1/
Z. ___	Not Applicable
	1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VII- CENTRAL SYSTEM OR GROUP EXPENSES
	NAME OF REPORTING UNIT

Item No.	Item Description
	DISCLOSURE BY CENTRAL SYSTEM OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE.
	Instructions for Part VII
	This part should be completed only by the central system office or a group office of an educational system when that office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VI of the Disclosure Statement.
	The reporting unit (central system or group office) should disclose how costs of services provided by the reporting unit are, or will be, accumulated and allocated to applicable segments of the institution. For a central system office, disclosure should cover the entire institution. For a group office, disclosure should cover all of the subordinate organizations administered by that group office.
7.1.0	Organizational Structure.
	On a continuation sheet, list all segments of the university or university system, including hospitals, Federally Funded Research and Development Centers (FFRDC's), Government-owned Contractor-operated (GOCO) facilities, and lower-tier group offices serviced by the reporting unit.
7.2.0	Cost Accumulation and Allocation.
	On a continuation sheet, provide a description of:
	A. The services provided to segments of the university or university system (including hospitals, FFRDC's, GOCO facilities, etc.), in brief.
	B. How the costs of the services are identified and accumulated.
	C. The basis used to allocate the accumulated costs to the benefitting segments.
	D. Any costs that are transferred from a segment to the central system office or the intermediate administrative office, and which are reallocated to another segment(s). If none, so state.
	E. Any fixed management fees that are charged to a segment(s) in lieu of a prorata or allocation basis and the basis of such charges. If none, so state.

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Subpart 9903.3—CAS Rules and Regulations

13. Section 9903.301 is amended by redesignating the existing introductory text and definitions as paragraph (a) and by adding a new paragraph (b) to read as follows:

9903.301 Definitions.

* * * * *

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

Business unit. See 9903.201–2(c)(2)(ii).

Educational institution. See 9903.201–2(c)(2)(i).

Intermediate cost objective. See 9905.502–30(a)(7).

Segment. See 9903.201–2(c)(2)(ii).

14. A new Part 9905 is added to read as follows:

PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.
9905.501–10 [Reserved]
9905.501–20 Purpose.
9905.501–30 Definitions.
9905.501–40 Fundamental requirement.
9905.501–50 Techniques for application.
9905.501–60 Illustration. [Reserved]
9905.501–61 Interpretation. [Reserved]
9905.501–62 Exemption.
9905.501–63 Effective Date.
9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.
9905.502–10 [Reserved]
9905.502–20 Purpose.
9905.502–30 Definitions.
9905.502–40 Fundamental requirement.
9905.502–50 Techniques for application.
9905.502–60 Illustrations.
9905.502–61 Interpretation.
9905.502–62 Exemption.
9905.502–63 Effective date.
9905.505 Accounting for unallowable costs—Educational institutions.
9905.505–10 [Reserved]
9905.505–20 Purpose.
9905.505–30 Definitions.
9905.505–40 Fundamental requirement.
9905.505–50 Techniques for application.
9905.505–60 Illustrations.
9905.505–61 Interpretation. [Reserved]
9905.505–62 Exemption.
9905.505–63 Effective date.
9905.506 Cost accounting period—Educational institutions.
9905.506–10 [Reserved]
9905.506–20 Purpose.
9905.506–30 Definitions.
9905.506–40 Fundamental requirement.
9905.506–50 Techniques for application.
9905.506–60 Illustrations.
9905.506–61 Interpretation. [Reserved]
9905.506–62 Exemption.
9905.506–63 Effective date.

Authority: Public Law 100–679, 102 Stat. 4058, 41 U.S.C. 422.

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

9905.501–10 [Reserved]

9905.501–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9905.501–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.501–40 Fundamental requirement.

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not *per se* be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this subsection when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9905.501–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9905.501–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during contract performance may be made in accordance with Part 9903 (48 CFR part 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the contractor must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

9905.501–60 Illustration. [Reserved]

9905.501–61 Interpretation. [Reserved]

9905.501–62 Exemption.

None for this Standard.

9905.501–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.

9905.502–10 [Reserved]

9905.502–20 Purpose.

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9905.502–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.502–40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

9905.502–50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in Subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect

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cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9905.502-60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new contract requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the Standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9905.502-61 Interpretation.

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in 9905.502-40, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such a specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

9905.502-62 Exemption.

None for this Standard.

9905.502-63 Effective date.

This Standard is effective as of January 9, 1995.

9905.505 Accounting for unallowable costs—Educational institutions.

9905.505-10 [Reserved]

9905.505-20 Purpose.

(a)(1) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(i) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(ii) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

(2) The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9905.505-30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.505-40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9905.505-50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Educational institutions may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

9905.505-60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain

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costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of other indirect expenses, the educational institution must allocate the other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A–21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable GA&GE costs form the applicable indirect cost pools. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE), an indirect cost category, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A–21, and is separately identified by the educational institution. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

9905.505–61 Interpretation. [Reserved]

9905.505–62 Exemption.

None for this Standard.

9905.505–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.506 Cost accounting period—Educational institutions.

9905.506–10 [Reserved]

9905.506–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9905.506–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.506–40 Fundamental requirement.

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506–50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506–50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506–50(e).

9905.506–50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool or expense pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9905.506–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f)(1) When a transitional cost accounting period is required under the provisions of 9905.506–40(a)(3), the institution may select any one of the following: (i) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period,

(ii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(iii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period.

(2) A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4)(ii) or (iii) of the contract clause set out at 9903.201–4(e).

9905.506–60 Illustrations.

(a) An institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(e).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

9905.506–61 Interpretation. [Reserved]

9905.506–62 Exemption.

None for this Standard.

9905.506–63 Effective date.

This Standard is effective as of January 9, 1995. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

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Part III

Environmental Protection Agency

40 CFR Part 264, et al.
Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5100–2]

RIN 2050–AD55

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the regulations under the Resource Conservation and Recovery Act (RCRA) in two areas. First, the Agency is proposing to remove the current requirement for a post-closure permit, and allow the Agency to use alternative authorities to address facilities with units requiring post-closure care. In addition, the Agency is proposing to amend the regulations governing State authorization to require authorized States to adopt, as part of an adequate enforcement program, authority to address corrective action at interim status facilities. This action also solicits comment on several issues related to closure and corrective action at hazardous waste management facilities.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS–305), 401 M St., SW., Washington, DC 20460. Commentors should send one original and two copies and place the docket number (F–94–PCPP–FFFFF) on the comments. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling 202–260–9327. A maximum of 100 pages of material may be copied at no cost from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline (1–800–424–9346) toll free, or (202–260–9327) in Washington, D.C. (for technical information); Barbara Foster (703–308–7057), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, Washington D.C. 20460 (issues related to closure or post-closure care), or Ellen Kandoll (703–603–8936), Office of Enforcement and Compliance Assurance, Mail Code 5502G, U.S. Environmental Protection Agency, Washington, DC 20460 (enforcement-related issues).

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I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Proposed Provisions Related to Closure and Post-Closure Requirements

A. Background Information

1. Overview of RCRA Permit Requirements

Section 3004 of the Resource Conservation Recovery Act (RCRA) requires the Administrator of EPA to develop regulations applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities, as necessary to protect human health and the environment. Section 3005 requires the EPA Administrator to promulgate regulations requiring each person owning or operating a treatment, storage, or disposal facility to have a permit, and to establish requirements for permit applications. Recognizing that the Agency would require a period of time to issue permits to all facilities, Congress provided, under section 3005(e) of RCRA, that qualifying owners and operators could obtain "interim status" and be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of continuing hazardous waste management operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued numerous regulations to implement RCRA requirements for hazardous waste management facilities. These regulations include the standards of 40 CFR part 264 (which apply to facilities that have been issued RCRA permits), part 265 (which apply to interim status facilities), and part 270 (which provide standards for permit issuance). The general requirements for closure are found at 40 CFR parts 264 and 265, subpart G.

2. The Closure Process

The closure regulations at 40 CFR parts 264 and 265, subpart G require owners and operators of hazardous waste management units to close these units in a manner that is protective of human health and the environment and that minimizes the post-closure release of hazardous constituents to the environment. These regulations also establish procedures for closure: they require owners and operators to submit closure plans to the Agency for their hazardous waste management units, and they require Agency approval of those closure plans.

In addition, parts 264 and 265 establish specific requirements for closure of different types of units. Under parts 264 and 265, subpart L, owners and operators of landfills are required to cover the unit with an impermeable cap designed to prevent infiltration of liquid into the unit; then owners or operators must conduct post-closure care (including maintenance of the cap and groundwater monitoring). Owners and operators of surface impoundments and waste piles have the option either to remove or decontaminate all hazardous waste and constituents from the unit, or to leave waste in place, cover the unit with an impermeable cap, and conduct post-closure care. Closure of land treatment facilities must be conducted in accordance with closure and post-closure care procedures of §§ 264.280 and 265.280. As part of the closure plan approval process, the Agency has the authority to require owners and operators to remove some or all of the waste from any type of unit at the time of closure, if doing so is necessary for the closure to meet the performance standard of § 264.111 or § 265.111.

Owners and operators of incinerators and storage and treatment units (e.g., tanks and containers) are required to remove or decontaminate all soils, structures, and equipment at closure. Owners and operators of tanks who are unable to do so must close the unit as a landfill and conduct post-closure care.

3. Post-Closure Care

As discussed above, owners and operators of hazardous waste management units that close with waste in place must conduct post-closure care at those units, including groundwater monitoring and maintenance of the cap. EPA's current regulations anticipate that these requirements, for the most part, will be imposed through RCRA permits. Under 40 CFR 270.1, permits are required for the post-closure period for any landfill, waste pile, surface impoundment, or land treatment unit that received waste after July 26, 1982, or ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. In addition, § 270.1(c)(5) requires owners and operators of surface impoundments, land treatment units, and waste piles that closed by removal or decontamination under former part 265 standards to obtain a post-closure permit unless they demonstrate that the closure met the current standards for closure by removal or decontamination.

In the case of operating land disposal facilities, the RCRA permit, when first issued, incorporates the closure plan and applicable post-closure provisions. These post-closure conditions become effective after the facility ceases to manage hazardous waste and the closure plan has been implemented. The permit, when issued, also requires compliance with part 264 subpart F groundwater monitoring standards, and (if the permit was issued after November, 1984) it would include terms implementing the facility-wide corrective action requirements of RCRA section 3004(u). Like the post-closure care provisions, these requirements remain in effect after closure of the hazardous waste management unit.

For interim status facilities that close without having obtained an operating permit, the post-closure permit (typically issued after completion of closure) performs a critical regulatory function. First, in securing a permit, the facility must meet the permit application requirements of part 270, which require extensive information on the hydrogeologic characteristics of the site and extent of any groundwater contamination. Second, once the post-closure permit has been issued, the facility then becomes subject to the standards of part 264 rather than part 265, most significantly to the site-specific groundwater monitoring requirements of part 264, subpart F. Third, the post-closure permit imposes facility-wide corrective action to satisfy the requirements of section 3004(u). Finally, the public involvement procedures of the permitting process assure that the public is informed of and has an opportunity to comment on permit conditions.

4. Developments Since 1982

Though EPA has amended the 1982 subpart G regulations on several occasions, the basic closure process and the requirement for a post-closure permit remain in place. Several significant developments since 1982, however, suggest that the closure process and standards should be revisited.

a. The agency has gained experience in the area of closure and post-closure. In 1982, when the regulatory structure for closure was established, the Agency had no experience with closure of RCRA regulated units. Since 1982, the Agency and authorized States have approved thousands of closure plans, and overseen the closure activities taking place under those plans. It has become evident that closure of these units is frequently more complex than EPA envisioned in 1982. In many cases, particularly with unlined land-based units, the unit has released hazardous waste and constituents into the surrounding soils and groundwater. In these cases, the closure activity is not simply a matter of capping a unit, or removing waste from the unit, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address these types of activities.

For example, it has become evident that the two options for closure provided in the current regulations (i.e., remove or decontaminate all waste from the unit, or cover the entire unit with an impermeable cap) do not provide the best remedy in all situations. In fact, the requirement that an impermeable cap be placed on the unit if all waste has not been removed may, if read narrowly, discourage implementation of more protective remedies. This issue is discussed later in this preamble.

In addition to gaining experience in the closure process, EPA and the States have issued more than 150 post-closure permits since 1982. In the course of reviewing post-closure permit applications, however, the EPA Regions and States have encountered many facilities where post-closure permit issuance proved difficult or, in some cases, impossible. Generally, the Regions and States have found two major difficulties in post-closure permit issuance. The first is that, in many cases, the facility chose to close, or was forced to close, because it could not comply with part 265 standards—particularly, groundwater monitoring and financial assurance. If a facility cannot meet these requirements, EPA cannot issue a permit to it because section 3005(c) of RCRA requires facilities to be in compliance with applicable requirements at the time of permit issuance. The second difficulty

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is that the owner or operator often has little incentive to seek a post-closure permit. Without a strong incentive on the part of the facility owner or operator to provide a complete application, the permitting process can be significantly protracted. These difficulties are discussed further in section IV.A. of this preamble.

b. *The agency has acquired new corrective action authority.* In 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA provided EPA with broad new authorities, under sections 3004(u), 3004(v), and 3008(h), to compel corrective action (i.e., cleanup) of facilities subject to regulation under RCRA Subtitle C. Corrective action has since become a major component of the RCRA Subtitle C program. Approximately 1100 hazardous waste management facilities are now in the process of implementing corrective action requirements specified under orders or permits.

The RCRA corrective action authorities, and the process that has been developed for implementing these authorities, require owners and operators to investigate the nature and extent of releases of hazardous waste or hazardous constituents at RCRA facilities (i.e., to soils, groundwater, and other environmental media). Owners and operators are required to investigate releases from solid waste management units at the facility, including releases from "regulated units" not addressed under subpart F of part 264. At the direction of the Agency, owners and operators are also required to characterize the sources of releases (i.e., the units from which wastes or constituents have been released), and to develop options for remediation of the facility. Remediation will typically address cleanup of the media contaminated by releases, and removal or containment of the source.

In practice, the corrective action process is highly site-specific, and involves direct oversight by the reviewing Agency. The process provides considerable flexibility to the Agency to tailor investigations, and to decide on remedies that reflect the conditions and the complexities of each facility. The process of investigating and achieving cleanup goals at facilities is often technically complex, and can take many years to complete. This is the case particularly for groundwater contamination in complex hydrogeologic conditions. Given the site-specific nature of corrective action, the technical challenges involved, and the large number of RCRA facilities that may require cleanup, EPA is pursuing an implementation strategy for the corrective action program that involves assessing the environmental priority of each facility from the standpoint of its need for corrective action, and focusing the program's resources on high priority facilities. This implementation strategy is discussed in more detail below.

c. *The agency has developed a strategy for addressing worst sites first under RCRA.* In 1990, EPA conducted the RCRA Implementation Study (RIS). This was the Agency's first comprehensive, in-depth evaluation of the RCRA hazardous waste program, its evolution, and its future. EPA produced the RIS after extensive discussion with stakeholders, private and public, in the RCRA program (i.e., industry, environmental groups, States, and the Agency). The RIS set forth a series of detailed recommendations regarding how to best ensure effective implementation of the RCRA program. An underlying theme throughout was the need to identify sound, environmentally-based implementation priorities in each area of the RCRA program and to demonstrate that those priorities are being effectively and efficiently addressed. The RIS advocated the use of strategic planning to define expectations and make choices among competing priorities.

In response to the RIS recommendations, EPA has developed and is implementing a comprehensive strategy for addressing the RCRA treatment, storage, and disposal universe. At the heart of this strategy is the principle that EPA and the authorized States should address the universe of hazardous waste management facilities on the basis of environmental priorities. Further, at any given site, EPA or the State should use whatever regulatory authority is best suited to achieving environmental success. One essential element of this strategy is a system to prioritize facilities based upon their risk. This allows the Agency to address the RCRA universe on a "worst-site-first" basis. Another is providing the regulator flexibility in choosing regulatory options to address a given problem, rather than focusing on the number of particular regulatory actions taken.

This approach is consistent with the Agency's response to recent recommendations from the General Accounting Office (GAO). In two recently issued reports, GAO evaluated EPA's progress in implementing the RCRA closure and post-closure program at land disposal facilities. In the first report, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, issued in May of 1991, GAO criticized the Agency's progress in closing land disposal facilities that lost interim status in 1985. The report cited limited progress in this area as a basis for its concern that the Agency was placing too little emphasis on closing land disposal facilities, even though these facilities may pose some of the greatest environmental threats. In April of 1992, GAO issued another report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*. This report criticized the Agency's progress in issuing post-closure permits and cited facility non-compliance with groundwater monitoring requirements as a result of permitting delays. In both of these reports, GAO recommended that EPA devote more of its time and resources specifically to addressing closed and closing land disposal facilities.

The Agency agrees with GAO's concerns about addressing risk at closed and closing land disposal facilities, but believes that those risks must be addressed within the context of the Agency's overall strategy for implementing the RCRA program. The Agency has, for several years, been carrying out a combined closure and corrective action strategy that relies on all of EPA's authorities to address environmental issues at all RCRA facilities on a worst-site-first basis. The foundation of this strategy is the Agency's system for ranking RCRA facilities based on environmental priority. This system was developed to enable EPA to focus its resources on deterring violations and remediating contamination at RCRA facilities that present the highest priority for risk reduction and prevention. (It should be noted that, because of their nature, closed and closing land disposal facilities often rank as high priority.) EPA's priority-based approach dictates that resource commitments be made based on the priority ranking of facilities. This strategy acknowledges that activities to address risk at high priority facilities may take precedence over procedural activities (e.g., permitting) at lower priority facilities. EPA believes that this priority-based approach to RCRA implementation provides the best use of available resources by ensuring progress at high priority facilities across the RCRA universe, including closed and closing land disposal facilities.

5. Response to Post-1982 Developments

In light of the developments discussed above, the Agency is reviewing the current closure and post-closure regulations. EPA's goals are to make the closure process more realistic,

integrate the closure and corrective action processes, and provide greater flexibility in addressing risks at closed sites. Today's notice is the first step in that direction. It sets out several amendments to the closure regulations, including a new approach to addressing post-closure needs at facilities currently subject to post-closure permit requirements.

In addition to the regulatory changes in today's proposal, section IV of this preamble solicits comment on further changes to the closure process. After reviewing public comment submitted in response to today's notice, the Agency will consider proposing further revisions to the closure process.

6. State Involvement in Development of This Proposed Rule

Under the terms of Executive Order 12875, the Federal Government is urged to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities.

Because this proposed rule would affect State RCRA programs, we provided the rule to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to obtain their reaction. Seven States submitted written comments and nine States participated in a conference call with EPA on April 7, 1994, to discuss States' concerns. The States' written comments and a summary of the April 7 conference call can be found in the docket for this proposed rule.

The States supported the proposal to remove the post-closure permit requirement. The States strongly supported removing the distinction between closing regulated units and solid waste management units, which is discussed in section III.B. of this preamble.

Generally, States supported the inclusion of a corrective action order authority as part of an adequate enforcement program. Concerns were expressed that the Agency's review procedure of such order authorities would be duplicative of efforts undertaken during a State's authorization of HSWA corrective action at permitted facilities. The Agency recognizes that in some cases States' corrective action enforcement authorities may, indeed, have been reviewed by EPA during the authorization process for section 3004(u) authority, and determined to meet the requirements of this proposal. Where EPA determines this is the case, this proposed rule would not require States to submit additional information; in addition, EPA would minimize its review.

B. Summary and Discussion of Proposed Provisions

Today's notice proposes a new approach to addressing post-closure environmental needs at facilities that have not received an operating permit, and that have units requiring post-closure care. It proposes to modify the post-closure permit requirement to allow the Agency either to issue a permit to address post-closure care at a facility, or to impose the same substantive requirements at the facility using alternative legal authorities (e.g., a post-closure plan to address the regulated unit, and an enforcement action to address the solid waste management units at the facility).

Today's proposal reaffirms that post-closure care requirements apply to all landfills, waste piles, surface impoundments, and land treatment units that received waste after July 26, 1982, or that ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. Under current regulations at § 270.1(c), all facilities subject to post-closure care requirements must obtain RCRA permits. Today's proposal is intended to allow EPA or an authorized State to use any other available legal authority as an alternative to the post-closure permit, as long as that authority provides the same level of protection and public participation as does the post-closure permit.

As discussed above, under the current regulations, facilities that cease operation without obtaining a permit are required to close and conduct post-closure care under the self-implementing standards of Part 265 until the Agency issues a post-closure permit to the facility. This proposed rule would not modify those interim status standards applicable to closed and closing land disposal facilities. Thus, for example, those facilities would continue to be required to conduct closure under approved closure plans, conduct post-closure care under an approved post-closure plan, and obtain financial assurance.

As a result of this proposal, rather than issue a post-closure permit to impose requirements beyond the self-implementing interim status standards, the Agency could use a variety of regulatory authorities. To ensure that the authority chosen by the Agency will provide the same level of environmental protection, this proposal specifically requires owners and operators to comply with the same regulatory requirements that would be imposed through a post-closure permit when those requirements are imposed by the Agency, regardless of the regulatory authority selected. Those requirements include the requirements of Part 264, Subpart F, facility-wide corrective action, and public involvement at the time of remedy selection (if corrective action is required).

The Agency is proposing to remove the permit requirement and allow the use of other authorities at post-closure facilities because it has concluded that a permit is not always the best authority for addressing environmental risk at these facilities. In fact, as was mentioned earlier, in the course of issuing post-closure permits over the past several years, EPA and the States have encountered many facilities at which post-closure permit issuance was difficult or, in some cases, impossible. Several obstacles to post-closure permit issuance have been identified.

One obstacle is a lack of incentive on the part of post-closure permit applicants. Unlike facility owners or operators seeking operating permits, owners or operators of closed or closing facilities often have little incentive to obtain post-closure permits, particularly where the post-closure unit is the only unit at the facility. While permit denial is a significant threat to a facility owner seeking an operating permit, it makes little difference to the owner of a facility that is already closed and that no longer actively manages hazardous waste. In the past, where the owner or operator has been uncooperative in obtaining a post-closure permit, the Agency and authorized States have taken enforcement actions to facilitate the permit issuance process, and to bring facilities into compliance with the applicable regulatory requirements so that a permit could be issued. Today's rule would allow the Agency to bring an uncooperative facility into compliance with the regulations through an enforcement action, and relieve the Agency of its obligation to force the facility through the permit application process, which was generally designed under the assumption that the permit applicant desired a permit. Under the proposal, while the Agency would not lose its authority to issue a post-closure permit at the facility by taking action under an alternative authority (e.g., an enforcement action), it would no longer be required to do so if all applicable regulatory requirements have been imposed at the facility.

The financial status of the facility owner or operator is often another obstacle. Closed and closing land disposal facilities subject to post-closure permit requirements are in many cases

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businesses that are no longer operating and may be in poor financial condition, or they may be without significant resources. In fact, many facilities currently in the closure universe were forced to close because they could not meet the RCRA financial assurance requirements. Yet meeting these requirements is a precondition for receiving an RCRA permit, regardless of whether it is an operating permit or a post-closure permit. Where an owner or operator is financially unable to meet the threshold post-closure financial requirements for permit issuance, the current regulations do not allow EPA to issue a post-closure permit—despite the regulatory requirement that these facilities obtain such a permit.

Similarly, some closing facilities are located in areas where it is difficult to satisfy the Part 264, Subpart F and Part 270 groundwater monitoring standards. For example, in some areas of complex hydrogeology, it may be technically impractical for a facility to install an adequate groundwater monitoring system. The regulatory agency would deny a permit application from an operating facility in such a situation, because denial prevents further receipt of waste and forces the facility to close. Denial of a post-closure permit application from a closed facility, however, is meaningless in such a situation, because it would have no effect on management of wastes already disposed of at the site and would leave any environmental problems there unaddressed.

To address environmental risk at facilities such as those described above, Regions and States have frequently utilized legal authorities other than permits. Use of enforcement actions enables the Agency to place these facilities on a schedule of compliance for meeting financial assurance and/or groundwater monitoring requirements over a period of time. And, even where enforcement actions cannot bring about full regulatory compliance (e.g., where the owner or operator cannot secure financial assurance), they will enable the Agency to prescribe actions to address the most significant environmental risks at the facility. For example, EPA has often issued corrective action orders under the authority of section 3008(h) to address releases from solid waste management units at these facilities. In other cases, Federal or State Superfund authorities have been used to address cleanup at sites. However, under the current regulations, EPA or the State is still required to issue a post-closure permit even where the environmental risks associated with the facility have been addressed through other authorities.

EPA believes that this proposed rule, by allowing the use of alternative authorities will enable the Agency more effectively to address post-closure care at a significant number of uncooperative and financially burdened facilities. The Agency recognizes, however, that today's proposal may have little practical effect on the Agency's ability to address those facilities that are in too precarious a financial state to meet even an extended schedule of compliance for financial assurance or groundwater monitoring. It is important to note, however, that EPA's prioritization strategy considers the financial status of facilities and elevates in importance those whose financial condition indicates that timely action will increase the likelihood that owners or operators will be able to meet their post-closure obligations. And, in some cases, where the owner or operator's financial condition prevents it from fulfilling its obligations under RCRA, the facility may be referred to Superfund.

EPA believes that more flexible use of the full range of available authorities will provide a more comprehensive approach to ensuring effective post-closure care at RCRA facilities. This approach will enable the Agency to address facilities on a worst-site-first basis using the regulatory or legal authority that is most effective at a given site. Examples of when an authority other than a post-closure permit may be most appropriately applied include cases where the owner or operator is financially incapable of meeting the threshold requirements for permit issuance, such as compliance with the financial assurance requirements, or where the owner or operator may be uncooperative and an enforcement action is necessary.

On the other hand, a post-closure permit will generally be the preferable mechanism for cooperative facilities capable of meeting financial assurance requirements. It has been the experience of several EPA Regions and States that many facility owners or operators will cooperate in the development of a post-closure permit, while they would oppose the same conditions in an enforcement order. Additionally, permit issuance may be advantageous in some situations because it enables the Regional Administrator or State Director to invoke the omnibus authority of section 3005(c)(3) of RCRA at facilities with special environmental needs that are outside the scope of the current regulations. In these cases, post-closure permits would continue to provide the best means of addressing the needs of the facility.

EPA has always interpreted sections 3004(a) and 3005 of RCRA to authorize—but not compel—the issuance of permits to implement post-closure care requirements at facilities that have ceased operating. As EPA explained when it first established the post-closure permit requirement, it "could have issued regulations * * * that are enforceable independent of a permit to impose many of the requirements that apply to a facility after closure * * *" (47 FR 32366, July 26, 1982). EPA, however, believed that permits would be the most effective enforcement vehicle, primarily because they facilitate the development of site-specific conditions tailored to individual waste management facilities. *Id.* The U.S. Court of Appeals for the District of Columbia Circuit has also ruled that the statute authorizes, but does not require, post-closure permits. (*See In re Consolidated Land Disposal Regulation Litigation*, 938 F2d 1386, 1388–89 (D.C. Cir. 1991)).

Today's proposed amendments would eliminate the regulatory requirement that EPA issue permits to all facilities subject to post-closure care requirements. This proposal, EPA has concluded, not only makes policy sense but is fully consistent with the statute, because the post-closure permit requirement is a regulatory rather than a statutory construct.

Although EPA is proposing to allow alternatives to post-closure permits, today's proposed regulations ensure that all substantive conditions currently imposed through post-closure permits are imposed at all facilities subject to post-closure care requirements, regardless of which regulatory or legal authority is used. This proposal specifies that the Agency must impose at these facilities, through enforceable legal authorities, the requirements of part 264, subpart F and facility-wide corrective action. In addition, this proposal would require that the owner or operator provide to the Agency the same information required by the permit issuance process. It would also maintain the requirement for facility-wide corrective action, and it would require public involvement at the time of remedy selection, if corrective action were necessary, or when the Agency determines that corrective action is not required at the facility.

These provisions would ensure that all the substantive requirements of a post-closure permit would be imposed when an alternative mechanism was used. In combination with requirements already imposed on interim status facilities through the part 265 interim status standards, these minimum requirements would ensure that all aspects of post-closure care are fully addressed.

C. Section-By-Section Analysis

Today's proposal would modify several provisions of the RCRA regulations in both the permit issuance procedures of part 270, as well as the requirements for interim status facilities of part 265. Each modification is described in detail below.

1. Section 270.1(c)—Use of Alternative Legal Authorities to Address Post-Closure Care

EPA is proposing two amendments to § 270.1(c). First, the Agency is proposing to revise § 270.1(c) to provide an alternative to the requirement that post-closure permits be issued to closed landfills, waste piles, surface impoundments, and land treatment units, where post-closure care and corrective action are imposed through an enforceable alternative authority. Second, EPA is proposing a new § 270.1(c)(7), which allows the EPA Regional Administrator (or an authorized State) to use alternate authorities to impose post-closure care requirements in lieu of a permit. Under this section, the Agency would be required to impose on post-closure facilities subject to alternative authorities the basic requirements imposed through post-closure permits. (These requirements are specified in proposed § 265.121, described below.) However, the Agency would have the discretion to impose those conditions through a permit, a RCRA enforcement authority, a Superfund authority, or a combination of these or other legal authorities. Similarly, an authorized State could impose conditions under a State cleanup authority. What is essential, in EPA's view, is that facilities meet the substantive standards currently imposed through post-closure permits, not that a specific regulatory authority be used to impose these standards.

2. Section 265.121—Interim Status Post-Closure Care Requirements for Facilities Subject to Section 270.1(c)(7)

The current regulations at §§ 265.117 through 265.120 govern post-closure care at interim status regulated units that close and conduct post-closure care without obtaining a permit. Under today's proposal, regulated units would continue to be subject to the requirements of part 265 for post-closure care, including the requirement to obtain a post-closure plan. Following the post-closure care period, the regulated units would remain in interim status until and unless interim status were terminated by the Agency through one of the available means (e.g., final permit determination).

However, the current interim status post-closure care requirements are in some respects less stringent than post-closure permit requirements, specifically, the groundwater requirements of part 264, the facility-wide corrective action requirements, and the public involvement procedures associated with permit issuance. Therefore, to assure that facilities that do not obtain a post-closure permit are subject to the same requirements as those that do, today's proposal would add a new § 265.121. That section, which would be applicable to those facilities subject to the requirements of § 270.1(c)(7) that close and conduct post-closure care without obtaining a permit, would require that those facilities meet the same substantive requirements as permitted facilities must meet before the Regional Administrator can consider the post-closure needs at the facility to be addressed. Those requirements are described below.

a. *Part 264 subpart F ground-water monitoring and corrective action program (sections 264.90–264.100).* Currently, the post-closure permit imposes part 264, subpart F requirements at closed land disposal units. Today's proposal would require that post-closure enforcement actions or other mechanisms used as alternatives to post-closure permits include conditions imposing part 264, subpart F standards on closed and closing land disposal units. Part 265 groundwater monitoring requirements for interim status land disposal units are less comprehensive than those established under the part 264, subpart F standards for permitted facilities. Whereas part 265 sets minimum standards for the installation of detection monitoring wells (e.g., one upgradient and three downgradient wells), part 264 establishes broader standards for establishing a more comprehensive monitoring system to ensure early detection of any releases of hazardous constituents. The specific details of the system are worked out through the permitting process. Consequently, compliance with part 264 standards usually results in a more extensive network of monitoring wells. Similarly, part 265 specifies a limited set of indicator parameters that must be monitored, while part 264 establishes a more comprehensive approach under which the owner or operator is required to design a monitoring program around site-specific indicator parameters. As a result, monitoring systems designed in accordance with part 264 standards are specifically tailored to the constituents of concern at each individual site. Additionally, part 264 compliance monitoring standards are more comprehensive than part 265 standards both in terms of monitoring frequency and the range of constituents that must be monitored. Finally, the part 264, subpart F regulations provide for corrective action for releases to groundwater whereas part 265 does not.

In light of these differences, the Agency is proposing that all units subject to post-closure care requirements be required to meet part 264, subpart F standards. This approach is designed to ensure equivalent protection of human health and the environment at all facilities, regardless of which legal authority used to address post-closure care.

b. *Facility-wide corrective action.* Under section 3004(u) of RCRA, which was added to the statute as part of the 1984 Hazardous and Solid Waste Amendments (HSWA), hazardous waste permits issued after November 8, 1984, must include provisions requiring the facility owner or operator to take corrective action to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMUs) at the facility. Section 3004(v) of HSWA extends corrective action authority to cover releases migrating off-site; section 3008(h) provides EPA enforcement authority to require corrective action at interim status facilities.

EPA has codified corrective action requirements at 40 CFR 264.101 and currently implements these requirements through the permitting process; at the same time, the Agency has made extensive use of the section 3008(h) authority to impose corrective action at interim status facilities. In addition, to facilitate the process, EPA proposed more extensive corrective action regulations in July, 1990, under a new part 264, subpart S, and recently finalized several sections of that proposal related to temporary units and corrective action management units (*see* 58 FR 8658, February 16, 1993). The subpart S proposal set forth EPA's interpretation of the statutory requirements at that time.

EPA recognizes that corrective action requirements are a central aspect of the HSWA amendments and that the post-closure permit currently provides the primary means of ensuring that corrective action will be adequately addressed at RCRA land disposal facilities that close without first

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receiving an operating permit. In allowing alternatives to the post-closure permit, EPA has no intention of undercutting or limiting its corrective action authority or the scope of the corrective action program. Consistent with this principle, today's proposal would require that authorities used at post-closure facilities as an alternative to post-closure permits impose corrective action requirements consistent with the statute and § 264.101 of the regulations, as described in this preamble.

Today's proposal would not specify the authorities that EPA or a State could use to impose corrective action as an alternative to a post-closure permit—only that the authority must be consistent with RCRA corrective action requirements. Certainly, RCRA section 3008(h) orders would be appropriate, but EPA does not believe it makes sense to limit alternative authorities to this section. For example, many States (including States not yet authorized for section 3004 (u) and (v) corrective action authority), have their own cleanup or State Superfund authorities that are consistent with RCRA corrective action authority. EPA believes that actions under these authorities should be allowed as alternatives to post-closure permits, as long as they are consistent with RCRA corrective action requirements. Similarly, if a facility is being addressed under a federal Superfund action, and the action addresses all releases at the site, issuance of a post-closure permit should be unnecessary.

In requiring facility-wide corrective action consistent with RCRA section 3004 (u) and (v) provisions, EPA does not intend to require that alternative authorities use procedures identical to those in EPA's Subpart S proposal. For example, compliance with the NCP procedures for remedy selection would satisfy these proposed requirements. EPA wishes to emphasize, however, that to be considered consistent, an alternative approach to corrective action at a facility would have to include facility-wide assessments, and it would have to address possible releases (including off-site releases) from all solid waste management units within the facility boundary. Anything less than that, in EPA's view, would not meet the basic requirements of RCRA sections 3004 (u) and (v). EPA believes that this proposed approach is appropriate because it provides reasonable flexibility for regulatory agencies using available authorities to address environmental problems at RCRA sites. At the same time, however, the Agency requests comment on this approach and suggestions for alternatives.

c. Public participation. Section 7004 of RCRA requires public participation in the permit issuance process. EPA has codified this requirement and has established specific public participation procedures for RCRA permitting at 40 CFR part 124. In the case of post-closure permits, these procedures assure that the public has access to information gathered by the Agency about the facility, and has an opportunity to review the Agency's decisions related to the regulated unit and to facility-wide corrective action. In addition, EPA's permit regulations in part 270 typically require a permit modification—with public participation—at the time a corrective action remedy is selected, if section 3004(u) corrective action is required as part of a facility's permit.

In developing today's proposal, the Agency sought to assure that by allowing alternative post-closure mechanisms, the Agency would provide adequate, mandatory public participation in the post-closure and corrective action processes. EPA believes that the current interim status procedures for closure and post-closure plan approval and modification (§§ 265.112 and 265.118) provide for acceptable public participation. While the procedures for plan approval are not identical to those used in permit issuance, they do require public notice and provide an opportunity for written public comment; they also include an opportunity for a hearing.[1] In EPA's view, these requirements ensure a reasonable opportunity for public participation in decisions that affect long-term care of the regulated unit.

At the same time, EPA acknowledges that the public currently has no absolute assurance that it will have an opportunity to participate in the corrective action process when corrective action is imposed through an enforcement order. EPA's enforcement programs have retained discretion to limit public participation when circumstances require it. However, where orders will operate in lieu of permits (which always require public participation), EPA is proposing to limit this discretion and require a minimum level of public participation for all facilities, except in rare cases as described below.

In proposing to make public participation mandatory, EPA notes that many cleanup authorities, including the federal Superfund authority and a number of State cleanup programs, already provide for significant levels of public participation in the majority of cases. In the case of CERCLA actions, procedures for public participation at point of remedy selection are established in § 300.430(f) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In addition, the CERCLA Community Relations Program guidance ("Community Relations in Superfund, A Handout") provides for extensive involvement of the public in Superfund actions. This guidance sets forth a community relations plan designed to promote two-way communication between the public and the lead Agency. In the case of corrective action imposed through RCRA enforcement orders, EPA has issued guidance announcing its policy to provide opportunity for public involvement at the time of remedy selection (see "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comment," issued on April 29, 1991, which is available in the docket for this rulemaking).

Today's proposal would establish, at § 265.121(b), minimum requirements for public involvement in the remedy selection process. These requirements would apply to both regulated units and solid waste management units subject to the requirements of § 270.1(c)(7), at which closure and/or corrective action is imposed through an alternative authority, in lieu of a post-closure permit. Section 265.121(b) would require, at the point of remedy selection, public involvement that includes, at a minimum, the following procedures: Public notification of the proposed remedy through a major newspaper; opportunity for public comment (at least 30 days); opportunity for a public meeting; availability of a transcript of the public meeting; availability of written summary of significant comments and information submitted and the EPA or State response; and, if the remedy is significantly revised during the public participation process, a written summary of significant changes or opportunity to comment on a revised remedy selection.

In developing the proposed minimum requirements for public involvement under an alternate mechanism, the Agency intends to provide States and

[1] The specific differences between public participation in permit issuance and post-closure plan approval are: permits allow a 45-day public comment period, plans allow 30 days; opportunity to comment must be noticed in local newspapers and through radio spots for permits, but only in newspapers for plans; the Regional Administrator is required to hold a public hearing if asked in the case of permits, but a hearing on a plan is held at the Regional Administrators discretion; and permit decisions are subject to Agency appeal procedures, while approved plans are not. Both, however, may be challenged in the courts.

Regions the opportunity to continue to use public participation procedures established under existing authorities, provided that they meet the requirements in § 265.121(b). Most Federal and State statutes and regulations already require that affected communities be informed about and involved in decisions regarding response to hazardous releases. In developing today's proposal, the Agency wished to avoid imposing new requirements that would force EPA and States to amend existing public participation procedures in order to use an alternate mechanism in lieu of a permit.

The Agency believes that today's proposal establishes minimum requirements necessary for adequate public involvement that are, at the same time, likely to be met by most public involvement procedures for remedy selection. For example, compliance with either the permit issuance procedures of part 124 or the NCP procedures for remedy selection would satisfy these proposed requirements. Similarly, use of public participation procedures imposed under other Federal and State authorities would also be allowed, if those procedures met the minimum criteria set forth under § 265.121(b) of today's proposal. The Agency solicits comment on the requirements for public involvement at remedy selection proposed today. Specifically, the Agency solicits comment on State or Federal authorities with public involvement requirements that would not satisfy today's proposed rule, and on the adequacy of today's proposed minimum requirements.

While today's proposed rule would require public participation at the point of remedy selection for facilities subject to § 270.1(c)(7), the Agency recognizes that there may be cases where emergency remedial actions may be needed to address immediate threats. Therefore, while today's proposal would ensure a minimum 30-day public comment period for corrective action remedies imposed under an alternative mechanism in most cases, EPA is proposing to allow reduction or elimination of the public comment period if the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely impact human health or the environment. The Agency anticipates that this discretionary authority will be invoked only in rare circumstances. Where the Agency finds it is necessary to implement the remedy prior to the public comment period, § 265.121(b) of today's proposal would require the Regional Administrator to solicit public comment on the remedy before making a determination that the facility's corrective action needs have been addressed in full.

As an alternative to providing an exemption to the public involvement procedures for section 3008(h), as described above, EPA solicits comment on whether to rely on RCRA, CERCLA, and State imminent and substantial endangerment authorities where immediate action is necessary.

Also, the Agency recognizes that corrective action at some facilities subject to § 270.1(c)(7) may have been implemented through a non-permit authority prior to the effective date of today's proposal. In these cases, § 265.121(c) would require the Regional Administrator to evaluate whether the remedy satisfies the requirements of this rule before considering the facility addressed. This process is discussed in more detail in section II.C.4. of this preamble.

d. Section 270.27 information requirements. RCRA permitting regulations do not distinguish between information requirements for operating permits and post-closure permits. Facilities seeking post-closure permits must generally provide EPA, as part of their Part B permit applications, the facility-level information required in § 270.14 as well as relevant unit-specific information required in §§ 270.16, 270.17, 270.18, 270.20, and 270.21. EPA needs this information to ensure compliance with part 264 requirements during operation and throughout the post-closure care period. Information required under § 270.14 includes such areas as general inspection schedules, floodplain information, the post-closure plan, the notice of deed or appropriate alternate instrument, closure and post-closure care cost estimates, site characterization and groundwater monitoring for land disposal facilities, and exposure information for landfills and surface impoundments.

The Agency has found that certain of the 270 information requirements are essential to ensuring proper post-closure while others are generally less relevant to post-closure. The most important information for setting long-term post-closure conditions are groundwater characterization and monitoring data, long-term care of the regulated unit and monitoring systems (e.g., inspections and systems maintenance), and information on SWMUs and possible releases. Therefore, EPA is today proposing to add a new section (§ 270.27) to identify that subset of the Part B application information that must be submitted for post-closure permits. Under today's proposal, an owner or operator seeking a post-closure permit would have to submit only that information specifically required for such permits under newly added § 270.27, unless otherwise specified by the Regional Administrator. The specific items required in post-closure permit applications are:

—A general description of the facility;
—A description of security procedures and equipment;
—A copy of the general inspection schedule;
—Justification for any request for waiver of preparedness and prevention requirements;
—Facility location information;
—A copy of the post-closure plan;
—Documentation that required post-closure notices have been filed;
—The post-closure cost estimate for the facility;
—Proof of financial assurance;
—A topographic map; and
—Information regarding protection of groundwater (e.g., monitoring data, groundwater monitoring system design, site characterization information)
—Information regarding solid waste management units at the facility.

In many cases, this information will be sufficient for the permitting agency to develop a draft permit. However, since RCRA permits are site-dependent, EPA believes it is important that the Regional Administrator have the ability to specify additional information needs on a case-by-case basis. Accordingly, to ensure availability of any information needed to address post-closure care at surface impoundments (§ 270.17), waste piles (§ 270.18), land treatment facilities (§ 270.20) and landfills (§ 270.21), § 270.27 of today's proposal would authorize the Regional Administrator to require any of the Part B information specified in these sections in addition to that already required for post-closure permits at these types of units. This approach would enable the Regional Administrator to require additional information as needed but would not otherwise compel the owner or operator to submit information that is irrelevant to post-closure care determinations.

To ensure substantive equivalency of authorities used in lieu of post-closure permits, today's proposal would require that part 270 information specifically required for post-closure permits must also be provided upon request by the Agency when an alternative authority is used in place of a post-closure permit. EPA requests comment on this approach.

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3. Post-Closure Plans and Permits

EPA anticipates that, in many cases where a post-closure permit is inappropriate or difficult to issue, the regulatory agency will choose to issue a post-closure plan under interim status authorities to address long-term care of the regulated unit (e.g., groundwater monitoring and maintenance of the cap) and a section 3008(h) order for facility-wide corrective action. EPA generally believes that this approach provides a reasonable alternative to a post-closure permit, as long as the substantive post-closure care requirements of proposed § 265.121 are satisfied.

EPA believes that, for the most part, proposed § 265.121 requirements can be satisfied using this approach. The section 3008(h) corrective action order would be structured to address all SWMUs on the facility, and public participation, under EPA's current policy, would occur at the time of corrective action remedy selection. The post-closure plan approval would be subject to public comment, in accordance with § 265.118, and it would in most respects impose appropriate long-term care requirements.

To assure that the post-closure plan will provide the same degree of environmental protection as would a permit, EPA is proposing in § 265.121(a)(1) to provide EPA the authority to impose part 264 groundwater monitoring requirements through the part 265 post-closure plan process. In addition, proposed § 265.121(a)(3) would provide EPA the authority to require submission of information necessary to impose part 264 groundwater monitoring requirements through a post-closure plan. This authority would expand the options available to the Agency to address post-closure facilities, without affecting the level of environmental protection or public participation.

4. Alternate Authorities Issued Prior to the Effective Date of the Final Rule

It is likely that prior to final promulgation of this rule, EPA and authorized States will have initiated and, in some cases, completed actions under a variety of regulatory authorities, other than post-closure permits, to address post-closure and corrective action at facilities currently subject to post-closure permit requirements. It also is likely that those actions, if taken after promulgation, would have satisfied the requirements of this rule. The Agency does not believe it would make sense to require EPA or the State to go through procedural steps to satisfy regulatory requirements where environmental needs at a facility have been addressed adequately. Therefore, the Agency is proposing, under § 265.121(c), a procedure for the Agency to review activities initiated or conducted in full prior to promulgation of this rule, to determine whether the requirements applicable to the facility have been met.

Under proposed § 265.121(c), EPA would provide public notice of its activities at the facility and its determination that the facility has been addressed, and solicit public comment. After review of public comment, the Agency would determine whether the activities conducted at the facility were adequate to satisfy the requirements of part 265. If the activities were found to be deficient, EPA would impose additional requirements either by amending the existing order, issuing a new order, modifying the post-closure plan, or requiring a post-closure permit.

III. Request for Public Comment on Closure and Post-Closure Related Issues

Today's notice proposes several amendments to the regulations governing closure and post-closure care. It is important to clarify that the regulatory amendments proposed today represent an initial step in a broader effort to improve the existing closure process. The Agency recognizes the need to amend the existing regulations beyond what is proposed today.

Specifically, the Agency recognizes a need to more effectively integrate the closure and corrective action activities at facilities, and to have closure requirements and timeframes that reflect the complexities of such activities. In the following discussion, the Agency solicits comment on both of these issues. In addition to soliciting comment on both specific issues discussed below, the Agency also solicits general comment on the closure process, including impediments to implementing the current requirements and options to improve the process.

A. Regulatory Timeframes

As was discussed above, the current closure regulations were promulgated before the Agency had any experience with closure under RCRA standards; not surprisingly, therefore, they do not always reflect the complexity of closure activities. One oversimplification in the current closure process is the imposition of timeframes for closure activities and closure plan approval. Expectations built based on these timeframes (as well as other factors) have caused GAO to criticize the pace at which the Agency is bringing facilities to closure.

In a report issued in May of 1991, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, GAO criticized the Agency's progress in completing closure activities at the approximately 1000 land disposal facilities that lost interim status in 1985. GAO pointed to the regulatory timeframes in the closure process and determined that the closure activities should be complete at those facilities. In a later report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*, issued in April of 1992, GAO expressed concerns that owners and operators can almost indefinitely delay the closure process. GAO suggested that the Agency should use the regulatory closure timeframes to prevent prolonged cleanup activities.

The Agency disagrees that the current regulatory timeframes for closure completion could be used to ensure that closure is completed within those timeframes. Rather, the Agency believes, as was discussed earlier in this preamble, that in many cases the timeframes for closure completion do not reflect the technical complexity of the process. In the following discussion, the Agency solicits comment on options for removing or extending the timeframes in the current closure regulations.

1. Closure Plan Review and Approval Process

In 1982, the Agency promulgated regulations that included timeframes for review and approval of closure plans. At the time, the Agency believed the timeframes were reasonable. Under these regulations, EPA must approve, modify, or disapprove a closure plan within 90 days of its initial submission. Upon disapproval of the plan, the owner or operator must submit a new or revised plan within 30 days. The Agency then has 60 days to approve or modify the resubmitted plan.

These timeframes were developed before the Agency had experience implementing closure, and prior to the enactment of RSWA. Since that time, experience has indicated that closures are often more complex than anticipated, particularly for older units requiring corrective action. Consequently, the timeframes established in the regulations often are not met by the Agency and the regulated community. Based on this experience, the Agency today seeks comment on the need to revise existing timeframes, and on alternative approaches to the review and approval process.

EPA specifically seeks comment on the option of eliminating mandatory timeframes. This change would allow for case-by-case variation in the time allowed for closure plan review and revision. The time required to process individual closure plans varies widely according to the scope and complexity of the closure activity, the quality of the plan submitted, and the extent of revision required. An additional important variable is the need to coordinate closure with corrective action required at the site. In addition to providing flexibility to account for site-specific variation, removing timeframes would allow EPA and the States to prioritize their workloads and to process closure plans on a worst-site first basis.

On the other hand, EPA recognizes the need to maintain accountability for timely and effective implementation of RCRA. Timeframes provide a simple, straightforward means of auditing performance and, by removing them, the Agency may be removing an important means of insuring accountability. In light of this concern, a second alternative may be to retain but extend the current timeframes to more accurately reflect time needed to complete specific closure activities. The Agency is not now suggesting alternate time periods, but solicits comment on specific timeframes that may be more reasonable and appropriate.

2. Timeframes for Completion of Closure Activities

Under existing regulations, facilities must complete closure within 180 days of receipt of the final volume of hazardous waste, or 180 days after the closure plan has been approved, whichever is later. Extensions may be approved upon demonstration of need. These timeframes are designed to prevent closures from dragging on for indefinite periods. The Agency is concerned that if closure is not addressed in a timely manner, there is an increased likelihood of releases from the unit into the environment, and that the financial situation of the facility may deteriorate such that it will be unable to complete closure activities on its own.

On the other hand, the Agency has found that the 180-day time period has been insufficient for a majority of closed and closing RCRA facilities. Activities required to complete closure (e.g. securing contracts, developing plans and specifications, bidding and construction) have proven to be more time consuming and complicated than originally anticipated. As noted above, the size and scope of the closure activities are important variables that may significantly affect time required to achieve final closure. Appropriate timeframes may also vary widely based on the type of remedies pursued. Bioremediation or waste fixation, for example, may constitute effective, albeit longer-term means of meeting closure performance standards. Another important consideration that frequently warrants extension of the closure period is the need to schedule closure activities to correspond with required corrective action.

Extensions may be granted if the owner or operator can demonstrate need in accordance with existing provisions. EPA is concerned, however, that extensions may have become the rule rather than the exception. Based on these concerns, EPA is considering revision of the 180-day closure completion period. Given the site-specific nature of time needed to complete closure, EPA is considering proposing that time periods for completing closure be developed on a facility specific basis through the closure plan process. Another alternative would be to establish a longer more appropriate mandatory time period for completing closure.

Under any alternative, EPA believes it is appropriate to retain the existing provision that, in instances where closure will take longer than 180 days, the owner or operator must certify that he has taken and will continue to take all steps to prevent threats to human health and the environment.

EPA solicits comments on whether the 180-day closure completion period should be revised and, if so, how it should be amended to provide necessary flexibility while ensuring effective and timely closures.

B. Regulatory Distinction Between Regulated Units Undergoing Corrective Action and Non-Regulated Solid Waste Management Units

The universe of closed and closing regulated land disposal units includes a number of units that have released hazardous wastes and constituents into soils and groundwater surrounding the unit. In terms of the environmental risk associated with these regulated units, and the activities necessary to address that risk, these units are indistinguishable from non-regulated solid waste management units. In many cases, particularly in the case of unlined land-based units, closure of the regulated unit will involve many of the same activities as do corrective actions conducted under the authority of § 264.101 or RCRA section 3008(h). However, in the case of regulated units, the regulations of parts 264 and 265 governing groundwater monitoring, closure and post-closure care, and financial assurance continue to apply during cleanup.

The Agency is concerned that this dual regulatory scheme often limits the Agency's ability to determine the best remedy at regulated units. The Agency believes that there are many situations where allowing the Regional Administrator to make a site-specific determination, rather than strictly applying the full range of parts 264 and 265 requirements, would better serve the goal of expedited closure of the unit.

Consider, for example, the situation where EPA or an authorized State addresses, through its corrective action authorities, a collection of adjacent units releasing hazardous constituents to the environment. If one of those units were a regulated unit, while the others were non-regulated solid waste management units, two regulatory regimes would arguably apply. Under the current regulatory structure, EPA might select remedies for the solid waste management units through the proposed 40 CFR subpart S process, while the regulated unit would remain subject to part 264 and part 265 closure and groundwater monitoring requirements. Thus, in one case groundwater cleanup levels would be selected through a balancing process comparable to Superfund's, while for the regulated unit, the owner or operator might be required to clean the site up to background, or seek an Alternative Concentration Limit under § 264.94. In this case, EPA does not believe retaining a dual regulatory structure serves the goal of expedited cleanups. Rather, it believes that the corrective action process, which was specifically designed for remedial activities, would be more appropriate to address the closed regulated units.

In other cases, the regulations might prevent the owner or operator from closing the unit in a manner that meets the closure performance standard of §§ 264.111 and 265.111. For example, where waste has been removed from a unit but contaminated soils remain, the remedy that might best prevent future releases from the unit could include installation of an infiltration system and flushing of soils over time to remove remaining contamination. However, the requirement of §§ 264.310 and 265.310 that the unit be covered with an impermeable RCRA cap would arguably rule out or significantly complicate the remedy, because soils could not be flushed beneath a cap, and the contaminated soils would remain untreated.

The Agency is considering amendments to the requirements of parts 264 and 265 that would reduce or

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eliminate the regulatory distinction between closed or closing regulated units that require corrective action and other solid waste management units. EPA, therefore, solicits comment on whether to allow the Regional Administrator to establish groundwater monitoring, closure and post-closure care, and financial assurance requirements on a site-specific basis at regulated units addressed through the corrective action process. Under this approach, the Regional Administrator would look to the corrective action process, rather than the unit-specific technical standards designed for regulated units, to determine remedial objectives and standards. This would allow EPA to develop, through the corrective action process, a consistent overall remedy, tailored to the specifics of the situation.

The Agency specifically solicits the following information:

(1) Situations where it is important to retain the regulatory distinction between regulated units undergoing corrective action and other solid waste management units,

(2) Specific requirements applicable to regulated units that should be retained (if any),

(3) Situations where it is important to eliminate the distinction between regulated units undergoing corrective action and other solid waste management units, and

(4) Specific requirements applicable to regulated units that impede cleanup at those units.

IV. Proposed Provisions Related to State Enforcement Authority to Compel Corrective Action at Interim Status Facilities

A. Background Information

The HSWA amendments of 1984 substantially expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) requires that any hazardous waste management permit issued after November 8, 1984, address corrective action for releases of hazardous waste or hazardous constituents from any solid waste management unit (SWMU) at the facility. Section 3004(v) extends corrective action authority to cover releases migrating off-site. Section 3008(h) provides EPA with enforcement authority to require corrective action at interim status facilities. Sections 3004 (u) and (v) became immediately effective in all States and are administered by EPA until States become authorized for HSWA corrective action (*see* section VI of this preamble for further discussion). Section 3008(h) also became effective immediately.

On July 15, 1985, and December 1, 1987, the Agency codified in § 264.101 the requirements of sections 3004 (u) and (v) for addressing corrective action at permitted facilities (*see* 50 FR 28747 and 52 FR 45788). As a result, States wishing to obtain or retain authorization to implement subtitle C hazardous waste management programs must adopt permitting authorities that are at least as stringent as the provisions in § 264.101.

Prior to today's rule, however, the Agency had not proposed that States adopt as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities (section 3008(h) authority). While many States may have authorities comparable to section 3008(h), they have not been reviewed by the Agency through the State authorization process. EPA is proposing today to require States to adopt such authority. As with all other EPA enforcement authorities, EPA will maintain it's authority to implement section 3008(h).

B. Summary of Proposed Provisions

The Agency, through today's proposal, would require States to adopt, as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities. States will now need to be authorized for both corrective action at permitted facilities under authorities comparable to sections 3004 (u) and (v) and at interim status facilities under an authority comparable to section 3008(h). States may choose to enhance their enforcement program by adopting an authority comparable to section 3008(h) prior to authorization for corrective action at permitted facilities. For example, a State with a cleanup authority that can address interim status facilities could include such authority as part of its adequate enforcement program, even if it did not yet have authority to address corrective action at permitted facilities.

The Agency would require that the State interim status enforcement authorities be comparable in scope to section 3008(h) authority. Section III.C. of this preamble describes conditions that a State enforcement authority would have to meet to be considered comparable to section 3008(h) authority.

C. Analysis and Discussion

The RCRA regulations at § 271.16 specify the requirements for enforcement authorities that States must meet in order to gain and maintain authorization to administer the RCRA program. The Agency is proposing to amend the requirements for enforcement authorities at § 271.16 to require States to have authority to compel corrective action at interim status facilities.

The Agency believes that requiring States to adopt such authority will enhance the State's role as the primary implementing authority for the RCRA Subtitle C program. Furthermore, today's proposal will ensure that States have the full range of RCRA clean up authority granted EPA by Congress, and, therefore, will promote a more complete and consistent delegation of the corrective action program to the States. As currently practiced, delegation of the corrective action program to address permitted facilities, but not interim status facilities, causes confusion in the regulated community and makes it more difficult for the States to establish priorities and manage resources efficiently. Furthermore, redundant or inconsistent regulation may result. Today's proposal enhances the State's ability to take the lead for RCRA cleanup activities at all RCRA treatment, storage, and disposal facilities—interim status as well as permitted. Furthermore, EPA believes that this will promote consistency between corrective actions compelled by the Federal and State corrective action programs. The proposed regulations will ensure that equivalent corrective action activities are implemented at interim status facilities, regardless of whether the action is initiated by EPA or a State.

The Agency believes that most States, especially those authorized for corrective action under sections 3004 (u) and (v), may already have the type of enforcement authority that would be required by today's proposal. EPA specifically requests comment from States as to whether the Agency is correct in this assumption. In addition, the Agency requests comment regarding the difficulty of obtaining such an enforcement authority in States where it does not already exist.

Requiring States to obtain the ability to issue interim status corrective action orders also complements today's proposal to allow alternative mechanisms (i.e., orders) to replace post-closure permits. Today's proposal ensures that all States have authority to address both corrective action and post-closure care at interim status facilities.

The Agency will retain its ability to issue section 3008(h) orders. The Agency believes that in many cases, it will be more efficient to continue to implement section 3008(h) orders

already in place, even if the facility is located in a State which has adopted a corrective action order authority as part of their adequate enforcement program. Issuance of a State corrective action order to an interim status facility would not preclude subsequent corrective action requirements pursuant to sections 3004 (u) and (v). Although EPA would retain the authority to issue section 3008(h) orders to interim status facilities, the Agency anticipates that such actions would be filed in States authorized for interim status corrective action authority only after careful consideration and only in cases that meet any of the following criteria:

(1) The State fails to take timely and appropriate action;

(2) The State's action is clearly inadequate; or

(3) Cases that are of national significance. Of course, the Agency will consider using its section 3008(h) authority to compel corrective action if requested by a State.

The Agency does not intend to duplicate past efforts conducted as part of the State authorization process for HSWA corrective action through this rulemaking. Where appropriate, the Agency will review previously submitted State corrective action authorization packages for permitted facilities to evaluate a State's interim status corrective action order authority. However, it may be necessary for States to augment previous authorization packages with supplemental information to enable the Agency to evaluate fully such order authorities.

Under this proposed rule, States that have not yet been authorized for corrective action at permitted facilities could apply for authorization for corrective action authority at interim status facilities. In such a case, EPA would require the State to develop a Memorandum of Agreement (MOA) with EPA to provide the Agency the opportunity to comment on draft orders prior to issuance. Prior to today's proposal, EPA has not established a right to comment on draft orders. However, in the case where States are not yet authorized for corrective action at permitted facilities, the Agency believes that it would be important to have such opportunity to ensure consistent implementation of the RCRA corrective action program. To accommodate variations in State procedural rules, EPA would allow these States and the Regions to decide exactly how and when EPA would submit comments on State orders in the State/EPA MOA.

D. EPA's Interpretation of the Scope of Section 3008(h)

The Agency uses section 3008(h) authority to address releases at interim status facilities authorized to operate under section 3005(e) of RCRA. In a December 16, 1985, memorandum from J. Winston Porter, then Assistant Administrator of the Office of Solid Waste and Emergency Response, *"Interpretation of Section 3008(h) of the Solid Waste Disposal Act,"* EPA interpreted section 3008(h) to enable the Agency to respond to releases of hazardous waste or hazardous constituents at facilities that have, had, or should have had authorization to operate under interim status by taking either judicial or administrative action. States must demonstrate that their authority can address an equally broad universe of facilities, through either judicial or administrative action, and that their order authorities, at a minimum, meet the criteria discussed below.[2]

1. Definition of Facility

In a recent rule, (Corrective Action Management Units and Temporary Units (58 FR 8658, February 16, 1993)), EPA defined "facility" for corrective action purposes as "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." The Agency interprets "facility" to have the same meaning under section 3008(h). EPA is proposing that States must demonstrate that their cleanup order authorities contain a definition of "facility" that is at least as broad as that available under section 3008(h) or that the State authority otherwise has a scope as broad as section 3008(h).

2. Definition of Release

While the statute does not define the term "release," the Agency has interpreted the term to be at least as broad as the definition of release under CERCLA section 101 (22). The Agency considers a release to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The legislative history (***) also makes it clear that the term release is not limited to releases to ground water. Therefore, the Agency uses section 3008(h) to address releases of hazardous waste or hazardous constituents[3] from a facility. EPA is proposing that States demonstrate that their corrective action order authorities include a definition of release that is as broad as that being used by EPA under section 3008(h), or otherwise has the authority to address all "releases" as defined under that section.

3. Off-Site Releases

EPA interprets section 3008(h) to include the responsibility to address corrective action beyond the facility boundaries as set out in section 3004(v). Section 3004(v) requires owners and operators to take corrective action beyond the facility boundary where such action is necessary to protect human health and the environment unless the owner or operator of the facility demonstrates that, despite best efforts, it is unable to obtain the necessary permission to undertake such action. EPA proposes to require States to be able to impose similarly stringent requirements.

4. Compelling Compliance

In cases of failure to comply with an order issued under section 3008(h) of RCRA, EPA may assess a civil penalty of up to $25,000 for each day of non-compliance. Section 3008(h) also allows EPA to commence a civil action for appropriate relief including a temporary or permanent injunction, or a suspension or revocation of a facility's authority to operate under interim status.

Before States enforcement programs can be deemed adequate under today's proposal (i.e., authority to address corrective action at interim status facilities), they must have the ability, either judicial or administrative, to assess and collect civil penalties. Current requirements for adequate enforcement programs found in §§ 271.15 and 271.16, require States to have administrative or judicial authority to assess penalties up to $10,000 per day. Although section 3008(h) enables the Agency to assess penalties up to $25,000 per day, at this time, EPA is not proposing to require States programs to meet the penalty amounts currently specified in section 3008(h). However, the Agency is seeking comment on whether §§ 271.15 and 271.16 should be amended to require States to demonstrate that their penalty authority is consistent with EPA's (the ability to collect penalties of up to $25,000 per

[2] The Agency's interpretation of the corrective action authorities under section 3008(h) and sections 3004 (u) and (v) are virtually identical. Therefore, criteria discussed in this section related to the Agency's interpretation of section 3008(h) are applicable to the discussion of sections 3004 (u) and (v) in section IV of this preamble, unless otherwise noted.

[3] Hazardous constituents are the substances listed in 40 CFR, Part 261, Appendix 8.

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day for non-compliance with RCRA and/or its regulations).

In addition, EPA will accept any State authority as part of their adequate enforcement program that allows assessment and collection of penalties for non-compliance with a cleanup order. States must be able to apply such penalty authority to facilities subject to interim status requirements under Subtitle C.

Today's proposal would also require States to demonstrate that they have the ability to suspend or revoke a facility's authority to operate under interim status and commence a civil action for appropriate relief, including a temporary or permanent injunction under the cleanup order authority or under a separate authority that can be applied to interim status facilities.

5. Application of Order Authority

EPA believes that State enforcement programs will be enhanced by requiring that such programs have the authority to use orders to address corrective action at interim status facilities. To provide States flexibility to satisfy this newly proposed requirement for authorization, EPA would allow States to request authorization for any State law or enforcement authority that meets the minimum requirements of section 3008(h) as discussed earlier in this section of the preamble.

Furthermore, the Agency has found that in some States, those agencies responsible for the RCRA program may not be responsible for enforcing RCRA order requirements. For example, the State's interim status corrective action orders might only be enforceable through the State Attorney General's Office. In this case, a Memorandum of Agreement (MOA) would be required between the two State agencies to allocate responsibilities for any necessary enforcement. Such MOA must be available for Agency review.

In order to facilitate authorization of State enforcement programs, the Agency requests comment on whether or not it would be appropriate to provide interim authorization for the corrective action order authority as proposed in today's rule.

V. Request for Comment on Authorizing States to Use State Orders to Impose Corrective Action at Permitted Facilities

In the course of authorizing States for sections 3004 (u) and (v) authority, the Agency has recognized that some States would like to compel corrective action at permitted facilities (all TSD facilities) through a State order, in lieu of writing specific permit conditions to implement section 3004 (u) and (v). For example, a State that has years of experience implementing a broad and powerful cleanup order authority may prefer to rely on this authority rather than imposing corrective action through permits; or a State that is already requiring facility-wide cleanup through an order issued under a State statute may find that at the time of permit issuance, no additional permit requirements are necessary.

To ensure that such cleanup orders meet the requirements of sections 3004(u) and (v), EPA would require States to assess the completed cleanup conducted under an order against the requirements of sections 3004(u) and (v). In addition, such orders must be incorporated by reference in the permit, which means the State's normal permit appeal procedures apply to the provisions of the order. Finally, the permit would need to include "reopener" language to ensure that if the requirements of sections 3004(u) and (v) were not met, the State would have the opportunity to modify the permit to require any additional work.

EPA is seeking comment on whether this concept (i.e., using orders in lieu of section 3004(u) and (v) permit conditions) should be made available to the States as an option for implementing corrective action, and whether it would be useful to facilitate cleanups and provide flexibility to States seeking authorization for corrective action. If this concept were eventually adopted, States wishing to use cleanup order authority as the principal vehicle for corrective action at permitted facilities would have to demonstrate to EPA that the order authority is at least as broad as the requirements of sections 3004(u) and (v). The specific requirements for section 3004(u) and (v) can be found under the similar discussion of section 3008(h) requirements found in section IV. of this preamble. Please note, however, that the Agency is not expanding its interpretation of section 3008(h) authority to include permitted facilities. Rather, the Agency believes that some States may have very broad authorities that can address both interim status and permitted facilities.

VI. Public Participation

It is the Agency's policy to provide a meaningful opportunity for members of the public to be informed of, and participate in, decisions that affect them and their communities. This policy applies to corrective action conducted under both orders and permits.

In this notice, the Agency is proposing to:

(1) Allow the use of orders in lieu of post-closure permits, and

(2) Require States to adopt authority, as part of their authorized programs, to address corrective action at interim status facilities. Furthermore, the Agency has asked for comment on allowing States to address corrective action through order authorities in lieu of sections 3004(u) and (v) at permitted facilities. The Agency would involve the public in each of these scenarios through the following procedures.

A. Public Participation Requirements When Issuing a Section 3008(h) Order in Lieu of a Post-Closure Permit

Under today's proposal, all orders issued in lieu of post-closure permit conditions, in conformance with proposed § 270.1(c)(7), must follow the public participation procedures of 40 CFR part 121, which are discussed in section V.A.2.c. of this preamble.

B. Public Participation Requirements for State Corrective Action Orders at Interim Status Facilities

Today's proposal would require States to obtain the ability to address corrective action at interim status facilities with an order authority. Current Agency policy strongly encourages that the opportunity for public participation be provided prior to final remedy selection.[4] Therefore, States seeking authorization for 3008(h) order authority must have a rule or a policy for public participation that is consistent with EPA's current policy.

At this time, the Agency is also asking for comment on whether it would be appropriate to mandate the use of public participation through regulation (specifically the public participation regulations proposed under today's rule at section V A.2.c. (40 CFR part 121)), for all orders addressing RCRA corrective action at interim status facilities.

C. Public Participation Requirements for Orders Used to Address Corrective Action at Permitted Facilities in Lieu of Sections 3004(u) and (v)

The Agency is asking for comment on whether it would be appropriate to allow State corrective action order authorities to address corrective action at permitted facilities in lieu of sections 3004(u) and (v). States seeking to be authorized for such authority would have to demonstrate that their cleanup order authority provides for public participation prior to final remedy selection. The Agency solicits comment on whether it should require that those public participation requirements be equivalent to the requirements of parts 124 and 270, or whether it should approve the use of alternative procedures.

[4] This policy reflects section 7004(b) of RCRA, which requires EPA to provide for and encourage public participation in RCRA actions, including enforcement.

VII. Effect of Today's Proposed Rule on State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (*See* 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains the enforcement authorities of sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect of Today's Proposed Revisions to Closure and Post-Closure Requirements on State Authorizations

This rule proposes revisions to the post-closure requirements under HSWA and non-HSWA authorities. The proposed requirements in §§ 265.110, 265.121 (except for paragraph 265.121(a)(2)), 270.1, and 270.27 are proposed under non-HSWA authority. Thus, those requirements would become immediately effective only in States that do not have final authorization, and would not be applicable in authorized States unless and until the State revises its program to adopt equivalent requirements. Section 265.121(a)(2) is proposed under HSWA authority. Thus, that section would become immediately effective in all States.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are not more stringent or reduce the scope of the Federal program, States are not required to modify their programs (*See* 40 CFR 271.1(i)).

The provisions of today's rule related to post-closure permit requirements are not more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposed rule. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

C. Effect of Today's Proposed Revisions to Requirements for Enforcement Authority on State Authorizations

1. Requirement to Adopt Provisions of Today's Proposal

The provisions of today's rule requiring States to adopt enforcement authorities comparable to section 3008(h) are more stringent than the current Federal program. Therefore, States wishing to seek or retain authorization would be required to adopt those provisions.

2. Effect of Proposed Rule on Federal Enforcement Authorities in States that Obtain Authorization for Today's Proposed Provisions

Since 1980, EPA has required States to adopt civil and criminal enforcement authorities to enforce violations of authorized State statutes and regulations. EPA's authority to use its own enforcement authorities, however, does not terminate when it authorizes a State's enforcement program.

Section 3008(a) allows EPA to enforce any "requirement" of subtitle C. This provision allows EPA to bring administrative and/or judicial enforcement actions to enforce subtitle C requirements even in States authorized to implement subtitle C programs in lieu of the federal program. (Section 3008(a)(2) clearly reflects this authority.) EPA has always used this authority sparingly because it believes States should take the lead role in enforcing their authorized programs. Nevertheless, EPA's continuing enforcement authority can be an essential tool in ensuring that the regulated community meets its obligations to manage hazardous waste in a manner that provides adequate protection for human health and the environment. For the same reasons, EPA will retain its authority to issue corrective action orders to interim status facilities under section 3008(h).

VIII. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (*see* 58 FR 51735), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–94–PCPP–FFFFF).

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B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time the Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities. The provisions of today's rule would expand the options available to address post-closure care so that a permit would not be required in every case, would impose no requirements on owners and operators in addition to those already in effect—nor would the provisions of this proposal that would require States to adopt, as part of an adequate enforcement program, authority to compel corrective action at interim status facilities. Therefore, pursuant to 5 U.S.C. 607b, I certify that this regulation will not have significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping and reporting requirements of this proposed rule would replace similar requirements already promulgated. Thus, this rule imposes no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule do not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.90 is amended by adding a new paragraph (e) to read as follows:

§ 264.90 Applicability.

* * * * *

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of § 270.1(c)(7) of this chapter to obtain either a post-closure permit or equivalent mechanism. Where these facilities are addressed through mechanisms other than a permit, references to "in the permit" in this subpart mean in whatever mechanism the Agency uses to implement the post-closure requirements. In the case of unpermitted facilities that are required by § 265.121 of this chapter to comply with the requirements of this section, any necessary corrective action will be specified in the enforcement order or other enforceable document issued by the Agency in lieu of a post-closure permit.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

2. Section 265.110 is amended by adding a new paragraph (c) to read as follows:

§ 265.110 Applicability.

* * * * *

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of § 270.1(c)(7) of this chapter and do not obtain a post-closure permit for the unit.

3. A new § 265.121 is added to subpart G to read as follows:

§ 265.121 Additional post-closure requirements.

(a) The Agency will impose the following additional requirements on owners or operators that do not obtain a post-closure permit but are subject to post-closure care requirements:

(1) The requirements of §§ 264.90–264.100 of this chapter;

(2) Facility-wide corrective action, consistent with § 264.101 of this chapter;

(3) The information submission requirements of § 270.27 of this chapter;

(b) The Regional Administrator must either:

(1) Provide opportunity for public participation, at the point of remedy selection if corrective action is required at the facility, or upon making a determination that corrective action is not needed, that includes the following:

(i) Publication of a notice of availability and a brief analysis of the proposed remedy, or notice of the determination that corrective action is not needed, in a major local newspaper of general circulation;

(ii) A reasonable opportunity, not less than 30 calendar days, for public comment and, upon timely request, extend the public comment for a period by a minimum of 30 additional days;

(iii) Opportunity for a public meeting to be held during the public comment period at a location convenient to the population center nearest the site at issue;

(iv) A tape or written transcript of the public meeting available to the public;

(v) A written summary of significant comments and information submitted during the public comment period and the EPA or State response to each issue available to the public;

(vi) In the written summary required in paragraph (b)(1)(v) of this section, a discussion of significant changes in documentation supporting the final remedy selected or a request for additional comment on a revised remedy selection if, after publication of the proposed remedy and prior to the adoption of the selected remedy, the remedy is changed such that it significantly differs from the original proposal with respect to scope, performance, or cost as a result of new information; or

(2) If the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely affect human health or the environment, the Regional Administrator may comply with the requirements of paragraph (b)(1) of this section after initiation of the remedy. These requirements must be met before the Regional Administrator may consider the facility addressed under § 270.1(c)(7) of this chapter.

(c) If the activities required of the owner or operator by this section were initiated or conducted prior to [effective date of the final rule], the Regional Administrator may make a determination that the requirements of paragraphs (a) (1), (2), and (3) of this section have been met. Upon making that determination, the Regional Administrator must, before considering the facility to be fully addressed under § 270.1(c)(7)(ii) of this chapter, provide the public notice of that determination in accordance with the procedures outlined in paragraph (b)(1) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by revising paragraph (c) introductory text and adding a new paragraph (c)(7) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA permit requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in part 261 of this chapter.

The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 270.1(c) (5) and (6), or they comply with the alternative post-closure requirements of § 270.1(c)(7)(i)(B). If a post-closure permit is required, the permit must address applicable part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

(7) *Post-closure care permits.* (i) Unless they demonstrate closure by removal or decontamination as provided by § 270.1 (c)(5) and (c)(6), owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must comply with either of the following requirements, as determined by the Regional Administrator:

(A) Obtain a post-closure permit in accordance with § 270.1(c); or

(B) Obtain an enforceable order or other enforceable document (or combination thereof), or be subject to a CERCLA response action or state response action imposing the conditions specified in § 265.121 of this chapter.

(ii) The Regional Administrator must assure that post-closure needs at facilities subject to the requirements of this paragraph (c)(7) are addressed under either paragraph (c)(7)(i)(A) or (c)(7)(i)(B) of this section.

4. Section 270.14 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) * * * For post-closure permits, only the information specified in § 270.27 is required in Part B of the permit application.

* * * * *

5. A new § 270.27 is added to subpart B to read as follows:

§ 270.27 Part B information requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit only the information specified in §§ 270.14(b) (1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), 270.14(c), and 270.14(d), unless the Regional Administrator determines that additional information from §§ 270.14, 270.16, 270.17, 270.18, 270.20, or 270.21 is necessary.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), and 6926.

2. Section 271.16 is amended by adding a new paragraph (e) to read as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(e) Any State administering a program shall have available judicial or administrative action to respond to releases of hazardous waste or hazardous constituents at interim status facilities as provided by section 3008(h).

[FR Doc. 94–27300 Filed 11–7–94; 8:45 am]
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Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Notices

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on December 1–2, 1994. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on December 1, 1994, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on December 2, 1994, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 26, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27574 Filed 11–7–94; 8:45 am]

BILLING CODE 4141–01–P–M

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on December 1–2, 1994. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by November 22, 1994, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its December 1–2, 1994, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Suite 323, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone 301–496–9839, FAX to 301–496–9839.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules:*

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Venook and Warren

In a letter dated October 3, 1994, Drs. Alan Venook and Robert Warren of the University of California, San Francisco, San Francisco, California, submitted a human gene transfer protocol entitled: *Gene Therapy of Primary and Metastatic Malignant Tumors of the Liver Using ACN53 Via Hepatic Artery Infusion: A Phase I Study* to the Recombinant DNA Advisory Committee for formal review and approval.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Gluckman

In a letter dated October 6, 1994, Dr. Jack Gluckman of the University of Cincinnati Medical Center, Cincinnati, Ohio, submitted a human gene transfer protocol entitled: *Intratumoral Injection of Herpes Simplex Thymidine Kinase Vector Producer Cells (PA317/G1Tk1SvNa.7) and Intravenous Ganciclovir for the Treatment of Locally Recurrent or Persistent Head and Neck Cancer* to the Recombinant DNA Advisory Committee for formal review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Hersh, et. al.

In a letter dated September 16, 1994, Drs. Evan Hersh, Emmanuel Akporiaye, David Harris, Alison Stopeck, Evan Unger, James Warneke, of the Arizona Cancer Center, Tucson, Arizona, submitted a human gene transfer protocol entitled: *Phase I Trial of Interleukin-2 Plasmid DNA/DMRIE/DOPE Lipid Complex as an Immunotherapeutic Agent in Solid Malignant Tumors or Lymphomas by Direct Gene Transfer* to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Grossman and Woo

In a letter dated September 27, 1994, Drs. Robert Grossman and Savio Woo of the Baylor College of Medicine & Methodist Hospital, Houston, Texas, submitted a human gene transfer protocol entitled: *Phase I Study of Adenoviral Vector Delivery of the HSV-TK Gene and the Intravenous Administration of Ganciclovir in Adults with Malignant Tumor of the Central Nervous System* to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Clayman

In a letter dated October 5, 1994, Dr. Gary Clayman of the MD Anderson Cancer Center, Houston, Texas, submitted a human gene transfer protocol entitled: *Clinical Protocol for Modification of Tumor Suppressor Gene Expression in Head and Neck Squamous Cell Carcinoma (HNSCC) with an Adenovirus Vector Expressing Wild-type p53* to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Dorkin and Lapey

In a letter dated October 11, 1994, Dr. Henry Dorkin of the New England Medical Center, Boston, Massachusetts, and Dr. Allen Lapey of Massachusetts General Hospital, Harvard Medical School, Boston, Massachusetts, submitted a human gene therapy protocol entitled: *Adenovirus Mediated Gene Transfer for Cystic Fibrosis: Safety of Single Administration in the Lung* to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Report on Minor Modifications to NIH-Approved Human Gene Transfer Protocols

Dr. LeRoy Walters, Chair of the Recombinant DNA Advisory Committee, will present an update on minor modifications to NIH-approved human gene transfer protocols.

VIII. Working Group on Data Management

Dr. Brian Smith, Chair of the Working Group on Data Management, will provide a summary of the reports submitted to the Office of Recombinant DNA Activities by the principal investigators of NIH-approved protocols, and make recommendations regarding actions to be taken in the event of non-reporting.

IX. Amendments to Appendix B of the NIH Guidelines Regarding Updating the Classification of Microorganisms/Fleming

In a letter dated June 24, 1993, Dr. Diane Fleming, President of the Mid-Atlantic Biological Safety Association requested updating Appendix B, *Classification of Microorganisms on the Basis of Hazard*. The Mid-Atlantic Biological Safety Association submitted an updated list of the classification of microorganisms for the Committee to review which included the latest taxonomy and agent risk group classifications as defined by the Centers for Disease Control and Prevention. This request was published for public comment in the **Federal Register** (August 18, 1994, 58 FR 44098).

During the September 9–10, 1993, meeting, the Recombinant DNA Advisory Committee recommended by consensus that the current classification of etiological agents described in the *Biosafety in Microbiological and Biomedical Laboratories*, 3rd edition, May 1993, U.S. Department of Health and Human Services, should be endorsed by the Committee. The Committee retains the option to adopt any modification to the CDC listing. The Committee recommended that the revised Appendix B, *Classification of Microorganisms on the Basis of Hazard*, submitted by Dr. Fleming should not be adopted until the Committee receives letters of concurrence from both the Centers for Disease Control and Prevention and the NIH Division of Safety.

In a telephone call on October 20, 1994, Dr. Fleming stated that Appendix B, *Classification of Microorganisms on the Basis of Hazard*, would be reviewed by experts from the Centers for Disease Control and Prevention and the American Society for Microbiology. The revised Appendix B will be submitted to the Committee for the December 1–2, 1994, meeting for review and discussion. If accepted, the revised Appendix B will be published in the **Federal Register** for public comment, and voted on during the March meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 31, 1994.

Daryl A. Chamblee,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 94–27575 Filed 11–7–94; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Notice of Funding Availability for Intermediaries To Administer Preservation Technical Assistance Grants: Limited Reissuance; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-94-3719; FR-3473-N-04]

NOFA for Intermediaries To Administer Preservation Technical Assistance Grants: Limited Reissuance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: The Department previously published a NOFA requesting applications from intermediaries seeking to administer technical assistance grant funds as described in an April 6, 1994, **Federal Register** publication (59 FR 16366). In that NOFA, the Department requested applications from intermediaries to administer funds on a State-by-State basis; it also requested applications from any intermediary interested in administering funds as a national intermediary to cover States for which acceptable State and regional intermediaries had not applied. The selection process for the April 6, 1994, NOFA is complete. However, because no national intermediary was selected and the Department is now aware of intermediaries interested in administering these grant funds in geographic areas not covered by selections under the April 6, 1994, NOFA, the Department is reissuing the NOFA for intermediaries interested in administering funds in those uncovered areas (a copy of that NOFA is included in the application kit). In addition, the Department is establishing a mandatory training program for intermediaries selected under the NOFA.

DATES: The deadline for submission of intermediary applications under the reissued NOFA is 4:30 p.m.(EST) on December 8, 1994.

ADDRESSES: Application kits for intermediaries contain a copy of the NOFA and may be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1-800-685-8470. Completed applications must be physically received in the Preservation Division, Department of Housing and Urban Development, Room 6284, 451 Seventh Street, SW, Washington, DC 20410, by the submission deadline.

FOR FURTHER INFORMATION CONTACT: Kerry Mulholland, Acting Chief, Affordable Housing Branch, Preservation Division, Department of Housing and Urban Development, Room 6164, 451 Seventh Street, NW, Washington, DC 20410; telephone (202) 708-2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300. (Except for the "800" number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Purpose and Substantive Description

The funding made available under this NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), in order to provide assistance to resident groups and Community-Based Nonprofit Housing Developers (CBDs) involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (title II of the Housing and Community Development Act of 1987; Pub. L. 100-242, approved February 5, 1988) (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (title VI of the National Affordable Housing Act (NAHA); Pub. L. 101-625, approved November 28, 1990) (LIHPRHA).

On April 6, 1994, the Department published a NOFA requesting applications from intermediaries seeking to administer technical assistance grant funds (59 FR 16366). The requirements of the April 6, 1994, NOFA are incorporated into this reissuance, except for Section II.C, "Allocation and Funding," and Section III.B, "Fees." Both Sections II.C and III.B have been revised to encourage additional intermediary applicants in certain geographic areas to apply for funds. The Department is also adding a training requirement, whereby selected intermediaries will be required to attend an intermediary training session in Washington, D.C.

The April 6, 1994, NOFA has a complete description of the authority and background, eligibility of intermediaries, intermediary responsibilities, and program requirements for technical assistance applicants applying for funds through selected intermediaries (see Appendix A of the April 6 NOFA).

Because the intermediary program is already in place, intermediaries applying for funds under this reissuance will be given only 30 days to submit applications. Likewise, the Department will review and approve applications in 30 days. The following are the States and territories for which the Department is seeking additional intermediaries and the amounts (rounded) that are available in each of those areas:

ALASKA	67,807.00
ARIZONA	524,817.01
ARKANSAS	793,800.05
CARIBBEAN	396,854.21
COLORADO	725,901.42
DELAWARE	67,807.00
FLORIDA	2,480,819.88
GEORGIA	911,316.91
HAWAII	396,854.21
IDAHO	652,779.82
IOWA	509,148.10
KENTUCKY	1,135,904.69
LOUISIANA	778,131.14
MAINE	156,597.52
MISSISSIPPI	224,496.15
MISSOURI (EAST)	156,597.52
MONTANA	164,431.97
NEBRASKA	300,229.24
NEVADA	214,050.20
NEW HAMPSHIRE	156,597.52
NORTH DAKOTA	289,783.29
OKLAHOMA	422,969.07
SOUTH CAROLINA	1,156,796.58
SOUTH DAKOTA	600,550.10
TEXAS	3,253,819.68
UTAH	310,675.18
VIRGIN ISLANDS	33,857.68
WEST VIRGINIA	133,094.14
WYOMING	185,323.86
Total	17,201,811.15

Training

The Department will conduct a two-day training program for intermediaries selected under both this NOFA and the April 6, 1994 NOFA. At least one staff person from each selected intermediary will be required to attend. The Department will reimburse each intermediary for allowable expenses related to attendance by its staff person. The intermediary, at its option, may send an additional staff person; however the Department will not reimburse the intermediary for expenses related to attendance of the additional person.

Accordingly, FR Doc. 94-8065, NOFA for Intermediaries to Administer Preservation Technical Assistance Grants, published on April 6, 1994 (59 FR 16366), is amended as follows:

1. On page 16372, in the second column, the first paragraph of Section II.C, "Allocation and Funding," is amended by adding two new sentences after the third sentence, to read as follows:

C. Allocation and Funding

* * * However, the Department will guarantee sufficient funds for each State to cover Intermediary start-up fees, in accordance with Section III.B ("Fees") of this NOFA. Also, to the extent necessary, the Department may maintain a reserve of funds to assure the availability of funds in geographic areas where there is the potential for Preservation activity, but no such activity currently exists.

* * * * *

2. On page 16373, in the first column, the first paragraph of Section III.B, "Fees," is revised to read as follows:

B. Fees

Each selected intermediary will receive processing fees. The fees will include a start-up fee. For any intermediary that was selected under the April 6, 1994, NOFA (59 FR 16366) to administer funds and that seeks, under the November 8, 1994, reissuance of the NOFA, to expand its coverage and administer funds in additional States, the start-up fee shall include $15,000, plus an appropriate adjustment for the required training of one staff person, under the April 6 NOFA and an additional $5,000 per State under the November 8, 1994, reissuance of the NOFA. For any intermediary that did not receive funds under the April 6 NOFA and that applies under the November 8, 1994, reissuance of the NOFA to administer funds for one State or an area smaller than one State, the start-up fee shall be $15,000. For any intermediary that did not receive funds under the April 6 NOFA and that applies under the November 8, 1994, reissuance of the NOFA to administer funds in more than one State, the start-up fee will be $15,000 for the first State and $5,000 for each additional State in which the intermediary is selected to administer funds. These fees are based on the intermediary performing the following activities: announcing the availability of grant funds; producing and distributing application kits; accepting, reviewing and approving and/or rejecting grant applications; executing grant agreements; disbursing grant funds; monitoring the grantees' activities under the grant award; monitoring compliance with the grant agreement through the term of the grant; and maintaining documentation of grant activities for the Department's monitoring of the intermediary.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: November 2, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-27642 Filed 11-7-94; 8:45 am]

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Part VI

The President

Proclamation 6754
National Military Families Recognition Day

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Presidential Documents

Title 3—

The President

Proclamation 6754 of November 4, 1994

National Military Families Recognition Day, 1994

By the President of the United States of America

A Proclamation

Military families play an integral role in ensuring the effectiveness of America's Armed Forces. Without fanfare, they selflessly provide behind-the-scenes support to service members, their units, and commands worldwide. Their devotion to their loved ones, to the military, and to their country is unfaltering.

Time and again, military families bravely bid farewell as wives and husbands, children and parents depart for missions in far-off, often hostile areas. Committed to preserving freedom and democracy for all of us, these families provide the continuity and stability essential to the well-being of our soldiers, sailors, airmen, Marines, and the members of our Coast Guard, National Guard, and Reserves.

Military families face abrupt separations, moves to foreign soil, and tours in isolated locations away from friends. As they adjust to conditions around the world, they learn to do without many of the conveniences that most Americans view as basics. They quickly and adeptly transform unfamiliar quarters into welcoming homes, forming bonds of friendship with others in the unit, sharing in their hopes, dreams, and aspirations.

Commanders and other Department of Defense leaders have long recognized the paramount importance of families in the retention and readiness of military members. Indeed, America reaps invaluable benefits from the dedication of military families as they support America's mission to promote democracy and to secure peace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21, 1994, as "National Military Families Recognition Day." I call upon all Americans to join in honoring military families throughout the world and in recognizing their integral role in supporting the men and women who defend the cause of freedom at home and abroad. I ask Federal, State, and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-27859
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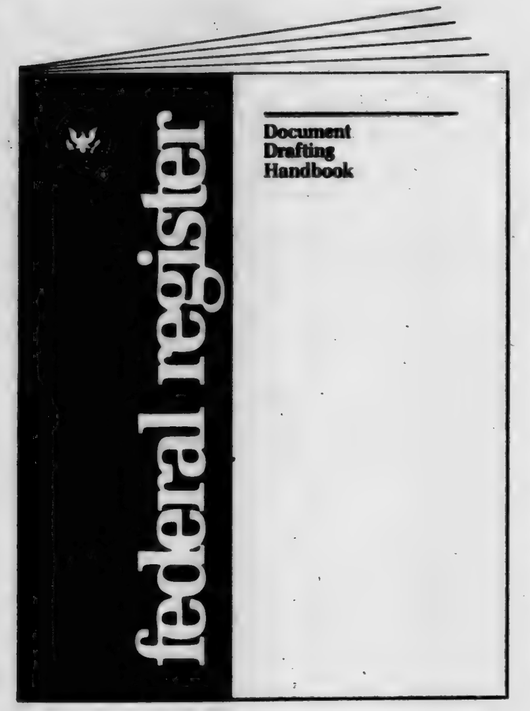
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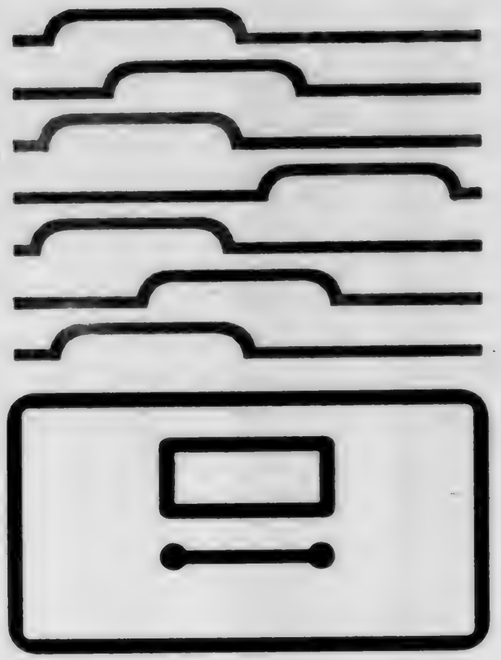
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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AG20

Waiver of Repayment of Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rules with request for comments.

SUMMARY: The Federal Workforce Restructuring Act of 1994, Public Law 103–226, enacted March 30, 1994, generally requires that an employee who accepts a voluntary separation incentive payment must repay the entire amount of the payment to the agency that paid the payment if the employee is reemployed by the Federal Government, in either a temporary or permanent status, within 5 years following the effective date of separation on which the payment was based. The payment must also be repaid if the employee accepts a personal services contract with the Federal Government within the 5-year period. The Act allows Executive agencies to request waivers of repayment from the Office of Personnel Management if the individual the agency wants to reemploy possesses unique abilities and is the only qualified applicant available for the position. These regulations implement this waiver authority.

DATES: Interim rules effective on November 9, 1994. Written comments will be considered if received no later than January 9, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director, Career Entry Group, Room 6F08, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Betty Pickering of the Workforce Restructuring Office, Career Entry Group, on 202–606–0960 or fax 202–606–2329.

SUPPLEMENTARY INFORMATION: The Federal Workforce Restructuring Act of 1994, Public Law 103–226, enacted March 30, 1994, authorizes the payment of voluntary separation incentive payments to employees of executive branch agencies.

Public Law 103–226 does not authorize the Department of Defense, the Central Intelligence Agency, or the General Accounting Office to pay voluntary separation incentive payments to their employees since they have separate voluntary separation incentive program authorities. However, Public Law 103–226 covers the Department of Defense and the Central Intelligence Agency under the provisions dealing with employee repayment of voluntary separation incentive payments on reemployment with the Federal Government. The provisions dealing with employee repayment of voluntary separation incentive payments on reemployment do not apply to the General Accounting Office.

Public Law 103–226 requires an employee who receives a separation incentive payment on or after March 30, 1994, from any executive branch agency, including the Department of Defense and the Central Intelligence Agency, to repay the entire amount, including all deductions for taxes, etc., if reemployed in the Federal Government of the United States within 5 years of the separation date. This requirement applies to any employment, of any length, in any entity of the Federal Government of the United States, including the United States Postal Service, the White House, and non-appropriated fund activities. Employees, except employees of the Department of Defense, who receive a voluntary separation incentive payment and accept employment with the Federal Government under a personal services contract within 5 years of the date of separation must also repay the entire amount of the incentive payment.

The statute establishes specific limited conditions under which repayment of the voluntary separation incentive payment may be waived. If the individual is to be reemployed by an Executive agency, the Director of the Office of Personnel Management may waive repayment. For reemployment in the Legislative branch, the head of the organization or the appointing official may waive the repayment. For reemployment in the Judicial branch, the Director of the Administrative Office of the United States Courts has waiver authority. In all cases, a waiver is permitted if the individual possesses unique abilities and is the only qualified applicant available for the position. The Office of Personnel Management does not have authority to approve waivers of repayment for individuals who accept personal service contracts, or for individuals reemployed in the Legislative or Judicial branches of the Federal Government. These regulations, therefore, apply only to individuals who are otherwise subject to the reemployment provision of the Federal Workforce Restructuring Act and have accepted reemployment with the executive branch agencies.

Reemployment and Waivers of Repayment

The Office of Personnel Management's specific criteria for waiving repayment of a separation incentive payment are similar to criteria used for waiving reduction in salary or retirement pay for reemployed annuitants in that waivers will be approved in response to exceptional recruiting difficulty. Requests for waivers must be submitted to the Office of Personnel Management by the agency head or a designee at the agency or departmental headquarters level. Two special provisions reflect the intent of Public Law 103–226.

If the employee will be reemployed in the same agency, the request for a waiver must show that the recruiting need could not have been forseen before the employee's separation. An agency should not need to rehire employees to whom it pays separation incentives since Public Law 103–226 gives agencies authority to control separations from critical or hard-to-fill positions. The Office of Personnel Management will approve waivers of repayment for reemployment in the same agency only in rare and unusual circumstances.

The law authorizes waivers of repayment only for reemployment in exceptionally hard-to-fill positions. Therefore, any waiver approved by the Office of Personnel Management will apply to a specific position and the

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employee appointed to it may not be reassigned during the 5-year period following separation unless the employee repays the separation incentive or the Office of Personnel Management approves a new waiver.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because the statutory basis for these regulations (Pub. L. 103–226) was effective March 30, 1994, and it would be contrary to the public interest to delay implementation of rules covering reemployment and waivers of repayment. For the same reasons, and pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 576

Government employees, wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management is adding a new Part 576 to title 5, Code of Federal Regulations, as follows:

PART 576—WAIVER OF REPAYMENT OF VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Reemployment and Waiver of Repayment

Sec.

576.101 Repayment requirement.
576.102 Requesting Office of Personnel Management approval for waiver of repayment.

Authority: 5 U.S.C. 2101 note.

Subpart A—Reemployment and Waiver of Repayment

§ 576.101 Repayment requirement.

(a) *Who is covered.* This subpart covers any executive agency employee who received a voluntary separation incentive payment on or after March 30, 1994, including employees of the Department of Defense and Central Intelligence Agency.

(b) *What is covered.* This subpart covers reemployment of any duration, under any authority, in the Federal Government of the United States, within 5 years of the date of the separation on which payment of an incentive is based.

(c) *What is required.* The employee must repay the entire amount of the voluntary separation incentive payment, including all deductions for taxes, etc., to the agency that made the payment. Repayment will be made as provided in 5 U.S.C. 5514, as implemented in part 550, subpart K, of this chapter, or other appropriate authority.

(d) *Exception to the repayment requirement.* If the individual accepts reemployment with an Executive agency, the Office of Personnel Management may waive repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. Each waiver must be approved individually, as provided in § 576.102 of this part. Waivers of repayment are not required for individuals who work as unpaid volunteers for the Federal Government.

§ 576.102 Requesting Office of Personnel Management approval for waiver of repayment.

(a) *Request by agency head.* The head of an Executive agency may request the Office of Personnel Management to approve a waiver of repayment for an individual when the agency has determined that the individual involved possesses unique abilities and is the only qualified applicant available for the position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Content of requests.* Each request must:

(1) Identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.

(2) Describe how the position is essential to accomplishing the agency's mission and how the individual is uniquely qualified for the position.

(3) Describe the length, breadth, and results of the agency's recruiting efforts for the position and any other factors demonstrating that the individual is the only qualified applicant available for the position.

(4) If the individual is being reemployed in the agency that paid the separation incentive, demonstrate why the recruiting need could not be foreseen at the time of separation.

(c) *Application of exceptions.* A waiver of repayment of a separation incentive approved by the Office of Personnel Management under this part applies only while the individual for whom it was approved continues to serve in the same or a successor position. The waiver terminates if the individual is assigned to a different position during the 5-year period in which repayment is required, unless OPM approves a new waiver.

[FR Doc. 94–27743 Filed 11–8–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV94–997–2FIR]

Clarifying and Updating Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim rule that clarified that peanut handlers not signatory to Peanut Marketing Agreement No. 146 (Agreement) may store and shell certain Segregation 2 seed peanut lots with Segregation 1 seed peanut lots when such lots are produced under the auspices of a State agency which regulates or controls their production. The interim rule also updated information on the laboratories qualified to perform aflatoxin testing of shelled peanuts, and certain cleaned inshell peanuts. Allowing peanut handlers to commingle certain seed peanut lots reduces the space and costs needed to store seed peanuts. Updating laboratory information should assist handlers in moving peanuts to market. These changes are intended to bring the non-signatory handling requirements into conformity with those specified in the Agreement.

EFFECTIVE DATE: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2020, facsimile (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement who are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

In 1993, the reported U.S. production, mostly covered under the Agreement, was approximately 3.33 billion pounds of peanuts, a 22 percent decrease from 1992 and the lowest level since 1983. The preliminary 1993 peanut crop value is $991.65 million, 77 percent of the 1992 crop value.

After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Act, Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965. The Agreement was signed by a majority of domestic peanut handlers.

Public Law 101–220, enacted December 12, 1989, amended section 608(b) of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49980) and amended several times thereafter, and are published in 7 CFR part 997. All such amendments were made to ensure that the non-signer handling requirements remain consistent with modifications to the handling requirements applied to signatory handlers under the Agreement. Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3) for the crop year during which the violation occurs.

The intent of P.L. 101–220 and the objective of the Agreement are to insure that only wholesome peanuts of good quality enter edible market channels. Under the non-signer and Agreement regulatory provisions, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts and certain lots of inshell peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in other laboratories listed in the regulations. Inspection and chemical analysis programs are administered by the Department.

Under the non-signer provisions, the second sentence of paragraph (e) *Seed peanuts.* prohibits the commingling of Segregation 2 seed lots with Segregation 1 peanut lots intended for human consumption. The difference between Segregation 1 and Segregation 2 lots is that Segregation 1 lots may contain no more than 2 percent damaged kernels and no more than 1 percent concealed damaged kernels, while Segregation 2 lots may contain more than 2 percent damaged kernels and 1 percent concealed damaged kernels. Both Segregation 1 lots and Segregation 2 lots must be free of visible *Aspergillus flavus.*

This rule continues in effect the clarification of the handling provisions in paragraph (e) of *§ 997.20 Incoming regulation* allowing Segregation 2 seed peanut lots containing up to 3 percent total damaged kernels to be stored, shelled and commingled with Segregation 1 seed peanut lots if both lots were produced under the auspices of a State peanut agency which regulates or controls the production of the lots being commingled.

The Committee meets in February or March each year and recommends to the Secretary such rules and regulations as may be necessary to keep the Agreement consistent with current industry practice. The Committee met on March 16, 1994, and unanimously recommended clarification of seed peanut handling regulations under the Agreement. Members of the Committee noted the impracticality of having separate storage bins for each of the various types and varieties of seed peanuts with up to 3 percent damage. It was noted that, if Segregation 2 seed lots with up to 3 percent damage must be stored separate from Segregation 1 seed lots, "foundation," "registered," and "certified" seed lots would have to be segregated into separate categories. This could increase the number of separate bins and space needed to store seed peanut lots. The current regulations for both signers and non-signers do not specifically address commingling Segregation 1 seed lots with Segregation 2 seed lots.

The Committee concluded that it is impracticable to require such Segregation 2 seed peanuts be stored and shelled separate from Segregation 1 seed peanuts. The Department has completed rulemaking implementing such a clarification in handling requirements applied on signatory handlers.

Continuation of the amendment to paragraph (e) of § 997.20(e) for non-signer seed peanuts will continue the continuity between the non-signatory handling requirements and those specified in the Agreement, and facilitate the movement of peanuts to market.

This rule will not affect the outgoing quality regulation of the non-signer provisions. The quality and handling requirements, as specified in § 997.30 *Outgoing regulations* applicable to non-signatory 1993–94 crop peanuts, continue to be effective for 1994–95 crop peanuts.

The interim rule also updated addresses and facsimile numbers, where applicable, of approved aflatoxin testing

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laboratories that perform chemical analyses required by the non-signatory handling regulations. This information is provided in paragraph (c)(5)(i) of § 997.30 *Outgoing regulations.* Non-signatory handlers may send peanut samples to any laboratory on the list, per instructions specified in paragraph (c) of the outgoing regulation. The interim rule also updated information in paragraph (c)(5)(ii) identifying the contact point of the USDA Science Division headquarter's office. This final rule continues the aforementioned changes.

The interim final rule was published in the **Federal Register** on August 30, 1994 (59 FR 44610). That interim final rule provided that interested persons could file comments through September 29, 1994. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 59 FR 44610, on August 30, 1994, is adopted as a final rule without change.

Dated: November 3, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27768 Filed 11–8–94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–13]

Modification of Class D Airspace Areas; North Philadelphia, PA and Willow Grove, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at North Philadelphia, PA, and Willow Grove, PA, by amending these area's effective hours to coincide with the associated control tower hours of operation. This action also reduces the Class D airspace at Willow Grove, PA, due to the closure of the Warminster NAWC, PA, Air Traffic Control Tower. External dimensions of these Class D airspace areas are being reduced and minor changes to the internal boundary between the North Philadelphia, PA, and Willow Grove, PA, Class D airspace areas are being made. The intended effect of this action is to clarify when two way radio communication with these air traffic control towers is required.

DATES: *Effective date.* 0901 U.T.C. December 8, 1994.

Comment date. Comments must be received on or before December 1, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–13, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above. The official docket may also be examined in the Office of the Assistant Chief Counsel, AEA–7, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "**DATES**" section. However, after the review of any comments and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) modfies the Class D airspace areas at North Philadelphia, PA, by amending the area's effective hours to coincide with the associated control tower hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the Air Traffic Control Tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. Additionally, this action reduces the lateral limits of the Willow Grove, PA, Class D airspace area due to the closure of the NAWC Warminster, PA Air Traffic Control Tower, and redefines the internal boundary between Willow Grove, PA, and North Philadelphia, PA, Class D airspace areas. The intended effect of this action is to clarify when two way radio communication with these air traffic control towers is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order. Because this action merely makes minor changes to the Class D airspace boundaries, reduces the total coverage of Class D airspace, and modifies the effective hours to coincide with the

existing hours of operation of the associated control towers, this is a rule insignificant in nature and impact and in which the public is not particularly interested. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA PA D North Philadelphia, PA [Revised]

Northeast Philadelphia Airport, Philadelphia, PA
(lat. 40°04'55"N., long. 75°00'39"W.)
Willow Grove NAS, Willow Grove, PA
(lat. 40°12'00"N., long. 75°08'53"W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Northeast Philadelphia Airport extending clockwise from a 030° bearing to a 252° bearing from the airport and within a 5.3-mile radius of the Northeast Philadelphia Airport extending clockwise from a 252° bearing to a 030° bearing from the airport, excluding that portion within the Willow Grove, PA, 4.4-mile radius Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA D Willow Grove, PA [Revised]

Willow Grove NAS, Willow Grove, PA
(lat. 40°12'00"N., long. 75°08'53"W.)
Willow Grove TACAN
(lat. 40°11'40"N., long. 75°08'47"W.)
Northeast Philadelphia Airport, Philadelphia, PA
(lat. 40°04'55"N., long. 75°00'39"W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.4-mile radius of Willow Grove NAS extending clockwise from a 347° bearing to a 253° bearing from the airport and within a 4.8-mile radius of Willow Grove NAS extending clockwise from a 253° bearing to a 347° bearing from the airport and within 2.6 miles each side of the Willow Grove TACAN 136° radial extending from the TACAN to 6.1 miles southeast of the TACAN, excluding the southeast extension of the Class D airspace area that coincides with the 5.3-mile radius of the Class D airspace area at Northeast Philadelphia Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on October 19, 1994.

James K. Buckles,

Acting Manager, Air Traffic Division.

[FR Doc. 94–27776 Filed 11–8–94; 8:45 am]

BILLING CODE 4910-13-M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 94–3]

Credit and Recognition Policy on the Use of the Library of Congress Name, Seal, or Logo

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to revise its policy on the use of its name, seal, or logo to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively and in fulfillment of its mission.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under the authority of 2 U.S.C. 136, the Librarian of Congress is authorized to make rules and regulations for the government of the Library. 18 U.S.C. 1017 contains criminal provisions on the misuse of official U.S. Government seals. Part 701 is revised to clarify the boundaries of when and how much credit or recognition the Library of Congress should appropriately receive when its name, seal, or logo are used in conjunction with a commercial product. It outlines also the current circumstances under which the use of both the name and seals of the Library may be granted and the procedures for doing so. This part combines and revises the provisions set forth in §§ 701.35 and 701.36 of 36 CFR Chapter VII. Section 701.36 of 36 CFR Chapter VII, Use of the Seal of the Library of Congress and the Library of Congress Trust Fund Board, will be removed.

Comments

The Library of Congress received one comment on the proposed regulation; that comment submitted by Jay L. Hack, Esquire, of Serchuk & Zelermyer, Attorneys at Law, White Plains, New York. Mr. Hack objected to the language in § 701.35, paragraph (c)(1) in the proposed regulation, regarding the use of the Library's name only when it is in the interest of the Library. Mr. Hack believes that this language constitutes a violation of First Amendment rights. The Library agrees that the purpose and focus of this proposed regulation was obscured by the language used. Accordingly, § 701.35, paragraph (c)(1) has been revised to clarify the Library's policy on the use of its name.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Final Regulation

In consideration of the foregoing the Library of Congress amends 36 CFR Part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 is revised to read as follows:

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

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2. Section 701.35 is revised to read as follows:

§ 701.35 Credit and Recognition Policy on the Use of the Library Name, Seal, or Logo.

(a) *Purpose.*

The purpose of this section is to assure that the Library of Congress is properly and appropriately identified and credited as a source of materials in publications that rely on Library resources, so that the public may know that the resources in its national library are being used productively in fulfillment of its mission.

(b) *Definitions.*

(1) *Publication* means any tangible expression of words or thoughts in any form or format, including print, sound recording, television, optical disc, software, online delivery, or other technology now known or hereinafter created. It includes the whole range of tangible products from simple signs, posters, pamphlets, and brochures to books, television productions, and movies.

(2) *Internal Library publication* means a publication over which any unit of the Library has complete or substantial control or responsibility.

(3) *Collaborative publications* means those in which any unit of the Library is providing more than routine assistance. The assistance may be pursuant to a formal agreement or may simply be an extensive courtesy.

(4) *Commercial publications* means those known or likely to involve subsequent mass distribution, whether by a for-profit or not-for-profit organization or individual.

(5) *Noncommercial user* means an individual whose publication includes a significant number of Library references, but the intended purpose of which is personal, scholarly, or noncommercial.

(6) *Official Library logo* means any official seal of the Library.

(c) *Credit and recognition policy.*

(1) The name "Library of Congress," or any abbreviation thereof, is used officially to represent the Library of Congress and its programs, projects, functions, activities, or elements thereof. In addition, the Library recognizes that its name may be used informationally by others in publications. Except as provided for in this part, however, the use of the Library's name, explicitly or implicitly to endorse materials in any publication, is prohibited.

(2) The Library of Congress seal symbolizes the Library's authority and standing as an official agency of the U.S. Government. As such, it shall be displayed only on official documents or publications of the Library. The seal of the Library of Congress Trust Fund Board shall be affixed to documents of that body as prescribed by the Librarian of Congress. Procedures governing the use of any other Library of Congress logo are set out in paragraphs (c)(3) through (c)(10) of this section.

(3) Questions regarding the appropriateness of the recognition or credit shall be referred to the Public Affairs Office.

(4) *Internal Publications.* Each internal Library publication shall include a copy of an official Library logo in a position, format, and location suitable to the particular media involved. The logo may be alone or in addition to an approved unit or activity logo, but shall be no less prominent than any other logo used, except in the cases of the Copyright Office, the Congressional Research Service, and the Center for the Book. Other exceptions to this policy may be made only if a written request is approved by the Management Team member under whose jurisdiction the publication falls.

(5) *Collaborative/Commercial Publications*

(i) Individuals with whom the Library is engaged in a collaborative publication, and individuals requesting assistance for commercial publications, shall be instructed regarding Library policy on credit, recognition, and endorsement by the Library employee with whom they are dealing.

(ii) Ordinarily, the Library logo accompanied by a concise acknowledgement should appear in an appropriate and suitable location on all collaborative and all commercial publications. The Library requires that a credit line accompany reproductions of images from its collections.

(iii) The size, location, and other attributes of the logo and credit line should be positioned in such a way that they do not imply Library endorsement of the publication unless such endorsement is expressly intended by the Library, as would be the case in copublication or coproduction activities. Use of the Library name or logo in any context suggesting an explicit or implicit endorsement may be approved in only those instances where the Library has sufficient expertise to pass judgment on the subject matter, where that expertise has been engaged or applied, and where the terms of the collaborative undertaking are such that the Library has sufficient control over the publication to make changes necessary to reflect Library expertise.

(iv) Library officers working on commercial publication projects shall notify all collaborators of Library policy in writing if the collaboration is arranged through an exchange of correspondence. A statement of Library policy shall be incorporated into the agreement if the terms of the collaboration are embodied in any written instrument, such as a contract or letter of understanding.

(6) *Noncommercial Users.* Staff members assisting individuals who are noncommercial users of Library resources shall encourage them to extend the customary professional courtesy of acknowledging their sources in publications, including films, television, and radio, and to use approved credit lines.

(7) Each product acquired for resale by the Library that involves new labeling or packaging shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections. Items not involving new packaging shall be accompanied by a printed description of the Library and its mission, with Library logo, as well as the rationale for operating a gift shop program in a statement such as, "Proceeds from gift shop sales are used to support the Library collections and to further the Library's educational mission."

(8) Each item authorized by the Library pursuant to a licensing agreement (directly or through a third party) shall bear a Library logo and shall contain information describing the relevance of the item to the Library or its collections.

(9) Office Systems Services shall make available copies of the Library seal or logo in a variety of sizes and formats, including digital versions.

(10) Each service unit head shall be responsible for devising the most appropriate way to carry out and enforce this policy.

(d) *Violations.*

(1) All violations or suspected violations of this section or of 18 U.S.C. 1017 shall be reported to the Office of the General Counsel as soon as they become known.

(2) Whenever the General Counsel has determined that any person or organization is engaged in or about to engage in an act or practice that constitutes or will constitute conduct prohibited by this part or a violation of any requirements of this section, the General Counsel shall take whatever action necessary, including seeking the assistance of the U.S. Department of Justice, to obtain injunctive relief or damages.

Dated: November 2, 1994.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–27652 Filed 11–8–94; 8:45 am]

BILLING CODE 1410–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5103–8]

Clean Air Act Final Interim Approval of Operating Permits Programs in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the State of Washington for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources and to certain other sources. The Washington program includes submittals by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Council (EFSEC), and seven local air authorities: the Benton-Franklin Counties Clean Air Authority (BFCCAA), the Northwest Air Pollution Authority (NWAPA), the Olympic Air Pollution Control Authority (OAPCA), the Puget Sound Air Pollution Control Agency (PSAPCA), the Spokane County Air Pollution Control Authority (SCAPCA), the Southwest Air Pollution Control Authority (SWAPCA), and the Yakima County Clean Air Authority (YCCAA).

EFFECTIVE DATE: December 9, 1994.

ADDRESSES: Copies of Washington's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, (206) 553–4303

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Introduction

Title V of the Clean Air Act Amendments of 1990 (sections 501–507 of the Clean Air Act ("the Act")) and implementing regulations at 40 Code of Federal Regulations (CFR) part 70, require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to Section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On August 18, 1994, EPA proposed interim approval of the operating permits program for Ecology, EFSEC, NWAPA, OAPCA, PSAPCA, SCAPCA, and SWAPCA. The same **Federal Register** notice proposed disapproval of the programs for BFCCAA and YCCAA and, in the alternative, interim approval of these programs if certain regulatory changes were made before EPA took final action on the proposal. See 59 FR 42552 (Aug. 18, 1994). EPA received eleven public comments on the proposal. In this notice EPA is taking final action on its proposal to promulgate interim approval of the operating permits program for Ecology, EFSEC, and all seven local air authorities in Washington (collectively, "the local air authorities").

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

Both BFCCAA and YCCAA made the regulatory changes necessary to receive interim approval. The board of directors of BFCCAA repealed BFCCAA Reg. 1, §§ 4.01, 4.02, 4.04, 4.05, 4.06, and 4.07 on August 18, 1994. The revised regulations were submitted to the Washington State register and became effective on September 23, 1994. On September 14, 1994, the board of directors of YCCAA repealed YCCAA Reg. 1, §§ 6.02, 6.04, 6.05, 6.07, and 6.08; revised YCCAA Reg. 1, § 12.01 to provide that the identified provisions of the Washington State Administrative Code are incorporated by reference unless the YCCAA regulation is more stringent; Revised YCCAA Reg. 1, § 12.02 so that the identified provisions of Federal law are incorporated by reference. The revised regulations were submitted to the Washington State register and became effective on October 22, 1994. The revised regulations for BFCCAA and YCCAA were submitted by the State of Washington on September 29, 1994 as an amendment to the Washington Title V program.

EPA received eleven public comments on the proposed interim approval of the Washington program, including comments from the Washington Department of Ecology and the Puyallup Tribe of Indians. No commenters objected to approval of the Washington permit program, although one commenter requested that the program not be approved before November 15, 1994 because of the substantial time needed to complete permit applications.

1. Insignificant Emissions Units

Most of the commenters stated that the insignificant emissions units provisions of the State operating permit regulation (WAC 173–401–200(16) and 173–401–530) should be granted full approval rather than interim approval. These commenters disagreed with EPA's interpretation that no unit for which there is an applicable requirement could be defined as "insignificant." They further stated that such an interpretation would prevent Washington and most other States from granting any relief for insignificant emission units, which they argue is inconsistent with the intent of Part 70. The result would be that all emissions, regardless of size and environmental impact, would be subject to all Part 70 requirements, including periodic monitoring, reporting, recordkeeping and compliance certification. Permit applications would have to describe emissions from all units and responsible officials would be required to conduct extensive due diligence efforts in order to certify the compliance of emission units that emit very small quantities of pollutants. Commenters emphasized that this was an unreasonable regulatory burden that would result in excessive paperwork and would likely decrease the ability of permitting agencies to effectively enforce Title V permits because inspectors would have to read through numerous pages of specifications and requirements to determine which emission units actually have permit conditions.

EPA maintains, however, that Title V and the Part 70 rules preclude the exemption of emission units as "insignificant" when such units are subject to an applicable requirement. Section 504(a) of the Act requires that "each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the

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permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with *applicable requirements of the Act, including the requirements of the applicable implementation plan.*" (emphasis added). Section 70.6(a)(1) provides that each permit shall include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." Furthermore, § 70.6(c)(1) requires that each permit shall contain "compliance, certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." The fact that an emission unit may emit only small quantities of pollutants does not provide a basis to exempt it from the fundamental statutory requirement that the permit specifically include, and ensure compliance with, all applicable requirements.

EPA understands the implementation concerns expressed by the commenters but disagrees that the Part 70 permit requirements need be unduly burdensome for these smaller emission units with only generally applicable requirements. For example, the requirement to "describe" emissions of regulated pollutants in a permit application is not a requirement to quantify those emissions. These smaller units can be aggregated and described in very general terms (e.g. all valves and flanges not otherwise specified). Furthermore, the requirement to include in a permit compliance certification, test, monitoring, reporting, and recordkeeping *sufficient to assure compliance* with the terms and conditions of the permit does not impose the same level of rigor with respect to small emission units that do not require extensive testing or monitoring in order to determine compliance with the applicable requirements.

Several commenters also stated it was unreasonable and inappropriate to require Washington to change its provisions for insignificant emission units at this time because this issue is part of ongoing litigation over the part 70 rules and may be revised. EPA acknowledges that it may be both burdensome and confusing if the Part 70 rules on insignificant emission units are changed and Ecology is required to revise its rules twice, once to meet EPA's current objection and later if part 70 is revised. EPA has no legal mechanism, however, to either grant a longer interim approval period or to grant full approval under the current part 70 rules based on a possibility that the part 70 regulations may change as a result of notice and comment rulemaking sometime in the future.

2. Definition of Title I Modification

In its August 18, 1994 **Federal Register** notice proposing interim approval for the Washington program, EPA advised the State that it would be required to revise its definition of the term "title I modification" to obtain full EPA approval:

> Revise WAC 173–401–200(33), the definition of "Title I modification," to include any modification permitted through a minor source preconstruction permit. The EPA believes the phrase "modification under an[y] provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 amendments. The EPA intends to revise its criteria for interim approval in 40 CFR 70.4(d) prior to taking final action on this proposal to grant Washington interim approval so that interim approval may be granted to State programs like Washington's that currently allow a more narrow definition of Title I modification. (59 FR 42557).

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow State programs with a more narrow definition of "title I modification" to receive interim approval (59 FR 44572). The Agency also solicited public comment on the proper interpretation of "title I modifications" (59 FR 44573). The Agency stated that if, after considering the public comments, it continues to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant states that adopted a narrower definition interim approval.

In response to EPA's proposed interim approval of the Washington program, several commenters questioned whether the State's adoption of a narrower "title I modification" definition justified anything other than full approval. These commenters asserted that Washington's current definition is the correct one under the existing regulations and the Clean Air Act and that a broader interpretation including minor NSR would be wholly unworkable.

One commenter, the National Environmental Development Association/Clean Air Regulatory Project (NEDA/CARP), further contended that EPA was using the August 29, 1994 proposed rule to effectively require revision of a State operating permits program that was otherwise consistent with current Part 70 and that such an approach was unauthorized, not supported by the Clean Air Act or Part 70, and poor public policy. NEDA/CARP also suggested that EPA's August 18, 1994 proposal to require Washington to adopt a broader interpretation of "title I modification" to obtain full approval indicated that the Agency does not intend to consider public comment on the August 29, 1994 proposal that solicits comments on the proper interpretation of "title I modifications."

As noted in the August 18, 1994 **Federal Register** notice, proposing interim approval of Washington's operating permit program, EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 programs submitted by the States. However, that is no longer possible. Publication of the proposed revisions was delayed until August 29, 1994, and EPA received several requests to extend the public comment period.[1] Given the importance of the issues in that rulemaking to States, sources and the public, but mindful of the need to take action quickly, EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State programs, such as Washington's, that were submitted on or before November 15, 1993.[2]

EPA believes it would be inappropriate to delay action on Washington's program, perhaps for several months, until final action is taken on the interim approval revisions. EPA also believes it would be inappropriate to grant interim approval to Washington on this issue before final action is taken to revise the current interim approval criteria of 40 CFR

[1] EPA originally established a 30-day public comment period for the August 29, 1994 proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. See 59 FR 52122 (October 14, 1994).

[2] Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part."

70.4(b) to provide a legal basis for such an interim approval. Until the revision to the interim approval criteria is promulgated, EPA's choices are to either fully approve or disapprove the narrower "title I modification" definition in States such as Washington. For the reasons set forth below, EPA believes that disapproving such programs at this time solely because of this issue would be inappropriate.

First, EPA has not yet conclusively determined that a narrower definition of "title I modifications" is incorrect and thus a basis for disapproval (or even interim approval). The Agency has received numerous comments on this issue as a result of the August 29, 1994 **Federal Register** notice, and EPA cannot and will not make a final decision on this issue until it has evaluated all of the comments. Second, EPA believes that the Washington program should not be disapproved because EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving programs from States such as Washington that submitted their programs to EPA on or before the November 15, 1993 statutory deadline could lead to the perverse result that these States would receive disapprovals, while States which were late in submitting programs could take advantage of revised interim approval criteria if and when these criteria become final. In effect, States would be severely penalized for having made timely program submissions to EPA. Finally, disapproval of a State program for a potential problem that primarily affects permit revision procedures would delay the issuance of Part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits system.

For the reasons mentioned above, EPA is approving the Washington program's use of a narrower definition of "title I modifications" at this time.[3] However, should EPA in the interim approval criteria rulemaking make a final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the Agency will propose further action on Washington's program so that the State's definition of "title I modifications" could become grounds for interim approval.[4] A State program like Washington's that receives full approval of its narrower "title I modification" definition pending completion of EPA's rulemaking must ultimately be placed on an equal footing with States that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after EPA completes its rulemaking will avoid this inequity. EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

3. Section 112(g) Modifications

One commenter stated that EPA has proceeded in a confusing and unauthorized fashion by proposing a construction ban on section 112(g) modifications and that EPA should not delegate section 112(g) authority until it completes its own rulemaking.

EPA did not propose a construction ban but simply noted the provision of section 112(g)(2) of the Act which prohibits the modification, construction, or reconstruction of a source after the date of approval of a Title V program unless maximum achievable control technology (MACT), determined on a case-by-case basis if necessary, is met. Although section 112(g)(1) requires the Administrator to publish guidance with respect to the implementation of section 112(g), the plain meaning of section 112(g)(2) is that it takes effect on the effective date of the Title V program in any State.

EPA has acknowledged that States may encounter difficulties implementing section 112(g) prior to the promulgation of final EPA regulations (see June 28, 1994 guidance memorandum entitled "Guidance for Implementation of Section 112(g)" signed by John Seitz). EPA has issued guidance, in the form of a proposed rule implementing 112(g), which may be used to determine whether a physical or operational change at a source is not a modification either because it is below *de minimis* levels or because it has been offset by a decrease of more hazardous emissions (see 59 FR 15004 (April 1, 1994)). EPA believes the proposed rule provides sufficient guidance to permitting authorities and sources until such time as EPA's section 112(g) rulemaking is finalized.

Although EPA does not have a program designed specifically to implement section 112(g), Washington does have a preconstruction review program that could serve as a procedural vehicle for rendering federally enforceable a case-by-case MACT or offset determination. Although the scope of Washington's program may not cover every situation where a section 112(g) modification, construction, or reconstruction may occur, it would cover most circumstances. In order to provide a federally-recognized mechanism to implement section 112(g) on an interim basis until final EPA regulations are promulgated, EPA intends to propose approval of Washington's preconstruction review program in a separate **Federal Register** notice. Final approval of Washington's preconstruction review program, and not this final approval of its Title V operating permit program, would represent EPA's delegation of section 112(g) authority to the State.

4. Limitations on Potential To Emit

One commenter objected to EPA's requirement that OAPCA revise its definition of "potential to emit" to include only those limitations on a source's capacity to emit that are federally enforceable, arguing that it requires local authorities to ignore their own and other State-enforceable limitations.

The cited definition appears in OAPCA Reg. 1, Art. 6, which addresses the operating permit program. As such, the definition of potential to emit must be consistent with the Part 70 rules which require, for the purposes of the Title V operating permit program, that all limits on potential to emit be federally enforceable. EPA does not place any restrictions on a local authority's use of non-Federally enforceable emission limits on non-Title V sources or on establishing additional, non-federally enforceable emission limits on Title V sources. However, in order for such limitations to be recognized for purposes of the Federal Clean Air Act, they must be enforceable by EPA and by citizens under the Act.

5. Scope of the Program—Tribal Lands

EPA proposed to exclude from the Washington Title V program, Title V sources located on any trust or restricted lands within the Puyallup 1873 Survey Area or any other lands within the exterior reservation boundaries of a Federally-recognized Indian Tribe because Ecology did not establish that it had jurisdiction over sources on these lands. EPA proposed to apply the

[3] For similar reasons, the EPA will not construe 40 CFR 70.7(e)(2)(i)(A)(3) to prohibit Washington from allowing minor NSR changes to be processed as minor permit modifications. See 59 FR 44573–44574.

[4] State programs with a narrower "title I modifications" definition that are acted upon by EPA after an Agency decision that such a narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR 70.4(b).

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Ecology and PSAPCA Title V program to non-trust lands within the 1873 Survey Area of the Puyallup Reservation because Ecology and PSAPCA submitted legal analysis demonstrating their authority to administer environmental laws on these lands. See 59 FR at 42554.

Ecology and PSAPCA presented legal analysis based on the Washington Indian (Puyallup) Land Claims Settlement, which expressly allocates jurisdiction according to a settlement agreement between the Tribe, Federal, State and local governments and certain private property owners. 25 U.S.C. 1773–1773j. The settlement agreement, in turn, gives Federal, State and local governments exclusive jurisdiction for the administration of environmental laws on all non-trust lands within the 1873 Survey Area and gives the Federal government and the Tribe exclusive jurisdiction for the administration of environmental laws on all trust and restricted lands within the Area.

The Puyallup Tribe of Indians commented that EPA correctly applied the settlement agreement in its proposed determination not to approve the application of Washington's Title V program to trust and restricted lands within the 1873 Survey Area. The Tribe also commented that Washington's request for authority over non-trust lands within the Survey Area was consistent with the settlement agreement.

In today's action, EPA finalizes its proposed determination that the Washington Title V program apply to Title V sources located on non-trust lands within the Survey Area.

During the public comment period, Ecology commented "that [it] has requisite authority to enforce and run the Air Operating Permits Program on tribal lands." Ecology's comments do not appear to challenge EPA's proposed allocation of jurisdiction over the Puyallup Reservation. Rather, Ecology appears to contend that EPA has erred in proposing to exclude application of the State's Title V program to Title V sources within the exterior reservation boundaries of all other Federally-recognized Tribes located within the State.

In support of this contention, Ecology generally asserts that Ecology has "necessary jurisdiction to regulate Title V sources throughout the state." Ecology also appears to be alleging that, at a minimum, it has authority over non-Indian owned Title V sources on non-Indian owned fee lands within reservations. Ecology states that the law presumes it has authority over such sources and that the legal opinion accompanying its Title V program submittal should be interpreted to apply consistently at least to all fee lands within the exterior boundaries of the State. Ecology comments that "[c]ourts have only found for tribal jurisdiction when the weight of tribal interests is great enough" and that "[s]everal potential major sources owned by non-[I]ndians with no tribal relationships can be found in the State on fee lands within reservations."

To obtain Title V program approval a State must demonstrate that it has adequate authority to issue permits and assure compliance by all sources required to have permits under Title V with each applicable requirement under the Act. See Section 502(b)(5) of the Act; 40 CFR 70.4(b)(3)(i). The authority must include:

> A legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific stat[ut]es, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. 40 CFR 70.4(b)(3).

Thus, the Act requires States to support their Title V program submittals with a specific showing of adequate legal authority over all regulated sources, including sources located on lands within Indian reservations.

EPA concludes that Ecology has not adequately demonstrated authority to regulate Title V sources owned by Tribal members or located on their territory or trust lands. Ecology's inability to reach into Indian country and apply environmental regulation to Tribal members, their territory or trust lands is not a new issue. Ecology previously asserted regulatory jurisdiction over Tribal lands in a submittal to EPA under the Resource Conservation and Recovery Act program. EPA declined to apply the program to waste-related activities on Tribal lands and its decision was upheld on judicial review. *See Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985).

The court's conclusion was informed by "well-settled principles of Indian law" including the principle that "States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it." *Washington Department of Ecology*, 752 F.2d at 1469–1479 (citations omitted); *see also United States* v. *Mazurie*, 419 U.S. 544, 556 (1975) (the inherent sovereign authority of Indian Tribes extends "over both their members and their territory"); *Montana* v. *United States*, 450 U.S. 544, 556–557 (1981) (Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe).

Washington has also asserted jurisdiction over underground injection activities on Indian lands under the Safe Drinking Water Act, claiming its laws are applicable throughout the borders of the State. EPA concluded that Washington could not regulate these activities on Indian lands because it had failed to demonstrate that its authority to regulate was not preempted by Federal law, and that the State regulation would not infringe on Tribal self-government. 53 FR 43080–43081–43082 (Oct. 25, 1988); *see White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980); *California* v. *Cabazon Band of Mission Indians*, 408 U.S. 202 (1987).

Ecology contends that EPA should nevertheless presume that Ecology at least has authority over non-Indian owned Title V sources on fee lands within the exterior boundaries of Federally-recognized Indian reservations. EPA concludes that Ecology has also failed to adequately demonstrate authority over Title V sources located on fee lands within reservations.

EPA's regulations require specific evidence of legal authority. Adequate authority is especially necessary in these circumstances where, as set out below, Supreme Court case law recognizes inherent sovereign Tribal authority to regulate activities on fee lands where the conduct may have a serious and substantial impact on Tribal health or welfare, air pollution activities generally pose serious health risks, EPA has proposed to interpret the Tribal authority provisions of the Act as granting Tribes authority over air pollution activities on fee lands within reservations, and Federal Indian law and policies direct EPA to treat Tribes as sovereigns and to consider Tribal interests in taking Federal actions that affect Tribes.

The Supreme Court has indicated that a Tribe "may * * * retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the * * * health or welfare of the tribe." *Montana*, 450 U.S. at 566. A Tribe's inherent authority must be determined on a case-by-case basis, considering whether the conduct being regulated has a direct effect on the

health or welfare of the Tribe substantial enough to support the Tribe's jurisdiction over non-Indians. See *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989).

The case law addressing a Tribe's authority over non-members on non-Indian owned fee lands within the exterior boundaries of a reservation must be viewed in light of the concerns presented by air pollution activities and, importantly, the 1990 Amendments to the Act. In 1990, Congress broadly addressed Tribal authority under the Act, adding sections 110(o) and 301(d) to the Act.[5] Section 301(d)(2) of the Act authorizes EPA to issue regulations specifying those provisions of the Act for which it is appropriate "to treat Indian Tribes as States." Further, it addresses the potential jurisdictional scope of Tribal programs under the Act, authorizing EPA to treat Tribes in the same manner as States for "the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." Section 301(d)(2)(B) of the Act. In addition, section 110(o) provides that Tribal implementation plans under the Act "shall become applicable to all areas * * * located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation."

EPA has proposed to interpret these and other provisions of the Act as granting Tribes—approved by EPA to administer Clean Air Act programs in the same manner as States—authority over all air resources within the exterior boundaries of a reservation for such programs. EPA has explained that "[t]his grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation." 59 FR 43956, 43958–43960 (Aug. 25, 1994) (legal rationale).

Further, EPA observed that even without this proposed grant of authority, Indian Tribes would very likely have inherent authority over all activities within reservation boundaries, including non-Indian owned activities on fee lands, that are subject to regulation under the Act. The high mobility of air pollutants, resulting area-wide effects and the seriousness of such impacts would all tend to support such inherent Tribal authority. *See* 59 FR 43958, n. 5; *see also* 56 FR 64876 at 64877–64879 (Dec. 12, 1991). In fact, Congress relied on the serious harm posed by air pollution in adopting the Act. Congress found that "the growth in the amount and complexity of air pollution * * * has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and deterioration of property and hazards to air and ground transportation." Section 101(a)(2) of the Act; *see also, e.g.*, H.R. Rep. No. 490, 101st Cong. 2d Sess. (1990); S.Rep. No. 228, 101st Cong., 1st Sess. (1989).

Ecology advances various reasons why it makes "practical sense" for EPA to allow Ecology to regulate all Title V sources throughout the State, including those within reservation boundaries. For example, Ecology contends that:

(1) Ecology is more protective of air quality than minimum Federal standards require and therefore regulation by EPA or the Tribe in lieu of the State would represent backsliding to minimum Federal standards and may give reservation residents inequitable protection;

(2) The nature of air pollution transport and impacts renders it undesirable to have different regulatory bodies within the State and within reservations;

(3) Non-Indian populations will be impacted because of the proximity of trust and fee lands as well as the proximity of reservation lands and non-reservation populations; and

(4) The State is well-situated to regulate all Title V sources, having extensive experience with air quality protection and a comprehensive, effective program.

These arguments do not provide adequate evidence to conclude that Washington's program should apply to Title V sources within the exterior reservation boundaries of Federally-recognized Indian Tribes or, in particular, non-Indian activities on fee lands. As indicated previously, the legal test for determining whether a Tribe has inherent sovereign authority over non-Indian activities centers on the conduct at issue. That the State may effectively regulate the conduct in lieu of a Tribe does not defeat Tribal sovereign interests. Otherwise, inherent Tribal sovereignty would be determined not by the Tribal interests at stake but by a State's willingness to infringe upon Tribal domain.

Nor does the fact that Ecology has adopted requirements more stringent than the federal minimum support Ecology's claim of authority. Ecology's policy choices about the nature and desirability of State-wide air quality management cannot displace any inherent authority Tribes may have or any authority that Congress may have granted to Tribes under the Clean Air Act. Tribes may very well have inherent sovereign authority over air pollution activities on fee lands and may exercise that authority to regulate more stringently than Federal law requires. In addition, the adoption of sections 301(d) and 110(o) of the Act evince Congressional intent to allow Tribes to implement Clean Air Act programs in the same manner as States. Congress gave EPA the responsibility of identifying the programs under the Act for which such treatment is appropriate. EPA's proposed Clean Air Act Tribal authority rule provides that Tribes, like States, will retain authority under the Act to impose requirements that are more stringent than Federal standards. 59 FR 43967.

At the same time, Congress and EPA recognize that it may take time for Tribes to develop the air quality management expertise that States have amassed for 20 years. Nevertheless, Tribes must demonstrate adequate capability before EPA will authorize them to implement a Clean Air Act program. In reviewing tribal programs, EPA was directed by Congress to assure that the Tribe is "capable * * * of carrying out the functions to be exercised in a manner consistent with the terms and purposes of [the Act] and all applicable regulations." Section 301(d)(2)(C) of the Act. Further, EPA will fill gaps in air quality protection in the interim period before tribal Clean Air Act programs are approved, as necessary to ensure that reservation air quality is adequately protected. 59 FR at 43960–43961.

Ecology also relies on the legal opinion submitted with its Title V program stating that it applies consistently at least to all fee lands within the State. The opinion relied on by Ecology, however, does not specifically address or analyze the legal basis for application of the Title V program to sources on fee lands within the exterior reservation boundaries of Federally-recognized Tribes. Ecology submitted a specific, sound legal analysis to support its authority over the non-trust lands within the Puyallup 1873 Survey Area. Ecology now requests, without specific legal analysis, that EPA give Ecology authority over all Title V sources on all other Federally-recognized Indian reservations.

EPA is guided by Federal and Agency Tribal policy in making decisions

[5] In the 1977 Amendments to the Act, Congress gave Tribes authority to redesignate "[l]ands within the exterior boundaries of reservations" for purposes of the Prevention of Significant Deterioration of Air Quality program. Section 164(c) of the Act.

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affecting Tribes. *Washington Department of Ecology*, 752 F.2d at 1471 & n. 5. As outlined below, these policies direct EPA to treat Tribes as sovereign governments not as subdivisions of States.

On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) That the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal governments on a "government-to-government" basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign Tribal governments must be fully respected. 59 FR 22951 (May 4, 1994). EPA's Tribal policies commit to certain principles, including the following:

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
>
> * * * * *
>
> In keeping with the principal of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations"; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994.

The United States also has a unique fiduciary relationship with Tribes, and EPA must consider Tribal interests in its actions. *Nance* v. *EPA*, 645 F.2d 701, 710 (9th Cir. 1981), *cert. denied*, *Crow Tribe of Indians* v. *EPA*, 454 U.S. 1081 (1981). Taken together, Federal law and policy counsel that it would be inappropriate for EPA to approve a State program covering activities within reservation boundaries without an adequately demonstrated legal basis.

For the foregoing reasons, EPA concludes that, except for the non-trust lands identified within the 1873 Survey Area of the Puyallup reservation, Ecology has not adequately demonstrated that it has authority over Title V sources located on lands within the exterior reservation boundaries of Federally-recognized Tribes. In sum, Ecology relies on a general legal opinion and associated assertion that its authority should apply throughout the State, an undocumented claim that several potential major sources owned by non-Indians with no "tribal relationships" can be found in the State on fee lands within reservations, and several practical reasons why EPA should allow Washington's Title V program to regulate Title V sources within reservations and at least on fee lands within reservations. Title V plainly requires a specific demonstration of authority over regulated sources. Based on the Clean Air Act and Federal Indian law and policies, EPA concludes that Ecology has not adequately supported the application of its Title V program to reservations generally or to fee lands within reservation boundaries.

6. Criminal Authorities

Ecology has also commented that the State currently has sufficient legal authority to recover criminal fines for false material statements and tampering with monitoring devices, as required by 40 CFR 70.11(a)(3)(iii). EPA disagrees. Ecology has submitted no additional authority to support this assertion. Instead, Ecology relies on the June 7, 1994, opinion of the Washington Attorney General, which EPA reviewed and considered before proposing interim approval of the Washington operating permits program in part because Washington law did not contain these necessary criminal authorities. As previously stated, EPA does not believe that the authorities discussed in the Attorney General's opinion are as broad as the authorities required by 40 CFR 70.11(a)(3)(iii) (see 59 FR 42552 (August 18, 1994)). Therefore, EPA maintains its position that in order to receive full approval, Ecology must revise RCW 70.94.430 to incorporate the criminal authorities required by 40 CFR 70.11(a)(3)(iii).

B. Options for Approval/Disapproval

EPA is promulgating interim approval of the operating permits programs submitted by Ecology, EFSEC and the local air authorities on November 1, 1993.[6] In order to receive full approval, the Washington permitting authorities must make the following changes:[7]

Ecology

(1) Revise RCW 70.94.430(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Delete WAC 173–401–735(3) entirely or revise it so that it refers to RCW 34.05.570(4)(b), rather than RCW 7.16.360.

(5) Revise WAC 173–401–530(2) to define an emissions unit as insignificant only if it is subject to no federally enforceable applicable requirement and delete the last sentence in WAC 173–401–200(16) ("These units and activities are exempt from permit program requirements except as provided in WAC 173–401–530.").

EFSEC

No additional changes are necessary for the EFSEC operating permits program to receive full approval other than those that may be necessary under applicable State and local law to incorporate into EFSEC's regulations all changes to the State operating permits program required for full approval.

BFCCAA

No additional changes are necessary for the BFCCAA operating permits program to receive full approval other than those that may be necessary under applicable State and local law to incorporate into BFCCAA's regulations all changes to the State operating permits program required for full approval.

NWAPA

(1) Revise NWAPA Section 132.1 to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise NWAPA Section 132 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise NWAPA Section 132 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise NWAPA § 133.1 to provide for maximum civil penalties of not less than $10,000 per day per violation in the case of violations of multiple standards by a specific emissions unit, as required by 40 CFR 70.11(a)(3).

PSAPCA

(1) Revise PSAPCA Reg. I, § 3.13(a) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise PSAPCA Reg. I, § 3.13 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise PSAPCA Reg. I, § 3.13 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

OAPCA

(1) Revise OAPCA Reg. 1, § 3.27(b)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(2) Revise OAPCA Reg. 1, § 3.27(b) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(3) Revise OAPCA Reg. 1, § 3.27(b) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise the definition of "potential to emit" in OAPCA Reg. 1, § 6.00 to provide that any physical or operational limitation on the capacity of a source to emit a pollutant shall be treated as part of its design only if the limitation is *federally* enforceable (see 40 CFR 70.2 (definition of potential to emit)).

SCAPCA

(1) Revise SCAPCA Reg. I, § 2.04(B) to eliminate the limitation on the control officer's authority to request criminal penalties to cases in which a violator has failed to correct the violation after a "reasonable and/or required period of time."

(2) Revise SCAPCA Reg. I, § 2.11(A)(1) to provide for maximum criminal penalties of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

(3) Revise SCAPCA Reg. I, § 2.11(A) to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

(4) Revise SCAPCA Reg. I, § 2.11(A) to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than $10,000 per day per violation.

SWAPCA

No changes in the SWAPCA operating permits program are necessary to receive full approval other than those that may be necessary under applicable State and local law to incorporate into SWAPCA's regulations all required changes to Ecology's operating permits program.

YCCAA

Revise YCCAA Reg. I, § 2.01, to delete the requirement that violations be "knowing." Part 70 prohibits a permitting authority from including a mental state as an element of proof for civil violations (see 40 CFR 70.11(a)(i)).

This interim approval, which may not be renewed, extends until November 9, 1996. During this interim approval period, the State is protected from sanctions and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued during the interim approval period of Washington's operating permits program have full standing with respect to Part 70. In addition, the 180 day time period under State law for submittal of permit applications by subject sources and the three-year time period for processing initial permit applications begin upon interim approval.

If the State fails to submit a complete corrective program for full approval by May 9, 1996, EPA will start an 18-month clock for mandatory sanctions. If the State fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA must apply sanctions. If EPA disapproves a State's corrective program, and the State has not submitted a subsequent corrective program that EPA determines corrects the deficiencies of the disapproved program within 18 months after the disapproval, then EPA must apply sanctions. In both cases, if the State has not corrected the deficiency within six months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the end of the interim approval period if the State has failed to submit a complete corrective program or after EPA disapproves a submitted corrective program. If the EPA has not granted full approval to the State program by November 9, 1996, EPA must promulgate, administer, and enforce a Federal permits program for Washington upon expiration of the interim approval.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including public comments on the proposal received and reviewed by EPA, are maintained in the docket at the EPA Regional Office. The docket is an organized and complete file of information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

[6] The scope of this action does not include the issuance of permits or the enforcement of standards for sewage sludge incinerators under Section 405 of the Clean Water Act, 42 USC 1345. Delegation of sewage sludge incinerator permitting under the Clean Water Act, if requested by the State, would be considered in a separate administrative action (see 40 CFR Parts 122 and 501).

[7] All changes required for Ecology to receive full approval must be made before EFSEC or any local air authority may receive full approval. In addition, in order to receive full approval, EFSEC and each local air authority must make such changes to their regulations as are necessary under applicable State and local law to incorporate into their respective regulations all required changes to Ecology's operating permits program.

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B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Chuck Clark,

Regional Administrator.

Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 70 is amended by adding a new appendix A as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

This appendix provides information on the approval status of State and Local operating Permit Programs.

Washington.

(a) Department of Ecology (Ecology): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(c) Benton-Franklin Counties Clean Air Authority (BFCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires November 9, 1996.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(f) Puget Sound Air Pollution Control Agency (PSAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(g) Southwest Air Pollution Control Authority (SWAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(h) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; effective on December 9, 1994; interim approval expires November 9, 1996.

(i) Yakima County Clean Air Authority (YCCAA): submitted on November 1, 1993 and amended on September 29, 1994; effective on December 9, 1994; interim approval expires November 9, 1996.

[FR Doc. 94–27683 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7100

[WY–930–1430–01; WYW–83357]

Partial Revocation of Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes five Secretarial Orders insofar as they affect 20,247 acres of public lands withdrawn for stock driveway purposes. The lands are no longer needed for this purpose, and the revocation is needed to permit disposal of the lands through exchange or sale under the authority of the Federal Land Management Policy Act. This action will open the lands to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The lands have been and will remain open to mining location and mineral leasing, unless closed by temporary segregations of record.

EFFECTIVE DATE: December 9, 1994.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders of October 20, 1917, May 6, 1918, May 16, 1918, August 28, 1934, and July 12, 1939, which withdrew the following public lands for stock driveway purposes, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 34 N., R. 70 W.,
Sec. 7, lot 4 and E½SW¼.
T. 35 N., R. 70 W.,
Sec. 21, NE¼ and N½NW¼.
T. 36 N., R. 70 W.,
Sec. 4, lots 1 and 2, S½NE¼, and SE¼.
T. 33 N., R. 72 W.,
Sec. 4, lots 6, 11, and 13 to 15, inclusive.
T. 34 N., R. 72 W.,
Sec. 15, S½SW¼ and SW¼SE¼;
Sec. 19, lots 2 and 3, E½SW¼, and S½SE¼;
Sec. 20, SW¼SW¼;
Sec. 21, NE¼ and S½S½;
Sec. 22, NW¼ and W½SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 33, N½ and SW¼.
T. 34 N., R. 73 W.,
Sec. 3, lots 2 to 4, inclusive;
Sec. 5, NE¼SW¼ and W½SE¼;
Sec. 12, W½SE¼;
Sec. 13, W½NE¼, SE¼NE¼, E½SW¼, and SE¼.
T. 35 N., R. 73 W.,
Sec. 5, SW¼NW¼ and SW¼;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 8, N½NE¼, SW¼NE¼, W½, and W½SE¼;
Sec. 17, E½SW¼ and SW¼SW¼;
Sec. 18, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, W½ and S½SE¼;
Sec. 34, W½SW¼ and SE¼SW¼.
T. 35 N., R. 74 W.,
Sec. 1, lots 1 to 4, inclusive, S½NE¼, and SE¼;
Sec. 2, lots 1 to 4, inclusive;
Sec. 12, N½NE¼ and SE¼NE¼.
T. 36 N., R. 74 W.,
Sec. 22, E½;
Sec. 25, W½;
Sec. 26, all;
Sec. 27, E½;
Sec. 35, all.
T. 37 N., R. 74 W.,
Sec. 14, NW¼, N½SW¼, and SW¼SW¼;
Sec. 15, all;
Sec. 22, NE¼;
Sec. 23, NW¼NW¼ and S½SW¼;
Sec. 26, W½ and W½SE¼;
Sec. 27, E½E½;
Sec. 35, W½NE¼ and NW¼.
T. 38 N., R. 74 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 11, N½NE¼ and NE¼NW¼;
Sec. 24, E½ and E½W½;
Sec. 26, E½;
Sec. 35, E½.
T. 39 N., R. 74 W.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 19, E½NE¼;
Sec. 20, all;
Sec. 21, NW¼ and S½;
Sec. 28, N½;
Sec. 29, NE¼;
Sec. 34, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 35, all.
T. 40 N., R. 74 W.,
Sec. 30, lots 1 to 4, inclusive, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W¼.
T. 40 N., R. 75 W.,
Sec. 14, S½NW¼ and SW¼;
Sec. 15, S½NE¼ and SE¼;
Sec. 22, E½;
Sec. 23, N½NW¼, SW¼NW¼, N½SW¼, SW¼SW¼, and SE¼;
Sec. 24, SW¼ and W½SE¼;
Sec. 25, N½;
Sec. 26, N½NE¼.

The areas aggregate approximately 20,247 acres in Converse County.

2. At 9:00 a.m. on December 9, 1994, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on December 9, 1994 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27690 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7101

[AZ–930–4210–06; AZA–26586]

Withdrawal of Public Land for the Forest Service's Clifton Ranger District Administrative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 34.18 acres of public land from surface entry and mining for a period of 20 years for the use and protection of the Forest Service's Clifton Ranger District Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, and reserved for use by the Forest Service as an administrative site:

Gila and Salt River Meridian

Apache National Forest

T. 6 S., R. 30 E.,
Sec. 1, lot 14.

The area described contains 34.18 acres in Greenlee, County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 21, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27691 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 110494A]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Bluefin tuna quota transfer from the longline-south Incidental subcategory to the longline-north Incidental subcategory.

SUMMARY: NMFS transfers 5 metric tons (mt) of bluefin tuna from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing bluefin under the longline-south Incidental subcategory will not achieve the full 1994 quota allocation. This action is being taken to extend the season for the longline-north Incidental subcategory, which will assure additional collection of biological assessment and monitoring data and increase the economic benefits from this fishery without contributing significantly to additional bluefin mortality. In addition, this action will prevent waste of bluefin tuna which might otherwise be discarded dead.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347.

SUPPLEMENTARY INFORMATION: Bluefin tuna are currently in their fall feeding grounds in New England and Mid-Atlantic waters, so incidental catch by longline vessels operating south of 34° N. lat. is not expected to occur at high levels. The longline-north Incidental subcategory has only .8 mt remaining of its allocation of 23 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any bluefin tuna incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of bluefin tuna, which would otherwise be discarded dead, NMFS is transferring 5 mt of quota from the southern to the northern subcategory. This amount should be sufficient to account for incidental take of bluefin by the northern subcategory for the remainder of this year while the balance for the southern subcategory will be added to their 1995 quota.

Classification

This action is authorized by 50 CFR 285.22(i) and is exempt from review under E.O. 12866.

Dated: November 4, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27747 Filed 11–4–94; 2:34 pm]

BILLING CODE 3510–22–F

50 CFR Part 625

[I.D. 092694B]

Summer Flounder Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Commercial quota transfer; correction.

SUMMARY: This document corrects a notification of commercial quota transfer (I.D. 092694B) published on Tuesday, October 4, 1994 (59 FR 50512), that announced the transfer of commercial quota under the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP).

EFFECTIVE DATE: September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

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Correction of Publication

Accordingly, the publication October 4, 1994, of the final rule that was the subject of FR Doc. 94–24489 is changed to correct an error in the calculation of the adjusted quota figure for the State of Connecticut as follows:

1. On page 50512, in the third column, first full paragraph, line 10, the words "384,343 lb (174,335 kg)" should be corrected to read "384,247 lb (174,292 kg)".

2. On page 50512, in the third column, first full paragraph, line 3 after the word "Connecticut.", insert the following sentence: "By publication in the **Federal Register** on June 6, 1994 (59 FR 29207), a transfer of 96 lb (44 kg) of quota from Connecticut to Delaware was made effective on June 1, 1994, and Connecticut's adjusted quota figure was 361,162 lb (163,820 kg)."

Dated: November 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27746 Filed 11–8–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 110194D]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the Herring Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI) to directed fishing for pollock by vessels using trawl gear. This action is necessary because the 1994 trawl bycatch allowance of Pacific herring specified for the midwater pollock fishery category in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 4, 1994, through 12 noon, A.l.t., March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 trawl bycatch allowance for Pacific herring specified for the midwater pollock fishery category, which is defined at § 675.21(b)(1)(iii)(A), was established as 1,419 metric tons by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(2)(i), that the trawl bycatch allowance of Pacific herring specified for the midwater pollock fishery category has been reached. Therefore, NMFS is closing the Herring Savings Areas of the BSAI to directed fishing for pollock by vessels using trawl gear from 12 noon, A.l.t., November 4, 1994, through 12 noon, A.l.t., March 1, 1995.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–27733; Filed 11–4–94; 11:59 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Expanded Hull Identification Number and New Requirements for Certificates of Origin

AGENCY: Coast Guard, DOT.

ACTION: Notice of workshop and reopening of comment period.

SUMMARY: In a notice of proposed rulemaking (NPRM) published May 6, 1994, the Coast Guard proposed amendments to the regulations concerning vessel Hull Identification Numbers (HIN) and new regulations requiring Certificates of Origin for new vessels offered for sale in the United States. Comments were required to be received by September 6, 1994. The Coast Guard has received comments from various parties opposing the proposed 19 character HIN and one comment from an association seeking an extension of the comment period. This notice announces a workshop to discuss the proposed expanded HIN, and reopens the comment period on this rulemaking.

DATES: Comments must be received on or before January 9, 1995. The Workshop will be held from 9 a.m. to 1 p.m. on Thursday, December 8, 1994 in room 2415 at U.S. Coast Guard Headquarters in Washington, DC. Individuals wishing to make oral presentations at the workshop should contact Mr. Alston Colihan, as further explained under **SUPPLEMENTARY INFORMATION**, at least ten days before the workshop.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD92–065), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Requests to make presentations at the workshop should be sent to COMMANDANT (G–NAB–6), room 1505, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001, Attn: Mr. Alston Colihan.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 92–065) and the specific section of the proposal to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-address postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. All comments received after the close of the initial comment period and before the reopening of the comment period will also be considered. The Coast Guard may change the proposal in view of the comments.

Background Information

The NPRM published May 6, 1994 (59 FR 23651), proposed to expand the existing 12 character HIN to 19 characters. The additional seven characters would indicate the country code, vessel length, hull materials, principal means of propulsion, vessel type and a check digit to make alteration of an HIN more difficult.

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, labeling and other, similar requirements. Both OMB and the Coast Guard have received a number of comments opposing a 19 character HIN because of the information collection burdens that would be imposed, particularly with the calculation of the check digit. When using simple arithmetic, those calculations may take as long as 15 minutes per vessel. Some States are also opposed to a 19 character HIN because of significant costs to adapt computers and computer programs for State vessels registration and numbering systems to 19 characters. In consideration of these comments, the Coast Guard is conducting a workshop to solicit additional comments from the public and to serve as an open forum for discussing the proposed HIN regulations. The workshop will explore various alternatives to a 19 character HIN.

The NPRM also proposed to require that manufacturers issue Certificates of Origin for new vessels offered for sale in the United States. The workshop will not include a discussion of those proposed requirements. Due to limited time, and in an effort to ensure that the workshop is as productive as possible, discussion will be strictly limited to the issues raised by the proposed expansion of the HIN.

Workshop Format

The workshop format will consist of presentations by a panel, followed by discussions and a question and answer period. The workshop is open to the public, however, due to limited time, the Coast Guard will limit the number and duration of panel presentations. Panelists will be allowed seven minutes to make their presentation. The Coast Guard will select panel members in a manner designed to ensure the broadest possible representation of viewpoints. The Coast Guard specifically solicits representatives of the following groups to participate in the workshop as panelists:

The International Organization for Standardization (ISO)

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The National Association of State Boating Law Administrators
The National Marine Manufacturers Association
The American Boat and Yacht Council
The National Association of Marine Investigators
The North American Paddlesports Association

Those wishing to participate as a panel member and give an oral presentation should submit their name, address, telephone number, organization represented (if any), and provide a summation of their presentation at least ten days prior to the workshop, as directed under **ADDRESSES.** Individuals selected to be panelists will be notified by the Coast Guard. Any changes in the location or time of the workshop will be announced in the **Federal Register**.

Dated: November 3, 1994.

G. A. Pennington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94-27758 Filed 11-8-94; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT-17-1-6536; A-1-FRL-5103-6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC RACT Catch-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Connecticut were received by the Environmental Protection Agency (EPA) on January 5, 1994. The intended effect of the revisions was to change three regulations and to add one regulation, all of which require the implementation of reasonably available control technology (RACT) for certain sources of volatile organic compounds (VOCs), as required by the Clean Air Act, as amended in 1990 (the Act). The EPA has evaluated these modifications to Connecticut's regulations and by this notice is proposing to approve the changes to the three existing regulations as part of the SIP. EPA is also proposing a limited approval/limited disapproval of the new regulation.

DATES: Comments must be received on or before December 9, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203-2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 565-9024.

SUPPLEMENTARY INFORMATION: On January 5, 1994, the Connecticut DEP submitted a revision to its SIP. The revision consists of changes made pursuant to the requirements of § 182(b)(2) of the Act to the following Connecticut Regulations for the Abatement of Air Pollution:

§§ 22a-174-20(s), Miscellaneous Metal Parts and Products,
§§ 22a-174-20(v), Graphic Arts Rotogravures and Flexography,
§§ 22a-174-20(ee), Reasonably Available Control Technology for Large Sources, and
§ 22a-174-32, Reasonably Available Control Technology for Volatile Organic Compounds.

I. Background

Under the pre-amended Clean Air Act (i.e., the Clean Air Act before the enactment of the amendments of November 15, 1990), ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guideline (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, Connecticut was designated as nonattainment for ozone and sought an extension of the attainment date under Section 172(a)(2) to December 31, 1987. Therefore, the State was required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources. However, the State of Connecticut did not attain the ozone standard by the approved attainment date. On May 25, 1988, EPA notified the Governor of Connecticut that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the Clean Air Act were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401-7671q. In Section 182(a)(2)(A) of the amended Act, Congress adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. All of Connecticut, with the exception of the portion of Connecticut located in the New York-New Jersey-Long Island Consolidated Statistical Metropolitan Area (NY-NJ-CT CMSA), was classified as serious nonattainment for ozone. The remaining portion of the State, i.e., the Connecticut portion of the NY-NJ-CT CMSA, was classified as severe nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991). The State submitted revisions to meet the RACT fix-up requirement and EPA approved those revisions to the Connecticut SIP on October 18, 1991 (56 FR 52205).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the 1990 amendments to the Act; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement applies to nonattainment areas that were previously exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to such requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Since Connecticut was previously required to adopt RACT regulations for all the CTG and major non-CTG sources to meet the RACT "catch-up" requirement, the State did not need to adopt any additional RACT rules. However, under Section 182 of the Act, the major source definition for serious and severe nonattainment areas was lowered to include sources that have a potential to emit greater than 50 or greater than 25 tons per year of VOC, respectively. Therefore, the State needed to lower the applicability cutoff of its non-CTG and/or relevant CTG-based regulations to include newly classified major sources in these categories.

VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and proposed action for the changes to Connecticut's Regulations for the Abatement of Air Pollution, subsection 22a-174-20(s), subsection 22a-174-20(v), subsection 22a-174-20(ee), and Section 22a-174-32.

II. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this notice. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) The proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," otherwise known as the "Blue Book" (notice of availability was published in the **Federal Register** on May 25, 1988 and in the existing CTGs); and (3) the "Model Volatile Organic Compound Rules for Reasonably Available Technology," (Model VOC RACT Rules) issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. The changes to Connecticut's VOC regulations that were included in the January 5, 1994 submittal are briefly summarized below.

Subsection 22a-174-20(s)

This regulation was amended to include an exemption for noncompliant coatings used in amounts less than 55 gallons in the aggregate for any consecutive 12 month period at a miscellaneous metal parts facility. The change is consistent with EPA's August 10, 1990 policy memorandum from G. T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch of the Office of Air Quality Planning and Standards, entitled, "Exemption for Low-Use Coatings." Section 193 of the Clean Air Act (i.e., the General Savings Clause), requires that any regulation in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any nonattainment area may only be modified if the modification insures equivalent or greater reductions of the same pollutant. Although the proposed change to 22a-174-20(s) represents a small relaxation of an existing control requirement, the requirements of Section 193 are met by the reductions resulting from other changes being proposed in this notice.

Subsection 22a-174-20(v)

This regulation was amended to define RACT for graphic arts sources with potential emissions from all printing operations of 50 tons or more per year in the serious ozone nonattainment area or, 25 tons or more per year in the severe ozone nonattainment area, which were not previously subject to the rule. The adopted regulation maintains the applicability of any printing line with actual emissions of 40 pounds or more per day. This change is consistent with the requirements of Section 182 of the Act.

Subsection 22a-174-20(ee)

Most of this subsection has been deleted and replaced with a reference to the new Section 32, entitled, "Reasonably Available Control Technology for Volatile Organic Compounds." The amended regulation removes the previous major source limits on applicability and refers all sources of VOC to Section 32. Sources previously subject to 22a-174-20(ee) that have enforceable consent orders or permits which currently define RACT at those facilities will continue to be regulated by those orders until Connecticut decides otherwise.

Section 22a-174-32

For major non-CTG sources of VOCs, the addition of this section sets forth both presumptive RACT norms and processes by which RACT can be established for those sources that cannot meet the presumptive norms. However, Section 182(b)(2) of the Clean Air Act requires that a SIP revision be submitted by November 15, 1992 including "provisions to require the implementation of reasonably available control technology * * *" In addition, the necessary SIP revision is required to "provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995." Since the first two options of Section 22a-174-32 define presumptive norms for RACT, and are consistent with EPA's Model VOC RACT Rules for "Other Facilities that Emit Volatile Organic Compounds," that portion of the regulation meets the requirements of Section 182 and is approvable. However, since the third and fourth options describe a process by which RACT can be defined but do not specifically define RACT for each source to which such options apply, that portion of the rule is not approvable. Therefore, EPA is proposing a limited approval/limited disapproval of Section 22a-174-32. To receive full approval, Connecticut will need to define explicitly, and have approved by EPA, RACT for all of those sources which do not conform to the presumptive RACT options outlined in the regulation. Alternatively, if it is determined that none of the affected sources will rely on the third or fourth process options contained in the rule to implement RACT, Section 22a-174-32 can be fully approved upon Connecticut making such a demonstration.

Proposed Action

EPA has evaluated Connecticut's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA

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has determined that the changes made to subsection 22a–174–20(s), subsection 22a–174–20(v), and subsection 22a–174–20(ee) of Connecticut's Regulations for the Abatement of Air Pollution meet the requirements of the Act. Therefore, EPA is proposing approval under Section 110(k)(3) of those changes.

However, EPA has determined that the proposed Section 22a–174–32 does not meet all of the Act's requirements for the reasons described above. EPA believes that approval of the submitted rule will strengthen the SIP but because of the above-mentioned deficiencies, the rule does not meet the requirements of Section 182(b)(2) of the CAA. In light of such deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and Part D. However, EPA may grant a limited approval of the submitted rule under Section 110(k)(3) and EPA's authority pursuant to Section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also includes a limited disapproval, due to the fact that this rule does not meet the requirement of Section 182(b)(2) because of the deficiencies noted above. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Connecticut's submitted Section 22a–174–32 under Section 110(k)(3) and 301(a) of the CAA.

As stated, EPA is also proposing a limited disapproval of this rule under Sections 110(k)(3) and 301(a) of the Act because the rule contains deficiencies that have not been corrected as the Act requires. Under Section 179(a)(2), if the Administrator disapproves a submission under Section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in Section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in Section 179(a) will begin at the effective date established in this limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

EPA's evaluation of all the submitted regulations is detailed in a memorandum, dated June 2, 1994 entitled "Technical Support Document—Connecticut—VOC RACT Catch-ups." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. § 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 6, 1994.

John P. Devillars,

Regional Administrator, Region I.

[FR Doc. 94–27684 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket Nos. 93–22 and 94–26]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts and Inquiry into Statutory Basis for Coloading Practices and Possible Section 16 Exemption for Coloading

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Proposed Rule in Docket No. 93–22, which would modify and clarify the Federal Maritime Commission's coloading regulations, is held in abeyance, pending an inquiry to explore whether existing coloading practices are consistent with statutory requirements, and, if not, whether an exemption proceeding should be initiated. The purpose of the Inquiry is to serve notice that the Commission has preliminarily determined that coloading practices appear to contravene the tariff filing requirements, and to provide another opportunity to the interested public to comment on whether, absent an exemption under section 16 of the 1984 Act, a statutory basis for such practices exists. The Inquiry also solicits comments on whether the Commission should initiate a proceeding under section 16 to exempt some aspect of coloading activity from otherwise applicable requirements if no other statutory basis for coloading exists.

DATES: Comments due on or before December 27, 1994.

ADDRESSES: Send Comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated Docket No. 93–22, *Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts*, for the purpose of addressing the practice of non-vessel-operating common carriers ("NVOCCs") of rating combined or consolidated cargoes under privately arranged rates rather than the rates in their tariffs. In its Notice of Proposed Rulemaking ("NPR" or "Proposed Rule"), the Commission noted that its current rules governing this practice, known as coloading, which were promulgated in 1985, have been variously interpreted by the NVOCC industry, due in part to apparent ambiguities in the rule's definitions and attendant enumeration of responsibilities of coloading NVOCCs.

Accordingly, the Commission proposed to revise the definition of consolidated cargo shipments which qualify to be rated off-tariff as coload cargo.

In the NPR, the Commission expressed its concern about diverse interpretations of and ambiguities in its coloading rules as reflected in coloading activity since 1985. The Commission also noted that a larger volume of NVOCC-carried cargo was being rated as coload cargo than was anticipated when the coload regulations were crafted, possibly resulting in an inordinate percentage of NVOCC shipments being rated irrespective of the NVOCCs' tariff rates. With coloading being used as a device to gain access to other NVOCCs' service contracts, the Commission noted that consolidated cargoes being deemed coload cargo by some NVOCCs now include multiple full containerloads ("FCLs"), not just the small, less-than-containerload ("LCL") shipments that constituted the objective of the Commission's current coloading rule. The Commission was also concerned that there was too wide a variety of interpretations of the regulatory responsibilities of coloading NVOCCs, with some NVOCCs assiduously adhering to the regulations and others adopting practices based on looser interpretations of those somewhat ambiguous rules.

The NPR sought comment on:

1. A proposal to redefine the term "coloading" to mean the combining of cargo pursuant to the rates, charges and terms of an agreement (*vis-a-vis* a tariff), which agreement must be in writing and made available to the Commission;
2. An alternative proposal limiting coloading to LCL cargo;
3. A proposal to prohibit coloaded cargo from being carried under a service contract; and
4. A proposal to define an "affiliate" having access to service contracts.

The Commission also sought comment on:

5. Whether to restrict applicability of time-volume rates to coloaded cargo; and
6. Whether to proscribe coloading altogether.

The Proposed Rule generated 58 comments. Conferences of vessel-operating common carriers ("VOCCs"), and some larger NVOCCs, generally supported the Proposed Rule, but urged that the Commission go further and ban coloading altogether. Some of these entities argued that the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"), provided no basis either for coloading or for unaffiliated NVOCCs jointly having access to service contracts other than through the statutorily sanctioned mechanism of a shippers' association, 46 U.S.C. app. 1702(24).

Most of the comments, however, were from smaller to mid-sized NVOCCs, who opposed the Proposed Rule. With few exceptions, these parties did not address the legal ramifications of the Proposed Rule, but instead focused on what they believed to be the practical impact of the proposal on their operations. The NVOCC community's comments collectively conveyed the prevalence of coloading, estimated as 40% or more of NVOCC carryings by one commenter, and characterized coloading practices as highly beneficial to the many smaller NVOCCs who rely on coloading to remain competitive.

The threshold question remains, however, whether the very concept of coloading is, or can be made, consistent with the 1984 Act. Section 8(a)(1) of the Act, 46 U.S.C. app. 1707(a)(1), states: "[E]ach common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices * * * ." Both NVOCCs and VOCCs are defined in the 1984 Act as "common carriers." 46 U.S.C. app. 1702 (17), (18). By defining NVOCCs as common carriers, Congress quite intentionally determined to subject them to the tariff-filing provisions of section 8. The Senate Commerce Committee Report advised that "all 'common carriers,' including both vessel operators and non-vessel operators," would have to publish tariffs under the bill. S. Rep. No. 3, 98th Cong., 1st Sess. 30 (1983). That NVOCCs file tariffs under the 1984 Act is not an accidental by-product of a complicated regulatory regime; it is a deliberate statutory mandate to which the Commission, in implementing that statute, must adhere.

In 1990, Congress reiterated its intention that NVOCCs file tariffs when it enacted the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments"), section 710 of Pub. L. No. 101–595. The 1990 Amendments were based upon the principle of NVOCC tariff filing and were devised in part to secure NVOCC compliance with section 8 of the 1984 Act.

Thus, the current statutory scheme not only includes provisions for NVOCC tariff filing, but has used that principle as the premise for other statutory proscriptions and obligations. Meanwhile, the 1984 Act makes no special provision for, or even acknowledgement of, consolidators and coloading. The Commission rejects the arguments of some NVOCCs that this is a signal that Congress intended coloading activity to remain unfettered by regulation or excused from the general statutory scheme. The law on its face effectively mandates that an NVOCC include in its tariff *all* rates and charges. Those would include not only those charged the underlying shipper, but also any rate charged another NVOCC, whatever its arrangement with that NVOCC may be. An NVOCC is given no express statutory authority to charge off-tariff rates or make private arrangements for the transportation of cargo in its capacity as a common carrier.

The Commission therefore makes the preliminary determination that the off-tariff rating of cargo by NVOCCs under the rubric of coloading contravenes the tariff-filing requirement of section 8 of the 1984 Act.[1] If that is the case, there would appear to be no present statutory basis for either the Proposed Rule on coloading or the Commission's existing coloading rules as well.

Before disposing of Docket No. 93–22 in accordance with these conclusions, however, the Commission has determined to provide interested parties one final opportunity to offer legal arguments as to whether coloading practices are currently consistent with section 8. The purpose of this endeavor is to ensure that the Commission has the benefit of all possible statutory interpretations on this issue. The policy arguments for and against coloading, which were more than adequately

[1] Another concern of the Commission, raised in the NPR, is that Congress established the shippers' association mechanism as the means by which unaffiliated shippers may jointly access service contracts. The NPR also expressed the view that the 1984 Act contemplates that service contract rates are available only to the shipper signatory to the contract. These issues were adequately addressed by the commenters on the Proposed Rule. Further comment on the statutory basis for coloading activity is therefore solicited only as it relates to the issue of section 8's tariff filing requirement.

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explored in the comments on the Proposed Rule, should not be reiterated in this proceeding.

If, after consideration of comments received in response to this Notice, the Commission remains unpersuaded that there is a present statutory basis for coloading, it would be its intention to explore whether a section 16 exemption is appropriate by initiating a separate proceeding under section 16 of the 1984 Act, 46 U.S.C. app. 1715, following this inquiry. That section provides:

> The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

To this end, the Commission seeks input from interested parties on whether a section 16 exemption proceeding should be initiated to determine if some form and degree of coloading activity should be exempted from the requirements of section 8 or other relevant provisions of the 1984 Act. Short of remedial legislation, section 16 would appear to provide the only possible avenue for excusing coloading NVOCCs from the otherwise applicable provisions of the 1984 Act, should those provisions be found to preclude existing coloading practices.

If the Commission initiates a section 16 proceeding, whether an exemption is ultimately deemed appropriate for coloading activities will depend on several factors. A threshold consideration is the scope of coloading activity which is proposed to be exempted. Is relief required for LCL coloading only, or also for FCL coloading by NVOCCs? How common is the off-tariff rating of FCL cargo as coload cargo? In assessing the need and desirability of coloading, the Commission is also desirous of ascertaining the extent to which the discount rates achieved through coloading inure to the benefit of the underlying shippers themselves, in addition to the coloading NVOCCs.

Many NVOCCs commenting on the Proposed Rule raised the issue of certain VOCC space-chartering arrangements, which include off-tariff compensation, and which were likened to NVOCC coloading arrangements. Accordingly, the Commission seeks views on whether such arrangements by VOCCs are inconsistent with the 1984 Act and also whether those activities should be addressed in any forthcoming section 16 exemption proceeding.

The major determinant on the appropriateness of a section 16 exemption would be the applicability of the specific criteria listed in that section. Regardless of the fervency with which coloading NVOCCs argue that coloading is essential to their operations, no exemption may issue if doing so would substantially impair the Commission's regulatory responsibilities, result in unjust discrimination (such as between shippers, or between carriers), or fail to meet the other statutorily imposed criteria. Commenters are therefore urged to address, albeit on a preliminary basis, how exemption of the various categories of coloading or other activity, discussed *supra*, would or would not meet the section 16 criteria. The Commission emphasizes that the reason for this proceeding is to give the interested public the opportunity to address these legal issues, and not merely to reiterate preferences based on the financial interests of the commenters.

The preliminary determinations to find coloading practices inconsistent with the 1984 Act (absent a formal section 16 exemption) and to initiate a separate section 16 exemption proceeding following this Inquiry, may be revised, if comments responding to this notice persuade the Commission that those determinations are incorrect. The scope and breadth of any exemption proceeding to be initiated may also be expected to reflect the arguments advanced by commenting parties. During the pendency of this proceeding, the Proposed Rule will remain in abeyance, and will be reconsidered should a resolution of these issues not result from this Inquiry.

Therefore, *it is ordered*, That this Notice of Inquiry be published in the **Federal Register**; and

It is further ordered, That the Proposed Rule in Docket No. 93–22 is held in abeyance pending further notice.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–27756 Filed 11–8–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92–167; RM–7680; FCC 94–274]

Special Temporary Licensing Procedure for Visiting Foreign Amateur Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination.

SUMMARY: This action terminates the proposal in this proceeding to amend the amateur service rules to provide a temporary licensing procedure for amateur operators, such as tourists and convention attendees, so that they can operate their amateur stations during brief visits to the United States. The action is necessary so that the matter will not remain in a pending status. The effect of this termination is that foreign amateur operators will continue to use the current means of obtaining operating authority, that is, obtaining a United States or a reciprocal license.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted October 24, 1994, and released November 2, 1994. The complete text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037. Telephone number (202) 857–3800.

Summary of Memorandum Opinion and Order

1. The Notice of Proposed Rule Making in FCC 92–346, 57 FR 37758, published August 20, 1992, in this proceeding, addresses a need that visiting foreign amateur operators have for a convenient procedure by which they can obtain authority to operate their amateur stations while they are here in the United States for brief visits.

2. Commenters were concerned that language barriers might pose a problem for volunteer examiners who would be required to verify the foreign amateur operator's license. Also raised in the comments was the matter of whether the volunteer examiner system should be used for the purpose of authorizing visiting foreign amateur operators. Another concern was that authorizing operation by visitors from countries that do no currently have reciprocal agreements with the United States might reduce the incentive for those countries to enter into such agreements.

3. The Commission said that because of the concerns expressed, the amateur service rules would not be amended as proposed. The Commission recognizes, however, the need a convenient licensing procedure for visiting foreign amateur operators. Other ways to meet the need, therefore, will continue to be explored. The Commission said that, in particular, it would work to ensure the reciprocal treatment of United States amateur operators, whether through bilateral or multilateral arrangements.

4. A related petition for rule making (RM–7680), filed by Stephen R. Hutchins, was dismissed without prejudice because the Commission did not want to retain it in a pending status while various international negotiations (such as the mutual recognition of Conference of Europeene des Administrations de la Post et Telecommunication (CEPT) licenses) are being pursued.

5. This Memorandum Opinion and Order is issued under the authority of 47 U.S.C. 154(i).

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Treaties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27757 Filed 11–8–94; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 4, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

- Agricultural Marketing Service

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon-Marketing Order No. 945
FV–131, FV–132, FV–132A, FV–133
Recordkeeping; on occasion, monthly; biennially
Farms, businesses or other for-profit; 60,903 responses; 387 hours
Teresa L. Hutchinson (503) 326–2724

- Agricultural Marketing Service

Poultry Market News Reports
PY–90
Weekly; monthly
Businesses or other for-profit; small businesses or organizations; 212,740 responses; 17,657 hours
Grover T. Hunter (202) 720–6911

Revision

- Farmers Home Administration

7 CFR 1948–C, Intermediary Relending Program
FmHA 1948–1, 3, 4
Recordkeeping; on occasion
State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations; 4,922 responses; 17,122 hours
Jack Holston (202) 720–9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–27769 Filed 11–8–94; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 217.5(d), the public shall be advised, through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 23, 1994, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspapers listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspaper will be used to provide notice.

Southern Region

Regional Forester Decisions

affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.
Atlanta Journal, published daily in Atlanta, GA

Southern Region

Regional Forester Decisions

affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest (s) of that state.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL
Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL
Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL
Talladega Ranger District: The Daily Home, published daily in Talladega, AL
Tuskegee Ranger District; Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decision

El Nuevo Dia, published daily in Spanish in San Juan, PR, San Juan Star, published daily in San Juan, PR

District Ranger Decisions

El Horizonte, published weekly (Wednesday) in Fajardo, PR

Chattachoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA
Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA
Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) is Dahlonega, GA
Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA
Towns County Herald, published weekly (Thursday) in Hiawesse, GA
Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District: Northeast Georgian, published weekly (Tuesday) in Cornelia, GA
Toccoa Record, published weekly (Thursday) in Toccoa, GA
The Telegraph, published weekly (Wednesday) in Cleveland, GA
Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA
Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN
Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday–Friday) in Athens, TN
Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN
Nolichucky Ranger District: Greenville Sun, published daily (Monday–Saturday) in Greenville, TN
Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN
Watauga Ranger District: Elizabethton Star, published daily (Sunday–Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY
Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Rangers Decisions

Apalachicola Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: The State, published daily in Columbia, SC
Wambaw Ranger District: News and Courier, published daily in Charleston, SC
Witherbee Ranger District: News and Courier, published daily in Charleston, SC
Tyger Ranger District: The Union Daily Times, published daily in Union, SC

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record, published daily (except Sunday) in Harrisonburg, VA

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA
James River Ranger District: Virginian Review, published daily in Covington, VA
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA
Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA

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Jefferson National Forest, Virginia

Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA

District Rangers Decision

Blacksburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.)

Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

New Castle Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the Roanoke Times and Monroe Watchman.)

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA

Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA

Colfax Chronicle, published weekly (Wednesday) in Colfax, LA

Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA

Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA

Vernon Ranger District: Leesville Leader, published daily in Leesville, LA

Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS

Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS

Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS

Bude Ranger District: Clarion-Ledger, published daily in Jackson, MS

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: The Sun Journal, published weekly

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC

French Broad District: The Asheville Citizen-Times, published daily in Asheville, NC

Grandfather District: McDowell News, published daily in Marion, NC

Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC

Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Toocano Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published tri-weekly (Monday, Wednesday, and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK

Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: Newton County Times, published weekly (Wednesday) in Jasper, AR

Bayou Ranger District: The Courier, published daily (Sunday through Friday) in Russellville, AR

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Rangers Decisions

Angelina Ranger District: The Lufkin Daily News, published daily in Lufkin, TX

San Jacinto Ranger District: The Houston Post, published daily in Houston, TX

Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX

Raven Ranger District: The Courier, published daily in Conroe, TX

Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX

Trinity Ranger District: The Lufkin Daily news, published daily in Lufkin, TX

Yellowpine Ranger District: The Beaumont Enterprise, published daily in Beaumont, TX

Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in May 23, 1994, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Correction of Newspapers of:

Chattahoochee-Oconee National Forests, Georgia

District Ranger Decisions

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA.

Towns County Herald, published weekly (Thursday) in Hiwassee, GA

Chattooga Ranger District: Northeast Georgian, published weekly (Tuesday) in Cornelia, GA.

Francis Marion & Sumter National Forest, South Carolina

District Ranger Decisions

Long Cane Ranger District: The State, published daily in Columbia, SC.

George Washington National Forest, Virginia

Forest Supervisor Decisions

Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

District Rangers Decisions

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.

Deletion of Newspaper of:

Francis Marion & Sumter National Forest, South Carolina

District Ranger Decisions

Edgefield Ranger District: Augusta Herald, published daily in Augusta, GA.

Dated: November 2, 1994.

Michael L. Sparks,

Acting Deputy Regional Forester for Resources.

[FR Doc. 94–27718 Filed 11–8–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:00 p.m. on December 2, 1994, at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada 89109. The purpose of the meeting is to sponsor a seminar on fair housing issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 2, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–27692; Filed 11–8–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Deposit of Biological Materials for Patent Purposes.

Agency Approval Number: 0651–0022.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,325 hours.

Number of Respondents: 3,325.

Avg Hours Per Response: 1 hour.

Needs and Uses: Information on depositing of biological materials in depositories is required for (1) PTO determination of compliance with patent statute where invention sought to be patented relies on biological material subject to deposit requirement, which includes notification to interested public where to obtain samples of deposits, and (2) depositories desiring to be recognized as suitable by PTO.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for–profit institutions, Federal agencies or employees, non–profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

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Dated: November 3, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-27717 Filed 11-8-94; 8:45 am]

BILLING CODE 3510-CW-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

November 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover. The limits for Categories 334/634, 336/636/836 and 342/642/842 are being increased an additional 5 percent for garments made from locally-woven, handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on November 10, 1994, you are directed to amend the directive dated March 22, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka:

Category	Adjusted eighteen-month limit [1]
237	393,936 dozen.
331/631	3,756,446 dozen pairs.
333/633	40,765 dozen.
334/634	676,806 dozen.
335/835	368,572 dozen.
336/636/836	634,244 dozen.
338/339	1,675,325 dozen.
340/640	1,622,643 dozen of which not more than 649,058 dozen shall be in Categories 340-Y/640-Y [2].
341/641	2,612,138 dozen of which not more than 1,741,425 dozen shall be in Category 341 and not more than 1,654,463 dozen shall be in Category 641.
342/642/842	944,444 dozen.
345/845	234,047 dozen.
347/348/847	2,138,777 dozen.
350/650	156,363 dozen.
351/651	456,347 dozen.
352/652	1,676,882 dozen.
359-C/659-C [3]	913,534 kilograms.
363	8,644,419 numbers.
369-D [4]	772,778 kilograms.
369-S [5]	993,288 kilograms.
435	23,704 dozen.
635	491,430 dozen.
638/639/838	1,238,429 dozen.
644	695,181 numbers.
645/646	149,554 dozen.
647/648	1,359,274 dozen.
840	424,255 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-27719; Filed 11-8-94; 8:45 am]

BILLING CODE 3510-DR-F

Establishment and Adjustment of Import Restraint Limits and Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits and charging imports.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6704. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 23, 1994, the Governments of the United States and Indonesia agreed to amend and extend their current Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of May 8, 1992. The agreement is extended through December 31, 1995—July 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995. The agreement has been converted to a calendar year agreement. Also, agreement was reached to charge 5,083 dozen to Category 341 for the period July 1, 1994 through December 31, 1994 for goods improperly entered into the United States.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the July 1, 1994 through December 31, 1994 period. The Group II Subgroup includes an increase for carryover. The limit for Category 433, within the subgroup, includes increases for carryforward and special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on June 27, 1994 by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to count imports of certain textile products, produced or manufactured in Indonesia and exported during the period July 1, 1994 through June 30, 1995. Import charges already made to these categories shall be retained and applied to the limits established in this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated September 23, 1994 between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 9, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the six-month period beginning on July 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Six-month restraint limit
Levels in Group I	
200	325,000 kilograms.
219	3,610,234 square meters.
225	2,528,100 square meters.
300/301	1,544,950 kilograms.
313	6,550,732 square meters.
314	22,873,516 square meters.
315	10,393,300 square meters.
317/617/326	10,038,429 square meters of which not more than 1,483,287 square meters shall be in Category 326.
331/631	921,837 dozen pairs.
334/335	84,474 dozen.
336/636	235,956 dozen.
338/339	456,182 dozen.
340/640	561,800 dozen.
341	337,896 dozen.
342/642	140,450 dozen.
345	163,370 dozen.
347/348	617,980 dozen.
350/650	64,888 dozen.
351/651	182,585 dozen.
359-C/659-C [1]	533,710 kilograms.
359-S/659-S [2]	561,800 kilograms.
360	500,000 numbers.
361	500,000 numbers.
369-S [3]	344,857 kilograms.
443	40,804 numbers.
445/446	27,342 dozen.
600	375,000 kilograms.
604-A [4]	268,220 kilograms.
611	2,382,199 square meters.
613/614/615	9,522,510 square meters.
618	2,247,200 square meters.
619/620	3,483,160 square meters.
625/626/627/628/629	10,658,304 square meters.
634/635	112,360 dozen.
638/639	584,272 dozen.
641	856,578 dozen.
643	125,000 numbers.
644	175,000 numbers.
645/646	295,659 dozen.
647/648	1,224,873 dozen.
669-P [5]	500,000 kilograms.
670-L [6]	500,000 kilograms.
847	154,760 dozen.
Group II	
201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 352-354, 359-O [7], 362, 363, 369-O [8], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604-O [9], 606, 607, 621, 622, 624, 630, 632, 633, 649, 652-654, 659-O [10], 665, 666, 669-O [11], 670-O [12], 831-836, 838, 839, 840, 842-846, 850-852, 858 and 859, as a group.	33,500,000 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	1,358,773 square meters equivalent.
In Group II subgroup	
433	6,655 dozen.
447	8,161 dozen.

[1] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 604-A: only HTS number 5509.32.0000.

[5] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[6] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

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[7] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[8] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[9] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[10] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[11] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[12] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period July 1, 1993 through June 30, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of May 8, 1992 and the MOU dated September 23, 1994 between the Governments of the United States and Indonesia.

You are directed to charge 5,083 dozen to the July 1, 1994 through December 31, 1994 period for Category 341.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–27720; Filed 11–8–94; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95–C0003]

Concord Enterprises, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Concord Enterprises, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 25, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT:

Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Sample No.	Product	Entry date	Expt/Mfg
P–860–7237	Baby Angels	6/27/91	L&A Company.
M–867–2954	3-Piece Doll	7/20/91	L&A Company.
P–867–7694	Plastic Doll	10/31/91	L&A Company.
P–867–7695	Plastic Wind Up Family Car	10/31/91	L&A Company.
P–867–7716	Soft Vinyl Animal In Plastic Box	11/11/91	Manley Toys.

Dated: November 3, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement

1. Concord Enterprises, Inc. (hereinafter "Concord"), a corporation, enters into this Settlement Agreement and Order (hereinafter "Settlement Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Concord knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Concord and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Concord is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 2957 E. 46th Street, Los Angeles, California 90058. Concord is a wholesaler of general and non-durable merchandise, including toys.

III. Allegations of the Staff

A. Toys

5. On five occasions between June 27, 1991, and December 17, 1991, Concord caused the introduction into interstate commerce of 7 kinds of toys (107,040 units) intended for use by children under three years of age, which are identified and described below:

Sample No.	Product	Entry date	Expt/Mfg
P–860–7238	Baby & Bear	12/17/91	Sunlight Industries.
P–860–7236	Two Dolls in Plastic Vinyl	12/17/91	Rewinner Enterprises.

6. The toys identified in paragraph 5 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that, when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated; and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 5 presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph 5 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 5 above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(g)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

B. Baby Rattles

10. On November 21, 1990, Concord caused the introduction into interstate commerce of 4,320 units of a baby rattle, "Set of Two Assorted Baby Rattles" ("Rattle"), purchased from Manley Toys (Sample No. M–867–2411).

11. When tested under the methods and procedures prescribed in 16 CFR 1500.51, the Rattle entered and penetrated the full depth of the cavity of the test fixture specified in 16 CFR 1510.4.

12. Pursuant to 16 CFR 1500.18(a)(15), the Rattle presents a "mechanical hazard" (i.e., choking, aspiration, and/or ingestion of small parts) within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) because it failed to comply with 16 CFR 1510.4.

13. The Rattle is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), because it is a toy or other article intended for use by children which presents a "mechanical hazard" under 16 CFR 1500.18(a)(15).

14. The Rattle is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), because it is a toy or other article intended for use by children which bears or contains a hazardous substance.

15. The introduction into interstate commerce of the aforesaid banned hazardous Rattle is a violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Concord

16. Concord denies the allegations of the staff set forth in paragraphs 5 through 15 above that it has knowingly caused the introduction into commerce of the aforesaid banned hazardous toys or rattles, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties

17. The Consumer Product Safety Commission has jurisdiction over Concord and the subject matter of this Settlement Agreement under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

18. Upon final acceptance by the Commission of this Settlement Agreement and issuance of the Final Order, Concord agrees to pay to the Commission a civil penalty in the amount of SIXTY THOUSAND AND 00/100 DOLLARS ($60,000.00), in three (3) payments of TWENTY THOUSAND AND 00/100 ($20,000.00) each. The first payment shall be due within twenty (20) days after service of the Final Order of the Commission accepting the Agreement, hereinafter, the "anniversary date." The second payment shall be made within one year of the anniversary date, and the third payment shall be made within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 15 above that Concord violated the FHSA. Upon the failure by Concord to make a payment or upon the making of a late payment by Concord (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

19. The Commission does not make any determination that Concord knowingly violated the FHSA. The Commission and Concord agree that this Agreement is entered into for the purposes of settlement only.

20. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Concord knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Concord failed to comply with the FHSA as aforesaid, and (4) to a settlement of findings of fact and conclusions of law.

21. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and the Order.

22. Upon provisional acceptance of this Settlement Agreement by the Commission, this Settlement Agreement and the Provisional Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order shall be deemed issued on the 16th day after the date the Settlement Agreement is published in the **Federal Register.**

23. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Concord to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement may be used to vary or to contradict its terms.

25. The provisions of the Settlement Agreement and Final Order shall apply to Concord and each of its successors and assigns.

Dated: May 10, 1994.

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Respondent Concord Enterprises, Inc.
Hamid Shayan,
President, Concord Enterprises, Inc., 2957 E 46th Street, Los Angeles, CA 90058.
Commission Staff.
David Schmeltzer,
Assistant Executive Director, Office of Compliance and Enforcement.
Eric L. Stone,
Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.
Dated: May 13, 1994 by:
Earl A. Gershenow,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.
Dated: May 31, 1994 by:
Dennis C. Kacoyanis,
Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Concord Enterprises, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Concord Enterprises, Inc; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Concord Enterprises, Inc. shall pay to the Commission a civil penalty in the amount of SIXTY THOUSAND-FIVE AND 00/100 DOLLARS ($60,000.00) in three (3) payments of TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) each. The first payment shall be due within twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement, hereinafter, the "anniversary date." The second payment shall be made within one year of the anniversary date, and the third payment shall be made within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 15 of the Settlement Agreement and Order that Concord Enterprises, Inc. violated the FHSA. Upon the failure by Concord to make a payment or upon the making of a late payment by Concord (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of November, 1994.

By Order of the Commission
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 94-27681 Filed 11-8-94; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-164-005]

Trunkline Gas Co.; Compliance Filing

November 3, 1994.

Take notice that on October 31, 1994, Trunkline Gas Company (Trunkline) tendered for filing a filing in compliance with the Commission's Letter Order dated October 14, 1994 in Docket No. RP94-164-004.

Trunkline states that this filing contains the required reconciliation and workpapers in accordance with the directives of the above-mentioned order.

Trunkline requests that the Commission grant such waivers as may be necessary for the acceptance of this filing as being in compliance with the Commission's Letter Order dated October 14, 1994 in Docket No. RP94-164-004.

Trunkline further states that copies of the filing are being served on all parties to this proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94-27708 Filed 11-8-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP95-36-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 3, 1994.

Take notice that on November 1, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 listed in Appendix A thereto. The proposed effective date of such tariff sheets is December 1, 1994.

TGPL states that the instant filing is for the limited purpose of revising TGPL's Rate Schedule FT reservation rates and Rates Schedule ESS (Eminence Storage Service) demand and capacity charges in order to provide for the recovery of certain costs attributable to expansion of TGPL's Eminence Storage Field. The revision to the Rate Schedule FT reservation charges will necessarily result in revisions to charges under Rate Schedules FT-R, FTN, FTN-R, and FT-G; similarly, the revisions to the Rate Schedule ESS-R charges. Moreover, the reservation rate surcharge applicable to Incremental Leidy Line Annual Firm Transportation service and the Niagara Import Project—System Expansion which have been assigned and converted from Section 7(c) to service under part 284 have been reduced in order to offset the increase in the Rate Schedule FT reservation rate such that the total reservation rate for such service remains unchanged.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94-27707 Filed 11-8-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM95-2-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on November 1, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, effective November 16, 1994:

Fourth Revised Sheet No. 40

Algonquin states that the purpose of this filing is to reflect changes in its requirement to retain gas in-kind in compensation for the quantities of company use gas used to provide service to Algonquin's customers.

Algonquin further states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 18 CFR Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94-27705 Filed 11-8-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP95-32-000]

NorAm Gas Transmission Co.; Notice of Filing

November 3, 1994.

Take notice that on November 1, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective December 1, 1994:

Third Revised Volume No. 1
Second Revised Sheet No. 131
Fourth Revised Volume No. 1
1st Rev Original Sheet No. 233
Original Sheet No. 233A

NGT states that these revised tariff sheets modify the provisions of NGT's compressor fuel assessment and retention percentage, to provide that for transactions that provide an operational benefit to NGT or that do not entail the use of NGT's compressors or consumption of fuel in other gas handling equipment on NGT's system, NGT may determine that the compressor fuel assessment or retention percentage should include only company used gas and gas lost or otherwise accounted for.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94-27706 Filed 11-8-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP95-33-000]

Williston Basin Interstate Pipeline Co.; Notice of Tariff Revisions

November 3, 1994.

Take notice that on November 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are designed to implement procedures to allow each Shipper the opportunity to trade and/or transfer telemetered imbalances below a specified tolerance level (four percent) and non-telemetered imbalances between Service Agreements and/or Shippers on Williston Basin's system to the extent such imbalances originated under the same Rate Schedule, prior to the imbalance cash-out procedures as more fully detailed in Williston Basin's FERC Gas Tariff.

Williston Basin respectfully requests that the tariff sheets be made effective December 1, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20246, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 94-27712 Filed 11-8-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP95-45-000]

Williston Basin Interstate Pipeline Co.; Notice of Application

November 3, 1994.

Take notice that on November 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95-45-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to amend the authorization in Docket No. CP91-1897-000[1] by deleting a receipt point and reassigning the natural gas volumes delivered to the receipt point for Northern States Power Company, (NSP), all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston Basin proposes to delete the West Short Pine Hills-Mainline receipt point in Harding County, South Dakota from its FERC Rate Schedule X-13 for service to NSP and to reassign those quantities to the Lignite Plant receipt point in Burke County, North Dakota, to its FERC Rate Schedule X-13 for NSP. The affected quantities of 250 dekatherms for each of the two periods from April-October and from November-March at the West Short Pine Hills point would be reassigned to the Lignite point during the same months.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1994, file with the

[1] 58 FERC ¶61,344 (1992).

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Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27711 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-177-124]

Texas Eastern Transmission Corp.; Notice of Refund Report

November 3, 1994.

Take notice that on October 27, 1994, Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Article VI of the final and non-appealable Stipulation and Agreement filed January 31, 1994 in Docket No. RP85-177-119, *et al.*, and approved by FERC Orders dated May 12, 1994 [1] and July 13, 1994,[2] filed its report of refunds.

Texas Eastern states that the refund report documents the information necessary to support Texas Eastern's refund of approximately $84 million (inclusive of principal and interest as of December 1, 1994) representing amounts received from its customers of Gas Supply Realignment, Contract Assignment Program, and Account No. 191 costs provided for in Article III of the Settlement. Texas Eastern states that it is also refunding all payments received (inclusive of both principal and interest) under Rate Schedules CD-1, CD-2, DCQ, GS, ACQ, SGS, and SCQ of Contrast Assignment Program costs as a result of Docket No. RP93-122 and Docket No. RP94-16.

Texas Eastern also states that Philadelphia Gas Works' (PGW) continued pursuant to its position in certain proceedings amounts to a breach of the settlement, and therefore, Texas Eastern is placing refunds due PGW into an escrow account, until PGW comes into compliance.

Texas Eastern states that a copy of the refund report summary together with a list of terminated dockets has been sent to each of Texas Eastern's affected customers as well as the detailed calculations for such customers refund.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 25, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27709 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[1] Texas Eastern Corp., 67 FERC ¶ 67,170 (1994).

[2] Texas Eastern Transmission Corp., 68 FERC ¶ 61,062 (1994).

[Docket No. ER94-1530-000]

Acme Power Marketing, Inc.; Issuance of Order

October 28, 1994.

On July 15, 1994 and August 15, 1994, Acme Power Marketing, Inc. (ACME) submitted for filing a rate scheduled under which ACME will engage in wholesale electric power and energy transactions as a marketer. ACME also requested waiver of various Commission regulations. In particular, ACME requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ACME.

On October 18, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ACME should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ACME is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interests, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ACME's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 17, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27715 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT95-2-000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on November 1, 1994, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 17
Second Revised Sheet No. 30
First Revised Sheet No. 51
First Revised Sheet No. 55
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 90
Second Revised Sheet No. 118
First Revised Sheet No. 119

The proposed effective date of the above tariff sheets is November 1, 1994.

Iroquois states that the purpose of its filing is to conform Iroquois' FERC Gas Tariff to recent regulatory changes promulgated by the Commission in Order Nos. 566 and 566-A, including specifically: (1) The removal of certain tariff provisions no longer required by Section 250.16(b) of the Commission's regulations; (2) removal of tariff languages requiring the posting of non-affiliate discounts on Iroquois' electronic bulletin board (EBB); (3) elimination of certain information items no longer required to be included in requests for service; and (4) revision of information required to be posted on Iroquois' EBB concerning discounts to marketing affiliates and contract data relevant to the allocation of capacity to marketing affiliates. In addition, Iroquois is updating its list of marketing affiliates to reflect the Commission's determinations in previous orders that the marketing affiliates of certain of Iroquois' partners do not qualify as marketing affiliates of Iroquois pursuant to Section 161.2 of the Commission's regulations, and to reflect certain other corporate changes.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27713 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM95-3-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 3, 1994.

Take notice that on October 31, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, filing certain revised tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to:

(1) Transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS,

(2) Transportation services purchased from National Fuel under its Rate Schedule X-54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS-2,

(3) Storage services purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S-2,

(4) Transportation services purchased from National Fuel under its Rate Schedule X-58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPP-SE),

(5) Transportation services purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT, and

(6) Transportation services purchased from CNG Transmission Corporation (CNG) under its Rate Schedule X-74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT-NT. This tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS-2, Section 26 of the General Terms and Conditions, Section 8.01(i) of TGPL's NIPP-SE Rate Schedules X-314, X-315, X-316, X-318 and X-324 and Section 4 of TGPL's Rate Schedule FT-NT.

TGPL states that Appendices B through F attached to the filing contain explanations of the rate changes and details regarding the computation of the revised LSS, SS-2, S-2, NIPP-SE and FT-NT rates, respectively.

TGPL states that copies of the filing are being mailed to each of its LSS, SS-2, S-2, NIPP-SE and FT-NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27714 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1494-038, -051, -059; Oklahoma]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

November 3, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed three applications for non-project use of project lands for the Pensacola Hydroelectric Project. Application number 1 proposes excavating 4,000 cubic yards of material from the bottom of Grand Lake O' The Cherokees, in Delaware County, Oklahoma, for the purpose of raising a private property to the 757-foot elevation. Application number 2 proposes excavating a 750-foot-long, 150-foot-wide area to 735 feet mean sea level, for the purpose of providing boat access from a protected cove in Elk River area of Grand Lake O' The Cherokees, in Delaware County, Oklahoma. Application number 3 proposes to excavate 989.87 feet of shoreline, containing approximately 12,000 cubic yards of material, for the purpose of providing boat access to the Ketchum Cove area of Grand Lake O' The Cherokees, in Delaware County, Oklahoma. The staff prepared an Environmental Assessment (EA) for the

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three proposals. In the EA, staff concludes that approval of these non-project uses of project lands would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27710 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2216-028, et al.]

Hydroelectric Applications [Power Authority of the State of New York, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 2216-028.

c. Dated Filed: May 26, 1994.

d. Applicant: Power Authority of the State of New York.

e. Name of Project: Niagara Power Project.

f. Location: The project is located on the Niagara river in the Towns of Lewiston and Niagara, Niagara County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Power Authority of the State of New York, Charles M. Pratt, General Counsel, 1633 Broadway, New York, NY 10019, (212) 468-8751.

i. FERC Contact: David T. Tran, Civil Engineer, (202) 219-2674.

j. Comment Date: December 15, 1994.

k. Description of Proposed Action: The Power Authority of the State of New York, licensee for the Niagara Power Project, proposes to remove the Lewiston Pump-Generating Plant (LPGP) expansion from the project license. The LPGP expansion consists of a new intake/outlet structure at the Lewiston Reservoir, two new 22-foot-diameter steel and concrete power tunnels, a new powerhouse containing two 30 MW pump-turbine units, a new tailrace channel, and a new 1,500-foot long, 230-kW transmission line.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. Type of Application: Amendment to Project Design.

b. Project No: 10228-007

c. Date Filed: October 14, 1994.

d. Applicant: Cannelton Hydroelectric Project, L.P.

e. Name of Project: Cannelton.

f. Location: On the existing United States Army Corps of Engineers' Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: James B. Price, President, Cannelton Hydro Project, L.P., 120 Calumet Court, Aiken, SC 29803, (803) 642-2749.

i. FERC Contact: Mohamad Fayyad, (202) 219-2665.

j. Comment Date: December 15, 1994.

k. Description of Amendment: Licensee proposes the following design changes: (1) Installing 240 bulb-type generating units rated at 330 kW each, instead of the licensed three 26,670-kW large units, and (2) extending the project's transmission line about 8.3 miles. The change in project design eliminates the need for a powerhouse, where the smaller units would be fitted in modules in the gate bays of the existing dam; each module will contain 30 units in two horizontal rows of 15 units. The proposed transmission line alignment will be along an existing utility line to the point of interconnection with LG&E's Cloverport substation. This proposed alignment would require the clearing of about 52 acres of woods.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Amendment of License.

b. Project No.: 10934-003.

c. Dated Filed: August 23, 1994.

d. Applicant: William B. Ruger, Jr.

e. Name of Project: Sugar River II.

f. Location: Sugar River, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: John R. Asp, 33 Roosevelt Drive, Suite 404, Derby, CT 06418, (203) 732-3525.

i. FERC Contact: David T. Tran (202) 219-2674.

j. Comment Date: December 12, 1994.

k. Description of Amendment: To shorten the bypass reach of river by 650 feet by relocating the proposed dam in a downstream direction and substituting an open canal with a seven-foot-diameter buried steel penstock.

l. This notice also consists of the following standard paragraphs: B, C1, and D2

4 a. Type of Application: Small Conduit Exemption.

b. Project No.: 11459-001 (Note: Duplicate notices of this application were issued on October 21, 1994 and October 31, 1994.)

c. Date filed: March 18, 1994.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Quail Creek No. 2 Hydroelectric Facility.

f. Location: On the existing Quail Creek irrigation and water supply project on the Virgin River and Quail Creek in Washington County, Utah. Section 36, Township 41 South, Range 14 West, Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)-825(r).

h. Applicant Contact: Mr. Morgan S. Jensen, Planning and Environmental Coordinator, Washington County, Water Conservancy District, 136 North 100 East, Suite 1, St. George, UT 84770, (801) 673-3617.

i. FERC Contact: James Hunter, (202) 219-2839.

j. Comment Date: December 23, 1994.

k. Description of Project: The proposed project would consist of: (1) a new pipeline connecting to the existing Quail Creek Reservoir supply pipeline; (2) a 40-foot-wide, 85-foot-long powerhouse containing two generating units rated at 1.8 MW and producing an average annual output of 3.08 GWH; (3) a tailrace discharging flows to Stratton Regulating pond; and (4) a new outlet from the regulating pond returning flows to the Virgin River at the same point as the existing Quail Creek Reservoir outlet.

l. Purpose of Project: Energy produced would be sold to Dixie/ Escalante Rural Electric Association and the City of Hurricane.

m. This notice also consists of the following standard paragraphs: A2, A9, B, and D4.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 30, 1994 for Project No. 11459-001). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 13, 1995 for Project No. 11459-001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 3, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94-27716 Filed 11-8-94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5101-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260-2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1721.01. Subpoenas Served to U.S. Parent Companies with Facilities in the Vicinity of Mexicali; was approved 09/20/94; OMB No. 2070-0140; expires 03/30/95.

EPA ICR No. 1287.04; Operations and Maintenance (D&M), Biosolids Use (Biosolids), Storm Water Management (SW), and Combined Sewer Overflow (CSO) Management Awards Nominees under EPA's Wastewater Excellence Awards Program; was approved 10/07/94; OMB No. 2040-0101; expires 10/31/97.

EPA ICR No. 1711.01; Information Collection Request for Customer Satisfaction Surveys; was approved 10/13/94; OMB No. 2090-0019; expires 10/31/97.

EPA ICR No. 1676.01; Clean Air Act Tribal Authority; was approved 10/04/94; OMB No. 2060-0306; expires 10/31/97.

EPA ICR No. 1714.01; Mandatory Patent Licenses under Section 308 of the Clean Air Act (CAA); was approved 10/03/94; OMB No. 2060-0307; expires 10/31/97.

EPA ICR No. 0370.12; Underground Injection Control Program Facility and Well Inventory Information; was approved 09/30/94; OMB No. 2040-0042; expires 03/31/95.

EPA ICR No. 1718.01; Regulations of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years (Interim Final Rule); was approved 10/03/94; OMB No. 2060-0308; expires 10/31/97.

OMB Disapproval

EPA ICR No. 0270.33; Disinfectants and Disinfection By-Products Rule; was disapproved 09/30/94.

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Dated: November 3, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–27685 Filed 11–8–94; 8:45 am]

BILLING CODE 6210–60–F

FEDERAL RESERVE SYSTEM

FCNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 2, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCNB Corp., Frederick, Maryland; to merge with ENB Financial Corporation, Elkridge, Maryland, and thereby indirectly acquire Elkridge National Bank, Elkridge, Maryland.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Prairie Financial Corporation, Bridgeview, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Prairie Bank and Trust Company, Bridgeview, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Barretville Corporation, Barretville, Tennessee; to become a bank holding company by acquiring 39.4 percent of the voting shares of Sommerville Bank and Trust Company, Somerville, Tennessee.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancook Corporation, Cook, Nebreska; to acquire 98 percent of the voting shares of The First National Bank of Summerfield, Summerfield, Kansas.

Board of Governors of the Federal Reserve System, November 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27726 Filed 11–8–94; 8:45 am]

BILLING CODE 6210–01–M

Banterra Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulatory Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulatory Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Banterra Corp., Eldorado, Illinois; to acquire, through its subsidiary, Eldorado, Illinois, and indirectly acquire Banterra Insurance Services, Inc., the assets of Ron Clark Insurance, Inc., and thereby engage in general insurance agency activities in Eldorado, Illinois, and five other Illinois towns with populations of less than 5,000, in which Banterra Corp., or a subsidiary thereof has a lending office, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 3, 1994.

Jennifer, J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27725 Filed 11–8–94; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders

AGENCY: Federal Trade Commission.

ACTION: Extension of time for filing comments.

SUMMARY: The Federal Trade Commission ("Commission") has requested public comments on a policy statement regarding duration of competition orders, and also has requested public comments as to the duration of consumer protection orders. 59 FR 45286 (September 1, 1994).

DATES: Written comments will be accepted until December 5, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: As to competition orders, Daniel P. Ducore, Assistant Director for Compliance (202) 326–2526. As to consumer protection orders, Dean C. Graybill, Associate Director for Enforcement (202) 326–3284. As to all matters, Donald S. Clark, Secretary (202) 326–2514.

SUPPLEMENTARY INFORMATION: On September 1, 1994, the Commission published a request for comments on a policy statement made effective July 22, 1994, with regard to the duration of competition (antitrust) orders. Under the policy statement, the Commission will presume that core injunctive provisions in future competition orders should terminate automatically (or "sunset") after twenty years. The Commission will also presume that all supplemental provisions in future competition orders should sunset after no more than ten years. In addition, the statement articulates the Commission's policy determination to apply, in the context of petitions to reopen and modify existing administrative orders (16 CFR 2.51) a rebuttable presumption that the public interest warrants terminating orders that have been in force more than twenty years. Although these policies are already in effect, the Commission is soliciting comment from interested persons. The Commission is also soliciting comment on adopting policies affecting the duration of administrative and court orders entered in consumer protection matters.

The comment period was scheduled to close on November 4, 1994. However, the American Association of Retired Persons requested an extension of time to file comments. Staff has received oral communications from several other interested persons expressing concern about meeting the original deadline for filing comments. In its discretion, the Commission hereby extends the comment period until December 5, 1994.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–27687 Filed 11–8–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Secretary, HHS.

ACTION: Notification of altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Secretary (OS) is publishing a notice of altered system of records. The purpose of the alteration is to add a new routine use to 51 Office of the Secretary Privacy Act systems of records.

DATES: OS invites interested parties to submit comments on the proposed routine use on or before December 9, 1994. OS has sent a Report of Altered System of Records to the Congress and to the Office of Management and Budget (OMB) on November 2, 1994. The new routine use will be effective 40 days after the date of publication unless OS receives comments that would result in a contrary determination.

ADDRESSES: Please submit comments to: HHS Privacy Act Officer, Room 645–F, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The HHS Privacy Act Officer at the address listed above. (Telephone: 202–690–7453; not a toll free number.)

SUPPLEMENTARY INFORMATION: OS is proposing to add a new routine use to 51 Office of the Secretary Privacy Act systems of records listed below. This routine use will permit the disclosure of information from these systems to certain individuals working in various OS offices but who do not have the status of agency employees and, in many instances, do not receive pay for their work. Examples of such categories of non-employee workers are:

Individuals working under a personal services contract.

Student volunteers engaged under 5 U.S.C. 3511.

Job Corps enrollees engaged under the Job Training Partnership Act.

Older American Community Service Employment Act enrollees.

Some OS offices that use these non-employee workers may wish to have them perform functions that require access to records in Privacy Act systems of records. Therefore we have decided to promulgate a new routine use rather than rely on subsection (b)(1) of the Privacy Act, which authorizes access to officers and employees of the agency who need the records in the performance of their duties.

The records will continue to be adequately protected, since the individuals to whom the information will be disclosed work under the supervision of agency employees. They must observe the same safeguards that agency employees do in the maintenance of Privacy Act records.

The proposed new routine use is compatible with the data collection, since the disclosures are being made for the very purpose for which the information was collected, i.e., to carry out the particular agency or program function for which the specific system of records was established.

Dated: November 2, 1994.

Avis LaVelle,

Assistant Secretary for Public Affairs.

Altered Systems

09–90–0001 Telephone Director/Locator System, HHS/OS/ASMB

09–90–0002 Investigatory Material Compiled for Security and Suitability Purposes, HHS/OS/OIG

09–90–0003 Criminal Investigative Files of the Inspector General HHS/OS/OIG

09–90–0005 Safety Management Information System, HHS/OS/ASMB

09–90–0006 Applicants for Employment Records, HHS/OS/ASPER

09–90–0007 Complaints and Inquiries Records, HHS/OS/ASPER

09–90–0008 Conflict of Interest Records, HHS/OS/ASPER

09–90–0009 Discrimination Complaint Records, HHS/OS/ASPER

09–90–0010 Employee Assistance Program Records, HHS/OS/ASPER

09–90–0011 Employee Appraisal Program Records, HHS/OS/ASPER

09–90–0012 Executive Development Records, HHS/OS/ASPER

09–90–0013 Federal Employees Occupational Health Program Records, HHS/OS/ASPER

09–90–0014 Grievances Filed Under Part 771 of 5 CFR, HHS/OS/ASPER

09–90–0015 Grievance Records Filed Under Procedures Established by Labor-Management Negotiations, HHS/OS/ASPER

09–90–0016 HHS Motor Vehicle Operator Records, HHS/OS/ASPER

09–90–0017 Pay, Leave, and Attendance Records, HHS/OS/ASPER

09–90–0018 Personnel Records in Operating Offices, HHS/OS/ASPER

09–90–0019 Special Employment Program Records, HHS/OS/ASPER

09–90–0020 Suitability for Employment Records, HHS/OS/ASPER

09–90–0021 Training Management Information System, HHS/OS/ASPER

09–90–0022 Volunteer EEO Support Personnel Records, HHS/OS/ASPER

09–90–0023 Departmental Parking Control Policy and Records Systems, HHS/OS/ASMB

09–90–0024 Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB

09–90–0025 Central Registry of Individuals Doing Business with HHS, HHS/OS/ASMB

09–90–0027 Congressional Correspondence Unit, HHS/OS/ASL

09–90–0028 Biographics and Photographs of HHS Officials, HHS/OS/ASPA

09–90–0036 Employee Suggestion Program Records, HHS/OS/ASPER

09–90–0037 Secretariat's Correspondence Control System, HHS/OS/ES

09–90–0038 Secretary's Official Files, HHS/OS/ES

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09-90-0041 Consumer Mailing List, HHS/OS/OCA
09-90-0046 Consumer Complaint Correspondence System, HHS/OS/OCA
09-90-0049 Departmental Appeals Board Case and Appeal Records, HHS/OS/DAB
09-90-0050 Case Information Management System, HHS/OS/OCR
09-90-0101 Health Care Program Violations, HHS/OS/OIG
09-90-0051 Complaint Files and Log, HHS/OS/OCR
09-90-0058 Freedom of Information Case File and Correspondence Control Log, HHS/OS/ASPA
09-90-0059 Federal Advisory Committee Membership Files, HHS/OS/ASPER
09-90-0062 Administrative Claims, HHS/OS/OGC
09-90-0064 Litigation Files, Administrative Complaints, and Adverse Personnel Actions, HHS/OS/OGC
09-90-0065 Conflict of Interest—Standards of Conduct Records, HHS/OS/OGC
09-90-0066 OGC Attorney Applicant Files, HHS/OS/OGC
09-90-0068 Federal Private Relief Legislation, HHS/OS/OGC
09-90-0069 Unfair Labor Practice Records, HHS/OS/ASPER
09-90-0072 Congressional Grants Notification Unit, HHS/OS/ASL
09-90-0079 Welfare Fraud Detection File, HHS/OS/OIG
09-90-0080 The Secretary's Advisory Committee Candidate Files, HHS/OS/ES
09-90-0083 Jobs Opportunities and Basic Skills Evaluation Data System (JOBS), HHS/OS/ASPE
09-90-0088 National Long-Term Care Channeling Demonstration, HHS/OS/ASPE
09-90-0095 Management Information System Efficiency Reporter (MISER) HHS/OS/ASPER
09-90-0100 Civil and Administrative Investigative Files of the Inspector General, HHS/OS/OIG
09-90-0101 Health Care Program Violations, HHS/OS/OIG
09-90-0150 Research and Demonstration Data System, HHS/ACF/OCSE

* * * * *

The following routine use should be added as the last routine use in all systems listed above:

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Use

Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

[FR Doc. 94-27702 Filed 11-8-94; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 94N-0033]

John D. Copanos; Proposal to Debar; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to issue an order permanently debarring Mr. John D. Copanos under the Federal Food, Drug, and Cosmetic Act (the act). Once debarred, Mr. Copanos would be prohibited from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this proposal on a finding that Mr. Copanos was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. This notice also offers Mr. Copanos an opportunity for a hearing on the proposal. The agency is issuing this notice in the Federal Register because all other appropriate means of service of the notice upon Mr. Copanos have proven ineffective.

DATES: Written requests for a hearing by December 9, 1994; information in support of the hearing request due by January 9, 1995.

ADDRESSES: Submit written requests for a hearing and supporting information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Conduct Related to Conviction

On November 13, 1989, Mr. Copanos agreed to plead guilty to one count of distributing misbranded drugs with intent to defraud and mislead, a Federal felony offense under 21 U.S.C. 331(a) and 333(a)(2) (formerly 333(b)), and one count of manufacturing adulterated drugs with intent to defraud and mislead, a Federal felony offense under 21 U.S.C. 331(k) and 333(a)(2). On February 16, 1990, the United States District Court for the District of Maryland accepted Mr. Copanos' plea of guilty and entered judgment against him for one count of distributing misbranded drugs with intent to defraud and mislead. The underlying facts supporting these felony convictions are as follows:

Mr. Copanos is and was, at the time of his criminal actions, the owner and president of John D. Copanos and Sons, Inc., and Kanasco, Ltd., both companies located at a common facility in Baltimore, MD. He was directly responsible for the manufacturing, packaging, and shipping of his firms' drug products for consumption by the public. Inherent in these responsibilities was the duty to ensure that a drug was manufactured in conformance with the current good manufacturing practice (CGMP) regulations, including, but not limited to, the duty to ensure that accurate manufacturing and testing records were opt and that the components of the drugs were pure, safe, and unadulterated.

An investigation, conducted prior to Mr. Copanos' conviction, revealed that he engaged in numerous illegal and fraudulent acts. In April 1989, the U.S. Attorney for the District of Maryland filed a 20-count indictment against him, his firms, and 3 employees of his firms. In November 1989, he agreed to plead guilty to two counts of this indictment.

The first count revealed that Mr. Copanos, along with other employees of his firms, distributed a drug for public use that was misbranded in that its labeling failed to bear adequate directions for use because its labeling failed to warn of the presence of phenylalanine, a component of aspartame. In fact, Mr. Copanos could not accurately describe the conditions for use because he had not conducted adequate testing to determine the effect of aspartame on the stability, potency, and effectiveness of this drug. This drug was also misbranded because its labeling was misleading in that it failed to reveal the presence and amount of phenylalanine, information that is pertinent to the treatment of children afflicted with phenylketonuria, who could suffer irreversible mental retardation if they ingested too much phenylalanine.

The second count for which Mr. Copanos was charged also revealed his disregard for CGMP by his intentional failure to prepare and maintain batch production and control records in order to disguise the adulteration of several of his products. Specifically, Mr. Copanos failed to prepare and maintain results of laboratory tests concerning the sterility of his injectable drug products which tests showed that the product samples tested were contaminated with bacteria.

II. FDA's Finding

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product. Mr. Copanos' felony convictions for distributing misbranded drugs and for manufacturing adulterated drugs are both related to the regulation of a drug product in that the convictions themselves are felony drug-related convictions under the act. The illegal acts leading to the convictions are direct violations of the primary legislation (the act) regulating drugs. In addition, the convictions relate to, in part, Mr. Copanos' failure to follow the CGMP regulations, which are enforced by FDA, to ensure the safety, identity, strength, quality, and purity of drug products.

Under section 306(l)(2) of the act (21 U.S.C. 335a(1)(2)), mandatory debarment pursuant to section 306(a)(2) applies to an individual convicted of up to 5 years prior to initiation of agency debarment action (such as this notice). Section 306(c)(2)(A)(ii) of the act (21 U.S.C. 335a(c)(2)(A)(ii)) requires that Mr. Copanos' debarment be permanent.

III. Proposed Action and Notice of Opportunity for a Hearing

Based on the findings discussed above, FDA proposes to issue an order under section 306(a)(2)(B) of the act, permanently debarring Mr. John D. Copanos from providing services in any capacity to a person that has an approved or pending drug product application.

In accordance with section 306 of the act and 21 CFR part 12, Mr. Copanos is hereby given an opportunity for a hearing to show why he should not be debarred.

If Mr. Copanos decides to seek a hearing, he must file: (1) A written notice of appearance and request for a hearing on or before December 9, 1994; and (2) the information on which he relies to justify a hearing on or before January 9, 1995. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, and a grant or denial of a hearing are contained in 21 CFR part 12 and section 306(i) of the act (21 U.S.C. 335a(i)).

Mr. Copanos' failure to file a timely written notice of appearance and request for a hearing constitutes an election by him not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning his debarment. If he does not request a hearing in the manner prescribed by the regulations, the agency will not hold a hearing and will issue the debarment order as proposed in this notice.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the information and factual analyses in Mr. Copanos' request for a hearing that there is no genuine and substantial issue of fact which precludes the order of debarment, the Commissioner of Food and Drugs will enter summary judgment against him, making findings and conclusions, and denying a hearing.

The facts underlying Mr. Copanos' conviction are not at issue in this proceeding. The only material issue is whether Mr. Copanos was convicted as alleged in this notice and, if so, whether, as a matter of law, this conviction mandates his debarment.

A request for a hearing, including any information or factual analyses relied on to justify a hearing, must be identified with Docket No. 94N-0033, and sent to the Dockets Management Branch (address above). All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 306 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a) and under authority delegated to the Interim Deputy Commissioner for Operations (21 CFR 5.20).

Dated: November 2, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94-27724; Filed 11-8-94; 8:45 am]
BILLING CODE 4160-01-F

[Docket No. 94M-0363]

Exogen™, Inc.; Premarket Approval of Sonic Accelerated Fracture Healing System (SAFHS®)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Exogen™, Inc., West Caldwell, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Sonic Accelerated Fracture Healing System (SAFHS®). After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 13, 1994, of the approval of the application.

DATES: Petitions for administrative review by December 9, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-1296.

SUPPLEMENTARY INFORMATION: On July 18, 1990, Interpore Therasonics, Inc., West Caldwell, NJ 07006, submitted to CDRH an application for premarket approval of the SAFHS®. Subsequently, the ownership was transferred to Exogen™, Inc., West Caldwell, NJ 07006. The Sonic Accelerated Fracture Healing System (SAFHS®) is indicated for acceleration of the time to a healed fracture for fresh, closed, distal radius (Colles') fractures, and fresh, closed or Grade I open tibial diaphysis fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. The SAFHS® emits a low intensity pulsed ultrasound collimated beam. Ultrasound coupling gel is used on the skin surface at the fracture location where the signal is to be applied.

On November 22, 1991, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory panel, reviewed the application. The original indication in the premarket approval application (PMA) stated that the device was to be used to accelerate the time to heal for all fresh cancellous and cortical bone fractures. The panel concluded that the safety of the device had been established and that the supporting preclinical studies had shown an effect of the device on bone healing. However, the panel members questioned extending the indications to all cortical and cancellous fresh fractures because the data presented in the PMA was limited to fresh closed, Grade I tibia diaphyseal fractures and fresh Colles' fractures. Therefore, the panel recommended that the PMA be found not approvable for the indication stated in the PMA. There were two votes for approval with conditions and three

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votes for not approvable. The panel discussed a very limited indication for the device to restrict its application to fresh tibia and fresh Colles' fractures. However, they could not reach a consensus on whether the sponsor had demonstrated effectiveness for the device for both fracture types. Nevertheless, it was the panel's opinion that the effectiveness already seen in some areas could eventually be applicable to others if further data were to be obtained from the study already accomplished. They also suggested that data obtained from a new study could be used to verify the device's performance in the PMA study. The panel recommended that several conditions be satisfied to place the PMA in approvable form. The conditions included a modification to the indication statement to restrict the device's use to the treatment of fresh, closed, distal radius (Colles') fractures and fresh, closed or Grade I open tibial diaphyseal fractures in skeletally mature individuals when these fractures are orthopedically managed by closed reduction and cast immobilization. The applicant amended the PMA to limit the use of the device to this indication. In addition, the panel suggested that the applicant expand the data base to provide additional supportive information. They stated that approval could be granted if the new data were found acceptable by FDA after appropriate review. At the request of FDA, the applicant submitted the results of a long-term followup study of all patients classified as healed at the time the PMA was presented before the panel, and a protocol for a 2-year post approval study to assess the performance of the device as it is marketed for the approved indications. Based on the data submitted in the PMA and the long-term followup study, CDRH determined that the data provide reasonable assurance that the device is safe and effective for the indications as specified in the labeling.

On September 13, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 9, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 27, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94-27222; Filed 11-8-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: November 18, 1994.

Time: 9:00 a.m.

Place: OMNI Shoreham Hotel, Washington, D.C.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594-7257.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 29, 1994.

Time: 4:00 p.m.

Place: NIH, Westwood Building, Room 219A, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 5333 Westbard Ave., Room 219A, Bethesda, MD 20892, (301) 594-7315.

Name of SEP: Clinical Sciences.

Date: November 29, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 219C, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594-7130.

Name of SEP: Biological and Physiological Sciences.

Date: December 1, 1994.

Time: 9:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 5333 Westbard Ave., Room 425A, Bethesda, MD 20892, (301) 594-7336.

Name of SEP: Multidisciplinary Sciences.

Date: January 5, 1995.

Time: 1:00 p.m.

Place: Doubletree Hotel, Arlington, VA.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 5333 Westbard Ave., Room 2A05, Bethesda, MD 20892, (301) 594-7053.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-27802 Filed 11-8-94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3781; FR-3693-N-03]

Announcement of Funding Awards for Training of Trainers and Technical Assistance for Public Housing Resident Patrols

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1994 Technical Assistance to Public Housing Authorities and Public Housing Police Departments. The purpose of this document is to announce the names and addresses of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1994 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $5 million.

III. Grant Award

On June 24, 1994 (59 FR 32824), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $300,000.00 in FY 1994 funds for Technical Assistance to Public Housing Authorities and Public Housing Police Departments. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

Grant Recipient: Virginia Crime Prevention Association

Recipient Contact Person: Harold Wright

Address: 4914 Radford Ave., #306, Richmond, VA, 23230

Telephone Number: (804) 359–8120

Amount Awarded: $300,000.00

General Objectives:

The United States Department of Housing and Urban Development (HUD) and the Virginia Crime Prevention Association (grantee) have entered into a grant agreement for $300,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a training program to train teams of public housing residents and staff in the development and administration of resident patrols, and (2) to provide the training in at least six venues.

This is a cost-reimbursable grant for $300,000.00 for a 1-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: November 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-27748 Filed 11-8-94; 8:45 am]

BILLING CODE 4210-33-P

[Docket No. N-94-3780; FR-3687-N-02]

Announcement of Funding Awards for Technical Assistance and Training to Public Housing Authorities for Crime Prevention Through Environmental Design

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1994 Technical Assistance and Training to Public Housing Authorities for Crime Prevention Through Environmental Design. The purpose of this document is to announce the names and addresses of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1994 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $5 million.

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III. Grant Award

On June 24, 1994 (59 FR 32818), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $200,000 in FY 1994 funds for Technical Assistance and Training for Public and Indian Housing for Crime Prevention Through Environmental Design. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

Grant Recipient: SPARTA Consulting Corporation

Recipient Contact Person: Severin Sorensen

Address: P.O. Box 34469, Bethesda, Maryland, 20827

Telephone Number: (301) 656–6600

Amount Awarded: $200,000.00

General Objectives:

The United States Department of Housing and Urban Development (HUD) and the SPARTA Consulting Corporation (grantee) have entered into a grant agreement for $200,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for physical changes to enhance security, and (2) to provide the TA and training in a seminar format in at least three venues.

This is a cost-reimbursable grant for $200,000 for a 1-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: November 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27749; Filed 11–8–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–57597]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

November 2, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 4,580 acres of National Forest System land for 50 years to protect recreational resources and planned and constructed facilities at the Adam's Rib Ski Area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 7, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 26, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

White River National Forest—Sixth Principal Meridian

T. 6 S., R. 83 W.,
- Sec. 16, SW¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, W½SE¼SW¼, and SE¼SE¼SW¼;
- Sec. 17, SE¼NE¼NE¼, N½NE¼SE¼NE¼, S½N½S½NE¼, S½S½N½, N½SW¼NW¼, S½NE¼SE¼NW¼, NW¼SE¼NW¼, and S½;
- Sec. 18, E½E½ lot 11, lots 13, 14, 15, 16, 19, 20, 22, and 23, and W½E½NE¼NE¼, W½NE¼NE¼, S½NE¼, and SE¼;
- Sec. 19, lots 9 and 14 and E½;
- Sec. 20;
- Sec. 21, W½NE¼NE¼, S½NE¼, NW¼NE¼, NW¼, and S½;
- Sec. 22, S½SW¼SW¼;
- Sec. 27, W½W½;
- Sec. 28;
- Sec. 29, N½ and SE¼;
- Sec. 30, NE¼;
- Sec. 33, N½.

The area described contains 4,580 acres of National Forest System land in Eagle County.

The purpose of this withdrawal is to protect recreational resources and planned recreational facilities at the Adam's Rib Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–27766; Filed 11–8–94; 8:45 am]

BILLING CODE 4310–JB–P

[CO–930–1430–01; COC–57598]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

November 2, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 40 acres of National Forest System land for 20 years to protect the proposed Nederland Work Center. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 7, 1995.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 27, 1994, the Department of Agriculture, Forest Service, filed an application to withdraw the following

described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Roosevelt National Forest

T. 1 S., R. 72 W.,
Sec. 7, lots 30, 31, and 32.

The area described contains approximately 39.99 acres of National Forest System Land in Boulder County.

The purpose of this withdrawal is to provide protection for capitol investments on a proposed Forest Service Work Center.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Doris E. Chelius,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–27767; Filed 11–8–94; 8:45 am]

BILLING CODE 4310–JB–P

[OR 51291; OR–060–05–1430–01; G5–008; 5–00151]

Realty Action; Proposed Direct Sale

October 28, 1994.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oreg

T. 1 N., R. 3 W.,
Sec. 3, Lot 2.

The above-described parcel contains 0.80 acre in Washington County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

The fair market value of the parcel has not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relatively small size and equities of two adjoining landowners, its best use is to merge it with one of the adjoining ownerships. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this parcel for sale.

Modified Bidding Procedures

Modified bidding procedures are being used pursuant to 43 CFR 2711.3–2. The parcel is being offered only to Robert F. Dersham et al. (fee owners of Tax Lot 600, Map 1N 3 3) and William Tolke et al. (fee owners of Tax Lot 300, Map 1N 3 11). Use of the modified competitive sale procedures will avoid an inappropriate land ownership pattern and would recognize equities of the individuals involved.

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11:00 a.m. on Wednesday, December 28, 1994. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than the appraised value of the parcel to be sold, and shall be enclosed in a sealed envelope clearly marked in the lower left hand corner, "Bid for Public Land Sale OR 51291". The written sealed bids will be opened and declared at the sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have no known mineral value. A bid submitted will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. All qualified bidders must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. The patent will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Tillamook Area Manager, Tillamook Resource Area Office, 4610 Third Street, Tillamook, OR 97141. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Charles E. Hawkins,

Acting Tillamook Area Manager.

[FR Doc. 94–27688 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–793049

Applicant: Gems of the Jungle, Surfside Beach, South Carolina

The applicant requests a multiple use permit to export, import and reexport 13 tigers (*Panthera tigris*) and 3 leopards (*Panthera pardus*) for enhancement of the species through conservation education.

PRT–796321

Applicant: Peruvian American Chamber of Commerce, Miami, Florida

The applicant requests a permit to import and reexport two captive-bred white-winged guans (*Penelope albipennis*) from/to Gustavo del Solar-Rojas of Lima, Peru, for the purpose of enhancement of survival of the species through conservation education at the upcoming "Summit of the Americas" in Miami, Florida.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203

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and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 3, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–27660 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–55–P

Notice of Extension of Public Comment Period on an Environmental Assessment/Habitat Conservation Plan for an Incidental Take Permit for the Proposed Barton Creek Development, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the public comment period on the environmental assessment/habitat conservation plan for F.M. Properties Operating Co., Inc's application for an incidental take permit pursuant to section 10(a) of the Endangered Species Act is being extended. The Applicant has been assigned permit number PRT–782833. During the public comment period, the Austin Ecological Services Field Office moved causing delays in some recipients obtaining the environmental assessment/habitat conservation plan for review.

DATES: The comment period for this proposal, which originally closed November 7, 1994, is now extended until November 18, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joe Johnston, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 E. Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection, by written request and by appointment only, during normal business hours (8:00 to 4:30). Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas at above address. Please refer to permit number PRT–782833 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Johnston at the above Austin Field Office address.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species, like the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a Residential-Resort and commercial development located just west of Capital of Texas Highway 360, south of FM 2244, and north of Highway 290, Austin, Travis County, Texas. The development will occupy approximately 4,684 acres. These activities will permanently eliminate about 1,036 acres of the 3,830 acres of occupied and/or suitable warbler habitat. The Applicant proposes to mitigate the incidental take via acquisition and donation of 3,923 acres of land, provision of operating and maintenance funds for these preserve lands, minimize impacts to warbler habitat, avoidance of direct impacts to warblers, preservation of undeveloped areas, and environmental monitoring. The Applicant considered four alternatives but rejected three of them because they were not economically viable.

Lynn B. Starnes,

Regional Director.

[FR Doc. 94–27721 Filed 11–8–94; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–723 (Preliminary)]

Certain Drawer Slides From China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–723 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of partial extension commercial roller drawer slides of steel provided for in subheading 8302.42.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 31, 1994, by Hardware Designers, Inc., Danbury, CT.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia DeRosa Hand (202–205–3182) not later than November 16, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 28, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27772 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–701 (Final)

Disposable Lighters From Thailand

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–701 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of disposable pocket lighters, provided for in subheadings 9613.10.00 and 9613.20.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: October 24, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of disposable pocket lighters from Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 9, 1994, by the BIC Corporation, Milford, CT.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 22, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 10, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and

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207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is January 4, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 19, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 19, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: November 2, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27770 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

In the Matter of: Certain Diltiazem Hydrochloride and Diltiazem Preparations; Decision Not To Review an Initial Determination Granting Partial Summary Determination of Patent Non-Infringement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 41) issued on September 29, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting partial summary determination of patent non-infringement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain diltiazem hydrochloride and diltiazem preparations, on March 25, 1993. Complainants Marion Merrell Dow, Inc. and Tanabe Seiyaku Co., Ltd. allege the importation and sale of diltiazem hydrochloride and diltiazem preparations manufactured abroad by a process covered by claim 1 of U.S. Letters Patent 4,438,035 (the '035 patent). The notice of investigation named nine respondents: Profarmaco Nobel SRL ("Profarmaco"), Mylan Pharmaceuticals, Inc. and Mylan Laboratories, Inc. (collectively, "Mylan"), Gyma Laboratories of America, Inc. ("Gyma"), Abic Ltd., Orion Corporation, Copley Pharmaceuticals, Inc., Interchem Corporation, and Rhone-Poulenc Rorer, Inc. 58 FR 16846, March 31, 1993. Plantex USA, Inc. was subsequently added as a respondent. 58 FR 34063, June 23, 1993.

On November 5, 1993, respondents Mylan and Profarmaco filed a motion for partial summary determination of non-infringement that Profarmaco's "alternative process" does not infringe claim 1 of the '035 patent. Respondent Gyma subsequently filed its own motion for partial summary determination on the same grounds alleged by Mylan/Profarmaco. On September 29, 1994, the presiding ALJ issued an ID (Order No. 41) granting respondents' motions for partial summary determination of non-infringement.

Complainants filed a petition for review of the ID on October 7, 1994. Respondents Mylan/Profarmaco and Gyma and the Commission investigative attorneys filed responses in opposition to the petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53. No agency comments on the ID were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27771 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–357]

Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on October 12, 1994, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–357, Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of investigating the competitive conditions affecting the U.S. lamb industry.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION: Information on industry sectors may be obtained from Rose Steller, Office of Industries (202–205–3323) or David Ludwick, Office of Industries (202–205–3329); economic aspects, from Ronald Babula, Office of Industries (202–205–3331); and legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background: As requested by the USTR, the Commission in its report will provide, to the extent practicable, the following:

(1) U.S. and foreign industry profiles;

(2) With respect to Australia and New Zealand, such information as the Commission develops concerning whether there is government assistance to the industries in those countries without regard to whether that assistance may constitute a subsidy under U.S. countervailing duty law;

(3) Information concerning U.S. and foreign markets, U.S. imports and exports, and U.S. market penetration;

(4) Price comparisons of domestic and imported lamb meat; and

(5) Any other information relating to competitive factors that affect the U.S. lamb industry.

As requested, the report will focus on the period 1991–94 and be similar in structure to the last Commission section 332 report on lamb: U.S. Imports of Lamb Meat: Final Monitoring Report (Inv. no. 332–264, USITC Publication 2345, December 1990). The Commission's report will be submitted to the USTR at the earliest possible date, but no later than August 14, 1995.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on February 23, 1995. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m. February 9, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m. February 13, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m. March 9, 1995.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 9, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: November 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27773 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Notice of Decision Not To Review an Initial Determination Granting a Motion for Summary Determination That the Economic Tests for Establishing a Domestic Industry Are Met

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 9) issued on October 10, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID granted a motion of complainant Minnesota Mining and Manufacturing (3M) for summary determination that the economic tests for establishing a domestic industry in this investigation are met.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3096.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, said to infringe eight claims of U.S. Letters Patent 4,166,152, on June 8, 1994 (59 FR 29620).

On August 22, 1994, 3M filed a motion that, *inter alia,* requested summary determination that the economic tests for establishing a domestic industry set forth in section 337(a)(3) (19 U.S.C. 1337(a)(3)) are met in this investigation. That request was opposed by the respondents to the investigation and supported by the Commission investigative attorney.

On October 10, 1994, the presiding ALJ issued an ID granting summary determination that the economic tests for establishing a domestic industry are met. There were no petitions for review of the ID and no agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 C.F.R. 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27774 Filed 11–8–94; 8:45 am]

BILLING CODE 7020–02–P

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[Investigation No. 731–TA–721 (Preliminary)]

Wheel Inserts From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of wheel inserts,[3] provided for in subheading 8708.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 15, 1994, a petition was filed with the Commission and the Department of Commerce (Commerce) by Consolidated International Automotive, Inc., Los Angeles, CA. The petition alleged that an industry in the United States is being materially injured and is threatened with further material injury, and cited the possibility that the establishment of an industry producing wheel inserts in the United States is materially retarded, by reason of allegedly LTFV imports from the People's Republic of China (China) and Taiwan of wheel inserts. Accordingly, effective September 15, 1994, the Commission instituted antidumping investigations Nos. 731–TA–720 and 721 (Preliminary).[4]

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 22, 1994 (59 FR 48639). The conference was held in Washington, DC, on October 6, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 31, 1994. The views of the Commission are contained in USITC Publication 2824 (October 1994), entitled "Wheel Inserts from Taiwan: Investigation No. 731–TA–721 (Preliminary)."

Issued: November 3, 1994

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–27775 Filed 11–8–94; 8:45 am]

BILLING CODE 7020-02-P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Newquist dissenting.

[3] The items covered by the scope of Commerce's investigation are wheel inserts, also referred to as lug hole inserts and insert bushings, made from steel, aluminum, brass, or zinc. A wheel insert is a washer-like product with a circular collar that protrudes into a stud hole to provide a protective seat between a lug nut and an aluminum or alloy wheel mounted on ground transportation vehicles. A wheel insert can be heat-treated or non-heat-treated, with or without knurls, and with or without surface coatings. Surface coatings include, but are not limited to, chrome plating, nickel plating, zinc plating (with or without wax coating), oxide coating, and powder coating.

[4] On October 5, 1994, the petitioner filed a letter with the Commission and Commerce withdrawing the petition concerning China. Accordingly, effective October 5, 1994, the Commission discontinued its antidumping investigation concerning wheel inserts from China (Inv. No. 731–TA–720 (Preliminary)).

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–No. 42 (Sub-No. 79X), The Atchison, Topeka, and Santa Fe Railway Company—Abandonment Exemption—In Atchison County, KS. EA available 10/24/94.

AB–No. 290 (Sub-No. 148X), Norfolk and Western Railway Company—abandonment—Between Lakeside and Hanging Rock, Virginia. EA available 10/28/94.

AB–No. 290 (Sub-No. 147X), Norfolk Southern company—Ababnonment—At Hilltop (Martinsville), Virginia. EA available 10/28/94.

AB–290 (Sub-No. 151X), Norfolk and Western Railway Company—abandonment—Between Phoebe and Concord, Virginia. EA available 11/4/94.

AB–303 (Sub-No. 13X), Wisconsin Central LTD.—Abandonment Exemption—In Brown County, Wisconsin. EA available 11/4/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–167 (SUB-NO. 1141), Consolidated Rail Corporation—abandonment in Hardin County, Ohio. EA available 11/1/94.

AB–167 (ub-No. 1142), Consolidated Rail Corporation—Abandonment—in Summit County, Ohio. Ea available 11/2/94.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27751 Filed 11–8–94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 2, 1994, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Difenoxin (9168).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 9, 1994.

Dated: November 1, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27753 Filed 11–8–94; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 28, 1994, and published in the **Federal Register** on April 1, 1994, (59 FR 15458), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396).	I
Methylphenidate (1724)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Meperidine (9230)	II
Morphine (9300)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

A registered manufacturer did file a written request for a hearing with respect to Methylphenidate. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate.

Dated: November 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–27754 Filed 11–8–94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting; Federal Committee on Apprenticeship

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on the following three dates and at the following three locations:

November 29, 1994

The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

West Ballroom

The agenda on *November 29* will include:

9:00 a.m.—Orientation/Administrative Matters
—Call to order; Introduction of FCA Members
—Advisory Committee Video
—Advisory Committee Procedures/Ethics
—Election of FCA Vice Chairs
—Overview of Registered Apprenticeship System
1. National Apprenticeship Act
2. 29 CFR Parts 29 and 30
3. Federal/State Partnership (BAT; SAAs)
4. Registered Apprenticeship System Demographics
5. Apprenticeship Information Management (AIMS) Demonstration

12:00 Noon—Committee Recesses until 11/30/94; 9:00 a.m.

November 30, 1994

The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, N.W., Washington, D.C. 20001.

Montpelier Room (2nd Floor)

The agenda on November 30 will include:

9:00 a.m.
—Remarks: Assistant Secretary for ETA and Assistant Secretary for Adult and Vocational Education
—BAT Report/Introduction of BAT National Staff
—Committee Goals/Priorities (expansion, awards program, others)
—Formation of Subcommittees

12:00 Noon—Committee Recesses for Lunch

1:30 p.m.
—Implementation of School-to-Work Opportunities Act
—Upcoming Federal Legislation Affecting/of Interest Apprenticeship
—Women's Bureau Report
—OFCCP Report

4:00 p.m.—Public Comment Period

5:00 p.m.—Committee Recesses until 12/1/94, 9:00 a.m.

December 1, 1994

Note Location Change

Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Dept. of Labor Academy, Room C–5515, Seminar Room 6

The agenda on December 1 will include:

9:00 a.m.—Reports:
—Subcommittee Reports
—NAGLO Report
—NASTAD Report
—Remarks: Secretary of Labor

11:30 a.m.—Other Business

12:00 Noon—Adjournment

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion W. Winters at (202) 219–5943 no later than November 18, 1994, if special accommodations are needed.

Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Designated Federal Official at any time prior to the meeting. His address is: Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–4649, Washington, D.C. 20210. Fifteen duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by November 25. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 3rd day of November 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 94–27763 Filed 11–8–94; 8:45 am]

BILLING CODE 4510-30-M

Office of the Assistant Secretary for Veterans' Employment and Training; Advisory Committee on Veterans' Employment and Training; Open Meeting

Summary: Pursuant to Section 8 of the Veterans' Benefits Amendments Act of 1991 (Public Law 102–16) and section 9 of the Federal Advisory Committee Act (FACA) (Public Law 92–462, 5 U.S.C. app. II) the Advisory Committee on Veterans' Employment and Training was established. Notice of its establishment was published in the **Federal Register** on August 10, 1994 (Volume 59 FR 40923). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Advisory Committee which is to take place on December 15, 1994. The purpose of the Advisory Committee is to: Assess the employment and training needs of veterans; determine the extent to which the programs and activities of the Department of Labor are meeting such needs; carry out such other activities

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that are necessary to make the reports and recommendations required by law; and, not later than July 1 of each year, the Advisory Committee shall submit to the Secretary of Labor a report on the employment and training needs of veterans.

Time and Place: The meeting will be held on Thursday, December 15, 1994, from 10:00 AM to approximately 12:30 PM, in Room S–2508 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.

Agenda: The agenda for the meeting is as follows:

- Opening of Meeting and Welcoming Remarks
- Introduction of Advisory Committee Members
- Solicitor's Legal Guidance to the Advisory Committee
- Remarks by Assistant Secretary for Veterans' Employment and Training
- Discussion of Focus of Advisory Committee
- Procedures for Presentation of Views to the Advisory Committee
- Closing Remarks and Adjournment
- Public comments, time permitting [last ½ hour].

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Mr. Thomas S. Keefe at the address indicated below no later than December 12, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send ten (10) copies to Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For Further Information Contact: Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210, telephone: (202) 219–9116.

Signed at Washington, D.C., this 3rd day of November, 1994.

Preston M. Taylor Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 94–27764 Filed 11–8–94; 8:45 am]

BILLING CODE 4510–79–M

Office of Workers' Compensation Programs

Privacy Act of 1974; New Computer Matching Program

AGENCY: Office of Workers' Compensation Programs, United States Department of Labor.

ACTION: Notice of computer matching program between the Office of Workers' Compensation Programs (OWCP) and the United States Postal Service (USPS) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches and to allow public comment. This publishes notice that the OWCP intends to conduct a computer matching program with the United States Postal Service (USPS). This matching program will compare OWCP delinquent debtor records with USPS payroll records to identify postal employees who are delinquent in their repayment of debts owed to the federal government under the Federal Employees' Compensation Act so as to permit OWCP to pursue and collect the debt by voluntary repayment or by salary offset procedures under the Debt Collection Act of 1982 (Pub. L. 97–365).

DATES: Comments must be received no later than December 9, 1994. Unless comments are received that result in a contrary determination, this matching program will become effective 40 days after transmittal of a matching report to the Office of Management and Budget (OMB) or 40 days after transmittal of a matching report and a copy of the matching agreement to the Congress or 30 days after the date of this notice, whichever occurs last.

ADDRESSES: Comments may be mailed to the Director for Federal Employees' Compensation, U.S. Department of Labor, OWCP, 200 Constitution Avenue, NW., Room S–3229, Washington, DC 20210–0002 or delivered to the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours.

FOR FURTHER INFORMATION CONTACT: Mr. Alex J. Senecal at the above address or at telephone (202) 219–8461.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, OWCP and USPS have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of OWCP debtors employed by USPS so that OWCP can pursue recoupment of the debt by voluntary payment or by salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned.

A copy of the computer matching agreement between OWCP and USPS is available to the public upon request. Requests should be submitted to the address caption above or to the USPS Records Office, 475 L'Enfant Plaza, SW., Washington, DC 20260–5240.

Pursuant to subsection (r) of the Privacy Act of 1974 and the reporting requirements set forth in paragraph 4d of Appendix I to OMB Circular No. A–130, Revised, "Management of Federal Information Resources," dated July 2, 1993 (58 FR 36068–36086), a computer matching program report, including an advance copy of this notice, was submitted to Congress and to the Office of Management and Budget on November 4, 1994. The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Notice of a Computer Matching Program Between the Office of Workers' Compensation Programs and the United States Postal Service for Debt Collection

A. *Participating agencies:* The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debtor records provided by the Department of Labor, Office of Workers' Compensation Programs (OWCP), the source agency in this matching program.

B. *Purpose of the matching program:* The computer match will compare USPS payroll and OWCP delinquent debtor records so that OWCP can identify and locate postal employees who owe delinquent debts to the federal government under the Federal Employees' Compensation Act administered by OWCP. The pay of an employee verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not made.

C. *Legal authority for conducting the match:* This matching program will be conducted under the authority of the Debt Collection Act of 1982 (Pub. L. 97–365) which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States (5 U.S.C. 5514(a)). The implementing regulations are contained in 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice). 20 CFR 10.320–324 (Department of Labor) contains OWCP's regulations governing the establishment and recovery of overpayments and 29 CFR 20.74–20.90, Salary Offset (Department of Labor), establishes the Department's regulations governing salary offset when the debtor is a current employee of the United States.

D. *Categories of individuals involved and identification of records used:* The systems of records maintained by the participant agencies under the Privacy Act of 1974 from which records will be disclosed for the purpose of this computer match are:

1. The USPS will use records from its system "Finance Records—Payroll System, USPS 050.020" containing payroll records for approximately 700,000 current USPS employees. Disclosure will be made under routine use 24 of that system, a full description of which was last published in 57 FR 57515, dated December 4, 1992.

2. OWCP will use records from its system identified as DOL/GOVT–1, entitled "Office of Workers' Compensation Programs, Federal Employees' Compensation Act File" and containing approximately 1,000 delinquent debt account records. Disclosure will be made under routine use "n" of that system, a full description of which was last published in the **Federal Register** at 58 FR 49548, 49556–8, on September 23, 1993 with amendments published at 59 FR 47361 on September 15, 1994.

E. *Description of the computer matching program:* OWCP will provide to USPS a magnetic computer tape containing the names and Social Security Numbers (SSNs) of its delinquent debtors. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e., "hits") on the basis of like SSNs. For each matched individual, the USPS will provide to OWCP the name, SSN, date of birth, home address, work address, and employee type (permanent or temporary). OWCP will be responsible for verifying and determining if the data of the USPS matched records are consistent with OWCP's source data and will resolve any discrepancies or inconsistencies on an individual basis, conducting independent inquiries when necessary to resolve questionable identities. OWCP will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Beginning and ending dates of the matching program:* This computer matching program is expected to begin in December, 1994. By agreement between OWCP and USPS, the matching program will continue in effect for a period of 18 months and may be extended for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

Dated: November 4, 1994.

Shelby Hallmark,

Acting Deputy Assistant Secretary, Office of Workers' Compensation Programs.

[FR Doc. 94–27765 Filed 11–8–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–088]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Veatronics Corporation of Charlotte, North Carolina 28205, a partially exclusive license to practice the invention protected by U.S. Patent No. 5,140,992 entitled "PASSIVE FETAL MONITORING SENSOR," which was granted on August 25, 1992, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by January 9, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: November 1, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–27727 Filed 11–8–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–089]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Pacific Scientific Company of Chandler, Arizona 85226, an exclusive license to practice the invention protected by U.S. Patent No. 5,160,233 entitled "Fastening Apparatus Having Shape Memory Alloy Actuator," which was issued on November 3, 1992, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The exclusive license will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations (14 CFR part 1245). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by January 9, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing, (202) 358–2041.

Dated: November 1, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–27761 Filed 11–8–94; 8:45 am]

BILLING CODE 7510–01–M

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NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by December 6, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Divisions of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Impact of Industry—Engineering Research Center (ERC) Interaction and Effectiveness of ERC-Trained Industrially Employed Engineers.

Affected Public: Individuals, Businesses or other for-profit, and small businesses or organizations.

Respondents/Reporting Burden: 918 respondents: 25 minutes per response.

Abstract: The evaluation examines two aspects of NSF's Engineering Research Center program's mission: the impact (1) on industry of different types of ERC-industry interaction and (2) of ERC training on industrially employed graduates. Survey participants include: ERC industrial partner firm representatives, industrially employed ERC masters and doctoral graduates, graduates' supervisors.

Dated: November 2, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–27701 Filed 11–8–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Parts 50, 55, and 73—Reduction of Reporting Requirements Imposed on NRC Licensees.

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion.

5. Who will be required or asked to report: Nuclear power reactors and material licensees under Parts 50, 55, and 73.

6. An estimate of the number of responses annually: A reduction of 33 submittals of containment leakage test summary test reports (.3 per licensee); a reduction of 50 notifications under § 55.25 (.5 per licensee): and a reduction of 284 submittals of safeguards log events (4 per licensee).

7. An estimate of the number of hours needed annually to complete the requirement or request: Total reduction of 1888.5 hours or 10 hours per licensee.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Applicable.

9. Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to reduce reporting requirements currently imposed on water-cooled nuclear power reactor and nuclear material licensees. This action will result in reducing the regulatory burden on NRC licensees and is the result of an NRC initiative to review its current regulations with the intent to revise or eliminate duplicative or unnecessary reporting requirements. The proposed amendments will: (1) Eliminate the current requirement for licensees to submit to the NRC summary reports of containment leakage rate tests (10 CFR Part 50–Appendix J), but preserve the requirements in §§ 50.72 and 50.73 under which licensees currently report any instances of leakage exceeding authorized limits in the technical specifications of the license; (2) revise 10 CFR 55.25 to refer licensees to a similar reporting requirement in 10 CFR 50.74(c) and require notification of operator incapacity only in case of permanent disability or illness; and (3) eliminate the requirement for quarterly submittal of safeguards event logs presently contained in 10 CFR 73.71(c)(2) and Appendix G to Part 73.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs, (3150–0011, –0018, –0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 2d day of November, 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–27738 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its April 16, 1990, application for proposed amendment to Facility Operating License No. NPF–11 and Facility Operating License No. NPF–18 for the LaSalle County Station, Units 1 and 2, located in Brookfield Township, LaSalle County, Illinois.

The proposed amendment would have revised the technical specification testing requirements for the charcoal adsorber beds and HEPA filters of the Standby Gas Treatment System and Control Room Emergency Filtration System and Supply Filter.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 27, 1990 (55 FR 26278). However, by letter dated September 27, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 16, 1990, and the licensee's letter dated September 27, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglelsby, Illinois 61348.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate III–2, Division of Reactor Projects—IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27734 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Co., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operation License Nos. DPR–53 and DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (the facilities), respectively. The license provides, among other things, that the facilities are subject to all rules, regulations and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Calvert County, Maryland.

The licensee is implementing upgrades to the existing safety-related emergency diesel generators (EDGs) to increase their load capacity. The first part of this effort was to upgrade Unit 1 EDG No. 11 during the previous Unit 1 refueling outage (RFO–11). The second part of the EDG upgrade project is to upgrade Unit 2 EDG No. 21 during the upcoming Unit 2 refueling outage (RFO–10). RFO–10 is scheduled to commence on March 17, 1995, and to be completed in late May 1995. To support this second portion of the upgrades, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The Code of Federal Regulations at 10 CFR Part 50, Appendix A, General Criterion-2 (GDC–2), requires that: Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as * * * tornadoes, * * * without loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of the planned upgrade of the Unit 2 EDG No. 21. The effort will require temporary removal of a steel missile door which will expose portions of the support systems of EDG Nos. 11 and 12. These EDGs are required to be operable to support the operation of Unit No. 1 and the shutdown or refueling of Unit No. 2. These EDGs require protection from the potential effects of postulated missiles generated by natural phenomena. The licensee indicates that the steel missile door will be removed 4 times during RFO–10. The licensee estimates that each of the missile door removals will last for about 24 hours which will result in a total removal time of about 100 hours during the scheduled 65 day outage.

The licensee is providing compensatory action to assure the safe operation of Unit No. 1 and refueling of Unit No. 2 for the short periods of time during which the steel missile door will be removed. To encompass all severe weather conditions as defined in the plant site Emergency Response Plan Implementing Procedures 3.0, Attachment 17, a concerted effort will be made to reinstall the missile door if a tornado or hurricane watch is issued or if sustained winds are predicted to be greater than 50 miles/hour at the site. The only factor which would impede the reinstallation of the missile door would be to ensure the safety of the individuals performing the reinstallation.

Considering the existing design features and compensatory measure proposed by the licensee, the likelihood of damage to the exposed EDG support systems from postulated missiles generated by natural phenomena is minimal for the short periods of time that the protective door will be removed. Also, based on the compensatory measure provided, reasonable assurance exists that the ability to reinstall the missile door will be maintained prior to any severe weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that, special circumstances as set forth in 10 CFR 50.12(a)(2)(v) exist. The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption request and has concluded that the EDG upgrades can only be conducted without the subject exemption during a period when both units are shut down.

Based on the above and on review of the licensee's submittal, as summarized in the Safety Evaluation, dated October 28, 1994, the NRC staff concludes that the likelihood of unacceptable damage to the exposed portions of the operable EDGs support systems due to weather-induced missiles during the short duration exposures occurring in the exemption period is low.

Based on the low probability of unacceptable events, coupled with the compensatory measure which the licensee has committed to, the NRC staff finds the proposed exemption from GDC–2 to be acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, may operate without conforming to the requirements of GDC–2 as they apply to the exposed portions of the support systems for EDG Nos. 11 and 12 providing that the compensatory measure as described herein is in place for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (October 27, 1994, 58 FR 54013).

The subject Unit No. 2 EDG No. 21 upgrade GDC–2 exemption if effective from its date of issuance through May 31, 1994.

Dated at Rockville, Maryland, this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27737 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 030–16999; License No. 37–16492–02 (Expired); EA 94–223]

Old Forge Testing Co.; Old Forge, PA; Order to Cease and Desist Use and Possession of Regulated Byproduct Material

I

Old Forge Testing Company (Licensee or Old Forge) is the holder of expired Byproduct Materials License No. 37–21381–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 7, 1983. The license authorized the possession and use of byproduct material, cesium-137 and americium-241 sealed source(s) in gauges, in accordance with the conditions specified therein. The License expired on December 31, 1993.

II

Since the expiration of the License, the byproduct material has remained in the possession of Old Forge at its S. Keyser Avenue facility, Old Forge, Pennsylvania. The Licensee did not submit an application for renewal of the License pursuant to 10 CFR 30.37 prior to its expiration; nor did the Licensee notify the Commission of a decision not to renew the License, dispose of the byproduct material, and submit a completed form NRC–314, as required pursuant to 10 CFR 30.36.

On May 6, 1994, the NRC Region I, issued a Notice of Violation (NOV) to Old Forge Testing Company, ATTN: Jonathan Szostek, President and Radiation Safety Officer, for possession of material without a valid license in violation of 10 CFR 30.3. The letter forwarding the NOV directed Old Forge to place the radioactive material in its possession in secure storage until such time as it acquired an NRC license, and stated that no other use of that material or purchase of additional material was authorized. Old Forge did not respond to the NOV. Old Forge was contacted on numerous occasions between March 2, 1994 and June 10, 1994, by Region I staff to determine the disposition of the byproduct material. In a March 10, 1994 telephone conversation with NRC Region I, Mr. Szostek stated that he is aware that Old Forge needs a license, but could not currently effort to apply for one. He also stated that the gauge was not being used and that it was in locked storage. On June 15, 1994, the NRC sent Old Forge a letter reminding it that it is in continuous noncompliance with NRC regulations for possessing byproduct material without a valid NRC license, and must transfer the byproduct material to an authorized recipient. By that letter, Old Forge was informed that it it was unable to transfer the material to an authorized recipient within 30 days of the date of that letter, it must inform the NRC, in writing, of the reason why it was unable to do so. As of this date, Old Forge has not responded to the letter, not has it transferred the byproduct material to an authorized recipient. Further, as of this date, Old Forge has not applied for, nor obtained, an NRC license.

III

Old Forge is in possession of byproduct material without a valid NRC license. This is prohibited by Section 81 of the Atomic Energy Act (AEA) of 1954, as amended. Based on the above, Old Forge has violated 10 CFR 30.3, which states that, except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general NRC license. Old Forge has failed to comply with 10 CFR 30.36(b) which requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

Furthermore, notwithstanding the several notices concerning the above from the NRC and the corresponding opportunities to achieve compliance with the applicable requirements, Old Forge has deliberately violated NRC requirements by possessing cesium-137 and americium-241 sealed source(s) without a license. This conclusion is based on the facts that Old Forge never filed a renewal application before the license issued to Old Forge expired on December 31, 1993, as provided in 10 CFR 30.37; Old Forge has not responded to the NRC Notice of Violation issued on May 6, 1993; Old Forge has not responded to an NRC letter dated June 15, 1994, addressing the previous failure of Old Forge to respond to the Notice of Violation; Old Forge has deliberately not disposed of the radioactive material; Old Forge possesses the radioactive material contrary to 10 CFR 30.3, without a valid NRC specific license; and Mr. Szostek has stated to the NRC on numerous occasions that Old Forge Testing Company intends to apply for a new license but has not done so.

The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Improper handling of the byproduct material can result in unnecessary exposure to radiation. Because Old Forge has continued to possess byproduct material without a valid license after being notified by NRC that the license has expired and that, since they have not obtained a new license, the material must be transferred to an authorized recipient, Old Forge has demonstrated that they are either unwilling or unable to comply with Commission requirements. Given the circumstances surrounding the possession of the byproduct material without a license by Old Forge, and its failure to respond to the NOV dated March 8, 1993, and to the letter dated June 2, 1994, I lack the requisite reasonable assurance that the health and safety of the public will be protected while Old Forge remains in possession of the radioactive material without the required NRC license.

IV

Accordingly, in accordance with Sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 20 and 30 of the Commission's regulations, it is hereby ordered that Old Forge Testing Company shall:

A. Immediately cease and desist from any further use of byproduct material now in its possession with the exception that sealed source(s) containing cesium-137 or americium-241 shall be tested for leakage by a person authorized to perform the test prior to transfer of the source(s) to another person or entity, if a leak test has not been performed within the last six months prior to transfer.

B. Maintain safe control over the byproduct material, as required by 10 CFR part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

C. Transfer all byproduct material to a person authorized to receive and possess it within 30 days of the date of this Order. If Old Forge does not have sufficient funds to complete the transfer, Old Forge must provide, within 10 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555: (1) An estimate of the cost of the transfer and the basis for the estimate, including the license numbers and identities of the persons who have provided estimates of the cost of the transfer; (2) written statements from at least two banks stating that Old Forge does not qualify for a loan to pay for the transfer; (3) copies of the Federal income tax returns of Old Forge for the years ending 1993, 1992, 1991, and 1990; and (4) a signed statement agreeing to allow the NRC to receive credit information on Old Forge from a credit agency. In addition, if Old Forge has not been able to find a person who will accept the byproduct material, Old Forge must provide to the Director, Office of Enforcement, at the address stated above, within 10 days of the date of this Order, the names of the persons who have been contacted regarding acceptance of the byproduct material and the dates that the contacts were made. A submittal of evidence supporting the lack of sufficient funds does not excuse noncompliance with this order.

D. At least two working days prior to the date of the transfer of the byproduct material, notify Dr. Ronald Bellamy, Chief, Nuclear Materials Safety Branch, NRC, Region I, by telephone (610–337–5200) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region I, in writing, under oath or affirmation: (1) Confirmation, on NRC Form 314, that the cesium-137 has been transferred, (2) the last date that the byproduct material was used, (3) a copy of the leak test performed prior to the transfer, (3) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v), and (5) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 94–27742 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated August 10, 1994 for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage."

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

"Access Requirements," of 10 CFR 73.55(d), paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area * * *." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

Currently, unescorted access into protected areas of the LGS is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91–0276 UC–906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the proposed hand geometry system would provide enhanced site access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to

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include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Limerick Generating Station, Units 1 and 2," dated April 1984.

Agencies and Persons Consulted

The NRC staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 10, October 7, 1994, and October 13, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 3d day of November, 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-2, Division of Reactor Projects--I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-27740 Filed 11-8-94; 8:45 am]

BILLING CODE 7590-01-M

Illinois Power Co. et al.; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62, issued to Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1 (CPS), located in Dewitt County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TS) in their entirety with the Improved Technical Specifications (ITS). The proposed action is in accordance with the licensee's amendment request dated October 26, 1993.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of TS. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," ("**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need. To facilitate the development of individual ITS, each reactor vendor owners group (OG) and the NRC staff developed standard Technical Specifications. For General Electric (GE) plants, the standard TS (STS) are NUREG-1433 for BWR/4 reactor facilities and NUREG-1434 for BWR/6 facilities. NUREG-1434 formed the basis of the CPS ITS. The NRC Committee to Review Generic Requirements (CRGR) reviewed the STS and made note of the safety merits of the STS and indicated its support of conversion by operating plants to the STS.

Description of the Proposed Change

The proposed revision to the TS is based on NUREG-1434 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TS. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG-1434, portions of the existing TS were also used as the basis for the ITS. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the GE and other OGs.

The proposed changes from the existing TS can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITS easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the CPS TS has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG-1434 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing CPS TS but did not meet the criteria set forth in the Policy Statement for inclusion in TS. In general, the proposed relocation of items in the CPS TS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, procedures and ITS Bases follows the guidance of the BWR/6 STS, NUREG-1434. Once these items have been relocated by removing them from the TS to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed CPS ITS items that are either more conservative than corresponding requirements in the existing CPS TS, or are additional restrictions which are not in the existing CPS TS but are contained in NUREG-1434. Examples of more restrictive requirements include: Placing a Limiting Condition of Operation (LCO) on plant equipment, which is not required by the present TS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing CPS TS which provided little or no safety benefit and placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for CPS as described in the Safety Evaluation to be issued with the license amendment, which will be noticed in the **Federal Register**.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. Changes which are administrative in nature have been found to have no effect on technical content of the TS, and are acceptable. The increased clarity and understanding these changes bring to the TS are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG-1434 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for CPS. Generic relaxations contained in NUREG-1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TS was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Clinton Power Station.

Agencies and Persons Consulted

The NRC staff consulted with the State of Illinois regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated October 26, 1993. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 1st day of November, 1994.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Project Directorate III-3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94-27741 Filed 11-8-94; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 17, 1994, through October 28, 1994. The last biweekly notice was published on October 26, 1994 (59 FR 53834).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in

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10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 9, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-248-5100 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al.

Docket Nos. 50–325 and 50–324

Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendments request: September 30, 1994.

Description of amendments request: The amendments would revise the Technical Specifications to eliminate the scram and isolation trip functions from the main steam line radiation monitor (MSLRM). This change would specifically remove the reactor scram, main steam line isolation valve closure, main steam line drain valve closure, reactor water sample line isolation, and mechanical vacuum pump line isolation actuated on a MSLRM High-High Radiation signal. The actuation signal for isolation of the reactor water sample line will be replaced with a low condenser vacuum signal. The isolation of the mechanical vacuum pump line will be changed to a signal from the main stack radiation monitor.

The MSLRMs will have both High Radiation and High-High Radiation alarms. The setpoint for the MSLRM High Radiation alarm will be set at or below 1.5 times the nominal full power background radiation adjusted for Hydrogen water chemistry operation. The setpoint for the condenser off-gas radiation monitor will be set at a value of 1.5 times background radiation, but not less than 1.5 Rem per hour.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the MSLRM trip function from the reactor scram and the Group 1 isolation initiation logic removes a potential transient initiation and therefore decreases the probability of plant transients occurring due to inadvertent scrams resulting from this system.

The deletion of the MSLRM trip function from the Main Steam Drain Valve, the Reactor Water Sample Isolation Valve, and the Mechanical Vacuum Pump line isolation logic, does not affect the initiators of any accident previously evaluated in the Safety Analysis Report. Therefore, the proposed change does not involve an increase in the probability of occurrence of any accident previously evaluated.

The NRC staff acceptance criterion for the Control Rod Drop Accident is that the doses from the accident fall significantly below the limits given in 10 CFR Part 100. The releases calculated for accident during plant operations when the Steam Jet Air Ejectors (SJAE) are operating and when the Mechanical Vacuum Pumps are operating are within these acceptance limits.

In NEDO–31400, GE shows that the occurrence of a CRDA, with the MSL high radiation isolation removed, and SJAE in operation, results in offsite radiological exposures that are small fractions of 10CFR100 guidelines. Since the Brunswick specific CRDA doses are lower than the [sic] calculated by GE and the GE dose parameters envelope those used for the Brunswick analysis, it is concluded that the NRC's findings that the radiological release consequence is within the staff's acceptance criteria, even without the automatic MSIV trip, is applicable to Brunswick.

While not specifically addressed in the GE evaluation, Carolina Power and Light also proposes to eliminate the Main Steam Line Drain valves, the Reactor Water Sample Line isolation valves, and the mechanical vacuum line isolation valves from the MSLRM isolation logic. Main Steam Line Drain Valves B21–F016 and B21–F019 drain to the main condenser, which is the same flow path as the MSIVs. The discharge of both the MSIV and MSL drain flow paths is processed through the offgas system. Any radiation released through the drain valves during a control rod drop accident will be negligible and, for Brunswick, is bounded by the NEDO analysis.

The reactor water sample line provides a small amount of reactor water to the Reactor Building Sample Panel. The discharge of the Reactor Building Sample Panel is routed through the floor drain sump to the liquid radwaste system. Any releases through this path would be negligible and, for Brunswick, is bounded by the NEDO analysis.

The mechanical vacuum pumps are used only when the reactor is at low power (less than 5%) and there is insufficient steam flow to operate the Steam Jet Air Ejectors. The increase in radiation will be detected by the MSLRMs and annunciated in the Main Control Room. Operators will be instructed, in the annunciator response procedures, to take action to stop the Mechanical Vacuum Pump(s) and isolate the Mechanical Vacuum Pump line. The amount of radiation released prior to isolating the line would represent the most limiting case for this accident. However, it will still be well within 10 CFR Part 100 limits. Additionally, the dose received in the Main Control Room as a result of this accident is within General Design Criteria 19 (SRP 6.4) limits.

Therefore, since elimination of the MSIV [sic, MSLRM] scram and isolation functions would not result in an increase in exposure above NRC acceptance limits, the proposed changes will not significantly increase the consequences of a previously evaluated accident.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. The function of a MSLRM trip is to detect abnormal fission product release and isolate the steam lines, thereby stopping the transport of fission products from the reactor to the main condenser. The monitors do not perform a prevention function for any kind of accident. The existence of a MSLRM trip does not prevent the occurrence of a fuel failure event or any other type of event. The elimination of these signals, which served only in a mitigative function, does not create the possibility of a new or different kind of accident from those previously evaluated. Also, radiation monitors with alarm functions will remain installed in the plant to warn the operators of a high radiation condition in the main steam lines, or in the off-gas system. Thus no new or different

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accident can be postulated by the proposed changes.

3. The proposed amendments do not involve a significant reduction in a margin of safety. As shown in the topical report, the changes represent an overall improvement in plant safety. Safe operation of the plant is further enhanced by elimination of the unnecessary scram and isolation of the reactor vessel. With implementation of these changes, 1) the primary heat sink (main condenser) remains available, 2) large transients on the reactor vessel, as well as challenges to the ESF, are avoided, and 3) the Offgas system remains available to control the pathway of potential releases. As such, the margin of safety is enhanced by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Project Director: Michael L. Boyle.

Carolina Power & Light Company

Docket No. 50–261

H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would revise the introduction to TS Section 6.9.3.3 to require the approved revision number for the referenced analytical methods be listed in the Core Operating Limits Report. The methodology referenced in 6.9.3.3.b.f (XN–NF–82–49(A)) will be updated to clarify that all supplements are included. New methodologies ANF–89–151(A) and EMF–92–081(A) will be added to TS Section 6.9.3.3.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes will have no influence on the probability of an accident previously evaluated. No changes will be made to any safety related equipment, systems, or setpoints used in determining the probability of an evaluated accident. The plant design basis will not be altered. Therefore, there will be no significant increase in the probability of an accident previously evaluated.

Consequences are dependent on the type of accident and the mitigating response of safety related equipment. Furthermore, the magnitude of consequences are calculated, directly or through supporting calculations, by use of NRC approved methodologies. The proposed license amendment will not alter the function of safety related equipment designed to mitigate the consequences of an accident previously evaluated or allow operation of the facility outside any current limitations or restrictions. Also, this amendment will not alter the requirement that evaluation of the consequences of an accident previously evaluated by determined/supported with NRC reviewed and approved methodologies. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Accordingly the proposed license amendment will not involve a significant reduction in the margin of safety.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The addition of and update to NRC previously reviewed and approved methodologies in TS Section 6.9.3.3.b will not result in any design or function changes to any safety related equipment designed to prevent and/or mitigate accidents, to any setpoints or systems, or to any portion of the plant design basis. Operation of the facility will remain within all required limitations and/or restrictions. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Therefore, the proposed amendment will not create the possibility of a new kind of accident from any accident previously evaluated.

The addition of and update to NRC previously reviewed and approved methodologies in TS Section 6.9.3.3.b will not result in any design or function changes to any safety related equipment designed to prevent and or mitigate accidents, to any setpoints or systems, or to any portion of the plant design basis. Operation of the facility will remain within all required limitations and/or restrictions. The changes to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Therefore, the proposed amendment will not create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed license amendment is defined as administrative in nature. No current operational limits, restrictions, or operating modes of the facility and its equipment, safety related or otherwise, designed to preserve the margin of safety will be changed or affected by the proposed amendment. There will be no changes to setpoints or to the plant design basis. The methodology proposed for addition to TS Section 6.9.3.3.b and the methodology that will be updated has been previously reviewed and approved by the NRC. The change to TS Section 6.9.3.3.b's introductory wording satisfies an administrative commitment and the requirements it adds are administrative in nature. Accordingly the proposed license amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Entergy Operations, Inc., et al.

Docket No. 50–416

Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi.

Date of amendment request: October 12, 1994.

Description of amendment request: The proposed amendment requests the closure and deletion of License Condition 2.C.(26) related to turbine disk integrity.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed change would close and delete License Condition 2.C.(26). The approved methodology currently used to evaluate the probability of rotor failure and the inspection interval will not be changed. The closure and deletion of the license condition is an administrative change and will affect any accident previously evaluated.

The bounding accident for the turbine-generator as analyzed in the Grand Gulf Nuclear Station (GGNS) Updated Final Safety Analysis Report (UFSAR) is the occurrence of an external missile resulting from the failure of a low pressure (LP) turbine disc. The probability of this incident occurring is less than 1×10^{-5} per year, which is the NRC acceptable failure criterion for probability.

Any extension to the service interval in the future will be evaluated in accordance with the current methodology. The original acceptable levels of failure will be maintained. Therefore, no significant increase in the probability or consequences of a previously evaluated accident results from this change.

2. The change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a change to the control logic or operating procedures for the turbine but rather transfers the control of the LP turbine disc inspection interval from the Operating License to administrative control. The current approved methodology will continue to be used when determining future inspection intervals.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The change would not involve a significant reduction in a margin of safety.

Closing and deleting the current license condition for LP turbine disc inspections and controlling the inspection interval administratively has no adverse effects to the margin of safety. The current approved methodology for failures will continue to be used and any changes to future inspection intervals will be evaluated by the methodology. This change does not affect any previous safety analysis presented in the UFSAR and does not affect the criteria used to establish safety limits, the basis for limiting safety system settings, the basis for limiting conditions of operation, a change to the technical specifications or a change in plant operations.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of amendment request: October 20, 1994.

Description of amendment request: The licensee proposes to change Turkey Point, Units 3 and 4 Technical Specifications (TS) by revising TS 1.9, Definitions—CORE ALTERATIONS to only address activities which may, in actuality, affect core reactivity. In addition, the licensee proposes to revise TS 3.9.4, Containment Building Penetrations to allow both containment personnel airlock (PAL) doors to be open during core alterations and movement of irradiated fuel in containment provided (a) that at least one PAL door is capable of being closed; (b) the plant is in Mode 6 with at least 23 feet of water above the fuel; and (c) a designated individual is available outside the PAL to close the door. The licensee also proposes a revision to the footnote of TS 3.9.4, to remove the description of the purpose for imposing administrative controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists, however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the In-Containment Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point Updated Final Safety Analysis Report (UFSAR). Therefore, the proposed change is bounded by the current and the proposed In-Containment Fuel Handling Accident Analyses and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3.9.4 would allow the containment personnel airlock (PAL) doors to be open during fuel movement and core alterations. Currently, a single PAL door is closed during fuel movement and core alterations to prevent the escape of radioactive material in the event of a in-containment fuel handling accident. The PAL is not an initiator of an accident. Whether the PAL doors are open or closed during fuel movement and core alterations has no affect on the probability of any accident previously evaluated.

Allowing the PAL doors to be open during fuel movement and core alterations does not increase the consequences from a fuel handling accident. The calculated offsite doses are well within the limits of 10 CFR Part 100. In addition, the calculated doses are larger than the expected doses because the calculation does not incorporate the closing of the PAL door after the containment is evacuated. The proposed change should significantly reduce the dose to workers in containment in the event of a fuel handling accident by reducing the time required to evacuate the containment. The proposed change will also significantly decrease the wear on the PAL doors and, consequently, increase

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the availability of the PAL doors in the event of an accident.

The proposed change to the footnote of TS 3.9.4 is administrative in nature, and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed do not affect assumptions contained in plant safety analyses or the physical design of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the In-Containment Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point UFSAR. Therefore the proposed change is bounded by the current and the proposed In-Containment Fuel Handling Accident Analyses and will not create the possibility of a new or different kind of accident.

The proposed change to Specification 3.9.4 affects a previously evaluated accident, i.e., in-containment fuel handling accident. Both the current and the proposed In-Containment Fuel Handling Accident Analysis assume that all of the iodines and noble gases that become airborne within the containment escape and reach the site boundary and low population zone with no credit taken for the containment building barrier or for decay or deposition taken. Since the proposed change does not involve the addition or modification of equipment nor does it alter the design of plant systems and the revised analysis is consistent with the current In-Containment Fuel Handling Accident Analysis, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the footnote of TS 3.9.4 is administrative in nature and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The change in the definition of CORE ALTERATIONS would allow the movement of a temporary source range detector or other small components, such as cameras, tools, etc., within the reactor vessel without the activity being considered CORE ALTERATIONS. The potential exists however small, that an object can be dropped into the reactor vessel. However, the justification for this change, is that the insertion of small components into the reactor vessel will have no effect on core reactivity since these items displace a small volume of borated water, and sufficient borated water will surround the components and provide the necessary neutron absorption to neutronically isolate the components from the reactor. The consequences of dropping one of these small components into the vessel are bounded by the Fuel Handling Accident Analysis discussed in Chapter 14.2.1 of the Turkey Point UFSAR. Therefore, the proposed change is bound by the current In-Containment Fuel Handling Accident Analyses and as a result will not involve a significant reduction in a margin of safety.

The margin of safety as defined by 10 CFR Part 100 has not been reduced. There is no increase in calculated offsite dose resulting from a fuel handling accident in containment and the calculated dose is a small fraction of the limits given in 10 CFR Part 100. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change to the footnote of TS 3.9.4 is administrative in nature and does not relate to or modify the safety margins defined in, and maintained by, the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Mohan C. Thadani, (Acting)

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of amendment request: October 20, 1994.

Description of amendment request: This supersedes the licensee's original request dated July 19, 1994, and noticed in the **Federal Register** on August 3, 1994 (59 FR 39588). The licensee proposes to change Turkey Point, Units 3 and 4 Technical Specifications (TS) 4.8.1.1.2e. and 4.8.1.1.2f., which address Emergency Diesel Generator (EDG) fuel oil testing, by replacing the specific EDG fuel oil Surveillance Requirements with the requirement to verify new and stored EDG fuel oil in accordance with the Diesel Fuel Oil Testing Program. In addition, the licensee proposes the addition of ACTION statements g. and h., to TS 3.8.1.1, to address the required action in the event the diesel fuel oil does not meet the Diesel Fuel Oil Testing Program limits. The Diesel Fuel Oil Testing Program will be described in both TS 6.8.4 and the BASES Section to the Technical Specifications. In addition, FPL proposes revising TS 6.8.1 to include the requirement that written procedures shall be established, implemented and maintained for implementation of the Diesel Fuel Oil Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil in accordance with the Turkey Point, Units 3 and 4 Diesel Fuel Oil Testing Program. The proposed change will permit FPL to use more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the Diesel Fuel Oil Testing Program, the proposed change will be evaluated pursuant to Title 10 Code of Federal Regulations § 50.59 (10 CFR § 50.59), "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question.

Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased. Consequently, since any change to the Diesel Fuel Oil Testing Program, including the ASTM standard or ASTM edition standard to be used to evaluate EDG fuel oil acceptability, the change must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated. The EDG fuel oil TS Surveillance Requirements will be replaced with a requirement to test the EDG fuel oil in accordance with the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the American Petroleum Institute (API) gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates do not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. The EDGs will thus continue to function as designed and the probability or consequences of previously evaluated accidents will be unaffected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator fuel oil using more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR § 50.59, "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question. Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates does not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if

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the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes do not involve a change in the design of any plant system or component, and since the proposed changes will need to evaluate the effect of any ASTM standard edition change on the level of EDG reliability, the change proposed will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil using more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR § 50.59, "Changes, tests, and experiments." Title 10 CFR § 50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior NRC approval, provided that the proposed changes does not involve an unreviewed safety question. Title 10 CFR § 50.59(a)(2) states that a proposed change involves an unreviewed safety question (iii) if the margin of safety as defined in the basis for any technical specification is reduced. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR § 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM–D975–81, except sulfur which may be performed in accordance with ASTM–D1552–79 or ASTM–D2622–82. In the event the other new fuel oil properties specified in Table 1 of ASTM–D975–81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates does not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes will require a safety evaluation to assure that the reliability of the EDGs using fuel oil tested in accordance with the different ASTM standard edition maintains the current margin of safety, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Mohan C. Thadani, Acting.

Florida Power Corporation, et al.

Docket No. 50–302

Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida.

Date of amendment request: September 30, 1994.

Description of amendment request: The proposed amendment would revise the Crystal River 3 (CR3) Nuclear generating Plant Technical Specifications (TS) to allow an increase in the rated thermal power (RTP) for CR–3 from the current 2544 level to 2568 Megawatt thermal (Wt). Accordingly, in TS 1.1, "Definitions," would be revised to indicate the new power level of 2568 MWt. The proposed change would not require any hardware modifications.

Basis for proposed no significant hazards consideration determination: Currently, CR–3 is operating at a maximum RTP of 2544 MWt. The licensee proposes to operate at a maximum RTP of 2568 MWt, an increase of 24 MWt over the current licensed power of 2544 MWt.

The licensee states that the Babcock and Wilcox (B&W) 177 Fuel Assembly (FA) Nuclear Steam Supply System (NSSS) in the CR3 design is capable of operating at a thermal power level of 2772 MWt. Due to limitations in the secondary area of the plant, the licensee requests authorization to operate at 2568 MWt which is less than the design level of 2772 MWt. The licensee performed a detailed engineering study on this power increase.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for a rated thermal power of 2568 MWt or higher. Therefore, the proposed thermal power increase to the reference power level of 2568 MWt does not change the original design assumptions and analyses for the reactor core. Most of the design basis accidents and transients were originally evaluated at the proposed power level. As described more fully in this submittal, those transients and accidents that were not originally evaluated at 2568 MWt were re-evaluated using CR–3 FSAR [Final Safety Analysis Report] Chapter 14 accident sequence of events, reactor protection criteria, and approved calculational methods. Based on this evaluation and initial plant design evaluations, FPC [Florida Power Corporation, the licensee for CR3] has determined that the probability and consequences of design basis transients and accidents are not significantly increased and that the radiological consequences from the design basis transients and accidents remain well below 10 CFR 100 limits.

FPC has also reviewed CR–3 balance of plant and safety related systems to determine which systems and components could be affected by the proposed power increase. The changes to the reactor coolant system and secondary conditions and parameters are discussed in this submittal. These changes are minor in nature. The only Technical Specification change is to revise the reference power to 2568 MWt. No facility modifications will be required. FPC evaluated the systems and components and concluded that these systems and components will continue to perform within their design parameters with the unit operating at 2568 MWt.

Based on the foregoing, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed thermal power increase does not create the possibility of a new or different kind of accident from previously evaluated accidents. As noted above, the thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for operation at the proposed thermal power. Therefore, operation at the proposed power level does not introduce new or different performance characteristics that create the possibility of a new or different kind of accident.

FPC has also reviewed CR–3 safety-related systems and balance of plant systems to determine which systems could be affected by the proposed power increase and the resultant minor changes in plant parameters and operating conditions. Systems that could be affected were evaluated using the licensing basis criteria described in the CR–3 FSAR to assure their adequacy at the increased power level. Included in these evaluations were plant features that are not power level related or directly affected by an increase in power level, as well as, associated issues such as environmental considerations. Equipment performance and plant operation were evaluated with respect to actual performance versus projected operating conditions to identify any hardware modifications required to achieve the upgraded power. Based on this evaluation, FPC has determined that all systems will continue to perform within their design parameters at 2568 MWt and that no physical modifications to these systems will be necessary to accommodate a 2568 MWt rating. Only minor re-calibration of plant instrumentation to reflect the increased power will be needed. The proposed power level does not introduce any new performance characteristics or modes of operation for plant systems and components, and does not introduce any new failure modes.

Based on the foregoing, the proposed amendment does not create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The thermal-hydraulic and nuclear characteristics of the reactor core were originally designed for operation at the proposed power level. Most of the design basis transients and accidents were originally analyzed assuming a power level of 2568 MWt or higher. As described more fully in this submittal, those transients and accidents that were not originally analyzed at 2568 MWt were re-evaluated using CR–3 FSAR Chapter 14 accident sequence of events, reactor protection criteria, and approved calculational methods. FPC has determined that operation with the proposed thermal power will be bounded by the original analyses. In addition, FPC's evaluation of affected plant systems and components revealed that plant systems and components will continue to operate within their design parameters with no significant change in a margin of safety.

Based on the foregoing, the proposed amendment does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC–A5D, P. O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: Mohan C. Thadani, (Acting).

Indiana Michigan Power Company

Docket Nos. 50–315 and 50–316

Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan.

Date of amendment request: August 3, 1994.

Description of amendment requests: The proposed amendments would allow the radiological effluent technical specifications (TS) to be relocated to other controlled documents. Procedural details contained in the current radiological effluents TS have been relocated to either the Offsite Dose Calculation Manual (OCDM) or the Process Control Program (PCP), as applicable. Proposed revisions to the OCDM and PCP have been prepared in accordance with the proposed changes to the administrative controls section of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The changes described above in no way negatively impact the requirements of the T/Ss. Separating the turbine room sump releases from the others is purely a clarification of the method we handle releases. The six ground monitoring wells added to the T/S table updates our current monitoring practice. With the six extra wells to monitor, we exceed the monitoring requirements of the T/Ss. Therefore, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

No changes to the LCOs for either T/S are proposed as part of this amendment request. The proposed change does not involve any physical changes to the plant or any changes to plant operations. The changes merely propose to update our methods of implementing the T/S with our current practices. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The changes described above in no way negatively impact the requirements of the T/Ss. Separating the turbine room sump releases from the others is purely a clarification of the method we handle releases. The six ground monitoring wells added to the T/S table updates our current monitoring practice. With the extra wells to monitor, we exceed the monitoring requirements called for in

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the T/Ss. Therefore, it is concluded that the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation

Docket No. 50–410

Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: October 5, 1994.

Description of amendment request: The proposed license amendment would revise the applicability requirements of Technical Specification (TS) 3.7.3 to require operability of the Control Room Outdoor Air Special Filter Train System in Operational Conditions 1, 2, 3 and ** (when irradiated fuel is being handled in the reactor building and during CORE ALTERATIONS and operations with a potential for draining the reactor vessel and uncovering irradiated fuel) rather than in all Operational Conditions and * * *. The applicability requirements for Action Statement b of TS 3.7.3 and for the Radiation Monitoring Instrumentation required operable by TS Tables 3.3.7.1–1 and 4.3.7.1–1 would be changed in a similar manner. The proposed amendment would also add a notation to Action Statement b.1 of TS 3.7.3 stating that the provisions of Specification 3.0.4 are not applicable provided an operable control room filter train is in the emergency pressurization mode of operation. The licensee stated that these proposed changes are consistent with the requirements of the NRC's Improved Standard Technical Specifications (NUREG–1433) and with Generic Letter 87–09, "Section 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Outdoor Air Special Filter Train System is not an initiator or precursor to an accident. The Control Room Outdoor Air Special Filter Train System responds to a release of radioactivity to the outside environment as detected in the air supply to the control room by providing a radiologically controlled environment within the control room. In operational conditions 4 and 5, the probability and consequences of a design basis accident are reduced due to the pressure and temperature limitations in these operational conditions. Therefore, maintaining the chiller subsystem operable is not required in operational conditions 4 and 5, except for the * * * operational condition. Therefore, a change to applicability and action statements of LCO [Limiting Condition For Operation] 3.7.3 cannot affect the probability of a previously evaluated accident.

All accidents which take credit for operation of the Control Room Outdoor Air Special Filter Train System in the emergency pressurization mode of operation are analyzed and presented in Chapter 15 of the USAR [Updated Safety Analysis Report]. These accidents can only occur in operational conditions 1, 2, 3 and * * *.

Accordingly, the proposed change in the applicability of LCO 3.7.3 from all operational conditions (i.e., 1, 2, 3, 4, 5 and * * *) to operational conditions 1, 2, 3 and * * * does not significantly increase the consequences of an accident previously evaluated. The proposed change to action statement b of LCO 3.7.3 and to Tables 3.3.7.1–1 and 4.3.7.1–1 of LCO 3.3.7.1 is consistent with the above change.

Sections 15.7.4 and 15.7.5 of the USAR evaluate a fuel handling accident and a spent fuel cask drop accident, respectively. The radiological evaluation of these accidents considers the unfiltered radioactivity that enters the control room prior to the automatic operation of the Control Room Outdoor Special Filter Train System in the emergency pressurization mode of operation. The radiological consequences of these accidents are within the limits of GDC [General Design Criterion]–19.

With one control room filter train inoperable and prior to entering the operational condition, the proposed change to action statement b.1 of LCO 3.7.3 would require an operable control room filter train be placed in the emergency pressurization mode of operation. During an accident involving the release of radioactivity to the environment, an operable control room filter train would already be running in the emergency pressurization mode and performing its safety function, thereby preventing the entry of unfiltered radioactivity into the control room. Therefore, if a fuel handling accident or a spent fuel cask drop accident were to occur and release radioactivity, the control room personnel radiological doses would be less than the doses depicted in the USAR. Accordingly, the Technical Specification change to action statement b.1 does not significantly increase the consequences of a previously evaluated accident.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not involve any accident precursors or initiators. In addition, this amendment does not require any changes to plant equipment. During an accident involving the release of radioactivity to the environment an operable control room filter train would already be running in the emergency pressurization mode and performing its safety function. Furthermore, the operating status of a running control room filter train would be unaffected by the receipt of an automatic start signal due to high radiation in either air intake to the Control Room Outdoor Air Special Filter Train System. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change in the applicability of LCO 3.7.3 from all operational conditions (i.e., 1, 2, 3, 4, 5 and * * *) to operational conditions 1, 2, 3 and * * * is consistent with the safety analysis contained in the USAR. The proposed changes to action statement b of LCO 3.7.3 and to Tables 3.3.7.1–1 and 4.3.7.1–1 of LCO 3.3.7.1 is consistent with the above change.

Entry into the ** operational condition for LCO 3.7.3 with one control room filter train inoperable and the other control room filter train operable and operating in the emergency pressurization mode provides a comparable level of safety to two operable non-running control room filter trains. The remedial measure prescribed by Technical Specification action statement b.1 (placing an operable control room filter train in the emergency pressurization mode of operation) for which the exception to LCO 3.0.4 is proposed provides a sufficient level of protection to permit operational mode changes and safe long-term operation of NMP2 [Nine Mile Point Unit 2] consistent with the licensing basis described in the USAR. Therefore, the proposed change to action statement b.1 is consistent with Generic Letter 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." Accordingly, this change will not significantly reduce the margin of safety.

This proposed amendment is consistent with the Improved Standard Technical Specifications, NUREG–1433. Accordingly, as determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Niagara Mohawk Power Corporation

Docket No. 50–410

Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of amendment request: October 21, 1994.

Description of amendment request: The proposed amendment would add a footnote to Technical Specification (TS) 4.8.1.1.2.e.8 which would permit performance of the 24-hour functional test of the emergency diesel generators (EDGs) during power operation. TS 4.8.1.1.2.e.8 currently requires the 24-hour functional test of the EDGs be performed at least once per 18 months during shutdown; the proposed amendment would permit this testing to be performed during power operation provided the other two EDGs are operable. If either of the other two EDGs become inoperable, the test would be aborted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to permit the 24 hour functional test of the diesels to be performed during power operation does not increase the chances for a previously analyzed accident to occur. The function of the diesels is to supply emergency power in the event of a loss of offsite power. Operation of the diesels is not a precursor to any accident. Furthermore, the diesel generator being tested will remain operable and will be available to supply emergency loads within the required time. In addition, the two remaining diesel generators will be operable during the test. Consequently, if an offsite disturbance were to occur that affected the operability of the diesel being tested, the two remaining diesels would be capable of feeding the loads necessary for safe shutdown of the plant. This addresses the concerns raised in Information Notice 84–69 regarding the operation of emergency diesel generators connected in parallel with offsite power. In summary, the proposed changes do not adversely affect the performance or the ability of the diesel generators to perform their intended function.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to the 24 hour functional surveillance test will not affect the operation of any safety system or alter its response to any previously analyzed accident. The diesel will automatically transfer from the test mode if necessary to supply emergency loads in the requried time. The test mode is used for the monthly surveillance of the diesel generators as well, therefore, no new plant operating modes are introduced. In the event the diesel fails the functional test it will be declared inoperable and the actions required for an inoperable diesel will be performed. The remaining two diesel generators will be operable and are capable of feeding the loads necessary for safe shutdown of the plant.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment will not reduce availability of the diesel generator being tested to provide emergency power in the event of a loss of offsite power. If a loss of offsite power or a loss of coolant accident occurs during the surveillance test, the emergency bus would de-energize and shed load. The diesel generator would then transfer from the test mode to the emergency mode. It would then be available to automatically supply emergency loads. In addition, the two remaining generators will be operable during the test. Consequently, if an offsite disturbance were to occur that affected the operability of the diesel begin tested, the two remaining diesels would be capable of feeding the loads necessary for safe shutdown of the plant. The time required for the diesel being tested to pick up emergency loads will not be affected by performing the 24 hour functional test during power operation.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

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Northeast Nuclear Energy Company et al.

Docket No. 50-336.

Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: October 18, 1994.

Description of amendment request: The proposed amendment would require three type A overall Integrated Containment Leakage Tests be conducted at approximately equal intervals during shutdowns during each 10-year service period. For the third Type A test for the second 10-year period, it would be conducted during the thirteenth refueling outage extending the second 10-year service period to the end of the thirteenth refueling outage. The amendment would also change the Containment Leakage Bases by reflecting the conditions of a proposed exemption to 10 CFR 50, Appendix J, that would remove the requirement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

* * * The proposed changes do not involve a SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Type A tests are performed to ensure that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate at the design pressure. This ensures compliance with the dose limits of 10 CFR 100.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

The first two Type A tests of the second 10-year service period for Millstone Unit No. 2 have been conducted. The results of these tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining margin between the acceptance criterion and the "As-Found" and "As-Left" leakage rates.

Historically, Type A tests have a relatively low failure rate where Type B and C testing (local leakage rate tests) could not detect the leakage path. Most Type A test failures are attributed to failures to Type B or C components (containment penetrations and isolation valves). Type B and C components are tested per Surveillance Requirement 4.6.1.2.d for the Millstone Unit No. 2 Technical Specifications. These tests are required to be conducted at intervals no greater than 24 months, and the acceptance criterion for the combined leakage rate for all penetrations and valves subject to the Type B and C tests is 0.6 L_a. These local leakage rate tests provide assurance that containment integrity is maintained. The relatively low "As-Left" Type B and C total leakage resulting from the past outage indicates that the leakage has been maintained within the technical specification acceptance criterion. The Type B and C tests will continue to be performed in accordance with the requirements of Surveillance Requirement 4.6.1.2.d. However, on September 26, 1994, NNECO submitted a request for a one-time technical specification change, request for enforcement discretion, and a request for a scheduler exemption from Appendix J to 10 CFR 50 regarding the Schedule for Type B and C testing. The NRC verbally granted enforcement discretion on September 24, 1994, and written enforcement discretion on September 30, 1994. The schedular exemption request was granted on October 12, 1994.

The previous Type A, B, and C tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining a conservative margin between the acceptance criterion and the "As-Found" and "As-Left" leakage results. Based on this, the Millstone Unit No. 2 containment is considered to be in sound condition. No operations are known to have occurred which would suggest any substantial degradation of these results.

Based on the above, the proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility in scheduling the Type A tests. It does not make any physical or operational changes to existing plant structures, systems, or components. In addition, the proposal does not modify the acceptance criterion for the Type A tests. Maintaining the leakage through the containment boundary to the atmosphere within a specific value ensures that the plant complies with the requirements of 10 CFR 100. The containment boundary serves as an accident mitigator; it is not an accident initiator. Therefore, the proposal to revise Surveillance Requirement 4.6.1.2.a does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposal to revise Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

The first two Type A tests of the second 10-year service period for Millstone Unit No. 2 have been conducted. The results of these tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining margin between the acceptance criterion and the "As-Found" and "As-Left" leakage rates. Additionally, the results of the last Type B and C tests had significant margin with respect to the acceptance criterion. Based on the previous Type A, B, and C tests, the Millstone Unit No. 2 containment is considered to be in sound condition. No operations are known to have occurred which would suggest any substantial degradation of these results.

Based on the above, the proposal does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al.

Docket No. 50-423

Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of amendment request: September 30, 1994.

Description of amendment request: The licensee has proposed to revise the Technical Specifications (1) to clarify the definition of core alterations, (2) to change the verbiage in the Limiting Condition For Operation (LCO) addressing the refueling operations, (3) to make changes to three surveillance requirements involving source range instrumentation, and (4) to change the LCO regarding the Residual heat Removal and coolant circulation water levels to be consistent with the guidance provided in NUREG-1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Boron Dilution in Mode 6—A boron dilution in Mode 6 is precluded by technical specification requirements to close and lock all dilution source valves. There is a provision for dilution valves to be opened under administrative controls; in this case, cautionary measures will be taken to control and monitor the reactivity addition. Deletion of the source range analog operational test prior to core alterations will not impact an accident previously evaluated since the sources range monitors are verified operable prior to entry into Mode 6 and every 7 days thereafter. The change in definition for a core alteration means that components which do not effect reactivity may be moved within the reactor vessel without any additional condition such as direct supervision of an SRO.

Since a boron dilution would not be initiated by movement of nonfuel components within the reactor vessel, it is not impacted by the change in definition of a core alteration.

Inadvertent Loading of a Fuel Assembly—Movement of a fuel assembly would be performed as a core alteration under the supervision of an SRO, therefore, it would not be impacted by the change to the definition of a core alteration. The change to the source range monitors also will not affect the probability of occurrence of a misloaded fuel assembly since this accident is precluded by administrative controls, as well as the source range monitors. Also, there will be no degradation in the reliability or accuracy of the source range monitors due to this change. The deletion of the requirement to perform the analog channel operational test within eight hours prior to core alterations will not impact performance of the monitors, since they have to be checked prior to entry into Mode 6 and every 7 days thereafter.

Fuel Handling Accident—Movement of fuel will not affect this accident, because it will still be considered a core alteration. Therefore, there is no effect on the probability of a fuel handling accident. The source range monitors are not involved in the occurrence of a fuel handling accident. The fuel handling accident is the only accident considered here with radiological consequences. It will not be impacted by the proposed changes.

Loss of RHR in Mode 6—The probability of this accident will not be changed since the new requirement is the same as before. As before, RHR may be secured for up to one hour per eight-hour period and boron dilution operations may not be performed with RHR secured (although this requirement is being added to the notes, the requirement is also given elsewhere in the technical specifications). Additionally, the existing reactor coolant system (RSC) temperature limits must still be met.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

All required systems will continue to operate as before. Therefore, there is no possibility of a new or different kind of accident. The deletion of the source range analog channel operational test within eight hours prior to core alterations will not affect the performance of the monitors since they will have had this test completed prior to entry into Mode 6 and every 7 days thereafter. The change in definition of a core alteration cannot create the possibility of a new type of accident because those initiating events for accidents will remain classified as core alterations.

3. Involve a significant reduction in the margin of safety.

The margin of safety for the above listed accidents will remain as before.

a. Boron dilution in Mode 6—This accident calculates the time from receipt of a shutdown margin monitor dilution alarm until the core reaches criticality. Since this time is not changed, there is no reduction in the margin of safety. In this case, the dilution is precluded by administrative controls which will not be impacted by the proposed changes.

b. Inadvertent Loading of a Fuel Assembly—Technical Specification 3.9.1.1 protects against this accident by requiring sufficient boron in the RCS to prevent criticality for any core configuration including two stuck RCCAs [rod cluster control assemblies] in the fully withdrawn position. Since this requirement will not change, the margin of safety will not change.

c. Fuel Handling Accident—The margin of safety for the radiological limits is not changed.

d. Loss of RHR—Changes are editorial due to the revised definition of a core alteration. There is no change to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L.M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee.

Northern States Power Company

Docket Nos. 50-282 and 50-306

Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota.

Date of amendment requests: October 3, 1994.

Description of amendment requests: The proposed amendment would revise

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Prairie Island Nuclear Generating Plant Technical Specification 4.6, "Periodic Testing of Emergency Power Systems." Specifically, the proposed amendment would modify the emergency diesel generator (EDG) 24-hour load test requirements to provide a indicated load range of 103–110% of the continuous rating. The proposed amendment would also rephrase various EDG test requirements to provide clarity and delete the requirement to verify that the auto-connected loads do not exceed 3000 kw (Unit 2 5100kw).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the specification from "unit" to "diesel generator" does not change the intent of the specification, it merely clarifies the original intent and therefore cannot involve a change in the probability or consequences of an accident.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement, therefore it cannot involve a change in the probability or consequences of an accident.

Removing the 22-hour upper range limit from the specification does not reduce the conservatism of the test since operating at a higher load provides more evidence of the ability of the machine to carry the accident loads. For this reason, this change will not involve any increase in the consequences of an accident. Also, increasing the load at which the diesel generator is tested cannot affect the probability of an accident.

The NRC staff has pointed out, in Generic Letter 88–15, the hazards of testing the Diesel Generator at a load greater than the design rating. The proposed change is intended to ensure that the design rating is not inadvertently exceeded. Since the recent installation of two additional emergency diesel generators, the highest anticipated event loads are: Unit 1–2414kW, Unit 2–3813 kW. For these diesel generators, then, 103% of the continuous ratings:

- Unit 1, 103% of 2750 kW (continuous rating) = 2832.5 kW represents 117.3% of the highest anticipated event load and;
- Unit 2, 103% of 5400 kW (continuous rating) = 5562 kW represents 145.9% of the highest anticipated event load.

A test load of 103%, therefore would still be significantly greater than the load required during accident conditions. Since an adequate level of electrical load carrying capacity of the diesel generators (and thus their accident mitigating functions) would still be demonstrated by the surveillance test, the consequences of an accident would be unaffected by the proposed change. The probability of occurrence of a previously evaluated accident would be unaffected since testing a diesel generator at load between 103 and 110 percent instead of at load between 105 and 110 percent could not cause or contribute to the initiation of an accident. For these reasons, this change could have no effect on the probability or consequences of an accident previously evaluated.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swing outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specified time period was achieved without moving outside the band. Since the machine will not be operated any differently, this specification change cannot affect the probability or consequences of an accident previously evaluated.

Proposed changes A, B, C, D, and the first part of E [identified as such in the submittal] are intended to clarify the meaning of the existing specifications without changing the requirements. For this reason, these proposed changes to the Technical Specifications will not change the manner in which the plant is operated or maintained. These administrative changes, therefore, will effect on the probability or consequences of an accident previously evaluated.

The second part of E (verification of the bypass of diesel generator trips during a simulated safety injection signal vs concurrent safety injection and loss of offsite power signals) does not change the intended function which is to be tested but, rather, reduces the special conditions (temporary electrical jumpers to simulate the loss of offsite power) in which the plant needs to be placed in order to perform the test.

Proposed change F (removal of the verification that the auto-connected load do not exceed 3000 or 5100 kW) does not reduce the assurance of the ability of the diesel generators to perform the accident mitigation functions since this verification is performed by other, more pertinent, means.

Therefore, these changes cannot increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different king of accident from any accident previously analyzed.

Changing the specification from "unit" to "diesel generator" does not change the intent of the specification, it merely clarifies the original intent and therefore cannot create the possibility of a new or different kind of accident.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement.

Removing the 22-hour upper range limit from the specification does not change the manner in which the surveillance is performed. It only affects whether the time spent above 100% load can be counted toward 22 hours in the 22-hour portion of the test. This change would not allow any new modes of operation nor does it allow any modification to the plant.

As stated above, testing a diesel generator at a load between 103 and 110% instead of between 105 and 110% could not cause or contribute to the initiation of an accident.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swings outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specific time period was achieved without moving outside the band.

Therefore, for these reasons, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

As stated above [for changes A–F], the proposed changes will not cause a change in the way in which the plant is operated or maintained, excepted for the reduction of the special conditions in which the plant needs to be placed in order to test the bypass of the diesel generator trips. Therefore, these administrative changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

Changing the specification from "unit" to "diesel generator" does not change the intent of the specification, it merely clarifies the original intent and therefore cannot affect the margin of safety.

Changing the 22-hour lower range limit from a load of 90% to an indicated load of 92% removes possible ambiguity from the specification but does not change the actual requirement and therefore cannot affect the margin of safety.

The margin of safety is not affected by removal of the 22-hour upper range limit on the operation of the diesel generators during surveillance testing since the margin of safety is related to the magnitude of the accident loads and the maximum capacity of the machine to carry load and this margin would be unaffected by this change.

The capacity of each diesel generator to carry electrical load can not be diminished by being tested at a lower load. Also, load testing to less than 105% but more than 103% does not lessen the confidence in the ability of the diesel generators to carry adequate load for this facility since these diesel generators have significantly greater load capacity than required by Standard Review Plan guidance in this regard (the guidance allows peak accident load up to 100% of the continuous rating versus Unit 1 diesel generators peak accident load of 87.8% and Unit 2 diesel generators peak accident load of 70.6%). Therefore, this change will not involve a significant reduction in the margin of safety.

Allowing momentary transients outside of the test band does not affect the conduct of the test, it merely allows momentary swings outside the specified band to not invalidate the test. Not allowing momentary transients would not prevent them, it would only require conducting the test longer until the specified time period was achieved without moving outside the band. Since the machine will not be operated any differently per the new specification, the margin of safety is unaffected.

As stated above [for changes A–F], the proposed changes will not cause a change in the way in which the plant is operated or maintained, except for the reduction of the special conditions in which the plant needs to be placed in order to test the bypass of the diesel generator trips. Therefore, these administrative change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

Omaha Public Power District

Docket No. 50–285

Fort Calhoun Station, Unit No. 1, Washington County, Nebraska.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment to the Technical Specifications (TSs) would (1) delete the surveillance requirements contained in TS 3.6(3)a for the raw water backup valves to the containment cooling coils, (2) delete the surveillance requirements contained in TS 3.2, Table 3–5, item 6, for raw water valves, and (3) revise the basis of TS 2.4 to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of surveillance requirements contained in Technical Specifications (TS) 3.2, Table 3–5, Items 6 and 3.6(3)a does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3.6(3)a requires the Raw Water (RW) backup valves to the containment air coolers to be tested each refueling outage. In 1990, during the process of reviewing several open items created by the design basis reconstitution project, an engineering analysis determined that RW direct cooling of the containment air cooling coils should not be used after an accident that has created elevated temperature conditions inside containment. The high containment air temperatures, in conjunction with the low back pressure in the containment cooling coils when in the RW direct cooling mode, introduces the possibility of vaporization inside the coils. Therefore, the use of RW direct cooling for the containment air coolers has been discontinued in post-Loss of Coolant Accident (LOCA) or post-Main Steam Line Break (MSLB) situations. The issue of not being able to utilize RW direct cooling to the containment air cooling coils was reported to the NRC in LER–90–25, dated October 29, 1990 and LER–90–25 Revision 1, dated December 17, 1990.

Raw water direct cooling of the containment air coolers is possible if the containment atmospheric temperatures are less that 150°F. If RW direct cooling of the containment air coolers was utilized after a LOCA or MSLB accident, it could only be used for long-term containment atmospheric cooling. These conditions are essentially equivalent to that associated with conditions in containment during normal plant operation. RW direct cooling of the containment air coolers is not a required post-accident function to maintain containment pressure below 60 psig. Since these valves are not required to perform a post-accident function, deletion of the requirements to test these valves does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3.2, Table 3–5, Item 6 requires that valves in the RW system be tested every refueling outage. The valves tested by this surveillance that could perform a safety function are already tested in accordance with TS 3.3(1). Therefore testing of these valves under TS 3.2, Table 3–5, Item 6 is redundant to TS 3.3(1)a.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints or limits as a result of this proposed change. Valves that are required to be repositioned during an accident to mitigate the consequences will still be tested on a refueling frequency. The proposed change only deletes unnecessary or redundant testing requirements from the TS. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes delete unnecessary or redundant surveillance requirements within the TS. The deletion of TS 3.2, Table 3–5 Item 6, only deletes testing requirements that are already required to be conducted by TS 3.3(1)a. The deletion of the requirement to test the RW backup

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valves to the containment air coolers in TS 3.6(3) only deletes an unnecessary surveillance. RW direct cooling of the containment air coolers is not required to maintain containment pressure below the design limit of 60 psig. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009–5728.

NRC Project Director: Theodore R. Quay.

Pennsylvania Power and Light Company

Docket Nos. 50–387 and 50–388

Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania.

Date of amendment request September 26, 1994.

Description of amendment request: The amendment would remove the requirement for operability of the Average Power Range Monitors (APRMs) while the plant is in Operational Condition 5. However, the requirement for the APRMs to be operable during a shutdown margin demonstration, when the mode switch is in Startup, will remain unchanged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards construction, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Not requiring APRMs to be OPERABLE in OPCON 5 will not increase the probability of inadvertent reactor criticality during refueling operations. Refueling Interlocks, NMS [Neutron Monitoring System] (SRMs [Source Range Monitor], IRMs [Intermediate Range Monitor]), and procedural restrictions provide assurance that inadvertent criticality does not occur due to the simultaneous withdrawal or removal of two control rods or due to the inadvertent insertion of a fuel bundle into a core location with a control blade removed.

The FSAR [Final Safety Analysis Report] Section 15.4.1 discusses the potential for a control rod withdrawal error during refueling and start-up operations. The discussion concludes that the withdrawal of one control rod does not require a safety action because the total worth of one control rod is not sufficient to cause criticality. The attempted withdrawal of two control rods, assuming an operator error and a single active failure, would result in a control rod block initiated by the Refueling Interlocks. The safety-related IRM subsystem, which is required by Technical Specifications to be OPERABLE while in OPCON 5, is designed to generate a rod block or reactor scram on high neutron flux and is therefore a backup protective system for the Refueling Interlocks during refueling.

The Safety-related IRM subsystem of the NMS is required by Technical Specifications to be OPERABLE during OPCON 5 to support the safety design bases of the NMS and RPS [Reactor Protection System]. The SRM is not a safety-related subsystem but is important to plant safety and is required by Technical Specifications to be OPERABLE in OPCON 5. The SRM subsystem provides the plant operator with neutron flux levels from startup conditions to the IRM operating range. The SRMs and IRMs are designed to respond to local core conditions and would indicate and respond (control rod block or scram) to an accident condition to mitigate the transient. Thus, the APRMS are not necessary to be OPERATOR in OPCON 5. The proposed Technical Specification change will not alter the current requirements that the APRMs be OPERABLE during shutdown margin demonstrations in OPCON 5 when the mode switch is in Startup.

The proposed Technical Specification change would reduce the APRM operability requirement in OPCON 5 and would not affect the FSAR evaluation of the inadvertent criticality due to the withdrawal or removal of the highest worth control rod or due to the insertion of fuel bundles in uncontrolled cells. The FSAR concludes that the Refueling Interlocks and plant procedures provide assurance that inadvertent criticality does not occur during refueling.

The consequences of an accident will not be increased by the proposed Technical Specification change because of the existing lines of defense which prevent an inadvertent criticality event during refueling, e.g., administrative restrictions, refueling procedures, licensed plant operators, SRMs, Refueling Interlocks, and IRMs. Furthermore, should the number of operator IRM or SRM channels be less than that required by Technical Specifications, the Technical Specifications require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Therefore, the proposed changes do not result in an increase in the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications will remove the APRM operability requirement while in OPCON 5 (except for shutdown margin demonstration testing); however, the SRMs and IRMs will still be required to be OPERABLE in OPCON 5.

The IRMs are safety-related and are designed to detect and respond to increases in neutron flux within the local core regions. Any inadvertent increases in neutron flux during refueling would originate at a local core location, i.e., rod withdrawal error or fuel bundle insertion. Technical Specifications require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the setpoint. Therefore, removing the APRMs operability requirement in OPCON 5 would not effect any safety related equipment or equipment important to safety.

The APRMs provide core power information to the control room operator and also provide trip signals to the RMCS [Reactor Manual Control System] and RPS as required. The absence of an APRMs input signal will not affect these systems during refueling operations.

Removing the APRMs operability in OPCON 5 will not affect the response of safety-related equipment as previously evaluated in the FSAR. The proposed changes to the Technical Specifications do not affect any safety-related equipment or equipment important to safety.

The proposed changes to the Technical Specifications would remove the APRMs operability requirement during refueling operations. Technical Specifications require IRM operability and will generate an RPS scram or control rod block if neutron flux increased to the applicable setpoint.

No new types of accidents would be introduced since the SRMs and IRMs are available and required to be OPERABLE in OPCON 5. Both SRMs and IRMs would indicate and provide a control rod block or scram signal, as appropriate, to an increase in neutron flux to mitigate a transient event. Furthermore, should the number of OPERABLE IRM or SRM channels be less than that required by Technical Specifications, the Technical Specifications require that core alteration activities be suspended and all insertable control rods be inserted into the core.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

For the reasons discussed in items 1 and 2 above and because the Technical Specification Bases do not discuss or require APRMs operability during OPCON 5, Refueling, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRS staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701 *Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Philadephia Electric Company

Docket Nos. 50–352 and 50–353

Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: August 22, 1994.

Description of amendment request: The amendment consists of five (5) sections of Technical Specifications changes which reflect the Improved Standard Technical Specifications (NUREG–1433):

Section 1: Control Rod Block Instrumentation,
Section 2: Standby Liquid Control System Operability in Mode 5,
Section 3: Scram Discharge Volume Valve Testing,
Section 4: Optional Method of Scram Timing, and
Section 5: Definition of Core Alteration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 1: Control Rod Block Instrumentation

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes can be divided into two general categories, the deletion of the "S/U" requirements, and the change in frequency of the SRM [Source Range Monitor] and IRM [Intermediate Range Monitor] Calibration and Functional Tests. In each case in which the "S/U" requirement has been deleted, the normal surveillance frequency specified for the required Operating Condition remains. The equipment's associated probability of failure remains unchanged. In the case of the surveillance frequency changes proposed for the SRMs and IRMs, the probability of an accident evaluated in the SAR [Safety Analysis Report] occurring does not increase since there is no credit taken in the SAR for those Control Rod Block functions with respect to an accident. As such, the proposed changes will not result in an increase in the probability of occurrence of an accident previously evaluated in the SAR. The proposed TS changes do not alter the method of operation or performance of the equipment in carrying out associated Control Rock Block functions. Thus, the consequences of an accident previously evaluated in the SAR are not increased.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not alter the configuration of the plant or the way that the plant is operated. The equipment can perform no other function than it is presently capable of, or cause or permit any other accident than is now possible. Thus, the possibility of an accident of a different type than previously evaluated in the SAR cannot be created.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Since the proposed TS changes affect only the surveillance frequency intervals and do not change the plant configuration or associated instrument setpoints, there is no quantitative or qualitative reduction in the margin of safety. Thus, the margin of safety as defined in the bases of any Technical Specification is not reduced.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

Section 2: Standby Liquid Control System Operability in Mode 5

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change will remove the SLCS operability requirement in OPCON 5. The purpose of the SLCS is to bring the reactor to and maintain it in a cold shutdown condition from normal power operations following failure to scram during power operations. Initiation of the SLCS is not a precursor to any accident. Therefore, inoperability of the SLCS in OPCON 5 cannot increase the probability of an accident previously evaluated.

The proposed TS change does not involve a physical change in any system's configuration and no new modes of operation are introduced. The SLCS has not analyzed function OPCON 5. The probability of fuel failure will not be increased by this change. Shutdown margin, in conjunction with TS requirements and procedural controls, will assure that an inadvertent criticality event will not occur during refueling. In addition, the Reactor Protection System (RPS) and Control Rod System will provide protection in the unlikely event that an inadvertent criticality should occur.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes does not involve a physical change in any system's configuration and no new modes of operation are introduced. The SLCS's only purpose is to mitigate the consequences of a failure to scram during power operation. In OPCON 5, the SLCS has no analyzed function, therefore, the proposed TS change will not create the possibility of a new or

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different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The purpose of the SLCS is to bring the reactor to and maintain it in a cold shutdown condition from normal power operations following a failure to scram during power operations. The SLCS is not designed to terminate an inadvertent criticality during OPCON 5. Shutdown margin, either demonstrated or analytically determined, in conjunction with Technical Specifications and procedural controls, will assure that an inadvertent criticality event will not occur during refueling operations. In addition, the RPS and Control Rod System, which are extremely reliable, will provide protection in the unlikely event that an inadvertent criticality does occur. Therefore, the proposed TS change does not involve a reduction in a margin of safety.

Section 3: Scram Discharge Volume Valve Testing

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Scram Discharge Volume (SDV) is not an accident initiator. Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves when control rods are scram tested from a normal control and configuration of less than or equal to 50% rod density at least once per 24 months, as proposed, will have no effect on the probability or consequences of an accident previously evaluated.

This proposed TS will have a negligible impact on the conditions experienced by the vent and drain valves as they stroke closed, since the SDV is initially vented to the atmosphere, and the valves close before the SDV becomes pressurized, even during a scram at full reactor power. Reactor pressure and Control Rod Drive (CRD) discharge flow conditions do not influence the SDV vent and drain closure rates, since the SDV is of sufficient volume and initially vented such that peak pressure prior to the SDV complete isolation will not be substantial. In addition, lower coolant temperatures expected during testing at shutdown conditions will also have a negligible impact on the performance of the test. Although, there could be some variation in the performance [of] the SDV vent and drain valves to re-open when performing the test during shutdown conditions, as opposed to conducting the test during power operation, the ability of the valves to re-open is demonstrated after each reactor scram during power operation.

In the event and SDV vent or drain valve failed to open, increasing SDV level during reactor operation would cause 1) an alarm in the Main Control Room (MCR), 2) a control rod block, and finally a reactor scram initiated by the Reactor Protection System (RPS) if action is not taken to drain the SDV. Therefore, the ability to shut down the reactor is not impaired. If a SDV vent or drain valve fails to close, the redundant valve's closure would provide the required function. If both valves failed to close, a loss of reactor coolant in the form of water discharged from the CRD system would occur. The amount of water discharged will be relatively small, and is more of a concern from the standpoint of contamination to the Secondary Containment rather than a loss of reactor water inventory. A structural failure of the SDV, which bounds this case of an open SDV vent or drain line, has been previously evaluated in NUREG–0808, "Generic Safety Evaluation Report Regarding Integrity of BWR Scram System Piping." In this evaluation, the NRC concluded that, for a bounding leakage case corresponding to a rupture of the SDV, the offsite doses would be well within the limits of 10CF100, and that adequate core cooling would be maintained.

Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves, as proposed in this TS Change Request, will have an insignificant effect on the probability of occurrence of malfunction of any plant equipment. The conditions in the SDV at the time of vent and drain valve closure are not appreciably different whether a scram is initiated from power operation or during shutdown conditions. In addition, this proposed TS change eliminates the potential need for an additional startup and shutdown cycle, along with the associated challenges to all systems and components, that would be required to satisfy the current TS requirements in the event a unit were to trip off-line shortly before a planned outage when the surveillance was scheduled to be performed. Furthermore, this proposed TS changes does not affect the testing frequency for the valves.

This proposed TS change will not result in appreciably different conditions experienced by the valves as they close, and their ability to re-open is confirmed following each reactor scram from power conditions. The consequences resulting from a failed closed or failed open SDV vent or drain line have been evaluated and determined not to result in offsite doses that would exceed the limits specified in 10CFR100, or jeopardize adequate reactor core cooling capability. Therefore, the consequences of a malfunction of equipment important to safety previously evaluated is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SDV is not an accident initiator. Deletion of the requirement that the SDV be determined OPERABLE by testing the SDV vent and drain valves from a configuration of less than or equal to 50% rod density, as proposed, will not create the possibility of a different type [of] accident than any previously evaluated.

No plant equipment is added or deleted as a result of this proposed change. Since the initial conditions of pressure, temperature, and CRD system discharge flowrate have no appreciable effect on the SDV vent and drain valve performance, no different type of malfunction of any equipment important to safety is created.

Therefore, the proposed TS change does not create the possibility of a new different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

Since the initial test conditions of pressure, temperature, and CRD discharge flowrate will have no appreciable effect on the SDV vent and drain valve performance, conducting the surveillance test during shutdown conditions, as specified in this proposed TS change, will not affect the validity of the surveillance results with respect to the operability of the SDV to perform its intended safety function. Furthermore, every reactor scram is a serious plant transient and a potential challenge to safety-related systems and equipment. The potential decrease in future scrams which could result from this proposed TS change will represent an improvement in overall safety.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

Section 4: Optional Method of Scram Timing

1. The proposed Technical Specification (TS) changes involves a significant increase in the probability or consequences of an accident previously evaluated.

Scram testing control rods at zero reactor coolant pressure will not increase the probability of any control rod related transient or accident discussed in the UFSAR [Updated Final Safety Analysis Report]. UFSAR Sections 15.4.1.1 and 15.4.1.2 discuss the consequences of inadvertent reactivity insertion errors due to the withdrawal of one or more control rods. The probability of one of these events occurring is a function of operator error and equipment malfunction and is not related to scram insertion times.

An inadvertent reactivity insertion error is prevented by existing system hardware interlocks and procedural controls that are not affected by scram time testing, e.g., core design, control and design, one-rod-out interlocks, refueling interlocks, control rod sequence designations, and neutron monitoring systems.

USFAR Section 15.4.9 discusses the control rod drop accident (CRDA). The CRDA assumes that a control rod suddenly drops out of the core due to equipment malfunction. The probability of occurrence of this accident is based on an equipment malfunction and is not affected by scram testing.

Engineering analysis and control rod scram test data demonstrate that a control rod drive that will meet the 2.0 second, scram insertion time, test criteria at zero reactor coolant pressure will also meet all scram insertion criteria during reactor startup and up to 40% rated thermal power.

The 2.0 second criterion was chosen to conservatively envelop scram time criteria and reactivity insertion criteria during reactor startup and up to 40% rated power conditions. Therefore, scram testing affected control rods at zero reactor pressure will not increase the consequences of an accident previously evaluated.

UFSAR Sections 15.4.1.1 and 15.4.1.2 evaluate reactivity insertion transients at low power conditions due to inadvertent control rod withdrawal errors. The UFSAR concludes that rod withdrawal errors at low power are adequately precluded by refueling interlocks, rod worth minimizer, operating procedures, core design, and control rod hardware design. However, should operator errors followed by equipment malfunctions result in an inadvertent criticality event, the IRMs would provide the necessary rod blocks or reactor scram to preclude the operational transient. Scram insertion time limits for the continuous rod withdrawal error during startup is 5.0 seconds. This scram time criterion will be met by a control rod that scrams within 2.0 seconds at zero reactor pressure. The 2.0 second scram criterion was established to ensure that affected control rods will meet scram requirements from zero reactor pressure up to 40% core thermal power.

Also, during low power operation (UFSAR Subsection 15.4.1.2) the rod worth minimizer (RWM) prevents the operator from selecting and withdrawing an out-of-sequence control rod. During reactor operation in the power range (UFSAR subsection 15.4.2) the rod block monitor (RBM) prevents a rod withdrawal error by inhibiting inadvertent control rod withdrawal. The RWM and RBM do not rely on a scram function to mitigation the consequences of a rod withdrawal error, and therefore the consequences of an accident evaluated in the UFSAR will not be affected by the proposed changes to the Technical Specifications.

The consequences of a control rod drop accident (UFSAR Section 15.4.9) would not be affected by scram testing a control rod at zero reactor pressure. The design basis accident of the rod drop accident assumes that control rods scram within 5.0 seconds. This 5.0 second scram test requirement will be met by control rods that meet the 2.0 second criterion at zero reactor pressure.

Therefore, the proposed TS changes do not involve an increase in he probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the Technical Specifications will allow control rods to be scram tested at zero reactor pressure and then again at rated reactor pressure prior to achieving 40% rated reactor power. No new types of accidents will be introduced since control rods that meet the 2.0 second scram criterion at zero reactor pressure will also meet all scram test criteria during reactor startup and at rated reactor pressure.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The basis for shutdown margin (TS Bases 3/4.1.1) states that the reactor shall be made subcritical by all certain margin in all operating and shutdown conditions. The proposed changes to the Technical Specifications will not affect the shutdown margin requirements. Adequate shutdown margin is assured by core design, the one-rod-out interlock, and administrative controls.

The basis for the control rod insertion times (TS Bases 3/4.1.3) states that the scram times are to be consistent with those used in the transient and accident analysis. The proposed Technical Specifications changes will add an additional scram test verification for affected control rods at zero reactor pressure. The zero reactor pressure scram limit (2.0 seconds) was designed to ensure that the scram times assumed in the transient analysis will remain bounding from zero reactor pressure up to 40% rated core thermal power.

The basis for the control rod drop accident (TS Bases 3/4.1.3) states that the potential effects of a CRDA are limited. The proposed Technical Specifications changes will not effect the control rod drop results as the changes do not affect the reactivity of the rod or the rod drop velocity. The CRDA analysis is based on a 5.0 second scram insertion time criterion. The 2.0 second time criterion was established to ensure that the 5.0 second scram time criterion was valid from zero reactor pressure to 950 psig reactor pressure.

The basis for MCPR limits (TS Bases 3/4.1.3 and 2.3) states the CRD system must bring the reactor subsubcritical at a rate fast enough to prevent MCPR from becoming less than the fuel cladding safety limit during the limiting power transient analyzed in the UFSAR. The proposed changes to the Technical Specifications will not affect the scram insertion rates that are used as input to the transient analysis. The zero reactor pressure scram limit of 2.0 seconds was developed to ensure that the control rods would meet their design scram insertion times from zero reactor pressure up to 40% rated power.

The proposed changes to the Technical Specifications will not increase the probability of inadvertent criticality because the changes do not affect the reactivity worth of control rods.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

Section 5: Definition of Core Alteration

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed definition change removes the requirement to have a SRO or LSRO supervise control rod withdrawal in an off-loaded cell (i.e. no fuel assemblies). The evaluated accident potentially affected by this change is a control rod movement error during refueling resulting in inadvertent

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criticality. The supervision by a SRO or LSRO does not solely preclude inadvertent criticality and was not relied upon in the accident analysis contained in Section 15.4 of the LGS Updated Final Safety Analysis Report (UFSAR). The LGS reactor core is designed to have adequate shutdown margin with the highest-reactivity-worth control rod withdrawn. The withdrawal of a second rod with fuel assemblies loaded in the associated cell is prevented by a combination of the refueling, one-rod-out interlock, and the Limiting Conditions for Operation (LCO) requirement of TS 3.9.10.2. The LCO requirements ensure adequate shutdown margin is present prior to control rod withdrawal. This is accomplished by testing during startup following a refueling outage or by analytical calculations during refueling. The refueling interlock will provide a rod block upon an attempt to withdraw a second control rod and is required to be operable in accordance with TS 3.9.10.2 except for rods which have no fuel assemblies in the associated cell. The removal of the fuel assemblies from a cell eliminates the need for the reactivity control function of the associated rod. The physical removal of a control blade from the core by means of the refueling floor, first requires the removal of the four associated fuel assemblies in the cell. This design inherently prevents inadvertent criticality. Finally, this change is consistent with NUREG–1433 "Standard Technical Specifications." Since current analysis permits the withdrawal of a control rod blade, provided the associated cell is unloaded, and refueling mode interlocks, administrative TS requirements and the physical design of the control blade and fuel cell, which preclude inadvertent criticality, will remain unchanged, this proposed change to the TS definition of CORE ALTERATION will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The LGS UFSAR currently permits control rod withdrawal and or removal, provided there are no fuel assemblies in the associated fuel cell. The definition change removes the requirement to have a SRO or LSRO supervise rod withdrawal in an off-loaded cell. The change potentially [a]ffects a control rod movement error during refueling resulting in inadvertent criticality which has been previously evaluated. In addition, the proposed change will make no physical changes to equipment or remove administrative controls which solely preclude inadvertent criticality. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The LGS TS bases address reactivity concerns, radiological releases, control rods, and monitoring of the facility related to this change. With the four fuel assemblies removed from a cell, the control rod/blade in the associated cell has no reactivity function. The reactivity issues addressed by TS are therefore unaffected. The rod/blade coupling integrity is maintained by the requirement to perform a coupling check following maintenance. Section 15.4 of the UFSAR states that there are no radiological releases in association with a rod withdrawal error during refueling. This conclusion is maintained by the administrative requirements of TS 3.9.10.2, the refueling interlocks for one-rod-out, and the physical design of the blade and cell. Lastly, the TS requirements for Emergency Core Cooling, Plant System, Containment, and Electrical Power Distribution System, which provide the systems necessary to mitigate the effects of a radiological release during control rod movement in an unloaded cell were reviewed and were found not to be adversely [a]ffected by the proposed change. Therefore, this change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

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NRC Project Director: John F. Stolz.

Philadelphia Electric Company

Docket Nos. 50–352 and 50–353

Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: August 31, 1994.

Description of amendment request: The proposed amendments, which are consistent with the Improved Standard Technical Specifications (NUREG–1433), involve the following six (6) sections of TS changes:

Section 1: Relocation of Turbine Overspeed Protection System Requirements;
Section 2: Relocation of Primary Containment Conductor Protection Devices Requirements;
Section 3: Feedwater/Main Turbine Trip System Actuation Instrumentation Requirements;
Section 4: Permit Operability of Low Pressure Coolant Injection While Aligned to Shutdown Cooling;
Section 5: Remove Temperature Requirement for Operational Condition [OPCON] 5; and
Section 6: Reduce Frequency of Alternate Decay Heat Demonstration

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Section 1: Relocation of Turbine Overspeed Protection System Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements from the TS, to licensee controlled documents. The licensee controlled documents containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 and are subject to the change control process in the Administrative Controls Section 6.0 of the TS. Since changes to licensee controlled documents will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident previously evaluated.

This change relocates requirements to licensee controlled documents. This change will not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. This change will not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This change relocates requirements from the TS to licensee controlled documents. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the TS to licensee controlled documents are the same as the existing Technical Specifications. Since any future changes to these licensee controlled documents will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in [a] margin of safety will be allowed. Therefore, this change will not involve a significant reduction in a margin of safety.

The existing requirements for NRC review and approval of revisions, in accordance with 10 CFR 50.59, to these details and requirements proposed for relocation, does not have a specific margin of safety upon which to evaluate. However, since the proposed change is inconsistent with the BWR [boiling-water reactor] Improved Standard Technical Specifications (NUREG–1433 approved by the NRC Staff) and the change controls for proposed relocated details and requirements provide an equivalent level of regulatory authority, revising the TS to reflect the approved level of detail and requirements ensures no reduction to the margin of safety.

Section 2: Relocation of Primary Containment Conductor Protection Devices Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change relocates requirements from the TS to licensee controlled documents. The licensee controlled documents containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 and are subject to the change control process in the Administrative Controls Section 6.0 of the TS. Since changes to these licensee controlled documents will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change relocates requirements to licensee controlled documents. This change will not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing plant operation. This change will not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This change relocates requirements from the TS to licensee controlled documents. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the TS to licensee controlled documents are the same as the existing Technical Specifications. Since any future changes to these licensee controlled documents will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in [a] margin of safety will be allowed. Therefore, this change will not involve a significant reduction in a margin of safety.

The existing requirements for NRC review and approval of revisions, in accordance with 10 CFR 50.59, to these details and requirements proposed for relocation, does not have a specific margin of safety upon which to evaluate. However, since the proposed change is consistent with the BWR Improved Standard TS (NUREG–1433 approved by the NRC Staff) and the change controls for proposed relocated details and requirements provide an equivalent level of regulatory authority, revising the TS to reflect the approved level of detail and requirements ensures no reduction to the margin of safety.

Section 3: Feedwater/Main Turbine Trip System Actuation Instrumentation Requirements

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

For the proposed TS change, in the event of a Reactor Vessel Water Level—High Level 8 transient, operator action per existing plant procedures would terminate the event and prevent damage to the Main/RFP [reactor feed pump] Turbine due to water carry over. The Main/RFP Turbine do not serve a safety function, also at <25% [Rated Thermal Power] RTP a level 8 transient event will not cause a reactor scram. An analysis of information in the bases for APLHGR [average planar linear heat generation rate] and MCPR [minimum critical power ratio] has shown that a sufficient margin to core safety limit exist, so fuel integrity levels are not violated. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Should the feedwater/main turbine trip system, Reactor Vessel Water Level-High Level 8, not actuate in OPCON 1 at <25% RTP, operator action per existing plant startup procedures would protect the Main/RFP turbines. If operator action is not performed, damage to Balance of Plant, non-safety related equipment could occur. High Reactor Vessel Water Level is not a concern for reactor core safety at <25% RTP. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed TS change, which revises the feedwater/main turbine trip system actuation instrumentation, Reactor Vessel Water Level-High Level 8, operability requirements, does not affect the TS bases. The trips are designed to protect Balance of Plant Equipment at all Rate Power Levels. The Reactor Vessel Water Level-High Level 8 trips also protects fuel integrity at >25% RTP. Therefore, the proposed TS change to the operability requirements for the feedwater/main turbine trip system actuation instrumentation does not involve a reduction in a margin of safety.

Section 4: Permit Operability of Low Pressure Coolant Injection While Aligned to Shutdown Cooling

1. The proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LPCI [low pressure coolant injection] mode of RHR is an accident mitigator, not an initiator. Currently, the

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LPCI mode of RHR is an automatic Emergency Core Cooling System (ECCS) function during OPCONs 4 and 5. However, shutdown cooling has been an accident initiator in many industry events. Reliance on this loop of RHR for LPCI does not increase the probability of an accident in shutdown cooling, but the alignment for LPCI will, in itself, terminate the draindown event by exiting the shutdown cooling mode. This proposed change will permit the operability of one LPCI subsystem while the components of that subsystem are aligned and operating in the Shutdown Cooling mode of RHR, provided all other components of that subsystem are operable and can be manually realigned from the Main Control Room, if required. The required number of operable Emergency Core Cooling Systems (ECCS) remains unchanged, thus maintaining the TS required subsystem redundancy (TS Section 3.5.2 requires two operable ECCS subsystems with exception for Reactor level). With this change, the required number of LPCI subsystems are capable of performing their function of limiting and/or mitigating the consequences of an accident, by allowing the manual alignment of one LPCI subsystem, during OPCONs 4 and 5. This allowance is justified since the change only applies to OPCONs 4 and 5, when reactor temperature, and associated heat loads are sufficiently low to provide the operator sufficient time to perform the manual realignment, from the Main Control Room, of the RHR pump suction valves and restart of the pump following LPCI injection conditions. Similar allowances for LPCI are currently permitted during OPCON 3, since the decay heat loads are significantly reduced compared to OPCON 1, which is the mode of operation under which ECCS capability is analyzed (Section 6.3 of the LGS [Limerick Generating Station] Updated Final Safety Analysis Report (UFSAR)). The change will not increase the probability of occurrence or consequences of a malfunction of equipment since there will be no physical changes made to plant equipment nor the method of their operation that would result in an unanalyzed condition. PECO Energy [Philadelphia Electric Company] evaluated the need for manual realignment of the pump minimum flow path since operating in Shutdown Cooling typically results in the isolation of the pump minimum flow path to prevent inadvertent draining of the reactor vessel. The associated pump is still operable since this change is limited to OPCONs 4 and 5, when reactor pressure is sufficiently low to allow immediate injection to the reactor vessel without a minimum flow path. In situations, while in OPCON 4, where reactor pressure may not be sufficiently low to allow injection, the RHR system will not be aligned for Shutdown Cooling, since the reactor vessel pressure will be greater than the RHR "cut-in" permissive pressure. In addition, Administrative Controls are currently in place to realign RHR to the LPCI mode for planned pressure increases. Finally, this change is consistent with NUREG–1433 "Standard Technical Specifications." Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The LPCI mode of RHR is an accident mitigator, not an initiator. This change will not reduce the number of required ECCS during OPCONs 4 and 5. This change will permit the operability of one LPCI subsystem while the components of that subsystem are aligned and operating in the Shutdown Cooling mode of RHR. The change does not alter current methods of plant operation nor does the change make a physical change to plant equipment resulting in an unanalyzed malfunction of equipment. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The basis of TS Section 3.5.2 is to ensure sufficient ECCS capacity to maintain core cooling in OPCONs 4 and 5. This proposed change does not affect the required number of ECCS during OPCONs 4 and 5; therefore, adequate capability through subsystem redundancy is maintained. The amount of time required to obtain rated LPCI conditions is increased due to the manual realignment, from the Main Control Room, of the suction valves and restart of the RHR pump following LPCI injection conditions. This change is in conformance with the current TS bases, since the operator has sufficient time to perform the manual realignment, during OPCONs 4 and 5, ensuring sufficient ECCS capability to maintain core coverage. In addition, NUREG–1433 BASES states, in part, "One LPCI subsystem may be aligned for decay heat removal and considered OPERABLE for the ECCS function, if it can be manually realigned (remote or local) to the LPCI mode and is not otherwise inoperable. Because of low pressure and low temperature conditions in MODES 4 and 5, sufficient time will be available to manually align and initiate LPCI subsystem operation to provide core cooling prior to postulated fuel uncover." Therefore, this change will not involve a significant reduction in a margin of safety.

Section 5: Remove Temperature Requirement for Operational Condition 5

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve a physical change in the configuration of any systems important to safety. The elimination of a temperature requirement from the definition of OPCON 5 was reviewed for potential effect on reactor coolant system materials and for potential effect on reactivity. This TS change does not result in system temperature and pressure change or reactivity changes not previously analyzed. The reactor pressure vessel will still be restricted to the temperature and pressure limits of TS Section 3/4.4.6 which includes heatup/cooldown rates and minimum boltup limits. The reactor pressure vessel temperature and pressure limits will still ensure proper protection of the reactor coolant system materials. Therefore, this TS change does not increase the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change does not involve any physical change in plant configuration, and reactor coolant system temperature and pressure are still restricted per TS Selection 3/4.4.6. The decrease in moderator density corresponding to the potential change in temperature (i.e., above 140°F and below 200°F) would have a negligible, however conservative effect on shutdown margin. Therefore, this TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

This proposed TS change does not change the reactor coolant system material restrictions as defined in TS Section 3/4.4.6. Therefore, the reactor pressure vessel will still be maintained under the current temperature and pressure restrictions as well as the current boltup limits.

The decrease in moderator density corresponding to the potential temperature change from 140°F to 200°F is insignificant and would afford approximately the same moderator effect. Therefore, shutdown margin could only be improved (although marginally) at these evaluated temperatures. The actual coolant temperature will be administratively controlled to provide for personnel safety. Therefore, this change will not involve a reduction in a margin of safety.

Section 6: Reduce Frequency of Alternate Decay Heat Demonstration

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant systems or equipment. This proposed TS change will allow the use of either an "analytical approach" (i.e., calculation) or "demonstration" to ensure the operability of an alternate decay heat removal method. This proposed TS change does not involve any physical changes to plant systems or components, nor does it affect the capability, availability, or operability of any decay heat removal systems/methods (e.g., Shutdown Cooling). The Shutdown Cooling mode of operation of the Residual Heat Removal (RHR) system, and Residual Heat Removal Service Water (RHRSW) system, are not impacted by this proposed TS change, and will continue to function as designed to remove decay heat loads from the reactor primary coolant system. The RHRSW system and various modes of operation of the RHR system, e.g., Low Pressure Coolant Injection (LPCI) are not accident initiators, since these systems function to mitigate the consequences of an accident. This proposed TS change is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4," dated September 28, 1992).

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS change does not involve any physical changes to plant systems or equipment. The proposed TS change will allow the use of a "calculation" or "demonstration" as the means for determining the operability of an alternate decay heat removal method. The proposed TS change does not involve any physical changes to plant systems or equipment. This proposed TS change will not affect the operation of the Shutdown Cooling mode of the RHR system. This mode of operation will continue to function as designed to remove decay heat loads from the reactor primary coolant system. This proposed TS change will not impact the operation of the other modes of operation of the RHR system (e.g., LPCI), nor will it affect the operation of the RHRSW system. These systems will continue to function as designed, which is to mitigate the consequences of an accident. This proposed TS change will not introduce the potential for equipment malfunctions or failures. This proposed TS change is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433).

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to the TS does not involve any physical changes to plant systems or equipment. This proposed TS change does not make any physical modifications to plant systems or equipment, and is consistent with the criteria delineated in the Improved Standard TS (i.e., NUREG–1433). The proposed TS change will not impact any mode of operation of the RHR system or the RHRSW system.

This proposed TS change involves revising TS ACTION statements, and associated supporting Bases sections, to allow for the use of a "calculation" or "demonstration" to ensure the operability of an alternate decay heat removal method. The bases for the TS sections affected by this proposed change indicate that sufficient heat removal capability, system redundancy, and coolant circulation will be available to facilitate decay heat removal and mixing to assure accurate temperature indication.

This proposed TS change does not affect the function or availability of any decay heat removal system or method.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York

Docket No. 50–333

James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: October 3, 1994.

Description of amendment request: The proposed amendment would extend the functional test intervals and allowable out-of-service times for some of the instruments subject to requirements of the Technical Specifications (TSs). These proposed changes are based upon NRC-approved Licensing Topical Reports prepared under the direction of the Boiling Water Reactors Owners Group and intended to enhance plant safety by reducing the potential for test related scrams, excessive test cycles on equipment, and operator errors. The proposed amendment would also: (1) Remove the Average Power Range Monitor (APRM) downscale scram function from the TSs, remove instrument response time values from the TSs in accordance with Generic Letter 93–08, and incorporate various editorial changes and clarifications into the TSs. The proposed amendment involves reactor protection system, primary containment isolation, emergency core cooling, control rod block, and anticipated transient without scram recirculation pump trip instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated because:

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a. Incorporate STI [Surveillance Test Interval] and AOT [Allowable Out-Of-Service Time] Improvement—Category 1

The proposed changes are limited to an extension of the surveillance testing intervals and allowable out-of-service times of plant instrumentation. The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability of occurrence of an accident.

Regarding the consequences of an accident, the GE [General Electric Company] Licensing Topical Reports (References 1 through 7) concluded that the proposed extensions in the STI and AOT for the safety system instrumentation results in an insignificant change in the core damage frequency. The extension of the STI/AOTs results in a slight increase in the unavailability of the safety functions. However, this effect is offset by a reduction in the probability of inadvertent plant trips due to reduced testing. The overall effect on the probability of an accident is negligible. While the effects of reducing unnecessary cycles on safety system instrumentation is not quantifiable, the effect will be to further reduce the core damage frequency. The NRC concurred in their SERs [Safety Evaluation Reports] (References 8 through 15) with these conclusions. Consequently, there is not a significant increase in the consequences of an accident.

b. Relocation of the Instrument Response Time Limits—Category 2

The change involves the use of an alternate regulatory process for controlling the instrument response time limits. The change does not introduce any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

The design basis accident applicable to the startup power region is the Control Rod Drop Accident (CRDA). The FSAR [Final Safety Analysis Report] does not credit the APRM downscale scram in the termination of this accident. Accident mitigation is provided by the APRM fixed high neutron flux scram. Therefore, elimination of this scram functions has no adverse affect on previously evaluated accidents.

d. Miscellaneous Changes—Category 4

The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The changes involve enhancements that clarify the Technical Specification requirements.

2. Create the possibility of a new or different kind of accident from those previously evaluated because:

a. Incorporate STI and AOT Improvements—Category 1

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. The changes reduce the probability of accidents initiated by test-induced plant trips.

b. Relocation of the Response Time Limits—Category 2

The change involves the use of an alternate process for controlling the instrument response time limits. The change does not introduce any accident initiators since it does not involve any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

Scram functions are intended to shutdown the reactor following transients or accidents and their removal does not introduce an accident initiator. The limiting accident evaluated in the FSAR for the startup power region is the control rod drop accident. This accident is assumed to occur irrespective of the scram functions provided to terminate this accident.

d. Miscellaneous Changes—Category 4

The changes do not introduce any new accident initiators or failure mechanisms since the changes do not alter the physical characteristics of any plant system or component. The changes involve enhancements that clarify the Technical Specification requirements.

3. Involve a significant reduction in the margin of safety because:

a. Incorporate STI and AOT Improvements—Category 1

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The affected instrumentation setpoints already account for the effects of drift and include sufficient allowance for an extension in the STIs. The evaluations presented in the referenced Licensing Topical Reports concluded that the overall effect of the proposed changes provides a not increase in plant safety. The improvement is achieved by reducing the potential for: (a) Test related plant scrams (reduced challenges to plant shutdown systems and improved plant availability); (b) excessive test cycles on equipment (reduced wear-out potential); (c) operator errors (AOT provides reasonable time for making repairs and tests); (d) scrams that occur when inoperable channels are tripped because insufficient repair time exists; and (e) diversion of plant personnel and resources on unnecessary testing (potential safety and operational improvement).

b. Relocation of the Response Time Limits—Category 2

The change involves the use of an alternate regulatory process for controlling the instrument response time limits. The change does not introduce any new modes of plant operation, make any physical changes, alter any operational setpoints, or change the surveillance requirements.

c. Delete APRM Downscale Scram—Category 3

The only scram function that the UFSAR [Updated Final Safety Analysis Report] takes credit for in the mitigation of the limiting accident (control rod drop accident) is the APRM 15% power fixed high neutron flux scram. This scram function, as well as the IRM [Intermediate Range Monitor] high flux scram function in the startup mode which could also terminate this accident, are not affected by this change. Only the APRM downscale scram, for which the UFSAR takes no credit in the termination of any analyzed event, is eliminated by this change. The APRM downscale control rod block is not affected by this change. Elimination of the APRM downscale scram will avoid the need to operate the plant in a "half scram" condition for certain IRM/APRM channel bypass combinations, therefore eliminating the potential for an inadvertent plant transient. For these reasons, the change does not involve a significant reduction in the safety margin.

d. Miscellaneous Changes—Category 4

The changes assure compliance with the Technical Specifications by improving its clarity and accuracy. For these reasons the changes will improve the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh.

Power Authority of the State of New York

Docket No. 50–333

James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.E.4 to establish that the manual cycling of reactor coolant system (RCS) safety/relief valves (SRVs) during plant startups is to be accomplished within 12 hours after steam pressure and flow are adequate to perform the testing. TS 4.6.E.4 currently requires this testing to be performed within 12 hours of continuous power operation at a reactor steam dome pressure of at least 940 psig. This change was proposed to minimize the potential for undesirable pressure transients in the RCS. The amendment would also make several editorial changes to clarify the intent of TS's involving SRV valve testing and performance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not change the test method or conditions under which valve testing may be performed and there is no affect on assumptions used for previously analyzed accidents. The original operating license for FitzPatrick did not specify any time limit for completing manual testing of the safety/relief valves.

2. Create the possibility of a new or different kind of accident from those previously evaluated because the proposed amendment does not involve any modification of plant equipment or changes in plant operating conditions.

3. Involve a significant reduction in the margin of safety because the proposed amendment makes no changes to the operability of performance requirements for the safety/relief valves including the ADS [Automatic Depressurization System] function. Valve lift setpoints and the minimum number of operable valves required are not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 9, 1994.

Description of amendment request: The proposed amendment modifies the visual inspection for snubbers in the Technical Specifications and is consistent with the guidance provided in Generic Letter 90–09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of snubbers, and does not change the ability of the snubbers to perform their intended functions. Visual inspection of snubbers is a separate process that complements the functional testing program. The NRC has concluded that functional testing of snubbers provides a 95 percent confidence level and 90 to 100 percent of the snubbers will operate within the specified acceptance limits. Any change in the visual inspection frequency will not have any significant impact on the operability of the snubbers.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not result in an unanalyzed condition. Replacing the current method of determining visual surveillance intervals with a new method approved by the NRC in Generic Letter 90–09 will not change the level of confidence in snubber operability. A new procedure for determining visual inspection frequencies will not result in an unreviewed failure mechanism.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes incorporate the alternate Technical Specification requirements for visual inspection of snubbers identified in Generic Letter 90–09. The alternate visual inspection criteria consider the size of the category of snubbers when evaluating inspection intervals due to failure rates. Since the functional testing requirements remain unchanged and do not reduce the operability confidence levels, there is no resultant change in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 20, 1994

Description of amendment request: The proposed amendment modifies the Technical Specifications for auxiliary feedwater to reduce the secondary side steam pressure required for testing the steam turbine driven auxiliary feedwater pump (AFW). The proposed amendment also clarifies the time

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required to perform the steam turbine driven auxiliary feedwater pump surveillance test when entering Mode 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to the minimum required test pressure for the steam turbine driven AFW pump does not affect the operation of the pump during conditions when it is required to performed its safety function. The clarification that the secondary side steam pressure is steam generator pressure is editorial. Reduced Tavg and increased steam generator tube plugging will affect the normal operating secondary side steam pressure.

However, the zero load secondary side steam pressure is not affected, therefore, the conditions in which the steam turbine driven AFW pump will be required to perform its safety function are not changed.

Providing a specific time frame in which to perform the surveillance test after attaining the required steam pressure ensures that the test will be performed in a timely manner. The time frame specified is consistent with NUREG–1431, Standard Technical Specifications—Westinghouse Plants.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident.

The proposed changes do not change system configurations, plant equipment, or analysis. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the minimum required steam pressure will not affect the heat removal capability of the AFW System. Therefore, the value assumed in the safety analysis is not changed. The change to the specification 4.0.4 exemption to provide a specific time period does not affect any margins of safety. Therefore, these changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of amendment request: September 20, 1994.

Description of amendment request: These proposed changes would adopt the Westinghouse Standard Technical Specifications (NUREG–1431) Channel Functional Test surveillance frequency for the Manual Reactor Trip Switches and for the Reactor Trip Breakers (RTB) and relocate RTB maintenance requirements from the Technical Specifications to the Salem, Units 1 and 2, Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes do not affect accident conditions or assumptions. They change the existing surveillance test and their frequencies to make them consistent with industry standards, and relocate maintenance requirements to the UFSAR [Updated Final Safety Analysis Report].

The changes, for the Manual Reactor Trip Switch and Reactor Trip Breaker (RTB) CHANNEL FUNCTIONAL TEST frequency, incorporate the established Westinghouse STS surveillance frequencies. These surveillance frequencies have received previous NRC review and generic approval via the issuance of NUREG–1431. The Westinghouse STS does not require Channel Functional Test for the Manual Reactor Trip Switches or the RTB prior to each reactor startup.

The addition of the RTB shunt trip feature for automatic reactor trips, the improved RTB maintenance activities developed over the past several years, and the implementation of 10 CFR 50.62 requirements have improved RTB reliability. These features are unaffected by the proposed changes. Excessive RTB testing results in increased component wear and possibly reduced component life. Testing the RTBs with associated logic trains reduces the potential for human errors and associated plant transients.

The consequences of accidents previously evaluated are unaffected by the proposed changes.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not modify any system or equipment, nor alter any process function. The Manual Reactor Trip Switch and RTB functionality remains unchanged. Therefore these changes do not create a new or un-evaluated accident or operating condition.

3. Does not involve a significant reduction in a margin of safety.

The proposed changes adopt the NRC approved Westinghouse STS surveillance testing frequencies to maintain RTB reliability. Reduced testing at power, consistent with the associated logic train test frequency, reduces the potential for inadvertent actuation and personnel errors. Thus, the proposed changes enhance plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Saxton Nuclear Experimental Corporation

Docket No. 50–146

Saxton Nuclear Facility, Bedford County, Pennsylvania.

Date of amendment request: August 8, 1994. This supersedes the request dated June 23, 1993.

Description of amendment request: The proposed amendment would revise the technical specifications to allow characterization activities related to the decommissioning of the Saxton Nuclear Facility and add administrative activities associated with the characterization activities.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards considerations because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The activities associated with characterization of the facility will have a minimum impact on the physical condition of the containment vessel as it relates to the risk of fire and has no effect on the risk of flooding.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

In its present condition, the only accidents applicable to the site are fire, flood, and radiological hazard. The possibility of a new or different type of accident than that previously evaluated in the FSAR will not be created by the implementation of activities permitted by the approval of this amendment request.

3. Involve a significant reduction in a margin of safety.

No margins of safety relevant to the equipment at the facility exist. Activities involved in characterization will not involve a reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678.

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Seymour H. Weiss.

Southern California Edison Company, et al.

[Docket Nos. 50–361 and 50–362

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California.

Date of amendment request: August 26, 1994.

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.7.5, "Control Room Emergency Air Cleanup System." The proposed revision to TS 3/4.7.5 will provide a Limiting Condition of Operation (LCO) 3.0.4 exception for MODES 5, 6, or a defueled configuration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Control Room Emergency Air Cleanup System (CREACUS) provides a protected environment from which operators can control the plant following an uncontrolled release of radioactivity or toxic gas.

[The following are the proposed changes to Technical Specification 3/4.7.5 "Control Room Emergency Air Cleanup System:"]

Proposed Change 1 [adds the following statement to the Applicability statement of TS 3.7.5: "or during movement of irradiated fuel assemblies."] will replace the existing wording of the Applicability with the following words "ALL MODES or during movement of irradiated fuel assemblies." The requirement concerning movement of irradiated fuel assemblies was added because the existing Applicability statement does not reflect the possibility of radiation exposure to the operators inside the control room during this event. A fuel handling accident can happen during defueled operations. In this case, movement of the last irradiated fuel assembly from the empty core inside containment is not covered by the existing Applicability.

Also, a fuel handling accident can happen inside the Fuel Handling Building when irradiated fuel is moved from one location to another in the Spent Fuel Pool (SEP). The need for the CREACUS during fuel handling is based on safety analysis assumptions which are specified in Chapter 15 of the SONGS Unit 2 and 3 Updated Final Safety Analysis Report (UFSAR).

Addition of the new Applicability requirement will not involve a significant increase in the possibility or consequences of any accident previously evaluated.

Proposed Change 2 [a new Action d): "The provisions of Specification 3.0.4 are not applicable when entering MODES 5, 6, or defueled configuration" is added to the Action section of TS 3.7.5] will add a new Action d) which reads: "the provisions of Specification 3.0.4 are not applicable when entering MODES 5, 6, or defueled configuration." Existing Technical Specification 3/4.7.5 prohibits entering MODE 6 from a defueled configuration unless both CREACUS trains are OPERABLE. With the addition of the statement "or during movement of irradiated fuel assemblies" to the Applicability, OPERABILITY of the CREACUS will be ensured prior to movement of irradiated fuel assemblies. Therefore, the only threshold between defueled configuration and MODE 6 is the position of the first irradiated fuel assembly—whether it is in the reactor vessel or external to it. This threshold has no safety significance because the only credible event during the transition from a defueled configuration to MODE 6 and from MODE 6 to defueled configuration is a Design Basis Fuel Handling Accident which is covered by the proposed Applicability. Therefore, this threshold can be expected from Limiting Condition for Operation (LCO) 3.0.4.

The threshold of entering MODE 5 from MODE 6 consists of fully tightening the last reactor vessel head closure bolt. This evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4. The threshold of entering MODE 6 from MODE 5 consists of untightening at least one reactor vessel head closure bolt. If no irradiated fuel assemblies are being moved, this evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4 also.

The threshold of entering MODE 5 from MODE 4 consists of decreasing Reactor Coolant System (RCS) temperature from 350°F > Tavg > 200°F to Tavg [less than or equal to] 200°F by initiating shutdown cooling. If no irradiated fuel assemblies are being moved, this evolution has no safety significance from the point of view of isolating the control room from external hazards. Therefore, this MODE change can be excepted from LCO 3.0.4.

The MODE changes have no significance relative to releases. Therefore, since CREACUS can be inoperable during each individual mode, it should not be required to have two OPERABLE CREACUS trains before mode changes.

Therefore, addition of the new Action will not involve a significant increase in the probability or consequences of any accident previously evaluated.

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Proposed Change 3 [adds the following words "or defueled configuration when moving irradiated fuel assemblies" after the words "Units 2 and 3 in MODE 5 or 6" in the Action statement of TS 3.7.5] will add the words "or defueled when moving irradiated fuel assemblies" to the Action statement when either Unit is in MODE 5 or 6. These words are added for consistency with a proposed Applicability statement "or during movement of irradiated fuel assemblies." Without these words it is not clear what Actions should be entered if the LCO requirement is not met in a defueled configuration when moving irradiated fuel assemblies. By adding these words Actions (a) and (b) became applicable in a defueled configuration when moving irradiated fuel assemblies. This change applies the requirement of the proposed Applicability to the Action when either Unit is in MODES 5 or 6. Therefore, addition of these words to the Action statement will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Proposed Change 4 [adds the following words "or movement of irradiated fuel assemblies" after the words "suspend all operations involving CORE ALTERATIONS or positive reactivity changes" in the Action (b) statement of TS 3.7.5] will add the words "or movement of irradiated fuel assemblies" in the Action (b) statement. These words are added for consistency with the proposed Applicability statement and proposed Action statement when either Unit is in MODES 5 or 6, or a defueled configuration when moving irradiated fuel assemblies. Without addition of these words Action (b) did not specify what should be done when any Unit is in a defueled configuration when moving irradiated fuel assemblies. Therefore, addition of these words to the Action statement will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The changes proposed herein do not reduce the reliability or performance of the Control Room Emergency Air Cleanup System (CREACUS). The proposed LCO 3.0.4 exception for CREACUS permits MODE 5, MODE 6, or defueled configuration entry with one train of CREACUS inoperable. This change does not affect CREACUS reliability and its capability to perform its intended design functions.

Additional requirements in the Applicability to have two Control Room Emergency Air Cleanup Systems OPERABLE during movement of irradiated fuel covers the consequences of a fuel accident in the Fuel Handling Building and in containment when the reactor vessel is defueled. Operation of the facility will remain unchanged as a result of the proposed changes.

Also, addition of the requirement to suspend movement of irradiated fuel assemblies when either Unit is in a defueled configuration when moving irradiated fuel is made for consistency with the proposed Applicability statement and Action statement. The proposed Action statement emphasize that Actions (a) and (b) are applicable not only when either Unit is in MODES 5 or 6, but also when in a defueled configuration when moving irradiated fuel assemblies. This change does not affect CREACUS reliability and its capability to perform its intended design functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of the facility in accordance with these changes will not be adversely affected as a result of the changes proposed herein. The proposed changes include a change to the Applicability, adding the new Action (d), modifying the Action statement when either Unit is in MODES 5 or 6, and modifying the Action (b). The proposed LCO 3.0.4 exception for CREACUS permits MODE 5, MODE 6, or defueled configuration entry with one train of CREACUS inoperable. Additional requirements in the Applicability statement to have two Control Room Emergency Air Cleanup Systems OPERABLE during movement of irradiated fuel, covers the consequences of the fuel accident in the Fuel Handling Building. Also, this requirement covers the movement of irradiated fuel when the reactor vessel is defueled. Modified Action statement for either Unit in MODES 5 or 6 is made for consistency with the proposed Applicability statement. Modified Action (b) covers the possibility of both the CREACUS trains being inoperable in a defueled configuration when moving irradiated fuel assemblies.

The margin of safety as defined in Bases 3/4.7.5 is limiting the dose to control room personnel to 5.0 rem or less whole body, or its equivalent. As discussed above, operation of the CREACUS will be unchanged as a result of the proposed changes. Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: Theodore R. Quay.

Southern California Edison Company, et al.

Docket Nos. 50–361 and 50–362.

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California.

Date of amendment requests: September 16, 1994.

Description of amendment requests: The licensee proposes to revise the linear heat rate (LHR) limit in Technical Specification (TS) 3/4.2.1, "Linear Heat Rate." TS 3/4.2.1 requires maintaining the LHR at or below 13.9 kilowatts per linear foot (kw/ft) for steady-state operation. This amendment request is to revise this value from 13.9 kw/ft to 13.0 kw/ft. The Bases of TS 3/4.2.1, "Linear Heat Rate," are also being revised to reflect the new value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The only event impacted by this Technical Specification (TS) change is the Large Break Loss of Coolant Accident (LBLOCA) which has been reanalyzed. There is a direct correlation between the magnitude of the TS 3/4.2.1 Linear Heat Rate (LHR) limit and the calculated peak cladding temperature (PCT). Since the LHR is being reduced in value, which is a conservative change, there will be no increase in the consequences of the event. The LBLOCA reanalysis, performed using the new LHR limit in support of an optimized fuel loading pattern, resulted in a reduction of the calculated LBLOCA PCT. Therefore, this change will not involve an increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This amendment request does not involve any change to plant equipment or operation. The linear heat rate limit provided in T/S 3.2.1 is used only in the LBLOCA analysis. No change to the LBLOCA methodology was made. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operation are determined. There is no change in the PCT acceptance criterion for this event as a result of the proposed reduction in the LHR limit. Therefore, there is no reduction in the margin of safety from the acceptance limit to the mechanical failure point of the fuel. Additionally, the analysis value for the LBLOCA PCT is reduced to 2160 °F. This results in an increase in the analysis margin between the acceptance criterion and the analysis value. Therefore, this proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: Theodore R. Quay.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company

Docket No. 50–346

Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of amendment request: October 7, 1994.

Description of amendment request: The proposed amendment would remove the existing Surveillance Requirement (SR) 4.5.2.d.3 for the Low Pressure Injection (LPI) System and the existing SR 4.6.2.1.c for the Containment Spray (CS) System since the requirement to leak test these systems is programmatically covered in TS 6.8.4.a, "Primary Coolant Sources Outside Containment." Additionally, changes are proposed to TS Bases 3/4.5.2 and 3/4.6.2.1 to reflect the elimination of the above SRs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not involve a significant increase in the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by removing the leak test requirements of LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment." TS 6.8.4.a requires integrated leak testing at refueling cycle intervals or less, for each system outside containment, that could contain highly radioactive fluids during a serious transient or accident.

The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated event.

These changes are consistent with NUREG–1430, Revision 0, "Improved Standard Technical Specifications for B&W Plants." The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of any new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by these proposed changes to LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment," which requires leak testing to be performed on the LPI and CS Systems. These changes are consistent with NUREG–1430. The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative. The proposed changes do not alter any accident scenarios.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The changes do not involve a significant reduction in the margin of safety because the proposed changes to the LPI System SR 4.5.2.d.3 and CS System SR 4.6.2.1.c do not reduce or adversely affect the capabilities of any plant structures, systems or components. The purpose of these SRs is already encompassed by the existing program requirements of TS 6.8.4.a, "Primary Coolant Sources Outside Containment." These changes are consistent with NUREG–1430. The associated changes to TS Bases 3/4.5.2 and 3/4.6.2.1 are administrative.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: C.A. Carpenter.

Virginia Electric and Power Company

Docket Nos. 50–280 and 50–281

Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of amendment request: October 11, 1994.

Description of amendment request: The proposed changes would modify the surveillance frequencies of the containment hydrogen analyzers.

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Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specifications will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed changes to the surveillance requirements for the hydrogen analyzers have no impact on the probability of any accident occurrence. The hydrogen analyzers are maintained in a standby mode during normal operation and are made fully operable within thirty minutes after a safety injection signal to provide indication of the hydrogen concentration in containment after a loss-of-coolant accident. This instrumentation is used solely post-accident to monitor containment conditions. Reduced testing of a post-accident monitor does not contribute to the probability of any previously analyzed accident. These monitors have no automatic safety function. Furthermore, the hydrogen analyzers will be operated in the same manner, and the operability requirements are not being altered. In addition, the Post-Accident Sampling System serves as a diverse means to confirm post-accident hydrogen concentration in containment. Therefore, the consequences of a Design Basis Accident are not being increased by the proposed change in surveillance test frequency of the hydrogen analyzers.

Reducing the frequency of surveillance testing could however decrease the timeliness in identifying an inoperable hydrogen analyzer. However, our surveillance test experience has shown that the analyzers have been very stable with repeatable results, and we conclude that the change in test frequency should not affect the reliability or operability of the analyzers. Likewise, the NRC has determined in Generic Letter 93–05 that a reduced frequency of surveillance testing during power is acceptable to determine hydrogen analyzer operability.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no plant modifications or changes in methods of plant operation introduced by this change in hydrogen analyzer surveillance frequencies. The hydrogen analyzers are maintained in a standby mode during normal operation and are fully operable within thirty minutes after a safety injection signal to provide indication of the hydrogen concentration in containment after a loss-of-coolant accident. Therefore, the possibility of a new or different kind of accident than previously evaluated is not created by the proposed changes in surveillance frequency of the control rods [hydrogen analyzers surveillance frequencies].

3. Involve a significant reduction in a margin of safety.

The hydrogen analyzer surveillance requirements do not affect the margin of safety in that the operability requirements for the safety systems and containment remain unchanged. The hydrogen analyzers only provide indication and do not perform any direct function to mitigate the consequences of any previously analyzed accidents. Furthermore, the change in surveillance frequency is associated with a post-accident monitor with no automatic safety functions and a diverse means of confirming the parameter by the Post-Accident Sampling System. Therefore, the margin of safety is not altered by this proposed change in the surveillance frequencies of the hydrogen analyzers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Mohan C. Thadani (Acting).

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al.

Docket No. 50–336

Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: September 26, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding a footnote to Surveillance Requirement 4.6.1.2.d that defers the performance of Type B and C containment leak rate tests to the end of the twelfth refueling outage.

Date of publication of individual notice in **Federal Register**: October 13, 1994, (59 FR 52005).

Expiration date of individual notice: November 14, 1994.

Local Public Document Room location: Learning Resource Center, Three Rivers Community—Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al.

Docket Nos. STN 50–528, STN 50–529, and STN 50–530

Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of application for amendments: August 23, 1993, as supplemented by letter of July 21, 1994.

Brief description of amendments: These amendments remove the Units 1 and 3 license condition regarding an augmented reactor coolant pump vibration monitoring program and the confirmatory order modifying the Unit 2 license regarding the same issue.

Date of issuance: October 27, 1994.

Effective date: October 27, 1994.

Amendment Nos.: 84, 72, and 56.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 29, 1993 (58 FR 50963).

The additional information in the letter dated July 21, 1994, was clarifying in nature and did not affect the staff's previously published no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company

Docket Nos. 50–317 and 50–318

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 & 2, Calvert County, Maryland.

Date of application for amendments: August 4, 1994.

Brief description of amendments: The amendments delete Technical Specifications 3/4.3.3.3, 6.9.2.b, 6.9.2.d, and Bases 3/4.3.3.3, which provide the requirements for the operation and the testing of seismic monitoring instrumentation, and relocates them to the Updated Final Safety Analysis Report and plant procedures.

Date of issuance: October 21, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 199 and 176

Facility Operating License No. DPR–53 and DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47165).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company

Docket Nos. 50–317 and 50–318

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of application for amendments: November 4, 1993.

Brief description of amendments: These amendments revise the Updated Final Safety Analysis Report to address the removal of orifice plates in the containment vent/purge lines of each unit and revise the maximum hypothetical accident analysis to address the increased flow as the result of removing the orifice plates.

Date of issuance: October 21, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 200 and 177.

Facility Operating License No. DPR–53 and DPR–69: Amendment revised the Licenses.

Date of initial notice in **Federal Register**: February 25, 1994 (59 FR 9254).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Commonwealth Edison Company

Docket Nos. STN 50–454 and STN 50–455

Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Date of application for amendments: August 1, 1994, as supplemented by your letters dated September 7, 1994, and September 17, 1994 (two letters), with clarifying information submitted by letters dated September 22, 1994, September 23, 1994, September 30, 1994, October 17, 1994, and October 24, 1994.

Brief description of amendments: The purpose of the amendment is to incorporate voltage-based repair criteria into the Byron, Unit 1, technical specifications, thereby permitting the use of voltage-based steam generator (SG) tube plugging criteria for a specific class of SG tube defects.

Date of issuance: October 24, 1994.

Effective date: October 24, 1994.

Amendment Nos.: 66 and 66.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1994 (59 FR 48917).

The clarifying information in the September 22, 1994, September 23, 1994, September 30, 1994, October 17, 1994, and October 24, 1994, submittals did not affect the initial determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Commonwealth Edison Company

Docket Nos. STN 50–454 and STN 50–455

Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457

Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: March 23, 1994, as supplemented on July 26, 1994.

Brief description of amendments: The amendments change the Technical Specifications to reflect a reduced thermal flow to compensate for increased steam generator tube plugging up to 15 percent of the total number of tubes. The amendment also approves the use of higher boron concentration in the refueling water storage tank, the reactor coolant system accumulators, and the refueling cavity.

Date of issuance: October 21, 1994.

Effective date: October 21, 1994.

Amendment Nos.: 65, 65, 56, and 55.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

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Date of initial notice in **Federal Register**: August 15, 1994 (59 FR 41802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consumers Power Company

Docket No. 50–255

Palisades Plant, Van Buren County, Michigan.

Date of application for amendment: November 15, 1991, supplemented February 22, March 11, April 7, and August 23, 1994.

Brief description of amendment: This amendment is a complete rewrite of the instrumentation operability requirements.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994.

Amendment No.: 162.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27052)

The August 23, 1994, request contained editorial changes within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Entergy Operations, Inc.,

Docket No. 50–313

Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas.

Date of amendment request: January 13, 1994.

Brief description of amendment: The amendment revised the specifications governing the reactor protection system (RPS) to permit the plant to operate indefinitely with one RPS channel in by-pass.

Date of issuance: October 24, 1994.

Effective date: October 24, 1994.

Amendment No.: 174.

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 2, 1994 (59 FR 10005).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company

Docket Nos. 50–250 and 50–251

Turkey Point Plant Units 3 and 4, Dade County, Florida.

Date of application for amendments: February 18, 1994, as supplemented by letter dated August 5, 1994.

Brief description of amendments: These amendments delete the audit frequencies from the Technical Specifications (TS) and modify the TS administrative control requirements for emergency and security plans.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994.

Amendment Nos: 168 and 162.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 30, 1994 (59 FR 14889). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al.

Docket No. 50–219

Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of application for amendment: August 19, 1994.

Brief description of amendment: The amendment updates and clarifies the surveillance requirements for control rod exercising and standby liquid control pump operability testing to be consistent with Generic Letter 93–05.

Date of Issuance: October 19, 1994.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 172.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47168).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 19, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

IES Utilities Inc.

Docket No. 50–331

Duane Arnold Energy Center, Linn County, Iowa.

Date of application for amendment: May 28, 1992, as supplemented on January 6, May 27 and October 20, 1994.

Brief description of amendment: The amendment revised the Technical Specifications by changing the limiting conditions for operation and surveillance requirements for primary containment integrity, secondary containment integrity, and other systems and equipment of Section 3.7, Containment Systems. Limiting conditions for operation and surveillance requirements for drywell average air temperature and secondary containment automatic isolation dampers were also added.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994, to implemented within 120 days.

Amendment No.: 201

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34665). The licensee's October 20, 1994, submittal, provided clarifying information at the request of the NRC staff. This submittal did not change the initial application or the no significant hazards determination as originally noticed. Therefore, renoticing was not warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al.

Docket No. 50–423

Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut.

Date of application for amendment: September 30, 1993, as supplemented July 8, 1994.

Brief description of amendment: The amendment revises the Technical

Specifications by increasing the minimum volume of fuel oil required to be stored in the emergency diesel generator (EDG) day tank from 205 gallons to 278 gallons, and clarifies the bases for the EDG fuel oil storage tank and day tank minimum fuel oil volume requirements.

Date of issuance: October 17, 1994.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 97.

Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 10, 1993 (58 FR 59753).

The July 8, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Pennsylvania Power and Light Company

Docket Nos. 50–387 and 50–388

Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania.

Date of application for amendments: May 31, 1994.

Brief description of amendments: These amendments change the frequency for monitoring the Susquehanna site spray pond ground water level from once per month to once every 6 months.

Date of issuance: October 20, 1994.

Effective date: Both units; as of date of issuance and to be implemented within 30 days after the date of issuance.

Amendment Nos.: 135 and 105.

Facility Operating License Nos. NPF–14 and NPF–22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 6, 1994 (59 FR 34668).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company

Docket No. 50–277

Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania.

Date of application for amendment: June 23, 1993, as supplemented by letters dated April 5, May 2, June 6, June 8, July 6 (two letters), July 7, July 20, July 28, 1994 (two letters), September 16, September 30, and October 14, 1994. The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: The amendment raises the authorized maximum power level from 3293 MWt to a new limit of 3458 MWt.

Date of issuance: October 18, 1994.

Effective date: Unit 2, effective as of its date of issuance and is to be implemented prior to startup in Cycle 11 currently scheduled for October 28, 1994.

Amendment No.: 198.

Facility Operating License No. DPR–44: The amendment revised the license and Technical Specifications.

Date of initial notice in **Federal Register**: August 29, 1994 (59 FR 44432).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company

Docket Nos. 50–272 and 50–311

Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey.

Date of application for amendments: February 18, as supplemented by letter dated April 6, 1994 for Salem Unit 1 and March 28, 1994 for Salem Unit 2.

Brief description of amendments: The change to Salem Unit 1 Technical Specifications (TS) replaces the main feedwater control and control bypass valves with the main feedwater stop check valves for the Containment Isolation Function. The change to Salem Unit 2 TS adds a footnote to the 21–24 BP22 (main feedwater stop check valves) on Table 3.6–1, "Containment Isolation Valves." This note identifies those containment isolation Valves that are not subject to 10 CFR Part 50, Appendix J, Type C leakage testing.

Date of issuance: October 20, 1994.

Effective date: Units 1 and 2, effective as of date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos.: 158 and 139.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37083).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al.

Docket Nos. 50–361 and 50–362

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 31, 1992.

Brief description of amendments: These amendments revise the Technical Specifications (TS) to (1) distinguish between the core operating limit supervisory system (COLSS) in service and the COLSS out of service (OOS), (2) add surveillances to monitor departure from nucleate boiling ratio (DNBR) and/or linear heat rate (LHR) every 15 minutes when the COLSS is OOS and the corresponding parameter is not being maintained as required, (3) increase the ACTION time from 1 hour to 4 hours when the COLSS is OOS and either the LHR or DNBR margin is not being maintained within the required limits, (4) change the power reduction requirements from "HOT STANDBY" to "less than or equal to 20 percent of Rated Thermal Power" when the DNBR margin and/or the LHR limiting condition for operation (LCO) cannot be met within the allowed ACTION time, and (5) revise the Bases to the TS to reflect these changes.

Date of issuance: October 27, 1994.

Effective date: October 27, 1994.

Amendment Nos.: 113 and 102.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

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Date of initial notice in **Federal Register**: March 3, 1993 (58 FR 12269).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: May 18, 1994; revised September 9, 1994 (TS 94–05).

Brief description of amendments: The amendments revise the action statement to provide a fixed duration that the control room emergency ventilation system may be inoperable due to actions taken as a result of a tornado warning.

Date of issuance: October 17, 1994.

Effective date: October 17, 1994.

Amendment Nos.: 187 and 179.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: June 22, 1994 (59 FR 32237).

The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: August 19, 1994 (TS 93–09).

Brief description of amendments: The amendments delay implementation of Amendments Nos. 182 and 174 from the Unit 2 Cycle 6 refueling outage to as soon as acceptable plant conditions and modification activities/procedures are established in fiscal year 1995.

Date of issuance: October 17, 1994.

Effective date: October 17, 1994.

Amendment Nos.: 188 and 180.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47182).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority

Docket Nos. 50–327 and 50–328

Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: September 8, 1994 (TS 94–14).

Brief description of amendments: The amendments incorporate clarifications regarding the evaluation of steam generator tube defects by separating the portion of the steam generator tube starting at the end of the tube up to the start of the tube-to-tube sheet weld from the remainder of the tube for the purposes of sample selection and repair when defects are found in this section of a steam generator tube.

Date of issuance: October 20, 1994.

Effective date: October 20, 1994.

Amendment Nos.: 189 and 181.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: September 19, 1994. (59 FR 47962).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1994.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company

Docket No. 50–346

Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio.

Date of application for amendment: April 5, 1994.

Brief description of amendment: The amendment increases the surveillance test interval for the turbine-driven auxiliary feedwater pump and motor-driven feedwater pump from 31 days to 92 days; clarifies a requirement for a dedicated individual to be stationed at manual valves during surveillance testing because of the availability of the motor-driven feedwater system; addresses miscellaneous editorial corrections, and revises TS 3/4.7.1.2 and TS 3/4.1.7 and their associated bases.

Date of issuance: October 18, 1994.

Effective date: October 18, 1994.

Amendment No.: 193.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27068).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company

Docket No. 50–483

Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application for amendment: February 10, 1994.

Brief description of amendment: The amendment revises the Technical Specification Table 2.2–1, "Reactor Trip System Instrumentation Trip Setpoints," to correct Total Allowance values. The associated Bases section clarifies the relationship between the power supply and undervoltage relays.

Date of issuance: October 27, 1994.

Effective date: Date of issuance to be implemented within 30 days.

Amendment No.: 93.

Facility Operating License No. NPF–30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: March 30, 1994 (59 FR 14897).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1994.

No Significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Vermont Yankee Nuclear Power Corporation

Docket No. 50–271

Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of application for amendment: December 6, 1993.

Brief description of amendment: The proposed change removes the requirement to perform jet pump integrity and operability surveillances in the idle loop during operation with one recirculation loop.

Date of issuance: October 26, 1994.

Effective date: October 26, 1994.

Amendment No.: 141.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 8, 1994 (59 FR 29637).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company

Docket Nos. 50–280 and 50–281

Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: October 19, 1993.

Brief description of amendments: These amendments will add operability requirements, action statements, and surveillance requirements for the recirculation spray heat exchanger service water outlet radiation monitors. Also, surveillance requirements for several post-accident instruments are being reinstated.

Date of issuance: October 27, 1994.

Effective date: October 27, 1994.

Amendment Nos.: 193 and 193.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 22, 1993 (58 FR 67864).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1994.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendancy before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 9, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the

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Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Wisconsin Electric Power Company

Docket Nos. 50–266 and 50–301

Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of application for amendments: October 20, 1994.

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.1.G, "Operational Limitations," to reduce the reactor coolant system raw measured total flow rate and operating pressure, modify TS Section 15.2.3.1.B to increase the required reduction in the delta-T trip setpoint, and modify TS Figure 15.2.1–1 to reflect new reactor core safety limits, all for Unit 2 only. The applicable bases are also revised.

Date of issuance: October 28, 1994.

Effective date: October 28, 1994.

Amendment Nos.: 156 and 160.

Facility Operating License Nos. DPR–24 and DPR–27. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 28, 1994.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

Acting NRC Project Director: Cynthia A. Carpenter.

Dated at Rockville, Maryland, this 2nd day of November, 1994.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27613 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., et al.; San Onofre Nuclear Generating Station Receipt of Petition For Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated September 19, 1994, Mr. Richard M. Dean requested that the Nuclear Regulatory Commission (NRC) take action with regard to San Onofre Nuclear Generating Station (SONGS). Petitioner requests that the NRC use its own power to "shut-down" the operation of the SONGS facility based upon gross negligence by Southern California Edison in not having an "escape plan."

Petitioner asserts as a basis for this request that although originally Southern California Edison had a plan to evacuate the city residents of San Clemente in the event of an emergency at the SONGS facility, there is now no emergency plan. In addition, the Petitioner also asserts that since last winter, a very large landslide permanently closed the Pacific Coast Highway at the Dana Point/San Clemente border, and since this highway was one of two exit routes out of the area, Southern California Edison now requests that, in the event of a nuclear emergency, all San Clemente residents should stay home.

The Petition has been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555–0001 and local public document room at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 28th day of October, 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27739 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–1027, "Format and Content of Application for Approval for Thermal Annealing of Reactor Pressure Vessels," and is intended for Division 1, "Power Reactors." DG–1027 is being developed to describe a format and content acceptable to the NRC staff or the application to perform a thermal annealing of a reactor vessel. This guide also would describe acceptance criteria that the NRC staff would use in evaluating the applications to ensure that the annealing conditions imposed on the reactor and other equipment, components, and structures do not degrade the original design of the system.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by January 3, 1995.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

[5 U.S.C. 552(a)]

Dated at Rockville, Maryland, this 25th day of October, 1994.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 94–27736 Filed 11–8–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Claimant or Other Person

(2) *Form(s) submitted:* G–93

(3) *OMB Number:* 3220–0183

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Individuals or households, business or other for-profit

(8) *Estimated annual number of respondents:* 900

(9) *Total annual responses:* 900

(10) *Average time per response:* 0.25000 hours

(11) *Total annual reporting hours:* 225

(12) *Collection description:* Under Section 2 of the Railroad Retirement and the Railroad Unemployment Insurance Acts, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 94–27689 Filed 11–8–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (TSX Corporation, Common Stock, $0.01 Par Value) File No. 1–11814

November 3, 1994.

TSX Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security has been listed for trading on the American Stock Exchange, Inc. ("Amex") since April 29, 1993, and has been listed for trading on the BSE since May 3, 1993. The Company believes that the cost of maintaining a listing on the BSE, in addition to the listing on the Amex, exceeds the benefits gained thereby.

Any interested person may, on or before November 25, 1994 submit by letter to the Secretary of the Securities and Exchange Commission 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27693 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Weatherford International Incorporated, Common Stock, $0.10 Par Value) File No. 1–7867

November 3, 1994.

Weatherford International Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on October 19, 1994 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before November 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27694 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Action Performance Companies, Inc., Common Stock, $0.01 Par Value and Warrants Expiring April 27, 1998) File No. 1–11886

November 3, 1994.

Action Performance Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Securities have been listed and traded on both the Exchange and the NASDAQ National Market System (NASDAQ/NMS) since the Company's April 1993 initial public offering of the Securities. Since April, 1993, the primary trading market for the Securities has developed on the NASDAQ/NMS. As a result, the officers and directors of the Company have determined that there is not sufficient trading volume on the Exchange to warrant the expenses involved with continued listing on both the Exchange and NASDAQ/NMS. The Company also find that multiple listing results in an unnecessarily burdensome duplication of filing documents with both the Exchange and NASDAQ whenever the Company makes any filing with the Commission.

Any interested person may, on or before November 25, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27695 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20681; 812–8942]

The Woodward Funds; Notice of Application

November 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Woodward Funds (the "Trust").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicant requests an order to permit it to offer new account allocation options under its deferred compensation plan for its trustees.

FILING DATE: The application was filed on April 14, 1994 and amended on July 25, 1994 and October 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o NBD Bank, N.A., P.O. Box 7058, Troy, Michigan 48007.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, (202) 942–0570, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust that currently offers eighteen investment portfolio series. NBD Bank, N.A., a national banking association, serves as investment adviser, transfer agent and custodian for each of the Trust's series.

2. The Trust has seven trustees, a majority of whom are not "interested persons" of the Trust within the meaning of section 2(a)(19) of the Act. Each of the trustees, including the interested trustees, currently receives an annual fee of $6,000 plus an additional $1,000 for each board meeting attended. The amounts paid to the trustees are expected to continue to be insignificant in comparison to the total net assets of the Trust. Liability for payment of the trustee's fees is allocated equally among each of the Trust's series.

3. Under the Deferred Compensation Plan (the "Plan") now in effect, a trustee may defer all or a portion of the trustee's fees until a specified later date. All deferred amounts are credited with interest at the end of each month at the "average rate" earned on 90-day United States Treasury Bills.[1]

4. Under the proposed Plan, the trustees could allocate their deferred trustee's fees among all or some of the Trust's series, including any series created in the future, pursuant to a deferred compensation agreement (the "Agreement") executed by the trustee. Under the Agreement, the trustees may elect to defer receipt of their fees, to defer payment of income taxes on such fees, or for other reasons. Shares of the series selected by a trustee are hereinafter called "Underlying Securities."

5. Under each Agreement, deferred trustee's fees payable by the Trust are credited to an account on the books of the Trust at the time the trustee's fees would otherwise have been payable. A trustee's account will be credited or charged with book adjustments representing interest, dividends, and other earnings, gains, and losses that would have been realized if an amount equal to the account balance had been invested in accordance with the trustee's instructions. The value of a trustee's account on any day will be equal to the value it would have had, if the deferred fees credited to it had actually been invested, and all dividends and distributions reinvested, in the Underlying Securities as of the date the fees, dividends and distributions were credited.

6. The Trust's obligation to make payments of amounts accrued in the trustee's account will be a general unsecured obligation payable solely from the Trust's general assets and property. As a matter of prudent risk management, the Trust intends, and with respect to each of the money market series of the Trust that values its assets using the amortized cost method, undertakes to set aside amounts to cover its obligations under the proposed Plan by purchasing and maintaining the Underlying Securities selected by the trustees. The Trust is under no obligation to purchase, hold, or dispose of any investment, and if the Trust chooses to purchase investments to cover its obligations under the Plan, any and all such investments will remain part of the general assets and property of the Trust.

7. At the option of the trustees, deferred payments of fees may be made either in a lump sum or as annual payments over a period of 2–15 years. A trustee's election regarding the time and manner of distributions must be made when an Agreement is executed and may not be changed with respect to any year covered by that Agreement. If the services of a trustee are terminated, commencement of his/her annual payments may be triggered by the provisions of his/her Agreement, but the Trust does not have the right under the Plan to accelerate payment of deferred trustees fees into an immediate lump-sum distribution payable upon the trustee's termination. The trustee's benefits are not transferable or assignable except in the event of death.

8. The amounts paid to the trustees under the Plan are expected to be insignificant in comparison to the total net assets of the Trust. In addition, the proposed Plan will not obligate the Trust to retain a trustee in such capacity, nor will it obligate the Trust to pay any, or any particular level of, trustee's fees to any trustee.

Applicant's Legal Analysis

1. In connection with the adoption and implementation of the Plan, applicant requests an order under section 6(c) of the Act exempting the Trust from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions. The order would permit the Trust to enter into deferred fee arrangements with certain of its trustees, and to effect transactions incident to those arrangements. Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the

[1] The SEC's Division of Investment Management has stated that it would not recommend that the Commission take any enforcement action under the Act if registered investment companies establish deferred compensations plans where the rate of return on the deferred compensation is based on the return on U.S. Treasury Bills. See, e.g., The North Carolina Management Trust (pub. avail. Jan. 23, 1992).

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protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant believes that its proposal meets the section 6(c) standards.

2. Section 18(f)(1) prohibits a registered open-end investment company from issuing senior securities, except in connection with a bank borrowing. Section 13(a)(2) requires each registered investment company to obtain authorization by a vote of a majority of its outstanding voting securities before issuing any senior securities not contemplated by the recitals of policy contained in its registration statement.

3. Applicant contends that the Plan does not possess any of the characteristics of senior securities that led Congress to enact sections 18(f)(1) and 13(a)(2). The Trust will not be borrowing from its trustees in the sense that concerned Congress. All liabilities created by accruals under the Plan would be offset by essentially equal amounts of assets of the Trust that would not otherwise exist if the fees were paid on a current basis. The Plan would not induce speculative investments by the Trust or provide opportunity for manipulative allocation of the Trust's expenses and profits of any series; control of each Trust will not be affected; and the Plan will not confuse stockholders or convey a false impression of safety.

4. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Three of the series have limitations on their ability to purchase securities issued by other investment companies. Applicant believes it is appropriate to exempt these three series from section 13(a)(3) to allow them to invest in affiliated investment companies without a shareholder vote. The value of the Underlying Securities will be *de minimis* compared to the total net assets of the respective series and will at all times equal the value of such series' obligation to pay deferred fees. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments. Thus, permitting the series to invest in Underlying Securities without obtaining the shareholder approval required by section 13(a)(3) would result in no harm to shareholders.

5. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicant submits that the sale of securities issued by the Trust's series under the Plan does not implicate Congress' concerns in enacting section 17, but merely facilitates the matching of the Trust's liability (and each series' derivative liability) for the deferred trustee's fees with the securities that determine the amount of that liability (and such derivative ability).

6. Section 17(d) and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transactions in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of an order of the SEC. The effect of the Plan is to defer the payment of fees that the Trust otherwise would be obligated to pay on a current basis as services are performed by the trustees. Liabilities created by the accruals under the agreement will be offset by essentially equal amounts of assets consisting of Trust shares.

7. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The restrictions under the Plan are clearly set forth in the Plan and do not adversely affect the interests of the trustees or of any Trust shareholders.

8. Section 22(g) generally prohibits an open-end investment company from issuing any of its securities for services or for property other than cash or securities. The Plan provides for deferred payment of fees and thus, the Agreement should not be viewed as being issued in return for services, but in return for the Trust not being required to pay such fees on a current basis.

9. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification. The rule also contains a number of conditions designed to reduce the likelihood that the net asset value of a money market fund as determined by the amortized cost method will deviate materially from its net asset value as determined by the mark-to-market method. Any money market series that values its assets using the amortized cost method will buy and hold Underlying Securities to achieve an exact match between such series' liability to pay deferred fees and the assets that liability. This would ensure that the deferred fee arrangements will not affect the net asset value of the money market series.

Applicant's Conditions

1. With respect to the requested relief from rule 2a–7, for any money market series that values its assets using the amortized cost method, the Trust will (a) buy and hold the securities that determine performance of the deferred compensation plan to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability and (b) allocate such securities to each money market series.

2. If the Trust purchases Underlying Securities issued by an affiliated series, the Trust will vote such shares in proportion to the votes of all other holders of shares of such affiliated series.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27698 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20685; 811–3780]

PMC Capital, Inc.; Notice of Proposed Deregistration

November 3, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 (the "Act").

RELEVANT ACT SECTIONS: Sections 8(f) and 54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that PMC Capital, Inc. ("PMC") ceased to be an investment company when it elected on June 7, 1994 to be regulated as a business development company ("BDC") pursuant to section 54(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. PMC is a registered, closed-end, diversified, management investment company. On June 24, 1993, PMC filed a Notification of Registration on form N–8A pursuant to section 8(a) of the Act and a registration statement on form N–1A under section 8(b) of the Act. On June 28, 1993, PMC filed a registration statement under the Securities Act of 1933. The registration statement became effective on November 23, 1993.

2. PMC is organized as a corporation under the laws of the state of Florida and has its principal place of business in the state of Texas.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48)(A) and (B) may elect to be subject to the provisions of sections 55 through 65 and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the "'Exchange Act"); or (i) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities.

4. On June 7, 1994, PMC elected BDC status by filing a form N–54A.

5. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

6. Section 8 of the Act, requiring registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election.[1]

7. The SEC finds that PMC ceased to be a registered investment company on June 7, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27755 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release No. 11703 (Mar. 26, 1981).

[Investment Company Act Release No 20680; 811–903]

Jupiter National, Inc.; Notice of Proposed Deregistration

November 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Proposed Deregistration under the Investment Company Act of 1940 (the "Act").

RELEVANT ACT SECTIONS: Sections 8(f) and 54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that Jupiter National, Inc. ("Jupiter") ceased to be an investment company when it elected on February 6, 1987 to be regulated as a business development company ("BDC") pursuant to section 54(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on November 28, 1994. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. Jupiter is a registered, closed-end, non-diversified, management investment company. On September 2, 1959, Jupiter filed a Notification of Registration on form N–8A pursuant to section 8(a) of the Act and a registration statement on form N–1A under section 8(b) of the Act. On December 20, 1968, Jupiter filed a registration statement under the Securities Act of 1933. The registration statement became effective on February 14, 1969.

2. Jupiter is organized as a corporation under the laws of the state of Delaware and has its principal place of business in the District of Columbia.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48)(A) and (B) may elect to be subject to the provisions of section 55 through 65 and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities.

4. On October 9, 1981, Jupiter elected BDC status by filing a form N–54A. On December 23, 1983, Jupiter withdrew its election of BDC status by filing a form N–54C. On February 6, 1987 Jupiter again elected BDC status and filed a form N–54A.[1]

5. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

6. Section 8 of the Act, requiring registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election.[2]

7. The SEC finds that Jupiter ceased to be a registered investment company on February 6, 1987.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27699 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–34928; File No. SR–NASD–94–48]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending Certain Current Terms and Adopting New Terms Relating to the NASDAQ System That Are Used in Schedule D to the NASD By-Laws and Other Parts of the NASD's Rules and Regulations That Are Contained in the NASD Manual

November 2, 1994.

On September 20, 1994, the National Association of Securities Dealers, Inc.

[1] On January 7, 1988, due to a reorganization from the District of Columbia to Delaware, Jupiter filed a form N–54C to withdraw its election of BDC status as a District of Columbia corporation and simultaneously filed a form N–54A to elect BDC status as a Delaware corporation.

[2] Investment Company Act Release No. 11703 (Mar. 26, 1981).

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("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The NASD proposes to amend certain current terms and adopt new terms related to the NASDAQ System that more appropriately describe the current technological facilities and services provided by this securities market throughout Schedule D to the NASD By-Laws ("Schedule D") and other parts of the NASD's rules and regulations in the NASD Manual.

Under the proposal, new nomenclature will be utilized and defined. For example, "The Nasdaq Stock Market" will replace the phrase "the NASDAQ System." The Nasdaq Stock Market will be defined as an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. Further, it will be noted that The Nasdaq Stock Market provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. The proposal will clarify that The Nasdaq Stock Market consists of two distinct tiers. The first tier will be labeled "The Nasdaq SmallCap Market" or "SCM" and the second tier will be labeled the "Nasdaq National Market" or "NNM". Securities included for quotation in these two tiers will be labelled "Nasdaq Small Cap Market Securities" or "SCM securities" and "Nasdaq National Market securities" or "NNM securities," respectively.

Notice of the proposed rule change, as amended, together with its terms of substance, was provided by issuance of a Commission release [4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[6] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent in that the proposed new terms will indicate more clearly the current operation of the system as a market for securities with quotation dissemination, trade reporting, order execution capability, screen-based negotiation of transactions, on-line comparison of transactions, and informational services. The proposed new terms will also clarify that the market is composed of two distinct market tiers, each with different inclusion criteria that are set forth in different parts of Schedule D. Further, the proposed rule change will make clear that The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–48 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27697 Filed 11–8–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD amended the proposed rule change subsequent to the original filing on August 23, 1994.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34743 (September 28, 1994).

[5] 59 FR 50784 (October 5, 1994).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–097]

Review of Icebreaking Resource Requirements in the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a review of icebreaking requirements in the Great Lakes and is seeking public comment. It may also hold a public meeting to provide additional opportunity for public input. The Coast Guard currently provides icebreaking services in the Great Lakes to support maritime commerce, respond to urgent search and rescue and other emergency situations, and to prevent flooding caused by ice. It is interested in continuing to provide the appropriate level of icebreaking services, while also seeking to reduce costs.

DATES: Comments must be received on or before, January 9, 1995.

ADDRESSES: Written comments may be mailed to the Chief, Ice Operations Division, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 1202A at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1450.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Garrett, Icebreaker Facilities Branch, Ice Operations Division, Office of Navigation Safety and Waterway Services. Telephone (202) 267–1460, telefax (202) 267–4425. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: If it receives indication of sufficient interest, the Coast Guard may hold a public meeting to discuss its plan to provide icebreaking services in the Great Lakes, and to obtain input from the shipping community and general public on the needs and benefits of icebreaking services. The most likely site for a meeting would be Sault Ste. Marie, Michigan. Such a meeting would be announced by separate notice published in the **Federal Register**. The Coast Guard is interested in providing the appropriate level of icebreaking services to the maritime community in the Great Lakes, while seeking to reduce costs. It specifically solicits comments on whether or not it should hold a public meeting.

Background and Purpose

The Coast Guard currently provides icebreaking services within the United States to support the reasonable demands of commerce, respond to urgent search and rescue and other emergency situations, and to prevent flooding caused by ice.

Executive Order 7521 (December 21, 1936) directs the Coast Guard domestic ice operations program to "assist in keeping open to navigation by means of icebreaking operations * * * channels and harbors in accordance with the reasonable demands of commerce * * *."

The U.S. Army Corps of Engineers has the responsibility for flood control and determines if icebreaking will assist in the regulation and operation of an affected waterway. Upon request of the appropriate Corps of Engineers

authority, the Coast Guard may, pursuant to 14 U.S.C. 141(a) and 14 U.S.C. 88(a), provide ice management facilities and services to aid in the prevention of floods and hazardous water stages caused by ice obstructions. The Coast Guard may also provide ice management facilities and services for flood control in response to requests from other Federal, State, or local governmental agencies or private interests, after appropriate consultations with the Corps of Engineers. Icebreaking for flood control is conducted to the extent Coast Guard resources are available and can be effectively used.

Request for Comments

The Coast Guard solicits comments from all segments of the Great Lakes maritime community on their reasonable requirements for icebreaking services. Persons submitting comments should include their name and address, identify this docket (CGD 94–097), identify the aspect of icebreaking operations on which comments are submitted, and state the expected impacts on current icebreaking operations and the reasons for those impacts. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard is particularly interested in receiving views, data, and reasons on the following review questions regarding two hypothetical scenarios of available icebreaking services in the Great Lakes. These scenarios do not indicate any future proposed level of service for Coast Guard icebreaking resources, but are designed to determine the total economic costs and benefits associated with icebreaking support.

- *Scenario One*—Limited Coast Guard icebreaking services would be available in the Great Lakes, but due to the severe ice conditions, would generally not permit any degree of certainty for planning vessel transits. Some ports may be inaccessible and some routes impassable for extended periods.
- *Scenario Two*—Coast Guard icebreaking services would be available in the Great Lakes but, on average, transit in ice conditions would generally take twice as long as when there is no ice. Most ports and routes would remain open, but may be temporarily closed due to ice conditions.

—Compared to your typical level of lake shipping during this period, would your shipping decrease under either scenario, and, if so, by approximately what percentage?

—Assess the impact of each scenario on your operations. Would either force you to significantly change your business operations?

—Would the changes to your business operations associated with either scenario affect your costs? Explain the effects and estimate the applicable costs as best as possible, including lost plant revenue, additional shipping costs (rail, truck, or increased shipping during non-ice season), increased inventory costs, or increased warehouse/storage facility costs, additional material handling costs, additional interest costs, additional inventory tax liabilities, or other relevant costs.

—What other considerations are relevant to your business or interests?

—Consider any environmental issues of each scenario. Explain any additional impacts from increased truck or rail shipping during the ice season.

All comments received by the Coast Guard as a result of this notice will be summarized for consideration prior to any public meeting and will also be included in the analysis of icebreaking requirements in the Great Lakes. The Coast Guard will consider all relevant comments in the formulation of any changes to its domestic ice operations program.

Dated: November 3, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Service.

[FR Doc. 94–27760 Filed 11–8–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL RAILROAD ADMINISTRATION

Notice of Revision to Submission Deadline for Grant Applications for Next Generation High-Speed Rail Program: Demonstration of High Speed Positive Train Control System (HSPTC)

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: In **Federal Register** Notice Vol. 59, No. 173, 46470, dated September 8, 1994, the FRA encouraged interested parties to attend a public, pre-application forum relating to grant(s) anticipated to be awarded as a result of the Next Generation High-Speed Rail Program, Demonstration of High Speed Positive Train Control System (HSPTC) ("Program") to demonstrate advanced train control technology that can contribute to more effective train control systems for emerging high-speed passenger rail corridors in the United States. Eligible applicants were informed of the opportunity to submit applications for funding to demonstrate an advanced positive train control system for high-speed passenger rail service on a mixed passenger and freight corridor. At the time of the pre-application forum held October 6, 1994, the application deadline was set at November 30, 1994.

REVISED DEADLINE FOR SUBMISSION OF APPLICATIONS: The deadline for submission of applications is hereby revised to the close of business, Friday, January 6, 1995.

ADDRESS FOR SUBMISSION OF APPLICATIONS: Applicants are requested to submit an original and six (6) copies of their applications to Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Acquisition and Grants Services (RAD–30), Federal Railroad Administration, 400 Seventh Street, S.W., Room 8222, Washington, DC 20590.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Robert J. McCown, Acting Director, Technology Development Programs, Office of Railroad Development (RDV–30), Federal Railroad Administration, 400 Seventh Street, S.W., Washington, DC 20590. Phone: (202) 366–0462; Fax: (202) 366–7150.

AUTHORITY: The authority for the Program can be found in Section 1036(c)(1)(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 309(b)), and the Department of Transportation and Related Agencies Appropriations Act for fiscal year 1995 (beginning October 1, 1994). The Secretary's responsibilities under this program will be administered by the Federal Railroad Administration (FRA).

MISCELLANEOUS: Prospective applicants that have not previously received a copy of the application packet released at the pre-application forum or mailed thereafter, may request a copy of the application by contacting either Mr. McCown or Mr. Carpenter. Except as provided herein, all other conditions and requirements of the application and application process remain unchanged.

Dated: November 3, 1994.

James T. McQueen,

Associate Administrator for Railroad Development.

[FR Doc. 94–27732 Filed 11–8–94; 8:45 am]

BILLING CODE 4910–06–P

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Sunshine Act Meetings

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

Staff Briefing for the Board of Directors.

TIME AND DATES: 2 p.m., Tuesday, November 15, 1994.

PLACE: Room 0305, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving privatization planning including reviewing a draft Request for Proposals for a financial advisor. Also discussion concerning the November 1 election results and general loan program business.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATES: 10 a.m., Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Swearing in newly elected Board members.
3. Approval of Minutes of the August 11, 1994, Board meeting.
4. Report on loans approved in the fourth quarter of FY 1994.
5. Summary of fourth quarter FY 1994 financial activity.
6. Report of ad hoc committee on privatization of the RTB.
7. Consideration of draft scope and objective for the Request for Proposals to assess the privatization of the Rural Telephone Bank.
8. Election of Board Officers: Chairperson, Vice Chairperson, Secretary, and Treasurer.
9. Establish date and location of next regular Board meeting.
10. Adjournment.

ACTION: 11th Biennial Stockholders Meeting.

TIME AND DATE: Following the Board of Directors Meeting (time approximate, 11 a.m.), Wednesday, November 16, 1994.

PLACE: Jefferson Auditorium, South Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders meeting:

1. Call to Order.
2. Establishment of a quorum of stockholders.
3. Approval of Minutes of the March 24, 1993, stockholders meeting.
4. Secretary's annual report on loans approved in FY 1993 and FY 1994.
5. Treasurer's annual report for FY 1993 and FY 1994.
6. Annual committee report on privatization of the RTB.
7. Annual committee report on prepayments.
8. New Business.
9. Adjournment.

Registration for the stockholders meeting.

(a) Voting Representatives may register on Tuesday, November 15, the day before the meeting, between 1–4 p.m. in Room 2832, South Building, USDA; or

(b) Wednesday, November 16, between 9–11 a.m. at the entrance to the Jefferson Auditorium.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: November 4, 1994.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 94–27818 Filed 11–7–94; 8:45 am]

BILLING CODE 3410–15–P

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 22, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A Webb,

Secretary of the Commission.

[FR Doc. 94–27855 Filed 11–7–94; 10:46 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27856 Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, November 30, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–27857–Filed 11–7–94; 10:48 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, November 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–27858 Filed 11–7–4; 11:06 am]

BILLING CODE 6210–1–P

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 18, 1994—7:30 a.m.—Closed Session

November 18, 1994—8:30 a.m.—Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, November 18, 1994

Closed Session (7:30 a.m.–8:30 a.m.)
—Minutes from October Meeting
—Grants and Contracts

Open Session (8:30 a.m.–9:30 a.m.)
—Minutes from October Meeting
—Chairman's Report
—Director's Report
—Committee Reports
—Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–27846 Filed 11–7–94; 9:54 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 15, 1994, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposal to Close the Springfield, MA Base Point Office
(2) Revision to Board Order 75–3, Section XIX, Agency Grievance Procedure
(3) Reengineering Initiative—Initial Plan
(4) Management of the Payment, Rate and Entitlement History (PREH) Project
(5) Pending Legislative Issues:
  A. H.R. 4277 and H.R. 4278—Amendments to Conform RRA to SSA
  B. Draft Legislative Language to Preclude Payment of Annuities, Tier I, tier II, & Supplemental, to Incarcerated Felons, Criminally Insane, etc.
  C. Legislative Proposals for the Fiscal Year 1996 Budget Submission
  D. Draft Bill Embodying Legislative Proposals for 2nd Session of 103rd Congress
  E. Disclosure of Tax Return Information
(6) Ethics issues:
  A. Frequent Traveler Programs
  B. Agency Designee for Determination Agency Interest in Acceptance of Free Attendance at Certain Meetings
(7) Proposed Revision to Incentive Awards Plan
(8) Filling Supervisory and Managerial GS–13 through GS–15 Vacancies
(9) Medicare Transaction System (MTS) Issue
(10) Plan to Improve the Quality and Timeliness of Claims Processing (BUSI)
(11) Cost-Saving Concepts
(12) Waiver of Contributions:
  A. Ellis & Eastern Company
  B. Employee Status Determination (Roth A. Gatewood)
  C. Timeline of Key Events and Contributions, Interest, and Penalties Due from Livingston Rebuild Center, Inc.
(13) Coverage Determinations:
  A. Marietta Industrial Enterprises, Inc.
  B. Great Southern Contracting, Inc.
  C. Pacific Standard Corporation—Request for Reconsideration of Employer Status
  D. Herzog Transit Services, Inc.
  E. Appeal of Border Pacific Railroad Company
  F. Appeal of National Railway System, Inc.
(14) Railroad Retirements Board Correspondence Manual
(15) Regulations:
  A. Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act
  B. Part 203, Employees Under the Railroad Retirement Act
  C. Part 220, Disability
  D. Part 226, Computing, Employee Spouse and Divorced Spouse Annuities
  E. Part 228 and 237, Computation of Survivor Annuities
  F. Part 230, Reduction and Non-Payment of Annuities by Reason of Work
  G. Part 225, Recovery of Overpayments
  H. Part 320, Initial Determinations under RUIA and Reviews and Appeals from Such Determinations
  I. Part 328, Voluntary Leaving of Work
  J. Part 345, Contribution and Contribution Reports—
(1) Policy for Considering the Waiver of Interest and/or Penalty Assessments for Railroad Employers
(16) Labor-Management Partnership—Management Member Kever's Memorandum of October 11, 1994, and Related Issues
(17) Reorganization Memos: Mr. Kever's of October 26; Mr. Bower's of November 1, and Mr. Speakman's of November 2, 1994.
(18) Field Service Issues:
  A. Field Migration Schedule
  B. Recommendations Concerning the Function and Structure of the Field Service
  C. Base Point Office Study
(19) Fiscal Year 1994 Performance Appraisal Plans

Portion Closed to the Public

(A) Acting Director of Office of Retirement and Survivor Benefits
(B) Restructuring of the Washington Legislative Liaison Office (Abolishment of GS–4 Ofc. Automation Clerk Position & Establishment of GS–7, Ofc. Asst. Position)
(C) Vacancy Announcement for Facility Manager Position
(D) Pending Board Appeals:
1. Lila Church Settlement Offer
2. Amsk, Michael P.
3. Barron, Wiley W.
4. Baumgardner, Susan J.
5. Beahm, Winston G.
6. Benbow, Philip K.
7. Coburn, Jr., Joe
8. Deni, Margaret E.
9. Grissom, Marcella
10. Harrison, Robert T.
11. Hunn, James L.
12. King, Mary J.
13. Kline, Woodrow C.
14. Land, Doris L.
15. L'Heureux, Authur/Dorothy
16. Price, Edward H.
17. Puffinbarger, Larry D.
18. Quick, Jr., Edwin B.
19. Watts, Gloria

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 4, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–27845 Filed 11–7–94; 9:55 am]

BILLING CODE 7905–01–M

VOL
59
ISS
216
NO
9
1994
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Corrections

Federal Register
Vol. 59, No. 216
Wednesday, November 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1451-93]
RIN 1115-AC72

Temporary Alien Workers Seeking H-1B, O, and P Classifications Under the Immigration and Nationality Act

Correction

In rule document 94-16674 beginning on page 41818 in the issue of Monday, August 15, 1994, make the following corrections:

§ 214.2 [Corrected]

In § 214.2:

1. On page 41835, in the second column, in paragraph (o)(8)(ii), in the last line, "practitioner" should read "petitioner".

2. On page 41837, in the third column, in paragraph (p)(3), in the definition for *Competition, event, or performance*, in the last line, "lien's" should read "alien's".

3. On page 41840, in the first column, after paragraph (p)(7)(i)(A), insert the following:

"(B) Except as provided in paragraph (p)(7)(i)(E) of this section, evidence of consultation shall be a written advisory opinion from an appropriate labor organization."

4. On page 41841, in the first column, in the first line, the paragraph designation "(i)" should read "(8)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Part 405

RIN 1505-AA48

Implementing Regulations for the Government Securities Act of 1986

Correction

In rule document 94-26545 beginning on page 53728 in the issue of Wednesday, October 26, 1994, make the following correction:

§ 405.3 [Corrected]

On page 53731, in the second column, in § 405.3, in paragraph (c)(5), in the paragraph designated (B), in the second line, "finds" should read "funds".

BILLING CODE 1505-01-D

federal register

Wednesday
November 9, 1994

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Refrigerant Recycling; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5101-8]

RIN 2060-AF05

Protection of Stratospheric Ozone; Refrigerant Recycling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the rules on refrigerant recycling promulgated under section 608 of the Clean Air Act to clarify the conditions under which technician certification programs will be grandfathered, allowing technicians who had participated in voluntary technician training and certification programs prior to the publication of the rule to receive formal certification. EPA is also amending the rule to clarify the scope of the technician certification requirement and to provide a limited exemption from certification requirements for apprentices.

EFFECTIVE DATE: October 28, 1994.

ADDRESSES: Materials relevant to the rulemaking are contained in Air Docket No. A–92–01 at: Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The Air and Radiation Docket and Information Center is located in room M–1500, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Dockets may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Debbie Ottinger, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, D.C. 20460 (202–233–9200). The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Final regulations published on May 14, 1993 (58 *FR* 28660) establish a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. The regulations require technicians to observe practices that minimize release of refrigerant to the environment. To ensure that technicians become knowledgeable of these requirements, § 82.161 of the final rule mandates that technicians be certified by passing a test. For Type II, Type III, and Universal technicians, the test must be a closed-book, proctored examination drawn from a bank of test questions kept by the Environmental Protection Agency (EPA) and administered in a secure environment by an EPA-approved certifying program. For Type I technicians, a mail-in program is permitted. Testing and training organizations can apply to EPA to become EPA-approved technician certifiers under § 82.161(c) by demonstrating that they can ensure test security, provide an adequate number of proctors during the examination, select questions randomly from the appropriate sections of the test bank, and provide proof of certification to technicians who pass the exams. Testing and training organizations must also demonstrate that they grade objectively and keep adequate records. The specific requirements of the program are presented in § 82.161 and appendix D of the final rule. To date, EPA has authorized over 90 organizations as technician certifying organizations.

II. This Action

A. Grandfathering

Under § 82.161(g), organizations that seek approval as certifying organizations can also apply to grandfather technicians who received training and testing under programs established prior to publication of the final rule in May 1993, which established the approval process for certification programs. Specifically, § 82.161(g) states:

> Persons seeking approval of a technician certification program may also seek approval for technician certifications granted previously under the program. Interested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, * * * except for some elements of the test subject material, in which case the person must submit verification that supplementary information on that material will be provided pursuant to appendix D, section (j).

When EPA initially drafted the language requiring programs to meet "all of the standards of § 82.161(c) and appendix D," these standards were considerably more general than those that were ultimately incorporated into the rule. The proposal had discussed possible requirements in broad terms. For instance, although the proposal anticipated that tests would be proctored, it did not suggest a specific ratio of proctors to examinees, such as the 1:50 ratio that appeared in the final rule. Similarly, the proposal did not specify whether tests would be open- or closed-book. Instead, the proposal included general requirements that tests be proctored, that test security measures be in place, and that tests be graded objectively. EPA believed that many voluntary programs would meet these general requirements.

In response to comments, the requirements for certifying organizations grew more specific. EPA believed that increasing the specificity of the standards strengthened the technician certification program overall. However, EPA did not thoroughly reevaluate and revise its grandfathering provision to reflect the new, detailed requirements. Instead, the provision inappropriately continued to allow voluntary programs to be grandfathered only if they meet all the requirements of § 82.161(c) and appendix D, with a limited exemption concerning test subject material.

The Agency recognizes that if voluntary programs were held to each of the detailed standards, no voluntary technician certification program could be grandfathered. Appendix D contains the specific requirements of the technician certification program. Voluntary programs prior to the promulgation of the final rule could not have complied with these requirements, as they were not yet in existence. Section (a) (Test Preparation) of appendix D requires that "[e]ach certifying program must assemble tests by choosing a prescribed subset from the EPA test bank." However, the test bank did not become available until September 30, 1993. In addition, EPA requires programs to certify technicians with Type I, Type II, or Type III certifications, depending on the level of the test passed by the technician. EPA developed these categories after the close of the public comment period to the proposed rule. However, other logical categorization systems are possible, and until EPA promulgated the final rule, many technician certification organizations categorized technician types differently. Furthermore, section (a) requires a closed-book test, yet most testing organizations prior to the final rule offered only open-book tests. Finally, appendix D defines the ratio of technicians to proctors, and establishes recordkeeping and reporting requirements, all requirements that organizations certainly could not have complied with prior to the promulgation of the final rule.

Nevertheless, many voluntary programs substantially complied with most of the standards of appendix D, even though they used alternative procedures to those eventually specified in appendix D. Thus, many programs did proctor tests (at least the equivalent of Type II, Type III, and Universal tests), ensure test security, objectively grade tests, and keep records. Several programs also covered most of the required subject matter in the core and at least some technical sections, even when they did not establish the same categories in their testing as were established in the final rule (Type I, II, etc.). Where the content of their voluntary testing fell short of that required by the final rule, programs expressed their willingness to provide additional testing and training as needed, and the final rule provided for this remedy.

EPA has always intended to grandfather these reasonably stringent programs. The purposes of the technician certification requirement are discussed fully in the preamble to the rule establishing the program (58 FR 28660, May 14, 1993). A primary goal of the requirement is to guarantee that technicians who handle refrigerants understand and practice safe refrigerant recovery and recycling techniques. Proper handling will minimize release of refrigerants to the atmosphere and the accompanying environmental harm.

In promulgating the certification provision, EPA determined that grandfathering reasonably stringent voluntary certification programs would significantly further the goals of the certification requirement in a number of ways. By training and testing technicians in recycling refrigerants before the rule was promulgated (on May 14, 1993), reasonably stringent voluntary programs prepared technicians to comply with the prohibition on venting that became effective on July 1, 1992, and probably significantly reduced refrigerant emissions. These programs also served as an impetus for developing a mandatory program, providing a model for that program. Indeed, EPA worked with several voluntary programs to develop the requirements of the mandatory program. In addition, many voluntary organizations provided questions for the test bank, determining the scope of the training and the current exam. Finally, EPA does not want to discourage future participation in voluntary environmental training. Requiring repeat testing for all technicians who voluntarily took adequate testing and training could discourage people from participating in future voluntary programs.

Any potential harm from grandfathering would arise from certifying some technicians on the basis of their participation in testing programs that unavoidably deviated from some of the specific requirements in appendix D. However, EPA will only grandfather those programs that substantially complied with most of the certification standards, and therefore largely achieved the basic goal of the certification requirement, to ensure that technicians understand proper refrigerant handling practices and the importance of such practices. In addition, a program can address any gaps in its coverage by providing supplementary information. Given substantial compliance and supplementary information, the marginal benefits derived from retesting would be relatively small. Moreover, such benefits must be compared to the burden of requiring retesting. Over 100,000 technicians participated in voluntary programs. Retesting would require almost all of these technicians to incur costs for time, travel and test administration. In light of the significant benefits and small potential harm expected from grandfathering reasonably stringent voluntary programs, EPA is modifying the requirements for grandfathering to ensure that an Agency drafting error does not disqualify these programs outright.

To carry out this intent, EPA today is amending the grandfathering provision of § 82.161(g) as the Agency proposed in the August 15, 1994 **Federal Register** notice (59 FR 41968). This paragraph currently states that "[i]nterested persons may submit to the Administrator at the address in § 82.160(a) verification that the program met all of the standards of § 82.161(c) and appendix D, or verification that the program met *all* of the standards of § 82.161(c) and appendix D, except for some elements of the test subject material, in which case the person must submit verification that supplementary information will be provided pursuant to appendix D, section (j)." (emphasis added). EPA is amending § 82.161(g) to read "Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program *substantially complied with most* of the standards of § 82.161(c) and appendix D of subpart F. (emphasis added). If the program did not test or train participants on some elements of the test subject material, the person must submit verification that supplementary information on the omitted material will be provided pursuant to appendix D of subpart F, section (j)."

In reviewing requests to grandfather technicians, EPA will assess the extent to which a program substantially complied with most of the requirements in each paragraph of § 82.161(c) and appendix D (paragraph (a) of appendix D being test preparation, (b), proctoring, (c), test security, etc.) and most of the basic concerns addressed by those paragraphs, considering the information that was available to the program at the time of its initial development. EPA believes that this is reasonable given the limited information available to these programs before the final rule was published and the question bank was released. For example, the proposed rule published on December 10, 1992, discussed the need for organizations to provide proctored tests under conditions that ensured test security, but did not specify that one proctor be provided for every 50 individuals taking the test as specified in the final rule. Under the approach taken in this document, voluntary programs that provided proctors, but did not necessarily provide exactly one proctor for every 50 individuals taking the test, would not be disqualified on that basis alone. EPA believes that the modification of the final rule to replace "met all" with "substantially complied with most" allows EPA to review these programs taking such circumstances into account.

Almost all commenters supported changing the language of § 82.161(g) to permit grandfathering of voluntary programs, although one commenter opposed grandfathering. A few commenters only supported grandfathering for the Type I level. Commenters who supported grandfathering cited EPA's rationale for making the change to permit it, stating that technicians and contractors in the air-conditioning and refrigeration industry required education on the new recycling requirements, and that voluntary programs fulfilled this need, probably significantly reducing refrigerant emissions. These commenters stated that any shortfalls in early testing and training could (and should) be remedied through providing supplemental information. Commenters also noted that failure to grandfather voluntary programs could discourage future participation in voluntary environmental education programs.

The commenter who opposed grandfathering argued that the certification testing being offered by new programs approved after the rule was published is significantly more difficult than that offered by one

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voluntary certification program. As discussed below, EPA plans to evaluate voluntary certification programs on a case-by-case basis and to consider the content of the programs' testing in its grandfathering decisions. As discussed above, EPA will only grandfather voluntary programs that substantially complied with most of the certification standards and that send out any supplementary information that EPA considers necessary. EPA believes that the benefits of grandfathering such programs significantly outweigh the costs.

Three commenters supported grandfathering of voluntary programs only to the Type I level. These commenters claimed that none of the voluntary programs were as comprehensive or stringently administered as new programs approved after the rule was published; therefore, grandfathering of technicians who participated in these programs to the Type II or Type III level would be dangerous to the environment and unfair to technicians who worked hard to successfully complete new programs. However, the commenters believed that grandfathering to the Type I level was acceptable because of the smaller charge sizes and lesser safety concerns associated with small appliances. One of the commenters stated that EPA should not grandfather programs simply because they offered an appropriate testing environment, but should examine content of voluntary exams to ensure that those exams were "reasonably similar" to the exams now being used for certification. This commenter argued that, for example, programs that did not test participants on the final rule, including all of those offered before publication of the final rule, should not be grandfathered even to Type I unless participants took and passed a test drawn from the Core section of the question bank.

The commenters also stated that requiring grandfathered technicians to take further testing before granting them Type II or Type III certification would not represent an undue burden. One of the commenters expressed the opinion that the organizations that operated voluntary programs should make any retesting an administratively simple and accessible option, because they assumed this responsibility when they made a conscious decision to offer testing before certification requirements were finalized.

EPA agrees with these commenters that the content of voluntary testing and training, along with the administrative criteria listed in appendix D, must be considered in any grandfathering decision. EPA does not intend to grandfather a voluntary program for a given Type if the program did not include any test questions or training for that Type. Indeed, voluntary programs differed significantly in their coverage of the various Types. Some programs focussed exclusively on Type I, while others covered Types I through III. EPA considers it appropriate to evaluate these programs individually, rather than adopting an across-the-board policy to grandfather them all to the same level.

EPA considers it appropriate to permit voluntary programs to address gaps within the Types covered by their original testing and training by providing additional materials to past participants. If a program has substantially complied with the standards, the voluntary certification should have largely met the educational purposes of requiring certification. While there may be some areas that a voluntary program did not cover, providing additional information should ensure that technicians achieve an acceptable level of competency. Moreover, requiring voluntary programs to have anticipated all of the topics within a Type constitutes just as impossible a hurdle as requiring them to have anticipated every administrative requirement in appendix D. Even the original final rule published on May 14, 1994, recognized this and permitted programs to be grandfathered as long as they "submit verification that supplementary information on that material will be provided."

Thus, voluntary programs that did not fully cover the requirements of the final rule, for instance, will be permitted to address the omission by developing supplementary materials on that topic, submitting these materials to EPA for review and revision, and then sending these materials to past participants. Past participants will be required to sign a statement that they have read the new materials and to return it to the voluntary program operator before receiving their certification cards. EPA believes that this process will ensure that supplementary materials are of acceptable quality and that past participants read and learn them before being certified.

EPA disagrees with the assertion that retesting on a Type would not represent an undue burden to technicians who participated in a voluntary program that covered that Type. Although EPA strongly believes that proctored testing in Types II and III is worthwhile for technicians who have not already been tested on those Types, the Agency believes that the costs of such testing outweigh its benefits for technicians who have already been tested in the Types. Those costs include time taken to travel to the test site and take the test, travel costs, and the cost of the test itself. The differences between the Type II and Type III tests being offered by new programs and those offered by many voluntary programs are not significant enough to warrant these additional investments. However, the Agency again emphasizes that if Type II or Type III was *not* covered by a voluntary program, then past participants in that program will have to take proctored testing before they can be certified for that Type.

One commenter argued that EPA should require programs that operated after the publication of the final rule (May 14, 1993) to have met stricter standards than programs that operated before publication of the final rule. This commenter stated that programs operating after publication of the final rule, unlike programs operating earlier, knew both the administrative and content requirements that would have to be met by technician certification programs. The commenter claimed that some programs "enticed technicians to be certified through an abridged, open-book testing methodology prior to October 15, 1994, with promises of these substandard processes being grandfathered." The commenter believed that rewarding these programs and the technicians who participated in them by grandfathering the programs would be unfair to programs and technicians who attempted to meet higher standards.

Although EPA will consider the efforts of voluntary programs to update their testing content and procedures to conform to the requirements of the final rule after May 14, 1993, EPA will not require voluntary programs to have met all of those requirements to be grandfathered. First, grandfathering voluntary programs that substantially complied with the standards of § 82.161 and appendix D should further the environmental goals of requiring certification, even if such programs did not fully update in conformity with the requirements of the final rule. If a voluntary program was already substantially complying with the requirements of § 82.561 and Appendix D before May 14, 1993, then changes to its administrative practices after May 14, probably would not have had a significant impact on the overall quality of the program. At the same time, omissions from a program's training and testing can be addressed by supplying past participants with supplementary materials that participants must read before they receive their certification

cards, as discussed above. Omissions can be rectified in this manner regardless of when the original training and testing occurred.

The process of developing and disseminating supplementary materials also mitigates the unfairness perceived by the commenter; programs that updated their testing and training more swiftly need not develop, and their participants need not review, as much supplementary information as programs that did not update their testing and training. In addition, until September 30, 1993, voluntary programs continued to provide the only source of training in refrigerant handling. EPA believes that the environmental benefit of timely, reasonably stringent training and testing outweighed any costs associated with programs' failure to adhere to every requirement in the final rule.

Second, it was not possible for programs to fully comply with the standards of the final rule until September 30, 1993. The bank of test questions was not available to programs until EPA approved the first set of programs, so programs could not have included these questions in their testing before that date. Requiring voluntary programs to have included such questions would automatically prevent all voluntary programs from being grandfathered.

Third, programs were understandably reluctant to change their procedures and materials given their uncertainty over when EPA would announce the approval of the first set of technician certification programs and thereby make the bank of test questions available. As discussed below, the process of reviewing certification programs can vary greatly in length, depending upon the completeness of initial submissions and the speed with which programs respond to later inquiries. Voluntary programs, therefore, could not be certain whether the effort and expense of revising and reprinting old tests would be justified, since such revised tests would become obsolete once the program operator had access to the bank of test questions. The same uncertainty surrounded efforts to develop and disseminate new administrative procedures, since such procedures would also probably be revised once programs were approved.

Finally, while EPA did not approve of programs advertising an "easy" alternative to a future, closed-book test, determining whether each program that applies for grandfathering did or did not engage in such advertising would be very difficult. It would be even harder for EPA to determine whether advertising that did occur was a centrally organized campaign or an isolated incident. Thus, EPA does not plan to use reports of such advertising as a criterion in its grandfathering decisions.

EPA will, however, consider requiring recertification of grandfathered technicians after some period, perhaps two years, if EPA's experience enforcing the rule indicates that their training was not adequate. As noted in the final rule published on May 14, 1993, EPA reserves the right to require recertification of any or all technicians, if necessary.

Another commenter argued that EPA should grandfather only programs that included a "live" instructor and should not grandfather programs that offered testing without training. EPA will consider the training and testing offered by programs in their entirety rather than requiring a specific instruction technique. While a videotape cannot respond to questions from technicians as a "live" instructor can, a thorough and accurate videotape is preferable to an ill-informed instructor. Moreover, if technicians have succeeded in passing a comprehensive, difficult test without taking a special training course, EPA believes that they have demonstrated their knowledge of proper and legal techniques for refrigerant handling, which is the goal of technician certification.

EPA is extending the November 14, 1994 deadline until May 15, 1994, for those technicians who successfully completed a voluntary program that applies for grandfathering no later than December 9, 1994. During the extension period, those technicians who successfully completed a voluntary program may continue to service, maintain, repair, and dispose of appliances and may buy refrigerant using the certificates or cards issued by the voluntary program. This additional time will allow EPA to consider applications by voluntary programs for grandfathering and will enable grandfathered voluntary programs to provide supplementary information, if necessary, and proof of EPA-approved certification to grandfathered technicians. To make their past participants eligible for this extension, programs must apply (or have already applied) within 30 days of publication of this amendment (1) to be approved as a technician certification program under § 82.161(c), and (2) to grandfather technicians. This extension does not apply to technicians who did not participate in any voluntary program, or who participated in voluntary programs that have not applied and do not apply within the set period. These technicians must still be certified by November 14, 1994.

This extension provision is very similar to the one proposed. The one difference between the proposed and final provisions is that the proposed provision would have made the extension effective until six months after publication of the final rule, and the final provision makes the extension effective until May 15, 1995, six months after the effective date of the technician certification requirement. EPA made this change to establish a simple, memorable date for the expiration of the extension. Because EPA expects to announce most of its grandfathering decisions when the rule becomes effective, and because EPA expects the rule to become effective before November 14, 1994, technicians who successfully completed voluntary programs will still have at least six months to complete any additional training or testing necessary to become certified.

All commenters in favor of grandfathering supported providing an extension of the November 14 deadline to past participants in voluntary programs. Many commenters cited the reasons in the proposal, noting that the November 14 deadline did not anticipate the delay caused by this amendment to the regulations. The commenters agreed that it would be counter-productive to force technicians who completed a voluntary program to take additional testing simply because they do not know whether or not their voluntary program will be grandfathered. However, some commenters believed that this extension should be linked to the date that EPA approves or disapproves grandfathering of the voluntary program, rather than the date of publication of the final amendment or any other specific date. This would ensure, these commenters argued, that participants in these programs had sufficient time to complete additional testing and/or training, if necessary. In addition, two commenters argued that EPA should be required to complete review of grandfathering applications within a specific period (one commenter suggested 30 days). Finally, one commenter believed that voluntary programs should be required to inform their past participants within a specific period both whether or not the programs applied for grandfathering and whether EPA approved or disapproved their applications.

EPA agrees with the commenters that voluntary programs and/or their past participants should have sufficient time to provide or obtain additional training

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or testing before the certification requirements go into effect for all technicians. Consequently, EPA has made a considerable effort to review grandfathering applications in a timely fashion. The Agency plans to announce the majority of its grandfathering decisions when this rule is published or shortly thereafter. EPA believes that this will leave voluntary programs and their past participants enough time to provide any required supplementary information and to complete any needed additional training or testing before the general six-month extension expires, making it unnecessary to issue separate, six-month extensions to each program.

Moreover, the Agency considers a fixed, uniform deadline for certification essential to effective compliance with and enforcement of the sales restriction. The sales restriction requires that every refrigeration wholesaler in the U.S. understand which certification cards issued by approved programs and which credentials issued by voluntary programs are valid for refrigerant purchase. If the credentials issued by voluntary programs "expired" on different dates, and if each expiration date were announced individually, compliance with the sales restriction would become unacceptably complicated for wholesalers.

EPA does not believe that imposing a deadline for review on itself is either necessary or practical. As noted above, the Agency expects to announce most, if not all, of its grandfathering decisions when this amendment is published. The only voluntary programs on which EPA will not have issued decisions will be those that have not yet applied at all and those that have not completed the necessary information requirements. The review process typically involves multiple contacts between EPA and the applying program; the speed with which it is completed depends as much upon the time taken by the program to respond to inquiries and develop submissions as the time taken by EPA to review them. Thus, even if it devotes all of its resources to the review process, EPA cannot guarantee that reviews will be completed within a given period.

EPA agrees, however, that voluntary programs should be required to inform past participants of EPA's decision and to provide any required supplementary information within a set period, so that technicians have sufficient time to review the supplementary information or to obtain additional training and testing if it is required. EPA is therefore modifying the proposed amendment to require that (1) voluntary programs that EPA has disapproved inform their past participants of EPA's decision within 30 days of their disapproval, and (2) programs that EPA has approved inform their past participants of EPA's decision and provide any supplementary information within 60 days of their approval. EPA believes that 30 days will provide sufficient time for disapproved voluntary programs to generate and mail their notifications while allowing technicians sufficient time (approximately five months, in most cases) to complete a certification program approved after May 14, 1994.

EPA is allowing 60 days rather than 30 days for approved programs because the Agency recognizes that printing and disseminating supplementary information may take longer than printing and mailing simple notifications. In addition, technicians who successfully completed voluntary programs that are approved for grandfathering will need less additional training and testing than technicians who participated in voluntary programs that are not approved. Finally, EPA is requiring programs approved for grandfathering to issue certification cards to technicians within 60 days of the programs' receipt of signed statements from the technicians indicating that the technicians have read the supplementary information. Based on discussions with voluntary programs, EPA believes that this will allow sufficient time for voluntary programs to generate and mail the cards, while allowing technicians enough time to read the supplementary information.

EPA does not believe that this notification requirement will impose an unreasonable burden on the voluntary programs that apply for grandfathering. These voluntary programs have undertaken to certify technicians in advance of the final regulations and have applied to EPA for grandfathering. Given their voluntary assumption of responsibility, it is reasonable to place on the voluntary programs the responsibilities (1) to inform their participants whether their applications for grandfathering were successful and (2) to send their participants certification cards in a timely fashion.

However, EPA is not requiring voluntary programs to notify participants whether or not the program has applied for grandfathering. EPA believes that it is the responsibility of technicians and/or their employers to obtain this information, and this information is (and has been) readily available from both EPA and voluntary technician certification programs. The Stratospheric Ozone Hotline has been distributing a list of programs that have applied for grandfathering since March, 1994. The list includes the following programs:

Amtrak Technical Training Center
Air Conditioning Contractors of America
CFC Reclamation and Recycling
Climate Control Institute, Inc.
Delaware County Community College
Environmental Training Group
Hartsog Trade School
Johnson Controls, Inc.
National Apartment Association
National Association of Power Engineers
People's Natural Gas
Refrigeration Environmental Protection Association
Refrigeration School, Inc.
Refrigeration Service Engineers Society
Rock Valley College
State of Alaska
State of Wisconsin, Department of Industry, Labor and Human Relations
Sears Product Services
Sequoia Institute
Tennessee Valley Technical Program
Texas Engineering Extension Service
United Association of Journeymen and Apprentices of the Plumbers and Pipe Fitting Industry of the United States and Canada
VGI Training Division, Video General Inc.
York International

Since they first appeared on this list, six of the programs, including Delaware County Community College, National Apartment Association, People's Natural Gas, Rock Valley College, Sequoia Institute, and Tennessee Valley Technical Program, have withdrawn their applications for grandfathering. However, because these programs appeared on the list, and because some of these programs withdrew relatively recently, EPA will grant past participants in these programs the six-month extension. These programs must inform their past participants that they have withdrawn their request for grandfathering by December 9, 1994, if they have not done so already, so that past participants can obtain certification through a program approved after May 14, 1993.

Additional programs may apply for grandfathering until December 9, 1994. EPA will provide wholesalers and other interested parties with a revised list at that time, if necessary.

One commenter believed that the amendment should allow technicians to continue to service equipment for six months from the promulgation date, as long as the equipment owner or operator could demonstrate that its technicians attended a voluntary certification program. This commenter believed that the extension should apply even if the voluntary program does not apply for grandfathering. EPA believes that only technicians who participated in voluntary programs that apply for grandfathering should be granted the six-month extension. Without an application for grandfathering, EPA has no reason to assume that the training might have been adequate to significantly meet the goals of the technician certification program. The extension is premised on the assumption that in many cases the voluntary programs have ensured technician training adequate to meet the certification program goals, as would be shown by substantial compliance with most of the standards in § 82.161 and appendix D. In such cases, EPA expects to approve the grandfathering applications, and thus the extension will have avoided the need to recertify technicians who eventually would be grandfathered. Where the program has not applied for grandfathering, however, EPA has no basis for believing either that there was a reasonable possibility that the program significantly met the goals of certification, or that the technician would not have to recertify at the expiration of the extension period. EPA believes that *bona fide* voluntary certification programs will make the effort to apply for grandfathering, and that, in fact, most of those programs have applied already.

In addition to the changes outlined above, in this amendment EPA is clarifying how it will determine whether programs and individual technicians will be grandfathered for a given Type. Whether a voluntary certification program will be grandfathered for a Type will depend upon the coverage by the program of the material in that Type. Whether an individual technician will be grandfathered for a given Type will depend upon (1) whether the technician successfully completed a voluntary program that has been grandfathered for that Type, (2) whether the technician successfully completed the portions of the voluntary certification program that correspond to that Type, and (3) whether the technician reads any supplementary information required by the Administrator pursuant to § 82.161(g)(1) and returns a signed statement to that effect to the program. For clarity, EPA is also adding a definition of "voluntary certification program." EPA had also proposed adding a definition of "to be grandfathered" but the Agency has determined that this definition is unnecessary. The regulations will simply refer to the "approval" of a voluntary program or the "certification" of a technician under a voluntary program.

To maintain consistency, EPA is also modifying appendix D, section j. The revised section reads:

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

EPA is deleting the second paragraph of appendix (D)(j). The deleted material reads:

Persons who are currently technicians must be certified by November 14, 1994. Technicians that participated in certification programs which do not become EPA-approved certifying programs must either receive EPA-approved supplemental information from the original testing organization or be certified by taking a test given by an EPA-approved certification organization by November 14, 1994.

This provision has been rendered redundant by the more specific requirements in § 82.161 (a) and (g). Also, technicians who participated in programs that are not approved for grandfathering do not have the option of becoming certified through receipt of EPA-approved supplemental information.

B. Clarification of the Scope of the Technician Certification Requirement

EPA is making several changes to clarify the scope of the technician certification requirement. Four provisions related to the scope of this requirement were somewhat inconsistent: the definitions of "technician," and "opening," the provision at § 82.154(l) that prohibits anyone but certified technicians from opening or disposing of appliances, and the technician certification requirements at § 82.161(a). In the August 15, 1994 notice, EPA proposed changes intended to eliminate the inconsistencies. First, EPA proposed to modify the definition of "opening" in order to distinguish it more clearly from the definition of "technician." In the proposed change, "opening" would have been defined as any service, maintenance, or repair on an appliance that *would* (instead of "could") be reasonably expected to release refrigerant from the appliance to the atmosphere unless the refrigerant were previously recovered from the appliance. Second, EPA proposed to modify the disposal provision of the definition of "technician" to include only those parts of the disposal process (e.g., evacuation of the equipment) that have the potential to release refrigerant. Third, the proposal linked the definition of technician to the certification requirement at § 82.161 by replacing the term "person" in that requirement with the term "technician." Fourth, EPA proposed to eliminate the prohibition requiring technician certification for "opening" appliances.

Commenters supported EPA's efforts to clarify the scope of the technician certification requirement. In particular, commenters supported EPA's efforts to exclude persons from the requirement who performed activities that have very little chance of releasing refrigerant, such as painting appliances or repairing empty appliances. However, some commenters disagreed with the proposed scope, and others believed that the proposed clarification either failed to remove all of the ambiguities or introduced new ones.

The proposed clarifications are necessary to accomplish the intended purposes of the provisions being revised. One important goal of the refrigerant recycling provisions is to clearly identify those conditions that will require evacuation of an appliance. Another critical element of the provisions is to state the kinds of activities that may be performed only by a certified technician. In addition, EPA intends the regulations to clearly indicate the types of situations that do not require evacuation and those activities that need not be performed by a certified technician.

In their current form, the provisions do not clearly distinguish maintenance, service, repair and disposal that should require technician certification from maintenance, service, repair and disposal that should require evacuation of the appliance or component to be serviced. EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. Where there is a reasonable risk of release, certification ensures among other things that the technician knows how to minimize that risk and understands the environmental importance of avoiding a release. However, EPA believes that evacuation

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requirements should be triggered by activities that would release refrigerant unless the refrigerant were recovered previously. Evacuation avoids such an otherwise inevitable release by emptying the appliance of refrigerant prior to the contemplated activity. (While some refrigerant will remain in an appliance even after the appliance has been evacuated pursuant to § 82.156, the Agency does not intend to require evacuation to levels below those specified in § 82.156.)

In the rule published May 14, 1993, EPA had linked both the technician certification and evacuation requirements to the definition of "opening." Thus, "technician" was defined as "any person who performs maintenance, service, or repair that could reasonably be expected to release" refrigerant, and "opening" was defined as "any service, maintenance, or repair * * * that could reasonably be expected to release refrigerant." Evacuation was required prior to opening, and only technicians were allowed to open appliances. EPA had linked these requirements believing that the same group of people who performed service that required evacuation would be those who engaged in activities that carry significant risk of refrigerant release.

In the proposed amendment, EPA recognized that there are some types of service, such as charging appliances, that should not trigger evacuation requirements but that carry a significant risk of refrigerant release. On the other hand, there are other types of service, such as replacement of compressors, that should trigger evacuation requirements but that, once evacuation is complete, carry no risk of refrigerant release. Moreover, there are some people who engage only in one or the other of these types of maintenance, service, repair, and disposal.

Accordingly, EPA proposed to detach the certification requirement from "opening" appliances by deleting prohibition § 82.154(l), which had required certification for persons who open appliances. In addition, EPA proposed to sharpen the distinction between the definitions of "opening" and "technician." Whereas both definitions had referred to maintenance, service, or repair, "that *could*" [emphasis added] reasonably be "expected to release refrigerant to the atmosphere," the proposed definition of "opening" was changed to "service, maintenance, or repair * * * that *would* [emphasis added] be reasonably expected to release refrigerant to the atmosphere." The evacuation requirements remained triggered by "opening" of appliances. Finally, EPA tied the certification requirements at § 82.161 to the definition of technician, clarifying that maintenance, service, repair, and disposal that has no reasonable chance of releasing refrigerant would not require certification. In this fashion, EPA attempted to convey that while technician certification requirements would be triggered by activities carrying a reasonable risk or probability of refrigerant release, evacuation requirements would be triggered by activities that certainly would release significant quantities of refrigerant unless the refrigerant were recovered previously.

Commenters have stated, however, that changing the "could" in the definition of "opening" to "would" does not sufficiently define the types of maintenance, service, repair, and disposal that require evacuation of the appliance or component to be serviced. In addition, commenters asserted that, due to the ambiguity of the term "could," the proposed definition of technician fails to sufficiently define the types of maintenance, service, repair, and disposal that should require technician certification. Commenters noted that there are a variety of types of activities that might still be included in the certification requirement although EPA did not intend certification to cover these activities. Procedures such as painting appliances, tightening nuts and bolts on fully charged appliances, and disposing evacuated appliances "could" release refrigerant. As commenters pointed out, a dropped paint brush or wrench has a minute chance of rupturing a refrigerant line, while tightening nuts and bolts could release refrigerant in the unlikely event of bolt shearing or failure. In addition, commenters noted that under the current definition, certification might be required for maintenance, service, repair, and disposal of evacuated appliances because small amounts of refrigerant would be released even from evacuated appliances.

Commenters suggested a variety of alternative methods for clarifying the scope of the evacuation and technician certification requirements. Many commenters suggested that EPA explicitly list in the definitions of "opening" and "technician" the activities that it intended to include in or exclude from those definitions. For instance, one commenter proposed explicitly excluding disposal of empty appliances from the definition of "technician." Another commenter recommended adding a statement to the definition of "opening" that read, "opening does not include any activity intended by design to close or tighten the system, including but not limited to tightening nuts and bolts to reduce refrigerant leaks." A third commenter suggested including "adding or removing class I or class II refrigerant from an appliance" in the definition of "opening."

Commenters also suggested explicitly listing included or excluded activities in other provisions of the regulation, such as the evacuation requirements at § 82.156(a) and the prohibition at § 82.154(l). (Some commenters did not appear to realize that EPA was proposing to delete this prohibition.) One commenter suggested that EPA add language to § 82.156(a) clarifying that "[a]dding refrigerant does not, in itself, require evacuation." A second commenter proposed excluding from § 82.154(l) "persons who repair, service, or maintain appliances that do not contain refrigerant at the time work is performed." A third commenter suggested adding a provision that would prohibit anyone but certified technicians from adding or removing refrigerant from appliances.

In addition, commenters recommended other changes to the definition of "opening." These commenters focussed on the phrase, "would be reasonably expected to release refrigerant," which they found subjective and unclear. One commenter suggested substituting "would create a reasonable probability" for "would be reasonably expected." Two commenters recommended eliminating the concept of refrigerant release from the definition altogether and defining "opening" as "entry into the refrigeration circuit of an appliance." One of these defined "entry" as "any action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant."

There are clearly a number of ways in which the scopes of the certification and evacuation requirements could be clarified. To keep the rule as straightforward as possible, EPA has chosen to place the conditions that trigger these requirements in the definitions of "technician" and "opening" respectively and to use the definitions alone to delineate the scopes. In addition, as proposed, EPA is eliminating the prohibition at § 82.154(l), which introduced confusion by linking technician certification requirements to the definition of "opening."

As discussed above, EPA believes that evacuation requirements should be triggered by activities that would release refrigerant unless the refrigerant were recovered previously. This includes any maintenance, service, or repair that leaves the appliance open to the atmosphere for more than an instant. It does not include connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to charge refrigerant into or recover refrigerant from the appliance. While these procedures may release refrigerant, the releases are small and unavoidable. Moreover, most of the procedures are fundamentally inconsistent with refrigerant recovery; their purpose would be defeated by it.

In view of these considerations, EPA is establishing the following definition of "opening:"

Opening an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

EPA believes that the revised definition of "opening" responds to the concerns raised about the proposed definition and clarifies the scope of activities subject to evacuation requirements. By replacing "would be reasonably expected" with "would," the revision minimizes any subjectivity that may have been in the proposed definition and clarifies that the activities covered are those that would release, not just could release, refrigerant if the refrigerant were not recovered first. The revised definition also recognizes that there are some types of maintenance, repair, and disposal whose purpose is not consistent with refrigerant recovery and that therefore should not trigger evacuation requirements.

EPA does not believe that "entry into the refrigerant circuit" is sufficiently clear, in itself, to serve as the definition of "opening." Even combined with the suggested definition for "entry," the suggested definition of "opening" may be interpreted to include more than the commenters evidently intended. One could argue, for instance, that attaching hoses and gauges to an appliance could be construed as an "action that is intended by design to violate the integrity of an enclosure that contains or would contain the refrigerant." When the hose is attached, the previously self-contained appliance has an opening in it, even if this opening leads only to a charging cylinder or gauge instead of to the atmosphere. In fact, EPA believes that the language in the proposed definition of "entry" is more useful in the definition of "technician" than in the definition of "opening," and as discussed below, the Agency is using this language in the former.

Some of the commenters suggested defining "opening" in a way that would prevent "opening" from ever occurring if the evacuation requirements of § 82.156(a) were observed. One commenter, for example, suggested that EPA revise the definition to read, "Opening an appliance means entry into the refrigerant circuit of an appliance containing a class I or class II refrigerant, unless the refrigerant were previously recovered from the appliance." Another commenter recommended that EPA change the definition to read, "Any repair, service, or maintenance on an appliance that would create a reasonable probability that the physical integrity of the refrigeration circuit would be compromised and allow a release of refrigerant from the appliance to the atmosphere. Recovery of the refrigerant from the refrigeration circuit by a certified technician before beginning such repairs, service, or maintenance shall create a rebuttable presumption that there is no reasonable probability that a release of refrigerant from the appliance would be allowed as a result thereof."

EPA developed the term "opening" to describe the activities before which refrigerant should be recovered. Neither the existing nor the proposed definition of "opening" requires actual refrigerant release; instead, the definitions refer to activities that would ("could" in the existing definition) release refrigerant if the refrigerant were not previously recovered. The activities can take place either while the appliance is fully charged or after it is evacuated; they are considered "opening" either way. In this way, EPA established a simple trigger that can be invoked in the evacuation requirements at § 82.156(a) as follows: "all persons opening appliances * * * must evacuate * * *." If "opening" never occurs, then the evacuation requirements are never triggered. Alternative ways of triggering evacuation requirements, such as stating that recovering refrigerant establishes a rebuttable presumption that opening does not occur, add unnecessary complication and confusion to the regulatory structure.

As stated above, EPA believes that technician certification requirements should be triggered by activities that carry a reasonable risk or probability of refrigerant release. The Agency believes that activities that carry a reasonable risk of refrigerant release are those that are intended to move across the boundary of the refrigerant circuit, or "violate the integrity of the refrigerant circuit," as one commenter put it, while refrigerant remains in the appliance. These conclusions flow directly from the physical structure of refrigeration systems, including enclosed refrigerant circuits. As long as the refrigerant circuit is not violated, there is no risk of release expected. However, the risk of release increases dramatically immediately upon violation of the refrigerant circuit.

Violation of the refrigerant circuit includes attaching hoses and gauges to add or remove refrigerant and to measure pressures within the appliance. It also includes field assembly of pre-charged split systems, which involves establishing a new connection between previously separate refrigerant enclosures. It does not include activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance (unless the nut or bolt is obviously weakened and may be reasonably expected to shear and result in refrigerant release). EPA agrees with commenters that the chances of release during these activities are remote. EPA intended the phrase "could be reasonably expected to release" to prevent these remote possibilities from triggering the certification requirements, particularly since certification would not reduce the likelihood of such accidents occurring.

Activities that carry a reasonable risk of refrigerant release also exclude maintenance, service, repair, or disposal of appliances that have already been evacuated pursuant to § 82.156, unless the service consists of recharging the appliance. As stated in the proposal, EPA does not believe that individuals who service, maintain, repair, or dispose of only empty appliances need to be certified, since releases have already been minimized to the extent possible through evacuation. While maintenance, service, or repair on the empty appliance could conceivably have an impact on future releases, particularly if performed incorrectly, technician certification does not, and cannot, address every aspect of repair that could lead to such releases. Thus, requiring persons who repair empty appliances to be certified would not significantly reduce the likelihood of such releases. However, requiring certification for the individual who recharges the appliances probably will

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significantly reduce the likelihood of such releases, because EPA's bank of test questions emphasizes the need to test appliances for leaks before recharging them. By performing such testing, the individual who recharges the appliance will be able to detect and rectify many of the problems that would lead to subsequent emissions from the appliance.

Just as EPA considers certification important for persons recharging appliances, the Agency considers certification important for persons who determine whether or not appliances have been evacuated adequately to be opened. However, the revised definition of technician, without changes elsewhere in the rule, might permit uncertified persons to make this determination in one instance. Specifically, the revised definition excludes individuals who move refrigerant within an appliance (e.g., into a receiver) and who thereby evacuate a component to be serviced. The revised definition also excludes individuals who open evacuated appliances or components. While EPA does not believe that either of these activities requires certification in itself, EPA recognizes that when they are performed in sequence by uncertified technicians, there is a risk that the appliance will be opened before it has been properly evacuated pursuant to § 82.154(a). Thus, EPA is inserting a sentence into § 82.154(a) that will require verification of evacuation by certified technicians. § 82.156(a) is amended to read:

(a) Effective July 13, 1993, all persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. All persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. Effective December 9, 1994, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

To make the definition of technician as clear as possible, EPA is explicitly listing activities that do or do not have a reasonable probability of releasing refrigerant in the definition of technician. The revised definition reads as follows:

Technician means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliances unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

EPA is also adding the following definition of "refrigerant circuit:"

Refrigerant circuit means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

There was some disagreement among the commenters regarding the kinds of maintenance, service, repair, and disposal that should require technician certification. Two commenters supported requiring certification of individuals who add refrigerant to appliances; however, one commenter opposed this requirement. This commenter argued that requiring certification for persons who add refrigerant to industrial process refrigeration was "extremely burdensome," since even transferring refrigerant from one portion of an industrial process refrigeration appliance to another (such as an internal receiver) could be construed as "adding refrigerant." In addition, the commenter stated that "the regulated community was lead (sic) to believe that the simple addition of refrigerant to a system * * * did not have to be certified." The commenter also stated that EPA staff told him in March of 1994 that persons who charge equipment do not need to be certified. Finally, the commenter stated that if EPA intended to require certification of persons who add refrigerant to industrial process refrigeration systems, EPA should establish a new certification category for such persons and should permit such persons an additional six months to become certified, since EPA was reversing its earlier position regarding the need for such persons to be certified.

EPA does not believe that requiring certification for persons who add refrigerant to industrial process refrigeration systems is unduly burdensome. First, transferring refrigerant from one part of a refrigeration circuit to another (including receivers that are separated from the operating circuit only by internal valves) will not require certification under the new definition of technician. The definition excludes activities that do not "violate the integrity of the refrigerant circuit." Thus, technicians who only transfer refrigerant within industrial process units will not have to be certified. Second, at least three other users of industrial process refrigeration commented on the rule, and none of them expressed concern that certification of persons adding refrigerant to industrial process refrigeration systems would be "burdensome." In fact, one of these commenters recommended that EPA add a provision to the regulation to specifically prohibit anyone but certified technicians from adding or removing refrigerant from appliances. Third, EPA believes that certification of persons adding refrigerant to industrial process systems (as opposed to transferring refrigerant within such systems) is justified because any disturbance of a refrigeration circuit has the potential to release significant quantities of refrigerant, for instance if a charging hose is not properly attached to a servicing aperture or if a valve is not resealed after charging.

To support the position that persons charging appliances should not be certified, the commenter also cited language from the preamble to the May 14, 1993 rule. This stated that persons who charge appliances during manufacture and transfer refrigerant from container to container did not have to be certified. The commenter implied that these activities were equivalent to charging appliances during servicing. However, in the same discussion cited

by the commenter, EPA repeatedly distinguished between these activities and servicing of appliances. EPA believes that transferring refrigerant between containers and charging during manufacture are in general less complex, more routinized, and in the case of charging during manufacture, more automated than charging appliances in the field. Thus, while EPA did not include appliance manufacturing personnel in its definition of "technician," it did include appliance "installers," whose only contact with refrigerant may be during the charging process.

EPA recognizes that there was some confusion within the regulated community regarding the scope of the certification requirement. In fact, EPA undertook this rulemaking in part to eliminate such confusion. However, EPA does not believe that the confusion justifies granting persons charging appliances their own category of certification or an additional six months to meet certification requirements. As noted above, only one commenter objected to the clarification that persons adding refrigerant must be certified; other commenters from the same sector supported this requirement.

One commenter supported EPA's clarification that installers of appliances must be certified. This commenter stated that the applicability of the certification requirement to installers had not been clear in the final rule published on May 14, 1993, but that the proposed definition corrected this problem. The commenter requested that EPA "continue to be consistent on this matter by prohibiting the sale of pre-charged split systems and components to 'do-it-yourself' installers such as homeowners."

Precharged components are parts of appliances that are sold with refrigerant already contained in them. Pre-charged split systems are air conditioners that are typically sold as two parts, one of which contains the evaporator, the other, the condenser. Both parts also contain refrigerant and must be joined at the installation site for the air conditioner to function.

As noted above, EPA agrees with the commenter that installers of pre-charged split systems and components should be certified, because joining the two halves of a split system during installation involves violation of the refrigerant circuit. Moreover, EPA agrees that sales of pre-charged split systems and other pre-charged appliance components should be limited to certified technicians to ensure that only certified technicians install them. The sales restriction provision (§ 82.154(n) in the rule published on May 14, 1994) contains an exception permitting the sale to uncertified persons of refrigerant contained in an appliance. While individual pre-charged components are clearly not "appliances," pre-charged split systems, although not fully assembled, arguably could be considered "appliances." Thus, the exception might be interpreted to permit the sale of pre-charged split systems to uncertified persons. EPA is revising this exception to remove this ambiguity and clarify that it allows the sale to uncertified persons of refrigerant contained in appliances only with fully assembled refrigerant circuits. This will prohibit the sale of split systems to anyone but certified technicians.

While this clarification of the sales restriction follows logically from the clarifications to the scope of the technician certification requirement that were proposed, the regulated community should have a reasonable period of time to conform to the revised sales restriction. The old exception to the sales restriction for refrigerant contained in appliances will therefore remain in effect until 60 days after publication of this final rule.

Another commenter argued that persons performing maintenance, service, or repair that are required during emergencies or that release only "de minimis" quantities of refrigerant should not need to be certified. This commenter stated that in an emergency, prompt action is often necessary in order to protect lives, property, and the environment. If a system were to develop a large leak during the night shift, for example, the entire refrigerant charge could be lost, necessitating shutdown of the process, before a certified technician was able to respond to a special call. All that might be required to repair the leak is tightening the nuts holding a flange together, an operation that would not be performed any better by a certified technician than by other plant personnel. The commenter stated that if EPA did not allow an exception to the certification requirements for emergencies, the commenter's staff may have no option but to "sit idly as entire charges of refrigerant escape." The commenter recommended that EPA establish the following exception to the certification requirements:

Nothing in this subpart is intended to prohibit servicing or maintenance activities performed by a person not certified as a technician pursuant to § 82.161, if the person is qualified by training and/or experience to perform the task safely and effectively, where: * * * (2) The servicing or maintenance activity is necessary due to an emergency; no technician certified for that type of appliance pursuant to § 82.161 is available; and postponing the activity is likely to result in significant releases of refrigerant, significant hazards to health, safety or the environment, or substantial property damage.

EPA recognizes that emergency situations may arise where a certified technician is not immediately available to perform needed repairs. However, EPA is reluctant to establish a special exception for emergencies for a number of reasons. First, EPA has clarified above that many procedures that would reduce leakage, such as tightening the nuts on the flange in the commenter's example, do not require certification because they are not expected to violate the integrity of the refrigeration circuit. Second, EPA does not consider the certification requirement overly burdensome. If operators of air-conditioning and refrigeration equipment believe that there is a significant chance that an emergency leak may occur, they can ensure that a certified technician is available on-site or on-call during every shift. This certainly provides a credible alternative to sitting "idly as entire charges of refrigerant escape." Third, the language suggested by the commenter for the exception includes several undefined, subjective terms, including "qualified," "emergency," "available," "significant" (applied both to "releases" and "hazards"), and "substantial." Even if EPA considered the exception necessary, defining these terms would be very difficult. Consequently, the exception would be difficult to apply and enforce, and absent a clearly demonstrated need for such a provision, EPA is reluctant to adopt this exception.

The commenter also requested an exception from certification requirements for persons performing maintenance, service, or repair that release only "de minimis" quantities of refrigerant and that do not require the use of recycling or recovery equipment. The commenter argued that plant operators would be fully qualified to perform minor repairs such as changing a gauge, if the maintenance does not involve evacuating the appliance and any resulting losses of refrigerant are *de minimis*. According to the commenter, such operators are already familiar with procedures such as closing valves to isolate high-pressure materials and removing and installing gauges; these procedures apply to much of the equipment in industrial facilities in addition to refrigeration equipment. Thus, workers who are not refrigeration

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technicians would be able to perform these tasks with no greater loss of refrigerant than a certified technician would experience. The commenter claimed that if technicians were required to be certified to perform these procedures, the commenter's training costs would rise by a factor of ten, based on the need to have at least two certified technicians on-site (in case one went on vacation) for four or five shifts per day. The commenter recommended that EPA adopt an exemption for activities releasing "de minimis" quantities of refrigerant very similar to the exemption recommended for emergencies.

Again, EPA is reluctant to establish an exemption based upon subjective terms such as "qualified" and "de minimis," absent a clearly demonstrated need for such a provision. EPA is especially reluctant to adopt a provision that might invite uncertified technicians to speculate whether releases would or would not be "de minimis." While uncertified technicians may be sufficiently "qualified by training or experience" to make an appropriate determination of a repair that would produce only de minimis releases and to complete the repair with minimal release, EPA has no assurance that this will be the case. The purpose of technician certification is to provide this assurance. If technicians are indeed "qualified by training or experience" to violate the integrity of a refrigerant circuit, then they should be able to pass the certification test without extensive or expensive additional training.

Moreover, EPA believes that the commenter's method for estimating increased training expenditures exaggerates these expenditures. For instance, rather than certifying nine additional persons per plant, the commenter could defer certain types of maintenance for less than 24 hours until a certified technician was on shift, or could arrange to have a certified technician on-call during night shifts or during vacations of a shift's usual certified technician.

C. Limited Exemption From Certification Requirements for Apprentices

As was proposed, EPA is amending the rule to clarify that apprentices who meet certain requirements are exempt from the certification requirement for two years. A person would be considered an apprentice if he or she (1) were currently registered as an apprentice in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau), and (2) had been registered as an apprentice for less than two years. An apprentice would not need to be certified as long as he or she were closely and continuously supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere. However, uncertified apprentices would not be able to purchase refrigerant after November 14, 1994. This provision clearly would not permit uncertified technicians who were not in a training program to perform, under a certified supervisor, service, maintenance, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the atmosphere.

EPA believes the apprenticeship exemption conforms with the goals of requiring certification. In establishing this exemption, EPA recognizes that field training programs in air conditioning and refrigeration provide a legitimate and valuable alternative or addition to classroom training. This exemption will allow bona fide trainees to gain field experience that will help them to obtain certification. Apprentices with such experience should better understand and apply the information on which certification tests them.

Limiting this exemption to registered apprentices under direct supervision and with no more than two years experience ensures that the exemption does not undercut the environmental protection goals of certification. Limiting the exemption to apprentice programs helps to ensure that supervision by certified technicians is available. In addition, the provision specifically requires close and continual supervision for the exemption to apply. Supervision should ensure that the apprentice follows environmentally safe practices. Moreover, the two-year time limit provides adequate time for the apprentice to gain useful field experience and seek certification, but narrowly bounds the period of any remaining environmental risk.

Most commenters supported an exemption from certification requirements for apprentices. However, many commenters believed that the exemption should be expanded to include persons who were not registered as apprentices with the Bureau of Apprenticeship and Training. Some commenters also believed that the exemption should be lengthened beyond two years. One commenter opposed the exemption.

Some commenters arguing for expansion of the exemption believed that it should also apply to students in classrooms. EPA wishes to clarify that the current rule *already* exempts students in vocational schools, community colleges, and university engineering programs from technician certification requirements, because work that is performed on appliances in classrooms or teaching laboratories strictly for educational purposes is not considered maintenance, service, or repair. EPA issued an applicability determination containing this conclusion on March 18, 1994 (Number 20). To the extent that prison training programs involve work that is strictly educational, students in those programs are also exempt from certification requirements.

Other commenters arguing for expansion of the exemption believed that it should also apply to trainees who work in the field but who are not registered with the Bureau of Apprenticeship and Training. One of these commenters noted that DOL-registered apprenticeship programs tend to be concentrated in the northeast and in heavily unionized areas, and that trainees in other areas may not use such programs as a means to learn the trade. This commenter believed that trainees should be permitted to submit an application to EPA to defer certification for up to two years, during which period a "learner's permit" could be issued to the trainee. Another commenter stated that many private sector contractors are discouraged from committing to formal, four-year apprenticeship programs by the Bureau's recordkeeping requirements and approval process. According to this commenter, prospective trainees often share contractors' reluctance to commit to a four-year program, preferring to be paid by competency level instead of by years in the program. The commenter believed that the requirement that trainees be supervised by certified technicians would prevent journeymen from masquerading as trainees, since it is expensive to send two workers to a site when one is sufficient. Both commenters believed that trainees should be supervised by certified technicians.

EPA recognizes that some trainees in air-conditioning and refrigeration maintenance, service, and repair are not currently registered with the Bureau of Apprenticeship and Training (or a recognized State Apprenticeship Council). However, EPA believes that third-party registration of apprentices and apprenticeship programs is critical to ensuring that only *bona fide* apprentices take advantage of the apprenticeship exemption. The requirement that apprentices be supervised by certified technicians may discourage some technicians from misrepresenting themselves as apprentices, but does not replace the requirement that the apprentice be registered with the Bureau of Apprenticeship and Training. This is because the supervision requirement is more difficult to enforce than a requirement that uncertified apprentices be registered with the Bureau. The suggested approach that EPA register apprentices and issue two-year learner's permits would demand more resources to implement and enforce than are justified by the exemption.

The apprenticeship exemption is practicable from an enforcement and administration perspective only if it can be linked to an existing registration system, and the only existing, nation-wide registration system that EPA is aware of (or that commenters mentioned) is that operated by the Bureau of Apprenticeship and Training. In discussions with EPA, the Department of Labor has emphasized that the Bureau registers any program that meets its requirements, including both union and non-union programs throughout the U.S. EPA considers compliance with these requirements a reasonable condition for granting field training programs the privilege of exempting their participants from the technician certification requirements.

Two commenters believed that EPA should extend the apprenticeship exemption from two years to three to five years to better match the length of typical apprenticeships. These commenters stated that extending the exemption would permit apprentices to thoroughly learn proper and legal refrigerant handling techniques. However, other commenters believed that the two-year term was appropriate or acceptable. One trainer noted that the end of the second year of training was the logical point at which a trainee would be prepared for certification. EPA agrees that a two-year exemption provides sufficient opportunity for trainees to become ready to pass the certification test. While beneficial, further training is not essential to certification. Also, as noted above, strictly limiting the time period for the apprenticeship exemption constrains the period of any possible heightened environmental risk.

One commenter believed that there should be no exemption for apprentices. This commenter argued that delaying the certification requirement could lead to "a nonchalant attitude to safe refrigerant handling" among apprentices. In addition, the commenter claimed that close supervision of apprentices by certified technicians is not always feasible, because a single journeyman may supervise several apprentices at once, at different locations. Another commenter argued that apprentices should be required to be certified in the Core Type, which focuses on environmental and safety issues, because passage of this section of the test does not require a working knowledge of the trade.

EPA does not believe that establishing the two-year apprenticeship exemption from the certification requirement would lead apprentices to develop a cavalier attitude toward safety. Safety and environmental training can and should begin as soon as an apprentice begins his or her training in air conditioning and refrigeration. Also, one commenter noted that their program provides classroom training for certification, but they believe on-the-job training is necessary to teach the proper procedures; this emphasizes the importance of allowing safety and environmental procedures to be taught in a hands-on setting. In addition, after the certification requirement goes into effect, technicians learning proper refrigerant handling will have the additional incentive of realizing that they must take and pass a test on this topic after two years. For the above reasons, EPA does not believe that certification in Core Type would provide sufficient environmental benefits to justify the burden of requiring apprentices to undergo the certification process in two separate steps.

Regarding the ability of journeymen to closely supervise apprentices, EPA emphasizes that if close supervision is not possible, then unsupervised apprentices must not be permitted to perform maintenance, service, repair, or disposal that could release refrigerant from the appliance to the environment. However, unsupervised apprentices may perform maintenance, service, repair, or disposal that could not be reasonably expected to release refrigerant, such as repair of evacuated appliances or electrical work.[1]

D. Miscellaneous Corrections and Response to Comments

1. Correction to Definition of "Recover"

EPA is correcting a typographical error in the definition of "recover." As discussed in the preamble to the May 14, 1993, final rule (58 FR 28671), EPA had intended to adopt the definition of "recover" developed by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE). The ASHRAE definition reads, "to remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way" (ASHRAE Guideline 3–1990). However, EPA inadvertently omitted the phrase "and store it in an external container" from the definition adopted in the final rule. EPA is therefore revising and clarifying the definition by restoring this phrase to it.

2. Correction to Prohibition § 82.154(g)

EPA is also correcting a typographical error in prohibition § 82.154(g). In the direct final regulation published on August 19, 1994, this prohibition incorrectly cited the definition of "reclaimed" at § 82.152(q). The prohibition indicated that the definition was found at § 82.152(g). With the addition of the definition of "apprentice," the definition of "reclaim" will now found be at § 82.152(r), and EPA is revising prohibition § 82.154(g) to reflect this change.

3. Correction to Required Practice § 82.156(e)

EPA is also restoring a phrase that was inadvertently omitted from § 82.156(e). This provision states, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC-like appliance." EPA intended to except MVACs as well as MVAC-like appliances from this provision, which might otherwise be interpreted to supersede the recycling requirements of the section 609 refrigerant recycling rule published on July 14, 1992. EPA has always intended the section 609 regulation to govern the servicing of MVACs. Thus, EPA is revising the provision to read, "Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance."

4. Correction to Reclaimer Certification Provisions

In the direct final rule published on August 19, 1994, EPA revised the reclaimer certification provisions at § 82.164 to reflect EPA's adoption of the updated ARI 700–1993 industry

[1] EPA is aware that there are other federal and state requirements for proper supervision, as one commenter noted, and the Agency does not intend to provide any kind of exemption from such requirements.

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standard for reclaimed refrigerant. As discussed in the preamble to the direct final rule (59 FR 42951), the revised standard differs from its predecessor, ARI 700–1988, in three main respects: (1) ARI 700–1993 includes eleven additional refrigerants, (2) ARI 700–1993 doubles the permissible water levels in liquid phase R–11 and R–113, and (3) where ARI 700–1988 allowed 0.5 as the maximum percentage by weight of "other refrigerants," ARI 700–1993 allows 0.50 as the maximum percentage by weight of "all other organic impurities, including other refrigerants."

Also as noted in the direct final rule, EPA made the change to the reclaimer certification provisions to maintain consistency between these provisions and the definition of reclaim. The revised provisions were intended to apply to reclaimers who became certified for the first time after October 18, 1994, the effective date of the direct final rule. EPA did not intend to require refrigerant reclaimers who had already been certified to become certified again. However, certified reclaimers have pointed out that the revised provisions could be interpreted to require recertification.

EPA considers such recertification unnecessary. As stated in the preamble to the final rule, the goal of reclaimer certification is to ensure that reclaimers are "fully aware of the regulations regarding reclaimed refrigerant" (58 FR 28700). Certified reclaimers have already demonstrated, through their original certifications, that they are aware of most of the regulations regarding reclaimed refrigerant, including the basic requirements to purify and analyze the refrigerant, to limit emissions to 1.5 percent of the refrigerant reclaimed, and to dispose of wastes from the reclamation process in accordance with all applicable laws and regulations. The only requirements of which they may not be aware are the changes to the ARI 700 standard enumerated above. Any failure to accommodate these changes, while undesirable, is not likely to have a significant adverse environmental or economic impact.[3] In fact, one of the changes represents a relaxation of the ARI 700–1988 standard.

Moreover, based on information submitted by certified reclaimers and the Air-Conditioning and Refrigeration Institute (the industry standard-setting group that developed ARI 700–1988 and –1993), EPA believes that most certified reclaimers either are aware or can be made aware of the new standard without recertifying. For instance, many reclaimers either participated in the development of ARI 700–1993 standard themselves or work with analytical laboratories that participated in the development of the standard. In addition, EPA plans to distribute copies of the direct final regulation, which includes the updated standard, to all certified reclaimers.

Finally, EPA will be undertaking a rulemaking in the near future to address refrigerant purity and transfer issues generally. EPA will be considering changes to the reclaimer certification provisions at that time. This will give the Agency an opportunity to revisit the recertification issue, if necessary.

Thus, in order to clarify that certified refrigerant reclaimers need not recertify, EPA is adding a sentence to the reclaimer certification provisions that states "Persons who certified under § 82.164 before October 18, 1994, need not recertify under this section."

5. Comments Outside the Scope of This Rulemaking

EPA received some comments that related to issues outside the scope of this rulemaking. One commenter advocated requiring certification of persons who dispose of small appliances. This commenter argued that disposers might not only release refrigerants, violating Clean Air Act requirements, but could be "liable as cogenerators" under other environmental statutes. EPA did not intend to request comment on whether disposers should be certified in the proposed rule published August 15, 1994; the part of the proposed definition of technician that excluded disposers of small appliances was identical to that in the final rule published May 14, 1993. The rationale for this exclusion may be found at 58 FR 28705.

The same commenter recommended that all certification programs that conform to § 82.161 be eligible for state required continuing education credits for licensing. Although EPA believes that this may be a good idea, eligibility for state continuing education credits is determined by the states, not EPA.

One commenter stated that EPA should amend the rule to permit transfers of used, unreclaimed refrigerant among subsidiaries of the same company. This issue is outside the scope of this rulemaking. However, EPA plans to undertake a rulemaking in the near future that will address refrigerant purity and transfer issues. EPA will take the comment into consideration at that time.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 608. An examination of the impacts on small entities was discussed in the final rule (58 FR 28660). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the refrigerant recycling rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

IV. Effective Date and Public Participation

This amendment is effective upon signature by the Administrator. This expedited effective date is necessary to effectuate the provision of the amendment extending the November 14, 1994 deadline for certification of technicians that successfully completed voluntary certification programs. The provisions regarding grandfathering do not place any significant burdens on affected parties prior to thirty days after publication, although programs that are disapproved for grandfathering will have to notify their participants within thirty days of EPA's disapproval of their application. The provision acts to allow grandfathering of voluntary certification programs previously barred under the regulations. The clarification of the scope of the technician requirements also should not place any burden on affected parties. The provision clarifies the scope of the activities covered by the certification and evacuation requirements. This relieves persons performing activities that might have been previously covered by the requirements from complying with the requirements. The apprenticeship exemption is similar. Given the lack of burden upon affected parties and the need to grant an immediate exemption from the November 14, 1994 deadline, the Agency finds good cause for expediting the effective date of the rule. EPA believes that this is consistent with 5 U.S.C. 553(d)(1) and (3).

Three provisions of this rule are being issued without notice and comment. The first provision corrects the typographical error in § 82.154(g) mistakenly citing the definition of "reclaimed" as § 82.152(g) instead of § 82.152(q). The error was introduced in the direct final rule of August 19, 1994 (59 FR 42950). The context of the citation makes it clear that this is an erroneous citation, thus raising no need for public notice of its correction. The Agency believes that this circumstance provides good cause to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The second provision adds MVACs to the exclusion of MVAC-like appliances from § 82.156(e). That section allows refrigerant to be returned to the appliance from which it is recovered or another appliance owned by the same person without being recycled or reclaimed. Applying § 82.156(e) to allow the return of refrigerant to MVACs without being recycled or reclaimed would directly conflict with the requirements for "properly using" equipment for servicing MVACs under section 609 of the Clean Air Act, as amended and EPA's implementing regulations. See § 82.30(e). This conflict was the reason that MVAC-like equipment was excluded from § 82.156(e) in the May 1993 final rule (59 FR 28708). The rationale applies even more strongly to MVACs themselves, which were erroneously omitted from the exclusion. This is a minor correction that merely eliminates the conflict between the two provisions and any resulting confusion over which provision governs. This correction does no more than clarify the regulations to be consistent with the section 609 regulations and the current general understanding throughout the industry. These circumstances provide good cause for the Agency to find public notice of this amendment unnecessary under sections 307(d) and 553(a)(3)(B).

The third provision clarifies the Agency's position on certification of reclaimers under § 82.164. In the August 19, 1994 direct final rule (59 FR 42950), EPA updated the refrigerant purity standards in accordance with the most recent industry standards, and set a new deadline of October 18, 1994 for reclaimers to be certified under these standards. The Agency intended this change to require reclaimers to certify under the new, rather than the old, standard, but only for those reclaimers that certified for the first time after the October 1994 effective date. It did not intend to require recertification of already certified reclaimers.

The deadline for certification under the new standard has already passed, and all reclaimers that have not recertified could be considered technically out of compliance. This makes it important for the Agency to clarify the coverage of the rule expediently, and makes the delay of a notice and comment rulemaking procedure contrary to the public interest. The Agency finds that these circumstances provide good cause under sections 307(d) and 553(a)(3)(B) to proceed with this rulemaking without public notice.

V. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Hydrochlorofluorocarbons, Recovery and recycle, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: October 28, 1994.

Carol M. Browner,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.152 is amended by redesignating paragraphs (u) through (y) as (w) through (aa), redesignating paragraphs (b) through (t) as paragraphs (c) through (u), revising newly designated paragraphs (o), (s), and (z), and by adding new paragraphs (b), (v), and (bb) to read as follows:

§ 82.152 Definitions.

* * * * *

(b) *Apprentice* means any person who is currently registered as an apprentice

[3] The one possible exception to this generalization is the broadening of the scope of the standard to include 11 additional refrigerants. If a new refrigerant was not reclaimed because the reclaimer did not know the purity standards for that refrigerant, the dirty refrigerant could harm air-conditioning and refrigeration equipment in which it was subsequently used. However, the 11 refrigerants added to the standard currently make up only a small fraction of the refrigerant that is reclaimed. Moreover, EPA believes that most certified reclaimers, when faced with a refrigerant whose purity standards they do not know, are likely to make an effort to discover these purity standards in order to retain their customers.

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in service, maintenance, repair, or disposal of appliances with the U.S. Department of Labor's Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training). If more than two years have elapsed since the person first registered as an apprentice with the Bureau of Apprenticeship and Training (or a State Apprenticeship Council recognized by the Bureau of Apprenticeship and Training), the person shall not be considered an apprentice.

* * * * *

(o) *Opening* an appliance means any service, maintenance, or repair on an appliance that would release class I or class II refrigerant from the appliance to the atmosphere unless the refrigerant were recovered previously from the appliance. Connecting and disconnecting hoses and gauges to and from the appliance to measure pressures within the appliance and to add refrigerant to or recover refrigerant from the appliance shall not be considered "opening."

* * * * *

(s) *Recover* refrigerant means to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.

* * * * *

(v) *Refrigerant circuit* means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

* * * * *

(z) *Technician* means any person who performs maintenance, service, or repair that could be reasonably expected to release class I or class II refrigerants from appliances, except for MVACs, into the atmosphere. Technician also means any person who performs disposal of appliances, except for small appliances, MVACs, and MVAC-like appliances, that could be reasonably expected to release class I or class II refrigerants from the appliances into the atmosphere. Performing maintenance, service, repair, or disposal could be reasonably expected to release refrigerants only if the activity is reasonably expected to violate the integrity of the refrigerant circuit. Activities reasonably expected to violate the integrity of the refrigerant circuit include activities such as attaching and detaching hoses and gauges to and from the appliance to add or remove refrigerant or to measure pressure and adding refrigerant to and removing refrigerant from the appliance. Activities such as painting the appliance, re-wiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts on the appliance are not reasonably expected to violate the integrity of the refrigerant circuit. Performing maintenance, service, repair, or disposal of appliances that have been evacuated pursuant to § 82.156 could not be reasonably expected to release refrigerants from the appliance unless the maintenance, service, or repair consists of adding refrigerant to the appliance. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

* * * * *

(bb) *Voluntary certification program* means a technician testing program operated by a person before that person obtained approval of a technician certification program pursuant to § 82.161(c).

§ 82.154 [Amended]

3. Section 82.154 is amended by revising paragraph (g)(1); by removing paragraph (l); by redesignating paragraphs (m) through (o) as (l) through (n) respectively; by redesignating newly designated paragraphs (m)(2) through (m)(6) as (m)(3) through (m)(7) respectively; by adding paragraphs (m)(2) and (m)(8); and by revising paragraphs (m)(6) and (m)(7) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) * * *

(1) The class I or class II substance has been reclaimed as defined at § 82.152(r);

* * * * *

(m) * * *

(2) The buyer has successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(2) expires on May 15, 1995.

* * * * *

(6) The refrigerant is contained in an appliance, and after January 9, 1995, the refrigerant is contained in an appliance with a fully assembled refrigerant circuit;

(7) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair; or

(8) The refrigerant is charged into an appliance by a technician who successfully completed a voluntary certification program requesting approval under § 82.161(g) by December 9, 1994. This paragraph (m)(8) expires on May 15, 1995.

4. Section 82.156 is amended by revising paragraph (a) introductory text and by revising paragraphs (a)(1)(i), (a)(2)(i) introductory text, and (e) to read as follows:

§ 82.156 Required practices.

(a) Effective July 13, 1993, all persons disposing of appliances, except for small appliances, MVACs, and MVAC-like appliances must evacuate the refrigerant in the entire unit to a recovery or recycling machine certified pursuant to § 82.158. All persons opening appliances except for MVACs for maintenance, service, or repair must evacuate the refrigerant in either the entire unit or the part to be serviced (if the latter can be isolated) to a system receiver or a recovery or recycling machine certified pursuant to § 82.158. Effective January 9, 1995, certified technicians must verify that the applicable level of evacuation has been reached in the appliance or the part before it is opened.

(1) * * *

(i) Evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and the maintenance, service, or repair is not major as defined at § 82.152(k); or

* * * * *

(2)(i) If evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and if the maintenance, service, or repair is not major as defined at § 82.152(k), the appliance must:

* * * * *

(e) Refrigerant may be returned to the appliance from which it is recovered or to another appliance owned by the same person without being recycled or reclaimed, unless the appliance is an MVAC or MVAC-like appliance.

* * * * *

5. Section 82.161 is amended by revising paragraph (a) introductory text; by removing the word "Persons" and adding in its place "Technicians" in paragraphs (a)(2) through (a)(5); by revising paragraph (a)(1), by revising paragraph (g); and by adding paragraph (a)(6) to read as follows:

§ 82.161 Technician certification.

(a) Effective November 14, 1994, technicians, except technicians who successfully completed voluntary certification programs that apply for approval under § 82.161(g) by December 9, 1994, must be certified by an approved technician certification program under the requirements of this paragraph (a). Effective May 15, 1995, all technicians must be certified by an approved technician certification program under the requirements of this paragraph (a).

(1) Technicians who maintain, service, or repair small appliances as defined in § 82.152(x) must be properly certified as Type I technicians.

* * * * *

(6) Apprentices are exempt from this requirement provided the apprentice is closely and continually supervised by a certified technician while performing any maintenance, service, repair, or disposal that could reasonably be expected to release refrigerant from appliances into the environment. The supervising certified technician is responsible for ensuring that the apprentice complies with this subpart.

* * * * *

(g)(1) Any person seeking approval of a technician certification program may also seek approval to certify technicians who successfully completed a voluntary certification program operated previously by that person. Interested persons must submit to the Administrator at the address in § 82.160(a) verification that the voluntary certification program substantially complied with most of the standards of § 82.161(c) and appendix D of subpart F of this part. If the program did not test or train participants on some elements of the test subject material, the person must submit supplementary information on the omitted material to the Administrator for approval and verify that the approved information will be provided to technicians pursuant to section j of appendix D of subpart F of this part. In this case, the person may not issue a certification card to a technician until he or she has received a signed statement from the technician indicating that the technician has read the supplementary information. Approval may be granted for Type I, Type II, or Type III certification, or some combination of these, depending upon the coverage in the voluntary certification program of the information in each Type. In order to have their voluntary programs considered for approval, persons must submit applications both for approval as a technician certification program and for approval as a voluntary program by December 9, 1994.

(2)(i) Persons who are approved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must:

(A) Notify technicians who successfully completed their voluntary programs of the Administrator's decision within 60 days of that decision;

(B) Send any supplementary materials required pursuant to § 82.161(g)(1) to technicians who successfully completed their voluntary programs within 60 days of the Administrator's decision; and

(C) Send certification cards to technicians who successfully completed their voluntary programs within 60 days of receipt of signed statements from the technicians indicating that the technicians have read the supplementary information.

(ii) Persons who are disapproved to certify technicians who successfully completed their voluntary programs pursuant to § 82.161(g)(1) must notify technicians who successfully completed their voluntary programs of the Administrator's decision within 30 days of that decision.

(iii) Persons who withdraw applications for voluntary program approval submitted pursuant to § 82.161(g)(1) must inform technicians who successfully completed their voluntary programs of the withdrawal by the later of 30 days after the withdrawal or December 9, 1994.

(3) Technicians who successfully completed voluntary certification programs may receive certification in a given Type through that program only if:

(i) The voluntary certification program successfully completed by the technician is approved for that Type pursuant to § 82.161(g)(1);

(ii) The technician successfully completed the portions of the voluntary certification program that correspond to that Type; and

(iii) The technician reads any supplementary materials required by the Administrator pursuant to § 82.161(g)(1) and section j of appendix D of subpart F of this part, and returns the signed statement required by § 82.161(g)(1).

* * * * *

6. Section 82.164 is amended by revising the introductory text to read as follows:

§ 82.164 Reclaimer certification.

Effective October 18, 1994, all persons reclaiming used refrigerant for sale to a new owner, except for persons who properly certified under this section prior to October 18, 1994, must certify to the Administrator that such person will:

* * * * *

7. Appendix D to subpart F is amended by revising section j to read as follows:

Appendix D to Part 82 Subpart F—Standards for Becoming a Certifying Program for Technicians

* * * * *

j. Grandfathering

EPA will grandfather technicians who successfully completed voluntary programs whose operators seek and receive EPA approval to grandfather these technicians, in accordance with § 82.161(g). As part of this process, these certifying programs may be required to send EPA-approved supplementary information to ensure the level of the technicians' knowledge. Technicians will be required to read this supplementary information as a condition of certification. The certifying programs will also issue new identification cards meeting the requirements specified above.

* * * * *

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Part III

Environmental Protection Agency

40 CFR Parts 89 and 91
Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89 and 91

[FRL–5102–2]

RIN 2060–AE54

Control of Air Pollution; Emission Standards for New Gasoline Spark-ignition and Diesel Compression-ignition Marine Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's notice proposes emission standards for new gasoline spark-ignition and diesel compression-ignition marine engines. This action is required by section 213(a)(3) of the Clean Air Act as amended. The proposed standards for gasoline spark-ignition marine engines are expected to result in a 75 percent reduction in hydrocarbon (HC) emissions from outboard and personal watercraft engines. EPA proposes to phase-in HC emission standards for gasoline spark-ignition outboard and personal watercraft engines over a period of 9 years. The emission standards would be phased-in by equal yearly percentage emission reductions from a baseline curve (g HC/kW-hr vs. engine power) beginning with the 1998 model year through the 2006 model year. For gasoline spark-ignition sterndrive/inboard engines the emission standards would also become effective during the 1998 model year. Emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) are also proposed for gasoline spark-ignition marine engines. EPA proposes to include marine diesel compression-ignition engines under the same regulatory framework as the land-based nonroad compression-ignition engines at or above 37 kW, with comparable NO_X reductions per engine of about 37 percent. Emission standards for HC, CO, NO_X, particulate matter (PM), and smoke are also proposed for compression-ignition marine engines.

DATES: Comments must be received on or before January 9, 1995. A public hearing will be held December 9, 1994, at 10 a.m.; requests to present oral testimony must be received on or before November 29, 1994.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) for EPA consideration by addressing them as follows: EPA Air Docket (LE–131), Attention: Docket Number A–92–28, room M–1500, 401 M Street, SW., Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be reviewed at this location from 8:00 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. Unless otherwise notified through a notice in the **Federal Register**, the public hearing will be held in the conference room at the National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zerafa, Office of Mobile Sources, Certification Division, (313) 668–4331.

SUPPLEMENTARY INFORMATION:

I. Obtaining Copies of the Regulatory Language

EPA has not included in this document the proposed regulatory language. Electronic copies (on 3.5" diskettes) of the proposed regulatory language may be obtained free of charge by visiting, writing, or calling the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4288. Refer to Docket A–92–28. A copy is also available for inspection in the docket (see **ADDRESSES**).

The preamble, regulatory language and regulatory support document are also available electronically on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. The service is free of charge, except for the cost of the phone call. Users are able to access and download TTN files on their first call using a personal computer and modem per the following information.

TTN BBS: 919–541–5742 (1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Helpline: 919–541–5384
Also accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking & Reporting
<6> Non-Road
<2> File area #1 . . . Non-Road Marine Engines

At this point, the system will list all available files in the chosen category in chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G> oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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III. Statutory Authority and Background

A. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended [42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)].

Section 213(a) of the Clean Air Act (CAA) directs EPA to: (1) conduct a study of emissions from nonroad engines and vehicles; (2) determine whether emissions of carbon monoxide (CO), oxides of nitrogen (NO_X), and volatile organic compounds (VOCs) from nonroad engines and vehicles are significant contributors to ozone or CO in more than one area which has failed to attain the national ambient air quality standards (NAAQS) for ozone or CO; and (3) if nonroad emissions are determined to be significant, regulate those categories or classes of new nonroad engines and vehicles that contribute to such air pollution. Under CAA section 213(a)(4), EPA may also regulate emissions other than CO, NO_X, and VOCs from new nonroad engines or vehicles if EPA determines that such other emissions contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Nonroad Engine and Vehicle Emission Study (hereafter, "Nonroad Study") required by section 213(a)(1) was completed in November 1991. The Nonroad Study is available in docket A–92–28. The determination of the significance of emissions from nonroad engines and vehicles in more than one NAAQS nonattainment area, required by section 213(a)(2), was published on June 17, 1994 (59 FR 31306). At the same time, the first set of regulations for a class or category of new nonroad engines that contribute to air pollution, required by section 213(a)(3), was promulgated. That rule controlled emissions from new nonroad compression-ignition engines (excluding marine engines) at or above 37 kilowatts (kW). EPA also has proposed emission standards for nonroad gasoline engines less than 19 kW used in lawn and garden equipment and in utility applications (May, 16, 1994, 59 FR 25399). Today's action continues to implement section 213(1)(3) and (4), by proposing emission standards for gasoline spark-ignition and diesel compression-ignition marine engines.

B. Background

Based on the results of the 1991 Nonroad Study, EPA has determined that emissions of VOCs, NO_X, and CO from nonroad engines and vehicles contribute significantly to ozone or CO levels in more than one NAAQS nonattainment area (see 59 FR 31306, June 17, 1994). As presented in the Nonroad Study, nonroad engines and vehicles contribute an average of 10 percent of summer VOCs in the 19 ozone nonattainment areas included in the study. Gasoline spark-ignition marine engines make up nearly 30 percent of these summertime nonroad VOC emissions and three-quarters of these gasoline spark-ignition marine engine HC emissions are from 2-stroke outboard engines. EPA therefore has determined that it is required to regulate new gasoline spark-ignition marine engines under Section 213(a) of the Clean Air Act.

EPA held a public workshop on July 29, 1992, to solicit information on technical characteristics, emissions, and general regulatory issues related to marine engines. Public notice of the meeting and comments submitted by interested parties can be found in the docket for this rulemaking (see **ADDRESSES** section at beginning of notice). Subsequent to the public workshop, EPA met several times with the National Marine Manufacturers Association (NMMA). NMMA has encouraged federal regulation of marine engine emissions, stating that the U.S. government should take the lead in developing emission standards and test procedures that could be a model for other countries. One of the marine industry's major concerns is that

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without such a U.S. federal effort, a patchwork of different emission standards and test procedures would proliferate throughout the world, subjecting the manufacturers to excessive costs and administrative burdens resulting from the lack of harmonized standards and procedures. The marine engine manufacturers have been very helpful in providing EPA with information and data used in the development of a number of emission control options presented in this notice. Also, NMMA has presented to EPA their analysis of potential emission reduction strategies for marine engines. The documentation of NMMA's analysis can be found in the public docket.

The settlement of *Sierra Club* v. *Browner*, Civ. No. 93–0197 NHJ (D.D.C. 1993), requires EPA to propose emission standards for marine engines by September 30, 1994 (extended to October 30, 1994), and to promulgate final regulations by November 22, 1995. The time schedule resulting from this settlement has influenced a number of EPA decisions regarding regulatory options and proposals which are discussed in more detail in this notice.

In this notice, EPA is also proposing to set emission standards for new diesel compression-ignition marine engines. EPA promulgated rules for nonroad compression-ignition engines above 37 kW (59 FR 31306, June 17, 1994), but this rule did not include marine engines. During the development of that rulemaking, EPA decided to exclude marine propulsion engines and marine auxiliary engines because little information was available at the time to determine whether the test procedure was sufficiently representative of the operating cycle of marine engines and also because of uncertainty of how such regulations may impact, or conflict with, the U.S. Coast Guard safety requirements. EPA now believes that marine compression-ignition engines should be covered by the same regulation as other compression-ignition engines over 37 kW, with appropriate amendments pertaining to testing procedures.

EPA proposes to amend 40 CFR part 89 to include all marine compression-ignition engines below 560 kW manufactured after January 1, 1999 and all marine compression-ignition engines equal to or above 560 kW after January 1, 2000. Many of the marine engines used for auxiliary power are very similar in design and operation to land-based nonroad engines that are required to be certified under the existing nonroad large compression-ignition engine regulations. However, marine compression-ignition engines used for propulsion may be less similar in operation and design than land-based compression-ignition nonroad engines and require additional considerations for possible inclusion in 40 CFR part 89. These issues are discussed in greater detail in the issues section of this notice.

The International Maritime Organization (IMO), a subgroup of the United Nations is currently developing an agreement (in the form of the addition of a new annex to the Marine Pollution Convention (MARPOL 73/78)) to control emissions from ships on international voyages. Such an agreement would provide important measures to control emissions from ships that are outside U.S. territorial waters for which national standards could not apply. Efforts are being made by the EPA and the U.S. Coast Guard (who represents the U.S. at IMO) to ensure that test procedures and certification procedures are harmonized between the IMO regulations and national regulations. The IMO annex will cover new diesel marine propulsion and auxiliary engines used on ships on international voyages. The current proposal at IMO covers engines over 100 kW used on such ships. The current draft IMO annex is contained in the docket.

IV. Requirements of the Proposed Rule

The general provisions of the regulation are briefly described in the following section, and the rationale for key parts of the proposal is discussed. A more thorough discussion of issues raised in the rulemaking follows in Section V.

A. Overview

EPA proposes to regulate the emissions of exhaust pollutants for both new gasoline spark-ignition marine engines and new diesel compression-ignition marine engines. For gasoline spark-ignition marine engines, the primary focus of the regulations is to significantly reduce hydrocarbon (HC) emissions. For gasoline spark-ignition outboard and personal watercraft engines, EPA proposes average HC emission standards that are a function of the rated power of the engine and will result in a 75 percent reduction in HC emissions from current technology 2-stroke marine engines. A more complete explanation for this form of emission standard is given in Section IV(D)(2) of this preamble. For gasoline spark-ignition sterndrive and inboard engines, EPA proposes an average HC emission standard of 8.0 g/kW-hr. EPA also proposes average emission standards for oxides of nitrogen (NOx) of 6.0 g/kW-hr and 6.5 g/kW-hr for outboard/personal watercraft and sterndrive/inboard engines respectively. These standards are discussed in more detail in Section V. A carbon monoxide (CO) cap of 400 g/kW-hr is also proposed, although CO is of secondary importance for gasoline spark-ignition marine engines.

For new diesel compression-ignition marine engines, EPA proposes appropriate amendments to the existing nonroad compression-ignition engine regulations (40 CFR part 89) to include marine engines. This approach would thus subject marine compression-ignition engines to the same emission standard levels as required for other nonroad compression-ignition engines. The proposed emission standards are 9.2 g/kW-hr for NOx, 1.3 g/kW-hr for HC, 11.4 g/kW-hr for CO, 0.54 g/kW-hr for PM, and smoke standards of 20/50 maximum percentage opacity for acceleration/peak operating modes. These standards would apply to all new compression-ignition marine propulsion engines and auxiliary engines, regardless of power rating.

Today's proposal includes a compliance program involving pre-sale certification, assembly line testing, and in-use enforcement for both gasoline spark-ignition and compression-ignition marine engines. The proposed program would be similar to the existing compression-ignition nonroad regulatory program and include:

- designation of product line into groups of engines with similar emission characteristics (such groups are called engine families),
- averaging and trading program elements modified to suit the proposed emission standard levels and industry structure,
- manufacturer emission testing of selected engines with the specified test procedure to demonstrate compliance with emission standards,
- labeling of engines from each engine family,
- submission of application for certification for each engine family by model year,
- issuance of an emission compliance certificate for each engine family,
- prohibition against U.S. sale of engines not certified by EPA,
- recordkeeping and reporting requirements,
- EPA confirmatory certification testing,
- banking of unused emission credits for use in future model years,
- manufacturer production line testing backed-up by EPA Selective Enforcement Auditing (SEA),
- in-use testing and enforcement,
- warranty and prohibition on tampering, and
- importation provisions.

For new gasoline spark-ignition marine engines, EPA proposes that the effective date of the emission control requirements of these regulations begin in model year 1998. For gasoline spark-ignition outboard and personal watercraft marine engines, the stringency of the HC standards is proposed to be proportionately phased-in each year through model year 2006. Engines on average, will be required to meet a consistently lower standard for each year from model year 1998 to 2006.

For new diesel compression-ignition marine engines, the standards would be effective for engines up to 560 kW on January 1, 1999; for engines including and above 560 kW, the proposed effective date is January 1, 2000.

B. Definition of Marine Engine

EPA proposes to define marine engines as any engine which is used on a "vessel" as defined in 1 U.S.C.S. 3 (1992) for the purposes of propulsion and/or auxiliary power. The word "vessel" includes every description of watercraft or another artificial contrivance used, or capable of being used, as a means of transportation on water. This definition applies equally to gasoline spark-ignition and diesel compression-engines unless specifically stated otherwise.

Pursuant to section 203(b)(1) of the CAA, the Agency proposes categories of exemptions from new marine engine regulations similar to the existing exemptions for new nonroad compression-ignition engines at or above 37 kW (50 horsepower) (see 40 CFR, Part 89, Subpart I). These include exemptions for purposes of research, investigations, studies, demonstrations, training, or for reasons of national security. Exemptions are obtained either categorically, that is without application to the Administrator, or by submitting a written application to the Administrator. Export exemptions and manufacturer-owned engine exemptions are granted without application. Testing exemptions, national security exemptions, and exemptions for engines used solely for competition are obtained by application.

Exemptions are justified in these cases because the sources are limited in number or scope so no environmental harm results; the particular use of the source is determined to further air quality research; and/or the exemption is vital to the security of the nation. (See 39 FR 10601, March 21, 1974, for history of on-highway exemptions policy.)

C. General Enforcement Provisions

Any manufacturer of a gasoline spark-ignition or diesel compression-ignition marine engine would be responsible for obtaining from the Administrator a certificate of conformity covering any engine introduced into commerce in the United States before such an engine is sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States. All such engines must comply with the standards promulgated in EPA's final regulations.

Section 213(d) of the Clean Air Act states that the Agency shall enforce new nonroad engine and vehicle standards in the same manner as on-highway vehicle and engine standards are enforced.[1] Therefore EPA is authorized to submit nonroad engines to certification requirements, assembly line testing, and in-use enforcement that apply to on-highway engines, with modifications that EPA deems appropriate. Section 213(d) also grants EPA the authority to revise or promulgate regulations as may be necessary to determine compliance with, and to enforce the nonroad standards. Further, EPA is authorized to prohibit certain acts, such as tampering with a certified engine.

Pursuant to this authority, the Agency is proposing today to require marine engine manufacturers to obtain certification and to subject them to manufacturer assembly line testing backed-up by selective enforcement auditing and in-use enforcement. The Agency is also proposing regulations for marine vessels that are similar to those for on-highway vehicles under sections 203, 204, 205, and 208 of the Act.[2] These general enforcement regulations include prohibitions contained in section 203(a); prohibited acts, if committed, subject persons to the assessment of civil penalties under section 205. As applied to nonroad engines under section 213(d), such acts include, but are not limited to, the introduction into commerce in the U.S. of marine engines which are not covered by a certificate of conformity issued by EPA, tampering with emission control devices or elements of design installed on or in a certified marine engine, and failing to provide information to the Agency if requested. The Agency is also proposing regulations under the authority of section 205 of the Act which sets forth the maximum statutory penalties for violating the prohibitions.

The Agency is proposing general information collection provisions similar to current on-highway provisions under section 208 of the Act which include, but are not limited to, the manufacturer's responsibility to provide information to the Agency, perform testing if requested by the Agency, and maintain records. In addition, EPA is proposing emission defect reporting regulations which require manufacturers to report to EPA emission-related defects that affect a given class or category of engines. The emission defect reporting regulations also specify procedural and reporting requirements for manufacturers that initiate voluntary emission-related recalls. The general information collection provision will also provide authority for EPA enforcement personnel to gain entry and access to various facilities under section 208.

EPA is authorized under section 217 of the CAA to establish fees to recover compliance program costs associated with sections 206 and 207. EPA will propose to establish fees for today's marine engine emission compliance program at some future time, after the program has been promulgated and associated costs are determined.

D. Program Description and Rationale

This section describes several features of EPA's marine engine emission compliance program and EPA's rationale for including these features in the program. Specific issues related to

[1] Section 213(d) of the Act provides that the standards under 213 "be subject to sections [206, 207, 208, and 209], with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section [202]. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section." Section 206 specifies requirements for motor vehicle and motor vehicle engine compliance testing and certification; Section 207 requires manufacturers to warrant compliance by motor vehicles and motor vehicle engines in actual use among other things; section 208 requires recordkeeping by manufacturers of new motor vehicles or new motor vehicle engines and authorizes EPA to require testing, collect information and require reports; and section 209 preempts states and political subdivisions from adopting or enforcing standards relating to emission control, certification, or inspection of new motor vehicles or new motor vehicle engines, and from adopting or enforcing emission control standards for certain new nonroad engines or new nonroad vehicles, unless specifically authorized to do so by EPA.

[2] Section 203 specifies prohibited acts and exempted motor vehicles; section 204 provides for federal court injunctions of violations of section 203(a); section 205 provides for the assessment of civil penalties for violations of section 203; and section 208 provides the Agency with information collection authority. The general enforcement language of section 213(d) provides the Agency's authority for applying sections 203, 204, 205, and 208 of the Act to nonroad engines and vehicles.

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the proposed program which require in-depth discussion are presented in Section V "Discussion of Issues."

1. Applicability

i. Gasoline Spark-ignition Engines. Under the proposed regulations, all gasoline spark-ignition marine engines for a given manufacturer are included in determining compliance with the average standards for each year. Compliance is determined taking into account any trading or banking of emission credits.

ii. Diesel Compression-ignition Engines. Today's proposal covers all compression-ignition marine engines regardless of rated power. EPA proposes to require compression-ignition marine engines to meet the standards that new nonroad large compression-ignition engines at or above 37 kW are required to meet, with appropriate changes to test procedures as discussed in Section V.

EPA has not proposed to set a lower power rating limit of 37 kW or an upper power rating limit for marine engines. EPA solicits comments regarding whether such limits should be set and, if so, the levels at which they should be set and the reasons why they should be set at those levels.

As described in the background section of this preamble, the International Maritime Organization (IMO) is developing an agreement to control emissions from ships on international voyages. The largest diesel marine engines will most likely be covered by the IMO annex, as these engines are typically used on ocean going vessels which traverse international waters. However, some large engines and auxiliary power engines may be used on U.S. flag vessels that remain in internal waters (e.g., Great Lakes freighters). There is no clear engine cut-point in terms of power (kW) above which the IMO annex will cover and below which the national marine regulations will cover. Therefore, EPA is not proposing an upper limit for the application of the national regulations to control emissions from compression-ignition marine engines. EPA requests comments on whether an upper limit should be established and, if so, at what level and why.

iii. Alternative-fueled Marine Engines. EPA does not believe that new emission standards for marine engines will require increased use of alternative fuels. Test procedures and standards for alternative fuels require significant effort, which could not be completed by the court deadline for this rulemaking. Therefore, EPA proposes not to include test procedures or emission standards for alternative-fueled marine engines. EPA requests comment on the need for regulations and the potential for increased market share for marine engines that operate on alternative fuels such as electricity, natural gas, methanol, ethanol, or other alternative fuels. Commenters encouraging EPA to adopt alternative fuels standards and test procedures in this rule should review the alternative fuels rules for on-highway engines for information regarding how such rules would work.

2. Emission Standards for Gasoline Spark-ignition Outboard and Personal Watercraft Engines

i. Hydrocarbon Standards. EPA is proposing that manufacturers comply with corporate average emission standards requiring a 75 percent reduction in HC emissions from 1990 outboard and personal watercraft base levels when fully implemented. The standards would be phased-in over 9 years. Each year a manufacturer's fleet would need to meet a lower average emission standard. The standard would be a work specific emission rate limit (g/kW-hr) which is a function (curve) that varies with engine power. Compliance by a manufacturer's fleet as a whole is determined by comparing each engine family against the curve and summing the differences.

To derive the yearly compliance curves for the emission standards, EPA first had to calculate a base HC emission standards curve from which equally proportional reductions would be taken over the phase-in period. EPA proposes the following equation as the base HC emission standards curve:

HC_{base}=151+557/$P^{0.9}$ or 300 g/kW-hr, whichever is lower

where:

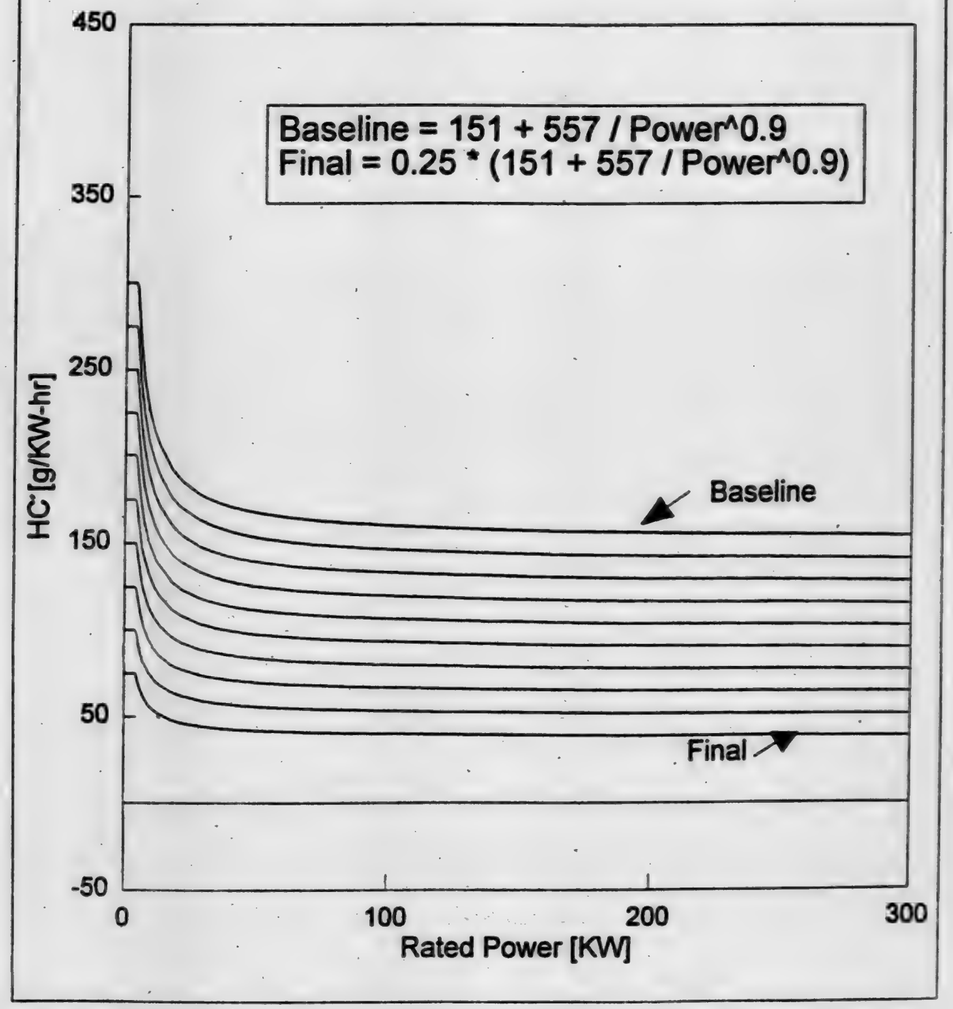
HC_{base}=hydrocarbon base emission standard in g/kW-hr P=rated power of the engine family in kilowatts.[3]

This function best fits the data provided by manufacturers for marine outboard and personal watercraft engines. With this functional format, the HC base emission standard is a function of the power rating of the engine family. However, EPA is also proposing that HC_{base} is not to exceed 300 g/kW-hr. The HC baseline curve is shown in Figure 1; also shown are the standard curves for the phase-in years, which are described in the following paragraphs.

BILLING CODE 6560-50-P

[3] Refer to Issues section V.D. for a discussion of the HC baseline emission function.

Figure 1
HC Standard Curves for Outboard/Personal Watercraft



BILLING CODE 6560-50-C

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The average HC standard curve for a given model year is determined by the product of the HC_{base} curve function and the model year factor as shown in Table 1. The model year factor reflects equal percentage reductions per year from the baseline over the nine year phase-in period, resulting in a 75 percent decrease when fully implemented. For example, the average HC emission standard in 2004 is the product of the 2004 HC model year factor, 0.417, and the HC_{base} function. The resulting average emission standard function for model year 2004 is as follows:

$$0.417\times\left(151+\frac{557}{p^{0.9}}\right)$$

or

$$62.97+\frac{232.27}{p^{0.9}}$$

Also, given the limitation on HC_{base} of 300 g/kW-hr maximum, the 2004 emission standard may not be greater than 0.417×300=125.1 g/kW-hr.

TABLE 1.—GASOLINE SPARK-IGNITION MARINE ENGINES AVERAGE EMISSION STANDARDS

Model year	HC model year factor
1998	0.917
1999	0.833
2000	0.750
2001	0.667
2002	0.583
2003	0.500
2004	0.417
2005	0.333
2006 and after	0.250

ii. Oxides of Nitrogen Standards. EPA is also proposing NO_X emission standards for gasoline spark-ignition outboard and personal watercraft engines. EPA believes that the proposed corporate average standard level of 6.0 g/kW-hr is at a level appropriate for the types of technologies that will be used for meeting the stringent proposed HC standards. EPA proposes full implementation of the NO_X standard beginning with the 1998 model year without phase-in. However, EPA requests comment on whether or not a phase-in period would be appropriate, and if so, what length and why. However, EPA requests comment on whether or not a phase-in period would be appropriate, and if so, what length and why. EPA proposes not to allow banking of NO_X credits for outboard/personal watercraft engines during the phase-in years 1998 through 2005 (this is discussed in more detail in the issues section, item M(5)).

iii. CO standards (cap). EPA is also proposing to cap CO emissions at 400 g/kW-hr. This standard is the standard proposed for many utility engines (see 59 FR 25399, May 16, 1994). While some marine engines currently have CO emissions higher than this level, EPA expects that the standard can be met with small adjustments. When engines are controlled for HC, this CO standard will be easier to achieve. Therefore, every engine must meet the CO emission standard. The CO emission standard remains constant over the phase-in period and is set only to eliminate very high CO levels, which generally are far above the CO emission levels of most other engines sold. Most of the NAAQS nonattainment episodes for CO occur in the winter, while most boating activity in the U.S. occurs during the summer months, when CO air quality standards are rarely in nonattainment. However, very high levels of CO can have severe impacts on the health of users of such engines and in these cases boat design must be taken into account. Therefore, EPA requests comment on the need for CO control and on the proposed cap standard level.

3. Emission Standards for Gasoline Spark-Ignition Sterndrive/Inboard Engines

For gasoline spark-ignition sterndrive/inboard engines, the proposed corporate average standards for HC and NO_X are 8.0 g/kW-hr and 6.5 g/kW-hr respectively. These proposed standards are discussed in greater detail in Section V. As with outboard and personal watercraft engines, and for similar reasons, EPA is proposing to cap CO levels from such engines at 400 g/kW-hr.

4. Emission Standards for Diesel Compression-Ignition Marine Engines

EPA is proposing appropriate amendments to the existing nonroad compression-ignition engine regulations (40 CFR Part 89) to include all marine compression-ignition propulsion and auxiliary engines, regardless of power rating. This approach would thus subject marine compression-ignition engines to the same emission standard levels as required for new nonroad compression-ignition engines at and above 37 kW. The proposed emission standards are 9.2 g/kW-hr for NO_X, 1.3 g/kW-hr for HC, 11.4 g/kW-hr for CO, 0.54 g/kW-hr for PM, and smoke standards of 20/50 maximum percentage opacity for acceleration/peak operating modes.

5. Crankcase Emission Controls

In addition to the numerical exhaust emission standards, EPA proposes to prohibit direct emissions of crankcase vapors into the atmosphere for both gasoline spark-ignition and compression-ignition marine engines. Motor vehicles have been subject to an analogous requirement since the first steps of emission control regulation.

6. Compliance with Gasoline Spark-ignition Marine Engine Emission Standards

Compliance with the HC and NO_X emission standards is based on an averaging, banking and trading (ABT) provisions determined by calculating the lifetime engine emissions difference between the engine family emission level and the standard (compliance curve). At the end of each model year, each manufacturer must have as many or more emissions below the standards than above the standards for the manufacturer's product line (with allowances for trading and banking).

For a given engine family, the amount of emission credit or shortfall will be based on the difference in emission rate (g/kW-hr) between the family emission level (FEL) which is determined with the deterioration factor applied and the emission standard level (STD). The HC emission standard level for outboard and personal watercraft engines is calculated using the model year specific emission standard function. The function utilizes the rated power for the engine family to determine the emission standard level, in conjunction with the HC model year factor given in Table 1. The NO_X emission standard level for outboard and personal watercraft engines is proposed to be 6.0 g/kW-hr. For sterndrive and inboard spark-ignition engines, the emission standard levels (STD) are proposed to be 8.0 g/kW-hr for HC and 6.5 g/kW-hr for NO_X. The emission rate difference between the family emission level (FEL) (with deterioration factor applied) and the emission standard level (STD) is used to calculate the lifetime emission credit. To calculate lifetime emission credits, the following variables are necessary.

- FEL: Engine family emission limit
- STD: The model year specific emission standard level
- power: Power rating of the engine family
- load factor: Fraction of rated engine power utilized in-use, assumed to be 0.207 for all gasoline spark-ignition engines
- max useful life: Maximum useful life specific to the power rating and the application

- hours per year: Usage rate specific to the application
- sales: Consumption of engines in the U.S. for the engine family
- 0.03: Discount rate for all emissions
- S(t): Cumulative fraction survived at time t

The following equation is used to calculate credit generation and usage for a given engine family.

$$\sum_{\text{t equals 1}}^{\text{max useful life}} \frac{S(t)\times\text{sales}\times(\text{STD}-\text{FEL})\times\text{power}\times\text{hours per year}\times.207}{1.03^{t}}$$

Credits are generated when the FEL is lower than the emission standard and are represented by positive numbers, while shortfalls (or credit usage) occurs when the FEL is above the emission standard and are represented by negative numbers.

EPA requests comment on the individual elements used in the equation above, specifically the following: estimates of maximum useful life according to power rating, survival probabilities, discount rate,[4] hours per year, and identification of U.S. sales. Refer to the benefits chapter of the Regulatory Impact Analysis for further information on useful life, survival probability, discount rate, and hours per year.

Manufacturers choose the FEL for each engine family based on testing and their estimate of deterioration. Each engine family must certify to the chosen FEL, and the FEL would be treated as the enforceable emission limit for certification, manufacturer assembly line testing, Selective Enforcement Auditing, and in-use testing.

Compliance with the emission standards will be determined by summing the positive and negative emission credits for all the manufacturer's engine families. For each model year, the manufacturer, at the models year's end, must have as many or more positive credits as negative for the manufacturer's product line. In other words, each manufacturer must maintain a positive or zero balance in their emission account with EPA.

Manufacturers would prepare an overall compliance strategy and submit an initial credit generation or usage report along with the application for certification for each engine family. To demonstrate compliance with the standards, the manufacturer would have to submit an end of the year report within 90 days of the end of the model year. The manufacturer would be allowed an additional 180 days after the end of the year reports are due to submit a final report for credit counting and calculation revisions. The end of the year report will contain the manufacturer's data on U.S. engine family sales to the point of first retail sale. EPA would adjust the manufacturer account balances to reflect the sales numbers contained in the final report. Certificates awarded to a manufacturer for its engine families could be rendered void *ab initio* if the manufacturer does not achieve an emission account balance greater than or equal to zero at the end of this time period.

When credits are generated and traded in the same model year, EPA proposes to make both buyers and sellers of credits potentially liable for accurate credit estimation, except in cases of fraud. This policy would provide additional incentives for buyers and sellers to take the steps necessary to ensure the integrity of the transactions and to place contractual liability on the appropriate party. EPA requests comment as to whether it should allow trading of emission credits during the model year in which they are generated. If credits are traded only after the end of year reports are finalized, the risk that the seller of credits would not have the full amount contracted in the account would be virtually eliminated.

In order to maintain the integrity of the balance of emissions for the new engine fleet, manufacturers must use accurate sales data when calculating credits which represent United States consumption of engines. Since engines sold to other countries, including Canada and Mexico, are excluded from this program, manufacturers are required to obtain data pertaining to engine sales to calculate accurate credit generation and usage. However, to ease the burden on manufacturers of tracking engines to the end user, manufacturers would only need to track engines to the location where the completed vessel or outboard engine is purchased, otherwise known as a point of first retail sale. In cases where the end user purchases the completed vessel directly from the manufacturer, the end user is the point of first retail sale. Alternatively, a boat dealer may be the point of first retail sale. Engine sales data pertaining to engines that have already been shipped to a point of first retail sale is also known as "first delivery" information.

7. Effective Dates for Certification

For gasoline spark-ignition outboard and personal watercraft engines, EPA proposes to phase-in average HC emission standards beginning with model year 1998. The HC emission standards would be phased-in through model year 2006, becoming more stringent each year. The definition of model year is discussed in the following section. The HC emission standards for gasoline spark-ignition sterndrive/inboard engines, along with the NO_X and CO emission standards for all gasoline spark-ignition marine engines are proposed to be effective with the 1998 model year, with no phase-in. However, EPA requests comments on whether or not the emission standards for gasoline spark-ignition sterndrive/inboard engines should include a phase-in period, and if so, what length and why.

In the NPRM for the Federal Implementation Plan for California (59 FR 23264), EPA proposed to allow personal watercraft manufacturers one additional year of leadtime. However, the standards proposed in today's notice were developed by analyzing emissions from outboard and personal watercraft as one category with a consistent phase-in period. Therefore, EPA is not proposing an additional year of leadtime in today's proposal for outboard/personal watercraft engines, but EPA is requesting comment on the necessity of an additional year of leadtime given the standards structure which contains provision for averaging and trading of emission credits with outboard manufacturers.

EPA proposes that diesel compression-ignition engines less than 560 kW meet the emissions standards beginning January 1, 1999, and those 560 kW and above meet the standards beginning January 1, 2000.

8. Model Year Designation

Section 202(b)(3)(A)(i) of the Clean Air Act defines the term "model year"

[4] Discount rate, as used here, refers to an appropriate rate for calculating present value of the useful life stream of emission credits generated. A discount rate of 3% is proposed because these are consumption goods.

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with reference to any specific calendar year as "the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of the calendar year. If the manufacturer has no annual production period, the term 'model year' means the calendar year."

In connection with the certification of on-highway engines and vehicles, EPA interprets the Act to define a model year as a period determined on an engine family by engine family basis including only one January 1.[5] EPA believes this meaning of model year is also appropriate for marine engines, because it allows manufacturers to retain the flexibility to introduce models at different times of the year. EPA includes this more detailed model year definition in the proposed regulations (§ 91.2) and requests comments on the appropriateness of this definition for marine engines. EPA requests comment on the relationship between the proposed model year definition and inventory issues, particularly left over inventory of engines at the end of the model year in the engine manufacturers possession. On-highway guidance documents on related stockpiling issues are contained in the docket for the readers reference.

9. Engine Family Categorization

For the purpose of demonstrating emission compliance, manufacturers of on-highway motor vehicles and/or large nonroad compression-ignition engines currently divide their product line into groups of engines called engine families. Engine families are composed of engines which have similar emission characteristics over their useful lives. EPA is proposing that gasoline spark-ignition marine and diesel compression-ignition marine engine families be determined using the same criteria (type of fuel, method of air aspiration, number of cylinders, and so forth) currently used to define on-highway engine families. EPA includes a more detailed description of engine family determinants in the proposed regulations (§ 91.116–98), and requests comments on the appropriateness of these determinants for marine engines.

For the same reasons, as explained in the nonroad large compression-ignition engine rule (59 FR 31306), a compression-ignition marine engine manufacturer could choose not to use the criteria to separate engines by number of cylinders and cylinder arrangement unless a manufacturer employs an aftertreatment device on its compression-ignition marine engines (see 40 CFR 89.116–96). This is necessary because the performance of an aftertreatment device can vary with the space velocity through the device. The space velocity will vary as the number of cylinders and cylinder arrangement vary. However, manufacturers have indicated aftertreatment devices will not be needed to meet the requirements in this proposal for compression-ignition marine engines.

10. Certification Testing

To obtain a certificate of conformity, all of the configurations within an engine family would be expected to meet each emission standard or family emission limit. Since it would be unreasonable to require that manufacturers emission test all engine configurations within an engine family to demonstrate compliance with the standards, EPA is proposing that one test engine from each engine family be selected and tested by the manufacturer. Choice of that test engine is discussed below.

i. Gasoline Spark-Ignition Engines. For gasoline spark-ignition marine engines, the engine selected for testing should be from the engine configuration the manufacturer expected to be the worst case hydrocarbon emitter. Since it may be difficult to determine which configuration is the worst case hydrocarbon emitter, EPA is proposing to use the criteria of brake-specific fuel consumption (BSFC) to determine which engine configuration within an engine family will be selected as the certification test engine. EPA believes that an engine configuration with high BSFC will generally emit higher levels of hydrocarbons and carbon monoxide than other configurations in the same engine family which exhibit lower BSFC. EPA solicits comments on the appropriateness of BSFC as the criterion to be used for selecting the certification test engine for a given engine family.

Although not proposed in today's notice, EPA also considered another alternative which would require the manufacturer to select and test the engine configuration expected to exhibit the highest hydrocarbon emission level using their own sound technical justification. EPA could verify the test results by confirmatory testing of this engine. EPA would also have the option to test or require testing of any available test engine representing other configurations in the engine family and review a manufacturer's technical justification to verify worst case selection. EPA solicits comment on the appropriateness of this approach for selecting the worst case hydrocarbon emitter.

ii. Diesel Compression-Ignition Engines. For diesel compression-ignition marine engines, EPA is proposing that the manufacturer must select one engine from each engine family which, at maximum power, has the greatest amount of fuel injected per injection stroke. This is the same criteria currently used for test engine selection for nonroad large compression-ignition engines used in land-based applications. EPA solicits comment on the appropriateness of this method of test engine selection for marine engines.

Before emission testing is carried out on marine compression-ignition engines, the manufacturer would perform service accumulation on each emission test engine over the dynamometer cycle of its choice based on good engineering practice (for example, a cycle representative of typical "break-in" operation of a new production engine in actual use). For each engine family, the manufacturer would determine the number of hours required to stabilize the emissions of the test engine. However, the number of hours which the manufacturer chooses may not be more than 125 hours. This limitation is necessary because on-highway experience has demonstrated that NO_x will decrease with hourly use for some engine family designs. The manufacturer should maintain, and provide in its application to the Administrator, a record of the rationale used in making the dynamometer cycle selection and the rationale used in making the service accumulation hours determination for emission testing.

iii. Both Gasoline Spark-Ignition and Diesel Compression-Ignition Engines. EPA proposes to allow manufacturers the flexibility to submit emission test data used to certify engine families in previous years in lieu of actual testing for current model year certification. This can be done to certify engine families similar to the previously certified engine family, provided these data show that the test engine would comply with the applicable regulations. This allows manufacturers the ability to "carry across" test data between similar engine families or to "carry over" test data from the same engine family from one year to another.

As in the case for on-highway vehicles and engines, the proposed regulations make it illegal for any person to use a device on a nonroad engine which senses operation outside normal emission test conditions and reduces the ability of the emission control system to control the engine's emissions. Such "defeat" devices would render the proposed test procedures inadequate to predict in-use emissions. To guard against use of these devices, EPA would reserve the right to audit test a certification test engine, or require the manufacturer to perform such testing over a modified test procedure if EPA suspects a defeat device is being used by an engine manufacturer on a particular engine.

Engines equipped with adjustable operating parameters would have to comply with all the regulations with the parameters adjusted to any setting in the full range of adjustment. For example, a maximum fuel system pressure screw that is readily adjustable with a screwdriver or wrench could be adjusted by EPA to any setting within its adjustable range for emission testing. This ensures that changes to the adjustable operating parameters that can readily occur in-use will not cause the engine to fail to comply with these regulations.

11. Engine Family Certification

Upon approval by the Administrator, an emission compliance certificate would be issued by EPA for each engine family. The engine manufacturer must submit an application to EPA requesting a certificate of conformity for each engine family every model year, as required by the CAA.[6] Applications must be submitted every model year even when the engine family does not change from the previous certificate, although representative test data could be reused in the succeeding year's application. However, EPA is proposing the option of a letter notifying EPA of carryover and the next year's projected sales in lieu of the full certification application.

The application would give EPA sufficient information regarding test results, deterioration factors, emission control system description, and other information necessary for determining compliance with the emission standards. The application would allow EPA to determine compliance with the applicable emission standards in a timely manner. It is important that the engine manufacturer succinctly, fully, and accurately submit all pertinent information to EPA and maintain internal records which can be easily accessed if such access is determined necessary by EPA.

If changes to an engine family configuration occurred that caused the changed version to be the engine family's worst case emitter, then emission testing of the changed version would be required. Manufacturers would be expected to conduct emission testing if proposed changes could cause an increase in emissions. Additionally, the Administrator could require a manufacturer to conduct testing to demonstrate compliance.

12. Durability Demonstration Requirements

Marine engines for which a certificate of conformity has been granted are expected to meet the emission standards not only when the engines are new, but also throughout their useful lives. Therefore, as described in the following, EPA is proposing emission control durability requirements as part of the certification process.

i. Gasoline Spark-ignition Engines. For gasoline spark-ignition engines used for on-highway applications, EPA's experience indicates that emission control efficiency generally decreases with the accumulated use of the engine. However, it is believed that much of this deterioration results from deterioration of the catalysts that are used on these vehicles. EPA does not have sufficient data for determining if the types of marine emission control technologies expected to be used to meet the requirements of this rule (such as, direct injection) will be durable during the useful life of the engines. Since EPA views this rulemaking as a long term strategy to reduce emissions from gasoline spark-ignition marine engines, and new technologies with unknown emission control durability will be used by manufacturers to meet the standards, a demonstration of emission control durability is necessary during the certification process.

For gasoline spark-ignition marine engines, EPA is proposing a durability demonstration program similar to that used for gasoline spark-ignition on-highway heavy-duty engines. This program includes a requirement that for each engine family, the manufacturer shall determine emission deterioration factors for each pollutant based on testing of engines, subsystems, or components and/or sound technical judgment. The deterioration factors would be submitted to EPA and applied to the new engine emission results (as proposed in 91.105 of the regulations) to determine compliance with the emission standards. The deterioration factors would be required to simulate deterioration for 350 hours of use for all gasoline spark-ignition marine engines. These factors would also be expected to simulate deterioration over a period of 10 years for all gasoline spark-ignition engines except personal watercraft, which would be expected to simulate 5 years. As a check of the adequacy of the methodologies used to determine the deterioration factors, EPA will use data from the recall testing program. See section 19 regarding in-use testing and recall for further discussion of these program elements.

EPA has considered an additional feature, although not proposed in today's notice, which would require the engine manufacturer to procure and test a sample of in-use engines covered by a certificate and submit the data to EPA as a condition of certification. The in-use data would be used to assess the adequacy of the methodology used by the manufacturers to determine deterioration factors.

Under this feature, a manufacturer's failure to fully execute the in-use tests will be considered a failure to satisfy the conditions under which the certificate is issued. An engine will be considered to be covered by the certificate only if the manufacturer fulfills the conditions upon which the certificate was issued. Thus, failure to satisfy the conditions of the certificate for this reason may subject a manufacturer to similar penalties as any other type of violation of the certification conditions. Although not proposed in today's notice, EPA requests comments on requiring an in-use testing program as a condition of certification as well as the appropriateness of such a program for the stated purposes.

ii. Diesel Compression-ignition Engines. EPA is proposing no requirements for the submission of durability demonstration test data or use of a deterioration factor when certifying engine families that do not employ aftertreatment. For on-highway vehicle certification, EPA has found that NO_x emissions from compression-ignition engines experience very little, if any, increase over time. Therefore, EPA believes that requiring durability demonstration test data and deterioration factor requirements during certification would impose an unnecessary cost burden on manufacturers.

Should a manufacturer choose to use exhaust aftertreatment to meet the emission standards for any engine family, deterioration factors would have to be determined and applied in the same manner as is currently done for on-highway compression-ignition engine durability demonstration. However, no durability demonstration or deterioration factors are required by this rule when an engine that was certified without aftertreatment is later retrofitted with an aftertreatment device

[5] Bertelsen, Bruce L. Memo to Eric O. Stork, March 3, 1978.

[6] Section 206 of the Clean Air Act requires certification on a yearly basis. This has been interpreted to mean certification for each model year, as defined in section 202(b)(3)(A)(i) of the CAA and in § 91.1 of the proposed regulations.

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or package. These retrofits are not designed to interfere with the original design and, therefore, should not result in worse emissions than the original design. Since the engine has already been demonstrated to be in compliance without the aftertreatment device, demonstration of the durability of a retrofitted aftertreatment device is not necessary.

13. Certification Test Procedure for HC, NO_x, CO, and PM

The proposed marine engine certification test procedure for gasoline spark-ignition engines will be based on the steady state test cycle developed by the International Council of Marine Industry Associations (ICOMIA) as described in Society of Automotive Engineers (SAE) Paper 901597. This cycle is named E4 by the International Standards Organization (ISO) and is contained in test procedure ISO 8178–4. EPA requests comments on the appropriateness of the E4 cycle for testing gasoline spark-ignition marine engines.

The proposed test cycle for diesel compression-ignition marine propulsion engines is the ISO E5 steady state test procedure developed from operational data supplied by Volvo and the Norwegian government. However, as more fully described in Section V, EPA requests comments on the appropriateness of the ISO E3 cycle for compression-ignition marine engines. Although the E5 cycle is proposed in today's notice, EPA is also seriously considering the E3 cycle, and the final rule may require the E5 or the E3 depending on the analysis of comments received on this issue in response to the proposed rule.

EPA is proposing the ISO C1 cycle for compression-ignition marine auxiliary engines. EPA believes that this cycle is more representative of the type of operation these engines experience in use than the E5 or E3 cycles. However, as described in more detail in Section V, EPA requests comment on the appropriateness of the ISO D2 cycle for both compression-ignition marine auxiliary engines and compression-ignition generator sets used for nonroad land-based applications.

EPA believes that most marine engine operation is well represented by steady state test cycles. However, preliminary data shows that certain emissions, such as hydrocarbons from inboard/sterndrive (gasoline spark-ignition) marine engines, are highly sensitive to transient operation. EPA has not yet gathered enough data to determine whether a transient test procedure would be appropriate for marine engines. For this reason, the marine steady state test cycles are being proposed for this rulemaking. EPA requests comments on all the test cycles proposed in today's notice as well as other test cycles that may be appropriate with a discussion of why they may be more appropriate than those proposed.

EPA is proposing to allow the use of either the raw gas (raw) or constant volume sampling (CVS or dilute) method of emission sampling for exhaust gas emission measurement from gasoline spark-ignition marine engines.

EPA's past experience with automotive engines has been to perform emission testing using the CVS method. For engine exhaust gas testing in general, EPA believes the CVS method to be more accurate and repeatable. EPA recognizes the difficulties of dilute sampling for outboard marine engines and recognizes that all marine engine manufacturers testing laboratories are currently using raw sampling to measure emissions from outboards. These difficulties include possible compromising of the exhaust tuning and the unknown effects on emission results of the cooling water mixing with the exhaust. Therefore, this proposal will allow raw sampling for these engines. Although, EPA is unaware of any dilute testing having been performed on an outboard marine engine, dilute testing of outboard exhaust is still being considered as an option. One suggestion is that the power-head could be removed from the gearbox for emission testing. If the appropriate exhaust backpressure were known and applied to each test mode, then dilute sampling would be feasible. EPA requests comments on the appropriateness of power-head testing for outboard marine engines.

Testing at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL) has shown that inboard marine engines can be tested using dilute sampling by blocking off (and re-routing) the cooling water in the exhaust manifold and extracting the total exhaust. However, EPA recognizes that all of the marine data used in generating the baseline emissions inventory for sterndrive and inboard engines, as well as outboard and personnel watercraft engines, is based on emission measurements taken using the raw gas sampling method. EPA believes it would be inappropriate to require marine engines to be sampled using the CVS method at this time without additional data which indicates marine engines can not be sampled accurately using the raw gas method.

EPA requests comments on the appropriateness of dilute or raw sampling for emission testing of marine engines.

14. Certification Test Procedure for Smoke from Diesel Compression-ignition Marine Engines

EPA is proposing that compression-ignition marine engines comply with the proposed smoke standards by using a smoke test procedure similar to the current on-highway heavy-duty engine smoke test procedure described in 40 CFR part 86, subpart I. Though, specifically designed for on-highway truck engines, at this time is the most applicable test.

The subpart I smoke test procedure cycle consists of an idle mode followed by an acceleration and deceleration, followed by another acceleration and an engine loading mode down to peak torque. This simulates a truck starting from rest, performing a gear shift, and then pulling a heavy load up a reasonably steep grade. EPA does not consider this "lugging" mode to be representative of in-use marine operation. Therefore, the smoke test procedure will be modified so that the lugging mode will not be applied to marine engines. In this aspect, the smoke test procedures are modified in this regulatory proposal.

EPA believes that these modified subpart I procedures are reasonable for compression-ignition marine engine smoke control within the proposed timeline. While marine applications experience some differences in operation compared to on-highway applications, EPA has determined that the same technologies will be used to control smoke in nonroad applications as are used in on-highway applications. EPA has determined that the modified subpart I procedures will provide the smoke reduction desired from certified marine engines. Therefore, the differences in marine and on-highway operation with respect to smoke generation are not large enough to hold up this proposal for the significant time period required to make changes.

EPA proposes this procedure for marine engines because it brings these engines under the same regulatory framework that currently governs nonroad compression-ignition engines at or above 37 kW. EPA requests comments on the appropriateness of applying this procedure to marine engines. Particularly, EPA requests comment on the need for a smoke test procedure for compression-ignition marine auxiliary engines. EPA may consider excluding such engines from the smoke requirements pending the response to today's proposal.

15. Certification Test Fuel Requirements

EPA is proposing test fuel properties that will ensure that fuel used for emission testing is representative of commercially available marine fuel. Because most of the fuel used in gasoline spark-ignition marine engines is the same fuel sold for automotive applications, the certification test fuel for gasoline spark-ignition marine engines will be similar to the baseline gasoline fuel defined in section 211 of the 1990 Clean Air Act Amendments. For two-stroke gasoline spark-ignition engines, when required, two-stroke oil will be mixed into the certification fuel according to the ratio recommended by the engine manufacturer. The oil grade for testing two-stroke engines will be TCW3 provided that the manufacturer recommend this oil in the owner's manual, otherwise, TCW2 oil shall be used. For compression-ignition engines, the grade of diesel fuel commercially designated as "Type 2–D" would be used, as is the regulatory requirement for other nonroad compression-ignition engines.

The manufacturer would be required to ensure that the properties of the test fuel used for all certification and compliance testing be within the ranges specified in § 91.308 of the proposed regulations. A manufacturer could use any commercially available marine fuel that stays within the proposed regulatory specifications for its certification tests. However, the engine family would be required to be able to comply with the proposed emission standards when any other commercially available marine fuel within these specifications is used. Therefore, EPA would reserve the right to choose any commercially available marine fuel within the regulated specifications for certification, manufacturer assembly line, SEA, or in-use compliance testing.

16. Labeling Requirements

EPA is proposing that manufacturers label each engine and that the label meet the same requirements with respect to durability, visibility, and information as required in the current on-highway heavy-duty engine and the nonroad large compression-ignition engine certification label requirements.[7] In addition, EPA is proposing that each engine must have a unique engine identification number which may be part of the engine label or engraved on the engine. Such identification is necessary for tracking engines for the manufacturer assembly line testing, the Selective Enforcement Auditing, import, and recall programs. EPA requests comment on this proposal as well as on current engine identification practices within the industry.

EPA is also proposing a voluntary labeling program for manufacturers of gasoline spark-ignition engines who produce engines that meet or exceed the final model year 2006 phase-in period HC emission standards. A label such as this could assist states and local areas in the development of programs to encourage the turn-over of older, higher polluting engines, since this label would identify the cleanest engines to replace older engines. This label would contain the words "Green Engine" and would state that the engines emissions are below the federal standard for HC planned for model year 2006. EPA requests comment on how such a voluntary labeling program could be implemented and on the content of the label.

17. Manufacturer Self-Audit Program

EPA is proposing that manufacturers of spark-ignition marine engines and compression-ignition marine engines perform self-audits of new marine engines. The self-audit program would be an emission compliance program for new production marine engines in which manufacturers would be required to test engines as they leave the assembly line, without EPA oversight. The objective of the self-audit program is that manufacturers and EPA could determine, with reasonable statistical certainty, whether or not new engines are in compliance with the regulations.

The manufacturer self-audit program would be the main assembly-line emission test program for marine engines. The Selective Enforcement Auditing (SEA)[8] program will serve a spot-check function and enable EPA to evaluate testing practices used by the manufacturer and follow-up on concerns EPA may have with regard to a particular engine family.

EPA believes that a post-production compliance program is necessary to verify that production engines comply with applicable regulations. A reliable new engine testing program is particularly vital in a regulatory situation in which manufacturers participate in an averaging, banking, and trading program and receive usable or salable credits for declaring FELs below standard. A self-audit program would reduce the need for an SEA program by providing a means to test a portion of production engines from each manufacturer as they came off the assembly line. All self-audit emission test results, statistical calculations to determine compliance levels, and quarterly production figures would be reported electronically to EPA. EPA would review self-audit data and procedures used in acquiring the data to assess the validity and representativeness of each manufacturer's self-audit program.

One new engine testing scheme which would be acceptable to EPA for any manufacturer is CARB's current Quality Audit Program for new utility and lawn and garden engines. This program assures that engines from each engine family will be tested periodically and their compliance evaluated on a quarterly basis. This program also provides for greatly reduced testing when sufficient engines are within standards to pass a statistical evaluation or when the production volume of an engine family is below a prescribed minimum level.

EPA recognizes the need to develop a testing scheme or several schemes to provide assurance that new engines are meeting standards while minimizing burden on the manufacturers. Marine engine manufacturers have indicated that unique characteristics of the industry may warrant testing schemes that reflect this diversity. EPA intends to develop manufacturer self-auditing programs which take into account the needs of this industry. This testing scheme or set of schemes could replace CARB's Quality Audit Program which is outlined in subpart F: "Manufacturer Self-Auditing" of the draft regulatory language. EPA believes that alternative plans may be developed that better account for the needs of this industry.

EPA would prefer to implement one or a few testing schemes which accommodate production differences between manufacturers or across engine families where the validity of the scheme(s) is established prior to promulgation. This will provide greater assurance to the public that this rule will result in new engines that meet standards and provide more consistency and equity between similarly situated manufacturers.

EPA recognizes that unique circumstances surrounding a low production engine family or a very specialized engine family could necessitate an individual plan. Consequently, we are providing an option in this proposal for such a plan in special cases.

In any manufacturer self-audit program, if an engine family is found to

[7] See 34 FR 12633 (August 2, 1969) where labeling requirements for new motor vehicles and new motor vehicle engines were originally proposed.

[8] SEA is a program in which EPA selects engines from one engine family configuration, directly from the assembly line, for emissions testing.

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be in noncompliance or the engine manufacturer's submittal revealed that the assembly-line self-audit tests were not performed in accordance with the applicable testing scheme, the Administrator may suspend or revoke the manufacturer's certificate of conformity in whole or in part for that engine family. The manufacturer must then address the engines produced prior to the suspension or revocation of the certificate of conformity. EPA will notify manufacturers of the suspension or revocation of the certificate of conformity within 10 days of the nonconformity determination. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate through its self-audit program, that improvements, modifications, or replacement had brought the engine or family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the statistical criteria or the manner in which tests were conducted.

EPA does not intend to routinely test, under the SEA program, the engines of a manufacturer that has a comprehensive and effective self-audit program. The Agency requests comment on possible designs of assembly-line testing programs that may reduce the testing burden on manufacturers, be more effective and less costly.

18. Selective Enforcement Auditing Program

EPA is proposing to implement a Selective Enforcement Auditing (SEA) program of spark-ignition and compression-ignition marine engines as authorized by section 213 of the Clean Air Act. The marine engine SEA program would be a secondary emission compliance program for new production marine engines in which manufacturers would be required to test engines as they leave the assembly line, with EPA oversight.

The SEA program would typically be employed when EPA determines that the results of the manufacturer self-audit program reveal noncompliance or when EPA determines that other evidence of suspected noncompliance by the manufacturer exists. In addition, SEAs will be utilized as a spot-check to enable EPA to evaluate testing practices used by the manufacturer, follow-up on concerns reported to EPA, and address any configurations not covered by manufacturers in their self-audit testing program. The SEA program strives to encourage manufacturers to perform proper self-auditing and promptly remedy an emission noncompliance that it may discover.

Manufacturers would be notified of an SEA by means of a test order. This test order would specify the engine family to be audited. EPA might also specify one or more engine configurations from a family to be audited. To minimize the burden on manufacturers, EPA would consider requests by manufacturers to exclude particular engines or engine configurations from a test sample. Justification for such requests could be a manufacturer's desire to avoid a delay in shipment of urgent customer-ordered engines or to minimize test cell set-up time by selecting engines of similar physical configurations.

Test orders would include information relevant to the SEA. The test order would indicate any specific procedures, such as the time to begin selecting engines, to be followed during the course of the audit. Additionally, the test order would authorize EPA enforcement officers, upon presentation of enforcement credentials, to inspect engine production, test facilities, storage facilities, and records necessary to demonstrate compliance with marine regulations.

Engines for SEA would typically be selected from a point of final engine assembly or from a storage or shipping facility. Most often, this selection point would be at the end of the engine assembly line. The location of these selections could be designated by the manufacturer to minimize disruption and shipping costs.

EPA proposes to include ports of entry or storage locations in the United States as locations for EPA selection of foreign-produced marine engines for SEA emission testing at laboratories in the United States. In this rule, EPA is proposing that SEAs will not likely be conducted unless a manufacturer's self-audit program indicates non-conformity or unless EPA has reason to believe that test procedures are not in accordance with the applicable testing scheme. If EPA initiates an SEA of a foreign manufacturer, these audits will be most easily and expeditiously conducted in the U.S. EPA anticipates that engines would be selected at a port of entry and the foreign manufacturer would then conduct emission testing at its test facility in the U.S. or be responsible for contracting for testing at a U.S. facility. EPA would allow the manufacturer reasonable time to locate a contract testing facility in the U.S. and to schedule such testing. EPA requests comments on the port selection aspect of the SEA program.

Engines for SEA could not receive any additional inspections or quality control other than that of normal production engines and pre-test safety checks. Engines would be tested in the same order as they were selected.

Prior to testing SEA engines, manufacturers could operate engines to break-in engine components. This break-in or service accumulation of an SEA engine family would follow the same procedures as certification and could be up to the same number of break-in hours accumulated for that family's omission data engine during certification.

Audit engines would be tested using the same test cycle as was used in certification; however, deviations allowed in certification from the full test procedures would not necessarily be permitted in SEAs.

EPA is proposing that marine engines will be selected for SEA tests at a rate of at least four engines per day, unless production is less than four engines per day. To minimize delays in shipment of engines to customers, manufacturers could test the first engines selected for an audit while additional engines were produced.

The total number of engines tested in an SEA would be dictated by the number of engines required to reach the statistically acceptable pass/fail decision within the sampling plan applied. EPA is proposing a sequential sampling plan for marine engine SEAs. These sampling plans have been designed to meet a 40 percent Acceptable Quality Level (AQL) and to ensure low statistical risks of incorrect pass/fail determinations. The maximum theoretical percentage of failing engines for passing an SEA is 40 percent. EPA is proposing a 40 percent AQL for the marine engine SEA program. EPA has used this AQL since the 1970s for the on-highway program, and has also promulgated it in the large compression-ignition nonroad engine rule. EPA currently has no reason to propose a different AQL for this program. EPA is proposing that the marine engine SEA program use the same sampling plans used for the on-highway heavy-duty engine and nonroad large compression-ignition engine SEA programs.

EPA proposes that engine manufacturers with projected United States annual sales of 7,500 or greater must complete a minimum of two engine tests per day during an SEA. Engine manufacturers with projected United States annual sales of less than 7,500 would be required to complete a minimum of one engine test per day during an SEA. A valid emission test or a voided test would each count as one

test toward meeting the requirement. EPA requests comments on this aspect of the proposal.

A test engine's pass or fail determination would be made by comparing final test results to the applicable federal emission standard. Within five working days of the conclusion of an audit, manufacturers would be required to submit a report to EPA summarizing engine test results, test procedures, and audit events such as the date, time, and location of each test, repairs to engines, and the reason for the repair.

Failure of an SEA could result in suspension or revocation of the certificate of conformity for that family. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer would be required to demonstrate, by showing passing data through a re-audit, that improvements, modifications, or replacement had brought the family into compliance. The proposed regulations include hearing provisions which allow the manufacturer to challenge EPA's suspension or revocation decision based on application of the sampling plans or the manner in which tests were conducted.

To maintain uniformity among all nonroad SEA regulations, procedures for marine engine SEA will parallel those in the large nonroad compression-ignition engine rule (59 FR June 17, 1994), with appropriate modifications.

19. In-Use Enforcement and Recall

EPA believes that a critical element in the success of its marine program is ensuring that manufacturers build engines that continue to meet emission standards beyond certification and production stages. Section 213(d) of the CAA specifically subjects nonroad engines to the recall provision of section 207(c).[9] EPA has authority to subject manufacturers to in-use testing (conducted by the Agency or by the manufacturer under section 208 of the Act) and recall for the full useful life of an engine. EPA's authority to recall engines which do not comply with emission standards in-use provides an important incentive to manufacturers to design and build durable engines and vehicles. The in-use enforcement and recall programs for spark-ignition and compression-ignition marine engines are described in the remainder of this section.

The current in-use liability period for on-highway heavy-duty engines holds an engine manufacturer subject to recall testing for approximately 75 percent of an engine's full useful life.[10] Spark-ignition marine engines covered by this proposal have an average useful life period of between 14 and 27 years depending on the engine power. This period is substantially longer than other engines. EPA is proposing an in-use testing and recall program for spark-ignition marine engines under which a manufacturer would test marine engines for the purpose of determining recall liability for a period of 10 years or 350 hours of operation (whichever occurs first), except personal watercraft, which would be 5 years or 350 hours of operation (whichever occurs first). While this period is somewhat longer than the in-use testing period for on-highway heavy-duty engines and large compression-ignition nonroad engines, EPA believes it is reasonable due to the long useful lives and the difficulties involved in finding engines for testing or repair beyond this period. For compression-ignition marine engines, EPA proposes the same recall liability period as for land-based large compression-ignition nonroad engines (see 59 FR 31306). EPA requests comment on this recall testing liability proposals.

Manufacturer in-use testing

EPA is proposing pursuant to section 208 of the CAA an in-use compliance (recall) program based primarily on testing conducted by the manufacturers of spark-ignition and compression-ignition marine engines. Although the program will have many similarities to EPA's current motor vehicle program, it will contain elements designed to minimize the burden on the industry while maintaining a strong incentive to build engines that meet applicable standards when in actual use.

In addition, EPA proposes that in-use compliance with emission standards would be determined based on test results using the same basic test procedure that is used for certification purposes with an opportunity for alternative test schemes to be approved in advance by the Administrator. Manufacturers of spark-ignition marine engines would be subject to recall testing up to 10 years or 350 hours of operation whichever occurs first, except in the case of personal watercraft, which would be subject to testing for 5 years or 350 hours of operation. Manufacturers of compression-ignition marine engines would be subject to the same recall liability period as those in the current nonroad compression-ignition engine rule (59 FR 31306). Actual repair, however, would not be limited by actual years or hours. For example, compliance testing of an engine family might be limited to 10 years, 5 years, or 350 hours of operation; however, any resulting recall repair would be required to be applied to all engines of that family, regardless of the years or hours on an individual engine. This is consistent with EPA's recall repair policy for on-highway vehicles and engines and on large compression-ignition nonroad engines.

Under this proposed testing scheme, EPA will specify the engine families to be tested each year, with selection based on criteria such as production quantity, past emission performance, and engine and emission control technology. Manufacturers will perform testing on the engine families selected by EPA up to a total of 25 percent of a model year's engine families. EPA requests comment on the level of testing burden which would be appropriate to assure in-use compliance giving consideration to the industry's limited resources and the substantial research and development effort it will require to comply with the declining certification standards over the nine year phase-in period (applicable to spark-ignition outboard and personal watercraft engines) of this rule. Additionally EPA requests comment on whether it would be appropriate to phase-in in-use liability through a graduated or tiered level of testing plan for the period of the new standards phase-in.

An example of one proposed in-use engine testing scheme which would be acceptable to EPA for any manufacturer is described in the following paragraphs. This scheme provides that each engine family will be tested periodically and provides for greatly reduced testing if the initial engines tested are clean enough to indicate compliance. The Agency acknowledges that this testing scheme may not be appropriate for all marine manufacturers and requests comment on what segments of the marine industry would find it inappropriate and why.

EPA's current motor vehicle program tests approximately ten vehicles or engines of a specific engine family when determining in-use compliance. To satisfy our goal of establishing a strong enforcement program while minimizing the burden on manufacturers, EPA is proposing a sampling process which is designed to provide adequate data on

[9] Section 207(c) of the Act authorizes EPA to enforce compliance by vehicles and engines to applicable standards in actual use. Manufacturers are subject to recall "[i]f the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations * * * when in actual use. * * *".

[10] 48 FR 52170, 52173, November 16, 1983.

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which to make compliance decisions while allowing the testing of families which are found to emit below the standard to be concluded as expeditiously as possible.

EPA requests comment on alternatives to this testing scheme. NMMA member manufacturers or other engine manufacturers may wish to provide examples of the in-use testing programs they would recommend as alternative testing schemes. EPA would like to have a more detailed description of what NMMA has referred to as an in-use testing program which would provide a "reasonable degree of certainty" as to whether the engine family at issue complies with applicable regulations. The Agency requests a description of what circumstances exist or are anticipated which would create the need for individual test plans. It would be helpful to learn whether a limited menu of plans would possibly meet these needs.

NMMA has suggested that upon approval of a manufacturer's testing plan by the Administrator a manufacturer be allowed to use fleets instead of individually owned engines for in-use compliance testing. The Agency is aware that manufacturers have access to fleets of marine engines as a source for the procurement of in-use engines. These engines will accumulate hours of use before most other engines because they are used for significantly more hours per year than individually owned engines. Thus, testing on these engines could highlight problems long before they would become widespread in engines owned by individual purchasers. Although these fleet engines may not have experienced maintenance and usage patterns identical to private owners, the Agency recognizes value in the accelerated usage patterns that these engines experience. While the Agency is inclined to accept the use of fleets in an in-use testing program conducted by engine manufacturers, EPA wishes to evaluate the relationship between the emissions performance of such fleets and the in-use performance of individually owned and maintained engines. The Agency is interested in an engineering analysis and/or data which indicates that a fleet engine family which indicated passing emissions performance would be representative of an engine family in non-fleet service. In addition, the Agency is interested in any criteria, which if applied to fleets, would better assure that their performance adequately reflected real world performance of marine engines (such as, required storage periods).

In addition to recommending the use of fleets to EPA, NMMA has suggested that manufacturers be permitted to develop, and submit for approval, within 120 days of a request for in-use testing from EPA, individual in-use testing programs for fleet marine engines tailored to the specific circumstances of the particular manufacturer. NMMA's proposal would be subject only to the requirements that the programs be designed to demonstrate with a reasonable degree of certainty whether or not the engines are in compliance. Under this proposal, EPA will approve or disapprove the program within 60 days of submission. A disapproved program must be revised and resubmitted to EPA within 60 days. An approved program must be implemented, and testing must be completed, within eighteen months of approval of the program by EPA. The proposal suggests that the Agency be willing to consider extensions to the requirements when the manufacturer presents circumstances that warrant such extensions. The manufacturer would be required to submit to the Administrator within three months of completion of testing, all emission testing results generated from the in-use testing program.

While the length of time a manufacturer is afforded by NMMA's schedule to complete in-use compliance testing is in the range of acceptability to EPA, the Agency is concerned that because there are 11 different gasoline marine engine manufacturers, NMMA's suggestion would create at least 11 different plans for gasoline manufacturers and more for diesel manufacturers. As with new engine testing, EPA would prefer to implement one or a few testing schemes which accommodate production differences between manufacturers or across engines families where the validity of the scheme(s) is established prior to final promulgation. This would provide greater assurance to the public that this rule will result in new engines that meet standards and provide more consistency and equity between manufacturers. EPA realizes that unique circumstances surrounding a very low production engine or a very specialized engine could necessitate an individual plan. Consequently, if manufacturers comments warrant, it may be appropriate to consider an additional regulatory provision which would accommodate special circumstances on a case-by-case basis.

Under section 207(c) of the CAA, the Administrator requires manufacturers to submit a remedial plan to recall applicable engines if a determination is made that a substantial number of properly maintained and used engines do not conform with the requirements prescribed under section 202 of the Act (an administratively ordered situation). Other statutory requirements include submittal of the manufacturer's remedial plan for EPA approval, procedures for notification of engine owners, submittal of quarterly reports on the progress of the recall campaign, and procedures to be followed in the event that the manufacturer requests a public hearing to contest the Administrator's finding of nonconformity.

Number and types of engines to be tested: Under EPA's currently proposed testing program, a manufacturer would be required to test in-use engines from an engine family specified by EPA when that family reached an appropriate age (in calendar age and/or usage hours). If an engine family did not change from one model year to the next, testing requirements would be reduced. The number of marine engines of a targeted family to be tested by a manufacturer would be determined by the following method:

1. A minimum of four (4) engines per family per year for each family that reaches the minimum age specified, provided that no engine fails any standard. For each failing engine, two more engines would be tested until the total number of engines equals 10.

2. For engine families of less than 500 engines per year or for engine manufacturers of less than 2,000 engines per year, a minimum of two (2) engines per targeted family per year, provided that no engine fails any standard. For each failing engine, two more engines would be tested until the total number of engines equals 10.

3. If an engine family has not changed from one year to the next or, has been certified using carryover emission data or, has been previously tested under options 1 or 2 and, EPA has not ordered or informed the manufacturer of an emission concern with that family, then only one engine per family per year must be tested. If that one engine fails for any pollutant, testing must be conducted as outlined in 1 or 2, whichever is appropriate.

A manufacturer may test more engines than the minimums above or may concede that the engine family fails to comply with applicable standards before reaching engine number 10. EPA will consider failure rates, average emission levels, and the existence of any defects, among other things in determining whether to pursue remedial action. EPA may order a recall before testing reaches the maximum number of engines.

As discussed above, EPA will consider requests for approval of alternate proposals for assuring in-use engine family compliance. Alternative proposals might be particularly appropriate in cases where (1) annual production is very low; or (2) engines cannot be obtained for testing because they are used substantially in craft which are not conducive to engine removal, such as large vessels where the engine cannot be removed without dismantling either the engine or the vessel; or (3) other compelling circumstances associated with the structure of the industry and uniqueness of marine engine applications.

Collection and testing of in-use engines: While certification testing demonstrates the effectiveness of prototype designs and manufacturer assembly-line testing and SEA demonstrate the performance of newly assembled engines, only an in-use test program can determine the effect that actual engine use has on emission performance. Under the current proposal, an engine manufacturer would, therefore, be required to procure a representative sample of in-use engines which have been operated up to the recall liability period (in calendar time or in hours of usage). EPA would likely target primarily one past model year each year. An engine manufacturer could test more than one model years' engines in a given year, provided the engines had been operated for up to the recall liability period. Manufacturers would be responsible for assuring that they met their testing responsibilities for all families of all model years.

While EPA determines the schedule for testing engine families in its on-highway program, the marine manufacturers will be afforded maximum flexibility in determining the test schedules for their own in-use testing programs so that these programs may be coordinated with other manufacturer activities. However, the Agency will require that the testing of a selected engine family begin within twelve months after receiving testing notification from the Agency and that this testing be completed within a twelve month period. Testing of an engine family in the on-highway program is usually completed within a three month period. The Agency is aware that marine engine manufacturers may have difficulty procuring engines which could lengthen the time needed to complete the testing of an engine family. The Agency believes that providing manufacturers with twelve months to complete this testing provides the manufacturers flexibility in conducting their test programs and adequately addresses most difficulties which would arise. Furthermore, the Agency is willing to consider extensions to this requirement when the manufacturers represent circumstances which warrant such extensions.

Typically a test engine would be procured from sources independent from and unrelated to the engine manufacturer or equipment manufacturer. With prior approval of the Administrator, an engine manufacturer with annual sales of less than 50,000 engines might obtain in-use engines associated with itself or its equipment manufacturer. Furthermore, as discussed above, the Agency is inclined to accept the use of fleets in an in-use testing program conducted by manufacturers.

A test engine would be required to have a maintenance and use history representative of a properly maintained and used engine. To comply with this requirement a manufacturer would question the end user regarding the accumulated usage, maintenance, operating conditions, and storage of the test engine.

The manufacturer would perform minimal set-to-spec maintenance on a test engine. Such maintenance would include no more than what is listed in the owner's instructions for engines with the amount of service and age of the acquired test engine. One valid emission test conducted under the Federal test procedure established for marine engines would be required for each in-use engine.

EPA recognizes the need to develop a testing scheme or limited set of schemes to provide assurance that in-use engines are meeting standards while taking into account the diverse needs of marine engine manufacturers. To this end, EPA requests comments and specific proposals for in-use engine test schemes that will address the concerns described above and on any possible alternative designs of in-use testing programs (such as independent third party testing paid for by manufacturers or their associations) or enforcement that may be more effective. The Agency will work with manufacturers during the comment period to create a limited menu of optional test plans which will meet the needs of the entire industry. However, any alternatives must produce a compliance scheme that provides EPA with an enforceable program which provides substantial incentive to manufacturers to produce clean, durable engines.

In-use test program reporting requirements: Under the current proposal, the manufacturer would be required to submit to the Administrator within three months of completion of testing, all emission testing results generated from the in-use testing program. EPA envisions that manufacturers will simply provide quarterly statements of all emission results obtained during the previous quarter, including a summary table of any engine family that has completed testing during that quarter. At the Administrator's request, a manufacturer would be required to provide documents used in the procurement process, including criteria used in the procurement screening process and information from the end user(s) related to use, maintenance, and storage of the selected engines.

NMMA suggested that when a determination of nonconformity is made (a class is ordered to be recalled) that a manufacturer have the option of an alternative remedial action or a recall. According to NMMA, an alternative remedial action might include re-certification of the nonconforming engine at the higher emission level, and use of the averaging, banking, and trading program elements to demonstrate manufacturer compliance with the emission standards on a corporate average basis. Alternatively, the manufacturer could implement a recall and repair program. A recall program, or an alternate remedial action, must achieve emission reductions sufficient to demonstrate compliance with the national standard on a corporate average basis.

For the reasons described below NMMA's suggestions as we understand them are either inconsistent with the Clean Air Act or with essential tenets of both certification and ABT. The issue of whether the Agency can allow some alternative to recall and repair after a determination of nonconformity has been made was litigated in *Center for Auto Safety* v. *EPA*, 747 F2d 1 (D.C. Cir. 1984), where the court concluded that "* * *section 207(c) requires recall and repair as the only statutory remedy for nonconformity." Therefore, after a determination of nonconformity the Agency may not allow an alternative remedy such as NMMA suggested.

NMMA has suggested that non-conformity determinations made in assembly line or in-use testing not require action by a manufacturer if the manufacturer had or could obtain credits from averaging, banking or trading to cover the nonconformity and still maintain a corporate average below standard.

As was stated in the assembly line testing discussion above, EPA believes

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that such an option runs counter to essential tenets of both certification and ABT. For an engine family involved in ABT, the FEL takes the place of the standard for certification, assembly line and in-use testing. For reasons stated earlier, the FELs must remain firm for those engines already introduced into commerce, otherwise, a manufacturer could certify to an overly optimistic FEL, knowing that if the engines drifted over the FEL either in assembly line or in-use testing, it need only cover a credit shortfall and not recall engines.

If a determination of nonconformity with the requirements of section 213 of the Act is made (that is, if EPA orders a recall under the provisions of section 207(c)), the manufacturer would not have the option of an alternate remedial action and an actual recall would be required.

Alternatives to Recall and Repair: EPA also requests comment regarding the circumstances under which alternatives to conventional recall would be considered as a voluntary action. These alternatives would be required to have the same or greater environmental benefit as conventional recall and provide equivalent incentives to manufacturers to produce engines which durably and reliably control emissions. For instance, a manufacturer might establish or increase the size of an in-house engine fleet designed to quickly accumulate usage. This fleet would be tested for emissions and any failures diagnosed would provide the manufacturer with information on needed design or calibration changes. EPA requests comment on how manufacturers who have repeated nonconformities should be handled as compared to those who only occasionally have problems. The Agency invites comment on this alternative as well as others and on the factors the Agency should consider in evaluating proposed alternatives.

EPA is aware that the program described above may not be appropriate for all marine manufacturers or circumstances. More information is needed to evaluate the appropriateness of today's proposal for this industry. EPA believes that today's proposed in-use testing and recall program is one appropriate way to enforce in-use compliance. However, as this is EPA's first regulation of marine engines, EPA requests comment on additional or alternative ways of enforcing in-use compliance or remedying noncompliance. EPA also requests comments on the legal authority for any suggested alternatives.

20. Defect Reporting and Warranty Requirements

While the Agency is not wedded to the number 25, EPA is proposing that manufacturers of marine spark-ignition and compression-ignition engines file a defect information report whenever a manufacturer identifies the existence of a specific emission-related defect in 25 or more engines manufactured in the same model year. However, no report would need to be filed if the defect was corrected prior to the sale of the affected engines to the ultimate purchaser. These proposed reporting requirements are similar to the requirements found in the on-highway program and in the nonroad large compression-ignition engine program. EPA is considering a revision of the on-highway reporting program. Any new regulations may encompass both on-highway and the nonroad sector. The Agency invites comment on the appropriate numerical trigger and an estimation of how many reports a commenter would expect to be generated by such a suggested trigger.

NMMA suggested that having 25 defects of a component of system trigger a reporting requirement would be too onerous. NMMA would prefer to have as a trigger the identification of a specific defect in one percent or more engines of the same engine family manufactured in the same model year, or 25 engine or more of the same engine family manufactured in the same model year. Because the production volume of heavy-duty manufacturers is similar to the marine industry, EPA has examined the level of reporting which currently is shouldered by the onroad heavy-duty manufacturers. As a result of that review, EPA estimates that the marine industry, as a whole, will only be expected to file 5–15 defect reports per year with EPA. A fuller analysis can be found in the ICR supporting this regulation. In addition to currently believing that 25 is not a burdensome trigger, EPA would be concerned that limiting the counting of defects to an engine family or model year could mask wider spread defects which occur in a part or component which is installed in several model years or several engine families in a given model year.

EPA is also proposing a warranty period under authority of section 207(a) of the CAA for spark-ignition marine engine emission-related parts of 4 years. This is the average period that the first owner possesses the engine as indicated by the engine manufacturers. EPA requests comments on the appropriateness of the length of the warranty period and also if the period should restrict the hours of use. EPA is currently developing more detailed regulations that will further clarify manufacturers' responsibilities under section 207(a) for both on-highway and marine engines. EPA will rely on the existing 207(a) practices until those regulations are finalized.

An advisory parts list issued by EPA on July 15, 1991, gives manufacturers notice of EPA's current view concerning the emission-related parts that must be covered by warranty under section 207(a). A copy of this list is in the docket for this rulemaking. This list will also cover marine engines.

21. Tampering Enforcement

As required under sections 213(d) and 203 of the CAA, it will be illegal for any person to tamper with any engine emission-related component or system installed on or in a marine engine in compliance with this proposal. EPA is proposing that existing on-highway tampering provisions apply to marine engines covered by this rule.[11]

EPA is aware that original nonroad equipment manufacturers often supply the engine accessories designed for their specific applications. At the same time, it is required that the engine tested to certify an engine family represent the worst-case configuration of that family. EPA requests comment on how to establish specific criteria or parameters under which a manufacturer would be allowed to continue to modify an engine without (1) jeopardizing the integrity of this proposed emission control program, and (2) causing the equipment manufacturer to have to recertify or risk being in violation of the tampering provisions of EPA's tampering guidance in Memorandum 1–A.[12]

22. Importation of Nonconforming Marine Engines

EPA is proposing to prohibit the importation of nonconforming marine engines originally manufactured after the effective date of this rule, except as provided below. Such prohibition is based in part on the existing regulations for the importation of nonconforming motor vehicles and motor vehicle engines (on-road program) and nonroad large compression-ignition engines.

For the on-road program, Independent Commercial Importers (ICIs) are responsible for all aspects of compliance required of the original manufacturers for their U.S. market production (for example, certification, testing, labeling, warranty, recall, maintaining records).

[11] Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974.

[12] Mobile Source Enforcement Memorandum No. 1A.

While EPA provides for an ICI program for motor vehicles and motor vehicle engines, EPA is not proposing to have an ICI program for marine engines. EPA believes that an ICI program for marine engines would not be cost-effective because of the expected low volume of importations of nonconforming marine engines and the high costs associated with an ICI program. Therefore, unless otherwise exempted or excluded, nonconforming marine engines may not be imported into the U.S. In such cases, a marine vessel containing a nonconforming marine engine must have the marine engine replaced with an EPA certified marine engine in order to be imported. EPA requests comment on the absence of an ICI program for marine engines.

This proposal provides for certain exemptions to the prohibition against importing nonconforming marine engines. These include temporary importation exemptions for repairs and alterations, testing and display, and permanent importation exemptions for national security and certain marine engines proven to be identical, in all material respects, to their corresponding EPA certified versions. In previous rulemakings, EPA has provided for a permanent importation exemption for vehicles or engines greater than 20 original production years old. EPA is not proposing an exemption for marine engines greater than 20 original production years old. EPA requests comment on the absence of such an exemption.

Importation regulations are joint regulations between EPA and the United States Department of the Treasury (Customs Service). The citation for United States Customs Service, Department of Treasury regulations governing import requirements is reserved. The citation will be inserted upon promulgation by the United States Customs Service of the applicable regulations.

EPA is also providing for the exclusion of nonconforming engines used solely in competition. EPA will exclude engines used in vessels whose use, because of features that are not easily removed in anything other than competition, would be unsafe, impractical or highly unlikely. EPA will employ a capability test as it has done with motor vehicles since the 1970s. Engines used in vessels that are incapable of uses other than competition will be excluded from the marine engine emission requirements.

V. Discussion of Issues

This section contains further discussion on a number of issues raised during the development of this notice.

A. Choice of Exhaust Constituents to be Regulated

1. Gasoline Spark-ignition Engines

EPA is proposing to regulate total exhaust hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from gasoline spark-ignition marine engines. Standards for particulate matter (PM), carbon dioxide (CO_2), and evaporative hydrocarbons are not being proposed in this rulemaking for gasoline spark-ignition engines for the reasons discussed below.

PM emissions from gasoline engines are small when compared to emissions of HC, CO, and NO_x. When compared to other sources, marine gasoline spark-ignition engines contribute between 0.0 percent and 0.3 percent of the PM inventory in cities studied by EPA.[13] This regulation will reduce HC emissions from these engines and as a result, PM emissions should also decrease. The length of the test procedure would need to be greatly increased in order to collect a large enough sample on a particulate filter for an accurate measurement. At this time, EPA does not consider the benefits of a PM standard for gasoline engines to be sufficient to justify the increased costs of measuring PM emissions from gasoline spark-ignition marine engines. Therefore, EPA believes that separate emission standards for particulate emissions for gasoline spark-ignition marine engines are not appropriate at this time. EPA requests comments on this issue.

The focus of this rulemaking is to reduce ground level ozone. Carbon dioxide is considered a "greenhouse" gas due to its role in global climate change. However, the HC emission standards of this rule are expected to result in significant improvements in fuel economy for marine engines and, therefore, significant reductions in CO_2 emissions. For these reasons, EPA is not proposing to regulate CO_2 from marine sources at this time. EPA requests comment on this issue.

EPA requests comment on the possibility of adopting evaporative emission standards for gasoline spark-ignition marine engines. All on-highway vehicles sold in the U.S. have been designed to control evaporative emissions for many years; however, the characteristics of marine engine operation may prevent the same level of control for these applications. Specifically, the carbon canister-based control systems used in motor vehicles depend on relatively frequent engine operation to restore vapor storage capacity. Marine engines are probably used too infrequently for such a design to be effective.

Sealed fuel systems on the other hand would contain vapors otherwise generated by fuel heating (either from engine operation or from daily temperature swings). Coast Guard regulations discourage, but do not prohibit, pressurized fuel systems (33 CFR 183.524(c)). EPA therefore requests comment on the legality as well as the practicality of designing sealed fuel tanks to control evaporative emissions. A sealed tank would have to be designed with a valve to allow entry of makeup air as fuel volume decreased. The portable nature of gas tanks/cans for outboard engines would perhaps require a more complex connection to the fuel line to allow for repeated opening and closing. If fuel tanks cannot be sealed during engine operation, it may still be possible to design the fuel system in a way that seals the fuel tank during engine-off periods.

Fuel permeation is another issue related to evaporative emissions. Gasoline is known to permeate through plastic and rubber components to the atmosphere at surprisingly high rates. The technologies being developed for on-highway vehicles, primarily coextrusion for fuel tanks and fluorination for fuel lines and grommets, should also be feasible and effective in the marine environment. EPA requests comment on requirements to demonstrate reduced permeation losses from marine fuel systems.

2. Compression-Ignition Engines

EPA proposes that all compression-ignition marine engines be included in the current regulations for new nonroad compression-ignition engines, regardless of power rating or usage (both propulsion and non-propulsion). HC, CO, NO_x, PM, and smoke are proposed to be regulated as in the current regulations. EPA is requesting comment on the appropriateness of removing the lugging mode from the smoke test for marine propulsion engines.

EPA is proposing to regulate all compression-ignition marine engines in this rule. Given the coverage of the large compression-ignition engine rule, this choice raises two issues. (1) Why regulate compression-ignition engines at this time and (2) why regulate even the smallest engines? The questions will be answered sequentially.

[13] Nonroad Engine and Vehicle Emissions Study, November 1991, 21A2001.

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EPA is proposing to regulate compression-ignition marine engines today although they were not regulated in the original large compression-ignition engine rule for several reasons. First, in developing inventories for the California Federal Implementation Plans, EPA found that these engines were a very significant source of emissions (1.65 tones NO_X per summer day in Ventura in 1990). Second, the large compression-ignition nonroad engine rule had very favorable cost effectiveness and there was no reason to believe that benefit wouldn't carry over to marine engines. Third, the knowledge gained from working with the Coast Guard on the gasoline spark-ignition engines was appropriately carried over. Finally, the best reading of the Sierra Club lawsuit settlement requires EPA to regulate all marine engines.

EPA chose to propose regulations of even the smaller compression-ignition marine engines because they too seemed to fit under the settlement agreement. Further, these small diesels are generally used in outboards. EPA believes that diesel outboards are substitutable for some gasoline outboards. Thus the market for these engines could grow substantially after regulation. Given the extremely high relative NO_X emission from these engines, EPA believed it was important to control the emissions.

Smoke from marine engines is perceived as a significant local air pollution concern in many areas. These areas have developed local regulations to discourage smoking engines. However, the U.S. Coast Guard has informed EPA that, often, properly maintained compression-ignition marine engines will fail local regulations. The continued smoking is not only unsightly, but it also created clean-up costs and may lead to health problems.

The emissions of primary concern from diesel engines are NO_X and PM/smoke. Only NO_X causes tropospheric ozone formation that is significant from these engines. The standards therefore require a reduction in NO_X. The HC and CO standards are included here to be consistent with the large compression-ignition nonroad engine rule. PM and smoke emissions are regulated for the reasons described above.

B. Water Quality Impacts/Scrubbing

The primary focus of today's notice is on the effects of marine exhaust emissions on ambient air quality. As a result, regulatory efforts and testing programs focus on air effects. However, another aspect of marine exhaust emissions is their impact on water quality. While EPA acknowledges that marine engine emissions also have an impact on water quality, EPA proposes to measure all emissions as if they go into the air, and not to specifically address the impact these emissions have on water quality for this rulemaking. EPA believes this is appropriate for three reasons: (1) The efforts contained in this rulemaking for reducing air quality effects will also act to reduce adverse water quality effects; (2) it is difficult to determine how much of the unburned fuel and oil present in marine environments comes from marine engine sources; (3) prior research regarding the effects of marine exhaust on water quality generally conclude that marine exhaust may not be a significant problem. Each of these are discussed in further detail below.

First, EPA believes that the cross-media effects on water are alleviated by this rulemaking. In fact, controls on exhaust emissions from marine engines designed primarily to reduce their effects on ambient air quality will also benefit water quality. Many of the pollutants associated with marine engine emissions are actually from unburned oil and fuel: current technology 2-stroke engines, the most popular kind for pleasure craft, discharge unburned oil and fuel into the water and the atmosphere along with other exhaust compounds. Today's proposal is expected to eliminate 85% or more of the sales of this old, 2-stroke technology from the marketplace. This will be replaced with technologies which do not emit significant amounts of unburned fuel and oil into the water or the atmosphere. Therefore, the overall emissions levels in both air and water will be significantly reduced as a result of this rulemaking.

Second, many studies conclude that it is difficult, if not impossible, to ascertain how much of the unburned fuel and oil present in marine environments comes specifically from marine engine sources. An undetermined portion of fuel and oil pollutants comes from sources such as parking lots, especially around marinas, and storm water runoff. Thus, while the regulations contemplated in this rulemaking would significantly reduce discharges of unburned fuel and oil from marine engines, the overall effects of these pollutants will not be completely eliminated because of these additional sources.

Third, most research studies of the impact of marine exhaust emissions on water quality indicate that these emissions have only moderate to small impacts on water.[14] According to these studies, as much as 65 percent of the harmful pollutants released into the water from marine engines evaporate into the air, and the remainder are not present in large enough concentrations to be harmful to marine plants and animals. These studies seem to indicate that the gaseous exhaust emissions evaporated into the air are more voluminous than the concentrations of emittants in water. Further study would need to be done to definitively evaluate the contribution of exhaust emissions to water quality problems.

C. Certification Durability Demonstration

One of the main goals of this regulation is to ensure that marine engines meet the emission standards throughout their useful lives while operating in-use. The objective of the certification process is to ensure that the designs of the emission control systems are capable of meeting the emission standards not only when such engines are new, but also during typical in-use operation through the engine's useful life. Given the long useful lives of marine engines, an up front determination of emission control durability is most important since problems may not be detected in-use for long periods of time. EPA considered a number of options regarding the demonstration of durable emission control systems for certification. The following discusses these options in more detail.

1. Self Approval/In-use Testing Feedback Requirement Program

EPA is proposing this option in today's notice. This option consists of a self approval process with in-use testing feedback. Based on good engineering practice, the manufacturer would determine the form and the extent of engine and/or component selection and testing methodologies. The manufacturer would establish deterioration factors which would be applied to the new engine emission levels; the resulting emission levels, taking into account the deterioration factors, would be required to comply with the emission standards (or the family emission limits). The manufacturer would also be required to perform in-use testing for the recall program (see Section IV(D)(19) "In-Use Enforcement and Recall"). EPA would use this in-use data to confirm the methodology for establishing deterioration factors. For example, if in-use testing indicates that an engine family's emission control system is deteriorating at a faster rate than predicted by the manufacturer's deterioration factor (DF), EPA would challenge the use of the manufacturer's methodology for determining DFs for that engine family as well as for other engine families. The manufacturer would have to revise its methodology for determining DFs or provide data and information to support the use of the DF generation methodology for other engine families. Failure of the manufacturer to correctly estimate the deterioration factor in the case of data indicating a faster rate of deterioration, would subject the manufacturer to the recall program penalties.

EPA believes that this approach will best ensure that marine emission control systems will be designed and built to be durable. This program requires manufacturers to assess deterioration of emission control systems before such engines enter into commerce. Therefore, systems with inadequate durability can be identified and corrected before they are used on the waterways. Also, this approach provides a means of determining the adequacy of the deterioration factor methodology through actual in-use data.

2. New Engine Standards/In-use Testing Requirement Program

This option would include emission standards for new engines and a data collection program for establishing a certification durability requirement at a future date. During certification, engine manufacturers would need only to demonstrate that new engines (perhaps after a break-in period) meet the new engine emission standards. However, as a condition of certification, the manufacturers would be required to agree to collect data on in-use engines. This data would be used to establish certification durability requirements at a future date when sufficient information exists on the durability of marine emission control systems.

This program would significantly delay the establishment of a certification durability program. The average useful lives of current technology 2-stroke marine engines are estimated to be between 14 and 27 years. Therefore, a substantial amount of time would pass before sufficient data were collected to establish a certification durability demonstration program. Therefore, EPA is not proposing this option. However, EPA requests comments on this type of program for certification durability demonstration.

3. Specified Service Accumulation Program

Another option considered by EPA is a pre-production durability demonstration program for marine engines similar to that used for on-highway light-duty vehicles. Such a program consists of operating engines to the end of their useful life over a specified accelerated service accumulation cycle to generate deterioration factors. The deterioration factors would then be applied to the new engine emission levels and the resulting emission levels would be required to comply with the emission standards (or the family emission limits). The advantages of this type of program are that the service accumulation and the deterioration factor generation methods would be consistent among manufacturers. Also, EPA has many years of experience in administering such a program.

However, the main disadvantages are related to establishing a service accumulation cycle that is representative of actual in-use operation. EPA currently has insufficient information to develop a representative accelerated cycle for gasoline spark-ignition marine engines. Also, experience with the on-highway certification durability program has shown that such accelerated cycles alone do not do a good job of simulating the in-use conditions and operation that can lead to emission control deterioration. This option does not contain any in-use testing feedback, therefore, any proposed service accumulation cycle would go unchecked with respect to how well it represents conditions that can result in emission control deterioration. Therefore, EPA is not proposing this option in today's notice.

EPA requests comments on whether this type of program is desirable for demonstrating the emission control system durability at the time of certification. Specifically, EPA requests comments on appropriate service accumulation cycles for this type of approach and on how this type of program could meet the goals of ensuring that emission control systems are designed and built to be durable while operating in-use.

4. No Certification Durability Demonstration

One option considered by EPA would be to have no requirements for emission control durability demonstration for certification purposes. This approach would require manufacturers to demonstrate that new engines meet the emission standards but would not require further demonstration during the certification process that the emission control system designs are durable. Instead, this program would rely on in-use enforcement (recall) programs to ensure that manufacturers build durable systems.

The advantages of this option are that it is simple and low cost. Also, it allows manufacturers to establish their own internal programs to ensure that emission control systems are durable and balance the associated risks of recall.

However, the primary disadvantages of this approach relate to the long useful lives of the engines and the potential problems associated with in-use testing of marine engines. The average useful lives of current technology 2-stroke outboard marine engines are estimated to be between 14 and 27 years. Therefore, a substantial amount of time would pass before problems with emission control durability would surface as a result of in-use enforcement testing. During this time, there would be no assurance that emissions control systems were performing properly in-use. Also, in-use engines may be very difficult to track for in-use testing purposes, as previously discussed (see Section IV(D)(19) "In-use Enforcement and Recall"). Since this approach relies heavily on in-use testing as the incentive for manufacturers to build durable emission control systems, the potential problem of limited resources to perform testing on a sufficient number of engine families could undermine the objective of this approach.

Due to the disadvantages discussed here, EPA is not proposing this approach in today's notice. However, EPA requests comment on the general approach of no durability demonstration requirements during the certification process. More specifically, EPA solicits comments on whether such an approach could be as effective as other options and on how the potential difficulties associated with this approach could be overcome.

EPA requests comment on the appropriateness of the proposed option as well as the other options discussed or other options for certification durability demonstration.

D. Use of an HC Emission Standards Curve for Outboard and Personal Watercraft Engines

EPA is proposing HC emission standards curves for spark-ignition outboards and personal watercraft specific to the power output of an engine as explained in Section IV(D)(2).

[14] See Memo to Docket which summarizes several studies on the impact of marine emissions on water quality.

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EPA believes that a standards curve is necessary because of the wide range of engine sizes subject to this proposal. Current engine size availability ranges from 1.5 kW to over 250 kW for outboard engines. Historically, with this wide spread of engine sizes, EPA has considered different standard levels for different size ranges of engines. This has partly been due to separate regulatory efforts for engines of different size and partly due to different uses for different size engines. For example, gasoline on-highway engines are classified as light-duty or heavy-duty with separate emission standards for each. If EPA were to regulate outboard marine engines in this historical manner, the result would be a set of step function emission standards which would group engines by power rating and apply separate standards to each group. EPA requests comments on this traditional approach to emission regulation as it might apply to HC emissions from gasoline spark-ignition engines. Commenters should include recommendations for specific engine groupings, criteria for engine classification and standards levels for each group.

As an alternative, EPA believes that the curve concept is much better suited for this regulation for several reasons. The curve eliminates the "steps" between emission standards and the associated problems of determining appropriate engine ranges for each step. Manufacturers could "game" step function standards by derating the power of engines so that they are classified into a group with higher emission standards. Another downside of step function standards is that for smaller (lower power) engines in a given step you are limiting the credit generation potential, while for larger (higher power) engines in the same range you are increasing the credit generation potential, compared to the inherent relationship between the work specific HC emission rate (g/kw-hr) and power. For large engines, the emission rate difference is marginal. But for the small engines, particularly below 100 kW, the slope of the curve changes at an increasing rate and results in significant emission rate differences for small power changes. The use of a curve allows the optimization of the work specific emission rate-power relationship.

Alternatively, having one HC standard for the entire power range of gasoline marine engines is not appropriate for the range of engine sizes proposed to be regulated. HC emissions on a work specific basis (g/kw-hr) inherently increase with smaller engines due to higher surface to volume ratios. The proposed standards curve concept takes into account these inherent differences in HC emissions for different size engines and requires equal percentage reductions of HC emissions from both large and small engines on a g/kw-hr basis. Therefore, the goal of reducing the emission rates for all engines is not compromised by the standards curve structure. In addition, this approach avoids setting rather arbitrary cutpoints for step change standards, thus eliminating the potential for mis-classifying engines by artificially changing their power ratings so that less stringent standards apply. EPA requests comments on the proposed standards curve for controlling HC emissions for outboard and personal watercraft engines. EPA also requests comments on other possible forms of the standards such as one level for all such engines.

E. Options for Averaging Sets and Effect on HC Standards for Gasoline Spark-ignition Marine Engines

Based on the estimated potential emission reductions that are expected from feasible future technology, EPA is proposing to set emissions standards that will achieve a 75 percent reduction in HC emissions of 2-stroke outboard/personal watercraft engines. As discussed in Section IV(D)(2), the specific standards for each outboard and personal watercraft engine family are determined by the power output of the engine and must be met on a corporate average basis. For the purpose of determining compliance with the average HC standards, EPA proposes to construct two separate averaging sets; Set 1: Including outboard/personal watercraft engines and Set 2: including inboards/sterndrive engines. EPA proposes to allow trading only within an averaging set, with no trading permitted between averaging sets. By constructing two averaging sets, EPA intends to generate two separate standards curves based on the emissions of the engines within each set. It is from these standards curves that emission credits and debits would be calculated for each engine family and corporate average compliance would be determined for each manufacturer. The mathematical formula for calculating the standards curve for Set 1 is discussed in section IV(D)(2) and reflects only the emissions of outboard/personal watercraft engines and the reductions that can be achieved from those engines through the application of expected feasible technology. Due to the narrower range in power output in the engines included in Set 2 and their more uniform emissions characteristics, the curve representing their emissions standard is flat. Therefore, EPA believes that a straight line standard is appropriate for determining compliance on average for these engines. EPA requests comments on the appropriateness of a straight line standard for Set 2.

EPA considered several options in constructing averaging sets and standards curves, including combining all gasoline spark-ignition engines into a single averaging set and generating one standards curve based on the baseline emissions of all such engines. EPA decided against proposing the single set option for the following reasons.

First, Section 213 of the Clean Air Act, directs EPA to set emissions standards for new nonroad engines that will achieve the greatest degree of emissions reduction achievable through the application of technology which the Agency believes will be available, taking several factors into account, including the cost of applying available technology. The emissions levels in the compliance curve generated in the single set option in the final year of phase-in are approximately 10–15 percent below the levels in the final standards curve describing the emissions of outboard/personal watercraft engines. To comply with the emissions levels in the single standards curve, outboard/personal watercraft engine manufacturers would have to achieve approximately a 90 percent reduction from current levels or purchase credits from other manufacturers of inboard/sterndrive engines. EPA believes that feasible technologies for outboard/personal watercraft engines will not achieve such levels without excessive NO_x increases. Further, EPA acknowledges that for some applications, especially for engines between 10–50 kw, only outboard technology is appropriate.

While the single set option results in a standards curve which is more stringent on its face, EPA believes that the real emissions reductions achieved will be the same under either the single set or two set options. If the single curve is promulgated, the outboard/personal watercraft engine manufacturers could most cost effectively achieve about a 75 percent reduction through application of the feasible technology and would be forced to buy credits to make up the difference. This would have the effect of making trading mandatory for some companies, creating the possibility for companies that generate credits to exploit this need. EPA is very concerned that the marine engine market is already oligopolistic and that the single curve

option carries significant risk of further limiting the competition in the market.

The effects of the single curve option in forcing the purchase of credits by manufacturers of outboard/personal watercraft engines are especially pronounced in the first years of the program. Using the single set option, the baseline standards curve in year one would be approximately 50 percent below the baseline compliance curve for outboards/personal watercraft under the two set option. Thus to comply with the baseline curve, manufacturers of outboard/personal watercraft would be forced to either (1) buy credits immediately , or (2) reduce emissions by 50 percent in year one. EPA does not believe reducing emissions by 50 percent in year one through application of new technology is feasible. Nor is it appropriate to in effect require outboard and personal watercraft manufacturers to purchase a large number of credits from inboard/sterndrive manufacturers in year one. The resulting market ramifications could be unacceptable.

Because of this problem, EPA did consider a third option of maintaining separate averaging sets during the nine year phase-in and then combining all engines into a single set in year ten. However, analysis showed that after the proposed phase-in, outboard manufacturers would not be able to comply with a final year standards curve generated under the single set option through re-engineering of their products alone, and would still be forced to purchase credits. The concerns about competitiveness in the market remain under this third option, although to a lesser degree. Additionally, EPA believes that § 213 requires the Agency to set standards that can be met either through existing or foreseeable technology. Therefore, EPA believes that two averaging sets with separate standards curves for each set is the most appropriate option for regulating HC emissions from gasoline spark-ignition marine engines.

However, the single set option does have several advantages. It provides the greatest opportunity for trading and more accurately assigns relative values to emissions from various technologies in the market. This relative valuation maximizes the incentive to substitute potentially cleaner inboard/sterndrives where substitution is appropriate. Combining all gasoline spark-ignition marine engines into one set simplifies compliance and enforcement and minimizes the chance of confusion over engine classification as new engine types (i.e. "jet drive" engines) emerge.

EPA is interested in encouraging the substitution of inboard/sterndrive technology for outboard technology since the former is expected to emit lower hydrocarbon emissions than future technology outboards. If inboard/sterndrive engines are cleaner than future technology outboards, EPA would like to encourage marine engine manufacturers to sell inboard/sterndrive engines in place of outboard engines where such substitution is possible. However, EPA recognizes that such substitution may not be possible for some applications. EPA believes that the proposed two set option will also encourage such substitution, since outboard engines will reflect the cost of emission control strategies. The price of inboard/sterndrive engines should remain relatively constant in comparison, because these engines are expected to meet the standard without additional controls or with minor calibration adjustments. However, if a single set standards curve were adopted, inboard/sterndrive engines would potentially generate larger emission credits and become even less expensive relative to outboards, thus encouraging substitution with inboard/sterndrive engines to a greater degree than does the two set option.

EPA understands that the proposed two set option may limit the emission trading pool, creating a smaller market than would occur with a broader, single averaging set. Credits could cost more and be traded less frequently than in a larger, more efficient market. In the long run, emission reductions could potentially be more expensive under the two set option than with the single averaging set. EPA understands that this argument is largely theoretical and requests comment on how markets would actually function under both averaging set options.

EPA believes that the potential advantages of a single averaging set may not offset the problems inherent in requiring engines to meet a standard that cannot be met through feasible future technology as outlined in Section 213 of the Act. Further, EPA believes that constructing two averaging sets meets the Agency's emission reduction goals and still encourages substitution of the cleanest technologies. For these reasons and others discussed at the beginning of this section, EPA today proposes to construct two averaging sets with separate HC compliance curves for each set. However, EPA requests comment on the option of combining all gasoline spark-ignition marine engines into a single averaging set with one standard curve. Particularly, EPA is interested in comments regarding how the price to the consumer differs between the proposed option and the single set curve option. EPA also is interested in comments related to implementation of such a single curve from the onset of the proposed program as opposed to implementation of a single curve in the years after phase-in is complete. To facilitate comments, section IV(D)(6) contains a full discussion of how the proposed averaging sets and standards curves would be implemented.

F. Electric Outboard Engines

EPA has not included electric motors in the baseline even though they are clearly substitutable and have the potential for further development as a marine power source. However, EPA lacks an appropriate emission factor to assign them. An emission factor is needed before including them in the baseline because electricity from a power plant must be used to recharge the battery. The appropriate emission factor is debatable. EPA requests comments on including electric motors in the baseline and on an appropriate emission factor for electric motors.

G. Level of HC Standard for Spark-ignition Outboards and Personal Watercraft Engines

EPA is proposing an HC average emission standard, which when completely phased-in (model year 2006), will result in an overall 75 percent reduction in HC emissions from spark-ignition outboard and personal watercraft engines from baseline levels. The HC emission reduction will come from the use of cleaner technologies, such as 2-stroke direct injection, 4-stroke, catalyst or other technologies, for outboard and personal watercraft engines.

The following issues are related to the level of the HC standard:

1. The marginal cost-effectiveness of emission control
2. Consideration of price elasticity effects
3. Spreading capital control costs over time
4. The level of the NO_x standard
5. Adherence to statutory criteria

EPA's proposal balances these concerns. Comments are requested on the proposed regulatory package, including comments on any individual element. If comments prompt EPA to change any individual element in the Final Rulemaking, changes in other elements may be necessary as outlined in the following sections.

1. Marginal Cost-Effectiveness Curve

EPA used the marginal cost-effectiveness curve in Figure 2 as an analytical tool for choosing the target

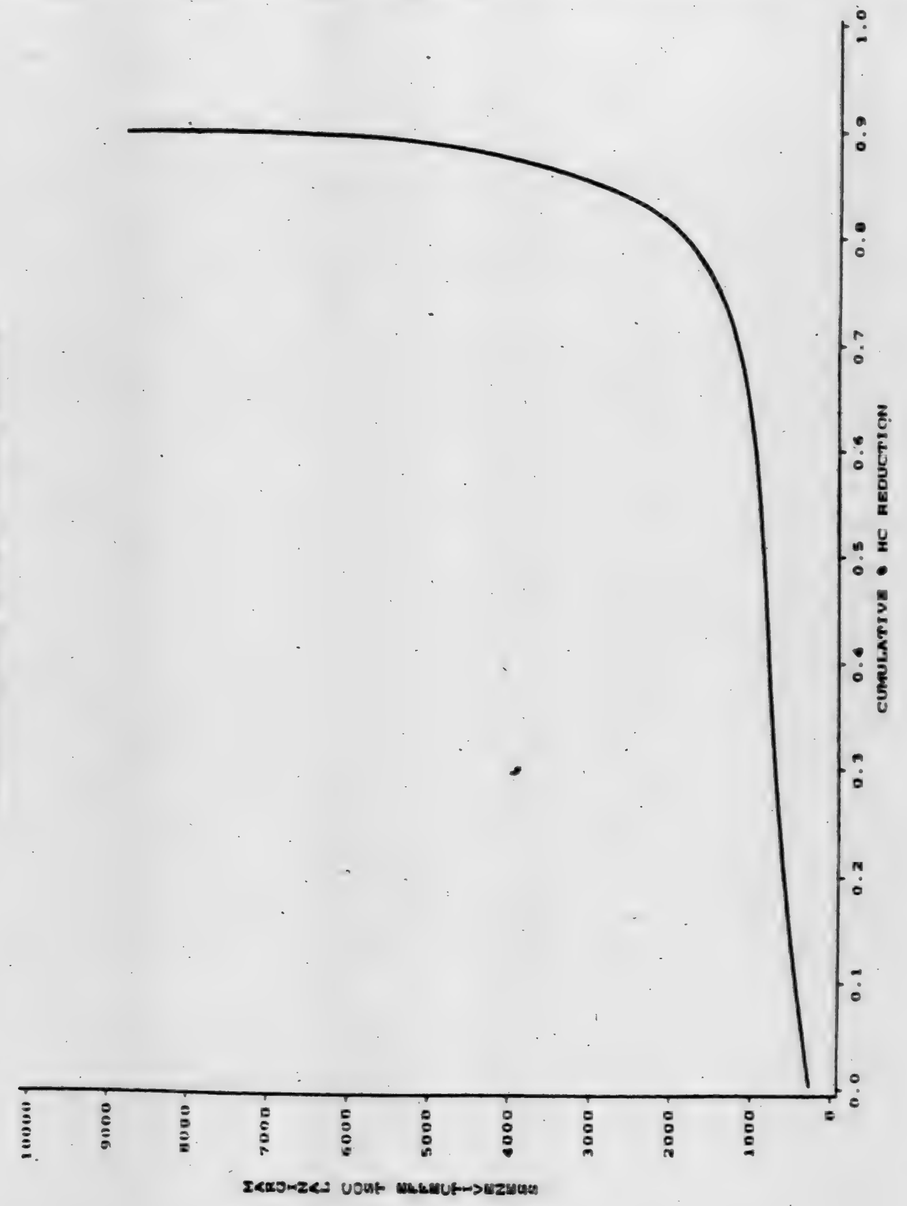
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reduction from outboards and personal watercraft. EPA is proposing a 75 percent reduction in HC emissions from outboards and personal watercraft. EPA believes that the marginal cost-effectiveness of emission control begins to decrease dramatically after a 75–80 percent reduction. EPA believes that there is a confidence range around the marginal cost-effectiveness curve, because of the possibility that either the costs or the effectiveness of various technologies in reducing emissions is over or underestimated. If costs (and therefore engine prices) are higher than predicted, there could be a negative impact on turnover to clean engines. Consumers may choose to hold on to old higher emitting engines, and therefore expected benefits would not be achieved. The data on which the benefits have been estimated is new engine data. EPA and the manufacturers have little data on in-use deterioration in these engines and no data on in-use deterioration from engines equipped with certain future technologies (such as direct injection). EPA proposes that the emission levels required under the standards curve to be maintained in-use. Although EPA does not have hard data for in-use emissions for all technologies, EPA expects that some deterioration may occur. Therefore, setting the standards curve at a 75 percent reduction to account for in-use emissions seems reasonable. Requiring an 80 percent reduction carries the risk that engines could not comply in-use. EPA requests in-use testing data on all emission reduction technologies. EPA believes that an HC reduction level of 75 percent for outboards and personal watercraft allows for these uncertainties in predicted marginal costs and effectiveness.

BILLING 6560-50-P

FIGURE 2

MARGINAL COST EFFECTIVENESS CURVE



BILLING CODE 6560-50-C

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However, EPA believes that estimated benefits of control technology could be understated by the manufacturers. EPA's analysis of emission levels submitted by manufacturers found that for the different control technologies, a range of emission results were reported. While it is expected that costs should differ between manufacturer due to the industry structure, one would expect less variation in the emission results for the same control technology. There may be a learning curve for manufacturers in the calibration of control technology which explains the variation in controlled emission levels which EPA saw in the manufacturers data. A reduction of this variation, however, is only estimated to at best make 85 percent an appropriate HC reduction level based on the marginal cost-effectiveness curve.

EPA is requesting comment on requiring a reduction of 80–85 percent for outboards and personal watercraft. Looking simply at the curve as shown in Figure 2, in EPA's judgement an 80 percent reduction reflects the level at which additional reductions are shown to become relatively expensive per unit of emission reduction achieved. Since the data was supplied by engine manufacturers, who do not have an interest in understating costs, EPA believes actual costs are close to these levels, if not lower. This data shows that the cost of additional control increases relatively quickly at the 80 percent point. However, the expected cost of control at 80 percent reduction is relatively moderate ($2,000/ton of HC reduced) compared to other programs EPA has implemented for HC control.

Reductions beyond 80 percent from outboards/personal watercraft are possible, as are reductions from sterndrive/inboard engines. These reductions tend to be quite expensive as they involve engines which, due to their size, sales, or use are expensive to control. EPA requests comments on reductions at, and beyond the 75–80 percent level from outboard/personal watercraft.

2. Elasticity Effects

Price elasticity is the economic term for the degree to which changes in product prices influence sales. Based on the best information available, EPA expects that a given percentage price increase due to production cost increases will have at least as large a corresponding percentage impact on sales. Such a response is customary with discretionary products and most marine engines are discretionary purchases.

Two effects of the price increase expected due to this regulation should be recognized. First, as mentioned above, the price increase can be expected to lead to a decline in sales of new engines. Second, the decline in sales means either that people find new forms of recreation or buy used marine engines. EPA is not in a position to determine the extent to which people will substitute other forms of recreation, such as sailing, or will buy a greater number of used marine engines. Substitution of some forms of recreation, such as sailing, will likely benefit the environment. However, if the increased price of new marine engines results in increased demand for used marine engines, the environment may be harmed in the short run because people will not be buying the newer, cleaner engines to replace old engines. The useful life of unregulated engines may be extended.

EPA is concerned about the effect of a price increase on new engine sales. If people continue to boat, it would be better for the environment if people buy and use new, clean, controlled engines rather than old, dirty, uncontrolled engines. Therefore, when setting the HC emission standard level, EPA has decided to err on the conservative side of the confidence range about the marginal cost-effectiveness curve and propose a level of 75 percent HC emission reduction for outboard and personal watercraft engines. The price effect for outboard/personal watercraft will be less than if EPA chose 80 percent or 85 percent HC emission reduction, as discussed previously regarding marginal cost-effectiveness.

EPA requests comment as to whether price elasticity concerns should be used as a criterion for setting emission standards. Additionally, comment is requested on what the appropriate HC emission reduction target should be for outboards and personal watercraft if price elasticity is not a concern.

Finally, EPA requests comments on programs which may be constructed to encourage turnover of the in-use fleet of marine engines. EPA believes that scrappage programs may be a way of influencing the attrition of old marine engines and the demand for new marine engines. It is conceivable that such a program could be constructed in conjunction with a national standard if issues surrounding surplus and quantification of emissions could be addressed. Interested readers should see EPA's MERC guidance for more information on this topic (Feb 23, 1993; 58 FR 11134).

3. Leadtime and Phase-In Considerations

EPA is proposing a phase-in of the required emission reductions for outboard and personal watercraft engines over a period of 9 model years beginning with model year 1998. EPA recognizes that this is a long phase-in period with a short leadtime period. However, it is justified by the standards structure, the large reduction in HC proposed, the expected costs of this to be imposed by regulation, and the related revolutionary changes to engines and production lines.

The technologies needed to achieve the proposed HC emission reductions are revolutionary technologies for this industry. Sufficient time is necessary to allow industry to design engine models and alter production lines. Consumer acceptance of the new types of outboards and personal watercraft will be critical to future viability of the industry. This is because the engine technologies will be different and unfamiliar. The proposal takes the market in one step from 2-stroke technology, which has not changed since the 1950's, to technologies associated with 4-stroke hydrocarbon levels, which include 4-stroke, direct injection 2-stroke, or catalyst technologies. Further, for some types of engines, particularly larger outboard motors, technical difficulties exist in applying emission reduction technology which necessitate a longer phase-in (such as, development of direct injection 2-stroke technology for large outboards).

Compounding these concerns is the fact that industry is coming out of a recessionary period in 1991 and 1992 which drained resources. Companies are in the process of rebuilding financial resources after these setbacks. The economic recovery should allow companies to regain resources, although perhaps lagging behind the economy as a whole. In the future, with ample phase-in, companies should be in a good position to handle the product development and production line costs which will be incurred due to this regulation. EPA believes that spreading the cost increases due to the proposed regulations over a longer period is important for those reasons and because industry estimates indicate that consumers are price sensitive. Estimates indicate that shortening the phase-in period to 7 years would increase annual costs by over 30 percent for the proposed level of reductions. Given that the emission reductions will result from new engine sales and not from the entire fleet, EPA believes that the small

amount of reduction foregone by the long phase-in is worth the expected reduction in cost and price allowed by spreading the costs over a longer period. Allowing time for the market to adjust to a changing cost structure will help to maintain the economic vitality of the market and potentially mitigate large adjustments to sales volumes. Therefore, it is essential that ample time be given for industry and consumer adjustment to the new cost structure imposed by regulation.

Moreover, nonattainment areas need to achieve emission reductions from gasoline marine engines as a long term attainment maintenance strategy. EPA is proposing a long term strategy that will achieve as much HC emission reduction as is relatively cost-effective from this source as explained above in the discussion of marginal cost-effectiveness. EPA is proposing a reduction level which pushes the limits of the marginal cost-effectiveness curve. It is EPA's opinion that the proposed emission reductions reflect the most aggressive emission reduction strategy feasible as an attainment maintenance strategy. Therefore, EPA is proposing a maintenance strategy, allowing a 9 model year phase-in period.

In addition, incentives are proposed to facilitate early emission reductions beyond the requirements. Manufacturers have an incentive to achieve emission reductions in excess of the requirements, especially in the early years of the phase-in, because the average standard level is not as low in the early years of the phase-in as it is in the later years. Manufacturers have the opportunity of banking unused emission credits, thereby attaining reductions in excess of program targets. This issue is discussed further in issue section M. "Banking of Emission Credits".

Additionally, the proposed phase-in regulatory structure has the advantage of requiring specific emission reduction progress each year of the phase-in. The regulatory structure requires that the new engine fleet for each model year of the phase-in reduce emissions by a set percentage from the baseline new engine fleet level.

Last, leadtime has been reduced by the standards structure. Implementation begins only 2 years after scheduled final rule promulgation. This 2 year leadtime is significantly less than leadtime given in the past for on-highway motor vehicle regulations. The implementation date is sooner than it would have to be for a program in which all engines would meet a certain level, because EPA believes that averaging and trading affords early reductions for those engines which are most cost-effective to control.

In light of these points, EPA believes that the 2 year leadtime and 9 year phase-in period are appropriate and feasible for the proposed emission reduction requirements. Because EPA is taking comment on the level of the HC emission standard, it should be noted that deviations from the proposed level would impact the length of the phase-in period. For example, if EPA were to finalize a less stringent HC emission standard level in response to comment, then less costs would be imposed on industry and consumers, and regulatory costs could be spread over fewer model years. If EPA finalizes a more stringent HC emission standard level than that proposed, the additional costs imposed may require a longer phase-in period. However, EPA's opinion is that it is unlikely that the 2 year leadtime would need to be changed as the result of either a less or more stringent HC emission standard.

4. Level of NO_X Standard

EPA is proposing to set average NO_X emission standards for outboard and personal watercraft engines at 6.0 g/kW-hr and for sterndrive and inboard engines at 6.5 g/kW-hr. The level of the HC standards impacts the level of the NO_X standards. The types of technologies used to reduce hydrocarbons from current technology 2-stroke engines will likely result in increased NO_X levels. EPA believes that the proposed standards reflect the proper balance between HC and NO_X standards: They achieve significant reductions in HC emissions while minimizing the increase in NO_X emissions. Therefore, in considering different levels of HC standards from those proposed in today's notice, commenters must also consider the impact on NO_X standards and inventory levels. EPA requests comments on NO_X standards below, above, or at the proposed levels of 6.0 g/kW-hr for spark-ignition outboard/personal watercraft engines and 6.5 g/kW-hr for sterndrive/inboard spark-ignition engines. The HC/NO_X tradeoff issues is an important issue which is discussed in much greater detail in several other sections of this preamble.

5. Proposed Standards Fit Statutory Criteria

EPA believes that the proposed standards structure is consistent with the statutory requirements of Clean Air Act (CAA) section 213. The Act requires EPA to consider costs, leadtime, and other factors in making its determination of the "greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available." Though the language of CAA section 213 is silent on the issue of averaging and trading, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing CAA section 213. The statute does not require a specific standard or technology to be implemented. Further, the emission standards under CAA section 213(a)(3) are "applicable to emissions from * * * classes or categories" of new nonroad engines or vehicles. This indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

At the same time, EPA believes that any averaging and trading program must be consistent with the statutory requirement that the standards reflect the greatest degree of emission reduction achievable through the application of available technology. EPA believes that the proposed standards are fully consistent with this requirement. The proposed emission standards have been established in light of averaging and trading program elements. EPA is proposing average emission standard levels that are set lower than they would be if all engines had to meet these standards because averaging and trading allow EPA to set a higher target level of reduction, yet still at a reasonable cost. In essence, the cost advantages of averaging and trading would be used to achieve a larger emission reduction.

The averaging and trading program elements are inherent in the proposed standards structure and were not designed to simply increase regulatory flexibility to manufacturers and/or lower costs. EPA does not consider these program elements to be optional. While averaging and trading do increase flexibility and lower cost compared to command-and-control, the command-and-control option is infeasible at the proposed standard levels due to the high costs of trying to achieve the proposed levels with every engine.

The proposed standards structure contains emission standard levels determined by applying the concept of cost-effectiveness. This is explained previously in section IV(D)(2).

EPA believes that the proposed standards level is consistent with the statutory requirements of CAA section 213. A discussion of the technologies and levels considered by EPA can be found in section V(I).

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H. NO_X Emission Standards for Gasoline Spark-Ignition Engines and NO_X/HC Tradeoff

The main focus of this regulation is to reduce the extremely high HC emission rates of current technology 2-stroke marine engines. However, EPA is striving to minimize any increase in NO_X emissions which could occur as a result of the stringent HC standards. Information gathered during the development of this proposal suggests that for outboard engines, HC emission rates of 4-stroke outboards are roughly 10–14 times lower than current technology 2-stroke outboards. However, NO_X emission rates are roughly 2–4 times higher for 4-strokes than for 2-strokes. Direct injection 2-stroke technology is also expected to substantially reduce HC emissions while increasing NO_X emissions beyond the levels emitted by the 2-stroke technology levels.

The high HC and low NO_X levels of current technology 2-stroke engines are inherent in the operation of such engines. For such engines the air/fuel intake mixture is used to push the exhaust gas out of the cylinder, resulting in a substantial dilution of the exhaust gases with unburned intake fuel. This "scavenging" of exhaust gases by fresh air/fuel charge results in a substantial portion of unburned fuel being pushed out with the exhaust gases. As a result, HC emissions are extremely high. However, NO_X emissions are low due to the lower combustion temperature resulting from exhaust being mixed in with the air/fuel intake mixture and from low oxygen levels due to rich air/fuel mixtures. Any modifications that raise combustion temperatures would be expected to increase NO_X levels.

Most of the technologies being considered to reduce HC from spark-ignition marine engines will result in NO_X increases. For example, with 4-stroke technology, exhaust gases are pushed out of the cylinder by the piston during the exhaust stroke. Therefore, compared to the pre-combustion air/fuel mixture of a current technology 2-stroke engine, the mixture of a 4-stroke engine contains much less exhaust gas. This in turn results in higher combustion temperatures, and therefore higher NO_X emissions from 4-stroke engines.

EPA believes that the increased NO_X emissions from technologies that will replace current technology 2-stroke engines can be somewhat offset by reductions in NO_X emissions from 4-stroke spark-ignition sterndrive and inboard engines. These NO_X reductions are available from at least three mechanisms: Exhaust gas recirculation (EGR), catalysts, and recalibration. In developing the standard to propose for these engines, EPA only considered recalibration and EGR because these changes can be performed by the manufacturer at reasonably low cost. Three way catalysts are more expensive equipment and their performance has not been demonstrated in the marine environment. EPA wants to ensure that inboard/sterndrive engines (which are relatively low emitting engines) will be attractive substitutes for outboards and personal watercraft in those applications where substitution is a viable option, and is therefore concerned that the regulations proposed today should not significantly increase the cost of inboard/sterndrive engines.

EPA performed emission testing on 3 inboard marine engines which had a range of calibrations resulting in various levels of HC and NO_X emissions. The HC vs. NO_X emissions were plotted and a calibration was extrapolated which could potentially reduce NO_X emissions with a slight penalty for HC emissions. As a result, EPA is proposing an average NO_X standard of 6.5 g/kW-hr for spark-ignition sterndrive and inboard engines, which represents about a 10 percent reduction in NO_X emissions from today's sterndrive and inboard engines. This results in an increase in overall NO_X emissions from all gasoline spark-ignition marine engines of 32 percent. If EPA did not require this 10 percent reduction in NO_X emissions from 1990 sterndrive/inboard engine NO_X emissions levels (which average at 7.0 g/kW-hr), the overall increase in NO_X from all gasoline spark-ignition marine engines would be 38 percent. While the additional 6 percent reduction (32 percent versus 38 percent) may not appear to be significant, manufacturers claim that 1994 engines have significantly higher NO_X than did 1990 engines due to recalibration to meet customer desires. Therefore, EPA may be mitigating larger NO_X increases not reflected by the 1990 sales fleet of sterndrive/inboard engines by requiring the 6.5 g/kW-hr average NO_X emission standard.

Although not proposed in today's notice, EPA has also considered setting NO_X levels below 6.5 g/kW-hr. EPA has estimated that to totally offset the increase in NO_X from spark-ignition outboards and personal watercraft, a level of 3.9 g/kW-hr would be required for spark-ignition sterndrive and inboard engines. EPA rejected the 3.9 g/kW-hr standard because EPA believes that there are substantial technological problems with achieving this level from these engines. For example, if this level were to be achieved by recalibration and or timing adjustment, HC and CO emissions would increase substantially for these engines. EPA believes that to meet such a standard and keep HC and CO low, all sterndrive and inboard engines would have to utilize closed loop fuel systems with three-way catalytic converters. The costs for such controls would not justify the relatively small benefit from these marine engines, which are already relatively clean.

EPA has more seriously considered levels between 3.9 g/kW-hr and the proposed level of 6.5 g/kW-hr. A level of 6.0 g/kW-hr has been considered for inboards and sterndrives. This would result in an overall increase in NO_X emissions from all gasoline spark-ignition engines of 25 percent as compared to 32 percent for the proposed 6.5 g/kW-hr standard. EPA currently does not have sufficient information regarding the effects of calibrations and EGR to attain such standards on the drivability and durability of gasoline spark-ignition sterndrive and inboard marine engines. EPA requests information on such effects at the level of 6.0 g/kW-hr. It must be noted that any increase in NO_X emissions from spark-ignition marine engines will be more than offset by the reduction in NO_X expected from the proposed NO_X standards for diesel compression-ignition marine engines.

EPA requests comments on the feasibility of the proposed NO_X emission standards for spark-ignition sterndrive/inboard engines and outboards and personal watercraft engines. EPA requests comments regarding the trade-off between HC reductions and NO_X increases for marine engines. EPA also requests comments on whether or not the proposed NO_X standards are appropriate, or if they should be higher or lower in light of the HC/NO_X trade-off. Specifically, EPA requests comments on the proposed level and structure of the emission standards as a way of meeting the goal of significant HC reductions while minimizing NO_X increases.

While the NO_X standards are different for outboard/personal watercraft and sterndrive/inboard categories, EPA is proposing to allow emissions averaging to achieve standards for the following reasons. First, an average standard may be set that results in greater economic efficiency than a cap type of standard which all engines must meet. Second, an average NO_X standard provides incentives for the manufacturer to achieve levels lower than the standard using new technologies. These new technologies might be useful not only for reducing the emissions from the

engine on which they are used but also for setting more stringent standards in the future in other rules.

I. Effect of Available Technologies on Emissions and Performance From Gasoline Spark-Ignition Engines

Chapter 1 of the draft Regulatory Support Document describes the technologies EPA has determined will be capable of meeting the proposed standards. This section will discuss the emission reductions EPA believes can be expected from these technologies, and the impact of these technologies on performance. The discussion is organized by equipment types because the equipment type has a large impact on which control technologies are available.

When considering an appropriate standard level for marine engines, CAA Section 213 requires EPA "In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 202, taking into account the technological feasibility, costs, safety, noise and energy factors associated with achieving, as appropriate, standards of such stringency and lead time." This section will discuss the automotive technologies considered, primarily four-stroke engines and catalytic converters, and why EPA is not purposing standards of equivalent numerical value to standards applied to motor vehicles. The use of catalytic converters on current two-stroke crankcase charge scavenged outboard and personnel watercraft engines is discussed, along with the technological difficulties associated with the application of catalytic converters to such engines. In addition, EPA considered the application of catalytic converters to four-stroke outboard and personnel watercraft engines as well as sterndrive and inboard engines. The technological difficulties of applying catalytic converters to marine engines, while not insurmountable, would be costly. When considering the level of the standard on a marginal cost effectiveness basis, the application of catalytic converters to four-stroke marine engines was found to be relatively expensive for the emission benefit derived from the technology.

1. Spark-ignition Outboard and Personal Watercraft Engines

Several technologies were considered for reduction of HC emissions from current two-stroke outboard and personal watercraft engines: conversion to four-stroke, direct-injection two-stroke, recalibration of current two-strokes, and the use of catalytic converters. In determining the benefits from these technologies, EPA compared emissions rates (on a brake specific work basis) from current two-stroke outboard and personal watercraft engines without these emission control technologies to estimates and test data from engines with these emission control technologies. Most of this data was received from the marine engine manufacturers. EPA has also made independent estimates as well and both are summarized in Table 2.

TABLE 2.—EPA AND MARINE ENGINE MANUFACTURER RANGE OF ESTIMATES OF POTENTIAL HYDROCARBON EMISSION REDUCTION, PER ENGINE, FOR CURRENT TWO-STROKE OUTBOARDS AND PERSONAL WATERCRAFT

Technology	HC percent reduction estimate ranges, per engine mass specific emission rate (%)
Conversion to Four-Stroke	75–95
Two-stroke direct injection	75–90
Recalibration of current two-strokes	8–20
Catalytic converters on current two-strokes	65–75
Electronic Fuel Injection on current two-strokes (crankcase injection)	15–25
Electronic Fuel Injection w/ Catalytic converter on current two-strokes	65–75

EPA's estimate for per engine mass emission rate reductions of carbon monoxide (CO) for personal watercraft and outboards ranges between 8 and 45 percent for most technologies, depending on the engine size. The direct injection two-stroke technology is the one exception. Due to the lean-burn nature of direct injection, EPA expects this technology to result in a per engine reduction in the brake specific emission rate of CO to be between 40 and 80 percent, depending on the particular engine size.

One inherent characteristic of current air-fuel crankcase scavenged two-stroke engines is the low emission rate for oxides of nitrogen (NO_X). The primary source of NO_X in spark-ignition engines is the oxidation of atmospheric nitrogen. The chemical reactions for production of NO_X have large activation energies, therefore NO_X formation is strongly dependent on temperature. In addition, since NO_X is formed by the oxidation of nitrogen (N_2), NO_X formation is also dependent on the availability of oxygen, (excess oxygen results from lean air-fuel ratios (A/F)). The condition at which the A/F ratio is chemically balanced for full combustion is called stoichiometry. At a rich A/F, when there is not enough oxygen present to fully burn the fuel, NO_X formation will be low relative to the same engine running under lean A/F, when there is more oxygen than necessary to fully burn the fuel. The current state of the marine outboard and personal watercraft industry has developed around the two-stroke crankcase charge scavenged gasoline spark-ignition power source. These engines are run at A/Fs on the rich side of stoichiometry, resulting in relatively low combustion temperature, incomplete combustion, and, therefore, low NO_X production.

However, the richness of the charge does not explain why current two-stroke engines have lower mass emission rates of NO_X than comparably powered four-strokes running at the same A/F. The explanation lies in the exhaust remaining in the combustion chamber of two-stroke engines from the previous power stroke. This exhaust, which was not completely scavenged by the air-fuel intake mixture, acts as internal exhaust gas recirculation (EGR). EGR is a well documented technique used to lower

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NO_X production in four-stroke gasoline spark-ignition engines. EGR acts as a diluent to the fresh charge in the cylinder, reducing peak burned gas temperatures, and thereby reducing NO_X formation.

Currently unregulated two-stroke crankcase charge scavenged outboard and personal watercraft engines have NO_X emission rates which range from 0.5 g/kW-hr up to 4.0 g/kW-hr. EPA estimates that the two primary technologies which will be used to meet the proposed HC standard, conversion to four-stroke engines and two-stroke direct injection, will both result in an increase in the level of NO_X produced by outboard and personal watercraft engines. In order to meet the proposed level of HC emissions, EPA estimates that manufacturers will need to recalibrate their engines to run at leaner air-fuel ratios, resulting in higher combustion temperatures, more complete combustion, and some increase in NO_X formation. In addition, 4-stroke technology has little "internal EGR" which could reduce NO_X emission rates. On a per engine basis, depending on the engine size and technology used to meet the proposed HC standard, the mass specific emission rate of NO_X will increase to values in the range between 4 and 12 g/kW-hr. However, EPA estimates the overall average NO_X for all outboard and personal watercraft engines to be 6 g/kW-hr after HC standards are met. Some of this increase in NO_X emissions can be counter-balanced by use of external EGR technology.

The primary performance effect from the conversion from 2-stroke crankcase charge scavenged engines to 4-stroke engines is the decrease in power to weight ratio. Based on information available on currently marketed 2- and 4-stroke outboard engines, EPA estimates the weight of the power unit for both outboards and personal watercraft will increase between 23 and 35 percent for a given rated power. Power to weight impacts resulting from the use of 2-stroke direct injection technology should be minimal. EPA estimates the additional weight increase from the added components necessary for 2-stroke direct injection technology will result in power unit weight increases between 5 and 10 percent for a given rated power.

As discussed previously, EPA considers the use of catalytic convertors in certain applications (with limited conversion efficiency) on 2-stroke crankcase charge scavenged engines as a potentially feasible and cost effective control method for outboards and personal watercraft. The increase in packaging size will add some additional weight to the engine; however, EPA does not believe this weight increase will be as great as is involved with the conversion to four-stroke engines. EPA does not believe there will be any significant performance changes to engines with the application of catalytic convertors other than the decrease in power to weight ratio. However, EPA requests comment on any safety or performance effects with the potential use of catalytic convertors on marine engines.

2. Spark-Ignition Sterndrive and Inboard Engines

EPA has examined a range of technologies for the control of exhaust emissions from sterndrive and inboard spark-ignited engines. These technologies include the following: recalibration of current carbureted and electronic fuel injection (EFI) engines for maximum emission reduction benefit, conversion of current carbureted marine engines to electronic port fuel injection, and the application of oxidizing (or three-way) catalytic convertors to current 4-stroke spark-ignition marine engines. Table 3 shows the range of hydrocarbon reductions estimated by EPA and industry on a per engine basis for the three technologies investigated by EPA.

TABLE 3.—EPA AND MARINE ENGINE MANUFACTURER RANGE OF ESTIMATES OF POTENTIAL HYDROCARBON EMISSION REDUCTION, PER ENGINE, FOR CURRENT STERNDRIVE AND INBOARD ENGINES

Technology	HC percent reduction estimate ranges, per engine mass specific emission rate (%)
Recalibration of Current Engines	8–20
Electronic Fuel Injection	8–20
Application of Catalytic Convertors	65–75

EPA has determined that recalibration of current engines is the most cost effective approach.

J. Effect of Available Technologies on Emissions and Performance From Compression-Ignition Engines

EPA proposes that the existing nonroad compression-ignition regulations (40 CFR 89) to cover compression-ignition marine engines, with appropriate modifications to test procedures and implementation dates. Both the expansion to marine engines and the two areas of modification will affect to some extent the technologies which are available to control emissions. Interested readers should review the existing nonroad compression-ignition regulations (June 17, 1994; 59 FR 31306) for more detailed information about the technologies needed. The discussion below considers the changes to technologies used due to the differences between this proposal and the existing nonroad regulations.

1. Types of Compression-Ignition Marine Engines

EPA is proposing to regulate the two different types of compression-ignition marine engine applications: auxiliary power units and propulsion engines. Auxiliary power units are generally the same engines as those used as nonroad generator sets for land-based applications. Many marine propulsion engines also have similar land-based engine counterparts, though marine engines often have cooling systems which take advantage of the abundant water supply. Since NO_X is highly temperature dependant, the increased cooling availability should make achieving lower NO_X standards simpler than it would be for other engines.

2. Leadtime and Cost

EPA's existing nonroad compression-ignition engine rule phases in from 1996 through 2000 by different power categories. Today's rule is proposed to be effective for all except the largest marine engines on January 1, 1999. The standards are proposed to be effective for the largest marine engines (at or above 560 kW) on January 1, 2000, which is the same as the effective date for similar size new nonroad land-based engines. The technologies that EPA expects to be used to meet the proposed compression-ignition marine engine standards are available technologies that can be applied within the proposed timeline and at low cost. These technologies have been used for on-highway engines for several years and are now being applied to nonroad engines in response to the California Air Resources Board's heavy duty off-road equipment and EPA's rules. Further, cooling is already more effective on marine engines than on other nonroad engines, since a ready supply of water is available. More cooling is needed since the engines are in a confined place. Therefore, compliance for these engines should be simpler than for other compression-ignition nonroad engines. However, in tropic regions, this cooling water may be as warm as 90–95° F.

The Agency is proposing that all compression-ignition marine engines comply with the proposed standards in 1999 except those over 560 kW, which would be required to comply in 2000. This would allow marine engine manufacturers to continue their development plans for nonroad engines generally, while requiring them to apply it to marine engines as soon as possible. EPA believes that the larger engines should be able to comply with the standards on the same timeline as other nonroad engines because 5 years leadtime is quite generous given that no new technology is required to meet the standards proposed.

EPA believes, however, that allowing this much leadtime is not excessive because many of the manufacturers of these engines are the same manufacturers who must also comply with the 1998 on-highway engine standard and the other nonroad engine standards. While the various engines are similar and the technologies needed are available, engineering effort is needed to accommodate the differences between engines.

As discussed at length in the existing nonroad compression-ignition engine rule, the technologies determined by EPA to be feasible to meet the proposed standards will be available for reasonably low cost, at approximately $110 per engine, and will have high cost-effectiveness, at approximately $86 per ton of NO_X reduction. EPA expects that these cost and cost effectiveness numbers will also be the same for compression-ignition marine engines. EPA requests comments on the proposed standards, leadtime and costs for compression-ignition marine engines.

3. Test Procedure

The test procedure used for diesel compression-ignition marine engines is different from that used for most other compression-ignition engines (this is discussed in more detail in a later section: "Representativeness of the Test Procedures.") This difference results from the different duty cycles involved in marine as opposed to other applications. The test cycle for marine compression-ignition engines and the test cycle for land-based compression-ignition engines weight the test points differently, but both weight the high power levels significantly. While the ISO E5 5–Mode test cycle for compression-ignition marine engines used as propulsion engines has a lower load factor than the ISO C1 8–Mode test cycle adopted for other large nonroad compression-ignition engines, both cycles characterize a number of steady-state modes between idle and wide open throttle operation. The emission control technologies predicted to meet the large nonroad compression-ignition engine rule (59 FR 31306, June 17, 1994) are capable of proportional emission control over the entire range of operation covered by both ISO E5 and ISO C1. Therefore, proposing the same level of emission standards tested over the ISO E5 test cycle as were promulgated for use with the ISO C1 test cycle will result in use of the same technologies (some calibration differences may be needed). However, EPA is interested in comments on whether the leadtime should be extended to allow more testing to ensure engines meet the new standards.

K. Representativeness of the Test Procedures

1. ISO E4 Cycle for Gasoline Spark-ignition Marine Engines

The emission standards in this proposal for gasoline spark-ignition marine engines are based on the 5-mode steady state test procedure developed by the International Council of Marine Industry Associations (ICOMIA) and referred to by ISO as the E4 cycle. EPA's primary concerns in the choice of a test procedure are that the test procedure must accurately predict actual in-use emissions of the engine being tested and that the emission control technologies applied to the test engine to meet the proposed standard result in comparable emission reduction when applied to production engines in actual use.

EPA believes that a standard based on the ICOMIA test procedure is appropriate to ensure that marine engines will meet the emission reduction goals of this regulation while operating in-use. Although preliminary data show that emissions from marine engines are highly sensitive to transience, EPA has not yet gathered enough data to determine whether or not a transient test cycle better represents actual in-use engine operation than a steady state cycle. For these reasons, the duty cycle from the ICOMIA test procedure is being proposed for this rulemaking.

The International Bodensee Shipping Commission has also developed an 8–mode steady state cycle (BSO cycle) from the same data that was used to develop the ICOMIA cycle. This cycle contains the five modes from the ICOMIA plus an additional three modes. Consequently, different weighting factors are used to calculate composite emissions. Neither EPA nor industry testing has shown that significant additional control would be gained by using the three additional operating points in the BSO cycle. Therefore, the additional test length of the BSO cycle would not be justified. In addition, emissions from engines tested on the BSO steady state cycle could easily be converted to represent ICOMIA cycle results. Therefore, EPA proposes the option of using the BSO cycle and calculating the results based on the modes and weightings of the ICOMIA cycle.

2. ISO E5 Cycle for Marine Propulsion Compression-ignition Engines

The ISO E5 test procedure was developed from operational data collected by Volvo on recreational boats and data collected by the Norwegian government on several classes of commercial fishing vessels. For the purpose of developing the cycle, data from vessels with engines rated over 375 kW (500 hp) were not used.

EPA is proposing a marine cycle for compression-ignition marine engines different from that proposed for gasoline spark-ignition marine engines due to the significantly higher power factor typical of compression-ignition marine engine operation. This higher power factor is attributed to the typical use of large displacement hull vessels with compression-ignition marine engines,

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while gasoline spark-ignition marine engines are typically used in smaller planing hull craft.

EPA requests comment on the possible use of the ISO E2 constant speed cycle for compression-ignition marine engines, as well as the ISO E3 propeller law cycle for compression-ignition marine engines. The principle difference between the ISO E3 and E5 cycle is the exclusion of an idle mode from the ISO E3 cycle which is included in the ISO E5 cycle. EPA requests comments on the distinction between the E3 and E5 cycles and the merits of including or not including an idle mode for compression-ignition marine propulsion engines.

3. ISO C1 Cycle for Marine Non-Propulsion Compression-Ignition Engines

EPA proposes to adopt the ISO C1 8-mode test cycle for all non-propulsion marine engines covered under this rulemaking to maintain consistency with similar requirements for other nonroad compression-ignition engines. The C1 cycle is identical to the 8-mode cycle used in 40 CFR 89 for nonroad compression-ignition engines greater than 37 kW. EPA solicits comment on the appropriateness of the ISO C1 cycle for non-propulsion compression-ignition marine engines.

However, the ISO D2 cycle may be more appropriate for generator sets because ISO D2 is intended to represent the generator set duty cycle. EPA solicits comment on the ISO D2 cycle as an alternative cycle for compression-ignition generator sets used on marine vessels. In addition, EPA solicits comment on the appropriateness of the 6-mode ISO G2 cycle for compression-ignition non-propulsion marine engines less than or equal to 20 kW. EPA is aware that this cycle is being utilized by the California Air Resources Board in their small utility, lawn and garden regulation for compression-ignition engines. EPA solicits comment on the rationale for using the 6-mode ISO G2 cycle and the 20 kW break-point as opposed to the 8-mode ISO C1 cycle for all compression-ignition non-propulsion marine engines.

L. Safety/Noise/Energy Issues

Pursuant to section 213(a)(3) of the 1990 Clean Air Act, if EPA decides to promulgate standards for new nonroad engines, EPA must consider the noise, energy, and safety factors associated with such regulations. Each of these factors is considered below.

1. Noise

EPA does not believe that the regulations proposed in this rule will significantly affect the noise levels associated with marine engines or marine vessels. The type of engine changes which EPA believes will be used to meet the proposed exhaust emission standards will not increase engine noise. Noise levels from new technology engines as a result of this rule are expected to remain the same or be reduced compared to current technology engines. EPA requests comments on this issue.

2. Energy

The regulations proposed in this rulemaking should result in significant fuel savings. Current technology two-stroke engines, which are widely used in marine vessels, do not use fuel efficiently. An unburned fuel/oil/air mixture is used to push the exhaust gas out of the cylinder (this is called "scavenging"). As a result, a substantial portion of the unburned fuel and oil is pushed out of the cylinder with the exhaust gases. This combustion technology can result in wasting more than 25–35 percent of the fuel consumed. These losses will be greatly alleviated by the proposed regulations because emissions of such magnitude would fail to meet the standards. The regulations are likely to encourage the widespread use of 4-stroke technology, 2-stroke direct injection technology, or other "clean" technologies to alleviate the problem. These technologies use a more complete combustion process and do not use air/fuel scavenging of exhaust. As a result, more fuel will be burned in the engine instead of being exhausted unburned, and work done per unit of fuel will be increased.

For example, based on manufacturer data from 1991, EPA estimates that changing outboard engines from current technology 2-stroke to 4-stroke technology will result in an average decrease in fuel consumption of approximately 31.5 percent. EPA expects similar results from engines that use direct injection technology.

3. Safety

The federal agency that regulates safety issues for marine vessels is the U.S. Coast Guard. The regulations promulgated by the Coast Guard fall into three general categories: (1) Ensuring the safety of passengers (regulations for personal flotation devices, and so forth); (2) reducing the risk of fire hazards (regulations for electrical systems, fuels systems, and ventilation systems); and, (3) for larger vessels, ensuring vessel integrity (strength and adequacy of design, construction, choice of materials for machinery, boilers, pressure vessels, and safety valves and piping).[15]

EPA has sent the proposed regulations to the Coast Guard for review, and their comments are in the docket. It is EPA's view that the proposed regulations do not violate or conflict with Coast Guard safety mandates. The regulations proposed in this rulemaking could be affected by two sets of Coast Guard regulations: (1) Compartment ventilation requirements and (2) fuel tank ventilation requirements.

Coast Guard regulations require that boats with compartments not open to the air and containing a permanently installed gasoline engine with a cranking motor be equipped with power-assisted ventilation. This ventilation system is necessary because gasoline fumes may accumulate in these compartments through evaporation, posing a fire hazard when the engine is started. The Coast Guard also mandates that compartments that contain: (1) An enclosed engine, (2) openings between it and a compartment that requires ventilation, (3) permanently installed fuel tanks, (4) a fuel tank with a vent that opens into the compartment, or (5) a nonmetallic fuel tank be equipped with natural ventilation to the exterior of the boat. The regulations proposed in this rulemaking do not require any systems that would violate any of these requirements. If EPA determines that evaporative emissions regulations are necessary, EPA will work with the Coast Guard to ensure that safety is not compromised.

Second, Coast Guard regulations mandate fuel tank vents on all fuel tanks. Since fuel gauges are not well-calibrated on boats, in part because fuel tanks come in so many sizes and shapes, and since boat operators want to be sure they have a full tank when they leave the dock, refueling often continues until some fuel spills out of the tank. The vent is to ensure that the spillage does not fall in the boat, creating a fire hazard. However, fuel vents also permit the release of evaporative emissions. Coast Guard representatives expressed concern about closed fuel systems that could be mandated to reduce these evaporative emissions. Closed fuel systems are not currently permitted under Coast Guard regulations and could cause a potential safety hazard. Again, the regulations proposed in this rulemaking do not require any systems that would violate any of these

[15] See Memorandum to the Docket regarding marine safety issues on recreational boats.

requirements, since EPA has decided not to regulate evaporative emissions at this time. However, EPA intends to continue working with the Coast Guard and boat manufacturer groups to encourage closure of this vent at most times and especially when fueling is completed.

At the same time, the proposed regulations give rise to a safety issue that has not yet been considered by the Coast Guard. In discussions with EPA, representatives of the Coast Guard expressed concern about the use of fuel injection systems on marine engines.[16] In these systems, the fuel must be under pressure in the fuel line. This is a potential safety hazard that could be dangerous, especially when the craft is far from shore. Although the regulations proposed in this preamble do not specifically call for fuel injection systems, it is the case that marine engine manufacturers already include these systems on some engines and may use them more in response to these regulations. For this reason, it is important for EPA and the Coast Guard to consider the safety issues relevant to fuel injection systems. EPA requests comment from both the general public and the Coast Guard on the issue of the safety of fuel injection systems on marine engines. Comments from the Coast Guard are included in the docket for this rulemaking and are described above.

M. Banking of Emission Credits for Gasoline Spark-Ignition Marine Engines

1. Banking Unused Credits During the Phase-in Period for Future Use

EPA is proposing to allow manufacturers to carry positive credit balances over to future model years to help achieve compliance with standards applicable in those future years. This is known as an emission credit banking program. The rationale for allowing banking is that the value to society of achieving greater emission reductions early is greater than the detriment caused by smaller reductions in the future, just as we value money more today than tomorrow (and hence pay interest on loans). However, since there is also an interest in maintaining reductions into the future, EPA in general has not allowed unrestricted banking and does not propose to do so today. As the program proposed today phases in the required reductions and allows for lead time, special issues need to be considered.

[16] See Memorandum to the Docket, cited above.

2. Early Banking (Banking Prior to Phase-in Period)

EPA is not proposing to allow early banking of emission credits, that is, banking of credits prior to the implementation date of model year 1998. The main reason for this is that allowing early banking would require early certification of every engine family of a given manufacturer since net emissions credits are determined based on the entire product line. EPA believes that allowing early banking for new product offerings with lower emissions will not encourage manufacturers to bring such engines into the market sooner or ease the transition to control technology since all families would have to be certified early. The standards structure already provides incentives to bring new product offerings into the market sooner because there is greater credit generation potential in the early phase-in years. EPA requests comment on allowing early banking.

3. Credit Life

Other mobile source credit banking programs allow banked credits to be used in the three years following generation. This is referred to as a three year potential credit life. EPA is proposing a three year potential credit life for this rule in order to be consistent with the other mobile source programs on this aspect. However, EPA is requesting comment on shortening this credit life to a two year or one year credit life. Given that the standards structure is based on a declining average emission level, it may be reasonable to limit the potential credit life to two years because credits generated in previous years would have been calculated from a higher average standard level. EPA is not proposing in this rulemaking to limit the potential credit life to two years or one year because of the possibility that shorter credit life may discourage early emission reduction. Moreover, even if the past year's credits were generated from a higher average standard level, they would still represent emission reductions beyond the average standard level requirement. This reduction is good for the environment. EPA requests comments on the potential benefits associated with a credit life of three years, of less than three years, or of greater than three years.

As described, society values earlier emission reductions more than later ones. Therefore, the year after emission reductions are earned, society values them less than it did in the year they were earned, and the longer the period between credits earned and used, the greater the benefits to society. Similarly, from the manufacturers' point of view, there is an incentive to use credits sooner rather than later. EPA is proposing expiration of credits since if it is not profitable for the manufacturers to use credits within the proposed 3 year life, then the necessity of the banked credits intended to ease the transition to tighter regulations is questionable. Further, by limiting credit life, EPA can better ensure that no manufacturer will stockpile credits early in the program when they may be easier to obtain and then turn them loose in a later year when they could significantly impact implementation of declining standards. Therefore, EPA is not proposing to extend the potential credit life beyond 3 years.

4. Determination of Amount of Credit: Year of Use v. Year of Generation

Under the regulations proposed today, the amount of banked credits would be determined as of the year they are generated. EPA has considered and is requesting comment on whether the amount of banked credits should instead be determined in the year of use. Under this option, if a manufacturer generated banked credits in the first year of the phase-in, but waited to use those credits until the third year of the phase-in, the manufacturer could only claim the credits that the engine would have generated in the third year of the phase-in.

For example, if the average emission standard for a 100 kW engine was 100 g/kw-hr in 1998 and the engine achieved a controlled emission level of 20 g/kw-hr, then the engine brake specific emission credit amount would be 80. However, the same engine would generate less credit in the year 2001 because the average emission standard would be less, at approximately 67 g/kw-hr. In the year 2001, the engine would only generate a brake specific credit amount of 47. Therefore, under this alternative, if the manufacturer had banked credits calculated using 80 brake specific credits after model year 1998 and had wanted to use them in the model year 2001, then only 47 of the 80 brake specific credits would be available for use. This is called determination of the amount of credits by year of credit use. EPA is not proposing this. EPA is proposing to determine the amount of credits by year of credit generation.

The amount of banked credits is reduced under this option where the amount of credits is determined by year of credit use. EPA is not proposing this option because the Agency believes that it reduces the incentive to achieve emission reductions beyond the

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required level in the early years of the program.

This program may be appropriate for today's proposal but is unlikely to be appropriate for other regulations. In today's proposal the standard is phased in gradually, yet it is very unlikely that engine manufacturers would choose to lower the emissions of any particular engine gradually. The technologies which will be used to meet the standards proposed today achieve very significant reductions; the reductions will be achieved in large "chunks." However, manufacturers phase in new technologies by using the technology on a portion of their fleet, not by adding more and more control to the fleet as a whole. Thus, in the third year, manufacturers are still earning credits and selling the engine that earned credits in the first year. Under today's proposal the same engine earns more credits in the first year than in the third. Since we would like engines cleaned up as early as possible, EPA is proposing this as the standard structure.

5. Banking Restriction for Outboard/Personal Watercraft NO_X Emissions

EPA proposes no banking of NO_X emission credits for the model years 1998 through 2005 for the outboard/personal watercraft averaging set. The reason for this concerns the level of the NO_X standard in relation to the HC emission standards in the phase-in years for this averaging set. So as not to limit the HC credit generation capabilities of the engine families during phase-in, EPA thinks it necessary to set the NO_X standard during phase-in at the level most appropriate for the fully phased-in HC reductions for model year 2006. This means that the NO_X standard is a fairly loose, flexible standard for the phase-in years. Because it is fairly loose and flexible, an additional banking provision would be excessively flexible and is unjustified.

EPA will not consider allowing NO_X credit banking during the model years 1998 through 2006 at the 6.0 g/kW-hr standard. EPA would only consider NO_X credit banking if the NO_X standard was incrementally increased in conjunction with the phased-in HC emission standards for model years 1998 through 2006. EPA requests comment on this option or other options which would make NO_X credit banking acceptable during phase-in.

N. Tracking Engine Sales to Point of First Retail Sale

For purposes of calculating emission credits, accurate sales levels must be used. EPA intends manufacturers to include all engines which are introduced into commerce in the U.S. for sale in the U.S. in the sales estimate. EPA does not include exports in this regulation. Therefore, it is important that manufacturers report sales levels to EPA which account for those engines actually introduced into commerce in the U.S., excluding any engines which are exported either by the engine or vessel manufacturer.

EPA is proposing to define "eligible sales" for the purposes of averaging, trading, and banking provisions as "marine engines sold for purposes of being used in the United States and include any engine introduced into commerce in the U.S. to be sold for use in the U.S." Therefore, EPA is requiring manufacturers to track the sales of engines to the point of first retail sale to determine which engines will remain in the U.S. and which engines will be exported. EPA is proposing to define "point of first retail sale" to mean "the point at which the engine is first sold directly to an end user." Generally, this point is with the boat or engine dealer. If the engine is sold first to a boat or vessel manufacturer, the boat or vessel manufacturer may serve as point of first retail sale if that manufacturer can determine with certainty whether the boat is to be exported or sold to a U.S. purchaser.

The main issue regarding tracking engine sales is the issue of determining which engines are exported and which engines are sold for use in the U.S. EPA's intent is to require manufacturers to track sales of engines only up to the point in the distribution chain where this determination can be made. EPA is willing to assume that if the engine is sold to a retail boat dealer in the U.S. that the engine is not exported. Further, EPA is willing to assume that if the engine is exported to a foreign dealer, then the engine does not re-enter the U.S.

EPA requests comment on these definitions and alternative methods of tracking engines to satisfactorily determine whether an engine is exported so that accurate U.S. sales are known. Comments are also requested on the nature of the distribution chain for the various types of marine engines.

O. Nonconformance Penalties for Marine Engines

Section 213(d) of the Act requires marine engine emissions standards to be subject to sections 206, 207, 208, and 209 of the Act, with such modifications as EPA deems appropriate. Pursuant to section 206(g)(1) of the CAA, the on-highway heavy-duty engine emission compliance program provides that, in certain cases, engine manufacturers whose engines cannot meet emission standards may continue to receive a certificate of conformity and continue to sell their engines provided they pay a nonconformance penalty (NCP). EPA believes that it has the authority, pursuant to section 213 of the CAA, to permit such a program for marine engines. However, EPA believes that the use of NCPs may not be warranted given the form of the standards proposed in today's action and EPA is not proposing NCPs for the engines included in this proposal. NCPs are designed to provide relief for engine manufacturers who cannot develop the emission control technology needed to meet technology forcing standards. The Agency believes the proposed averaging, banking, and trading program should provide manufacturers sufficient flexibility to meet the proposed standards and should alleviate any concerns that manufacturers may have regarding their inability to bring some engines into compliance with the proposed standards. EPA requests comment on whether or not NCPs would be appropriate in the context of this proposed rulemaking.

P. New Vessels Must Incorporate New Engines

EPA is aware that some new vessels are currently manufactured without new engines incorporated (e.g., air boats). EPA is concerned that such practices may compromise the intent and integrity of the proposed regulations. EPA is proposing to prohibit the sale of new vessels with old engines. This prohibition is contained in § 91.8 in the proposed regulations.

EPA does not intend this proposed restriction on new vessels to apply to vessels normally sold without any engine, such as rowboats and canoes. EPA requests comment on the adequacy of the proposed § 91.8 to meet this intent. Also, EPA requests comment on the necessity of this restriction.

Q. Emerging Market Segments

EPA is aware of several emerging market segments of marine vessels. Both jet boats and air boats are new types of vessels gaining in popularity. EPA is proposing to include jet boats in the outboard/personal watercraft category and airboats in the sterndrive/inboard category. However, EPA requests comments on jet boats, air boats, or any type of vessel not mentioned in this NPRM. Commenters should address how any such vessel should be handled in the regulations.

VI. Cost Analysis

Refer to Chapters 1 and 2 of the Regulatory Impact Analysis for further discussion of all individual cost components and calculation methodology.

A. Gasoline Spark-Ignition Engine Cost Analysis

1. Aggregate Annual Cost

EPA estimates the cost of this rule to be approximately $14 million in 1998 increasing to approximately $300 million in the year of 2006. The cost analysis estimates the annual cost and the price increase to consumers assuming that all manufacturers participate in averaging and trading of emission credits.

EPA calculated manufacturers' costs on an aggregate annual basis. These costs consider the aggregate cost to all engine manufacturers to design, certify, and produce all current engines to meet the standards proposed in this rule. This average annual cost estimate includes costs for hardware, research and development, test facilities, certification and enforcement of engine families.

2. Consumer Cost Summary

In assessing the cost to the consumer, three areas are analyzed: change to the cost of the engine, cost of fuel, and cost of maintenance.

As a conservative assumption, EPA assumes that increased costs to the manufacturers will be fully passed on to the consumer through an increase in the retail price of the engine. The increase in the retail price of the engine to the consumer is estimated using a percentage increase over the average amortized and discounted per engine manufacturers' cost. The estimated price increase to consumer per engine on average due to the proposed rule in 2006 is approximately $700 per engine. Because of the phase-in structure of the proposal, costs are less during phase-in. For instance, EPA estimates the price increase in year one to be approximately $32 per engine on average. Over time, EPA estimates the cost increase will stabilize at approximately $565 once research and development and other capital costs have been recovered.

B. Compression-Ignition Engine Cost Analysis

Because EPA is proposing the same emission standards and comparable certification and enforcement measures for compression-ignition marine engines as the Agency promulgated for large nonroad compression-ignition engines, the cost estimates for the final rule for nonroad compression-ignition engines greater than 37 kw have been used to estimate the cost of the proposed compression-ignition marine engine emission standard.

The per-engine cost estimate is $220 per engine for the nonroad compression-ignition engine regulation for engines greater than 37 kw. EPA estimates sales of marine compression ignition engines to be approximately 10,000 units in 1999, the proposed first year of implementation of the compression-ignition marine engine emission standards. This indicates a total aggregate cost in 1999 of about $2 million.

EPA requests comment from the compression-ignition marine engine manufacturers regarding their cost estimates specific to marine applications of compression-ignition engines. Comments are requested on the fixed costs of production such as development and production line costs, testing and test facility costs, and administrative costs. Variable costs should also be submitted, including cost for additional hardware, fuel consumption impacts, maintenance impacts, and warranty related costs.

VII. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials, and visibility. The primary criteria pollutants affected by this rule include, ozone and hydrocarbons (HC) for gasoline spark-ignition engines and oxides of nitrogen (NO_X) for compression-ignition engines. In addition, this rule will have some impact on the other criteria pollutants, particles smaller than 10 microns (PM_{10}), and carbon monoxide (CO). EPA has determined the standards set in this rule will reduce HC emissions from spark-ignition engines and reduce NO_X from compression-ignition engines and help areas come into compliance with the ozone NAAQS. The following provides a summary of the reduction expected and the health effects of HC and NO_X emissions. The underlying analysis is described in greater detail in Chapter 3 of the draft Regulatory Impact Analysis.

A. Gasoline Spark-Ignition Engine HC Reduction

The proposed gasoline spark-ignition marine engine HC emission standards should decrease HC emissions from marine engines by approximately 75% from projected baseline emission levels by the year 2025. HC emission levels are estimated to be stabilized at this percentage reduction through complete fleet turnover by the year 2051. Results are summarized in Table 4.

TABLE 4.—HC EMISSION SUMMARY: GASOLINE SPARK-IGNITION MARINE ENGINES

Year	Appx. projected aggregate controlled HC level (tons)	% HC reduction from projected baseline estimate
1998	520,000	1
2006	410,000	32
2010	310,000	52
2025	210,000	74
2051	220,000	74

B. Diesel Compression-Ignition Engine NO_X Reduction

Emission reductions due to this regulation for diesel compression-ignition marine engines are expected to be equivalent on a per-engine basis to the reductions achieved from land-based compression-ignition engines. Land-based compression-ignition engines were estimated to achieve a reduction in NO_X of approximately 37% per year on a per-engine basis (see 59 FR 31306).

Reductions in the inventory will occur through the introduction of new, controlled engines into the in-use fleet. The annual percentage reduction in the NO_X inventory of marine diesel engines is dependent upon the useful lives of these engines, the rate of attrition of old engines from the in-use fleet, and the rate of new sales added to the in-use fleet each year. EPA does not have sufficient information at this time to estimate future inventory levels and requests comment on the hours engines are used per year, the loads placed on engines, the average and full useful lives of these engines including rebuilds, the survival probability function, engine populations, aggregate sales estimates according to engine size (i.e., kiloWatt), estimates of future sales growth, and any related information.

C. Health and Welfare Effects of Tropospheric Ozone

EPA's primary reason for controlling HC and NO_X emissions from marine engines is the role of these pollutants in forming ozone (O_3). Of the major air pollutants for which national ambient air quality standards (NAAQS) have been designated under the Clean Air Act, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant

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and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving hydrocarbons, nitrogen oxides and other compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and nitrogen oxides from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of HC and NO_X can result in urban and rural areas exceeding the national ambient ozone standard by a factor of three. The ozone NAAQS represents the maximum level considered protective of public health by the EPA.

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma. Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The current NAAQS for ozone of 0.12 ppm is based primarily on the level at which human health effects begin to occur. However, ozone has also been shown to damage forests and crops, watershed areas, and marine life.[17] The NAAQS for ozone is frequently violated across large areas in the U.S., and even after 20 years of efforts aimed at reducing ozone-forming pollutants, the ozone standard has proven to be exceptionally difficult to achieve. High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere.

Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[18] Repeated exposure to ozone levels as low as 0.04 ppm can cause reductions in the yields of some crops above 10%.[19] While some strains of corn and wheat are relatively resistant to ozone, many crops experience a loss in yield of 30% at ozone concentrations below the NAAQS.[20] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the U.S.[21] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, growth in many species of pine appears to be particularly sensitive to ozone. Specifically, in the San Bernadino Mountains of southern California, the high ozone concentrations are believed to be the predominant cause of the decline of the endangered ponderosa pine.[22]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect).[23]

D. Roles of VOC and NO_X in Ozone Formation

Both volatile organic compounds (VOC) (used interchangeably with hydrocarbons for the purposes of this rule) and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. EPA's understanding of the importance of these pollutants in this process has been evolving along with improved emission inventories and modeling techniques. The role of NO_X has been controversial because, depending on local conditions, NO_X reductions can either promote or retard ozone formation near the emission source(s), while downwind ozone concentrations will eventually decline in response to NO_X reductions.

In general, the ratio between the ambient concentrations of VOC and NO_X in a localized area is an indicator of the likely effectiveness of VOC and/or NO_X reductions as ozone control measures. If the level of VOC is high relative to the level of NO_X (that is, a ratio of 20 to 1), ozone formation is limited by the amount of NO_X present, making reduction of NO_X emissions an effective strategy for reducing ozone levels. Alternatively, if the level of VOC is low relative to the level of NO_X (that is, in a ratio of 8 to 1), efforts to control VOC would be expected to be a more effective means of reducing ozone concentration.

For many years, it was believed that ozone formation was VOC-limited in most nonattainment areas. Consequently, although both NO_X and VOC emissions are regulated for certain source types, the primary focus of past ozone abatement strategies has been VOC. However, many areas have yet to attain the ozone standard. In recent years, state-of-the-art air quality models and improved knowledge of atmospheric chemistry have indicated that control of NO_X in addition to VOC is necessary for effective reduction of ozone in many parts of the United States.

Based upon recent scientific research, National Academy of Science has determined that in many parts of the country NO_X control is generally a very beneficial strategy for ozone reduction. However, under some circumstances, NO_X reductions without accompanying VOC control may actually increase ozone in a few urban cores such as downtown Los Angeles and New York City.[24] In the recent report, researchers emphasize that both VOC and NO_X controls are needed in most areas of the U.S.[25]

E. Smoke

Smoke from compression-ignition engines has long been considered a significant nuisance that can cause considerable economic, visibility, and aesthetic damage. The large carbon particles remain suspended for long periods and refract light, thus causing the negative environmental effect of reduced visibility. Furthermore, these particles are often wet and cause costly damage through soiling of urban buildings, homes, cars and other property. Such particles also soil human skin and clothes and are associated with increased odor. While there is no concrete connection between visible smoke and direct health effects, there are indications that visible smoke may have an adverse effect on health. In any case, there are substantial costs to society in terms of living with a dirtier environment or alternatively, paying to clean it up. Further, the public is particularly aware of this highly visible pollutant that comes into contact with them and their property. Public support for effective environmental programs is hampered by the negative impression brought about by the substantial nuisance of a visible pollutant that is left uncontrolled, even given that the health effects of such pollutant are uncertain. It undermines EPA emission control programs to allow a highly visible pollutant that can have substantial cost to society remain uncontrolled while tightly controlling sources that emit no visible pollutants. The compression-ignition smoke standards proposed today should reduce smoke significantly.

[17] U.S. Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989.

[18] U.S. EPA, Review of NAAQS for Ozone.

[19] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[20] U.S. EPA, Review of NAAQS for Ozone, p. X–10.

[21] U.S. EPA, Review of NAAQS for Ozone, p. X–12.

[22] U.S. EPA, Review of NAAQS for Ozone, p. X–25.

[23] Rethinking the Ozone Problem, p. 22.

[24] NRC, Rethinking the Ozone Problem, pp. 350–377.

[25] NRC, Rethinking the Ozone Problem.

VIII. Cost-Effectiveness

In evaluating various pollution control options, EPA considers the cost-effectiveness of the control. Also, § 213 of the Act requires that EPA consider cost when developing emission standards. The cost-effectiveness of a pollution control measure is typically expressed as the cost per ton of pollutant emissions reduced. Other things being equal, the Agency prefers to target emission reductions that cost less per ton of emissions reduced.

A. Gasoline Spark-ignition Engines

The proposed HC standard for spark-ignition marine engines is estimated to have a cost-effectiveness of $718 per ton of HC removed from the exhaust of the affected engines. This is based on the ratio of the present value of the stream of projected costs to the present value of the stream of projected benefits.

B. Diesel Compression-ignition Engines

The proposed NO_X standard for compression-ignition marine engines is estimated to have the same cost-effectiveness as the final nonroad compression-ignition engine regulation for engines above 37 kw, which is $188 per ton of NO_X removed from the exhaust of the affected engines. This is based on the ratio of the present value of the stream of projected costs to the present value of the stream of projected benefits.

IX. Public Participation

A. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. While EPA is not publishing the proposed regulatory language, EPA welcomes comments on it. EPA has sent copies of the language to those business, environmental, and governmental entities expressing interest in this proposal and invites others to request a copy immediately. See the "Obtaining Copies of the Regulatory Language" at the beginning of **SUPPLEMENTARY INFORMATION.** Commenters are especially encouraged to give suggestions for changing any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–92–28 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

B. Public Hearing

Any person desiring to present testimony regarding this proposal at the public hearing (see **DATES**) must notify the contact person listed above of such intent at least ten days prior to the opening day of the hearing. The contact person should also be given an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet also will be available at the registration table the morning of the hearing for scheduling testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–92–28 (see **ADDRESSES**).

Ms. Mary Smith, Acting Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

X. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may adversely affect in a material way that sector of the economy involved with the production of marine engines. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has prepared eight Information Collection Request (ICR) documents for this proposal. Copies of the ICR documents may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M

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St., SW. (mail code 2136); Washington, DC 20460 or by calling (202) 260–2740.

The eight ICR documents that have been prepared are:

EPA ICR document No.	Type of information
1722.01	Certification/ABT.
282.07	Emission Defect Information.
1723.01	Importation of Nonconforming Engines.
1724.01	Selective Enforcement Auditing.
12.08	Engine Exclusion Determination.
95.07	Precertification and Testing Exemption.
1725.01	Manufacturers' Assembly Line Testing.
1726.01	Manufacturers' In-use Testing.

Each ICR document estimates the public reporting, recordkeeping, and testing burden for collecting the specified information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. EPA has estimated that the public burden for the collection of information for all ICRs under this proposed rule would average approximately 6,050 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emissions defects, etc.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA). The RFA explores options for minimizing those impacts.

EPA has recently adopted a new approach to regulatory flexibility: [20] for purposes of EPA's implementation of the Act, any impact is a significant impact, and any number of small entities is a substantial number. Thus, EPA will consider regulatory options for every regulation subject to the Act that can reasonably be expected to have an impact on small entities. Therefore, in light of this new approach, EPA has determined that, in the absence of provisions to take economic effects into account, this rule would likely have a significant effect on a substantial number of small entities. As a result, in addition to the flexibility inherent in averaging, trading, and banking of emissions, EPA has tailored this rule to minimize the cost burdens imposed on smaller engine manufacturers.

The proposed regulations contain certification requirements for new engines, in-use testing requirements for controlled engines, manufacturer assembly line and Selective Enforcement Auditing provisions for the testing of production engines.

The certification program has been structured in this proposal such that all manufacturers may take advantage of a more simplified certification process than that currently mandated in the on-highway program. Testing requirements for test engines are reduced. The application and certification process is more straightforward.

The in-use testing program is structured such that manufacturers with lower annual production volumes have a lower minimum number of engines which must be tested. This places the burden of the in-use testing mostly on manufacturers with high production volumes. Provisions are also allowed for manufacturers with a limited number of product lines. Also, manufacturers with very low production volumes are allowed maximum flexibility in procuring engines to be tested.

The SEA program is structured such that the annual limit on the number of SEA's that EPA may perform is lower for manufacturers with lower projected annual production. Additionally, manufacturers with high projected annual production but fewer engine families will have a lower annual limit. Furthermore, manufacturers with low projected annual production may perform fewer audit tests per day to minimize the SEA burden on its test facilities.

EPA is proposing that vessel manufacturers must correctly use engines that are certified upon implementation of these regulations. However, EPA has decided to make the use of non-certified engines for United States-marketed vessels a prohibited act rather than requiring vessel manufacturers to report to EPA that they are using certified engines in their vessels being consumed in the United States. EPA decided to make these provisions prohibited acts in order to reduce any potential reporting or recordkeeping burden for engine and vessel manufacturers. Manufacturers who attempt to sell vessels to the United States market which uses noncertified engines will be voluntarily reported to EPA by their competitors. EPA has proposed stiff fines on prohibited acts. Competition should effectively police these prohibited acts as competitors have a competitive incentive to make sure that no vessel manufacturer is dumping equipment with lower cost, unlawful, noncertified, or incorrectly used engines into the U.S. market.

EPA considered, but rejected, the notion of exempting small manufacturers from enforcement programs or from the regulation entirely. A more proportionate sharing of cost burden was deemed appropriate. The pollution emitted by each of these engines not only contributes to ambient air quality problems but also has health impacts on the user of the engine who is in close proximity to the exhaust emissions. See "VI. Environmental Benefit Assessment" for a discussion of the health impacts of the related exhaust pollutants.

List of Subjects in 40 CFR Parts 89 and 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: October 28, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–27401 Filed 11–8–94; 8:45 am]

BILLING CODE 6560–50–P

[20] Habicht, F. Henry II, Deputy Administrator, Internal EPA Memorandum, "Revised Guidelines for Implementing the Regulatory Flexibility Act," April 6, 1992.

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Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary - Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Tonkawa Tribe of Oklahoma and the State of Oklahoma, which was executed on June 10, 1994.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219–4068.

Dated: October 28, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–27728; Filed 11–8–94; 8:45 am]

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Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

October 28, 1994.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, which was executed on August 26, 1994.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219-4068.

Dated: October 28, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94-27729; Filed 11-8-94; 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Guideline; Availability; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0194]

International Conference on Harmonisation; Dose-Response Information to Support Drug Registration; Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Dose-Response Information To Support Drug Registration." The guideline is applicable to both drugs and biological products. This guideline was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline describes why dose-response information is useful and how it should be obtained in the course of drug development. This information can help identify an appropriate starting dose as well as how to adjust dosage to the needs of a particular patient. It can also identify the maximum dosage beyond which any added benefits to the patient would be unlikely or would produce unacceptable side effects. This guideline is intended to help ensure that dose response information to support drug registration is generated according to sound scientific principles.

EFFECTIVE DATE: November 9, 1994.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Robert Temple, Center for Drug Evaluation and Research (HFD–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on March 8, 9, and 10, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Dose-Response Information To Support Drug Registration" should be made available for comment. (The document is the product of the Efficacy Export Working Group of ICH.) Subsequently, the draft guideline was made available for comment by the European Union and Japan, as well as by FDA (see 58 FR 37402, July 9, 1993), in accordance with their consultation procedures. The comments were analyzed and the guideline was revised as necessary. At a meeting held on March 10, 1994, the ICH Steering Committee agreed that this final guideline should be published.

With this notice, FDA is publishing a final guideline entitled "Dose-Response Information To Support Drug Registration." It is applicable to both drugs and biological products. This guideline has been endorsed by all ICH sponsors. The guideline describes the value and uses of dose-response information and the kinds of studies that can obtain such information, and gives specific guidance to manufacturers on the kinds of information they should obtain.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, the guideline is not being issued under the authority of current § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except the individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the final guideline follows:

Dose-Response Information to Support Drug Registration

I. Introduction

Purpose of Dose-Response Information

Knowledge of the relationships among dose, drug concentration in blood, and clinical response (effectiveness and undesirable effects) is important for the safe and effective use of drugs in individual patients. This information can help identify an appropriate starting dose, the best way to adjust dosage to the needs of a particular patient, and a dose beyond which increases would be unlikely to provide added benefit or would produce unacceptable side effects. Dose-concentration, concentration- and/or dose-response information is used to prepare dosage and administration instructions in product labeling. In addition, knowledge of dose-response may provide an economical approach to global drug development, by enabling multiple regulatory agencies to make approval decisions from a common database.

Historically, drugs have often been initially marketed at what were later recognized as excessive doses (i.e., doses well onto the plateau of the dose-response curve for the desired effect), sometimes with adverse consequences (e.g., hypokalemia and other metabolic disturbances with thiazide-type diuretics in hypertension). This situation has been improved by attempts to find the smallest dose with a discernible useful effect or a maximum dose beyond which no further beneficial effect is seen, but practical study designs do not exist to allow for precise determination of these doses. Further, expanding knowledge indicates that the concepts of minimum effective dose and maximum useful dose do not adequately account for individual differences and do not allow a comparison, at various doses, of both beneficial and undesirable effects. Any given dose provides a mixture of desirable and undesirable effects, with no single dose necessarily optimal for all patients.

Use of Dose-Response Information in Choosing Doses

What is most helpful in choosing the starting dose of a drug is knowing the shape and location of the population (group) average dose-response curve for both desirable and undesirable effects. Selection of dose is best based on that information, together with a judgment about the relative importance of desirable and undesirable effects. For example, a relatively high starting dose (on or near the plateau of the effectiveness dose-response curve) might be recommended for a drug with a large demonstrated separation between its useful and undesirable dose ranges or where a rapidly evolving disease process demands rapid effective intervention. A high starting dose, however, might be a poor choice for a drug with a small demonstrated separation between its useful and undesirable dose ranges. In these cases, the recommended starting dose might best be a low dose exhibiting a clinically important effect in even a fraction of the patient population, with the intent to titrate the dose upwards as long as the drug is well tolerated. Choice of a starting dose might also be affected by potential intersubject variability in pharmacodynamic response to a given blood concentration level, or by anticipated intersubject pharmacokinetic differences, such as could arise from nonlinear kinetics, metabolic polymorphism, or a high potential for pharmacokinetic drug-drug interactions. In these cases, a lower starting dose would protect patients who obtain higher blood concentrations. It is entirely possible that different physicians and even different regulatory authorities, looking at the same data, would make different choices as to the appropriate starting doses, dose-titration steps, and maximum recommended dose, based on different perceptions of risk/benefit relationships. Valid dose response data allow the use of such judgment.

In adjusting the dose in an individual patient after observing the response to an initial dose, what would be most helpful is knowledge of the shape of individual dose-response curves, which is usually not the same as the population (group) average dose-response curve. Study designs that allow estimation of individual dose-response curves could therefore be useful in guiding titration, although experience with such designs and their analysis is very limited.

In utilizing dose-response information, it is important to identify, to the extent possible, factors that lead to differences in pharmacokinetics of drugs among individuals, including demographic factors (e.g., age, gender, race), other diseases (e.g., renal or hepatic failure), diet, concurrent therapies, or individual characteristics (e.g., weight, body habitus, other drugs, metabolic differences).

Uses of Concentration-Response Data

Where a drug can be safely and effectively given only with blood concentration monitoring, the value of concentration-response information is obvious. In other cases, an established concentration-response relationship is often not needed, but may be useful: (1) For ascertaining the magnitude of the clinical consequences of pharmacokinetic differences, such as those due to drug-disease (e.g. renal failure) or drug-drug interactions; or (2) for assessing the effects of the altered pharmacokinetics of new dosage forms (e.g., controlled release formulation) or new dosage regimens without need for additional clinical trial data, where such assessment is permitted by regional regulations. Prospective randomized concentration-response studies are obviously critical to defining concentration monitoring therapeutic "windows," but are also useful when pharmacokinetic variability among patients is great; in that case, a concentration-response relationship may in principle be discerned in a prospective study with a smaller number of subjects than could the dose-response relationship in a standard dose-response study. Note that collection of concentration-response information does not imply that therapeutic blood level monitoring will be needed to administer the drug properly. Concentration-response relationships can be translated into dose-response information. Concentration-response information can also allow selection of doses (based on the range of concentrations they will achieve) most likely to lead to a satisfactory response. Alternatively, if the relationships between concentration and observed effects (e.g., an undesirable or desirable pharmacologic effect) are defined, the drug can be titrated according to patient response without the need for further blood level monitoring.

Problems With Titration Designs

A study design widely used to demonstrate effectiveness utilizes dose titration to some effectiveness or safety endpoint. Such titration designs, without careful analysis, are usually not informative about dose-response relationships. In many studies, there is a tendency to spontaneous improvement over time that is not easily distinguishable from an increased response to higher doses or cumulative drug exposure. This leads to a tendency to choose, as a recommended dose, the highest dose used in such studies that was reasonably well tolerated. Historically, this approach has often led to a dose that was well in excess of what was really necessary, resulting in increased undesirable effects, e.g., to high-dose diuretics used for hypertension. In some cases, notably where an early answer is essential, the titration-to-highest-tolerable-dose approach is acceptable, because it often requires a minimum number of patients. For example, the first marketing of zidovudine (AZT) for treatment of people with acquired immune deficiency syndrome (AIDS) was based on studies at a high dose; later studies showed that lower doses were as effective and far better tolerated. The urgent need for the first effective anti-HIV (human immunodeficiency virus) treatment made the absence of dose-response information at the time of approval reasonable (with the condition that more data were to be obtained after marketing), but in less urgent cases this approach is discouraged.

Interactions Between Dose-Response and Time

The choice of the size of an individual dose is often intertwined with the frequency of dosing. In general, when the dose interval is long compared to the half-life of the drug, attention should be directed to the pharmacodynamic basis for the chosen dosing interval. For example, there might be a comparison of the long dose interval regimen with the same dose in a more divided regimen, looking, where this is feasible, for persistence of desired effect throughout the dose interval and for adverse effects associated with blood level peaks. Within a single dose interval, the dose-response relationships at peak and trough blood levels may differ and the relationship could depend on the dose interval chosen.

Dose-response studies should take time into account in a variety of other ways. The study period at a given dose should be long enough for the full effect to be realized, whether delay is the result of pharmacokinetic or pharmacodynamic factors. The dose-response may also be different for morning versus evening dosing. Similarly, the dose-response relationship during early dosing may not be the same as in the subsequent maintenance dosing period. Responses could also be related to cumulative dose, rather than daily dose, to duration of exposure (e.g., tachyphylaxis, tolerance, or hysteresis) or to the relationships of dosing to meals.

II. Obtaining Dose-Response Information

Dose-Response Assessment Should Be an Integral Part of Drug Development

Assessment of dose-response should be an integral component of drug development with studies designed to assess dose-response an inherent part of establishing the safety and effectiveness of the drug. If development of dose-response information is built into the development process it can usually be accomplished with no loss of time and minimal extra effort compared to development plans that ignore dose-response.

Studies in Life-Threatening Diseases

In particular therapeutic areas, different therapeutic and investigational behaviors

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have evolved; these affect the kinds of studies typically carried out. Parallel dose-response study designs with placebo, or placebo-controlled titration study designs (very effective designs, typically used in studies of angina, depression, hypertension, etc.) would not be acceptable in the study of some conditions, such as life-threatening infections or potentially curable tumors, at least if there were effective treatments known. Moreover, because in those therapeutic areas considerable toxicity could be accepted, relatively high doses of drugs are usually chosen to achieve the greatest possible beneficial effect rapidly. This approach may lead to recommended doses that deprive some patients of the potential benefit of a drug by inducing toxicity that leads to cessation of therapy. On the other hand, use of low, possibly subeffective, doses, or of titration to desired effect may be unacceptable, as an initial failure in these cases may represent an opportunity for cure forever lost.

Nonetheless, even for life-threatening diseases, drug developers should always be weighing the gains and disadvantages of varying regimens and considering how best to choose dose, dose-interval and dose-escalation steps. Even in indications involving life-threatening diseases, the highest tolerated dose, or the dose with the largest effect on a surrogate marker will not always be the optimal dose. Where only a single dose is studied, blood concentration data, which will almost always show considerable individual variability due to pharmacokinetic differences, may retrospectively give clues to possible concentration-response relationships.

Use of just a single dose has been typical of large-scale intervention studies (e.g., post-myocardial infarction studies) because of the large sample sizes needed. In planning an intervention study, the potential advantages of studying more than a single dose should be considered. In some cases, it may be possible to simplify the study by collecting less information on each patient, allowing study of a larger population treated with several doses without significant increase in costs.

Regulatory Considerations When Dose-Response Data Are Imperfect

Even well-laid plans are not invariably successful. An otherwise well-designed dose-response study may have utilized doses that were too high, or too close together, so that all appear equivalent (albeit superior to placebo). In that case, there is the possibility that the lowest dose studied is still greater than needed to exert the drug's maximum effect. Nonetheless, an acceptable balance of observed undesired effects and beneficial effects might make marketing at one of the doses studied reasonable. This decision would be easiest, of course, if the drug had special value, but even if it did not, in light of the studies that partly defined the proper dose range, further dose-finding might be pursued in the postmarketing period. Similarly, although seeking dose response data should be a goal of every development program, approval based on data from studies using a fixed single dose or a defined dose range (but without valid dose response information) might be appropriate where benefit from a new therapy in treating or preventing a serious disease is clear.

Examining the Entire Database for Dose-Response Information

In addition to seeking dose-response information from studies specifically designed to provide it, the entire database should be examined intensively for possible dose-response effects. The limitations imposed by certain study design features should, of course, be appreciated. For example, many studies titrate the dose upward for safety reasons. As most side effects of drugs occur early and may disappear with continued treatment, this can result in a spuriously higher rate of undesirable effects at the lower doses. Similarly, in studies where patients are titrated to a desired response, those patients relatively unresponsive to the drug are more likely to receive the higher dose, giving an apparent, but misleading, inverted "U-shaped" dose-response curve. Despite such limitations, clinical data from all sources should be analyzed for dose-related effects using multivariate or other approaches, even if the analyses can yield principally hypotheses, not definitive conclusions. For example, an inverse relation of effect to weight or creatinine clearance could reflect a dose-related covariate relationship. If pharmacokinetic screening (obtaining a small number of steady-state blood concentration measurements in most Phase 2 and Phase 3 study patients) is carried out, or if other approaches to obtaining drug concentrations during trials are used, a relation of effects (desirable or undesirable) to blood concentrations may be discerned. The relationship may by itself be a persuasive description of concentration-response or may suggest further study.

III. Study Designs for Assessing Dose Response

General

The choice of study design and study population in dose-response trials will depend on the phase of development, the therapeutic indication under investigation, and the severity of the disease in the patient population of interest. For example, the lack of appropriate salvage therapy for life-threatening or serious conditions with irreversible outcomes may ethically preclude conduct of studies at doses below the maximum tolerated dose. A homogeneous patient population will generally allow achievement of study objectives with small numbers of subjects given each treatment. On the other hand, larger, more diverse populations allow detection of potentially important covariate effects.

In general, useful dose-response information is best obtained from trials specifically designed to compare several doses. A comparison of results from two or more controlled trials with single fixed doses might sometimes be informative, e.g., if control groups were similar, although even in that case, the many across-study differences that occur in separate trials usually make this approach unsatisfactory. It is also possible in some cases to derive, retrospectively, blood concentration-response relationships from the variable concentrations attained in a fixed-dose trial. While these analyses are potentially confounded by disease severity or other patient factors, the information can be useful and can guide subsequent studies. Conducting dose-response studies at an early stage of clinical development may reduce the number of failed Phase 3 trials, speeding the drug development process and conserving development resources.

Pharmacokinetic information can be used to choose doses that ensure adequate spread of attained concentration-response values and diminish or eliminate overlap between attained concentrations in dose-response trials. For drugs with high pharmacokinetic variability, a greater spread of doses could be chosen. Alternatively, the dosing groups could be individualized by adjusting for pharmacokinetic covariates (e.g., correction for weight, lean body mass, or renal function) or a concentration-controlled study could be carried out.

As a practical matter, valid dose-response data can be obtained more readily when the response is measured by a continuous or categorical variable, is relatively rapidly obtained after therapy is started, and is rapidly dissipated after therapy is stopped (e.g., blood pressure, analgesia, bronchodilation). In this case, a wider range of study designs can be used and relatively small, simple studies can give useful information. Placebo-controlled individual subject titration designs typical of many early drug development studies, for example, properly conducted and analyzed (quantitative analysis that models and estimates the population and individual dose-response relationships), can give guidance for more definitive parallel, fixed-dose, dose-response studies or may be definitive on their own.

In contrast, when the study endpoint or adverse effect is delayed, persistent, or irreversible (e.g., stroke or heart attack prevention, asthma prophylaxis, arthritis treatments with late onset response, survival in cancer, treatment of depression), titration and simultaneous assessment of response is usually not possible, and the parallel dose-response study is usually needed. The parallel dose-response study also offers protection against missing an effective dose because of an inverted "U-shaped" (umbrella or bell-shaped) dose-response curve, where higher doses are less effective than lower doses, a response that can occur, for example, with mixed agonist-antagonists.

Trials intended to evaluate dose- or concentration-response should be well-controlled, using randomization and blinding (unless blinding is unnecessary or impossible) to assure comparability of treatment groups and to minimize potential patient, investigator, and analyst bias, and should be of adequate size.

It is important to choose as wide a range of doses as is compatible with practicality and patient safety to discern clinically meaningful differences. This is especially important where there are no pharmacologic or plausible surrogate endpoints to give initial guidance as to dose.

Specific Trial Designs

A number of specific study designs can be used to assess dose-response. The same approaches can also be used to measure concentration-response relationships. Although not intended to be an exhaustive list, the following approaches have been shown to be useful ways of deriving valid dose-response information. Some designs outlined in this guidance are better established than others, but all are worthy of consideration. These designs can be applied to the study of established clinical endpoints or surrogate endpoints.

1. Parallel Dose-Response

Randomization to several fixed-dose groups (the randomized parallel dose-response study) is simple in concept and is a design that has had extensive use and considerable success. The fixed dose is the final or maintenance dose; patients may be placed immediately on that dose or titrated gradually (in a scheduled "forced" titration) to it if that seems safer. In either case, the final dose should be maintained for a time adequate to allow the dose-response comparison. Although including a placebo group in dose-response studies is desirable, it is not theoretically necessary in all cases; a positive slope, even without a placebo group, provides evidence of a drug effect. To measure the absolute size of the drug effect, however, a placebo or comparator with very limited effect on the endpoint of interest is usually needed. Moreover, because a difference between drug groups and placebo unequivocally shows effectiveness, inclusion of a placebo group can salvage, in part, a study that used doses that were all too high and, therefore, showed no dose-response slope, by showing that all doses were superior to placebo. In principle, being able to detect a statistically significant difference in pair-wise comparisons between doses is not necessary if a statistically significant trend (upward slope) across doses can be established using all the data. It should be demonstrated, however, that the lowest dose(s) tested, if it is to be recommended, has a statistically significant and clinically meaningful effect.

The parallel dose-response study gives group mean (population-average) dose-response, not the distribution or shape of individual dose-response curves.

It is all too common to discover, at the end of a parallel dose-response study, that all doses were too high (on the plateau of the dose-response curve), or that doses did not go high enough. A formally planned interim analysis (or other multi-stage design) might detect such a problem and allow study of the proper dose range.

As with any placebo-controlled trial, it may also be useful to include one or more doses of an active drug control. Inclusion of both placebo and active control groups allows assessment of "assay sensitivity," permitting a distinction between an ineffective drug and an "ineffective" (null, no test) study. Comparison of dose-response curves for test and control drugs, not yet a common design, may also represent a more valid and informative comparative effectiveness/safety study than comparison of single doses of the two agents.

The factorial trial is a special case of the parallel dose-response study to be considered when combination therapy is being evaluated. It is particularly useful when both agents are intended to affect the same response variable (a diuretic and another anti-hypertensive, for example), or when one drug is intended to mitigate the side effects of the other. These studies can show effectiveness (a contribution of each component of the combination) and, in addition, provide dosing information for the drugs used alone and together.

A factorial trial employs a parallel fixed-dose design with a range of doses of each separate drug and some or all combinations of these doses. The sample size need not be large enough to distinguish single cells from each other in pair-wise comparisons because all of the data can be used to derive dose-response relationships for the single agents and combinations, i.e., a dose-response surface. These trials, therefore, can be of moderate size. The doses and combinations that could be approved for marketing might not be limited to the actual doses studied but might include doses and combinations in between those studied. There may be some exceptions to the ability to rely entirely on the response surface analysis in choosing dose(s). At the low end of the dose range, if the doses used are lower than the recognized effective doses of the single agents, it would ordinarily be important to have adequate evidence that these can be distinguished from placebo in a pair-wise comparison. One way to do this in the factorial study is to have the lowest dose combination and placebo groups be somewhat larger than other groups; another is to have a separate study of the low-dose combination. Also, at the high end of the dose range, it may be necessary to confirm the contribution of each component to the overall effect.

2. Cross-over Dose-Response

A randomized multiple cross-over study of different doses can be successful if drug effect develops rapidly and patients return to baseline conditions quickly after cessation of therapy, if responses are not irreversible (cure, death), and if patients have reasonably stable disease. This design suffers, however, from the potential problems of all cross-over studies: It can have analytic problems if there are many treatment withdrawals; it can be quite long in duration for an individual patient; and there is often uncertainty about carry-over effects (longer treatment periods may minimize this problem), baseline comparability after the first period, and period-by-treatment interactions. The length of the trial can be reduced by approaches that do not require all patients to receive each dose, such as balanced incomplete block designs.

The advantages of the design are that each individual receives several different doses so that the distribution of individual dose-response curves may be estimated, as well as the population average curve, and that, compared to a parallel design, fewer patients may be needed. Also, in contrast to titration designs, dose and time are not confounded and carry-over effects are better assessed.

3. Forced Titration

A forced titration study, where all patients move through a series of rising doses, is similar in concept and limitations to a randomized multiple cross-over dose-response study, except that assignment to dose levels is ordered, not random. If most patients complete all doses, and if the study is controlled with a parallel placebo group, the forced titration study allows a series of comparisons of an entire randomized group given several doses of drug with a concurrent placebo, just as the parallel fixed-dose trial does. A critical disadvantage is that, by itself, this study design cannot distinguish response to increased dose from response to increased time on drug therapy or a cumulative drug dosage effect. It is therefore an unsatisfactory design when response is delayed, unless treatment at each dose is prolonged. Even where the time until development of effect is known to be short (from other data), this design gives poor information on adverse effects, many of which have time-dependent characteristics. A tendency toward spontaneous improvement, a very common circumstance, will be revealed by the placebo group, but is nonetheless a problem for this design, as over time, the higher doses may find little room to show an increased effect. This design can give a reasonable first approximation of both population-average dose response and the distribution of individual dose-response relationships if the cumulative (time-dependent) drug effect is minimal and the number of treatment withdrawals is not excessive. Compared to a parallel dose-response study, this design may use fewer patients, and by extending the study duration, can be used to investigate a wide range of doses, again making it a reasonable first study. With a concurrent placebo group this design can provide clear evidence of effectiveness, and may be especially valuable in helping choose doses for a parallel dose-response study.

4. Optional Titration (Placebo-Controlled Titration to Endpoint)

In this design, patients are titrated until they reach a well-characterized favorable or unfavorable response, defined by dosing rules expressed in the protocol. This approach is most applicable to conditions where the response is reasonably prompt and is not an irreversible event, such as stroke or death. A crude analysis of such studies, e.g., comparing the effects in the subgroups of patients titrated to various dosages, often gives a misleading inverted "U-shaped" curve, as only poor responders are titrated to the highest dose. However, more sophisticated statistical analytical approaches that correct for this occurrence, by modeling and estimating the population and individual dose-response relationships, appear to allow calculation of valid dose-response information. Experience in deriving valid dose-response information in this fashion is still limited. It is important, in this design, to maintain a concurrent placebo group to correct for spontaneous changes, investigator expectations, etc. Like other designs that use several doses in the same patient, this design may use fewer patients than a parallel fixed-dose study of similar

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statistical power and can provide both population average and individual dose-response information. The design does, however, risk confounding of time and dose effects and would be expected to have particular problems in finding dose-response relationships for adverse effects. Like the forced titration design, it can be used to study a wide dose range and, with a concurrent placebo group, can provide clear evidence of effectiveness. It too may be especially valuable as an early study to identify doses for a definitive parallel study.

IV. Guidance and Advice

1. Dose response data are desirable for almost all new chemical entities entering the market. These data should be derived from study designs that are sound and scientifically based; a variety of different designs can give valid information. The studies should be well-controlled, using accepted approaches to minimize bias. In addition to carrying out formal dose-response studies, sponsors should examine the entire database for possible dose-response information.

2. The information obtained through targeted studies and analyses of the entire database should be used by the sponsor to:

a. Identify a reasonable starting dose, ideally with specific adjustments (or a firm basis for believing none is needed) for patient size, gender, age, concomitant illness, and concomitant therapy, reflecting an integration of what is known about pharmacokinetic and pharmacodynamic variability. Depending on circumstances (the disease, the drug's toxicity), the starting dose may range from a low dose with some useful effect to a dose that is at or near the full-effect dose.

b. Identify reasonable, response-guided titration steps, and the interval at which they should be taken, again with appropriate adjustments for patient characteristics. These steps would be based either on the shape of the typical individual's dose-effect curves (for both desirable and undesirable effects), if individual dose-response data were available, or if not, on the shape of the population (group)-average dose-response, and the time needed to detect a change in these effects. It should be noted that methodology for finding the population (group)-average dose-response, at present, is better established than is methodology for finding individual dose-response relationships.

c. Identify a dose, or a response (desirable or undesirable), beyond which titration should not ordinarily be attempted because of a lack of further benefit or an unacceptable increase in undesirable effects.

3. It is prudent to carry out dose-ranging or concentration-response studies early in development as well as in later stages in order to avoid failed Phase 3 studies or accumulation of a database that consists largely of exposures at ineffective or excessive doses. The endpoints of studies may vary at different stages of drug development. For example, in studying a drug for heart failure, a pharmacodynamic endpoint might be used early (e.g., cardiac output, pulmonary capillary wedge pressure), an intermediate endpoint might be used later (e.g., exercise tolerance, symptoms) and a mortality or irreversible morbidity endpoint might be the final assessment (survival, new infarction). It should be anticipated that the dose response for these endpoints may be different. Of course, the choice of endpoints that must be studied for marketing approval will depend on the specific situation.

4. A widely used, successful, and acceptable design, but not the only study design for obtaining population average dose-response data, is the randomized parallel, dose-response study with three or more dosage levels, one of which may be zero (placebo). From such a trial, if dose levels are well chosen, the relationship of drug dosage, or drug concentration, to clinical beneficial or undesirable effects can be defined.

Several dose levels are needed, at least two in addition to placebo, but in general, study of more than the minimum number of doses is desirable. A single dose level of drug versus placebo allows a test of the null hypothesis of no difference between drug and placebo, but cannot define the dose-response relationship. Similarly, although a linear relationship can be derived from the response to two active doses (without placebo), this approximation is usually not sufficiently informative. Study designs usually should emphasize elucidation of the dose-response function, not individual pairwise comparisons. If a particular point on the curve, e.g., whether a certain low dose is useful, becomes an issue, it should be studied separately.

5. Dose-response data for both beneficial and undesirable effects may provide information that allows approval of a range of doses that encompass an appropriate benefit-to-risk ratio. A well-controlled dose-response study is also a study that can serve as primary evidence of effectiveness.

6. Regulatory agencies and drug developers should be open to new approaches and to the concept of reasoned and well-documented exploratory data analysis of existing or future databases in search of dose-response data. Agencies should also be open to the use of various statistical and pharmacometric techniques such as Bayesian and population methods, modeling, and pharmacokinetic-pharmacodynamic approaches. However, these approaches should not subvert the requirement for dose-response data from prospective, randomized, multi-dose-level clinical trials. Post-hoc exploratory data analysis in search of dose-response information from databases generated to meet other objectives will often generate new hypotheses, but will only occasionally provide definitive assessment of dose-response relationships.

A variety of data analytical techniques, including increased use of retrospective population-type analyses, and novel designs (e.g., sequential designs) may help define the dose-response relationship. For example, fixed-dose designs can be reanalyzed as a continuum of dose levels if doses are refigured on a milligram per kilogram (mg/kg) basis, or adjusted for renal function, lean body mass, etc. Similarly, blood levels taken during a dose-response study may allow estimates of concentration-response relationships. Adjustment of drug exposure levels might be made on the basis of reliable information on drug-taking compliance. In all of these cases, one should always be conscious of confounding, i.e., the presence of a factor that alters both the refigured dose and response or that alters both blood level and response, compliance and response, etc.

7. Dose-response data should be explored for possible differences in subsets based on demographic characteristics, such as age, gender, or race. To do this, it is important to know whether there are pharmacokinetic differences among these groups, e.g., due to metabolic differences, differences in body habitus, or composition, etc.

8. Approval decisions are based on a consideration of the totality of information on a drug. Although dose-response information should be available, depending on the kind and degree of effectiveness shown, imperfections in the database may be acceptable with the expectation that further studies will be carried out after approval. Thus, informative dose-response data, like information on responses in special populations, on long-term use, on potential drug-drug and drug-disease interactions, is expected, but might, in the face of a major therapeutic benefit or urgent need, or very low levels of observed toxicity, become a deferred requirement.

Dated: October 25, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27723; Filed 11–8–94; 8:45 am]

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federal register

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Part VII

The President

Presidential Determination 95–2—Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306)

Proclamation 6755—National Women Veterans Recognition Week

Proclamation 6756—National American Indian Heritage Month

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Title 3—

The President

Presidential Determination No. 95–2 of November 1, 1994

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Act) (Public Law 103–306), I hereby certify that withholding funds from international financial institutions and other international organizations and programs, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated or otherwise made available pursuant to this Act to finance indirectly any assistance or reparations to certain specified countries, is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE
Washington, November 1, 1994.

[FR Doc. 94–27936
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Presidential Documents

Proclamation 6755 of November 5, 1994

National Women Veterans Recognition Week, 1994

By the President of the United States of America

A Proclamation

During the American Civil War, both Union and Confederate forces relied on the skill and courage of women. Thousands volunteered as nurses; others spied on the enemy; many disguised themselves as men and stood to fight in battle. As our Nation has grown, so too has the number of women veterans. From Europe to Korea to the Persian Gulf, their knowledge and leadership have been essential in maintaining the unparalleled effectiveness of every branch of the United States Armed Forces.

Today, American women share the responsibility of defending the cause of freedom around the world. Time and again, women have demonstrated their professionalism in peacetime and have proven their mettle in combat. Their heroism, their bravery, and their tireless devotion to duty have helped to ensure all Americans the protection of the greatest fighting force the world has ever known.

America is blessed with more than 1 million living women veterans. In myriad different roles, they have brought honor to our country and strength to our cause. As more and more women answer the call to military service, we salute the many proud veterans who served before them and paved the way. Our veterans exemplify the spirit of patriotism and service that has characterized American women in uniform throughout our Nation's history.

In respect for and recognition of these distinguished citizens, the Congress, by Public Law 103–148, has designated the week of November 6, 1994, through November 12, 1994, as "National Women Veterans Recognition Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 6, 1994, through November 12, 1994, as National Women Veterans Recognition Week. I encourage all Americans to join in acknowledging the tremendous contributions and sacrifices of these noble veterans with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–27937
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Presidential Documents

Proclamation 6756 of November 5, 1994

National American Indian Heritage Month, 1994

By the President of the United States of America

A Proclamation

There is a yearning among American people for a sense of community, a sense of belonging, a sense of shared beliefs and common goals. Today, across the country, we are searching for ways to come together in friendship and mutual respect. As we look toward the promise of the 21st century, it is important that we reflect on our shared heritage and on the valuable lessons history teaches.

At this momentous time, we pay tribute to this country's first peoples—the American Indians. We celebrate the innumerable contributions that generations of American Indians and Alaska Natives have made to our country and to our world. Before there were colonists on these shores, long before our Nation's founders drafted the U.S. Constitution, American Indians had established powerful civilizations and rich and thriving cultures. Government, art, music, spirituality, and a deep and abiding respect for the natural environment—all of these are enduring traditions of the American Indians.

Native peoples were the first environmentalists, understanding that air, water, plants, and animals must be treated with respect if they are to remain available for generations to come. American Indians taught the first European settlers how to survive in new surroundings and helped them to explore uncharted wilderness. Native peoples have represented this country in every war, from the American Revolution to the Persian Gulf, and are proud members of every branch of the U.S. Armed Forces. Artists such as R. C. Gorman and Fritz Scholder and writers such as Louise Erdrich and N. Scott Momaday have made remarkable contributions to art and literature.

The relationship between the U.S. Government and the American Indians has not been without controversy. As we look back on our history, we must acknowledge often profound mistakes. But we also must look to and plan for a future of cooperation and respect. With the recent passage of the Indian self-governance and self-determination amendments of 1994, we celebrate the government-to-government relationship that exists between the Indian tribes and the United States. This legislation reaffirms and strengthens the political ties between all of the nations of this land.

To acknowledge the varied and inestimable contributions of the native peoples and to celebrate this proud legacy, the Congress, by House Joint Resolution 271, has designated November 1994 as "National American Indian Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 1994 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, and local levels, to observe this month with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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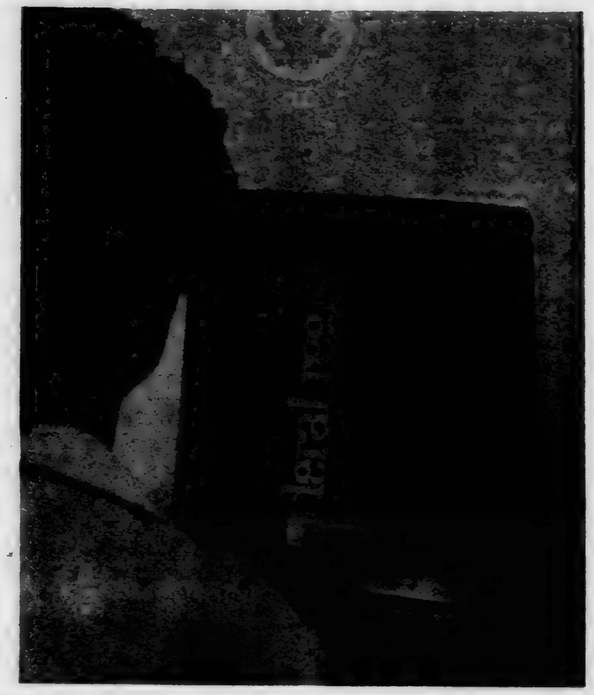
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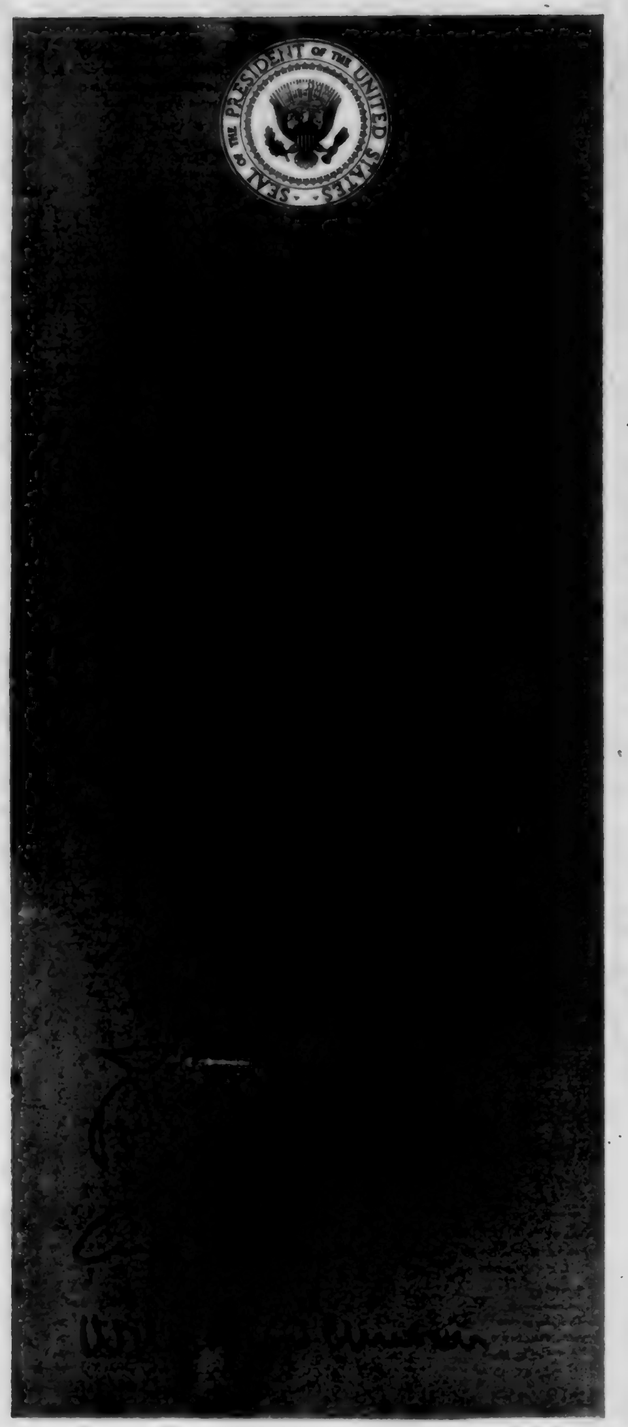
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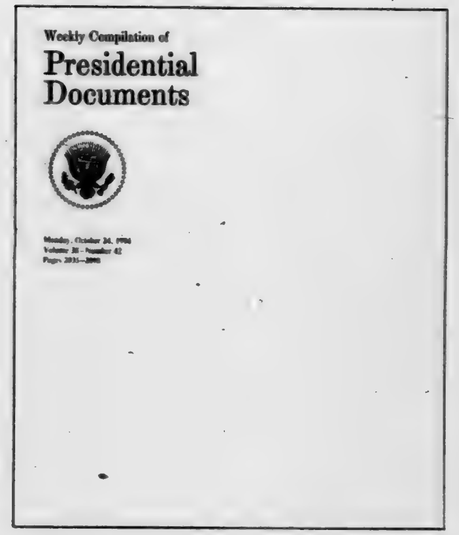
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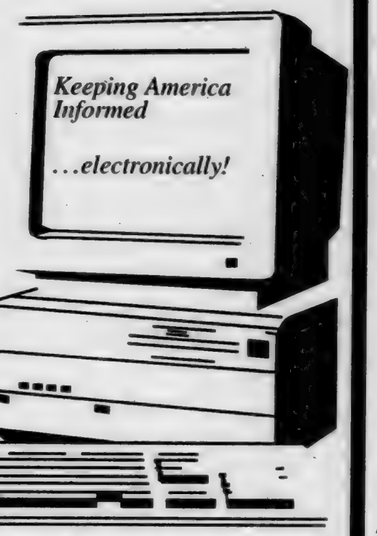
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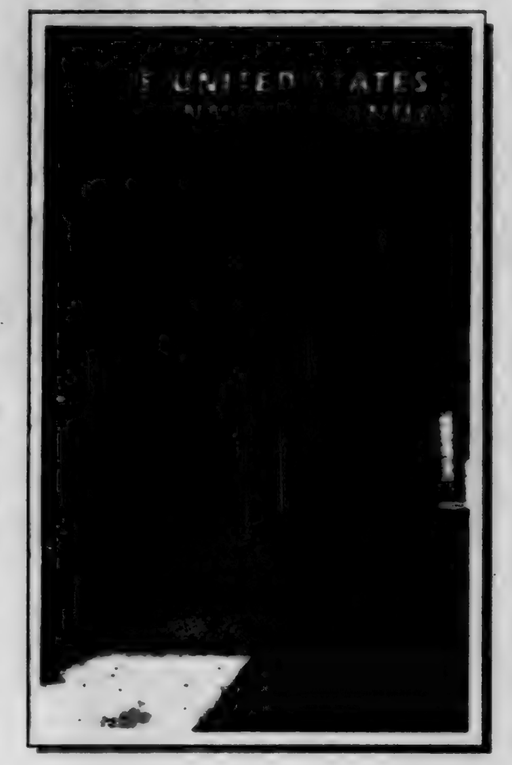
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Rules and Regulations

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Thursday, November 10, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV94-932-1FIR]

Olives Grown in California and Imported Olives; Final Rule Establishing Limited Use Olive Requirements During the 1994-95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change, the provisions of an interim final rule which authorized the use of smaller sized olives in the production of limited use styles for California olives during the 1994-95 crop year. This rule is intended to allow more olives into fresh market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this rule also changes the olive import regulation.

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone (202) 720-5127, or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, CA 93721, telephone (209) 487-5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those requirements imposed upon the domestic commodities regulated under the Federal marketing orders.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives that will be subject to regulation under the order during the current season, and there are about 1,200 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. The majority of olives are produced in central California. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 163,023 tons during the 1992-93 crop year. The California Olive Committee (committee) indicated that 1993-94 production totalled about 120,049 tons. Total production for the 1994-95 crop year is estimated to be 95,000 tons. Because olive trees need to restore their nutrients from one season to the next, various varieties of olives produced in California have alternate bearing

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tendencies. This results in high production one year and low the next, which usually causes the total crop to vary greatly from year to year. This crop year's estimated production is expected to be smaller than last year due to weather conditions early in the season which resulted in poor fruit pollination.

However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1994–95 crop year to meet market demand for limited use styles of canned olives. Limited use olives are too small to meet the minimum size requirements established for whole and whole pitted canned ripe olives. However, they are large enough to be suitable for processing into limited use styles such as wedges, halves, slices, or segments. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. During the past three crop years, 1991–92, 1992–93, and 1993–94, the committee recommended sizes smaller than those previously authorized.

The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of through less profitable non-canning uses such as crushing for oil. Returns to producers are lower on fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was promulgated in 1965.

This final rule finalizes an interim final rule that will help growers and handlers to meet the growing market demand for limited use style olives based upon current conditions. The limited use size requirements allow the use of sizes which would otherwise have to be disposed of for less profitable, non-canning uses. Permitting the use of such smaller olives for limited use styles would therefore improve grower returns.

On July 13, 1994, the committee recommended by a vote of 15–1, to establish grade and size regulations for limited use size olives during the 1994–95 crop year pursuant to paragraph (a)(3) of § 932.52 of the order. The one handler member who dissented was concerned that approval of limited use size olives would be detrimental to handlers, due to already large inventories of such olives from the two previous seasons. The recommended grade and size requirements are the same as those established during the 1990–91 crop year, which means slightly larger minimum sizes than were in effect during the 1991–92, 1992–93, and 1993–94 crop years.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allowed handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives with this relaxation in size requirements than under regulations effective prior to the interim final rule.

The committee also based its decision on certain production and market factors. The last three crop years were the first crop years that limited use olives were authorized at sizes below the 1990–91 crop year minimum size requirements. Prior to the 1990–91 crop year, the committee investigated limited use olives that were below permitted minimum sizes. From investigations and surveys within the industry, the committee determined that limited use olives below 1990–91 minimum sizes could be efficiently sliced using current technology. However, consumer interest in and need for such olives also had to be determined, specifically for smaller sliced olive rings. Thus, minimum size requirements below the 1990–91 crop year were recommended and became effective for limited use olives.

During the following three seasons, the industry experienced a higher percentage of broken pieces in the smaller olives than with the slightly larger sizes. The U.S. Standards for Grades of Canned Ripe Olives (Standards) define a broken piece as any piece of olive that is less than three quarters of a full unit. This situation had a negative impact on the California olive market as the extra broken pieces caused customers to complain about the lack of uniformity and poorer quality of product from these smaller sizes. Such olives also had to compete with imported sliced olives that had fewer broken pieces. Therefore, the committee recommended slightly larger minimum size requirements for limited use olives in order to improve the quality of and enhance the market for California limited use olives.

Also, the committee estimates that production for this crop year is expected to be at 95,000 tons, which is smaller than the previous two seasons. Weather conditions early in the crop year caused poor pollination resulting in a smaller crop with an uneven distribution of sizes. The 1992–93 and 1993–94 crop years produced large crops of 163,023 tons and 120,049 tons, respectively. During years with large olive crops, the ratio of limited use olives to other sizes tends to be higher; there are more limited use size olives in proportion to the other sizes. During years with small olive crops, the ratio of smaller olives to other sizes is smaller; there tends to be fewer limited use size olives in proportion to the other sizes. The increased availability of limited use sized fruit could be reflected in handler processing for the last three seasons. For example, during the 1992–93 crop year, 19 percent of the olives (163,024 tons) processed by handlers were limited use, and during the 1991–92 crop year, 11 percent of total olives (63,259 tons) processed by handlers were limited use. Although limited use minimum sizes were larger during the 1990–91 season, limited use olives processed by handlers were 16 percent of total olives (126,879 tons) purchased by handlers. Thus, unlike the two previous seasons, fewer small limited use olives are expected to be harvested this season. The percentage of limited use olives is expected to be smaller. The slight increase in minimum limited use size requirements being established for the 1994–95 season is therefore not expected to greatly impact available supplies.

Thus, it is found that permitting limited use olives as recommended by the committee is expected to improve market conditions, and grower returns, and meet market needs for limited use style olives.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in Olive Regulation 1 (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the Standards. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule finalizes an interim final rule that modified paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles during the 1994–1995 crop year. This rule also finalizes establishment of size regulations for such olives in paragraph (b)(12).

The committee recommended authorizing establishment of minimum sizes for use in the production of limited use styles during the 1994–95 crop year. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes for import requirements are as follows:

Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties—1/60 pound

Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties—1/140 pound

Variety Group 2, except the Obliza variety—1/160 pound

Variety Group 2 of the Obliza variety—1/140 pound

Olives not identifiable as to variety or variety group—1/160 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

Continuing to permit the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted under regulations prior to the interim final rule that relaxed size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. Prior to the interim final rule, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service, exported, or utilized in exempt outlets.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble 7 CFR Parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 932 and 944 continue to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR Part 932 which was published at 59 FR 46907 on September 13, 1994, is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR Part 944 which was published at 59 FR 46907 on September 13, 1994, is adopted as a final rule without change.

Dated: November 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27920 Filed 11–9–94; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0854]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation H to remove the requirement that a state member bank publish its reports of condition. The amendment implements section 308 of the Riegle Community Development and Regulatory Improvements Act of 1994 which contains a number of measures to reduce the burden of federal regulation in depository institutions.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Lawranne Stewart, Senior Attorney (202/452–3513), Legal Division; or Nancy Rawlings, Senior Financial Analyst, (202/ 452–3059), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/ 452–3544).

SUPPLEMENTARY INFORMATION: Title III of the Riegle Community Development and

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Regulatory Improvements Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (the Act) contains a number of measures to reduce the burden of federal regulation on depository institutions. Title III, section 308, amended the Federal Reserve Act to repeal the requirement in section 9, paragraph 6 (12 U.S.C. 324) that state member banks publish their reports of condition. Section 308 also removed similar publication requirements in the National Bank Act and the Federal Deposit Insurance Act.

The Board's Regulation H, Membership of State Banking Institutions in the Federal Reserve System, currently requires that a state member bank publish its report of condition (Forms FFIEC 031–034) within 20 days of the date the call for a report of condition is issued. 12 CFR 208.10(a). The report of condition is included in the Consolidated Reports of Condition and Income, usually referred to as the "Call Report," that state member banks generally are required to submit on a quarterly basis.

In order to achieve the reduction in regulatory burden intended under the Act, the Board is removing the provisions of Regulation H that require publication of a state member bank's report of condition. The amendments delete paragraphs (a) and (b) of § 208.10 of the regulation. Additionally, the section is renamed to reflect the subject of the remaining paragraph, in which the Board exercises its authority under section 21 of the Federal Reserve Act to waive submission of reports of affiliates by state member banks required under section 9 of the Federal Reserve Act.

The Board notes that a bank's Call Reports, including its reports of condition, will continue to be publicly available through the National Technical Information Service of the United States Department of Commerce under the Board's Rules Regarding Availability of Information. See 12 CFR 261.6(c)(3). Additionally, state member banks will continue to be required to advise shareholders, customers, and the general public of the availability of year-end Call Reports or other financial information under § 208.17 of Regulation H. See 12 CFR 208.17. The Board believes that these provisions are sufficient to ensure that adequate information is available to the public with respect to the condition of a state member bank. Additionally, the amendment has no effect on any publication requirements that may be imposed on a state member bank under state law.

Notice and Public Participation

The provisions of the Administrative Procedure Act relating to notice and public participation (5 U.S.C. 553(b)) have not been followed in connection with the adoption of these amendments, as the amendments implement a statutory provision that is intended to reduce the regulatory burden on banks. The Board therefore finds good cause for determining, and so determines, that notice and public participation are unnecessary and contrary to the public interest.

The provisions of the Act relating to notice of the effective date of a rule (5 U.S.C. 553(d)) have not been followed in connection with the adoption of these amendments. Section 308 of the Act was effective as of the date of enactment (September 24, 1994), and the Board is amending Regulation H promptly to implement the statutory provision. For this reason, the Board finds there is good cause to determine, and so determines, that notice is not necessary and would be contrary to the purpose of section 308. These amendments have therefore been published in final with an immediate effective date.

Regulatory Flexibility Act

Because the Board finds that no notice of proposed rulemaking is required, a statement concerning the effects of the rule on small entities is also not required under the Regulatory Flexibility Act. 5 U.S.C. 604. The Board notes, however, that the proposed amendments will reduce the regulatory burden imposed on all state member banks. The amendments should be particularly helpful to smaller institutions for which the publication requirement represent a more significant cost burden.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Capital adequacy, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR part 208 as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p-1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318.

2. Section 208.10 is amended as follows:

a. The section heading is revised;

b. Paragraphs (a) and (b) are removed; and

c. The paragraph designation and heading for paragraph (c) are removed.

The revised Section heading reads as follows:

§ 208.10 Waiver of reports of affiliates.

* * * * *

Subpart A—[Amended]

3. In Subpart A, footnotes 11 through 13 are redesignated as footnotes 9 through 11, respectively.

§ 208.17 [Amended]

4. Section 208.17 is amended by removing the undesignated text following paragraph (a)(2).

By order of the Board of Governors of the Federal Reserve System, November 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27870 Filed 11–9–94; 8:45am]

Billing Code 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–197–AD; Amendment 39–9054; AD 94–22–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses on certain demountable flange (outboard) wheel subassemblies, and modification or replacement of the wheel subassemblies. This amendment is prompted by reports of cracks and broken spokes found on certain main wheel assemblies of these airplanes. The actions specified by this AD are intended to prevent loss of a main wheel assembly during takeoff or landing.

DATES: Effective December 12, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on February 28, 1994 (59 FR 9450). That action proposed to require inspections to detect cracks of certain demountable flange (inboard) wheel subassemblies and of the bolt bosses on certain demountable flange (outboard) wheel subassemblies, and modification or replacement of the wheel subassemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that proposed paragraphs (a) and (b) be revised to provide credit for inspections accomplished within the last 500 landings before the final rule becomes effective. This commenter has been performing the repetitive inspections proposed in the AD. The commenter indicates that accomplishment of these inspections has proven to provide an acceptable level of safety by detecting all cracking before a critical cumulative defect size has been exceeded.

The FAA does not concur with the commenter's request. The FAA finds that the requested change is unnecessary because such credit is provided by the statement in the AD, "Required as indicated, unless accomplished previously." Any operator that has accomplished the required inspections may take credit for those inspections provided that the repetitive inspections are accomplished in accordance with the requirements of this AD.

The same commenter also requests that paragraphs (a)(1) and (b)(1) of the proposed rule be revised to clarify that the modification must be accomplished prior to further flight following the third inspection accomplished after the effective date of the AD. Since the commenter has been conducting the proposed inspections, the FAA infers from this commenter's request that it would like credit for those inspections without having to modify the wheel subassemblies sooner than the AD would require had the operator not conducted any inspections.

The FAA concurs that clarification is necessary, and has revised paragraphs (a)(1) and (b)(1) of the final rule to clarify its intent that the modification must be accomplished prior to further flight following the third inspection accomplished after the effective date of this AD.

This commenter also requests that paragraph (c) of the proposed rule be revised to delete the words "and modified." The commenter points out that wheel subassemblies that are inspected in accordance with the proposal may remain in service until the third inspection after the effective date of the AD, at which time those subassemblies must be modified. Therefore, a wheel subassembly that has been inspected in accordance with the proposed rule would be considered to be safe. The FAA finds that clarification is necessary. Paragraph (c) of the final rule has been revised to specify that certain parts may not be installed on the airplane unless the part has been inspected and subsequently modified in accordance with the requirements of this AD.

The FAA has revised paragraphs (a)(2) and (b)(2) of the final rule to indicate that the replacement procedures required by those paragraphs are found in the Airplane Maintenance Manual. This information was omitted inadvertently from the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 87 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,990, or $770 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-22-05 Fokker: Amendment 39-9054. Docket 93-NM-197-AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Aircraft Braking Systems Corporation (ABSC) main wheel assembly, part number 5008131-4, serial numbers APR91-0570 through FEB93-0965 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a main wheel assembly during takeoff or landing, accomplish the following:

(a) For airplanes equipped with a demountable flange (inboard) wheel subassembly, part number 5008142-4, serial numbers APR91-0570 through OCT92-0858 inclusive, or S-APR91-0097 through S-MAY92-0126 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the wheel subassembly, in accordance with paragraph C. of SECTION II—ACCOMPLISHMENT INSTRUCTIONS of ABSC Service Bulletin Fo100-32-46, dated December 24, 1992. Repeat this inspection thereafter at intervals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (a) of this AD: Prior to further flight following the third inspection accomplished after the effective date of this AD, modify the wheel subassembly in accordance with paragraph D. of SECTION II—ACCOMPLISHMENT INSTRUCTIONS of the service bulletin. After modification, continue to inspect in accordance with paragraph (a) of this AD. If no crack is found during the first two inspections conducted after modification, no further action is required by this paragraph.

(2) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace the wheel subassembly, part number 5008142-4, with a serviceable part in accordance with the Airplane Maintenance Manual. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(b) For airplanes equipped with a demountable flange (outboard) wheel subassembly, part number 5008140-1, serial numbers APR91-0570 through FEB93-0965 inclusive, or S-MAR91-0002 through S-FEB93-0010 inclusive: Within 100 landings after the effective date of this AD, or at the next tire change, whichever occurs first, perform an eddy current inspection to detect cracks of the bolt bosses of the wheel subassembly, in accordance with paragraph B. of SECTION II—ACCOMPLISHMENT INSTRUCTIONS of ABSC Service Bulletin Fo100-32-48, dated March 10, 1993. Repeat this inspection thereafter at intervals not to exceed 500 landings or at each tire change, whichever occurs first.

(1) If no crack is found during any inspection required by paragraph (b) of this AD: Prior to further flight following the third inspection accomplished after the effective date of this AD, modify the wheel subassembly in accordance with paragraph C. of SECTION II—ACCOMPLISHMENT INSTRUCTIONS of the service bulletin. Such modification constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(2) If any crack is found during any inspection required by paragraph (b) of this AD, prior to further flight, replace the wheel subassembly, part number 5008140-1, with a serviceable part in accordance with the Airplane Maintenance Manual. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(c) After the effective date of this AD, no person shall install any of the following parts on any airplane unless that part has been inspected in accordance with paragraph (a) or (b) of this AD, as applicable. Following installation of any such part, the part must be repetitively inspected and modified in accordance with paragraphs (a) or (b) of this AD, as applicable.

(1) ABSC demountable flange (inboard) wheel subassembly, part number 5008142-4, having serial numbers APR91-0570 through OCT92-0858 inclusive, or S-APR91-0097 through S-MAY92-0126 inclusive;

(2) ABSC demountable flange (outboard) wheel subassembly, part number 5008140-1, having serial numbers APR91-0570 through FEB93-0965 inclusive, or S-MAR91-0002 through S-FEB93-0010 inclusive;

(3) Main wheel assembly, part number 5008131-4, having serial numbers APR91-0570 through FEB93-0965 inclusive.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with ABSC Service Bulletin Fo100-32-46, dated December 24, 1992; or ABSC Service Bulletin Fo100-32-48, dated March 10, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 12, 1994.

Issued in Renton, Washington, on October 24, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-26719; Filed 11-9-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 93-NM-213-AD; Amendment 39-9055; AD 94-22-06]

Airworthiness Directives; Bombardier (Formerly Canadair) Model CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2B19 series airplanes, that requires modification of the stall protection system (SPS) input wiring; a revision to the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start; and modification of the stall protection computer (SPC) to accept restored dual attitude and heading reference system (AHRS) input. This amendment is prompted by a report that the AHRS could send conflicting input to the SPC on the airplane. The actions specified by this AD are intended to prevent the loss of stall warning protection on the airplanes.

DATES: Effective December 12, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on March 4, 1994 (59 FR 10340). That action proposed to require modification of the stall protection system (SPS) input wiring; a revision to the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to specify that a pre-flight check of the slip/skid indications must be conducted prior to engine start; and modification of the attitude and heading reference system (AHRS) to restore the dual AHRS inputs to the SPC.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the FAA revise the final rule to indicate that it is not the AHRS that will be modified, but the stall protection computer (SPC). The FAA concurs, and has revised the preamble and paragraph (c) of the final rule to clarify its intent that the SPC be modified to restore the dual AHRS inputs to the SPC.

The commenter also requests that the proposed compliance time of 6 months for modification of the SPC, as specified in paragraph (c) of the proposed rule, be extended due to the complex nature of the SPC modification and the need to modify additional equipment to support the SPC change. The commenter proposes a target date of April 4, 1995, for accomplishment of the modification. As justification for this suggested extension, the commenter states that the SPC software will detect a loss of AHRS input to both SPC channels, and a "STALL FAIL" amber message will be displayed; additionally, the AFM defines abnormal procedures to be followed when loss of the SPS occurs. The commenter adds that there are several components in the SPS that can fail and cause the loss of stall protection on any one flight. The commenter believes that the loss of AHRS input is no worse than, and the system is just as reliable as, a system with two independent AHRS inputs.

The FAA does not concur. Compliance times for AD's are normally based on a parameter related to failure of a particular component. The FAA has determined that there is no apparent direct relationship between the transmittal of conflicting input from the AHRS to the SPC (and subsequent loss of stall warning protection on the airplane) and a calendar date. Therefore, the FAA does not consider that the compliance time for modification of the SPC should be expressed in terms of a calendar date, as suggested by the commenter.

Further, in developing a compliance time for this requirement of the rule, the FAA considered not only the safety implications, but the availability of required parts and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. In light of these items, the FAA finds that a compliance time of 6 months is appropriate. (Additionally, based on the effective date of this final rule, the compliance time for operators to perform the modification will fall close to the calendar date requested by the commenter.)

A new paragraph (d) has been added to the final rule to clarify the FAA's intent that modification of the SPC constitutes terminating action for the AFM revision required by paragraph (b) of this AD. Therefore, once the SPC is modified, the AFM revision may be removed from the AFM.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts will be minimal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-22-06 Bombardier, Inc. (Formerly Canadair): Amendment 39-9055. Docket 93-NM-213-AD.

Applicability: Model CL-600-2B19 (Regional Jet Series 100) series airplanes; serial numbers 7003 through 7026, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

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To prevent the loss of stall warning protection on the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the stall protection system (SPS) input wiring in accordance with Canadair Regional Jet Alert Service Bulletin A601R-34-028, Revision "A," dated October 22, 1993.

(b) Prior to further flight after accomplishment of the modification required by paragraph (a) of this AD, revise the Normal Procedures section of the FAA-approved Airplane Flight Manual (AFM) by inserting the following into the AFM as facing page 04-20-13 <FAA> to advise the flight crew that a pre-flight check of the slip/skid indications must be accomplished as a "Before Start" item. This may be accomplished by inserting a copy of this AD into the AFM.

"Change step (4) within paragraph E, Before Start, to read as follows:

(4) EFIS .....Checked and Set

- Check that no annunciations are displayed on EFIS
- EFIS slip/skid indications .....Normal
- Indications of a one-half (½) symbol width lateral deviation should be interpreted as an AHRS failure.

NOTE

- One-half (½) symbol width displacement corresponds to approximately one-half displacement on a conventional inclinometer.
- EFIS .....Set for Departure"

Note 1: Insertion of Canadair Regional Jet Airplane Flight Manual CSP A-012, Temporary Revision RJ/26, dated October 21, 1993, in the Normal Procedures section of the AFM is an acceptable method of compliance with the requirements of paragraph (b) of this AD.

(c) Within 9 months after the effective date of this AD, modify the stall protection computer (SPC) to accept restored dual attitude and heading reference system (AHRS) input, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(d) Modification of the SPC in accordance with paragraph (c) of this AD constitutes terminating action for the AFM revision required by paragraph (b) of this AD. Following accomplishment of that modification, the AFM revision may be removed from the FAA-approved AFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The modification shall be done in accordance with Canadair Regional Jet Alert Service Bulletin A601R-34-028, Revision "A," dated October 22, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 12, 1994.

Issued in Renton, Washington, on October 24, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-26721; Filed 11-9-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 94-NM-41-AD; Amendment 39-9061; AD 94-22-11]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that requires modification of the power supply for the communications system. This amendment is prompted by reports of loss of power to the communications system due to an electrical fault in the ground crew jack box or the handset of the public address (PA) system. The actions specified by this AD are intended to prevent the inability of the flight crew to communicate with passengers via the PA system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane.

DATES: Effective December 12, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes series airplanes was published in the Federal Register on May 11, 1994 (59 FR 24382). That action proposed to require modification of the power supply for the communications system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Since issuance of the notice, Jetstream has issued errata sheets Numbers 1, 2, and 4, pertaining to Service Bulletin ATP-23-21-35288A. Erratum No. 1 was issued March 14, 1994, and adds an additional part number to the list of pertinent cable looms that appeared in Revision 2 of Jetstream Service Bulletin ATP-23-21-35288A. Erratum No. 2 was issued April 25, 1994, and corrects certain editorial errors that appeared in that same service bulletin. Erratum No. 4 was issued June 1, 1994, and includes an additional reference to the fuse and circuit breaker index that appeared in that same service bulletin. The final rule has been revised to add a note referencing the existence of these errata sheets. These errata sheets do not require any further work by operators who have previously complied with Jetstream Service Bulletin ATP-23-21-35288A, Revision 2, dated February 15, 1994.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,000, or $1,800 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-22-11 British Aerospace: Amendment 39-9061. Docket 94-NM-41-AD.

Applicability: Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to communicate with passengers via the public address system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane, accomplish the following:

(a) Within 675 hours time-in-service after the effective date of this AD, modify the power supply of the communications system (Modification 35288A) in accordance with Jetstream Service Bulletin ATP-23-21-35288A, Revision 2, dated February 15, 1994.

Note 1: Jetstream Service Bulletin ATP-23-21-35288A Erratum No. 1, dated March 14, 1994; Erratum No. 2, dated April 25, 1994; and Erratum No. 4, dated June 1, 1994; describe certain editorial corrections to Jetstream Service Bulletin ATP-23-21-35288A, Revision 2.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin ATP-23-21-35288A, Revision 2, dated February 15, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 6, 15	2	February 15, 1994.
2, 4, 5, 7-14, 16-19.	1	February 1, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 12, 1994.

Issued in Renton, Washington, on October 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-27046 Filed 11-9-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 94-NM-65-AD; Amendment 39-9056; AD 94-22-07]

Airworthiness Directives; McDonnell Douglas Model DC-8-70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8-70 series airplanes, that currently requires replacement of all attachment screws at the exhaust nozzle plug splice, and a check of nut plates for running torque and replacement of nut plates, if necessary. This amendment requires modification of the engine exhaust plug assemblies as terminating action for the currently required replacement and check. This amendment is prompted by reports of loose or missing attachments at the splice joint of the engine forward and aft exhaust plugs, and loss of the rear exhaust plug following an engine bird strike. The actions specified by this AD are intended to prevent reduced integrity of the engine exhaust plug installation, which may lead to separation of exhaust plugs from the airplane, and create a hazard to persons and property on the ground.

DATES: Effective December 12, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative

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Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5245; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 83–02–05, amendment 39–4544 (48 FR 5539, February 7, 1983), which is applicable to all McDonnell Douglas Model DC–8–70 series airplanes, was published in the **Federal Register** on July 27, 1994 (59 FR 38144). The action proposed to require replacement of all attachment screws at the exhaust nozzle plug splice, and a check of nut plates for running torque and replacement of nut plates, if necessary. The action also proposed to require modification of the engine exhaust plug assemblies; when accomplished, this modification would terminate the need for the currently required replacement and check.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supports the proposed rule.

One commenter requests that the compliance time for the accomplishment of the modification be extended from the proposed 24 months to 60 months. This commenter states that it would have to procure additional spare engines and would need to special schedule its fleet of airplanes to accomplish this modification within the proposed compliance time. This would entail considerable expense over what was estimated in the FAA's cost impact analysis. The commenter indicates that a compliance time of 60 months would allow the modification to be accomplished during regularly scheduled maintenance, thereby eliminating any additional expenses.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and the practical aspect of installing the required modification during normal maintenance schedules. In light of this, the FAA does not consider it appropriate to change the compliance time for all operators based on the unique circumstances of an individual operator. On the other hand, paragraph (c) of the AD provides that an individual may request an adjustment of compliance time that provides an acceptable level of safety, and this would be the appropriate means for the commenter to seek the requested relief.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 110 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry will be affected by this AD, that it will take approximately 46 work hours per airplane to accomplish the required modification, and that the average labor rate is $55 per work hour. Required parts will cost approximately $21,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,866,540, or $23,930 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4544 (48 FR 5539, February 7, 1983), and by adding a new airworthiness directive (AD), amendment 39–9056, to read as follows:

94–22–07 McDonnell Douglas: Amendment 39–9056. Docket 94–NM–65–AD. Supersedes AD 83–02–05, Amendment 39–4544.

Applicability: All Model DC–8–70 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced integrity of the engine exhaust plug installation, which may lead to separation of exhaust plugs from the airplane, and create a hazard to persons and property on the ground, accomplish the following:

(a) Within 300 flight hours after February 7, 1983 (the effective date of AD 83–02–05, amendment 39–4544), accomplish the procedures specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A78–107, dated November 30, 1982; McDonnell Douglas DC–8–70 Service Bulletin 78–107, dated January 16, 1984; or McDonnell Douglas DC–8–70 Service Bulletin 78–107, Revision 1, dated June 12, 1984.

(1) Replace all NAS560XK4–5 screws with NAS560XK4–4 screws at the exhaust nozzle plug splice.

(2) Check nut plates for running torque and replace all nut plates not meeting the minimum run down torque of five inch-pounds.

(b) Within 24 months after the effective date of this AD, modify the engine exhaust plug assemblies in accordance with McDonnell Douglas DC–8–70 Service Bulletin 78–112, Revision 2, dated March 8, 1994. Accomplishment of this modification constitutes terminating action for the replacement and check requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with McDonnell Douglas DC–8–70 Service Bulletin 78–112, Revision 2, dated March 8, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 12, 1994.

Issued in Renton, Washington, on October 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–26875 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–44; Amendment 39–9006; AD 94–01–03 R1]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 94–17–11 applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos that was published in the **Federal Register** on August 22, 1994 (59 FR 43029). The AD number is incorrect. This document corrects the error in the AD number. In all other respects, the original document remains the same.

DATES: Effective November 10, 1994.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive (AD) applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, was published in the **Federal Register** on August 22, 1994 (59 FR 43029). The AD was inadvertently assigned a new number, 94–17–11. Since the AD is a revision to a current AD, it should retain the original AD number, 94–01–03, with the suffix R1. The following correction is needed:

On page 43029, in the center column, in the header, in the second line, "AD 94–17–11" should read "AD 94–01–03 R1."

On page 43030, in the right column, in the title of the compliance section, in the first line, "94–17–11" should read "94–01–03 R1."

Issued in Burlington, MA, on November 3, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–27851 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 94–AGL–27]

Addition of Controlling Agency for Restricted Area R–3302; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds the Chicago Air Route Traffic Control Center (ARTCC) as the controlling agency for Restricted Area R–3302, Savanna, IL. This is an administrative change initiated by the Chicago ARTCC to facilitate joint use of the airspace. There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted area.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Kadechka, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7683.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations adds the Chicago ARTCC as the controlling agency for R–3302, Savanna, IL. This change was initiated by the Chicago ARTCC and coordinated with the U.S. Army to facilitate joint use of the airspace. This will allow access for general aviation aircraft when the special use airspace is not active. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.33 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action adds the controlling agency for the restricted area. There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted area. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

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Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.33 [Amended]

2. Section 73.33 is amended as follows:

R–3302 Savanna, IL [Amended]

By adding the following: "Controlling agency. FAA, Chicago ARTCC."

Issued in Washington, DC, on November 2, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–27911 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 94–AGL–22]

Amendment to Using Agency for Restricted Areas R–3403A, B, and C; Jefferson Proving Ground, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R–3403A, B, and C, from "Commanding Officer, Jefferson Proving Ground, Madison, IN" to "Adjutant General, Indiana National Guard." This is an administrative change initiated by the U.S. Army due to decisions of the Base Realignment and Closure Commission. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Kadechka, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7683.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R–3403A, B, and C, Jefferson Proving Ground, IN, from "Commanding Officer, Jefferson Proving Ground, Madison, IN" to "Adjutant General, Indiana National Guard." This is an administrative change initiated by the U.S. Army due to decisions of the Base Realignment and Closure Commission. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.34 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R–3403A Jefferson Proving Ground, IN [Amended]

By removing "Using agency. Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency. Adjutant General, Indiana National Guard."

R–3403B Jefferson Proving Ground, IN [Amended]

By removing "Using agency. Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency. Adjutant General, Indiana National Guard."

R–3403C Jefferson Proving Ground, IN [Amended]

By removing "Using agency. Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency. Adjutant General, Indiana National Guard."

Issued in Washington, DC, on November 2, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–27910 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 94–90]

Technical Corrections to the Customs Regulations Relating to Customs Modernization

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessitated by one of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, which went into effect when signed on December 8, 1993. The changes involve the time period that Customs must retain goods seized for certain intellectual property violations before the goods can be sold.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Intellectual Property Rights Branch, at 202–482–6960.

SUPPLEMENTARY INFORMATION:

Background

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103–182, 107 Stat. 2057 (the NAFTA Act), went into effect when the NAFTA

Act was signed on December 8, 1993 (section 692 of the NAFTA Act). One of the changes effected by this legislation was an amendment to 19 U.S.C. 1526(e)(3), which involves the time period for retention of goods seized by Customs for certain intellectual property rights violations. Section 663 of the NAFTA Act amended 19 U.S.C. 1526(e)(3) to allow Customs to sell merchandise bearing a counterfeit trademark at a public auction 90 days after the forfeiture of the merchandise if Customs has determined that a need for the merchandise has not been established by any federal, state, or local government or eleemosynary institution. Prior to this amendment, the statute had required Customs to wait more than one year before the sale of the merchandise by appropriate Customs officers.

As a result of the changes in 19 U.S.C. 526(e)(3), corresponding changes are required in the Customs Regulations, in § 133.52(c)(3) (19 CFR 133.52(c)(3)).

Discussion of Changes

In 19 CFR 133.52(c)(3), the time period is changed from "one year" to "90 days," and the entity responsible for the sale is changed from "the Commissioner or his designee" to "the Customs Service."

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law, pursuant to 5 U.S.C.(a)(2) and (b)(3)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. (a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 133

Copyright, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade names, Trademarks.

Amendments to the Regulations

Part 133 of the Customs Regulations (19 CFR Part 133) is amended as set forth below:

PART 133—TRADEMARK, TRADE NAMES AND COPYRIGHTS

1. The general authority citation for Part 133 continues to read and specific authority for § 133.52 is added to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 133.52 also issued under 19 U.S.C. 1526;

* * * * *

§ 133.52 [Amended]

2. Section 133.52(c)(3) is amended by removing the words "1 year" in the first sentence and adding in their place "90 days"; and removing the words "Commissioner or his designee" wherever they appear and adding in their place the words "Customs Service".

George J. Weise,

Commissioner of Customs.

Approved: October 24, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–27906 Filed 11–9–94; 8:45 am]

BILLING CODE 4820–02–P

19 CFR Part 171

(T.D. 94–89)

Penalty Guidelines Applicable to Transshipped Textiles and Textile Products

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the revised penalty guidelines pertaining to section 592 of the Tariff Act of 1930, as amended, by adopting the interim rule that added, as an example of an aggravating factor in arriving at a final administrative penalty decision, violations involving the illegal importation and entry of transshipped textiles and textile products. This amendment will enhance the U.S. textile import program and other programs or laws administered or enforced by Customs which involve a determination of the country of origin of imported merchandise.

DATES: Final rule is effective on November 10, 1994. This final rule is applicable to all textiles and textile products entered or withdrawn from warehouse for consumption, on or after, November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, Office of Regulations and Rulings (202–482–6950).

SUPPLEMENTARY INFORMATION:

Background

Customs is confronted with a continuing problem involving textiles and textile products which, after exportation from their country of origin, are transshipped through a second country, thereby facilitating a false or otherwise unlawful statement, act, or omission regarding the country of origin of the merchandise when ultimately imported and entered in the United States. Such statements, acts or omissions may impinge on a number of programs or laws administered or enforced by Customs, including country of origin marking requirements, textile quota limitations and visa requirements under the U.S. textile import program, duty assessment and collection, and collection of trade statistics. The consequences of such unlawful statements, acts or omissions may include interference with the consumer's right to make an informed decision regarding a prospective purchase, undermining of bilateral and multilateral textile agreements to which the United States is a party and with resulting injury to domestic producers of textiles and textile products, loss of revenue, and inability to maintain proper trade statistics to support overall U.S. trade policy and analysis.

Under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), a penalty may be assessed against any party who has committed fraud, gross negligence or negligence in connection with the unlawful entry of any merchandise in the United States, including textiles and textile products that have been transshipped in the circumstances described above. Provisions relating to the filing of petitions, and action upon petitions, for relief from fines, penalties and forfeitures incurred under laws administered by Customs, including penalties under section 592, are set forth in Part 171 of the Customs Regulations (19 CFR Part 171). Appendix B to Part 171 sets forth Revised Penalty Guidelines under section 592. Although Appendix B is not intended to have regulatory effect, it represents the official Customs position regarding the standards that are generally applicable to the administrative review of petitions

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for remission or mitigation of penalties incurred under section 592. Appendix B includes, in section (G), certain factors that may be determined by Customs to be aggravating factors in arriving at a final administrative penalty decision. Appendix B is currently undergoing review within Customs with a view to publication of a proposed revision of those guidelines, with opportunity for public comment, in the near future.

Notwithstanding the upcoming revision of Appendix B to Part 171 and the intended solicitation of public comments thereon, Customs determined that immediate action should be taken in a penalty mitigation context to address the textile and textile products transshipment problem described above. Customs notes that transshipments have resulted in material false statements, acts or omissions regarding the country of origin of the imported merchandise, including false designations of origin. Consequently, it is Customs position that transshipment must be susceptible to treatment as an aggravating factor in arriving at a final mitigated section 592 penalty decision under Part 171 of the regulations.

On March 30, 1994, Customs published as T.D. 94–29 an interim rule in the **Federal Register** (59 FR 14745) to amend section (G) of Appendix B to Part 171 by adding a reference to "transshipment in the case of textiles and textile products affecting a country of origin determination" as an aggravating factor. Although this change was effective for merchandise entered, or withdrawn from warehouse for consumption, on or after April 1, 1994, Customs stated that it would consider any comments submitted.

Customs received eleven comments in response to the interim rule. The comments received, and Customs responses to them, where appropriate, are set forth below.

Comment Analysis

The comments received ostensibly fell into two categories: those unequivocally endorsing the interim rule as written (three comments); and those opposing the interim rule or seeking to limit its application (eight comments).

Comments Supporting the Interim Rule

The three commenters supporting the interim rule expressed concern over Customs ability to combat transshipment resulting in an unlawful entry of textiles and textile products, and were of the opinion that the interim rule, as written, would serve as a useful deterrent to such unlawful practices.

Comments Opposing the Interim Rule

Regarding the eight commenters opposing the interim rule or seeking to limit its application, three claimed that the interim rule unfairly discriminated against textile importers by holding such importers to a higher standard of care than that required of parties importing other merchandise. Two of these three commenters indicated that it was illogical for Customs to consider the act of transshipment an aggravating factor when, in fact, the act of transshipment constitutes the violation in question or, at least, an element of the violation. Put another way, these two commenters were of the opinion that aggravating factors cannot constitute the violation in question. Otherwise, according to one of these commenters, undervaluation logically would have to be an aggravating factor in cases involving understatement of value.

Two other commenters stated that the interim rule should be limited in its application to those instances where the importer had actual knowledge of the improper transshipment of the textile products at issue.

Regarding the remaining three commenters fully opposed to the interim rule, they objected on the basis that the rule constituted the imposition of unfair additional penalties and that mitigation in such cases would become meaningless. These commenters felt that existing guidelines were adequate and that the interim rule was not in keeping with the spirit of the recently enacted Customs Modernization Act. One of these commenters also expressed concern that the rule would permit Customs to raise the assessed penalty in cases involving transshipment. Finally, one of the commenters indicated that rules such as the interim rule have forced the closure of his apparel importing company.

Customs Response

Customs acknowledges the concerns expressed by those commenters opposed to the interim rule on the basis that the rule discriminates against textile importers, but the importing community and domestic industry must, in Customs opinion, acknowledge the dilemma faced by the agency, namely, balancing the interests of the importer against the explosion of illegal transshipments to the United States. Aside from the obvious negative impact such shipments can have on domestic industry, illegally transshipped goods deceive U.S. consumers regarding the country of origin of imported merchandise, as well as distort the application of bilateral agreements with our trading partners. When faced with similar situations, Customs has had to take enforcement actions which focus on specific commodities or types of merchandise. In effect, the interim rule provides a warning to textile importers about the threat of illegal transshipment and suggests that such importers take extra pre-importation measures to ensure the accuracy of the country of origin of the products in question.

Contrary to some commenters' views, it is clear that these textile transshipments do not, *per se*, constitute a violation of section 1592. Such transshipments may, or may not, result in false statements concerning the country of origin on entry documents, or goods being falsely marked with an incorrect country of origin. Consequently, a violation occurs at the time when the transshipped textile goods arrive for entry in the United States and are falsely marked, or the entry documents contain culpable, material false statements, omissions or acts. In other words, with respect to the circumstances under discussion, the act of textile transshipment does not, in and of itself, constitute a violation of section 1592.

With respect to those commenters who recommended implementation of the rule provided that it only apply to those instances where the importer has actual knowledge of the improper transshipment, Customs notes that application of this aggravating factor would first require that Customs establish a violation of section 1592. If the importer is an innocent party to the transaction, then that importer will not be considered culpable, and therefore, cannot be charged with a violation of section 1592.

Customs also would like to clear up what appears to be a misunderstanding regarding the meaning of the term "aggravating factor" and the practical impact of the presence of an aggravating factor in a penalty situation. First, as indicated above, aggravating factors alone do not constitute a violation of section 1592. Second, contrary to some commenters' belief, the presence of an aggravating factor does not increase or decrease the asserted level of culpability set forth in Customs section 1592 prepenalty and/or penalty notices. For example, in the case of an importer's material grossly negligent false statement of origin on an entry document, Customs does not increase the asserted level of culpability to fraud because the goods were transshipped. Rather, in arriving at the administrative disposition in a penalty action, Customs treats the presence of an aggravating factor (designated as such in the Customs guidelines) as an offset to the presence of a mitigating factor. It should also be noted that because the interim rule involves Customs penalty guidelines and such guidelines are neither statutory nor regulatory, per se, certain circumstances may warrant deviation from the ordinary application of the guidelines.

Customs also is of the opinion that the interim rule is, in fact, in keeping with the spirit of the Customs Modernization provisions (Title VI) of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993). Both the language of the Act and its legislative history clearly set forth the concepts of "shared responsibility" and "informed compliance" as critical to its effectiveness and application. In the instant situation, the interim rule is one of the measures Customs intends to use to address the significant problem of illegal transshipment. The interim rule informs the textile importer that he or she can avoid application of the interim rule by taking adequate measures prior to importation to attempt to ensure the accuracy and completeness of the information provided to Customs at the time of entry, including proper marking or other indication of the country of origin of the articles. In light of the problems associated with illegal transshipment, Customs believes that it is not unreasonable to expect textile importers to exert diligence in attempting to verify the source of their goods prior to importation commensurate with the statutory requirement to exercise reasonable care in presenting documentation to Customs during the entry process. If a textile importer can demonstrate that such measures were taken (i.e., the importer was not culpable and acted with reasonable care), then there can be no violation of section 1592 because culpability is a requisite element of such a violation. Put another way, the interim rule does not apply to those textile importers who responsibly take such adequate measures prior to importation.

In view of the foregoing, Customs is adopting the text of the interim rule as final without change.

The Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

Amendment to 19 CFR Chapter I

For the reasons stated above, the interim rule amending part 171 of the Customs Regulations (19 CFR part 171), which was published at 59 FR 14745–14746 on March 30, 1994 (T.D. 94–29), is adopted as a final rule without change.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 24, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–27905 Filed 11–9–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for eight new animal drug applications (NADA's) from Hoffmann-La Roche, Inc., to SmithKline Beecham Animal Health.

EFFECTIVE DATE: November 10, 1994

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380:

NADA Number	Ingredient	Trade name
15–102	Sulfadimethoxine	Albon Tablets.
31–205	Sulfadimethoxine	Albon Drinking Water Solution.
31–715	Sulfadimethoxine	Albon Bolus.
41–245	Sulfadimethoxine	Albon Injection 40%.
43–785	Sulfadimethoxine	Albon Oral Suspension 5%.
46–285	Sulfadimethoxine	Albon Soluble Powder.
93–107	Sulfadimethoxine	Albon Sustained-Release Bolus.
100–929	Sulfadimethoxine/ormetoprim	Primor Tablets.

Accordingly, the agency is amending the regulations in 21 CFR 520.2220a(b), 520.2220b(b)(1), 520.2220c(c), 520.2220d(b) and 522.2220(a)(2)(i) to reflect the change of sponsor.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

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§ 520.2220a [Amended]

2. Section 520.2220a *Sulfadimethoxine oral solution and soluble powder* is amended in paragraph (b) by removing "000004" and by adding in its place "053571".

§ 520.2220b [Amended]

3. Section 520.2220b *Sulfadimethoxine tablets and boluses* is amended in paragraph (b)(1) by removing "000004" and by adding in its place "053571".

§ 520.2220c [Amended]

4. Section 520.2220c *Sulfadimethoxine oral suspension* is amended in paragraph (c) by removing "000004" and by adding in its place "053571".

§ 520.2220d [Amended]

5. Section 520.2220d *Sulfadimethoxine-ormetoprim tablets* is amended in paragraph (b) by removing "000004" and by adding in its place "053571".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

6. The authority citation of 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.2220 [Amended]

7. Section 522.2220 *Sulfadimethoxine injection* is amended in paragraph (a)(2)(i) by removing "000004" and by adding in its place "053571".

Dated: November 2, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94-27793 Filed 11-9-94; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-5101-4]

North Carolina; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). North Carolina's revisions consist of the provisions of HSWA Cluster I promulgated November 8, 1984, through June 30, 1987. The Environmental Protection Agency has reviewed North Carolina's application and has made a decision, subject to review and comment, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revisions is available for public review and comment.

DATES: Final authorization for North Carolina's program revisions shall be effective January 9, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business, December 12, 1994.

ADDRESSES: Copies of North Carolina's program revision application are available during normal business hours at the following addresses for inspection and copying: North Carolina Department of Environment, Health, and Natural Resources, Hazardous Waste Branch, P.O. Box 27687, Raleigh, North Carolina 27611-7687; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with Part 271, § 271.21(a) of Title 40 of the Code of Federal Regulations (40 CFR 271.21(a)), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. North Carolina

North Carolina initially received final authorization for its base RCRA program effective on December 31, 1984, (49 FR 48694). North Carolina most recently received final authorization effective June 3, 1994, for RCRA Cluster II (59 FR 15633, April 4, 1994). On October 29, 1991, North Carolina submitted a program revision application for additional program approval for the requirements of HSWA Cluster I. EPA granted North Carolina interim authorization for HSWA Cluster I effective June 1, 1993. Today, North Caroline is seeking final authorization of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed North Carolina's application and has made an immediate final decision that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the HSWA Cluster I program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until December 12, 1994.

Copies of North Carolina's application for these program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of North Carolina's program revisions shall become effective January 9, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA issues, administers, and enforces RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State has not received authorization. Upon the effective date of this authorization, EPA will suspend issuance of any further permits under the provisions for which the State is being authorized. Any permits, or portions of permits, that were issued by EPA prior to the effective date of this authorization will be terminated pursuant to 40 CFR 124.5(d). Those permits, or portions of permits, issued by EPA not terminated pursuant to 40 CFR 124.5(d) will either: (1) Be modified to allow for an earlier expiration date pursuant to 40 CFR 270.41 (a); or (2) be administered by the State until the permit is reissued.

North Carolina is today seeking authority to administer the following Federal requirements promulgated between November 8, 1984, through June 30, 1987:

Federal requirements	HSWA or FR notice	Promulgation	State authority
Hazardous and Used Oil Fuel Criminal Penalties.	HSWA 3006(h), 3008(d), 3014		NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Dioxin Waste Listing and Management Standards.	50 FR 1978	1/14/85	15A NCAC 13A.0006(a) 15A NCAC 13A.0006(d) 15A NCAC 13A.0006(e) 15A NCAC 13A.0009(j) 15A NCAC 13A.0009(k) 15A NCAC 13A.0009(l)(1) 15A NCAC 13A.0009(m) 15A NCAC 13A.0009(n) 15A NCAC 13A.0009(o) 15A NCAC 13A.0009(q) 15A NCAC 13A.0010(a) 15A NCAC 13A.0010(o) 15A NCAC 13A.0010(p) 15A NCAC 13A.0013(b)
Fuel Labeling	HSWA 3004(r)(1)		NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Paint Filter Test	50 FR 16370	4/30/85	15A NCAC 13A.0009(c) 15A NCAC 13A.0009(f) 15A NCAC 13A.0009(o) 15A NCAC 13A.0010(b) 15A NCAC 13A.0010(e) 15A NCAC 13A.0010(n)
Prohibition of Liquids in Landfills	HSWA 3004(c)	5/8/85	NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Expansion During Interim Status—Waste Piles.	HSWA 3015(a)	5/8/85	NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Expansion During Interim Status—Landfills and Surface Impoundments.	HSWA 3015(b)	5/8/85	NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Sharing of Information Agency for Toxic Substances and Disease Registry.	HSWA 3019(b)	7/15/85	NCGS 130A-294(c)(1)&(15) NCGS 150B-14(a)(1)&(c)
Delisting	50 FR 28702	7/15/85	15A NCAC 13A.0003(b)
Household Waste	50 FR 28702	7/15/85	15A NCAC 13A.0006(a)
Waste Minimization	50 FR 28702	7/15/85	15A NCAC 13A.0007(d) 15A NCAC 13A.0007(h) 15A NCAC 13A.0009(f) 15A NCAC 13A.0013(f) 15A NCAC 13A.0013(j)
Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	50 FR 28702	7/15/85	15A NCAC 13A.0009(c) 15A NCAC 13A.0010(b)
Liquids in Landfills	50 FR 28702	7/15/85	15A NCAC 13A.0009(o) 15A NCAC 13A.0010(n) 15A NCAC 13A.0013(b)
Dust Suppression	50 FR 28702	7/15/85	15A NCAC 13A.0011(a)
Double Liners	50 FR 28702	7/15/85	15A NCAC 13A.0009(l)(1) 15A NCAC 13A.0009(o) 15A NCAC 13A.0010(k) 15A NCAC 13A.0010(l) 15A NCAC 13A.0010(n)
Groundwater Monitoring	50 FR 28702	7/15/85	15A NCAC 13A.0009(g) 15A NCAC 13A.0009(l)(1) 15A NCAC 13A.0009(m) 15A NCAC 13A.0009(o)
Cement Kilns	50 FR 28702	7/15/85	15A NCAC 13A.0006(a) 15A NCAC 13A.0006(d) 15A NCAC 13A.0011(b)
Fuel Labeling	50 FR 28702	7/15/85	15A NCAC 13A.0011(b)
Corrective Action	50 FR 28702	7/15/85	15A NCAC 13A.0009(g) 15A NCAC 13A.0013(i)
Pre-Construction Ban	50 FR 28702	7/15/85	15A NCAC 13A.0013(b)

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Federal requirements	HSWA or FR notice	Promulgation	State authority
Permit Life	50 FR 28702	7/15/85	15A NCAC 13A.0013(g)
			15A NCAC 13A.0013(h)
Omnibus Provision	50 FR 28702	7/15/85	15A NCAC 13A.0013(f)
Interim Status	50 FR 28702	7/15/85	15A NCAC 13A.0013(b)
			15A NCAC 13A.0013(f)
			15A NCAC 13A.0013(j)
Research and Development	50 FR 28702	7/15/85	15A NCAC 13A.0013(b)
			15A NCAC 13A.0013(i)
Exposure Information	50 FR 28702	7/15/85	15A NCAC 13A.0013(b)
Listing of TDI, DNT, and TDA Waste.	50 FR 42936	10/23/85	15A NCAC 13A.0006(d)
			15A NCAC 13A.0006(e)
Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces.	50 FR 49164	11/29/85	15A NCAC 13A.0006(a)
			15A NCAC 13A.0009(q)
			15A NCAC 13A.0010(o)
			15A NCAC 13A.0011(b)
			15A NCAC 13A.0011(c)
Listing of Spent Solvents	50 FR 53315	12/31/85	15A NCAC 13A.0006(d)
Listing of EDB Waste	51 FR 5327	2/13/86	15A NCAC 13A.0006(d)
			15A NCAC 13A.0006(e)
Listing of Four Spent Solvents	51 FR 6537	2/25/86	15A NCAC 13A.0006(d)
			15A NCAC 13A.0006(e)
Generators of 100 to 1000kg Hazardous Waste.	51 FR 10146	3/24/86	15A NCAC 13A.0002(b)
			15A NCAC 13A.0006(a)
			15A NCAC 13A.0006(d)
			15A NCAC 13A.0007(b)
			15A NCAC 13A.0007(c)
			15A NCAC 13A.0007(d)
			15A NCAC 13A.0008(b)
			15A NCAC 13A.0013(a)
			15A NCAC 13A.0013(b)
Codification Rule	51 FR 19176	5/28/86	15A NCAC 13A.0010(n)
Standards for Hazardous Waste Storage and Treatment Tank Systems.	51 FR 25422	7/14/86	15A NCAC 13A.0002(b)
			15A NCAC 13A.0006(a)
			15A NCAC 13A.0007(c)
			15A NCAC 13A.0009(c)
			15A NCAC 13A.0009(f)
			15A NCAC 13A.0009(h)
			15A NCAC 13A.0009(i)
			15A NCAC 13A.0009(k)
			15A NCAC 13A.0010(b)
			15A NCAC 13A.0010(e)
			15A NCAC 13A.0010(g)
			15A NCAC 13A.0010(h)
			15A NCAC 13A.0010(j)
			15A NCAC 13A.0013(b)
Biennial Report	51 FR 28556	8/5/86	15A NCAC 13A.0009(f)
			15A NCAC 13A.0010(e)
Standards for Generators, Waste Minimization Certifications.	51 FR 35190	10/1/86	15A NCAC 13A.0007(h)
Listing of EBDC	51 FR 37725	10/24/86	15A NCAC 13A.0006(d)
			15A NCAC 13A.0006(e)

With the passage of the Hazardous and Solid Waste Amendments of 1984 (HSWA), responsibilities for hazardous waste permitting in North Carolina were split between EPA and the State. Upon receiving interim authorization for HSWA corrective action, North Carolina assumed responsibility for HSWA corrective action for new permits. EPA continued to administer and enforce federal permits issued prior to the interim authorization. Upon final authorization of the State program for those provisions specified above, EPA will suspend issuance of federal permits in those areas for which the State is receiving authorization. Additionally, EPA will terminate, pursuant to 40 CFR 124.5(d), federal permits or portions of permits containing those provisions specified above and issued prior to the effective date of this authorization. A discussion of how North Carolina and EPA will delineate permitting responsibilities is contained in the EPA-North Carolina Memorandum of Agreement.

North Carolina is not authorized to operate the federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that North Carolina's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised.

North Carolina now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, the Memorandum of Agreement, and this notice. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: October 25, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–27296 Filed 11–9–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7115]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Pasco County ..	Unincorporated Areas .	August 19, 1994, August 26, 1994, West Pasco Press.	Mr. John Gallagher, Pasco County Administrator, 7530 Little Road, New Port Richey, Florida 34654.	August 12, 1994.	120230 D
Illinois: Will County	Village of Crete	August 18, 1994, August 25, 1994, Crete Record.	Mr. David L. Wallace, Crete Village Administrator, 524 Exchange Street, Crete, Illinois 60417.	August 11, 1994.	170700 B
Maryland: Prince George's.	Unincorporated Areas of Prince George's County.	March 18, 1994, March 25, 1944, The Prince George's Journal.	Mow-Soung Cheng, Ph.D., P.E., Section Head, Watershed Programs Section of Environmental Department, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland 20785.	March 10, 1994.	245208 C
Ohio: Fairfield & Franklin Counties.	City of Columbus	August 24, 1994, August 31, 1994, The Columbus Dispatch.	The Honorable Greg S. Lashutka, Mayor of the City of Columbus, 99 North Front Street, Columbus, Ohio 43215–2838.	February 16, 1995.	390170 B
Ohio: Unincorporated Areas.	Franklin County	August 24, 1994, August 31, 1994, The Columbus Areas.	Ms. Dorothy Teater, President of the Franklin County Board of Commissioners, 373 South High Street, Columbus, Ohio 43215.	February 16, 1995.	390167 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: November 1, 1994.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–27884; Filed 11–9–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 681

[Docket No. 940818–4301; I.D. 072094A]

RIN 0648–AF82

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement selected measures of Amendment 8 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The rule eliminates a 2-year landing requirement for permit renewal, which had an unintended detrimental effect on lobster fishery permit holders. The rule also modifies existing notification and reporting procedures. The implemented changes are intended to improve administration, monitoring, and enforcement of the fishery.

EFFECTIVE DATE: December 12, 1994.

ADDRESSES: Copies of Amendment 8 and the associated environmental assessment may be obtained from Ms. Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

Comments on the information collection should be sent to the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Ms. Kitty M. Simonds, WPFMC, at (808) 522–8220; Mr. Svein Fougner, NMFS, at (310) 980–4034; or Mr. Alvin Z. Katekaru, NMFS, at (808) 973–2937.

SUPPLEMENTARY INFORMATION: The WPFMC developed Amendment 8 to the FMP and submitted it to NMFS for approval. A proposed rule to implement Amendment 8 was published in the **Federal Register** on August 9, 1994 (59 FR 40515). The proposed rule provided background on the following provisions of Amendment 8: (1) Removing the requirement for a vessel to land at least four lobsters for each trap normally used during 1 of the 2 most recent years in which fishing was allowed as a condition of permit renewal; (2) establishing a framework procedure for reviewing, with the possibility of changing, the target catch-per-unit-of effort (CPUE) used in the formula to derive the quota for the fishery from 1.0 lobster per trap-haul to a number that is more reflective of the current status of the lobster resource; (3) establishing a framework procedure authorizing, under some circumstances, fishing for the purposes of obtaining fisheries data or alleviating economic hardship, when the initial quota is zero; (4) requiring vessel owners to notify NMFS of the location and time of offloading of their catch; and (5) requiring information from the first-level buyer to be attached to the Sales Report, if available, and requiring first-level buyers to make records of their transactions involving management unit species available to authorized officials.

The measures establishing framework procedures for the review and possible change of the target level of the CPUE in the model used to calculate the annual quota and to allow fishing under some circumstances when the initial quota is zero (numbers 2 and 3 above) have been disapproved by NMFS. These two measures are neither necessary nor appropriate for conservation and management of the fishery as required by section 303(a)(1)(A) of the Magnuson Act.

There has been a substantial decrease in recruitment to the lobster fishery. This, the total closure of the fishery during the 1993 season, and the great difference between the initial quota and the final quota during the 1994 season has prompted a complete review of the model used to determine the annual quotas and the quota system in general. For this reason, the provision allowing changes in the target CPUE pursuant to framework procedures is premature. Any change in the model should be postponed until an analysis of the model is available.

The purposes of the framework procedure under which fishing might be allowed when the initial quota is zero are to obtain fisheries data or to relieve economic hardship. The proposal to consider allowing fishing to relieve economic hardship is ambiguous because the term "economic hardship" is not defined. Without defining the term, it is unclear how and when allowing fishing would be considered and how it would meet the goals of the FMP. Allowing fishing to collect data duplicates section 681.26 of the implementing regulations regarding experimental fishing. Issuing experimental fishing permits is an effective way of allowing fishing that ordinarily would not be permitted so that fisheries data can be collected. The other provisions of Amendment 8 have been approved.

Comment and Response

Only one comment was received on the proposed rule.

Comment: One individual commented that eliminating the landing requirement gives the resource in perpetuity to those who currently hold permits. He felt the point system for new entry should be maintained. The holders of these permits may or may not view the fishery as a long-term trust. This commenter also indicated it was a mistake to allow the transfer of permits given that carrying capacity now exceeds the capacity of the resource.

Response: The issues of maintaining the point system or not allowing the transfer of permits are not within the scope of Amendment 8.

Nevertheless, the landing requirement, coupled with transferable limited entry permits, was intended to ensure that there always would be sufficient capacity to harvest the optimum yield. The number of permitted vessels was based on an assumption of stable recruitment and would provide the greatest economic return from the fishery. Presently, productivity of the resource is low and the harvesting capacity of the fleet is greater than needed; however, the Council did not propose changing the number of permits allowed in the fishery. There are numerous restrictions to protect the resource, including size limits, a closed season, protection of berried females, and a quota based on productivity of the resource. When productivity is low, the quota is low.

Eliminating the landing requirement relieves vessel owners from fishing for lobster when investing fishing effort would be poor business; therefore, an unforeseen and unintended economic burden will be removed. The point system has not resulted in and would not be expected to result in new entry. Permits are transferable, and permit holders would likely transfer permits rather than forfeit them. In addition, at low quota levels, there may be risks of overrunning the quota before the fishery can be closed.

Changes From the Proposed Rule

The changes in the Quota Management Program (§ 681.31) described in the proposed rule have not been approved; therefore, those revisions have been dropped from the final rule and § 681.31 remains unchanged. Also in the final rule, the definition of "forecast quota" is not added to replace the definition of "initial quota" because this was intended to implement one of the disapproved measures. No other changes were made to the proposed rule.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB under OMB Control Number 0648–0214. A notification requirement before offloading of the catch is added. The existing sales report is modified by eliminating certain data elements. First-level buyers can choose to submit a worksheet in lieu of allowing an authorized officer to access, inspect, and copy records relating to their sales. The estimated total reporting burden (assuming that all 15 permit holders will take 4 trips per year) is estimated at 5 minutes per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: November 4, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.2, the definition of "Land or Landing" is removed, and definitions of "Council", "First-level buyer", "Landing", "Management unit species", and "Off-loading" are added, in alphabetical order, to read as follows:

§ 681.2 Definitions.

* * * * *

Council means the Western Pacific Fishery Management Council established by the Magnuson Act.

* * * * *

First-level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit under this part or that is otherwise regulated under this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

* * * * *

Landing means bringing management unit species to shore for the purpose of offloading.

* * * * *

Management unit species means spiny lobster (*Panulirus* spp.), slipper lobster (family Scyllaridae), and Kona crab (family Raninidae).

Off-loading means removing management unit species from a vessel.

* * * * *

3. Section 681.5 is amended by revising paragraph (a), the heading in paragraph (b), paragraphs (c) and (d), and by adding a new paragraph (e) to read as follows:

§ 681.5 Recordkeeping and reporting.

(a) *Daily Lobster Catch Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must maintain onboard the fishing vessel, while fishing for lobster, an accurate and complete NMFS Daily Lobster Catch Report on a form provided by the Regional Director. All information specified on the form and specified in paragraph (b) of this section must be recorded on the form within 24 hours after the completion of the fishing day. The Daily Lobster Catch Reports for a fishing trip must be submitted to the Regional Director within 72 hours of each landing of lobsters.

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(b) *Information Requirements for Daily Lobster Catch Report.* * * *

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(c) *Lobster Sales Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must submit to the Regional Director, within 72 hours of off-loading of lobster, an accurate and complete Lobster Sales Report on a form provided by the Regional Director, and attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing/weighout slips have not been provided in time by the buyer(s).

(d) *Information Requirements for Lobster Sales Report.* The Lobster Sales Report must be signed and dated by the vessel operator and include the following information:

(1) Vessel information.

(i) Name of vessel.

(ii) Permit number.

(2) First-level buyer information.

(i) Name of first-level buyer(s).

(ii) Address(es) and phone number(s).

(3) Landing information.

(i) Date of off-loading.

(ii) Port of landing.

(4) Sales information.

(i) Total number or weight of spiny lobsters sold and total number or weight not sold by product type.

(ii) Total number or weight of slipper lobsters sold and total number or weight not sold by product type.

(iii) Total number or weight of octopus sold and total number or weight not sold by product type.

(iv) Total number or weight of other fishery products sold and total number or weight not sold by product type.

(v) If available, packing/weighout slip or other sales information, including information on revenue by species, product type, and size categories.

(e) *Modification of reporting requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the Daily Lobster Catch Report or the Lobster Sales Report.

4. Section 681.7 is amended by revising paragraph (b)(5) and by adding paragraph (b)(14) to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(5) Fail to report before landing or off-loading as specified in § 681.25.

* * * * *

(14) Refuse to make available to an authorized officer for inspection and copying any records that must be made available in accordance with § 681.11.

* * * * *

5. Section 681.11 is added to subpart A to read as follows:

§ 681.11 Availability of records for inspection.

(a) Upon request, any first-level buyer must allow an authorized officer to access, inspect, and copy all records relating to the harvest, sale, or transfer of management unit species taken by vessels that have permits issued under this part or that are otherwise subject to this part, including, but not limited to, information concerning:

(1) The name of the vessel involved in each transaction and the owner or operator of the vessel;

(2) The amount, number, and size of each species of fish involved in each transaction; and

(3) Prices paid by the buyer and proceeds to the seller in each transaction.

(b) This requirement may be met by furnishing the information on a worksheet provided by the Regional Director.

6. Section 681.25 is revised to read as follows:

§ 681.25 Notification requirements.

(a) The operator of any vessel that has on board management unit species taken from Permit Area I must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which lobsters will be landed; and

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of the lobster will begin.

(b) The Regional Director shall notify permit holders of any change in the reporting method and schedule at least 30 days prior to the opening of the fishing season.

7. In § 681.30, paragraph (c) is revised to read as follows:

§ 681.30 Limited access management program.

* * * * *

(c) *Renewal.* Applications for renewal of a limited entry permit for the next calendar year must be submitted to the Pacific Area Office by December 31.

* * * * *

[FR Doc. 94–27840 Filed 11–9–94; 8:45 am]
BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 59, No. 217
Thursday, November 10, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[FV94–929–3PR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Establishment of Late Payment and Increase in Interest Charges on Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the interest charge from 1 percent to 1½ percent per month and add a late payment charge of 5 percent on delinquent assessments owed by handlers under Marketing Order No. 929 covering cranberries grown in ten states. This rule would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order.

DATES: Comments must be received by December 12, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark Hessel or Patricia Petrella, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in ten states, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area.

Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

The Cranberry Marketing Committee (committee), the agency responsible for local administration of the order, met on August 23, 1994, and unanimously recommended modifying the administrative rules in effect under the order concerning delinquent handler assessments. The modification would increase the interest charge from 1 percent to 1½ percent per month and add a late payment charge of 5 percent on delinquent handler assessments.

Under section 929.41 of the order, each person who first handles cranberries is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's acquisitions.

Section 929.41 also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both.

Section 929.152 of the rules and regulations in effect under the order specifies that delinquent assessments be subject to an interest charge of 1 percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the committee. The committee currently schedules two assessment payments during the crop year which begins on September 1. Assessments equal to 100 percent of the prior crop year's assessment obligation are due on October 1. If a handler's October 1 payment is not sufficient to meet the current crop year's assessment obligation then a second payment, making up the difference, is required by April 1. If the October 1 payment exceeds the current crop year's

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assessment obligation then the committee refunds the difference on or before April 15.

Assessments are the main source of funds to pay committee expenses. The failure of handlers to pay assessment obligations promptly results in added expense and operational problems for the committee. The committee has frequently encountered difficulty in collecting assessments from some handlers. To attempt to collect, the committee must incur the added expense of sending out additional invoices and contacting each delinquent handler by phone, in person, or by fax. Nonpayment or late payment of assessments hampers the operation of the committee.

The authority to levy late payment and interest charges on delinquent assessments was added in 1973 to address the failure of handlers to pay their assessments promptly. Consequently, in 1978 an informal rulemaking change (43 FR 29764, July 11, 1978) was approved which established a one percent interest charge per month to address this problem.

However, the current interest charge of one percent per month is not sufficient to induce handlers to comply with the assessment provisions. Competition in the cranberry industry has increased. The number of handlers regulated by the order has increased, and many of these additional handlers have been more reluctant to pay assessments in a timely manner. The increase in charges on delinquent assessments would encourage these handlers to pay their assessments more promptly.

Charges would not be imposed until the end of the month if handler assessments are invoiced up to the 15th of the month and would be levied at the end of the following month if the handler assessment is invoiced later than the 15th of the month. Handlers would have ample time to pay their assessments and avoid incurring the additional charges. Any amount paid by the handler would be credited upon receipt in the committee office. These additional charges would apply to any unpaid assessments which become due to the committee after the effective date of this rule change.

A 30-day comment period is provided to allow interested persons an opportunity to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is proposed to be amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.152 is revised to read as follows:

§ 929.152 Delinquent assessments.

There shall be a late payment charge of five percent and an interest charge of 1½ percent per month applied to any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler: *Provided*, That if an assessment is first invoiced later than the 15th of the month, no late payment or interest charge shall be levied if such assessment is received at the committee office by the end of the following month in which the assessment was first invoiced to the handler.

Dated: November 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–27921 Filed 11–9–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–123–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes, Excluding Airplanes Equipped with Pratt & Whitney PW4000 and General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require replacement of certain fuse pins on the upper link of the inboard and outboard struts. This AD also would require inspections to detect corrosion or cracks of certain fuse pins, and replacement, if necessary. This proposal is prompted by reports of cracked or corroded fuse pins on the upper link of the inboard and outboard struts, which could result in fracturing of the pins. The actions specified by the proposed AD are intended to prevent failure of the strut and separation of an engine from the airplane due to fracturing of the fuse pins.

DATES: Comments must be received by January 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–123–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–123–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received several reports of cracked fuse pins on the upper link of the inboard and outboard struts on Boeing Model 747 series airplanes. Several pins also showed evidence of corrosion. The fuse pins involved in these reports were "bottle bore style" fuse pins installed in the forward position of the struts. The cracking initiated in a machining groove in the inner recess of the pin bore, and it propagated due to fatigue. Cracking of the pins occurred on some airplanes as early as 9,366 total flight cycles (on the airplane) and 42,493 total flight hours. One of the reports involved the complete fracture of both shear planes on the fuse pin; consequently, that pin had no load carrying capability. Analysis of several of the cracked fuse pins indicated that fracturing occurred in the recess area of the pin bore.

Corrosion may cause cracking of the fuse pins; this could lead to fracturing of the fuse pins. This condition, if not corrected, could result in failure of the strut and separation of an engine from the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, which describes procedures for replacement of "bulkhead style" and "bottle bore style" fuse pins, installed in the forward position of the upper link on the inboard and outboard struts, with either a 15–5 corrosion-resistant steel fuse pin (also known as a "third generation" pin) or a new bulkhead style pin. (This alert service bulletin specifies that installation of the third generation pin is preferred.) The alert service bulletin also describes procedures for repetitive detailed visual inspections to detect corrosion of the bulkhead style pins; magnetic particle inspections to detect cracks in these pins; and replacement of any cracked or corroded pin with a third generation pin or a new bulkhead style pin.

The alert service bulletin references Boeing Service Bulletin 747–54–2155, dated September 23, 1993, as an additional source of service information for replacement of certain fuse pins, installed in the forward and aft positions of the upper link, with third generation pins. (Although there have been no reports of cracked pins in the aft position, replacement of the pin in the forward position with a third generation pin necessitates that the aft pin also be replaced with a third generation pin in order to preserve the function and location of the primary structural fuse.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of bottle bore style fuse pins, installed in the forward position of the upper link on the inboard and outboard struts, with either third generation fuse pins or new bulkhead style pins. This proposed AD also would require repetitive detailed visual inspections to detect corrosion of bulkhead style fuse pins; magnetic particle inspections to detect cracks in those pins; and replacement of any corroded or cracked bulkhead style fuse pin with a third generation fuse pin or with a new bulkhead style pin. Installation of a third generation fuse pin, if accomplished, would constitute terminating action for the inspection requirements of the proposed AD. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The manufacturer has advised that it is currently developing a modification program for the engine strut that will positively address the unsafe condition addressed by this AD. Once this modification program is developed, approved, and available, the FAA may consider additional rulemaking.

There are approximately 869 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 147 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 122 work hours per airplane to accomplish the proposed replacement of fuse pins with bulkhead style pins. The average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators who replace fuse pins with bulkhead style pins is estimated to be $7,320 per airplane.

It would take approximately 140 work hours per airplane to accomplish the proposed replacement of fuse pins with third generation pins. The average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators who replace fuse pins with third generation pins is estimated to be $8,400 per airplane.

It would take approximately 1.5 work hours per airplane to accomplish the proposed inspections (in addition to the work hours necessary for fuse pin replacement). The average labor rate is $60 per work hour. Based on these figures, the total cost impact on U.S. operators for the proposed inspections is estimated to be $90 per airplane per inspection.

The cost of required replacement parts would vary from airplane to airplane, depending upon the current airplane configuration.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the proposed inspection and replacement actions were to be conducted as "stand alone" actions. However, in actual practice, these actions, for the most part, would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be minimal.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed

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AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–123–AD.

Applicability: Model 747 series airplanes; line numbers 1 through 967 inclusive, and 969 through 992 inclusive; excluding airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6–80C2 series engines; certificated in any category.

Note 1: This AD does not require that the actions be accomplished on the struts of airplanes having straight bore fuse pins (installed on Model 747 series airplanes equipped with Pratt & Whitney PW4000 or General Electric CF6–80C2 series engines) or 15–5 corrosion resistant steel (third generation) fuse pins.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and loss of an engine due to corrosion or cracking of the fuse pins, accomplish the following:

(a) For airplanes having bottle bore style fuse pins in the forward position on the upper link: Replace any bottle bore style fuse pin with a new bulkhead style fuse pin in the forward position, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward position, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 5,000 landings on the fuse pin, or within 5 years since installation of the pin, whichever occurs first. Or

(2) Within 6 months after the effective date of this AD.

Note 2: Third generation fuse pins are installed in pairs (in the forward and aft positions). Therefore, replacement of an individual upper link fuse pin in the forward position with a third generation pin also would necessitate replacement of the pin in the aft position.

Note 3: The alert service bulletin references Boeing Service Bulletin 747–54–2155, dated September 23, 1993, as an additional source of service information for replacement of the fuse pins with 15–5 corrosion resistant steel (third generation) fuse pins. Installation of these third generation fuse pins is preferred over installation of bulkhead style fuse pins.

(b) For airplanes having bulkhead style fuse pins in the forward position on the upper link: Perform a detailed visual inspection to detect corrosion of the pins, and a magnetic particle inspection to detect cracks, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994, at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 8,000 landings on the fuse pin, or within 8 years since installation of the pin, whichever occurs first. Or

(2) Within 12 months after the effective date of this AD.

(c) If no corrosion or crack is found during the inspection required by paragraph (b) of this AD, repeat the inspections thereafter at the intervals specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For the inboard and outboard struts on airplanes other than those identified in paragraph (c)(2) of this AD: Repeat the inspections at intervals not to exceed 1,000 landings.

(2) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: Repeat the inspections at intervals not to exceed 2,000 landings.

Note 4: The outboard struts of airplanes equipped with Rolls-Royce RB211–524G or –524H series engines are equipped with thick wall "4330 steel" bulkhead style fuse pins in the forward position of the upper link. Crack propagation to critical length in these thick wall pins is slower than for pins installed on the struts of airplanes equipped with engines other than the Rolls-Royce RB211–524G or –524H series.

(d) If any corrosion or crack is found during any inspection required by this AD, prior to further flight, replace the corroded or cracked pin with either a new bulkhead style fuse pin in the forward position of the upper link, or with 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994.

(1) If the corroded or cracked fuse pin is replaced with a new bulkhead style fuse pin, prior to the accumulation of 8,000 landings on the new pin, or within 8 years since installation of the new pin, whichever occurs first, perform a detailed visual inspection to detect corrosion of the new pin, and a magnetic particle inspection to detect cracks of the new pin, in accordance with Boeing Alert Service Bulletin 747–54A2166, dated April 28, 1994. Repeat these inspections thereafter at the interval specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) For the inboard and outboard struts on airplanes other than those identified in paragraph (d)(1)(ii) of this AD: Repeat the inspections at intervals not to exceed 1,000 landings.

(ii) For the outboard struts on airplanes equipped with Rolls-Royce RB211–524G or –524H series engines: Repeat the inspections at intervals not to exceed 2,000 landings.

(2) If the corroded or cracked fuse pin is replaced with a 15–5 corrosion resistant steel (third generation) fuse pin, no further action is required by this AD.

(e) Installation of 15–5 corrosion resistant steel (third generation) fuse pins in the forward and aft positions of the upper link on the inboard or outboard strut constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27852 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–92–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that currently requires certain inspections and structural modifications. This action would require additional inspections and structural modifications. This proposal is prompted by an evaluation conducted by the Airworthiness Assurance Working Group (AAWG), Model DC–9/MD–80 Task Group, which identified additional modifications for mandatory action. The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only by repetitive inspections for known service problems.

DATES: Comments must be received by December 23, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5323; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–92–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 6, 1990, the FAA issued AD 90–18–03, amendment 39–6701 (55 FR 34704, August 24, 1990), applicable to Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, to require certain inspections and structural modifications. That action was prompted by reports of incidents involving fatigue cracking, corrosion, and stress corrosion cracking in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The requirements of that AD are intended to prevent degradation in the structural capabilities of the affected airplanes.

Since the issuance of that AD, the Airworthiness Assurance Working Group (AAWG), Model DC–9/MD–80 Task Group, comprised of representatives from operators of Model DC–9/MD–80 series airplanes, the manufacturer, and the FAA, has completed its review of certain service bulletins that are applicable to aging Model DC–9/MD–80 series airplanes. The Task Group has recommended these service bulletins for mandatory inspection and structural modification in order to reduce the potential for major structural failure of those airplanes.

Consequently, McDonnell Douglas has issued Revision B to Report No. MDC K1572, "DC–9/MD80 Aging Aircraft Service Action Requirements Document," dated January 15, 1993. The Task Group's most recent recommendations for mandatory actions are contained in Tables 2.3, 2.4, and 3.1 of that document. (The actions contained in Tables 2.1 and 2.2 were made mandatory by AD 90–18–03.) The FAA has reviewed and approved that document. Tables 2.3 and 2.4 of the document reference the following service bulletins:

1. One service bulletin that describes inspections and modification of the slat drive mechanism;

2. Four service bulletins that describe inspections and modifications of the doors;

3. Eleven service bulletins that describe inspections and modifications of the fuselage;

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4. Four service bulletins that describe inspections and modifications of the horizontal stabilizers;

5. Two service bulletins that describe inspections and modifications of the wings;

6. One service bulletin that describes inspections and modification of the engine thrust reverser system;

7. One service bulletin that describes inspections and modification of the nose gear steering;

8. Two service bulletins that describe inspections and modifications of the engine pylon;

9. One service bulletin that describes inspections and modification of the rudder; and

10. Two service bulletins that describe inspections and modifications of the main landing gear structures.

Table 3.1 of the document references the following service bulletins for mandatory inspections:

1. One service bulletin that describes inspections of the doors;

2. One service bulletin that describes inspections of the engine pylons; and

3. Two service bulletins that describe inspections of the wings. (These two service bulletins were made mandatory by AD 90–18–03.)

The Task Group has also recommended, for mandatory modification, the actions contained in McDonnell Douglas DC–9 Service Bulletin 53–230, Revision 1, dated January 12, 1993. The FAA has reviewed and approved this service bulletin, which describes procedures for installation of doublers and clips at the intersections of upper longerons/intercostals and fuselage frames between longerons 10L and 10R at various overwing stations between Y=484.000 and Y=851.000, as applicable, depending upon series of the airplane. Accomplishment of these modifications would terminate the inspections required by AD 88–24–08 R2, amendment 39–6469 (55 FR 1002, January 11, 1990), which requires external eddy current inspection to detect cracking of the fuselage skin and certain longerons, internal visual inspections of certain longerons, and repair of any findings of cracking.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–18–03 to require additional structural modifications and inspections. The actions would be required to be accomplished in accordance with the document described previously.

There are approximately 892 Model DC–9 and C–9 (military) series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 568 Model DC–9 and C–9 (military) series airplanes of U.S. registry were originally affected by AD 90–18–03. The requirements of that AD were estimated to take approximately 946 work hours to accomplish, at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $15,140 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–18–03 on U.S. operators of Model DC–9 and C–9 (military) series airplanes would be $38,152,560, or $67,170 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 511 Model DC–9 and C–9 (military) series airplanes of U.S. registry would be affected by the new requirements specified in this proposed AD. The new additional requirements proposed by this AD action would take approximately 638 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would cost an additional $37,027 per airplane. Based on these figures, the total additional cost impact of this proposed AD on U.S. operators is estimated to be $36,851,787, or $72,117 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, and tool acquisition.)

There are approximately 1,090 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet.

The FAA estimates that 173 Model DC–9–80 series airplanes and Model MD–88 airplanes of U.S. registry were originally affected by AD 90–18–03. The requirements of that AD were estimated to take approximately 47 work hours to accomplish, at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $752 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–18–03 on U.S. operators of Model DC–9–80 series airplanes and Model MD–88 airplanes would be $577,301, or $3,337 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 615 Model DC–9–80 series airplanes and Model MD–88 airplanes of U.S. registry would be affected by the new requirements specified in this proposed AD. This increase in the number of affected airplanes is due to various reasons, including transfer of ownership and the fact that additional airplanes have accumulated time-in-service since the issuance of AD 90–18–03 and have reached the threshold for modification/inspection. The new additional requirements proposed by this AD action would take approximately 13 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would cost an additional $943 per airplane. Based on these figures, the total additional cost impact of this proposed AD on U.S. operators is estimated to be $1,019,670, or $1,658 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished the currently required or the newly proposed requirements of this AD action; however, it can reasonably be assumed that a majority of affected operators have already initiated the inspections and structural modifications required by AD 90–18–03 (retained in paragraphs (a) and (d) of this AD) and many may have already initiated the additional inspections and structural modifications proposed in this new AD action.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be minimal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6701 (55 FR 34704, August 24, 1990), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 94–NM–92–AD. Supersedes AD 90–18–03, Amendment 39–6701.

Applicability: Model DC–9–10, -20, -30, -40, -50 series airplanes; Model DC–9–81 (MD–81), -82 (MD–82), -83 (MD–83), and -87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Within the threshold for inspections specified in the service bulletins listed in either Table 2.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.2 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of McDonnell Douglas Report No. MDC K1572, "DC–9/MD–80 Aging Aircraft Service Action Requirements Document," Revision A, dated June 1, 1990 (hereinafter referred to as "SARD, Revision A"), or within one repetitive inspection period specified in those service bulletins after September 24, 1990 (the effective date of AD 90–18–03, Amendment 39–6701), whichever occurs later: Inspect to detect cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in either Table 2.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.2 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision A, until the applicable terminating modification required by paragraph (d) of this AD is accomplished.

Note 1: Paragraph (a) of this AD restates the requirements for an initial inspection and the repetitive inspections contained in paragraph A. of AD 90–18–03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–18–03, paragraph (a) of this AD requires that the next scheduled inspection be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph A. of AD 90–18–03.

(b) Within the threshold for inspections specified in the service bulletins listed in Tables 2.3 and 3.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.4 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of McDonnell Douglas Report No. MDC K1572, "DC–9/MD–80 Aging Aircraft Service Action Requirements Document," Revision B, dated January 15, 1993 (hereinafter referred to as "SARD, Revision B"), or within one repetitive inspection period specified in those service bulletins after the effective date of this AD, whichever occurs later: Inspect to detect cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in either paragraph (b)(1) or (b)(2) of this AD, as applicable, until the applicable terminating modification required by paragraph (e) of this AD is accomplished.

(1) For Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes: The service bulletins listed in Tables 2.3 and 3.1 of SARD, Revision B. Or

(2) For Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes: The service bulletins listed in Table 2.4 of SARD, Revision B.

(c) If any crack is found during any inspection required by this AD, prior to further flight, either accomplish the applicable terminating modification in accordance with paragraph (d) or (e) of this AD, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Detection of any discrepancy, other than cracking, necessitates appropriate corrective action in accordance with the provisions of part 43 of the Federal Aviation Regulations (14 CFR part 43).

(d) Prior to reaching the incorporation thresholds listed in either Table 2.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.2 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision A or Revision B, or within 4 years after September 24, 1990 (the effective date of AD 90–18–03), whichever occurs later: Accomplish the structural modifications specified in the service bulletins listed in either Table 2.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.2 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision A or Revision B. Accomplishment of these modifications constitutes terminating action for the applicable inspections required by paragraph (a) of this AD.

Note 3: Paragraph (d) of this AD restates the modification requirements of paragraph B. of AD 90–18–03. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraph B. of AD 90–18–03 have been accomplished previously, paragraph (d) of this AD does not require that they be repeated.

Note 4: The service bulletin revision levels listed under "Recommended Modification" in either Table 2.1 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.2 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision B, are acceptable revisions for modifications accomplished prior to September 24, 1994.

(e) Prior to reaching the incorporation thresholds listed in either Table 2.3 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.4 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision B, or within 4 years after the effective date of this AD, whichever occurs later: Accomplish the structural modifications specified in the service bulletins listed in either Table 2.3 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.4 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes], as applicable, of SARD, Revision B.

Accomplishment of this modification constitutes terminating action for the applicable inspections required by paragraph (b) of this AD.

Note 5: The service bulletin revision levels listed under "Recommended Modification" in either Table 2.3 [for Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes], or Table 2.4 [for Model DC–9–81, -82, -83, -87 (MD–81, -82, -83, -87), and Model MD–88 airplanes] of SARD, Revision B, are acceptable revisions for modifications accomplished prior to the effective date of this AD.

Note 6: The modifications required by paragraphs (d) and (e) of this AD do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for those specified inspection requirements.

(f) For Model DC–9–10, -20, -30, -40, -50, and C–9 (military) series airplanes: Prior to the accumulation of 100,000 total landings, accomplish the modifications specified in McDonnell Douglas DC–9 Service Bulletin 53–230, Revision 1, dated January 12, 1993.

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Accomplishment of these modifications constitute terminating action for the inspections required by AD 88-24-06 R2, amendment 39-6460.

(g) Accomplishment of the modifications in accordance with the service bulletins listed in Tables 2.1 and 2.3 [for Model DC-9-10, -20, -30, -40, -50, and C-9 (military) series airplanes], or Tables 2.2 and 2.4 [for Model DC-9-81, -82, -83, -87 (MD-81, -82, -83, -87), and Model MD-88 airplanes] of SARD, Revision A or B, terminates the individual inspection requirements of the applicable service bulletin.

(h) The requirements of this AD exclude the actions specified in the following McDonnell Douglas service bulletins that are referenced in the following tables of SARD, Revision A or B:

Table(s)	Service Bulletin
2.1 and 2.2	MD-80 Service Bulletin 53-186.
2.2	MD-80 Service Bulletin 53-216

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(j) Alternative methods of compliance previously granted for amendment AD 90-18-03, 39-6701 continue to be considered as acceptable alternative methods of compliance with this amendment.

(k) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-27853 Filed 11-9-94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 123 and 148

RIN 1515-AB56

Examination of Baggage

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations in order to more clearly reflect Customs statutory authority to open and examine baggage and vehicles without the permission of the owners of the baggage and vehicles. These amendments will make the pertinent Customs regulations consistent with Customs statutory authority to inspect and search baggage and vehicles coming into the United States.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations & Rulings, 1099 14th Street NW., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lars-Erik Hjelm, Office of the Chief Counsel, U.S. Customs Service, 202-927-6900.

SUPPLEMENTARY INFORMATION:

Background

There are several statutory provisions which give the U. S. Customs Service the authority to open and examine baggage. The primary provisions are sections 482, 1461, 1462, 1496, 1581 and 1582 of Title 19, United States Code (19 U.S.C. 482, 1461, 1462, 1496, 1581, and 1582). Section 482 authorizes Customs to search vehicles and persons and to seize undeclared merchandise or merchandise imported contrary to law. Section 1461 authorizes Customs to inspect all merchandise and baggage brought into the United States from contiguous countries. Section 1461 also authorizes Customs officers to require that owners of baggage open it or furnish keys for doing so.

Section 1462 authorizes Customs to inspect the contents of all baggage and vehicles brought into the United States. Section 1462 also authorizes Customs to seize and forfeit the contents of such imported baggage or vehicle which is subject to duty or which constitutes a prohibited importation. Section 1496 authorizes Customs to examine the baggage of people arriving in the United States. Section 1581(a) authorizes Customs to board vessels and vehicles and to examine, inspect and search the vessels or vehicles and everyone and everything thereon. Section 1582 authorizes the Secretary of the Treasury to write regulations concerning the search of persons and baggage. It also authorizes officers or agents of the United States Government to detain and search, under such regulations, any persons coming into the United States from foreign countries.

Proposal

The statutes cited above grant Customs broad authority to inspect, search and seize baggage and vehicles coming into the United States. The current Customs Regulations do not accurately reflect these statutes; therefore, Customs intends to revise the regulations, specifically 19 CFR 123.63 and 19 CFR 148.21, to more clearly reflect the fact that Customs has the statutory authority to open and examine baggage, vehicles and compartments thereof without the permission of the owners. Of course, if at all possible, Customs will ask the owner or operator to unlock the vehicle, compartment or baggage.

Comments

Before adopting this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Inspection Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, D.C.

Regulatory Flexibility Act and Executive Order 12866

Based upon the supplementary information set forth above and because the opening and examination of baggage and merchandise is mandated by the statutes cited above, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 148

Airmen, Customs duties and inspection, Foreign officials, Government employees, International organizations, Reporting and recordkeeping requirements, Vessels.

Proposed Amendments

For the reasons set forth above, it is proposed to amend parts 123 and 148 of the Customs Regulations (19 CFR parts 123 and 148) as set forth below.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 and the specific relevant authority citation for § 123.63 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 123.63 also issued under 19 U.S.C. 1461, 1462;

* * * * *

2. It is proposed to revise § 123.63 to read as follows:

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers are authorized to unlock, open, and examine vehicles and compartments thereof for the purposes of examining baggage under sections 461, 462, 496, 581(a) and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, 1581(a), and 1582) and 19 U.S.C. 482. However, to the extent practical, the Customs officer should ask the owner or operator to unlock such vehicle or compartment first. Where the owner or operator is unavailable or refuses to unlock the vehicle or compartment or where it is not practical to ask the owner or operator to unlock the same, it shall be opened by the Customs Officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs Officer, the whole contents and the vehicle shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

(b) *Inspection of baggage.* A Customs officer has the right to inspect all merchandise and baggage brought into the United States from contiguous countries under 19 U.S.C. 1461. He also has the right, under the same statute, to require that owners of such baggage open it or furnish keys for doing so. Where the owner or agent is unavailable or refuses to open the baggage or furnish keys or where it is not practical to ask the owner or agent to open or furnish keys to the same, it shall be opened by the Customs Officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs Officer, the whole contents and the baggage shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for Part 148 will be revised to read as set forth below, and the specific sectional authority for § 148.21 will continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States).

Section 148.21 is also issued under 19 U.S.C. 1461, 1462;

* * * * *

2. It is proposed to revise § 148.21 to read as follows:

§ 148.21 Opening of baggage, compartments, or vehicles.

A Customs officer has the right to open and examine all baggage, compartments and vehicles brought into the United States under Sections 461, 462, 496 and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, and 1582) and 19 U.S.C. 482. To the extent practical, the owner or his agent should be asked to open the baggage, compartment or vehicle first. If the owner or his agent is unavailable or refuses to open the baggage, compartment, or vehicle, it shall be opened by the Customs officer. If any article subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the baggage or vehicle shall be subject to forfeiture, pursuant to 19 U.S.C. 1462.

Peter J. Baish,

Acting Commissioner of Customs.

Approved: October 20, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-27907 Filed 11-9-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 941087-4287]

RIN 0651-AA52

Amendment to Rules for Extension of Patent Term

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend the rules directed to the extension of patent term to implement the provisions of Public Law 103-179 (December 3, 1993) and to clarify the requirements for eligibility. The proposed rules establish procedures for the Commissioner to issue an interim extension of the term of a patent where the original term would expire before a product covered by the patent has received regulatory approval for commercial marketing or use. The rules also are proposed to be amended to clarify that an application for patent term extension must be based on regulatory activities performed by the patent owner or its agent.

DATES: Written comments must be submitted on or before January 12, 1995. There will be no oral hearing.

ADDRESSES: Address written comments to Commissioner of Patents and Trademarks, Washington, D.C. 20231 marked to the attention of Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, or by FAX to (703) 305-8825.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn by telephone at (703) 305-9054 or Gerald A. Dost by telephone at (703) 305-9282 or by mail addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231 marked to the attention of Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, or by FAX to (703) 305-8825.

SUPPLEMENTARY INFORMATION: Patent term extension has been available under 35 U.S.C. 156 for patents that claim certain products that are subject to regulatory review before being commercially marketed or used. Prior to enactment of Public Law 103-179, eligibility for patent term extension was dependent on regulatory approval of the product before the original patent term expired. Public Law 103-179 has made it possible, under appropriate circumstances, to obtain interim extensions of patent term where the regulatory process is likely to extend

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beyond the expiration of the patent term.

One purpose of the proposed rule change is to revise the present regulations contained in 37 CFR Part 1, Subpart F, to include provisions for interim extension of the patent term prior to regulatory approval of the product that can now form the basis of patent term extension. These proposed rules set forth procedures that govern the content and submission of applications for an interim extension of a patent term, and procedures governing the interim extension determination and issuance of interim patent term extension certificates by the Office.

Initial guidelines directed to the preparation and filing of applications for interim extensions of patent terms as authorized by Public Law 103–179 were published as "Guidelines For Interim Extension Under 35 U.S.C. 156(d)(5) of a Patent Term Prior To Regulatory Approval of a Product For Commercial Marketing or Use—Public Law 103–179 (December 3, 1993)" in the *Official Gazette* at 1159 Off. Gaz. Pat. Office 12 (February 1, 1994). It is intended that those guidelines will continue in effect until the promulgation of final rules based on the proposed rulemaking.

It is important to keep in mind the distinction between an interim patent term extension under § 156(e)(2) and the interim patent term extension provided for by Public Law 103–179 under § 156(d)(5). The former applies after regulatory approval has occurred and is addressed in 37 CFR 1.706. Interim patent term extensions under § 156(e)(2) are not affected by the proposed changes to the rules. The latter applies before regulatory approval has occurred and is addressed in 37 CFR 1.780 and 1.790.

The eligibility criteria for obtaining an interim extension under § 156(d)(5) are substantially the same as for obtaining patent term extension under § 156 after regulatory approval has occurred. Under the provisions of Public Law 103–179, a patent owner or its agent may submit an application for an interim patent term extension within six months, but not later than 15 days, of the original expiration date of the patent. At the time the application is submitted, the regulatory review period must have advanced to the approval phase as defined in § 156(g), but must not have ended. For a new drug, for example, the approval phase is defined in § 156(g)(1)(B)(ii) as the period beginning on the date a new drug application was initially submitted for the new drug under section 505 of the Federal Food, Drug and Cosmetic Act.

The content of the application for interim extension is proposed to be the same as for an application for patent term extension following regulatory review, with certain modifications necessitated by the circumstances. For example, the application for interim term extension will not be required to contain information about regulatory approval since that event has not occurred. A fee is proposed for each interim extension application filed before regulatory approval occurs—$400.00 for the initial application for interim extension and $200.00 for each supplementary application for interim extension.

The processing of an application for interim patent term extension under Pub. L. No. 103–179 will not require transmission of a copy of the application to the regulatory agency. However, it is contemplated that the Office will consult with the regulatory agency, as it has been doing for the past 10 years under § 156, on the question of eligibility for patent term extension.

If the patent is eligible for extension but for the fact that it is still under regulatory review, the Office can extend the patent term in one-year increments not to exceed five years from the expiration date. Any such extension would terminate 60 days after market approval. Before the 60-day period expires, the patentee could submit an application for patent term extension, supplying any additional information necessary to obtain any additional extension available under § 156.

The interim extension of patent term available under § 156(d)(5) cannot exceed the extension from the original patent term that would be available after regulatory approval. Thus, for example, a patent that was subject to the two-year extension limitation of § 156(g)(6)(C), could not obtain interim extension beyond two years from the original patent term expiration date. However, after an interim extension under § 156(d)(5) has been granted, the amount of patent term extension available after regulatory review is controlled by either § 156(d)(5) or § 156(g)(6) (A) or (B). In no case would the extension go beyond five years from the original expiration date of the patent. However, for those situations falling under § 156(g)(6)(C), where regulatory approval occurs within the two-year period after the original expiration date of the patent, the extension after approval is measured from the date on which the product receives permission for commercial marketing or use. § 156(d)(5)(E)(ii).

Review of recent applications for patent term extension has revealed that the provisions of 37 CFR 1.785(c) may be read as being inconsistent with 35 U.S.C. 156. The statute requires that an application for patent term extension be filed by the patent owner or its agent. 35 U.S.C. 156(d)(1). The statute further requires under § 156(d)(1)(D) a description of the activities undertaken by the applicant (i.e., the patent owner or its agent) during the regulatory review period, and specifies in § 156(d)(2)(B)(i) that the lack of due diligence by the applicant during the regulatory review period may be taken into account. Given these statutory requirements, the Office has held that in order to be eligible for patent term extension, the patent owner or its agent must have undertaken the activities that lead to regulatory approval. If a patent owner has not been involved, either directly or indirectly, in the regulatory review process, that patent owner has not lost any effective patent life since it never invested time and resources necessary to obtain approval for commercial marketing or use. Accordingly, to the extent that § 1.785 could be interpreted to permit a patent owner to obtain a patent term extension where neither the patent owner nor its agent were responsible for activities leading to regulatory approval, it was misleading and contrary to both the letter and intent of § 156.

Discussion of Specific Rules

Section 1.750, if amended as proposed, would be changed to also provide for an eligibility determination which will be made on applications for interim extension filed in compliance with § 1.790. The section is further modified to limit the mailing of a notice of a final determination to applications filed in compliance with § 1.740 after the regulatory approval process is complete.

Section 1.760, if amended as proposed, would have the title recite that the section is directed to requests for interim extensions of patent term under 35 U.S.C. 156(e)(2), to distinguish it from interim extensions available under Pub. Law No. 103–179, proposed to be addressed in § 1.780.

Section 1.765(a) if amended as proposed, would change the phrase (two occurrences) "the Office of the Secretary" to read "the Office or the Secretary." The change provides that the applicant has a duty of disclosure to both the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture.

Section 1.780, if amended as proposed, would provide that a certificate of interim extension under 35 U.S.C. 156(d)(5) will be issued to the applicant. Section 1.780 would also provide for notification of the issuance of the certificate of interim extension

under 35 U.S.C. § 156(d)(5), including the identity of the product currently under regulatory review, to be published in the **Federal Register.**

Section 1.785, if amended as proposed, would require the applicant for extension, i.e., the patent owner or its agent, to also have been the marketing applicant who obtained regulatory approval of the product for commercial marketing or use. While regulatory approval can be obtained by a party other than the patent owner, that other party must have been an agent of the patent owner when obtaining the regulatory approval in order for the patent owner to be eligible to apply for extension of the patent term.

Section 1.790, if added as proposed, would provide for one or more interim extensions for periods of up to one year for patents where the applicable regulatory review period described in paragraph (1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii) of section 156(g) that began for the patented product may extend beyond the expiration of the patent term in effect.

Paragraph (a) of proposed § 1790 defines the time periods in which the initial interim extension application and each subsequent interim extension application must be filed in the Office. In no event will interim extensions be granted under proposed § 1.790 for a period of extension longer than that to which the applicant would be entitled to under 35 U.S.C. 156(c).

Paragraph (b) of proposed § 1.790 would establish that the content requirements of the initial interim extension applications are substantially the same as the content requirements for a formal application for extension of patent term under § 1.740 and a complete application under § 1.741, except that the content requirements relate to a product currently undergoing regulatory review. In other words, the interim extension applications contain information available to the patent owner or its agent at the time the application is filed.

Paragraph (c) of proposed § 1.790 permits each interim extension application after the initial interim extension application to be limited to a request for a subsequent interim extension along with a statement that the regulatory review period has not been completed and any materials or information required under §§ 1.740 and 1.741 not present in the preceding interim extension application.

Section § 1.795, if added as proposed, would provide that any interim extension granted under 35 U.S.C. 156(d)(5) terminates at the end of the 60-day period beginning on the date on which the product involved receives permission for commercial marketing or use. If within that 60-day period the patent owner or its agent files additional information required under 35 U.S.C. 156(d)(1) not contained in the applications for interim extension, the patent shall be further extended in accordance with the provisions of 35 U.S.C. 156.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., E.O. 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The proposed rule changes have been determined to be not significant for the purposes of E.O. 12866.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the proposed rules would affect only a very small number of patents eligible for interim patent term extension.

The Office has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in E.O. 12612.

These rule changes will impose no substantial additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The paperwork burden imposed by adherence to the patent term extension rules is currently approved by the Office of Management and Budget under Control Number 0651–0020. Comments relating to this requirement should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Commerce, Patent and Trademark Office.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interest, Courts, Inventions and patents, Lawyers.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 156, the Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below:

It is proposed to amend 37 CFR Part 1, Subparts A and F, as follows wherein removals are indicated by brackets and additions by arrows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. (a) An authority citation for 37 CFR Part 1, subpart A would be added to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

1. (b) The authority citation for 37 CFR Part 1, subpart F would continue to read as follows:

Authority: 35 U.S.C. 6 and 156.

2. Section 1.20 is proposed to be amended by revising paragraph (j) to read as follows:

§ 1.20 Post-issuance fees.

* * * * *

(j) For filing an application for extension of the term of a patent

>(1) Application for extension under § 1.740<[(§ 1.740)]—$1,000.00

>(2) Initial application for interim extension under § 1.790—$400.00

(3) Subsequent application for interim extension under § 1.790—$200.00<

3. Section 1.750 is proposed to be revised to read as follows:

§ 1.750 Determination of eligibility for extension of patent term.

A determination as to whether a patent is eligible for extension may be made by the Commissioner solely on the basis of the representations contained in the application for extension filed in compliance with § 1.740> or § 1.790<. This determination may be delegated to appropriate Patent and Trademark Office officials and may be made at any time before the certificate of extension is issued. The Commissioner or other appropriate officials may require from applicant further information or make such independent inquiries as desired before a final determination is made on whether a patent is eligible for extension. >In an application for extension filed in compliance with § 1.740,a< [A] notice will be mailed to applicant containing the determination as to the eligibility of the patent for extension and the period of time of the extension, if any. This notice shall constitute the final determination as to the eligibility and any period of extension of the patent. A single request for reconsideration of a final determination may be made if filed by the applicant within such time as may be set in the notice of final determination or, if no time is set, within one month from the date of the final determination. The time periods set forth herein are subject to the provisions of [37 CFR]> § <1.136.

4. In § 1.760, the heading is proposed to be revised to read as follows:

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§ 1.760 Interim extension of patent term > under 35 U.S.C. § 156(e)(2)<.

5. Section 1.765(a) is proposed to be revised to read as follows:

§ 1.765 Duty of disclosure in patent term extension proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture rests on the patent owner or its agent, on each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding. All such individuals who are aware, or become aware, of material information adverse to a determination of entitlement to the extension sought, which has not been previously made of record in the patent term extension proceeding must bring such information to the attention of the Office [of] > or < the Secretary, as appropriate, in accordance with paragraph (b) of this section, as soon as it is practical to do so after the individual becomes aware of the information. Information is material where there is a substantial likelihood that the Office [of] > or < the Secretary would consider it important in determinations to be made in the patent term extension proceeding.

6. Section 1.780 is proposed to be revised to read as follows:

§ 1.780 Certificate of extension of patent term.

If a determination is made pursuant to § 1.750 that a patent is eligible for extension and that the term of the patent is to be extended, a certificate of extension, under seal,>or certificate of interim extension under 35 U.S.C. 156(d)(5)<will be issued to the applicant for the extension of the patent term. Such certificate will be recorded in the official file of the patent and will be considered as part of the original patent. Notification of the issuance of the certificate of extension will be published in the Official Gazette of the Patent and Trademark Office. >Notification of the issuance of the certificate of interim extension under 35 U.S.C. 156(d)(5), including the identity of the product currently under regulatory review, will be published in the Official Gazette of the Patent and Trademark Office and in the Federal Register.< No certificate of extension will be issued if the term of the patent cannot be extended, even though the patent is otherwise determined to be eligible for extension. In such situations the final determination made pursuant to § 1.750 will indicate that no certificate will issue.

7. Section 1.785 is proposed to be revised to read as follows:

§ 1.785 Multiple applications for extension of term of the same patent or of different patents for the same regulatory review period for a period.

(a) Only one patent may be extended for a regulatory review period for any product (§ 1.720[(g)]>(h)<). If more than one application for extension of the same patent is filed, the certificate of extension of patent term, if appropriate, will be issued based upon the first filed application for extension.

(b) If more than one application for extension is filed by a single applicant which seeks the extension of the term of two or more patents based upon the same regulatory review period, and the [applications or] > patents are < otherwise eligible for extension pursuant to the requirements of this subpart, in the absence of an election by the applicant, the certificate of extension of patent term, if appropriate, will be issued upon the application for extension of the patent > term < having the earliest date of issuance of those patents for which extension is sought.

(c) If an application for extension is filed which seeks the extension of the term of a patent based upon the same regulatory review period as that relied upon in one or more applications for extension pursuant to the requirements of this subpart, the certificate of extension of patent term will be issued on the application only if [—

(1) The applicant for extension] > the patent owner or its agent < is the holder of the regulatory approval granted with respect to the regulatory review period [, or

(2) The holder of the regulatory approval granted with respect to the regulatory review period is not an applicant and the applicant for extension holds express and exclusive authorization from the holder of the regulatory approval to rely upon the regulatory review period as the basis for the application for extension, or

(3) The holder of the regulatory approval granted with respect to the regulatory review period is not an applicant and no applicant for extension holds an express and exclusive authorization from the holder of the regulatory approval to rely upon the regulatory review period as the basis for the application for extension and the application is for extension of the patent having the earliest date of issuance of those patents for which extension is sought based upon the same regulatory review period].

(d) An application for extension shall be considered complete and formal regardless of whether it contains the identification of the holder of the regulatory approval granted with respect to the regulatory review period [or express and exclusive authorization from the holder of the regulatory approval to rely on the regulatory review period for extension]. When an application contains such information, or is amended to contain such information, it will be considered in determining whether an application is eligible for an extension under this section. A request may be made of any applicant to supply such information within a non-extendable period of not less than one (1) month whenever multiple applications for extension of more than one patent are received and rely upon the same regulatory review period. Failure to provide such information within the period for response set shall be regarded as conclusively establishing that the applicant is not the holder of the regulatory approval [and is not expressly and exclusively authorized by the holder of the regulatory approval to seek the extension being sought].

(e) Determinations made under this section shall be included in the notice of final determination of eligibility for extension of the patent term pursuant to § 1.750 and shall be regarded as part of that determination.

8. Section 1.790 is proposed to be added to read as follows:

>§ 1.790 Interim extension of patent term under 35 U.S.C. 156(d)(5).

(a) An owner of record of a patent or its agent who reasonably expects that the applicable regulatory review period described in paragraph (1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii) of subsection (g) of 35 U.S.C. 156 that began for a product that is the subject of such patent may extend beyond the expiration of the patent term in effect may submit one or more applications for interim extensions for periods of up to one year each. The initial application for interim extension must be filed during the period beginning 6 months and ending 15 days before the patent term is due to expire. Each subsequent application for interim extension must be filed during the period beginning 60 days before and ending 30 days before the expiration of the preceding interim extension. In no event will the interim extensions granted under this section be longer than the maximum period of extension to which the applicant would be entitled under 35 U.S.C. 156(c).

(b) A complete application for interim extension under this section shall include all of the information required for a formal application under § 1.740 and a complete application under § 1.741. Sections (a)(1), (a)(2), (a)(4), and (a)(6) through (a)(17) of § 1.740 and § 1.741 shall be read in the context of a product currently undergoing regulatory review. Paragraphs (a)(3) and (a)(5) of § 1.740 are not applicable to an application for interim extension under this section.

(c) The content of each subsequent interim extension application may be limited to a request for a subsequent interim extension along with a statement that the regulatory review period has not been completed and any materials or information required under § 1.740 and § 1.741 not present in the preceding interim extension application.<

9. Section 1.791 is proposed to be added to read as follows:

>§ 1.791 Termination of interim extension granted prior to regulatory approval of a product for commercial marketing or use.

Any interim extension granted under 35 U.S.C. 156(d)(5) terminates at the end of the 60-day period beginning on the date on which the product involved receives permission for commercial marketing or use. If within that 60-day period the patent owner or its agent files an application for extension under § 1.740 and § 1.741 including any additional information required under 35 U.S.C. 156(d)(1) not contained in the application for interim extension, the patent shall be further extended in accordance with the provisions of 35 U.S.C. 156.<

Dated: November 2, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94-27881 Filed 11-9-94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 131, NJ 15-1-6341; FRL-5104-8]

Approval and Promulgation of Implementation Plans; Carbon Monoxide State Implementation Plan Revision, State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of a request from New Jersey to revise its State Implementation Plan (SIP) related to the control of carbon monoxide and disapprove remaining portions. EPA is proposing approval of New Jersey's vehicle miles travelled forecast, carbon monoxide emission inventory, oxygenated fuels rule, and multi-state coordination. EPA is also proposing approval of the employee commute option and transportation control measures as contingency measures. In addition, EPA is proposing a limited approval and a limited disapproval of New Jersey's new source review regulation which covers all nonattainment pollutants. EPA proposes to disapprove New Jersey's November 15, 1993, proposal for an enhanced inspection and maintenance program. In addition, the attainment demonstration is also being disapproved since it relies on the enhanced inspection and maintenance program as a control measure. These revisions have been submitted in response to requirements established in the Clean Air Act as amended in 1990.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: Written comments should be addressed to:

William J. Muszynski, P.E., Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 Attention: William S. Baker.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, Room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Office of Energy, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act), as amended in 1990, sets forth a number of requirements that states designated as moderate nonattainment for carbon monoxide had to submit as revisions to their State Implementation Plans (SIPs) by November 15, 1992. These requirements are: an attainment demonstration, an enhanced vehicle inspection and maintenance program, an oxygenated fuels rule, a vehicle miles travelled forecast, contingency measures, a carbon monoxide emission inventory, a revised New Source Review program, and multi-state coordination. In addition, a conformity plan is required to be submitted by November 25, 1994.

On November 15, 1992, New Jersey submitted to the Environmental Protection Agency (EPA) proposed revisions to its carbon monoxide SIP that addressed each of the above requirements for its two moderate carbon monoxide nonattainment areas. In addition, in a submittal dated October 4, 1993, New Jersey submitted to EPA information on TCMs which New Jersey will use as a contingency measure.

The New Jersey portion of the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area is classified as a moderate 2 area (an area that has a design value of 12.8–16.4 ppm.), while the other area, Camden County, is classified as a moderate 1 area (an area with a design value of 9.1–12.7 ppm). The New York-Northern New Jersey-Long Island carbon monoxide nonattainment area is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area and includes the Counties of Bergen, Essex, Hudson, Union, and parts of Passaic. The nonattainment area in Passaic County includes the Cities of Clifton, Paterson, and Passaic. The remainder of the State is either in attainment or is not classified.

EPA has issued a "General Preamble" describing its preliminary views on how it intends to review SIPs and SIP revisions submitted in order to meet title I requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The reader should refer to the General Preamble for a more detailed discussion of the title I requirements and what EPA views as necessary to adequately comply with title I provisions. The following summarizes EPA's evaluation of New Jersey's SIP submittals and EPA's proposed actions. The details of EPA's review of New Jersey's submittals are contained in the Technical Support Document available at EPA's Region II office.

Attainment Demonstration

Section 187(a)(7) of the Act requires each state that contains all or part of a moderate 2 area to submit to the Administrator an attainment demonstration by November 15, 1992. This attainment demonstration should

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document how the State will attain the 8-hour carbon monoxide National Ambient Air Quality Standard (NAAQS) of 9 ppm by December 31, 1995.

New Jersey, using emissions from the EPA-approved MOBILE4.1 model, demonstrated attainment of the carbon monoxide standard with the EPA-approved CAL3QHC air quality dispersion model. New Jersey took emission reductions credit from an enhanced inspection and maintenance program, oxygenated fuels, and the federal motor vehicle control program (vehicle turnover) as control measures to attain the standard. The following is a summary of the methods and modeling techniques New Jersey used in its attainment demonstration. A more detailed explanation of this modeling is contained in the Technical Support Document.

To begin the modeling process, New Jersey first selected then ranked the "worst case" intersections that the New Jersey Department of Transportation, working in conjunction with the county and local governments, had identified. Next, New Jersey chose a background concentration and an ambient temperature for use in the CAL3QHC intersection model. Once all the parameters were selected, the modeling was performed and maximum future carbon monoxide concentrations were predicted.

New Jersey ranked the "worst case" intersections with a technique other than that prescribed by the EPA guidance, "Guideline for Modeling Carbon Monoxide from Roadway Intersections." This guidance specifies that such rankings use Level Of Service (LOS) calculations which measure the operating conditions in the intersection and how those conditions affect traffic flow and delay. As such, LOS is a measure of the combined traffic volume, signal timing, and related congestion and delay. New Jersey did not have LOS data in its database, and the time and cost of collecting this data prohibited the use of this method. Instead, New Jersey used traffic volume information and a survey conducted by the New Jersey Department of Transportation which examined the geometry of various intersections. Since this traffic volume information is closely related to delay, it is a valid alternative method for ranking.

New Jersey then used the EPA default background carbon monoxide value of 3.5 ppm for a central business district from the "Guideline for Modeling Carbon Monoxide from Roadway Intersections." This background was used in place of EPA's Urban Airshed Model (UAM) or RAM model. Given the lack of reliable gridded traffic information, the UAM or RAM model would have no advantage over the default value in this instance. Further, the default value was shown to be conservative when compared with background values for the entire New York-Northern New Jersey-Long Island carbon monoxide nonattainment area.

New Jersey, using the above parameters along with additional traffic and air quality data inputs required by the CAL3QHC intersection model, then performed an air quality modeling analysis on the 25 "worst case" intersections. This analysis demonstrated that all of the modeled intersections will attain the 8-hour carbon monoxide standard of 9 ppm. The highest value obtained was 8.0 ppm, which is 11% below the 8-hour carbon monoxide standard. Since air quality at the most congested intersections was determined to be below the standard, New Jersey has demonstrated that the entire area will be in attainment for carbon monoxide by December 31, 1995.

New Jersey used appropriate modeling techniques and modeling inputs in this demonstration, however one of the control measures used to demonstrate attainment, the enhanced inspection and maintenance program, submitted on November 15, 1993 has not been fully adopted in accordance with State requirements. In addition, New Jersey has publicly declared its intention to make a revised submittal at a later date. Therefore, EPA is proposing to disapprove the attainment demonstration because it is dependent on an unadopted program.

Enhanced Inspection and Maintenance Program

Section 187(a)(6) of the Act requires implementation of enhanced inspection and maintenance programs in moderate 2 carbon monoxide nonattainment areas which includes provisions as required under section 182(c)(3) concerning serious ozone nonattainment areas. Such provisions require implementation of an enhanced inspection and maintenance program in urbanized areas with a population greater than 200,000.

On November 15, 1993 New Jersey submitted proposed regulations and other information pertaining to the enhanced inspection and maintenance program. Since New Jersey did not submit a fully adopted enhanced inspection and maintenance program, on February 2, 1994 EPA notified the State that this submittal was incomplete and a sanctions process was begun. Because these regulations were not adopted at the time of their submittal (or since), EPA is proposing the disapproval of the enhanced inspection and maintenance program as submitted.

Oxygenated Fuels Rule—Subchapter 25

Section 211(m) of the Act requires that states submit revisions to their SIPs to require an oxygenated gasoline program by no later than November 1, 1992. This requirement applies to all states with moderate carbon monoxide nonattainment areas having a design value of 9.1 ppm or greater based generally on 1988 and 1989 air quality data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7% oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements generally are to cover all gasoline sold or dispensed in the larger of either the Consolidated Metropolitan Statistical Area or the Metropolitan Statistical Area in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992 (57 FR 47849).

In this guidance, EPA also announced the availability of an oxygenated gasoline credit program. Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7% by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight. EPA also issued labeling regulations under section 211(m)(4) of the Act, which were published in the **Federal Register** on October 20, 1992.

New Jersey was required to submit a revised SIP by November 15, 1992 under section 110 and part D of title I of the Act and which was to include an oxygenated gasoline program for the New Jersey portions of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area and the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area.

As part of the November 15, 1992, submittal, the New Jersey Department of Environmental Protection (NJDEP) submitted adopted amendments and new rule Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels," of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 25 contains the requirements for New Jersey's oxygenated gasoline program, which was adopted by New Jersey on September 1, 1992.

A more detailed analysis of the submittal is contained in the Technical Support Document. The following is EPA's review of the major elements of the State's submittal.

Type of Program and Oxygen Content Requirement

New Jersey has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area. The regulation also contains a variance that allows, upon individual facility request and subsequent State approval, the establishment of a 2.0% minimum oxygen content. Under EPA's credit program guidelines, all gasoline sold or dispensed during the control period by each control area responsible party (CAR or Blender CAR) must contain an average oxygen content of not less than 2.7% by weight. New Jersey has adopted an oxygen content requirement, though it also provides for variances from this requirement.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period established by the EPA Administrator based on air quality monitoring data. New Jersey has established control periods consistent with the EPA guidance.

Subchapter 25 has an "averaging period" scheme which provides that all gasoline sold or dispensed within the control areas during a one month averaging period must comply with the 2.7% average oxygen content standard.

Subchapter 25 requires oxygenated gasoline to be sold statewide and divides New Jersey into a northern and southern area. The two areas differ only in the relative length of their control periods: seven months (October 1 to April 30) in the northern area and four months (November 1 to the last day of February) in the southern area. The length of each control period is consistent with the requirements of section 211(m)(2) of the Act.

Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to sell or dispense gasoline obtained from a Control Area Terminal should register with the state at least 30 days in advance of each control season. At the time of registration, every CAR will be required to declare its intention to comply with the regulation. Upon acceptance, CAR identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

Subchapter 25 provides CAR identification numbers. However, if the applicant fails to provide all information requested by the NJDEP, the application may be denied.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0% oxygen by weight if they are participating in the averaging program.

New Jersey requires all parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, to keep records concerning certain day-to-day activities.

New Jersey's regulation requires any terminal or facility that is granted a variance to submit to the NJDEP, on a monthly basis during the applicable averaging period, a report that states the contemporaneous average of the oxygen content of the gasoline transferred to or from that terminal or facility during that month.

With respect to the implementation of an averaging program, EPA guidelines also require that CARs commission an annual attest engagement (a report detailing relevant activities), performed by either an internal auditor or independent Certified Public Accountant. Since New Jersey does not provide for the use of oxygenate credits in their averaging program, there is no need for a requirement to conduct a review or audit for averaging purposes.

Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percentage of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. EPA's guidelines further recommend that records be maintained. New Jersey's program addresses these requirements.

Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: date of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and the oxygen content of the gasoline (for transfers upstream of the control area terminal and for transfers between CARs, include the oxygenate volume of the gasoline). Records are to be kept in a location where they are available for state review.

Subchapter 25 requires that facilities and terminals keep such records available, upon request, for review by the NJDEP.

Subchapter 25 includes requirements related to transfer documentation in its regulation. These transfer document requirements will enhance the enforcement of the oxygenated gasoline regulation by providing a paper trail for each gasoline sample taken by State enforcement personnel.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of the regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, EPA guidelines recommend that each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a

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party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation. New Jersey's regulation contains a comprehensive penalty schedule in accordance with EPA guidance. New Jersey, in addition to having authority to assess a civil administrative penalty, reserves its authority to revoke a violator's operating certificate or variance.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in Appendix D of 40 Code of Federal Regulation part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. New Jersey has adopted EPA sampling procedures, which include established federal testing procedures and tolerances.

Labeling

EPA requires the labeling of gasoline pumps and has strongly recommended that states adopt their own labeling regulations, consistent with the federal regulation. New Jersey has adopted labeling regulations consistent with the federal regulation.

EPA's review of subchapter 25 and supporting materials indicates that New Jersey has adopted an oxygenated gasoline regulation that meets the requirements of the Act. Therefore, EPA is proposing to approve New Jersey's Subchapter 25 oxygenated fuels program.

Vehicle Miles Travelled Forecast

Section 187(a)(2)(A) of the Act requires moderate carbon monoxide nonattainment areas, such as that portion of New Jersey included in the New York-Northern New Jersey-Long Island nonattainment area, to submit a SIP revision that forecasts vehicle miles travelled (VMT) through the year 1995. In addition, annual reports and annual updates are required by the state, the first of these is required by September 30, 1994.

The VMT forecast must meet two requirements. First, it must estimate the VMT from 1990 through 1995 using a method acceptable to EPA, and must be conducted in the appropriate geographic area. Second, there must be proper coordination between the state agencies involved in developing the VMT forecast.

Contingency measures are to be implemented in a case where the actual annual VMT or the updated forecast exceeds the most recent prior VMT forecast by 5.0 percent in 1994, 4.0 percent in 1995, and 3.0 percent thereafter. In addition, if these annual exceedances are less than these maximum percentages but cumulatively exceed 5 percent, then contingency measures are also triggered.

The estimated VMT for 1990 and 1991 are 94.9 and 97.4 million miles per day, respectively. In addition, the future forecasts are (in million miles per day) 99.8 for 1992, 102.2 for 1993, 104.6 for 1994, and 107.1 for 1995.

EPA proposes to find that New Jersey has submitted documentation satisfying these requirements, and therefore proposes approval of its VMT forecast SIP revision.

Contingency Measures

Section 187(a)(3) of the Act requires that states adopt contingency measures to take effect without further action by the Administrator or the state if the state fails to attain the NAAQS by the required date or if the VMT forecast is exceeded beyond the allowable limit as discussed in the VMT forecast section. New Jersey submitted three contingency measures, the Employee Commute Option (ECO) program, an enhanced inspection and maintenance program (benefit from emission reductions outside of the carbon monoxide nonattainment area), and Transportation Control Measures (TCMs) to fulfill this requirement. The ECO program will act as a contingency measure for failure to attain the carbon monoxide standard while the state-wide enhanced inspection and maintenance program and the TCMs will be used as measures for exceeding the VMT forecast.

1. *ECO Program* New Jersey is required by section 182(d)(1) of the Act to submit its ECO program as part of its ozone nonattainment SIP. New Jersey's program will apply to employers with 100 or more employees who arrive at the workplace between the hours of 6 and 10 a.m. The goal of this program is to increase the average passenger occupancies (APO) by 25% above the average for vehicles arriving at the workplace. This would decrease the amount of automobiles arriving at the workplace, and therefore, decrease the VMT.

New Jersey submitted a SIP revision on November 15, 1993 that contained an adopted ECO program. EPA is proposing to approve the State's ECO program as a carbon monoxide contingency measure since it is an adopted measure which will serve to reduce VMT. However, EPA will be taking action on the ECO program submittal as a requirement of the ozone SIP in a separate **Federal Register** notice since there are specific requirements an ECO program must meet for an ozone SIP but not for a carbon monoxide SIP.

2. *Statewide Enhanced Inspection and Maintenance Program* New Jersey also submitted this program as a revision for its ozone SIP, and it is identical to that required by section 187(a)(6) of the Act (see section on enhanced inspection and maintenance program earlier in this notice). Since the program is being established on a state-wide basis, carbon monoxide reductions derived from outside of the Northeastern New Jersey nonattainment area will have a benefit in the carbon monoxide nonattainment areas and could be used for contingency purposes. Once adopted, the enhanced inspection and maintenance program will act as an additional contingency measure should the VMT forecast be exceeded.

3. *TCMs* The Act requires states in carbon monoxide non-attainment areas to develop VMT forecasts. In addition, states must develop TCMs that will be used as contingency measures in the event that the VMT forecast included in the 1992 carbon monoxide SIP is exceeded.

New Jersey's SIP submittal includes TCMs as contingency measures. These TCMs are incorporated into three major program areas, which includes traffic flow improvements, park & ride lots, and increased ridesharing. EPA proposes to approve these TCMs as viable contingency measures to offset excess growth in VMT.

EPA proposes to approve the ECO program as an adequate contingency measure for failure to attain the carbon monoxide standard. While New Jersey identified two contingency measures should the VMT forecast be exceeded, only one measure was adopted. EPA proposes to approve the TCMs as an adequate contingency measure for exceeding the VMT forecast. Once the enhanced inspection and maintenance program is adopted, it will act as an additional contingency measure should further carbon monoxide reductions be necessary.

Carbon Monoxide Emission Inventory

New Jersey submitted a comprehensive carbon monoxide emission inventory on November 15, 1992 as required by section 187(a)(1) and as described in section 172(c)(3) of the Act. Additional inventory information was submitted on January 12, 1993.

The emission inventory represents a comprehensive, actual inventory of all carbon monoxide emission sources in the nonattainment areas. It includes emissions from point, area, and mobile sources (see 1990 base year carbon monoxide emissions summary in Tables 1 and 2).

The inventory was developed according to EPA guidance and has been quality assured. Sources that emit in excess of 100 tons per year of carbon monoxide are defined as point sources. Stationary sources that emit below this threshold are too small to be considered point sources and are, therefore, considered to be area sources. The area and off-highway mobile sources include such categories as stationary source fuel combustion, aircraft, marine vessels, and railroads. Highway mobile source emissions were calculated using EPA's MOBILE 4.1 model. Input parameters to this model included VMT, speed, temperature, and registration distribution.

EPA proposes to approve New Jersey's 1990 base year emission inventory for carbon monoxide.

In addition, it should be noted that New Jersey may be undertaking a revised analysis of its attainment demonstration and emissions budget based on more recent traffic information now being developed. EPA would evaluate, in a future **Federal Register** notice, any additional information provided by New Jersey.

TABLE 1.—SUMMARY OF 1990 BASE YEAR CARBON MONOXIDE EMISSIONS BY SOURCE CATEGORY FOR NEW JERSEY PORTION OF THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND CARBON MONOXIDE NONATTAINMENT AREA

Source category	CO emissions (tons/day)
Point	36.43
Area	31.98
Non-Road Mobile	228.40
On-Road Mobile	1613.56
Total	1910.37

TABLE 2.—SUMMARY OF 1990 BASE YEAR CARBON MONOXIDE EMISSIONS BY SOURCE CATEGORY FOR CAMDEN COUNTY CARBON MONOXIDE NONATTAINMENT AREA

Source category	CO emissions (tons/day)
Point	1.12
Area	11.78
Non-Road Mobile	33.47
On-Road Mobile	576.39
Total	622.76

Multi-State Coordination

Section 187(e) of the Act establishes the requirements for "multi-state carbon monoxide nonattainment areas," which are defined as single carbon monoxide nonattainment areas that cover more than one state. To satisfy this requirement, states must develop and submit to EPA a joint workplan to demonstrate early cooperation and integration. This workplan can be in the form of a letter co-signed by all states in the nonattainment area, or EPA has decided, it can consist of signed individual letters from each of the states. New Jersey submitted its letter, containing a detailed schedule of milestones and a commitment to coordinate with EPA and each of the states involved, on October 27, 1992.

Therefore, EPA proposes to find that New Jersey has fulfilled this requirement and proposes approval of this SIP revision.

Conformity Plan

Section 176(c) of the Act requires states to revise their SIPs to establish criteria and procedures to ensure that federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with federal conformity regulations that the Act required EPA to promulgate. Congress provided for the state revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of title I informed states that its conformity regulations would establish a submittal date (see 57 FR 13498 (April 16, 1992)).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to § 51.396 of the transportation conformity rule, the State of New Jersey is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule by November 25, 1994. Similarly, New Jersey is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule by November 30, 1994, pursuant to § 51.851 of the general conformity rule. Those deadlines have not yet come due.

The State of New Jersey has committed to develop and submit a SIP revision containing conformity procedures that are consistent with the final federal conformity rules. EPA will evaluate and take action at a later time on any such submittal. Until EPA approves a conformity SIP revision for New Jersey, EPA's general conformity and transportation conformity rules, along with the provisions of section 176(c), will govern conformity determinations.

According to EPA's transportation conformity regulation, 40 CFR 93.128, the conformity status of the transportation plan and TIP shall lapse 120 days following the date of final disapproval of the control strategy implementation plan revision, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures. Therefore, should EPA's proposed disapproval be finalized, the conformity status of the North Jersey Transportation Planning Authority's transportation plan and TIP will lapse 120 days later.

New Source Review Regulation—Subchapter 18

Section 173 of the Act requires states to submit New Source Review (NSR) revisions that, among other things, incorporate new offset ratios and applicability limits in new source review permitting regulations by November 15, 1992.

I. Background

EPA is currently developing a proposed rule to implement all changes required by the 1990 Amendments in the new source review provisions in parts C and D of title I of the Act. EPA will refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. When final federal regulations are promulgated, EPA will review those NSR SIP submittals on which it may have taken final action to determine whether additional SIP revisions are necessary.

In this proposed rulemaking on New Jersey's nonattainment NSR SIP, Subchapter 18 "Control and Prohibition

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of Air Pollution from New and Altered Sources Affecting Ambient Air Quality," EPA is applying its current view of the Act's requirements. New Jersey addressed all pollutants in its revision to Subchapter 18 and therefore, EPA is taking action on the NSR program as it relates to all criteria pollutants.

II. Evaluation of State Program

The following summarizes EPA's evaluation of New Jersey's revised NSR rule and EPA's proposed action. The State of New Jersey held a public hearing on November 5, 1992 to entertain public comment on its revised NSR implementation plan. Subchapter 18 was adopted on February 19, 1993, and submitted to EPA on the same date as part its proposed revision to its ozone SIP. EPA found the submittal to be complete on April 29, 1993.

General Nonattainment NSR Requirements

The statutory requirements for nonattainment NSR review permitting SIPs are found at sections 172, 173 and 182–189 of the Act. It is on this basis that EPA is making its decision today. The Act requires all states to have submitted the following nonattainment NSR requirements to EPA by November 15, 1992:

1. Provisions to ensure that the construction bans imposed by EPA may be lifted by states. New Jersey had no such bans because it had an approved nonattainment NSR regulation in place. This provision, therefore, does not apply to New Jersey.

2. Provisions to assure that calculation of emissions offsets, as required by section 173(a)(1)(A) of the Act, are based on the same emissions baseline used in the demonstration of reasonable further progress. New Jersey's emissions baseline for offsets calculation is an inventory based on actual 1990 emissions. This provision meets federal requirements and is, therefore, approvable.

3. Provisions, in accordance with section 173(c)(1) of the Act, to allow offsets to be obtained in another nonattainment area, if the area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a NAAQS violation in the area in which the source would construct. New Jersey has chosen not to allow offsets from other nonattainment areas. This approach is more restrictive than the federal requirement and is, therefore, approvable.

4. Provisions, in accordance with section 173(c)(1) of the Act, to assure that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. New Jersey has included a provision requiring such a demonstration from all permit applicants. However subchapter 18 does not contain definitions of "initiation of construction or operation." In addition New Jersey's rule does not specify that changes to existing permits from sources which are to provide offsets must be in place by the time of permit issuance to the new or altered source. New Jersey's rule must be clarified accordingly. Therefore, these deficiencies are a basis for disapproval.

5. Provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions as required by section 173(c)(1) of the Act. New Jersey has defined reductions to be used as offsets as actual reductions in emissions that must be federally enforceable. This definition also applies to the use of banked emission reductions. This definition meets federal requirements and is, therefore, approvable.

6. Provisions, in accordance with section 173(c)(2) of the Act, to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements. New Jersey has defined reductions used as offsets as reductions not otherwise required pursuant to any federal or state law, rule, order, permit, or other legal document. In addition, its definition states that emission reductions to be used as offsets cannot have been relied upon to demonstrate attainment, maintenance of reasonable further progress or of a NAAQS. This definition satisfies the requirements of the Act and is, therefore, approvable.

7. Provisions, in accordance with sections 172(c)(4) and 173(a)(1)(B) of the Act, that reflect changes in the use of growth allowances. Though New Jersey has no growth allowance program in place, it does have a program for banking emissions reductions to be used as offsets. This program incorporates pre-1990 reductions which have been incorporated into the emission inventory as future growth. This approach is consistent with the requirements for the achievement of reasonable further progress. This provision meets the requirement of section 172(c)(4) of the Act and is, therefore, approvable.

8. Provisions, in accordance with section 173(a)(5) of the Act, that require as a prerequisite to the issuance of any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. New Jersey has included this analysis as part of its permit requirements. This provision is, therefore, approvable.

9. Provisions, in accordance with section 173(d) of the Act, for supplying information from nonattainment NSR permits to EPA's control technology clearinghouse. New Jersey has not included this provision in its revised NSR nonattainment rule. New Jersey must revise its rule to incorporate this provision. Therefore, EPA finds this as a basis for disapproval.

10. Provisions, in accordance with section 173(e) of the Act, that allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning if certain conditions are met, or impose a fee on such source. New Jersey's NSR nonattainment rule does not include provisions which allow for these alternative means of meeting offset requirements. While the Act requires this provision, since New Jersey has no sources which fall into this category, we are not proposing to disapprove on this basis.

11. Provisions, in accordance with section 819 of the Act, that effectively exempt activities related to stripper wells from the new NSR requirements of new subparts 2, 3, and 4 for PM–10, ozone, or carbon monoxide nonattainment areas classified as serious or less, and having a population of less than 350,000. New Jersey's NSR nonattainment rule does not include provisions which allow for these exemptions. However, since states are allowed under the Act to implement NSR provisions that are more stringent than the Act requirements, New Jersey's approach is acceptable.

12. Provisions, in accordance with section 328 of the Act, to assure that sources located on the outer continental shelf are subject to the same requirements applicable if the source were located in the corresponding onshore area. New Jersey's NSR nonattainment rule does not include provisions which address this requirement. It is EPA's understanding that New Jersey has no sources to which this requirement would apply.

13. A definition, in accordance with sections 302(z) and 111(a)(3) of the Act, of "stationary source" reflecting

Congressional intent that certain internal combustion engines be subject to control under state programs, but excluding the newly defined category of "nonroad engines." New Jersey's NSR nonattainment rule does not include provisions which address this requirement. New Jersey must revise its definition of "stationary source" to exclude this category. EPA, therefore, finds this as a basis for disapproval. EPA will be proposing a definition of "nonroad engines" in its rulemaking package to implement provisions of part D of the Act.

14. Exemptions, in accordance with section 415(b)(2) of the Act, from nonattainment NSR provisions for installation, operation, cessation, or removal of a temporary clean coal technology demonstration project. New Jersey's NSR nonattainment rule does not include provisions which allow for these exemptions. However, since states are allowed under the Act to implement NSR provisions that are more stringent than the Act requirements, New Jersey's approach is acceptable.

15. Provisions in accordance with section 173(a)(3) of the Act, that owners or operators of each proposed new or modified major stationary source demonstrate the compliance of all other major stationary sources under the same ownership in the state. New Jersey's revised rule requires this demonstration from all permit applicants. This provision is approvable.

16. For new major stationary sources, Lowest Achievable Emission Rate (LAER) is to apply to each nonattainment pollutant which the source has the potential-to-emit in major amounts. New Jersey's definition of LAER incorporates all necessary requirements. New Jersey's regulations specify that LAER applies to sources which have the potential to emit regulated pollutants above threshold levels. Application of LAER to the equipment constructed or altered is a requirement for permit issuance. These provisions meet the federal requirements and are approvable.

NSR Requirements for Ozone

The statutory permit requirements for ozone nonattainment areas are generally contained in sections 172 and 173, and in subpart 2 of part D of the Act. For all classifications of ozone nonattainment areas and for ozone transport regions, states must adopt the appropriate major source thresholds and offset ratios, and provisions to ensure that any new or modified major stationary source of nitrogen oxides (NO_X) satisfies the requirements applicable to any major source of volatile organic compounds (VOC), unless a special NO_X exemption is granted by the Administrator under the provision of section 182(f) of the Act. For serious and severe ozone nonattainment areas, state plans must implement the requirements of sections 182(c) (6), (7) and (8) with regard to modifications.

Though New Jersey contains marginal, moderate and severe ozone nonattainment areas, it has elected to treat the entire State as a severe nonattainment areas for purposes of nonattainment review. Consequently, it has adopted uniform major source threshold, offset ratio, and NO_X provisions for the entire State.

These are:

Area classification	Major source threshold	Minimum offset ratio	NO_X provisions
Severe	25 tons/year.	1.3:1.0	LAER/Emission offsets equivalent to VOC requirements.

These provisions meet the requirements for severe nonattainment areas at sections 182(d) and (d)(2) of the Act. In addition, New Jersey has adopted offset ratios for all pollutants, except lead, which increase with distance from the source. Since this approach is stricter than that required under the Act, these offset ratios are approvable.

New Jersey's rule submittal does not include the additional modification provisions for serious and severe areas required by sections 182(c) (6), (7) and (8) of the Act. First, the amended Act establishes a de minimis emissions threshold of 25 tons for both VOC and (where applicable) NO_X. Second, it requires an aggregation of past net increases over a 5-year period, even when the proposed increase itself is below the de minimis level. The Act establishes different requirements if the modification occurs at sources emitting less than 100 tons per year (TPY) of VOC or emitting 100 TPY or more of VOC. New Jersey must revise its rule to conform to these requirements. Therefore, EPA finds this as a basis for disapproval.

NSR Requirements for Carbon Monoxide

The general statutory permit requirements for carbon monoxide nonattainment areas are contained in revised section 173, and in subpart 3 of part D of the Act. States must adopt the appropriate major source threshold and offset ratio.

New Jersey contains areas classified as moderate nonattainment for carbon monoxide. New Jersey has established a major source threshold of 100 TPY and an offset ratio that equals or exceeds 1.0:1.0 for these areas. These provisions meet the federal requirements and are, therefore, approvable.

NSR Requirements for PM–10

The general statutory permit requirements for PM–10 nonattainment areas are contained in section 173 and in subpart 4 of part D of the Act. For both classifications of PM–10 nonattainment areas, moderate and severe, states must adopt the appropriate major source threshold, offset ratio, significance level for modifications, and provisions for PM–10 precursors.

New Jersey has no areas classified as PM–10 nonattainment areas. New Jersey has established a major source threshold of 25 TPY, a minimum offset ratio which equals or exceeds 1.0:1.0, and a modification significance level of 15 TPY. These provisions exceed the minimum federal requirements and are. therefore, approvable. If any area is subsequently reclassified as nonattainment for PM–10, New Jersey will be required to amend its SIP and include the requirements for PM–10 precursors and the applicable threshold offset and significance level requirements for that area classification

NSR Requirements for Sulfur Dioxide

The general statutory permit requirements for SO_2 nonattainment areas are contained in section 173, and in subpart 5 of part D of the Act. For SO_2 nonattainment areas, states must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

New Jersey has one SO_2 nonattainment area. New Jersey has established a major source threshold of 100 TPY a minimum offset ratio which equals or exceeds 1.0:1.0, and a modification significance level of 40 TPY. These provisions meet the federal requirements and are. therefore, approvable.

NSR Requirements for Lead

The general statutory permit requirements for lead nonattainment areas are generally contained in section 173, and in subpart 5 of part D of the Act. For lead nonattainment areas, states must adopt the appropriate major source threshold, offset ratio, and significance level for modifications.

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New Jersey has no lead nonattainment areas. New Jersey has established a major source threshold of 10 TPY, an offset ratio of 1.0:1.0, and a modification significance level of 0.6 TPY. These provisions meet the federal requirements for offset ratio and significance level, and exceed the requirements for major threshold level and are, therefore, approvable.

NSR Requirements for Nitrogen Dioxide

The statutory permit requirements for nitrogen dioxide nonattainment areas are contained in section 173, and in subpart 5 of part D of the Act. For nitrogen dioxide nonattainment areas, states must adopt the appropriate major source threshold, offset ratio, and significance level for modifications. New Jersey did not address this requirement since there are no nitrogen dioxide nonattainment areas in the State.

General Savings Clause

Section 193 of the Act states that no control requirement, in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant, may be modified after November 15, 1990 unless the modification ensures equivalent or greater emission reductions of that air pollutant. New Jersey's revised NSR rule contains three modifications to control requirements. First, the revised regulations relax the NO_X emissio.. offset ratio from 2.0:1.0 to 1.3:1.0. Second, the revised regulations relax the VOC offset ratio from 2.0:1.0 to 1.3:1.0. Third, the revised regulations relax the carbon monoxide applicability threshold from 50 to 100 TPY. In all three instances, New Jersey has demonstrated that the revised rule, taken as a whole, provides equivalent or greater emission reductions than the current rule. It thus complies with section 193, the General Savings Clause.

EPA Policy Issues

EPA has identified the following provisions of New Jersey's NSR rule which do not adhere to current EPA guidance.

1. Net Air Quality Benefit. Current EPA guidance (1989 SO_2 Guidance EPA–450/2–89–019) states that a net air quality benefit analysis must be demonstrated for sources that do not satisfy the location requirements for emission offsets as specified in 40 CFR part 51, appendix S. According to that guidance, the net air quality benefit is made with a modeling analysis that predicts that the LAER and emission offsets proposed will result in a net concentration change that is less than zero at an agreed upon number of receptors within the nonattainment area of the emission increase.

As in the Act prior to 1990, section 173(a) specifies that emission increases from a proposed major source or major modification must achieve LAER and sufficient offsetting emission reductions in order to represent, when considered together with other provisions of the SIP, reasonable further progress towards attainment of the NAAQS.

Section 173(c)(1), which was added in the 1990 amendments, specifies conditions on the location of emission reductions that may qualify as offsets. EPA intends to continue to require the net air quality benefit test consistent with prior practice, so that it can be assured that the area affected by the source progresses toward attainment on balance. It need not be interpreted as requiring an air quality improvement at every location affected by the new source (44 FR 3279, (January 16, 1979)), but rather assuring progress toward attainment for the area where the new source is locating. Also, as explained in the Offset Rule, the reviewing authority should consider atmospheric simulation modeling for SO_2, particulates, and carbon monoxide sources. Also, EPA's view in the Offset Rule continues to apply that in most cases the permitting authority may assume that offsets obtained from an existing source on the same premises or in the immediate vicinity of the new source and from the same effective stack height satisfy the net air quality benefit test.

EPA believes that it is prudent for states to reserve the right in their regulations to reject emission reductions proposed to satisfy offset requirements which do not provide a net air quality benefit in the nonattainment area where the proposed emission increase will occur. EPA does not believe that a new source should be permitted which will inhibit progress toward attainment due to the fact that the offsets are obtained from an inappropriate location.

New Jersey's approach toward a net air quality benefit analysis is inadequate. This is because the Air Quality Impact Analysis Section does not specifically require a dispersion modeling analysis which demonstrates a net decrease in ambient impacts on balance in the nonattainment area where the net emission increase is proposed. This test is required for major new or modified sources whose emission decrease (offset) does not meet the location requirements specified in 40 CFR part 51, appendix S. This test need not be performed at every location but rather on balance in the nonattainment area of the proposed emission increase (refer to Technical Support Document). EPA requires that the NJDEP modify subchapter 18, 7:27–18.4 to 18.5 to include a net air quality benefit test. Therefore, EPA finds this as a basis for disapproval.

2. Calculation of "Net Emission Increase". EPA has identified a problem with the provision which requires the calculation of "Net Emission Increase." As part of EPA's review of New Jersey's revised nonattainment NSR rule, EPA evaluated whether the formula used to determine whether a source is subject to this rule follows EPA guidance for determining applicability. New Jersey's rule determines a "net emission increase" by using a modified "potential to potential" test. However, 40 CFR 51.165 requires that an "actual to potential" test be performed. Consequently, EPA cannot approve this methodology and New Jersey must correct this deficiency in its rule. Therefore, EPA finds this as a basis for disapproval.

3. Definition of "Contemporaneous". New Jersey defines "contemporaneous," in reference to the construction of new or altered equipment as "* * * occurring within a time period which includes: 1. The five years prior to the initiation of the construction; and 2. The period between the initiation of construction and the initiation of operation of that new or altered equipment." However, New Jersey has not specifically defined the terms "initiation of construction" and "initiation of operation." Consequently, EPA cannot approve this definition of "contemporaneous" and New Jersey must correct this deficiency in its rule. Therefore, EPA finds this as a basis for disapproval.

NSR Conclusion

The EPA is proposing to grant a limited approval and limited disapproval to New Jersey's rule for NSR in nonattainment areas (NJAC 7:27–18). EPA cannot grant full approval under section 110(k)(3) of the Act because the rule does not fully meet the requirements of part D of the Act.

In addition, because the provisions are not composed of separable parts, EPA cannot grant partial approval as provided under section 110(k)(3). However, the rule does contain the major new requirements under the Act for new offset requirements, lower emission thresholds, and new provisions for NO_X in ozone nonattainment areas. Consequently, this rule strengthens New Jersey's SIP. In light of EPA's rulemaking authority under section 301(a), EPA is granting a limited approval of the rule in order to further progress in air quality in the state.

At the same time, EPA is also proposing a limited disapproval of New Jersey's nonattainment NSR rule because the rule lacks provisions that will:

1. Revise offset provisions such that permit changes in existing permits providing offsets must be in effect by the time of permit issuance.
2. Supply information from nonattainment NSR permits to EPA's control technology clearinghouse;
3. Revise the definition of "stationary source" to exclude the new category of "nonroad engines;"
4. Add provisions for modifications in serious and severe ozone nonattainment areas required under sections 182(c)(6), (7) and (8);
5. Provide a net air quality benefit test; and
6. Provide a methodology for calculating net emissions increase that adheres to EPA guidance and policy.
7. Provide definitions for "initiation of construction" and "initiation of operation."

If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566–13567). It should be noted that EPA's limited disapproval does not prevent EPA and the State of New Jersey from enforcing the NSR rule.

Summary

EPA is proposing approval of New Jersey's vehicle miles travelled forecast, emission inventory, Subchapter 25—oxygenated fuels rule, and the employee commute option and transportation control measures as contingency measures, and the multi-state coordination as revisions to its carbon monoxide SIP. EPA is also proposing a limited approval and a limited disapproval of New Jersey's Subchapter 18—new source review regulation. EPA is proposing a disapproval of New Jersey's enhanced inspection and maintenance program since it has not been adopted. In addition, since the attainment demonstration relies on the enhanced inspection and maintenance program, the attainment demonstration is also being proposed for disapproval.

For those elements for which EPA is proposing disapproval, under section 179(a) of the Act, the State of New Jersey would have up to 18 months after final disapproval to correct the deficiencies responsible for the disapproval before EPA would be required to impose sanctions. Section 179(b) describes the sanctions available to the Administrator. Any final disapproval also would trigger the section 110(c)(1) Federal Implementation Plan provision of the Act. To obtain full approval of this carbon monoxide SIP, New Jersey must correct the identified deficiencies in the new source review regulation, and an enhanced inspection and maintenance program must be submitted and approved.

Nothing in this rulemaking should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This proposed rule has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary wavier until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 will not have a significant economic impact on a substantial number of small entities. SIP approvals do not create any new requirements but simply approve requirements that are already state law. SIP approvals, therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The Act forbids EPA to base its actions concerning SIPs on such grounds.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 3, 1994.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 94–27676; Filed 11–9–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300365; FRL–4917–0]

RIN 2070–AC18

FD & C Yellow No. 6 Aluminum Lake, 2-(2'-Hydroxy-5'-Methylphenyl)Benzotriazole and Octadecyl 3,5-Di-Tert-Butyl-4-Hydroxyhydrocinnamate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of FD & C Yellow No. 6 Aluminum Lake (CAS Reg. No. 15790-07-5), 2-(2'-hydroxy-5'-methylphenyl)benzotriazole (CAS Reg. No. 2440-22-4), and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3) when used as inert ingredients (components of ear tags and similar slow-release devices) in pesticide formulations applied to animals. Y-Tex Corp. requested this proposed regulation.

DATES: Comments, identified by the document control number [OPP-300365], must be received on or before December 12, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by

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the EPA without prior notice. The public docket is available for public inspection in Rm. 1132, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry B. Leifer, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8323.

SUPPLEMENTARY INFORMATION: Y-Tex Corp., P.O. Box 1450, 1825 Big Horn Ave., Cody, WY 82414, submitted a pesticide petition to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for residues of acrylonitrile-butadiene copolymer (CAS Reg. No. 900318-3), FD & C Yellow No. 6 Aluminum Lake (CAS Reg. No. 15790-07-5), 2-(2'-hydroxy-5'-methylphenyl)-benzotriazole (CAS Reg. No. 244022-4), and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate when used as inert ingredients (components of ear tags and similar slow-release devices) in pesticide formulations applied to animals. In the **Federal Register** of February 3, 1989 (54 FR 5502), EPA proposed such exemptions. One comment was received in response to the proposal. The commenter claimed that among the bases for approval of the acrylonitrile-butadiene copolymer was an erroneous interpretation of the results of a risk assessment conducted on acrylonitrile-butadiene copolymer by the U. S. Food and Drug Administration (FDA). The Agency agreed with the commenter and, based upon additional information, reproposed the exemption for acrylonitrile-butadiene copolymer in the **Federal Register** of July 27, 1994 (59 FR 38151).

No comments were received in response to the February 3, 1989 proposal on the tolerance exemptions for residues of the other three substances, FD & C Yellow No. 6 Aluminum Lake, 2-(2'-hydroxy-5'-methylphenyl)-benzotriazole, and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate. However, because of the length of time that has elapsed since the original proposal, EPA is reproposing the exemption for FD & C Yellow No. 6 Aluminum Lake, 2-(2'-hydroxy-5'-methylphenyl)-benzotriazole, and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate .

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300365]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 26, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended in the table therein by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
FD & C Yellow No. 6 Aluminum Lake (CAS Reg. No. 15790-07-5).	Not more than 2% by weight of pesticide formulation.	Pigment in animal tag and similar slow-release devices.
* * *	* * *	* * *
2-(2'-Hydroxy-5'-methylphenyl)-benzotriazole (CAS Reg. No. 2440-22-4).	Not more than 0.5% by weight of pesticide formulation.	Ultraviolet light absorber/stabilizer in animal tag and similar slow-release devices.
* * *	* * *	* * *
Octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate (CAS Reg. No. 2082-79-3).	Not more than 0.5% by weight of pesticide formulation.	Thermal stabilizer/antioxidant in animal tag and similar slow-release devices.
* * *	* * *	* * *

[FR Doc. 94-27843 Filed 11-9-94; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-125, RM-8534]

Radio Broadcasting Services; Fredericksburg and Helotes, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by October Communications Group, Inc., seeking the reallotment of Channel 266C from Fredericksburg, Texas, to Helotes, Texas, and the modification of Station KONO-FM's license to specify Helotes as its community of license. Channel 266C, if reallotted, would provide Helotes with its first local aural transmission service. Channel 266C can be allotted to Helotes in compliance with the Commission's minimum distance separation requirements at Station KONO-FM's presently licensed transmitter site, at coordinates 29-50-26 North Latitude and 98-49-32 West Longitude, which is 32.2 kilometers (20 miles) northwest of Helotes.

DATES: Comments must be filed on or before December 29, 1994, and reply comments on or before January 13, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Joseph McVeigh, Esq., Multinational Legal Services, P.C., 11 Dupont Circle, Suite 700, Washington, D.C. 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-125, adopted October 26, 1994, and released November 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-27875 Filed 11-9-94; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 110294C]

Reef Fish Fishery of the Gulf of Mexico; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene nine public hearings on Draft Amendment 8 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Draft Amendment 8 contains alternatives for limited access systems for the Gulf commercial red snapper fishery, including license limitation and individual transferable quota systems.

DATES: Written comments on the proposed amendment will be accepted until January 4, 1995. Public hearings will be held in December. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: Comments should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; fax: 813-225-7015. Public hearings will be held in TX, LA, MS, AL, and FL. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813-228-2815.

SUPPLEMENTARY INFORMATION: The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. December 5, 1994—Port Isabel Community Center, Corner of Yturia and Maxan, Port Isabel, TX.
2. December 6, 1994—Visitor's Center Auditorium, University of Texas, 750 Channel View Drive, Port Aransas, TX.
3. December 7, 1994—Holiday Inn on the Beach, Ballroom South, 5002 Seawall Boulevard, Galveston, TX.
4. December 8, 1994—Policy Jury Annex, Courthouse Square, Cameron, LA.
5. December 12, 1994—Venice Fire House, Highway 23, Venice, LA.
6. December 13, 1994—Larose Regional Park, Versailles Room, 2001 East 5th Street, Larose, LA.
7. December 14, 1994—J.L. Scott Marine Education Center and Aquarium, Auditorium, 115 East Beach Boulevard (U.S. Highway 90), Biloxi, MI.
8. December 15, 1994—Orange Beach Community Center, 27301 Canal Road, Orange Beach, AL.
9. December 16, 1994—NMFS, Panama City Laboratory, Conference Room, 3500 Delwood Beach Road, Panama City, FL.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by November 28, 1994.

Dated: November 4, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-27891 Filed 11-9-94; 8:45 am]
BILLING CODE 3510-22-F

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Notices

Federal Register
Vol. 59, No. 217
Thursday, November 10, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Wheat Crop Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of applications).

SUMMARY: Effective for the 1995 crop year only, the Federal Crop Insurance Corporation (FCIC) gives notice of its determination to extend the date for acceptance of wheat crop insurance applications for those counties where producers are offered the winter coverage endorsement. The sales closing date of September 30 previously extended to October 31 shall be further extended to November 4, 1994.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: Joan Rogers, Regulatory Specialist, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the policy sales closing date. On Tuesday, October 4, 1994, FCIC published in the **Federal Register** (59 FR 50559), effective for the 1995 winter wheat crop year only, a sales closing date extension to October 31. FCIC has determined that an additional extension of the sales closing date may be needed for wheat counties in which the winter coverage endorsement is available. By extending the sales closing date, farmers will have more time to make crop insurance decisions for the 1995 wheat crop year. The Manager has determined that extension of the sales closing date for the 1995 wheat crop year only in counties in which the winter coverage endorsement is available will not adversely affect the actuarial status of the crop insurance program. Therefore, the Manager of FCIC has determined that the October 31 sales closing date shall be further extended to November 14 for wheat counties in which the winter coverage endorsement is available. No other crop insurance program dates are affected or extended at this time.

Under the provisions of the General Crop Insurance Regulations (§ 457.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse effect will result from such extension. FCIC has determined that no adverse effect will result from this extension.

FCIC will discontinue the acceptance of applications if it determines that adverse conditions develop and that insurance risk becomes excessive.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) herewith gives notice that, effective for the 1995 crop year only, applications for wheat crop insurance in counties in which the winter coverage endorsement is available with published sales closing dates of September 30, 1994, will be accepted up to the *close of business on November 4, 1994*. This sales closing date may be terminated by the Corporation prior to November 4, 1994, if FCIC determines that adverse conditions develop and that insurance risk becomes excessive.

Authority: 7 U.S.C. 1501, as amended.

Done in Washington, DC on November 3, 1994.

Kenneth D. Ackermann,

Acting Deputy Administrator, Federal Crop Insurance Corporation.

[FR Doc. 94–27777 Filed 11–9–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Phosphate Leasing, Caribou National Forest, Caribou County, ID

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service (FS), Caribou National Forest, and the Department of the Interior, Bureau of Land Management (BLM), Idaho Falls District, will jointly prepare an Environmental Impact Statement (EIS) for a proposal to issue two new phosphate leases within the Caribou National Forest. The Dairy Syncline Tract lies about 13 air miles east of Soda Springs, Idaho, and the Manning Creek Tract lies about 14 air miles southwest of Afton, Wyoming. If a lease(s) is issued pursuant to the mineral leasing regulations at 43 CFR part 3500, the lessee has a right to develop a mine and necessary ancillary facilities for the purposes of mining the phosphate ore reserves within the lease boundaries. However, before actual mining could occur, the lessee would be required to obtain an approved mining and reclamation plan, which would require a NEPA document addressing the site specific proposed mine development.

SCOPING PROCEDURE: The scoping procedure to be used for this EIS has or will involve the following: a wide-scale mailing asking for comments, issues and concerns to interested and potentially affected individuals, groups, Federal, State, and local governments; public information gathering meetings; news releases; and a scoping meeting. The scoping meeting will be held in Chubbuck, Idaho on Monday, November 21, 1994, at 7:00 p.m. in the Aspen-Willow Room, Days Inn, 133 West Burnside Avenue. Public information meetings were announced in a newsletter by the EIS contractor and held in Pocatello and Soda Springs, Idaho and Afton, Wyoming on October 18–20, 1994, respectively.

DATE: Written comments concerning the scope of the analysis described in this Notice should be received by December 12, 1994.

ADDRESSES: Send written comments and suggestions to Steve Robison, Caribou National Forest, 250 South 4th Avenue, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Steve Robison, Geologist, Caribou National Forest, 250 South 4th Avenue, Pacatello, Idaho 83201, phone: (208) 236–7573, or Dennis Hoyem, Environmental Coordinator, Bureau of Land Management, 940 Lincoln Rd., Idaho Falls, Idaho, phone: (208) 524–7525.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) has received proposals to lease two parcels of land for the development and mining of phosphate reserves within the Caribou National Forest (FS). The 1920 Leasing Act, as amended, gives the primary responsibility for leasing of solid minerals, like phosphate, to the BLM, even though the surface of the lands may be administered by other agencies such as the FS. The FS develops recommendations to the BLM concerning whether or not leases should be issued, and if so, what stipulations or mitigation measures should be included with each lease to protect the surface resources. Although the BLM decision to be made based on this EIS (the FS only makes recommendations) is whether or not to lease the two proposed Tracts, and if so, under what conditions, lease issuance confers a right to mine. Therefore, the anticipated impacts from mining and transportation of the ore must also be analyzed in this EIS.

These Tracts have only received sufficient exploration to determine the presence of mineable phosphate ore and rough estimates of ore reserves. Because of this limited information, and because there is no lessee that has developed a site-specific mining and reclamation plan, only conceptual mine plans have been developed for analysis in this EIS. The ore from both Tracts would be removed by surface mining methods.

The proposed Dairy Syncline Tract contains 3,380 acres, with preliminary phosphate ore reserves estimated at about 20 million tons. Phosphate rock mined from the Tract would probably be transported to primary users (phosphate fertilizer or elemental phosphorus plants) by one of the following methods: hauling ore by truck or conveyor to existing railroad loading facilities located about 4.5 road miles from the Tract; by building a new railroad spur to the Tract (about 5–7 road miles depending on where loading facilities were located); or by the development of a slurry pipeline (it could parallel an existing slurry pipeline for all but about 4 miles of its length). About 14 miles of existing road into the area may need to be upgraded to accommodate mine related traffic (not ore haul), and new power/phone lines to the lease Tract area would need to be constructed. Mine life for this lease Tract is estimated at 10–20 years, depending on annual mine production.

The proposed Manning Creek Tract covers 2,000 acres, with preliminary estimated phosphate ore reserves in the range of 18–50 million tons. Mineable reserves may be about 30 million tons. The lease Tract could be developed as an extension of an existing, operating mine, or ore could be transported from the lease Tract in a slurry pipeline. Based on the phosphate ore reserves in the proposed leases, the following options do not appear to be economically feasible at this time: build a phosphate processing plant near the lease Tract; build a railroad facility to the lease Tract area; or transport the ore to existing railroad facilities or phosphate plants by means other than a slurry pipeline. If this proposed lease Tract were to be developed separate from the existing mine, as many as 8 miles of new pipeline may be necessary to reach an existing slurry line corridor, about 5 miles of new mine access road would be required, as many as 7 miles of existing road upgraded to accommodate mine traffic (not ore haul), and new power/phone lines built. Mine life is estimated to be 10–25 years.

This EIS will tier to the final EIS for the caribou National Forest Land and Resource Management Plan (Forest Plan). The Caribou Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

Preparation of the EIS will include the following steps:

1. Define the purpose of and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 have started and will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues. Four alternatives have been drafted to date:

Alternative 1, no lease or the no action alternative.

Alternative 2, issue both leases as delineated (proposed action).

Alternative 3, issue the Manning Creek lease only.

Alternative 4, issue the Dairy Syncline lease only.

Other alternatives could be developed based on key issues.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

The Forest Service and BLM are seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action as part of the scoping process. The scoping process is designed to guide project analysis and documentation and obtain input to identify significant issues and alternatives to the proposal. The EIS will consider a range of alternatives based on the issues, concerns and opportunities identified for the project. Comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

The estimated date for completion of the draft EIS is June, 1995. A public meeting(s) will be held in conjunction with the issuance of the draft EIS. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service and BLM believe it is important to give reviewers notice at this early stage in the process of court rulings related to public participation in the environmental review process. Reviewers of draft EISs must structure

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their participation in the environmental review of the proposal so that it is meaningful and alerts the agencies to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). We mention these court cases to ensure that substantive comments and objections are made available to the BLM and FS at a time when they can meaningfully consider them and respond in the Final EIS.

To assist the Forest Service and BLM in identifying and considering issues and concerns related to the proposed action, comments for scoping, and later for the draft EIS, should be as specific as possible. It would be helpful if comments on the draft EIS refer to specific pages or chapters of the draft or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

The final EIS is expected to be available in December, 1995.

The BLM Idaho State Director, who is the responsible official for the EIS, will then make a decision regarding this proposal, considering: FS recommendations; comments; responses; anticipated environmental consequences discussed in the Final EIS; and applicable laws regulations, and policies. The reasons for the decision will be documented in the Record of Decision.

Dated: November 3, 1994.

Harold W. Klein,

Acting Forest Supervisor, Caribou National Forest.

Jeff S. Steele,

Area Manager, Pocatello Resource Area.

[FR Doc. 94–27882 Filed 11–9–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of the Record of Decision for the "Exxon Valdez" Oil Spill Restoration Plan

AGENCIES: Department of Agriculture and the Department of the Interior. The National Oceanic and Atmospheric Administration, Department of Commerce is a cooperating agency.

ACTION: Notice of availability of the record of decision for the *Exxon Valdez* restoration plan.

SUMMARY: On behalf of the *Exxon Valdez* Trustee Council, the Department of Agriculture, Forest Service and the Department of the Interior announce the availability of the Record of Decision (ROD) for the *Exxon Valdez* Oil Spill Restoration Plan. The responsible officials for the ROD are the Secretaries of the Departments of Agriculture and of the Interior, and the Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The Restoration Plan will establish management direction and guide all natural resource restoration activities covered by the civil settlement following the *Exxon Valdez* oil spill.

DATE: The decision was made on the Restoration Program by the responsible officials on October 31, 1994.

ADDRESSES: Copies of the ROD are available on request from the Oil Spill Public Information Office, 645 G. Street, Anchorage, Alaska 99501. Phone number (907) 278–8008 or within Alaska (800) 478–7745, outside Alaska (800) 283–7745. Copies also will be sent to public libraries in Anchorage, Juneau, Fairbanks, Valdez, Cordova, Kodiak, Homer, and Seward, Alaska.

SUPPLEMENTARY INFORMATION:

A. Introduction

On October 8, 1991, a federal court approved settlement between the State and Federal governments and Exxon under which Exxon will pay $1 billion in criminal restitution and civil damages to the governments. The State and Federal Trustees will receive $900 million in civil damages from Exxon over the 10 years. The funds are to be used to restore the natural resources and the services they provide, injured by the *Exxon Valdez* oil spill. This includes the restoration of any natural resources injured, lost or destroyed and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

Under the applicable court decrees, all decisions about restoration and use of the civil settlement funds are made by six natural resources Trustees, three Federal and three State. The three Federal Trustees are: The Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Secretaries of the Departments of Agriculture and of the Interior. The three State Trustees are: The Commissioners of Fish and Game, and Environmental Conservation, and the Alaska Attorney General. A Trustee Council, located in Alaska, composed of the three State Trustees and designees of the three Federal Trustees, has been assigned responsibility for decisions relating to the assessment of injuries, use of the civil settlement funds, and all restoration activities including the preparation of a Restoration Plan.

On April 10, 1992 (57 FR 12473–12475) on behalf of the Exxon Valdez Oil Spill Trustee Council, the Forest Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Restoration Plan. This was later revised on January 14, 1994 (59 FR 2352–2353).

The Trustee Council released a Draft Restoration Plan in November 1993, which was the proposed action for the analysis conducted in the EIS. The Draft EIS was released for public comment on June 17, 1994 (59 FR 31191) followed by a 45-day comment period ending on August 1, 1994. This was followed by the release of the Final EIS on September 30, 1994 (59 FR 49925).

B. The Decision

The proposed action (Draft Restoration Plan) consisted of policy statements, a discussion of categories of restoration actions and broad objectives for injured resources and services. The policies for identifying and conducting restoration actions have been revised and reorganized into policy groups in response to public comments received on the Draft EIS. People commented that some of the policies needed clarification. This was done in the Final EIS.

Based on the analysis contained in the EIS and the recommendation of the Trustee Council, it is the decision of the Federal Trustees to adopt Alternative 5 and its policies as identified in the Final EIS. This includes the establishment of a restoration reserve.

Copies of the ROD may be requested from the Oil Spill Public Information Office, 645 G. Street, Anchorage, Alaska 99501. Phone number 907 278–8008 or within Alaska 800 478–7745, outside Alaska 800 283–7745.

Dated: November 3, 1994.

Deborah L. Williams,

Special Assistant to the Secretary for Alaska, Department of the Interior.

Phil Janik,

Regional Forester, Alaska Region, Forest Service, Department of Agriculture.

[FR Doc. 94–27904 Filed 11–9–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Mission/Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Approval Number: 0625–0034.

Type of Request: Revision of a currently approved collection.

Burden: 167 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: Information is collected on the results of a firm's participation in an overseas trade event managed and funded from participant contributions. The information is used to evaluate the efficiency, impact and effectiveness of an event from the participant's perspective.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Ocean Thermal Energy Conversion Licensing Regulations.

Agency Form Number: None but requirements are found at 15 C.F.R, Chapter IX, Part 981.

OMB Approval Number: 0648–0144.

Burden: 1 hour assigned for purposes of OMB approval.

Number of Respondents: None anticipated at this time.

Avg Hours Per Response: N/A.

Needs and Uses: In order to own, construct and operate an Ocean Thermal Energy Conversion facility or plantship, a U.S. citizen requires a license issued by NOAA. The application to NOAA is, by statute, also an application for all other Federal licenses, permits and authorizations required. The regulations specify what information must be submitted for these purposes. No applications are expected to be submitted until there is a sufficient profit incentive to do so.

Affected Public: State or local governments, businesses or other for–profit institutions, federal agencies.

Frequency: On occasion, annually, recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 4, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–27915 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–CW–F

Bureau of Export Administration

[Docket No. 0108–01]

Action Affecting Export Privileges

Order

Whereas, on March 6, 1991, then-Under Secretary for Export Administration Dennis E. Kloske entered an Order [1] denying Franciscus B. Govaerts, individually and doing business as Printlas Europa (hereinafter collectively referred to as Govaerts), all U.S. export privileges for a period of 10 years, five of which were suspended during a five-year probationary period, based on a finding that Govaerts had violated the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–227, July 5, 1994)) (the Act),[2] and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1994)) (the Regulations);

Whereas, the March 6, 1991 Order entered against Govaerts identified his address and that of his business as "Torenakker 6–5731 CC, Mierlo, Netherlands";

Whereas, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), has confirmed that Govaerts has ceased doing business at Torenakker 6–5731 CC, Mierlo, Netherlands, and is presently operating his business at Van Lokvenstraat 117, 5731 Mierlo, Netherlands; and

Whereas, as a result of the information the Department obtained regarding a new address for Govaerts, the Department has requested that an order be issued amending the March 6, 1991 Order to reflect that new address for Govaerts;

Accordingly, it is hereby ordered that the March 6, 1991 Order denying all U.S. export privileges to Franciscus B. Govaerts, individually and doing business as Printlas Europa, is amended by changing his address and that of his business to "Van Lokvenstraat 117, 5731 Mierlo, Netherlands."

This Order, which is effective immediately, shall be published in the **Federal Register**.

Entered this 2d day of November 1994.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 94–27790 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–DT–M

[1] 56 FR 10532, March 13, 1991.

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

Foreign-Trade Zones Board

[Docket 33–94]

Foreign-Trade Zone 78—Nashville, TN; Application for Subzone Status; Columbia Specialties, Inc., Plant (Room Air Conditioners/Dehumidifiers) Columbia, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville Port Authority, grantee of FTZ 78, requesting special-purpose subzone status for the room air conditioner and dehumidifier manufacturing plant of Columbia Specialties, Inc., (CSI) (subsidiary of Fedders North America, Inc.), located in Columbia, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 28, 1994.

The CSI plant (62 acres/200,000 sq. ft.) is located at 1027 Industrial Park Road, Columbia (Maury County), Tennessee, some 30 miles south of Nashville. The facility (375 employees) is used to produce room air conditioners and dehumidifiers (duty rate—2.2%).

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Materials and components purchased from abroad (some 15% of total value) include polymers of styrene, articles of plastic and rubber, fasteners, articles of copper (bars, rods, profiles, tubes, pipes, fittings), aluminum foil, taps, cocks, valves, electric motors and switches, electric heating apparatus, rotary and other compressors and parts, capacitors, optical fiber cables, and automatic regulating and controlling apparatus (duty rate range: free—14%, $0.9/kg+9.2%). Some 5 percent of the finished units is exported.

Zone procedures would exempt CSI from Customs duty payments on the foreign components used in export production. On its domestic sales, CSI would be able to choose the duty rate that applies to finished room air conditioners and dehumidifiers (2.2%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 9, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 24, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Parkway Towers, Suite 114, 404 James Robertson Parkway, Nashville, TN 37219

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: October 28, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–27786 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 50–93]

Foreign-Trade Zone 21—Dorchester County, South Carolina; Application for Expansion; Amendment of Application

The pending application of the South Carolina State Ports Authority (SCSPA), grantee of FTZ 21, requesting authority to expand its zone (Docket 50–93, filed 9/14/93, 58 FR 50330, 9/27/93, amended 8/9/94, 59 FR 40519), has been further amended to request an additional site.

The application as previously amended requested authority to expand the zone's two existing sites and to include within the zone project SCSPA's terminal complex at the Port of Charleston (8 parcels—2,040 acres) and two new industrial park sites.

The further amendment requests inclusion of an additional site (19 acres) located at 4 Meadow Street, Loris, Horry County, South Carolina, some 55 miles from the Georgetown, South Carolina Customs Port of Entry. The new site, owned and operated by Southern Ammunition Company, Inc. (SACI), would be used for general-purpose zone warehousing activity. The application indicates that several firms are interested in using this site for storage activity. SACI plans to use zone procedures in conjunction with its warehousing of small arms parts, accessories and ammunition.

The comment period is reopened until [45 days from date of publication].

The application and amendment materials are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, Room 128 C Long Building, 9 Liberty Street, Charleston, South Carolina 29424

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 3716, Washington, D.C. 20230.

Dated: November 2, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–27916 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–DS–P–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than November 30, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

Antidumping duty proceedings	Period
Argentina: Barbed Wire and Barbless Fencing Wire (A–357–405)	11/1/93–10/31/94
Argentina: Carbon Steel Wire Rods (A–357–007)	11/1/93–10/31/94
Brazil: Circular Welded Non-Alloy Steel Pipe (A–351–809)	11/1/93–10/31/94
Germany: Drycleaning Machinery (A–428–037)	11/1/93–10/31/94
Japan: Bicycle Speedometers (A–588–038)	11/1/93–10/31/94
Japan: Light Scattering Instruments (A–588–813)	11/1/93–10/31/94
Japan: Titanium Sponge (A–588–020)	11/1/93–10/31/94
Korea: Circular Welded Non-Alloy Steel Pipe (A–580–809)	11/1/93–10/31/94
Mexico: Circular Welded Non-Alloy Steel Pipe (A–201–805)	11/1/93–10/31/94
Singapore: Rectangular Pipes & Tubes (A–559–502)	11/1/93–10/31/94
Taiwan: Circular Welded Non-Alloy Steel Pipe (A–583–814)	11/1/93–10/31/94

Antidumping duty proceedings	Period
The People's Republic of China: Tungsten Ore Concentrates (A–570–909)	11/1/93–10/31/94
Venezuela: Circular Welded Non-Alloy Steel Pipe (A–307–805)	11/1/93–10/31/94

Suspension agreements	Period
Japan: Certain Small Motors (A–588–090)	11/1/93–10/31/94

Countervailing duty proceedings	Period
Argentina: Oil Country Tubular Goods (C–357–403)	1/1/93–12/31/93
Peru: Deformed Steel Concrete Reinforcing Bar (C–333–502)	1/1/93–12/31/93

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by November 30, 1994. If the Department does not receive, by November 30, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–27791 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–054]

Tapered Roller Bearings, Four Inches or Less in Diameter, and Components Thereof, From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results and Partial Termination of Antidumping Duty Administrative Reviews.

SUMMARY: On December 30, 1993, the Department of Commerce published in the **Federal Register** the preliminary results of administrative reviews of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan. The reviews cover 14 manufacturers/exporters of the subject merchandise to the United States generally during the periods April 1, 1979 through July 31, 1980; August 1, 1980 through July 31, 1981; August 1, 1981 through July 31, 1982; August 1, 1982, through July 31, 1983; August 1, 1983 through July 31, 1984; August 1, 1984 through July 31, 1985; and August 1, 1985 through July 31, 1986. Based on our analysis of comments received, the dumping margins for some companies have changed from the margins contained in the preliminary results.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips (Koyo), Chip Hayes (NSK), Valerie Turoscy (Toyota), Lisa Raisner (Yamaha, Nissan, Mazda, MC International, Nachi-Fujikoshi, Niigata Converter, Toyosha, Suzuki, Maekawa, Sumitomo Yale, Sumitomo Corp., Mitsubishi), Chip Hayes, Charles Vannatta, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 69336) the preliminary results of administrative reviews of the antidumping finding on tapered roller bearings (TRBs), four inches or less in outside diameter, and components thereof, from Japan (41 FR 34374, August 18, 1976). We have now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Reviews

Imports covered by these reviews are TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review periods such merchandise was classifiable under item numbers 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 8708.70.6060, 8708.99, and 8482.99.4510. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover TRB sales by Koyo Seiko Company, Ltd. (Koyo), for the periods 1979 through 1986, NSK Ltd. (formerly Nippon Seiko, K.K.) (NSK), for the periods 1980 through 1986, Mitsubishi Corp. (Mitsubishi), for the periods 1980 through 1985, Sumitomo Yale Co., Ltd. (Sumitomo Yale), for the periods 1980 through 1985, and Sumitomo Corporation (Sumitomo Corp.), Nachi-Fujikoshi, Niigata Converter, Toyosha, Toyota, Yamaha, Suzuki, and Maekawa Bearing Manufacturer (Maekawa), for the periods 1985 through 1986. Nachi-Fujikoshi and Niigata Converter claimed no shipments during the 1985–86 period of review (POR). Consequently, for both firms we have used each firm's rate from the last prior period in which they had shipments. Finally, as stated in the preliminary results, for these final results we are terminating the reviews of Nissan, Mazda (formerly Toyo Kogyo Co. Ltd.), and MC International.

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Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from petitioner, the Timken Company (Timken), and respondents NSK, Koyo, Mazda, and Sumitomo Corp. Rebuttal briefs were submitted by Timken, NSK, and Koyo. At the request of Timken, NSK, Koyo, and Mazda, we held a hearing on February 18, 1994.

Comments are addressed in the following order:

1. General Issues
2. Terminations
3. Annual Average Foreign Market Value (FMV), Model Match, and Cost Test Methodology
4. Calculation of FMV
5. Calculation of U.S. Price (USP)
6. Cost of Production (COP) and Constructed Value (CV)
7. Use of Best Information Available (BIA)
8. Clerical Errors

Comments Regarding General Issues

Comment 1: Timken proposes that assessment of duties should be based on the actual value of the entries suspended by the U.S. Customs Service, as Timken states was done in *Antifriction Bearings from France, et al.*, 58 FR 39729 (July 26, 1993) (*AFBs III*), and was upheld for the first antifriction bearing (AFB) administrative review by the Court of International Trade (CIT) in *Koyo Seiko Co., Ltd.* v. *United States*, 796 F. Supp. 1526, 1529, *modified*, 806 F.Supp. 1008 (1992) (*Koyo Seiko*). Timken acknowledges that, although the Department's approach in the AFB cases was necessary due to the Department's sampling methodology, compelling reasons exist in these reviews to adopt the same approach.

Further, Timken cites *Timken Company* v. *United States*, Slip Op. 94–1 at 11–12 (January 3, 1994) (*Timken III*), wherein the CIT did not order a remand for further investigation, but required the Department to order liquidation of the merchandise in accordance with the *AFBs III* methodology (*i.e.*, collect the full amount of antidumping duties calculated to be due in this case by assessing these duties over all suspended entries of the merchandise). Timken submits that this is the only reasonable method of assessing antidumping duties in this long-delayed proceeding.

Timken argues that assessing antidumping duties in these reviews may be problematic because "it is likely" that entries subject to the dumping finding have been incorrectly liquidated. Similarly, Timken notes that the administrative record contains evidence that an importer incorrectly entered certain merchandise as outside the scope of the antidumping orders on TRBs, referring to *U.S. Customs Service, HQ 222367* (December 28, 1990) (*Customs HQ*), originally submitted as Exhibit B of Koyo's October 30, 1991 submission.

Timken acknowledges that identification of the merchandise is complicated by the fact that the subject merchandise was often entered as part of a multi-product shipment and points out that, unless the Department adopts an alternative assessment methodology, the correct amount of duty may not be assessed at liquidation. Timken suggests that before the Department issues final assessment instructions, it should require Customs to report the value of suspended entries during the review periods for each manufacturer subject to review. With this information, Timken argues, the Department could then formulate assessment instructions that would ensure collection of the actual amount of duty determined to be payable by each company.

Koyo believes the Department should reject Timken's claim for the following reasons:

- Timken has provided no evidence to support its claim that entries subject to the dumping finding have been liquidated in error.
- Timken's cite to the CIT decision in *Koyo Seiko* as support for assessment on the basis of entered value is misleading because the use of sampling rendered assessment on entered value necessary in the AFB cases.
- Section 751(a)(2) of the Tariff Act requires that the excess of FMV over USP "shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties."
- Timken's cite to *Timken III* is not valid because in that case Timken challenged the Department's failure to address adequately Timken's arguments regarding discrepancies between the value of U.S. sales reported by respondents and the value of suspended entries reported by the Customs Service. The CIT concluded that the Department had fulfilled its statutory obligation and that Timken should have brought an action *in mandamus* to compel Customs to perform its duty. Moreover, Koyo argues that the CIT's reference to assessment based on entered value was *obiter dicta*, as the Department had not instructed the Customs Service to assess antidumping duties based on entered value in the review at issue in that appeal.
- Furthermore, Koyo states that the Department cannot legally order the assessment of duties on entries which have already been liquidated. Koyo states that liquidation of entries is final unless the liquidation is properly protested in a timely manner, citing 19 U.S.C. § 1514(a) and *United States* v. *Utex Intern, Inc.*, 857 F.2d 1408, 1410–11 (Fed. Cir. 1988).

NSK argues that assessment of antidumping duties must be imposed on an entry-by-entry basis only on unliquidated entries. NSK asserts that the Department has no statutory authority to assess total antidumping duties (covering liquidated and unliquidated entries) over unliquidated entries.

Department's Position: As outlined in the Department's *Advanced Notice of Proposed Rule Making* (56 FR 63696 (December 5, 1991)), with respect to exporter's sale price (ESP) assessment, the Department has experienced significant difficulties in issuing liquidation instructions to Customs in cases involving large volumes of ESP entries. Several factors contribute to this difficulty: (1) the lag between entry date and sale date in ESP transactions, (2) the fungibility of the product, (3) the volume of transactions reviewed, and (4) the parties' own inability to link entries to sales or to provide the Department with the documentation to do so. Given these difficulties, as noted in the *Advanced Notice of Proposed Rule Making*, the Department has explored various alternative methods of issuing ESP assessment instructions. Such alternatives, and variations, include:

(1) When entry data are available, the Department can derive a per-unit margin by dividing the calculated dumping duties due (based on sales) by the number of units entered and then instruct Customs to apply the per-unit margin against all units entered during the review period. Similarly, the Department can derive a percentage margin by dividing the calculated dumping duties due (based on sales) by the entered value of the merchandise entered during the POR and then instruct Customs to apply this percentage margin against the entered Customs value of merchandise entered during the POR. This proposed methodology simplifies and streamlines assessment and liquidation dramatically, yet still enables Customs to collect the exact amount of dumping duties due on ESP sales that occurred during the review periods (although the lag between entry and sale dates in an ESP situation will still make assessment problematic).

(2) When entry data are not available, we can derive a percentage margin by dividing the calculated dumping duties due (based on sales) by the net USP (which is our best calculation of the entered value of the merchandise entered during the POR), and then instruct Customs to apply that percentage margin against the Customs value of suspended entries of merchandise entered during the POR.

(3) The Department can derive a per-unit dumping margin by dividing the calculated dumping duties on ESP sales that occurred during the POR by the number of units sold and then apply the per-unit margin against all units entered during the POR.

We have evaluated these options in the context of these reviews covering entries from 1979 through 1986. We have determined that absolute assessment (option 1), as advocated by Timken, is not feasible for these reviews. Collection of the entered value of suspended entries of covered merchandise requires an amount of precision on a country-wide scale that, though possible for current ongoing reviews given today's level of electronic database maintenance, is clearly not feasible for the time periods in question in these reviews. Also, other than a limited number of Yamaha entries and the single instance cited by Timken (*Customs HQ*), we have no evidence that any entries of covered TRBs were incorrectly liquidated. Timken's concern about possible incorrectly liquidated entries is also unfounded conjecture and not based on substantial evidence. We disagree with Timken that these concerns constitute compelling reasons to use the *AFBs III* methodology. As for Timken's concern that TRBs entered as a part of a multi-product shipment may escape coverage of the finding, there is no evidence on the record to support this conclusion. Further, this option is not feasible because we did not ask the respondents for the entered value data necessary to implement this approach, and do not believe it appropriate to do so now, given the age of the reviews.

Since option 1 is not feasible, we have considered options 2 and 3. In order to be consistent with the Department's practice outlined in the second administrative review of the AFB orders (*Antifriction Bearings from the Federal Republic of Germany* (57 FR 28395, June 24, 1992) (*AFBs II*), we will calculate POR-specific appraisement rates using option 2, and we will instruct Customs to assess dumping duties on the entered value of suspended entries of covered TRBs during each POR.

Comment 2: Timken notes that cash deposits were not required for Koyo and NSK until the completion of the first administrative review in June 1990. Timken maintains that the Department, in each of the administrative results of review issued to date in this case, has refused to assess interest on antidumping duties secured by bonds rather than cash deposits. Timken acknowledges that the CIT has upheld the Department's determination not to assess interest and notes that Timken has appealed those decisions to the Court of Appeals for the Federal Circuit (Federal Circuit) (*Timken Company* v. *United States*, 15 CIT 526, 777 F.Supp. 20 (1991), *aff'd after remand*, 819 F.Supp. 1093 (CIT March 4, 1993), *appeal docketed*, Fed. Cir. No. 93–1312 (April 16, 1993)).

Timken asserts that section 778(a) of the Tariff Act contemplates collection of interest on all "underpayments of amounts deposited on merchandise entered" and that the Department's rationale for distinguishing entries secured by bonds, as opposed to cash deposits, distorts the statutory purpose and benefits those respondents that failed to make cash deposits of estimated duties. Timken requests that the Department address this issue once again in these final results.

NSK argues that the Tariff Act, the Department's practice, and judicial precedent hold that no interest is assessable on entries covered by bonds rather than cash deposits.

Koyo counters that Timken raises no new arguments in this review in support of its position and that unless and until the Department's longstanding interpretation of the Tariff Act is rejected by the Federal Circuit, the Department should continue to instruct Customs not to assess interest on antidumping duties secured by bond when liquidating the entries subject to these reviews.

Department's Position: We disagree with Timken. Section 778(a) of the Tariff Act provides that interest shall be payable only on overpayments and underpayments of "amounts deposited." The CIT held in *Timken Co.* v. *United States*, 777 F.Supp. 20 (1991), that the words "amounts deposited" refer only to cash deposits of estimated antidumping duties upon entry, and not to other kinds of security, such as a bond. In considering Timken's appeal, the Federal Circuit held that "the requirement to make cash deposits of estimated duties, under the duty order, triggers the interest provision. Without the duty order, the importer has no obligation to pay interest. The Court of International Trade did not err in upholding ITA's determination that NSK and Koyo Seiko are not liable for interest * * *" (*Timken Co.* v. *United States*, Fed. Cir. No. 93–1312, –1455 (Fed. Cir., September 27, 1994)).

This proceeding concerns a 1976 finding, in which the statute required bonds, not cash deposits. The Trade Agreements Act of 1979 (the 1979 Act) did not allow the collection (or payment) of interest where the entry of merchandise was permitted under bond rather than by the cash deposit of estimated dumping duties. Further, the 1979 Act contained no provision for the conversion from bonds to cash deposits for existing antidumping findings, except through the administrative review process.

Therefore, because we required cash deposits for the first time on entries of merchandise manufactured by Koyo and NSK on June 1, 1990, interest will only be collected or refunded on under- or overpayments of cash deposits on entries after that date.

Comment 3: Timken states that in its submission of October 8, 1991, it requested that the Department convert existing bonds, posted by Koyo and NSK as security for antidumping duties, to cash deposits. Since the Department has never formally responded to its request, Timken is renewing that request in its case brief for these administrative reviews.

Timken maintains that the role of Customs in matters pertaining to antidumping duties is purely "ministerial," requiring Customs to implement the instructions of the Department to the extent those instructions are not inconsistent with Customs regulations, citing *Diversified Products Corp.* v. *United States*, 6 CIT 155, 572 F.Supp. 883 (1983). According to Timken, the Department, therefore, has the authority to require Customs to collect cash deposits at this time, even if such deposits are nominal in amount. Timken argues that the conversion of existing bonds to cash deposits would permit the Department to collect interest on under-deposits of antidumping duties as required by section 778(a) of the Tariff Act. Timken contends that the Department should recognize that this proceeding is *sui generis*, at least with respect to Koyo and NSK, since the Department published a decision that cash deposits would be imposed on entries subject to existing findings as of the date of completion of the first administrative review (45 FR 1084, January 4, 1980). Timken points out that Koyo and NSK posted bonds for all of their entries during each of the PORs.

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Moreover, Timken notes that the Department's ruling with respect to interest on Koyo and NSK entries was issued in June 1990 and is still pending before the Federal Circuit. Based on this experience, Timken states that it may take four years or more before assessment occurs. In order to safeguard the revenue during the inevitable appeals of the final results of these reviews, Timken urges the Department to require conversion of bonds to cash deposits.

NSK argues that the Department has consistently followed its policy of not requiring cash deposits on entries covered by pre-1980 findings until the first administrative review has been completed under section 751 of the Tariff Act. NSK contends that Timken has cited no authority to suggest that the Department's practice is contrary to law.

Koyo counters that neither the Department nor the Customs Service possesses any authority to require the posting of cash deposits retroactively. Koyo remarks, citing *U.S. Customs Service, HQ 222367* (December 28, 1990), that the Customs Service has no authority to require posting of cash deposits on entries that have been entered and accepted.

Department's Position: In 1980, the Department of the Treasury published a notice (45 FR 1084, 1980) stating that the 1979 Act contained no provision for the immediate conversion of existing antidumping findings from bonds to cash. Section 106(a) of the 1979 Act merely provides that outstanding antidumping findings would remain in effect and would be subject to review under section 751 of the Tariff Act. Section 751(a)(2) of the Tariff Act provides that the administrative review "shall be the basis for * * * deposits of estimated duties." Thus, the legal basis for requiring cash deposits under the 1979 Act is a review under section 751 of the Tariff Act or an order pursuant to section 736 of the Tariff Act. Because this case is not governed by an order, the Department is without power to require the imposition of a cash deposit until the completion of an administrative review.

Under U.S. law, where an affirmative dumping finding has been made, security must be provided upon entry of the merchandise into the country, and if the form of security is cash deposits, it must be paid no later than 30 days after entry (19 U.S.C. section 1505). Because the merchandise in question has already entered the country, the form of security cannot be changed retroactively. Similarly, since interest is only collectible on cash deposits pursuant to sections 737 and 778 of the Tariff Act, interest would accrue only from the time that the Department required a cash deposit and would not be retroactive to the time of entry under bond. The Department has followed this practice consistently and will continue to follow it for merchandise already entered into the United States.

Comment 4: Timken urges the Department to release detailed computer printouts of the final results of review as the limited information released in the preliminary results is insufficient to permit the parties to identify all errors in the computer printout. Since the Department has consistently refused to release "pre-final" calculations for review by the parties, Timken contends that the final output often provides the only indication of clerical errors in the Department's analysis. Therefore, at a minimum, Timken believes the Department should release a representative sample of major datasets (*i.e.*, 500 observations for each annual period).

NSK agrees with Timken that the Department should release detailed computer printouts of its final analysis. NSK also suggests that the Department consider releasing the printouts in advance of issuance of the final results, in order to expeditiously identify and correct any clerical errors.

Koyo supports Timken's request for pre-disclosure of the final results in this case due to the very complex nature of the preliminary margin analysis and the number of clerical errors identified in the preliminary results computer program.

Department's Position: We disagree with Koyo and NSK. The issuance of pre-final programs and printouts would only serve to delay the final results of these reviews. We believe that Koyo has misinterpreted Timken's comments regarding release of the "pre-final" calculations. In fact, Timken states that the Department's past consistency in refusing to release pre-final results makes a detailed release of the final margin program even more important. We agree with Timken in principle, and intend to provide the parties to this proceeding with a representative sample of the major datasets needed to identify any clerical errors in the computer programs, if they request disclosure after issuance of the final results to identify and comment on any clerical errors.

Comments Regarding Terminations

Comment 5: Mazda states its concern over the Department's refusal to terminate the review of Sumitomo Corp. with respect to Mazda transactions. Mazda notes that in Timken's agreement to withdraw its request to review Mazda, Timken consented to the termination of the review with regard to resale transactions to Mazda's subsidiaries through Sumitomo Corp. Mazda states its interest in this proceeding is to retain its zero margin rate for all U.S. entries of Mazda replacement-part TRBs, without regard to whether such TRBs are imported directly from Mazda or indirectly from Mazda through resales by Sumitomo Corp.

Mazda suggests three alternative proposals: (1) partial termination of the review of those sales through Sumitomo which both originate and end with Mazda; (2) termination of the review with regard to all sales for export to the United States by Mazda, whether directly or indirectly through Sumitomo Corp.; or (3) termination of the review with regard to all sales for export to the United States by Mazda and instructions to Customs to liquidate all TRBs sold by Mazda for export to the United States, whether directly or indirectly through Sumitomo Corp. Mazda contends that any of the three alternatives would leave Sumitomo Corp. in the review while clarifying the Department's intent to have all of Mazda's export sales of TRBs to the United States, whether directly or indirectly through Sumitomo Corp. as a reshipper, treated as exports by Mazda. Mazda maintains that such treatment is consistent with both Mazda's and Timken's request to terminate the review, as well as consistent with current and past treatment by Customs of Mazda's exports to the United States.

Sumitomo Corp. maintains that it is not the importer of record, and therefore has no liability for antidumping duties. Further, by terminating the review of Mazda, the Department will effectively terminate the review of Sumitomo Corp. with respect to Mazda's exports during the POR.

Timken reaffirms its agreement to the termination of the 1985/86 review with respect to Mazda and, of the three alternatives proposed by Mazda, prefers the third, namely, the termination of the review with regard to all sales for export to the United States by Mazda, with a clarification to Customs of the Department's intent that Mazda's exporter rate should be applied to all TRBs sold by Mazda for export to the United States, whether directly or indirectly through Sumitomo Corp.

Department's Position: We agree with Timken that alternative three offers the best solution with regard to termination of the review of Mazda and Mazda transactions through Sumitomo Corp. It satisfies Mazda's request and Timken's affirmation to terminate the review with regard to all sales for export to the United States by Mazda, while enabling us to appraise exports by Sumitomo Corp. for sale to parties other than Mazda. Accordingly, in these final results, we are terminating the review of Mazda with regard to all sales for export to the United States by Mazda. In our instructions to Customs we will clarify our intent that Mazda's rate should be applied to all TRBs sold by Mazda for export to the United States, whether directly or indirectly through any entity. For an explanation of our treatment of Sumitomo Corp., please see the following comment.

Comment 6: Mazda argues that the Department erroneously treated Sumitomo Corp. (also known as Sumitomo Shoji Kaisha, Ltd.) and Sumitomo Yale Co., Ltd. as one company, when in fact they are two separate, independent firms. Mazda also notes that only Sumitomo Yale was included in the 1980/85 reviews (51 FR 24883) and only Sumitomo Corp. was included in the 1985/86 review (51 FR 32817).

Sumitomo Corp. states that it should not have been included in these reviews and should no longer be considered a party to this proceeding because Sumitomo Corp. does not manufacture, import, or further process TRBs. Sumitomo Corp.'s role, for which it receives a fixed commission, in the sale and shipment of TRBs, has only been to arrange for the transport of the merchandise from Japan to the United States in transactions between related parties.

Because Sumitomo Corp. did not respond to the Department's questionnaire, Timken argues that, for exports by Sumitomo Corp. for sale to parties other than Mazda, the Department should apply BIA to Sumitomo Corp.'s entries both for appraisement and to derive the cash deposit rate for future entries.

Department's Position: Evidence on the record indicates that Sumitomo Yale and Sumitomo Corp. are, in fact, two separate firms. Evidence on the record also indicates, however, that we sent Sumitomo Yale questionnaires for the 1980/85 periods to which the firm declined to respond. Therefore, in accordance with section 776(c) of the Tariff Act and the methodology outlined in the notice of preliminary results, we have used first-tier BIA to determine the margins for Sumitomo Yale.

Although the Department initiated a review of Sumitomo Corp. only for the 1985/86 POR, we inadvertently sent Sumitomo Corp. a questionnaire for several periods preceding that POR. In addition, we cannot confirm that we sent a questionnaire to Sumitomo Corp. for the 1985/86 review. Therefore, it is inappropriate to use BIA, since Sumitomo Corp. did not fail to respond or otherwise impede the proceeding.

We have considered several additional facts: (1) the age of the proceeding does not allow for efficient retrieval from Customs of information on suspended entries; and (2) Timken has withdrawn its request for a review of Sumitomo Corp.'s shipments with respect to Mazda for the 1985/86 POR. Therefore, we have accepted the portion of Sumitomo Corp.'s case brief with comments regarding its activities for the 1985/86 POR which provides evidence that Sumitomo Corp. did not sell TRBs to the United States during the 1985/86 POR.

Therefore, for entries suspended as "Sumitomo Corp." entries for the 1985/86 POR, we will notify Customs to liquidate them at the manufacturer's rate, either based on the final results of this review or as provided for by 19 CFR 353.22(e). Specifically, in accordance with 19 CFR 353.22(e), Mazda entries suspended as "Sumitomo Corp." entries will be liquidated at the amount of cash deposit required at the time of entry. We further note that we are currently conducting a review of Sumitomo Corp. for the 1992/93 POR, and we will determine in that review the role of Sumitomo Corp. in U.S. TRB transactions based on the information on the record for that review.

For entries by all firms for which we are terminating these reviews, in accordance with 19 CFR 353.22, we will instruct Customs to assess antidumping duties in the amount of the cash deposit required at time of entry. Existing cash deposit rates will remain in effect for those firms until the next publication of final results of review.

Comments Regarding Annual Average FMV, Model Match, and Cost Test Methodology

Comment 7: Both NSK and Timken argue that the Department's calculations incorrectly excluded home-market models which lacked physical criteria information from the model-match portion of the analysis. NSK and Timken contend that, where possible, the Department should match such home-market models with U.S. models with identical nomenclature.

Department's Position: We agree. In the preliminary results of review we did not intend to exclude from the model-match analysis any home-market models lacking physical criteria information. We have made the necessary correction to our calculations for these final results of review to ensure that we consider all home-market models in determining whether they are identical to models respondents sold in the United States.

Comment 8: Koyo states that for the final results the Department should follow the CIT's direction in *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.* v. *United States*, 834 F.Supp. 431 (CIT 1993). In that case, the CIT concluded that a 10-percent cap was required to limit the permissible deviation of the criteria used to match TRB models and agreed with Koyo that the use of a 10-percent cap on the comparison of each physical criterion is necessary to avoid "comparisons between products which differ so dramatically that they simply cannot be considered commercially similar" (*Koyo Seiko, Co.*, 834 F.Supp. 435).

Timken disagrees with Koyo, stating that the "sum of the deviations" method of determining comparison merchandise, in conjunction with the 20-percent difference-in-merchandise (difmer) limit, implements the intent of section 771(16) of the Tariff Act that the comparison merchandise be "like" the merchandise sold in the United States, and of approximately equal commercial value. Section 771(16) of the Tariff Act, Timken argues, does not require that home-market models be technically substitutable. Therefore, in Timken's opinion, because this issue is currently under judicial review, the Department should decline to modify its methodology, pending a "final" judicial decision on the issue.

Department's Position: We agree with Timken. As we stated in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan* (58 FR 64721, December 9, 1993) (*1990/91 and 1991/92 TRBs*), we are satisfied that use of the original sum of the deviations methodology, without the 10-percent cap but including the 20-percent difmer cap, accurately determines the most similar model sold in the home market. We have, therefore, used the original sum of the deviations methodology for model-match comparisons in these final results of review.

Because we use the original sum of the deviations model-match methodology, rather than the single greatest deviation methodology we used in conjunction with the 10-percent deviation cap in the less-than-fair-value (LTFV) investigation of TRBs over 4 inches, application of a 10-percent deviation cap to each physical criterion would mean that the best overall match could be eliminated simply because a single physical criterion deviated by more than 10 percent. By using the sum

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of the deviations methodology, all five matching criteria have equal weight. By contrast, the application of a 10-percent cap to each physical criterion represents a distortion of the model-match methodology, in that it establishes a randomly-selected hierarchy, rather than evaluating each criterion on an equal basis. The 10-percent cap can result in our inability to match some U.S. sales of TRBs which the Department considers most similar overall, but which have a greater than 10-percent deviation in only one criterion. This results in reliance on CV to a much greater degree when the statutory preference is for price comparisons.

Furthermore, if the Department were to apply both the 10-percent cap and the 20-percent difmer cap, the methodology would become too restrictive, since in some cases the only matches passing the 20-percent difmer test may vary by more than 10 percent in one or more physical criteria. Using both tests might eliminate matches of otherwise comparable merchandise. Thus, this methodology would result not in more precise matches but in fewer matches to such or similar merchandise, and an overreliance on CV.

Finally, although the CIT held in *NTN Bearing Corp.* v. *United States*, Slip Op. 94–25 (February 11, 1994), that the Department must apply the 10-percent cap to the sum of the deviations methodology, the Department respectfully disagrees with this decision. Because application of the 10-percent cap in that case does not alter the margins, the Department cannot appeal that case (see *Zenith Electronic Corp.* v. *United States*, 895 F.2d 291 (Fed. Cir. 1989)). However, we have appealed the next case involving this issue (*Koyo Seiko Co., Ltd and Koyo Corporation of U.S.A.* v. *United States*, Slip Op. 93–185). Therefore, for all of these reasons, and for the reasons explained in the notices of prior TRB final results of review, we have not changed our methodology for these reviews.

Comment 9: Koyo objects to the Department's use of set-splitting to create artificial home-market sales of cups and cones for comparison to sales of cups and cones sold separately in the United States. Koyo states that there are sufficient actual sales of cups and cones in the home market to allow the Department to avoid comparison with CV. In addition, the use of annual average FMVs in these reviews permits the Department to match a U.S. sale of a cup or cone to a home-market sale of a such or similar cup or cone made at any time in the home market, rather than within the six-month window the Department uses with monthly weighted-average FMVs. Koyo asserts that this fabrication of artificial sales by set-splitting violates the statute, skews the margins, and creates unnecessary work and expense.

Koyo cites section 773(a)(1) of the Tariff Act as providing that "[i]n the ascertainment of foreign market value, for the purpose of this title, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account." Koyo contends that there may have been a "sale", but not of the type of product to which it was matched in the U.S. market.

Acknowledging that the CIT upheld the Department's splitting of sets in *NTN Bearing Corp. of America* v. *United States*, 747 F.Supp. 726 (CIT 1990)(*NTN*), Koyo contends that the facts of that LTFV investigation are different from the facts of these reviews. Koyo explains that in the LTFV investigation, to avoid over-reliance on CV, the Department split home-market sales of TRBs into "sales" of cups and cones. Koyo contends, however, that in these reviews there were sufficient actual home-market sales of cups and cones to match with the U.S. sales of cups and cones. In addition, Koyo states that reliance on actual sales would simplify the calculations and lessen the administrative burden. If the Department determines that it is necessary to continue to split TRB sets, Koyo requests that the Department at least combine the sales of cups and cones in order to conduct a fair analysis, citing *Timken Co.* v. *United States*, 673 F.Supp. 495, 505 (CIT 1987) (*Timken II*).

Timken asserts that a TRB set is nothing more than a cup or cone sold together as a unit. The practice of selling cups and cones as individual components in some markets does not render the components distinct articles of commerce. Timken challenges Koyo's contention that cups and cones have different commercial values than complete sets, when, in fact, Koyo points to no evidence in the administrative record to support its contention.

Timken identifies several court cases where the CIT upheld the Department's set-splitting. For example, in *Timken II*, Timken notes that the CIT rejected NTN's argument that the Department was creating pretended sales of cups and cones in the home market. Timken also cites NTN as support for the Department's set-splitting methodology.

Moreover, Timken notes that the CIT has upheld the Department's use of set-splitting in the context of using home-market annual average prices in *NTN Bearing Corp. of America* v. *United States*, 835 F.Supp. 646 (CIT 1993)(*NTN I*). Although this issue was not specifically addressed in this case, Timken notes that the Department's consistent practice has been to split TRB sets, no matter how FMV was determined (*e.g., 1990/91 and 1991/92 TRBs*, 58 FR 64720).

Finally, Timken sees no merit in Koyo's argument that the Department and respondents would be spared the additional work necessary to split home-market set sales into cups and cones.

Timken concludes that Koyo has provided no reason for the Department to modify its present approach, and urges the Department to continue to split home-market TRB sets into individual cup and cone components for the final results of these reviews.

Department's Position: We agree with Timken. In its most recent decision on this matter, the CIT again reaffirmed the Department's practice of set splitting (*NTN I*). In *Timken II* the CIT pointed out that these split sales are not "fictitious" sales, but real sales made to real customers. The CIT upheld the Department's decision to split sales of sets because, otherwise, respondents could have forced the Department to use CV in its analysis by simply selling sets in one market and cups and cones in the other: "the Court declines to read section 1677b(a)(1) to permit such control by foreign manufacturers of the manner in which FMV is determined" (*Timken II*, at 495, 504–505). In addition, the CIT has also stated in *NTN I* that, if NTN's interpretation of the statute were followed, "such interpretations would encourage importers to circumvent the antidumping laws by simply using divergent invoicing methods" (*NTN I*, 726, 741). The Department considers set-splitting to be necessary for these reviews; cups and cones split from sets are potentially the most similar merchandise to the products sold in the United States. Because they may be the most similar products, it is appropriate to include this merchandise in the pool of home-market sales.

Comments Regarding Calculation of FMV

Comment 10: Timken argues that the adjustment to FMV for early-payment discounts as direct selling expenses, which the Department granted NSK in the preliminary results of the 1984/85 and 1985/86 reviews, is unsupported. Timken contends that the discounts were not related to specific merchandise and notes that, under identical circumstances, the Department has in the past denied a respondent's claim for a direct adjustment.

NSK concedes that, using its present methodology, the Department requires discounts to be reported on a transaction-specific basis. However, NSK argues that in this case the Department's 1986 questionnaire did not require NSK to report early-payment discounts on a transaction-specific basis, reflecting the Department's practice at the time. Furthermore, NSK notes the company was unable to tie its cash discounts to specific merchandise because the same discounts were granted on all merchandise. NSK explains that its allocation of total discounts over total sales was consistent with its record-keeping at the time.

Department's Position: The Department's current practice is indeed to require that discounts be reported on a transaction-specific basis (see *AFBs III*, 39729, 39759). However, in our original questionnaires for these reviews we did not require NSK to report discounts on such a basis, and we did not issue supplementary instructions when our practice changed. Therefore, because NSK's submitted discount information represents the only information on the record, we have continued to rely on these data for these final results of review.

Comment 11: Timken contends that the Department incorrectly treated Koyo's post-sale price adjustments (PSPAs) and rebates as direct selling expenses in the home market when, in fact, Koyo reported these adjustments as aggregate amounts, attributable to all products, and, therefore, did not report them on a transaction-specific basis. Timken states that at verification the Department determined that Koyo calculated (a) a lump-sum discount amount, and (b) a part-number-specific debit/credit PSPA, and then reported a PSPA ratio based on the aggregate of these two values. Timken notes that 19 CFR 353.56(a) requires that billing adjustments bear "a direct relationship to the sales compared" in order to be treated as a direct selling expense. In addition, Timken notes that, according to several court decisions, the burden of proving entitlement to adjustments rests with respondents. Further, Timken cites *Torrington Company* v. *United States*, 818 F.Supp. 1563, 1579 (1993) (*Torrington*), as evidence that the CIT disallowed a methodology which would include PSPAs and rebates on out-of-scope merchandise in calculating an FMV.

Timken, however, believes that the Department should continue to adjust for home-market price increases, by using Koyo's "positive" price adjustments, as these data constitute the best information on the record concerning price increases during the periods of review.

Koyo states that the Department correctly accepted Koyo's home-market billing adjustments as direct selling expenses. Koyo argues that Timken's reliance on *Torrington* is misplaced because, although the CIT stated that the Department should not include billing adjustments for out-of-scope merchandise, the CIT proposed an alternative methodology whereby billing adjustments for in-scope merchandise can be calculated by identifying the ratio of in-scope merchandise to total sales to which these billing adjustments apply, and applying that ratio to total billing adjustments (*Torrington*, 1578–79). Koyo maintains that the Department has verified and accepted Koyo's methodology in previously completed TRB reviews (*1990/91 and 1991/92 TRBs; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Japan*, 57 FR 4951 (February 11, 1992))(*TRBs I*).

Koyo concludes that the Department properly treated Koyo's home-market PSPAs as direct selling expenses. Koyo adds that if the Department contemplates rejecting Koyo's billing adjustments, it must, at a minimum, re-open the administrative record to allow Koyo to resubmit information that conforms to any new standard the Department may use in lieu of the standard prevailing in 1991 when Koyo submitted its consolidated response.

Department's Position: We disagree in part with Timken and Koyo. For these review periods, Koyo pooled all debit and credit notes associated with the PSPAs and rebates of each customer and allocated the amounts over the total purchases (*i.e.*, in-scope and out-of-scope merchandise) of each customer. In our supplemental questionnaire we asked Koyo to demonstrate how each price adjustment was linked to each transaction. Koyo only provided a computer printout showing price adjustments by customer code. The price adjustments were divided by the customer's total purchases during each POR. Since Koyo's records during the PORs did not reveal the exact nature of the price adjustments, we have not treated these expenses as direct selling expenses. Nor have we limited the adjustments to only positive values, as Timken suggests, because the use of only positive values would distort the information submitted by Koyo. Therefore, we have classified Koyo's PSPAs and rebates as indirect, rather than direct, expenses.

Comment 12: Koyo states that the CIT held in *Koyo Seiko Co., Ltd.* v. *United States*, 810 F.Supp. 1287, 1292 (CIT 1993) (*Koyo Seiko*), and in numerous other cases that the antidumping statute requires the Department to make a circumstance-of-sale (COS) adjustment to FMV for U.S. direct selling expenses. Koyo cites as examples *NSK Ltd.* v. *United States*, No. 92–03–00158, Slip Op. 93–216 (CIT Nov. 18, 1993), and *NTN Bearing Corp. of America* v. *United States*, No. 91–08–00576, Slip Op. 93–56 (CIT April 21, 1993)). Given such clear and consistent instruction from the CIT, Koyo argues that the Department, for these final results, must adjust for U.S. direct selling expenses by adding these expenses to FMV, rather than by subtracting them from USP.

NSK argues that the Department's treatment of U.S. direct selling expenses as adjustments to USP was contrary to law and judicial precedent. NSK argues that U.S. direct selling expenses are properly treated as upward adjustments to FMV.

Timken counters that the law requires Customs to collect the full amount of the difference between USP and FMV, and if an improper denominator is used in calculating the *ad valorem* appraisement rate, respondents will escape collection of the full amount of duties. Timken asserts that in order for Customs to apply appraisement rates to the entries subject to these reviews, the Department should calculate the percentage rates on the basis of entered value. If this is done, Timken claims there will be no difference in the rates calculated regardless of whether the expenses are subtracted from USP or added to FMV.

Moreover, Timken notes that the Department has declined to follow the decisions cited by NSK and Koyo (*1990/91 and 1991/92 TRBs*), on the grounds that an appeal of the underlying issue is pending in other TRB litigation. Therefore, Timken states that the Department should continue to deduct direct selling expenses from USP rather than add them to FMV.

Department's Position: It is our longstanding practice, pursuant to section 772(e)(2) of the Tariff Act, to deduct all expenses incurred in the United States, including direct selling expenses, in calculating ESP. In calculating purchase price (PP), adjustments for differences in COS pursuant to 19 C.F.R. § 353.56, including direct selling expenses, are made to FMV, and no deduction of direct selling expenses is made from PP. This is necessary to avoid a systematic distortion in the amounts of duty assessed which would result if the value

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on which dumping margins were calculated were consistently different than the entered value, to which Customs will apply the margin.

Entered value is most commonly based on the price to the United States between the exporter and the importer. In contrast, the basis of ESP is the resale price in the United States to the first unrelated purchaser, which will approximate the entered value only after all expenses incurred in the United States (including direct selling expenses) are deducted. PP will approximate the entered value without the deduction of any expenses because the direct selling expenses are incurred in the exporting country and included in the price to the United States used for both PP and entered value.

On September 30, 1994, the Federal Circuit reversed the decisions of the CIT in *Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.* and *Isuzu Motors, Ltd. and American Isuzu Motors, Inc.*, v. *United States* and *The Timken Company* (93–1525, 93–1534), holding that "(n)othing in the plain language * * * of the Antidumping Act precludes Commerce's approach of adjusting exporter's sales price by deducting therefrom certain direct selling expenses incurred in the United States. Indeed, Commerce's stated rationale for its approach is well within the bounds of reasonableness." Therefore, we have maintained our practice for these final results.

Comment 13: Timken maintains that Koyo cannot consolidate its sales to a related distributor and then report the selling expenses of that distributor (*e.g.*, indirect selling expenses, credit), when it reported the sale between Koyo and its related distributor and did not report the distributor's re-sale prices to unrelated parties. In Timken's view, Koyo's *ad hoc* treatment of related distributors' expenses and sales information, which were consolidated for some purposes and not for others, renders the entire indirect selling expense claim invalid.

Koyo states that Timken misinterpreted the verification report, which makes clear that Koyo reported only selling expenses incurred by Koyo at its headquarters and sales offices, and did not include any expenses incurred by related companies.

Department's Position: We disagree with Timken. We have reexamined the documents cited by Koyo, including the home-market verification report, and have concluded that the information on the record regarding Koyo's indirect selling expenses is accurate. Although we have adjusted Koyo's home-market indirect selling expenses as a result of other positions taken by the Department for these final results, we are satisfied that Koyo submitted only those expenses it incurred at its headquarters and sales offices.

Comment 14: Timken maintains that in the preliminary results of review for Yamaha, the Department erroneously deducted an imputed adjustment for home-market credit expense from FMV. Because Yamaha made no claim for this adjustment, Timken asserts that the Department is under no obligation to adjust for this expense, and that for the final results the Department should not make the credit expense adjustment to FMV.

Department's Position: We agree. The CIT has stated that the burden of proving entitlement to adjustments rests with the respondent making the claim (*Timken II*). Therefore, we have not made an adjustment to FMV for Yamaha's imputed credit expenses.

Comments Regarding Calculation of USP

Comment 15: Timken asserts that section 772 of the Tariff Act requires the Department to adjust USP for "all costs, charges, and expenses . . . incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States. . . ." Timken states that this includes pre-sale inland freight. In contrast, Timken observes that there is no similar provision for deduction of such expenses from FMV. Therefore, Timken argues that the statute calls for distinct treatment of pre-sale inland freight, depending upon whether USP or FMV is at issue.

Timken notes that the Federal Circuit's rejection of the Department's practice of treating home-market pre-sale inland freight as a direct deduction from FMV is categorical and not limited to the PP context (*Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (Fed. Cir., January 5, 1994) (*Ad Hoc Committee*)). Timken asserts that the Department's implementation of *Ad Hoc Committee* requires that any adjustment for pre-sale inland freight be made pursuant to the ESP offset (as an indirect selling expense), rather than pursuant to the COS provision of section 773 of the Tariff Act.

Koyo points out that the Department treated pre-sale inland freight as an indirect expense, which is contrary to the Department's established practice in previous reviews of this case of treating pre-sale inland freight as a direct selling expense. Koyo cites *1990/91 and 1991/92 TRBs*.

Koyo states that in *Ad Hoc Committee*, which involved PP sales, the Federal Circuit held that the Department may not make a deduction for pre-sale inland freight in calculating FMV. Koyo notes, moreover, that the Federal Circuit's decision explains that the case before it was a departure from the Department's longstanding practice of deducting pre-sale transportation expenses from FMV in ESP situations.

Therefore, Koyo maintains that the Department should continue its practice of deducting pre-sale inland freight expenses as direct selling expenses from FMV. Koyo also asserts that Timken's reliance on *Ad Hoc Committee* is misplaced because the decision applied only to situations involving PP transactions and does not apply to Koyo's transactions in these reviews where USP is calculated using ESP.

NSK argues that the *Ad Hoc Committee* decision has no bearing on, NSK's sales. NSK contends that the Federal Circuit decision involved PP sales, in which foreign inland freight was post-sale freight, whereas NSK's sales are ESP sales, in which all inland freight is pre-sale freight. NSK argues that, in an ESP analysis, the deduction of pre-sale freight from USP but not from home-market price would result in an unequal comparison.

Department's Position: The *Ad Hoc Committee* decision states that the statute does not give the Department the authority to deduct home-market movement expenses from FMV by invoking its inherent power to fill in "gaps" in the antidumping statute (*Ad Hoc Committee*, Slip. Op. 93–1239). Consistent with the rationale of this decision, the Department applies this methodology to both PP and ESP situations. As a result, we must now evaluate a claim for pre-sale inland freight within the context of the COS adjustment provision of the Tariff Act. With respect to Koyo's and NSK's claims of having incurred pre-sale freight expenses, we find that neither claim is directly related to any specific sale and no specific sale is anticipated at the time when respondents incurred the pre-sale inland freight expense. Consistent with our practice regarding non-sales-specific expenses, we have treated pre-sale inland freight for NSK and Koyo as a home-market indirect selling expense (19 CFR 353.56(b)(2)).

Comment 16: Timken notes that in the preliminary results the Department excluded NSK's sales with prices of zero from the margin analysis. Timken contends that these sales are likely sample or promotional sales, and should be included in the margin calculation as

required by both the statute and past Department practice.

NSK argues that transactions showing zero prices are not "sales" because sales require the payment of money, and are thus more properly viewed as selling expenses. NSK notes that, as verified by the Department, sample sales are included in NSK's reported SG&A expenses, and thus should not be included in the Department's analysis of sales.

Department's Position: We agree with Timken. Our general practice has been to include zero-priced sample U.S. sales in margin calculations. In *AFBs II*, where our policy is discussed at length, we stated,

> Sample sales fall outside the scope of the review when the respondent can demonstrate that no transfer of ownership has occurred between the exporter and the unrelated U.S. purchaser . . . the statute and the regulations require the Department to analyze all sales within the period of review. . . . Consequently, all U.S. zero-price sales have been included for the final margin calculation.

In *Granular PTFE from Japan* we excluded certain U.S. sample sales from our analysis. In that case, however, sample goods were provided to customers for testing. Because of the nature of the product, once tested, the sample could not be returned. Although a transfer of ownership had occurred, the product had not been used for commercial consumption, and thus could not be said to have been "sold" (see *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Review*, 58 FR 50345 (September 27, 1993)). In this case NSK states that its sample sales involve transfer of ownership and makes no claim that the samples are destroyed or rendered unusable, as in *Granular PTFE from Japan*. Accordingly, we have included all U.S. sample sales in our analysis for these final results of review.

Comment 17: Timken argues that NSK's selling, general, and administrative expenses (SG&A) for U.S. sales are underreported. Timken notes that NSK excluded SG&A expenses which it claimed to be related to NSK's U.S. subsidiary's manufacturing operations. Timken argues that NSK has not provided evidence to support such a claim, and that the Department, in the 1974/80 reviews, rejected a similar claim. Timken contends that the Department should recalculate NSK's SG&A expenses to include the "manufacturing-related" expenses.

NSK argues that expenses specifically related to U.S. manufacturing should not be included in SG&A expenses. NSK maintains that, in the administrative reviews of the AFB orders, the Department recognized that a portion of NSK's SG&A expenses are properly related to U.S. manufacturing. NSK contends that it would be unreasonable to deny NSK a similar allocation in these reviews.

Department's Position: We agree with Timken. NSK has failed to support its claimed allocation in either these or previous segments of this proceeding. At verification we noted that while total SG&A expenses attributable to manufacturing-related expenses had been verified, "NSK did not provide evidence to substantiate the amounts to be allocated to manufacturing only" (see *Verification Report*, March 27, 1987, p. 10). Therefore, for these final results of review we have recalculated NSK's SG&A expenses to be deducted from USP to include the "manufacturing-related" expenses.

Comment 18: Timken notes that NSK reported an export inspection fee applicable to exports to the United States in 1985/86, and Timken presumes that similar expenses were also incurred for other periods. Timken contends that the Department has not adjusted USP for these expenses in the 1980/85 reviews.

NSK agrees with Timken's contention.

Department's Position: In the preliminary results we did not adjust USP for export inspection fees. We have made the necessary changes to our calculations for these final results of review.

Comment 19: Timken argues that for 1980 through 1982, NSK claims that it had no loans in the United States, and challenges the "average lending rate" methodology NSK used to determine credit expenses and inventory carrying costs. Timken claims that the "average lending rate" used by NSK is the rate charged on intra-company loans. Timken argues that the Department should recalculate the U.S. interest rate based on the formula used by NSK for the other periods (*i.e.*, the U.S. prime lending rate plus a given factor).

NSK argues that its reported "average lending rate" was in fact the average interest received on short-term deposits, and thus reflects NSK's true credit costs. NSK argues that, as verified by the Department, NSK had no loans for the period 1980 through 1982, and, therefore, its cost of credit is properly the opportunity cost of late payment, *i.e.*, unrealized interest from short-term deposits.

Department's Position: We agree with NSK. We verified that NSK had no loans for the period 1980 through 1982 and agree that NSK's credit costs are the opportunity costs of late payment, and therefore, properly captured using the average interest rates on short-term deposits.

Comment 20: Timken maintains that Koyo's conclusion that 50 percent of its inland freight costs are direct and 50 percent are indirect is an unsupported estimate of pre-sale and post-sale inland freight expense and, therefore, should be rejected in its entirety, or, at a minimum, all of Koyo's inland freight expenses should be considered as indirect selling expenses.

Koyo counters that there is no evidence that its reported freight expenses are inaccurate or unreliable. Koyo states that the Department verified the accuracy of its freight expense amount, and that the Department's practice of treating pre-sale and post-sale inland freight as direct selling expenses renders the amount of the allocation between the two types of expenses immaterial.

Department's Position: Although Koyo requested that we deduct pre-sale inland freight as direct selling expenses from FMV, it allocated total freight expenses into direct and indirect categories in its submission. Koyo contends that it did not distinguish post-sale and pre-sale freight expenses in its records at that time and, therefore, allocated half of the expenses to warehouse transfers and half to direct inland freight. We verified the accuracy of Koyo's total freight expenses and accept Koyo's allocation of these expenses as the best estimate possible given the lack of specificity of Koyo's records at the time. Therefore, we have continued to accept Koyo's allocation of direct and indirect home-market freight expenses in these final results, treating 50 percent of total freight expenses as pre-sale freight (an indirect selling expense) and 50 percent as post-sale freight (a direct selling expense deduction from FMV).

Comment 21: Timken contends that the Department should deduct a reasonable profit amount from ESP. Timken concedes that the statute is silent on this question, but states that there is broad international understanding that reseller profits should be deducted in ESP-type situations.

NSK argues that the Department has consistently rejected Timken's argument, and has been sustained by the CIT. Therefore, the Department's treatment of profit is in accordance with the law.

Koyo believes that Timken's argument should be rejected not only because there is no statutory basis for deducting profit from ESP, but Timken's interpretation of the statute would

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require a fundamental change in a well-established Department practice. According to Koyo, section 772(e) of the Tariff Act directs that, for purposes of calculating ESP, the price shall be reduced by the amount of "commissions for selling in the United States the particular merchandise under consideration." Koyo asserts that the Department (and, prior to 1980, the Department of the Treasury), interprets this provision literally (*i.e.*, that "commission" does not include "profit"), citing *Timken II* and *Timken Co.* v. *United States*, 630 F.Supp. 1327, 17783–44 (CIT 1986). Koyo concludes that there is no basis upon which to overturn the Department's decision not to deduct profits from ESP.

Department's Position: We agree with Koyo and NSK. Sections 772(d) and (e) of the Tariff Act do not include resale profits among the detailed list of adjustments that the Department is authorized to make to USP in ESP situations. Thus, there is no provision in the statute by which we can make the adjustment that Timken requests.

Comment 22: Timken points out that the Department, in several recent administrative reviews, rejected Koyo's U.S. discount data because they were aggregated, rather than transaction-specific. Timken states that aggregated discounts or price adjustments are unreliable for purposes of antidumping analysis. Timken cites *AFBs III*, wherein the Department rejected Koyo's U.S. discounts and sales allowances because Koyo did not report them on a transaction-specific basis. In that review, Timken asserts that the Department assigned to Koyo, as BIA, the highest percentage discount or sales allowance of any U.S. sale to all sales that received a discount or sales allowance. Timken believes the Department should be consistent with its approach in AFBs III.

Moreover, Timken maintains that the Department should not grant any adjustment for upward PSPAs to USP given that Koyo's claim is based on averages of price adjustments and discounts on in-scope and out-of-scope merchandise rather than transaction-specific price adjustments and discounts on in-scope merchandise.

Koyo contends that the application of BIA for U.S. discounts would be inappropriate for these reviews because BIA is normally reserved for situations in which a respondent fails to comply with an information request from the Department. Koyo cites *Olympic Adhesives* v. *United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990), in support of its contention.

In this instance, according to Koyo, the Department never informed Koyo that the methodology Koyo used in 1991 for reporting U.S. discounts and sales allowances would no longer satisfy the Department's new standard in the more recent final results of review the Department published for TRBs and AFBs in 1993. Thus, Koyo concludes that it would be extremely unfair for the Department to reject Koyo's claimed U.S. discounts at this late stage of these long-delayed reviews.

Department's Position: We agree with Timken. In these reviews of TRBs it has been the consistent practice of the Department to require that discounts be reported on a transaction-specific basis. As early as June 6, 1991, in our final results of review for the 1987/88 POR (*Tapered Roller Bearings from Japan; Final Results of Review*, 56 FR 26059) (*TRBs*), we stated that Koyo's methodology of calculating one discount factor for all bearing sales and assigning it to a group of customers is not representative of actual TRB sales experience, since it fails to tie the actual discounts granted to the sales to which they apply (56 FR 26059). Thus, we did not allow discounts, rebates, or price adjustments based on broad allocations in that review. Moreover, in our 1993 supplemental questionnaire for these administrative reviews, we requested documentation of the discount rates in effect during each of the PORs. We also asked Koyo to report discounts and sales allowances on a transaction-specific or, if that were not possible, on a customer-specific basis. However, since Koyo did not report its U.S. discounts and sales allowances on a transaction-specific basis for the reviews in question, we assigned, as BIA, the highest percentage discount reported for any U.S. sale to all sales that received a discount during each POR.

Comment 23: Timken contends that Koyo's ESP offset cap is inflated due to the Department's inclusion of freight-out expense and commissions which the Department should re-classify as direct selling expenses, not indirect. Timken points out that Koyo reported its U.S. sales commissions on a transaction-by-transaction basis as direct expenses. Similarly, Timken states that there is no basis for including freight-out in indirect selling expenses since freight, in general, is considered a movement charge when calculating USP.

Koyo agrees that the Department should define the ESP offset cap in the same manner as in its other recent TRB reviews.

Department's Position: We agree with Timken that freight incurred in the United States should be treated as a direct deduction from USP pursuant to 19 CFR 353.41(d) and have done so for these final results. However, the Department rejected Koyo's claim for a deduction for home-market commissions because Koyo was unable to tie the total commission amount to sales of covered merchandise at verification. We have, therefore, included U.S. commissions in the ESP cap, pursuant to 19 CFR 353.56(b).

Comment 24: Timken objects to Koyo's reporting of U.S. freight expenses based on sales value. Timken notes that the Department requested that Koyo report its freight-in expense based on the cost of goods sold, but Koyo indicated that it was unable to comply. Timken cites *TRBs* to assert that the Department's consistent position is that "allocation of freight costs by volume, weight, distance, or a combination of these, is preferable to allocations based on sales value" (TRBs 56 FR, 41508, Comment 17). Timken requests that the Department re-allocate freight expenses based on the weight of the merchandise, since the net weight of individual bearings is available in the administrative record of these reviews.

Koyo claims that its method of allocating freight expenses over the sales value of the subject merchandise remains the most accurate method available to account for these expenses. Koyo asserts that the Department accepted this method as reasonable in prior reviews and should continue to do so for these final results.

Department's Position: We agree with Koyo. While we have stated, as Timken notes, that allocations of freight costs by volume, weight, distance, or a combination of these elements are preferable to allocations based on sales value, we have also recognized that individual bearing firms do not maintain records of freight expenses based on weight (see TRBs). Therefore, we determined that Koyo's allocation of freight expense based on value is a reasonable method and does not produce distorted results.

Comment 25: Timken states that the Department is faced with competing data for export sales expenses reported in May 1991 (revised November 1993) and export department expenses verified in 1987 for the period 1974/85. Since both the March 1987 and November 1993 verification reports indicate that total export expenses were "unsubstantiated" or an aspect of the expense was "not verified," the Department should use the highest figure on the record for determining export selling expenses.

Koyo counters that Timken has misconstrued language in the

Department's verification report that Koyo failed verification regarding its selling expenses. Koyo asserts that the statement that the breakdown of employees into various categories "was not verified" means that the verification team did not address that issue in detail, and not, as Timken has interpreted it, that Koyo failed verification regarding its selling expenses.

Department's Position: We agree with Koyo that Timken misinterpreted the verifiers' explanation of Koyo's home-market indirect selling expenses, specifically selling expenses incurred in Japan with respect to U.S. sales. Since export selling expenses were, indeed, satisfactorily verified in November 1993, we have used the export selling expenses reported in Exhibit C–16 of Koyo's November 10, 1993, submission.

Comment 26: Timken asserts that Koyo, in its calculation of U.S. inventory carrying costs, failed to include the imputed interest expense for time in transit from Japan to its U.S. subsidiary, American Koyo Company (AKC). Timken cites *Silver Reed America, Inc.* v. *United States*, 12 CIT 250, 683 F.Supp. 1393 (1988), as support for its position that such an interest expense can be deducted from ESP. Although Koyo contends that the U.S. inventory period includes time in transit, Timken maintains that there is no support for that claim in the administrative record. Timken cites the Department's U.S. verification report (March 27, 1987), covering the PORs from 1974/85 wherein the Department determined that inventory carrying costs, which were reported on a similar basis as the present period, did not include time in transit from Japan.

Timken urges the Department to increase the reported inventory time by a reasonable time for shipment from Japan to the United States, using data supplied by another producer, or by assuming at least thirty-five days in transit.

Koyo states that Timken is incorrect in its assertion that Koyo's U.S. inventory carrying cost does not include "time on the water". Koyo explains that AKC takes title to merchandise when it leaves Koyo's warehouse in Japan, and it is booked into AKC's inventory at that time. Therefore, Koyo contends that AKC's inventory values used to determine the average time in inventory include the value of the inventory in transit.

Department's Position: We disagree with Timken. Koyo submitted U.S. inventory carrying costs in two separate stages, the expenses incurred in Japan for exported goods and the inventory expenses associated with U.S. sales. Koyo states that these costs include "time on the water". Because its sales were satisfactorily verified, and we have no reason to believe that this expense is inaccurate, we have continued to use Koyo's U.S. inventory carrying costs as reported.

Comments Regarding COP and CV

Comment 27: Timken argues that NSK reported interest expenses for COP net of interest income, but NSK did not demonstrate that this income stemmed solely from short-term deposits or normal operations. Timken contends that the Department should recalculate NSK's COP based on gross interest expenses, or in the alternative, recalculate the interest expense factor to exclude long-term interest income based on a supplementary cost response in which NSK segregated short-term and long-term interest revenue.

NSK agrees with Timken's contention that the submitted COP figures incorrectly included an interest expense net of all interest income. NSK suggests that the Department should recalculate the interest expense factor based on the supplementary cost response figures.

Department's Position: The interest-expense factor should reflect only short-term interest income attributable to the normal production of the merchandise within the scope of the order. We have reviewed NSK's data for this claimed adjustment and are satisfied that the firm attributed the reported interest income only to the production of merchandise within the scope of the order. We did not find evidence on the record to suggest that some portion of the claimed interest income is attributable to the production of other merchandise or associated with long-term deposits.

Therefore, for these final results we have recalculated NSK's interest expenses based on a NSK's supplementary COP response, wherein NSK segregated short-term and long-term interest income.

Comment 28: Timken argues that the Department's deduction from CV for home-market selling expenses is overstated for NSK. Timken contends that the Department calculated selling expenses by applying reported factors to CV to determine the amount of selling expenses to deduct from CV, which already includes selling expenses, rather than applying those factors to COP.

NSK argues that CV is a proxy for price, and that since the selling expense factors reported were calculated as a percentage of total sales, these factors are correctly applied to CV.

Department's Position: We agree with Timken in part. To avoid overstating the home-market selling expense adjustments, and given that we have the home-market unit prices, we have applied the reported selling expense factors, expressed as a percentage of unit price, to obtain a yen amount for the expense. We then deducted the resulting amounts from CV.

Comment 29: According to Timken, the Department should exclude below-cost sales in calculating profit for CV. Timken cites section 773(e) of the Tariff Act to argue that CV includes profit earned on sales "in the ordinary course of trade". Since CV is merely an alternative basis for determining FMV, and the Department disregards below-cost sales when sales form the basis of FMV, Timken asserts that the Department should not include any below-cost sales in its calculation of profit for CV.

Timken notes that the Department recognized the need for this balance in *Timken II* and in *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 13 CIT 25, 704 F.Supp. 1114, 1124, (1989), *aff'd*, 901 F.2d 1089, *cert. denied*, 498 U.S. 848 (1990). Timken points out that in these cases the question was whether CV is properly subject to COS adjustments pursuant to 19 CFR 353.56, which provides for adjustments to home-market price for certain types of selling expenses. Timken notes that the CIT held that adjustments were proper, given the functional equivalent of CV and FMV.

Timken states that in *Certain Stainless Steel Wire Rods from France*, 58 FR 68865 (December 29, 1993), the Department recognized that non-arm's-length sales to related parties should not be included in the profit calculation for CV. Timken concludes that the same reasoning applies to below-cost sales in the home market and that the statute's reference to sales in the ordinary course of trade does not include below-cost sales when those sales are made in substantial quantities over an extended period of time.

Citing section 773(e) of the Tariff Act, NSK argues that the statute does not require that sales below cost be excluded in the calculation of profit of the class or kind of merchandise under consideration.

Koyo asserts that Timken's arguments run contrary to the statute and represent unprecedented and radical departure from the Department's past administrative practice. Koyo notes that the Department has recently rejected substantially identical arguments made by Timken in the most recent TRB reviews and the two most recent AFB reviews (*1990/91 and 1991/92 TRBs*, 58

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FR 64728; *AFBs III*, 58 FR 39751; *AFBs II*, 57 FR 28374). Koyo concludes that the Department should reject Timken's arguments and continue its longstanding practice of including all home-market sales in the calculation of profit for CV.

Department's Position: As noted by Koyo, the Department has rejected Timken's arguments that below-cost sales should not be included in the calculation of profit because (a) the statute does not explicitly provide that below-cost sales should be disregarded in the calculation of profit, (b) the definition of "ordinary course of trade" (section 771(15) of the Tariff Act) does not exclude or even mention sales below cost, and (c) the provision requiring the Department to disregard certain sales below COP in the calculation of FMV suggests that below-cost sales are not, *per se*, outside the ordinary course of trade. Therefore, in these reviews we have not excluded below-cost sales in calculating profit for CV (see, *e.g.*, *AFBs III*).

Comment 30: Koyo objects to the Department's initiation of a sales-below-cost investigation on the grounds that the Department has acknowledged, and the CIT has held, that Timken's below-cost allegation in 1983 for the 1974 through 1979 reviews formed an inadequate basis for a below-cost investigation. Because the 1989 allegation for the 1979/86 PORs was based on the 1983 allegation, Koyo asserts that the later allegation is also inadequate. In addition, Koyo maintains that both allegations were untimely.

Koyo points to section 773(b) of the Tariff Act, which states that the Department may initiate a below-cost investigation whenever it has "reasonable grounds" to believe sales of subject merchandise in the home market are being made at prices which represent less than the cost of producing the merchandise. Koyo maintains that Timken's 1983 and 1989 cost allegations were not company-specific and instead relied entirely upon references to public sources and, therefore, should be rejected. Koyo cites *Al Tech Specialty Steel Corp. v. United States*, 575 F.Supp. 1277 (CIT 1983), in support of its position that COP allegations must be company-specific. Koyo states that despite the CIT's decision that Timken's allegations were deficient with respect to the 1974/79 PORs, Timken never attempted to remedy the deficiencies in its cost allegations regarding the periods covered by the 1979/86 administrative reviews.

Koyo states that prior to the promulgation of 19 CFR 353.31, which requires all below-cost allegations to be filed within 120 days of the initiation of the administrative review, the Department examined the span of time between when Timken possessed sufficient information to make the allegation and when the below-cost allegation was actually made. Koyo cites *Color Television Receivers, Except for Video Monitors, from Taiwan* (51 FR 46695, December 29, 1986), which stated that possessing information 4 months prior to making a COP allegation was enough time to make the allegation untimely. Koyo states that the Department relied on these parameters in dismissing two below-cost allegations, one 10 months after the release of cost-of-manufacture data, the other 12 months later, submitted by Timken against NSK in the 1974/80 reviews.

In contrast to the NSK situation, Koyo notes that the Department initiated a below-cost investigation of Koyo for the 1974/79 reviews based on Timken's 1983 allegation despite the fact that it was based on information that was available to Timken nearly two years before it filed the allegation. Koyo notes that Timken's 1989 allegation for the 1979/86 reviews was filed three years after the end of the final period covered by these reviews, and nine years after the end of the first period covered by these reviews.

Koyo concludes that the below-cost allegation on which the Department predicated its cost investigation in the 1979/86 periods of review was both factually deficient and untimely and, accordingly, the Department should not investigate whether Koyo sold such or similar merchandise in the home market at prices below the COP.

Timken disagrees with Koyo's assessment of Timken's 1983 below-cost allegation for the 1974/79 administrative reviews; stating that Koyo's argument contains several key errors and omissions, namely its failure to mention Timken's supplemental COP allegation of April 28, 1992, or its submission of August 19, 1988.

Timken notes that although the Department initiated a sales-below-cost investigation for the 1974/79 periods in September 1983, that investigation was subsequently interpreted to cover only the 1978/79 period, and was to encompass subsequent periods only if the Department found below-cost sales in the 1978/79 POR. Timken states that when the Department found that Koyo made below-cost sales during the 1978/79 POR, it issued a COP questionnaire for the 1979/86 PORs in July 1989.

Timken states that, upon completion of the 1974/79 reviews, Koyo filed a CIT action challenging the Department's decision to conduct a COP investigation of Koyo. Timken elaborates on the history of that litigation: 1) the court ruled that Timken's original 1983 submission did not meet the *Al Tech* standard for initiation of a cost investigation and remanded the case for re-calculation of the margin without a COP analysis (*Koyo Seiko Co., Ltd. v. United States*, 796 F.Supp. 517 (CIT 1992); 2) on Timken's motion for rehearing, the CIT modified the remand order, permitting Timken to supplement its COP allegation without recourse to information obtained during the Department's initial COP investigation (*Koyo Seiko Co., Ltd. v. United States*, 16 CIT 92–139 at 11 (August 21, 1992)); 3) the Department determined and the CIT affirmed that Timken's supplemental allegation was a sufficient basis for the below-cost sales investigation (*Koyo Seiko Co., Ltd., et al. v. United States v. United States*, 819 F.Supp. 1093 (CIT 1993)).

With regard to the 1979/86 reviews, Timken asserts that it supplemented its prior allegations for the 1979 through 1986 reviews in April 1992, based on the COP data Koyo submitted in response to the July 1989 questionnaire and the variable cost data that would have been on the administrative record in any event. Timken notes that Koyo failed to address Timken's April 1992 submission.

Department's Position: If we find sales below cost in the immediately preceding segment of a proceeding, we have reasonable grounds to believe or suspect below-cost sales in the subsequent segment of the proceeding pursuant to section 773(b) of the Tariff Act. Therefore, we require a response to a cost questionnaire in an administrative review subsequent to finding sales below cost in a previous segment of the proceeding. We decided to proceed in the 1979/86 reviews with a cost investigation since, upon remand in the 1974/79 litigation, the Department conducted a cost investigation for 1978/79 and found sales below cost. The Department's finding of sales below cost in the 1978/79 review is an adequate foundation to conduct a cost investigation in the subsequent administrative reviews.

Comment 31: Timken maintains that Koyo's COP information should be rejected in its entirety as unreliable because Koyo admitted that its primary records for COP prior to 1984 were destroyed. According to Timken, the information submitted by Koyo is simply an extrapolation of data from the 1985/86 POR. Moreover, the data have never been verified.

Timken points out that the Department rejected Koyo's COP data for the 1978/79 review as inconsistent and unreliable and consequently used BIA. According to Timken, Koyo has not demonstrated that the cost information submitted for these reviews is any more accurate or reliable than the cost data rejected by the Department in the 1978/79 review. Moreover, Timken notes that corporate losses sustained by Koyo in the late 1970's and early 1980's makes it inherently unreasonable to extrapolate 1985/86 costs to this earlier period.

Timken identifies the following specific deficiencies in Koyo's COP submissions:

- From 1980–86 Koyo used three separate and irreconcilable COP systems.
- Post-1983 standards and variances were projected backward to yield costs for the 1979/83 PORs.
- "Actual" and "reconstructed" costs for a limited sample of bearings differed substantially, calling into question the reliability of Koyo's methodology.
- Koyo failed to provide information on transfers of production equipment from related parties, although Koyo is a major manufacturer of bearing-production equipment.
- Koyo failed to provide part-number-specific data regarding material usage and prices during the PORs.
- The responses contain no detailed information on calculation of research and development expenses.

Timken asserts that the Department should reject Koyo's COP data unless it can establish that the newly-submitted data are consistent with previously-verified information on the record. If the Department determines to accept the data as submitted, Timken argues that the Department should make the following modifications:

- Timken states that, under the Department's precedent in *AFBs III and Minivans from Japan* (57 FR 21933, May 26, 1992), interest income must be related to production of the subject merchandise to be allowed as an offset to interest expense. Since Koyo was unable to report separately long- and short-term interest income for the 1979/83 periods, and instead used net interest expense based on its experience during the 1983/86 PORs, Timken urges the Department to use the interest expense contained in Koyo's consolidated financial statements.
- Timken maintains that the Department should ensure that all adjustments to CV are consistent with the price-based adjustments Koyo reported. If it is not possible to adjust the reported expenses in this manner, the Department should decline to make any adjustment to CV for selling expenses.
- Timken claims that the Department misconstrued Koyo's reporting of direct and indirect selling expenses, G&A expenses, and interest expenses as a fixed amount per unit rather than as a percentage of the cost of manufacturing (COM). Timken urges the Department to revise its calculations accordingly.

Koyo reiterates its contention that the Department's initiation of a below-cost investigation in these reviews was improper (see Comment 30). In response to Timken's arguments Koyo makes the following points:

- Timken's assertion that Koyo's costs for the 1979/85 periods are merely an extrapolation of Koyo's 1985/86 costs is incorrect. Koyo submits that the costs for all the periods covered by these reviews can be reconciled to total cost of goods sold as reported in the annual financial statements.
- Contrary to Timken's conclusion that essential records were destroyed, Koyo states that it did retain a complete historical record of total standard costs, or COM, by bearing model and year.
- Koyo argues that it is normal for a firm to change its cost accounting procedures in the ordinary course of business over a ten-year period.
- Koyo maintains that nothing in its submission suggests that the ratio of interest expenses for the later period was applied to the earlier period, as Timken implies.
- Koyo did not project post-1983 standards and variances backwards, but applied standard costs and variances for each review year to obtain the actual costs for that year.
- Contrary to Timken's assertion that Koyo failed to provide information on transfers of production equipment from related parties, Koyo maintains that it fully disclosed all consolidated subsidiaries and subcontractors.

Koyo maintains that differences in how it accounted for various expenses in different years do not, in themselves, suggest that Koyo's system is inaccurate or unreliable. Therefore, Koyo concludes that the Department should continue to use these data if it decides to pursue the below-cost investigation.

Moreover, Koyo contends that Timken fails to produce new evidence of any deficiencies in Koyo's cost data, relying only on references to Koyo's cost submissions in the 1974/79 reviews. Koyo argues that references to those reviews are irrelevant, and Koyo is under no burden to draw comparisons between its current submissions and submissions in previous reviews. Koyo adds that the Department has had Timken's comments for over two and a half years and has not seen fit to request additional or clarifying data from Koyo. For the Department to decide that these data are inadequate would be grossly unfair and prejudicial to Koyo's interests.

Department's Position: We disagree with Timken's assertion that Koyo's cost response should be rejected in its entirety. Timken does not explain why or how Koyo's cost accounting systems are irreconcilable. Moreover, there is no evidence on the record that Koyo extrapolated data from the 1985/86 review period and applied a deflator for previous years included in these reviews. Koyo stated in its responses to our COP questionnaires that all cost data for these reviews can be traced to its financial statements. While we did not verify these specific cost data from the October 1989 and April 1990 submissions, we did verify a significant portion of Koyo's data from these review periods and found the reported information in the vast majority of cases to be accurate.

We agree with Koyo that Timken is incorrect in its assertion that Koyo used net interest expense for the 1979/83 PORs extrapolated from its experience in the 1983/86 PORs. In its 1990 supplemental response Koyo explained that it does not separate long- and short-term interest expense in the normal course of business. However, Koyo stated that it was able to separate these expenses for the periods 1983/1986. For the periods 1979/83 Koyo estimated the short-term element based on the ratio of short-term to long-term liabilities actually paid rather than accrued each year. Koyo deducted short-term interest income to derive a net interest expense ratio which was then applied to each model's basic cost. Therefore, Timken is incorrect in its contention that 1979/83 net interest expenses were based on Koyo's experience in the 1983/86 review periods.

We agree, however, with Timken's contention that not all of the expenses reported by Koyo as direct expenses should be deducted from CV. For these final results we have not used the direct selling expense variable as submitted in the CV database because this variable represented commissions, which we disregarded (see our response to Comment 23), and rebate expenses, which we did not treat as a direct adjustment to Koyo's home-market unit prices (see our response to Comment 11) in these final results. We have used the weighted-average home-market credit expense of all sales reported in each POR as the only direct deduction from CV.

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We believe that the cost information submitted by Koyo provides the necessary data to conduct a cost test for each of these periods of review. Therefore, for these final results of review, we have continued to use Koyo's cost data as submitted, with certain changes explained in this notice which we deemed appropriate (see Comments 33, 38, 41, and 46).

As for Koyo's contention that initiation of a below-cost investigation is improper, see our position on Comment 30.

Comments Regarding Use of BIA

Comment 32: Timken asserts that in all instances BIA for missing data should be based on adverse inferences. Timken points out that in *Rhone Poulenc Inc.* v. *United States* (899 F.2d 1185, 1190 (Fed. Cir. 1990)) the Federal Circuit upheld the Department's use of the highest prior margin as BIA. In this instance, however, Timken notes that for those home-market models lacking variable cost of manufacture (VCOM) information, the Department set the difference in merchandise (difmer) to 20 percent, the maximum difference allowed for matching bearings under the Department's model-match methodology. Timken claims that this approach infers that the match is otherwise valid, and, in practice, provides an incentive for respondents to manipulate the model-match process. Timken concludes that the Department should apply the highest rate in any previous administrative review to any U.S. sales that are missing cost data. In Timken's view, such a choice would reflect "a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the [respondent], knowing of the rule, would have produced current information showing the margin to be less" (*Rhone Poulenc*).

NSK argues that at the time that the VCOM data were submitted in this case the Department did not use a 20-percent difmer as BIA, and, therefore, respondents had no incentive to selectively report VCOM information.

Department's Position: We disagree with Timken's contention that setting the difmer equal to 20 percent when home-market sales lack VCOM data provides an incentive for respondents to manipulate the model-match process. We have no reason to believe that such manipulation is taking place. As a result, we do not agree with Timken that the highest rate from a previous administrative review should be applied to U.S. sales which match to home-market sales for which respondents did not provide VCOM data. Rather, for these final results we have set the difmer equal to 20 percent. We have used this approach in previous TRB reviews (see *TRBs*, 56 FR 26057 (June 6, 1991), *TRBs I*, 57 FR 4986 (February 11, 1992), *1990/91 and 1991/92 TRBs* 58 FR 64731 (December 9, 1993)).

Comment 33: NSK disagrees with the Department's application of NSK's rate for the April 1, 1978 through July 31, 1978, period as BIA for these reviews. NSK argues that the Department should not have used as BIA a weighted-average rate resulting from a four-month period. NSK contends that the Department has never relied on a rate from a prior administrative review that covered such a brief period of time.

Timken notes that the Department frequently applies as BIA margins from LTFV investigations, which generally cover six-month periods. Timken argues that NSK has not offered any evidence that a BIA rate from a four-month period should be deemed unreliable, particularly where the underlying determination has been through judicial review.

Department's Position: We agree with Timken. As stated in our preliminary results, the Department sought to use, as BIA, the highest rate NSK received in a previous POR, which in this instance was a rate for a four-month POR. In the final results of review covering the 1974 through 1980 period the Department found a rate of 23.43 percent for the period August 1, 1977 through July 31, 1978 (55 FR 369, June 1 1990). NSK challenged those results and the CIT remanded them to the Department with instructions to use Treasury master lists for sales made from August 1, 1977, through March 31, 1978, and to recalculate the margin for the remaining (non-master list) period in accordance with the CIT's instructions. Thus, the margin from the previous review covered four months.

We note that NSK has not cited any instance where the Department deemed a rate from a four-month period to be unsuitable as BIA. Furthermore, NSK has not provided evidence that the rate in question is not representative of the rate that we would have obtained from a longer POR. Therefore, for U.S. sales for which we have relied on BIA, we have applied the margin from the four-month POR, since it is the highest margin for NSK in a previous segment of the proceeding.

Comment 34: Timken states that as a result of Koyo's model-match exercise it became clear that Koyo failed to provide VCOM data for a number of U.S. and home-market part numbers. In these instances the Department applied a 20 percent variable-cost differential as BIA. Timken suggests that splitting the variable costs of the sets would provide VCOMs for those cups and cones which lacked variable costs in the preliminary results.

Koyo acknowledges that there may still be some part numbers for which no VCOM can be found after correction of the VCOM error. However, Koyo submits that the Department's present BIA approach is more efficient and reliable than the alternative of set-splitting advocated by Timken.

Department's Position: In our calculations of FMV we did split the variable costs of the home-market sets. There were four TRB sets sold in the home market with no reported cost data which resulted in four cup and cone models with no reported VCOM after set splitting. For these sales we have continued to calculate a 20-percent VCOM differential as BIA. There were no models of cups and cones sold in the home market for which Koyo did not report a variable cost.

Where the variable cost of models sold in the U.S. was missing, we did not use BIA to calculate a difmer adjustment to FMV. For U.S. sales of those models with no variable cost information, we either matched them to identical home-market models or we have used CV as the basis for FMV pursuant to § 773(a)(1) and § 773(a)(2) of the Tariff Act.

Comment 35: Timken argues that the Department should base NSK's margin on total BIA. Timken contends that NSK failed to submit complete home-market sales data on a sale-by-sale basis, despite a specific request from the Department to do so. Timken notes that NSK reported only home-market sales with quantities equal to five percent or more of the corresponding U.S. sales, and generally utilized its own model-match criteria, which deviated substantially from those currently applied by the Department.

Timken further argues that the Department should determine that NSK was "non-cooperative" and should apply first-tier BIA to NSK for all periods (*i.e.*, use the highest margin calculated for any respondent in either prior or concurrent periods of review).

NSK argues that there are no grounds for the Department to base NSK's margin on total BIA. NSK contends that the Department verified that the home-market sales list reported by NSK was complete. NSK contends that the Department, after verification, did not challenge or further investigate the model-matching method employed by NSK.

NSK further argues that the Department's request for a sale-by-sale listing of home-market sales was made in the context of a cost investigation, and came two years after the submission of the original home-market sales listing.

Finally, NSK argues that to the extent that NSK responses may have been deficient, the omissions were minor and not intended to impede the reviews, and first-tier BIA should not be applied.

Department's Position: We agree with NSK that the Department verified the general completeness of NSK's reported home-market sales listing. We also agree with NSK that the Department's request for a sale-by-sale listing of home-market sales was pursuant to a cost investigation.

However, as NSK has conceded both in its rebuttal brief and at the hearing, NSK never responded to our July 1, 1988, request for a complete home-market sales listing. This failure to report a sale-by-sale listing has major implications with respect to the cost test and the model match. By selectively reporting home-market sales, NSK could have arguably contrived a result where U.S. models would be matched with low-cost, low-price "similar" models. Therefore, while we appreciate NSK's candor in admitting that it never provided the complete sales listing, we cannot ignore the fact that the cost test and model match were compromised.

We note that this conclusion applies only to U.S. models which do not have "identical" matches in the home market. Throughout the TRB reviews, all parties have operated on the premise that bearings with identical nomenclature (*i.e.*, product or identification number) are identical in all physical aspects. Thus, models with identical nomenclature will in every instance be matched to each other, and NSK's incomplete sales listing does not compromise such a comparison.

Therefore, for these final results of review, we have relied on BIA for sales of U.S. models for which NSK did not make sales of identical merchandise in the home market. Where identical bearings were sold in both markets, we have used NSK's reported data.

With respect to the choice of BIA, we note that, throughout the many delays that have arisen in the course of the 1980/86 reviews, NSK has generally been a cooperative respondent. Accordingly, for those U.S. sales where no identical matches are possible, we have relied on a second-tier BIA rate, which is the highest margin for NSK from any preceding review period.

Comment 36: NSK takes issue with the Department's application of BIA for U.S. sales lacking VCOM information. NSK contends that its COM records are tied to the year of production, rather than the year of sale and, therefore, the Department should use cost data from another year within the 1980/86 PORs for any U.S. sale lacking difmer cost data.

NSK further notes that in the 1974/80 segment of this proceeding, the Department used 1980/85 cost data, if available, as BIA when cost data for the 1974/80 period were missing.

Timken argues that while it may be reasonable for the Department to search the annual period immediately prior to the period in which the sale took place, any search beyond one period would be affected by fluctuations in steel prices and changes in labor efficiency over the course of the six-year review period.

Timken further notes that NSK's citation of the 1974/80 results is misleading. In that case, the Department relied on NSK's 1980/85 cost data as BIA because NSK had not retained cost information for the 1976/80 PORs. Timken contends that for the 1980/86 PORs, NSK simply failed to provide complete review-specific VCOM data despite the Department's request for the information.

Timken counters that the Department specifically requested VCOM information in both markets for the entire POR, and NSK failed to provide it. Under these circumstances Timken concludes that application of a BIA rate for sales with missing data is reasonable.

Department's Position: In our preliminary results of review we applied BIA to sales of U.S. models lacking VCOM data which were matched with similar home-market models. For these final results of review, we applied BIA to sales of all U.S. models when we did not find an identical match in the home market. Since we are not attempting to find matches for U.S. models with no identicals in the home market, VCOM data is not relevant to these results. Therefore, the issue of missing VCOM data is moot.

Comment 37: Koyo contends that the Department should not apply BIA to Koyo's U.S. sample sales because the Department did not specifically request this information until September 17, 1993, 13 years after the end of the first period and 7 years after the end of the final period covered by these reviews. Koyo asserts that it was not the Department's practice to require the submission of information regarding such sales during the periods under review (1979/86). Koyo argues that it may have been able to provide information regarding its U.S. sample sales had the Department completed these reviews in a timely manner. In Koyo's view, the application of BIA to these sales, in effect, would punish Koyo for the Department's own delay. In the interest of fairness, Koyo states that the Department should not apply any BIA to these sales.

Timken agrees with the Department's proposal to use BIA for U.S. sample sales, based on the value of sample sales in the home market, as obtained at verification. Timken also states that the Department should guard against increasing the value of U.S. sales (the denominator of the weighted-average margin) and increasing the value of the duties due (the numerator of the weighted-average margin) by a BIA factor which would result in the same amount of duties collected absent the application of BIA.

Department's Position: In its response to our supplemental questionnaire, Koyo failed to comply with our request for a list of U.S. sample sales, stating that "to produce such a sales listing, AKC would have to review manually all of its sales invoices and records for the covered periods" (November 1, 1993 submission, p. 6). In that letter Koyo stated that time restraints were the only obstacles to producing a list of U.S. sample sales. However, in its case brief Koyo stated that "it is unable, at such a removed point in time, to identify its U.S. sample sales, because (it) did not maintain a database of its U.S. sales that identified its sample sales."

Section 776(c) of the Tariff Act requires that BIA be applied when a party does not produce requested information whether the non-compliance is due to refusal or mere inability to produce the desired data (Olympic Adhesives, Inc., v. United States, 899 F.2d 1565, 1574 (1990)). Koyo failed to reply to our request for a list of U.S. sample sales, saying the effort would be too great. In our preliminary analysis memorandum for these reviews we identified the methodology we intended to use as BIA for the missing U.S. sample sales in our final results of review. Therefore, we are applying BIA to these sales. We only have information on Koyo's home market sample sales. Therefore, we used the data for home market sample sales from the 1985/86 period. We used the relationship of home market sample sales to total home market sales to represent the relationship of U.S. sample sales to total U.S. sales. With this information, we determined a value for those U.S. sample sales and applied a BIA margin to that value. We added both the resulting duties due amount

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and the calculated value of the sample U.S. sales to our respective margin and value totals in deriving our weighted-average margin.

Comment 38: Timken asserts that Koyo's failure to report home-market sample sales in its original submission, and then, at the Department's request, Koyo's submission of a list rather than a computer tape, should not be countenanced. Timken claims that the printout of home-market sample sales Koyo provided in its supplemental response is clearly from a computer file.

Therefore, Timken concludes that submission of a computer tape of home-market sample sales could not be as difficult as Koyo professes. Moreover, Timken chides the Department for not requesting such data despite Timken's timely protest of Koyo's failure to report home-market sample sales. Absent sample sales, the home-market sales listing is incomplete and unreliable. In Timken's view, the only proper solution, short of rejecting the entire response, is to require immediate submission of a computer tape listing of sample sales.

Timken maintains that Koyo elected not to comply because the Department has only limited options regarding "best information" under these circumstances. Timken states that in *1990/91 and 1991/92 TRBs* the Department addressed Koyo's failure to support its claim that particular home-market sales were samples.

Koyo argues that the Department properly excluded its home-market sample sales because they are *de minimis* in volume and value and have been verified by the Department as sample sales outside the ordinary course of trade. Koyo characterizes Timken's suggestion that Koyo be required to submit an entire new computer tape of the home-market sales, including these sales, as "ridiculous" and contrary to Timken's own stated desire not to "increase the cost of bringing this proceeding to a final conclusion."

Department's Position: In our October 1993 supplemental questionnaire we requested that Koyo submit a listing of its home-market sample sales. In response to our supplemental questionnaire Koyo submitted a hard copy computer printout of its home-market sample sales (November 1, 1993, Exhibit 1). At verification we confirmed the accuracy of the nature of these sales (*i.e.*, samples) and the value and volume reported. We determined that the volume and value of these sales were indeed minuscule and the fact that we did not have them electronically could not have any measurable or significant impact on our ability to conduct these administrative reviews. We are confident that the home-market data base we used for comparison purposes was indeed sufficient and complete. Requiring a computer tape of the home-market sample sales would be, in this instance, superfluous and unnecessarily time-consuming.

Comment 39: Timken notes that the Department relied upon the revised data submitted by Koyo in 1991 for its analysis and did not consider other information contained in the administrative record. In view of Koyo's decision to revise its data, Timken asserts that the Department should draw adverse inferences in any instance where data are deficient or missing. According to Timken, the Department's failure to draw any adverse inference based on the omission of various data (*e.g.*, home-market sample sales, some variable costs) allowed Koyo to control in part the Department's calculation of margins.

Koyo asserts that it is absurd for Timken to suggest that Koyo's co-operation in the resubmission of its data for the 1979 through 1986 PORs should be used against Koyo, when Koyo is in no way responsible for the delays in this proceeding. Koyo states that the CIT made it clear that respondents must not be prejudiced by the government's undue delays in the completion of administrative reviews, and, similarly, respondents cannot be punished for intervening changes in the Department's antidumping methodologies (*Koyo Seiko*).

Koyo also objects to Timken's conclusion that Koyo's cost data should be rejected in their entirety. In Koyo's opinion the Department should not even conduct a below-cost investigation (see Comment 30). However, should the Department do so, Koyo states that the Department has had several years in which to request supplemental cost data or other germane information, and the Department cannot now decide that Koyo's data are inadequate without unduly and illegally prejudicing Koyo's rights in these proceedings.

Department's Position: We disagree with Timken's contention that we should draw the most adverse inferences in applying BIA to Koyo's revised submission where data are deficient or missing. The Department agreed to accept a consolidated response from Koyo to facilitate and expedite the completion of these administrative reviews. We verified Koyo's consolidated response and found that, for the most part, Koyo's data were reasonable and accurate (see *Verification Report*, November 22, 1993, and Comment 31 regarding the adequacy of Koyo's cost data). We used BIA when we did not agree with Koyo's methodology in calculating an expense, or when data were missing from the submission. Therefore, we do not believe that we allowed Koyo to control the calculation of the margins in any way.

Comments Regarding Clerical and Ministerial Errors

Comment 40: Both Timken and Koyo addressed the following clerical errors:

1. The preliminary program erroneously sets the VCOM and other variables equal to zero (see Comment 45).
2. The denominator for recalculating the home-market credit expense in 1979/80 must be added to the program.
3. The ratio of inventory carrying costs to total U.S. sales for the 1980/81 POR should be multiplied by the landed cost, consistent with the other PORs.
4. The Department failed to adjust Koyo's reported home-market unit price for post-sale freight expense in calculating FMV. However, Timken believes that no change is necessary because Koyo failed to report its freight expenses correctly (see Comment 20).
5. The Department should delete certain duplicate observations in the home-market database.
6. Timken maintains and Koyo confirms that Koyo reported direct and indirect selling expenses, G&A expense, and interest expense as a percentage of COM, not fixed amounts per unit as interpreted by the Department.

Department's Position: We agree with Koyo and Timken and have made each of these changes in the calculations for these final results of review.

Comment 41: Timken states that the Department inadvertently reversed signs in its preliminary program for Koyo by applying the 20-percent BIA rate for models with no reported home-market VCOM.

Department's Position: We agree with Timken and have corrected the program for these final results.

Comment 42: Timken asserts that the Department must ensure that selling-expense adjustments to CV are consistent in all respects with price-based adjustments. Timken contends that not all of the expenses, originally reported as direct selling expenses, were ultimately considered direct by the Department (*e.g.*, freight, discounts).

Department's Position: We agree with Timken's assertion that deducting the expenses reported as "direct" selling expenses in Koyo's CV database was incorrect. For these final results we have not used this variable in our CV calculation because it represented commission and rebate expenses, both of which we did not treat as direct selling expenses for Koyo in these final results (see our responses to Comments 11 and 23, respectively). Therefore, the only valid direct deduction from CV is the weighted-average credit expense for home market sales from the sales database for each POR.

Comment 43: Koyo maintains that the Department's constant practice in its TRB determinations has been to break ties between two equally similar matches by first comparing the sum of the deviations for the two models, then comparing the levels of trade for the two models, then comparing the cost deviations for the two models, and finally by ranking the two models alphanumerically. According to Koyo, the Department inadvertently omitted the level-of-trade (LOT) tie-breaker in conducting the model match for these PORs. Koyo notes that this is not the same issue regarding LOTs that Koyo has raised unsuccessfully in previous reviews—that the Department should not cross levels of trade in comparing identical models before looking for similar models at the same level of trade.

Timken agrees, stating that where two matches with equivalent "sums of the deviations" are found, each at a different LOT, the Department should select the match at the same level of trade.

Department's Position: Koyo's statement that we have consistently selected the best model match based on, in order, "sum of the deviations," LOT, and cost differences in all of its recent TRB determinations, is correct in the context of our computer programs for some previous reviews of this finding and the 1987 order of Koyo's U.S. sales of TRBs. However, in those previously completed reviews, the Department's stated methodology was to rank similar merchandise by minimizing first the "sum of the deviations", second, the difference in the VCOM of the U.S. and similar home-market product, third, the differences in LOT, and lastly, alphanumerically. When the "sum of the deviations" was the same for two or more bearings, the Department ranked them according to the similarity in costs, and, if the costs were the same, according to the similarity in LOT (*TRBs I*, 57 FR 4978 (February 11, 1992)). In our computer programs for these administrative reviews, we have followed this methodology, ranking similar bearings by "sum of the deviations", differences in cost, LOT, and, lastly, alphanumerically.

Comment 44: Koyo states that the load rating for some sales of one model was reported incorrectly on Koyo's submitted computer tape. Although the cup and cone of each model should have the same basic load rating as the assembled model, in this instance a computer input error on Koyo's part resulted in an inconsistency in reporting the load rating of the cup, cone, and set. Koyo requests that the Department correct this error for these final results and cites *AFBs III* as precedent.

Timken contends that the Department should make the requested correction only if the error is discernible based on the evidence of record at the time the error was identified. Timken notes that the documents cited by Koyo that contain corroborating evidence were all submitted in administrative reviews for periods other than 1979/86.

Department's Position: The load rating of individual bearings for the periods under review is available in any Koyo catalogue and, as such, is part of the public domain. Therefore, we have made the appropriate corrections in the load rating of the model designated by Koyo.

Comment 45: Timken points out that the preliminary program erroneously sets certain home-market VCOMs equal to zero. Timken states that for certain set-split bearings only VCOM is zero. For others the VCOM, net unit price, and indirect selling expenses are zero, resulting in erroneous calculations for FMV and the weighted-average home-market indirect selling expenses.

Timken notes that this problem has been discussed with Department personnel and revision of the program instructions will apparently result in assignment of correct values.

Koyo affirms Timken's observation, stating that the Department erred in its calculation of the cup and cone ratios during the set-splitting exercise, resulting in the progressive reduction of the cup and cone ratio variables and, consequently, the VCOM ratio.

Department's Position: We agree with Koyo and Timken. We inappropriately altered VCOM when we merged the home-market sales and cost data files and split the home-market sales of TRB sets into sales of cups and cones. However, Koyo's explanation that the cup and cone ratios are progressively reduced toward zero is wrong, as evidenced from the computation of the home-market net unit prices and indirect selling expenses for sales of split sets. We have determined that the value for the VCOM itself was reduced toward zero, and have corrected the calculations accordingly.

We also found a similar error in the calculations where we split home-market sales of TRB sets with no reported cup or cone ratios using the weighted-average of the reported cup and cone ratios as BIA for each POR. We have also corrected this error.

Comment 46: Timken believes that a discrepancy in the U.S. sales values reported by Koyo and those analyzed by the Department in its preliminary results signifies that the Department either dropped some U.S. sales from the database or it perhaps dropped sales that lacked data.

Koyo claims that Timken is comparing apples to oranges. The U.S. sales numbers from the Department's analysis memorandum appear to represent net USP figures, whereas the figures cited from Koyo's 1991 submission are gross figures. Koyo adds that it has found no discrepancies in the value of U.S. sales used by the Department.

Department's Position: We agree with Koyo. It is impossible to arrive at any definitive conclusion by comparing Koyo's gross sales figures to the net sales figures calculated by the Department. We are satisfied that we used all of Koyo's reported U.S. sales in our analysis.

Comment 47: Timken maintains that in analyzing Koyo's transactions, the Department failed to make any adjustment to USP, FMV, or CV for packing expenses. In addition, Timken states that, if it is not practical to apply packing expenses on a LOT basis, we should apply the higher value to all sales.

Koyo states that the Department deducted home-market packing from FMV, but that the Department failed to adjust FMV for U.S. packing. Both Timken and Koyo urge the Department to adjust for packing in accordance with its normal practice.

Department's Position: We agree with Koyo that we inadvertently failed to add U.S packing expenses to FMV and CV. For these final results we have made this correction pursuant to 19 CFR 353.56 and 353.50.

Comment 48: NSK notes that it inadvertently included in its U.S. sales listing certain U.S. sales of TRBs over four inches in outside diameter (*i.e.*, outside the scope of the finding). NSK contends that it advised the Department of this oversight in a timely manner, and points out that the Department nonetheless included these sales in its analysis.

NSK notes further that a reported 1986 sale of a U.S. bearing which lacked a part number and had an unusually high price in fact corresponded to the sale of a four-row cylindrical roller bearing. NSK claims that cylindrical roller bearings are outside the scope of

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the finding and, thus, the Department should exclude this U.S. sale from its analysis.

Timken agrees with NSK that the above-cited models are out-of-scope merchandise and should not be included in the Department's analysis.

Department's Position: We agree. We have excluded all U.S. sales of bearings over four inches in diameter, as well as the one U.S. sale of cylindrical roller bearings, from our analysis.

Comment 49: NSK and Timken point out that the Department incorrectly treated certain U.S. expenses (warehousing, inventory carrying costs, duty, and inland freight) as factors, rather than as actual amounts. Both parties agree that NSK reported these expenses as actual amounts, *e.g.*, an expense of ".25" should be read as twenty-five cents rather than twenty-five percent.

Department's Position: We agree. We inadvertently treated the reported expenses as factors rather than as actual amounts. We have made the appropriate correction to the computer program for these final results of review.

Comment 50: NSK contends it reported certain export expenses (ocean freight, export, insurance, SG&A) as a percentage of C.I.F. price, and that the Department incorrectly treated these expenses as a percentage of reported unit price. NSK argues that the Department should only apply these factors to unit price where NSK has not reported a C.I.F. price.

Timken agrees with NSK's position, and emphasizes that expenses reported by NSK as a percentage of C.I.F. price should be applied to unit price where a C.I.F. price has not been reported.

Department's Position: We agree. We have made the appropriate correction to our calculations for these final results of review. We have applied expenses, which NSK reported as a percentage of C.I.F. price, to unit price where NSK did not report a C.I.F. price.

Comment 51: Timken contends and NSK agrees that in adjusting NSK's CV for direct and indirect selling expenses, the Department reversed the relevant variables in its computer program.

Department's Position: We agree and have made the necessary corrections for these final results.

Comment 52: Timken notes that the CV calculations for NSK do not include export packing expenses. Timken argues that the CV calculation, in accordance with the statute, must include export packing expenses. Timken also contends that "palletizing" expenses should be included as packing expenses.

NSK agrees with Timken's observations.

Department's Position: We agree that CV must include export packing expenses pursuant to section 773(e) of the Tariff Act. We have therefore added NSK's export packing expenses, which were reported as a percentage of "processing cost", as well as palletizing expenses, to CV. In addition, we note that in our preliminary results we did not add NSK's U.S. packing expenses to FMV for price-to-price comparisons, but we have corrected this for these final results.

Toyota Correction

Although no parties submitted comments regarding the preliminary results for Toyota, we discovered a programming error in our preliminary calculations for Toyota that resulted in the exclusion of all PP sales from the preliminary weighted-average margin calculation. For these final results we have corrected this error by incorporating all sales in our final weighted-average margin calculation for Toyota.

Final Results of the Reviews

After analysis of the comments received, we determine that the following weighted-average margins exist for the reviewed periods:

Manufacturer/exporter	Percent margin
April 1, 1979 through July 31, 1980:	
Koyo Seiko	44.60
August 1, 1980 through July 31, 1981:	
Koyo Seiko	35.44
NSK Ltd.	16.55
Mitsubishi	39.60
Sumitomo Yale	39.60
August 1, 1981 through July 31, 1982:	
Koyo Seiko	33.10
NSK Ltd.	14.34
Mitsubishi	39.60
Sumitomo Yale	39.60
August 1, 1982 through July 31, 1983:	
Koyo Seiko	13.30
NSK Ltd	11.93
Mitsubishi	39.60
Sumitomo Yale	39.60
August 1, 1983 through July 31, 1984:	
Koyo Seiko	20.38
NSK Ltd	19.52
Mitsubishi	39.60
Sumitomo Yale	39.60
August 1, 1984 through July 31, 1985:	
Koyo Seiko	8.68
NSK Ltd	8.14
Mitsubishi	39.60
Sumitomo Yale	39.60
August 1, 1985 through July 31, 1986:	
Koyo Seiko	30.94
NSK Ltd.	43.23
Nachi-Fujikoshi	*18.70
Niigata Converter	*0.00
Toyota	28.24
Toyosha	39.60
Yamaha	15.25
Suzuki	39.60
Maekawa	39.60
Sumitomo Corp.	*0.00

*No shipments during the period; rate from the last period in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act:

(1) All exports of subject merchandise by firms covered in these reviews will be subject to cash deposit rates as follows:

a. for Koyo, NSK, and Nachi-Fujikoshi, see the final results of the 1991/92 review (58 FR 64720, December 9, 1993);

b. for Toyota, see the final results of the 1986/87 review (55 FR 38720, September 20, 1990);

c. for those firms that have not been covered in reviews of later periods, the cash deposit rates will be those rates established in the final results of the 1985/86 review, as outlined above;

(2) For previously reviewed or investigated companies not listed in this notice and not reviewed in subsequent periods, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate. The "all others" rate is the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (1993), and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, 839 F.Supp. 864 (1993) decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, we have determined that it is appropriate to adopt the first "new shipper" rate established in the final results of an administrative review of this finding published by the Department (or that rate as amended for correction of clerical errors as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purpose of these reviews is 18.07 percent from *Tapered Roller Bearings and Certain Components Thereof from Japan, Final Results of Administrative Review of Antidumping Finding*, 49 FR 8976 (March 9, 1984), the first review conducted by the Department in which a "new shipper" rate was established.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: November 2, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27783 Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-834]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Stainless Steel Angle From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482-0116.

PRELIMINARY DETERMINATION: We preliminarily determine that stainless steel angle (SSA) from Japan is being sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on April 28, 1994 (59 FR 23052, May 4, 1994), the following events have occurred.

On May 23, 1994, the International Trade Commission (ITC) issued an affirmative preliminary injury determination in this proceeding (see ITC Investigation No. 731-TA-699).

On June 2, 1994, the Department of Commerce (the Department) issued an antidumping questionnaire to Aichi Steel Works, Ltd., (Aichi). Aichi submitted responses to the Department's questionnaire in June and July 1994.

On August 23, 1994, the Department issued a supplemental sales questionnaire to the respondent. Aichi submitted its response to the supplemental questionnaire on September 19, 1994.

On August 17, 1994, the petitioners, Slater Steels Corporation and United Steelworkers of America, requested that the Department postpone the preliminary determination until November 4, 1994, pursuant to 19 CFR 353.15(c)(1994). The Department granted this request on August 24, 1994 (59 FR 44966, August 31, 1994).

On August 10, 1994, the petitioners alleged that Aichi was selling the subject merchandise in the home market at below its cost of production. On August 16, 1994, the respondent submitted comments which questioned the methodology employed in the petitioners' below-cost allegation. On August 22, 1994, the petitioners revised their original cost allegation. After analyzing the petitioners' allegation, we found reasonable grounds to believe or suspect that sales in the home market were being made at less than the cost of production. Consequently, on September 7, 1994, the Department initiated an investigation of sales below cost for Aichi's home market sales, in accordance with section 773(b) of the Act and 19 CFR 353.51. On this date, we presented Aichi with Section D of the antidumping questionnaire concerning cost of production. Aichi submitted its response to Section D of the questionnaire on October 17, 1994.

On November 2, 1994, in accordance with 19 CFR 353.20(b), the respondent requested that, in the event of an affirmative preliminary determination, the Department postpone the final determination due to the complexity of the cost information, and the problems associated with scheduling verification because of the year-end holidays.

Scope of Investigation

For purposes of this investigation, the term "stainless steel angle" includes hot-rolled, whether or not annealed or descaled, stainless steel products angled at 90 degrees, that are not otherwise advanced.

The stainless steel angle subject to this investigation is currently classifiable under subheadings 7222.40.30.20 and 7222.40.30.60 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1993, through April 30, 1994.

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Such or Similar Comparisons

For purposes of the preliminary determination, we have determined that stainless steel angle constitutes a single "such or similar" category of merchandise.

The respondent reported that there were no sales of identical merchandise in the home market during the POI. Because there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) stainless steel grade; (2) leg-length; (3) thickness; (4) spine length; and (5) other characteristics. The Department used Aichi's reported costs to adjust for physical differences in merchandise.

Fair Value Comparisons

To determine whether sales of stainless steel angle from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the home market, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to an unrelated purchaser before importation into the United States and because exporter's sales price methodology was not otherwise indicated.

We made deductions from the U.S. sales price, where appropriate, for foreign brokerage, foreign inland freight, and insurance.

We recalculated U.S. credit expense based on Aichi's lending rate to its customers as opposed to Aichi's investment return rate.

We made an adjustment to U.S. price for a consumption tax levied on comparison sales in Japan in accordance with our practice, pursuant to the decision of the Court of International Trade (CIT) in *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 834 F. Supp. 1391 (CIT 1993). See Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan (59 FR 16177, 16179, April 6, 1994), for an explanation of this methodology.

Foreign Market Value

We compared the volume of home market sales of SSA to the volume of third-country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, in accordance with section 773 (a)(1)(B) of the Act. We found that the home market was viable for sales of stainless steel angle, in accordance with 19 CFR 353.48(a).

We excluded from our analysis those sales in the home market database with negative quantities or negative sales prices.

We used the Department's arm's-length test to determine whether sales to related customers were made on an arm's-length basis. Where possible, we compared related and unrelated party sales at the same level of trade. For purposes of the preliminary determination, we considered a party as related to respondent whenever respondent had substantial ownership in the party. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's arm's-length test.

In the home market, Aichi sells SSAs through several distribution channels. Where Aichi sold SSAs through its subsidiary, that subsidiary's sales to unrelated parties formed the basis of our FMV calculation. Only a minuscule proportion of Aichi's sales were made to related parties, either directly, or through its subsidiary. We only included sales to the related parties that were made at arm's length. We also excluded certain related party sales from our analysis because those products could not be compared to unrelated sales and because these were made in insignificant quantities.

We calculated FMV based on delivered prices. We made deductions for discounts and rebates, where applicable.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a), as appropriate. Accordingly, in the present case, we deducted post-sale home market inland freight and insurance from FMV under the circumstance-of-sale provision of 19 CFR 353.56(a).

For one expense claimed as a rebate by Aichi, we preliminarily determined that the expense was, in fact, a transfer of funds from the parent to its subsidiary. This rebate was not passed on to the unrelated purchaser. Consequently, we did not make any adjustments to FMV for this claimed rebate.

We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made circumstance of sale adjustments for home market direct selling expenses, which included credit, in accordance with 19 CFR 353.56(a)(2). We reclassified pre-sale warehousing expenses as indirect selling expenses.

We adjusted for the consumption tax in accordance with our practice (see "United States Price" section of this notice).

Cost of Production (COP)

In order to determine whether home market sales prices were below COP within the meaning of section 773(b) of the Act, we calculated COP based on the sum of the respondent's cost of materials, fabrication, general, and packing expenses, in accordance with 19 CFR 353.51(c). (See e.g., Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea (59 FR 35098, 35099, July 8, 1994). We then compared the COP to the home market selling prices, net of movement charges and discounts and rebates.

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. Where we found that over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that respondent's below-cost sales are not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we disregarded only the below-cost sales if made over an extended period of time.

Where we found that more than 90 percent of a respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that model and calculated FMV based on constructed value (CV), in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (See, Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan (58 FR 69336, 69338, December 10, 1993).

Constructed Value (CV)

We calculated constructed value based on the sum of the cost of materials, fabrication, general expenses, profit, and U.S. packing cost. In accordance with section 773 (e)(1)(B) of the Act, for general expenses, which include selling and financial expenses (SG&A), we used the greater of the reported general expenses or the statutory minimum of ten percent of the cost of production. For profit, we used the statutory minimum of eight percent of the cost of manufacturing and general expenses, because Aichi's reported profit was less than eight percent of the total of cost of manufacturing and general expenses.

Currency Conversion

We have made currency conversions based on the official exchange rates, certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel angle from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Aichi Steel Works, LTD.	14.92
All others	14.92

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Postponement of Final Determination

On November 1, 1994, in accordance with 19 CFR 353.20(b), respondent requested that, in the event of an affirmative preliminary determination by the Department, the Department postpone the final determination due to the complexity of the cost information and problems associated with scheduling verifications with the year-end holidays. We find no compelling reason to deny the request. Accordingly, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies may be submitted by any interested party to the Assistant Secretary for Import Administration no later than February 10, 1995, and rebuttal briefs no later than February 17, 1995. We request that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 23, 1995, at 9 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW, Washington, D.C. 20230. Parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) the party's name, address, telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: November 4, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–27917 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–DS–P

University of Michigan, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the

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specified time period. This is the case for each of the listed dockets.

Docket Number: 94–041. *Applicant:* The University of Michigan, 1150 W. Medical Center Drive, Ann Arbor, MI 48109-0626. *Instrument:* Rapid Kinetic Spectrofluorimeter, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 19, 1994.

Docket Number: 94–047. *Applicant:* University of South Dakota, 414 E. Clark Street, Vermillion, SD 57069. *Instrument:* Rapid Kinetics Accessory. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* August 19, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-27785 Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-F

[C-423-808, C-469-804 and C-427-810]

Certain Cut-to-Length Carbon Steel Plate From Belgium and Spain and Certain Corrosion-Resistant Steel Flat Products From France: Termination of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is terminating the countervailing duty administrative reviews of certain cut-to-length carbon steel plate from Belgium and Spain and certain corrosion-resistant steel flat products from France initiated on September 8, 1994.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Seiders or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, AK Corporation, Bethlehem Steel Corporation, Geneva Steel, Gulf States Steel of Alabama, Inland Steel Industries, LTV Steel Company, Laclede Steel Company, Lukens Steel Company, National Steel Corporation, Sharon Steel Corporation, US Steel Corporation and WCI Steel, Inc. (hereinafter "domestic producers") requested administrative reviews of the countervailing duty orders on certain cut-to-length carbon steel plate from Belgium and Spain and on certain corrosion-resistant steel flat products from France for the period December 7, 1992, through December 31, 1993. No other interested party requested a review. On September 8, 1994, the Department published a notice initiating the administrative reviews for that period (59 FR 46391). On September 20 1994, the domestic producers submitted a timely withdrawal of their request for review. As a result, pursuant to 19 CFR § 355.22(a)(3), the Department is terminating the reviews.

This notice is published in accordance with 19 CFR § 355.22(a)(3).

Dated: October 26, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27787; Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-P

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–074. *Applicant:* University of California, Livermore, CA 94551. *Instrument:* Mass Spectrometer. *Manufacturer:* Fisons Instruments/VG Isotech, United Kingdom. *Intended Use:* See notice at 59 FR 32418 June 23, 1994. *Reasons:* The foreign instrument provides: (1) an abundance sensitivity of 2 ppm for C or N, (2) an internal precision of 0.005 per mil for 3 bar μl samples of CO_2 and (3) 4 Faraday collectors. *Advice Received From:* National Institutes of Health, August 22, 1994.

Docket Number: 94–083. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Biological Monitor, Model MOSSELMONITOR. *Manufacturer:* Delta Consult, The Netherlands. *Intended Use:* See notice at 59 FR 38439, July 28, 1994. *Reasons:* The foreign instrument provides capability to use live mussels, clams or other aquatic test organisms as an early warning or monitoring pollutant sensor. *Advice Received From:* National Institutes of Health, September 9, 1994.

Docket Number: 94–087. *Applicant:* University of Maryland, Baltimore, MD 21201. *Instrument:* Robotic Micromanipulator System. *Manufacturer:* Scientific Precision Instruments, Germany. *Intended Use:* See notice at 59 FR 38439, July 28, 1994. *Reasons:* The foreign instrument provides: (1) hardware/software that can remember and repeat exact cell locations and (2) 20 nm spatial resolution. *Advice Received From:* National Institutes of Health, September 9, 1994.

Docket Number: 94–088. *Applicant:* University of Hawaii at Manoa, Honolulu, HI 96822. *Instrument:* Portable Cholorphyll Fluorometer, Model PAM-200. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* See notice at 59 FR 38585, July 29, 1994. *Reasons:* The foreign instrument provides: (1) measurement and calculation of quantum yield within ± 0.001 units, (2) LED light modulated at 600 and 20 000 Hz and (3) tolerance of high levels of background light. *Advice Received From:* National Institutes of Health, September 9, 1994.

Docket Number: 94–090. *Applicant:* Howard Hughes Medical Institute, New Haven, CT 06536. *Instrument:* Phosphoimager X-ray Diffraction Area Detector. *Manufacturer:* MacScience Co. Ltd., Japan. *Intended Use:* See notice at 59 FR 46963, September 13, 1994. *Reasons:* The foreign instrument provides sensitivity of 1 x-ray proton per level and minimized measurement time using Weissenberg geometry and simultaneous movements of specimen rotation and film translation. *Advice Received From:* The National Institutes of Health, September 9, 1994.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94-27910 Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-F

[C-351-406]

Certain Agricultural Tillage Tools From Brazil; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: On November 27, 1992, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty administrative review of certain agricultural tillage tools from Brazil. The Department has now decided to terminate this review.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Dawn Carroll or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

Background

On October 9, 1992, the Department received a request for an administrative review of this countervailing duty order from Marchesan Implementos Agricolas, S.A., an importer of the subject merchandise, for the period January 1, 1991, through December 31, 1991. No other interested party requested a review. On November 27, 1992, the Department published in the Federal Register (57 FR 56318) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review for that period. On August 19, 1994, Marchesan Implementos Agricolas, S.A., submitted a withdrawal of its request for review.

Section § 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because no significant work has been completed on this review, the aforementioned importer's request does not unduly burden the Department. Moreover, we have received no objections to terminating this review from other interested parties. Therefore, under the circumstances presented in this review, we are waiving the 90-day requirement in 19 CFR 355.22(a)(3). Accordingly, we are terminating this review. This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27788 Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-333-402]

Certain Textile Mill Products From Peru; Termination of Company-Specific Administrative Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Company-Specific Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce (the Department) is terminating the company-specific administrative review of the countervailing duty order on certain textile mill products from Peru, initiated on April 15, 1994.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1994, Credisa Division Textil, S.A. (Credisa), a producer and exporter of the subject merchandise, requested a company-specific administrative review of the countervailing duty order on certain textile mill products from Peru for the period May 18, 1992, through December 31, 1993, pursuant to 19 CFR 355.22(a)(2). No other interested party requested a review. On April 15, 1994, the Department published a notice initiating the company-specific administrative review for that period (59 FR 18099). On September 28, 1994, Credisa withdrew its request for review.

Section 355.22(a)(3) of the Department's regulations (19 CFR 355.22(a)(3)) stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of a request if it is reasonable to do so.

Because no significant work has been done on this review, Credisa's request does not unduly burden the Department under the circumstances presented in this review, we are waiving the 90-day requirement in 19 CFR 355.22(a)(3). Accordingly, we are terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: November 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-27789 Filed 11-9-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-201-003]

Ceramic Tile from Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on ceramic tile from Mexico. The review period is January 1, 1992 through December 31, 1992. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 32 companies, and 2.55 percent *ad valorem* for all other companies during this review period. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

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SUPPLEMENTARY INFORMATION:

Background

On April 28, 1993, the Department published a notice of "Opportunity to Request Administrative Review" (58 FR 25802) of the countervailing duty order on ceramic tile from Mexico. We received a request for review from Ceramica Regiomontana, S.A., (Ceramica) a Mexican exporter of the subject merchandise. We initiated the review on June 25, 1993 (58 FR 34414). The review period is January 1, 1992 through December 31, 1992. This review involves 33 companies and 10 programs.

On February 7, 1994, the Government of Mexico submitted a request for partial revocation for 14 companies with their questionnaire response. According to 19 CFR 355.25(b)(3), a request for revocation can only be submitted in the fifth and subsequent anniversary months of an order. Since the anniversary month for the review period January 1, 1992 through December 31, 1992 is May 1993, and the request was submitted on February 7, 1994, the request was untimely. Therefore, the Department is unable to consider partial revocation for these 14 companies in this administrative review.

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930 (the Act), as amended. The final results of the last administrative review of this order were published in the **Federal Register** on January 19, 1994 (59 FR 2823).

Scope of Review

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000, and 6908.90.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52306, and 52325; December 27, 1988). We calculated a country-wide rate, weight-averaging the benefits received by the 33 companies subject to review to determine the overall subsidy from all programs benefitting exports of the subject merchandise to the United States. In weight-averaging the benefits, we used each firm's share of exports to the United States as weights.

Because the overall weighted-average country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Thirty-two companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)). Therefore, these companies were treated separately for assessment and cash deposit purposes.

Ceramica's rate was not significantly different from the weighted-average country-wide rate. Since Ceramica was the only company receiving subsidies greater than *de minimis*, the all other rate was calculated based on the unweighted aggregate benefits that Ceramic received from all countervailing programs.

Analysis of Programs

(1) BANCOMEXT Financing for Exporters

Effective January 1, 1990, the Mexican Treasury Department eliminated the Fondo para el Fomento de las Exportaciones de Productos Manufacturados (FOMEX) loan program and transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.C. (BANCOMEXT). BANCOMEXT offers short-term financing to producers or trading companies engaged in export activities; any company generating foreign currency through exports is eligible for financing under this program. The BANCOMEXT program operates much like its predecessor, FOMEX. BANCOMEXT provides two types of financing, both in U.S. dollars, to exporters: working capital loans (pre-export loans), and loans for export sales (export loans). In addition, BANCOMEXT may provide financing to foreign buyers of Mexican goods and services.

The Department has previously found this program to confer an export subsidy to the extent that the loans are provided at preferential terms (*See Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Review* (57 FR 5997; February 19, 1992) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Review* (57 FR 24247; June 8, 1992)). In this review the Government of Mexico provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

We found that the annual interest rates that BANCOMEXT charged to borrowers for certain loans on which interest payments were due during the review period were lower than commercial rates. The BANCOMEXT dollar-denominated loans under review were granted at annual interest rates ranging from 7.1 percent to 9.8 percent. As discussed in *Certain Steel Products from Mexico; Final Countervailing Duty Determination* (58 FR 37357; July 9, 1993), because loans are funded by BANCOMEXT through commercial banks in dollars and indexed to dollars for repayment, we used a dollar benchmark. As the benchmark for BANCOMEXT pre-export and export dollar-denominated loans granted in 1992, we used the average of the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which resulted in an annual benchmark of 7.18 percent in 1992.

We consider the benefits from short-term loans to occur at the time the interest is paid. Because interest on BANCOMEXT pre-export loans is paid at maturity, we calculated benefits based on loans that matured during the review period; these were obtained between March 1992 and May 1992. Interest on BANCOMEXT export loans is paid in advance; we therefore calculated benefits based on BANCOMEXT loans received during the review period.

Two exporters of ceramic tile products used BANCOMEXT pre-export and export financing. Because we found that the exporters were able to tie their BANCOMEXT loans to specific sales, we measured the benefit only from the BANCOMEXT loans tied to sales of the subject merchandise to the United States. To determine the benefit for each exporter, we multiplied the difference between the interest rate charged to exporters for these loans and the benchmark interest rate by the outstanding principal and then multiplied this amount by the term of the loan divided by 365. Because one company's monthly sales figures are indexed to account for inflation, we adjusted that company's benefit amounts to be on the same terms as the sales figures. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* for Internacional de Ceramica and zero for all other companies listed in the preliminary results of review section of this notice.

(2) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the *Diario Oficial* on May 9, 1985, and amended in the *Diario Oficial* on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and spare parts and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports. Because it is only available to exporters, the Department previously found in *Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review* (56 FR 50859; October 9, 1991) and *Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review* (57 FR 24247; June 8, 1992) that PITEX provides countervailable benefits to the extent that it provides duty exemptions on imports of merchandise not physically incorporated into exported products. The Government of Mexico provided no new information or evidence of changed circumstances that would lead the Department to alter that determination.

During the review period, Ceramica used the PITEX program for imports of machinery and spare parts which are not physically incorporated into exported products. To calculate the benefit from this program, we calculated the duties that should have been paid on the non-physically incorporated items that were imported under the PITEX program during the review period. We then divided that amount by the company's total exports. On this basis, we preliminarily determine the benefit from this program to be zero for the 32 companies listed in the preliminary results of review section of this notice and 2.55 percent *ad valorem* for all other companies.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of the subject merchandise did not use them during the review period:

(A) Other BANCOMEXT preferential financing;
(B) Other Dollar-Denominated Financing Programs;
(C) Fiscal Promotion Certificates (CEPROFI);
(D) Import duty reductions and exemptions;
(E) State tax incentives;
(F) Article 15 Loans;
(G) NAFINSA FONEI-type financing; and
(H) NAFINSA FOGAIN-type financing.

Preliminary Results of Review

We preliminarily determine that the following 32 companies received zero or *de minimis* benefits during the 1992 review period. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

(1) Adrian Sifuentes Jimenez.
(2) Agustin Cedillo Ruiz.
(3) Alejandro Estrada Silva.
(4) Apolonio Arias Vasquez.
(5) Arturo Leija Lucio.
(6) Aurelio Cedillo Ruiz.
(7) Azuelejos Decorativos Carrillo, S.A.
(8) Efrain Medina Carrillo.
(9) Emilio Pacheco.
(10) Faustino Nuncio Silva.
(11) Ima Regiomontana, S.A. de C.V.
(12) Industrias Intercontinental, S.A. de C.V.
(13) Internacional de Ceramica, S.A. de C.V.
(14) Javier Leija Lucio.
(15) Jesus Gallegos Olivares.
(16) Jesus Jimenez Lucio.
(17) Jose Arellano Valdez.
(18) Jose Dolores Hernandez.
(19) Jose Silva Romero.
(20) Juan Cortex Coronel.
(21) Leopoldo Montiel Rincon.
(22) Luis Najera Flores.
(23) Luis Paulino Flores.
(24) Norberto Cuellar Zuniga.
(25) O.H. Internacional, S.A. de C.V.
(26) Pedro Lopez Alonso.
(27) Raul Leija.
(28) Recubrimientos Mezquital, S.A. de C.V.
(29) Ricardo Berrones.
(30) Taller de Azuelejos Coloniales.
(31) Vicente Jalomo Reyna.
(32) Zenon Cortez Coronel.

In addition, we preliminarily determine the total bounty or grant to be 2.55 percent *ad valorem* for all other companies during the period January 1, 1992 through December 31, 1992.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Mexico exported by the 32 companies listed above for the period on or after January 1, 1992, and on or before December 31, 1992, and to assess countervailing duties of 2.55 percent of the f.o.b. invoice price of shipments from all other companies for the same period.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 4, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27918 Filed 11-9-94; 8:45 am]
BILLING CODE 3510-DS-P

Minority Business Development Agency

Business Development Center Applications: Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

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SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program, to operate an MBDC in the Alaska Metropolitan Area. The previous announcement was published in the Friday, August 19, 1994 issue of the **Federal Register**.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: November 4, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–27854 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 102194A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit 929 (P163A), the First Modification to Permit 923 (P509A), and the Second Amendment to Permit 802 (P512).

On April 28, 1994, notice was published (59 FR 22824) that an application had been filed by John Musick of the Virginia Institute of Marine Science (P163A) to take listed sea turtles to study population trends, migration, and habitat as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on November 2, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 929 for the above taking subject to certain conditions set forth therein.

On September 13, 1994, notice was published that an application had been filed by Robert van Dam of Scripps Institute of Oceanography for a modification to Permit 923 (P509A), to take an additional eighty listed hawksbill sea turtles for habitat and population studies as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Notice is hereby given that on October 21, 1994, as authorized by the provisions of the ESA, NMFS issued Modification One to Permit 929 for the above taking, subject to certain conditions set forth therein.

Notice is hereby given that on September 23, 1994, NMFS issued a Second Amendment to Permit 802 to Dr. André Landry of Texas A&M University (P512), to take listed species as authorized by the ESA. This Second Amendment to Permit 802 involved buoys, net length and monitoring, and water depth of the research area.

Issuance of these actions, as required by the ESA, were based on findings that such actions: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these actions; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These actions were also issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141); also

Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250) for Permit 929 only; and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016) for Permit 923 only.

Dated: November 2, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27892 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110194C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Modification 4 to Permit 825 held by the Columbia River Inter-Tribal Fish Commission (P513).

Notice is hereby given that on November 4, 1994, NMFS issued Modification 4 to Permit Number 825 held by the Columbia River Inter-Tribal Fish Commission (P513) to take listed Snake River chinook salmon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222), and subject to certain conditions set forth therein. The modification authorizes an increase in take of juvenile Snake River chinook salmon at two fish counting facilities, due to higher than expected outmigration.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this modification; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503–230–5400).

Dated: November 4, 1994.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–27893 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of public meeting on November 16, 1994, regarding the G–7 ministerial level conference on the Information Society on February 25–26, 1995, in Brussels.

SUMMARY: NTIA is convening a public meeting to discuss U.S. government goals and technology demonstration for the up-coming G–7 ministerial level conference on the Information Society. The G–7 conference is scheduled for February 25–26, 1995, in Brussels.

The public meeting will be chaired by Larry Irving, Assistant Secretary of Commerce for Communications and Information and Administrator of NTIA. The purpose of the meeting is to brief the public and obtain input on U.S. government goals for the meeting in Brussels and to solicit industry interest in participating in technology demonstrations, which will be held in conjunction with the G–7 conference.

DATES: The public meeting will be held from 11:00 a.m. to 12 noon on Wednesday, November 16, 1994, in the main auditorium at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Members of the public should use the main entrance to the Department of Commerce building, on 14th Street between Pennsylvania Avenue and Constitution Avenue.

FOR FURTHER INFORMATION CONTACT: Dr. Charles M. Rush, Chief Scientist, NTIA; U.S. Department of Commerce, Room 4701; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–1866; Fax: (202) 482–1865; E-mail: crush@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: At the Naples G–7 Summit in July 1994, the G–7 leaders emphasized the necessity of encouraging the development of a worldwide information society and they agreed that the relevant ministers should meet in Brussels. The European Commission extended an invitation to the G–7 to convene a ministerial level conference on the Information Society on February 25–26, 1995. The Information Society Conference will include ministerial level discussions on: (1) Regulatory and competitive frameworks; (2) the development of the infrastructure and access to it; and, (3) essential applications as well as the social, societal, and cultural aspects of the information society.

Each G–7 Country, plus the European Union, will send Ministers responsible for telecommunications and information matters. The conference will include a session with private sector representatives, both users and producers of telecommunications and information equipment and services from each of the Member states participating in the G–7 conference. Technology demonstrations will be given by governments and industry during the conference to showcase the benefits and capabilities of information technology. The United States delegation will be led by Ronald H. Brown, the Secretary of Commerce.

Dated: November 7, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–27923 Filed 11–9–94; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 12, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On September 30, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 49913) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Order Processing Service
General Services Administration
Customer Supply and Industrial Products Center
Springfield, Virginia
(40% of the Government's requirement)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–27889 Filed 11–9–94; 8:45 am]

BILLING CODE 6820–33–F

DEPARTMENT OF DEFENSE

Office of the Secretary of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Installation Operations and Master Plan Update, U.S. Army Aviation Center (USAAC) and Fort Rucker, Fort Rucker, Alabama

AGENCY: Department of Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The United States Army proposes to prepare a Draft Environmental Impact Statement (DEIS) for changes to the operation and ongoing mission of the U.S. Army Aviation Center and Fort Rucker, Alabama. The DEIS will identify and evaluate the environmental, social, and economic aspects of the installation operation, master planned component plans and their alternatives for the proposed changes to the ongoing mission and training activities of the USAAC and Fort Rucker. Alternatives to be evaluated include:

a. No action. Installation ongoing operations, development and training would continue at current levels.

b. Master plan and component plans would be implemented and current operations, development and training levels would be maintained. Construction listed in the master plan would be implemented.

c. Master plan and component plans would be revised and expanded to support new and changing missions. Operations, development and training programs may be expanded. Construction above the level outlined in the master plan would be implemented as necessary to meet total requirements.

The U.S. Army will conduct scoping meetings on or near Fort Rucker. As soon as dates and locations of the scoping meetings have been established, they will be published in local newspapers. The purpose of the meetings will be to gather information from the public about the issue they would like to see addressed in the DEIS.

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Comments may be made orally or in writing at the meetings.

FOR FURTHER INFORMATION: Questions regarding this action may be directed to Mr. Larry Neal at (803) 234–3000 or at the following address: RUST Environment and Infrastructure Inc., ATTN: Mr. Larry Neal, Post Office Box 24000, Greenville, SC 29616.

Dated: October 28, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health, OASA(I,L&E).

[FR Doc. 94–27784 Filed 11–9–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Notice of Availability of the Final Environmental Impact Statement (FEIS) for Closure and Disposal of Sacramento Army Depot, CA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the 1991 Defense Base Closure and Realignment Commission recommended the closure of Sacramento Army Depot and transfer of depot missions to other installations/agencies. Maintenance missions would be competed to determine location of transfer. In accordance with the Act, the Secretary of Defense must implement all recommendations for closure or realignment. The FEIS focuses on the environmental and socioeconomic impacts and mitigations associated with the disposal and reuse of Sacramento Army Depot.

No long-term adverse ecological or environmental health effects are expected due to this action. The increase in population anticipated by the reuse and disposal activities is expected to have a net positive impact on the local economy. The preferred alternative, prepared with the cooperation of the local community, is not expected to significantly impact environmental resources.

DATES: Written public comments and suggestions can be submitted within 30 days of this Notice of Availability (December 12, 1994) to the address shown below.

ADDRESSES: Copies of the FEIS can be obtained by writing to the United States Army Corps of Engineers, Sacramento District, ATTN: CESPK–ED–M (ISS), 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Mr. Wandell Carlton (916) 557–7424.

Dated: November 4, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 94–27803 Filed 11–9–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for Disposal and Redevelopment of Naval Base Charleston, North Charleston, South Carolina

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the disposal and subsequent redevelopment of the Naval Base Charleston, North Charleston, South Carolina.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission and to legislative requirements in the 1990 Base Closure and Realignment Act (BCRA) (Pub. L. 101–510), Naval Base Charleston is to be closed. Activities included in the closure are the Naval Station, the Naval Shipyard, the Fleet Industrial Support Center, the Fleet and Mine Warfare Training Center, the Submarine Training Facility, and the Naval Reserve Center.

Naval Base Charleston is located in the City of North Charleston approximately five miles north of the City of Charleston. The Base encompasses approximately 1,575 acres of land along the Cooper River and includes about 2.3 million square feet of industrial space, 1.8 million square feet of warehouse space, 2.2 million square feet of administrative space, 86 residences, 19 barracks, 152 marina slips, 23 piers, 5 dry-dock facilities, and a wide range of recreational facilities.

The proposed action addressed in the DEIS is the disposal and subsequent redevelopment of lands/facilities determined surplus to the needs of the federal government. A Charleston Naval Complex Reuse Plan was prepared by the Building Economic Solutions Together (BEST) Committee, which included representation of over 40 local groups and organizations from throughout the region. This plan, which identifies a preferred development plan, was approved by both the BEST Committee and the recently created Charleston Naval Base Redevelopment Authority. The DEIS has been prepared to address the environmental consequences of the implementation of this comprehensive reuse plan.

In the preparation of the Redevelopment Plan, consideration was given to the possible reuse of the Base by other federal, state, and local agencies, homeless support organizations, business interests (i.e., privatization of the Shipyard), and recreational users. Various reuse scenarios were developed by BEST, and a preferred reuse plan was identified and approved following public review and evaluation. The Preferred Alternative evaluated in the DEIS is the Preferred Development Plan as approved by BEST and the Redevelopment Authority.

The Preferred Redevelopment Plan identifies areas of the Naval Base for use as a Cargo Terminal, Intermodal Rail Yard, Marine Industrial Park, recreational areas, cultural park warehouse space and open space/stormwater management. The Shipyard is to be privatized for continued use as a shipyard. The preferred plan also provides facilities for local/regional homeless service agencies including residential, training, and administrative uses. The plan also provides for use of lands/facilities for the National Oceanic and Atmospheric Agency (NOAA), the Defense Finance Accounting Service (DFAS), and interim use of facilities by the Navy.

In response to environmental concerns and the current unavailability of information from ongoing Installation Restoration efforts, a Contingent Redevelopment Plan is being considered as part of the Preferred Alternative. The Contingent Redevelopment Plan includes all the same components as the Preferred Development Plan and will result in similar beneficial economic impacts, but will avoid restoration sites if necessary. The DEIS also addresses potential impacts to community services, traffic, air quality, water quality, vegetation and wildlife, cultural resources, noise and land use.

The DEIS has been distributed to various federal, state, and local government agencies and elected officials, special interest groups, libraries and the media. A limited number of single copies are available at the address listed at the end of this notice.

The Department of the Navy will hold two public hearings to inform the public of the DEIS findings and to solicit comments. One hearing will be held from 7:30 p.m. to 10:00 p.m. on Monday, November 28, 1994, at the Chicora Neighborhood Center, North Charleston. The second hearing will be held from 7:00 PM to 10:00 PM on Tuesday, November 29, 1994, at the North Charleston City Hall. Public hearing times will be as scheduled or until the conclusion of public comments. The hearings will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to attend or be represented at the hearings. Oral statements will be heard and transcribed by a stenographer, however, to assure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record. Equal weight will be given to both oral and written comments.

In the interest of available time, each speaker will be asked to limit remarks to five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by Monday, December 12, 1994 to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. William Sloger, PE (Code 203WS), Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, North Charleston, South Carolina, 29419–9010, telephone (803) 743–0797.

Dated November 8, 1994.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liason Officer.

[FR Doc. 94–28002 Filed 11–9–94; 8:45 am]

BILLING CODE 3810–AE–P

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public hearing.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. § 946(a), to be held at 2:00 p.m. on December 12, 1994 in the Court Conference Room, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–0001. The agenda for this meeting will include consideration of proposed changes to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATES: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–001, telephone (202) 272–1448.

Dated: November 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27795 Filed 11–9–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Commission on Roles and Missions of the Armed Forces, Department of Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces. The Commission will meet in open session from 10:00 a.m. until 1:30 p.m., and in closed session from 1:30 p.m. until 6:00 p.m. The purpose of the meeting will be to present and discuss alternative strategies and force postures. In addition, the Commission will solicit the opinions and perspectives of recent commanders and other authorities on roles and missions issues, future national security requirements, and warfighting in a joint force environment. During the closed portion of the meeting, the Commission will consider issues that will include the disclosure and discussion of classified information. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that these portions of the Commission on Roles and Missions meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meeting will be closed to the public during these times.

DATES: November 16, 1994, 10:00 a.m. until 6:00 p.m.

ADDRESSES: Hyatt Regency Arlington, Ravensworth Ballroom—West 1325 Wilson Blvd, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION: Seating will be available on a first-come, first-served basis. Members of the press who wish to reserve seating should contact Commander Gregg Hartung, Director for Public Affairs, in advance at (703) 696–4250.

Extraordinary circumstances created by coordination difficulties compel notice of this meeting to be posted in less than the 15-day requirement.

Dated: November 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–27794 Filed 11–9–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Nevada Solar Enterprise Zone Task Force to the Advisory Committee on Demonstration and Commercial Applications of Renewable Energy and Energy Efficiency Technologies

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

DATES: Tuesday, December 6, 1994: 9:00 a.m.–4:00 p.m.

ADDRESSES: Las Vegas Convention and Visitor Authority Board Room, 3150 Paradise Road, Las Vegas, NV 89109.

FOR FURTHER INFORMATION CONTACT: Lisa DiNunzio, Office of Solar Energy Conversion, EE–13, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1720.

SUPPLEMENTARY INFORMATION: The Nevada Solar Enterprise Zone Task Force to the Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies advises the Department of Energy on making the best use of the solar resource in southern Nevada. The Task Force will seek public input and focus attention on significant issues, develop solutions to problems, organize public and private support for implementing a solar enterprise zone, and incorporate appropriate Task Force findings and results into a final report and recommendations for implementing a solar enterprise zone.

Tentative Agenda

Tuesday, December 6, 1994

9:00 am

Call to Order

Review of September 30th Meeting Minutes

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Presentation of Recommendations (Robert Annan)
Task Force Questions for Support Staff
Public Comment
Task Force Vote on Recommendations
Set Date for Task Force Review of Implementation
Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Subcommittee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Lisa DiNunzio at the address or telephone number listed above. Requests must be received five (5) days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on November 7, 1994.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–27901 Filed 11–9–94; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, November 28, 1994: 6 p.m.–7 p.m. (public comment session); Tuesday, November 29, 1994: 8:30 a.m. to 4:00 p.m.

ADDRESSES: The public comment session will be held at: The Winton Inn, 1003 Marlboro Avenue, Barnwell, South Carolina. The board meeting (Tuesday, November 29) will be held at: Barnwell County Museum, Marlboro Avenue, Barnwell, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

Monday, November 28, 1994

6:00 p.m. Public Comment Session (5-minute rule)

7:00 p.m. Adjourn

Tuesday, November 29, 1994

8:00 a.m. Coffee

8:30 a.m. Board organizational issues

3:30 p.m. Public Comment Session (5-minute rule)

4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Monday, November 28, 1994.

Public Participation The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)–725–8074.

Issued at Washington, DC, on November 7, 1994.

Rachel M. Samuel,

Acting Advisory Committee Management Officer.

[FR Doc. 94–27902 Filed 11–9–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From York International; Case No. F–077

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to York International (York) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's P2LN, and PBNL lines of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from York. York's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. York seeks to test using a blower delay time of 30 seconds for its P2LN, and PBNL lines of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than December 12, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–077, Mail Stop EE–43, Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102 486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On September 22, 1994, York filed an Application for Interim Waiver regarding blower time delay. York's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, York requests the allowance to test using a 30-second blower time delay when testing its P2LN, and PBNL lines of condensing furnaces. York states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an overall furnace AFUE improvement of approximately 1.5 percent points. Since current DOE test procedures do not address this variable blower time delay, York asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992, and 59 FR 30577, June 14, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting York an Interim Waiver for its P2LN, and PBNL lines of condensing furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to York was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, November 2, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

September 22, 1994.

Assistant Secretary, Conservation & Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Subject: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of Subpart B

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to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

York International requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after the gas valve opens. A control of this type with a fixed 30 second blower on-time will be utilized in our P2LN and PBNL lines of condensing furnaces.

The current test procedure does not credit York for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the overall furnace AFUE will increase approximately 1.5 percentage points compared to the same furnace when tested with the 1.5 minute delay. Copies of the confidential test data conforming these energy savings will be forwarded to you upon request.

York International is confident that this waiver will be granted, as similar waivers have been granted in the past to Coleman Company, Magic Chef Company, Rheem Manufacturing, the Trane Company, Carrier Corporation, Lennox Industries, Amana Refrigeration, Goodman Manufacturing Company and others.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Michael B. Eberlein, P.E.,

Engineering Manager—Furnace Products, Unitary Products Group, York ® Central Environmental Systems, York International.

Mr. Michael B. Eberlein, P.E., Engineering Manager—Furnace Products, Unitary Products Group, York International, P.O. Box 4022, Elyria, OH 44036

Dear Mr. Eberlein: This is in response to your September 22, 1994, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for York International (York) P2LN, and PBNL lines of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 3, 1992, and 59 FR 30577, June 14, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46966, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

York's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage York will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, York's Application for an Interim Waiver from the DOE test procedure for its P2LN, and PBNL lines of condensing furnaces regarding blower time delay is granted.

York shall be permitted to test its P2LN, and PBNL lines of condensing furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t−) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–27782; Filed 11–9–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Inventory of Current DOE Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration.

ACTION: Department of Energy's inventory of energy information collections, including reporting and recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and recordkeeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1994, the first day of Fiscal Year (FY) 1995. The inventory is published for the use of respondents and other interested parties. DOE's management and procurement collections are the responsibility of DOE's Assistant Secretary for Human Resources and Administration and are not included in these notices.

The listing that is attached, hereto, includes DOE energy information collections that had OMB approval as of October 1, 1994. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Herbert Miller, Energy Information Administration (EI–73), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 254–5346. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–231), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800.

SUPPLEMENTARY INFORMATION: As DOE's energy information collections are submitted for review and approval to OMB during FY 1995 (October 1, 1994 through September 30, 1995), Federal Register notices will be published informing the public. Such notices not only provide an opportunity for the public to review and comment on the collections, but also notify the public of proposed changes to the inventory. Questions concerning the inventory or the changes that take place during FY 1995 may be directed to Mr. Miller at the address above.

STATUTORY AUTHORITY: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1).

Issued in Washington, DC, November 3, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

PART I.—DOE ACTIVE INFORMATION COLLECTIONS, OCTOBER 1, 1994 INVENTORY

DOE No.	Title	OMB control No.	Expiration date
Civilian Radioactive Waste Management:			
NWPA–830R–A–G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste	19010260	05/31/97
RW–859	Nuclear Fuel Data	19010287	12/31/94
Conservation and Renewable Energy:			
CE–63A/B	Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module/Cell Manufacturers Survey.	19010292	08/31/95
Emergency Planning and Operations:			
OE–411	Coordinated Regional Bulk Power Supply Program Report	19010286	10/31/96
OE–417R	Power System Emergency Reporting Procedures	19010288	10/31/95
Energy Information Administration:			
EIA–1	Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby Form).	19050167	03/31/96
EIA–3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	03/31/96
EIA–3A	Annual Coal Quality Report—Manufacturing Plants	19050167	03/31/96
EIA–4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	03/31/96
EIA–5	Coke Plant Report—Quarterly	19050167	03/31/96
EIA–5A	Annual Coal Quality Report—Coke Plants	19050167	03/31/96
EIA–6	Coal Distribution Report	19050167	03/31/96
EIA–7A	Coal Production Report	19050167	03/31/96
EIA–14	Refiners' Monthly Cost Report	19050174	09/30/96
EIA–20	Weekly Telephone Survey of Coal Burning Utilities (Standby Form)	19050167	03/31/96
EIA–23	Annual Survey of Domestic Oil and Gas Reserves	19050057	12/31/94
EIA–23P	Oil and Gas Well Operator List Update Report	19050057	12/31/94
EIA–28	Financial Reporting System	19050149	12/31/96
EIA–64A	Annual Report of the Origin of Natural Gas Liquids Production	19050057	12/31/94
EIA–176	Annual Report of Natural and Supplemental Gas Supply and Disposition	19050175	12/31/96
EIA–182	Domestic Crude Oil First Purchase Report	19050174	09/30/96
EIA–191	Underground Gas Storage Report	19050175	12/31/96
EIA–191S	Weekly Underground Gas Storage Report (Standby Form)	19050175	12/31/96
EIA–254	Semiannual Report on Status of Reactor Construction	19050160	01/31/97
EIA–412	Annual Report of Public Electric Utilities	19050129	12/31/95
EIA–457A/H	Residential Energy Consumption Survey	19050092	06/30/96
EIA–627	Annual Quantity and Value of Natural Gas Report	19050175	12/31/96
EIA–759	Monthly Power Plant Report	19050129	12/31/95
EIA–782A	Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA–782B	Resellers'/Retailers' Monthly Petroleum Product Sales Report	19050174	09/30/96
EIA–782C	Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption.	19050174	09/30/96
EIA–800	Weekly Refinery Report	19050165	01/31/96
EIA–801	Weekly Bulk Terminal Report	19050165	01/31/96
EIA–802	Weekly Product Pipeline Report	19050165	01/31/96
EIA–803	Weekly Crude Oil Stocks Report	19050165	01/31/96
EIA–804	Weekly Imports Report	19050165	01/31/96
EIA–807	Propane Telephone Survey	19050165	01/31/96
EIA–810	Monthly Refinery Report	19050165	01/31/96
EIA–811	Monthly Bulk Terminal Report	19050165	01/31/96
EIA–812	Monthly Product Pipeline Report	19050165	01/31/96
EIA–813	Monthly Crude Oil Report	19050165	01/31/96

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PART I.—DOE ACTIVE INFORMATION COLLECTIONS, OCTOBER 1, 1994 INVENTORY—Continued

DOE No.	Title	OMB control No.	Expiration date
EIA–814	Monthly Imports Report	19050185	01/31/96
EIA–816	Monthly Natural Gas Liquids Report	19050165	01/31/96
EIA–817	Monthly Tanker and Barge Movement Report	19050165	01/31/96
EIA–819A	Annual Oxygenate Capacity Report	19050165	01/31/96
EIA–819M	Monthly Oxygenate Telephone Report	19050165	01/31/96
EIA–820	Annual Refinery Report	19050165	01/31/96
EIA–821	Annual Fuel Oil and Kerosene Sales Report	19050174	09/30/96
EIA–825	Petroleum Facility Operator Identification Survey	19050165	01/31/96
EIA–826	Monthly Electric Utility Sales and Revenue Report with State Distributions	19050129	12/31/95
EIA–846A/D	Manufacturing Energy Consumption Survey	19050169	11/30/94
EIA–851	Domestic Uranium Mining Production Report	19050160	12/31/97
EIA–856	Monthly Foreign Crude Oil Acquisition Report	19050174	09/30/96
EIA–857	Monthly Report of Natural Gas Purchases and Deliveries to Consumers	19050175	12/31/96
EIA–857S	Weekly Report of Natural Gas Supplies and Deliveries to Consumers (Standby Form)	19050175	12/31/96
EIA–858	Uranium Industry Annual Survey	19050160	01/31/97
EIA–860	Annual Electric Generator Report	19050129	12/31/95
EIA–861	Annual Electric Utility Report	19050129	12/31/95
EIA–863	Petroleum Product Sales Identification Survey	19050174	09/30/96
EIA–867	Annual Nonutility Power Producer Report	19050129	12/31/95
EIA–871A/F	Commercial Buildings Energy Consumption Survey	19050145	12/31/94
EIA–876A/E	Residential Transportation Energy Consumption Survey	19050068	01/31/97
EIA–877	Winter Heating Fuels Telephone Survey	19050174	09/30/96
EIA–878	Motor Gasoline Price Survey	19050174	09/30/96
EIA–882T	Generic Clearance for Questionnaire Testing, Evaluation, and Research	19050186	06/30/96
EIA–885	Propane Provider Fleet Survey	19050187	04/30/97
EIA–887	DOE Customer Surveys	19050188	05/31/97
EIA–888	On-Highway Diesel Fuel Price Survey	19050174	09/30/96
EIA–890	Atlanta Clean City Vehicle Fleet Survey	19050189	06/30/97
Federal Energy Regulatory Commission:			
FERC–1	Annual Report of Major Electric Utilities, Licensees and Others	19020021	07/31/95
FERC–1–F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	07/31/95
FERC–2	Annual Report of Major Natural Gas Companies	19020028	07/31/96
FERC–2A	Annual Report of Nonmajor Natural Gas Companies	19020030	07/31/96
FERC–6	Annual Report of Oil Pipeline Companies	19020022	06/30/96
FERC–8	Underground Gas Storage Report	19020026	08/31/95
FERC–11	Natural Gas Pipeline Company Monthly Statement	19020032	06/30/96
FERC–73	Oil Pipeline Service Life Data	19020019	08/31/95
FERC–80	Licensed Hydropower Development Recreation Report	19020106	10/31/95
FERC–423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	12/31/96
FERC–556	Cogeneration and Small Power Production	19020075	11/30/94
FERC–561	Annual Report of Interlocking Positions	19020099	10/31/95
FERC–580	Fuel Purchase Practices	19020137	06/30/97
FERC–592	Marketing Affiliates of Interstate Pipelines	19020157	12/31/96
FERC–597	Customer Satisfaction Survey	19020163	11/30/96
FERC–714	Annual Electric Power System Report	19020140	01/31/97
FERC–715	Annual Transmission Planning and Evaluation Report	19020171	01/31/97
FPC–14	Annual Report for Importers and Exporters of Natural Gas	19020027	08/31/95
Fossil Energy:			
EIA–767(3)	Steam Electric Plant Operation and Design Report	19010298	05/31/97
FE–748	Enhanced Oil Recovery Annual Report	19010291	12/31/95
Policy, Safety, and Environment:			
EIA–767(2)	Steam Electric Plant Operation and Design Report	19010267	05/31/97

PART II.—DOE ACTIVE INFORMATION COLLECTIONS, NOT UTILIZING STRUCTURED FORMS, OCTOBER 1, 1994 INVENTORY

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Economic Regulatory Administration:				
ERA–766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules.	19030073	10/31/96	10 CFR 210.1
Federal Energy Regulatory Commission:				
FERC–16A	Monitoring (Omnibus) Report(stand-by authority)	19020105	10/31/95	18 CFR 375.307
FERC–16AT	Interstate Pipeline Curtailment (Telephone) Survey	19020139	11/30/96	By FERC Order
FERC–500	Application For License for Hydropower Projects Greater Than 5MW.	19020058	11/30/94	18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200–.202, 16.1, 16.14–16

PART II.—DOE ACTIVE INFORMATION COLLECTIONS, NOT UTILIZING STRUCTURED FORMS, OCTOBER 1, 1994 INVENTORY—Continued

DOE No.	Title	OMB control No.	Expiration date	CFR citation
FERC–505	Application for License for Water Projects 5MW or Less.	19020115	11/30/94	18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.113, 4.201–.202
FERC–510	Application for Surrender of Electric License	19020068	05/31/96	18 CFR 6.1, 6.3
FERC–511	Application for Transfer of Electric License	19020069	11/30/94	18 CFR 9.1, 9.2, 9.10
FERC–512	Application for Preliminary Permit	19020073	11/30/94	18 CFR 4.31, 4.32, 4.33, 4.81, 4.82
FERC–515	Hydropower License—Declaration of Intention	19020079	12/31/94	18 CFR 24.1
FERC–516	Electric Rate Schedule Filings	19020096	05/31/95	18 CFR 35, Subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301
FERC–519	Disposition of Facilities, Mergers, and Acquisitions of Securities.	19020082	03/31/96	18 CFR 33
FERC–520	Application for Authority to Hold Interlocking Directorate Positions.	19020083	02/28/96	18 CFR 45
FERC–521	Headwater Benefits	19020087	08/31/95	18 CFR 11.16
FERC–523	Application for Authorization of The Issuance of Securities or the Assumption of Liabilities.	19020043	09/30/95	18 CFR 20, 34, 131.43, 131.50
FERC–525	Financial Audits	19020092	02/28/95	18 CFR 41, 101, 116, 125, 141.1, 158, 216, 225, 260, 351,
FERC–537	Gas Pipeline Certificates: Construction, Acquisition & Abandonment.	19020060	04/30/95	18 CFR 2.79, 157.5–.21, .100, .201–.218, 159.1, 284.107, .127, .221
FERC–538	Gas Pipeline Certificate: Initial Service	19020061	04/30/97	18 CFR 156.3, 156.4, 156.5
FERC–539	Gas Pipeline Certificate: Import/Export Related	19020062	05/31/97	18 CFR 153
FERC–541	Gas Pipeline Certificate: Curtailment Plan	19020066	05/31/97	18 CFR 2.78, 281
FERC–542	Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking.	19020070	05/31/97	18 CFR 154.38, 154.61–154.67
FERC–542A	Tracking and Recovery of Alaska Natural Gas Transportation System.	19020129	02/28/97	18 CFR 154.201–154.213
FERC–543	Gas Pipeline Rates: Purchased Gas Adjustment Tracking.	19020152	05/31/97	18 CFR 154.38
FERC–544	Gas Pipeline Rates: Rate Change (Formal)	19020153	05/31/97	18 CFR 154.63–154.67
FERC–545	Gas Pipeline Rates: Rate Change (Non-Formal)	19020154	06/30/96	18 CFR 154.63–154.67
FERC–546	Gas Pipeline Rates: Certificated Rate Filings	19020155	05/31/97	18 CFR 154.62–154.67
FERC–547	Gas Pipeline Rates: Refund Obligations	19020084	05/31/97	18 CFR 154.38(5)(V)(H), 270.101, 273.301, 273.302
FERC–549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions.	19020085	11/30/94	18 CFR 284 Sub. A/D/E/H, 284.7–.11, .102, .105, .106, .122, and others
FERC–549B	Gas Pipeline Rates: Capacity Release Information	19020169	12/31/96	18 CFR 284(b)(5)
FERC–550	Oil Pipeline Rates: Tariff Filings	19020089	08/31/95	18 CFR 340–345, 347
FERC–555	Records Retention Requirements	19020098	04/30/95	18 CFR 125, 150, 160.1, 225, 276.108, 277.210, 356
FERC–566	Report of Utility's Twenty Largest Purchasers	19020114	02/28/95	18 CFR 46.3
FERC–567	Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.	19020005	08/31/96	18 CFR 260.8, 284.12
FERC–574	Gas Pipeline Certificates—Hinshaw Exemption	19020116	08/31/95	18 CFR 152
FERC–576	Report by Certain Natural Gas Companies on Service Interruptions.	19020004	05/31/95	18 CFR 260.9
FERC–577	Gas Pipeline Certificates: Environmental Impact Statement.	19020128	12/31/94	18 CFR 157.14
FERC–577(A)	Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule).	19020161	10/31/96	18 CFR 2.80, 2.82, 157.14
FERC–581	Management and Procurement Reporting and Recordkeeping Requirements.	19020130	11/30/96	48 CFR 30 Subtitle A, Chapter 9
FERC–582	Oil, Gas, and Electric Fees and Annual Charges	19020132	10/31/96	18 CFR 381.106, 382.105(A), 382.201(B)(4)
FERC–583	Hydroelectric Fees and Annual Charges	19020136	10/31/96	18 CFR 11.1, 11.3, 11.4, 11.6
FERC–585	Reports on Electric Energy Shortages & Contingency Plans Under PURPA 206.	19020138	12/31/96	18 CFR 294.202
FERC–588	Emergency Natural Gas Sale, Transportation and Exchange Transactions.	19020144	05/31/97	18 CFR 284, Subpart I
FERC–598	Certification of Entities Seeking Exempt Wholesale Generator Status.	19020166	04/30/96	18 CFR 365
FERC–716	Good Faith Request for Transmission Services and Response by Transmitting Utility.	19020170	11/30/96	18 CFR 2.20
FERC–716A	Application for Transmission Services Under Section 211 of the Federal Power Act.	19020168	10/31/95	18 CFR 36

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PART II.—DOE ACTIVE INFORMATION COLLECTIONS, NOT UTILIZING STRUCTURED FORMS, OCTOBER 1, 1994 INVENTORY—Continued

DOE No.	Title	OMB control No.	Expiration date	CFR citation
Fossil Energy				
FE–329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504.	19010297	06/30/95	10 CFR 500, 501, 503, 504, 505, 508, 515
FE–746R	Import and Export of Natural Gas	19010294	01/31/96	10 CFR 205, 590

[FR Doc. 94–27779; Filed 11–9–94; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. GT95–3–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1994.

Take notice that on November 1, 1994, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 1100
Third Revised Sheet No. 1101
Third Revised Sheet No. 1102
Third Revised Sheet No. 1103
Third Revised Sheet No. 1104
Third Revised Sheet No. 1105
Third Revised Sheet No. 1106
Third Revised Sheet No. 1107
Third Revised Sheet No. 1108
Second Revised Sheet No. 1109

The proposed effective date of the tariff sheets is December 1, 1994.

Algonquin states that the purpose of this filing is to revise Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27803 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ID–2857–000]

Jean Allard; Notice of Filing

November 3, 1994.

Take notice that on October 26, 1994, Jean Allard (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director: Commonwealth Edison Company [1]
Director: LaSalle National Bank [2]
Director: LaSalle National Corporation [2]
Director: LaSalle National Trust, N.A.[2]
Director: LaSalle Cragin Bank, F.S.B.[2]
Director: LaSalle Talman Bank, F.S.B.[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27804 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–221–001]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1994.

Take notice that on November 1, 1994, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 8
Second Revised Sheet No. 177
Second Revised Sheet No. 181
Second Revised Sheet No. 183
Second Revised Sheet No. 184

ANR states that the above-referenced tariff sheets are being filed pursuant to Ordering Paragraph (A) of the Commission's "Order Terminating Technical Conference Subject to Conditions" in this proceeding. Such order required ANR to adjust its Rate Schedule FTS–2 overrun rates to include the GSR incremental cost component associated with ITS service, and to use known and measurable Rate Schedule FTS–2 overrun volumes in the derivation of rates associated with the allocation of 10% of GSR costs to interruptible service.

ANR states that all parties and interested State Commissions have been mailed a copy of this filing.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27805 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–35–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

November 4, 1994.

Take notice that on November 2, 1994, K N Interstate Gas Transmission Co. (KNI) tendered for filing an application and proposed First Revised Volume Nos. 1–C and 1–D. KNI states that the proposed First Revised Volume Nos. 1–C and 1–D are to apply solely to its Buffalo Wallow System and will enable KNI to implement the following market center services, at cost-based rates, on that system: (1) firm and interruptible transportation (Rate Schedules FT–BW and IT–BW); and (2) an optional Aggregation Pooling Service available as a component of Rate Schedules FT–BW and IT–BW.

KNI also requests that the tendered volumes be accepted for filing and permitted to become effective on December 2, 1994, without suspension.

Finally, KNI requests that the Commission waive all other regulations that may otherwise be applicable so as to permit proposed First Revised Volume Nos. 1–C and 1–D to become effective as of December 2, 1994.

KNI states that copies of the filing were served upon KNI's customers and interested public bodies.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27806 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT95–4–000]

Natural Gas Pipeline Co. of America; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1994.

Take notice that on November 2, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the below listed tariff sheets to be effective December 2, 1994:

Third Revised Sheet No. 601
Fifth Revised Sheet Nos. 602, 603, 604, and 605
First Revised Sheet No. 609
Fifth Revised Sheet No. 611
Second Revised Sheet Nos. 612 and 614

Natural states that the purpose of the filing is to update the Index of Purchasers contained in Natural's Tariff.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective December 2, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27807 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ID–2858–000]

Cordell Reed; Notice of Filing

November 3, 1994.

Take notice that on October 26, 1994, Cordell Reed (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President: Commonwealth Edison Company
Director: LaSalle National Bank [1]
Director: LaSalle National Corporation [1]
Director: LaSalle National Trust, N.A.[1]
Director: LaSalle Cragin Bank, F.S.B.[1]
Director: LaSalle Talman Bank, F.S.B.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–27808 Filed 11–9–94; 8:45 am]
BILLING CODE 6717–01–M

[1] On July 15, 1994, the Commission approved the holding company reorganization (the Reorganization) of Edison whereby initially 100% of the common stock of Edison will be owned by a newly formed holding company (initially referred to as CECo Holding Company but renamed Unicom (Unicom)). *Commonwealth Edison Company* (Docket No. EC94–10–000), 68 FERC ¶ 62,049, (July 15, 1994). The holding company reorganization described in that docket became effective on September 1, 1994, and Applicant became a director of Unicom which controls Edison as a subsidiary. To the extent required, this application seeks approval of such interlocking position together with the other positions described herein.

[2] Applicant seeks authority to hold interlocking positions with Edison, a public utility, and five other companies which are affiliates of certain companies which are authorized by law to underwrite or participate in the marketing of securities. Authority to hold a position with each LaSalle Entity is sought because the LaSalle Entities are each wholly owned indirect subsidiaries of ABN AMRO Bank N.V., a foreign corporation, and (i) ABN AMRO Securities (USA) Inc., a registered broker-dealer under the Securities Exchange Act of 1934, is another wholly owned indirect subsidiary of ABN AMRO Bank N.V. and is authorized to underwrite certain securities as more fully described herein and (ii) ABN AMRO Bank N.V. and certain foreign subsidiaries it owns or controls are authorized by law to underwrite or participate in the marketing of securities, including securities issued by public utilities.

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[Docket Nos. RP94-119-000, et al.]

Texas Gas Transmission Corp.; Notice of Informal Settlement Conference

November 4, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on November 16, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will immediately follow the prehearing conference scheduled for 10:00 a.m. on that date in Texas Gas' new rate filing in Docket No. RP94-423-000.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208-1076, or Russell B. Mamone (202) 208-0744.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27800 Filed 11-9-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER95-6-000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1994.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

Docket No. ER95-5-000

Take notice that on October 25, 1994, Commonwealth Edison Company (ComEd) submitted an amendment to its October 3, 1994, filing for a revision to its Power Sales Tariff (PS-1 Tariff). The amendment seeks to reduce ComEd's proposed rates for third party transmission service in its Power Sales Schedule 4, Negotiated Capacity.

ComEd continues to request an effective date of December 3, 1994. Copies of this filing were served upon current customers, ECI, Heartland, MidCon, NSP and the Illinois Commerce Commission.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. The Northeast Utilities Service Company

Docket No. ER95-41-000

Take notice that on October 17, 1994, The Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P) a Letter Agreement dated September 28, 1994, to change the delivery point for a portion of service being taken under an existing Capacity Sales Agreement between CL&P and New England Power Company (NEP).

NUSCO requests that the Commission waive its standard notice and filing requirements to the extent necessary to permit the change in delivery point to become effective November 1, 1994, until otherwise instructed by NEP.

NUSCO states that a copy of the rate schedule has been mailed to NEP.

USCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

Docket No. ER95-69-000

Take notice that on October 21, 1994, Oklahoma Gas and Electric Company (OG&E), tendered for filing a proposed extension to a Letter Agreement dated April 18, 1994, with AES Power, Inc. (AESPI) for the sale of capacity and energy (Extension Agreement). Such Extension Agreement extends the termination of the Letter Agreement from October 31, 1994 to December 31, 1994. OG&E has also provided a notice of termination of the Letter Agreement to become effective as of December 31, 1994.

Copies of this filing have been sent to AESPI, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Power Exchange Corporation

Docket No. ER95-72-000

Take notice that on October 26, 1994, Power Exchange Corporation (Petitioner), tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1993), a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule FERC No. 1, to be effective on or prior to December 26, 1994.

Petitioner intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Petitioner purchases power, including capacity and related services from electric utilities, exempt wholesale generators, qualifying facilities, and independent power producers, and resells such power to other purchasers, Petitioner will be functioning as a marketer. In Petitioner's marketing transactions, Petitioner proposes to charge rates mutually agreed upon by the parties. In transactions where Petitioner does not take title to electric power and/or energy, Petitioner will be limited to the role of a broker and charge a fee for its services. Petitioner is not in the business of producing or transmitting electric power. Petitioner does not currently have or contemplate acquiring title to any electric power transmission facilities.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

Docket No. ER95-73-000

Take notice that on October 25, 1994, Maine Public Service Company (Maine Public), tendered for filing an agreement providing for short-term interim transmission for Central Maine Power Company.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Mesquite Energy Services, Inc.

Docket No. ER95-74-000

Take notice that on October 26, 1994, Mesquite Energy Services, Inc. (Mesquite), tendered for filing its initial FERC electric service tariff, Rate Schedule No. 1, under which Mesquite Energy Services, Inc., will engage in wholesale power and energy transactions as a marketer, and for blanket approvals and waivers of certain regulations of the Commission.

Mesquite's power marketing activities will include purchases of capacity, energy, and/or transmission services from electric utilities, qualifying facilities, independent power producers, or other power marketers and reselling such power to other purchasers. From time to time, it may act as a broker. Mesquite is not currently in the business of generating, transmitting, or distributing electric power.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Vermont Yankee Nuclear Power Corporation

Docket No. ER95-67-000

Take notice that on October 28, 1994, Vermont Yankee Nuclear Power Corporation (Vermont Yankee), tendered for filing proposed changes in its FPC Electric Service Tariff No. 1. Vermont Yankee states that the rate change proposed would result in a decrease in Vermont Yankee's revenues requirement of approximately $175,636 during 1994 and an increase of $54,688 during 1995 based on the 12 months ending December 31, 1993.

Vermont Yankee is making a limited Section 205 filing solely for amounts to fund post-retirement benefits other than pensions (PROPs) pursuant to the requirement of SFAS 106.

Vermont Yankee states that copies of its filing have been provided to its customers and to state regulatory authorities in Vermont, New Hampshire, Maine, Massachusetts, Connecticut and Rhode Island.

Comment date: November 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. LG&E-Westmoreland Rensselaer

Docket Nos. QF91-138-002 and EL95-7-000

Take notice that on October 20, 1994, LG&E-Westmoreland Rensselaer (LG&E-Westmoreland), tendered for filing a request for limited waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). LG&E-Westmoreland requests the Commission to temporarily waive the operating and efficiency standards for qualifying cogeneration facilities as set forth in Section 292.205 of the Commission's Regulations, implementing Section 201 of PURPA, as amended, 18 C.F.R. § 292.205, with respect to its 79 MW cogeneration facility located in Rensselaer, New York. Specifically, LG&E-Westmoreland requests waiver of the operating and efficiency standards for calendar year 1993, and waiver of the efficiency standard for 1994.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-27799; Filed 11-9-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER95-22-000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

November 2, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Co.

[Docket No. ER95-22-000]

Take notice that on October 28, 1994, Wisconsin Power and Light Company (WP&L), tendered for filing an amendment in the above designated docket. WP&L respectfully requests waiver of the Commission's notice requirements, and an effective date of October 1, 1994.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Co. v. American Electric Power Service Corp.

[Docket No. EL95-4-000]

Take notice that on October 18, 1994, as amended on October 20, 1994, Commonwealth Edison Company (ComEd) filed a complaint against American Power Service Corporation (AEP). ComEd alleges that the rate AEP or its operating subsidiaries charge for hourly and daily purchase and resale service rendered during off-peak hours or weekend days or holidays are unjust, unreasonable, unduly discriminatory and preferential in violation of section 205(b) of the Federal Power Act.

Comment date: December 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power and Light Co.

[Docket No. ER95-24-000]

Take notice that on October 28, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in the above designated docket. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 1, 1994.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Rochester Gas and Electric Corp.

[Docket No. ER95-48-000]

Take notice that on October 19, 1994, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and Enron Power Marketing, Inc. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94-1279. RG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Co.

[Docket No. ER95-70-000]

Take notice that on October 25, 1994, Illinois Power Company (Illinois), tendered for filing an Interchange Agreement between Illinois and AES Power, Inc. (AESPI). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and AESPI.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Great Bay Power Corp.

[Docket No. ER95-75-000]

Take notice that on October 26, 1994, Great Bay Power Corporation (Great Bay), tendered for filing an executed service agreement between Enron Power Marketing Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93-924-000. The service agreement is proposed to be effective November 1, 1994.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Mid-American Resources, Inc.

[Docket No. ER95-78-000]

Take notice that on October 27, 1994, Mid-American Resources, Inc., tendered for filing the Application of Mid-American Resources, Inc. for Waivers, Blanket Approvals and Order Approving Rate Schedule. The Application seeks certain waivers and blanket approvals under the Federal Power Act. Mid-American further seeks

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approval of an initial rate schedule to be effective December 27, 1994.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–70–000]

Take notice that on October 27, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, revisions to Exhibit B, Table 1 and Exhibit D of the General Transfer Agreement between PacifiCorp and Bonneville Power Administration, PacifiCorp Rate Schedule FERC No. 237.

PacifiCorp requests a waiver of prior notice and that an effective date of November 1, 1994 be assigned to the revised Exhibits.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co.

[Docket No. ER95–80–000]

Take notice that on October 27, 1994, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide non-firm transmission service to Enron Power Marketing Inc. (Enron) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to Enron.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Co.

[Docket No. ER95–81–000]

Take notice that on October 27, 1994, Illinois Power Company (Illinois) tendered for filing an Interchange Agreement between Illinois and Enron Power Marketing, Inc. (EPMI). Illinois states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between Illinois and EPMI.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER95–86–000]

Take notice that on October 28, 1994, Entergy Services, Inc. (Entergy Services), filed the Transmission Service Agreement (TSA), dated as of October 1, 1994, between South Mississippi Electric Power Association (SMEPA) and Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, Entergy Operating Companies). The TSA provides for the firm transmission of SMEPA's purchase of power and energy from Cajun Electric Power Cooperative, Inc. Entergy Services requests that the TSA be made effective as of October 1, 1994.

Comment date: November 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Kentucky Utilities Co.

[Docket Nos. ES95–7–000 and ES95–7–001]

Take notice that on October 27, 1994, Kentucky Utilities Company filed an application and on October 28, 1994, filed an amendment to its application under § 204 of the Federal Power Act seeking authorization to issue up to $100 million of unsecured promissory notes and commercial paper to be issued from December 1, 1994 through November 30, 1996, with a final maturity date no later than December 31, 1996.

Comment date: November 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Central Louisiana Electric Co., Inc.

[Docket No. ES95–8–000]

Take notice that on October 28, 1994, Central Louisiana Electric Company, Inc., filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $123 million of short-term indebtedness through December 31, 1996, due within one year from the respective dates of their issuance.

Comment date: November 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Goal Line, L.P.

[Docket Nos. QF92–179–002 and EL95–6–000]

On October 28, 1994, Goal Line, L.P. tendered for filing an amendment to its October 18, 1994, filing, and additional information in support of its request for waiver of the technical standards relating to its cogeneration facility.

Comment date: November 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27800 Filed 11–0–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–36–000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

November 2, 1994.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP95–36–000]

Take notice that on October 26, 1994, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky, 42302, filed in Docket No. CP95–36–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), requesting authority to abandon in place a purchase meter station and related pipeline located in Panola County, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Texas Gas asserts that the facilities proposed to be abandoned consist of a dual 12-inch purchase meter station known as the Union Pacific PMS ("old" Union Pacific PMS) and approximately 1,298 feet of related 20-inch pipeline, as well as approximately 20 feet of 20-inch line installed in conjunction with the installation of a "new" Union Pacific PMS, with all appurtenances, located at the Union Pacific Resources Company's East Texas Plant (East Texas Plant) in Panola County, Texas.

It is stated that Texas Gas proposes to transfer ownership to Union Pacific Resources Company (UPRC) the "old" Union Pacific PMS, approximately

1,248 feet of the "old" 20-inch pipeline, and approximately 20 feet of "new" 20-inch pipeline installed in conjunction with the construction of the "new" Union Pacific PMS. The remaining approximately 50 feet of "old" 20-inch pipeline located downstream of the "new" Union Pacific PMS will be abandoned in place, but not transferred to UPRC.

It is also stated that the facilities for which Texas Gas seeks abandonment approval are utilized to receive natural gas purchased by Texas Gas or transported by Texas Gas from various producers located in the Carthage Area in Texas. However, because the "old" Union Pacific PMS is located *inside* the East Texas Plant yard, Texas Gas states that operation of the facilities has become increasingly difficult. Therefore, UPRC and Texas Gas agreed to "relocate" the Union Pacific PMS to an area outside the plant property downstream of the "old" Union Pacific PMS. (The "new" Union Pacific PMS was constructed and installed pursuant to Section 157.208 of the Commission's regulations.) In the instant application, Texas Gas is requesting authority to: (1) Abandon by transfer to UPRC the "old" Union Pacific PMS and all the related 20-inch pipeline located upstream of the "new" Union Pacific PMS, as well as a small portion of "new" 20-inch pipeline installed in conjunction with the "new" meter station; and (2) abandon in place a portion of the "old" 20-inch pipeline located downstream of the "New" Union Pacific PMS. Texas gas states that the relocation of these facilities will eliminate the operational problems now existing at the location of the "old" Union Pacific PMS while continuing to allow Texas Gas to receive gas into its system from the East Texas Plant.

Comment date: November 23, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP95–37–000]

Take notice that on October 26, 1994, pursuant to Section 7(c) and Section 7(b) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR Section 157.7), Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., P.O. Box 1273, Charleston, West Virginia 25325–1273, filed an application for: (1) A certificate of public convenience and necessity authorizing construction and operation of certain natural gas facilities to provide firm transportation service under Rate Schedule FTS pursuant to Part 284 of the Commission's regulation for Panda-Brandywine, L.P. (Panda), a new firm service customer; and (2) an order granting permission and approval to abandon an existing segment of natural gas transmission facilities to be replaced to aid in providing the service to Panda; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant states that Panda has requested up to 24,240 Dth/d of firm service under Rate Schedule FTS, which will be used to supply natural gas to its Brandywine, Maryland cogeneration plant. Applicant states that the proposed construction will consist of three segments: (a) The first segment's construction will be approximately 4.1 miles of 36-inch pipeline loop on Line WB in Hardy County, West Virginia; (b) the second segment's construction will be approximately 1.6 miles of 36-inch pipeline designated as Line WB–5, which will replace by abandonment approximately 1.5 miles of 26-inch pipeline in three sections designated as Line WB, Braxton County, West Virginia; and (c) the third segment's construction will be approximately 0.6 miles of 36-inch pipeline loop on Line WB–5 in Clay County, West Virginia.

Applicant estimates that the proposed facilities total cost will be $11,448,000. Applicant states that Panda has agreed to make a contribution-in-aid of construction of up to $8,772,590, toward the actual cost of construction of the proposed facilities, plus any gross-up for income taxes. Applicant claims that the remaining balance for construction will be financed through funds generated from internal sources. Applicant states that the net book value of the 1.5 mile segment of Line WB, to be abandoned by replacement, is $727,000. Applicant estimates that the revenues associated with its proposal are greater than the cost of service which results in a net benefit to Applicant and its customers. Finally, Applicant states that the proposed construction will aid in the development of a natural gas-fired electric power generation in Washington, DC and a major portion of Montgomery and Prince George's Counties, Maryland.

Comment date: November 23, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP95–41–000]

Take notice that on October 26, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP95–41–000 a request pursuant to Section 157.205 of the Commission's Regulations to construct and operate a new sales tap to serve a new residential customer of National Fuel Gas Distribution Corporation (Distribution), a local distribution company, in Clarion County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct and operate one new sales tap on its K–2 line in Millcreek Township, Clarion County, Pennsylvania to provide service to a new residential customer of Distribution pursuant to National's Rate Schedule EFT. National states that the estimated deliveries for this sales tap is 150 Mcf of natural gas per year. National states that the estimated cost to install these facilities is $1,500, for which National would be reimbursed by Distribution. National states that the volumes to be delivered to Distribution at this sales tap would have a minimal impact on National's peak day and annual deliveries. National states that the addition of new sales taps are not prohibited by National's existing tariff and National has sufficient capacity to accomplish deliveries at this new sales tap without detriment or disadvantage to National's other customers.

Comment date: December 19, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Kern River Gas Transmission Company

[Docket No. CP95–44–000]

Take notice that on October 31, 1994, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–44–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, own and operate facilities located in the City of Bakersfield, Kern County, California, to permit the delivery of gas to Bear Mountain Limited, a Texas limited partnership, under the blanket certificate issued in Docket No. CP89–2048–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Kern River proposes to construct and operate a 6-inch tap, a meter station with two 4-inch meter tubes and appurtenant facilities and a 150-foot

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section of 6-inch lateral pipeline located immediately downstream of the meter station. Kern River states that the delivery point would have a nominal design capacity of approximately 12,500 Mcf per day. It is indicated that, upon completion of the facility, it would provide transportation service at the new delivery point for any of its shippers under the terms and conditions of its Part 284, Subpart G blanket certificate. Kern River states that the gas delivered at the delivery point would be used in connection with the proposed Bear Mountain Cogeneration Facility, which, it is indicated, is scheduled to commence service on March 1, 1995. Kern River states that deliveries to Kern River at the proposed delivery point would have no impact upon Kern River's peak day and annual deliveries.

Kern River states that the facilities would be located adjacent to the East Side Lateral of the Common Facilities owned jointly by Kern River and Mojave Pipeline Company (Mojave) as tenants-in-common and would be operated and maintained on behalf of Kern River by Mojave Pipeline Operating Company (MPOC) as operator of the Common Facilities pursuant to a construction, operation, and maintenance agreement between Kern River, Mojave, and MPOC.

Comment date: December 19, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27801; Filed 11–9–94; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5104–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 12, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resources Management

Title: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (OMB Control No. 2010–0020; EPA ICR No. 1487.05).

Abstract: This is an extension of an existing collection of information to support the administrative requirements set forth for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as "Superfund". CERCLA, as implemented at 40 CFR Part 35 Subpart O, sets forth the pre-award, post-award, and after-the-grant requirements for receiving and managing a Superfund State contract or Superfund cooperative agreement. The information is necessary to qualify grant/cooperative agreement applicants for funding, monitor compliance of grant/cooperative agreement recipients with statutory and regulatory requirements, perform cost recovery, and close-out awards.

Recipients must perform activities that include preparing and submitting: (1) standardized applications for funding; (2) certifications; (3) technical performance, property inventory, procurement and financial reports; and (4) other information necessary to support cost recovery and provide EPA with the status of activities under the grant/cooperative agreement. Recipients must also develop and maintain records related to: (1) accounting and finances; (2) cost comparisn and user rate analysis, (3) property disposition and (4) health and safety plans, community relations plans, and quality assurance plans.

The information is used by EPA project officers, grant specialists, and finance officials to manage/oversee clean-up activities at Superfund sites. The information is also used to update the CERCLA information system (CERCLIS) which tracks progress made at Superfund sites.

Burden Statement: Public reporting burden for this collection of information is estimated to average 9 hour per response annually, including time for gathering information, completing and reviewing the collection of information, and submitting the information to the EPA. Public recordkeeping is estimated to average 1 hour per recordkeeper annually, including the time for preparing and maintaining records, plans and other information.

Respondents: Local, State and Indian tribe applicants for, and recipients of, Superfund grant/cooperative awards.

Estimated Number of Respondents: 1110.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Quarterly and annually.

Estimated Total Annual Burden on Respondents: 9,990 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460,
and
Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, D.C. 20503.

Dated: November 4, 1994.

David Schwarz,

Acting Director for Regulatory Management Division.

[FR Doc. 94–27877 Filed 11–9–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5104–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 12, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Monitoring and Reporting Requirements (OMB Control No. 2040–0004; EPA ICR No. 0229.09).

Abstract: This ICR extends the collection of information for the current monitoring, reporting and recordkeeping requirements associated with Discharge Monitoring Reports (DMRs), and other monitoring reports EPA's National Pollutant Discharge System (NPDES) program. This ICR has incorporated the ICR for the "Standards for the Use and Disposal of Sewage Sludge at 40 CFR Part 503" (OMB control no. 2040–0157) and recent OMB-approved amendments for "Storm Water Implementation" (EPA ICR 229.07) and the "State Sludge Management for NPDES/State Sludge Monitoring" (EPA ICR 229.08). The information collected in support of these programs is authorized under Clean Water Act (CWA) Section 308, 402 and 405, as promulgated at 40 CFR Parts 122 through 125, 40 CFR Part 501, and 40 CFR Part 503. The information is necessary to ensure that permit holders comply with CWA mandates by fulfilling the terms and conditions of their NPDES permits.

Respondents must perform activities that include (1) monitoring, sample collection and analysis of water samples; and (2) reporting of monitoring results (DMRs, stormwater and sewage sludge monitoring reports, as appropriate) to the permitting authority. In general, with the exception of certain sludge records that must be kept indefinitely, respondents must maintain records for five years.

Reporting information received by the permitting authority is entered into the Permit Compliance System (PCS) national computer database. The permitting authority will use the reporting information stored on PCS to assess permittee compliance, modifying/and new permit requirements and revise effluent guidelines.

Burden Statement: Public reporting burden for this collection of information is estimated to average 17 hours per response, including time for reviewing the institutions, searching existing data sources, gathering the data needed, and completing and reviewing the information. Public recordkeeping burden is estimated to average 19 hours per recordkeeper, including time for gathering and maintaining monitoring data and other records, as appropriate.

Repondents: State NPDES permitting authorities, NPDES permittees (including local governments and businesses), and domestic sewage treatment works and domestic septic haulers.

Estimated Number of Respondents: 123,277 respondents, 11,914 recordkeepers.

Estimated Number of Respondents Per Respondent: 9.

Frequency of Collection: Varies with respondent (Monthly, quarterly, semi-annually, annually).

Estimated Total Annual Burden on Respondents: 17,947,910 reporting hours, 225,235 recordkeeping hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460,
and
Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: November 4, 1994

David Schwarz,

Acting Director for Regulatory Management Division.

[FR Doc. 94–27878 Filed 11–9–94; 8:45 am]

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[ER–FRL–4717–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 24, 1994 through October 28, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D–FHW–K40207–CA Rating LO, CA–41 Route Adoption of Alignment Project, between El Paso Avenue and CA–145, Funding, Right-of-Way Acquisition and COE Section 404 Permit, Fresno and Madera Counties, CA.

Summary: EPA expressed a lack of objections with the draft EIS, it noted that the rating does not preclude EPA from having future comments on site-specific environmental impacts and mitigation that may be identified or required during the Tier II NEPA review.

ERP No. DR–COE–K35035–CA Rating EO2, San Gabriel Canyon Sediment Management Plan, Dredging and Disposal of Sediments, Revised

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Information, COE Section 404 Permit, Special Use Permit and Right-of-Entry Issuance, Angeles National Forest, San Gabriel River, Los Angeles County, CA.

Summary: EPA expressed environmental objections due to potential adverse impacts to riparian habitat, aquatic biota, biodiversity and water quality. EPA recommended that upstream sediment management techniques and reservoir operation be included to help avoid potential adverse impacts.

Final EISs

ERP No. F-COE-G30013-LA West Bank of the Mississippi River Hurricane Protection Plan, Implementation, east of the Harvey Canal, New Orleans, LA.

Summary: EPA had no objection to the proposed action. ERP No. F-FHW-G40129-AR US 67 Construction, US 67/167 to I-40 West/I-430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR.

Summary: EPA concurs with the selection of Alternative 1 as the preferred alternative. Based upon our review of the information presented, we find that all areas of EPA responsibilities and concerns have been adequately addressed in the final EIS.

ERP No. F-NRC-G06008-LA Claiborne Uranium Enrichment Center, Construction and Operation, (NUREG-1482), NPDES Permit and Licensing, Homer, Claiborne Parish, LA.

Summary: EPA expressed environmental concern that the analysis did not provide assurance that the facility siting and operation would not result in significant disproportionate adverse impact upon the local communities.

Dated: November 7, 1994.

William D. Dickerson,

Director, FALD, Office of Federal Activities.

[FR Doc. 94-27890; Filed 11-9-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4717-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed October 31, 1994 Through November 4, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940448, DRAFT EIS, BLM, CO, White River Resource Area, Land and Resource Management Plan, Implementation, Craig District, Meeker, CO, Due: February 10, 1995, Contact: B. Curtis Smith (303) 878-3601.

EIS No. 940449, DRAFT EIS, COE, CA, Montezuma Wetlands Project, Use of Cover and Non-cover Dredged Materials to restore Wetland, Implementation, Conditional-Use-Permit, NPDES and COE Section 10 and 404 Permit, Suisun Marsh, Collinsville, Solano County, CA, Due: December 27, 1994, Contact: Dr. Peter Baye (415) 744-3322.

EIS No. 940450, FINAL EIS, BLM, CA, Oro Cruz Operation of the American Girl Canyon Project, Surface and Underground Mining, Plan of Operations Approval, Imperial County, CA, Due: December 12, 1994, Contact: Thomas Zale (619) 353-1060.

EIS No. 940451, DRAFT SUPPLEMENT, GSA, WA, Seattle Federal Courthouse Building (Project #ZWA 81061), Implementation, Site Selection, Construction and Operation, King County, WA, Due: December 27, 1994, Contact: Donna M. Meyer (206) 931-7675.

EIS No. 940452, FINAL EIS, NOA, Deep Seabed Hard Mining Exploration Project, License Issuance for the former Kennecott Mining Site (USA-4) to Ocean Minerals Mining, Pacific Ocean, Central America to HI, Due: December 27, 1994, Contact: W. Stanley Wilson (301) 713-3074.

Dated: November 7, 1994.

William D. Dickerson,

Director, FALD, Office of Federal Activities.

[FR Doc. 94-27898; Filed 11-9-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-5104-7]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Exemption Reissuance.

SUMMARY: Notice is hereby given that a request for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Chemical Waste Management, Inc., for the Class I injection well located at Corpus Christi, Texas. As required by 40 CFR Part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Chemical Waste Management, Inc., of the specific restricted hazardous waste identified in the reissued petition, into the Class I hazardous waste injection well at the Corpus Christi, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on September 2, 1994. The public comment period ended on October 17, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 27, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, UIC State Programs/Land Ban, EPA - Region 6, telephone (214) 665-7142.

Oscar Cabra,

Acting Director, Water Management Division (6W).

[FR Doc. 94-27879 Filed 11-9-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5104-6]

Sustainable Economics Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a one-day meeting of the Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the Sustainable Economies Committee was formed to identify opportunities for harmonizing environmental policy, economic activity, and ecosystem management.

The meeting is being held to discuss initial recommendations the Committee plans to submit to the Agency in January, 1995. Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Tuesday, December 6, 1994, from 9 a.m. to 5 p.m. in Room 383 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, D.C.

ADDRESSES: Written comments should be sent to: Mark Joyce, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260-6889, Secretary's line (202) 260-9744.

Dated: November 3, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94-27880 Filed 11-9-94; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00392; FRL-4915-6]

Reregistration Eligibility Decision Documents for Mevinphos, et. al.; Notice of Availability; Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Reregistration Eligibility Decision documents; opportunity to comment.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the active ingredients Mevinphos (List A, case 0250), N6-Benzyladenine (List B, case 2040), and Periplanone B (List D, case 4115). This notice also announces a 60-day public comment period. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the REDs must be submitted by January 9, 1994.

ADDRESSES: Three copies of comments identified with the docket number "OPP-00392" and the case number (noted above), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of the REDs may be obtained from the Docket Office listed above or by calling 703-305-5805.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the Virginia address listed above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the above listed RED documents should be directed to the appropriate Chemical Review Managers: Mevinphos—Joshua First (703) 308-8032; N6-Benzyladenine—Ruby Whiters (703) 308-8079; and Periplanone B—William Wooge (703) 308-8794.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete. EPA has determined that all currently registered products subject to reregistration containing these active ingredients are eligible for reregistration.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product-specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

Dated: October 31, 1994.

Louis True,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 94-27844 Filed 11-9-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3797
Name: Advanced International Freight Services Inc.
Address: 1722 Nokia Way, Eagan, MN 55121
Date Revoked: September 26, 1994
Reason: Surrendered license voluntarily.

License Number: 1231
Name: Fermin R. Morales, Inc.
Address: P.O. Box 2050, Recinto Sur 259, San Juan, P.R. 00902
Date Revoked: October 7, 1994
Reason: Surrendered license voluntarily.

License Number: 3577
Name: Spartan Worldwide Delivery, Inc.
Address: 55 Commerce Street, New York, NY 11231
Date Revoked: October 8, 1994
Reason: Failed to furnish a valid surety bond.

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License Number: 1150
Name: American International Forwarder Corp.
Address: 2044 Edison Ave., San Leandro, CA 94577
Date Revoked: October 12, 1994
Reason: Failed to furnish a valid surety bond.
License Number: 986
Name: Frank B. Kennedy dba Albatross Shipping Company
Address: 214 Peckham Place, Encinitas, CA 92024
Date Revoked: October 12, 1994
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–27797 Filed 11–9–94; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Pactrans (USA) Inc., 167–55 148th Ave., #288, Jamaica, NY 11434, Officers: Henry Lau, President, Anna To, Vice President
C & Y International, Inc., 22,157 68th Ave., South, Kent, WA 98032, Officers: Glendy Chiu, President, Shu-Chiu Wang, Vice President, Gordon J. Yeh, Vice President
Alice Sharon Welsch, 4872 SW 74th Court, Miami, FL 33155, Sole Proprietor
I.C. Assemblies, Inc., 6815 NW 84th Ave., Miami, FL 33166, Officers: Abelardo Gomez, President, Lucila Gomez, Vice President
International Transportation Experts Limited, 1801 H Crossbeam Drive, Charlotte, NC 28217, Officers: Klaus Hesse, President, Doris Larkin, Vice President
Mohawk Customs & Shipping Corp., 3 Northern Concourse, North Syracuse, NY 13212, Officers: Michael Bronowich, President, Anthony B. Borowiecki, Secretary, Robert Lynch, Treasurer
Mona Forwarding Co., 2118 Collingsfield, Sugar Land, TX 77478, Ameera Yassir, Sole Proprietor
Ocean Trade International, Inc., 9600 NW 25th Street, Suite 2–D, Miami, FL 33172, Officers: Jaime Blanco, President, Ana Blanco, Vice President
General Construction & Industrial Equipment, Inc., dba Genie, 3900 NW 79th Ave., Suite 211, Miami, FL 33166, Officers: Fred Nordenson, President, Bryn Nordenson, Secretary

By the Federal Maritime Commission.
Dated: November 4, 1994.
Joseph C. Polking,
Secretary.

[FR Doc. 94–27798 Filed 11–9–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cho Hung Bank, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *Cho Hung Bank*, Seoul, Korea; to acquire 100 percent of the voting shares of Seoul Bank of California, Los Angeles, California.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Banking Corporation*, Flint, Michigan; to acquire 100 percent of the voting shares of Bank One Fenton, NA, Fenton, Michigan; Bank One Ypsilanti, Ypsilanti, Michigan; Bank One East Lansing, East Lansing, Michigan; and Bank One, Sturgis, Sturgis, Michigan.

Board of Governors of the Federal Reserve System, November 4, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94–27871; Filed 11–9–94; 8:45 am]
BILLING CODE 6210–01–F

Community First Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to engage *de novo* through its nonbank subsidiary, Community First Service Corporation, Inc., Fargo, North Dakota, in providing management consulting to nonaffiliated depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94–27872; Filed 11–9–94; 8:45 am]
BILLING CODE 6210–01–F

Fred C. Lewis; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 25, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55400:

1. *Fred C. Lewis*, Twig, Minnesota; to acquire 23.17 percent of the voting shares of North Shore Financial Corporation, Duluth, Minnesota, and thereby indirectly acquire North Shore Bank of Commerce, Duluth, Minnesota.

Board of Governors of the Federal Reserve System, November 4, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94–27873; Filed 11–9–94; 8:45 am]
BILLING CODE 6210–01–F

PAB Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 25, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *PAB Bankshares, Inc.*, Valdosta, Georgia; to acquire First Federal Savings Bank of Bainbridge, Brainbridge, Georgia, and thereby indirectly acquire First Service and Development Corporation, and Empire Financial Services, Inc., both of Bainbridge, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Republic Bancorp, Inc.*, Owosso, Michigan; to acquire through its majority owned subsidiary, CUB Funding, Calabasas, California, a one-third equity interest, in Premier Partners (a California Joint Venture), Northridge, California, and thereby engage in the nonbanking activity of originating, funding, and servicing residential mortgage loans on a retail basis, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 4, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 94–27874; Filed 11–9–94; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 1–2, 1994, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 1:30 p.m. on December 1, to recess and on December 2 from 8:30 a.m. to adjournment. The topics proposed for discussion include (1) Report of the Human Embryo Panel; (2) Implementation of External Advisors Report on the Intramural Program; (3) Clinical Research Plans for the Future; (4) Reinvention of Extramural Research Administration; and (5) Report of Meetings on Cooperative Research and Development Agreements (CRADAs). Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 402–1229, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 18, 1994.

Dated: November 4, 1994.
Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 94–27813 Filed 11–9–94; 8:45 am]
BILLING CODE 4140–01–M

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National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Intervention to Improve Asthma Management and Prevention at School.
Date: November 29–30, 1994.
Time: 7:00 p.m.
Place: Holiday Inn, Bethesda, Maryland.
Contact Person: Anthony M. Coelho, Jr., Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, Maryland 20892, (301) 594–7452.
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Genetic Determinants of High Blood Pressure.
Date: December 11–13, 1994.
Time: 7:00 p.m.
Place: Hyatt Regency, Bethesda, Maryland.
Contact Person: Lynn Amende, Ph.D., 5333 Westbard Avenue, Room 5A10, Bethesda, Maryland 20892, (301) 594–7480.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Review of NHLBI Minority Training Applications.
Date: December 15–16, 1994.
Time: 8:00 a.m.
Place: Holiday Inn, Bethesda, Maryland
Contact Person: Kathryn W. Ballard, Ph.D., 5333 Westbard Avenue, Room 550, Bethesda, Maryland 20892, (301) 594–7450.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27814 Filed 11–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.
Date: December 1, 1994.
Time: 8:00 a.m.
Place: Holiday Inn Chevy Chase, Chevy Chase, Maryland
Contact Person: Dr. Jeffrey Hurst, 5333 Westbard Avenue, Room 555, Bethesda, Maryland 20892, (301) 594–7418.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27815 Filed 11–9–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: November 28, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., room 226, Bethesda, MD 20892, (301) 594–7167.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 30, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, room 226, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., room 226, Bethesda, MD 20892 (301) 594–7167.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 1, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, room A23, Telephone Conference.
Contact Person: Dr Anita Weinblatt, Scientific Review Admin. 5333 Westbard Ave., room A23, Bethesda, MD 20892, (301) 594–7175.

Name of SEP: Chemistry and Related Sciences.
Date: December 6, 1994.
Time: 1:30 p.m.
Place: NIH, Westwood Building, room 349, Telephone Conference.
Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 5333 Westbard Ave., room 349, Bethesda, MD 20892, (301) 594–7166.

Name of SEP: Chemistry and Related Sciences.
Date: December 7, 1994.
Time: 2:00 p.m.
Place: NIH, Westwood Building, room 334A, Telephone Conference.
Contact Person: Dr. John Beisler, Scientific Review Administrator, 5333 Westbard Ave., room 334A, Bethesda, MD 20892, (301) 594–7149.

Name of SEP: Chemistry and Related Sciences.
Date: December 13, 1994.
Time: 1:00 p.m.
Place: NIH, Westwood Building, room 334, Telephone Conference.
Contact Person: Dr. Ronald Dubois, Scientific Review Administrator, 5333 Westbard Ave., room 334, Bethesda, MD 20892, (301) 594–7163.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: December 2, 1994.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Keith Murray, Scientific Review Administrator, 5333 Westbard Ave., room 325, Bethesda, MD 20892, (301) 594–7145.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 7–8, 1994.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 5333 Westbard Ave., room 226, Bethesda, MD 20892, (301) 594–7167.

The meetings will be closed in accordance with the provisions set forth in sec 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–27816 Filed 11–9–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 USC Chapter 35). Expedited review by OMB has been requested as described below.

Call PHS Reports Clearance Officer on 202–690–7100 for a copy of the submission.

Cosmetics Adverse Reaction Hotline Reports Guide—New—In support of the Food and Drug Administration's (FDA) Women's Health Initiatives Program, the agency is undertaking a consumer cosmetics adverse reaction program to enable the public to report directly to FDA any adverse reactions they encounter with cosmetic product usage. Both men and women will be able to report adverse rections encountered.

Under the Food, Drug and Cosmetic Act, cosmetics are defined as "articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance." Cosmetic products and ingredients are regulated after, not before, they are marketed and thus are not subject to premarket approval for safety or effectiveness for their intended use. They can only be removed from the market place when it can be demonstrated that they are adulterated or misbranded under sections 601 and 602 of the Act.

Almost everyone uses some cosmetic products, and many people use a great many. The number of cosmetic products grows daily and there is great diversity of intended uses and a potential for consumer harm. In addition, product formulation technology has advanced to the point where manufacturers can put together highly sophisticated products that were unknown even a few years ago. With this vigorous activity in the cosmetic market place, there is considerable uncertainty about the prevalence and intensity of product problems being experienced by the public and there is limited capability to detect emerging problems due to new types of products or changing consumer usages.

The agency currently has two monitoring systems in place, the Cosmetic Adverse Reaction Monitoring Program and the Voluntary Cosmetic Product Experience Program. However, both of these systems are passive in nature and each has limitations in terms of timeliness or completeness of reporting.

The toll-free hotline program will allow consumers to report to the agency detailed information on the nature and severity of cosmetic adverse reactions that they experience. Direct entry of information reported into an on-line computer database will minimize possible errors and expedite the timeliness of data processing.

Such information will enable the agency to know the magnitude of a problem in real time. The agency also intends to provide the cosmetic industry with a listing of their products which have adverse reaction rates greater than the norm for similar products. This will enable cosmetic companies to compare their products to the rest of the industry and to correct quickly a problem with a cosmetic product.

The cosmetic adverse reaction reports received through the hotline will be used in conjunction with the cosmetic product ingredient registration program information received in accordance with 21 CFR 720. Correlation of hotline data with ingredient data from over 28,000 cosmetic product formulations will give FDA scientists a valuable insight into potentially unsafe ingredients in cosmetic products.

OMB has been requested to review and approved the hotline reports guide on an expedited basis by Friday, December 2. This approval date is necessary in order to implement the national toll-free hotline service on December 7. This date is crucial because of the outreach program needed to promote consumer awareness of cosmetic adverse reactions and have the hotline available for the holiday season. In keeping with the requirements for expedited review, we are publishing the interview guide and associated instructions. It should be noted that the information will actually be collected using a computer assisted telephone interview program which presents to the interviewer screens containing the data items and associated instructions.

Respondents: Individuals or households; Number of Respondents: 30,000; Number of Responses per Respondent; 1; Average Burden per Response: .25 hour; Estimated Annual Burden: 7,500 hours.

OMB Desk Officer: Steve Semenuk.

Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395–7316 or by express mail at the following address: Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 7, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

BILLING CODE 4160–11–M

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INSTRUCTIONS
for
Guide for Collection of Consumer
Cosmetics Adverse Reaction and Injury Complaints

Preliminary Information: Enter caller's source of information of HOTLINE

Determine whether the consumer has an Adverse Reaction or an Injury to report and the date/dates the incident occurred

Determine if Medical Attention was sought and received Responses could be "Unknown" "No", or "Yes" If "Yes" is the response insert the first three letters of the medical provider in the field Doctor would be D O C tor , Hospital would be H O S pital

Description of Adverse Reaction/Injury Event:

Verbatim Description of Incident

Allow Reporter to give a detailed description of their adverse reaction or injury Attempt to keep Reporter on the subject and event

Adverse Reaction

Ascertain "Area of Body" to which product was applied and on which reaction occurred Code may be entered now or later by reviewer as time permits

Reaction Confined to area of Application

Was the adverse reaction confined to the area of application or did it spread to other parts of the body?

Ascertain "Type of Adverse Reaction" Code may be entered now or later by reviewer as time permits

Reaction Appeared — At what time interval did the adverse reaction first appear? Code may be entered now or later by reviewer as time permits

Injury

Ascertain type of injury and object or ignitor

Product opened by — If the product contained a foreign body or substance determine who originally open the product

Product/Manufacturer Information:

Brand Name Ascertain the brand name of the product as it appears on the product label The Product Category Code (PCC) may be entered now or later by reviewer as time permits

Packaging Information — Determine if product was part of a kit or group of products Does the label have a Batch Code Lot Number or Expiration Date? What was the approximate date of purchase and what was the date or dates the product was used?

Manufacturer's Name and Address — Ascertain the manufacturer s name and address as it appears on the product label

Complaint reported to Manufacturer — Was the complaint reported to the manufacturer?

Where was product purchased — Ascertain the name/type of store at which the product was purchased.

Reporter/Complainant Information: REQUIRED STATEMENT: MUST BE READ EXACTLY AS WRITTEN:

"Prior to requesting the name, address and telephone number of the reporter and/or complainant for the Hotline, I am required to read the following passage to you: 'Under Section 21.10, Title 21, Code of Federal Regulations, Entitled, Policy Concerning Records About Individuals, which states information about the individuals in Food and Drug Records shall be collected, maintained, used, and disseminated so as to protect the right to privacy of the individual to the fullest possible extent consistent with the laws related to disclosure of information to the general public, the law enforcement responsibilities of the agency, and administrative and program management needs.'"

"The giving of this information is voluntary, but is extremely helpful in providing us with meaningful data. It will be used to send you an acknowledgement and thank you for your participation in this program, and if necessary to contact you for additional information."

Reporter s Name Relationship to Complainant and Address

Ascertain the Reporter s name and relationship to the individual experiencing the adverse reaction or injury Relationship would be entered as S E L F Husband would be H U S band

Determine Reporter s address and home and/or work telephone numbers Determine Reporter s mailing address is different from their residential address

Complainant Information

If Reporter s Relationship to Complainant is other than SELF determine address and telephone information

Ascertain Complainant s sex skin type any special skin conditions or related health problems Examples of skin type special skin conditions and related health problems can be found on code sheet

OMB No. _____
Expiration Date: _____

Public Reporting burden for the hotline calls is estimated to average 15 minutes per call. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Reports Clearance Officer, PHS, Hubert H. Humphrey Building, Room 721-B, 200 Independence Avenue, S.W., Washington, DC 20201, Attn: PRA.

Guide for Collection of Consumer
Cosmetics Adverse Reaction and Injury Complaints
Version 10/94

Preliminary Information: Where did you learn of the HOTLINE?: _ _ _ _____

Adverse Reaction or Injury: A I Date/Dates of Incident _____

Medical Attention Sought: Unk No Yes: (From) _ _ _ _ _____

Description of Adverse Reaction/Injury Event:

Verbatim Description of Incident:

Adverse Reaction:

Area of Body - to which product was applied: _____ Code: _____
on which reaction occurred: _____ Code: _____

Reaction Confined to area of Application: Y N Spread: Y N

Type of Adverse Reaction: _____ Code: _____

Reaction Appeared: _____ Code: _____

Injury:

Type of Injury: Cut: _____ Object: _____
Ignition: _____ Bite: _____
Inhalation: _____ Ingestion: _____ Other: _____

Product opened by: _____

Product/Manufacturer Information:

Brand Name: _____ PCC: ____

Packaging/Application Type. _____ Code Lot Number _____ Exp Date: _____

Approximate Date of Purchase: _____ Date or Dates Used: _____

Manufacturer's Name: _____ _____
Address

Complaint reported to Manufacturer Y N

Where was product purchased: _____

INTERVIEWER: "READ REQUIRED STATEMENT TO REPORTER/COMPLAINANT BEFORE COMPLETING THIS SECTION"

Reporter/Complainant Information:

Reporter's Name _____ Relationship to Complainant _ _ _ ____
Address Mailing Address

Home Ph (___ _____ Work Ph (___ _____

Complainant's Name. _____ Age _____ Sex M F
Address Mailing Address

Home Ph (___ _____ Work Ph (___ _____

Skin Type _____ Special Skin Conditions _____

Health Problems _____

Complaint #: _____ Operator ID ____ Date _____ Reviewed ____ Date _____

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[FR Doc. 94-27888 Filed 11-9-94; 8:45 am]
BILLING CODE 4160-11-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-1917; FR-3778-N-10]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATES: [Insert date of publication.]

ADDRESS: For further information, contact William Molster, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1226; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 4, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94-27750 Filed 11-9-94; 8:45 am]
BILLING CODE 4210-29-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3640; FR 3348-N-09]

Certification of Substantially Equivalent Agencies; and Interim Referral Agencies; Annual Notice

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: As required by 24 CFR 115.6(f), this Notice announces: (1) An updated consolidated list of all certified agencies; (2) a list of all agencies whose certification has been withdrawn since publication of the previous notice on July 23, 1993 (58 FR 39561); (3) a list of agencies for which notice of denial of certification has been published, in accordance with 24 CFR 115.7(c) since publication of the July 23, 1993 notice; (4) a list of agencies for which a notice of comment has been published in accordance with 24 CFR 115.6(b), and whose status remains pending; (5) a list of agencies for which notice of proposed withdrawal of certification has been published in accordance with 24 CFR 115.8(c), and whose withdrawal remains pending; and (6) a list of agencies with which an agreement for interim referrals or other utilization of services has been entered into under 24 CFR 115.11 and remains in effect. These announcements are applicable for calendar year 1993.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Chief, Fair Housing Assistance Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5234, Washington, DC 20410-2000, telephone number (202) 708-0455 (voice/TDD).

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.

Announcements

This notice announces, among other things, the 1993 list of agencies certified under 24 CFR 115.6(f), and the agencies with which the Department has entered into an agreement for interim referrals of complaints in accordance with 24 CFR 115.11.

In accordance with the requirements of 24 CFR 115.6(f), the Department makes the announcements set forth below. These announcements are applicable for the calendar year 1993.

Updated Consolidated List of Certified Agencies

The agencies administering the fair housing laws of the following States and localities were certified under section 810(f) of the Fair Housing Act and 24 CFR Part 115.6(d).

States (2)

North Carolina
Texas

Localities (0)

Withdrawal of Certification; Denial of Certification; and Pending Requests for Certification

The Department announces that for calendar year 1993 no certification has been withdrawn since publication of the July 23, 1993 notice; no notice of denial of certification has been published since the July 23, 1993 notice; and no agencies for which a notice of comment was published under 24 CFR 115.6(b) have pending requests for certification.

Interim Certification

The Department also announces that the agencies administering the fair housing laws of the following States and localities entered into an agreement for interim referrals subsequent to September 12, 1988. These agencies were also considered to have interim certification in accordance with section 810(f)(4) of the Act. The agencies and the dates of their agreements are as follows:

States (24)

Arizona—May 4, 1992
Colorado—September 13, 1992
Connecticut—November 25, 1992
Florida—December 12, 1991
Georgia—November 19, 1992
Hawaii—May 14, 1993
Illinois—September 11, 1992
Indiana—August 9, 1991
Iowa—December 3, 1992
Kansas—September 11, 1992
Kentucky—April 6, 1993
Louisiana—April 29, 1993
Massachusetts—September 11, 1992
Missouri—December 3, 1992
Montana—September 24, 1992
Nebraska—April 20, 1992
Ohio—November 16, 1992
Oklahoma—October 7, 1992
Pennsylvania—October 19, 1992
South Carolina—December 31, 1990
Tennessee—March 29, 1993
Utah—December 16, 1993
Virginia—February 5, 1993
West Virginia—October 19, 1992

Localities (32)

Phoenix, AZ—March 29, 1993
Clearwater, FL—August 12, 1993
Orlando, FL—November 19, 1992
Pinellas County, FL—October 29, 1992
St. Petersburg, FL—March 10, 1993
Tampa, FL—December 3, 1992
Springfield, IL—October 7, 1992
Olathe, KS—November 16, 1993
Salina, KS—October 20, 1992
Louisville-Jefferson County, KY—May 5, 1993
Lexington-Fayette Urban County, KY—November 15, 1993
Elgin, IL—June 1, 1993
Evanston, IL—September 13, 1993
Springfield, IL—October 7, 1992
Gary, IN—July 19, 1993
South Bend, IN—December 21, 1993
Dubuque, IO—January 12, 1993
Cambridge, MA—December 3, 1992
Kansas City, MO—June 14, 1993
Asheville-Buncombe County, NC—May 18, 1992
Charlotte, NC—August 11, 1992
Charlotte-Mecklenburg County—August 11, 1992
Greensboro, NC—October 7, 1992
New Hanover, NC—July 3, 1993
Winston-Salem, NC—August 11, 1992
Omaha, NE—June 18, 1993
Dayton, OH—June 18, 1993
Shaker Heights, OH—September 24, 1992
Dallas, TX—June 12, 1992
Knoxville, TN—July 27, 1993
Charleston, WV—September 11, 1992
King County, WA—October 19, 1992

Dated: September 15, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-27896 Filed 11-9-94; 8:45 am]
BILLING CODE 4210-28-P

[Docket No. N-94-3691; FR-3348-N-11]

State and Local Fair Housing Laws: Notice of Initial Determination Concerning Substantial Equivalency of the Fair Housing Laws of the States of Connecticut, Ohio, South Carolina, and the City of Cambridge, Massachusetts

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: In accordance with 24 CFR 115.6(c), this notice announces the Department's initial determination that the fair housing laws of the States of Connecticut, Ohio and South Carolina, and the city of Cambridge, Massachusetts, are substantially equivalent, on their face, to the Fair Housing Act. This notice solicits comments from the public on the initial determinations made with respect to these three States and this locality. This notice also solicits comments on the Department's proposed determinations that the present practices and past performance of the agency enforcing the fair housing law of the three States and the locality demonstrate that, in operation, the fair housing laws of the States and the locality provide rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: December 12, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Chief, Fair Housing Assistance Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5234, Washington, DC 20410, telephone (202) 708-0455 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, is cited as the "Fair Housing Act.") Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department.

Part 115 of the Department's regulations (24 CFR part 115) contains the certification standards and the procedures for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

Announcement of Initial Determinations and Solicitation of Comments

In accordance with 24 CFR 115.6(c)(1), this notice announces that the fair housing laws of the States of Connecticut, Ohio, South Carolina and the city of Cambridge, MA, have been determined by the Assistant Secretary for Fair Housing and Equal Opportunity to be substantially equivalent, on their face, to the Fair Housing Act. The Assistant Secretary has determined, after application of the criteria set forth in 24 CFR 115.3 and 115.4, that the fair housing laws for these three States and this locality provide, on their face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

Following a review of performance standards and other materials pertaining to the fair housing laws of these three States and this locality, the Department expects to make final determinations that the law of each of the three States and the locality, in operation, provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of each State and locality in accordance with 24 CFR 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this notice. Specifically, the Department requests written comments on the proposed determinations that the current practices and past performance of the agencies charged with administration and enforcement of the fair housing laws of the three States and the locality demonstrate that, in operation, these laws provide substantive rights and remedies that are substantially equivalent to the Fair Housing Act. This notice also invites comments from the public on the Department's determination that the fair housing laws of these three States and the locality are, on their face, substantially equivalent to the Fair Housing Act.

In commenting on this notice, the Department requests that commenters clearly identify the State or the locality for which comments are submitted.

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Dated: September 15, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–27894 Filed 11–9–94; 8:45 am]

BILLING CODE 4210–28–P

[Docket No. N–94–3691; FR–3348–N–10]

State and Local Fair Housing Laws: Notice of Initial Determination Concerning Substantial Equivalency of the Fair Housing Laws of Various States and Localities

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: In accordance with 24 CFR 115.6(c), this notice announces the Department's initial determination that the fair housing laws of certain States and localities are substantially equivalent, on their face, to the Fair Housing Act. The States and localities are listed in the Supplementary Information section of this notice. This notice solicits comments from the public on the initial determinations made with respect to each State and locality. This notice also solicits comments on the Department's proposed determinations that the present practices and past performance of the agency enforcing the fair housing law of the States and localities demonstrate that, in operation, the fair housing laws of these States and localities provide rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: December 12, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Chief, Fair Housing Assistance Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 5234, Washington, DC 20410, telephone (202) 708–0455 [voice/TDD]. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, is cited as the "Fair Housing Act.") Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department.

Part 115 of the Department's regulations (24 CFR part 115) contains the certification standards and the procedures for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

Announcement of Initial Determinations and Solicitation of Comments

In accordance with 24 CFR 115.6(c)(1), this notice announces that the fair housing laws of the following States and localities have been determined by the Assistant Secretary for Fair Housing and Equal Opportunity to be substantially equivalent, on their face, to the Fair Housing Act. The Assistant Secretary has determined, after application of the criteria set forth in 24 CFR 115.3, that the fair housing laws for these States and localities provide, on their face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

The States and localities are as follows:

States (23)

California
Colorado
Delaware
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Missouri
Montana
Oklahoma
Pennsylvania
Rhode Island
Tennessee
Utah
Virginia
Washington
West Virginia

Localities (35)

Phoenix, AZ
Clearwater, FL
Hillsborough County, FL
Orlando, FL
Pinellas County, FL
St. Petersburg, FL
Tampa, FL
Des Moines, IA
Springfield, IL
Hammond, IN
Olathe, KS
Salina, KS
Louisville-Jefferson County, KY
Lexington-Fayette Urban County, KY
Elgin, IL
Evanston, IL
Springfield, IL
Gary, IN
South Bend, IN
Dubuque, IO
Kansas City, MO
Asheville-Buncombe County, NC
Charlotte-Mecklenburg County, NC
Greensboro, NC
New Hanover, NC
Winston-Salem, NC
Omaha, NE
Dayton, OH
Shaker Heights, OH
Dallas, TX
Fort Worth, TX
Knoxville, TN
Charleston, WV
Huntington, WV
King County, WA

Following a review of performance standards and other materials pertaining to the fair housing laws of the above-listed States and localities, the Department expects to make final determinations that the law of each State and locality, in operation, provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of each State and locality in accordance with 24 CFR 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this notice. Specifically, the Department requests written comments on the proposed determinations that the current practices and past performance of the State and local agencies charged with administration and enforcement of the fair housing laws of the above-listed States and localities demonstrate that, in operation, these laws provide substantive rights and remedies that are substantially equivalent to the Fair Housing Act. This notice also invites comments from the public on the Department's determination that the fair housing laws of the above-listed States and localities are, on their face, substantially equivalent to the Fair Housing Act.

In commenting on this notice, the Department requests that commenters clearly identify the State or locality for which comments are submitted.

Dated: September 23, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and, Equal Opportunity.

[FR Doc. 94–27895 Filed 11–9–94; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–676811

APPLICANT: Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

The applicant requests an amendment to the Regional Director's Blanket Endangered Species Permit to include take activities for the Louisiana black bear *(Ursus americanus luteolus)* for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 94–27847 Filed 11–9–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 5; Notice of Acceptance of Application.

SUMMARY: The Commission is accepting for consideration the application filed October 13, 1994, by Burlington Northern Inc. (BNI), Burlington Northern Railroad Company (BN), Santa Fe Pacific Corporation (SFP), and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) (collectively applicants), seeking Commission approval and authorization under 49 U.S.C. 11343–45 for: (1) BNI's acquisition of, control of, and merger with SFP; (2) the resulting common control of BN and Santa Fe by the merged company; and (3) the merger of the two railroad entities. Applicants are directed to provide certain additional information.

DATES: The effective date of this decision is November 10, 1994. Written comments on the primary application, including initial lists of protective conditions, must be filed with the Commission no later than December 27, 1994, and second lists of protective conditions must be filed by January 24, 1995. Responsive applications must be filed by February 8, 1995. For further information, see the attached procedural schedule.[1]

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Avenue, NW, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

[1] The procedural schedule set forth below was adopted in Decision No. 4 in this proceeding, served October 5, 1994.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon or Chris Oehrle (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On October 13, 1994, pursuant to 49 U.S.C. 11343–45 and our rules at 49 CFR 1180.4, applicants filed an application for approval of BNI's acquisition of, control of, and merger with SFP, the resulting common control of BN and Santa Fe by the merged company, the consolidation of BN and Santa Fe railroad operations and the merger of BN and Santa Fe. Applicants are also seeking exemption from regulation under 49 U.S.C. 10505 for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company (WUTR) [Finance Docket No. 32549 (Sub-No. 1)] and for eleven construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)].[2] We are accepting for consideration

[2] Under 49 CFR 1180.4(c)(2)(vi), all directly related applications, petitions, and notices of exemption must be filed concurrently with the primary control and merger application. We note that there are two pending proceedings that may be related to the proposed merger. The question is whether these proceedings are directly related to the merger within the meaning of 49 CFR 1180.4(c)(2)(vi).

The first proceeding is Docket No. AB–423 (Sub-No. 1X), which involves a petition for exemption to discontinue the lease and operation of a rail yard in Houston filed by the Houston Belt & Terminal Railway Company (HBT). Although HBT is not an applicant carrier in the merger proceeding, BN has a 24% interest and Santa Fe has a 25% interest in HBT. *See* the waiver decision in Finance Docket No. 32549, Decision No. 3, served Oct. 4, 1994. The petition in Docket No. AB–423 (Sub-No. 1X) was filed on July 8, 1994, which was the same day that applicants filed their notice of intent to file the merger application in Finance Docket No. 32549. A separate decision is being issued in Docket No. AB–423 (Sub-No. 1X) directing petitioner to clarify the relationship, if any, between the subject matter of the petition for exemption and the merger transaction in Finance Docket No. 32549.

The second proceeding is Finance Docket No. 32593, which is a notice of a corporate family reorganization filed by Santa Fe under the class exemption procedures at 49 CFR 1180.2(d)(3). The reorganization involves the purchase by Santa Fe of all of the real estate and improvements now owned by four of its subsidiary railroads. According to the notice filed by Santa Fe, the purpose of the reorganization is to concentrate Santa Fe's railroad real estate holdings in a single corporation and to reduce administrative expenses. There is no mention of the proposed merger application which was filed 10 days after the filing of the notice in Finance Docket No. 32593. Notice of the transaction in Finance Docket No. 32593 will be published separately in the **Federal Register**. Santa Fe is directed in that proceeding to explain the relationship, if any, between the corporate family reorganization in Finance Docket No. 32593 and the proposed merger in Finance Docket No. 32549. Comments from other parties on Santa Fe's corporate family reorganization (including any comments alleging that the reorganization is directly related to the application in Finance Docket

Continued

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the control and merger application filed in this proceeding.

Upon receipt of Commission approval and authorization and satisfaction of other conditions to closing under an Agreement and Plan of Merger dated June 29, 1994, SFP will merge with and into BNI, which will change its name to Burlington Northern Santa Fe Corporation. Each share of SFP common stock will be exchanged for 0.34 shares of newly issued BNI common stock. Upon the BNI-SFP merger, BNI will acquire and exercise control of Santa Fe in common with its existing control of BN.[3] The operations of BN and Santa Fe will be consolidated and fully integrated following the holding company merger. Applicants also seek Commission approval to merge the BN and Santa Fe legal entities, although the timing of the railroad merger will depend on tax, legal and other considerations.

As a result of the proposed transaction, the merged company will also acquire control of WUTR, in which BN and Santa Fe each own a one-third stock interest. A petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–47 for the acquisition and exercise of control of WUTR was filed concurrently with the primary application [Finance Docket No. 32549 (Sub-No. 1)].

No new securities will be issued by any company subject to Commission regulation under 49 U.S.C. 11301 to effect the merger of BNI and SFP or the common control of BN and Santa Fe. To the extent BN's succession to then-outstanding debt obligations of Santa Fe in the merger of the railroad entities may be deemed to require Commission authorization under 49 U.S.C. 11301, applicants seek such authorization, and provide the relevant information in accordance with 49 CFR 1180.6(a)(1)(iv).

In connection with the transaction, applicants propose to construct new railroad lines that are or may be subject to the jurisdiction of the Commission under 49 U.S.C. 10901. Petitions for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901 for the construction of those railroad lines were filed concurrently with the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)].

BN operates approximately 25,000 miles of road and second main track in the United States and Canada. BN's principal routes are as follows: a route that extends from the Pacific Northwest (Washington, Oregon, Idaho, and southern British Columbia) across Montana, North Dakota, Minnesota, and the western edge of Wisconsin to Chicago; a route extending from the Powder River Basin in Wyoming in a southeasterly direction through Lincoln to Chicago and Kansas City; a second route extending from the Powder River Basin in Wyoming south to Denver and Fort Worth; a route extending from the Powder River Basin in Montana to Bismarck and Minneapolis/St. Paul, with an auxiliary line to the Head of the Lakes; a route from Denver to Chicago with a junction at Lincoln; a route from Avard, Oklahoma east to Memphis and Birmingham; and a route from Chicago to Houston through Kansas City and Dallas, with an auxiliary line from St. Louis to a junction point east of Tulsa. BN's principal termini are at Seattle, Tacoma, and Spokane, Washington; Portland, Oregon; Bieber, California; Vancouver, British Columbia; Winnipeg, Manitoba; Billings, Montana; Cheyenne, Wyoming; Denver, Colorado; Duluth, Minnesota/Superior, Wisconsin; Fargo, North Dakota/Moorhead, Minnesota; Minneapolis/St. Paul, Minnesota; Chicago, Illinois; Omaha and Lincoln, Nebraska; Des Moines, Iowa; Wichita and Kansas City, Kansas; Kansas City, Springfield, and St. Louis, Missouri; Tulsa, Oklahoma; Fort Worth, Dallas, Houston, and Galveston, Texas; Memphis, Tennessee; Birmingham and Mobile, Alabama; and Pensacola, Florida. BN's principal points of interchange are at those termini and at Avard, Oklahoma.

As of December 31, 1993, BN operated approximately 22,506 miles of road track, 2,134 miles of second main track and 39 miles of other main tracks in the United States and Canada.

Santa Fe operates approximately 10,400 miles of road and secondary main tracks, creating a system of 8,500 route miles. Santa Fe's principal routes are as follows: a route from Chicago across Illinois, Iowa, Missouri, Kansas, Oklahoma, Texas, New Mexico, and Arizona to California; a second route from Kansas City to Colorado and New Mexico with an auxiliary line to Superior, Nebraska; and a route from Chicago to Dallas/Fort Worth and Houston with an auxiliary line to East Texas and Louisiana. Santa Fe's principal termini are at San Francisco/Oakland, Los Angeles, San Diego, and Barstow, California; Phoenix, Arizona; Albuquerque and Clovis, New Mexico; Denver, Colorado; El Paso, Dallas, and Houston, Texas; Kansas City, Kansas; and Chicago, Illinois.

As of December 31, 1993, Santa Fe operated approximately 8,536 miles of road track, 1,812 miles of second main track and 45 miles of other main tracks, including the lines of its wholly owned subsidiaries and leased lines.

According to applicants, the consolidation of BN and Santa Fe would be almost entirely an end-to-end transaction, which would create new single-line routes and increase, not reduce, competition. In terms of both geographic configuration and commodities handled, applicants indicate that their existing rail operations are essentially complementary to one another. BN's routes are concentrated in the Upper Midwest, the Northern Plains and the Pacific Northwest. From this defining core, BN's lines extend into the south central region of the country, but with much less market coverage than in the North. Santa Fe serves the area from California through the Southwest, reaching up through the Midwest to Chicago. The principal commodities handled by BN are coal and grain. A primary focus of Santa Fe's business is intermodal traffic.

According to applicants, both BN and Santa Fe operate in a highly competitive environment and face pervasive competition from other rail carriers as well as from trucks and barges in many markets. Applicants contend that, with only a few limited exceptions, the proposed transaction does not threaten any reduction in the vigor of intramodal competition. Applicants contend that the bulk of the BN and Santa Fe systems do not overlap in horizontal competition. Applicants also indicate that no horizontal overlap exists in the three major corridors from the mid-continent to the west coast. BN operates in the Northern Corridor; Santa Fe operates in the Southern Corridor.

Where overlap is present, applicants indicate that it almost always occurs in the presence of extensive competition with other providers of freight transportation services. Applicants' analyses, however, indicate the possibility for some limited reduction in competition in the areas of Amarillo and Lubbock, Texas. Concerning this area, applicants say that they are prepared to negotiate ameliorative arrangements to address any such reductions in competition.

Applicants state that there will be few basic changes in the existing route structure. Applicants find that the Avard, OK gateway route will experience the most pronounced change. Applicants also project that California-Southeast traffic will increase significantly and that traffic on the route east of Avard to Tulsa will approximately double due to a combination of growth and internal reroutes. Applicants' traffic projections also involve increases in intermodal, merchandise, and grain traffic.

BN and Santa Fe routes between Denver and Texas and between Chicago and Texas also possess some parallel characteristics. Applicants, however, find that each route is generally far removed from its counterpart and each serves other different, but important, traffic lanes and, therefore, no major change in overall uses and traffic density is planned.

We are accepting the application for consideration because it complies with the applicable regulations, waivers, and requirements. *See* 49 U.S.C. 11343–45; 49 CFR Part 1180. We reserve the right, however, to require the filing of supplemental information from applicants or any other party or individual, as necessary to complete the record in this matter.

Although applicants have provided sufficient market analysis under 49 CFR 1180.7 for us to accept their application for consideration, we find that additional information will be necessary for us to analyze the effect of this transaction on certain other railroads. Specifically, we are concerned about railroads which have interests in either WUTR or HBT.

In our decision served October 3, 1994 [Decision No. 3], we waived our regulations at 49 CFR 1180.3(b) pertaining to WUTR and HBT by not considering either of them an "applicant carrier." Consequently, we are lacking certain information that we believe is necessary to conduct our market analysis. Therefore, applicants are directed to provide us with additional information concerning WUTR and HBT

In Finance Docket No. 32549 (Sub-No. 1), applicants seek an exemption for their control of WUTR. In their petition, applicants indicate that the Missouri Pacific Railroad Company (MP) owns the other one-third stock interest in WUTR. Applicants state in the petition that they expect MP will continue to participate in WUTR's management and that applicants' control will not impair MP's ability to obtain service from WUTR. Applicants are directed to provide copies of any agreement concerning use of that property.

Although BN and Santa Fe currently own only 24% and 25% of HBT, respectively, in the event of consolidation, their combined interests may constitute control of HBT. Therefore, we will direct applicants to provide us with the following information:

1. Identify the owners of HBT and their respective ownership percentages.
2. Identify any railroads dependent on HBT in order to interchange with other carriers (specify which carriers) or to connect their own lines through the city. Explain each dependent circumstance.
3. Explain whether the agreement or agreements governing the use of the property held or owned by HBT protect any other owners of HBT from adverse effects in the event of consolidation. Provide copies of any agreement concerning use of that property.

Because of the expedited procedural schedule, additional information will be necessary to assist us in preparing prompt and complete analysis of the transaction. Therefore, applicants are directed to provide us with a current complete set of employee operating timetables for both BN and Santa Fe.

In our Decision No. 4, served October 5, 1994, we adopted an expedited procedural schedule, and we have attached it here to give notice to all interested persons. All of the filing deadlines are in accordance with the statute and governing regulations, as modified by the expedited procedural schedule. We advise applicants and all other parties to this proceeding that, particularly because of the accelerated schedule we have adopted, they must strictly comply with all requirements.[4]

If questions arise concerning an interpretation of a requirement, they may contact the Commission's Office of Proceedings at 202–927–5610 for assistance. *See* 49 CFR 1180.4(c)(6)(iii).

The application and accompanying exhibits are available for inspection in the Public Docket Room, room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including government parties, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than December 27, 1994. An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation (DOT), the Attorney General of the United States (DOJ), and applicants' representatives. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after comments have been received. Any person who files timely written comments shall be considered a party of record if he, she, or it so indicates in their comments. In this event, no petition for leave to intervene need be filed. Written comments shall include:

1. The docket number and title of the proceeding;
2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
3. The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;
4. A statement on whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;
5. A list of all information sought to be discovered from applicant carriers;
6. An initial list of specific protective conditions sought;
7. An analysis of the issues the Commission must consider in this proceeding. Particular attention should be given to our general policy statement for the merger or control of at least two class I railroads, 49 CFR 1180.1, the statutory criteria, and antitrust policy.

Because we have determined that this proceeding constitutes a major transaction within the meaning of our

No. 32549) should be addressed in Finance Docket No. 32593.

[3] Santa Fe and its majority-owned railroad subsidiaries—The Dodge City and Cimarron Valley Railway Company, The Gulf and Inter-State Railway Company of Texas, Los Angeles Junction Railway Company, Oklahoma City Junction Railway Company, Rio Grande, El Paso and Santa Fe Railway Company and Star Lake Railroad Company—are an integrated single system railroad. Santa Fe Pacific Railroad Company, a non-operating rail carrier entity, likewise is part of Santa Fe's single system. As such, the acquisition of control of Santa Fe by BNI involves the control of a single carrier within the meaning of 49 U.S.C. 11343. *See Robert W. Bethge & Raymond K. Wilson—Control Exemption—Canal Cartage Co.*, Finance Docket No. MC-F-19525 (served Nov. 29, 1989); *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Ry.*, 366 I.C.C. 862, 955, *aff'd sub nom. Brotherhood of Ry. & Airline Clerks v. Burlington Northern Inc.*, 722 F.2d 380 (8th Cir. 1983); *Katy Indus., Inc.—Control—Missouri-Kansas-Texas R.R.*, 331 I.C.C. 405, 410–411 (1967); *Kansas City Southern Indus. Inc.—Control—Kansas City S. Ry.*, 317 I.C.C. 1, 4 (1962); *Woods Indus., Inc.—Control—United Transports, Inc.*, 85 M.C.C. 672, 675 (1960); *Louisville & Jeffersonville B. & R. Co. Merger*, 295 I.C.C. 11, 17–18 (1955), *aff'd sub nom. Alleghany Corp. v. Breswick & Co.*, 353 U.S. 151 (1957).

[4] By petition filed October 26, 1994, The National Industrial Transportation League (NITL) requests that the procedural schedule adopted in and attached to our decision served October 5, 1994, Decision No. 4, be extended by adding 30 days to each of the time periods specified. NITL's primary concern is the possibility that the application will be modified or withdrawn as a result of the actions of SFP's shareholders at their meeting scheduled for November 18, 1994.

Under 49 CFR 1180.4(b)(7)(i), our decision to accept the application cannot be extended. Further, comments by parties and interested persons are not due until December 27, 1994. We see no reason to extend the procedural schedule at this time. Accordingly petitioner's request is denied.

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rail consolidation rules, 49 CFR Part 1180, railroads filing written comments must also submit at that time a statement of whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission and a general statement of what that application is expected to include. THIS WILL BE CONSIDERED A PREFILING NOTICE WITHOUT WHICH THE COMMISSION WILL NOT ENTERTAIN APPLICATIONS FOR THIS TYPE OF RELIEF.

Comments from the Secretary of Transportation and Attorney General must be filed by January 11, 1995. Parties seeking to modify any protective conditions specified in their initial comments must file a second list of protective conditions no later than January 24, 1995. Parties shall not be permitted to seek any protective conditions other than those requested in their final list.

Parties seeking to file responsive applications must do so no later than February 8, 1995. Responsive applications include inconsistent applications, petitions for inclusion, or any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). Parties should contact Chris Oehrle (202) 927–6288 to obtain docket numbers for their responsive applications.

Petitions for waiver or clarification by responsive applicants shall be filed no later than December 27, 1994. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding.[5]

Discovery may begin immediately. The Commission will not tolerate dilatory tactics in response to discovery requests designed to elicit relevant evidence. A refusal voluntarily to supply information will be treated as an objection to the request for discovery. Responses must be served upon all parties of record, and five copies of those responses must be concurrently filed with the Commission.

We plan to conclude the evidentiary phase of this proceeding by January 2, 1996. The initial decision will be waived, and the determination of the merits of the application(s) will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

Any traffic studies and data submitted in opposition to the primary application must use calendar year 1993 data and, where relevant, use depreciation accounting, in order to be comparable with the evidence submitted by applicants. Evidence supporting protestants' responsive applications must use 1993 as the base year and the depreciation accounting system, and applicants' evidence in opposition to the responsive applications must use 1993 and depreciation accounting.

We advise protestants that, if they seek to have the primary application denied, or seek conditions if approved, because they contend their ability to provide essential service and/or competition will be harmed, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in Finance Docket No. 32549 is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. Applicants are directed to provide the Commission's Office of Compliance and Enforcement with a current complete set of employee operating timetables for both BN and Santa Fe within 30 days of the effective date of this decision.

4. Applicants are directed to provide copies of any agreement concerning use of property operated by WUTR within 10 days of the effective date of this decision.

5. Applicants are directed to provide the following information within 10 days of the effective date of this decision:

a. Identify the owners of HBT and their respective ownership percentages.

b. Identify any railroads dependent on HBT in order to interchange with other carriers (specify which carriers) or to connect their own lines through the city. Explain each dependent circumstance.

c. Explain whether the agreement or agreements governing the use of the property held or owned by HBT could adversely affect any other owners of HBT in the event of consolidation. Provide copies of any agreement concerning use of that property.

6. This decision is effective on November 10, 1994.

Decided: November 3, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Secretary.

Procedural Schedule

October 13, 1994—Primary application filed.
November 10, 1994—Commission notice of acceptance of primary application published.
December 27, 1994—Comments on primary application (except DOJ, DOT) due, including initial list of protective conditions; petitions for waiver or clarification by responsive applicants due.
January 11, 1995—DOJ, DOT comments on primary application due.
January 24, 1995—Second lists of protective conditions due.
February 8, 1995—Responsive applications due; opposition to primary application due.
March 10, 1995—Commission notice of acceptance of responsive applications published.
June 8, 1995—Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due.
July 24, 1995—Responses to government parties' evidence due; rebuttal in support of responsive applications due.
August 14, 1995–August 18, 1995—Hearing on all evidence; witnesses to be to cross-examined only to the extent specific need is shown in order to resolve material issues of disputed fact.
October 2, 1995—Opening briefs due.
November 16, 1995—Reply briefs due.
January 2, 1996 Oral argument.
February 16, 1996 Voting Conference.
April 1, 1996 Final decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement.

[5] In addition to submitting an original and 20 copies of all documents filed with the Commission, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The computer data contained on the computer diskettes submitted are subject to the protective order attached to the Commission's decision served July 15, 1994, and are for the exclusive use of Commission employees working directly with review of substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Commission and its staff.

Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes. The dates for filing post-hearing briefs and for oral argument before the Commission will be set upon completion of oral hearings.

[FR Doc. 94–27903 Filed 11–9–94; 8:45 am]
BILLING CODE 7035–01–P

[Docket No. AB–167; Sub-No. 1141]

Consolidated Rail Corporation—Abandonment—Between Kenton and Alger, OH

The Commission has issued a certificate authorizing the Consolidated Rail Corporation (Conrail) to abandon its 14.34-mile Alger Industrial Track between Kenton (milepost 25.16) and Alger (milepost 39.50 in Hardin, County, OH. The abandonment was granted subject to standard employee protective conditions and the condition that Conrail must not salvage or dispose of 9 bridges on the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

The abandonment certificate will become effective 30 days after this publication unless the Commission finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued and (2) it is likely that the financial assistance will fully compensate Conrail.

Requests for public use conditions must be filed with the Commission and Conrail within 10 days after publication.

Any offers of financial assistance must be filed with the Commission and Conrail no later than 10 days from the publication date of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: November 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27886 Filed 11–9–94; 8:45 am]
BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 150X)]

Norfolk and Western Railway Company—Abandonment Exemption—In Mercer County, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 6.22-mile line of railroad: (1) between milepost BE–8.59 at Montcalm and milepost BE–13.9 at McComas;[1] and (2) between milepost WF–12.69 and milepost WF–13.6 at McComas, in Mercer County, WV.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 10, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by November 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 30, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 15, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–27887 Filed 11–9–94; 8:45 am]
BILLING CODE 7035–01–P

[1] NW was authorized to discontinue operations between milepost BE–8.6 at Montcalm and milepost BE–13.9 at McComas in *Norfolk and Western Railway Company—Discontinuance Exemption—In Mercer County, WV*, Docket No. AB–290 (Sub-No. 83X) (ICC served May 17, 1990).

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of a final revised aggregate production quota for 1994.

SUMMARY: The interim notice (59 FR 49256, September 27, 1994) which established a revised 1994 aggregate production quota for methylphenidate, a Schedule II controlled substance, as required under the Controlled Substances Act (CSA) (21 USC 826), is adopted without change.

EFFECTIVE DATE: This order is effective upon November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On September 27, 1994, an interim notice establishing a revised 1994 aggregate production quota for methylphenidate was published in the **Federal Register** (59 FR 49256). All interested persons were invited to comment on or object to this proposed aggregate production quota on or before October 27, 1994. No comments or objections were received. The interim notice is adopted without change.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substance Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to 59 FR 23637 (May 6, 1994), the Deputy Administrator hereby orders that the 1994 revised aggregate production quota for methylphenidate, expressed in grams of anhydrous base, be established as follows:

Basic class	Established revised 1994 quotas (in grams)
Methylphenidate	6,189,000

Dated: November 3, 1994.

[FR Doc. 94–27812 Filed 11–9–94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #940004

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office (NAO) gives notice that on November 4, 1994, Submission #940004 was accepted for review. The submission was filed with the NAO on September 12, 1994 by the United Electrical, Radio and Machine Workers of America (UE) and concerns the operations of an employer in Ciudad Juarez, State of Chihuahua, Mexico. The allegations of the submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objective of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, the availability of enforcement procedures, and procedural guarantees, as set out in Articles 3, 4, and 5 of the NAALC.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue NW., Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 12, 1994 the UE filed a submission with the NAO concerning allegations involving the operations of an employer in Ciudad Juarez, State of Chihuahua, Mexico. The allegations of the submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the NAO. "Labor law" is defined in Article 49 of the NAALC to include freedom of association and the right to organize.

The procedural guidelines for the NAO, published in the **Federal Register** on April 7, 1994, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

Submission #940004 relates to labor law matters in Mexico. A review would also appear to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the NAALC, among them freedom of association and the right to organize; promoting compliance with, and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, the submission has been accepted for review. However, acceptance for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

The objective of the review will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, the availability of enforcement procedures, and procedural guarantees, as set out in Articles 3, 4, and 5 of the NAALC. The review will focus on labor laws that guarantee the right of association and the right to organize freely and prohibit interference with the efforts of workers to exercise those rights. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

Signed at Washington, DC, on November 4, 1994.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 94–27885 Filed 11–9–94; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirement of 10 CFR Part 50, Appendix J, to Facility Operating License No. DPR–19, issued to Commonwealth Edison Company, (ComEd the licensee), for operation of the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a schedular exemption from the requirements of Section III.A.6.(b) (Type A test) of Appendix J to 10 CFR Part 50 relating to the primary reactor containment leakage testing for water cooled reactors. The purpose of the test is to assure that leakage through the primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications (TS) and that periodic surveillance is performed.

The proposed action is in accordance with the licensee's request for an exemption dated October 28, 1994.

Need for the Proposed Action

The licensee requested, pursuant to 10 CFR 50.12(a), a one-time schedular exemption for Dresden, Unit 2, from the integrated leak rate test (ILRT) intervals for the Type A leak rate test required by 10 CFR Part 50, Appendix J. Section III.A.6.(b). The exemption is requested to avoid the potential for a reactor shutdown. If a forced outage is imposed to perform testing, it would present undue hardship and cost in the form of increased radiological exposure. Furthermore, if a forced outage is imposed to perform the required testing, an additional plant shutdown and startup will be required. ComEd has had to reschedule the Dresden, Unit 2, refueling outage from September 1994 to July 1995, because of two forced maintenance outages. Increasing the interval between refueling outages will cause Dresden, Unit 2, to exceed the Type A leak rate testing surveillance interval required for the Type A leak rate test which can not be performed during reactor operation.

Environmental Impacts of the Proposed Action

The proposed action includes an exemption from performing the Type A test for a maximum period of 242 days beyond the required Appendix J test interval. As stated in 10 CFR Part 50, Appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the TS requirements and to assure that proper maintenance and repairs are performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR 50.12(a), in that it represents a one-time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with TS requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in Section III.A.6.(b) of Appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the Appendix J interval by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of occurrence during the 242 day extended period. In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden Unit 2 will impose an administrative limit for minimum pathway leakage of 85 percent of 0.75La for the remaining Unit 2 fuel cycle. Past Unit 2 local leak rate test data have, in general, demonstrated good leak rate test results. The two consecutive Type A ILRT failures that have placed Unit 2 on the accelerated test schedule were the result of the addition of Type B and C test results to the Type A leakage and not problems with the Type A test boundaries. The containment leakage rate minus the Type B and C leakages for the last two Type A test failures during D2R12 and D2R13 were 285.50 standard cubic feet per hour (scfh) and 302.62 scfh, respectively. These values are 47 percent and 50 percent of the Type A ILRT acceptance criteria of 610.56 scfh (.75La). The above data, along with the station imposed limit for minimum pathway leakage, provide a basis for showing that the probability of exceeding the off site dose rates established in 10 CFR Part 100, will not be increased by extending the current Type A testing interval for a maximum of 242 days. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Section III.A.6.(b) of Appendix J to 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternate Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statements for Dresden, Units 2 and 3, dated November 1973.

Agencies and Persons Consulted

The staff consulted with the Illinois State official regarding the environmental impact of the proposed action. The State official had no comments.

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Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for exemption dated October 28, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 4th day of November, 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III/2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27860 Filed 11–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–36, issued to Maine Yankee Atomic Power Company, (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Wiscasset, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated August 5, 1994, for an exemption from certain requirements of 10 CFR Part 73, Appendix B, "General Criteria for Security Personnel." The requested exemption would relieve two security officers from meeting the distant visual acuity requirements in one eye, which was not discovered at the time of their initial employment screening in 1989 and 1990.

The Need for the Proposed Action

Pursuant to 10 CFR Part 73, Appendix B, security personnel who are responsible for the protection of special nuclear material on site or in transit should, like other elements of the physical security system, be required to meet minimum criteria to ensure that they will effectively perform their assigned security-related job duties.

The Code of Federal Regulations at 10 CFR Part 73, Appendix B, Section I.B.b.(1)(a), "Vision," specifies, in part that: For each individual (security officer), distant visual acuity in each eye shall be correctable to 20/30 (Snellen or equivalent) in the better eye and 20/40 in the other eye with eyeglasses or contact lenses.

At the time of their employment in 1989 and 1990, the two subject security officers were screened using a licensee-generated form that was based on the requirements of Appendix B to 10 CFR Part 73. However, the form did not properly reflect the correct distant visual acuity requirements of the "other eye." On July 28, 1994, the discrepancy between the licensee's form and the requirements of 10 CFR Part 73, Appendix B, Section I.B.b.(1)(a) was noted for the first officer. A review of the visual examination records for all security officers found a second instance in which the distant visual acuity requirement was not met for another security officer.

The licensee has provided expert professional medical opinions asserting that each officer has normal peripheral vision, normal peripheral depth perception, and normal binocular acuity. Further, each security officer uses the right eye for firearms siting and each currently tests 20/20 in the right eye. Finally, the licensee has committed to have each security officer's vision tested by its optometrist every 6 months to ensure no significant visual deterioration occurs. The criteria to establish that no significant visual deterioration has occurred will be:

1. Vision in the better eye will be at least 20/30 corrected or uncorrected.
2. Vision in the other eye will be monitored. If eyesight in the other eye should worsen, immediate testing will be performed to demonstrate that the individual is physically capable of meeting all the requirements of the Maine Yankee Security Training and Qualification Plan prior to being reassigned duties of an armed security officer. (This testing will include the complete firearms qualification course.)
3. The remaining vision criteria of 10 CFR Part 73, Appendix B, will be met or exceeded.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action, including the expert professional medical opinions, vision screening results, firearms qualifications, and the proposed alternate qualification criteria the licensee has documented. The expert professional medical opinions assert that the diminished central visual acuity for each officer's left eye has existed since birth for one, and since about the age of four, for the other. Thus, the early age of onset and the nature of both conditions contribute to relative functional normality for each officer. Further, each officer has normal peripheral vision, normal peripheral depth perception, and normal binocular acuity.

The underlying purpose for requiring vision criteria for security officers is to ensure that they can effectively perform their assigned security-related job duties. Expert professional opinions assert that each officer has relative functional normality and that an exception could thus be made because of the longevity of their vision loss (they have adapted and effectively compensate for diminished central visual acuity in their left eye).

Accordingly, the Commission concludes that an exemption to allow continued service of the two subject employees as security officers at Maine Yankee Atomic Power Station would not result in a reduction in the physical protection capabilities for the protection of special nuclear material—either on site or in transit—or of Maine Yankee Atomic Power Station. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in visual capabilities for two security officers that are substantially equivalent to the existing requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to Operation of Maine Yankee Atomic Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 5, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, at the local public document room located at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 3rd day of November, 1994.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reator Regulation.

[FR Doc. 94–27861 Filed 11–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its September 29, 1994, application for proposed amendment to Facility Operating License No. DPR–64 for Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

The proposed amendment would have revised the facility technical specifications to allow a one-time extension to the 30-month interval requirement for the leak rate testing of Residual Heat Removal containment isolation valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 5, 1994 (59 FR 50777). However, by letter dated November 2, 1994, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated September 29, 1994, and the licensee's letter dated November 2, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 3rd day of November 1994.

For the Nuclear Regulatory Commission.

John E. Menning,

Acting Project Manager, Project Directorate I–I, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27862 Filed 11–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Indian Point Nuclear Generating Unit No. 3; Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the licensee, is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Westchester County, New York.

II

By letter dated September 29, 1994, the licensee requested an amendment to the Technical Specifications (TSs) that would allow Residual Heat Removal (RHR) containment isolation valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 Type C local leak rate tests (LLRTs) to be performed during refueling outage (RFO) 9/10, scheduled for spring of 1996. In addition, the licensee's letter requested an exemption from the requirements of the Code of Federal Regulations (CFR) since 10 CFR Part 50, Appendix J, Paragraph III.D.3, requires that licensees perform Type C tests during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are LLRTs of containment isolation valves.

The licensee commenced operating on 24-month fuel cycles in August 1992, instead of the previous 18-month fuel cycles, starting with fuel cycle 9. The requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.3, indicate that Type C LLRTs must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). On January 12, 1993, the NRC staff issued an exemption that allowed Type C LLRTs to be performed at intervals up to 30 months, thus, permitting operating on a 24-month fuel cycle.

Approximately 6 months after startup from RFO 8/9, IP3 began an extended unplanned nonrefueling outage. In November and December of 1994, RHR containment isolation valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 are due for their Type C LLRT. Currently, the interval for Type C testing of these valves is 30 months. Therefore, the licensee requested a one-time schedular exemption to allow Type C LLRTs of the above listed valves to be deferred until the 9/10 RFO, which is currently scheduled for the spring of 1996.

By letter dated November 2, 1994, the licensee requested withdrawal of the proposed changes to the TSs and modified the exemption request. Specifically, the licensee requested that the exemption extend until the return to power following the current outage, which is defined as prior to T_{avg} exceeding 350° F. The NRC staff granted the request for withdrawal of the proposed changes to the TSs in a letter dated November 3, 1994.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The CFR at 10 CFR part 50, Appendix J, Paragraphs III.D.3, states: "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years * * *." The underlying purpose of the requirement to perform Type C containment leak rate tests at intervals not to exceed 2 years is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or being unknown, and long enough to

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allow the test to be conducted during scheduled refueling outages. The requirements to perform Type C LLRTs at intervals no greater than 2 years presumed the 2-year time interval was adequate to accommodate the 12-month fuel cycles which were common when Appendix J to 10 CFR part 50 was published in 1973. However, IP3, along with several other facilities, are utilizing core designs which allow operation on a 24-month cycle. In January 12, 1993, the NRC staff issued an exemption that allowed Types B and C LLRTs to be performed at intervals up to 30 months, thus, permitting operation on a 24-month fuel cycle.

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, starting with fuel cycle 9. Fuel cycle 9 started in August 1992. Approximately 6 months after startup from 8/9 RFO, IP3 began an extended unplanned nonrefueling outage. Startup from the outage is currently expected for early 1995. After startup from the current outage, the plant expects to run until its next FRO 9/10 which is scheduled to begin in spring of 1996. In November and December of 1994, RHR containment isolation valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 are due for their Type C LLRT.

Currently, the interval for Type C testing of these valves is 30 months. These LLRTs are normally performed during a refueling outage when the reactor is defueled and the RHR system is not providing a source of cooling water. The current outage is a nonrefueling outage; therefore, the reactor is not defueled and RHR system is providing core cooling water. The licensee's procedure and the system design require the RHR system to be out of service in order to perform the LLRTs. The licensee has requested a one-time schedular exemption to allow Type C LLRTs of the above listed valves to be deferred to provide additional time to finalize plans to accomplish this testing.

The NRC staff has reviewed the LLRT data provided by the licensee as well as methodology used by the licensee to extrapolate LLRT data to a 30-month test interval and the staff concludes that there is reasonable assurance that the containment leakage rate would be maintained within acceptable limits with a one-time LLRT interval increase until the return to power following the current outage, which is defined as prior T_{av_g} exceeding 350 °F. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Thus, there are special circumstances present which satisfy the requirements of 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that (1) the exemption as described in Section III are authorized by law, will not endanger life or property, and are otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants the following exemption:

The Power Authority of the State of New York is exempt from the requirement of 10 CFR part 50, Appendix J, Paragraph III.D.3, in that the interval for Type C tests of RHR containment isolation valves AC–732, AC–741, AC–MOV–743, AC–MOV–744, and AC–MOV–1870 may be extended until the return to power following the current outage at Indian Point Nuclear Generating Unit No. 3, which is defined as prior to T_{av_g} exceeding 350 °F.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (59 FR 54478).

This exemption is effective upon issuance.

Dated at Rockeville, Maryland, this 4th day of November, 1994.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–27863 Filed 11–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–06309; License No. 37–13129–01; EA 94–114]

Radiation Management Consultants; Philadelphia, Pennsylvania; Order Imposing Civil Monetary Penalty

I

Radiation Management Consultants (Licensee) is the holder of Byproduct Materials License No. 37–13129–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on April 13, 1992. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein. The license is due to expire on April 30, 1997. In addition, on December 13, 1993, the Licensee requested termination of the license.

II

An inspection of the Licensee's activities was conducted on December 9–10, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 11, 1994. The Notice states the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in letters dated August 10, and August 19, 1994. In its response, the Licensee denies two of the violations (F and G), and either admits or partially admits the other six violations. In addition, the licensee requests remission of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that Violation F should be withdrawn and that Violations A–E, G, and H, occurred as stated in the Notice and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is Hereby Ordered That:

The Licensee pay a civil penalty in the amount of $1,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland this 3rd day of November, 1994.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–27864 Filed 11–9–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SPECIAL COUNSEL

Appointment of Members to the Performance Review Board

AGENCY: U.S. Office of Special Counsel.

ACTION: Notice of appointment of members to the Performance Review Board.

SUMMARY: This notice publishes the names of three Performance Review Board members as required by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to and will serve on the Performance Review Board for Senior Executives in the U.S. Office of Special Counsel: Susan D. McCluskey, Chief Counsel to the Chair, Federal Labor Relations Authority; Michael W. Doheny, Regional Director, Washington Regional Office, Federal Labor Relations Authority; and Mark K. Stephens, Associate General Counsel, Office of SBIC Liquidation/Litigation, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: M. Marie Glover, Personnel Officer, Management Division, U.S. Office of Special Counsel, 1730 M Street NW., Suite 300, Washington, D.C. 20036–4505, (202) 653–8964.

Signed on this 4th day of November 1994.

Kathleen Day Koch,

Special Counsel.

[FR Doc. 94–27796 Filed 11–9–94; 8:45 am]

BILLING CODE 7405–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–93]

Extension of Comment Period for Section 302 Investigation of Barriers to Access to the Auto Parts Replacement Market in Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of comment period for investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A), of the replacement market for auto parts in Japan.

SUMMARY: On October 1, 1994, the United States Trade Representative (USTR) initiated (59 FR 52034) an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Japan that restrict or deny U.S. auto parts suppliers' access to the auto parts replacement and accessories market in Japan. Parties with a significant interest in the Japanese auto parts replacement and accessories market have requested that USTR extend the period for comments. In response to this request, USTR has decided to extend the closing date for the comment period from November 10, 1994 until December 1, 1994.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Burns, Director, Japan Affairs, (202) 395–5050, or James Southwick, Assistant General Counsel, (202) 395–7203. For further information regarding filing procedures, contact Sybia Harrison, Special Assistant to the Section 301 Committee, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than noon on December 1, 1994. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–93) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of a confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 94–27908 Filed 11–9–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34939; File No. SR–DGOC–94–05]

Self-Regulatory Organizations; Delta Government Options Corp.; Notice of Filing of Proposed Rule Change Relating to the Over-the-Counter Options Trading System Procedures for Emergency Contingencies and Disaster Recovery

November 3, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 9, 1994, the Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been primarily prepared by the self-regulatory organization. On September 23, 1994, Delta filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify Delta's Over-The-Counter Options Trading System Procedures ("Procedures") relating to emergency contingencies and disaster recovery. In particular, Delta is adopting provisions governing (1) the waiver or suspension of Delta's procedures; (2) action by Delta's management on behalf of Delta; and (3) interpretation of Delta's rules.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The amendment modified certain sections of the proposed rule change to correct typographical errors and to specify which members of Delta's senior management will have authority under the proposed rule change. Letter from Barry E. Silverman, President, Delta, to Jerry W. Carpenter, Assistant Director, Securities Processing Regulation, Division of Market Regulation, Commission (September 22, 1994).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Delta included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Delta has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change will add a new Article XIX to Delta's Procedures. Article XIX contains Section 1901, "Waiver or Suspension of Procedures," Section 1902, "Action by Delta," and Section 1903, "Interpretation of Rules." These new provisions codify Delta's existing policies regarding emergency contingencies and disaster recovery.

Section 1901 will permit Delta's Board of Directors, Chairman of the Board, President, Vice President, Chief Financial Officer, Secretary, or Controller (1) to extend the time fixed by any provision of Delta's Procedures or any regulations issued by Delta for the doing of any act or acts or (2) to waive or to suspend any provision of Delta's Procedures or any regulations issued by Delta if they judge such extension, waiver, or suspension to be necessary or expedient. The extension, waiver, or suspension may remain in effect only for sixty days unless approved by Delta's Board of Directors.

Section 1901 will require that a written report of the extension, waiver, or suspension be filed with Delta and shall be available for inspection by any participant. The written report will set forth the pertinent facts, the identity of the person who authorized the extension, waiver, or suspension, and the reason the extension, waiver, or suspension was deemed necessary or expedient. No written report will be required for extensions of time of less than eight hours.

Section 1902 will permit Delta's Board of Directors, Chairman of the Board, President, Vice President, Chief Financial Officer, Secretary, Controller, or other persons designated by Delta's Board of Directors to act on behalf of Delta except where Delta's Procedures require action by the Board of Directors. Section 1903 will authorize Delta's Board of Directors, Chairman of the Board, President, any committee of the Board of Directors, or any designee of the Board of Directors to interpret Delta's Procedures.

(b) The proposed rule change will enable Delta to establish contingency planning and disaster recovery procedures that can be used in the event of an emergency, market disruption, or other unanticipated event and will permit Delta to maintain continuous operations while safeguarding the assets under its custodianship. Delta believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder and in particular with Section 17A(b)(3)(F) of the Act which requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Delta believes the proposed rule change will greatly reduce the possibility of market disruption and insure the prompt and accurate clearance and settlement of transactions in Delta's system in the event of an emergency or other unanticipated event.

B. Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No SR-DGOC-94-5 and should be submitted by December 1, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-27810 Filed 11-9-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34935; File No. SR-GSCC-94-04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Establishing New Categories of Netting System Membership for Futures Commission Merchants

November 3, 1994.

On July 5, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-GSCC-94-04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change establishes new categories of netting system membership for futures commission merchants ("FCMs"). The Commission published notice of the proposed rule change in the **Federal Register** on August 23, 1994.[2] No

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 34529 (August 12, 1994) 59 FR 43365.

comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Background

GSCC was established primarily to provide the government securities marketplace with risk protections and a means of ensuring orderly settlement of member trading activity in U.S. Treasury securities. Initially, membership criteria were specified for large dealers, interdealer brokers, and clearing banks that might benefit from GSCC's services. Following expressions of interest in netting system membership by several FCMs, GSCC is establishing a Category 1 and a Category 2 FCM netting system membership class.

An FCM is generally an entity that solicits orders, accepts orders, and/or accepts funds for the purchase or sale of exchange traded futures or options on futures. In effect, an FCM is the equivalent in the futures industry of a securities broker.[3] The determination of whether an applicant is considered a Category 1 FCM or a Category 2 FCM will be based on the determination by GSCC as to which minimum financial admission criteria such FCM satisfies.[4]

Proposed Minimum Financial Standards

The term "net capital" as used in GSCC's rules and the Commission's uniform net capital rule is the approximate accounting equivalent of the term "adjusted net capital" as that term is used in the CFTC financial requirement rule.[5] In addition, the term "net worth" as used in GSCC's rules is comparable to the concept of "net capital" in the CFTC's financial requirement rule.[6]

Given these similarities, GSCC established categories of FCM netting membership with minimum financial standards and margin requirements that are equivalent to those for Category 1 and Category 2 dealer netting members. Specifically, if an applicant is applying to become a Category 1 FCM, it must have, as of the end of the calendar month prior to the effective date of its membership, $50 million in net worth and $10 million in excess adjusted net capital[7] and must meet the same clearing fund requirements as a Category 1 dealer netting member. If an applicant is applying to become a Category 2 FCM, it must have, as of the end of the calendar month prior to the effective date of its membership, $25 million in net worth and $10 million in excess adjusted net capital and must meet the same clearing fund requirements as a Category 2 dealer netting member.[8] The minimum financial admission criteria are continuing membership standards, and a member must promptly inform GSCC any time it is not in compliance with any of the financial standards.

GSCC's rules require dealers to submit to GSCC certain financial reports that the dealers are required to file with their regulatory authorities. Because the CFTC requires all FCMs as of the close of business each month only to make and to keep a record of their computation of adjusted net capital and does not require FCMs to file such computations with their regulatory authorities, GSCC specifically will require every FCM netting member to submit to GSCC each month a copy of the computation of adjusted net capital required by the CFTC. GSCC also will require FCMs to submit to GSCC a copy of the CFTC's regulatory financial report at the time that the form is filed with the CFTC each quarter.

II. Discussion

The Commission believes that GSCC's proposed rule change is consistent with Section 17A of the Act[9] and in particular with Section 17A(b)(3)(F) of the Act.[10] Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds within its possession or control or for which it is responsible and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that GSCC's proposal to establish new categories of netting system membership for FCMs is consistent with these obligations.

In their trading of futures on government securities, FCMs may be required to deliver or to accept delivery of Treasury securities but under certain circumstances may not be required to register as broker-dealers.[11] By permitting FCMs to become GSCC members, the proposed rule change allows GSCC to extend the services and benefits it offers as a registered clearing agency to a greater number of market participants and thereby should promote the establishment of a national system for the prompt clearance and settlement of securities transactions.

The minimum financial requirements implemented by GSCC for Category 1 and Category 2 FCMs mirror those for Category 1 and Category 2 dealer netting members. The Commission believes that given the similarities between the concepts of net capital and net worth in GSCC, CFTC, and Commission rules, there is a basis for establishing categories of FCM netting membership with net capital, net worth, clearing fund, and margin requirements that are equivalent to those for Category 1 and

[3] Under GSCC's rules, the term FCM is defined as having the meaning set forth in Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA") except that no entity will be considered an FCM for purposes of GSCC's rules unless it is registered as such with the Commodity Futures Trading Commission ("CFTC"). Section 2(a)(1)(A) of the CEA defines an FCM to include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. GSCC Rule 1, "Definitions."

[4] In addition, because many participants are both broker-dealers and FCMs, GSCC is amending its rules to expressly provide that if an applicant qualifies for more than one category of netting system membership, GSCC will determine in its sole discretion the proper category of netting system membership for which the FCM will be considered. This determination will be made at the time of admission as a netting system member.

[5] Under GSCC's rules, the term "net capital" is defined as the amount equal to the net capital of a broker or dealer as defined in Commission Rule 15c3-1(c)(2) or any successor rule or regulation thereto. GSCC Rule 1, "Definitions."

[6] Under GSCC's rules, for purposes of Category 1 and Category 2 FCMs, the term "net worth" is defined as the amount equal to the excess of the assets of the FCM over the liabilities of the FCM computed in accordance with generally accepted accounting principles, including liabilities that are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as defined in 17 CFR 1.17(h) for an FCM that is not a registered broker-dealer. GSCC Rule 1, "Definitions."

[7] Under GSCC's rules, for purposes of Category 1 and Category 2 FCMs, the term "excess adjusted net capital" is defined as the amount equal to the difference between the adjusted net capital of an FCM and the minimum adjusted net capital that such FCM must have to comply with the requirements of 17 CFR 1.17 (a)(1) or (a)(2) or any successor regulations. GSCC Rule 1, "Definitions."

[8] If an applicant satisfies the minimum financial standards required to become a Category 1 FCM, they will be subject to lower margin requirements than those imposed on a Category 2 FCM.

[9] 15 U.S.C. § 78q-1 (1988).

[10] 15 U.S.C. § 78q-1(b)(3)(F) (1988).

[11] In connection with the proposed rule change, GSCC will require each FCM who is not registered with the Commission as a broker-dealer or government securities broker-dealer and who applies to become a Category 1 or Category 2 FCM netting system member to send a representation to the Commission that the FCM is in compliance with Commission Rules 3a43-1 and 3a44-1 (17 CFR 240.3a43-1 and 240.3a44-1 [1994]) and will remain in compliance with Commission Rules 3a43-1 and 3a44-1. Telephone conversation between Jeff Ingber, General Counsel, GSCC, and Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission, and Ari Burstein, Attorney, Division of Market Regulation, Commission (November 2, 1994).

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Category 2 dealer netting members. The Commission therefore believes that the financial and reporting requirements established by GSCC for Category 1 and Category 2 FCMs along with GSCC's regular risk management procedures should allow GSCC to provide membership to FCMs consistent with GSCC's safeguarding obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, particularly with Section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–GSCC–94–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27811 Filed 11–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34941; International Series Release No. 744; File No. SR–NASD–94–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Parts VI and X of Schedule C of the NASD By-Laws Relating to Foreign Finders and Foreign Associates

November 4, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Parts VI and X of Schedule C of the NASD By-Laws relating to foreign finders and foreign associates. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

PART VI

PERSONS EXEMPT FROM REGISTRATION

* * * * *

(2) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

(a) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(b) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

(c) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(d) customers receive a descriptive document, similar to that required by Rule 206(4)–3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

(e) customers provide written acknowledgement to the member firm of the existence of the compensation arrangement and that such acknowledgement is retained and made available for inspection by the Association;

(f) records reflecting payments to finder are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Association; and

(g) the confirmation of each transaction indicates that a referral or finder's fee is being paid pursuant to an agreement.

PART X

FOREIGN ASSOCIATES

All persons associated with a member who are designated as Foreign Associates shall [not] be required to be registered [and] *but* shall be exempt from the requirement to pass a Qualification Examination.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At its January 1994 meeting, the NASD Board of Governors approved the issuance of a Notice to Members soliciting comments on amendments to the foreign associate provisions in Part X of Schedule C to the NASD By-Laws. These proposed amendments would substantially conform NASD requirements for "foreign finders" to certain interpretations under New York Stock Exchange (NYSE) Rule 345 recently approved by the Commission in SEC Rel. No. 34–32431; File No. SR–NYSE–92–33. These amendments would permit the payment of transaction-related compensation to non-registered foreign finders who are not subject to the jurisdiction of U.S. securities laws, subject to certain disclosure and recordkeeping requirements by the U.S. broker-dealer.

The proposed amendment to Part VI of Schedule C of the NASD By-Laws is limited in application only to compensation arrangements that involve foreign (i.e., non-U.S. citizens) finders who are domiciled abroad and customers who are not U.S. citizens or U.S. institutions that are also domiciled abroad. Additionally, as one of the conditions under the proposed interpretation, customers must acknowledge receipt of information, in the form of a descriptive document, regarding the compensation arrangement. If all the specified conditions of the proposed interpretation are met, members may pay transaction-related compensation to nonregistered foreign finders based on the business of non-U.S. customers that the finders refer to the member. The proposed amendment would also require member firms to verify that those foreign finders are not subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws.

While the foreign finders' sole involvement would be the initial referral to a member or a member organization, compensation could be made on an ongoing basis and tied to such variables as the level of business generated or assets under control. All accounts referred by such foreign finders would be carried on the books of the member.

The proposed amendment will allow member organizations the opportunity to enhance their competitive position in foreign countries where new accounts are routinely opened on a referral basis with ongoing compensation.

The proposed amendment to Part X of Schedule C of the By-Laws would allow members to continue to use Part X to register Foreign Associates with the NASD but would require members to file Form U–4 to register such persons.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed changes to Parts VI and X of Schedule C of the By-Laws will impose substantial regulatory requirements on the relationship between members and foreign finders while at the same time allowing members to use foreign finders to expand the members' business opportunities overseas.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association received 7 letters commenting on Notice to Members 94–6, the proposed amendments to the Interpretation. The commenters include the Securities Industry Association (SIA), two law firms, and four broker-dealers. Below is a summary of the more significant and/or recurring issues raised in the letters and the NASD's position in connection with the same.

One letter dealt with the narrow issue of whether the drafting of the foreign associate provisions inadvertently conflicted with the provisions of SEC Rule 15a–6. The NASD does not believe the amended proposal conflicts with Rule 15a–6.

Of the remaining six letters, one was from the SIA and another from counsel representing five large, full service member firms. All of these comment letters supported the NASD's attempt to comport its requirements to the disclosure provisions of the interpretation to NYSE Rule 345, but opposed both the requirement to include foreign finders under the definition of foreign associates and the provision subjecting such persons to full U–4 registration. The commenters argued that foreign finders are not associated persons of a member. The commenters noted that, if NASD rules required such persons to file U–4 registration documents, the foreign finders would likely refuse to do so and would redirect their business to foreign broker-dealers and banks. Such a result would contradict the purpose of the NYSE interpretation which was designed to permit U.S. broker-dealers to be more competitive in global markets where finding arrangements are common practice. The commenters also noted that it would be very difficult, if not impossible, for NASD members to exert meaningful supervision over foreign finders even if they did file U–4 registration documents, because these individuals and firms view themselves as independent contractors not otherwise subject to supervision of the broker-dealer. Furthermore, the filing of such documents through a firm may raise regulatory, tax and other issues in the country of domicile for the foreign finders and increase the overall burden of regulation of member firms.

The NASD Board of Governors ("Board") found the commenters' arguments persuasive and developed a different approach to the foreign finder issue. In keeping with a recommendation from counsel for the five large member firms, the Board determined to include foreign finders under the portion of Schedule C that identifies persons exempt from registration and to incorporate the information disclosure requirements of the interpretation to NYSE Rule 345 into the section. The Board also added a provision requiring firms to take reasonable steps to assure that foreign finders are not subject to the disqualification provisions of Article II, Section 4 of the NASD By-Laws. The Board also decided it is important to coordinate its activities with the NYSE to ensure consistency in the NASD's requirements with those of the NYSE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–51 and should be submitted by December 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27890 Filed 11–9–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2749 Amdt. 1]

Georgia; Declaration of Disaster Loan Area Amendment #1

The above-numbered Declaration is hereby amended, in accordance with notices from the Federal Emergency Management Agency dated October 25 and 28, 1994, to include Brooks Bulloch, Clinch, Colquitt, Effingham, Thomas, and Worth Counties in the State of Georgia as a disaster area as a result of damages caused by severe weather, heavy rains, flooding, high winds, and tornadoes beginning on October 1, 1994, and continuing.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] 17 CFR 200.30–3(a)(12).

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In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Atkinson, Candler, Crisp, Dougherty, Echols, Emmanuel, Jenkins, Lanier, Lee, Lowndes, Screven, and Ware Counties in Georgia; Baker, Columbia, Jefferson, and Madison Counties in Florida; and Hampton County in South Carolina.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 17, 1994 and for economic injury the deadline is July 19, 1995.

The economic injury numbers are 838000 for Georgia; 838100 for South Carolina; and 838200 for Florida.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 31, 1994.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 94-27885 Filed 11-9-94; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2750]

Wisconsin; Declaration of Disaster Loan Area

Adams County and the contiguous Counties of Columbia, Juneau, Marquette, Portage, Sauk, Waushara, and Wood in the State of Wisconsin constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on August 27, 1994. Applications for loans for physical damage may be filed until the close of business on December 27, 1994 and for economic injury until the close of business on July 26, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury: businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 275012 and for economic injury the number is 838300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 26, 1994.

Richard Hernandez,

Acting Administrator.

[FR Doc. 94-27866 Filed 11-9-94; 8:45 am]

BILLING CODE 8025-01-M

Honolulu District Advisory Council; Public Meeting

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting on Tuesday, November 15, 1994 at 11:30 a.m. at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii 96850, to discuss such matter as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2314, Honolulu, Hawaii 96850 (808) 541-2965.

Dated: November 3, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94-27867 Filed 11-9-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Rotorcraft Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee on rotorcraft issues to discuss current rulemaking actions and future activities and plans.

DATES: The meeting will be held on November 29, 1994, at 9 a.m. CST. Arrange for oral presentations by November 15, 1994.

ADDRESSES: The meeting will be held at the FAA Southwest Regional Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137-0110.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Herber, Office of Rulemaking, Aircraft & Airport Rules Division, AIR-200, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3498.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II). The agenda will include:

- Review of up-dated AARC Operating Procedures.
- Report from the External Load Working Group.
- Discussion of relationship of the rotorcraft interests in the ARAC "Single-Engine IMC with Passengers" issue.
- Discussion of future activities and plans.
- Develop meeting schedule for 1995.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by November 15, 1994, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Executive Director or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, on November 7, 1994

Eric Bries,

Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-27914 Filed 11-9-94; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 27954]

Report to Congress on Quiet Aircraft Technology for Propeller and Rotor Driven Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice, request for comment.

SUMMARY: This notice requests comment and information to help fulfill a requirement from the Federal Aviation Administration Authorization Act of 1994 that requires the Federal Aviation Administration (FAA) and the National Aeronautics and Space Administration (NASA) to conduct a joint study to identify the technologies for noise reduction in propeller-driven airplanes and rotorcraft. This notice solicits information and comment on specific issues; the FAA will consider all responses in preparing its report to Congress on the Quiet Aircraft Technology for Propeller and Rotor Driven Aircraft.

DATES: Comments must be received on or before December 27, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket, Docket No. 27954, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591.

Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mehmet Marsan, Research and Engineering Branch (AEE-110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 7703; fax (202) 267-5594.

SUPPLEMENTARY INFORMATION:

Background

Section 308 of the Federal Aviation Administration Authorization Act of 1994 requires the FAA and NASA to jointly conduct a noise study and report the results to Congress. This study shall identify technologies for noise reduction of propeller-driven airplanes and rotorcraft. The goal of the study is to determine the status of research and development now underway in the area of noise reduction technology for propeller-driven airplanes and rotorcraft, and to determine whether a research program to supplement existing research activities is necessary.

The FAA and NASA have developed a plan for conducting the required study and completing the report to Congress. The plan's major elements include an assessment of current noise reduction technology for propeller driven airplanes and rotorcraft, a review of the study findings with appropriate groups, and preparation of the report to Congress.

The FAA and NASA are in the process of determining the status of research and development now underway within NASA in the area of noise reduction technology for propeller-driven airplanes and rotorcraft.

Participation of federal agencies will be invited through the Federal Interagency Committee on Aviation Noise (FICAN).

Request for Information

In supplementing the study findings, the FAA is seeking comment and information regarding the following 6 questions. A discussion of each will be incorporated into the FAA/NASA report to Congress. Additional comments regarding any of the issues raised by Congress under Section 308 of the Authorization Act are also invited. The FAA and NASA will review and consider all responses in preparing its report to Congress.

1. What are the existing and emerging propeller driven airplane and rotorcraft noise reduction technologies?
2. Which noise reduction technologies can be retrofitted to the current propeller driven airplanes and rotorcraft and what are the economic impacts?
3. To what extent do existing noise reduction technologies succeed in reducing noise exposure?
4. To what extent is noise from propeller driven airplane and rotorcraft considered a problem requiring further research efforts?
5. What aspects of propeller driven airplane and rotorcraft noise create impact?
6. What are the areas of propeller driven airplane and rotorcraft noise reduction technology that require further research?

The FAA encourages public participation in this opportunity to comment to comply with the requirements of the Federal Aviation Administration Authorization Act of 1994. The data received for this request will be considered in preparing the report to Congress. Comments responding to these questions should be mailed to the office designated in the **ADDRESSES** heading and include docket number. Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27954." The postcard will be date-stamped by the FAA and returned to the commenter.

Issued in Washington, DC, on November 4, 1994.

Louise E. Maillett,

Director, Office of Environment and Energy.

[FR Doc. 94-27913 Filed 11-9-94; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, enforcement and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, enforcement and other programs will be held on December 21, 1994, beginning at 9:30 a.m. and ending at approximately 12:30 p.m. Questions relating to the agency's rulemaking, enforcement and other programs must be submitted in writing by December 12, 1994, to the address shown below. If sufficient time is available, questions received after the December 12th date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by December 12th 1994, and the issues to be discussed will be mailed to interested persons by December 16, 1994, and will be available at the meeting.

Also, the agency will hold a second public meeting on December 20, devoted exclusively to a presentation of research and development programs. The meeting will being at 1:00 p.m. and end at approximately 4:30 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the December 21, NHTSA Technical Industry Meeting, to be held from 9:30 a.m. to 12:30 p.m., relating to the agency's rulemaking and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, NRM-01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. Questions for the Research and Development Program Meeting to be held on December 20, from 1:00 p.m. to 4:30 p.m. should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD-01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, SW, Washington, DC

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20590. Both meetings will be held at the Department of Transportation, 400 7th Street SW, Washington, DC in Room 4436–40.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting from 9:30 a.m. to 12:30 p.m., to answer questions from the public and the regulated industries regarding the agency's rulemaking, enforcement and other programs, on December 21, 1994. Since the agency is holding a separate meeting on its research and development programs, any questions on those issues will only be answered at the afternoon meeting to be held on December 20, 1994 from 1:00 p.m. to 4:30 p.m. and should be submitted to the Research and Development Office. However, questions on aspects of the agency's research and development activities that relate to ongoing rulemaking procedures should be submitted, as in the past, to the agency's Rulemaking Office. The December 20th and the December 21st meeting will be held at the Department of Transportation (DOT), 400 7th Street, SW, Washington, DC in Room 2230. The purpose of the meetings is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of the meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting and the NHTSA Industry Research and Development Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf person (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB December 12, 1994, for the 9:30 a.m. to 12:30 p.m. portion of the meeting or Barbara Coleman (202) 366–1537 by COB December 12, 1994 for the 1:00 p.m. to 4:30 p.m. portion.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–27817 Filed 11–9–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Frontier Pacific Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34156 to reflect this addition:

Frontier Pacific Insurance Company. BUSINESS ADDRESS: 6404 Wilshire Blvd. #850, Los Angeles, California, 90048–5510. PHONE: (213) 653–4058. UNDERWRITING LIMITATION *b/*: $1,511,000. SURETY LICENSES *c/*: CA, NV. INCORPORATED IN: California

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: November 4, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service,

[FR Doc. 94–27868 Filed 11–9–94; 8:45 am]

BILLING CODE 4810–35–M

Office of Thrift Supervision

Carteret Federal Savings Bank of Florida Pompano Beach, Florida; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Carteret Federal Savings Bank of Florida, Pompano Beach, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 28, 1994.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27819 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

Cherokee Valley Federal Savings Association, Cleveland, Ohio; Notice of Replacement of Conservation With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Cherokee Valley Federal Savings Association, Cleveland, Ohio ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 23, 1994.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27820 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

Home Federal Savings Bank, Norfolk, VA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Home Federal Savings Bank, Norfolk, Virginia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 30, 1994.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27821 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

Second National Federal Savings Association, Salisbury, MD; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as

Conservator Second National Federal Savings Association, Salisbury, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 16, 1994.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27822 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

TransOhio Federal Savings Bank, Cleveland, OH; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator TransOhio Federal Savings Bank, Cleveland, Ohio ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 16, 1994.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27823 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–71; OTS No. 03690]

Catlettsburg Federal Savings and Loan Association, Catlettsburg, KY; Approval of Conversion Application

Notice is hereby given that on November 2, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Catlettsburg Federal Savings and Loan Association, Catlettsburg, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27824 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–60; OTS No. 06466]

Central Kentucky Federal Savings and Loan Association, Danville, KY; Approval of Conversion Application

Notice is hereby given that on October 3, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Central Kentucky Federal Savings and Loan Association, Danville, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27825 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–68; OTS Nos. H–2064 and 02855]

Fed One Bank, M.H.C., Wheeling, WV; Approval of Conversion Application

Notice is hereby given that on October 28, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fed One Bank, M.H.C., Wheeling, West Virginia, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27826 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–75; OTS No. 03920]

First Federal Savings and Loan Association, Bucyrus, OH; Approval of Conversion Application

Notice is hereby given that on November 3, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association, Bucyrus, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27827 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–70; OTS No. 04381]

First Federal Savings Bank of Frankfort, Frankfort, KY; Approval of Conversion Application

Notice is hereby given that on November 1, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Frankfort, Frankfort, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–27828 Filed 11–9–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–73; OTS No. 03346]

First Keystone Federal Savings Bank, Media, PA; Approval of Conversion Application

Notice is hereby given that on November 3, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Keystone Federal Savings Bank,

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Media, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27829 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-61; OTS No. 04834]

Gilmer Savings Bank FSB, Gilmer, TX; Approval of Conversion Application

Notice is hereby given that on October 20, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Gilmer Savings Bank FSB, Gilmer, Texas, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27830 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-62; OTS No. 00076]

Home Building Savings Bank, FSB, Washington, Indiana; Approval of Conversion Application

Notice is hereby given that on October 27, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Building Savings Bank, FSB, Washington, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27831 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-65; OTS No. 00470]

Huntington Federal Savings and Loan Association, Huntington, West Virginia; Approval of Conversion Application

Notice is hereby given that on October 28, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Huntington Federal Savings and Loan Association, Huntington, West Virginia, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27832 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-64; OTS No. 00813]

Investors Federal Savings, Kensley, Kansas; Approval of Conversion Application

Notice is hereby given that on October 27, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Investors Federal Savings, Kensley, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27833 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-74; OTS No. 08050]

Lafayette Savings Bank, F.S.B., Lafayette, Indiana; Approval of Conversion Application

Notice is hereby given that on November 3, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Lafayette Savings Bank, F.S.B., Lafayette, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27834 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-72; OTS No. 02295]

Mutual Savings Bank, f.s.b., Jefferson City, Missouri; Approval of Conversion Application

Notice is hereby given that on November 2, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Mutual Savings Bank, f.s.b., Jefferson City, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27835 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-67; OTS No. 04844]

Perry County Savings Bank, FSB, Perryville, Missouri; Approval of Conversion Application

Notice is hereby given that on October 28, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Perry County Savings Bank, FSB, Perryville, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27836 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-63; OTS No. 06300]

Twin City Federal Savings Bank, Bristol, Tennessee; Approval of Conversion Application

Notice is hereby given that on October 27, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Twin City Federal Savings Bank, Bristol, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27837 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-69; OTS No. 12269]

Washington Federal Bank for Savings, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on November 1, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Washington Federal Bank for Savings, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27838 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

[AC-66; OTS No. 01273]

Watsonville Federal Savings and Loan Association, Watsonville, California; Approval of Conversion Application

Notice is hereby given that on October 28, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Watsonville Federal Savings and Loan Association, Watsonville, California, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: November 4, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94-27839 Filed 11-9-94; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Freedom Support Act Secondary School Initiative—U.S./NIS Academic Studies Inbound/Outbound Program

ACTION: Notice—Request for Proposals.

SUMMARY: The NIS Secondary School Initiative Division, Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award to facilitate academic exchanges between American high school students and students from the 12 Newly Independent States (NIS) of the former Soviet Union. Public or private non-profit organizations and educational institutions meeting the provisions described in IRS regulation 501(c)(3) may apply to develop projects that promote the purposes of this program, which are to: (a) Build the capacity of organizations to conduct academic exchanges at the secondary school level between the U.S. and the NIS; (b) promote study abroad opportunities in the NIS for Americans; and (c) sponsor study opportunities in the U.S. for NIS high school-aged students. Applicants may apply for grants of up to two years duration. Full-year exchanges are permitted only in the second year of the grant. Exchanges of three to five months duration may take place during the 1996 spring semester, the 1996 fall semester, the 1997 spring semester, and the 1997 fall semester. Full year exchanges for both inbound and outbound students may take place during the 1996-97 academic year.

Overall grant making authority for this program is contained in the Secondary School Exchange Initiative, as originally authorized in the Freedom Support Act of 1992 (Pub. L. 102-391). It is anticipated that $5 million will be allotted to this program. However, grants are subject to the availability of funds in Fiscal Year 1995.

Programs and projects must conform with Agency requirements and guidelines as outlined in the Solicitation Package.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P-95-24. This is a request for proposals only for the program models described above. Requests for proposals in support of other youth exchange programs with the NIS are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, January 20, 1995. Faxed documents will not be accepted, nor will documents postmarked on January 20, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Notification of awards will be announced on or after March 24, 1995. Grant funds should be available by June 1, 1995.

FOR FURTHER INFORMATION CONTACT: David Dallas, Division for the Secondary School Initiative, E/PY, room 314, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone:

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(202)619–6299; Fax (202) 619–5311, to request a Solicitation Package. This package includes all application forms; more detailed award criteria; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Division of the Secondary School Initiative. Once the RFP deadline has passed, Agency representatives may not discuss this competition in any way with applicants until after the Bureau's proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package and send only complete applications to: U.S. Information Agency, Ref.: E/P–95–24, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The purpose of this program is to provide the opportunity for American students to study at a school and experience life with a host family and its community in one of the 12 Newly Independent States of the former Soviet Union, and, to sponsor students from countries of the former Soviet Union to study at an American school and experience life with a host family and its community in the U.S. Grant funding is also intended to provide avenues that will enhance the students' understanding of each country's political, social, and cultural and ethnic diversity; to promote the exchange of ideas; and to foster long-term friendships. The countries of the NIS are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrogyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Guidelines

This program has four components. Please note that each component is independent of the other and is not subject to reciprocity. However, applicants may opt to apply for any component or a combination of any or all four.

A. Outbound Semester

This component will give American high-school students a chance to live with a host family and study at the secondary school level in an NIS country for a period of no less than three months.

B. Inbound Semester

This component provides opportunities for NIS high school students to live with a host family and study at secondary level institutions for one academic semester in the U.S.

C. Academic Year Outbound

This component provides opportunities for American high school students to study for a full year in one of the countries of the former Soviet Union, and to more fully experience the life and culture of a host family and its community.

D. Academic Year Inbound

This component provides the opportunity for students from the former Soviet Union to study for a full year at an American high school, and to more fully experience the life and culture of a host family and its community.

There is no prescribed formula for either component of the program. However, organizations should encourage students to participate in extracurricular activities as well as provide students with community based activities. Also, organizations have the option to disperse students widely or concentrate groups of students in regional clusters. The purpose of clustering is to facilitate periodic gatherings for ongoing orientation, excursions and cultural programming, as well as supervision and feedback. Organizations should identify in their proposals the target regions, states and/or communities in which placements will be sought. Regardless of the placement plan, organizations may propose periodic gatherings of students locally, regionally or nationally.

Grantee organizations working with their offices overseas and/or NIS partners will: Recruit and select students based on merit using their own criteria; arrange for their placement in schools; select and orient host families; make all travel and logistical arrangements; conduct orientation sessions; conduct re-entry and debriefing sessions; supervise students, solve problems, and provide counseling as needed; develop a mechanism for the transfer of academic credit and/or the certification of school attendance; interact with the schools on an ongoing basis; and evaluate the program's success. Proposals should succinctly describe how these elements will be handled, with special attention to the following factors:

—Organizations must demonstrate the capacity to secure quality homestays and school placements for the number of students on which they are bidding in conformance with the regulations governing J visas for inbound secondary school students.
—The proposal should include a description of the process the organization uses to identify and screen potential host families, as well as its system for making school placements.
—Proposals using the cluster method should: Specify the cluster size and likely locations; and include a description of how clustering will affect the program, such as scheduling periodic gatherings of the students. A sample schedule of gatherings and topics or themes to be addressed should be included.
—An organization using the dispersal method should include a justification for not using the cluster model and explain its placement philosophy; and if planning period gatherings the proposal should include a tentative itinerary for a sample meeting.
—Inbound students should be sufficiently proficient in English upon arrival in the U.S. to function in a high-school environment. No USIA grant funding will be provided for English training under this program. Preference will be given to proposals that include language skills as a selection criterion for American students going to the NIS. Applicant organizations with alternative approaches to language qualifications should discuss them in the proposal.
—Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details.

Eligibility

Both private not-for-profit organizations and public educational institutions including secondary schools, school districts and state education agencies are eligible. Organizational and educational consortiums are invited to participate.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. Cost-sharing is encouraged and may be in the form of allowable direct or indirect costs. Please refer to the Solicitation Package and Guidelines for complete budget and formatting instructions.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the Agency's Area Office and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to Agency's mission and the program idea as described above.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should also clearly demonstrate how students will be selected on the basis of merit and the qualifications needed for a successful program.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or ongoing activities and efforts that further the principle of diversity within both the organization and the program activities.

6. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's record/ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. *Project evaluation:* Proposals should include a plan to evaluate the success of the program, both as the activities unfold and at its conclusion. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of a methodology to use to link outcomes to original project objectives. Grantee organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly reports, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-partner country relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 24, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: November 1, 1994.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 94–27502 Filed 11–9–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials for Fiscal Year 1993 has been issued. The Report summarizes activities of the Committee on matters relative to programs, policies and accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540,

and

Department of Veterans Affairs, National Cemetery System, 810 Vermont Ave., NW., Washington, D.C. 20420.

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Dated: October 19, 1994.
Heyward Bannister,
Committee Management Officer.
[FR Doc. 94–27869 Filed 11–9–94; 8:45 am]
BILLING CODE 6330–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 217
Thursday, November 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 15, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.
[FR Doc. 94–28076 Filed 11–8–94; 3:07 pm]
BILLING CODE 6715–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Tuesday, November 15, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1995 budget for the Office of Employee Benefits.
2. Proposed changes to actuarial assumptions and related delegation to the Committee on Employee Benefits.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:
Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 8, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–27983 Filed 11–8–94; 10:56 am]
BILLING CODE 6210–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 3:30 p.m., Tuesday, November 15, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: (A) A proposed 1995 Retiree Pension Supplement; (B) retirement benefits; and (C) proposed changes to the Thrift Plan Investment Options.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 8, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–27984 Filed 11–8–94; 10:56 am]
BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 52861, October 19, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Operations and Regulations Committee will be held on October 27-28, 1994. The meetings began at 10:00 a.m., on October 27, 1994, and at 9:00 a.m., on October 28, 1994.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Marriott at Metro Center, 775 12th Street, N.W., Salon "A", Washington, D.C., (202) 737–2200.

CHANGES IN THE MEETINGS:

MATTERS TO BE CONSIDERED: The Committee also considered proposed changes to 45 C.F.R. Part 1611.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: November 7, 1994.
Patricia D. Batie,
Corporate Secretary.
[FR Doc. 94–27939 Filed 11–8–94; 9:30 am]
BILLING CODE 7050–01–M

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Corrections

Federal Register
Vol. 59, No. 217
Thursday, November 10, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 940818-4216]

RIN 0693-AA70

Approval of Federal Information Processing Standards Publication 189, Portable Operating System Interface (POSIX); Part 2: Shell and Utilities

Correction

In the correction to notice document 94-25049 appearing on page 55531 in the issue of Monday, November 7, 1994, correction 2. is corrected to read as follows:

2. On the same page, in the third column, in the third and fourth lines, "c-1" should read "c;1".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL—5090—3]

Utah; Final Authorization of State Hazardous Waste Management Program

Correction

In rule document 94-25386 beginning on page 52084 in the issue of Friday, October 14, 1994, make the following change:

On page 52085, in the first column, in the second paragraph, in the 11th line, the parenthetical phrase should not have appeared. Insert in its place "November 13, 1994."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34779; File No. SR-DTC-94-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change Implementing the Prime Broker Option in the Institutional Delivery System

Correction

In notice document 94-25002 beginning on page 51465 in the issue of Tuesday, October 11, 1994, make the following correction:

On page 51467, in the first column, the signature and title lines preceding the file line were omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34780; File Nos. SR-MCC-93-07 and SR-MSTC-93-14]

Self-Regulatory Organizations; Midwest Clearing Corporation and Midwest Securties Trust Company; Notice of Amendments and Order Approving on an Accelerated Basis Proposed Rule Changes Establishing a Risk Assessment Committee and Making Various Other Changes to MCC's and MSTC's BY-Laws and Rules

Correction

In notice document 94-25040 beginning on page 51462 in the issue of Tuesday, October 11, 1994, make the following change:

On page 51462, following the subject heading, the date was omitted and should have appeared as follows:

"October 3, 1994."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34875; File Nos. SR-MCC-94-13 and SCCP-94-06]

Self-Regulatory Organizations; Midwest Clearing Corporation and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Expanding the Interfaces With the National Securities Clearing Corporation's Fixed Income Transaction System

Correction

In notice document 94-26766 beginning on page 54228 in the issue of Friday, October 28, 1994 make the following correction:

On page 54229, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Jonathan G. Katz,

Secretary.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-78-AD; Amendment 39-9052; AD 94-22-03]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

Correction

In rule document 94-26366, beginning on page 54123, in the issue of Friday, October 28, 1994, in the first column, the first line under **DATES**, the effective date should read "November 28, 1994".

BILLING CODE 1505-01-D

federal register

Thursday
November 10, 1994

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 401, et al.

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 431, 435, 440, 441, 442, 447, 483, 488, 489, and 498

[HSQ–156–F]

RIN 0938–AD94

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of the Omnibus Budget Reconciliation Act of 1987, as further amended by subsequent 1988, 1989, and 1990 legislation. These provisions make significant changes in the process of surveying skilled nursing facilities under Medicare and nursing facilities under Medicaid and in the process for certifying that these facilities meet the Federal requirements for participation in the Medicare and Medicaid programs. They also set forth a number of alternative remedies which may be imposed on facilities that do not comply with the Federal participation requirements (instead of or in addition to termination), and specify remedies for State survey agencies that do not meet surveying requirements.

DATES: These regulations are effective July 1, 1995.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Kaplan Schoenemann, (410) 966–6771.

SUPPLEMENTARY INFORMATION:

I. Background

To participate in the Medicare or Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation requirements for these facilities are specified in HCFA regulations at 42 CFR part 483, subparts A through C.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by HCFA and the Medicaid State agency, respectively, as the basis for a decision to enter into, deny, or terminate a provider agreement with the facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual residents.

SNFs that are approved for participation in the Medicare program also meet the participation requirements for the Medicaid program. However, the Medicaid State agency is not obligated to enter into a Medicaid provider agreement with a facility just because the Secretary has entered into a Medicare provider agreement with the facility. Additionally, if a State imposes Medicaid requirements that exceed those of Medicare, section 1863 of the Act provides that the higher requirements must be met by the Medicare SNFs in that State.

Before the 1987 legislation, the only adverse actions available to HCFA and the States against facilities that were determined to be out of compliance with Federal participation requirements included termination, nonrenewal, or automatic cancellation of provider agreements; denial of participation for prospective facilities; and denial of payment for new admissions in lieu of termination when the facilities had deficiencies that did not pose an immediate and serious threat to the health and safety of residents. (The denial of payment action has been considered an "alternative" sanction because it is an alternative to termination.)

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, enacted on December 22, 1987, amended the Act to incorporate specific provisions for nursing home reform. These provisions included specific revised requirements for the survey and certification process (section 4202 for Medicare and section 4212 for Medicaid) and for the enforcement process (sections 4203 and 4213). Sections 4202 and 4212 of OBRA '87 added new sections 1819(g) and 1919(g) to the Act to revise and expand Medicare and Medicaid provisions, respectively, on State and Federal responsibilities for survey and certification, types of and requirements for surveys, survey team composition and responsibilities, requirements for validation surveys, procedures for investigating complaints and monitoring compliance, disclosure of results of inspections and activities, and provisions for penalties imposed on the States for failure to comply with survey process requirements. Sections 4203 and 4213 of OBRA '87 added sections 1819(h) and 1919(h) to the Act to specify the Medicare and Medicaid enforcement process, respectively, and specified remedies for noncompliance to be used in lieu of or in addition to termination of facilities' participation in the programs. Section 411 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360, enacted on July 1, 1988, also included a number of technical and correcting amendments affecting these OBRA '87 provisions. These changes will be discussed in detail later in this preamble.

On August 28, 1992, we published a proposed rule in the **Federal Register** (57 FR 39278) setting forth our proposal for altering the requirements for surveying facilities and expanding the choice of alternative remedies for HCFA and the Medicaid State agency to apply in lieu of or in addition to termination of facilities that do not comply with participation requirements. In the proposed rule we said that our goal is to promote facility compliance by ensuring that all deficient providers are appropriately sanctioned. Termination is still possible any time a facility is identified as having deficiencies, and if a facility continues to have deficiencies after a specified period of time, the law requires that Federal payments for services in that facility cease at that time.

In the proposed rule we indicated that we are implementing the Congress' mandate, as indicated in OBRA '87, to abandon our traditional hierarchical requirement system and develop a system capable of detecting and responding to noncompliance with any requirement. The system we proposed was built on the assumption that all requirements must be met and enforced and that requirements take on greater or lesser significance as a function of the circumstances and resident outcomes in a particular facility at the time of survey. The surveyors will determine the existence or nonexistence of immediate and serious threat to residents as well as the severity and scope of a deficiency to arrive at a conclusion as to the seriousness of that deficiency in that facility. The proposed regulations incorporated scope and severity surveyor guides for determining the remedy or remedies to apply. We also proposed that the selection of a particular remedy be based on the nature of the deficiencies and the remedy (or remedies) that either HCFA or the Medicaid State agency believes is most likely to achieve correction of the deficiencies. As we stated in the proposed rule, we believe that remedies applied in the manner described within the proposed regulations will deter violations as well as encourage immediate response and sustained compliance.

The new system also proposed changes in the enforcement authority for dually participating (Medicare and Medicaid) facilities. OBRA '89 provided the basis for decisions as to whether the State's or the Secretary's determination of compliance or noncompliance or choice of remedies is binding in the case of a dually participating facility. Moreover, the statute at section 1919(h)(8), provides that whether certification decisions and enforcement actions, as applied to Medicaid, are those of the Secretary or the State, the same certification decision and enforcement actions will also apply to Medicare in a dually participating facility. In addition, the statute specifies whether the Secretary's or State's certification decision and enforcement remedies will prevail in the case of Federal validation surveys. Our August 28, 1992 proposed rule reflected these changes.

II. Provisions of the Proposed Rule

In the proposed rule published on August 28, 1992 in the **Federal Register**, we proposed to implement the provisions of OBRA '87, as further amended by subsequent 1988, 1989, and 1990 legislation. The specific proposals were as follows:

A. Routine Process of Certification and Enforcement

1. State-Operated Facilities

We proposed at § 488.155 and § 488.180 that in all State-operated facilities, the State survey agency conduct the survey, recommend to HCFA a certification of compliance or noncompliance and recommend appropriate enforcement action(s). After the survey agency forwards its survey findings and recommended certification and enforcement action(s) to HCFA, HCFA in turn would certify facility compliance or noncompliance and impose any enforcement action(s).

2. Non-State Operated Facilities

At §§ 488.155 and 488.180, we proposed the following:

- For non-State operated SNFs, to continue to use the process in effect before October 1, 1990, whereby the State survey agency conducts the survey and certifies compliance or noncompliance with Federal requirements subject to HCFA approval. We also proposed that the survey agency recommend appropriate remedies, and that, after the survey agency forwards its survey findings and recommended enforcement action(s) to HCFA for review, HCFA determines the compliance or noncompliance of the facility and imposes any enforcement action(s).
- For non-State operated NFs, to continue to use the process in effect before October 1, 1990, whereby the survey agency conducts the survey, certifies compliance or noncompliance with Federal requirements, and recommends appropriate enforcement actions to HCFA and the Medicaid State agency. The certification of compliance or noncompliance by the State is final except in the case of a complaint or validation survey, or review of the State's findings by HCFA in which the Secretary substitutes her judgment for that of the State. Except where the Secretary intervenes, the State makes all enforcement decisions and imposes remedies after consideration of the survey findings and recommended enforcement remedies. Regardless of which agency of the State exercises certification and enforcement authority, however, we look to the Medicaid State agency to assure compliance with Federal requirements.
- For dually participating facilities, the survey agency would conduct the survey, certify compliance or noncompliance with Federal requirements, and recommend appropriate enforcement actions. The certification of compliance or noncompliance and recommended enforcement action(s) by the State would be sent to both HCFA and the Medicaid State agency for review. In a new subpart F (Remedies for Long-Term Care Facilities with Deficiencies), we proposed to add a new § 488.234, to set forth procedures for occasions when there are State and Federal disagreements involving findings when there is no immediate and serious threat to the residents. We view section 1919(h)(8) of the Act as calling for the application of the decision for Medicaid NFs to Medicare SNFs when a facility is dually participating.

B. Validation Surveys and HCFA Oversight

Sections 1819(g)(3)(A) and 1919(g)(3)(A) of the Act direct the Secretary to conduct onsite surveys of a representative sample of nursing homes within 2 months of the last day of survey when the Secretary is validating the State survey agency's performance. If the State determines that the facility is in compliance, but the Secretary finds that the facility is out of compliance, the Secretary's determination as to the facility's noncompliance is binding and supersedes that resulting from the State survey as specified at § 488.234(a)(2) of our NPRM and section 1919(h)(6)(B) of the Act. However, section 1919(h)(6)(A) specifies that when the State finds noncompliance and the Secretary makes no such finding, the State's noncompliance decision and enforcement actions control. We incorporated this in § 488.234(a)(1) of our proposed rule. At paragraph (a)(3) of § 488.234, we proposed that, when HCFA's survey findings take precedence, HCFA could—

- Impose any of the alternative remedies we specify in our proposed § 488.206 (Available remedies); or
- Permit payments to continue to the NF and dually participating facility if the applicable conditions at our proposed § 488.232 (Continuation of payments to a facility with deficiencies) are satisfied.

These provisions proposed to specify the means to determine compliance or noncompliance for the Medicaid NF which would then become the compliance/noncompliance decision for the Medicare SNF.

In our proposed § 488.234(b), we stated that, if both the Secretary and the State disagree over the decision to terminate a non-State operated NF or dually participating facility—

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• HCFA's decision to terminate the participation of a facility takes precedence when—

+ Both HCFA and the State find that the facility has not met all requirements; and

+ HCFA, but not the State, finds that the facility's participation should be terminated. We proposed that HCFA would permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months from the last day of the survey.

• The State's decision to terminate a facility's participation and the timing of termination would take precedence when—

+ The State, but not HCFA, finds that a facility's participation should be terminated; and

+ The State's timing for the termination is for no later than 6 months after the last day of survey.

In paragraph (c) of the proposed § 488.234, we stated that when the State and HCFA disagree over timing of termination of a facility, the State's timing takes precedence if it does not occur later than 6 months after the date of the finding to terminate. Paragraph (d) stated that when there is overlap of State and HCFA remedies, the HCFA remedies apply, and paragraph (e) stated that, regardless of whose decision controlled in paragraphs (b), (c), or (d), the compliance and enforcement decision for the Medicaid agreement is binding on the Medicare agreement in the case of a dually participating facility.

C. Hearings and Appeals

At § 488.180(e)(1), we proposed that the State must impose remedies on any Medicaid provider—

• When the State identifies violations of Federal requirements after notifying the provider of the deficiencies and impending remedy; and

• Except for civil money penalties, during the pendency of any hearing that the provider may request.

At § 488.180(e)(2), we proposed that appeal procedures under 42 CFR part 498 (Appeals Procedures for Determinations that Affect Participation in the Medicare Program) apply when the provider requests a hearing on HCFA's denial of participation, termination of provider agreement, or the Secretary's certification of noncompliance leading to an enforcement remedy, except State monitoring, against all State-operated facilities, as a result of a HCFA validation survey or HCFA's review of the State's survey findings and for non-State operated SNFs and dually participating facilities. The State must impose the same remedy, which is also subject to these appeal procedures. At § 488.180(e)(3) of our proposed rule, we proposed that the appeal procedures under 42 CFR part 431 (State Organization and General Administration) apply in cases when the provider requests a hearing on the State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy against a non-State operated Medicaid NF.

D. Prospective Providers

At § 488.180(f), we proposed that prospective providers applying to participate in the Medicare or Medicaid (or both) programs meet all participation requirements as a precondition of their participation. As we explained in the preamble of the proposed rule, we based this on various provisions of the Act and the legislative history and on the overall structure of the Act which differs significantly from the one previously in effect.

E. Substandard Care

In § 488.151 (Definitions), we proposed defining substandard care as care furnished in a facility that has one or more deficiencies in any area with a severity level of 3 or 4, regardless of scope; or a level 2 in severity with a level 3 or 4 in scope in quality of care requirements, as defined in § 483.25 (Quality of care). We described the levels for severity and scope in detail under the section of the preamble entitled, "Enforcement Options." That discussion is summarized in section J.11 of this background statement.

F. Surveys

Sections 1819(g) (2) and (3) and 1919(g) (2) and (3) of the Act, as added by sections 4202 and 4212 of OBRA '87, specify the requirements for types and periodicity of surveys that are to be conducted for each facility; including standard, special, partial extended, extended, and validation surveys. These provisions include specific contents and procedures, frequency, consistency, and team composition, and are intended to protect residents' rights, health and safety and not unduly burden the facilities or the survey agencies. We proposed to set forth implementing regulations as follows:

Standard Surveys

At § 488.155, we proposed that, for each SNF and NF, the State survey agency must conduct standard surveys and stated what they must include.

At § 488.158, we proposed to require each SNF and NF to be subject to a standard survey not later than 15 months after the last day of the previous standard survey and that the statewide average intervals between standard surveys must not exceed 12 months. We also specified when and how the average intervals would be computed.

Special Surveys

Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act, as added by OBRA '87, specify that a standard survey or an abbreviated standard survey may be conducted within 2 months of any change of ownership, administration, management of a facility, or director of nursing to determine whether the change has resulted in any decline in the quality of care furnished by the facility. A survey conducted for the purpose of investigating a complaint against a facility is also considered a special survey. An abbreviated standard survey is a partial survey that focuses on a specific participation requirement or requirements. At paragraph (e) of § 488.158, we proposed that the decision of whether to conduct a standard or an abbreviated standard survey under these circumstances be at a State survey agency's or the Secretary's discretion, based on the individuals and facilities involved and the State's concern that the quality of care may have declined.

Extended and Partial Extended Surveys

In accordance with Sections 1819(g)(2)(B) and 1919 (g)(2)(B) of the Act, we proposed to require that, during an extended survey, the survey team must review and identify the policies and procedures for those provisions of the regulations that produced the substandard quality of care and must determine whether a facility complies with all requirements of participation. The extended survey must also include an expansion of the size of the sample of residents' assessments reviewed, a review of the staffing levels and staff inservice training, and, if appropriate, an examination of contracts with consultants.

These provisions were incorporated in the proposed rule at § 488.160 (Extended survey).

Validation Surveys

We proposed that the validation surveys must be conducted within 2 months of the date of the State's surveys and must be of sufficient number to allow inferences about the adequacy of the State's surveys. In addition, the Act requires us to conduct validation surveys in at least 5 percent of the SNFs and NFs surveyed by each State during the year but in no case less than 5 facilities in each State. The same protocol used for the standard or extended survey must be used for the validation survey. We proposed to incorporate these requirements in paragraph (a) of § 488.166 (Validation surveys).

In the proposed rule, we dealt with four other survey-related issues:

Composition of Survey Teams

At § 488.164, we proposed that—

—Surveys must be conducted by a multidisciplinary team of professionals, which must include a registered nurse.

—A surveyor is disqualified for surveying a particular facility if he or she currently serves or, within the previous 2 years has served as a member of the staff of, or as a consultant to that facility, or if a member of his or her immediate family has any financial interest or any direct or indirect ownership interest in that facility.

Surveyors must receive comprehensive training, including the application and interpretation of regulations for SNFs and NFs, techniques and survey procedures for conducting standard and extended surveys; and techniques and survey procedures for auditing resident assessments and plans of care.

Consistency of Surveys

The proposed regulations at § 488.162 specify that the State must conduct ongoing studies and analyses, and/or implement new programs to measure and improve consistency in survey results, such as validation of surveyor findings, and the application of enforcement remedies. The proposed regulations also specified that HCFA will perform the same tasks.

Unannounced Surveys

While sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i) of the Act specifically require unannounced standard surveys, we proposed that all surveys, whether abbreviated, extended, follow-up, validation or otherwise, be unannounced and incorporated this provision in the proposed regulations at § 488.157. When a survey agency is found to have notified a SNF or NF through its scheduling or procedural policies, we are authorized to apply appropriate sanctions for inadequate survey performance specified at the proposed § 488.170 and described immediately below under the section entitled, "Inadequate Survey Performance."

Inadequate Survey Performance

If we find, as a result of the validation surveys, that the State has failed to perform the standard and extended surveys properly or that the State's performance is otherwise inadequate, we are authorized to apply an appropriate sanction for inadequate survey performance. Section 1819(g)(3)(C) of the Act requires the Secretary to provide an appropriate remedy (which may include training) when the State has failed to perform surveys required under the Act or when the Secretary has decided survey performance is not otherwise adequate. At § 488.170, we proposed the following remedies to be applied as appropriate:

• For Medicaid facilities HCFA will—

+ Reduce FFP and if appropriate,

+ Provide for training of survey teams.

• For Medicare facilities HCFA will—

+ Specify the inadequacy to the survey agency;

+ Require a plan of correction;

+ Provide for training of survey teams;

+ Provide technical assistance on scheduling and procedural policies;

+ Provide HCFA-directed scheduling; or

+ Initiate action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

G. Investigations of Allegations of Resident Neglect and Abuse and Misappropriation of Resident Property

In § 488.151, we proposed to define "abuse" as physical, psychological, or verbal interaction with a facility resident, including, but not limited to, ill treatment, physical violation, and/or other disregard of an individual which could cause or result in mild to severe, temporary or permanent mental or physical injury, harm, or, ultimately, death. "Neglect" would mean a failure, through inattentiveness, carelessness, or omission, of an individual, to provide timely, consistent and safe services, treatment, and care to a facility resident. "Misappropriation of resident property" would mean the deliberate misplacement, exploitation, or wrongful, temporary, or permanent taking or use of a facility resident's belongings or money, or both, without the resident's consent.

Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, as added by OBRA '87 and amended by section 411(a)(5)(C) of Public Law 100–360 (MCCA), require the State, through the agency responsible for surveys and certification of nursing facilities, to develop a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a facility or by another individual used by the facility in providing services to residents. These sections also provide, after notification of the allegations, for the State to provide the opportunity for a hearing to the individual against whom an allegation has been made; and if the allegations are confirmed, for the State to notify the individual, the nurse aide registry, and the appropriate licensure authorities if applicable. In § 488.185 (Action on complaints of neglect, abuse and misappropriation of property), we proposed regulations that would implement these provisions.

H. Investigation of Complaints of Violations of Federal Participation Requirements and Monitoring Compliance

In § 488.182 (Investigation of complaints of violations: Investigations and monitoring), we proposed that the survey agency be required to conduct surveys as frequently as necessary to ascertain compliance with the Federal requirements of participation or to confirm the correction of deficiencies under the cited circumstances. The proposed regulations would also incorporate the provisions of sections 1819(g)(4) and 1919(g)(4) of the Act that a State may maintain and use a specialized team to identify, survey, gather, and preserve evidence and to administer appropriate enforcement remedies against substandard facilities.

I. Disclosure of Survey Information

At § 488.175 (Disclosure of survey information), we proposed regulations to implement sections 1819(g)(5) and 1919(g)(5) of the Act, as added by OBRA '87. We proposed at § 488.175 to accept oral as well as written requests for information and to charge the public for the cost of retrieval, reproduction, and mailing information in accordance with regulations under the Freedom of Information/Privacy Act. The disclosing entity (HCFA, the survey agency, or the Medicaid State agency) would respond within 10 days with the requested information, if releasable and already available, or with an interim response explaining whether the information is releasable and when it will be available for release.

OBRA '90 specified which information is releasable and when it is available for release. Sections 1819(g)(5)(A) and 1919(g)(5)(A) of the Act provide that each State, and the Secretary, shall make available to the

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public information concerning all surveys and certifications of NFs and SNFs, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction. We proposed to implement this provision at § 488.175(d)(3).

Sections 1819(g)(5)(B) and 1919(g)(5)(B) of the Act require State survey agencies to notify the State's long-term care ombudsman of any adverse actions imposed against a facility. We proposed at 488.175(e) that the State survey agency be required to provide the State's long-term care ombudsman with the report of noncompliance of a facility, report of any adverse actions imposed, any written response by the SNF or NF, and the results of any appeals.

As a result of sections 4008(h)(2)(E) and 4801(e)(5)(D) of OBRA '90, sections 1819(b)(4)(C)(ii)(IV) and 1919(b)(4)(C)(ii)(IV) of the Act require the Secretary and the State, respectively, to provide notice to the State long-term care ombudsman and the State protection and advocacy system for the mentally ill and mentally retarded of SNF and NF waivers. Sections 1819(b)(4)(C)(ii)(V) and 1919(b)(4)(C)(ii)(V), as added by OBRA '90, require the facility receiving such nursing waivers to notify the residents of the facility (or, when appropriate, the guardians or legal representatives of such residents) and a resident's immediate family of the waiver. We proposed, at section 488.175 (f) and (g), that facilities give this notice within 10 days from the date the SNF or NF is granted the waiver.

Under sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act, the State is required to notify each attending physician and the State board responsible for licensing nursing home administrators when a facility has provided substandard quality of care. We proposed requiring each SNF or NF to provide either HCFA or the State, no later than 10 days after receiving a notice of substandard care, with a list of each Medicare and Medicaid resident in the facility and the name and address of his or her attending physician. We also proposed at § 488.175 requiring the State to notify the attending physicians and the State licensing board within 30 days of the date the SNF or NF is notified of a finding of substandard care. We recognized that this and the notification requirement related to nurse waivers were the only provisions in our proposed regulation which set forth requirements for nursing homes. All other provisions in the proposed rule set forth requirements for the Secretary and the State in the enforcement of nursing homes requirements. We included these facility requirements in the proposed rule because they directly or indirectly pertain to the enforcement process. The same sections of the Act also required the State survey agency to provide access to any information incidental to a facility's participation in Medicare or Medicaid upon request by the State Medicaid fraud control unit established under 42 CFR part 1002, subpart C. We proposed incorporating this provision under paragraph (j) of § 488.175.

J. Enforcement Options

1. Overview

As stated earlier, before the passage of OBRA '87, the only adverse actions available to HCFA and the States for imposition against long term care facilities that were out of compliance with Federal requirements were termination of participation, nonrenewal and automatic cancellation, and denial of participation for prospective providers. In addition, HCFA and the States had authority, in cases of long-term care facilities, to deny payment for new admissions to facilities rather than to terminate the provider agreements when deficiencies did not present an immediate and serious threat to the health and safety of residents of the facilities. The denial of payment provision was considered both an alternative to the more severe measures, as well as an intermediate step that HCFA or the State could take prior to and possibly in lieu of termination from the Medicare and Medicaid programs. The sanction afforded HCFA and the States the opportunity to defer the decision to terminate. Thus, the terms "alternative sanction" and "intermediate sanction" came into use to designate denial of payment for new admissions to facilities for a period of up to 11 months after the month in which the sanction was imposed. Former sections 1866(f) and 1902(i) of the Act were the authority for the alternative sanction under Medicare and Medicaid respectively. The Family Support Act of 1988, Public Law 100–345, repealed the Medicare provision and MCCA made the Medicaid provision applicable only to ICFs/MR.

OBRA '87 included revised and expanded authority for enforcement of the Federal participation requirements for long-term care facilities. We proposed adding a new subpart, subpart F (Remedies for Long Term Care Facilities with Deficiencies) to part 488 to implement these new provisions.

2. Determination of Deficiencies

Effective October 1, 1990, providers of nursing services participating in the Medicare or Medicaid programs were subject to the requirements of participation that were published on February 2, 1989 (54 FR 5316). These requirements focus more sharply on the resident care practices and outcomes, and facility practices with respect to resident rights.

In the proposed rule we explained that the collective exercise of surveyor judgments, which has always been the vehicle for the identification of deficiencies would remain unchanged. For this reason, we concluded that there was no more reason to have specific regulations governing this process than there had been in the past. Thus, we proposed that, surveyors would gather information based upon direct observations, record review, and interviews with residents, staff, and family members. Based on their collection of information, they would collectively compile and analyze it, and match the data to the legal standards facilities are obliged to meet to determine if deficiencies exist. As is true now, these conclusions would be based upon single observations or groups of observations, either one of which may sustain a finding that a requirement has not been met. We proposed that once the survey team made its judgments about whether the facts supported a conclusion that deficiencies exist, it would be the team's responsibility to assess the scope and severity of those deficiencies (in the manner described later in this preamble) in order to recommend one or more remedies to either HCFA or the Medicaid State agency for the enforcement of the requirements.

3. Remedies To Be Imposed as Alternative or Intermediate Sanctions

Consistent with sections 1819(h) and 1919(h) of the Act as added by OBRA '87, we proposed to add a new § 488.206, listing the available remedies. It stated that, in addition to termination of the provider agreement, the following remedies would be available:

- Temporary management;
- Denial of payment including—
  + Denial of payment for all new admissions;
  + Denial of payment for all new admissions in certain diagnostic categories or requiring specialized care; and
  + Denial of all payment (to be imposed only by HCFA) to facilities, for Medicare and to States, for Medicaid.
- Directed plan of corrections;

- State monitoring; and
- Civil money penalties.

Section 488.206 also proposed other remedies for non-State-operated Medicaid-only and dually participating facilities. They were:

- Closure of the facility and transfer of residents; and
- Additional or alternative State remedies.

Finally, we proposed at § 488.153 that, if a State wishes to use additional or alternative remedies, it must specify those remedies in the State plan, and demonstrate to HCFA's satisfaction that those remedies are as effective as those set forth in the Act.

At § 488.206, we set forth proposed rules governing the choice of remedies. We said that the survey agency or HCFA would assess individual deficiencies or clusters of deficiencies first according to the presence or absence of immediate and serious threat to resident health and safety, the severity of the deficiency, and the scope of the deficiency. We proposed that, following the initial assessment, HCFA and the survey agency may consider the following secondary factors:

- The relationship of one deficiency or group (cluster) of deficiencies to other deficiencies; and
- The facility's prior compliance history in general and specifically with reference to the cited deficiencies.

We said that the selection of a remedy would be based on the nature of the deficiencies or cluster of deficiencies. Proposed §§ 488.210 and 488.212 set forth the rules for imposition of particular remedies in specified circumstances. We said that, regardless of which remedy or remedies are imposed, each facility that is out of compliance with a program requirement would be required to submit a plan of correction for approval by HCFA or the survey agency, except in the case of deficiencies that HCFA or the State determines to be at a scope and severity level of 1.

The choice of remedy, by either HCFA or the State, including the manner in which HCFA or the State uses the scope and severity scales specified in § 488.204 would not be subject to review as part of the appeals process set forth in part 431 or part 498.

4. Temporary Management as a Remedy

When alternative remedies are imposed instead of termination to bring a facility into compliance with program requirements in an immediate and serious threat situation, temporary management would always be imposed immediately to remove the threat to residents in accordance with sections 1819(h)(2)(A)(i), 1919(h)(1)(A), and 1919(h)(3)(B)(i) of the Act. We proposed that temporary management also be available in addition to termination in an immediate and serious threat situation while there is an orderly termination or closure of the facility. In situations where deficiencies do not constitute an immediate and serious threat, HCFA or the State also may appoint a temporary manager to substitute as a manager or administrator. (Other remedies in addition to temporary management may also be imposed in the case of immediate and serious threat situations.)

The temporary manager would have the authority to hire, terminate and reassign staff, obligate facility funds, alter facility procedures as appropriate, or otherwise manage the facility as necessary to correct deficiencies identified in the facility's operation. The temporary manager would be required to be a licensed nursing home administrator within the State or have a reciprocal agreement with the State in which he or she is to serve, demonstrate prior competence as a nursing home administrator, and have had no disciplinary action taken against him or her by any licensing board of any State or by any professional society in the past 5 years. We proposed as well that neither the temporary manager nor his or her immediate family could have a financial or ownership interest in the facility. The temporary manager's salary would be paid by the facility. We proposed that the salary for the temporary manager may not exceed an amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, additional costs that would have reasonably been incurred by the provider if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement (for example, travel allowance) or as otherwise set by the State.

We proposed that termination would be imposed if the facility does not agree to this remedy or refuses to relinquish authority to the temporary manager. In addition, if, despite the appointment of a temporary manager, the immediate and serious threat is not removed within 23 days of the appointment of the temporary manager or if non-immediate and serious threat deficiencies are not corrected within 6 months from the last day of survey, the facility's participation would be terminated.

We proposed incorporating the above provisions regarding temporary management in §§ 488.206, 488.210, and 488.215.

5. Denial of Payment for New Admissions As a Remedy

We proposed that a new § 488.217 be added to part 488 to set forth denial for payment for all new admissions as a sanction as follows:

- For all new admissions
  —HCFA or the State may deny payment for new admissions. However, HCFA will and the State must deny payment for new admissions if—
  + Any deficiency remains uncorrected within 90 calendar days after the last day of survey identifying the deficiencies; or
  + The survey agency has cited a facility with substandard quality of care on the last 3 consecutive standard surveys.
  —If the facility achieves compliance with the requirements, HCFA does or the State must resume payments to the facility prospectively from the date that it determined that compliance has been achieved.
- Denial of payment for new admissions in certain diagnostic categories or requiring specialized care.
  —HCFA or the State may deny payment for new admissions who have certain specified diagnoses or special care needs when HCFA or the State finds that—
  + The facility is not currently able to provide care for these individuals; or
  + Caring for these individuals will adversely affect care provided to other residents.
  —If the facility achieves compliance with the requirements, HCFA does or the State must resume payment to the facility prospectively from the date that it determines that compliance has been achieved.

6. Directed Plan of Correction

Sections 1819(h)(2)(B) and 1919(h)(2)(A) permit the Secretary and the State, respectively, to provide for other specified remedies. At § 488.224, we proposed adding a directed plan of correction as a remedy in which a facility could be required to take action within specified timeframes according to the plan of correction developed by HCFA, the survey agency, or the temporary manager (with HCFA or survey agency approval).

The directed plans of correction would set forth the expected correction actions which the facility must take to achieve compliance and the dates by which the actions must be taken.

7. Use of State Monitoring As a Remedy

In §§ 488.206 and 488.222, we proposed that, if State monitoring is

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used as a remedy, State monitors would be required to be onsite as frequently as necessary to oversee the correction of specific deficiencies cited. This remedy differs from traditional revisits by the survey agency in that State monitors are onsite, as necessary, while corrections are being made, as opposed to a revisit which occurs after corrections are completed, and serve to confirm that the deficiency has been removed. We said that State monitoring must be used as a remedy when a survey agency has cited a facility with substandard quality of care on the last three consecutive standard surveys.

We proposed that individuals serving as State monitors would be required to be employees or contractors of the State survey agency, and maintain professional qualifications needed to address the specific nature of the deficiencies. The State would be responsible for ensuring that the monitors are appropriate health care professionals. A State monitor could not function as a consultant to the facility nor could the State monitor be an employee of the facility. We concluded that a monitor serving as a consultant to a facility would potentially put the State in a situation of defending the monitor's recommendations rather than making the facility responsible for correcting its deficiencies. Additionally, a monitor employed by a facility and working for the State would constitute a conflict of interest.

8. Civil Money Penalties

At § 488.230, we proposed allowing civil money penalties to be imposed for noncompliance regardless of whether or not the deficiencies constitute immediate and serious threat to resident health and safety. However, we proposed at § 488.230(b) that civil money penalties would not be imposed during the pendency of a hearing on the imposition of that remedy.

We proposed that, if HCFA wants to impose a civil money penalty, it must notify the provider in writing of the intent to impose a penalty. The notice would include reference to the statutory basis for the penalty, the amount of the penalty per day of noncompliance, any circumstances that were considered when determining the amount per day of the proposed penalty, and instructions for responding to the notice, including a specific statement of the facility's right to a hearing and implications of waiving a hearing.

If the State proposes to impose a civil money penalty, the State would notify the facility in accordance with State procedures.

We proposed that a penalty amount would be permitted to be imposed within the following ranges:

- For deficiencies constituting an immediate and serious threat (that is, a severity level of 4, regardless of scope)—$3,050 to $10,000 per day;
- For deficiencies constituting nonimmediate and nonserious threat above a scope or severity level of 1—$50 to $3,000 per day.
- For both levels, the amount of the civil money penalty would be set at $50 increments within these ranges.

Removal of the immediate and serious threat, but not the deficiencies, would justify the shift to the range of penalties that are imposed for nonimmediate and nonserious threat above a scope or severity level of 1. A penalty would be imposed at the immediate and serious level for the number of days the immediate and serious threat is present. We proposed that a provider may, in lieu of contesting the deficiency which led to the imposition of the civil money penalty, waive the right to a hearing within the specified timeframes and procedures in the regulations under § 498.40 (Request for hearing) for Medicare and § 431.221 (Request for hearing) for Medicaid. If the facility were to waive the right to a hearing within 60 days from the date of notice, HCFA or the State would be required to reduce the civil money penalty by 35 percent. If the facility were to waive the right to a hearing after the 60th day, HCFA's or the State's settlement would be discretionary. The reduction in the civil money penalty would reflect the savings to both the government and the provider of costs that would otherwise be incurred to formally adjudicate the dispute. The provider would be free to reject the option to waive the right to a hearing. We proposed that the daily fine amount of a facility could be increased if the facility alleges compliance, but on a revisit by HCFA or the State survey agency, the facility is still found to be noncompliant with the same requirements. The purpose of giving HCFA or the State discretion to increase the daily fine, we believe, would be to deter unfounded allegations of compliance. The amount of increase, if any, would be effective the day following the resurvey.

In determining the amount of the penalty, section 1128A(d) of the Act requires the Secretary to consider specific matters and also provides authority to take into account any other items relevant to the penalty determination. We proposed that the Secretary's nondiscretionary and discretionary requirements be applicable to the State as well to make the Medicare and Medicaid requirements equivalent for SNFs and NFs. We do not believe that the Congress intended to have two separate assessment methodologies in place between both enforcement authorities when a civil money penalty from each could potentially be imposed on a single facility. Our proposal included two additional factors so that the noncompliance itself is considered when determining the penalty amount.

In determining the amount of the penalty, we proposed at § 488.230(g) that HCFA or the State must take into account the following factors:

- The facility's degree of culpability;
- The facility's history of prior offenses, including repeat deficiencies;
- The facility's financial condition;
- The nature, scope, severity and duration of the noncompliance; and
- The category of requirement with which the facility is out of compliance.

The effective date for a civil money penalty would be the 10th day after the last day of the survey in the case of immediate and serious threat deficiencies; or the 20th day after the last day of survey in the case of non-immediate and non-serious threat deficiencies. These timeframes permit time to notify the facility of the intent to impose a civil money penalty 5 days after the last day of survey.

When HCFA's or the State's imposition of a civil money penalty is upheld on appeal or the facility waives its right to a hearing, we proposed that the civil money penalty would be for the number of days between the effective date of the penalty and the date of correction of deficiencies, or, if applicable, the effective date of termination. Penalties would be computed after compliance is verified or the facility has been sent notice of termination and the effective date. In the case of the facility achieving compliance, HCFA or the State would send a separate notice to the facility containing the amount of penalty per day, the number of days involved, the due date of the penalty, and the total amount due. In the case of a facility to be terminated, HCFA or the State would send this penalty information in the termination notice.

The daily accrual of civil money penalties would be imposed for no longer than 6 months for non-immediate and non-serious threat deficiencies after which HCFA would terminate a SNF provider agreement, or stop Federal funding to the State for a NF, and the State may terminate the provider agreement of the NF if deficiencies remain. In the case of immediate and serious threat deficiencies, the daily

accrual of civil money penalties would continue until HCFA or the State terminates the provider agreement or the deficiencies are corrected. If the facility can supply documentation acceptable to HCFA or the State survey agency that compliance with participation requirements was attained on a date preceding that of the revisit, fines would only accrue until that date.

Payments for civil money penalties would be due 15 days after—

- Compliance is verified, if a hearing decision upholding the imposition of the penalty had been rendered before compliance had been verified, or the 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing;
- A hearing decision upholding the imposition of the penalty if compliance was achieved before the hearing decision; or
- The effective date of termination if compliance has not been achieved by that time.

Currently, § 431.153 (Evidentiary hearing) does not specify the number of days a facility has to request a hearing. We proposed amending § 431.153 to add a new paragraph (b) which specifies that a NF or ICF/MR must file a request for hearing within 60 days of receipt of the notice of denial, termination, nonrenewal, or imposition of a civil money penalty or other remedies.

Consistent with the way other civil money penalties are recovered, as provided in section 1128A(f) of the Act, we proposed that the amount of any penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility against whom the penalty has been assessed. Interest would be assessed on the unpaid balance of the penalty beginning on the due date. We proposed that the rate of interest to be assessed on the unpaid balance would be negotiable and for that reason might vary on a case by case basis. Funds collected by HCFA or the State as a result of a civil money penalty would be returned to the Medicare Trust Fund or to the State, respectively. Civil money penalties collected from dually participating facilities would be returned to the Medicare Trust Fund and the State in proportion commensurate with the relative proportions of the number of Medicare and Medicaid beds actually in use at the facility at the time the facility receives notice of the imposition of the civil money penalty. Under section 1919(h)(2)(A)(ii) of the Act, funds collected by a Medicaid State agency must be put into a common fund to be applied to the protection of the health or property of residents of any NF that the State or HCFA finds deficient, including payment for the cost of relocating residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost. Oversight of the collection and use of funds will be addressed through HCFA's State agency evaluation program now in place.

With respect to SNFs, State-operated facilities, or HCFA validation actions when HCFA's enforcement choice prevails, HCFA would have the exclusive authority to settle any case at any time prior to a final administrative law judge hearing decision. With respect to non-State-operated NFs or dually participating facilities or HCFA validation surveys when only the State's enforcement decision prevails, the State would have the authority to settle any case at any time prior to the hearing decision.

9. Closure of a Medicaid Facility and Transfer of Residents as a Remedy

Section 1919(h)(2)(A)(iv) of the Act allows the State to close a Medicaid facility and transfer its residents as an available remedy in emergency situations. This provision appeared in our proposed § 488.226 (Closure of a Medicaid facility and transfer of residents). Notice and appeal rights would be in accordance with State procedures.

10. Other Alternative or Additional State Remedies Other Than Termination—Medicaid only

Section 1919(h)(2)(A) allows the State to develop alternative or additional State remedies (other than denial of payment for new admissions and State monitoring). At § 488.228 (Alternative or additional State remedies), we proposed that for Medicaid facilities, the State may establish and impose alternative remedies if the State demonstrates to HCFA's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the remedies of temporary management, civil money penalties, and emergency closure of the facility and transfer of residents. Regardless of which alternative remedies the State establishes, we proposed that they must include denial of payment for new admissions and State monitoring as remedies. We reached this conclusion because section 1919(h)(2)(D) of the Act requires that denial of payment for new admissions and State monitoring be imposed when a NF was found to have provided substandard quality of care on three consecutive standard surveys. We also required the State to include denial of payment for new admissions because section 1919(h)(2)(C) of the Act requires this remedy be imposed on a NF that has not complied with the participation requirements within 3 months after the last day of the survey which found the facility out of compliance with the requirements. We proposed requiring that these alternative or additional remedies be approved by HCFA and specified in the State plan.

11. Selecting an Enforcement Remedy

Once a State or HCFA determines that violations of nursing home requirements have occurred, there is an obligation to assess what the most effective remedy ought to be to assure the protection of the well being of the resident population. At § 488.208 (Choice of remedies), we proposed that the survey agency or HCFA assess individual deficiencies or clusters of deficiencies first according to the following initial factors:

- The presence or absence of immediate and serious threat to resident health and safety;
- The severity of the deficiency; and
- The scope of the deficiency.

We also proposed that, following the initial assessment, HCFA and survey agency could consider the following secondary factors:

- The relationship of one deficiency or group (cluster) of deficiencies to other deficiencies; and
- The facility's prior compliance history in general and specifically with reference to the cited deficiencies.

We said that the selection of a remedy would be based on the nature of the deficiencies or cluster of deficiencies. In the proposed §§ 488.210 (Action when there is immediate and serious threat) and 488.212 (Action when there is no immediate and serious threat), we set forth rules for the imposition of particular remedies in specified circumstances. Regardless of which remedy or remedies are imposed, each facility that is out of compliance with a program requirement must submit a plan of correction for approval by HCFA or the survey agency, except in the case of deficiencies that HCFA or the State determines to be at a scope and severity level of 1.

We said that the choice of remedy, by either HCFA or the State, including the manner in which HCFA or the State uses the scope and severity scales specified in § 488.204 (Determination of remedies) would not be subject to review as part of the appeals process.

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We set forth the proposed severity and scope scale in § 488.204 (Determination of remedies). We said that, in order to determine the seriousness of deficiencies, the survey team would apply the following severity and scope scale guides:

• Severity scale.

The four levels of the severity scale are as follows:

—*Level 1*. Any deficiency with respect to requirements for long term care facilities that does not meet the criteria for severity levels 2, 3, or 4.

—*Level 2*. Either a negative outcome or resident rights violation has occurred, or, in the survey team's judgment, the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being has been compromised, or both.

—*Level 3*. Potential physical harm, which could cause serious harm, impairment or death. In the survey team's judgment, there is a recognizable health or safety hazard, which if left unabated, is likely to cause serious harm, impairment or death.

—*Level 4*. Actual physical harm, which has caused serious impairment or death. Life threatening harm, severe impairment, or death has occurred.

• Scope scale.

The four levels of the scope scale are as follows:

—*Level 1*—Isolated. The survey team might conclude that a deficiency is isolated if its perception is such that, it believed the deficiency to exist only in a very limited number of cases.

—*Level 2*—Occasional. The survey team might conclude that a deficiency is occasional if, in its combined judgment, the deficiency is identified in a number of cases, but does not appear to reflect a pattern of facility behavior.

—*Level 3*—Pattern. The survey team might conclude that a pattern exists where, in its judgment, there are a sufficient number of repeated observations that it is likely that the deficiency might exist in cases not reviewed by the team.

—*Level 4*—Widespread. The survey team might conclude that a deficiency exists in sufficient number that, in its judgment, the deficiency represents a systemic or pervasive practice of the facility.

12. Application of Remedies

At § 488.210, we proposed that, if a determination has been made that a deficiency would present an immediate and serious threat to resident health or safety, HCFA or the State would take immediate action to appoint a temporary manager to remove the threat, impose other remedies as it determines necessary to bring the facility into full compliance, and/or terminate the facility's participation in the program within 23 calendar days of the last day of survey. If the facility does not accept temporary management, HCFA or the State would immediately terminate the provider agreement within 23 calendar days of the last day of survey. If the facility accepts temporary management but does not remove the immediate and serious threat within 23 calendar days of the appointment of the temporary manager, HCFA or the State would terminate the provider agreement on the 23rd day from that appointment. The 5-calendar day period for providing notice to facilities of termination of a provider agreement as specified in § 489.53 (Termination by HCFA) of the regulations would be included within this 23-day period.

At § 488.212, we proposed that, if the facility is found, at the time of the survey, to have deficiencies that do not pose an immediate and serious threat to resident health and safety, HCFA or the State may allow the facility to continue to participate for up to 6 months from the date of the survey if—

• The State finds that it is more appropriate to impose alternative remedies than to terminate the facility;

• The State survey agency has submitted a plan of correction approved by HCFA; and

• The facility (in the case of a Medicare SNF or the State in the case of a Medicaid NF) agrees to repay to the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

We said that, if a facility does not meet these eligibility criteria for continuation of payment, HCFA would and the State must terminate the facility's provider agreement. If any deficiency at any severity or scope level remained uncorrected within 90 calendar days after the last day of survey, HCFA would and the State must deny payment for new admissions.

We proposed that HCFA terminate provider agreements for SNFs and NFs, and stop FFP for NFs for which participation was continued, if cited deficiencies were not corrected within 6 months of the last day of the survey.

In the proposed rule, we also set forth specific rules on how to apply both low severity and scope levels and all other severity and scope levels as follows:

• Low severity and scope levels

—If both the severity level and the scope level are 1, a deficiency still exists, but no alternative remedies are imposed or plan of correction required as long as correction is achieved within 90 calendar days from the last day of survey.

—The survey agency would be required to give the facility a summary of the deficiencies.

—If the survey agency identifies a recurrence of these deficiencies at the next standard survey, HCFA or the State would be required to impose one or more remedies specified at § 488.206 (Available remedies) due to the persistence of the deficiencies over time.

• All other severity and scope levels

—If the severity level is 1 and the scope is 2, 3, or 4, the State must (and HCFA does) require a plan of correction and may impose one or more remedies specified at § 488.206.

—If the severity level is 2 and the scope level is 1 or 2, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction.

—If the severity level is 2 and the scope level is 3 or 4 in quality of care, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction. The State would be required to notify the attending physician of each resident to which such finding is made, as well as any State board responsible for the licensing of the facility administrator.

13. Procedures for the Imposition of Remedies Notice

HCFA or the State would give the facility notice of intent to impose a remedy. At § 488.202(f), we proposed that HCFA or the State give the facility notice of the remedy at least 2 days but not more than 4 days before the effective date of the remedy in immediate jeopardy situations, and at least 15 days before the effective date of the remedy when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the remedy could be imposed anytime after the minimum 2 day notification period, but not later than the 10th day after the last day of survey. This would allow up to 5 days for HCFA or the State to send the notice and an additional 2 to 4 days before the remedy is imposed.

14. Hearings: Medicare and Medicaid Consistency.

We proposed revising § 431.153 (Evidentiary hearing) to provide that States must impose remedies, with the exception of civil money penalties, against providers of services at the time that they identify the existence of violations of Federal requirements, notwithstanding any other provision of State law. We intended that, under this

provision, sanctions available under the program would become effective immediately after the identification of program violations and notification to the provider of the deficiencies and the impending sanction(s).

We also proposed to delete § 442.40 (Availability of FFP during appeals). This section has enabled States to continue to receive FFP, under certain circumstances, for facilities whose provider agreement has been terminated, for up to 120 days after the effective date of the termination if a required administrative hearing decision has not been reached. In light of our objective to be more aggressive in the enforcement of nursing home requirements by requiring that States provide only post-action hearings, just as is done under Medicare, we see § 442.40 as plainly inconsistent with this objective.

15. Continuation of Payment Pending Remedies

At § 488.232, we proposed that HCFA may continue payments to a facility with deficiencies if the following criteria are met:

• The State finds that it is more appropriate to impose alternative remedies than to terminate the facility;

• The State has submitted a plan of correction approved by HCFA; and

• The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

We also proposed that HCFA or the State may terminate the SNF or NF agreement before the end of the 6-month correction period if these criteria are not met. We said that, if any of these criteria are not met or agreed to by either the State or the facility, the facility would receive no Medicare or Federal Medicaid payments, as applicable, from the date of the determination of noncompliance by either HCFA or the State.

If the criteria are met, HCFA or the State may continue payments to a facility with deficiencies that do not constitute an immediate and serious threat for up to 6 months from the last day of the survey. If the facility does not correct deficiencies by the end of the period specified, HCFA would—

• Terminate the provider agreement for Medicare SNFs; and

• Discontinue FFP to the State for Medicaid NFs. The State may terminate the provider agreement for NFs.

We proposed that the required termination notice would be sent 15 days before the end of the 6-month period, and that the notice period would run concurrently with the last 15 days of the 6-month period.

Medicare SNFs and dually participating facilities adversely affected by the requirement to repay to the government all payments received if corrective action is not taken could appeal the decision.

16. Resolution of Differences in Findings and Recommended Remedies Between State and HCFA for non-State operated Medicaid Facilities and Dually Participating Facilities.

Sections 1919(h) (6) and (7) of the Act set forth special rules for when the State and Secretary do not agree on findings of noncompliance, timing of termination or where remedies overlap. To implement these provisions, we provided in § 488.234 that, if HCFA finds that a non State-operated NF or a dually participating facility has met all requirements, but the State survey agency finds that the facility has not met all requirements and the failure does not immediately jeopardize the health and safety of its residents, the State survey agency's finding will control (proposed § 488.234(a)(1)). In this instance the State's certification of noncompliance would control. The dually participating facility would have its hearing rights met through the procedures set forth at 42 CFR part 498. The non-State operated NF would have its hearing rights met through the procedures set forth at 42 CFR part 431. If HCFA finds that a NF or a dually participating facility has not met all requirements and the failure does not immediately jeopardize the health or safety of its residents, but the State survey agency has not made such a finding, HFCA's finding could control. In this case, HCFA would impose the remedies and would permit the State to continue payments to the facility during the correction period (proposed § 488.234(a) (2) and (3)). These provisions specify the means to determine compliance or noncompliance for the Medicaid NF which will then, by virtue of section 1919(h)(8) of the Act, become the compliance/noncompliance decision for the Medicare SNF.

If both HCFA and the State find that a facility has not met all requirements and neither find that the failure immediately jeopardizes the health or safety of its residents, the following procedures would apply:

• If both HCFA and the State find that a facility's participation should be terminated, the State's timing of any termination (as specified in proposed § 431.153(c)) would control so long as the termination date does not occur later than 6 months after the date of the finding to terminate (§ 488.234(b)).

• If HCFA, but not the State finds that a facility's participation should be terminated, HCFA's decision to terminate would prevail and HCFA would permit continuation of payment during the period prior to the effective date of termination, not to exceed 6 months from the last day of survey (§ 488.234(b)(1)).

• If the State, but not HCFA finds that a facility's participation should be terminated, the State's decision to terminate and the timing of the termination (as specified in proposed section 431.153(c)) would control (§ 488.234(b)(2)).

• If HCFA or the State, but not both, would impose one or more remedies that are additional or alternative to termination, the additional or alternative remedies would also be applied (§ 488.234(d)(1)).

• If both HFCA and the State would impose one or more remedies that are additional or alternative to termination, only the additional or alternative remedies of HCFA would apply (§ 488.234(d)(2)).

17. Termination of Provider Agreements and Discontinuation of FFP

At § 488.238, we said that termination of the provider agreement would end payment to the facility and any alternative remedy. We proposed that HCFA and the State may terminate a facility's provider agreement if a facility—

• Fails to correct deficiencies within the specified time;

• Fails to submit a plan of correction within the time specified by HCFA; or

• Does not meet the eligibility criteria for continuation of payment.

We said that HCFA and the State would terminate a facility's provider agreement if a facility with immediate and serious threat deficiencies refuses temporary management, if that remedy is offered by HCFA or the Medicaid agency. In addition, we proposed that, before terminating a provider agreement, HCFA does and the State must notify the facility and the public—

• At least 2 and not more than 4 calendar days before termination for a facility with immediate and serious threat deficiencies; and

• At least 15 calendar days before termination for a facility with non-immediate and serious threat deficiencies.

The current termination notification requirement at § 489.53(c)(1) requires HCFA to give notice to any provider at least 15 days before the actual effective

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date of a termination of a provider agreement, irrespective of whether the situation poses an immediate and serious threat, except in the case of Medicare SNFs. Section 489.53(c)(2) provides that SNFs with deficiencies that pose an immediate and serious threat are entitled to notice of the termination at least 2 days before the effective date of the termination of the provider agreement. Since the existing regulations do not discriminate between immediate and serious and nonimmediate and serious threat situations except in the case of Medicare SNFs, we proposed to amend § 489.53(c)(2) to require at least 2 and not more than 4 calendar days notice to all providers of a termination action involving an immediate and serious threat.

If HCFA or the State terminates the provider agreement, we would require the survey agency to arrange for the orderly transfer of all Medicare and Medicaid residents to another SNF or NF. If there is a closure of a Medicaid NF or dually participating facility by the State, we proposed at § 488.240 that the State would be required to arrange for an orderly transfer of all residents.

16. Conflict Resolution

In the proposed rule, we sought public comment about the desirability and feasibility of establishing a conflict resolution system whereby facilities dissatisfied with a certification of noncompliance would be afforded a formal mechanism for disputing deficiencies prior to the administrative and judicial review processes. We also requested comments on the best way for such a system to be implemented.

K. Incentives for High Quality Care

Section 1919(h)(2)(F) of the Act, as added by section 4213 of OBRA '87, provides that, in addition to the remedies discussed, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to Medicaid. A State would incorporate such an incentive program in its State plan. We proposed incorporating this provision in our proposed § 488.153(b).

L. Educational Program

Sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act provide that each State must conduct periodic educational programs for the staff and residents (and their representatives) of nursing homes in order to present current regulations, procedures, and policies on the survey and certification and enforcement processes. We proposed incorporating this provision in §§ 488.153(c) and 488.184.

M. Conforming Changes

In addition to changes already discussed in this preamble, we proposed making other conforming changes to regulations under part 431, 442, and 489.

III. Summary of Major Provisions in Final Rule

In response to public comments, we made numerous technical changes and some major policy changes, which are explained in detail in the following section. In summary, the major changes include the following:

- We reconfigured the criteria used to determine enforcement remedies when facilities are out of compliance with Federal requirements, so that there is a clearer correlation between levels of noncompliance and types of remedies imposed. We have also grouped the remedies into three remedy categories ranging from least to most severe. In this final rule, we present an enforcement scheme in which States may use their own methods for interpreting terms that describe the relative frequency or seriousness of deficiencies, other than immediate jeopardy, as long as they are consistent with the guidance presented in the regulation.
- We provide that remedies may cease when substantial compliance is achieved, and define substantial compliance as "a measure of compliance with the participation requirements such that no deficiencies exist which pose actual harm or have the potential for more than minimal harm." The only exceptions to this rule are those involving temporary management and State monitoring and denial of payment imposed for repeated noncompliance. In these cases, in addition to achieving substantial compliance, the facility must prove to HCFA's or the State's satisfaction that it will remain in substantial compliance.
- We also revise or add definitions for abuse, neglect, immediate jeopardy, substandard quality of care, standard survey, validation survey, extended survey, partial extended survey, abbreviated standard survey, deficiency, nursing facility, skilled nursing facility, substantial compliance, noncompliance and revisit.
- We clarify the term "professionals" as it relates to the members of a survey team by setting forth examples and by stating that the State, subject to HCFA approval, determines what constitutes a "professional."
- We modify the qualifications for temporary managers and set a salary floor.
- We expand the financial, employment, and familial circumstances that disqualify a surveyor from surveying a particular facility.
- We limit the instances in which a reduction in FFP is taken for inadequate survey performance to situations when a State demonstrates a pattern of failure to identify deficiencies in Medicaid facilities.
- We redefine what constitutes inadequate survey performance.
- We amend the regulations text at § 488.312 (§ 488.162 of the proposed rule), consistency of survey results, to require that State survey agencies study surveyor accuracy as well as consistency.
- We clarify that the survey agency will review complaint allegations and conduct a standard or abbreviated standard survey *if* the survey agency concludes that a deficiency in one or more requirements may have occurred and *only* a survey can confirm the existence of the deficiency or deficiencies.
- We limit HCFA's and the State agency's discretion to conduct an extended or partial extended survey to situations in which substandard quality of care has been identified. HCFA or the State will, however, continue to have complete discretion to examine any and all aspects of a facility's performance in order to determine compliance with the requirements.
- We add directed in-service training as a new remedy.
- We expressly state that denial of all payment for all Medicare residents in a facility may be imposed by HCFA and that HCFA may deny payment to the State for all Medicaid residents in a facility.
- We clarify that one or more remedies may be imposed for one or more deficiencies.
- We eliminate as a remedy denial of payment for certain diagnostic categories.
- We add the following to clarify the civil money penalty provisions:
  + The amount of the civil money penalty can be adjusted to reflect changes from non-immediate jeopardy to immediate jeopardy and from immediate jeopardy to non-immediate jeopardy.
  + A civil money penalty is increased for repeated deficiencies within the same regulatory grouping of requirements in those cases where a civil money penalty was imposed as a remedy for the first occurrence of the deficiency;

+ The interest rate for civil money penalties is in accordance with the rate fixed by the Secretary of the Treasury and used by the Department for Medicare and determined by the State for Medicaid;
+ The HCFA notice of the imposition of the civil money penalty does not have to be sent by mail;
+ The HCFA notice of intent to impose the civil money penalty includes more information regarding the nature of the noncompliance, dates of accrual and dates of collection;
+ The State's notice to non-State operated NFs when the State takes action must include at a minimum the information specified in the HCFA notice;
+ If the facility waives its right to a hearing in writing within 60 days from the date of the notice of intent to impose the civil money penalty, HCFA or the State reduces the civil money penalty by 35 percent.
+ The civil money penalty may start to accrue as early as the date the facility was first found out of compliance, as determined by HCFA or the State. This may be the last day of the survey or, in certain situations, before that date.
- When the basis for imposing a civil money penalty exists, the administrative law judge or State hearing officer may not set a penalty of zero, reduce the penalty to zero, or review the exercise of discretion to impose the civil money penalty.
- In the case of civil money penalties, facilities may challenge the level of noncompliance found by HCFA or the State if a successful challenge on the issue would affect the range of civil money penalty amounts from which HCFA or the State could collect a civil money penalty.
- We add a provision to direct the State during a complaint investigation to follow the specific procedures found at § 488.335 (§ 488.185 of the proposed rule), action on complaints of resident neglect and abuse, and misappropriation of resident property, when there is reason to believe that an identifiable individual neglected or abused a resident or misappropriated a resident's property.
- We add a requirement that the State must have written procedures for the timely review and investigation of allegations of resident neglect and abuse and misappropriation of resident property. In addition, we have required that the State should take appropriate precautions to protect a complainant's anonymity and privacy, if possible.
- If arrangements have been made with other State components for investigation of complaints, we require that the State have a means of communicating information among appropriate entities, and that the survey agency retain the responsibility for the investigation process.
- We require that findings of investigations be included in the nurse aide registry within 10 working days of the findings.
- We require that the survey agency determine if complaints violate any requirements of part 483, subpart B and take appropriate enforcement action as necessary if the allegation of neglect, abuse or misappropriation of property against an individual is a complaint against the facility.
- We require the notification of physicians of those residents identified as receiving substandard quality of care.
- We clarify that survey findings are reported with recommendations for corrective action to officials in the enforcing agency who determine what remedies to impose.
- With respect to the disclosure of survey information, we revise the provisions on fees, charges, and timeframes for release of information to provide that, with certain exceptions, HCFA or the State will disclose survey-related information and may charge the public in accordance with pre-existing Federal regulations and State procedures.
- We eliminate 120 days of FFP for a Medicaid NF and retain, for now, 120 days of FFP for an ICF/MR while the facility waits for a post-termination hearing.
- We formalize the opportunity for informal dispute resolution currently in the State Operations Manual for providers to raise unresolved issues to the State agency or the respective HCFA regional office after the provider's receipt of the official deficiency statement, and have prohibited challenges by providers from postponing or otherwise delaying the effective date of any enforcement action.
- We specify that a provider in substantial compliance at the end of 6 months may continue to participate without repayment of Federal funds.
- We delete the section on validation surveys from the regulation text because the statutory provisions are self-implementing and regulatory interpretation is not needed to clarify them. The few elaborations on the requirements in sections 1819(g)(3) and 1919(g)(3) of the Act are duplicated elsewhere in the regulation and there is little reason to repeat them.
- We renumber proposed §§ 488.150–488.185 and proposed §§ 488.200–488.240 as §§ 488.300–488.335 and §§ 488.400–488.456, respectively, to take into account existing section numbers already included in part 488, subpart D.
- We incorporate the provision of proposed § 488.240, Transfer of residents, into § 488.426 in the final rule. We revise the title of § 488.426 to Closure and/or transfer of residents.
- We incorporate the provisions of proposed § 488.228 into § 488.406 of the final rule.

IV. Discussion of Public Comments

We received more than 27,900 timely letters in response to our August 28, 1992 proposed rule. Most were from the owners and operators, administrators, staff, and attorneys of long term care facilities. Others were from professional organizations, chains of long term care facilities, employee unions, and vendors that supply facilities. We also heard from consumer advocates and ombudsmen, Federal, State, and local governments, consumer organizations, and residents of long term care facilities. Families of residents and their guardians and other legal representatives commented as well. A discussion of the comments follows. We do not discuss sections of the rule on which the public had no comment.

Normally, a final rule is not effective until 30 or 60 days after it is published in the **Federal Register**. Because implementation of the complex and far-reaching provisions of this final rule will require a major, nationwide training effort to train surveyors, their supervisors and related personnel, this rule is effective June 1, 1995.

Effective Date

Comment: One commenter stated that HCFA must provide nursing homes with a reasonable education and retraining grace period of no less than one year before implementing the new survey standards so that facilities can adjust to the enormous changes. The States and HCFA should provide reasonable funding to ensure that training is completed before the new requirements take effect. There is a precedent for this in HCFA's recent recognition that State certification requirements for home health care aides should be accompanied by State funding to help facilitate retraining.

Response: HCFA routinely provides a long lag time for the effective date of particularly complicated regulations and has done so for this regulation as well. The new long term care requirements were published in the **Federal Register** on September 26, 1991 (56 FR 48826), and were effective April 1, 1992. This final enforcement rule should have no effect on the

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requirements for long-term care as stated in the September 1991 regulation and the facilities should have had ample time to become familiar with its requirements. Our primary concern is to provide oversight for the protection of residents in nursing homes who are dependent upon others for the care they receive. It would serve no purpose to allow facilities to have additional time to become familiar with requirements of which they are already aware. Our responsibility is to continue to move forward in enacting the enforcement provisions for long term care facilities.

Part 431 State Organization and General Administration

Comment: In response to our proposed revisions to part 431, most opposing comments concerned the effect on ICFs/MR of withdrawing FFP during appeals. Some commenters noted that OBRA '87 specifically exempted ICFs/MR from its scope, and stated that it is not appropriate to change the ICF/MR rules in implementing a law that applies to other facilities. Some commenters stated that the discussion on ICFs/MR was lost within the SNF/NF regulations, and there was no discussion in the preamble concerning applicability to ICFs/MR. Some stated that HCFA provided no rationale for this change in the ICF/MR rules, and therefore a proposed rule should be published which allows for full notice and comment rulemaking. Some commented that if the proposal had been written in a more direct manner, more groups would have written to object.

Response: We agree that it would be preferable to include the provisions applicable to ICFs/MR at a later date in rulemaking focused on ICFs/MR. Therefore, we are adopting the commenters' proposals that the 120 days of FFP continue for ICFs/MR until this issue may be more fairly resolved in such a rulemaking. Therefore, at this time, we are leaving the existing appeals system in place for ICFs/MR. There were other comments concerning ICFs/MR that are outside the purview of this regulation, and are therefore not addressed in this discussion.

For the reasons stated directly above, we are revising §§ 431.151, 431.153, and 431.154 to delete reference to SNFs and ICFs as follows:

- § 431.151 ("Scope and applicability.") is revised so that subpart B of part 431 specifies the appeal procedures the State must make available to an ICF/MR for which the State denies, terminates, or fails to renew certification or a provider agreement for the Medicaid program.
- § 431.153 ("Evidentiary hearing.") is revised to state that
  - —An ICF/MR whose certification or provider agreement is denied, terminated, or not renewed must be given an opportunity for a full evidentiary hearing on the denial, termination or nonrenewal;
  - —If the facility requests a hearing, it must be completed either before the effective date of the denial, termination or nonrenewal or within 120 days after that date; and
  - —The hearing must, at a minimum, include the provisions of § 431.153(e).

Comment: Several commenters responded to our specific request for comments on whether States, adversely affected by the repayment statutory provisions of section 1919(h)(3)(D), should have the right to appeal resulting disallowances to the Departmental Appeals Board (DAB) in addition to appealing a provider's certification of noncompliance under part 498. The commenters said that States should have this right to appeal but believed that few States would find it necessary to exercise this right.

Response: We agree that States probably would not often find it worthwhile to challenge a decision that had withstood the test of an appeal in accordance with part 498. However, because section 1116(d) of the Act provides States with a statutory right to reconsideration whenever HCFA takes a disallowance, and regulations at 45 CFR part 16 provide States with a hearing before the DAB when disallowances are made, we agree that appeal to the DAB should be an option for the States. At any such DAB hearing, the decision of the ALJ upholding HCFA's adverse action against the provider would, of course, be part of the evidence.

Comment: A few commenters noted that State hearings will significantly increase, and stated that the regulatory impact statement fails to consider the amount of time surveyors and other staff, including attorneys, will need to prepare for and participate in hearings. They commented that overall costs for which HCFA must reimburse the states will be increased.

Response: We recognize that the revised regulations expand the initial determinations for which States are required to grant an appeal. However, we have no program experience upon which to base a prediction of appeal volume or costs. There is not even a precedent to follow from the Medicare program, inasmuch as the expanded initial determinations are also new in the Medicare regulations. We anticipate that, in many cases, providers will be able to meet the necessary requirements before remedies are to be imposed, thus obviating the need for a hearing. Moreover, we are finding that the percentage of facilities with no deficiencies continues to increase, thereby causing us to predict fewer facilities facing some form of appealable enforcement action than has been the case previously. Because of these factors which may affect the increased number of initial determinations that are appealable, we can offer no valid prediction as to effect on volume or costs of appeals. However, we expect that the informal dispute resolution process will reduce the number (or scope) of adverse actions that lead to a hearing. Any increased net costs to States that are found to occur will be reflected in the budget process.

Because we are now providing for an informal dispute resolution, we are revising § 431.154 ("Informal reconsideration") to delete references to SNFs and NFs and state that—

- If the State decides to provide an ICF/MR with an opportunity for an evidentiary hearing required by § 431.153(a) only after the effective date of a denial of participation or termination, the State must offer the ICF/MR an informal reconsideration, to be completed before the effective date of the adverse action; and
- The informal reconsideration must, at a minimum, include
  - —Written notice to the facility of the denial of participation or termination, and the findings upon which it was based;
  - —A reasonable opportunity for the facility to refute those findings in writing; and
  - —A written affirmation or reversal of the denial, termination, or nonrenewal.

Section 442.40 Availability of FFP During Appeals

We proposed deleting § 442.40, which presently provides for continuing FFP for up to 120 days after the effective date of termination of a Medicaid provider agreement if an appeal is pending. (See the discussion of comments on part 431 above.)

Comment: Several commenters wanted to retain the current provisions which allow for up to 120 days of FFP during a State's appeal process. A few wanted Federal funding to continue until a final decision is issued after a hearing. A few stated that elimination of the current rule would provide no benefit to the overall process.

Response: As we stated in the proposed rule, it is our belief that the needs of individual residents are best served by the availability of prompt and effective remedial action that will motivate the fastest efforts by providers to comply with Federal program requirements. The Congress has already set the maximum time for a termination at 6 months. Because a State could be paid for perhaps as long as 4 months after the effective date of provider termination, the State would have no incentive to challenge NFs to promptly comply with all program requirements. This is because, in all likelihood, the State would continue funding the Medicaid facility while receiving Federal payments. If we eliminate Federal funding to the State on a more accelerated schedule, States are likely to stop funding the NF once we stop Federal payments to the State. Thus, a greater incentive will exist for NFs to promptly comply with program requirements. Moreover, because the 120-day provision would significantly delay the imposition of certain remedies, it would not be consistent with section 1919(h)(2) of the Act, which calls for States to minimize the period of time between the identification of deficiencies and the imposition of remedies. In our opinion, the residents will benefit because the facilities in which they reside will come into substantial compliance faster. However, for the reasons previously explained, we have decided to continue FFP to ICFs/MR whose agreements have been terminated for up to 120 days after termination while we work on the publication of a separate rulemaking on ICF/MR policy.

Comment: A few commenters stated that if pre-hearings were provided, the 120 day regulation would not be necessary for SNFs and NFs, but that if pre-hearings were not provided, the 120 regulation should be retained in order to give a facility time to present its side of the story before suffering irreparable harm.

Response: As discussed elsewhere in this preamble, we are providing for dispute resolution beginning with the provider's receipt of the official Statement of Deficiencies, in order to give facilities an opportunity to rebut survey findings early in the process. By adding this feature to the enforcement process, we are balancing the needs of facilities to avoid unnecessary disputes and protracted litigation, on one hand, with the interests of facility residents, which we believe to be paramount, in assuring the most rapid correction of deficiencies. In so doing, we believe that the continued application of the 120-day rule would upset this balance of interests that we believe the Congress intended us to have.

Comment: A few commenters predicted that the courts would be clogged with pretermination or presanction hearings if FFP were denied during the State appeal procedures.

Response: Post-termination hearings have been upheld by all the circuit courts that have analyzed the issue of whether post-termination hearings satisfy the due process clause of the Constitution (see discussion titled, "Hearings: Medicare and Medicaid Consistency"). Moreover, we do not believe that the courts will be eager to entertain legal challenges from providers that have failed to exhaust their administrative remedies.

We note that the Federal courts are not clogged with pre-termination challenges when Medicare agreements are terminated and Federal funding ceases on the effective date of termination. Under both Medicare and Medicaid, 30 days of funding will be available, as it is now, to provide a period of time for orderly transfer of residents.

Comment: A few commenters believed that HCFA would be punishing those States that aggressively implement the Act, and some noted that States would have a financial incentive to "settle" during the survey process.

Response: Because the Medicaid program is a joint Federal-State program, we do not believe that States have an incentive to spend their own State money on nursing care provided in a facility that does not meet the statutory requirements.

Comment: Some wondered why HCFA's finding of noncompliance takes precedence over a State survey agency's finding of compliance, yet HCFA has no obligation to provide FFP during the appeal.

Response: HCFA's finding of noncompliance takes precedence over a State's finding of compliance because the Act mandates this result in sections 1919(h)(6) and 1919(g)(3)(A). The Congress provided detailed procedures for resolving differences between a State and HCFA, but did not provide that FFP should continue merely because HCFA and a State disagree about a facility's compliance status. If HCFA's termination determination is overturned as a result of the appeal process, the State would receive FFP based on the reinstated provider agreement should the State have continued to make Medicaid payments to the facility.

Comment: Some commenters apparently equated the availability of 120 days FFP during the hearing process with providing a pre-termination hearing. These commenters noted that Medicare's post-termination hearing does not cause concern to most providers because Medicare pays for only a small portion of days, whereas, to require post-termination hearings for Medicaid will cause greater concern because more money is at stake.

Response: As we explain more fully elsewhere in this preamble, we believe it is important that, in light of the great similarity between facility requirements in Medicare and Medicaid and the fact that such a large percentage of facilities participate in both programs, appeal procedures ought to be the same for both programs. Additionally, because of the informal opportunities to resolve differences in the form of an informal dispute resolution mechanism, we believe that a facility's concerns for due process are more than adequately protected when balanced with the interests of nursing home residents in the swift correction of deficiencies.

Redesignation of Sections

A new Subpart D of part 488, consisting of §§ 488.201–488.211, became effective on August 31, 1992, shortly after the proposed rule was published on August 28. This requires that we designate Subpart E, which was to consist of §§ 488.150–488.185, with subsequent numbers. To assist the reader, we are publishing the new table of contents for Subpart E, with designations of the proposed rule shown in parenthesis. In the following discussions, we refer to the sections as renumbered, with the proposal's identification included only if distinction is necessary.

Sec.

488.300 Statutory basis. (§ 488.150)
488.301 Definitions. (§ 488.151)
488.303 State plan requirement. (§ 488.153)
488.305 Standard surveys. (§ 488.155)
488.307 Unannounced surveys. (§ 488.157)
488.308 Survey frequency. (§ 488.158)
488.310 Extended survey. (§ 488.160)
488.312 Consistency of survey results. (§ 488.162)
488.314 Survey teams. (§ 488.164)
488.318 Inadequate survey performance. (§ 488.168)
488.320 Sanctions for inadequate survey performance. (§ 488.170)
488.325 Disclosure of results of surveys and activities. (§ 488.175)
488.330 Certification of compliance and noncompliance. (§ 488.180)
488.331 Informal dispute resolution. (Not in proposal)
488.332 Investigation of complaints of violations and monitoring of compliance. (§ 488.182)
488.334 Educational programs. (§ 488.184)
488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property. (§ 488.185)

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Section 488.301 Definitions

Comment: Many commenters were concerned that the proposed definition of "abuse" is too broad and ambiguous. Unless the definition is amended, they believe it will generate inconsistency in the survey process and overburden the system with complaints of abuse. Other suggestions and recommendations are as follows:

- Willfulness and/or deliberate intent should be incorporated into the definition;
- Change "and/or otherwise disregard of an individual which could cause or result in mild to severe harm" and replace with "has caused or creates a high probability of causing serious harm";
- Physical harm should be defined; include a definition of assault suggested by a particular State's definition;
- The phrase "otherwise disregard of an individual" should be deleted as this statement more accurately describes neglect;
- Incorporate the definition of abuse as found in the Older Americans Act.

Response: We have considered the above comments and are revising the definition of abuse in § 488.301 to address some of the aforementioned concerns. However, we do not believe it appropriate to adopt any one State's definition as there is no evidence to suggest that one definition is superior to another. We are adopting the major concepts of the definition in the Older Americans Act. Therefore, the modified definition of abuse now reads: Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

Comment: Some commenters suggested that we require that the resident perceive the conduct as abusive.

Response: We do not accept this comment. Our obligation is to protect the health and safety of every resident, including those that are incapable of perception or are unable to express themselves. This presumes that instances of abuse of any resident, whether cognizant or not, cause physical harm, pain, or mental anguish.

Comment: Some commenters believed that the definitions of abuse and neglect should also apply to nurse aides in hospitals as well as in nursing facilities.

Response: This comment falls outside the purview of this regulation. This rule specifically pertains to the survey, certification and enforcement of requirements of participation for SNFs and NFs.

Comment: Some commenters thought that the proposed definition of abuse was inconsistent with that in § 483.13.

Response: Section 483.13(b) does not provide a definition of abuse. What it does provide is a list of the types of abuse from which residents have a right to be free. The definition, a statement as to the meaning of the term "abuse," is offered at § 488.301.

Comment: Several commenters thought the proposed definition of "neglect" was too broad and ambiguous. They contend it is necessary to narrow the definition in order not to inundate the system with complaints. Some commenters requested that the terms "willful" and "intent" be inserted into the definition to limit the scope of actions that could be considered neglect.

Response: In order to promote consistency in the survey process, there needs to be a common definition of neglect for a variety of applications. We have, therefore, adopted the concept of the definition used in the Older Americans Act, as we explain below. That definition does not incorporate the terms "willful" or "intent." While an act of neglect can be intentional, neglect can also occur unintentionally. However, we are specifying at § 488.335(e) that a State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond his or her control. If the inattentiveness is due to factors within that person's control, intentional or unintentional, he or she can be considered to have neglected the resident(s). Therefore, while willfulness and intent may be considered when a State finds that an individual has neglected a resident, we believe the terms "willful" or "intent" should not be included in the definition because neglect can occur unintentionally.

Comment: Some commenters perceived that, in order for a finding of neglect to be made against an individual, the alleged neglect must be within the individual's control or job responsibility. It was suggested that a provision be added to the proposed definition that includes the individual's "breach of duty to provide * * * needed * * * services." The commenters contend that the proposed definition places the blame upon the individual and excludes the extent of the culpability of the facility to provide the necessary services or goods.

Response: We agree that an employee should not be found to have neglected a resident if the neglect was caused by factors beyond the control of the employee. As this provision is already addressed in § 488.335(e), we do not believe it needs to be restated in § 488.301.

Comment: Other commenters suggested their own State definition of neglect should suffice in order not to confuse facilities with separate definitions.

Response: As noted earlier, there has been no evidence to suggest that any State definition is preferable to ours. In fact, we believe allowing each State definition to stand, as is, would increase confusion among the providers and promote inconsistency from State to State.

Comment: Many commenters wished to add the phrase: "Each resident should be free from * * *," prior to the proposed definition of neglect.

Response: We agree that each resident should be free from neglect as well as other forms of mistreatment. This prohibition of neglect is inherent in § 483.13(c). We do not believe the phrase suggested by the commenters defines the term. Therefore, we did not include it in § 488.301.

Comment: Other commenters requested that we require (within the definition of neglect) that evidence be presented that physical, emotional or psychological harm or some other negative outcome had occurred.

Response: We do not accept this comment because neglect may be determined even if no apparent negative outcome has occurred. The potential for negative outcome must also be considered. For example, instances of neglect may include, but are not limited to, being left to sit or lie in urine or feces, isolating dependent residents by leaving them in their rooms or other isolated locations, or failing to answer call bells to provide needed assistance.

Comment: Many commenters believed that "timely" should be removed from the definition of neglect or else be defined, as it is overly broad. Other commenters wish to add the language incorporated within section 102(37) of the Older Americans Act.

Response: Although the term "timely" does not appear in the final definition, we believe timeliness is an integral component in determining neglect. A delay in providing needed services for a resident has the potential to cause physical harm and/or mental anguish. Such a delay (or lack of timeliness) can be considered neglect under the definition we are incorporating in the final regulation. We are adopting the concept from the Older Americans Act which provides that neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Comment: Many commenters asked that HCFA include the following occupations in the proposed list of licensed health professionals:

- Clinical Nurse Specialist;
- Medical Records Specialist;
- Dietitian;
- Social Work Assistant;
- Speech Pathologist or Audiologist;
- Recreational or Activities Specialist;
- Respiratory Therapist;
- Dentist or Dental Hygienist;
- Optometrist;
- Podiatrist;
- Pharmacist;
- Psychologist;
- Chiropractor;
- Nursing Home Administrator; and
- All other licensed health professionals.

Other commenters believed that licensed practical nurses (LPNs) should not be included on the list because, although licensed, LPNs are not professional nurses by education or by legal accountability and must work under the supervision of a registered nurse or a medical doctor. It was also suggested that the term be changed to "licensed health personnel."

Response: We are deleting the definition of "licensed health professional" as it is not used in this part.

Comment: Several commenters recommended changing the proposed definition of "misappropriation of resident property" to apply to the resident's "real or personal property," as opposed to "belongings or money," because they believe the current language is not broad enough to encompass every type of resident property. Other commenters recommended that the definition include "attempted" misappropriation or the "intent to deprive."

Response: We do not discern any substantial difference between the terms "belongings or money" and "real or personal property." We believe the terms "belongings or money" are sufficient to implement the statutory requirement in sections 1819(g)(1) and 1919(g)(1) of the Act. Additionally, the concept of "intent to deprive" is inherent within the phrase "deliberate misplacement" in the definition. Therefore, we are not accepting these comments as we believe the suggested changes do not substantially enhance the proposed definition.

Comment: Some commenters proposed to limit the definition of misappropriation to that incurred by a nurse aide.

Response: We disagree. Limiting the definition of misappropriation to a specific individual would exempt all others from the provisions of the Act which explicitly states in sections 1819(g)(1)(C) and 1919(g)(1)(C):

> * * * allegations of * * * misappropriation of resident property [is] by a nurse aide of a resident in a nursing facility *or by another individual* used by the facility in providing services to such a resident." (emphasis added)

Comment: Some commenters wanted our definition to set a minimum of $50 on the amount of money or property which can be deliberately misplaced or wrongfully used without the resident's consent in order to be considered misappropriation of resident property.

Response: We disagree because we believe that it is impossible to quantify the value of some personal items. Moreover, possessions, regardless of their apparent value to others, must be treated with respect, for what they are and for what they may represent to the resident. As no such limitations are dictated by the Act, we interpret misappropriation to apply to any belongings or money, regardless of their actual value.

Comment: Some commenters questioned whether the proposed definition of "nurse aide" includes dietary aide or private duty paid individuals. They recommended that the definition of nurse aide be amended to read "provides personal care and nursing related services under the supervision of licensed nurses." Additionally, commenters wanted a list of distinct duties required of nurse aides to be added to the final definition.

Response: We do not adopt these comments because the definition of a nurse aide is specified by sections 1819(b)(5)(F) and 1919(b)(6)(F) of the Act and by implementing regulations at § 483.75(e).

Comment: Some commenters stated that the phrase "substandard quality of care" was specifically used in the Act and that HCFA should recognize and adopt the same language.

Response: We agree with the above comment. To be consistent with the Act, we are using that terminology throughout this final rule, where appropriate.

Comment: Some commenters wanted HCFA to include "any violation of the requirements that leads to, or is likely to lead to a failure of the resident to achieve the highest practicable physical and mental well-being" in the definition of substandard quality of care.

Response: We are not accepting this suggestion. We believe that any infringement of any requirement could be construed to compromise some ability of a resident to achieve his or her highest practicable well-being. The definition proposed by the commenter could encompass every deficiency under every regulatory requirement. Given the ramifications a determination of substandard quality of care has for a provider (loss of NATCEP, notification of licensing boards and physicians), we are limiting the definition of substandard quality of care to reflect the most egregious situations related to participation requirements under §§ 483.13 ("Resident behavior and facility practices"), 483.15 ("Quality of life"), and 483.25 ("Quality of care"). However, we are not minimizing deficiencies in other participation requirements. As discussed later under the response to public comments for § 488.401, it is possible that a deficiency under any requirement can encompass any degree of seriousness. Deficiencies under the remaining requirements can be more appropriately addressed through specified remedies rather than through the loss of NATCEP which would be precipitated by a substandard quality of care determination.

Comment: Several commenters thought that the scope and severity grid should not be a determining factor in defining substandard quality of care.

Response: As we discuss later at § 488.404, we are removing references to the scope and severity grid from the definition of substandard quality of care. We are retaining, however, concepts of seriousness and frequency which we believe are important to determining this type of deficient facility practices.

Comment: Other commenters wished to include compliance history in the final definition of substandard quality of care.

Response: We do not agree with this comment. Our first priority is to protect the health and safety of the residents. If violations are identified, the problem must be rectified, regardless of the facility's compliance history.

Comment: Some commenters wanted us to explicitly state in the definition of substandard quality of care that deficiencies of immediate jeopardy are regarded as substandard quality of care.

Response: We are not adopting this comment. Given the ramifications a finding of substandard quality of care has for a provider, we are limiting the definition of substandard quality of care to those requirements mentioned previously. The only immediate jeopardy deficiencies considered substandard quality of care are those determined under the participation requirements of §§ 483.13 ("Resident behavior and facility practices"), 483.15

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("Quality of life"), and 483.25 ("Quality of care"). Because we are removing references to the scope and severity scales from the definition of substandard quality of care we believe that it is necessary to amend the definition. We are now defining substandard quality of care as care furnished in a facility that has one or more deficiencies related to participation requirements under §§ 483.13 ("Resident behavior and facility practices"), 483.15 ("Quality of life"), or 483.25 ("Quality of care") that constitutes immediate jeopardy, a pattern of widespread actual harm that is not immediate jeopardy, or widespread potential for more than minimal harm, but less than immediate jeopardy with no actual harm.

Comment: Some commenters wanted compliance and correction to be defined as "substantially meeting all applicable certification requirements."

Response: While we do not agree with the suggested definition, we do agree with the intent of the commenters that there should be some range of compliance within which prospective and current providers may participate. This concept is discussed further in § 488.330 "Certification of compliance". Accordingly, in § 488.301, we define "substantial compliance" to mean a level of compliance with requirements of participation such that any identified deficiencies pose no greater risk to patient health and safety than the potential for causing minimal harm.

As we discuss later in this preamble, a facility may avoid a remedy even if it has failed to comply perfectly with all statutory requirements. However, the facility still has the duty to provide the care to each resident which enhances the chances for positive outcomes and avoids negative ones. If a single resident experiences *any* harm, no matter how minimal, the facility will not have satisfied its statutory obligations.

We acknowledge that there might be many definitions that we could have chosen, but in our view, the definition we have settled on best implements the Act and accommodates both facility and resident concerns.

Additionally, since we are incorporating the concept of substantial compliance, we believe it is necessary to provide a definition of noncompliance at § 488.301. Noncompliance with the requirements of participation is any deficiency that causes a facility to not be in substantial compliance.

Section 488.303 State Plan Requirement

Comment: There were several comments concerning the requirement for and content of incentive programs.

- Some commenters suggested that the incentives to reward quality care be required and implemented on a national scale by HCFA as well as the States.
- A few commenters suggested that the States develop incentive programs with consultation from residents, families and the ombudsman.
- One commenter presented an elaborate process including applications, group evaluations and resident participation for any award.
- One commenter said that the regulation should define the rewards for quality to support quality improvement.

Response: Section 1919(h)(2)(F) of the Act does not permit HCFA to require the States to establish a public recognition or incentive payment system for nursing facilities that provide high quality care. If the commenters mean that the same public recognition or incentive payment system be permitted for Medicare SNFs, the Act does not authorize such recognition. In addition, a HCFA program for nursing facilities would be duplicative.

Section 1919(h)(2)(F) of the Act gives States the flexibility to decide if an incentive program would be appropriate and how they will implement the program. If a State decides to implement an incentive program, the State should have the option to consult those individuals and organizations it thinks necessary. In the same vein, it would be inadvisable to restrict the States' programs to elaborate regulatory procedures because, in so doing, we may inadvertently discourage States from establishing such programs. Although we encourage States to develop effective incentive programs, we are not making any changes to § 488.303 because we want to preserve the States' flexibility in establishing such incentive programs.

Comment: A few commenters suggested that the Medicaid program should fund the incentive payments through civil money penalties.

Response: The Act provides that State expenses for the implementation and maintenance of an incentive program is an authorized Medicaid administrative expense: the Act does not permit the use of funds collected from civil money penalties for this purpose. Indeed, section 1919(h)(2)(A)(ii) of the Act provides that when the State uses the specified civil money penalty remedy, the State must apply funds collected through civil money penalties to the protection of the health or property of nursing home residents. Therefore, we reject this comment.

Comment: Several commenters suggested that the regulation should go beyond the Act and specify certain topics and methods of training.

- Some wanted mandated educational programs for assessment and care planning, resident rights and quality of care issues as well as those in subparts E and F of part 488.
- Other commenters believe that the scope of the educational program should include a section on complaint investigation and resolution.
- A few commenters asked that States work with the ombudsman program to develop and present training.
- Another commenter believes that literature and/or video presentations would be more effective than State presentations.

Response: Sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act require that States conduct educational programs for staff and residents of facilities regarding current regulations, procedures and policies of the long term care survey and certification process. We agree with the commenters that the proposed regulation unnecessarily restricts the scope of the mandated educational programs. We are revising it to permit the education programs to cover all aspects of the long term care survey process so that the States have the flexibility to structure the educational programs to the needs of the facilities. The methods to develop the programs (for example, consultation with the ombudsman program) and the methods of presentation are being left to the States.

Comment: A few commenters suggested that these requirements be met, in part, by giving facility staff and residents access to HCFA and State agency surveyor training sessions.

Response: We believe that this suggestion, if done at the participant's expense, may have merit. Traditionally, we have not had the ability within available resources to accommodate all providers or other interested parties wanting to attend training; our available resources are devoted, for the most part, to providing timely training for surveyors. However, being able to offer surveyor training universally to providers and interested others at their own cost, and if space allows, may help improve understanding and cooperation between surveyors and the other parties. We are, therefore, seriously considering what changes in policy and legislation will be necessary to allow this.

Comment: One commenter suggested that a review of the State educational

activities be made a part of HCFA's State agency evaluation program which would assure its implementation.

Response: The HCFA State Agency Evaluation Program (SAEP) currently is undergoing substantial review and revision. We are unable, at this time, to assert that a review of State educational activities will become a part of the revised SAEP. Nonetheless, the HCFA regional offices will continue to have the responsibility to monitor and assess the States' educational activities.

Comment: Several commenters suggested that the States be directed to include bans on all new admissions as a required remedy because a ban on only Medicaid admissions is discriminatory. A majority of those commenting suggested that a directed plan of correction also be included as a required remedy.

Response: We do not have statutory authority to allow the States the option of banning all new admissions. States are free, however, to enact their own laws regarding facility licensure that may extend enforcement options beyond the reach of the Act.

Section 1919(h)(2)(A)(i) of the Act expressly gives States the authority to impose payment denials with respect to new Medicaid admissions. While the Act also provides States with the opportunity to design other remedies, subject to Federal approval, that are as effective as those enumerated in the Medicaid law, we believe that it would be inappropriate for us to evaluate a remedy that would be aimed at the admissions of persons over whom the Medicaid law provides no jurisdiction. We believe it would be more appropriate to leave to State law remedies that extend as far as the commenters suggest. In any event, while a denial of payment for new Medicaid admissions does not reach all potential admissions, it will provide an incentive to a facility to correct deficiencies rapidly, which would serve to benefit not only Medicaid residents but all those persons who are receiving care at the facility regardless of payment source. Also, States may provide public notice of the imposition of the denial of payment for new admissions remedy which would alert potential residents to the situation in the facility.

We are not accepting the suggestion that directed plans of correction be a required remedy. As discussed under "Factors to be considered in selecting remedies" later in this preamble, we have provided a revised enforcement scheme in this final rule that correlates the seriousness of noncompliance with the selection of remedies from within specified enforcement remedy categories. While we do not intend to mandate the specific selection of the directed plan of correction remedy from among the available enforcement actions for any specific level of actionable noncompliance, in other words, when the facility is not in substantial compliance, we note that it is always an enforcement option and it may be the only remedy used for lower level deficiencies.

Comment: Some commenters requested that we require States to submit any alternative or additional remedies to a full State rulemaking process with an opportunity for comment. Other commenters believed that States should be allowed to implement additional or alternative remedies unless HCFA can demonstrate that the State remedies are not as effective as the HCFA remedies.

Response: The States must follow any internal State procedures which govern the development and submittal of a Medicaid State plan amendment. The Act does not require nor do we believe our regulations should require specific procedures that would limit State prerogatives for promulgating enforcement policies. Similarly, section 1919(h)(2)(B)(ii) of the Act states that the State must demonstrate that any alternative remedies are as effective as the remedies specified in the Act.

Comment: Commenters suggested that the effective remedies established by the States be made applicable to dually participating facilities.

Response: We are accepting this comment with some clarification. Since States may establish their own sanctions through their respective State plan amendment, and since HCFA will be the entity imposing sanctions for dually participating facilities, it is highly likely that a State may choose to impose one of its own remedies on a Medicaid NF which HCFA would have no authority to impose against the Medicare provider agreement. It would not be rational for us to proceed with an enforcement scheme whereby a single facility, by virtue of participating in both Medicare and Medicaid, would be subject to a dual enforcement track. Also, and more importantly, since HCFA will be taking the lead on enforcement actions against dually participating facilities under part 498, we have concluded that HCFA needs to have the authority to impose these alternative or additional remedies against Medicare facilities in the States that have established these remedies. While we acknowledge that this would not permit consistency nationally relative to remedies available for dually participating facilities, we conclude that it is a realistic and necessary response to statutory intent that enforcement, decisions made regarding the Medicaid agreement, which could include imposition of these "other" State remedies, will be applied by the Secretary to the Medicare agreement as well. Therefore, under the Secretary's general rulemaking authority, this final rule provides that, if the State's remedy is unique to the State plan and has been approved by HCFA, then that remedy, as imposed by the State under its Medicaid authority, can be imposed by HCFA against the Medicare provider agreement of a dually participating facility.

Comment: One commenter suggested that the regulations create penalties for States that fail to implement the State enforcement rules.

Response: The Act provides no specific penalty for State failure to implement the enforcement provisions of the Act, nor do we wish to add one. However, there are existing Medicaid rules regarding the submission of and adherence to State plan amendments. If a State does not comply with the Medicaid rules, the failure could lead to Medicaid administrative sanctions.

Section 488.305 Standard Surveys

Comment: A large number of commenters opposed the provision at proposed 488.155(b) and suggested we delete it. This section states that the State survey agency's failure to follow HCFA survey procedures will not invalidate otherwise legitimate determinations that a facility's deficiencies exist. Because the provision does not appear in the Act, a few commenters questioned whether the Congress sanctioned this policy, and certain commenters asked that facilities be allowed to appeal surveyor noncompliance with the survey protocol. Many commenters felt that this provision would encourage disregard of established survey guidelines, and for this reason one commenter believed this provision would cause the standard survey to violate the Fourth Amendment.

Response: We believe the provision accurately reflects the intent of the Act and are retaining it in § 488.305(b). To invalidate legitimate determinations of noncompliance and leave them unaddressed would be in opposition to the mandate of OBRA '87 that all requirements be met and enforced, and would lead to inconsistent application of the law.

Sections 1819(g)(2)(C) and 1919(g)(2)(C) of the Act reveal the intent of the Act very clearly. These sections state that standard surveys must be conducted based upon a protocol, but

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add that the failure of the Secretary to develop, test or validate such a protocol will not relieve any State or the Secretary of the responsibility to conduct surveys. Because the Congress intended for survey results to be binding even when surveys were conducted in the absence of a formal protocol, it is clear that the Congress views the substance of survey findings to be of greater importance than the process used to identify them. An appeal of a deficiency based on surveyor noncompliance with the established protocol would be inconsistent with this position, and as a result, we will not offer facilities an appeal on these grounds. In particular, we wish to avoid situations where otherwise well documented deficiencies are subject to challenge, and potentially invalidated, simply because a surveyor did not follow every last detail of the survey protocol. We believe this would be surrendering all substance to form and would clearly thwart Congressional will. Moreover, since the source of binding requirements on facilities is not in the survey protocol, but in the Act and regulations, the ultimate, and proper, test of facility noncompliance will not rest on whether the survey protocol was rigorously followed, but on whether a requirement of the Act or the regulations has been violated.

The foregoing does not imply that HCFA encourages or condones disregard of its established survey policy; on the contrary, HCFA trains surveyors in survey policies and procedures and is responsible for assessing State survey agency performance and applying sanctions when there has been a failure to use Federal standards and protocols. The guidance we provide to surveyors, and the expectation we have that they adhere to our directives, contradict the claim that surveyors are given unbridled discretion which would render the standard survey an unreasonable administrative search in violation of the Fourth Amendment. Once a facility seeks participation in the Medicare or Medicaid programs, it must accept the responsibility of demonstrating its compliance with Federal certification requirements which the Congress has directed must be done through the survey process. A facility cannot seek such participation, and accept program funds, and then argue that Federal or State efforts to monitor compliance with essential health or safety requirements constitute a violation of the Fourth Amendment as an unreasonable search and seizure. In any event, surveys that nursing homes experience in the Medicare and Medicaid programs are reasonable. They advance the government's interest in protecting the health and safety of individual residents, and because of the various requirements for surveys in both the Act the Federal regulations, no facility can be said to be unaware of its obligations to permit onsite visits by State or Federal surveyors as a condition of its participation in these programs. Commercial enterprises, such as nursing homes, do not have the same expectation to be free of warrantless searches as individuals in their homes do. Indeed, the United States Supreme Court has ruled that warrantless searches of closely regulated businesses do not pose a violation of constitutional Fourth Amendment protections that commercial enterprises have.

We recognize that protocols and guidelines are necessary to promote consistent survey practice. However, whether or not a surveyor follows protocols must be subordinate in importance to whether or not a facility meets Federal participation requirements. Violations must be recognized and remedied appropriately if resident interests are to be protected and integrity is to remain in the enforcement system.

Comment: One commenter questioned whether proposed § 488.155(a)(3) conflicts with subpart III of Appendix P of the State Operations Manual, Transmittal No. 250. Section 488.155(a)(3) would require the State survey agency to include in the standard survey an audit of written plans of care and residents' assessments. Subpart III states that a review of the accuracy of resident assessments is to be performed as part of the extended survey which is triggered by the identification of a deficiency in quality of care during the standard survey.

Response: There is no conflict because a review of comprehensive assessments and care plans is not limited to the extended survey. It is also a major part of the Quality of Care Assessment performed during the standard survey (see Task 5 in Appendix P of State Operations Manual Transmittal No. 250). The review that occurs during the extended survey is slightly different, though, in that surveyors are directed to review more recent care plan and assessment information, and are given more flexibility in choosing sample size than in the standard survey.

Comment: One commenter suggested that we require surveyors to determine whether a facility attempted to accommodate both the exercise of a resident's rights and the resident's health when there appears to be a conflict. The commenter believed that accommodation should include exploration of care alternatives through a thorough care planning process in which the resident may participate.

Response: Surveyors are presently instructed to make such determinations. At tag number F295 in the Interpretive Guidance to Surveyors, the surveyor is directed to determine whether the care plan reflects the facility's efforts to find alternative means to address a problem if a resident has refused treatment. Additional guidance concerning this matter is found at tags F174 and F158. We believe such specific instructions are more appropriately located in the State Operations Manual than in the regulation itself, so we are not incorporating them into the regulation.

Comment: A few commenters suggested that we explicitly mention a review of the quantity and quality of nursing services staff in § 488.305(a)(2) where we outline a survey of the quality of care.

Response: Inherent in an evaluation of the indicators of care and services listed at § 488.305(a)(2) is an examination of the quality of the staff providing them. As part of the observational portion of the Quality of Care Assessment, surveyors are directed to make observations of staff/resident interactions which necessarily involve evaluating the quality of care and services provided by the staff, which is an indication of the quality of the staff itself. For this reason we do not explicitly mention this assessment in the regulation. We do specifically address a review of staffing in Appendix P of the State Operations Manual Transmittal No. 250.

Comment: One commenter recommended that we include, as part of the standard survey, private meetings between surveyors and family groups during evening and or weekend hours and another conference at the conclusion of the survey process to explain survey findings in lay person language.

Response: We recognize the value of family input in the survey process, and direct surveyors when interviewing to provide the opportunity for all interested parties to give what they believe is pertinent information. We expect this to include accommodating family members who wish to speak with the survey team but are unable to be at the facility at the time of the survey. It is possible for family members to call surveyors at the facility and be either interviewed over the telephone or scheduled for a personal meeting as the survey schedule allows. The survey team is in a better position than HCFA to know how to best accommodate these groups within the time and personnel constraints of the standard survey, and for this reason it would be unduly restrictive of us to require evening and week-end meetings.

Neither will we require that there be an exit conference specifically for family groups. If survey teams conduct an exit conference for facility residents, family members are not prohibited from attending. If such a conference does not take place, family members still have many other opportunities to learn about the outcome of a survey. Survey results are available to family members whenever they visit a facility, because facilities are required to accessibly post the results of the most recent survey. These survey reports are thorough and detailed, and if a family member has any difficulty understanding the results, he or she may resolve it by contacting either the long-term care ombudsman or the State survey agency.

Comment: One commenter proposed that we allow the survey team to expand the standard survey when it identifies substandard quality of care instead of requiring it to conduct an extended or partial extended survey to investigate the extent of the facility's problems.

Response: We must reject this proposal. We are bound by sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act which require a facility to be subject to an extended survey when it is found to have provided substandard quality of care during the standard survey.

Comment: One commenter proposed that we specify that the audit of written plans of care outlined at proposed § 488.155(a)(3) must include an investigation of whether the written plans were implemented and subsequently reevaluated and revised, as necessary.

Response: In Appendix P of State Operations Manual Transmittal No. 250, surveyors are directed, when conducting an audit of written plans of care, to determine whether care plans were consistently implemented, evaluated, and revised as necessary. We believe such detailed instruction is more appropriate in the manual than in the regulation itself, and so we are not including it in the regulation.

Section 488.307 Unannounced Surveys

Comment: Many commenters agreed that all surveys should be unannounced. Some commenters stated that survey schedules should be more unpredictable and one suggested that there should be even more unannounced inspections. Several commenters emphasized that many nursing homes are aware that they are about to be surveyed. One commenter stated that randomness of surveys has not yet been achieved and that HCFA should require States to demonstrate through survey scheduling that chronically substandard facilities have been targeted. Another commenter stated that annual licensure cycles, such as billings and certificates, may compromise unannounced surveys. Several commenters suggested that we require that the States provide a randomization plan or scheduling methods which would ensure that the timing of inspections is not predictable.

Response: We realize that commenters, in many cases, feel it is preferable to have unannounced surveys for the welfare of residents in nursing homes. However, after careful consideration, we have concluded that requiring all surveys to be unannounced is not mandated by the Act. Moreover, doing so would, in some cases, undermine the efficiency of the survey process in which, for example, the only thing necessary to verify compliance is a request for documentation or an interview with a particular part time employee who may, otherwise, not be at the facility if a survey is not announced. We are, therefore, revising § 488.307(a) to require that only standard surveys be unannounced.

We agree that survey schedules should be more unpredictable and have made this more possible at § 488.308(a) by allowing the flexibility of conducting standard surveys no later than 15 months after the previous survey. We disagree with the recommendation that there should be more unannounced inspections than presently required by HCFA. The States are responsible for determining which facilities need to be surveyed and when the surveys should be scheduled, subject to the requirements of § 488.307. The States already have the obligation to conduct extended surveys and complaint surveys as the need arises. Moreover, because of time and money constraints and the difficulty of scheduling the surveys already required, it would be unfair to place an additional burden on the States for conducting more surveys than required by law.

We agree that complete randomness of surveys has not been achieved but we believe that complete randomness should not be our goal. Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act provide for a flexible survey cycle. While the law does not specify the criteria to be used to determine intervals between consecutive surveys, States will undoubtedly use past performance as a primary criterion. If past performance is considered in determining how frequently to survey specific facilities, the survey cycle can not be completely random.

Our intention is to strive to have surveys conducted on as random a basis as possible consistent with effective enforcement. We are aware that annual licensure cycles may compromise unannounced surveys. However, we believe that, over time, State licensure cycles will not be a factor in survey predictability since licensure and certification surveys are generally conducted concurrently. In the event that States do not move to a more flexible licensing schedule, this will not create a problem because licensing schedules will not substitute for certification requirements. We believe that it is unnecessary to require States to provide a randomization plan for the timing of surveys because we are already stating at § 488.307(b) that we will review States' procedures on at least an annual basis. In addition, the law does not require States to demonstrate that substandard facilities have been targeted, but in examining the States' scheduling practices annually, we will look for logical scheduling criteria and past performance will undoubtedly be one of the reasonable criteria States can use.

Comment: Several commenters stated that it is unfair for surveyors to come into a facility without any advance notice. Another commenter stated that unannounced surveys are not more beneficial than announced ones. This commenter stated that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) announces its surveys and that this practice is less stressful and avoids placing an unnecessary mystique on the process since it is known that a survey must occur 90 days before the license expires. (We assume the commenter is referring to the expiration of accreditation.) This commenter feels that the same objective is achieved. Another commenter stated that facilities should always be given a warning that a survey will occur and ample time to correct whatever is wrong.

Response: We cannot accept the comments advocating announced standard surveys. To do so would be inconsistent with sections 1819(g)(2)(A) and 1919(g)(2)(A) of the Act. Moreover, warning facilities in all cases of an upcoming survey can undermine the accuracy of survey findings which sometimes is predicated on the element of surprise.

Comment: Two commenters proposed that paragraph (a) of § 488.307 be revised as follows:

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"(a) *Basic rule.* All surveys must be unannounced and their timing should be unpredictable. State survey agencies must adopt survey schedules that maximize the element of surprise. Scheduling procedures and practices must not have the effect of giving facilities notice of inspections. For example, inspections should not occur around the same time each year nor be conducted in a predictable sequential cycle."

Response: We agree that the timing of surveys should be made as unpredictable to long term care facilities as possible. However, at this point, it does not seem practical or even possible to mandate, or enforce the total unpredictability of surveys by States or to require that all surveys be unannounced, as explained in the response to prior comments in this section. We will be looking into the possibility of incorporating some guidance on ways in which to maximize unpredictability into manual instructions.

Comment: Two commenters suggested that § 488.307(b) be changed to provide that HCFA shall identify successful scheduling methods, distribute them, then monitor State agency performance, taking corrective action when necessary. One commenter thought that the way the provision was written, an agency gets constructive suggestions about scheduling surveys only after the surveys have been done and at the time of a review of its procedures. Two other commenters suggested it would be helpful if HCFA could put in the Regional Office Manual the successful methods it has identified that assure that surveys are unannounced.

Response: We disagree with these comments suggesting that HCFA specify in regulations that it will provide successful scheduling methods because we believe the States are better able than we are to identify successful scheduling methods which may differ from one locality or region to another. Each State uses the methods that work best for it to schedule surveys within the required timeframes. We believe that the controls in place at § 488.307, which provide that all standard surveys must be unannounced, and that we will review each State's scheduling procedures on an annual basis, are sufficient.

Comment: One commenter asked what the term "any individual" means in reference to penalizing someone who notifies a facility that a survey is scheduled. Another commenter suggested that individuals other than an employee of the Federal and State government should be held harmless from fine if he or she notifies a facility that it is scheduled to be surveyed. This commenter further suggests that any individual who is fined for notifying a facility, should have the right to contest the fine in a formal hearing.

Response: The Act, in sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i), is clear that "any individual" who notifies a nursing home of the time and date of a standard survey is subject to a civil money penalty. We, therefore, disagree that only employees of the Federal and State governments should be held responsible for notifying a facility that it is scheduled to be surveyed; any individual who knowingly advises a facility that a standard survey is scheduled will be held accountable, according to the Act. Any individual who is fined for notifying a facility is entitled to the appeals mechanisms specified at section 1128A of the Act. The administrative appeals policy for civil money penalties imposed against an individual announcing a standard survey is not established by HCFA but rather by the Office of Inspector General (OIG) and is already in place.

Comment: Two commenters suggested that ombudsmen should be informed in advance of a survey in order to be able to participate fully, provided ombudsmen are subject to the penalties mandated by law and to loss of employment if they cause the time of the survey to be known. One of these commenters suggested that advance notice of the survey should be given to the local ombudsman by means of a letter from the survey agency stamped "CONFIDENTIAL." This commenter feels ombudsmen should be informed in advance because they are currently notified on the first or second day of three or four day surveys and may have already scheduled appointments which cannot be changed in order to accommodate the survey schedule. This commenter feels that advance notice would guarantee better surveys by strengthening ombudsman/consumer input.

Response: We disagree. Each additional individual or organization that has knowledge of a scheduled survey decreases the likelihood that the survey will remain unannounced. The ombudsman is contacted soon after the survey team has entered the facility and can participate meaningfully even if not present for the initial tour of the facility or other early phases of the survey.

Comment: Two commenters stated that a $2,000 fine is not a severe enough penalty for willfully disclosing in advance the timing of a nursing home inspection or taking advantage of foreknowledge of an inspection. Another suggested that this type of violation should also be referred to the Department of Justice for prosecution for obstruction of justice.

Response: The $2,000 fine is the maximum allowable under sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i) of the Act. The exact amount of the civil money penalty is determined by the OIG. In response to the suggestion that this violation be referred to the Department of Justice, OIG decides which cases are appropriate for such referral.

Comment: This commenter stated that § 488.307(c) is weakened by the use of the word "standard" and that civil money penalties should be applied as a penalty for the announcement of any type of survey including validation, complaint, or other surveys.

Response: Sections 1819(g)(2)(A) and 1919(g)(2)(A) of the Act are applicable to standard surveys only, so that the civil money penalties specified at sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i) are imposed for announcing standard surveys. We do not have the statutory authority to require that civil money penalties be imposed for announcing anything other than standard surveys.

Section 488.308 Survey Frequency

The nursing home reform provisions of OBRA '87 reconfigured the way in which HCFA and the States would track nursing home compliance with Federal requirements and approach enforcement remedies. The survey and certification provisions, set forth at sections 1819(g) and 1919(g) of the Act, require implementation of a flexible survey cycle for Medicare skilled nursing facilities and Medicaid nursing facilities so that standard surveys are conducted at intervals not later than 15 months after the date of the previous standard survey with a statewide average interval that does not exceed 12 months.

The legislative history of OBRA '87 and the National Academy of Science's Institute of Medicine (IoM) study (1986) are plain in their stated reasons for this change from the rigid, time limited system of having surveys for all facilities follow a 12 month cycle. First, a flexible survey cycle provides less predictability to the scheduling of surveys, thus reducing the opportunities for certain providers, by anticipating the survey, to achieve only temporary compliance for the short term period around the time of survey. Second, flexible survey cycles allow survey agencies to better allocate their limited resources by increasing the frequency of surveys for problem facilities while allowing other facilities with a better record of compliance to be less rigorously monitored. Additionally, because time limited agreements have automatic cancellation clauses, a significant paperwork and recordkeeping burden results from the frequent need to conduct resurveys as a means of avoiding provider agreement expirations. Third, the enforcement provisions of nursing home reform, set forth at sections 1819(h) and 1919(h) of the Act, are designed to work in the context of provider agreements that do not have a fixed ending date.

Specifically, sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act speak to the ability of the Secretary to continue payments for up to 6 months after the identification of deficiencies if certain criteria, described in those sections, are met. Sections 1819(h)(2)(D) and 1919(h)(2)(C) of the Act require the Secretary and States to impose denials of payment for new admissions should deficient facilities fail to achieve compliance within 3 months after they have been determined not to comply with Federal requirements. In both cases, these remedies make sense only where a facility's provider agreement has no set expiration date.

We reach this conclusion because under a time limited agreement survey system in which surveys are typically conducted shortly before the expiration of provider agreements, facilities would have only the shortest period of time to correct deficiencies if they are to be entitled to renewed agreements. The statutory remedies described above, however, contemplate periods of time that far exceed what would be available under a time limited agreement system for providers to achieve compliance.

For HCFA and the States to attempt to fit this survey system into the procedures described in sections 1819(h) and 1919(h) of the Act would require the wholesale revamping of surveys so that they occur no later than mid-way through the term of the 12 month provider agreement. Such a radical departure from more than 20 years of practice would require the kind of massive reallocation of survey resources that is not possible under a time limited agreement survey system and would likely cause many facilities to go unsurveyed by the time their time limited agreements are scheduled to expire. Of equal significance, we do not believe that the Congress would approve of a survey system in which the decisions about renewal of a provider agreement are made as far as 6 months prior to the expiration of that agreement, since determinations of compliance made so far in advance may not be reflective of the degree of facility compliance at the time the agreement is set to expire.

Continued implementation of time limited agreement requirements for skilled nursing facilities and nursing facilities frustrated many aspects of nursing home reform and, in a practical way, rendered them inoperable. For these reasons, a HCFA Ruling was signed on August 26, 1992 eliminating time limited agreements for skilled nursing facilities and nursing facilities participating in the Medicare and Medicaid programs and these regulations further adopt this position.

Section 488.308 implements sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act, which require that each skilled nursing facility and nursing facility be subject to a standard survey not later than 15 months after the last day of the previous standard survey and that the statewide average interval between standard surveys not exceed 12 months. The regulation specifies when and how the average interval is computed, specific conditions that may prompt a standard or an abbreviated standard survey and HCFA's corrective action to ensure that State survey agencies meet the 12 month average interval requirement. These final rules also codify the substance of the HCFA ruling described above by eliminating from the regulations the requirements for time limited agreements for SNFs and NFs.

Comment: One commenter requested clarification of the 15 month interval by asking if determination would be "to the day" or "during the 15th month."

Response: We intend to calculate the 15-month interval by counting days. The survey agency calculates the number of days between the last day of the current standard survey and the last day of the facility's previous standard survey.

Comment: Several commenters recommended that survey frequency be related to the compliance/noncompliance history of the facility. A few commenters suggested that States be required to conduct more frequent inspections of nursing homes with poor care histories. One commenter recommended that States take facility compliance history into account when establishing survey cycles and conduct more frequent surveys of nursing homes with a history of substandard quality of care.

Response: We are retaining this provision of the regulation as written because we believe that the Act, as previously cited, provides a framework within which the State survey agency can establish a flexible survey cycle that effectively ensures that quality health care is furnished in a safe environment. Without restricting this flexibility, we expect that State survey agencies will consider a facility's compliance history when scheduling standard surveys and revisits. The survey agency may conduct surveys as frequently as necessary to determine compliance with participation requirements, to confirm that previously cited deficiencies have been corrected, to investigate complaints and to ensure that certain changes do not cause a decline in the quality of care furnished to the resident.

Comment: Several commenters recommended that an additional provision be incorporated which would allow State survey agencies to conduct tailored or abbreviated surveys in those facilities which were deficiency-free in the previous standard survey. Some additional commenters recommended that facilities with a record of deficiency-free surveys be inspected less frequently than every 12 months. One commenter specifically suggested that surveys not be conducted yearly if there is in place good surveillance and monitoring from the State, and that, perhaps, over time a survey would be conducted every third year as hospitals are surveyed by the Joint Commission on the Accreditation of Healthcare Organizations. One commenter recommended a demonstration project that would test the possibility of an extended survey cycle for excellent facilities.

Response: We cannot accept the comment to conduct abbreviated or tailored surveys of facilities that were free of deficiencies in the previous standard survey, because the Act does not include abbreviated standard surveys in the computation of the 15 month interval between standard surveys of a facility or in the computation of the 12 month statewide average for all facilities in a particular State. Abbreviated standard surveys are premised on complaints received, or a change of ownership, management or director of nursing, or other indicators of specific concern and, therefore, could be focused on certain specific requirements, whereas, a standard survey is a periodic inspection to gather information about the quality of service furnished in a facility to determine compliance with the certification requirements for participation. To use an abbreviated standard survey instead of a standard survey in the computation of the 15 month survey interval or the 12 month statewide average would not meet the intent of the Act, nor would it be an accurate assessment of the State's ability to ensure that each facility

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furnishes quality health care in a safe environment.

Sections 1819(g)(2) and 1919(g)(2) of the Act require that each facility must have a standard survey no less frequently than every 15 months. With this constraint, we can accept the comment to conduct a standard survey of facilities with good compliance histories less frequently than every 12 months but not less frequently than every 15 months. Once we have had the benefit of experience under the new survey process, we will consider whether it might be appropriate to approve a demonstration project that would explore whether other survey frequencies would be more effective.

Comment: A commenter stated that a State could survey small facilities or facilities near the survey office most often to meet the 12 month average interval requirement.

Response: Existing procedures call for HCFA regional office review of State survey agency workload planning. This review will continue and can identify and respond to inadequate survey practices. We do not believe a regulatory requirement is necessary to ensure the use of meaningful criteria for determining survey intervals.

Comment: One commenter was confused about how HCFA can determine which facility survey did not meet the 12 month average interval requirement.

Response: The regulation specifies that it is the statewide average interval between standard surveys that must not exceed 12 months, rather than the interval between consecutive surveys of specific facilities.

Comment: Several commenters suggested alternative language for proposed § 488.158(b)(2). These writers recommended that the sentence which reads, "If the provider is a Medicaid facility, HCFA reduces FFP in accordance with § 488.170" be replaced with "HCFA will reduce FFP in accordance with § 488.170 and may apply corrective action which includes the following: * * *" or "HCFA reduces FFP to the State in accordance with § 488.170." Another commenter recommended that HCFA's corrective action be limited to technical assistance and inservice training during the first year and only include FFP reduction if there is a gross violation.

Response: While we appreciate the merits of these suggestions, the FFP reduction formula now specified at § 488.320 has certain limitations as it cannot logically be used to sanction a State for failure to achieve a 12 month statewide average interval requirement for standard surveys. This is because a survey agency's performance in calculating the 12 month statewide average interval is unrelated to the terms of the FFP reduction formula. The formula is comprised of two terms: the total number of residents in nursing facilities surveyed by HCFA during a quarter and the total number of residents in nursing facilities found, in accordance with HCFA surveys, to be noncompliant. Thus, the statutory formula does not lend itself to remedying problems States might be experiencing in conducting timely surveys. However, section 1919(g)(3) of the Act states that we may respond to inadequate State survey performance in Medicaid facilities by providing for the training of the State's survey teams. We are revising §§ 488.308 and 488.320 in this final rule accordingly.

Comment: A commenter asked that we explain which date is used for computation of the 12 month statewide average interval when an extended survey follows a standard survey.

Response: The last day of the standard survey, not the last day of the extended survey, is the date used in the computation of the statewide average interval. Sections 1819(g)(2)(A)(iii)(I) and 1919(g)(2)(A)(iii)(I) of the Act specify the statewide average interval between standard surveys shall not exceed 12 months.

Comment: In examining the criteria which trigger special surveys, one commenter agreed that survey agencies may need to conduct a survey when changes occur as specified in the regulation. A few other commenters disagreed and indicated that an abbreviated or standard survey within 60 days of a change in ownership, management, nursing home administrator and/or director of nursing was stressful, wasteful of taxpayer dollars or unnecessary. One commenter specifically stated that the change of a director of nursing as a survey trigger was inappropriate and should be removed.

Response: We are retaining this provision as written. Sections 1819(g)(2)(A)(iii)(II) and 1919(g)(2)(A)(iii)(II) of the Act use the word "may," thus permitting the State survey agency discretion in deciding to conduct a standard survey or an abbreviated standard survey within 60 days of any of the above stated changes to determine whether these changes have caused a decline in the quality of care furnished by the facility.

Comment: A few other commenters recommended that the regulation specify that other surveys (§ 488.308(c)) must be conducted as frequently as necessary to determine compliance with participation requirements and to confirm the correction of previously cited deficiencies.

Response: We are retaining this provision in which the decision to conduct other surveys under the circumstances specified at § 488.308(c) be at the State survey agency's discretion. We expect the survey agency to base its decision on the individuals and facilities involved and the State's concern that the quality of care may have declined, and to conduct a survey in those cases where one is necessary to confirm compliance with participation requirements. The correction of noncompliance will be monitored and verified by some type of follow up activity which may or may not be a survey. Section 488.332 states that the State survey agency conducts on-site monitoring as needed when: a facility is not in substantial compliance with the requirements and is in the process of correcting deficiencies; verification of continued substantial compliance is needed after deficiencies have been corrected; or, the survey agency has reason to question the substantial compliance of the facility with the requirements of participation. (Please refer to the discussion at § 488.332, Investigation of complaints of violations and monitoring of compliance.)

Comment: The proposed regulation indicates that the survey agency may conduct a standard or an abbreviated standard survey to determine whether certain changes have caused a decline in the quality of care furnished by a facility. The commenter recommended that the phrase "decline in the quality of care furnished by" be modified to allow special surveys for the purpose of determining whether the facility is out of compliance with any conditions of participation.

Response: Since the language of concern to the commenter simply reiterates the Act, at sections 1819(g)(2)(A)(iii)(II) and 1919(g)(2)(A)(iii)(II), we are not free to modify the language as suggested. However, we believe the Act gives States ample authority to conduct surveys any time they suspect that conditions at a facility may be declining.

Comment: A commenter proposed amending the regulation to expressly permit the survey agency to screen complaints to decide if they merit an on-site investigation. Another commenter wrote that this rule goes beyond the Act and requires a standard or abbreviated survey in every instance, including those which may be an isolated complaint or abuse. One commenter proposed revising § 488.308(e)(2) to read, "The survey agency must conduct a standard or an abbreviated standard survey to investigate complaints of violations of the requirements by SNFs and NFs that the agency has reviewed and determined to provide a reasonable basis for investigation."

Response: We are clarifying the wording of this provision to say the survey agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of deficiencies in requirements by SNFs and NFs if after reviewing the allegation, the survey agency concludes that a violation of one or more of the requirements may have occurred and only a survey can confirm that a deficiency or deficiencies exist. A survey will not be conducted if the complaint raises issues that are outside the purview of Federal participation requirements.

Section 488.310 Extended Surveys

Comment: Several commenters advocated that HCFA mandate extended surveys and/or more frequent surveys (every 6 months) whenever a facility has a nurse staffing waiver. Commenters reasoned that requiring extended surveys would protect residents through the process of reviewing a facility's staffing, as required in sections 1819(g)(2)(B)(iii) and 1919(g)(2)(B)(iii) of the Act. One commenter raised the presumption that in the case of nurse staffing waivers, quality of care problems exist and need to be closely examined. Further, the commenters fundamentally questioned the legality of granting nurse staffing waivers because they believe it contradicts the statutory definition of a SNF and NF.

Response: While we agree that facilities with nurse staffing waivers should be carefully examined to ensure sufficient staffing, we do not believe that conducting an extended survey is the only means available to do so. The standard survey, as described in the Appendix P of the State Operations Manual Transmittal No. 250, permits surveyors to expand the standard survey "as needed" for any reason without requiring an extended survey. Subpart I of the State Operations Manual, Appendix P, Section A states, "If in conducting the information gathering tasks of the standard survey you identify a possible noncompliant situation related to any requirement, investigate the situation to determine whether the facility is in full compliance with the requirements." Therefore, surveyors could review facility staffing records during the standard survey to assure sufficient staffing. We wish to reserve the use of extended surveys to those circumstances in which we have found substandard quality of care.

We are not accepting the commenters' suggestion that we require more frequent surveys for facilities with nurse staffing waivers. To do so would undermine the State survey agency's ability to choose survey intervals. We believe that the Congress intended State survey agencies to have the flexibility to choose the survey intervals. The law specifies that the interval between 2 successive standard surveys must not exceed 15 months and that the State survey agency must maintain no greater than a 12 month Statewide average for standard surveys.

We do not address the comments regarding the legality of nurse staffing waivers. The requirements for nurse staffing waivers are outside of the purview of this rule and were included in a final rule published in the **Federal Register** on September 26, 1991 (56 FR 48826).

Comment: Several commenters questioned the use of the survey agency and HCFA discretion to conduct an extended survey at any time for any reason. Some commenters disagreed that the Act gives HCFA or the survey agency the discretion to conduct an extended survey at any time. These commenters urged HCFA to clarify that the purpose of an extended survey is to identify policies and procedures that caused the facility to furnish substandard quality of care.

Response: We disagree with commenters who believe that the Act does not give HCFA or the survey agency the discretion to conduct an extended survey at any time. Sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act specifically state, "Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey)." However, we recognize that when facilities are subject to an extended survey or partial extended survey, they are disadvantaged because they automatically lose approval of their nurse aide training and competency evaluation programs (NATCEP) for two years. There may be other instances when a facility would lose their NATCEP, for example, when a facility has a nurse staffing waiver or has had a denial of payment for new admissions remedy, or temporary manager remedy imposed. Therefore, as a matter of policy, we do not expect to exercise our discretionary authority to conduct an extended or partial extended survey unless we have found substandard quality of care on a standard survey or abbreviated standard survey and we will advise the State survey agencies in manual instructions to adopt the same policy.

We have built into our survey process the ability of the survey team to expand a standard survey at any time. The expanded standard survey can be tailored to the unique situation in a particular facility and need not include all of the tasks listed at § 488.310(b). It allows more thorough investigation of specific areas in order to confirm noncompliance when the initial scope of the standard survey is not adequate to substantiate a particular deficiency. But it does not penalize a facility with loss of approval of a NATCEP.

We are not including proposed § 488.160(c)(2) which would spell out the State survey agency's and Secretary's discretion to conduct extended surveys, as it is unnecessary given the explicit language of sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act.

Comment: We received numerous comments urging us to amend the purpose of an extended survey as stated in § 488.310(a). One commenter suggested the following revision:

> The purpose of an extended survey is to determine the extent of the problems and their effect on residents, when surveyors determine or suspect that jeopardy exists, in order to document the problems fully and determine the appropriate combination of remedies. Extended surveys must be conducted whenever a facility has been granted a waiver of nurse staffing requirements.

Response: We are not accepting this proposed change because it is inconsistent with the Act. Sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act specify that an extended survey must be conducted when the Secretary or State survey agency finds substandard quality of care. Substandard quality of care does not necessarily pose immediate jeopardy to residents. Therefore, the commenter's proposal is more restrictive than the Act. As we discussed previously, we are not requiring that the Secretary or the State survey agency conduct an extended survey when a facility has a nurse staffing waiver.

We believe that adding "to determine the extent of problems and their effect on residents" to the stated purpose of an extended survey is not necessary because it is inherent in identifying policies and procedures that caused substandard quality of care. For example, if there are poor policies and procedures (rather than isolated practices that don't conform to appropriate policies and procedures),

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the extent of the problem in the facility could be potentially pervasive.

Comment: Other commenters suggested that random discretionary extended surveys are a good idea. However, they do not believe that penalties should be applied to facilities as a result of such random surveys when the facility was not cited for substandard quality of care.

Response: Sections 1819(f)(2)(B)(iii)(I)(*b*) and 1919(f)(2)(B)(iii)(I)(*b*) of the Act require that the approval of NATCEP be withheld or withdrawn for 2 years when the State or HCFA conducts an extended survey. The law makes no exceptions for extended surveys conducted at the discretion of the Secretary or the State. However, we believe that we can achieve the indepth random survey favored by commenters through the standard survey. As we discussed above, the State survey agency or HCFA may expand a standard survey at any time without the threat of a loss of NATCEP.

Comment: Several commenters disagreed with or suggested alternatives for the items included in an extended survey, as specified in proposed § 488.160(b). Some commenters asked that we add "and review sampled residents in more depth" after paragraph (b)(1). The majority of commenters asked that we delete paragraph (b)(5) which requires that an extended survey include "an investigation of any participation requirement at the discretion of the survey agency." These commenters believe that the proposed language exceeds the concept of the statutory language. In part the commenters stated:

> It returns to the old methodology of checking everything in contrast to the intent of the IoM study and resident-centered outcomes. It would also waste fiscal resources that could be better utilized elsewhere in the survey system.

Response: We are not accepting the proposed amendment to § 488.310(b)(1) which would add the requirement that the survey agency review sampled residents in more depth. The purpose of an extended survey is to look at the policies and procedures that produced substandard quality of care. The Act only requires an expansion of the size of the sample of resident assessments and not the depth of the reviews of the residents themselves. A more indepth look at residents will not facilitate an investigation of policies and procedures and should, therefore, be accomplished through a standard survey if the survey agency so desires. We also disagree with commenters that § 488.310(b) should not include "an investigation of any participation requirement at the discretion of the survey agency." Section 488.310(b) says "all" and paragraph (b)(5) says "any participation requirement at the discretion of the survey agency." This does not mean, as the commenter suggests, that every requirement would be surveyed, rather, only those that the survey agency chooses.

Comment: One commenter asked that we indicate whether the 2 weeks specified in § 488.310(c) is 2 work or calendar weeks (that is, 10 work days or 14 calendar days). Another commenter asked that we define "partial extended survey." One commenter wondered whether the survey agency would notify facilities that they were going to receive an extended survey.

Response: We are revising § 488.310(c) to state that the 2 weeks are computed in calendar days. We are defining the term "partial extended survey" in § 488.301 ("Definitions"). The survey agency will not notify a facility when an extended survey will be conducted. The survey team will let the facility know at the exit conference when it finds substandard quality of care. Based on the finding of substandard quality of care, the facility will then know that an extended survey will be conducted any time within the next 14 calendar days. In most cases, we expect that the survey team will conduct the extended survey immediately following the standard survey especially when it would be more cost effective for the State to complete both the standard and extended survey while on site rather than scheduling another visit.

Section 488.312 Consistency of Survey Results

We specifically asked in the preamble of the proposed regulation for comments or suggestions for enhancing surveyor consistency.

Comment: Several commenters support efforts by HCFA to assure consistency of survey results and the application of remedies. However, it was stressed that consistency should not receive greater emphasis than accuracy and efficiency. Increased accuracy of the citation of deficiencies will lead to greater consistency within the survey process.

Response: In the preamble of the proposed rule, we stressed that surveyors should be trained to "exercise consistency and accuracy." We agree that accuracy is as important as consistency and we are including the term in the text of the final regulation. Additionally, we believe that the recommendations of the studies and analyses required by the regulation should be implemented to enhance consistency and be monitored by each HCFA regional office. These changes are reflected in the final text at § 488.312.

Comment: Some commenters suggested the use of consumers, ombudsmen, other resident advocates, and providers to evaluate the quality of the survey process.

Response: This rule requires each State survey agency to implement programs to enhance consistency. Each State survey agency is encouraged to gather pertinent data and consider varied sources in its data collection. While we agree with this suggestion, we do not want to limit, in regulations, what data each State may consider.

Comment: Commenters also suggested that deference be given to the data compiled on survey consistency by "entities and their associations." These commenters believe that these data are valuable and often compiled in a manner which permits "valid and reliable statistical conclusions about the degree of inconsistency among surveyor results." Additionally, these commenters wanted the final regulation to require survey agencies to consult with the regulated entities as part of the effort to reduce inconsistency among survey teams.

Response: We assume that the commenters mean "long-term care facilities" when they refer to "entities and their associations." Sections 1819(g)(2)(D) and 1919(g)(2)(D) of the Act require that the State (and the Secretary under section 1819) implement programs to improve consistency in the interpretation and application of survey results among surveyors. The intent of the Act is to assign the authority to administer these programs to the States, not to facilities. In fact, the compilation of data to allow statistical conclusions about surveyor consistency may be a part of the programs that the law requires the States and the Secretary to establish. As far as mandating that the State survey agency must consult with facilities in the effort to ensure consistency, we believe it is unnecessary to require this in regulation as it is already inherent within the survey process.

Comment: Other commenters wanted the required studies and programs outlined within the final regulation or the State Operations Manual. A few commenters wanted a written quality assurance program approved by HCFA which would outline specific data to be included in the required studies and programs.

Response: The only requirements that we are specifying in regulations are that the State survey agencies must consider surveyor accuracy as well as consistency. We believe that it is preferable for individual State survey agencies to develop their own programs.

Comment: Some commenters believed increased surveyor training and testing would enhance surveyor consistency.

Response: As previously stated in the preamble to the proposed rule, HCFA has implemented an exhaustive surveyor training and testing program that will ensure that surveyors are adequately trained and competent at performing surveys. This requirement is in § 488.314.

Comment: Some commenters advocate the review of every statement of deficiencies by survey agency supervisory personnel for compliance with the requirements before the statement is sent to the provider.

Response: As stated in the preamble of the proposed rule, surveyors will, based upon their collective information, match the data to the legal standards the facilities are obligated to meet in order to determine if deficiencies exist. Most State survey agencies already employ some type of supervisory review for all statements of deficiencies prior to provider notification. However, we will not require a 100 percent supervisory review in all State survey agencies.

Comment: A few commenters suggested that a procedure for maintaining and monitoring records of individual surveyor's proficiency should be initiated and these records should be considered in the preparation of deficiency reports for facilities.

Response: We are not making changes suggested by this commenter because there is no statutory basis for using the records of individual surveyor's proficiency in the preparation of deficiency reports. Compliance is something achieved or not achieved by the facility; therefore, individual surveyor proficiency records do not obviate the obligation of each facility to abide by Federal regulations. All decisions regarding the preparation of deficiency reports are made as a team, rather than by individual members. In fact, we require team decision making and provide comprehensive training on the regulations and documentation techniques in order to enhance consistency.

Comment: One commenter claimed the section of the proposed regulation regarding consistency violates the Congressional mandate to establish new programs to improve consistency by stating "* * * the collective exercise of surveyor judgements, which has always been the vehicle for the identification of deficiencies, will remain unchanged." (57 FR 39290)

Response: We do not agree with this comment. The above passage refers to the method by which the survey team collects the data for the identification of deficiencies. Following the above passage, as stated in the preamble of the proposed rule, this "collective exercise" is described as how "* * * surveyors will *gather* information based upon direct observations, record review, and interviews with residents, staff, and family members" (emphasis added). (57 FR 39290) Through training, surveyors are instructed on this method of information gathering which assists them in identifying situations that are indicative of a facility's compliance with the regulations. Additionally, the Congressional mandate refers to the "*establishment* of new programs, studies and analyses" (emphasis added), not to the method in which the information is gathered.

Comment: A few commenters stressed the importance of consistency being sought in the application of enforcement remedies as well as the survey procedures.

Response: We agree with the commenters. The final regulation requires that State survey agencies conduct programs designed to enhance consistency in the application of enforcement remedies as well as in survey results.

Comment: A few commenters questioned the inclusion of the application of remedies as part of the evaluation of survey consistency. They assume it is not the surveyors who would be responsible for the selection and implementation of remedies.

Response: We recognize that the surveyors are not ultimately responsible for the selection and implementation of remedies. As stated in the preamble of the proposed rule, it is the surveyor's responsibility to "* * * *recommend* one or more remedies to either HCFA or the SMA [State Medicaid agency] for the enforcement of the requirements." (emphasis added) However, we disagree with the comment questioning the inclusion of the application of remedies as part of the evaluation of survey consistency. As it was the intention of the Congress to "* * * measure and reduce inconsistencies in the application of survey *results* * * *," (emphasis added) we interpret sections 1819(g)(2)(D) and 1919(g)(2)(D) of the Act to include both inconsistencies in survey findings as well as inconsistencies in the application of enforcement remedies. In order for each State survey agency to measure accuracy and consistency in the application of survey results among surveyors, it must first ensure that these results are consistent across surveyors, and then determine that the enforcement actions precipitated by the survey results are consistently applied.

Comment: One commenter suggested that facilities be requested to fill out a questionnaire after their survey to give feedback on the quality, competence and attitude of their survey teams.

Response: We believe that it is unnecessary to require a questionnaire because feedback is inherent in the survey process. There are numerous times throughout the survey process for the provider to comment upon the performance of the survey team. Providers have the opportunity to question survey findings during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, upon receipt of the same, and through dialogue with the State survey agency and HCFA regional officials.

Section 488.314 Survey Teams

Comment: Virtually everyone who commented on this proposed section emphasized the importance of ensuring that surveyors have the appropriate professional credentials for the job and that they receive adequate training. For the most part, the only differences were over exactly what constitutes "appropriate" professional credentials and "adequate" training. Opinion ran the gamut from maintenance/safety experts to physicians with experience in geriatric medicine or long term care. Some suggested that trainees work under the supervision of an experienced surveyor.

Numerous commenters offered suggestions regarding team composition. Two examples included—

- A nurse, licensed administrator, pharmacist, nutritionist, and social services/activities therapist; and
- A nurse, a maintenance/safety expert, and a social worker.

One commenter suggested that one team member must be "a physician trained in geriatric and psycho-pharmacology," and said that, "To the extent the new survey process incorporates new guidelines for chemical and physical restraints, a physician (MD/DO) team member must be included." Some said that nurse surveyors should have, as a minimum qualification, a B.S.N. One commenter said that the nurse on the team should have spent 2 or 3 years as a director of nursing at a long term care facility. Other disciplines that commenters said should be represented in the ranks of

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surveyors include speech-language pathologists, sanitarians, gerontologists, and dietitians. A number of commenters suggested a specific requirement that all surveyors must have at least 1 year of experience with geriatric populations in a health care or related setting or experience in long term care. Some said that this experience should be "hands on" experience, and a few commenters suggested that we set forth the size of the team in regulations, with the size being proportional to the number of beds in the facility or increasing in certain instances such as a historical pattern of serious deficiencies or complaints.

Many commenters asked for clarification of the meaning of "multidisciplinary" and "professionals," and one suggested we use the word "interdisciplinary" instead of "multidisciplinary."

Finally, one commenter said that surveyors should be sent to the same facilities year after year so that they become more familiar with the facility and its staff. This would, the commenter suggested, enable the team to do a better job. Another commenter said that surveyors should be rotated among facilities to maintain their objectivity.

Response: We are deleting the modifier, "health," and clarifying the term, "professionals," in § 488.314(a)(1) by setting forth examples. Examples of professionals include physicians, physician assistants, nurse practitioners, physical, speech, or occupational therapists, physical or occupational therapy assistants, registered professional nurses, dieticians, licensed practical nurses, sanitarians, engineers, and social workers, but are not completely inclusive; the State, subject to HCFA's approval, determines what constitutes a "professional." We are deleting the word "health" because it may be appropriate in some cases to include other types of professionals on a survey team. For example, if the facility has or may have structural problems or other physical plant facilities, an engineer may be needed.

We have chosen to continue to use the term "multidisciplinary," rather than change it to "interdisciplinary." Dictionary definitions of the prefixes "multi-" and "inter-" are very broad, with the former generally meaning "more than one," and the latter generally meaning "between or among." Therefore, we believe that "multidisciplinary" is the more appropriate choice. Furthermore, "multidisciplinary" is the term used in the Act.

Different States have different licensure requirements and different staffing patterns. Also, it is difficult to recruit qualified professionals in certain areas of the country. Therefore, other than requiring that there at least be a registered nurse on the team, we do not believe dictating to the States in Federal regulations the precise composition of survey teams is necessary at this time. (The registered nurse member of the team is necessary because SNFs and NFs are primarily engaged in providing skilled nursing care and/or related services.) The most important considerations are that the surveys be conducted by professionals and that the survey guidelines be followed. All surveyors must pass HCFA's "Surveyor Minimum Qualifications Test" (SMQT), which is in itself, a test of several disciplines directly related to the survey of health care facilities.

Cogent cases can be made both for and against surveyor rotation, as is evidenced by the comments themselves. For this reason, we are considering this an administrative matter and leaving it to the discretion of the States.

Comment: One commenter thought that § 488.314(a)(2)(i) should be expanded to include surveyors who serve, or within the previous 2 years, have served as a member of the staff or as a consultant to the chain of which the facility is a part (if applicable). Another commenter said that we should also disqualify surveyors who work or who have worked in the previous 2 years as agency staff. The commenter said that, in many States, nurses who work for agencies and are sent to nursing homes for discrete periods of time are not always considered to be "staff."

Other suggestions were to revise § 488.314(a)(2)(ii) to disqualify surveyors who—

- Own a part of any nursing home in the State;
- Own a part of any nursing home in the United States;
- Have a financial interest or any direct or indirect ownership interest in the facility to be surveyed, or in any related facility, company, or chain; or
- Have an immediate family member who is a resident or an employee of the facility.

Finally, one commenter wants to prohibit any surveyor from accepting a job with a facility for 1 year after the individual has last surveyed it.

Response: In response to comments, to preclude conflicts of interest and to ensure survey objectivity, we are expanding § 488.314(a)(2) to disqualify anyone from surveying a facility if he or she works, or, within the previous 2 years, has worked as an employee, as employment agency staff at the facility, or as an officer, consultant or agent for the facility to be surveyed. The surveyor is also disqualified if a member of his or her immediate family has, or, within the previous 2 years has had, such a relationship with the facility or if a member of his or her immediate family is, or within the previous 2 years has been, a resident of the facility.

In § 488.314(a)(2), we continue to disqualify surveyors who have a financial interest or any ownership interest in the facility but have deleted the modifying phrase "direct or indirect" to preclude misunderstandings. One commenter, for example, interpreted the restriction against "indirect" financial interest to mean that a surveyor would be disqualified if he or she held shares in a broad-based mutual fund which included ownership in health care facilities. (This was not our intent.) The issue of what constitutes disqualifying financial interest must be discussed in considerable detail, and our manuals provide the most appropriate vehicle for this discussion. However, we have broken out the parallel restriction on surveyors whose family members have direct or indirect ownership interest and placed it in a new § 488.314(a)(2)(iii). We are also extending the § 488.314(a)(2)(i) disqualifying requirement to family members in paragraph (a)(2)(iii). Finally, in a new paragraph (a)(2)(iv), we disqualify any surveyor who has an immediate family member who is a resident of the facility.

We believe that these safeguards are sufficient to ensure objectivity and that nothing beyond these is warranted. Finally, in our view, prohibiting any surveyor from accepting a job with a facility for 1 year after he or she has last surveyed it is unnecessary and would be difficult to enforce. Whether or not the ex-surveyor has surveyed that particular facility before would be of less benefit to the facility than the in-depth knowledge of Federal requirements that the individual could share with the facility. We believe that such knowledge can help the facility achieve and maintain compliance which ultimately serves the residents. The protection of the residents' health, safety, dignity, and general interests is our primary goal.

Comment: Commenters were generally critical of surveyor training and skills, and most offered specific suggestions on how training could be enhanced. Some examples follow:

- There should be provider and/or ombudsman input for surveyor training and/or testing;
- "Activity professionals" or "individuals with significant clinical and investigative skills" should teach at least part of the surveyor training course;
- Training should include——
—Interviewing and investigatory skills;
—Quality of care standards;
—Communication skills, particularly for communicating with residents who may have communication barriers;
—How to identify outcomes;
—How to identify iatrogenic declines;
—How to identify care conditions that could lead to decline or failure to improve if not properly addressed;
—Standards of care for the professional disciplines involved;
—More training on long term care issues;
—Rules of evidence;
—120 hours or more field work experience in a long term care facility;
—Pharmacology;
—Gerontology;
—Therapeutic recreation;
—Training to produce or to update clinical competency in each surveyor's area of expertise;
—Residents' rights;
—Resident assessment and care planning;
—Mental health care and services;
—Rehabilitation;
—Correct application of the applicable statutes and regulations; and
—Proper documentation;
- Some of the training should be done in the field;
- There should be annual in-service training for surveyors;
- Training should be held not only for surveyors, but for other State personnel with related duties;
- There should be a continuing education requirement for surveyors;
- Surveyor training must stress that only the established Federal survey methodology may be used in determining facility compliance;
- The techniques taught in surveyor training courses should be published for public comment;
- Providers, at their own expense, should be permitted to take surveyor training courses;
- The number of training slots must be increased so new survey agency employees do not have to wait so long to receive HCFA surveyor training;
- Training should be made available locally or through interactive video;
- A passing score on a pre-test should not exempt a surveyor from the final test; all should be required to take and pass the final test;
- All Federal and State surveyors should be trained by qualified, national HCFA staff;
- Survey agencies should have built in mechanisms for quality assurance and supervision;
- The survey agency's leadership should include health professionals and attorneys;
- There should be a formal complaint mechanism that providers may use without fear of reprisal to challenge the actions and activities of "rogue" surveyors;
- No one should be a member of a survey team unless he or she has successfully completed a training and testing program, not only on how to conduct a standard survey, but on how to conduct an extended survey as well. Proof of successful completion of this training must be made available to the facility prior to the initiation of a survey; and
- Before a citation is given, the surveyor must be able to demonstrate a negative outcome.

One commenter said that the HCFA policy that surveyors are not to be consultants is a great disservice; surveyors should adopt a role like the JCAHO surveyors. Another said that HCFA should convene a national group of experts, including State and Federal surveyors with extensive experience, nursing facility providers, and consumers, to identify the knowledge and skills needed by survey teams.

Some said that surveyors should pass not only the initial examination, but be tested annually. The passing scores for the tests should be 85 percent or more, commenters said, and the results of the testing and remediation must be made available to the public.

One commenter said that, when surveyors are cross-trained, their expertise in the new area is not good enough to survey facilities' performances in that area. For this reason, the commenter suggested that § 488.314 be revised "* * *" to preclude the use of surveyors without demonstrated professional training and experience in the substantive area being surveyed. By professional training and experience," the commenter said, "we do not mean on-the-job or inter-agency in-service training. Rather, we mean graduates of accredited or approved educational institutions."

One commenter said that there should be no "grandfathering" of surveyors. Another asked the following three questions:

- What validity and reliability studies were conducted to ensure the test measures the ability of surveyors to perform their functions in a consistent manner?
- Has the test been validated to allow States to meet their affirmative action plans?
- Are the results of the tests in line with the State's requirements for merit systems and collective bargain contracts?

Response: The listing of suggested topics for surveyor training was extensive. Some of the items (for example, correct application of the applicable statutes and regulations, quality of care standards, and proper documentation) are already covered in surveyor training. We believe others are inappropriate to require as part of survey training; they should be provided as part of each team member's initial and continuing training within the context of training for his or her area of professional expertise.

We would encourage, but do not require, States to allow surveyors in training to act as observers on actual surveys in the field, and are taking all possible measures to meet the demand for surveyor training. For example, we are planning to use satellite transmissions for training courses. We have already begun to move ahead with one of the other suggestions, interactive video training. As for provider and/or ombudsman input for surveyor training and testing, we have convened a national workgroup which includes provider organization and consumer advocacy group representatives to assess the surveyor training program and make recommendations for changes. Finally, we will listen to all reasonable suggestions from providers and ombudsmen, but do not agree that the regulations need to be revised to require this input.

The qualifications for surveyors, other survey agency personnel, and HCFA trainers, we believe, are already high. In our operating experience, we have seen no reason to believe otherwise. Even if we required that each team include a physician, as some commenters recommended, we are not certain that some providers would be any more pleased with the survey results than they are now. We remain unconvinced that one must be a physician or an acknowledged expert in a clinical specialty in order to perform a valid survey. We believe that the heart of the survey process consists of clear guidelines and a detailed review of the results.

The suggestions that survey training materials be published for public comment are addressed under the "Determination of a Deficiency" section of this preamble.

The suggestion that providers be permitted to attend survey training courses at their own expense has merit. Traditionally, we have had no provisions for accommodating all providers interested in attending: our resources are taxed enough by simply

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trying to provide timely training for surveyors. However, being able to offer surveyor training universally to providers at their own cost may help improve understanding and cooperation between surveyors and providers. We are therefore seriously considering the changes in law necessary to allow this.

We do not accept the suggestion that surveyors present providers with proof of the successful completion of surveyor training. The fact that a surveyor is sent by the State or HCFA is, in itself, evidence that the bearer meets the requirements to be a surveyor.

A number of the commenters did not make any suggestions with respect to the proposed rule. Instead, their comments were in the context of denigrating surveyors with whom they had had unpleasant experiences, declaring that running a facility is costly, frustrating, and unappreciated, or protesting the whole survey process in general. Because no specific suggestions were made concerning the proposed rule, we are unable to respond to these kinds of broad complaints.

Comment: Two commenters suggested revising the end of the sentence at proposed § 488.164(c) as follows: " * * * completed the required training and competency testing program." Another said that, at the onset of each survey, facilities should be told which surveyors are serving as observers, and regulations should stipulate that these individuals should be excluded from active participation in the survey process.

Some other commenters said that surveyors-in-training should be allowed to participate in the survey process as long as they are appropriately supervised. They said that, historically, these individuals have been used to "* * * collect information to be used by qualified surveyors during the deficiency decision making process." Further, two commenters said, not allowing surveyors-in-training to observe would mean that new surveyors would face significant periods of nonproductive time while waiting for courses to be offered.

Response: We agree that surveyors must not only complete the required training, but the competency testing program as well. However, paragraph (c) already requires that a surveyor successfully complete "* * * a training and testing program." We do not agree that the survey team should, at the outset of a survey, identify which of its members (if any) have not yet completed the required training and competency testing program. We also disagree that surveyors who have not yet completed the training and testing program should "be excluded from active participation." We do not want to prohibit the "historic" role of observers mentioned by two of the commenters, that is, to "* * * collect information to be used by qualified surveyors during the deficiency decision making process," or forbid individuals from making valuable contributions to the survey process if they are in a position to do so. We are, therefore, amending this section (§ 488.164(d) in the proposed rule) redesignated as § 488.314(c)(3) in the final rule, to provide that the survey agency may permit an individual who has not completed a training program to participate in a survey as a trainee if accompanied onsite by a surveyor who has successfully completed the required training and testing program.

Proposed § 488.166 Validation Surveys

We have reconsidered the necessity of including this section in the text of the regulation, and have concluded that it would be pointless and redundant to retain it. We believe that the statutory provisions upon which this section is based are self-implementing, and that regulatory interpretation is not needed to clarify them. In addition, the few elaborations on the requirements in sections 1819(g)(3) and 1919(g)(3) of the Act, which are found at § 488.316 are duplicated elsewhere in the regulations, and we believe there is little reason to repeat them. Appeals applicable to certifications of noncompliance based on validation surveys will be conducted according to § 488.330, Certification of compliance or noncompliance.

In the absence of a regulatory section devoted to validation surveys, we are adding a definition of a validation survey to § 488.301, Definitions, to serve as a reference because the term is used elsewhere in the regulations.

Our decision to not finalize proposed § 488.166 does not make the public comments we received on this section any less valuable for they are still pertinent commentary on validation survey policy and we are responding to them, accordingly.

Comment: Several commenters insisted that HCFA validation surveys should be conducted concurrently with the State survey. Other commenters encouraged HCFA to use the Onsite Performance Assessment and Training Survey (OSPATS) as the validation survey method. Still other commenters said the HCFA validation survey should be as soon as possible after the State survey, but no more than 2 weeks, 3 weeks or 30 days after the State survey. Most commenters noted that survey findings may vary slightly from day to day and that it was essential that both survey teams were viewing the same set of facts. In addition, concurrent surveys cause less disruption to facilities and residents and enable HCFA to provide immediate feedback to State surveyors. One commenter recommended that HCFA validation surveys not be concurrent; another said the unexpected nature of the validation survey was important in that the facility will return to its "normal daily routine" after the State survey; and one commenter said the HCFA validation surveys were a waste of time.

Response: We agree with the commenters as to the advantages of a validation survey concurrent with the State standard recertification survey. To that end, HCFA has developed the OSPATS. The OSPATS long term care survey process has Federal surveyors assessing the facility while evaluating State survey agency performance. This process, which is fairly new for long term care surveys, is believed by some providers to be less disruptive to facilities and residents. It does ensure that both Federal and State surveyors observe the same conditions in the facility. It is our intent to expand the use of the OSPATS process for validation surveys. We also agree that when the validation survey is not concurrent with the State survey, it should occur as soon as possible after the State survey. Sections 1819(g)(3)(A) and 1919(g)(3)(A) of the Act permit a 2 month period; in practice HCFA attempts to schedule the surveys closer to the State survey. However, often there are scheduling and/or travel difficulties, which make minimum intervals between the two surveys difficult to achieve. We want to retain the flexibility to use whatever survey process best achieves the goals of the Act. The commenters who said that the validation surveys should not be concurrent or were a waste of time presented no reasons or alternative proposals. We can say only that validation surveys, concurrent or not, are mandated by sections 1819(g)(3) and 1919(g)(3) of the Act.

Comment: Several commenters proposed that HCFA establish procedures that would enable resident advocates, families and the interested public to request validation (complaint) surveys for specific facilities. These procedures should include public notice including a regulatory requirement that a poster notice be displayed in facilities. HCFA would be required to respond to such requests and investigate complaints against facilities and allegations of poor performance of State agencies.

Response: Disclosure of survey-related information is in accordance with § 488.325, and it is also discussed in detail under the section of this preamble entitled, "Disclosure of Survey Information."

We understand the concerns expressed by the commenters who would like HCFA to perform complaint investigations and validation surveys at the request of advocates and other individuals. The Act and current regulations ensure that the State survey agencies will respond to allegations of poor care or abuse and will investigate these allegations according to State law and HCFA requirements. Most complaints directed to HCFA are referred to the State agencies for investigation. HCFA is not staffed sufficiently to respond directly to complaints and/or requests for validation surveys. The small HCFA survey staff is occupied fully in the assessment of State agency performance of its survey and certification responsibilities under section 1864 of the Act. Because of these constraints, we are unable to accept the commenters' suggestions.

Comment: Certain commenters asked that we give a facility that is dissatisfied with the State survey the ability to request a validation survey and receive it within a reasonable time period.

Response: As mentioned above, we do not have the resources to conduct validation surveys upon every request. If a provider believes that the State survey was done in an inappropriate manner, it may file a complaint with the HCFA regional office at whose discretion a validation survey may be, but need not be, performed.

Comment: One commenter was concerned that when selecting facilities for validation surveys, HCFA will not draw a random sample but will select inferior facilities in order to cut its Medicaid obligations to the States.

Response: This fear is groundless. It is not the quality of the facility that determines whether the State will be sanctioned for inadequate State survey agency performance, but rather the quality of the State's assessment of the facility which is relevant. Facility noncompliance does not reflect poorly upon the State unless the State has failed to identify it.

Comment: One commenter believed that the identities of facilities on which validation surveys are to be performed should not be disclosed to the State survey agency.

Response: There is no justification for such a policy. Currently, HCFA notifies States of an impending validation survey either 3 days before a nonconcurrent Federal validation survey or 3 weeks before a Federal/State OSPATS survey. In the case of the nonconcurrent Federal validation survey, this allows the State to arrange to have a surveyor present to observe the Federal survey and take advantage of the instructional opportunities that it presents.

Comment: Several commenters with recent experience with validation surveys noted that the State and Federal surveys were very different; the Federal surveys stressed concepts (for example, use of restraints) not emphasized by the State.

Response: The primary emphasis of the Federal validation survey is on assessing State survey performance. Therefore, the Federal review may stress certain areas of compliance in which an evaluation of State performance is particularly important. In addition, the long term care survey protocol has only been in effect since October 1990, with appropriate instruction enhancements for the final long term care regulations which were effective April 1, 1992. It is not unusual that some variation in emphasis will occur in a new survey process. HCFA is committed to a survey process that produces accurate and consistent findings. To that end, we have organized numerous educational sessions for Federal and State surveyors, held regional training conferences in the HCFA regions and produced the "Principles of Documentation" which is an attempt to standardize the writing of deficiency citations. Despite all of these continuing efforts, some variation will remain as long as human beings perform surveys and statutory requirements involve the making of professional judgments. As far as the use of restraints is involved, the decrease of restraints has been a HCFA priority since the inception of the new survey protocol.

Comment: One commenter suggested that HCFA perform validation surveys of all facilities that have a waiver of the RN director of nursing or other licensed nursing requirements for a year or more. Others suggested that HCFA list the criteria it uses to select facilities for validation surveys and that the validation sample should reflect the State's diversity in location, size and ownership of facilities.

Response: The selection of facilities for validation surveys depends upon which facilities the State has surveyed recently or intends to survey imminently. Within those constraints, the typical sampling process for selecting facilities for a validation survey ensures that a wide variety of facilities are selected. Because of this and the heavy demands placed upon HCFA survey staff, we do not accept these suggestions that add survey responsibilities not mandated by the Act. Moreover, we do not see the necessity of targeting facilities with waivers for validation surveys because an annual review of the appropriateness of each waiver will be conducted whether the facility to which it was granted is subject to a validation survey or not.

Comment: Several commenters suggested that HCFA validation surveys be required to use the "methods, procedures, and forms prescribed for use by the survey agency."

Response: The language used in the proposed rule (that HCFA conduct validation surveys "using the HCFA protocol prescribed for use by the survey agency") was derived from sections 1819(g)(3)(A) and 1919(g)(3)(A) of the Act, which require that the Secretary conduct validation surveys using "the same survey protocols as the State is required to use * * *." We do not believe that there is any meaningful difference between the phraseology suggested by the commenter and that used in the proposed rule.

Comment: A few commenters said that when HCFA conducts a focused review at its discretion, it should not exceed the authority contained in the Act.

Response: HCFA's authority to conduct a survey at its discretion is pervasive in the Act.

Comment: One commenter suggested that all validation surveys should be conducted by special teams dispatched from and responsible to the HCFA headquarters office.

Response: The HCFA survey staff is located in the ten HCFA regional offices. Although there are staff persons in the HCFA headquarters qualified to conduct surveys, surveying is not their primary function.

Comment: One commenter stressed that the HCFA surveyors should meet with the State surveyors if the Federal survey findings disagree with the State findings. Another commenter said that the Federal validation survey team should not review the State survey findings until after the Federal survey.

Response: It is HCFA practice to meet with the State survey agency whenever possible if there is a significant difference of findings between a State survey and the Federal validation survey. Often this is not possible because of time and travel constraints. In these cases, we notify the State survey agency of the findings and begin discussions regarding the appropriate enforcement remedy to apply. We agree with the commenter that a face to face

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meeting is the best practice. Current instructions to Federal and State surveyors are to review all pertinent documents regarding the performance of the facility before starting the survey. In practice, this review seldom covers the most recent State survey, because it is not available, as these survey reports are not sent routinely to the HCFA regional offices. We appreciate the apparent concerns of the commenter; however, it will be difficult to prevent Federal surveyors from seeing the most recent State report at some time during the Federal survey because, in accordance with § 483.10(g)(1), survey results must be made available in the facility. Despite the concerns of the commenter, we believe that the accuracy of the Federal survey is not compromised by the knowledge of what the State findings were. In any case, the increased use of the OSPATS process should reduce the concerns of both commenters.

Comment: One commenter said that the statutory provision that requires no fewer than five validation surveys in each State is discriminatory to small States.

Response: We understand the commenter's concerns. However, sections 1819(g)(3)(B) and 1919(g)(3)(B) of the Act are explicit that HCFA must conduct surveys in no fewer than five facilities in each State.

Comment: A few commenters said that validation surveys should be focused on State survey performance, not facility compliance. Unless the HCFA survey discovers a serious threat to residents, the findings should be directed toward the State. For egregious failures of State survey performance, HCFA should consider contracting with another professional survey entity.

Response: The primary purpose of the validation survey is to assess State survey performance. In the process, we do determine facility compliance and must take action consistent with this information. Therefore, the validation survey can result in actions against non-compliant facilities and against the State. Section 488.320 provides the sanctions authorized by the Act to be imposed against the States.

Comment: One commenter said that validation surveys should focus on the validity of State deficiencies cited as well as the failure to cite deficiencies. If the focus is on only the State's failure to cite deficiencies, it may lead State surveyors to cite more deficiencies as a means of preventing Federal sanctions.

Response: We agree with this comment. The HCFA focus is now and will continue to be on the accuracy of the State survey. Part of that focus is to alert the State survey agency to situations where State surveyors are failing to cite valid deficiencies. We are aware of the possibility that some State surveyors might cite more deficiencies in order to avoid sanctions against the State. We have no concrete evidence that any actually have done so. In any case, our education efforts, including training on the "Principles of Documentation," are directed to the writing of accurate, well documented deficiencies. Well documented deficiencies are more likely to prompt corrective action and avoid unnecessary contentiousness between providers and survey agencies than poorly documented deficiencies.

Comment: One commenter said that HCFA should provide for two separate hearings because the deficiency determinations and the remedies selected are based on two sets of facts. Other commenters said it would be better to have one hearing; either State or Federal. One commenter suggested that the closer the validation survey was to the State survey, the easier it would be to hold one hearing.

Response: The Act is constructed so that a facility subject to a validation survey is entitled to only one hearing, either State or Federal. The provisions at section 1919(h)(7) of the Act furnish the means for resolving disagreements between HCFA and the State over whose enforcement action will control, which in turn, determines whether the facility is entitled to a hearing under part 431 or part 498. Moreover, HCFA excludes from the validation sample any facility against which adverse action has been initiated by the State survey agency. Therefore, if HCFA imposes remedies against a provider on the basis of noncompliance identified during a validation survey, HCFA's remedies are the only ones imposed, and the provider can contest the determination of noncompliance leading to the enforcement remedy in one Federal hearing.

Section 488.318 Inadequate Survey Performance

Comment: Some commenters asked how HCFA would determine "inadequate survey performance" by a State agency.

Response: We monitor State agency survey performance primarily by reviewing State survey team findings and by conducting validation surveys. Sections 1819(g)(3) and 1919(g)(3) of the Act, as added by sections 4202 and 4212 of OBRA '87, require the Secretary to conduct validation surveys of at least 5 percent of the SNFs and NFs in each State that have been surveyed by the State survey agency (but in no case less than 5 facilities). Prior to the effective date of OBRA '87, HCFA, acting for the Secretary, monitored State performance by conducting Federal monitoring surveys. OBRA '87 formalizes this process. The validation surveys must be conducted within 2 months of the date of the State's surveys and must be of sufficient number to allow inferences about the adequacy of the State's surveys.

Comment: Several commenters said HCFA should sanction individual surveyors when they make erroneous findings against facilities, whether the errors are intentional or unintentional.

Response: Section 1864(a) of the Act authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. HCFA assesses the performance of each State's survey and certification program annually, and § 488.320 sets forth the sanctions that HCFA may impose upon the States for inadequate survey performance. With respect to sanctions against individuals, we note that, with the exception of the relatively small number of HCFA staff who perform validation surveys, surveyors are State agency personnel, appointed and paid by the State agency, and supervised by State managers. For these reasons, HCFA considers that any corrective or disciplinary action is a State matter. Whenever HCFA validation surveys uncover errors on the part of any individual State agency surveyor, the State is informed so it can take whatever action is necessary.

As a final measure, formal mechanisms are in place which provide an opportunity for facilities to appeal certifications of noncompliance that lead to enforcement remedies, except State monitoring.

Comment: A few commenters said States may begin to cite more deficiencies than usual in order to avoid sanctions by HCFA based on failure to meet the requirement at § 488.168(c) of the proposed rule, which provided that HCFA would consider it inadequate performance when a State agency fails to identify an immediate or nonimmediate jeopardy situation, substandard care, or other deficiencies.

Response: HCFA monitors the accuracy of a State survey agency's findings by performing validation surveys and reviews. Accuracy means not only that the State team has appropriately cited all the deficiencies that existed, but also that it has not cited a deficiency when no violation of a requirement has occurred. HCFA conducts random surveys concurrently with the State surveys as well as independent surveys within 2 months of the States' surveys, and also conducts indepth reviews of selected State survey documentation. If HCFA discovers that a State is systematically citing unfounded deficiencies, HCFA will consider there to be inadequate survey performance and may apply any of the sanctions provided for at § 488.320(b)(2) of the proposed rule, Sanctions for Inadequate Survey Performance, in the case of Medicare facilities. In the case of Medicaid facilities, HCFA cannot reduce FFP as specified at § 488.170(b)(1)(i) of the proposed rule because we have concluded that section 1919(g)(3)(C) of the Act does not accommodate such action under this scenario. The two terms of the FFP reduction formula at section 1919(g)(3)(C) of the Act are: the total number of residents in nursing facilities surveyed by HCFA during a quarter; and, the total number of residents in nursing facilities found pursuant to HCFA surveys to be noncompliant. The number of residents in nursing facilities which HCFA found to be compliant but which the State determined were noncompliant does not figure into the calculation; therefore, no FFP reduction can be taken when the form of the State survey inadequacy is the citation of unfounded deficiencies, or indeed when the inadequacy is anything other than the State's failure to identify deficiencies. However, the Act does allow the Secretary to impose another sanction for the citation of unfounded deficiencies in Medicaid facilities. Section 1919(g)(3) of the Act states that the Secretary may also respond to inadequate State survey performance in Medicaid facilities by providing for the training of the State's survey teams. We are amending § 488.320 of the regulation to indicate this and to clarify that the citation of unfounded deficiencies will be considered inadequate survey performance. An additional safeguard against the citation of unfounded deficiencies will be afforded to facilities by their opportunity to engage in informal dispute resolution, as described in § 488.331.

Comment: Some commenters said that § 488.318 precluded facilities from informally challenging or expressing disagreement with survey findings.

Response: All States currently offer some opportunity for providers to refute survey findings. In one State, the process is required by State law. It is State policy in the rest. Although these policies vary among States, they all apply to State surveys of Medicare and Medicaid providers. In addition, HCFA's State Operations Manual requires that States allow facilities to interact with the survey team during the survey, to discuss findings at an exit conference, to raise unresolved issues to the State survey agency or the HCFA regional office, or both, and to record their disagreement on the HCFA–2567. If none of these courses of action satisfy the provider, there are appeal mechanisms available.

However, whenever possible, we want to provide every opportunity to settle disagreements at the earliest stage, before much time and money are spent by the provider, the State agency, and HCFA. Therefore, we are requiring, at § 488.331, that States offer an opportunity for informal dispute resolution beginning with the provider's receipt of the official statement of deficiencies. Although inadequate survey performance will not invalidate adequately documented deficiencies, neither the State's inadequate performance nor a resulting HCFA sanction imposed on the State will prevent the facility from formally or informally challenging or expressing disagreement with survey findings.

Comment: One State was concerned that any disagreement between the Federal and State agencies will equate to inadequate survey performance on the part of the State.

Response: We will not automatically consider any disparity between validation and State survey findings as inadequate survey performance. For example, when Federal surveyors find a facility in compliance with a requirement that the State cited as a deficiency, Federal surveyors are directed to go through a decision making process to determine if the disparity is due to facility correction or a flaw of the State survey. When Federal surveyors find deficiencies that were not previously cited by the State, we will consider whether the discrepancies can be explained by changed facility conditions or by other case specific factors before concluding that State survey performance has been inadequate.

Comment: One commenter suggested we reverse the order of the provisions of this section, making the reference to the failure to identify poor resident care of greater importance.

Response: We do not imply that the way in which paragraphs (a), (b), and (c) are ordered is of any relevance. All are of equal importance.

Comment: One suggestion was that determinations of inadequate survey performance be based on a State agency's overall performance rather than on isolated instances. Commenters believed that a pattern of noncompliance and noncorrection should be established before HCFA concludes that there is inadequate survey performance, and that HCFA should only consider State survey performance to be inadequate when the State "substantially" fails to perform as required. Others requested that we consider there to be inadequate survey performance only when the State fails to identify serious deficiencies.

Response: Sections 1819(g)(3)(C) and 1919(g)(3)(C) of the Act specify actions the Secretary may and must take if the State has failed to perform surveys as required by the Act or if a State's survey and certification performance is otherwise inadequate. Although the Act requires us to apply sanctions for inadequate survey performance, it gives us leeway when it comes to determining what inadequate survey performance actually is. The Act does not specify the criteria by which the Secretary is to make determinations of inadequate State performance, and does not obligate us to sanction the State for every survey shortcoming. It would be inappropriate and unduly harsh to automatically consider any failure by a State to cite a deficiency or to follow proper procedure to be inadequate survey performance. Rather, we believe it would be preferable to reserve sanctions for States that demonstrate a pattern of failure to identify deficiencies, or to follow proper procedure, or whose isolated oversights are particularly egregious. Changing facility conditions may account for many of the discrepancies between Federal and State survey findings, and because not every discrepancy or omission indicates systemic inadequate survey performance, not every one should cause a State to automatically lose FFP or be subject to other sanctions.

We reflect this policy in § 488.320. Guidelines for making determinations of inadequate survey performance will be forthcoming in future manual instructions.

Comment: Some commenters said that any findings or remedies resulting from inadequate survey performance should be rescinded.

Response: As we stated in § 488.168(c) of the proposed rule (which has been redesignated as § 488.318(b) in this final rule), "Inadequate survey performance does not relieve a SNF or NF of its obligations to meet all requirements for program participation, nor does it invalidate *adequately documented* deficiencies." (emphasis

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added) In other words, a flawed survey can still validly document one or many deficiencies; the facility is still liable for sanctions where deficiencies, in fact, exist.

Section 488.320 Sanctions for Inadequate Survey Performance

Comment: Some commenters asked if the State Agency Evaluation Program (SAEP) was going to be used to evaluate State survey agency performance under this section. Certain commenters believe that it should be.

Response: The SAEP is currently undergoing comprehensive evaluation. We do not know if the program, in its future form, will be designed to identify performance problems of individual States for enforcement purposes, or whether the purpose of the program will be more geared toward global evaluation of the State agency survey and certification process as a whole. HCFA will, however, obtain information on the adequacy of State agency survey activity through validation surveys and otherwise through its general oversight authority.

Comment: Certain commenters recommended that we limit determinations of inadequate survey performance to the OSPATS. It was their view that it is unfair to reduce FFP based on a comparison of survey findings, as conditions in nursing homes change daily.

Response: As stated previously, we acknowledge that there are great advantages to conducting a validation survey concurrently with the State's standard recertification survey, and it is our intent to expand the use of the OSPATS process for validation surveys. However, we reiterate that it is necessary to continue to use nonconcurrent validation surveys, despite the preference of the States and HCFA for OSPATS, because Federal surveyors must have at least one year of experience surveying before they are eligible to conduct an OSPATS.

Comment: Some comments suggested the rules should state whether or not appeals under this section should stay the reduction of FFP action.

Response: Section 1919(g)(3)(C) of the Act requires that appeals of sanctions under this rule are to be made according to section 1116 of the Act. According to section 1903(d)(5) of the Act, if an appeal of a disallowance is made, the State has the option of retaining the funds disallowed pending a final administrative decision. If the final decision upholds the disallowance and the State elected to retain the funds during the appeal process, the proper amount of the disallowance, plus interest computed in accordance with § 488.442 will be offset in a subsequent grant award.

Comment: Some commenters complained that FFP reduction is an excessive measure, and suggested that FFP not be reduced as a sanction, or be reduced only after other methods of addressing inadequate State agency performance have been tried and failed. Other commenters asked that the same sanctions be imposed against the State for inadequate survey performance regardless of whether the inadequately surveyed facilities participate in Medicare or Medicaid. An additional commenter recommended that we levy financial penalties against the survey agency instead of reducing FFP to the State.

Response: While we appreciate the merits of these suggestions, section 1919(g)(3)(C) of the Act does not give us such flexibility. Rather, it requires that, when HCFA finds, on the basis of validation surveys that the State has inadequately surveyed Medicaid nursing facilities, HCFA may provide for training of State survey teams, but shall provide for a reduction of FFP according to a prescribed formula.

However, the FFP reduction formula specified at section 1919(g)(3)(C) of the Act and at § 488.170(c) of the proposed rule has certain limitations: it cannot be used to sanction a State when it has cited unfounded deficiencies or when its survey findings are appropriate but its survey scheduling, team composition or other practices are unacceptable. However, these survey defects are no less serious than a failure to identify deficiencies, and it is unlikely that the Congress intended for us to disregard them. HCFA does have the authority to provide for the training of survey teams in these instances. We are revising § 488.320(b)(2) to provide that when the State's survey performance in Medicaid facilities is inadequate but the inadequacy is not accommodated by the FFP reduction formula, HCFA will provide for the training of State survey teams. In addition, HCFA has the authority to consider the Medicaid provider agreement to be invalid for failure to follow proper survey procedures, and may invoke the FFP disallowance provision at § 442.30, Agreement as evidence of certification.

We are unable to make the sanctions for inadequate survey performance parallel across facility type as commenters suggested. As discussed above, the Act does not permit us to eliminate FFP reduction as a sanction for inadequate survey performance in Medicaid facilities, and neither does it allow us to expand the application of this sanction to inadequate survey performance in Medicare facilities. The conspicuous absence of Federal payment reduction in section 1819(g)(3)(C) of the Act, which lists sanctions for inadequate survey performance in Medicare facilities, as opposed to the inclusion of FFP reduction in section 1919(g)(3)(C), which specifies sanctions for inadequate performance in Medicaid facilities, is a clear indication that the Congress intended to restrict Federal payment reduction for inadequate survey performance in Medicaid facilities alone. Likewise, section 1819(g)(3)(C) gives us the flexibility to devise our own sanctions for inadequate survey performance in Medicare facilities, but no comparable authority exists in section 1919(g)(3)(C). Therefore, we must assume that the Congress did not intend for us to impose sanctions other than the two specified in the statute for inadequate survey performance in Medicaid facilities.

Comment: One commenter asked that we convene a technical advisory group composed of State agency and HCFA regional office personnel to explore the possibility of a legislative amendment to the Act's FFP reduction requirement.

Response: We do not see the necessity of requesting a legislative amendment, but will not discourage the States if they choose to pursue one.

Comment: A question was asked regarding whether the reduction of FFP would be by audit exception or through a reduction in the amounts of future budget approvals.

Response: Procedures for such actions will be written following existing procedures found in section 3165, "Non-audit Medicaid Disallowances", of the Regional Office Manual. As noted above, such procedures will be in accordance with section 1116 of the Act.

Section 488.325 Disclosure of Results of Surveys and Activities

Comment: A few commenters suggested that § 488.325(a)(1) be expanded to require that the scope and severity levels of all deficiencies, including those deficiencies with a scope and severity level of 1, be recorded on and, therefore disclosable as part of, the official deficiency statement, in an effort to promote facility competition and quality. Some of these commenters argue that we must disclose notice of all deficiencies, regardless of scope and severity level, if we are to provide the public with a complete and accurate report of a facility's current compliance status. Some propose that another requirement

be added under § 488.325(a) to read: "(9) The summary of 1–1 deficiencies."

Response: As discussed later in this preamble, we are revising the scheme that appeared in the proposed rule by eliminating scope and severity scales, as such, and by substituting instead a scheme in which HCFA and the State will assess deficiencies by application of several factors that will gear enforcement remedies to the seriousness of noncompliance at facilities. However, we are accepting the second comment with some modification. With the exception of isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for only minimal harm, all deficiencies will be recorded on the HCFA–2567. Those isolated deficiencies will not be recorded on the official deficiency statement, but will be recorded on a separate document as discussed in the preamble of the proposed rule. However, all of a facility's deficiencies, including those deficiencies that HCFA or the State determines constitute no actual harm with potential for minimal harm, will be disclosable. We are revising § 488.325(a)(2) to require the release of the summary of isolated deficiencies that HCFA or the State determines constitute no actual harm with potential for minimal harm deficiencies.

Comment: One commenter asked how this information will be disclosed to the public and also wanted to know if facilities have any responsibility relative to disclosure. The same commenter wasn't sure what we meant by "direct or indirect interest in a SNF or NF" as used at § 488.325(a) (7) and (8).

Response: Existing procedural requirements at §§ 401.133–136 and 431.115 as well as sections 3300–3320 in the State Operations Manual remain in effect relative to public disclosure of Medicare and Medicaid survey documents, respectively. While § 431.115 provides only minimum disclosure requirements for States, it directs that States have a procedure for disclosing the specified survey information.

Sections 1819(g)(5) and 1919(g)(5) of the Act provide the statutory bases for § 488.325 regarding disclosure of inspection and other information on SNFs and NFs by the States and HCFA. The only requirement we are imposing on nursing home providers in this regard is that, not later than 10 working days after receiving a notice of substandard quality of care, a SNF or a NF must provide the State with a list of each resident in the facility and the name and address of his or her attending physician. Failure of the facility to disclose the information timely will result in termination or alternative remedies being imposed.

Due to an administrative oversight, the word "ownership" was omitted from the proposed regulation text at proposed § 488.175(a) (7) and (8), clarifying "direct or indirect interest." We are revising both cites, which have been redesignated as § 488.325(a) (8) and (9), respectively, to specify "ownership" interest. We are also cross-referring these cites to § 420.201, which defines "direct" and "indirect" ownership interest.

Comment: Several commenters suggested that results of complaint surveys be disclosable under this subpart.

Response: The regulation implementing sections 1819(g)(5) and 1919(g)(5) of the Act provides that information must be made available by the State or HCFA for all surveys and certifications. Therefore, information from any survey, including a complaint survey, is disclosable under this subpart.

Comment: We received four distinct comments on § 488.325(b), which concerns charges associated with making information available. First, some commenters believe that, while charges should be permitted, they should not be required, nor should they, when imposed, exceed the amount facilities charge residents for copies of records. They proposed that the requirement to follow 42 CFR 401.140 regarding fees and charges be reduced to a suggestion by changing the word "will" to "may." Second, other commenters contended that § 401.140 is outdated, too restrictive, and in conflict with some States' Freedom of Information laws. Since many States have adopted their own fee schedule, they suggested that this provision be revised to permit States to use their own fee schedule. Third, one commenter questioned HCFA's authority to require States to impose any charges. Lastly, some commenters proposed that the regulation allow for waiver of fees or reduced fees so that survey information is truly accessible to all.

Response: We are not accepting the suggestion that fees imposed by HCFA or the States relative to disclosure parallel those charged by facilities to residents because we have no basis to develop a provider-specific disclosure policy relative to fees. However, since § 431.115(d) requires only that the Medicaid agency "have a procedure for disclosing pertinent findings obtained from surveys made by the State survey agency," and since we understand that most, if not all, States have their own fee schedules, we are amending this subsection to allow, but not require, States to use their respective fee schedules for documents which they maintain and which they have been asked to disclose. In response to the comments that fees be permissible but not required, as well as the request for a fee exception clause, we refer the commenters to § 401.140(c), which provides for waiver or reduction of fees for Medicare. That section discusses when a waiver of fees and charges would be appropriate and permissible; States are free to use any such waiver provisions within their respective disclosure procedures in the same way that they are free to use or not use a fee schedule at all.

Comment: Numerous commenters were strongly opposed to allowing oral requests for information. Some say that this is clearly inconsistent with past practice which has generally been that requests be in writing. This claim is further substantiated by the Freedom of Information Act which provides that all agencies generally stipulate that requests for information be in writing. Some commenters say that only written requests can substantiate specific charges and fees, while others, specifically States, use the written requests as a record of the distribution of information which is used for workload and expenditure reporting, as well as for other administrative purposes.

Response: Since publishing the proposed rule, we have concluded that it is not necessary to create a facility-specific requirement relative to the method by which requests for survey information should be made, and we are revising § 488.325(c) to provide that such requests are to be made in accordance with the Department of Health and Human Services' regulations relative to disclosure at 45 CFR Part 5, in other words, generally in writing.

Comment: Many commenters suggested that paragraph (d)(3) be expanded to include providers' responses in order to be consistent with § 488.325(a)(1) as well as to ensure full disclosure of all affected parties.

Response: With the exception of those isolated deficiencies that HCFA or the State determines constitute no actual harm with potential for minimal harm, which are recorded on a separate form and which can be refuted by providers during the dispute resolution process, any provider response to the deficiency statement itself would be noted on the plan of correction (both of which are explicitly releasable under the Freedom of Information Act), we are making explicit in § 488.325(d) that provider

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responses to the deficiency statements are disclosable.

Comment: Some commenters believed that States and facilities should be required to provide information immediately, especially when State law or policy provides immediate access. Commenters also wanted to know whose disclosure provisions apply (HCFA's or the State's) when there is a difference about what is releasable and when. A few commenters asked us to specify whether the 10 days referred to in paragraphs (d) (1) and (2) are calendar or working days.

Response: As we have stated above, we have no basis to require facilities to disclose any information other than that which is statutorily mandated. OBRA '90 provided that each State and the Secretary (HCFA), must make available to the public information concerning all surveys and certifications of NFs and SNFs, including statements of deficiencies, and approved plans of correction, within 14 calendar days after such information is made available to those facilities. For procedures relative to release of information not included in the OBRA '90 provision, HCFA or the State should defer to § 401.126 or State procedures, respectively. Also, we note that § 488.325(d) implements sections 4008(h)(2)(M) and 4801(e)(14) of OBRA '90, which require release of information by HCFA and the States, respectively, not by providers.

Since paragraphs (d) (1) and (2) of the proposed rule offered no additional guidance to HCFA or the States beyond what is currently at § 401.126 or in State procedures, respectively, we are deleting them. However, we are clarifying the 10-day timeframe at § 401.126 as "working" days.

The question of whose regulations prevail when disclosure requirements differ between HCFA and the State should not arise since the State and Federal disclosure systems operate separately from one another. It is possible that the same document could be releasable under a State's disclosure laws yet not be releasable under Federal law, or vice versa. It is also possible that a disclosable document may be released by HCFA and the State subject to different disclosure timeframes. In other words, documents maintained by Federal agencies are subject to Federal regulations; those maintained by the State are subject to the State's regulations.

Comment: A few commenters requested clarification regarding the 14 calendar days referenced in paragraphs (d)(2). They weren't sure whether there was a single release of information that would occur 14 calendar days after some event, or whether more than one release of information, each after 14 calendar days, was contemplated. Another commenter wanted to know if the statement of deficiencies and plan of correction are a single document.

Response: While the statement of deficiencies and the plan of correction are recorded on the same form (Statement of Deficiencies and Plan of Correction, Form HCFA–2567), the completion and disclosure of each is separate, not concurrent. The deficiency statement, as well as the separate sheet transmitting survey findings of isolated deficiencies which constitute no actual harm with potential for minimal harm, are notices that the certifying agency gives to a provider transmitting its official survey findings. We have concluded that, since the separate listing of a facility's isolated deficiencies which constitute no actual harm with a potential for minimal harm supplements the official deficiency statement, the listing must be disclosed along with the official statement of deficiencies if we are to provide the public with an accurate and complete report of that facility's compliance status. This information is disclosable within 14 calendar days after it is made available to the provider. Upon receipt of the statement of deficiencies, the provider responds, on the same form, with its plan and timetable for correction of cited deficiencies, as well as any disagreement with the survey findings. Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act require that a plan and timetable for corrective action be approved by HCFA if alternative remedies are the only remedies being sought, and if the facility is to continue to participate with deficiencies that do not constitute immediate jeopardy in either or both the Medicare and Medicaid programs. Information about the plan of correction must be released to the public, upon request, within 14 calendar days after the provider is notified of the approval status of its plan. Therefore, each part, that is, the deficiency statement and the plan of correction, is releasable within 14 calendar days after the provider's notification of that part.

Comment: A few commenters believe that States should not charge the State ombudsman for the notifications specified in this subsection.

Response: Since the information in this subsection is being disclosed by the State, any fees and charges, or waivers thereof, would be subject to the specific State's disclosure law.

Comment: Several commenters requested that proposed § 488.175(e)(4) (redesignated in this final rule as § 488.325(f)(4)), be expanded to include requests for appeals as well as results of appeals. A few other commenters suggested that the paragraph be revised to include facility cost reports, confidential survey records, for example, surveyor notes, etc.

Response: We are accepting the first suggestion and are revising redesignated paragraph (f)(4), to provide that the State must provide the State's long term care ombudsman with requests for appeals and results of appeals. We are not accepting the second suggestion. The fact that the Congress explicitly provided that a facility's Medicare and Medicaid cost reports are disclosable to the public in accordance with applicable disclosure laws, and not routinely disseminated to any specific party, demonstrates its intention that release of these reports should be based on the requestor's right to know the information. The State's long-term care ombudsman, as well as any other member of the public, may request these cost reports, surveyors' notes, and any other survey-related documents not included in this subsection through the appropriate disclosure mechanism, for example, the Freedom of Information Act, where they will be evaluated accordingly.

Comment: Many commenters, mostly State agencies, were opposed to routinely providing ombudsmen with the information required by this subsection. They contend that this results in a costly and overwhelming task especially in the larger States; for example, California has 1300 nursing homes and 42 ombudsman field offices. They propose that a more reasonable approach to notification would be that in cases where a specified degree of noncompliance exists, for example, substandard care, notification would be automatic; in all other cases, notification would be upon request. Another comment was that HCFA should develop a report using data from current reporting systems to provide the needed information.

Response: We cannot accept those suggestions. Sections 1819(g)(5)(B) and 1919(g)(5)(B) of the Act, as amended by sections 4008(h)(2)(N) and 4801(e)(15) of OBRA '90, specifically provide, without exception, that "States" will notify "the State long-term care ombudsman" of a State finding of noncompliance with "any" participation requirement as well as of "any" adverse action imposed against a facility in that State. Regarding the number of ombudsmen offices within a State to which notifications must be made, we note that, since the statutory requirement to notify "the State long-term care ombudsman" is singular, the State's central long-term care ombudsman office within each State's organizational structure is the intended contact point for satisfying such notification requirements. While we see the function of disseminating the information further among the district and other ombudsmen offices to be the responsibility of the State's central long-term care ombudsman office, each State has the flexibility to design its own system.

Comment: A few commenters wanted HCFA or the State to notify the ombudsman of a nurse staffing waiver within 7 days of its approval. Several commenters proposed that notice of nurse staffing waivers be provided to prospective residents, their physicians, families or legal representatives, the State licensure board for nursing and the State and local medical societies. They based their proposal on the public's need to know, not only from a consumer's perspective, but as taxpayers who directly subsidize the affected facilities.

One commenter wanted to know who validates that nurse staffing waiver information is actually provided to those required to receive it.

A couple of commenters asked that the notice to residents about nurse staffing waivers be in the form of a sign and be posted in a prominent place in the facility to ensure that notice is received.

Response: Since publishing the proposed rule, we found that disclosure of nurse staffing waivers is addressed in regulations at 42 CFR 483.30. Also, since sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act are clear as to the individuals and organizations that would have the greatest need for specified survey-related information, we believe that all interests have been adequately represented and that such information is easily accessible to any other interested parties either through their respective professional affiliations, or through the public disclosure mechanism. Therefore, we are eliminating notifications specific to nurse staffing waivers from this final rule.

Comment: Some commenters urge that ombudsmen, protection and advocacy systems for the mentally ill and mentally retarded, residents or legal representatives and immediate family members, and the public should be given an opportunity to comment on a proposed nurse staffing waiver before it is granted.

Response: This comment is outside of the purview of this regulation.

Comment: One commenter suggested that we delete the last sentence of § 488.175(h) (redesignated in this final rule as § 488.325(g)) relating to enforcement consequences to a facility that fails to satisfy the disclosure requirement timely because it is not necessary.

Response: We are not accepting this comment. We believe we must retain this provision since this final rule provides HCFA's and the State's enforcement strategy when facilities do not substantially meet the nursing home participation requirements which are codified at 42 CFR Part 483, Subpart B. The requirement that facilities provide information to the State relative to specified residents so that the State can meet its statutory obligation to notify attending physicians and licensing boards is in addition to the other participation requirements at Part 483, Subpart B, and we believe that consequences for facility noncompliance with this requirement are noteworthy.

Comment: Many commenters were opposed to our proposal implementing sections 1819(g)(5)(C)(i) and 1919(g)(5)(C)(i) of the Act regarding notice to physicians when the State finds that a nursing home has provided substandard quality of care. All of these commenters objected to the requirement that the attending physician of each Medicare and Medicaid resident receive notification of the substandard quality of care. Some believed that physicians of all residents in the facility should be notified when such care is found because they contend that all residents are vulnerable to such care and a program relationship should not need to exist before notifications occur. An equal number of commenters argued that this subsection exceeds the statutory requirement that provides for notification of "* * * the attending physician of each resident with respect to which such finding is made * * *". These commenters suggested that the purpose of the statutory requirement was to ensure that the physician of a resident who has allegedly received substandard quality of care is apprised of the situation in order to ensure appropriate medical interventions, if needed.

Response: We are adopting a modified version of the above suggestions and are requiring that the physician of each resident in the facility who was found to have suffered substandard quality of care, regardless of payment source, be notified of findings of substandard quality of care. Findings of substandard quality of care are indicative of the facility's inability or unwillingness to meet specific participation requirements relative to the entire resident population. While we have the statutory responsibility to ensure the safety and well-being of program beneficiaries and recipients in nursing homes that participate in one or both programs, noncompliance frequently affects residents in a facility, other than just Medicare and Medicaid residents. Moreover, the Act plainly applies to all residents receiving substandard quality of care regardless of payment source. Therefore, findings of substandard quality of care must be communicated to the physician of each resident who was the subject of such care.

Comment: A few commenters suggested that notification to the State board responsible for the licensing of the facility administrator be limited to those situations where the administrator is found culpable for the violations identified. They describe situations in which a reputable administrator is recruited to a problem facility in an effort to turn the facility around. Shortly thereafter, a survey is performed which identifies substandard quality of care, and as a result, the newly hired administrator is reported to the licensing board. They point out that this situation provides a disincentive for quality administrators to assume control of problem facilities due to the risk to their reputation. A few commenters wondered why licensing boards need to be notified, while others believed that notification should be expanded to include State licensure boards for nursing and medicine as well as the State and local medical societies.

Response: We are not accepting these suggestions. First, the requirements to notify the licensing board, as well as physicians of Medicare and Medicaid residents, when substandard quality of care is identified, are statutory and do not provide for exceptions. Second, a facility administrator, regardless of recency of appointment, is ultimately accountable for the care and services provided in his or her facility at the time of the survey. We would expect that this consideration as well as others would be evaluated by a prospective facility administrator.

Regarding the comment that notification should be expanded, sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act are clear as to the individuals and organizations that would have the greatest need for the specified survey-related information. We believe that all interests have been adequately represented and that such information is easily accessible to any other interested parties either through their respective professional affiliations, or through the

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public disclosure mechanism. Therefore, we see no need to expand the list of parties the State must notify about substandard quality of care.

Comment: Several commenters asked whether the State notification requirements at sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act apply to surveys performed by HCFA.

Response: States will provide the notification regardless of who performed the survey that identified the substandard quality of care. For all State-operated facilities, as well as non-State-operated facilities which are subject to a Federal survey, HCFA will notify the State of the finding of substandard quality of care so that the State can fulfill the notification requirements. This requirement is based on the rationale that the State "finds" noncompliance when it is notified of it by HCFA. This approach permits use of existing State systems and centralizes notification efforts.

Comment: Some commenters complained that in cases where the facility fails to provide the list of residents and their physicians required in proposed § 480.175(h) (redesignated in this rule as paragraph § 488.325(g)), the State will be unable to comply with the State notification requirements in proposed paragraph (i) (redesignated in this rule as paragraph (h)). If the facility provides the list late, the State will miss its 30-day deadline. These commenters believe that this paragraph should be rewritten to require the State to issue notice within 30 calendar days of receipt of the resident/physician information from the facility.

Response: We are accepting this suggestion with some modification and are revising redesignated paragraph (h) to read, "Not later than 20 calendar days after a SNF or NF complies with paragraph (g), the State must provide written notice of the noncompliance to—". This revision imposes the notification requirement on the State once the State has received the necessary information from the facility. Also, § 488.325(g) provides that facilities that fail to provide the information to the State timely will have termination or alternative remedies imposed.

Comment: A few commenters questioned whether there would be a revisit prior to the notification to physicians and licensing boards, and, if so, and corrections had been made, whether notifications must still occur.

Response: The Act does not require revisits, appeals or any other pre-notification activity prior to notification to physicians and licensing boards. If the facility does manage to correct the deficiencies designated as substandard quality of care and have the correction substantiated by State or Federal surveyors before the notification, that notification should indicate that corrections have been made. However, the Act is clear that physicians and licensing boards are to be notified when the facility has provided substandard quality of care. Therefore, substandard quality of care provided before corrective action was taken, still must be reported.

Comment: A few commenters wanted to know how physicians will know when a facility, previously found to have provided substandard quality of care, has achieved compliance. Other commenters questioned whether physician and licensing board notifications are subject to an appeal by the facility, and if so, whether the results of the appeal will be communicated to the physicians and licensing board. These commenters also asked what becomes of this information.

Response: There is no statutory basis for notifying physicians more than once about a facility's compliance status. However, there is nothing to preclude facilities, physicians, or licensing boards from following up on this matter absent a statutory or regulatory requirement. Physicians are free to initiate inquiries into this matter, just as facilities are free to contact physicians and licensing boards about corrective action having occurred after the initial notification by the State.

While the notification in and of itself is not appealable, providers may appeal, in accordance with parts 431 or 498, as applicable, a finding of noncompliance that caused a remedy or remedies to be imposed. However, there is no statutory basis to require that results of provider appeals be communicated to the physicians and licensing board previously notified of the substandard quality of care. Again, the providers are free to notify physicians and licensing boards about the outcomes of these appeals and physicians and licensing boards are free to inquire about such matters.

All information related to the survey and certification of Medicare and Medicaid providers is retained in accordance with Federal and State provider survey and certification records retention requirements.

Section 488.330 Certification of Compliance or Noncompliance

Comment: A small number of commenters suggested that HCFA delegate to the State all enforcement responsibilities for the SNF portion of dually participating facilities. Commenters believe that States have better resources to perform the enforcement functions and this solution would eliminate duplicative efforts and be more cost effective. One commenter further suggested that the State handle all enforcement responsibilities for all SNFs.

Response: We cannot accept this suggestion. Section 1819(h)(2) of the Act requires the Secretary to take certain enforcement actions when the Secretary finds either through his or her own survey, or through the State's survey, that a SNF no longer meets the requirements set forth in section 1819(b), (c) or (d) of the Act. Thus, we do not have the authority to delegate the enforcement authority for SNFs to the State.

Comment: A few commenters believed that HCFA, not the State, should perform the on-site surveys of State-operated nursing homes.

Response: To the extent possible, we have attempted to use the survey and certification process in effect before October 1, 1990, whereby the survey agency would conduct the survey and certify compliance or noncompliance with Federal requirements, subject to HCFA approval as necessary for SNFs. The OBRA '87 legislation made a distinction between State operated and non-State operated facilities. Specifically, OBRA '87 provided that the Secretary would be responsible for certifying State-operated facilities. To be as consistent as possible with our present survey process, we proposed that the State survey agency would conduct all surveys (with the exception of validation surveys). We believe that requiring survey agencies to survey all facilities will make surveys for all nursing homes in a State more consistent since the same entity will conduct all surveys. However, HCFA would maintain the certification responsibility, thus assuring oversight as envisioned by the Act.

Comment: Some commenters were concerned that, although the Secretary's determination of a facility's noncompliance takes precedence over a State's finding of compliance, the regulation is unclear about which agency's remedies control when both HCFA and the State determine that the facility is not in compliance.

Response: When both the Secretary and the State survey agency agree that a facility is not in compliance, the rules at proposed § 488.232 (redesignated as § 488.452(b),(c),(d) and (e)) are applied to determine whether the Secretary's or the State's timing and choice of remedies control.

Comment: A few commenters were unclear about whether the validation survey and the certification survey would be counted as separate surveys for sanction purposes because the denial of payment sanction must be imposed when the State or Secretary finds substandard quality of care through three consecutive standard surveys.

Response: The Secretary's finding of noncompliance during a validation survey would not be counted toward three consecutive findings of substandard quality of care. Sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act refer to facilities being found to have provided substandard care under three consecutive standard surveys conducted under sections 1819(g)(2) and 1919(g)(2) of the Act, respectively. Sections 1819(g)(2) and 1919(g)(2) of the Act describe the State's standard survey of a facility.

Prospective Providers

In the proposed rule, we asked for public comments regarding our requirement that prospective providers be in full compliance with the requirements of sections 1819 (b), (c) and (d) and 1919 (b), (c) and (d) of the Act in order to participate in the Medicare and Medicaid programs, respectively.

Comment: Many commenters believe that HCFA's proposal ignores the concept of substantial compliance because the proposed regulations define any failure to comply with the regulations as a deficiency. The commenters suggest that the regulation be rewritten to state that facilities will be judged on substantial compliance. A few commenters asked if a deficiency with a scope of 1 and a severity of 1 would constitute noncompliance that is sufficient to exclude a prospective provider from program participation.

Response: After carefully considering the matter, we are accepting the commenters' suggestion to incorporate the concept of substantial compliance in the regulation as the standard that prospective providers and existing providers must meet in order to begin or continue to participate in the Medicare and Medicaid programs. We arrived at this conclusion for several reasons.

Based on public comments and further consideration on our part, we believe that the notion of perfect compliance, as discussed in the proposed rule, is an impractical and, perhaps, unrealistic standard for providers or prospective providers to meet. This is because in lieu of approximately 15 statutory requirements with which facilities had to comply before OBRA '87, the Act now sets forth more than 100 requirements that facilities have to meet in order to participate in the Medicare or Medicaid programs. In fact, in 1992 only 7.3 percent of all nursing homes surveyed were deficiency-free. Under a regulatory system defined by condition and standard level requirements, such as the system in place for many years, we found that almost all facilities that were experiencing only minor problems did retain program eligibility since the system allowed for some noncompliance at the standard level. That is no longer the case. By vastly increasing the number of statutory requirements that facilities have to meet in order to meet the statutory definition of a SNF or NF, and by directing the Department to do away with its former hierarchy of requirements, the Congress made it far more difficult for facilities to meet prerequisites for program participation. As discussed above, however, we do not believe that the Congress intended to write into law a set of requirements that would eliminate almost all providers from the Medicare and Medicaid programs. Accordingly, we have drawn upon the principles enunciated by the Institute of Medicine in its study of nursing home regulation that helped spawn nursing home reform.

A benchmark of the IoM study was its conclusion that the focus of nursing home regulation should be on resident outcomes and not procedural requirements that do not always accurately measure whether quality care is being rendered. Sections 1819 and 1919 of the Act, and the implementing regulations at 42 CFR Part 483, as well as our survey process, reflect this focus.

We believe that the Act sets forth many examples of requirements which, if violated by a facility, would not necessarily expose a resident to the potential for anything more than minimal harm, much less actual harm. For example, § 1919(b)(3)(C) requires that a facility conduct a resident assessment for each individual no later than 14 days after admission. If a facility were to conduct almost all of its assessments in compliance with this requirement, but failed in the case of only one resident who was assessed on the 15th day after admission, a very narrow reading of the statute would compel a conclusion that the facility was out of compliance and thereby failed to meet the statutory definition of a nursing facility under § 1919(a) of the Act. This kind of approach to nursing home regulation, as we alluded to above, would be unduly harsh and impractical where the facility's failure did not expose the resident to any harm. Indeed, it may be the case that the facility prepared an exemplary assessment for the one resident for whom it acted untimely. The same type of analysis could be made for violations of the requirement at § 1919(c)(2)(B) regarding the requirement to be given at least 30 days in advance notice of a resident's transfer. Where in a given case, a facility gives 29 days advance notice, the question might better be, was there a potential for minimal harm as a result of this infraction rather than conclude that the Act was violated and expose the facility to one or more remedies, even where the resident experienced no more than the potential for minimal harm.

Accordingly, we are defining "substantial compliance" at § 488.301 as a level of compliance with requirements of participation such that any identified deficiencies pose no greater risk to patient health and safety than the potential for causing minimal harm. Thus, while a facility may avoid a remedy even if it fails to comply perfectly with all statutory requirements, it still has a duty to each resident to provide care that enhances the chances of positive outcomes and avoids negative outcomes. If a single resident experiences any harm, a facility will not have satisfied its statutory obligations. Given the statute's focus on each resident's right to receive quality care, and the facility's mirrored obligation to provide it, we believe that we could not adopt a less rigorous standard of compliance.

We acknowledge that there might be many definitions that we could have chosen from, but in our view the definition we have settled upon strikes the appropriate balance that best implements the statute, the IoM study, and accommodates both facility and resident concerns.

Second, as commenters suggested, we considered the fact that section 1866(b)(2) of the Act allows the Secretary to enter into provider agreements with facilities that "substantially" meet applicable requirements. Although there is no analogous provision in the Medicaid law for nursing facilities, we are exercising our general rulemaking authority in section 1102 of the Act, to extend the "substantiality" concept to Medicaid providers. We believe that since Congress stressed that it intended to adopt the IoM recommendation that the same requirements apply to both Medicare and Medicaid facilities, it is logical to recognize substantial compliance as an acceptable standard to meet for participation in both programs.

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As we discuss in more detail later in this preamble, the scope and severity gradations that appeared in the proposed rule will only serve as one example of how States can determine remedies. Furthermore, we are removing the numerical designations from the scope and severity measure. In response to the commenter who asked if a deficiency at a scope of 1 and a severity of 1 would constitute noncompliance sufficient enough to exclude a prospective provider from program participation, the answer is no. While we are not mandating the use of numerical ranges, if States use such ranges, and if a 1/1 designation denotes a deficiency which is of limited scope and which has caused no harm and is unlikely to cause more than minimal harm, a facility with such a deficiency would not be precluded from participating in the Medicare or Medicaid program.

Comment: Several commenters raised concerns with the provision that facilities must meet all requirements because they wonder how many follow-up surveys will be necessary to ascertain that a facility is in full compliance.

Response: As we discussed earlier, we reconsidered our position spelled out in the proposed rule that prospective providers had to comply perfectly with all requirements to participate in the Medicare and Medicaid programs. Instead, we are requiring that providers and prospective providers be in substantial compliance with all requirements in order to participate in both programs. If a State survey agency is requested to conduct more than one initial survey of a prospective provider because it was not in substantial compliance, the State survey agency will have the flexibility to conduct follow-up surveys up to three weeks after the facility alleges correction of the noncompliance that disqualified it from Medicare and/or Medicaid participation. This is consistent with section 2008 of the State Operations Manual which established 3 weeks as the timeframe in which the State should conduct an initial survey of a prospective provider after its notification of full operation. The 3-week interval is necessary to allow the State survey agency adequate time to schedule a revisit, and gives the prospective provider who has corrected noncompliance the opportunity to demonstrate that it is capable of continued substantial compliance.

Comment: Some commenters suggested adding a phrase at the end of the sentence in § 488.330(b)(2)(ii) to require that when a provider has achieved compliance, the State can only remove the remedy if the State has reason to believe that compliance will be maintained.

Response: We accept this suggestion, but only with regard to the denial of payment and State monitor sanctions imposed for repeated substandard quality of care, as specified at sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act, and for the imposition of temporary management as specified at sections 1819(h)(2)(B)(iii), 1919(h)(2)(A)(iii), and 1919(h)(3)(C)(iii) of the Act. Sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act provide that, if the State or Secretary finds substandard quality of care on three consecutive standard surveys, the State or the Secretary must impose a denial of payment remedy and monitor the facility until the facility has demonstrated to the satisfaction of the Secretary or State that it is in compliance with the requirements of sections 1819 (b), (c), and (d) and 1919 (b), (c), and (d), and that it will remain in compliance with such requirements. Likewise sections 1819(h)(2)(B)(iii), 1919(h)(2)(B)(iii) and 1919(h)(3)(C)(iii) of the Act specify that temporary management must not be lifted until the Secretary or State has determined that the facility has the management capacity to ensure continued compliance with all the requirements of sections 1819 (b), (c), and (d) and 1919 (b), (c), and (d) of the Act. We are, as explained earlier in this preamble, imposing a substantial compliance standard for the purpose of imposing and lifting sanctions. Therefore, for the above mentioned remedies, we are requiring that the remedies be lifted when the facility achieves substantial compliance and the facility has demonstrated to the Secretary or the State that substantial compliance can be maintained. There is no statutory authority for the continuation of any other remedies past the date that a facility achieves substantial compliance. We are making changes to § 488.330(b)(2)(ii) accordingly and corresponding changes to proposed § 488.236 (redesignated as § 488.454).

Comment: A few commenters recommended amending the proposed text to provide that a facility that is certified meets all Federal requirements, except that a facility may be considered to meet the requirements if it has requested and been granted a waiver by either HCFA or the State survey agency. Commenters further requested that we clarify in the regulation that once a waiver is granted, the existing situation which required the waiver is not considered a deficiency for the purpose of remedies or repeat deficiencies.

Response: We do not believe the regulation needs to be changed. Waiving requirements renders those requirements not applicable to a particular facility for the duration of the waiver. If requirements are not applicable to a particular facility, that facility cannot be out of compliance with those requirements. Therefore, when a facility has been granted a waiver of certain requirements, there would be no remedies imposed nor would those waived requirements be considered when looking at a pattern of repeated noncompliance.

Comment: Some State commenters believed that the proposed rule was unclear about when the certification of compliance or noncompliance would be issued. For example, in the case of a plan of correction, would HCFA or the State certify compliance after an acceptable plan of correction was received or would noncompliance be certified, and after successful completion of the plan of correction, a subsequent certification of compliance be issued.

Response: The certification of compliance or noncompliance is issued by the State survey agency approximately 20 to 25 days after the last day of the survey. A finding of substantial compliance is considered within the range of compliance and would receive a certification of compliance. A certification of compliance would be issued after a certification of noncompliance if, as in the example the commenter offers, a facility submits a plan of correction and achieves substantial compliance. The exact mechanism by which the facility will be notified of the subsequent certification of compliance will be specified in manual instructions.

Comment: One commenter suggested that HCFA not terminate a Medicaid provider agreement based on a validation survey unless there is immediate jeopardy to resident health and safety.

Response: We continue to believe that there is ample authority in the Act for the Secretary to terminate Medicaid provider agreements in situations that do not pose immediate jeopardy. First, section 1919(h)(3)(B) of the Act provides that "[n]othing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a facility's deficiencies." Second, section 1919(h)(3)(C) of the Act provides that the Secretary may provide for other specified remedies. We view these provisions as statutory authority and Congressional intent that the Secretary design enforcement remedies that will assist in effectively assuring

prompt and lasting compliance by nursing facilities that serve the Medicaid population. Third, the Act already expressly provides for terminations by the Secretary in non-immediate jeopardy cases. Specifically, sections 1919(h)(6) and 1919(h)(7) of the Act, by their own terms, apply to findings of noncompliance by the Secretary when there is no immediate jeopardy to resident health and safety. Each of these provisions speaks to actions of the Secretary to terminate the provider agreement of such facilities. Accordingly, we are not accepting the commenter's suggestion.

Comment: A few commenters recommended that we revise § 488.330(d)(1) to remove "nature of noncompliance" and replace it with "basis for the determination." The commenters suggested that the word "nature" was not specific enough and does not furnish the provider with the necessary information to formulate an appropriate plan of correction or response to deny the allegation. Some commenters further suggested that the facility should be provided with full information that supports each citation and the survey agency's decisions including the underlying reason, basis or rationale for the findings of noncompliance with a regulatory requirement.

Response: We are not accepting this suggestion because we believe that the Statement of Deficiencies and Plan of Correction Form (HCFA–2567) provide facilities with the specific information necessary to formulate an acceptable plan of correction. To include such detailed information regarding deficiencies in the notice of noncompliance would be duplicative and administratively burdensome. We also are not accepting the suggestion to replace "nature of noncompliance" with "basis for the determination" because we believe there is virtually no substantive difference.

Comment: A few commenters suggested that the notice of a certification of noncompliance should include all of the specified items in § 488.330(d) and not only some of them.

Response: We agree with the commenters and are amending § 488.330(d) to require that all of the information included in proposed paragraph (d) must be included in the notice.

Comment: Many commenters supported our proposal to impose remedies prior to the hearing, and noted that from the perspective of the residents and their families this proposal is a strength of the proposed rules. These commenters approved of applying remedies once the violations are found. Consumer groups emphasized that imposing remedies prior to appeals is essential to carrying out the statutory requirement to "minimize the time between identification of violations and the final imposition of remedies". They also commented that the IoM report expressed a similar view, stating that HCFA "should develop regulations that would allow states to implement sanctions prior to hearings and appeals." Many commenters stressed that delays in enforcement could harm the residents, and that remedies should not be delayed pending a hearing. One consumer group noted that immediately imposing a restriction on admissions while a hearing is pending is particularly effective.

Many commenters also indicated that facilities should initiate a plan of correction immediately.

Response: We agree with the above comments, and are adopting procedures that allow for the swift imposition of remedies prior to a hearing. We believe that the intent of the Act was that remedies be imposed as soon as possible in order to protect the residents.

Comment: Several commenters were concerned that providing hearings only after imposition of remedies denied providers their rights to due process. Many commenters recognized that in cases of immediate jeopardy to resident health or safety, pre-hearings were not necessary, but in cases in which there is no immediate jeopardy, they favored a hearing prior to imposition of any sanctions. Some commenters wanted HCFA to require the States to give an informal hearing prior to imposition of alternative remedies if the deficiencies do not pose immediate jeopardy to resident health or safety.

A few commenters recognized that the majority of courts that have addressed the issue have found that providers are not constitutionally entitled to pre-hearing relief, but that a minority of courts have found that hardships are imposed on providers and residents when no pre-termination process is afforded. These minority-view courts have found facilities entitled to a pre-termination hearing on due process grounds when no pre-termination procedures are available.

A few commenters challenged HCFA's reliance on the court cases which have upheld post-termination hearings on the grounds that these cases involved deficiencies analogous to immediate jeopardy situations. These commenters concede that in immediate jeopardy situations, the residents' interests are compelling enough to permit post-termination relief to providers, but not otherwise.

Several providers noted that residents could suffer transfer trauma, the facility's business could be destroyed, and facility employees could lose their jobs, none of which could be restored if the facility were ultimately successful on appeal. A few commenters noted that a prior hearing is often the only safeguard against a mistake or incorrect judgment of a less experienced surveyor.

A few people commented that when penalties become incrementally more severe for repeated non-compliance, and imposition of penalties takes into account a facility's compliance history, the need for hearings becomes more critical.

A few commenters urged that facilities be given an opportunity to correct deficiencies before any remedy is imposed.

Response: We believe that post-sanction hearings are entirely compatible with due process. Courts that have addressed this issue have concluded that, because the facility has numerous opportunities to prevent mistakes from occurring and to present its side of the story both during the survey process, at the exit interview, and by submitting written statements and a plan of correction, due process is satisfied by the availability of post-sanction hearings. See, for example *Case* v. *Weinberger*, 523 F.2nd 602 (2nd Cir. 1975), *Caton Ridge Nursing Home* v. *Califano*, 596 F.2d 608 (4th Cir. 1979), *Green* v. *Cashman*, 605 F.2d 945 (6th Cir. 1979), *Northlake Community Hospital* v. *United States*, 654 F.2d 1234 (7th Cir. 1981), *Geriatrics, Inc.* v. *Harris*, 640 F.2d 262 (10th Cir. 1981), cert. denied 454 U.S. 832, 102 S.Ct. 1295. Although the Supreme Court has not directly decided the issue of due process requirements when a provider is terminated, the Court has decided in *O'Bannon* v. *Town Court*, 447 U.S. 773, 100 S.Ct. 2467 (1980), that residents are not entitled to a pre-termination hearing. The Court reached this result notwithstanding the fact that residents were the intended beneficiaries of the provider agreement through their entitlement to high quality care. Moreover, consistent with the balancing of interests formula first enunciated by the Supreme Court in *Mathews* v. *Eldridge*, 434 U.S. 319 (1976), we have concluded, first and foremost, that the private interest that facilities have in their continued participation in the Medicare and Medicaid programs must give way to the Government's interest in protecting the health and safety of the resident population. Additionally, in

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light of the opportunities available to providers to question the accuracy of survey findings at various points during the survey process including during the survey, exit conference, and through informal meetings with State or Federal officials, we believe that the chances for an erroneous deprivation are quite small when compared to the enormous delay in the correction of noncompliance that could occur were hearings to be routinely held prior to the institution of remedies. The use of an informal dispute resolution process, to be discussed later in this preamble, should serve to reduce even further the chances of an erroneous deprivation.

Apart from the support of case law, the nursing home reform statutory provisions clearly reflect the desire expressed in the enactment's legislative history that remedies be applied swiftly once deficiencies are identified. Specifically, sections 1919(h)(2)(A) and (h)(3)(C) of the Act require that when States and the Secretary develop criteria detailing the manner in which remedies are to be imposed that they be designed so as to minimize the time between the identification of violations and final imposition of the remedies. Additionally, section 1919(h)(8) of the Act specifies that States may impose a denial of payments for new admissions, temporary management, and facility closures during the pendency of any hearing. We believe it would be incompatible with these pronouncements were we to devise an appeal scheme that would provide for hearings before the imposition of remedies. Moreover, we conclude that this is the case regardless of whether the facility's deficiencies pose immediate jeopardy to resident health or safety since the Act makes no distinction on this basis and because the delay in imposing remedies once noncompliance has been identified could be considerable.

Comment: One commenter stated that residents should have the right to remain in their nursing homes until after the alleged deficiencies are substantiated.

Response: The Supreme Court has addressed the issue of the right of residents to a pre-termination hearing when the nursing home in which they reside loses its Medicaid agreement (*O'Bannon* v. *Town Court*, 447 U.S. 773, 100 S. Ct. 2467 (1980)). The Court noted that although termination may be harmful to some residents, residents are moved to a complying nursing facility for their own benefit, so that they can obtain the care to which they are entitled as Medicaid residents. The Court noted that Medicaid residents who are forced to move may have difficulty locating other homes they consider suitable or may suffer both emotional and physical harms as a result of the disruption associated with their move, and might have a claim for damages against the nursing home, yet they would not have any claim against the government for deprivation of an interest in life, liberty or property (Id. 447 U.S. at 788, 100 S.Ct. at 2476).

As discussed more fully below, residents do have opportunities for giving information to the surveyors during the survey process.

Comment: One commenter believed that providing pre-hearings for monetary penalties, without providing any hearing, formal or informal, prior to imposition of harsher sanctions is irrational.

Response: Pre-sanction hearings are available when monetary penalties are assessed because the provisions of section 1128A of the Act apply. These procedures require pre-sanction hearings when civil monetary penalties are assessed. As discussed above, the statute clearly provides for the immediate imposition of remedies where civil money penalties are not involved.

Comment: One commenter argued in favor of a written appeals process prior to revocation of the facility's license.

Response: Termination of a provider agreement is not termination of a license to do business; therefore, we do not accept the implication that pre-termination hearings should be available on the grounds that a license is being revoked, especially when the statute, legislative history and case law so clearly point in the other direction.

Comment: A few commenters stated their belief that HCFA is inappropriately extending its rulemaking authority to supersede State laws which provide pre-sanction hearings. Some commenters noted that current Medicaid regulations at § 431.153(b) allow States the option of providing pre-hearings.

A few commenters stated that there was no statutory basis for HCFA's proposal to eliminate pre-sanction hearings in the Medicaid program, and no indication that the Congress intended to eliminate this State practice. These commenters noted that there is a material difference between the Medicare and Medicaid programs in the impact of not having a pre-hearing available because nursing homes usually have many more Medicaid residents than Medicare residents. They stated that loss of Medicaid reimbursement has a greater financial impact than the loss of Medicare reimbursement.

A few people commented that the statutory requirement to minimize the length of time between identification of deficiencies and imposition of remedies is not a mandate to eliminate the time between the two events.

A few people commented that the proposed regulation was making terminations so easy to accomplish, by providing only for post-termination hearings, that the Congressional intent to provide alternatives to termination was being undermined.

One commenter noted that the legislative history of Public Law 96–499, indicated that the Congress wanted providers to have an opportunity to present their cases at an informal hearing prior to imposition of a sanction, citing H.R. 1169 at 56, reprinted in 1980 U.S. Code, Cong. & Admin News, 5526, 5569.

Response: OBRA '87, as discussed more fully above, OBRA '87 specifically provides that the Secretary must "minimize the time between the identification of violations and final imposition of the remedies" (see sections 1819(h)(2)(B) and 1919(h)(2)(A) of the Act). In addition, OBRA '87 provides that, "It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care [* * * in both Medicare and Medicaid facilities * * *] and *the enforcement of such requirements*, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys." (Sections 1819(f) and 1919(f) of the Act, emphasis added).

As we stated in the proposed rule, we believe that there are compelling reasons to provide for an appeals mechanism under Medicaid that is triggered only after an adverse action has gone into effect. As discussed above, we believe this scheme most accurately reflects legislative intent. Additionally, we believe the Act gives us general rulemaking authority to achieve this objective and that, in particular, we have authority to regulate the timing of State Medicaid hearings that may be provided in accordance with section 1919(h)(7) of the Act. We also see no reason why the rules governing the Medicaid program in this area should be any different than those governing the Medicare program when the substantive requirements affecting providers are exactly the same and the enforcement options are virtually identical.

For Medicaid, the only hearing a provider will receive is that which is provided for in this final rule, as determined by § 488.330(e)(4). When States hear certification and licensure

appeals under the same process, that process can be used for Medicaid purposes as long as it does not go beyond the scope of the hearing procedures in part 431. Part 431 only provides for appeals of deficiencies that lead to an enforcement remedy; therefore, appeals of deficiencies that did not lead to an enforcement remedy will not be recognized for Medicaid purposes.

As stated above, we believe that residents are the primary beneficiaries of the Medicare and Medicaid program, and their interests are paramount. The Second Circuit Court of Appeals stated as follows in *Case* v. *Weinberger*, 523 F.2d 602, 607 (2nd Cir. 1975):

> This anticipated damage to Mrs. Case, which is certainly serious, does not compare favorably with the government's interest in the safety of her patients. A nursing facility's "need" for patients has nothing to do with the statutory benefits structure. The facility's need is incidental. That a particular nursing facility cannot survive without Medicaid participation was certainly not Congress' foremost consideration in its creation of the Medicaid program. This is not to derogate Mrs. Case's property interest in her expectation of continued participation. We must, however, place that right in proper perspective with regard to the health and safety expectations of the patients, which expectations the Secretary has a valid interest in protecting. The benefits to a nursing home from its participation in Medicaid reimbursement result from nothing more than a statutory business relationship.

The above comments on the relationship of providers to the Medicare and Medicaid programs were cited with approval by the Tenth Circuit Court of Appeals in *Geriatrics* v. *Harris*, 640 F.2d 262, 265 cert denied, U.S. Supreme Court (1981).

Comment: Several commenters offered alternatives to the proposed post-sanction hearings. Some accepted HCFA's goal of applying remedies immediately, but proposed that States should be allowed the flexibility to use pre-sanction hearings in limited circumstances.

Some wanted the option to use pre-sanction hearings in cases where deficiencies are minor and States have a high caseload of appeals (presumably making it difficult to obtain a speedy post-remedy hearing); some wanted pre-sanction hearings in all cases unless the facility was substantially out of compliance or the deficiency was deemed life threatening.

Some stated that although the residents' interests prevail when the deficiencies impair their safety, the facility's interests should prevail when the deficiencies are less serious, thereby justifying pre-sanction hearings. For example, some commenters agreed that substandard care needed to be addressed expeditiously, prior to any hearing, but other deficiencies could be addressed after an expedited appeals process.

Some proposed a balancing test under which the procedures would vary according to the interests at stake. The residents' interests would specifically be balanced against the nursing home's interests on a case by case basis. A post-sanction hearing would be held in cases of immediate jeopardy, and pre-sanction hearings would be held when the threat to residents was less extreme.

Some wanted States to have the option of providing pre-sanction hearings in all cases. Some wanted to retain the present State option in the Medicaid program to provide either pre-termination hearings or post-termination hearings which must be completed within 120 days of the effective date of the termination. A few commented that requiring completion of the hearing within 120 days would alleviate HCFA's concern that pre-sanction hearings would delay imposition of remedies.

One commenter proposed that an existing State procedure be adopted, whereby the State schedules an appeal within 30 days of receiving a request for a hearing; an impartial decision maker makes a recommendation within 30 days of the hearing, and the Secretary makes a final decision within 10 days. Another proposed a 10 day filing period for requesting an appeal; a hearing held within 30 days of request; and a decision within 30 days of the hearing.

A few commenters proposed minimizing the time between identification of remedies and imposition of remedies by instituting deadlines in an expedited hearing process. These commenters proposed imposing time periods for filing of documents by all parties, and mandatory deadlines for decisions by hearing officers.

Some commenters proposed allowing States to follow their own Administrative Procedure Act provisions.

Some submitted State license laws for our consideration. For example, under one State's license law, deficiencies are classified based on whether there is a substantial probability of death or serious mental or physical harm (Class A), a direct threat to health, safety or welfare of a resident (Class B), or no direct threat to health, safety or welfare of a resident (Class C). Class A violations require immediate abatement, subject to a Court injunction for failure to abate; Class B or C violations require a plan of correction within 10 days (extendable to 30). Timeframes are included, providing generally for requesting hearings within 10 days after notice, and providing hearings within 30 days of request.

Response: We are not accepting suggestions that would require pre-sanction hearings because we continue to believe that residents are best served if remedies are imposed promptly. The residents are the beneficiaries of the Medicare and Medicaid programs, and their best interests are the motivating force behind OBRA '87 and these regulations. We are not mandating post-remedy hearings. We are merely not requiring a hearing to be completed before imposing any sanction but civil money penalties. Depending on the size of the case load and processing times, a State could complete a hearing prior to the imposition of a remedy, but to be consistent with these regulations any hearing would need to be conducted and concluded very shortly after noncompliance was identified. However, we acknowledge that the ability to provide a pre-sanction hearing would be difficult for most States.

We are not accepting the various proposals on timing events within the hearing process itself. With respect to Medicare, some of these time periods are established by the Act, as is true, for example, for the 60 day period in which to appeal. With respect to both Medicare and Medicaid, hearings are held by independent hearing officers who are in a far better position than HCFA to determine how quickly various hearings can be held.

We do not believe that State license law is analogous to Medicare and Medicaid provider agreements. As we stated above, providers have entered into agreements with Medicare and Medicaid in which they have agreed to comply with Federal requirements, including the requirements applicable to remedies for noncompliance.

Comment: Several commenters proposed an explicit review period during which the State survey agency's central office would give providers an opportunity to question, clarify and develop the issues.

Response: We are adopting this proposal with some modification to require dispute resolution by an official in the survey agency and/or HCFA regional office. See discussion under the heading, Dispute resolution. We believe that making an informal dispute resolution process available alleviates many of the concerns expressed above, and gives a provider an opportunity to present its side of the story to the survey

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agency and/or regional office officials prior to imposition of remedies.

Comment: Several commenters wanted a right to appeal all deficiencies, even if no remedy was imposed.

Response: We are not accepting this suggestion because if no remedy is imposed, the provider has suffered no injury calling for an appeal. We agree that deficiencies that constitute noncompliance and that result in a remedy imposed are appealable (except for minor remedies such as State monitoring).

Comment: Several commenters approved our plan to provide a single hearing for dually participating SNF/NFs. One commenter wanted two hearings, if the same deficiency was cited by two survey agencies, unless the provider requested a single hearing.

Response: We are adopting a single hearing, as proposed, in accordance with procedures in 42 CFR part 498, because we believe that it would be extremely burdensome and costly for the government to participate in two hearings. Witnesses would need to testify twice, in different locations. Attorneys would be required to prepare for two separate proceedings, and respond to two different sets of procedural rules. Further, because the two hearings would be based on the same set of facts, a second hearing is not necessary. Before OBRA '87, the practice was to provide one hearing for dually participating facilities, in accordance with procedures at 42 CFR part 498, and this proved to be satisfactory.

Comment: One commenter stated that the ombudsman should participate in the hearing because sections 712(a)(3)(E), and 712(a)(5)(B)(iv) of the Older Americans Act Amendments of 1992 authorize ombudsmen to represent the interests of the residents before governmental agencies.

Response: We are not adopting this suggestion because residents are not a party to the Medicare or Medicaid agreements between providers and HCFA or the State agency. Moreover, the entire process of surveys, determining compliance or noncompliance, and citing deficiencies is a process designed to protect the interests of the residents. The ombudsman can, of course, advise the survey agency of any concerns relevant to a particular facility.

Comment: A few commenters suggested that States should be necessary parties in any hearing, stating that when HCFA decertifies facilities the results of the survey could be used as evidence that the State survey agency was negligent in surveying the facility.

Response: This comment apparently refers to decertification of a facility after a HCFA validation survey. We are not adopting this proposal, because in any hearing the parties to the hearing are the complainant (the provider, in this case) and the party who made the decision about which the complaint is made (HCFA in the case of a validation survey).

Comment: A few commenters recommended that residents be permitted to be parties in any hearings, to ensure that terminations are used only as a last resort. A few also wanted residents to be able to initiate challenges through the appeal process when either HCFA or the State failed to apply remedies when appropriate. A few wanted residents to be notified of enforcement actions at the same time a nursing home is notified.

Response: We are not adopting these suggestions, because we believe that the needs of the residents to be heard are addressed in other ways. As a threshold matter, the Supreme Court has already concluded in the previously cited *O'Bannon* decision that residents do not have a right to a pre-termination hearing when the facility in which they reside faces a provider agreement termination. Whether residents might testify to a facility's compliance or noncompliance, arguments on both sides of the issue are already being made by either the government or the provider. Certainly, a provider has every incentive to state its case that it was in compliance with certification requirements and that it ought not be the subject of an adverse action.

On the other hand, if residents were interested in contributing to the case against a facility, whatever evidence they might have could be shared with surveyors before, during, or after the completion of a survey. Residents have always had, and will continue to have, opportunities to discuss facility conditions with surveyors either individually or in group meetings, and always have the right to comment on the care they are receiving. Except when there is immediate jeopardy to resident health or safety, the States and the Secretary have very broad discretion under the Act to select among enumerated remedies. Just as we believe it is not for facilities to choose what remedies they should be subject to, we do not believe that facility residents should make that choice either.

Comment: Many commenters favored an informal procedure to challenge the survey agency's findings prior to making the Statement of Deficiencies (HCFA–2567) final.

Response: As discussed in the section entitled, Dispute Resolution, we are accepting this proposal and are providing for such a process in § 488.331. We believe that such a process will alleviate many of the concerns expressed on providing only post-sanction formal hearings.

Comment: A few commenters noted that the existing appeals regulations at 42 CFR part 498 should be amended to reflect the additional issues which can now be appealed in addition to termination.

Response: We agree and are amending § 498.3 to make it clear that noncompliance leading to an enforcement remedy (other than State monitoring) is appealable. These changes are identified in section V. of this preamble, Additional Conforming Changes.

Comment: Several commenters proposed that we clarify when sanctions are to be imposed. Some feared that sanctions would be imposed by the survey team onsite as soon as a deficiency is cited. Some wanted clarification that the State survey agency would be given a reasonable period of time in which to review surveyor findings in order to decide upon a sanction.

Response: It is not our intent that the survey team impose remedies. Moreover, the appropriate agency for imposing remedies does not do so prior to the time the facility receives written notice of the noncompliance and written notice of the remedy(ies) to be imposed. The survey agency will have time to review the findings and make a decision as to compliance or noncompliance, and recommend a remedy or remedies to the appropriate State entity or to HCFA, depending on whose decision controls as specified at sections 1919(h)(6) and (7) of the Act.

Comment: A few commenters wanted clarification of the timing and meaning of a certification of noncompliance specified in proposed § 488.180(d), the notice of hearing given specified in proposed § 431.153(e), and the notice of imposition of remedies specified in proposed § 488.202(f).

Response: Under section 1864 of the Act, the State survey agency certifies to HCFA, in a document called a "Certification and Transmittal," the status of a facility's compliance with the statutory and regulatory requirements. In certain situations, HCFA itself makes the decision on whether a facility complies, as is the case for State facilities and in the case of validation surveys. This certification of compliance or noncompliance is a decision made by one of the

governmental agencies (HCFA or the State) prior to notification of the provider.

If a certification of noncompliance is made, the provider is notified in accordance with § 488.330(c). It is usually notified in a separate notice of remedies to be imposed, in accordance with § 488.402(f). (There may not be two separate notices in the case of immediate jeopardy.) Except for the imposition of civil money penalties, providers are given notice before the effective date of all remedies. In the case of civil money penalties, providers are given a pre-sanction hearing before civil money penalties can be collected. The notice given to the provider includes a notice of the remaining noncompliance, (even if there was a prior notice of deficiencies constituting noncompliance found on the survey) and notice of an opportunity to request a hearing, in accordance with § 431.153(d) and § 498.20(a).

If a hearing is requested, the hearing must include the components specified in § 431.153(e). Note that the requirement in § 431.153(e) that the facility receive notice and a copy of the statement of deficiencies is accomplished prior to the hearing, in accordance with § 431.153(d).

We do not believe that the regulations need to be re-written to achieve the above intended result. Providers will be given notice of any deficiencies if HCFA or the State survey agency determines, that is, certifies noncompliance. They will also be given notice of any remedies that are imposed, and notice of their right to request a hearing.

Comment: A few commenters requested that the notice given to the provider include not only the deficiencies found and the remedies selected but also the severity/scope rating for each deficiency. These commenters wanted an opportunity to appeal the severity/scope ratings.

Response: We are not accepting this comment. As we discuss later in this preamble, with the exception of certain civil money penalties, providers will not have the opportunity to appeal the scope and severity of deficiencies.

Comment: Many States commenting on this section believe that the HCFA finding of noncompliance should not supersede a State survey agency certification of compliance when both are available. States assert that State surveyors are more familiar with the operation of specific facilities in the State and that HCFA's surveyors may impose remedies because of their lack of familiarity with a particular facility.

Response: Section 1919(g)(3)(A) of the Act mandates that the Secretary's determination as to the facility's noncompliance is binding and supersedes that of the State survey. Moreover, HCFA surveyors do not impose remedies. Rather, the managerial staff in the HCFA regional offices decide on the most appropriate remedy to be imposed. Therefore, we are not accepting this suggestion.

Section 488.332 Investigation of Complaints of Violations and Monitoring of Compliance

Comment: A few commenters said that the certification and validation surveys constitute unreasonable administrative searches which violate the Fourth Amendment. They stated that routine inspections require a warrant unless the survey is initiated in accordance with neutral criteria and the surveyor's discretion is limited by an administrative plan defining the scope and procedure of the inspection, citing *Barlow's Inc.*, 436 U.S. at 323 and *Donovan* v. *Dewey*, 452 U.S. 594 (1981).

A few commented that warrantless complaint investigations also violate the Fourth Amendment because the proposed rule provides no assurance that investigations are justified and because the proposed rule contains no limits on time, place, scope and manner of any complaint investigation.

Response: Providers have consented to certification and validation surveys and to complaint investigations by choosing to participate as providers in the Medicare or Medicaid programs, or both. As indicated previously, the Supreme Court has long upheld warrantless searches of closely regulated businesses, and the nursing home industry is no exception. Moreover, section 1128(b)(12) of the Act provides for the exclusion from the Medicare and Medicaid programs of an individual or an entity who denies access to the Secretary or the State agency for the purpose of a survey to determine a provider's compliance with Federal requirements.

Comment: Some commenters suggested that we require coordination of complaint investigations with the State or local ombudsman program.

Response: The Act does not require the State to coordinate complaint investigations with ombudsman programs. However, under the Act, each State is required to notify the State long-term care ombudsman of its findings of noncompliance as specified on the HCFA–2567, with any of the requirements pertaining to provision of services, resident rights, or administration and other matters. The State also provides the long term care ombudsman with any report of adverse action (specified at § 488.406 of this rule) imposed on a facility. We are including the requirement for disclosing such information to long term care ombudsman at § 488.325.

Comment: Some commenters believed that § 488.332 should include procedures, including timing, evaluation of severity, and protocols, to be used in the investigation of complaints of violations of participation requirements. These commenters offered a variety of specific procedures to be included in this regulatory section. Also, commenters suggested that the State investigate all complaints received, while other commenters suggested giving States flexibility to determine whether there is a reasonable basis for an investigation.

Response: As explained fully in the preamble to the proposed rule, sections 1819(g)(4)(A) and 1919(g)(4)(A) of the Act require each State to maintain procedures to investigate complaints of violations of Federal participation requirements. Additionally, the State Operations Manual has prescribed procedures State agencies must follow if complaints involve Medicare and/or Medicaid facilities. We believe these procedures, which are subject to ongoing revisions, provide basic minimum instructions, with sufficient flexibility, for State agencies to follow when investigating complaints.

We do not believe that it would be reasonable or economically feasible to require States, especially those with remotely located facilities, to survey all facilities for which complaints are received. The experience of State survey agencies has shown that many complaints are either groundless or are not potential violations of requirements for certification. This position, however, does not relieve the States from their responsibilities to properly evaluate and investigate all complaints that may affect a facility's certification.

To ensure these responsibilities are properly carried out, §§ 488.318 and 488.320 of these rules and sections 1819(g)(3)(C) and 1919(g)(3)(C) of the Act require that the Secretary provide appropriate remedies when a State fails to perform survey and certification responsibilities required under the Act. In addition, HCFA evaluates the Medicare/Medicaid survey and certification performance of State survey agencies with the State Agency Evaluation Program (SAEP). The SAEP identifies, among other factors, State actions with regard to the investigation of complaints. In Federal fiscal year 1992, the SAEP assessment of the State agency's timely processing of general certification related complaints

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indicated that on a national average between 90 and 99 percent of all general certification related complaints reviewed in the sample were processed in a timely manner. The evaluation included determining if allegations which may involve immediate jeopardy were investigated within two working days of receipt and also determining if non-immediate jeopardy complaints were processed in accordance with existing State agency procedures for prioritizing and investigating general certification related complaints. The SAEP data for fiscal year 1992 also confirmed that in the sample of complaints reviewed, which included general certification related complaints, complaints against accredited hospitals and violations of section 1867 of the Act (Examination and Treatment for Emergency Medical Conditions and Women in Labor), between 90 and 100 percent of complaints were collected, logged, referred and acknowledged in accordance with the guidelines provided in the State Operations Manual and specific policy memoranda. Any inappropriate State actions are discussed with State survey agency management and reconciled accordingly.

Comment: Some commenters suggested that the regulations state that complaints may be accepted from anonymous sources or provide for the anonymity of complainants if requested.

Response: We recognize there are instances when it is necessary to protect the identity of a complainant to avoid possible reprisal. In keeping with this, States are instructed in the State Operations Manual to take appropriate precautions to protect a complainant's anonymity and privacy, if possible. While we do not believe we can guarantee anonymity should an adverse action result from the investigation, we would expect that ultimately the issue before a trier of fact would be the substantial compliance or noncompliance with certification requirements, not the identity of the individual who brought the allegation to the survey agency's attention. We are revising § 488.332 to provide that, if possible, the State survey agency takes appropriate precautions to protect a complainant's anonymity and privacy.

Comment: Many commenters asked for an explanation of the term "monitoring" used in this section. There seemed to be a pervasive thought that the term as used in this section was analogous to the remedy of "State monitoring" found in § 488.406.

Response: We believe the term "monitoring," as found in section 1819(g)(4) and 1919(g)(4) of the Act, is intended to encompass the entire survey process, which is to ascertain whether a facility is in substantial compliance with the requirements for participation in the Medicare or Medicaid programs, or both. The use of this term in this section of the rules should not be construed as to alter the protocols for long term care surveys which are found in the State Operations Manual.

Section 488.332(b) gives States flexibility to visit facilities at their discretion in order to determine whether or not they are in compliance with program requirements. It should not, as some commenters felt, be an option whether or not to follow up on deficiencies cited on previous visits. (Note the following comment and response regarding follow up visits.)

Finally, we are changing the title of this section so that "monitoring" is distinct and separate from complaint investigation.

Comment: Commenters asked whether or not follow up visits for determining correction of all cited deficiencies must be conducted.

Response: The proposed rules do not change our position regarding the scheduling and conduct of follow up visits. This position is described in the State Operations Manual. Correction of noncompliance must be verified by some type of follow up activity; albeit, not necessarily by an on-site visit. The timing of follow up visits must be determined by factors such as the effect of the noncompliance on the care of the facility's residents and the date of correction specified in the provider's plan of correction.

Comment: Some commenters suggested that investigations of complaints regarding violations of participation requirements be solely the responsibility of the State survey agency. Other commenters maintained that necessary referrals are not being made to other State agencies.

Response: The Act provides that a State may maintain and utilize a specialized team for the purpose of identifying, surveying, gathering and preserving evidence and does not specify that such team be part of the survey agency. However, if a State uses a specialized team that is not part of the survey agency, the State survey agency is not absolved of its responsibility to properly document complaints and their findings and take required certification action with respect to a facility's Medicaid or Medicare participation, or both.

In keeping with this responsibility, we are strengthening § 488.332 by requiring that, if arrangements have been made with other State components for investigation of complaints, the State must have a means of communicating information among appropriate entities, and the State survey agency retains responsibility for the investigation process.

Also, we are adding a paragraph to § 488.335 requiring that State survey agencies consider complaints of neglect, abuse or misappropriation of resident property by an individual used by a facility to provide services to residents as a potential reflection on a facility's compliance with Medicaid and/or Medicare participation requirements.

Comment: Some commenters expressed concern about the use of an attorney on a specialized investigation team.

Response: The Act, at sections 1819(g)(4) and 1919(g)(4), refers to an "attorney" as well as other professions (auditor, appropriate health care professionals) to describe examples of various disciplines that may be used to make up specialized teams to investigate violations of requirements by nursing facilities or skilled nursing facilities and, in a broader sense, to monitor all facilities for compliance with the requirements of sections 1819(b), (c), and (d) and 1919(b), (c), and (d) of the Act.

We did not intend that attorneys be a routine part of such teams; however, the language of the Act and proposed rules gives States a broad choice of occupations from which to choose for the survey and certification process.

Comment: Several commenters requested that a facility have prior notice of a complaint investigation to notify its attorney in those instances when an attorney is part of the specialized complaint investigation team.

Response: Notifying a facility in advance of a complaint survey so that its attorney might be present is, in fact, announcing the survey. To do so is inconsistent with HCFA policy, which intends that as many surveys as possible be unannounced.

Comment: A few commenters identified specific areas of concern in the complaint investigation process. These concerns stemmed from the general comment that the complaint investigation team may not have proper training.

Response: We appreciate the concern of these commenters who recognize that the investigation and resolution of complaints is a critical certification activity requiring properly trained investigators, and we will consider these concerns as we strive to continually improve our training courses. However, we believe that the

expertise of a special investigation team and the overall State survey agency responsibility for complaint investigations provides a coordinated effort that assures that the complaint investigation process is executed by properly trained individuals. Sections 1819(g)(4) and 1919(g)(4) of the Act provide that the State may maintain and utilize a specialized team which may include an auditor, an attorney, and appropriate health care professionals to identify, survey, gather and preserve evidence, and carry out appropriate enforcement action against substandard facilities. The discipline, specific training, and education of such a specialized team provides the narrow focus that is often essential to conduct a comprehensive complaint investigation. The State survey agency has the overall survey and certification responsibility and expertise that assures that surveyors can ascertain when Medicare and Medicaid facilities meet participation requirements.

Comment: A few commenters recommended that a process for appeal by the complainant be implemented.

Response: While we cannot deny that there may be instances in which a complainant is dissatisfied with the findings of a complaint investigation, we cannot accept the recommendation to include an appeal process for the complainant in the regulation as the complainant is not a party to the provider agreement.

Comment: A commenter asked what type of action could be invoked when a complaint was received after the violation occurred and was resolved by the time the surveyors arrived.

Response: Although we may have discretion with the selection of remedies to address noncompliance with requirements that are corrected by the time of a survey, it is likely that we would give serious consideration to imposing a civil money penalty in such cases. Sections 1819(h)(1) and 1919(h)(1) and (3) of the Act expressly authorize the impositions of these sanctions even if, at the time of the survey, the facility is in compliance.

Comment: A few commenters recommended that the provision which includes administering remedies to noncompliant facilities found during a complaint investigation be revised to say that the State will carry out appropriate enforcement remedies against chronically substandard facilities.

Response: We do not agree. While the facility's compliance history is a factor in general and specifically with reference to the cited deficiencies in determining the appropriate remedy or remedies, we will not limit the remedies to only those facilities which have chronically provided substandard care. To do so, would be to allow many deficiencies that constitute noncompliance to go unsanctioned. This undermines the purpose of remedies that are intended to motivate prompt compliance with participation requirements.

Section 488.334 Educational Programs

Comment: The consensus of those who commented on § 488.334, with the exception of the following two commenters, was that there is a definite need for educational programs for facilities, residents, and their representatives. The two commenters stated that it was unrealistic to expect the States to conduct periodic educational programs for the staff and residents of facilities either because of the cost, because they felt the requirement was already met when surveyors interviewed residents, or because the appearance of objectivity would be jeopardized.

Response: The regulatory provision requiring the States to conduct periodic educational programs stems from a statutory requirement at sections 1819(g)(1) and 1919(g)(1) of the Act. The concept that the requirement is met when surveyors interview residents is not acceptable for two reasons: First, surveyors do not interview every resident. Secondly, the responsibility of a surveyor is to survey nursing homes and not to have attention deflected to educate staff and residents as to regulations, procedures, and policies. In fact, even if surveyors were to attempt an educational task, time and money constraints would prevent them from being able to provide complete information to staff and residents. As to the appearance of objectivity being jeopardized, this is not an issue since the Act requires that States assume this responsibility. However, irrespective of the Act, there is no reason why a State's educational program, explaining the Federal requirements, should jeopardize the State's objectivity in exercising its survey function. We believe that well-informed staff and residents contribute to nursing homes' being able to achieve and maintain compliance. If the implementation of training programs is followed by a pattern of increased facility compliance, one can just as easily conclude that providers and their clients are becoming more knowledgeable about the requirements to which they are subject, than that surveyors are losing their objectivity.

Comment: Several commenters recommended that State educational programs for consumers be expanded. Several commenters suggested that we require State survey agencies to involve ombudsmen in the development of educational programs and in the planning and implementation of additional training of residents. Another commenter suggested that we require State agencies to give NFs access to training programs for State surveyors. Several commenters suggested that we conduct joint continuing education programs for providers and surveyors. A few commenters recommended that we make HCFA's inservice training programs available to facilities. Another commenter recommended adding to this regulation that the State make available to staff and residents documents related to current regulations, procedures, and policies.

Response: Sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act require that States conduct educational programs for facility staff and residents (and their representatives) regarding current regulations, procedures and policies of the long-term care survey process. We include ombudsmen as representatives of residents. Such information will be provided during educational programs as they relate to the content of the program. Such regulations, policies, and procedures are also releasable under the Freedom of Information Act, and can be requested outside of the scope of the educational program. There is no statutory requirement to include ombudsmen in the development, planning, and implementation of educational programs and we feel that each State should develop its own program regarding these activities. A State may or may not choose to include ombudsmen in the *development* of its program. In any case, we are interpreting the Act to include ombudsmen in educational programs as representatives of residents. The suggestion has been made that providers be permitted to attend survey training courses. Traditionally, we have had no provisions for accommodating all providers interested in attending; our resources are taxed enough by simply trying to provide timely training for surveyors. However, being able to offer surveyor training universally to providers at their own cost may help improve understanding and cooperation between surveyors and providers. We are therefore seriously considering changing our policy to allow this.

Comment: Two commenters representing consumer groups, suggested that §§ 488.303 and 488.334 be expanded to require State agencies to provide education to residents and their

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representatives in a variety of additional areas such as

- How to participate in assessment and care planning.
- Residents' rights.
- Rights to rehabilitation and other services.

One of these commenters also recommended that States work with residents and family councils to:

- Solicit recommendations prior to any changes in the requirements.
- Evaluate the effectiveness of the survey process.
- Receive consultation prior to and during imposition of remedies to determine their effectiveness.
- Receive consultation prior to determining whether to grant a waiver of nurse staffing.

Another commenter suggested that residents' understanding is critical and their education should be expanded to include:

- How the survey process works and how to participate.
- How the investigation process works and how to participate.
- How the care planning process works and how to participate.

Response: These suggestions have considerable merit and are within both the spirit and intent of the Act. We agree with the commenters that the proposed regulation unnecessarily restricted the scope of the mandated educational programs. The regulation is being revised to permit the education programs to cover all aspects of the long-term care survey process. We believe the States should have the flexibility to structure the educational programs to the needs of the facilities. The methods of developing the programs (for example, consultation with the ombudsmen program) and the methods of presentation are best left to the States. The comment that States should work with residents and family councils to solicit their recommendations prior to any changes in requirements goes beyond the educational process. In some respects, this comment incorporates residents and families as participants in the survey and enforcement processes. Whenever there is public rulemaking, any member of the public is a participant in the process and can comment and make recommendations on such matters. In addition, when surveyors speak with residents during the survey, residents are free to bring up comments about the survey process if they wish. Regarding the comment that residents' understanding of the survey, investigation, and the care planning processes should be expanded, we repeat that the regulation is being amended to permit the educational programs to cover all aspects of the long-term care process.

Comment: One commenter recommended that HCFA share central office and regional office satellite training to provide training simultaneously with nursing facility staff and consumers.

Response: It is beyond the scope of this regulation to institute such detailed procedures as providing satellite training to consumers or specifying any other training medium. It is beyond our technological capabilities to provide training via satellite to every SNF and NF in the country. The costs of installing the necessary equipment in each facility would far exceed our budgetary resources.

Comment: One commenter stated that, although this section providing education to residents and staff of facilities is an excellent idea, it lacks specificity and oversight. Because of budgetary crises, this is but another educational program at State expense and will receive low priority. HCFA must ensure that the State will conduct educational programs at particular time intervals or face sanctioning by HCFA.

Response: Although there is no statutory provision requiring HCFA to oversee States to determine if they have failed to conduct educational programs as required by the Act, we recognize that we have some responsibility to do so. It is within the purview of the States to decide how and when to conduct their educational programs. We believe it is wiser to leave these decisions to the individual States since they must design the educational programs the Act specifies. However, we are looking into the feasibility of monitoring the States in some way to assure that they are in compliance with this statutory requirement. We plan to find an acceptable approach to evaluating State efforts in providing educational programs to facilities and their staffs, and residents and their representatives.

Comment: A commenter stated that further definition of the nature and frequency of educational programs is needed and, for consistency, HCFA should establish the nature and content of such programs. There could be extensive new resource requirements if the program is not considered adequate. Another commenter recommends that we define "periodic" and detail the process for State compliance.

Response: As previously mentioned, the nature and content could cover any of the requirements of sections 1819 and 1919 of the Act. When manual instructions are developed, they will provide guidelines on topics such as frequency of educational programs.

Comment: One commenter questioned whether on-site presentations were preferable to written communication.

Response: This is a detailed and specific matter. The methods of training will be determined by the States, but HCFA will publish guidelines in manuals to assist States in structuring their programs.

Comment: This commenter also recommends replacing the word "conduct" with "provide" to allow for the use of subcontractors, and for the distribution of written and/or auto-visual materials toward this end.

Response: We believe to make such a change could be interpreted as changing the intent of the Act, which uses the word "conduct." The Act gives the responsibility for developing educational programs specifically to the States.

Comment: Two commenters stated that funds must be made available to the States for educational purposes.

Response: HCFA does make funding available to the States for the required periodic education program through its budget process.

Section 488.335 Action on Complaints of Resident Neglect and Abuse, and Misappropriation of Resident Property

Upon further analysis, we revised the title of this section to be more explicit.

Comment: Some commenters suggested regulatory language requiring coordination of investigations of complaints of neglect, abuse, or misappropriation of property with the State or local ombudsman program.

Response: The Act does not require the State to coordinate complaint investigations with the State long term care ombudsman. However, under the Act, each State is required to notify the State long term care ombudsman of its findings of noncompliance with any of the requirements pertaining to provision of services, resident rights, or administration and other matters. The State also provides the State long term care ombudsman with any report of adverse action (specified at § 488.406 of this rule) imposed on a facility. We have included the requirement for disclosing such information to the long term care ombudsman at § 488.325.

Comment: Some commenters felt procedures for investigating complaints of neglect, abuse, or misappropriation of property should be included in the final rule.

Response: As stated in the proposed rule, we believe such an approach is inconsistent with our view that States should have the flexibility to rely on

State entities other than the State survey agency to investigate and adjudicate these matters. States will likely use an array of different licensing or investigative bodies to meet their obligations in this area.

Comment: Several commenters suggested that investigations of allegations of neglect, abuse, or misappropriation of property be integrated into the comprehensive survey, certification and enforcement process. Further, there were suggestions that investigations of these complaints be conducted solely by the State survey agency.

Response: The Act requires that States must provide, through the agency responsible for surveys and certification of nursing facilities, for a process for the receipt and timely review and investigation of allegations of resident neglect or abuse, or misappropriation of resident property.

As pointed out in the preamble to the proposed rule, while the State is free to delegate to other State agencies the adjudicatory functions described in sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, we fully expect State survey agencies to retain ultimate responsibility for compliance with these statutory requirements. If a State uses an agency which is not part of the State survey agency, the State survey agency cannot be absolved of its responsibility to properly document complaints and take required certification action with respect to a facility's participation in either the Medicaid or Medicare programs.

In keeping with this responsibility, we are strengthening the rules under § 488.335(a) by cross referencing § 488.332, which specifies that the State survey agency retains responsibility for the investigation process and requiring the State survey agency to have a means of communicating information among appropriate entities if other State agencies are involved in the investigation of these complaints.

In response to the above comments we are adding a new requirement that State survey agencies consider all complaints of resident neglect or abuse, or misappropriation of resident property as a potential reflection on a facility's compliance with Medicaid and/or Medicare participation requirements. This new requirement is at § 488.335(h). (The provisions in § 488.165 (g) and (h) of the proposed rule are revised and combined in § 488.335(g) and are discussed later in this preamble.)

Comment: Some commenters suggested that the words, "by an individual used by the facility" be added to paragraph (a) of this section as it requires the State to review all allegations of neglect, abuse, or misappropriation of resident property. Commenters pointed out that the suggested text is found in the Act and the preamble to the proposed rule.

Response: We are revising and expanding § 488.335(a), and in doing so, incorporating the comment. This paragraph now specifies that the State reviews all allegations of resident abuse and neglect and misappropriation of resident property. The State also follows the procedures of § 488.332. We are adding that, if there is reason to believe, either through oral or written evidence, that an individual used by the facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation. We also now specify in this section that the State must have written procedures for the timely review and investigation of these allegations.

Comment: Several commenters mentioned that the proposed rules do not specify a timeframe for initiation of an investigation nor a time limit on the length of an investigation of neglect, abuse, or misappropriation of resident property.

Response: Our intent in writing this rule was to not be too prescriptive of State investigation processes. However, manual instructions to State survey agencies specify a timeframe for situations of immediate jeopardy in which they should initiate complaint investigations.

We chose not to regulate the time in which a State must complete its investigation of these types of complaints. We thought a specific time limit could, in some instances, compromise the outcome of the investigation.

Comment: Some commenters suggested that the rules specify a timeframe in which the State must notify an individual when there is reason to believe that the abuse, neglect, or misappropriation of resident property did occur. Also, some suggested that we notify the administrator or owner of the facility employing such person, or both.

Also, some commenters suggested that we include in the notice to the accused person the consequences of the hearing determination or waiving the right to a hearing.

Response: We do not accept the comment to send a notice to the individual implicated in an allegation of resident neglect or abuse or misappropriation of resident property before the State has conducted an investigation. To do so could possibly jeopardize the outcome of the investigation and in some cases would be premature as the investigation might find the allegation unsupported. However, we are revising the final rule at § 488.335(c) to require that a State must notify the individual implicated in the allegation and the current administrator of the facility in which the incident occurred, in writing within 10 working days of its preliminary determination, which is based on oral or written evidence and its investigation, that resident neglect or abuse, or misappropriation of resident property occurred. This timeframe was selected to provide timely notice to the individual involved and yet, give States sufficient time to provide such notice. We are also revising the final rule to reflect that this notice to the individual includes the consequences of a hearing finding and of waiving the right to a hearing. We are adding that the notice includes a statement to inform the accused individual of the right to be represented by an attorney at the individual's own expense.

Comment: We received several comments suggesting that we establish, by regulation, a more extensive "due process" appeal mechanism for facility employees accused of neglect, abuse, or misappropriation of a resident's property.

Response: We recognize the importance of the need for a fair and impartial hearing whenever an individual used by the facility is accused of resident neglect or abuse, or misappropriation of a resident's property. However, we recognize that all States have administrative procedure acts which allow for resolution of disputed cases of this nature. Thus, we chose to allow the need for these appeals to be addressed by State law.

Comment: Some commenters felt the provision to allow 120 days for States to conduct hearings of staff accused of neglect, abuse, or misappropriation of a resident's property was excessive and suggested other dates, while other commenters felt the 120 day period did not allow sufficient time for a State's administrative process to complete the hearing.

Response: While we agree that a person accused of resident neglect, abuse, or misappropriation of a resident's property is entitled to swift determination of the accusation, we believe States must be given reasonable time in which to schedule and conduct the hearing process under their administrative procedure acts. Our experience with other related State hearings indicates that 120 days is a reasonable timeframe for scheduling and completing these appeals.

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Comment: Several commenters suggested we modify the rules so they specify who should be notified when a person accused of neglect, abuse, or misappropriation of a resident's property waives the right to a hearing or when a State hearing finds that such an individual did, in fact, act as accused. In addition, some commenters suggested we specify timeframes for such reporting.

Response: In response to these comments, we are rewriting § 488.335(f) and combining paragraphs (g) and (h) into (g) to clarify the reporting process and to include timeframes for reporting. We are specifying that the State survey agency, which may not delegate this responsibility, must report in writing the finding that an individual neglected or abused a resident or misappropriated a resident's property within 10 working days of the finding to: the individual; the current administrator of the facility in which the incident occurred; the administrator of the facility currently employing the individual, if different; the licensing authority for individuals other than nurse aides; and the nurse aide registry. For nurse aides, these findings must not only be reported to the nurse aide registry but must be included in the nurse aide registry within 10 working days of the finding in accordance with § 483.156(c)(iv)(D).

Comment: We received comments suggesting that if an allegation was found to be untrue, that accusation be expunged from the nurse aide registry.

Response: An allegation of resident abuse or neglect or misappropriation of resident property that is not substantiated would not be entered on the nurse aide registry. Only a finding of resident abuse or neglect or misappropriation of resident property would be entered on the nurse aide registry. Section 483.156(c)(1)(iv) specifies the particular information that the registry must contain with regard to any finding by the State survey agency of abuse, neglect or misappropriation of property. This information includes documentation of the State's investigation (including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid), the date of the hearing and its outcome (if a hearing was requested), and a statement by the individual disputing the allegation (if the individual chooses to make one). The rule also provides that this information must be included in the registry within 10 working days of the finding and must remain in the registry permanently unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

Comment: We received several comments regarding the nurse aide registry. Commenters offered suggestions for the contents of the registry, its availability to the public and action taken as a result of substantiation of abuse, neglect or misappropriation of property.

One commenter suggested that the report of findings provision include notifying the appropriate law enforcement authorities in those cases where a crime has been committed.

Another commenter suggested that HCFA offer guidance to facilities concerning the treatment of employees who are awaiting the resolution of a complaint.

Response: These specific comments fall outside the purview of this regulation on the survey, certification and enforcement of skilled nursing facilities and nursing facilities. However, a discussion of these and other related issues can be found in a final rule titled Medicare and Medicaid; Requirements for Long Term Care Facilities and Nurse Aide Training and Competency Evaluation Programs, published September 26, 1991 in the **Federal Register** at 56 FR 48880.

Comment: Several commenters suggested that every investigation seek to identify facility practices which led to the neglect, abuse or misappropriation of resident property.

Response: We believe that every investigation does seek to identify facility practices which led to the resident neglect or abuse, or misappropriation of resident property and this is evidenced by the guidance currently provided to the States in manual instructions. These guidelines include the general procedures for conducting complaint investigations and stipulate that, if significant problems are identified during an initial assessment or other observations, the scope of the review is expanded as necessary. The procedures also specify that when the team is investigating allegations of substandard care, they are to evaluate not only the care of the individuals involved in the allegation, but also to evaluate the facility's patterns of related care. Also, noncompliance identified during the survey is recorded on the Statement of Deficiencies and Plan of Correction (HCFA–2567) and a plan of correction is requested. When the facility is not in substantial compliance as a result of the deficiencies identified, enforcement actions could include the imposition of alternative remedies or termination of a facility's provider agreement.

Comment: A few commenters suggested that in those cases where neglect was found and determined to be caused by factors beyond the control of the individual, the State agency must impose sanctions upon the facility or document why such sanctions are inappropriate.

Response: We do not accept this suggestion to add a regulatory requirement that obligates HCFA or the State to impose sanctions where resident neglect was found and determined to be caused by factors beyond the control of the individual. Regardless of the cause of the noncompliance, a facility is not relieved of its responsibility to correct its deficiencies. This responsibility assures that residents consistently receive quality health care in a safe environment and it exists whether or not a remedy is imposed. However, there are instances in which a remedy will be imposed due to the egregious nature of the deficiency and to encourage prompt compliance. Conversely, there are situations in which a remedy might not be necessary because the facility corrected the practice which led to the abuse. For example, firing an employee who neglects a resident or residents could immediately correct that deficiency.

We do not accept the suggestion to incorporate into the regulation a provision that would require documentation for those cases in which a remedy is not imposed. We are not required by the Act to document why sanctions are not imposed and to require this through regulations would impose a significant workload burden because, as stated above, there are many cases in which deficiencies are corrected and remedies are not imposed.

Redesignation of Subpart F

As noted earlier, a new Subpart D of part 488, consisting of §§ 488.201–488.211, became effective on August 31, 1992, shortly after this proposed rule was published on August 28. Consequently, we must designate Subpart F, which was to consist of §§ 488.200–488.240, with subsequent numbers. To assist the reader, we are publishing the new table of contents for Subpart F, with designations of the proposed rule shown in parenthesis. In the following discussions, we refer to the sections as renumbered, with the proposal's identification included only if distinction is necessary.

Sec.
488.400 Statutory basis. (§ 488.200)
488.401 Definitions. (§ 488.201)
488.402 General provisions. (§ 488.202)

488.404 Factors to be considered in selecting remedies. (§ 488.204)
488.406 Available remedies. (§ 488.206)
488.408 Selection of remedies. (§ 488.208)
488.410 Action when there is immediate jeopardy. (§ 488.210)
488.412 Action when there is no immediate jeopardy. (§ 488.212)
488.414 Action when there is repeated substandard quality of care. (§ 488.214)
488.415 Temporary management. (§ 488.215)
488.417 Denial of payment for all new admissions. (§ 488.217)
488.418 Secretarial authority to deny all payments.
488.422 State monitoring. (§ 488.222)
488.424 Directed plan of correction. (§ 488.224)
488.425 Directed inservice training.
488.426 Closure of a facility or transfer of residents, or both. (§§ 488.226 and 488.240)
488.430 Civil money penalties: Basis for imposing penalty. (§ 488.230)
488.432 Civil money penalties: When penalty is collected.
488.434 Civil money penalties: Notice of penalty.
488.436 Civil money penalties: Waiver of hearing, reduction of penalty amount.
488.438 Civil money penalties: Amount of penalty.
488.440 Civil money penalties: Effective date and duration of penalty.
488.442 Civil money penalties: Due date for payment of penalty.
488.444 Civil money penalties: Settlement of penalties.
488.450 Continuation of payments to a facility with deficiencies. (§ 488.232)
488.452 State and Federal disagreements involving findings not in agreement in situations where there is no immediate jeopardy. (§ 488.234)
488.454 Duration of remedies. (§ 488.236)
488.456 Termination of provider agreement. (§ 488.238)

Section 488.401 Definitions

It was brought to our attention that the term "immediate family" also appears in subpart E as well as subpart F. Therefore, in the final regulation we are moving the definition of "immediate family" to subpart E, § 488.301, but we are stating the comments and responses below.

Comment: A few commenters believe that the definition of "immediate family" should be expanded to include niece, nephew, and domestic partner.

Response: We have not accepted this suggestion. Section 1004, part 1, of the Provider Reimbursement Manual defines "immediate family" for Medicare purposes. The commenters offered no compelling argument as to why any individual should be added to the definition of immediate family. In fact, we are amending our definition to be consistent with the definition found in the Provider Reimbursement Manual by deleting "spouse of grandparent or grandchild."

Comment: Some commenters pointed out that the definition of "immediate jeopardy" should be located in subpart E instead of subpart F because the term is first introduced in subpart E.

Comment: We agree with the commenters. In the final rule, we have relocated the definition of "immediate jeopardy" from proposed § 488.201 in subpart F to § 488.301 in subpart E. However, since commenters concerned with responses regarding the definition of immediate jeopardy will first look in this section, we have retained the comments and responses below.

Comment: We received numerous comments about HCFA's or the State survey agency's ability to assign resident rights and/or physical environment violations at higher severity levels. These commenters believe that any deficiency could be egregious enough to be considered "moderate harm" or "immediate jeopardy."

Response: We agree with these commenters and are allowing violations of any participation requirement, including resident rights and physical environment, to be assessed at any degree of seriousness.

Comment: Many commenters wanted clarification regarding cases in which termination actions for immediate jeopardy would be applicable.

Response: Sections 1819(h)(2)(A)(i), 1819(h)(4), 1919(h)(1)(A), 1919(h)(3)(B)(i), and 1919(h)(5) of the Act specifically state that termination of participation for a facility is possible with any determination of noncompliance where the State or the Secretary finds this noncompliance immediately jeopardizes the health or safety of the residents. For example, immediate jeopardy to resident health or safety may exist, but is not limited to, the presence of one of more of the following:

- Insect or rodent infestation indicative of food contamination or the possible spread of contagion;
- Failure to control infections as evidenced by the presence of facility-acquired infections;
- Patient abuse or poor resident care, including;

+ Instances of malnutrition or dehydration that are unrelated to the resident's condition and are a result of patient care;

+ Neglect by the staff with the result that residents are often left lying in urine, feces and other waste;

- Drug or pharmaceutical hazards that directly affect resident health and safety, such as:

+ Excessive drug errors or mishandling of drugs;

+ Failure to provide medications as prescribed;

+ Failure to monitor drugs as evidenced by lack of ordered laboratory work, failure to take vital signs as indicated by drug regimen, and lack of other nursing monitoring practices;

+ Gross mishandling of drugs such as leaving drug trays unattended and available to residents and visitors.

+ Administration of drugs by unqualified staff; or

+ Administration of experimental drugs without the informed consent of the resident (or responsible party). This list is not to be interpreted as all-inclusive, but rather as examples of what may be construed as immediate jeopardy situations warranting termination.

Comment: Other commenters were unclear about how the phrase "at any time" constitutes "immediate threat."

Response: We agree that it is unclear and are removing the phrase in § 488.401.

Comment: Some commenters believe the definition in § 442.2 conflicts with the proposed definition of immediate jeopardy.

Response: We agree that these definitions are in conflict. However, the definition in § 442.2 will no longer apply to nursing facilities and is being revised to reflect this change. We are maintaining two separate definitions of immediate jeopardy because of the different regulations applicable to ICFs/MR and SNFs or NFs.

Comment: Some commenters suggested striking references to the scope and severity scale and inserting the phrase "creates imminent danger." Other commenters recommended that immediate jeopardy should represent the most severe or life threatening violation.

Response: We agree with the commenters and we have removed references to the scope and severity scale from the definition of immediate jeopardy. We are redefining immediate jeopardy to encompass all situations that pose actual or potential life threatening harm, death, serious injury or impairment. Therefore, a life threatening situation or imminent danger will inevitably be considered immediate jeopardy.

Comment: Many commenters were concerned that the definition of immediate jeopardy pertains to only physical harm and not emotional harm.

Response: We agree with the commenters that significant emotional as well as physical harm may be considered immediate jeopardy. Every

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determination of the seriousness of a deficiency includes the consideration of whether a resident has failed to achieve his or her highest practicable physical, mental, or psychosocial function.

Comment: Many commenters expressed the need for us to clarify the definition of "new admission" to indicate whether or not residents transferred to the hospital, with the intention of returning, are considered new admissions. They are concerned that if denial of payment for new admissions is imposed, those transferred residents will not be covered if they return to the facility.

Response: New admission is described within § 442.2 as well as § 488.401. We believe these descriptions are sufficient and further clarification is not necessary.

Comment: Some commenters suggested that the definition of "plan of correction" be amended to require the facility to identify the systemic underlying problem, make restitution to the affected resident or residents, contain measurable outcomes for all quality of care deficiencies, and require the facility to take further measures to ensure future compliance.

Response: The purpose of a plan of correction is to identify and address the underlying problem or problems for the facility. Individual residents have other legal means at their disposal to seek restitution. It is impracticable to develop model thresholds for each and every plan of correction as each situation is different and is evaluated accordingly. Plans of correction are geared toward prospective compliance to ensure the underlying causes of cited deficiencies do not recur. As it is virtually impossible to afford retroactive restitution to residents who have been injured or have been deprived of their rights, we have not accepted these suggestions.

Comment: Many commenters wanted to have a definition of "highest practicable well-being."

Response: The phrase "highest practicable well-being" was established in sections 1819(b)(2) and 1919(b)(2) of the Act. We believe the conspicuous absence of a definition demonstrates that the Congress recognized the impossibility of establishing a single definition of this phrase, as every resident, and his or her particular needs and abilities, must be evaluated individually.

Comment: Some commenters wanted a definition of "repeat deficiency."

Response: The Act, in section 1819(h)(2)(B) and 1919(h)(3)(C), specifies that incrementally more severe fines must be imposed for repeated or uncorrected deficiencies. Repeated deficiencies are described in § 488.438 as deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey.

Comment: A few commenters wanted a definition of "distinct part."

Response: "Distinct part" is defined in sections 2110 and 2762 of the State Operations Manual. As it is beyond the scope of this regulation, we do not believe it is necessary to place this definition in these regulations.

Comment: Some commenters wanted various other terms defined or clarified.

Response: We define terms in regulations only if the use of those terms, within the regulation, has a different application than that which is accepted in common English usage.

Section 488.402 General Provisions.

Comment: We received a number of comments from the health care industry, from consumer organizations, and from professional groups regarding the purpose of the regulations as set forth in proposed § 488.202. The consensus of those who commented on paragraph (a) was that protecting residents from "actual or potential harmful outcomes resulting from deficiencies" is but one of many purposes of the regulations. Other purposes commenters suggested we include were to—

- Deter noncompliance;
- Punish noncompliance through the use of appropriate sanctions;
- Ensure correction of deficiencies for residents whose care is deficient;
- Encourage sustained compliance; and
- Protect patient rights.

Two commenters suggested we change paragraph (a) of proposed § 488.202 to read, "The purpose of remedies is to encourage prompt, rapid compliance with program requirements at the minimum level that will achieve correction so as to protect residents from actual or potential outcomes resulting from deficiencies." They said that, "The Congress made it clear that a purpose of enforcement remedies is to render the time period between identification of deficiencies and *correction* (emphasis in original) as short as possible. This intent precludes punitive measures and promotes the least disruption to facility operation. Based on Congressional intent, general consensus now exists that the enforcement process should be corrective, not punitive, and that enforcement remedies should be set at the minimum level required to achieve the desired correction. Successively stricter measures would be used as needed for failure to correct."

Finally, one commenter said that "prompt, rapid," is redundant.

Response: A number of these comments suggest to us that there is some confusion between the purpose of these remedies and the expected outcomes of the regulations. Therefore, in order to be absolutely unequivocal, we are revising § 488.402(a) to read, "The purpose of remedies is to ensure prompt compliance with program requirements."

Comment: Two commenters suggested that the last sentence of proposed § 488.202(b)(1) be revised to read, "Survey findings are reported to the State and HCFA which will make recommendations for corrective action." Their rationale was that the determination of remedies to fit a particular deficiency or deficiencies should be made by an objective party in the survey agency or HCFA who did not survey the facility.

Another said that the same sentence should be revised to state, "Survey findings are reported to the State or HCFA, as appropriate, with recommendations for corrective action." Still another said that we should clarify the fact that the survey findings are reported with recommendations for remedies, and one commenter said that our proposed paragraph (b)(1) appears to exclude the possibility of imposing remedies based on HCFA's paper review of State survey agency findings.

Two commenters suggested a new paragraph (b)(1) to read substantially as follows:

(b) Requirement for State enforcement plan.

(1) The State and HCFA shall develop a plan for imposing intermediate remedies. The plan shall—

(i) Vary remedies with the scope and severity so that more substantial remedies are imposed for more serious deficiencies;

(ii) Assure that the State and HCFA minimize the time between identification of violations and final imposition of remedies;

(iii) Assure that remedies serve goals of requiring immediate correction of deficiencies, protecting residents, correcting deficiencies for specific residents who are harmed, punishing violations and deterring violations;

(iv) Include rules and policies about when and how various sanctions are imposed and when remedies are imposed singly or in combination; and

(v) Develop procedures to solicit the active participation of residents in the enforcement process, including permitting residents to participate in

any formal proceedings the State offers to providers to contest imposition of an intermediate remedy.

The two commenters who made this suggestion also said that enforcement under the reform law is not a collection of free-standing remedies that States and the Secretary apply on an ad hoc basis; enforcement under the law requires enforcement agencies to have a systematic way of making decisions to apply sanctions. They cite the Institute of Medicine (IoM) report, issued in March 1986, that says that guidelines on when to initiate sanctions are necessary for effective State enforcement. The commenters also cite the October 9, 1992 final settlement of *Valdivia* v. *California Department of Health Services* which reads in part:

The enforcement system shall:

A. Define the purposes of the system and of the remedies;

B. Set forth guidelines for appropriately assessing monetary penalties and other intermediate remedies (in lieu of or in addition to termination) allowed under Federal requirements;

C. Identify guidelines for approving and monitoring plans of correction;

D. Define the role of the complaint investigation process in the comprehensive enforcement system;

E. Encourage and promote use of intermediate sanctions, as appropriate, rather than termination, to achieve the purposes of the comprehensive enforcement system;

F. Identify mechanisms to better inform the public as to actions taken by the State against facilities that are not in compliance with Federal Requirements of Participation;

G. Identify the factors to be considered in determining which remedies may or must be imposed, assuring that more substantial remedies are imposed for more serious deficiencies.

Finally, two of these commenters suggested that HCFA specify that one of the bases for the imposition of remedies be interfering with the work of a survey team, monitor, and/or temporary manager.

Response: We agree that it would be more accurate to say that survey findings are reported with recommendations for remedies, and we are making that change in this final rule. We do not, however, believe that either the IoM study or OBRA '87 calls for an inflexible cookbook approach to enforcement. As noted in the comment, the IoM study speaks of establishing "guidelines," and we believe that this term connotes that there be a range of options available to the Secretary and the States (including the option not to impose any remedies). In sections 4203 and 4213 of OBRA '87, the intent to provide a flexible range of options is clearer still. Those sections amended sections 1819(h) and 1919(h) of the Act at several places to reflect this intent. For example, the Act now provides:

- "* * * the Secretary may impose any of the remedies described in subparagraph (B)." (1819(h)(2)(A)(ii));
- "Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary * * *" (1819(h)(2)(A));
- "The Secretary may take the following actions***" (1819(h)(2)(B)); and
- "The Secretary may impose a civil money penalty in an amount not to exceed $10,000 * * *." (1819(h)(2)(B)(ii)).

Further evidence of the need to retain flexibility in the choice of remedies is found in the House of Representatives Committee on the Budget report (H.R. Rep. No. 391, 100th Cong., 1st Sess. 472 (1987)) that accompanied OBRA '87. It states that, "the Committee amendment would specify a broad range of sanctions for use by both the Secretary and the States." The committee report goes on to say that, "The Committee emphasizes that the remedies specified under the amendment are not exclusive, and should not be construed to limit the use of other remedies that may be available to either the States or the Secretary under State or Federal law." It is clear that flexibility was the statutory intent. Therefore, in order to ensure this intended flexibility, we have set forth minimum remedies for deficiencies according to their seriousness and offered several additional optional ones.

We agree, for the most part, with the thrust of the final settlement in *Valdivia*, and are making revisions to the relationship between deficiencies and remedies which reflect aspects of the final settlement of that case. However, these revised policies are not appropriate for paragraph (b), which is intended only to succinctly set forth the basis for the imposition of remedies, and not the outline for the entire enforcement process. Rather, we have specified the linkage between deficiencies and remedies imposed at § 488.408, Selection of remedies.

We do not believe that proposed § 488.202(b)(1) excludes the possibility of imposing remedies based on "HCFA's paper review of survey agency findings." Since HCFA's "paper review" is itself based on survey findings, it is clear that remedies may be imposed as a result.

Finally, in response to the commenters who suggested that HCFA specify that one of the bases for the imposition of remedies be interfering with the work of a survey team, monitor, and/or temporary manager, there is authority at section 1128(b)(12) of the Act to exclude a facility based on its failure to grant access to the Secretary or to the State survey agency, and we believe this includes not only a survey team, but a monitor. Our regulations at § 488.415 set forth what happens if a facility does not relinquish control to a temporary manager.

Based on the above discussion, we are revising § 488.402(b)(1) to state that in every instance of noncompliance, one or more remedies are imposed based on deficiencies found during surveys conducted by HCFA or by the survey agency. We are deleting paragraph (b)(2) because we believe that manual issuances are the most appropriate places for procedural information of this sort.

Comment: Two commenters suggested that we set forth at § 488.402(b)(2) the principle that termination of provider agreements is a measure taken only as a last resort when the imposition of intermediate remedies has failed to correct the deficiencies. One commenter recommends that paragraph (b)(2) be amended to state that the survey agencies should be allowed to impose one or more remedies for each deficiency or cluster of deficiencies.

Finally, one commenter said that OBRA '87 stated that when deficiencies constitute an immediate and serious threat to residents' health and safety, neither HCFA nor the States have any discretion with regard to remedies. Rather, the commenter said that, in such cases, HCFA or the States must impose either temporary management or a provider agreement termination.

Response: We agree that termination of provider agreements is a serious measure, but not that it is a "last resort" in the strictest sense. While we believe that the Congress wrote into the law the wide array of alternative remedies to encourage their use, the Act does not require that in every case the States or the Secretary may not choose provider agreement termination until alternative remedies have been used. We believe that the Act's alternative remedies offer States and the Secretary a valuable opportunity to redress a wide variety of facility shortcomings through means that will promote quick correction without having to exclude the facility from program participation, and it is our expectation not only that serious consideration will be given for such opportunities when there is facility non-

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compliance, but that they will be used far more frequently than they have in the past. It would be an entirely erroneous impression of the Act, however, to conclude that it deprives States and the Secretary from exercising discretion to choose *any* remedy, including termination, whenever they determine it appropriate to do so. The comment suggesting that the proposed paragraph (b)(2) be amended to state that the survey agencies should be allowed to impose one or more remedies for each deficiency or cluster of deficiencies is inappropriate; the number of remedies that may be imposed is covered in the proposed § 488.202(c). We will discuss this comment in connection with others on that paragraph.

It is true that, when no immediate jeopardy exists, the Congress stated that the State or the Secretary may impose termination or may impose one or more intermediate sanctions against the provider, or may impose both, and that this is in contrast to the specific measures that must be imposed when immediate jeopardy exists. However, it does not follow that the State, rather than the Federal government, should have the ability and the obligation to specify when and how each remedy is to be applied. The Committee report that accompanied OBRA '87 clearly states:

> * * * it is the responsibility of the Secretary to take the enforcement measures necessary to assure compliance by Medicaid facilities with the requirements of participation as well as to assure that State enforcement activities are adequate to protect the health and safety of residents. To enable the Secretary to discharge this responsibility, the committee amendment would greatly expand the remedies available to the Secretary under current law.
>
> * * * [i]f both the State and the Secretary decide that remedies other than termination are appropriate, the Secretary's selection of alternative remedies, and not those of the State apply. (H.R. Rep. No. 391, 100th Cong., 1st Sess. 475–7 (1987)).

Moreover, section 1919(h)(2)(B) of the Act specifies that the Secretary shall provide, through regulations, guidance to States in establishing remedies.

However, when there is disagreement between HCFA and the State regarding enforcement action, the disagreement is resolved in accordance with the policy set forth in § 488.452(d). For example, paragraph (d) says that when HCFA or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

- Both HCFA and the State find that a NF has not met all the participation requirements; and
- Both HCFA and the State find that no immediate jeopardy exists.

In this way, the sanction(s) proposed by the State can take effect.

Based on the above discussion and the need to make conforming changes with other provisions of the regulation, we are revising § 488.402(b)(2) to indicate that the State or HCFA may apply one or more of the remedies specified in § 488.406 instead of terminating the provider agreement, or in addition to termination procedures, to continue until the effective date of the termination or until substantial compliance is achieved, and, in some cases, until the State or HCFA is assured that substantial compliance can be maintained.

Comment: As stated above, one State said that § 488.402(b)(2) should be amended to state that the survey agencies should be allowed to impose one or more remedies for each deficiency or cluster of deficiencies. The State's rationale is that the proposed paragraph (c) would restrict both HCFA and the States in their efforts to encourage prompt corrective action, and to protect residents' health and safety. Another commenter said the application of a separate remedy for each deficiency seems unduly harsh. A remedy or set of remedies should be imposed relating to the entire universe on deficiencies cited. Still another said that one incident should trigger the citing of no more than one remedy.

Two commenters said that there is no statutory basis for paragraph (c). Other commenters asked for clarification, suggesting that we use examples, limits, and further guidelines to ensure consistency. Of particular concern to many was the fear that, absent these guidelines and limits, providers might incur multiple sanctions for single deficiencies or for multiple deficiencies arising from a single act or incident. Some suggested that HCFA and the State be directed to consider whether a facility's deficiencies are "clustered" or "bundled" (we used the term "interrelated" in the proposed rule) or scattered throughout the facility in deciding which remedy(ies) to impose in particular situations.

A number of commenters wanted us to specifically set forth in regulations exactly which sanctions should be imposed for each type of possible deficiency or group of deficiencies.

One State expressed concern about the potentially large number of separate follow-up visits required to verify corrections of the deficiencies under each remedy. "For example," it said—

> If separate civil monetary penalties are imposed for several deficiencies, or groups of deficiencies, it would be expected that deficiencies would be corrected on different dates and that the facility would insist on immediate followup on each deficiency or group of deficiencies in order to immediately end the daily monetary penalty. Additionally, a follow-up would be required at 90 days after the survey to determine if denial of payments would be required under [the proposed] 488.212(a)(3), and another followup would be required at six months to determine if termination is required under [the proposed] 488.212(a)(4).

Finally, one commenter wanted us to insert the words, "Subject to the provisions of this subpart," at the beginning of the paragraph, and another wanted us to define interrelated deficiencies as deficiencies caused by or resulting from the same action or occurrence.

Response: Sections 4203 and 4213 of OBRA '87 and subsequent related legislation were enacted partially because of the Congress' recognition that the Secretary and the States needed more flexibility in enforcing regulations pertaining to Medicare SNFs and Medicaid NFs, and, therefore, more choices of enforcement actions. The selection of a particular remedy is based on the nature of noncompliance and the remedy (or remedies) that either HCFA or the Medicaid agency believes is most likely to achieve correction of the deficiencies. We believe that this approach best fulfills the Congressional mandate to "promote compliance with the requirements of participation and assure high quality care for nursing facility residents" (H.R. Rep. No. 391, 100th Cong., 1st Sess. 472 (1987)). In some instances, the most effective remedy may be two or more remedies. Furthermore, section 1919(h)(1) (A) and (B) of the Act clearly states that this is the case. The first reads in part, "* * * the State * * * may provide * * * for one or more of the other remedies," and the second, "* * * the State may provide for one or more of the remedies." Consequently, we are revising § 488.402(c) to clearly state that more than one remedy may be considered appropriate for noncompliance for each deficiency. However, it may also be appropriate for one remedy to be imposed for multiple deficiencies that constitute noncompliance, and the revised regulation reflects this policy as well. In any case, the choice of one or multiple remedies for each deficiency constituting noncompliance is part of the decision making process. The actual

imposition of a remedy or remedies is imposed on a facility for noncompliance as a whole, with participation requirements. We are deleting the limitation in the proposed paragraph (c) that, for a single remedy for all deficiencies to be imposed, the deficiencies must be interrelated and subject to correction by the same remedy. This change offers more flexibility to the State survey agencies and to HCFA, and is in keeping with the statute.

Further, setting forth specific sanctions to be applied for each deficiency constituting noncompliance or a group of deficiencies constituting noncompliance would defeat the whole purpose of providing maximum flexibility to both the Secretary and to the States. We are adopting certain minimum sanctions that will be imposed according to how serious the noncompliance is, but beyond that, there is enough flexibility to tailor the remedy or remedies to the specific case at hand.

The statutory authority for § 488.402(c) is found at sections 1819(h) and 1919(h) of the Act. We have discussed this statutory authority in both the proposed rule and elsewhere in the preamble of this final rule.

The matter of a potentially large number of follow-up visits is a possibility. If it materializes, State survey agencies and possibly HCFA's regional offices may require additional resources. We will be closely monitoring implementation of these regulations to determine the resources needed for this task. However, not every deficiency will require or even merit a separate revisit for certification of substantial compliance. As stated above, sometimes several deficiencies will lead to the imposition of only one remedy. Moreover, even if different remedies can be traced to different deficiencies, the survey agency is under no obligation to make multiple revisits. The noncompliance which led to the imposition of remedies is due entirely to facility performance. The survey agency is not responsible for the noncompliance and is under no obligation to spend valuable resources on multiple revisits. Furthermore, remedies are imposed for noncompliance in a facility, rather than for deficiency "a" or "b" or "c," etc. The survey agency is generally obligated to revisit only when the facility makes a credible allegation of compliance with all requirements and, in some cases, no revisit is required even then.

Finally, we are not adding the phrase, "Subject to the provisions of this subpart," at the beginning of paragraph (c) because we believe it to be unnecessary. Since we are revising this final rule to allow HCFA or the State to impose one or more remedies for all deficiencies constituting noncompliance whether they are interrelated or not, there is no need to define "interrelated deficiencies."

For the reasons given directly above, we are revising § 488.402(c) to provide that HCFA or the State may apply one or more remedies for each deficiency constituting noncompliance, or single or multiple remedies for all deficiencies constituting noncompliance.

Comment: A number of commenters said that they opposed our proposed exemption of deficiencies with scope and severity levels of 1 from the requirement for a plan of correction. The consensus of these commenters was that all deficiencies should require a plan of correction. As one commenter remarked:

> While we understand that it is inappropriate to punish or sanction a facility for an isolated, minor deficiency, the government should ask facilities to correct such problems and there should be a public record of the facility's plan to do so. Since the regulations and the reform law require compliance with all requirements, there cannot be any exclusions from completing plans of correction. Plans of correction are a management tool for both the facility and the regulators, not a penalty or punishment.

Two commenters said the exception should be retained, but only if HCFA applies a "substantiality factor" to the determination of what constitutes a deficiency. By "substantiality" they meant that nothing would be cited as a deficiency unless it is *not* an isolated or occasional occurrence or unless it has a significant impact on resident rights or quality of life. If this were the case, they said, then all deficiencies should require a plan of correction.

One commenter asked, "Why cite a deficiency at scope and severity level 1?"

Regarding the issue of approval of the plans of correction, one commenter suggested that HCFA approve all plans of correction. Another suggested we add the following specific language:

> HCFA will or the survey agency must approve the plan of correction if it is reasonably calculated to result in substantial correction of the deficiency within a reasonable time. Neither HCFA nor the survey agency may disapprove a plan of correction because the facility denies the existence of the deficiency, if the plan otherwise meets the criteria specified by this paragraph. The facility may submit an amended plan of correction at any time, and HCFA will or the survey agency must approve the amended plan if it meets the criteria specified in this paragraph. A facility's submission of a plan of correction does not constitute an admission that the deficiency exists.

Finally, one commenter said that there is a need for clearer plans of correction, and another said that the plans need to be more specific and focus on care issues.

Response: We agree that all deficiencies should require either a plan of correction or an agreement to correct, and are revising this final regulation at § 488.408 ("Selection of remedies.") accordingly. One commenter expressed the rationale for this succinctly: "* * * the government should ask facilities to correct [deficiencies] and there should be a public record of the facilities' plan to do so."

We do not accept the suggestion that the regulations specify that HCFA will or the survey agency must approve the plan of correction if it is reasonably calculated to result in substantial correction of the deficiency within a reasonable time. We have discussed the meaning of substantial compliance elsewhere in this preamble. As for the terms "reasonably calculated" and "reasonable time," it has been our experience that putting general language such as this in regulations is not useful. Plans of correction are considered on a case-by-case basis by both the States and by HCFA because circumstances vary greatly from facility to facility. To state in the regulations that HCFA and the States have a moral and legal responsibility to be reasonable in their dealings with providers would be to belabor the obvious; there is no need for such a pronouncement.

One of the commenters who proposed that plans of correction be required for all deficiencies made the observation that some plans of correction do nothing more than complain about the law, the surveyor, or the circumstances, without ever describing how the violation will be corrected. We agree and would only add that it is highly probable that facilities submitting these plans considered them to be "reasonable," and extremely improbable that these plans would be acceptable to HCFA or the State.

Finally, we agree that plans of correction must be clear and specific, but believe that there is no need to state this in regulations.

Comment: Two commenters suggested that, in addition to cross-referring to § 488.234 of the proposed rule (redesignated as § 488.452, "State and Federal disagreements involving findings not in agreement in situations where there is no immediate and serious threat"), we should refer the reader to proposed § 488.212(a) ("Action when

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there is no immediate and serious threat"), and to § 488.232 of the proposed rule (redesignated as § 488.450, "Continuation of payments to a facility with deficiencies").

Response: We believe this to be unnecessary. We try, to the greatest extent possible, to avoid redundancy in regulations. When trying to determine what to do when there is State and Federal disagreement, it is most likely that the reader will consult § 488.452.

Comment: Another commenter suggested that the text of our proposed § 488.202(e) be revised to state, "If the State and HCFA disagree on the decision to impose remedies when HCFA has performed a validation survey, the disagreement is resolved in accordance with [proposed] § 488.234."

Response: Not allowing HCFA to impose remedies unless and until it has performed its own validation survey would, in most cases, significantly lengthen the amount of time between the facility's being cited for a deficiency and the time when a remedy would be imposed. This would not fulfill the intent of the Act, which states that criteria as to when and how each of the remedies is to be applied "shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies * * *" (sections 1819(h)(2)(B) and 1919(h)(2)(B) of the Act). In any event, the Act does not limit the Secretary's ability to make findings exclusively through the use of validation surveys. The Act says only that the Secretary may impose sanctions if he or she "finds" noncompliance. There may be occasions, for example, when the Secretary may choose to impose sanctions based on a State agency survey. We have therefore concluded that the Act did not intend that the Secretary exercise his or her oversight authority only through Federal onsite validation surveys. Nonetheless, in some cases it will only be possible to draw conclusions about facility compliance through onsite surveys. Moreover, sections 1819(g)(3)(B) and 1919(g)(3)(B) of the Act require the Secretary to conduct validation surveys for at least 5 percent of the State survey agency's standard surveys, as long as the 5 percent equals at least 5 facilities. Therefore, many times the Secretary's enforcement decisions will arise as a result of Federal validation surveys. However, this will not always be the case.

For the reasons listed immediately above, we are making no revisions to proposed § 488.202(e).

Comment: Some members of the health care community said that the proposed 2–4 and 15-day periods are inadequate to allow facilities a fair opportunity for correcting deficiencies. In addition, commenters suggested that HCFA—

- Specify whether the days are calendar days or business days;
- Specify that the time frames for correction will not begin until the facility receives the notice, rather than when notice is sent;
- Specify that the notice must be sent by certified mail, return receipt requested or by personal delivery, and that the State must give the facility notice in the same manner; and
- Provide an expedited hearing process to safeguard the facility's ability to continue its business and protect its residents from wrongful government action. This measure must be taken, the commenter said, due to the short notice we proposed to give in the case of immediate and serious threat.

Other commenters said that the time frames we proposed are too long. One of these commenters expressed serious concern, noting that the Act clearly requires that immediate action be taken to remove the jeopardy in immediate and serious threat situations. This commenter urged that no notice be given before the imposition of a sanction in these cases, and suggested that, in nonimmediate and serious threat situations, 5 days notice should be given. Another said that, in many cases, it is obvious that the remedy should be imposed immediately. This consumer organization asked why a State survey agency should ever have to delay initiating monitoring visits to a facility or why a facility with widespread quality of care problems should be allowed to admit new residents for 15 days after such problems are discovered. Other commenters cited the possible continuance of "roller coaster compliance" unless we shorten the time frames. "Roller coaster compliance" refers to the facility practice of coming into compliance only long enough to stave off an impending remedy, then reverting to noncompliant activities or practices until the next time the deficiencies are cited, when the cycle begins all over again.

Other commenters said that our proposed time frames do not adequately protect residents, referring to monitors as an example. One said that in a case of jeopardy, the State might feel it necessary to have a monitor in the facility as the survey team is leaving. Waiting two days without outside scrutiny may be too long under some circumstances.

Two commenters said that, in the case of civil money penalties, notice before an effective date is meaningless, since the fine may be imposed for a past violation that has already been corrected.

One commenter said that the "not more than four days" notice in § 488.402(f) conflicts with § 488.410, and another that paragraph (f) conflicts with § 488.330(e)(1)(i) and (ii). Another said that the clause, "* * * the remedy could be imposed anytime after the minimum 2 day notification period, but not later than the 10th day after the last day of survey," is confusing.

Finally, one commenter suggested that residents and their representatives be notified of enforcement actions and their implications at the same time the nursing home is notified. Two other commenters said that States should be required to compile, at least monthly, a list of facilities against which they have taken adverse action and imposed sanctions. They suggested that this listing be sent to newspapers, to the State long-term care ombudsman, to the State protection and advocacy agency, to acute care hospitals, and to public and private agencies that regularly make referrals of individuals to nursing facilities. They also suggested that States be required to develop poster notices for each intermediate remedy, and require facilities to post the notice in a prominent place.

Response: We are revising § 488.402(f) to specify that the time frames given are calendar days, and that they begin when the facility receives the notice, but in no event will the effective date of the enforcement action be later than 20 days after the notice is sent. We are not accepting the suggestion that the notices be sent via certified mail, with return receipt requested. This would preclude a valid notice sent via other means, such as telefax, telegram, commercial overnight delivery services, or other means that may be faster. This becomes an especially important consideration in the case of immediate jeopardy deficiencies.

The commenter who asks for an expedited hearing process due to the short notice alleging immediate jeopardy seems to be suggesting that the hearing take place before the effective date of a sanction to safeguard the facility's ability to continue its business and protect its residents from wrongful government action. In the case of immediate jeopardy, this would mean a hearing would have to be held as early as the first 48 hours after the survey. It is entirely possible that, when a survey uncovers such jeopardy, the State or HCFA may immediately set an effective date at the minimum required time after notice, that is, 2 days. It is virtually impossible to set up a hearing this quickly, and expanding the time between the notice and the effective date of a remedy to make it possible to hold a hearing before the effective date would not be in the best interests of the residents. The whole point of a short time frame is to safeguard the lives and the safety of residents by taking immediate action. As discussed at proposed § 488.180 (now designated as § 488.330), Certification of compliance or noncompliance, it is not necessary to hold a hearing before the effective date of termination to adequately protect a facility's right to due process.

As noted above, we received comments saying our time frames were too short, and others saying that they were too long. While we are mindful of the Act's requirement that the Secretary take immediate action in the case of immediate jeopardy (sections 1819(h)(4) and 1919(h)(4) of the Act), and to minimize the time between the identification of violations and final imposition of the other remedies (sections 1819(h)(2)(B) and 1919(h)(2)(B) of the Act), we have chosen not to shorten them, except for the same day (if necessary) installation of a State monitor in the case of an immediate jeopardy. We believe that, for other available remedies when there is an immediate jeopardy deficiency, the facility should be allowed at least 2 days before imposition of sanctions. This is because we believe that even in cases of immediate jeopardy, providers are entitled to some notice before the imposition of sanctions. We believe that, in the case of non-immediate jeopardy, we should not allow any less than 15 days for similar reasons.

We chose not to set the minimum amount of notice required any higher than 2 days in the case of immediate jeopardy because the longer immediate jeopardy persists, the greater the likelihood that actual harm or even death may result or continue. We have, for the reasons cited in the paragraph immediately preceding determined that a facility be given no less than 2 days before imposition of sanctions. Besides, it has been our experience that, as a practical matter, it takes longer than 2 days to complete termination proceedings once they are begun. It is our belief that we have struck a fair balance between giving facilities fair notice and a reasonable chance to correct deficiencies and fulfilling our responsibility to safeguard the health or safety of residents.

We have chosen 15 days in the case of nonimmediate jeopardy by carefully weighing the same considerations. It is important to understand that we are bound by Federal law to minimize the time between the identification of violations and final imposition of remedies. While sections 1819 and 1919 of the Act do not require giving specific notice before the imposition of remedies, constitutional principles of due process generally do require such a notice of agency adverse action. On the other hand, neither the Act nor the Constitution require that providers have the opportunity to correct deficiencies before sanctions are imposed. In other words, there is a need for prior notice, but not an entitlement on the providers' part to an opportunity to correct deficiencies. This policy, we believe, satisfies due process concerns of providers. As we have said, the only exception is the immediate imposition of a State monitor when there is an immediate jeopardy situation, because, above all else, it is our responsibility to protect the lives of residents. The facility will not be required to pay the salary of the State monitor; nor will the State monitor have managerial authority to obligate facility funds. (That authority is reserved for the temporary manager who could be installed a couple of days later.) The State monitor can be appointed immediately, while other sanctions are pending during notice periods to protect residents. With respect to civil money penalties, we do not believe that any notice is required before HCFA or a State advises a facility that noncompliance has occurred and that a penalty is to be imposed. As the statute clearly suggests, civil money penalties may be imposed for past periods of noncompliance even if a facility is currently in compliance. Notice is required, however, before a civil money penalty can be *collected*, and the regulations call for exactly this procedure. Like any other commercial enterprise, nursing homes must structure their debits and credits around their cash flow. We believe that notifying a facility that it must pay a civil money penalty instantly is unfair, unrealistic, and not in accordance with the basic principles of due process.

In this final rule, we are removing the provision requiring a maximum of 4 days notice before the imposition of a sanction in § 488.402(f). We may impose a remedy for immediate jeopardy, as § 488.410 allows, as long as we give the facility at least 2 days' notice before the imposition of the remedy and no more than 23 days from the last day of the survey to remove the jeopardy or be terminated. In actual practice, the facility is notified that there is an immediate jeopardy deficiency as soon as the survey has been completed. It is only the official notice of the imposition of a remedy that may not be sent until later, as long as it is received by the facility at least two days before the effective date of the remedy.

As a result of our review of these comments, we are not making final proposed § 488.180(e)(1)(i), Certification of compliance or noncompliance, because it appears to conflict with § 488.402(f).

As proposed, we are providing in § 488.325(f), that the State must provide the State's long-term care ombudsman with any report of adverse actions specified at § 488.406 imposed on a facility. We believe that this provision will keep residents informed about each enforcement action. Whatever additional publicity States may wish to give notices of adverse action is their decision.

We are also revising paragraph (f) to note the exceptions in notification requirements for civil money penalties and restructured it to clarify them.

Section 488.404 Factors To Be Considered in Selecting Remedies

We received comments on proposed § 488.204, as well as on our solicitation of comments in the preamble to the proposed rule, about the scope and severity measures; specifically, we asked for comments on how scope and severity values were described and how they were to be assigned. We will address all of the comments we received on scope and severity in this section of the preamble.

Comment: The majority of commenters did not comment on the scope scale. Several commenters expressed support for using scope and severity scales to determine the enforcement response to facility noncompliance. Other commenters opposed using these scales. Of those opposed, some believed that the scales, absent any measurable criteria, introduce another opportunity for surveyor inconsistencies to occur.

Others thought the scope and severity level definitions were too broad and vague to be applied consistently by surveyors, allowing too much government discretion in the selection of remedies, while one commenter believed that the determination of remedies should be left to the judgment of the survey agency.

A few commenters argued that the scales were impractical because they were either too complex or prescriptive and left no room for surveyor judgment.

Several commenters argued that the use of scope and severity scales conflict

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with Congressional intent to eliminate a hierarchy of participation requirements. They contend that by ranking the seriousness, that is, importance, of a facility's deficiencies, the scope and severity scales foster the belief that some requirements are more important than others.

One commenter questioned why the scope and severity scales were being put into regulation. This commenter believed that codifying the criteria used for determining remedies is inappropriate and will invite additional legal challenges by nursing home providers dissatisfied with severity and scope level determinations.

One commenter was concerned that the scope and severity scales failed to provide enough regulatory guidance on the exact criteria that will be used in making remedy determinations to ensure that the enforcement response is appropriate to the nature of the noncompliance.

We received a variety of proposals for reconfiguring the scope and severity scales from provider organizations, State governments and consumer advocate organizations.

One consumer advocate organization proposed a scope and severity scale with three tiers of severity (immediate jeopardy, substandard quality of care, and other violations), while retaining the definition of scope as we proposed.

This proposal called for a plan of correction for all level 1 deficiencies (other violations) regardless of scope and a mandatory civil money penalty for scopes of 3 and 4. Additionally, the proposal specified that the State or HCFA must impose a directed plan of correction if the violation is repeated. All other remedies could be imposed at the option of the State or HCFA.

The second tier (substandard quality of care) would require a civil money penalty, public notice, a plan of correction and, at the State's option, any other remedy. If repeated, the State or HCFA would require a State monitor and a directed plan of correction. There were additional mandatory remedies imposed at higher scope levels.

The third tier (immediate jeopardy) would require the statutorily mandated temporary management and physician and nursing home administrator licensing board notice, as well as a denial of payment for new admissions and a plan of correction.

Another organization also proposed three severity levels (Actual harm, impairment or death; potential harm, impairment and death; and negative outcome). The scope levels were also pared down to three levels (isolated, occasional and widespread/pattern). Substandard quality of care would be defined as a severity of 2 with a scope of 3 in quality of care and all of severity level 3. For non-immediate jeopardy, this proposal would require termination in 180 days from the last date of survey unless compliance is achieved during the correction period. For immediate jeopardy, termination would take effect in 23 days if no temporary manager is appointed or accepted. This proposal would not require any mandatory fines but rather, would leave the choice of remedy to the State or HCFA. Other statutorily driven remedies have also been included in the proposed plan.

One State organization proposed a matrix which had five severity levels (harm or death; negative outcome non-staff action; negative outcome staff action; negative outcome likely; and no negative outcome). As in some other proposals, the scope levels remained as we had provided in the proposed rule. Under this plan, no remedies would be imposed for severity level of 1 and scope of 1 or severity level of 1 and scope of 2 or severity level of 2 and scope of 1. A plan of correction would be required for a severity and scope of 1–3, 1–4 and 2–2, respectively. A civil money penalty would be imposed for a severity and scope of 2–3 and 2–4. No fine would be imposed for a scope of 1, even if a deficiency is at the severity of 3 or 4. Denial of payment for new admissions would only be imposed for severity levels of 4 and 5 (except severity 4 and scope of 1). This plan also would exempt facilities from any remedies in certain situations where new requirements had not been disseminated to nursing homes.

Another State organization proposed a scope and severity scale using the four scope levels defined in our proposed rule, but defining the severity levels differently. The four severity levels would be defined as level 4—life threatening harm or death; 3—actual harm; 2—potential harm; and 1—no harm or likelihood of harm. Severity and scope of 1 would have no remedies imposed. Severity level of 1 and scope of 2 and severity of 2 and scope of 1 or 2 would have no remedy imposed the first time the deficiency was cited, but the State or HCFA would impose a directed plan of correction if the same deficiency(ies) was found at the next survey. This plan also requires the State or HCFA to choose between a denial of payment for new admissions or a civil money penalty for severity levels of 3 and 4.

Another State disagreed with our use of the term immediate jeopardy relative to the scales because it believes that the term, as described for the scales, carries no connotation of immediacy and is not equivalent to the language "likely to cause at any time" we had proposed in the definition of the term in § 488.201 of the proposed rule. Also, the State questioned our definition of substandard quality of care in relationship to severity and scope. It believed that substandard quality of care should not apply to one or two residents but should reflect deficient patterns of care, policies or procedures present in or used by the facility. The State recommended that HCFA provide that a finding of substandard quality of care may be made (but is not required) for scope levels of 1 and 2 and severity levels of 3 and 4.

Several commenters suggested that severity levels 3 and 4 should be redefined. Specifically, these commenters found virtually no difference in the application of remedies in the two levels. Other commenters believed that a potential for life threatening harm should not be an immediate jeopardy finding subject to harsher remedies.

Many commenters disagreed that facilities be furnished with a separate summary of all level 1–1 deficiencies rather than receiving notice of them on the official deficiency statement. They believed that it would be confusing to have a facility's deficiencies recorded, in parts, between two separate documents, as well as harder to track repeat deficiencies at the next standard survey.

Many commenters made specific recommendations of required remedies for various levels of severity and scope. Some suggested that HCFA or the State only impose a plan of correction at the lower scope and severity levels, while other commenters wanted HCFA to mandate civil money penalties and other remedies.

Many consumer advocates expressed concern that the proposed scope and severity scales did not represent the intent of the Congress to make resident rights and physical environment requirements equivalent to quality of care requirements. They contend that the way the scales are currently written, resident rights and physical environment deficiencies would never rise above severity level 2.

A few commenters believe that the scope and severity scales should be predicated on a statistical analysis of probability and suggest that this could be done by health care professionals who could factor into the scales the predisposition of a given individual to a particular incident. Many commenters asked that the ambiguous terms used within the level descriptions be defined,

for example, how many cases constitute "in a number of cases." One commenter suggested that a numerical or percentage determination be made to clarify the terms, for example, 1–3 instances = isolated, or less than 17 percent occurrences = isolated.

One commenter suggested that the scope scale include only three levels, combining the proposed levels 3 and 4 because there was no distinction for the remedies. Another commenter observed that the scope scale level descriptions were written in terms of the number of times that the surveyors made a particular observation, and contended that while this approach may be appropriate for certain types of problems, it is not for others. For example, when surveying for life safety code compliance, what scope would be assigned to a total sprinkler system failure? This problem is a single observation, but it is one that affects every resident in the facility. This commenter, therefore, suggested that if we are to accurately reflect the extent of the deficiency, then scope should be based on the number of residents who are affected by the deficient practice. Overall, many commenters feared that the scope and severity scales, as proposed, give the enforcing agency virtually unlimited discretion in selecting remedies. They contended that the proposed scheme does not limit imposition of the most onerous remedies only to the most serious deficiencies and they, therefore, suggest that a prescriptive approach be developed for correlating deficiencies and remedies.

Response: Historically, the enforcement system was based on a hierarchical set of requirements called conditions of participation, standards, and elements. Each condition of participation included groups of standards, and standards were made up of separate elements. Enforcement was based on the level of the requirement for which a deficiency was cited. For example, condition-level deficiencies in a SNF resulted in the initiation of termination procedures or a denial of payment for new admissions. However, if only standard-level deficiencies were found, only a plan of correction was required. Since the Congress has expressly eliminated the use of hierarchical requirements in nursing homes, we needed an organized way to determine how serious a facility's deficiencies are, as well as a consistent approach to guide enforcing agencies in making enforcement decisions.

We believe that we have implemented the Congress' mandate to abandon our pre-OBRA hierarchical requirements and to develop a system capable of detecting and responding to deficiencies in any participation requirement. The enforcement scheme provided in this final rule is built on the assumption that all requirements must be met and enforced and that requirements take on greater or lesser significance depending on the circumstances and resident outcomes in a particular facility. In addition, we wish to emphasize that measuring the seriousness of deficiencies is only for the purpose of determining the enforcement response most appropriate for specific degrees of noncompliance.

In order to grant the statutory flexibility given to HCFA and the States to design their own enforcement approaches (with guidance from the Secretary), we are providing a modified enforcement scheme to be used to assess the seriousness of deficiencies and then used to select an enforcement response. The scheme requires that specified factors be considered by HCFA or the State to assess the seriousness of a facility's deficiencies, and it correlates seriousness to specific enforcement responses. However, with the exception of the immediate jeopardy level, the enforcing agencies may exercise the flexibility to design their own methods of interpreting and applying the assessment factors to the identified deficiencies. Historically, determinations of immediate jeopardy to resident health or safety have been made by HCFA and the States in accordance with guidance provided in Appendix Q of the State Operations Manual. We conclude that there is no compelling reason for States to redefine this level of noncompliance. The enforcing agencies may also exercise their statutory authority to determine whether an alternative remedy is or is not preferable to termination. In determining the seriousness of Life Safety Code (LSC) deficiencies, States are encouraged to apply the Fire Safety Evaluation System (FSES), which is Appendix C of the 1985 edition of the LSC. Since the FSES is an equivalency system based on point values, it is possible to utilize the system to document the seriousness of deficiencies on a quantitative basis in accordance with the revised enforcement matrix. Once the seriousness of the deficiencies is determined and the decision to impose alternative remedies instead of, or in addition to, termination, HCFA or the State must make its remedy selection from the remedy category associated with the specific level of noncompliance. This correlation is provided in § 488.408 of this final rule.

This approach has the added benefit of promoting national consistency because all systems will be considering the same initial assessment factors, and the remedy choice will then be based on the nature of the noncompliance and the corrective action most likely to achieve correction and continued compliance. In other words, we developed, for use by the States and by HCFA, an organized and consistent method by which to first, determine how serious a facility's deficiencies are, and second, to select an enforcement response from a specified remedy category linked to that degree of noncompliance.

We believe that the enforcement scheme we are providing in this final rule for HCFA and the States to use in rating deficiencies and selecting remedies satisfies a variety of concerns posed by the former scope and severity scale and the proposed rule in general. Under the proposed rule, we set out two scales, one for scope and one for severity, that HCFA and the States were to apply in determining which remedy to apply once deficiencies were identified. While the rule provided some definition for each of the levels of scope and severity, HCFA and the States were essentially free to determine what constituted a "sufficient" number of "repeated observations" in concluding whether or not a "pattern" of deficiencies could be said to exist.

In the final rule, we have removed the scope and severity scales, as such, and have replaced them with a set of criteria that must be used (should a decision be made to impose alternative remedies at all) to select an enforcement remedy. Specifically, while the enforcement scheme in this final rule is conceptually the same as the former scope and severity scales, it differs from that approach in numerous significant ways:

- It leaves to the judgment of both HCFA and the States whether to impose alternative remedies at all, regardless of the seriousness of a facility's deficiencies.
- It incorporates the concept of substantial compliance, whereby deficiencies found which constitute no more than a potential for minimal harm are not sanctioned.
- With the exception of immediate jeopardy, a State may use its own method for interpreting terms that describe the relative frequency or seriousness of deficiencies as long as it is consistent with the guidance presented in the regulation.
- It correlates, to a greater extent than in the proposed rule, specific enforcement categories from which an

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enforcement response must be selected with specified degrees of noncompliance.

• It can be applied to physical environment deficiencies, as well as to all others, and it should relieve commenters' fears that resident rights violations and physical environment deficiencies could not be considered as serious deficiencies.

• Providers will have a clearer idea of the enforcement consequences they could be subject to for specific degrees of noncompliance because, in § 488.408, we have correlated enforcement categories with levels of noncompliance.

The establishment of these remedy categories will provide regulatory guidance to HCFA and the States in selecting remedies and will necessitate that States and HCFA clearly define the seriousness of cited deficiencies in order to select an appropriate remedy.

We have not accepted any of the commenters' proposed revisions to the scope and severity scales for inclusion in the modified enforcement scheme in this final rule. After reviewing the proposals, we concluded that, while the terminology may have been different, all of the proposals were conceptually the same as the scales that were published in the proposed rule. In addition, those commenting provided no evidence (for example, success data) to indicate that their respective proposed enforcement systems would be more effective than the scales we published in the proposed rule. We, therefore, have not adopted any of the commenters' proposals in place of the enforcement model we are presenting in this final rule. In addition and equally noteworthy, we spent considerable time meeting with various groups representing the nursing home industry, State agencies and consumer organizations to discuss and seek input on the various approaches to restructure and refocus the survey and enforcement processes. The resulting approach was presented in the notice of proposed rulemaking as well as in what has been carried over into this final rule.

In response to concerns that repeated 1–1 deficiencies (now referred to as isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimum harm) would be hard to monitor on subsequent surveys, we note that, while such deficiencies are not cited on the official deficiency statement and are not sanctioned, their existence is maintained in the official provider file along with the official deficiency statement. The separate listing of these deficiencies is also accessible to the surveying agency and disclosable to the public.

While we intend that the enforcement scheme provide internal guidance to States and to HCFA, we are including it in the regulations to provide the public, and particularly regulated facilities and facility residents, with full disclosure as to how enforcing agencies will determine appropriate remedies for providers that have been found out of compliance with Federal participation requirements.

Comment: One commenter wanted a remedy to be imposed for insufficient nurse staffing.

Response: The law requires that nursing homes meet all participation requirements. Should noncompliance with nurse staffing requirements be identified, either during an extended survey or when a waiver of RN and/or licensed nursing staffing has been requested or granted, the facility would be subject to an enforcement response from HCFA or the State, just as it would be for other instances of noncompliance.

Comment: Some commenters wanted to remove the distinction between initial and secondary factors in § 488.404 (proposed at § 488.208) believing that the secondary criteria are equally important as the initial assessment.

Response: The secondary factors are not less important; they just come later in the process of selecting an appropriate remedy or remedies. However, we are replacing the word "secondary" with the word "other" to avoid any further confusion. The first step is to assess the seriousness of the deficiency(ies), including the presence or absence of immediate jeopardy, to determine the minimum recommended categories of remedies to impose, as well as the suggested optional categories from which to choose. The other factors (that is, the relationship of one deficiency to other deficiencies, and the facility's prior compliance history in general and specifically with reference to the cited deficiencies) assist in making choices from among all remedies available in any of the categories applicable to specific deficiencies.

Comment: Other commenters want the compliance history of the facility to remain secondary because facilities with a change of ownership and/or personnel may not be able to otherwise emerge positively due to poor compliance in the past. It was suggested that we change § 488.404 (proposed at § 488.208) accordingly.

Response: We did not revise the regulations text to reflect this suggestion. A facility's prior compliance history should be considered regardless of a change in ownership. A facility is purchased "as is." The new owner acquires the compliance history, good or bad, as well as the assets. While we agree that after consideration of the facility's compliance history, HCFA or the State may conclude that such history is no longer a valid predictive factor of the facility's ability to achieve and maintain compliance (for example, following a change of ownership where the new owner "cleans house") the burden of proof is on the new owner to demonstrate that poor past performance no longer is a predictive factor.

Comment: Other commenters wanted additional factors to be considered in addition to those outlined in § 488.404 (proposed at § 488.208). The suggestions for additional factors are:

• Whether the deficiency or deficiencies are directly related to resident care;

• The corrective, long-term compliance, resident protective, and non-punitive outcomes sought by the agency;

• The facility's degree of culpability;

• The accuracy, extent, and availability of facility records;

• The facility's financial condition;

• Any adverse effect that the remedy would have on the health and safety of facility residents;

• Whether there has been a change in ownership or operation of the facility;

• The facility's action to correct the deficiency prior to the conclusion of the survey.

Response: While we are not expanding § 488.404 to include these additional factors, there is nothing to preclude HCFA or the State from considering any other factors they believe to be relevant in the decision-making process. We are, however, revising § 488.404(b) to clarify that the other factors that HCFA and the State may consider include, but are not limited to, only those factors listed. Because we do not want to limit valid assessment considerations unnecessarily, we do not desire to provide an all-inclusive list. We realize that it is impossible to predict every factor that would have a bearing on every particular case. The two factors that we have included in the regulatory model have a direct bearing on the determination of the most appropriate remedy or remedies. We have explained above how the interrelationships among deficiencies can impact the decision to impose one as opposed to several remedies. The second factor, the facility's prior compliance history, is pertinent because sections 1819(h)(2)(B), 1919(h)(2)(A), and

1919(h)(3)(C) of the Act provide for increased penalty amounts for uncorrected or repeated noncompliance. Moreover, sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act require the imposition of the denial of payment remedy for repeated substandard quality of care.

Comment: One commenter didn't believe that surveyors should make binding decisions regarding remedies, but rather this authority should be retained by the surveyors' supervisor in order to promote centralization as well as consistency in decision making.

Response: Surveyors do not have the authority to make binding enforcement determinations; rather, either HCFA or the State makes binding enforcement determinations in accordance with criteria at § 488.452.

Section 488.406 Available Remedies

While analyzing the comments for this section, we again reviewed the provisions of the Act to ensure conformance in the final regulation. In doing so, we noted that proposed § 488.206(c) did not include the remedies of civil money penalties, temporary management, and closure of the facility and transfer of residents, or their equivalents, in the listing of available remedies. We have also clarified that, regardless of what other additional remedies a State may have approved, the State must establish, at a minimum, those specified remedies, or an approved alternative to a specified remedy, that is, termination, State monitoring, denial of payment for new admissions, closure of a facility by the State in emergency situations and/or transfer of residents, civil money penalties, and temporary management. We are correcting this oversight in this final regulation.

In addition, during the process of reviewing and analyzing comments, we added another remedy. This remedy, directed in-service training, is described in the discussion of § 488.425.

Also, since the proposed § 488.228, "Alternative or additional State remedies", contained virtually the same information as this section, we are eliminating the proposed § 488.228 and moving the remaining non-duplicative provisions to this section. All comments received in response to proposed § 488.228 are being included and addressed below.

Comment: One of the major concerns expressed throughout the comments was that it should be possible to address many or most instances of facility noncompliance through a traditional plan of correction. Several commenters indicated that plan of correction should be added to the list of possible remedies.

Response: A plan of correction is a minimum requirement for any facility with deficiencies other than those isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimal harm, and, as for other providers and suppliers, it is not considered an enforcement remedy. Therefore, while we are clarifying the regulation to require that a facility complete and submit a plan of correction each time deficiencies are noted (other than those isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimal harm), we are not adding plan of correction to the listing of available remedies.

Comment: Many commenters expressed concerns that the proposed remedies are punitive rather than corrective in nature, excessively burdensome in relationship to the deficiencies, too harsh or that they will direct the focus away from resident care, thereby having a negative effect on long term care. Some commenters stated that the remedies do not allow for one time digressions from a facility's history of compliance. Others believed that the proposed remedies would threaten job security for nursing home staff or the security of facility residents.

Response: As indicated in response to the previous comment, many commenters assumed that it was not possible to have a plan of correction as the only corrective measure required in a facility, even when the deficiencies were of a low degree of seriousness. In this final regulation, we acknowledge that a traditional plan of correction may be the only measure needed to correct deficiencies in some facilities which have only lower level deficiencies. While we believe that using plans of corrections in this fashion should alleviate some of the concerns expressed by the commenters, we do not accept the notion that the use of more severe remedies for more severe deficiencies is excessive. There can be little question that the Congress was concerned about what it concluded was an unsatisfactory enforcement scheme prior to nursing home reform. As a result, it wrote into the law a series of remedies that it expects to be used should circumstances at individual facilities warrant. The driving force behind the legislation in this context was to provide the Secretary and the States with the authority to aggressively enforce the Act's new requirements in a way that would discourage facility noncompliance that the Congress believed to be widely evident between surveys, and thereby, to encourage lasting compliance. The design of these enforcement rules provides for incrementally more severe remedies as cited noncompliance is more egregious. We do not believe that an enforcement approach styled this way is harsh or excessive.

Comment: Six commenters suggested that the regulation include a remedy which would allow a ban on all admissions to a facility, regardless of the resident's source of payment. Three commenters further indicated that this remedy should be mandatory in cases involving immediate jeopardy.

Response: We cannot accept these suggestions. The Act does not provide the authority to ban admissions for residents whose source of payment is other than Medicare or Medicaid. The Act does provide for the remedies of denial of all payment for SNFs and NFs by the Secretary and for denial of payment for all new admissions for SNFs by the Secretary, and for NFs, by the Secretary or the States. The proposed rule included denial of payment for all new admissions in certain diagnostic categories or requiring specialized care, but we have not included that remedy in this final rule for the reasons discussed under "Denial of Payment" later in this preamble. We believe that these remedies, along with the other available remedies for noncompliance, should be sufficient to promote a shift from noncompliance to substantial compliance.

Comment: Two commenters stated that the option of closing the facility should be available for SNFs and not just for those facilities that participate as NFs or SNF/NFs.

Response: For SNFs, HCFA has termination as an option for remedying noncompliance. While HCFA can terminate a SNF's Medicare participation, it cannot revoke a facility's license to operate within a State. Therefore, actual closures of facilities and transfers of residents are remedies which are options only for those facilities for which the State is the enforcing agency because the State also has licensing authority; closures of facilities are license related actions.

Comment: One commenter proposed that off-site monitoring be added to the list of available remedies.

Response: We are not accepting this suggestion. Enforcement remedies are designed to motivate providers to achieve and maintain compliance with participation requirements. The motivation is provided by the nature of the various available enforcement

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remedies that either require some action to be taken by the provider or that involve financial consequences directly or indirectly to the provider. Since off-site monitoring would be performed by the State rather than imposed on the facility, and since there would be no responsibility and, therefore, no incentive for a facility response, we conclude that this type of monitor is not an enforcement remedy to be imposed against facilities with deficiencies.

Comment: One commenter proposed the addition of State and Secretarial authority to order the hospitalization of residents in cases involving immediate jeopardy, if the facility is unable or unwilling to respond to the residents' needs.

Response: We do not believe an additional remedy is needed in order to respond to this commenter's concern. As temporary management will be imposed in those cases where immediate jeopardy is identified in a facility that will not be terminated immediately, control of the situation, including determinations as to the care of individual residents, will be shifted away from the facility's own management until the jeopardy is removed. Should the facility fail to relinquish control to the temporary manager, termination will result and residents will be transferred to facilities that are able to provide care in a manner consistent with certification requirements.

Comment: One commenter proposed that public notice be included as an available remedy.

Response: Public notices are already required by regulation for any SNF termination. Public notices are also allowed, but not required (unless the State has its own public notice requirement), for NFs that will be subject to termination.

We do not believe that the regulation should expand the use of public notices as a remedy for noncompliance by including them in this section's listing. Public notices are frequently costly, and they do not always serve the intent of notifying the widest possible audience of a facility's noncompliance. Further, facilities are already required to post the availability of the results of their surveys on their premises. Accordingly, we are not adopting this suggestion in the final regulation.

Comment: A few commenters indicated that the prohibition of nurse aide training and competency evaluation programs (NATCEPs) is a penalty which should be included in the listing of available remedies.

Response: The prohibition of a NATCEP is predicated on, among other things, the existence of a nurse staffing waiver, the fact that a facility has been subject to an extended or partial extended survey, or the imposition of an adverse action, including termination of the provider agreement. The enforcement remedies, on the other hand, are the consequences of facility noncompliance once deficiencies have been identified through the survey process. While the disapproval of a NATCEP is automatic when criteria set forth in the Act are met, the imposition of remedies is a matter requiring some discretion on the part of HCFA or the State.

It is possible for a facility with a nurse staffing waiver to be surveyed and have no deficiencies identified or have no deficiencies found which cause the facility to be out of compliance. In these cases, an enforcement action would not be in order, even though other provisions of the Act and regulations would require that a prohibition of a NATCEP be imposed. Further, it would be possible for a facility with no nurse staffing waiver, which had not been subject to an extended or partial extended survey, to have a civil money penalty imposed as a remedy for deficiencies identified. In this latter case, the civil money penalty is the enforcement remedy, and not the prohibition of a NATCEP, which is an automatic statutory consequence of the civil money penalty being imposed.

Because we believe that the Act, as well as regulations published on September 26, 1991, separately address how the State arrives at the disapproval of a NATCEP as opposed to how it or HCFA determines that an enforcement action is in order, we are not adopting these comments in the final regulation.

Comment: One commenter indicated that denial of payment for new admissions for certain diagnostic categories is too difficult to implement or monitor. Another stated that it is too broadly defined and that it was not the intention of the Act to modify remedies included in the Act.

Response: The first comment is discussed in detail under "Denial of Payment" later in this preamble.

Regarding the comment that the Act does not allow for modifications of its listed remedies, we point to the provisions of the Act at sections 1819(h)(2)(B), 1919(h)(2)(A), 1919(h)(2)(B)(ii) and 1919(h)(3)(C), all of which indicate that remedies other than those specified in the Act are allowed.

Comment: Two commenters asked that the proposed available remedy of denial of payment for new admissions for certain diagnostic categories be amended to ensure that it not promote discrimination against residents a facility does not want to admit. Both indicated that a directed plan of correction should be required in these situations, and one comment further stated that the directed plan of correction should direct the facility on how to regain the capability to care for residents with the designated diagnoses.

Response: This issue is discussed in detail under "Denial of Payment" later in this preamble.

Comment: Five commenters indicated that HCFA should specify in the regulation the criteria by which the Secretary will determine whether a State's alternative or additional remedies are as effective in determining noncompliance and correcting deficiencies as the remedies specified in the Act. Other commenters insisted that any alternative or additional remedies must be made available for public comment before adoption.

Response: We agree that there is a need for uniformity in the process which is used to approve State remedies which are alternative or additional to those included in the regulation. While we will prepare manual instructions that will address how these reviews and approvals should be processed, we believe such information is not appropriate for the text of the regulation itself since it would be impossible to contemplate the vast array of alternatives that States might propose. The Act does not require and HCFA will not require specific public notice procedures that limit State prerogatives in the State plan amendment process.

Comment: One commenter indicated that States should be able to develop and implement additional or alternative remedies unless HCFA can demonstrate that the States' remedies are not as effective as the HCFA remedies.

Response: We cannot adopt this comment. The Act provides, at section 1919(h)(2)(B)(ii), that the State must demonstrate to the Secretary's satisfaction that the alternative or additional remedies it proposes are as effective in deterring noncompliance and correcting the noncompliance as those included in the Act. To shift the burden of proof to HCFA would be contrary to the Act's clear instruction.

Comment: One commenter indicated that any State remedies approved as alternative or additional remedies should apply to SNF/NFs as well as NFs, unless HCFA takes a different action based on a validation survey.

Response: The determination of whose remedies prevail in a dually participating facility is made in accordance with section 1919(h)(7) of the Act and codified at § 488.452 of this final rule.

Comment: One commenter indicated that the final rule should clarify and refer to the relationship of these rules to the sanctions available under section 1128 of the Act and to how the Office of Inspector General's (OIG) actions will have an impact on enforcement actions taken under this regulation.

Response: The provisions of sections 1819(h) and 1919(h) of the Act, for which HCFA takes action, and the provision of section 1128 of the Act, for which the OIG takes action, are two independent sources of enforcement authority that are triggered by separate considerations. Section 1128 of the Act contains mandatory and permissive exclusions which are, for the most part, applied in cases of individuals and entities who have been charged with or convicted of certain types of behavior (such as fraud and abuse, and obstruction of investigation) under Federal or State law. Section 1128 does not generally apply to cases of facility noncompliance, which are covered under sections 1819 and 1919 of the Act that specify survey and enforcement provisions. Section 1128A is cited in sections 1819 and 1919 to give guidance on the imposition of civil money penalties which will be imposed in accordance with common statutory provisions by HCFA and OIG for their respective purposes. If a case happens to involve both noncompliance and fraud, abuse or obstruction of investigation, each agency has the authority to take separate action, independently of the other.

Comment: Commenters from several States indicated that their States had effective remedies that should be adopted without change. One commenter stated that HCFA approval of alternative or additional remedies should not be required.

Response: The Act gives the States the option of requesting that HCFA authorize the adoption of existing State remedies. The regulation follows the Act, which leaves the decision to request the adoption of these remedies up to each State. However, the Act provides that HCFA approval is necessary and that the State must bear the burden of proof that any alternative or additional remedies are as effective as the remedies specified in the Act.

Comment: Several commenters were concerned that the State's ability to impose alternative remedies instead of termination was impaired by the proposed provision that would require the repayment of the Federal share of the Medicaid payment (FFP) if the correction of the deficiencies was not made in accordance with the approved plan and timetable. These commenters said that the regulations should allow States to enter into agreements under which the facilities would agree to repay States, which would then repay the Federal government FFP if compliance was not achieved according to the approved plan.

Response: Neither the Act nor the proposed or final regulations prevent the States from entering into agreements with facilities to repay States if the facility fails to adhere to its plan of correction. The Act is silent on this issue. Therefore, it follows that the States have the option to consider such agreements with facilities. Many facilities may find such agreements preferable to termination.

Comment: One commenter stated that the authority to implement alternative or additional remedies should rest within the single State agency.

Response: The Act gives the States the authority to elect alternative or additional remedies through the use of the Medicaid State plan process. Medicaid regulations at § 431.10 specify that a single State agency administer or supervise the administration of the State plan. In most States, the Medicaid agency is the single State agency that implements the current transitional enforcement remedies against Medicaid facilities. In some States, enforcement remedies, such as civil money penalties, are implemented by the survey agency. We believe that States should retain the flexibility to organize their enforcement activity as they deem necessary as long as the organizations meet Medicaid regulations.

Comment: One commenter believed that every State should implement the same penalty system.

Response: We cannot accept this suggestion because the Act permits the States to elect alternative or additional remedies if they can demonstrate that the alternative or additional remedies are as effective as the remedies specified by the Act. Further, section 1919(h)(2)(A) of the Act provides that the State shall specify criteria, as to when and how each remedy is to be applied, the amount of any fines, and the severity of each of these remedies, to be used in the imposition of such fines.

Comment: One commenter suggested that the final rule include a list of remedies other than termination which HCFA finds acceptable.

Response: Such a list is provided at § 488.406(a) and (b).

Section 488.408 Selection of Remedies

The comments we received on this section, as it was proposed, which relate to the factors considered when making remedy determinations, have already been included and addressed in our discussion of § 488.404 of this preamble.

Comment: Some commenters were uncertain about how the "determination" of remedies in § 488.404 and the "choice" of remedies in § 488.408 differ.

Response: We are retitling §§ 488.404 and 488.408 to "Factors to be considered in selecting remedies" and to "Selection of remedies," respectively, and are revising the content of both sections as a result of the revision to the criteria for selecting among enforcement options as discussed earlier in this preamble. After the survey team has determined that a deficiency or deficiencies exist, it is required to determine the seriousness of the violations. The factors that HCFA and the States must and may consider in determining the seriousness of a facility's deficiencies can be found at § 488.404. The optional process of determining the most appropriate enforcement action is described at § 488.408, which correlates the level of noncompliance with a required and/or optional category of remedies.

Comment: A few commenters wanted HCFA to include a statement from the preamble of the proposed rule that asserts "the more pervasive or severe the facility's shortcomings, the more severe the penalty."

Response: We agree with the commenters, and are providing such a linkage in the revised § 488.408.

Comment: Some commenters wanted HCFA to explain the purpose of intermediate sanctions.

Response: The purpose of an intermediate sanction (or alternative remedy) is to motivate providers to achieve and maintain substantial compliance before termination becomes necessary. Prior to OBRA '87, the term "intermediate sanction" was limited to a denial of payment for new admissions. Sections 1819(h) and 1919(h) of the Act specify that remedies for noncompliance are to be imposed in lieu of, or in addition to, the remedy of termination of a facility's participation in the programs. This legislation expanded the range of alternative remedies for the Secretary and the State to use as an incentive for correction and as a way that might avoid termination of the provider agreement.

Comment: A few commenters wanted to revise § 488.408 to require that HCFA and the State make appropriate remedy

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selections, but not select a specific remedy solely to punish the facility.

Response: Alternative remedies are designed to motivate providers to comply quickly with the requirements of participation. While some providers may view the remedies as punishment, our first responsibility is to protect the health and safety of the residents. We are interested in motivating providers to achieve and maintain compliance with health and safety requirements so that they may continue to provide quality services to the residents. Accordingly, the selection of an enforcement action is based on that which is most likely to elicit a prompt response from the facility to achieve and maintain compliance before termination becomes necessary. We believe the proposed change does not significantly add to the process of selecting remedies; therefore, we are not incorporating it in the final regulation.

Comment: A few commenters wanted a definition of "clusters of deficiencies" included in § 488.408, which deals with the initial assessment of the seriousness of deficiencies. Other commenters wanted instruction on which deficiencies are cited as a cluster versus those deficiencies cited individually.

Response: We have removed the reference to clusters in this final rule because we do not want to limit the discretion HCFA and the States have been given by the statute to make enforcement decisions. We believe that the relationship between and among deficiencies is inherent in remedy determinations and should be made on a case-by-case basis. While we do not intend to include instructions in this final rule on which deficiencies would be treated individually and which would be consolidated, we will offer examples in the HCFA Regional Office Manual and the State Operations Manual of how deficiencies could be grouped together.

Comment: We received many general comments about how HCFA should be more specific in its guidance on selecting an appropriate remedy. This guidance must help determine the criteria for the selection of remedies and must require the use of specific remedies for particular deficiencies. Some of these commenters suggested a scope and severity scale linked with specific remedies at specific levels.

Response: While we agree with the above commenters advocating more guidance on the selection of remedies, and have developed an enforcement scheme capable of doing just that, we are bound by the statutory provisions giving HCFA and the States some discretion in designing their own schemes within a Federal framework. Therefore, we are providing the method by which facility deficiencies, including physical environment deficiencies, will be measured, and we are linking specific categories of remedies with certain levels of noncompliance. We are revising § 488.408 accordingly.

Comment: Many commenters believe that level 1–1 deficiencies, now referred to as isolated deficiencies which HCFA or the State determines constitute no actual harm with a potential for minimal harm, must be cited and a plan of correction required. Additionally, these commenters urge that every deficiency should be cited before leaving the facility. They believe that unless each deficiency is cited, important patterns of repeat noncompliance can be missed.

Response: We disagree. As we stated in the preamble to the proposed rule, providers must be aware that they are responsible for complying with all participation requirements. Notifying the facility of this level of deficiency acknowledges that a problem could potentially occur if the deficiency is permitted to go uncorrected. While no formal plan of correction is required for this low level deficiency and no remedy is applied, correction is necessary nevertheless.

The exit conference focuses primarily on the most serious preliminary findings by the surveyors. While the survey team documents its observations relative to the survey, the surveyors' findings are not official until the provider receives the official deficiency statement.

Comment: Many commenters commended HCFA for prohibiting facilities from challenging the choice of remedy or remedies. These commenters assert that giving the facility the right to challenge the existence of deficiencies adequately protects their rights. A few commenters agreed that the choice of the remedy should not be appealable but that the scope and severity of a deficiency should be. Other commenters believed providers should be permitted to formally appeal both the existence of a deficiency as well as challenge determinations of scope and severity and the remedy imposed.

Response: The most important issue on which to grant an appeal is the existence of deficiencies which lead to a remedy. We are requiring that such an appeal before an administrative law judge be offered, and that dispute resolution procedures be applied first, at the request of the provider.

Providers have the opportunity to appeal certifications of noncompliance leading to an enforcement remedy but, with the one exception noted below, do not have the opportunity to appeal either the level of noncompliance or the enforcement choice made by HCFA or the State. We have reached this conclusion for several reasons. First, as a general matter, whether HCFA or a State chooses one remedy or another to address facility noncompliance is a matter that we believe is a prosecutorial prerogative of the government, not with the provider of services. It is an inherent function of government in this context to make choices as to which kind of enforcement action will best achieve prompt compliance so that residents face noncompliant conditions for as short a time as possible.

Second, in the case of provider agreement terminations, even if a facility were able to successfully contest a conclusion that immediate jeopardy exists, the agency could still proceed with the termination action since the agency's authority to bring such an action is not limited to immediate jeopardy cases, but may span all noncompliant facility behavior. As has been agency policy for many years, the determination of what remedy to seek is beyond challenge in light of the government's fundamental necessity to protect the welfare of facility residents as expeditiously as possible. This is especially the case with respect to provider agreement terminations since residents may be at considerable risk even where there is no immediate jeopardy.

Third, in the case of most alternative sanctions, the regulations are structured so that whether a facility's noncompliance falls in category 1 or category 2, HCFA and the States have complete discretion to choose from either category. Thus, even if a facility were able to successfully demonstrate that the agency had erred in its conclusion that the noncompliance belonged in category 1, that fact would be irrelevant since noncompliance in category 1 could still trigger the same remedy. Only a showing that the facility was in substantial compliance would enable the facility to avoid sanctions, and it is this issue that we agree must be subject to challenge.

Fourth, with respect to the imposition of temporary management, a facility facing this remedy would have the opportunity to argue during informal dispute resolution that the agency had erred in concluding that immediate jeopardy existed. Should it succeed in making this showing, the remedy would not be imposed. On the other hand, should the facility fail to convince agency officials that the noncompliance was of a lesser nature, the facility would face temporary management well before it could more formally challenge the agency finding of immediate jeopardy. Thus, even if the facility ultimately prevailed in a hearing in proving that its noncompliance posed less than immediate jeopardy, the facility's appeal would not be effective since the remedy would have already been imposed and the facility would either have achieved substantial compliance or been terminated by the time of the hearing.

For this reason, we considered whether, in light of this sequence of events, facilities should be given a prior hearing in temporary management cases, but concluded that would completely undermine the purpose of this remedy which is to resolve the most serious noncompliance in the shortest possible time frame. This is particularly the case when facilities facing such remedies have available to them an informal means to contest agency action prior to the imposition of the remedy and when, ultimately, it is the facility's choice to accept temporary management rather than face termination. Accordingly, we concluded that in the balancing of interest of facilities and residents in such cases, the interests of residents must take precedence.

Only in the case of civil money penalties could we see the necessity of allowing facilities the opportunity to challenge the level of noncompliance since the amount of these penalties hinges upon discrete levels of noncompliance rather than noncompliance as a whole. Thus, it may be legally significant to a facility facing a $10,000 per day civil money penalty to be able to prove that its noncompliance belonged in category 2, rather than category 3, since in category 2 the largest civil money penalty available to HCF or a State would be $3,000 per day. Accordingly, we are revising the rules to allow a facility to challenge the level of noncompliance when a successful challenge on this issue would affect the amount of a civil money penalty that HCFA or a State could collect.

We believe that a provider's burden of upsetting survey findings relating to the level of noncompliance should be high, however. As we indicated in the proposed rule, distinctions between different levels of noncompliance, whether measured in terms of their frequency or seriousness, do not represent mathematical judgments for which there are clear or objectively measured boundaries. Identifying failures in a facility's obligation to provide the kind of high quality care required by the Act and the implementing regulations most often reflect judgments that will reflect a range of noncompliant behavior. Thus, in civil money penalty cases, whether deficiencies pose immediate jeopardy, or are widespread and cause actual harm that is not immediate jeopardy, or are widespread and have a potential for more than minimal harm that is not immediate jeopardy does not reflect that a precise point of noncompliance has occurred, but rather that a range of noncompliance has occurred which may vary from facility to facility. While we understand the desire of those who seek the greatest possible consistency in survey findings, an objective that we share, the answer does not lie in designing yardsticks of compliance that can be reduced to rigid and objectively calculated numbers. Survey team members and their supervisors ought to have some degree of flexibility, and deference, in applying their expertise in working with these less than perfectly precise concepts. For these reasons, we have revised the regulations to require an administrative law judge or appellate administrative review authority to uphold State or HCFA findings on the seriousness of facility deficiencies in civil money penalty cases unless they are clearly erroneous.

Comment: A few commenters believe it is not sufficient to simply state that the choice of a remedy is not appealable and recommend that the regulation explicitly state that HCFA will not look behind or "second guess" the State's selection of remedy or remedies.

Response: We cannot accept these comments as sections 1919(h)(6) and (7) of the Act specify the means to resolve any disagreement between the State and the Secretary regarding noncompliance or enforcement action.

Comment: Some commenters wanted sanctions imposed upon the facility for interfering with the survey team, monitor or temporary manager.

Response: Section 1128(b)(12) of the Act permits the Secretary to exclude SNFs from Medicare and to direct that NFs be excluded from Medicaid for failure to grant access to the applicable survey agencies performing survey and certification functions in accordance with sections 1864(a) and 1902(a)(33)(B) of the Act. Failure to grant access can certainly be regarded as interference with the activities of State agency personnel. However, interference with the temporary manager is different. Sections 488.410 and 488.438 specify that if the facility does not agree to the conditions under which the temporary manager is imposed, the facility may refuse to relinquish control to the temporary manager, and, in so doing, opt for termination.

Comment: One commenter wanted HCFA to include a "sole community provider exception" to allow States to oversee the operations of noncompliant facilities with uncorrected deficiencies in rural areas, where the closure would result in hardship to the residents and the community.

Response: States have the authority to oversee (appoint a State monitor) any noncompliant facility, regardless of the location. However, if the commenter wants a provider in a rural area to be exempted from correcting deficiencies, we do not have the authority to grant such an exception. Waiver authority requirements are provided at § 483.70 and at § 483.30(c) and (d), relative to the Physical Environment and Nursing Services participation requirements, respectively, and then only when specified conditions are met.

Section 488.410 Action When There Is Immediate Jeopardy

In conducting our review of the provisions of the regulation for conformance with the Act, we noted that the Act uses "immediate jeopardy to resident health or safety" to describe those situations in which immediate corrections must be achieved and immediate enforcement action must ensue, while the text of the proposed rule refers to such situations as "immediate and serious threat." We have attempted to modify the terminology used in the final regulation to consistently reflect the language of the Act.

Comment: Many commenters stated that the 23-day timeframe for termination is not included in the Act, that it is too short and that it does not allow adequate time for corrections. Some suggested that other timeframes, such as 45 days or 90 days, be used, while others indicated that the 23-day clock should not start until the facility has been given a chance to undertake corrections.

Response: While the 23-day timeframe is not specified in the Act, HCFA has for many years used a 23-day timeframe for addressing immediate jeopardy situations encountered in other provider and supplier types. In fact, the enforcement procedures which were in effect for long term care facilities prior to the implementation of OBRA '87 provisions called for processing termination actions within 23 calendar days when immediate and serious threat to patient health or safety was documented. In these cases, if the immediate and serious threat was resolved before the end of the 23

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calendar days, the termination action was lifted entirely, or if the threat was removed but other serious deficiencies remained, the termination date was extended to allow the facility additional time to correct the remaining deficiencies.

Our experience in processing noncompliance actions against other facilities and against long term care facilities (both before and after OBRA '87 implementation) whose deficiencies constitute immediate jeopardy indicates that 23 calendar days is a reasonable amount of time for proper notice to the facility and to the public, as may be required. Further, it provides the facility sufficient time to react to the immediate jeopardy without unnecessarily lengthening the amount of time the facility's residents are at risk because of the situation or situations which constitute the immediate jeopardy.

While we appreciate the concerns expressed by the commenters, we are not amending the 23-day timeframe in the final regulation.

Comment: Another group of commenters believed that the 23-day timeframe is too long and that, for facilities in which immediate jeopardy is identified, the requirement should be that corrections be initiated immediately.

Response: The 23-day timeframe is not the amount of time the facility has to begin making corrections. Rather, it is the maximum amount of time available to the facility to resolve the immediate jeopardy. It begins on the last day of the survey. A facility is ordinarily advised of the existence of immediate jeopardy at the conclusion of the survey which identified the immediate jeopardy. Most facilities in this situation that want to remain in the Medicare or Medicaid program will begin to make corrections immediately. Even for those that do not begin making corrections on their own, some time must be allowed for provision of proper notices, as required by regulation, and/or the appointment of temporary management. In consideration of these factors and the fact that it is also possible for the enforcement process to be completed in less than 23 calendar days, we are not adopting these comments in the final regulation.

Comment: Some commenters asked that the regulation be amended to clarify that 23 calendar days is the maximum amount of time which a facility will be given to resolve a finding of immediate jeopardy, whether or not temporary management is utilized. One commenter said that the facility should be given an additional 23 days beyond the termination date during which a temporary manager would be utilized to attempt to achieve compliance.

Response: We have accepted the first comment. We agree that 23 calendar days is the maximum time allowed for a facility with immediate jeopardy to resolve the jeopardy. It is not possible for a facility to first be given 23 calendar days to correct deficiencies pending termination followed by another period of time during which temporary management is utilized in an attempt to regain compliance.

Comment: Some commenters cited the 23-day timeframe as a disincentive for the use of temporary management as an alternative remedy.

Response: We do not believe that use of the 23-day timeframe is a disincentive for use of temporary management based on the seriousness of deficiencies identified at this level as well as the need to take immediate corrective action.

Comment: A number of commenters indicated that the facility should not be given the opportunity to refuse temporary management.

Response: As noted in the comments and responses for § 488.415, facilities will not be offered a formal choice of whether to accept or refuse temporary management. When HCFA or a State chooses to implement this remedy, a temporary manager will be installed unless the facility refuses to relinquish control to the temporary manager, in which case, immediate termination will be sought.

Comment: A few comments indicated that there should be an immediate ban on admissions to the facility, large civil money penalties and/or immediate assignment of a State monitor for these cases.

Response: While the Act does not allow for bans on all admissions under these or any other circumstances, it is possible for the State or HCFA to impose State monitoring as an additional remedy. While large civil money penalties are also allowed, they may not be as likely to result in immediate corrections, since they may not be collected until the facility has the opportunity for a hearing.

Comment: Several commenters believed that the regulation as proposed does not promote the use of alternative remedies in situations involving immediate jeopardy and argued that this approach does not follow the spirit of OBRA '87.

Response: The Act makes a clear distinction between how cases involving immediate jeopardy will be handled as opposed to how all other cases will be handled. The Act requires immediate action to remove the jeopardy and correct the deficiencies through the use of temporary management or termination, or both. While it allows for the use of other remedies which are in addition to temporary management or termination, it is clear that the penalty for a facility with noncompliance which constitutes immediate jeopardy is intended to be swift and severe. The regulation reflects the intent of the Act; therefore, the use of alternative remedies in addition to temporary management is allowed but not stressed for immediate jeopardy situations.

Comment: Several commenters asked for a better definition of immediate and serious threat. Others indicated that the scope and severity scale, as issued for comment in the proposed rule, would lead to many more instances of immediate jeopardy than are now being identified.

Response: In response to the many comments received regarding the proposed scope and severity scale, we are amending the definition of immediate jeopardy in the final regulation (see § 488.301). In making decisions on the existence of immediate jeopardy, HCFA and the States will continue to refer to the traditional guidance on this subject which is contained in Appendix Q of the State Operations Manual.

Comment: One commenter pointed out that the proposed regulation does not address who will prevail (HCFA or the State) about whether or not immediate jeopardy exists in a facility, and asked for clarification.

Response: HCFA always has the option of reviewing the State's compliance determination and making its own decision based on the survey agency's survey findings. It is not necessary for HCFA to conduct its own survey of a facility in order to make a decision as to whether immediate jeopardy does or does not exist. Whether HCFA's decision is based on its own survey or on a review of the State's findings, the decision as to whether or not immediate jeopardy exists is made pursuant to section 1919(h)(5) of the Act. Specifically, the determination of immediate jeopardy, whether it is the survey agency's or the Secretary's, will prevail.

Comment: One commenter asked that the facility and not the State be responsible for notifying attending physicians and licensure boards, as outlined in §§ 488.410(e) and 488.325(h).

Response: As indicated in sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act, Disclosure of Results of Inspections and Activities, the responsibility for this notification lies with the State; it may not be redelegated to the facility.

Comment: One commenter asked that we clarify § 488.410(e) to indicate that the notice should go to the licensing authority of the nursing home administrator.

Response: We agree, and this comment is reflected in the final regulation.

Comment: Two commenters asked that the text of § 488.410(c)(2)(i) be amended to indicate that the use of temporary management is for the purpose of correcting the deficiencies that resulted in a finding of immediate jeopardy.

Response: We are not adopting these comments, as we believe they would provide for a more narrow interpretation than the Act specifies at sections 1819(h)(4) and 1919(h)(5). These sections state that the appointment of a temporary manager shall be for the purpose of removing the jeopardy and correcting the deficiencies. Further, as indicated in the comments and responses for § 488.415, temporary management will be removed when the facility is terminated, or when HCFA or the survey agency has determined that the facility is in substantial compliance and has the management capability to ensure continued substantial compliance with all requirements. Consistent with sections 1819(h)(2), 1919(h)(2) and (h)(3) of the Act, temporary management would not necessarily end as soon as deficiencies causing the immediate jeopardy have been corrected.

Comment: Four commenters indicated that HCFA should adopt a procedure utilized in Louisiana, whereby a facility may request sanctions other than a temporary manager and the request may be granted if the State determines that an adequate plan to correct has been devised by the facility and the State can monitor the implementation of the facility's plan.

Response: As presented, this procedure does not appear to meet the requirements of the Act which call for immediate action to remove the immediate jeopardy through termination or appointment of temporary management, or both. It would appear that the proposed procedure would allow something similar to a directed plan of correction and State monitoring to replace termination or temporary management as the remedies for immediate jeopardy cases. Such a policy would constitute a violation of the Act.

Section 488.412 Action When There Is No Immediate Jeopardy

Comment: Many commenters said that the requirement for the State or the facility to repay funds received from the Federal government if corrective action was not taken in accordance with the approved plan of correction conflicts with HCFA's intent to promote the use of alternative remedies.

Response: Comments regarding the State and facility repayment provision of § 488.412(a) will be answered in our discussion of proposed § 488.232 (redesignated as § 488.450, Continuation of payments to a facility with deficiencies).

Comment: Several commenters objected to the requirement that a denial of payment for new admissions be imposed if any deficiency remains uncorrected 90 days after the survey. They believed that it is illogical to cut off funds after 90 days because the funds might be needed to make the corrections. Other commenters said that the regulations should allow continued participation with substantial compliance because the 100 percent compliance is impossible to achieve. Still other commenters made the following points:

- Major physical environment deficiencies may take longer than 90 days to correct;
- The regulations should permit an appeal of the decision to deny payments for new admissions;
- It is unclear whether mailing time is included in the 90 days and whether an appeal stops the action; and
- It is unclear whether there is notice to the public regarding the remedy at the 90th day.

Response: Sections 1819(h)(2)(D) and 1919(h)(2)(C) of the Act stipulate that the Secretary or the State, respectively, must impose a denial of payment for new admissions if the facility is not in compliance 3 months after the date that the facility was noncompliant, regardless of the requirement that is deficient. In answer to the commenter who raised the issue of substantial compliance, we are revising § 488.412(c) to require a mandatory denial of payment for new admissions when a facility is not in substantial compliance 3 months after the last day of the survey. Therefore, if a facility is in substantial compliance, it would not be subject to the mandatory denial of payment for new admissions remedy, or the denial of payment remedy would be lifted if it had already been imposed. Substantial compliance is discussed in detail earlier in this preamble. The fact that physical environment deficiencies may take longer to correct than others is an example of facility noncompliance which may not be wholly corrected after the completion of the 6-month continuation of payment period, but which could be considered substantial compliance if corrective action had progressed in accordance with the approved corrective action plan and timetable. With respect to the other points raised by the commenters, § 488.330(e) (3) and (4) specify that a facility may appeal the certification of noncompliance leading to the denial of payment remedy; § 488.330, paragraphs (e)(1)(ii) and (e)(2)(ii) specify that, except for civil money penalties, a pending appeal will not stop the action. Mailing time is included within the 3 months because the 3 months constitutes a statutory limit. There are neither statutory nor regulatory public notice requirements with regard to the denial of payment remedy.

Comment: A great many individuals and organizations commented upon the requirement at proposed § 488.212(b) which specifies that, although deficiencies with a scope and severity level of 1 are considered deficiencies, remedies or plans of correction are not required as long as corrections are achieved by the 90th day. Commenters' views varied widely as illustrated by the following—

- There should be no deficiency if the scope and severity level is 1;
- If no plan of correction is required there is no apparent reason for requiring correction in 90 days;
- A follow-up visit should not be required if the scope and severity level is 1;
- If deficiencies with a scope and severity level of 1 are to be treated differently than other deficiencies, then a new term should be used for them, such as findings;
- Deficiencies with a scope and severity level of 1 should be given to the facility on a separate document and not be disclosable to the public;
- Deficiencies with a scope and severity level of 1 should receive a plan of correction and be disclosable to the public;
- Deficiencies with a scope and severity level of 1 should not receive either a plan of correction or a remedy if substantial compliance is achieved;
- There is no such thing as an isolated problem. Excusing certain deficiencies as inconsequential sets a disturbing precedent for the health care industry;
- All deficiencies must be corrected;
- No deficiency should be found unless there is a quality of care issue;

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- There doesn't appear to be a way for HCFA to track deficiencies with a scope and severity level of 1 without a follow-up visit;
- HCFA should clarify when a citation becomes a "repeat deficiency." Remedies should be imposed in cases of repeated noncompliance only after a facility is found, after three standard surveys, to have furnished substandard care;
- A recurrence of a deficiency with a scope and severity level of 1 should be upgraded to a scope and severity level of 2;
- The regulation at proposed § 488.212(b)(3) should specify continued noncompliance rather than recurrence;
- The regulation at proposed § 488.212(b)(1) should read "both the severity level and the scope level are 2" rather than 1;
- The regulation at proposed § 488.212(b)(3) should impose a civil monetary penalty and one or more other remedies;
- HCFA should provide guidelines regarding what is an acceptable plan of correction;
- If a deficiency with a scope and severity level of 1 recurs, HCFA or the State should impose a directed plan of correction or State monitoring; and
- The lack of appeal rights on recurring deficiencies with a scope and severity level of 1 will put the State at risk of increased informal administrative hearings, because of the requirement that remedies be imposed.

Response: The issue of deficiencies at a severity and scope level of 1 are discussed under § 488.408 of this preamble.

We are retaining the definition of deficiency at § 488.301. A deficiency is failure to meet a participation requirement. All deficiencies, with the exception of those isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimal harm, will be displayed on the HCFA–2567, Statement of Deficiencies and Plan of Correction, and will require a plan of correction to be tracked by the State survey agency. All deficiencies, including those isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimal harm, will be disclosable to the public. However, these low level deficiencies will not be recorded on the HCFA–2567 and will not precipitate any enforcement action. We conclude that this approach is reasonable and practical from both the provider's and the consumer's perspective. To react to low level deficiencies with the same degree of concern as to those that are more serious is not rational. We believe that providers and consumers will agree that deficiencies which constitute no actual harm with no more than a potential for minimal harm, and which bear no relationship to poor care or negative resident outcomes should not detract from actionable noncompliance.

Comment: Many commenters suggested modifications to the use of the scope and severity scales for selection of remedies at proposed § 488.412(c). The following comments and suggestions were made:

- Proposed paragraph (c)(2), (now paragraph (b)(3)), should read "If HCFA or the State determines the existence of substandard care, the State must notify * * *";
- Expand proposed paragraph (c)(3), to include deficiencies in quality of life, nurse staffing, and resident behavior and facility practices;
- For deficiencies with a severity level of 2, civil money penalties should be required using scope and severity to determine the size of the fine and other remedies should be applied according to § 488.408;
- Provision should be made for remedies for deficiencies not in the area of quality of care with a severity level of 2 and scope level of 3 or 4;
- A variety of specific schemes were proposed for correlating each of the scope and severity levels to specific types of remedies; and
- Non-life threatening deficiencies should be exempted from remedies and fines.

Response: As noted earlier, we addressed these issues under § 488.408 of this preamble. Also, in response to the many comments we received advocating a clearer correlation between levels of noncompliance and types of remedies imposed, we are making extensive revisions to the scope and severity grid published in the proposed rule. We are, in fact, correlating categories of remedies to various categories of noncompliance. A revised grid appears below.

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	Isolated	Pattern	Widespread
Immediate Jeopardy to Resident Health or Safety	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC Required: Cat. 3 Optional: Cat. 2 Optional: Cat. 1
Actual Harm that is not Immediate Jeopardy	PoC Required* Cat. 2 Optional: Cat. 1	PoC Required* Cat. 2 Optional: Cat. 1	PoC Required* Cat. 2 Optional: Cat. 1 Optional: Temporary Mgmt.
No Actual Harm with Potential for More than Minimal Harm that is not Immediate Jeopardy	PoC Required* Cat. 1 Optional: Cat. 2	PoC Required* Cat. 1 Optional: Cat. 2	PoC Required* Cat. 2 Optional: Cat. 1
No Actual Harm with Potential for Minimal Harm	No PoC No Remedies Commitment to Correct Not on HCFA-2567	PoC	PoC

Substandard quality of care: any deficiency in §483.13 Resident Behavior and Facility Practices, §483.15 Quality of life, or in §483.25, Quality of Care that constitutes: immediate jeopardy to resident health or safety; or, a pattern of or widespread actual harm that is not immediate jeopardy; or, a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

Substantial compliance

REMEDY CATEGORIES

Category 1 (Cat.1)

Directed Plan of Correction
State Monitor; and/or
Directed In-Service Training

Category 2 (Cat.2)

Denial of Payment for New Admissions;
Denial of Payment for All Individuals;
Imposed by HCFA:
and/or
Civil Money Penalties:
$50 - $3,000/day

Category 3 (Cat.3)

Temporary Management
Termination

Optional:

Civil Money Penalties
$3,050 - $10,000/day

Denial of Payment for New Admissions must be imposed when a facility is not in substantial compliance within 3 months after being found out of compliance.

Denial of Payment and State Monitoring must be imposed when a facility has been found to have provided substandard quality of care on three consecutive standard surveys.

Note: Termination may be imposed by the State or HCFA at any time when appropriate.

* Required only when decision is

BILLING CODE 4120-01-C

Section 488.414 Action When There Is Repeated Substandard Quality of Care

While analyzing the comments for this section, we again reviewed the provisions of the Act to ensure conformance in the final regulation. Through this process, we noted that this section does not address the portions of the statutory provisions at sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act that specify that the denial of payment and monitoring must continue until the facility has demonstrated that it is in compliance and that it will remain in compliance. Accordingly, we are modifying this provision to specify that the mandatory denial of payment and State monitoring imposed for the finding of substandard quality of care on three consecutive standard surveys must continue until the facility has demonstrated that it has achieved substantial compliance and can maintain substantial compliance over the period of time specified by HCFA or the State.

We further noted that the remedy described in section 1819(h)(2)(B)(i) of

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the Act can be either denial of payment for all Medicare residents or denial of payment for all new Medicare admissions in a facility. In recognition of this fact, the regulation is being amended to reflect this distinction.

Finally, because the provisions of the Act were in effect prior to the effective date of this regulation, we have had actual experience processing enforcement actions for facilities with substandard quality of care noted in three consecutive standard surveys. Our experience pointed out the need for further clarification in this section in two respects. One of these related to the handling of actions against facilities whose type of program participation changed during the period of time spanned by the three consecutive standard surveys, and the other related to whether remedies could be avoided through an allegation of compliance or actual corrections which followed the finding that there had been repeated substandard quality of care.

In reviewing actual cases, we concluded that the determination of repeat substandard quality of care in a certified facility should be made without regard to the type of program participation involved; that is, any standard surveys conducted in the facility for Medicare, Medicaid or both should be considered. Since the survey process is the same for both Medicare and Medicaid participating facilities, there is no reason to consider the facility's type of program participation in the determination of whether repeated substandard quality of care has occurred. These issues are being clarified in § 488.414.

We also concluded that sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act indicate statutory intent that specific remedies be imposed any time substandard quality of care is repeatedly noted. Further, the Congress specifically provided the authority for continuation of these remedies after compliance has been achieved. The Congress' specific description of how this type of noncompliance must be dealt with clearly sets it apart from the handling of other cases. Therefore, we have concluded that a facility's allegation of compliance or actual attainment of compliance following the third consecutive standard survey which found substandard quality of care will not stop the imposition of the denial of payment or State monitoring. The remedy may be lifted when the facility has demonstrated its ability to maintain substantial compliance to the satisfaction of HCFA or the State. This point is also being clarified in this section of the regulation.

Comment: A number of commenters asked for a clearer definition of "substandard care." Some asked whether substandard care and substandard quality of care are one and the same. Others pointed out that sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act specify that action is to be taken based on the provision of substandard quality of care.

Response: We are changing the regulation to match the Act and indicate that this provision will apply when substandard quality of care is identified. For the purpose of this provision, substandard quality of care is defined in § 488.301.

Comment: Several commenters requested that the word "standard" be inserted between "consecutive" and "surveys." They pointed out that the proposed regulation does not match the wording of the Act at sections 1819(h)(2)(E) and 1919(h)(2)(D), both of which specify that the substandard quality of care must be identified in three consecutive standard surveys.

Response: We agree with the commenters. We are amending this section to indicate that the repeated substandard quality of care must have been noted through three consecutive standard surveys. Standard surveys are those described in § 488.305.

Comment: Four commenters asked for a clearer definition of repeated noncompliance. Two commenters indicated that repeat noncompliance should be defined as actual repeats of the same problem and the content of the deficiency and not just a repeat of a deficiency at the same tag number.

Response: Sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act clearly indicate that action must be taken when repeat noncompliance in the form of substandard quality of care is identified. The Act does not narrow the scope to specify that the basis for finding substandard quality of care in a facility must be identical from one standard survey to the next or for all three of the consecutive standard surveys considered in making the determination that repeated substandard quality of care has occurred. Accordingly, we do not believe that the regulation should more narrowly define what constitutes substandard quality of care for the purpose of this provision.

The regulation is being modified to clarify that action must be taken any time any deficiencies which constitute substandard quality of care are identified in the last three consecutive standard surveys. This provision will be applied solely on the basis of the repeated finding of substandard quality of care, and no attempt will be made to determine whether the substance of the noncompliance or the exact tag numbers for deficiencies which constitute noncompliance were repeated.

Comment: One commenter stated that a facility's performance on surveys which were conducted prior to the effective date of this regulation should be counted in the determination of whether there is repeated noncompliance.

Response: We agree with this comment. The survey process specified in the OBRA '87 provisions was effective for all surveys conducted on or after October 1, 1990. Even though the implementation of the corresponding enforcement provisions was not concurrent, any standard survey completed on or after October 1, 1990 must be considered in the determination of whether there is repeated noncompliance that resulted in substandard quality of care.

Comment: One commenter suggested that to be consistent with the intent of the Act to have facilities maintain compliance, regulations should require that facilities maintain compliance with the deficient requirement after correction. The commenter recommended requiring termination if a facility corrects the deficiency, but then falls out of compliance with the same requirement during the same correction period.

Response: The Act provides that when a facility has had findings of substandard quality of care on three consecutive standard surveys, the Secretary or the State must impose a denial of payment and a State monitor. In addition, sections 1819(h)(2)(E) and 1919(h)(2)(D) of the Act require that the denial of payment for new admissions and State monitor remedies must remain in force until the facility not only achieves substantial compliance but demonstrates that it can maintain substantial compliance. As we have explained earlier, substantial compliance constitutes compliance for the purpose of imposing or lifting a remedy, as well as issuing a certification of compliance.

We do not foresee the situation described by the commenter as a problem. If a facility has corrected a deficiency, or is at least considered to be in substantial compliance, any remedy(ies) in effect would be lifted as well as compliance certified. We would not normally revisit a facility after compliance has been certified unless there is a complaint or some other impetus. If, at some later date after compliance has been certified, the facility is found to have a recurrence of the same deficiency that causes the facility to be out of substantial compliance, either a new continuation of payment period would begin, or termination (or cessation of FFP payments) would occur, depending on the seriousness of the noncompliance. However, any termination would be based on the fact that the facility was not in substantial compliance with sections 1819 (b), (c), and (d) and 1919 (b), (c), and (d) of the Act by the end of the correction period, and not on the fact that the noncompliance was repeated. We have not adopted the commenter's suggestion to terminate a facility solely on the basis of repeated noncompliance.

Section 488.415 Temporary Management

Comment: One commenter asked that we clarify the term "disciplinary action" and state that the temporary manager must not have been found guilty of misconduct by any licensing board or professional society, and another commenter recommended that HCFA maintain a national registry of nursing home administrator disciplinary actions.

Response: To avoid confusion surrounding the interpretation of "disciplinary action," we will not use the term in the requirement at § 488.415(b)(2) as we did in § 488.215(b)(3) of the proposed rule. Instead, we are structuring the provision to read that the temporary manager must "not have been found guilty of misconduct by any licensing board or professional society in any State." We agree that it may be beneficial to have a misconduct registry for nursing home administrators, and we intend to examine the feasibility of developing one.

Comment: Many commenters recommended that we include requirements that the temporary manager must have had no adverse ties to the problem facility, and must not have been fired from the facility in the past. Another commenter proposed that we include a requirement that the temporary manager have had no business or professional relationship with the facility for a minimum of 3 years prior to his or her appointment to operate the facility.

Response: We agree with the commenters that the individual chosen to be temporary manager must not have been recently employed by the facility to be managed. We believe that an individual's previous employment relationship with a facility could positively or negatively prejudice that individual in his or her present dealings with the facility. Therefore, we are incorporating into the regulation, at § 488.415(b)(4), a requirement that the temporary manager must not currently serve, or, within the past 2 years, have served as a member of the staff of the noncompliant facility. This requirement is similar to the requirement for surveyors, which we believe is appropriate, since effective evaluation is a necessary tool of both surveyors and temporary managers and requires their objectivity.

Comment: One commenter asked how prior competency will be judged. Various commenters suggested that prior competency be defined by a minimum of one year of continuous experience as administrator of a long term care facility, by demonstrated expertise and experience in the operation of a nursing facility similar to the one the temporary manager is needed to manage, or by demonstrated experience in temporary management. Another commenter suggested that a measure of competency be whether the temporary manager served within the past 10 years as the administrator of a facility which furnished substandard quality of care.

Response: As explained below, we are no longer requiring that the temporary manager be a licensed nursing home administrator or demonstrate prior competency as one. Because the skills and experience a temporary manager must have to correct deficiencies will vary on a case by case basis, HCFA and the State need to have the flexibility to appoint whoever is most suitable without the constraints of overly prescriptive eligibility requirements.

When it happens that an individual interested in becoming a temporary manager is or has been a nursing home administrator, the compliance histories of the facilities managed by him or her will be reviewed. We will provide in manual instructions that there be such a review because we agree with the commenter that it would be inappropriate to appoint as a temporary manager an administrator who has had difficulty maintaining facility compliance in the past.

Comment: A number of commenters believed that the temporary manager should not be a current competitor of the facility, have ownership interest in a competitor, or have been recently employed by a competitor. Commenters were concerned that these individuals would gain an unfair competitive advantage if appointed temporary manager.

Response: We appreciate this concern, and we and the State will attempt to select temporary managers who are not affiliated with competitors of the facilities to be managed when the pool of temporary manager candidates allows. However, the purpose of imposing temporary management or any other remedy is to achieve and maintain substantial compliance with Federal requirements. When the only temporary manager candidate likely to accomplish this goal is affiliated with a competitor of the problem facility, HCFA and the State will necessarily consider that affiliation to be subordinate to the administrator's competency. If the facility feels more threatened by compromised competitiveness than it does by termination of its provider agreement, it has the right to refuse to relinquish control to the temporary manager selected by HCFA or the State, and subject itself to the possibility of termination instead.

Comment: One commenter was concerned that persons interested in acquiring a financial interest in a facility would be motivated to serve as that facility's temporary manager in order to gain a competitive edge in later negotiations. The commenter asked that we prevent this possibility by precluding through contract with the temporary manager the purchase or other acquisition of the facility for a fixed period of time after completion of the temporary manager's responsibilities.

Response: We do not have the authority to restrict a temporary manager's future business activities. If the facility to be managed has reason to believe that the temporary manager chosen by HCFA or the State would use the financial information he or she would acquire in the facility to the facility's disadvantage, the facility may raise this concern to HCFA or the State, and HCFA or the State may attempt to locate a temporary manager that is more acceptable to the facility. Should a temporary manager acceptable to the facility not be located, the facility may exercise its right to refuse to relinquish control to the temporary manager and face termination of its provider agreement.

Comment: One commenter proposed that the temporary manager should neither have been an employee of, nor have been associated with an employee of HCFA, the Department of Health and Human Services, or any State licensing or survey agency.

Response: We do not believe that a past affiliation with the aforementioned organizations would reduce a temporary manager's objectivity or effectiveness in any way. On the contrary, it is likely that the temporary manager would be more knowledgeable about Medicare and Medicaid participation

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requirements after having had exposure to the agencies that set and enforce the Medicare and Medicaid requirements, and we expect that the facility at which the temporary manager is imposed would benefit from this knowledge.

Comment: A couple of commenters believed that the State must compile and update a list of people or organizations that meet the qualifications of temporary manager, and they asked that this list be available for public inspection. Another commenter proposed that the State or HCFA maintain a list of substantiated complaints or allegations concerning the performance of temporary managers.

Response: We will not require that States catalogue complaints made against temporary managers, but will allow them to process complaint information in the way that they determine is most effective. Neither will we require the States to compile, update, and release a list of those qualified to be temporary managers. Because we have no authority to require the release of individuals' qualifications or other assignments, a list of temporary managers would contain no criteria by which facilities would be able to evaluate the candidates, and would be of little value. Moreover, HCFA and the State are not obligated to seek facility approval of temporary managers. It is neither the facility's responsibility nor right to select a temporary manager. (See additional response below.)

Comment: A few commenters recommended that we allow a State or a team of people to qualify as a temporary manager. They believed that nursing guidance and expertise would be needed in addition to administrative supervision in order to remedy serious deficiencies.

Response: Because a temporary manager has the authority to hire additional staff, it is possible for him or her to assemble what would be in essence a temporary management team. When the temporary manager determines that successful correction of a facility's deficiencies requires knowledge and skills in addition to his or her own, he or she may engage the specialists necessary.

We have no statutory authority to require State survey agencies to make their staff available to function as temporary managers. Their role involves survey, certification, and monitoring, rather than the management (albeit temporary) of nursing homes.

Comment: Several commenters asked that facilities be able to participate in the selection of the temporary manager. One recommended that the governing board of the facility be responsible for placing the temporary manager at the facility, and others requested that facilities be able to object to a particular temporary manager once selected by HCFA or the State.

Response: The choice of a temporary manager will be made either by the State or by HCFA and will be based on the recommendation of the State survey agency. The State survey agency's geographic proximity to the providers it surveys and its knowledge of available and competent managers in the area place it in the best position to recommend a temporary manager. Because facilities have the right to refuse to relinquish control to the temporary manager, no facility will be forced to submit to a temporary manager that it objects to, and it may decide to subject itself to the possibility of termination instead.

Comment: Certain commenters were concerned that the qualifications for a temporary manager will be hard to meet. A few commenters suggested that HCFA and the State be given latitude to appoint as temporary manager any qualified person, such as a registered nurse with nursing home experience, instead of having to appoint a licensed nursing home administrator.

Response: We agree that a nursing home administrator's license is not the only valid indicator of an individual's fitness to serve as temporary manager. Certain combinations of educational and vocational achievement may also signify administrative competency. We are, therefore, amending paragraph (b)(1) and deleting paragraph (b)(2) of § 488.215 as they appeared in the proposed rule to allow an individual who does not hold a nursing home administrator's license to serve as temporary manager if the State determines that he or she is qualified to oversee correction of deficiencies on the basis of experience and education. Because this change should expand the pool of qualified temporary manager candidates, it should reduce the number of terminations caused by inability to locate a temporary manager, a clear benefit to both providers and residents.

Comment: One commenter believed that the State should be required to conduct an orientation session for people on the list of qualified temporary managers. That session would cover topics such as situations warranting the appointment of a temporary manager, and the responsibilities and authority of a temporary manager.

Response: We agree that a temporary manager would not be able to do his or her job effectively without being oriented to the task, and will direct the State survey agencies in our State Operations Manual to provide an orientation, the form of which shall be determined by them.

Comment: Many commenters requested that we impose an enforceable limit on the salary of the temporary manager, and a large number of those recommended that we use the prevailing salary limit set forth in the preamble to the NPRM. Other commenters proposed that we require compensation for the temporary manager to be set at a rate sufficient to attract people with the necessary qualifications, and they recommended that we not limit the salary of the temporary manager to the rate mentioned in the preamble. These commenters were concerned that it would be unlikely to draw the expertise needed.

A few commenters requested that we identify who will determine the salary of the temporary manager, and certain of those asked whether it will be negotiable. Another commenter asked if the facility will be obligated to provide benefits to the temporary manager.

Response: After reviewing the comments we received, we have concluded that the salary limit put forth in the preamble to the proposed rule would not be in the best interests of facilities or their residents because it would make it difficult to attract qualified temporary managers. The temporary managers that are available are sometimes located long distances from the facilities which need them, and unless the salary offered is sufficiently attractive, it will not induce individuals to temporarily upset their normal routines and accept the challenge of managing a severely deficient facility. If temporary managers cannot be secured, we will have no choice but to proceed with termination. In order to avoid this result and promote the use of temporary management as an alternative remedy, we will give facilities the flexibility to exceed the salary floor specified below if the State is otherwise unable to attract a qualified temporary manager and the facility considers a higher payment preferable to termination. The salary of the temporary manager must be at least equivalent to the prevailing salary paid by providers in the facility's geographic area for positions of this type, plus the prevailing cost of certain additional allowances. The additional allowances will include costs that would have reasonably been incurred by the provider if the temporary manager had been in an employment relationship, such as the cost of a benefits package, prorated for the amount of time the temporary manager is working in the facility. The facility will also be

responsible for any other costs incurred by the temporary manager in furnishing services under such an arrangement or as otherwise set by the State.

Because the State is in a better position than HCFA to determine the prevailing salary and other employment related costs of a nursing home administrator within what the State considers to be the facility's geographic area, it will be responsible for setting the salary/benefits floor of the temporary manager and for determining whether or not it is necessary to exceed it. The State may consult with a provider while it determines the appropriate salary, but we will not require that the salary of the temporary manager be negotiable.

Comment: One commenter asked what would happen if a facility agreed to temporary management, but then failed to pay the salary.

Response: We are considering requiring that facilities pay the salary of the temporary manager before the remedy begins, which would eliminate the need for a recoupment strategy. Until a decision is made, the mechanism that is currently used to recover Medicare and Medicaid funds from facilities which have been overpaid will be used to collect money from any facilities that owe the salary of the temporary manager. The amount owed would be withheld from future amounts due to the facility from HCFA or the State. Because Medicare and Medicaid payments may continue for up to 30 days after termination, salaries may be recouped even when they are owed by terminated facilities.

Comment: A large number of commenters disagreed with the provision that the temporary manager's salary be paid by the facility. A few commenters stated that the money spent on temporary management would be better spent by the facility on its own improvements. Certain commenters complained that a lack of sufficient funds is often what leads to noncompliance, and so they were concerned that this remedy would be worthless without additional funding. A number of commenters argued that a facility's inability to pay for temporary management should not preclude its use as a remedy.

Many commenters recommended that the temporary manager's salary be paid out of a fund composed of civil money penalties collected by the State, and certain commenters cited 42 U.S.C. 1396r(h)(2)(A)(ii) (section 1919(h)(2)(A)(ii) of the Act) as establishing the authority to do so. Other commenters believed that States should be required to use funds collected through imposition of civil money penalties to cover the costs of correcting deficiencies incurred by the temporary manager, but only if the facility cannot afford to pay these costs itself. Certain commenters believed that the facility and its operators should be liable to the fund for reimbursement of expenses. One commenter recommended that the States should be authorized to impose liens on the facility and other assets of the corporate entity until the facility reimburses the fund. Another commenter believed that the States should be charged with the duty of using all available collection methods afforded by law to recoup expenditures from the fund.

One commenter noted that 42 U.S.C. 1396r(h)(2)(E) (section 1919(h)(2)(e) of the Act) provides that temporary management costs are legitimately payable administrative expenses of the State. Therefore, this commenter and others believed that the temporary manager's salary and the costs that he or she incurs while managing the facility should be borne by the State and reimbursed under the State's Medicaid reimbursement system.

Other commenters were in favor of obligating facilities to bear the cost of temporary management, and several asked that we state that the cost of temporary management is not an allowable expense for Medicare or Medicaid reimbursement. One commenter recommended that the salary payment be funded by the facility but routed to the State which would deliver the payment to the temporary manager. The commenter was concerned that direct facility payment would undermine the objectivity of the temporary manager.

Response: We will continue to require that facilities pay the salary of the temporary manager, and we will not deem this cost to be an allowable expense for Medicare or Medicaid reimbursement. We believe that to do otherwise would undermine our enforcement efforts to motivate corrective action and encourage sustained substantial compliance. If we relieved facilities of their responsibility for bearing the costs of correcting serious deficiencies, we would be providing them with a clear disincentive to remain in substantial compliance. We also believe that providing the services of a temporary manager without charging for them would be an inappropriate response to a facility's failure to meet the responsibility it assumed upon entering the Medicare and/or Medicaid programs to meet participation requirements. A noncompliant facility must be held accountable for breaches of responsibility; therefore, it (and not HCFA or the State) should bear the cost of the temporary management it has incurred.

Because responsibility for paying for the cost of the temporary management is one condition of the remedy, a facility's unwillingness to pay will be considered a failure to relinquish control to the temporary manager, and will cause the facility to be subject to the possibility of termination instead. A facility's inability to pay for the cost of the temporary management will have the same result. A provision has been added at paragraph (c)(4) to indicate this. The conspicuous absence of consideration of a facility's financial condition as a statutory criterion for imposing temporary management (as opposed to its inclusion as a criterion for determining the amount of a civil money penalty) implies that the Congress did not intend for it to be a factor in imposition of the remedy. Consequently, we are also compelled to proceed with action to terminate those facilities that are unable to assume the cost of the temporary management.

We do not believe that our position conflicts with the statutory references cited by certain commenters. Section 1919(h)(2)(A)(ii) of the Act states that funds collected by a State as a result of imposition of civil money penalties shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including maintenance of operation of a facility pending correction of deficiencies or closure. A temporary manager does not maintain operation of a facility. Rather, it is the facility ownership that is responsible for sustaining facility operations. If the State assumes control of a facility after it has been abandoned by its ownership, then it would be appropriate for the State to use civil money penalty funds to pay the expenses of maintaining the abandoned facility.

We also believe that commenters misinterpreted the provision of the Act found at section 1919(h)(2)(E). This section states that the reasonable expenditures of a State to provide for temporary management shall be considered for Federal payment purposes to be necessary for the proper and efficient administration of the State plan. We believe this refers to the resources necessary to locate, orient, guide, and monitor the temporary manager, and does not include the cost of the temporary manager's service itself. When a facility pays for the temporary manager, we believe that it

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would be unnecessarily circuitous to route the salary payment to the State before delivering it to the temporary manager, and disagree that direct payment would compromise the temporary manager's objectivity. A facility would not be able to use the temporary manager's salary as leverage to influence his or her actions because a facility could not effectively keep the salary from the temporary manager. The temporary manager would be paid even if the facility attempted to withhold his or her salary because HCFA or the State could recoup the amount owed to the temporary manager from payments later made to the facility. Therefore, we are requiring that the facility pay the salary of the temporary manager directly, and are modifying the provision at § 488.415(c) to reflect this.

Comment: A large number of commenters believed that facilities should not be given the opportunity to refuse temporary management. Commenters were concerned that facilities would reject temporary management if given the choice, thereby subjecting residents to continued substandard quality of care, promoting facility terminations, and exposing residents to relocation trauma.

Commenters proposed various ways for HCFA and the State to obviate facility consent when appointing a temporary manager. One suggestion was that we appoint the temporary manager subject to court order. Another recommendation was that we administratively appoint the temporary manager in accordance with the State's police power. Additional commenters proposed that we set limits on the duration of the temporary management (for example, restricting the appointment to two weeks), the circumstances under which the manager would be appointed, and the funds that the manager could spend in order to make the administrative appointment binding.

Other commenters proposed not only that facilities be required to accept temporary management, but that HCFA and the State be required to impose temporary management in immediate jeopardy situations without a choice between it and termination.

Response: We agree that facilities should not be offered a formal choice of whether to accept or reject temporary management because we believe that more facilities will exercise the right to refuse if it is explicitly offered. Therefore, once HCFA or the State has determined that temporary management is the optimal enforcement response, we will expect the facility to accept it, and we will proceed with the appointment of the temporary manager without requesting facility consent to do so. However, facilities will have the right to refuse to relinquish control to the temporary manager since the administrative process precludes us from forcing providers to relinquish control. A facility's refusal will initiate termination. While we realize that, in effect, the right of refusing to relinquish control to the temporary manager is tantamount to the prerogative of rejecting temporary management, we believe that the new arrangement will encourage the use of the remedy. We are amending §§ 488.410, 488.415, and § 488.456 to delete references to a facility's choice of accepting or rejecting the remedy.

We cannot force a facility to relinquish control to a temporary manager because, ultimately, participation in the Medicare or Medicaid program is voluntary under the Act, and we have no authority to compel a facility to stay in the program should it, for its own reasons, choose to withdraw. We will not seek judicial action to impose temporary management because the Act does not require that judicial intervention be a prerequisite for imposing this remedy.

We do not believe it is appropriate to rest appointment of temporary managers upon the State's police power as described in State law. First, the Act does not suggest that this be the case. Second, this remedy is one imposed under the Act, not State law. Ultimate authority for this remedy lies, accordingly, in the Medicare and Medicaid laws and ought not look to State law without some indication by the Congress that it expected this to be the case.

A facility's refusal to relinquish control to the temporary manager will cause HCFA or the State to proceed with action to terminate the facility's program participation. We share commenter concern about the protection of the health and safety of residents when termination proceedings have been initiated. Consequently, we will allow a State monitor to be imposed at all facilities that have failed to relinquish control to a temporary manager in cases of immediate jeopardy, and also at those facilities for which no temporary manager could be located. The monitor will notify HCFA or the State when the absence of temporary management subjects residents to substantial risks, and HCFA and the State may then opt to take additional enforcement action.

We note that the Act does not require that temporary management be imposed when there is immediate jeopardy. Sections 1819(h)(2)(A)(i), 1919(h)(1)(A), and 1919(h)(5) of the Act give HCFA and the State the option of using temporary management and/or termination to respond to a situation that immediately jeopardizes the health or safety of residents. In certain cases, facility shortcomings may be so severe and the likelihood of a temporary manager being able to successfully remove them so small, that HCFA or the State may decide that resident interests would be better served by terminating the facility and relocating the residents than by continuing to subject the residents to substandard conditions that are unlikely to improve. Because we believe there are situations where termination is more appropriate than temporary management, we do not accept the suggestion that HCFA and the State be required to impose a temporary manager in lieu of termination in cases of immediate jeopardy.

Comment: Numerous commenters requested that we restructure the relationship between the facility and the temporary manager. Certain commenters believed that the temporary manager should act in a consultant capacity, and not as a replacement for the facility administrator. Others felt that the temporary manager should work under the control of the facility's governing body, and that we should require the temporary manager to consult with the governing body when developing the plan of correction. Another commenter favored giving the temporary manager legal but not financial control of the facility.

Many other limitations on the temporary manager's authority were proposed. A number of commenters believed that the temporary manager should not be able to make employment decisions, and they recommended that we require the temporary manager to obtain approval from HCFA, the State, or the facility's governing body before hiring or firing facility employees. Other commenters proposed that there be limits on the expenditures the temporary manager can make in order to correct deficiencies, and they suggested that the regulation require that the temporary manager obtain the consent of the provider to spend beyond those limits. Another group of commenters requested that we limit the time period for which the temporary manager may legally commit or obligate the facility, and asked that we require the temporary manager to seek facility approval before entering into long term contracts. A few commenters recommended that facility ownership be able to appeal to the State to stay the actions of the temporary manager, and another requested that the

facility have the right to object to the temporary manager's business practices.

Response: Sections 1819(h)(2)(B)(iii) and 1919(h)(2)(A)(iii) of the Act specifically provide that the temporary manager is to oversee the operation of the facility and assure the health and safety of the facility's residents while improvements are made to bring the facility into compliance. Further, once the facility relinquishes authority to the temporary manager, the Act prohibits the removal of the temporary manager until the Secretary or the State has determined that the facility has the management capability to ensure continued compliance, assuming that the Secretary or State does not decide to terminate the facility before that time. We believe that implicit in the reason that the Act authorizes temporary management is the assumption that the facility's management staff lacks the capability to bring the facility into compliance. Therefore, the temporary manager needs to have the authority to completely manage the entire facility with enough autonomy to remove any immediate jeopardy and/or correct deficiencies. Imposing the limits proposed by commenters would handicap the ability of the temporary manager to make the necessary corrections, and thus jeopardize the successful completion of the temporary manager's mission.

We believe that requiring that the governing body of the facility be allowed to become involved in the decision making process after it has demonstrated that its management skills are deficient would defeat the purpose of the remedy. The temporary manager may find it useful to consult with facility officials, but the extent to which the temporary manager interacts with the facility's management is at his or her discretion. This does not mean that we will deny the facility the opportunity to object to the actions of the temporary manager, or that we will force the facility to submit to the temporary manager's reform agenda against its will. At any time the governing body of the facility is not in agreement with the decisions or actions of the temporary manager, it may advise the owner or corporate official with appropriate authority to refuse to continue with the remedy. Such action would, of course, subject the facility to the possibility of termination instead.

Comment: Many commenters believed that facilities should have recourse to HCFA or the State to express concerns regarding the administrative competency of the temporary manager. One commenter was worried that providers would not have the opportunity to lodge a complaint about the temporary manager before his or her services ended.

Certain commenters proposed that HCFA and the State monitor the performance of the temporary manager and replace any manager whose performance is unsatisfactory. Another commenter asked that a provider be able to replace the temporary manager if the provider can demonstrate that the manager is incapable of correcting deficiencies or is jeopardizing or impairing the facility's continued operation.

Response: HCFA and the State survey agency will monitor the actions of the temporary manager, and we expect the facility to do the same. We encourage an open dialogue with providers and invite them to communicate to HCFA or the State on an ongoing basis any concerns that they have with the decisions of the temporary manager. If HCFA or the State is dissatisfied with the performance of the temporary manager, we may respond by providing the temporary manager with remedial guidance or by replacing him or her with an alternate. However, if these actions are not possible or prove unsuccessful, we will have no choice but to remove the temporary manager and proceed with termination of the facility's provider agreement. The most appropriate and practical response will vary, and it will depend upon factors such as the availability of an alternate or the amount of time remaining in the 23 days after the last day of the survey allotted for removal of the immediate jeopardy when the temporary manager is imposed in an immediate jeopardy situation.

Comment: One commenter asked that providers be allowed a time period to demonstrate an ability to correct deficiencies if, because of a temporary manager's incompetence, deficiencies have not been corrected timely.

Response: A temporary manager's failure to correct facility deficiencies does not absolve a facility of its responsibility for generating corrections to those deficiencies, and if deficiencies are not corrected or the immediate jeopardy is not removed timely, the facility will be terminated. HCFA and the State are not required to provide facilities with additional time to come back into substantial compliance, but we are obligated to ensure that Medicare beneficiaries and Medicaid recipients receive the quality care to which they are entitled.

Comment: Many commenters requested that we clarify the fiduciary responsibility of the temporary manager. One commenter asked that we designate the temporary manager as a fiduciary of the facility, and stated that by doing so we would empower the facility to protect its interests through established legal principles governing the relationship of fiduciaries to their charges. Other commenters believed we should stipulate that the temporary manager has a responsibility to maintain confidentiality of facility information, and obligations to act in the facility's best interests and ensure that the facility's financial resources are properly managed while he or she works to bring the facility into compliance. Additional commenters asked that we require the temporary manager to conduct himself or herself in a professional manner and to act in a manner reasonably calculated to correct deficiencies and protect the facility's residents.

Response: The temporary manager has a responsibility to further the enforcement efforts of HCFA or the State in an effort to protect the facility's residents, and not a duty to serve the facility. HCFA or the State commissions the temporary manager to correct deficiencies identified in the facility's operation, and we expect the temporary manager to exercise sound financial judgment and discretion while executing his or her duty. Likewise, we assume that the temporary manager will conduct himself or herself in a professional manner and act in the facility's best interests. However, we will not explicitly require these standards in the regulation. These terms could not be meaningfully defined because appropriate definitions for them would vary with the circumstances of each temporary management assignment.

Comment: A great number of commenters asked that the temporary manager be held liable to the owner or governing body of a facility for gross negligence, intentional acts and omissions, unexplained shortfalls in facility funds, and breaches of fiduciary duty. Certain commenters proposed that HCFA, the State, or the temporary manager be required to secure a bond before overseeing operation of a facility, and others requested that HCFA or the State indemnify the facility for harmful consequences arising from the temporary manager's actions or omissions. Another felt that HCFA or the State should be identified as the temporary manager's employer for liability purposes.

Response: We expect facilities to monitor the performance of the temporary manager, and if they have any apprehensions about his or her performance, they may have the remedy

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discontinued. Neither HCFA nor the State can force a facility to relinquish control to the temporary manager. Because it is the facility that decides to continue to yield to the temporary manager, neither HCFA nor the State will assume liability for the facility's decision. However, the facility does have the right to seek from the temporary manager any redress available under State laws relating to liability and fiduciary responsibilities.

Comment: A few commenters asked whether the temporary manager will have a contract.

Response: All of the actions needed to remove immediate jeopardy and correct deficiencies at a facility may not be readily apparent at the outset of the temporary management; therefore, it would be imprudent to delineate the specific duties and authorities of the temporary manager in contract form. The temporary manager must have the autonomy to take whatever steps are necessary to bring the facility into substantial compliance and ensure resident health and safety. Shortsighted contract provisions could prove restrictive and thus impede the temporary manager's progress.

Comment: One commenter was concerned about the effect that the appointment of a temporary manager would have on a facility's liability insurance rates.

Response: It would be more appropriate for a facility's insurer to address this issue. Should a facility find that the imposition of a temporary manager will cause the cost of its liability insurance to rise, this increase would be one of the factors that the facility would have to consider when evaluating the benefits and costs of relinquishing control to a temporary manager.

Comment: One commenter asked that the temporary manager be authorized to not honor pre-existing leases, mortgages or contracts if their costs are excessive or if the contracts are otherwise unconscionable.

Response: The temporary manager does not have the authority to selectively meet the financial obligations of the nursing home. That is, the temporary manager can not choose to pay some bills and not others, because he or she disagrees with the wisdom of the permanent facility management having assumed those financial obligations previously. It is the temporary manager's role to manage all aspects of the facility's operation, including its finances.

Comment: One commenter believed that it would be problematic to bring temporary managers into county facilities because those facilities are subject to many restraints on hiring and the expenditure of funds set by county commissioners. Other commenters were concerned about whether the temporary manager would respect a facility's union agreements and contracts.

Response: We recognize that a temporary manager in a public facility may be constrained in ways that he or she would not be in other facilities. We expect the temporary manager to work within any limitations under which the facility operates and to abide by union agreements and contracts. (See above response.)

Comment: One commenter asked whether HCFA or the State would sanction a temporary manager who fails to rectify an immediate jeopardy situation within 23 days.

Response: A failure to rectify an immediate jeopardy situation may be more indicative of the magnitude of a facility's deficiencies than the competency of the temporary manager, and neither HCFA nor the State will penalize automatically a temporary manager when his or her efforts failed to remove the immediate jeopardy. However, if HCFA or the State believes that the temporary manager was deficient in his or her duty, then that individual may be penalized to the extent that he or she is excluded from consideration for future temporary management assignments.

Comment: Several commenters asked that we limit the duration of the temporary management. Many recommended that the temporary manager be discontinued when the immediate jeopardy is removed or when compliance with the requirements that triggered the temporary management is achieved.

Response: Temporary management will be removed when the facility is terminated, or when HCFA or the State has determined that the facility is in substantial compliance and has the management capability to sustain substantial compliance. The temporary management might end when the immediate jeopardy has been removed and deficiencies have been corrected, but it would not have to. It would be premature to discontinue the temporary management before HCFA or the State is confident that the facility will not relapse into noncompliance. Effective enforcement involves promoting sustained substantial compliance, and we are revising § 488.454, "Duration of remedies" to reflect this.

Comment: One commenter recommended that HCFA or the State be able to continue special actions taken by the temporary manager which are necessary to protect resident health, welfare or safety. Facility management would request termination of the special conditions once it could show that they are no longer necessary. The commenter believed that this policy would ensure that the facility doesn't deteriorate when the temporary management ends.

Response: Neither HCFA nor the State will discontinue temporary management and restore control of a facility to its own management unless it is convinced that the facility is capable of and committed to sustaining substantial compliance. We do not believe an additional regulatory provision is necessary to ensure this result.

Comment: Several commenters were opposed to the use of temporary management, and proposed alternatives to it. One commenter suggested that, instead of using temporary management in immediate jeopardy cases, HCFA require the non-compliant homes to hire consultants approved by HCFA to correct deficiencies. Another commenter proposed that HCFA itself create and train teams to act in an advisory capacity. A few commenters asked that temporary management be eliminated and replaced by State monitoring. Another commenter requested that we allow facilities to devise their own plans of correction to remove immediate jeopardy and have the State agency monitor implementation instead of imposing temporary management.

Response: Temporary management is authorized by sections 1819(h)(2)(B)(iii), 1919(h)(2)(A)(iii), and 1919(h)(3)(C)(iii) of the Act, and HCFA and the States are required to establish and implement it: we may not exclude it as an enforcement option. Sections 1819(h)(2)(A)(i), 1919(h)(1)(A), and 1919(h)(5) of the Act specifically require that temporary management be used in immediate jeopardy situations when provider agreement termination is not sought.

The Act provides that the temporary manager is to oversee the operation of a facility and assure the health and safety of the facility's residents while improvements are made to bring the facility into compliance. Therefore, we conclude that the Act intends the temporary manager's role to be more than that of just a monitor of the progress made by the facility or a consultant to management, and we believe that inherent in the Act's rationale for establishing temporary management is the assumption that the facility's management staff lacks the capability to bring the facility into compliance. It would be insufficient to substitute the use of a consultant or monitor for the appointment of a temporary manager, because a consultant or monitor would not have the authority to completely manage the entire facility as a temporary manager does. Only a temporary manager has a role active enough to substitute for the facility management, whose deficient skills or practices would impede correction of deficiencies and protection of the residents' health or safety.

Comment: One commenter wondered how availability of temporary managers would affect the use of this remedy.

Response: In cases of immediate jeopardy, if a temporary manager cannot be located within 10 days of the last day of the survey, HCFA or the State is required to proceed with action to terminate the facility's program participation in order to protect the health or safety of the residents. To safeguard residents when this takes place, we will allow a State monitor to be imposed who will notify HCFA or the State if residents are being subjected to substantial risks and need to be transferred from the facility. If a temporary manager cannot be located for a situation which does not immediately jeopardize the health or safety of the residents, HCFA or the State has the flexibility to impose another type of remedy which it believes will best motivate the facility to achieve substantial compliance. However, if temporary management is the most logical alternative remedy, and a temporary manager cannot be located, HCFA or the State has the authority to terminate the provider agreement. We do not believe that the imposition of temporary management in lieu of termination is a provider right. Rather, it is an accommodation to the provider if, in the judgment of HCFA or the State, it will lead to substantial compliance and there are competent temporary managers available in the given geographic area.

Comment: A few commenters requested that States be able to appoint a trustee or a receiver in lieu of a temporary manager if they have State laws that provide for these enforcement actions.

Response: Many States have developed laws in accordance with State licensure authority that provide for sanctions similar to temporary management. The States use these sanctions, such as receivership and trusteeship, to enforce compliance with State licensure requirements. Section 1919(h)(2)(B)(ii) of the Act also gives the State the authority to use these measures when enforcing compliance with Federal Medicaid participation requirements, if the State can demonstrate to HCFA's satisfaction through a State plan amendment that trusteeship or receivership is as effective in deterring noncompliance and correcting deficiencies as the remedy of temporary management. Therefore, if HCFA approves the State plan amendment establishing trusteeship or receivership as a remedy, a trustee or receiver may be used by a State as an acceptable alternative to a temporary manager when the State takes the enforcement action. The State may use the alternative remedy both when a temporary manager is required in cases of immediate jeopardy, and when one is selected as the most appropriate enforcement response in non-jeopardy cases.

Comment: One commenter asked that we state the conditions under which temporary management will be imposed.

Response: Other than the provisions in the law requiring temporary management in situations that immediately jeopardize the health or safety of residents, specific criteria for imposing temporary management in other types of situations would be impossible to develop. The decision of HCFA or the State to impose a temporary manager will be based on the deficiencies found at the time of survey coupled with other factors that exist at the facility at that particular point in time. For example, a facility might identify a deficiency before the State survey agency does and attempt to correct it. Although we could not dismiss the facility's failure to prevent the deficiency, neither would we ignore the administrative competence that the facility demonstrated by identifying and attempting to address the deficiency on its own initiative. We would consider both factors when selecting the appropriate remedy.

Section 488.417 Denial of Payment for All New Admissions

Upon our review of comments and evaluation of the underlying statute, we noted that we did not make it clear in the proposed rule that the authority of the Secretary to deny payment to a facility is limited to Medicare facilities. In the case of Medicaid facilities, the State may deny payment to the facility and HCFA may deny payment to the State for all Medicaid residents in the facility. A related issue is the question of who must be satisfied that a facility has achieved and will remain in substantial compliance after the facility has been cited for repeated instances of substandard quality of care so that payments may resume. Section 1819(h)(2)(E) says that it is the Secretary for Medicare, and section 1919(h)(2)(D) says that it is the State for Medicaid.

Comment: One commenter said that this remedy should be imposed only in cases posing a hazard to the residents or in cases when their rights are compromised.

Response: We consider this remedy to be appropriate for both the cases in which we have designated it may be used and the cases in which we designate it must be used. We believe that it will be one of our most effective remedies because it will strongly motivate facilities to come into and remain in compliance.

Comment: Some commenters said that the denial of payment for certain diagnostic categories set forth at § 488.217(b) of the proposed rule would be ineffective, and lead to discrimination against individuals whose care may be more costly. This, they said, would be in violation of the Rehabilitation Act of 1974 and of the Americans with Disabilities Act of 1991.

Response: We believe that these arguments are convincing, and to prevent facilities from using the provision as a means to discriminate, we have deleted it in this final rule.

Comment: Many commenters said that this remedy as written is too broad and subject to too much interpretation, particularly with respect to the meaning of the terms "adequate care," "diagnostic categories," "certain specified diagnoses," "substandard quality of care," and "new admission." Some said that residents who go to the hospital, then directly back to the facility, should not be considered to be "new admissions."

Response: "Substandard quality of care" has been defined in § 488.301. "New admission" has been defined at § 488.401 and the definition already contained the statement that residents admitted before the effective date of the denial of payment and taking temporary leave are not considered new admissions, nor subject to the denial of payment. Since we have deleted the proposed § 488.417(b), no definitions for those terms need be provided. Finally, the term "adequate care" does not appear in the regulations text at § 488.417. When it appears elsewhere in this regulation, it has the ordinary dictionary meaning.

Comment: One facility offered criteria for imposing denial of payment for all new admissions based on a scope and severity scale of its own design, and suggested we say, at § 488.417, that denial of payment for all new admissions will be in effect only until the date the facility is certified to be in substantial compliance.

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Response: We received several suggestions for revising our scope and severity scales, and the enforcement scheme that we have established at § 488.408 ("Selection of remedies.") reflects some of these suggestions. Neither a denial of payment nor any other remedy will be imposed at a facility in substantial compliance, as defined at § 488.401. Once a denial of payment is imposed, it will be lifted when the facility achieves substantial compliance (and is capable of maintaining it, if necessary). This policy is set forth at paragraphs (c) and (d) of this section, as well as at § 488.454 Duration of remedies.

Comment: One commenter, in setting forth regulation text for proposed § 488.217, said that—

- Denial of payment should be imposed, not only for any deficiency which remains uncorrected within 90 calendar days after the last day of survey identifying the deficiency, but for any deficiency which remains substantially uncorrected within that time period as well;
- If the facility can supply documentation that substantial compliance was attained on a date preceding that of the revisit of the survey team, the denial of payment only remains in effect until the date that substantial compliance was actually reached;
- Denial of payment for all new admissions should last only until the facility has "substantially corrected" the deficiencies;
- Denial of payment should not take effect until either HCFA or the State has provided notice to the facility and the public of the impending action. Public notice shall be provided by publication in a newspaper of general circulation in the county where the facility is located; (Another commenter agreed that denial of payment should not take effect until notice has been provided, and also said that HCFA should set forth regulations requiring States to give notice to facilities before denying payment for all new admissions.); and
- When payments resume, this too should be announced to the public in the same way as the denial notice.

Response: We agree that denial of payment for all new admissions should last only until the facility is in substantial compliance. Because the final rule reflects the adoption of a substantial compliance standard, a denial of payment for new admissions, like other sanctions, will only be applied should a facility fail to meet that standard. Thus, under sections 1819(h)(2)(d) or 1919(h)(2)(C) of the Act, that facility must face a denial of payments for new admissions. Similarly, if, within 3 months of the survey that first identified deficiencies, the facility is successful in achieving substantial compliance, the denial of payments will be lifted as required by sections 1819(h)(3) and 1919(h)(4) of the Act. If the facility does not come into substantial compliance by 3 months after the last day of the survey, denial of payment will be imposed until substantial compliance is achieved or until the facility is terminated.

We also agree that, except in the case of the mandatory denial of payment for substandard quality of care identified in three consecutive standard surveys, if the facility can supply documentation acceptable to HCFA or the State survey agency that it was in substantial compliance, and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that HCFA or the State can verify as the date that substantial compliance was achieved. (This is further discussed in connection with a comment on § 488.454.) In the case of repeated substandard quality of care, the Act requires that the denial of payment (and State monitor) remain in place until the facility is in compliance and can demonstrate that it will remain in compliance.

We agree that facilities should receive notice of remedies before they are imposed. Notification requirements are found at § 488.402(f), and need not appear again at § 488.417. The commenter cited section 1919(h)(2)(A)(i) of the Act as rationale for HCFA promulgating regulations setting forth procedures for States to use in informing the general public about remedies. We do not agree that the Act requires HCFA to promulgate regulations regarding how States must go about notifying the general public.

Comment: Some commenters said that the remedy denial of payment for specific categories of residents to be used if the surveyor finds that the facility is not currently able to provide adequate care for these individuals, or determines that caring for such individuals would adversely affect care provided to other residents, was not one of the remedies provided in OBRA '87.

Response: We are deleting the provisions for denial of payment for specific categories of residents from this final rule because, as we stated at the beginning of this section, we believe that this remedy could lead to inequities.

Comment: A number of commenters expressed concern over whether survey agency revisits would be timely enough to ensure the prompt resumption of payments as soon as the facility corrects its deficiencies.

Response: We are revising this final rule to state that deficiencies are considered to be corrected when a survey team revisit confirms that they have been corrected, or when a facility provides evidence satisfactory to HCFA or the State survey agency, which can be verified without an on-site visit, that the deficiencies have been corrected before the revisit or before the credible evidence was submitted. In addition, sections 1819(h)(3) and 1919(h)(4) of the Act allow for lifting the denial of payment for new admissions when the facility achieves substantial compliance. (Please see the discussion regarding substantial compliance under the comments pertaining to § 488.454 in this final rule, Duration of remedies.)

Comment: Two commenters suggested that, instead of denying payment for all new Medicare and/or Medicaid admissions when warranted, we impose a ban on all new admissions to a facility, regardless of the source of payment. They said that if we use this remedy, we should pair it with a directed plan of correction requiring the facility to take steps to restore capacity to provide a full range of NF/SNF services.

Response: We cannot accept this suggestion since the Act does not give us the authority to regulate payments that may be made to facilities by private paying residents.

Comment: Three commenters suggested that we add to proposed § 488.217 (a)(2) and (b)(2) a sentence stating, "No retroactive payments will be made when a ban on all new admissions is lifted." The rationale is that, if facilities know they will receive payments later, they may admit those residents they choose and thus cover the short term cash flow problem. They say that this would lessen the effectiveness of the sanction.

Response: We agree in principle, and, for purposes of clarification, we are revising the suggested sentence to state, at § 488.417(e), that no retroactive payments will be made for any new admissions to the facility for the period between the date the remedy was imposed and the date that HCFA or the State determines that the facility achieved substantial compliance.

Comment: One commenter suggested that § 488.417(a)(1)(i) be revised to state that HCFA or the State may impose a denial of payment for new admissions if a deficiency remains uncorrected after 90 calendar days (as opposed to within) of the last day of survey identifying the deficiency. As worded in the proposed

rule, the mandatory sanction would have been imposed if a deficiency had existed at any time during the 90 days.

Response: We agree with the intent of the comment, and although we are no longer referring to 90 days but to 3 months as the Act does, we are making this revision. (Please note that the proposed § 488.217(a)(1)(i) is now redesignated as § 488.417(b)(1).)

Comment: One commenter suggested that HCFA deny payment for all new admissions after the second consecutive survey which documents that substandard care is being provided. The rationale is that this would be more in keeping with the purpose of remedies, that is, encouraging rapid compliance with the program requirements. Another commenter suggested that denial of payment for new admissions be a mandatory remedy when there are widespread substandard quality of care violations or when there is a pattern of substandard quality of care violations.

Response: While the Act, at section 1819(h)(2)(E) *requires* denial of payment for new admissions or for all Medicare residents, and, at 1919(h)(2)(D) *requires* that denial of payment for new admissions be imposed after the third consecutive standard survey that shows substandard quality of care, it *permits* the imposition of this sanction anytime that noncompliance is found.

Comment: One commenter said that provisions should be made for the protection of Medicare beneficiaries or Medicaid recipients, or both, admitted to a facility while the payment ban on new admissions is in effect. To protect such individuals, the commenter said, providers should be prohibited from seeking payment from residents or third parties for any care furnished during a period in which the providers were denied payment for new admissions.

Response: This provision is already in the Act at section 1866(a)(1)(A) for Medicare and at section 1919(c)(5)(A) for Medicaid. Additionally, 42 CFR 447.15 obligates providers to accept Medicaid payments as payment in full.

Comment: One commenter said that, in order for this remedy to be effective, the duration must be such that there is some assurance that compliance will be sustained.

Response: In the strictest sense, regardless of the nature of the deficiency, and regardless of the remedy imposed, there can be no guarantee that substantial compliance will continue once the survey team leaves. We can only impose reasonable sanctions and make periodic on-site inspections to ensure compliance. However, when HCFA or the State denies payment for instances of repeated substandard quality of care, we do, at paragraph (c) of this section, state that the sanction is not lifted until—

- The facility is in substantial compliance; and
- HCFA or the State survey agency believes that it will remain in substantial compliance.

Comment: One commenter suggested we amend this section to state that a denial of payment for all new admissions will take effect on the date the facility receives the notice of the remedy.

Response: Notification requirements are at § 488.402(f). Section 488.402(f)(1) states that, except when the State is taking the action for a non-State operated NF, HCFA gives the provider notice of the reasons for, and the effective date of, the remedy. Paragraph (f)(2) states that, for all remedies specified in § 488.406, the notice must be given at least 2 calendar days before the effective date of the remedy in immediate jeopardy situations, and at least 15 calendar days before the effective date in non-immediate jeopardy situations. We believe that this is equitable. Nursing homes are businesses, some of them very large businesses. They have payrolls to meet, suppliers to pay, buildings and equipment to maintain, and similar overhead. An "effective immediately" notice would not be reasonable.

Comment: One commenter said that § 488.417(a)(1)(i) is inconsistent with § 488.412(b)(3). Section 488.417 says, at paragraph (a)(1), that HCFA or the State may deny payment for new admissions, and, at (a)(1)(i), that HCFA will and the State must deny payment for new admissions if any deficiency remains uncorrected within 90 calendar days after the last day of survey identifying the deficiencies. (Since § 488.412(b)(3) bears no direct relationship to § 488.417(a)(1)(i) and § 488.412(a)(3) does, we believe that the commenter meant to cite the latter, which says that if any deficiency remains uncorrected within 90 calendar days after the last day of survey, HCFA will and the State must deny payment for new admissions.)

Response: While §§ 488.417(a)(1)(i) and 488.412(a)(3) overlap, they are not inconsistent because a certain amount of overlapping has been purposely written into this final rule for ease of reference on the part of those who will use it. As previously, noted, we have amended the regulations text to reflect a 3 month timeframe to comport with the Act.

Comment: One commenter asked if there was any difference between "all new admissions" in § 488.417(a) and "new admissions" in § 488.417(a)(1).

Response: There is no difference. We are revising the regulations text to conform to the section's title.

Comment: Some general comments we received on the provisions in this section of the proposed rule were as follows:

- They are unjustifiably severe;
- Providers can not comply with them in all cases because some deficiencies take more than 90 days to correct; and
- They are unnecessary.

Response: At HCFA's request, the Institute of Medicine (IoM), which is part of the National Academy of Sciences, conducted a study of the policies and regulations governing the certification of nursing homes participating in Medicare and Medicaid. Its report, issued in March 1986, cited the urgent need for enacting statutory provisions extending the remedies available to HCFA and the States in enforcing compliance with nursing home regulations. A General Accounting Office (GAO) study ("Medicare and Medicaid: Stronger Enforcement of Nursing Home Requirements Needed" (July 1987)) also concluded that penalties short of decertification of nursing homes are needed to deter noncompliance. HCFA's operating experience also bears this out. Traditionally, if facilities were unable to correct deficiencies within 90 days of the survey date, their provider agreements would have been terminated by the 90th day. We, along with the IoM, GAO, and the Congress believe that these regulations are necessary, are not unduly harsh or severe, and that it is possible for providers to comply with them. Furthermore, the denial of payment for new admissions is not only authorized by the Act, but required by the Act in certain circumstances, such as when noncompliance remains after 3 months or when substandard quality of care has been cited in three consecutive standard surveys.

Section 488.418 Secretarial Authority to Deny All Payment

Upon our review of comments and evaluation of the underlying Act, we noted that we did not include a section in the proposed rule explicitly stating the Secretary's authority to deny all payment to a facility. Under section 1819(h)(2)(B) of the Act, if a facility has not met a requirement, the Secretary may deny payment for all Medicare residents. Under section 1819(h)(2)(E), the Secretary is required to deny payment for all current Medicare residents or for all Medicare new admissions if a SNF, on three consecutive standard surveys has been

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found to have provided substandard quality of care.

Under section 1919(h)(3)(C)(i) of the Act, the Secretary may deny payments for all current Medicaid residents but this denial authority is exercised against the State, not the facility. Only with respect to State-operated facilities may the Secretary take action directly against a facility because section 1919(h)(3)(A) expressly provides such authority.

We are adding new § 488.418 to make explicit this authority. We provide that, if a facility has not met a requirement, in addition to the authority to deny payment for all new admissions as set forth at § 488.417(a), HCFA has the authority to deny any further payment to the facility for all Medicare residents and to deny further payment to the State for all Medicaid residents.

Under paragraph (b) of new § 488.418, if the facility achieves substantial compliance, HCFA resumes payment to the facility or the State prospectively from the date that it verifies as the date that substantial compliance has been achieved, except as provided in paragraphs (c), (d), and (e) of this section.

If payments to the facility or the State resume, no payments will be made for the period between the date the remedy was imposed and the date that HCFA verifies as the date that substantial compliance was achieved. This is the case with both denial of payment for all new admissions as well as with denial of payment for those already residing in the facility.

Should HCFA or the State find that the facility was in substantial compliance before the date of the revisit, or before HCFA or the survey agency receives the credible evidence of such compliance, the remedy must be lifted as of the date that substantial compliance was achieved, as determined by HCFA. The exceptions to this rule occur when the denial of payment remedy is imposed for repeat instances of substandard quality of care. The remedy is not lifted until substantial compliance is achieved and HCFA believes that the facility will remain in substantial compliance.

Section 488.422 State Monitoring

Comment: Some commenters expressed concern that the Act did not provide for State monitoring.

Response: We disagree. The statutory authority for State monitoring is implicit for cases of repeated noncompliance (see sections 1819(h)(2)(E)(ii) and 1919(h)(2)(D)(ii) of the Act with cross references to sections 1819(g)(4)(B) and 1919(g)(4)(B) of the Act for Medicare and Medicaid respectively).

Comment: Some commenters asked in what instances the remedy of State monitoring is to be applied.

Response: The Act requires State monitoring in cases of repeated noncompliance. That is, if a facility, on three consecutive standard surveys conducted under sections 1819(g)(2) and 1919(g)(2) of the Act has been found to have provided substandard quality of care, State monitoring is to be imposed. Otherwise, State monitoring may be considered as an optional remedy.

Comment: Several commenters raised questions as to how funding for State monitors would be met. Some suggested that costs for monitoring be borne by the facility and not be an allowable cost for reimbursement.

Response: We believe the costs of State monitoring should be part of the survey and certification process and, therefore, should be considered by the State survey agency in planning its annual Medicare and Medicaid workload. The budgeted amounts for these activities are approved by HCFA as part of the annual survey and certification budget process.

Comment: A few commenters suggested that we prescribe the role of the State monitor in the final rule.

Response: We do not wish to prescribe the role of the State monitor; however, we have clarified language in the final rule describing in general terms the purpose of the State monitor. The State monitor oversees the correction of cited deficiencies and ensures that residents are protected from harm. Any more specific description of State monitor roles and responsibilities will be addressed in manual instructions to the State survey agency.

Comment: Some commenters expressed concerns regarding the length of time State monitoring would continue. Several commenters suggested that the State survey agency retain the ability to monitor ongoing conditions in the facility until the State survey agency or HCFA determines the serious condition(s) have been corrected.

Response: We agree with the commenters. State monitoring remains in place at least until HCFA or the State survey agency determines that the provider is in substantial compliance with the requirements of participation. In the case of State monitoring imposed for repeated substandard quality of care, the sanction will stay in place until the facility has demonstrated to the Secretary or the State survey agency that it will stay in substantial compliance. At this time, any serious deficiencies must have been corrected to the point where the facility is in substantial compliance.

Comment: We received several comments suggesting we write qualifications for a State monitor in the final rule.

Response: Because of the broad spectrum of situations in which State monitoring might be used, we choose not to expand the current language in § 488.422(a).

Comment: Some commenters suggested we mandate State monitoring be used whenever a facility is undergoing termination or closure.

Response: While we agree with commenters that installing a State monitor would be appropriate in a termination or closure situation, we will not require the States to use this remedy in all such cases.

Section 488.421 Directed Plans of Correction

Comment: Some commenters wanted us to define a directed PoC as a facility-initiated PoC which the State or HCFA orders the facility to implement. Commenters reasoned that making this change would allow States to use directed PoC more efficiently and effectively since facilities' governing bodies will generally be more capable of drafting viable plans of correction based upon knowledge of facility resources. One commenter wanted to amend proposed § 488.224 to read as follows: "HCFA, or the State (or the temporary manager with HCFA or State approval) has the responsibility to develop a plan of correction * * *". Another commenter believed that when the State or HCFA orders (or directs) a facility to comply with the directed PoC, the State or HCFA have more authority to require the facility to revise any aspect of the PoC which is not acceptable. The commenter further suggested that the imposition of a governmentally created PoC on a facility raises questions of the government's and the facility's respective liabilities if the plan does not correct the deficiencies.

Response: Defining a directed PoC as a facility-initiated plan which HCFA or the State orders or directs a facility to implement would be virtually identical to the way we have always defined a traditional PoC. The traditional PoC is a requirement when any deficiency is cited, except for isolated deficiencies where no actual harm has occurred and there may be potential for minimal harm. The exception to this is if a directed PoC is used as a remedy. The directed PoC can be used by itself for deficiencies which cause no actual harm. We also disagree that a PoC developed by the facility would give the State survey agency or HCFA any more authority than one developed by the State survey agency, HCFA, or a temporary manager. We do not believe that to say "HCFA * * * has the responsibility" adds anything to the meaning of this section. Although it may be true that the facility's governing body may be more familiar with a facility's resources, developing a directed PoC does not rest solely on this knowledge. For the reasons stated above, we are not accepting these suggestions.

With respect to the commenter's point that a governmentally-initiated PoC could raise a question about the State's or HCFA's liability if the directed PoC does not correct deficiencies, we do not guarantee that any remedy will necessarily result in facility compliance. The directed PoC, as well as other remedies prescribed, are developed and recommended based on the professional judgment of State or HCFA staff and their consideration of which remedy(ies) would promote prompt achievement of compliance. If a remedy does not result in a facility achieving compliance, another remedy may be imposed to safeguard the health or safety of nursing home residents. This other remedy could be an additional remedy from the same category, or, if the deficiencies have been exacerbated, a remedy or remedies from a higher category, including termination. However, HCFA and the State will usually impose alternative remedies prior to terminating a facility.

Comment: Other commenters wanted us to amend § 488.424 to specify situations where a directed PoC would be mandatory. These commenters asked that a directed PoC be used when the following deficiencies are identified.

- Violations of admission requirements;
- Violations of Sarrasat requirements concerning notice of Medicare coverage and rights to demand billing;
- Violations of transfer prohibitions and bed hold requirements;
- All cases of violations of individual rights; and
- Care problems of specific, identifiable individuals.

Commenters further suggested that the directed plans of correction must be developed by qualified health care professionals in consultation with the State survey agency.

Response: We are rejecting this suggestion for several reasons. Mandating a directed PoC for certain deficiencies would limit HCFA or the State's choice of remedies and would run counter to the thrust of the Act which encourages the flexible application of enforcement options. Also, requiring a remedy for specific deficiencies would be inconsistent with the requirements associated with other remedies. We also do not want to prescribe in regulations which staff people must develop the directed PoC, but opt to give HCFA or State the flexibility to decide who will carry out this function. We expect that the State survey agency would develop the directed PoC, but the State would be responsible for officially notifying the facility of the remedy. However, in manual instructions, we will provide guidance in this regard by including examples of deficiency situations and corresponding directed PoCs which are appropriate in terms of content and the staff person responsible for development.

Comment: One commenter urged HCFA to require that directed PoCs include specific corrective action to protect individual residents who suffered harm when those residents are clearly identifiable. Another commenter wanted the rule amended to provide that all PoCs are to make an injured resident or residents "whole," whenever possible, and that the facility be required to take specific steps to ensure future compliance. The commenters offered, as an example, a facility which improperly denies a resident his or her bed hold rights. The commenters believed that in this example the directed PoC must require that the facility honor the resident's statutory right to return to the next available bed. Commenters feared that without such a requirement, the directed PoC will be nothing more than a facility's promise not to do it again.

Response: Requiring in regulation that a facility make a resident whole whenever a resident has been injured or has been deprived of his or her rights would be virtually impossible. In many instances where irreparable harm has occurred this would be an unattainable goal. Although HCFA and the State survey agency consider the unique circumstances of a facility and the results on residents when developing a directed PoC, any PoC is based on prospective compliance. The principle behind a PoC is to ensure that the underlying cause of cited deficiencies does not recur. The purpose of the PoC is not, however, a checklist of past violations which must retroactively be corrected. In the example cited, if a facility denied a resident a bed through improper application of a bed hold policy, the resident would probably have to be admitted to another facility. Prescribing in the directed PoC that the resident would be eligible to be readmitted to the facility when the next bed became available would be pointless since he or she, being unable to wait, would probably already be placed in another home. We have not accepted this comment to mandate that the directed PoC include resident specific reparations.

Comment: One commenter recommended the use of a directed PoC for substandard quality of care findings with a scope of 3 or 4 and for repeat substandard quality of care findings at a scope of 1 or 2 and for all other repeated violations.

Response: We are not accepting this suggestion. Based on numerous public comments, we have reconfigured the scope and severity grid without numerical values, and are offering it in this preamble as one example of how a State could determine what remedies to impose in noncompliant facilities. Additionally, we have developed recommended categories of remedies for ranges of deficiencies. The directed PoC is a remedy which can be used for any deficiency and may be the only remedy used for lower level deficiencies. We do not intend to require a directed PoC for substandard quality of care findings but rather leave that option to the enforcing entity. Nor do we mandate the use of directed PoCs for repeat deficiencies. The law provides for denial of payment, State monitoring, and increased civil money penalties in certain cases of repeated noncompliance and those are the only enforcement actions related to repeat deficiencies that we have required in these regulations.

Section 488.425 Directed In-Service Training

On the basis of our review of issues raised by commenters and our reevaluation of our statutory authority, we are including in the final rule a provision for the imposition of a directed inservice training program. After several years of experience with implementing the OBRA '87 provisions, we have come to a greater realization that some compliance problems are a result of imperfect knowledge on the part of the health services staff relative to state-of-art practices and resident outcome expectations. For example, we know that incontinence and decubitus ulcers are not an inevitable result of old age and immobility. The incidence and/or prevalence of these conditions in a particular long-term care facility may be the result of general lack of knowledge about the prevention and treatment of these conditions, and a lasting change may be produced in that facility by a directed inservice training program.

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We also believe that a directed inservice training program may be particularly effective in reducing reliance on chemical restraints. Two studies have been instructional on this point. The first, entitled "A Randomized Trial of a Program to Reduce the Use of Psychoactive Drugs in Nursing Homes" by Dr. Jerry Avorn and colleagues (*New England Journal of Medicine;* Vol. 327 No. 3; July 16, 1992, pages 168–173), demonstrates that a fairly intensive training program for the medical, as well as, all three shifts of the nursing staff (including aides) can bring a dramatic reduction in the use of psychoactive drugs without adversely affecting the overall behavior and level of functioning of the residents.

Another study was entitled, "Reducing Antipsychotic Drug Use in Nursing Homes: A Controlled Trial of Provider Education," by Dr. Wayne Ray and colleagues at Vanderbilt University School of Medicine published in the *Archives of Internal Medicine;* Vol. 153; March 22, 1993, pages 713–721. This study applied a formalized training program to teach nursing personnel how to manage the most prevalent behavioral symptoms experienced by aged individuals in nursing homes. Common behavioral symptoms such as catastrophic reaction, yelling and screaming, fighting, wandering, etc. are addressed in this study, and non-drug interventions are described. The training program led to a 59 percent reduction in the use of antipsychotic drugs over the control facility, and a 31 percent reduction in physical restraints over the control facility.

We would invite facilities to use inservice programs conducted by sources with an in-depth knowledge of the area(s) which require specific training so the positive change is achieved and maintained. We would also encourage facilities to use programs developed by well established centers of geriatric health services education and training. These centers include, but are not limited to, schools of medicine or nursing, Area Health Education Centers, and centers for aging. These centers should have established programs in geriatrics and geriatric psychiatry. We only recommend to the facility where it can obtain its inservice training program. The ultimate test of the training program will be in the outcome of care achieved by the facility after completion of the training program. If the resident's care circumstance has not improved after training, the facility, upon resurvey by the State agency, will be subject to stronger sanctions. We also require that the payment for the directed inservice training is the responsibility of the facility.

Section 488.426 Closure or Transfer of Residents, or Both

Comment: Several commenters said that HCFA should give more guidance on when closure of a facility and/or transfer of residents are appropriate. Others were concerned because the regulations did not set out procedures for State transfer of residents. A few commenters said that closures should be conducted in accordance with the provisions of the proposed § 488.240. Some commenters insisted that closing a facility should only be a last resort when alternative methods have failed or the physical plant is unsafe. Other commenters said HCFA should include a definition of the term "emergency" in the regulations.

Response: The closure of a facility and/or transfer of the residents are measures of last resort that are taken only in an emergency situation. These actions are rare, but most States have had experience with such actions. Most States have a relocation plan that outlines the circumstances under which the plan will be put into effect and the procedures to be followed. Because of this, we believe it would be unnecessary to mandate procedures for States to follow in cases of closure or transfer of residents. The Act places the responsibility for closure and/or transfer upon the States and proposed § 488.240, the content of which is now incorporated into § 488.426, requires any transfers to be orderly. We do not believe that any greater procedural specificity is required in Federal regulations. We also do not believe that it is necessary to define "emergency." We define words only if their definitions will have a narrower application than definitions commonly found in dictionaries. That is not the case for the use of the word "emergency" in this regulation.

Comment: Some commenters insisted that a temporary manager be appointed to oversee the transfers whenever large numbers of residents are involved. Other commenters believed that States should be required to get a court order before closing a facility or transferring residents.

Response: We do not agree with these comments. We believe the States should retain the flexibility to implement emergency relocation plans according to the circumstances of each case. The States have the knowledge and experience to choose the optimum combination of procedures to handle each unique situation. Obtaining a court order could delay the implementation of the relocation plan in an emergency situation and would add nothing to the process. The same can be said about the imposition of a temporary manager, because it is the State that is experienced in closure and/or transfer of residents' situations, not necessarily a temporary manager.

Comment: One commenter noted that the Act at section 1919(h)(5) cross references the transfer of residents to sections pertaining to facility-initiated transfers and discharges. Consequently, the final rule must require States to set up procedures which include written notice, involvement of ombudsmen and orientation procedures.

Response: Sections 1819(h)(4) and 1919(h)(5) of the Act, which make reference to a resident's rights upon transfer, speak to them as they relate to the "safe and orderly transfer of the residents * * *" We believe that whatever appeal rights individual residents have when the facility in which they reside faces termination bear only on the appropriateness of the transfer plans for those individuals and not the correctness of the government's decision to terminate the facility's provider agreement. For example, an individual may disagree with the nature or location of the facility to which he is slated for transfer and could challenge such a decision under the appeals process provided by sections 1819(e)(3) and 1919(e)(3) of the Act.

There is no evidence in the Act or the legislative history that the Congress intended to vest nursing home residents with the right to challenge the correctness of the decision to take enforcement measures against the facility. That decision lies with either the Secretary or the State and is subject to challenge by the facility, not the residents. There is no reason to believe that the Congress, in drafting these provisions, had as its objective the overturning of the Supreme Court's decision in *O'Bannon* v. *Town Court Nursing Center,* 447 U.S. 773 (1980), and we cannot presume that *O'Bannon* has been overturned by indirection.

Moreover, the plain implication of the transfer and discharge provisions in sections 1819(c) and 1919(c) of the Act is that their focus is on actions that may face an individual resident of a facility rather than *all* of a facility's residents. Thus, subsection (c)(2)(A) speaks to a transfer or discharge for the *resident's* welfare or for the health of *individuals* in the facility. These imply individualized determinations, not the kind of facility determination that automatically subjects the entire Medicare or Medicaid patient

population to forced removal from the facility.

Additionally, when describing the documentation requirements for discharge or transfer, the Act (in the paragraph immediately following the listing of permissible grounds for such actions) speaks to the necessity for documentation to appear in the resident's clinical record and often times to be entered by the resident's physician. We know, however, that decisions to terminate a facility's provider agreement are made by either the Secretary or the State, not by residents' physicians. Thus, it would seem that the kind of transfer appeals referred to in sections 1819(c)(2) and 1919(c)(2) of the Act do not encompass issues that are central to the provider agreement termination, but rather decisions affecting the fate of an individual resident that may be made by his or her physician.

We believe that sections 1819(h)(4) and 1919(h)(5) of the Act give the Secretary and the States discretion in how to apply the transfer notice and appeal provisions of sections 1819(c)(2) and 1919(c)(2). The Act's enforcement provisions require that the transfer of residents whose facility faces termination be done in a manner "consistent with" the provisions of subsection (c)(2). Had the Congress intended that there be strict adherence to the Act's transfer provisions, it could easily have specified that they be followed precisely. Use of the phrase "consistent with," however, implies a less rigorous standard that permits the Secretary and the States to make judgments as to how to best accommodate the notice provisions, for example, while not compromising the effectiveness of the termination action. Thus we believe residents should receive as much notice as possible of their impending transfer as long as the notice period does not further compromise their quality of care.

Comment: A few commenters mentioned that the proposed regulation improperly references proposed § 488.206(c).

Response: The reference to proposed § 488.206(c) has not been included in the final rule as § 488.426 has been revised to include closure and transfer of residents in NFs and SNF/NFs.

Comment: One commenter suggested that the term "Medicaid facility" be changed to read "Medicaid certified facility " so as not to give the false impression that a facility must be 100 percent Medicaid in order for these provisions to apply.

Response: The term "Medicaid facility" is commonly used to designate Medicaid certification, regardless of whether or not the entire facility is occupied by Medicaid eligible patients.

Proposed § 488.228 Alternative or Additional State Remedies (now incorporated in § 488.406)

Proposed § 488.230 Civil Money Penalties

In the final rule, we are redesignating proposed § 488.230 as the following sections:

Redesignated Section	Proposed § 488.230
§ 488.430 CMP: Basis for imposing penalty.	(a)
§ 488.432 CMP: When penalty is collected.	(b)
§ 488.434 CMP: Notice of penalty.	(c), (d)
§ 488.436 CMP: Waiver of hearing, reduction of penalty amount.	(e)
§ 488.438 CMP: Amount of penalty.	(f), (g)
§ 488.440 CMP: Effective date and duration of penalty.	(h), (i)
§ 488.442 CMP: Due date for payment of penalty.	(j)
§ 488.444 CMP: Settlement of penalty.	(k)

Comment: We received many general comments regarding civil money penalties. A few commenters who supported this provision of the regulation stated they believed in a swift and certain fine structure which is mandatory in nature and imposed directly on ownership.

Response: We appreciate the support of these commenters who realize that civil money penalties can be an effective remedy to encourage prompt compliance with participation requirements as well as to promote the continued rendering of quality health care in a safe environment.

Comment: One commenter suggested that we prohibit the recoupment of fines through rate increases.

Response: We do not accept this suggestion. Incorporating provisions to address the facility's recoupment of penalties through rate increases is beyond the scope of this rule which addresses the survey, certification and enforcement for skilled nursing facilities and nursing facilities.

Comment: Several other commenters believed civil money penalties do not work, are not the answer, serve no purpose or are an insult to professionals.

Response: We do not agree with these comments. We have the statutory responsibility to do what is necessary to promote the continued health and safety of residents in long term care facilities. We cannot say at this point that civil money penalties do not work. We can say the Congress perceived the effectiveness of this remedy and included it among the other remedies established to encourage prompt compliance with participation requirements.

Comment: A few commenters stated that civil money penalties are not necessary, as there is an extensive list of available remedies.

Response: We agree that there are many available remedies that can be used. We are including at § 488.404 the factors to be considered when selecting the most effective enforcement remedy. OBRA '87 included revised and expanded authority for the enforcement of the Federal participation requirements for long-term care facilities which allow State and Federal governments to choose the most effective remedy to encourage rapid compliance with participation requirements. We do not agree with the statement that civil money penalties are not necessary, because using civil money penalties as a remedy provides another enforcement option for addressing the unique characteristics of each case of facility noncompliance.

Comment: A few commenters said that civil money penalties are not fair and must be reasonable and realistic.

Response: The ranges in the amounts of the civil money penalties are commensurate with the level of SNF or NF noncompliance and, we believe, permit penalties to be imposed in a fair, reasonable and realistic manner. In fact, the higher and wider range of fines ($3,050 to $10,000 per day) is reserved for immediate jeopardy deficiencies, even though these deficiencies account for a very small minority of the cases of noncompliance.

Comment: Several commenters expressed concern that civil money penalties will drive up the cost to the taxpayer and increase the government's debt.

Response: Increased cost to taxpayers as a result of civil money penalties is possible if civil money penalties are imposed on publicly funded facilities. To the extent that such a provider's operation is characterized by deficiencies, and costs are excessive, financial burdens are imposed on the taxpayers. However, the money collected from penalties does not increase the Federal debt as it is returned to the Medicare Trust Fund or is earmarked for the protection of the health or property of Medicaid residents. Therefore, money is indirectly returned to the taxpayers' benefit.

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Comment: Several commenters expressed the concern that civil money penalties could cause small, independent, primarily Medicaid supported, rural facilities to be closed down, possibly displacing residents from their community home.

Response: We reject this argument. Sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act state that the Secretary or the State *may* (emphasis added) impose a civil money penalty. A civil money penalty need not be imposed in every situation. The Act provides the Secretary and the State the authority to choose a remedy which corresponds to the unique characteristics of each case. In addition, § 488.438 states that a facility's financial condition is a factor considered in determining the amount of the civil money penalty.

Comment: Several commenters are concerned that the imposition of civil money penalties could detract from resident care or redirect funds that could be used to continue to improve care.

Response: We do not accept this comment. First, the money that is collected from civil money penalties is either transferred into the Medicare Trust Fund or is earmarked for the protection of Medicaid residents' health or property. Second, as soon as substantial compliance is achieved, civil money penalties are discontinued. Therefore, the facility is in control of how much money it ultimately is responsible for paying; that is, the sooner it corrects deficiencies, the less penalties it will pay.

Comment: A professional organization commented that the proposed section on civil money penalties does not reflect all of the points discussed by the Institute of Medicine in its study, *Improving the Quality of Care in Nursing Homes* (1986). The Institute of Medicine envisioned civil money penalties as a valuable enforcement tool which could be applied in amounts appropriate to the seriousness, duration and repeat occurrence of the violation. It recommended prompt, short hearings on the imposition of the remedy, that fines be large enough to be more costly than the violation, and that fines be versatile enough to be used to correct minor violations, as well as to immediately punish life threatening violations.

Response: We believe the regulatory provisions for civil money penalties encompass the above referenced points from the Institute of Medicine. The only point of departure is the suggestion with regard to promptness. Section 1128A of the Act requires that a hearing be provided to a provider that properly requests one before HCFA collects a civil money penalty. Section 1919(h)(3) of the Act requires the State to offer a hearing before collecting a civil money penalty.

Comment: One commenter suggested that the civil money penalty system be changed to a monetary award program. Facilities in compliance with the regulations would be rewarded. This would lead to improved resident care and provide an incentive for the employees.

Response: We do not accept this comment. Provisions for civil money penalties are located in sections 1819(h)(2)(B)(ii), 1919(h)(2)(A)(ii) and 1919(h)(3)(C)(ii) of the Act as part of an enforcement process. They are options that the Secretary and the State may exercise when SNFs and NFs are not in substantial compliance with participation requirements. Removing civil money penalties as an enforcement option and substituting a monetary reward system would not reflect the law as written. For participants in the Medicaid program, the State may separately establish a program to reward, through public recognition or incentive payments, or both, providers that provide the highest quality care. This reward provision is specified at § 488.303 of this rule.

Comment: Several State civil monetary penalty systems were submitted with the comments on the proposed rule for review. Different commenters recommended that HCFA adopt and/or evaluate these civil money penalty systems.

Response: Before developing regulations for civil money penalties, we met with the nursing home industry, consumer groups and government entities to obtain input in the development of the proposed rule. In addition, we reviewed a variety of State civil money penalty systems. We do not believe we have sufficient data at this time to justify abandoning the system we developed in the proposed rule in favor of another or to cause us to consider any State's program to be more effective than the civil money penalty system in the regulation at this time.

Comment: One commenter suggested changing "HCFA or the State may impose * * *" to "HCFA or the State shall impose * * *" at proposed § 488.230(a)(1). The commenter's rationale is that if facilities are required to pay for every instance of noncompliance, compliance would be maintained and additional funds could be used to support critical areas, such as, Long Term Care Ombudsman Programs.

Response: The regulation reflects the corresponding provisions of the Act. The Act permits HCFA's and the States' discretion in the imposition of this enforcement remedy. The Federal government cannot require the States to use this remedy in every instance of noncompliance, nor must it choose this remedy itself in every instance of noncompliance.

Comment: Another commenter suggested that HCFA interpret its authority to include the delegation of the imposition of civil money penalties to the States for Medicare purposes when HCFA determines that it is appropriate. The commenter also suggested the State could recommend a civil money penalty, HCFA could monitor the State's performance in this area and funds collected could offset State costs in performing this task.

Response: The Act does not permit the Secretary to delegate the authority to impose a civil money penalty on a Medicare participating facility to the State. Section 1819(h)(2) of the Act charges the Secretary, upon the recommendation of the State, with the authority to impose remedies. HCFA's decision to monitor a State's performance does not hinge on the imposition of civil money penalties. Further, any civil money penalties collected under Medicare will be returned to the Medicare Trust Fund.

Comment: A few commenters are concerned that the proposed definition of deficiency will make any failure to comply, no matter how small, subject to a fine.

Response: We agree with the commenters' concern that, as described in the proposed rule, very minimal deficiencies could be subject to civil money penalties. As a result, we revised the rule and developed enforcement action categories which correspond to the seriousness of the deficiencies. These enforcement action categories are described at § 488.408, Selection of remedies.

Also, as discussed previously in this preamble, we are accepting the commenters' implicit suggestion to incorporate the concept of substantial compliance as a standard SNFs and NFs must meet to participate in the Medicare and Medicaid programs. Using the standard of performance of substantial compliance for these providers ensures virtual compliance with sections 1819(b), (c), and (d) and 1919(b), (c), and (d) of the Act because the type of deficiency tolerated under a substantial compliance standard is very limited. We are defining substantial compliance at § 488.301. We consider substantial compliance to satisfy a facility's obligation to meet requirements. Therefore, facilities in substantial compliance adequately protect the health and safety of nursing home residents and will not be subject to a civil money penalty.

Section 488.430 Basis for Imposing Penalty

Comment: Several commenters were confused and requested that we clarify the number of days of noncompliance between two certifications of compliance at proposed § 488.230(a)(2).

Response: We revised this paragraph of the rule and redesignated it as § 488.430(b). It now provides that HCFA or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the days of immediate jeopardy. We believe that this revision implements sections 1819(h) and 1919(h) of the Act, which state that if a facility meets the requirements of subsections (b), (c), and (d), but as of a previous period did not meet such requirements, a civil money penalty could be imposed for the days in which the facility was not in compliance with the requirements. We believe this statutory provision permits a civil money penalty to be imposed whenever there is past noncompliance with the participation requirements between standard surveys. The following example illustrates one application of this provision: A facility had a survey on July 1, 1993, and it was in substantial compliance with all of the participation requirements. During the orientation tour at the next survey, June 15, 1994, surveyors observed questionable infection control procedures. This observation prompted the surveyors to further examine records and the facility's infection control program. This examination indicated that the facility was out of compliance with infection control requirements (§ 483.65) from October 15 to October 30, 1993. However, at the time of the June 15, 1994, survey, the facility was again in substantial compliance with participation requirements. The number of days of noncompliance would be 16, which is the number of days between (and including) October 15 and October 30. This noncompliance existed for 16 days, but it did not exist at the time of either survey.

Although we may have discretion with respect to the selection of remedies to address noncompliance that is corrected by the time of a survey, it is likely that we would give serious consideration to civil money penalties in such cases. The Act, at sections 1819(h)(1) and 1919(h) (1) and (3), expressly authorizes the impositions of these sanctions even if, at the time of the survey, the facility is in substantial compliance.

Comment: Another commenter suggested incorporating language which says, "HCFA or the State may impose a civil money penalty for the number of days of noncompliance between two certifications of compliance if the deficiency was at a severity level of 4 and the facility could have prevented it."

Response: We do not accept this suggestion. Adding this language narrows the authority of the Secretary and the State. Limiting this enforcement authority could allow noncompliance to go unsanctioned. We see no justification for narrowing this authority.

Comment: A consumer organization specifically recommended we clarify proposed § 488.230(a)(2) to say, "the penalty accrues as of the first day that noncompliance existed in a previous period." Resident records or resident witnesses with corroboration would be sufficient evidence to determine noncompliance.

Response: In this final rule, we are revising this paragraph to provide that HCFA or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the number of days of immediate jeopardy. It is evident in this situation the civil money penalty could be imposed for all of the days of noncompliance. We do not accept the suggestion to incorporate into the regulation what specific evidence must be used to determine noncompliance, as each situation of noncompliance is unique.

Comment: Several commenters recommended that the word "impose" be changed to "collect" at proposed § 488.230(a)(2), since the Act authorizes the use of civil money penalties for past noncompliance that has been corrected.

Response: While it is true that the Act specifies that a civil money penalty may be imposed for past noncompliance that has been corrected, it is not necessarily true that a civil money penalty will be collected in every case. For instance, if a facility prevails at a hearing, a civil money penalty will not be collected. Accordingly, we are not adopting this recommendation.

Comment: A provider organization suggested that we expand proposed § 488.230(b) by adding, "(2) HCFA will not and the State may not impose a civil money penalty on a facility that is being terminated or is under temporary management or a denial of payment for all new admissions, except for a denial of payment under paragraph (a)(1) of [proposed] § 488.217."

Response: The purpose of all remedies is to protect residents against inadequate care and to motivate providers to promptly comply with the participation requirements so they may continue to provide quality services. Sections 1819(h) and 1919(h) of the Act specify that the State or HCFA may impose multiple sanctions to achieve these purposes. Limiting the authority of the Secretary and the State, as suggested by this comment, would reduce the ability of the Secretary and the State to tailor remedies to fit each unique situation of noncompliance, particularly those situations in which multiple remedies are warranted. If HCFA or the State chooses to impose a remedy, the procedures set forth in §§ 488.404 and 488.408 of this rule are followed to determine the most appropriate remedy or remedies.

Section 488.432 When Penalty Is Collected

Comment: Many commenters questioned the proposed provisions of § 488.230(b) which stated that HCFA will not and the State may not impose a civil money penalty while the facility has a hearing pending on the imposition of a remedy. A few commenters recommended that the word "impose" be changed to "collect" at § 488.230(b). Commenters wanted more information about:

- When a fine begins;
- Whether a fine is assessed for the days between the survey date and the hearing date, or only for days after the hearing date;
- Whether there is a conflict between § 488.230(b) and § 488.230(i) of the proposed rule.

The commenters' recommendations included:

- Stop the assessment of civil money penalties on the date that a formal hearing is requested. If the appeal outcome upholds the remedy then the civil money penalty is imposed retroactive to the date that the appeal was requested.
- Permit the States and HCFA to impose but not collect a civil money penalty during the pendency of any hearing. The penalty would accumulate during the appeal until the deficiency is corrected or the appeal is decided; and
- Do not stop the clock from running on a civil money penalty while the appeal is pending, as this can insulate noncompliant facilities against the imposition of these penalties.

Response: We are revising redesignated § 488.432 to be more specific and discuss when penalties are

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collected. We say that, when a facility requests a hearing on the noncompliance which led to the imposition of the civil money penalty, HCFA or the State will not initiate collection of the penalty until a final administrative decision is rendered which upholds the determination of noncompliance.

If a facility does not request a hearing within the time period for requesting a hearing, collection of the penalty will begin when the facility achieves substantial compliance or is terminated. If a facility waives its right to a hearing in writing within 60 days of the date of the notice of intent to impose the penalty, collection is initiated when the facility achieves substantial compliance with the participation requirements or is terminated. This section now references § 488.440, which discusses the accrual of the civil money penalty and computation and notice of the amount due, and § 488.442, which discusses when payments for civil money penalties are due.

Comment: A commenter stated the proposed regulation does not permit the survey agency to impose a remedy for a second deficiency found as a result of a complaint survey until a pending hearing on a deficiency cited from a previous survey is concluded.

Response: This regulatory provision does not compromise the ability of the Secretary or the State to impose another remedy if one is warranted for a second situation of noncompliance before a final administrative decision is concluded on the first situation of noncompliance which has led to the pending imposition of a civil money penalty. However, if a civil money penalty is the preferred remedy for the second instance of noncompliance, as it was for the first, it will not be collected until the final administrative decision supporting its imposition is concluded. In this case, the State or HCFA could increase the civil money penalty amount if the noncompliance found later creates a situation of immediate jeopardy. If the second situation of noncompliance results from repeated deficiencies, HCFA or the State would increase the civil money penalty. However, the noncompliance found at a later time may warrant a remedy other than a civil money penalty which could be imposed before there is a final administrative decision on the first situation of noncompliance.

Comment: We received many comments stating that the proposed process will precipitate prolonged appeals without civil money penalties ever being assessed.

Response: The Act requires that an administrative appeal be provided before civil money penalties are collected. Even a prolonged appeals process does not eliminate the civil money penalty unless the facility prevails at the hearing. For example, if a provider achieves substantial compliance by the time of the appeal, the correction is only relevant from the standpoint of the number of days the penalty applies. The fact that a facility achieves substantial compliance before the hearing does not eliminate the need for the hearing. If the facility does not prevail in the hearing, the civil money penalty is collectible for each day of noncompliance.

Comment: Commenters endorsed incorporating a variety of ideas into the final rule to discourage frivolous appeals, including the following: provide for the accrual of interest pending appeal at a rate fixed by the State, stipulate that attorney fees will not be paid and are not an allowable cost if the appeal is unsuccessful, and, as stated in the Institute of Medicine Report, deny payment of provider fees for unsuccessful appeals of survey related costs. Another commenter requested the rule be revised to include that facilities not be allowed to claim on State or Federal income taxes civil money penalties and legal expenses upheld on appeal.

Response: We do not support these revisions. It would not be fair practice to assess interest on a civil money penalty before the provider knows the outcome of the hearing on the imposition of that penalty. To charge interest for the time period during which a hearing is pending would be tantamount to punishing the provider for exercising its right to have an administrative hearing, as provided for in sections 1128A(c)(2) and 1919(h)(8) of the Act. Regarding the comments about attorney fees, other provider costs and income taxes, these payment issues are not addressed in the Act and are beyond the scope of this regulation.

Section 488.434 Notice of Penalty

Comment: One commenter asked for further clarification of HCFA notice of penalty and State notice of penalty provisions of the regulation.

Response: We revised the content of § 488.434 to be more specific regarding the notice of intent to impose the penalty. The rule now states that, when HCFA proposes to impose a civil money penalty, it would deliver or send to the provider written notice of its intent to impose the penalty. The notice would include reference to the statutory basis for the penalty; the nature of the noncompliance; the amount of the penalty per day of noncompliance; any factors specified in § 488.438(f) that were considered when determining the amount per day of the proposed penalty; the date the penalty starts accruing; when the penalty will stop accruing; when collection of the penalty will be made; and instructions for responding to the notice. These instructions would include a specific statement of the facility's right to a hearing and the implications of waiving a hearing.

The rule now states that, when the State imposes a civil money penalty in the case of any non-State operated nursing facility, the State must notify the facility in accordance with State procedures; however, the State's notice must be written and it must include, at a minimum, the information specified in the HCFA notice of penalty as stated above.

Comment: A few commenters were concerned about implementation of civil money penalties if HCFA could not issue the notice in a timely manner.

Response: Although HCFA and the State will proceed quickly to issue notice of the imposition of the civil money penalty, its imposition does not hinge on specified notification timeframes. The notice of the imposition of the penalty is not required before a civil money penalty can start to accrue, since the Act permits the imposition of civil money penalties for past violations that have been corrected, and the penalty may start accruing as early as the date the facility was first out of compliance. For these reasons, in § 488.402, we exclude the civil money penalty remedy in the discussion of the notification requirements when remedies are imposed.

Comment: One provider organization recommended revising the notice of penalty section to specify that the State sends the notice via certified mail in all cases except State operated facilities and other facilities when HCFA is imposing the penalty based on a validation survey. This comment also listed specifics to be included in the notice.

Another commenter recommended that the notification requirements HCFA uses when it imposes the civil money penalty must also be the minimal standards applied to the State, instead of allowing the State's notice to be prepared in accordance with State's procedures.

Response: We are not accepting the suggestion that the notice be sent via certified mail because this would preclude sending a valid notice via other means, such as telefax, telegram, commercial overnight delivery services, or other means that may be faster. In fact, for these reasons we are revising this section of the rule to eliminate the requirement that the notice be sent by mail with a return receipt requested. Also, to have the State send the penalty notice to Medicare participating facilities and to dually participating facilities, as the commenter suggests, would be inappropriate as HCFA provides notices for Medicare facilities.

We accept the comment to require that the contents included in the HCFA notice of penalty be contained in the State notice of penalty. Accordingly, as stated in a previous response, we are revising redesignated § 488.434 to provide that the State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action; however, the State's notice must be written and must include, at a minimum, the information specified in redesignated § 488.434(a). This revision is consistent with existing policy in prescribing the content of State notices in Medicaid provider termination cases and other Medicaid and AFDC matters.

Section 488.436 Waiver of Hearing; Reduction of Penalty Amount

Comment: We received many comments opposing the facility's opportunity to have a 35 percent reduction in the civil money penalty if the facility waived its right to a hearing. Commenters said that this provision is inappropriate in the regulatory process, not reflective of Congressional intent, insulting, tantamount to blackmail and plea bargaining and without statutory basis for offering a bonus to providers who waive their appeal rights. Some commenters objected to the 35 percent reduction if a facility waives its right to a hearing because they felt a justified penalty should be imposed without any compromise or reduction. Another commenter stated that, if the penalties reflect the deficiencies, then reducing the penalty amount makes the penalty lose some of its deterrent value. One commenter was concerned that the waiver of hearing provision, as written, may induce HCFA or the State to inflate the penalty. Then, if the penalty is reduced 35 percent because of the waiver, the fine amount is the amount it would have been before the reduction.

A commenter agreed with this regulatory provision on waiver of a hearing and stated that this is appropriate since informal conflict resolution can be used to eliminate misunderstandings or deficiencies that are not supported by the evidence.

Response: The 35 percent reduction in the civil money penalty afforded providers for waiver of right to appeal is based on a State model (§ 488.436). Providers are free to reject the option to waive the right to a hearing. The intent behind this regulatory provision is to encourage facilities to carefully consider their position in terms of substantial compliance, as well as the costs they will incur in litigating the matter, before tying up already overburdened hearing resources.

Also, if we are not confronted with the administrative costs of litigation, we believe we should consider offsetting civil money penalty amounts accordingly. On its face, these waiver provisions could seem to lessen the deterrent value of the civil money penalty. However, a 35 percent reduction of a $10,000 per day civil money penalty leaves a penalty amount of $6,500 per each day of noncompliance, and this is a significant deterrent to continued noncompliance.

We disagree with the comment that the waiver provision may induce HCFA or the State to inflate the penalty because the per day amount of the civil money penalty will be determined before the facility would have the opportunity to exercise its option to waive a hearing. This is because the notice of the intent to impose the penalty includes the amount of the penalty per day of noncompliance, as well as the option to waive the hearing.

Regarding dispute resolution, we appreciate the support of this commenter and agree that dispute resolution is an appropriate vehicle afforded the provider to address survey finding issues.

Comment: One commenter stated that the waiver should not permit the facility to deny the existence of the deficiency for the purpose of determining whether repeat violations exist.

Response: The opportunity to waive the right to a hearing and consequently receive a 35 percent reduction in the amount of the civil money penalty does not permit the facility to deny the existence of deficiencies for any purpose, nor will waiver of the right to a hearing remove the deficiencies from the facility's record. When a facility waives its right to a hearing, it is in effect not contesting the deficiency.

Comment: One commenter suggested replacing *may* with *must* as alternative language indicating that, "HCFA or the State *must* reduce the civil money penalty." A few commenters stated that the language used in the preamble regarding proposed § 488.230(e) renders the reduction in the penalty mandatory, and the language used in the regulation text is permissive.

Response: We erred in the proposed text. We accept the suggestion and intended to require that, when a facility requests a waiver of a hearing in writing, within the 60 day timeframe, HCFA or the State reduces the civil money penalty amount by 35 percent, and we are revising the final rule accordingly. We are also adding a paragraph to specify that, if the facility does not waive its right to a hearing, in writing, within 60 days from the date of the notice of intent to impose the penalty, the civil money penalty is not reduced. We believe the specified timeframe gives the provider ample opportunity to decide whether or not to exercise its option to waive a hearing.

Comment: One commenter stated that allowing a reduction in the amount of the civil money penalty will necessitate that States develop and implement complicated and costly accounting systems for recordkeeping and reporting purposes. Another commenter suggested that the collection of civil money penalties will be very confusing and they would rather have lower penalty amounts than the opportunity for a 35 percent reduction.

Response: Less litigation as a result of the waiver of hearing provision more than compensates for the recordkeeping and reporting necessary to implement the 35 percent reductions in civil money penalties. We are striving not only to reduce litigation costs but also to reduce the considerable investment of time necessary to prepare for and participate in a hearing. Imposing lower fine amounts instead of allowing the 35 percent reduction for a waiver is not in keeping with the reasons, as stated above, for having this provision.

Comment: A few commenters requested that the reduction of the civil money penalty amount when a facility waives its right to a hearing be 50 percent. Another suggestion was permitting a reduction of up to 35 percent. One commenter recommended the percent reduction be 10 percent and only available upon prompt payment.

Response: We believe that 35 percent is reasonable and appropriate, based on our review of an existing State model, and it approximates the savings we believe are possible by not litigating these cases.

Comment: One commenter suggested that the waiver of appeal rights submitted be written and that 50 percent of the civil money penalty be paid within 15 days from the date of notification.

Response: We accept the suggestion that the waiver be in writing and have made this revision in the final rule. We do not accept the suggestion that 50

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percent of the penalty be paid within 15 days from the date of the receipt of a request to waive appeal rights. If a facility waives its right to request a hearing in accordance with the provisions specified in § 488.436, and subsequently receives a 35 percent reduction in the amount of the penalty owed, we do not believe it is necessary to also offer the facility the opportunity to pay only 50 percent of the civil money penalty at that time. To accept partial payments of a civil money penalty creates an unnecessary recordkeeping system and detracts from the financial incentive to motivate compliance which civil money penalties were intended to create. Also, we specified in the regulation that the entire penalty is payable on the due date, and that date would be 15 days after receipt of the waiver request if the facility has achieved substantial compliance with the requirements or the facility has been terminated. However, if the facility has not achieved substantial compliance or been terminated when the waiver request is received, the civil money penalty would continue to accrue until the facility achieves substantial compliance or is terminated. The due dates for civil money penalties are specified in § 488.442.

Comment: A few commenters proposed that the number of days in which a facility may request, or waive the right to, a hearing be changed. The alternatives were 10, 20 or 30 days.

Response: We do not accept the commenters' recommendations to change the number of days in which a facility may request or waive its right to a hearing. The existing 60 day timeframe to request a hearing has been effective in accommodating the needs of the government to move quickly in situations of noncompliance without unduly compromising the due process considerations of the provider. It often provides sufficient time to the facility to resolve disagreements prior to the initiation of costly litigation or, failing resolution of disagreements, adequate time to prepare for a hearing. To adopt a shorter timeframe, as suggested by the commenters, could compromise these opportunities.

Comment: A couple of the commenters offered the following alternative text for proposed § 488.230(e): "The facility must pay the civil money penalty that was imposed, less 35 percent, and correct the deficiencies for which the civil money was imposed, within 10 days of receipt of the notice. This waiver of hearing is called settlement."

Response: We do not accept these comments. We believe these suggestions do not allow a facility enough time to make a decision regarding whether to waive or request a hearing.

Section 488.438 Amount of Penalty

Comment: Several commenters supported the "two tier" civil money penalty system as enunciated in proposed § 488.230(f)(1).

Response: We appreciate the support of these commenters for this regulatory provision.

Comment: Many commenters believed that the civil money penalty fines of up to $10,000 a day are excessive and exorbitant. A few comments stated that the range is too broad and would create inconsistency on a national level. Some commenters said that imposing civil money penalties for non-immediate jeopardy deficiencies is severely punitive and "overreacting" and they should only be imposed in severe, life threatening or repeated situations.

Response: The Act allows a maximum civil money penalty of $10,000 per day of noncompliance. By designating the highest two thirds of the civil money penalties as the immediate jeopardy range, we believe we have developed a system for the States to use under which relatively few facilities will be subject to a maximum penalty. We expect that the higher penalties will seldom be imposed, because situations involving immediate jeopardy occur far less frequently than those with no immediate jeopardy. Furthermore, the range of civil money penalties for immediate jeopardy cases is broad enough to allow us the flexibility to impose the maximum civil money penalty in only the most egregious cases and some lower amount within the range for other situations of immediate jeopardy. We believe penalties imposed in the immediate jeopardy range are justified because residents are in life threatening situations, and we want to motivate the facility to immediately correct deficiencies. We set the amounts of the penalties within the two ranges to allow consideration of the unique characteristics of each situation of noncompliance. It is inappropriate to refer to a "consistent" application of civil money penalties because each situation of noncompliance and the factors that affect the amount of the civil money penalty are unique for each facility.

Comment: Several commenters stated that the civil money penalty system appears to duplicate existing State systems and doubled fines could financially destroy facilities. A few commenters asked that the proposed rule be amended to allow States to use their civil money penalty system when they have demonstrated that their system is effective.

Response: The Medicare and Medicaid programs are separate and distinct from State licensure programs. It is possible that a civil money penalty could be imposed under the State licensure program as well as under the Medicare and Medicaid programs; however, there is no reason to assume that the penalties would be doubled.

A State can use its licensure civil money penalty system for Medicaid purposes when it has demonstrated its effectiveness in accordance with § 488.406. These provisions state that alternative State remedies for facilities participating in Medicaid may be imposed if the State demonstrates to HCFA's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the HCFA remedies.

Comment: A few commenters recommended that civil money penalties be significantly reduced, because if a facility receives a civil money penalty of $5,000 or more, that facility loses its ability to train nurse aides.

Response: As stated above, the $10,000 per day civil money penalty limit is established in the Act. While the Act gives the State and the Secretary the discretion to impose a penalty as high as the limit, we will not, as a matter of policy, lower civil money penalty amounts in specific cases to preclude facilities from losing their ability to train nurse aides. If a civil money penalty of $5,000 or more is imposed on a facility, it is indicative of the fact that an egregious situation of immediate jeopardy exists. In this case, we believe the facility's ability to continue to train nurse aides is compromised and the facility should lose approval of its nurse aide training and competency evaluation program. However, as we have already stated, we anticipate that the higher penalties will seldom be imposed, as situations involving immediate jeopardy occur far less frequently than those with no immediate jeopardy.

Comment: One commenter recommended revising proposed § 488.230(f)(2) to specify that a civil money penalty may not be one of the alternative remedies imposed when a facility does not meet the eligibility criteria for continuation of payment and HCFA will or the State must terminate a provider's agreement. Also, the commenter recommended that neither HCFA nor the State may impose more than four penalties against a facility on

the basis of a single survey and the maximum total penalty amount that may be imposed against a facility during any twelve-month period is five hundred dollars per licensed or certified bed.

Response: The Act does not preclude the imposition of a civil money penalty remedy as an enforcement option when the facility does not meet the eligibility criteria for continuation of payment or is terminated. In fact, section 1919(h)(7) of the Act discusses the special rules applicable when other remedies additional or alternative to termination are imposed. Concerning the specified amount of the penalty that can be imposed per licensed or certified bed during a specific time period, the Act does not specify such a limitation, and utilizing these limitations would unnecessarily restrict the authority of the Secretary and the State to tailor a civil money penalty remedy to the specific situation of noncompliance. However, the Act does set dollar limitations for each day of noncompliance. Therefore, the Act contemplates that all deficiencies will be aggregated for the purposes of determining the number of days of noncompliance (as opposed to the number of deficiencies).

Comment: A few commenters requested that we clarify if survey agencies may exceed the specified penalty ranges when a facility alleges compliance but a revisit by HCFA or the State finds noncompliance. One commenter recommended that the penalty be doubled in this situation even if it exceeds the penalty limit. Another commenter suggested replacing *may* with *shall* at proposed § 488.230(f)(3) so that this section reads, "HCFA or the State shall increase the daily penalty if the facility alleges compliance * * *."

One commenter disagreed with § 488.230(f)(3) concerning HCFA's or the State's ability to increase the daily penalty if the facility alleges compliance but a revisit finds noncompliance. The commenter recommended including an objective and quantifiable basis for increasing such penalties or deleting this regulatory provision. Another commenter suggested increasing the civil money penalty when a facility alleges completion of its plan of correction, but a revisit finds the facility has not completed its plan.

Response: As noted above, we are revising redesignated § 488.438 to provide that a civil money penalty would be decreased to the lower range of penalty amounts if a revisit determines that the immediate jeopardy is removed but the noncompliance continues. However, if the noncompliance, that continues constitutes repeated deficiencies in the same regulatory grouping of requirements, the civil money penalty would be increased, as specified in sections 1819(h)(2)(B) and 1919(h)(2)(A) and (h)(3)(C) of the Act. A civil money penalty could be increased to the upper range of penalty amounts if deficiencies for which a lower level penalty amount was imposed have become sufficiently serious to pose immediate jeopardy. We are also revising § 488.438 to provide that civil money penalties are increased, even if a new penalty amount exceeds the range for nonimmediate jeopardy, when deficiencies in the same regulatory grouping of requirements for which a civil money penalty was imposed are repeated.

We cannot accept the suggestion to increase a civil money penalty if a facility does not follow its plan of correction. When a remedy is lifted for a facility, it is based on that facility's substantial compliance with the requirements, not on the facility's adherence to its plan of correction. The health or safety of a resident could be jeopardized by a situation in which a plan of correction was followed but the facility was still not in substantial compliance with the participation requirements.

Comment: One commenter stated that there is no provision in the regulation which would prohibit daily penalties from mounting. This commenter added that this is not reflective of the Congressional intent behind sections 1819(h)(3) and 1919(h)(4) of the Act, which says that a finding to deny payment terminates when the State or Secretary finds that the facility is in substantial compliance with the requirements of subsections (b), (c), and (d).

Response: A facility can always stop the accrual of a civil money penalty by correcting the situation that caused the noncompliance. With regard to all remedies, we received many comments recommending that the standard of substantial compliance with sections 1819(b), (c), and (d) and 1919(b), (c), and (d) of the Act be incorporated into the rule as an acceptable measure of compliance. As discussed previously in this preamble, we accept this comment and we will lift remedies imposed for noncompliance when a facility is in substantial compliance with sections 1819(b), (c), and (d) and 1919(b), (c), and (d) of the Act.

Comment: A few commenters requested we add, at proposed § 488.230(f), that interest accrues on all penalties not settled, at the credit card rate, from the date of citation.

Response: We do not accept this comment. Redesignated § 488.438 discusses the base amount of the civil money penalties. We do not think it is appropriate to incorporate the interest rate in this section. A discussion of interest follows in redesignated § 488.442.

Comment: One commenter suggested that when noncompliance could financially benefit a facility, the amount of the penalty should never be less than twice what the State or HCFA can reasonably assume to have been the savings to the facility, as a facility should never believe it is in its financial self-interest to violate the law. This commenter also said that HCFA and the State should have access to any data (employee salaries, fees, supply costs, etc.) that will provide necessary information to determine the amount of the penalty.

Response: We do not agree. First, it would be beyond the scope of this rule to require the State to determine or for HCFA to try to determine when noncompliance would financially benefit a facility. Moreover, to provide that civil money penalties be twice the presumed savings incurred by the facility would be to establish an arbitrary requirement that would unnecessarily complicate using civil money penalties as an enforcement option.

A facility that perceives it is in its financial self interest to violate the law commits a grave error as it could face termination of its provider agreement for noncompliance.

Comment: A few commenters recommended that all minimum penalty amounts specified at proposed § 488.230(f) and the "per day" modifiers in the regulation be deleted to permit the Secretary or the State more discretion when imposing civil money penalty amounts.

Response: We do not accept these comments. The minimum penalty amount is set at $50 because we believe that any lesser amount would not be a remedy for any provider. The $50 minimum penalty amount also corresponds to the imposition of civil money penalties in increments of $50; this process was designed for purposes of simplicity of implementation.

The Act specifies that a civil money penalty may be imposed for each day of noncompliance. We believe that removing references to "per day" alters the clear instructions specified in the Act. Furthermore, the Secretary and the State always have discretion to impose or not to impose a civil money penalty,

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since the law states that a civil money penalty *may* be imposed for each day of noncompliance.

Comment: Many commenters responded that the factors used to determine the amount of the civil money penalty are too broad and will promote inconsistency. A commenter posed that these factors are subjective, not uniform, and therefore, are challengeable in a court of law. A few commenters suggested removing the factors used to determine the amount of the civil money penalty from the final regulation while a few said that HCFA and the State should be required to give due consideration to the information provided by the facility.

Many commenters were generally negative in response to using the facility's financial condition as a factor affecting the amount of penalty and offered the following arguments about this policy:

- It is not equitable;
- It would result in inconsistent civil money penalties for the same deficiency;
- Poorly managed and/or not-for-profit facilities should not be excused or pay a lower civil money penalty;
- It discriminates against facilities that are more solvent;
- It is inappropriate if the facility can not appeal the amount of the penalty;
- Neither the Secretary nor the States have adequate information to evaluate a facility's financial condition;
- It would be difficult to apply objectively and would require an audit of the facility; and
- The regulation does not clarify how financial information is obtained, who evaluates this information and if it will be available promptly.

Another commenter requested that we remove a facility's financial condition as a factor and consider instead the location of the facility and the percent of Medicaid or Medicare patient days relative to the total patient days of the facility.

A few commenters suggested including the facility's degree of culpability as a factor in determining the amount of the civil money penalty as mentioned in the preamble of the proposed rule.

Response: In determining the amount of the penalty, section 1128A of the Act, which is incorporated by reference into sections 1819(h) and 1919(h) of the Act, requires the Secretary to consider specific matters and also provides authority to take into account any other items relevant to the penalty determination. We are requiring the State to also consider these specific matters to make Medicare and Medicaid requirements equivalent for SNFs and NFs. The specific matters the Secretary and the State must take into account, as stipulated in section 1128A of the Act, include the facility's degree of culpability, history of prior offenses and financial condition. Therefore, we cannot remove financial condition as the commenters suggested, and we are revising redesignated § 488.438(f) to include the facility's degree of culpability, which was inadvertently omitted from the proposed regulatory text.

We explain in § 488.438 what we mean by "culpability" in the context of provider certification. Section 1128A authorizes civil money penalties for criminal or quasi-criminal acts, such as, false claims or claims for charges in excess of those permitted by law. The intent of the individual who commits one of these acts plays a prominent role in determining the amount of the civil money penalty. For example, if this individual submits a false claim while under the influence of drugs or the individual has a psychiatric condition, that person's culpability for submitting false claims may be reduced.

The enforcement provisions for civil money penalties in sections 1819(h) and 1919(h) incorporate section 1128A of the Act and require a consideration of a facility's culpability in determining the amount of the civil money penalty. However, this consideration is not limited to situations in which a provider "intends" for a situation of noncompliance to exist. In fact, a facility is culpable if noncompliance causing harm or placing a resident at risk of harm is intentional or is a product of neglect, indifference or disregard. While a facility's culpability for serious noncompliance is a factor in the determination of the amount of the civil money penalty, the absence of culpability is not a factor, as a facility is always fully responsible for the health and safety of its residents.

Comment: One commenter asked that we specifically define "history" as used at proposed § 488.230(g)(1). Another commenter suggested that the facility's history of prior compliance only include the period of operation under the current owners.

Response: Information concerning a facility's history of noncompliance, as discussed with regard to § 488.438(f)(1) of the final rule, is maintained in the State survey agency, the HCFA regional office and the Online Survey Certification and Reporting system (OSCAR). The OSCAR system can provide facility specific reports from the four most recent surveys. We do not accept the comment that the facility's history of prior noncompliance only include that of the current owner because when a change of ownership occurs, all Medicare penalties and sanctions are automatically assigned to the new owner or owners with the exception of the two year restriction on Nurse Aide Training and Competency Evaluation Programs (which is explained later in this preamble).

Comment: Several commenters suggested that we provide that if a facility wants its financial condition considered it must fully disclose all financial information.

Response: As stated above, it is a statutory requirement that a facility's financial condition be considered as a factor to determine the amount of the civil money penalty. We do not specify in the regulation what we will examine in determining the facility's financial condition, because these factors are unique for each facility. Therefore, it is the responsibility of the facility to furnish the information it believes appropriately represents its financial status. We consider a facility's financial condition in conjunction with the other factors specified in the rule when determining the amount of a civil money penalty, because it is not our intent to put facilities out of business, and the amount of the civil money penalty is determined on a case by case basis.

Comment: We received a suggestion to remove the facility's financial condition as a factor in determining the amount of the civil money penalty but to permit the facility an opportunity to negotiate a payment schedule if it can demonstrate that the civil money penalty would cause financial hardship after the assessment and final adjudication of a civil money penalty.

Response: We do not accept this comment. First, as previously stated, it is a statutory requirement to consider a facility's financial condition as a factor in determining the amount of the penalty. Second, to negotiate a payment schedule based on the facility's financial condition after the assessment and final adjudication of a civil money penalty would not be necessary since the facility's financial condition has already been considered in the determination of the penalty amount.

Comment: Many commenters submitted examples of existing State civil money penalty systems which assigned a specific dollar amount per bed to each scope and severity level or assigned a maximum daily fine amount for each scope and severity level. Another commenter asked that we clarify that there will not be a correlation between the number of beds

and the amount of the civil money penalty.

Response: We are revising §§ 488.404 and 488.408 to correlate the seriousness of the deficiencies with the selection of remedies when HCFA or the State chooses to impose a remedy. (See explanation at § 488.404, Factors to be considered in selecting remedies and § 488.408, Selection of remedies.) Civil money penalties may be used for deficiencies constituting immediate jeopardy. Civil money penalties may also be used for deficiencies which constitute no actual harm but have a potential for more than minimal harm; or for deficiencies that constitute actual harm.

We do not accept the comment suggesting assigning a dollar amount per bed because the regulation, in accordance with section 1128A of the Act, requires a consideration of a facility's financial condition in the determination of the civil money penalty amount. We assume that a primary reason some States compute civil money penalty amounts based on the number of beds is to take into account the financial condition of facilities, that is, the larger facilities would be presumed to have a greater availability of cash than the smaller facilities. This is not necessarily the case, and even if it were a valid consideration in some cases, to take this relationship into account would be to consider financial condition twice. Nor have we assigned a specific dollar amount for each degree of seriousness.

While we have assigned ranges of penalties to immediate jeopardy and non-immediate jeopardy, we have not refined the figures further. We believe that this allows for the additional discretion on the part of HCFA or the State to assign a penalty amount once the facility's financial condition and other factors have been considered.

Comment: A commenter asked how the terms scope, severity and duration of noncompliance used at proposed § 488.230(g)(3) will be defined.

Response: In response to the concern raised by this commenter, we are revising redesignated § 488.438(f). We are replacing the phrase, "The scope, severity, and duration of the noncompliance" with, "The factors in section 488.404." The factors specified in § 488.404 address the assessment of the seriousness of deficiencies and include assessing the scope, severity and duration of the noncompliance in more specific terms.

Comment: A commenter suggested the specific category of the unmet requirement be a factor in determining the amount of the penalty. Another commenter asked that we explain the difference between "health and safety requirements" and "administrative requirements" as stated in § 488.230(g)(4) of the proposed regulation. We also received many recommendations to revise this regulatory provision to require that HCFA or the State consider whether the requirements with which the facility is out of compliance are health and safety requirements, residents' rights, quality of life or failure to attain the highest practicable functioning or administrative requirements when determining the amount of the civil money penalty.

Response: After considering the above comments, we are eliminating this provision because we believe that the factors inherent in this provision are reflected in revised § 488.438(f), which now requires the consideration of the factors contained in § 488.404 when determining the amount of the penalty. These factors include consideration of whether the facilities' deficiencies constitute: no actual harm, with a potential for minimal harm; no actual harm, with the potential for more than minimal harm that is not immediate jeopardy; actual harm that is not immediate jeopardy; or immediate jeopardy to resident health or safety. These factors also require considering whether the deficiencies are isolated, constitute a pattern or are widespread. A consideration of these factors includes considering the specific type of unmet requirement.

Comment: A few commenters recommended that civil money penalties be mandatory for all substandard quality of care deficiencies, immediate jeopardy situations and repeated deficiencies at their proposed severity level 1 and scope of 3 or 4. A few other commenters who proposed a new scope and severity grid suggested that we modify the civil money penalty provisions to reflect the grid that they proposed. One commenter suggested doubling the civil money penalty for repeated deficiencies, and another suggested simply increasing the penalty for repeated deficiencies. Other commenters requested that we add a description of civil money penalties that would include a flat, one time fine for:

- Single deficiencies regardless of the severity;
- Deficiencies with a starting point that cannot be determined;
- Repeated deficiencies; and
- Deficiencies where the State finds it more difficult to document continuous noncompliance.

Many commenters suggested requiring that civil money penalties be imposed at specific scope and severity levels.

Response: We do not accept these recommendations. Requiring that civil money penalties be imposed for specific types of deficiencies would be inconsistent with the Act which provides that civil money penalties *may* (emphasis added) be imposed for each day of noncompliance. The Secretary does not have the authority to require the States to impose civil money penalties where the Act gives States' discretion. While the Secretary could implement a policy by which each specific degree of seriousness would automatically precipitate civil money penalties at specific amounts, such a policy would undermine the Secretary's flexibility to tailor enforcement action to the exact nature of deficiencies in specific facilities. As a matter of policy, we will limit the use of civil money penalties to more serious deficiencies. Civil money penalties are included as a remedy choice when the seriousness of the deficiencies is such that Category 2 or Category 3 remedies would be applicable, as specified in § 488.408, Selection of remedies.

In cases of repeated or uncorrected deficiencies, imposing a flat, one time civil money penalty for these deficiencies would ignore the statutory requirement to provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies as specified in sections 1819(h)(2)(B), 1919(h)(2)(A), and 1919(h)(3)(C) of the Act. While we are providing in redesignated § 488.438 that penalties are increased for repeated deficiencies in the same regulatory grouping of requirements, we do not accept the recommendation to double the fines because mandating the magnitude of the increase would detract from the kind of flexibility the Congress gave to the Secretary and the States. With regard to uncorrected deficiencies, we may propose to increase a civil money penalty for those cases in which a lower level penalty amount was imposed should those uncorrected deficiencies become sufficiently serious to pose immediate jeopardy.

To assign a flat, one time fine to a single deficiency regardless of its seriousness does not take into consideration the factors included in section 1128A of the Act and specified in § 488.438 of this final rule, and ignores the fact that the Act mandates that a civil money penalty, when imposed, be computed for each day of noncompliance. The Act contemplates the imposition of civil money penalties

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for whatever period HCFA or the State determines the noncompliance exists.

Comment: A commenter asked if the hearing officer makes the assessment decision on the amount of the civil money penalty.

Response: As previously stated, when a facility requests a hearing on the noncompliance which led to the imposition of the civil money penalty, HCFA or the State will not initiate collection of the penalty until a final administrative decision is rendered which upholds the determination of noncompliance. Upon further analysis, we are adding a paragraph to redesignated § 488.438 to explain the reviewability of the civil money penalty that is imposed on a SNF or NF for noncompliance with participation requirements. We now specify that in any case in which an administrative law judge or State hearing officer (or higher administrative review authority) finds that the basis for imposing a civil money penalty exists, as described in § 488.430, the administrative law judge or State hearing officer (or higher administrative review authority) may not: set a penalty of zero or reduce a penalty to zero; review the exercise of discretion by the Secretary or the State to impose a civil money penalty; or consider any factors in reviewing the amount of the penalty other than those specified at § 488.438(f). In other words, when the administrative law judge or State hearing officer (or higher administrative review authority) finds noncompliance supporting the imposition of the civil money penalty, he or she must remedy it with some amount of penalty consistent with the ranges of penalty amounts established in § 488.438. This provision is consistent with other provisions specified in this rule to motivate a SNF's and NF's compliance with participation requirements in which we state that these providers have the opportunity to appeal certifications of noncompliance leading to an enforcement remedy. This provision is also consistent with section 1128A(d) of the Act, which requires that specific factors be considered in determining the amount of any penalty.

Section 488.440 Effective Date and Duration of Penalty

Comment: We received many comments on the effective date of the civil money penalty. Some commenters recommended that the effective date:

- Be stayed if a hearing is requested;
- Begin on the date an appeals decision is issued; or
- Begin on the date the facility receives notice of the proposed penalty.

A commenter recommended that no civil money penalty be imposed if the facility is in compliance by the effective date of the notice.

Many commenters advocated that this regulatory section be changed to require that the effective date of the civil money penalty be the date when the deficiency began as can be documented by the surveyors. They said that the effective date provision of the proposed rule:

- Implies a "grace period" for providers to correct deficiencies;
- Is inconsistent with OBRA '87;
- Contradicts § 488.230(a)(2) of the proposed rule;
- Undermines the States' ability to use civil money penalties; and
- Defeats the deterrent effect of this remedy and the goal of encouraging prompt compliance.

Response: We are revising redesignated § 488.440 after thoughtful consideration of the many comments received. We are changing the heading of paragraph (a) to read, "When penalty begins to accrue." This phrase is more appropriate in the context of a civil money penalty since this penalty cannot be collected until the provider has an opportunity for a hearing if one is requested; however, it can begin to accrue before the hearing. Also, this revision includes the accrual of the civil money penalty for past days of noncompliance since the last standard survey which are corrected by the time of the current survey as provided in the Act at sections 1819(h) and 1919(h). Revised paragraph (a) now provides that the civil money penalty may start accruing as early as the date that the facility was first out of compliance, as determined by HCFA or the State. To stay the accrual of the penalty if a hearing is requested, to start the accrual when a hearing decision is made, or to begin the accrual on the date of the notice, as the commenters suggest, would allow noncompliance to continue without a remedy being imposed and would not be implementing the remedy as the Congress intended. This intent is clearly stated in the Committee report that accompanied OBRA '87:

> • • • the Committee amendment would expressly allow a State to impose civil money penalties for each day in which a facility was found out of compliance with one or more of the requirements of participation, even if the facility subsequently corrected its deficiencies and brought itself into full compliance. This, in the Committee's view, is essential to creating a financial incentive for facilities to maintain compliance with the requirements for participation. The Committee amendment would set no upper limit on the amount of these penalties and would allow States to increase the amounts in cases of repeated noncompliance. States could impose civil money penalties prior to a hearing.
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> • • • the Committee amendment would create an incentive for facilities to maintain compliance with all of the requirements of participation by authorizing the Secretary to impose and collect civil money penalties for each day a facility is out of compliance even though the facility may subsequently bring itself back into full compliance. (H.R. Report No. 391, 100th Cong., 1st Sess., 473–6 (1987)).

Moving the date when the penalty can accrue to be as early as the date of the noncompliance permits noncompliance to be sanctioned promptly and addresses the concerns of the commenters who said that the effective date in the proposed rule implied a "grace period" for providers to correct deficiencies before a civil money penalty was imposed and undermined the States' abilities to use this remedy. We expect that in virtually all cases, the civil money penalty would start accruing from the date of the noncompliance. The only exception could be those cases in which the survey identifies the noncompliance but there is undue delay before HCFA or the State notifies the provider of the imposition of the penalty. However, the provider would receive a second notice before the collection of the civil money penalty, as explained in § 488.440.

Comment: A commenter recommended deleting proposed § 488.230(i)(6) (redesignated as § 488.440(g)), which provides that, in the case of immediate and serious threat deficiencies, HCFA will or the State must terminate the provider agreement on the 23rd day after the appointment of temporary management if the threat remains.

Response: We do not accept the suggestion to delete this provision because we believe it is important to specify the situations that affect the accrual of civil money penalties. However, we are revising redesignated § 488.440(g) to specify that termination occurs within 23 days after the last day of the survey if immediate jeopardy remains, and the daily accrual of civil money penalties stops on that day.

Comment: Many commenters suggested that the regulation incorporate a provision assuring prompt revisits by HCFA or the States to evaluate compliance based upon a facility's allegation of compliance, because several commenters stated that survey teams often are not prompt in the follow-up process. Others asked if civil money penalties accrue when a revisit is not timely. Several commenters asked that we clarify if there must be on-site revisits by the State to verify reports by

facilities. One commenter requested revisits be within a specified timeframe and another specified a 10 day timeframe in which revisits must be conducted. One commenter recommended that civil money penalties be suspended immediately (until the survey team can revisit) when authorities receive notification through certified mail that deficiencies have been corrected.

Response: While we understand the concern expressed by the commenters that surveyors conduct prompt revisits to confirm substantial compliance, the fact remains that when a SNF or NF participates in the Medicare and/or Medicaid program, that facility agrees to maintain substantial compliance with the participation requirements. When a civil money penalty or any other remedy is imposed upon a SNF or NF, it is because it has not maintained substantial compliance with these requirements, and we want to motivate corrective action. While HCFA and the States will try to revisit the facility in as timely a fashion as possible, when a revisit is necessary to verify substantial compliance, neither HCFA nor the States will be constrained by a specified timeframe in which to conduct these revisits. Nor will HCFA or the States suspend a penalty until a revisit can be conducted. The revisit would not be necessary if the SNF or NF had met its commitment to remain in substantial compliance with the participation requirements. Therefore, it is the provider's poor performance that has generated the need for a revisit. Moreover, timeframes for revisits can vary from State to State and within a State due to geographical variations and available personnel.

Hence, in those cases in which an on-site revisit is determined necessary to verify that the SNF or NF has come back into substantial compliance with participation requirements, civil money penalties may accrue from as early as the date the facility was first out of compliance, as determined by HCFA or the State, until the date of the revisit which finds substantial compliance. Or, the civil money penalty may accrue from as early as the date the facility was first out of compliance, as determined by HCFA or the State, until the date substantial compliance was achieved as documented by written credible evidence submitted to, and accepted by, HCFA or the State before an on-site revisit, but which, in certain situations, must be confirmed by an on-site revisit.

Sometimes an on-site revisit is not necessary to establish that a facility has come back into substantial compliance; in those cases, the civil money penalty may accrue from as early as the date the facility was first out of compliance, as determined by HCFA or the State, until the date for which there is written credible evidence of substantial compliance which is acceptable to HCFA or the State without the on-site visit. In these cases, there is no reason to "assure" the timeframe of a revisit as stated by a commenter. In response to the concerns and questions of the commenters, we are revising § 488.438(h) to provide for the policies expressed above.

Comment: Several commenters asked what documentation will be acceptable to HCFA or the State as credible evidence as stated in proposed § 488.230(i)(7) (redesignated as § 488.440(h)).

Response: In order to appropriately respond to each unique situation of noncompliance, HCFA or the State will evaluate written credible evidence on a case by case basis. HCFA and the State have the discretion to determine what constitutes written credible evidence. For example, a survey may determine that a facility's furnace is broken constituting a deficiency for violating a Physical Environment requirement by its failure to maintain all essential mechanical, electrical and patient care equipment in safe operating condition (§ 488.70(c)(2)). In such a case, the facility may buy a new furnace, have it installed, and submit the receipt to the State or HCFA as written credible evidence of substantial compliance. If this written credible evidence is accepted by HCFA or the State, the accrual of the civil money penalty would stop as of the date substantial compliance was achieved.

Sometimes substantial compliance can be achieved before an on-site revisit and the retroactive substantial compliance date can be verified with an on-site revisit. For example, during a closed record review (which is an examination of the records of discharged, transferred or deceased residents), it may be determined that a facility was not recording the reason for transfer or discharge in the residents' clinical records. This would be a violation of a requirement under Admission, Transfer and Discharge Rights set forth at 42 CFR 483.12. Since it would be inappropriate to send residents' records in the mail as evidence of correction, a revisit would be necessary. During the revisit on May 30, 1994, documentation confirms that the facility came into compliance with this requirement on May 10, 1994, 20 days before the revisit. Since the revisit confirms compliance with this requirement as having occurred on May 10, 1994, the accrual of the civil money penalty for the facility could be from as early as the date the facility was first out of compliance as determined by HCFA or the State until the date for which the revisit established that substantial compliance was achieved, which would be May 10, 1994 in this example.

There are other cases in which documentation cannot confirm the correction of noncompliance, and in these cases an on-site revisit is necessary. For example, one of the requirements for Infection Control is that personnel must handle, store, process and transport linens so as to prevent the spread of infection as specified in § 483.65. If a deficiency is cited for a violation of this requirement and a civil money penalty is imposed, submitting written documentation would not confirm the correction of the violation. An on-site revisit to observe personnel behavior is necessary in this case to confirm that the facility is, in fact, back in substantial compliance with this regulatory provision.

Comment: One commenter stated that fines should accrue until a follow-up survey confirms compliance. This commenter said proposed § 488.230(i)(7) should be revised because it rests on a clause rejected by OBRA '87 that paper review cannot adequately determine compliance. The commenter also said that if a facility requests a survey and is found out of compliance, the facility would be held liable for the costs of the survey.

Response: We do not accept this comment. First, we are not suggesting that written credible evidence submitted to HCFA or the State can confirm substantial compliance in every situation. We are well aware that not every deficiency can be determined to be corrected by written evidence as not every requirement is related to a written record. OBRA '87 did increase the number of outcome oriented requirements and reduce the number of paper compliance requirements; however, it did not eliminate all paper compliance requirements. The examples used in the discussion of the comment above describe situations in which written credible evidence can confirm substantial compliance. When we can confirm substantial compliance without an on-site revisit, valuable resources can be conserved, creating a savings for the taxpayer.

We do not accept the comment to charge the facility for the costs of the survey when it alleges substantial compliance but is found to be noncompliant at a revisit. The Act does not include the imposition of a survey charge as an available remedy.

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Comment: A commenter asked how a facility will notify the State when it has corrected the noncompliance.

Response: When a facility has corrected the noncompliance, it may notify the State in whatever manner it feels is most appropriate. For instance, in certain situations written credible evidence sent through the mail will be the best method of notification. In other cases a telephone call to request an on-site revisit will be the most appropriate method of notification.

Comment: A commenter asked how penalties will be computed during the interim when a facility believes it is in compliance and a survey team, upon revisit, disagrees.

Response: While a revisit is pending, the penalties continue to accrue at the rate originally specified by HCFA or the State. However, HCFA or the State may propose to increase the daily penalty if a facility with nonimmediate jeopardy deficiencies alleges compliance, but on a revisit, HCFA or the State finds that the facility's deficiencies have become sufficiently serious to pose immediate jeopardy.

When a facility disagrees with the decision made at the time of the revisit, this disagreement could be resolved through the administrative hearing process. HCFA has authority to settle cases at any time prior to a final administrative decision for facilities in which HCFA's enforcement action prevails. The State has authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails. These provisions are specified in redesignated § 488.444. However, a civil money penalty would not be computed and collected until substantial compliance is verified, HCFA's or the State's decision of noncompliance is upheld after a final administrative decision, the facility waives its right to a hearing, or the facility is terminated.

Comment: One commenter suggested adding a new provision to require that follow-up surveys be conducted within 10 days of the facility notifying the State or HCFA that it has substantially corrected deficiencies. The penalty is terminated on the date the facility provided the notice if the deficiencies are substantially corrected at the time of the revisit or the 10 day period for a revisit has elapsed and the revisit has not occurred. If a revisit determines the scope and severity of the deficiencies has changed, the penalty amount is adjusted and the penalty is effective on the date of the facility's notice.

Response: We cannot accept this comment in total. However, as previously explained in this preamble, we are accepting the commenters' suggestion to incorporate the concept of substantial compliance into the regulation as the standard providers must meet to participate in the Medicare and Medicaid programs as SNFs or NFs. Consequently, a remedy is lifted when deficiencies lessen to the point that the facility is in substantial compliance.

The amount of the civil money penalty is increased to reflect repeated deficiencies in the same regulatory grouping of requirements. The civil money penalty may be increased for a facility that has deficiencies, which, after imposition of a lower level penalty amount remain uncorrected and, in fact, become sufficiently serious to pose immediate jeopardy. The civil money penalty would be shifted to the lower range of penalty amounts for a facility which had immediate jeopardy deficiencies if the immediate jeopardy is removed. However, if the noncompliance that continues after the immediate jeopardy is removed constitutes repeated deficiencies in the same regulatory grouping of requirements, the civil money penalty would be increased in accordance with § 488.438(d)(2) of this final rule. In a previous discussion, we clarified the reasons why we will not be constrained by a specified timeframe to conduct on-site revisits or suspend a penalty until we can revisit and the date when the penalty begins to accrue.

Comment: One commenter suggested that at proposed § 488.230(i) we provide for the accrual of interest.

Response: We are revising redesignated § 488.440 to require that the notice of the penalty amount due include a statement of the interest rate so that a provider is aware of the interest rate applicable if the penalty is not paid on the due date. Redesignated § 488.442(c), which discusses the collection procedures for civil money penalties, specifies how the rate of interest is computed. Redesignated § 488.442 Due date for payment of penalty.

Comment: Several commenters proposed changing the date when civil money penalties are due as stipulated at § 488.230(j)(1) of the proposed rule to one of the following:

- 30 days everywhere the proposed rule specifies 15 days, as 30 days is more commonly used in commerce;
- 30 days from the date of notification or any earlier period as provided for by State law; or
- Within 10 days of receipt of notice of penalty or within 10 days of receipt of the final hearing decision unless the decision is appealed.

Response: We do not accept the recommendations of the commenters to change the due date. The due date proposed (now in redesignated § 488.442) is consistent with existing HCFA notification procedures in which we give the provider a 15 day notice before a remedy begins, such as, in the case of the denial of payment for new admissions or termination in nonimmediate jeopardy situations. Because we have no compelling reason to conclude that reducing the 15 days to 10 days or increasing the 15 days to 30 days would result in a more effective enforcement process, we are not changing this policy.

However, while reviewing these comments, we realized that we did not include all of the provisions explaining when the civil money penalty can be collected. Consequently, we are adding these provisions to redesignated § 488.442(a).

Comment: One commenter said that a facility should not have to pay any penalty until it has fully exhausted its appeal rights, including appeals to the appropriate State or Federal court.

Response: We do not accept this recommendation. We are revising redesignated § 488.442(a) to make clear that the civil money penalty is collectible when a final administrative decision is issued upholding the imposition of the penalty. This position is in accordance with the intent of section 1128A(e) of the Act, as stated in the conference agreement. The conference agreement provides that no penalties will be assessed nor payment prohibited until all administrative remedies have been exhausted. (See H.R. Rept. 97–208, 97 Cong., 1st Sess. Book 2 (Conference Report) p. 950. (1981)).

Comment: Many commenters supported the provision that allows the civil money penalty to be deducted from any sum then or later owing to the facility by HCFA or the State. The commenters believe that this provision is time saving and cost effective.

A few commenters recommended only deducting the civil money penalty from any sum then or later owing by HCFA or the State if the penalty payment is not received in full within 30 days from the date of notification. A commenter asked if HCFA or the State will notify the facility when they plan to deduct the penalty from future monies that HCFA or the State owe the facility.

Response: We appreciate the support of the commenters who agree that the amount of the penalty when determined, may be deducted from any sum then or later that HCFA or the State owe to the facility as specified in redesignated § 488.442(b). This provision implements section 1128A(f) of the Act.

The comments to only deduct the penalty if the facility has not paid in full within 30 days and the question about notifying a facility of a deduction are concerns that will be addressed in forthcoming manual instructions. However, a facility is not precluded from paying the civil money penalty, when it is collectible, at any time prior to the time when the penalty would be deducted from sums then or later owing to the facility.

Comment: A commenter stated that HCFA and/or the State should collect the civil money penalty after all appeal rights are exhausted because the ability to deduct a civil money penalty, when determined, from any sum then or later owing, is unfair and could financially cripple the facility.

Response: We do not accept the comment. First, a civil money penalty is not collectible until, as explained in a previous comment, a final administrative decision is made that supports the imposition of the penalty. Second, a facility's financial condition is one of the many factors considered in determining the amount of the penalty. It is not our intent to cause a facility undue hardship; however, if the penalty imposed is in the upper limit of the immediate jeopardy range, we believe it is justified, because residents are in life threatening situations and we want to motivate the facility to immediately correct deficiencies. Finally, the Act permits that civil money penalties may be deducted from any sum that HCFA or the State owes or will owe the facility, and since a provider has ample notice of the due date, the option exists to pay the civil money penalty on or before the due date as opposed to the money being deducted from sums owed or owing.

Comment: Another commenter said more consistency between regulatory requirements and enforcement practice would be demonstrated by requiring the agreement of the patient and his or her attending physician with the monetary penalty to be imposed prior to the withholding of monies from the patient's funding source.

Response: To solicit the agreement of each and every resident and his or her attending physician before the imposition of a civil money penalty would unnecessarily delay the imposition of the civil money penalty. Also, if a facility is not motivated to promptly correct noncompliance, due to the lengthy delay created by seeking resident and physician approval, the health and safety of residents could be compromised for an even longer period of time. Furthermore, when a provider enters into an agreement with HCFA or the State, or both, to participate in the Medicare and/or Medicaid programs, it is responsible for providing the agreed upon level of care to the residents. There is no justification for asking each resident and his or her attending physician for permission to impose a civil money penalty since the resident is the recipient and/or the beneficiary of the program and not a party to the agreement.

Comment: Many commenters suggested that the rate of interest not be negotiable as stated in the proposed rule's preamble. The commenters said this can promote inconsistency, is unworkable and inequitable. Commenters wanted to know how the rate will be negotiated (as stated in the proposed preamble) and who will determine this rate.

Many commenters offered alternative language for this regulatory provision which included the following:

- Interest accrues at the credit card rate from the date of citation on all penalties not paid prior to a request for a hearing;
- Interest is assessed at an annual rate which is 2 percent above the prime rate on the unpaid balance of the civil money penalty beginning on the due date;
- Interest accrues from the date of the violation at the highest rate permitted by State usury laws;
- Interest is based on a national index (for example, 6-month Treasury bills); and
- The interest rate must be placed in regulation.

Response: We agree that the interest rate should not be negotiable and we are revising redesignated § 488.442(c) to specify the interest rate applicable to the collection of civil money penalties. For Medicare, the interest rate is the rate fixed by the Secretary of the Treasury and used by the Department of Health and Human Services. The rule now states that the interest rate is the higher of either—(1) the rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of the notice of the penalty amount due (this rate is published quarterly in the Federal Register by the Department under 45 CFR 30.13(a)); or (2) the current value of funds rate (this rate is published annually in the Federal Register by the Secretary of the Treasury, subject to quarterly revisions). For Medicaid, the interest rate is determined by the State.

Comment: We received many comments on the collection of civil money penalties from dually participating facilities. A few commenters were confused and asked for clarification of this regulatory provision. Commenters suggested amending the language of the proposed rule, which says, "the relative proportions of Medicare and Medicaid beds at the facility actually in use" by adding "by residents covered by the respective programs * * *" to this sentence. Another commenter recommended the regulation say, "the relative proportions of Medicare and Medicaid residents in the facility at the time the facility receives notice of the imposition of the civil money penalty."

Response: We are revising redesignated § 488.442(e) to include the phrase "by residents covered by the respective programs on the date the civil money penalty begins to accrue." By including this phrase, we require that civil money penalties collected from dually participating facilities be apportioned to the Medicare and Medicaid programs, not according to the proportionate number of beds but proportionate to the number of residents in each program on the date the civil money penalty begins to accrue. For example, a facility has the capacity and is certified to provide care for 50 Medicare beneficiaries and 50 Medicaid recipients. On the date the penalty begins to accrue, 15 Medicare beneficiaries and 45 Medicaid recipients are residing in the facility and 40 beds of the 100 beds are empty. The amount of the civil money penalty is apportioned as follows: 25 percent (15/60) of the civil money penalty would be apportioned to the Medicare Trust Fund for Medicare beneficiaries and 75 percent (45/60) of the civil money penalty would be applied to the protection of the health and property of Medicaid residents of facilities that the State or HCFA finds deficient.

Comment: Many commenters suggested alternative uses for the civil money penalties collected by HCFA or the State. Many suggested using the civil money penalty amount to address the situation which led to the deficiency so as to protect the health of the residents as OBRA requires. Other commenters suggested that civil money penalties collected be used to:

- Fund the State incentive program;
- Offer financial improvement grants to needy facilities;

Other commenters suggested:

- Placing the monies collected into a fund to be used by HCFA or the appropriate State agency, rather than

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placing them in the State's general revenue fund;

• Depositing the monies with the State Treasurer into the Long Term Care Monitor/Receiver Fund; and

• Not using the monies to fund government administrative activities or those activities not related to resident care.

Response: We cannot accept the above suggestions for the disposition of a civil money penalty imposed in accordance with sections 1819(h)(2)(B)(ii), 1919(h)(3)(C)(ii) or 1919(h)(2)(A)(ii) of the Act. If the civil money penalty is used by the facility to correct the noncompliance which led to its imposition, it is, in effect, not a remedy. While the use of the civil money penalty to fund the State incentive program, to finance grants for needy facilities or to deposit into the Long Term Care Monitor/Receiver Fund would be beneficial uses, the Congress has directed the use of the civil money penalty amounts collected as specified in section 1128(A)(f) of the Act. Civil money penalties collected from Medicare facilities are returned to the Medicare Trust Fund and, as specified at section 1919(h)(2)(A)(ii) of the Act and redesignated § 488.442(e). Civil money penalties collected by the Medicaid State agency, in accordance with section 1919(h)(2)(A)(ii) of the Act, are applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds or property lost (redesignated § 488.442(f)). The law does not require that the money received through civil money penalties be spent on direct patient care. In fact, the Act suggests that those funds will be spent on administrative expenses, such as those incurred in moving patients to other facilities.

Comment: Many commenters support the use of civil money penalties by the State for the protection of the health and property of the residents. A few commenters raised questions, such as:

• How the disposition of civil money penalties will be implemented to assure that money collected by the State is used appropriately;

• What State costs are included at proposed § 488.230(j)(6)(ii);

• Whether a priority would be assigned to the items included in the State's use of civil money penalties (such as, relocation of residents and resident reimbursement); and

• How resident reimbursement would be accomplished.

Response: These questions raised by the commenters are issues that need not be addressed through the Federal regulatory process. The Act permits each State to implement its own procedures.

Comment: A commenter supported the application of civil money penalties as specified in the regulation; however, the commenter was concerned that this provision conflicts with this party's State constitution which requires all civil forfeitures to be placed in the State's school fund. The commenter asked which provision takes precedence.

Response: Medicare and Medicaid are Federal programs, so when a civil money penalty is collected as an enforcement action because a participating SNF or NF is out of compliance with the Medicare or Medicaid requirements, the Federal regulation takes precedence.

Comment: A few commenters recommended amending proposed § 488.230(j)(6)(iii) to include the reimbursement of lost resident property. A few commenters suggested replacing "including" at § 488.230(j)(6) with the words "such as."

Response: Section 1919(h)(2)(A) of the Act specifies that civil money penalties collected by the State be applied to the protection of the health or property of residents of nursing facilities that the State or Secretary finds deficient. We believe the Congress intended that this include the State reimbursement of a resident for personal property and funds lost at the facility as a result of actions by the facility or by individuals used by the facility to provide services to residents. We are revising the rule accordingly.

We accept the suggestion to replace the word "including" with the word "such as" in the paragraph that discusses the use of civil money penalties collected by the State. This revision does not alter the meaning of the provision, but does provide needed clarity. The Act, as referenced above, enumerates certain specified activities for which a collected civil money penalty may be used; however, it is not an exhaustive list. As long as the intended use of the funds may be said to relate to protecting resident health or property, it is not necessary that each use of the civil money penalty be expressly stated in the regulation. Using the words "such as" more precisely conveys the intent of this provision and allows the State to have flexibility in determining what activities relate to protecting residents' health or property.

Section 488.444 Settlement of Penalties

Comment: A few commenters said that the regulatory provision at proposed § 488.230(k) does not offer guidelines on how civil money penalties may be settled and that there is no control over the States' or Secretary's discretion.

A consumer organization commented that granting States complete discretion to settle cases whenever and however they choose undermines the effectiveness of civil money penalties. They added that this regulatory provision opens the door too wide for parties interested in not paying fines to make inappropriate deals with decision-makers and avoid responsibility for their noncompliance.

Several commenters suggested deleting this regulatory provision, and a few commenters specifically suggested that this section be deleted in accordance with their changes proposed at § 488.230(e) which provide for settlement in which a facility pays the civil money penalty that was imposed (less the 35 percent), and corrects the deficiencies which led to the penalty, within 10 days of receipt of the notice.

Response: We cannot accept these comments. The authority provided HCFA or the State to settle any case at any time prior to a final administrative decision, as specified at redesignated § 488.444, is consistent with other regulatory provisions pertaining to civil money penalties. Regarding the comment that this provision opens the door for decision makers to make deals with providers, we contend that the survey, certification and enforcement process is built on a system of integrity and implements the necessary controls to assure that this integrity is maintained. To remove this provision, as suggested by a few commenters, would deny providers the opportunity to promptly settle their cases. We believe that the suggestion to settle by deducting 35 percent from the civil money penalty if the deficiencies which led to the penalty are corrected within 10 days does not allow a facility enough time to make a decision regarding whether to waive or request a hearing. Moreover, the provision in redesignated § 488.436 deals specifically with a provider waiving its right to a hearing. Redesignated § 488.444 provides the opportunity to settle a case, even if the hearing right was not previously waived. This provision was incorporated into the regulation in the interest of resolving disagreements at the stage in the process before sizeable expenditures of time and money are

devoted to hearing procedures. Even if a hearing had been requested, if, before the proceeding, all parties can reach agreement over the deficiencies to be corrected and the penalty to be paid until corrections are made, costly hearings procedures can be avoided.

Comment: A commenter requested that press releases and a notice to the long term care ombudsman accompany settlement, and if the civil money penalty was imposed as a result of a complaint investigation, notice should be given to the complainant.

Response: We do not accept this comment. Sections 1819(g)(5) and 1919(g)(5) of the Act provide for the disclosure of information regarding inspections and other activities of skilled nursing facilities and nursing facilities. Survey and certification information, which includes but is not limited to statements of deficiencies, plans of correction and appeal results, is available to the public. The regulation at § 488.325 expands disclosure to include among other things, notice of SNF or NF noncompliance and adverse action(s) imposed to the long term care ombudsman. Existing State survey agency procedures require that a notice be sent to the complainant informing him or her of the disposition of the allegation. We maintain that the present methods of disclosure used for all noncompliance situations provide ample opportunity for public awareness, and we do not believe that any additional benefit is derived by having separate disclosure procedures for those cases in which civil money penalties are used as a remedy (see discussion for § 488.325 Disclosure of results of surveys and activities).

Comment: A provider organization recommended that issues that may be resolved at settlement include citation of a deficiency; severity and scope of the deficiency; the remedy imposed; exclusion of the deficiency as the basis for increased sanctions in the future; and exclusion of the deficiency or deficiencies cited on the HCFA Form-2567 as the basis for further enforcement action by any other agency or office of the Department of Health and Human Services (HHS).

Response: We do not accept the suggestion to include in the regulation specific deficiency related issues that may be discussed at settlement. Providers have many opportunities to discuss and resolve the deficiency-related issues raised by the commenter before the settlement of the civil money penalty would occur. Providers have the opportunity to question survey findings during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, upon receipt of same, and through ongoing dialogue with the State and HCFA regional offices. Also, all States must have a dispute resolution process as required by § 488.331 of this rule to enable providers to discuss perceived discrepancies in the survey process. While the existence of a deficiency may arise at settlement discussions, it is unnecessary to mention it or any other of the above issues which are predicated on the existence of deficiencies and which may arise. Moreover, we have no authority, as the commenter suggests, to exclude a deficiency in the present but increase the enforcement action if it is repeated in the future.

Section 488.450 Continuation of Payments to a Facility With Deficiencies

Virtually everyone who commented vehemently disagrees with this proposed section. Consumer groups oppose this section because, they believe, it forces HCFA or the State to terminate a facility's provider agreement rather than to impose alternative remedies. State organizations disagree with the provision that the State must agree to repay FFP for Medicaid facilities rather than the facility agreeing to repay (as stipulated for Medicare). Providers argue that the proposed rule is too strict, because repayment of Federal funding would begin the day that the State survey agency identifies deficiencies rather than when HCFA or the State imposes remedies when facilities do not correct deficiencies. Providers also believe that asking for an agreement to repay Federal funds for deficiencies at low scope and severity levels is harsh.

Comment: Several commenters believed that proposed § 488.232, as redesignated at § 488.450, will force States to impose termination instead of alternative remedies for all instances of noncompliance in NFs. They based their belief on the provision that says that, when the State survey agency prefers an alternative remedy in lieu of termination, the State must agree to repay FFP. If the NF fails to correct the deficiencies during the correction period, the State would be liable. These commenters said, that because many States have no intention of entering into an agreement to repay FFP, the State must start termination. One commenter stated that if the provision remains as a prerequisite to the use of alternative remedies, reliance on termination procedures will continue. In the commenter's view, the end result will be more litigation, because providers will be placed in the unenviable position of having to respond to potential decertification for relatively minor infractions.

Other commenters criticized HCFA's proposed rule because it denies the intent of OBRA to make available to States a range of remedies to be used as alternatives to termination for deficiencies of lesser severity and places NFs in the undesirable position of having to respond to decertification actions for relatively minor violations.

Response: We are aware of the difficulties posed by the repayment provisions of sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act. As almost all commenters noted, these requirements constitute a significant disincentive to impose alternative remedies because the Act requires that either the facility (under Medicare) or the State (under Medicaid) repay the Federal government should the facility fail to correct identified deficiencies.

We note, however, that sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act specify the rules that must apply to SNFs and NFs when the *only* course chosen to respond to the violation of certification requirements is through alternative remedies. We reach this conclusion because of the literal language of both of the provisions of the Act, which specifies that these remediation provisions apply when the State survey agency determines that it would be more appropriate to employ alternative means to assure compliance than to seek a provider agreement termination. Thus, the commenters are quite right that when an alternative remedy only is being sought, the repayment provisions of the Act for SNFs and NFs are inescapable.

While we see the desirability of being able to pursue only alternative remedies in many cases of facility noncompliance, the fact is that section 1919(h)(7) of the Act offers the availability of alternative remedies when coupled with an action to terminate a provider agreement when there would be no repayment consequences for either the facility or the State. In these cases, when HCFA agrees with the State's assessment that a provider agreement termination should be sought, the State's timing for the termination controls. If the State opts for one or more alternative remedies in addition to termination, those remedies would be applied unless the Secretary chooses to impose an alternative remedy. When both the State and the Secretary choose to impose one or more alternative remedies, section 1919(h)(7)(B)(ii) of the Act specifies that only the Secretary's remedies are imposed. As already discussed, when the State's decision to terminate the

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provider agreement as well as impose alternative remedies prevails, we do not believe the rules of section 1919(h)(3)(D) of the Act would govern the imposition of the alternative remedy.

Thus, where a SNF's or NF's deficiencies do not pose an immediate jeopardy to resident health or safety, HCFA or the State may opt for a "slow-track" termination and apply one or more alternative remedies in the interim period. Should the facility achieve substantial compliance before the effective date of the termination, as we would expect to occur in almost every case, the termination action would be rescinded. Should the facility fail to correct deficiencies by the effective date of the termination, the termination would proceed, but neither the State nor the facility would be liable to us for a repayment of funds for the time following the identification of deficiencies. While we are not suggesting that States or HCFA make a decision to terminate a provider agreement in all cases where facility deficiencies have been identified, we believe it is important that States, and all others affected by these provisions, be clear as to the consequences of using the various provisions of the Act.

We have concluded that the approach we have described above can be applied to SNFs as well as to NFs and dually-participating facilities. When we have identified deficiencies for SNFs and seek provider agreement termination in accordance with section 1866(b) of the Act, we would not be seeking only an alternative remedy. In such cases, we believe the rules of section 1819(h)(2)(C) would not apply since the State's recommendation is for a termination and alternative remedies.

We believe proceeding in the fashion we have described relative to all nursing homes may strike the kind of balance that the Congress was seeking through its placing of alternative remedies in greater prominence than had been the case before nursing home reform. Most importantly, nursing home residents would be protected, because the facilities in which they reside would have every incentive to comply quickly in order to have alternative remedies lifted. With that incentive, residents would face the unsatisfactory care that gave rise to the enforcement action for only short periods of time without facing the specter of relocating were termination the first remedy of choice. Second, States would have considerably more flexibility to impose alternative remedies knowing that neither they nor the facility will be liable to us for the repayment of funds should a facility, in fact, fail to achieve substantial compliance by the time that the termination action is effective. Of course, the mandatory denial of payment which the State or the Secretary is required to impose after the third month of noncompliance would not require the State for Medicaid or the facility for Medicare to sign an agreement to repay Federal funds if substantial compliance is not achieved.

Comment: One commenter believed that the continuation of payments pending remediation provision should only be applied in situations where the Secretary and the State disagree about whether to terminate and the Secretary believes that termination should occur but the State believes that the facility can correct the problems. The commenter states:

> This interpretation flows very logically from the wording of section 1919(h)(3)(D), which gives the Secretary permission to continue payments ("The Secretary *may* continue payments * * *" emphasis added). Since the Secretary has ample authority elsewhere in the Act to pay facilities, he does not need this "permission" and therefore the provision would appear to be redundant. It acquires meaning only if it is understood as making an exception to a situation where the Secretary would otherwise be barred from making payment.

One commenter believes that sections 1919(h)(3)(D) and1819(h)(2)(D) of the Act, if not redundant, were incorporated into the Act to constitute guidance in a situation that otherwise would make it unclear as to whether or not payment should continue, that is, disagreement between HCFA and the State.

Other commenters noted that, "A reasonable reading of the statute does not require the Secretary to second-guess every determination by a State that intermediate sanctions should be attempted before resorting to termination." The commenters assert that the statutory provision should only apply in those very rare circumstances where the Secretary concludes that termination is necessary, but yields to the State's recommendation that intermediate remedies be imposed instead.

Response: While we agree that the Secretary has the authority to pay Medicare facilities and pay States for Medicaid facilities in accordance with sections 1861(v)(1) and 1903 of the Act, respectively, the provisions of sections 1819(h)(2)(C) and 1919(h)(3)(D) limit the Secretary's authority to make payments for Medicare providers and States (for Medicaid providers), respectively. However, that is not the only situation in which there would be lack of clarity as to whether or not payment should continue. The clearer reading and the one we have adopted is that, without this provision, a lack of clarity would exist over whether or not payments should continue despite noncompliance with the statutory participation requirements. Further, we do not agree that the Act provides for the scheme offered by the commenter (that is, that we only invoke section 1919(h)(3)(D) of the Act if there is disagreement about termination). Such disagreements between the State and the Secretary over termination and establishing remedies are addressed at section 1919(h)(7) of the Act.

Comment: One commenter expressed the opinion that there is almost universal agreement that terminating nursing homes from Medicare and Medicaid is harmful to residents. The commenter believed that in most terminations, residents are transferred to other substandard nursing homes farther away from family and friends. The end result of most provider terminations is to expose residents to relocation trauma without getting better care. Other commenters also expressed concern over the resident's reaction to a potential termination. Commenters believed that even when a facility has come into compliance, residents suffer from the uncertainty of their situations. Although commenters agreed with our statement in the preamble that we see provider agreement terminations generally to be the enforcement response to the most serious deficiencies, they believed the proposed regulation allows almost unrestricted use of termination as a sanction.

Response: We disagree with the commenter, who gave no evidence to support the contention that most provider terminations expose residents to relocation trauma without getting better care. We acknowledge that there are instances in which termination will cause some hardship to residents, but the advantages of removing residents from a noncompliant nursing home could outweigh any disadvantages. Usually, HCFA and the State will impose alternative remedies prior to terminating or in addition to terminating a facility in hopes that a facility will achieve substantial compliance. We believe that in those cases in which termination becomes necessary, the termination is for the ultimate benefit of the residents to assure that they receive the care to which they are entitled.

Comment: One commenter stated that section 1919(h)(3)(D) of the Act requires the Secretary to establish guidelines for the approval of corrective actions requested by the States. The commenter

pointed out there are no proposed rules that address this statutory requirement.

Response: We will issue these guidelines in manual instructions. We do not believe including them in regulations is required or necessary.

Comment: Many commenters believed that the proposed rule was so broadly worded that it could be understood to apply to every situation where the extra time and the intermediate sanctions did not produce compliance. These commenters asked that we revise the regulation to use the continuation of payment during remediation provision in only in the most egregious situations where the Secretary disagrees with the State survey agency regarding termination.

Response: Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act do not provide any flexibility about the seriousness of a deficiency in applying the continuation of payment during remediation provision. Indeed because the statute in both places makes reference to the payment limitations being triggered if a facility is "not in compliance with *a* requirement of subsections (b), (c), or (d)" (emphasis added), we believe that the Congress was focusing on any deficiency that might cause a facility to not be in substantial compliance, not just cases of egregious noncompliance. Therefore, we cannot accept the commenter's request.

Comment: One commenter recommended that we add the following sentence at the end of proposed § 488.232(a)(1)(i): "In considering whether it is more appropriate to impose alternative remedies than to terminate the facility, the State shall take into account the relative effects on the facility's residents of relocation and remaining in the facility, including the availability of suitable alternative placements for them."

Response: We are not adopting this recommendation because there may be instances when termination is necessary despite the fact that it will cause some hardship to residents. As noted earlier, usually, HCFA and the State will impose alternative remedies prior to terminating a facility; however, there may be instances where this is not possible. For example, a facility could refuse to allow access to the surveyors, or could refuse to submit a plan of correction. A facility might also remain out of substantial compliance with requirements after an up to 6-month period allowed for correction, at which time the Act would require termination despite hardships to the residents.

Comment: Several commenters urged us to delete the provision at paragraph (a)(2) that HCFA or the State may terminate the SNF or NF agreement before the end of a 6-month correction period if the criteria in paragraph (a)(1) of this section are not met. Commenters believed that the Act does not authorize HCFA or the State to terminate a provider agreement if a facility does not meet the threshold criteria (that is, the State survey agency finds that it is more appropriate to impose an alternative remedy than to terminate the facility; the State has submitted a plan and timetable for correction approved by HCFA; and the facility, in the case of a Medicare SNF, or the State, in the case of a Medicaid NF, agrees to repay the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction). Commenters believed that once a determination is made to invoke the continuation of payment provision, a facility should not be terminated or have its Federal funding discontinued unless it is found on a subsequent survey to present immediate jeopardy, or the 6 months expire and the originally cited deficiencies have not been corrected. On the other hand, a few commenters recommended that we change the section to read "HCFA or the State must terminate" rather than "may terminate" as it was proposed.

Response: We disagree with these commenters. First, on its face, the statute does not limit the authority of the Secretary to deny further payments to facilities or States under these provisions to only those cases where deficiencies pose immediate jeopardy. Rather, the statute speaks to all providers which do not meet "a" requirement of the Act. Second, the States and the Secretary have plenary authority to terminate provider agreements any time there is facility noncompliance, and sections 1819(h)(2)(C) and 1919(h)(3)((D) pose no limitation on that authority. If the State survey agency does not prefer an alternative remedy in lieu of termination to remedy noncompliance, the Act compels the Secretary to cease payments to the facility under Medicare or the State under Medicaid. If the State survey agency prefers an alternative remedy in lieu of termination and the other two criteria are not met, the Secretary does not have authority to continue payments under either program. However, if the State survey agency prefers termination, we cannot preclude a State from imposing additional remedies while the termination is pending, which can be up to six months from the last day of the survey. Therefore, we are not accepting the commenter's suggestion that we should continue Federal funding unless we found on a subsequent survey that deficiencies present immediate jeopardy, or the 6 months have expired and the facility has not corrected the originally cited deficiencies. To do so would be clearly inconsistent with the Act, as we have discussed above. Neither immediate jeopardy nor a full 6 months of noncompliance have to have occurred in order for the State or HCFA to terminate a provider agreement.

We are also not accepting the suggestion to change HCFA or the State "may" to HCFA or the State "must," since the text of the regulations mirrors the Act, which affords States and HCFA discretion in these matters.

Comment: Many commenters suggested that we delete the requirement that States submit the plan of correction to HCFA for approval in every case for which alternative remedies are to be imposed. Some commenters assert that this provision, as written, provides strong incentives to using termination rather than alternative remedies. They point out that if a State survey agency wants to impose any remedy other than termination, it must submit a plan of correction to HCFA. The commenters believed that this will encourage States to terminate a provider agreement rather than to impose an alternative remedy because the requirement that HCFA approve plans of correction under the continuation of payment provision will be administratively burdensome.

Response: The requirement that State survey agencies submit a plan of correction to HCFA as part of the continuation of payment provision is statutory. Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act provide that, "the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action." We do not have the authority to delegate this function to the State. However, we may, through manual instruction provide for a mechanism whereby, if the State survey agency has not received approval or disapproval from HCFA within a prescribed amount of time, we would deem the plan and timetable for corrective action approved.

Comment: One commenter believed that the Secretary should require States to seek HCFA approval for all plans of correction involving use of alternative remedies only if the review will be done for the purpose of determining whether the State has chosen its remedy strategically to achieve the appropriate change in facility behavior toward residents.

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Response: Sections 1819(h)(2)(C)(ii) and 1919(h)(3)(D)(ii) of the Act require that the Secretary approve all plans of corrective action. Moreover, the Act does not delve into the purpose behind approving the plans of corrective action (that is only reviewing the plan of correction to determine whether the State imposed the best remedy for a given situation of noncompliance.) Adding such a requirement to the regulation would inappropriately limit the authority of the Secretary. For this reason, we are not accepting this suggestion.

Comment: One commenter believed that alternatives to termination should be allowed to be imposed because, without a distinction between level and type of deficiency, even minor noncompliance becomes grounds for withholding of Medicaid funds.

Response: We assume the commenter means that HCFA should not use the continuation of payment provision for minor noncompliance. As we have explained before, the Act makes no such distinction for minor deficiencies. Therefore, we have no basis to revise the rule. If the commenter is urging the use of remedies instead of termination, we believe that the enforcement scheme we have designed and in § 488.406, which correlates specific enforcement responses to specific levels of noncompliance, provides for incrementally more severe remedies for more serious deficiencies. Also, as discussed elsewhere in this final rule, while all facility noncompliance will be identified, the enforcement response can range from a provider's commitment to correct with no remedies imposed, to termination of the provider agreement. Providers found to be in substantial compliance will not have remedies imposed.

Comment: The majority of commenters who responded to this section asked that we take out paragraph (a)(1)(iii), which requires that States repay Federal funds paid to a nursing facility when alternative remedies are used. One organization stated that they believe HCFA is basing the regulation on a specific statutory requirement but they believe that this issue should be discussed before implementation of its provision in the enforcement rules. They said that they believe that a stronger public policy rests on the use of the alternative remedies and that a facility's failure to comply should not create a financial threat to the State.

Response: First, we must point out that the repayment provision in redesignated § 488.450(a)(1)(iii) is based on the Act and pertains to facilities, in the case of Medicare SNFs, as well as to the State, for NFs, that are not in substantial compliance. Second, we recognize that the statutory requirement for State agreement to repay FFP for NFs if facilities do not achieve substantial compliance can be a barrier for a State survey agency choosing to impose an alternative remedy in lieu of termination. We understand the commenters' concern that many States will not agree to repay because a NF's achievement of substantial compliance is not wholly within the State's control. We have been studying the repayment issue and hope to develop a legislative proposal to remedy the inherent barriers in the Act. Absent a legislative change, we cannot eliminate the requirement that States agree to repay Federal funds in accordance with section 1919(h)(3)(D) of the Act. Neither do we have the authority to delay the implementation of this provision without legislative intervention. However, the Act does not prevent States from obtaining a repayment agreement from a facility. The State could obtain the facility's repayment agreement either before or after it enters into a repayment agreement with the Secretary. Nor does the Act require that repayment of Federal funds be made if a facility is not in compliance with Federal requirements. If the facility does not take corrective action in accordance with its approved plan and timetable and is not in substantial compliance at the end of the correction period, the facility (for Medicare) or the State (for Medicaid) would be responsible for repaying Federal payments for the correction period and HCFA would stop any further payment to the facility (for Medicare) or the State (for Medicaid) for nursing home services. If the facility followed its approved plan and timetable, but was not able to achieve substantial compliance at the end of the correction period, the facility or State would not be responsible for repayment of Federal funds, but HCFA would stop further payment to the facility or State for nursing home services. If a facility does not take action in accordance with its approved plan or correction and timetable, but is able to achieve substantial compliance, the facility or State would not be responsible for repaying Federal funds for the correction period, and the facility could continue in the Medicare and Medicaid programs. Section 1919(h)(3)(D) of the Act provide that the State agrees to repay "if corrective action is not taken in accordance with the approved plan and timetable" that was approved by the Secretary. Furthermore, we have explained above that alternative remedies can be imposed in addition to termination, and in such cases they would not be subject to the requirements of section 1919(h)(3)(D) of the Act.

Comment: Many commenters urged HCFA to delay the requirement for the State to indemnify HCFA for FFP repayment until day 90 if a facility is not in compliance with the requirements. Some commenters believed that the proposed rule eliminates any incentive for State survey agencies to recommend alternative remedies by imposing a requirement to indemnify HCFA for FFP from day one. Others wanted to modify the regulations so that States would not be required to guarantee repayment until day 90. One commenter believed that such a policy would be consistent with the Act and would ensure that facilities have the opportunity to make corrections.

Response: Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act specify that the Secretary may continue payments over a period of not longer than 6 months after the effective date of the findings. To read "the effective date of the findings" to mean the 90th day would extend the correction period from up to six months and up to nine months. Moreover, it would greatly distort the intent and clear meaning of the phrase "effective date of the findings" to designate the 90th day after the findings were first cited as the effective date. Therefore, the period covered by the sections 1819(h)(3)(C) and 1919(h)(3)(D) of the Act is a maximum of six months, starting with the last day of the survey. Sections 1819(h)(3)(C)(iii) and 1919(h)(3)(D)(iii) of the Act provides that the facility (for Medicare) and the State (for Medicaid) agree to repay the Federal government payments received under these subparagraphs if the corrective action is not taken in accordance with the approved plan and time period. Therefore, if the facility or the State must agree to repay money received for the period covered by section 1819(h)(3)(C) or 1919(h)(3)(D), they must agree to repay money received since the last day of the survey. Therefore, when the State or a facility enters into a repayment agreement and the facility does not take action in accordance with its approved plan and timetable for corrective action or does not achieve substantial compliance, the State or facility would be held financially accountable for the period covered by the repayment agreement.

We also disagree with the commenter's assertion that the repayment period should not start until the 90th day in order to give facilities more time to correct deficiencies. The facility is notified of its deficiencies during the survey, at the exit conference and then formally through the Statement of Deficiencies shortly after the completion of the survey. We believe that the beginning of the repayment period is irrelevant to the correction period. The facility has up to 6 months to take corrective action in accordance with its approved plan and timetable for corrective action or achieve substantial compliance, or both. If the facility does not meet that goal, the State or the facility will be expected to pay back the Federal funding for the period covered by the repayment agreement.

Comment: Many commenters recommended that we delete redesignated § 488.450(a)(1)(iii). Their comments included the following:

- It is unrealistic that a State will agree to repay the Federal government payments received if corrective action is not taken in accordance with a facility's plan of correction;
- The language does not fit within the concept of enforcement as envisioned in the Act;
- This provision is a heavy disincentive to use intermediate remedies;
- A State should not be monetarily penalized for a facility's failure to comply with regulations when an alternative remedy is chosen over termination;
- To put the State at risk for something that is ultimately out of the State's control does not make for good public policy; and
- The provision is beyond statutory authority and should be left to the States as to whether or not they wish to recover reimbursement from the facilities for noncompliant actions.

A number of commenters asked that we amend this subsection to explicitly permit States to enter into agreements with facilities to repay Medicaid funds if deficiencies are not corrected according to the approved plan of correction. Other commenters suggested that we only hold a State liable for repayment of Federal Medicaid payments to a noncompliant facility if the facility remains out of compliance and the State has not made full use of available intermediate remedies. One commenter wanted us to broaden the rule used for Medicare (that is, that the facility agree to repay) to apply to Medicaid as well.

Response: Absent a legislative change, we have limited choices when a State survey agency finds a facility out of substantial compliance with Federal requirements and alternative remedies only are the recommended enforcement response. For Medicare, we must obtain an agreement to repay from the facility or cease making payment to the facility. For Medicaid, we either obtain a repayment agreement from the State or stop Federal financial participation to the State for that facility. In addition, the State may terminate a NF. In response to the commenter who worried about the State's liability for up to six months of FFP, the Act does not prevent States from securing an agreement to repay from the facility before agreeing to repay monies to the Federal government. In fact, during the transition period between when the new nursing home requirements became effective and the effective date of the final survey process and enforcement rules, some States have obtained agreements to repay from facilities before signing agreements to repay to HCFA. However, we will not explicitly include in regulation that States are permitted to enter into repayment agreements with facilities, nor will we broaden the rule for Medicare to apply to Medicaid. The State has the discretion to determine whether repayment agreements between it and the Medicaid facilities would be beneficial.

We also are not accepting the recommendation to only hold a State liable for the repayment of Federal funds if the State had not made full use of available alternative remedies. Accepting this recommendation would limit the Secretary's ability to implement the provisions of section 1919(h)(3)(D) of the Act.

Comment: One commenter suggested that we replace "of the determination of noncompliance by" with "that the facility's provider agreement is terminated by" at § 488.432(b).

Response: The amended language suggested by the commenter substantially alters the meaning of this section and, if accepted, would be contrary to the Act. Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act permit the Secretary to continue payments pending remediation if the State, for Medicaid, and the facility, for Medicare, meet certain criteria. If the State agency prefers alternative remedies rather than termination and the criteria of section 1819(h)(2)(C) and 1919(h)(3)(D) of the Act are not met, the Secretary has no authority to make any payments to the facility from the "effective date of the findings," that is, from the last day of the survey that found the facility was not in substantial compliance with the requirements of section 1819 (b), (c) or (d) or 1919 (b), (c) or (d) of the Act, or both. If termination of a facility's provider agreement is sought, payments continue until the effective date of termination, which may not be more than 6 months after the last day of the survey. Substituting "that the facility's provider agreement is terminated by" would permit more payments to the State or the facility than the Act allows. In fact, such a policy would be no different than pre-existing policies to stop Federal payments on the effective date of termination. For these reasons, we have not accepted this comment.

Comment: One commenter pointed out that § 488.432(c) allows continuation of payments for up to 6 months from the last day of survey. The commenter further stated that if HCFA intends that the government can decide to give a facility less than 6 months of continued payments, HCFA should specify clear criteria in the regulations to guide this decision. Because the proposed regulations do not contain any such criteria, the commenter suggests that we delete the words "up to."

Response: We are not accepting the commenter's suggestion, and we have not specified criteria as to when HCFA or the State would allow continued payments for less than 6 months. We do not want to in any way restrict HCFA's or the State's ability to decide, on a case-by-case basis, the optimal amount of time for continuation of payment for a particular facility.

Comment: One commenter offered alternative language for § 488.432(d) to insert "substantially" before "correct."

Response: We are accepting the spirit of the commenter's alternate language, and are revising redesignated § 488.450 to say "If the facility does not * * * achieve substantial compliance".

Comment: One commenter stated the Act does not require that a facility correct all deficiencies; rather, the Act requires that a facility must have taken corrective action in accordance with the approved plan and timetable.

Response: While we believe that a provider must be in substantial compliance by the end of the allotted correction period to avoid a loss of Federal payments or termination, we agree with the commenter that our language could be more precise and are revising § 488.450(d) to delete the section title "Deficiencies not corrected" and renaming it "Action not taken in accordance with approved plan and timetable for corrective action."

Comment: Several commenters wanted to expand the period for providing notice of payment cutoff under the six month rule from 15 to 60 days. Commenters asserted that 15 days is insufficient time for the facility to

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correct any remaining problems and obtain a follow-up survey. They contend it is even less sufficient if the facility disputes the continued existence of the deficiencies and desires a hearing on the matter.

Response: We are not expanding the notice period from 15 days to 60 days nor do we agree that the 15-day notice period is inadequate. We base the 15-day notice period prior to termination on our experience with § 489.53(c)(1), which sets forth notice requirements for other providers and suppliers. Moreover, the purpose of the notice is not for a facility to make last minute corrections, but for the government to help fulfill its duty to provide due process to facilities before termination. Facilities generally have had notice of their noncompliance long before the 15 days prior to termination.

Comment: One commenter recommended that, unless HCFA is the only party acting (that is, the State does not terminate Medicaid participation), the State should provide the hearing and final decision. The commenter believed that if HCFA subsequently disagrees with the State's decision, the facility should not be affected. HCFA's action would be against the State alone, for recoupment of Federal financial participation, and should be appealed through the normal Departmental Appeals Board (DAB) process.

Response: We assume this commenter is referring to a NF. When a NF's provider agreement is terminated, the appeal procedures which apply depend on who is taking the enforcement action. If the State is terminating a NF and the Secretary is taking no action, the appeal procedures at 42 CFR part 431 apply. If the Secretary exercises her authority, finds noncompliance, and terminates the NF, the appeal procedures at 42 CFR part 498 apply. If a NF is a State-operated entity, the Secretary always takes the enforcement action, and the appeal procedures at 42 CFR part 498 would apply. In the case of facilities which participate as a NF and a SNF (dually participating facilities), where both the State and the Secretary are making enforcement decisions on the Medicaid and Medicare agreements respectively, the appeal procedures at 42 CFR part 498 apply. Since nearly 80% of all nursing homes are dually participating, the majority of NFs will appeal their enforcement actions through the Federal appeal procedures at 42 CFR part 498. The appeals mechanism for providers adversely affected by the repayment provision would be the same as an appeal of noncompliance which led to termination or other enforcement remedies, except that a State can also appeal the recoupment of FFP under a DAB hearing in accordance with 45 CFR part 16. The recoupment of Federal funds will be one of the results of the termination; however, the noncompliance which led to termination remains the initial determination which is at issue at the hearing, and is the action on which the recoupment of funds is predicated.

Section 488.452 State and Federal Disagreements Involving Findings Not in Agreement in Situations When There Is No Immediate Jeopardy

Many commenters were not aware that most of the provisions in this section are required by the Act. Most of the comments we received concerned proposed § 488.234 as a whole; therefore, we have grouped the comments under generic headings, rather than under specific subsections.

HCFA's Role in Enforcement Decisions.

Comment: Some commenters stated that the proposed regulations give HCFA too large of a role in enforcement decisions.

Response: The regulations reflect the statutory role given to the Secretary by the Congress in the enforcement provisions of the Act. Specifically, sections 1919(h) (5), (6), and (7) require the Secretary's involvement in enforcement decisions with respect to Medicaid NFs should the Secretary find facility noncompliance and seek to impose either alternative sanctions or termination or both.

Comment: Several commenters stated that the Congress did not intend HCFA to make all compliance decisions on dually certified SNF/NFs.

Response: HCFA does not make "all the decisions" on a dually certified SNF/NF. The Act itself prescribes that a finding of noncompliance, by either the State or the Secretary, will prevail over the other agency's finding of compliance. Therefore, the Congress decided that in cases where the agencies disagree, the finding of noncompliance becomes the effective finding regardless of whether it is the Secretary or the State that has made the finding. In addition, the Act provides that a State's decision to terminate prevails over HCFA's decision not to terminate, and the State's timing of a termination also prevails over HCFA's.

Comment: Some commenters stated that the Congress did not intend that HCFA "second guess" States' decisions on every survey.

Response: We have no intention of second guessing the results of every State survey. Sections 1819(g)(3) and 1919(g)(3) of the Act, however, require the Secretary to conduct validation surveys of a representative sample of SNFs and NFs in each State within 2 months of surveys by the State survey agency. Section 1919(h)(3)(B) of the Act provides for the Secretary's general validation authority exclusive of actual on-site validation surveys. As we stated in the proposed rule, prior to the effective date of OBRA '87, HCFA, acting for the Secretary, monitored State surveys. OBRA '87 formalized this process. The Congress also made explicit provision for whose enforcement approach would prevail in the case of a disagreement between the State and HCFA. Sections 1919(h) (6) and (7) of the Act, as implemented by redesignated § 488.452, specify situations in which the State rather than the Federal government prevails, with regard to the choice of a remedy or the timing of an enforcement action.

Comment: A few commenters stated that HCFA should take enforcement action against a Medicaid provider only after a validation survey or other on-site survey. Some wanted to change the above regulation by inserting the phrase: "on the basis of a validation survey" after "HCFA finds." Some commenters wanted a State's enforcement decision to be the controlling decision because the States understand local conditions better than HCFA does.

Response: We are not adopting these proposals to act only on the basis of an on-site validation survey, because they would limit HCFA's oversight responsibility and limit HCFA's ability to protect residents' health, safety and rights. Federal surveyors are able to review a State-prepared Statement of Deficiencies and come to an independent conclusion about whether the deficiencies cited indicate substantial compliance or noncompliance with the statutory and regulatory requirements. This has been a routine part of HCFA's monitoring of State survey agencies in the past. We do not think the Congress intended to reduce these monitoring responsibilities.

Federal-State Disagreement

Comment: One commenter noted that under § 488.452, if a State and HCFA have a difference of opinion on the deficiencies cited, the one that finds noncompliance prevails. The commenter wondered how an administrator of the facility could understand how to comply, if the State and HCFA could not agree on compliance/noncompliance.

Response: The Act mandates that the finding of noncompliance prevails over the finding of compliance. All facility

administrators can read the Act, the regulations and the detailed guidelines that have been issued to implement the regulations. We believe that facilities have a duty to operate in compliance at all times, regardless of whether the State and Secretary agree that a noncompliance exists. Disagreements between the State and Secretary could be a result of different findings between Federal and State surveys from different observations at different times, and not necessarily a disagreement about the same set of facts. The surveys could occur 2 months apart, for example, during which time conditions at the facility could change.

Comment: One commenter stated that § 488.452(d)(1) appears to pose double jeopardy for nursing facilities in that compounded remedies may be applied by both HCFA and the State agency. The commenter did not think that providers should have to face corrective action from both agencies. Another commenter noted that in case of a Federal survey following a State survey, two different remedies could apply; for example a State could terminate an agreement and the Secretary could impose additional civil monetary penalties. The commenter stated that the one-time Federal survey could not consistently or fairly evaluate the facility, and double sanctions from both agencies would not improve quality of care. The commenter suggested that only one type of sanction be applied "after" the Federal and State surveyors concur on the findings.

Response: Section 1919(h)(7) of the Act, specifically envisions cases where a facility may face remedies at the hands of both a State and HCFA. Section 1919(h)(7)(B) of the Act expressly sets forth the rules as to whose remedies will apply when either or both parties are seeking to impose alternative sanctions in addition to a provider agreement termination.

We do not accept the implication that one-time Federal surveys cannot fairly evaluate a facility. Federal surveyors are trained, just as State surveyors are, in the requirements of the Act and the regulations. Federal surveyors have always conducted Federal monitoring surveys to monitor State survey agency performance; therefore these, statutory requirements formalize long-standing agency practice.

Comment: One commenter stated that the net effect of the regulations is that facilities will be assumed to be out of compliance. This commenter stated that historically, facilities were deemed to be in compliance unless there were allegations to the contrary, and that if Federal and State surveyors disagreed, another survey should be required.

Response: We do not agree that another survey should be conducted whenever there is disagreement between Federal and State surveyors. Whatever the commenter may think of the wisdom of the Act's "tie-breaker" rule, the Congress has been quite clear in directing which survey decision applies when HCFA and the State disagree about compliance and remedies. We also do not agree that facilities will be assumed to be out of compliance. Facilities are required to meet all the requirements at all times. When a facility signs a provider agreement, the facility is agreeing to maintain compliance. The surveyors' job is to verify that compliance. If either a Federal or State survey finds the facility to be out of compliance with program requirements, deference must be given to that certification of noncompliance in the interest of the protection of resident health and safety.

Preference for Intermediate Sanctions Rather than Termination

Comment: Several commenters stated that the proposed regulations allow almost unrestricted use of terminations and do not promote the use of intermediate sanctions. They wanted HCFA to revise the proposed rules to encourage and promote the use of intermediate sanctions rather than terminations.

Some commenters said that intermediate sanctions enable States and HCFA to promote correction of deficiencies with incentives and pressures different from those imposed by termination or the threat of termination. They enable the State and HCFA to move quickly against facilities with deficiencies and to target their enforcement actions to the nature, character, and extent of the deficiencies. They quoted House Report No. 100–391(I) at 451–452, 470–497, as reprinted in 4 U.S. Code and Cong. & Ad. News, 100th Cong. 1st Sess. at 2313–271 through 2313–272, 2313–290 through 2313–296; IOM at Chapter 5 (pp. 146–170); General Accounting Office, "Medicare and Medicaid Requirements: Stronger Enforcement of Nursing Home Requirements Needed" (July 1987).

Some stated that the regulations place roadblocks to the use of intermediate sanctions. They commented that § 488.456 allows termination if a facility fails to submit a plan of correction, or fails to comply with a plan of correction. They also noted that § 488.406 describes other remedies as being "in addition to termination of the provider agreement." They stated that this wording makes it appear as if termination is the preferred or most common remedy. They were also concerned that §§ 488.410 and 488.415 make termination mandatory if a facility refuses the appointment of a temporary manager, despite the fact that temporary management "is not an optional remedy under the reform law."

These commenters were concerned that nursing home residents would be subjected to harm because of actual or threatened terminations of their nursing homes. They stated that language in the preamble, indicating that terminations were an enforcement response of last resort, was not reflected in the language of the regulations themselves.

Some commenters recommended that the regulations prohibit use of termination as a remedy, except in those circumstances required under OBRA '87 or when alternative remedies have failed and the condition of the building is unsafe. They wanted State regulators to find ways to use alternative remedies to protect residents, rather than making them homeless, or subjecting them to the trauma of threatened termination, stating that "If the building is safe but care is bad, the operator should be evicted rather than the residents. Used properly, alternative remedies can be used to force a substandard provider to sell the facility."

Response: We agree that the use of alternative remedies should be encouraged. However, if a facility chooses not to submit a plan of correction, neither HCFA nor the State survey agency has any means to determine how the facility intends to improve conditions of inadequate care and, therefore, no clear picture for how residents will be protected. In such a case, failure to terminate the provider agreement would be irresponsible on the part of HCFA or the State. However, if the facility fails to comply with a plan of correction but achieves substantial compliance, we would not terminate the facility's provider agreement. Allowing a nursing home to participate with deficiencies and with a plan of correction represents a certain degree of risk. The nursing home's lack of success in making corrections could indicate that the risk to the residents has not dissipated. Moreover, facilities that had a civil money penalty imposed could face an increase in their penalty because the noncompliance was uncorrected. The responsible exercise of certification duties requires that residents be protected, even if termination is necessary to achieve that protection.

We disagree that temporary management "is not an optional remedy." It is the State's or HCFA's decision as to whether or not to impose temporary management, whether in

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immediate jeopardy or non-immediate jeopardy situations. In the former cases, there is a choice between temporary management and immediate termination. If temporary management is not imposed, either because HCFA or the State considers that action inappropriate or because the facility refuses to relinquish management control to the temporary manager, the Act requires that the facility's provider agreement be terminated. We have no authority to ignore this explicit statutory requirement. In the latter cases, temporary management is an optional remedy when facilities are found to have widespread actual harm.

We note that we have no authority to evict non-complying officers or staff of the provider, as the commenter suggests, or to force the sale of substandard facilities.

Comment: Some commenters stated that we had not presented a coherent scheme for choosing remedies which are tailored to fit the desired corrective action.

Response: It is our intent that both HCFA and the State apply remedies tailored to fit specific problems. We have developed an enforcement model which correlates categories of remedies to the seriousness of noncompliance. However, with approximately 16,000 nursing homes in the United States, it is impossible to specify in regulations precise remedies to fit every particular problem in facilities. The seriousness of the noncompliance dictate the category of minimum enforcement action to be taken. The exact choice of a remedy or remedies from that category should be based on an evaluation of the nature of the situation in a particular nursing home and the course of action most likely to precipitate the rapid correction of the noncompliance.

"Pay Back Provisions"

Comment: Some commenters proposed interpreting the "pay back" provisions in section 1919(h)(3)(D) of the Act as applying only to those rare situations in which the Secretary concludes that termination is necessary, but yields to the State's recommendation that intermediate sanctions be imposed instead. In situations in which the Secretary does yield to the State, that action could properly be contingent on the State's promise to repay Federal funds if the intermediate sanctions do not succeed in bringing the facility into compliance. These commenters wanted HCFA to add language giving guidance to the States on the corrective action plans mentioned in the Act.

Response: We believe that the Congress intended to give facilities the chance to come into substantial compliance during a period when only limited, alternative remedies are imposed, but that in return for this grace period, during which Federal money is expended on noncompliant facilities, the facilities (and the State) must agree to repay the Federal money if substantial compliance is not achieved. Because of the procedural specificity of preparing corrective action plans, we have decided to incorporate such guidance in manual instructions.

Other Comments

Comment: Several commenters suggested that the State be designated the primary enforcement agency, with authority to select and carry out remedies prior to HCFA review. They feared that enforcement would be delayed if the survey agency only recommended to HCFA, and waited for HCFA's determination on what remedies to apply. Several commenters suggested that we delete the requirement that State survey agencies submit the plan of correction along with suggested intermediate sanctions, to HCFA for approval prior to imposing the intermediate sanctions.

Response: The Act is quite clear in its division of responsibilities between the States and the Federal government when it comes to the enforcement of Federal certification requirements. Under the Medicare program, the State has no authority to impose remedies as the commenter suggests. Section 1819(h) of the Act reserves all enforcement decisions to the Secretary and permits States to make recommendations only on the basis of the surveys they do under their section 1864 agreements with the Secretary.

Under the Medicaid program, however, we agree with the commenter that in most cases it is the States in the first instance that are responsible for enforcement decisions affecting providers of services. In either case, we believe we have designed an enforcement model that will place a premium on swift action once noncompliance is identified by either the State or the Secretary, and we do not anticipate delay in the implementation of decisions.

Comment: A few commenters wanted to add provisions that would require HCFA and the State to consider the availability of other nursing home beds, when a termination action is considered. They wanted HCFA and the State to consider the relative effects on the facility's residents of relocation compared to remaining in the facility.

Response: We are not adopting this recommendation because we believe that there may be instances in which termination is necessary despite the fact that it may cause hardship to residents. Usually, HCFA and the State will impose alternative remedies prior to terminating a facility, including a mandatory denial of payment for new admissions remedy imposed at the 3rd month; however, there may be instances when this is not possible. For example, a facility could refuse to allow access to the surveyors, or could refuse to submit a plan of correction. A facility might also remain out of substantial compliance with requirements after a 6-month period of correction, at which time the Act would no longer authorize continued payment, despite hardships to the residents. We believe that in those cases in which termination becomes necessary, the termination is for the ultimate benefit of the residents to assure that they receive the care to which they are entitled.

Comment: A few commenters suggested that States should be allowed the discretion to develop their own enforcement systems.

Response: The enforcement scheme delineated at § 488.408, Selection of Remedies, is a model that States must adopt. States have the authority granted them under section 1919(h)(2)(A) of the Act to specify their own criteria as to when and how to apply each of the remedies provided by the Act. Moreover, States are authorized to develop alternative remedies, in accordance with section 1919(h)(2)(B)(ii) of the Act, and we encourage them to do so.

Section 488.454 Duration of Remedies

Comment: In the proposed rule, we said that alternative remedies would continue until HCFA or the State determines that the facility has corrected all deficiencies, until HCFA or the State terminates the provider agreement, *and* until HCFA discontinues FFP. This statement included a typographical error ("and" was used instead of "or") that changed the meaning of the statement. We meant to say that alternative remedies would continue until HCFA or the State determines that the facility has corrected all deficiencies, until HCFA or the State terminates the provider agreement, *or* until HCFA discontinues FFP.

Some commenters expressed concern over when deficiencies are considered to be corrected:

- One said that it is not clear whether compliance is considered achieved when procedures for alleviating the problem are in place, or when the actual problem no longer exists.
- One said that once the facility has notified HCFA that a deficiency has been corrected, penalties should be suspended immediately until the survey team is able to return to the facility to alleviate a possible financial burden on the facility.
- Another said that the State should be required to do a follow-up within a specified period of time, and, if it fails to do so, the remedy should be lifted automatically.

A number of commenters said that the duration of alternative remedies should be linked solely to the deficiencies that led to their imposition, not to the correction of all deficiencies. They said that consideration should be given for significant progress and substantial compliance, suggesting that remedies should be lifted as soon as the facility corrects all deficiencies that led to the imposition of the remedy. One commenter suggested that even if a deficiency remains uncorrected, the remedy should be lifted if the scope and severity combination is brought down to a level that does not authorize the remedy.

Response: Sections 1819(h)(3) and 1919(h)(4) of the Act specifically state that the denial of payment sanction ends when HCFA or the State determines that the facility is in "substantial compliance" with program requirements. In this final rule, we are extending this principle to all other alternative remedies as well. The determination that the facility is in substantial compliance may be made either through a survey team's revisit, or, through some other review, if HCFA or the State, based on credible evidence which can be verified without an on-site visit, determines that at least substantial compliance has been achieved.

However, the Act, at sections 1819(h)(2)(E) and 1919(h)(2)(D), and at sections 1819(h)(2)(B) and 1919(h)(2)(A)(iii) provides for certain additional qualifications as to when remedies are lifted, and we are incorporating them in the regulation as follows:

- In the case of temporary management, and in the cases of denial of payment and State monitoring imposed because of repeated substandard quality of care, the remedy continues in effect until the facility has demonstrated, to the satisfaction of the State or HCFA, that it is in substantial compliance, and that it is capable of remaining in substantial compliance. (See § 488.414)

In addition, with respect to the duration of all other remedies, we state in this final regulation they remain in effect until—

- A revisit confirms that the facility has achieved substantial compliance;
- The date HCFA or the State, based on credible written evidence which can be verified without an on-site visit, determines that the facility has achieved substantial compliance; or
- HCFA or the State terminates the provider agreement.

In accordance with § 488.430(i)(7), if a facility can show that substantial compliance was achieved on a date earlier than a revisit by a survey team or before the State or HCFA receives or examines acceptable credible evidence, the remedies cease to apply as of that date.

Comment: One commenter said that no alternative remedies should be imposed on facilities because it would hamper their efforts in correcting their deficiencies.

Response: The Congress enacted the various types of alternative sanctions that appear at sections 1819(h) and 1919(h) of the Act with the expectation that they would be used. Drawing from the IoM study on nursing homes, which criticized the large numbers of facilities that fluctuated between compliance and noncompliance, the Act is designed to impose alternative sanctions swiftly once noncompliance is identified as a means of spurring facilities to correct deficiencies more rapidly than might otherwise be the case. While this may prove costly to those facilities that find themselves subject to such sanctions, this is a cost that the Congress obviously anticipated and concluded was necessary to assure high quality care for program beneficiaries.

Section 488.456 Termination of Provider Agreement

Comment: Several commenters argued that the proposed regulations rely too heavily upon termination as a remedy. These commenters feel that termination should be used as a last resort and only where other remedies have failed or where the building is unsafe. In addition, some of these commenters want to consider the effect of termination on residents (transfer trauma) and a few of them go further to recommend that the regulations prohibit the use of termination unless immediate jeopardy to residents is present and only after everything else has failed.

Response: One of the main goals of the proposed enforcement regulations was to increase the number of remedies available to HCFA and the States in order to ensure compliance with the health and safety requirements. We believe that implementation of these final regulations will accomplish that goal. While we will encourage the use of alternative sanctions, we firmly believe that provider agreement terminations may be appropriate in certain cases of noncompliance whether or not deficiencies pose immediate jeopardy to residents. We, too, are concerned about the potential harm to residents when they are required to move from a facility. For this reason, the regulations are designed to provide HCFA and the State survey agency with the ability to target noncompliance with appropriate remedies to assure compliance with the least disruption to residents and the facility. We cannot, however, restrict the use of termination to immediate jeopardy situations. Sections 1819(a)(3) and 1919(a)(3) of the Act require that a facility meet all of the statutory participation requirements to be considered a SNF or a NF, respectively (in other words, participate in either Medicare or Medicaid). While we have explained elsewhere why it is justifiable to consider substantial compliance as acceptable, the Act does not limit the above provisions by allowing indefinite noncompliance in non-immediate jeopardy situations. Indeed, sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act only permit continuation of Federal payments to facilities with non-immediate jeopardy deficiencies for a maximum of 6 months, and then only if certain criteria are met. Continuation of payment after 6 months is only permissible if substantial compliance has been achieved. Further, section 1919(h)(7)(A)(i) reinforces the 6 months maximum for participation for a noncompliant SNF.

Comment: One commenter recommended that HCFA create a conditional waiver, not to exceed two years, that would apply to all physical environment requirements. The commenter recognized that no period of correction may exceed the 6-month limitation but pointed out that it may be physically impossible to correct structural deficiencies within that timeframe. Such correction may necessitate applications for bank loans and certificate of need approval; moreover, the construction season is limited by geographical location. The commenter believed that creation of conditional waiver not to exceed two years, for physical environment requirements, would allow facilities to continue to participate legitimately while correcting problems that the facility cannot correct within the 6-month period.

Response: We agree that some physical environment deficiencies may

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take longer to correct than others and that these deficiencies may not be wholly corrected within 6 months of the last day of the survey. However, as we have discussed previously, facilities must meet the standard of "substantial compliance" in order to continue participation in the Medicare and Medicaid programs. To meet the standard of "substantial compliance", deficiencies must be such that they cause no harm or potential for more than minimal harm. Although we have no desire to terminate facilities that are otherwise providing good quality of care, we believe that facilities have had ample time to comply with these requirements. Physical environment requirements have been in place since October 1990. Moreover, this regulation will not become effective until 6 months after the first day of the month after the regulation is published in the **Federal Register**, so facilities will have even more time to comply.

Comment: A few commenters stated that the termination notice period of 2 days was inadequate to allow a fair opportunity for elimination of jeopardy. These commenters and others mentioned that the 2-day notice period was inconsistent with the 23-day termination process outlined at § 488.410. One commenter proposed a termination notice of 60 days for cases not involving immediate jeopardy. The same commenter said the time period should start when the facility receives notice of the remedies being proposed. One commenter asked how the public was to be notified of a termination action and another felt a notice should be posted on the front door of the facility.

Response: We are not accepting these comments, although we believe that there may be some misunderstanding among commenters as to the workings of the fast track termination cycle and the notice provisions applicable to facilities facing adverse action. In describing these procedures in the proposed rule, we were stressing the paramount significance of protecting resident health or safety in cases where immediate jeopardy is identified during the survey process. In such cases, the overriding concern is the removal of the threat either through immediate correction by the facility or by the transfer of residents to other more qualified facilities following the termination of the deficient facility's provider agreement.

We continue to believe that the 2-day prior notice provision of the proposed rule is necessary to protect these resident interests and we are retaining it for this reason in this final rule. Past experience with this notice provision in the case of Medicare SNFs has demonstrated to us that it is effective. Having said this, however, we want to dispel those fears about this provision that in all cases a provider will never have more than 2 days' notice before having its provider agreement terminated. As described in the proposed rule, we will have in place a 23-day termination cycle in immediate jeopardy cases. This time frame spans the maximum period of time between the last day of the survey that identified immediate jeopardy and the effective date of the termination. Thus, in many cases, providers, which will have been advised of the survey findings during the survey or at the exit conference, will often have ample time to remove the conditions that gave rise to the immediate jeopardy finding. The prior notice must be given early enough so that the termination date does not extend beyond the 23-day period should the facility fail to remove the immediate jeopardy.

Facilities facing adverse action in these cases will not be guaranteed the maximum amount of time provided by these regulations. For those facilities whose substandard conditions warrant the quickest possible response, it is entirely possible that the effective date of the termination action will occur sooner than the 23rd day after the survey; and it is these facilities that will likely receive notice of the impending action against them as quickly as administratively feasible following the survey.

Extensive experience has demonstrated that it is possible to schedule revisits in a short time frame to verify that the immediate jeopardy has been removed. Because of our experience that the 23-day process works, we will continue to start the clock on the last day of the survey to ensure that jeopardy situations do not remain long uncorrected. We see no justification for facilities to receive additional time to correct instances of immediate jeopardy. In the same vein, we will continue to give a 15-day notice to the public and the facility in non-immediate jeopardy cases, and a maximum of 6 months from the last day of the survey to reach substantial compliance before termination is effective. A 15-day notice in nonimmediate jeopardy cases is a well established practice for all provider types. For both immediate jeopardy and non-immediate jeopardy situations, the public will be notified of terminations by a variety of means; in most instances, this will be accomplished by a newspaper notice, as is the predominant present practice. We believe that a public notice posted on the front door of the facility would be an unnecessary affront to the facility when Federal requirements stipulate that the survey results be made available to residents for examination in a place readily accessible to residents and a notice of their availability must be posted (see § 483.10(g)).

Comment: A few commenters felt that termination should not be applied if deficiencies were corrected within the delineated timeframes. One commenter said that the timeframe for termination should be no shorter than 6 months in cases that do not constitute immediate jeopardy. One commenter suggested that the regulation require an "acceptable plan of correction" from the facility.

Response: Current practice and the final regulations assure that termination will not be applied if noncompliance has been corrected within the designated timeframes. Redesignated § 488.456(b)(1) states that the facility's provider agreement may be terminated if the facility—

- Is not in substantial compliance with the requirements of participation; or
- Fails to submit a plan of correction with the time specified by HCFA or the State.

Section 488.456(b)(2) states that HCFA and the State will terminate a facility's provider agreement if a facility—

- Fails to relinquish control to the temporary manager, if that remedy is imposed by HCFA or the State; or
- Does not meet the eligibility criteria for continuation of payment as set forth in § 488.412(a)(1).

However, the Act does not mandate an automatic 6 month period for the correction of all deficiencies; 6 months is the outside limit permitted for correction of deficiencies that constitute noncompliance and then only when specific statutory criteria are met. The States and HCFA must have the flexibility to choose appropriate remedies, including termination, and timeframes appropriate to the noncompliance identified. We agree with the suggestion to revise redesignated § 488.456(b)(1)(ii) to read "an acceptable plan of correction." This change is in line with our current practice.

Comment: A few commenters were concerned that the proposed regulations were unreasonable and that HCFA and the States should have an objective, measurable mechanism to govern the enforcement procedures. Another commenter felt the new regulations would inflate termination actions

tenfold and increase the State agency workload.

Response: We do not agree with these comments. These regulations are designed to encourage the selection of a particular remedy based on the nature of the noncompliance and the likelihood of immediate and sustained compliance. It was the intent of the Act that the availability of additional remedies will mean that HCFA and the States will use termination as a remedy less frequently. The use of these regulations for the selection of remedies will help ensure that the selection of remedies is consistent and appropriate. We expect that these new regulations will not cause greater expenditures for the State agencies. However, as we said in the proposed rule, a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities may well occur.

Comment: One commenter recommended amending the regulations to permit the survey agency to initiate termination actions based upon poor compliance history.

Response: The Act provides the States and HCFA with the authority to terminate facilities with poor compliance histories. Specifically, sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act provide for State and Federal discretion as to whether or not termination is preferable to the imposition of alternative remedies in the case of noncompliance that constitutes non-immediate jeopardy. We expect that a facility's previous history will be a significant factor in the determination of whether termination or an alternative remedy is preferred. However, poor history in and of itself can not warrant termination if the noncompliance has not persisted. That is, if the provider has indicated poor performance in the past but is in compliance in the present, there would be no basis for termination.

Section 488.426 Transfer of Residents

After considering comments we received on proposed § 488.226 and § 488.240, we have decided to combine both sections in a new § 488.426. We believe this change will be less confusing as transfers for all nursing homes can be referenced in one place.

Comment: One commenter asked the following questions: If a facility is terminated, who will be responsible for placing the residents elsewhere? If no bed is available, who will pay for the residents' care in the facility until a bed is found? The commenter stated that the State should have the responsibilities regarding transfer and discharge (in other words, tour of the new facility, counseling, orientation to the new facility, etc.), to avoid transfer trauma.

Response: Proposed § 488.240, now incorporated into § 488.426, stated that the State must arrange for the orderly transfer of residents when a facility is closed or its provider agreement is terminated. Further protection for residents is available in regulation. Section 489.55 provides that payment is available for up to 30 days after the effective date of termination for eligible residents and § 441.11(a)(2) states that, in the case of continuation of FFP for Medicaid, the Medicaid agency must make reasonable efforts to transfer recipients to other facilities. The regulation clearly gives the responsibility for orderly transfer of residents to the State. Each case involving the transfer of residents could potentially be different. We are, therefore, leaving it up to the State to decide, on a case-by-case basis, what steps need to be taken to reduce the risk of transfer trauma, understanding that the State's responsibility is to minimize the period of time during which residents are receiving less than adequate care.

Comment: One commenter stated that a finding of immediate jeopardy will result in the facility's emergency closure and transfer of the residents. This commenter asked where residents would be transferred if a county or particular area had too few available beds?

Response: The finding of immediate jeopardy will not, in and of itself, require States to close a facility and transfer Medicare and Medicaid residents. In an emergency, the State could transfer Medicare and Medicaid residents to another facility or facilities. There could be situations, such as an earthquake or other natural disaster, where the State would temporarily transfer residents to another facility until the facility can adequately care for its residents. In this case, the facility did nothing wrong. However, in the case of immediate jeopardy, the facility failed to protect the health or safety of its residents. For immediate jeopardy situations, the statute at sections 1819(h)(4) and 1919(h)(5) of the Act provides for immediate termination if the jeopardy is not removed, but it does not require the State to close the facility. However, when a facility is terminated for immediate jeopardy, the State has up to 30 days to transfer the facility's Medicare and Medicaid residents. Most States have a relocation plan that outlines the circumstances under which the plan will be put into effect and the procedures to be followed. These plans usually provide for first attempting to place residents in the closest facility or facilities and then attempting placement at increasingly distant facilities until available beds are found. We believe it is unnecessary to mandate procedures for States to follow in cases of closure or transfer of residents, and that no greater procedural specificity is required in regulations.

Comment: One commenter expressed concern that after coming to a nursing home with the expectation of living out the rest of one's life there, a resident may be forced to move to another location because of some technicality.

Response: Termination and closure of a facility are among several remedies available to protect the health and safety of Medicare and Medicaid residents. Although it is possible that a noncompliant facility could be terminated for not submitting to a plan of correction, as is required for continuing participation in the Medicare or Medicaid program, it is not likely. Most nursing homes are interested in participating in the Medicare and Medicaid programs and will not risk termination based on such noncompliance.

Comment: Several commenters requested that we place more requirements upon the States to assist residents, should a facility lose its Medicare or Medicaid certification. Two of the commenters, representing consumer organizations, believe proposed § 488.240 is inadequate in terms of requirement specificity, and they provided a complete and detailed rewrite of the section. Their experience with closures and decertifications in the last 5 years has led them to believe that providers and regulators cannot be trusted to provide a "safe and orderly" transfer process. As a result, their rewrite focuses on the recommendation that HCFA mandate the States to develop plans that provide requirements for the "safe and orderly" transfer of all residents when the State closes a facility.

Included in the rewrite are provisions that outline specific residents' rights in the transfer process such as, determining the location of the transfer, availability of counseling and support, and the transferring of residents' possessions and trust funds. The commenters also address requirements for the new admitting facility, as well as requirements for the coordination among appropriate agencies, organizations and ombudsmen involved in the transfer process.

To ensure proper development and execution of the plan, the commenters recommend that we require the State to submit its transfer plan to HCFA for

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approval. HCFA, in turn, should assess performance under the transfer plan annually, during the review of the State's enforcement performance. The commenters end their rewrite of proposed § 488.240 with an enforcement recommendation that if the State's transfer plan is found inadequate, HCFA should take actions as described in proposed § 488.243 (b) and (c). They also recommend that immediate implementation of the plan be waived during a crisis or disaster which makes it impossible to fully implement a State's transfer plan.

In addition to the detailed rewrite of the section, the commenters recommend that the term "all residents" be defined, because the amount of assistance residents receive in the transfer process is directly related to their Medicaid, Medicare, or private payment status. For example, Medicaid residents receive services such as notice of closing, information about care options, counseling, transportation, and other types of relocation assistance. Medicare residents are often not offered any of these services, and private pay residents usually receive no help whatsoever. One commenter suggested that it is inappropriate to "require" the transfer of residents if the facility has not been delicensed by the State and the residents choose to remain at the facility.

Further, one of the commenters states that the preamble and the text of the proposed regulation differ as to which agency has the responsibility for transferring residents, with the preamble stating that the State agency must arrange for transfer, proposed § 488.240 stating that the State has the responsibility, and § 441.11(a)(2) stating that the Medicaid agency does.

Response: We believe the commenters inadvertently transposed proposed section numbers § 488.234 (b) and (c) as there are no proposed sections § 488.243 (b) and (c). We appreciate these very thorough and specific comments and the amount of effort that went into them. Although there are valid considerations in the suggested rewrite of this section, some of them may be impossible for the States to implement. We, therefore, choose not to impose such stringent requirements on the States. Existing regulations at § 483.12(a) provide numerous procedural safeguards regarding the transfer and discharge of residents. In addition, the States are already required by sections 1819(h)(4) and 1919(h)(5) of the Act to provide for the orderly transfer of residents when a facility is terminated or closed, and at sections 1819(c)(2) and 1919(c)(2) of the Act, to provide notice of transfer at least 30 days in advance in most cases. We agree that proposed § 488.240, now incorporated into § 488.426, which uses the words "all residents," may be overly broad and we are revising that section to specify that only Medicare and Medicaid residents are affected by this section. We accept the suggestion that the term "orderly transfer" be amended to "safe and orderly transfer" to maintain consistency with the language of sections 1819(h)(4) and 1919(h)(5) of the Act. Since sections 1819(h)(4) and 1919(h)(5) address immediate jeopardy terminations, we cannot accept the comment that it is appropriate to allow any Medicare or Medicaid residents to remain in a facility that is being terminated for such serious situations. To do so, would put these residents in jeopardy and would be clearly contrary to sections 1819(h)(4) and 1919(h)(5) of the Act.

The following addresses what one of the commenters perceives as conflicting information regarding responsibility for the orderly transfer of residents. The preamble did indeed state that the survey agency is responsible for arranging for transfers, while proposed § 488.240 (now incorporated into § 488.426) is taken directly from sections 1819(h) and 1919(h) of the Act and places the responsibility generally on the State. We wish to give the States the greatest latitude in determining which State agencies they will use. Therefore, it is our intent to rely on the broader interpretation in proposed § 488.240 and place the responsibility on the State as required by the Act. Although the commenter has correctly pointed out that § 441.11(a)(2) places the responsibility on the Medicaid agency, we believe that each State should be given the flexibility to select the appropriate agency under its particular governmental structure. Therefore, we are revising § 441.11(a)(2) accordingly.

Comment: This commenter stated that, in the past, the responsibility for arranging for the orderly transfer of residents to another facility whenever a provider agreement is terminated has been placed on the facility operator subject to the State's oversight. This commenter stated that the proposed regulations would impose substantial costs and uncertain legal liabilities upon the State.

Response: According to existing regulations at § 483.12(a), the State, not the facility, has had the responsibility in the past for numerous procedural safeguards regarding the transfer and discharge of residents and has funded such costs. Sometimes the facilities cooperate in the transfer of residents and sometimes they do not. Sometimes they have no resources with which to help. Therefore, the ultimate responsibility for all aspects relative to transfer of residents in the case of a facility closure lies with the State to ensure that the well-being of residents is protected.

Comment: Another commenter agreed with the regulatory text but wanted us to require, in the case of provider agreement termination, that the State permit a resident to remain in a terminated facility provided the resident arranges to pay for his or her care and the facility does not close.

Response: It is not necessary to require States to allow residents to remain in terminated facilities because they already have that right. If a resident prefers to remain in a terminated facility that is still operating, and is able to pay for his or her own care, that resident has every right to do so. The government has fulfilled its obligation by providing notice to residents that the facility's provider agreement has been terminated. This applies whether or not immediate jeopardy exists. The State is the only entity that has the authority to close or delicense a facility.

Comment: One commenter suggested that if residents are transferred because a facility is terminated, we should require that the State provide for such transfer, at its own expense, and that it be held liable for its action during such action.

Response: We already require the State to transfer Medicare and Medicaid residents to another facility or facilities in immediate jeopardy terminations. In fact, for Medicaid residents, the State is paid up to 30 days of FFP for the safe and orderly transfer to another facility or facilities after termination. We have not accepted the comment that the State be held liable for its action during such transfer. A State's liability should come under the purview of State law. We have no statutory basis to hold States liable for such actions. Therefore, we have not included this provision in the regulation.

Comment: One commenter, representing a State Department of Aging, stated that the language in the proposed rule regarding transfer of residents is inadequate and provided a list of minimum requirements for States. The twelve requirements listed have all been covered by the preceding commenters except for the following two instances. The commenter recommends that a facility that is being terminated be monitored daily and also recommends that ongoing counseling for residents include follow-up post-transfer counseling.

Response: Although the suggestion that facilities in the process of being terminated be monitored daily is well-intentioned, the specifics of transfer plans are under the purview of the States. We are not mandating that the States take specific action other than that already required and it is unlikely they could implement this suggestion given the uncertainty of how long the process will take and how much funding they will have available. Regarding the suggestion that follow-up post-transfer counseling be provided to residents, again it is the State that determines which services are provided for transfer of residents.

Informal Dispute Resolution (§ 488.331)

In the preamble to the proposed rule, we specifically asked for public comment about the desirability and feasibility of establishing a formal conflict resolution process whereby providers dissatisfied with survey findings could request a review of the deficiencies after the survey and prior to the formal administrative and judicial review processes. We also acknowledged the existence of the numerous informal opportunities providers currently have throughout the survey process to challenge survey findings: during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, through dialogue with State and regional officials, and upon receiving the official deficiency statement.

The term "conflict" resolution has been changed to "dispute" resolution in this final rule to be consistent with terminology used in the Administrative Dispute Resolution Act (ADRA) of 1990 and Executive Order 12778, which encourage such a process.

Many commenters believe that a dispute resolution process is necessary. A few do not.

Comment: The majority of commenters in favor of a dispute resolution process contend that there is currently no means for providers to resolve conflicts with survey findings short of costly litigation. Most say that they are either not afforded the informal opportunities to resolve conflicts to which we referred in the preamble to the proposed rule, or that the outcome of those opportunities is predetermined and, therefore, of little value. Also, many cite the ADRA of 1990 and Executive Order 12778 which (they claim) direct Federal agencies to develop dispute resolution mechanisms in an effort to reduce costly and lengthy litigation. A few commenters believe such a process could also serve as a means to measure surveyor quality assurance.

The majority of comments supporting a process suggested that HCFA mandate an informal dispute resolution process, while less than one-third preferred that HCFA mandate a formal one. Several commenters suggested that HCFA adopt the current dispute resolution process of a specific State, for example, Ohio or Louisiana. These commenters contend that existing programs in specific States have been successful in resolving conflicts about survey findings. Others suggested that HCFA require that each State establish a State-specific process, in order to give States the flexibility to work within their existing administrative framework. Commenters proposed that since most States already have some type of dispute resolution process, we need only to require that it be formalized; in other words, in written form and publicly recognized. Commenters also suggested that HCFA establish one process to be used by all States. These comments were presumably based on the belief that a single process mandated by HCFA is the most effective means to ensure that consistent opportunities are offered in a consistent manner to all nursing home providers dissatisfied with survey findings. The proposals we received for a single process varied in extent and sophistication and included suggestions that the dispute resolution process:

- Offer resolution opportunities at specific times during the survey (for example, conduct daily exit conferences or communicate at the time a deficiency is identified), and cease offering opportunities beyond specific events (for example, after the exit conference or after the issuance of the deficiency statement);
- Provide multi-tiered opportunities that could include monitoring of corrections and mandatory revisits;
- Be limited to deficiencies at specific scope and severity levels;
- Offer opportunities proportionate to the noncompliance;
- Allow incorrectly cited deficiencies and scope and severity scale levels to be removed from the deficiency statement;
- Require that another survey be conducted by different surveyors;
- Establish local or national advisory councils, arbitration panels, or quality assurance committees, etc., comprised of specific types of individuals not previously directly involved in the dispute; and
- Involve consumers and ombudsmen.

Conversely, other commenters did not believe that a dispute resolution process is necessary. They said that providers already have numerous opportunities to refute survey findings throughout the survey process. Some alleged that an additional process would only serve to delay the enforcement process which would be contrary to the OBRA '87 mandate to minimize the time between the identification of violations and final imposition of enforcement remedies. Some also believed that if such a process were in place, deficiencies may not be cited or, at a minimum, they would be cited at lower scope and severity scale levels to reduce the universe for challenges.

One consumer organization argued that the regulatory system is not a two-party system in which the facilities and the State negotiate. Rather, it is a contractual arrangement in which the State holds the public's trust and acts as the public's agent to ensure that the contractees satisfy the arrangement. They believed that if any party should have "appeal" rights, it is the residents who should be able to contest survey findings that do not require facilities to comply with the law. They submitted, therefore, that instead of establishing a dispute resolution process for providers, HCFA should build mechanisms into the survey procedures to notify residents, families, ombudsmen and others when surveyors, during the course of the survey, have not yet been able to substantiate suspected problems. These procedures would provide an opportunity for residents and families to provide additional information to surveyors.

One commenter, opposed to a dispute resolution process, remarked that there is currently so much interaction between surveyors and providers during the survey process that providers are actually interfering with the performance of the survey. This commenter suggested that a sanction be imposed against providers when this occurs.

Overall, most commenters, including States, offered strong support for a dispute resolution process. These commenters were interested in resolving conflicts as early in the survey process as possible and prior to litigation. They prefer to minimize the number of issues that could advance to formal litigation by resolving early those conflicts caused by misunderstandings, miscommunication, oversights, etc. However, the consumer advocacy groups were adamant in their opposition, arguing that any additional process will delay the enforcement process against noncompliant facilities and shift focus away from resident care. These commenters believe that the

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perceived need by providers for a dispute resolution process must be secondary to the responsibility HCFA, the States, and facilities have to provide for the health and well-being of nursing home residents.

Response: We recognize the validity of both major points of view and have concluded that both perspectives must be addressed.

In the Fall of 1992, we asked the States to provide us with a description of existing dispute resolution processes offered to providers who disagree with survey findings. All States responded. Washington, DC, Puerto Rico, and Guam were not asked to provide their comments due to the small number of facilities surveyed. We discovered that all States currently have a dispute resolution process. Nevada's system of due process is required by State law. The other States' processes, although not legally mandated, are reflective of State policy and not legislation. The policies vary among States, and there are numerous differences in the details of the processes of individual States.

Overall, the opportunities offered to providers by States to challenge survey findings can be divided into two basic stages: during and after the survey. All States offer the providers a chance for rebuttal during at least one of these stages; half of the States include both in the process. During the survey, the opportunities afforded providers include the chance for the provider's staff to interact with the survey team throughout the process and the specific opportunity to discuss survey findings at the exit conference. After the survey, many States allow the providers to elevate unresolved issues to survey agency management and/or the HCFA regional office for resolution. Moreover, providers in all States may record their disagreement with survey findings on the Statement of Deficiencies HCFA–2567.

Our State Operations Manual currently requires that States allow facilities to interact with the survey team during the survey, to discuss findings at an exit conference, to raise unresolved issues to the survey agency and/or to the HCFA regional office and to record their disagreements with survey findings on the HCFA–2567.

As we reviewed all of the comments supporting a dispute resolution process, it became apparent that, while the words "informal" and "formal" were used to distinguish the type of process a specific commenter preferred, many commenters, regardless of which word was used, preferred the same process. The majority of those in favor of a dispute resolution process have asked that it be required by HCFA. Since many believe that a process can be required only through rulemaking, most commenters, therefore, prefer a regulatory process.

We note that the Administrative Dispute Resolution Act of 1990 and the Executive Order 12778 of October 23, 1991, Civil Justice Reform (56 FR 55195), encourage, but do not direct dispute resolution, as some commenters have claimed.

We are not accepting those comments proposing that we adopt a specific State's process on a national level, nor those suggesting that each State be permitted to design its own process in its entirety. While we have concluded that all States offer some opportunity to resolve disputes, we have no evidence that suggests that any particular State's process is more successful or effective than that of another State.

However, we are accepting, with modification, the suggestion that HCFA adopt one process to be used by all States. Just as participation requirements and the survey and certification process for nursing homes are consistent from State to State, so should the opportunity for providers to challenge survey findings. In § 488.331, we are requiring several core elements that all informal dispute resolution processes must include as a minimum:

- The entity conducting the survey must offer nursing home providers the opportunity, if they request it, to refute survey findings beginning with their receipt of the official HCFA–2567 with which they disagree;
- Providers must be able to advance their disagreements to survey agency or HCFA regional office officials, or both;
- In no case, will dispute resolution delay the effective date of an enforcement action;
- The dispute resolution process (whether or not it exceeds the minimum requirements specified in this final rule) must be available to providers, upon their request, in written form. HCFA regional offices provide dispute resolution to providers upon request, relative to Federal surveys.

We believe that specific procedural requirements that determine the manner in which dispute resolution proceeds, for example, such things as how the request is made, the method by which the process is conducted, and who may participate in the process, should be left to the individual States. Upon the facility's request, the State will provide a written summary of that State's procedures relative to the informal dispute resolution process. Any attempt on our part to codify procedural aspects of dispute resolution that would be applicable to all States would limit States' as well as providers' flexibility in utilizing and refining the process, as necessary, to satisfy their needs.

To allay commenters' fears that dispute resolution would stall the survey process and delay enforcement action, we are providing in § 488.331 the opportunity for providers to dispute survey findings upon receipt of the official HCFA–2567 with which they disagree, while prohibiting challenges by providers from postponing or otherwise delaying the enforcement process. In no case will dispute resolution delay the effective date of an enforcement action. Thus, while it is our hope that dispute resolution procedures could be completed in all cases before the effective date of the enforcement action, we wish to make it clear that where the completion of these procedures does not occur by that time, this will not be grounds to either delay the enforcement action or give providers a right to challenge the inadequacy of these procedures. We believe that to have a process that would allow for enforcement to be deferred pending the scheduling and completion of this informal appeals process is far outweighed by the needs of residents to face a minimum of time during which they receive care that does not meet the requisite health and safety standards. We also believe that not delaying the effective date of the enforcement action until the conclusion of the dispute resolution process will encourage facilities to make the kind of swift corrections the Congress obviously intended when it enacted nursing home reform. If a provider is subsequently successful, during the dispute resolution process, at demonstrating that deficiencies should not have been cited, the deficiencies are removed from the HCFA–2567 and any enforcement actions that had been imposed as a result of those cited deficiencies are lifted.

This dispute resolution system does not introduce additional requirements into the survey process; rather, it reinforces instructions that already exist but which have been applied inconsistently up to this point. Because we are formalizing this element of the appeals process, we are amending the appeals procedures at 42 CFR parts 431 and 498 to eliminate the reconsideration process for SNFs and NFs, respectively. Informal dispute resolution will duplicate, in every pertinent way, this element of the process since it will provide the opportunity for providers to contest survey findings informally just as reconsiderations currently are designed to do. Accordingly, we have concluded that retaining the reconsideration process for SNFs and NFs would create redundant procedures and are amending it so that it applies only to other provider and supplier types.

Regarding the comment to use dispute resolution as a means to measure surveyor consistency, accuracy, and decision-making, section 1819(g)(2)(D) of the Act requires the Secretary and the States, and section 1919(g)(2)(D) of the Act requires that States, implement programs to measure and reduce inconsistency in the application of survey results among surveyors. HCFA and the States will develop their own mechanisms to satisfy this requirement and may choose to use the dispute resolution process as a means to evaluate surveyor performance in this area.

We do not agree with some commenters' characterization of dispute resolution as negotiation between providers and the survey agency, nor do we agree that a process should be established to notify residents and their families when surveyors require additional information in identifying deficiencies. First, dispute resolution as required in this final rule does not contemplate bargaining between providers and the survey agency; rather, it is a preliminary opportunity for providers to refute survey findings that they believe are inaccurate and to present evidence to support their belief. The purpose of this informal process is to clarify, if not eliminate, the issues that might otherwise lead to needless litigation and to sharpen the issues for an administrative law judge or State hearing official so that litigation, should it occur, may be less burdensome and costly. This may work in two ways. It may convince the State or HCFA officials that erroneous deficiencies have been cited, or it may convince providers that, because the State and HCFA have ample support for their conclusions, it would be unwise for providers to pursue litigation.

Second, States enter into an agreement with the Secretary (HCFA), in accordance with section 1864 of the Act, to act as HCFA's agent for the purpose, (among others), of determining if a facility meets participation requirements. After following the survey protocol, which includes interviews with residents, and family members or legal representatives, surveyors may find that they do not have sufficient information to cite a deficiency. However, we note that whenever nursing home residents or their families believe that a deficient or otherwise inappropriate practice exists in the facility, regardless of whether a survey is in process, they should contact the State ombudsman, request a complaint investigation, or both.

Some commenters believe that a dispute resolution mechanism may impact on how surveyors recognize deficiencies as well as how they assign scope and severity scale levels to cited deficiencies. First, it is important that commenters be absolutely clear that neither the enforcement scheme presented in the proposed rule nor the modified model in this final rule was developed for the purpose of identifying deficiencies. Rather, the assessment factors discussed under "Factors to be Considered in Selecting Remedies" of this preamble and codified at § 488.404 of this final rule will be used (as the former scope and severity scale was to be used) to evaluate the seriousness of deficiencies already identified in order to determine what, if any, enforcement action is appropriate. Second, in response to public comment, this final rule has incorporated the concept of substantial compliance. This concept, which is discussed in detail under "Certification of Compliance" of this preamble, provides that not all deficiencies will result in enforcement action and should, therefore, eliminate resistance or hesitation of surveyors to cite deficiencies that they have identified for fear of provider disputes of lower-level assessment determinations. As we have stated elsewhere in this preamble, the survey process provides several opportunities for deficient practices or otherwise inadequate performance on the part of the State to be identified and sanctioned. Therefore, if the situation described by the commenters should occur, there are adequate statutory and regulatory mechanisms to respond to it.

We do not accept the comment that we should sanction a provider for interfering in the performance of a survey. We believe that this situation is adequately addressed in section 2713 of the State Operations Manual, which provides that surveyors may allow, or refuse to allow, facility personnel to accompany them during a survey. Each case is at the surveyors' discretion and is to be worked out with facility management. If it cannot be worked out, surveyors should contact their supervisors.

Determination of a Deficiency

Many commenters responded to our request in the proposed rule for recommendations for a regulatory design that could accommodate the use of scope and severity scales for determining deficiencies.

Comment: A large number of commenters recommended that we adopt a system for determining deficiencies similar to that used by the State of Ohio. The Ohio system employs the use of a worksheet that must be completed for each violation of a requirement. The worksheet evaluates violations against criteria such as preventability and resident choice, and then classifies violations based on ratings of scope and severity into two types. The first type is called a deficiency and the second, lesser violation, is called a finding. Both a deficiency and a finding are recorded on the statement of deficiencies and are disclosable to the public, but only a deficiency would require a remedy. To the extent that the State of Ohio does not use scope and severity scales to determine whether a violation should appear on the statement of deficiencies but rather to determine appropriate enforcement action, the Ohio enforcement system is similar to the one that we proposed.

Another model proposed requires a mathematical weight for each tag number identified in the interpretive guidelines. Individual data elements would be ranked in descending order according to their importance in a regulation. The model then calls for a statistical computation incorporating scope to determine whether a deficiency exists.

A third model submitted involves two factors in determining whether an observation is a deficiency. The first factor is preventability. Under this proposal, if either the negative outcome could not have reasonably been foreseen or if the facility could foresee the negative outcome and did everything reasonably possible to prevent its occurrence but it occurred nonetheless, a deficiency would not be cited, regardless of scope and severity. The second factor is substantiality. If a facility were determined to be in substantial compliance with a requirement, a deficiency would not exist. Scope and severity would be used to determine if the requirement were met.

Other models that incorporate the concept of substantial compliance into the determination of deficiencies but that do not involve the use of scope and severity scales were also recommended. One commenter suggested that we create an audit form outlining the minimum requirements for long term care facilities, and then rate each item either a "pass" or a "fail" depending upon whether the requirement was substantially met. Another suggestion was that we calculate a percentage of

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error rate for each requirement and evaluate the rating against a tolerable threshold of compliance. Certain commenters believed that for resident outcomes to have significance in the survey process, negative findings which have no adverse impact upon the care being received by residents should not constitute citable deficiencies. One commenter recommended that we adopt the Joint Commission on the Accreditation of Healthcare Organizations' accreditation system which places any minor deficiencies that do not meet substandard care criteria on a recommendation report and reserves the official citations for substandard care. Other commenters believed that guidelines should express a standard of "practicably met compliance with requirements" which they asserted would be comparable to the "highest practicable" language applied to facility responsibility for resident care.

Although the majority of commenters (mostly from the provider community) favored the use of scope and severity scales to determine deficiencies, a significant number of commenters did oppose it. Many of these were concerned that the use of scope and severity scales to determine deficiencies would violate the intent of the Act that all requirements be met and enforced. One commenter noted that the intent of the Act is to ensure that each individual's needs are met "at the highest practicable level," not just at minimum standards. Others asserted that for enforcement to be resident centered, residents' individual problems must matter, and that using scope and severity scales to determine deficiencies would force residents to put up with a certain amount of misery before the facility would be required to address their problems.

Response: We are not adopting the use of scope and severity scales to identify deficiencies because, as described below, the Act imposes limitations that make it impractical. However, we are adopting substantial compliance as the standard of performance to which providers will be held. This is consistent with the intent of the Act, and will accomplish much of what the advocates of scope and severity scales claimed that the scales would accomplish. Although the thrust of nursing home reform was to codify a system of nursing home regulation that is outcome oriented, the Congress enacted a number of requirements that simply do not lend themselves to an outcome analysis. Moreover, the Act does not always lend itself to an analysis of whether the resident population as a whole was treated properly which, in our view, would be essential to a workable scope index.

For example, section 1919(b)(3)(C)(i)(I) of the Act requires facilities to conduct a resident assessment no later than 14 days after admission. Whether a facility complies with this obligation, which the Act makes applicable to each resident, rests only on whether the assessment was in fact done by the date prescribed in the Act. Should a facility conduct an assessment on the 15th day after a resident's admission, that facility will have failed to comply with the requirement, notwithstanding the fact that it may have conducted timely assessments on all other residents, and notwithstanding the fact that there may have been no negative outcome for the resident who received the untimely assessment. In the same fashion, section 1919(b)(7) of the Act requires that facilities having more than 120 beds employ a full-time social worker. Should a facility having 121 beds not have such an employee, that failure is a clear violation of the statutory standard regardless of whether there are any documented negative outcomes that resulted from this failure. There are numerous other examples of this type of requirement in the Act.

Other requirements in the Act, as some commenters pointed out, focus on a facility's duty with respect to each resident and not its duty to perform in a certain fashion for the bulk of all individuals in residence. Other than the resident assessment requirement discussed above, section 1919(c)(1)(A) of the Act requires facilities to protect and promote the rights of each resident. Should a facility, therefore, not perform in such a manner (as further described in the Act and implementing regulations) even for one resident, it cannot be said that the facility was not deficient in this area notwithstanding the fact that the failure was an isolated one. In the same way, section 1919(b)(6) of the Act requires that the health care of every resident be under the supervision of a physician (or, at the State's option, other specified health care professionals). Here, too, a facility may not be determined to meet this requirement if it has successfully provided for such supervision for most of its residents as long as even one of its residents has not had the benefit of such supervision.

This is not to say that any violation of these or other similar requirements ought to result in the imposition of sanctions of consequence. As we suggested in the proposed rule, and as we require in this final rule, the degree of seriousness of a deficiency looms large in determining the appropriateness of a remedy. In some of the hypothetical situations cited above, there may be nothing more than a plan of correction that is called for. The point is, however, that the kind of analysis that allows for the consideration of a deficiency's seriousness in determining an appropriate remedy will not always work when seriousness is considered to determine whether a deficiency exists. None of the commenters who sought the use of scales in this context acknowledged these issues squarely or made suggestions that would allow us to address this matter in a way that comports with the structure of the Act.

The substantial compliance standard that we are adopting tolerates a reasonable degree of imperfection. Even though deficiencies will be cited for violations that constitute no actual harm and a potential for no more than minimal harm, these deficiencies, due to their negligible seriousness, will not deny a provider a certification of compliance nor subject a provider to a remedy. The substantial compliance standard should also insulate providers from the uneven enforcement that may result from inconsistent surveyor behavior, because the marginal deficiencies that surveyors are likely to be the most uncertain about citing are liable to be the deficiencies that fall into the substantial compliance range, and, consequently, neither a facility in which a situation constituting no actual harm and a potential for no more than minimal harm was cited as a deficiency nor a facility in which the same situation was not cited as a deficiency will be penalized.

Comment: One commenter was concerned that a formal scope and severity scheme to determine deficiencies would add issues to hearings.

Response: Providers have the opportunity to appeal certifications of noncompliance leading to an enforcement remedy, and if we adopted scope and severity scales for determining deficiencies, the commenter is correct that scope and severity assignments would be an integral part of the determination of noncompliance, and would therefore be subject to challenge if the deficiency led to the imposition of an enforcement remedy.

Comment: Many commenters requested that we incorporate the survey guidelines into the body of survey and enforcement regulations. Certain commenters believed that a failure to do so would violate the Federal Administrative Procedure Act, 5

U.S.C. 553, which requires that general notice of proposed rulemaking be published in the Federal Register when the rulemaking is substantive.

Response: We do not believe that the current survey materials are subject to the notice and comment procedures of the Administrative Procedure Act. As a result of OBRA '87, the Medicare and Medicaid law and regulations now contain comprehensive, detailed criteria for assessing the quality of care provided to Medicare and Medicaid residents, as well as the standards and methodology for determining deficiencies. The survey forms, procedures and guidelines merely enable surveyors to certify whether facilities are, in fact, complying with these binding statutory and regulatory requirements. These materials do not, in any way, add to or change these requirements and thus cannot be characterized as "substantive" rules; rather, they are a mixture of "interpretive rules," "general statements of policy," and "rules of agency procedure" within the meaning of 5 U.S.C. 553(b)(A) which excludes such rules from the notice and comment requirements.

Comment: In the course of reviewing comments, it became apparent that many commenters associated the use of scope and severity scales to determine deficiencies with results that do not depend on using scope and severity scales in this way. Many commenters were concerned that surveyors would not investigate extenuating circumstances surrounding violations of requirements unless they were required to use scope and severity scales for determining deficiencies.

Response: This is not the case. The surveyor guidelines provide surveyors with a consistent structure to evaluate situations and analyze information prior to making compliance decisions. One such evaluation that surveyors are directed to make under certain requirements is the assessment of a facility's responsibility for a certain situation. For example, survey guidelines list situations where pressure sores may be unavoidable and aid surveyors in determining whether a resident's pressure sore was preventable or not. This type of guidance is provided for many of the resident-centered requirements. In addition, surveyor training courses stress ways to arrive at consistent and accurate conclusions as to facility responsibility.

Comment: A number of commenters requested that we require surveyors to consider, when identifying deficiencies, whether or not the facility identified a violation before the survey and attempted to correct it.

Response: We believe that it would be inappropriate to ignore a failure to prevent a negative outcome, but the regulation does allow the competence that the facility demonstrated by identifying and addressing the deficiency on its own initiative to be considered when enforcement action is selected.

Comment: Certain commenters asked that we direct surveyors to determine whether a negative outcome is the result of a resident's refusal of treatment, which is a resident's right.

Response: Whenever there appears to be a conflict between a resident's right and the resident's health or safety, we do direct the surveyor in the guidance to surveyors to determine if the facility attempted to accommodate both the exercise of the resident's right and the resident's health, including exploration of care alternatives through a thorough planning process in which the resident may participate.

Comment: An additional factor that commenters believed surveyors should take into consideration when determining deficiencies is whether the noncompliance occurred because the facility was following a physician's orders.

Response: We cannot allow this to be considered in the deficiency determination. The facility is accountable for providing to the resident the medical services to which he or she is entitled as a Medicare or Medicaid beneficiary, and it is the facility's responsibility to ensure that the services provided by physicians will satisfy the facility's obligations under the Act and regulations. The statute specifically contemplates a relationship between a facility and either the Secretary or the State in which the facility, in exchange for certification and payments for the care of program beneficiaries, commits to provide care in a manner consistent with statutory requirements. A facility cannot excuse itself from this obligation by deferring responsibility to an individual (the physician) with whom neither the State nor the Secretary has any statutory relationship for the purpose of maintaining compliance with facility health and safety standards.

Comment: Many commenters were also very concerned that we correlate the stringency of the enforcement action with the seriousness of the deficiency.

Response: It is not necessary to use scope and severity scales when determining deficiencies to ensure this result. We establish criteria for determining remedies in § 488.408, Selection of remedies, and we link infractions with specific categories of remedial action. Under this scheme, a facility with a single deficiency that caused no harm is not treated the same as a facility with on-going, widespread problems that threaten resident lives.

Comment: Certain commenters requested that we give facilities with a good history of patient care the opportunity to correct occasional isolated problems before the end of the survey so as to avoid deficiency citations for these problems.

Response: Any violation of Federal participation requirements must be noted and we cannot direct surveyors to ignore violations on account of a facility's past compliance record. If violations of participation requirements are corrected during the survey, surveyors will note the correction along with the citation on the statement of deficiencies, and this information will be considered when enforcement action is selected.

Comment: Certain commenters believed that all deficiency citations made by surveyors should include what the negative outcome is.

Response: A violation of any participation requirement must be considered a deficiency, even if the violation caused no negative outcome to occur. As discussed earlier, there are a number of requirements in the Act for which questions of outcomes are irrelevant. The deficiency citation will in all cases clearly identify how or why the requirement is or was not met and the extent of the deficient practice, but will only detail the impact or potential impact of the facility's non-compliance on the resident when it is appropriate.

Comment: A great number of commenters complained that facilities do not know what is required of them until they are cited for deficiencies at the time of survey. They requested that we inform providers of the Medicare or Medicaid participation requirements, or both, to which they will be held accountable. Certain commenters specifically requested that we provide copies of those standards to facilities at no cost.

Response: There is no reason why any Medicare or Medicaid provider should be unaware of program participation requirements. The requirements are public knowledge, and it is incumbent upon facilities that enter into Medicare and Medicaid agreements to familiarize themselves with the requirements with which they have voluntarily agreed to comply. Moreover, copies of the State Operations Manual Transmittal No. 250, which contains the interpretive guidelines, procedures, and forms used

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by surveyors to assess facility compliance, are available to the public for purchase from the National Technical Information Service. The address is: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600. The document publication order number is PB–92–950003.

Comment: One commenter recommended that violations of requirements be cited as they are discovered so that the facility can act upon them immediately. The commenter believed that correction should not be delayed until after the exit conference.

Response: Because we direct surveyors to maintain an ongoing dialogue with facility staff, there should be few instances where the facility is not aware of surveyors' most serious concerns prior to the exit conference. We do expect surveyors to immediately communicate to the facility staff any findings that jeopardize the health or safety of residents, but it would be impractical for surveyors to advise the facility of each and every violation as it is identified. It could also be misleading because the deficiencies cited on the HCFA–2567 are not official until they are reviewed by supervisory personnel and the State or HCFA. This review could invalidate or alter some of the deficiencies cited by surveyors while onsite at the facility.

Comment: Certain commenters asked that we recognize that a facility's failure to comply with participation requirements does not always occur at the time of the survey visit. These commenters requested that we empower surveyors to write citations for deficiencies that occurred before the survey, even if they were corrected prior to it.

Response: If surveyors determine that a facility did not meet one or more participation requirements during a period preceding the survey, they may cite the deficiency, which may be sanctionable despite its correction prior to the survey. The Congress intended for past deficiencies to be identified and addressed. Sections 1819(h)(2)(A) and 1919(h)(1) of the Act provide that if the Secretary or the State finds that a facility meets participation requirements, but as of a previous period did not meet such requirements, then the Secretary or the State may provide for a civil money penalty for the days for which it finds that the facility was not in compliance.

Comment: Certain individuals believed that State survey agency supervisors should review the survey results and make the compliance determinations instead of the surveyors. These commenters believed that this measure would enhance consistent decisionmaking.

Response: Surveyors do not make the ultimate compliance decision, which is why only a draft of the statement of deficiencies is available to the facility at the time of the exit conference, if at all. The statement of deficiencies is reviewed by the State survey agency which makes the final compliance decision.

Scope and Severity Scales

In the preamble to the proposed rule, we requested general public comment about how the severity scale levels were described as well as assigned. We specifically asked for comments on the proposed construction of the severity scale whereby deficiencies at a severity of 3 or 4 can result in the same sanctions.

All comments received in response to this section have been included and addressed under § 488.404 of this preamble.

Nurse Aide Training and Competency Evaluation Programs

Comment: As mentioned elsewhere in this document, a number of commenters expressed concern that HCFA or the survey agency may decide to conduct an extended survey at any time for any reason. One of the reasons for this concern is that, under regulations at § 483.151(b)(2)(iii), which expressly reflect the statutory requirement, when a facility undergoes an extended (or a partial extended) survey, it automatically loses approval of its Nurse Aide Training and Competency Evaluation Program (NATCEP) for 2 years.

Response: Our response to that particular comment was stated earlier in this preamble under our discussion of extended surveys. However, there is a closely related policy we would like to address here that goes beyond NATCEP rescission as a result of an extended survey. There are other circumstances described at § 483.151(b)(2) that also trigger a 2-year prohibition on NATCEP. It has been our policy that the remainder (if any) of a 2-year prohibition on NATCEPs also applies to a new owner when the provider undergoes a change of ownership as defined in § 489.18(a), Change of ownership or leasing: Effect on provider agreement. The implicit basis for this policy has been paragraph (d) of § 489.18, which states that an "assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued * * *."

This policy was explicitly set forth in the **Federal Register** (56 FR 48894) on September 26, 1991, as well as in State Operations Letter 91–75. The latter reads in part that, "a facility subject to the prohibition on [NATCEP] training remains subject for two years after the event triggering the prohibition regardless of the change of ownership." While we have been consistent in this policy, we have been reexamining it within the larger context of drafting these regulations. We have been reexamining all of our policies and regulations concerning remedies to ensure that they are consonant with the fundamental purpose of remedies, which is to motivate providers to come quickly into compliance with program requirements.

In the proposed rule, we spoke to the purpose of sanctions, saying in part that our intent is to "deter violations as well as encourage *immediate* (emphasis added) response and sustained compliance." If the new owner of a provider must wait for the expiration of the remainder of a 2-year prohibition of NATCEP that was imposed on a previous owner, regardless of any action he or she may take to correct the deficiencies that triggered the prohibition, the 2-year prohibition on NATCEP would be unlike other remedies. As soon as a new owner corrects the noncompliance that led to the imposition of any other remedy, the remedy can be lifted. The exception to this is that when a facility has had a denial of payment imposed against it for repeated substandard quality of care or has been placed under temporary management, in addition to achieving substantial compliance, it must demonstrate to HCFA's or the State's satisfaction that it will remain in substantial compliance.

However, it is not just the inconsistency with the other remedies which has led us to reexamine our policy on this issue. In addition, HCFA does not want to discourage new, capable ownership interests from improving the quality of care that residents receive. Investing in a NATCEP may enhance quality of care; to prohibit a new owner from having such a program would be counterproductive with the larger purposes of the programs. Therefore, under this regulation, we are changing our policy on transfer of the prohibition of NATCEP to a new owner to bring it into line with the workings of other remedies. The 2-year restriction of NATCEP will not apply to the new owner of a provider unless that new owner or organization has been the subject of an extended (or partial extended) survey, or is otherwise subject to the terms of § 483.151, under its tenure. If all other requirements for the approval of NATCEP are met, including substantial compliance with all program requirements, the new owner may provide NATCEP.

We have received numerous inquiries from providers as well as their attorneys asking what appeal rights are available when approval of a facility's NATCEP has been denied or withdrawn. While the Act does not provide for any formal appeals for denial or withdrawal of a NATCEP, we believe that providers ought to have some opportunity to challenge this disapproval. Therefore, we expect providers to appeal their NATCEP disapproval within the timeframes established for dispute resolution, as described in § 488.331 of this final rule.

We have reached this result because, notwithstanding the fact that the Act permits us and the State survey agencies to conduct extended (or partial extended) surveys for any reason, we are nevertheless under this regulation choosing to conduct such surveys only when we or a State survey agency determines that substandard quality of care exists. Just as we believe a provider ought to have access to an informal dispute resolution mechanism to challenge what it perceives to be inaccurate survey findings, we believe that it ought to be able to challenge the correctness of the State survey agency's or HCFA's determination that substandard quality of care existed. If successful in that challenge, then the factual basis for doing the extended survey will have been removed, and, in such cases, it would be inequitable to saddle the provider with the loss of its NATCEP when there was no factual basis for doing so.

We are limiting the appeals of these matters to the informal dispute resolution process because we do not believe the loss of a NATCEP is a remedy of the same magnitude or type as other statutory remedies for which a more formal appeals mechanism is available. Unlike the case with other remedies, a facility losing its NATCEP will not, on that basis alone, face exclusion from the Medicare or Medicaid programs, nor will it face the same kind of deprivation that is arguably the case with respect to civil money penalties, denial of payment, or the imposition of temporary management. We believe the informal dispute resolution process satisfies essential elements of due process here, since a provider will have notice of the intended denial of its NATCEP and the opportunity to meet with agency officials to challenge the findings that gave rise to the denial.

Comment: One commenter believed that every State should implement the same penalty system.

Response: The Act permits the States to elect alternative remedies if they can demonstrate that the alternative remedies are as effective as the remedies specified by the Act.

V. Additional Conforming Changes.

In addition to change to our regulations identified above, it is necessary that we make minor, technical, editorial or cross reference changes to several other regulation sections. We are making conforming changes to:

- Part 401 (§§ 401.130, and 401.133), part 431 (§§ 431.115, 431.151, 431.152, 431.153, 431.154, 431.221, and 431.610);
- Part 435 (§ 435.1009);
- Part 440 (§ 440.40, 440.140, 440.150); we recodified § 440.150 to separate NFs and ICFs/MR to make it clear which provisions apply to each. No substantive changes have been made as a result of this new section.
- Part 441 (§ 441.11);
- Part 442 (§§ 442.1, 442.12, 442.14, 442.15, 442.16, 442.20, 442.30, 442.40, 442.42, 442.101, 442.105, 442.109, 442.110, 442.111, 442.117, 442.118, and 442.119);
- Part 488 (§§ 488.8, 488.11, 488.14, 488.18, 488.20, 488.24, 488.26, 488.28, and 488.50);
- Part 489 (§§ 489.3, 489.11, 489.12, 489.15, 489.16, 489.18, 489.53, 489.60, 489.62, and 489.64); and
- Part 498 (§§ 498.1, 498.2, 498.3, and 498.5).
- Part 498 (§§ 498.1, 498.2, 498.3, and 498.5); we revised § 498.3(b)(7) to exclude SNF and NF terminations. SNFs and NFs may appeal the noncompliance that led to a termination under § 498.3(b)(13).

VI. Regulatory Impact Analysis

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all long term care facilities are considered small entities. However, individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds.

As described earlier in the preamble, OBRA '87 mandated extensive revisions to the Medicare and Medicaid requirements for nursing facilities. Under the previous system, long term care facilities were required to meet a set of requirements called conditions of participation. Each condition of participation included groups of standards, and standards were made up of separate elements. Enforcement was based on the level of the requirement for which a deficiency was cited. For example, condition-level deficiencies in a SNF resulted in the initiation of termination procedures and/or a denial of payment for new admissions. However, if only standard-level deficiencies were found, a plan of correction was required with no further immediate sanctions. Conditions of participation later became Level A requirements, and standards and elements became Level B requirements, as the result of a preliminary effort to dismantle the hierarchy of requirements as mandated by OBRA '87. We revised the requirements that long term care facilities must meet in order to participate in the Medicare and Medicaid programs on September 26, 1991 (56 FR 48826). These requirements focus generally on actual facility performance in meeting residents' needs in a safe and healthy environment, as compared to prior requirements which focused on the capacity of the facility to provide appropriate care.

As of October 1993, there were 10,512 facilities certified for both Medicare and Medicaid (dually participating), 939 SNFs certified only for Medicare, and 4,974 NFs certified only for Medicaid. HCFA data indicate that 7.3 percent (1,141) of all long term care facilities surveyed in 1992 were found to be deficiency-free. Facilities in full compliance with the participation requirements would not, of course, be subject to the enforcement remedies contained in this final rule. Six and one-half percent (1,021) of the surveyed facilities were found to have at least one Level A deficiency and would have been subject to denial of payment for new admissions and/or termination under the former enforcement rules. However, the number of involuntary

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terminations of long term care facilities for calendar year 1992 was 53 (29 SNFs/NFs and 24 NFs), less than one-half of one percent of all participating facilities. This figure demonstrates that most of the facilities identified during a survey to have at least one serious deficiency can and do correct deficiencies to avoid termination. The majority of the facilities surveyed (86.2 percent) were determined to have no Level A but at least one Level B deficiency, a finding that usually would allow the facility to continue to participate for a longer period of time while taking corrective action.

The intent of the OBRA '87 legislation was to provide the Secretary and States with the authority to impose timely, alternative remedies on noncompliant facilities that, under the previous enforcement process, had no incentive to promptly correct deficiencies and maintain lasting compliance. Our proposed rule (57 FR 39270, August 28, 1992) delineated the process we would use to survey, assess, and enforce facility compliance with all participation requirements.

It is clear that a large number of small entities will be affected by adoption of these procedures, and, as intended by OBRA '87, a substantial number of those entities are at risk of some remedy if they are noncompliant until they make changes in their operations to meet certification requirements. Therefore, we have prepared the following analysis which, in combination with the rest of the preamble, is intended to conform to the objectives of the RFA. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of substantial number of small rural hospitals.

B. Affected Entities

We expect that the implementation of these final regulations will significantly influence facilities to conform quickly with the Federal participation requirements in order to avoid remedies. We recognize that not all of the potential effects of this final rule can be definitely anticipated, especially in view of their interaction with other Federal, State, and local activities regarding adherence to requirements for participation in Medicare and Medicaid. In particular, considering the effects of our efforts to improve survey and certification activities, through both new survey procedures and instruments and the promulgation of regulations, it is impossible to quantify precisely the future effect of all of these regulations on facilities' compliance activities or costs. We also are unable to accurately project the frequency with which enforcement proceedings may occur in light of the options to apply a host of remedies short of termination.

As a result of the 27,900 comments received in response to our proposed rule, virtually every aspect of the regulation was re-evaluated. Where warranted, changes were made and the details of those changes were discussed in detail in the preceding section of the preamble to this rule. In response to our proposed revisions to part 431, most of the negative comments concerned the effect on ICFs/MR of withdrawing FFP during appeals. Some commenters noted that OBRA '87 specifically exempted ICFs/MR from its scope, and stated that it is not appropriate to change the ICF/MR rules in implementing a law that applies to other facilities. We agree that it would be preferable to include the provisions applicable to ICFs/MR at a later date in rulemaking focused on ICFs/MR. Therefore, we are adopting the commenters' proposals that the 120 days of FFP continue for ICFs/MR until such rulemaking is carried out, and are leaving the existing appeals system in place for ICFs/MR. Thus, neither ICFs/MR nor their residents will experience any impact from this final rule.

Also based on commenters' suggestions, we incorporate in this final rule the concept of substantial compliance as the standard that prospective providers and existing providers must meet in order to begin or continue to participate in the Medicare and Medicaid programs. After evaluation of the comments received, and in consideration of the fact that, as noted earlier, only 7.3 percent of all nursing homes surveyed in 1992 were deficiency-free, we believe that total compliance with all requirements is unrealistic and, in fact, a standard that many providers or prospective providers would find impossible to meet. We note that the statute now sets forth more than 100 requirements that facilities have to meet in order to participate in the Medicare or Medicaid programs, whereas before OBRA '87, facilities had to comply with approximately 15. With the seven-fold increase in statutory requirements, there is a greater likelihood that facilities will be found not to meet the statutory definition of a SNF or NF. We are convinced, however, based on experience and commenters' views, that many statutory deficiencies do not result in actual harm to residents, nor do they constitute the potential for anything more than minimal harm. We realized that under the provisions of our proposed rule, a facility could have been subject to the most severe remedies, including denial of payment for new admissions, termination of the provider agreement for SNFs and discontinuation of FFP for NFs, if any deficiency, no matter how minor, was identified at the time of the survey. We recognized that imposing a remedy in all cases would be contrary to our intention to correlate the severity of the remedy to the seriousness of the deficiency, and would have a negative effect on facilities and residents. Instead, this final rule provides that remedies will not be imposed when a facility is in substantial compliance with all participation requirements.

We are removing the scope and severity scales from the regulation and are, instead, providing assessment factors which consider scope and severity to be used in evaluating the seriousness of deficiencies and determining whether an enforcement response is required. We continue to believe, as we proposed, that because remedies are tailored to reflect the seriousness of the violations, the use of the assessment factors will provide consistent remedy recommendations and enforcement actions among all facilities. Since facilities will be aware of the correlation between the seriousness of the noncompliance and the penalty imposed, we anticipate that remedies applied in this manner will deter violations and encourage immediate response and sustained compliance. Based on the large number of comments we received expressing concern over the imposition of civil money penalties, which can be imposed for past periods of noncompliance, we expect that the regulations will have the desired effect of motivating facilities to remain in substantial compliance at all times.

Under these final rules, a facility with isolated deficiencies that constitute no actual harm with potential for minimal harm will be expected to correct the deficiencies and maintain compliance. However, a formal plan of correction is required for deficiencies that constitute no actual harm with potential for minimal harm if the deficiencies are widespread or if they constitute a pattern. A formal plan of correction is also required for all deficiencies that constitute noncompliance. Facilities with deficiencies that constitute no actual harm with potential for no more than minimal harm will be considered in substantial compliance with the participation requirements and will have no remedy applied. We believe that the majority of the 86 percent of the facilities cited in 1992 with at least one

Level B deficiency would fall within this range. We note, however, that some noncompliance categorized previously as Level B deficiencies could now result in remedies because of their effect on the residents.

In response to commenters, we are requiring that States provide an opportunity for informal dispute resolution whereby providers dissatisfied with survey findings can request a review of the deficiencies upon receipt of the official HCFA–2567. Dispute resolution augments the various other opportunities facilities have during and after the survey to challenge the surveyors' findings, including during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, through dialogue with State and regional officials, and upon receipt of the official statement of deficiencies. The process we are requiring generally reflects current practice and guidance we have consistently given States, except that here it is formally adopted as a rule. While we believe that many formal hearings will be avoided by utilizing dispute resolution, the regulations provide facilities with the opportunity to appeal certifications of noncompliance leading to an enforcement remedy, and specify the formal administrative and judicial review processes. However, because the Act mandates that enforcement systems minimize the time between identification of violations and the imposition of remedies, we are not requiring that hearings be held before the effective date of the enforcement action, except in the case of civil money penalties. Facilities facing civil money penalties may also appeal the level of noncompliance but only where a successful challenge would affect the amount of the civil money penalty that HCFA or the State could collect.

Because of the variety of alternative remedies now available, we believe termination will be the enforcement response to the most serious noncompliance, and it can be avoided by facilities that are willing and able to effectively allocate their resources to ensure substantial compliance. To the extent that those marginal facilities that are most at risk from these provisions are able to come into substantial compliance, there may even be a reduction in the frequency of enforcement actions. Of course, facilities will ordinarily incur some costs associated with compliance efforts. Those costs could be significant if they necessitate substantial staffing increases or alterations to a physical plant. Our elimination of FFP after termination of the provider agreement during the administrative hearing process provides an incentive for facilities to comply promptly with enforcement actions, but could also add to the impact on facilities.

C. Effect on State Survey Process

The impact that this final rule will have on State survey agencies' surveys must be viewed in the context of other ongoing activities related to survey and certification.

On October 1, 1986, HCFA implemented its new long term care outcome-oriented survey process (formerly called PACs: Patient Care and Services Survey Process). This system shifted the emphasis away from the facility's capacity to provide adequate care to the facility's success in providing such care. On October 1, 1990, HCFA implemented a revised outcome-oriented survey process that includes the OBRA provision of resident rights review. Because the effective date of this rule is July 1, 1995, training courses can be designed and offered timely to provide the State agency surveyors and other staff with information on assessing the seriousness of deficiencies. The knowledge they gain in applying Federal survey requirements in an accurate, consistent, and time efficient manner, should lead to improved surveys at no increase in costs. We do not expect that assessing the seriousness of the deficiencies will add to the time needed to conduct a survey since this process is one that surveyors have essentially engaged in for years. We do not expect these regulations to necessitate greater expenditures on the part of State survey agencies; however, they probably will result in a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities. Further, these regulatory changes will contribute to a shift toward more enforcement-oriented roles for State survey agencies and surveyors. Although States will have an expanded role and increased responsibility as a result of this final rule, they will also be given increased flexibility in carrying out their responsibilities.

We expect some incremental costs to facilities and to States as a result of facility appeals of termination and alternative remedies. Although we have no experience on which to predict increases in volume or cost, we believe that the increase will be offset somewhat as some hearings will be avoided as a result of dispute resolution. The appeals process has been thoroughly explained elsewhere in this preamble. The responses to comments illustrate the thoughtful approach taken, with a view to minimizing burden in implementing statutory requirements.

D. Effect on Residents

We expect this final rule to result in improved quality of life and care for residents of long term care facilities. Because of the various enforcement tools provided by this regulation, facilities will have more of an incentive to remain in compliance with participation requirements. This sustained compliance will provide residents with consistent, high quality health care. Because quality of life can be affected by a resident's sense of satisfaction with his or her environment, the quality of care received, and the extent of control over his or her life, heightened facility interest in maintaining substantial compliance should be perceived by residents and their families as improved care.

While termination of SNFs and NFs could have a significant impact on residents, especially those living in rural areas, this final rule provides a variety of alternatives to termination for those facilities that are able to come into compliance. To the extent that termination occurs less frequently, there would be less disruption to nursing home residents and ensured access to needed services. In those cases in which termination becomes necessary, the termination is for the ultimate benefit of the residents to assure that they receive the quality care to which they are entitled.

VII. Information Collection Requirements

Sections 4204(b) and 4214(d) of OBRA '87 provide a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 431

Grant programs–health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs–health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

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42 CFR Part 440

Grant programs–health, Medicaid.

42 CFR Part 441

Family planning, Grant programs–health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs–health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements; Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs–health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs–health , Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

A. Part 401 is amended as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 205, 1102, 1106, 1819, 1871, and 1919(g) and (h) of the Social Security Act (42 U.S.C. 405, 1302, 1306, 1395i-3, 1395hh, and 1396r(g) and (h)); the Freedom of Information Act (5 U.S.C. 552); and the Privacy Act (5 U.S.C. 552a).

2. Section 401.130 is amended by revising paragraph (b) (17) to read as follows:

§ 401.130 Materials available at social security district offices and branch offices.

* * * * *

(b) *Materials available for inspection and copying.*

* * * * *

(17) Statements of deficiencies based upon survey reports of health care institutions or facilities prepared after January 31, 1973, by a State agency, and such reports (including pertinent written statements furnished by such institution or facility on such statements of deficiencies), as set forth in § 401.133(a). Except as otherwise provided for at §§ 401.133 and 488.325 of this chapter for SNFs, such statements of deficiencies, reports, and pertinent written statements shall be available or made available only at the social security district office and regional office servicing the area in which the institution or facility is located, except that such statements of deficiencies and pertinent written statements shall also be available at the local public assistance offices servicing such area.

* * * * *

3. Section 401.133 is amended by revising the introductory text to read as follows:

§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.

Except as otherwise provided for in § 488.325 of this chapter for SNFs, the following must be made available to the public under the conditions specified:

* * * * *

B. Part 431 is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.115 is amended by revising paragraph (c) to read as follows:

§ 431.115 Disclosure of survey information and provider or contractor evaluation.

* * * * *

(c) *State plan requirements.* A State plan must provide that the requirements of this section and § 488.325 of this chapter are met.

* * * * *

3. The heading for subpart D is revised to read as follows:

Subpart D—Appeals Process for NFs and ICFs/MR

4. Section 431.151 is revised to read as follows:

§ 431.151 Scope and applicability.

(a) This subpart specifies the appeal procedures the State must make available to a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR), when the State's finding of noncompliance leads to a denial or termination of a provider agreement under the Medicaid program or nonrenewal of an agreement in the case of an ICF/MR.

(b) This subpart also specifies the appeal procedures for NFs which disagree with a certification of noncompliance which led to the imposition of a remedy.

(c) The choice of remedy is not appealable.

(d) A NF may not challenge the level of noncompliance found by the State, except that in the case of a civil money penalty, a NF may challenge the level of noncompliance found by the State only if a successful challenge on this issue would affect the range of civil money penalty amounts that the State could collect.

(e) For a NF, the scope of review on the imposition of a civil money penalty is specified in § 488.438(e) of this chapter.

5. Section 431.152 is revised to read as follows:

§ 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 through 431.154.

6. Section 431.153 is revised to read as follows:

§ 431.153 Evidentiary hearing.

(a) For actions specified in § 431.151, the Medicaid agency must give a provider the opportunity for a full evidentiary hearing.

(b) When a NF requests a hearing. Except when a civil money penalty is imposed, when a NF requests a hearing, the hearing need not be completed before the proposed effective date of the denial or termination of participation, or imposition of any remedy.

(c) When an ICF/MR requests a hearing. When an ICF/MR requests a hearing, it must be completed—

(1) Before the effective date of the denial, termination or nonrenewal of participation; or

(2) Within 120 days after that date.

(d) Time period for request of hearing. The affected NF or ICF/MR, or its legal representative or other authorized official, must file the request for hearing in writing within 60 days from receipt of the notice of the proposed denial, termination, or nonrenewal of participation, or imposition of a civil money penalty or other remedies.

(e) When remedies are imposed. (1) Notwithstanding any provision of State law, the State must impose all remedies timely on any provider of services participating in the Medicaid program—

(i) After notifying the facility timely of the deficiencies and impending remedies; and

(ii) Except as specified in paragraph (e)(2) of this section, during any pending hearing that may be requested by the provider of services, as provided in paragraph (b) of this section.

(2) The State must not collect a civil money penalty until a final administrative decision is made that supports the imposition of the penalty.

(f) Non-State operated NF. In the case of a non-State operated NF upon which remedies have been imposed, the State must give the facility—

(1) Notice, as specified in paragraph (h) of this section; and

(2) An opportunity for a full evidentiary hearing on the issue of the noncompliance that led to the imposition of enforcement actions, except for State monitoring and loss of nurse aide training, as provided in § 488.406 of this chapter.

(g) Remedies imposed during pending hearing. Except for the collection of civil money penalties, the State must impose all such remedies during any pending hearing.

(h) Contents of notice. The notice to the facility must include—

(1) The basis for the decision; and

(2) A statement of deficiencies on which the decision is based.

(i) Required elements of hearing. The hearing must, at a minimum, include—

(1) An opportunity for the facility to appear before an impartial decision maker to refute the certification of noncompliance upon which the denial, termination, nonrenewal of participation for ICFs/MR, or upon which the denial, termination, or imposition of other remedies for NFs are based;

(2) An opportunity for the facility to be represented by counsel or another representative;

(3) An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence; and

(4) A written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(j) In civil money penalty cases, a State's conclusion about a NF's level of noncompliance must be upheld unless clearly erroneous.

(k) Dually participating facilities. If a NF is also participating or seeking to participate in Medicare as a SNF, and the basis for the State's denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that—

(1) The appeal procedures specified for Medicare facilities in part 498 of this chapter apply; and

(2) A final decision entered under the Medicare review procedures is binding for the purposes of Medicaid participation and Medicare participation in a dually participating facility or a facility seeking to participate in Medicare and Medicaid.

(l) If HCFA determines that a NF is not in substantial compliance with participation requirements, thereby resulting in HCFA's imposition of alternative remedies, or if HCFA denies, or terminates the provider agreement(s) of such a facility, and the findings and proposed remedies of HCFA prevail in accordance with § 488.452 of this chapter, the facility is entitled only to the review procedures specified in part 498 of this chapter, in lieu of the procedures specified in this subpart.

7. Section 431.154 is amended by revising the section heading and paragraph (a) to read as follows:

§ 431.154 Informal reconsideration for ICFs/MR.

(a) If the State decides to provide the opportunity for an evidentiary hearing required by § 431.153(a) only after the effective date of a denial, or nonrenewal of participation, the State must offer the facility an informal reconsideration, to be completed before the effective date.

* * * * *

8. Section 431.610 is amended by adding a new paragraph (a)(3), revising the introductory text in paragraph (g), and revising paragraphs (g)(2) to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

(a) * * *

(3) Section 1919(g)(1)(A) of the Act, concerning responsibilities of the State for certifying the compliance of non-State operated NFs with requirements of participation in the State's Medicaid program.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying NFs and ICFs/MR, the survey agency designated under paragraph (e) of this section will—

* * * * *

(2) Have qualified personnel perform on-site inspections periodically as appropriate based on the timeframes in the correction plan and—

(i) At least once during each certification period or more frequently if there is a compliance question; and

(ii) For non-State operated NFs, within the timeframes specified in § 488.308 of this chapter.

* * * * *

C. Part 435 is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.1009 is amended by revising in the definition of *Publicly operated community residence that serves no more than 16 residents* the introductory text of the definition, paragraph (b) introductory text, and paragrapgh (b)(4) and removing the definition of *Resident of an intermediate care facility* to read as follows:

§ 435.1009 Definitions relating to institutional status.

* * * * *

Publicly operated community residence that serves no more than 16 residents is defined in 20 CFR 416.231(b)(6)(i). A summary of that definition is repeated here for the information of readers.

* * * * *

(b) A publicly operated community residence does not include the following facilities, even though they accommodate 16 or fewer residents:

* * * * *

(4) Hospitals, nursing facilities, and intermediate care facilities for the mentally retarded.

* * * * *

D. Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.40 is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental diseases). EPSDT, and family planning services and supplies.

(a) *Nursing facility services.* (1) "Nursing facility services for individuals age 21 or older, other than services in an institution for mental diseases", means services that are—

(i) Needed on a daily basis and required to be provided on an inpatient

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basis under §§ 409.31 through 409.35 of this chapter.

(ii) Provided by—

(A) A facility or distinct part of a facility that is certified to meet the requirements for participation under subpart C of part 442 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; or

(B) If specified in the State plan, a swing-bed hospital that has an approval from HCFA to furnish skilled nursing facility services in the Medicare program; and

(iii) Ordered by and provided under the direction of a physician.

(2) Nursing facility services includes services provided by any facility located on an Indian reservation and certified by the Secretary as meeting the requirements of subpart B of part 483 of this chapter.

(b) *EPSDT.* "Early and periodic screening and diagnosis and treatment" means—

(1) Screening and diagnostic services to determine physical or mental defects in recipients under age 21; and

(2) Health care, treatment, and other measures to correct or ameliorate any defects and chronic conditions discovered. (See subpart B of part 441 of this chapter.)

3. Section 440.140 is revised to read as follows:

§ 440.140 Inpatient hospital services, nursing facility services, and intermediate care facility services for individuals age 65 or older in institutions for mental diseases.

(a) *Inpatient hospital services.* "Inpatient hospital services for individuals age 65 or older in institutions for mental diseases" means services provided under the direction of a physician for the care and treatment of recipients in an institution for mental diseases that meets the requirements specified in § 482.60(b), (c), and (e) of this chapter and—

(1) Meets the requirements for utilization review in § 482.30(a), (b), (d), and (e) of this chapter; or

(2) Has been granted a waiver of those utilization review requirements under section 1903(i)(4) of the Act and Subpart H of Part 456 of this chapter.

(b) *Nursing facility services.* "Nursing facility services for individuals age 65 or older in institutions for mental diseases" means nursing facility services as defined in § 440.40 and in subpart B of part 483 of this chapter that are provided in institutions for mental diseases, as defined in § 435.1009 of this chapter.

4. Section 440.150 is revised to read as follows:

§ 440.150 Intermediate care facility (ICF/MR) services.

(a) "ICF/MR services" means those items and services furnished in an intermediate care facility for the mentally retarded if the following conditions are met:

(1) The facility fully meets the requirements for a State license to provide services that are above the level of room and board;

(2) The primary purpose of the ICF/MR is to furnish health or rehabilitative services to persons with mental retardation or persons with related conditions;

(3) The ICF/MR meets the standards specified in subpart I of part 483 of this chapter.

(4) The recipient with mental retardation for whom payment is requested is receiving active treatment, as specified in § 483.440 of this chapter.

(5) The ICF/MR has been certified to meet the requirements of subpart C of part 442 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for furnishing ICF/MR services and making payments for these services under the plan.

(b) ICF/MR services may be furnished in a distinct part of a facility other than an ICF/MR if the distinct part—

(1) Meets all requirements for an ICF/MR, as specified in subpart I of part 483 of this chapter;

(2) Is clearly an identifiable living unit, such as an entire ward, wing, floor or building;

(3) Consists of all beds and related services in the unit;

(4) Houses all recipients for whom payment is being made for ICF/MR services; and

(5) Is approved in writing by the survey agency.

5. A new § 440.155 is added to read as follows:

§ 440.155 Nursing facility services, other than in institutions for mental diseases.

(a) "Nursing facility services, other than in an institution for mental diseases" means services provided in a facility that—

(1) Fully meets the requirements for a State license to provide, on a regular basis, health-related services to individuals who do not require hospital care, but whose mental or physical condition requires services that—

(i) Are above the level of room and board; and

(ii) Can be made available only through institutional facilities;

(2) Has been certified to meet the requirements of subpart C of part 442 of this chapter as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; and

(b) "Nursing facility services" include services—

(1) Considered appropriate by the State and provided by a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.; or

(2) Provided by a facility located on an Indian reservation that—

(i) Furnishes, on a regular basis, health-related services; and

(ii) Is certified by the Secretary to meet the standards in Subpart E of Part 442 of this chapter.

(c) "Nursing facility services" may include services provided in a distinct part of a facility other than a nursing facility if the distinct part—

(1) Meets all requirements for a nursing facility;

(2) Is an identifiable unit, such as an entire ward or contiguous ward, a wing, floor, or building;

(3) Consists of all beds and related facilities in the unit;

(4) Houses all recipients for whom payment is being made for nursing facility services, except as provided in paragraph (d) of this section;

(5) Is clearly identified; and

(6) Is approved in writing by the survey agency.

(d) If a State includes as nursing facility services those services provided by a distinct part of a facility other than a nursing facility, it may not require transfer of a recipient within or between facilities if, in the opinion of the attending physician, it might be harmful to the physical or mental health of the recipient.

(e) Nursing facility services may include services provided in a swing-bed hospital that has an approval to furnish nursing facility services.

E. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.11 is revised to read as follows:

§ 441.11 Continuation of FFP for institutional services.

(a) *Basic conditions for continuation of FFP.* FFP may be continued for up to 30 days after the effective date of termination or expiration of a provider agreement, if the following conditions are met:

(1) The Medicaid payments are for recipients admitted to the facility before the effective date of termination or expiration.

(2) The State agency is making reasonable efforts to transfer those recipients to other facilities or to alternate care.

(b) *When the 30-day period begins.* The 30-day period begins on one of the following:

(1) The effective date of termination of the facility's provider agreement by HCFA;

(2) The effective date of termination of the facility's Medicaid provider agreement by the Medicaid agency on its own volition; or

(3) In the case of an ICF/MR, the later of—

(i) The effective date of termination or nonrenewal of the facility's provider agreement by the Medicaid agency on its own volition; or

(ii) The date of issuance of an administrative hearing decision that upholds the agency's termination or nonrenewal action.

(c) *Services for which FFP may be continued.* FFP may be continued for any of the following services, as defined in subpart A of part 440 of this chapter:

(1) Inpatient hospital services.

(2) Inpatient hospital services for individuals age 65 or older in an institution for mental diseases.

(3) Nursing facility services for individuals age 21 or older.

(4) Nursing facility services for individuals age 65 or older in an institution for mental diseases.

(5) Inpatient psychiatric services for individuals under age 21.

(6) Nursing facility services for individuals under 21.

(7) Intermediate care facility services for the mentally retarded.

F. Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise indicated.

2. The heading for part 442 is revised as set forth above.

3. Section 442.1 is amended by revising paragraph (a) to read as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements for facility certification relating to the provision of services furnished by nursing facilities and intermediate care facilities for the mentally retarded. This part is based on the following sections of the Act:

Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;

Section 1902(a)(27), provider agreements;

Section 1902(a)(28), nursing facility standards;

Section 1902(a)(33)(B), State survey agency functions; Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements in certain cases;

Section 1905(c), definition of nursing facility;

Section 1905(d), definition of intermediate care facility for the mentally retarded;

Section 1905 (f), definition of nursing facility services;

Section 1910, certification and approval of ICFs/MR and of RHCs;

Section 1913, hospital providers of nursing facility services;

Section 1919 (g) and (h), survey, certification and enforcement of nursing facilities; and

Section 1922, correction and reduction plans for intermediate care facilities for the mentally retarded.

* * * * *

4. Section 442.2 is amended by removing the definition *Immediate jeopardy or immediate threat* and adding in alphabetical order the definition of *Immediate jeopardy* to read as follows:

§ 442.2 Terms.

* * * * *

Immediate jeopardy means a situation in which immediate corrective action is necessary because the provider's noncompliance with one or more requirements of participation or conditions of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to an individual receiving care in a facility.

* * * * *

5. Section 442.12 is amended by revising paragraph (c) to read as follows:

§ 442.12 Provider agreement: General requirements.

* * * * *

(c) *Conformance with certification condition.* An agreement must be in accordance with the certification provisions set by the Secretary or the survey agency under subpart C of this part for ICFs/MR or subpart E of part 488 of this chapter for NFs.

* * * * *

6. Section 442.13 is amended by revising paragraphs (b) and (c) to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(b) *All Federal requirements are met on the date of the survey.* The agreement must be effective on the date the on-site survey is completed (or on the day following the expiration of a current agreement) if, on the date of the survey the provider meets all Federal health and safety conditions of participation or requirements for NFs and any other requirements imposed by the Medicaid agency.

(c) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (b) of this section, the agreement must be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) The date on which an ICF/MR—

(i) Is found to meet all conditions of participation; and

(ii) The facility submits an acceptable plan of correction for lower level deficiencies, or an approvable waiver request, or both.

(3) The date on which a NF—

(i) Is in substantial compliance, as defined in § 488.301 of this title; and

(ii) Submits an acceptable plan of correction, if applicable, or an approvable waiver request, or both.

7. Section 442.14 is amended by revising paragraph (b)(2) to read as follows:

§ 442.14 Effect of change of ownership.

* * * * *

(b) * * *

(2) Any expiration date for ICFs/MR.

* * * * *

8. Section 442.15 is amended by removing paragraph (d) and revising the section heading to read as follows:

§ 442.15 Duration of agreement for ICFs/MR.

* * * * *

9. Section 442.16 is amended by revising the section heading to read as follows:

§ 442.16 Extension of agreement for ICFs/MR.

* * * * *

10. Section 442.30 is amended by revising paragraphs (a)(1), (a)(2), (a)(4), and (a)(7) to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) * * *

(1) The survey agency failed to apply the applicable requirements under subpart B of part 483 of this chapter for NFs or subpart I of part 483 of this

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chapter, which set forth the conditions of participation for ICFs/MR.

(2) The survey agency failed to follow the rules and procedures for certification set forth in subpart C of this part, subpart E of part 488, and § 431.610 of this subchapter;

* * * * *

(4) The agency failed to use the Federal standards, and the forms, methods and procedures prescribed by HCFA as required under § 431.610(f)(1) or § 488.318(b) of this chapter, for determining the qualifications of providers; or

* * * * *

(7) Required elements of the NF survey process fails to include all of the following:

* * * * *

11. Section 442.40 is amended by revising the section heading and paragraphs (b)(1), (b)(2)(ii), and (c)(1) to read as follows:

§ 442.40 Availability of FFP during appeals for ICFs/MR.

* * * * *

(b) *Scope, applicability, and effective date.* (1) *Scope.* This section sets forth the extent of FFP in State Medicaid payments to an ICF/MR after its provider agreement has been terminated or has expired and not been renewed.

(2) * * *

(ii) When the State acts under instructions from HCFA, FFP ends on the date specified by HCFA (HCFA instructs the State to terminate the Medicaid provider agreement when HCFA in validating a State survey agency certification, determines that an ICF/MR does not meet the requirements for participation.)

* * * * *

(c) *Basic rules.* (1) Except as provided in paragraphs (d) and (e) of this section, FFP in payments to an ICF/MR ends on the effective date of termination of the facility's provider agreement, or if the agreement is not terminated, on the effective date of expiration.

* * * * *

12. Section 442.42 is amended by revising paragraph (a) to read as follows:

§ 442.42 FFP under a retroactive provider agreement following appeal.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if an NF or ICF/MR prevails on appeal from termination or, in the case of an ICF/MR, nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

* * * * *

13. The heading for subpart C is revised to read as follows:

Subpart C—Certification of ICFs/MR

§ 442.101 [Amended]

14. Section 442.101(d) is amended as follows:

a. In paragraph (d)(1), "subpart D" is removed and "subpart I" is added.

b. In paragraph (d)(2), "subpart D." is removed and "subpart I of part 483 of this chapter." is added.

15. Section 442.105 is amended by revising the section heading, the introductory text, and paragraphs (c)(1), and (d)(1) to read as follows:

§ 442.105 Certification of ICFs/MR with deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards for ICFs/MR, as specified under subpart I of part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

(c) * * *

(1) Was unable to stay in compliance with the standard for ICFs/MR for reasons beyond its control, or despite intensive efforts to comply; and

* * * * *

(d) * * *

(1) Did achieve compliance with the standard for ICFs/MR at some time during the prior certification period;

* * * * *

16. The heading for § 442.109 is revised to read as follows:

§ 442.109 Certification period for ICFs/MR: General provisions.

* * * * *

17. The heading for § 442.110 and paragraph (a) are revised to read as follows:

§ 442.110 Certification period for ICFs/MR with standard-level deficiencies.

(a) Facilities with deficiencies may be certified under § 442.105 for the period specified in either paragraph (b) or (c) of this section.

* * * * *

§ 442.116 [Removed]

18. Section 442.116 is removed.

19. Section 442.117 is amended by revising the section heading and paragraph (a) to read as follows:

§ 442.117 Termination of certification for ICFs/MR whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets conditions of participation for ICFs/MR as specified in subpart I of part 483 of this chapter.

(2) The facility's deficiencies pose immediate jeopardy to residents' health and safety.

* * * * *

20. Section 442.118 is amended by removing paragraph (c) and revising the section heading, paragraphs (a), (b)(1) and (b)(3)(i) to read as follows:

§ 442.118 Denial of payments for new admissions to an ICF/MR.

(a) *Basis for denial of payments.* The Medicaid agency may deny payment for new admissions to an ICF/MR that no longer meets the applicable conditions of participation specified under subpart I of part 483 of this chapter.

(b) * * *

(1) Provide the facility up to 60 days to correct the cited deficiencies and comply with conditions of participation for ICFs/MR.

* * * * *

(3) * * *

(i) The opportunity for the facility to present, before a State Medicaid official who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the conditions of participation for ICFs/MR.

* * * * *

21. Section 442.119 is amended by revising the section heading, paragraph (a)(1) and (b)(1) to read as follows:

§ 442.119 Duration of denial of payments and subsequent termination of an ICF/MR.

(a) * * *

(1) The facility has corrected the deficiencies or is making a good faith effort to achieve compliance with the conditions of participation for ICFs/MR; or

* * * * *

(b) * * *

(1) Upon the agency's finding that the facility has been unable to achieve compliance with the conditions of participation for ICFs/MR during the period that payments for new admissions have been denied;

* * * * *

G. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.280 is revised to read as follows:

§ 447.280 Hospital providers of NF services (swing-bed hospitals).

(a) *General rule.* If the State plan provides for NF services furnished by a swing-bed hospital, as specified in §§ 440.40(a) and 440.150(f) of this chapter, the methods and standards used to determine payment rates for routine NF services must—

(1) Provide for payment at the average rate per patient day paid to NFs, as applicable, for routine services furnished during the previous calendar year; or

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Application of the rule.* The payment methodology used by a State to set payment rates for routine NF services must apply to all swing-bed hospitals in the State.

H. Part 483 is amended as follows:

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)–(h), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a), (c) and (d), and 1919(a)–(h) of the Social Security Act (42 U.S.C. 1302, 1395i–3(a)–(h), 1395x (j) and (l), 1395z, 1395hh, 1396a(a)(28), and 1396d (a), (c) and (d), and 1396r(a)–(h)), unless otherwise noted.

2. Section 483.75 is amended by revising the heading to read as follows:

§ 483.75 Administration.

* * * * *

I. Part 488 is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

1. The heading for part 488 is revised as set forth above.

2. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102, 1126, 1128A, 1814, 1819, 1861, 1863, 1864, 1865, 1866, 1871, 1880, 1881, 1883, 1902, and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395f, 1395i–3, 1395x, 1395z, 1395aa, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, 1396a, and 1396r).

3. Section 488.11 is amended by revising paragraph (b) to read as follows:

§ 488.11 State survey agency functions.

* * * * *

(b) Conduct validation surveys of accredited facilities as provided in § 488.6; and

* * * * *

5. Section 488.14 is revised to read as follows:

§ 488.14 Effect of PRO review.

When a PRO is conducting review activities under section 1154 of the Act and Part 466 of this chapter, its activities are in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), and 1861(k) of the Act.

6. Section 488.18 is amended by revising paragraphs (a) and (b) to read as follows:

§ 488.18 Documentation of findings.

(a) The findings of the State agency with respect to each of the conditions of participation, requirements (for SNFs and NFs), or conditions for coverage must be adequately documented. When the State agency certifies to the Secretary that a provider or supplier is not in compliance with the conditions or requirements (for SNFs and NFs), and therefore not eligible to participate in the program, such documentation includes, in addition to the description of the specific deficiencies which resulted in the agency's recommendation, any provider or supplier response.

(b) If a provider or supplier is certified by the State agency as in compliance with the conditions or participation requirements (for SNFs and NFs) or as meeting the requirements for special certification (see § 488.54), with deficiencies not adversely affecting the health and safety of patients, the following information will be incorporated into the finding:

(1) A statement of the deficiencies that were found.

(2) A description of further action that is required to remove the deficiencies.

(3) A time-phased plan of correction developed by the provider and supplier and concurred with by the State agency.

(4) A scheduled time for a resurvey of the institution or agency to be conducted by the State agency within 90 days following the completion of the survey.

* * * * *

7. Section 488.20 is amended by revising paragraph (a) to read as follows:

§ 488.20 Periodic review of compliance and approval.

(a) Determinations by HCFA to the effect that a provider or supplier is in compliance with the conditions of participation, or requirements (for SNFs and NFs), or the conditions for coverage are made as often as HCFA deems necessary and may be more or less than a 12-month period, except for SNFs, NFs and HHAs. (See § 488.308 for special rules for SNFs and NFs.)

* * * * *

8. Section 488.24 is revised to read as follows:

§ 488.24 Certification of noncompliance.

(a) Special rules for certification of noncompliance for SNFs and NFs are set forth in § 488.330.

(b) The State agency will certify that a provider or supplier is not or is no longer in compliance with the conditions of participation or conditions for coverage where the deficiencies are of such character as to substantially limit the provider's or supplier's capacity to furnish adequate care or which adversely affect the health and safety of patients; or

(c) If HCFA determines that an institution or agency does not qualify for participation or coverage because it is not in compliance with the conditions of participation or conditions for coverage, or if a provider's agreement is terminated for that reason, the institution or agency has the right to request that the determination be reviewed. (Appeals procedures are set forth in Part 498 of this chapter.)

9. Section 488.26 is revised to read as follows:

§ 488.26 Determining compliance.

(a) Additional rules for certification of compliance for SNFs and NFs are set forth in § 488.330.

(b) The decision as to whether there is compliance with a particular requirement, condition of participation, or condition for coverage depends upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's or supplier's performance against these standards enables the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(c) The State survey agency must adhere to the following principles in determining compliance with participation requirements:

(1) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(2) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically surveyors will directly observe the actual provision of care and services to residents, and the effects of that care, to assess whether the care provided meets the needs of individual residents;

(3) Surveyors are professionals who use their judgment, in concert with

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Federal forms and procedures, to determine compliance;

(4) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(5) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(d) The State survey agency must use the survey methods, procedures, and forms that are prescribed by HCFA.

(e) The State survey agency must ensure that a facility's actual provision of care and services to residents and the effects of that care on residents are assessed in a systematic manner.

10. Section 488.28 is revised to read as follows:

§ 488.28 Providers or suppliers, other than SNFs and NFs, with deficiencies.

(a) If a provider or supplier is found to be deficient with respect to one or more of the standards in the conditions of participation or conditions for coverage, it may participate in or be covered under the Health Insurance for the Aged and Disabled Program only if the facility has submitted an acceptable plan of correction for achieving compliance within a reasonable period of time acceptable to the Secretary.

(b) The existing deficiencies noted either individually or in combination neither jeopardize the health and safety of patients nor are of such character as to seriously limit the provider's capacity to render adequate care.

(c)(1) If it is determined during a survey that a provider or supplier is not in compliance with one or more of the standards, it is granted a reasonable time to achieve compliance.

(2) The amount of time depends upon the—

(i) Nature of the deficiency; and

(ii) State survey agency's judgment as to the capabilities of the facility to provide adequate and safe care.

(d) Ordinarily a provider or supplier is expected to take the steps needed to achieve compliance within 60 days of being notified of the deficiencies but the State survey agency may recommend that additional time be granted by the Secretary in individual situations, if in its judgment, it is not reasonable to expect compliance within 60 days, for example, a facility must obtain the approval of its governing body, or engage in competitive bidding.

§ 488.50 [Removed]

11. Section 488.50 is removed.

4. A new subpart E is added to read as follows:

Subpart E—Survey and Certification of Long-Term Care Facilities

Sec.

488.300 Statutory basis.
488.301 Definitions.
488.303 State plan requirement.
488.305 Standard surveys.
488.307 Unannounced surveys.
488.308 Survey frequency.
488.310 Extended survey.
488.312 Consistency of survey results.
488.314 Survey teams.
488.318 Inadequate survey performance.
488.320 Sanctions for inadequate survey performance.
488.325 Disclosure of results of surveys and activities.
488.330 Certification of compliance and noncompliance.
488.331 Informal dispute resolution.
488.332 Investigation of complaints of violations and monitoring of compliance.
488.334 Educational programs.
488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property.

Subpart E—Survey and Certification of Long-Term Care Facilities

§ 488.300 Statutory basis.

Sections 1819 and 1919 of the Act establish requirements for surveying SNFs and NFs to determine whether they meet the requirements for participation in the Medicare and Medicaid programs.

§ 488.301 Definitions.

As used in this subpart—

Abbreviated standard survey means a survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change of ownership, management, or director of nursing; or other indicators of specific concern.

Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

Deficiency means a SNF's or NF's failure to meet a participation requirement specified in the Act or in part 483, subpart B of this chapter.

Dually participating facility means a facility that has a provider agreement in both the Medicare and Medicaid programs.

Extended survey means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during a standard survey.

Facility means a SNF or NF, or a distinct part SNF or NF, in accordance with § 483.5 of this chapter.

Immediate family means husband or wife; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Noncompliance means any deficiency that causes a facility to not be in substantial compliance.

Nurse aide means an individual, as defined in § 483.75(e)(1) of this chapter.

Nursing facility (NF) means a Medicaid nursing facility.

Partial extended survey means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during an abbreviated standard survey.

Skilled nursing facility (SNF) means a Medicare nursing facility.

Standard survey means a periodic, resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the requirements for participation.

Substandard quality of care means one or more deficiencies related to participation requirements under § 483.13, Resident behavior and facility practices, § 483.15, Quality of life, or § 483.25, Quality of care of this chapter, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

Substantial compliance means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

Validation survey means a survey conducted by the Secretary within 2 months following a standard survey, abbreviated standard survey, partial extended survey, or extended survey for the purpose of monitoring State survey agency performance.

§ 488.303 State plan requirement.

(a) A State plan must provide that the requirements of this subpart and subpart F of this part are met, to the extent that those requirements apply to the Medicaid program.

(b) A State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to Medicaid residents. For purposes of section 1903(a)(7) of the Social Security Act, proper expenses incurred by a State in carrying out such a program are considered to be expenses necessary for the proper and efficient administration of the State plan.

(c) A State must conduct periodic educational programs for the staff and residents (and their representatives) of NFs in order to present current regulations, procedures, and policies under this subpart and subpart F of this part.

(d) Required remedies for a non-State operated NF. A State must establish the following remedies or an approved alternative to the following remedies for imposition against a non-State operated NF:

(1) Termination of the provider agreement.

(2) Temporary management.

(3) Denial of payment for new admissions.

(4) Civil money penalties.

(5) Closure of the facility in emergency situations or transfer of residents, or both.

(6) State monitoring.

(e) Optional remedies for a non-State operated NF. A State may establish the following remedies for imposition against a non-State operated NF:

(1) Directed plan of correction.

(2) Directed in-service training.

(3) Alternative or additional State remedies.

(f) Alternative or additional State remedies. If a State uses remedies that are in addition to those specified in paragraph (d) or (e) of this section, or alternative to those specified in paragraph (d) of this section (other than termination of participation), it must—

(1) Specify those remedies in the State plan; and

(2) Demonstrate to HCFA's satisfaction that those alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the remedies listed in paragraphs (d) and (e) of this section.

§ 488.305 Standard surveys.

(a) For each SNF and NF, the State survey agency must conduct standard surveys that include all of the following:

(1) A case-mix stratified sample of residents;

(2) A survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment;

(3) An audit of written plans of care and residents' assessments to determine the accuracy of such assessments and the adequacy of such plans of care; and

(4) A review of compliance with residents' rights requirements set forth in sections 1819(c) and 1919(c) of the Act.

(b) The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that a facility's deficiencies exist.

§ 488.307 Unannounced surveys.

(a) *Basic rule.* All standard surveys must be unannounced.

(b) *Review of survey agency's scheduling and surveying procedures.* (1) HCFA reviews on an annual basis each State survey agency's scheduling and surveying procedures and practices to ensure that survey agencies avoid giving notice of a survey through the scheduling procedures and the conduct of the surveys.

(2) HCFA takes corrective action in accordance with the nature and complexity of the problem when survey agencies are found to have notified a SNF or NF through their scheduling or procedural policies. Sanctions for inadequate survey performance are in accordance with § 488.320.

(c) *Civil money penalties.* An indjvidual who notifies a SNF or NF, or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed $2,000.

§ 488.308 Survey frequency.

(a) *Basic period.* The survey agency must conduct a standard survey of each SNF and NF not later than 15 months after the last day of the previous standard survey.

(b) *Statewide average interval.* (1) The statewide average interval between standard surveys must be 12 months or less, computed in accordance with paragraph (d) of this section.

(2) HCFA takes corrective action in accordance with the nature of the State survey agency's failure to ensure that the 12-month statewide average interval requirement is met. HCFA's corrective action is in accordance with § 488.320.

(c) *Other surveys.* The survey agency may conduct a survey as frequently as necessary to—

(1) Determine whether a facility complies with the participation requirements; and

(2) Confirm that the facility has corrected deficiencies previously cited.

(d) *Computation of statewide average interval.* The statewide average interval is computed at the end of each Federal fiscal year by comparing the last day of the most recent standard survey for each participating facility to the last day of each facility's previous standard survey.

(e) *Special surveys.* (1) The survey agency may conduct a standard or an abbreviated standard survey to determine whether certain changes have caused a decline in the quality of care furnished by a SNF or a NF, within 60 days of a change in the following:

(i) Ownership;

(ii) Entity responsible for management of a facility (management firm);

(iii) Nursing home administrator; or

(iv) Director of nursing.

(2) The survey agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements by SNFs and NFs if its review of the allegation concludes that—

(i) A deficiency in one or more of the requirements may have occurred; and

(ii) Only a survey can determine whether a deficiency or deficiencies exist.

(3) The survey agency does not conduct a survey if the complaint raises issues that are outside the purview of Federal participation requirements.

§ 488.310 Extended survey.

(a) *Purpose of survey.* The purpose of an extended survey is to identify the policies and procedures that caused the facility to furnish substandard quality of care.

(b) *Scope of extended survey.* An extended survey includes all of the following:

(1) Review of a larger sample of resident assessments than the sample used in a standard survey.

(2) Review of the staffing and in-service training.

(3) If appropriate, examination of the contracts with consultants.

(4) A review of the policies and procedures related to the requirements for which deficiencies exist.

(5) Investigation of any participation requirement at the discretion of the survey agency.

(c) *Timing and basis for survey.* The survey agency must conduct an extended survey not later than 14 calendar days after completion of a standard survey which found that the facility had furnished substandard quality of care.

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§ 488.312 Consistency of survey results.

HCFA does and the survey agency must implement programs to measure accuracy and improve consistency in the application of survey results and enforcement remedies.

§ 488.314 Survey teams.

(a) *Team composition.* (1) Surveys must be conducted by a multidisciplinary team of professionals, which must include a registered nurse.

(2) Examples of professionals include, but are not limited to, physicians, physician assistants, nurse practitioners, physical, speech, or occupational therapists, registered professional nurses, dieticians, sanitarians, engineers, licensed practical nurses, or social workers.

(3) The State determines what constitutes a professional, subject to HCFA approval.

(4) Any of the following circumstances disqualifies a surveyor for surveying a particular facility:

(i) The surveyor currently works, or, within the past two years, has worked as an employee, as employment agency staff at the facility, or as an offices, consultant, or agent for the facility to be surveyed.

(ii) The surveyor has any financial interest or any ownership interest in the facility.

(iii) The surveyor has an immediate family member who has a relationship with a facility described in paragraphs (a)(2) (i) or (ii) of this section.

(iv) The surveyor has an immediate family member who is a resident in the facility to be surveyed. For purposes of this section, an immediate family member is defined at § 488.301 of this part.

(b) *HCFA training.* HCFA provides comprehensive training to surveyors, including at least the following:

(1) Application and interpretation of regulations for SNFs and NFs.

(2) Techniques and survey procedures for conducting standard and extended surveys.

(3) Techniques for auditing resident assessments and plans of care.

(c) *Required surveyor training.* (1) Except as specified in paragraph (c)(3) of this section, the survey agency may not permit an individual to serve as a member of a survey team unless the individual has successfully completed a training and testing program prescribed by the Secretary.

(2) The survey agency must have a mechanism to identify and respond to in-service training needs of the surveyors.

(3) The survey agency may permit an individual who has not completed a training program to participate in a survey as a trainee if accompanied on-site by a surveyor who has successfully completed the required training and testing program.

§ 488.318 Inadequate survey performance.

(a) HCFA considers survey performance to be inadequate if the State survey agency—

(1) Indicates a pattern of failure to—

(i) Identify deficiencies and the failure cannot be explained by changed conditions in the facility or other case specific factors;

(ii) Cite only valid deficiencies;

(iii) Conduct surveys in accordance with the requirements of this subpart; or

(iv) Use Federal standards, protocols, and the forms, methods and procedures specified by HCFA in manual instructions; or

(2) Fails to identify an immediate jeopardy situation.

(b) Inadequate survey performance does not—

(1) Relieve a SNF or NF of its obligation to meet all requirements for program participation; or

(2) Invalidate adequately documented deficiencies.

§ 488.320 Sanctions for inadequate survey performance.

(a) *Annual assessment of survey performance.* HCFA assesses the performance of the State's survey and certification program annually.

(b) *Sanctions for inadequate survey performance.* When a State demonstrates inadequate survey performance, as specified in § 488.318, HCFA notifies the survey agency of the inadequacy and takes action in accordance with paragraphs (c) and (d) of this section.

(c) *Medicaid facilities.* (1) For a pattern of failure to identify deficiencies in Medicaid facilities, HCFA—

(i) Reduces FFP, as specified in paragraph (e) of this section, and if appropriate;

(ii) Provides for training of survey teams.

(2) For other survey inadequacies in Medicaid facilities, HCFA provides for training of survey teams.

(d) *Medicare facilities.* For all survey inadequacies in Medicare facilities, HCFA—

(1) Requires that the State survey agency submit a plan of correction;

(2) Provides for training of survey teams;

(3) Provides technical assistance on scheduling and procedural policies;

(4) Provides HCFA-directed scheduling; or

(5) Initiates action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(e) *Reduction of FFP.* In reducing FFP for inadequate survey performance, HCFA uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that HCFA found to be noncompliant during validation surveys for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs in which HCFA conducted validation surveys during that quarter.

(f) *Appeal of FFP reduction.* When a State is dissatisfied with HCFA's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR part 16.

§ 488.325 Disclosure of results of surveys and activities.

(a) *Information which must be provided to public.* As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public, upon the public's request, by the State or HCFA for all surveys and certifications of SNFs and NFs:

(1) Statements of deficiencies and providers' comments.

(2) A list of isolated deficiencies that constitute no actual harm, with the potential for minimal harm.

(3) Approved plans of correction.

(4) Statements that the facility did not submit an acceptable plan of correction or failed to comply with the conditions of imposed remedies.

(5) Final appeal results.

(6) Notice of termination of a facility.

(7) Medicare and Medicaid cost reports.

(8) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in § 420.201 of this chapter.

(9) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in § 420.201 of this chapter, who have been found guilty by a court of law of a criminal offense in violation of Medicare or Medicaid law.

(b) *Charge to public for information.* HCFA and the State may charge the public for specified services with respect to requests for information in accordance with—

(1) Section 401.140 of this chapter, for Medicare; or

(2) State procedures, for Medicaid.

(c) *How public can request information.* The public may request information in accordance with disclosure procedures specified in 45 CFR part 5.

(d) *When information must be disclosed.* The disclosing agency must make available to the public, upon the public's request, information concerning all surveys and certifications of SNFs and NFs, including statements of deficiencies, separate listings of any isolated deficiencies that constitute no actual harm, with the potential for minimal harm, and plans of correction (which contain any provider response to the deficiency statement) within 14 calendar days after each item is made available to the facility.

(e) *Procedures for responding to requests.* The procedures and time periods for responding to requests are in accordance with—

(1) Section 401.136 of this chapter for documents maintained by HCFA; and

(2) State procedures for documents maintained by the State.

(f) *Information that must be provided to the State's long-term care ombudsman.* The State must provide the State's long-term care ombudsman with the following:

(1) A statement of deficiencies reflecting facility noncompliance, including a separate list of isolated deficiencies that constitute no harm with the potential for minimal harm.

(2) Reports of adverse actions specified at § 488.206 imposed on a facility.

(3) Written response by the provider.

(4) A provider's request for an appeal and the results of any appeal.

(g) *Information which must be provided to State by a facility with substandard quality of care.* (1) To provide for the notice to physicians required under sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act, not later than 10 working days after receiving a notice of substandard quality of care, a SNF or NF must provide the State with a list of—

(i) Each resident in the facility with respect to which such finding was made; and

(ii) The name and address of his or her attending physician.

(2) Failure to disclose the information timely will result in termination of participation or imposition of alternative remedies.

(h) *Information the State must provide to attending physician and State board.* Not later than 20 calendar days after a SNF or NF complies with paragraph (g) of this section, the State must provide written notice of the noncompliance to—

(1) The attending physician of each resident in the facility with respect to which a finding of substandard quality of care was made; and

(2) The State board responsible for licensing the facility's administrator.

(i) *Access to information by State Medicaid fraud control unit.* The State must provide access to any survey and certification information incidental to a SNF's or NF's participation in Medicare or Medicaid upon written request by the State Medicaid fraud control unit established under part 1002, subpart C, of this title, consistent with current State laws.

§ 488.330 Certification of compliance or noncompliance.

(a) *General rules—(1) Responsibility for certification.* (i) The State survey agency surveys all facilities for compliance or noncompliance with requirements for long term care facilities. The survey by the State survey agency may be followed by a Federal validation survey.

(A) The State certifies the compliance or noncompliance of non-State operated NFs. Regardless of the State entity doing the certification, it is final, except in the case of a complaint or validation survey conducted by HCFA, or HCFA review of the State's findings.

(B) HCFA certifies the compliance or noncompliance of all State-operated facilities.

(C) The State survey agency certifies the compliance or noncompliance of a non-State operated SNF, subject to the approval of HCFA.

(D) The State survey agency certifies compliance or noncompliance for a dually participating SNF/NF. In the case of a disagreement between HCFA and the State survey agency, a finding of noncompliance takes precedence over that of compliance.

(ii) In the case of a validation survey, the Secretary's determination as to the facility's noncompliance is binding, and takes precedence over a certification of compliance resulting from the State survey.

(2) *Basis for certification.* (i) Certification by the State is based on the survey agency findings.

(ii) Certification by HCFA is based on either the survey agency findings (in the case of State-operated facilities), or, in the case of a validation survey, on HCFA's own survey findings.

(b) *Effect of certification—(1) Certification of compliance.* A certification of compliance constitutes a determination that the facility is in substantial compliance and is eligible to participate in Medicaid as a NF, or in Medicare as a SNF, or in Medicare and Medicaid as a dually participating facility.

(2) *Certification of noncompliance.* A certification of noncompliance requires denial of participation for prospective providers and enforcement action for current providers in accordance with subpart F of this part. Enforcement action must include one of the following:

(i) Termination of any Medicare or Medicaid provider agreements that are in effect.

(ii) Application of alternative remedies instead of, or in addition to, termination procedures.

(c) *Notice of certification of noncompliance and resulting action.* The notice of certification of noncompliance is sent in accordance with the timeframes specified in § 488.402(f), and resulting action is issued by HCFA, except when the State is taking the action for a non-State operated NF.

(d) *Content of notice of certification of noncompliance.* The notice of certification of noncompliance is sent in accordance with the timeframes specified in § 488.402(f) and includes information on all of the following:

(1) Nature of noncompliance.

(2) Any alternative remedies to be imposed under subpart F of this part.

(3) Any termination or denial of participation action to be taken under this part.

(4) The appeal rights available to the facility under this part.

(5) Timeframes to be met by the provider and certifying agency with regard to each of the enforcement actions or appeal procedures addressed in the notice.

(e) *Appeals.* (1) Notwithstanding any provision of State law, the State must impose remedies promptly on any provider of services participating in the Medicaid program—

(i) After promptly notifying the facility of the deficiencies and impending remedy or remedies; and

(ii) Except for civil money penalties, during the pendency of any hearing that may be requested by the provider of services.

(2) HCFA imposes remedies promptly on any provider of services participating in the Medicare or Medicaid program or any provider of services participating in both the Medicare and Medicaid programs—

(i) After promptly notifying the facility of the deficiencies and impending remedy or remedies; and

(ii) Except for civil money penalties, during any pending hearing that may be requested by the provider of services.

(3) The provisions of part 498 of this chapter apply when the following providers request a hearing on a denial of participation, or certification of noncompliance leading to an

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enforcement remedy (including termination of the provider agreement), except State monitoring:

(i) All State-operated facilities;

(ii) SNFs and dually participating SNF/NFs; and

(iii) Any other facilities subject to a HCFA validation survey or HCFA review of the State's findings.

(4) The provisions of part 431 of this chapter apply when a non-State operated Medicaid NF, which has not received a HCFA validation survey or HCFA review of the State's findings, requests a hearing on the State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy, except State monitoring.

(f) *Provider agreements.* HCFA or the Medicaid agency may execute a provider agreement when a prospective provider is in substantial compliance with all the requirements for participation for a SNF or NF, respectively.

(g) *Special rules for Federal validation surveys.* (1) HCFA may make independent certifications of a NF's, SNF's, or dually participating facility's noncompliance based on a HCFA validation survey.

(2) HCFA issues the notice of actions affecting facilities for which HCFA did validation surveys.

(3) For non-State-operated NFs and non-State-operated dually participating facilities, any disagreement between HCFA and the State regarding the timing and choice of remedies is resolved in accordance with § 488.452.

(4) Either HCFA or the survey agency, at HCFA's option, may revisit the facility to ensure that corrections are made.

§ 488.331 Informal dispute resolution.

(a) *Opportunity to refute survey findings.* (1) For non-Federal surveys, the State must offer a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(2) For Federal surveys, HCFA offers a facility an informal opportunity, at the facility's request, to dispute survey findings upon the facility's receipt of the official statement of deficiencies.

(b)(1) Failure of the State or HCFA, as appropriate, to complete informal dispute resolution timely cannot delay the effective date of any enforcement action against the facility.

(2) A facility may not seek a delay of any enforcement action against it on the grounds that informal dispute resolution has not been completed before the effective date of the enforcement action.

(c) If a provider is subsequently successful, during the informal dispute resolution process, at demonstrating that deficiencies should not have been cited, the deficiencies are removed from the statement of deficiencies and any enforcement actions imposed solely as a result of those cited deficiencies are rescinded.

(d) *Notification.* Upon request, HCFA does and the State must provide the facility with written notification of the informal dispute resolution process.

§ 488.332 Investigation of complaints of violations and monitoring of compliance.

(a) *Investigation of complaints.* (1) The State survey agency must establish procedures and maintain adequate staff to investigate complaints of violations of participation requirements.

(2) The State survey agency takes appropriate precautions to protect a complainant's anonymity and privacy, if possible.

(3) If arrangements have been made with other State components for investigation of complaints, the State must have a means of communicating information among appropriate entities, and the State survey agency retains responsibility for the investigation process.

(4) If, after investigating a complaint, the State has reason to believe that an identifiable individual neglected or abused a resident, or misappropriated a resident's property, the State survey agency must act on the complaint in accordance with § 488.335.

(b) *On-site monitoring.* The State survey agency conducts on-site monitoring on an as necessary basis when—

(1) A facility is not in substantial compliance with the requirements and is in the process of correcting deficiencies;

(2) A facility has corrected deficiencies and verification of continued substantial compliance is needed; or

(3) The survey agency has reason to question the substantial compliance of the facility with a requirement of participation.

(c) *Composition of the investigative team.* A State may use a specialized team, which may include an attorney, auditor and appropriate health professionals, to identify, survey, gather and preserve evidence, and administer remedies to noncompliant facilities.

§ 488.334 Educational programs.

A State must conduct periodic educational programs for the staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies on the survey, certification and enforcement process under this subpart and subpart F of this part.

§ 488.335 Action on complaints of resident neglect and abuse, and misappropriation of resident property.

(a) *Investigation.* (1) The State must review all allegations of resident neglect and abuse, and misappropriation of resident property and follow procedures specified in § 488.332.

(2) If there is reason to believe, either through oral or written evidence that an individual used by a facility to provide services to residents could have abused or neglected a resident or misappropriated a resident's property, the State must investigate the allegation.

(3) The State must have written procedures for the timely review and investigation of allegations of resident abuse and neglect, and misappropriation of resident property.

(b) *Source of complaints.* The State must review all allegations regardless of their source.

(c) *Notification*—(1) *Individuals to be notified.* If the State makes a preliminary determination, based on oral or written evidence and its investigation, that the abuse, neglect or misappropriation of property occurred, it must notify in writing—

(i) The individuals implicated in the investigation; and

(ii) The current administrator of the facility in which the incident occurred.

(2) *Timing of the notice.* The State must notify the individuals specified in paragraph (c)(1) of this section in writing within 10 working days of the State's investigation.

(3) *Contents of the notice.* The notice must include the—

(i) Nature of the allegation(s);

(ii) Date and time of the occurrence;

(iii) Right to a hearing;

(iv) Survey agency's intent to report the substantiated findings in writing, once the individual has had the opportunity for a hearing, to the nurse aide registry or appropriate licensure authority;

(v) Fact that the individual's failure to request a hearing in writing within 30 days from the date of the notice will result in the survey agency reporting the substantiated findings to the nurse aide registry or appropriate licensure authority.

(vi) Consequences of waiving the right to a hearing;

(vii) Consequences of a finding through the hearing process that the alleged resident abuse or neglect, or misappropriation of resident property did occur; and

(viii) Fact that the individual has the right to be represented by an attorney at the individual's own expense.

(d) *Conduct of hearing.* (1) The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing.

(2) The State must hold the hearing at a reasonable place and time convenient for the individual.

(e) *Factors beyond the individual's control.* A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(f) *Report of findings.* If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State survey agency, which may not delegate this responsibility, must report the findings in writing within 10 working days to—

(1) The individual;

(2) The current administrator of the facility in which the incident occurred; and

(3) The administrator of the facility that currently employs the individual, if different than the facility in which the incident occurred;

(4) The licensing authority for individuals used by the facility other than nurse aides, if applicable; and

(5) The nurse aide registry for nurse aides. The findings must be included in the registry within 10 working days of the findings, in accordance with § 483.156(c) of this chapter.

(g) *Contents and retention of report of finding to the nurse aide registry.* (1) The report of finding must include information in accordance with § 483.156(c) of this chapter.

(2) The survey agency must retain the information as specified in paragraph (g)(1) of this section, in accordance with the procedures specified in § 483.156(c) of this chapter.

(h) *Survey agency responsibility.* (1) The survey agency must promptly review the results of all complaint investigations and determine whether or not a facility has violated any requirements in part 483, subpart B of this chapter.

(2) If a facility is not in substantial compliance with the requirements in part 483, subpart B of this chapter, the survey agency initiates appropriate actions, as specified in subpart F of this part.

5. A new subpart F is added to read as follows:

Subpart F—Enforcement of Compliance For Long-Term Care Facilities with Deficiencies

Sec.

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Subpart F—Enforcement of Compliance for Long-Term Care Facilities with Deficiencies

§ 488.400 Statutory basis.

Sections 1819(h) and 1919(h) of the Act specify remedies that may be used by the Secretary or the State respectively when a SNF or a NF is not in substantial compliance with the requirements for participation in the Medicare and Medicaid programs. These sections also provide for ensuring prompt compliance and specify that these remedies are in addition to any others available under State or Federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.401 Definitions.

As used in this subpart—

New admission means a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

Plan of correction means a plan developed by the facility and approved by the certifying agency which describes the actions the facility will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

§ 488.402 General provisions.

(a) *Purpose of remedies.* The purpose of remedies is to ensure prompt compliance with program requirements.

(b) *Basis for imposition and duration of remedies.* When HCFA or the State chooses to apply one or more remedies specified in § 488.406, the remedies are applied on the basis of noncompliance found during surveys conducted by HCFA or by the survey agency.

(c) *Number of remedies.* HCFA or the State may apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

(d) *Plan of correction requirement.* (1) Except as specified in paragraph (d)(2) of this section, regardless of which remedy is applied, each facility that has deficiencies with respect to program requirements must submit a plan of correction for approval by HCFA or the survey agency.

(2) *Isolated deficiencies.* A facility is not required to submit a plan of correction when it has deficiencies that are isolated and have a potential for minimal harm, but no actual harm has occurred.

(e) *Disagreement regarding remedies.* If the State and HCFA disagree on the decision to impose a remedy, the disagreement is resolved in accordance with § 488.452.

(f) *Notification requirements*—(1) *All facilities other than non-State operated NFs.* Except when the State is taking action against a non-State operated NF, HCFA gives the provider notice of the remedy, including the—

(i) Nature of the noncompliance;

(ii) Which remedy is imposed;

(iii) Effective date of the remedy; and

(iv) Right to appeal the determination leading to the remedy.

(2) *Non-State operated NF.* When a State is taking action against a non-State operated NF, the State's notice must

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include the same information required by HCFA in paragraph (f)(1) of this section.

(3) *Immediate jeopardy—2 day notice.* Except for civil money penalties and State monitoring imposed when there is immediate jeopardy, for all remedies specified in § 488.406 imposed when there is immediate jeopardy, the notice must be given at least 2 calendar days before the effective date of the enforcement action.

(4) *No immediate jeopardy—15 day notice.* Except for civil money penalties and State monitoring, notice must be given at least 15 calendar days before the effective date of the enforcement action in situations in which there is no immediate jeopardy.

(5) *Latest date of enforcement action.* The 2 and 15-day notice periods begin when the facility receives the notice, but, in no event will the effective date of the enforcement action be later than 20 calendar days after the notice is sent.

(6) *Civil money penalties.* For civil money penalties, the notices must be given in accordance with the provisions of §§ 488.434 and 488.440.

(7) *State monitoring—immediate jeopardy.* For State monitoring imposed when there is immediate jeopardy, no prior notice is required.

§ 488.404 Factors to be considered in selecting remedies.

(a) *Initial assessment.* In order to select the appropriate remedy, if any, to apply to a facility with deficiencies, HCFA and the State determine the seriousness of the deficiencies.

(b) *Determining seriousness of deficiencies.* To determine the seriousness of the deficiency, HCFA considers and the State must consider at least the following factors:

(1) Whether a facility's deficiencies constitute—

(i) No actual harm with a potential for minimal harm;

(ii) No actual harm with a potential for more than minimal harm, but not immediate jeopardy;

(iii) Actual harm that is not immediate jeopardy; or

(iv) Immediate jeopardy to resident health or safety.

(2) Whether the deficiencies—

(i) Are isolated;

(ii) Constitute a pattern; or

(iii) Are widespread.

(c) *Other factors which may be considered in choosing a remedy within a remedy category.* Following the initial assessment, HCFA and the State may consider other factors, which may include, but are not limited to the following:

(1) The relationship of the one deficiency to other deficiencies resulting in noncompliance.

(2) The facility's prior history of noncompliance in general and specifically with reference to the cited deficiencies.

§ 488.406 Available remedies.

(a) *General.* In addition to the remedy of termination of the provider agreement, the following remedies are available:

(1) Temporary management;

(2) Denial of payment including—

(i) Denial of payment for all individuals, imposed by HCFA, to a—

(A) Skilled nursing facility, for Medicare;

(B) State, for Medicaid; or

(ii) Denial of payment for all new admissions;

(3) Civil money penalties;

(4) State monitoring;

(5) Closure of the facility by the State in emergency situations or transfer of residents, or both;

(6) Directed plan of correction;

(7) Directed in-service training; and

(8) Alternative or additional State remedies approved by HCFA.

(b) *Remedies that must be established.* At a minimum, the State must establish the following remedies or approved alternatives to the following remedies:

(1) Termination of the provider agreement.

(2) Temporary management.

(3) Denial of payment for new admissions.

(4) Civil money penalties.

(5) Closure of the facility in emergency situations or transfer of residents, or both.

(6) State monitoring.

(c) *State plan requirement.* If a State wishes to use remedies for noncompliance that are either additional or alternative to those specified in paragraphs (a) or (b) of this section, it must—

(1) Specify those remedies in the State plan; and

(2) Demonstrate to HCFA's satisfaction that those remedies are as effective as the remedies listed in paragraph (a) of this section, for deterring noncompliance and correcting deficiencies.

(d) *State remedies in dually participating facilities.* If the State's remedy is unique to the State plan and has been approved by HCFA, then that remedy, as imposed by the State under its Medicaid authority, may be imposed by HCFA against the Medicare provider agreement of a dually participating facility.

§ 488.408 Selection of remedies.

(a) *Categories of remedies.* In this section, the remedies specified in § 488.406(a) are grouped into categories and applied to deficiencies according to how serious the noncompliance is.

(b) *Application of remedies.* After considering the factors specified in § 488.404, as applicable, if HCFA and the State choose to impose remedies, as provided in paragraphs (c)(1), (d)(1) and (e)(1) of this section, for facility noncompliance, instead of, or in addition to, termination of the provider agreement, HCFA does and the State must follow the criteria set forth paragraphs (c)(2), (d)(2), and (e)(2) of this section, as applicable.

(c) *Category 1.* (1) Category 1 remedies include the following:

(i) Directed plan of correction.

(ii) State monitoring.

(iii) Directed in-service training.

(2) HCFA or the State must apply one or more of the remedies in Category 1 when there—

(i) Are isolated deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or

(ii) Is a pattern of deficiencies that constitutes no actual harm with a potential for more than minimal harm but not immediate jeopardy.

(3) Except when the facility is in substantial compliance, HCFA or the State may apply one or more of the remedies in Category 1 to any deficiency.

(d) *Category 2.* (1) Category 2 remedies include the following:

(i) Denial of payment for new admissions.

(ii) Denial of payment for all individuals imposed only by HCFA.

(iii) Civil money penalties of $50–3,000 per day.

(2) HCFA applies one or more of the remedies in Category 2, or, except for denial of payment for all individuals, the State must apply one or more of the remedies in Category 2 when there are—

(i) Widespread deficiencies that constitute no actual harm with a potential for more than minimal harm but not immediate jeopardy; or

(ii) One or more deficiencies that constitute actual harm that is not immediate jeopardy.

(3) Except when the facility is in substantial compliance, HCFA or the State may apply one or more of the remedies in Category 2 to any deficiency.

(e) *Category 3.* (1) Category 3 remedies include the following:

(i) Temporary management.

(ii) Immediate termination.

(iii) Civil money penalties of $3,050–$10,000 per day.

(2) When there are one or more deficiencies that constitute immediate jeopardy to resident health or safety—

(i) HCFA does and the State must do one or both of the following:

(A) Impose temporary management; or

(B) Terminate the provider agreement;

(ii) HCFA and the State may impose a civil money penalty of $3,050–$10,000 per day, in addition to imposing the remedies specified in paragraph (e)(2)(i) of this section.

(3) When there are widespread deficiencies that constitute actual harm that is not immediate jeopardy, HCFA and the State may impose temporary management, in addition to Category 2 remedies.

(f) *Plan of correction.* (1) Except as specified in paragraph (F)(2) of this section, each facility that has a deficiency with regard to a requirement for long term care facilities must submit a plan of correction for approval by HCFA or the State, regardless of—

(i) Which remedies are imposed; or

(ii) The seriousness of the deficiencies.

(2) When there are only isolated deficiencies that HCFA or the State determines constitute no actual harm with a potential for minimal harm, the facility need not submit a plan of correction.

(g) *Appeal of a certification of noncompliance.* (1) A facility may appeal a certification of noncompliance leading to an enforcement remedy.

(2) A facility may not appeal the choice of remedy, including the factors considered by HCFA or the State in selecting the remedy, specified in § 488.404.

§ 488.410 Action when there is immediate jeopardy.

(a) If there is immediate jeopardy to resident health or safety, the State must (and HCFA does) either terminate the provider agreement within 23 calendar days of the last date of the survey or appoint a temporary manager to remove the immediate jeopardy. The rules for appointment of a temporary manager in an immediate jeopardy situation are as follows:

(1) HCFA does and the State must notify the facility that a temporary manager is being appointed.

(2) If the facility fails to relinquish control to the temporary manager, HCFA does and the State must terminate the provider agreement within 23 calendar days of the last day of the survey, if the immediate jeopardy is not removed. In these cases, State monitoring may be imposed pending termination.

(3) If the facility relinquishes control to the temporary manager, the State must (and HCFA does) notify the facility that, unless it removes the immediate jeopardy, its provider agreement will be terminated within 23 calendar days of the last day of the survey.

(4) HCFA does and the State must terminate the provider agreement within 23 calendar days of the last day of survey if the immediate jeopardy has not been removed.

(b) HCFA or the State may also impose other remedies, as appropriate.

(c)(1) In a NF or dually participating facility, if either HCFA or the State finds that a facility's noncompliance poses immediate jeopardy to resident health or safety, HCFA or the State must notify the other of such a finding.

(2) HCFA will or the State must—

(i) Take immediate action to remove the jeopardy and correct the noncompliance through temporary management; or

(ii) Terminate the facility's participation under the State plan. If this is done, HCFA will also terminate the facility's participation in Medicare if it is a dually participating facility.

(d) The State must provide for the safe and orderly transfer of residents when the facility is terminated.

(e) If the immediate jeopardy is also substandard quality of care, the State survey agency must notify attending physicians and the State board responsible for licensing the facility administrator of the finding of substandard quality of care, as specified in § 488.325(h).

§ 488.412 Action when there is no immediate jeopardy.

(a) If a facility's deficiencies do not pose immediate jeopardy to residents' health or safety, and the facility is not in substantial compliance, HCFA or the State may terminate the facility's provider agreement or may allow the facility to continue to participate for no longer than 6 months from the last day of the survey if—

(1) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility's provider agreement;

(2) The State survey agency has submitted a plan of correction approved by HCFA; and

(3) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay to the Federal government payments received after the last day of the survey that first identified the deficiencies if corrective action is not taken in accordance with the approved plan of correction.

(b) If a facility does not meet the criteria for continuation of payment under paragraph (a) of this section, HCFA will and the State must terminate the facility's provider agreement.

(c) HCFA does and the State must deny payment for new admissions when a facility is not in substantial compliance 3 months after the last day of the survey.

(d) HCFA terminates the provider agreement for SNFs and NFs, and stops FFP to a State for a NF for which participation was continued under paragraph (a) of this section, if the facility is not in substantial compliance within 6 months of the last day of the survey.

§ 488.414 Action when there is repeated substandard quality of care.

(a) *General.* If a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys, as defined in § 488.305, regardless of other remedies provided—

(1) HCFA imposes denial of payment for all new admissions, as specified in § 488.417, or denial of all payments, as specified in § 488.418;

(2) The State must impose denial of payment for all new admissions, as specified in § 488.417; and

(3) HCFA does and the State survey agency must impose State monitoring, as specified in § 488.422, until the facility has demonstrated to the satisfaction of HCFA or the State, that it is in substantial compliance with all requirements and will remain in substantial compliance with all requirements.

(b) *Repeated noncompliance.* For purposes of this section, repeated noncompliance is based on the repeated finding of substandard quality of care and not on the basis that the substance of the deficiency or the exact tag number for the deficiency was repeated.

(c) *Standard surveys to which this provision applies.* Standard surveys completed by the State survey agency on or after October 1, 1990, are used to determine whether the threshold of three consecutive standard surveys is met.

(d) *Program participation.* (1) The determination that a certified facility has repeated instances of substandard quality of care is made without regard to any variances in the facility's program participation (that is, any standard survey completed for Medicare, Medicaid or both programs will be considered).

(2) Termination would allow the count of repeated substandard quality of care surveys to start over.

(3) Change of ownership. (i) A facility may not avoid a remedy on the basis

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that it underwent a change of ownership.

(ii) In a facility that has undergone a change of ownership, HCFA does not and the State may not restart the count of repeated substandard quality of care surveys unless the new owner can demonstrate to the satisfaction of HCFA or the State that the poor past performance no longer is a factor due to the change in ownership.

(e) *Facility alleges corrections or achieves compliance after repeated substandard quality of care is identified.* (1) If a penalty is imposed for repeated substandard quality of care, it will continue until the facility has demonstrated to the satisfaction of HCFA or the State that it is in substantial compliance with the requirements and that it will remain in substantial compliance with the requirements for a period of time specified by HCFA or the State.

(2) A facility will not avoid the imposition of remedies or the obligation to demonstrate that it will remain in compliance when it—

(i) Alleges correction of the deficiencies cited in the most recent standard survey; or

(ii) Achieves compliance before the effective date of the remedies.

§ 488.415 Temporary management.

(a) *Definition.* Temporary management means the temporary appointment by HCFA or the State of a substitute facility manager or administrator with authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

(b) *Qualifications.* The temporary manager must—

(1) Be qualified to oversee correction of deficiencies on the basis of experience and education, as determined by the State;

(2) Not have been found guilty of misconduct by any licensing board or professional society in any State;

(3) Have, or a member of his or her immediate family have, no financial ownership interest in the facility; and

(4) Not currently serve or, within the past 2 years, have served as a member of the staff of the facility.

(c) *Payment of salary.* The temporary manager's salary—

(1) Is paid directly by the facility while the temporary manager is assigned to that facility; and

(2) Must be at least equivalent to the sum of the following—

(i) The prevailing salary paid by providers for positions of this type in what the State considers to be the facility's geographic area;

(ii) Additional costs that would have reasonably been incurred by the provider if such person had been in an employment relationship; and

(iii) Any other costs incurred by such a person in furnishing services under such an arrangement or as otherwise set by the State.

(3) May exceed the amount specified in paragraph (c)(2) of this section if the State is otherwise unable to attract a qualified temporary manager.

(d) *Failure to relinquish authority to temporary management*—(1) *Termination of provider agreement.* If a facility fails to relinquish authority to the temporary manager as described in this section, HCFA will or the State must terminate the provider agreement in accordance with § 488.456.

(2) *Failure to pay salary of temporary manager.* A facility's failure to pay the salary of the temporary manager is considered a failure to relinquish authority to temporary management.

(e) *Duration of temporary management.* Temporary management ends when the facility meets any of the conditions specified in § 488.454(c).

§ 488.417 Denial of payment for all new admissions.

(a) *Optional denial of payment.* Except as specified in paragraph (b) of this section, HCFA or the State may deny payment for all new admissions when a facility is not in substantial compliance with the requirements, as defined in § 488.401, as follows:

(1) *Medicare facilities.* In the case of Medicare facilities, HCFA may deny payment to the facility.

(2) *Medicaid facilities.* In the case of Medicaid facilities—

(i) The State may deny payment to the facility; and

(ii) HCFA may deny payment to the State for all new Medicaid admissions to the facility.

(b) *Required denial of payment.* HCFA does or the State must deny payment for all new admissions when—

(1) The facility is not in substantial compliance, as defined in § 488.401, 3 months after the last day of the survey identifying the noncompliance; or

(2) The State survey agency has cited a facility with substandard quality of care on the last three consecutive standard surveys.

(c) *Resumption of payments: Repeated instances of substandard quality of care.* When a facility has repeated instances of substandard quality of care, payments to the facility or, under Medicaid, HCFA payments to the State on behalf of the facility, resume on the date that—

(1) The facility achieves substantial compliance as indicated by a revisit or written credible evidence acceptable to HCFA (under Medicare) or the State (under Medicaid); and

(2) HCFA (under Medicare) or the State (under Medicaid) believes that the facility is capable of remaining in substantial compliance.

(d) *Resumption of payments: No repeated instances of substandard quality of care.* When a facility does not have repeated instances of substandard quality of care, payments to the facility or, under Medicaid, HCFA payments to the State on behalf of the facility, resume prospectively on the date that the facility achieves substantial compliance, as indicated by a revisit or written credible evidence acceptable to HCFA (under Medicare) or the State (under Medicaid).

(e) *Restriction.* No payments to a facility or, under Medicaid, HCFA payments to the State on behalf of the facility, are made for the period between the date that the—

(1) Denial of payment remedy is imposed; and

(2) Facility achieves substantial compliance, as determined by HCFA or the State.

§ 488.418 Secretarial authority to deny all payments.

(a) *HCFA option to deny all payment.* If a facility has not met a requirement, in addition to the authority to deny payment for all new admissions as specified in § 488.417, HCFA may deny any further payment for all Medicare residents in the facility and to the State for all Medicaid residents in the facility.

(b) *Prospective resumption of payment.* Except as provided in paragraphs (d) and (e) of this section, if the facility achieves substantial compliance, HCFA resumes payment prospectively from the date that it verifies as the date that the facility achieved substantial compliance.

(c) *Restriction on payment after denial of payment is imposed.* If payment to the facility or to the State resumes after denial of payment for all residents, no payment is made for the period between the date that—

(1) Denial of payment was imposed; and

(2) HCFA verifies as the date that the facility achieved substantial compliance.

(d) *Retroactive resumption of payment.* Except when a facility has repeated instances of substandard quality of care, as specified in paragraph (e) of this section, when HCFA or the State finds that the facility was in substantial compliance before the date

of the revisit, or before HCFA or the survey agency received credible evidence of such compliance, payment is resumed on the date that substantial compliance was achieved, as determined by HCFA.

(e) *Resumption of payment—repeated instances of substandard care.* When HCFA denies payment for all Medicare residents for repeated instances of substandard quality of care, payment is resumed when—

(1) The facility achieved substantial compliance, as indicated by a revisit or written credible evidence acceptable to HCFA; and

(2) HCFA believes that the facility will remain in substantial compliance.

§ 488.422 State monitoring.

(a) A State monitor—

(1) Oversees the correction of deficiencies specified by HCFA or the State survey agency at the facility site and protects the facility's residents from harm;

(2) Is an employee or a contractor of the survey agency;

(3) Is identified by the State as an appropriate professional to monitor cited deficiencies;

(4) Is not an employee of the facility;

(5) Does not function as a consultant to the facility; and

(6) Does not have an immediate family member who is a resident of the facility to be monitored.

(b) A State monitor must be used when a survey agency has cited a facility with substandard quality of care deficiencies on the last 3 consecutive standard surveys.

(c) State monitoring is discontinued when—

(1) The facility has demonstrated that it is in substantial compliance with the requirements, and it will remain in compliance for a period of time specified by HCFA or the State; or

(2) Termination procedures are completed.

§ 488.424 Directed plan of correction.

HCFA, the State survey agency, or the temporary manager (with HCFA or State approval) may develop a plan of correction and HCFA, the State, or the temporary manager require a facility to take action within specified timeframes.

§ 488.425 Directed inservice training.

(a) *Required training.* HCFA or the State agency may require the staff of a facility to attend an inservice training program if—

(1) The facility has a pattern of deficiencies that indicate noncompliance; and

(2) Education is likely to correct the deficiencies.

(b) *Action following training.* After the staff has received inservice training, if the facility has not achieved substantial compliance, HCFA or the State may impose one or more other remedies specified in § 488.206.

(c) *Payment.* The facility pays for directed inservice training.

§ 488.426 Closure of a facility or transfer of residents, or both.

(a) *Closure of facility or transfer of residents, or both, during an emergency.* In an emergency, the State has the authority to—

(1) Transfer Medicaid and Medicare residents to another facility; or

(2) Close the facility and transfer the Medicaid and Medicare residents to another facility.

(b) *Required transfer in immediate jeopardy situations.* When the State or HCFA terminates a facility's provider agreement for a deficiency that constitutes immediate jeopardy, the State arranges for the safe and orderly transfer of all Medicare and Medicaid residents to another facility.

(c) *All other situations.* Except for immediate jeopardy situations, as specified in paragraph (b) of this section, when the State or HCFA terminates a facility's provider agreement, the State arranges for the safe and orderly transfer of all Medicare and Medicaid residents to another facility.

§ 488.430 Civil money penalties: Basis for imposing penalty.

(a) HCFA or the State may impose a civil money penalty for the number of days a facility is not in substantial compliance with one or more participation requirements, regardless of whether or not the deficiencies constitute immediate jeopardy.

(b) HCFA or the State may impose a civil money penalty for the number of days of past noncompliance since the last standard survey, including the number of days of immediate jeopardy.

§ 488.432 Civil money penalties: When penalty is collected.

(a) *When facility requests a hearing.* (1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty within the time specified in—

(i) Section 498.40 of this chapter for a

(A) SNF;

(B) Dually participating facility; or

(C) State-operated NF.

(ii) Section 431.153 of this chapter for a non-State operated NF.

(2) If a facility requests a hearing within the time specified in paragraph (a)(1) of this section, HCFA or the State initiates collection of the penalty when there is a final administrative decision that upholds HCFA's or the State's determination of noncompliance after the facility achieves substantial compliance or is terminated.

(b) *When facility does not request a hearing.* If a facility does not request a hearing, in accordance with paragraph (a) of this section, HCFA or the State initiates collection of the penalty when the facility—

(1) Achieves substantial compliance; or

(2) Is terminated.

(c) *When facility waives a hearing.* If a facility waives its right to a hearing in writing, as specified in § 488.436, HCFA or the State initiates collection of the penalty when the facility—

(1) Achieves substantial compliance; or

(2) Is terminated.

(d) Accrual and computation of penalties for a facility that—

(1) Requests a hearing or does not request a hearing are specified in § 488.440;

(2) Waives its right to a hearing in writing, are specified in §§ 488.436(b) and 488.440.

(e) The collection of civil money penalties is made as provided in § 488.442.

§ 488.434 Civil money penalties: Notice of penalty.

(a) *HCFA notice of penalty.* (1) HCFA sends a written notice of intent to impose the penalty to the facility for all facilities except non-State operated NFs when the State is imposing the penalty.

(2) *Content of notice.* The notice that HCFA sends includes—

(i) The nature of the noncompliance;

(ii) The statutory basis for the penalty;

(iii) The amount of penalty per day of noncompliance;

(iv) Any factors specified in § 488.438(f) that were considered when determining the amount of the penalty;

(v) The date on which the penalty begins to accrue;

(vi) When the penalty stops accruing;

(vii) When the penalty is collected; and

(viii) Instructions for responding to the notice, including a statement of the facility's right to a hearing, and the implication of waiving a hearing, as provided in § 488.436.

(b) *State notice of penalty.*

(1) The State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action.

(2) The State's notice must—

(i) Be in writing; and

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(ii) Include, at a minimum, the information specified in paragraph (a)(2) of this section.

§ 488.436 Civil money penalties: Waiver of hearing, reduction of penalty amount.

(a) *Waiver of a hearing.* The facility may waive the right to a hearing, in writing, within 60 days from the date of the notice of intent to impose the civil money penalty.

(b) *Reduction of penalty amount.* (1) If the facility waives its right to a hearing in accordance with the procedures specified in paragraph (a) of this section, HCFA or the State reduces the civil money penalty amount by 35 percent.

(2) If the facility does not waive its right to a hearing in accordance with the procedures specified in paragraph (a) of this section, the civil money penalty is not reduced by 35 percent.

§ 488.438 Civil money penalties: Amount of penalty.

(a) *Amount of penalty.* The penalties are within the following ranges, set at $50 increments:

(1) *Upper range—$3,050–$10,000.* Penalties in the range of $3,050–$10,000 per day are imposed for deficiencies constituting immediate jeopardy, and as specified in paragraph (d)(2) of this section.

(2) *Lower range—$50–$3,000.* Penalties in the range of $50–$3,000 per day are imposed for deficiencies that do not constitute immediate jeopardy, but either caused actual harm, or caused no actual harm, but have the potential for more than minimal harm.

(b) *Basis for penalty amount.* The amount of penalty is based on HCFA's or the State's assessment of factors listed in paragraph (f) of this section.

(c) *Decreased penalty amounts.* Except as specified in paragraph (d)(2) of this section, if immediate jeopardy is removed, but the noncompliance continues, HCFA or the State will shift the penalty amount to the lower range.

(d) *Increased penalty amounts.* (1) Before the hearing, HCFA or the State may propose to increase the penalty amount for facility noncompliance which, after imposition of a lower level penalty amount, becomes sufficiently serious to pose immediate jeopardy.

(2) HCFA does and the State must increase the penalty amount for any repeated deficiencies for which a lower level penalty amount was previously imposed, regardless of whether the increased penalty amount would exceed the range otherwise reserved for nonimmediate jeopardy deficiencies.

(3) Repeated deficiencies are deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey.

(e) *Review of the penalty.* When an administrative law judge or State hearing officer (or higher administrative review authority) finds that the basis for imposing a civil money penalty exists, as specified in § 488.430, the administrative law judge or State hearing officer (or higher administrative review authority) may not—

(1) Set a penalty of zero or reduce a penalty to zero;

(2) Review the exercise of discretion by HCFA or the State to impose a civil money penalty; and

(3) Consider any factors in reviewing the amount of the penalty other than those specified in paragraph (f) of this section.

(f) *Factors affecting the amount of penalty.* In determining the amount of penalty, HCFA does or the State must take into account the following factors:

(1) The facility's history of noncompliance, including repeated deficiencies.

(2) The facility's financial condition.

(3) The factors specified in § 488.404.

(4) *The facility's degree of culpability.* *Culpability* for purposes of this paragraph includes, but is not limited to, neglect, indifference, or disregard for resident care, comfort or safety. The absence of culpability is not a mitigating circumstance in reducing the amount of the penalty.

§ 488.440 Civil money penalties: Effective date and duration of penalty.

(a) *When penalty begins to accrue.* The civil money penalty may start accruing as early as the date that the facility was first out of compliance, as determined by HCFA or the State.

(b) *Duration of penalty.* The civil money penalty is computed and collectible, as specified in §§ 488.432 and 488.442, for the number of days of noncompliance until the date the facility achieves substantial compliance, or, if applicable, the date of termination when—

(1) HCFA's or the State's decision of noncompliance is upheld after a final administrative decision;

(2) The facility waives its right to a hearing in accordance with § 488.436; or

(3) The time for requesting a hearing has expired and HCFA or the State has not received a hearing request from the facility.

(c) The entire accrued penalty is due and collectible, as specified in the notice sent to the provider under paragraphs (d) and (e) of this section.

(d) When a facility achieves substantial compliance, HCFA does or the State must send a separate notice to the facility containing—

(1) The amount of penalty per day;

(2) The number of days involved;

(3) The total amount due;

(4) The due date of the penalty; and

(5) The rate of interest assessed on the unpaid balance beginning on the due date, as provided in § 488.442.

(e) In the case of a terminated facility, HCFA does or the State must send this penalty information after the—

(1) Final administrative decision is made;

(2) Facility has waived its right to a hearing in accordance with § 488.436; or

(3) Time for requesting a hearing has expired and HCFA or the state has not received a hearing request from the facility.

(f) *Accrual of penalties when there is no immediate jeopardy.* (1) In the case of noncompliance that does not pose immediate jeopardy, the daily accrual of civil money penalties is imposed for the days of noncompliance prior to the notice specified in § 488.434 and an additional period of no longer than 6 months following the last day of the survey.

(2) After the period specified in paragraph (f)(1) of this section, if the facility has not achieved substantial compliance, HCFA terminates the provider agreement and the State may terminate the provider agreement.

(g) *Accrual of penalties when there is immediate jeopardy.* (1) When a facility has deficiencies that pose immediate jeopardy, HCFA does or the State must terminate the provider agreement within 23 calendar days after the last day of the survey if the immediate jeopardy remains.

(2) The accrual of the civil money penalty stops on the day the provider agreement is terminated.

(h) *Documenting substantial compliance.* (1) If an on-site revisit is necessary to confirm substantial compliance and the provider can supply documentation acceptable to HCFA or the State agency that substantial compliance was achieved on a date preceding the revisit, penalties only accrue until that date of correction for which there is written credible evidence.

(2) If an on-site revisit is not necessary to confirm substantial compliance, penalties only accrue until the date of correction for which HCFA or the State receives and accepts written credible evidence.

§ 488.442 Civil money penalties: Due date for payment of penalty.

(a) *When payments are due—*(1) *After a final administrative decision.* A civil money penalty payment is due 15 days after a final administrative decision is made when—

(i) The facility achieves substantial compliance before the final administrative decision; or

(ii) The effective date of termination occurs before the final administrative decision.

(2) *When no hearing was requested.* A civil money penalty payment is due 15 days after the time period for requesting a hearing has expired and a hearing request was not received when—

(i) The facility achieved substantial compliance before the hearing request was due; or

(ii) The effective date of termination occurs before the hearing request was due.

(3) *After a request to waive a hearing.* A civil money penalty payment is due 15 days after receipt of the written request to waive a hearing when—

(i) The facility achieved substantial compliance before HCFA or the State received the written waiver of hearing; or

(ii) The effective date of termination occurs before HCFA or the State received the written waiver of hearing.

(4) *After substantial compliance is achieved.* A civil money penalty payment is due 15 days after substantial compliance is achieved when—

(i) The final administrative decision is made before the facility came into substantial compliance;

(ii) The facility did not file a timely hearing request before it came into substantial compliance; or

(iii) The facility waived its right to a hearing before it came into substantial compliance;

(5) *After the effective date of termination.* A civil money penalty payment is due 15 days after the effective date of termination, if before the effective date of termination—

(i) The final administrative decision was made;

(ii) The time for requesting a hearing has expired and the facility did not request a hearing; or

(iii) The facility waived its right to a hearing.

(6) In the cases specified in paragraph (a)(4) of this section, the period of noncompliance may not extend beyond 6 months from the last day of the survey.

(b) *Deduction of penalty from amount owed.* The amount of the penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility.

(c) *Interest—*(1) *Assessment.* Interest is assessed on the unpaid balance of the penalty, beginning on the due date.

(2) *Medicare interest.* Medicare rate of interest is—

(i) Fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of the notice of the penalty amount due (published quarterly in the Federal Register by HHS under 45 CFR 30.13(a)); or

(ii) The current value of funds (published annually in the Federal Register by the Secretary of the Treasury, subject to quarterly revisions).

(3) *Medicaid interest.* The interest rate for Medicaid is determined by the State.

(d) Civil money penalties and corresponding interest collected by HCFA or the State from Medicare and Medicaid facilities must be returned to the Medicare Trust Fund or the State, respectively.

(e) *Collection from dually participating facilities.* Civil money penalties collected from dually participating facilities are returned to the Medicare Trust Fund and the State in proportion commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the respective programs on the date the civil money penalty begins to accrue.

(f) *Penalties collected by the State.* Civil money penalties collected by the State must be applied to the protection of the health or property of residents of facilities that the State or HCFA finds deficient, such as—

(1) Payment for the cost of relocating residents to other facilities;

(2) State costs related to the operation of a facility pending correction of deficiencies or closure; and

(3) Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents.

§ 488.444 Civil money penalties: Settlement of penalties.

(a) HCFA has authority to settle cases at any time prior to a final administrative decision for Medicare-only SNFs, State-operated facilities, or other facilities for which HCFA's enforcement action prevails, in accordance with § 488.330.

(b) The State has the authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails.

§ 488.450 Continuation of payments to a facility with deficiencies.

(a) *Criteria.* (1) HCFA may continue payments to a facility not in substantial compliance for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State survey agency finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan and timetable for corrective action approved by HCFA; and

(iii) The facility, in the case of a Medicare SNF, or the State, in the case of a Medicaid NF, agrees to repay the Federal government payments received under this provision if corrective action is not taken in accordance with the approved plan and timetable for corrective action.

(2) HCFA or the State may terminate the SNF or NF agreement before the end of the correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If termination is not sought, either by itself or along with another remedy or remedies, or any of the criteria set forth in paragraph (a)(1) if this section are not met or agreed to by either the facility or the State, the facility or State will receive no Medicare or Federal Medicaid payments, as applicable, from the last day of the survey.

(c) *Period of continued payments.* If the conditions in paragraph (a)(1) of this section are met, HCFA may continue payments to a Medicare facility or to the State for a Medicaid facility with noncompliance that does not constitute immediate jeopardy for up to 6 months from the last day of the survey.

(d) *Failure to achieve substantial compliance.* If the facility does not achieve substantial compliance by the end of the period specified in paragraph (c) of this section,

(1) HCFA will—

(i) Terminate the provider agreement of the Medicare SNF in accordance with § 488.456; or

(ii) Discontinue Federal funding to the SNF for Medicare; and

(iii) Discontinue FFP to the State for the Medicaid NF.

(2) The State may terminate the provider agreement for the NF.

§ 488.452 State and Federal disagreements involving findings not in agreement in non-State operated NFs and dually participating facilities when there is no immediate jeopardy.

The following rules apply when HCFA and the State disagree over findings of noncompliance or application of remedies in a non-State operated NF or dually participating facility:

(a) *Disagreement over whether facility has met requirements.* (1) The State's

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finding of noncompliance takes precedence when—

(i) HCFA finds that a NF or a dually participating facility is in substantial compliance with the participation requirements; and

(ii) The State finds that a NF or dually participating facility has not achieved substantial compliance.

(2) HCFA's findings of noncompliance take precedence when—

(i) HCFA finds that a NF or a dually participating facility has not achieved substantial compliance; and

(ii) The State finds that a NF or a dually participating facility is in substantial compliance with the participation requirements.

(3) When HCFA's survey findings take precedence, HCFA may—

(i) Impose any of the alternative remedies specified in § 488.406;

(ii) Terminate the provider agreement subject to the applicable conditions of § 488.450; and

(iii) Stop FFP to the State for a NF.

(b) *Disagreement over decision to terminate.* (1) HCFA's decision to terminate the participation of a facility takes precedence when—

(i) Both HCFA and the State find that the facility has not achieved substantial compliance; and

(ii) HCFA, but not the State, finds that the facility's participation should be terminated. HCFA will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months, if the applicable conditions of § 488.450 are met.

(2) The State's decision to terminate a facility's participation and the procedures for appealing such termination, as specified in § 431.153(c) of this chapter, takes precedence when—

(i) The State, but not HCFA, finds that a NF's participation should be terminated; and

(ii) The State's effective date for the termination of the NF's provider agreement is no later than 6 months after the last day of survey.

(c) *Disagreement over timing of termination of facility.* The State's timing of termination takes precedence if it does not occur later than 6 months after the last day of the survey when both HCFA and the State find that—

(1) A facility is not in substantial compliance; and

(2) The facility's participation should be terminated.

(d) *Disagreement over remedies.* (1) When HCFA or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

(i) Both HCFA and the State find that a facility has not achieved substantial compliance; and

(ii) Both HCFA and the State find that no immediate jeopardy exists.

(2) *Overlap of remedies.* When HCFA and the State establish one or more remedies, in addition to or as an alternative to termination, only the HCFA remedies apply when both HCFA and the State find that a facility has not achieved substantial compliance.

(e) Regardless of whether HCFA's or the State's decision controls, only one noncompliance and enforcement decision is applied to the Medicaid agreement, and for a dually participating facility, that same decision will apply to the Medicare agreement.

§ 488.454 Duration of remedies.

(a) Except as specified in paragraph (b) of this section, alternative remedies continue until—

(1) The facility has achieved substantial compliance, as determined by HCFA or the State based upon a revisit or after an examination of credible written evidence that it can verify without an on-site visit; or

(2) HCFA or the State terminates the provider agreement.

(b) In the cases of State monitoring and denial of payment imposed for repeated substandard quality of care, remedies continue until—

(1) HCFA or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance; or

(2) HCFA or the State terminates the provider agreement.

(c) In the case of temporary management, the remedy continues until—

(1) HCFA or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance;

(2) HCFA or the State terminates the provider agreement; or

(3) The facility which has not achieved substantial compliance reassumes management control. In this case, HCFA or the State initiates termination of the provider agreement and may impose additional remedies.

(d) If the facility can supply documentation acceptable to HCFA or the State survey agency that it was in substantial compliance, and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that HCFA or the State can verify as the date that substantial compliance was achieved.

§ 488.456 Termination of provider agreement.

(a) *Effect of termination.* Termination of the provider agreement ends—

(1) Payment to the facility; and

(2) Any alternative remedy.

(b) *Basis for termination.* (1) HCFA and the State may terminate a facility's provider agreement if a facility—

(i) Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or

(ii) Fails to submit an acceptable plan of correction within the timeframe specified by HCFA or the State.

(2) HCFA and the State terminate a facility's provider agreement if a facility—

(i) Fails to relinquish control to the temporary manager, if that remedy is imposed by HCFA or the State; or

(ii) Does not meet the eligibility criteria for continuation of payment as set forth in § 488.412(a)(1).

(c) *Notice of termination.* Before terminating a provider agreement, HCFA does and the State must notify the facility and the public—

(1) At least 2 calendar days before the effective date of termination for a facility with immediate jeopardy deficiencies; and

(2) At least 15 calendar days before the effective date of termination for a facility with non-immediate jeopardy deficiencies that constitute noncompliance.

(d) *Procedures for termination.* (1) HCFA terminates the provider agreement in accordance with procedures set forth in § 489.53 of this chapter; and

(2) The State must terminate the provider agreement of a NF in accordance with procedures specified in parts 431 and 442 of this chapter.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

I. Part 489 is amended as follows:

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

2. The heading for part 489 is revised as set forth above.

3. In § 489.3, the definition of "immediate jeopardy" is revised to read as follows:

§ 489.3 Definitions.

* * * * *

Immediate jeopardy means a situation in which immediate corrective action is necessary because the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

* * * * *

§ 489.11 [Amended]

4. Section 489.11 is amended by removing paragraph (c)(3).

5. Section 489.12 is amended by revising paragraph (a) to read as follows:

§ 489.12 Decision to deny an agreement.

(a) *Bases for denial.* HCFA may refuse to enter into an agreement for any of the following reasons:

(1) Principals of the prospective provider have been convicted of fraud (see § 420.204 of this chapter);

(2) The prospective provider has failed to disclose ownership and control interests in accordance with § 420.206 of this chapter; or

(3) The prospective provider is unable to give satisfactory assurance of compliance with the requirements of title XVIII of the Act.

* * * * *

6. Section 489.13 is revised to read as follows:

§ 489.13 Effective date of agreement.

(a) *All Federal requirements are met on the date of the survey.* The agreement is effective on the date the on-site survey is completed if, on the date of the survey, the provider meets all Federal health and safety conditions of participation or requirements (for SNFs), and any other requirements imposed by HCFA.

(b) *All Federal requirements are not met on the date of the survey.* If the provider fails to meet any of the requirements specified in paragraph (a) of this section, the agreement will be effective on the earlier of the following dates:

(1) The date on which the provider meets all requirements.

(2) Except for SNFs, the date on which the provider is found to meet all conditions of participation and submits a plan of correction acceptable to HCFA for lower-level deficiencies or an approvable waiver request, or both.

(3) The date on which a SNF—

(i) Is in substantial compliance, as defined in § 488.301; and

(ii) Submits an acceptable plan of correction, if applicable, or an approvable waiver request, or both.

§ 489.15 [Removed]

7. Section 489.15 is removed.

§ 489.16 [Removed]

8. Section 489.16 is removed.

9. Section 489.18 is amended by revising paragraph (d) to read as follows:

§ 489.18 Change of ownership or leasing: Effect on provider agreement.

* * * * *

(d) *Conditions that apply to assigned agreements.* An assigned agreement is subject to all applicable statutes and regulations and to the terms and conditions under which it was originally issued including, but not limited to, the following:

(1) Any existing plan of correction.

(2) Compliance with applicable health and safety standards.

(3) Compliance with the ownership and financial interest disclosure requirements of part 420, subpart C, of this chapter.

(4) Compliance with civil rights requirements set forth in 45 CFR Parts 80, 84, and 90.

* * * * *

10. Section 489.53 is amended by removing and reserving paragraph (b), adding a new paragraph (a)(13), and revising paragraph (c) to read as follows:

§ 489.53 Termination by HCFA.

(a) * * *

(13) It refuses to permit photocopying of any records or other information by, or on behalf of HCFA, as necessary to determine or verify compliance with participation requirements.

(b) [Reserved]

(c) *Notice of termination*—(1) *Timing: Basic rule.* Except as provided in § 488.456 of this chapter, HCFA gives the provider notice of termination at least 15 days before the effective date of termination of the provider agreement.

(2) *Immediate jeopardy deficiencies.* For a provider or supplier with deficiencies that pose immediate jeopardy to residents' or patients' health or safety, HCFA gives notice of termination at least 2 days before the effective date of termination of the provider agreement.

(3) *Content of notice.* The notice states the reasons for, and the effective date of, the termination, and explains the extent to which services may continue after that date, in accordance with § 489.55.

(4) *Notice to public.* HCFA concurrently gives notice of the termination to the public.

* * * * *

Subpart F—[Removed]

10. Subpart F, consisting of §§ 489.60, 489.62, 489.64, and 489.66 is removed.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFS IN THE MEDICAID PROGRAM

K. Part 498 is amended as follows:

1. The authority citation for part 498 is revised to read as follows:

Authority: Secs. 205(a), 1102, 1819, 1861(aa), 1869(c), 1871, 1872, and 1919 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395i–3, 1395x(aa), 1395ff(c), 1395hh, 1395ii and 1396r(g) and (h)), unless otherwise noted.

2. The heading of part 498 is revised as set forth above.

3. Section 498.1 is amended by adding a new paragraph (h) to read as follows:

§ 498.1 Statutory basis.

* * * * *

(h) Section 1128A of the Act provides that HCFA will not collect a civil money penalty while a SNF or NF has a final administrative decision pending on the noncompliance that led to the imposition of the civil money penalty.

4. Section 498.2 is amended by revising the definition of *Provider* to read as follows:

§ 498.2 Definitions.

* * * * *

Provider means a hospital, rural primary care hospital (RPCH), skilled nursing facility (SNF), comprehensive outpatient rehabilitation facility (CORF), home health agency (HHA), or hospice, that has in effect an agreement to participate in Medicare, a nursing facility (NF), or intermediate care facility for the mentally retarded (ICF/MR) that has in effect an agreement to participate in Medicaid, or a clinic, rehabilitation agency, or public health agency that has a similar agreement but only to furnish outpatient physical therapy or outpatient speech pathology services, and "prospective provider" means any of the listed entities that seeks to participate in Medicare as a provider.

* * * * *

5. Section 498.3 is amended by revising paragraph (b)(7), adding new paragraphs (b)(12) and (b)(13), revising paragraphs (d)(1) and (d)(10), redesignating paragraphs (d)(11) and (d)(12) as (d)(13) and (d)(14), respectively, and adding new paragraphs (d)(11) and (d)(12), to read as follows:

§ 498.3 Scope and applicability.

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(7) Except for SNFs and NFs, the termination of a provider agreement in accordance with § 489.53 of this chapter, or the termination of a rural health clinic agreement in accordance with § 405.2404 of this chapter, or the termination of a Federally qualified health center agreement in accordance with § 405.2400 of this chapter.

* * * * *

(12) Except as provided at § 498.3(d)(11). for SNFs and NFs, the finding of noncompliance leading to the imposition of enforcement actions specified in § 488.406 of this chapter, but not the determination as to which remedy to impose. The scope of review on the imposition of a civil money penalty is specified in § 488.438(e) of this chapter.

(13) The level of noncompliance found by HCFA in a SNF or NF only if a successful challenge on this issue would affect the range of civil money penalty amounts that HCFA could collect.

(d) * * *

(1) The finding that a provider or supplier determined to be in compliance with the conditions of participation or the conditions for coverage has deficiencies.

* * * * *

(10) With respect to an SNF or NF that is not in substantial compliance with the requirements, the finding that the SNF's or NF's deficiencies pose immediate jeopardy to residents' health or safety, except as provided in paragraph (b)(14) of this section.

(11) For SNFs and NFs, the imposition of State monitoring or loss of nurse aide training.

(12) Except as provided in paragraph (b)(14) of this section, a determination by HCFA concerning the level of noncompliance in an SNF or NF.

* * * * *

6. A new § 498.4 is added to read as follows:

§ 498.4 NFs subject to appeals process in part 498.

A NF is considered a provider for purposes of this part when it has in effect an agreement to participate in Medicaid, including an agreement to participate in both Medicaid and Medicare and it is a—

(a) State-operated NF; or

(b) Non State-operated NF that is subject to compliance action as a result of—

(1) A validation survey by HCFA; or

(2) HCFA's review of the State's survey findings.

7. Section 498.5 is amended by revising paragraphs (f)(1), (i)(2), and (j)(1) to read as follows:

§ 498.5 Appeal rights.

* * * * *

(f) *Appeal rights of suppliers and prospective suppliers.* (1) Any supplier or prospective supplier dissatisfied with the hearing decision may request Departmental Appeals Board review of the ALJ's decision.

* * * * *

(i) *Appeal rights for suspended or excluded practitioners, providers, or suppliers.*

* * * * *

(2) Any suspended or excluded practitioner, provider, or supplier dissatisfied with a hearing decision may request Departmental Appeals Board review and has a right to seek judicial review of the Board's decision by filing an action in Federal district court.

* * * * *

(j) *Appeal rights for Medicaid ICFs/MR terminated by HCFA.* (1) Any Medicaid ICF/MR that has had its approval cancelled by HCFA in accordance with § 498.3(b)(8) has a right to a hearing before an ALJ, to request Departmental Appeals Board review of the hearing decision, and to seek judicial review of the Board's decision.

* * * * *

8. Section 498.61 is revised to read as follows:

§ 498.61 Evidence.

(a) Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to court procedure. The ALJ rules on the admissibility of evidence.

(b) In civil money penalty cases, HCFA's conclusions as to a SNF's or NF's level of noncompliance must be upheld unless clearly erroneous.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare Hospital Insurance)

Editorial Note: This document was received by the Office of the Federal Register on November 3, 1994.

Dated: June 13, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 25, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94-27703 Filed 11-9-94; 8:45 am]

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Thursday
November 10, 1994

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 956

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Recommended Decision; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. 94AMA-FV-956-1; FV93-956-1PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Recommended Decision and Opportunity To File Written Exceptions to the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes the issuance of a marketing agreement and order for Walla Walla Sweet Onions in southern Washington and northeast Oregon. For the purposes of this document, the term "Walla Walla Sweet Onions" refers to sweet onions grown in the proposed production area, which consists of designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon. The proposed order and agreement would authorize production and marketing research and marketing development and promotion projects, including paid advertising, and would authorize container markings. The order would be administered by a ten-member committee consisting of six producer members, three handler members, and a public member. The order would be financed by assessments on handlers of Walla Walla Sweet Onions grown in the production area. A primary objective of this program would be to improve producer returns by strengthening consumer demand through various promotional activities and by reducing production and marketing costs through production and marketing research. Walla Walla Sweet Onion producers would vote in a referendum to determine if they favor issuance of the proposed marketing order.

DATES: Comments must be received by December 12, 1994.

ADDRESSES: Four copies of all comments should be sent to the Hearing Clerk, United States Department of Agriculture (USDA), Room 1079, South Building, Washington, D.C. 20250–9200. All written comments will be made available for public inspection at the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, Room 369, Portland, Oregon, 97204; telephone: (503)326–2724, FAX: (503)326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202)690–0464, FAX: (202)720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued October 26, 1993, and published in the Federal Register on October 29, 1993 [58 FR 58105].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR Part 900].

The proposed Federal marketing agreement and order (order) were formulated on the record of a public hearing held at the Education Service District Building in Walla Walla, Washington, on November 15, 1993. The hearing was held pursuant to the provisions of the Act. Approximately 25 witnesses, including Walla Walla Sweet Onion producers, handlers, and a Washington State University researcher, testified in support of the order. Proponents emphasized that Walla Walla Sweet Onion producers need a Federal marketing order to effectively compete with other sweet onion producing areas. No one present at the hearing testified in opposition to the proposed order. At the close of the hearing, January 15, 1994, was established as the date by which briefs, statements, and proposed corrections to the transcript were due. None were filed.

The proponents testified that Walla Walla Sweet Onion producers, in order to remain competitive with other sweet onion producing areas, must conduct research and promotion programs to reduce production and marketing costs and increase sales. Such programs should include production and marketing research projects and promotion projects, including paid advertising.

Testimony indicated that voluntary research and development efforts by the Walla Walla Sweet Onion industry have not been successful because of the lack of a coherent research and development plan with broad-based industry support. Also, a relatively small percentage of the U.S. onion crop is produced in the proposed production area in Walla Walla County, Washington, and Umatilla County, Oregon, and individual producers and handlers cannot implement an effective research, marketing development, and promotion program. By contrast, most other onion growing areas in the United States are large enough to convince private entities, such as seed companies, to conduct production research and developmental efforts with the result being new varieties specifically suited to those areas. Proponents believe that an industry-wide program is therefore necessary to enable the pooling of resources to address common problems. A single producer or even two or three producers cannot marshal the resources necessary to conduct effective research, marketing, and promotion programs.

Small Business Consideration: In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service considered the economic impact of this action on small entities. The record indicates that there are approximately nine handlers of Walla Walla Sweet Onions in the proposed production area and 50 producers. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

During the 1992 season, commercial shipments of Walla Walla Sweet Onions totaled about 390,000 hundredweight at an average f.o.b. price of $16.60 per hundredweight for a total value of $6,474,000. An indeterminate volume, probably about 10 percent, was sold at roadside stands. While there is a great variance in the size of individual handlers' operations, the record indicates that nearly all of the handlers that would be regulated under this order would qualify as small firms under the SBA's definition. Witnesses testified that because most of the producers and handlers of Walla Walla Sweet Onions are small, they are unable to individually finance the types of research and promotion efforts needed by the industry. A marketing order program would provide a means for these small entities to pool their resources and work together to solve their common problems. Witnesses testified that such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger industries.

Acreage and supplies of Walla Walla Sweet Onions have declined in recent years, and proponents believe that the order would provide a much needed means of halting the drop in grower returns experienced in past seasons. This would be achieved by strengthening demand and developing new markets for existing supplies and encouraging increased production. Also, costs could be reduced through production research. Thus, the order would be expected to have a positive impact on producer returns.

The order would authorize the collection of assessments from handlers of Walla Walla Sweet Onions grown in the designated parts of Walla Walla County, Washington, and Umatilla County, Oregon. Assessment funds would be used to finance production research projects that could reduce costs by reducing the occurrence of onion diseases, controlling plant pests, and developing varieties with more desirable flavor, quality, and size. Assessment funds could also be used to strengthen demand and expand markets for Walla Walla Sweet Onions through marketing research and development, and product promotion programs, including paid advertising. Projects to develop better methods of handling, shipping or storing onions, to explore additional or alternative uses of onions, to check nutritive values, and similar research are some examples of marketing research. Examples of marketing development projects include exploring marketing possibilities, contacting buyers, distributing educational material relating to the handling and marketing of onions, and the dissemination of the results of current or past marketing research projects.

The order would be administered by a committee composed of Walla Walla Sweet Onion producers, handlers, and a public member nominated by growers and handlers and selected by the Secretary of Agriculture (Secretary). Daily administration of the order would be carried out by a staff hired by the committee. The order would not regulate the production of Walla Walla Sweet Onions and would place no restriction on the quality or quantity of Walla Walla Sweet Onions that could be handled.

The principal requirements of the order that would affect handlers would be the requirements that they pay assessments on fresh market shipments of Walla Walla Sweet Onions to fund research and promotion programs and that container markings would be regulated. The amount of the assessment rate is not specified in the proposed order, but witnesses at the hearing indicated that an appropriate rate might be five cents per 50-pound bag for administrative costs; research and promotion costs could require an additional five to seven cents per bag or more. Any assessment rate to cover committee expenses that may be established would be recommended by the committee to the Secretary for approval.

The order would also impose some reporting and recordkeeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval. Any requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour with a two year record requirement. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated nine handlers of Walla Walla Sweet Onions.

The Act requires that prior to the issuance of an order, a referendum be conducted of affected producers to determine if they favor issuance of the order. The ballot material that will be used in conducting the referendum will be submitted to and approved by OMB prior to use. It is estimated that it would take an average of 10 minutes for each of the approximately 50 Walla Walla Sweet Onion growers to participate in the voluntary referendum balloting. Additionally, it has been estimated that it would take approximately ten minutes for each of the nine handlers to complete the marketing agreement. In determining that the order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order would help to strengthen demand for Walla Walla Sweet Onions. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefitting handlers and producers alike. Accordingly, it is determined that the order would not have a significant economic impact on a substantial number of small handlers or producers.

Material Issues: The material issues presented on the record of the hearing are as follows:

1. Whether the handling of Walla Walla Sweet Onions grown in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for an order which will tend to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be; and

5. What the specific terms and provisions of the order should be, including:

(a) The definition of terms used therein which are necessary and incidental to attain the declared policy and objectives of the order and the Act;

(b) The establishment, composition, maintenance, procedures, powers and duties of a committee that would be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish or provide for the establishment of production and marketing research and

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marketing development projects, including paid advertising;

(e) The authority to establish regulations for container markings and safeguards for such regulations;

(f) The establishment of requirements for handler reporting and recordkeeping;

(g) The requirement of compliance with all provisions of the order and with any regulations issued under it, and

(h) Miscellaneous provisions as set forth in §§ 956.85 through 956.96 of the Notice of Hearing published in the **Federal Register** of October 29, 1993 [58 FR 58105] which are common to all orders, and other terms and conditions published at §§ 956.97 through 956.99 that are common to marketing agreements only.

Findings and Conclusions:

The following proposed findings and conclusions on the material issues are based on the record of the hearing.

1. The record indicates that the handling of Walla Walla Sweet Onions grown in designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce. The proposed production area is discussed in material issue 3.

The record evidence shows that in July 1989, 49 percent of the commercial shipments of Walla Walla Sweet Onions were marketed in Seattle, Washington. That percentage increased over the following four years, and, in 1993, 71 percent of the volume moved to outlets inside the State, the remaining 29 percent going to both eastern and western destinations outside Washington and Oregon. An indeterminate volume of Walla Walla Sweet Onions is sold within the proposed production area at roadside stands, and some are marketed throughout the United States. A negligible percentage of the crop is processed. The record indicates that no Walla Walla Sweet Onions are currently exported, but that they may be in the future.

In addition to Seattle, the record indicates that other major markets for Walla Walla Sweet Onions include Chicago, Illinois, and San Francisco, California. USDA Market News reports show that these three markets accounted for about 12 percent of commercial shipments in June, July, and August of 1992. Walla Walla Sweet Onions also were marketed (in descending order of volume marketed) in Los Angeles, California; Atlanta, Georgia; Boston, Massachusetts; New York, New York; Baltimore, Maryland; Cincinnati, Ohio; St. Louis, Missouri; Dallas, Texas; Miami, Florida; Pittsburgh, Pennsylvania; and Detroit, Michigan.

Record evidence shows that any handling of Walla Walla Sweet Onions in fresh market channels, including intrastate shipments, exerts an influence on all other handling of such onions and vice versa. Therefore, because such shipments directly burden, obstruct, or affect such commerce, all handling of Walla Walla Sweet Onions grown in the proposed production area should be covered by the order, and an order for Walla Walla Sweet Onions is supported by the evidence in the record of hearing.

2. The record indicates that onions are grown in each of the 50 States, but commercial production is concentrated in a few. There are three major seasonal groups of U.S. dry onions. They include spring onions produced mainly in Georgia, Texas, and California; summer non-storage onions grown in New Mexico, Texas, and Washington; and summer storage onions produced mostly in Colorado, Idaho, Michigan, New York, Ohio, Oregon, Utah, Minnesota, Washington, and Wisconsin.

The record also indicates that during its season, the Walla Walla Sweet Onion industry faces strong competition from other summer non-storage onion suppliers. Two major competitors are New Mexico, which, in 1992 accounted for 74 percent of the summer non-storage crop, and the High Plains and Trans-Pecos areas of Texas, with 17 percent of the crop.

The shipping season for Walla Walla Sweet Onions runs from late June through early August each year. About 23 percent of the volume moves in June, about 40 percent in July, and the remaining 37 percent is shipped in August.

As is true with other commodities, sellers of onions conduct their businesses to obtain maximum returns for the product they have for sale. Handlers and other sellers therefore continually survey all accessible markets so that they may take advantage of the best possible prices available. Further, they constantly attempt to develop demand and seek new markets for their product. Likewise, onion buyers consider prices and availability of onions from all sources in making their purchasing decisions. Frequent market news reports of onion prices are available in shipping areas, and means of rapid communication are readily available. For these reasons, onion supplies and prices in any one location are promptly known elsewhere and have a direct effect on onion supplies and prices in other locations.

Summer storage onions normally account for over half the U.S. dry onion crop. About 55 percent of the 1993 dry onion crop was summer storage compared to 58 percent in 1992. The two principal types of onions grown for the summer storage crop are globe and sweet Spanish type onions. Globe onions are the dominant type grown in the midwest and east and are not generally adaptable to production in the southern States. They tend to have a strong flavor, are firm to hard to the touch, and keep well under proper storage conditions. Spanish type onions are particularly well adapted to production in the western States. They are noted for their milder, sweeter flavor, but have a more limited storage life than globes. Onions grown in the northern States are harvested primarily in July and August, and the bulk of the crop is placed in storage. Marketing of the late-summer onion crop begins shortly after harvest and continues through the fall and winter and into the spring months.

Spring non-storage onions rank second in seasonal importance. Production totaled eight million hundredweight in 1993, 14 percent of the U.S. total. Spring crop onions are grown primarily in the southern States and are principally of the Grano and Granex types. These types of onions are typically sweeter and milder than the globe type. Additionally, they are more tender and perishable than either the globe or Spanish type onion. Unlike the summer storage onion crop, the spring crop is marketed relatively soon after harvest. Major producers of the spring onion crop are California, Texas, Arizona, and Georgia.

Summer non-storage production reached only 4.8 million hundredweight in 1993, but this was a record crop for summer non-storage production; the 1992 crop was 4.3 million hundredweight.

Testimony indicated that onions were first planted commercially in Walla Walla County, Washington, located in what is now known as the Walla Walla Valley around the year 1900. According to testimony, it was discovered that the unique growing conditions in this area of southeastern Washington and northeastern Oregon, particularly the low sulfur content of the soil, yielded a sweeter, milder onion than those grown elsewhere. In 1915, 500 carlots consisting of 300 100-pound sacks each were grown and shipped from the outskirts of Walla Walla.

The record indicates that the majority of current commercial non-storage onion production in Washington is in the Walla Walla Valley. Testimony

shows that separate acreage, price, and production statistics are not available for the Walla Walla Valley alone, but also include other areas in Washington, such as the Tri-cities area, the Yakima Valley, and the Columbia River Basin. The record indicates that neither the National Agricultural Statistics Service (NASS) nor State reporting services for Washington and Oregon report separate statistics for Walla Walla Sweet Onions. Such statistics are grouped together as summer-non storage onions. Witnesses testified that Walla Walla Sweet Onion acreage is included in the total for Washington non-storage onions, so that any figure representing Walla Walla Sweet Onions is necessarily an estimate. Moreover, no statistical data are available for Umatilla County, Oregon, although one witness testified that perhaps 150 to 200 acres of Walla Walla Sweet Onions may be grown. As reported by NASS, summer non-storage onions grown in Washington in 1980 totaled 780 acres, increasing until 1988 when 1,600 acres were harvested. Since then, acreage has declined to 1,000 acres in 1992. Testimony was offered that Walla Walla Sweet Onion acreage has been declining at the rate of about 100 acres per year. Moreover, although harvested acreage in Washington for 1991 was reported as 900 acres, the record indicates that the total number of acres of sweet onions harvested in the Walla Walla Valley was as little as half that, the remaining acreage being in other areas in the State.

Washington summer non-storage acreage currently accounts for about .71 percent of the U.S. annual total, and an estimated 9 percent of the summer non-storage crop. Washington accounts for less than a tenth of summer non-storage onion production, however, because Washington's acreage is much less than that of competing growing areas in New Mexico and Texas. The record indicates that the average yield for the Washington summer non-storage onion crop in 1992 was about 390 hundredweight per acre. This compares with the average yield for all summer non-storage onions of 341 hundredweight per acre.

Walla Walla Sweet Onion plantings begin about September 10 and end as late as October. The majority of growers attempt to have most of the crop planted by mid- to late-September. Since the growing season spans the winter months, freeze damage to Walla Walla Sweet Onions is a risk growers face each year. Harvest typically begins in the following June. Walla Walla Sweet Onions are shipped from June through August, with peak volume moving in July. Statistical data indicate that production of non-storage onions in Washington has risen in recent years, totaling 29.7 million pounds in 1991, 39.0 million pounds in 1992, and 36.0 million pounds in 1993.

The record indicates that one weakness in current post harvest handling practices is storage life. Current produced varieties of Walla Walla Sweet Onions are highly perishable and cannot be stored for extended periods. Preliminary research has shown that the life of Walla Walla Sweet Onions can be extended by low temperature storage. Additionally, the identification of varieties with longer storage capability would benefit the industry.

The record indicates that further extending the storage life of Walla Walla Sweet Onions has become a critical need of the industry, particularly in view of its competitive pressures. Witnesses testified that the relatively short life of Walla Walla Sweet Onions accentuates the industry's marketing risks by adding an urgency to move the produce quickly into wholesale and retail channels without regard to existing supplies and prices in those markets. The proposed order would authorize production research projects to address these problems.

Season average prices for Washington summer non-storage onions decreased 31 percent to $16.60 per hundredweight in 1992. Prices reached a record high in 1991 at $23.90 per hundredweight. The 1992 crop was valued at $6.5 million, which was an 8 percent decrease from the previous season. Monthly prices generally decrease during the peak harvesting in the State of Washington. There are no separate price data available for Umatilla County. However, given the small production area, such prices from the Walla Walla Valley area of Umatilla County should be similar to those of the adjacent area of Washington.

Monthly prices received for Washington summer non-storage onions decreased 9 percent from June 1992, to August, 1992 ($17.50 per hundredweight to $16.00 per hundredweight). Prices for 1991 were considerably higher, beginning at $29.40 per hundredweight and ending at $20.00 per hundredweight. The five-year average non-storage onion prices in Washington (1988–1992) for the period June through August, respectively, was $20.94, $16.94, and $14.06 per hundredweight. This compared with total U.S. five-year non-storage onion average prices of $12.22, $14.20, and $12.16 per hundredweight for the same period. U.S. summer non-storage prices in June of 1992 were 37 percent lower than Washington summer non-storage prices during that period, but prices began to even out in August of 1992 at $16.00 per hundredweight for Washington summer non-storage onions and rose 23 percent to $15.80 per hundredweight for the U.S. total for non-storage onions.

According to testimony, a major share of the Walla Walla Sweet Onion market is being lost to two major competitors, South Texas onions and those from Vidalia, Georgia. Onions grown in these areas are covered by Federal marketing order programs that fund promotion and advertising activities and, therefore, help to make buyers and consumers more aware of the favorable attributes of the onions.

Marketing order programs for Idaho-Eastern Oregon onions regulate the handling of onions grown on approximately 17,600 acres; the South Texas program has about 14,200 acres; and the Vidalia program covers about 8,000 acres. The industry believes that a research and promotion program is necessary to expand Walla Walla markets.

Witnesses attributed the recent downward trend in Walla Walla Sweet Onion prices in part to increasing competitive pressures from other, larger onion growing areas. Testimony indicated that while the Walla Walla Sweet Onion is considered unique in its sweetness, other areas have or are developing sweet varieties of onions to capitalize on the strong consumer demand for sweet onions. For example, the South Texas onion industry has funded, through a Federal marketing order, varietal research to develop an onion variety with the desired characteristics of being mild tasting and sweet. This variety, called the Texas Grano 1015 Y, has been actively promoted. The record indicates that the South Texas onion industry budgeted funds for research and market development activities through its marketing order. Additionally, handlers in Idaho and Eastern Oregon, also under a Federal marketing order program, budgeted funds during the same period for promotion and research of its sweet Spanish onion. Witnesses attributed the success these other growing areas have had to their ability to pool available resources under their respective marketing orders. Proponents testified that the research and promotion activities conducted by competitors have assisted those competing industries in developing and promoting sweeter onion varieties that are challenging the Walla Walla Sweet Onion for its share of the onion market. It is believed that a similar program is

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necessary for Walla Walla Sweet Onions to remain profitable in this competitive industry.

The record indicates that most Northwest residents are familiar with the taste and origin of the Walla Walla Sweet Onion. The record also indicates that they are aware of its unique flavor characteristics and are loyal customers. However, as the Walla Walla industry has grown, the development of new markets has become necessary. Testimony demonstrated the need to differentiate the Walla Walla Sweet Onion from other onions available in the marketplace to garner customer loyalty in markets located outside Washington and Oregon.

The record indicates that most Walla Walla Sweet Onion growers and handlers are not sufficiently large to finance promotion and research programs on an individual basis. In addition, public funds to finance such projects are scarce. Heretofore, the Walla Walla Sweet Onion industry has attempted to operate and fund research and development projects under voluntary programs. Eventually, these programs ceased to operate because of inadequate support and financing. Witness testimony unanimously supported a marketing order program to be financed by all handlers, to strengthen consumer demand through promotion of the commodity and reducing costs through production research.

Witnesses also testified that market research, in the form of data collection and analysis, would be an essential part of an overall marketing and promotion strategy. Currently, limited data is gathered with respect to Walla Walla Sweet Onions. To effectively promote and market Walla Walla Sweet Onions, proponents testified that additional knowledge of market conditions and access to complete data is necessary to make prudent decisions for focusing promotional efforts and promoting the efficient allocation of resources.

The record indicates that many onions sold as Walla Walla Sweet Onions do not have the same mild flavor and other characteristics of Walla Walla Sweet Onions grown in the proposed production area. Several witnesses testified that often such onions were identified as Walla Walla Sweet Onions grown in other states or areas near the Walla Walla Valley. Testimony indicates that the growers of the Walla Walla Valley have spent time and effort attempting to market the Walla Walla Sweet Onion as one they believe has unique characteristics because of the area in which the onions are grown. These growers believe that such efforts have been offset by growers and handlers selling onions produced outside the proposed production area as Walla Walla Sweet Onions. Testimony indicated that 40 percent of the onions sold and described as Walla Walla Sweet Onions were grown outside the proposed production area and, therefore, were not true Walla Walla Sweet Onions.

In summary, a number of problems were identified in the record that could be resolved through a marketing order that would enable the Walla Walla industry to work together collectively identifying varieties that have good seedling survival rate, a low susceptibility to cold damage, good eating quality, and increased storage capability would add stability to the supply and quality of the Walla Walla Sweet Onion crop, and could increase yields and reduce costs. The marketing order program could assist handlers in solving mutual post harvest handling problems, in the interest of increasing the quality of their offerings, reducing costs and increasing returns. Finally, authorizing industry financing of promotion and advertising programs would enable the industry to increase consumer awareness of its unique commodity, strengthen demand and increase sales.

In view of the foregoing, it is concluded that there is a need for a marketing order for Walla Walla Sweet Onions grown in designated parts of Washington and Oregon. The order would meet many of the needs of the industry and would tend to effectuate the declared policy of the Act.

3. A definition of the term "production area" should be included in the order to delineate the area in which Walla Walla Sweet Onions must be grown before the handling thereof is subject to the marketing order. Such term should include designated parts of Walla Walla County, Washington, and Umatilla County, Oregon.

The area defined in the proposed order comprises what is generally recognized as the Walla Walla Valley of Washington and Oregon. The counties included are contiguous and share essentially the same growing, harvesting and marketing conditions with respect to Walla Walla Sweet Onions. While production of Walla Walla Sweet Onions is currently concentrated in the two counties of Walla Walla and Umatilla, onions of all types are grown throughout the proposed production area, as well as adjacent areas.

At the hearing, a witness proposed revising the definition of production area appearing in the Notice of Hearing to include an area north of the Touchet River in Washington. However, testimony indicated that this area is dry land of a different soil type. Further, it does not have a history of Walla Walla Sweet Onion production, so that onions produced there may not have the same quality attributes as others from the proposed production area. The area as defined accounts for much of the current sweet onion acreage in Washington and Oregon and, according to record evidence, is generally recognized by the onion trade and consumers as comprising the Walla Walla Sweet Onion region of Washington and Oregon. This is because of the unique soil and growing conditions in the highly localized area. Furthermore, the production area as defined in the marketing order is the smallest practicable geographic area to which the order should be applied, consistent with carrying out the declared policy of the Act.

The term "Walla Walla Sweet Onion" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the marketing order would be applicable. The record indicates that a "Walla Walla Sweet Onion" may be any of a number of onion varieties grown in the production area, rather than one specific variety of onion. However, testimony indicated that onions acquire special characteristics when grown in the proposed production area. This is due in part to the low sulfur content of the soil. Further, according to testimony, the term "Walla Walla Sweet Onion" has a specific meaning in the onion trade, and consumers perceive Walla Walla Sweet Onions as a unique commodity distinct from other onions. For these reasons, the term "Walla Walla Sweet Onion" should be defined to mean all varieties of the genus and species *Allium cepa*, except sweet Spanish types, grown in the proposed production area.

To provide for the possibility that other types of onions that have characteristics similar to what is now known as the "Walla Walla Sweet Onion" may be grown in the production area in the future, the committee should be authorized, upon approval of the Secretary, to add those types of onions to the types included under the term "Walla Walla Sweet Onion." This would be accomplished through informal rulemaking procedures.

The definition should include dry onions, onions grown for transplanting, and salad onions. The definition in the order as originally proposed also included onion seed. However, testimony indicated that regulating seed was not necessary, as the intent of the proponents is to define Walla Walla Sweet Onions as only those sweet onions grown in the production area. Accordingly, if onions are grown outside the proposed production area from seed produced within that area, the resulting onions would not be true Walla Walla Sweet Onions. Testimony indicated that this is because of the soil and climate unique to the Walla Walla River Valley, comprising designated parts of Walla Walla County, Washington, and Umatilla County, Oregon. Accordingly, the term "seeds" should not be included in the proposed definition of Walla Walla Sweet Onions.

4. The term "handler" is synonymous with the term "shipper" and should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person, except a common or contract carrier transporting Walla Walla Sweet Onions owned by another person, who first performs any of the activities within the scope of the term "handle" as hereinafter defined. The definition identifies persons who would be responsible for meeting the requirements of the order, including paying assessments and submitting reports.

Common or contract carriers transporting Walla Walla Sweet Onions owned by another person would not be considered as handlers, even though they transport Walla Walla Sweet Onions, because such carriers do not have control over the Walla Walla Sweet Onions being transported. Nor are they the persons who cause the introduction of such Walla Walla Sweet Onions into the stream of commerce. The only interest of a common or contract carrier in such Walla Walla Sweet Onions is to transport them for a service charge to destinations determined by others.

Growers who handle their own Walla Walla Sweet Onions or Walla Walla Sweet Onions grown by others would be considered handlers under the order. Any person who purchases Walla Walla Sweet Onions from growers and performs any other handling function such as grading and packing such Walla Walla Sweet Onions would be a handler.

The term "handle" should be defined in the order to establish the specific functions that would place Walla Walla Sweet Onions in the current of commerce within the production area or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the marketing order. "Handle" and "ship" are used synonymously and the definition should so indicate.

The record indicates that the term "handle" should include the acts of packaging, loading, transporting or selling Walla Walla Sweet Onions. However, the term "handle" should not include the transportation, sale or delivery of field-run Walla Walla Sweet Onions to a handler within the production area or to a handler outside the production area but within Walla Walla County, Washington, or Umatilla County, Oregon, to have such onions prepared for market. In this case, the onions have not yet been prepared for market nor are they in their existing condition being transported to market. Most sellers and buyers do not consider them as yet suitable or appropriate for commercial transactions and, as such, they have not yet entered the stream of commerce.

Walla Walla Sweet Onion producers sometimes market their Walla Walla Sweet Onions themselves. In such cases, those growers would be the first handlers of Walla Walla Sweet Onions and would be responsible for paying assessments and complying with other order requirements.

5.(a) Certain terms should be defined for the purpose of designating specifically their applicability and limitations whenever they are used in the order. The definition of terms discussed below is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any officer, or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to mean the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

The term "registered handler" should be defined to mean a person who is a handler with adequate facilities for procuring and sorting, grading, packaging, and performing any other handling function or who is a handler with access to such facilities. This provision would require all Walla Walla Sweet Onion handlers to register with the committee after meeting certain qualifications. Some handlers may have grading and storage facilities outside of the production area. Handler registration would aid the committee in determining compliance with order requirements. Registration also would enable the committee to obtain the necessary information to levy assessments.

No testimony was presented concerning the actual method of registration. However, based on similar orders using handler registration the committee should be authorized to recommend, for approval of the Secretary, procedures with respect to handler registration. This provision has been added to the definition of registered handler.

The term "container" should be defined as a box, bag, crate, hamper, basket, package, or any other receptacle used in packaging, transporting, sales, shipment, or other handling of Walla Walla Sweet Onions. It is necessary to define the term since it may be used throughout the proposed order and any rules established thereunder.

The term "producer" should be synonymous with "grower" and should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternate producer members on the committee and those who may vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market within the production area. Each business unit (such as a corporation or partnership) should be considered a single producer and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of Walla Walla Sweet Onions such as a landowner landlord, tenant, or sharecropper. A person who owns and farms land resulting in that person's ownership of the Walla Walla Sweet Onions produced on such land should be considered a producer. The same is true with respect to a person who rents and farms land resulting in that person's ownership of all or part of the Walla Walla Sweet Onions produced on that land.

Likewise, any person who owns land which that person does not farm, but as rental for such land obtains the ownership of a portion of the Walla Walla Sweet Onions produced thereon, should be regarded as a producer for that portion of the Walla Walla Sweet Onions received as rent. The tenant on such land should be regarded as a producer for the remaining portion produced on such land.

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A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a Walla Walla Sweet Onion crop. In such venture, one party may be the farmer who contributes one or more factors such as labor, time, production facilities or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. Any individual, partnership, family enterprise, organization, estate, or other business unit currently engaged in the production of Walla Walla Sweet Onions for market would be considered a producer under the order, and would be entitled to vote in referenda and committee nominations. Each party would have to have title to at least part of the crop produced, electing its disposition, and receiving the proceeds therefrom. This control could come from owning and farming land producing Walla Walla Sweet Onions, payment for farming services performed, or a landlord's share of the crop for the use of the producing land. A landlord who only receives cash for the land would not be eligible to vote. A business unit would be able to cast only one vote regardless of the number and locations of its farms, but each separate legal entity would be entitled to vote.

A number of producers in the production area own or operate packing sheds. A producer who owns or operates a packing shed should not be precluded from qualifying as a producer under the order.

The term "Varieties" should mean all classifications, subdivisions, or types of Walla Walla Sweet Onions that are commonly recognized by the trade and officially recognized by the U.S. Department of Agriculture or recommended by the committee and approved by the Secretary.

Testimony indicated that only Walla Walla Sweet Onions or subdivisions or varieties thereof would be subject to any regulations issued pursuant to the proposed order, and that varieties of onions grown in the production area not possessing characteristics of Walla Walla Sweet Onions would not be included. Varieties not included would include hybrid varieties of the sweet Spanish storage type onion.

The term "Committee" should be defined to mean the administrative agency known as the Walla Walla Sweet Onion Committee established under the provisions of the order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time it is used.

The term "fiscal period" should be defined to mean the annual period for which the committee would plan the use of its funds. This period should be established to allow sufficient time prior to the time Walla Walla Sweet Onions are first shipped for the committee to organize and develop its budget for the ensuing season. However, it should also be set to minimize the incurring of expenses during a fiscal period prior to the time assessment income is available to defray such expenses.

The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning June 1 and ending the following May 31. Record evidence indicates that the harvesting and marketing cycle for Walla Walla Sweet Onions grown in the production area begins in June and ends in August. The fiscal period should coincide with the Walla Walla Sweet Onion crop year, because the industry typically plans its operation on this basis. Hearing testimony supported the fiscal period being established for a 12-month period beginning June 1 and ending May 31 of the next year.

However, based on future experience, it may be desirable to establish a fiscal period other than one ending on May 31. Thus, authority should be included in the order to provide for the establishment of a different fiscal period if recommended by the committee and approved by the Secretary through informal rulemaking procedures. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal period, such change would result in a transition period.

(b) Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act and to provide for effective and efficient operation of the order. As proposed in § 956.20, the Walla Walla Sweet Onion Committee should therefore be established and consist of ten members, including one public member. The record indicates that a committee composed of ten members, with a like number of alternates, would provide adequate representation and would provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties.

Since the order is intended to primarily benefit Walla Walla Sweet Onion producers, it is appropriate that the committee be comprised primarily of growers. Six of the ten committee members should therefore be Walla Walla Sweet Onion growers. Since the program would be financed by handlers, and handlers would be responsible for complying with the terms of the marketing order, however, it would be reasonable to provide for handler representation on the committee as well. For this reason, proponents proposed that, of the ten members on the committee, three of those members should be handlers.

The record indicates that producer members and their alternates should be selected from the production area at large. Since the production area is relatively small, this method should be adequate to ensure equitable representation on the committee. The record indicates that Walla Walla Sweet Onion production is currently located in Walla Walla County in Washington, and Umatilla County in Oregon, which together account for all of the production.

Hearing testimony indicated that the six persons selected to serve as grower members or alternates should be individuals who are producers, or officers or employees of producers. Persons selected to serve as handlers should be engaged in handling Walla Walla Sweet Onions. Such persons could be expected to have strong interests in the effects of committee decisions of Walla Walla Sweet Onion producers and handlers.

To help ensure that the committee will not have a membership with partiality toward a single handling entity, the proposal also contains a provision that, at the time of selection, no more than two producer members may be affiliated with the same handler.

Testimony indicates that a producer member should have at least three years experience in the production of Walla Walla Sweet Onions. The proponents believe that because committee membership is a heavy responsibility requiring a high degree of individual initiative for what is done and how it is done, and cultural practices for Walla Walla Sweet Onions are diverse, it would take three years of experience producing Walla Walla Sweet Onions in order to become knowledgeable about the industry.

At the hearing, witnesses supported adding a public member to the committee. While the influence of consumers would be implicitly present in the deliberations of the producer and handler committee members, and all meetings would be public, the appointment of a public member would offer many advantages. One would be direct communication between industry members and the public member, who would have no connection with the industry and whose opinions would afford the industry an opportunity to discuss its problems and concerns with someone who would view these problems and concerns from outside the Walla Walla Sweet Onion industry.

The public representative and that person's alternate should not be permitted to have a direct financial interest in the production, processing, financing, buying, packing, or marketing of Walla Walla Sweet Onions except as a consumer, nor be a director, officer, or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry.

Proposed § 956.25 states that each member of the committee, including the public member, should have an alternate. This would ensure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted. The order should provide that alternate members should meet the same qualifications as their respective members, except for tenure and growing experience. They would act in the place and stead of their respective members during temporary absences. In the case of the death, removal, resignation, or disqualification of a member, the alternate should serve as member until a new member is selected and has qualified.

Proposed § 956.21 states that, with the exception of initial members, the term of office of committee members and their respective alternates should be for three years and should begin on June 1 and end on May 31, or for such other three year period as the committee may recommend and the Secretary approve. The record indicates that the term of office should begin on June 1 because that is considered the beginning of the Walla Walla Sweet Onion crop year. The Walla Walla Sweet Onion shipping season generally ends in August and work begins again in September when growers begin seeding for the next year's crop. At that point in time, it can be determined which growers have remained in business and qualify to serve on the committee.

A three-year term would be appropriate because it would give members sufficient time to become familiar with committee operations and enable them to make meaningful contributions at committee meetings. Furthermore, a three-year term would enable establishment of a rotation so that approximately one-third of the committee membership would terminate each year. Staggered terms would lend continuity to the committee by insuring that some experienced members would be on the committee at all times. Therefore, the order should provide that the terms shall be determined so that approximately one-third of the total committee membership terminates each year.

The Notice of Hearing proposed that the term of office for initial members and alternates should be established so that one-third of the initial producer and handler members and alternates would serve for a one-year term, one-third would serve for a two-year term, and one-third would serve for a three-year term. Since there would be only one public member, there is no need to provide for staggering that membership; the initial public member should serve a three-year term of office.

The effective date of the order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the terms of office of the initial members and alternates shall begin as soon as possible after the effective date of the order.

In the event that the initial members are selected prior to June 1, 1995, an example of how the initial terms of office could be adjusted is as follows: the initial one-year term would not end on May 31, 1995, but would continue until May 31, 1996. Similarly, the two-year and three-year terms would end on May 31, 1997, and 1998, respectively. For the purposes of applying the tenure requirements of the proposed order, each of these initial terms would be considered as a one-year, a two-year, or a three-year term even though the actual period of the appointment may be several months longer.

To prevent unnecessary vacancies from occurring on the committee, the order should provide that members and alternates shall serve in such capacity for the term of office, or portion thereof, for which they are selected and have qualified, and until their respective successors are selected. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member, including the public member, may serve more than two consecutive terms on the committee unless specifically exempted by the Secretary. After serving two consecutive terms, a committee member should be eligible to serve as an alternate, but should be ineligible to serve as a member for a period of one year. These tenure requirements should not apply to alternate members.

Testimony indicates that there should be no tenure restriction on alternate members. The proponents believe that establishing a maximum of two three-year terms for alternate members would serve no useful purpose, but potentially could limit the pool of candidates for full committee membership. Testimony also indicates that producers with less than three years experience growing Walla Walla Sweet Onions should be eligible for appointment to the committee as alternate members.

To guard against the possibility of a position remaining vacant because of a lack of eligible nominees or persons eligible to serve, the Secretary should have the authority to except an individual from tenure limitation. Such an exception would be made in special and unusual circumstances. Limiting the tenure of committee membership as proposed would be in accordance with the Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders."

The order should provide that the Secretary shall have the authority to select members and alternates of the committee, but the Walla Walla Sweet Onion growers and handlers should have the responsibility for recommending nominees to the Secretary for selection under proposed § 956.22. The nomination procedure outlined in the order would provide a means of making available to the Secretary the names of prospective members and alternates desired by the industry to serve on the committee.

The record does not indicate how the initial committee should be nominated, but an often used method in such instances is for the Secretary to conduct a meeting to nominate initial industry committee members. All producers of record in the production area should receive notice of the meeting in sufficient time to enable them to attend. Nominations should be received and voted upon at these meetings. Those persons receiving the highest number of votes for each of the positions to be filled should be considered the nominee for that position. Handler nominations should be accomplished in the same way.

The committee should be responsible for conducting subsequent nomination meetings, and providing notice to Walla

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Walla Sweet Onion producers and handlers of those meetings. The proposal in the Notice also provided that at least one nominee be submitted for each position for the Secretary's consideration. Proposed § 956.22 provides that one nominee be designated for each member and alternate member position that is vacant or is about to become vacant. However, the Secretary would reserve the right to select any qualified candidate willing to serve.

Testimony indicates that it would be desirable to hold nomination meetings in conjunction with other industry meetings, such as a shipper's association, grower's association, or Extension Service meetings. Such a procedure would encourage higher attendance at the meetings.

Meetings held for nominating members and alternates of subsequent committees should be held no later than April 1 of each year or such other date as the committee may recommend and the Secretary may approve. Inasmuch as the term of office would begin June 1 of each year, nomination meetings should be held in sufficient time to assure that appointments may be made prior to the beginning of each new term of office.

Nominations should be submitted in such manner and form as the Secretary may prescribe. One nominee should be designated for each position that is to be filled the following June 1. Sufficient information about each nominee should be provided so the Secretary can determine if such person is qualified for the position for which nominated.

Only Walla Walla Sweet Onion producers should participate in designating nominees for producer members and alternates. Only Walla Walla Sweet Onion handlers would be entitled to vote for handler members. If a person both produces and handles Walla Walla Sweet Onions, such person may vote either as a producer or a handler, but not both. Each eligible person should be allowed to cast only one vote in the nomination process for each member and alternate member position that is to be filled.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that nominees for the public member and alternate should be selected by the industry members of the committee every three years at the first meeting following the selection of the current committee. The names of the nominees would then be forwarded to the Secretary for selection.

The order should provide that the members of the committee should be selected by the Secretary from persons nominated or from among other qualified persons, in accordance with proposed § 956.23. In the event nominations are not made within the time and in the manner specified in the order, the Secretary may select members and alternates without regard to nominations, in accordance with proposed § 956.27. Such selection should be from qualified persons as provided in the order. Each person to be selected by the Secretary as a member or as an alternate member of the committee should, prior to selection, qualify by advising the Secretary that such person agrees to serve in the position for which nominated.

Proposed § 956.26 states that the order should provide a method for promptly filling any vacancies on the committee for unexpired terms of office. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The order should provide that the Secretary should name a successor to fill an unexpired term from nominations made in the same manner as provided for nominating all other members and alternates. Any nomination meetings for filling vacancies should be held within a reasonable amount of time after a vacancy occurs.

In order to avoid holding meetings and electing nominees when other nominees acceptable to the Walla Walla Sweet Onion industry are before the Secretary, the selection of members from nominees previously submitted but not selected should be permitted. This would allow, for example, the Secretary to appoint a person who received the second highest number of votes at the last nomination meeting for the position that has become vacant.

As set forth in proposed § 956.28, the order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee is necessary to constitute a quorum and to pass any motion or approve any committee action. However, any action made pursuant to proposed § 956.61 pertaining to recommendations for regulations, would require seven concurring votes. Accordingly, six members of the ten-member committee must be present in order to constitute a quorum and enable the committee to conduct a meeting. At least six affirmative votes should be required to pass any motion or approve any committee action, except when dealing with recommendations for regulations, which would require at least seven. The evidence of record is that at least seven committee members should be required to concur on any recommendations pertaining to the imposition of container marking requirements because more is needed to protect minority interests while at the same time allowing majority rule. A simple majority would be sufficient for recommendations on other activities authorized under the marketing order, i.e., recommendations on production and marketing research and marketing development and promotion projects, including paid advertising, and the financing of these activities through handler assessments and voluntary contributions.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. Therefore, the order also should enable committee members, and alternates when acting as members, to vote by mail, telegraph, telephone, facsimile, or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person, to ensure that the person voting on a motion or committee action hears both sides of the question before taking such action. The majority, quorum, and voting requirements should still apply when voting by mail, telegraph, telephone, facsimile, or other means of communication.

Committee members and alternates will necessarily incur some expense while on committee business. Reasonable expenses, which may include travel, meals and lodging, should be reimbursed to members while attending committee meetings or performing other duties under the order, in accordance with proposed § 956.29. Therefore, the order should provide that members, and alternates when serving as members of the committee, should serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order. Testimony indicates that it should be at the discretion of the committee to pay expenses of alternate members who are requested to attend meetings regardless of whether their respective members are present.

The committee, under proposed § 956.30, should be given those specific powers that are set forth in section 608c(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Walla Walla Sweet Onion Committee, to carry out its proper functions. It would be necessary for the committee to adopt rules and regulations, prescribe the terms on which applications or information is to be filed, and to set up procedural rules to administer this part. The committee also should have the power to investigate complaints of violations to the order and forward such information to the Secretary, and to recommend to the Secretary appropriate amendments to this part.

The committee's duties as set forth in § 956.31 of the proposed order are necessary for the discharge of its responsibilities. These duties are similar to those typically specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating and compiling information regarding Walla Walla Sweet Onion marketing conditions, and to the general operation of the order including hiring employees, appointing officers, and keeping records of all committee transactions. It is proposed that the marketing order delineate committee duties as follows:

(1) At the beginning of each fiscal period, or as soon thereafter as practicable, the committee should hold an organizational meeting at which a chairman and such other officers as may be necessary would be selected, any necessary subcommittees should be appointed, and such rules and regulations for the conduct of business should be adopted as may be advisable.

(2) The committee should act as intermediary between the Secretary and producers and handlers of Walla Walla Sweet Onions.

(3) Any available information requested by the Secretary should be furnished by the committee.

(4) The committee should appoint such employees, agents, and representatives as it may deem necessary, and determine salaries, benefits, and duties for each such persons.

(5) At such times as may be necessary, the committee should investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Walla Walla Sweet Onions. Furthermore, upon approval of the Secretary, the committee should engage in research and service activities that relate to the production, handling, or marketing of Walla Walla Sweet Onions.

(6) The committee should keep minutes, books, and records which clearly reflect all of its acts and transactions. These minutes, books, and records would be subject to examination at any time by the Secretary or an authorized agent or representative of the Secretary.

(7) The committee should ensure that its voting record on recommended regulations and other matters are available to producers and handlers.

(8) Prior to the beginning of each fiscal period, the committee should submit to the Secretary a budget of its proposed expenses for such fiscal period along with a recommendation for the assessment rate for such period.

(9) The committee should have its books audited by a competent independent accountant at least once each fiscal period, and at such other times as the committee may find necessary or as the Secretary may request. The audit report should show the receipt and expenditures of funds collected pursuant to this part. A copy of this report should be made available to the Secretary, as well as at the principal office of the committee for inspection by handlers and producers. Confidential or proprietary information should be removed from the audit report before making it available to handlers and producers.

(10) The committee should have the duty of consulting, cooperating, and exchanging information with other onion marketing committees, as well as with other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

The duties listed in proposed § 956.31 are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties that the committee may need to perform which are incidental to, and not inconsistent with, these specified duties.

(c) The committee should be authorized under § 956.40 of the proposed order to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee, as well as to finance production research and market promotion programs. Necessary expenses would include, but would not be limited to, such items as employee salaries and benefits; establishment of an office and equipping such office; telephone and mail services; and business-related transportation for the committee staff. Expenses incurred by committee members in attending committee meetings should also be a reimbursable expense. All such expenses may be incurred on an ongoing basis.

The committee, under proposed § 956.41, should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal period to provide for the Secretary's review and approval. The submitted budget should include a recommendation to the Secretary of a rate of assessment designed to secure all or part of the income required for such fiscal year. The committee should be permitted to use reserve and other committee funds carried over from previous years, and voluntary contributions, to meet budget requirements as authorized under the order.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their pro rata share of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation and other available information in accordance with proposed § 956.42. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve an assessment rate increase, and such increase should be applicable to all Walla Walla Sweet Onions handled during the fiscal year to which that assessment rate applies.

The order should provide for the payment of assessments by first handlers of Walla Walla Sweet Onions for the maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative. For example, adverse weather during a growing season could result in reduced supplies, and therefore, planned market support activities for the season could be canceled. The committee should be able to continue levying assessments to pay other approved expenses incurred for other purposes.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment charge or an interest charge, or both, at rates set by the committee with

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the Secretary's approval. Such charges should be set at rates established to cover additional costs that may be incurred by the committee in attempting to collect overdue assessments, and should encourage timely payments. The period in which payments would be considered late, and late payment charges or interest charges incurred should be recommended by the committee and approved by the Secretary.

The committee should be authorized to accept advance payment of assessments so that it may pay expenses which become due before assessment income is normally received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received.

The committee should also be able to borrow money to meet administrative expenses that would be incurred before assessment income is sufficient to defray such expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in the committee's reserve fund or in other committee accounts.

All funds collected by the committee through assessments or any other provision of the order should be used only for the purposes set forth in the order, as set forth in proposed § 956.43. The Secretary should at all times have authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for which such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or becomes inoperative, the committee should appoint, with the approval of the Secretary, one or more trustees for holding records, funds or other property of the committee.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess should be established as a reserve or refunded pro rata to the handlers, under proposed § 956.44. The committee should be authorized to carry over excess assessment income into the following fiscal period as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately two years' of committee expenses.

One purpose of the reserve fund would be to provide stability in the administration of the order in the case of a short crop. Also, establishing a reserve should minimize the necessity of the committee borrowing money at the beginning of a fiscal year or raising an assessment rate during a season of less than anticipated production.

Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

Under proposed § 956.45, for the payment of production research or promotional activities as authorized by the order, the committee should also be authorized to receive voluntary contributions. Testimony also indicated that contributions should be authorized for first-year administrative start-up costs. Such contributions should be received by the committee without any obligations to the donor, and the expenditure of such funds should be under the complete control of the committee and subject to the provisions of the order. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest. Testimony indicates that donations should be considered as miscellaneous receipts, the same as interest or dividend income, and be subject to all of the accounting provisions of the order.

(d) Under proposed § 956.50, the order should authorize the committee to establish and provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Funding for these programs should come from any authorized receipts of the committee including assessment income, voluntary contributions and miscellaneous income such as interest.

The committee should have the authority to initiate new production and marketing research projects, as well as to contribute to research which may currently be taking place.

Testimony indicated that public funds for research are becoming scarcer and more difficult to obtain. Marketing order proponents believe that their industry needs to finance research on improved onion storage and cultural practices.

The record also supports the need for marketing research and promotion projects. Research would enable the Walla Walla Sweet Onion industry to identify and analyze its current markets and find ways of expanding current markets and developing new ones.

Expanding markets for Walla Walla Sweet Onions could be accomplished by promotional activities, including paid advertising, to acquaint wholesalers, retailers, and consumers with the product available from the Walla Walla area.

Market development projects would enable the committee to compile meaningful market data and to explore marketing possibilities, such as how to gain entry to or recapture a specific market. That authority also would enable the committee to contact buyers and food editors to distribute educational material relating to the handling and marketing of Walla Walla Sweet Onions, and disseminate to the industry the results of current or past marketing research projects. It would also allow the committee to give out promotional literature, recipes, and information relative to consumption or use.

Record testimony indicated that the committee should be authorized to develop and register a common identifying mark, or logo, that could be used by all Walla Walla Sweet Onion producers and handlers to distinguish the Walla Walla Sweet Onion in the marketplace. Proponents supported utilizing such a mark in conjunction with any paid advertising, to make the consumer aware that they are purchasing Walla Walla Sweet Onions. Witnesses supported advertising as a means of increasing demand for Walla Walla Sweet Onions.

Walla Walla Sweet Onions have a very limited marketing season (June to early August) and prices customarily begin to decline rapidly over the season. Proponents believe an education and advertising campaign would help increase the public's awareness of this specialty onion with the objective of expanding the market and increasing consumption of Walla Walla Sweet Onions. Paid advertising with an identifying mark would assist in clarifying and maintaining the Walla Walla Sweet Onion's image in the marketplace in a way not available through other forms of promotion or publicity. Also, Walla Walla Sweet Onion producers face larger and better funded competition. Testimony indicates that paid advertising is

necessary for the industry to be competitive and maintain or increase its market share. Testimony also indicates that advertising could have a positive influence on the demand for Walla Walla Sweet Onions, particularly in times of heavy supply, thereby tending to increase grower returns.

Market promotion programs, including paid advertising, for Walla Walla Sweet Onions carried out with funds collected under the proposed program, would be generic in nature and would not use particular name brands, handler or producer names, or favor any particular portion of the production area. In addition, any promotional material or advertising would not be authorized to make false or unwarranted claims on behalf of Walla Walla Sweet Onions.

Nor would such material be authorized to include statements that disparage other agricultural commodities.

The record does not indicate the amount of assessment funds that may be allotted for research and promotion programs. The committee should have the responsibility to determine the amount of funds spent on each program each year. Such determination should be based on the needs of the industry each year. The amount of funds to be spent on research and promotion programs would be included in the annual budget required to be submitted to the Secretary for review and approval.

All research and promotion projects to be conducted under the order in a given fiscal period should be submitted by the committee to the Secretary for approval prior to being undertaken. This will ensure that all projects are appropriate given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should be required to report at least annually on the progress of each project and at the conclusion of each project. Such reports should be made to the Secretary.

(e) In accordance with proposed § 956.61, the committee should have the authority to recommend regulations to the Secretary, whenever it believes that regulations issued pursuant to proposed § 956.62 regarding container markings would be appropriate. Also, the committee should be authorized to recommend to the Secretary the amendment, modification, termination, or suspension of any regulation issued under this part, when deemed necessary. The committee should also be permitted to recommend modification, termination, or suspension of any regulation or amendment thereto to facilitate the handling of Walla Walla Sweet Onions for special purpose handling pursuant to proposed § 956.63, regarding handling for specified purposes.

The committee should have the authority to recommend to the Secretary rules and regulations for fixing the markings of the containers used in the packaging and handling of Walla Walla Sweet Onions. This could include a logo or other markings that would identify the contents of such containers. Such a logo or other marking would be small enough to be used in conjunction with the handler's own label, so that handlers would not have to incur the cost of having existing labels remade.

As set forth in proposed § 956.63, there should be provision for handling Walla Walla Sweet Onions in other than fresh market channels differently than those for the fresh market. It would authorize the Secretary, whenever it is found that it would tend to effectuate the declared policy of the Act, to issue regulations, suspend or terminate assessment requirements, container marking regulations, or any combination thereof, to facilitate the handling of Walla Walla Sweet Onions for other than fresh market uses. Such uses would be for relief or charity, livestock feed, planting and/or plants, salad onions, and all processing uses including canning, freezing, pickling, peeling, dehydration, juicing, or other processing. In addition, shipments for disposal, for packing and storing within the production area or to specified areas outside the production area in Washington and Oregon, or for other purposes which may be specified are included.

Requirements for special purpose shipments would be intended to ensure that shipments of Walla Walla Sweet Onions for these uses would not be diverted to the fresh market. Shipments for relief, charity, or livestock feed would not compete with fresh market shipments in the market place. Onion plants are too small to be used as a food product. Salad onions, i.e., immature Walla Walla Sweet Onions of smaller sizes, usually 1½ to 2 inches in diameter, would not normally be regulated in the same way as fully mature, dry bulbs. Onions for canning and freezing are exempt from regulation under the authority for this part, and onions of such poor quality that they must be destroyed would not be marketable in any case. Shipments for storage both within and in specified locations outside of the production area would be handled as special purpose shipments with suitable safeguards. Such safeguards might be in the form of handler reports and would include such information that the committee would deem adequate to ensure compliance with program provisions. Other safeguards, unforeseen at this time, might be needed to assure program compliance and prevent abuses. Hence, the committee should be provided the flexibility to recommend, with approval of the Secretary, other safeguards as needed.

There should be authority under proposed § 956.64 to establish minimum quantities of Walla Walla Sweet Onions that would not be subject to regulation under this part. Testimony indicates that this quantity should be recommended by the committee and approved by the Secretary. Such quantities would not be subject to the requirements set forth in §§ 956.42, 956.62, and/or 956.63. Such quantities usually are too small to affect the overall marketing of Walla Walla Sweet Onions.

In accordance with proposed § 956.65, the Secretary should notify the committee of each regulation issued, and of each amendment, modification, suspension, or termination thereof, and the committee would give reasonable notice of such action to handlers subject to this part. Such notification would be necessary for the efficient operation of the marketing order.

The committee should be able to issue appropriate rules, regulations, and safeguards in connection with shipments for specified purposes and minimum quantity shipments. Such rules and regulations should authorize the use of appropriate safeguards under proposed § 956.66.

The term "certificate of privilege" is intended to mean the approval or permit necessary to make special purpose shipments. Authority should be included for the committee to specify the requirements contained in the certificate of privilege. Such requirements, established through rulemaking, would be intended to ensure that shipments would not be diverted to the fresh market.

Safeguards should be adequate so that the committee can track such shipments from the time they leave the local shipping point to ultimate destination. This would be necessary to determine that such shipments did not enter fresh market channels of trade.

The committee should have the authority to rescind or deny certificates of privilege or any other permit to any handler if proof is obtained that such handler shipped Walla Walla Sweet Onions for any other purpose than stated on the certificate of privilege. The committee would rescind or deny certificates only after an appropriate

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investigation concerning the alleged shipments and upon adequate and substantial proof that the handler did in fact violate the regulation. The Secretary would have the right to modify, change, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

The committee would report to the Secretary such information concerning certificates of privilege as may be requested.

(f) The committee should have the authority, under proposed § 956.80, with the approval of the Secretary, to require that first handlers submit to the committee such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. In the normal course of business, Walla Walla Sweet Onion handlers collect and record information that may be needed by the committee. Witnesses expressed the belief that the reporting requirements that may be imposed under the proposed order would not constitute an undue burden on handler businesses since the information is typically collected for other purposes.

Reports could be needed by the committee for such purposes as collecting assessments; compiling statistical data for use in evaluating marketing research and development projects; promotional activities; making recommendations for production research; and determining whether handlers are complying with order requirements. The record evidence indicates that to the extent necessary for the committee to perform its functions, handlers will likely need to provide information on the quantity of Walla Walla Sweet Onions handled each season. This required information may include, but would not necessarily be limited to, the quantities of Walla Walla Sweet Onions received by the handler and the quantities disposed of by such handler, the date of each such receipt and disposition, and the identity of the carrier transporting such onions. This should not be construed as a complete list of information the committee might require, nor should it be assumed that all of the above would necessarily be required of handlers. There may be other reports or kinds of information that the committee may find necessary for the proper conduct of its operations under the order. Therefore, the committee should have the authority, with the Secretary's approval, to require each handler to furnish such information as it finds necessary to perform its duties under the order.

Each handler should be required to maintain such records of Walla Walla Sweet Onions received and disposed of as may be necessary to verify the reports that the handlers submit to the committee. All such records should be maintained for at least two fiscal periods after the fiscal period in which the transactions occurred. The order should provide that the Secretary and authorized employees of the committee should have access to handlers' premises to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the order.

All reports and records submitted for committee use by handlers would be required to remain confidential and be disclosed to none other than persons authorized by the Secretary, as required by the Act. Such reports should become part of the committee and Secretary's records. However, the committee should be authorized to release composite information from any or all reports that do not reveal confidential information. Such composite information could be helpful to the committee and to the industry in planning operations under the order and in promoting the order. Any release of composite information should not disclose the identity of the persons furnishing the information or any person's individual operation.

(g) No handler should be permitted to handle Walla Walla Sweet Onions except in conformity with the provisions of this part, as set forth in proposed § 956.89. If the program is to be effective, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion, on the part of even one handler, could be demoralizing to those handlers who are in compliance and would tend to impair the effective operation of the program.

Witnesses testified that consumers are being deceived when they purchase onions they believe to be Walla Walla Sweet Onions, but which are actually onions produced outside the production area. Proponents testified that the application of the Walla Walla name to onions not grown in the production area is an unfair trade practice that destroys the reputation of the Walla Walla Sweet Onion and causes harm to the industry.

The Act provides that a marketing order can only apply to a defined commodity grown in a specified production area. No authority exists for regulating the handling of that commodity grown outside that production area.

In accordance with proposed § 956.85, the order should provide that the Secretary conduct a periodic referendum every six years with the initial referendum conducted within six years of the effective date of the marketing order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. The Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period.

Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, a provision for continuance referenda should be included. Continuance should be based upon the affirmative vote of either two-thirds of the producers voting or an affirmative vote of the producers of two-thirds of the volume of Walla Walla Sweet Onions represented in the referendum.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda should be based on the same standard of industry support. This requirement is considered adequate to measure producers' support to continue the marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Walla Walla Sweet Onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 608(C)(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market.

The Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

The provisions of proposed §§ 956.87 through 956.99 of the order as contained in the Notice of Hearing and hereinafter set forth, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. These provisions, which are applicable to both the marketing agreement and the marketing order, are identified by section number and heading as follows: § 956.87 Proceedings after termination; § 956.88 Effect of termination or amendment; § 956.90 Right of the Secretary; § 956.91 Duration of immunities; § 956.92 Agents; § 956.93 Derogation; § 956.94 Personal liability; § 956.95 Separability; and § 956.96 Amendments. Those provisions applicable to the marketing agreement only are: § 956.97 Counterparts; § 956.98 Additional parties; and § 956.99 Order with marketing agreement.

Miscellaneous changes have been made from the provisions as proposed in the notice of hearing for the purpose of clarity.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Title 7, Chapter IX is proposed to be amended by adding Part 956 to read as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

Subpart—Order Regulating Handling

Definitions

Sec.
956.1 Secretary.
956.2 Act.
956.3 Person.
956.4 Production area.
956.5 Walla Walla Sweet Onions.
956.6 Handler.
956.7 Registered handler.
956.8 Handle.
956.9 Container.
956.10 Producer.
956.11 Varieties.
956.12 Committee.
956.13 Fiscal period.

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Authority: 7 U.S.C. 601–674.

Definitions

§ 956.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 956.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 956.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 956.4 Production area.

Production area means a tract of land in Umatilla County, Oregon, and Walla Walla County, Washington, based on surveyors' maps, enclosed by the following boundaries: Commencing at the Southeast corner of Section 13, Township (Twp.) 5 North, Range (Rge.) 36 East, W.M.; thence Westerly along the South line of Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 36 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 35 East, Sections 13, 14, 15, 16, 17, and 18 in Twp. 5 North, Rge. 34 East, Sections 13, 14, and 15 in Twp. 5 North, Rge. 33 East, W.M. to the East right of way line of the Northern Pacific Railway, as it runs Northwesterly through Vansyckle Canyon; thence Northwesterly along said Easterly right of way line to a point in the Northwest ¼ of Section 20, Twp. 7 North, Rge. 32 East, W.M. where said line intersects the South right of way of the Union Pacific Railway, said intersection being commonly known as Zangar Junction; thence Easterly along said South right of way line of the Union Pacific Railway to a point in the Southwest ¼ of Section 23, Twp. 7 North, Rge. 32 East where said line intersects the South right of way line of Washington State Highway No. 12; thence Easterly along said South right of way line to the intersection with the West line of Section 34, Twp. 7 North, Rge. 33 East, W.M.; thence North, along the West line of Sections 34, 27, 22, 15, 10, and 3 in Twp. 7 North, Rge. 33 East, W.M., and the West line of Sections 34, 27, and 22 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 22; thence East along the North line of said Section 22 to the Northeast corner thereof; thence North

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along the West line of Sections 14, 11, and 2 in Twp. 8 North, Rge. 33 East, W.M. to the Northwest corner of said Section 2; thence East along North lines of Sections 2 and 1 in Twp. 8 North, Rge. 33 East, W.M. and the North line of Section 6, Twp. 8 North, Rge. 34 East, W.M. to the centerline of the Touchet River; thence northerly and Easterly along said centerline of the Touchet River as it runs through Twp. 9 North, Rge. 34 East, Twp. 9 North, Rge. 35 East, Twp. 10 North, Rge. 35 East, Twp. 10 North, Rge. 36 East, Twp. 9 North, Rge. 36 East, and Twp. 9 North, Rge. 37 East to a point on the East line of Section 11 in Twp. 9 North, Rge. 37 East, W.M., thence South along the East line of Sections 11, 14, 23, 26, and 35 in Twp. 9 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 8 North, Rge. 37 East, W.M., the East lines of Sections 2, 11, 14, 23, 26, and 35 in Twp. 7 North, Rge. 37 East, W.M., and the East lines of Sections 2, 11, and fractional Section 14 in Twp. 6 North, Rge. 37 East, W.M., to a point on the Washington-Oregon State line; thence West along said State Line to the closing corner on the West side of Section 18 in Twp. 6 North, Rge. 37 East, W.M.; thence South along the West line of Sections 18, 19, 30, and 31 in Twp. 6 North, Rge. 37 East, W.M. and the West line of Sections 6, 7, and 18 in Twp. 5 North, Rge. 37 East to the corner common to Sections 18 and 19 in Twp. 5 North, Rge. 37 East, W.M. and 13 and 24 in Twp. 5 North, Rge. 36 East, W.M., Being the True Point of Beginning of this Legal Description.

§ 956.5 Walla Walla Sweet Onions.

Walla Walla Sweet Onions means all varieties of *Allium cepa* grown within the production area, except Spanish hybrid varieties. The committee may, with the approval of the Secretary, exempt individual varieties from any or all regulations issued under this part.

§ 956.6 Handler.

Handler is synonymous with "shipper" and means any person (except a common or contract carrier of Walla Walla Sweet Onions owned by another person) who handles Walla Walla Sweet Onions or causes Walla Walla Sweet Onions to be handled.

§ 956.7 Registered handler.

Registered handler means any person with adequate facilities for preparing Walla Walla Sweet Onions for commercial market, who has requested such registration and is so recorded by the committee, or any person who has access to such facilities and has recorded with the committee the ability and willingness to assume customary obligations of preparing Walla Walla Sweet Onions for commercial market. The committee may recommend, for approval of the Secretary, procedures with respect to handler registration.

§ 956.8 Handle.

Handle is synonymous with "ship" and means to package, load, sell, transport, or in any way place Walla Walla Sweet Onions or cause Walla Walla Sweet Onions to be placed in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of harvested Walla Walla Sweet Onions to a handler within the production area for the purpose of having such Walla Walla Sweet Onions prepared for market.

§ 956.9 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transporting, sale, shipment, or other handling of Walla Walla Sweet Onions.

§ 956.10 Producer.

Producer is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Walla Walla Sweet Onions for market.

§ 956.11 Varieties.

Varieties means and includes all classifications, subdivisions, or types of Walla Walla Sweet Onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 956.12 Committee.

Committee means the Walla Walla Sweet Onion Committee established pursuant to § 956.20.

§ 956.13 Fiscal period.

Fiscal period means the period beginning on June 1 and ending on May 31 of each year, or other such period as may be recommended by the committee and approved by the Secretary.

Administrative Committee

§ 956.20 Establishment and membership.

(a) The Walla Walla Sweet Onion Committee, consisting of ten members, is hereby established. The committee shall consist of six producer members, three handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

(b) A producer shall have three years of experience in producing onions in order to qualify for committee membership. At the time of selection, no more than two producer members may be affiliated with the same handler.

§ 956.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three fiscal periods beginning on June 1 or such other date as recommended by the committee and approved by the Secretary. The terms shall be determined so that one-third of the grower membership and one-third of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-third of the initial industry members and alternates shall serve for a one-year term, one-third shall serve for a two-year term, and one-third shall serve for a three-year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two three-year terms. There shall be no such limitation for alternate members.

§ 956.22 Nominations.

Nominations from which the Secretary may select the members of the committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held, within the production area and prior to April 1 of each year or by such other date as may be specified by the Secretary, one or more meetings of producers and handlers for the purpose of designating one nominee for each of the member and alternate member positions which are vacant or will be vacant at the end of the fiscal period;

(b) In arranging for such meetings the committee may, if it deems such desirable, cooperate with existing organizations and agencies;

(c) Nominations for committee members and alternate members shall be provided to the Secretary, in such manner and form as the Secretary may

prescribe, not later than 30 days prior to the end of the fiscal period within which the current term of office expires;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer, but not both;

(f) Each person is entitled to cast only one vote on behalf of him or herself, his or her partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. An eligible producer's or handler's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each producer member and alternate member position to be filled or each handler member and alternate member position to be filled, but not both.

(g) Every three years, at the first meeting following selection, the committee shall nominate the public member and alternate for a three-year term of office.

(h) The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

§ 956.23 Selection.

The Secretary shall select members and alternate members of the committee from the nominations made pursuant to § 956.22 or from other qualified persons.

§ 956.24 Qualification and acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

§ 956.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor to such member has qualified and is selected.

§ 956.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 956.22 from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 956.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 956.22 the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 956.20.

§ 956.28 Procedure.

(a) Six members of the committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

(b) The committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 956.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 956.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 956.31 Duties.

It shall be among the duties of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as the Secretary may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Walla Walla Sweet Onions and to engage in such research and service activities which relate to the production, handling, or marketing of Walla Walla Sweet Onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon, and a recommendation as to the rate of assessment for such period;

(i) To cause its books to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may require; the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary, and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers: *Provided,* that confidential information shall be removed from all copies made available to the public; and

(j) To consult, cooperate, and exchange information with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

Expenses and Assessments

§ 956.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred

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by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in §§ 956.42 and 956.45.

§ 956.41 Budget.

Prior to each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 956.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Walla Walla Sweet Onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers, at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase in the assessment rate shall be applicable to all Walla Walla Sweet Onions which were handled by each handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current season's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 956.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternate members, employees, agents, and all other such persons associated with the committee to account for all receipts, disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member, alternate member, employee, or agent of the committee, such person shall account for all receipts, disbursements, funds, property, and records pertaining to the committee's activities for which such person was responsible, deliver all property and funds in such person's possession to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person pursuant to this part.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 956.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately two fiscal periods' budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid as soon as practicable.

§ 956.45 Contributions.

The committee may accept voluntary contributions but these shall be used only to pay expenses incurred pursuant to § 956.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 956.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development, and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Walla Walla Sweet Onions. Any such project for the promotion and advertising of Walla Walla Sweet Onions may utilize an identifying mark, including but not limited to registered trademarks and logos, which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The committee may register such logos with the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office. The expense of

such projects shall be paid from funds collected pursuant to §§ 956.42 and 956.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Walla Walla Sweet Onions in relation to market requirements;

(2) The supply situation among competing onion areas and communities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee concludes that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to §§ 956.42 and 956.45;

(2) Its recommendations as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark, or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Regulation

§ 956.61 Recommendation for regulations.

The committee shall recommend regulations to the Secretary whenever it deems it advisable, as provided in § 956.62. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of Walla Walla Sweet Onions for the purposes authorized in § 956.63. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 956.62 Container markings.

The committee may, with the approval of the Secretary, provide a method, through rules and regulations issued pursuant to this part, for fixing the marking of containers which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof. Further, the committee may, with the approval of the Secretary, establish through rules and regulations such safeguards as may be necessary to ensure that such container marking requirements are complied with.

§ 956.63 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 956.42 and 956.62 or any combination thereof, in order to facilitate the handling of onions for the following purposes:

(a) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions;

(b) Shipments of Walla Walla Sweet Onions for livestock feed;

(c) Shipments of Walla Walla Sweet Onions for planting and for plants;

(d) Shipments of Walla Walla Sweet Onions as salad onions;

(e) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(f) Shipments of Walla Walla Sweet Onions for disposal;

(g) Shipments of Walla Walla Sweet Onions for seed;

(h) Shipments of Walla Walla Sweet Onions for packing or storing within the production area or outside the production area, but within specified locations in the States of Oregon and Washington; and

(i) Shipments of Walla Walla Sweet Onions for other purposes which may be specified.

§ 956.64 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, and 956.63, or any combination thereof.

§ 956.65 Notification of regulations.

The Secretary shall notify the committee of each regulation issued and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 956.66 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent Walla Walla Sweet Onions shipped, pursuant to §§ 956.63 and 956.64, from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such Walla Walla Sweet Onions.

(2) Handlers shall pay the pro rata share of expenses provided by § 956.42 in connection with such Walla Walla Sweet Onions.

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege, to any handler if proof is obtained that Walla Walla Sweet Onions shipped by the handler for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary as requested, showing the number of applications for such certificates, the quantity of Walla Walla Sweet Onions covered by such applications, the number of such applications denied and certificates granted, the quantity of Walla Walla Sweet Onions handled under duly issued certificates, and such other information as may be requested.

Reports

§ 956.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the

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committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The acreage of Walla Walla Sweet Onions grown;

(2) The quantities of Walla Walla Sweet Onions received by such handler;

(3) The quantities of Walla Walla Sweet Onions disposed of by such handler;

(4) The disposition date of such Walla Walla Sweet Onions;

(5) The manner of disposition of such Walla Walla Sweet Onions; and

(6) The identification of the carrier transporting such Walla Walla Sweet Onions.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that any information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Walla Walla Sweet Onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 956.85 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this subpart whenever it is found that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Walla Walla Sweet Onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Walla Walla Sweet Onions produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the production for market of Walla Walla Sweet Onions in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 956.87 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 956.88 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; and

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 956.89 Compliance.

No handler shall handle Walla Walla Sweet Onions except in conformity to the provisions of this part.

§ 956.90 Right of the Secretary.

The members of the committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 956.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 956.92 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 956.93 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 956.94 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 956.95 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 956.96 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 956.97 Counterparts.

This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 956.98 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 956.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Walla Walla Sweet Onions in the same manner as is provided for in this agreement.

Dated: November 3, 1994.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 94–27759 Filed 11–4–94; 3:53 pm]

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Part IV

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone;
Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-5100-4]

RIN 2060-AE70

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing amendments to anticipate the phaseout of production and consumption of various ozone-depleting substances and to clarify minor aspects of the current regulation as provided for under section 604 and 606 of the Clean Air Act Amendments of 1990 (CAA). To ensure an orderly phaseout of the production and consumption of halons in 1994, and of chlorofluorocarbons (CFCs), carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons in 1996, this action proposes to alter the administrative requirements of the regulations so companies may continue to produce for special exempted uses. Today's action also proposes clarifications to improve the efficiency of the current requirements and to reduce the burden on the affected companies while ensuring continued compliance with Title VI of the CAA and in a manner consistent with the United States' obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer as amended.

Specifically, EPA proposes to (1) change the requirements for the post-phaseout period for transformation and destruction of ozone-depleting substances; (2) establish the framework for the post-phaseout exempted production for essential uses; (3) revise the controls for imports of controlled substances that are used or recycled; (4) ease the requirements for exporting substances to Article 5 countries; (5) change the allowance requirements for exports of ozone-depleting substances; (6) clarify the definitions for transhipments and heels; (7) provide a period of reconciliation in which allowance balances may be adjusted; and (8) adjust the recordkeeping and reporting requirements.

DATES: Written comments on this proposed rule must be received on or before December 12, 1994, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 21, 1994. If a hearing is held EPA will publish a document in the **Federal Register** announcing the hearing information.

ADDRESSES: Comments on this proposed rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A-92-13, U.S. Environmental Protection Agency, 401 M Street SW., Room M-1500, Washington, DC 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Information Hotline at 1-800-296-1996.

Materials relevant to this proposed rulemaking are contained in Docket No. A-92-13. The Docket is located in room M-1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street SW., Washington, DC, 20460, (202)-233-9185.

SUPPLEMENTARY INFORMATION:

I. Background
II. Administrative Changes in the Stratospheric Protection Program
A. Program Requirements for Continued Post-Phaseout Production and Imports
1. Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances
2. Post-Phaseout Requirements for Essential-Use Production
B. Imports of Used Controlled Substances
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4. Treatment of Controlled Substances Remaining in Emptied Containers, i.e. "Heels"
5. Clarification of the Definition of Transhipment
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7. Additional Clarifications
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III. Summary of Supporting Analysis
A. Executive Order 12866
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I. Background

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA) in the **Federal Register** on December 10, 1993 (58 FR 65018), and on December 30, 1993 (58 FR 69235). These rules set out the requirements of an Allowance Program (the Program).

The Allowance Program was originally developed in 1988 (published on August 12, 1988, 58 FR 30568) in response to the 1987 "Montreal Protocol on Substances that Deplete the Ozone Layer," an international agreement that requires nations that are Parties to the Protocol to reduce and eventually eliminate their production and consumption of ozone-depleting chemicals.[1]

In 1990, the Parties to the Protocol amended the Montreal Protocol during their meeting in London and added other ozone-depleting chemicals and designated phaseout dates for production and consumption of these chemicals. Shortly after the 1990 meeting of the Protocol Parties, the United States Congress passed the Clean Air Act Amendments (CAA). The CAA requires the phaseout of ozone-depleting chemicals on a schedule parallel to, or in some cases more stringent than, that of the Protocol.

The Allowance Program promulgated in the **Federal Register**, first on March 6, 1991 (56 FR 9518), and then as a final rule on July 30, 1992 (57 FR 33754), was designed to ensure that the United States meet its obligations to control and phase out these substances under the Protocol and consistent with Title VI of the CAA. Since that time, the Parties to the Protocol agreed to accelerate the phaseout of all class I substances (except Group VI), to control class II substances and to add methyl bromide and hydrobromofluorocarbons (HBFCs) to the list of class I substances. EPA modified its control requirements in a final rule promulgated December 10, 1993, in the **Federal Register**, to be consistent with Title VI and the Protocol adjustments and amendments.

The substances that are listed in the Protocol, and controlled in the accelerated phaseout, are:

CLASS I

- Chlorofluorocarbons (CFCs);
- Halons;
- Carbon Tetrachloride;
- Methyl Chloroform;
- Methyl Bromide;
- Hydrobromofluorocarbons (HBFCs);

CLASS II

- Hydrochlorofluorocarbons (HCFCs). (These substances are described in greater detail in 58 FR 65018).

EPA promulgated regulations on December 10, 1993, accelerating the phaseout of halons to January 1, 1994, the phaseout of chlorofluorocarbons (CFCs), carbon tetrachloride, methyl chloroform, and HBFCs to January 1, 1996, and the phaseout of methyl bromide to January 1, 2001. The rule also accelerates the phaseout of class II substances, HCFC-22, HCFC-141b and HCFC-142b.

Both the Protocol and the Clean Air Act require the phaseout of production and consumption of ozone-depleting substances. In the context of the Program, the use of the term consumption may be misleading. It is not the "use" of these substances that is controlled through the regulations but rather the amount of the substance available for U.S. domestic consumption, defined as production plus imports minus exports of bulk virgin chemicals.

In developing the regulatory program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed domestically. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data was also used to assign company-specific production and import rights in most cases for companies either importing or producing during the base years of the data collection. These rights are called allowances.

Companies expend allowances when they produce or import ozone-depleting substances. With certain restrictions, the allowances can be traded among companies both domestically and internationally (between Party countries). To control production, the Agency allocated baseline production allowances to producers of specific ozone-depleting chemicals. To control consumption, the Agency allocated baseline consumption allowances to producers and importers of specific ozone-depleting chemicals. Allowances for class I substances are currently provided to companies on an annual basis except for the production of halons, which was phased out on January 1, 1994.

In summary, the Program currently operates as follows:

- In order to produce controlled ozone-depleting substances, companies must use both production and consumption allowances;
- In order to import controlled substances, companies must use consumption allowances;
- No allowances are required in order to export, once allowances are expended in the production or importation of the substance. Rather, companies that export can apply for and be granted additional consumption allowances;
- If a company exports certain controlled substances to an Article 5 country (developing nations as defined by the Protocol that consume less than .3 kilograms of CFCs per capita), the company producing these chemicals can request additional production allowances as well as the consumption allowances normally granted for export. Production by Parties to the Protocol for these developing countries will continue for 10 years after the phaseout in the United States. The number of additional production allowances that can be provided to a company for this purpose is currently limited to 10 percent of their baseline allowance but will increase to 15 percent upon phaseout of these controlled substances.
- No allowances are required to produce ozone-depleting substances that are transformed or destroyed;
- Used or recycled ozone-depleting chemicals can be imported without allowances. No consumption allowances are granted if used or recycled ozone-depleting chemicals are exported;
- Companies are required to maintain records and to provide the data to ensure compliance with the regulation and to meet the reporting requirements of the Protocol.

The Program currently controls and monitors the production and consumption of ozone-depleting substances in the United States. The production and import of halons has already been phased out, and the phaseout for the remaining class I substances, except for methyl bromide, is scheduled for January 1, 1996. In order to ensure an orderly phaseout in 1996, the EPA must alter the administrative requirements of the regulations so companies may continue to produce for exempted uses permitted under the Montreal Protocol and Clean Air Act Amendments.

In addition, the Agency is seeking to improve the efficiency of the requirements and to reduce the burden on the affected companies while ensuring continued compliance with Title VI of the CAA and the Montreal Protocol. In light of these objectives, the Agency is proposing the following administrative changes to improve the Program.

II. Administrative Changes in the Stratospheric Protection Program

A. Program Requirements for Continued Post-Phaseout Production and Imports

The paragraphs under Section A., Program Requirements for Continued Post-Phaseout Production and Imports, describe the administrative changes being proposed by EPA to facilitate the phaseout of all class I ozone-depleting substances effective January 1, 1996 (except for methyl bromide), and the special production and importation scenarios allowed for essential uses.[2]

The Program currently requires the use of allowances by companies that produce or import class I chemicals, except halons (Group II), which were phased out January 1, 1994. Under the current regulation, the phaseout of the production and consumption of the following Groups of class I controlled substances will be complete by January 1, 1996:

Group I, CFCs
Group II, Halons
Group III, Other CFCs
Group IV, Carbon Tetrachloride
Group V, Methyl Chloroform, and
Group VII, HBFCs.

A list of the specific class I ozone-depleting chemicals in each Group is in Appendix A and F in Subpart A.

Due to the phaseout, the Agency is proposing to no longer use production and consumption allowances for all class I controlled substances, except Group VI, methyl bromide, beginning January 1, 1996. Today's proposal anticipates the 1996 production phaseout agreed to by the Parties to the Protocol for CFCs, carbon tetrachloride, methyl chloroform and HBFCs, but allows production for essential uses to become effective January 1, 1996, contingent upon approval for such essential uses by the Parties to the Protocol at the October 1994 meeting.

Although EPA proposes to no longer use production and consumption allowances for class I controlled substances (except methyl bromide) beginning January 1, 1996, the Agency envisions that the manufacture of class I controlled substances will continue after January 1, 1996, provided the substances are:

[1] Several minor revisions to the original 1988 rule were issued on the following dates: February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28082), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

[2] In contrast, the changes in Section C., Program Adjustments and Clarifications, are proposed to modify the current regulation in order to increase the effectiveness of the program and ease administrative burdens and will go into effect January 1, 1995.

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- either transformed or destroyed,
- exported to Article 5 countries,
- produced for essential uses as authorized by the Protocol and CAA and consistent with essential-use allowances, or
- produced with destruction or transformation credits.

In addition, EPA envisions class I controlled substances (except methyl bromide) being imported without the need for consumption allowances after January 1, 1996, if:

- the substance is either transformed or destroyed,
- the substance was previously used, recycled or reclaimed,
- the substance was imported using destruction or transformation credits, or
- the substance was imported using essential-use allowances.

Although the proposal is to no longer use production or consumption allowances for the phased out class I substances (except methyl bromide), the Agency wishes:

(1) to maintain a category of Article 5 allowances (previously called potential production allowances),

(2) to create a new category of essential-use allowances, and

(3) to create destruction and transformation credits (similar to the previous process for granting additional production allowances when substances produced or imported with expended allowances are transformed or destroyed).

The following paragraphs describe the allowance requirements for a variety of production and importation scenarios under the current Allowance Program. In addition, the paragraphs describe the administrative changes being proposed by EPA to facilitate the phaseout of all class I ozone-depleting substances effective January 1, 1996, (except for methyl bromide) and the special production and importation scenarios proposed for the post-phaseout period.

1. Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances

The current regulation distinguishes between two categories of controlled substances that are transformed or destroyed. The two categories are: (1) controlled substances that were produced or imported explicitly for uses that result in transformation or destruction, and (2) controlled substances that were produced or imported with the intention of putting the substance to an "emissive use." EPA proposes adding the definition of emissive use to the current regulation, such that emissive use would be those uses of controlled substances that do not result in the transformation or destruction of the substance. Examples of emissive uses would be the incorporation of controlled substances into a refrigerator or an air conditioner (for a car, household or building), or the use of a controlled substance as a solvent to clean machine parts or circuit boards.

The current program assumes that when a controlled substance is produced or imported for other than transformation or destruction it is intended for an emissive use. When the controlled substance is produced or imported for an intended emissive use, the producer or importer must expend allowances under the current program. Whether or not the controlled substance is actually incorporated into an emissive use is not as important as the fact that it was intended for an emissive use. If the controlled substance is *intended* for an emissive use at the time of production or importation, the person producing or importing the substance is required to expend allowances. However, the expenditure of allowances is not sufficient to define emissive use. For example, a controlled substance recovered from an air conditioner, refrigerator or dehumidifier manufactured before the current program became effective (July 1989) would not have been produced with expended allowances.

In the following discussion, EPA proposes changes to the requirements for controlled substances that are produced explicitly for transformation and destruction, and to the requirements for controlled substances that are produced for intended emissive uses and then subsequently transformed or destroyed. The requirements differ according to the intended purpose of the controlled substance during production.

a. *Production or importation of controlled substances explicitly for uses that result in domestic transformation or destruction.* The current regulation does not require a person to expend allowances if they are explicitly producing or importing a controlled substance for a use that will result in the transformation or destruction of that substance in the United States. In other words, allowances do not need to be expended at the time of production or importation as long as the producer or importer has certification that the controlled substance will be transformed or destroyed by themselves, by a second-party, or by a third-party. As long as the producer or importer has such certification that the substance will be transformed or destroyed domestically, there is no need to expend allowances for the production or importation of the substance. To confirm the future transformation or destruction of the controlled substance, the current regulation requires the second- or third-party person, who will transform or destroy the substance, to submit a transformation certification or destruction verification to the producer or exporter.

EPA proposes that the current system continue after January 1, 1996, and that companies be permitted to produce or import controlled substances explicitly for uses that result in transformation or destruction with the same requirements as under the current regulation.[3] Therefore, such producers and importers will continue to receive an IRS certification of intent to transform or a destruction verification from the second- or third-party transformers or destroyers. The producers and importers will also continue to submit these certificates or verifications to EPA along with their quarterly reports (see Section C.7. Recordkeeping and Reporting).

b. *Production or importation of controlled substances intended for emissive use but subsequently transformed or destroyed.* Under the current regulation a person who transforms or destroys a controlled substance that was produced or imported with expended allowances may petition the Agency for "additional" consumption and production allowances. The person who transforms or destroys a controlled substance that was produced or imported with expended allowances is essentially requesting a "refund" of the allowances originally used in the production or importation of the substance.

EPA proposes that, after the phaseout begins on January 1, 1996, companies will no longer be able to request additional production allowances or consumption allowances for the transformation or destruction of controlled substances which were produced or imported for emissive uses (other than for methyl bromide). The Agency proposes the elimination of the specific provisions that grant additional production and consumption allowances, beginning January 1, 1996, for all class I controlled substances, except methyl bromide, in anticipation of the post-phaseout elimination of production and consumption allowances for those substances. Thus, a person who expends allowances to produce or import a class I substance,

[3] Controlled substances produced for export to be transformed or destroyed are discussed in section C.3. "Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed."

other than methyl bromide, and then transforms or destroys that substance after January 1, 1996, will not be granted additional production or consumption allowances. However, a person who expends allowances and then transforms or destroys methyl bromide after January 1, 1996, would still be able to petition the Agency for additional production and consumption allowances until January 1, 2001, as under the current regulation. In this respect, a person who transforms or destroys methyl bromide that was produced or imported for an intended emissive use may continue to follow the existing regulation as described under § 82.9 and § 82.10.

c. *The post-phaseout procedures for granting destruction and transformation credits.* At the Fourth Meeting of the Protocol Parties in Copenhagen in 1992, in Decision IV/24, the Parties agreed to urge "all practicable measures to prevent releases of controlled substances into the atmosphere." In accordance with this Decision, EPA wishes to continue encouraging destruction and transformation of controlled substances after the phaseout begins January 1, 1996, especially for those controlled substances that were produced or imported for intended emissive uses. EPA believes a system of incentives can be devised to foster destruction or transformation of ozone-depleting substances in order to prevent their emission to the atmosphere.

In this action, EPA proposes a system of incentives to encourage destruction or transformation after the accelerated phaseout dates by offering credits for the destruction or transformation of controlled substances. These credits would be used to produce or import an amount of controlled substance. The Agency believes a system of incentives to encourage destruction or transformation of controlled substances after the phaseout is an important mechanism to deter individuals from releasing the unneeded controlled substance to the atmosphere.

As discussed below, EPA believes that Decision IV/24 of the Parties to the Protocol urging measures to prevent the release of unneeded controlled substances to the atmosphere and the Protocol definition of production provide the basis to devise incentives for destruction or transformation after the accelerated phaseout and until the interim and final phaseout dates set forth in the CAA.

The Protocol defines production as the "amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals." Under the Protocol, Parties may continue to produce controlled substances after they are phased out as long as the amount of the controlled substance produced is offset in each control period by the same amount that is transformed [4] or destroyed by an approved technology.[5] The Protocol definition of production indicates that an amount of controlled substance produced and the same amount destroyed or transformed would balance in a calculation of atmospheric loading and result in a net environmental impact of zero.

Although the definition of production in the Protocol would permit continued production beyond the phaseout as long as such production was offset by transformation or destruction, the definition of production under the Clean Air Act Amendments is distinct and does not permit such offsetting. The CAA defines "produce," "produced" and "production" as the "manufacture of a controlled substance from any raw material or feedstock chemical, but such terms do not include (A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or (B) the reuse or recycling of a substance." Under the CAA definition, once production of a controlled substance is phased-out, it may no longer be produced for emissive purposes because there are no provisions, as in the Protocol's definition, to permit that continued production be offset by destruction or transformation.

Pursuant to CAA section 614, in the case of conflict between any provision of the CAA and the Montreal Protocol, the more stringent provision shall govern. Because the CAA definition of production is more stringent than that of the Protocol, the definition of production under the CAA shall apply when the phaseout dates under the CAA take effect. Section 604 of the CAA sets interim reductions and final phaseout dates for listed class I substances. The class I substances listed in the CAA must be phased out by the year 2000, except for methyl chloroform which must be phased out by the year 2002. In addition, under the terms of the CAA, methyl bromide must be phased out by 2001. Section 604 also includes interim reductions for the listed class I substances as outlined in Table I below.

In today's rule, EPA proposes to authorize the use of destruction/transformation credits until the respective dates when the terms of the CAA become more stringent than those of the Protocol (2000 for most class I controlled substances, 2001 for methyl bromide, and 2002 for methyl chloroform). For example, under the terms of the Protocol, CFC–12 must be phased out by 1996, but production may be continued as long as it is offset by either transformation or destruction. However, the CAA requires that in 1996, the maximum allowable production of CFC–12 be no more than 40 percent of the quantity produced in the baseline year. From 1995 until 1999, the CAA requires that the maximum allowable production of CFC–12 be no more than 15 percent of the quantity produced in the baseline year, and in the year 2000, no CFC–12 may be produced.

Today's proposal permits the use of destruction and/or transformation credits, but does not permit continued production beyond the maximum allowable limits set forth in the CAA. Thus in the example above, for 1996, individuals may use destruction and/or transformation credits, but in no case may CFC–12 be produced for emissive purposes beyond 40 percent of the quantity produced in the baseline year. To comply with the 1996 phaseout date and definition of production under the Protocol, production of this amount of CFC–12 must be offset by the amount transformed or destroyed.[6]

Below is a chart indicating the dates and the maximum permissible production levels set forth in the Clean Air Act Amendment of 1990.

TABLE I.—TITLE VI OF THE CLEAN AIR ACT AMENDMENTS OF 1990 PRODUCTION PHASEOUT SCHEDULE FOR OZONE-DEPLETING SUBSTANCE

Date	Carbon tetrachloride (percent)	Methyl chloroform (percent)	Other class I substances (percent)
1994	70	85	85
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15

[4] Under the current regulation, transformation is defined as the amount entirely used as feedstock (except for trace quantities) in the manufacture of other chemicals.

[5] To date, Parties have approved five technologies for destruction (Decision IV/11) which are listed in the definition or "destruction" under § 82.3.

[6] Limits are being proposed in today's action for production after 1996 regarding destruction and transformation credits, essential-use allowances (to be discussed in the next section of the preamble) and Article 5 allowances (discussed in section C.1 "Changes in Requirements for Export to Article 5 Countries" of the preamble.)

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TABLE I.—TITLE VI OF THE CLEAN AIR ACT AMENDMENTS OF 1990 PRODUCTION PHASEOUT SCHEDULE FOR OZONE-DEPLETING SUBSTANCE—Continued

Date	Carbon tetrachloride (percent)	Methyl chloroform (percent)	Other class I substances (percent)
1999	15	50	15
2000		20	
2001		20	

Proposed System for Credits—EPA is seeking comments on a system that would grant destruction credits and/or transformation credits as an incentive to destroy and/or transform controlled substances produced or imported for intended emissive uses. EPA is seeking comments on this system in which a person may submit, after January 1, 1996, a request to the Agency for credits based on the destruction or transformation of a quantity of controlled substances in the United States that were initially produced for an emissive use. The person requesting credits would need to identify the amount of controlled substance that was destroyed or transformed and the previous use of the controlled substance. In addition, the person would need to submit to EPA a copy of the destruction efficiency certification as under § 82.13(k). Upon approval, EPA would grant the person credits equal to the amount of the controlled substance they destroyed or transformed minus an offset. EPA proposes that credits could be used for: (i) the importation of a calculated level of the controlled substance, or (ii) the production of a calculated level of the controlled substance. Consistent with the parameters set for control periods by the Montreal Protocol, EPA proposes that credits not be carried over from one control period to the next, due to the limits on net production. The recordkeeping and reporting requirements associated with the credits described in these paragraphs are outlined in paragraph C.7.a.iv and C.7.a.v below.

Under the proposed system, the Agency will create a balance of credits for the person upon approval of a request. Deductions will be made from this balance of credits based upon quarterly reports to EPA showing production and importation. EPA is proposing that inter-pollutant transfers of credits as currently defined in § 82.12 be permitted within the Groups of class I substances listed in Appendix A and F to Subpart A, subtracting a one percent offset. The Agency is also proposing that inter-company transfers of credits be permitted as currently defined in § 82.12, subtracting the one percent offset. Inter-Party trades of credits would also be permitted under today's proposal as currently described in § 82.9 with the actual controlled substance returning to the United States.

Discussion of Options—The following discussion outlines options considered by EPA in proposing today's system to grant credits for the destruction or transformation of controlled substances. The initial discussion focuses on options for destruction credits. This is followed by a summary of how the same arguments pertain to a parallel system for granting transformation credits.

Options for Destruction Credits—The Agency considered many factors in analyzing how to provide incentives to destroy controlled substances in the post-phaseout period.

EPA envisions granting destruction credits to people who destroy controlled substances that were recovered from use systems, as well as controlled substances that were produced or imported for intended emissive uses. The Agency believes that as the phaseout goes into effect on January 1, 1996, an increasing number of people will retrofit or switch from use systems that use class I controlled substances to use systems that occupy other chemicals or processes less damaging to stratospheric ozone. However, in the near term the Agency anticipates a period of transition in which some people continue to use equipment that occupies class I substances. To meet the needs of people with equipment designed for class I controlled substances after the phaseout, EPA presumes market demand will engender a service industry to recover the phased out substances from existing equipment, such as building chillers, commercial refrigeration units, and automobile air conditioners as this equipment is retrofitted with alternative chemicals or is taken out of commission. EPA anticipates that much of the recovered controlled substances will be recycled or reclaimed and stored (banked) to meet the near term needs of people still using equipment that requires phased out substances. At this point in time, it is difficult to project what the future supply and demand for controlled substances will be once the post-phaseout period begins (January 1, 1996) and how long the transition period will last.

EPA is proposing destruction credits to encourage the destruction of controlled substances when the supply of these substances exceeds the demand. In time, the demand for class I controlled substances should fall as the majority of equipment is converted to alternative chemicals or new systems replace old systems. The Agency presumes this will occur as alternative substances, retrofits and new equipment are brought into wider use throughout all sectors, obviating the need for banked class I controlled substances. Under this scenario, when the supply of a class I substance being banked for the period of transition exceeds the demand, the price will drop and the existing stocks will become "unneeded," as mentioned in Decision IV/24 of the Parties to the Protocol cited above. When the substances are unneeded, the demand for phased out controlled substances may no longer even warrant storage. A person with a stored quantity of class I controlled substance that no longer has a market due to the conversion and replacement of equipment should be encouraged through a meaningful incentive system to destroy the substance. Without such an incentive, individuals may continue storing these controlled substances, increasing the risk of leaks, accidental releases or intentional releases to the atmosphere. EPA believes destruction should be encouraged to prevent such releases into the atmosphere.

The proposed system encourages the destruction of controlled substances that are unneeded as demand shifts from one specific substance to alternatives or other types of equipment. The system of granting destruction credits allows market flexibility in meeting demand by allowing inter-pollutant transfers of destruction credits at the same time that it provides an incentive to destroy the excess supply of a given substance that might potentially be released into the atmosphere. As a hypothetical example, CFC–11 might be recovered from several use systems and banked during the first years after the phaseout (January 1, 1996) to meet demand during the period of transition. But as alternative substances and/or equipment are brought to market to replace the need for CFC–11, the supply of CFC–11 that was banked would become unnecessary. Today's proposed destruction credits would encourage the destruction of this excess supply of CFC–11 and the credits could be used, through an inter-pollutant transfer, to produce or import a different controlled substance in the same Group of controlled substances, such as CFC–12, to satisfy a still unmet demand for CFC–12.

As under the current regulation, the Agency will grant credits equal to 100 percent of the volume destroyed (minus the offset) for controlled substances that are completely destroyed (using the current definition of completely destroy). For controlled substances destroyed at less than a 98 percent destruction efficiency, EPA will grant allowances commensurate with that percent of destruction efficiency that is actually achieved (minus the offset).

Another factor considered in proposing an incentive system was the general technical destruction characteristic of the chlorinated and brominated compounds regulated under the current rule. Due to the chemical composition of these ozone-depleting substances, the by-products of destruction are often corrosive acids. The corrosivity of these destruction by-products may influence the maintenance costs for approved destruction technologies. Increased rates of destruction of controlled substances could increase the frequency with which operators of approved incineration technologies would need to replace the liners of their incineration units. Therefore, operators will probably continue to charge high prices for the destruction of controlled substances.

EPA received anecdotal information that very few incineration facilities in the United States are now accepting bulk quantities of CFCs for destruction and as a result the price being charged is extremely high. The Agency does not want the maintenance costs at incineration facilities to impede the overall availability of destruction for controlled substances, especially as controlled substances are taken from existing use systems. If destruction is limited and expensive, the release of controlled substances to the atmosphere may be an unfortunately attractive option. Offering credits for destruction provides an economic incentive to persons who have controlled substances but would like to dispose of them. The credits have economic value which could offset the high costs of destruction. If persons gain a benefit from destroying a controlled substance, they will be more likely to destroy the controlled substance than release it to the atmosphere. The overall goal of providing the incentives for destruction is to prevent the release of ozone-depleting substances to the atmosphere.

EPA believes that the proposed system for granting destruction credits will have an overall environmental benefit. Without an incentive to increase the current rate of destruction the Agency presumes there will be greater release of controlled substances to the atmosphere as equipment that contains the phased out substances is taken out of commission. Today's proposal is to grant destruction credits equal to the quantity of controlled substance destroyed minus an offset of 15 percent. Although the credits can be used to produce or import controlled substances, the amount produced or imported will be less than the amount destroyed due to the offset. The credits also provide an incentive to destroy ozone-depleting substances that otherwise might be emitted.

In making today's proposal the Agency considered other ways of encouraging destruction. EPA considered a voluntary system for encouraging destruction of controlled substances. The voluntary system would not grant credits but simply try to persuade companies to destroy ozone-depleting substances with publicity and public relations assistance. For instance, the Agency could develop a list of companies actively destroying controlled substances as "friends of the ozone" in a national publicity campaign. EPA believes, however, that a system of credits would provide greater incentive to increase current rates of destruction and there would be less chance of controlled substances being released to the atmosphere.

Another option considered by EPA was to grant destruction credits equal to the amount of controlled substance destroyed. Under an option of giving 1:1 credits for kilograms, a person who destroys 100 kilograms of CFC–12 would be given a calculated level of 100 kilograms of destruction credits which could be used to produce or import 100 kilograms of new CFC–12. Although the incentive would be great to destroy unneeded stocks of controlled substances without an offset, EPA believes the environmental benefits of the actual destruction would be balanced by the subsequent production or importation of an equal amount of additional controlled substance.

In developing today's proposal, EPA considered offsetting the number of credits to be granted by one percent from the actual quantity destroyed. A one percent offset is used throughout the current regulation in calculating allowances authorized in various transfers; both between Groups of controlled substances (inter-pollutant trades) and between companies (inter-company trades). The offset was developed to address Section 607 of the CAA which requires that trades result in less overall production or consumption than would have occurred absent the trade. The one percent offset was proposed in the September 30, 1991 rule, as an amount large enough to provide a net environmental benefit but without discouraging the trading that might be necessary to meet market demand.

In today's proposal, EPA recommends a 15 percent offset. The 15 percent offset is proposed to ensure that environmental benefits result from the proposed incentive system granting additional production or importation to encourage destruction and prevent the release of controlled substances. The 15 percent offset proposed today is based on an estimate of the amount of controlled substances that could possibly be destroyed given the capacity of U.S. approved technologies. Estimates of destruction capacity for controlled substances in the United States for 1992 are 15 percent of annual production.[7] Therefore, the greatest environmental benefit that can be obtained in the U.S. from destruction is 15 percent of annual U.S. production. The 15 percent offset means a person who destroys a quantity of controlled substance after the phaseout (January 1, 1996) may request credits equal to 85 percent of the quantity destroyed. The 85 percent is the portion of annual United States production of controlled substances for intended emissive uses that cannot be destroyed due to the limits of estimated domestic destruction capacity. To control and reduce the damage caused by corrosive by-products from the destruction of controlled substances, operators of incineration units usually incorporate a small percentage of halogenated substances in each batch. The offset would encourage owners of approved destruction technologies to maximize their capacity for incorporating controlled substances.

Options for Transformation Credits—The discussion of destruction credits above also pertains to a system for granting transformation credits. Transformation credits would be granted to a person who transforms controlled substances originally produced or imported for intended emissive uses. EPA is seeking comment on a system that would grant transformation credits as a parallel system to the system for destruction credits described above. In other words, transformation credits would be granted for a quantity of controlled substance transformed originally produced or imported for intended emissive uses, minus the 15 percent offset.

EPA is aware that most controlled substances currently produced or

[7] United States capacity for destruction of halogenated compounds at commercial and public hazardous waste incineration facilities is 63,600 metric tons per year. United Nations Environmental Programme's Report from the Ad-Hoc Technical Advisory Committee on ODS Destruction Technology, May 1992.

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imported for intended emissive uses do not subsequently become a feedstock for a transformation process. However, EPA believes that new technologies may appear that can transform controlled substances that were produced or imported for intended emissive uses. As defined in the current regulation, transformation is the process of entirely consuming a controlled substance (except for trace quantities) in the manufacture of other chemicals for commercial purposes. The Agency has learned of independent efforts to develop transformation technologies that would transform controlled substances into commercially useful chemicals. The information EPA has on these technologies suggests that they may be able to transform even controlled substances that are taken from use systems and that are contaminated. Today's proposal anticipates the development of these new technologies and would offer an incentive for the transformation of controlled substances that might otherwise be released into the atmosphere.

EPA is proposing to implement the Decision of the Parties to the Protocol to encourage practicable measures to prevent the release of controlled substances to the atmosphere, recognizing that there are many options for creating incentives that also achieve varying degrees of environmental benefits. EPA is therefore seeking comments on today's proposed system for granting credits as an incentive for the destruction or transformation of controlled substances after the phaseout and the options discussed above.

2. Post-Phaseout Requirements for Essential-Use Production

EPA discussed the issue of essential uses in its **Federal Register** notice containing the final accelerated allowance regulations (December 10, 1993, 58 FR 65018). While recognizing the need to include provisions to implement the essential use provisions of the Montreal Protocol, the final rule did not address how this would be incorporated into EPA's allowance program.

a. *Protocol Decisions Regarding Essential-Use Production.* The Montreal Protocol established an essential use provision at the Fourth Meeting of the Parties (Decision IV/25). Production and consumption are only to be permitted past the phaseout date for those applications approved under this Decision. The Decision established both criteria for determining whether a specific use should be approved as essential and a process for the Parties to use in making such a determination.

The criteria for an essential use adopted by the Parties is the following:

"(1) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) that production and consumption, if any, of a controlled substance for an essential use should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing country need for controlled substance."

Thus, any proposed application for an essential use would be evaluated based on the social utility of that application, the availability of substitutes, and the potential for meeting that need through banked or recycled controlled substances.

Decision IV/25 also set out the procedural steps for implementing this process. It first calls for individual Parties to nominate essential uses. These nominations are then to be evaluated by the Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) which makes recommendations to representatives of all Protocol Parties. The final decision on which nominations are to be approved is to be taken by a meeting of the Parties.

The initial cycle of implementing this Decision has been completed in the context of halons which were phased out of production at the end of 1993. EPA issued a **Federal Register** notice requesting nominations for essential uses of halons (February 2, 1993; 58 FR 6786). In response, the Agency received over ten nominations, but was able to work with applicants to resolve their near-term requirements. As a result, the U.S. did not nominate any uses for continued halon production in 1994. About a dozen other nations put forth nominations which were reviewed by the Technical and Economics Assessment Panel. Because the Panel determined that in each case alternatives existed or that the existing supply of banked halons was adequate to meet near-term needs, it did not recommend approval of any of the nominations. In November of 1993, at the Fifth Meeting, the Parties unanimously adopted the recommendation of the Panel not to approve any essential uses for the production or consumption of halons in 1994.

EPA issued a second notice for essential use nominations for halons on October 18, 1993 (58 FR 53722). These nominations covered possible production of halons in 1995 for essential uses. In response to this inquiry, EPA received no nominations.

Only one nomination (from France) was received by the TEAP for production and consumption of halons for an essential use in 1995. The TEAP did not recommend approval of this nomination.

EPA also issued a **Federal Register** notice requesting nominations for essential use applications which would need to continue beyond the 1996 phaseout of consumption and production allowances for CFCs, methyl chloroform, carbon tetrachloride, and hydrobromofluorocarbons (May 20, 1993, 58 FR 29410). EPA received 20 applications in response to this notice. For several of these applications, EPA determined that the criteria contained in the Decision had not been satisfied. For example, two applications sought CFCs for servicing existing air-conditioning equipment. EPA rejected these applications on the basis that if all economically feasible steps were taken prior to the 1996 phaseout, then adequate supplies of banked and recycled CFCs should be available. However, in rejecting these nominations, the United States noted that servicing existing air-conditioning and refrigeration remains a major challenge to the successful transition from the use of CFCs and that a future nomination in this area might be necessary if a combination of retrofits, replacements, recycling, recovery at disposal, and banking do not adequately address these needs.

Of the responses to the **Federal Register** request for essential use applications, the United States submitted essential use nominations to the Protocol for the following uses of CFCs: metered dose inhalers and other selected medical applications; a bonding agent for the Space Shuttle; aerosol wasp killers; limited use in a specified bonding agent and polymer application; and a generic application for laboratory uses under specified

limitations. (Letter from Pomerance to UNEP, September 27, 1993).

Nominations from the U.S. and other countries for over 200 specific uses were submitted to the Montreal Protocol Secretariat and provided to the Technical and Economics Assessment Panel for review. In March 1994, the Panel issued the "1994 Report of the Technology and Economic Assessment Panel." The Report includes the Panel's recommendations for essential-use production and consumption exemptions. The Panel recommended that essential use exemptions be granted for nominations of: methyl chloroform in solvent bonding of the Space Shuttle; CFCs used in metered dose inhalers; and specific controlled substances needed for laboratory and analytical applications.

For each of the other nominations submitted, the Panel determined that one or more of the criteria for evaluating an essential use had not been satisfied. For example, in the case of several of the U.S. nominations, the report states that alternatives are available and therefore the essential use exemption is not warranted.

The next meeting of the Parties is scheduled for October 1994. At that session the Parties will review the recommendations by the Technology and Economic Assessment Panel and make final decisions on this round of essential use nominations.

In 1993, the Parties to the Protocol modified the timetable for submission of essential use nominations to combine both halons and all the other class I controlled substances (except methyl bromide) and to reduce the overall length of time between nomination and decision. According to Decision V/18, essential use nominations for halon consumption and production for 1995 and beyond, and essential use nominations for all the other class I controlled substances (except methyl bromide) for 1997 and beyond, must be submitted to the Secretariat prior to January 1st of the year prior to the year for which production and consumption is being sought.[a] Parties must submit essential use nominations for CFCs for 1997 (nominations for 1996 have already been considered) to the Montreal Protocol Secretariat by January 1, 1996. EPA will revise its domestic schedule to require that nominations be submitted at least three months prior to the Protocol Secretariat deadline for submission, and will issue a **Federal Register** notice in August 1994, calling for essential use nominations for halons for 1996 and beyond. The next call by EPA for other class I controlled substances will be in August of 1995 for 1997 essential-use exemption nominations.

b. *Domestic Implementation of Essential-Use Program.* Any essential use exemptions would also have to comply with the provisions of the CAA. Section 604 of the CAA authorizes the granting of specific exemptions from the phaseout schedules contained in the Clean Air Act for essential uses for methyl chloroform for which no safe and effective substitute is available (section 604(d)(1)), for limited quantities of class I substances solely for use in medical devices if such authorization is determined to be necessary (section 604(d)(2)) and for limited quantities of halon–1211, halon–1301 and halon–2402 solely for use in aviation safety if no safe and effective substitute is available and if such authorization is necessary. The CAA also authorizes specific exemptions from the phaseout schedule of CFC–114, halon–1211, halon–1301 and halon–2402 for national security (section 604(f)).

In today's action, EPA does not propose essential uses under the provisions of the CAA. However, EPA does propose to permit continued production for the essential uses authorized under the Protocol, so long as these essential use exemptions do not exceed amounts allowed in the schedule contained in section 604(a) of the CAA.

As indicated on the table below, EPA is proposing essential uses for specified controlled substances for the years 1996 and 1997. As discussed in section A.1.c., "The Post-Phaseout Procedures for Granting Destruction and Transformation Credits," EPA proposes to authorize continued production for essential uses permitted under the Montreal Protocol, but not to exceed the maximum allowable limits set forth in section 604(a) of the CAA. As used in a previous example in section A.1.c., the CAA requires that in 1996, the maximum allowable production of CFC–12 may be no more than 40 percent of the quantity produced in the baseline year. Thus, in 1996, if total production of CFC–12 were to be used for essential uses, the amount produced for those essential uses may not exceed 40 percent of the quantity produced in the baseline year. Although production may be used for some combination of essential uses, destruction credits, or transformation credits, the total amount produced could not exceed the maximum allowable limits set forth in the CAA as reproduced in Table I below.

To incorporate the essential-use provisions under the Montreal Protocol into our domestic allowance program, EPA is proposing the creation of a new class of allowances to be referred to as "essential-use allowances."

The essential-use allowances will be allocated to United States entities based on the nominations made to the Protocol which will be decided upon by the Parties at the October 1994 meeting and at meetings thereafter. In the nominations to the Protocol, U.S. entities apply for an essential-use exemption from the production and consumption phaseout for a specific quantity of controlled substance for a specific use. EPA proposes using the applications that are agreed to by the Parties to the Protocol to make specific allocations of essential-use allowances. Although the TEAP has received applications for essential-use exemptions beyond 1997, today's proposal only includes those recommendations by the Panel for 1996 and 1997. In today's rulemaking, EPA proposes an allocation of essential-use allowances up to the amount being recommended by the Technology and Economic Assessment Panel to the Parties for their meeting in October 1994. It should be noted that the final essential-use allowances promulgated by EPA may not exceed the exemptions adopted by the Parties.

[a] Decision V/18 also directed the Technology and Economic Assessment Panel to develop a "Handbook of Essential Use Nominations." The Handbook is being prepared and will contain forms and instructions for how to apply for an essential-use exemption. When available, the Handbook may be obtained from the Stratospheric Protection Division, U.S. Environmental Protection Agency or the Ozone Secretariat of the Montreal Protocol in Nairobi.

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ESSENTIAL USES RECOMMENDATION BY THE UNEP TECHNOLOGY AND ECONOMIC ASSESSMENT PANEL

Company	Year	Chemical	Quantity (metric tons)
Metered Dose Inhalers:			
International Pharmaceutical & Aerosol Consortium	1996	CFC–11	749.6
		CFC–12	2353.2
		CFC–114	314.1
	1997	CFC–11	658.3
		CFC–12	2166.5
		CFC–114	311.4
Sterling Winthrop	1996	CFC–12	10.2
		CFC–114	29.6
	1997	CFC–12	10.5
		CFC–114	31.7
Space Shuttle Solvent			
NASA/Thiokol	1996	Methyl Chloroform	56.8
	1997	Methyl Chloroform	56.8
Laboratory and Analytical Applications			
Global Exemption	1996	CFCs, Methyl Chloroform, Carbon Tetrachloride.	(1)
	1997	(2)	(2)

[1] No quantity specified.
[2] Same.

The nomination for essential uses in 1996, 1997 and 1998 of CFCs, methyl chloroform and carbon tetrachloride in analytical and laboratory applications is being recommended by the Technology and Economic Assessment Panel for a global exemption which will not specify the quantity granted to each Party. The TEAP describes the many analytical and laboratory procedures for which small quantities of controlled substances are now used and for which applications were received, such as: equipment calibration; extraction solvents, diluents, or carriers for specific chemical analyses; inducing chemical-specific health effects for biochemical research; and other critical purposes in research and development where substitutes are not readily available or where standards set by national and international agencies require specific use of a controlled substance. The TEAP recommendation for a global exemption pertains only to 1996, 1997 and 1998 and refers to the manufacture of CFCs, methyl chloroform and carbon tetrachloride of very high purities to be packaged in small containers. Additional detailed information regarding the purity of the substances and the size of the containers being recommended by the TEAP is contained in Appendix G to subpart A. In anticipation of the Parties adopting this recommendation of the Technology and Economic Assessment Panel, EPA is proposing that a specific quantity of essential-use allowances for laboratory and analytical use not be designated.

In anticipation of a Decision by the Parties at the October 1994 meeting that does not specify the quantity of essential use allowances permitted for analytical and laboratory application, but a global essential-use exemption, EPA is proposing that producers or importers of the controlled substance require that laboratories certify they are purchasing the designated essential-use controlled substances only for laboratory or analytical uses, and that the substance will not be resold (see Recordkeeping and Reporting in Section C.7.b.). Unlike the system for the allocation of essential-use allowances for metered dose inhalers and space shuttle solvents, there will not be specific recipients of analytical/laboratory essential-use allowances. A person who claims the essential need for an analytical or laboratory application of a substance that has been phased out will be permitted to purchase the requested quantity as long as a certificate is provided to the importer or producer of the substance. The certificates will allow EPA to monitor the quantities of phased-out controlled substances that are used in analytical or laboratory applications domestically. EPA reserves the right to amend these procedures in the future based on information collected through the certificates and changes made by the Protocol.

In the case of the allowances for specific essential uses, EPA proposes that the recipient of essential-use allowances confer to a producer or importer the right to produce or import a specific quantity of the specific controlled substance. The company conferring the essential-use allowances must, as in the case of laboratories, certify to the producer or importer that the controlled substance will only be used for the specified essential use. The producer or importer will report to EPA quarterly the quantity produced for essential uses, submitting the certification from the holder of the essential-use allowance.

Due to the specific nominations of specific substances for specific uses, EPA is proposing that inter-pollutant transfers of essential-use allowances not be permitted. The application process described above in which U.S. companies petitioned the Parties to the Protocol through EPA for an essential-use exemption for a specific quantity of a specific substance for a given year indicated that the substance is essential for the specific application because no practicable alternative chemical exists. EPA reviewed these applications and made recommendations to the TEAP, which in turn reviewed the claims that the specific substance is essential for the application and recommended an exemption be given in those cases where experts felt no substitute exists. For the same reason, EPA proposes that inter-company transfers of essential-use allowances not be permitted because allowances will be allocated based on a company's application to the Parties through EPA for a specific quantity of a controlled substance for a specific use. As a result, EPA is also proposing that inter-Party trades not be permitted since these would be trades between companies internationally and the allocations being recommended by the TEAP to the Parties for the October 1994 meeting are country-specific.

B. Imports of Used Controlled Substances

In recognition of the critical role that previously used materials would play in ensuring a smooth transition to ozone-friendly substances, the Parties to the Montreal Protocol decided to encourage their expanded use. Specifically, in Decision IV/24 (Copenhagen, 1992), the Parties decided "not to take into account, for calculating consumption, the import and export of recycled and used controlled substances." EPA implemented this decision domestically in the December 10, 1993 phaseout rule (December 10, 1993; 58 FR 65018). Accordingly, EPA rules now allow importation of previously used or recycled controlled substances without allowances (§ 82.4(a) and (b)).

Although the December rule allows importation of used or recycled controlled substances, EPA is now investigating several cases of potential fraud in which the importer claimed that the substance was used or recycled when in fact, the Agency believes the substance was virgin or "off-spec" virgin (a newly manufactured substance that does not meet industry specifications for quality). Several other countries are investigating importation of controlled substances that were believed to be fraudulently labelled as used or recycled. Due to the difficulty of determining whether a substance is used or recycled, the Parties to the Montreal Protocol are very likely to consider a clarification of Decision IV/24 during the 1994 meeting. In an effort to facilitate final adoption of a rule that is consistent with the Protocol Parties' action, EPA is today proposing alternative methods for ensuring that materials brought into the country under the used and recycled allowance exemption are in fact used or recycled.

Additionally, EPA is today proposing that the current definition of used and recycled controlled substances be changed to include only the term "used" since EPA believes recycled and reclaimed substances fall under the current definition. In this manner, a controlled substance is defined as used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed. The proposed change simplifies the references to used substances without confusion regarding their subsequent treatment.

1. Information Requirements

One method for ensuring that a substance claimed to be used is in fact used is to require that the importer have proof of the origin of the substance prior to import. Naming the previous use of the substance offers opportunities for verification, whether through chemical analysis or through knowledge of a country's infrastructure. Therefore, EPA is considering incorporating some or all of the following information requirements:

—the name and address of the firm that recovered the chemical,
—the type of equipment from which the substance was recovered,
—the type of machine used to recover and/or recycle the material,
—the name of the facility and/or the name of the equipment employed to reclaim a previously used substance, or
—a chain of ownership of the substance from recovery to final import,
—a certification from the foreign seller that the substance is previously used,
—a chemical test of used imports where the quantity of the import exceeds some specified weight (e.g., 10,000 pounds).

EPA is aware that the importer may not always know if the imported substance was in fact previously used. In the absence of information requirements such as those noted above, the importer might be forced to rely solely on the statements of exporters from other countries—individuals about whom the importer may know little or nothing. The types of information noted above are designed to provide an opportunity for independent verification of the nature of the substance being imported (both from the U.S., and by the exporting country government).

As an alternative, or in addition to requiring import information such as that noted above, EPA proposes that it be able to request post-import information designed to ensure that the product is treated in a manner consistent with the claimed import status. Importers of used material that was not reclaimed may be asked to provide information on the facilities that they will use for reclaiming the used substances once imported. Information that EPA may require could include, where applicable:

—the name of the reclamation facility that will clean a used or a recycled substance to the specified ARI–700 Standard,
—information demonstrating that such cleaning will take place, or
—the bills of sale from the exporter to the actual purchaser of the substance (not necessarily the importer).

EPA requests comment on the above-noted list of potential information requirements, and requests comment on alternative information requirements that can reasonably be expected to result in an accurate determination of whether the substance being imported is in fact used.

2. Certification by the Country of Export

In future meetings, the Parties to the Protocol may decide to require the government of the country of origin of a material to certify its status as used prior to export. While this might obviate the need for some of the information listed in paragraph B.1. above, it would also require EPA to establish a program to certify any U.S. exports of used controlled substances. EPA already has a limited certification program for certain reclamation facilities. Under this program, reclamation facilities must be able to ensure that previously used substances will be reclaimed to a level of purity called for by the ARI–700 Standard. With regard to exports of used substances, with such Protocol changes, U.S. exporters could be required to certify to EPA that the "used" substance that it wishes to export was indeed taken from a use system. The exporter could also be required to keep records on selected items under paragraph B.1. above, to facilitate future verification. EPA requests comments on this approach to certify that the used and recycled class I substances being exported are being recovered from use systems.

3. Creation of a Permit Program for the Importation of Used Materials

EPA is considering the use of a permit system for the importation of used controlled substances. In addition to the measures discussed in paragraphs B.1. and B.2. above, EPA believes a permit system may deter fraudulent import of mislabelled controlled substances, and may provide greater control over the entry of used controlled substances into United States jurisdiction. The European Union requires importers to have permits to control the import of mislabelled ozone-depleting substances that are used. EPA believes that adoption of a similar system of permits for the importation of used controlled substances may increase the

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effectiveness of enforcement actions against the illegal importation of used substances into the U.S. EPA seeks comments on the potential effectiveness of a permit system in controlling the import of mislabelled used controlled substances, in general, and the specific permit systems described below. Under all options being considered, an importer would not be able to import until a permit was granted.

Currently, EPA receives a monthly list of importers of controlled substances from U.S. Customs. With a permit system, EPA would collect information from importers of used controlled substances and could match persons on the monthly U.S. Customs list with the list of persons who have permits to import used controlled substances. A person appearing on the U.S. Customs list who does not have a permit would be in potential violation of the regulation. A permit system would also enable compliance and enforcement staff to link suspicious imports by permitted importer to a specific person, i.e., the name and address of the company. Importers would also be aware that EPA held information on each import, providing a disincentive for fraudulent activity.

One option EPA is considering would require individuals to obtain a permit from EPA prior to each proposed import of a used controlled substance. EPA would require the person to submit an application for a permit 15 days before the import is due to enter U.S. jurisdiction. EPA would then have 5 days in which to grant the permit. If EPA does not act within 5 days, the permit would be granted automatically. EPA would review the information to determine if the information is sufficient and verify the accuracy of the claims. If the application is denied, the person may appeal within 5 days. EPA would then have 5 days in which to review the appeal and deny or grant the permit. If EPA does not make a determination on the appeal within 5 days, the permit would be granted automatically.

The application for an import permit for a particular shipment of used controlled substances would need to include the name and address of the importer, their importer identification number, and the quantity of controlled substance that the person intends to import. In addition, the individual would be required to furnish information such as that outlined under paragraph B.1., "Information Requirements," that ensures the substance being imported is in fact "used." EPA is requesting comment on a list of information requirements in paragraph B.1. to identify those which might best verify that a controlled substance is in fact "used." In addition, importers of used controlled substances may be asked to provide information on the reclamation facility they will use once the substance is imported, in order to bring the contaminated material to chemical and physical specifications for sale in the United States. EPA is considering this option because it would provide detailed, timely information on each shipment and allow more accurate compliance determinations. However, EPA is seeking comments on the potential constraints on trade that a shipment by shipment permitting system might impose.

Another option EPA is considering would require all importers of used controlled substances to apply each year for a permit. Such a permit application would need to be submitted to EPA between November 1 and November 15 in the year prior to the control period for which it would be applicable. The permit application would include the person's name and address, their importer identification number, and the intended quantity of used controlled substance that the person estimates will be imported during the control period. The estimates would not be binding, but would provide EPA with information on the total potential import of used controlled substances for the U.S. for that year. EPA would need to make a determination within 30 days of the receipt of an application. If the application is denied due to insufficient information, the person would have 5 days in which to appeal the decision. EPA would then have an additional 5 days in which to deny or grant the permit. If EPA did not act in the 5 days, the permit would be granted automatically. A person wishing to import used controlled substances who did not apply for a permit during the designated time before the control period, may submit an application at any time during the year. However, EPA would maintain the right to review the application within 60 days of its receipt. A 60-day review of the application is justified by the fact that the person is applying outside of the designated time for processing permits. Any person receiving a permit outside of the designated time period for application would be required to apply again for the following control period, during the designated period.

The importers granted permits for a year would be asked to furnish information upon the import of each shipment of used controlled substance. EPA is requesting comment on a list of information requirements in paragraph B.1. to determine those that best verify that an imported controlled substance is used. Such information would become the reporting requirements for each particular shipment for individuals holding a permit to import used controlled substances.

The yearly permit system described may be easier to implement and comply with than a permit system for each imported shipment of used controlled substance. A permit system for each shipment, however, could provide more detailed information and potential control over each particular import of used substances. The Agency seeks comments on the options discussed above and also solicits suggestions on other approaches for permit requirements that are not burdensome but adequately ensure that imported used controlled substances are in fact "used."

C. Adjustments and Clarifications of the Allowance Program to Become Effective January 1, 1995

This section describes proposed changes to the current regulation in an effort to address issues that have arisen since the December 10, 1993 rule. The proposed clarifications in this section are made to increase the efficiency of the requirements and reduce the administrative burden for affected individuals and the Agency. The following paragraphs propose changes to the current rule that would go into effect January 1, 1995, for the last control period before the phaseout begins on January 1, 1996.

1. Changes in Requirements for Export to Article 5 Countries

In accordance with the Montreal Protocol, limited production of controlled substances for export to Article 5 countries may continue after the phaseout. Specifically, Article 2 of the Protocol allows Parties to produce beyond the January 1, 1996 phaseout to meet the basic domestic needs of Article 5 countries. Article 5 countries are defined by the Parties as developing countries "whose annual calculated level of consumption of class I, Group I controlled substances is less than 0.3 kilograms per capita." Article 5 countries are listed in Appendix E to Subpart A.

Under the current Allowance Program, a company must have production and consumption allowances before producing a controlled substance for export to an Article 5 country. Companies with a baseline allocation of consumption and production allowances for specific

controlled substances currently are given an allocation of potential production allowances amounting to ten percent of their baseline production allowances until January 1, 2000, and fifteen percent of baseline production allowances from January 1, 2000, until January 1, 2011 based on phaseout dates required by the Clean Air Act (see discussion below regarding proposed changes in percentage allocations, based on accelerated phaseout dates). These companies may request the conversion of these potential production allowances to production allowances after exporting a controlled substance to an Article 5 country.

Effective January 1, 1995, EPA proposes changing the name of potential production allowances to Article 5 allowances. In today's rule, EPA also proposes to eliminate the process for converting potential production allowances to production allowances beginning January 1, 1995. This proposed change would eliminate the current process where companies expend production and consumption allowances up-front to produce a controlled substance for export to an Article 5 country and, after the export, request the conversion of potential production allowances to production allowances. The changes are proposed to anticipate the elimination of production allowances for class I controlled substances (except methyl bromide) after January 1, 1996, and to ease the administrative burdens created by the current process.

EPA proposes that beginning January 1, 1995, the Agency assign Article 5 allowances to companies that have an allocated baseline of production allowances.[9] Under the proposed system, a company would notify the Agency at the end of the quarter in which they exported to Article 5 countries. EPA would then deduct the amount of controlled substance exported to Article 5 countries from the balance of Article 5 allowances held by the company, rather than require an application to convert potential production allowances to production allowances.

The Agency is also proposing to correct the date from which, and until which, companies may produce 15 percent of baseline allowances for export to Article 5 countries. CAA section 604(e)(2)(C) permits production for developing countries to exceed baseline allowances by up to 15 percent beginning January 1, 2000, and to continue until January 1, 2010 (2012 in the case of methyl chloroform). However, the Protocol permits production for export to Article 5 countries at 15 percent of baseline allowances beginning with the phaseout date (January 1, 1994, for halons, and January 1, 1996, for CFCs, methyl chloroform and carbon tetrachloride) and continuing for ten years after the Protocol phaseout (until 2003 for halons and until 2006 for CFCs, methyl chloroform and carbon tetrachloride). Since the terms of the Protocol are more stringent than those of the CAA, EPA proposes to permit production of class I substances for export to Article 5 countries to continue until 2006 (2003 for halons).

At the 1992 London meetings, the Parties agreed that Parties may produce fifteen percent of baseline production allowances of all class I controlled substances (except methyl bromide and HBFCs) to meet the basic domestic needs of Article 5 countries starting from the phaseout date (January 1, 1994, for halons, and January 1, 1996, for CFCs, methyl chloroform and carbon tetrachloride). CAA section 604(e)(2) authorizes production of a class I substance at the production percentage specified for a given year (see phaseout schedule in Table I of section A.2. Post-Phaseout Requirements for Essential-Use Production), plus an amount equal to 10 percent of the baseline production allowances for export to developing countries. In the year in which the CAA phases out production of class I controlled substances, section 604(e)(2)(B) authorizes production of a class I controlled substance for export to developing countries up to 15 percent of baseline allowances. Under the CAA, production of listed class I controlled substances terminates on January 1, 2000, except for methyl bromide on January 1, 2001, and methyl chloroform on January 1, 2002.

CAA section 604(e)(2) permits production based on limits imposed under section 604(a) plus 10 percent of the baseline allowance. Thus, in the example cited above for 1996, the CAA authorizes 40 percent of baseline production for CFC–12 as listed in Table I in this preamble, plus an additional 10 percent for export to Article 5 countries, for a total production of 50 percent of total baseline production for that year. Under today's proposal, because the Protocol phases out production of CFCs in 1996, up to 50 percent of baseline could be produced through a combination of destruction credits, transformation credits, essential use allowances and Article 5 allowances. A person's total production in 1996 could not exceed 50 percent of baseline allowances. Of this total production, production for export to Article 5 countries could not exceed 15 percent of baseline allowances as authorized under the Protocol. In addition, any amount of production in excess of 40 percent of baseline allowances would have to be for export to Article 5 countries. This same scenario would pertain to the production of halons for export to Article 5 countries from 1994. EPA invites comment on this interpretation.

In proposing today's changes to the procedures for Article 5 allowances, EPA considered the following changes to the provisions for transfers and conversions in § 82.12. Inter-pollutant transfers of Article 5 allowances, as currently defined in § 82.12, will continue to be permitted within the Groups of class I substances listed in Appendix A and F of Subpart A. Inter-pollutant transfers of Article 5 allowances will continue to require a one percent offset, as required by section 607 of the CAA and stipulated in the current regulation.

The Agency is also proposing that inter-company transfers of Article 5 allowances be permitted as currently defined in § 82.12 and inter-Party trades of Article 5 allowances be permitted as currently described in § 82.9. However, the requirement that the controlled substance in an inter-Party trade return to the country from whom the allowances were traded will not apply in the case of Article 5 allowances as stipulated in § 82.9(a)(b)(1)(vi). As an example, if one Party to the Protocol wants to trade Article 5 allowances to another Party to achieve improved economies of scale, the controlled substance produced with the allowances would not need to be returned to the Party from whom the allowances were traded; instead, the substance could be sold directly to an Article 5 country. The Agency proposes maintaining the requirement that the contract contain the statement that the controlled substance exported to an Article 5 country will only be used to meet basic domestic needs, as defined by the Montreal Protocol, and will not be reshipped. In addition, EPA understands that the Parties to the Protocol are considering, for future discussion, that reports be sent from the exporter to Article 5 countries indicating that they should expect to receive a shipment of a specific quantity of controlled substance. The Parties may discuss requirements that the exporting company send a copy of the sales contract for an export to the head of the Montreal Protocol delegation of the

[9] Under a separate **Federal Register** notice, EPA is allocating Article 5 allowances for production of methyl bromide (class I, Group VI) to persons with baseline production allowances.

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Article 5 country or to the stratospheric ozone unit in the Article 5 country.

EPA seeks comments on the proposed changes to the system for controlling and monitoring exports of controlled substances to Article 5 countries.

2. Administrative Changes to the Consumption Allowance Requirements for Exports

The current regulation requires that production of controlled substances for export to Parties meet the requirements for both consumption and production allowances. The current rule requires producers to expend both production and consumption allowances to produce class I controlled substances. If the controlled substance is then exported to a Party, the producer (or exporter) may request that EPA "refund" consumption allowances equal to the amount exported.

EPA considered not proposing any changes to the administrative procedures because only one year remains before the phaseout of class I controlled substances begins on January 1, 1996. However, EPA recognizes that the administrative process of expending consumption allowances to produce class I controlled substances for export, with the subsequent request to have the consumption allowances refunded for these exported substances, is cumbersome for the producer, especially at this point in the schedule of the phaseout. In the last control period before the phaseout (from January 1, 1995 to January 1, 1996), producers are reducing their production to a fraction of the quantity they produced in previous years (see schedule for phaseout in § 82.8).

EPA believes United States companies should be able to respond in a timely manner to requests for controlled substances. If United States companies are not able to respond to requests for controlled substances in a timely manner due to the administrative procedures created by the current rule, these business opportunities will be lost to foreign competitors.

According to reports from producers, the time lag between the expenditure of consumption allowances during production and the receipt of the refunded consumption allowances for an export can often mean missing the opportunity to fulfill a request for a controlled substance. As a result, the Agency is proposing to reduce the time taken to refund consumption allowances for an exported controlled substance.

By changing the reporting requirements so companies report earlier to the Agency, EPA proposes to reduce the time taken to refund the consumption allowances expended in the production of controlled substances that are exported. This proposal would permit a U.S. company to report the export of a controlled substance to a Party at the time the export is initiated, rather than requiring the producer to submit the completed bill of lading and the invoice with the request for additional refunded consumption allowances. This change in the reporting procedures would allow the company to submit a preliminary report of export earlier. Therefore, EPA would be able to authorize the refund of consumption allowances earlier, contingent upon verification of the export when the company submitted the bill of lading and invoice. Today's proposal would permit companies to expend the contingent consumption allowances to meet their production or importation needs in a more timely manner. The contingent authorization of consumption allowances will accelerate the time in which companies receive the allowances, allowing them to meet requests for controlled substances in a timely manner. Thus, companies will be less constrained by the time lag caused by current administrative requirements. However, in the event that documentation submitted by the company does not support the export, EPA will consider that the granting of the consumption allowances never occurred, potentially putting the company in violation of the requirements.

EPA also considered another option in making today's proposal. The option considered would exempt the production of class I controlled substances from the consumption allowance requirements, if the substance is exported to Parties during the one remaining control period before the phaseout (from January 1, 1995 to January 1, 1996). This option would include an exemption for methyl bromide from the consumption allowance requirements for exports beginning January 1, 1995, and extending until January 1, 2001. Producers would be allowed to produce class I controlled substances for export to a Party with only the expenditure of production allowances.

Under the second option described above, exports would be exempt from the requirements to expend consumption allowances. If the producer is certain that a person purchasing the controlled substance in the United States would export to a Party, there would be no requirement to expend consumption allowances in the production of that substance under this option. The exporter would certify to the producer, either in the sales agreement or in a letter, that the controlled substance would be exported. When the producer has no guarantee that the substance would, or would not, be exported to a Party, they would expend both production and consumption allowances in producing the controlled substance.

Under the current regulation, a person in the United States may receive both production and consumption allowances from a Party to the Protocol in an inter-Party trade (under the Protocol this is called industrial rationalization). The U.S. company that receives the allowances from the other Party expends the production and consumption allowances to produce a controlled substance. The controlled substance produced with the traded allowances is then exported to the Party from whom the allowances were traded. The U.S. company expends consumption allowances in the production of the controlled substance for an inter-Party trade and then asks EPA for a "refund" of these consumption allowances because the controlled substance was exported.

Due to the redundant cycling of consumption allowances in inter-Party trades to the United States described above, EPA is also considering the option that a person *not* receive additional consumption allowances through inter-Party trades for the remaining control period from January 1, 1995, to January 1, 1996. Under this option, consumption allowances would not be expended in the production of controlled substances as part of an inter-Party trade. The option of eliminating consumption allowances for inter-Party trades to the United States for methyl bromide would begin January 1, 1995, and extend until January 1, 2001. EPA seeks comments on this considered option to alleviate administrative requirements for consumption allowances for the export of controlled substances to Parties to the Protocol.

Today's proposal is to receive a preliminary export report from U.S. companies at the time they initiate an export and authorize a contingent refund of consumption allowances with verification conducted later when the company submits the bill of lading and invoice for the export. However, the Agency considered two other options for today's proposed rulemaking: (1) to maintain the status quo requirements and reporting procedures in the current regulation for the remaining control period from January 1, 1995 to January 1, 1996, (2) to eliminate the requirement that consumption allowances be expended if the controlled substance is produced for export to a Party to the Protocol. EPA seeks comments on today's proposal and the other options considered for controlled substances exported to Parties of the Protocol.

3. Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed

EPA is proposing that a person who produces a controlled substance for exportation to a Party to the Protocol for transformation or destruction may request from the Agency the refund of the production allowances expended in the production of the substance. The proposal pertains to the production of class I controlled substances for the control period beginning January 1, 1995 and ending January 1, 1996, except for methyl bromide. For methyl bromide, the proposed refund of expended production allowances for quantities exported to Parties which are certified to be for transformation or destruction would begin January 1, 1995 and extend until January 1, 2001. As with the procedures for refunding consumption allowances, a person in the U.S. producing or purchasing a class I controlled substance may, upon export to a Party for subsequent transformation or destruction, request from EPA a "refund" of production allowances with a certification that the production allowances were expended in the production of the substance. To ensure that the controlled substance is in fact transformed or destroyed by the recipient in a Party country, the Agency is proposing exporters be required to include in the sales contract a certification of the future transformation or destruction.

In parallel with the administrative changes proposed in the previous section for consumption allowances, the Agency proposes accelerating the procedures for requesting production allowances for the export of substances that will be transformed or destroyed. This proposal would permit a U.S. company to report the export of a controlled substance for transformation or destruction at the time the export is initiated, rather than requiring a completed bill of lading and invoice with a certification in order to grant additional production allowances. EPA would authorize the refund of production allowances contingent upon verification of the export for transformation or destruction by the bill of lading and invoice and the certification of transformation or destruction. The company could expend the contingent production allowances to meet their production or importation needs in a timely manner. However, in the event that documentation submitted by the company does not support the export for transformation or destruction, EPA will consider that the granting of the production allowances never occurred, which may mean the company is in violation if they do not have sufficient production allowances for the quantity of controlled substances produced.

In making today's proposal, EPA also considered eliminating the expenditure of production allowances for class I controlled substances to be exported to Parties of the Protocol for transformation or destruction. Under this option, the production of all class I controlled substances explicitly for transformation or destruction in the U.S. or in a Party after January 1, 1995, would not require the producer to expend production allowances. The producer would need a certification of intent to transform or verification of destruction. To ensure that the controlled substance is transformed or destroyed by the recipient in a Party country, the Agency would require the exporter to include a certification of future transformation or destruction in the sales contract.

EPA seeks comments on today's proposal to allow a person to request production allowances for the export of class I controlled substances to Parties for transformation or destruction.

4. Treatment of Controlled Substances Remaining in Emptied Containers, i.e. "Heels"

Heels are the amount of a substance remaining in a vessel or container after the majority is off-loaded or discharged. For example, when a ship returns from transporting a controlled substance, the container that held the controlled substance often retains a residue of the substance. This is known as the heel. Heels can be as much as ten percent of the volume of a given container. A ship returning with a heel represents a significant volume of controlled substance returning to the United States.

Heels are included in the current definition of bulk controlled substance in the current regulation. Therefore, the current interpretation of a bulk controlled substance requires ships returning with a heel to the United States to expend consumption allowances to import that substance.

EPA proposes amending the current consumption allowance requirements to exempt heels, effective January 1, 1995. The amended definition will allow vessels with heels to return to the United States if the company certifies that certain conditions are met. EPA proposes that heels be exempted from the consumption allowance requirements if the company bringing the heel into the United States certifies that the residual amount will remain in the container and be included in a future shipment, or recovered and banked for future recycling, reclamation, transformation, destruction or non-emissive use. The industry rule-of-thumb is that a heel is up to ten percent of the volume of the container. Therefore, EPA proposes that containers returning to the United States with more than ten percent of their volume filled with controlled substance, and labelled as a heel, be required to expend consumption allowances to import the substance until January 1, 1996. After January 1, 1996, a heel that is greater than ten percent of the volume of the container would require the use of destruction or transformation credits for the importation for the amount in excess of ten percent.

The Agency is proposing that persons who bring heels back to the United States report annually their returns of heels. The Agency will review this information to determine if the returns of heels is cause for concern due to volume and frequency of occurrence. Comments are requested on this issue of exempting heels from the requirements to expend consumption allowances to import.

5. Clarification of the Definition of Transhipment

Under the current regulation a person who transships a controlled substance from one foreign country through the United States to another foreign destination does not need allowances.

In the current regulation, transhipments of controlled substances are excluded from the limits and requirements for allowances. The current regulation excludes transhipments from the allowance requirements consistent with the Decision of the Parties to the Protocol. However, EPA wishes to further elaborate on the definition of transhipment.

The request to clarify the definition of transhipment was made by a company who ships controlled substances through United States ports. The company brings controlled substances from other countries to United States ports where the contents of a larger vessel are subdivided into smaller vessels for shipment to other countries. The question arose whether this constituted repackaging and therefore was considered an import and thus subject to the requirements of the

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regulation. Although the language of the regulation does not preclude repackaging, the preamble states that transhipments are shipments of bulk chemicals that are "not repackaged within the United States." Therefore, the transfer of a controlled substance from one ship to another while in a U.S. port could possibly be interpreted to constitute repackaging.

In today's proposal, EPA further clarifies the definition of transhipment to allow for the transfer of controlled substances between ships in United States ports as long as the substance does not enter into United States jurisdiction. In other words, repackaging of controlled substances that are being transhipped through the United States, and that do not enter into United States jurisdiction, do not require the expenditure of allowances. Today's proposal is intended to clarify that transhipments do not require consumption allowances to be expended, whether or not the controlled substance is repackaged. Today's clarification does not change the current rule; and transhipments are still excluded from the requirements for production and consumption allowances.

EPA wishes to further clarify the definition of transhipment to allow for shipments into and out of United States foreign trade zones and subzones without requiring the expenditure of production or consumption allowances. Controlled substances that enter United States foreign trade zones and subzones are not considered to be entering into United States jurisdiction. EPA seeks comments on the proposed clarification of the definition of transhipment.

6. Provision of an Account Reconciliation Period

EPA recognizes that as the phaseout enters the final year (1995) for production and consumption of class I controlled substances (except methyl bromide), the administrative task increases for a company to ensure that it has a balance of allowances at the end of the year. This is particularly difficult given the need to meet requirements for each controlled substance and to reconcile transformations, destructions, exports, imports and production. Several companies that produce, import, export, transform or destroy controlled substances have requested a period in which to reconcile all previous transactions in a year.

EPA is proposing an administrative change to ease the end-of-year burden of reconciling the balance of allowances without changing the level of environmental protection provided by the regulation. To ease this burden, EPA is proposing a 45-day period of reconciliation beyond the end of the control period in which persons may make inter-pollutant transfers of class I controlled substances as defined in the current regulation. Inter-pollutant transfers of controlled substances can only be made between controlled substances in the same Group as listed in Appendix A and F of Subpart A. In addition, the inter-pollutant transfer must be authorized by EPA and will include a one percent offset. The Agency is proposing that inter-company trades not be allowed past the end of the control period (December 31st of 1995), and every subsequent control period for methyl bromide. The proposal allows for a potential net environmental benefit and greater flexibility for end-of-control-period compliance.

The proposed reconciliation period is being limited only to inter-pollutant transfers, in part, to provide a margin of latitude for companies in the final year of the phaseout when balancing production and consumption allowances at the end of year is important before closing the books. For many companies, the final year will be particularly difficult because there is less margin of error afforded in the amount of allowances provided for imports and production. Inter-pollutant transfers at the end of the control period are intra-company adjustments to the balance of allowances through paper accounting rather than an extension of the control period for trades, exports or transfers between companies. EPA seeks comments on the proposed period for the reconciliation of these specific allowances at the end of the control period.

7. Additional Clarifications

a. *Unintended by-products of research and development.* EPA proposes adding the production of unintended by-products of research and development applications to the list of inadvertent or coincidental creation of insignificant quantities of listed substances in Appendix A or Appendix B in the definition of "controlled substance." The Agency is proposing that these inadvertent or coincidental creations of insignificant quantities of unintended by-products during research and development applications not be considered controlled substances. The Agency believes that an unintended by-product a substance generated during research and development can be considered an inadvertent creation of a controlled substance. In addition, EPA received information from various companies that the amounts generated during research and development applications are generally insignificant quantities. The Agency reserves the right to require a person to destroy the unintended by-products of research and development applications if they are determined to be no longer insignificant.

b. *Export of increased production that is received through a trade from a party.* EPA proposes removing the requirements under § 82.9(b)(vi) and § 82.10(c)(3) that compel increased production to return to the Party from whom a U.S. producer receives additional production or consumption allowances through an international trade. As a result of this proposal, U.S. companies could receive allowances through an international trade to produce for either the demand within the country from whom the allowances were traded or for the demand in the U.S. domestic market. The proposal would permit greater international market flexibility without increasing global production of ozone-depleting substances. EPA believes that U.S. producers will need greater flexibility to meet domestic demand as they enter the final year before the production of class I controlled substances is phased out (January 1, 1996). Sections 82.9 and 82.10 of the current regulation permit international trades in accordance with the Protocol's definition of "international rationalization" as discussed in the **Federal Register** proposed rule published on December 14, 1987. Today's proposal would further support international rationalization by increasing opportunities for achieving "economic efficiencies" globally. Achieving these economic efficiencies is particularly important as all Parties continue to reduce production prior to the phaseout in 1996. EPA seeks comments on the proposed amendment that would allow international trades from Parties to meet market demand for class I controlled substances within the United States.

8. Clarification of Reporting and Recordkeeping Requirements

EPA is proposing amendments to the current recordkeeping and reporting requirements to more effectively address issues that have arisen and are likely to arise as the phaseout date is near and for the period following the end of production of class I controlled substances in the United States. In addition, EPA proposes to amend reporting and recordkeeping requirements to reflect the proposed changes discussed earlier.

a. *Reporting and recordkeeping for transformation and destruction.* As with the earlier section describing transformation and destruction (Section A.1.), this section distinguishes between the different categories of recordkeeping and reporting requirements for producers, importers, transformers and destroyers.

EPA is proposing that the administrative changes to the recordkeeping and reporting requirements for transformation and destruction be effective January 1, 1995. The changes are made to reduce redundancy and clarify the responsibilities of companies that produce or import substances that are transformed or destroyed, as well as the responsibilities of transformers or destroyers controlled substances (see paragraph A.1. of this proposed rule). EPA is proposing changes to the recordkeeping and reporting requirements for importers to address issues of importation of used, recycled or reclaimed controlled substances. These proposed recordkeeping and reporting requirements for importers are described in greater detail in Section C.7.c., Recordkeeping and Reporting for Imports.

(i) Reporting and recordkeeping requirements for producers and importers of controlled substances that were produced or imported explicitly for transformation or destruction in the United States. Today's proposal does not change the recordkeeping and reporting requirements for persons who produce controlled substances that are explicitly for transformation or destruction within the United States. Although EPA is proposing changes to the recordkeeping and reporting requirements for importers to address issues of importation of used, recycled or reclaimed controlled substances (described in greater detail in Section C.7.c., Recordkeeping and Reporting for Imports), there are no changes to the requirements for importing controlled substances that are explicitly for transformation or destruction.

Under the current regulation, companies that produce or import controlled substances explicitly for destruction or transformation in the United States are required to maintain records and to report to EPA quarterly. The producers and importers must report quarterly the "amount of controlled substances sold or transferred during the quarter to a person for use in processes resulting in their transformation or destruction," and submit the IRS transformation certification or destruction verification. Producers and importers must also report quarterly on the quantity that they themselves transform or destroy in the quarter.

(ii) Reporting and recordkeeping requirements for producers and importers of controlled substances that were produced or imported for intended emissive uses but subsequently transformed or destroyed. Today's proposal does not change these requirements regarding controlled substances sold for intended emissive uses that are subsequently transformed or destroyed.

The current regulation requires producers and importers to report on controlled substances sold for emissive uses. However, the current rule does not require producers or importers to maintain records or report to the Agency on the subsequent transformation or destruction of controlled substances initially produced for emissive uses. Once the controlled substance is sold for an emissive use the producer or importer is no longer responsible for informing the Agency of its subsequent disposition, whether it be for emissive use, for transformation, or, for destruction.

(iii) Reporting and recordkeeping requirements for transformers and destroyers of controlled substances that were produced or imported explicitly for transformation or destruction. The Agency is not proposing changes to the recordkeeping and reporting requirements for those persons who transform or destroy controlled substances that were produced or imported explicitly for transformation or destruction. The transformers will continue to submit an IRS certification of intent to transform to the producer or importer and the destroyers will continue to submit a destruction verification to the producer or importer. Those transformers and destroyers who submit a certification or verification must continue to report annually to EPA as in the current regulation under § 82.13(m). The Agency verifies the transformation or destruction of controlled substances that were explicitly produced or imported for transformation or destruction through this annual reporting.

The current regulation requires all companies that destroy or transform controlled substances, regardless of whether or not they were produced or imported explicitly for transformation or destruction, to maintain records and to report to EPA the amounts of substances destroyed or transformed within 45-days of the end of the control period (annually). Facilities that transform or destroy controlled substances that were explicitly produced or imported for transformation or destruction must submit an IRS certificate of intent to transform or a destruction verification to the producer when the substance is sold or transferred. The producer reports to EPA quarterly the quantities sold or transferred for transformation or destruction with a copy of the IRS transformation certification or the destruction verification. EPA requires the information from both the producer/importer and the transformer/destroyer to crosscheck and verify the quantity of controlled substances claimed to be produced or imported without expended allowances explicitly because it was for transformation or destruction.

(iv) Reporting and recordkeeping requirements for transformers of controlled substances produced or imported for intended emissive uses. Under the current regulation, a person who transforms a controlled substance that was produced for intended emissive uses may request additional production allowances or consumption allowances from the Agency. The current regulation lists the information the Agency must receive to consider a request for additional production allowances in § 82.9(c) and for additional consumption allowances in § 82.10(b). A person may only request additional production allowances and consumption allowances for the transformation of class I controlled substances (except methyl bromide) that were produced for intended emissive uses during the remaining control period from January 1, 1995, to January 1, 1996. A person transforming methyl bromide that was produced for intended emissive uses may request additional production and/or consumption allowances until January 1, 2001.

EPA proposes waiving the annual reporting requirement for transformation facilities that receive controlled substances that were produced or imported for intended emissive uses, as long as the facility does not request from EPA additional production or consumption allowances before January 1, 1996, and does not request transformation credits after January 1, 1996. If a person transforms a controlled substance produced or imported for intended emissive use for which additional production or consumption allowances are requested from EPA during the control period from January 1, 1995, until January 1, 1996, or for which transformation credits are requested from the Agency after January 1, 1996, the transformer must report to the Agency the name and quantity of substance transformed at the end of the control period.

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The proposed recordkeeping and reporting requirements for a transformer who requests transformation credits (beginning after January 1, 1996) are similar to the current requirements for obtaining additional production allowances as listed under § 82.9(c). Effective January 1, 1996, a person who transforms a class I controlled substance (except methyl bromide) that was produced or imported for intended emissive use may submit specific information to EPA requesting transformation credits (see Section A.1.c., "The Post-Phaseout Procedures for Granting Destruction or Transformation Credits). The following information must be submitted to request transformation credits:

—The identity and address of the person requesting the credits;
—The name, quantity, and volume of controlled substance transformed;
—A copy of the invoice or receipt documenting the sale of the controlled substance to the person;
—The name of the use system from which the controlled substance was recovered;

(v) Reporting and recordkeeping requirements for destroyers of controlled substances produced or imported for intended emissive uses. Under the current regulation, all facilities that destroy controlled substances that were produced or imported for intended emissive uses are required to report the names and quantities of class I substances destroyed within 45-days of the end of the control period. In addition, these destroyers may request additional production allowances and/or consumption allowances from EPA under the current regulation in § 82.9(c) and § 82.10(b).

EPA proposes waiving the annual reporting requirement for destruction facilities that receive controlled substances that were produced or imported for intended emissive uses, as long as the facility does not request from EPA additional production or consumption allowances before January 1, 1996, and does not request destruction credits after January 1, 1996. However, if a person destroys a controlled substance produced or imported for intended emissive use for which additional production or consumption allowances are requested from EPA during the control period from January 1, 1995, until January 1, 1996, or for which destruction credits are requested from the Agency after January 1, 1996, the destroyer must report to the Agency the name and quantity of substances destroyed at the end of the control period.

The recordkeeping and reporting requirements for a destroyer who requests destruction credits (beginning after January 1, 1996) are similar to the information now required for additional production allowances as listed under § 82.9(c). Effective January 1, 1996, a person who destroys a class I controlled substance (except methyl bromide) that was produced or imported for intended emissive use may submit specific information to EPA requesting destruction credits (see Section A.1.c. for a description of the "The Post-Phaseout Procedures for Granting Destruction and Transformation Credits"). The information someone must submit to request destruction credits is:

—The identity and address of the person requesting the credits;
—The name, quantity, and volume of controlled substance destroyed;
—A copy of the invoice or receipt documenting the sale of the controlled substance to the person;
—The name of the use system from which the controlled substance was recovered;
—The efficiency of the destruction process.

(vi) Recordkeeping and reporting for exporters of controlled substances that are transformed or destroyed. The current regulation has no specific recordkeeping or reporting requirements for exporters of controlled substances that are transformed or destroyed. All exporters of controlled substances, regardless of whether the substance is exported for an intended emissive use, for transformation or for destruction, must submit the information listed under § 82.13(h) to the Agency annually.

Today's proposal includes procedures for refunding expended production allowances for controlled substances exported for transformation or destruction in the final control period. A person who requests additional production allowances for controlled substances exported for transformation or destruction must submit the same information required under the current rule for persons requesting additional consumption allowances in § 82.10(a):

—The identities and addresses of the exporter and the recipient of the exports;
—The exporter's Employer Identification Number;
—The names and telephone numbers of contact person for the exporter and recipient;
—The quantity and type of controlled substance exported;
—The source of the controlled substance and the date purchased;
—The date on which and port from which the controlled substances are exported from the United States or its territories;
—The country to which the controlled substances were exported;
—The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser for either transformation or destruction;
—The commodity code of the controlled substance exported.

In today's proposal, EPA wishes to accelerate the time when exporters of controlled substances to Parties can submit forms for the "refund" of consumption allowances, whether or not the substance is for transformation or destruction or for an emissive use. EPA is proposing that exporters submit the current "Request for Additional Consumption Allowances" form at the initiation of the export of a specific quantity of controlled substance to a Party rather than wait until a completed bill of lading and invoice are prepared. The proposed change accelerates the time taken to grant consumption allowances for exports. EPA proposes that the consumption allowances be granted for the quantity of controlled substance exported, with confirmation contingent upon receipt of the bill of lading and invoice. Granting of the consumption allowances will be confirmed upon review of the bill of lading and invoice. Such allowances may be used at the time granted, prior to confirmation. In the event, however, that EPA determines that the controlled substances are not exported for whatever reason, then EPA will consider that allowances were expended by the producer for the production of the controlled substance and the consumption allowances were never granted. Without the consumption allowances, the producer may have a negative balance, at which time the producer will be out of compliance.

b. *Reporting and recordkeeping for essential uses.* Today's proposal creates a new category of allowances called essential-use allowances in anticipation of the special exemptions that Parties to the Protocol will most likely approve for essential-use production after January 1, 1996.

In today's rule, EPA is proposing that the final allocation of essential-use allowances be published in the final rule based on the Decisions of the Parties at their meeting in October of 1994. Once the Parties have reached a final Decision in this first round of essential-uses designations, EPA will propose allocations of essential-use allowances that parallel the specific quantities of a controlled substance for the specific uses as nominated by specific U.S. entities to the Protocol.

EPA is proposing a system whereby deductions will be made from the control period allocations of essential-use allowances based on quarterly reports submitted by producers and the recipient of the essential-use allowances.

The producer or importer of controlled substances for essential uses must maintain, under today's proposal, the following records: (i) The letter conferring the essential-use allowances from the recipient of the allowances certifying that the controlled substance will be used only for the specified essential-use, and (ii) in the case of essential-use production for laboratory or analytical use, a certification from the laboratories that the quantity of the specific substance purchased will be used only for laboratory/analytical applications and will not be resold.

EPA is also proposing that the producers and importers of controlled substances for essential uses submit the following information to the Agency quarterly: (i) A list of the labs and essential-use allowance holders for whom specific controlled substances were produced or imported during the quarter, (ii) the name and quantity of the controlled substance produced or imported for each lab and essential-use allowance recipient.

To verify and crosscheck that essential-use allowances were conferred and that the controlled substance was delivered, EPA is proposing that the original recipients of essential-use allowances submit quarterly a list of the producers or importers to whom they transferred allowances and the quantity of the specific controlled substance that will be, or was, delivered. Those persons purchasing controlled substances under the global exemption for labs must provide the producer or importer with a detailed description of the analytical procedures requiring the substance with references to published instructions, standards, or specifications.

c. *Reporting and recordkeeping for importers.* EPA is proposing a clarification of the reporting and recordkeeping for importers to include the entry of virgin and "off-spec" virgin controlled substances under current requirements in order to forestall those mislabelled as used, recycled or reclaimed controlled substance (the issue raised in Section B. "Imports of Used or Recycled Controlled Substances," of this preamble). EPA is proposing that importers in general, including importers of used, recycled or reclaimed controlled substances, be required to maintain records on the items included in Section B. of this preamble that are included in the final rule. In addition, EPA is proposing that the current quarterly reports from importers differentiate between quantities of imported virgin substances and imported substances that are used, recycled or reclaimed.

EPA is also proposing that, at the point of entry into U.S. jurisdiction, importers of used refrigerant provide documentation (or verification) of the reclamation facility where the controlled substance will be sent before it is sold within the United States. In accordance with the regulation published in the **Federal Register** on May 14, 1993, (40 CFR Part 82) no class I or class II controlled substance may be sold or offered for sale for use as a refrigerant unless it has been reclaimed to the ARI–700 Standard (§ 82.154). Therefore, EPA is proposing that importers of used or recycled controlled substances (including halons) provide information regarding the facility at which the substance will be reclaimed. The proposal asks for information that should be readily available to the importer because it is required by 40 CFR Part 82. By asking the importer to name the point of reclamation, EPA hopes to deter the immediate sale of virgin or off-spec virgin controlled substances that are mislabelled as imported used or recycled substances.

To deter the import of virgin or off-spec virgin controlled substances that are mislabelled as reclaimed, EPA is proposing that importers identify, at the point of entry into U.S. jurisdiction, the name and address of the overseas reclamation facility to verify that the substance was indeed previously used and reclaimed. There are a limited number of reclamation facilities for controlled substances worldwide, and as a Party to the Protocol, the United States can identify those Parties capable of reclamation. Through the continued cooperation with U.S. Customs, EPA plans to develop coordinated procedures for reviewing import documents at the point of entry into U.S. Customs territory that will identify controlled substances suspected of being mislabelled virgin or off-spec virgin entering the U.S. as used, recycled or reclaimed.

The specific reporting requirements (in addition to any recordkeeping requirements that may be established under Section B. of this preamble) that EPA is proposing, which would accompany the bill of lading and the bill of sale for the import of used, recycled or reclaimed controlled substances, are:

(i) For imports of used or recycled controlled substance, the previous use of each substance, and the intended reclamation destination of the controlled substances in the United States, or

(ii) For imports of reclaimed controlled substances, the country of origin of the used controlled substance, and the foreign reclamation facility (reclamation equipment used) where the substance was reclaimed.

d. *Reporting and recordkeeping for article 5 exports.* The current regulation asks producers to report quarterly on the amount of potential production allowances that are converted to production allowances and the amount of unexpended potential production allowances. Today's proposal changes the name of potential production allowances to Article 5 allowances but does not change the reporting requirements. Instead of requiring the quarterly reporting of converted and unexpended potential production allowances, today's proposal requires the producer to indicate the amount of Article 5 allowances expended quarterly in production for export to Article 5 countries.

Today's proposed amendments to the recordkeeping and reporting requirements are made to anticipate the phaseout of class I controlled substances (except methyl bromide) in January 1, 1996. EPA proposes simplifying the quarterly reporting beginning January 1, 1996, so that producers indicate which of the production exceptions applies (i.e., essential-use allowances, Article 5 allowances, destruction credits, transformation credits, transformation or destruction) for a given quantity of controlled substance. EPA is proposing many of the changes to the requirements to address issues and concerns raised by industry regarding the maintenance of a transparent and openly competitive market in controlled substances during the transition to the phaseout. EPA requests comments on today's proposed amendments to the recordkeeping and reporting requirements.

III. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order.

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The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. That RFA was also updated as Appendix G of the Regulatory Impact Analysis for the regulations implementing the phaseout schedule of section 604 of the Clean Air Act Amendments of 1990. The Addendum to the Regulatory Impact Analysis was further updated in 1993 to examine the impact of the acceleration of the phaseout and the phaseout of HCFCs on small businesses. The analysis in the Addendum indicated that the actions were not expected to have a substantial impact on small entities. Today's proposed amendments to the current regulation do not significantly change the current requirements, and in many cases reduce reporting or recordkeeping burdens that might possibly impact small businesses. However, almost all businesses participating in the phaseout program for ozone-depleting substances are large companies. Therefore, today's proposed amendments are expected to have minimal if any impact on small entities.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this notice will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et. seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1432.15) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460 or by calling (202)–260–2740.

The information collection requirements for this proposed action has an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

Send comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, U.S. EPA, 401 M St., SW., (2316), Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7671–7671q.

2. Subpart A is revised to read as follows:

Subpart A—Production and Consumption Controls

Sec.

82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.
82.8 Grant and freeze of baseline production and consumption allowances for class II controlled substances. [Reserved]
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to Article 5 Parties.
82.12 Transfers.
82.13 Recordkeeping and reporting requirements.
Appendix A to Subpart A—Class I Controlled Substances
Appendix B to Subpart A—Class II Controlled Substances
Appendix C to Subpart A—Parties to the Montreal Protocol and Nations Complying with, but Not Parties to, the Protocol
Appendix D to Subpart A—Harmonized Tariff Schedule
Description of Products That May Contain Controlled Substances in Appendix A to Subpart A, Class I, Groups I and II
Appendix E to Subpart A—Article 5 Parties
Appendix F to Subpart A—Listing of Ozone Depleting Chemicals
Appendix G to Subpart A—UNEP Recommendations for Conditions Applied to Exemption for Laboratory and Analytical Uses
Appendix H to Subpart A—Clean Air Act Amendments of 1990
Phaseout Schedule for Production of Ozone Depleting Substances

Subpart A—Production and Consumption Controls

§ 82.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 603, 604, 605, 606, 607 and 616 of the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transhipments and used controlled substances) of certain ozone-depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone-depleting substances with non-Parties.

(b) This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports a controlled product.

§ 82.2 Effective date.

(a) The regulations under this subpart take effect January 1, 1995, unless otherwise noted herein.

(b) The regulations under this subpart that were effective prior to [date of publication of the final rule] continue to apply for purposes of enforcing the provisions that were applicable prior to January 1, 1995.

§ 82.3 Definitions.

As used in this subpart, the term:

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

Article 5 allowances means the allowances apportioned under § 82.9(a) of this subpart.

Baseline consumption allowances means the consumption allowances apportioned under § 82.6 of this subpart.

Baseline production allowances means the production allowances apportioned under § 82.5 of this subpart.

Calculated level means the weighted amount of a controlled substance determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion weight listed in Appendix A or Appendix B to this subpart.

Class I refers to the controlled substances listed in Appendix A to this subpart.

Class II refers to the controlled substances listed in Appendix B to this subpart.

Completely destroy means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

Complying with the Protocol, when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, means that the non-Party has been determined as complying with the Protocol, as indicated in Appendix C to this subpart, by a meeting of the Parties as noted in the records of the directorate of the United Nations Secretariat.

Consumption means the production plus imports minus exports of a controlled substance (other than transhipments, or used controlled substances).

Consumption allowances means the privileges granted by this subpart to produce and import class I controlled substances; however, consumption allowances may be used to produce class I controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances obtained under §§ 82.7 and 82.6 of this subpart and § 82.10 of this subpart, as may be modified under § 82.12 of this subpart (transfer of allowances).

Control period means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

Controlled product means a product that contains a controlled substance listed as a Class I, Group I or II substance in appendix A to this subpart. Controlled products include, but are not limited to, those products listed in appendix D to this subpart. Controlled products belong to one or more of the following six categories of products:

(1) Automobile and truck air conditioning units (whether incorporated in vehicles or not);

(2) Domestic and commercial refrigeration and air-conditioning/heat pump equipment (whether containing controlled substances as a refrigerant and/or in insulating material of the product), e.g. Refrigerators, Freezers, Dehumidifiers, Water coolers, Ice machines, Air-conditioning and heat pump units;

(3) Aerosol products, except medical aerosols;

(4) Portable fire extinguishers;

(5) Insulation boards, panels and pipe covers;

(6) Pre-polymers.

Controlled substance means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a "controlled substance." The inadvertent or coincidental creation of insignificant quantities of a listed substance in appendix A or appendix B to this subpart; during a chemical manufacturing process; resulting from unreacted feedstock; from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured; or as an unintended byproduct of research and development applications, is not deemed a controlled substance. Controlled substances are divided into two classes, Class I in appendix A to this subpart, and Class II listed in appendix B to this subpart. Class I substances are further divided into seven groups, Group I, Group II, Group III, Group IV, Group V, Group VI, and Group VII, as set forth in appendix A to this subpart.

Copenhagen Amendments means the Montreal Protocol on Substances That Deplete the Ozone Layer, as amended at the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in 1992.

Destruction means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;
(2) Reactor cracking;
(3) Gaseous/fume oxidation;
(4) Rotary kiln incineration; or
(5) Cement kiln.

Destruction Credits means those privileges that may be obtained under § 82.9 of this subpart to produce or import controlled substances.

Emissive Use means that use of a controlled substance that does not result in the transformation or destruction of the controlled substance as defined in this subpart.

Essential-Uses means those uses of controlled substances designated by the Parties to the Protocol to be necessary for the health and safety of, or critical for the functioning of, society; and for which there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health. Beginning January 1, 2000 (January 1, 2002 for methyl chloroform) the essential use designations for class I substances must be made in accordance with the provisions of the Clean Air Act Amendments of 1990.

Essential-Use Allowances means the privileges granted by § 82.4(o) of this subpart to produce class I substances, effective January 1, 1996 until January 1, 2000, as determined by allocation decisions made by the Parties to the

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Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

Export means the transport of virgin or used controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

Exporter means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

Facility means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

Foreign state means an entity which is recognized as a sovereign nation or country other than the United States of America (Taiwan is not considered a foreign state).

Foreign state not Party to or *Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendments, or of the Copenhagen Amendments, as specified.

Heel means the amount of a controlled substance that remains in a container after it is discharged or off-loaded (that is no more than ten percent of the volume of the container) and that the person owning or operating the container certifies will remain in the container and be included in a future shipment or recovered and banked for future recycling, reclamation, transformation, destruction or for non-emissive purposes.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing,

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin; and

(3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

Importer means any person who imports a controlled substance or a controlled product into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

London Amendments means the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

1987 Montreal Protocol means the Montreal Protocol, as originally adopted by the Parties in 1987.

Nations complying with, but not joining, the Protocol means any nation listed in appendix C, Annex 2, to this subpart.

Party means any foreign state that is listed in appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(h)(2) pursuant to the London Amendments, only those foreign states that are listed in appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties.

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

Plant means one or more facilities at the same location owned by or under common control of the same person.

Production means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) Amounts that are destroyed by the approved technologies; or

(4) Amounts that are spilled or vented unintentionally.

Production allowances means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances he obtains under § 82.7 and § 82.5 of this subpart and § 82.9 of this subpart, and as may be modified under § 82.12 of this subpart (transfer of allowances).

Transform means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

Transformation Credits means those privileges that may be obtained under § 82.9 of this subpart to produce or import controlled substances.

Transhipment means the continuous shipment of a controlled substance from a foreign state of origin through the United States, its territories, or foreign trade zones, including possible repackaging, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction.

Unexpended consumption allowances means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transhipments and used controlled substances) in that control period until that time.

Unexpended production allowances means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

Used controlled substances means controlled substances that have been recovered from their intended use systems.

§ 82.4 Prohibitions.

(a) Prior to January 1, 1996, for all Groups of class I controlled substances, except Group VI, and prior to January 1, 2001 for Group VI, no person may produce, at any time in any control period, any controlled substance (except that are transformed or destroyed) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(b) Effective January 1, 1996, no person may produce, at any time in any control period, any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substance (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances under § 82.4, amount of unexpended Article 5 allowances as allocated under § 82.9 or the amount of unexpended destruction or transformation credits as obtained under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(c) Effective January 1, 1996, no person's total production of a class I controlled substance (except Group VI) as allocated under § 82.4 for essential-use allowances, and as obtained under § 82.9 for destruction or transformation credits, may, at any time, in any control period until January 1, 2000, exceed the percent limitation of baseline production in appendix H of this subpart, as set forth in the Clean Air Act Amendments of 1990.

(d) In addition to total production permitted under § 82.4(c), effective January 1, 1996, for class I, Group I, Group III, Group IV and Group V controlled substances, and effective January 1, 1995, for class I, Group II, a person may, at any time, in any control period until January 1, 2000, produce 10 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. No person may, at any time, in any control period until January 1, 2000, produce class I, Group I, Group II, Group III, Group IV, and Group V controlled substances for export to Article 5 countries in excess of the Article 5 allowances allocated under § 82.9(a).

(e) Prior to January 1, 1996, for all Groups of class I controlled substances, except Group VI, and prior to January 1, 2001, for Group VI, no person may produce or (except for transhipments, heels, or for used controlled substances) import, at any time in any control period, any class I controlled substance (except for controlled substances that are transformed, or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments or used and recycled controlled substances) constitutes a separate violation of this subpart.

(f) Effective January 1, 1995, no person may import, at any time in any control period, a heel of any class I controlled substance that is greater than 10 percent of the volume of the container in excess of the amount of unexpended consumption allowances, unexpended destruction credits or unexpended transformation credits held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(g) Prior to January 1, 1996, for all Groups of class I controlled substances, except Group VI, and prior to January 1, 2001, for Group VI, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, only consumption allowances are required to import class I controlled substances with the exception of transhipments, heels and used controlled substances.

(h) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart, thus no person may:

(1) Import or export any quantity of a controlled substance listed in Class I, Group I or Group II, in appendix A to this subpart from or to any foreign state not listed as a Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (See appendix C, Annex 2 of this subpart);

(2) Import or export any quantity of a controlled substance listed in Class I, Group III, Group IV or Group V, in appendix A to this subpart, from or to any foreign state not Party to the London Amendments (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the London Amendments (as noted in appendix C, Annex 2, to this subpart); or

(3) Import a controlled product from any foreign state not Party to the 1987 Montreal Protocol (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Protocol (as noted in appendix C, Annex 2, to this subpart).

(i) Effective January 1, 2003, no person may produce HCFC–141b except in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (p) of this section.

(j) Effective January 1, 2003, no person may import HCFC–141b except for use in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (p) of this section.

(k) Effective January 1, 2010, no person may produce or consume (as defined under § 82.3 of this subpart) HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, for use in equipment manufactured prior to January 1, 2010, or for exceptions stated in paragraph (p) of this section in excess of baseline allowances allocated § 82.5(h) and § 82.6(h).

(l) Effective January 1, 2020, no person may produce or consume (as defined under § 82.3 of this subpart) HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction or for exceptions stated in paragraph (p) of this section.

(m) Effective January 1, 2015, no person may produce or consume (as under defined under § 82.3 of this subpart) class II substances not previously controlled, for any purpose other than for use in a process resulting in its transformation, use in a process resulting in their destruction, as a refrigerant in equipment manufactured before January 1, 2020, or for exceptions stated in paragraph (p) of this section, in excess of baseline production and consumption levels defined in § 82.5(h) and § 82.6(h).

(n) Effective January 1, 2030, no person may produce or consume class II substances, for any purpose other than for use in a process resulting in their

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transformation, use in a process resulting in their destruction, or for exceptions stated in paragraph (p) of this section.

(o) Effective January 1, 1996, essential-use allowances are apportioned to a person for the exempted production of specified class I (except class I, Group VI) controlled substances.

(1) Essential-uses for the production of controlled substances as agreed to by the Parties to the Protocol and subject to the periodic revision of the Parties are:

(i) Medical Dose Inhalers—aerosols.

(ii) Space Shuttle—solvents.

(iii) Laboratory and Analytical Applications (see Appendix G of this subpart).

(2) Persons in the following list are allocated essential-use allowances for a specific quantity of a specific class I controlled substances for a specific essential-use exemption:

(i) Metered Dose Inhalers—Aerosols.

ESSENTIAL USES RECOMMENDATION BY THE UNEP TECHNOLOGY AND ECONOMIC ASSESSMENT PANEL

Company	Year	Chemical	Quantity (metric tons)
Metered Dose Inhalers			
International Pharmaceutical & Aerosol Consortium	1996	CFC–11	749.8
		CFC–12	2353.2
		CFC–114	314.1
	1997	CFC–11	658.3
		CFC–12	2166.5
		CFC–114	311.4
Sterling Winthrop	1996	CFC–12	10.2
		CFC–114	29.6
	1997	CFC–12	10.5
		CFC–114	31.7
Space Shuttle Solvent			
NASA/Thiokol	1996	Methyl Chloroform	56.8
	1997	Methyl Chloroform	56.8
Laboratory and Analytical Applications			
Global Exemption	1996	CFCs, Methyl Chloroform, Carbon Tetrachloride.	No quantity specified.
	1997	Same	Same.

(p) The following exemptions apply to the production and consumption restrictions under paragraphs (i), (j), (k), (l), (m) and (n) of this section:

(1) Medical Devices [Reserved].

(2) Exports to developing countries [Reserved].

§ 82.5 Apportionment of baseline production allowances.

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced controlled substances in Group VI and VII in 1991 are apportioned baseline allowances as set forth in paragraphs (f) and (g) of this section.

Controlled substance	Person	Allowances (kg)
(a) For Group I Controlled Substances		
CFC–11	Allied-Signal, Inc	23,082,358
	E.I. DuPont de Nemours & Co	33,830,000
	Elf Atochem, N.A	21,821,500
CFC–12	Laroche Chemicals	12,856,364
	Allied-Signal, Inc	35,699,776
	E.I. DuPont de Nemours & Co	64,849,000
	Elf Atochem, N.A	31,089,807
CFC–113	Laroche Chemicals	15,330,909
	Allied-Signal, Inc	21,788,896
CFC–114	E.I. DuPont de Nemours & Co	58,553,000
	Allied-Signal, Inc	1,488,569
CFC–115	E.I. DuPont de Nemours & Co	4,194,000
	E.I. DuPont de Nemours & Co	4,176,000
(b) For Group II Controlled Substances		
Halon–1211	Great Lakes Chemical Corp	826,487
	ICI Americas, Inc	2,135,484
Halon–1301	E.I. DuPont de Nemours & Co	3,220,000
	Great Lakes Chemical Corp	1,766,850
Halon–2402		

Controlled substance	Person	Allowances (kg)
(c) For Group III Controlled Substances		
CFC–13	Allied-Signal, Inc	127,125
	E.I. DuPont de Nemours & Co	187,831
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,381
	Laroche Chemicals	29,025
CFC–111	* * * * *	* * * * *
CFC–112	* * * * *	* * * * *
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	11
CFC–215	E.I. DuPont de Nemours & Co	511
	Halocarbon Products Corp	1,270
CFC–216	E.I. DuPont de Nemours & Co	170,574
CFC–217	E.I. DuPont de Nemours & Co	511
(d) For Group IV Controlled Substances		
CCl_4	Akzo Chemicals, Inc	7,873,615
	Degussa Corporation	25,545
	Dow Chemical Company, USA	18,987,747
	E.I. DuPont de Nemours & Co	9,099
	Hanlin Chemicals—WV, Inc	219,616
	ICI Americas, Inc	853,714
	Occidental Chemical Corp	1,059,358
	Vulcan Chemicals	21,931,987
(e) For Group V Controlled Substances		
Methyl Chloroform	Dow Chemical Company, USA	168,030,117
	E.I. DuPont de Nemours & Co	2
	PPG Industries, Inc	57,450,719
	Vulcan Chemicals	89,689,064
(f) For Group VI Controlled Substances		
Methyl Bromide	Great Lakes Chemical Corporation	19,945,788
	Ethyl Corporation	8,233,894
(g) For Group VII Controlled Substances		
HBFC 22B1–1	Great Lakes Chemical Corporation	46,211
(h) For Class II Controlled Substances (Reserved)		

§ 82.6 Apportionment of baseline consumption allowances.

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced, imported, or produced and imported controlled substances in Group VI or VII in 1991 are apportioned chemical specific baseline consumption allowances as set forth in paragraphs (f) and (g) of this section.

Controlled substance	Person	Allowances (kg)
(a) For Group I Controlled Substances		
CFC–11	Allied-Signal, Inc	22,683,833
	E.I. DuPont de Nemours & Co	32,054,283
	Elf Atochem, N.A	21,740,194
	Hoechst Celanese Corporation	185,296
	ICI Americas, Inc	1,673,436
	Kali-Chemie Corporation	82,500
	Laroche Chemicals	12,695,726
	National Refrigerants, Inc	693,707
	Refricentro, Inc	160,697
	Sumitomo Corporation of America	5,800
CFC–12	Allied-Signal, Inc	35,236,397
	E.I. DuPont de Nemours & Co	61,098,726
	Elf Atochem, N.A	32,403,869
	Hoechst Celanese Corporation	138,855
	ICI Americas, Inc	1,264,980
	Kali-Chemie Corporation	355,440
	Laroche Chemicals	15,281,553

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Controlled substance	Person	Allowances (kg)
	National Refrigerants, Inc	2,375,384
	Refricentro, Inc	242,526
CFC–113	Allied-Signal, Inc	18,241,928
	E.I. DuPont de Nemours & Co	49,602,858
	Elf Atochem, N.A	244,908
	Holchem	265,199
	ICI Americas, Inc	2,399,700
	Refricentro, Inc	37,385
CFC–114	Sumitomo Corp. of America	280,163
	Allied-Signal, Inc	1,429,582
	E.I. DuPont de Nemours & Co	3,686,103
	Elf Atochem, N.A	22,880
CFC–115	ICI Americas, Inc	32,930
	E.I. DuPont de Nemours & Co	2,764,109
	Elf Atochem, N.A	633,007
	Hoechst Celanese Corporation	5,893
	ICI Americas, Inc	2,366,351
	Laroche Chemicals	135,520
	Refricentro, Inc	27,337
	(b) For Controlled Substances	
Halon-1211	Elf Atochem, N.A	411,292
	Great Lakes Chemical Corp	772,775
	ICI Americas, Inc	2,116,641
	Kali-Chemie Corporation	330,000
Halon-1301	E.I. DuPont de Nemours & Co	2,772,917
	Elf Atochem, N.A	89,255
	Great Lakes Chemical Corp	1,744,132
	Kali-Chemie Corporation	54,380
Halon-2402	Ausimont	34,400
	Great Lakes Chemical Corp	15,900
	(c) For Group III Controlled Substances	
CFC–13	Allied-Signal, Inc	127,124
	E.I. DuPont de Nemours & Co	158,508
	Elf Atochem, N.A	3,992
	Great Lakes Chemical Corp	56,239
	ICI Americas, Inc	5,855
	Laroche Chemicals	29,025
	National Refrigerants, Inc	16,665
CFC–111	Sumitomo Corporation of America	5,912
CFC–112	TG (USA) Corporation	9,253
	E.I. DuPont de Nemours & Co	11
CFC–211	E.I. DuPont de Nemours & Co	11
CFC–212	E.I. DuPont de Nemours & Co	11
CFC–213	E.I. DuPont de Nemours & Co	11
CFC–214	E.I. DuPont de Nemours & Co	511
CFC–215	Halocarbon Products Corp	1,270
	E.I. DuPont de Nemours & Co	170,574
CFC–216	E.I. DuPont de Nemours & Co	511
CFC–217.		
	(d) For Group IV Controlled Substances	
CCl_4	Crescent Chemical Co	41
	Degussa Corporation	56
	Dow Chemical Company, USA	12,466
	E.I. DuPont de Nemours & Co	8,170,561
	Elf Atochem, N.A	26,537
	Hanlin Chemicals-WV, Inc	103,133
	Hoechst Celanese Corporation	3
	ICC Chemical Corp	1,173,723
	ICI Americas, Inc	855,466
	Occidental Chemical Corp	497,478
	Sumitomo Corporation of America	9
	(e) For Group V Controlled Substances	
Methyl Chloroform	3V Chemical Corp	3,528
	Actex, Inc	50,171
	Atochem North America	74,355
	Dow Chemical Company, USA	125,200,200
	E.I. DuPont de Nemours & Co	2
	IBM	2,026
	ICI Americas, Inc	14,179,850
	Laidlaw	420,207

Controlled substance	Person	Allowances (kg)
	PPG Industries	45,254,115
	Sumitomo	1,954
	TG (USA) Corporation	7,073
	Unitor Ships Service, Inc	14,746
	Vulcan Chemicals	70,765,072
	(f) For Group VI Controlled Substances	
Methyl Bromide	Great Lakes Chemical Corporation	15,514,746
	Ethyl Corporation	6,379,906
	AmeriBrom, Inc	3,524,393
	TriCal, Inc	109,225
	(g) For Group VII Controlled Substances	
HBFC 22B1–1	Great Lakes Chemical Corporation	40,110
	(h) For Class II Controlled Substances (Reserved)	

§ 82.7 Grant and phase reduction of baseline production and consumption allowances for class I controlled substances.

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6 of this subpart.

Control period	Class I substances in groups I and III (percent)	Class I substances in group II (percent)	Class I substances in group IV (percent)	Class I substances in group V (percent)	Class I substances in group VI (percent)	Class I substances in Group VII (percent)
1994	25	0	50	50	100	100
1995	25	0	15	30	100	100
1996	0	0	0	0	100	0
1997	0	0	0	0	100	0
1998	0	0	0	0	100	0
1999	0	0	0	0	100	0
2000	0	0	0	0	100	0
2001	0	0	0	0	0	0

§ 82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]

§ 82.9 Availability of allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (e) of this subpart is also granted Article 5 allowances equal to:

(1) 15 percent of his baseline production allowances for class I, Group II controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1994 until January 1, 2003;

(2) 10 percent of his baseline production allowance listed for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 of this subpart for each control period ending before January 1, 1996;

(3) 15 percent of his baseline production allowances for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1996 until January 1, 2006.

(b) Effective January 1, 1995, a person allocated Article 5 allowances may produce class I controlled substances for export to Article 5 countries as under § 82.11 and transfer Article 5 allowances as under § 82.12. In addition, a company may also increase or decrease its Article 5 allowances by trading with another Party to the Protocol according to the provisions under this paragraph of this section. A nation listed in Appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of Article 5 production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of Article 5 production that the person is permitted under this subpart.

(c) Until January 1, 1996, a company may also increase or decrease its production allowances by trading with another Party to the Protocol according to the provision under this paragraph of this section. A nation listed in Appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production that the person is permitted under this subpart.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred; and

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(v) The control period(s) to which the transfer applies.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (b)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this section for trades from Parties and paragraphs (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred divided by the total amount transferred by all the other person trading the same controlled substance in the same control period minus the amount transferred by that person.

(iii) The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by the amount transferred by all of the persons that have traded that controlled substance in that control period. The change in production allowances will be effective on the date that the notice is issued.

(d) Effective January 1, 1996, there will be no trade in production or consumption allowances with Parties to the Protocol for class I controlled substances, except for class I, Group VI, methyl bromide.

(e) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States in the cases where production allowances were expended to produce such substance in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b) of this subpart.

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance to the person;

(iv) A certification that production allowances were expended for the production of the controlled substance;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical transformed; and

(vi) If the controlled substance is destroyed, the efficiency of the destruction process.

(2) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were transformed or destroyed. For controlled substances completely destroyed under this rule, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percentage of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, if the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator will issue

a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(f) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was exported to be transformed or destroyed within a Party in the cases where production allowances were expended to produce such substance in accordance with the provisions of this paragraph.

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person must submit a request for production allowances that includes the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser for either transformation or destruction;

(ix) The commodity code of the controlled substance exported.

(x) Written statement from the producer that the controlled substance was produced with expended allowances.

(2) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (f)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was exported to be transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were exported to be transformed or destroyed. The Agency will grant allowances equal to 100 percent of volume intended for destruction or transformation. The grant of allowances will be effective on the date that the notice is issued.

(3) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, if the Administrator determines that the documentation for production allowances does not satisfactorily substantiate that the person exported for transformation or destruction as claimed, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(g) Effective January 1, 1996, and until January 1, 2000, a person may obtain destruction or transformation credits for a class I controlled substance (except class I, Group VI) equal to the amount of that controlled substance produced in the United States that was destroyed or transformed within the United States in cases where the controlled substance was produced for an emissive use in accordance with the provisions of this subpart, subtracting an offset of 15 percent.

(1) Effective January 1, 1996, and until January 1, 2000, a person must submit a request for destruction or transformation credits that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity and volume of controlled substance destroyed or transformed;

(iii) A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;

(iv) A certification of the previous use of the controlled substance;

(v) For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and

(vi) For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

(2) Effective January 1, 1996, and until January 1, 2000, the Administrator will issue the person destruction or transformation credits equivalent to the class I controlled substance (except class I, Group VI) produced for emissive uses that the Administrator determines were destroyed or transformed, subtracting the offset of 15 percent. For controlled substances completely destroyed under this rule, the Agency will grant destruction credits equal to 100 percent of volume destroyed minus the offset. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant destruction credits commensurate with that percentage of destruction efficiency that is actually achieved minus the offset. The grant of credits will be effective on the date that the notice is issued.

(3) Effective January 1, 1996, and until January 1, 2000, if the Administrator determines that the request for destruction or transformation credits does not satisfactorily substantiate that the person destroyed or transformed a class I controlled substance (except class I, Group VI) as claimed, or that the controlled substance was not previously used for an emissive purpose, the Administrator will issue a notice disallowing the request for additional destruction or transformation credits. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(a) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class I, Group VI, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of class I controlled substances (other than used controlled substances or transhipments) that the person has exported from the United States and its territories to a Party (as listed in Appendix C to this subpart).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class

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I, Group VI, to receive consumption allowances in addition to baseline consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) The commodity code of the controlled substance exported; and

(ix) Written statement from the producer that the controlled substance was produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section. The Administrator will issue the exporter contingent consumption allowances equivalent to the level of controlled substances that the Administrator determined will be exported contingent upon receipt of confirming documentation.

(3) To receive the consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances including the following:

(i) The bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser.

(ii) [Reserved]

(4) The Administrator will assess the quantity of controlled substances that the documentation under paragraph (a)(3) verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued. If the Administrator determines that the confirming documentation does not satisfactorily substantiate that the person exported controlled substances as claimed the Administrator will issue a notice that the consumption allowances are not granted.

(b) A person may obtain consumption allowances for that controlled substance equal to the amount of a controlled substance either produced in, or imported into, the United States that was transformed or destroyed in the case where consumption allowances were expended to produce or import such substance in accordance with the provisions of this paragraph. Effective January 1, 1996, consumption allowances will not be granted for a class I controlled substance (except class I, Group VI) produced in, or imported into, the United States that was transformed or destroyed. However, a person producing or importing a controlled substance (except class I, Group VI) that was transformed or destroyed must submit to the Administrator the information described under § 82.13 (f)(3) (i) and (ii).

(c) A company may also increase its consumption allowances by receiving production from another Party to the Protocol for class I, Group I through Group V and Group VII controlled substances until January 1, 1996, and for class I, Group VI controlled substances until January 1, 2001. A nation listed in Appendix C to this subpart (Parties to the Montreal Protocol) must agree to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol. For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(1) The identity and address of the person;

(2) The identity of the Party;

(3) The names and telephone numbers of contact persons for the person and for the Party;

(4) The chemical type and level of production being transferred; and

(5) The control period(s) to which the transfer applies.

(d) On the first day of each control period the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5 of this subpart.

(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

§ 82.11 Exports to Article 5 Parties.

(a) A person may produce class I controlled substances for export (not including exports resulting in transformation or destruction, or used controlled substances) to foreign states listed in appendix E to this subpart (Article 5 countries) if apportioned Article 5 allowances under § 82.9(a). Upon notification, the Administrator will deduct from the person's balance of Article 5 allowances the amount equal to the class I controlled substance exported.

(b) A person must submit a notice to the Administrator of exports to Article 5 countries (except transhipments, exports resulting in transformation or destruction, or used controlled substances) at the end of the quarter that includes the following:

(1) The identities and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The names and telephone numbers of contact persons for the exporter and for the recipient;

(4) The quantity and the type of controlled substances exported, its source and date purchased;

(5) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(6) The country to which the controlled substances were exported;

(7) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the purchaser;

(8) The commodity code of the controlled substance exported; and

(9) A copy of the contract covering the sale of the controlled substances to the recipient that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

§ 82.12 Transfers.

(a) Inter-company transfers.

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2001, for Group VI, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances or production allowances or Article 5 allowances, as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances or authorizations being transferred, including the names of the controlled substances for which allowances are to be transferred;

(D) The group of controlled substances to which the allowances or authorizations being transferred pertains;

(E) The amount of allowances or authorizations being transferred;

(F) The control period(s) for which the allowances or authorizations are being transferred;

(G) The amount of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(H) The amount of the one percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement).

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances sufficient to cover the transfer claim (i.e., the amount to be transferred plus, in the case of transferors of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) If EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(2) Effective January 1, 1995, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's Article 5 allowances. The transfer proceeds as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the controlled substances for which allowances are to be transferred;

(D) The group of controlled substances to which the allowances being transferred pertains;

(E) The amount of Article 5 allowances being transferred;

(F) The control period(s) for which the Article 5 allowances are being transferred; and

(G) The amount of unexpended Article 5 allowances for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA.

(H) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended Article 5 allowances sufficient to cover the transfer claim. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended Article 5 allowances to cover the transfer claim the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended Article 5 allowances by the amount to be transferred. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended Article 5 allowances to cover the claim, the transferor and transferee will be held liable for any violations of the

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regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) If EPA's records show that the transferor has insufficient unexpended Article 5 allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(2)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended Article 5 allowances by the amount to be transferred. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(3) Effective January 1, 1996, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's destruction credits or transformation credits. The type of credit received by the transferee in a transfer are the same type of credits transferred by the transferor. The transfer proceeds as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of credits being transferred, including the names of the controlled substances for which credits are to be transferred;

(D) The group of controlled substances to which the credits being transferred pertains;

(E) The amount of destruction credits or transformation credits being transferred;

(F) The control period(s) for which the destruction credits or transformation credits are being transferred;

(G) The amount of unexpended destruction credits or transformation credits for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(H) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended destruction credits or transformation credits sufficient to cover the transfer claim (i.e., the amount to be transferred plus one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended destruction credits or transformation credits to cover the transfer claim the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended or credits by the amount to be transferred plus one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) If EPA's records show that the transferor has insufficient unexpended destruction credits or transformation credits to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(2)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended destruction credits or transformation credits by the amount to be transferred plus one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) Inter-pollutant conversions.

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for Group VI, any person ("convertor") may convert consumption allowances or production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the group of controlled substances as the first as follows:

(i) The convertor must submit to the Administrator a conversion claim setting forth the following:

(A) The identity and address of the convertor;

(B) The name and telephone number of a contact person for the convertor;

(C) The type of allowances being converted, including the names of the controlled substances for which allowances are to be converted;

(D) The group of controlled substances to which the allowances being converted pertains;

(E) The amount and type of allowances to be converted;

(F) The amount of allowances to be subtracted from the convertor's unexpended allowances for the first controlled substance, to be equal to 101 percent of the amount of allowances converted;

(G) The amount of allowances or to be added to the convertor's unexpended allowances for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in Appendix A to this subpart;

(H) The control period(s) for which the allowances are being converted; and

(I) The amount of unexpended allowances or authorizations of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, imports (not including transshipments, or used controlled substances), or exports (not including transshipments, or used controlled substances) of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances sufficient to cover the conversion claim (i.e., the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(A) If EPA's records show that the convertor has sufficient unexpended allowances to cover the conversion claim the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(B) If EPA's records show that the convertor has insufficient unexpended allowances to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(2) Effective January 1, 1995, any person ("convertor") may convert Article 5 allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group of controlled substances as the first, as follows:

(i) The convertor must submit to the Administrator a conversion claim setting forth the following:

(A) The identity and address of the convertor;

(B) The name and telephone number of a contact person for the convertor;

(C) The type of Article 5 allowances being converted, including the names of the controlled substances for which allowances are to be converted;

(D) The group of controlled substances to which the Article 5 allowances being converted pertains;

(E) The amount and type of allowances to be converted;

(F) The amount of allowances to be subtracted from the convertor's unexpended allowances for the first controlled substance, to be equal to 101 percent of the amount of allowances converted.

(G) The amount of Article 5 allowances to be added to the convertor's unexpended allowances for the second controlled substance, to be equal to the amount of allowances for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in Appendix A to this subpart.

(H) The control period(s) for which the Article 5 allowances are being converted; and

(I) The amount of unexpended Article 5 allowances for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, or exports of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended Article 5 allowances sufficient to cover the conversion claim. Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(A) If EPA's records show that the convertor has sufficient unexpended Article 5 allowances to cover the conversion claim the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances by the amount to be converted. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended Article 5 allowances to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(B) If EPA's records show that the convertor has insufficient unexpended Article 5 allowances to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2)(ii) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances by the amount to be converted plus, in the case of conversions of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(3) Effective January 1, 1996, any person ("convertor") may convert destruction and/or transformation credits for one class I controlled substance to the same type of credits for another class I controlled substance within the same group of controlled substances as the first as follows:

(i) The convertor must submit to the Administrator a conversion claim setting forth the following:

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(A) The identity and address of the convertor;

(B) The name and telephone number of a contact person for the convertor;

(C) The type of destruction and/or transformation credits being converted, including the names of the controlled substances for which credits are to be converted;

(D) The group of controlled substances to which the destruction and/or transformation credits being converted pertains;

(E) The amount and type of credits to be converted;

(F) The amount of credits to be subtracted from the convertor's unexpended credits for the first controlled substance, to be equal to 101 percent of the amount of credits converted;

(G) The amount of destruction and/or transformation credits to be added to the convertor's unexpended credits for the second controlled substance, to be equal to the amount of credits for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in Appendix A to this subpart.

(H) The control period(s) for which the destruction and/or transformation credits are being converted; and

(I) The amount of unexpended destruction and/or transformation credits for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, and any production, imports (not including transhipments, or used controlled substances), or exports (not including transhipments, exports for destruction or transformation, or used controlled substances) of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended destruction and/or transformation credits sufficient to cover the conversion claim (i.e., the amount to be converted plus one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(A) If EPA's records show that the convertor has sufficient unexpended destruction and/or transformation credits to cover the conversion claim the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended credits by the amount to be converted plus one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended destruction and/or transformation credits to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(B) If EPA's records show that the convertor has insufficient unexpended destruction and/or transformation credits to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(2) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended destruction and/or transformation credits by the amount to be converted plus one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended destruction and/or transformation credits to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(3) Effective January 1, 1995, and for every control period thereafter, inter-pollutant trades will be permitted during the 45 days after the end of a control period.

(c) Inter-company transfers and Inter-pollutant conversions.

(1) Until January 1, 1996, if a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances for the first controlled substance will be equal to 101 percent of the amount of allowances converted and transferred in the case of transfer-conversions of production or consumption allowances.

(2) Effective January 1, 1995, if a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended Article 5 allowances for the first controlled substance will be equal to 101 percent of the amount of Article 5 allowances converted and transferred in the case of transfer-conversions of Article 5 allowances.

(3) Effective January 1, 1996, if a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended destruction and/or transformation credits for the first controlled substance will be equal to 101 percent of the amount of destruction and/or transformation credits converted and transferred in the case of transfer-conversions of destruction and/or transformation credits allowances.

§ 82.13 Record-keeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person ("producer") who produces class I controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of November 10, 1994, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, every producer who has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance.

Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every producer of a class I controlled substance during a control period must maintain the following records:

(i) Dated records of the quantity of each controlled substance produced at each facility;

(ii) Dated records of the quantity of controlled substances produced for use in processes that result in their transformation or for use in processes that result in their destruction and quantity sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity of controlled substances produced for an essential-use;

(iv) Dated records of the quantity of controlled substances produced with expended destruction and/or transformation credits;

(v) Copies of invoices or receipts documenting sale of controlled substance for use in processes resulting in their transformation or for use in processes resulting in destruction;

(vi) Dated records of the quantity of each controlled substance used at each facility as feedstocks or destroyed in the manufacture of a controlled substance or in the manufacture of any other substance, and any controlled substance introduced into the production process of the same controlled substance at each facility;

(vii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances;

(viii) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(ix) Dated records of the shipments of each controlled substance produced at each plant;

(x) The quantity of controlled substances, the date received, and names and addresses of the source of recyclable or recoverable materials containing controlled substances which are recovered at each plant;

(xi) Records of the date, the controlled substance, and the estimated quantity of any spill or release of a controlled substance that equals or exceeds 100 pounds;

(xii) For transformation or destruction in the United States, copies of IRS certification that the controlled substance will be transformed or of the verification that it will be destroyed; for transformation or destruction outside the United States, a copy of all sales contracts certifying that the controlled substance that was exported, by the producer or another U.S. company, to a Party to the Protocol, will be transformed or destroyed in cases when production and consumption allowances were not expended;

(xiii) Written verifications that essential-use allowances were conveyed to the producer for the production of specified quantities of a specific controlled substance that will only be used for the named essential-use; and

(xiv) Written verifications from a U.S. purchaser that the controlled substance was exported to an Article 5 country in cases when Article 5 allowances were expended during production.

(3) For each quarter, each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

(i) The production by company in that quarter of each controlled substance, specifying the quantity of any controlled substance used in processing, resulting in its transformation by the producer;

(ii) The amount of production for use in processes resulting in destruction of controlled substances by the producer;

(iii) The levels of production (expended allowances) for each controlled substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, essential-use allowances and destruction and/or transformation credits at of the end of that quarter;

(v) The quantity of recyclable and recoverable materials received containing the controlled substances which are recovered;

(vi) The amount of controlled substance sold or transferred during the quarter to a person other than the producer for use in processes resulting in its transformation or eventual destruction;

(vii) Internal Revenue Service Certificates in the case of transformation, or the purchaser's destruction verification in the case of destruction, showing that the purchaser or recipient of a controlled substance intends to either transform or destroy the controlled substance;

(viii) A list of the essential-use allowance holder and/or laboratory from whom orders were placed and the quantity of specific essential-use controlled substances requested and produced;

(ix) A list of U.S. purchasers of controlled substances that exported to an Article 5 country in cases when Article 5 allowances were expended during production; and

(x) A list of the quantities and names of controlled substances exported, by the producer and or by other U.S. companies, to a Party to the Protocol that will be transformed or destroyed and therefore were not produced expending production or consumption allowances.

(4) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4 of this subpart.

(g) Importers of class I controlled substances during a control period must comply with record-keeping and reporting requirements specified in this subsection.

(1) Recordkeeping—Importers. Any importer of a class I controlled substance (including used, recycled and reclaimed controlled substances) must maintain the following records:

(i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a controlled substance;

(ii) The quantity of those controlled substances imported that are used, recycled or reclaimed;

(iii) The quantity of controlled substances other than transhipments or used, recycled or reclaimed substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation;

(iv) The date on which the controlled substances were imported;

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(v) The port of entry through which the controlled substances passed;
(vi) The country from which the imported controlled substances were imported;
(vii) The commodity code for the controlled substances shipped;
(viii) The importer number for the shipment;
(ix) A copy of the bill of lading for the import;
(x) The invoice for the import;
(xi) The quantity of imports of used class I controlled substances and class II controlled substances;
(xii) The U.S. Customs entry form;
(xiii) Dated records documenting the sale or transfer of controlled substances for use in process resulting in transformation or destruction;
(xiv) Copies of IRS certifications that the controlled substance will be transformed or destruction verifications that it will be destroyed;
(xv) Dated records of the quantity of controlled substances produced for an essential-use; and
(xvi) Copies of documents conveying the right to import controlled substances for essential uses.

(2) Reporting Requirements-Importers. For each quarter, every importer of a class I controlled substance (including importers of used controlled substances) must submit to the Administrator a report containing the following information:
(i) Summaries of the records required in paragraph (g)(1)(i) through (xvi) of this section for the previous quarter;
(ii) The total quantity imported in kilograms of each controlled substance for that quarter;
(iii) The quantity of those controlled substances imported that are used, recycled or reclaimed;
(iv) The levels of import (expended consumption allowances) of controlled substances for that quarter and totaled by chemical for the control-period-to-date;
(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;
(viii) The amount of controlled substances imported for use in processes resulting in their transformation or destruction;
(ix) The amount of controlled substances sold or transferred during the quarter to each person for use in processes resulting in their transformation or eventual destruction;
(x) The amount of controlled substances sold or transferred during the quarter to each person for an essential use;
(xi) Internal Revenue Service Certificates showing that the purchaser or recipient of imported controlled substances intends to transform those substances or destruction verifications showing that purchaser or recipient intends to destroy the controlled substances; and
(xii) A list of the essential-use allowance holder and/or laboratory from whom orders were placed and the quantity of specific essential-use controlled substances requested and imported.

(h) Reporting Requirements-Exporters. For any exports of class I controlled substances not reported under § 82.10 of this subpart (additional consumption allowances), or under § 82.13(f)(3) (reporting for producers of controlled substances), the exporter who exported a class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:
(1) The names and addresses of the exporter and the recipient of the exports;
(2) The exporter's Employee Identification Number;
(3) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance are recycled or used;
(4) The date on which and the port from which the controlled substances were exported from the United States or its territories;
(5) The country to which the controlled substances were exported; and
(6) The commodity code of the controlled substance shipped.
(7) The sales contract certifying that the controlled substance that was exported to a Party to the Protocol will be transformed or destroyed.

(i) Every person who has requested additional production allowances or destruction and/or transformation credits under § 82.9 (e), (f) and (g) of this subpart or consumption allowances under § 82.10(b) of this subpart or who transforms or destroys class I controlled substances not produced by that person must maintain the following:
(1) Dated records of the quantity and level of each controlled substance transformed or destroyed;
(2) Copies of the invoices or receipts documenting the sale or transfer of the controlled substance to the person;
(3) In the case where those controlled substances are transformed, dated records of the names, commercial use, and quantities of the resulting chemical(s);
(4) In the case where those controlled substances are transformed, dated records of shipments to purchasers of the resulting chemical(s);
(5) Dated records of all shipments of controlled substances received by the person, and the identity of the producer or importer of the controlled substances;
(6) Dated records of inventories of controlled substances at each plant on the first day of each quarter; and
(7) A copy of the person's IRS certification of intent to transform or the purchaser's or recipient's destruction verification of intent to destroy, in the case where substances were purchased or transferred for transformation or destruction purposes.

(j) Persons who destroy class I controlled substances shall, following promulgation of this rule, provide EPA with a one-time report stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency and the name of other relevant federal or state regulations that may apply to the destruction process. Any changes to the unit's destruction efficiency or methods used to record volume destroyed and to determine destruction efficiency must be reflected in a revision to this report to be submitted to EPA within 60 days of the change.

(k) Persons who purchase or receive and subsequently destroy controlled class I substances that were originally produced without expending allowances shall provide the producer or importer from whom they purchase or receive controlled substances to be destroyed with a verification that controlled substances will be used in processes that result in their destruction.
(1) The verification shall include the following:
(i) Identity and address of the person intending to destroy controlled substances;
(ii) Indication of whether those controlled substances will be completely destroyed, as defined in § 82.3 of this rule, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;
(iii) Period of time over which the person intends to destroy controlled substances; and
(iv) Signature of the verifying person.
(2) If, at any time, any aspects of this verification change, the person must submit a revised verification reflecting such changes to the producer from whom that person purchases controlled substances intended for destruction.

(l) Persons who purchase class I controlled substances and who subsequently transform such controlled substances shall provide the producer or importer with the IRS certification that the controlled substances are to be used in processes resulting in their transformation.

(m) Any person who transforms or destroys class I controlled substances who has submitted an IRS certificate of intent to transform or a destruction verification to the producer of the controlled substance, or who has requested destruction and/or transformation credits from the Administrator must report the names and quantities of class I controlled substances transformed and destroyed for each control period within 45 days of the end of such control period.

(n) Every person who produces, imports, or exports class II chemicals must report its quarterly level of production, imports, and exports of these chemicals within 45 days of the end of each quarter (except those substances transformed or destroyed).

(o) Persons who import used, recycled or reclaimed controlled substances must label their bill of lading or invoice indicating that the controlled substance is used, recycled or reclaimed.

(1) Every person who imports used or recycled controlled substances must present a letter to United States Customs for entry clearance, that contains the following:

(i) the previous use of each controlled substance in each shipment, and

(ii) the intended reclamation destination of each controlled substance in a shipment.

(2) Every person who imports reclaimed controlled substances must present a letter to United States Customs for entry clearance, that contains the following:

(i) the previous use(s) of each controlled substance in a shipment, and

(ii) the reclamation facility (or name of equipment used) in the foreign country where the controlled substance was reclaimed.

(p) Persons who export used, recycled or reclaimed controlled substances must label their bill of lading or invoice indicating that the controlled substance is used, recycled or reclaimed.

(q) Persons who import heels of controlled substances must label their bill of lading or invoice indicating that the controlled substance in the container is a heel.

(r) Every person who brings back a container with a heel to the United States must report the annual quantity brought back into the United States within 45 days of the end of the control period.

(s) Every person who imports or exports used, recycled or reclaimed group II, class I controlled substances, or class II controlled substances must report its annual level within 45 days of the end of the control period.

(t) Every person who transships a controlled substance must maintain records that indicate that the controlled substance shipment originated in one country destined for another country, and does not enter interstate commerce with the United States.

(u) Any person who submits an order to a producer or importer for a controlled substance for an essential use must report the annual quantity received from each producer or importer within 45 days of the end of the control period. Those persons receiving controlled substances under the exemption for laboratories must provide a detailed description of the analytical procedures for which the specific controlled substance is essential and reference the published instructions, standards or specifications. The person reporting should submit the following:
(1) The identity and address of the person;
(2) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed;
(3) A copy of the invoice or receipt documenting the sale of the controlled substance to the person;
(4) A certification that production allowances were expended for the production of the controlled substance;
(5) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical transformed; and
(6) If the controlled substance is destroyed, the efficiency of the destruction process.

Appendix A to Subpart A—Class I Controlled Substances

Class 1 controlled substances	Ozone depletion potential (ODP)
A. Group I:	
$CFCl_3$-Trichlorofluoromethane (CFC–11)	1.0
CF_2Cl_2-Dichlorofifluoromethane (CFC–12)	1.0
$C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113)	0.8
$C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114)	1.0
C_2F_5Cl-Monochloropentafluoroethane (CFC–115)	0.6
All isomers of the above chemicals.	
B. Group II:	
CF_2ClBr-Bromochlorodifluoromethane (Halon-1211)	3.0
CF_3Br-Bromotrifluoromethane (Halon-1301)	10.0
$C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402)	6.0
All isomers of the above chemicals.	
C. Group III:	
CF_3Cl-Chlorotrifluoromethane (CFC–13)	1.0
C_2FCl_5-(CFC–111)	1.0
$C_2F_2Cl_4$-(CFC–112)	1.0
C_3FCl_7-(CFC–211)	1.0
$C_3F_2Cl_6$-(CFC–212)	1.0
$C_3F_3Cl_5$-(CFC–213)	1.0
$C_3F_4Cl_4$-(CFC–214)	1.0
$C_3F_5Cl_3$-(CFC–215)	1.0
$C_3F_6Cl_2$-(CFC–216)	1.0
C_3F_7Cl-(CFC–217)	1.0
All isomers of the above chemicals.	
D Group IV:	
CCl_4-Carbon Tetrachloride	1.1
E. Group V:	

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Class 1 controlled substances	Ozone depletion potential (ODP)
$C_2H_3Cl_3$-1,1,1 Trichloroethane (Methyl chloroform)	0.1
All isomers of the above chemical except 1,1,2-trichloroethane.	
F. Group VI:	
CH3Br—Bromomethane (Methyl Bromide)	0.7
G. Group VII:	
$CHFBR_2$	1.00
CHF_2Br (HBFC–2201)	0.74
CH_2FBr	0.73
C_2HFBr_4	0.3–0.8
$C_2HF_2Br_3$	0.5–1.8
$C_2HF_3Br_2$	0.4–1.6
C_2HF_4Br	0.7–1.2
$C_2H_2FBr_3$	0.1–1.1
$C_2H_2F_2Br_2$	0.2–1.5
$C_2H_2F_3Br$	0.7–1.6
$C_2H_2FBr_2$	0.1–1.7
$C_2H_3F_2Br$	0.2–1.1
C_2H_4FBr	0.07–0.1
C_3HFBr_6	0.3–1.5
$C_3HF_2Br_5$	0.2–1.9
$C_3HF_3Br_4$	0.3–1.8
$C_3HF_4Br_3$	0.5–2.2
$C_3HF_5Br_2$	0.9–2.0
C_3HF_6Br	0.7–3.3
$C_3H_2FBr_5$	0.1–1.9
$C_3H_2F_2Br_4$	0.2–2.1
$C_3H_2F_3Br_3$	0.2–5.6
$C_3H_2F_4Br_2$	0.3–7.5
$C_3H_2F_5Br$	0.9–14
$C_3H_3FBr_4$	0.08–1.9
$C_3H_3F_2Br_3$	0.1–3.1
$C_3H_3F_3Br_2$	0.1–2.5
$C_3H_3F_4Br$	0.3–4.4
$C_3H_4FBr_3$	0.03–0.3
$C_3H_4F_2Br_2$	0.1–1.0
$C_3H_4F_3Br$	0.07–0.8
$C_3H_5FBr_2$	0.04–0.4
$C_3H_5F_2Br$	0.07–0.8
C_3H_6FB	0.02–0.7

Appendix B to Subpart A.—Class II Controlled Substances

Controlled substance	ODP
$CHFC1_2$-Dichlorofluoromethane (HCFC-21)	[reserved]
CHF_2C1-Chlorodifluoromethane (HCFC-22)	0.05
CH_2FC1-Chlorofluoromethane (HCFC-31)	[reserved]
C_2HFC1_4-(HCFC-121)	[reserved]
$C_2HF_3C1_2$-(HCFC-122)	[reserved]
$C_2HF_3C1_2$-(HCFC-123)	0.02
C_2HF_4C1-(HCFC-124)	0.02
$C_2H_2FC1_3$-(HCFC-131)	[reserved]
$C_2H_2F_2C1_2$-(HCFC-132b)	[reserved]
$C_2H_2F_3C1$-(HCFC-133a)	[reserved]
$C_2H_3FC1_2$-(HCFC-141b)	0.12
$C_2H_3F_2C1$-(HCFC-142b)	0.06
C_3HCFC1_6-(HCFC-221)	[reserved]
$C_3HF_2C1_5$-(HCFC-222)	[reserved]
$C_3HF_3c1_4$-(HCFC-223)	[reserved]
$C_3HF_4C1_3$-(HCFC-224)	[reserved]
$C_3HF_5C1_2$-(HCFC-225ca)	[reserved]
C_3HF_5C1-(HCFC-225cb)	[reserved]
C_3HF_6C1-(HCFC-226)	[reserved]
$C_3H_2FC1_5$-(HCFC-231)	[reserved]
$C_3H_2F_2C1_4$-(HCFC-232)	[reserved]
$C_3H_2F_3C1_3$-(HCFC-233)	[reserved]
$C_3H_2F_4C1_2$-(HCFC-234)	[reserved]
$C_3H_2F_5C1$-(HCFC-235)	[reserved]
$C_3H_3FC1_4$-(HCFC-241)	[reserved]
$C_3H_3F_2C1_3$-(HCFC-242)	[reserved]
$C_3H_3F_3C1_2$-(HCFC-243)	[reserved]

Appendix B to Subpart A.—Class II Controlled Substances—Continued

Controlled substance	ODP
$C_3H_3F_4C1$-(HCFC-244)	[reserved]
$C_3H_4FC1_3$-(HCFC-251)	[reserved]
$C_3H_4F_2C1_2$-(HCFC-252)	[reserved]
$C_3H_4F_3C1$-(HCFC-253)	[reserved]
$C_3H_5FC1_2$-(HCFC-261)	[reserved]
$C_3H_5F_2C1$-(HCFC-262)	[reserved]
C_3H_6FC1-(HCFC-271)	[reserved]
All isomers of the above chemicals.	

Appendix C to Subpart A.—Parties to the Montreal Protocol and Nations Complying With, But Not Parties to, the Protocol

[Annex 1—Parties to the Montreal Protocol]

Foreign State	Montreal Protocol	London Amendments	Copenhagen Amendments
Algeria	√	√	
Antigua and Barbuda	√	√	√
Argentina	√	√	
Australia	√	√	
Austria	√	√	
Bahamas	√	√	√
Bahrain	√	√	
Bangladesh	√		
Barbados	√		
Belarus	√		
Belgium	√	√	
Benin	√		
Bosnia and Herzegovina	√		
Botswana	√		
Brazil	√	√	
Brunei	√		
Bulgaria	√		
Burkina Faso	√		
Cameroon	√	√	
Canada	√	√	
Central African Republic	√		
Chile	√	√	
China	√	√	
Colombia	√		
Congo	√		
Costa Rica	√		
Cote Ivoire	√		
Croatia	√	√	
Cuba	√		
Cyprus	√		
Czech Republic	√		
Denmark	√	√	√
Dominica	√	√	
Ecuador	√	√	√
Egypt	√	√	
El Salvador	√		
European E.C.	√	√	
Fiji	√		
Finland	√	√	√
France	√	√	
Gabon	√		
Gambia	√		
Germany	√	√	√
Ghana	√	√	
Greece	√	√	
Grenada	√	√	
Guatemala	√		
Guinea	√	√	
Guyana	√	√	
Honduras	√		
Hungary	√	√	
Iceland	√	√	
India	√	√	
Indonesia	√	√	

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Appendix C to Subpart A.—Parties to the Montreal Protocol and Nations Complying With, But Not Parties to, the Protocol—Continued

[Annex 1—Parties to the Montreal Protocol]

Foreign State	Montreal Protocol	London Amendments	Copenhagen Amendments
Iran	√		
Ireland	√	√	
Israel	√	√	
Italy	√	√	
Jamaica	√	√	
Japan	√	√	
Jordan	√	√	
Kenya	√		
Kiribati	√		
Korea, Republic of	√	√	
Kuwait	√		
Lebanon	√	√	
Libya	√		
Liechtenstein	√		
Luxembourg	√	√	
Malawi	√	√	√
Malaysia	√	√	√
Maldives	√	√	
Malta	√	√	
Marshall Islands	√	√	√
Mauritius	√	√	√
Mexico	√	√	
Monaco	√	√	
Morocco	√		
Myranmar	√	√	
Namibia	√		
Netherlands	√	√	
New Zealand	√	√	√
Nicaragua	√		
Niger	√		
Nigeria	√		
Norway	√	√	√
Pakistan	√	√	
Panama	√	√	
Papua New Guinea	√	√	
Paraguay	√	√	
Peru	√	√	
Philippines	√	√	
Poland	√	√	
Portugal	√	√	
Romania	√	√	
Russian Federation	√	√	
Saint Kitts and Nevis	√		
Saint Lucia	√		
Samoa	√		
Saudi Arabia	√	√	√
Senegal	√	√	
Seychelles	√	√	√
Singapore	√	√	
Slovenia	√	√	
Solomon Islands	√	√	
South Africa	√	√	
Spain	√	√	
Sri Lanka	√	√	
Sudan	√		
Swaziland	√		
Sweden	√	√	√
Switzerland	√	√	
Syrian Arab Republic	√		
Tanzania, United Republic of	√	√	
Thailand	√	√	
Togo	√		
Trinidad and Tobago	√		
Tunisia	√	√	
Turkey	√		
Turkmenistan	√		
Tuvalu	√		
Uganda	√	√	

Appendix C to Subpart A.—Parties to the Montreal Protocol and Nations Complying With, But Not Parties to, the Protocol—Continued

[Annex 1—Parties to the Montreal Protocol]

Foreign State	Montreal Protocol	London Amendments	Copenhagen Amendments
Ukranian SSR	√		
United Arab Emirates	√		
United Kingdom	√	√	
United States	√	√	√
Uruguay	√	√	
Uzbekistan	√		
Venezuela	√	√	
Viet Nam	√	√	√
Yugoslavia	√		
Zambia	√		
Zimbabwe	√		

Annex 2—Nations Complying With, but not Parties to, the Protocol [Reserved]

Appendix D to Subpart A—Harmonized Tariff Schedule Description of Products That May Contain Controlled Substances in Appendix A to Subpart A, Class I Groups I and II

This Appendix is based on information provided by the Ozone Secretariat of the United Nations Ozone Environment Programme.[1] The Appendix lists available U.S. harmonized tariff schedule codes identifying headings and subheadings for Annex D products that may contain controlled substances. The Harmonized Tariff Schedule of the United States uses an enumeration system to identify products imported and exported to and from the U.S. This system relies on a four digit heading, a four digit subheading and additional two digit statistical suffix to characterize products. The United States uses the suffix for its own statistical records and analyses. This Appendix lists only headings and subheadings.

While some can be readily associated with harmonized system codes, many products cannot be tied to HS classifications unless their exact composition and the presentation are known. It should be noted that the specified HS classifications represent the most likely headings and subheadings which may contain substances controlled by the Montreal Protocol. The codes given should only be used as a starting point; further verification is needed to ascertain whether or not the products actually contain controlled substances.

Category 1. Automobile and Truck Air Conditioning Units (Whether Incorporated in Vehicles or Not)

There are no separate code numbers for air conditioning units specially used in automobiles and trucks. Although a code has been proposed for car air conditioners, it is not yet officially listed in the Harmonized Tariff Schedule (see category 2). The following codes apply to the vehicles potentially containing air conditioning units.

Heading/subheading	Article description
[2]8701.(10, 20, 30, 90)	Tractors.
8702	Public-transport type passenger motor vehicles.
8702.10	With compression-ignition internal-combustion piston engine (diesel or semi-diesel).
8702.90	Other.
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars.
8703.10	Vehicles specially designed for traveling on snow; golf carts and similar vehicles; includes subheading 10.10 and 10.50.
8703.(21, 22, 23, 24)	Other vehicles, with spark-ignition internal combustion reciprocating engines.
8703.(31, 32, 33, 90)	Other vehicles, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704	Motor vehicles for the transport of goods.
8704.10.(10, 50)	Dumpers designed for off-highway use.
8704.(21, 22, 23)	Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel).
8704.(31, 32, 90)	Other, with compression-ignition internal combustion piston engine.
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units).
8705.10	Crane lorries.
8705.20	Mobile drilling derricks.
8705.30	Fire fighting vehicles.
8705.90	Other.

[2] At this time vehicle air conditioning units are considered components of vehicles or are classified under the general category for air conditioning and refrigeration equipment. Vehicles containing air conditioners are therefore considered products containing controlled substances.

[1] "A Note Regarding the Harmonized System Code Numbers for the Products Listed in Annex D." Adopted by Decision IV/15 paragraph 3, of the Fourth Meeting of the Parties in Copenhagen, 23–25 November, 1992.

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Category 2. Domestic and Commercial Refrigeration and Air Conditioning/Heat Pump Equipment

Domestic and commercial air conditioning and refrigeration equipment fall primarily under headings 8415 and 8418

Heading/subheading	Article description
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.
8415.20	Proposed code for air conditioning of a kind used for persons, in motor vehicles.
8415.10.00	A/C window or wall types, self-contained.
8415.81.00	Other, except parts, incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle.
8415.82.00	Other, incorporating a refrigerating unit.
	Self-contained machines and remote condenser type air conditioners (not for year-round use).
	Year-round units (for heating and cooling).
	Air conditioning evaporator coils.
	Dehumidifiers.
	Other air conditioning machines incorporating a refrigerating unit.
8415.83	Automotive air conditioners.
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than air conditioning machines of heading 8415; parts thereof.
8418.10.00	Combined refrigerator-freezers, fitted with separate external doors.
8418.21.00	Refrigerators, household type, Compression type.
8418.22.00	Absorption type, electrical.
8418.29.00	Other.
8418.30.00	Freezers of the chest type.
8418.40	Freezers of the upright type.
8418.50.0040	Other refrigerating or freezing chests, cabinets, display counters, showcases and similar refrigerating or freezing furniture.
8418.61.00	Other refrigerating or freezing equipment; heat pumps.
8418.69	Other.
	Icemaking machines.
	Drinking water coolers, self-contained.
	Soda fountain and beer dispensing equipment.
	Centrifugal liquid chilling refrigerating units.
	Absorption liquid chilling units.
	Reciprocating liquid chilling units.
	Other refrigerating or freezing equipment (household or other).
8479.89.10	Dehumidifiers (other than those under 8415 or 8424 classified as "machines and mechanical appliances having individual functions, not specified or included elsewhere").

Category 3.—Aerosol Products

An array of different products use controlled substances as aerosols and in aerosol applications. Not all aerosol applications use controlled substances, however. The codes given below represent the most likely classifications for products containing controlled substances. The product codes listed include:[3]

- varnishes
- perfumes
- preparations for use on hair
- preparations for oral and dental hygiene
- shaving preparations
- personal deodorants, bath preparations
- prepared room deodorizers
- soaps
- lubricants
- polishes and creams
- explosives
- insecticides, fungicides, herbicides, disinfectants
- arms and ammunition
- household products such as footwear or leather polishes
- other miscellaneous products

Heading/subheading	Article description
3208	Paints and varnishes[4] (including enamels and lacquers) based on synthetic polymers of chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium;
3208.10	Based on polyesters.
3208.20	Based on acrylic or vinyl polymers.
3208.90	Other.
3209	Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium.
3209.10	Based on acrylic or vinyl polymers.
3209.90	Other.
3210.00	Other paints and varnishes (including enamels, lacquers and distempers) and prepared water pigments of a kind used for finishing leather.
3212.90	Dyes and other coloring matter put up in forms or packings for retail sale.
3303.00	Perfumes and toilet waters.

[3] Other categories of products that may contain controlled substances are listed below. EPA is currently working to match them with appropriate codes. They include: coatings and electronic equipment (e.g., electrical motors), coatings or cleaning fluids for aircraft maintenance, mold release agents (e.g. for production of plastic or elastomeric materials), water and oil repellant (potentially under HS 3402), spray undercoats (potentially under "paints and varnishes"), spot removers, brake cleaners, safety sprays (e.g., mace cans), animal repellant, noise horns (e.g., for use on boats), weld inspection developers, freezants, gum removers, intruder alarms, tire inflators, dusters (for electronic and non-electronic applications), spray shoe polish, and suede protectors.

Heading/subheading	Article description
3304.30	Manicure or pedicure preparations.
3305.10	Shampoos.
3305.20	Preparations for permanent waving or straightening.
3305.30	Hair lacquers.
3305.90	Other hair preparations.
3306.10	Dentrifices.
3306.90	Other dental (this may include breath sprays).
3307.10	Pre-shave, shaving or after-shave preparations.
3307.20	Personal deodorants and antiperspirants.
3307.30	Perfumed bath salts and other bath preparations.
3307.49	Other (this may include preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, whether or not perfumed or having disinfectant properties).
3307.90	Other (this may include depilatory products and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included).
3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants), and preparations of a kind used for the oil or grease treatment of textile materials, leather, fur skins or other materials, but excluding preparations containing, as basic constituents, 70 percent or more by weight of petroleum oils or of oils obtained from bituminous minerals.
3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning operations, whether or not containing soap, other than those of 3401.
3402.20	Preparations put up for retail sale.
3402.19	Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3403	Lubricating preparations consisting of mixtures containing silicone greases or oils, as the case may be.
2710.00	Preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.
3403.11	Lubricants containing petroleum oils or oils obtained from bituminous minerals used for preparations from the treatment of textile materials, leather, fur skins or other materials.
3403.19	Other preparations containing petroleum oils or oils obtained from bituminous minerals.
3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations excluding waxes of heading 3404.
3405.10	Polishes and creams for footwear or leather.
3405.20	Polishes for wooden furniture, floors or other woodwork.
36	Explosives.
3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly papers).
3808.10	Insecticides.
3808.20	Fungicides.
3808.30	Herbicides, anti-sprouting products and plant growth regulators.
3808.40	Disinfectants.
3808.90	Other insecticides, fungicides.
3809.10	Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants) of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included, with a basis of amylaceous substances.
3814	Organic composite solvents and thinners (not elsewhere specified or included) and the prepared paint or varnish removers.
3910	Silicones in primary forms.
9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading No. 93.07. Thus, aerosol spray cans containing tear gas may be classified under this subheading.
0404.90	Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.
1517.90	Edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No. 15.16.
2106.90	Food preparations not elsewhere specified or included.

[4] Although paints do not generally use contain controlled substances, some varnishes use CFC 113 and 1,1,1, trichlorethane as solvents.

Category 4.—Portable Fire Extinguishers

Heading/subheading	Article description
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines.
8424.10	Fire extinguishers, whether or not charged.

Category 5.—Insulation Boards, Panels and Pipe Covers

These goods have to be classified according to their composition and presentation. For example, if the insulation materials are made of polyurethane, polystyrene, polyolefin and phenolic plastics, then they may be classified Chapter 39, for "Plastics and articles thereof". The exact description of the products at issue is necessary before a classification can be given.[6]

[6] This category may include insulating board for building panels and windows and doors. It also

Continued

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Heading/subheading	Article description
3917.21 to 3917.39	Tubes, pipes and hoses of plastics.
3920.10 to 3920.99	Plates, sheets, film, foil and strip made of plastics, non-cellular and not reinforced, laminated, supported or similarly combine with other materials.
3921.11 to 3921.90	Other plates, sheets, film, foil and strip, made of plastics.
3925.90	Builders' ware made of plastics, not elsewhere specified or included.
3926.90	Articles made of plastics, not elsewhere specified or included.

Category 6.—Pre-Polymers

According to the Explanatory Notes to the Harmonized Commodity Description and Coding System, "prepolymers are products which are characterized by some repetition of monomer units although they may contain unreacted monomers. Prepolymers are not normally used as such but are intended to be transformed into higher molecular weight polymers by further polymerization. Therefore the term does not cover finished products, such as diisobutylenes or mixed polyethylene glycols with very low molecular weight. Examples are epoxides based with epichlorohydrin, and polymeric isocyanates."

Heading/subheading	Article description
3901	Pre-polymers based on ethylene (in primary forms).
3902	Pre-polymers based on propylene or other olefins (in primary forms).
3903, 3907, 3909	Pre-polymers based on styrene (in primary forms), epoxide and phenols.

Appendix E to Subpart A—Article 5 Parties

Algeria, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bosnia and Hertsegovina, Botswana, Brazil, Burkina Faso, Cameroon, Central African Republic, Chile, China, Colombia, Costa Rica, Cote Ivoire, Croatia, Cuba, Dominica, Ecuador, Egypt, El Salvador, Fiji, Gambia, Ghana, Grenada, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iran, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Libya, Malawi, Malaysia, Maldives, Malta, Mauritius, Mexico, Myranmar, Namibia, Nicaragua, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Saint Kitts and Nevis, Saint Lucia, Samoa, Senegal, Seychelles, Slovenia, Solomon Islands, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zambia, Zimbabwe.

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Controlled substance	ODP[1]	AT L[2]	CLP[3]	BLP[4]
A. Class I:				
1. Group I:				
$CFCl_3$-Trichlorofluoromethane (CFC–11)	1.0	60.0	1.0	0.00
CF_2Cl_2-Dichlorodifluoromethane (CFC–12)	1.0	120.0	1.5	0.00
$C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113)	0.8	90.0	1.11	0.00
$C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114)	1.0	200.00	1.8	0.00
C_2F_5Cl-Monochloropentafluoroethane (CFC–115)	0.6	400.0	2.0	0.00
All isomers of the above chemicals. [Reserved]				
2. Group II:				
CF_2ClBr-Bromochlorodifluoromethane (Halon-1211)	3.0–18	12.0–.08	0.06–0.03	0.13
CF_3Br-Bromotrifluoromethane (Halon-1301)	10.0–107	72.0	0.00	1.00
$C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402)	6.0–25	23.0	0.00–0.37	0.30
All isomers of the above chemicals. [Reserved]				
3. Group III:				
CF_3Cl-Chlorotrifluoromethane (CFC–13)	1.0–250	120.0–1.83	0.88	0.00
C_2FCl_5-(CFC–111)	1.0–90	60.0–1.56	1.04	0.00
$C_2F_2Cl_4$-(CFC–112)	1.0–90	60.0–1.35	0.90	0.00
C_2FCl_7-(CFC–211)	1.0–500	100.0–8.81	1.76	0.00
$C_3F_2Cl_6$-(CFC–212)	1.0–500	100.0–7.98	1.60	0.00
$C_3F_3Cl_5$-(CFC–213)	1.0–500	100.0–7.06	1.41	0.00
$C_3F_4Cl_4$-(CFC–214)	1.0–500	100.0–6.01	1.20	0.00
$C_3F_5Cl_3$-(CFC–215)	1.0–500	100.0–4.82	0.96	0.00
$C_3F_6Cl_2$-(CFC–216)	1.0–500	100.0–3.45	0.69	0.00
C_3F_7Cl-(CFC–217)	1.0–500	100.0–1.87	0.37	0.00
All isomers of the above chemicals. [Reserved]				
4. Group IV:				
CCl_4-Carbon Tetrachloride	1.1	50.0	1.0	0.00
5. Group V:				
$C_2H_3Cl_3$ 1,1,1 Trichloroethane (Methyl chloroform)	0.1	5.3	0.11	0.00

[1] Includes rigid appliance insulation for pipes, tanks, trucks, trailers, containers, train cars & ships, refrigerators, freezers, beverage vending machines, bulk beverage dispensers, water coolers and heaters and ice machines.

Controlled substance	ODP[1]	AT L[2]	CLP[3]	BLP[4]
All isomers of the above chemical except 1,1,2-trichloroethane. [Reserved]				
6. Group VI:				
CH3Br-Bromomethane (Methyl Bromide)	0.7		[Reserved]	
7. Group VII:				
$CHFBr_2$	1.00		[Reserved]	
CHF_2Br-(HBFC–22B1)	0.74		[Reserved]	
$CH_{22}FBr$	0.73		[Reserved]	
C_2HFBr_4	0.3–0.8		Reserved]	
$C_2HF_2Br_3$	0.5–1.8		[Reserved]	
$C_2HF_3Br_2$	0.4–16		[Reserved]	
C_2HF_4Br	0.7–1.2		[Reserved]	
$C_2H_2FBr_3$	0.1–1.1		[Reserved]	
$C_2H_2F_2Br_2$	0.2–1.50		[Reserved]	
$C_2H_2F_3Br$	0.7–1.6		[Reserved]	
$C_2H_3FBr_2$	0.1–1.7		[Reserved]	
$C_2H_3F_2Br$	0.2–1.1		[Reserved]	
C_2H_4FBr	0.07–0.1		[Reserved]	
C_3HFBr_6	0.3–1.5		[Reserved]	
$C_3HF_2Br_5$	0.2–1.9		[Reserved]	
$C_3HF_3Br_4$	0.3–1.8		[Reserved]	
$C_3HF_4Br_3$	0.5–2.2		[Reserved]	
$C_3HF_5Br_2$	0.9–2.0		[Reserved]	
C_3HF_6Br	0.7–3.3		[Reserved]	
$C_3H_2FBr_5$	0.1–1.9		[Reserved]	
$C_3H_2F_2Br_4$	0.2–2.1		[Reserved]	
$C_3H_2F_3Br_3$	0.2–5.6		[Reserved]	
$C_3H_2F_4Br_2$	0.3–7.5		[Reserved]	
$C_3H_2F_5Br$	0.9–1.4		[Reserved]	
$C_3H_3FBR_4$	0.08–1.9		[Reserved]	
$C_3H_3F_2Br_3$	0.1–3.1		[Reserved]	
$C_3H_3F_3Br_2$	0.1–2.5		[Reserved]	
$C_3H_3F_4Br$	0.3–4.4		[Reserved]	
$C_3H_4FBr_3$	0.03–0.3		[Reserved]	
$C_3H_4F_2Br_2$	0.1–1.0		[Reserved]	
$C_3H_4F_3Br$	0.07–0.8		[Reserved]	
$C_3H_5FBr_2$	0.04–0.4		[Reserved]	
$C_3H_5F_2Br$	0.07–0.8		[Reserved]	
C_3H_6FB	0.02–0.7		[Reserved]	
B. Class II:				
$CHFCl_2$-Dichlorofluoromethane (HCFC–21)	[Reserved]	2.1	0.03	0.00
CHF_2Cl-Chlorodifluoromethane (HCFC–22)	0.05	15.3	0.14	0.00
CH_2FCl-Chlorofluoromethane (HCFC–31)	[Reserved]	1.44	0.02	0.00
C_2HFCl_4(HCFC–121)	[Reserved	0.6	0.01	0.00
$C_2HF_2Cl_3$-(HCFC–122)	[Reserved]	1.4	0.02	0.00
$C_2HF_3Cl_2$-(HCFC–123)	0.02	1.6	0.016	0.00
C_2HF_4Cl-(HCFC–124)	0.02	6.6	0.04	0.00
$C_2HF_2Cl_3$-(HCFC–131)	[Reserved]	4.0	0.06	0.00
$C_2H_2F_2Cl_2$-(HCFC–132b)	[Reserved]	4.2	0.05	0.00
$C_2H_2F_3Cl$-(HCFC–133a)	[Reserved]	4.8	0.03	0.00
$C_2H_3FCl_2$-(HCFC–141b)	0.12	7.8	0.10	0.00
$C_2H_3F_2Cl$-(HCFC–142b)	0.06	19.1	0.14	0.00
C_3HFCl_6-(HCFC–221)	[Reserved]			0.00
$C_3HF_2Cl_5$-(HCFC–222)	[Reserved]			0.00
$C_3HF_3Cl_4$-(HCFC–223)	[Reserved]			0.00
$C_3HF_4Cl_3$-(HCFC–224)	[Reserved]			0.00
$C_3HF_5Cl_2$-(HCFC–225ca)	[Res.]-1.7	1.5	0.01	0.00
(HCFC–225cb)	[Reserved]	5.1	0.04	0.00
C_3HF_6Cl-(HCFC–226)	[Reserved]			0.00
$C_3H_2FCl_5$-(HCFC–231)	[Reserved]			0.00
$C_3H_2F_2Cl_4$-(HCFC–232)	[Reserved]			0.00
$C_3H_2F_3Cl_3$-(HCFC–233)	[Reserved]			0.00
$C_3H_2F_4Cl_2$-(HCFC–234)	[Reserved]			0.00
$C_3H_2F_5Cl$-(HCFC–235)	[Reserved]			0.00
$C_3H_3FCl_4$-(HCFC–241)	[Reserved]			0.00
$C_3H_3F_2Cl_3$-(HCFC–242)	[Reserved]			0.00
$C_3H_3F_3Cl_2$-(HCFC–243)	[Reserved]			0.00
$C_3H_3F_4Cl$-(HCFC–244)	[Reserved]			0.00
$C_3H_4FCl_3$-(HCFC–251)	[Reserved]			0.00
$C_3H_4F_2Cl_2$-(HCFC–252)	[Reserved]			0.00
$C_3H_4F_3Cl$-(HCFC–253)	[Reserved]			0.00
$C_3H_5FCl_2$-(HCFC–261)	[Reserved]			0.00
$C_2H_5F_2Cl$-(HCFC–262)	[Reserved]			0.00
C_3H_6FCl-(HCFC–271)	[Reserved]			0.00

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Controlled substance	ODP[1]	AT L[2]	CLP[3]	BLP[4]
All isomers of the above chemicals. (Reserved)				

[1] Ozone Depletion Potential.
[2] Atmospheric Lifetime.
[3] Chlorine Loading Potential.
[4] Bromine Loading Potential.

Appendix G to Subpart A—UNEP Recommendations for Conditions Applied to Exemption for Laboratory and Analytical Uses

1. Laboratory purposes are identified at this time to include equipment calibration; use as extraction solvents, diluents, or carriers for chemcial analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. Production for laboratory and analytical purposes is authorized provided that these laboratory and analytical chemicals shall contain only controlled substances manufactured to the following purities:

CTC (reagent grade)	99.5
1,1,1=trichloroethane	99.0
CFC–11	99.5
CFC–13	99.5
CFC–12	99.5
CFC–113	99.5
CFC–114	99.5
Other w/ Boiling P>20° C	99.5
Other w/ Boiling P<20° C	99.0

2. These pure, controlled substances can be subsequently mixed by manufacturers, agents or distributors with other chemicals controlled or not controlled by the Montreal Protocol as is customary for laboratory and analytical uses.

3. These high purity substances and mixtures containing controlled substances shall be supplied only in re-closable containers or high pressure cylinders smaller than three litres or in 10 millilitre or smaller glass ampoules, marked clearly as substances that deplete the ozone layer, restricted to laboratory use and analytical purposes and specifying that used or surplus substances should be collected and recycled, if practical. The material should be destroyed if recycling is not practical.

4. Parties shall annually report for each controlled substance produced: the purity; the quantity; the application, specific test standard, or procedure requiring its uses; and the status of efforts to eliminate its use in each application. Parties shall also submit copies of published instructions, standards, specifications, and regulations requiring the use of the controlled substance.

Appendix H to Subpart A—Clean Air Act Amendments of 1990 Phaseout Schedule for Production of Ozone-Depleting Substances

Class I and date	Carbon tetrachloride (percent)	Methyl chloroform (percent)	Other substances (percent)
1994	70	85	85
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000		20	
2001		20	

[FR Doc. 94–27019 Filed 11–9–94; 8:45 am]
BILLING CODE 6560–60–P

federal register

Thursday
November 10, 1994

Part V

Department of Education

Independent Living Services for Older Individuals Who Are Blind; Notice

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DEPARTMENT OF EDUCATION

Independent Living Services for Older Individuals Who Are Blind

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary proposes a priority under the Independent Living Services for Older Individuals Who Are Blind program. The Secretary may use this priority for fiscal year (FY) 1995 and subsequent years. The Secretary takes this action to focus Federal financial assistance on States that do not currently have projects funded under this program. The priority is intended to increase the number of States participating in this program.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: All comments concerning this proposed priority should be addressed to John Nelson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3326, Switzer Building, Washington, D.C. 20202–2741. Comments may also be sent through the internet to "older_blind@ed.gov."

FOR FURTHER INFORMATION CONTACT: Raymond Melhoff, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3416, Switzer Building, Washington, D.C. 20202–2741. Telephone: (202) 205–9320. Individuals who use a telecommunications device for the deaf (TTD) may call (202) 205–9302.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the Independent Living Services for Older Individuals Who Are Blind program. Grants under this program are authorized by section 752(a) of the Rehabilitation Act of 1973 (Act), as amended. The expenditure of grant funds under this program is governed by the regulations in 34 CFR Part 367, which were published in the **Federal Register** on August 15, 1994 (59 FR 41910).

The purpose of this program is to support projects that provide to older individuals who are blind any of the independent living services that are described in 34 CFR 367.3(b); conduct activities that will improve or expand services for these individuals; and conduct activities to help improve public understanding of the problems of these individuals.

This program is an important part of the National Education Goals. This programs supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Any designated State agency (DSA) that meets the requirements in 34 CFR 367.2 is eligible to receive an award under this program. A DSA's application for funds under this program must contain the assurances required by 34 CFR 367.11 and any other agreements, assurances, and information that the Secretary determines to be necessary to carry out this program. In addition, section 21 of the Act requires that projects funded under this program must demonstrate how they will address, in whole or in part, the needs of older individuals who are blind and are from minority backgrounds.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Background

The Department funded projects in 45 States in fiscal year 1994 to provide independent living services for older individuals who are blind. The Secretary is interested in supporting projects in States that do not currently have projects funded under this program. This priority would increase the number of States providing services to older individuals who are blind under this program.

Priority

Projects must provide services to older individuals who are blind in States that do not currently have projects funded under this program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3326, Mary Switzer Building, 330 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 367.

Program Authority: 29 U.S.C. 796f.

(Catalog of Federal Domestic Assistance Number 84.177A, Independent Living Services for Older Individuals Who Are Blind)

Dated: November 2, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–27778 Filed 11–9–94; 8:45 am]

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federal register

Thursday
November 10, 1994

Part VI

Department of Energy

Office of Nuclear Energy

Management of Depleted Uranium Hexafluoride; Request for Recommendations; Alternative Strategies for the Long-Term Management of Depleted Uranium Hexafluoride Resources at Several Geographic Locations; Notices

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DEPARTMENT OF ENERGY

Office of Nuclear Energy

Management of Depleted Uranium Hexafluoride (UF_6); Request for Recommendations

AGENCY: Department of Energy.

ACTION: Notice of request for recommendations.

SUMMARY: DOE is preparing to assess several alternative strategies for the long-term management or use of depleted UF_6. As part of that assessment, DOE is requesting recommendations from interested persons, industry, and other Government agencies for potential uses for the depleted UF_6 stored at the gaseous diffusion plants in Paducah, Kentucky, and Portsmouth, Ohio, and at the Oak Ridge Reservation in Tennessee, as well as for technologies that could facilitate the long-term management of this material.

DATES: Individuals or organizations wishing to make recommendations should do so in writing by December 12, 1994, to ensure their consideration.

ADDRESSES: Please submit recommendations to Mr. Charles E. Bradley Jr., Office of Uranium Programs, Office of Nuclear Energy, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION:

1. Background

Uranium is a naturally-occurring radioactive element containing different isotopes, notably Uranium-238 (U-238) and Uranium-235 (U-235). The usability of uranium for controlled fission in nuclear chain reactions in most nuclear reactors depends on increasing the proportion of the U-235 isotope in the material through an isotopic separation process called enrichment. This process divides a stream of UF_6 into separate streams—one enriched in U-235 and the other depleted in U-235. The first large scale enrichment process was developed by the United States through the Manhattan Project in the 1940s. The process of enrichment used in the United States is called "gaseous diffusion," and has continued under the auspices of the Atomic Energy Commission and its successor agencies, including DOE. On July 1, 1993, general responsibility for uranium enrichment was transferred from DOE to the United States Enrichment Corporation (USEC).

Gaseous diffusion was developed, on a large scale, first at the Oak Ridge Reservation in Tennessee and, later, at plants located near Paducah, Kentucky, and Portsmouth, Ohio. Using UF_6 as feed material for the enrichment process, these plants produced highly enriched uranium for defense needs of the United States, as well as low enriched uranium for use as fuel in commercial nuclear reactors. The production of highly enriched uranium was discontinued in 1992 due to the reduced requirements of the U.S. defense programs. All diffusion operations at the Oak Ridge facility ceased in 1985.

A major consequence of the gaseous diffusion process is the accumulation of a significant amount of depleted UF_6. This material is so named because it is depleted in the percentage of the U-235 isotope, as compared to the original feed material. Most of this material is stored at the Paducah and Portsmouth Gaseous Diffusion Plants and at the Oak Ridge Reservation. The total amount in storage at these three sites is approximately 560,000 metric tons. Depleted UF_6 is a solid at ambient temperatures, and is stored in large cylinders holding approximately 14 tons each, stacked two layers high, which are subject to regular inspection and maintenance. About 29,000 cylinders are stored at Paducah, 13,000 at Portsmouth, and 5,000 at Oak Ridge.

2. DOE is publishing, elsewhere in today's **Federal Register**, an Advance Notice of Intent (ANOI) to prepare an EIS on alternative strategies for the long-term management of depleted UF_6. The first step in the process to consider alternative approaches is this Request to the public, industry, and other Government agencies for information and suggestions for potential uses for depleted UF_6 and/or technologies that could facilitate the long-term management of the material. This Request will help to ensure that the resulting long-range management strategy will consider all reasonable alternatives. For purposes of responding to this Request, current regulatory requirements should not be considered a barrier to recommended uses or technologies. DOE will evaluate each submission to determine if it should be included as a reasonable alternative in the EIS, which will assess the environmental impacts of the various alternative management strategies.

3. DOE requests from the public, industry, and other Government agencies, their suggestions and recommendations on the following:

A. *Uses or applications of products or materials that use any form of depleted uranium.* Such uses or applications could be for the depleted uranium in its current chemical form, for any of its individual components, for either the uranium or fluorine in some other chemical or physical form, or products made from any form or compound of depleted UF_6 including alloys, cements, or other materials. Suggested uses and applications should not be limited to those that only DOE or another Government agency might pursue. The Department is interested in all possible uses or applications for the depleted UF_6, whether by the public or the private sector. With the suggestions, the Department requires as much of the following information as possible:

1. A description of the use or application, including a design description and/or flow sheet; material, fabrication, product, and other specifications; and resulting wastes or effluents;

2. The potential annual and total usage;

3. The technical status of the use or application (that is, whether it is standard industrial practice; demonstrated on a bench or small scale, but not on an industrial scale; engineering, materials, or design development needed; etc.);

4. Facilities, equipment, other materials, and labor required;

5. Environmental and health and safety approvals required;

6. Any Government participation or funding required;

7. Estimated cost, including research, development and demonstration; construction; operations; decontamination; decommissioning; basis for estimates; and assumptions; product value, if any; and

8. Proposed schedule including, research, development and demonstration; and operations.

B. *Technologies that could facilitate the long-term management of the depleted uranium.* The Department requires as much of the following information as possible concerning the recommended technology:

1. The environmental, health and safety, and economic characteristics;

2. A description of the technology and any processes or treatment, including a design description and/or flow sheet; material, fabrication, product, and other specifications; and resulting wastes or effluents;

3. The status of the technology and any required research, development or demonstration;

4. Materials balance information and chemical composition of any wastes produced;

5. Labor requirements for both construction and operation;

6. Timing of research, development and demonstration; construction; and operation;

7. Factors that might limit siting choices;

8. Facilities, equipment, or materials required; and

9. Estimated cost, including research, development and demonstration; construction; operations; product value, if any; decontamination; decommissioning; basis for estimates; and assumptions.

4. If any of the information supplied to the Department is proprietary, privileged and confidential commercial or financial information, a trade secret, or otherwise exempt from public disclosure, it should be so designated and the Department will protect this information in accordance with its standard procedures as prescribed in 10 CFR 1004.11 or other applicable law. The title page of the information should be marked with the restriction cited in the regulation. Each page to be so restricted should be marked with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page.

5. A DOE Laboratory will prepare a report, based on evaluations by independent experts, on the responses to the request for recommendations. After review of the laboratory report, responses DOE considers reasonable will be included as alternatives for which environmental impacts will be assessed in the EIS. DOE will also initiate a study of the life cycle costs of each EIS alternative. That study will also be considered, along with the final EIS, when DOE selects a strategy from among these alternatives.

6. This Request is solely for the information described above and is not for the purpose of obtaining recommendations and/or proposals for research, development, and demonstration to be funded by the Government.

7. Except as provided in paragraph 4, the written submissions from the public, industry, and other Government agencies will be made available for public review at DOE Public Reading Room located in Room 1E–190 at 1000 Independence Avenue SW, Washington, DC 20585.

8. Throughout this process, opportunities for public participation will be provided to discuss technologies submitted. Comments will be requested on the criteria that the technical experts will use to evaluate responses to this Request for Recommendations.

9. In addition to the ANOI, DOE intends in the future to publish in the **Federal Register**, a notice of intent to begin the scoping process for the preparation of the EIS on the selection of a strategy for the long-term management of the depleted uranium hexafluoride.

Issued in Washington, D.C. on this 26th day of October, 1994.

Terry R. Lash,

Director, Office of Nuclear Energy.

[FR Doc. 94–27781; Filed 11–9–94; 8:45 am]

BILLING CODE 6450–01–P

Alternative Strategies for the Long-Term Management of Depleted Uranium Hexafluoride Resources at Several Geographic Locations

AGENCY: Department of Energy.

ACTION: Advance notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Energy is providing advance notice of its intent to prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (NEPA). The environmental impact statement will assess the potential environmental impacts of alternative strategies for the long-term management or uses of depleted uranium hexafluoride (UF_6) resources currently stored at Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee.

This environmental impact statement will consider general strategy options, including the general impacts of siting potential facilities or transporting materials to or from such facilities. In addition, such analyses would focus on those issues that would affect strategy selection, such as consolidation at one site. The specific environmental impacts of the transportation of materials or impacts from the actual siting of any projects that would result from strategy selection would be further assessed by any necessary project NEPA documents to follow.

DATES AND ADDRESSES: The Department of Energy requests comments by January 9, 1994, but comments sent after that time will be considered to the extent possible. The anticipated date for the formal notice of intent is June 1995. The dates and locations of all scoping meetings will be announced in that notice of intent or subsequent **Federal Register** notices as well as in local media, prior to the planned meetings.

Written comments on the scope of the environmental impact statement, questions concerning the proposed action, and requests for copies of referenced material should be directed to: Mr. Charles E. Bradley Jr., Office of Uranium Programs, Office of Nuclear Energy, United States Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 903–4781.

FOR FURTHER INFORMATION CONTACT: For general information on the Department of Energy NEPA review process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Depleted UF_6 is stored as a solid compound of uranium and fluorine in large cylinders. It is produced by an enrichment process that divides a single stream of UF_6 into two separate streams—one enriched in uranium-235 and one depleted in uranium-235. The enriched UF_6 is withdrawn from the process and used to produce fuel for commercial nuclear power plants. The depleted UF_6 is withdrawn from the process and stored in large cylinders.

The purpose of the environmental impact statement is to assess the potential impacts of a range of technological or market options related to the management of depleted UF_6 (currently stored at Paducah, Kentucky; Portsmouth, Ohio; and Oak Ridge, Tennessee), including use, reuse, conversion, or disposal, and to select a strategy for the long-term management of such depleted UF_6 in light of the changed missions and functions. Should the Department of Energy develop any proposal in the future to use any fraction of the depleted UF_6 inventory for its own research or other activity, that proposal would be the subject of a separate NEPA document, and would not affect this notice.

The environmental impact statement will focus on the Department of Energy's depleted UF_6 stored at the Paducah, Portsmouth, and Oak Ridge sites. Other forms of depleted uranium (e.g., uranium oxides and uranium metal) and depleted UF_6 used or stored at other sites would not be analyzed in the environmental impact statement since they exist only in small quantities (taken all together they total about 7 percent of the quantity of the subject depleted UF_6), would not affect strategy selection, and would involve different management and potentially different uses. Should the Department propose an action that involves these other forms of depleted uranium, such a proposal would receive appropriate NEPA review.

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The Department of Energy is publishing elsewhere in today's **Federal Register** a Request for Recommendations for potential uses for the depleted UF_6, which includes a request for suggestions of technologies that could facilitate the long-term management of the material. The request will also be published in industry and trade publications.

The Department of Energy intends to use technical experts to evaluate the responses that are received from the requests. Following the Department's receipt of the technical evaluations, the Department will determine which responses evaluated are reasonable and include them as alternatives to be assessed in the environmental impact statement. The Department will provide opportunities for the public to participate in the technology evaluation process. The Department will also initiate a separate study on the costs of the depleted UF_6 uses and management options assessed in the environmental impact statement. This request to the public, industry, and other Government agencies is the first step in the process to consider alternative approaches. The request and the evaluations that follow will help to ensure that the resulting long-range management strategy will consider all reasonable alternatives.

The Department of Energy will also initiate a study of the life cycle costs of each environmental impact statement alternative. That study will also be considered, along with the final environmental impact statement, when the Department selects a strategy from among the reasonable alternatives.

Invitation To Comment

The Department of Energy intends to conduct a full and open process to define the scope of the environmental impact statement and is issuing this Advance Notice of Intent as a preliminary step in seeking public comment on the proposed action, the range of alternatives, and the scope of impact analysis. Written comments from all interested parties are invited in order to assist the Department in defining the scope of the environmental impact statement, including the identification of the likely alternatives and significant environmental issues. Written comments should be sent to the address shown at the beginning of this notice.

Following the completion of this preliminary public comment period, the Department of Energy will publish a notice of intent to initiate the scoping process, including the schedule of public meetings to receive oral or written comments on the scope of this environmental impact statement. At this time, the Department is not scheduling any public meetings in advance of the notice of intent. If there is significant interest in holding earlier public meetings, however, the Department will consider any requests and would publish notices for such meetings prior to holding them.

Background

Uranium is a naturally-occurring radioactive element containing different isotopes, notably Uranium-238 and Uranium-235. The ability to use uranium for controlled fission in nuclear chain reactions in most nuclear reactors depends on increasing the proportion of the Uranium-235 isotope in the material through an isotopic separation process called enrichment. This process divides a single stream of UF_6 into two separate streams—one enriched in Uranium-235 and the other depleted in Uranium-235. The first large-scale enrichment process was developed by the United States through the Manhattan Project in the 1940s. The enrichment technology employed in the United States is called "gaseous diffusion," which has continued under the auspices of the Atomic Energy Commission and its successor agencies including the Department of Energy. On July 1, 1993, general responsibility for uranium enrichment in the United States was transferred from the Department to the United States Enrichment Corporation.

Gaseous diffusion was developed, on a large scale, first at the Oak Ridge Reservation in Tennessee and later at plants located near Paducah, Kentucky, and Portsmouth, Ohio. Using UF_6 as feed material for the enrichment process, these plants produced highly enriched uranium for the defense needs of the United States, as well as low enriched uranium for use in making fuel for commercial nuclear power reactors. All diffusion operations at the Oak Ridge facility ceased in 1985, and that facility is awaiting decontamination and decommissioning.

The Energy Policy Act of 1992 established the United States Enrichment Corporation as a new Government corporation which generally has responsibility for enriched uranium production at the Portsmouth and Paducah plants, as well as United States marketing rights for enriched uranium produced or blended at those plants. The United States Enrichment Corporation is leasing the plants from the Department of Energy, has signed an agreement for division of responsibilities between the Department and the Corporation at the two plants, and assumed responsibility for enriched uranium production on July 1, 1993. All depleted UF_6 created beginning July 1, 1993, is the responsibility of the Corporation. Consequently, the proposed Department strategy for depleted UF_6 management does not include material created after July 1, 1993; however, the Department's decisions on depleted UF_6 disposition could affect the Corporation's operating plans and policies. The environmental impact statement will include a discussion of the likely impacts of any of the Department's decisions on the Corporation, but cannot commit to a course of action for material controlled by the Corporation without prior agreement. Public comment on the scope of possible actions and agreements is welcome.

A major consequence of the gaseous diffusion process is the accumulation of a significant amount of depleted UF_6. Most of this material is stored at the Paducah and Portsmouth Gaseous Diffusion Plants and at the Oak Ridge Reservation. The total amount of depleted UF_6 stored at these three sites is approximately 560,000 metric tons. Depleted UF_6 is stored in large steel cylinders holding approximately 14 tons each, stacked two layers high, in large "yards" at the sites. The cylinders are inspected regularly to detect and repair any leaks should they occur. About 29,000 cylinders are stored at Paducah, 13,000 at Portsmouth, and 5,000 at Oak Ridge.

Potential uses of depleted UF_6 and its chemical constituents include: (1) use of uranium metal in armament manufacture or as metal or oxide-based shielding in the management of radioactive materials, including wastes or spent nuclear fuel; and (2) use of hydrogen fluoride, hydrofluoric acid, and fluorine for commercial industrial processes.

Purpose of the Environmental Impact Statement

The purpose of the environmental impact statement is to evaluate the impacts of alternative strategies for the long-term management and use of depleted UF_6 stored at the Paducah, Portsmouth, and Oak Ridge sites. Such alternatives would be analyzed for their impacts on the human environment, including risks to public health and safety, occupational health and safety, and effects upon the natural environment. The need for the proposed action arises from changes in various domestic and international factors. These factors include: the changed mission and functions of the Department of Energy programs for nuclear materials production and

research; changes brought about by the end of the Cold War; the shift in emphasis mandated by the President's budget requests; and by directives of the Secretary of Energy to reconsider future Department missions, functions, and responsibilities. The unique properties and value of depleted UF_6, as well as the large volumes in storage, suggest that the evaluation, analysis, and decisions on the fate of this material be made separate from those of other materials in storage or awaiting disposition. The Department has determined that such an action is a major Federal action with potentially significant environmental impacts and requires the preparation of an environmental impact statement in accordance with NEPA. This environmental impact statement will aid in making management decisions on depleted UF_6 by evaluating the environmental impacts of a range of reasonable alternatives, as well as providing a means for a public voice in the decision-making process. The Department is committed to ensuring that the public has a full and complete opportunity to be heard on this matter and is providing this advance notice of intent to that end.

Preliminary Description of Alternatives for Environmental Impact Statement

The Department of Energy requests public input on all relevant aspects of the long-term management and use of depleted UF_6 and potential alternatives. At this time, the Department has no preferred alternative and will consider for inclusion in the environmental impact statement all reasonable alternatives. The following is a discussion about the preliminary list of alternatives for the environmental impact statement that may be modified by additions or deletions; public comment on the range of alternatives is hereby requested.

Continue Current Storage and Management Practices (NO ACTION)

This alternative would continue present storage and management practices for depleted UF_6 at the Paducah, Portsmouth, and Oak Ridge locations for at least twenty to thirty years, until shutdown and decommissioning of the facilities. At this time, the depleted UF_6 at the Department of Energy's Paducah, Portsmouth, and Oak Ridge facilities is stored in steel cylinders the specifications for which are typically: a capacity of 14 tons, a diameter of 48 inches, a length of 12 feet, and wall thickness of 5/16 inch. There are approximately 47,000 such cylinders in storage at the three sites (29,000 at Paducah, 13,000 at Portsmouth, and 5,000 at Oak Ridge).

Current management practices consist of: (1) use of special equipment to transport cylinders within the storage yards; (2) regular visual inspection of all cylinders to verify cylinder integrity; (3) replacement/refurbishment of deteriorating cylinders, as necessary; (4) construction/reconstruction of cylinder storage yards, as necessary; (5) operating procedures for control of radioactive and hazardous material exposure to workers and for response to any unanticipated releases of depleted UF_6; (6) restacking of cylinders when needed to facilitate inspections, and replacing wood "saddles" (storage chocks) with concrete saddles; (7) technical assessments of cylinder performance and development of improved inspection methods; and (8) research on coatings to apply to cylinder surfaces to control corrosion.

Modifications to Depleted UF_6 Storage Facilities and Procedures

This alternative would include significant changes in the Department of Energy's facilities and management procedures for depleted UF_6 in storage. Such changes could consist of one or more of the following:

(1) redesign of the storage yards to add diking and runoff collection;

(2) construction of storage buildings in lieu of outdoor storage;

(3) provision of double-walled containers for the cylinders; and

(4) increased inspection frequency.

Use of Depleted UF_6

This alternative would consist of a number of sub-alternatives for depleted UF_6 use by means of conversion through chemical processes that separate the uranium from the fluorine. Likely end products could be uranium oxide, calcium fluoride, depleted uranium metal, depleted uranium concrete, hydrogen fluoride or hydrofluoric acid, the latter having commercial value in industrial processing. Locations for such conversions could include one or more of the following: (1) Department of Energy facilities where depleted UF_6 is stored; (2) One or more commercial nuclear fuel fabrication plants or industrial facilities in the United States; or (3) Commercial nuclear facilities outside of the United States. The analysis of this alternative would include the results of feasibility studies of each subalternative, as well as a discussion of the relative impacts of each subalternative.

Use of the converted depleted UF_6 would be evaluated as subalternatives including: (1) use as radiation shielding in the management of nuclear materials including waste and spent nuclear fuel, and (2) use in armament manufacture.

Disposal of Depleted UF_6

This alternative would consist of the analysis of potential impacts from the disposal of depleted UF_6 either in its present form, or in other forms, at appropriate waste disposal facilities.

Identification of Environmental Issues. The impact analysis would consider, for each alternative, the health and safety risks to workers and to the public of material transportation, storage, and use, as well as any potential impacts to environmental resources. As to the site-specific impacts of technologies, the analyses would be generic rather than site-specific for any technology alternative; selection of a site is not part of the proposed Department of Energy action and will be preceded by appropriate NEPA documentation. The environmental impact statement would provide estimates of the maximum impacts expected.

Related and Other Department of Energy NEPA Documentation. Should the depleted UF_6 strategy selection result in site-specific actions, additional NEPA documents would be prepared to consider the specific impacts on the site and vicinity from any proposed action. Such analyses would address site-specific issues such as historic resources, threatened and endangered species, critical environmental resources, floodplain, and land use.

The Draft and Final Environmental Impact Statements on the Alternative Strategies for the Long-Term Management of Depleted Uranium Hexafluoride Resources at Several Geographic Locations, and related documents, will be available for inspection, when completed, at the Department of Energy's Freedom of Information Reading Rooms. The location of these Reading Rooms will be announced in the Notice of Intent to prepare an environmental impact statement.

Issued in Washington, D.C., this 21st day of October, 1994.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–27780; Filed 11–9–94; 8:45 am]

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Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Mann's Bluegrass; Final Rules

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Poa Mannii (Mann's Bluegrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Poa mannii* (Mann's bluegrass). Four extant populations containing a total of approximately 125 individuals of the species are known to occur in the northwestern and north-central region of the island of Kauai. The species and its habitat are threatened by goats, competition by naturalized, introduced vegetation, fire, landslides, and erosion. The existence of few populations and individuals increases the likelihood of extinction from stochastic events and/or reduced reproductive vigor.

This final rule implements the Federal protection provisions provided by the Act.

EFFECTIVE DATE: December 12, 1994.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Poa mannii was first collected by Horace Mann, Jr., and William Tufts Brigham in 1864 or 1865 in Waimea Canyon on the island of Kauai. The name *Poa mannii* was published without a description (attributed to William Munro) in Seemann's *Journal of Botany* in 1869. The specific epithet was selected to honor one of the original collectors. Subsequently, the species was validly published by Hillebrand (1888) in his flora.

Poa mannii of the grass family (Poaceae) is a perennial with short rhizomes (underground stems) and erect, tufted culms (bunched stems) 50 to 75 centimeters (cm) (20 to 30 inches (in)) tall. The leaf sheath completely surrounds the leaf, and the ligule (appendage at the junction of the leaf blade and sheath) completely encircles the stem, is about 0.5 millimeters (mm) (0.02 in) long, and has a tooth about 2 to 4 mm (0.08 to 0.2 in) long and a fringed margin. The leaf blade is up to 15 cm (6 in) long and 2 to 4 mm (0.08 to 0.2 in) wide, and has a rough upper surface and a hairless lower surface. The panicles (branched flower clusters) are usually less than 5 cm (2 in) long and have primary branches 5 to 20 mm (0.2 to 0.8 in) long. The 4 to 7 mm (0.2 to 0.3 in) long, flattened spikelets (ultimate flower clusters) are pale greenish or yellowish brown and usually are comprised of 4 or 5 flowers. The glumes (small pair of bracts at the base of each spikelet) are about 3 mm (0.1 in) long. The lemma (outer bract at the base of a floret) is 3 to 4 mm (0.1 to 0.2 in) long and has cobwebby hairs at its base. The palea (inner bract at the base of a floret) is 3 to 3.5 mm (about 0.1 in) long and has a sharp, longitudinal ridge. The reddish brown grain-like fruit is elliptical to spindle-shaped and about 1.5 mm (0.06 in) long. All three native species of *Poa* in the Hawaiian Islands are endemic to the island of Kauai. *Poa mannii* is distinguished from both *Poa siphonoglossa* and *Poa sandvicensis* by its fringed ligule and from *Poa sandvicensis* by its shorter panicle branches (O'Connor 1990).

Poa mannii is found only on the northwestern and west-central portions of the island of Kauai. The four known populations extend over a distance of about 10.5 by 8.5 kilometers (km) (6.5 by 5.3 miles (mi)) and are found in Kalalau, Makaha, Koaie, and Waialae Valleys, all on State lands (David Lorence, National Tropical Botanical Garden, pers. comm., 1992). The species was formerly found in Olokele Gulch (O'Connor 1990). Approximately 125 individuals have been observed in the extant populations. This species typically grows on cliffs and rock faces at elevations between 460 and 1,150 meters (m) (1,510 and 3,770 feet (ft)) in lowland and montane mesic forests. Associated species include: *Chamaesyce* sp. ('akoko), *Exocarpos luteolus* (heau), *Lobordia helleri* (kamakahala), and *Nototrichium* sp. in Kalalau Valley; *Cyrtandra wawrae* (ha'iwale) in Makaha Valley; *Acacia koa* (koa), *Alectryon macrococcus* (mahoe), and *Antidesma platyphyllum* (hame) in Koaie Valley; and *Bidens cosmoides* (po'ola nui), *Carex meyenii, Dodonaea viscosa* ('a'ali'i), and *Schiedea amplexicaulis* in Waialae Valley. Threats to *Poa mannii* include habitat damage, trampling, and browsing by feral goats (*Capra hircus*); competition with invasive alien plants, especially *Erigeron karvinskianus* (daisy fleabane), *Lantana camara* (lantana), and *Rubus argutus* (prickly Florida blackberry); landslides in the steep habitat; fire; and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (D. Lorence and Ken Wood, Hawaii Plant Conservation Center, pers. comms., 1992).

Previous Federal Action

Federal action on *Poa mannii* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including *Poa mannii*, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). *Poa mannii* was first included in the 1980 and 1985 notices of review as a category 1 species. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1990 notice of review, *Poa mannii* was considered a category 1* species. Category 1* taxa are those which are possibly extinct. Since the 1990 notice of review, three previously unknown populations of the species have been discovered, and a population has been found in an area in which the plant was formerly known.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further required all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Poa mannii* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final 1-year finding for this species.

On April 7, 1993, the Service published in the **Federal Register** (58 FR 18073) a proposal to list the plant *Poa mannii* as endangered. This proposal was based primarily on information supplied by Hawaii State Department of Land and Natural Resources unpublished reports and observations by botanists and naturalists. The Service now determines *Poa mannii* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the April 7, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended June 7, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Honolulu Advertiser" on May 12, 1993, and "The Garden Isle" on May 16, 1993. No letters of comment were received.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Poa mannii* Munro ex Hillebr. (Mann's bluegrass) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The area of Kauai in which *Poa mannii* is found has undergone extreme alteration because of past and present land management practices, including grazing, deliberate alien plant and animal introductions, water diversion, and recreational development (Wagner *et al.* 1985). Feral animals have had the greatest overall impact, altering and degrading the vegetation and habitats of the area; feral goats currently cause the greatest damage to the area.

Feral goats, which have inhabited the drier, more rugged areas of Kauai since the 1820s, consume native vegetation, trample roots and seedlings, cause erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990). Feral goats on Kauai are managed as a game species with a limited hunting season (Tomich 1986), but their numbers are large enough to cause considerable habitat damage. *Poa mannii* survives only in very steep areas that are inaccessible to goats, suggesting that goat predation may have eliminated this species from more accessible locations, as is the case for other rare plants from northwestern Kauai (Corn *et al.* 1979). Populations of *Poa mannii* are affected by erosion and landslides, resulting, in part, from goat activities in surrounding areas (K. Wood, pers. comm., 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Poa mannii* that could also promote erosion and greater ingress by competing alien species.

C. Disease or Predation

Poa mannii is not known to be unpalatable to goats, which inhabit the areas where all four known populations of *Poa mannii* grow. Predation is a probable reason that this species is currently found only on cliff faces inaccessible to goats (D. Lorence and K. Wood, pers. comms., 1992). Predation by goats constitutes a threat to the expansion of the extant populations of *Poa mannii*.

D. The Inadequacy of Existing Regulatory Mechanisms

All four populations of *Poa mannii* are located on State conservation district land, which, among other purposes, are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in the conservation district are chosen by considering how best to make multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by both Federal and State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). Before decisions on these requests are made, the impact of the proposed reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17), as well as the maintenance of natural resources, is required to be taken into account (HRS, sects. 205–2, 205–4). For any proposed land use change that would occur on county or State land, that would be funded in part or whole by county or State funds, or that would occur within land classified as conservation district, an environmental assessment is required to determine whether or not the environment will be significantly affected (HRS, chapt. 343). If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii environmental policy and, thus, approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). However, the species is not presently protected as an endangered species under the State's endangered species provisions, and, despite provisions for conserving endemic resources, individual rare species may be overlooked during consideration of other land use priorities.

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E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only four populations consisting of approximately 125 individuals of *Poa mannii* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, a disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species. In the steep areas where *Poa mannii* grows, erosion and landslides due to natural weathering can result in the death of individual plants as well as habitat destruction. This process especially affects the continued existence of species or populations with limited numbers and/or narrow ranges, such as *Poa mannii*, and can be exacerbated by human disturbance and land use practices.

Competition by alien plant species is a threat to *Poa mannii*. Brought to Hawaii as a cultivated herbaceous plant, daisy fleabane has become naturalized in wetter regions of four islands (Wagner *et al.* 1990). Daisy fleabane has invaded Kalalau, Koaie, and Waialae Valleys, three of the four areas where *Poa mannii* occurs (K. Wood, pers. comm., 1992). Lantana, brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). Lantana threatens all known populations of *Poa mannii* (D. Lorence and K. Wood, pers. comms., 1992). Prickly Florida blackberry, an aggressive alien species in disturbed mesic to wet forests and subalpine grasslands on four islands, is considered a noxious weed by the State of Hawaii (Smith 1985, Wagner *et al.* 1990). Prickly Florida blackberry threatens the Kalalau and Waialae Valley populations of *Poa mannii* (K. Wood, pers. comm., 1992).

Fire is considered an immediate threat to the rare plants of the cliff faces and valleys of the Na Pali Coast, where the largest known population of *Poa mannii* occurs. Under dry conditions, human-set fires would spread rapidly and could destroy these plants, due to the strong prevailing winds and dry fuel load on cliff ledges. Fire could destroy dormant seeds as well as plants, even on steep cliffs (Clarke and Cuddihy 1980).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in finalizing this rule. Based on this evaluation, this rulemaking will list *Poa mannii* as endangered. This species numbers only approximately 125 individuals in four known extant populations. Threats to the continued existence of the species include habitat degradation and/or predation by goats, competition from alien plants, fire, landslides and erosion, and lack of legal protection or difficulty in enforcing laws that become effective with this listing action. Small population size and limited distribution make the species particularly vulnerable to extinction and/or reduced reproductive vigor from stochastic events. Because *Poa mannii* is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Poa mannii* for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Poa mannii*. The publication of a map and precise description of critical habitat in the **Federal Register**, as required in a designation of critical habitat, would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline. The listing of this species as endangered publicizes the rarity of the plant and, thus, can make it attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowner have been notified of the location and importance of protecting the habitat of this species, which will be addressed through the recovery process and through the section 7 consultation process. There are no known Federal activities within the currently known natural habitat of this species. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Listing encourages conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The requirement for Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402.

Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. There are no known Federal activities that occur within the presently known habitat of *Poa mannii*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Poa mannii*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant species to/from the United States; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 10 of the Act and 50 CFR 17.62 also provide for the issuance of permits under certain circumstances to carry out activities involving

endangered plants that are otherwise prohibited by section 9.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. The four known populations of *Poa mannii* occur on cliffs and rock faces located on State lands. The Service is not aware of any otherwise legal activities proposed or being conducted by the public at this time that will be affected by this listing and result in a violation of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's endangered species act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. State law also encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195D–4 and 5). Two populations of *Poa mannii* occur in forest reserves, which have rules and regulations for the protection of resources. State law mandates the development and implementation of programs concerning the conservation of biological resources, including this endangered species (HRS, sect. 195D–5(a)).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited*

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Pacific Islands Office (see **ADDRESSES** section).

Authors

The authors of this rule are Marie M. Bruegmann and Zella E. Ellshoff of the Pacific Islands Office (see **ADDRESSES** section), (808/541–3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
.	.	.	.	.	.	.	.
Poa mannii	Mann's bluegrass	U.S.A. (HI)	Poaceae	E	558	NA	NA
.	.	.	.	.	.	.	.

Dated: September 9, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–27301 Filed 11–9–94; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB94

Endangered and Threatened Wildlife and Plants; Endangered Status for 12 Plants From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 12 species of Hawaiian plants: *Adenophorus periens* (pendant kihi fern), *Bonamia menziesii* (no common name (NCN)), *Diellia erecta* (NCN), *Flueggea neowawraea* (mehamehame), *Hibiscus brackenridgei* (ma'o hau hele), *Mariscus pennatiformis* (NCN), *Neraudia sericea* (ma'aloa), *Plantago princeps* (ale), *Sesbania tomentosa* ('ohai), *Solanum incompletum* (thorny popolo), *Spermolepis hawaiiensis* (NCN), and *Vigna o-wahuensis* (Oahu vigna). These 12 species are found on 1 or more of the following Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii. The 12 species and their habitats have been variously affected or are currently threatened by one or more of the following: habitat degradation and/or predation by wild, feral, or domestic animals (pigs, goats, deer, cattle); competition for space, light, water, and nutrients by naturalized, introduced vegetation; habitat loss from

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fires; human impacts from recreational activities; and insect infestations. Due to the small number of existing individuals and/or their very narrow distributions, these species and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This rule implements the protection provisions provided by the Act for these plant taxa.

EFFECTIVE DATE: December 12, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, and *Vigna o-wahuensis* are currently known from 11 Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii. The current and historical distribution by island is presented in Table 1 for each of the 12 species.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF THE PROPOSED SPECIES

Species	Hawaiian Island										
	La	Ne	N	Ni	K	O	Mo	L	Ka	M	H
Adenophorus periens	.....	.....	.....	.....	C	H	C	H	.....	H	C
Bonamia menziesii	.....	.....	.....	.....	C	C	H	C	.....	C	C
Diellia erecta	.....	.....	.....	.....	C	H	C	H	.....	C	C
Flueggea neowawraea	.....	.....	.....	.....	C	C	H	.....	.....	C	C
Hibiscus brackenridgei	.....	.....	.....	.....	C?	C	H	C	H	C	C
Mariscus pennatiformis	C	.....	.....	.....	H	H	.....	.....	.....	C?	H
Neraudia sericea	.....	.....	.....	.....	.....	.....	C	H	H	C	
Plantago princeps	.....	.....	.....	.....	C	C	C	.....	.....	C	H
Sesbania tomentosa	.....	C	C	C	C	C	C	C	C	C	H
Solanum incompletum	.....	.....	.....	.....	C?	.....	C?	H	.....	H	C
Spermolepis hawaiiensis	.....	.....	.....	.....	H	C	C	C	.....	C	C?
Vigna o-wahuensis	.....	.....	.....	H	H	H	C	C	C	H	C

C = current; population last observed within the past 50 years.
H = historical; population not seen for over 50 years.u
? = questionable locality or inconsistent information in sources.
La—Laysan
Ne—Necker
N—Nihoa
Ni—Niihau
K—Kauai
O—Oahu
Mo—Molokai
L—Lanai
Ka—Kahoolawe
M—Maui
H—Hawaii

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). The archipelago covers a land area of about 16,600 square kilometers (sq km) (6,400 sq miles (mi)), extending roughly between latitude 18°50′ to 28°15′ N and longitude 154°40′ to 178°70′ W, and ranging in elevation from sea level to 4,200 meters (m) (13,800 feet (ft)) (Dept. of Geography 1983). The regional geological setting is a mid-oceanic volcanic island archipelago set in a roughly northwest to southeast line, with younger islands to the southeast. The youngest island, Hawaii, is volcanically active. The older islands are increasingly eroded, so that the basaltic portions of many of the northwesternmost islands (such as Laysan, Necker, and Nihoa) are entirely submerged, and coralline atolls and shoals are often all that remain above sea level (Macdonald *et al.* 1986). The topography of the Hawaiian Islands is extremely diverse. On the younger islands, Hawaii and Maui, gently sloping unweathered shield volcanoes with very poor soil development are juxtaposed with older, heavily weathered valleys with steep walls, well-developed streams, and gently sloped flood plains. The older islands to the northwest (i.e., Niihau, Kauai, Oahu, and Molokai) are generally more weathered. On a typical older island, sea cliffs and large amphitheater-headed valleys on the windward (northeast) side contrast with erosionally younger, dissected slopes on the leeward (southwest) side (Dept. of Geography 1983).

The climate of the Hawaiian Islands reflects the tropical setting buffered by the surrounding ocean (Dept. of Geography 1983). The prevailing winds are northeast trades with some seasonal fluctuation in strength. There are also winter storm systems and occasional hurricanes. Temperatures vary over the year on an average of 5° Celsius (C) (11° Fahrenheit (F)) or less, with daily variation usually exceeding seasonal variation in temperature. Temperature varies with elevation and ranges from a maximum recorded temperature of 37.7° C (99.9° F), measured at 265 m (870 ft) elevation, to a minimum of minus 12.7° C (9.1° F) recorded at 4,205 m (13,795 ft) elevation. Annual rainfall varies greatly by location, with marked windward to leeward gradients over short distances. Minimum average annual rainfall is less than 250 millimeters (mm) (10 inches (in)); the maximum average precipitation is well in excess of 11,000 mm (450 in) per year. Precipitation is greatest during the months of October through April. A dry season is apparent in leeward settings, while windward settings generally receive tradewind-driven rainfall throughout the year (Dept. of Geography 1983).

The native-dominated vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. The most recent classification of Hawaiian natural communities recognizes nearly 100 native vegetation types (Gagne and Cuddihy 1990). Within these types are numerous island-specific or region-specific associations, comprising an extremely rich array of vegetation types within a very limited geographic area. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates.

There are lowland, montane, and subalpine forest types in Hawaii, extending from sea level to above 3,000 m (9,800 ft) in elevation. Coastal and lowland forests are generally dry or mesic and may be open- or closed-canopied. The stature of lowland forests is generally under 10 m (30 ft). Eleven species included in this ruling (*Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Solanum incompletum, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) have been reported from lowland forest habitat. Montane forests, occupying elevations between 1,000 and 2,000 m (3,000 and 6,000 ft), are dry to mesic on the leeward slopes of the islands of Kauai, Maui, and Hawaii. On those islands, as well as on Oahu, Molokai, and Lanai, mesic to wet montane forests occur on the windward slopes and summits. The dry and mesic forests may be open- to closed-canopied, and may exceed 20 m (65 ft) in stature. Of the species in this ruling, four (*Diellia erecta, Plantago princeps, Solanum incompletum,* and *Vigna o-wahuensis*) have been reported from montane mesic and dry forest habitats. Montane wet forests are usually dominated by several species of native trees and tree ferns. Three species (*Adenophorus periens, Mariscus pennatiformis,* and *Plantago princeps*) have been reported from montane wet forest habitat. At high montane and subalpine elevations, at and above 2,000 m (6,500 ft) elevation, are subalpine forests, usually open-canopied and forming a mosaic with surrounding grasslands and shrublands. Subalpine forests are known only from Haleakala on East Maui and from Hualalai, Mauna Kea, and Mauna Loa on Hawaii. *Solanum incompletum* has been reported from subalpine forest habitat.

Hawaiian shrublands are also found from coastal to alpine elevations. The majority of Hawaiian shrubland types are in dry and mesic settings, or on cliffs and slopes too steep to support trees. Wet montane shrublands are typically dominated by *Metrosideros* ('ohi'a). Taxa reported from native shrublands include *Bonamia menziesii, Hibiscus brackenridgei,* and *Sesbania tomentosa.* Hawaiian grassland types are found from coastal to subalpine settings. Coastal and lowland grasslands are known from the Northwestern Hawaiian Islands, Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. Both *Hibiscus brackenridgei* and *Vigna o-wahuensis* have been reported from native grasslands.

The land that supports these 12 plant species is owned by various private parties, the City and County of Honolulu, the County of Maui, the State of Hawaii (including State parks, forest reserves, natural area reserves, and Hawaiian Home Lands), and the Federal government (including national parks, national wildlife refuges, national historic sites, and property under the jurisdiction of the Department of Defense).

Discussion of the 12 Plant Taxa Included in This Final Rule

Adenophorus periens (pendant kihi fern) was first collected by Captain Fredrick William Beechey in the 1820s or 1830s. It was not formally described until 1974, when L. Earl Bishop published the name *Adenophorus periens.* Prior to its description, the names *Polypodium adenophorus* and *Adenophorus pinnatifidus* had been erroneously applied to the species represented by Beechey's specimen (Bishop 1974).

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. The rhizome (prostrate stem) is covered with small dark, stiff scales 2 to 4 centimeters (cm) (0.8 to 1.6 in) long. Its yellowish green fronds are usually between 10 and 40 cm (4 and 16 in) long and covered with hairs. The fronds have slightly hairy stalks less than 1 cm (0.4 in) long. Each frond is comprised of oblong or narrowly triangular pinnae (divisions or leaflets) 5 to 15 mm (0.2 to 0.6 in) long with margins that are smooth or toothed and lined with sparse hairs. The pinnae are situated perpendicular to the axis of the midrib, with each pinna twisted such that its upper surface faces upward. Round sori (groups of spore-producing bodies) usually develop in the central portion of the fertile frond, forming two regular rows on each pinna. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, pinnae at right angles to the midrib axis, by the placement of the sori, and the degree of dissection of each pinna (Bishop 1970, 1974; Hillebrand 1888; Linney 1989).

Historically, *Adenophorus periens* was known from the following general areas: Halemanu on Kauai, the Koolau Mountains of Oahu, the summit of Lanai, Kula Pipeline on East Maui, and Hilo and Waimea on the island of Hawaii (Hawaii Heritage Program (HHP) 1992a1 to 1992a6, 1992a10 to 1992a13). Currently, *Adenophorus periens* is known from several locations on three islands. On Kauai, one population is known from the boundary of Hono O Na Pali Natural Area Reserve (NAR) and Na Pali Coast State Park on State land, one from Waioli on State land, and four are clustered in the Wahiawa area over a distance of 2 sq km (0.8 sq mi) on private land (HHP 1992a15 to 1992a17; Hawaii Plant Conservation Center (HPCC) 1991b, 1991c, 1992; Lorence and Flynn 1991). On Molokai, there is a single population of three plants on private land at Kamakou Preserve (HHP 1992a7). On the island of Hawaii, four populations are found at Olaa Tract, Kane Nui o Hamo Crater, Kahaualea NAR, and 2.4 km (1.5 mi) northwest of Puu Kauka on private, State, and Federal land (L. Cuddihy, National Park Service, *in litt.*, 1983, 1988; HHP 1992a8, 1992a9, 1992a14). The population at Kane Nui o Hamo has recently been affected by volcanic eruptions and drought and its status is uncertain (Hugo Huntzinger, National Park Service, *in litt.*, 1993). The statewide total of 11 current populations comprises approximately 1,280 individuals of this species; on Kauai, there are about 63 individuals; on Molokai, there are 3; and on Hawaii, there are approximately 1,215 (L. Cuddihy, *in litt.*, 1983, 1988; HHP 1992a7 to 1992a9, 1992a14 to 1992a17; HPCC 1991a to 1991c; Lorence and Flynn 1991).

Adenophorus periens is found in *Metrosideros polymorpha* ('Ohi'a)/*Cibotium glaucum* (Hapu'u) Lowland Wet Forest between 470 and 1,270 m (1,540 and 4,140 ft) in elevation (HHP 1992a7, 1992a8, 1992a14 to 1992a16). Associated species include *Broussaisia*

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arguta (kanawao ke'oke'o), *Cheirodendron trigynum* ('olapa), *Dicranopteris linearis* (uluhe), *Freycinetia arborea* ('ie'ie), and *Psychotria hawaiiensis* (kopiko) (HHP 1992a7, 1992a8, 1992a15, 1992a16). The primary threats to *Adenophorus periens* are habitat degradation by pigs (*Sus scrofa*); competition for light, space, nutrients, and water with alien plant species; and habitat destruction by fires.

Asa Gray gave the name *Bonamia menziesii* (NCN) to a plant from the Sandwich Islands (Hawaii) in honor of its collector, Archibald Menzies (Gray 1862). Wilhelm Hillebrand (1888) placed the species into the segregate genus *Breweria*. Otto Degener (1932a, 1932b) described a new genus, *Perispermum*, and placed *Bonamia menziesii* in it. He also described another species of *Perispermum*, *P. albiflorum*. T. Myint and D.B. Ward (1968) recognized only one Hawaiian species and placed it in the genus *Bonamia*. They recognized two varieties: variety *menziesii* and a new variety, *rockii*. The current treatment (Austin 1990) recognizes only one species with no subspecific taxa.

Bonamia menziesii, a member of the morning-glory family (Convolvulaceae), is a vine with twining branches up to 10 m (33 ft) long that are fuzzy when young. The leathery, oblong to oval leaves measure 3 to 9 cm (1.2 to 3.5 in) in length and 1 to 4 cm (0.4 to 1.6 in) wide. The upper leaf surface is usually hairless or covered with sparse hairs and the lower surface is covered with dense fuzzy hairs. The white to greenish funnel-shaped flowers, each 2 to 2.5 mm (0.08 to 0.1 in) long, are produced singly or in clusters of three on stalks 1 to 2 cm (0.4 to 0.8 in) long with tiny bracts (modified leaves) at the base of each stalk. Stamens usually have glandular hairs at their bases. The flower has two styles that are separate or partly fused. The fruits are tan or yellowish brown capsules 1 to 1.5 cm (0.4 to 0.6 in) long that contain one or two oval seeds imbedded in black pulp. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1990).

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, and the eastern sides of Maui and Hawaii (HHP 1992b3, 1992b4, 1992b10, 1992b11, 1992b13, 1992b15 to 1992b17, 1992b28, 1992b35). Currently, *Bonamia menziesii* is known from 28 populations on 5 islands. On Kauai, five populations are known from Kalalau, Pasiki Valley, Mount Kahili (all on State land), and Wahiawa drainage on private land (HHP 1992b25 to 1992b27, Lorence and Flynn 1991). On Oahu, *Bonamia menziesii* is known from both the Waianae and the Koolau Mountains. In the Waianae Mountains between Kuaokala and Nanakuli, 10 populations are spread over a distance of 24 km (15 mi) on Federal, private, and State land; 8 of these populations are clustered in the northernmost section over a distance of 8 km (5 mi) (HHP 1992b6, 1992b8, 1992b9, 1992b12, 1992b19, 1992b20, 1992b22, 1992b23, 1992b30, 1992b34). In the southeastern part of the Koolau Mountains, five populations are found over an area of 6 sq km (2.5 sq mi) on private and State land (HHP 1992b5, 1992b14, 1992b18, 1992b21, 1992b31). On Lanai, *Bonamia menziesii* is known from four scattered locations from Kanepuu to Puhielelu on private land (Garnett 1991; HHP 1992b1, 1992b2, 1992b32; HPCC 1991d). On Maui, one population is known from the western slopes of West Maui on private land and two populations are located on East Maui on private and State land (HHP 1992b24, 1992b29, 1992b33). On the island of Hawaii, a single population is located at Kaupulehu on private land (HHP 1992b7). The total current populations throughout the State consist of approximately 200 individuals, with the largest populations occurring on Oahu (HHP 1992b14, 1992b21, 1992b23, 1992b30). On Kauai, there are approximately 28 plants; on Oahu no more than 150; on Lanai approximately 9; on Maui a total of 10; and on the island of Hawaii at least 1 specimen has been collected (HHP 1992b1, 1992b2, 1992b5 to 1992b12, 1992b14, 1992b18 to 1992b27, 1992b29 to 1992b34; Lorence and Flynn 1991).

Bonamia menziesii is found on steep slopes in dry to mesic forest and sometimes in wet forest between the elevation of 150 and 625 m (492 and 2,051 ft) (Austin 1990). Associated species include 'ohi'a, *Canthium odoratum* (alahe'e), *Nestegis sandwicense* (olopua), *Pisonia* sp. (papala kepau), and *Sapindus oahuensis* (lonomea) (HHP 1992b1, 1992b2, 1992b4, 1992b7 to 1992b9, 1992b18 to 1992b20, 1992b22, 1992b23, 1992b25, 1992b27, 1992b30, 1992b31, 1992b33). The primary threats to *Bonamia menziesii* are habitat degradation and possible predation by wild and feral ungulates (pigs, goats (*Capra hircus*), axis deer (*Axis axis*), black-tailed deer (*Odocoileus hemionus*), and cattle (*Bos taurus*), competition with a variety of alien plant species, and fire.

Diellia erecta (NCN) was described by William Dunlop Brackenridge based on a specimen collected during the Wilkes Expedition in 1840 (Brackenridge 1854). He also described *Diellia pumila*, which subsequently has been considered a depauperate form of *D. erecta*. *Davallia alexandri* was published by Hillebrand in 1873. It has subsequently been considered a form of *Diellia erecta* with finely dissected fronds. *Diellia erecta* and *Davallia alexandri* had been placed in the genus *Lindsaya* by certain early authors, and *Diellia erecta* into the genus *Schizoloma*. Degener and Amy B. Greenwell (1950) published the new combination *Diellia erecta* var. *falcata* for a taxon originally described by Brackenridge as *Diellia falcata*. However, further study has established that *Diellia falcata* is best considered a separate species. *Diellia erecta* is now considered to be a species with no subspecific taxa (Wagner 1952, Wagner and Wagner 1992).

Diellia erecta, a member of the spleenwort family (Aspleniaceae), is a fern that grows in tufts of three to nine lance-shaped fronds, each 20 to 70 cm (8 to 28 in) long. The fronds emerge from a 1 to 2.5 cm (0.4 to 1 in) long rhizome covered with brown to dark gray scales. The frond stalks are reddish brown to black and smooth and glossy, 2 to 21 cm (0.8 to 8.3 in) long, and have a few stiff scales at their bases. Each frond has 15 to 50 lance-shaped pinnae arranged oppositely along the midrib. The pinnae are usually between 2 and 4 cm (0.8 and 1.6 in) long and 4 to 8 mm (0.2 to 0.3 in) wide. Ten to 20 sori, which may be separate or fused, are borne on each margin of the pinna. Each sorus is covered by an indusium (protective membrane) that falls short of the edge of the frond and runs parallel to the edge of each pinna. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950, Hillebrand 1888, Robinson 1912, Smith 1934, Wagner 1952).

Historically, *Diellia erecta* was known from the Kokee area on Kauai; the Koolau Mountains on Oahu; Pukoo, Pelekunu Valley, and Kaunakakai Gulch on Molokai; Mahana Valley and Hauola Gulch on Lanai; scattered locations on West Maui; and various locations on the island of Hawaii (HHP 1992c1 to 1992c3, 1992c6, 1992c8 to 1992c11, 1992c16, 1992c18 to 1992c26).

Currently, *Diellia erecta* is only known from Molokai, Maui, and Hawaii. On Molokai, there are four locations with an unknown number of individuals at Halawa Valley, Kahuaawi Gulch, Makolelau, and Puu Kolekole on private land (HHP 1992c12, 1992c14, 1992c15; Robert Hobdy, Hawaii State Division of Forestry and Wildlife (DOFAW), pers. comm., 1991). On Maui, there is a total of at least 38 individuals at 7 locations: 4 populations on West Maui at Iao Valley on private land, and Kanaha Stream, Manawainui Plant Sanctuary, and Papalaua Gulch on State land; and 3 populations on East Maui at Olinda, Waiopai Gulch, and near Makawao on State and private land (HHP 1992c4, 1992c5, 1992c7, 1992c13, 1992c17; HPCC 1990a; Joel Lau, HHP, and R. Hobdy, pers. comms., 1992). On the island of Hawaii, there are 2 populations on State land: 1 at Honomalino with over 20 plants, and 1 at Manuka NAR with at least 1 plant (J. Lau, pers. comm., 1992). Statewide, this species has a total of 13 populations and approximately 63 known individuals.

Diellia erecta is found in *Diospyros sandwicensis* (Lama)/'Ohi'a Lowland Mesic Forest between 210 and 1,590 m (700 and 5,200 ft) in elevation (HHP 1992c21; HPCC 1990a; R. Hobdy, pers. comm., 1992). Other associated plant species include *Dodonaea viscosa* ('a'ali'i), *Dryopteris unidentata*, *Pleomele auwahiensis* (halapepe), *Syzygium sandwicensis* ('ohi'a ha), and *Wikstroemia* sp. ('akia) (HPCC 1990a). The major threats to *Diellia erecta* are habitat degradation by pigs, goats, and cattle; competition with alien plant species; and stochastic extinction due to the small number of existing individuals.

In 1912, Joseph F. Rock collected the first specimens of *Flueggea neowawraea* (mehamehame) from Kapua on the island of Hawaii (Rock 1913). Based on his specimens, he established the monotypic genus *Neowawraea*, named for Dr. Heinrich W. Wawra, a colleague of Rock's. He named the species *Neowawraea phyllanthoides* because of its apparent resemblance to *Phyllanthus*, a member of the same family (Euphorbiaceae). Earl Edward Sherff (1939) later transferred the taxon to the genus *Drypetes*. W. John Hayden (1987), upon further investigation, placed the species in the genus *Flueggea*. Because retention of the specific epithet would result in a later homonym, Hayden chose to maintain the tribute to Wawra in the new epithet, *neowawraea*.

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large tree up to 30 m (100 ft) tall and 2 m (7 ft) in diameter with white oblong pores covering its scaly, pale brown bark. The thin, papery, oval leaves, 4 to 14 cm (1.5 to 5.5 in) long and 2 to 9 cm (0.8 to 3.5 in) wide, are green on the upper surface and pale green on the lower surface. Plants are usually dioecious (having separate male and female plants) with unisexual flowers lacking petals. Male flowers, on stalks less than 4 mm (0.2 in) long, have five green sepals with brownish tips. The female flowers, on stalks 1 to 2.5 mm (0.04 to 0.1 in) long, have sepals of unequal length with irregular margins. The two-lobed stigma is positioned atop a 2.5 to 3 mm (0.1 in) long, round ovary with a nectary disk. The fleshy, round fruits, about 5 mm (0.2 in) in diameter, are reddish brown to black and contain two slightly curved seeds about 3 mm (0.1 in) long that are somewhat triangular in cross section. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size; scaly bark; the shape, size, and color of the leaves; flowers clustered along the branches; and the size and shape of the fruits (Hayden 1990, Linney 1982, Neal 1965).

Historically, *Flueggea neowawraea* was known from Waihii near Kapuna on Molokai, but is now presumed extinct on that island (HHP 1992d25, Hayden 1990). This species was also known from Kealia Trail, Kahanahaiki Valley, and Pohakea Gulch in the Waianae Mountains of Oahu (HHP 1992d5, 1992d10, 1992d33). Currently, *Flueggea neowawraea* is known on Kauai from Limahuli Valley, Kalalau, Pohakuao, and from the Koaie and Poomau branches of Waimea Canyon (HHP 1992d17, 1992d18, 1992d30 to 1992d32; HPCC 1990b; J. Lau, pers. comm., 1992). Also, three individuals (some of which may be dead) are known from the two adjacent valleys of Mahanaloa and Paaiki, near Makaha Point, on State-owned land (HHP 1992d9, 1992d13). Only one unhealthy individual is known from Limahuli Valley on privately owned land (HHP 1992d17). One tree is known from Kalalau and 10 from Pohakuao on State-owned land (J. Lau, pers. comm., 1992). Sixteen trees are known from the Poomau branch of Waimea Canyon, and 40 to 80 individuals are known from 4 scattered populations along the Koaie branch of Waimea Canyon on State-owned land (HHP 1992d18, 1992d30, 1992d31; HPCC 1990b; J. Lau, pers. comm., 1992). On Oahu, *Flueggea neowawraea* is currently known from 15 locations with approximately 33 individuals in the Waianae Mountains. The populations are spread from East Kapuahikahi Gulch to Puumaialau Gulch over a distance of about 15.5 km (9.6 mi) on Federal, State, County, and private land (HHP 1992d1 to 1992d4, 1992d6 to 1992d8, 1992d11, 1992d12, 1992d14 to 1992d16, 1992d19, 1992d20, 1992d24, 1992d26, 1992d29; J. Lau, pers. comm.; 1992). On East Maui, one or two individuals are known from Auwahi on the southwest slope of Haleakala at approximately 850 m (2,800 ft) elevation on privately owned land (HHP 1992d23). Five populations are known from the island of Hawaii in South Kona and Kau, extending over an area of about 10 by 5 km (6 by 3 mi) from Papa to Manuka, and numbering approximately 20 individuals, on State and private land (HHP 1992d21, 1992d22, 1992d27, 1992d28, 1992d34, 1992d35; J. Lau, pers. comm., 1990). A Hawaii Island population on private land at Huehue Ranch in North Kona consists of an unknown number of individuals (Hayden 1990). Statewide, the species totals 28 populations containing approximately 127 to 167 known individuals.

Flueggea neowawraea occurs in dry to mesic forest at 250 to 1,000 m (820 to 3,280 ft) elevation (Hayden 1990). Associated plant species include alahe'e, lama, *Aleurites moluccana* (kukui), *Antidesma pulvinatum* (hame), and *Streblus pendulina* (a'ia'i) (HHP 1992d3, 1992d7, 1992d9, 1992d12 to 1992d19, 1992d30, 1992d31, 1992d34). The primary threat to the continued existence of *Flueggea neowawraea* is the black twig borer (*Xylosandrus compactus*), that has affected all known *Flueggea neowawraea* plants. Other major threats include habitat degradation by feral and wild ungulates (pigs, goats, deer, and cattle), competition with alien plant species, and fire. The small number of individuals within any population and the scattered distribution of populations, compounded by a requirement for cross-pollination because the species is dioecious, must be considered a serious threat.

In 1838, Asa Gray described *Hibiscus brackenridgei* (ma'o hau hele) from a specimen collected on West Maui (Roe 1961). Then, in 1930, Edward Leonard Caum published two varieties, *molokaiana* and *kauaiana*, based upon type specimens from the islands of Molokai and Kauai (Caum 1930). An additional variety, var. *mokuleiana*, was named by Sister Margaret James Roe in 1961. In 1990, David Bates recognized two subspecific taxa: ssp. *mokuleianus* and ssp. *brackenridgei* (including var. *molokaiana*). He placed *Hibiscus brackenridgei* var. *kauaiana* in

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synonymy with a non-Hawaiian species of *Hibiscus*, *H. calyphyllus*.

Hibiscus brackenridgei, a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree up to 5 m (16 ft) tall. Most plant parts (young branches, leaves, and some flower parts) vary in the degree of hairiness. The leaves, about 5 to 15 cm (2 to 6 in) long and equally wide, have three to seven lobes but are generally heart-shaped in outline. Beneath each leaf stalk is a pair of very thin stipules (leaf-like appendages), 5 to 15 mm (0.2 to 0.6 in) long, that fall off early in development, leaving an elliptic scar. Flowers are borne singly or in small clusters. The petals, between 3.5 and 8 cm (1.4 and 3.1 in) long, are yellow, usually with a maroon spot in the center of the flower. Each triangular calyx lobe is reddish to yellow, and usually has a raised, elongated gland on the midrib. Seven to 10 bracts are attached below the calyx. The staminal column, which has anthers attached to the upper three-fourths or nearly to the base, extends beyond the petals. The fruits are somewhat round or oval capsules 1.1 to 2 cm (0.4 to 0.8 in) long that have a beak-like appendage at one end. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx comprised of triangular lobes with raised veins and a single midrib often bearing a prominent elongated gland, 7 to 10 bracts attached below the calyx, and thin stipules 5 to 15 mm (0.2 to 0.6 in) long that fall off, leaving an elliptic scar (Bates 1990).

Hibiscus brackenridgei is currently known from Oahu, Lanai, Maui, and Hawaii; it may possibly occur on Kauai. Twelve populations are known to exist, containing approximately 60 individuals. The two recognized subspecies are discussed separately below. *Hibiscus brackenridgei* ssp. *brackenridgei* was known historically from Laau Point on Molokai (HHP 1992e7), from scattered locations on Lanai, and from Pohakea Gulch south to near McGregor Point on West Maui (HHP 1992e4, 1992e5, 1992e10 to 1992e13, 1992e15). *Hibiscus brackenridgei* was also collected from an unspecified site on Kahoolawe (HHP 1992e17). However, the specimen is unavailable, and the subspecies was not determined (Bates 1990). Currently, *Hibiscus brackenridgei* ssp. *brackenridgei* consists of about 7 populations containing probably fewer than 60 individuals on State and private land on the islands of Lanai, Maui, and Hawaii (HHP 1992e1 to 1992e3, 1992e6, 1992e9, 1992e14, 1992e16; HPCC 1990c, 1991e; J. Lau, pers. comm., 1992). On Lanai, only five or six plants remain near Koomuku Road at 275 m (900 ft) elevation on privately owned land (HHP 1992e14, HPCC 1991e). On West Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is known from two populations occurring at Kaunohua Gulch and the West Maui NAR (HHP 1992e2, 1992e3; J. Lau, pers. comm., 1992). The Kaunohua Gulch population, numbering approximately eight individuals, is found within a fenced area of 5 to 10 sq m (55 to 110 sq ft) on privately owned land (HHP 1992e3). The West Maui NAR population, consisting of 14 individuals, is located in the Lihau section at about 400 m (1,300 ft) elevation in lowland dry forest on State-owned land (HHP 1992e2; J. Lau, pers. comm., 1992). On East Maui, the known populations, which extend over a 6.25 sq km (2.4 sq mi) area, number no more than 20 individuals (HHP 1992e1, 1992e8; HPCC 1990c). These populations are near Puu o Kali between 240 and 440 m (800 and 1,450 ft) in elevation on State-owned land (HHP 1992e1, 1992e8). On the island of Hawaii, *Hibiscus brackenridgei* ssp. *brackenridgei* is known from two populations on State and private land: at Puu Anahulu Homesteads and Puu Huluhulu, approximately 3.5 km (2 mi) apart. These two populations contain no more than five individuals (HHP 1992e6, 1992e16; P. Q. Tomich, *in litt.*, 1991; K. Wallis, *in litt.*, 1993).

Hibiscus brackenridgei ssp. *mokuleianus* is currently known from five populations, possibly containing as few as six to eight individuals. Undocumented observations of this taxon have been reported from Lihue and Olokele Canyon on Kauai (Bates 1990). On Oahu, *Hibiscus brackenridgei* ssp. *mokuleianus* was known historically from scattered locations in the Waianae Mountains (HHP 1992e18, 1992e21, 1992e22, 1992e24). Within a 12 by 5 km (7.5 by 3 mi) area extending from Puu Pane to Kealia-Kawaihapai are three current populations (1992e19, 1992e20, 1992e23, 1992e25; HPCC 1990d). The northernmost population, consisting of three individuals and occupying an area of 10 to 100 sq m (110 to 1,080 sq ft), is in the mountains south of the Dillingham Military Reservation at an elevation of 170 m (560 ft) on privately owned land (HHP 1992e25, HPCC 1990d). Another population is known from two adjacent gulches between the Dupont Trail and Puu Iki at elevations between 120 and 240 m (400 and 800 ft) (HHP 1992e19, 1992e23). This population on privately owned land consists of three to five individuals in an area measuring not more than 0.25 sq km (0.1 sq mi) (HHP 1992e19, 1992e23). A population of *Hibiscus brackenridgei* ssp. *mokuleianus* reported from the Puu Pane area has not been seen for more than 40 years (HHP 1992e20).

Hibiscus brackenridgei occurs in lowland dry to mesic forest and shrubland from 130 to 800 m (425 to 2,625 ft) in elevation (Geesink *et al.* 1990; HHP 1992e1, 1992e4, 1992e5, 1992e8, 1992e14, 1992e19, 1992e25). Associated plant species include 'a'ali'i, alahe'e, *Erythrina sandwicensis* (wiliwili), *Reynoldsia sandwicensis* ('ohe), and *Sida fallax* ('ilima) (HHP 1992e1 to 1992e3, 1992e6, 1992e8, 1992e20, 1992e23, 1992e25). The primary threats to this species are habitat degradation and possible predation by pigs, goats, axis deer, and cattle; competition with alien plant species; road construction; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

In 1931, the name *Cyperus pennatiformis* was published by Georg Kukenthal based on a specimen collected from Hana on Maui (Christophersen and Caum 1931). He also described a variety of the species, variety *bryanii*, for plants collected from the Northwestern Hawaiian Island of Laysan. Tetsuo Koyama recombined the species under the genus *Mariscus* and maintained the two subspecific taxa as subspecies (Wagner *et al.* 1989).

Mariscus pennatiformis (NCN), a member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. The stout, smooth, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) long, slightly concave and 3 to 7 mm (0.1 to 0.3 in) in diameter in the lower part. The three to five linear, somewhat leathery leaves are 8 to 17 mm (0.3 to 0.7 in) wide and at least as long as the stem. Each flower cluster, umbrella-shaped and moderately dense, is 4 to 15 cm (1.5 to 6 in) long and 5 to 25 cm (2 to 10 in) wide. About 5 to 18 spikes, comprised of numerous spikelets, form each cluster. Each spikelet, measuring about 8 to 14 mm (0.3 to 0.6 in) in length, is yellowish brown or grayish brown and is comprised of 8 to 25 densely arranged flowers. The glumes (bracts beneath each flower), which are less than twice as long as wide, are spreading and overlap tightly. The lowest glume does not overlap the base of the uppermost glume. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of

stems. The two subspecies are distinguished primarily by larger and more numerous spikelets, larger achenes (dry, one-seeded fruits), and more overlapping and yellower glumes in ssp. *pennatiformis* as compared with ssp. *bryanii* (Koyama 1990).

Historically, *Mariscus pennatiformis* ssp. *pennatiformis* was known from six populations, located on Kauai at Halemanu in Kokee State Park, on Oahu in the Waianae Mountains on a ridge above Makaha Valley, on East Maui at Keanae Valley and Hana, and on the island of Hawaii at an unspecified location (HHP 1992f3 to 1992f6). *Mariscus pennatiformis* ssp. *pennatiformis* also exists in cultivation at the Maui Zoological and Botanical Gardens. The cultivated plants were originally from Nahiku, East Maui (J. Davis and R. Silva, Maui Zoological and Botanical Gardens, *in litt.*, 1978). It is not known whether the Nahiku population is still extant. The five current populations, with an unknown number of individuals, are at open sites in mesic forests and low elevation grasslands from sea level to 1,200 m (3,940 ft) in elevation. No historical locations are known for *Mariscus pennatiformis* ssp. *bryanii*. It is currently known only from federally managed Laysan Island. This subspecies is found on the southeast end of the central lagoon, and the west and northeast sides of the island (HHP 1992f1, 1992f2; Koyama 1990). These 3 locations are on sandy substrate at 5 m (16 ft) in elevation and contain approximately 30 individuals (HHP 1992f1, 1992f2; Koyama 1990). Associated species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis* (kawelu), and *Ipomoea* sp. (HHP 1992f1, Koyama 1990). The small number of individuals and fewer than six known populations of *Mariscus pennatiformis* make the species vulnerable to stochastic extinction and/or reduced reproductive vigor.

Neraudia sericea (ma'aloa) was published by Gaudichaud in 1851 (Cowan 1949). In 1888, Hillebrand reduced it to a variety of *N. melastomaefolia* (*N. melastomaefolia* var. *sericea*). He also described a new species, *N. kahoolawensis*, named for a specimen collected by J.M. Lydgate on the island of Kahoolawe. In the most current treatment (Wagner *et al.* 1990), the reduction of *N. sericea* to a variety of *N. melastomaefolia* is not accepted and *N. kahoolawensis* is considered a Kahoolawe population of *N. sericea*.

Neraudia sericea, a member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves are between 4.3 and 13 cm (1.7 and 5.1 in) long and have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs up to 1 mm (0.04 in) long along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are 1 mm (0.04 in) long achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1990).

Neraudia sericea was known historically from Kamalo and near Waianui on Molokai, from Kaiholena on central Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from an unspecified site on Kahoolawe (HHP 1992g1, 1992g3, 1992g4, 1992g6 to 1992g10). Currently, two populations of this species are known, from the slopes below Puu Kolekole on Molokai, specifically along the bottom and lower slopes of Makolelau Gulch, and from Pohakea Gulch on West Maui (HHP 1992g2, 1992g5, 1992g11). Both populations are on privately owned land. The Makolelau population contains an estimated 50 to 100 individuals growing in 'Ohi'a/'A'ali'i/*Styphelia tameiameiae* (Pukiawe) Lowland Dry Shrubland in an area of over 100 sq m (1,080 sq ft) (HHP 1992g11). The population size of the Pohakea population is undetermined (HHP 1992g2). *Neraudia sericea* generally occurs in lowland dry to mesic shrubland or forest between 670 and 1,370 m (2,200 and 4,500 ft) in elevation (HHP 1992g3, 1992g10, 1992g11; Wagner *et al.* 1990). Other associated plant species include 'ilima, lama, *Bobea* ('ahakea), *Coprosma* (pilo), and *Hedyotis* (HHP 1992g11). The primary threats to *Neraudia sericea* are habitat degradation by feral pigs and goats; competition with the alien plant, *Melinus minutiflora* (molasses grass); and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

In 1826, Louis Charles Adelbert von Chamisso and D.F.L. Schlectendal described the species *Plantago princeps* (ale) (Rock 1920a). In 1829, *P. queleniana* was described by Gaudichaud. An additional species, *P. fauriei*, was described by H. Leveille (1911) from a specimen collected by Abbe Urbain Jean Faurie from Hanapepe Falls on Kauai. Several varieties and forms of *P. princeps* have also been described. The currently accepted classification places *P. queleniana* and *P. fauriei* in synonymy with *P. princeps* and recognizes only four varieties: *anomala*, *laxiflora*, *longibracteata*, and *princeps* (Gaudichaud 1829, Gray 1862, Hillebrand 1888, Mann 1867, Rock 1920a, Wagner *et al.* 1990, Wawra 1874).

Plantago princeps, a member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. Its erect or ascending stems are hollow, about 2 to 250 cm (1 to 100 in) long, and often branched with young internodes that are more or less woolly with reddish brown hairs. The oblong to elliptic, thick, leathery leaves are between 6 and 30 cm (2.4 and 12 in) long and up to 5 cm (2 in) wide and are tufted near the ends of stems. The leaves have smooth or minutely toothed margins, a pointed tip, and primary veins that converge at the base of the leaves. Numerous stalkless flowers are densely arranged in a cluster 11 to 28 cm (4.3 to 11 in) long with each cluster on a stalk 10 to 50 cm (4 to 20 in) long. Each flower spreads at an angle of nearly 90 degrees to the axis of the stalk or grows upright. The sepals are somewhat distinct and elliptic in shape. The fruits are capsules that contain three or four tiny black seeds; the surface of the seeds is apparently covered with a sticky membrane. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties (*anomala*, *laxiflora*, *longibracteata*, and *princeps*) are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1990).

The four varieties of *Plantago princeps* were historically found on five islands, and now occur on Kauai, Oahu, Molokai, and Maui. A total of 18 populations containing approximately 300 to 1,200 individuals is currently known. The four varieties are discussed separately below. Historically, *Plantago princeps* var. *anomala* was known from Makaleha in the Waianae Mountains on Oahu, and a ridge west of Hanapepe

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River on Kauai (HHP 1992i1, 1992i4). Currently on Kauai, 4 populations with 45 individuals are known from the south rim and upper reaches of Kalalau Valley on State land (HHP 1992i2; HPCC 1990e, 1990g, 1991g).

Historically, *Plantago princeps* var. *laxiflora* was known from Waikolu, Olokui, Kamakou, and Pelekunu on the east side of Molokai; in back of Lahaina on West Maui; and Hamakua and Kohala on the island of Hawaii (HHP 1992i6, 1992i8 to 1992i11, 1992i16, 1992i17). Currently on Molokai, *Plantago princeps* var. *laxiflora* is known from one population with five individuals at Kawela Gulch on private land (HHP 1992i5). On Maui, it is known from 2 locations in Iao Valley on West Maui, and 4 locations within Haleakala National Park and adjacent Waikamoi Preserve on East Maui on Federal and private land, totalling about 100 plants on that island (HHP 1992i7, 1992i12 to 1992i15, 1992i18; HPCC 1990h to 1990j, 1991h, 1991i).

Plantago princeps var. *longibracteata* was historically known from Hanalei, the Wahiawa Mountains, and Hanapepe Falls on Kauai, and from Kaala and the Koolauloa Mountains on Oahu (HHP 1992i19, 1992i21, 1992i23, 1992i24, 1992i26). Currently, 2 populations are known from Kauai at Waioli Valley and Wainiha on State land; they are estimated to contain between 130 and more than 1,000 individuals (HHP 1992i25, 1992i27). On Oahu, two populations approximately 3.5 km (2.2 mi) apart are known from the Poamoho area on private and State land; the number of individuals is not known (HHP 1992i20, 1992i22). Historically, *Plantago princeps* var. *princeps* was known from Nuuanu Pali and Kalihi in the Koolau Mountains of Oahu (HHP 1992i28 to 1992i30). Three current populations of this taxon are known from Mount Tantalus in the Koolau Mountains and from North Palawai and Ekahanui gulches in the Waianae Mountains of Oahu. Between 16 and 20 individuals are known from the Waianae Mountains. The number of individuals at the Koolau site is not known, as it was last observed in 1948 (HHP 1992i3, 1992i28 to 1992i31; HPCC 1990f; J. Lau, pers. comm., 1992).

Plantago princeps is typically found on steep slopes, rock walls, or at bases of waterfalls from 480 to about 1,100 m (1,580 to 3,600 ft) in elevation (Wagner *et al.* 1990). Associated plant species include 'a'ali'i, kopiko, 'ohi'a, uluhe, and *Dubautia plantaginea* (HHP 1992i28; HPCC 1990e to 1990i, 1990k, 1991g to 1991i). The primary threats to *Plantago princeps* are habitat degradation by ungulates (pigs and goats) and competition with various alien plant species.

Sesbania tomentosa ('ohai) was first described by W.J. Hooker and G.A.W. Arnott in 1836 from collections from Oahu (Degener 1937); it was named for its silvery hairs. In 1920, Joseph F. Rock described an arborescent form of the species (*S. tomentosa* f. *arborea*) based on a Molokai specimen. Degener and Sherff (Sherff 1949) published a new variety, var. *molokaiensis*, based on plants from West Molokai. Nearly 30 years later, Otto and Isa Degener elevated that variety to the specific level (Degener and Degener 1978). At that time, the Degeners also described two new species, *S. hawaiiensis* and *S. hobdyi*. In the currently accepted classification by Geesink and others (1990), *S. arborea*, *S. hawaiiensis*, *S. hobdyi*, and *S. molokaiensis* are synonymized with *S. tomentosa*. However, they note that the arborescent form of the species found on the island of Molokai probably merits formal taxonomic recognition.

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling shrub with branches up to 14 m (45 ft) long but may also be a small tree up to 6 m (20 ft) in height. Each compound leaf is comprised of 18 to 38 oblong to elliptic leaflets, each 15 to 38 mm (0.6 to 1.5 in) long and 5 to 18 mm (0.2 to 0.7 in) wide, and is usually sparsely to densely covered with silky hairs. The flowers, in clusters of two to nine, are salmon tinged with yellow, orange-red, or scarlet, or rarely pure yellow. The petals are between 23 and 45 mm (0.9 and 1.8 in) long, the upper pair sometimes of a lighter color than the other petals. The calyx is about 7 to 12 mm (0.3 to 0.5 in) long. Fruits are slightly flattened pods 7 to 23 cm (2.8 to 9 in) long and about 5 mm (0.2 in) wide that contain about 6 to 27 olive to pale or dark brown, oblong seeds. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1990).

On Molokai, *Sesbania tomentosa* was known historically from Mahana on Mauna Loa, in the vicinity of the coast near Waiahewahewa Gulch, and on Molokai's west coast at Laau and Ilio Points (HHP 1992j16, 1992j18, 1992j23, 1992j26, 1992j37). On Oahu, *Sesbania tomentosa* was known historically from eastern Oahu at Ulupau Crater, and on the islets of Kaohikaipu and Mokulua (HHP 1992j3, 1992j6, 1992j34). This taxon was also known historically from western Oahu at an unspecified location along the Waianae coast (HHP 1992j10). On Lanai, *Sesbania tomentosa* was known historically from scattered locations on the south half of the island and on the east slope of the island at Kahinahina (HHP 1992j5, 1992j19 to 1992j22, 1992j42). *Sesbania tomentosa* was also known historically from an unspecified location on Kahoolawe (HHP 1992j24).

Currently, there are two populations of *Sesbania tomentosa* in the Northwestern Hawaiian Islands (HHP 1992j35, 1992j36). One population is on the island of Nihoa, which comprises 0.8 sq km (0.3 sq mi) and is under U.S. Fish and Wildlife Service management (Depart. of Geography 1983, HHP 1992j35). The Nihoa plants have been described as relatively common in some areas, with several thousand individuals known (HHP 1992j35). Another population is known from Necker Island, which is only 0.2 sq km (0.1 sq mi) in area, and like Nihoa is managed by the U.S. Fish and Wildlife Service (HHP 1992j36). Although there are no population estimates for Necker Island, *Sesbania tomentosa* is known to occur from 45 m (150 ft) elevation to the summit, growing on the tops of all hills of the main island with a few individuals found on the Northwest Cape (HHP 1992j36). On the privately owned island of Niihau, *Sesbania tomentosa* is known from the south tip of the island at the headland west of Kaumuhonu Bay. The size of this population has not been determined; in 1947 at least one collection was made at an elevation of 50 m (160 ft) (HHP 1992j14).

On Kauai, *Sesbania tomentosa* is found between Mana town and Mana Point and at Polihale State Park (HHP 1992j15, 1992j33; HPCC 1991L). The population on State-owned land at Polihale State Park consists of about 30 individuals growing in a lithified dune area at approximately 12 m (40 ft) elevation in an area of approximately 10 to 50 sq m (110 to 540 sq ft) (HHP 1992j33). The second population is approximately 6 km (4 mi) southwest of the Polihale State Park population, growing alongside a pond owned by the State (HHP 1992j15). The size of the population has not been determined. On Oahu, *Sesbania tomentosa* is currently known from 1 population of 50 to 100 individuals on State-owned land at Kaena Point (HHP 1992j1, 1992j2). This population is primarily within the Kaena Point NAR, growing in sand dunes in a Naupaka kahakai Mixed Coastal Dry Shrubland (HHP 1992j1, 1992j2; HPCC 1990o). However, scattered individuals are also located to the east for about 3.5 km (2.25 mi) along the north coast (HHP 1992j1, 1992j2; Woodward *et al.* 1991).

On Molokai, *Sesbania tomentosa* is known from the south slopes of central Molokai from Kamiloloa to Makolelau and along Molokai's northwest coast from Moomomi to east of Hinanaulua. The 4 populations on private and State-owned land from Kamiloloa to Makolelau total fewer than 2,000 individuals and grow in a 7 by 3 km (4.5 by 2 mi) area (HHP 1992j11, 1992j13, 1992j25, 1992j27; HPCC 1990m, 1990n). The 3 populations from Moomomi to east of Hinanaulua consist of about 100 to 150 plants growing on State and private land from sea level to 60 m (200 ft) elevation in a 5 by 1 km (3 by 0.5 mi) area (HHP 1992j12, 1992j28, 1992j49; HPCC 1990L). On Lanai, *Sesbania tomentosa* is now restricted to the northern slopes of the island. This cluster of 3 populations between Paomai and Maunalei is on privately owned land and includes at least 12 individuals growing on arid slopes (HHP 1992j17, 1992j38, 1992j39).

On Maui, *Sesbania tomentosa* is only known from two areas on West Maui and two areas on East Maui. On West Maui, one plant is on State-owned land below Lihau Peak (HHP 1992j30). *Sesbania tomentosa* also occurs on a 6 km (4 mi) stretch of the northeast coast of West Maui, from the lighthouse near Nakalele Point to Puu Kahulianapa (HHP 1992j31, 1992j32, 1992j43, 1992j48; HPCC 1991m). This cluster of 4 populations contains an estimated 50 to 75 individuals on land owned by the State, the County of Maui, and private individuals (HHP 1992j31, 1992j32, 1992j43, 1992j48; R. Hobdy, pers. comm., 1992). On East Maui, two trees exist on privately owned land in Kamaole, but they appear to have been planted (Winona Char, Char & Associates, *in litt.*, 1993). *Sesbania tomentosa* also occurs on the southeastern slopes of Pimoe cinder cone between 450 and 500 m (1480 to 1640 ft) elevation. This population consists of 13 plants located on the Hawaii National Guard Kanaio Training Area (Sam Gon, The Nature Conservancy, *in litt.*, 1993). Off the south central coast of Kahoolawe, approximately 25 to 30 individuals of *Sesbania tomentosa* are found on the sparsely vegetated islet of Puu Koae, which is a State-owned seabird sanctuary (HHP 1992j29).

On the island of Hawaii, *Sesbania tomentosa* is known from two regions of the southeast coast and two areas along the northwestern coast. On the southeastern coast it occurs along 16 km (10 mi) of coastline between Ka Lae and Kaalela. This cluster of populations on State-owned land contains an estimated 260 individuals growing between sea level and 25 m (80 ft) elevation, with some populations occurring in 'Ilima Coastal Dry Shrubland (HHP 1992j7, 1992j9, 1992j44, 1992j45, 1992j50; HPCC 1991j, 1991k; W. Char, *in litt.*, 1993). The second cluster is in Hawaii Volcanoes National Park and consists of scattered populations within a 19 by 8 km (12 by 5 mi) area from above Kukalauula Pali to Kahue, at elevations between 10 and 850 m (30 and 2,800 ft). This cluster of populations on federally owned land contains at least 50 individuals (HHP 1992j4, 1992j8, 1992j40, 1992j41, 1992j46, 1992j47; H. Huntzinger, *in litt.*, 1993). On the northwestern coast, a single plant occurs at 30 m (100 ft) elevation on private land at Kaupulehua (W. Char, in litt., 1993). The other northwest coast population is also on private land at Waiakailio, and consists of eight plants with several seedlings at 300 m (1000 ft) elevation (W. Char, *in litt.*, 1993). The total currently known populations of *Sesbania tomentosa* on the 8 main Hawaiian islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii) contain an estimated 2,000 to 3,000 individuals. In the Northwestern Hawaiian Islands, the largest population occurs on Nihoa and consists of several thousand individuals (HHP 1992j35).

Sesbania tomentosa is found on sandy beaches, dunes, soil pockets on lava, and along pond margins (Geesink *et al.* 1990). It commonly occurs in coastal dry shrublands and grasslands, but is also known from open 'ohi'a forests and Mixed Coastal Dry Cliffs (HHP 1992j2, 1992j4, 1992j5, 1992j7, 1992j14, 1992j27, 1992j28, 1992j35, 1992j49). Associated plant species include 'ilima, naupaka kahakai, *Heteropogon contortus* (pili), *Myoporum sandwicense* (naio), and *Sporobolus virginicus* ('aki'aki) (HHP 1992j1, 1992j2, 1992j7, 1992j8, 1992j12, 1992j13, 1992j25, 1992j28, 1992j31, 1992j33, 1992j40, 1992j45, 1992j49, 1992j50). The primary threats to *Sesbania tomentosa* are habitat degradation caused by axis deer and cattle, competition with various alien plant species, fire, and destruction by off-road vehicles.

A specimen collected by David Nelson in 1779 from the island of Hawaii was described and named *Solanum incompletum* (thorny popolo) by Dunal (1852). In 1888, Hillebrand described two varieties of the species: var. *glabratum* and var. *mauiense*. In 1969, Harold St. John described the species *S. haleakalaense* based on a specimen collected by Hillebrand on the south slope of Haleakala on Maui (St. John 1969). In the latest treatment, *S. haleakalaense* was synonymized with *S. incompletum* and no subspecific taxa of *S. incompletum* were recognized (Symon 1990).

Solanum incompletum, a member of the nightshade family (Solanaceae), is a woody shrub up to 3 m (10 ft) tall. Its stems and lower leaf surfaces are covered with prominent reddish prickles about 4 mm (0.2 in) long or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves, 10 to 15 cm (4 to 6 in) long and about 7 cm (2.8 in) wide, have prominent veins on the lower surface, and are on stalks up to 7 cm (2.8 in) long. The leaf margins are lobed with one to four lobes on each side. Numerous flowers grow in loose branching clusters with each flower on a stalk about 9 mm (0.4 in) long. The calyx and flowers generally lack prickles. The white petals form a star-shaped corolla about 2 cm (0.8 in) in diameter. The curved anthers, about 2 mm (0.08 in) long, top short filaments that do not extend beyond the petals. Fruits are round berries about 1.5 cm (0.6 in) in diameter that mature from yellow-orange to black. This species differs from others in the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1990).

Historically, *Solanum incompletum* was known from central and northeastern Lanai and from scattered locations on Maui (HHP 1992k1, 1992k2, 1992k4, 1992k10 to 1992k13; Symon 1990). According to David Symon (1990), the known distribution of *Solanum incompletum* also extends to the islands of Kauai and Molokai. On the island of Hawaii, *Solanum incompletum* was known historically from the Kohala Mountains, Kona, Puu Waawaa, Puu Ikaaka Crater, and Omaokoili (HHP 1992k3, 1992k5, 1992k7 to 1992k9). The single remaining known population is from the island of Hawaii; it has not been seen for more than 40 years. This population is on State land at Puu Huluhulu and consists of perhaps two individuals at an approximate elevation of 2,040 m (6,700 ft) (HHP 1992k6). Associated species include naio, *Acacia koa* (koa), and *Sophora chrysophylla* (mamane) in dry mesic forest, diverse mesic forest, and subalpine forest at elevations from 300 to 2,040 m (1,000 to 6,700 ft) (HHP 1992k1, 1992k6; Symon 1990; J. Lau, pers. comm., 1992). The primary threats to the last remaining individuals of *Solanum incompletum* are stochastic extinction and reduced reproductive

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vigor due to the extremely small number of existing plants, and competition with the alien plant, *Senecio mikanioides* (German ivy).

Spermolepis hawaiiensis (NCN) was first described by H. Wolff in 1921. In the past, this Hawaiian species had been confused with the European plants, *Apium echinatum* and *Caucalis daucoides* (Constance and Affolter 1990, Wolff 1921).

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches that grows to a height of 5 to 20 cm (2 to 8 in). Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks about 2.5 cm (1 in) long. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. Each cluster consists of two to six flowers, with each flower on a stalk between 2 and 6 mm (0.08 and 0.2 in) long. The calyx is lacking in this species, but one to five bracts grow below the clusters of flowers. The fruits are oval and laterally compressed and constricted at the line where the two halves of the fruit meet. The fruits are 4 mm (0.2 in) long and 3 mm (0.1 in) wide, covered with curved bristles, and contain seeds that are marked with longitudinal grooves beneath oil tubes that are characteristic of the parsley family. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1990).

Historically, *Spermolepis hawaiiensis* was known from Waimea on Kauai, Koko Head on Oahu, Paomai and Kahinahina on Lanai, and Kipuka Kahali' on Hawaii (HHP 1992L3 to 1992L5, 1992L8, 1992L9; H. Huntzinger, *in litt.*, 1993). Currently, six populations are known on Oahu, Molokai, Lanai, and West Maui; one additional population may exist on Hawaii. On Oahu, on State land at Diamond Head (land leased to the Department of Defense at the Diamond Head Reservation), 10 plants were observed in 1992 during the dry season. In 1988, when the site was first visited, thousands of plants were seen over an area less than 50 sq m (several hundred sq ft) (Wayne Takeuchi, DOFAW, pers. comm., 1992). The population fluctuations probably reflect seasonal changes in precipitation. On Molokai, about 600 plants were reported from Kamalo on private land within an area of less than 400 sq m (0.1 ac) (HHP 1992L8). On Lanai, 2 populations of *S. hawaiiensis* are known on private land: 1 at Kapoho with 100 individuals and 1 west of Puu Manu with 50 to 100 individuals covering an area of about 0.1 ha (0.25 ac) (HHP 1992L7; R. Hobdy, pers. comm., 1992). On West Maui, 3 populations are known on State land: 1 in the Lihau section of the West Maui NAR, with 60 to 100 individuals within an area of about 0.4 ha (1 ac); 1 further east in the Lihau section of the West Maui NAR, with several hundred plants scattered over a distance of 0.7 km (0.4 mi); and 1 above Lahainaluna School, with several hundred individuals spread over an area of about 0.4 ha (1 ac) (HHP 1992L1, 1992L2; HPCC 1991n). On the island of Hawaii, a collection of *Spermolepis hawaiiensis* was made at an unspecified location in 1943; it is not known whether this population still exists (HHP 1992L9).

Spermolepis hawaiiensis is known from various vegetation types, including 'ohi'a forests, 'A'ali'i Lowland Dry Shrubland, cultivated fields, and pastures between about 300 and 600 m (1,000 and 2,000 ft) in elevation (HHP 1992L2, 1992L8, 1992L9; HPCC 1991n). Associated plant species include 'ilima, *Doryopteris* sp., *Gouania hillebrandii*, and the alien plant, *Leucaena leucocephala* (koa haole) (HHP 1992L1). The primary threats to *Spermolepis hawaiiensis* are habitat degradation by axis deer and competition with the alien plant, koa haole.

Vigna o-wahuensis (Oahu vigna) was described by T. Vogel in 1836 from a specimen from the Waianae Mountains of Oahu (Gray 1854). In 1854, Gray described another species, *Vigna sandwicensis*, for which Rock later designated two varieties: var. *heterophylla* and var. *sandwicensis* (Rock 1920b). The currently accepted treatment places *V. sandwicensis* in synonymy under *V. o-wahuensis* (Geesink *et al.* 1990).

Vigna o-wahuensis, a member of the pea family, is a slender twining annual or perennial herb with fuzzy stems that grows to 0.4 m (1.3 ft) in length. Each leaf is made up of three leaflets that vary in shape from round to linear, are 1.2 to 8 cm (0.5 to 3 in) long and 0.1 to 2.5 cm (0.04 to 1 in) wide, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals about 2 to 2.5 cm (0.8 to 1 in) long. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx is 4 to 8 mm (0.2 to 0.3 in) long with asymmetrical lobes that measure about 3 mm (0.1 in) long. The fruits are long slender pods 4 to 9 cm (1.6 to 3.5 in) long and about 5 mm (0.2 in) wide, that may or may not be slightly inflated and contain 7 to 15 gray to black seeds less than 6 mm (0.2 in) long. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1990).

Historically, *Vigna o-wahuensis* was known from Niihau and from an unspecified location on Kauai (HHP 1992m10, 1992m16). On Oahu, this taxon was known from between Waimanalo and Makapuu Point, the Mokulua Islets, and the Waianae Mountains (HHP 1992m13 to 1992m15, 1992m20). On Maui, *Vigna o-wahuensis* was known from an unspecified site on West Maui and from Makawao, Waiakoa, and Haleakala on East Maui (HHP 1992m2 to 1992m4, 1992m25). There are no currently known populations on Niihau, Kauai, Oahu, or Maui. On Molokai, *Vigna o-wahuensis* was known historically from the western end of the island in the vicinity of Ilio Point (HHP 1992m18). On Lanai, this species occurred historically at scattered locations across the island's southern half (HHP 1992m5, 1992m6, 1992m8, 1992m9, 1992m17). On the island of Hawaii, this taxon was known from Mauna Loa and Kau at unspecified sites (HHP 1992m1, 1992m19, 1992m24).

Currently, a total of fewer than 100 individuals of *Vigna o-wahuensis* is known from 7 populations on the islands of Molokai, Lanai, Kahoolawe, and Hawaii (HHP 1992m11, 1992m12, 1992m21 to 1992m23; HPCC 1991o; J. Lau, pers. comm., 1992). On Molokai, there are two populations separated by a distance of 4 km (2.5 mi). One population, south of Onini Gulch at about 850 m (2,800 ft) elevation on privately owned land, covers an area of 18 sq m (200 sq ft) in a forestry planting of *Fraxinus uhdei* (tropical ash) and *Pinus* (pine) (HHP 1992m11). The other Molokai population of about 10 individuals is on privately owned land at Makolelau (J. Lau, pers. comm., 1992). On Lanai, at least one individual of *Vigna o-wahuensis* is known from the arid windward slopes northeast of Kanepuu above Lapaiki at about 370 m (1,200 ft) elevation on privately owned land (HHP 1992m7, 1992m23). On the State-owned island of Kahoolawe, *Vigna o-wahuensis* grows between Makaalae and Lua Kealialalo at 140 m (460 ft) elevation, near the summit at about 400 m (1,300 ft) elevation, and about 0.8 km (0.5 mi) south of Hanakanaea near "Sailor's Hat" (HHP 1992m21, 1992m23; J. Lau, pers. comm., 1992). Only one individual is known from the population between Makaalae and Lua Kealialalo in pili grassland (J. Lau, pers. comm., 1992). Near the summit, about 20 plants grow in a 9 sq m (100 sq ft) area with a few more plants scattered nearby (HHP 1992m22). The size of the population south of Hanakanaea has not been determined, but at least one collection has been made recently (HHP 1992m21). On the island of Hawaii, *Vigna o-wahuensis* is known only from Nohonaohae Cinder Cone on privately owned land. Ten plants are known from 'A'ali'i Lowland Dry Shrubland within an exclosure containing pasture grass (HHP 1992m12, HPCC 1991o).

Vigna o-wahuensis occurs in dry to mesic grassland and shrubland from 10 to 1,370 m (30 to 4,500 ft) in elevation (Geesink *et al.* 1990; HHP 1992m1 to 1992m3, 1992m5, 1992m11, 1992m12, 1992m15, 1992m22, 1992m24). Other associated plant species include 'ilima, *Chenopodium* ('aheahea), *Dubautia menziesii*, and *Osteomeles anthyllidifolia* (ulei) (HHP 1992m11, 1992m12, 1992m23; HPCC 1991o). The primary threats to *Vigna o-wahuensis* are habitat degradation by ungulates (pigs and axis deer), competition with various alien plant species, fire, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens*, *Bonamia menziesii*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hibiscus brackenridgei* (as *H. b.* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Neraudia sericea*, *Plantago princeps* (as *P. p.* var. *elata*, var. *laxifolia*, and var. *princeps*), *Sesbania tomentosa* (as *S. t.* var. *tomentosa*), *Solanum incompletum* (as *S. i.* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), *Vigna o-wahuensis* (also as *V. sandwicensis* var. *heterophylla* and *V. s.* var. *sandwicensis*) were considered to be endangered. *Diellia erecta* and *Plantago princeps* (as *P. p.* var. *acaulis*, var. *denticulata*, and var. *queleniana*) were considered to be threatened, and *Neraudia sericea* (as *N. kahoolawensis*) and *Solanum incompletum* (as *S. haleakalense*) were considered to be extinct.

On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct, plus *Diellia erecta* (considered threatened). The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including the above taxa, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, 11 of the taxa (including synonymous taxa) that had been in the 1976 proposed rule were treated as category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Other than *Mariscus pennatiformis*, *Neraudia sericea* (as *N. kahoolawensis*), *Plantago princeps* (as *P. p.* var. *acaulis* and var. *queleniana*), *Sesbania tomentosa* (as *S. hobdyi*), *Solanum incompletum* (as *S. haleakalense*), and *Spermolepis hawaiiensis*, all the aforementioned taxa that were proposed as endangered in the June 16, 1976, proposed rule were considered category 1 candidates on all three notices of review. *Flueggea neowawraea* appeared as *Neowawraea phyllanthoides* in the 1980 and 1985 notices. In the 1980 and 1985 notices, *Sesbania tomentosa* (as *S. hobdyi*) and *Solanum incompletum* (as *S. haleakalense*) were considered category 1* species. Category 1* species are those that are possibly extinct. *Plantago princeps* (as *P. p.* var. *acaulis* and var. *queleniana*) appeared as a category 2 taxon and *Neraudia sericea* (as *N. kahoolawensis*) as a category 3A species in the 1980 and 1985 notices. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3A taxa are those for which the Service has persuasive evidence of extinction. Through taxonomic revisions, each of the category 1*, 2, and 3A taxa were synonymized under category 1 taxa on the 1990 list. *Mariscus pennatiformis* (as *Cyperus p.* var. *bryanii*) first appeared on the 1985 notice of review as a category 1 taxon. *Spermolepis hawaiiensis* first appeared on the 1990 notice of review as a category 1 species after it was rediscovered in 1986.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions that present substantial information indicating that the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the Service to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. The findings were reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. The proposed rule published on September 14, 1993 (58 FR 48012) to list 12 species of plants from the Hawaiian Islands as endangered species constituted the final 1-year finding that was required for these species.

Based on comments and recommendations received in response to the proposal (see Comments and Recommendations, below), the Service now determines these 12 plant species to be endangered with the publication of this final rule.

Summary of Comments and Recommendations

In the September 14, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information

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that might contribute to the development of a final rule. The public comment period ended on November 15, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in "The Maui News" on October 7, 1993, the "Hawaii Tribune-Herald" on October 8, 1993, and the "Honolulu Advertiser" on October 7, 1993.

Comments were received from three parties: One from an individual in support of the listing of *Spermolepis hawaiiensis*, but offering no additional information; one from an individual in support of the listing of *Spermolepis hawaiiensis*, *Adenophorus periens* and *Sesbania tomentosa*, and providing information on the possible extirpation of the population of *Adenophorus periens* at Kane Nui o Hamo by volcanic activity and drought, and indicating that the actual number of plants of *Sesbania tomentosa* in Hawaii Volcanoes National Park is more than 50; the third respondent provided information on three previously unknown populations of *Sesbania tomentosa*, one from the south coast of East Maui and two from the northwest coast of the island of Hawaii. The information provided by these respondents has been incorporated into this final rule. The information received does not indicate that any of these species are under less threat than previously thought.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 12 species are summarized in Table 2.

TABLE 2.—SUMMARY OF THREATS

Species	Feral animal activity				Alien plants	Fire	Human impacts	Insects	Limited numbers*
	Pigs	Goats	Deer	Cattle					
Adenophorus periens	X	———	———	———	X	X	———	———	
Bonamia menziesii	X	X	X	X	X	X	———	———	
Diellia erecta	X	X	———	X	X	———	———	———	X[1]
Flueggea neowawraea	X	X	X	X	X	X	———	X	
Hibiscus brackenridgei	X	X	X	X	X	———	X	———	X[1]
Mariscus pennatiformis	———	———	———	———	———	———	———	———	X[1]
Neraudia sericea	X	X	———	———	X	———	———	———	X[1,2]
Plantago princeps	X	X	———	———	X	———	———	———	
Sesbania tomentosa	———	———	X	X	X	X	X	———	
Solanum incompletum	———	———	———	———	X	———	———	———	X[2,3]
Spermolepis hawaiiensis	———	———	X	———	X	———	———	———	
Vigna o-wahuensis	X	———	X	———	X	X	———	———	X[1]

* No more than 100 individuals and/or fewer than five populations.
[1] No more than 100 individuals.
[2] Fewer than five populations.
[3] No more than 10 individuals.

These factors and their application to *Adenophorus periens* L.E. Bishop (pendant kihi fern), *Bonamia menziesii* A. Gray (no common name (NCN)), *Diellia erecta* Brack. (NCN), *Flueggea neowawraea* W. Hayden (mehamehame), *Hibiscus brackenridgei* A. Gray (ma'o hau hele), *Mariscus pennatiformis* (Kekunth.) T. Koyama (NCN), *Neraudia sericea* Gaud. (ma'aloa), *Plantago princeps* Cham. and Schlechtend. (ale), *Sesbania tomentosa* Hook. and Arnott ('ohai), *Solanum incompletum* Dunal (thorny popolo), *Spermolepis hawaiiensis* Wolff (NCN), and *Vigna o-wahuensis* Vogel (Oahu vigna) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate alien animal and plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). The Northwestern Hawaiian Islands have undergone similar alteration, but to a lesser degree. The primary threats facing the 12 plant species included in this ruling are ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants.

Eleven of the 12 species in this ruling are variously threatened by feral animals. (See Table 2.) Animals such as pigs, goats, axis deer, black-tailed deer, and cattle were introduced either by the early Hawaiians (pigs) or more recently by European settlers (all ungulate species) for food and/or commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of feral ungulates on native vegetation have become increasingly apparent. Beyond the direct effect of trampling and grazing native plants, feral ungulates have contributed significantly to the heavy erosion still taking place on most of the main Hawaiian Islands.

Pigs (*Sus scrofa*), originally native to Europe, Africa, and Asia, were introduced to Hawaii by the Polynesian ancestors of Hawaiians, and later by western immigrants. The pigs escaped domestication and invaded primarily wet and mesic forests and grasslands of Kauai, Oahu, Molokai, Maui, and Hawaii. They presently threaten the existence of at least eight of the taxa in those habitats. While foraging, pigs root and trample the forest floor, encouraging the establishment of alien plants in the newly disturbed soil. Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). On Kauai, three populations each of *Adenophorus periens* and *Flueggea neowawraea* and a single population each of *Plantago princeps* var. *anomala* and *P. p.* var. *longibracteata* have sustained loss of individual plants and/or habitat as a result of feral pig activities (HHP 1992d18, 1992i2; J. Lau, pers. comm., 1992). The following numbers of populations of the plants on Oahu are threatened by pigs: 4 populations of *Bonamia menziesii*, 15 of *Flueggea neowawraea*, 1 of *Hibiscus brackenridgei* ssp. *mokuleianus*, and 2 populations each of *Plantago princeps* var. *longibracteata* and *P. p.* var. *princeps*. On Molokai, one population each of *Diellia erecta*, *Plantago princeps* var. *laxiflora*, and *Vigna o-wahuensis*, and two populations of *Neraudia sericea* are also threatened by pigs. On East Maui, pigs are destroying the habitat of three populations of *Plantago princeps* var. *laxiflora* (HHP 1992i12; J. Lau, pers. comm., 1992). On the island of Hawaii, feral pigs are a major threat to species at the following locations: in Kahaualea NAR, Olaa Tract, and 2.4 km (1.5 mi) northwest of Puu Kauka, where at least three populations of *Adenophorus periens* occur; and in the regions of Manuka and Honomalino in the South Kona District, where one or more populations of *Diellia erecta* and *Flueggea neowawraea* remain (J. Lau, pers. comm., 1992).

Goats (*Capra hircus*), native to the Middle East and India, were first successfully introduced to the Hawaiian Islands in 1792. Feral goats now occupy a wide variety of habitats from lowland dry forests to montane grasslands on Kauai, Oahu, Molokai, Maui, and Hawaii, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985, van Riper and van Riper 1982). Goats are significantly degrading the habitat of at least five species in this rule. On Kauai, goats contribute to the substantial decline of one population of *Bonamia menziesii*, four populations of *Flueggea neowawraea*, and one population of *Plantago princeps* var. *anomala* (HHP 1992d18, 1992d30, 1992d31, 1992i2; J. Lau, pers. comm., 1992). On Oahu, encroaching urbanization and hunting pressure tend to concentrate the goat population in the dry upper slopes of the Waianae Mountains, where one population of *Bonamia menziesii* and two populations of *Flueggea neowawraea* exist (HHP 1992d15; J. Lau, pers. comm., 1992). The goat population in the Waianae area is apparently increasing, becoming an even greater threat to the rare plants that grow there. On Molokai, two populations of *Diellia erecta* in Halawa Valley and Puu Kolekole and one population of *Neraudia sericea* at Makolelau are presently threatened by goats (HHP 1992c12, 1992c13; J. Lau, pers. comm., 1992). Until a few years ago, feral goats were a major threat to rare plants in Haleakala National Park on East Maui, but because of an active ungulate control program, the goat population was reduced to 100 by 1988. While they are no longer a significant threat, the future ingress and reestablishment of goats are still a possibility (Lloyd Loope, National Park Service (NPS), pers. comm., 1992) and could potentially affect the three populations of *Plantago princeps* var. *laxiflora* found in the park (J. Lau, pers. comm., 1992).

Eight individuals of axis deer (*Axis axis*), introduced to the island of Molokai in 1868, increased to thousands of animals within about 30 years (Tomich 1986). By the turn of the century, the herds so damaged the vegetation of Molokai that professional hunters were hired to control their numbers (Tomich 1986). By then, the native vegetation had suffered irreparable damage from overgrazing by axis deer. They degrade the habitat by trampling and overgrazing vegetation, which removes ground cover and exposes the soil to erosion (J. Lau, pers. comm., 1992). Activity of deer on Molokai has resulted in loss of habitat and/or individuals of at least six of the species. In the absence of a protective fence, axis deer continue to invade the unfenced areas and threaten to trample the plants. On both Molokai and Lanai, the axis deer populations are presently actively managed for recreational hunting by the Hawaii State Department of Land and Natural Resources. Extensive red erosional scars caused by decades of deer activity are evident on Lanai. The habitat of three Lanai populations of *Bonamia menziesii* and one population of *Hibiscus brackenridgei* ssp. *brackenridgei* on that island is negatively affected by axis deer (HHP 1992e1; J. Lau, pers. comm., 1992). Two populations of *Sesbania tomentosa* at Paomai and Mahana on Lanai were last seen in the mid-1950s (HHP 1992j17, 1992j38). Those areas have long supported axis deer, which probably pose the primary threat to those two *Sesbania* populations. Elsewhere on Lanai, one population of *Vigna o-wahuensis* above Lapaiki and one population of *Spermolepis hawaiiensis* at Kapoho are threatened by axis deer (HHP 1992L7, 1992m23). To control deer in what remains of Lanai's dry forests, The Nature Conservancy of Hawaii (TNCH) is presently erecting fenced exclosures to protect populations of rare taxa (including two populations of *Bonamia menziesii*) that occur within Kanepuu Preserve (Heidi Bornhorst, TNCH, and J. Lau, pers. comms., 1992). Although the fence is high enough to normally inhibit entry by deer, human pressure can force the deer to jump over the fence. On Maui, deer damaged plants of two populations of *Hibiscus brackenridgei* ssp. *brackenridgei* at Puu O Kali by stripping the bark and breaking limbs (HHP 1992e1, 1992e8).

Black-tailed deer (*Odocoileus hemionus*) were first introduced to Kauai in 1961 for the purpose of sport hunting and today probably number well over 500 animals. The deer are presently confined to the western side of the island, where they feed on a variety of native and alien plants (van Riper and van Riper 1982). On Kauai, one population of *Bonamia menziesii* in Paaiki Valley and the population of *Flueggea neowawraea* in Paaiki and Mahanaloa valleys are threatened by black-tailed deer (J. Lau, pers. comm., 1992).

Large-scale ranching of cattle (*Bos taurus*) in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Large ranches, tens of thousands of acres in size, developed on East Maui and Hawaii (Cuddihy and Stone 1990) where most of the State's large ranches still exist today. Degradation of native forests used for ranching activities became evident soon after full-scale ranching began. The negative impact of cattle on Hawaii's ecosystem is similar to that described for goats and deer (Cuddihy and Stone 1990, Stone 1985). Cattle grazing continues in several lowland regions in the northern portion of the Waianae Mountains of Oahu: in Lualualei, where one population of *Bonamia menziesii* exists, and in Kaumoku Gulch, where one population of *Hibiscus brackenridgei* ssp. *mokuleianus* remains (HHP 1992b30; J. Lau, pers. comm., 1992). On Molokai, cattle ranching is slowly recovering from setbacks caused by recent herd reductions enforced in an effort to eliminate bovine tuberculosis from domestic and feral stock. As cattle ranching becomes reestablished on Molokai and the number of cattle increases, the threat to the rare plant species that remain in those ranching areas will also likely increase. One population of *Sesbania tomentosa* located east of Moomomi Preserve grows in a grazing area. On Maui, cattle ranching is the primary agricultural activity on the west and southwest slopes of East Maui and in lowland regions of West Maui. On both East and West Maui, one or more populations of *Bonamia menziesii*, *Diellia erecta*, and *Hibiscus brackenridgei* ssp. *brackenridgei* and the only Maui

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population of *Flueggea neowawraea* continue to be threatened by grazing cattle (HHP 1992c13; J. Lau, pers. comm., 1992). The *Flueggea neowawraea* population and one of the *Bonamia menziesii* populations grow within a fenced exclosure. Although probably minimal, the possibility of cattle entering the exclosure poses a potential threat. In the Kamaoa-Puueo and South Point regions of the island of Hawaii, cattle continue to graze in habitat currently occupied by most of the populations of *Sesbania tomentosa* on that island (J. Lau, pers. comm., 1992). In addition, one population of *Hibiscus brackenridgei* ssp. *brackenridgei* and the only known population of *Bonamia menziesii* on that island grow in regions currently used for cattle ranching (J. Lau, pers. comm., 1992).

Habitat disturbance caused by human activities threatens two of the taxa. On West Maui, all-terrain vehicles have driven over *Sesbania tomentosa* plants growing west of Nakalele Point lighthouse (HHP 1992j43). Continued off-road activity threatens to destroy a significant portion of that population. On the island of Hawaii, a dirt road runs through a population of *Sesbania tomentosa* located in the Kamaoa-Puueo region (HHP 1992j50). Off-road activity could damage a significant portion of that population as well. In the Puu Anahulu region on that island, a ranch road was bulldozed close to a plant of *Hibiscus brackenridgei* ssp. *brackenridgei* in 1989 (HHP 1992e6). Continued road development threatens to destroy the only known population of that taxon in the area.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a factor, but unrestricted collecting for scientific or horticultural purposes would seriously impact the six species whose low numbers make them especially vulnerable to disturbances (*Diellia erecta, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis*).

C. Disease and predation.

Black twig borer (*Xylosandrus compactus*) has been cited as an immediate threat to all extant populations of *Flueggea neowawraea* (J. Lau, pers. comm., 1992). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely and often killing branches or whole plants (Howarth 1985). All known plants of *Flueggea neowawraea* suffer slight to severe defoliation and reduced vigor due to infestations of this alien insect.

Evidence of predation on two of the taxa by ungulates (cattle, deer, goats) is documented on Oahu, Lanai, and Maui. On Oahu, plants of *Bonamia menziesii* at Lualualei grow over native vegetation and drape well below the browse line of cattle, indicating the potential for cattle to feed on the plants (HHP 1992b30). On Lanai, axis deer are known to feed on this species, especially at Kanepuu. Depredation of *Hibiscus brackenridgei* ssp. *brackenridgei* by goats has been observed on Lanai and Maui. Goats are known to eat the branch tips and strip the bark of the plants (HHP 1992e14). While there is no evidence of predation on the other 11 species, none of them are known to be unpalatable to cattle, deer, or goats. Predation is therefore a probable threat to species growing at sites where those animals have been reported (*Diellia erecta, Flueggea neowawraea, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) (See Factor A.).

D. The Inadequacy of Existing Regulatory Mechanisms

Of the 12 species in this ruling, a total of 10 have populations located on private land, 2 on County land, 10 on State land, and 7 on Federal land. With the exception of *Neraudia sericea* which is restricted to private land, all of the other species occur in more than one of those ownership categories. The known populations of these species located on Federal lands are inadequate to ensure their long-term survival.

There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private or State land. However, Federal listing would automatically invoke listing and associated protection under Hawaii State law.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Eleven of the 12 species are threatened by competition with one or more alien plant species. (See Table 2). The most significant of these appear to be *Schinus terebinthifolius* (Christmasberry), *Psidium cattleianum* (strawberry guava), *Melinus minutiflora* (molasses grass), *Pennisetum setaceum* (fountain grass), *Clidemia hirta* (Koster's curse), *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), *Prosopis pallida* (kiawe), *Toona ciliata* (Australian red cedar), *Cenchrus ciliaris* (buffelgrass), *Rubus argutus* (prickly Florida blackberry), *Passiflora mollissima* (banana poka), and *Rubus ellipticus* (Himalayan raspberry).

Many noxious alien plants such as Christmasberry have invaded the dry to mesic lowland regions of the Hawaiian Islands. Introduced to Hawaii before 1911, Christmasberry forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990). This fast-growing species is found in lowland areas of the major Hawaiian Islands (Smith 1985) and is currently expanding its range. Christmasberry is a major component of the mesic forests of the Waianae and Koolau Mountains of Oahu. For example, over half of the populations of *Bonamia menziesii*, 2 of the populations of *Plantago princeps* var. *princeps*, and all 15 populations of *Flueggea neowawraea* that occur on Oahu are negatively affected by this invasive plant (HHP 1992b18, 1992b22, 1992b31, 1992d3, 1992d15, 1992d16; J. Lau, pers. comm., 1992). In addition, one population of *Diellia erecta* at Halawa Valley on Molokai and one population of *Bonamia menziesii* on Lanai are also affected (J. Lau, pers. comm., 1992). On Maui, Christmasberry is spreading in Iao Valley and on the south slope of East Maui (Haleakala Volcano) and is one of the primary alien plant threats to one or more populations of *Bonamia menziesii, Diellia erecta,* and *Plantago princeps* var. *laxiflora* that exist there (J. Lau, pers. comm., 1992). On the island of Hawaii, Christmasberry continues to threaten at least two populations of *Diellia erecta* and *Flueggea neowawraea* in the regions of Manuka and Honomalino in the South Kona District (HHP 1992d34; J. Lau, pers. comm., 1992).

Strawberry guava, an invasive shrub or small tree native to tropical America, has become naturalized on all of the main Hawaiian islands. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990) and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal species, including feral pigs and game birds, which disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's rain forests and is known to pose a direct threat to at least one population of *Adenophorus periens* and *Bonamia menziesii* on the island of Kauai (HHP 1992a16; J. Lau, pers. comm., 1992). Strawberry guava is a major invader of forests in the Waianae and Koolau Mountains of Oahu, where it often

forms single-species stands. It poses an immediate threat to 6 populations of *Bonamia menziesii*, 10 populations of *Flueggea neowawraea*, and 1 population of *Plantago princeps* var. *princeps* on that island (HHP 1992b5, 1992b14, 1992b18, 1992b21; J. Lau, pers. comm., 1992). On Molokai, the habitat of the Halawa Valley population of *Diellia erecta* is currently being invaded by strawberry guava (HHP 1992c12). On Maui, strawberry guava is beginning to invade the habitat of one population each of *Bonamia menziesii* and *Plantago princeps* var. *laxiflora* on West Maui and at least one population each of *Diellia erecta* and *Plantago princeps* var. *laxiflora* on East Maui (J. Lau, pers. comm., 1992). It is also a major threat to the habitat of *Adenophorus periens* in Kahaualea NAR on the island of Hawaii (HHP 1992a8).

First introduced to the Hawaiian Islands as cattle fodder, molasses grass was later planted for erosion control (Cuddihy and Stone 1990). This alien grass quickly spread to dry and mesic forests previously disturbed by ungulates. Molasses grass produces a dense mat capable of smothering plants (Smith 1985), essentially preventing seedling growth and native plant reproduction (Cuddihy and Stone 1990). Because it burns readily and often grows at the border of forests, molasses grass tends to carry fire into areas with woody native plants (Cuddihy and Stone 1990, Smith 1985). It is able to spread prolifically after a fire and effectively compete with less fire-adapted native plant species, ultimately creating a stand of alien grass where forest once stood. Molasses grass is becoming a major threat to seven of the species on four islands. In the Waianae Mountains of Oahu, three populations of *Bonamia menziesii* and one population of *Plantago princeps* var. *princeps* are immediately threatened by this grass. On Molokai, at least one population each of *Diellia erecta, Plantago princeps* var. *laxiflora,* and *Neraudia sericea* and all populations of *Vigna o-wahuensis* on the island are also negatively affected. Molasses grass is quickly spreading throughout the dry regions of West Maui, threatening two populations of *Diellia erecta* there. On Hawaii Island, a population of *Sesbania tomentosa* in Hawaii Volcanoes National Park is located in an area invaded by molasses grass (J. Lau, pers. comm., 1992).

Like molasses grass, fountain grass has greatly increased fire risk in some regions, especially on the dry slopes of Hualalai, Kilauea, and Mauna Loa volcanoes on the island of Hawaii. The effects of fountain grass invasion are similar to those discussed above for molasses grass. Fountain grass threatens the native vegetation on the leeward slopes of Hualalai in a region where at least one population of *Hibiscus brackenridgei* ssp. *brackenridgei* and the only known Hawaii Island populations of *Bonamia menziesii* and *Vigna o-wahuensis* exist (HHP 1992m12; J. Lau, pers. comm., 1992).

Koster's curse, a noxious shrub native to tropical America, was first reported on Oahu in 1941. It had spread through much of the Koolau Mountains by the early 1960s, and spread to the Waianae Mountains by 1970 (Cuddihy and Stone 1990). It poses a serious threat to two populations of *Plantago princeps* var. *longibracteata* in the Koolau Mountains. Koster's curse is widespread in Honouliuli and threatens two populations of *Flueggea neowawraea* that occur in that area of the Waianae Mountains. This prolific alien plant has recently spread to five other islands, including Kauai, where there are at least five small infestations totaling about 40 ha (100 ac) (Cuddihy and Stone 1990); one of these poses an immediate threat to one population of *Adenophorus periens* in Waioli Valley (J. Lau, pers. comm., 1992).

Lantana, a native of the West Indies, became naturalized in dry to mesic forests and shrublands of the Hawaiian Islands before 1871 (Cuddihy and Stone 1990). This shrub often forms thick cover and produces chemicals that inhibit the growth of other plant species (Smith 1985). On Kauai, lantana is a major component of the vegetation at Peaiki Valley and Waimea Canyon and is rapidly becoming established in Pohakuao. It poses a threat to populations of *Flueggea neowawraea* in those areas (HHP 1992d13, 1992d17, 1992d18, 1992d30, 1992d31). One population of *Bonamia menziesii* on Lanai and one on Maui are also negatively affected by this invasive plant (HHP 1992b1, 1992b24).

Koa haole, a shrub naturalized and often dominant in low elevation, dry, disturbed areas on all of the main Hawaiian Islands, threatens to degrade the habitat of six of the species. Koa haole is one of the major weeds found at Polihale on the island of Kauai, growing in the vicinity of a population of *Sesbania tomentosa* (HHP 1992j33; J. Lau, pers. comm., 1992). In the Waianae Mountains of Oahu, koa haole is one of the primary weed threats to half of the *Bonamia menziesii* populations and all of the *Hibiscus brackenridgei* ssp. *mokuleianus* populations found in the area (HHP 1992b12, 1992b19, 1992e23; J. Lau, pers. comm., 1992). Most of the Molokai populations of *Sesbania tomentosa* and one of the Kahoolawe populations of *Vigna o-wahuensis* are also negatively affected by koa haole (HHP 1992j13; J. Lau, pers. comm., 1992). On Maui, koa haole poses a threat to *Hibiscus brackenridgei* ssp. *brackenridgei* and *Spermolepis hawaiiensis* in the Lihau section of the West Maui NAR, and is probably also a threat to *Hibiscus brackenridgei* ssp. *brackenridgei* and *Sesbania tomentosa* elsewhere on West Maui (HHP 1992e3; J. Lau, pers. comm., 1992).

Kiawe, a deciduous thorny tree that can grow to 20 m (65 ft) in height, overshadows other plants and competes with associated vegetation for available water and space. At Polihale, on the island of Kauai, it is the primary alien plant threat to *Sesbania tomentosa*. Two Molokai populations of *Sesbania tomentosa* compete with kiawe for water and space on Moomomi's beaches. The primary alien plant threat to *Vigna o-wahuensis* on the island of Kahoolawe is kiawe (HHP 1992m21).

Australian red cedar is a fast-growing tree that was probably introduced to Hawaii for lumber. It is now found in many of Hawaii's extensively planted lowland forests and has become naturalized in mesic to wet forests (Wagner et al. 1990). Today, this tree is a definite threat to at least one population of *Bonamia menziesii* and most of the plants of *Flueggea neowawraea* in the Waianae Mountains of Oahu (J. Lau, pers. comm., 1992).

Buffelgrass forms continuous cover in dry habitats and provides excellent fuel for fire, from which it recovers quickly. Its seeds are easily dispersed by wind (Smith 1985). Buffelgrass threatens the habitat of two populations of *Sesbania tomentosa* on Molokai, and at least one population of *Vigna o-wahuensis* on Kahoolawe (J. Lau, pers. comm., 1992).

Prickly Florida blackberry was introduced to the Hawaiian Islands in the late 1800s (Haselwood and Motter 1983). The fruits are easily spread by birds to open areas where this plant can form dense, impenetrable thickets (Smith 1985). The Kauai population of *Adenophorus periens*, which is located at the boundary of Hono O Na Pali NAR and Na Pali Coast State Park, is threatened by this noxious weed (J. Lau, pers. comm., 1992).

A vine in the passionflower family, banana poka was introduced to the islands in the 1920s, probably as an ornamental. This vine is extremely detrimental to certain wet forest habitats of Kauai, Maui, and Hawaii. Heavy growth of this vine can cause damage or death to the native trees by overloading branches, causing breakage, or by forming a dense canopy cover, intercepting sunlight and shading out

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native plants below. An infestation of this vine is located at Olaa Tract on the island of Hawaii, the site of one population of *Adenophorus periens* (J. Lau, pers. comm., 1992).

A recent introduction to the Hawaiian Islands, yellow Himalayan raspberry is rapidly becoming a major weed pest in wet forests, pastures, and other open areas on the island of Hawaii. It forms large thorny thickets and displaces native plants. Its ability to invade the understory of wet forests enables it to fill a niche presently unoccupied by any other major wet forest weed in Hawaii. This has resulted in an extremely rapid population expansion of this alien plant in recent years. One population of *Adenophorus periens* grows in Olaa Tract within Hawaii Volcanoes National Park in a region where yellow Himalayan raspberry is found in increasing numbers (J. Lau, pers. comm., 1992).

There are a number of other alien plant species that pose a significant threat to populations of the plants in this ruling. *Cynodon dactylon* (Bermuda grass) is a major threat to at least one population of *Sesbania tomentosa* at Moomomi on Molokai. *Senecio mikanioides* (German ivy), a noxious, wind-dispersed vine that forms localized mats of vegetation, is a threat to the only currently known population of *Solanum incompletum* on the island of Hawaii (J. Lau, pers. comm., 1992). This *Solanum incompletum* population is fenced and protected from ungulates; however, it is not protected from German ivy. *Syzygium cumini* (Java plum), a large evergreen tree, is an aggressive invader of undisturbed forests (Smith 1985). It threatens to shade out the only known populations of *Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu (J. Lau, pers. comm., 1992). *Melia azedarach* (pride of India), a fast-growing deciduous tree that forms deep shade, grows in open dry habitats. A major infestation of this large tree in Waimea Canyon on Kauai poses an immediate threat to individuals of *Flueggea neowawraea* (HHP 1992d18, 1992d31).

Fire threatens six plant species growing in dry to mesic grassland, shrubland, and forests on five islands. On Oahu, fire is a potential threat to three populations of *Bonamia menziesii* and two populations of *Flueggea neowawraea* located adjacent to Makua Military Reservation, where current ordnance training exercises could unintentionally ignite fires (HHP 1992b12, 1992b19, 1992b20, 1992d12; J. Lau, pers. comm., 1992). The area has had a history of fires that may have burned through at least one of the populations of *Bonamia menziesii*, and burned to within a few tens of meters of another (HHP 1992b19, 1992b20). Fire is also a threat to the following populations: one population each of *Bonamia menziesii* and *Flueggea neowawraea* on Oahu, one population of *Bonamia menziesii* on Lanai, two populations of *Sesbania tomentosa* and one population of *Vigna o-wahuensis* on Molokai, all known populations of *Vigna o-wahuensis* on Kahoolawe, and at least one population each of *Bonamia menziesii* and *Sesbania tomentosa* on the island of Hawaii (HHP 1992d12; J. Lau, pers. comm., 1992). Of note is a population of *Adenophorus periens* in Kahaualea NAR on the island of Hawaii (HHP 1992a8). Tephra fallout and lava flows from Kilauea Volcano have affected the NAR over the past several years. Wildfires ignited by volcanic activity have destroyed some of the NAR's mesic and wet forests. In addition, tephra fallout and noxious volcanic gasses have caused extensive damage to surrounding native forests. Such catastrophic natural events threaten to destroy the region's largest population of *Adenophorus periens*.

The small number of populations and of individual plants of six of these species (*Diellia erecta, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Solanum incompletum*, and *Vigna o-wahuensis*) increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, *Solanum incompletum* is known from a single population on the island of Hawaii and numbers only two individuals. Two of the species have fewer than 5 populations and 6 of the species are estimated to number no more than 100 individuals (See Table 2). All of the species in this ruling except *Sesbania tomentosa* either number fewer than 20 populations or total fewer than 200 individuals. The reproductive system of *Flueggia neowawraea* further exacerbates the problem of limited numbers. Since each tree bears only male or female flowers, they must be cross-pollinated from a different tree (Hayden 1990). If only a few trees flower at the same time, or if flowering trees are too widely separated for pollination by insects, no seed will be set. The survival of small, isolated populations, which probably are already experiencing depressed reproductive vigor, is therefore further threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, this rulemaking will list these 12 species as endangered: *Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis*, and *Vigna o-wahuensis*. These 12 species are threatened by one or more of the following: habitat degradation and/or predation by pigs, goats, deer, and cattle; competition for space, light, water, and nutrients by alien plants; habitat loss from fires; human impacts from recreational activities; and insect infestations. Six of the 12 species either number no more than about 100 individuals or are known from fewer than 5 populations. Small population size and limited distribution make all of these species particularly vulnerable to extinction from reduced reproductive vigor or from stochastic events. Because these 12 species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 12 species is warranted.

Critical habitat is not being proposed for the 12 species included in this rule, for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species are determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The species have low total populations and/or numbers of individuals and face anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, would increase the degree of threat to these plants from take or vandalism and could contribute to their decline. The listing of these species under the Act publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified. Protection of the habitat of the species will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Listing can encourage and result in conservation actions by Federal, State, and local agencies, and private organizations and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The requirements for Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Two taxa are located on Federal land in a national wildlife refuge on three Northwestern Hawaiian Islands: *Mariscus pennatiformis* ssp. *bryanii* grows only on the island of Laysan and *Sesbania tomentosa* grows on Necker and Nihoa. The national wildlife refuge is under the jurisdiction of the U.S. Fish and Wildlife Service. On the island of Hawaii, two species (*Adenophorus periens* and *Sesbania tomentosa*) are located in Hawaii Volcanoes National Park. Three populations of *Plantago princeps* var. *laxiflora* are located in Haleakala National Park on Maui. The two national parks on Maui and Hawaii are under the jurisdiction of the National Park Service. Federal laws protect all plants on the national wildlife refuges, national parks, and national historic sites from damage or removal.

Five of the species in this rule occur on land owned or leased by the U.S. Department of Defense. Populations of *Bonamia menziesii* and *Flueggea neowawraea* are located in the mountains of the Lualualei Naval Reservation. No military activities currently affect those populations. On the island of Oahu, *Flueggea neowawraea* is known to grow on lands owned by the U.S. Army in Schofield Barracks Military Reservation. One population of *Hibiscus brackenridgei* ssp. *mokuleianus* may possibly occur at Schofield Barracks as well. Three of the species are located on State-owned land currently leased to the U.S. military: On Oahu, *Bonamia menziesii* and *Flueggea neowawraea* are located within Makua Military Reservation and *Spermolepis hawaiiensis* is located in Diamond Head Reservation, leased by the Department of Defense. Portions of Makua Military Reservation are used by the Army and other branches of the military for ordnance training. The two species are not located inside the impact areas or adjacent buffer zones and, thus, are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from the use of ordnance (Herve Messier, U.S. Army, Ft. Shafter, pers. comm., 1990). Plants of *Spermolepis hawaiiensis* are restricted to the outer slope of Diamond Head and are not in an area affected by military activities. One species, *Vigna o-wahuensis*, grows on the previously federally owned island of Kahoolawe where the Federal government is involved with ordnance disposal. Although periodic detonation of ordnance is required on the island, the populations of this species found there are at sites too remote to sustain impacts from such detonation (J. Lau, pers. comm., 1992). There are no other known Federal activities that occur within the presently known habitat of these 12 plant species.

The Act and implementing regulations at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the 12 plant species subject to this final rule, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant species to/from the United States; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 10 of the Act and 50 CFR 17.62 provide for the issuance of permits under certain circumstances to carry out activities involving endangered plants that are otherwise prohibited by section 9.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Seven of the twelve species in this rule are known to occur on lands under the jurisdiction of the Fish and Wildlife Service, National Park Service or Department of Defense. Collection, damage or destruction of these species on these lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of State criminal trespass law (see Hawaii State Law section below).

Two of the listed species are of horticultural interest and both are currently in commercial trade. *Hibiscus brackenridgei* is a very attractive member of a genus known for its immense horticultural popularity and is the official State flower of Hawaii. *Sesbania tomentosa* also is an exceptionally attractive species that grows well in low elevation urban areas. Intrastate commerce (commerce within a State) is not prohibited under the Act. However, interstate and foreign commerce (sale or offering for sale across State or international boundaries), will require a Federal endangered species permit. (Endangered species may be advertised for sale provided the advertisement contains a statement that no sale may be consummated until a permit has been

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obtained from the Service.) Other than possible interstate commerce, the Service is not aware of any other activities being conducted by the public that will be affected by this listing and result in a violation of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

Hawaii State Law

Federal listing would automatically invoke listing under Hawaii State law. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter." The State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant, or attempting to engage in any such conduct. The State law also encourages conservation by State agencies and triggers other State regulations to protect the species (HRS, sect. 195–4 and 5). The State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** above).

Authors

The authors of this final rule are Joan E. Canfield, Derral R. Herbst, and Adam Asquith of the Pacific Islands Office (see **ADDRESSES** section) (808/541-3441).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
*	*	*	*	*	*	*	*
Spermolepis hawaiiensis	None	U.S.A.(HI)	Apiaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Diellia erecta	Asplenium-leaved diellia	U.S.A. (HI)	Aspleniaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Mariscus pennatiformis	None	U.S.A. (HI)	Cyperaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Flueggea neowawraea	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Sesbania tomentosa	'Ohai	U.S.A. (HI)	Fabaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	*
Hibiscus brackenridgei	Ma'o hau hele	U.S.A. (HI)	Malvaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Solanum incompletum	Popolo ku mai	U.S.A. (HI)	Solanaceae	E	559	NA	NA
*	*	*	*	*	*	*	*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	NA	NA
*	*	*	*	*	*	*	*

Dated: September 12, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–27302; Filed 11–9–94; 8:45 am]

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Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 906

Section 5(h) Homeownership Program for Public and Indian Housing; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 906

[Docket No. R-94-1529; FR-2810-F-03]

RIN 2577-AA90

Section 5(h) Homeownership Program for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes several changes in the interim rule for the Section 5(h) Homeownership Program for Public and Indian Housing. It responds to the public comments received on the interim rule that was published September 20, 1991, incorporating a few substantive modifications, as well as some clarifications and editorial revisions.

This rule provides separate regulatory codifications of the Section 5(h) Homeownership Program for public housing and for Indian housing, as appropriate for each. For Indian Housing Authorities (IHAs), the rule consists of subpart P of the Consolidated Program Regulations for Indian Housing (24 CFR Part 905); for Public Housing Agencies (PHAs), 24 CFR Part 906. The language of these two versions is identical, excepting only appropriate distinctions in terminology and phrasing, and in references to applicable Federal statutes and regulations on nondiscrimination and civil rights. In general, the Section 5(h) Homeownership Program works the same way for both PHAs and IHAs.

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT:

With regard to the PHA version of the rule: C. Wayne Hunter, Senior Homeownership Programs Advisor, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, DC 20410. Telephone number, voice (202) 708-4233, TDD (202) 708-0850. (These are not toll-free numbers.)

With regard to the IHA version of the rule: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room B-133, Washington, D.C. 20410. Telephone number, voice, (202) 755-0032, TDD (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been approved under control number 2577-0201.

Public Comments

The interim rule for the Section 5(h) Homeownership Program for Public and Indian Housing was published September 20, 1991 (56 FR 47852), with an effective date of October 21, 1991.

Comments were received from 10 commenters, including six Public Housing Agencies (PHAs), one national association of PHAs, two legal services organizations, and one private consultant. All comments have been considered, as indicated by the discussion below.

Because the texts of the IHA rule (Part 905, subpart P) and the PHA rule (Part 906) follow a parallel format, with provisions that are substantially the same, the following discussion applies to both, except where noted. In most instances, dual section references are cited, with the section of the IHA regulation followed by the corresponding section of the PHA regulation, e.g., §§ 905.1001/906.1 through 905.1021/906.21. Except where differences in the IHA and PHA versions are indicated, the term "Housing Authority (HA)" is used in the following discussion as a common term of reference to both PHAs and IHAs.

In General: The Flexibility Issue

The extent to which the regulation should allow flexibility for Housing Authorities (HAs) and residents in the design of their local homeownership plans was the subject of greatest concern to the commenters. While a number of comments addressed this issue in the context of specific provisions of the regulation, as discussed below, some urged that the regulation as a whole afford the maximum flexibility permitted by the statute, pointing out that the statutory authorities for this program—Sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (Act)—are clearly intended to authorize a high degree of local discretion. Some other commenters, however, argued for a more restrictive approach, suggesting that local discretion be curtailed and regulatory requirements be more rigidly detailed.

The changes that are incorporated in the final rule move in the direction of more local flexibility, as explained in the section-by-section analysis below. The overall approach is deliberately brief and simple, limited to a basic regulatory framework of essential standards and procedures. No attempt is made to specify the details of everything that might possibly be required or permitted in all the variety of local situations. Anything not specifically prohibited is permissible, if consistent with the three fundamental criteria stated in §§ 905.1004/906.4.

The Department intends to develop additional handbook materials to provide appropriate guidance and administrative instructions for HAs, residents, and HUD Field Offices concerning the development, processing and implementation of Section 5(h) homeownership plans.

Comments on Specific Sections

Sections 905.1002/906.2 (Applicability)

In paragraph (a) of §§ 905.1002/906.2 (*Applicability*), the final rule adds clarifying language to explain that, except where otherwise indicated by the context, the term "resident" includes Turnkey III homebuyers (and, in the IHA version, Mutual Help homebuyers as well), along with rental tenants of public or Indian housing and Section 8 residents. As suggested by one commenter, language has been added to make it clear that, unless otherwise indicated, references to sale, purchase, conveyance and ownership include the types of transactions and interests that are incident to cooperative ownership, such as cooperative shares, membership, and occupancy agreements.

As another point of clarification, paragraph (b) of this section adds an express declaration of nonretroactivity. This responds to one commenter's question about whether a Section 5(h) homeownership plan approved under the statutory authority, prior to publication of the interim rule, would have to be modified to conform to the requirements of the interim rule. Neither the interim nor final rule imposes any additional requirements for homeownership plans approved before the respective effective dates of each rule.

Sections 905.1003/906.3 (General Authority for Sale)

With regard to §§ 905.1003/906.3 (*General authority for sale*), one commenter observed that HUD Field Offices need instructions on how to release the declaration of trust upon sale of housing units under a HUD-approved Section 5(h) homeownership plan. The Department agrees that such instructions are needed, and intends to provide them in the forthcoming processing handbook. In the IHA version of this section, the language of the interim rule concerning housing developments that are subject to project debt under the ACC has been deleted, because, as a result of loan forgiveness legislation, there are now no Indian housing developments which are subject to such indebtedness.

Sections 905.1004/906.4 (Fundamental Criteria for HUD Approval)

One commenter urged that resident consultation be added to §§ 905.1004/906.4 (*Fundamental criteria for HUD approval*) as a fourth criterion. The final rule does not adopt this recommendation. The three fundamental criteria that are established by this section merit special emphasis at the outset, because they go to the plan as a whole, serving as touchstones for weighing and linking the discrete requirements of all subsequent sections, including the specific requirements for resident consultation under §§ 905.1005/906.5.

Sections 905.1005/906.5 (Resident Consultation and Involvement)

Sections 905.1005/906.5 (*Resident consultation and involvement*) have been revised to clarify the requirements for resident input at the initial planning stage, in connection with the HA's development of its proposed homeownership plan for submission to HUD. This language responds to the observations of several commenters who aptly pointed out that the interim rule failed to indicate who must be consulted when the development is vacant. The final rule addresses this question by specifying that, where the plan involves an entirely vacant development, the HA must consult with the HA-wide resident organization, if any.

One commenter argued that no resident consultation at all should be required for newly-developed vacant units, but the Department sees no justification for exempting such units from the requirement that pertains to vacant units in general.

As a further provision in the direction of more local flexibility, the final rule deletes the interim rule's requirement for a public hearing, leaving it to the HA and the residents to work out methods of consultation that they find most appropriate and productive. While a public hearing may be advisable for larger undertakings, relatively informal consultation may be more appropriate in other situations.

One commenter mistakenly asserted that "there is no mention of resident involvement prior to implementation". On the contrary, the interim rule strongly emphasized the requirement for resident input during the planning stage, and that requirement remains unchanged in the final rule.

Sections 905.1006/906.6 (Property That May Be Sold)

In paragraph (a) of §§ 905.1006/906.6 (*Property that may be sold*), the final rule corrects the interim rule's unintended indication that only conventional rental units would be eligible for sale under the Section 5(h) Program. The final rule notes that a homeownership plan may provide for converting Turnkey III homes (and, in the case of an IHA, Mutual Help homes as well) to Section 5(h) homeownership, subject to the contractual rights of existing Turnkey III or Mutual Help homebuyers, and an appropriate ACC amendment. An HA might thus afford existing Turnkey III or Mutual Help homebuyers the option to terminate their Turnkey III or Mutual Help homebuyer agreements in favor of Section 5(h) purchase of their present homes, or might make vacant Turnkey III or Mutual Help units available for purchase under the terms of a Section 5(h) plan.

One of the public comments asked whether the regulation applies to newly-constructed housing. The answer is yes, as expressly stated in the interim rule and restated in the final rule at paragraph (a) of §§ 905.1006/906.6. As a clarification, however, the final rule adds a cautionary note regarding a question that may arise in rare situations where the HA wants to consider Section 5(h) sale of units developed as replacement housing for public or Indian housing demolished or disposed of under the regulations implementing section 18 of the Act (for IHAs, subpart M of 24 CFR part 905; for PHAs, 24 CFR part 970). This calls attention to the fact that the demolition-disposition regulations require selection of the initial occupants of such replacement units solely on the basis of the requirements governing rental occupancy (or, in the case of replacement of Indian housing with new Mutual Help units, the homebuyer occupancy requirements of the Mutual Help Program).

Paragraph (b) of these sections amplifies the provisions concerning the physical condition of the property, adding the Section 8 housing quality standards as an alternative measure for cases where no local code exists, along with a cross-reference to the regulatory requirements for accessibility by purchasers with disabilities. One commenter objected to the option for post-conveyance repair. The Department believes that this option should be retained, subject to the kind of protections for the homebuyer that are stipulated, including the final rule's addition of a maximum period of two years for completion of the work needed to satisfy the regulatory standard. As a further clarification, the option for a sound sweat equity arrangement has been added as another example of permissible means for making post-sale improvements.

Sections 905.1007/906.7 (Methods of Sale and Ownership)

In §§ 905.1007/906.7 (*Methods of sale and ownership*), language has been inserted in subparagraph (b)(2)(ii) to make it clear that, in the context of sale of a multifamily building or a group of single-family dwellings via a resident-controlled entity, the prohibition against encumbrances applies only to encumbrances by the resident entity, prior to conveyance of individual units to residents. Thus, it would not be necessary to obtain additional HA consent for mortgages or other encumbrances that are incident to the purchase and financing of individual units, pursuant to the provisions of the homeownership plan and the agreement between the HA and the resident-controlled entity.

Sections 905.1008/906.8 (Purchaser Eligibility and Selection)

Several changes have been made in §§ 905.1008/906.8 (*Purchaser eligibility and selection*). In response to comments, the final rule allows HAs more flexibility concerning how they may wish to formulate the particulars of the eligibility and preference provisions of their homeownership plans. It also incorporates a number of clarifications and editorial revisions, including reordering the paragraphs in a more logical sequence.

In paragraph (b) of these sections, language has been inserted to make it clear that Turnkey III homebuyers (and, in the case of IHAs, Mutual Help homebuyers as well) are within the overall class of public or Indian housing residents who are eligible to purchase under the Section 5(h) Homeownership Program, should they elect to terminate their existing homebuyer agreements in favor of purchase under a Section 5(h) plan. A homeownership plan might thus allow Turnkey III or Mutual Help homebuyers the individual option to

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switch over to Section 5(h) purchase of their present homes. As another possibility, a plan might allow such a homebuyer to vacate the present Turnkey III or Mutual Help unit and purchase a vacant unit that is offered for sale under the Section 5(h) plan.

One comment objected to the option to include Section 8 residents. The Department believes that the statute was intended to allow that option, at HA discretion, subject to the minimum residency requirement and the requirements for admission to public or Indian housing.

One commenter objected to the 30-day minimum residency requirement, while another suggested that a minimum one-year period be prescribed. Because Section 5(h) of the Act authorizes an HA to sell to "its tenants", some initial period of public or Indian housing or Section 8 residency is a statutory precondition for purchaser eligibility, and the Department believes that 30 days is the shortest period that satisfies the statute. Each HA is, however, free to include in its homeownership plan a longer minimum period for such tenure.

One objection was expressed about the further option (as now reflected in paragraph (c) of these sections) for the HA to extend eligibility to applicants who are not public or Indian housing or Section 8 residents at the time of application, subject to the preference for existing public and Indian housing residents and the requirement for a minimum period of public or Indian housing residency prior to conveyance. The Department believes that the HA should have this option to extend eligibility to families on its waiting lists, or to other low-income families who may wish to apply, or to both of those categories, if the HA considers that they are needed to make up a sufficient pool of eligible applicants for purchase of the vacant units that will be offered for sale. Such nonresident applicants would also be subject to the requirements for admission to public or Indian housing, including the income limits and Federal preferences for admission, as prescribed by applicable regulations. (Those admission requirements do not, however, apply to applicants who are already residents of public or Indian housing.)

The first sentence of §§ 905.1008(d)/906.8(d) modifies the interim rule's provision restricting eligibility to applicants who have been current in their lease obligations for a period of at least six months. If a family has been in residence for less than six months, the homeownership plan may now allow eligibility on the basis of lease compliance for that lesser period. The final rule also adds language that is appropriate in this context to existing Turnkey III or Mutual Help homebuyers who may elect to terminate their present Turnkey III or Mutual Help homebuyer agreements in favor of purchase under a Section 5(h) homeownership plan.

In response to several comments, the affordability standard of §§ 905.1008(e)/906.8(e) has been modified. In the interim rule, the cost-to-income ratio—based on mortgage principal and interest, plus insurance and real estate taxes (PITI)—was 30 percent, but a percentage figure of 35 percent was allowed with special justification. As aptly pointed out by some commenters, the interim rule did not say what was required to justify the 35 percent exception ratio or how maintenance, utilities and (if applicable) common ownership fees were to be taken into account. The final rule's revised formula now states that the average monthly estimate for the total amount of all of the stated types of homeownership costs—including maintenance and utilities and (if applicable) cooperative, condominium or homeownership association fees, as well as PITI—may not exceed 35 percent of the applicant's adjusted income.

One commenter urged that separate affordability standards be adopted for single-family and multifamily properties, with the latter to take into account cooperative or condominium carrying charges, as well as debt service payments on individual mortgages or share loans. For single-family houses, this commenter recommended that a PITI cost-to-income ratio of more than 35 percent be authorized, citing the fact that, in the general housing market, the current ratio among first-time homebuyers tends to be higher. For multifamily properties, a two-part affordability standard was recommended: (1) the ability of homebuyers to meet their financial obligations on an individual family basis; and (2) the ability of the homebuyers involved to meet their financial obligations on an aggregated basis.

Because the prospective purchasers under the Section 5(h) Program are low-income families, the Department believes that it would be imprudent to allow a cost-income ratio of more than 35 percent for either single-family or multifamily housing. The final rule requires that, if applicable, cooperative, condominium or other homeownership association fees must be taken into account. This is sufficient to address the financial viability of multifamily properties on both an individual and aggregated basis.

Paragraph (g) of these sections simplifies the requirements concerning preference among the various residency-based categories of potentially eligible applicants. This affords each HA broad discretion in defining, on the basis of present residency status, which categories of residents are eligible to apply under the particular homeownership plan, and in establishing preferences among those categories.

For occupied units, the rule continues to require a preference for the existing occupants. If such occupants cannot meet the other eligibility requirements, or do not desire to purchase their units, a further provision of the rule (§§ 905.1010/906.10) prohibits their involuntary displacement to make the units available for sale to other families. Consequently, the question of other residency-based eligibility and preference categories is pertinent only if the homeownership plan contemplates sale of vacant units, or if an existing occupant voluntarily agrees to vacate and relocate, pursuant to §§ 905.1010/906.10.

For vacant units, the only residency-based preference category that is mandated by the final rule consists of residents of the HA's other public or Indian housing units. The HA may limit eligibility to applicants in that category only, in which case the question of further residency-based eligibility or preference categories will not arise.

Alternatively, subject to the preference for families who are already residents of public or Indian housing, the homeownership plan may, at the option of an HA, also allow application for purchase of vacant units by families in either or both of the other residency-based categories permitted under paragraphs (b) and (c) of this section: (1) Section 8 residents, and (2) other low-income families who are neither public or Indian housing nor Section 8 residents at time of application or selection, subject to their completion of the prescribed minimum period of public or Indian housing or Section 8 residence prior to conveyance. For example, families in the second category—families who are not presently public or Indian housing or Section 8 residents—would have to take occupancy of the Section 5(h) unit under a lease-purchase agreement, providing for completion of an initial period of public or Indian housing tenancy (30 days or more, as prescribed by the homeownership plan) prior to conveyance.

As noted in §§ 905.1008(h)/906.8(i), the rule does not preclude any other types of eligibility and preference factors that the HA may wish to establish in its homeownership plan, if consistent with statutory and regulatory requirements. For example, in a situation where vacant units comprising only a portion of an otherwise occupied development are to be offered for sale, the homeownership plan could limit eligibility to the other residents of the same development, or give them preference over the residents of other HA developments. As another example, with reference to families that are not already public or Indian housing or Section 8 residents, the HA would have the option to restrict eligibility to families who are already on the HA's waiting lists for other programs, or to give such waiting list families a preference over other nonresident applicants.

One question was raised about § 906.8(h) of the PHA rule, which mandates a preference for residents who have completed self-sufficiency and job training programs. (There is no parallel provision in the IHA rule). The commenter asked whether a resident who completes such a program in one PHA may qualify for the preference under another PHA's Section 5(h) homeownership plan. That is a matter for local determination. In general, a plan should allow for recognition of sound self-sufficiency and job training programs, regardless of where completed, but the regulation leaves each HA discretion to define the standards for acceptability.

Sections 905.1009/906.9 (Counseling, Training, and Technical Assistance)

One commenter recommended that HUD set minimum standards for counseling, in connection with the requirements of §§ 905.1009/906.9 (*Counseling, training, and technical assistance*).

Detailed regulatory requirements on this subject would be inappropriate for the wide variety of local situations that may be presented by particular Section 5(h) homeownership plans. While the rule establishes basic standards, it is intended to allow due flexibility for HAs to design the kinds of counseling, training and technical assistance activities that are necessary and appropriate for each local situation.

Sections 905.1010/906.10 (Nonpurchasing Residents)

Two commenters recommended that §§ 905.1010/906.10 (*Nonpurchasing residents*) be changed to delete the prohibition against involuntary displacement of nonpurchasing residents. The final rule retains that prohibition. Another commenter urged that assistance under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA) be extended to residents who relocate voluntarily. The final rule does not adopt that recommendation. The rule mandates that nonpurchasing residents be provided the opportunity to relocate to another suitable and affordable unit, with counseling and advisory services, along with payment of moving expenses. However, it is noted that the rule also provides that a violation of the prohibition against involuntary displacement may trigger a requirement that the HA provide URA relocation assistance.

Some changes have nevertheless been made in this section, largely editorial revisions to clarify the requirements that were reflected in the interim rule. In paragraph (b) of the PHA version only, familial status has been added to the list of nondiscrimination factors. (The IHA version covers nondiscrimination by cross-reference to § 905.115.) In both the IHA and PHA versions, a new paragraph (c) has been added to clarify requirements for temporary relocation of nonpurchasing residents in connection with repair or rehabilitation.

This prohibition applies only against displacement for the specific purpose of making the unit available for Section 5(h) sale to another family. It is not intended to prohibit a permanent move for any other reason required or authorized by the existing occupant's lease (or homebuyer agreement), consistent with applicable statutes and HUD occupancy regulations. For example, where the size of the unit in relation to family size results in overhousing or underhousing, a family may be required to move to another unit of suitable size, pursuant to the HA's assignment policy.

Sections 905.1011/906.11 (Nonroutine Maintenance Reserve)

In §§ 905.1011/906.11 (*Nonroutine maintenance reserve*), the interim rule's references to "maintenance reserve" have been changed to "nonroutine maintenance". This clarifying change was prompted by the suggestion of one commenter that the term "capital improvement and replacement reserve" be used. Two other commenters objected to this section entirely as an undue restriction on local discretion. The Department believes that, considering the flexibility allowed, this reserve requirement is justified by the financial viability test that is implicit in Section 5(h) of the Act, and expressly stated in Sec. 6(c)(4)(D) of the Act.

Sections 905.1014/906.14 (Limitation on Resale Profit)

One commenter pointed out that the last sentence of paragraph (s) of §§ 905.1014/906.14 (*Limitation on resale profit*) seemed to contradict the authorization for limited equity or shared equity arrangements. In the final rule, this sentence has been revised to make it clear that, under a limited or shared equity arrangement, the resale provisions may limit the seller to a portion of the resale profit attributable to appreciation in value. Language to similar effect has also been inserted in the limited equity option under paragraph (c) of this section.

Another commenter urged that the regulation be modified to require or strongly encourage restriction of resale to low-income families only. The final rule does not adopt this recommendation. Although the regulation allows HA discretion to design limited equity arrangements with such resale restrictions, the statute does not authorize the Department to mandate that for all cases.

Sections 905.1016/906.16 (Replacement Housing)

With regard to §§ 905.1016/906.16 (*Replacement housing*), one commenter objected to the inclusion of replacement options other than development of additional public or Indian housing units. As an alternative to such a narrow restriction, the commenter suggested that the options included in the interim rule be given priority in the order listed. Other commenters objected to the options for rehabilitation of vacant public or Indian housing units and for use of Section 8 certificates and vouchers.

The final rule makes no change in the replacement options stated in the interim rule. Those options are statutory, and the Department has no authority to change them by regulation.

Two commenters addressed the question of funding for replacement housing. One recommended that such funding be built into the Section 5(h) Program itself, while another suggested a priority for Major Rehabilitation of Obsolete Projects (MROP) funding. The Department has not adopted those recommendations. Although special funding priorities for replacement housing in connection with Section 5(h) homeownership plans may be established in the contexts of the other HUD programs from which the funding becomes available, no provision for such funding is incorporated in the

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Section 5(h) Homeownership Program itself.

One commenter recommended that the regulation set a time limit on the actual provision of replacement housing. In recognition of the different factual situations that may affect the time required to have replacement units ready for occupancy, the Department believes that it would be unwise to set a rigid time limitation by regulation. However, reasonable time frames for this and all other major steps must be established in the timetable to be included in the homeownership plan.

The same commenter argued against the flexibility afforded by the interim rule for the HA to address the community's current priority housing needs, urging that the regulation impose a rigid requirement to replace with units of the same sizes as those sold, regardless of current needs. The Department believes that such rigidity would risk absurd results, in those local situations where identical replacement would be at odds with intelligent prioritization by the HA of the community's current housing needs. One commenter urged that the replacement housing requirements be applied retroactively to plans approved or pending before publication of the interim rule. That point is addressed in paragraph (d) of this section, which, as in the interim rule, reflects the legislative mandate in Section 5(h) of the Act that the replacement housing provisions shall not apply to "applications" (proposed homeownership plans) that were submitted to HUD prior to October 1, 1990—the effective date of the legislation that added the replacement requirement to Section 5(h).

Section 906.17 (Records, Reports and Audits)

In § 906.17 of the PHA rule only (*Records, reports and audits*), language has been added to specify that, as evidence of compliance with fair housing and equal opportunity requirements, the sale and financial records maintained in the files of the PHA must contain information on the racial and ethnic characteristics of purchasers. (No such requirement applies to Indian housing.)

Sections 905.1018/906.18 (Submission and Review of Homeownership Plan)

In paragraph (b) of §§ 905.1018/906.18 (*Submission and review of homeownership plan*), the phrase, "in a format prescribed by HUD," has been inserted. While allowing for due flexibility, HUD will issue administrative instructions and guidelines regarding the format and processing of homeownership plans.

Sections 905.1020/906.20 (Content of Homeownership Plan)

In §§ 905.1020/906.20 (*Content of homeownership plan*), the order of some items has been changed, for a more logical sequence that places administrative items after those that describe the principal provisions of the plan. In the PHA rule only, a provision on affirmative marketing (applicable only if the plan allows purchase of vacant units by families who are not public housing residents or already on the PHA's waiting lists for those programs) has been added to paragraph § 906.20(c). (There is no affirmative marketing requirement for IHAs.)

Sections 905.1021/906.21 (Supporting Documentation)

In paragraph (a) of §§ 905.1021/906.21 (*Supporting documentation*), the final rule explains that the purpose of the property value estimate is merely to assist HUD in determining whether the plan adequately addresses the risks of fraud and abuse and the potential for windfall profit. For this item of supporting documentation, a rough estimate is sufficient, backed by information to support its reasonableness. Submission of a formal appraisal is not required at this point, because the Department does not believe that such an expense is justified for the purpose of HUD review of the proposed homeownership plan. [Note, however, that this is a matter involving only the initial process of preparation and review of the HA's proposal. It is not intended to contradict the rule's separate requirement, in §§ 905.1014(e)/906.14(e), for the appraisal of individual dwelling units at the point of sale, made with the distinct purpose of calculating the amount of resale profit that would be payable to the PHA by the individual purchaser.)

Section 906.21(f) (Nondiscrimination Certification)

In the PHA rule only, language has been inserted in § 906.21(f)—the requirement for the PHA's nondiscrimination certification—to add citations to Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations. (The parallel provision of the IHA rule (§ 905.1021(f)) remains unchanged, citing the different nondiscrimination requirements that apply to Indian housing under § 905.115.)

Comments on Other Issues

One commenter observed that the interim rule contained no explicit mention as to whether the Section 5(h) authority can be used in conjunction with other public housing homeownership programs, such as HOPE. Such questions will be addressed in the context of the other programs involved, on a case-by-case basis.

It was also observed that the interim rule contained no explicit mention of whether Section 5(h) can be used in conjunction with the Low-Income Housing Tax Credit (LIHTC). The Department believes that this is not an appropriate matter for rulemaking at this time. The Department has not received any Section 5(h) proposals involving LIHTCs, and no determination has been made as to whether it would be possible to design a feasible proposal of that nature. If warranted by future experience, the Department will consider this question for further rulemaking.

One commenter recommended that the rule incorporate a specific list of all statutes and regulations that must be complied with. A list of all of the multitude of Federal statutes and regulations that might possibly be applicable to all of the variety of possible features of all of the many possible types of homeownership plans would be excessively lengthy for inclusion in a regulation. While cross-references are cited for some especially important Federal requirements—notably, as to fair housing and nondiscrimination—the possible variations among local homeownership plans make it impossible to present a standard matrix of applicable legal requirements. As emphasized in the requirement for the HA to include in its supporting documentation a legal opinion from its own counsel (§§ 905.1021(g)/906.21(g)), it is the responsibility of the HA to ascertain for itself just what requirements of Federal, State, Tribal and local law are pertinent to the facts of each particular homeownership plan. Compliance with State, Tribal and local laws and regulations on real estate transactions is one of the critical points that must be carefully reviewed by the HA's counsel.

Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Planning and Review

This rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review*. Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, S.W., Washington, DC.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule creates homeownership opportunities for low-income residents of public and Indian housing with, at most, an incidental effect on small businesses.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being and therefore is not subject to review under the order. The rule would have an indirect, though positive, impact on families to the extent that it would provide opportunities for families residing in public and Indian housing to own their own homes.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that this rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects would be on individuals; any involvement of States or their political subdivisions is limited to their cooperative efforts in promoting homeownership among public and Indian housing residents.

This rule was listed as Item No. 1695 in the Department's Semiannual Agenda of Regulations published on April 25, 1994, (59 FR 20424, 20472) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.146 and 14.147.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 905 and 906 of title 24 of the Code of Federal Regulations are amended as set forth below.

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

2. Subpart P of part 905 is revised to read as follows:

Subpart P—Section 5(h) Homeownership Program

Sec.

905.1001 Purpose.
905.1002 Applicability.
905.1003 General authority for sale.
905.1004 Fundamental criteria for HUD approval:
905.1005 Resident consultation and involvement.
905.1006 Property that may be sold.
905.1007 Methods of sale and ownership.
905.1008 Purchaser eligibility and selection.
905.1009 Counseling, training, and technical assistance.
905.1010 Nonpurchasing residents.
905.1011 Nonroutine maintenance reserve.
905.1012 Purchase prices and financing.
905.1013 Protection against fraud and abuse.
905.1014 Limitation on resale profit.
905.1015 Use of sale proceeds.
905.1016 Replacement housing.
905.1017 Records, reports, and audits.
905.1018 Submission and review of homeownership plan.
905.1019 HUD approval and IHA-HUD implementing agreement.
905.1020 Content of homeownership plan.
905.1021 Supporting documentation.

Subpart P—Section 5(h) Homeownership Program

§ 905.1001 Purpose.

This part codifies the provisions of the Section 5(h) Homeownership Program for Indian housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (Act) and administered by the Department of Housing and Urban Development (HUD).

§ 905.1002 Applicability.

(a) *General applicability.* This subpart applies to low-income housing owned by Indian Housing Authorities (IHAs), subject to Annual Contributions Contracts (ACCs) under the Act. The terms "housing" or "low-income housing", as used in this subpart, refer to the types of properties described in the preceding sentence, except as indicated by the particular context. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant", as the latter term is used in the Act, including Mutual Help and Turnkey III homebuyers, as well as rental tenants of low-income housing and Section 8 residents, and references to sale, purchase, conveyance and ownership include the types of interests and transactions that are incident to cooperative ownership.

(b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD before the effective date of the interim rule under this subpart (October 21, 1991) no modifications or additional requirements will be imposed under the provisions of the interim or final rule, except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved under the interim rule, but before the effective date of the final rule (December 12, 1994), no modifications or additional requirements will be imposed under the provisions of the final rule, except for such reasonable administrative procedures.

§ 905.1003 General authority for sale.

An IHA may sell all or a portion of a development to eligible residents, as defined under § 905.1008, for purposes of homeownership, according to a homeownership plan approved by HUD under this subpart. Upon sale in accordance with the HUD-approved homeownership plan, HUD will execute a release of the title restrictions

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prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for further HUD funding for operating subsidies or modernization under the Act upon conveyance of title by the IHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, Tribal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative homeownership, if authorized by the Section 8 regulations.)

§ 905.1004 Fundamental criteria for HUD approval.

HUD will approve an IHA's homeownership plan if it meets all three of the following criteria:

(a) *Workability.* The plan must be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The plan must be consistent with law, including the requirements of this part and any other applicable Federal, Tribal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the plan, at the discretion of the IHA, whether or not expressly authorized in this subpart.

(c) *Documentation.* The plan must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

§ 905.1005 Resident consultation and involvement.

(a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. If the plan contemplates sale of units in an entirely vacant development, the IHA shall consult with the IHA-wide resident organization, if any. While the Act gives the IHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the IHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a Resident Management Corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the IHA shall negotiate with them in good faith. Joint development and submission of the plan by the IHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged. (Approved by the Office of Management and Budget under control number 2577–0201).

§ 905.1006 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 905.1004(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more housing developments. A plan may provide for conversion of existing housing to homeownership or for homeownership sale of newly-developed housing. (However, for low-income housing units developed as replacement housing for units demolished or disposed of pursuant to subpart M of this part, that subpart requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy (or Mutual Help occupancy, if applicable), without reference to any additional homeownership eligibility or selection requirements under this subpart.) Mutual Help or Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Mutual Help or Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective purchaser with disabilities requests accessible features, the features must be added in accordance with 24 CFR parts 8 and 9. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. This standard must be met as a condition for conveyance of a dwelling to an individual purchaser, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (*e.g.*, as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

§ 905.1007 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee-simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* An IHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the IHA's low-income housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan.

(2) The respective rights and obligations of the IHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the IHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the IHA, and that the property will not be encumbered by the other entity without the written consent of the IHA;

(iii) Protection against fraud or misuse of funds or other property on the part of the other entity, its employees and agents;

(iv) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership plan;

(v) Limitation of the other entity's administrative and overhead costs, and of any compensation or profit that may

be realized by the entity, to amounts that are reasonable in relation to its responsibilities and risks;

(vi) Accountability to the IHA and residents for the recordkeeping, reporting and audit requirements of § 905.1017;

(vii) Assurances that the other entity will administer its responsibilities under the plan in accordance with applicable civil rights statutes and implementing regulations, as described in § 905.115; and

(viii) Adequate legal remedies for the IHA and residents, in the event of the other entity's failure to perform in accordance with the agreement.

§ 905.1008 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase must submit applications for that specific purpose, and those applications shall be handled separately from applications for other IHA programs. For vacant units, applications shall be dated as received by the IHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt. Application for homeownership shall not affect an applicant's place on any other IHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of low-income housing owned or leased by the seller IHA (including Mutual Help and Turnkey III homebuyers, who may elect to terminate their existing homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller IHA; provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the Indian housing unit. If the family is to meet part or all of the minimum occupancy requirement in the Indian housing unit, the Section 8 assistance must be terminated before the family moves into the Indian housing unit. Indian housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under the ACC as Indian housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.* (1) A homeownership plan, at IHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. A plan may thus allow satisfaction of the threshold requirements for eligibility by:

(i) Existing low-income housing or Section 8 residents with less than the minimum period of residency;

(ii) Families who are already on the IHA's waiting lists; and

(iii) Other low-income families who are neither low-income housing nor Section 8 residents at the time of application or selection.

(2) Applicants who are not already low-income housing residents, however, must also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited, however, to residents who have been current in all of their lease obligations (in the case of Mutual Help or Turnkey III homebuyers, obligations under their homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of low-income housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges and reporting of all income that is pertinent to determination of rents (or homebuyer's monthly payments). At the IHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to low-income housing or for Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be further limited to residents who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of operating subsidies and modernization funds after conveyance of the property by the IHA. A homeownership plan may, however, take account of any available subsidy from other sources (*e.g.*, in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant must meet the following requirements:

(1) On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly-recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of 35 percent of the applicant's adjusted income, as defined in this part.

(2) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

(f) *Option to restrict eligibility.* A homeownership plan may, at the IHA's discretion, restrict eligibility to one or more residency-based categories (*e.g.*, for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to low-income housing residents only, or to low-income housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories provided that the residency-based preferences mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other low-income housing units owned or leased by the seller IHA (over any other residency-based categories that may be established by a homeownership plan for Section 8 residents or for nonresident applicants).

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(h) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards for eligibility or preference, or both, at the discretion of the IHA, that are not contrary to law.

(Approved by the Office of Management and Budget under control number 2577–0201).

§ 905.1009 Counseling, training, and technical assistance

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention must be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

§ 905.1010 Nonpurchasing residents

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move), in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conveyance of the property, the homeownership plan must include provision for any rental subsidy required (*e.g.*, Section 8 assistance, if available and authorized by the Section 8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, including timely information, counseling, and explanation of the resident's rights under applicable civil rights statutes and implementing regulations, as specified in § 905.115, and referrals to suitable, safe, sanitary and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, in accordance with applicable civil rights statutes and implementing regulations, as specified in § 905.115. This requirement will be met if the applicant is offered the opportunity to relocate to another suitable unit in other low-income housing, under any of the housing assistance programs under Section 8 of the Act, or any other Federal, Tribal, State or local program that is comparable, as to standards of housing quality, admission and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

§ 905.1011 Nonroutine maintenance reserve.

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the IHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

§ 905.1012 Purchase prices and financing.

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under § 906.8(e) of this chapter, a homeownership plan may provide for below-market purchase prices or below-market financing, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (*e.g.*, uniform prices for a group of comparable dwellings, within a range of affordability by a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (*e.g.*, conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a Tribal, State or local program). An IHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 905.1013 Protection against fraud and abuse.

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, collusive sale that would circumvent the resale profit limitation of § 905.1014.

§ 905.1014 Limitation on resale profit.

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market value at date of purchase from the IHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any

portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(b) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the IHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

(A) The discounted purchase price;

(B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the IHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require an IHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the IHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the IHA, to be based solely on the IHA's determination that the resale price represents fair market value or a lesser amount that will result in payment to the IHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the IHA shall be obligated to approve the resale.

(4) The IHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the IHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (*e.g.*, according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale, by an independent appraiser to be selected by the IHA.

§ 905.1015 Use of sale proceeds.

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the IHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (*e.g.*, earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under § 905.1014, and interest earned on all such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the IHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the IHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under Sec. 905.1011, a reserve for loans to homeowners to prevent or cure default or for other emergency housing needs; a reserve for any contingent liabilities of the IHA under the homeownership plan (such as IHA guaranty of mortgage loans); and a reserve for IHA repurchase, repair and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a Tribal, State or local homeownership program for low-income families, as described in the homeownership plan, for assistance to purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the IHA's other low-income housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the IHA for its other low-income housing.

(5) In connection with any other type of Federal, Tribal, State, or local housing program for low-income families, as described in the homeownership plan.

§ 905.1016 Replacement housing.

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the IHA must obtain a funding commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the IHA of additional low-income housing under

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this part (by new construction or acquisition).

(2) Rehabilitation of vacant low-income housing owned by the IHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the IHA for sale to residents through an RMC, resident organization or cooperative association which is otherwise eligible to participate under this subpart, acquisition of nonpublicly-owned housing units, which the RMC, resident organization or cooperative association will operate as rental housing, comparable to IHA-owned low-income housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, Tribal, State, or local housing program that is comparable, as to housing standards, eligibility and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a Tribal, State or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (*e.g.*, rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the IHA–HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the homeownership plan, as to unit sizes or family or elderly occupancy, if the IHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

§ 905.1017 Records, reports, and audits.

The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. Until all planned sales of individual dwellings have been completed, the IHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the IHA's housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 905.1007(b), the IHA must ensure that the entity's responsibilities include proper recordkeeping and accountability to the IHA, sufficient to enable the IHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO).

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 905.1018 Submission and review of homeownership plan.

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each IHA. An IHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the IHA shall consult informally with the appropriate HUD Field Office to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The IHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Field Office.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, where HUD determines that to be justified. For example, conditional HUD approval might be a necessary precondition for the IHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 905.1019 HUD approval and IHA–HUD implementing agreement.

Upon HUD notification to the IHA that the homeownership plan is approvable (in final form that satisfies all applicable requirements of this part), the IHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The plan itself, as approved by HUD, shall be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the IHA and HUD. The IHA shall be obligated to carry out the approved homeownership plan and other provisions of the implementing agreement without modification, except with written approval by HUD.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 905.1020 Content of homeownership plan.

The homeownership plan must address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 905.1006, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 905.1008.

(d) *Sale and financing.* Terms and conditions of sale and financing (see, particularly, §§ 905.1011 through 905.1014).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 905.1005). If appropriate, this may be combined with the plan for counseling.

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 905.1009.

(g) *Sale via other entity.* If the plan contemplates sale to residents via an entity other than the IHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 905.1007 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 905.1010.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 905.1015.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 905.1016.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Recordkeeping, accounting and reporting.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 905.1017.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

(n) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 905.1021 Supporting documentation.

The following supporting documentation shall be submitted to HUD with the proposed homeownership plan, as appropriate for the particular plan:

(a) *Estimate of value.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this information is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse, pursuant to § 905.1013, and windfall profit on resale, pursuant to § 905.1014. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 905.1006.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 905.1004(a).)

(d) *IHA commitment and capability.* Information to substantiate the commitment and capability of the IHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 905.1005 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been submitted to the IHA by individual residents and resident organizations, and any other individuals and organizations.

(f) *Nondiscrimination certification.* The IHA's certification that it will administer the plan on a nondiscriminatory basis, in accordance with applicable civil rights laws and implementing regulations, as described in § 905.115 of this part, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the plan.

(g) *Legal opinion.* An opinion by legal counsel to the IHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, Tribal, State, and local law, including regulations as well as statutes. In addition, counsel must identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

(h) *Board resolution.* A resolution by the IHA's Board of Commissioners, evidencing its approval of the plan.

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the IHA–HUD implementing agreement under § 905.1019, HUD approval is not required for documents to be prepared and used by the IHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation.

(Approved by the Office of Management and Budget under control number 2577–0201)

3. Part 906, consisting of §§ 906.1 through 906.21, is revised to read as follows:

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

Sec.

906.1 Purpose.
906.2 Applicability.
906.3 General authority for sale.
906.4 Fundamental criteria for HUD approval.
906.5 Resident consultation and involvement.
906.6 Property that may be sold.
906.7 Methods of sale and ownership.
906.8 Purchaser eligibility and selection.
906.9 Counseling, training, and technical assistance.
906.10 Nonpurchasing residents.
906.11 Nonroutine maintenance reserve.
906.12 Purchase prices and financing.
906.13 Protection against fraud and abuse.
906.14 Limitation on resale profit.
906.15 Use of sale proceeds.
906.16 Replacement housing.
906.17 Records, reports, and audits.
906.18 Submission and review of homeownership plan.
906.19 HUD approval and PHA–HUD implementing agreement.
906.20 Content of homeownership plan.
906.21 Supporting documentation.

Authority: 42 U.S.C. 1437c, 1437d and 3535(d).

§ 906.1 Purpose.

This part codifies the provisions of the Section 5(h) Homeownership Program for public housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (Act) and administered by the Department of Housing and Urban Development (HUD).

§ 906.2 Applicability.

(a) *General applicability.* This part applies to public housing owned by public housing agencies (PHAs) (excluding Indian Housing Authorities (IHAs)) subject to Annual Contributions Contracts (ACCs) under the Act. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant", as the latter term is used in the Act, including Turnkey III homebuyers, if applicable, as well as rental tenants of public housing and Section 8 residents, and references to sale, purchase, conveyance and ownership include the types of interests and transactions that are incident to cooperative ownership.

(b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD prior to the effective date of the interim rule under this part (October 21, 1991), no modifications or additional requirements will be imposed under the provisions of the interim or final rule,

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except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved under the interim rule, before the effective date of the final rule (December 12, 1994), no modifications or additional requirements will be imposed under the provisions of the final rule, except for such reasonable administrative procedures.

§ 906.3 General authority for sale.

A PHA may sell all or a portion of a public housing development to eligible residents, as defined under § 906.8, for purposes of homeownership, according to a homeownership plan approved by HUD under this part. If the development is subject to indebtedness under the ACC, HUD will continue to make any debt service contributions for which it is obligated under the ACC, and the property sold will not be subject to the encumbrance of that indebtedness. (In the case of a development with financing restrictions (such as a bond-financed development), however, sale is subject to the terms and conditions of the applicable restrictions.) Upon sale in accordance with the HUD-approved homeownership plan, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for further HUD funding for public housing operating subsidies or modernization under the Act upon conveyance of title by the PHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative homeownership, if authorized by the Section 8 regulations.)

§ 906.4 Fundamental criteria for HUD approval.

HUD will approve a PHA's homeownership plan if it meets all three of the following criteria:

(a) *Workability.* The plan must be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The plan must be consistent with law, including the requirements of this part and any other applicable Federal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the plan, at the discretion of the PHA, whether or not expressly authorized in this part.

(c) *Documentation.* The plan must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

§ 906.5 Resident consultation and involvement.

(a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the PHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the PHA. If the plan contemplates sale of units in an entirely vacant development, the PHA shall consult with the PHA-wide resident organization, if any. While the Act gives the PHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the PHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a Resident Management Corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the PHA shall negotiate with them in good faith. Joint development and submission of the plan by the PHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged.

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§ 906.6 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 906.4(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more public housing developments. A plan may provide for conversion of existing public housing to homeownership or for homeownership sale of newly-developed public housing. (However, for public housing units developed as replacement housing for units demolished or disposed of pursuant to 24 CFR part 970, that part requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy, without reference to any additional homeownership eligibility or selection requirements under this part.) Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective purchaser with disabilities requests accessible features, the features must be added in accordance with 24 CFR parts 8 and 9. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. These standards must be met as a condition for conveyance of a dwelling to an individual purchaser, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (*e.g.*, as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

§ 906.7 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee-simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* A PHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the PHA's public housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan; and

(2) The respective rights and obligations of the PHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the PHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the PHA, and that the property will not be encumbered by the other entity without the written consent of the PHA;

(iii) Protection against fraud or misuse of funds or other property on the part of the other entity, its employees, and agents;

(iv) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership plan;

(v) Limitation of the other entity's administrative and overhead costs, and of any compensation or profit that may be realized by the entity, to amounts that are reasonable in relation to its responsibilities and risks;

(vi) Accountability to the PHA and residents for the recordkeeping, reporting and audit requirements of § 906.17;

(vii) Assurances that the other entity will administer its responsibilities under the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act and implementing regulations; and

(viii) Adequate legal remedies for the PHA and residents, in the event of the other entity's failure to perform in accordance with the agreement.

§ 906.8 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase must submit applications for that specific purpose, and those applications shall be handled separately from applications for other PHA programs. For vacant units, applications shall be dated as received by the PHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt. Application for homeownership shall not affect an applicant's place on any other PHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller PHA (including Turnkey III homebuyers who may elect to terminate their existing Turnkey III homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller PHA, provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the public housing unit. If the family is to meet part or all of the minimum occupancy requirement in the public housing unit, the Section 8 assistance must be terminated before the family moves into the public housing unit. Public housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under ACC as public housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.* (1) A homeownership plan, at PHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. (A plan may thus allow satisfaction of the threshold requirements for eligibility by:

(i) Existing public housing or Section 8 residents with less than the minimum period of residency;

(ii) Families who are already on the PHA's waiting lists; and

(iii) Other low-income families who are neither public housing nor Section 8 residents at the time of application or selection.)

(2) Applicants who are not already public housing residents, however, must also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited to residents who have been current in all of their lease obligations (in the case of Turnkey III homebuyers, obligations under their Turnkey III homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of public housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges, and reporting of all income that is pertinent to determination of rental charges (or homebuyer's monthly payments). At the PHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to public housing or for Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump-sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be limited to residents who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of public housing operating subsidies and modernization funds after conveyance of the property by the PHA. A homeownership plan may, however, take account of any available subsidy from other sources (*e.g.*, in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant must meet the following requirements:

(1) On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance and other regularly recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of:

(i) 35 percent of the applicant's adjusted income as defined in 24 CFR Part 913; and

(ii) Any subsidy that will be available for such payments.

(2) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

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(f) *Option to restrict eligibility.* A homeownership plan may, at the PHA's discretion, restrict eligibility to one or more residency-based categories (*e.g.*, for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to public housing residents only, or to public housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories, provided that the residency-based preference requirements mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other public housing units owned or leased by the seller PHA (over any other residency-based categories that may be established by the homeownership plan for Section 8 residents and any categories of nonresident applicants).

(h) *Self sufficiency preference.* For vacant units, a further preference shall be given to those applicants who have completed self-sufficiency and job training programs, as identified in the homeownership plan, or who meet equivalent standards of economic self-sufficiency, such as actual employment experience, as specified in the homeownership plan.

(i) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards for eligibility or preference, or both, at the discretion of the PHA, that are not contrary to law.

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§ 906.9 Counseling, training, and technical assistance.

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention must be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

§ 906.10 Nonpurchasing residents.

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move) in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR Part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conversion of the property to cooperative or condominium ownership, the homeownership plan must include provision for any rental subsidy required (*e.g.*, Section 8 assistance, if available and authorized by the Section 8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, in and outside areas of minority concentration, including timely information, counseling, explanation of the resident's rights under the Fair Housing Act, and referrals to suitable, safe, sanitary and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, sex, or familial status, in compliance with applicable Federal and State law. This requirement will be met if the resident is offered the opportunity to relocate to other suitable housing under the Public Housing Program, any of the housing assistance programs under Section 8 of the Act, or any other Federal, State or local program that is comparable, as to standards of housing quality, admission and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

§ 906.11 Nonroutine maintenance reserve.

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the PHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

§ 906.12 Purchase prices and financing.

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under § 906.8(e), a homeownership plan may provide for below-market purchase prices or below-market financing, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (*e.g.*, uniform prices for a group of comparable dwellings, within a range of affordability by a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (*e.g.*, conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a State or local program). A PHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 906.13 Protection against fraud and abuse.

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, or collusive sale that would circumvent the resale profit limitation of § 906.14.

§ 906.14 Limitation on resale profit.

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market value at date of purchase from the PHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(*b*) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the PHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

(A) The discounted purchase price;

(B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the PHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require a PHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the PHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the PHA, to be based solely on the PHA's determination that the resale price represents fair market value or a lesser amount that will result in payment to the PHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the PHA shall be obligated to approve the resale.

(4) The PHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the PHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (*e.g.*, according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale by an independent appraiser, to be selected by the PHA.

§ 906.15 Use of sale proceeds.

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the PHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (*e.g.*, earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under § 906.14, and interest earned on all such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the PHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the PHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under § 906.11; a reserve for loans to homeowners to prevent or cure default or for other emergency housing needs; a reserve for any contingent liabilities of the PHA under the homeownership plan (such as PHA guaranty of mortgage loans); and a reserve for PHA repurchase, repair and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a State or local homeownership program for low-income families, as described in the homeownership plan, for assistance to

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purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the PHA's other public housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the PHA under 24 CFR part 990.

(5) In connection with any other type of Federal, State, or local housing program for low-income families, as described in the homeownership plan.

§ 906.16 Replacement housing.

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the PHA must obtain a funding commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the PHA of additional public housing under 24 CFR part 941 (by new construction or acquisition).

(2) Rehabilitation of vacant public housing owned by the PHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the PHA for sale to residents through an RMC, resident organization or cooperative association which is otherwise eligible to participate under this part, acquisition of nonpublicly-owned housing units, which the RMC, resident organization or cooperative association will operate as rental housing, comparable to public housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, State, or local housing program that is comparable, as to housing standards, eligibility and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a State or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (*e.g.*, rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the PHA–HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the homeownership plan, as to unit sizes or family or elderly occupancy, if the PHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

§ 906.17 Records, reports, and audits.

The PHA shall be responsible for the maintenance of records (including sale and financial records, which must include information on the racial and ethnic characteristics of the purchasers) for all activities incident to implementation of the HUD-approved homeownership plan. Until all planned sales of individual dwellings have been completed, the PHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the PHA's public housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 906.7(b), the PHA must ensure that the entity's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO).

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 906.18 Submission and review of homeownership plan.

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each PHA. A PHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the PHA shall consult informally with the appropriate HUD Field Office to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The PHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Field Office.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, where HUD determines that to be justified. For example, conditional HUD approval might be a necessary precondition for the PHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 906.19 HUD approval and PHA–HUD implementing agreement.

Upon HUD notification to the PHA that the homeownership plan is approvable (in final form that satisfies all applicable requirements of this part), the PHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The plan itself, as approved by HUD, shall be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the PHA and HUD. The PHA shall be obligated to carry out the approved homeownership plan and other provisions of the implementing agreement without modification, except with written approval by HUD.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 906.20 Content of homeownership plan.

The homeownership plan must address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 906.6, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.8. If the homeownership plan allows application for purchase of vacant units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the plan must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach.

(d) *Sale and financing.* Terms and conditions of sale and financing (see, particularly, §§ 906.11 through 906.14).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 906.5). If appropriate, this may be combined with the plan for counseling.

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 906.9.

(g) *Sale via resident-controlled entity.* If the plan contemplates sale to residents via an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.7(b) have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 906.10.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.15.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 906.16.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Records, accounts and reports.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 906.17.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

(n) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

(Approved by the Office of Management and Budget under control number 2577–0201)

§ 906.21 Supporting documentation.

The following supporting documentation shall be submitted to HUD with the proposed homeownership plan, as appropriate for the particular plan:

(a) *Property value estimate.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this data is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse pursuant to § 906.13 and of windfall profit upon resale, pursuant to § 906.14. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 906.6.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 906.4(a)).

(d) *Commitment and capability.* Information to substantiate the commitment and capability of the PHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 906.5 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been submitted to the PHA by individual residents and resident organizations, and any other individuals and organizations.

(f) *Nondiscrimination certification.* The PHA's certification that it will administer the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the plan.

(g) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, State, and local law, including regulations as well as statutes. In addition, counsel must identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

(h) *Board resolution.* A resolution by the PHA's Board of Commissioners, evidencing its approval of the plan.

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the PHA-HUD implementing agreement under § 906.19, HUD approval is not required for documents to be prepared and used by the PHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation.

Dated: September 20, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–27697 Filed 11–9–94; 8:45 am]

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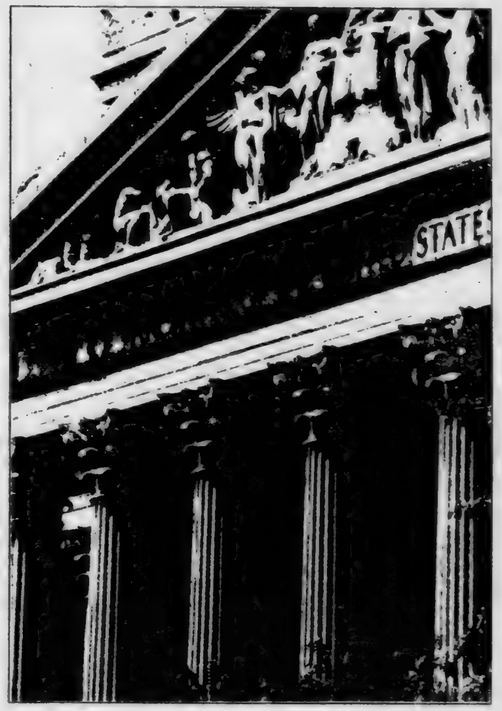
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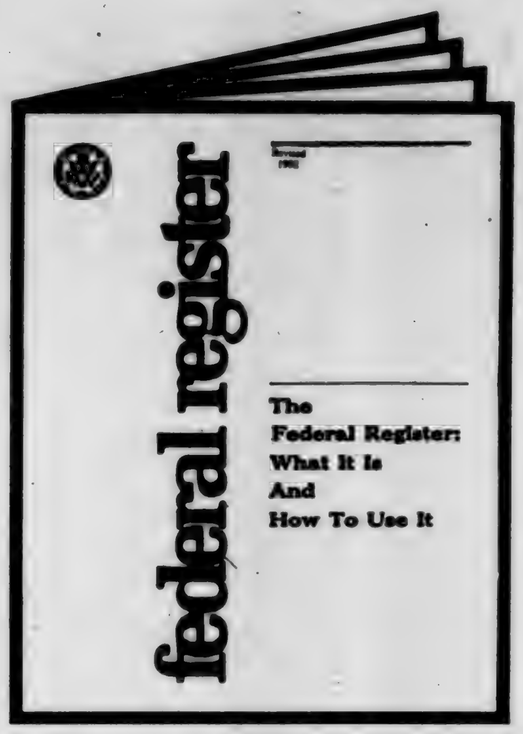
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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

NEW YORK, NY

WHEN: December 13, 9:30 am–12:30 pm
WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
RESERVATIONS: 1–800–347–1997

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–3 of November 1, 1994

Military Drawdown for Israel

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to Section 599B of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), as amended by Public Law 102–145, by Public Law 102–391, by Public Law 103–87, and most recently by Section 542 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995, Public Law 103–306 (the "Act"), I hereby:

(1) Direct the additional drawdown for Israel of an estimated $75 million in defense articles from the stocks of the Department of Defense and defense services of the Department of Defense, as appropriate;

(2) Delegate to the Secretary of Defense the notification and reporting functions contained in subsections 599B(c) and (d) of the Act.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 1, 1994.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–117–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Interim rule effective November 7, 1994. Consideration will be given only to comments received on or before January 13, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 94–117–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, at the following address: Room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 before January 9, 1995; or room 4C03, USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737 on or after January 9, 1995. Telephone: (301) 436–8247.

SUPPLEMENTARY INFORMATION

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), reveal that a portion of Los Angeles County, CA, is infested with the Oriental fruit fly. Specifically, inspectors collected eight adult Oriental fruit flies in traps in the Florence area of Los Angeles County between October 13 and 18, 1994. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, California has taken action to restrict the intrastate movement of certain articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly to other States, we are amending the regulations in § 301.93–3 by designating as a quarantined area a portion of Los Angeles County, CA. The quarantined area, composed of about 59 square miles in the Florence area, is described below:

Los Angeles County

That portion of Los Angeles County in the Florence area bounded by a line drawn as follows: Beginning at the intersection of El Segundo Boulevard and Western Avenue; then north along Western Avenue to its intersection with Vernon Avenue; then east along Vernon Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with Martin Luther King (M.L.K.), Jr. Boulevard; then east along M.L.K. Jr. Boulevard to its intersection with Broadway; then northeast along Broadway to its intersection with Washington Boulevard; then southeast along Washington Boulevard to its intersection with Interstate Highway 710 (Long Beach Freeway); then south along Interstate Highway 710 to its intersection with Rosecrans Avenue; then west along Rosecrans Avenue to its intersection with Interstate Highway 110 (Harbor Freeway); then north along Interstate Highway 110 to its intersection with El Segundo Boulevard; then west along El Segundo Boulevard to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

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and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule restricts the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within this regulated area, there are approximately 516 entities that will be affected by this rule. All would be considered small entities. These include 486 fruit sellers, 13 nurseries, 10 swap meets, 6 wholesale distributors, 1 farmers market. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Oriental fruit fly regulatory program. The assessment provides a basis for the conclusion that the methods employed to regulate the Oriental fruit fly will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3), USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The area described below is designated as a quarantined area:

California

Los Angeles County. That portion of Los Angeles County in the Florence area bounded by a line drawn as follows: Beginning at the intersection of El Segundo Boulevard and Western Avenue; then north along Western Avenue to its intersection with Vernon Avenue; then east along Vernon Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with Martin Luther King (M.L.K.), Jr. Boulevard; then east along M.L.K. Jr. Boulevard to its intersection with Broadway; then northeast along Broadway to its intersection with Washington Boulevard; then southeast along Washington Boulevard to its intersection with Interstate Highway 710 (Long Beach Freeway); then south along Interstate Highway 710 to its intersection with Rosecrans Avenue; then west along Rosecrans Avenue to its intersection with Interstate Highway 110 (Harbor Freeway); then north along Interstate Highway 110 to its intersection with El Segundo Boulevard; then west along El Segundo Boulevard to the point of beginning.

Done in Washington, DC, this 7th day of November 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–28046 Filed 11–10–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV94–905–2–FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Fruits, Import Regulations (Grapefruit); Higher Grade Requirements for Florida-Grown and Imported Red and White Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum grade requirements for Florida-grown and imported fresh red and white seedless grapefruit to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External—U.S. No. 1 Internal. This rule improves the quality of fresh domestic, export, and import shipments of seedless grapefruit and is in the interest of producers, handlers, and consumers of such fruit.

EFFECTIVE DATE: This final rule becomes effective November 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 [7 CFR Part 905] regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the Act.

This final rule is also issued under section 8e [7 U.S.C. Section 608e–1] of the Act. Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under the order, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under the order.

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are about 100 Florida citrus handlers subject to regulation under the order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, about 11,970 producers of these citrus fruits in Florida, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of these handlers and a majority of these producers and importers may be classified as small entities.

The Citrus Administrative Committee (committee) met on June 21, 1994, and recommended the regulatory changes for Florida citrus. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 [7 CFR 905.306] specifies minimum grade requirements for different varieties of fresh Florida-grown grapefruit, as authorized by § 905.52 [7 CFR 905.52] of the order. Section 905.306 specifies such grade requirements in Table I of paragraph (a) for domestic markets (fruit shipped from the production area to any point outside thereof in the 48 contiguous States and the District of Columbia of the United States), and in Table II of paragraph (b) for export markets (fruit shipped from any point in the 48 contiguous States and the District of Columbia of the United States to any destination).

This rule amends § 905.306 by revising the entries for grapefruit in Table I and in Table II, effective September 1, 1994. Under the final rule, the minimum grade requirements for domestic and export shipments of Florida-grown red and white seedless grapefruit will be increased to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External—U.S. No. 1 Internal, beginning with 1994–95 season shipments.

The current minimum size requirements for Florida-grown red and white seedless grapefruit for both domestic and export shipments remain unchanged under this rule. Also, the current minimum grade and size requirements for Florida-grown red and white seeded grapefruit for both domestic and export shipments remain unchanged.

This rule removes entries for seeded pink grapefruit and seedless pink grapefruit in Table I and in Table II of § 905.306. Such removal is necessary because such pink grapefruit were reclassified as red grapefruit and the entries in such Tables for pink grapefruit were changed to red grapefruit by a final rule published in the **Federal Register** [55 FR 41659, October 15, 1990], but such changes were not incorporated in the Code of Federal Regulations.

The committee recommended that the minimum grade requirements for domestic and export market shipments of fresh Florida-grown red and white seedless grapefruit be increased, as specified. The committee reports that it expects that the higher minimum grade requirements will result in better quality Florida-grown red and white seedless grapefruit being shipped to the fresh market, and that such fruit should receive greater consumer support and

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increased consumer demand resulting in improved grower returns. The consumer demand for such grapefruit should be strengthened because consumers prefer the higher quality grapefruit which this rule requires be shipped.

Minimum grade requirements under the order are designed to provide fresh markets with fruit of accepTable grade and maturity, thereby maintaining consumer confidence in fresh Florida-grown grapefruit. This contributes to sTable marketing conditions.

The higher grade requirements for Florida-grown red and white seedless grapefruit are based on the committee's assessment of the prospective crop and market conditions for the 1994–95 season Florida-grown seedless grapefruit crop. The requirements are designed to enable Florida grapefruit shippers to ship red and white seedless grapefruit to the domestic and export markets consistent with anticipated demand in those markets.

Processing outlets are an important market for Florida-grown seedless grapefruit, with nearly one-half of the seedless grapefruit crop produced in Florida normally utilized in processing. Any grapefruit which do not meet the proposed higher grade requirements could be utilized in processing outlets.

The committee reports that it expects that more red and white seedless grapefruit will be produced in Florida during the 1994–95 season than last season. The committee also expects that supplies of fresh Florida-grown red and white seedless grapefruit meeting the higher grade requirements will adequately meet consumer demand during the entire 1994–95 season. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July, but occasionally begins in late August.

This rule is designed to establish and maintain orderly marketing conditions in the United States for fresh Florida-grown red and white seedless grapefruit in the interest of producers, handlers, and consumers, and is expected to increase returns to Florida grapefruit producers.

Under the order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from grade and size requirements. Fruit shipped in gift packages which are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from grade and size requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106]. This rule amends § 944.106 by revising paragraph (a) and the Table in that section by modifying the entries for imported red and white seedless grapefruit. This increases the minimum grade requirements for such grapefruit to U.S. No. 1, from the current minimum grade requirement of Improved No. 2 External—U.S. No. 1 Internal. The higher grade requirements for imported red and white seedless grapefruit are the same as those in this rule under § 905.306 for red and white seedless grapefruit grown in Florida.

The current minimum size requirements for imported red and white seedless grapefruit remains unchanged under this rule. Also, the current minimum grade and size requirements for imported red and white seeded grapefruit remain unchanged.

This rule reflects the committee's and the Department's appraisal of the need to increase the minimum grade requirements for fresh Florida-grown red and white seedless grapefruit, as specified. The Department's view is that this rule will have a beneficial impact on Florida producers and handlers of fresh seedless grapefruit, since it enables such producers and handlers to make available those grades of grapefruit needed to meet consumer needs consistent with 1994–95 season crop and market conditions.

The proposed rule concerning this action was published in the September 9, 1994, **Federal Register** [59 FR 46361], with a 15-day comment period ending September 23,1994. Nine comments were received, five in support and four in opposition to the proposed rule.

The comments in favor of implementing the higher grade as set forth in the proposed rule were submitted by Mr. W. Cody Estes of the Indian River Citrus League, Mr. Bobby F. McKown of Florida Citrus Mutual, Mr. Gregory P. Nelson of DNE World Fruit Sales, Mr. Bernard A. Egan of Bernard Egan and Company, and Mr. David Milwood of Golden River Fruit Co. Their comments reiterated the arguments made in the proposed rule.

Mr. Estes stated in his comment that the presence on the market of Improved No. 2 External grade grapefruit during times of abundant supplies of grapefruit does not result in greater volumes of fresh fruit movement. He sees its presence dragging down the price and movement of better quality fruit to the point that very little price differential exists between the price for U.S. No. 1 and Improved No. 2 External. Mr. Estes further stated that better quality grapefruit will stimulate demand, and that increasing production levels will ensure ample supplies for consumers. Mr. McKown stated he favored the higher grade requirement because it will improve the quality and strengthen demand for fresh domestic and export shipments of seedless grapefruit and benefit citrus growers, packers and the industry as a whole.

Both Mr. Nelson and Mr. Egan expressed strong support for increasing the grade requirements. They believe that higher minimum grade requirements will prevent unsightly and misshapen fruit from entering the fresh market and depressing demand and prices for Florida grapefruit.

Mr. Milwood stated that higher grade requirements will result in marketing and packing the best fruit available. This will benefit Florida growers by enhancing the image of Florida grapefruit in the domestic market. His position is that the industry must improve its image in order to compete with other fruit available to the consumer. He states that having No. 2's in the market place will only reduce the price for U.S. No. 1's and bring down prices to unacceptable levels for all Florida growers. Mr. Milwood also stated that throughout the 1980's, there was a need for U.S. No. 2 grapefruit due to devastating freezes and limited crop sizes. Mr. Milwood's impression is that the situation has changed. With the forecast for larger crops, he believes the industry must improve its image in order to be competitive in the market place.

Comments in opposition to implementing the higher grades as set forth in the proposed rule were submitted by Mr. J. Richard Graves, Jr., of Graves Brothers Company, Mr. Theodore R. Bolema of the United States Department of Justice (DOJ) and Mr. James Crockett of United Citrus Marketing.

Mr. Graves commented that in his view the rule which changes grade standards will prove economically disastrous for Indian River area grapefruit growers. In his opinion, it will result in limiting the shipment of Improved No. 2 External Florida seedless grapefruit and prevent certain customers and consumers from buying Florida grapefruit. He states that there is a fresh fruit market for these grades of grapefruit.

In actuality, the average quality of grapefruit is rising and the higher minimum grade requirement is an attempt to keep up with the quality change. Although interseasonal variations in quality make it difficult to estimate the effect of the higher minimum grade requirement, the total quantity of grapefruit that could meet the new grade is approximately 94 percent. With the expectation of a grapefruit crop 8 percent larger than last year, consumers will not be noticeably affected, and supplies might even be larger than in the 1993/94 season. Thus, consumers will not find shortages or high prices for Florida grapefruit as a result of this action.

In addition, it is the view of a majority of committee members, which is made up of growers, that shipments of lower grade grapefruit have been poorly received by consumers. The committee contends there is a need for premium quality grapefruit in the market place. They pointed out that some customers prefer and will purchase only high quality produce. This group stated that having U.S. No. 2's in the market will only reduce the price of U.S. No. 1 grapefruit. In recent seasons, prices for Florida grapefruit marketed fresh have been depressed, falling from a season average of over $8.50 per box in 1990 and 1991 to less than $5.00 per box in 1992, the lowest since the early 1980's. Grower prices for 1993/94 averaged slightly more than $6.00 per box in 1993.

Mr. Graves forwarded a memorandum from Mr. Robert E. Barber, Jr., on the "Estimated Impact of Proposed Changes in U.S. Grade Standards for Fresh Grapefruit". In his memorandum, Mr. Barber analyzes the economic impact of raising minimum grades for Florida grapefruit to U.S. No. 1.

Mr. Barber argues that the higher minimum grade standards are economically risky because of the impact upon the overall revenues generated by Florida's grapefruit crop. His theory is that shipping point revenues for Florida grapefruit would increase due to the restriction in volume of shipments that would occur under higher grade requirements.

Mr. Barber postulates that the gains in fresh market value could be more than offset by an anticipated drop in revenues for processed grapefruit resulting from the reallocation of fruit from the fresh market to the processed market.

Mr. Barber's conclusions are not in line with current Florida Citrus Commission projections. In fact, this season's volume of grapefruit is expected to be 8 percent larger than in the 1993–94 season. In recent seasons, more than 30 percent of the Florida grapefruit crop was exported, with Western Europe and Japan being key markets. However, export demand has been weak because of economic recessions in these markets. It is not expected that this situation will change appreciably in the 1994/95 season. The soft export demand coupled with the larger crop mean that higher minimum grade requirements will not have an impact on domestic availability of grapefruit compared to last season.

Mr. Graves states that the higher grade requirements will make Florida grapefruit shippers noncompetitive with Texas grapefruit shippers. However, Texas grapefruit shippers have also proposed to increase the minimum quality requirements for Texas grapefruit. The increase would be from the current minimum grade requirement of U.S. No. 2 to Texas Choice.

Mr. Bolema of the DOJ contends that the restriction on grapefruit shipments offers no long term benefits to consumers or producers. Mr. Bolema also contends that the higher minimum grade requirements will artificially restrict the supply of fresh grapefruit.

Based on current crop forecast, the Department believes that there will be more than enough U.S. No. 1 fruit to meet consumer demand.

Additionally, Mr. Bolema asserts that the increased grower profits will not be sustainable in the long run, because any artificially raised returns to producers will provide incentives for inefficient new grapefruit production. Mr. Bolema argues further that this new inefficient production will increase producer costs and erode grower profits until producer returns revert to the pre-restriction level.

According to National Agricultural Statistics Service forecasts, the production of grapefruit will increase in the 1994–95 and subsequent seasons and because of this, there is a need to increase the demand for Florida fresh market grapefruit. An increase in the general level of quality is associated with an increase in demand; increased sales at higher prices would mean greater returns to growers.

The Department's position is that higher minimum grade requirements will have the effect of stabilizing prices for grapefruit by providing consistent quality to consumers. In addition, a survey conducted by "The Packer," a trade newspaper, demonstrated that higher quality leads to larger purchases of fruit by consumers. Also, Dr. Robert Behr, Economic and Market Research Director of the Florida Department of Citrus is preparing a report on grapefruit quality; this study, which is expected to be completed in the Spring of 1995, will provide the committee additional information it can use to modify the quality requirements under the Federal marketing order, so the preferences of consumers can be better served.

Mr. Crockett stated that while well intended, higher minimum grade requirements for Florida grapefruit will be a blatant restraint on free trade. He stated that it is the customer or "market" that sets the price for grapefruit.

This rule is an attempt to increase the demand for Florida grapefruit. There is the potential to raise returns to growers; based on the supposition that higher grade requirements mean better looking fruit that can be sold at higher prices.

This rule reflects the Department's appraisal of the need to increase the grade requirements for imported red and white seedless grapefruit, to ensure that such fruit meets the same higher grade requirements for Florida-grown red and white seedless grapefruit, consistent with the Act.

After thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** [5 U.S.C. 533] because this rule should be implemented as soon as possible since the shipping season began in early September. Further, handlers are aware of this rule which was recommended at public meetings. Also, a 15-comment period was provided in the proposed rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

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7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR Parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.306 is amended by revising the entries in Table I of paragraph (a) and in Table II of paragraph (b) for "seeded, except red" grapefruit, "seeded, red" grapefruit, "seedless, except red" grapefruit, and "seedless, red" grapefruit; and by removing the entries for "seeded, except pink" grapefruit, "seeded, pink" grapefruit, "seedless, except pink" grapefruit, and "seedless, pink" grapefruit to read as follows:

§ 905.306 Orange, grapefruit, tangerine and tangelo regulation.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
GRAPEFRUIT			
Seeded, except red	On and after 09/01/94	U.S. No. 1	3 12/16
Seeded, red	On and after 09/01/94	U.S. No. 1	3 12/16
Seedless, red	11/07/94–11/23/94	Improved No. 2 External, U.S. No. 1 Internal.	3 9/16
	11/24/94–11/12/95	U.S. No. 1	3 9/16
	On and after 11/13/95	U.S. No. 1	3 9/16
Seedless, except red	On and after 09/01/94	U.S. No. 1	3 9/16

(b) * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
GRAPEFRUIT			
Seeded, except red	On and after 09/01/94	U.S. No. 1	3 9/16
Seeded, red	On and after 09/01/94	U.S. No. 1	3 9/16
Seedless, except red	On and after 09/01/94	U.S. No. 1	3 9/16
Seedless, red	On and after 09/01/94	U.S. No. 1	3 9/16

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.106 is amended by revising paragraph (a), and by redesignating the second appearing paragraph (h) as paragraph (i) to read as follows:

§ 944.106 Grapefruit import regulation.

(a) Pursuant to Section 8e [7 U.S.C. 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
Seeded	On and after 09/01/94	U.S. No. 1	3 12/16
Seedless, red	11/07/94–11/23/94	Improved No. 2 External, U.S. No. 1 Internal.	3 9/16
	11/24/94–11/12/95	U.S. No. 1	3 9/16
	On and after 11/13/95	U.S. No. 1	3 9/16
Seedless, except red	On and after 09/01/94	U.S. No. 1	3 9/16

* * * * *

Dated: November 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–28113 Filed 11–9–94; 11:20 am]

BILLING CODE 3410–02–P

7 CFR Part 906

[Docket No. FV94–906–3–FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Higher Quality and Reduced Size Requirements for Texas Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum quality requirements for Texas grapefruit to Texas Choice, from the current minimum grade requirement of U.S. No. 2. This rule also temporarily relaxes the minimum size requirements for certain Texas grapefruit for the remainder of the 1994–95 season. This rule is designed to help the Texas citrus industry successfully market the 1994–95 season grapefruit crop.

EFFECTIVE DATE: This final rule becomes effective November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906 [7 CFR Part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 15 citrus handlers subject to regulation under the order covering oranges and grapefruit grown in Texas, and about 750 producers of these citrus fruits in Texas. Small agricultural service firms, which include grapefruit handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (committee) met on June 30, 1994, and recommended the regulatory changes for Texas grapefruit. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Minimum grade and size requirements for fresh grapefruit grown in Texas are in effect under § 906.365 [7 CFR 906.365]. This rule amends § 906.365 by revising paragraph (a)(3) to delete authority for shipping U.S. No. 2 grade grapefruit and by revising paragraph (a)(4) to permit shipment of grapefruit measuring at least 3 9/16 inches in diameter (pack size 112) for the remainder of the 1994–95 season ending July 31, 1995, provided such grapefruit grade at least U.S. No. 1.

Revision of Minimum Quality Requirements

Section 906.365 of the order's rules and regulations currently provide that fresh shipments of grapefruit must grade, in descending order of quality, U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2. The requirements for these grades are set forth in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and

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Arizona) [7 CFR 51.620 through 51.653]. In addition, there are other qualities of grapefruit packed by the Texas citrus industry defined in section 906.137, pertaining to handlers' use of identifying marks utilized by the committee in promotional and advertising projects. Section 906.137 provides that handlers may use the identifying mark "Texas Fancy" only with respect to grapefruit grading at least U.S. No. 1, but with no more than 40 percent of the surface of the fruit, in aggregate, affected by discoloration. This quality of fruit is slightly better than that grading U.S. No. 1, but slightly less than that grading U.S. Fancy. Section 906.137 further provides that handlers may use the identifying mark "Texas Choice" only with respect to fruit grading at least U.S. No. 2, except that no more than 60 percent of the surface of the fruit, in aggregate, may be affected by discoloration. "Texas Choice" fruit is of a quality slightly better than that of a U.S. No. 2 grade, which provides that up to two-thirds of the fruit surface may be affected by discoloration.

This rule amends section 906.365 to provide that the minimum quality of grapefruit shipped to fresh market outlets will be "Texas Choice", thereby eliminating the authority to ship U.S. No. 2 grade fruit beginning with 1994–95 season shipments.

The committee recommended that the minimum quality requirements for fresh market shipments of Texas-grown grapefruit be increased, as specified. The committee reports that because grapefruit production in Texas as well as in other competitive grapefruit growing areas is increasing much faster than consumer demand, there is an opportunity to increase consumer satisfaction with fresh market grapefruit and a need to improve returns to producers. The consumer demand for such grapefruit should be strengthened, because consumers prefer the higher quality grapefruit which this rule requires be shipped.

Minimum grade requirements under the order are designed to provide fresh markets with fruit of acceptable grade and maturity, thereby maintaining consumer confidence in fresh Texas-grown grapefruit. This helps create buyer confidence and contributes to stable marketing conditions.

The committee believes elimination of the U.S. No. 2 grade has other benefits as well. First, it reduces the number of different packs of grapefruit currently being offered by the Texas citrus industry from seven to six. This reduction enhances standardization and reduces buyer confusion, which should benefit Texas growers and shippers. Second, this action makes the Texas grapefruit industry more competitive with other growing areas. The Citrus Administrative Committee which administers Federal Marketing Order No. 905, covering citrus grown in Florida, recently made a similar recommendation to eliminate the shipment of U.S. No. 2 grade grapefruit. The Texas industry believes it should do the same to remain viable in this highly competitive business. Finally, the committee believes that increasing the quality of grapefruit offerings from Texas will complement its promotion and advertising activities undertaken under authority of the order. These activities are designed to create buyer preference for Texas-grown grapefruit, and increasing the quality offered for shipment enhances these efforts.

This increase in quality requirements should not have a significant impact on available supplies of fresh Texas grapefruit. The committee reports that in recent seasons, grapefruit grading U.S. No. 2 have comprised less than 1 percent of total fresh shipments. The benefits of this rule should therefore outweigh any costs related to increasing the minimum quality requirements. Grapefruit not meeting "Texas Choice" quality requirements could be utilized in exempt outlets, such as processing, relief or charity.

Temporary Relaxation of Minimum Size Requirements

Section 906.365 also establishes minimum size requirements for Texas grapefruit. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, except that the minimum diameter for the grapefruit in any lot is 3$^{9}/_{16}$ inches. At other times, grapefruit that is pack size 112, except that the minimum diameter for grapefruit in any lot is 3$^{5}/_{16}$ inches, may be shipped if it grades at least U.S. No. 1. This rule provides that pack size 112 grapefruit may be shipped throughout the remainder of the 1994–95 season if such grapefruit grade at least U.S. No. 1. This relaxation is the same as the relaxation which previously was issued for the period beginning October 25, 1993, and ending July 31, 1994.

This relaxation is expected to help the Texas citrus industry successfully market its 1994–95 season grapefruit crop and have a positive effect on producer returns. Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the remainder of the 1994–95 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida. This rule is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments are expected to begin in October of this season.

This rule reflects the committee's and the Department's appraisal of the need to increase minimum quality and temporarily relax minimum size requirements for fresh Texas-grown grapefruit, as specified. The Department's view is that this rule will have a beneficial impact on Texas producers and handlers of fresh grapefruit, since it enables such producers and handlers to make available the quality and sizes of grapefruit needed to meet consumer needs consistent with the remainder of the 1994–95 season crop and market conditions.

The proposed rule concerning this action was published in the September 1, 1994, **Federal Register** [59 FR 45241], with a 15-day comment period ending September 16, 1994. One comment was received and it was in opposition to the proposed rule.

The comment in opposition to increasing the minimum grade requirement for Texas grapefruit was submitted by the United States Department of Justice (DOJ). The DOJ contends that this action will result in a restriction on grapefruit shipments which will offer no long term benefits to consumers or producers. The DOJ also contends that the higher minimum grade requirements will artificially restrict the supply of fresh grapefruit, causing consumer prices to rise and promoting wasteful misallocation of society's resources. Additionally, the DOJ contends that the increased grower profits will not be sustainable in the long run, because any artificially raised returns to producers will provide an incentive for inefficient new grapefruit production. The DOJ contends further that this new inefficient production will increase producer costs and erode grower profits until producer returns revert to the prerestriction level.

The Department's position is that higher minimum grade requirements will have the effect of stabilizing prices for grapefruit by providing consistent quality to consumers. In addition, studies have shown that consumers prefer high quality fruit. Therefore, a higher grade requirement could increase and sustain demand. Consequently, the DOJ request that the Secretary reject the committee's recommendation is denied.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 15 days after publication in the **Federal Register** because: (1) The committee needs to have this amendment in effect as soon as possible because Texas grapefruit shipments for the 1994–95 season have begun; (2) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (3) the proposed rule provided a 15-day comment period and all comments timely received were considered prior to finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.365 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, or U.S. No. 1 Bronze, or meet the quality requirements of "Texas Fancy" or "Texas Choice" as defined in section 906.137 of this part;

(4) Such grapefruit are at least pack size 96, except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3$^{9}/_{16}$ inches: *Provided*, That any handler may handle grapefruit, except during the period November 16 through January 31 each season, which are smaller than pack size 96, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$^{5}/_{16}$ inches: *Provided further*, That for the period beginning October 15, 1994, and ending July 31, 1995, any handler may handle grapefruit if such grapefruit grade at least U.S. No. 1 and they are at least pack size 112, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$^{5}/_{16}$ inches in diameter.

* * * * *

Dated: November 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–28084 Filed 11–9–94; 9:24 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–202–AD; Amendment 39–9070; AD 93–25–09 R1]

Airworthiness Directives; McDonnell Douglas Model MD–11 and DC–10 Series Airplanes, and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes, that currently requires repetitive functional testing to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary; and the reporting of findings of discrepancies as a result of the repetitive functional tests. That AD was prompted by a report indicating that the electrical connectors to the fire extinguishing handles were found to be connected incorrectly (crossed) on one airplane. The actions specified in that AD are intended to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine. This amendment deletes the requirement to submit reports repetitively following each functional test.

DATES: Effective November 29, 1994.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 7, 1994 (58 FR 68026, December 23, 1993).

Comments for inclusion in the Rules Docket must be received on or before January 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 16, 1993, the FAA issued AD 93–25–09, amendment 39–8775 (58 FR 68026, December 23, 1993), which is applicable to certain McDonnell Douglas Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes. That AD requires a functional test to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary. A similar functional test is required any time that maintenance is performed on the fire extinguishing handle system. That AD also requires operators to submit to the FAA a report of findings when any discrepancies are identified during any of the required functional tests.

That action was prompted by a report that, during pre-delivery testing of a Model MD–11 series airplane, the electrical connectors to the fire extinguishing handles were found to be connected incorrectly (crossed). The

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actions required by that AD are intended to prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine.

In response to the reporting requirements of AD 93–25–09, operators of Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes have not reported finding any discrepancies as a result of the functional tests of the fire extinguishing handle system. Therefore, the FAA has determined that it is appropriate to take action to revise paragraph (e) of that AD to delete the requirement to report the findings of discrepancies as a result of any functional test other than the initial one. Submission of a report to the FAA is required only after the initial functional test, as required by paragraph (a) of the AD.

Further, the FAA finds that removal of this reporting requirement will not compromise safety of the fleet due to the ongoing system of reports required by section 121.703 of the Federal Aviation Regulations (14 CFR 121.703), "Mechanical reliability reports."

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD continues to require a one-time functional test to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches, and correction of the installation, if necessary; and a report that details the findings of discrepancies identified during the accomplishment of the initial functional test. This AD deletes the requirement to report findings of discrepancies as a result of the repetitive functional tests of the fire extinguishing handle system.

This AD merely deletes a previously-required action; it requires no additional work to be performed by affected operators. In light of this, the FAA has determined that it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Cost Impact

There are approximately 526 Model MD–11 and DC–10 series airplanes, and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 316 airplanes of U.S. registry will continue to be affected by the requirements that are retained in this AD. To accomplish the actions in this AD, it will take approximately 0.5 work hour per airplane, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,690, or $27.50 per airplane.

Because this AD deletes a previously-required reporting action, it eliminates the costs associated with that reporting action. Therefore, the economic burden to operators is lessened by that amount.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–202–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8775 (58 FR 68026, December 23, 1993), and by adding a new airworthiness directive (AD), amendment 39–9070, to read as follows:

93–25–09 R1 McDonnell Douglas: Amendment 39–9070. Docket 94–NM–202–AD. Revises AD 93–25–09, Amendment 39–8775.

Applicability: Model MD–11 series airplanes as listed in McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993; and Model DC–10 series airplanes and Model KC–10A (military) airplanes as listed in McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wrong engine-driven generator from being shut down unnecessarily in the event of an engine fire or severe damage to the engine, accomplish the following:

(a) Perform a functional test to verify proper installation of the electrical connectors to the engine generator and fire bell shutoff switches at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model MD–11 series airplanes: Within 30 days after January 7, 1994 (the effective date of AD 93–25–09, amendment 39–8775), in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993. Or

(2) For Model DC–10 series airplanes, and Model KC–10A (military) airplanes: Within 60 days after January 7, 1994 (the effective date of AD 93–25–09, amendment 39–8775), in accordance with the Accomplishment Instructions of McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993.

(b) If the electrical connectors are found to be properly installed, no further action is required by paragraph (a) of this AD.

(c) If the electrical connectors are found to be improperly installed, prior to further flight, correct the wiring installation and repeat the functional test, in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993 (for Model MD–11 series airplanes); or McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993 [for Model DC–10 series airplanes, and Model KC–10A (military) airplanes]; as applicable.

(d) Prior to further flight following any maintenance performed on the fire extinguishing handle system, repeat the functional test in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993 (for Model MD–11 series airplanes); or McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993 [for Model DC–10 series airplanes and, Model KC–10A (military) airplanes]; as applicable.

(e) Within 10 days after completing the functional test required by paragraph (a) of this AD, submit a report of the findings of discrepancies to the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The functional test shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A26–16, dated November 22, 1993 (for Model MD–11 series airplanes); or McDonnell Douglas DC–10/KC–10A Alert Service Bulletin A26–46, dated December 6, 1993 [for Model DC–10 series airplanes or Model KC–10A (military) airplanes]; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 7, 1994 (58 FR 68026, December 23, 1993). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 29, 1994.

Issued in Renton, Washington, on November 7, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27967 Filed 11–10–94; 8:45 am]

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14 CFR Part 61

[Docket No. 27682; Amdt. No. 61–96]

RIN 2120–AF32

Recent Flight Experience: Pilot in Command

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations governing the recent flight experience requirements for pilots in command (PICs) by providing relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations. This final rule will provide the air carrier industry, which already complies with recency requirements found in parts 121 and 135, relief from unnecessary duplicate recordkeeping, without diminishing the current level of safety.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA–200), 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this amendment.

Background

The decision to provide relief from essentially redundant recency requirements and from the accompanying recordkeeping burden for parts 121 and 135 operators and their PICs was prompted by a petition for exemption or other regulatory relief submitted by the Air Transport Association (ATA). The ATA petitioned the Federal Aviation Administration (FAA), on behalf of its affected member airlines and other similarly situated airlines, for exemption or other regulatory relief from the requirements of Sections 61.57(e) and 121.683(a)(1) of the FAR. Section 61.57(e) requires a pilot who wishes to act as a PIC under instrument flight rules to meet certain recency experience requirements. Section 121.683(a)(1) requires a part 121 air carrier to maintain current records of each crewmember that shows compliance with the FAR (e.g., recent flight experience).

The ATA petitioned for relief from what it considered to be essentially duplicative recordkeeping requirements related to the recency of experience for part 121 PICs. This "duplication" arises because certificate holders are currently required to maintain records under Section 121.683 showing compliance with both Section 61.57 and the currency requirements of part 121. The FAA agreed with the premise of the ATA petition. It is not the intent of the FAA to require duplicative recency requirements for PICs serving in part 121 or part 135 air carrier operations. The FAA does intend, however, that each PIC serving in these air carrier operations have adequate recent experience.

The FAA determined, however, that rulemaking was necessary to provide the relief requested. Therefore, the FAA decided to propose a change to the existing regulations. In addition, the FAA determined that it was appropriate

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to propose the same relief to part 135 operators, including relief from the general and night experience requirements, as they also have training and checking requirements that are basically equivalent to the recency requirements of Section 61.57.

Currently, part 121 and part 135 operators record all flight time. Almost all flight time logged by PICs in parts 121 and 135 air carrier operations is under instrument flight rules (IFR) but is not broken down into instrument meteorological conditions (IMC) or visual meteorological conditions (VMC). The reason for this is that air carriers are required to file instrument flight rules (IFR) flight plans and perform navigation solely by reference to instruments regardless of meteorological conditions. Therefore, in order for parts 121 and 135 air carrier pilots to comply with Section 61.57 they must log separately their flight time in and out of IMC. Under Sections 121.683 and 135.63, parts 121 and 135 operators must also keep records of their PICs' IFR flight time in and out of IMC to show that their PICs comply with Section 61.57. The FAA finds that having both pilots and certificate holders separately log flight hours in and out of IMC meteorological conditions is redundant. This duplicative logging of flight time is an unnecessary burden on both the PICs and the air carriers, and adds no safety benefits.

The specific requirement to obtain recent flight experience under Section 61.57 is unnecessary for part 121 and part 135 air carrier pilots. The FAA concludes that removing this requirement will not reduce the current level of safety because part 121 and part 135 pilots already maintain an equivalent or higher level of qualification. The nature of air carrier operations, the current regulatory and training requirements, and the availability of simulators combine to ensure part 121 and part 135 air carrier pilots maintain currency beyond the minimum requirements of Section 61.57.

Also, this final rule is deregulating in nature because it precludes the unnecessary recordkeeping for the air carrier pilots during the time they are performing parts 121 or 135 flights. Additionally, this final rule will relieve parts 121 and 135 operators from the need to keep a record of their pilots' compliance with Section 61.57. Pilots will still be personally responsible for showing currency when they are flying in an operation conducted under part 91, unless, as discussed below, that operation is being conducted for a part 121 or 135 operator.

The FAA has decided not to extend this amendment to part 125 operators. Most part 125 training and checking rules are not equivalent to those in parts 121 and 135, nor do they need to be. Although some part 125 operators have established training programs which exceed part 125 requirements, these programs have been submitted voluntarily and are not in response to an FAA requirement.

On April 11, 1994, the FAA issued Notice No. 94–9 (59 FR 17162) that proposed to revise the Federal Aviation Regulations governing the recent flight experience requirements for PICs; specifically to provide relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations.

Discussion of Public Comments

The FAA received three comments in response to Notice No. 94–9, one from the Air Line Pilots Association (ALPA) and two from the Air Transport Association (ATA). ALPA agrees with and supports the proposal since an equivalent level of safety will be provided along with the relief from redundant reporting requirements. In their first comment, ATA supports the proposal stating that the duplicative logging of flight time is an unnecessary burden on both the PICs and the air carriers while adding no safety benefits.

In their second comment, ATA, while still supporting the proposal, suggested a minor change to the proposed wording in Section 61.57(f); specifically, that Section 61.57 "does not apply to pilots, employed by parts 121 and 135 operators, engaged in any Flight Operations for the certificate holder." The reason for the change, ATA states, is that part 121 and part 135 pilots often conduct ferry flights, local acceptance flights, training flights, etc., and none of these operations are conducted under part 121 or part 135. Hence, the originally proposed wording would require two sets of records to be maintained covering the above-mentioned operations. The FAA agrees with ATA, the intent of the FAA was to relieve duplicative recency requirements for PICs serving in part 121 or part 135 air carrier operations including all flight operations conducted for the certificate holder. The FAA does intend, however, that pilots who are employed by a part 121 or a part 135 air carrier, who are flying in an operation conducted under part 91 that is not an operation for the certificate holder, be personally responsible for showing currency under Section 61.57. The ATA wording change to Section 61.57(f) is reflected in this final rule.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because this final rule eliminates duplicative recordkeeping for U.S. carriers and has no effect on actual currency.

Regulatory Analysis

This section contains the full regulatory evaluation prepared by the FAA that provides information on the economic consequences of this regulatory action. This evaluation quantifies, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12866, dated September 30, 1993, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of an economic analysis of all "significant regulatory actions" except those responding to emergency situations or other narrowly defined exigencies.

The FAA has determined that this final rule is not a significant rulemaking action as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below.

The estimated benefit of the final rule is the relief from recordkeeping for parts 121 and 135 operators and their pilots. It is estimated that under the rules before this amendment each of these pilots would meet the relevant requirement for Section 61.57 after flying about five days every 6 months and spending 5 minutes per day logging their flight time. After that, the prior regulation required no additional recordkeeping. The FAA estimates that about 14,900 hours were used for recordkeeping purposes annually. Given that the median monthly earnings for a captain (for majors, nationals, and regionals) in 1993 dollars is about $11,400 or about $138 per hour, the industry is expected to realize a potential annual cost benefit of about $2.06 million. However, if the recordkeeping duties would have been performed by the first officer or flight engineer, the potential benefit will not be as great.

There will be no incremental costs associated with this final rule since the recent flight experience requirements for parts 121 and 135 PICs are equivalent to those required by Section 61.57; in essence only the recordkeeping requirements would be relaxed. The FAA has concluded that there would be no degradation of safety. Therefore, the FAA has concluded that the final rule is cost beneficial.

Regulatory Flexibility Determination

The final rule will not have a significant economic impact, positive or negative, on small entities. Moreover, only national and regional air carriers, rather than small entities, will be affected by this final rule. Therefore, a substantial number of small entities will not suffer a significant economic impact as a result of this final rule.

International Trade Impact Analysis

This final rule will have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects pilots employed by regional and national air carriers, not businesses involved in the sale of aviation products or services.

Federalism Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the FAA has considered the information collection impact associated with this final rule and finds that the final rule will result in some reduction in required recordkeeping. The FAA requested comments on this issue in Notice No. 94–9, but did not receive any. There are no additional requirements for information collection associated with this final rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this final rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The full Regulatory Evaluation for this amendment is set out above.

List of Subjects in 14 CFR Part 61

Airmen, Reporting and recordkeeping requirements

The Amendment

Accordingly, the FAA amends 14 CFR part 61 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.57 is revised to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a)–(b) [Reserved]

(c) *General experience.* Except as provided in paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers, nor of an aircraft certificated for more than one required pilot flight crewmember, unless, within the preceding 90 days, that person has made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type. If the aircraft is a tailwheel airplane, the landings must have been made to a full stop in a tailwheel airplane. For the purposes of meeting the requirements of the paragraph, a person may act as pilot in command of a flight under day VFR of day IFR if no persons or property other than as necessary for compliance thereunder, are carried.

(d) *Night experience.* Except as provided by paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made at least three takeoffs and three landings to a full stop during that period in the category and class of aircraft to be used.

(e) *Instrument experience.* (1) *Recent IFR experience.* Except as provided by paragraph (f) of this section, no pilot may act as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, unless that pilot has, within the past 6 calendar months—

(i) In the case of an aircraft other than a glider, logged at least 6 hours of instrument time under actual or simulated IFR conditions, at least 3 of which were in flight in the category of aircraft involved, including at least 6 instrument approaches, or passed an instrument competency check in the category of aircraft involved.

(ii) In the case of a glider, logged at least 3 hours of instrument time, at least half of which were in a glider or an airplane. If a passenger is carried in the glider, at least 3 hours of instrument flight time must have been in gliders.

(2) *Instrument competency check.* A pilot who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time or 6 calendar months thereafter may not serve as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, until that pilot passes an instrument competency check in the category of aircraft involved, given by an FAA inspector, a member of an armed force of the United States authorized to conduct flight tests, an FAA-approved check pilot, or a certificated instrument flight instructor. The Administrator may authorize the conduct of part of all of this check in a pilot ground trainer equipped for instruments or an aircraft simulator.

(f) *Exemptions.* This section does not apply to a pilot in command, employed by a 14 CFR part 121 or part 135 operator, engaged in a flight operation under 14 CFR part 91, 121, or 135 for the operator.

Issued in Washington, DC, on November 4, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–27909 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Statement of Enforcement Policy; Labeling and Banning Provisions of the Child Safety Protection Act

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of Enforcement Policy.

SUMMARY: Recently, Congress enacted the Child Safety Protection Act of 1994

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("CSPA") by adding a new section 24 to the Federal Hazardous Substances Act ("FHSA"). This new section 24 places labeling requirements on balloons, small balls, marbles, and certain toys and games intended for use by children at least 3 years old but not older than 6 years. It also bans small balls (with a diameter of 1.75 inches or less) that are intended for use by children younger than 3 years of age. Under the statute, these provisions of the CSPA will become effective on January 1, 1995 and will apply to products entering into commerce on or after that date. This statement of enforcement policy explains the Commission's intention to enforce these provisions of the CSPA when they take effect.

DATES: This statement of enforcement policy becomes effective on November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, ext. 1344.

SUPPLEMENTARY INFORMATION:

A. Background: the Statute

On June 16, 1994, Congress amended the Federal Hazardous Substances Act ("FHSA") and enacted the Child Safety Protection Act ("CSPA"). Congress intended that the act generally provide greater protection for small children against the hazard of choking on small items. The CSPA provides for a new section 24 of the FHSA. This section imposes precautionary labeling requirements for (1) latex balloons, (2) small balls (with a diameter of 1.75 inches or less) intended for children 3 years or older, (3) marbles intended for children 3 years of age or older, (4) any toy or game intended for children three years or older that contains a small ball or marble, (5) any toy or game that contains a latex balloon, and (6) any toy or game which includes a small part and is intended for children at least 3 years old but not older than 6. In addition to these labeling requirements, section 24 bans small balls that have a diameter of 1.75 inches or less and are intended for children under three years of age.

The new section 24 specifies the text of the warning labels that must appear on these products. It also provides that, in general, these cautionary statements must be displayed on the principal display panel of the product's package. The statute also requires that the warning statements must be in English and be conspicuous. Products subject to these labeling requirements that do not bear the required labeling will be misbranded hazardous substances under section 2(p) of the FHSA. 15 U.S.C. 1261(p).

B. Background: the Proposed Regulations

The CSPA directs the Commission to issue regulations to implement the new requirements of section 24 of the FHSA. On July 1, 1994, the Commission issued proposed regulations to incorporate the requirements of the CSPA into the Code of Federal Regulations and to interpret or clarify certain provisions of the legislation. 59 FR 33932. The Commission is in the process of reviewing public comments responding to the proposed rule and is developing a final rule. The Commission anticipates issuing a final rule in the early part of 1995. The Commission will not be enforcing the requirements of these regulations until after publication of the final rule.

C. Enforcement Policy

The staff has received several inquiries concerning enforcement of the new labeling and banning provisions. Although the statute is clear as to its effective date and specifies the text of the labeling statement it requires, to alleviate any possible confusion, the Commission offers this guidance.

Section 101 of the CSPA specifically provides that the labeling and banning provisions of the law shall take effect January 1, 1995. The labeling requirements only apply to products that enter into commerce on or after that date. Accordingly, packages for products that are subject to the requirements of the act and that are manufactured in or imported into the United States on or after January 1, 1995 must bear the labeling statements specified in the law. The statute further provides that the required statement must appear on the principal display panel of the package in conspicuous and legible type in contrast by typography, layout or color with other printed matter. These statutory provisions do not depend on the promulgation of final regulations.

The labels of products subject to the act are not required to comply with the specific requirements of the proposed rule until a final rule is published and goes into effect. The Commission also notes that it is not necessary that the labeling statements required by the act be incorporated into the lithography of a package label. Sticker labels can be used to comply with the requirements.

Dated: November 7, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–27960 Filed 11–10–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 15, 1994 (59 FR 41664). The document amended the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA 200–066) filed by Agri Laboratories, Ltd. The regulation was published with an inadvertent error in the amendatory language. This document corrects that error.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: In FR Doc. 94–19934, appearing on page 41664 in the **Federal Register** of August 15, 1994, the following correction is made: On page 41664, in the third column, amendatory instruction number 2 is corrected to read: "Section 520.1660d is amended by adding new paragraphs (a)(6) and (b)(4), and by revising the next to last sentence in paragraphs (e)(1)(ii)(A)(*3*), (e)(1)(ii)(B)(*3*), and (e)(1)(ii)(C)(*3*), and the last sentence in paragraph (e)(1)(iii)(C) to read as follows:".

Dated: November 3, 1994.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 94–27924 Filed 11–10–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–035]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to the Code of Maryland Regulations (COMAR) pertaining to impoundments. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated May 16, 1994, Maryland submitted a proposed amendment to its program pursuant to SMCRA and submitted revisions to the amendment on June 23, 1994 (combined Administrative Record No. MD–569.00). Maryland submitted the proposed amendment in response to an April 20, 1993, letter (Administrative Record No. MD–549.18) that OSM sent to Maryland in accordance with 30 CFR 732.17(c) requesting that its engineering design standards be clarified.

Maryland proposed to add COMAR 08.13.09.24H(1)(q) and revise COMA 08.13.09.24H(3)(c). Maryland also submitted a revised "Supplemental Stability Analysis" to support the proposed revisions. Although Maryland recodified COMAR 08.13 to 08.20 in April 1993, the revisions have been submitted using the original classification system.

OSM announced receipt of the proposed amendment in the July 11, 1994, **Federal Register** (59 FR 35289), and in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 10, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

COMAR 08.13.09.24—Ponds and Sediment Control Measures

At COMAR 08.13.09.24H(1)(q), Maryland is proposing to require that impoundments be constructed of fill material that contains sufficient moisture content to achieve proper compaction. As an indication of sufficient moisture content, the soil should form a ball which does not readily separate when kneaded by hand. The engineer may specify other methods of testing moisture content.

At COMAR 08.13.09.24H(3)(c), Maryland is proposing to require that impoundments meeting the criteria of sections H(1) and H(3)(b) meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage condition if: (1) The embankment is not constructed of organic soil or clay of high plasticity; and (2) the existing slope of the foundation area is not steeper than the slope for the soil type to be used to construct the embankment as specified by Maryland. Maryland submitted a stability analysis to support the proposed regulation.

The Federal regulations at 30 CFR 780.25(c)(3) pertain to impoundments not meeting the size or other criteria specified at 30 CFR 77.216(a) and located where failure would not be expected to cause loss of life or serious property damage. The regulations permit States to establish engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor.

On July 29, 1994, OSM conducted a technical review of the proposed design standards and stability analysis and concluded that they satisfy the requirements of 30 CFR 780.25(c)(3). Therefore, the Director finds the proposed revisions at COMAR 08.13.09.24H(1)(q) and (3)(c) to be no less effective than the Federal regulations at 30 CFR 780.25(c)(3). Maryland has agreed to make the necessary recodification changes upon promulgation of the regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration; the Department of the Army, Corps of Engineers; and the Department of the Interior, Bureau of Mines, concurred without comment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Maryland proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (Administrative Record No. MD–569.00). By letter dated September 13, 1994, EPA concurred with the proposed amendment.

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V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Maryland on May 16, 1994, and revised on June 23, 1994.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. The Director is approving these proposed rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended by adding paragraph (aa) to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(aa) The following amendment, as submitted to OSM on May 16, 1994, and revised on June 23, 1994 is approved effective November 14, 1994. The amendment consists of revisions to the following regulations in the Code of Maryland Regulations:

08.13.09.24H(1)(q) ..	Impoundments—General Requirements.
08.13.09.24H(3)(c) ..	Impoundments—Stability.

[FR Doc. 94–27978 Filed 11–10–94; 8:45 am]

BILLING CODE 4310-05-M

[MD–034]

30 CFR Part 920

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions to and additions of statutes pertaining to sections 7–501 (Definitions), 7–504 (Operator's License), and 7–517.1 (Liability) of the Annotated Code of Maryland (Code). The proposed amendment would allow a "limited liability company" to become an operator of surface coal mining operations under Maryland's approved program.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
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III. Director's Findings
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V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Submission of the Proposed Amendment

By letter dated May 31, 1994 (Administrative Record No. MD–568.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA. Maryland submitted the proposed amendment at its own initiative. Maryland proposed to revise sections 7–501, 7–504, and 7–517.1 of its Code to incorporate the "limited liability company" into its definitions of "operator" and "principal owner" and to include the "limited liability company" in the provisions of law relating to the licensing, regulation, and enforcement of open-pit mining operations.

OSM announced receipt of the proposed amendment in the June 23, 1994, **Federal Register** (59 FR 32388), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 25, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, which are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

A. Revisions to Maryland's Statutes That Are Not Substantively Identical to the Corresponding Federal Regulation

1. Section 7–501—Definitions

a. At section 7–501(o) of the Code, Maryland is revising the definition of "operator" to mean any person, partnership, "limited liability company," or corporation that removes or intends to remove more than 250 tons of coal from the earth by surface coal mining within 12 consecutive months in any one location.

The proposed State definition is identical to the Federal counterpart at section 701(13) of SMCRA except that the Federal definition does not expressly include limited liability companies. Because the State is clarifying the types of entities to which its definition applies, the Director finds the proposed revision at 7–501(o) no less stringent that the Federal definition at section 701(13) of SMCRA.

b. At section 7–501(v) of the Code, Maryland is revising the definition of "principal owner" to mean an owner or beneficial owner of at least 10 percent of a corporation, firm, partnership, "limited liability company," or association.

The Federal regulations do not define "principal owner." Because the State is expanding the types of entities to which its definition applies, the Director finds the proposed revision at 7–501(v) not inconsistent with the general Federal provisions.

2. Section 7–517.1—Penalties

At section 7–517.1, Maryland is requiring that whenever a corporation or "limited liability company" violates certain rules or regulations, any permit issued, or fails to correct a violation within a specified time, any officer, director, or agent of the corporation or "limited liability company" who willfully and knowingly authorized, ordered, or carried out the violation of failure shall be subject to the penalty provisions of Maryland's Strip Mining Law.

The Maryland amendment is no less stringent than 518(f) of SMCRA because it, like SMCRA, allows the State Regulatory Authority to assess penalties against individuals who are not assessed civil penalties under 518(a) of SMCRA and are normally shielded from personal liability for obligations of the entity. See Maryland Limited Liability Company Act, sections 4A–301 and 4A–302.

C. Revisions to Maryland's Statute With No Corresponding Federal Regulations

Section 7–504—Operator's License

At section 7–504(b), Maryland is requiring that if an applicant for a license or renewal is a corporation, "limited liability company," partnership, or association, the Director of the Bureau of Mines may not issue or renew the license if the Director finds that any officer, director, or principal owner of the corporation, "limited liability company," partnership, or association has previously failed and continues to fail to comply with any provisions of this subtitle, or if any officer, director, or principal owner is or has been an officer, director, or principal owner of any other corporation, "limited liability company," partnership, or association which has previously failed and continues to fail to comply with the specified provisions. If the applicant is a corporation, "limited liability company," partnership, or association, the Director may not issue or renew the license if an officer, director, or principal owner of the corporation, "limited liability company," partnership, or association has previously forfeited any bond posted in connection with strip-mining in any state.

At section 7–504(c)(1), Maryland is requiring that continued operation by the licensee at any other location shall include operation by the licensee directly, or operation by any corporation, "limited liability company," partnership, or association of which the licensee is an officer, director, or principal owner, and which involves use of equipment or resources employed on the permit area in violation under this section.

At section 7–504(c)(2), Maryland is authorizing the suspension of the license of any corporation, "limited liability company," partnership, or association that is found to be a contributing factor in the persistent or repeated failure to comply with specified requirements under this section, and which failure caused the State to initiate permit revocation procedures.

At section 7–504(d), Maryland is requiring that if it finds that any officer, director, principal owner, or resident agent is or has been an officer, director, principal owner, or resident agent of any other corporation, "limited liability company," partnership, or association that has failed or continues to fail to comply with any provisions of this subtitle, it shall notify the operator and require corrective action within 30 days.

SMCRA and the Federal rules do not require that an operator obtain a license. Licensing is a separate requirement from obtaining a permit, which is also required under the Maryland regulatory program. Since licensees can now be limited liability companies, it is appropriate that the licensing enforcement provisions be applicable to limited liability companies. Therefore, the Director finds the proposed revisions at 7–504(b)–(d) are not inconsistent with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One public comment was received. The commenter stated that the amendment "modifies the provisions relating to suspension of permits." This is not an accurate statement. The Maryland amendment is amending its licensing statute which provides for license suspension in certain situations.

Licensing is a separate requirement from the permitting requirements found at section 7–505 of the Maryland Natural Resources Code. The permitting requirements of section 7–505 are not being revised by this amendment. The commenter felt that OSM should seek

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clarification from Maryland to determine whether the concept of the "limited liability company" created any barrier against the enforcement of bond forfeitures, notices of violations or cessation orders, imposition of civil or criminal penalties, or of derivative liability under the ownership and control regulations. The commenter's concern is not supported by SMCRA. The Federal SMCRA and its implementing regulations already include limited liability companies within its scope. The definition of "person" found at 701(19) of SMCRA includes not only individuals, corporations, and partnerships but any "other business organization." See also section 7–501 of the Maryland Code. A person must apply for a permit before mining may commence. See sections 7–505 of the Maryland Code and 506 of SMCRA. Nothing in the current State or Federal laws or regulations prevents a limited liability company from applying for permits. The amendment is intended to ensure that limited liability companies are included within the purview of the licensing provisions. Accordingly, Maryland's proposed amendment does not alter any of its approved ownership and control or enforcement provisions and will apply to the same extent as before. It should be noted that Maryland's ownership and control provisions, of which the commenter was particularly concerned with, were approved by OSM on December 2, 1991, and were found to be not only no less effective but with one exception, were substantively identical to the corresponding regulations (56 FR 61160). Further clarification is not required.

Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. No comments were received. The U.S. Department of Labor, Mine Safety and Health Administration; the Department of the Army, Corps of Engineers; and the Department of Interior, Bureau of Mines had no comments.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Maryland proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Maryland on May 31, 1994.

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions in proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(c)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended by adding paragraph (z) to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(z) The following amendment, as submitted to OSM on May 31, 1994, is approved effective November 14, 1994. The amendment consists of revisions to the following statutes in the Annotated Code of Maryland:

7–501(o)	Definition.
7–501(v)	Definition.
7–504 (b)–(d)	Operator's License.
7–517.1	Penalties.

[FR Doc. 94–27979 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 94–073]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1994 and September 30, 1994, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between July 1, 1994 and September 30, 1994, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander, Thomas R. Cahill, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1994 and September 30, 1994, unless otherwise indicated.

Thomas R. Cahill,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 94–014	Patapsco River, Baltimore, MD	Safety Zone	7/4/94
Baltimore 94–015	Severn River, Annapolis, MD	Safety Zone	7/4/94
Baltimore 94–019	Patuxent River, Solomons, MD	Safety Zone	7/4/94
Baltimore 94–020	Patuxent River, Golden Beach, MD	Safety Zone	7/2/94
Baltimore 94–021	Severn River, Sherwood Forest, MD	Safety Zone	7/3/94
Baltimore 94–022	Ocean City, MD	Safety Zone	7/8/94
Baltimore 94–023	Chester River, MD	Safety Zone	7/30/94
Baltimore 94–025	Baltimore, MD	Safety Zone	9/11/94
Baltimore 94–026	Cox Point Park, Back River, MD	Safety Zone	9/3/94
Baltimore 94–027	Patuxent River, Solomons, MD	Safety Zone	9/14/94
Baltimore 94–028	Annapolis, MD	Safety Zone	9/15/94
Charleston 94–099	Cooper River, Charleston, SC	Safety Zone	9/2/94
Charleston 94–100	Cooper River, Charleston, SC	Safety Zone	9/2/94
Charleston 94–102	Cooper River, Charleston, SC	Safety Zone	9/16/94
Charleston 94–103	Charleston, SC	Safety Zone	9/17/94
Huntington 94–003	Ohio River, M. 279.5 to M. 283	Safety Zone	7/7/94
Huntington 94–004	Kanawha River, M. 29.6 to M. 31	Safety Zone	7/7/94
Huntington 94–005	Kanawha River, M. 29.6 to M. 31	Safety Zone	8/21/94
Jacksonville 94–074	Halifax River, Ormond Beach, FL	Safety Zone	7/4/94
Jacksonville 94–075	Amelia River, Fernandina Beach, FL	Safety Zone	7/3/94
Jacksonville 94–076	St. Johns River, Jacksonville, FL	Safety Zone	7/4/94
Jacksonville 94–077	Indian River, Cocoa, FL	Safety Zone	7/4/94
Jacksonville 94–081	Tolomato River, St. Augustine, FL	Safety Zone	7/4/94
Jacksonville 94–091	St. Johns River, Jacksonville, FL	Safety Zone	8/13/94
Jacksonville 94–093	St. Johns River, Jacksonville, FL	Safety Zone	8/11/94
Jacksonville 94–106	St. Johns River, Jacksonville, FL	Safety Zone	9/23/94
LA/Long Beach 94–003	San Pedro Bay, CA	Safety Zone	7/15/94
New Orleans, LA 94–027	Mississippi River, M. 93 to M. 97	Security Zone	9/9/94

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QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
San Diego 94-002	San Diego Bay, CA	Safety Zone	7/8/94
San Francisco Bay 94-001	San Francisco Bay, CA	Safety Zone	1/8/94
San Francisco Bay 94-009	San Francisco Bay, CA	Safety Zone	7/4/94
San Juan 94-068	San Juan Harbor, PR	Safety Zone	5/14/94
San Juan 94-107	San Juan Harbor, PR	Safety Zone	9/23/94
Savannah 94-070	Skull Creek, Hilton Head, SC	Safety Zone	7/4/94
Savannah 94-080	Savannah River, Savannah, GA	Safety Zone	7/4/94
Savannah 94-090	Savannah River, Savannah, GA	Safety Zone	8/5/94
Savannah 94-092	Sapelo Sound, GA	Safety Zone	8/25/94
Savannah 94-098	Savannah River, Savannah, GA	Safety Zone	8/27/94
St. Louis 94-013	Mississippi River, M. 202.2 to M. 203.2	Safety Zone	9/14/94
St. Louis 94-014	Missouri River, M. 364 to M. 368	Safety Zone	9/24/94
St. Louis 94-063	Mississippi River, M. 419.7 to M. 420.3	Safety Zone	8/12/94
Western Alaska 94-001	Chiniak Bay, Kodiak, AK	Safety Zone	7/1/94
Wilmington 94-005	Motts and Banks Channels, NC	Safety Zone	6/23/94
01-94-016	East River, NY	Reg Nav Area	7/4/94
01-94-034	Lake Montauk, NY	Safety Zone	7/3/94
01-94-035	Cove Neck, NY	Safety Zone	7/4/94
01-94-037	East Hampton, NY	Safety Zone	7/16/94
01-94-045	Fairfield, CT	Safety Zone	7/2/94
01-94-050	Westport, CT	Safety Zone	7/1/94
01-94-051	Hudson River, NY	Safety Zone	7/23/94
01-94-062	Bayville, NY	Safety Zone	9/4/94
01-94-065	Bridgeport, CT	Safety Zone	7/1/94
01-94-066	New London, CT	Safety Zone	7/8/94
01-94-067	Middletown, CT	Safety Zone	7/4/94
01-94-072	Westhampton Beach, NY	Safety Zone	8/26/94
01-94-073	Norwalk, CT	Safety Zone	7/3/94
01-94-076	Groton, CT	Safety Zone	7/4/94
01-94-077	Newport, RI	Safety Zone	6/30/94
01-94-078	Jonesport, ME	Safety Zone	7/4/94
01-94-079	Bar Harbor, ME	Safety Zone	7/4/94
01-94-080	Belfast, ME	Safety Zone	7/23/94
01-94-081	Stonington, ME	Safety Zone	7/23/94
01-94-084	Burlington Bay, VT	Safety Zone	7/3/94
01-94-085	South Surry, ME	Safety Zone	7/2/94
01-94-086	Stratford, CT	Safety Zone	7/3/94
01-94-089	Staten Island, NY	Safety Zone	7/2/94
01-94-091	Boston, MA	Safety Zone	7/1/94
01-94-092	Edgartown, MA	Safety Zone	7/2/94
01-94-093	Falmouth, MA	Safety Zone	7/4/94
01-94-096	Hempstead Harbor, NY	Safety Zone	7/4/94
01-94-100	Weymouth, MA	Safety Zone	7/3/94
01-94-101	Hartford, CT	Safety Zone	7/2/94
01-94-102	Norwich, CT	Safety Zone	7/3/94
01-94-105	Providence River, RI	Safety Zone	7/4/94
01-94-106	Upper New York Bay, NY and NJ	Safety Zone	7/23/94
01-94-108	Hudson River, NY	Safety Zone	9/24/94
01-94-111	Norwich, CT	Safety Zone	8/5/94
01-94-112	Norwich, CT	Safety Zone	9/10/94
01-94-113	Connecticut River, Hartford, CT	Safety Zone	8/13/94
01-94-115	Upper New York Bay, NY and NJ	Safety Zone	8/13/94
01-94-116	Atlantic Ocean, Bay Head, NJ	Safety Zone	8/20/94
01-94-117	Middletown, CT	Safety Zone	8/5/94
01-94-119	Kennebec River, Bath, ME	Safety Zone	7/23/94
01-94-120	Narragansett Bay, RI	Safety Zone	7/24/94
01-94-121	Narragansett Bay, RI	Safety Zone	7/30/94
01-94-123	Liberty State Park, NJ	Security Zone	8/1/94
01-94-124	Hempstead Harbor, NY	Safety Zone	9/11/94
01-94-126	Narragansett Bay, RI	Safety Zone	8/26/94
01-94-127	Shinnecock Bay, NY	Safety Zone	9/3/94
01-94-128	Norwich, CT	Safety Zone	8/28/94
01-94-130	Connecticut River, M. 50.6, Hartford, CT	Safety Zone	8/15/94
01-94-133	Rocky Hill, CT	Safety Zone	9/3/94
01-94-134	Providence River, RI	Safety Zone	9/4/94
01-94-137	Presidential Visit, Bath, ME	Security Zone	9/5/94
01-94-139	Provincetown Harbor, MA	Safety Zone	9/10/94
01-94-142	Erie Basin, Brooklyn, NY	Safety Zone	9/9/94
01-94-143	Yves Saint Laurent Fireworks, NY and NJ	Safety Zone	9/12/94
01-94-144	Military Ocean Terminal Bayonne, NY and NJ	Security Zone	9/13/94
01-94-147	East River, NY	Security Zone	9/24/94
02-94-040	Ohio River, M. 603.5 to M. 604.5	Special Local	7/4/94

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
02-94-041	Missouri River, M. 46.4 to M. 46.5	Special Local	7/2/94
02-94-042	Ohio River, M. 608 to M. 609	Special Local	7/4/94
02-94-043	Mississippi River, M. 634.5 to M. 634.7	Special Local	7/4/94
02-94-044	Mississippi River, M. 179 to M. 180.2	Special Local	7/1/94
02-94-053	Mississippi River, M. 580.5 to M. 582.5	Special Local	8/5/94
05-94-056	Tar River, Washington, NC	Special Local	7/31/94
07-94-054	Jacksonville Beach, FL	Special Local	8/28/94
07-94-071	Charleston, SC	Special Local	7/4/94
07-94-072	Lake Worth, FL	Special Local	7/2/94
07-94-073	Sarasota, FL	Special Local	7/1/94
07-94-078	Sarasota, FL	Special Local	7/2/94
07-94-079	Sarasota, FL	Special Local	7/3/94
07-94-084	City of Beaufort, SC	Special Local	7/16/94
07-94-086	Augusta, GA	Special Local	7/21/94
07-94-096	Fort Lauderdale, FL	Special Local	9/11/94
07-94-097	Miami Beach, FL	Special Local	9/11/94
08-94-015	Lake Charles, LA	Special Local	7/4/94
08-94-030	Galveston, TX	Special Local	9/24/94
08-94-031	Galveston, TX	Speical Local	9/23/94
09-94-016	Lake Erie, Cleveland, OH	Special Local	6/12/94
09-94-020	Cleveland Harbor, Cleveland, OH	Special Local	8/7/94
09-94-028	Lake Erie, Waters off Camp Perry, OH	Safety Zone	8/20/94
09-94-030	Lake Erie, Waters off Camp Perry, OH	Safety Zone	9/10/94
13-94-022	Puget Sound, WA	Safety Zone	8/3/94
13-94-026	Portland, OR	Safety Zone	8/3/94
13-94-027	Portland, OR	Safety Zone	8/11/94
13-94-028	Portland, OR	Safety Zone	8/18/94
13-94-030	Portland, OR	Safety Zone	9/15/94
14-94-001	Thunderbirds Air Show, Honolulu, HI	Safety Zone	8/27/94

[FR Doc. 94-28035 Filed 11-10-94; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[CGD07-93-009]

RIN 2115-AE48

Regulated Navigation Area; Egmont Channel, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a one way traffic pattern in the Egmont Channel, Tampa Bay, from Egmont Channel lighted whistle buoy 9 and lighted buoy 10 through Egmont Channel lighted whistle buoy 13 and lighted buoy 14. This regulated navigation area is needed to protect vessels with a draft of greater than 36 feet from a safety hazard associated with shoaling within the marked channel.

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dirk Greene, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations [58 FR 59975]. Interested persons were requested to submit comments, and one comment was received.

Drafting Information

The drafters of these regulations are Chief Marine Science Technician W. L. Morse, project officer, Marine Safety Office Tampa, and Lieutenant J. M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

Marine Safety Office Tampa received one comment from the Tampa Bay Pilots on December 14, 1993. They are in agreement with the proposal. However, they recommended that the draft restriction be expanded to require one-way traffic in the area whenever a vessel has a draft greater than 23 feet to ensure there is no interaction or shearing between the vessel and the shoaling. This office does not concur with this recommendation, because it creates a more restrictive standard than is necessary for the shoaling conditions as they exist in Egmont Channel. The "36 feet" standard is sufficient to avoid interaction of shearing between vessels and the shoaling. Accordingly, the only change being made to the final rule is that "½ hour" has been amended to read "30 minutes" for clarification purposes.

Regulatory Evaluation

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is based on the fact that the instances requiring one-way traffic are infrequent in nature and of brief duration.

Since the impact of this is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), has determined this action to be categorically excluded from further environmental documentation. A Categorical Exclusion has been prepared in accordance with Section 2.B.2.c. of

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COMDINST M16475.1B, NEPA Implementing Procedures.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.709 is added to read as follows:

§ 165.709 Egmont Channel, Tampa Bay, FL—regulated navigation area.

(a) The following is a regulated navigation area: Waters within the boundaries of a line beginning at 27–36–37N, 082–48–43W; thence to 27–36–15N, 082–52–10W; thence to 27–36–07N, 082–52–10W; thence to 27–36–30N, 082–48–42W; and thence to the beginning point.

(b) A vessel which requires use of the channel due to its draft shall not meet or overtake a vessel with a draft of 36 feet or greater within the regulated area.

(c) A vessel with a draft of 36 feet or greater must make a security broadcast 30 minutes prior to entering the regulated area.

Dated: November 7, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–28036 Filed 11–10–94; 8:45am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore 94–029]

RIN 2115–AA97

Safety Zone Regulation; Retrieval and Removal of Ordnance at Solomon's Naval Annex, Patuxent River, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for Patuxent River, Solomon's Naval Annex, MD. to permit the retrieval, transport and disarming of supposedly inert ordinance by Navy EOD personnel. This safety zone is necessary to control boat traffic and to provide for the safety of life and property on U.S. navigable waters during the operation. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will be effective from November 15, 1994 until November 23, 1994 during daylight hours only, unless sooner terminated.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Eugene Zimbalkin, U.S. Coast Guard Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–5100.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The approved timeline for this operation was not submitted to Coast Guard Marine Safety Office Baltimore until the middle of October 1994 and there was not sufficient time remaining to publish proposed rules in advance of the event or, to provide for a delayed effective date. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard vessel traffic from the possible dangers associated with the transport of ordnance.

Background and Purpose

Over the years much inert ordnance (practice ordnance) has accumulated on the east bank of the Patuxent River in the vicinity of Solomon's Naval Annex. Several pieces have been uncovered during an ordnance sweep. They will be retrieved, transported by land 1000 yards upriver to a remote land site, and disarmed. Depending on any additional ordnance uncovered, the entire operation may take from two to eight days. A safety zone has been determined to be necessary to safeguard waterways users of the Patuxent River in this area.

Discussion of Regulations

Coast Guard Marine Safety Office Baltimore is establishing a safety zone around the EOD retrieval, transport and disarming operation to be held in the Patuxent River. The safety zone will ecompass all waters of the Patuxent River which fall within a 2800-yard diameter circle with the epicenter of the circle being the position 38 degrees 19 minutes 55 seconds north, 078 degrees 28 minutes 41 seconds West.

While the operation may take as long as eight days, this section of the Patuxent River should only be closed intermittently (2–4 hours daily during daylight hours) during the duration of this safety zone. Vessel traffic should not be severely disrupted.

Only the retrieval of one specific piece of ordnance (supposedly inert Mark 82 bomb) on November 15, 1994 will require complete closure of this section of the Patuxent River for a short period (2–4 hours). Notification of this closure will be broadcast two days before such operation is to take place, during the effective time period. During remainder of the operation traffic will be allowed to pass on the west side of the river.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Eugene Zimbalkin, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Kathleen A Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Due to the intermittent nature and short duration of this safety zone the Coast Guard expects the impact of this rule to be minimal. The Coast Guard also certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.c. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 48 CFR 1.46.

2. In part 165 a temporary section 165.T05–098 is added to read as follows:

§ 165.T05–098 Safety Zone: Retrieval and removal of inert ordnance, Solomon's Annex, Patuxent River, MD.

(a) Location. The following area is a safety zone: All waters within an area measured 1400 yards radius from the center of a circle, epicenter of the circle located at:

Latitude	*Longitude*
38° 19′ 55″ N.	078° 28′ 41″ W.

(b) Definitions. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) General information. The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) Regulations.

(1) In accordance with general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) Effective date. This section is effective from November 15, 1994 to November 23, 1994, during daylight hours, unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: November 1, 1944.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5102–8]

New Hampshire; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Any State which seeks to administer and enforce a hazardous waste program pursuant to section 3006(b) of RCRA, may develop, and, after notice and opportunity for public hearing, submit to the Administrator of EPA, or his or her designee, an application for authorization of such program. A state's application for authorization must be consistent with 40 CFR part 271. EPA will approve a state hazardous waste program which is equivalent to, and no less stringent than the federal requirements for those provisions for which a state seeks authorization. Upon authorization, a state is authorized to carry out its authorized program in lieu of the Federal program.

The State of New Hampshire has applied for final authorization for revisions to its base RCRA hazardous waste program, Non-HSWA requirements prior to Non-HSWA Cluster I, Non-HSWA Clusters I-V, and certain components of HSWA Clusters I and II. Clusters were established by EPA to enable states to seek authorization for multiple Federal regulatory changes that occur in a specific time period.

The United States Environmental Protection Agency, Region I (EPA) has reviewed New Hampshire's application and has made a decision, subject to public review and comment, that New Hampshire's hazardous waste program revision application satisfies all the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New Hampshire's hazardous waste program revisions. New Hampshire's application for program revision is available for public review and comment.

DATES: Final authorization for New Hampshire shall be effective on January 13, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New Hampshire's program revision application must be received by the close of business on December 14, 1994.

ADDRESSES: Copies of New Hampshire's program revision application are available for inspection and copying at the following addresses: (1) New Hampshire Department of Environmental Services, Waste Management Division, 6 Hazen Drive, Concord, New Hampshire, 03301–6509, Phone: (603) 271–2942). Business Hours: 8 a.m. to 4 p.m., Monday through Friday. (2) USEPA Region I Library, One Congress Street, 11th Floor, Boston, Massachusetts, 02203, Phone: (617) 565–3300. Business Hours: 8:30 a.m. to 4:30 p.m., Monday through Friday. Written comments must be forwarded to Geri Mannion at the address below.

FOR FURTHER INFORMATION CONTACT: Geri Mannion, U.S. EPA Region I, (HPR), J.F.K. Federal Building, Boston, Massachusetts, 02203–2211, Phone: (617) 573–9657.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

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Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authorities are modified, or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260 through 266, 268, 124, and 270.

B. New Hampshire

The State of New Hampshire received initial final authorization to implement its hazardous waste management program on December 18, 1984, with an effective date of January 3, 1985. (*See:* 49 *FR* 49093, December 18, 1984.) Subsequent statutory changes and significant revisions to the New Hampshire Hazardous Waste Management Regulations resulted in New Hampshire's submission of a program revision application for these changes. On May 27, 1991, New Hampshire submitted a draft program revision authorization application for RCRA base program revisions and Non-HSWA Requirements Prior to Non-HSWA Cluster I, Non-HWSA Clusters I–V, and certain components of HSWA Clusters I and II. EPA completed its review of New Hampshire's draft authorization application in August 1994, and determined, subject to public review and comment, that the State qualifies for final authorization. As part of EPA's review of the State's draft application, New Hampshire was required to make several revisions to its draft regulations during the review process in order to ensure that the State revised regulations were equivalent to the federal regulations. The State regulations were adopted on August 24, 1994, and became effective on August 26, 1994. New Hampshire did not include three (3) changes to its State regulations prior to adoption. EPA believed that certain references in the revised State regulations needed clarification to avoid confusion. Unfortunately, the State was unable to utilize its emergency rule making procedures to make the required changes prior to September 30, 1994, the end of the federal fiscal year. However, EPA determined that this authorization should proceed. To address issues in need of clarification, the State has agreed in its Memorandum of Agreement ("MOA") (required under 40 CFR part 271) with EPA to make the changes noted below to its regulations as soon as possible, and, in any event, no later than September 30, 1995, the end of the next State fiscal year. This arrangement, and EPA's determination that the State's omissions do not materially impact the Agency's equivalency determination, support EPA's decision to grant New Hampshire final authorization at this time. The omissions noted in the MOA are described below:

1. The State agrees to seek amendment to Env-Wm 802.02(a)(1) to substitute the term "industrial ethyl alcohol" for the term "industrial alcohol," in order to ensure that the State regulations are equivalent to the federal regulations for *industrial ethyl alcohol* contained at 40 CFR 261.6(a)(3)(i). However, EPA and the State acknowledge that the unqualified term "alcohol" is generally understood to mean "ethyl alcohol." (*See: "The Condensed Chemical Dictionary,"* Van Norstrand & Reinhold, 8th ed., 1971).

2. The State agrees to seek amendment to Env-Wm 708.02(g) to substitute a reference to "Env-Wm 353.09(b)" for the reference to "Env-Wm 353.09(h)(10)," to ensure that the State regulations for this requirement are equivalent to the federal regulations. (The current citation does not exist.)

3. The State agrees to seek amendment to Env-Wm 110.01(b)(6), definition of "aquifer," to substitute the term "groundwater" for the term "water." However, EPA and the State acknowledge that the use of the term "water" in reference to an aquifer generally refers to groundwater. Therefore, although the State agrees to make this change, the current language of Env-Wm 110.01(b)(6) does not impact the State's equivalency for this requirement.

In addition to the Region's review of the State's revised hazardous waste regulations, EPA consulted closely with the State regarding its draft Attorney General's Statement, draft Program Description, draft Memorandum of Understanding between the New Hampshire Department of Environmental Services, Waste Management Division and the New Hampshire Department of Health and Human Services, Division of Public Health Services ("MOU") concerning the regulation of radioactive mixed wastes, and its MOA with EPA, all required under 40 CFR part 271. On September 13, 1994, pursuant to 40 CFR part 271, the State submitted its final authorization application to EPA. The Region has reviewed New Hampshire's final application, and has made an immediate final decision that New Hampshire's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to New Hampshire for the program revisions contained in its final authorization application, subject to further review based on adverse public comments.

The public may submit written comments on EPA's immediate final rule and the State's final application up to the close of business on December 14, 1994. Copies of New Hampshire's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of New Hampshire's program revision shall become effective in 60 days unless adverse comments pertaining to the State's program revisions are received by the end of the thirty day (30-day) comment period. If adverse comments are received, EPA will publish either: (1) a withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Some portions of New Hampshire's revised program are more stringent than the federal program, and are federally enforceable. For example, New Hampshire statutes and regulations define "small quantity generators" ("SQG") more stringently than the federal regulations, as the State definition of an SQG applies to generators who produce less than one hundred kilograms of waste or less than one kilogram of acutely hazardous waste per month, whereas the federal definition of an SQG applies to generators who produce between one hundred and one thousand kilograms of waste per month and less than one kilogram of acutely hazardous waste per month. Mixtures of SQG's hazardous waste with non-hazardous wastes are regulated as hazardous waste mixtures in the State, and do not qualify for any reduced requirements comparable to those available at 40 CFR 261.5(h).

Additionally, under State law, only domestic sewage, defined as untreated sanitary wastes which passes through a sewer system and other wastewater releases actually in compliance with an applicable State or federal discharge permit are not considered "solid wastes" in New Hampshire. This is more stringent than the exclusions contained at 40 CFR 261.4(a)(1)(ii) and (a)(2).

Among other areas, New Hampshire's revised program is also more stringent than the federal program in the following areas: (1) New Hampshire has not adopted the exemption for used oil established at 40 CFR 261.6(a)(3)(iii), and its waste oil management regulations are more stringent than the federal regulations; (2) household hazardous wastes are not exempt from State hazardous waste rules when collected at household hazardous waste collection projects; and (3) the State does not exempt residues removed in "empty containers" from regulatory requirements as do the federal regulations at 40 CFR 261.7.

Some portions of New Hampshire's revised program are broader in scope than the federal program, and thus are not federally enforceable. For example, New Hampshire's Hazardous Waste Management Regulations regulate as hazardous wastes from Non-specific sources, the New Hampshire listed generic industrial process wastes contained at Env-Wm 402.06(b). New Hampshire listed wastes are not part of the federal program (40 CFR 261.31).

The specific RCRA program revisions for which the State of New Hampshire is authorized today are listed in the Table below. The following abbreviations are used in the Table: CFR = Code of Federal Regulations; MOA = Memorandum of Agreement between the State of New Hampshire and the EPA; MOU = Memorandum of Understanding between the New Hampshire Department of Environmental Services, Waste Management Division and the New Hampshire Department of Health and Human Services, Division of Public Health Services; RSA = New Hampshire Revised Statutes Annotated; AG = Attorney General Statement. The state analogues listed in the table below are taken from New Hampshire's *Hazardous Waste Rules*, Env-Wm 110, 211–216, 351–353 and 400 through 1000.

Federal requirement	State authority
Section I: Base RCRA Program Requirements	
Identification and Listing:	
Definition of Solid Waste, 40 C.F.R. §261.2	See Section III, # (13) below.
Definition of Hazardous Waste, 40 C.F.R. §261.3	401.01(a), (a)(4), 404.01(a)(1), (a)(2), 401.02(a)(1), (a)(2), (a)(4), 401.02(b), 404.03(a), 401.02(b)(1) & (b)(2).
Exclusions, 40 C.F.R. §261.4	RSA 147–A:2, XVIII, 401.03(a), (a)(1), (a)(2), (a)(3), (a)(4), 401.03(b)(14), RSA 147–A:2, 2XVIII, 401.03(b)(1), (b)(2), (3), (4), (6), (7), (8), (5), (14).
Special Requirements for Hazardous Waste Generated Small Quantity Generators, 40 C.F.R. §261.5.	503.01, (a), (b), (c), 501.01, by 501.02, 508.01, 503.03 (a),(b) & (c), 511.01(b), 404.01(c).
Special Requirements for Hazardous Waste Which is Used, Re-Used, Recycled or Reclaimed, 40 C.F.R. §261.6.	804.01, 02, 802.02, 804.01(b)(1) & (2), 801.01(c).
Residues of Hazardous Waste in Empty Containers 40 C.F.R. §261.7	401.03(b).
Waste Lists:	
General, 40 C.F.R. §261.30	401.01(a), 402.01, 402.02.
Hazardous Waste From Non-Specific Sources, 40 C.F.R. §261.31	402.06.
Hazardous Waste From Specific Sources, 40 C.F.R. §261.32	402.07.
Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, Spill Residues Thereof, 40 C.F.R. §261.33.	402.03, 402.04, 402.04(a)(1), . (a)(2), 402.05, 402.05(a)(2), 404.02.
Characteristics:	
Characteristic of Ignitability, 40 C.F.R. §261.21	403.03(a), 403.03(b)(1), (b)(2), (b)(3), (b)(4).
Characteristic of Corrosivity, 40 C.F.R. §261.22	403.04(a), 403.04(b)(1), 403.04(b)(2).
Characteristic of Reactivity, 40 C.F.R. §261.23	403.05(a), 403.05(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8).
Characteristic of Toxicity, 40 C.F.R. §261.24	403.06(a), (b), (c), (d).
Generator Requirements General:	
Purpose, Scope, and Applicability, 40 C.F.R. §262.10	501.02(a), (a)(2), RSA 147–A:16,1, RSA 147–A:17,1
Hazardous Waste Determination, 40 C.F.R. §262.11	502.01(a), 502.01(b), 502.01(c), (c)(1), (c)(2).
EPA Identification Numbers, 40 C.F.R. §262.12	505.01, 505.02(a), 511.01(a).
The Manifest:	
General Requirements, 40 C.F.R. §262.20	510.01, 511.01(c), 511.02(a).
Required Information, 40 C.F.R. §262.21	See Section II # (5) below.
Number of Copies, 40 C.F.R. §262.22	510.02.
Use of Manifest, 40 C.F.R. §262.23	510.02, 510.02(c), (d), (e), 510.05, 510.05(a), 510.05(b), (b)(1), (b)(2), (b)(3).
Pre-Transport Requirements:	
Packaging, 40 C.F.R. §262.30	507.03(b)(1).
Labeling, 40 C.F.R. §262.31	507.03(b)(2).
Marking, 40 C.F.R. §262.32	507.03(b)(2), (b)(3).
Placarding, 40 C.F.R. §262.33	507.03(c)(2), NH Dept. of Safety.
Accumulation Time, C.F.R. §262.34	507.02(a), (a)(1); (a)(2), (a)(3), 507.02(b), 507.03(a)(1)a, 507.03(a)(1)b, 509.02(a)(2), (4), (6).
Record Keeping and Reporting Recordkeeping, 40 C.F.R. §262.40	512.01(a), (a)(2); (3), (6), 512.01(b).
Biennial Reporting, 40 C.F.R. §262.41	512.03, 512.03(d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), 512.03(e).
Exception Reporting, 40 C.F.R. §262.42	511.01(d).
Additional Reporting, 40 C.F.R. §262.43	RSA 147–A:3,VI.
Transporter Requirements General:	
Scope, 40 C.F.R. §263.10	601.01(a), (b), (b)(1), (b)(1)(a), (b)(1)(b), 601.02(a)
EPA Identification Number, 40 C.F.R. §263.11	603.04(a) & (b).
Transfer Facility Requirements, 40 C.F.R. §263.12	601.01(b)(2) & (3).
Compliance With Manifest System and Recordkeeping:	
Manifest System, 40 C.F.R. §263.20	604.01(b)—(g), 604.03 (a)—(d), 604.04(a)—(b).
Compliance With Manifest, 40 C.F.R. §263.21	606.01(a), (a)(1), (a)(2), (a)(3), (a)(4), 606.02.
Recordkeeping, 40 C.F.R. §263.22	607.01, 607.02(a) & (b), 607.03, 607.04.
Hazardous Waste Discharges:	

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Federal requirement	State authority
Immediate Action, 40 C.F.R. §263.30	608.01(a), 608.01(b), (b)(3), (b)(4), (b)(5), 608.03.
Discharge Clean-Up, 40 C.F.R. 263.31	608.02(a).
Facility Requirements General:	
Applicability, 40 C.F.R. §264.1	701.01(a), (d), (e), 701.02(a), (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), 701.02(a)(8), (a)(8)a, (a)(8)b, (a)(8)c, 701.02(a)(9), 701.03.
General Facility Standards Identification Number, 40 C.F.R. §264.11	702.04(a).
Notices, 40 C.F.R. §264.12	708.02(a).
General Waste Analysis, 40 C.F.R. §264.13	708.02(b).
Security, 40 C.F.R. §264.14	708.02(c).
General Inspection Requirements, 40 C.F.R. §264.15	708.02(d).
Personnel Training, 40 C.F.R. §264.16	708.02(e).
General Requirements for Ignitable, Reactive, or Incompatible Wastes Location Standards, 40 C.F.R. §264.17.	706.02(f).
Location Standards, 40 C.F.R. §264.18	353.09(c), (c)(1) & (2), 353.09(b), (b)(1) & (2), 353.09.(d)(14), 110.01(b), 708.02(g).
Preparedness and Prevention:	
Design and Operation of Facility, 40 C.F.R. §265.31	708.02(h).
Required Equipment, 40 C.F.R. §264.32	708.02(h).
Testing and Maintenance of Equipment, 40 C.F.R. §264.33	708.02(h).
Access to Communications or Alarm System, 40 C.F.R. §264.34	708.02(h).
Required Aisle Space, 40 C.F.R. § 264.35	708.02(h).
Arrangements with Local Authorities, 40 C.F.R. § 264.37	708.02(h).
Contingency Plan and Emergency Procedures:	
Purpose and Implementation of Contingency Plan, 40 C.F.R. §264.51	708.02(i).
Content of Contingency Plan, 40 C.F.R. §264.52	708.02(i).
Copies of Contingency Plan, 40 C.F.R. §264.53	708.02(i).
Amendment of Contingency Plan, 40 C.F.R §264.54	708.02(i).
Emergency Coordinator, 40 C.F.R. §264.55	708.02(i).
Emergency Procedures, 40 C.F.R. §264.56	708.02(i).
Manifest System, Recordkeeping and Reporting:	
Applicability, 40 C.F.R. §264.70	510.01(a), 701.01(a).
Use of Manifest System, 40 C.F.R. §264.71	703.01(a)(1)—(4), 703.03(b), (b)(1), 703.03(c), (d), & (e), 705.01(b)(1).
Manifest Discrepancies, 40 C.F.R. §264.72	703.02(b) and (c).
Operating Record, 40 C.F.R. §264.73	705.01(a), 705.01(b)(2), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(10), (b)(12), (b)(13).
Availability, Retention, Disposition of Records, 40 C.F.R. §264.74	705.04(b).
Biennial Report, 40 C.F.R. §264.75	705.03, 705.03(c)(1), (c)(3), (c)(5), (c)(6), (c)(7)a & b.
Unmanifested Waste Report, 40 C.F.R. §264.76	703.05, 703.05(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7).
Additional Reports, 40 C.F.R. §264.77	705.04(b).
Groundwater Protection:	
Applicability, 40 C.F.R. §264.90	708.02(j).
Required Programs, 40 C.F.R. §264.91	708.02(j).
Groundwater Protection Standards, 40 C.F.R. §264.92	708.02(j).
Hazardous Constituents, 40 C.F.R. §264.93	708.02(j).
Concentration Limits, 40 C.F.R. §264.94	708.02(j).
Point of Compliance, 40 C.F.R. §264.95	708.02(j).
Compliance Period, 40 C.F.R. §264.96	708.02(j).
General Groundwater Monitoring Requirements, 40 C.F.R. §264.97	708.02(j).
Detection Monitoring Program, 40 C.F.R. §264.98	708.02(j).
Compliance Monitoring Program, 40 C.F.R. §264.99	708.02(j).
Corrective Action Program, 40 C.F.R. §264.100	708.02(j).
Closure and Post-closure:	
Applicability, 40 C.F.R. §264.110	708.02(k).
Closure Performance Standards, 40 C.F.R. §264.111	708.02(k).
Closure Plan; Amendment of Plan, 40 C.F.R. §264.112	708.02(k).
Closure; Time Allowed for Closure, 40 C.F.R. §264.113	708.02(k).
Disposal or Decontamination of Equipment, 40 C.F.R. §264.114	708.02(k).
Certification of Closure, 40 C.F.R. §264.115	708.02(k).
Post-Closure Care and Use of Property, 40 C.F.R. §264.117	708.02(k).
Post-Closure Plan; Amendment of Plan, 40 C.F.R. §264.118	708.02(k).
Notice to Local Land Authority, 40 C.F.R. §264.119	708.02(k).
Notice in Deed to Property, 40 C.F.R. §264.120	708.02(k).
Financial Requirements:	
Applicability, 40 C.F.R. §264.140	708.02(l).
Definitions, 40 C.F.R. §264.141	708.02(l).
Cost Estimate for Closure, 40 C.F.R. §264.142	708.02(l).
Financial Assurance for Closure, 40 C.F.R. §264.143	708.02(l).
Cost Estimate for Post-Closure Care, 40 C.F.R. §264.144	708.02(l).
Financial Assurance for Post-Closure Care, 40 C.F.R. §264.145	708.02(l).
Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care, 40 C.F.R. §264.146.	708.02(l).

Federal requirement	State authority
Liability Requirements, 40 C.F.R. §264.147	708.02(l).
Incapacity of Owners/Operators, Guarantors, or Financial Institutions, 40 C.F.R. §264.148.	708.02(l).
Wording of Instruments, 40 C.F.R. §264.151	708.02(l).
Use and Management of Containers:	
Applicability, 40 C.F.R. §264.170	708.03.(d)(1).
Condition of Containers, 40 C.F.R. §264.171	708.03.(d)(1).
Compatibility of Waste with Containers, 40 C.F.R. §264.172	708.03.(d)(1).
Management of Containers, 40 C.F.R. §264.173	708.03.(d)(1).
Inspections, 40 C.F.R. §264.174	708.03.(d)(1).
Containment, 40 C.F.R. §264.175	708.03.(d)(1).
Special Requirements for Ignitable or Reactive Waste, 40 C.F.R. §264.176	708.03.(d)(1).
Special Requirements for Incompatible Waste, 40 C.F.R. §264.177	708.03.(d)(1).
Closure, 40 C.F.R. §264.178	708.03.(d)(1).
Tanks:	
Applicability, 40 C.F.R. §264.190	708.02(d)(2) .
Design of Tanks, 40 C.F.R. §264.191	See Section V, # (8) below.
General Operating Requirements, 40 C.F.R. §264.192	See Section V, # (8) below.
Inspections, 40 C.F.R. §264.194	See Section V, # (8) below.
Closure, 40 C.F.R. §264.197	See Section V, # (8) below.
Special Requirements for Ignitable or Reactive Wastes, 40 C.F.R. §264.198	708.02(d)(2).
Special Requirement for Incompatible Wastes, 40 C.F.R. §264.199	708.02(d)(2).
Surface Impoundments:	
Applicability, 40 C.F.R. §264.220	708.03(d)(3).
Design and Operating Requirements, 40 C.F.R. §264.221	708.03(d)(3). See also, Section VIII, # (17 H) below.
Double-Lined Surface Impoundments; Exemption From Subpart F Ground-Water Protection Requirements, 40 C.F.R. §264.222.	See Section VIII, # (17 I) below.
Monitoring and Inspection, 40 C.F.R. §264.226	708.03(d)(3).
Emergency Repairs; Contingency Plans, 40 C.F.R. §264.227	708.03(d)(3).
Closure and Post-Closure Care, 40 C.F.R. §264.228	708.03(d)(3).
Special Requirement for Ignitable or Reactive Waste, 40 C.F.R. §264.229	708.03(d)(3).
Special Requirements for Incompatible Waste, 40 C.F.R. §264.230	708.03(d)(3).
Waste Piles:	
Applicability, 40 C.F.R. §264.250	708.03(d)(4).
Design and Operating Requirements, 40 C.F.R. §264.251	708.03(d)(4).
Double-Lined Piles: Exemption from Subpart F Ground-Water Protection Requirement, 40 C.F.R. §264.252.	See Section VIII, # (17 I) below.
Inspection of Liners: Exemption from Subpart F Ground-Water Protection Requirements, 40 C.F.R. § 264.253.	See Section VIII, # (17 I) below.
Monitoring and Inspection, 40 C.F.R. §264.254	708.03(d)(4); see also Section VIII, # (17 I) below
Special Requirements for Ignitable or Reactive Waste, 40 C.F.R. §264.256	708.03(d)(4).
Special Requirements for Incompatible Wastes, 40 C.F.R. §264.257	708.03(d)(4).
Closure and Post-Closure Care, 40 C.F.R. §264.258	708.03(d)(4).
Land Treatment:	
Applicability, 40 C.F.R. §264.270	708.03(d)(5).
Treatment Program, 40 C.F.R. §264.271	708.03(d)(5).
Treatment Demonstration, 40 C.F.R. §264.272	708.03(d)(5).
Design and Operating Requirements, 40 C.F.R. §264.273	708.03(d)(5).
Food-Chain Crops, 40 C.F.R. §264.276	708.03(d)(5).
Unsaturated Zone Monitoring, 40 C.F.R. §264.278	708.03(d)(5).
Recordkeeping, 40 C.F.R. §264.279	708.03(d)(5).
Closure and Post-Closure Care, 40 C.F.R. §264.280	708.03(d)(5).
Special Requirements for Ignitable or Reactive Wastes, 40 C.F.R. §264.281	708.03(d)(5).
Special Requirements for Incompatible Wastes, 40 C.F.R. §264.282	708.03(d)(5).
Landfills:	
Applicability, 40 C.F.R. §264.300	708.03(d)(6).
Design and Operating Requirements, 40 C.F.R. §264.301	708.03(d)(6); see also Section VIII, # (17 I) below.
Double-Lined Landfills: Exemption from Subpart F Ground-Water Protection Requirements, 40 C.F.R. §264.302.	See Section VIII, # (17 I) below.
Monitoring and Inspection, 40 C.F.R. §264.303	708.03(d)(6); see also Section VIII, # (17 I) below.
Surveying and Recordkeeping, 40 C.F.R. §264.309	708.03(d)(6).
Closure and Post-Closure Care, # 40 C.F.R. §264.310	708.03(d)(6); see also Section VIII, # (17 I) below.
Special Requirement for Ignitable or Reactive Waste, 40 C.F.R. §264.312	708.03(d)(6).
Special Requirements for Incompatible Wastes, 40 C.F.R. §264.313	708.03(d)(6).
Special Requirements for Liquid Wastes, 40 C.F.R. §264.314	708.03(d)(6), see also Section VIII, See also = (17 I) below.
Special Requirements for Containers, 40 C.F.R. §264.315	708.03(d)(6).
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17 D—Waste Minimization	512.03(d)(6), 512.03(d)(7), 510.03, 510.01(a), 701.01(a), 705.01(b)(14),356.26(b), 110.01(b)(40), 353.02, 353.02(c).
17 E—Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	353.09(d)14, 708.02(g).
17 F—Liquids in Landfills	708.03(d)(6) IBR, 707.03(f), NEED #'S 353.13(h).
17 G—Dust Suppression	805.01(d)&(e).
17 H—Double Liners	708.03(d)(3), 708.03(d)(6), 707.03(c), 707.03(d), 707.03(f).
17 I—Ground-Water Monitoring	708.02(j), 702.10(a)(2), 708.03(d)(3), 708.03(d)(4), 708.03(d)(6).
17 J—Cement Kilns	804.02(c), 402.03, 806.05(f)
17 L—Corrective Action	708.02(j), 353.03
17 N—Permit Life	353.27, 353.28(a), 353.24(d).
17 O—Omnibus Provision	353.26(b).
17 Q—Research & Development Permits	351.04, 353.12(a)&(b), 353.05(d).
(18) Listing of TDI, DNT, & TDA Wastes; 50 *FR* 42936–42943, 10/23/85	402.07, 402.05, 401.04, 402.01(b), 405.02(b), 406.02(b)(5), 406.02(d)(1)–(3).
(20) Listing of Spent Solvents; 50 *FR* 53315–53320, 12/31/85; amended at 51 *FR* 2702, 01/21/86.	402.06.
(21) Listing of EDB Wastes; 51 *FR* 5327–5331, 02/13/1986	402.07, 401.04, 402.01(b).
(22) Listing of Four Spent Solvents; 51 *FR* 6537–6542, 02/25/86	402.06, 402.05, 401.04, 402.01(b), 405.02(b), 406.02(b)(5), 406.02(d)(1)–(3), 803.03(b)(4)(a).
(23) Generators of 100 to 1000 kg Hazardous Waste; 51 *FR* 10146–10176, 03/24/86.	401.01(a), 503.01, 501.02, 501.01 503.03(a), (b), (c), 503.01(b)&(a), 508.01, 511.01(b), 404.01(c), 402.05, 505.03(e)(3), (e)(3)(a), (e)(3)(b), (e)(3)(c), 507.02(a), (a)(3), 351.05(d), 353.02(a)(3).
(25) Codification Rule, Technical Correction; 51 *FR* 19176–19177, 05/28/86	707.03(f).
(32) Standards for Generators—Waste Minimization Certifications; 51 *FR* 35190–35194, 10/01/86.	510.03.
(33) Listing EDBC 51; *FR* 37725–37729, 10/24/86	402.07, 401.04, 402.02(b).
Section IX: HSWA II	
(42) Exception Reporting for Small Quantity Generators of Hazardous Waste; 52 *FR* 35894–35899, 09/23/87.	511.01(d), 509–512.
(44) HSWA Codification Rule 2; 52 *FR* 45788–45799, 12/01/87	
44 A—Permit Application Requirement Regarding Corrective Action	353.13(a)&(g).
44 B—Corrective Action Beyond the Facility Boundary	708.02(j).
44 C—Corrective Action for Injection Wells	701.03 (NH doesn't permit Injection Wells).
44 D—Permit Modification	353.28(a).
44 E—Permit as a Shield Provision	353.06(a).
44 F—Permit Conditions to Protect Human Health and the Environment	353.26(b), 353.13(i).
(47) Identification and Listing of Hazardous Waste: Technical Correction; 53 *FR* 27162–27163, 07/19/88.	503.01(b), 503.02(b), 508.01.
(52) Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 *FR* 34079, 09/02/88.	110.01(b), 708.02(k), 708.03(d), 707.02(j), 707.03(j).

Status of Federal Permits

EPA will suspend the further issuance of RCRA and HSWA permits in the State of New Hampshire for those provisions for which the State receives final authorization on the effective date of this authorization.

EPA will retain lead responsibility for the issuance, administration, and enforcement of those HSWA provisions in the State of New Hampshire for which the State does not receive authorization. EPA will administer and enforce any RCRA and HSWA permits, or portions of permits, it has issued in New Hampshire until the State, after receiving authorization for those provisions, issues permits for these facilities which are equivalent to the Federal permits, or until the State incorporates the terms and conditions of the Federal permits into the State RCRA permits in accordance with its authorized program. If the State assumes responsibility for the administration of federally issued permits under its authorized program, the federally issued permits will continue in effect until their expiration. EPA will then seek to terminate Federal permits through agreements with permittees. Further, EPA will transfer copies of any pending permit applications, completed permits, or pertinent file information to the State within thirty (30) days of the effective date of this authorization.

The State of New Hampshire will assume lead responsibility for issuing permits in the State for those program areas authorized today. The State will review all State issued permits, and modify or reissue these permits as necessary to require compliance with its approved program.

Indian Lands

New Hampshire is not seeking authority over Indian lands since there are no federally recognized Indian lands in the State at this time.

C. Decision

I conclude that New Hampshire's final application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, New Hampshire is granted final authorization to operate its hazardous waste program as revised.

New Hampshire now has responsibility for permitting treatment, storage, and disposal facilities within its jurisdiction and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Hampshire also has primary RCRA enforcement responsibility in the State under its authorized program, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Hampshire's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: September 30, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–27542 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5101–3]

Alabama; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the provisions contained in RCRA Cluster II, Checklist 59 in Non-HSWA Cluster V, and Checklist 70 in Non-HSWA Cluster VI. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Alabama's application and has made a decision, subject to public review and comment, that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste program revisions. Alabama's application for program revisions is available for public review and comment.

DATES: Final authorization for Alabama's program revisions shall be effective January 13, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision application must be received by the close of business, December 14, 1994.

ADDRESSES: Copies of Alabama's program revision application are available during 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36130; (205) 271–7737; U.S. EPA, Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2416. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Alabama

Alabama initially received final authorization for its base RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, July 12, 1992, December 21, 1992, May 17, 1993, November 23, 1993, and April 4, 1994. On June 25, 1993, Alabama submitted a program revision application for additional program approvals. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's application and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision up until December 14, 1994.

Copies of Alabama's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice. Approval of Alabama's program revisions shall become effective January 13, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is

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being authorized on the effective date of this authorization. Alabama is today seeking authority to administer the following Federal requirements promulgated on June 1, 1991–June 30, 1992, for RCRA Cluster II.

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 59: Hazardous Waste Miscellaneous Units.	54 FR 615	1/9/89	335–14–8–.02(5)(b)5.b(13).
Checklist 70: Various FR Listings Changes to Part 124 Not Accounted for by Present Checklists.	48 FR 14146; 48 FR 30113; 53 FR 28118; 53 FR 37396; 53 FR 246.	4/1/83; 6/30/83; 7/26/88; 9/26/88; 1/4/89.	335–14–8–.08(1),(2),(3),(5),(7).
Checklist 95: Land Disposal Restrictions for Electric Arc Furnace Dust (K061).	56 FR 41164	8/19/91	335–14–2–.01(3)(c)2.(ii)(III); 335–14–2–.01(4)(a)11; 335–14–9–.04(2)(3).
Checklist 97: Exports of Hazardous Waste; Technical Correction.	56 FR 43704	9/4/91	335–14–3–.05(4)(b); 335–14–3–.05(7)(b).
Checklist 99: Amendments to Interim Status Standards for Downgradient Groundwater Monitoring Well Locations.	56 FR 66365	12/23/91	335–14–1–.02(1); 335–14–6–.06(2)(a)3; 335–14–6–.06(2)(a)3(i–v).
Checklist 100: Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units.	57 FR 3462	1/29/92	335–14–14–1–.02(1); 335–14–5–.02(6)(b)4; 335–14–5–.05(10)(a)(b)(c)(d); 335–14–5–.05(4)(b)6; 335–14–5–.ii(2)(c); 335–14–5–.ii(2)(c)1.(i)(I)(II); 335–14–5–.ii(2)(c)1.(ii); 335–14–5–.ii(2)(c)2,3,4; 335–14–5–.11(2)(d)(f)(g)–(i); 335–14–5–.11(3)(a)(b); 335–14–5–.11(4)(a)(b)(c); 335–14–5–.11(7)(d)1,2,3; 335–14–5–.11(9)(b)2,3&4; 335–14–5–.12(2)(c); 335–14–5–.12(2)(c)1.(i)(I); 335–14–5–.12(2)(c)1.(i)(I)(II); 335–14–5–.12(2)(c)1.(ii); 335–14–5–.12(2)(c)2,3,4,5; 335–14–5–.12(2)(d); 335–14–5–.12(2)(d)1,2; 335–14–5–.12(2)(e)(f)(g)–(k); 335–14–5–.12(3)(a)(b); 335–14–5–.12(4)(a)(b)(b)1–6; 335–14–5–.12(4)(c); 335–14–5–.12(4)(c)1.(i)–(iii); 335–14–5–.12(4)(c)2; 335–14–5–.12(5)(c); 335–14–5–.14(2)(b)(b)1.(i); 335–14–5–.14(2)(b)1.(i)(I)(II); 335–14–5–.14(2)(b)2,3; 335–14–5–.14(2)(b)3(i–v); 335–14–5–.14(2)(c)4,5; 335–14–5–.14(3)(a)(b); 335–14–5–.14(4)(c)1,2,3; 335–14–5–.14(5)(a)(b)(c); 335–14–5–.14(11)(b)3; 335–14–5–.14(11)(b)4–6; 335–14–6–.02(6)(b)4; 335–14–8–.02(10)(a)(b)(c)(d); 335–14–6–.05(4)(b)6; 335–14–6–.11(2)(a)(c)(f)(g); 335–14–6–.11(3)(a)(b)(c); 335–14–6–.11(7)(b)1–3; 335–14–8–.11(9)(b)2,3,4; 335–14–6–.12(5)(6)(a)(b)(c); 335–14–6–.12(10)(a)(b)(c); 335–14–6–.12(11); 335–14–6–.14(2)(a)(c)(I–i); 335–14–6–.14(3)(a)(b)(c); 335–14–6–.14(2)(i); 335–14–6–.14(4)(a)(b)(c); 335–14–6–.14(3)(a)(b)(c); 335–14–6–.14(5)(a)(b)(c); 335–14–6–.14(11)(b)2; 335–14–6–.14(11)(b)3–5; 335–14–8–.01(4)(a); 335–14–8–.02(8)(b); 335–14–8–.02(8)(b)2–7; 335–14–8–.02(8)(c); 335–14–8–.02(9)(c); 335–14–8–.02(9)(c)1(i–v); 335–14–8–.02(9)(d); 335–14–8–.02(12)(b); 335–14–8–.02(12)(b)1(i–v); 335–14–8–.02(12)(d).
Checklist 102: Second Correction to the Third Third Land Disposal Requirements.	57 FR 8086	3/6/92	335–14–5–.02(4)(a); 335–14–9–.01(3); 335–14–9–.04(2)(3).
Checklist 103: Hazardous Debris Case-by-Case Capacity Variance.	57 FR 20766	5/15/92	335–14–9–.63(6).
Checklist 104: Oil Filter Exclusion.	57 FR 21524	5/20/92	335–14–2–.01(4)(b)13; 335–14–2–.01(4)(b)14.
Checklist 105: Recycled Coke By-Product Exclusion.	57 FR 27880	6/22/92	335–14–2–.01(4)(a)10.
Checklist 106: Lead-bearing Hazardous Materials Case-by-Case Capacity Variance.	57 FR 28628	6/26/92	335–14–9–.03(6)

Alabama is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Alabama's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised. Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: October 26, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–27540 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5104–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Allied Plating site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Allied Plating site, located in Portland, Oregon from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Oregon have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin Rochlin, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW–113, Seattle, WA 98101, (206) 553–2106.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Allied Plating, Portland, Oregon.

A notice of intent to delete for this site was published September 2, 1994, (59 FR 45675). The closing date for comments on the notice of intent to delete was October 3, 1994. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP provides that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 26, 1994.

Charles Findley,

Acting Regional Administrator, U.S. EPA, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923. 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for "Allied Plating, Portland, Oregon".

[FR Doc. 94–28026 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; AA–6665]

43 CFR Public Land Order 7102

Withdrawal of Public Lands for False Pass Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 9,985.08 acres of public lands located within the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Isanotski Corporation (formerly the False Pass Corporation), the village corporation for False Pass. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any

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lands described herein that are not selected by the corporation will remain withdrawn as part of the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any other withdrawal of record.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Alaska Maritime National Wildlife Refuge, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by the Isanotski Corporation, the village corporation for False Pass:

Seward Meridian

T. 62 S., R. 94 W.,
Secs. 4 to 9, inclusive.
T. 63 S., R. 93 W.,
Secs. 9, 10, 15, and 16.
T. 60 S., R. 93 W.,
Sec. 31.
T. 60 S., R. 94 W.,
Secs. 14 to 18, inclusive.

The areas described aggregate a total of 9,985.08 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make lands available for selection by the Isanotski Corporation, to fulfill the entitlement of the village for False Pass under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until they are conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Alaska Maritime National Wildlife Refuge, pursuant to Sections 303(l) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1988), and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 (1988), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1988).

Dated: October 28, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27944 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–JA–P

[OR–943–1430–01; GP4–242; OR–49218]

43 CFR Public Land Order 7103

Withdrawal of Public Lands for the Crooks Creek Fisheries and Limestone Caves; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 758.46 acres of Revested Oregon and California Railroad Grant Lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Crooks Creek Fisheries and limestone caves located in Josephine County. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the significant scenic, wildlife, fisheries, and recreational values in the Crooks Creek Fisheries and four limestone caves:

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 37 S., R. 6 W.,
Sec. 31, lots 1 and 2.
T. 37 S., R. 7 W.,
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 39 S., R. 8 W.,
Sec. 11, SE¼SE¼.

The areas described aggregate 758.46 acres in Josephine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 28, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–27945 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–33–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–183; RM–8276, RM–8337, RM–8338]

Radio Broadcasting Services; Shelley and Sun Valley, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298C to Sun Valley, Idaho, as that community's third local FM service, at the request of Sun Valley Fine Arts Broadcasting. In addition, it allots Channel 300C to Shelley, Idaho, as that community's first local FM transmission service, at the request of Native Broadcasters of Idaho. *See* 58 FR 38111, July 15, 1993. Channel 298C can be allotted to Sun Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates 43–41–48 and 114–21–00. Channel 300C can be allotted to Shelley in compliance with the Commission's minimum distance separation requirements with a site restriction of 53 kilometers (32.9 miles) north at coordinates 43–51–09 and 112–03–09. With this action, this proceeding is terminated.

DATES: Effective December 23, 1994. The window period for filing applications for Channel 300C at Shelley, Idaho, and Channel 298C at Sun Valley, Idaho, will be open on December 23, 1994, and close on January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–183, adopted November 1, 1994, and released November 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Shelley, Channel 300C, and by adding Channel 298C at Sun Valley.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27997 Filed 11–10–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–243; RM–8314 and RM–8379]

Radio Broadcasting Services; Bagley and Park Rapids, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Park Rapids, Minnesota, in response to a petition filed by Roger Paskvan. See 58 FR 48819, September 20, 1993. The coordinates for Channel 223A, without a site restriction, are 46–55–20 and 95–03–30. In response to a counterproposal filed by Edward P. DeLaHunt we shall allot Channel 224C3 to Bagley, Minnesota, without a site restriction. The coordinates for Channel 244C3 are 47–31–18 and 95–23–53. Canadian concurrence has been obtained for both allotments. With this action, this proceeding is terminated.

DATES: Effective December 23, 1994.

The window period for filing applications for Channel 223A at Park Rapids, Minnesota, and Channel 244C3 at Bagley, Minnesota, will open on December 23, 1994, and close on January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–243, adopted November 1, 1994, and released November 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 223A at Park Rapids.

3. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Bagley, Channel 244C3.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–27998 Filed 11–10–94; 8:45 am]

BILLING CODE 6712–01–M

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Proposed Rules

Federal Register
Vol. 59, No. 218
Monday, November 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–028–4]

Grapefruit and Mangoes From Mexico; Addition of Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the use of high-temperature forced air treatments for grapefruit and mangoes imported from Mexico. The treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations. We are also proposing to make several nonsubstantive changes to clarify the fruits and vegetables regulations.

DATES: Consideration will be given only to comments received on or before December 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 93–028–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295, or Mr. Victor Harabin, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) of the Animal and Plant Health Inspection Service is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The PPQ Treatment Manual contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign plant quarantines and regulations.

History

In a direct final rule published in the **Federal Register** on March 1, 1994 (59 FR 9613–9614, Docket No. 93–028–2), we notified the public of our intent to add to the PPQ Treatment Manual high-temperature forced air treatments for grapefruit and mangoes from Mexico. The direct final rule was to become effective 60 days after publication in the **Federal Register**, unless we received written adverse comments or written notice of intent to submit adverse comments. In response to the direct final rule, we received one written adverse comment (discussed below) from a representative of the citrus industry. Therefore, in a document published in the **Federal Register** on April 21, 1994 (59 FR 18943, Docket No. 93–028–3), we withdrew the direct final rule and stated our intent to publish a proposed rule for public comment.

Comment

The commenter supported the use of high-temperature forced air treatments for grapefruit and mangoes from Mexico, but did not consider the size and weight specifications for grapefruit to be all-encompassing. In the direct final rule, we stated that the high-temperature forced air treatment could be used on grapefruit that was from 9 to 9.5 inches in circumference and that weighed from .5 to 1 pound. According to this commenter, this size and weight specification for grapefruit would exclude several larger sizes of grapefruit that are shipped to market for commercial use. This was not our intent. We thought we had included all the standard sizes of grapefruit that are marketed currently. To correct this omission, this proposal provides for use of the high-temperature forced air treatment on larger grapefruit. The treatment is effective against fruit flies in the larger grapefruit. Larger grapefruit will just take longer to reach the required internal pulp temperature.

Treatments

Currently, the PPQ Treatment Manual provides for either cold, methyl bromide, or vapor heat as treatments for grapefruit. The PPQ Treatment Manual provides for hot water treatment for all mangoes and vapor heat treatment for Manila mangoes only. We are proposing to allow high-temperature forced air treatments for both grapefruit and mangoes that are imported from Mexico.

The high-temperature forced air treatments described below were developed by the Agricultural Research Service of the U.S. Department of Agriculture as effective alternative treatments against the Mexican fruit fly in grapefruit imported from Mexico and against the Mexican, West Indian, and black fruit flies in mangoes imported from Mexico. Both treatments are administered in sealed chambers. The air may be heated in the chambers or hot air may be introduced into the chambers.

Grapefruit

The high-temperature forced air treatment may be used on grapefruit that measure 3.5 inches (9 centimeters) or more in diameter, weigh 9.25 ounces (262 grams) or more, and have an initial pulp temperature of 77 °F (25 °C) or higher. These steps must occur in order:

(1) Place the grapefruit in a chamber and seal the chamber.

(2) Heat air in chamber to 104 °F (40 °C) for 120 minutes.

(3) Heat air in chamber to 122 °F (50 °C) for 90 minutes.

(4) Heat air in chamber to 126 °F (52 °C) and maintain temperature until the grapefruit center reaches 118 °F (48 °C).

The treatment schedule includes a warning that grapefruit larger than 3.7 inches (9.5 centimeters) in diameter and 14.2 ounces (402 grams) in weight could suffer cosmetic damage as a result of this treatment because of longer times needed for the center of the grapefruit to reach the required temperature.

Mangoes

The high-temperature forced air treatment may be used on mangoes that measure 3.15 inches (8 centimeters) to 5.5 inches (14 centimeters) in diameter (sizes 8 to 14) and weigh 1.5 pounds (746.5 grams) or less. These steps must occur in order:

(1) Probe at least three of the largest mangoes at the seed's surface. Insert the probes into the thickest portion of the mangoes' pulp.

(2) Place the mangoes in a chamber and seal the chamber.

(3) Record temperatures at least once every 2 minutes until the treatment is concluded.

(4) Heat air in chamber to 122° F (50° C).

(5) Conclude the treatment once the temperature at the seed's surface (based upon the coolest part of the mango) reaches 118° F (48° C).

The treatment schedule includes a note that treatment time will vary depending on the size of the mangoes and the number of boxes of mangoes treated.

Fruits and Vegetables Regulations

We are also proposing three nonsubstantive editorial changes to simplify the fruits and vegetables regulations, contained in 7 CFR 319.56 through 319.56–8. Section 319.56–2f provides that certain oranges, grapefruit, tangerines, and Manila mangoes may be eligible for entry into the United States from Mexico if treated with vapor heat in accordance with that section. Section 319.56–2q provides that lots of grapefruits, oranges, and tangerines may be eligible for entry into the United States from Mexico if treated with methyl bromide in accordance with that section. Section 319.56–2x contains a list of fruits and vegetables that require treatment, in accordance with the PPQ Treatment Manual, as a condition of entry into the United States. We are proposing to add oranges, grapefruit, tangerines, and Manila mangoes from Mexico to the list in § 319.56–2x and to remove the regulations under §§ 319.56–2f and 319.56–2q. The treatments prescribed under §§ 319.56–2f and 319.56–2q are already included in the PPQ Treatment Manual. This change would simplify the regulations but would not revise current requirements concerning the entry of oranges, grapefruit, tangerines, and Manila mangoes from Mexico into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

If adopted, the proposed rule would provide an additional treatment option, high-temperature forced air, for grapefruit and mangoes imported from Mexico. Because this new treatment would be optional, this rule should have no significant economic impact on entities using the currently prescribed cold, hot water, methyl bromide, or vapor heat treatments.

Also, since high-temperature forced air treatment would provide for longer fruit shelf life than do hot water and vapor heat treatments, the most commonly used treatments, we anticipate that some private treatment enterprises would convert their facilities to employ this new optional treatment. We believe, though, that any costs of facility conversion would be offset through the production of fruit that has a longer shelf life. Therefore, we anticipate no significant change in the price or production of grapefruit and mangoes as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paper Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2f [Removed and Reserved]

4. Section 319.56–2f would be removed and reserved.

§ 319.56–2q [Removed and Reserved]

5. Section 319.56–2q would be removed and reserved.

6. In § 319.56–2x, paragraph (a), the table would be amended for the Mexico entry by adding four new commodities, in alphabetical order, to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

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Country/locality	Common name	Botanical name	Plant part(s)
Mexico			
	Grapefruit	*Citrus paradisi*	Fruit
	Mango	*Mangerifa indica*	Fruit
	Orange	*Citrus sinensis*	Fruit
	Tangerine	*Citrus reticulata*	Fruit.

* * * * *

Done in Washington, DC, this 7th day of November, 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–28047 Filed 11–10–94; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO–271–A32; DA–92–24]

Milk in the Central Arizona Marketing Area; Revised Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This revised decision recommends changes in the Central Arizona Federal milk order by revising the definition of producer-handler to require, in certain cases, a pool payment on seasonal reserve milk supplies disposed of for fluid use. It also recommends removal of the "associated producer" and "associated producer milk" provisions. The decision is based on proposals presented at a public hearing held in Phoenix, Arizona, on February 2–3, 1993.

DATES: Comments are due on or before December 14, 1994.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (58 FR 67703).

Extension of Time for Filing Extensions: Issued February 4, 1994; published February 14, 1994 (59 FR 6916).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Central Arizona marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Phoenix, Arizona, on February 2–3, 1993, pursuant to a notice of hearing issued December 21, 1992 (57 FR 62241).

The material issues on the record of hearing relate to:

1. The definition and treatment of *producer-handlers*;

2. The definition and treatment of *associated producers*; and

3. Conforming changes and non-substantive changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The Definition and Treatment of Producer-Handlers

The order should be amended to require producer-handlers (P–H) who distribute packaged fluid milk products other than to retail customers to pay into the pool each month a sum that reflects the amount by which (a) the volume of own-farm production marketed as Class I milk in the current month exceeds (b) the volume of own-farm production marketed as Class I milk during the lowest production month within the immediately preceding 12 months. The rate of payment should be based on the difference between the Class I and Class III prices for the current month.

A P–H whose sole distribution of packaged fluid milk products was to retail customers (i.e., through the P–H's own retail facility or home delivery route) would be exempt from the pool payment. Similarly, a newly operational P–H would be exempt from the pool payment during the first 12 months of operation.

At the time of the hearing, Heartland Dairy was the largest P–H in the Central Arizona market. Since then, it voluntarily has become a fully regulated handler under the order. Testimony at the hearing indicated that Heartland had been sharing a joint account with a fully regulated handler, Jackson Foremost Foods, to supply Fry's Food Stores, the dominant supermarket chain in the Phoenix area.

The Executive Director of The United Dairymen of Arizona (UDA), a cooperative association in the market, testified that Fry's Food Stores is the principal outlet for Heartland Dairy's fluid milk product distribution in the Central Arizona marketing area. The witness stated that Heartland shared the Fry's account with Jackson Foremost Foods, a fully regulated handler supplied by UDA. He said that when Heartland's deliveries to Fry's were insufficient to cover its commitment, Fry's called on Jackson to make up the deficit. Jackson, in turn, called on UDA to supply it with more milk. The witness indicated that this scenario had occurred repeatedly in the last three years, particularly during the low production months of July, August, September, and October, and throughout the year on Fridays and Saturdays.

The UDA spokesman testified that this pattern of operation by Heartland Dairy violated the spirit of the P–H provision. He referenced the Secretary of Agriculture's 1962 decision (27 FR 3923) which states that:

> A producer-handler should be required to maintain his own reserve supply since he is exempted from pooling his Class I sales with other producers. The limitation on the amount of milk which an exempt producer-handler may purchase from pool plants will make it necessary for him to maintain herd production equal to his Class I sales plus a reserve to cover variations in production and sales.
>
> . . . [P]roducer-handlers' milk sales represent a potential threat to orderly marketing if producer-handlers are permitted to shift their excess burden to other producers. The Central Arizona market is composed of large producers delivering nearly one million pounds a month. If such large volume producers could market their own production entirely as Class I and buy reserve milk to balance daily fluctuations in their production and sales, they would be a disturbing element in the market.

The Vice President of Sales for Shamrock Foods, one of the largest handlers in the Central Arizona market, testified that Heartland Dairy supplied private label milk to the Southwest Supermarket chain in December of 1992, when Shamrock was also supplying milk to Southwest stores. In addition, he said that from time to time Southwest would call Shamrock asking for additional milk when Southwest was not getting its orders filled by Heartland Dairy. It was his understanding, he testified, that when Southwest was required to buy this extra milk from Shamrock, Heartland Dairy would pay the difference in price between what it would have charged Southwest and what Shamrock charged Southwest for this milk.

In this market, the annual variation in producer milk from the lowest production month to the highest production month has averaged 28 percent during the past five years. Given this seasonality in production, a P–H must find a way to handle its seasonal production problem. One method would be to maintain a fluid milk distribution level equal to its highest month's production—typically, March—and purchase enough supplemental milk during the other eleven months. However, unrestricted supplemental purchases are conceptually antithetical to the principle of maintaining one's own reserve supply. Alternatively, a P–H could maintain a fluid milk product distribution level equal to its lowest month's production—typically, August—and send the additional production during the other 11 months to a manufacturing plant.

At the present time, the only manufacturing plant within reasonable distance of Heartland Dairy is UDA's butter-powder plant at Tempe, Arizona. There are no other manufacturing plants in the Central Arizona marketing area, except for a cheese plant which is under the same roof as UDA's butter-powder plant and which is fully supplied by UDA, and a yogurt processing plant, LaCorona Yogurt, which, according to the manager of Heartland Dairy, was under contract to buy its milk from Shamrock. Consequently, the only surplus outlet available to Heartland Dairy in this area is UDA's butter-powder plant.

The Heartland Dairy manager testified that when Heartland Dairy sent surplus milk to the UDA butter-powder plant for manufacturing use, it was in the position of having to accept whatever the cooperative was willing to pay for the milk. For example, he said that in December 1992 Heartland sold 427,210 pounds of surplus milk to UDA and was paid $10.25 per hundredweight for it, which was $1.09 less than the order's Class III price.

The evidence in the record indicates that Heartland used other ways to handle its seasonal production problem. It shared joint Class I sales accounts with fully regulated handlers and disposed of fluid milk products outside of the marketing area when extra milk was available.

UDA's proposal to address these practices would require the market administrator to closely monitor the P–H's operations and to make several subjective judgments regarding whether the P–H was maintaining its own reserve supply. Specifically, the market administrator would be asked to: (1) compare weekly volumes sold to accounts serviced by the P–H and by other handlers under this or any other Federal milk order; (2) determine whether the P–H packaged milk in the same label as another handler under this or any other Federal milk order; (3) determine if the P–H's pro rata share of Class I route disposition in the marketing area during the flush milk production months (March, April, May) was substantially the same as during the short milk production months (July, August, September); and (4) use any other method that would indicate when the P–H was not maintaining the burden of its own reserve supply. Under the proposal, the P–H would be fully regulated for the next 12 months if the market administrator found that the P–H was not maintaining its own reserve supply.

Another part of the UDA proposal was designed to preclude P–Hs from sharing

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Class I accounts with fully regulated handlers. In this case, the order would treat packaged fluid milk that is delivered by a P–H to a market outlet which is also serviced by a pool plant (using the same label as the P–H) as having been "acquired for distribution" by the pool plant. In such circumstances, the P–H's milk would be assigned a Class III classification at the pool plant. This procedure would force an equal amount of "producer milk" into Class I and thereby increase the pool plant's obligation to the pool.

In its brief, UDA stated that, based on the evidence in the record, a producer-handler should be required to carry 135 percent of its monthly Class I sales in its own herd production. To implement this requirement, the cooperative suggested that its proposal be amended by inserting a new paragraph in § 1131.10(a), which would read as follows:

(2) Produces in his own herd a rolling average during the preceding three months of 135 percent of Class I route disposition. If such person's milk production from his own herd falls below 135 percent of Class I route disposition in any such period, such person shall be pooled in the next succeeding month and continue to be pooled until production from his own herd equals or exceeds 135 percent of Class I route disposition for a three month period.

The UDA proposal should not be adopted. It lacks objective standards and instead relies on many subjective judgments, which would make it very difficult to administer and enforce. In addition, it would penalize P–Hs and fully regulated handlers even when a P–H was operating in a totally unobjectionable manner. For example, if a P–H serviced an account with a fully regulated handler and each party contributed a fixed amount of fluid milk products each month to the account, the order, as modified by UDA's proposal, would nonetheless treat the P–H's deliveries as receipts of the pool plant and penalize the pool plant as described above.

A representative of the National Milk Producers Federation (NMPF) appeared at the hearing to present a proposal that was ruled by the Administrative Law Judge to be outside the scope of the hearing. The NMPF proposal would have limited the size of a P–H. The witness stated that the NMPF was offering the proposal as an alternative to the UDA proposal because, in his opinion, the UDA proposal would be impossible to administer or enforce.

A consultant for Heartland Dairy testified in support of a modified Heartland Dairy proposal that would enable a P–H to purchase unlimited supplies of supplemental milk from any source, but which also would require the P–H to make a payment into the order's marketwide pool each month to compensate the market's producers for carrying Heartland's reserve supply of milk. The consultant stated that the goal of the Federal order program is to insure minimum prices to dairy farmers. This goal, he said, could be accomplished without fully regulating producer-handlers.

The modified proposal of Heartland Dairy calls for the P–H to make a payment into the pool each month based on the difference between the P–H's production in the current month and its lowest month's production during the immediately preceding 12 months. The difference in production between the current month and the lowest month would be prorated to the P–H's utilization of milk in each class in the current month. The payment would then be computed by: (1) multiplying the pounds assigned to Class I by the difference between the Class I price and the blend price (a positive value); (2) multiplying the pounds assigned to Class II by the difference between the Class II price and the blend price (a positive or negative value); (3) multiplying the pounds assigned to Class III by the difference between the Class III price and the blend price (a negative value); and (4) adding these products together. If the current month's production were less than the lowest month's production during the preceding 12 months, no payment would be required.

There can be no argument with certain basic facts that must be taken into consideration in resolving the problems described in the hearing record. First, the seasonal variation in production in this market is significant, and this variation in production adversely affects the cost of handling and manufacturing the market's reserve supply of milk. From the evidence in the record, it would appear that this burden falls largely on UDA.

Second, there is really only one place to economically dispose of surplus milk for manufacturing use: UDA's butter-powder plant at Tempe. This lack of viable economic alternatives leads to marketing practices which some parties in the market deem to be "disruptive" and which nearly all parties in the market concede result in an unequal sharing of the cost of maintaining the market's reserve supply of milk.

Third, there is really only one place to obtain supplemental supplies of milk in this market. UDA accounts for 88 percent of the producer milk in the market, and Shamrock Foods accounts for the remaining 12 percent, which is largely used for its own use, except for the amount which it supplies to LaCorona Yogurt.

These facts lead to the conclusion that additional flexibility is needed in the order to permit a P–H to bear its pro rata share of the cost of maintaining the market's reserve supply while, at the same time, operating in a reasonably efficient manner.

Given the limited manufacturing outlets available in the Central Arizona market, the solution to the problems described in the hearing record must be corrected through providing an alternative means for a P–H to bear its share for maintaining its reserve supply of milk. Specifically, we certify that the Administrative Law Judge made the correct decision at the hearing to permit testimony on the modified Heartland Dairy proposal, and we believe this proposal should be adopted but modified in several respects.

First, the P–H's payment into the pool should be based on the difference between the Class I price and the Class III price, instead of the blend price. If a P–H were really bearing the burden of its own reserve supply, that reserve supply, by definition, must be used in the utilization of last resort: i.e., Class III. Therefore, it should be recognized that the P–H would obtain the Class III price or less for its seasonal excess production, which would likely be processed into butter and powder at UDA's manufacturing plant. Consequently, the payment to the pool should be based on the difference between the Class I price and the Class III price.

If a P–H geared its Class I disposition to its low production month (e.g., August) and disposed of its seasonal excess as Class III utilization, there clearly would be no grounds for alleging that the P–H was not bearing the burden of its own reserve supply. Accordingly, under such circumstances, a payment into the pool would be neither necessary nor appropriate.

Therefore, the second modification concerns the computation to determine the amount of milk on which the payment should be based. Since, for the reason described above, there may be circumstances in which no payment would be appropriate, it would be incorrect to use the current month's "production" in determining the reserve supply upon which to base the payment. Instead, one should subtract the P–H's "Class I sales of own-farm milk during the month of lowest production (within the immediately preceding 12 months)" from the current month's "Class I sales of own-farm milk" in determining the reserve supply on which to compute the payment. Using this language will avoid penalizing the P–H who has not utilized all of its current month's production in Class I, but who, instead, has utilized some of the seasonal production increase for Class II or III use. It will also eliminate the possibility of double-charging the P–H for supplemental purchases of Class I milk from pool sources which have already been priced at the Class I price.

In computing the seasonal increase in Class I sales as described above, some adjustment should be made for the number of days in the month. Accordingly, a daily average should be computed for each of the months being compared and any difference between these two averages would then be multiplied by the number of days in the current month. For example, in comparing Class I sales of own-farm milk in February to Class I sales of own-farm milk in August, the August daily average would be subtracted from the February daily average and any positive difference would then be multiplied by 28 (or 29 if it was a leap year).

The third change which should be made to the Heartland Dairy proposal concerns the source of supplemental milk purchases. As proposed, a P–H would be allowed to purchase an unlimited amount of milk from any source. This should be changed to restrict such purchases to fluid milk products obtained by transfer or diversion from pool plants and other order plants, and by diversion from a cooperative bulk tank handler. In addition, a limit of 5,000 pounds or 5 percent of the P–H's monthly fluid milk product disposition should apply. No other sources of supply would be allowed regardless of whether such purchases entered the P–H's plant or were acquired elsewhere.

Currently, P–Hs are not permitted to purchase milk directly from dairy farms. However, as noted previously, UDA accounts for 88 percent of the producer milk in the Central Arizona market. Accordingly, the cooperative is the likely source for supplemental milk supplies. Even if the P–H were to obtain transfers from a pool plant operated by another handler, in all likelihood it would be UDA milk since the cooperative association supplies all of the pool plants in this market. In view of this, it would be much more efficient to allow a P–H to obtain milk from a cooperative association in its capacity as a handler on milk delivered directly from producers' farms. This milk would be classified as Class I milk, and the cooperative association handler delivering the milk would account to the pool for it.

While a P–H may now receive *transfers* from pool plants and other order plants, it may not receive *diverted* milk from these plants. This restriction also should be removed to allow a P–H to obtain supplemental milk by diversion from these plants directly from the farms of producers. Under most circumstances, this would be the most efficient way to obtain a load of supplemental milk, and there is no reason to preclude such shipments. Such receipts would be classified as Class I milk, and the diverting handler would account to the pool for this milk.

In verifying the computation of the P–H's pool payment, the market administrator will require full access to all of the producer-handler's records, including all of the milk production and farm pickup records pertaining to the dairy operations of each of the P–H's farms.

The changes adopted above are designed to apply to P–Hs that supply milk to wholesale outlets. With respect to P–Hs that distribute all of their milk to retail outlets, the order should continue to provide a complete exemption from any pool payment. As used herein, retail outlets would include only retail sales to consumers at the P–H's dock, at the P–H's own retail stores (wherever located), or on the P–H's home delivery route. Thus, P–Hs operating under this total exemption would not be permitted to make any sales to stores that are owned or leased by others, to distributors or jobbers, or to institutions such as schools, hospitals, prisons, nursing homes, etc.

The limit on supplemental purchases that is now in the order will not only apply to bulk or packaged fluid milk products that are received by transfer or diversion at the P–H's plant, but also will apply equally to packaged fluid milk products that are acquired for route disposition to any of the P–H's retail outlets. This means that any acquisition of a fluid milk product, whether or not it entered the P–H's plant or retail facility, was picked up by the P–H's truck, or was acquired in some other way, would still count against the monthly 5,000-pound/5 percent limit.

Although UDA did not include any specific order language to address the appropriate size of a P–H, the cooperative attempted to modify the language of its proposal to restrict the P–H exemption to a "family-type farm operation." The Administrative Law Judge presiding at the hearing disallowed the modification but permitted the testimony as an "offer of proof." We concur with the Judge that this modification is beyond the scope of the hearing.

Exceptions to the Recommended Decision

Several refinements have been made in the P–H provisions included in the December 15, 1993, recommended decision. Most of these refinements are in response to the exceptions to the recommended decision and are discussed below.

Comment: UDA stated that adoption of the modified Heartland Dairy proposal was unlawful because there was no prior notice of it and that it deprived other hearing participants from fully exploring any operational or administrative loopholes embodied in the proposal. The cooperative requested that either the hearing be reopened for additional testimony on the provision or that the proceeding be terminated.

Response: We believe that the modified Heartland Dairy proposal was within the scope of the hearing notice and, hence, was properly proposed. However, some significant further modifications are now being proposed in light of the participants' comments. Therefore, we are issuing this revised recommended decision to give all parties more time to analyze the P–H treatment embodied in §§ 1131.10 and 1131.60(j) of the order. Any decision to reopen the hearing will be made following the receipt of exceptions to this revised recommended decision.

Comment: UDA criticized the recommended decision for failing to address "the basic problem of how to exempt a P–H from full pricing and pooling under the order while, at the same time, insuring at least an approach to competitive equity with fully regulated handlers by imposing on the P–H the burden of carrying the cost of the reserve production associated with its Class I sales in the marketing area."

It went on to explain:

Under the recommended P–H provisions, a P–H could receive at its plant for Class I distribution in the marketing area a total of one million pounds of milk per month supplied partially from each of three of four farm units owned by the P–H with aggregate "own farm production" of four or five million pounds. In such a case, the P–H's pounds of "own farm production" marketed as Class I would never exceed the pounds of "own farm production" during the lowest production month during the preceding month.

An Arizona P–H with a plant on or near the California border, with farm units straddling the border or in California, would have no difficulty in disposing of its "own farm production" to fluid milk plants or as packaged fluid milk sales in California or Mexico. For such a P–H who would never

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need to "dispose of its seasonal excess as Class III utilization," there is every "ground for alleging that the P–H was not bearing the burden of its own reserve supply" contrary to the conclusion of the Recommended Decision.

Unless the P–H's "own farm production" is limited to the net pounds of milk actually received at the P–H's plant and it is required to account to the pool for the order values of all bulk dispositions for fluid use, the recommended P–H amendment will simply perpetuate the problem of competitive equity and disorder that gave rise to the need for this hearing.

Response: In § 1131.60(j) of this revised recommended decision, where a P–H's pool payment is computed, the P–H's average daily Class I sales of own-farm milk during the lowest production month (within the preceding 12 months) is subtracted from the P–H's average daily Class I sales of own-farm milk in the current month, and the difference is multiplied by the number of days in the current month.

If a P–H operated other farms or other plants in other States, it could receive the milk from these other farms at its Order 131 plant during the low production month and then transfer this milk in bulk to its own plant or someone else's plant in California or another State. By changing "own-farm production during the lowest production month" to "average daily Class I sales of own-farm milk during the month of lowest production," this revised decision makes it clear that the P–H's production includes only the milk "actually received" at its plant.

Comment: UDA states that the P–H could circumvent the pool payment by disposing of its own-farm production to fluid milk plants in California or Mexico, either in bulk or in packaged form.

Response: If the P–H distributed packaged fluid milk products outside of the Central Arizona marketing area, that distribution would be considered "route disposition" pursuant to § 1131.3 of the order and would be counted as "Class I sales of own-farm milk." Therefore, the pool payment would include those sales.

If the P–H disposed of its seasonal excess production in the form of bulk transfers to an unregulated plant in California or Mexico, the market administrator would not follow those transfers to determine the ultimate utilization of the milk. If the P–H were able to find a fluid milk plant in California to take this milk, the State of California would prorate this bulk receipt to the receiving plant's utilization, but it would not price this milk since it has come from outside the State.

At the present time, there is nothing in the order to preclude a P–H from sending its surplus milk to California for disposition in any form, including as a fluid milk product. Nor is there any prohibition against this disposition in the P–H provision proposed by UDA. This type of out-of-order disposition presents no burden to Order 131 producers. From the standpoint of California producers, on the other hand, it could certainly be construed as an intrusion on their market for a P–H to dispose of its seasonal surplus milk in anything but the lowest use classification.

Comment: UDA states that a fully-regulated handler-supermarket operator with almost 100 percent Class I utilization would be able to establish or lease a production facility to supply all or the major share of its present Class I requirements and rely on UDA for unlimited supplies to expand or handle surges in its Class I sales.

Response: This revised recommended decision does not permit the purchase of unlimited supplemental supplies by a P–H but instead sets a limit of 5,000 pounds per month or 5 percent of the P–H's total fluid milk product disposition for the month, whichever is less. With the provisions recommended in this decision, a supermarket chain would have less incentive to become a P-H than it now does.

Comment: Shamrock Foods criticized the recommended decision for implying that UDA underpaid Heartland Dairy for its surplus milk when, in December 1992, UDA paid Heartland $10.25 or $1.09 below the Order's Class III price. It stated that in that month the Western States Class III–A price was only $10.42 and that this price did not include the balancing cost of maintaining idle production capacity during months when the UDA butter-powder plant is not operational. Shamrock also referred to the Department's October 29, 1993, final decision in which Class III–A pricing was adopted in 29 Federal milk orders, including the Central Arizona order. It stated that the recommended decision was incorrect in using the Class III price to compute a producer-handler's pool obligation because the appropriate measure of the value of surplus milk used in butter and powder is a weighted average of the Class III and III–A prices, reflecting the fact that only the portion of a hundredweight of milk that is used to make butter should be priced at the Class III price; the remainder should be priced at the Class III–A price. Thus, Shamrock argued that in December 1993, the appropriate weighted average price to use was $10.52 (i.e., 91.5 Class III–A pounds (.1 percent butterfat) valued at $7.63, plus 8.5 pounds of Class III (34.5 percent butterfat) valued at $2.89).

Response: Shamrock is correct in its computation of the value of surplus milk used to make butter and nonfat dry milk. However, its proposed weighted average price should not be adopted because it is not certain that the Class III–A price will always be lower than the Class III price. In fact, prior to its incorporation in the Central Arizona order in December 1993,[1] there were months when the Class III–A price exceeded the Class III price. Also, it is incorrect to assume that a producer-handler could not obtain more than a weighted average Class III/III–A price for its milk. In fact, a producer-handler could sell its surplus milk to a commercial food processor or the manufacturer of Class II products at the Class III price. Finally, the Class III–A price has not been adopted as a basis for computing compensatory payments under the order.

Since Class III–A pricing was added to the Central Arizona order eleven months after the February 1993 hearing in this proceeding, there is no testimony in the record concerning its suitability for computing a P–H's pool obligation. For this reason, as well as those discussed above, it would not be appropriate to replace the Class III price with a weighted average Class III/III–A price for the purpose of computing a producer-handler's payment into the pool.

Comment: Sarah Farms, a new P–H on the Central Arizona market, stated that the computation of a P–H's pool payment in § 1131.60(j)(1) should not apply to a new P–H until two years after the P–H began operations.

Response: Some accommodation should be made for a new P–H so as not to unfairly penalize them. Accordingly, for its first 12 months of operation, a P–H should be totally exempt from the payment into the pool as computed in § 1131.60(j). This exclusion is included in the introductory text of § 1131.60(j).

Another possible inequity that could arise in the application of the P–H payment obligation concerns a natural disaster that could artificially reduce a P–H's low month production and thereby increase its pool obligation in subsequent months. To prevent this problem, paragraph (j)(4)(i) has been added to § 1131.60 to exclude "a month of abnormally low production due to a flood, fire, or other natural disaster beyond the control of the producer-handler." If such a disaster should befall a P–H, the P–H should notify the market administrator as soon as possible and request that a different low month be used in the computations pursuant to § 1131.60(j)(1)(ii).

[1] Official notice is taken of the final decision issued October 20, 1993, and published October 29, 1993 (58 FR 58112), adopting Class III–A pricing for 27 Federal milk orders, including Order 1106.

2. The Definition and Treatment of Associated Producers

A proposal by The United Dairymen of Arizona to remove all language from the order relating to "associated producer" should be adopted. UDA's general manager testified that UDA had proposed the associated producer provisions at a hearing held on November 9–10, 1982. The purpose of these provisions, he explained, was to enable a dairy farmer in the Phoenix area to retain "producer" status on a portion of his milk which he was unable to market to an Order 131 handler.

The UDA witness stated that the Phoenix producer never availed himself of these provisions, but that a dairy farmer from California had "exploited" the provision during a 21-month period from June 1987 through February 1989. He said that this dairy farmer had drawn $192,340 out of the pool in the form of "phantom freight" on more than 8 million pounds of milk diverted to a nonpool plant in California.

The "associated producer" provision now in the order is not a provision that is commonly found in Federal orders. Normally, a pool plant operator who regularly receives a dairy farmer's milk will willingly serve as the handler for the milk when it is not needed at the pool plant and must be diverted to a nonpool plant for manufacturing use. In the Central Arizona market, however, a pool plant operator who had received a dairy farmer's milk was not willing to bear responsibility for the milk when it was diverted to a nonpool plant. Accordingly, UDA proposed—and the Secretary adopted, with some modifications—the "associated producer" provisions.

The producer for whom the "associated producer" provision was intended did not appear at the hearing to present any opposition testimony but did submit a brief in which he explained that he was unable to attend the hearing because of a flooding problem. In his brief, he stated that the associated producer provision is needed because "the pool should service all producers in it, not just a select few." He suggested, however, that it be modified to restrict it to "producer milk originating in the geographical boundaries of Order 131." He did not indicate that he has used the provision or plans to use it in the future but implied that it should be kept as a safeguard.

Under the associated producer provisions, a producer is permitted to divert a certain portion of his/her milk to a nonpool plant for Class III use if 50 percent of that person's milk is "producer milk" in the current month and in each of the immediately preceding two months. On the milk diverted to the nonpool plant, the producer draws a payment from the pool based on the difference between the order uniform price and the Class III price for the month.

The non-member dairy farmer who inspired the cooperative's 1982 proposal has never used the associated producer provision and now markets his milk through UDA. According to the UDA general manager, the California producer who had used the provision for a 21-month period joined UDA in the fall of 1989 and stopped using the provision in February 1989.

The associated producer provisions, when used, have been difficult to administer. In a letter referenced by the UDA witness at the hearing, the Order 131 market administrator is quoted as stating that he had "no handle under the order for determining the volume of milk shipped from a producer's farm to a nonpool plant because there were no reporting requirements" with which to verify the information supplied by the producer. In view of the difficulty of administering the associated producer provision, its lack of use during the past three years, the potential for its abuse, and the limited opposition to its removal, there is no valid reason to keep it in the order. Under these circumstances, it no longer effectuates the declared policy of the Act and should be removed.

In removing the associated producer provisions from the order in the initial recommended decision, § 1131.12(b)(4) was modified inadvertently. This paragraph is part of the order's "dairy farmer for other markets" provision, which was not the subject of the hearing and should not be modified.

3. Conforming and Non-Substantive Changes

Certain conforming changes are needed to implement the proposed changes adopted above. In particular, § 1131.9 (Handler) will have to be changed to allow a cooperative bulk tank handler or a pool plant operator to divert milk for their accounts to a producer-handler; § 1131.30 (Reports of receipts and utilization) will have to be modified to report the P–H's own-farm production and supplemental milk purchases each month; § 1131.42 (Classification of transfers and diversions) will have to be modified to provide for the classification of milk diverted to a P–H from a cooperative bulk tank handler or a pool plant operator; § 1131.60 (i.e., Handler's value of milk for computing uniform price) will have to be amended to include the value of the P–H payment into the pool; and § 1131.61 (Computation of uniform price) will have to be changed to remove obsolete language related to "associated producer milk." In addition, § 1131.71 (Payments to the producer-settlement fund) will have to be amended to provide for the P–H's payment into the pool.

Other changes of a minor and non-substantive nature should also be made to the order at this time to remove obsolete language from the Class I price provision and to correct errors in § 1131.44 (i.e., change "ilk" to "milk") and § 1131.72 (i.e., change "for" to "from"). In addition, in § 1000.6(b) of the General Provisions, the words "fails to notify" should be changed to read "so notifies" in 7 CFR for Parts 1120 to 1199. Although the General Provisions are the same for all milk orders, the wording of § 1000.6(b) for Parts 1120 to 1199 was erroneously modified to read "fails to notify" in the 1978 printing of the code book. This correction will bring Parts 1120 to 1199 into conformity with the 7 CFRs for Parts 1000 to 1059 and Parts 1060 to 1119.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Order 131 was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and

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conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Central Arizona marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Central Arizona marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions of Title 7, Part and 1131, would be amended as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2–3. § 1131.10(a)(1)(ii) is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer or diversion from pool plants, other order plants, or from a handler described in § 1131.9(b), in an amount not to exceed 5 percent of its fluid milk product disposition for the month or 5,000 pounds, whichever is less; .

* * * * *

4. In § 1131.13 paragraphs (a)(2) and (b)(1), the words "that is not a producer-handler plant," are removed.

5. Sections 1131.21 and 1131.22 are removed.

6. In § 1131.30, paragraph (d) is redesignated as paragraph (e), in newly designated (e) the words "(a) through (c)" are revised to read "(a) through (d)", and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1131.9(b);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

7. Section 1131.33 is removed.

8. In § 1131.42 paragraph (d)(2)(vi), the words "pursuant to § 1131.22 or" are removed, and the introductory text of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in § 1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

* * * * *

9. In § 1131.44(a)(4), the word ".ilk" is revised to read "milk".

10. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

11. § 1131.60 is amended by revising the introductory text, removing the word "and" at the end of paragraph (h), removing the period at the end of paragraph (i) and adding in its place the words "; and", and adding a new paragraph (j) to read as follows:

§ 1131.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1131.9 (b) and (c) and § 1131.10 as follows:

* * * * *

(j) Add, for each producer-handler described in § 1131.10, except a producer-handler whose total distribution of packaged fluid milk products is solely to retail consumers or a producer-handler who has not been distributing fluid milk products for more than 12 months since commencing operations, an amount resulting from the computations in paragraph (j) (1) through (3) of this section:

(1) Determine the producer-handler's:

(i) Average daily Class I sales of own-farm milk for the current month; and

(ii) Average daily Class I sales of own-farm milk during the month of lowest production within the immediately preceding 12 months pursuant to the instructions in paragraph (j)(4) of this section;

(2) Subtract the amount computed in paragraph (j)(1)(ii) of this section from the amount computed in paragraph (j)(1)(i) of this section and multiply any positive difference by the number of days in the current month;

(3) Multiply the pounds of milk calculated in paragraph (j)(2) of this section by the difference between the Class I price at the producer-handler's plant, as adjusted for location at the rates set forth in § 1131.52(a), and the Class III price for the current month; and

(4) In determining the amount computed pursuant to paragraph (j)(1)(ii) of this section:

(i) A month of abnormally low production due to a flood, fire, or other natural disaster beyond the control of the producer-handler will be excluded from the computation; and

(ii) Own-farm milk means only the milk produced by a producer-handler that is actually received at its plant, exclusive of bulk fluid milk transfers.

12. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is revised to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

13. In § 1131.71, the introductory text of paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 1131.71 Payments to the producer-settlement fund.

(a) On of before the 13th day after the end of the month, each handler, except a handler described in § 1131.10, shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

* * * * *

(b) On or before the 13th day after the end of the month, each handler described in § 1131.10, except those which are exempt from such payment pursuant to § 1131.60(j), shall pay to the market administrator the amount computed pursuant to § 1131.60(j).

* * * * *

14. In § 1131.72, the word "for" is revised to read "from" in the section heading, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

15. In § 1131.77, the last sentence is removed.

16. In § 1131.85, paragraph (b) is removed.

Dated: November 4, 1994.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 94–27922 Filed 11–10–94; 8:45 am]

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DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Ch. II, III, and X; 18 CFR Ch. I; and 48 CFR Ch. 9

[Docket No. GC–NOI–94–110]

Review of Existing Regulations for Modification or Elimination

AGENCY: Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: This is the second step of an effort by the Department of Energy (DOE or Department) to involve the public in assessing opportunities for streamlining the Department's existing regulations. In a notice of inquiry published on March 1, 1994 (59 FR 9682), the Department sought public comments on general areas of its existing regulations that should be modified or eliminated. In this document, the Department seeks public comment on specific regulations that have been targeted for modification or elimination based on the earlier public comments. This streamlining effort is in response to Executive Order 12866, "Regulatory Planning and Review."

This document also establishes a plan for performing similar reviews under the Regulatory Flexibility Act.

DATES: Written comments (10 copies) will be considered if received by the Department no later than December 29, 1994.

ADDRESSES: Written comments (10 copies) and the envelope should be marked, "Second Notice of Inquiry, Docket No. GC–NOI–94–110." Written comments should be submitted to: U.S. Department of Energy, Office of General Counsel, GC–1, Attn: Romulo Diaz, Jr., 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Romulo L. Diaz, Jr., U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION:

I. Background

This streamlining effort is in response to Executive Order 12866, "Regulatory Planning and Review," published October 4, 1993 (58 FR 51735). The Executive Order requires that existing significant regulations be reviewed to: make them more effective in achieving regulatory objectives; reduce regulatory burden; or align them more closely with the President's priorities or principles of the Executive Order. DOE has expanded the scope of its review to include all of its existing regulations.

It is the Department's intention to implement any modifications or revisions to existing regulations through appropriate administrative actions, including issuance of notices of proposed rulemaking.

The Department published on March 1, 1994, a notice of inquiry (NOI) requesting that the public provide general comments on areas where existing DOE regulations should be modified or eliminated. The Department received 14 written public comments in response to that notice. Those comments, combined with an extensive internal review, were used as the basis for developing the list of potentially beneficial regulatory modifications or deletions set forth below.

II. Discussion

Most of the public comments focused on the Department of Energy Acquisition Regulations (DEAR), although a few comments related to the Department's National Environmental Policy Act (NEPA) regulations and DOE's Institutional Conservation Program regulations.

Streamline Procurement Activities

Many of the comments were based on recommendations formulated in January 1994 by a group of contractor purchasing managers representing eight of the Department's management and operating (M&O) contractors: PNL; Associated Universities, Inc.; Bechtel; EG&G, Inc.; FERMCO; Stanford University; Westinghouse; and the University of California. That group produced a report entitled "DOE Contractor Purchasing, from Rigid Rules to Guiding Principles," (M&O Contractors' Report) which was submitted to Secretary O'Leary on January 31, 1994. Although the M&O Contractors' Report was prepared before the first NOI was issued, its recommendations are germane to a number of DOE efforts to streamline the DEAR.

Pursuant to Executive Order 12861 (58 FR 48255, September 14, 1993), the Department's Office of Human Resources and Administration has an effort underway to reduce internal regulatory guidance by a minimum of 50 percent. In fact, through a recent final rulemaking published on May 10, 1994 (59 FR 24357), the Department eliminated approximately ten percent of the DEAR, and is continuing its efforts to comply with Executive Orders 12861 and 12866 through an extensive regulatory analysis.

An internal DOE task group is currently conducting a detailed review of the DEAR to identify additional areas for reduction. The initial effort of the task group is to eliminate unnecessary language from the DEAR, such as provisions that duplicate other regulations, or purely internal administrative provisions that should be included in an Acquisition Manual or Handbook. Later stages of the review will consider more substantive changes.

In addition, several DOE task forces, established to implement a report of the

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Contract Reform Team, entitled "Making Contracting Work Better and Cost Less" (DOE/S–107), are considering recommendations that relate to M&O contractor regulations and practices. The comments received in response to the March 1, 1994, NOI have been forwarded to those groups.

Those commenters addressing the DEAR reiterated their willingness to work with DOE on reducing unnecessary regulatory burdens. We would welcome the opportunity to work with M&O contractors and other DOE stakeholders on this effort.

Simplify NEPA Compliance

With regard to suggestions for revisions to the Department's NEPA regulations (10 CFR Part 1021), the Department believes that a new Secretarial Policy addresses the substance of the public comments. (Secretarial Policy on the National Environmental Policy Act, U. S. Department of Energy, June 13, 1994.) Under the new policy, Secretary O'Leary has directed a number of actions to streamline the NEPA process, minimize the cost and time for document preparation and review, emphasize teamwork, and make the process more useful to decision makers and the public. The Secretary invited full Departmental participation, including contractors, to implement these new policies.

Improve Institutional Conservation Program (ICP)

The States of New York, Vermont and Utah commented on the need to improve the flexibility of DOE's ICP regulations (10 CFR Part 455). Under the ICP, the Department provides matching funds for engineering studies and implementation of identified conservation measures. The commenters noted that Federal dollars, while not large, have provided the necessary leverage to spur many major energy conservation initiatives on behalf of schools and hospitals. The State of Vermont noted the program's "well deserved reputation . . . for regulatory overload" and urged that the Federal Government "minimize [its] involvement in the administration of ICP to give the [S]tates the flexibility needed to operate this program in a more cost-effective manner." The State of New York, among other things, noted its concerns that the DOE regulations had not fully implemented the flexibility inherent in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440), and that delays in ICP approvals due to environmental reviews could be reduced by blanket exceptions for the ICP or clearer NEPA policy and procedures applicable to the ICP. Within the framework provided by DOE's NEPA regulations and the recently issued Secretarial Policy on NEPA, DOE has the flexibility for and has initiated certain NEPA process improvements, such as the preparation of a broad, programmatic NEPA assessment for the ICP to simplify and accelerate NEPA review for individual projects. The Department would welcome specific recommendations on how to modify existing ICP regulations consistent with statutory requirements, as well as whether any statutory revisions are needed.

Changes in Statutory Authorities and Mission

DOE's Golden Field Office noted that the authorizing authority for geothermal loan guarantees and for alcohol, biomass and municipal waste projects has expired, so that 10 CFR Parts 791 and 799 should be eliminated. Moreover, the Golden Field Office commented that the Department had never entered into loans or loan guarantees for activities covered by 10 CFR Parts 792, 794, 796–798, nor have such activities received Congressional appropriations.

The Department's Oak Ridge Operations Office suggested that 10 CFR Parts 760–766 be reviewed for possible modification in light of the Department's new emphasis on environmental management and shift away from nuclear weapons activities.

Proposed Targets

Upon review of the comments received on the March 1, 1994, **Federal Register** notice and the Department's internal review, the Department has targeted the following regulations or areas for modification or elimination:

(1) Eliminate regulations in 10 CFR Part 515 (Powerplant and Industrial Fuel Use Act).

(2) Eliminate 10 CFR Part 791 (Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guarantees).

(3) Eliminate 10 CFR Part 799 (Loan Guarantees for Alcohol Fuels, Biomass Energy and Municipal Waste Projects).

(4) Eliminate 10 CFR Part 792 (Loans for Reservoir Confirmation Projects).

(5) Eliminate 10 CFR Part 794 (Loans for Development of Wind Energy Systems and Small Hydroelectric Power Projects).

(6) Eliminate 10 CFR Part 796 (Federal Loan Guarantees for Alternative Fuel Demonstration Facilities).

(7) Eliminate 10 CFR Part 797 (Loans for Small Hydroelectric Power Project Feasibility Studies and Related Licensing.

(8) Eliminate 10 CFR Part 798 (Urban Wastes Demonstration Facilities Guarantee Program).

(9) Modify 10 CFR Part 455 (Grants Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

(10) Modify 10 CFR Part 760 (Domestic Uranium Program).

(11) Modify 10 CFR Part 761 (Criteria to Assess Viability of Domestic Uranium Mining and Milling Industry).

(12) Modify 10 CFR Part 762 (Uranium Enrichment Services Criteria).

(13) Modify 10 CFR Part 763 (Uranium Enrichment Late Payment Charges).

III. Plan Under the Regulatory Flexibility Act

The Department is incorporating a requirement for regulatory review under the Regulatory Flexibility Act (RFA), (P.L. 96–354, 5 U.S.C. 601–612), with the program for periodically reviewing existing regulations under Executive Order 12866. Among its provisions, the RFA requires each agency to publish in the **Federal Register** a plan for the periodic review of the agency's existing rules which have or will have a significant economic impact on a substantial number of small businesses, organizations, and governmental jurisdictions affected by a rule (5 U.S.C. 610). The purpose of the RFA review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The plan must provide for the review of all such existing rules once within ten years of their promulgation as final rules. As part of its RFA plan, DOE is expanding the scope of the RFA review to include review of all of DOE's existing regulations, not just regulations with a significant economic impact upon a substantial number of small entities. This will be accomplished as part of the Department's periodic review of existing regulations under Executive Order 12866.

Issued in Washington, DC on November 4, 1994.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 94–27900 Filed 11–10–94; 8:45 am]

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Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Three Cleaning Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988 and the Energy Policy Act of 1992, prescribes energy conservation standards for certain major household appliances and requires the Department of Energy (Department) to administer an energy conservation program for these products. Among other things, the Energy Policy and Conservation Act, as amended, requires the Department to consider amending the energy conservation standards for dishwashers, clothes washers and clothes dryers.

The purpose of this Advance Notice of Proposed Rulemaking is to: Present for comment the product classes that the Department is planning to analyze; present a detailed discussion of the analytical methodology and analytical models that the Department expects to use in performing analyses in connection with the proposed rule; and facilitate the gathering of information and comments prior to publishing a subsequent notice of proposed rulemaking.

DATES: Written comments must be received by January 30, 1995.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Energy Efficiency Standards for Consumer Products," (Docket No. EE-RM–94–403), Room 5E–066, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7140.

Copies of the public comments received may be read at the Department's Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486,[1] created the Energy Conservation Program for various Consumer Products other than Automobiles (Program).

Three cleaning products (dishwashers, clothes washers, and clothes dryers) are the subject of this Advance Notice of Proposed Rulemaking. The National Appliance Energy Conservation Act of 1987 amended the Act (section 325(g)) to impose prescriptive standards (design feature requirements) for the three cleaning products as part of the energy conservation program for consumer products. These design feature requirements were effective for appliances manufactured on or after January 1, 1988, and were as follows: dishwashers shall be equipped with an option to dry without heat, clothes washers shall have an unheated rinse option, and gas clothes dryers shall not be equipped with a constant burning pilot. The Act required the Department to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. The Act provided that any amendment to the standards would apply to products manufactured three years after the rulemaking. The final rule (56 FR 22279) was issued May 14, 1991, and is effective for products manufactured on or after May 14, 1994 (hereafter referred to as the May 1991 final rule). The Act also requires the Department to conduct a subsequent rulemaking no later than five years after the date of publication of the previous final rule. This second round of rulemaking is the purpose of today's notice.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) of the Act provides that before the Department determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal,

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this Advance Notice of Proposed Rulemaking as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to as the National Energy Conservation Policy Act.

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the Department must then determine that the benefits of the standard exceed its burdens, based to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

b. Background

The Department conducted the first rulemaking to determine if the standards (design feature requirements) imposed by the Act should be amended. The Department published an Advance Notice of Proposed Rulemaking (53 FR 17712, May 18, 1988), a Notice of Proposed Rulemaking (54 FR 32744, August 9, 1989), and the May 1991 final rule. The May 1991 final rule imposed energy conservation standards for the cleaning products which are based on performance. The standards specify a minimum energy factor for both classes of dishwashers (Standard and Compact). Two of the five classes of clothes washers (Top-loading Standard and Top-loading Compact) and four of the five classes of clothes dryers (Electric Standard, Electric Compact (120v), Electric Compact (240v), and Gas Standard) are subject to a minimum energy factor while the remaining classes are subject to design feature requirements. The May 1991 final rule energy conservation standards are effective for products manufactured on or after May 14, 1994.

In the May 1991 final rule, the Department announced that it was accelerating the second review of energy efficiency standards for clothes washers because it became aware of a design option (horizontal-axis wash tub in a top-loading washer) in use in Europe that was not included in the proposed rule and upon which no comment was received. The Department did not consider establishing a standard based on the top-loading horizontal-axis design option because this information came to the attention of the Department after the close of the comment period on the proposed rule and thus was not subject to public debate. The Department published an Advance Notice of Proposed Rulemaking (55 FR 39624, September 28, 1990, "nine product rulemaking") which announced the acceleration of the second review of energy efficiency standards for clothes washers. In response to that notice, a number of energy efficiency advocates and appliance manufacturers requested that the Department delay the second review until 1995–1996. The additional time was requested in order to allow manufacturers time to implement the standards imposed by the May 1991 final rule and to fully evaluate new, more energy efficient technologies such as top-loading horizontal-axis clothes washers. This additional time, manufacturers contended, would enable them to provide more meaningful and relevant comments on the next, legislatively required rulemaking. The Department considered the request, and by letter, dated February 26, 1992, notified the parties requesting the delay that the Department had determined that it would conduct the rulemaking on the later schedule, as requested.

Today's Advance Notice of Proposed Rulemaking includes clothes washers. Comments previously received for the September 28, 1990, Advance Notice of Proposed Rulemaking relative to clothes washers will be considered and addressed in the Department's Notice of Proposed Rulemaking. Those who submitted previous comments have the option of maintaining their previously submitted comments, amending previous comments, or withdrawing their previous comments and submitting new comments. The Department will address all applicable comments in the Notice of Proposed Rulemaking.

Presently, the Department also is conducting a rulemaking on three types of consumer products (central air conditioners and central air conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers, and freezers) which was initiated by the publication of a Advance Notice of Proposed Rulemaking. (58 FR 47326, Sept. 8, 1993) (hereafter referred to as the Three Product Advance Notice). The Three Product Advance Notice has a detailed discussion on numerous cross-cutting policy and methodological issues. These issues include discount rates, environmental externalities, manufacturer impact analysis, incremental analysis and information on any identifiable groups or consumers who may be disproportionally affected by any proposed national energy efficiency standard levels. The Department proposes to use the same analytical methods in all efficiency standard rulemakings and, therefore, the decisions on many of these cross-cutting issues that emerge from other rulemaking processes, such as the Three Product Advance Notice, are likely to be reflected in the proposed standards that will follow this Advance Notice.

The Department is developing a general test procedure revision which will address previously granted waivers, add future testing criteria and provide test procedure clarity. This planned revision will not change the energy consumption reporting of any product models and will be promulgated prior to the effective date of any new standards from this rulemaking.

II. Methodology

This section provides a brief description of the analyses to be used to determine the impacts of the standards. It offers an overview of the analytic methodology and discusses the major components of the analyses: the Engineering Analysis, the Manufacturer Analysis, the Consumer Analysis, and the Utility Analysis.

This section also discusses the interrelationships among the components that ensure consistency throughout the analyses.

The next section, Models, Data and Assumptions, describes the computer models used in the analyses. The models predict the anticipated response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards. Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analyses are:

- Engineering Performance Models,
- Consumer Impact Models,
- Manufacturer Impact Models, and
- Utility Impact Model.

The function, data sources, assumptions and validity of the results for each model are discussed below.

The overall impact of appliance conservation standards on energy use, consumers, manufacturers, and other factors will be determined by comparing projections under the base case[2] with the projections under the proposed standards and, perhaps, by comparing the projections of various proposed standards. The possible comparison of different standard cases was one of the issues raised in the Three Product Advance Notice. The analysis method chosen, based on the review of public comments on this earlier notice, as well as, comments received in response to today's notice, will be used in the development of the proposed standards for the products addressed by this Advance Notice.

[2] The base case assumes implementation of the conservation standards that were set by the Department of Energy in the May 1991 final rule.

The analysis that will be performed is made up of the following items:

- An Engineering Analysis that establishes the technical feasibility and product attributes, including costs of design options, to improve appliance efficiency.
- A Manufacturer Analysis that provides an estimate of manufacturers' responses to the proposed standards. Their responses are quantified by changes in several financial performance measures, such as pricing, output and profitability etc.
- A Consumer Analysis that forecasts appliance sales, efficiencies, energy use, consumer expenditures, and the national net benefits and costs and a separate Life Cycle Cost Analysis to evaluate the purchaser's savings in operating expenses relative to increases in purchase price.
- A Utility Analysis that measures the projected impacts of the altered energy-consumption patterns on electric and gas utilities.

Each analysis area will be performed for each of the three products under consideration. The results of the Engineering Analysis will be reviewed by the Department to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings, then the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed.

There is interaction among the Engineering, Consumer, Utility, and Manufacturer Analyses. The Engineering Analysis examines appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis forecasts national aggregate energy savings and consumer expenditures associated with the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Three periods of time are used in the analyses. First, the Engineering Analysis examines the technical feasibility of improving the efficiency of the covered products by analyzing design options available today to improve product efficiency, whether they are commercially available or prototypes. Second, the Manufacturer Analysis is performed for a typical year after the standards are assumed to have been imposed. Typically, the fifth year is selected, so all major impacts of a standard would have occurred. Third, the Consumer Analysis examines impacts over a time period at least as long as the average lifetimes of the products.

III. Models, Data, and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first requirement is that the Department consider only improvements in energy efficiency that are technologically feasible. The second is that the Department consider any lessening of utility to the consumer due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, energy consumption, manufacturing costs, and maintenance and installation costs for use in the other analyses.

The Engineering Analysis deveiops cost and efficiency data for a set of design options within each appliance class. These data are the output of the engineering performance models and costing analysis discussed in subsections 5–9, below.

1. Appliance Classes

The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas, or electricity) or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the three appliances, the following are the classes that the Department proposes to consider. The Department welcomes comments on the proposed classes.

(i) Dishwashers

Compact Dishwasher (less than 22 inches in exterior width)
Standard Dishwasher (equal to or greater than 22 inches in exterior width)

(ii) Clothes Washers

Compact (less than 1.6 ft^3 capacity)
Standard (1.6 ft^3 or greater capacity)

(iii) Clothes Dryers

Electric, Standard (4.4 ft^3 or greater capacity)
Electric, Compact, 120v (less than 4.4 ft^3 capacity)
Electric, Compact, 240v (less than 4.4 ft^3 capacity)
Gas, Standard (4.4 ft^3 or greater capacity)
Gas, Compact (less than 4.4 ft^3 capacity)

In the case of clothes washers, the Department is proposing to eliminate certain previously defined classifications (Semi-Automatic Top-Loading, Front-Loading and Suds Saving) because they do not offer any added utility which is inherently less energy efficient and therefore would require protection from the energy conservation standards. In the May 1991 final rule, these classes were not subject to a minimum energy conservation standard imposed because they represented a small portion of the market, and due to a lack of adequate information the Department did not analyze them. However, the 1988 standard requiring an unheated rinse option is still applicable to these classes. The Department has further reviewed this topic and believes that these products should be subject to the minimum energy conservation standards applicable to either compact or standard clothes washers. The Department welcomes comments on this issue.

2. Baseline Units

For the purpose of generating a cost/efficiency relationship, the Engineering Analysis needs to define a starting point or baseline. The assumed baseline unit is to represent a typical model within an appliance class sold during the initial year of the analysis, e.g., a unit that minimally exceeds the existing standard. Once identified, each baseline

[3] The energy factor is a measurement of energy efficiency derived from the Department of Energy test procedure for that product.

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unit is characterized by its efficiency-related design options. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to determine the engineering characteristics of the baseline unit. The Department requests data on specific units and combinations of design options to be considered as a baseline unit. In addition, the Department requests comments on any other factors to be considered in selecting baseline units.

3. Design Options

The Engineering Analysis will identify an individual design option or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market, that are being developed, or that may be on the market by the time standards are effective will be considered. Furthermore, the Department requests comments on whether the existing test procedures are appropriate for measuring product energy use and efficiency and whether the test procedure can evaluate a particular design option's contribution to the product's energy consumption.

In addition to proposing a credit for more efficient water extraction in the clothes washer test procedure, the Department may consider a two tier energy conservation standard for clothes washers. One standard would be the same as the existing performance standard for clothes washers and the second standard would require a minimum water extraction. The Department believes that mechanical water extraction is much more cost effective than thermal extraction. If the Department were to propose this two tier standard, then the analysis for the clothes dryer standard would consider the impact of drier clothes entering the clothes dryer. The Department welcomes comments on this issue.

The Department requests comments on both the design options listed below and the applicability of the extant or proposed test procedure. The following is a list of design options that will be examined:

(i) Dishwashers

Energy Savings Options for Water Reduction:

(A) Improved food filter
(B) Improved spray arm geometry
(C) Improved fill control
(D) Modified sump geometry with & without dual pumps
(E) Microprocessor controls and fuzzy logic (algorithm logic based on sensor input)

Other Energy Saving Options:

(F) Reduced inlet water temperature
(G) Improved motor efficiency
(H) Increased insulation
(I) Flow-thru heating
(J) Ultrasonic washing

(ii) Clothes Washers

(A) Improved fill control
(B) Configuration/tolerance of inner and outer tubs to reduce water use
(C) Reduce thermal mass
(D) Added Insulation
(E) Increase motor efficiency
(F) Thermostatically controlled mixing valves
(G) Electrolytic dissociation of water
(H) Ultrasonic washing
(I) Higher spin speed
(J) Horizontal axis design
(K) Bubble action
(L) Microprocessor controls and fuzzy logic (algorithm logic based on sensor input)
(M) Ozonated laundering
(N) Suds saving
(O) Direct drive motor

(iii) Clothes Dryers

(A) Automatic termination
(B) Increased insulation
(C) Recycle exhaust heat
(D) Inlet air preheat
(E) Inlet air preheat, condensing mode
(F) Modified operating conditions
(G) Heat pump
(H) Microwave
(I) Reverse tumble feature
(J) Improved rib design to reduce drying time

4. Maximum Technologically Feasible Designs

The Act requires that, in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A)). As a first step, the maximum technologically feasible level will be identified. The maximum technologically feasible level is one that can be carried out by the addition of energy efficient design improvements to the baseline units without affecting the product's utility. The Department believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in at least a prototype form to be considered technologically feasible.

5. Performance Models

In the Engineering Analysis, the Department's estimate of the efficiency of various design options and combination of design options will be based on either calculation (e.g., computer simulation models) or experimental data based on the Department's test procedures. The Department requests test data on the efficiency of the various design options and information on possible simulation models for use in this rulemaking.

6. Costing Analysis

Manufacturer cost data for baseline units and incremental costs for design improvements are requested. The cost data requested include, for each design option, incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging, and tooling. Also requested are any additional consumer installation or maintenance costs resulting from the design improvements.

7. Price-Efficiency Relationships

The results of the Engineering Analysis are summarized in the cost-efficiency relationships that show the efficiency, unit energy consumption, and manufacturer cost of each design option and combination of design options for each appliance class. Manufacturer and dealer markups obtained from the Manufacturer Impact Analysis are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. Data Sources

Shipments data, costs of purchased materials and parts, and engineering and labor cost data will be based on available information, including information received in comments on this Advance Notice of Proposed Rulemaking and collected from industry sources.

9. Outputs From the Engineering Analysis

For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the Department's energy factor),[3]
- Annual energy consumption per unit (based on the Department's test procedures),
- Increased material, purchased parts, labor, and investment costs for medium [4] and large manufacturers by product class,

[4] As was the case with previous analyses, small manufacturers will not be analyzed separately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers' costs have been assumed to equal those of medium manufacturers. The Department encourages small manufacturers to submit data.

- The relationship between cost and efficiency level by product class, and
- Other information on product characteristics, such as lifetimes, maintenance costs and installation costs.

b. Residential Energy Models

The Department has used the Lawrence Berkeley Laboratory Residential Energy Model (LBL–REM) in the analysis and reanalysis for numerous Department rulemakings. The Department has considered replacing the LBL–REM with the Electric Power Research Institute's REEPS model and is presently analyzing it for the Three Product Advance Notice rulemaking. The Department expects to use the analytical method chosen for that rulemaking in the analysis for this rulemaking. The Department welcomes comments on this approach. Below is a description of both models.

1. Lawrence Berkeley Laboratory Residential Energy Model

The LBL–REM forecasts the appliance purchase choices that households make as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. Alternative designs are characterized by price and efficiency. The output from the LBL–REM provides estimates of national energy savings and consumer economic impacts (including equipment and operating expenses).

Engineering, economic, and demographic data are used in the LBL–REM. The engineering data for appliances include the price-efficiency relationships described above. Additional data include information regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data include projected energy prices [5] and household income, models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end use. Demographic data include number of households by type, projected housing starts and demolitions, and initial appliance holdings.

Structure of the model. The LBL–REM segments annual energy consumption into house types, end uses, and fuel types. The house types are single-family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period 1980–2030. The end uses are space heating (including room and central), air conditioning (room, central conventional, and central heat pump), water heating, refrigeration, cooking, clothes drying, lighting, clothes washing, dishwashing, pool heating, televisions and miscellaneous. Up to four fuels are considered, as appropriate to each end use: electricity, natural gas, heating oil, and liquid petroleum gas. The model exists in two versions: national (one region) and regional (10 Federal regions). Since usage of cleaning products is not likely to differ by geographic location, the national version will be utilized in this analysis.

The model projects five types of activities: technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

Housing stock submodel. This submodel generates data about housing stock projections for the LBL–REM. The number of occupied households, by type, is taken from the 1990 Census of Population and Housing. An exogenous projection for housing starts is obtained, and estimates of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981–2030, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single-family, multifamily, and mobile homes, respectively.

Efficiency choice algorithm. Historical efficiency data are available primarily from trade associations for selected years for each class of appliance through at least 1992. The Federal energy conservation standards for new units of these appliances are expected to be met by the effective date of the standard. After that date, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. The forecasting algorithm is designed to allow annual average efficiency or shipment-weighted efficiency factors to increase if either more efficient designs become available at lower prices or energy prices increase. Conversely, if energy prices decrease, the shipment-weighted efficiency factors may decline, but would have a lower bound at the existing standard level, i.e., the 1991 standard prescribed by the Department, effective 1994, for dishwashers, clothes washers and clothes dryers.

Thermal integrity. The LBL–REM addresses thermal integrity as an input into the model for conducting analysis on appliances which affect a dwelling's cooling or heating load. The Department believes that thermal integrity will not be a factor in the analysis for the three cleaning products. The Department welcomes comments on this assumption.

Modeling efficiency standards. The LBL–REM projects the average efficiency of new products; for example, clothes dryers purchased each year in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average based on efficiency distributions observed in the marketplace. This information includes information from industry sources and published data from the industry trade associations. A new Federal standard level eliminates part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again for the standards case[6] with the adjusted average efficiencies to calculate any changes in market shares or usage behavior that may occur as a result of standards and to calculate the net energy savings.

Turnover of appliance stocks. The initial age distribution of appliances in stock is based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase, the model associates an average efficiency, so that when older appliances are retired, they are also recognized as less efficient. All appliance replacements are included in the retirement function, including those resulting for reasons other than product failure. However, the analysis does not explicitly consider the effect of increased purchase price on the turnover rate. The Department requests

[5] The projections of energy prices will be taken from the most recent *Annual Energy Outlook*, a publication of the Department's Energy Information Administration.

[6] The standards case refers to a time period when a potential new standard has been implemented.

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data and comments on how to consider this factor.

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances plus (if applicable) a fraction of those households that did not previously own the product.

Calculation of market shares. Potential purchasers may purchase any competing technology within an end use or none. For each end use, long-term market share elasticities are estimated with respect to equipment price, operating expense, and income, respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment prices will decrease sales volumes while lower operating expenses will increase them. The net result (predicted market share) depends on the standard level selected with its associated equipment prices and operating expenses.

Usage behavior. For some products changing the operating expense results in changes in usage behavior. These changes are modeled based on usage elasticities in operating expense and income. For dishwashers, clothes washers and clothes dryers we expect these elasticities to be at or near zero; usage behavior is not influenced by the cost of operating the appliance. On the other hand, the popularity of certain "energy saving" features, such as air (in lieu of heated) drying on dishwashers suggests that some consumers alter their behavior in response to operating costs. The Department requests comments on this assumption.

Energy consumption calculations. The total energy consumption per house for each end use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes) and usage factor, e.g., relative hours of full-load use for dishwashers. The corresponding annual energy consumption for all households is the annual consumption per household, times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for residential dishwashing in a particular year is the sum across house types and house vintages of electricity used by compact and standard dishwashers. National residential electricity consumption in that year is the sum of all end uses of electricity consumption in the residential sector.

Model outputs. The principal outputs from the LBL-REM for each year are:

- Energy consumption by end use and fuel,
- Total residential energy consumption by fuel,
- Per-unit equipment price and operating expense by product,
- Projected annual shipments of residential appliances, and
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1999–2030. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product and for the end use(s) comprising the regulated and competing products.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes changes in fuel choice or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.[7] Net present value is calculated from per-unit changes in equipment and operating expenses, multiplied by standards case shipments. If the net present value were calculated without normalizing with regard to shipments, erroneous results would be obtained. If standards caused decreased purchases of a product, this would appear as an economic benefit; namely, less money spent on purchasing and using appliances.[8] If standards resulted in increased purchases, this would be incorrectly counted as a cost when it reflects consumers' preference for the post-standards product.

Base case usage is assumed in calculating the net present value since any "rebound effect"[9] reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect," prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

Other Impacts. In determining economic justification, the Act directs the Department to consider a number of different factors. Among these factors are requirements that the Department consider the economic impact of the standard on consumers. In this regard, the Act establishes a rebuttable presumption that a standard is economically justified if the additional product costs attributable to the standard are less than three times the value of the first year energy cost savings. Also, the Department is required to consider changes in the life-cycle costs resulting from the standard.

Taking into consideration these various requirements, the Department calculates:

- The estimated simple payback of additional product costs (based on estimated changes in product purchase prices) by the energy cost savings projected to result from the proposed standard.
- The estimated changes in life-cycle costs to the consumer likely to result from the proposed standard, and
- The net present value of estimated savings to the Nation of the proposed standard.

The calculation of both consumer life-cycle costs and national net present costs/benefits require the use of appropriate discount rates. The discount rate used in such calculations is intended to approximate the time-value of money of those who would bear the additional product prices resulting from

[7] Present value is the discounted total value of energy consumption during the appliances' lifetimes, plus the discounted equipment costs for those appliances that are purchased during those periods at alternative standards levels. The difference between a standards case and a base case is the net present value attributable to amended standards. A positive net present value for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased initial price for a more efficient appliance, discounted to the present, compared to the base case.

[8] Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

[9] The "rebound effect" is the projected energy savings from an efficiency improvement that does not occur. This results when purchasers of more energy efficient appliance use them more intensively, thereby saving less energy than the engineering estimates would have indicated. In some instances, the rebound is zero.

a proposed standard and who would also, presumably, benefit from the resulting savings in energy expenses. Consequently, the most appropriate discount rate depends on the characteristics of the individual consumers, businesses, or other persons affected by a proposed standard. The Department expects to use the same discount rates for this notice as are selected as a result of the Three Product Advance Notice. The Department welcomes comments on this issue.

The Department recognizes that there are external societal benefits (and possibly costs) that are generated from appliance standards. These are principally the value of reductions in oil imports and the reduction in projected emissions of SO_2, NO_2 and CO_2. It has been suggested that the appliance standards resulting from this rulemaking will not create any SO_2 or NO_2 savings beyond those that will be required by the Clean Air Act of 1990 (P.L. 101–549, November 15, 1990). If that proves to be true, then the emissions reductions from standards that do occur will accrue to those deriving the reductions (which are principally electric utilities) by displacing the measures that those firms would otherwise utilize to achieve their required reductions of SO_2 and NO_2. In that case, the SO_2 and NO_2 reductions from standards would represent a cost-free way for those firms to achieve their savings, and, as such, would have some value to those firms realizing the reductions. The actual value that will be realized from appliance standards-induced reductions of SO_2 will be the market-determined dollar value placed on the pollution credits that are earned. Such credits can be used by the firm realizing the credits, "banked" for future use, or sold for use or "banking" by others.

In previous rulemakings, the Department identified benefits resulting from national energy savings and emissions reductions, but did not attach any monetary value to these benefits because of the considerable uncertainty of such estimates. However, in order more explicitly to consider such externalized benefits (or costs), the Department will attempt in this rulemaking to establish values for these benefits, if a sound analytical basis can be found. The Department has recently published a Supplemental Advance Notice (59 FR 51140, October 7, 1994) to the Three Product Advance Notice; this Supplemental Advance Notice presents considerations that would need to be made in developing a sound analytic basis for monetizing externalities.

The Department is concerned about the impact to any identifiable groups or consumers who may be disproportionally affected by any proposed national energy efficiency standard levels. The Department requested comments on a methodology for addressing this issue in the Three Product Advance Notice. The Department expects to follow the policy regarding the consideration of such disproportionate impacts that emerges from the consideration of comments on the Three Product Advance Notice in this rulemaking. The Department welcomes comments on this issue.

2. Electric Power Research Institutes Residential End-Use Energy Planning System (REEPS 2.12)

REEPS has been used since the early 1980s both as a tool for national residential policy analysis and subsequently as an analytical tool for electric utilities to forecast long-term residential energy demand. The current version of the model, REEPS 2.12, simulates the energy consumption behavior of specific household segments.

REEPS 2.12 incorporates the basic features of residential end-use forecasting into a generalized modeling framework in which the user has considerable control over the algorithms and model structure. This framework provides greater flexibility over more traditional models which are "hardwired" for particular formulations of residential sector energy use. This facilitates implementation of a wide range of scenarios and policies at varying levels of disaggregation without ever changing the computer program itself.

Space conditioning and appliance modeling. REEPS 2.12 provides a separate modeling framework for space conditioning end-uses and another for household appliances, like refrigerators, clothes washers, etc. These frameworks are referred to as the HVAC module and appliance modules. Exogenous variables include macroeconomic projections such as income and household size and other external parameters specified by the user. Fuel price projections are implemented as exogenous time series for each fuel and rate class used in the model. Household data allows the user to forecast changes to the housing stock based on separate decay rates for each housing type and vintage block.

HVAC module/thermal shell. REEPS 2.12 has an HVAC module which deals with space conditioning equipment and the thermal shell. The module has various parameters such as fuel choice, system capacity, efficiency levels, etc.. The Department believes that these issues will not be a factor in the analysis for the three cleaning products because these products do not impact the thermal characteristics of the dwelling. The Department welcomes comments on this assumption.

Appliance module. The REEPS 2.12 Appliance Model provides a generalized structure for characterizing purchases and energy consumption of appliances. This model will be used to analyze the three cleaning products if the Department decides to adopt REEPS. Working within the REEPS framework, users of the model configure economic and energy data on appliances and define functional relationships to model changes in energy consumption in future years. Demographic segmentation allows the user to define different segments of the appliance market based on household characteristics such as income or household size and differentiate purchase decisions across these segments. These other input sets precede the specification of the appliance models themselves because they define important elements of appliance model structure, such as the housing types specified in the Households module. Data from these input sets are used as drivers in forecasting the size, characteristics, and usage of the appliance stock.

The REEPS 2.12 Appliance Model is a vintaged capital stock or stock flow-adjustment model that maintains accounts of appliances by vintage year. REEPS 2.12 uses a state-based approach to forecasting in which purchase decisions are explicitly modeled at the household level. The state-based approach differs from a saturation approach to appliance modeling, in which the saturations or market shares are modeled and the difference from the current ownership patterns are attributed to appliance purchases. The "state" of a given appliance model in a given year determines the energy consumption for that appliance by tracking five key variables throughout the course of the forecast: size, efficiency, usage, market share and the number of households. Appliance size, efficiency and usage are defined by the user in the units and values appropriate for a given end-use and/or appliance.

Three general modeling steps are executed for each appliance end-use: (1) Base-year calibration, (2) decision-model calibration, and (3) forecast execution. In the base-year calibration, the Appliance Model is compared with the input housing stock and demographic characteristics to check for values that are disaggregated by housing type and demographic segment. Usage is

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adjusted to be consistent with stock Unit Energy Consumption values and vintage block information on vintage block shares, efficiencies and sizes. In the second step, decision-model calibration, the decision models are adjusted to fit the control values specified in the first forecast year. These control values are referred to as "control-year" data, and include the marginal appliance efficiencies and new purchase shares. Finally, in the forecast execution step, decision models are used to predict new appliance ownership shares and efficiency choices. The algorithmic procedures in each of these three steps are detailed in the technical documentation for the Appliance Model.

Policy modeling. The flexibility of REEPS 2.1 allows the user to model a number of policies through the judicious modification of the appropriate parameters, equations, structure, and addition of new technologies. Government and utility policies have the potential to restrict appliance efficiency levels, energy prices, financial criteria for new equipment purchases, early retirement of appliances, and rates of technical innovation. The policy choices in REEPS 2.12 include: Energy prices, functional forms and coefficients for choice equations, pre-failure replacement conversion decision algorithm, restrictions on legal or market availability of specific technologies, and modification of specific technologies, purchase prices or efficiencies.

c. Manufacturer Impact Models

1. Conceptual Approach

The manufacturer impact analysis estimates the overall impact of new or amended standards on an industry's profitability and scale of operation.

2. Measures of Impact

The analysis examines two types of long-run impact: profitability and growth. Consequently, five measures of impact are reported. They are: shipments, prices, revenues, net incomes and returns on equity. Return on equity is the primary measure of profitability, assets and income provide the primary measures of growth. At the request of appliance manufacturers, a new measure, net present value of the industry, will also be reported.

Two short-run impacts are also analyzed. First, the ability of the industry to provide the one-time investments required to meet the new standard is examined. Second, if standards result in decreased sales for the particular industry being analyzed, the analysis examines the possibility of price-cutting while the industry is adjusting to a lower sales volume.

3. Lawrence Berkeley Laboratory Manufacturer Impact Model

In order to estimate the impacts of energy efficiency standards, a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), was developed.

The LBL–MIM was developed at Lawrence Berkeley Laboratory in 1988. Since its inception, it has evolved and has been used in the analysis and reanalysis for numerous Department rulemakings.

The LBL–MIM models the cumulative effects of standards on the future of the industry, and by means of present value formulas presents the effects on an annualized basis.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis is not feasible. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, the LBL–MIM models a prototypical firm. In many cases this firm represents a division of a larger firm. Therefore, a prototype firm is a hypothetical firm representative of a portion of the industry. Prototypical firms are defined by parameters that are important for determining the impacts of standards and are consistent with data for the portion of the industry they represent. Important parameters used in the model include the cost structure of the firms, profitability ratios, relative costs of complying with the new standard, and marketing strategies.

Revenue is affected by both price and shipments. Price is determined by computing the markup over long-run marginal costs and then using the markup to determine an optimal price. Demand is determined by price and operating expense elasticities, coupled with the changes in price and operating expenses resulting from the standards.

The LBL–MIM produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, five main variables—shipments, prices, revenues, net incomes, and returns on equity—are reported. The results are presented for the without-standards (or without amended standards) case and the with-standards (or with amended standards) case, and the relative differences between the two are also given.

4. Integration of the Lawrence Berkeley Laboratory Manufacturer Impact Model and the Government Regulatory Impact Model

As part of its comments submitted to the Department for the rulemaking on nine consumer products (comments No. 61D and 61E dated July 1991 and September 9, 1991, respectively), the Association of Home Appliance Manufacturers (AHAM) proposed an alternate approach to the LBL–MIM for the analysis of manufacturer impacts. The AHAM's approach was formalized as a computer spreadsheet by the Arthur D. Little consulting firm. It was named the Government Regulatory Impact Model (GRIM) and was formally proposed to DOE by representatives of the AHAM, the Air-Conditioning and Refrigeration Institute, the Gas Appliance Manufacturers Association, and Arthur D. Little on April 15, 1993.

The primary functional differences between GRIM and LBL–MIM are GRIM's use of an annual cash-flow analysis for manufacturer costs and restriction to cost predictions. DOE has analyzed the GRIM's cost approach and found that, given identical inputs, its results were similar enough to those of the cost section of the LBL–MIM that the LBL–MIM outputs are not significantly affected by the use of the GRIM. Because the cash-flow approach to manufacturer costs is simpler and more transparent to the industry, DOE intends to analyze the GRIM cost-analysis methodology and may integrate the model into the LBL–MIM as a replacement for the cost analysis section of the LBL–MIM. The analysis of the GRIM and possible adoption will be determined in the Three Product Advance Notice rulemaking and the Department expects to use the same methodology in this rulemaking. The Department welcomes comments on this issue.

If the GRIM is adopted, then the capabilities of the LBL–MIM necessary to the analysis but not found in the GRIM, such as price and shipments forecasting, will be retained. The GRIM's measure of impact and industry net present value would be included as part of the LBL–MIM's primary measures of impact.

5. Cash-Flow Analysis of Costs Due to Standards

A change in standards affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue through higher prices and, possibly, lower quantities sold.

The integrated model using the GRIM cost analysis uses a number of factors—annual expected revenues; manufacturer costs such as costs of sales, selling and general administration costs; taxes; and capital expenditures related to depreciation, new standards, and maintenance—to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for five years after implementation.

The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some future point in time.

The revenues are supplied by the price and shipments forecasting algorithms from the LBL–MIM.

6. Data Sources

The models need data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: Lawrence Berkeley Laboratory business consultation groups; the Engineering Analysis; the Consumer Analysis; public financial data; and industry profiles.

d. Utility Impact Model

Electric utility impact model. The electric utility analysis serves three purposes within the overall assessment of the impact of the proposed standards. First, it contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. Second, the estimated reduction in fossil fuel consumption is an input to the Environmental Assessment, as required by the National Environmental Policy Act. And third, by calculating utility avoided costs, it provides marginal electricity costs. Avoided cost is calculated by assessing the impacts on the electric utility industry in terms of changes in investment, revenue requirements, and residential load factors.

The electric utility analysis adopts the standard approach that the value of electricity savings, based on marginal costs, can be broken down into energy savings and capacity savings. The energy component reflects the avoided cost of fuel not burned at the powerplant by the reduced need to generate electricity. The capacity component measures the avoided cost of financing and building extra generating capacity. The analysis characterizes these avoided costs per KWh of heating, cooling, and baseload energy saved. The heating and cooling energy includes baseload and peak energy. These values are used to calculate societal benefits from reduced electricity consumption.

The Electric Utility Impact Model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council regions and a simplified load duration curve for each region. First, the model allocates national electricity savings that are forecasted by the LBL–REM to National Electric Reliability Council regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction, respectively, are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors for the energy savings attributable to the standards as well as the capacity costs of a combustion turbine. A conservation load factor is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The conservation load factors are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per-kWh values described above. The National Electric Reliability Council forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If the National Electric Reliability Council forecasts an adequate reserve margin in a region for a given year, no value is given to the capacity savings in the region.

The inputs needed for the Utility Impact Model are conservation load factors, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use as well as electricity generation by fuel type and capacity need by National Electric Reliability Council region. The outputs of the analysis are fuel savings, reduction in the need for new generating capacity, and avoided energy and capacity costs for heating, cooling, and baseload appliances per million Btu's of resource energy.

Gas utility modeling. Because the natural gas supply system does not consist of vertically integrated suppliers, the gas utility modeling necessarily takes a different approach from the electric utility modeling. Nonetheless, the fundamental goal, to estimate the effect of proposed standards on utilities and their customers, is the same. The analysis on the gas side is greatly simplified by the fact that no energy conversion is involved, so that the amount of natural gas saved at the burner tip is not very different from the amount that can remain in the ground. The environmental impacts are similarly simple, relative to electricity supply, because most of the environmental consequences of residential natural gas use occur at the burner tip. The focus of the gas analysis, therefore, sits squarely on the cost impact of proposed standards.

The gas utility cost modeling is in two parts. In the first, the effect of the standard on the general market for natural gas is estimated. For the purposes of this analysis, the result of interest is the city gate price of natural gas. That is, the price that local gas distribution companies pay for the gas they later distribute to customers. In general, the sales reductions predicted from residential appliance efficiency standards are not expected to be great enough, or near enough in the future to have a major impact on the North American gas market as a whole. However, to quantify any possible effect, the Department will use a national equilibrium gas supply and transmission model. This model will be run under a base case that reflects current EIA forecasts of gas supply and demand, and policy cases that reflect Department forecasts of the effect of the proposed standard.

The second part of the analysis concerns the gas market downstream of the city gate. The U.S. has numerous and diverse local natural gas distribution companies, and no individual modeling of companies is feasible. The Department will, therefore, rely on a general econometric model of industry cost structure. Company operating costs are represented in an historic data base covering about 50 major U.S. distribution companies. A

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translog econometric cost function will be fitted to these data and then applied as a forecasting tool. The inputs to this model are twofold: (1) the same base case and policy case demand forecasts, reduced to local company levels; and (2) the base and policy case city gate price forecasts derived from the market-wide analysis. The results of the econometric modeling will show the effects of the proposed standard on a typical local distribution company and its customers.

e. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

The sensitivity analyses have been developed at the national level and no effort has been made to link them with any specific population groups. The standards analysis assumes that nationwide average appliance usage rates, energy prices, and efficiency apply to all consumers in all areas of the nation, although the Department recognizes that there exist large variations in each of these factors. The Department requested in the Three Product Advance Notice information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and how best to consider such impacts in the selection of efficiency standard levels. The Department also requested additional data to help it better assess the disproportionate impacts on such groups. The Department expects to use the same approach that emerges in the Three Product Advance Notice rulemaking in this rulemaking. The Department welcomes comments on this issue.

IV. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal.

The Department has established a period of 75 days following publication of this notice for persons to comment on this proposal. All public comments received will be available for review in the Department's Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Cleaning Products Rulemaking (Docket No. EE–RM–94–403)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by the Department in the proposed rule.

All written comments received on the Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to the Department, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Issues for Public Comment

The Department is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, the Department welcomes discussion on improvements or alternatives to this approach. In particular, the Department is interested in gathering data on the following:

- Descriptive and performance characteristics for baseline models of each product class that are the subject of this rulemaking; these baseline models should be those satisfying the appropriate standards;
- Proposed product classes for products in this rulemaking;
- Costs of baseline models and incremental costs of designs improving the energy efficiency of the products that are the subject of this rulemaking;
- Appropriateness of existing and proposed test procedures to the proposed design options; specifically, the Department would like comments on whether a clothes washer that consumes more energy for a higher percentage of water extraction (thus, lower clothes dryer energy consumption) should be given a credit and if so, how much; and
- Data on lifetimes of the appliances.

The Department requested information on the issues listed below in the Three Product Advance Notice issued in September 1993. However, the Department encourages commenters to provide any additional information on these issues which may not have been presented in response to the Department's Three Product Advance Notice. These issues are as follows:

- The relevance of the data inputs and outputs of the LBL–REM and LBL–MIM models, whether these models could or should capture the cumulative effects of Federal energy conservation standards on multi-product appliance manufacturers and whether or not there are acceptable alternative models that could be used, such as REEPS or GRIM;
- Analytic bases and methods of calculating the dollar value of reduced atmospheric emissions of SO_2, NO_2, and CO_2 from reduced energy consumption;
- Data on consumer financing of appliances useful for obtaining a weighted-average discount rate; and
- Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates.

The Department has been unable to identify the financial characteristics of small manufacturers. For purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. The Department is especially interested in learning of the existence of small manufacturers and in obtaining costing data from such manufacturers of the products under consideration.

For the Residential Energy Model analysis, the Department requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices and on the installation and maintenance expenses of these appliances are also requested.

The manufacturer analysis needs financial data from the product division level. All of these data are available at the firm level; but since firms are typically much larger than the relevant division, the firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: Net income, revenue, selling and general and administrative costs, engineering costs, costs of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

The Department also welcomes current data on unit sales and revenues for the industries as a whole.

V. Review Under Executive Order 12866

Today's regulatory action has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

There were no substantive changes between the draft submitted to OIRA and today's action.

The draft of today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue SW. Washington, DC 20585 between the hours of 9:00 and 4:00, Monday through Friday, telephone (202) 586–6020.

Issued in Washington, DC, on November 2, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–28044 Filed 11–10–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–141–AD]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require replacement of the check valves of the thrust reverser with modified valves on certain airplane configurations and the replacement of the manual control valves of the thrust reverser with modified valves on certain other airplane configurations. This proposal is prompted by recent engineering analysis, which revealed that if the non-return valve installed on the hydraulic return line of the thrust reverser were to jam in the closed position, it could cause pressurization of the Hydraulic Control Unit (HCU). The actions specified by the proposed AD are intended to prevent possible pressurization of the HCU, due to jamming of the non-return valve in the hydraulic return line, and consequent deployment of a thrust reverser during flight, which could affect the controllability of the airplane.

DATES: Comments must be received by December 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–141–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–141–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

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FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus A320 series airplanes. The DGAC advises that recent engineering analysis has revealed that, if the non-return valve installed on the thrust reverser hydraulic return line on a Model A320 series airplane were to jam in the closed position for any reason, it could cause pressurization of the Hydraulic Control Unit (HCU). Pressurization of the HCU, if not corrected, could result in the deployment of a thrust reverser during flight, which could affect the controllability of the airplane. (There have been no incidents of the non-return valve jamming on in-service airplanes, however.)

Airbus has issued Service Bulletin A320-29-1048, Revision 1, dated December 4, 1992, which describes procedures for replacing the Engine 1 and Engine 2 thrust reverser check valves with modified valves on airplanes equipped with CFM series engines, and replacing the Engine 1 and Engine 2 thrust reverser manual control valves with modified valves on airplanes equipped with International Aero Engines (IAE) engines. Replacement in accordance with the service bulletin of these valves with a modified check or manual control valve on the thrust reverser line will allow for leakage and prevent pressurization of the HCU. The DGAC has classified this service bulletin as mandatory and issued French Airworthiness Directive 94-059-054(B), dated March 16, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the thrust reverser check valves with modified valves on Engine 1 and Engine 2 of airplanes equipped with CFM series engines. It would also require replacing the thrust reverser manual control valves with modified valves on the Engine 1 and Engine 2 of airplanes equipped with IAE engines. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,540, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 94-NM-141-AD.

Applicability: Model A320 series airplanes as specified in Airbus Industrie Service Bulletin A320-29-1048, Revision 1, dated December 4, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser during flight, and consequently affecting the controllability of the airplane, accomplish the following:

(a) Within 5 months after the effective date of the AD, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Airbus Industrie Service Bulletin A320-29-1048, Revision 1, dated December 4, 1992.

(1) For airplanes equipped with CFM series engines: Replace the Engine 1 and Engine 2 check valves of the thrust reverser in the nacelle with modified valves as specified in the service bulletin.

(2) For airplanes equipped with International Aero Engines (IAE): Replace the Engine 1 and Engine 2 manual control valves of the thrust reverser on the pylon with modified valves as specified in the service bullein.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 7, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-27968 Filed 11-10-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-109-AD]

Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 series airplanes. This proposal would require repetitive inspections to detect fatigue cracking in the pivot pins that attach both nose wheel steering actuators to the steering head assembly, and replacement of cracked pins. This proposal is prompted by a reported failure of a pivot pin due to fatigue cracking. The actions specified by the proposed AD are intended to prevent failure of the pivot pin, which could result in the loss of nose wheel steering capability.

DATES: Comments must be received by December 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-109-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, The Military Business Unit (M.B.U.), In-Service Aircraft, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-109-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs.

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-109-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model Viscount 744, 745D and 810 series airplanes. The CAA advises of a report of failure of the pivot pin that attaches one of the two nose wheel steering actuators to the steering head assembly on the nose undercarriage leg. The failure of the pin has been attributed to fatigue cracking. This condition, if not detected and corrected in a timely manner, could result in loss of nose wheel steering capability.

British Aerospace has issued Viscount Preliminary Technical Leaflet (PTL) 334, Issue 2 (for the Model 744 and 745D series airplanes), and PTL 205, Issue 2 (for the Model 810 series airplanes), both dated July 8, 1994. These PTL's describe procedures for initial and repetitive magnetic particle inspections to detect cracking of the pivot pin that attaches the nose wheel steering actuators to the steering head assembly, and replacement of cracked pins. The CAA classified these PTL's as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require initial and repetitive magnetic particle inspections to detect cracking of the pivot pin that attaches the nose wheel steering actuators to the steering head assembly, and replacement of cracked pins. The actions would be required to be accomplished in accordance with the PTL's described previously.

The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane, per inspection cycle, to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,220, or $180 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

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proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Docket 94–NM–109–AD.

Applicability: All Model Viscount 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of nose wheel steering capability due to failure of the pivot pin, accomplish the following:

(a) Prior to the accumulation of 1,100 landings after the effective date of this AD, or within 14 months after the effective date of this AD, whichever occurs first, perform a magnetic particle inspection to detect cracks of the nose wheel steering actuators connecting (pivot) pins, in accordance with either Viscount Preliminary Technical Leaflet (PTL) 334 Issue 2, dated July 8, 1992 (for Model 744 and 745D series airplanes); or Viscount PTL 205, Issue 2, dated July 8, 1992 (for Model 810 series airplanes); as applicable. Repeat this inspection thereafter at intervals not to exceed 1,100 landings or 14 months, whichever occurs first.

(b) If any crack is found in a pivot pin during any inspection required by this AD, replace the pivot pin in accordance with either Preliminary Technical Leaflet (PTL) 334, Issue 2, dated July 8, 1992 (for Model 744 and 745D series airplanes), or Viscount PTL 205, Issue 2, dated July 8, 1992 (for Model 810 series airplanes). After replacement, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 1,100 landings or within 14 months, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 7, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27969 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–ASW–28]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, and 206L–3 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, and 206L–3 series helicopters, that would have required installing a protective mechanical fuel valve switch guard on the fuel valve switch. That proposal was prompted by reports of airmen inadvertently placing the fuel valve switch to the "OFF" position. This action revises the proposed rule by further proposing to require the installation of a protective mechanical fuel valve switch guard on an additional serial-numbered Model 206B helicopter, and further proposing that the rule apply to certain additional visual flight rule-equipped Model 206L–1 and 206L–3 helicopters. The actions specified by this proposed AD are intended to prevent the fuel valve switch from being inadvertently placed in the "OFF" position, which could result in an engine failure and a subsequent power-off landing.

DATES: Comments must be received by December 19, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ASW–28, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., Attention: Customer Support, P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Lance Gant, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, ASW–170, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5141, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–ASW–28." The postcard will be date stamped and returned to the commenter.

Availability of SNPRMs

Any person may obtain a copy of this SNPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ASW–28, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, and 206L–3 series helicopters, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 5, 1992 (57 FR 19265). That NPRM would have required installation of a protective mechanical fuel valve switch guard (switch guard) on certain serial-numbered BHTI Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters. That NPRM was prompted by reports of airmen inadvertently placing the fuel valve switch to the "OFF" position. That condition, if not corrected, could result in the fuel valve switch being inadvertently placed in the "OFF" position, which could result in engine failure and a subsequent power-off landing.

Since the issuance of that NPRM, the FAA has determined that certain serial-numbered, visual flight rule (VFR)-equipped Model 206L–1 and 206L–3 helicopters were inadvertently omitted from the proposed requirements of the NPRM. These certain serial-numbered, VFR-equipped model helicopters should have a switch guard installed on the fuel valve switch. The NPRM proposed adding a switch guard on those certain serial-numbered model helicopters only if they were instrument flight rule (IFR)-equipped. Also, the NPRM failed to propose that the AD apply to Model 206B, serial number 914. This SNPRM adds that serial numbered-helicopter to paragraph (a)(3). Additionally, this proposal makes various other non-substantive editorial changes, including raising the average labor rate from $55 to $60.

Proposing to expand the applicability of this AD to include other serial-numbered rotorcraft expands the scope of the originally proposed rule. Therefore, the FAA has decided to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 5,192 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost nothing for these helicopters since the manufacturer is providing full warranty compensation for the parts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $311,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 91–ASW–28.

Applicability: Model 206A, 206B, 206L, 206L–1, and 206L–3 series helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent placement of the fuel switch in the "OFF" position, which could result in an engine failure and a subsequent power-off landing, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this airworthiness directive (AD), modify the fuel valve switch to add a protective mechanical fuel valve switch guard as follows:

(1) For the Model 206A, serial numbers (S/N) 1 through 153, modify in accordance with Part I of the Accomplishment Instructions in BHTI Alert Service Bulletin (ASB) No. 206–90–54, dated May 31, 1990.

(2) For the Model 206A, S/N 154 through 660 and 672 through 715, and Model 206B, S/N 661 through 671 and 716 through 913, modify in accordance with Part II of the Accomplishment Instructions in ASB No. 206–90–54, dated May 31, 1990.

(3) For the Model 206B, S/N 914 through 4069 and 4071 through 4074, modify in accordance with Part III of the Accomplishment Instructions in ASB No. 206–90–54, dated May 31, 1990.

(4) For the visual flight rule-equipped Model 206L, S/N 45001 through 45153 and 46601 through 46617, Model 206L–1, S/N 45154 through 45790, and Model 206L–3, S/N 51001 through 51319, modify in accordance with Part I of the Accomplishment Instructions in BHTI ASB No. 206L–90–67, Revision A, dated August 5, 1991.

(5) For the Model 206L–1, S/N 45154 through 45790, and Model 206L–3, S/N 51001 through 51319, equipped with instrument flight rule kit, part number 206–705–001–101, installed per BHTI Service Instructions No. 206–2030, modify in accordance with Part II of the Accomplishment Instructions in ASB No. 206L–90–67, Revision A, dated August 5, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 3, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–27927 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–SW–08–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters. This proposal would require removal and replacement of certain crosstube assemblies (crosstubes). This proposal is prompted by two accidents attributed to crosstube failures, as well as 27 field reports that indicate that corrosion or metal fatigue may cause a failure of the affected crosstubes. The actions specified by the proposed AD are intended to prevent failure of the crosstubes and subsequent loss of control of the helicopter.

DATES: Comments must be received by January 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Miles, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas, 76193–0170, telephone (817) 222–5172, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This notice proposes the adoption of a new airworthiness directive (AD), that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, equipped with crosstube assemblies (crosstubes), BHTI part numbers (P/N) 206–050–107, 206–050–119, 206–050–134, 206–050–157, 206–050–169, 206–053–109, 206–053–119, and 206–053–129 (all dash numbers), or Airborne Supply, Inc. P/N AB206–050–107, AB206–050–119, or AB206–053–109. There have been at least two accidents attributed to failures of the crosstubes. Additionally, 27 field reports indicated that corrosion or metal fatigue may contribute to cracking of the crosstubes. This condition, if not corrected, could result in failure of the crosstubes and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters of the same type design, the proposed AD would require removal and replacement of certain crosstubes within the next 90 calendar days.

The FAA estimates that 5,700 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,900,000 to replace two crosstubes per helicopter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 94–SW–08–AD.

Applicability: Model 206A, 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, crosstube assemblies (crosstubes), BHTI part numbers (P/N) 206–050–107, 206–050–119, 206–050–134, 206–050–157, 206–050–169, 206–053–109, 206–053–119, and 206–053–129 (all dash numbers), or Airborne Supply, Inc. P/N AB206–050–107, AB206–050–119, or AB206–053–109 (all dash numbers) installed, certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the crosstubes and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 90 calendar days after the effective date of this AD, remove any affected crosstube listed in the "Applicability" paragraph of this AD, and replace with an airworthy crosstube in accordance with the appropriate maintenance manual or service instructions. Any crosstubes removed as a result of this AD shall be permanently marked as unairworthy.

Note 1: For BHTI P/N 206–053–109 and 206–053–119, the P/N are vibro-etched on the upper cuff of the crosstube on the aft side on both forward and aft crosstubes; for BHTI P/N 206–053–129, the P/N are vibro-etched on the bottom of the cuff on the aft side on both forward and aft crosstubes; for BHTI P/N 206–050–107, 206–050–119, 206–050–134, 206–050–157, and 206–050–169, the P/N are stamped in ink on the crosstube, which is shipped without paint (once the helicopter is painted, the P/N are covered); and for Airborne Supply, Inc., P/N AB206–050–107, AB206–050–119, and AB206–053–109, the P/N are rubber stamped at the bottom end of the crosstube.

(b) If the crosstubes' P/N cannot be determined by reference to the crosstubes, if possible, determine the P/N by reference to the maintenance records or other aircraft records. If the crosstubes' P/N cannot be determined, replace the crosstubes with airworthy crosstubes within 90 calendar days after the effective date of this AD in accordance with the appropriate maintenance manual or service instructions.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 3, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–27928 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 291

[Docket No. 941097–4297]

RIN 0693–AB36

Manufacturing Extension Partnership; Environmental Projects

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Proposed Rulemaking; Request for Comments.

SUMMARY: The purpose of this proposed rule would be to provide for integration of environmental services and resources into the national manufacturing extension system and to codify the process by which NIST will solicit and select applications for cooperative agreements and financial assistance on projects which have the dual benefit of promoting the competitiveness and environmental soundness of smaller U.S. manufacturers. The intended effect is to increase the scope and scale of environmental services provided through the national manufacturing extension system.

DATES: Comments on the proposed program must be received no later than December 14, 1994.

ADDRESSES: Comments on the proposed program must be submitted in writing to: MEP Environmental Projects Rule Comments, Attention David Gold, National Institute of Standards and Technology Bldg. 224 Room B115, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Extension Partnership Environmental Projects Manager, 301–975–5020.

SUPPLEMENTARY INFORMATION: The purpose of the National Institute of Standards and Technology Manufacturing Extension Partnership is to promote the competitiveness of smaller U.S. manufacturers. This is done primarily through technical assistance provided by a network of nonprofit manufacturing extension centers. Proposals from qualified organizations will periodically be solicited for projects which accomplish any one of the following objectives:

Integration of Environmental Services Into Manufacturing Extension Centers: to support the integration of environmentally-focused technical assistance, and especially pollution prevention assistance, for smaller manufacturers into the broader services provided by manufacturing extension centers.

Development of Environmentally Related Technical Assistance Tools and Techniques: to support the initial development and implementation of tools or techniques which will aide manufacturing extension organizations in providing environmentally-related services, and especially pollution prevention services, to smaller manufacturers and which also may be of direct use by the smaller manufacturers themselves. Specific industry sectors and categories of tools and techniques may be specified in solicitations.

Pilots for National Industry-Specific Pollution Prevention and Environmental Compliance Information Centers: to support the pilot implementation of national centers for specific industry sectors specified in solicitations. The centers will provide easy access to relevant, current, reliable and comprehensive information on innovative technologies, pollution prevention opportunities and regulatory compliance.

Integration projects are open to existing manufacturing extension affiliates of the NIST Manufacturing Extension Partnership.

Projects for development of tools or techniques and national information centers are open to all nonprofit organizations including universities, community colleges, state governments, and independent nonprofit organizations.

Announcements of solicitations will be made in the Commerce Business Daily.

In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. 272(b)(1) and (c)(3) and 2781), as amended, NIST will provide assistance to integrate environmentally-related services and resources into the national manufacturing extension system. This assistance will be provided by NIST

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often in cooperation with the EPA. Under the NIST Manufacturing Extension Partnership (MEP), NIST will periodically make merit-based awards to existing MEP manufacturing extension affiliates for integration of environmental services into extension centers and to non-profit organizations for development of environmentally-related tools and techniques. In addition, NIST will initiate pilot centers providing environmental information for specific industrial sectors to be specified in solicitations. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology, and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

Classification

This notice relating to public property, loans, grants, benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purposes of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). The program is not a major Federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0010, 0348–0042 and 0348–0046). Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to (to the address shown above); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

It has been determined that this rule is not significant for purposes of EO 12866.

List of Subjects in 15 CFR Part 291

Environmental projects, Environmental compliance assistance, Manufacturing extension, Pollution prevention assistance, Technical assistance.

Dated: November 3, 1994.

Samuel Kramer,

Associate Director.

For the reasons set out in the preamble, it is proposed that 15 CFR part 291 be added as set forth below.

PART 291—MANUFACTURING EXTENSION PARTNERSHIP; ENVIRONMENTAL PROJECTS

Sec.

291.1 Program description.
291.2 Environmental integration projects.
291.3 Environmental tools and techniques projects.
291.4 National industry-specific pollution prevention and environmental compliance resource centers.
291.5 Proposal selection process.

Authority: 15 U.S.C. 272(b)(1) and (c)(3) and 2781

§ 291.1 Program description.

(a) In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. 272(b)(1) and (c)(3) and 2781), as amended, NIST will provide financial assistance to integrate environmentally-related services and resources into the national manufacturing extension system. This assistance will be provided by NIST often in cooperation with the EPA. Under the NIST Manufacturing Extension Partnership (MEP), NIST will periodically make merit-based awards to existing MEP manufacturing extension affiliates for integration of environmental services into extension centers and to non-profit organizations for development of environmentally-related tools and techniques. In addition, NIST will initiate pilot centers providing environmental information for specific industrial sectors to be specified in solicitations. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology, and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

(b) *Announcements of solicitations.* Announcements of solicitations will be made in the Commerce Business Daily. Specific information on the level of funding available and the deadline for proposals will be contained in that announcement. In addition, any specific industry sectors or types of tools and techniques to be focused on will be specified in the announcement.

(c) *Proposal workshops.* Prior to an announcement of solicitation, NIST may announce opportunities for potential applicants to learn about these projects through workshops. The time and place of the workshop(s) will be contained in a Commerce Business Daily announcement.

(c) *Indirect costs.* The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(d) *Proposal format.* The Proposal must not exceed 20 typewritten pages in length for integration proposals. Proposals for tools and techniques projects and national information centers must not exceed 30 pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such as the pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6 × 27.9 cm (8 ½" × 11") paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1"). The applicant may submit a separately bound document of appendices, containing letters of support for the Basic Proposal. The basic proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the Proposal will not be considered in the evaluation. Applicants must submit one single original plus six copies of the proposal along with Standard Form 424, 424A (Rev 4/92) and Form CD–511.

(e) *Content of basic proposal.* The Basic Proposal must, at a minimum, include the following:

(1) An executive summary summarizing the planned project consistent with the Evaluation Criteria stated in this notice.

(2) A description of the planned project sufficient to permit evaluation of the proposal in accordance with the proposal Evaluation Criteria stated in this notice.

(3) A budget for the project which identifies all sources of funds and which breaks out planned expenditures by both activity and object class (e.g., personnel, travel, etc.).

(4) A description of the qualifications of key personnel who will be assigned to work on the proposal project.

(5) A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

(6) A Standard Form 424, 424A (Rev 4–92) prescribed by the applicable OMB circular and Form CD–511, Certification Regarding Debarment, Suspension of Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. SF–424, 424A (Rev 4–92) and Form CD–511 will not be considered part of the page count of the Basic Proposal.

(7) The application requirements and the standard form requirements have been approved by OMB (OMB Control Number 0693–0010, 0348–0042 and 0348–0046).

(f) *Applicable federal and departmental guidance.* This includes: Administrative requirements, cost principles, and audits. (Dependent upon type of Recipient organization: Non-profit, for-profit, state/local government, or educational institution.)

(1) *Nonprofit organizations.*

(i) OMB Circular A–110—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

(ii) OMB Circular A–122—Cost Principles for Nonprofit Organizations

(iii) 15 CFR part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations (implements OMB Circular A–133—Audits for Institutions of Higher Education and Other Nonprofit Organizations)

(2) *State/local governments.*

(i) 15 CFR part 24—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(ii) OMB Circular A–87—Cost Principles for State and Local Governments.

(iii) 15 CFR part 29a—Audit Requirements for State and Local Governments (implements OMB Circular A–128—Audit of State and Local Governments).

(3) *Education Institutions.*

(i) OMB Circular A–110—Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

(ii) OMB Circular A–21—Cost Principles for Educational Institutions.

(iii) 15 CFR part 29b—Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations (implements OMB Circular A–133—Audits for Institutions of Higher Education and Other Nonprofit Organizations).

§ 291.2 Environmental integration projects.

(a) *Eligibility criteria.* Eligible applicants for these projects are manufacturing extension centers or state technology extension programs which at the time of solicitation have cooperative agreements with the NIST Manufacturing Extension Partnership. Only one proposal per organization per solicitation is permitted in this category.

(b) *Project objective.* The purpose of these projects is to support the integration of environmentally-focused technical assistance, and especially pollution prevention assistance, for smaller manufacturers into the broader services provided by existing MEP manufacturing extension centers. Proposers are free to structure their project in whatever way will be most effective and efficient in increasing the ability of the center to deliver high quality environmental and pollution prevention technical assistance (either directly or in partnership with other organizations). Following are some examples of purposes for which these funds could be used. This list is by no means meant to be all inclusive. A center might propose a set of actions encompassing several of these examples as well as others.

(1) *Environmental needs assessment.* Detailed assessment of the environmentally-related technical assistance needs of manufacturers within the state or region of the manufacturing extension center. This would be done as part of a broader plan to incorporate environmentally related services into the services of the manufacturing extension center. The center might propose to document its process and findings so that other centers may learn from its work.

(2) *Partnership with another organization.* The center might propose to partner with an existing organization which is providing environmentally-focused technical assistance to manufacturers. The partnership would lead to greater integration of service delivery through joint technical assistance projects and joint training.

(3) *Accessing private-sector environmental resources.* The center might propose to increase its ability to access environmental technical services for smaller manufacturers from environmental consultants or environmental firms.

(4) *Training of field engineers/agents in environmental topics.* Funding for training which empowers the field engineer/agent with the knowledge needed to recognize potential environmental, and especially pollution prevention, problems and opportunities. In addition, training might be funded which empowers the field engineer/agent with the knowledge needed to make appropriate recommendations for solutions or appropriate referrals to other sources of information or expertise. The over-arching goal is for the field engineer/agent to enable the manufacturer to be both environmentally clean and competitive.

(5) *Access to environmentally related information or expertise.* A center might propose to fund access to databases or other sources of environmentally-related information or expertise which might be necessary to augment the environmentally focused activities of the manufacturing extension center.

(6) *Addition of environmentally focused staff.* It may be necessary for manufacturing extension centers to have an environmental program manager or lead field engineer/agent with environmental training and experience. Funds could be requested to hire this person. However, the proposer would have to demonstrate a clear and reasonable plan for providing for the support of this person after the funds provided under this project are exhausted since no commitment is being made to on-going funding.

(c) *Award period.* Projects initiated under this category may be carried out over multiple years. The proposer should include optional second and third years in their proposal. Proposals selected for award may receive one, two or three years of funding from currently available funds tat the discretion of DOC. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. A separate cooperative agreement will be written with winning applicants. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. It is anticipated that successful projects will be given the opportunity to roll the funding for these efforts into the base funding for the extension center. Such a roll-over will be based on a performance review and the availability of funds.

(d) *Matching requirements.* No matching funds are required for these proposals. However, the presence of matching funds (cash and in-kind) will

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be considered in the evaluation under the Financial Plan criteria.

(e) *Environmental integration projects evaluation criteria.* In most solicitations, preference will be given to projects which are focused on a single industry sector. This is desired to build on the expertise and resources which are being built in tools and resources projects in these industry sectors. Industry focus will be specified in the solicitation announcement. However, actual services need not be limited exclusively to this sector. In addition preference may be given to extension centers which do not have extensive environmentally-related services already in place. In addition to these preferences, the criteria for selection of awards will be as follows in descending order of importance:

(1) *Demonstrated commitment to incorporating environmentally related services.* The extension center must demonstrate its commitment to incorporate environmentally-related technical services into its overall manufacturing extension services even after funding for this project is exhausted. It is not the objective of this effort to establish completely autonomous environmentally focused extension centers. Rather, the goal is to ensure that such service are integrated directly with general manufacturing extension services focused on competitiveness. The center must demonstrate that such integration will take place. Factors that may be considered include: The amount of matching funds devoted to the efforts proposed as demonstration of the center's commitment to the activity; Indication that environmental services are a significant aspect of the organization's long range planning; Strength of commitment and plans for continuing service beyond funding which might be awarded through this project; The degree to which environmental services will become an integral part of each field engineers' portfolio of services; The level of current or planned education and training of staff on relevant environmental issues; and The extent of environmentally related information and expert resources which will be easily accessible by field engineers.

(2) *Demonstrated understanding of the environmentally related technical assistance needs of manufacturers in the target population.* Target population must be clearly defined. The manufacturing center must demonstrate that it understands the populations environmentally related needs or include a coherent methodology for identifying those needs. The proposal should show that the efforts being proposed will enable the center to better meet those needs. Factors that may be considered include: A clear definition of the target population, its size and demographic characteristics; Demonstrated understanding of the target population's environmental technical assistance needs or a plan to develop this understanding; and Appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(3) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are providing high quality environmentally-related services to manufacturers in the same target population or which have relevant resources which can be of assistance in the proposed effort. If no such organizations exist, the proposal should build the case that there are no such organizations. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication of services in providing assistance to small and medium-sized manufacturers. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population; Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and That the proposed activity does not duplicate existing services or resources.

(4) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(5) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; Qualifications of the project team and its leadership to conduct the proposed activity; Soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; Appropriateness of the organizational approach for carrying out the proposed activity; Evidence of involvement and support by private industry.

(6) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; Strength of commitment and amount of the proposer's cost share, if any; Effectiveness of management plans for control of budget; Appropriateness of matching contributions; and Plans for maintaining the program after the cooperative agreement has expired.

§ 291.3 Environmental tools and techniques projects.

(a) *Eligibility criteria.* Eligible applicants for these projects include all nonprofit organizations including universities, community colleges, State governments, State technology programs and independent nonprofit organizations. Organizations may submit multiple proposals under this category for unique projects in each solicitation.

(b) *Project objective.* The purpose of these projects is to support the initial development and implementation of tools or techniques which will aide manufacturing extension organizations in providing environmentally-related services to smaller manufacturers and which may also be of direct use by the smaller manufacturers themselves. Specific industry sectors to be addressed and categories of tolls and techniques may be specified in solicitations. Those sectors will be specified in the solicitation. Examples of tools and techniques include, but are not limited to, manufacturing assessment tools, environmental benchmarking tools, training delivery programs, electronically accessible environmental information resources, environmental demonstration facilities, software tools, etc. Projects must be completed within the scope of the effort proposed and should not be on-going endeavors.

(c) *Award period.* Projects initiated under this category may be carried out over up to three years. Proposals selected for award will receive all funding from currently available funds. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(d) *Matching requirements.* No matching funds are required for these proposals. However, the presence of matching funds (cash and in-kind) will be considered in the evaluation under the Financial Plan criteria.

(e) *Environmental tools and techniques projects evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstrated understanding of the environmentally-related technical assistance needs of manufacturers and technical assistance providers in the target population.* Target population must be clearly defined. The proposal must demonstrate that it understands the population's environmentally related tool or technique needs. The proposal should show that the efforts being proposed meet the needs identified. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; Demonstrated understanding of the target population's environmental tools or technique needs; and Appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

(2) *Technology and information sources.* The proposal must delineate the sources of technology and/or information which will be used to create the tool or resource. Sources may include those internal to the center (including staff expertise) or from other organizations. Factors that may be considered include: Strength of core competency in the proposed area of activity; and Demonstrated access to relevant technical or information sources external to the organization.

(3) *Degree of integration with the manufacturing extension partnership.* The proposal must demonstrate that the tool or resource will be integrated into and will be of service to the NIST Manufacturing Extension Centers. Factors that may be considered include: Ability to access the tool or resource especially for MEP extension centers; Methodology for disseminating or promoting use of the tool or technique especially within the MEP system; and Demonstrated interest in using the tool or technique especially by MEP extension centers.

(4) *Coordination with other relevant organizations.* Wherever possible the project should be coordinated with and leverage other organizations which are developing or have expertise on similar tools or techniques. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities; and That the proposed activity does not duplicate existing services or resources.

(5) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed tool or technique and for ensuring continuous improvement of the tool. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(6) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; Qualifications of the project team and its leadership to conduct the proposed activity; Soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and Appropriateness of the organizational approach for carrying out the proposed activity.

(7) *Financial plan:* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; Strength of commitment and amount of the proposer's cost share, if any; Effectiveness of management plans for control of budget; Appropriateness of matching contributions; and Plan for maintaining the program after the cooperative agreement has expired.

§ 291.4 National industry-specific pollution prevention and environmental compliance resource centers.

(a) *Eligibility criteria.* Eligible applicants for these projects include all nonprofit organizations including universities, community colleges, state governments, state technology programs and independent nonprofit organizations. Only one proposal per organization is permitted in this category.

(b) *Project objective.* These centers will provide easy access to relevant, current, reliable and comprehensive information on pollution prevention opportunities, regulatory compliance and technologies and techniques for reducing pollution in the most competitive manner for a specific industry sector or industrial process. The sector or industrial process to be addressed will be specified in the solicitation. The center will enhance the ability of small businesses to implement risk based pollution prevention alternatives to increase competitiveness and reduce adverse environmental impacts. The center should use existing resources, information and expertise and will avoid duplication of existing efforts. The information provided by the center will create links between relevant EPA Pollution Prevention programs, EPA and other technical information, NIST manufacturing extension efforts, EPA regulation and guidance, and state requirements. The center will emphasize pollution prevention methods as the principal means to both comply with government regulations and enhance competitiveness.

(c) *Project goal.* To improve the environmental and competitive performance of smaller manufacturers by:

(1) Enhancing the national capability to provide pollution prevention and regulatory requirements information (federal, state and local) to specific industries.

(2) Providing easy access to relevant and reliable information and tools on pollution prevention technologies and techniques that achieve manufacturing efficiency and enhanced competitiveness with reduced environmental impact.

(3) Providing easy access to relevant and reliable information and tools to enable specific industries to achieve the continued environmental improvement to meet or exceed compliance requirements.

(d) *Project customers.* (1) The customers for this center will be the businesses in the industrial sector or businesses which use the industrial process specified as the focus for the solicitation. In addition, consultants providing services to those businesses, the NIST Manufacturing Extension Centers, and federal, state and local programs providing technical, pollution prevention and compliance assistance.

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(2) The center should assist the customer in choosing the most cost effective, environmentally sound options or practices that enhance the company's competitiveness. Assistance must be accessible to all interested customers. The center, wherever feasible, shall use existing materials and information to enhance and develop the services to its customers. The centers should rarely, if ever, perform research, but should find and assimilate data and information produced by other sources. The center should not duplicate any existing distribution system. The center should distribute and provide information, but should not directly provide on-site assistance to customers. Rather, referrals to local technical assistance organizations should be given when appropriate. Information would likely be available through multiple avenues such as phone, fax, electronically accessible databases, printed material, networks of technical experts, etc.

(e) *Award period.* The pilot initiated under this category may be carried out over multiple years. The proposer should include optional second and third years in their proposal. Proposals selected for award may receive one, two or three years of funding from currently available funds at the discretion of DOC. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Successful centers may be given an opportunity to receive continuing funding as a NIST manufacturing center after the expiration of their initial cooperative agreement. Such a roll-over will be based upon the performance of the center and availability of funding.

(f) *Matching requirements.* A matching contribution from each applicant will be required. NIST may provide financial support up to 50% of the total budget for the project. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and non-federal in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

(g) *Resource center evaluation criteria.* Proposals from applicants will be evaluated and rated on the basis of the following criteria listed in descending order of importance:

(1) *Demonstrated understanding of the environmentally-related information needs of manufacturers and technical assistance providers in the target population.* Understanding the environmentally-related needs of the target population (i.e., customers) is absolutely critical to the success of such a resource center. Factors that may be considered include: A clear definition of the target population, size and demographic distribution; Demonstrated understanding of the target population's environmentally-related information needs or a clear plan for identifying those customer needs; and Methodologies for continually improving the understanding of the target population's environmentally-related information needs.

(2) *Delivery mechanisms.* The proposal must set forth clearly defined, effective mechanisms for delivery of services to target population. Factors that may be considered include: Potential effectiveness and efficiency of proposed delivery systems; and Demonstrated capacity to form the effective linkages and partnerships necessary for success of the proposed activity.

(3) *Technology and information sources.* The proposal must delineate the sources of information which will be used to create the informational foundation of the resource center. Sources may include those internal to the center (including staff expertise), but it is expected that many sources will be external. Factors that may be considered include: Strength of core competency in the proposed area of activity; Demonstrated access to relevant technical or information sources external to the organization.

(4) *Degree of integration with the manufacturing extension partnership and other technical assistance providers.* The proposal must demonstrate that the resource center will be integrated into the system of services provided by the NIST Manufacturing Extension Partnership and other technical assistance providers. Factors that may be considered include: Ability of the target population including MEP Extension Centers to access the resource center; and Methodology for disseminating or promoting use of the resource center especially within the MEP system.

(5) *Coordination with other relevant organizations.* Whenever possible the project should be coordinated with and leverage other organizations which are developing or have expertise on similar tools or techniques. If no such organizations exist, the proposal should show that this is the case. Applicants will need to describe how they will coordinate to allow for increased economies of scale and to avoid duplication. Factors that may be considered include: Demonstrated understanding of existing organizations and resources relevant to the proposed project; and Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities.

(6) *Program evaluation.* The applicant should specify plans for evaluation of the effectiveness of the proposed resource center and for ensuring continuous improvement. Factors that may be considered include: Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance; and The proposer's plan must include documentation, analysis of the results, and must show how the results can be used in improving the resource center.

(7) *Management experience and plans.* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that may be considered include: Appropriateness and authority of the governing or managing organization to conduct the proposed activities; Qualifications and experience of the project team and its leadership to conduct the proposed activity; Soundness of any staffing plans, including recruitment, selection, training, and continuing professional development; and Appropriateness of the organizational approach for carrying out the proposed activity.

(8) *Financial plan.* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that may be considered include: Reasonableness of the budget, both in income and expenses; Strength of commitment and amount of the proposer's *cost share*; Effectiveness of management plans for control of the budget; and Appropriateness of matching contributions.

§ 291.5 Proposal selection process.

The proposal evaluation and selection process will consist of three principal phases: Proposal qualification; Proposal review and selection of finalists; and Award determination.

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* NIST will appoint an evaluation panel composed of NIST and in some cases other federal employees to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. A site visit may be required to make full evaluation of a proposal. From the qualified proposals, a group of finalists will be numerically ranked and recommended for award based on this review.

(c) *Award determination.* The Director of the NIST, or her/his designee, shall select awardees based on total evaluation scores, geographic distribution, and the availability of funds. All three factors will be considered in making an award. Upon the final award decision, a notification will be made to each of the proposing organizations.

[FR Doc. 94-27680 Filed 11-10-94; 8:45 am]
BILLING CODE 3510-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Rule: Requirements for Child-Resistant Packaging; Packages Containing 250 mg or More of Naproxen

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing a rule to require child-resistant packaging for naproxen preparations containing 250 mg or more of naproxen per package. Naproxen is marketed as an anti-inflammatory drug. It is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting naproxen.

DATES: Comments on the proposal should be submitted no later than January 30, 1995.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301)504-0800.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504-0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant (CR) packaging," is defined as packaging that (1) is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) is not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B).

Effectiveness standards have been established under the PPPA for special packaging (16 CFR 1700.15), as has a procedure to evaluate its effectiveness (16 CFR 1700.20). Regulations have been issued requiring special packaging for a number of household products (16 CFR 1700.14). The findings that the Commission must make in order to issue a standard requiring CR packaging for a product are discussed below in Section D of this notice.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages of a popular size and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

2. Background of Naproxen

Naproxen is a nonsteroidal anti-inflammatory drug (NSAID). This class of compounds is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain.

Formerly, naproxen was a prescription drug that was required to be in child-resistant packaging by the Commission's regulation of human oral prescription drugs, 16 CFR 1700.14(a)(10). Initially, two Food and Drug Administration (FDA) panels voted against the nonprescription ("over-the-counter," or "OTC") sale of naproxen because of its slow onset of action; potential for adverse gastrointestinal and renal effects with high doses; and potential for misuse in children and the elderly. *American Druggist*, March 1994, p. 45. The manufacturer then agreed to reduce the recommended dose and include warning labels for children and the elderly. Subsequently, FDA granted OTC status to the sodium salt of naproxen by a letter dated January 11, 1994.

The OTC formulation of naproxen consists of naproxen sodium and is equivalent to 200 mg of naproxen and 20 mg of sodium per tablet. The recommended dose is 1 tablet every 8 to 12 hours. The maximum daily dose is 3 tablets for patients between the ages of 12 and 65 and 2 tablets for those over

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65. The drug is not recommended for children under 12 years old except under the supervision of a doctor. However, naproxen is used to treat juvenile arthritis in children over 2 years.

The patent for naproxen expired in 1993. The OTC naproxen product approved by the FDA will be manufactured by the original patent holder and marketed by another company as a joint venture. In accordance with FDA's regulations, these two companies have requested sole marketing rights for a period of 3 years.

Although these companies are voluntarily placing naproxen in child-resistant packaging, a mandatory special packaging standard for naproxen products would ensure that other companies that may come on the market in the future use CR packaging. The post-OTC experience with another NSAID, ibuprofen, supports this action. As discussed below, the incidence of accidental ingestion of ibuprofen by children under 5 years old increased after it became available OTC and before special packaging was required by the Commission. A mandatory standard would also enable the Commission to ensure that the packaging used meets the performance requirements of the PPPA test protocol at 16 CFR 1700.15, 1700.20.

B. Toxicity of Naproxen

The Commission's Directorate for Health Sciences reviewed the toxicity of naproxen. Side effects commonly associated with naproxen and other NSAID's include dose-related gastrointestinal (GI) complications such as constipation, heartburn, abdominal pain, nausea, and diarrhea. Other adverse effects include headache, dizziness, drowsiness, pruritus (itching), and tinnitus (ringing in the ears).

Naproxen may also cause liver and kidney toxicity, but these effects are infrequent with routine therapeutic use. Kidney toxicity has been documented in children following naproxen therapy. One report describes a two-year-old male with juvenile arthritis who developed acute renal failure and hyperkalemia (high blood potassium) following treatment with 20 mg/kg/day of naproxen sodium for 1 month.

Acute overdosage of naproxen may result in mild, transient effects, including drowsiness, GI disturbances, and prolonged clotting times. Life-threatening effects are uncommon, but serious complications such as seizures, apnea (cessation of breathing), metabolic acidosis (reduced blood pH), and impaired kidney function have been documented. The acute lethal dose of naproxen is unknown and the severity of symptoms is not always dose-related.

The Commission's Directorate for Epidemiology reviewed data from NEISS involving hospital emergency room treatment of children under 5 years old who ingested naproxen. There were nine reported cases from 1980 to 1989 and 23 reported cases from 1990 to 1993. The average annual number of estimated cases during these time periods was 50 and 300, respectively. In 1982, one case resulted in the hospitalization of a 2-year-old male.

AAPCC data from 1985 to 1992 were unavailable because naproxen poisoning incidents were not categorized separately from other NSAID incidents unless they resulted in death. However, this does not mean that naproxen poisonings did not occur. The Commission's Directorate for Health Sciences requested 1993 incident data from the AAPCC related specifically to naproxen in children under 5 years old. Of the 1,413 naproxen ingestions reported, two resulted in outcomes characterized by AAPCC as moderate"—i.e., pronounced and prolonged symptoms that generally require treatment but are not life-threatening. In addition, 53 of the ingestions resulted in outcomes characterized by AAPCC as minor"—i.e., symptoms present, but mild with rapid and complete resolution. Forty-eight cases were documented as potentially toxic, but the ultimate disposition was not reported. From 1985 to 1993, there were no naproxen-related fatalities in children reported to the AAPCC.

Several cases of naproxen poisoning in children were reported through the FDA's Adverse Reactions Reporting System (ARRS) and the Worldwide Safety Surveillance and Reporting division of Syntex, the manufacturer of naproxen. These include:

An 8-month-old girl died following daily treatment for fever and an upper respiratory tract infection with 100 to 400 mg naproxen sodium for 5 days. The autopsy showed serious effects on the liver and brain, multiple GI ulcerations, and yeast colonization of the upper respiratory tract.

A 2-year-old boy recovered after developing drowsiness, ataxia (loss of voluntary muscle coordination), and a prolonged bleeding time following ingestion of naproxen (up to 2 grams), hydrogen peroxide, and eucalyptus oil. The ARRS listed naproxen as the suspect drug and hydrogen peroxide as non-suspect. There was no comment relating to the contribution of eucalyptus oil to the symptoms. Eucalyptus oil may cause drowsiness and ataxia, but it does not affect bleeding time.

A 2-year-old girl suffered dyspepsia (indigestion) after ingesting 625 mg of naproxen. She recovered after her stomach was emptied.

Convulsions developed in a 5-year-old girl who accidently ingested an unknown amount of naproxen sodium.

NEISS data for ingestions of ibuprofen, another popular NSAID that began to be marketed OTC in 1984, show that there was a larger estimated number of children under 5 years old treated in hospital emergency rooms for each year from 1984–1992 than for each year from 1980–1983. In 1993, when the special packaging standard for ibuprofen became effective, the estimated number of cases was lower than every annual estimate from 1984–1992. Most cases of naproxen poisoning described in the literature involve adults. These patients generally developed GI side effects and several experienced seizures. The incidence of side effects may differ in children and adults. Studies involving children taking naproxen showed that, compared to adults, the children's incidence of: (1) rash and prolonged bleeding times were increased; (2) GI and central nervous system (CNS) reactions were similar; and (3) other reactions decreased.

There is evidence that naproxen and other NSAID's have adverse fetal effects when used during pregnancy. A 35-week-old newborn delivered 8 hours after his mother ingested an overdose of 5 grams of naproxen, developed severe hyponatremia (low blood sodium) and water retention with indications of cerebral irritation and paralytic ileus. It was tentatively diagnosed that naproxen adversely affected renal function.

Complications were reported in three newborns after maternal naproxen treatment to prevent premature labor. One newborn died, and the autopsy showed a brain hemorrhage, multiple gastric ulcers, extensive GI bleeding, and a cardiovascular birth defect that is a known adverse effect of NSAID's.

A 7-day-old breast-fed infant boy developed symptoms associated with naproxen toxicity after his mother was treated with 1 g naproxen and 800 mg of antibiotic for 3 days.

C. Level for Regulation

The Commission proposes that special packaging be required for OTC naproxen products containing 250 mg or more naproxen per package. This level is based on (1) established guidelines for medical treatment following ingestion of NSAID's and (2) a known toxic dose of naproxen, reduced by a safety factor to account for biologic variability.

The precise toxic level of naproxen in humans is unknown. However, guidelines established for pediatric NSAID overdose suggest medical treatment for young children who ingest five times the maximum single therapeutic dose. Therefore, the dose of naproxen requiring medical intervention would be 5 mg/kg (the maximum single therapeutic dose) times five, or 25 mg/kg. In a 10-kg child, this is equivalent to 250 mg of naproxen, or one and one-quarter OTC tablets.

The same level results when calculated using a different approach. When treatment information for poisonings is unavailable, the staff typically uses a known toxic dose divided by a safety factor of 10 to determine the level for regulation. Applying this factor to the 250 mg/kg dose of naproxen that caused life-threatening acidosis in a 15-year-old girl also results in a level of 25 mg/kg, or 250 mg in a 10-kg child.

D. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of naproxen sodium demonstrate that this compound can cause serious illness and injury to children. Moreover, the preparations are readily available to children. Although the current marketer of this compound voluntarily uses CR packaging for this product, the Commission concludes preliminarily that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any new manufacturers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds preliminarily that the degree and nature of the hazard to children from ingesting naproxen is such that special packaging is required to protect children from serious illness. The Commission bases this preliminary finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

The current marketers of OTC naproxen use packaging that not only is child resistant, but also is easier for adult consumers (and especially older adults) to open. Therefore, the Commission preliminarily concludes that CR packaging for naproxen is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard, section 3(b) of the PPPA, 15 U.S.C. 1472(b), requires the Commission to consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these items with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission preliminarily proposes an effective date of 180 days from the date the final regulation is published in the **Federal Register**. The Commission, however, would consider a shorter effective date if the public interest warrants such a period. The public interest might warrant a shorter effective date if, for example, naproxen were going to be marketed in significant numbers in non-CR packaging for any significant period before any Commission regulation requiring CR packaging for this product became final. Accordingly, the Commission solicits comment on the appropriateness of a 180-day or shorter effective date. The final rule would apply to products that are packaged on or after the effective date.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of a rule to require special packaging for naproxen preparations with 250 mg or more of naproxen in a single package. Based on this assessment, the Commission concludes that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because the current marketers of naproxen are already using CR packaging and have requested sole marketing rights for 3 years. Furthermore, the relatively low costs of CR packages should not be an entry burden for future marketers. Accordingly, for the reasons given above, the Commission preliminarily concludes that the rule to require special packaging for naproxen preparations having 250 mg or more of naproxen would not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed Poison Prevention Packaging Act (PPPA)

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packaging requirements for naproxen preparations.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Preliminary analysis of the potential impact of this proposed rule indicates that CR packages for naproxen preparations would have no significant effects on the environment. This is because the rule will not significantly increase the number of CR packages in use and, in any event, the manufacture, use, and disposal of the CR packages present the same potential environmental effects as do the currently used packages.

Therefore, because the proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(24), reading as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(24) *Naproxen.* Naproxen preparations for human use and containing the equivalent of 250 mg or more of naproxen in a single package (i.e., retail unit) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

* * * * * *

Dated: November 7, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note. This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Vale, J.A. and Meredith, T.J., Acute poisoning due to non-steroidal anti-inflammatory drugs: clinical features and management. Medical Toxicology 1:12–31, 1986.

2. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, Injury Data on Naproxen and Ibuprofen for the 1980–1993 Period," May 27, 1994.

3. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require Child-Resistant Packaging for OTC Preparations Containing Naproxen" June 7, 1994.

4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging," June 10, 1994.

5. Memorandum from Sandra Inkster, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, Review of Naproxen Toxicity," July 1, 1994.

6. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, Proposed Special Packaging Standard for Naproxen," September 29, 1994.

[FR Doc. 94–27961 Filed 11–10–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 601, 606, 607, 610, 640, and 660

[Dockets Nos. 94N–0066 and 94N–0080]

Review of Regulations for General Biologics and Licensing and for Blood Establishments and Blood Products; Extension of Comment Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Intent to review regulations; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 13, 1995, the comment periods for two documents published in the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822, respectively). The documents requested comments on the agency's intent to review certain biological regulations. FDA is taking this action to allow additional opportunity for public comment, including an opportunity to comment at an upcoming public meeting concerning the biologic regulations under review. The comments received will be part of the public record for these two documents.

DATES: Written comments by February 13, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth or Jean M. Olson, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822 respectively), FDA issued two documents entitled, "Review of General Biologics and Licensing Regulations" (Docket No. 94N–0066) and "Review of Regulations for Blood Establishments and Blood Products" (Docket No. 94N–0080). The documents announced that the agency would begin reviewing certain biologics regulations. Interested persons were given until August 17, 1994, to respond to the documents. In the **Federal Register** of August 17, 1994 (59 FR 42193), FDA extended the comment periods to November 15, 1994. This decision was based on requests to allow additional time for public comment.

The Biotechnology Industry Organization and the Pharmaceutical Research and Manufacturers of America have requested a public meeting to allow for the presentation of comments regarding the agency's intent to review the biologics regulations. FDA agrees that a public meeting is useful, therefore, it intends to hold a public meeting to allow all interested persons to present their comments. FDA will announce the date, time, and place of the meeting in the **Federal Register** at a later date. A transcript of the comments presented at the above mentioned public meeting and written comments resulting from the meeting will be made a part of the public docket. Thus, FDA is extending the comment periods for both documents to February 13, 1995.

Interested persons may, on or before February 13, 1995, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 7, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–27985 Filed 11–10–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

[Docket No. N–94–1706; FR–3502–N–04]

Housing for Older Persons: Defining Significant Facilities and Services—Announcement of Public Meeting in Spokane, WA

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of Public Meeting in Spokane, WA.

SUMMARY: On July 7, 1994, HUD published a proposed rule that would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section."

On August 9, 1994, HUD published a notice announcing four public meetings to be held across the country to discuss the July 7, 1994 proposed rule and to provide an additional opportunity for members of the public to submit comments on the rule.

This notice announces the date and location of a fifth public meeting.

DATES: A fifth public meeting will beheld on November 17, 1994.

ADDRESSES: The meeting will be held at the Spokane Coliseum, 1101 North Howard, Spokane, WA 99201.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, Room 5240, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, telephone (202) 708–2904 (not a toll-free number). The toll-free TDD number is: 1–800 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1994 (59 FR 34902), HUD published a proposed rule that would implement the rulemaking required by section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue "rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section." The regulations governing "housing for older persons" are codified in 24 CFR part 100, subpart E, and the July 7, 1994 proposed rule (also referred to as the "Significant Facilities proposed rule") would amend subpart E to provide the definitions required by section 919.

On August 9, 1994 (59 FR 40502), HUD published a notice announcing four public meetings to be held across the country to discuss the July 7, 1994 proposed rule and to provide an additional opportunity for members of the public to submit comments on the rule.

This Notice

This notice announces the date and location of a fifth public meeting.

Public Meeting in Spokane, WA

A fifth public meeting will be held in Spokane, Washington, on Thursday, November 17, 1994 in the Spokane Coliseum, 1101 North Howard, Spokane, WA 99201. The meeting will convene at 9:00 am and adjourn at 4:00 pm, unless otherwise extended or adjourned earlier by the Assistant Secretary for Fair Housing and Equal Opportunity or the duly designated Presiding Officer.

Attendance is open to the public but limited to the space available. The meeting facility is accessible to persons with mobility impairments. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments. If you require any of these services, please contact HUD at the location listed in the "For Further Information" section of this document.

Individuals, groups and organizations that wish to make oral statements at the meeting are asked to submit a written request to do so, and to forward the text of their statement to HUD at the location listed in the "For Further Information" section of this document, at least five work days before the meeting, if possible. If not possible, there will be a table at the meeting site to register to speak at the meeting.

Dated: November 9, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–28160 Filed 11–10–94; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[KY–210]

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to Kentucky Administrative Regulations (KAR) at 405 KAR 7:080 relating to small operator assistance. The proposed amendment also includes a new SOAP application form dated September 1994. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing if one is requested.

DATES: Written comments must be received on or before 4 p.m., E.D.T. on December 14, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on December 9, 1994. Requests to speak at the hearing must be received on or before 4 p.m., E.D.T. on November 29, 1994.

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ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896;

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Discussion of Amendment

By letter of October 3, 1994 (Administrative Record No. KY–1320), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. The amendment consists of proposed changes to the Kentucky Administrative Regulations at 405 KAR 7:080 relating to small operator assistance and a new application form dated September 1994. The proposed amendment is in response to two actions: 1) publication of final Federal regulations on May 31, 1994 (59 FR 28167), revising 30 CFR 795 to implement the 1992 Energy Policy Act; and 2) publication of a final rule dated September 1, 1994 (59 FR 45201), that approved, with exceptions, Kentucky's emergency regulations submitted on April 26, 1994.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on November 29, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–27980 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 920

[MD–031]

Maryland Abandoned Mine Lands Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is announcing the receipt of additional materials pertaining to a previously proposed amendment to the Maryland Abandoned Mine Lands (AML) Reclamation Plan (hereinafter referred to as the Maryland Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland submitted House Bill 1522 which revises section 7–906(b) of the Natural Resources Article, Subtitle 9, of the Annotated Code of Maryland to reflect extended eligibility dates for the reclamation of mine sites. Maryland also revised its Plan to specify that eligible interim program sites are those on which mining ended on or before the Secretary of the Interior's approval of Maryland's regulatory program.

DATES: Written comments must be received by 4 p.m., E.S.T. November 29, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below.

Copies of the Maryland plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior approved the Maryland Plan effective July 16, 1982. Information on the background of the Maryland Plan including the Secretary's findings, and the disposition of comments can be found in the June 16, 1982, **Federal Register** (47 FR 25955). Effective March 22, 1993, the Maryland Plan was amended to allow for the new acid mine drainage and abatement initiative provided under the AML Reclamation Act of 1990 Pub. L. 101–508). The Secretary's findings and the disposition of comments relative to the Plan amendment can be found in the March 22, 1993, **Federal Register** (58 FR 15272). Subsequent actions concerning the conditions of approval and amendments to the Plan can be found at 30 CFR 920.20 and 9120.25.

II. Discussion of Amendment

By letter dated August 19, 1993, Maryland submitted a proposed amendment to revise the Maryland Plan (Administrative Record No. MD–565.00). Maryland proposed to amend its Plan to allow for two new initiatives. OSM announced receipt of the amendment in the September 21, 1993, **Federal Register** (58 FR 48998), and in the same document, provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 21, 1993.

During its review of the amendment, OSM identified concerns relating to the extended eligibility dates for interim mine sites and the use and source of funds. OSM notified Maryland of these concerns by letter dated November 2, 1993 (Administrative Record No. MD–565.06). By letters dated August 3, 1994 (Administrative Record No. MD–565.07), and September 1, 1994 (Administrative Record No. MD–565.08), Maryland responded to OSM's concerns by submitting additional explanatory information. On August 3, 1994, Maryland also submitted House Bill 1522 which revised section 7–906 of the Natural Resources Act, Subtitle 9, of the Annotated Code of Maryland. The statutory language was revised to extend the eligibility dates for the reclamation of mine sites by including lands and waters made eligible through amendments to SMCRA, as amended October 1, 1994.

On September 1, 1994, Maryland revised its Plan to specify that eligible interim sites are those on which mining ended on or before the Secretary's approval of Maryland's regulatory program. OSM approved the Maryland program on December 1, 1980 (45 FR 79449).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Maryland program amendment to provide the public an opportunity to consider the adequacy of the proposed amendment in light of the revisions contained in House Bill 1522. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans

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and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–27981 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2E4057/P594; FRL–4918–2]

RIN 2070–AC18

Pesticide Tolerance for Glufosinate-Ammonium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a time-limited tolerance for combined residues of the herbicide glufosinate-ammonium, monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate, and its metabolite, 3-methylphosphinicopropionic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on the imported raw agricultural commodity bananas at 0.3 part per million. (Not more than 0.2 ppm shall be present in the pulp after peel is removed). Hoechst Celanese Corp. (now AgrEVO Corp.) petitioned for this proposed regulation to establish a maximum permissible level for combined residues of the herbicide.

DATES: Comments, identified by the document control number, [PP 2E4057/P594], must be received on or before December 14, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: AgrEVO Corp., Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, has submitted pesticide petition (PP) 2E4057 to EPA. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for combined residues of the herbicide glufosinate-ammonium (monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate) and its metabolite, 3-methylphosphinicopropionic acid, in or on the imported raw agricultural commodity bananas at 0.2 ppm. The petition was subsequently amended to raise the tolerance level to 0.3 ppm.

The data submitted in support of the petition and other relevant materials have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerances include the following:

1. A 90-day feeding study in rats at dietary intakes of 0, 0.52, 4.1, 32, or 263 mg/kg/day with a no-observed-effect level (NOEL) of 4.1 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 32 mg/kg/day based on increased absolute and relative kidney weights.

2. A 90-day feeding study in mice at dietary intakes of 0, 16.6, 67.1, or 278 mg/kg/day for males and 19.4, 86.6, or 288.2 mg/kg/day for females with a NOEL of 16.6 mg/kg/day and a LOEL of 67.1 mg/kg/day based on increased absolute and relative liver weights (both sexes) and an increase in serum potassium levels (males).

3. Three teratology studies in rats at doses from 0.5 to 250 mg/kg/day with no teratogenic effects occurring up to and including 250 mg/kg/day. A NOEL for developmental toxicity was 2.24 mg/kg/day, based upon an increase in the incidence of dilated renal pelvis with hydrouretер in the fetuses at 10 mg/kg/day. The maternal NOEL was also 2.24 mg/kg/day.

4. A teratology study in rabbits at doses of 0, 2, 6.3, or 20 mg/kg/day with no teratogenic effects occurring up to and including 20 mg/kg/day, and a maternal NOEL of 6.3 mg/kg/day and a developmental NOEL of 20 mg/kg/day, the highest dose tested.

5. A two-generation reproduction study in rats at dietary concentrations of 0, 40, 120, or 360 ppm with a NOEL for reproductive effects at 120 ppm (equivalent to 12 mg/kg/day) based upon reduced number of pups in the high- dose group. The NOEL for parental toxicity was also 120 ppm based upon increased kidney weights in the high-dose group.

6. A 12-month feeding study in dogs at doses of 0, 2, 5, or 8.5 mg/kg/day. The NOEL was 5.0 mg/kg/day based upon the death of one male and one female dog at 8.5 mg/kg/day with no other treatment-related toxicity.

7. A mouse carcinogenicity study at doses of 0, 2.8, 10.8, or 22.7 mg/kg/day in males and 0, 4.2, 16.2, or 64.0 mg/kg/day in females for 104 weeks with no carcinogenic effects observed under the conditions of the study up to and including 64 mg/kg/day and a systemic NOEL of 10.8 and 16.2 for males and females, respectively, based on the dose-related increase in mortality.

8. A chronic feeding/carcinogenicity study in rats at dietary doses of 0, 2.5, 8.8, or 31.5 mg/kg/day (males) and 0, 2.4, 8.2, or 28.7 mg/kg/day (females) with a NOEL of 2.1 mg/kg/day for systemic effects based on an increase in mortality rate in females at the two higher doses. There were no treatment-related carcinogenic effects at any dose level.

9. Acceptable studies on gene mutation (*Salmonella, E. coli* and mouse lymphoma assays), structural chromosomal aberration (*in vivo* micronucleus assay in mice), and other genotoxic effects (unscheduled DNA synthesis assay with rat hepatocytes) yielded negative results.

10. Pharmacokinetic and metabolism studies which indicated that approximately 80 to 90 percent of the orally administered dose of glufosinate-ammonium remained unabsorbed and was eliminated in the feces. Approximately 10 to 15 percent was eliminated in the urine. The major metabolic pathway is oxidative deamination yielding the metabolite, 3-methylphospinicopropionic acid.

The chronic analysis used a Reference Dose (RfD) of 0.02 mg/kg body weight/day, based on a no-observed-effect level (NOEL) of 2.1 mg/kg/day and an uncertainty factor of 100. The NOEL is based on a 2-year rat feeding study that demonstrated increased absolute and relative kidney weight in males as an endpoint effect.

Using tolerance-level residues and assumptions that 100 percent of every crop for which glufosinate-ammonium has a proposed or published use is treated, the total Theoretical Maximum Residue Contribution (TMRC) for the general population is 1%, for nonnursing infants it is 4 %. EPA believes exposure below 100% of the RFD for chronic effect presents no appreciable risk.

A data gap currently exists for a rat carcinogenicity study. The tolerances will be time-limited because of this gap. The time limitation allows for development and review of the data.

There are presently no actions pending against the continued registration of this chemical. The metabolism of glufosinateammonium in plants is adequately understood. There is no reasonable expectation that secondary residues will occur in meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, or poultry, and there is no reasonable expectation that secondary residues will occur in eggs or milk.

An adequate analytical method, gas chromatography with flame photometric detection (P-mode), is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The office location and telephone number are: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-4432).

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4057/P594]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

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Authority: 21 U.S.C. 346a and 371.

2. In § 180.473, by redesignating existing paragraph (b) as new paragraph (c) and adding new paragraph (b), to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

* * * * *

(b)(1) A tolerance, to expire on (*date 5 years after the date of publication of the final rule in the* **Federal Register**), is established as follows for combined residues of glufosinate ammonium (monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate) and its metabolite 3-methylphosphinicopropionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents.

Commodity	Parts per million
Bananas	0.3 (Not more than 0.2 ppm shall be present in the pulp after peel is removed).

(2) There are no U.S. registrations as of August 24, 1994, for bananas.

* * * * *

[FR Doc. 94-27642 Filed 11-10-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/P595; FRL-4919-3]

RIN 2070-AC18

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Fenpropathrin, Cyfluthrin and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would extend tolerances for the residues of seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, fenpropathrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. This proposal to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on these commodities was requested by FMC Corp. (FMC), Zeneca Ag Products, E. I. DuPont de Nemours & Co., Inc., Hoechst-Roussel Agri-Vet Co., Miles, Inc., and Valent U.S.A. Corp. (collectively called the industry's Pyrethroid Working Group (PWG)).

DATES: Comments, identified by the document control number [PP 8F2034, 7F2103, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/P595], must be submitted on or before December 14, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of the objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 28, 1994 (59 FR 9411), EPA amended 40 CFR part 180 by extending to November 15, 1994, tolerances for the residues of seven pyrethroids on cotton and other commodities. The tolerances were extended to coincide with the extension of the conditional registrations of these pesticides to allow time for EPA to review data and complete an aquatic risk assessment for use on cotton. The basis for these extensions is discussed in detail in the **Federal Register** of October 20, 1993 (58 FR 54094). On November 15, 1993, EPA again amended the conditional registrations of these pesticides on cotton by extending the expiration date to November 15, 1996. The registrations were amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of the synthetic pyrethroids on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996.

Tolerances for the synthetic pyrethroid fenpropathrin on cotton have been added to the list of tolerances being extended since the manufacturer, Valent U.S.A. Corp., committed to agree to the terms and conditions stipulated by the Agency for continued registration of current cotton pyrethroid products. (See the **Federal Register** of April 14, 1993 (58 FR 19357).) Tolerances for the synthetic pyrethroid bifenthrin on cotton are not included here since these tolerances were previously extended to November 15, 1997. (See the **Federal Register** of September 9, 1994 (59 FR 46190).)

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of April 25, 1979 (44 FR 24287) for permethrin, January 31, 1979 (44 FR 6098) for fenvalerate, September 18, 1985 (50 FR 37581) for tralomethrin, February 21, 1985 (50 FR 7172) for cypermethrin, January 25, 1988 (53 FR 1923) for cyfluthrin, April 14, 1993 (58 FR 19357) for fenpropathrin, and May 24, 1988 (53 FR 18558) for lambdacyhalothrin.

To be consistent with the extensions issued for the conditional registrations, the Agency is proposing to amend/extend the tolerances on cottonseed and other commodities with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

The pesticide are considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that extending the tolerances will protect the public health. Therefore, it is proposed to extend the tolerances as set forth below.

Residues remaining in or on the above raw agricultural commodity after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the conditional registrations.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the

Federal Register that this rulemaking proposal as it relates to the section 408 tolerance be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicting the document control number, [PP 8F2304, 7F2013, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/P595]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); ,2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Records and recordkeeping.

Dated: October 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346 and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1997, are established for residues of the insecticide permethrin [(3-pheoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379 by amending the table in paragraph (a) by revising the footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.2
. . . . .	

[1]The tolerance for cottonseed expires on November 15, 1997.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "November 15, 1994" to read "November 15, 1997".

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,*R*)-3(2,2,-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

§ 180.436 [Amended]

f. In § 180.436 *Cyfluthrin; tolerances for residues*, by amending the entry for cottonseed in the table therein by amending the footnote to the entry by changing "November 15, 1994" to read "November 15, 1997".

g. In § 180.438 by amending the table therein by revising the footnote to the entry for conttonseed as follows:

§ 180.438 [1 α-(S*),3 α-(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

* * * * *

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.05
. . . . .	

[1]The tolerance for cottonseed expires on November 15, 1997.

h. In § 180.466, by revising the table therein, to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed	1.0	Nov. 15, 1997
Cattle, fat	0.02	Do.
Cattle, mbyp	0.02	Do.
Cattle, meat	0.02	Do.
Eggs	0.02	Do.
Goats, fat	0.02	Do.
Goats, mbyp	0.02	Do.
Goats, meat	0.02	Do.
Hogs, fat	0.02	Do.
Hogs, mbyp	0.02	Do.
Hogs, meat	0.02	Do.
Horses, fat	0.02	Do.
Horses, mbyp	0.02	Do.
Horses, meat	0.02	Do.
Milkfat (reflecting 0.02 ppm in whole milk)	0.03	Do.
Poultry, fat	0.02	Do.
Poultry, mbyp	0.02	Do.
Sheep, fat	0.02	Do.

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Commodity	Parts per million	Expiration date
Sheep, mbyp	0.02	Do.
Sheep, meat	0.02	Do.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a) to read as follows:

§ 185.1250 Cyfluthrin.

(a) A tolerance of 2.0 parts per million that expires on November 15, 1997 is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

c. In § 185.3225, by revising the table therein to read as follows:

§ 185.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed oil ...	3.0	Nov. 15, 1997.

d. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances that expire on November 15, 1997 are established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2,-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance of 2.0 parts per million that expires November 15, 1997 is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate (CAS Reg. No. 69359-37-5)) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

c. By amending § 186.3225 by revising the table therein, to read as follows:

§ 186.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed hulls	2.0	Nov. 15, 1997

[FR Doc. 94–27841 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 197

[CGD 88–103]

RIN 2115–AD16

Controlling the Hazard of Asbestos in the Industrial Maritime Environment

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking was initiated to revise and incorporate into regulation the guidance the Coast Guard has issued on exposure to asbestos aboard certain vessels and at outer continental shelf (OCS) facilities and deepwater ports. The Coast Guard guidance was based on the Occupational Safety and Health Administration (OSHA) general industry asbestos exposure guidelines published in 1986. Since the Advanced Notice of Proposed Rulemaking (ANPRM) was published for this Coast Guard rulemaking, OSHA has revised its asbestos exposure guidelines and issued industry-specific guidance for shipyard workers. This new OSHA shipyard regulation is a modified version of the 1986 OSHA standards and appears to be adaptable to shipboard application with minor modifications. This rulemaking project is terminated pending an investigation by the Coast Guard of the feasibility of applying the OSHA shipyard standards to shipboard use.

DATES: This rulemaking is terminated on November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles F. Barker, Project Manager, Office of Marine Safety, Security and Environmental Protection (G–MVI–2), (202) 267–1181.

SUPPLEMENTARY INFORMATION: On October 7, 1992, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) (57 FR 46126) titled "Controlling the Marine Asbestos Hazard," docket number (CGD 88–103), which solicited comments on a proposed asbestos control rulemaking. Nineteen comments were received. The comment were nearly unanimous in recommending that the Coast Guard adopt the OSHA asbestos exposure limits and concentrate on developing safe work practices and training to reduce shipboard asbestos exposure. The comments stated that the OSHA standards were based on exhaustive studies and took into account the limits of current measuring devices. They contended that the Coast Guard lacked justification for lowering exposure limits based on the potential for a mariner to be exposed to asbestos up to 24 hours per day. The comments also pointed out that the risk of asbestos exposure aboard vessels has been steadily decreasing over the years due to increased hazard awareness and the substitution of non-asbestos containing materials during vessel renovations conducted in shipyards. Comments from the OCS industry supported shoreside OSHA standards for offshore platforms.

The Coast Guard has determined that the best course of action at this point is to terminate this rulemaking, issue policy guidance on the adaptation of the new OSHA shipyard standard to the marine industry, and reexamine the necessity of a rulemaking at some point in the future. Therefore, the Coast Guard is terminating further rulemaking under docket number 88–103.

Dated: November 4, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–28034 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition to List the Santa Ana Mountains Population of the California Mountain Lion as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day petition finding to list the Santa Ana Mountains population of the California mountain lion (*Felis concolor californica*) as endangered under the Endangered Species Act of 1973, as amended (Act). The Service finds that the petition did not present substantial scientific or commercial information indicating that the population meets the definition of "species" under the Act.

DATES: The finding announced in this document was made on November 4, 1994. Information and comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding this petition should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, the Service's finding, and additional information are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

The Service has now made a 90-day finding on a petition to list the Santa Ana Mountains population of the California mountain lion (*Felis concolor californica*). The petition, dated February 25, 1992, was submitted by Mr. Mark Palmer, Conservation Director and Chief Executive Officer of the Mountain Lion Foundation, and received by the Service on February 27, 1992. The petitioner requested that the Santa Ana Mountains population of the California mountain lion be added to the list of endangered species.

The range of the California mountain lion encompasses most of California, southern Oregon, western Nevada, and northern Baja California, Mexico. Although the petition presents information (Beier and Barrett 1993) suggesting deterioration of the mountain lion's habitat and a population decline within the Santa Ana Mountains of Orange, western Riverside and northern San Diego Counties, California, insufficient evidence exists that this population is discrete and naturally isolated from the remainder of this subspecies. Mountain lions, paticularly males and younger animals, are well known to be wide ranging, with possible dispersal in excess of 160 kilometers (100 miles). Additionally, insufficient evidence exists to demonstrate that these lions are significant in terms of morphological, genetic, or behavioral distinctness as compared to the subspecies overall. Therefore, the Santa Ana Mountains population of the California mountain lion does not meet the definition of a "species" as defined by the Act.

The Service has reviewed the petition and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information that the Santa Ana Mountains population of the California mountain lion meets the definition of a "species" under section 3(15) of the Act. This action places the Santa Ana Mountain population of the California mountain lion into category 3–B for the purposes of future candidate assessment; this category is for inactive candidates determined to not meet the definition of "species" under the Act.

If additional data become available in the future, the Service may reassess its finding.

References Cited

Beier, P., and R.H. Barrett. 1993. The cougar in the Santa Ana Mountain range, California, Final Report. Orange County Cooperative Mountain Lion Study. Department of Forestry and Resource Management, Univ. of California, Berkeley.

Author

The primary author of this document is Fred M. Roberts, Carlsbad Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 4, 1994.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 94–28040 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 59, No. 218
Monday, November 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94-119-1]

Public Meeting; Implementation of Boll Weevil Control Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are announcing that a public meeting will be held to provide a forum for community input on health and environmental issues associated with implementation of a program to control boll weevils in the Lower Rio Grande Valley of Texas. Basic information regarding the proposed program will be dismissed at the meeting and an opportunity for oral presentations will be provided.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held on November 29, 1994, at the Best Western Palm Air Motor Inn, 415 South International Boulevard (Highway 1015), Weslaco, TX 78596; and will begin at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Miller, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565; or Joe Davidson, Plant Protection and Quarantine, APHIS, USDA, suite 321, 3505 Boca Chica Boulevard, Brownsville, TX 78521-4065, (210) 504-4154.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is planning to cooperate in a boll weevil eradication program in the Lower Rio Grande Valley of Texas, including the counties of Brooks, Cameron, Hidalgo, Starr, Webb, and Willacy. The eradication program relies, in part, on the use of chemicals (predominantly malathion) which are applied to the cotton crop. Consistent with the National Environmental Policy Act (NEPA), APHIS is undertaking the environmental assessment process as a first step, in the Lower Rio Grande Valley, in determining the effects of program actions and alternatives on the quality of the human environment.

We are aware that a number of minority and low-income farmworkers reside in proximity to the cotton fields that may require treatment. A number of household gardens are planted by area farmworkers and their families (many of whom are Spanish speaking) near their residences. We are also aware that produce from those gardens, as well as fish caught by farmworker family members in nearby streams, may be consumed by those family members, and also sold in the marketplace to supplement family incomes.

Executive Order No. 12898 of February 11, 1994, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs each agency of the Federal Government to identify and address disproportionately high and adverse human health or environmental effects of agency programs, policies, and activities on minority populations and low-income populations. The executive order is intended, in part, "to provide minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment." To this end, the President has directed that "[e]ach Federal agency shall provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices."

The public meeting announced in this notice is intended to promote the objectives of NEPA and Executive Order No. 12898. Information concerning the program and issues that will be examined will be provided (in English and Spanish) to everyone in attendance at the meeting and anyone else who requests it. Any individual who wishes to will be able to make an oral presentation to agency officials. Sign-up sheets for that purpose will be available at the meeting place. To avoid repetition and to provide an opportunity for all views to be aired at the meeting, individuals or groups with similar interests should designate a single spokesperson to represent them in any oral presentation. The substance of this notice will also be published in newspapers (English and Spanish) serving the Lower Rio Grande Valley of Texas.

Done in Washington, DC, this 7th day of November, 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-28048 Filed 11-10-94; 8:45 am]

BILLING CODE 3410-34-M

ARCTIC RESEARCH COMMISSION

Meeting

November 4, 1994.

Notice is hereby given that the Arctic Research Commission will hold its 37th Meeting in San Francisco, California, on December 7-8, 1994. On Wednesday, December 7, a Business Session open to the public will convene at 9:00 a.m. in the Cathedral Hill Hotel at Geary and Van Ness Streets. Agenda items include: (1) Chairman's Report; (2) Recent Research Activities in the Arctic Ocean; (3) Engineering Initiatives; (4) Arctic Logistics; and (5) The Arctic Monitoring and Assessment Program. On Thursday, December 8, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Arctic Submarine Plans and Operations; (2) Icebreaker Notes; (3) Revision of the Goals Report, and (4) Trip Reports. An Executive Session for Members of the Commission will be held following the Business Session on December 8.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703-525-0111 or TDD 703-306-0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 94-27941 Filed 11-10-94; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34-94]

Foreign-Trade Zone 80—San Antonio, TX; Application for Subzone Status R.G. Barry Corporation (Footwear and Thermal Comfort Products) San Angelo, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Antonio, grantee of FTZ 80, requesting special-purpose subzone status for the distribution facilities of R.G. Barry Corporation, located in San Angelo, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 1, 1994.

R.G. Barry is a manufacturer and distributor of comfort footwear (household slippers) and thermal comfort products (heat seats, scarves, back warmers, hand warmers, pocket warmers, ear muffs and bread warmers), headquartered in San Antonio, Texas. The company employs 3,685 people worldwide and its total sales in 1993 exceeded $100 million.

R.G. Barry has two facilities in San Angelo, Texas, some 200 miles northwest of San Antonio. They are located at 3301 Barry Avenue (144,000 sq. ft. on 9.9 acres) and 2000 Loop St. (145,800 sq. ft. on 10 acres). The facilities (235 employees) are engaged in the warehousing and distribution of R.G. Barry's footwear and comfort products. The Loop Street facility is also used for injection molding of slipper soles for footwear, but this activity would not be conducted under zone procedures. The products are generally made of domestic materials (polyester and other man-made fibers), which are cut at Barry plants in the U.S. and sent to company plants abroad to be sewn. The finished products are then shipped to Barry's U.S. distribution centers in San Angelo and Laredo, Texas and Goldsboro, North Carolina. While currently over five percent of the finished products are reexported, the company plans to increase export activity to 14 percent.

Zone procedures would exempt R.G. Barry from Customs duty payments on the foreign value involved in products that are reexported. On its domestic sales, the company would be able to defer Customs duties on the value added abroad. The application indicates that zone savings would help improve the international competitiveness of the company's domestic operations.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 13, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 30, 1995.)

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Port Director, 9800 Airport Blvd., Suite 1103, San Antonio, Texas 78216.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: November 7, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94-28046 Filed 11-10-94; 8:45 am]

BILLING CODE 3410-34-P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 1995.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Steel Jacks [1]	
A-122-006	
Seeburn	09/01/93-08/31/94
New-Form Manufacturing Co.	
Italy:	
Pressure Sensitive Plastic Tape	
A-475-059	
Autoadesivi Magri, s.r.l	10/01/93-09/30/94
N.R.A., S.p.A.	
Japan:	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished; Tapered Roller Bearings and Certain Components Thereof	
A-588-604	
A-588-054	
NTN Corporation	10/01/93-09/31/94

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Antidumping duty proceedings	Period to be reviewed
NSK Ltd.	
Kawasaki Heavy Industries	
Koyo Seiko Co., Ltd.	
Nachi-Fujikoshi Corp.	
Fuji Heavy Ind.	
Itochu (C. Itoh)	
Maekawa Bearing	
MC International	
Niigata Converter Co.	
Sumitomo Shoji	
Suzuki Motor Co., Ltd.	
Honda Motor Co.	
Toyosha Co., Ltd.	
Yamaha Motor Co., Ltd.	
Daido Steel	
Kawada Tekkosho	
Asakawa Screw Co.	
Fuserashi	
Hamanaka Nut	
Ichiyangi Tekko	
Isshi Nut Ind.	
Toyo Valve Co.	
Kinki Marusei Nut Koygo Kumiai	
Kitz Corp. (Kitazawa Valve Co.)	
Nittetsu Bolten	
Shinga Bolt	
Shinko Bolt	
Showa Seiko Co., Ltd.	
Sugiura Seisakusho	
Sumikin Seiatsu	
Unytite Fastener Mfg. Co., Ltd. (Unytite Koygo)	
Malaysia:	
Extruded Rubber Thread	
A–557–805	
Heveafil Sdn. Bhd.	10/01/93–09/30/94
Filmax Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Filati Lastex Elastofibre Sdn. Bhd.	
Rubfil Sdn. Bhd.	
Rubber Thread Industries Sdn. Bhd.	
The People's Republic of China	
Spring Lock Washers	
A–570–822	
Hagzhou Spring Washer Plant	10/15/93–09/30/94
All other exporters of spring lock washers from the PRC are conditionally covered by this review.	
The People's Republic of China:	
Chrome-Plated Lug Nuts[2]	
A–570–808	
China National Machinery & Equipment, I/E Corporation, Nantong Branch	09/01/93–08/31/94
China National Automotive Industry, I/E Corporation, Yangzhou Branch	
China National Automotive Industry, I/E Corporation	
China National Machinery & Equipment, I/E Corporation, Jiangsu Branch	
Ningbo Knives & Scissors Factory	
Rudong Grease-Gun Factory	
Shanghai Automobile I & E Corp.	
Tianjin Automobile I & E Corp.	
All other exporters of chrome-plated lug nuts from the PRC are conditionally covered by this review.	

[1] This is a correction to 59 FR 51939, published October 13, 1994, for steel jacks from Canada. The firms initiated should have read as stated here.

[2] This is a correction to 59 FR 51939, published October 13, 1994, for chrome-plated lug nuts from the PRC. The firms initiated should have read as stated here.

Countervailing duty proceedings	Period to be reviewed
Brazil: Certain Agricultural Tillage Tools, C–351–406	01/01/93–12/31/93
India: Certain Iron-Metal Castings, C–533–063	01/01/93–12/31/93
Sweden: Certain Carbon Steel Products, C–401–401	01/01/93–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: November 7, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–28052 Filed 11–10–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–813 (France); A–533–811, C–533–812 (India); A–508–807, C–508–808 (Israel); A–557–808 (Malaysia); A–580–824 (South Korea); A–549–809 (Thailand); A–412–816 (United Kingdom); A–307–812 (Venezuela)]

Notice of Postponement of Final Antidumping and Countervailing Duty Determinations: Certain Carbon Steel Butt-Weld Pipe Fittings From France, India, Israel, Malaysia, South Korea, Thailand, the United Kingdom and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gary Bettger (France and Israel), Susan Strumbel (India and Venezuela), Thomas McGinty (Malaysia and South Korea), Vincent Kane (Thailand and UK), Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–2239, 492–1442, 482–5055, and 482–2815, respectively.

Postponement of Final Determination

On September 26, 1994, (59 FR 50564, October 4, 1994), the Department issued its preliminary determinations in these investigations.

Respondents requested that the Department postpone the final determinations in the respective investigations on the following dates: Awaji Sangyo Co., Ltd. (Thailand)—October 3, 1994; BKL Fittings Limited (United Kingdom)—October 3, 1994; Sivanandha Pipe Fittings Ltd. and Karmen Steels (India)—October 5, 1994; Pipe Fittings Carmiel Ltd. (Israel)—October 5, 1994; Interfit, S.A. and Vallourec, Inc. (France)—October 11, 1994; Embassy of the Republic of Korea on behalf of Korean exporters (South Korea)—October 13, 1994; Petroltubos S.A. and Coveco C.A. (Venevzuela)—October 14, 1994; Government of Malaysia on behalf of Malaysian exporters (Malaysia)—October 20, 1994.

These postponements are provided for in Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(a)(2)).

Postponement of Final Antidumping Determinations

Under Section 735(a)(2) of the Act and section 353.20(b) of the Department's regulations (19 CFR 353.20(b)) if, subsequent to the preliminary determination, the Department receives a request for postponement of the final determination from the party adversely affected by the determination, the Department will, absent compelling reasons for denial, grant the request. Accordingly, we are postponing our final determinations in these investigations until no later than February 16, 1995.

Postponement of Final Countervailing Determinations

On June 27, 1994, in accordance with section 705(a)(1) of the Act, we aligned the final determinations in the countervailing duty (CVD) investigations for both India and Israel, involving the merchandise subject to these investigations with the final determinations in the companion antidumping duty (AD) investigations (see. 59 FR 39255, June 27, 1994). Therefore, the final CVD determinations in these investigations will also now be postponed until no later than February 16, 1995.

Public Comment

In accordance with 19 CFR 353.38(b) and 355.38(b), we will hold public hearings to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing schedules are as follows:

February 1, 1995, 8:30 AM–5:00 PM, Room 1412
Antidumping Hearings: France, South Korea, Venezuela, Thailand, United Kingdom

February 2, 1995, 8:30 AM–5:00 PM, Room 1412
Antidumping Hearings: Malaysia, India, Israel
Countervailing Duty Hearings: India, Israel

All hearings will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date and place of the hearings 48 hours prior to the scheduled time.

In accordance with 19 CFR 353.38, for the AD hearings, case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than January 23, 1995. Additionally, rebuttal briefs must be submitted no later than January 30, 1995.

In accordance with 19 CFR 355.38, for the CVD hearings, case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than January 24, 1995. Additionally, rebuttal briefs must be submitted no later than January 31, 1995.

This notice is published pursuant to 19 CFR 353.20(b).

Dated: November 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28050 Filed 11–10–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review and Partial Termination.

SUMMARY: On February 17, 1994, the Department of Commerce published the preliminary results of administrative review of the antidumpting duty order on chrome-plated lug nuts from Taiwan. The review covers four firms and the period April 18, 1991, through August 31, 1992. Based on our analysis of the comments received, we have determined that the dumping margins remain the same as those presented in the preliminary results.

EFFECTIVE DATE: November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195 or 482–3814, respectively.

Background

On February 17, 1994, the Department of Commerce (the Department) published the preliminary results (59 FR 7981) of its administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan (September 20, 1991, 56 FR 47737). No hearing was requested. On March 18, 1994, the petitioner submitted a brief. On March 25, 1994, the respondent submitted a rebuttal brief. The Department has now completed this administrative review in accordance with section 751 of the

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Tariff Act of 1930, as amended (the tariff Act).

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than $1^{1}/_{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least ¾ inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus $^{1}/_{16}$ of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of this review.

During the period of review, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

This review covers four firms: King Kong Corporation; Gourmet Equipment (Taiwan) Corporation (Gourmet); Chu Fong Metallic Industrial Corporation (Chu Fong); and San Chien Electric Industrial Works (San Chien). The period of review is April 18, 1991, through August 31, 1992.

For the two parties that refused to respond to our questionnaire, Chu Fong and San Chien, we based our determination on best information available (BIA). The First-tier BIA rate we applied is 10.67 percent, which is the highest rate the Department found in the original less-than-fair value investigation (LTFV). Gourmet provided us with responses to our questionnaire, however the information it provided was unverifiable (see verification report). Accordingly, we applied the second-tier BIA rate of 6.47 percent. This rate represents the highest rate ever applicable to Gourmet. King Kong Corporation received the "all others" rate because the Department attempted, but could not locate, an address for it.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from the petitioner, Consolidated International Automotive, Inc., and rebuttal comments from one respondent, Gourmet.

Comment 1

Petitioner believes that the Department correctly applied best information available (BIA) to both cooperative and uncooperative firms. However, petitioner asserts that the rates assigned to uncooperative firms do not accomplish the statute's two goals with regard to BIA, which are: (1) To approximate the actual dumping margins, and (2) to induce future compliance. Petitioner further stresses that these rates may not be sufficient to encourage compliance with the order by middlemen, which is especially important in this case since the Department chose not to initiate a middleman dumping investigation in response to petitioner's request for one. Accordingly, petitioner asserts that the Department has the authority to apply a BIA rate to the uncooperative firms based on a rate found in the petition.

Petitioner cites Brass Sheet and Strip from Sweden: Final Results of Antidumping Duty Administrative Review (57 FR 29278, July 1, 1992) for an explanation of the Department's BIA policy. In that case, the Department stated: "The primary purpose of the BIA rule is to induce respondents to provide the Department with timely, complete or accurate information, so that the agency can achieve the fundamental purpose of the Tariff Act, namely, 'determining current margins as accurately as possible'." The Department also explained that "to induce a noncomplying respondent to provide the necessary response to a future information request, the Department must select an appropriate BIA rate to encourage future compliance." Petitioner stresses that encouraging middlemen to cooperate is especially important, otherwise the issue of middleman dumping cannot be addressed.

Petitioner cites § 353.37(b) of the Department's regulations which defines the Department's latitude in assigning BIA rates: "The best information available may include the factual information submitted in support of the petition or subsequently submitted by interested parties. * * *. If an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available." Petitioner also cites *Krupp Stahl A.G.* v. *United States*, 822 F. Supp. 789 (CIT 1993) (*Krupp Stahl*) where the Court of International Trade (CIT) affirmed the Department's broad discretion in determining which BIA rate to apply.

Petitioner states that *Krupp Stahl* supports its argument that "[o]nce Commerce has exercised its discretion to use the best information available rule against a respondent, it is for Commerce, not the respondent, to determine what is the best information."

The respondent, Gourmet, argues that Chu Fong and San Chien, should be assigned the cooperative second-tier BIA rate because they are trading companies. Gourmet claims that, according to the Department's own policy, trading companies are not required to respond. Gourmet points to the Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from Taiwan (56 FR 36130, 36132 (July 31, 1991)), which states that "it is the Department's longstanding practice to look at prices charged by the manufacturer, as opposed to the trading company, where the manufacturer knows the destination of the merchandise." According to Gourmet, the Department was aware of Gourmet's relationship with trading companies during the original investigation. In addition, Gourmet provided one trading company's invoices of lug nuts manufactured by Gourmet in the questionnaire response and at verification. Respondent claims the Department therefore had all the necessary information to cover Gourmet's and all trading company sales. It refers to *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2nd 1185 (Fed. Cir. 1993) (*Allied-Signal*), where the CIT found that the Department cannot apply punitive BIA when a firm did provide the requested information, although not in the form requested by the Department.

Respondent claims that the Department cannot apply adverse BIA to the trading companies based on the margins contained in the petition. Following the Department's two-tiered BIA methodology, respondent argues that the rate assigned to an uncooperative firm may be based on either (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV or prior administrative reviews, or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin. Furthermore, the respondent claims that the petition-based rate may not be considered because the petition is not part of this administrative review.

Department's Position

In our preliminary results of review, we determined in accordance with section 776(c) of the Tariff Act that the use of BIA was appropriate for San Chien and Chu Fong because they failed to respond to our questionnaires. Each firm was sent a questionnaire and a follow-up letter. The questionnaire stated, "[a]ny undue delay or lack of response may result in our proceeding with appraisements based on the best information available" (from Laurie Lucksinger, Division Director, Office of Antidumping Compliance, March 24, 1993). The follow-up letter stated, "[t]he Department has received no response. If you are still intending to respond, we must receive your response by June 19, 1993. Otherwise the Department must conclude that your firm is not responding to the questionnaire. As stated in the questionnaire sent to you, the Department will use the best information otherwise available to determine your antidumping margin" (from Laurie Lucksinger, Division Director, Office of Antidumping Compliance, June 1, 1993). Neither firm responded to the questionnaire nor to the follow-up letter.

While trading companies normally are not required to participate in a review when the manufacturer knows the ultimate destination of the merchandise, it is necessary for a firm to respond to a questionnaire in order for the Department to be able to establish the fact that it is a trading company. The nature of Chu Fong's and San Chien's business has not been established in this review, because neither firm responded to a questionnaire. Therefore, we cannot determine that these firms are in fact trading companies, manufacturing companies, or a combination of both.

The LTFV investigation is not part of this review. Therefore, information submitted during the LTFV investigation cannot be used in this review unless it is placed on the record of this review by the Department or an interested party. Furthermore, business relationships and practices established during the LTFV investigation may or may not be the same during subsequent administrative reviews. Thus, it is necessary for respondents to respond to questionnaires.

Gourmet is incorrect in claiming that the Department has all of the information necessary to conduct a review that covers both the trading company's and Gourmet's sales. In this review, we had only the invoices of the subject merchandise that related to Gourmet's sale to the United States through one trading company. There is no information concerning U.S., home market, or third country sales by the trading companies of subject merchandise produced by manufacturers other than Gourmet. In addition, there is no general information relating to corporate structure, ownership, corporate functions, accounting practices, and quantity and value of sales of the two trading companies.

The respondent is also incorrect in citing *Allied Signal* to support its claim that first-tier BIA is inappropriate. In *Allied Signal*, the court stated, "[t]he ITA may well have been justified in resorting to the first tier in selecting the best information available for bearings produced by INA Roulements S.A. after it announced that it would not participate in the administrative review and accordingly did not respond to the questionnaire at all." In this review, San Chien and Chu Fong submitted nothing, unlike the respondent in *Allied Signal*, which has submitted a response to the questionnaire and demonstrated its willingness to cooperate to the extent that it could.

Because San Chien and Chu Fong failed to respond to our questionnaire, we assigned them the highest rate of any company from the LTFV investigation. In assigning this BIA rate, we were following our two-tiered methodology under which we impose the most adverse rates upon those who refuse to cooperate or otherwise significantly impede the proceeding, and less adverse rates upon those who were cooperative but failed to provide requested information in a timely manner or in the form required (see Final Results of Antidumping Duty Administrative Review of Antifriction bearings and Parts Thereof from France, *et al.*, 58 FR 39739, July 26, 1993, and section 776 (c) of the Tariff Act.

The application of the two-tiered methodology used in the preliminary results does achieve the intended results of using BIA. The threat of application of first-tier BIA induces respondents to provide the Department with timely, complete, and accurate factual information. therefore, we have determined to continue our use of the two-tiered methodology. Accordingly, we have applied the highest margin from the LTFV investigation to San Chien and Chu Fong. The rate is 10.67 percent.

Comment 2

With respect to Gourmet, petitioner questions whether the cooperative BIA rate assigned in the preliminary results of review actually reflects the true dumping margins. Petitioner believes that this is an important criterion for the Department to consider in selecting a rate.

Department's Position

We have determined that the cooperative second-tier BIA rate of 6.47 percent is appropriate for Gourmet for the period of review, pursuant to section 776(c) of the Tariff Act. Although, Gourmet submitted all requested information in a timely manner, we were unable to reconcile its response with its audited financial statements.

The BIA rate is Gourmet's rate from the LTFV investigation. As we are unable to compute a margin from verifiable information in this review, the Department determines that the rate Gourmet received in the LTFV investigation is a reasonable approximation of Gourmet's actual dumping margins.

Final Results of Review

As a result of comments received, we have not revised our preliminary results. Therefore, we find the following margins exist for the period April 18, 1991 through August 31, 1992:

Manufacturing/exporter	Margin (percent)
Gourmet Equipment (Taiwan) Corporation	6.47
Chu Fong Metallic Industrial Works Co, Ltd	10.67
San Chien Industrial Works, Ltd	10.67
King Kong Corporation	6.93

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customers Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firms will be those firms' rates established above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the "all others" rate will remain at 6.93 percent as established in the LTFV investigation (see *Floral Trade Council* versus *United States*, Slip Op. 93–79).

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These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 4, 1994

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-28051 Filed 11-10-94; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B-256, Gaithersburg, MD 20899; Fax 301-869-2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTAL INFORMATION: The inventions available for licensing are:

NIST Docket No. 91-020CIP

Title: Electrical Test Structure and Method for Measuring the Relative Locations of Conducting Features on an Insulating Substrate.

Description: NIST researchers have invented a new electrical test structure to provide measurements of the separations of conducting features on an insulating substrate with uncertainties typically below 10 nm. Measurement dynamic repeatability is nominally less than 1 nm. Absolute accuracy has been determined by comparing measurements of the same feature separations with those made by the NIST line-scale interferometer which has traceability to absolute length standards.

NIST Docket No. 92-013

Title: Aerosol Mass Spectrometer.

Description: The analysis of aerosol particle mass is important in a number of fields including chemical process control, air pollution analysis and ceramic powder production and use. Current devices used to classify aerosol particles do so based on size and then make some assumptions to estimate the weight. This new device is capable of classifying the particles according to specific weight and thereby particle mass.

NIST Docket No. 94-016

Title: A Simple, Effective Method for Bonding to Mineralized Dental Tissue Using N-Phenyliminodiacetic Acid.

Description: The wider applicability of conservative and preventive dentistry depends on the availability of simple, effective dental bonding procedures. Such dental adhesive systems have been developed based on N-phenyliminodiacetic acid, a unique amino acid with conditioning, cleansing and polymerization-initiating properties.

Dated: November 7, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-27993 Filed 11-10-94; 8:45 am]

BILLING CODE 3510-13-M

[Docket No. 941096-4296]

Termination of Selected National Voluntary Laboratory Accreditation Program (NVLAP) Services

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice is to announce to decision by the Director of NIST to: (1) terminate the NVLAP High Level Protocols, Solid Fuel Room Heaters, and the DDN X.25/Blacker Host fields of testing as of December 31, 1994; and (2) continue two fields of testing, Plastics, and Seals and Sealants.

Under the NVLAP Procedures (15 CFR, Part 285), the Director of NIST may terminate a field or a laboratory accreditation program (LAP) when it is determined that a need no longer exists to accredit laboratories for the services covered under the scope of a LAP.

Accreditations previously granted in the terminated fields of testing will remain effective through December 31, 1994, or until their expiration date, whichever is later. Laboratories may voluntarily terminate their accreditation at any time.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975-4016.

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Standards and Technology administers the National Voluntary Laboratory Accreditation Program under regulations as found in Part 285 of Title 15 of the Code of Federal Regulations. NVLAP provides an unbiased third party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance by accrediting calibration and testing laboratories found competent to perform specific tests or calibrations.

NVLAP accreditation is available to commercial laboratories, manufacturer's in-house laboratories, and federal, state and local government laboratories. Foreign-based laboratories may also be accredited if they meet the same requirements as domestic laboratories.

NVLAP is comprised of a series of Laboratory Accreditation Programs (LAPS) which are established on the basis of requests and demonstrated need. Each LAP includes specific test and/or calibration standards and related methods and protocols assembled to satisfy the unique needs for accreditation in a field of testing, field of calibration, product or service.

On April 12, 1994, NIST published a notice in the **Federal Register** (59 FR 17338) requesting comments on the proposed termination of selected fields of testing in the Computer/Electronics and Product Testing Laboratory Accreditation Programs offered by NVLAP. The fields of testing proposed for termination were High Level Protocols, DDN X.25/Blacker Host, Plastics, Seals and Sealants, and Solid Fuel Room Heaters.

Analysis of Comments Received

After a 60 day comment period, a total of 12 responses were received; 10 regarding the Seals and Sealants field of testing, 1 regarding the continuance of the DDN X.25/Blacker Host field of testing and 1 regarding the termination of the Solid Fuel Room Heaters field of testing. Of the 12 responses, 7 were from manufacturers of seals and sealants, 2 from government agencies, 2 from a testing laboratory and 1 from an industry trade association.

Comment: Two letters from one manufacturer stated that sealant specifiers and manufacturers of quality sealants rely on the quality and accuracy of the data presented from an accredited laboratory.

Response: NVLAP agrees with the statements in these letters.

Comment: A manufacturer, a government agency, and a testing laboratory commented that the seals and sealants industry needs NVLAP-accredited laboratories to conduct independent testing of products. Two other manufacturers commented that they seek independent accredited laboratories to perform testing on their product.

Response: NVLAP agrees that a need for NVLAP accreditation exists.

Comment: Two manufacturers and a trade industry commented that the Sealant Waterproofing & Restoration Institute (SWRI) is developing a validation program which requires NVLAP accreditation for seals and sealants testing laboratories. However, the validation program would not be realized for another 18-24 months.

Response: NVLAP will work with the (SWRI) as they develop their accreditation program.

Comment: One letter from a government agency requested that NVLAP temporarily continue the DDN X.25/Blacker Host field of testing through December 31, 1994, because it is planning to consolidate the requirements of this program with those of the larger NVLAP program of GOSIP.

Response: Because the Defense Information Systems Agency (DISA) requires all laboratories performing qualification testing for equipment on the DISA approved DDN X.25 Qualified Host Interface and the DDN X.25/Blacker Host Interface list, NVLAP has agreed to maintain this field and the others fields of testing through December 31, 1994.

Comment: One letter from a testing laboratory supported our proposal for the termination of the Solid Fuel Room Heater field of testing.

Response:. The Solid Fuel Room Heater field of testing will be terminated as proposed.

No responses were received regarding the High Level Protocols or Plastics fields of testing.

Based on the above analysis of the comments received, the Director of NIST has decided to: (1) terminate the NVLAP High Level Protocols, DDN X.25/Blacker Host, and Solid Fuel Room Heaters fields of testing; (2) continue the Seals and Sealants field of testing, and (3) continue the Plastics field of testing because it shares the same laboratory population as the Seals and Sealants field and because products tested in both fields are similar.

Dated: November 7, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-27994 Filed 11-10-94; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the procurement list commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 14, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On July 15 and 22, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 36168 and 37465) of proposed additions to the procurement list.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and service proposed for addition to the Procurement List. Accordingly, the following commodities and service are hereby added to the procurement list:

Commodities

Curtain, Smoke

4210-01-306-7826

Pen, Rubberized, Retractable with Refills

7510-01-368-3500, 7510-01-368-3501, 7510-01-368-3502, 7510-01-381-7997, 7510-01-381-7998, 7510-01-381-8014, 7520-01-368-7771, 7520-01-368-7772, 7520-01-368-7773, 7520-01-352-7309, 7520-01-352-7310, 7520-01-352-7311

Service

Janitorial/Minor Maintenance

U.S. Post Office, Courthouse and Customs House, 301 Simonton Street, Key West, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94-28054 Filed 11-10-94; 8:45 am]

BILLING CODE 6820-33-P

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Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 14, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 2, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 45668) of proposed addition to the Procurement List. Comments were received from one of the current contractors for the litter during the development phase of the proposal to add the litter to the Procurement List. This contractor indicated that addition of the litter to the Procurement List would have catastrophic consequences for the company, which is totally dependent on sales to the Government, particularly the Defense Personnel Support Center (DPSC), which buys the litter from this contractor. According to the contractor, loss of the ability to supply the litter to the Government, along with other losses due to reduced Government purchasing, will result in significant layoffs of the contractor's personnel in a labor surplus area and will place the company's ability to survive in jeopardy. This contractor also noted that it had made a substantial investment in tooling and fixtures to make the litter.

The other current contractor for the litter contacted the Committee after the comment period for the proposal to add the litter to the Procurement List had ended. This contractor provided data to support its claim of being a longtime supplier of the litter. The contractor questioned the adequacy of notice to it of the Committee's proposal to add the litter to the Procurement List, and challenged the propriety of the Committee's determinations on the suitability of the nonprofit agency to produce the litter and the impact of the action on the contractor. The contractor also claimed that addition of the litter would have an adverse impact on national security.

The second contractor also indicated that it had Government sales of the litter outside of DPSC, which the Committee initially believed bought all the Government requirement for this litter for distribution to other agencies. As the Committee's proposal was based on the DPSC requirement for the litter, the Committee has decided to limit its addition of this litter to the Procurement List to the DPSC requirement, rather than the total Government requirement as originally proposed. This will also limit the effect of the Committee's action on the two contractors, as the Government market outside DPSC will remain available for them to compete to supply.

In order to gauge the likely impact on the two contractors of adding the DPSC requirement for the litter to the Procurement List in a period of declining Government purchases, the Committee has acquired DPSC data concerning its purchases of the litter since 1988 (all from the two commenting contractors). The Committee has determined impact on the two contractors by assigning each of them a portion of the estimated requirement for the litter for next year in proportion to the average percentage of the requirement which they supplied during that period, and by applying the portion to the latest sales data and projections provided by each contractor, in one case through a financial reporting service to which the Committee subscribes.

Using this approach, the percentage of each contractor's total sales which it would lose is not high enough to constitute severe adverse impact, in the Committee's estimation. Consequently, the Committee does not believe its action will jeopardize the survival of either company. As to the possible displacement of workers in a labor surplus area, the addition of the litter to the Procurement List will create jobs for blind people, whose unemployment rate far exceeds that of nondisabled workers, even in labor surplus areas.

Under the competitive bidding system, no contractor is guaranteed a contract with the Government to supply an item. A decision to make an investment in tooling and fixtures to produce an item thus requires a business to assume a certain amount of risk. In this case, the first contractor did not get the previous contract for the litter and has not indicated that it will be unable to use its tooling and fixtures to produce litters commercially. Consequently, the Committee does not believe that addition of the Government requirement for the litter to the Procurement List will severely impact the contractor in this regard.

The second contractor's challenge to the propriety of the Committee's notice is that the Committee did not give it actual notice of the proposal and that the notice published in the **Federal Register** did not provide sufficient detail to allow the contractor to evaluate the suitability of the litter for inclusion on the Procurement List. When it adds items to the Procurement List, the Committee is required to use a rulemaking process set forth in 5 U.S.C. 553 which includes notice of its intent in the Federal Register, which in turn is considered under the law to be adequate notice to all affected parties. The Committee believes that its notices contain all the elements which the law requires for a notice of proposed rulemaking.

The second contractor also challenged the adequacy of the Committee's determinations on suitability and impact of the addition to the Procurement List on the contractor, as the contractor had not provided information on these two points. The Committee, following its usual practice, based its suitability determination on an inspection of the nonprofit agency arranged by DPSC, a separate inspection by the central nonprofit agency which represents the nonprofit agency in the Committee's program, and the nonprofit agency's long record of successful production of a variety of items including a comparable litter. The basis for the Committee's determination that addition of the litter to the Procurement List will not have a severe adverse impact on either contractor was described earlier in this notice. The Committee does not believe that additional information from the contractor would be likely to alter either determination, and the delay necessary for the information to be provided would frustrate the purpose of the Committee's program, to create employment for blind people, as DPSC needs to procure litters before the information can be provided. The Committee's regulations provide for a reconsideration of its decision if information can be provided which would significantly affect any of the factors on which the decision was made, so the contractor will still be able to present any significant information it finds.

The second contractor's claim that addition of the litter to the Procurement List will have an adverse effect on national security is based on the fact that as a defense contractor the second contractor is required to be able to provide additional quantities of the litter in the event of a national emergency. The nonprofit agency which will produce the litter is also required to possess this capacity, and the surveys which were done on it took this factor into account. As the contractor will still be able to bid on the non-DPSC part of the Government requirement, it is unlikely that it will give up its productive capabilities for the litter, and thus lose its capability to contribute to the defense industrial base for the item, as it had indicated it would do in response to the Committee's original proposal to add the entire Government requirement for the litter to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Litter, Folding

6530–00–783–7205

(Requirements for the Defense Personnel Support Center only)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 94–28053 Filed 11–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 14, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Test Kit, Oil Condition
6630–01–096–4792
NPA: Lancaster County Association for the Blind, Lancaster, Pennsylvania

Drawers and Undershirt, Chemical Protective
8415–00–NSH–0091
8415–00–NSH–0092
8415–00–NSH–0093
8415–00–NSH–0094
8415–00–NSH–0095
8415–00–NSH–0096
8415–00–NSH–0097
8415–00–NSH–0098
8415–00–NSH–0099
8415–00–NSH–0100
8415–00–NSH–0101
8415–00–NSH–0102
8415–00–NSH–0103
8415–00–NSH–0104
8415–00–NSH–0105
8415–00–NSH–0106
8415–00–NSH–0107
8415–00–NSH–0108
(Requirements for the U.S. Marine Corps, Quantico, Virginia)
NPA: Peckham Vocational Industries, Inc. Lansing, Michigan

Shirt and Trousers, Chemical Protective
8415–00–NSH–0109
8415–00–NSH–0110
8415–00–NSH–0111
8415–00–NSH–0112
8415–00–NSH–0113
8415–00–NSH–0114
8415–00–NSH–0115
8415–00–NSH–0116
8415–00–NSH–0117
8415–00–NSH–0118
8415–00–NSH–0119
8415–00–NSH–0120
8415–00–NSH–0121
8415–00–NSH–0122
8415–00–NSH–0123
8415–00–NSH–0124
8415–00–NSH–0125
8415–00–NSH–0126
8415–00–NSH–0127
8415–00–NSH–0128
8415–00–NSH–0129
8415–00–NSH–0130
8415–00–NSH–0131
8415–00–NSH–0132
8415–00–NSH–0133
8415–00–NSH–0134
8415–00–NSH–0135
8415–00–NSH–0136
8415–00–NSH–0137
8415–00–NSH–0138
8415–00–NSH–0139
8415–00–NSH–0140
8415–00–NSH–0141

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8415–00–NSH–0142
8415–00–NSH–0143
8415–00–NSH–0144
8415–00–NSH–0145
8415–00–NSH–0146
8415–00–NSH–0147
8415–00–NSH–0148
8415–00–NSH–0149
8415–00–NSH–0150
(Requirements for the U.S. Marine Corps, Quantico, Virginia)
NPA: Abilities Unlimited, Inc. Magnolia, Arkansas; Goodwill Industries of Atlanta, Inc. Atlanta, Georgia

Deletion

The following commodity has been proposed for deletion from the Procurement List:

Mat. Floor
7220–00–205–3099

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 94–28055 Filed 11–10–94; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange: Proposed Amendments Relating to Locational Price Differentials for the Nonfat Dry Milk Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Rule Change.

SUMMARY: The Coffee, Sugar & Cocoa Exchange ("CSCE") has submitted proposed amendments to its nonfat dry milk futures contract that will eliminate all existing locational price differentials for product delivered on the futures contract. In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before December 14, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Reference should be made to the proposed elimination of the locational price differentials for the CSCE nonfat dry milk futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The nonfat dry milk (NDM) futures contract currently provides for delivery of product from processing plants located anywhere in the continental United States. Under the contract's existing terms, the continental United States is divided into three regions for purposes of defining delivery locations: the Western, the Central, and the Eastern Regions.[1] Delivery at any location within the Western Region is at par. Delivery at any location within the Central and Eastern Regions may be made at a premiums of 3.5 and 5 cents per pound, respectively.

The proposed amendments will eliminate all of the contract's existing locational price differentials, with the effect that delivery may be made at any location in the continental United States at par. The CSCE proposes to apply the proposed amendments to all currently listed contract months following the last contract month in which there is an open position on the date that the amendment is made effective and to newly listed contract months.

The CSCE indicates that the proposal to eliminate the locational price differentials reflects current cash market pricing conditions. The Exchange observes that changes in the pricing of raw milk used to produce NDM under Federal milk marketing orders has encouraged a significant increase in the production of NDM in the Central and Eastern regions. The CSCE indicates that, consequently, these regions no longer have their traditional deficits of NDM requiring the purchase of product from the Western region and that, as a result, the contract's existing locational price differentials no longer reflect cash market conditions.

The Commission is requesting comments specifically in regard to the extent to which the proposal to allow delivery of NDM at par at all eligible delivery locations in the continental United States falls within the commonly observed or expected range of cash market price differences between each potential delivery location on the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The materials submitted by the CSCE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW, Washington, D.C. 20581 by the specified date.

Issued in Washington, D.C. on November 4, 1994.

Blake Imel,
Acting Director, Division of Economic Analysis.
[FR Doc. 94–27982 Filed 11–10–94; 8:45 am]
BILLING CODE 6351–01–P

[1] Under the contract's existing terms, the Western Region includes all locations west of longitude 103 degrees West; the Central Region includes all locations east of longitude 103 degrees West, and west of longitude 82 degrees West; and the Eastern Region includes all locations east of longitude 82 degrees West.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: November 16–17, 1994 (8:30 to 4:00).

ADDRESS: The Defense Intelligence Agency (DIAC), Bolling AFB, Washington, DC, 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–5100 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 8, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 94–28001 Filed 11–10–94; 8:45 am]
BILLING CODE 5000–04–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy.

ACTION: Notice of Availability of Invention for Licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of the patent application cited should be directed to the Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR OOCC), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application 097,802: Color Changing Pigments for Solar Energy Controllable Paints and Coatings; filed 27 July 1993.

Dated: November 7, 1994.

L.R. McNees,
Federal Register Liaison Officer.
[FR Doc. 94–27970 Filed 11–10–94; 8:45 am]
BILLING CODE 3810–AE–M

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,272,932: TORSIONAL DEVICE FOR REMOTE CONTROL STEERING SYSTEM; filed 28 May 1992; patented 28 December 1993.

Patent 5,283,586: METHOD OF PHASED MAGNITUDE CORRELATION USING BINARY SEQUENCES; filed 26 February 1992; patented 1 February 1994.

Patent 5,291,784: FLUID DYNAMIC LINEAR ACCELEROMETER; filed 17 May 1993; patented 8 March 1994.

Patent 5,299,922: POSITIVE DISPLACEMENT ROTARY PUMP; filed 1 December 1992; patented 5 April 1994.

Patent 5,301,127: HIGH SPEED METHOD FOR PREDICTING RADIO-WAVE PROPAGATION; filed 12 February 1992; patented 5 April 1994.

Patent 5,303,882: CORNER VORTEX SUPPRESSOR; filed 22 February 1993; patented 19 April 1994.

Patent 5,306,893: WELD ACOUSTIC MONITOR; filed 31 July 1992; patented 26 April 1994.

Patent 5,307,475: SLAVE CONTROLLER UTILIZING EIGHT LEAST/MOST SIGNIFICANT BITS FOR ACCESSING SIXTEEN BIT DATA WORDS; filed 29 June 1992; patented 26 April 1994.

Patent 5,307,487: METHOD OF DATABASE SYNCHRONIZATION WITH CONSISTENCY DETERMINED BY ENTRY AND EXIT COUNTERS USED ON BOTH UPDATE AND RETRIEVAL; filed 3 October 1991; patented 26 April 1994.

Patent 5,307,505: RAPID REPROGRAMMING TERMINAL; filed 5 May 1992; patented 26 April 1994.

Patent 5,307,688: METHOD AND FLOWMETER FOR UNSTEADY FLUID FLOW STUDY; filed 19 December 1990; patented 3 May 1994.

Patent 5,308,270: ICE PENETRATING BUOY; filed 15 April 1993; patented 3 May 1994.

Patent 5,308,675: FLEXIBLE HIGH DAMPING STRUCTURE; filed 15 September 1992; patented 3 May 1994.

Patent 5,308,800: APPARATUS AND METHOD FOR FORMING TEXTURED BULK HIGH TEMPERATURE SUPERCONDUCTING MATERIALS; filed 23 March 1992; patented 3 May 1994.

Patent 5,308,903: POLYURETHANE SELF-PRIMING TOPCOATS; filed 14 May 1993; patented 3 May 1994.

Patent 5,309,140: FEEDBACK SYSTEM FOR REMOTELY OPERATED VEHICLES; filed 26 November 1991; patented 3 May 1994.

Patent 5,309,647: FIBER OPTIC CABLE FOOTAGE INDICATOR; filed 21 December 1992; patented 10 May 1994.

Patent 5,310,470: CORROSIVITY SENSOR; filed 10 September 1992; patented 10 May 1994.

Patent 5,311,055: TRENCHED BIPOLAR TRANSISTOR STRUCTURES; filed 22 November 1991; patented 10 May 1994.

Patent 5,311,126: MAGNETIC FIELD STRENGTH THRESHOLD INDICATOR FOR USE IN A MAGNETIC PARTICLE INSPECTION DEVICE; filed 11 September 1992; patented 10 May 1994.

Patent 5,311,180: DIGITAL CIRCUIT FOR THE INTRODUCTION AND LATER REMOVAL OF DITHER FROM AN ANALOG SIGNAL; filed 15 January 1993; patented 10 May 1994.

Patent 5,311,764: REBOUND HAMMER; filed 19 July 1993; patented 17 May 1994.

Patent 5,312,322: THREE POINT EXTENSION SPLINT TO TREAT FLEXION CONTRACTURES ABOUT LIMB SYNOVIAL HINGE JOINTS; filed 2 November 1992; patented 17 May 1994.

Patent 5,313,513: ANNULAR COMPUTED TOMOGRAPHY; filed 11 May 1993; patented 17 May 1994.

Patent 5,314,130: COMBINATION CAPSTAN AND STOWAGE REEL ASSEMBLY FOR ARRAYS TOWED BY SUBMARINES; filed 11 July 1993; patented 24 May 1994.

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Patent 5,315,158: INTEGRATED ROLL CONTROL AND POWER SUPPLY SYSTEM AND METHOD; filed 17 May 1993; patented 24 May 1994.
Patent 5,315,304: DIGITAL MONOPULSE; filed 2 July 1993; patented 24 May 1994.
Patent 5,316,393: DUPLEX ROLLING ELEMENT BEARING MOUNTING FOR ENSURING PRELOAD CONTROL; filed 30 September 1992; patented 31 May 1994.
Patent 5,316,600: ENERGETIC BINDER EXPLOSIVE; filed 18 September 1992; patented 31 May 1994.
Patent 5,317,542: SHIP'S ATTITUDE DATA CONVERTER; filed 21 July 1993; patented 31 May 1994.
Patent 5,317,929: FIBER OPTIC FLEXURAL DISK ACCELEROMETER; filed 7 February 1991; patented 7 June 1994.
Patent 5,318,389: TOWED ARRAY HOSE TERMINATION PREPARATION TOOL APPARATUS; filed 6 May 1993; patented 7 June 1994.
Patent 5,319,249: POWER CONVERSION SYSTEM MODIFICATION TO PERMIT USE OF DC POWER SOURCE; filed 7 August 1992; patented 7 June 1994.
Patent 5,319,556: ADAPTIVE TRAJECTORY SELECTION APPARATUS AND METHOD; filed 11 December 1992; patented 7 June 1994.
Patent 5,319,608: METHOD AND SYSTEM FOR IDENTIFYING THE ONSET OF A TURBULENT BOUNDARY LAYER INDUCED BY A BODY MOVING THROUGH A FLUID MEDIUM; filed 2 September 1993; patented 7 June 1994.
Patent 5,319,726: MULTI-LINE PASSIVE FIBER OPTIC SLIPPING; filed 30 September 1993; patented 7 June 1994.
Patent 5,319,767: SLAVE CONTROLLER FOR EFFECTING A BLOCK TRANSFER OF SIXTEEN BIT WORDS BETWEEN A MEMORY AND A DATA TRANSFER BUS; filed 26 August 1992; patented 7 June 1994.
Patent 5,320,304: INTEGRATED AERODYNAMIC FIN AND STOWABLE TVC VANE SYSTEM; filed 3 March 1991; patented 14 June 1994.
Patent 5,320,402: METHOD AND APPARATUS FOR REDUCING AXIAL THRUST IN CENTRIFUGAL PUMPS; filed 21 September 1992; patented 14 June 1994.
Patent 5,320,692: SOLID FUEL RAMJET COMPOSITION; filed 25 November 1981; patented 14 June 1994.
Patent 5,320,870: FIRE PROTECTIVE COATING AND METHOD FOR APPLYING SAME TO A STRUCTURE; filed 28 August 1991; patented 14 June 1994.
Patent 5,321,004: METHOD FOR FORMING JOSEPHSON BREAK JUNCTION; filed 17 September 1992; patented 14 June 1994.
Patent 5,321,165: SYNTHETIC METHOD FOR ETHYNYLATION OF AROMATIC COMPOUNDS; filed 14 June 1993; patented 14 June 1994.
Patent 5,321,503: CLOSED LOOP, DEPOLARIZED INTERFEROMETRIC FIBER OPTIC (IFOG) GYROSCOPE WITH SELF-ADJUSTING SERRODYNE PHASE NULLING; filed 4 June 1990; patented 14 June 1994.
Patent 5,322,003: MODULAR HYDRAULIC CONTROL SYSTEM; filed 30 September 1992; patented 21 June 1994.
Patent 5,322,988: LASER TEXTURING; filed 27 July 1992; patented 21 June 1994.
Patent 5,322,997: OPTIC FIBER PAYOUT TEST APPARATUS HAVING A PROJECTILE TRACK SYSTEM WITH DUAL RAILS; filed 6 July 1993; patented 21 June 1994.
Patent 5,323,013: METHOD OF RAPID SAMPLE HANDLING FOR LASER PROCESSING; filed 31 March 1992; patented 21 June 1994.
Patent 5,323,849: CORROSION RESISTANT SHELL AND TUBE HEAT EXCHANGER AND A METHOD OF REPAIRING THE SAME; filed 21 April 1993; patented 28 June 1994.
Patent 5,325,395: 5-VOLT LOW LEVEL SERIAL TRANSCEIVER; filed 31 March 1992; patented 28 June 1994.
Patent 5,325,862: METHOD AND/OR SYSTEM FOR PERSONAL IDENTIFICATION AND IMPAIRMENT ASSESSMENT FROM BRAIN ACTIVITY PATTERNS; filed 26 March 1993; patented 5 July 1994.
Patent 5,326,992: SILICON CARBIDE AND SICALN HETEROJUNCTION BIPOLAR TRANSISTOR STRUCTURES; filed 29 July 1992; patented 5 July 1994.
Patent 5,327,359: METHOD AND SYSTEM FOR INFERRING THE RADIO REFRACTIVE INDEX STRUCTURE OF THE ATMOSPHERE FROM RADIO MEASUREMENTS; filed 24 September 1994; patented 5 July 1994.
Patent 5,329,097: COMPACT SUBSTRATE HEATER FOR USE IN AN OXIDIZING ATMOSPHERE; filed 19 May 1993; patented 12 July 1994.
Patent Application 07/777,773: JOSEPHSON BREAK JUNCTION AND METHOD OF MAKING SAME; filed 10 October 1991.
Patent Application 07/800,902: VIBRATION-DAMPING STRUCTURAL COMPONENT; filed 26 November 1993.
Patent Application 07/921,863: PASSIVE RANGE MEASUREMENT SYSTEM; filed 27 July 1992.
Patent 08/025,535: IMPROVED VIBRATION-DAMPING STRUCTURAL COMPONENT; filed 3 March 1993.
Patent Application 08/062,864: POLYURETHANE SELF-PRIMING TOPCOATS; filed 14 May 1993.
Patent Application 08/067,763: IMPROVED LIFT ENHANCEMENT DEVICE; filed 26 May 1993.
Patent Application 08/079,518: RECOVERY AND DEPLOYMENT DEVICE; filed 21 June 1993.
Patent Application 08/082,068: METHOD OF MAKING AN OFFSET CORRUGATED SANDWICH CONSTRUCTION; filed 23 June 1993.
Patent Application 08/087,237: CORROSIVITY SENSOR; filed 30 June 1993.
Patent Application 08/126,869: TRIVALENT CHRONIUM CONVERSION COATINGS FOR ALUMINUM; filed 27 September 1993.
Patent Application 08/130,940: SMALL ANTENNAS FOR COMMUNICATION OVER SEA ICE; filed 4 October 1993.
Patent Application 08/130,941: PASSIVE SURFACE DEPLOYED VARIABLE INDUCTANCE WIRE ANTENNA; filed 4 October 1993.
Patent Application 08/134,449: HYDRAULIC CYLINDER ASSEMBLY FOR USE IN VARIABLE EXTERNAL PRESSURE ENVIRONMENTS; file 12 October 1993.
Patent Application 08/159,169: FIBER GRATING-BASED DETECTION SYSTEM FOR WAVELENGTH ENCODED FIBER SENSORS; filed 30 November 1993.
Patent Application 08/174,925: UNDERWATER DELIVERY SYSTEM; filed 29 December 1993.
Patent Application 08/187,330: ACOUSTICALLY QUIET, PASSIVE LOAD FOR TESTING LOW-SPEED MOTORS; filed 26 January 1994.
Patent Application 08/193,688: TRANSDUCERS WITH IMPROVED SIGNAL TRANSFER FIELD OF THE INVENTION; filed 25 January 1994.

Patent Application 08/193,690: ELECTRON TUNNELING MAGNETIC FIELD SENSOR; filed 7 February 1994.
Patent Application 08/194,600: MULTI-PORT TESTER INTERFACE; filed 10 February 1994.
Patent Application 08/199,868: OPTICAL FIBER PRESSURE SENSOR FOR LIQUID LEVEL MONITORING; filed 22 February 1994.
Patent Application 08/200,032: FIBER OPTIC PRESSURE SENSING ARRAY; filed 22 February 1994.
Patent Application 08/202,628: MANDREL BASED EMBEDDED PLANAR FIBER-OPTIC INTERFEROMETRIC ACOUSTIC SENSOR; filed 28 February 1994.
Patent Application 08/207,311: CIRCUIT MEANS FOR PROVIDING COMPATIBILITY BETWEEN TWO SEPARATE DIGITAL DATA INTERFACES; filed 4 March 1994.
Patent Application 08/207,445: POLYURETHANE SELF-PRIMING TOPCOATS; filed 7 March 1994.
Patent Application 08/209,345: THORIATED-TUNGSTEN, SPLIT-RING, HOLLOW-CATHODE ELECTRODE FOR DISCHARGE DEVICES; filed 14 March 1994.
Patent Application 08/215,800: AUTONOMOUS ROVING UNDERWATER VEHICLE; filed 18 March 1994.
Patent Application 08/215,879: PRE-AMPLIFIER WITH MULTI-STAGE FEEDBACK; filed 25 March 1994.
Patent Application 08/217,908: ADVANCED DEGAUSSING COIL SYSTEM; filed 25 March 1994.
Patent Application 08/219,552: SCSI CONTROLLER WITH TARGET STATUS RETRIEVAL; filed 29 March 1994.
Patent Application 08/219,553: NON-INTRUSIVE SCSI STATUS SENSING SYSTEM; filed 29 March 1994.
Patent Application 08/219,554: METHOD OF RETRIEVING AND STORING COMPUTER PERIPHERAL DATA; filed 29 March 1994.
Patent Application 08/219,555: METHOD OF SENSING TARGET STATUS IN A LOCAL AREA NETWORK; filed 29 March 1994.
Patent Application 08/219,556: NETWORK FILE SERVER WITH AUTOMATIC SENSING MEANS; filed 29 March 1994.
Patent Application 08/219,557: METHOD OF NON-INTRUSIVELY SENSING STATUS IN A COMPUTER PERIPHERAL; filed 29 March 1994.
Patent Application 08/226,517: OCCUPANT REACH AND MOBILITY APPARATUS; filed 12 April 1994.

Dated: November 7, 1994.
L.R. McNees,
Federal Register Liaison Officer.
[FR Doc. 94-27971 Filed 11-10-94; 8:45 am]
BILLING CODE 3810-AE-M

Department of the Navy

Intent To Grant Partially Exclusive Patent License; Compatible Components Corporation

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Compatible Components Corporation, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 4,957,242, "Fluid Mixing Device Having a Conical Inlet and a Noncircular Outlet," issued September 18, 1990.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC), Ballston Tower One, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Dated: November 7, 1994.
L.R. McNees,
Federal Register Liaison Officer.
[FR Doc. 94-27972 Filed 11-10-94; 8:45 am]
BILLING CODE 3810-AE-M

Intent To Grant Partially Exclusive Patent License; Diamond Microelectronics Corporation

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Diamond Microelectronics Corporation, a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,269,890, "Electrochemical Process and Product Therefrom," issued December 14, 1993; and U.S. Patent Applications Serial Nos. 8/266,758, "Growing and Releasing Diamonds," filed June 28, 1994 and 08/266,770, "Polishing Diamond Surface," filed June 28, 1994.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR OOCC), Ballston Tower One, Arlington. Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Navy Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660. telephone (703) 696-40001.

Dated: November 7, 1994.
L.R. McNees,
Federal Register Liaison Officer.
[FR Doc. 94-27973 Filed 11-10-94; 8:45 am]
BILLING CODE 3810-AE-M

Department of the Navy

Intent To Grant Partially Exclusive Patent License; Serotech, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Serotech, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,276,695, "Multifrequency, Rapidly Sequenced or Simultaneous Tunable Laser", issued January 4, 1994.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR OOCC), Ballston Tower One, Arlington. Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR OOCC), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660. telephone (703) 696-4001.

Dated: November 7, 1994.
L.R. McNees,
Federal Register Liaison Officer.
[FR Doc. 94-27974 Filed 11-10-94; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

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forthcoming hearing sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Wednesday, November 30, 1994, beginning at 8:30 a.m. and ending at 5 p.m.

ADDRESS: The University of California, Irvine, Monarch Bay A Room, Campus Drive, in Irvine, California 92717–2825.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Federal Direct Student Loan Program (FDSLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report on the feasibility of proceeding to full federal direct lending by January 1, 1997.

The Advisory Committee will meet in Irvine, California, on November 30, 1994, from 8:30 a.m. to 5 p.m.

The proposed agenda includes discussion sessions on the evaluation of the Federal Director Student Loan Program (FDSLP). Also, in carrying out its legislative charges, the Advisory Committee will conduct site visits. Those who cannot attend the hearing are invited to submit written testimony for the record. Written testimony should be mailed to the Advisory Committee office. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439.

The registration deadline is Monday, November 21, 1994.

The intent of the Irvine, California hearing is to involve as witnesses many of the financial aid administrators, students, and members of the higher education community participating in direct lending from that region. In addition, congressional staff are being invited to share their views on the loan programs. Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: November 4, 1994.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 94–27996 Filed 11–10–94; 8:45 am]

BILLING CODE 4000–01–M

CFDA No: 84.200

Graduate Assistance in Areas on National Need

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshops.

SUMMARY: The Department of Education will conduct technical assistance workshops to assist prospective applicants in developing applications for the Graduate Assistance in Areas of National Need Program for fiscal year 1995. Reservations are not required for attendance at these workshops, which will be conducted from 10:00 a.m.–3:00 p.m. at each site. The workshops dates and locations are as follows:

November 14, 1994

Location: U.S. Department of Transportation, Room 2230, 400 7th Street, S.W. (Use southeast entrance), Washington, DC.

Contact: Jarret Cummings, Division of Higher Education Incentive, Programs, Telephone: (202) 260–3311, Fax: (202) 260–7615, Internet: jarret___cummings@ed.gov.

November 16, 1994

Location: Northwestern University, Louis South (Norris University Center), Evanston, IL.

Host: Dr. Leila S. Edwards, Telephone: (708) 491–7264, Fax: (708) 491–5070, Internet: penny@gsa-orsp.crown.nwu.edu.

The workshops are free to the public. Those persons attending the workshop at Northwestern University and requiring overnight accommodations on November 15, 1994 should contact the Omni Orrington Hotel, 1710 Orrington Avenue, Evanston, Illinois, and make their reservations as soon as possible to obtain the discount room rate, if it is still available. The caller should mention either the GAANN Workshop or the Northwestern University Graduate School. The hotel may be reached at (708) 866–8700.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Bonas, U.S. Department of Education, 400 Independence Avenue, S.W., Portals Building, Suite C–80, Washington, DC 20202–5329. Telephone: (202) 260–3265; Fax: (202) 260–7615; Internet: john—bonas@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C., 11341–1134q–1.

Dated: November 9, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–28227 Filed 11–10–94; 9:09 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision; Piñon Pine Power Project; Tracy Station, Nevada

AGENCY: Department of Energy.

ACTION: Record of Decision; Piñon Pine Power Project of the Clean Coal Technology Demonstration Program at Tracy Power Station, Reno, Nevada.

SUMMARY: The Department of Energy (Department) has decided to provide approximately $135 million in cost-shared Federal funding as part of the Clean Coal Technology Demonstration Program for the design, construction, and operation of the Piñon Pine Power Project. It would demonstrate integrated gasification combined-cycle technology with hot gas clean-up at the Sierra Pacific Power Company's (Sierra Pacific) Tracy Power Station near Reno, Nevada. A Mitigation Action Plan will be prepared before initiation of any actions for which mitigation measures have been committed. With the exception of the dry cooling option, all practicable means of avoiding or minimizing environmental harm from the preferred alternative have been adopted.

The Department prepared an Environmental Impact Statement (DOE/EIS–0215) to assess the environmental impacts associated with the Piñon Pine Power Project, a 104 megawatt gross generation demonstration project at the Tracy Power Station, 17 miles east of Reno, Nevada. The Department's participation in this project is to provide cost-shared financial assistance under its Clean Coal Technology Demonstration Program to Sierra Pacific for the development of an air-blown, fluidized bed, integrated gasification combined-cycle demonstration facility. Specifically, the Piñon Pine Power Project will receive cost-shared (50 percent) financial assistance in the amount of $135 million under the terms of the Clean Coal Technology Demonstration Program.

The Department has considered the proposal to provide cost-shared financial assistance for the design, construction, and operation of this integrated gasification combined-cycle demonstration project to be a major Federal action subject to the provisions of the National Environmental Policy Act and corresponding Department regulations (10 CFR Part 1021) and has determined that the appropriate level of National Environmental Policy Act review was an Environmental Impact Statement.

Following careful evaluation of the potential environmental impacts, consideration of Clean Coal Technology Demonstration Program goals and objectives, review and analysis of public comments, and consultation with Federal and state agencies and Indian tribal representatives, the Department issued the Final Environmental Impact Statement for the Piñon Pine Power Project. A Notice of Availability for the Final Environmental Impact Statement for the Piñon Pine Power Project was published in the **Federal Register** (59 FR 49926) on September 30, 1994.

The Department has determined that the congressionally-mandated goals and objectives of demonstrating clean coal technologies would be achieved through the construction and operation of this project, which will demonstrate the integrated performance of coal gasification and combined-cycle technologies. The Piñon Pine Power Project, successfully demonstrated, will provide a promising technology ready for commercialization in the 1990s. The project is expected to generate sufficient data from design, construction, and operation to allow private industry to further assess the potential for commercial application of this technology to new or existing generating facilities. No unacceptable adverse impacts are expected from the construction or operation of the Piñon Pine Power Project.

Comments Received: The Department received three comments on the Final Environmental Impact Statement. One commenter expressed support for the project but noted concerns regarding the handling of coal with a high sulfur content, the loss of the safety factor provided by the two silo system of coal storage, water sources and usages, air emissions, and the revised mitigation section. The Department believes that these issues were adequately addressed in the Final Environmental Impact Statement.

The Nevada Department of Transportation recommended that Sierra Pacific provide active fog warning signs as a mitigation measure because of the potential for increased fog occurrences. In addition, they requested that Sierra Pacific install a fog and ice detection system. The Department of Energy agrees with these recommendations and has incorporated the suggested mitigation measures (installation of a system that includes fog and ice detection and active warning capabilities) into this Record of Decision.

FOR FURTHER INFORMATION: For further information on the Department's activities related to this project, please contact Dr. Suellen A. Van Octeghem, Environmental Project Manager, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, WV 26507–0880 or call at (304) 285–5443.

For further information on the Department's National Environmental Policy Act process, please contact Carol M. Borgstrom, Director, Office of NEPA Oversight [EH–25], Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, or call at either (202) 586–4600 or (800) 472–2756.

Background

The Department has prepared this Record of Decision pursuant to Council on Environmental Quality regulations for implementing the provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508) and Department regulations (10 CFR part 1021). This Record of Decision is based on the Department's Final Environmental Impact Statement for the Piñon Pine Power Project (DOE/EIS–0215).

An overall National Environmental Policy Act compliance strategy was developed for the Clean Coal Technology Demonstration Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. This strategy is called tiering (40 CFR 1508.28), and refers to the coverage of general matters in a broader Environmental Impact Statement (e.g., the Programmatic Environmental Impact Statement for the Clean Coal Technology Demonstration Program), with subsequent narrower statements or environmental analyses incorporating by reference those general discussions found in the broader programmatic document. A project-specific document, therefore, concentrates solely on the issues specific to that particular project being considered.

The Department strategy has three principal elements. The first element involved preparation of a comprehensive Programmatic Environmental Impact Statement for the Clean Coal Technology Demonstration Program (DOE/EIS–0146, November 1989) to address the potential environmental consequences of widespread commercialization of up to 22 successfully demonstrated clean coal technologies by the year 2010. The Programmatic Environmental Impact Statement evaluated (1) a no-action alternative, that assumed the Clean Coal Technology Demonstration Program was not continued and that conventional coal-fired technologies with flue gas desulfurization controls would be used for new plants or as replacements for existing plants that are retired or refurbished, and (2) a proposed action, that assumed that Clean Coal Technology Demonstration Program projects would be selected for funding and that successfully demonstrated technologies would undergo widespread commercialization by 2010.

The second element involved preparation of a preselection environmental review of project-specific environmental data and analyses that the Clean Coal Technology Demonstration Program offerors were required to supply to the Department as part of their Clean Coal Technology Demonstration Program proposal.

The third element consists of preparing site-specific National Environmental Policy Act documents for each selected project. As part of this overall strategy, the Piñon Pine Power Project's Environmental Impact Statement draws upon the Programmatic Environmental Impact Statement and preselection environmental reviews that analyzed various alternatives and scenarios (e.g., alternative technologies and sites).

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Project Description

Sierra Pacific plans to expand its electric generating capacity by constructing the Piñon Pine Power Project, an air-blown, fluidized bed, integrated gasification combined-cycle facility with hot gas cleanup. This project was selected under the Department's Clean Coal Technology Demonstration Program to demonstrate the commercial application of integrated gasification combined-cycle technology. When compared to conventional coal burning techniques, the Piñon Pine Power Project will provide several unique features that are designed to increase coal utilization efficiency while significantly reducing potential environmental releases.

In the facility, coal, mixed with limestone (for in-bed sulfur control), will be partially burned in a gasifier to produce fuel gas. The fuel gas will be subsequently cleaned by cyclones and then by hot gas cleanup barrier filters to remove particulates and by external-bed sorbents to remove residual sulfur, prior to being used in a combined-cycle combustion turbine to produce electricity. Gasification technology can utilize a variety of coals; thus, it allows greater fuel flexibility to produce fuel gas. The airblown coal gasification process will also allow higher thermal efficiency (compared with oxygen-blown gasification systems) because less auxiliary power consumption is associated with an air-blown gasification process. The gasification portion of the project will be based on technology developed by KRW Energy Systems Inc. and provided by The M.W. Kellogg Company. Hot gas cleanup will reduce environmental emissions, while increasing efficiency because thermal losses associated with conventional cold gas cleanup technologies (such as wet scrubbers) will not occur. The hot gas cleanup portion of this project will also be based largely on technology provided by KRW Energy Systems Inc. The integrated gasification combined-cycle process is at least 10 to 12 percent more efficient than a conventional coal-fire power plant.

Integrated gasification combined-cycle facilities offer several additional advantages over conventional coal-based power generation technology, including (1) major reductions in sulfur dioxide, oxides of nitrogen, carbon dioxide, and dust emissions; (2) decreased coal consumption associated with increased generating efficiency; (3) modular construction which allows economic increments of capacity to match load growth; (4) greater fuel flexibility; (5) reduced land area and cooling water requirements; and (6) the potential for design standardization due to modular construction, which should reduce required engineering effort, construction time, and potential permitting complications for construction of future plants.

The combined-cycle design consists of a combustion turbine/generator, a heat recovery steam generator, and a steam turbine/generator. Combined-cycle technology is currently the most efficient commercially available method of producing electricity because combined-cycle generation reuses the exhaust heat from the combustion turbine to produce additional electricity. The combined-cycle portion of this project will be an industrial frame-type combustion turbine to produce additional electricity. The combined-cycle portion of this project will be an industrial frame-type combustion turbine, with a technologically advanced firing temperature and cooling system supplied by General Electric. The associated steam turbine and generator to be used in the Piñon Pine Power Project will be of conventional design.

Combining these technologies as part of the project will allow the Sierra Pacific to couple the high thermal efficiency of air-blown integrated gasification combined-cycle design with the low cost of coal as a fuel, and will also allow assessment of the long-term compatibility, reliability, availability, and maintainability of the various technology components. Environmental emissions from the Piñon Pine Power Project will be further reduced when compared to conventional power plants because the design coal to be used in this facility is a low-sulfur western bituminous coal.

Project Status

Project activities to date include applications for permits and approvals necessary to construct and operate the Piñon Pine Power Plant at Tracy Station; preparation of designs and specifications necessary to apply for these permits and approvals; and preparation, publication, and distribution of the Draft and Final Environmental Impact Statements.

In 1991, Sierra Pacific proposed the Piñon Pine Power Project to the Public Service Commission of Nevada as part of Sierra Pacific's Electric Resource Plan, to meet anticipated load growth. Following public hearings, on November 8, 1993, the Commission issued an "Interim Order" granting resource planning approval for the Piñon Pine Power Project citing the advantages of flexibility, diversity, displacement of fuel, and reliability. Sierra Pacific is currently in the process of obtaining other permits and approvals required to support this project.

Alternatives

Congress directed the Department to pursue the goals of the Clean Coal Technology Demonstration Program by means of partial funding of projects owned and controlled by nonfederal-government sponsors. This statutory requirement places the Department in a more limited role than if the Federal government were the owner and operator of the project. In the latter situation, the Department would be responsible for a comprehensive review of reasonable alternatives for the project. However, when the Department signs a Cooperative Agreement with an industrial partner, the scope of alternatives is necessarily more restricted because the Department must focus on alternative ways that not only accomplish its purpose but also reflect the industrial partner's needs and the functions it plays in the decision making process. It is, therefore, appropriate for the Department to give substantial weight to the industrial partner's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the reasonable alternative to the preferred alternative is the no-action alternative (including scenarios reasonably foreseeable as a consequence of the no-action alternative). The alternatives available to the Department for this decision, therefore, are either to provide cost-shared financial assistance for the project or to deny financial assistance. After reviewing all potential environmental effects, the Department has determined that its preferred alternative is to provide cost-shared financial assistance for the Piñon Pine Power Project.

Preferred Alternative

The preferred alternative is the provision of approximately $135 million in cost-shared Federal funding support for the design, construction, and operation of a nominal 800-ton-per-day (approximately 104 megawatt gross generation) coal-fired power generating facility that integrates coal gasification and combined-cycle technologies to develop a highly efficient new technology for removing sulfur and particles from fuel gas prior to combustion. A combustion turbine unit will be integrated with heat recovery steam generator and steam turbine generator facilities to form a combined-cycle generating unit with coal gasification facilities to complete the 104-megawatt Piñon Pine Power Project at Tracy Power Station.

A KRW Energy Systems Inc. air-blown fluidized-bed gasifier will be used to produce a fuel gas. Crushed coal and limestone will be fed to the pressurized gasifier bed. The gasifier bed will be maintained in a "fluidized" form by injecting controlled amounts of steam, recycle gas, and air through special nozzles into the combustion zone. Heat from the combustion zone will cause the coal to gasify (creating fuel gas). A portion of the sulfur gasses generated will be removed from the fuel gas by reacting with the limestone in the fluidized bed. Fuel gas leaving the gasifier will spin through a cyclone unit to remove nearly all of the particulate matter. The particles removed in the cyclone will be returned to the fludized-bed, while the partially-cleaned fuel gas will enter a hot gas cleanup section. The hot gas cleanup devices (employing barrier filters to remove remaining particles and zinc-based sorbents to remove hydrogen sulfide) will complete the cleaning of the fuel gas prior to its entrance into the combustion turbine. Because desulfurization and particulate removal will be carried out at an elevated temperature, the inefficiencies (and higher capital costs) of cooling and cleaning the fuel gas at a low temperature will be avoided.

Cleaned fuel gas will be routed to a combined-cycle system for electric power generation. The General Electric combustion turbine will covert fuel gas into approximately 61 megawatts (gross) of electricity and produce exhaust gases that will be used to superheat high pressure steam. The high pressure steam will then be used to produce an additional 43 megawatts (gross) of electricity using a conventional steam turbine generator.

No Action

Under the no-action alternative, the Department would not provide cost-shared Federal funding support for the Piñon Pine Power Project, and the advanced KRW gasification technology with hot gas cleanup would be demonstrated in Reno, Nevada, or elsewhere because there are not similar proposals in the Clean Coal Technology Demonstration Program.

Sierra Pacific has stated that without cost-shared funding support from the Department, it will not construct the project as proposed. However, Sierra Pacific still must find a cost-effective means of meeting the projected energy demand of its customers. This increased demand requires the addition of generating capacity by the company. Should the Department not fund the Piñon Pine Power Project, the "most reasonable" course of action of Sierra Pacific to pursue is currently the construction of essentially the same project without the capability of using coal fuel; the use of natural gas with distillate oil as a secondary fuel source is most likely. A final determination, however, would be made in compliance with the resource planning process required by the state of Nevada. Sierra Pacific would analyze all possibilities and present their most preferred (least-cost) option of the Public Service Commission of Nevada; Sierra Pacific would proceed only after receiving Commission approval.

The configuration of a natural gas and distillate oil combined-cycle power plant would include the same General Electric combustion turbine and auxiliary equipment selection as described for the Piñon Pine Power Project. A slightly smaller size steam turbine might be utilized. If the proposed Tuscarora pipeline is constructed, natural gas potentially could be used exclusively. The pipeline would end at the property line of the Tracy Power Station and Sierra Pacific would be responsible for extending it approximately 50 feet. The Federal Energy Regulatory Commission is in the process of preparing an Environmental Impact Statement for this proposed pipeline; a decision to proceed is independent of decisions pertaining to the Tracy Power Station.

Alternative Sites

The Department is not the owner-operator of the Piñon Pine Power Project under consideration. Therefore, the Department's evaluation of the project's reasonable site alternatives is focused on a review of the site selection study and criteria prepared by the industrial partner. Sierra Pacific conducted a preliminary site selection study before submitting its proposal to the Department. Following a screening analysis of the potential candidate sites, four potential locations for the integrated gasification combined cycle project were considered: (1) Fort Churchill Power Plant; (2) North Valmy Power Plant; (3) Tracy Power Station; and (4) Carlin, Nevada.

Because there are no existing generating facilities nor gas pipeline capacity in the Carlin area, a specific site was not pursued and no further analysis of the area was conducted. (Use of an existing generating station reduces the construction costs of common facilities such as warehouses, substations, parking lots, and office buildings, and requires fewer additional employees.) The environmental evaluation of the remaining three candidate sites considered the potential for regulatory compliance and potential environmental impacts. All of the sites are judged by Sierra Pacific to be acceptable from an environmental perspective. Sierra Pacific also subjectively ranked economic and reliability data for each site, and the Tracy site scored highest overall.

On the basis of its review of the site analysis conducted by Sierra Pacific, the Department has determined that the Tracy Station site is the only site that meets Sierra Pacific's goals and objectives.

Environmentally Preferred Alternative

Fewer impacts would result from the no-action alternative if Sierra Pacific built the same plant without the capability of using coal. Under the no-action alternative, it is reasonably foreseeable that Sierra Pacific would construct essentially the same project at the same site, but with natural gas as its primary fuel source. However, Sierra Pacific's actual course of action without Department funding is as yet undetermined because the financial determination would depend on the decision of the Public Service Commission of Nevada. In any event, because the no-action alternative would not further the goals of the Clean Coal Technology Demonstration Program, the no-action alternative is not the preferred alternative.

Potential Environmental Impacts and Mitigation Measures

In compliance with the National Environmental Policy Act, the Department analyzed the environmental impacts and mitigation alternatives associated with the construction and operation of the Piñon Pine Power Project and of the no-action alternative.

Construction Impacts and Mitigation Measures

Site preparation and plant construction are expected to have a negligible impact on current land use. The Piñon Pine Power Project will be in conformance with zoning for Storey County, and a Special Use Permit will be obtained. To reduce visual impacts, trees, such as cottonwoods, poplars, and alders, will be planted along the south bank of the Truckee River to screen portions of the proposed facility. Piñon Pine Power Project facilities that lend themselves to painting will be painted in earth-tones. Steel will be painted a silver/grey color to blend in with existing Tracy Power Station structures. Fugitive dust emissions will be

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minimized by water application, as necessary.

Approximately 120,000 cubic yards of soil will be disturbed during construction but erosion will be controlled through the use of best management practices. Because there is a slight possibility that liquefiable zones would exist within the new facility's footprint, a design-level subsurface investigation program will be initiated and if liquefiable material is found, appropriate mitigation measures (such as excavating and removing loose to medium density materials) will be implemented. Although near-surface site soils appear to have a moderate potential for collapse, the practices of over-excavating, saturating the soil, and then compacting it prior to construction have proven successful and may be employed. Because a site-specific resistivity survey showed moderate corrosion potential to steel, a soil resistivity test program also will be implemented and used in the design of underground features. Soil excavations will follow current Occupational Health and Safety Administration (OSHA) regulations.

During the 26-month construction phase, projected water usage is not expected to differ from current consumption rate; consumption would average 1,972 acre-feet per year (1,221 gpm, 2.8 cfs), which is comparable to recent annual withdrawals at the Tracy Station site. Best management practices will be implemented to control nonpoint source pollution discharges to surface waters to alleviate sedimentation and siltation during construction. The groundwater withdrawal rate is not expected to increase. The only potentially significant influence on groundwater flows would be the dewatering that might be required during excavation of the coal unloading facility; however, groundwater modeling results indicate that this would involve only slight changes in surface or groundwater flows for a short time period. No permanent adverse impacts to groundwater quality are expected because best management practices will be followed. Construction of the new switchyard in the Federal Emergency Management Agency-designated 100-year floodplain also would require the use of best management practices to minimize runoff and sedimentation. Because the proposed switchyard is relatively small in size, minimal impacts are anticipated. Construction of the Piñon Pine Power Project is not expected to impact wetlands; however, a temporary fence adjacent to wetlands areas will be erected, if necessary, to ensure that all activities occur outside the wetlands.

Short-term impacts to aquatic ecosystems may include dust contamination from the windblown, dry, and unstabilized area; truck traffic; and other activities. Aquatic resources of the Truckee River also could be impacted if increased soil erosion leads to increased fine sediment loads in the river, but this would be unlikely because construction zones will be located away from the river or other drainages and a soil erosion control plan will be implemented. Potential impacts on aquatic resources also would be avoided through implementation of the hazardous spill control plan.

Construction impacts to vegetation would be minimal because a majority of the project site is barren. There would, however, be permanent displacement of some wildlife species that now utilize the site. Mule deer that regularly use the power plant property to access the river would be displaced and would need to find a new river access location site; this will be facilitated by planting food source plants such as rose and currant in an appropriate area to act as an attractant.

Impacts on sensitive or threatened species from construction activities are expected to be minor. The Cui-ui and Lahontan cutthroat trout are not present in the immediate area and bald eagle wintering habitat requirements, such as perching and roosting trees and foraging areas, would not be affected.

The temporary (1- to 2-week period) and short-duration (about 2½ minutes each) steam blowing activity will produce audible levels of noise. Prior to the initiation of steam blowing, letters of explanation will be sent to the nine residences in the area. Sierra Pacific also will offer to temporarily relocate affected residents to a hotel in the Reno/Sparks area.

No adverse impacts from construction are expected to occur to any cultural resources. To ensure protection of identified sites, 6-foot chain-link fences will be constructed. If construction activities encounter buried deposits, construction will cease until a professional archaeologist, in consultation with the State Historic Preservation Officer, evaluates the resource. It is not expected that any Native American cultural resources or historic resources would be impacted.

The currently available construction labor resources in the affected area are sufficient to satisfy projected labor needs. An average labor rate of $36.00 per hour and the estimated total construction period of 1,147,900 person-hours is expected to yield a construction-phase payroll of approximately $41.3 million dollars, with a total income of approximately $59.0 million. Total sales tax revenue accruing during the construction phase would be approximately $9.0 million, based on a sales tax rate of 6.75 percent.

Construction of the new facility would not have disproportionately high and adverse human health or environmental effects on low-income, minority, or Native American communities. All direct impacts are expected to occur on site, with little effect on surrounding areas of Storey or Washoe counties.

Appropriate health and safety measures will be implemented for all identified and anticipated hazards to worker health and safety. During construction, portions of the interior fences will be removed, however, the perimeter fence will remain intact to deter intrusion by unauthorized persons. Additional fences will be constructed to secure new facilities (and to prevent encroachment on existing resources).

Sierra Pacific is responsible for storage and disposal of all hazardous and solid wastes generated during construction; stipulations for the handling and transportation of solid wastes are included in special use permits. Only small quantities of hazardous wastes will be generated and no impacts from hazardous or toxic materials are anticipated.

Operations Impacts and Mitigation Measures

No impacts to land use are expected to result from the operation of the Piñon Pine Power Project; the special use permits for construction will also apply to operations. The project will not create significant visual impacts because the new facilities will blend with existing power plant structure.

Air emissions expected during operation of the facility include 225 tons per year of sulfur dioxide, 123 tons per year of particulate matter, 575 tons per year of oxides of nitrogen, and 304 tons per year of carbon monoxide. Modeling results based on these emissions loadings and consideration of surrounding topography and meteorology indicate that pollutant emission levels would be in compliance with National Ambient Air Quality Standards and would not have a significant impact on nonattainment areas in the Truckee Meadows and Washoe County. Both the Class I and Class II Prevention of Significant Deterioration increment analyses indicate that the Piñon Pine Power Project would not result in significant degradation of air quality in the project area. The Class I PSD increment analysis showed that operation of the Piñon Pine Power Project would result in the consumption of no more than 3/5 of 1 percent of a PSD Class I increment. The results of the Class II PSD increment analysis indicated that the Piñon Pine Power Project's contribution to the consumption of the annual increment would be between 10 and 11 percent for sulfur dioxide and 12 percent for particulate matter. In addition, site-specific analyses for Nixon and Wadsworth areas show that no adverse air quality impacts would occur on tribal lands.

Visibility impact analyses performed for the area surrounding the proposed facility indicate that the Piñon Pine Power Project emissions of oxides of nitrogen and particulate matter will not result in a plume detectable against the background sky beyond 3.1 miles; visual impact analysis performed for the nearest Class I Area (Desolation Wilderness) indicate that emissions from existing and proposed facilities would be below the screening criteria for all impact categories; and there would be no significant visual impacts in the Desolation Wilderness or other scenic areas (e.g., Lassen Volcanic National Park, Yosemite National Park, Grand Canyon National Park) located further away. At the request of the U.S. Forest Service, the Class I visibility analysis was re-evaluated using a value for background visual range that was actually measured in the Desolation Wilderness Area. The visual impacts analysis still indicated that sources from existing and proposed facilities would be below the screening criteria for all impact categories.

As a result of the Piñon Pine Power Project, there may be some occasional increase in the production of fog in the canyon during cold weather. The Nevada Department of Transportation, in cooperation with Sierra Pacific, already has posted warning signs in the canyon in order to mitigate any potential problems generated by natural sources. Results of a modeling analysis indicate that the addition of the Piñon Pine Power Project could result in an incremental increase in annual fog hours of 3 percent. Sierra Pacific will provide a system that includes fog and ice detection with active warning capabilities, which will be installed by the Nevada Department of Transportation. Sierra Pacific will also continue to work with the Nevada Department of Transportation to minimize any adverse impacts from fog.

Because of the design features to be implemented (Uniform Building Code, Seismic Zone 4), if an earthquake occurs, external structures and internal features of the Piñon Pine Power Project are expected to withstand the potential force. If a breach in containment of hazardous materials occurs, Chemical Emergency Response Plan and Spill Prevention Control and Countermeasures Plan procedures would reduce or eliminate the extent of the potential impact. No activity associated with operation of the facility is expected to impact soil erosion or soil quality. However, procedures are in place for the response to and remediation of a spill that could potentially contaminate the soil.

River water quality is not expected to be impacted by plant operations because the plant will continue as a "zero discharge" system. Discharges from the project will be directed to a new, double-lined evaporation pond. This pond will be regulated by the Nevada Division of Environmental Protection under Nevada Revised Statutes, Chapter 445. Stormwater from the Piñon Pine Power Project will be routed to the cooling pond and could result in some siltation. However, it is unlikely that a storm event would result in significant runoff. Routing of the stormwater runoff to the cooling pond should prevent discharge of suspended material to the Truckee River. In addition, best management practices will be incorporated into the containment of hazardous materials and coal to prevent them from entering the Truckee River and potentially harming fish or other wildlife.

Protection of groundwater quality will be accomplished by storing coal, coke, and limestone in concrete or steel enclosures and using protective double liners for liquid waste impoundments. Coal will be delivered via a covered handling system equipped with a sump to reclaim and recycle any water used for dust suppression. Chemical and petroleum product and hazardous waste storage facilities and handling procedures will be designed to prevent or contain accidental spills. The impact of increased groundwater withdrawal on adjacent will owners also was evaluated. Results from the simulation show that the area affected by additional drawdowns would be quite small. The level of impact to groundwater flow are not expected to change as a result of the Piñon Pine Power Project.

Because of the limited size and open structure of the switchyard, potential impacts to the floodplain are expected to be minimal. The site is largely devoid of vegetation, is not an ecologically sensitive area, and contains no wetlands. Therefore, potential indirect impacts to habitat, resulting from flood storage and impediments to flow conveyance, are not expected.

During the early design phases of the project, Sierra Pacific incorporated several measures to reduce water consumption. These water-conserving measures are currently part of the proposed facility. The increase in water consumption, compared to present operations, would be relatively small. Projected water usage during the 26-month construction phase would not differ from current consumption. Consumption would average 1,972 acre-feet per year (1,221 gpm, 2.8 cfs), which is comparable to recent annual withdrawals at the Tracy Station site. Consequently, construction would be unlikely to affect water availability. The average water consumption for the Tracy Station site for cooling after the start-up of the Pinon Pine Power Project is estimated to be 2,806 acre-feet/year (or 3.9 cfs), averaged over the operation years 1997 through 2011 and excluding the construction years prior to 1997. Of this amount, downstream users are expected to experience a water loss of 1,004 acre-feet/year (1.4 cfs; 630 gpm), which would be attributed to the Pinon Pine Power Project. This amount is typically less than one percent of current normal Truckee River flows. No change would be anticipated in water use during drought conditions.

The Final EIS also presented alternative cooling methods, which were investigated in an effort to find ways to conserve water. In addition to the option incorporated into the preferred alternative (use of wet cooling in the form of a cooling tower), other options of air condensers (dry cooling), a wet-dry cooling tower (hybrid cooling), a spray pond, a cooling pond with cooling tower, and a cooling tower were analyzed. Only the use of air condensers (dry cooling option) was shown to substantially reduce water consumption when compared to the other options. Although there were environmental advantages associated with the dry cooling option when compared to the wet cooling tower in the preferred alternative (a 1.3 cfs [941 acre-fee/year] reduction of water consumption, elimination of fogging, icing, and plume visibility potential, elimination of requirements for chemical treatment of cooling water and disposal of blowdown), it was dropped from further consideration due to its economic and environmental disadvantages. The cost of air condensers was $7.8M more than the wet cooling tower (which could potentially be reflected in an increase in rates). In addition, the inclusion of air

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condensers would require more coal use (in order to generate the same gross electrical output) due to parasitic power requirements of the air condenser fans and to compensate for the higher backpressures resulting from the air condenser system. This increase coal usage potentially translates into increased air emissions (12 tons per year of sulfur dioxide; 32 tons per year of oxides of nitrogen; 7 tons per year of particulate matter, and 17 tons per year of carbon monoxide). Other characteristics associated with air condensers compared to wet cooling systems at Tracy Station include more noise, risk of freezing, more noticeable structures, and higher degree of technical risk. In addition, the unused water (1.3 cfs) resulting from the use of air-cooled condensers would probably be consumed as a resource for current or future operations at Tracy Station and/or another Sierra Pacific location, rather than augmenting downstream flow from the Tracy Station site. Thus, the most probable end effect of conserving water through the use of air condensers would be a redistribution of projects and/or locations that would use existing water rights (including the 1.3 cfs) held by Sierra Pacific. However, in any event, the Pyramid Lake Pauite Indian Tribe holds the most senior water rights, and would not be affected by this additional withdrawal.

No significant impacts on Truckee River aquatic habitat are expected. Two wire mesh plate screens at the intake facility at the Tracy Power Station currently prevent entrainment of fish from the Truckee River and can accommodate any additional diversion volume. The anticipated consumption of additional water is within Sierra Pacific's existing water rights and full use of these water rights has been assumed as part of the hydrological foundation of the Cui-ui Recovery Plan. A Biological Assessment was formally submitted to the U.S. Fish and Wildlife Service in February 1994. The Service concurred with the conclusion that the Pinon Pine Power Project would result in "no effect" on the Cui-ui sucker, the efforts of the Cui-ui Recovery Plan, the Lahontan cutthroat trout, and the bald eagle.

The cooling pond at the Tracy Power Station currently supports a number of warmwater fish species. The Piñon Pine Power Project will result in changes to the pond's inflow and outflow (because utilization of existing Tracy Station units will change), but there should be no significant variations in water level. Although evaporative water loss from the cooling pond could slightly increase total dissolved solids over time, no significant alterations in the existing ionic concentration are expected. Anticipated temperature fluctuations in the pond resulting from divergent ambient air temperatures and varying utilization are expected to remain within the current range.

Wastewater in the evaporation ponds is not anticipated to result in any adverse effect on wildlife. Sierra Pacific will periodically test the evaporation ponds and compare the results with the standards of section 445 of the Clean Water Act for wildlife propagation. If water quality is found to be out of compliance with these standards, Sierra Pacific will either neutralize the pond's contents or work with the Nevada Division of Wildlife to develop necessary exclusion measures.

Loss or modification of habitat and noise disturbance within the operation area may affect wildlife, but any impact is expected to be minor. The habitat types that will be impacted (i.e., natural and disturbed big sage desert shrub communities) are common habitat types in the area and some natural revegetation likely would occur in areas such as evaporation pond tailings, and along the new railroad spur. In addition, wildlife species using the project area appear to be accustomed to the noise from the Tracy Power Station, traffic along I–80, the Southern Pacific Railroad, and surrounding mining operations. No significant impact to the birds in the area is anticipated. Although an increase in collision potential may occur during foggy conditions, this has not been a major concern with current structures, and such an increase would be slight.

Railroad access to the site is provided by the Southern Pacific Railroad Company. Because a new railroad spur will be constructed as part of this facility, minimal impact to the right-of-way utilized by existing train traffic is expected. Coal will be delivered by rail in railcars of approximately 100–110 ton capacity, resulting in a small increase in rail traffic along the main route. Train cars will be pulled off the main track during the coal off-loading process. No adverse impact to the Truckee River is expected from coal transportation. If a spill occurs during transport, Southern Pacific Railroad will be responsible for cleanup. The railroad company has a contingency plan on file and is required to notify Washoe County Health Department, Nevada Health Department, Nevada Division of Environmental Protection, Pyramid Lake Paiute Indian Tribe, Nevada Department of Wildlife, the U.S. Fish and Wildlife Service, and the Truckee-Carson Irrigation District. The Tracy Bridge, which links the access road over the Truckee River to the Piñon Pine Power Project site, will be maintained as necessary to safely accommodate the current maximum load rating of 52 tons; no increase in load bearing capacity is needed.

Potential noise impacts have been assessed for the nearest residence at a distance of 1 mile and for the residences in the community of Patrick about 3 miles from the site. The addition to the Piñon Pine Power Project is expected to increase the noise level by 1 to 2 dBA for the nearest residences and by 1 dBA for the community of Patrick. In addition, the Storey County noise ordinance limit of 84 dBA at the property line in the frequency range of 500 to 1,800 Hz would not be exceeded.

The permanent chain-link fence constructed to protect archaeological sites will remain in place during operation; no adverse impacts are expected. No Indian sacred sites of religious worship have been identified on the project property or within the affected property area. Consultations with Native American Tribes have not indicated any religious practices associated with the facility or site. No infringement of the American Indian Religious Freedom Act of 1978 and no impacts on Native American cultural resources would occur as a result of project operation. The Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation concurred with the determination that operation of the Piñon Pine Project would not adversely impact historic resources on, or adjacent to, the Tracy Power Station site.

No significant adverse socioeconomic impacts are anticipated with operation of the Piñon Pine Project. Adequate labor force, housing, schools, police protection, fire protection, and medical services are available. A beneficial impact of increased tax revenue is expected. Based upon an average hourly labor rate for public utility workers of $16.14, the annual wages for a total of 25 permanent workers would be approximately $850,000. The Piñon Pine Project is expected to yield a total annual income of approximately $1.165 million during the operations phase. The project also is expected to generate approximately $1 million annually in state and local property taxes.

Operation of the Piñon Pine Project is not expected to result in a disproportionately high and adverse human health or environmental effects on low-income, minority, or Native American communities. Coordination with the Pyramid Lake Paiute Indian Tribe, initiated before this project was proposed, will continue during project operation and beyond.

The greatest potential health and safety concern is the accidental or emergency release of fugitive coal dust. The facility provides engineering controls to minimize fugitive dust, such as the use of bottom dump railcars in a negative pressure building. A dust filtration system also will be included in the design to minimize airborne dusts. Dusts generated from coal crushing and screening will be collected in negative pressure hoods that will be vented through a pulse jet or similar baghouse to adequately control emissions and manage the potential impacts to workers in the area. Coal fines will be collected and consumed as fuel in the gasifier and, therefore, are not expected to present a disposal problem. Although there is some potential for fire or ignitability from the coal storage or coal dust build-up in the coal crushing and handling systems, workers will be trained on proper management. A fire suppression system, to be designed, will comply with applicable fire and safety specifications and regulations.

Lime (calcium oxide) in LASH reacts with water to form hydrated lime (calcium hydroxide) and generates a considerable amount of heat. Chronic exposure to LASH dusts could potentially result in carcinogenicity. A material safety data sheet (MSDS) will be available to all workers. If required to handle LASH, workers will be trained in the proper handling of the material and appropriate protective equipment will be provided.

Up to a maximum of 134 tons/day of cooled LASH will exit the fluidized-bed sulfation combustor and be conveyed continuously to the solid waste storage silo using a covered belt conveyor system. The storage silo, with a 5-day storage capacity, is designed to prevent rainwater runoff from contacting the LASH and wind from dispersing LASH particles into the environment.

Washoe County requires that the LASH pass the Toxic Characteristic Leaching Procedure test associated with the Resource Conservation and Recovery Act requirements before the material can be landfilled. Although it is expected that the LASH will be able to pass this test, improved means of disposal are being investigated. Various uses for the LASH and resulting environmental impacts are also being evaluated. The results of these evaluations will be used to determine the most cost-effective residuals management solution. Until a final decision on reuse is reached, however, the planned procedure for LASH disposal is to transport it daily to a nearby landfill by truck. The LASH storage silo will be equipped with a rotary underloader equipped with discharge valve and a telescope loading chute to minimize dusting during the truck loading operation. Transportation will be performed in accordance with all Federal, state, and local regulations. The most likely location for LASH disposal is the Lockwood landfill, which has a life expectancy of 122 years based on the assumption that 8,000 tons of solid waste is received daily.

Other solid wastes to be generated by the facility include barrier filters and spent sorbent from the external hot gas desulfurization vessels. Barrier filters could capture some of the trace metals from the coal; therefore, analytical testing will be performed to determine if the filters contain any hazardous constituents and to ensure that they are disposed properly. Wastewater and wastewater sediments will be reclaimed, thus minimizing wastes and the potential for adverse impacts to workers.

Safety considerations for high-pressure systems will be implemented to minimize potential impacts from the accidental release of pressure during normal operations. Leak detection (area monitors) will be required at all flanges located in enclosed areas. In addition, hand-held leak detectors will be used by operators during leak detection and repair programs. The design for desulfurization and sulfation also takes into account control measures to minimize the potential release of toxic gases, thereby minimizing potential impacts to the worker population.

Near-field or in-plant noise levels will be controlled by a specific requirement that equipment cannot produce a noise level that exceeds 85 dBA (at 3 feet). This will permit compliance with noise exposure regulations (29 CFR 1910.95) without hearing protection. However, hearing protection will be required in each area posted as a high noise level area. The existing Tracy Power Station hearing conservation program will be extended to include the Piñon Pine Power Project.

An in-place site program is in full compliance with the Hazard Communication/Right-To-Know Program (29 CFR 1910.1200). All aspects of health and safety compliance monitoring are implemented and conform to Federal and state requirements. To ensure that employee exposures to hazardous substances do not exceed the standards allowed by the Occupational Health and Safety Administration or the National Institute of Occupational Safety and Health, the Sierra Pacific Industrial Hygienist will determine requirements for personal protective equipment, modified work practices, engineering controls, and/or administrative controls. Until instructed otherwise, all employees in affected work areas will wear prescribed personal protective equipment.

The chemical analyses of the existing evaporation pond were reviewed to determine potential health impacts to workers and individuals in the vicinity of the proposed new evaporation pond from water sprayed by the floating spray units. An assessment also was conducted to determine the impacts to workers from breathing vapors from the pond spray. All chemicals of concern were determined to be below the threshold limit values.

Appropriate containment structures will be constructed around chemical or petrochemical storage tanks to avoid entraining spillage of those compounds in surface runoff. Surface runoff draining from areas of industrial activity will be directed through a filter or separator treatment device capable of removing entrained pollutants. Solid and liquid wastes retained by treatment devices will be disposed of periodically, as required. Either a hazardous waste disposal contractor or used-oil recycler contractor will remove the waste material for disposal in compliance with the appropriate Federal, state, and local environmental regulations. The discharge of nonstormwater (process water or water from floor drains) from the new facility will be directed to the double-lined evaporation pond to prevent co-mingling with stormwater.

The Piñon Pine Power Project will use small quantities of hazardous chemicals during routine operations, which are not expected to pose any threat to public health and safety. However, if a spill or other accidental release of these materials occurs, use of secondary containment, containment piping, leak detection, and other techniques to contain a release would minimize the potential impact.

The Piñon Pine Power Project probably will use sealed low-level radiation sources in process control sensors for coal, limestone, and LASH handling. While the accumulated dose from these sources is not expected to exceed the federally mandated whole-body dose, radiation safety surveys will be required in the areas where employees may be working with these materials. Until the results of these surveys are known, all employees working with these sources will be required to wear personal dosimeters and to adhere strictly to the procedures established for working with these materials.

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Existing Tracy Power Station pollution prevention measures will continue to be implemented. Attempts currently are being made to replace hazardous materials with non-hazardous materials and prevent resulting pollution. For example, Tracy Power Station is using non-hydrazine containing oxygen scavenger chemicals for steam cycle corrosion control.

No impact to the general public's health and safety is expected from operation of the facility. Unauthorized personnel will continue to be prevented from entering the site by a perimeter fence surrounding the property. For added security and safety, additional fences will surround specific facilities, as necessary. In addition, in the unlikely event of an accident, the implementation of the Chemical Emergency Response Plan would ensure that proper notification and evacuation procedures are followed. This plan will be modified to incorporate the new facilities and processes of the project.

In sum, with the exception of the dry cooling option, all practicable means of avoiding or minimizing environmental harm from the preferred alternative have been adopted. The reasons for not selecting the dry cooling option have been presented earlier in this section.

No-action Alternative

For most resources, impacts from the no-action alternative would be similar to those for the Department's preferred alternative. However, air emissions from the no-action alternative would be less than for the preferred alternative because the anticipated use of natural gas under the no-action alternative would result in lower emissions of sulfur dioxide, particulate matter, oxides of nitrogen, and carbon monoxide. In addition, total water (surface and groundwater) consumption for the no-action alternative would be approximately 1.098 cfs compared to 1.646 for the preferred alternative. Because the most likely project that would result under the no-action alternative would be non-coal-burning, no LASH would be generated and thus the anticipated two year reduction in the 122-year lifespan of the Lockwood disposal facility would not result. The beneficial impact of increased tax revenue would be less with the no-action alternative because fewer construction workers and employees would be required. However, the no-action alternative would not further the goals of the Clean Coal Technology Demonstration Program. Demonstration of the coal-based power generating technology, with the KRW gasifier, in-bed desulfurization, external regenerable sulfur removal, and fine particulate filters would not occur.

Mitigation Action Plan

Section 1021.331(a) of the Department of Energy regulations implementing the National Environmental Policy Act (10 CFR Part 1021) states that the Department must prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the Record of Decision. Most of the mitigation measures associated with the construction of the Piñon Pine Power Project have already been incorporated into the design and include sound engineering and proper construction practices. Many of the mitigation measures associated with operation of the Piñon Pine Power Project are part of existing Sierra Pacific operating procedures. The Department has identified a number of additional mitigation measures that Sierra Pacific will implement as appropriate. These measures include planting trees on the south bank of the Truckee River to screen portions of the facility; painting portions of the Piñon Pine Power Project structures, where possible, in earth-tones; painting structural steel silver/grey in color to blend with existing facilities; minimizing fugitive dust emissions during construction by water application, as necessary; providing a system with fog and ice detection coupled active warning capabilities (to be installed by the Nevada Department of Transportation) and continuing to work with the Nevada Department of Transportation to improve travel safety during fog events; preparing a geotechnical report and implementing mitigating measures if soils are found liquefiable or collapsible, or if settlements are found to exceed tolerable settlement values; implementing a soil resistivity program and using it in the design of underground features; periodically testing the evaporation pond and either neutralizing the pond's contents or working with the Nevada Division of Wildlife to develop necessary exclusion measures if water if found to be hazardous to wildlife; providing habitat enhancement for Mule deer by planting food source plants to act as an attractant; protecting archaeological sites by permanent and temporary 6-foot chain-link fences; and prior to the initiation of steam blowing, sending letters of explanation to the nine residences in the area and temporarily relocating, on a voluntary basis, affected residents to a hotel in the Reno/Sparks area.

A Mitigation Action Plan for the Piñon Pine Power Project is being developed that identifies how the Department will ensure that Sierra Pacific implements all mitigation commitments. Copies of the Mitigation Action Plan may be obtained from Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. Telephone: (304) 285–5443.

Conclusion

The Department has weighed the costs, benefits, and environmental impacts in its decision to provide co-funding support for the design, construction, and operation of the Piñon Pine Power Project at the Tracy Power Station, near, Reno, Nevada. The Department will provide $135 million in financial assistance under the terms of the Clean Coal Technology Demonstration Program's Cooperative Agreement with Sierra Pacific Power Company to construct and operate this project.

Issued in Washington, D.C., on November 8, 1994.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 94–28042 Filed 11–10–94; 8:45 am]

BILLING CODE 6450–01–P–M

Bonneville Power Administration

Notice of Availability of Record of Decision for the Coyote Springs Cogeneration Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: Today's notice announces the availability of the ROD to authorize the use of the Federal Columbia River Transmission System (FCRTS) to transmit power from Unit 1 of Portland General Electric's (PGE) proposed Coyote Springs Cogeneration Plant to the Portland Metropolitan Area, relying on the analysis in the Coyote Springs Cogeneration Project Environmental Impact Statement (EIS). This decision would be achieved by building the proposed transmission facilities that are required to interconnect the proposed plant with the FCRTS and by revising the general transmission agreement with PGE to establish Coyote springs as a point of interconnection for wheeling services.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Ken Barnhart, Routing ECN–3, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3667, fax number 503–230–3984.

Public Availability: This ROD has been distributed to all interested and affected persons and agencies.

Issued in Portland, Oregon, on November 4, 1994.

Kenneth A. Barnhart,

Environment Project Leader.

[FR Doc. 94–28043 Filed 11–10–94; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. QF95–15–000]

Williams Field Services; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 4, 1994.

On October 28, 1994, Williams Field Services (Applicant) of 295 Chipeta Way, P.O. Box 58900, Salt Lake City, Utah 84158–0900, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the topping-cycle cogeneration facility will be located approximately 1.5 miles east of Bloomfield, New Mexico, and will consist of two combustion turbine generators and two heat recovery boilers. Steam recovered from the facility will be used by the Applicant in its Milagro plant. The electric power production capacity of the facility will be in the range of 28 and 33 MW. The primary energy source will be coal seam gas. Construction of the facility is expected to commence on January 1, 1996.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28003 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1175–005]

Notice of Application

November 7, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 1175–005.

c. Date filed: November 1, 1994.

d. Applicant: Kanawha Valley Power Company and Appalachian Power Company.

e. Name of Project: London/Marmet Project.

f. Location: On Kanawha River, in Kanawha and Fayette Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Applicant contact: John B. Shinnock, Senior Assistant General Counsel, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1622.

i. FERC contact: Etta Foster (202) 219–2679.

j. Comment Date: December 7, 1994.

k. Description of Proposed Action; Kanawha Valley Power Company proposes to transfer its license for the London/Marmet Project to Appalachian Power Company and requests expedited consideration of the transfer in order to meet a merger date before the end of the year.

l. This notice also consists of the following standard paragraphs: B , C1, and D2.

B. Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28006 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1290–004]

Notice of Application

November 7, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 1290–004.

c. Date filed: November 1, 1994.

d. Applicant: Kanawha Valley Power Company and Appalachian Power Company.

e. Name of Project: Winfield Project.

f. Location: On Kanawha River, in Kanawha and Putnam Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant contact: John B. Shinnock, Senior Assistant General Counsel, American Electric Power

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Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1622.

l. FERC contact: Etta Foster (202) 219–2679.

j. Comment Date: December 7, 1994.

k. Description of Proposed Action: Kanawha Valley Power Company proposes to transfer its license for the Winfield Project to Appalachian Power Company and requests expedited consideration of the transfer in order to meet a merger date before the end of the year.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28007 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2594–007]

Notice of Application

November 4, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No.: 2594–007.

c. Date filed: October 28, 1994.

d. Applicant: Stimson Lumber Company and Northern Lights, Inc.

e. Name of Project: Lake Creek.

f. Location: On Lake Creek in Lincoln County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant contact:

Dan M. Dutton, President, Stimson Lumber Company, 520 S.W. Yamhill Street, Suite 308, Portland, OR 97232, (503) 222–1676

Max M. Miller, Jr., Tonkon, Torp, Galen, Marmaduke & Booth, 1600 Pioneer Tower, 888 S.W. Fifth Avenue, Portland, OR 97204, (503) 221–1440

Jon Shelby, Acting General Manager, Northern Lights, Inc., P.O. Box 310, 1423 Dover Highway, Sandpoint, ID 83864–0310, (208) 263–5141

i. FERC contact: Etta Foster (202) 219–2679.

j. Comment Date: December 5, 1994.

k. Description of Proposed Action: Stimson Lumber Company proposes to transfer its license for the Lake Creek Project to Northern Lights, Inc., and requests expedited consideration of the transfer in order to close the sale of the property by December 30, 1994. Stimson became licensee pursuant to a license transfer issued October 29, 1993.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28008 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Notice of Informal Settlement Conference

November 7, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on November 16, 1994 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28009 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–7–000]

LG&E-Westmoreland Rensselaer; Notice of Filing

November 7, 1994.

Take notice that on October 20, 1994, LG&E-Westmoreland Rensselaer, c/o LG&E Power Inc., 12500 Fair Lakes Circle, Suite 350, Fairfax, Virginia 22033–3822, filed with the Federal Energy Regulatory Commission a request for temporary waiver of the operating and efficiency standards established for qualifying cogeneration facilities by § 292.205 of the Commission's Rules and Regulations, 18 CFR 292.205.

The facility is a topping-cycle cogeneration facility located in Rensselaer, New York. The waiver requested relates to the facility's start-up and testing period, which was prolonged by problems encountered with natural gas pipeline facilities and major equipment malfunctions, occurring at the end of 1993 and early 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be filed on or before November 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28011 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[RP94–164–000]

Trunkline Gas Co.; Notice of Informal Settlement Conference

November 7, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on November 16, 1994 at 1:00 p.m. with the possibility of continuation on November 17, 1994 at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Edith A. Gilmore (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28012 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2232–300; North Carolina]

Duke Power Co.; Notice of Availability of Environmental Assessment

November 7, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to permit dredging and installation of an intake structure on Lake Norman of the Catawba-Wateree Project. The proposed facility would be operated by the Charlotte-Mecklenburg Utility Department and is part of a water supply project that includes the raw water intake structure, raw water transmission pipeline, water treatment plant, pumping facilities, and treated water transmission mains. The proposed facilities would provide an important source of high quality water that would support the area's population and economic growth.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that the licensee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

All entities on the service list are invited to review and comment on the EA. Any comments should be specific and include the factual basis to support the comments. Any references to other documents should be properly cited to the appropriate page.

An original and eight copies of any comments should be filed by November 28, 1994, with: The Secretary, Federal Energy Regulatory Commission, Mail Code: DPCA HL 21.1, 825 North Capitol Street, NE., Washington, DC 20426.

Questions concerning this EA may be referred to Mr. Jack Hannula at (202) 219–0116.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28004 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket CP94–765–000]

Questar Pipeline Co.; Notice of Intent To Prepare an Environmental Assessment for the Questar Pipeline Company's Proposed Main Line No. 68 Replacement Project and Request for Comments on Environmental Issues

November 7, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the Main Line No. 68 Replacement Project. This EA will be used by the Commission in its decision-making process.[1] Because federally administered lands would be crossed, the Bureau of Land Management (BLM), White River Resource Area (Meeker, Colorado), has agreed to act as a cooperating agency with the FERC staff in the preparation of the EA.

Summary of the Proposed Facilities

Questar Pipeline Company (Questar) proposes to replace 26.4 miles of its existing 10-inch-diameter Main Line No. 68 pipeline with 14-inch-diameter pipe. The proposed project would begin at milepost (MP) 50.57 in Section 29, Township 2 South, Range 95 West, Rio Blanco County, Colorado, and ending at Questar's Clough valve assembly located at MP 24.21 in Section 34, Township 5

[1] Questar Pipeline Company's application was filed with the Commission pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

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South, Range 93 West, Garfield County, Colorado. The general location of the project facilities is shown in appendix 1.[2]

Questar indicates that the existing segment of 10-inch-diameter pipe would be abandoned in place, purged with an inert gas, and capped. Questar also states that the proposed 14-inch-diameter pipeline would transport 40 million cubic feet of gas per day.

Questar proposed this replacement principally because of the deteriorated condition of the pipe coating. Furthermore, the 10-inch-diameter segment would be replaced with 14-inch-diameter pipe to match the existing pipe diameter on either end, reduce operating problems, and reduce operating pressure to enable producers to deliver gas into this portion of Questar's system at a lower pressure.

Land Requirements for Construction

Questar proposes to install the replacement pipeline in a parallel trench, 10 to 15 feet offset from its existing Main Line No. 68. It would use a 70-foot-wide right-of-way during construction, which would partially overlap with its existing right-of-way. Areas requiring additional width during pipeline construction (such as for excessive side hill cuts or at stream crossings) would be identified during the analysis and approved before use. At present, Questar has identified eight such areas along the pipeline right-of-way averaging 200 feet by 150 feet each. Questar would also require additional work space for staging areas at each end of the project. These two areas measure 2.3 and 2.8 acres apiece. Overall, approximately 234 acres are expected to be disturbed by construction.

While no new permanent access roads would be required to construct the replacement facilities, temporary access roads could be needed. If new temporary access roads are required, they will be identified during the environmental analysis and the land would be restored to its original condition following construction.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission and the BLM to take into account the environmental impacts that could result from an action whenever they consider the issuance of a Certificate of Public Convenience and Necessity or a right-of-way grant, respectively. NEPA also requires us to discover an address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land Use.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Cultural resources.

As resource conflicts are identified, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state and local agencies, public interest groups, interested individuals, affected landowners, newspaper, libraries, the Commission's official service list for this proceeding, and interested entities identified by the BLM. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.
- Reference Docket No. CP94–765–000.
- Send a *copy* of your letter to: Mr. Laurence J. Sauter, Jr., Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426, and
- Mail your comments so that they will be received in Washington, DC on or before December 12, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Sauter at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Sauter, Project Manager, at (202) 208–0205.

Lois Cashell,

Secretary.

[FR Doc. 94–28005 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Room, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Project No. 4715–006–NY]

Felts Mills Energy Partners, L.P.; Public Meeting Scheduled for Licensing of Felts Mills Hydroelectric Project

November 7, 1994.

This notice corrects information recently issued on October 28, 1994 (59 FR 55094, November 3, 1994), concerning the Public Meeting to be held by the Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing to present findings and solicit comments on the Draft Environmental Impact Statement (DEIS) for the relicensing of the Felts Mills hydroelectric project within the Black River Basin, New York.

The public meeting will be held November 16, 1994, in Watertown, New York at 7:00 p.m. in the Large Group Instruction Room of the Watertown High School, 1335 Washington Street, Watertown, New York.

Participants wishing to make oral comments at the meeting are asked to keep them brief.

Contrary to our previous notice, all comments made on the DEIS within the official comment period will be considered in the preparation of the Final EIS (FEIS). The meeting will be recorded by a court reporter and all oral and written statements will become part of the record of the Commission proceedings. However, only written comments on the DEIS which are filed with the Commission Secretary within the official comment period, will be explicitly addressed in the FEIS. Written DEIS comments must be filed before or on November 28, 1994, with: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All written DEIS comments should use the following caption on the first page of the comments: Felts Mills Project No. 4715.

Questions regarding the relicensing of the projects can be addressed to Tom Camp, Task Monitor, FERC, (202) 219–2832.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28010 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–182–008; Docket No. CP92–415–005]

Florida Gas Transmission Co.; Transcontinental Gas Pipe Line Corp.; Notice of Petition to Amend

November 4, 1994.

Take notice that on November 4, 1994, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, and Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed a petition to amend in Docket Nos. CP92–182–008 and CP92–415–005 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to lease compression facilitates partially owned by FGT to TGPL, all as more fully set forth in the petition which is open to the public for inspection.

FGT and TGPL propose to amend the Commission orders issued in Docket No. CP92–182, *et al.*,[1] in order for TGPL to commence its leasing of the Mobile Lateral compression facilities at Mile Post 122.57 in Mobile County, Alabama, on the first day of the month immediately following the completion of the compression facilities without affecting FGT's Phase III expansion program in any way. TGPL anticipates that construction of the Mobile Lateral compression facilities would be completed in late November 1994, thus enabling TGPL to begin leasing the compression facilities in time for the 1994–1995 winter heating season on December 1, 1994. TGPL states that as a result of leasing the Mobile Lateral compression facilities, TGPL would have an additional firm transportation capacity of 203,997 Mcf of natural gas per day on the Mobile Lateral. TGPL states that it would pay $286,000 per month to FGT to lease the Mobile Lateral compression facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 14, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–27935 Filed 11–10–94; 8:45 am]

BILLING CODE 6717–01–M

[1] 62 FERC ¶ 61,024 (1993); 63 FERC ¶ 61,093 (1993); 64 FERC ¶ 61,288 (1993); and 66 FERC ¶ 61,160 1994).

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1995

AGENCY: Office of Hearings and Appeals, U.S. Department of Energy.

ACTION: Notice of Determination of Excess Monies Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $20,875,570 of the amounts currently in escrow is determined to be excess funds for fiscal year 1995. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 [Mann]; (202) 586–2383 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $20,875,570 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited.

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PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1994, the total in escrow subject to the PODRA procedures was $164,811,620.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1994, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1994 PODRA determination (58 FR 60018 (1993)) are included as part of the "excess" for fiscal year 1995. Finally, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which finds in its accompanying determination, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $164,811,620. The total amount needed as reserves for direct restitution in those cases is $143,936,050. When this figure is subtracted from the former, the remainder—$20,875,570—is the amount in fiscal year 1995 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $20,875,570 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Date: November 8, 1994.

George B. Breznay,

Director Office of Hearings and Appeals.

BILLING CODE 6450-01-P

Appendix A: Funds Available Under PODRA in Fiscal Year 1995

Name of Case	Case Number	Consent Order No.	Equity as of September 30, 1994	Excess Funds Available
MARATHON PETROLEUM CO	KEF-0021	RMNA00001Z	$8,568,703.00	$8,568,703
ENRON CORPORATION	HEF-0116	730V00221Z	$30,947,110.08	$6,000,000
EASON OIL COMPANY	LEF-0040	740S01314Z	$7,915,883.37	$2,000,000
GOOD HOPE REFINERIES INC.	HEF-0211	150S00154Z	$5,459,493.25	$2,000,000
STRASBURGER ENTERPRISES,INC.	LEF-0014	400H00219Z	$551,045.71	$551,045
QUINTANA ENERGY CORP. ET AL.	KEF-0131	650X00356Z	$530,681.81	$530,681
REINAUER PETROLEUM COMPANY INC	KEF-0110	240H00492Z	$342,665.46	$342,665
AGWAY,INC.	KEF-0107	RTYA00001Z	$305,930.91	$305,930
WHITAKER OIL COMPANY	LEF-0052	410H00109Z	$279,136.54	$260,000
E-Z SERVICE INC	LEF-0077	400H00220T	$382,898.68	$95,726
QUANTUM CHEMICAL CORPORATION	LEF-0011	720V01245Z	$78,449.91	$78,449
CRESCENT OIL COMPANY	LEF-0044	930H00094Z	$38,239.46	$38,239
MURPHY OIL CORPORATION	KEF-0095	RMUH01983Z	$39,210.96	$30,000
BEACON BAY ENTERPRISES, INC	LEF-0074	999K90120T	$104,617.26	$26,154
AUTOMATIC COMFORT CORP.	LEF-0005	110H00519A	$11,839.60	$11,839
PETE ALIJAN CHEVRON	LEF-0089	999K90062T	$8,508.16	$8,508
SHAW & 99 CHEVRON	LEF-0090	999K90061T	$6,982.40	$6,982
INDIAN WELLS OIL COMPANY	KEF-0103	710V02002Z	$6,711.30	$6,711
BEACON OIL CO.	HEF-0203	910S00008Z	$2,042.25	$2,042
EXXON CORPORATION	KEF-0087	REXL00201Z	$1,848.30	$1,848
ELWOOD CHEVRON SERVICE	LEF-0085	999K90098T	$6,086.37	$1,522
MOBIL OIL CORPORATION	HEF-0508	RMOA00001Z	$1,444.68	$1,444
REDHILL MOBIL AND TOWING	LEF-0088	999K90109T	$4,766.40	$1,192
EDGINGTON OIL COMPANY	KEF-0002	930S00173Z	$1,048.49	$1,048
AMINOIL U.S.A., INC.	HEF-0007	740V01259Y	$769.47	$769
ED'S EXXON	LEF-0078	999K90097T	$2,596.18	$649
HALF MOON BAY EXXON	LEF-0087	999K90099T	$2,596.18	$649
BOB'S BROADWAY	LEF-0075	900Z40056T	$2,180.41	$545
MILBRAE SHELL	LEF-0079	900Z06293T	$1,829.57	$457
PRODUCT TRACKING - PODRA	N/A	999DOE005W	$315.08	$315
MILES UNION SERVICE	LEF-0083	900Z03258T	$1,256.02	$314
RON'S SHELL	LEF-0084	900Z10251T	$1,201.62	$300

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Name of Case	Case Number	Consent Order No.	Equity as of September 30, 1994	Excess Funds Available
CLEARVIEW GULF	LEF-0076	640Z00670T	$616.76	$150
BUCHANAN SHELL INC	LEF-0061	900Z10250T	$584.94	$146
STARKS SHELL SERVICE	LEF-0034	999K90065Z	$108.43	$108
FUEL OIL SUPPLY & TERMINALING	LEF-0037	650X00284Z	$94.40	$94
BOB HUTCHINSON, INC	LEF-0080	900Z02252T	$284.30	$71
SAUVAGE GAS SERVICE CO,INC	KEF-0024	710H06008Z	$68.38	$68
UNITED REFINING COMPANY	KEF-0132	340S00445Z	$56.54	$56
JIM CAMPBELL SHELL	LEF-0082	900Z03255T	$202.71	$50
THOMAS P.REIDY,INC.	KEF-0137	720H06015Z	$26.42	$26
JOHN R. ADAMS	LEF-0020	660H00060Z	$23.60	$23
SOUTH HAMPTON REFINING	HEF-0222	6E0S00002Z	$22.47	$22
MEADOWS REALTY COMPANY	KEF-0133	910S00001Z	$16.21	$16
DIAMOND INDUSTRIES,INC.	KEF-0130	320H00097Z	$6.12	$6
TRUE OIL COMPANY	HEF-0557	733V02019Z	$4.34	$4
FLETCHER OIL & REFINING COMP	LEF-0010	960S00100Z	$2.84	$2
PAUL INVESTS & A.B. HOLDING CO	LEF-0006	400H00231Z	$1.36	$1
PESTER MARKETING COMPANY	KEF-0134	730S01236Z	$1.82	$1
A-1 EXXON	HEF-0509	999K90080T	$3,115.34	$0
ALAMEDA CHEVRON	LEF-0093	999K90081T	$1,522.08	$0
ALAMEDA CHEVRON	LEF-0093	900Z06251T	$834.10	$0
ANCHOR GASOLINE CORPORATION	KEF-0120	740S01247Z	$4,701,378.77	$0
AOC ACQUISITION CORPORATION	LEF-0003	RCKH016A1Z	$8,725,258.96	$0
APTOS SHELL	LEF-0092	999K90083T	$4,765.63	$0
ATLANTIC RICHFIELD CO (ARCO)	HEF-0591	RARH00001Z	$17,980,535.36	$0
BELL FUELS INC	LEF-0061	570H00195T	$35,294.40	$0
BEN'S EXXON SERVICE	HEF-0512	999K90085T	$3,174.07	$0
BERRYESSE CHEVRON	LEF-0095	999K90086T	$3,045.88	$0
BILL WREN'S SHELL	LEF-0096	999K90087T	$4,535.05	$0
C J KING CHEVRON	LEF-0109	999K90089T	$4,971.70	$0
CAPITOL 66 OIL COMPANY	LEF-0067	422H00238T	$16,379.08	$0
CROWN CENTRAL PETROLEUM CORP	KEF-0044	RCWA00000Z	$0.68	$0
CRUDE OIL PURCHASING INC	LEF-0058	6A0X00269T	$97,398.84	$0

Appendix A: Funds Available Under PODRA in Fiscal Year 1995

Name of Case	Case Number	Consent Order No.	Equity as of September 30, 1994	Excess Funds Available
CUMBERLAND FARMS DAIRY INC	LEF-0068	120K00497T	$190,324.98	$0
CUTTING SHELL SERVICE	LEF-0097	999K90091T	$5,002.07	$0
DALCO PETROLEUM	HEF-0060	660T00642Z	$750,130.41	$0
DANE ENERGY COMPANY	LEF-0122	6A0X00320Z	$891,775.27	$0
DOMA CORP/DON MARTIN	LEF-0049	6A0X00111Z	$7,955.29	$0
ED GULARTE CHEVRON	LEF-0098	999K90095T	$6,477.21	$0
ELIAS OIL COMPANY	KEF-0022	412H00105Z	$0.21	$0
EMPIRE GAS CORPORATION	KEF-0048	720T00521Z	$493,200.48	$0
ESTE OIL COMPANY	LEF-0062	533H00163T	$65,486.73	$0
G & G OIL COMPANY	LEF-0063	550H00332T	$51,007.36	$0
GENERAL PETROLEUM	LEF-0064	550H00075T	$23,957.10	$0
GETTY OIL COMPANY	HEF-0209	RGEA00001Z	$5,548,250.92	$0
GULF OIL CORPORATION	HEF-0590	RGFA00001Z	$15,029,364.28	$0
GULF STATES OIL & REFINING	LEF-0073	6E0S00057T	$519,466.21	$0
HUGHES BURLINGAME SHELL	LEF-0110	999K90100T	$7,566.27	$0
INTERCOASTAL OIL CO	LEF-0057	940X00076T	$30,067.28	$0
JAGUAR PETROLEUM INC	LEF-0059	640X00444T	$67,009.87	$0
JOE BERUBE SERVICES	LEF-0099	999K90101T	$8,615.63	$0
KICKAPOO OIL	LEF-0069	570H00214T	$42,400.21	$0
LAMPTON-LOVE INC	LEF-0070	422T00013T	$13,487.84	$0
MACMILLAN OIL COMPANY,INC	LEF-0046	730T00031Z	$733,876.73	$0
MAXWELL OIL CO.	HEF-0125	000H00425Z	$16,060.10	$0
MCDOWELL EXXON	LEF-0100	999K90104T	$7,269.45	$0
METROPOLITAN PETROLEUM CO,INC.	LEF-0032	412H00171Z	$83,148.41	$0
MT.AIRY REFINING COMPANY,ET AL	LEF-0120	650X00286Z	$2,448,625.64	$0
N C GINTHER COMPANY	LEF-0060	710V03022T	$150,503.81	$0
NORTHEAST PETROL INDUSTRY CORP	HEF-0580	6C0X00241Z	$0.68	$0
OASIS PETROLEUM CORP	LEF-0007	940X00217Z	$1,849,614.81	$0
PERMIAN CORPORATION	LEF-0035	650X00246T	$1,369,302.91	$0
PETALUMA STANDARD SERVICE	LEF-0101	999K90106T	$4,141.12	$0
RECO PETROLEUM INC	LEF-0065	320H00304T	$27,501.68	$0
REGALIA'S CHEVRON SERVICE	LEF-0102	999K90110T	$9,232.62	$0

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Appendix A: Funds Available Under PODRA in Fiscal Year 1995

Name of Case	Case Number	Consent Order No.	Equity as of September 30, 1994	Excess Funds Available
SANDUSKY'S UNION SERVICE	LEF-0111	999K90068T	$2,965.51	$0
SHELL OIL COMPANY	KEF-0093	RSHA00001Z	$4,843,578.33	$0
SKINNEY'S INC	LEF-0071	400H00227T	$16,621.62	$0
SKYCREST SHELL	LEF-0112	999K90112T	$2,336.08	$0
SOS MONARCH OIL CORP	LEF-0066	240H00498T	$6,129.36	$0
STARR UNION SERVICE	LEF-0103	999K90067T	$7,035.77	$0
SUNSET BLVD CAR WASH	LEF-0091	999K90113T	$54,232.80	$0
TELUM, INC.	LEF-0114	820H00020Z	$66,486.96	$0
TENTH STREET CHEVRON	LEF-0104	999K90115T	$7,372.96	$0
TESORO PETROLEUM CORP	KEF-0128	BUBBBBBBBB	$6,003,593.67	$0
TEXACO INC	KEF-0119	RTXE006A1Z	$35,341,189.96	$0
TOM'S COFFEE TREE CHEVRON	LEF-0105	999K90116T	$4,673.62	$0
VERMONT MORGAN CORP	LEF-0072	110H00514T	$21,063.01	$0
WALLACE & WALLACE	HEF-0190	240H00399Z	$0.71	$0
WALLACE ARCO SERVICE	LEF-0106	999K90117T	$2,146.28	$0
WALT'S SHELL	LEF-0107	999K90118T	$3,700.00	$0
WEBER'S CHEVRON SERVICE	LEF-0108	999K90119T	$8,310.02	$0
WEST COAST OIL COMPANY	KEF-0142	961S00028Z	$0.59	$0
WITCO CHEMICAL CORP	HEF-0227	240S00054Z	$776,938.89	$0
			$164,811,620.18	$20,875,570

BILLING CODE 6460-01-C

Appendix B

October 17, 1994.

MEMORANDUM FOR: George B. Breznay, Director, Office of Hearings and Appeals

SUBJECT: *ERA Input for the PODRA Section 3003(c) Report*

ERA has reviewed the funds held in escrow as of September 30, 1994, which have not been petitioned under Subpart V. The purpose of the review was to identify funds held in escrow in excess of the amounts required to effect restitution to persons or classes of persons in accordance with Section 3003(b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Since the amount of funds which will be available and the extent of claims which will be filed are not known, the funds currently on deposit in the escrow accounts we reviewed are not excess funds for the purposes of PODRA.

Jay F. Thompson,

Director, Office of Management and Information Systems, Economic Regulatory Administration, Office of General Counsel.

[FR Doc. 94–28045 Filed 11–10–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5105–5]

Access to Confidential Business Information by Booz-Allen, & Hamilton

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to participate in reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data on November 21, 1994.

ADDRESSES: Send or deliver, written comments to Steven X. Pandza, U.S. Environmental Protection Agency, Financial Management Section (3PM31), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Steven X. Pandza, Financial Management Section (3PM31), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone (215) 597–6161.

SUPPLEMENTARY INFORMATION: Under Contract 68–W4–0010, Work Assignment #ESS026, Booz-Allen, & Hamilton, Inc., will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the States of Maryland and West Virginia. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of time sheets to expense reports.

(2) Financial Reports: review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Record Keeping Procedures: review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specified time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: November 3, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–28028 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5105–2]

Notice of Open Meeting of the Environmental Financial Advisory Board on December 6–7, 1994

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, D.C. on December 6 and 7, 1994. The meeting will be held in the Parkview Room of the Hotel Washington located at 15th & Pennsylvania Avenue, N.W., Washington, D.C. The Board will meet on December 6 from 1 p.m. to 5 p.m. and on December 7 from 9 a.m. to 4 p.m.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. This will be a working meeting to review and comment on ongoing advisories and reports. These advisories and reports address important environmental financing issues related to sustainable development, urban redevelopment, paying for environmental mandates, the North American Free Trade Agreement, and ecosystem management.

The meeting will be open to the public, but seating is limited. For further information, please contact Joanne Lynch, U.S. EPA on (202) 260–1459.

Dated: October 27, 1994.

Peter Nobert,

Acting Director, Resource Management Division.

[FR Doc. 94–28025 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–M

National Drinking Water Advisory Council; Notice of Open Meeting

Under Section (1)(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99–339), will be held at 9:00 a.m. on December 1, 1994 and at 8:30 a.m. on December 2, 1994, at the Embassy Row Hotel, Continental Room, 2015 Massachusetts Avenue, NW, Washington, DC 20036. Council Subcommittees will hold their meetings on November 29 and November 30, 1994, at the Environmental Protection Agency.

The purpose of the meeting will be to seek Council advice and comments on major program issues. Some issues will include: A Performance Based Methods System; the Community Water Supply Survey; the Needs Survey; Primacy;

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Compliance and Enforcement Priorities; and Viability Initiatives under the existing statutory framework.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be only one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 28, 1994.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, DC 20460 or at (202 260–2285.

Dated: November 7, 1994.

W.R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 94–28027 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–42116B; FRL–4910–3]

Testing Consent Order For 4-Vinylcyclohexene; Proposed Deletion of Triggered In vivo Alkaline Elution Assay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: This notice invites public comment on the proposed deletion of the triggered *in vivo* alkaline elution assay on 4-vinylcyclohexene (4-VCH) currently required by the enforceable consent agreement incorporated in the testing consent order for 4-VCH (Docket No. OPPTS–42116B).

DATES: Written comments must be received on or before December 14, 1994.

ADDRESSES: Submit written comments, identified by the document control number (OPPTS–42116B) in triplicate to: TSCA Nonconfidential Information Center (NCIC) (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Northeast Mall (NEM) Rm. B–607, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action, without confidential business information (CBI) is available for inspection at the above address in the NEM, Rm. B–607, from 12:00 noon to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA's procedures for requiring the testing of chemical substances under section 4 of the Toxic Substances Control Act (TSCA) include the use of enforceable consent agreements (ECAs). The manufacturers of 4-VCH agreed to a testing program which included an *in vivo* alkaline elution assay, if triggered by a negative or equivocal 13–week micronucleus test in both the rat and mouse, (56 FR 47912, September 23, 1991). In a letter dated August 10, 1994, the Chemical Manufacturers Association (CMA) requested, on behalf of the nine companies subject to the testing consent order (E.I. Du Pont de Nemours & Company, Exxon Chemical Co., Lyondell Petrochemical Co., Oxy Petrochemicals, Inc., Shell Oil Co., Texaco Chemical Co., Texas Petrochemicals Corp., Dow Chemical USA., and Union Carbide Chemicals and Plastics Co., Inc.), that the requirement to perform an *in vivo* alkaline elution assay study on 4-VCH be deleted because this requirement is not scientifically justifiable at this time.

The ECA for 4-VCH requires a 2–day micronucleus test in mice and rats. If this test is negative or equivocal, the ECA requires a 90–day micronucleus test. If the results of the 90–day micronucleus test are negative or equivocal, a testicular alkaline elution assay is required. Results of both the 2–day and 90–day micronucleus tests have been submitted to EPA and EPA believes that the results of both tests support the conclusion that 4-VCH does not induce increased frequencies of micronucleated erythrocytes in the bone marrow of mice or rats.

The literature indicates that 4-VCH is not mutagenic in the Salmonella/Ames assay and that 4-VCH induces negative responses in *in vitro* cytogenetic assays (sister chromatid exchange and chromosome aberration). Although 4-VCH was reported to induce gene mutations in L5178Y mouse lymphoma cells, further evaluation of the data by both the National Toxicology Program and the EPA indicate that the evidence for activity in this assay is equivocal, at most. Results of subchronic and reproductive studies indicate that 4-VCH does not cause significant testicular effects in male mice or rats. The majority of the scientific evidence suggests that 4-VCH is nongenotoxic *in vitro* and *in vivo* and does not pose a risk of potential heritable effects to male germ cells.

CMA claims, and EPA preliminarily agrees, that there is no scientific justification to conduct the alkaline elution test at this time. Under 40 CFR 790.68(b)(2)(iii), EPA may approve modifications to test standards that significantly affect the scopt of the ECAs but only after providing the public with notice and an opportunity for comment on such modifications. Furthermore, under §790.68(a), if public comments indicate that no consensus exists on making the change, the issue must be negotiated before any such adjustment can become effective. Therefore, interested persons have 30 days from publication of this notice to provide written comments on the elimination of the *in vivo* alkaline elution assay study from the ECA for 4-VCH. If comments indicate that differences of opinion exist regarding this change, EPA will conduct negotiations following the procedures specified in 40 CFR 790.22(b). If the 30 day deadline passes and no adverse public comments have been received, EPA will grant the proposed modification without further notice.

Authority: 15 U.S.C. 2603

Dated: October 31, 1994.

Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–28019 Filed 11–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 4, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services (ET Docket No. 92–100 and Gen. Docket No. 90–314).

Action: New collection.

Respondents: Individuals or households, state or local governments, non- profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Other: First collection: 1 year after initial license grant for BTA licensees. Second collection: 5 years after initial license grant for nationwide, regional and MTA licensees. Third collection: 10 years after initial license grant for nationwide, regional and MTA licensees.

Estimated Annual Burden: 1,782 responses, 15.1 hours average burden per response, 26,843 hours total annual burden.

Needs and Uses: The Commission has adopted a Memorandum Opinion and Order, released March 4, 1994, in the narrowband personal communications service (PCS) proceeding that requires all licensees, except for paging response channel licensees, to file materials that show their compliance with the construction requirements of this service. Specifically, the Commission required that upon meeting five and ten year construction benchmarks, nationwide, regional and major trading area (MTA) 50 kHz-based licensees shall file a map and other supporting documentation that demonstrates compliance with a geographic area or population coverage requirement. Basic trading area (BTA) 50 kHz-based licensees shall file a statement indicating commencement of service within one year of initial license grant. The Commission required these reporting requirements to ensure that the spectrum is being effectively utilized.

OMB Number: None.

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services (Gen. Docket No. 90–314).

Action: New collection.

Respondents: Individuals or households, state or local governments, non- profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Other: First Collection: 5 years after initial license grant for all licensees. Second Collection: 10 years after initial license grant for 30 MHz licensees.

Estimated Annual Burden: 2,669 responses; 3.12 hours average burden per response; 8,330 hours total annual burden.

Needs and Uses: The Commission adopted a Memorandum Opinion and Order, released June 13, 1994, in the broadband personal communications service (PCS) proceeding that requires licensees to file materials demonstrating their compliance with three Commission rules. Specifically, in Section 24.203, the Commission required that licensees of 30 MHz blocks must serve at least one-third of the population in their licensed areas within five years of being licensed and two-thirds of the population in their licensed areas within ten years of being licensed. Licensees of 10 MHz blocks must serve at least one-quarter of the population in their licensed areas within five years of being licensed, or make a showing of substantial service in their licensed areas within five years of being licensed. Licensees must file maps and other supporting documents showing compliance with the respective construction requirements by the appropriate five- and ten-year benchmarks measured as of the date of their initial licenses. The Commission required these reporting requirements to ensure that the spectrum is being effectively utilized. Section 24.204 states that parties with controlling or attributable ownership interests in cellular licensees where the CGSA(s) covers 20 percent or less of the PCS service area population may be a party to a broadband PCS application and that such PCS applicant will be eligible for more than 10 MHz broadband PCS license and/or 30 MHz broadband PCS license(s) pursuant to the following divestiture procedures: The broadband PCS applicant shall certify on its short-form auction application, filed in accordance with Section 24.305, that it and all parties to the application will come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section. If such an applicant is a successful bidder, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the limitations on common ownership of cellular and broadband PCS interests set for in this section. Where parties to broadband PCS applications hold less-than-controlling (but still attributable) interests in cellular licensee(s), they shall submit, within ninety days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section. Finally, Section 24.237(b) states that the results of the coordination process between incumbent microwave users and PCS licensees need to be reported to the Commission only if the parties fail to agree. Additionally, the Commission requires that each broadband PCS licensee perform an engineering analysis to assure that the proposed facilities will not cause interference to existing OFS stations within the specified coordination distance of a magnitude greater than a specified criteria, unless there is a prior agreement with the affected OFS licensee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–27999 Filed 11–10–94; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 21]

Activities of the Trans-Atlantic Agreement and its Members; Postponement of Second Hearing in Washington D.C.

Pursuant to Commission Order issued July 27, 1994, instituting Fact Finding Investigation No. 21 ("the Fact Finding

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Order"), notice was published in the **Federal Register** on October 3, 1994, that the Investigative Officers would conduct a hearing commencing in public session at 10:00 A.M. on Monday, November 14, 1994, in Washington, DC., concerning various activities and practices by the Trans-Atlantic Agreement ("TAA") and its members which are alleged to be anticompetitive or otherwise violative of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The initial notice was revised on November 4, 1994, to reschedule the hearing to begin on Tuesday, November 15, 1994.

At this time, the Commission intends to review the information collected thus far by the Investigative Officers. Therefore, the Investigative Officers are postponing the hearing that was scheduled to begin on November 15, 1994. The hearing may be rescheduled at a later date.

(Federal Maritime Commission, Bureau of Hearing Counsel, 800 North Capitol Street NW, Washington D.C. 20573, Tele: (202) 523-5783, Fax: (202) 523-5785)

Martha C. Smith,

Investigative Officer.

[FR Doc. 94-28180 Filed 11-10-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Carbon County Holding Company, Englewood, Colorado; Application to Engage in Nonbanking Activities

Carbon County Holding Company, Englewood, Colorado (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to acquire Hanifen, Imhoff Management Co., Inc., Denver, Colorado (Company), and thereby engage in providing investment advisory and administrative services to mutual funds. Applicant states that the proposed administrative services include, among other things, preparing and filing securities registration statements, preparing and filing various financial and operating reports pertaining to the fund, maintaining the records of the fund, computing the net asset value of the fund, and providing office facilities and clerical support for the fund.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984). Applicant maintains that the Board has previously determined that the proposed administrative services are closely related to banking and may be provided together with investment advisory services. *Mellon Bank Corporation*, 79 Federal Reserve Bulletin 626 (1993).

Applicant also proposes to have one individual serve as an officer of Applicant and its subsidiary bank and also serve as an officer of Company. As an officer of Company, this individual would perform ministerial functions for the fund, such as preparing minutes for meetings of the fund's board of trustees. This individual would not serve as an officer, director, or employee of any fund. Applicant maintains that neither Company nor the individual who would perform administrative services for the fund would be able to control the fund. In this regard, Applicant notes that an independent third party would distribute the shares of the fund and that the fund would be governed by an independent board of trustees.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City.

Board of Governors of the Federal Reserve System, November 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27987 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-F

CS Holding and Credit Suisse, both of Zurich, Switzerland; Application to Engage in Nonbanking Activities

CS Holding and Credit Suisse, both of Zurich, Switzerland ("Applicants"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), through BEA Associates, New York, New York ("Company"), to engage *de novo* in providing investment advisory services (including discretionary portfolio management services) to institutional customers with respect to futures and options on futures on nonfinancial commodities. Applicants would engage in these activities on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984).

Applicants maintain that the Board previously has determined by order that providing general investment advisory services with respect to futures and options on futures on nonfinancial commodities is closely related to banking. *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 126 (1991)(*"Swiss Bank"*; *J.P. Morgan & Co., Incorporated*, 80 Federal Reserve Bulletin 151 (1994)(*"J.P. Morgan"*). Applicants state that they would provide general investment advisory services in accordance with *J.P. Morgan*.

Applicants also maintain that the Board previously has not determined that providing discretionary portfolio management services with respect to futures and options on futures on nonfinancial commodities is closely related to banking. Applicants state that Company only would provide discretionary portfolio management services to institutional customers, and only with the consent of such customers. Applicants also state that Company would comply with applicable law, including fiduciary principles. Applicants maintain that the Board has permitted bank holding companies to provide general investment advisory services with respect to futures and options on futures on nonfinancial commodities (*Swiss Bank* and *J.P. Morgan*), and that the proposed discretionary services appear to be functionally similar to the securities-related investment advisory activities the Board has approved for bank holding companies generally in section 225.25(b)(4) of Regulation Y. Applicants conclude that for these reasons, providing discretionary portfolio management services with respect to futures and options on futures on nonfinancial commodities is closely related to banking.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. § 1843(c)(8). Applicants believe that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicants maintain that the proposal will enhance competition and enable Applicants to offer their customers a broader range of products. In addition, Applicants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 13, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27986 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-F

One Valley Bancorp of West Virginia, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

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identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. One Valley Bancorp of West Virginia, Inc., Charleston, West Virginia; to acquire Point Bancorp, Inc., Point Pleasant, West Virginia, and thereby acquire Point Pleasant Federal Savings Bank, Point Pleasant, West Virginia, and thereby engage in the acquisition of a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27988 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-F

United Carolina Bancshares Corporation, Whiteville, North Carolina; Application to Engage in Nonbanking Activities

United Carolina Bancshares Corporation, Whiteville, North Carolina (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to retain its investment in Southeast Switch, Inc. (Company), which engages in data processing and related nonbanking activities pursuant to Regulation Y. Applicant currently owns indirectly 8.33 percent of the Class A shares of Company. Applicant also has joined the application filed by Bank South Corporation, *et al.*, for Company to provide card production and related services to entities that are not members of the Honor electronic funds transfer (EFT) network. *See* 59 FR 51197 (October 7, 1994).

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto...." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are (1) whether banks generally have in fact provided the proposed services, (2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services, and (3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (January 5, 1984).

Applicant would engage through Company in those nonbanking activities in which Company may currently engage and in providing card production and related services to entities that are not members of the Honor electronic funds transfer (EFT) network, as proposed by Bank South *et al.* Applicant maintains that the proposed card production activities are closely related to banking within the meaning of the BHC Act. Specifically, Applicant maintains that the Board has previously authorized bank holding companies to provide data processing services to nonfinancial customers. *See, e.g., Citicorp*, 72 Federal Reserve Bulletin 497 (1986). In addition, Applicant maintains that the Board has authorized card embossing and issuance functions with respect to medical benefits cards issued by payer organizations. *Banc One Corporation*, 80 Federal Reserve Bulletin 139 (1994). Applicant also maintains that the Board has authorized card embossing and encoding functions with respect to stored value cards for nonfinancial institutions. *Banc One Corporation*, 79 Federal Reserve Bulletin 1158 (1993). Applicant further maintains that the data embossed on the type of cards that are the subject of this application are banking, economic, or financial data that permit the cardholder to initiate or consummate a banking or financial transaction, and that the identity of the customer does not change the financial nature of the information being encoded and processed.

Proper Incident to Banking Standard

In order to approve the proposal, the Board also must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance customer convenience and efficiency. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors, the Federal Reserve Bank of Atlanta, or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, November 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27989 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-F

Wilmot Bank Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Wilmot Bank Holding Company, Wilmot, Arkansas; to become a bank holding company by acquiring 70.75 percent of the voting shares of Wilmot State Bank, Wilmot, Arkansas.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Financial Corporation, Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank (in organization), Topeka, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Signature Bancshares, Inc., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Signature Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire First State Bank, Coolidge, Texas. In addition, Signature Delaware Financial Corporation, Dover, Delaware, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Coolidge, Texas.

Board of Governors of the Federal Reserve System, November 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-27990 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 1996

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 1996.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1996, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401-5536.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.8 billion for Fiscal Year 1996 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.8 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.8 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1996, the allotments are based upon the Bureau of Census population statistics contained in its reports "Updated National/State Population Estimates" (CB94-43 Table 1) released March 1994, and "1990 Census of Population and Housing" (CPH-6-AS and CPH-6-CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1995.

Fiscal Year 1996 Federal Allotments to States for Social Services—Title XX Block Grants

TOTAL	$2,800,000,000
ALABAMA	45,202,466
ALASKA	6,477,545
AMERICAN SAMOA	104,188
ARIZONA	42,492,693
ARKANSAS	26,169,280
CALIFORNIA	336,951,078
COLORADO	38,498,207
CONNECTICUT	35,378,190
DELAWARE	7,567,931
DIST. OF COL.	6,250,831
FLORIDA	147,677,222
GEORGIA	74,675,294
GUAM	482,759
HAWAII	12,663,600
IDAHO	11,875,499
ILLINOIS	126,279,733
INDIANA	61,677,021
IOWA	30,379,684
KANSAS	27,324,443
KENTUCKY	40,905,695
LOUISIANA	46,368,424
MAINE	13,376,130
MARYLAND	53,601,682
MASSACHUSETTS	64,904,998
MICHIGAN	102,323,614
MINNESOTA	48,765,115
MISSISSIPPI	28,533,584
MISSOURI	56,505,781
MONTANA	9,068,563
NEBRASKA	17,349,024
NEVADA	14,995,516
NEW HAMPSHIRE	12,156,192
NEW JERSEY	85,060,957
NEW MEXICO	17,446,187
NEW YORK	196,453,134
NORTH CAROLINA	74,977,580
NORTH DAKOTA	6,866,197
NO. MARIANA ISLANDS	96,552
OHIO	119,737,413
OKLAHOMA	34,881,578
OREGON	32,733,192
PENNSYLVANIA	129,982,730
PUERTO RICO	14,482,759
RHODE ISLAND	10,806,704
SOUTH CAROLINA	39,329,492
SOUTH DAKOTA	7,729,870
TENNESSEE	55,048,334
TEXAS	194,661,013
UTAH	20,080,388
VERMONT	6,229,239

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VIRGIN ISLANDS	482,759
VIRGINIA	70,076,237
WASHINGTON	56,732,495
WEST VIRGINIA	19,648,552
WISCONSIN	54,389,783
WYOMING	5,084,873

Dated: November 4, 1994.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 94-27929 Filed 11-10-94; 8:45 am]

BILLING CODE 4184-01-P

Agency For Toxic Substances and Disease Registry

[ATSDR-57]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of 6 final and 9 updated final toxicological profiles of priority hazardous substances comprising the sixth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Fears, Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road, NE., Mail Stop E-29, Atlanta, Georgia 30333, telephone (404) 639-6304.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both agencies determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on February 28, 1994 (59 FR 9486). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987, (52 FR 12866); October 20, 1988, (53 FR 41280); October 26, 1989, (54 FR 43619); October 17, 1990, (55 FR 42067); October 17, 1991, (56 FR 52166) and October 28, 1992, (57 FR 48801).

Notice of the availability of drafts of the sixth set (15) of toxicological profiles for public review and comment was published in the **Federal Register** on October 8, 1992, (57 FR 46393), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR-59. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of 6 final and 9 updated final toxicological profiles comprising the sixth set. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1-800-553-6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Sixth Set:		
1. Acetone	PB/95/100095	67-64-1
2. Carbon Tetrachloride (UPDATE)	PB/95/100103	56-23-5
3. Chlordane (UPDATE)	PB/95/100111	12789-03-6
4. Chlorodibenzofurans	PB/95/100129	
1,3,7,8-Tetrachlorodiphenylene oxide		57117-35-8
2,3,6,8-Tetrachlorodiphenylene oxide		57117-37-0
2,3,7,8-Tetrachlorodiphenylene oxide		51207-31-9
1,2,3,4,8-Pentachlorodiphenylene oxide		67517-48-0
1,2,3,7,8-Pentachlorodiphenylene oxide		57117-41-6
2,3,4,7,8-Pentachlorodiphenylene oxide		57117-31-4
1,2,3,4,7,8-Hexachlorodiphenylene oxide		70648-26-9
1,2,3,6,7,8-Hexachlorodiphenylene oxide		57117-44-9
1,2,3,7,8,9-Hexachlorodiphenylene oxide		72918-21-9
1,2,4,6,7,9-Hexachlorodiphenylene oxide		75627-02-0
2,3,4,6,7,8-Hexachlorodiphenylene oxide		60851-34-5
1,2,3,4,6,7,8-Heptachlorodiphenylene oxide		67562-39-4
1,2,3,4,6,7,9-Heptachlorodiphenylene oxide		70648-25-8
1,2,3,4,6,8,9-Heptachlorodiphenylene oxide		69698-58-4
1,2,3,4,7,8,9-Heptachlorodiphenylene oxide		55673-89-7
1,2,3,4,6,7,8,9-Octachlorodiphenylene oxide		39001-02-0
5. 4,4'-DDT, DDE, DDD (UPDATE)	PB/95/100137	
Dichlorodiphenyltrichloroethane (DDT)		50-29-3
Dichlorodiphenyldichloroethylene (DDE)		72-55-9
1,1,-bis(4-chlorophenyl)-2,2-dichloroethane (DDD)		72-54-8
6. 1,2-Dichloroethane (UPDATE)	PB/95/100145	107-06-2
7. 1,1-Dichloroethene (UPDATE)	PB/95/100152	75-35-4
8. Hexachlorobutadiene	PB/95/100160	87-68-3
9. Hexachlorocyclohexanes	PB/95/100178	
Gamma-Hexachlorocyclohexane		58-89-9
Alpha-Hexachlorocyclohexane		319-84-6
Beta-Hexachlorocyclohexane		319-85-7

Toxicological profile	NTIS Order No.	CAS No.
Delta-Hexachlorocyclohexane		319-86-8
10. MBOCA	PB/95/100186	101-14-4
11. Mercury (UPDATE)	PB/95/100194	7439-97-6
12. Methoxychlor	PB/95/100202	72-43-5
13. Pentachlorophenol (UPDATE)	PB/95/100210	87-86-5
14. Toluene (UPDATE)	PB/95/100228	108-88-3
15. Zinc (UPDATE)	PB/95/100236	7440-66-6

Dated: November 7, 1994.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94-27964 Filed 11-10-94; 8:45 am]

BILLING CODE 4163-70-P

Food and Drug Administration

[Docket No. 94M-0364]

Cook OB/GYN; Premarket Approval of the Cook Chorionic Villus Sampling Set

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cook OB/GYN, Spencer, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Cook Chorionic Villus Sampling Set. After reviewing the recommendation of the Obstetrics-Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1994, of the approval of the application.

DATES: Petitions for administrative review by December 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-1180.

SUPPLEMENTARY INFORMATION: On February 1, 1990, Cook OB/GYN, Spencer, IN 47460, submitted to CDRH an application for premarket approval of the Cook Chorionic Villus Sampling Set. This device is indicated for use in obtaining chorionic tissue samples transcervically for the prenatal diagnosis of genetic abnormalities during weeks 10 to 12 of pregnancy.

On April 29, 1991, the Obstetrics-Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application subject to the submission of the revised indication for use of the device and revised draft labeling. On September 30, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before (*insert date 30 days after date of publication in the* **Federal Register**), file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 27, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94-27926 Filed 11-10-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 94M-0362]

CIBA Corning Diagnostics Corp.; Premarket Approval of ACS™ CEA Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ciba Corning Corp., Medfield, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the ACS™ CEA Assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of August 23, 1994, of the approval of the application.

DATES: Petitions for administrative review by December 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

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FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On June 23, 1993, Ciba Corning Diagnostics Corp., Medfield, MA 02052–1688, submitted to CDRH an application for premarket approval of the ACS™ CEA Assay. The device is an in vitro device for the quantitative measurement of carcinoembryonic antigen (CEA) in human serum to aid in the management of cancer patients in whom changing concentrations of cea are observed, using the Ciba Corning Automated Chemiluminescence System (ACS).

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 23, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before (*insert date 30 days after date of publication in the* **Federal Register**), file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 27, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–27925 Filed 11–10–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Revision; *Title of Information Collection:* Monitoring and Evaluation of the Medicare Cataract Surgery Alternate Payment Demonstration; *Form No.:* HCFA–R–154; *Use:* Proposed changes in the presurgery and postsurgery patient interviews that will be used to interview Medicare beneficiaries participating in the Medicare Cataract Surgery Alternate Payment Demonstration. Changes in the research design necessitate that some questions in the beneficiary surveys be modified in order to be comparable to an existing data base and that total annual respondent burden be reduced.; *Frequency:* On occasion; *Respondents:* Individuals or households, businesses or other for profit, nonprofit institutions; *Estimated Number of Responses:* 562 (survey), 4,170 (checklist); *Average Hours Per Response:* .30 (survey), .15 (checklist); *Total Estimated Burden Hours:* 795.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction; *Form No.:* HCFA–2567; *Use:* This form provides information regarding deficiencies noted during periodic facility and laboratory certification surveys. Information from this form is used to make decisions concerning certification and recertification of health care facilities participating in the Medicare/Medicaid programs and of laboratories regulated by the Clinical Laboratory Improvement Amendments (CLIA); *Frequency:* Biennially; *Respondents:* Businesses or other for profit, small businesses or organizations, State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 98,400; *Average Hours Per Response:* 2; *Total Estimated Burden Hours:* 196,800.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Laboratory Personnel Report (CLIA); *Form No.:* HCFA–209; *Use:* This form is used by the State agency to determine a laboratory's compliance with personnel qualifications under CLIA. This information is needed for a laboratory's CLIA certification and recertification; *Frequency:* Biennially; *Respondents:* State or local governments, businesses or other for profit, Federal agencies or employees, small businesses or organizations, nonprofit institutions; *Estimated Number of Responses:* 26,250; *Average Hours Per Response:* .5; *Total Estimated Burden Hours:* 13,125.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Clinical Laboratory Improvement Amendments of 1988 (CLIA), Section 42 CFR, Part 493; *Form No.:* HCFA–R–26; *Use:* CLIA requires every laboratory, with certain exceptions contained in the regulation, that performs testing on human specimens to meet performance requirements in order to be certified. This rule, HSQ–176, implements the certificate, laboratory standards, and inspection requirements of CLIA; *Frequency:* On occasion; *Respondents:* Federal agencies or employees, nonprofit institutions, State or local governments, individuals or households; *Estimated Number of Responses:* 149,700; *Average Hours Per Response:* 61.488; *Total Estimated Burden Hours:* 9,204,754.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Dated: November 2, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–27942 Filed 11–10–94; 8:45 am]

BILLING CODE 4120–03–P

[BPO–127–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during April, May, and June of 1994 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

We are also providing the content of revisions to the Medicare Coverage Issues Manual published between April 1 and June 30, 1994. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Margaret Cotton, (410) 966–5255 (For Medicare instruction information)

Walter Rutemueller, (410) 966–5395 (For Medicare coverage information)

Pat Prete, (410) 966–3246 (For Medicaid instruction information)

Michael Robinson, (410) 966–5633 (For all other information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 36 million Medicare beneficiaries and 33 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from April 1 through June 30, 1994.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage

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Issues Manual may wish to review the August 21, 1989, publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of August 5, 1994. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, the Parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

Addendum V sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, , Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of the January 1, 1993. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendix M (Interpretative Guidelines for Hospices). Copies of this appendix may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA-Pub. 14–3) transmittal entitled "Claims Involving Patients Who Have Elected Hospice Care," use the Superintendent of Documents No. HE 22.8/7, and the HCFA transmittal number 1475.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Issuances Staff, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–3246.

Questions concerning items in Addenda V may be addressed to Walter Rutemueller, Office of Coverage and Eligibility Policy, Health Care Financing Administration, Room 401 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5395.

Questions concerning all other information may be addressed to Michael Robinson, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5633.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: October 20, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.

March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16, 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)
July 9, 1993 (58 FR 36967)
September 1, 1993 (58 FR 46200)
December 22, 1993 (58 FR 67796)
March 17, 1994 (59 FR 12610)
August 5, 1994 (59 FR 40038)

Addendum II

Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

Program Memorandum for Insurance Commissioners (Non-Manual Issuances)

This new transmittal is used to convey HCFA's position regarding Medigap issues or problems of current interest to State Insurance Commissioners. These transmittals are used to communicate information or requests for action of a one-time only, non-recurring nature.

Addendum III.—Medicare and Medicaid Manual Instructions

[April Through June 1994]

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual **Part 1—Fiscal Administration (HCFA–Pub. 13–1)** **(Superintendent of Documents No. HE 22.8/6–1)**
125	• Principles of Reimbursement for Administrative Costs. Budget Preparation. Budget Execution.
	Intermediary Manual **Part 2—Audits, Reimbursement Program Administration (HCFA–13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
397	• Standards and Procedures for Evaluating Intermediary Performance in FY 1994. Standards and Procedures for Evaluating Regional Home Health Intermediary Performance in FY 1994.
	Intermediary Manual **Part 3—Claims Process (HCFA–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1619	• HCFA–485—Home Health Certification and Plan of Treatment Data Elements. Treatment Codes for Home Health Services. Treatment Codes for Professional Services.
1620	• Development of Local Medical Review Policy. Determining When a Local MR Policy Is Needed. Development of a LMRP.
1621	• Pneumococcal Pneumonia and Influenza Virus Vaccines. Comprehensive Medical Review Procedures for On-Site Review of Provider Medical Records. Selection of Providers. Selection of Claims and Period to Review. Performance of Postpayment CMRs.
1622	• Liver Transplants. List of Approved Liver Transplant Centers. Provider-Specific Payment Data. Provider-Specific Data Record Layout and Description. Intermediary Responsibilities.
1623	• Federally Qualified Health Centers.
1624	• Beneficiary Services. Provider Services.
1625	• Epoetin.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
		Carriers Manual **Part 1—Fiscal Administration (HCFA–Pub. 14–1)** **(Superintendent of Documents No. HE 22.8/7–2)**
119	•	Principles of Reimbursement for Administrative Costs. Budget Preparation. Budget Execution.
		Carriers Manual **Part 2—Program Administration (HCFA–Pub. 14–2)** **(Superintendent of Documents No. HE 22.8/7–3)**
125	•	Standards and Procedures for Evaluating Carrier Performance in FY 1994. Standards and Procedures for Evaluating Common Working File Host Performance in FY 1994.
126	•	Beneficiary Services. Provider Services.
		Carriers Manual **Part 3—Claims Process (HCFA–14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1483	•	Relative Value Units and Related Information. Geographic Practice Cost Indexes by Medicare Carrier Locality. Procedure Codes Subject to Assistant at Surgery Payment Restriction. Facility-Based Procedures for Which an Additional Amount for Supplies May Be Payable if Performed in a Physician's Office. Procedure Codes Subject to the Outpatient Limit.
1484	•	Billing for Provider-Based Physician Services.
1485	•	Medicare Standard PC-Print-B Software.
1486	•	Rebundling of CPT–4 Codes.
1487	•	Payments for Services Provided to Patients in Sleep Disorder Clinics. Reimbursement for Services Rendered to Patients in Freestanding Cardiac Rehabilitation Clinics. Reasonable Charges for Digital Subtraction Angiography. Payment for Extracorporeal Shock Wave Lithotripsy. Payment to Ambulatory Surgical Centers. Carrier Adjustment of Payment Rates. Wage Index for Determining Ambulatory Surgical Center Facility Payments. Carrier Adjustment of Payment Rates. Payment for Intraocular Lens.
1488	•	Incentive Payments to Physicians for Professional Services Furnished in Health Professional Shortage Areas.
1490	•	Epoetin.
		Program Memorandum **Intermediaries (HCFA–Pub.60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–94–2	•	Fiscal Intermediary Coordination of Benefits Interim Flat File Formats.
A–94–3	•	Extension of Due Date for Filing Provider Cost Reports on Form HCFA–2552–92.
A–94–4	•	Requests for Exceptions to the Skilled Nursing Facility Routine Service Cost Limits for Atypical Services or Items.
		Program Memorandum **Carriers (HCFA–Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–94–3	•	1994 Participation Enrollment for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies.
		Program Memorandum **Regional Offices General (HCFA–Pub. 51)** **(Superintendent of Documents No. HE 22.8/6–5)**
94–1	•	Long-Term Care Facility Responsibility to Inform Residents of Cost Sharing Charges.
		Program Memorandum **Medicaid State Agencies (HCFA–Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
94–2	•	Title XIX, Social Security Act, Medicaid Eligibility.
94–3	•	Title XIX, Social Security Act, Vaccine for Children Program.
94–4	•	Title XIX, Social Security Act, Tuberculosis-Related Services.
94–5	•	Title XIX, Social Security Act, Nurse-Midwife Services.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April Through June 1994]

Trans. No.		Manual/Subject/Publication Number
		Program Memorandum **Insurance Commissioners (HCFA–Pub. 80)** **(Superintendent of Documents No. 22.28/5:90–1)**
94–1	•	Medigap Bulletin Series (Number One).
		Regional Office Manual **Standards and Certification (HCFA–Pub. 23–4)** **(Superintendent of Documents No. 22.8/8–3)**
54	•	Approval of Extended Care Services (Swing Bed) in Hospitals. Special Requirements for Swing-Bed Hospitals with 50–99 Beds. Approval Prodedures for Hospitals in the 50–99 Bed Category. Dispute Procedures Regarding Geographic Region. Approval Letter for Extended Care Services (Swing-Beds) in Hospitals (50–99 Beds).
		Regional Office Manual **Medicaid (HCFA–Pub. 23)** **(Superintendent of Documents No. 22.28/5:90–1)**
36	•	Reporting Requirements for Plan Amendments/Waivers.
		State Operations Manual **Provider Certification (HCFA–Pub. 7)** **(Superintendent of Documents No. HE 22.8/12)**
264	•	Hospital Providers of Extended Care Services ("Swing Bed")—Citations and Description. Requirements Assessed Prior to Survey for Swing-Bed Approval. Survey Procedures for Swing-Bed Approval. Form HCFA–605, Request for Approval as a Hospital Provider of Extended Care Services. (Swing-Bed) in the Medicare and Medicaid Programs. Model Letter—Swing Bed Applicants. Hospital Providers of Extended Care Services. Guidance to Surveyors, Swing-Bed Hospitals
		Peer Review Organization Manual (HCFA–Pub. 19) **(Superintendent of Documents No. HE 22.8/15)**
30	•	Introduction. Notification Requirements. Basic Elements for Quality Concern Notices. Potential Quality Concern Notices. Final Quality Concern Determination Notices. Rereview Quality Concern Notices. Potential Quality Concern Model Notice. Confirmed Quality Concern Model Notice. Rereview Upheld Quality Concern Model Notice. Physician Recipients of PRO Potential Quality Concern Notices. Introduction. Inpatient Hospitals/Speciality Hospitals/Units. Ambulatory Surgery. Intervening Care. Authority. Types of Denial Determinations. Denial and Reporting Timeframes. Notification of Denial. Content of Denial Notice. Assembling the Hearing Claim File. Introduction. PRO Review Documentation. Timeframes for Retaining PRO Review Documentation. Medical Records. Timeframes for Retaining Medical Records. Disposal of Records.
31	•	NOTE: Instructions that do not apply to Round Four Contracts were deleted.
32	•	General Requirements.
33	•	Overview. Quality Review Process. Identification of Quality of Care Concerns. Determination of Sources of Concern. Notification of Quality Concerns to Affected Parties. Timing of Quality Review. PRO Quality Improvement Activities.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April Through June 1994]

Trans. No.		Manual/Subject/Publication Number
34	•	Introduction. Formulation and Dissemination of Review Criteria. Formulation and Dissemination of Documentation Guidelines. Opportunity to Discuss. On-Site Review. An Important Message From Medicare.
35	•	NOTE: Instructions that do not apply to Round Four Contracts were deleted.
36	•	Introduction. Admission Review. Quality of Care Review. Invasive Procedure Review. Length-of-Stay Review. Coverage Review. Documentation Review. Discharge Review. Introduction. Day and Cost Outlier Review. Referrals/Special Studies. Assistant at Cataract Surgery Review. Hospital-Issued Notices of Noncoverage. Beneficiary Complaints. Limitation on Liability Presumption Determinations. Readmissions. Transfer. Introduction. Nonphysician Case Review. First Level Physician Review. Action Following Opportunity to Discuss. Second Level Physician Review. Third Level Physician Review. Use of the PRAF. Introduction. Feedback to the Provider and Involved Physicians. Request for an Action Plan. When an Action Plan is Not Needed. Provider Implementation of an Action Plan. Additional Performance Improvement Activities. Monitoring Performance Improvement Actions. Timing Requirements for Performance Improvement Activities. Model Physician Reviewer Assessment Format. PRO Action Flow Diagram. Index.
37	•	Introduction. Nonphysician Reviewers. Physician Reviewers.
		Hospital Manual (HCFA–Pub. 10) (Superintendent of Documents No. HE 22.8/2)
663	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report.
664	•	Pneumococcal Pneumonia and Influenza Virus Vaccines.
665	•	Liver Transplants.
666	•	Epoetin
		Skilled Nursing Facility Manual (HCFA–Pub. 12) (Superintendent of Documents No. HE 22.8/3)
328	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report. Billing for Mammography Screening.
329	•	Special Billing Instructions for Pneumococcal Pneumonia and Influenza Virus Vaccines.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April Through June 1994]

Trans. No.		Manual/Subject/Publication Number
		State Medicaid Manual Part 2—State Organization and General Administration (HCFA–45–2) (Superintendent of Documents No. 22.8/10)
85	•	How to Submit Request for Waiver Under Section 1915.
		State Medicaid Manual Part 3—Eligibility (HCFA–Pub. 45–3) (Superintendent of Documents No. 22.8/10)
IM–94–1	•	Third Party Liability.
		State Medicaid Manual Part 4—Services (HCFA–45–4) (Superintendent of Documents No. 22.8/10)
68	•	Tuberculosis Related Services.
		State Medicaid Manual Part 5—Early and Periodic Screening, Diagnosis, Treatment (HCFA–45–5) (Superintendent of Documents No. 22.8/10)
8	•	EPSDT Service Requirements. Screening Service Content. Referral for Services Not Covered Under Medicaid. Records or Information on Services and Recipients.
		State Medicaid Manual Part 6—Payment for Services (HCFA–Pub. 45.6) (Superintendent of Documents No. 22.8/10)
25	•	Federal Upper Limit.
		State Medicaid Manual Part 7—Quality Control (HCFA–Pub. 45–7) (Superintendent of Documents No. 22.8/10)
51	•	Other Elements of Interview. Income. Verification Guide
		Coverage Issues Manual (HCFA–Pub. 6) (Superintendent of Documents No. 22.8/14)
70	•	Incontinence Control Devices.
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA–Pub. 15–II) (Superintendent of Documents No. 22.8/4)
3	•	Worksheet S–3—Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Statistical Data.
		Rural Health Clinic and Federally Qualified Health Center Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22/19:985)
11	•	Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers. Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report.
12	•	Completion of Form HCFA–1450 by Rural Health Clinics and Federally Qualified Health Centers.
13	•	Billing of Pneumococcal Pneumonia and Influenza Virus Vaccines by Rural Health Clinics and Federally Qualified Health Centers.
14	•	Part B Coinsurance.
15	•	Filing Procedures. Special Billing Instructions for Federally Qualified Health Centers.
		Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA–Pub. 29) (Superintendent of Documents No. HE 22.8/13)
65	•	Epoetin. Completion of Form HCFA–1450 by Independent Facilities for Home Dialysis Items and Services Billed Under the Composite Rate.

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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
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Trans. No.		Manual/Subject/Publication Number
66	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report.
67	•	Pneumococcal Pneumonia and Influenza Virus Vaccines.
68	•	Epoetin.
		Home Health Agency Manual (HCFA–Pub. 11) (Superintendent of Documents No. 22.8/5)
266	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report.
267	•	HCFA–485—Home Health Certification and Plan of Care. Treatment Codes for Home Health Services. Treatment Codes for Professional Services Required.
268	•	Pneumococcal Pneumonia and Influenza Virus Vaccines. Billing for Hepatitis B Vaccine.
269	•	Billing for Pneumococcal and Hepatitis B Vaccine. Billing for Oral Cancer Drugs. Completion of Form HCFA–1450 for Home Health Billing.
		Medicare Christian Science Sanatorium Hospital Manual Supplement (NCFA-Pub. 32) (Superintendent of Documents No. HE 22.8/2–2)
31	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report (HCFA–838).
32	•	Pneumococcal Pneumonia and Influenza Virus Vaccines.
		Hospice Manual (HCFA–Pub. 21) (Superintendent of Documents No. 22.8/18)
43	•	Billing Hospice Claims for Pneumococcal Pneumonia and Influenza Virus Vaccines.
44	•	Billing Hospice Claims for Pneumococcal Pneumonia and Influenza Virus Vaccines.
		Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA–Pub. 9) (Superintendent of Documents No. HE 22.8/9)
118	•	Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report.
119	•	Pneumococcal Pneumonia and Influenza Virus Vaccines.
		Medicare/Medicaid Sanction—Reinstatement Report
94–5	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
94–5	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.

APPENDIX IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	Vol. 59 FR page numbers	CFR Part	File Code*	Regulation title	End of: Comment period	End of: Effective date
				April 1994		
4/18/94	18318	405	BPD–422–CN	Medicare Program; Review of Information Collection and Recordkeeping Requirements for Providers of Outpatient Physical Therapy and/or Speech Pathology (OFR CORRECTION TO A FINAL RULE).		10/1/93
4/20/94	18820–18821		OMC–017–N	Health Maintenance Organizations: Qualification Determinations and Compliance Actions During the Period October 1, 1993 through December 31, 1993.		
5/2/94	22674–22677		MB–088–N	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals; Federal Fiscal Year 1994.		10/1/93

APPENDIX IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	Vol. 59 FR page numbers	CFR Part	File Code*	Regulation title	End of: Comment period	End of: Effective date
5/9/94	23820–23824	434, 435	MB–044–P	Medicaid Program; Requirements for Certain Health Insuring Organizations and OBRA '90 Technical Amendments.	7/8/94	
5/10/94	24167–24170		BPO–125–N	Medicare and Medicaid Programs; Medicare-Medicaid Coverage Data Bank Requirements: Preliminary Guidance.		
5/20/94	26499–26500		OPA–012–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.		
5/23/94	26653–26659		BPD–782–PN	Medicare Programs; Noncoverage of Electrostimulation of Salivary Glands for the Treatment of Xerostomia (Dry Mouth).	7/22/94	
5/24/94	26739–26740	424	BPD–610–CN	Medicare Program; Diagnosis Codes on Physician Bills; (CORRECTION TO A FINAL RULE).		3/4/94
5/25/94	26955–26960	405, 406, 408, 410, 413.	BPD–791–FC	Medicare Program; Self-Implementing Coverage and Payment Provisions: 1993 Legislation.	7/25/94	6/24/94
5/25/94	26960–26965	413	BPD–689–FC	Medicare Program; Uniform Electronic Cost Reporting System for Hospitals.	7/25/94	6/24/94
5/25/94	26998–27002	413	BPD–794–P	Medicare Program; Date for Filing Medicare Cost Reports.	7/25/94	
5/25/94	27023–27025		BPD–814–N	Medicare Program; Methodology for Calculating the Interest Rate To Be Applied to Medigap Premium Refunds and Credits.		5/25/94
5/27/94	27708–27930	412, 413, 482, 485, 489.	BPD–802–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1995 Rates.	7/26/94	
5/31/94	28133		MB–088–CN	Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1994 (OFR CORRECTION TO A FINAL RULE).		10/1/93
6/1/94	68410–68411		BPD–774–CN	Medicare Program; Physician Performance Standard Rates of Increase for Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994 (CORRECTION TO A FINAL RULE).		1/1/94
6/8/94	29578–29586	413	BPD–409–P	Medicare Program; Optional Payment System for Low Medicare Volume Skilled Nursing Facilities.	8/8/94	
6/13/94	30389	412	BPD–769–FC	Medicare Program; Changes to the Requirement for Annual Physician Acknowledgement of Physician Attestation Responsibilities (CORRECTION TO A FINAL RULE WITH COMMENT PERIOD).	5/9/94	4/8/94
6/17/94	31303	412, 413, 482, 485, 489.	BPD–802–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates (CORRECTION TO A PROPOSED RULE).	7/26/94	
6/20/94	31569–31580	435, 436	MB–47–P	Medicare Program; Requirements for Enrollment in or Payment for Certain Employer Group Health Plans.	8/19/94	
6/22/94	32086–32127	405, 489	BPD–393–IFC.	Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care.	8/22/94	7/22/94
6/23/94	32378–32383	412	BPD–771–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates.		7/25/94
6/24/94	32754–32794	410, 414	BPD–789–P	Medicare Program; Refinements to Geographic Adjustment Factor Values and Other Policies Under the Physician Fee Schedule.	8/23/94	
6/29/94	33520–35536		BPD–781–PN	Medicare Program; Limitations on Medicare Coverage of Intermittent Positive Pressure Breathing Machine Therapy.	8/29/94	

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling.

Addendum V—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 70; section 65–9. Incontinence Control Devices. CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For Services Furnished on or After 07/11/94.

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Section 65–9, Incontinence Control Devices, is revised to reflect that a collagen implant is injected into the submucosal tissue of the urethra and/or bladder neck and into the tissue adjacent to the urethra to create increased tissue bulk as a mechanism to manage urinary incontinence is considered a prosthetic device for the reason that the product helps replace the function of the sphincter muscle by augmenting the urethral submucosa. This type of augmentation helps increase intrabdominal pressure to assist in urethral closing thereby improving or eliminating urinary incontinence.

The instruction specifies patient selection criteria that must be met before the product or the procedure to implant the product can be covered.

65–9 INCONTINENCE CONTROL DEVICES

A. Mechanical/Hydraulic Incontinence Control Devices.—Mechanical/hydraulic incontinence control devices are accepted as safe and effective in the management of urinary incontinence in patients with permanent anatomic and neurologic dysfunctions of the bladder. This class of devices achieves control of urination by compression of the urethra. The materials used and the success rate may vary somewhat from device to device. Such a device is covered when its use is reasonable and necessary for the individual patient.

B. Collagen Implant.—A collagen implant, which is injected into the submucosal tissues of the urethra and/or the bladder neck and into tissues adjacent to the urethra, is a prosthetic device used in the treatment of stress urinary incontinence resulting from intrinsic sphincter deficiency (ISD). ISD is a cause of stress urinary incontinence in which the urethral sphincter is unable to contract and generate sufficient resistance in the bladder, especially during stress maneuvers.

Prior to collagen implant therapy, a skin test for collagen sensitivity must be administered and evaluated over a four week period.

In male patients, the evaluation must include a complete history and physical examination and a simple cystometrogram to determine that the bladder fills and stores properly. The patient then is asked to stand upright with a full bladder and to cough or otherwise exert abdominal pressure on his bladder. If the patient leaks, the diagnosis of ISD is established.

In female patients, the evaluation must include a complete history and physical examination (including a pelvic exam) and a simple cystometrogram to rule out abnormalities of bladder compliance and abnormalities of urethral support. Following that determination, an abdominal leak point pressure (ALLP) test is performed. Leak point pressure, stated in cm H_2O, is defined as the intra-abdominal pressure at which leakage occurs from the bladder (around a catheter) when the bladder has been filled with a minimum of 150 cc fluid. If the patient has an ALLP of less than 65 cm H_2O, the diagnosis of ISD is established.

To use a collagen implant, physicians must have urology training in the use of a cystoscope and must complete a collagen implant training program.

Coverage of a collagen implant, and the procedure to inject it, is limited to the following types of patients with stress urinary incontinence due to ISD:

- *Male or female patients with congenital sphincter weakness secondary to conditions such as myelomeningocele or epispadias;*
- *Male or female patients with acquired sphincter weakness secondary to spinal cord lesions;*
- *Male patients following trauma, including prostatectomy and/or radiation; and*
- *Female patients without urethral hypermobility and with abdominal leak point pressures of 65 cm H_2O or less.*

In addition, patients must have shown no improvement in their incontinence for at least 12 months prior to collagen therapy. Patients whose incontinence does not improve with 5 injection procedures (5 separate treatment sessions) are considered treatment failures and no further treatment of urinary incontinence by collagen implant is covered.

C. Implantable Electronic Stimulators.—Implantable electronic stimulators are not covered. (See § 65–11.)

See Intermediary Manual, § 3110.4.

[FR Doc. 94–28023 Filed 11–10–94; 8:45 am]

BILLING CODE 4120–01–P

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is being given that Chapter S2, the Office of the Deputy Commissioner for Operations (DCO) is being amended to reflect a revised mission statement for and the renaming of subcomponents within the Office of Automation Support (OAS) (S2L); and the establishment of subcomponents within the Office of Public Service and Operations Support (OPSOS) (S2N) and the Office of Telephone Services (S2Q). The changes are as follows:

Section S2L.00 *The Office of Automation Support*—(Mission)

Revise as follows:

The Office of Automation Support (OAS) ensures delivery of automation support to meet end users' needs to deliver accurate, caring, efficient public service while providing a favorable environment for OAS employees. OAS is responsible for integrating service delivery and employee concerns with modern technology. In concert with the Deputy Commissioner for Systems (DCS), it determines and defines DCO requirements for software and hardware support. OAS directs user evaluations to ensure that technology meets DCO needs and coordinates all implementation activities. Working with DCS, it ensures that the most recent technology is integrated into the operations of all DCO components.

Section S2L.10 *The Office of Automation Support*—(Organization):

Retitle:

D. The Division of Software Implementation (S2LA) to the Software Implementation Process Team (S2LA).

E. The Division of Technology Support (S2LB) to the Technology Support Process Team (S2LB).

Section S2L.20 *The Office of Automation Support*—(Functions):

Retitle:

D. The Division of Software Implementation (S2LA) to the Software Implementation Process Team (S2LA).

E. The Division of Technology Support (S2LB) to the Technology Support Process Team (S2LB).

Add the following subchapters:

Subchapter S2N
Office of Public Service and Operations Support
S2N.00 Mission
S2N.10 Organization
S2N.20 Functions

Section S2N.00 *The Office of Public Service and Operations Support*—(Mission):

The Office of Public Service and Operations Support (OPSOS) is responsible for providing operational/program support and for conducting studies and analyses related to service to the public, employee services and activities associated with financial management, budget and management information. This Office provides broad

operations support to the Field Offices (FOs), Teleservice Centers (TSCs), Processing Centers, the Office of Disability and International Operations and the Office of Central Records Operations. The Office of Public Service and Operations Support (OPSOS) is also responsible for integrating operational delivery of public services under the Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and Health Insurance programs for domestic beneficiaries and for the delivery of RSDI program services to foreign beneficiaries. Additionally, this Office provides broad operations support to the maintenance of the basic earnings data which support the Social Security programs. This Office also conducts studies, pilots and other activities associated with the overall effectiveness and efficiency of DCO components. It directs and coordinates internal management support functions to ensure effective position management, workforce utilization and management analysis and planning. It directs the overall DCO budget process and plans, implements, manages and assesses the interrelated duties of delivering SSA program and related services to the public.

Section S2N.10 *The Office of Public Service and Operations Support*—(Organization):

The Office of Public Service and Operations Support, under the leadership of the Associate Commissioner for Public Service and Operations Support, includes:

A. The Associate Commissioner for Public Service and Operations Support (S2N).

B. The Deputy Associate Commissioner for Public Service and Operations Support (S2N).

C. The Immediate Office of the Associate Commissioner for Public Service and Operations Support (S2N).

D. The Division of Service Delivery and Program Policy (S2NA).

E. The Division of Operations Management (S2NB).

F. The Division of Resource and Management Information (S2NC).

Section S2N.20 *The Office of Public Service and Operations Support*—(Functions):

A. The Associate Commissioner for Public Service and Operations Support (S2N) is directly responsible to the Deputy Commissioner, Operations, for carrying out OPSOS's mission and provides general supervision to the major components of OPSOS.

B. The Deputy Associate Commissioner for Public Service and Operations Support (S2N) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Public Service and Operations Support (S2N) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Division of Service Delivery and Program Policy (S2NA).

1. Plans, develops or participates in the development of operational policy and procedures to assure effective and efficient implementation of national and international program activities in DCO.

2. Plans and implements studies designed to assess DCO's processing activities and affected operational objectives to ensure appropriate integration of new program policies.

3. Provides analysis and recommendations to the DCO regarding legislative planning and implementation. Provides technical guidance to DCO management and ensures integration of RSI, disability insurance, SSI, and Medicare policies and procedures.

4. Develops partnerships with other SSA components and Health Care Financing Administration to ensure effective program delivery within operational constraints.

5. Provides operational support to the enumeration process.

6. Plans, directs and evaluates the quality of program activities throughout operational components. Develops initiatives to improve the quality of the claims, postentitlement and preclaims processes.

7. Participates with appropriate policy components in SSA to provide clear, accurate and timely notices to the public and to fully utilize automation to reduce the need for manually prepared notices.

8. Develops and recommends to DCO standards and practices for national and international delivery of services. Plans, implements and evaluates the full range of SSA's service to the public.

9. Establishes service delivery policies; develops and evaluates standards for measuring service to the public to ensure that quality, efficient and compassionate service is provided.

10. Plans, conducts and evaluates public information/referral programs to ensure Agency and other public and private services are effectively provided to the community within the guidelines and direction provided by the Agency. Ensures SSA's public affairs/information efforts are implemented effectively and efficiently within DCO components.

11. Establishes policies and develops criteria on field office accessibility (hours of service, size of field offices, type and location of services, etc.).

12. Directs the planning, analysis and evaluation of field office structure and develops innovative concepts for the future role of DCO components, including improvements in service.

13. Develops innovative approaches to job restructuring/enhancements from an Operations' perspective. Plans, develops, implements and analyzes pilots and studies to enhance the quality of the workforce.

14. Ensures open and effective communication with employees and Union representatives.

E. The Division of Operations Management (S2NB).

1. Plans and coordinates postentitlement cyclical workloads; maintenance of beneficiary and earnings records; certification of payment and recoupment of overpayment processes impacting on DCO components.

2. Plans, designs and implements studies and analyses to assess payment processing activities and operational goals and objectives. Plans and initiates new processing workflows for claims and postadjudicative actions to ensure the most effective and efficient program delivery to the public.

3. Establishes workload processing schedules assuring efficient sequences of interrelated workloads and recommends to DCO appropriate priorities.

4. Coordinates operational processes with programs administered by other government agencies such as Railroad Retirement Board, Treasury Department, Internal Revenue Service, Veterans Administration, State Department and the Administration on Aging.

5. Creates workflows and processes with systemic safeguards to prevent errors and assure a full audit trail for automated and paper products.

F. The Division of Resource and Management Information (S2NC).

1. Performs a broad range of financial management, budget and management information activities. Formulates, executes and monitors component budgets and spending plans. Develops and monitors DCO's operating budgets. Develops reprogramming recommendations for DCO management consideration.

2. Analyzes and develops budget cost analyses based on Agency constraints, initiatives and legislation. Analyzes budget data, program cost allocations, operating program input, workload and productivity information for the preparation of the annual budget.

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3. Analyzes and monitors component productivity to determine staffing requirements and ensure effective delivery of service. Establishes component fulltime equivalents, workyears and dollar allocations, including identification of reprogramming needs. Distributes and monitors General Services Administration building delegations.

4. Analyzes legislative, procedural and technological changes and ensures appropriate resource allocations are provided to effectively implement those changes. Plans and implements budgetary incentives/pay reform projects.

5. Implements and maintains an integrated management information system through studies and analyses which identify specific operating areas to be measured and to control workloads. Identifies DCO management needs and develops systems and methods to deliver the timely, pertinent information that managers need to effectively manage SSA's programs and delivery of service.

6. Analyzes data to identify trends which DCO management must consider in developing plans for deployment of human and materiel resources. Designs, develops and analyzes various weekly, quarterly and annual management information reports.

7. Develops policies, procedures and standards for which DCO can carry out its management activities in the areas of personnel, employee relations, facilities, space, property management, etc.

8. Identifies training and career development needs of DCO employees and ensures these needs are met. Assesses future training needs as technology advances and plans and implements component career enhancement programs to ensure employees have skills needed to plan and prepare for these technological changes.

9. Within established guidelines, plans and oversees implementation in DCO components of projects which improve employee environment and well being (wellness/fitness, child care, elder care, office space/furniture).

10. Plans, develops, implements and evaluates comprehensive handicapped, Equal Employment Opportunity and affirmative employment programs to ensure all employees are treated equitably.

11. Plans and implements effective management communication networks to ensure employees are kept informed of Operations' and SSA's initiatives as well as determining, evaluating and addressing employee concerns.

12. Provides staff support to DCO in planning and providing effective performance management/awards programs ensuring fair and equitable treatment of all employees.

Subchapter S2Q
Office of Telephone Services
S2Q.00 Mission
S2Q.10 Organization
S2Q.20 Functions

Section S2Q.00 *The Office of Telephone Services*—(Mission): The Office of Telephone Services is responsible for planning, implementing, operating and evaluating SSA's telephone service to the public delivered by the national 800 Number and SSA FOs. The Office plans and conducts studies, pilots and analyses of 800 Number and FO telephone operations to assess and improve the service provided. The office provides direct support to 37 TSCs and approximately 1,300 FOs, including developing and communicating uniform operating policies and procedures. The office maintains close, effective working relationships with SSA policy, program and administrative components, with other Federal agencies and with vendors which have important roles in the delivery and evaluation of SSA's telephone service to the public. This office manages SSA's National 800 Number network operation, designs and administers call routing plans, continuously monitors call handling and adjusts routing to handle emergency situations and to maximize call answering effectiveness and efficiency.

Section S2Q.10 *The Office of Telephone Services*—(Organization): The Office of Telephone Services includes:

A. The Director of the Office of Telephone Services (S2Q).

B. The Deputy Director of the Office of Telephone Services (S2Q).

C. The Immediate Office of the Director of the Office of Telephone Services (S2Q).

D. The Service Team (S2QA).

E. The Voice Network Team (S2QB).

Section S2Q.20 *The Office of Telephone Services*—(Functions):

A. The Director, Office of Telephone Services (S2Q) is directly responsible to the DCO for carrying out the Office's mission relating to the operation of SSA's National 800 Number and FO telephone service, and provides general supervision to the major components in the Office.

B. The Deputy Director, Office of Telephone Services (S2Q) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Office of Telephone Services (S2Q) provides the Director with staff assistance over the full range of his/her responsibilities.

D. The Service Team (S2QA).

1. Plans, designs, implements and evaluates studies of initiatives related to the effective management, operation and future direction of telephone services provided to the public by the national 800 number and FOs.

2. Provides leadership on SSA telephone service planning initiatives for the Office of Operations.

3. Researches and evaluates the application of innovative concepts and new technologies for SSA's public telephone services.

4. Designs, implements and maintains management information systems for SSA telephone service delivery. Analyzes data, evaluates trends and long-range needs and prepares executive level reports.

5. Evaluates and plans for implementation of legislative issues that impact SSA's telephone service. Works with other SSA components, other Federal agencies and vendors to ensure quality public telephone services.

6. Plans, develops, implements and evaluates systematic measurement processes to assess the operational effectiveness and efficiency of SSA public telephone service operations.

7. Develops and maintains procedural guides, operational instructions and training materials for TSC and FO employees providing public telephone service.

8. Develops and evaluates plans for the effective utilization of TSC and FO resources and equipment relating to delivery of telephone services to the public.

9. Develops and evaluates operational telephone service quality review policies. Evaluates telephone service delivery training needs to ensure quality public service is provided.

E. The Voice Network Team (S2QB).

1. Plans, develops, implements and evaluates the effectiveness and efficiency of the routing of 800 number calls to the geographically dispersed TSCs that provide 800 number service.

2. Administers 800 number call routing on a daily basis, making necessary adjustments to ensure the best possible public telephone service.

3. Develops and maintains an effective management information system needed for the 800 number operation and produces the required reports. Analyzes the information to evaluate the routing of calls.

4. Identifies trends and/or patterns that impact 800 number call volumes and resource requirements. Projects call volumes and creates staffing models and other techniques to determine future call-handling capacity needs.

5. Analyzes the applicability of innovative concepts and technologies to the national 800 number and FO telephone service and recommends ways to improve service.

6. Studies and evaluates the effectiveness of TSCs and overall SSA 800 number network operations and FO telephone services and makes recommendations for improving operations.

Dated: October 3, 1994.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 94–28014 Filed 11–10–94; 8:45 am]

BILLING CODE 4190–29–P

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S5, the Office of the Deputy Commissioner for Policy and External Affairs is being further amended to reflect organizational changes within subordinate offices. These offices are the Office of Legislation and Congressional Affairs (S5B), the Office of Public Affairs (S5E), the Office of International Policy (S5G), the Office of Research and Statistics (S5H) and the Office of Policy Communications (S5R). The changes are as follows:

Section S5B.10 *The Office of Legislation and Congressional Affairs*—(Organization):

Delete:

D. The Legislative Reference Staff (S5BA).

F. The Division of Disability and Supplemental Security Income (S5BC).

G. The Division of Retirement and Survivors Benefits (S5BE).

Establish:

D. The Disability Insurance Program Staff (S5BH).

F. The Supplemental Security Income (SSI) Program Staff (S5BJ).

G. The Old Age and Survivors Insurance (OASI) Benefits Staff (S5BK).

H. The Program Administration and Financing Staff (S5BL).

Section S5B.20 *The Office of Legislation and Congressional Affairs* (OLCA)—(Functions):

Delete in their entirety:

D. The Legislative Reference Staff (S5BA).

F. The Division of Disability and Supplemental Security Income (S5BC).

G. The Division of Retirement and Survivors Benefits (S5BE). Amend:

C. The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs to read as follows: The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities, including the legislative reference function. The legislative reference function:

1. Tracks legislative bills, highlights items of interest from the Congressional Record and other publications for Office of Legislation and Congressional Affairs and SSA's Executive Staff and provides support for other OLCA and SSA components at congressional hearings.

2. Assists individual Members of Congress and their staffs and congressional committee staffs by responding to requests for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

Establish:

D. The Disability Insurance Program Staff (S5BH).

1. Develops and explains disability insurance (DI) program principles and philosophy.

2. Reviews proposed regulations dealing with the DI program to assure consistency with policy requirements and decisions.

3. Develops and evaluates legislative proposals for changes in the DI program, the SSA hearings and appeals process and the process for approving attorney fees under the program.

4. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees, State officials and private organizations having an interest in the DI program, the SSA hearings and appeals process and the process for approving attorney fees under the program.

F. The Supplemental Security Income (SSI) Program Staff (S5BJ).

1. Develops and explains SSI program principles and philosophy.

2. Studies the SSI program interrelationships with Social Security income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs and recommends methods for coordinating these programs.

3. Reviews regulations dealing with the SSI program for the aged, blind and disabled to ensure consistency with policy requirements and decisions.

4. Develops and evaluates legislative proposals for changes in the SSI program.

5. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in the SSI program.

G. The Old Age and Survivors Insurance (OASI) Benefits Staff (S5BK).

1. Develops and explains retirement and survivors insurance (RSI) program principles and philosophy.

2. Develops and evaluates legislative proposals for changes in the areas of retirement and survivors benefits and coverage.

3. Conducts studies on broad programmatic issue, including eligibility requirements for dependents' and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefit computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Reviews proposed regulations dealing with RSI issues, such as Social Security coverage, the retirement earnings test, insured status and the definition of employment and wages to assure cross-program consistency with policy requirements and decisions.

5. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in RSI and Social Security coverage issues.

H. The Program Administration and Financing Staff (S5BL).

1. Develops and explains Social Security program principles and philosophy.

2. Conducts studies of broad programmatic issues, including tax rates, alternative methods of financing trust fund operations, service to the public, Social Security numbers, taxation of benefits, alien suspension, and debt management.

3. Identifies and analyzes far-reaching economic, political and societal issues that impact/influence the development and modification of Social Security program policies and procedures.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded under other public and private benefit programs.

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5. Reviews proposed regulations dealing with interprogram relationships to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual Members of Congress, State officials and private organizations having an interest in interprogram relationships.

Section S5E.10 *The Office of Public Affairs*—(Organization):

D. The Office of Communications Technology (S5EB) Retitle:

2. "The Media Operations Staff (S5EB6)" to "The Audiovisual Media Operations Staff (S5EB6)."

Retitle:

E. "The Office of Information (S5EH)" to "The Office of Editorial Policy and Communications (S5EH)."

1. "The Editorial Planning and Evaluation Staff (S5EH2)" to "The Editorial Policy and Communications Staff (S5EH2)."

2. "The Internal Communications Staff (S5EH3)" to "The Special Communications Staff (S5EH3)."

Retitle:

G. "The Office of External Affairs (S5EK)" to "The Office of National Affairs (S5EK)."

Abolish:

1. The External Liaison Staff (S5EK4).

2. The Intergovernmental Affairs Staff (S5EK7).

Reletter:

"G" to "F".

Retitle:

H. "The Regional Affairs Staff (S5EM)" to "The Office of Regional Affairs and Special Projects (S5EM)."

Reletter:

"H" to "G".

Section S5E.20 *The Office of Public Affairs*—(Functions):

D. The Office of Communications Technology (S5EB)

Retitle:

2. "The Media Operations Staff (S5EB6)" to "The Audiovisual Media Operations Staff (S5EB6)."

Retitle:

E. "The Office of Information (S5EH)" to "The Office of Editorial Policy and Communications (S5EH)."

1. "The Editorial Planning and Evaluation Staff (S5EH2)" to "The Editorial Policy and Communications Staff (S5EH2)."

2. "The Internal Communications Staff (S5EH3)" to "The Special Communications Staff (S5EH3)."

Retitle:

G. "The Office of External Affairs (S5EK)" to "The Office of National Affairs (S5EK)."

Abolish:

1. The External Liaison Staff (S5EK4) in its entirety.

2. The Intergovernmental Affairs Staff (S5EK7) in its entirety.

Reletter:

"G" to "F".

Retitle:

H. "The Regional Affairs Staff (S5EM)" to "The Office of Regional Affairs and Special Projects (S5EM)."

Reletter:

"H" to "G".

Section S5G.10 *The Office of International Policy*—(Organization):

Delete:

B. The Deputy Director for International Policy (S5G).

Reletter:

"C" to "B", "D" to "C" and "E" to "D".

Section S5G.20 *The Office of International Policy*—(Functions):

Delete:

B. The Deputy Director for International Policy (S5G) in its entirety.

Amend to read as follows:

C. The Immediate Office of the Director for International Policy (S5G) provides the Director with staff assistance on the full range of his/her responsibilities, helps coordinate the activities of the Office of International Policy's components, and acts as the SSA or United States Government representative to international organizations and world bodies involved with international social security matters.

D. The Division of International Program Policy and Agreements (S5GA)

Delete "1–8" in their entirety.

Add:

1. Plans, develops and evaluates program policies and procedures relating to foreign claims administration, foreign evidence and beneficiaries and modifies policies and procedures to meet program requirements in foreign countries.

2. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops policies and procedures to implement agreements and administers the coverage provisions of the agreements.

3. Issues certificates of coverage to United States-based workers who are self-employed or are sent on temporary assignments of countries with which the United States has international totalization agreements to exempt them (and their employers) from foreign social security taxes.

4. Analyzes foreign social security programs and evaluates their relationships to and effects on the United States' Social Security programs and benefit payments.

5. Conducts legislative and regulatory reviews, studies and analysis of all matters relating to international policy and international Social Security agreements and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

E. The International Activities Staff (S5GC)

Delete "1–4" in their entirety.

Add:

1. Develops and coordinates individualized training/orientation programs for foreign officials on the United States' Social Security system.

2. Coordinates SSA's technical assistance to developing countries in designing and/or modernizing existing social security systems.

3. Serves as SSA's focal point in providing information about United States' Social Security programs to foreign organizations.

4. Plans and coordinates SSA's international travel plan, including providing logistical support and administering all activities relating to control of official passports for SSA staff travelling abroad.

5. Plans and manages SSA-hosted international conferences, meetings and seminars.

Reletter:

"C" to "B", "D" to "C" and "E" to "D".

Section S5H.10 *The Office of Research and Statistics*—(Organization):

Retitle:

E. "The Program Analysis Staff (S5HB)" to "The Division of Program Analysis (S5HB)".

Delete:

G. The Division of Statistical Operations and Services (S5HE)

H. The Division of Statistics Analysis (S5HG).

Establish:

G. The Division of Earnings Statistics and Analysis (S5HH).

H. The Division of Retirement, Survivors, Disability Insurance (RSDI) Research Statistics (S5HJ).

I. The Division of SSI Analysis/ Management Statistical Support (S5HK).

J. The Disability Research Staff (S5HL).

Section S5H.20 *The Office of Research and Statistics*—(Functions):

Retitle:

E. "The Program Analysis Staff (S5HB)" to "The Division of Program Analysis (S5HB)".

Add:

3. Plans, conducts and publishes the results of cross-national research on social security programs worldwide.

Delete in their entirety:

G. The Division of Statistical Operations and Services (S5HE).

H. The Division of Statistics Analysis (S5HG).

Establish:

G. The Division of Earnings Statistics and Analysis (S5HH).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to earnings, employment and employer classification. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities, and private research organizations.

2. Provides the Office of Research and Statistics and other SSA researchers with support in the development of social science survey data linked with SSA administrative record data.

H. The Division of Retirement, Survivors and Disability Insurance (RSDI) Research Statistics (S5HJ).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to Old Age, Survivors and Disability Insurance (OASDI) claims and benefits provisions of Title II of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities and private research organizations.

I. The Division of SSI Analysis/ Management Statistical Support (S5HK).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to the Supplemental Security Income provisions of Title XVI of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA and for research by other Federal and State and local government agencies, universities and private research organizations.

2. Provides management statistical services to SSA operating and policy components, including such activities as the development of general purpose and customized field office samples, development of work sampling systems and quality assurance systems, and the design and analysis of operational pilot studies. Provides support for the development and use of mathematical models and statistical methods.

J. The Disability Research Staff (S5HL).

1. Plans, directs and implements a wide range of studies and analyses, utilizing data from surveys and administrative records, on the national disabled population, disability applicants and disability beneficiaries.

2. Develops research in response to DI program issues.

3. Maintains and develops research surveys and administrative data files used in the analysis of disability data.

Section S5R.10 *The Office of Policy Communications*—(Organization):

Delete:

D. The Policy Analysis and Integration Staff (S5RA).

E. The Office of Regulations (S5RB).

F. The Office of Directives Management (S5RG).

Establish:

D. The Notice Policy Staff (S5RK).

E. The Division of Regulations and Rulings (S5RL).

F. The Division of Directives Management (S5RM).

Section S5R.20 *The Office of Policy Communications*—(Functions):

Delete in their entirety:

D. The Policy Analysis and Integration Staff (S5RA).

E. The Office of Regulations (S5RB).

F. The Office of Directives Management (S5RG).

Establish:

D. The Notice Policy Staff (S5RK) serves as the focal point for SSA's effort to improve service to the public through issuing clear notices. Coordinates, plans, establishes priorities and schedules all notice improvement activities for the Agency. Develops Agency-level strategies for notice improvements. Establishes the Agency's notice policy and develops and publishes the Agency's Notice Standards. Designs and writes notices and selected forms. Provides direction for notice content and design throughout SSA. Acts as a clearinghouse through which program offices submit proposed new or revised notices and selected forms. Assesses the impact of new notices on public service. Develops, plans and implements Agency efforts to get public feedback about notices. Maintains the language database for the Field Office Notice Software, both in English and Spanish. Oversees training for operations and program components to improve the quality of notices.

E. The Division of Regulations and Rulings (S5RL) plans, develops and writes SSA regulations and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA. Coordinates, within SSA, the review and clearance of regulations for the claims and payment processes developed for the RSDI programs, the SSI program and the Black Lung Benefits programs and assures the Office of Policy Communications has input into the regulations development process. Coordinates activities with HHS' Office of the General Counsel on the issuance of regulations. Negotiates with HHS, Office of Management and Budget and the Office of the Federal Register on regulations matters. Plans and develops Social Security Rulings to provide interpretations and applications of the Social Security Act. Coordinates the review and clearance of Social Security Rulings with the Office of the General Counsel, the Office of the Commissioner and the Office of the Deputy Commissioner for Programs. Coordinates publication, distribution and warehousing of all Social Security Rulings.

F. The Division of Directives Management (S5RM) directs the review, coordination, publication and distribution of program instructions and other materials in paper and electronic form to insure uniformity, lack of duplication and compatibility of all SSA operations, instructional and informational material. Participates in determining the instructional needs of SSA operating personnel. Directs technical review of program operating instructions to insure proper integration, organization, clearance and audience for materials prepared by various SSA components for the Program Operations Manual System and related program guides. Coordinates publication, distribution and warehousing of all program instructional and related materials and directs a quality review of new issuances to insure proper reproduction of printed materials. Indexes all program instructional materials and determines user needs in this area. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Participates with SSA's Systems organization in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials. Coordinates with SSA's Office of Human Resources as appropriate. Establishes policies and guidelines for the distribution of SSA's

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program publications to the public as required by the Freedom of Information Act.

Dated: October 3, 1994.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 94-28017 Filed 11-10-94; 8:45 am]

BILLING CODE 4190-25-P

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S7, the Office of the Deputy Commissioner for Human Resources is being amended to reflect a realignment of functions within the Office of Personnel (S7B), the Office of Labor Management Relations (S7C), the Office of Civil Rights and Equal Opportunity (S7E), the Office of Training (S7G) and the Office of Workforce Analysis (S7H). The changes are as follows:

Section S7B.10 *The Office of Personnel*—(Organization):

Delete:

D. The Executive Recruitment and Services Staff (S7BA).

E. The Division of Personnel Operations (S7BB).

F. The Division of Classification and Organization Management (S7BC).

Establish:

D. The Project Management Staff (S7BH).

E. The Personnel Management Information Systems and Payroll Staff (S7BJ).

F. The Center for Personnel Operations (S7BK).

Retitle:

G. The Division of Personnel Policy and Data (S7BE) as the Center for Personnel Policy and Program Development (S7BE).

Section S7B.20 *The Office of Personnel*—(Functions):

Delete in their entirety:

D. The Executive Recruitment and Services Staff (S7BA).

E. The Division of Personnel Operations (S7BB).

F. The Division of Classification and Organization Management (S7BC).

Establish:

D. The Project Management Staff (S7BH).

1. Provides the Associate Commissioner with a staff of self-managed work/project teams of a temporary nature which could be rapidly deployed to address high priority, interdisciplinary personnel projects of a specialized nature. The staff would expand or contract based upon the workload at any given time.

2. Directs an SSA-wide program for inspection and evaluation of SSA's personnel management program including employment and staffing, position management and classification, employee relations, equal employment opportunity and labor relations. Conducts administrative surveys and special studies to provide managers with information and assistance to assure conformance with Office of Personnel Management (OPM) regulations and HHS/SSA policies and directives.

E. The Personnel Management Information Systems and Payroll Staff (S7BJ).

1. Plans and directs ongoing development, analysis and evaluation of SSA's personnel recordkeeping systems; develops general objectives and performance standards for automated systems and detailed specifications for development or modification of computer programs used in automated systems and proposes changes in these systems to meet SSA's human resources data, statistics and information needs.

2. Coordinates, with SSA's Office of the Deputy Commissioner for Systems, the planning, development, modification and evaluation of automated systems.

3. Plans, designs and evaluates the use of personal computers and provides office automation support for human resources systems.

4. Operates selected data processing/office automation systems in the Office of Personnel.

5. Reviews and processes all personnel and payroll actions in conformance with OPM and HHS regulations.

F. The Center for Personnel Operations (S7BK).

1. Develops and implements policies and regulations pertaining to SSA recruitment and placement, including policies and guidelines for SSA administration of the Senior Executive Service (SES). Initiates and processes personnel actions for SSA Headquarters employees and participates with office managers and staffs in assessing placement actions; directs the administration of all Merit Promotion Plans applicable within Baltimore/Washington/ Falls Church Headquarters components. Processes necessary administrative actions required for new employees entering on duty.

2. Develops and implements SSA-wide programs of position classification, position management and personnel security within SSA Headquarters. Directs position classification, position management and personnel security activities having SSA-wide-significance.

3. Provides advice and assistance to all SSA components on activities and issues that involve position classification and position management; serves as the central SSA referral point on these programs and acts as SSA liaison with OPM, HHS and other non-SSA entities and organizations with respect to assigned areas of responsibility.

4. Formulates and oversees the implementation of policies, procedures, standards, directives and objectives which assure that position structure and management promote cost-effective operations and the efficient use of employee skills.

5. Provides leadership and coordination in the formulation of SSA policies, directives and programs relating to the Fair Labor Standards Act and to salary and wage surveys; and conducts a continuing review of the applicability of classification standards and, as appropriate, negotiates with OPM for the revision of such standards or the development of single Agency standards.

6. Authorizes the establishment of positions and organizations, providing advice and guidance to managers on organizational structure and preparing **Federal Register** and Organization Manual material.

7. Implements policies, regulations and programs pertaining to special recruitment and staffing activities for SSA Headquarters and field organizations; develops and implements student employment programs.

8. Directs the development and administration of SSA services concerning employee benefit programs which include the Civil Service Retirement System, the Federal Employee Retirement System, the Thrift Savings Plan, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program.

9. Provides for the establishment and maintenance of the Official Personnel Folders for SSA Headquarters employees.

10. Develops and implements all SSA policies and activities relating to the Agency's executive level personnel management program.

11. Recruits for and places individuals in positions in the SES in accordance with OPM and HHS regulations.

12. Provides staff support to the Executive Resources Board in administering a systematic program to manage SSA's executive and professional resources and ensuring the appropriate selection of candidates to participate in official executive development programs.

13. Provides staff support to the Performance Review Board in reviewing performance plans and subsequent appraisals of career and noncareer executives in SES and employees in equivalent level positions.

Retitle:

G. The Division of Personnel Policy and Data (S7BE) as the Center for Personnel Policy and Program Development (S7BE). Delete 3 and 4 in their entirety.

H. The Center for Employee Services (S7BG). Add to 6 after wellness, "Career/Life Planning and financial counseling."

Section S7C.10 *The Office of Labor Management Relations*—(Organization):

Delete:

D. The Division of Labor and Employee Relations Operations (S7CA).

E. The Division of Labor and Employee Relations Policy (S7CB).

Section S7C.20 *The Office of Labor Management Relations*—(Functions):

Eliminate titles of:

D. The Division of Labor and Employee Relations Operations (S7CA).

E. The Division of Labor and Employee Relations Policy (S7CB).

Merge former division functions at the Director level and renumber functions "1–6" from former Division of Labor and Employee Relations Policy as "5–10."

Section S7E.10 *The Office of Civil Rights and Equal Opportunity*—(Organization):

Delete:

D. The Division of Equal Opportunity Services (S7EA).

E. The Division of Equal Opportunity Planning and Studies (S7EB).

Section S7E.20 *The Office of Civil Rights and Equal Opportunity*—(Functions):

Eliminate titles of:

D. The Division of Equal Opportunity Services (S7EA).

E. The Division of Equal Opportunity Planning and Studies (S7EB).

Merge former divisions functions under the Director, Office of Civil Rights and Equal Opportunity and renumber functions "1–12" from former Division of Equal Opportunity Planning and Studies as "9–20."

Section S7G.10 *The Office of Training*—(Organization):

Delete:

D. The Division of Management and Employee Development (S7GA).

E. The Division of Technical Training (S7GB).

Establish:

D. The Administrative Staff (S7GC).

E. The Human Resources Planning Staff (S7GE).

F. The Center for Technology and Employee Development (S7GG).

G. The Center for Program Initiatives and Management Education (S7GH).

H. The Center for Educational Research and Evaluation (S7GJ).

Section S7G.20 *The Office of Training*—(Functions):

Delete in their entirety:

D. The Division of Management and Employee Development (S7GA).

E. The Division of Technical Training (S7GB).

Establish:

D. The Administrative Staff (S7GC) plans, directs, coordinates and administers the activities relative to developing and executing budget activities; acts as Office of Training liaison with Personnel on such personnel matters as classification, position management, staffing and recruitment; plans, formulates and implements SSA training policies and provides overall support and coordination to the training function. Coordinates travel, training and conference attendance for office staff.

E. The Human Resources Planning Staff (S7GE) is responsible for the development, implementation and updating of SSA's Human Resources Plan. This plan provides for the development of an SSA staffing and recruitment plan, for training employees once they enter on duty, for providing the means for employee development beyond training for the initial position for which the employee was recruited and for retaining Agency employees.

F. The Center for Technology and Employee Development (S7GG).

1. Directs the design, development, implementation and evaluation of Title II disability related program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Develops guidelines and procedures to determine technical training needs for disability related training programs, and reviews and evaluates technical training Agencywide.

3. Initiates independent studies and analyses to anticipate and identify new or changing training and development needs in a dynamic organizational environment.

G. The Center for Program Initiatives and Management Education (S7GH).

1. Directs the design, development, implementation and evaluation of Title XVI program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Directs, designs, develops, implements, conducts and evaluates all SSA supervisory, managerial and executive level training development activities.

3. Develops guidelines and procedures to determine technical training needs for Title XVI training programs, and reviews and evaluates technical training Agencywide.

4. Has Agencywide responsibility for common needs and general skills training, including related developmental activities for nonsupervisory personnel.

H. The Center for Educational Research and Evaluation (S7GJ).

1. Directs the design, development, implementation and evaluation of Title II Retirement Survivors Insurance-related program/technical training for SSA components, including entry-level and advanced program, systems-user and computer technology training and other technical training to meet the needs of SSA components Agencywide.

2. Develops guidelines and procedures to determine technical training needs, and reviews and evaluates technical training Agencywide.

3. Engages in applied research and development efforts associated with training and development programs administered by the center. Provides ongoing consultative assistance and support to SSA components, including training needs identification and program design; monitors and evaluates Agency training and developmental activities to ensure desired results and effects of nontechnical training provided to the Agency's employees. Fosters and maintains effective communications with appropriate internal and external organizations to ensure positive results relative to Agency objectives, policy directives, new initiatives, inservice training needs, etc.

4. Develops guidelines and procedures to determine technical training needs for Title II training programs, and reviews and evaluates technical training Agencywide.

5. Conducts ongoing research to identify automated technologies and instructional methodologies for application to training throughout SSA

Section S7H.10 *The Office of Workforce Analysis*—(Organization):

Delete:

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C. The Division of Workforce Studies and Analysis (S7HA).

D. The Division of Workforce Utilization (S7HB).

Section S7H.20 *The Office of Workforce Analysis*—(Functions):

Eliminate titles of:

C. The Division of Workforce Studies and Analysis (S7HA).

D. The Division of Workforce Utilization (S7HB).

Merge former division functions under the Director, Office of Workforce Analysis and renumber functions "1–4" from former Division of Workforce Utilization as "4–7."

Dated: September 17, 1994.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 94–28015 Filed 11–10–94; 8:45 am]

BILLING CODE 4150–29–P

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is being given that Subchapter S3J is being amended to provide additional information on the Division level organizational structure and functions. The changes are as follows:

Section S3J.10 *The Office of Retirement and Survivors Insurance and Supplemental Security Income Policy*—(Organization):

Establish:

D. The Division of Benefit Continuity (S3J1).

E. The Division of Coverage (S3J2).

F. The Division of Entitlement (S3J3).

G. The Division of Payment Policy (S3J4).

H. The Division of Program Requirements Policy (S3J5).

I. The Division of Program Management, Research and Demonstration (S3J6).

Section S3J.20 *The Office of Retirement and Survivors Insurance and Supplemental Security Income Policy*—(Functions):

Establish:

D. The Division of Benefit Continuity (S3J1).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of benefit continuity.

2. Develops, issues and evaluates guidelines, directives, instructions and operating procedures for such areas as work notices, annual and monthly earnings tests, suspensions and terminations, governmental pension offset and enforcement and beneficiary compliance, overpayments, underpayments, recovery and waiver, garnishment, direct deposit, cycling, payment delivery, onsite review, accounting, representative payee selection, advance notice, capability/incapability and use and misuse.

E. The Division of Coverage (S3J2).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of coverage.

2. Develops and issues guidelines, directives, instructions and operating procedures for such coverage and employment subject areas as wages, coverage and exceptions, anti-poverty programs, earnings discrepancies, coverage aspects of international agreements, self-employment status and income, religious exemptions, State and local coverage and statutes of limitations.

F. The Division of Entitlement (S3J3).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of entitlement.

2. Develops and issues guidelines, directives, instructions and operating procedures for such entitlement subject areas as applications, insured status, veterans' benefits, railroad employment, family relationships, dependency and support, proofs, school attendance, decoupling and indexing of earnings, reduction of benefits for age, family maximums, saving clauses, recomputations and recalculations of benefits, period of disability computations, awards, disallowances and abatements of claims, earnings records, claims application forms, administrative finality, adjudicative standards, evidence, documentation and conspicuous characteristics.

G. The Division of Payment Policy (S3J4).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of payment policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such payment policy subject areas as mandatory and optional State supplemental payments, pass through of rate increases, monitoring of fiscal information systems with the States, maintenance of State agreements, food stamps, Medicaid, interim State assistance, energy assistance, State data exchange systems and postadjudicative issues.

H. The Division of Program Requirements Policy (S3J5).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of program requirements policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such program requirements subject areas as eligibility requirements for in-kind income, living arrangements, special classifications of income and medical social services, generic income issues, deeming of income and resources, computation of income, certain grandfather clauses, citizenship and residency, dependents, other resources and programs to achieve self-support.

I. The Division of Program Management, Research and Demonstration (S3J6).

1. Designs, manages and conducts studies to measure the impact and effectiveness of the supplemental security income and the retirement and survivors insurance program policies, procedures and programs on the population.

2. Establishes, maintains and operates statistical program data base extract systems to provide program information for internal and external use; develops functional specifications and programs; validates output and assists requestors in verifying final product.

3. Conducts retirement and survivors insurance and supplemental security income research programs based on administrative records and State and Federal data to formulate and evaluate policies and the impact of legislation, to reduce errors, to implement redetermination requirements, and to improve program implementation.

4. Manages demonstration cooperative agreements and initiatives to target special populations and program issues. Evaluates the effectiveness of demonstrations and initiatives and develops new and revised policies and procedures to implement program improvements.

5. Coordinates and directs assignments and projects related to program redesign and systems modernization efforts, including development of program specifications for expert systems. Formulates, plans and implements computer programs and other automation activities in support of program policy, research and administrative needs.

Dated: October 3, 1994.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 94–28013 Filed 11–10–94; 8:45 am]

BILLING CODE 4190–29–P

Statement of Organization, Functions, Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1, the Office of the Deputy Commissioner for Finance, Assessment and Management is being amended to reflect organizational changes within subordinate offices. These offices are the Office of Program and Integrity Reviews (S1K), the Office of Financial Policy and Operations (S1N), the Office of Budget (S1P), the Office of Acquisition and Grants (S1Q), the Office of Facilities Management (S1R) and the Office of Publications and Logistics Management (S1S). The changes are as follows:

Section S1K.10 *The Office of Program and Integrity Reviews*—(Organization):

Delete:

D. The Office of Insurance Program Quality (S1KA).

E. The Office of Assistance Program Quality (S1KB).

Establish:

D. The Administration, Matching and Data Management Staff (S1K–1).

E. The Office of Statistics and Special Area Studies (S1KE).

1. The Division of Statistics (S1KE1).

2. The Division of Special Studies and Analysis (S1KE2).

3. The Division of Public Service Evaluation (S1KE3).

H. The Office of Assistance and Insurance Program Quality (S1KG).

1. The Division of Insurance Program Entitlement Quality (S1KG1).

2. The Division of Insurance Program Postentitlement Quality (S1KG2).

3. The Division of Assistance Program Eligibility Quality (S1KG3).

4. The Division of Assistance Program Posteligibility Quality (S1KG4).

Section S1K.20 *The Office of Program and Integrity Reviews*—(Functions):

Delete:

D. The Office of Insurance Program Quality (S1KA) in its entirety.

E. The Office of Assistance Program Quality (S1KB) in its entirety.

Establish:

D. The Administration, Matching and Data Management Staff (S1K–1) consolidates and focuses on a number of functions previously spread throughout the organization. It conducts a variety of activities that cross component lines and impact the organization as a whole. The staff provides support on all budget, personnel and staffing issues; oversees the implementation of the provisions of the Computer Matching and Privacy Protection Act of 1988 for the Agency; and supports the Office of Program and Integrity Reviews (OPIR) components, including the Office of Regional Program Integrity Reviews (ORPIR), by planning, developing, maintaining and improving OPIR's communications and data processing systems and the quality review data bases for SSA programs.

E. The Office of Statistics and Special Area Studies (S1KE) has the responsibility for conducting broad-based studies and analyses of SSA's Retirement and Survivors Insurance (RSI), Supplemental Security Income (SSI), Disability Insurance (DI) and 800 Number operations and policies. It surveys SSA's customers to determine their satisfaction with field office (FO) services and whether their expectations were met; i.e., customer satisfaction. This effort supports the Agency initiative to improve the quality of services provided. The Office provides statistical advice and assistance to OPIR components. Operations research studies of SSA programs and management issues, designed to improve the efficiency of SSA's operational workloads, are also conducted in this office.

1. The Division of Statistics (S1KE1).

a. Provides statistical advice and support to OPIR components on study design, sample selection, variance calculations, hypothesis testing and data analysis.

b. Develops and applies statistical profiling techniques to operational workloads to improve targeting of resources and/or quality of operations.

2. The Division of Special Studies and Analysis (S1KE2).

a. Designs, coordinates and conducts ad hoc studies and analyses of the RSI, SSI and DI programs' policies and procedures.

b. Develops recommendations to improve quality and/or cost-effectiveness of SSA operations.

3. The Division of Public Service Evaluation (S1KE3).

a. Designs, directs and coordinates the nationwide system and procedures for evaluating SSA's 800 Number service.

b. Designs, directs and coordinates the evaluation of SSA's delivery of services to our customers by obtaining feedback of their expectations for, and perceptions of, SSA's service.

c. Plans, coordinates and conducts focus group discussions on various issues/policies/concerns with general public and beneficiary/recipient populations.

H. The Office of Assistance and Insurance Program Quality (S1KG) is responsible for quality reviews, special studies and analyses of the full range of legal requirements, policies, procedures, systems and operations for the RSI and SSI programs, for the nonmedical aspects of disability in both programs, and for issues common to both programs.

1. The Division of Insurance Program Entitlement Quality (S1KG1).

a. Is the principal SSA source for quality measurement and data for preclaims (enumeration and earnings maintenance) and RSI claims actions and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing RSI quality reviews, special studies and analyses of entitlement. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of RSI entitlement, to improve productivity in processing entitlement workloads, and to improve entitlement policies and procedures.

d. Conducts research in the areas of RSI entitlement and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

2. The Division of Insurance Program Postentitlement Quality (S1KG2).

a. Is the principal SSA source for quality measurement and data for RSI postentitlement actions, including Stewardship studies, and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing RSI quality reviews, special studies and analyses of postentitlement. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being

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Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of RSI postentitlement, to improve productivity in processing postentitlement workloads, and to improve postentitlement policies and procedures.

d. Conducts research in the areas of RSI postentitlement and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

3. The Division of Assistance Program Eligibility Quality (S1KG3).

a. Is the principal SSA source for quality measurement and data for SSI claims and subsequent determination actions and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing SSI quality reviews, special studies, and analyses of eligibility and subsequent determinations of eligibility. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data and develops and promotes recommendations to improve the accuracy and cost-effectiveness of SSI eligibility and subsequent determinations of eligibility, to improve productivity in processing such workloads, and to improve such policies and procedures.

d. Conducts research in the areas of SSI eligibility and subsequent eligibility and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

e. Designs automation-enhanced quality review processes.

4. The Division of Assistance Program Posteligibility Quality (S1KG4).

a. Is the principal SSA source for quality measurement and data for SSI posteligibility actions, including Stewardship studies, and for the level of service rendered to the public with such actions.

b. Designs, develops and conducts ongoing SSI quality reviews, special studies, and analyses of posteligibility decisions. Special studies and targeted analyses are requested by Congress, higher monitoring authorities, the SSA Executive Staff, as well as being Division-initiated in response to identified error issues.

c. Maintains, analyzes and reports quality data, performs consistency reviews, and develops, promotes and tracks recommendations to improve the accuracy of SSI posteligibility, to improve productivity in processing posteligibility workloads, and to improve posteligibility policies and procedures.

d. Conducts research in the areas of SSI posteligibility and serves as SSA liaison with other Federal entities, State and local governments, and the private sector.

Section S1N.10 *The Office of Financial Policy and Operations*—(Organization):

D. *The Office of Financial Policy and Systems Design (S1NA):*

Delete:

3. The Division of Internal Control and Security (S1NA3) in its entirety.

Establish:

3. The Division of Systems Security (S1NA6).

4. The Division of Program Systems Requirements (S1NA7).

Delete:

E. The Office of Financial Operations (S1NB) in its entirety.

Establish:

E. The Office of Finance (S1NC).

1. The Division of Central Accounting Operations (S1NC1).

2. The Division of Administrative Payments and Recovery (S1NC2).

3. The Division of Travel Management (S1NC3).

F. The Office of Program Accounting Operations (S1NE).

1. The Division of Benefit Certification and Accounting (S1NE1).

2. The Division of Cost Analysis (S1NE2).

Section S1N.20 *The Office of Financial Policy and Operations*—(Functions):

Revise the opening statement as follows:

D. The Office of Financial Policy and Systems Design (S1NA) develops financial accounting policies, procedures and requirements for all SSA financial management systems: program benefits, debt management and financial/administrative systems. It directs the preparation and publication of SSA's annual financial statement, plans and directs the analysis of SSA's integrated financial/administrative systems and develops and executes Agency policies and procedures for system security, management integrity, cash management, administrative control and use of Agency funds and performance measurement including analysis of program outcomes, program financing adequacy, operational efficiency and service delivery.

Delete:

3. The Division of Internal Control and Security (S1NA3) in its entirety.

Amend as follows:

1. The Division of Financial Policy and Standards (S1NA4) directs the development of financial accounting policies and procedures for all SSA financial management systems in compliance with accounting principles and standards prescribed by the Comptroller General and Chief Financial Officer of the United States and fiscal policies prescribed by the Secretary of the Treasury. It administers SSA's Federal Managers' Financial Integrity Act reporting and monitoring program (sections 2 and 4) including a risk analysis/vulnerability assessment program to ensure the accuracy and accountability of SSA's operational and administrative processes. It manages the preparation of SSA's audited annual financial statement and reports required by the Government Performance and Results Act.

2. The Division of Financial/Administrative Systems (S1NA5) provides systems analysis and support for the design, development and implementation of SSA's financial management systems and their integration with related administrative processes including applications to support core accounting functions of fund control, general ledger and reporting to higher monitoring authorities; accounts payable functions with connectivity to Treasury disbursing centers, Agency cashier and electronic commerce operations; cost analysis functions with determinations for Agency production, productivity and costs of workloads, business processes, programs and projects; travel management functions including document preparation, authorization and management information; and payroll management functions including full-time equivalency, workyear and dollar tracking at all organizational levels; the budget formulation and execution functions of the Office of Budget and related functions of managers SSA-wide.

Establish:

3. The Division of Systems Security (S1NA6) directs, coordinates and manages SSA's overall information systems security program. This includes the development of SSA's security policy requirements and procedures, the effective implementation of other governing directives in the area of security, the administration of an effective access control program and an onsite review program. It provides educational training and awareness programs to management and employees on security policy/requirements; serves as the Agency focal point for day-to-day contact with the Office of Inspector General on matters of fraud, waste and abuse, and provides direction and guidance to the Agency's component and regional security officers.

4. The Division of Program Systems Requirements (S1NA7) directs the development of financial and accounting requirements for SSA's programmatic systems; reviews and negotiates modifications to Agency's functional requirements for adherence to the Chief Financial Officer's (CFO) requirements; participates in software validation/testing to ensure its effectiveness, reliability and conformance; and negotiates scope and timing for software releases especially to ensure prompt correction of material nonconformances with accounting principles and standards prescribed by the Comptroller General and the CFO of the United States.

Delete:

E. The Office of Financial Operations (S1NB) in its entirety.

Establish:

E. The Office of Finance (S1NC) directs SSA's central accounting and financial reporting activities and provides financial, fund control, cash management services that include administrative payments, administrative debt collection and travel management. It plans and directs the development of operating policies and procedures related to financial operations and evaluates these activities to ensure they are responsive to the needs of the Agency.

1. The Division of Central Accounting Operations (S1NC1) directs SSA's central accounting and reporting operations and develops related Agency operating procedures. It monitors and reports on the status of Agency spending and maintains control over Agency assets, liabilities and appropriations; manages the Agency's cash position and flow including coordination with trust fund investment activities and with fund balances at the U.S. Treasury; manages SSA's financial reporting activities, including preparation of all Agency financial reports to higher monitoring authorities; and serves as the Agency's obligations control point assuring and certifying the legality and propriety of proposed and incurred obligations.

2. The Division of Administrative Payments and Recovery (S1NC2) directs SSA's administrative payment and collection operations and develops related operating policies and procedures. It examines and certifies SSA's administrative payments; administers SSA's third party draft program, providing both administrative and benefit payment delivery service to SSA FOs nationwide; adjudicates claims submitted to the Agency under the Federal Tort Claims and Military Personnel and Civilian Employees' Claims Act; and serves as the Agency's focal point for administrative debt management ensuring the billing and collection of fees charged by SSA for reimbursable services.

3. The Division of Travel Management (S1NC3) directs SSA's travel management operations and develops related operating policies and procedures. It serves as the Agency's focal point for travel management, ensuring the propriety of travel payments; examines and certifies SSA's travel payments; administers commercial travel agent, charge card, traveler's checks and automated teller machine services; and manages SSA's nationwide relocation services program.

F. The Office of Program Accounting Operations (S1NE) directs SSA's program accounting operations including the processes which determine trust fund revenues, authorize recurring and daily benefit payments and determine the administrative expenses to be borne by each trust fund and the general fund for administration of titles II, XVI and XVIII of the Social Security Act and other Federal programs. It also plans and directs the formulation of SSA's operating policies and procedures in these areas and provides a wide range of management information and analysis of SSA workloads, workyears, productivity and costs.

1. The Division of Benefit Certification and Accounting (S1NE1) directs SSA's benefit payment and earnings certification operations and develops related operating policies and procedures. It certifies and accounts for all benefit payments authorized under the Social Security Act; interacts with the Department of Treasury to ensure accurate and timely issuance of benefit entitlements and accounting for all related cash activity including proper charges and credits to the Agency's trust funds and general fund appropriations and master beneficiary records. As necessary, directs parallel actions by SSA's FOs and processing centers. Oversees the Agency's earnings records maintenance operation and maintains accounting controls necessary for interim and final certifications to the Secretary of Treasury which determine revenues paid to the Social Security and Medicare trust funds.

2. The Division of Cost Analysis (S1NE2) directs SSA's cost accounting and analysis operations and the development of related Agency operating procedures; develops Agency workload measurement policy and labor distribution requirements; manages SSA's Cost Analysis System which supports the Agency's budget formulation and execution processes and satisfies the statutory requirements for attribution of costs to all Agency workloads, functions, business processes and programs. Provides a wide range of management information and analysis on the Agency's administrative costs, workloads, labor utilization and productivity.

Section S1P.10 *The Office of Budget*—(Organization):

Retitle:

D. The Division of Administrative Budget (S1PA) to the Office of Administrative Budget (S1PA).

E. The Division of Program Budget (S1PB) to the Office of Program Budget (S1PB).

F. The Division of Administrative Budget Coordination and Analysis (S1PC) to the Office of Administrative Budget Coordination and Analysis (S1PC).

Section S1P.20 *The Office of Budget*—(Functions)

Retitle:

D. The Division of Administrative Budget (S1PA) to the Office of Administrative Budget (S1PA).

E. The Division of Program Budget (S1PB) to the Office of Program Budget (S1PB).

F. The Division of Administrative Budget Coordination and Analysis (S1PC) to the Office of Administrative Budget Coordination and Analysis (S1PC).

Section S1Q.10 *The Office of Acquisition and Grants*—(Organization):

Retitle:

D. The Division of Automated Data Processing and Telecommunications Contracts (S1QA) to the Office of Information Resources and Programs Contracts (S1QA).

E. The Division of Contract and Grant Operations (S1QB) to the Office of Operations Contracts and Grants (S1QB).

F. The Division of Acquisition Policy and Information Management (S1QC) to the Office of Acquisition Support (S1QC).

Section S1Q.20 *The Office of Acquisition and Grants*—(Functions):

Retitle:

D. The Division of Automated Data Processing and Telecommunications Contracts (S1QA) to the Office of Information Resources and Programs Contracts (S1QA).

E. The Division of Contract and Grant Operations (S1QB) to the Office of Operations Contracts and Grants (S1QB).

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F. The Division of Acquisition Policy and Information Management (S1QC) to the Office of Acquisition Support (S1QC).

Section S1R.10 *The Office of Facilities Management*—(Organization):

Delete:

D. The Division of Facilities (S1RA).

E. The Division of Environmental Protection and Security (S1RB).

F. The Division of Building Operations (S1RC).

Add:

D. The Office of Realty Management (S1RE).

E. The Office of Environmental Policy and Automation Resources (S1RG).

F. The Office of Main Complex Management (S1RH).

G. The Office of Outlying Buildings Management (S1RJ).

H. The Office of Field Facilities Management (S1RK).

I. The Office of Protective Security Services (S1RL).

Section S1R.20 *The Office of Facilities Management*—(Functions):

Delete:

D. The Division of Facilities (S1RA).

E. The Division of Environmental Protection and Security (S1RB).

F. The Division of Building Operations (S1RC).

Add:

D. The Office of Realty Management (S1RE) directs SSA's national real property program, including long- and short-range planning, design, construction and leasing of central office and prospectus level field facilities, renovation projects, energy management, project management, and the development and implementation of policies, procedures and technical assistance to support these programs. The Office of Realty Management is SSA's representative to other agencies in all these areas, and participates in the development of governmentwide policies and procedures.

E. The Office of Environmental Policy and Automation Resources (S1RG) directs SSA's national security, environmental, occupational health, and safety programs, including long- and short-range planning, management of disparate contract guard forces, automation efforts, the Agency's asbestos management program, national testing programs for water and indoor air quality, the Agency's suitability program, and the development and implementation of policies, procedures and technical assistance to support these programs. The Office of Facilities Services Management also coordinates budget, personnel, and other administrative functions for the Office of Facilities Management. The Office of Facilities Services Management is SSA's representative to other agencies in all these areas and participates in the development of government-wide policies and procedures.

F. The Office of Main Complex Management (S1RH) directs SSA's headquarters facilities, including the East, Operations, Annex, West, Supply and Altmeyer Buildings. Responsibilities include long- and short-range planning, maintenance, repair, ongoing preventive maintenance, space planning, execution of safety, environmental health, and physical security policies, and the development and implementation of policies, procedures and technical assistance to support these programs.

G. The Office of Outlying Buildings Management (S1RJ) directs operations at the Metro West, Security West, the National Computer Center, Hollings Ferry, and Techwood Buildings, including long- and short-range planning, construction and lease management, maintenance, repair, ongoing preventive maintenance, space planning, execution of safety, environmental health, and physical security policies, and the development of the appropriate policies, procedures and technical assistance to support these programs.

H. The Office of Field Facilities Management (S1RK) directs SSA's space management program for all field facilities, including long- and short-range planning, acquisition, management, and utilization of space, installation of IWS/LAN, modular furniture installation, asbestos management, and the execution of safety, environmental health, and physical security policies, and the development of policies, procedures and technical assistance to support these programs.

I. The Office of Protective Security Services (S1RL) directs the SSA's security program, including physical security, criminal investigation, and civil defense, designed to ensure the physical security of life and property on premises occupied by SSA personnel on a nationwide basis. The Office of Security Management is the SSA's representative to other agencies in all these areas and participates in the development of governmentwide policies and procedures.

Section S1S.10 *The Office of Publications and Logistics Management*—(Organization) :

Delete:

D. The Division of Logistics Services (S1SA).

E. The Division of Publications Management (S1SB).

Add:

D. The Office of Receiving, Storage and Issue (S1SC).

E. The Office of Property Management (S1SE).

F. The Office of Supply Management (S1SG).

G. The Office of Logistics Planning and Process Control (S1SH).

H. The Office of Publications Management (S1SJ).

I. The Office of Library, Records and Reprographics (S1SK).

J. The Office of Printing Operations (S1SL).

K. The Office of Mail Management (S1SM).

Section S1S.20 *The Office of Publications and Logistics Management*—(Functions):

Delete:

D. The Division of Logistics Services (S1SA) in its entirety.

E. The Division of Publications Management (S1SB) in its entirety.

Add:

D. The Office of Receiving, Storage and Issue (S1SC).

1. Directs the supply program nationwide by managing the operations of SSA warehousing facilities, including the control and maintenance of stock, the receipt, storage and issuance of forms, publications, supplies and equipment for use, and conducts ongoing inventories and investigates discrepancies at all sites.

2. Provides transportation services including chauffeur service for the Executive Staff and shuttle service for employees between SSA headquarters and other buildings in the Washington/Baltimore metropolitan areas.

3. Prepares and administers maintenance contracts and services for all SSA equipment; maintains adequate stock of repair parts for in-house emergency repair.

4. Performs all electrical preparations for SSA ceremonies; provides carpentry services for all SSA occupied buildings in the Baltimore/Washington area; exercises procurement authority to provide parts, services and maintenance for all SSA equipment; and maintains all equipment inventory history and records.

E. The Office of Property Management (S1SE).

1. Oversees all policy and procedures pertaining to the acquisition, utilization, accountability, transfer and disposal of SSA personal property. Manages and maintains the SSA Property Accountability System and the Property Management Officer/Custodial Officer network for the effective control of all SSA's sensitive, accountable, and personalized personal property assets. Provides SSA's liaison for all personal property activities with other Federal, State and local agencies, as well as commercial and civic organizations. Represents SSA's interest in the acquisition, transfer and disposal of personal property.

2. Oversees the acquisition and installation of modular/systems furniture in SSA offices nationwide; acts as technical expert and plans, coordinates and implements studies and surveys related to providing necessary ergonomic furniture and equipment to support SSA employees; plans coordinates and implements studies and surveys to access the variety of ergonomic furniture previously purchased and new furniture available to SSA offices; and provides expert technical advice and consultative services to the SSA executive staff and to major headquarters and regional components.

3. Responsible for all financial management and contracting activities performed within the scope of the Interagency Agreement with the Federal Prison Industries. Maintains audit trails for all expenses incurred during and after furniture installation.

F. The Office of Supply Management (S1SG).

1. Responsible for the development of policies, procedures and directives in support of SSA supply management program. Ensures that Agency's printing requests and justified requisitions are processed timely for all necessary forms, publications, office supplies and instructional materials.

2. Monitors Agencywide stock items usage for making proper stock replenishment and to initiate scheduled shipments timely through the Direct Delivery Program, and oversees the replenishment of warehouse stock for headquarters' use, emergencies, etc.

3. Manages the direct delivery program of scheduled shipments to field components of major use forms, publications and supplies; evaluates all supply proposals; monitors warehouse availability of on-hand training materials to accommodate periodic changes to training schedules and course material configurations; and develops and oversees common expense supply budget.

G. The Office of Logistics Planning and Process Control (S1SH).

1. Responsible for the overall management and control of automatic data processing resources which support SSA's centralized Supply and Property Accountability Systems; coordinates with financial/administrative components governmentwide on major systems management projects and studies and is the primary systems planning, development, and execution component within the Deputy Commissioners' office.

2. Responsible for the collection, validation, process, and control of SSA-wide requisitions for expendable supplies; supports special service programs for processing field and headquarters routine and emergency supply requests and planned training class orders.

H. The Office of Publications Management (S1SJ).

1. Directs a comprehensive SSA-wide forms control, publication and distribution management program, including forms and publications design, photocomposition and electronic information dissemination (electronic publishing, on-line publishing/services, electronic reference materials and CD–ROM and multi-media production and delivery); provides SSA-wide special media services for visually impaired employees.

2. Responsible for administering the regulatory and procedural requirements governing SSA's collection of information from the public, stemming from the Paperwork Reduction Act and providing liaison services with the Office of Management and Budget; and coordinates the Agency Administrative Instructions Manual System for the printing, clearance and issuance of policy, standards and procedural instructions.

3. Coordinates and directs a comprehensive printing management program and administers the procurement of all SSA printing needs; prepares the Agency's Comprehensive Printing Program Plan report for the Joint Committee on Printing, and provides liaison on policy and procedures.

4. Plans, directs and administers the SSA mail policy program, including developing policy and procedures for more efficient Agency mail processing methodologies and administers Agencywide mail management contracts. Provides liaison with the U.S. Postal Service in all national level mail management and operational policy negotiations and activities.

I. The Office of Library, Records and Reprographics (S1SK).

1. Directs, develops and maintains an Agencywide library and information service at SSA headquarters and nationwide. Provides on-line information on subjects relating to SSA programs and their operations in a variety of media.

2. Directs, develops and maintains a records management program. Develops policy and procedures regarding the retention and disposition of SSA's program and administrative records, administrative filing systems and equipment utilization, administrative correspondence, electronic records and vital records; and coordinates records storage and maintenance activities.

3. Directs, develops and maintains a reprographics management program. Develops Agencywide reprographic policy and procedures and manages the nationwide complement of SSA's reprographic equipment; represents SSA in activities and negotiations with reprographic vendors and government officials at the Department of Health and Human Services and the General Services Administration.

J. The Office of Printing Operations (S1SL).

1. Provides SSA in-house printing services for short turnaround work which cannot be procured commercially.

2. Provides coordination, technical advice and guidance to Agency components on SSA's in-house printing operation.

K. Office of Mail Management (S1SM).

1. Plans, directs and coordinates the SSA mail handling program, including the receipt, processing and dispatch of all incoming and outgoing U.S. Postal Service mail for SSA headquarters. Provides inter-office mail service for SSA headquarters and priority delivery service in Washington, D.C.

2. Administers oversight of necessary contracts such as the internal mail messenger service; consolidates and processes outgoing mail from headquarters to district offices, branch offices, program service centers and regional offices.

3. Processes computer-generated priority notices to SSA beneficiaries nationwide, using high-speed equipment to fold, insert and label mailings.

Dated: October 3, 1994.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 94–28016 Filed 11–10–94; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3750; FR–3700–N–02]

Announcement of Funding Awards for Homeless Assistance/Shelter Plus Care—FY 1994

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of competition winners.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Homeless Assistance. The announcement contains the names and addresses of the competition winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Please contact the HUD Field Office for the area in which the proposed project is located for additional information. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

SUPPLEMENTARY INFORMATION: The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney Act, as amended, 42 U.S.C. 11403.

On May 10, 1994 (59 FR 24255), HUD published a NOFA for Homeless Assistance. The May 10, 1994 NOFA announced the availability of approximately $545 million for applications for assistance designed to help communities move toward continuum of care systems to assist homeless persons. The May 10, 1994 NOFA advised that the funds were available under three programs to fill gaps within the context of developing seamless systems for combating homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing, in this notice, the names and addresses of the award winners under the May 10, 1994 NOFA for Homeless Assistance/Shelter Plus Care, and the amount of their respective awards. This information is set forth in Appendix A to this notice.

Dated: November 7, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A.—FISCAL YEAR 1994 SHELTER PLUS CARE COMPETITION

[List of grantees by State]

	Amount of grant awarded
Alabama: Jefferson County Housing Authority	$2,658,600
Arkansas: Arkansas Department of Human Services	2,793,840
Arizona: Department of Health Services	2,982,060
California:	
Housing Authority of the City of Los Angeles	2,862,780
San Diego Housing Commission	2,499,840
City and County of San Francisco	2,851,800
Housing Authority of the County of Contra Costa	2,992,620
Colorado:	
Colorado Department of Human Services	734,400
Denver Department of Social Services	298,800
Connecticut:	
State of Connecticut, Department of Mental Health	932,400
State of Connecticut, Department of Mental Health	2,822,400
State of Connecticut, Department of Mental Health	2,991,600
State of Connecticut, Department of Mental Health	915,840
District of Columbia: District of Columbia, Department of Human Services	2,989,380
Florida: Clearwater Housing Authority	2,389,440
Georgia:	
City of Savannah	1,496,040
Housing Authority of Savannah	1,684,800
Illinois:	
City of Rockford	568,020
City of Chicago	2,922,060
Indiana: State of Indiana	483,800
Kansas: City of Topeka	2,130,960
Kentucky: Kentucky Housing Corporation	306,840
Louisiana: Louisiana State Department of Health and Hospitals	2,733,660
Massachusetts:	
City of Boston	2,018,700
Commonwealth of Massachusetts	721,200
Lynn Housing Authority	2,077,620
City of Cambridge Housing Authority	441,780
Maryland: City of Baltimore	2,872,380
Maine: Maine Department of Mental Health and Mental Retardation	1,830,060
Michigan: City of Ann Arbor	2,244,000
Minnesota: Dakota County Housing and Redevelopment Authority	482,400
North Carolina: State of North Carolina, Division of Mental Health	2,373,600
New Jersey: New Jersey Housing and Mortgage Finance Agency	1,881,840
New York:	
New York State, Office of Mental Health	2,525,460

APPENDIX A.—FISCAL YEAR 1994 SHELTER PLUS CARE COMPETITION—Continued

[List of grantees by State]

	Amount of grant awarded
New York State, Office of Mental Health	592,200
State of New York	327,180
State of New York	1,441,140
State of New York	384,720
New York State, Office of Mental Health	553,680
New York State, Office of Mental Health	2,453,940
New York State, Office of Mental Health	2,986,320
New York State, Office of Mental Health	955,080
State of New York	559,680
Dutchess County Department of Mental Hygiene	437,640
Westchester County	2,706,840
Ohio:	
Stark Metropolitan Housing Authority	702,180
Lorain Metropolitan Housing Authority	1,221,000
Oregon: Housing Authority of Portland	707,400
Pennsylvania:	
City of Philadelphia	2,993,100
Lehigh County Housing Authority	704,520
Rhode Island: City of Pawtucket Planning and Redevelopment	1,928,400
South Dakota: Sioux Falls Housing and Redevelopment Commission	559,500
Texas:	
Harris County	2,993,040
City of Fort Worth Housing Authority	2,987,580
Utah: Utah Department of Community and Economic Development	210,240
Virginia:	
City of Virginia Beach Municipal Center	457,860
Fairfax County, Department of Housing and Community Development	360,120
Vermont: Burlington Housing Authority	347,760
Washington:	
Housing Authority of Snohomish County	2,952,240
County of King	2,997,840
Wisconsin: Dane County Human Services	916,900
Totals 61 grants and 33 States	101,931,120

[FR Doc. 94–28031 Filed 11–10–94; 8:45 am]

BILLING CODE 4210–29–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–94–3719; FR–3473–N–05]

Announcement of Funding Awards for Intermediaries to Administer Preservation Technical Assistance Grants for FY 1994

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability for Intermediaries to Administer Preservation Technical Assistance Grants. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Mulholland, Acting Chief, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2300. The TDD number for the hearing impaired is 1–800–877–8339. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Preservation Technical Assistance Grants program is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) in order to provide assistance to resident groups and Community-Based Nonprofit Housing Developers involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L. 100–242, section 201 of the Housing and Community Development Act of 1987, approved February 5, 1988) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act approved November 28, 1990).

The purpose of the competition was to promote the ability of residents of eligible low-income housing to participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1987 and Low-Income Housing Preservation and Resident Homeownership Act of 1990.

The 1994 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 6, 1994 (59 FR 16366). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $35,027,900 has been awarded to 21 Intermediaries Technical Assistance Grant applicants that are located throughout the country. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the

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names, addresses, and amounts of those awards as follows:

Organization selected	Approved geographic area(s)	Dollar amount
AMADOR TULUMNE—COMMUNITY ACTION AGENCY, Ms. Shelly Hance, (209) 223–1485	Sacramento HUD Office Jurisdiction.	$2,491,265
COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATION (CEDAC), Mr. Vince O'Donnell, (617) 727–0506.	MA	1,777,000
COMMUNITY SERVICES OF WEST ALABAMA, INC., Mr. Bill Edwards, (205) 758–4756	AL	566,300
CONNECTICUT HOUSING INVESTMENT FUND, Ms. Paula Sampson, (203) 233–5165	CT	292,100
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT, Washington State, Mr. Al D'Alessandro, (206) 586–3370.	WA	3,488,600
LISC KANSAS CITY OFFICE, Mr. Jim White, (816) 753–0055	Kansas City and W. MO, KA.	1,420,450
LOW INCOME HOUSING FUND, Mr. Cort Gross, (415) 777–9804	CA (not including Sacramento F.O.).	5,301,200
METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS (WASHCOG), Ms. Peggy Sands, (202) 962–3256.	D.C. HUD Office & Frederick Co. [District, Northern VA, Montgomery, Prince Georges & Frederick Co.].	754,443
MINNESOTA HOUSING PARTNERSHIP, Mr. Chip Halbach, (612) 874–0112	MN	966,500
NATIONAL CENTER FOR TENANT OWNERSHIP, GEORGETOWN LAW, Mr. Ben Hecht, (202) 371–9200.	Northern MD, Southern VA, IL, IN, MI, OH.	7,371,764
NEIGHBORHOOD PRESERVATION COALITION NYS., INC., Ms. Cecilia Tkaczyk, (518) 432–6757	NY	947,600
NEW MEXICO REGION II AUTHORITY, Ms. Teresa Baca, (505) 454–0654	NM	456,700
NORTH CAROLINA HOUSING FINANCE AGENCY, Mr. James Quinn, (919) 571–4806	NC	1,104,300
OREGON HOUSING & COMMUNITY DEVELOPMENT, Ms. Lynn Schoessler, (503) 986–2007	OR	1,809,400
PENNSYLVANIA HOUSING FINANCE AGENCY, Ms. Lisa Yaffee, (717) 780–3882	PA	1,284,500
RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORP., Mr. Chris Hanafen, (401) 751–5566	RI	443,600
STATE OF NEW JSERSY—DEPT. OF COMMUNITY AFFAIRS, Mr. Anthony Cancro, (609) 633–6246	NJ	847,800
TENNESSEE HOUSING DEVELOPMENT AGENCY, Ms. Susan Mattson, (615) 741–7918	TN	1,595,300
VERMONT HOUSING FINANCE AGENCY, Ms. Irene Jenkins, (802) 864–5743, Ex. 231	VT	111,900
WISCONSIN COMMUNITY ACTION PROGRAM ASSOCIATION (WISCAP), Ms. Jackie Lawrence, (608) 244–4422.	WI (Res. Capacity)	490,300
WISCONSIN HOUSING & ECONOMIC DEVELOPMENT, Ms. Carol Winge, (608) 267–1453	WI (Predevelopment)	1,144,100
Total		35,027,900

Dated: November 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–28030 Filed 11–10–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–05–7122–00–6514]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a final Environmental Impact Statement for the Oro Cruz Operation of the American Girl Project, a proposed gold mining operation on public lands in Imperial County, California.

DATES: Comments on the final Environmental Impact Statement must be postmarked no later than Monday, December 12, 1994.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, ATTN: Thomas Zale.

FOR FURTHER INFORMATION CONTACT: Thomas Zale, Multi-Resource Staff Chief, telephone (619) 353–1060.

SUPPLEMENTARY INFORMATION: The proposed action is a surface and underground mining project on unpatented lode and placer claims on public lands in Imperial County, California. About 2.5 million tons of ore and 8.5 million tons of waste rock would be mined from two open pits, the Cross Pit and the Queen Pit, during an estimated two year period. The Queen Pit would be backfilled upon completion of mining. Underground mining would begin in the Cross Pit and be conducted concurrently with surface mining. One-half million tons of ore and 75,000 tons of waste rock would be produced during a three year period. Ore produced by both surface and underground mining would be transported 2.5 miles by haul trucks to existing mill and heap leach facilities in American Girl Canyon via a proposed haul road. Waste rock would be disposed of in the Queen Pit, and on one large and three smaller waste rock dumps. Aggregate for use in stabilizing underground mine workings would be hauled from a quarry near the existing American Girl Canyon facilities to the Cross Pit along the same haul road. Surface disturbance resulting from the proposed action would total 191 acres.

Dated: November 4, 1994.

G. Ben Koski,

Area Manager.

[FR Doc. 94–27848; Filed 11–10–94; 8:45 am]

BILLING CODE 4310–40–P

[AZ–026–5–1610–00]

Draft Amendment and Environmental Assessment to Lower Gila North and Lower Gila South Planning Documents, Phoenix District, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Lower Gila Resource Area, Phoenix District, has prepared a draft amendment and environmental assessment to its Lower Gila North Management Framework Plan and Lower Gila South Resource Management Plan for public review and comment. This is in compliance with sections 202 and 210 of the Federal Land Policy and Management Act (43 CFR 1600) and the National Environmental Policy Act (40 CFR 1500).

The amendment/environmental assessment proposes to resolve issues concerning land tenure adjustment, desert tortoise habitat management, desert bighorn sheep augmentation and reestablishment, wild horse and burro management, recreation management, and oil and gas development.

SUPPLEMENTARY INFORMATION: Proposed actions include:

Land Tenure Adjustment

- Identifying approximately 45,260 acres of public land for disposal.
- Identifying five management areas in which private lands with public and resource values may be acquired on a willing seller-willing buyer basis.

Desert Tortoise Habitat Management

- Managing habitat to assure that populations of the desert tortoise do not become threatened or endangered through Bureau of Land Management actions.
- Addressing at the activity planning level specific and quantifiable objectives for categorized habitat.
- Addressing in environmental decision documents mitigation measures to offset loss of category I and II tortoise habitats.
- Granting new land use authorizations in category I and II habitats only if no reasonable alternative exists, and evaluating mitigation, including compensation, to meet the no net loss goal.
- Prohibiting new off-highway vehicle competitive courses in category I and II habitats, and evaluating proposals for new off-highway vehicle competitive courses in category III habitat and mitigating the impacts.
- Considering the forage needs of desert tortoise in relation to livestock use and determining and prioritizing efforts to resolve conflicts.
- Allowing only those range improvements for livestock that will not conflict with category I and II habitats or populations.
- Allowing only those desert bighorn sheep augmentations and reestablishments that do not create conflicts with desert tortoise habitat or populations.
- Restricting sales of ornamental boulders to areas that will result in no net loss of habitat.

Desert Bighorn-Sheep Augmentation and Reestablishment

- Considering augmentations and reestablishments of desert bighorn sheep on a case-by-case basis with the appropriate National Environmental Policy Act consideration of conflicts and requirement for public participation.

Wild Horse and Burro Management

- Managing the Alamo Herd Management Area, Harquahala and Painted Rock herd areas, and the Little Harquahala herd area in the Yuma Resource Area, as self-sustaining populations which contain the optimum number of wild burros in a thriving natural ecological balance with other ecosystem components.

Recreation Management

- Designating all public lands described in the Lower Gila North and South planning documents as "limited", which will limit off-highway vehicle use to existing and/or designated roads, trails, and traditional or historically used vehicle routes (wildernesses will remain closed); this includes those lands transferred to the Phoenix, Havasu, and Yuma Resource Areas.
- Changing the off-highway vehicle designation in the Vekol Valley Grassland Area of Critical Environmental Concern and the Coffeepot Botanical Area of Critical Environmental Concern from "closed" to "limited to designated routes only".
- Planning and developing off-highway vehicle management plans.
- Permitting ultralight and hang glider launches and landings in designated areas.
- Establishing long-term, extended, and short-term camping areas, and maintaining the existing 14-day camping stay limit for lands outside of established camping areas and wildernesses.
- Planning and developing special use areas (rockhounding, climbing, shooting, etc.) through interdisciplinary planning.
- Establishing and planning the Vulture Mountains, Gila Trail, Saddle Mountain, and Ajo Special Recreation Management Areas, and revising plans for two special recreation management areas on the Barry M. Goldwater Air Force Range; and developing in these areas and the remaining extensive management area, where appropriate, the activities mentioned above plus activities such as hiking, horseback riding, mountain biking, and scenic, cultural, and wildlife viewing.

Oil and Gas Development

- Permitting an estimated twenty oil and gas leases and the drilling of up to ten wells subject to the standard lease and special stipulations to mitigate resource impacts.

DATES: The sixty day comment period ends January 23, 1995. Comments received after this date may be considered but will not be included in the comments reproduced in the final document.

During this comment period in December and January, open houses will be held in Wickenburg, Phoenix, Buckeye, Gila Bend, Ajo, and Tucson. Dates and locations will be announced through the media and in direct mailing to our mailing list. Open houses or meetings in other places will be held as requested.

ADDRESSES: A limited number of draft amendments are available from the Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona, 85027.

FOR FURTHER INFORMATION CONTACT: Carol Laver, Team Leader, at (602) 780–8090.

Dated: November 4, 1994.

David J. Miller,

Associate District Manager.

[FR Doc. 94–27949 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–32–P

[ID–060–1220–00–80016]

Notice of Restriction Order

AGENCY: Bureau of Land Management, Coeur d'Alene District, Idaho.

ACTION: Notice of Restriction Order for Wallace L. Forest Conservation Area, Order No. ID060–12.

SUMMARY: By order, the following restrictions apply to the Wallace L. Forest Conservation Area described as public land located in section 31, (portions of SW¼) T.50N. R.2W.; section 1 (portions of lots 1–6) T.49N., R.3W.; section 35 (portions of lots 4–7; SW¼ NE¼) T.50N., R.3W.

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(1) Discharging of firearms for any reason is prohibited.

(2) Use of motorized vehicles on other than existing county roads is prohibited.

The authority for establishing these restrictions is Title 43, Code of Federal Regulations, 8364.1.

These restrictions become effective immediately and shall remain in effect until revoked and/or replaced with supplemental rules

These restrictions do not apply to:

(1) Any federal, state or local official while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor or cooperator while in the performance of an official duty.

(3) Any person who is expressly authorized by the Authorized Officer to operate a vehicle in the closed area to access private property.

These restrictions are necessary to protect property and families of adjacent homeowners and to protect the public land from erosion and habitat degradation due to off-road vehicle use.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Jack O'Brien, Area Manager, Bureau of Land Management, 1808 North Third St., Coeur d'Alene, ID 83814.

Signed at Coeur d'Alene, Idaho, this 1st day of November 1994.

Eric Thomson,

Acting District Manager, Coeur d'Alene District.

[FR Doc. 94-27946 Filed 11-10-94; 8:45 am]

BILLING CODE 4310-GG-M

[IO-932-1430-01-Colorado 55433]

Notice of Realty Action

ACTION: Notice of Realty Action, COC-55433-Exchange of Bureau of Land Management (BLM) mineral rights in Las Animas County and State of Colorado mineral rights in Fremont and Moffat Counties, Colorado.

SUMMARY: The following federally owned minerals underlying land owned by the state of Colorado have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, as amended:

Sixth Principal Meridian

T. 29 S., R. 56 W.,
Sec. 15, SW¼ and W½SE¼;
Sec. 22, NE¼, N½NW¼ and E½SE¼;
Sec. 23, W½NW¼ and S½

The area described aggregates 960.00 acres in Las Animas County.

In exchange for these minerals the United States would obtain title to mineral rights presently owned by the state of Colorado under surface estate that is administered by the BLM in the following described parcels:

Sixth Principal Meridian

T. 16 S., R. 70 W.,
Sec. 36, N½;
T. 10 N., R. 104 W.,
Sec. 36, All.

The areas described aggregate 960 acres in Fremont and Moffat Counties, respectively.

The purpose of the exchange is for the BLM to obtain title to state of Colorado mineral estate underlying surface that is already in federal ownership. The exchange would transfer title to federal mineral rights that underlie surface that is already state-owned. This exchange of mineral rights is consistent with the objectives of the land use plans for the separate areas. The value of the mineral rights administered by the respective agencies have been determined to be equal.

DATES: For a period of 45 days from the date of this notice, interested parties may submit written comments to the BLM State Director.

ADDRESSES: Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti 303/239-3713.

Dated: November 4, 1994.

Jenny L. Saunders,

Acting Chief, Branch of Really Programs.

[FR Doc. 94-27947 Filed 11-10-94; 8:45 am]

BILLING CODE 4310-JB-M

[NM-010-1610-00/G010-G50001]

Notice of Intent To Prepare a Coordinated Resource Management Plan and Amend the Taos Resource Management Plan; Taos Resource Area, New Mexico and San Luis Resource Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Albuquerque District, Taos Resource Area and Canon City District, San Luis Resource Area are initiating preparation of a Coordinated Resource Management Plan (CRMP) in combination with a Taos Resource Management Plan Amendment (RMPA). This document will enable coordinated management activities throughout the 94-mile Rio Grande corridor from La Sauses, Colorado to Velarde, New Mexico; address inadequacies of the Taos Resource Management Plan (RMP) relating to the BLM's Supplemental Program Guidance for wildlife and fire; and include an Environmental Impact Statement to meet legislative requirements for the Rio Grande Wild and Scenic River extension and study areas. The plan's management strategy will center around conserving, restoring and maintaining the public lands' ecological integrity, productivity and biological diversity, while considering social, economic, cultural and ecological factors.

The public is invited to participate in each stage of the planning process, and public meetings will be held. The initial scoping meetings will occur at 7:00 p.m. at the following locations: Santa Fe, NM (BLM State Office, 1474 Rodeo Rd.)—December 5, 1994; Dixon, NM (Dixon Elementary School, Hwy. 76)—December 6, 1994; Taos, NM (Taos Civic Plaza & Convention Center, 121 Civic Plaza Drive)—December 7, 1994; Questa, NM (Village Council Chambers, Hwy. 522)—December 8, 1994; Alamosa, CO (Holiday Inn, 333 Santa Fe Ave.)—January 17, 1995; and Antonito, CO (Chamber of Commerce, Hwy. 285)—January 18, 1995.

DATES: Written comments relating to the planning process will be accepted on or before January 20, 1995, and should be brought or mailed to Terry Humphrey at the address below.

FOR FURTHER INFORMATION, CONTACT: Terry Humphrey, Taos Resource Area, 224 Cruz Alta Road, Taos, NM 87571; phone (505) 758-8851.

SUPPLEMENTARY INFORMATION: This CRMP is proposed to link activity-level planning throughout the Rio Grande corridor. The Taos RMP and San Luis RMP objectives and management prescriptions that relate to the Rio Grande corridor will serve as the baseline for this plan, limiting the scope and range of alternatives. A primary concern in completing this activity-level planning is to encourage a larger "landscape" approach to management through coordination across administrative and political boundaries.

Activity plans are needed for the Rio Grande Area of Critical Environmental Concern (ACEC) and San Luis Hills ACEC in Colorado; and the Orilla Verde Recreation Area, Racecourse ACEC, Warm Springs Special Management Area (SMA), Black Mesa ACEC, Lower Embudo SMA, and Riparian/Aquatic SMA in New Mexico. Activity plan updates are needed for the Wild Rivers SMA and 52 miles of the Wild and Scenic Rio Grande/Red River. The Taos RMP also calls for an evaluation of the Embudo Canyon ACEC for potential Wild and Scenic designation.

The BLM must complete a management plan for the newly designated 12-mile Wild and Scenic segment of the Rio Grande (from Taos Junction Bridge to Rinconada, New Mexico, just below the Taos County Line), by May 1997. The legislation designating the segment also requires that a study be completed for an 8-mile segment from Rinconada to the Velarde diversion structure by the same date.

Major issues to be addressed include upland and riparian vegetation; fish and wildlife habitat; water quantity and quality; historical and archaeological resources; socioeconomic conditions and quality of life; enforcement, trespass and emergency services; recreational access, transportation and facilities; recreational opportunities, use limits and allocations; guided and outfitted services; and visual resources.

The Taos RMP did not adequately address threatened (T), endangered (E), or sensitive wildlife species within the corridor. The corridor plan will identify areas of T&E habitat and restrict uses that would compromise this habitat.

The RMP decisions restricting vegetative manipulation within SMAs and Wilderness Study Areas also needs further analysis. The Taos RMP did not delineate areas of initial fire attack response or those that would be allowed to burn under modified suppression. Areas where modified or limited suppression could occur without compromising resource values will be identified. An opportunity also exists to use prescribed fire to enhance vegetative conditions and maintain biological diversity, and as a tool to reduce fuel accumulations where adjacent properties may be threatened by wildfire.

The recommended planning area boundary roughly follows the rims of the Rio Grande corridor except where SMAs extend beyond it. In Colorado the boundary incorporates the Rio Grande River Corridor ACEC, the San Luis Hills ACEC, and BLM-administered lands between the two ACECs, for a total of approximately 35,000 acres. In New Mexico the boundary encompasses approximately 65,000 acres, including two designated Wild and Scenic River segments and an 8-mile study segment; the Wild Rivers SMA, including the Guadalupe Mountain ACEC; the abandoned Molycorp molybdenum millsite; the Orilla Verde Recreation Area; the Racecourse ACEC; the Warm Springs SMA (including the Agua Caliente and Embudo Canyon ACECs); the Black Mesa ACEC; and the Riparian-Aquatic ACEC. Adjustments to the planning area boundary may be needed, however, because management actions may be recommended for areas outside of it to resolve issues.

A boundary recommendation for the 12-mile extension to the Rio Grande Wild and Scenic River will also be a part of this planning effort. Until Congressional approval is granted for the recommended boundary, the interim boundary is ¼ mile (1,320 feet) from the ordinary high-water mark on both sides of the river.

Maps of the affected area are available for public inspection at BLM offices in Santa Fe (1474 Rodeo Rd.), Albuquerque (435 Montaño Rd. NE), and Taos (224 Cruz Alta Rd.). The CRMP/RMPA is being developed by an interdisciplinary team of specialists with backgrounds in recreation, wildlife biology, range conservation, realty, geology, soils, hydrology, visual resources, archaeology, public affairs, and writing-editing. Additional technical support will be provided by other specialists as needed.

Dated: November 2, 1994.

Mike Ford,

District Manager.

[FR Doc. 94-27948 Filed 11-10-94; 8:45 am]

BILLING CODE 4310-FB-P

[ID-942-05-1420-00]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., November 2, 1994.

The plat representing the dependent resurvey of portions of the Third Standard Parallel North (south boundary), the Ninth Auxiliary Meridian East (east boundary), the west and north boundaries, and subdivisional lines, and the subdivision of certain sections, Township 13 North, Range 36 East, Boise Meridian, Idaho, Group No. 698, Idaho, was accepted October 31, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 2, 1994.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-27950 Filed 11-10-94; 8:45 am]

BILLING CODE 4310-GG-M

U.S. Geological Survey

Notice

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from Minera Kennecott, S.A. De C.V. a contribution of $15,000 to support geologic mapping of selected areas in northern Sonora, Mexico.

DATES: This notice is effective November 14, 1994.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Center for Inter-American Mineral Resource Investigations, Corbett Building, 210 East Seventh Street, Tucson, Arizona 85705-8454.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Page of U.S. Geological Survey, Center for Inter-American Mineral Resource Investigations, at the address given above; telephone 602/670-5580.

John R. Filson,

Acting Chief Geologist.

[FR Doc. 94-28037 Filed 11-10-94; 8:45 am]

BILLING CODE 4310-31-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Kathryn M. Springer, Owner, Sunrise Nursery, Leander, Texas.

The applicant requests a renewal permit to sell in Interstate Commerce artificially propagated endangered and threatened plants and seeds of various cacti within the United States.

Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any

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party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Division of Endangered Species/Permits, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–27965 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Meeting

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act. The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8 a.m. to 5 p.m. on Tuesday, November 29, 1994, and from 8 a.m. to Noon on Wednesday, November 30, 1994.

ADDRESSES: The meeting will be held at Conference Room B of the Klamath County Fairgrounds, 3531 South 6th Street, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, Suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: The Task Force will: Review a final DRAFT of a restoration plan amendment to expand the Klamath River Restoration program into the upper Klamath Basin and initiate another round of public review, or if a final DRAFT is not prepared, decide upon options to plan long-range fishery restoration in the upper Klamath Basin; review recommendations and progress regarding water allocation decisions in the upper Basin and its consistency with Klamath River Fishery Restoration Act goals; consider the need for a feasibility study of the potential for drawing water from the bottom of Klamath River reservoirs to improve downstream fish habitat; recommend an approach to the 1995 mid-term evaluation of the Klamath Restoration Program; review Technical Team progress towards recommended measures which may prevent listing of Klamath River Spring Chinook under the Endangered Species Act.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: November 3, 1994.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–27943 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Gettysburg National Military Park/Eisenhower National Historic Site, Draft Deer Management Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the release of the White-tailed Deer Management Plan/Draft Environmental Impact Statement for Gettysburg National Military Park/Eisenhower National Historic Site, Pennsylvania.

DATES: The DEIS will be on public review November 30, 1994. All review comments must be postmarked no later than February 10, 1995. A public information meeting will be held Saturday, January 7, 1995, at 1:00 PM, in the Gettysburg Junior High School, Lefever St., Gettysburg, Pennyslvania.

SUPPLEMENTARY INFORMATION: The DEIS presents six alternatives with a preferred alternative for the future management of deer at Gettysburg National Military Park and Eisenhower National Historic Site.

FOR FURTHER INFORMATION CONTACT: Superintendent Dr. John A. Latschar, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325, (717/334–1124).

Dated: November 3, 1994.

Anthony Corbisiero,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 94–27931 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: December 6, 1994; 8 a.m. until 5 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 250 North Main Street, Memphis, Tennessee.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: November 4, 1994.

Edward D. Carlin,

Acting Regional Director, Midwest Region.

[FR Doc. 94–27932 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–70–P

[Order 70, Amendment 1]

Chief, Land Resources Division, Washington Office; Delegation of Authority

Section 1. Delegation. The Chief, Land Resources Division, Washington Office, is authorized to:

(1) Approve and accept options and offers to sell to, or exchange with the United States, lands or interests in lands within areas under the jurisdiction or control of the National Park Service, and to execute all necessary agreements and conveyances incident thereto.

(2) Accept deeds conveying to the United States, lands or interests in lands, within areas under the jurisdiction or control of the National Park Service.

(3) Contract for and accept bills of sale or other evidence of title to personal property related to the acquisition of lands which is authorized to be acquired for the purposes of the areas under the jurisdiction or control of the National Park Service.

(4) Dispose of excess real property having an estimated fair market value of less than $15,000 by means most advantageous to the United States in accordance with § 101–47.603(b) of the Federal Property Management Regulations.

(5) Approve on behalf of the National Park Service offers of settlement in condemnation cases. Approvals of offers of settlement by him/her will be communicated to the appropriate office of the Solicitor's Office of the Department of the Interior for such further action as may be proper.

(6) Approve claims for reimbursement under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601, et seq.

Section 2. Revocation. This order supersedes and revokes National Park Service Delegation of Authority Order No. 70, 36 F.R. 13803, July 24, 1971.

Dated: October 18, 1994.

John Reynolds,

Acting Director, National Park Service.

[FR Doc. 94–27930 Filed 11–10–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 490X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pulaski County, IN

AGENCY: Interstate Commerce Commission.

ACTION: Petition for exemption.

SUMMARY: The Commission exempts, from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc. (CSXT), of the 0.37-mile end portion of its Medaryville Branch from milepost QB–14.79 to milepost QB–15.16, in Pulaski County, IN. The exemption is subject to standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 14, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by November 23, 1994. Petitions to stay must be filed by November 29, 1994. Requests for a public use condition must be filed by December 5, 1994. Petitions to reopen must be filed by December 9, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 490X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: October 27, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28021 Filed 11–10–94; 8:45 am]

BILLING CODE 7035–01–P–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket No. AB–88 (Sub-No. 6)]

Bessemer and Lake Erie Railroad Company—Abandonment and Discontinuance of Trackage Rights in Erie County, PA

The Commission has issued a certificate authorizing Bessemer and Lake Erie Railroad Company (B&LE) to abandon a 0.95-mile line of railroad between milepost 21.34 (B&LE sta -9+76.5) and milepost 22.29 (B&LE sta 40+35) and to discontinue trackage rights over 12.2 miles of rail line owned by Norfolk and Southern Railroad Company between B&LE sta 5580+66.9 and B&LE sta -9+76.5, in Erie County, PA. The abandonment and discontinuance certificate will become effective December 14, 1994, unless the Commission finds that (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate B&LE.

Any offers of financial assistance must be filed with the Commission and B&LE no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB-OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: October 21, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–28022 Filed 11–10–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 156X)]

Norfolk and Western Railway Company—Discontinuance of Operations Exemption—Between Koehler and Fieldale, VA; Norfolk Southern Railway Company—Abandonment Exemption—Between Koehler and Fieldale, VA

Norfolk and Western Railway Company (NW) and Norfolk Southern Railway Company (NS)[1] have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments for NW to discontinue operations over and NS to abandon approximately 1.4 miles of rail line between milepost 47.2–DW at Koehler and milepost 48.6–DW at Fieldale, in Henry County, VA.

Applicants have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance will be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

[1] On December 31, 1990, NW became a wholly owned subsidiary of NS. NS (formerly Southern Railway Company) is a wholly owned subsidiary of Norfolk Southern Corporation, a noncarrier.

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revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 24, 1994.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 5, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 18, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 3, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28020 Filed 11–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA"

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Pretty Products, Inc., et al*, Civil Action No. C2–91–074 (S.D. Ohio), was lodged on October 28, 1994 with the United States District Court for the Southern District of Ohio. The decree resolves claims against Pretty Products, Inc. and the Lancaster Colony Corporation, under Sections 104(e) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9604(e) and 9607, in connection with a hazardous waste site known as the Coshocton Landfill site (the "Site") located in Coshocton County, Ohio. The proposed decree requires defendant, Pretty Products, to pay to the Hazardous Substance Superfund, as reimbursement for response costs previously incurred by the United States in connection with the Site, the sum of $1,750,000, with interest from July 1, 1994. In addition, Defendants will pay costs incurred by the United States in overseeing remedial action work that is being undertaken by other Potentially Responsible Parties ("PRPs") at the Site, to the extent that such oversight costs are not reimbursable under a separate settlement between the United States and those other PRPs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pretty Products, Inc., et al*, D.J. reference #90–11–2–214A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Nationwide Bank Building, 280 N. High Street, Columbus, Ohio 43215; the Region V Office of the Environmental Protection Agency, 77 West Jackson boulevard, Chicago, Illinois; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20004, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–27956 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on July 12, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and Leghorn Telepublishing Corporation ("LTC") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and LTC, Hyannis, MA.

The area of planned activity is to exchange ideas and information about technology to enable parents to block viewing by their children of violent or otherwise unacceptable television programming.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27951 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for National Research Initiatives—Cross Industry Working Team Project

Notice is hereby given that, on August 5, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for National Research Initiatives ("CNRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the Cross Industry Working Team Project ("XIWT"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become Primary Members of XIWT: Texas Instruments, Inc., Dallas, TX; and U.S. West Communications, Seattle, WA. American Management Systems, Fairfax, VA; and Houston Association, Inc., Arlington, VA, have become Associate Members of XIWT. The following parties have withdrawn from XIWT as Associate Members: cisco Systems; and Satellite Broadcasting Communications Associates.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNRI intends to file additional written notifications disclosing all changes in membership. On September 28, 1993, CNRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 1993 (58 FR 66022). The last notification was filed with the Department on March 30, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23233).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27952 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 3, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new member to be added to the Consortium is Chemical Bank, New York, New York.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993, 58 FR 65399.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27953 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IBM, 3M and Lexmark International Inc.

Notice is hereby given that, on July 25, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IBM, 3M, and Lexmark International Inc. ("Lexmark") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of the antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are IBM, Armonk, NY; 3M, St. Paul, MN; and Lexmark, Lexington, KY.

IBM, 3M, and Lexmark have entered into an agreement contemplating collaborative research in furtherance of a Cooperative Agreement issued by the Department of Commerce, National Institute of Standards and Technology (NIST) Agreement No. 70 NANB4H1521 under NIST's Advanced Technology Program (ATP). The objectives of such collaborative research include the development of a low-cost, fiber-optic data bus technology for initial application in interconnection of multi-processor clusters. The agreement also contemplates IBM, 3M, and Lexmark taking advantage of each others' fiber-optic data bus technology intended to enhance each participants' performance of its obligations under the program. Such technical data is expected to include, but not be limited to, applications in interconnection of multi-processor clusters, advantages of fiber-optic over copperwire interconnections, plastic molding technology, parallel optical fiber array connector, and cable and module technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27954 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on July 1, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. ("PowerOpen"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Caldera Systems, Strajbourg, FRANCE; Software AG, Darmstadt, GERMANY; Ki Research, Inc., Columbia, MD; Acer Computer International Pte, SINGAPORE; Parsytec GmbH, Aachen, GERMANY; Axil Workstations, San Jose, CA; Power Computing Corporation, Milpitas, CA; SofTech, Inc., Waltham, MA; Neil Fitzgerald, Lincoln, MA; PowerPC News, London, ENGLAND; Opti, Inc., Santa Clara CA; TELMAT INFORMATIQUE, Soultz, FRANCE; ROTEC, Rastatt, GERMANY; Meiko Scientific Corporation, Concord, MA: The Physician's Computer, Essex Junction, VT; InfoSoft International, Inc., Boston, MA; V.I. Computer Corporation, Encinitas, CA; Wild Hare Computer Systems, Boulder, CO; Finmeccanica, S.p.A., Rome, ITALY; Hitachi Computer Products, Inc., Santa Clara, CA.

On April 21, 1993, PowerOpen filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 22, 1993 (58 FR 33954).

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The last notification was filed with the Department on April 5, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 1994 (59 FR 25961).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–27955 Filed 11–10–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 4th day of November 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–27762 Filed 11–10–94; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–9742, et al.]

Proposed Exemptions; Allied Old English, Inc. Employees' Profit Sharing Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Allied Old English, Inc. Employees' Profit Sharing Plan (the Plan)

Located in Port Reading, New Jersey

[Application No. D–9742]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of $600,000 by the Plan to the Harold Ross Trust (the Ross Trust), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan; (c) the Loan is secured by a first deed of trust on certain real property (the Property) which has been appraised by an independent, qualified appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan; (d) the fair market value of the Property remains at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan; (e) the independent, qualified fiduciary determines on behalf of the Plan that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; and (f) the independent, qualified fiduciary monitors compliance with the terms of the Loan and conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

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Summary of Facts and Representations

1. Allied Old English (Allied), the Plan sponsor, is a New Jersey corporation with its principal place of business located in Port Reading, New Jersey. Allied engages in the business of food manufacturing and distributing.

The Plan is a profit sharing plan with assets totaling $2,489,603 as of December 31, 1993. Thirty individuals participate in the Plan. The Plan trustees, Frederick Ross, Harold Ross and Richard Owens (the Trustees), possess the sole investment discretion with regard to the Plan's assets. Frederick Ross and Harold Ross both serve as directors as well as President and Treasurer, respectively, of Allied.

2. On May 9, 1980, Harold Ross and Lucille Ross (the Grantors) established the Ross Trust, which is an irrevocable investment trust. As of October 5, 1994, the Ross Trust had $1,925,000 in total assets, with the Ross Trust's only asset being the Property. Frederick Ross is the trustee of the Ross Trust. The Grantors, the Grantors' son, Frederick Ross, and the trustee of the Ross Trust on behalf of the Grantors' daughter, Elyse Ames, hold the beneficial interests of the Ross Trust. The Trustees represent that because at least fifty percent of the beneficial interests of the Ross Trust are held by two of the Plan's trustees, the Ross Trust appears to be a party in interest with respect to the Plan under section 3(14)(G) of the Act.

3. The Trustees request an administrative exemption from the Department to permit the Loan to the Ross Trust under the terms and conditions described herein. The Ross Trust proposes to use the Loan proceeds towards retiring an outstanding first mortgage on the Property in the amount of $760,572 which becomes due and payable on January 1, 1995.

4. The Loan will be in a principal amount of $600,000. The applicant states that at no time will the amount of the Loan represent more than twenty-five percent of the Plan's total assets. The Loan will be secured by a first deed of trust on the Property, which consists of a 60,000 square foot, one-story manufacturing warehouse distribution facility situated on 4.25 acres located at 100 Markley Street, Port Reading, New Jersey. As of June 15, 1994, Allied leased the Property pursuant to a lease scheduled to expire on October 31, 2007. Allied has the option to renew such lease for five additional five-year periods with a maximum term ending on October 31, 2032. The deed of trust will be duly recorded in Middlesex County to reflect the Plan's security interest in the Property. In addition, the Ross Trust will insure the Property against casualty loss and designate the Plan as the loss payee of such insurance.

5. The Loan will have a ten-year term and will be evidenced by a promissory note (the Note). The Note will require the Ross Trust to make monthly payments of principal and interest which will be fully amortized over the ten-year term. The interest rate on the Loan will be the greater of: (a) The prime rate of CoreStates Bank, N.A. (CoreStates) of Philadelphia, Pennsylvania, an unrelated entity, plus three quarters of a percentage point; or (b) 9.65 percent. The Plan will not be required to pay any commissions, fees or other expenses in connection with the Loan.

As a condition of the proposed exemption, the terms and conditions of the Loan must be at least as favorable to the Plan as those which the Plan could obtain in dealing at arm's length with an unrelated party. In this regard, CoreStates states in a letter dated July 12, 1994 that CoreStates would make a secured loan of $600,000 to the Ross Trust with interest accruing at either: (1) A daily floating rate equal to its prime rate plus three quarters of a percentage point; or (2) a fixed rate equal to 9.65 percent. In addition, CoreStates states that it would charge the Ross Trust a facility fee equal to one percent of the principal amount of such loan or $6000. Accordingly, the applicants represent that the Ross Trust will pay a facility fee of $6000 to the Plan at the inception of the Loan.

6. Dale R. Kilpatrick, MAI and Robert Appaluccio (the Appraisers) of National Valuation Services, Inc. (National Valuation), a valuation firm located in Florham Park, New Jersey, appraised the Property. Mr. Kilpatrick is the Vice President of National Valuation and Mr. Appaluccio has been actively engaged in appraising real estate since 1986. The Appraisers represent that both they and National Valuation are independent of, and unrelated to, both the Ross Trust and Allied.

The Appraisers placed the fair market value of the Property at $1,925,000 as of June 2, 1994. The Appraisers utilized the sales comparison and income approaches of valuation by using recent sales and current leases from comparable properties in the Woodbridge area. Primary emphasis was given to the sale comparison approach.

Mr. Appaluccio, in a letter dated October 14, 1994, stated that the fact that the Property is subject to a long term lease does not warrant a discount on the Property's fair market value because several types of investors would be willing to purchase the Property at its full fair market value. By letter dated October 21, 1994, Mr. Kilpatrick concurred with Mr. Appaluccio's position regarding such discount.

7. Milgrom, Galuskin, Rosner & Company (MGR&C), an accounting firm located in Edison, New Jersey, will serve as the independent, qualified fiduciary for the Plan with respect to the Loan. Paul D. Milgrom of MGR&C represents that MGR&C has extensive experience in business and loan transactions. Mr. Milgrom represents that both he and MGR&C are independent of, and unrelated to, both the Ross Trust and Allied. Mr. Milgrom states that MGR&C understands and acknowledges their duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan based upon consultation with counsel experienced with the fiduciary responsibility provisions of the Act.

Mr. Milgrom represents that MGR&C has reviewed the terms of the Loan and all of the documents and relevant information in connection with the Loan, including the appraisal. Mr. Milgrom states that the terms of the Loan compare favorably with the terms of similar transactions between unrelated parties and would be an arm's length transaction as evidenced by the terms offered by CoreStates (see Item #5 above). Mr. Milgrom represents that MGR&C believes that the Loan is in the best interests of the Plan and its participants and beneficiaries as an investment for the Plan's portfolio. Mr. Milgrom states that MGR&C believes that the Loan would be an appropriate and desirable investment for the Plan, based on the Loan's rate of return, the collateral securing the Loan, the character and diversification of the Plan's other assets and the projected liquidity needs of the Plan.

MGR&C has reviewed the financial condition of the Ross Trust in order to establish its ability to repay the Loan. In this regard, MGR&C has reviewed the Ross Trust's financial statements as well as Allied's financial statements. MGR&C concludes that the Ross Trust is credit worthy and, based upon its available monthly cash flow, the Ross Trust is financially capable of making the monthly Loan payments without such payments having an adverse impact on its cash flow.

Mr. Milgrom represents that MGR&C will monitor the Loan throughout its entire duration and will take any appropriate action necessary to protect the interests of the Plan and its participants and beneficiaries, including a foreclosure on the Property in the event of default. MGR&C will monitor the Property to ensure that the Loan remains secured by collateral worth at least 150 percent of the Loan at all times. Finally, MGR&C will monitor the conditions of the exemption and will ensure that such conditions are met.

8. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms of the Loan will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan; (c) the Loan will be secured by a first deed of trust on certain real property (the Property) which has been appraised by an independent, qualified appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan; (d) the fair market value of the Property will remain at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan; (e) MGR&C, as the Plan's independent, qualified fiduciary, determined on behalf of the Plan that the Loan is in the best interest of the Plan and protective of the Plan's participants and beneficiaries; and (f) MGR&C will monitor compliance with the terms of the Loan and the conditions of the exemption throughout the duration of the transaction, taking any action necessary to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.

Westinghouse Pension Plan (The Plan)

Located in Pittsburgh, Pennsylvania

[Application No. D–9519]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the contribution of certain securities (the Securities) to the Plan on September 14, 1993 and October 29, 1993 by Westinghouse Electric Corporation (WEC), the Plan's sponsor and as such a party in interest with respect to the Plan, provided the following conditions are met:

(a) The Securities were valued at an amount which was no greater than their fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contributions were at least as favorable to the Plan as terms and conditions which the Plan could have obtained in a purchase of similar securities from an unrelated party;

(c) The Plan did not pay any commissions or other expenses with respect to the contributions;

(d) The fair market value of the Securities represents at all times an amount of the Plan's total assets which is consistent with the Plan's investment guidelines and objectives;

(e) Mellon Bank N.A. (Mellon), as an independent, qualified fiduciary for the Plan, determined that each contribution of the Securities to the Plan was in the best interests and protective of the Plan and its participants and beneficiaries at the time of the transactions;

(f) Mellon monitored each contribution made to the Plan and took all appropriate actions necessary to protect the interests of the Plan and its participants and beneficiaries;

(g) Mellon monitors the performance of the Securities as an investment for the Plan and takes whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries;

(h) On the third anniversary of the date of the first contribution made to the Plan (i.e. September 14, 1996), WEC shall contribute to the Plan the difference between the sum of:

(1) The sales proceeds received by the Plan on the disposition of any of the Securities, plus

(2) The current fair market value of the Securities remaining in the Plan, plus

(3) Interest accrued and interest and dividends received on the Securities, and the aggregate value of the Securities on the date that they were originally contributed to the Plan (i.e. $188,882,694), plus any adjustments to such aggregate value requested by Mellon to reflect changes in the Consumer Price Index (CPI) during the period that the Securities were held by the Plan, upon demand by Mellon as the Plan's independent fiduciary under the terms of a "makewhole agreement" with the Plan (the Makewhole Agreement). Mellon shall have sole authority to determine the current fair market value of the Securities remaining in the Plan under the Makewhole Agreement through either appointment of one or more independent appraisers or by its own appraisal of the Securities at the time of the transaction;

(i) No later than December 31, 1994, WEC makes a cash contribution to the Plan in the amount of $25 million to support any amounts that may become due under the Makewhole Agreement, provided that this cash contribution is held as a separate credit balance in the Plan's funding standard account until September 14, 1996 (the termination date of the Makewhole Agreement) and is not used to offset any other funding obligation owed by WEC to the Plan until such date. Mellon, as the Plan's independent fiduciary, shall be responsible for investing the $25 million and ensuring that the Plan receives all interest and other income earned on the $25 million; and

(j) Mellon monitors the compliance by all parties with the terms and conditions of the exemption.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective for each contribution as of September 14 and October 29, 1993, respectively.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which had 135,969 participants and total assets of approximately $3.7 billion, as of December 31, 1992. The Plan is maintained by WEC, a diversified, global technology-based corporation with its headquarters in Pittsburgh, Pennsylvania. The trustee of the Plan is Mellon. As of September 15, 1993, the Plan was funded above the required minimum funding level and WEC had no minimum funding obligation.

2. The named fiduciary of the Plan is the WEC Pension Plan Administration Committee (the Committee). The Committee has the general authority to control and manage the operation and administration of the Plan, including the authority to appoint, direct, and monitor the trustee and investment managers. The Committee also has the authority to employ attorneys, consultants and other advisers in furtherance of its duties.

The Committee retained The Frank Russell Company (Russell) in 1990 as a consultant to review the Plan's asset allocation guidelines. The purpose of these guidelines is to establish percentage goals for the allocation of Plan assets among various categories of investments to enable the Plan to meet targeted returns, achieve divefsification, and satisfy projected liquidity needs.

Pursuant to this review, Russell concluded that a target of approximately

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5.2 percent of total Plan assets would be an appropriate asset allocation goal for so-called "alternative investments" that would be consistent with the Plan's investment needs and objectives. Alternative investments generally are relatively illiquid investments in an asset class other than traditional classes of cash, stock, fixed income securities and real estate. Alternative investments typically include venture capital, buyout funds, distressed companies, mezzanine financing, oil and gas programs, timberland or farmland, and economically targeted investments addressing certain social policies. Russell states that allocation of a small portion of assets to alternative investments is common among large corporate pension plans, such as the Plan.

3. As the result of a corporate reorganization in 1992, WEC held the investments of its former subsidiary, Westinghouse Credit Corporation (WCC). These assets included a portfolio of corporate securities which contained numerous alternative investments of the type described above. These assets had a value of approximately $1 billion. WEC had determined to liquidate all assets of WCC pursuant to the corporate restructuring. However, upon internal review of these assets, WEC concluded that some of the assets were high quality alternative investments possessing a significant potential for strong investment returns. In view of the fact that the Plan had an unsatisfied asset allocation target for such alternative investments, WEC began considering the possibility of contributing some of these assets to the Plan.

4. The process leading to the subject contribution of the Securities involved a number of steps. First, Westinghouse Pension Investment Corporation (WPIC), a wholly-owned subsidiary of WEC that managed the Plan's existing alternative investment portfolio, examined the entire $1 billion portfolio of available securities and identified $300 million in securities that were suitable for contribution to the Plan. Second, once WPIC had completed its initial review, the Plan retained Mellon to act as its independent fiduciary to examine the remaining securities for purposes of the proposed contribution of some of these securities to the Plan. Mellon was vested with full authority to act on behalf of the Plan and to determine whether accepting the contribution of any of the securities identified by WPIC would be in the best interests of the Plan and its participants and beneficiaries. As a result, Mellon had the authority either to refuse to accept any contribution, to accept the entire contribution identified by WPIC, or to further choose among the $1 billion portfolio of offered securities.

Mellon reviewed the $300 million of securities identified by WPIC and concluded that the contribution of four specific securities (i.e. the Securities) valued at approximately $188 million would be in the best interests of the Plan.

5. The Securities, all of which were issued by entities unrelated to WEC and its affiliates as well as Mellon, represent equity and debt interests that are within the asset category of alternative investments because the Securities are fairly illiquid and high risk investments. KPMG Peat Marwick (Peat Marwick) of Chicago, Illinois, and Stern Brothers & Company (Stern Brothers) of Kansas City, Missouri, were engaged as qualified, independent appraisers to value the Securities for purposes of the contribution.

The Securities are described as follows: (i) 35.1% of the outstanding shares of common stock of Topps Appliance City Inc. (the Topps Securities), appraised by Peat Marwick as having a fair market value of approximately $32,804,694; (ii) a senior revolving loan, subordinated notes, and 100% of the class A cumulative preferred stock of Tele-Media Company of Western Connecticut (the Tele-Media Securities), appraised by Peat Marwick as having a fair market value of approximately $62,000,000; (iii) 12% of the outstanding shares of class B common stock of Federated Investors (the Federated Securities), appraised by Stern Brothers as having a fair market value of approximately $20,100,000; [1] and (iv) 2% of the senior debt, 37.4% of the subordinated debt, 37.9% of the preferred stock and 31.6% of the common stock of First Britannia Mezzanine N.V. (the First Britannia Securities), appraised by Peat Marwick as having a fair market value of approximately $73,978,000.

The total fair market value of the Securities established by Peat Marwick and Stern Brothers (together, the Appraisers) was approximately $188,882,694. The Appraisers' reports state that certain discount rates were used to value each of the Securities to reflect their lack of marketability and the rate of return which investors would require to compensate for the risks involved.

The Topps Securities, the Tele-Media Securities, and the Federated Securities were contributed by WEC to the Plan on September 14, 1993. The First Britannia Securities were contributed by WEC to the Plan on October 29, 1993 (for reasons discussed in Item 6 below). The Securities represented approximately 5.1% of the Plan's total assets as of the date of the last contribution.

6. Mellon represents that it thoroughly reviewed, prior to the subject contributions, both the Appraisers' reports and the Securities themselves in order to determine whether and at what amount to accept the Securities on behalf of the Plan. Mellon had access to all information relating to the Securities in the possession of WEC, WCC and WPIC, including legal documentation of the Securities, various financial statements, and annual reports on the issuers of the Securities. Mellon reviewed and approved the valuation methodologies contained in the Appraisers' reports, which utilized both independent, market-based data as well as information provided by the issuers of the Securities. Mellon concluded that the Appraisers used accepted valuation methods and relied on information that was reliable and consistent with the information developed by Mellon during its review of the contribution of the Securities.

With respect to the Topps Securities, the investment consists of 2,523,438 shares of common stock of Topps Appliance City Inc. (Topps), a NASDAQ listed retailer of home appliances and consumer electronics in the New York City area. Mellon states that the shares, although publicly traded, are unregistered and subject to certain sale restrictions under Rule 144 of the Securities and Exchange Commission (SEC). Thus, Mellon notes that the Topps Securities can be disposed of only in a private placement or in the public market over a period of approximately 8–10 years under the timing and volume restrictions of SEC Rule 144. However, Mellon states that the valuation of the Topps Securities by Peat Marwick analyzed the price volatility and trading volume of the common stock of Topps as well as the discounts at which private placements of such stock occur in the market. Peat Marwick's valuation of the Topps Securities reflected a 20% discount off the traded share price of $16.25 as of September 13, 1993, to account for the lack of liquidity. Mellon believed that this discount and the potential for significant returns over a long term made the Topps Securities an appropriate alternative investment for the Plan.

[1] The applicant states that Mellon agreed to have the Securities valued by Peat Marwick because of its expertise in the field of valuing alternative investment securities. However, Peat Marwick determined that as a result of a pre-existing relationship with Federated Investors, it would be unable to evaluate the Federated Securities. Therefore, at Peat Marwick's suggestion with the approval of Mellon, Stern Brothers was chosen to value these Securities.

With respect to the Tele-Media Securities, the investment consists of a senior revolving loan, subordinated debt and 100% of the cumulative preferred stock of Tele-Media Company of Western Connecticut (Tele-Media), a cable television and video production studio operator in Naugatuck Valley, Connecticut. Tele-Media is a privately-held company. WEC was the sole lender under the senior revolving loan, sole holder of Tele-Media's subordinated debt, and sole owner of the Tele-Media preferred stock prior to the subject contribution to the Plan. Peat Marwick's valuation of the Tele-Media Securities utilized in part a discounted cash flow analysis of the company. The discounted cash flow method attempts to measure what a buyer is willing to pay currently for the future cash generating potential of an entity. The estimate of the present value of future cash flows of Tele-Media, using an average of management's best and worst case scenarios for a five-year earnings forecast and a discount rate of 14.5%, suggested a value for Tele-Media's total capital of approximately $70 million. However, Peat Marwick's valuation also utilized a market approach analysis involving trades of similar securities by companies within the industry. This approach was given more weight because of uncertainty regarding the potential impact of new cable regulations on Tele-Media's future cash flow. Under this approach, the fair market value of senior and subordinated debt was determined by computing the present value of the expected principal and interest payments at rates which reflected current market rates for similar debt instruments. Peat Marwick concluded that the value of the Tele-Media Securities under the market approach was $62 million.[2] Mellon states that Peat Marwick's valuation of the Tele-Media Securities appropriately reflected the risk of holding such a position in a private company. Mellon believed that the potential for significant returns over the long term made the Tele-Media Securities an appropriate alternative investment for the Plan.

The applicant states that on June 16, 1994, the Tele-Media Securities were sold by the Plan to Tele-Media for $66,050,000. Thus, based on Peat Marwick's determination that the Tele-Media Securities had a fair market value of $62 million as of September 14, 1993, the applicant represents that the Plan has realized a net gain of $4,050,000 as a result of the contribution and sale of these securities.

With respect to the Federated Securities, the investment consists of 1,200,000 shares of class B common stock of Federated Investors (Federated), a nationwide mutual fund sponsor and service-provider based in Pittsburgh, Pennsylvania. The Federated Securities represent a minority interest (i.e. approximately 12%) in a privately-held company. Stern Brothers' valuation of the Federated Securities utilized a capitalization of earnings approach, which considered the market value of Federated's invested capital as a multiple of projected earnings, and a discounted cash flow approach. Stern Brothers used these approaches to arrive at a $20.87 per share value, on a publicly traded equivalent basis, for the Federated Securities. In addition, Stern Brothers applied a 20% discount to this amount to account for the lack of marketability of the Federated Securities. Mellon believed that this discount and the potential for significant returns over the long term made the Federated Securities an appropriate alternative investment for the Plan. With respect to the First Britannia Securities, the investment consists of 2% of the outstanding senior debt, 37.39% of the subordinated debt, 37.96% of the preferred stock (i.e. 873,140 shares) and 31.61% of the common stock (i.e. 4,425,322 shares) of First Britannia Mezzanine N.V. (First Britannia), an investment fund based in London, England, whose purpose is to invest in high yield, subordinated debt with associated equity securities focusing primarily on companies in the United Kingdom. First Britannia's portfolio consisted of investments in 16 diversified operating companies at the time of Peat Marwick's valuation. Peat Marwick selected the adjusted net asset value approach to determine the fair market value of First Britannia's equity interests. In this regard, Peat Marwick relied on a current valuation of the equity investments in First Britannia's portfolio by Coopers & Lybrand, an independent qualified appraiser. Peat Marwick assumed that the fair market value of First Britannia's debt interests was equal to book value since all portfolio loans were current and had adjustable interest rates based on the London Interbank Offered Rate (LIBOR). Mellon states that the valuation of the First Britannia Securities reflected appropriate investment company, minority ownership and marketability discounts. Mellon believed that these discounts and the potential for significant returns over the long term made the First Britannia Securities an appropriate alternative investment for the Plan. However, Mellon withheld final approval of the Plan accepting the First Britannia Securities on September 14, 1993, the contribution date for the other Securities, because First Britannia was in the process at that time of refinancing its senior debt. The refinancing was completed on October 25, 1993, with terms which were more favorable to senior debtholders, including an increase in the interest rate.[3] Mellon, upon review of the terms of First Britannia's new senior debt, determined that the contribution of the First Britannia Securities was in the best interest of the Plan and accepted those Securities on October 29, 1993. Peat Marwick established the fair market value of the First Britannia Securities to be 49,733,000 pounds sterling on the date of contribution, which equated to $73,978,000 based on exchange rates as of close of business on October 28, 1993.

7. As the Plan's independent fiduciary, Mellon represents that it also: (i) Reviewed the Plan's investment allocation policy and guidelines relating to alternative investments; (ii) confirmed that such investment guidelines were independently reviewed by Russell who had worked with WPIC to assure that the guidelines were designed to meet appropriate investment return and diversification needs of the Plan; (iii) determined that it was proper to rely on the investment guidelines with respect to the need for alternative investments and the percentage to be committed to such investments; (iv) determined the value of Plan assets currently committed to alternative investments; and (v) determined that the Plan could accept the Securities without exceeding the guidelines relating to alternative investments. Mellon concluded, prior to each contribution of the Securities to the Plan, that the Plan's allocation

[2] In this regard, a current market rate of 9% per annum was assumed for Tele-Media's $51 million senior debt outstanding and a current market rate of 20% per annum was assumed for Tele-Media's $12 million subordinated debt outstanding as of June 30, 1993. Thus, the estimated present value of the senior and subordinated debt totalled approximately $59 million as of such date. Peat Marwick states that, based on a total invested capital value for Tele-Media of $62 million, $3 million was allocated to Tele-Media's preferred stock. Peat Marwick made no further adjustments to its valuation of the Tele-Media Securities at the time of the contribution (i.e. September 14, 1993).

[3] First Britannia's new senior debt has interest payable semi-annually at a rate equal to LIBOR plus 200 basis points, an increase of 35 basis points over the original senior debt which paid semi-annual interest equal to LIBOR plus 165 basis points. First Britannia's subordinated debt pays interest semi-annually at a rate equal to LIBOR plus 300 basis points.

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policy and investment guidelines relating to alternative investments were appropriate and that acceptance of the Securities would be within these guidelines and would not adversely affect the Plan's liquidity needs. Accordingly, Mellon represents that the contribution of the Securities was in the best interests and protective of the Plan and its participants and beneficiaries at the time of the subject transactions.[4]

8. Mellon states that it monitored the contributions of the Securities on behalf of the Plan and took all appropriate actions necessary to protect the interests of the Plan and its participants and beneficiaries. Mellon represented the Plan in the preparation and review of all documentation necessary to effect the transfer of the Securities from WEC to the Plan. In addition to reviewing and approving the valuation methodologies utilized by the Appraisers, Mellon ensured that the valuation of each of the Securities was adjusted to reflect the current fair market value on the date of contribution to the Plan. In this regard, Mellon requested that the Appraisers provide updated valuations of the Securities as of the date of the contributions. Where market forces resulted in changes in the valuations of the Securities, Mellon states that it reviewed the stated causes for these changes and was satisfied that the changes were accurately reflected in the valuations.

9. Mellon agreed to act as the Plan's independent investment manager for the holding of the Securities. Mellon has full authority for decisions relating to whether to hold or dispose of the Securities on behalf of the Plan. Mellon states that it has and will continue to monitor the performance of the Securities as an investment for the Plan and will take whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries.

10. WEC has entered into the Makewhole Agreement with the Plan for the Securities in order to provide additional protections to the Plan. Under the Makewhole Agreement, the parties agree that on the third anniversary of the date of the first contribution made to the Plan (the Exercise Date), WEC shall contribute to the Plan the difference between the sum of:

(i) The sales proceeds received by the Plan on the disposition of any of the Securities, plus

(ii) The current fair market value of the Securities remaining in the Plan, plus

(iii) Interest accrued and interest and dividends received on the Securities, and the aggregate value of the Securities on the date that they were originally contributed to the Plan (i.e. $188,882,694), if such amount is greater, plus any adjustments to such aggregate value requested by Mellon to reflect changes in the CPI during the period that the Securities were held by the Plan (referred to below as "the Makewhole Amount"), upon demand by Mellon as the Plan's independent fiduciary. Mellon will exercise the rights under the Makewhole Agreement on behalf of the Plan by delivery of a notice (the Notice of Exercise) to WEC no later than the sixtieth (60th) day after the Exercise Date. Mellon represents that it has full authority regarding whether and when to deliver the Notice of Exercise. In the event Mellon determines to exercise the rights under the Makewhole Agreement, it will have sole authority to determine the current fair market value of the Securities remaining in the Plan, for purposes of establishing the Makewhole Amount, through either appointment of one or more independent appraisers or by its own appraisal of the Securities at the time of the transaction.

Mellon states that the terms of the Makewhole Agreement are in the best interests of the Plan. The Makewhole Agreement is designed to guarantee the full value of the Securities as a contribution to the Plan, based on their fair market value at the time of each contribution, even though WEC was under no legal obligation to make a cash contribution at the time of the transactions. Under the Makewhole Agreement, WEC will guarantee the value of the Securities as an investment for the Plan during a three-year time period in order to ensure that the Plan will be protected from any losses that may result from holding the Securities during this period. Thus, the Makewhole Agreement ensures that the Plan will be in at least as favorable a position at the end of this period as it would have been had it received a cash contribution of the amount given in-kind through the contribution of the Securities and used the cash to purchase similar alternative investments. WEC states that the Plan incurred significant transaction cost savings in acquiring the Securities from WEC because no commissions or other expenses were paid by the Plan for the Securities.

11. WEC states that it will adhere to all minimum funding obligations that will otherwise accrue to the Plan during the three year period covered by the Makewhole Agreement.[5] In addition, as support for the Makewhole Amount, the applicant has agreed to the following arrangement:

(a) WEC will make a cash contribution to the Plan in the amount of $25 million. This amount represents at least 20 percent of the difference between the original value of the Securities at the time of contribution and the proceeds of the sale of the Tele-Media Securities ($188,882,694 − $66,050,000 = $122,832,694).

(b) This $25 million contribution will not alter the terms of the Makewhole Agreement or any obligation WEC may have as a result of the operation of the Makewhole Agreement.

(c) This contribution will be made no later than December 31, 1994.

(d) WEC will make this contribution solely as the result of and in connection with the requested exemption. WEC has no currently outstanding annual minimum funding obligation that would otherwise be satisfied by this contribution.

(e) This $25 million contribution will be held as a separate credit balance in the Plan's funding standard account until September 14, 1996 (the termination date of the Makewhole Agreement). Until that date, this $25 million credit balance will not be used to offset any other funding obligation owed by WEC to the Plan, and will not be used in calculating the amount of any other funding payment or contribution made by WEC to the Plan.

(f) This $25 million will be managed by Mellon (as investment manager for the Plan) and all interest and other income produced by this contribution will be credited to the Plan.

12. In summary, the applicant represents that the contributions of the

[4] The Department expresses no opinion in this proposed exemption as to whether the contribution and subsequent holding of the Securities by the Plan would violate section 404(a) of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[5] The applicant represents that the Securities became plan assets upon contribution to the Plan, and the value of the Securities was included in the Plan's funding standard account. However, WEC states that it has no minimum funding payments that must be made to the Plan until 1995. The value of the Securities (including the proceeds from the sale of any of the Securities and the dividends, interest and other income generated by the Securities), along with certain other contributions made by WEC, will be included in the basis for the calculation of the amount of minimum funding payments due to the Plan in 1995. In this regard, WEC made a cash contribution of $75 million to the Plan on June 30, 1994. WEC states that, as in the case of the contribution of the Securities, this cash contribution was not a required minimum funding payment but was made as part of WEC's ongoing efforts to improve the funding status of the Plan.

Securities met the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Securities were valued at an amount which was no greater than their fair market value at the time of the transactions, as established by independent, qualified appraisers; (b) Mellon analyzed the Securities as an investment for the Plan, prior to the contributions, and concluded that the acquisition of the Securities would be in the best interests of the Plan and its participants and beneficiaries; (c) the Securities were contributed under terms and conditions which were at least as favorable to the Plan as a purchase of similar securities on the open market; (d) the fair market value of the Securities represented an amount of the Plan's total assets which was consistent with the Plan's investment guidelines and objectives, as reviewed and approved by Russell and Mellon; (e) WEC will contribute, on the third anniversary of the date of the first contribution made to the Plan, the difference between the sum of (i) the sales proceeds received by the Plan on the disposition of any of the Securities, plus (ii) the current fair market value of the Securities remaining in the Plan, plus (iii) interest accrued and interest and dividends received on the Securities, and the aggregate value of the Securities on the date that they were originally contributed to the Plan (plus any adjustments to such aggregate value requested by Mellon to reflect changes in the CPI during the period that the Securities were held by the Plan), upon demand by Mellon as the Plan's independent fiduciary under the terms of the Makewhole Agreement; (f) WEC will make an additional cash contribution to the Plan in the amount of $25 million as support for the Makewhole Amount; and (g) Mellon will monitor the holding of the Securities by the Plan, as well as the conditions of the exemption, and will take whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan (The Plan)

Located in Detroit, Michigan
[Application No. D–9734]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code[6] shall not apply to:

(1) The transfer of shares of Class E common stock (the Class E stock) of General Motors Corporation (GM) to the Plan through the in-kind contribution of such shares by GM, a party in interest with respect to such Plan;

(2) The holding of the Class E stock by the Plan;

(3) The sale for cash of shares of Class E stock by the Plan to GM or its affiliates or to certain defined contribution plans sponsored by GM or its affiliates;

(4) The exchange of shares of Class E stock for publicly-traded securities between the Plan and GM or its affiliates under the same terms and conditions as are made available to all shareholders of Class E stock; and

(5) The acquisition, holding, and exercise by the Plan of a put option granted by GM which permits the Plan to sell the Class E stock or a successor security for which the Class E stock has been exchanged to GM.

This exemption is conditioned upon adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) GM contributes to the Plan at least 177 million shares of Class E stock but no more than 186 million shares plus $4 billion in cash, with at least $2 billion contributed in conjunction with or prior to the contribution of the Class E stock, and the remaining $2 billion contributed no later than September 30, 1995;

(b) If less than 177 million shares of Class E stock are contributed, GM will contribute additional cash in an amount equal to the difference between 177 million and the number of shares of Class E stock contributed times the per-share value of such stock at the time of contribution, or a weighted average price if such stock is not contributed on a single date;

(c) United States Trust (UST), an independent qualified fiduciary, or a successor independent fiduciary acceptable to the Pension Benefit Guaranty Corporation (PBGC) represents the Plan's interests for all purposes with respect to the Class E stock and determines, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Class E stock, is in the interest of the Plan;

(d) UST negotiates and approves the terms of any of the transactions between the Plan and GM or its affiliates or certain defined contribution plans sponsored by GM or its affiliates;

(e) UST manages the holding and disposition of the Class E stock and takes whatever action it deems necessary to protect the rights of the Plan;

(f) The terms of any of the transactions between the Plan and parties in interest are no less favorable to such Plan than terms negotiated at arm's length under similar circumstances with unrelated third parties;

(g) A credit balance reserve is maintained in the Plan consisting of the cash credit balance or cash generated from stock that has been sold in an amount equal to at least 25 percent (25%) of the contributed value[7] of the Class E stock which remains unsold in the Plan, for so long as such stock or any securities received in exchange exceeds the percentage limitations described in sections 407(a) and 407(f) of the Act (the ERISA Limits);

(h) An independent qualified appraiser determines the fair market value of the Class E stock contributed to the Plan as of the date of such contribution, and determines the fair market value of the Class E stock at various other times as required under the agreement between GM and the PBGC (the PBGC agreement);

(i) With respect to any sale or exchange of Class E stock by the Plan to GM or its affiliates or to any defined contribution plans sponsored by GM or its affiliates, no commission will be charged to or paid by the Plan;

(j) Any sale or exchange of Class E stock between the Plan and GM or its affiliates will be for no less than "adequate consideration" within the meaning set forth in section 3(18) of the Act, and any sale of Class E stock by the Plan to a defined contribution plan sponsored by GM or its affiliates will be at the prevailing price for such stock on the New York Stock Exchange (NYSE); and

(k) The Plan incurs no fees, costs, or other charges or expenses as a result of its participation in any of the transactions.

[6] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[7] Contributed value means the value of the Class E stock when contributed to the Plan, as determined by Duff & Phelps Capital Markets Co. (formerly Duff & Phelps Financial Consulting Co.) (Duff & Phelps).

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EFFECTIVE DATE: If this proposed exemption is granted, it will be effective on the later of the date on which the final exemption appears in the **Federal Register** or the date on which the PBGC Agreement is executed.

Summary of Facts and Representations

1. GM, the applicant, is a Delaware corporation, headquartered at 3044 West Grand Boulevard, Detroit, Michigan. GM is best known as a full-line vehicle manufacturer and supplier of automotive components and systems to other major manufacturers. In this regard, GM makes and sells cars, trucks, locomotives, and automotive components worldwide. It is represented that, as of December 31, 1993, GM had net sales and revenues of $138.2 billion and employed an average of 448,000 individuals. GM's other substantial business interests include three wholly-owned subsidiaries: (1) GM Hughes Electronics Corporation (GMHE); (2) General Motors Acceptance Corporation (GMAC); and (3) Electronic Data Systems Corporation (EDS). GMHE was organized in 1985 as a holding company for Hughes Aircraft Company and Delco Electronics Corporation and is involved in telecommunications systems, satellite systems, automotive electronic components, and other electronic products for commercial, aviation, and defense applications. GMAC and its affiliates provide financing and insurance to GM customers and dealers. EDS, acquired by GM in 1984, and operated as an independent and autonomous unit of GM, provides customers worldwide with information systems management and development, telecommunications, data processing, and other technological consulting services.

2. The Plan is a non-contributory defined benefit pension plan covering substantially all of the hourly employees of GM in the United States. The Plan uses an October 1–September 30 plan year. For the 1992 Plan year which ended September 30, 1993, the Plan covered a total of 599,262 participants and beneficiaries. Of these, 274,257 were fully vested active participants, 280,633 were retirees or their beneficiaries in pay status, and 44,372 were terminated vested participants. The GM hourly employees are represented by eleven different unions. In this regard, more than 500,000 of the participants of the Plan are members of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America.

The named fiduciary of the Plan is the Finance Committee of the Board of Directors of GM (the Board). A majority of the members of the Finance Committee are outside directors. Acting in its fiduciary capacity, GM appointed a wholly-owned subsidiary, the General Motors Investment Management Corporation (GMIMCO), to serve as the primary investment manager for the Plan. GMIMCO is a registered investment advisor under the Investment Advisers Act of 1940 and has acknowledged that it is a fiduciary with respect to the Plan. It is represented that EDS began providing administrative services in January 1994 to the Plan and to another plan sponsored by GM, after being chosen in competitive bidding to do so. In this regard, it is represented that the Plan pays only direct costs for the provision of such services.[8]

As of September 30, 1993, the Plan had assets of $19.6 billion. In this regard, the Plan's investments were held in two master trusts (the Master Trusts), the General Motors Hourly-Rate Employes Pension Trust (the Hourly Trust) and the General Motors Global Pension Trust (the Global Trust). The Master Trusts permit commingling of the assets of one or more GM employee benefit plans for investment and administrative purposes. The Plan has an undivided interest in the net assets of the Master Trusts, and allocations are made monthly.

The Global Trust invests primarily in foreign equities, and for reporting purposes its investments are translated into U.S. dollar equivalents. The Hourly Trust invests principally in U.S. equity and fixed income securities, real estate mortgages, and commingled pension trust funds. As of September 30, 1992, the Hourly Trust and the Global Trust had net assets of $13,791,304,000 and $6,881,072,000, respectively. Banker's Trust Company (Banker's Trust), Mellon Bank, N.A. (Mellon Bank), and Chase Manhattan Bank, N.A. (Chase Bank) administer the Hourly Trust, and Chase Bank administers the Global Trust. Effective December 31, 1991, the Hourly Trust became a master trust by amendment of the provisions of existing trust agreements between GM and Banker's Trust, Mellon Bank, and Chase Bank.

It is represented that the Plan owns land and buildings in sixteen (16) separate sites dispersed throughout the United States that are leased to GM and on which are located GM training centers (the Training Centers). As of March 31, 1994, the aggregate fair market value of the Training Centers was $2,266,000 which represented a small fraction (approximately one one-hundredth of one percent) of the total assets of the Plan, as of that date. It is represented that each of the Training Centers constitutes "qualifying employer real property," as defined in section 407(d)(4) of the Act, such that the acquisition by the Plan of such centers and the leaseback to GM were exempt from the prohibited transaction provisions under section 408(e) of the Act.[9]

As of March 31, 1994,11 the Plan also held the following securities issued by GM: (1) 17,306,532 million shares of Class E stock with a market value of $592.7 million; (2) 516,425 shares of GM $1⅔ common stock with a market value of $27.8 million; (3) GM Corp Series C Depositary Shares with a market value of $6.2 million, and (4) debt securities of GMAC with a market value of $3,798,000. It is further represented that these securities constitute "qualifying employer securities," as defined in section 407(d)(5) of the Act, such that the acquisition and holding by the Plan of such securities were exempt from the prohibited transaction provisions under section 408(e) of the Act.[10]

3. The Plan was established October 1, 1950, to provide normal retirement, early retirement, disability retirement, death and survivor benefits, and other benefits to participants and beneficiaries. Effective October 1, 1990, the Plan was amended to provide for increases in basic, temporary, and certain supplemental benefit rates for retirees. It is represented that the Plan, as amended in October 1990, meets the Code requirements for a qualified pension plan. Subsequent to September 30, 1992, the Plan was amended to provide unreduced retirement benefits for certain employees who elected voluntary early retirement.

Benefits provided under the Plan are based generally on an employee's credited service and vest generally after five years. Contributions by GM to the Plan are determined on the basis of

[8] The Department expresses no opinion, herein, as to whether the provision of services by EDS to the Plan and the compensation received therefor satisfy the terms and conditions as set forth in section 408(b)(2) of the Act.

[9] The Department, herein, expresses no opinion as to whether the Training Centers constitute "qualifying employer real property," as defined in section 407(d)(4) of the Act or whether the acquisition and leaseback of the Training Centers satisfy the conditions, as set forth under section 408(e) of the Act.

[10] The Department, herein, expresses no opinion as to whether these securities constitute "qualifying employer securities," as defined in section 407(d)(5) of the Act, or whether the acquisition and holding by the Plan of such securities satisfy the conditions, as set forth under section 408(e) of the Act.

actuarial cost methods and include amortization of prior service cost. It is represented that such contributions are made periodically by GM within the limits set by the Act. As of September 30, 1991 and 1992, the net assets of the Plan available for benefits totaled $17,953,494,000 and $18,399,015,000 respectively.

4. With regard to the net assets of the Plan available to pay benefits, it is represented that the Plan is significantly underfunded, even though GM has never failed to make any funding payment required by the Act. For purposes of financial accounting, GM reports the liabilities of the Plan in accordance with the Statement of Financial Accounting Standards No. 87 (SFAS No. 87) issued by the Financial Accounting Standards Board. Although the Plan was overfunded on an SFAS No. 87 basis as recently as 1987, it is represented that the liabilities of the Plan have doubled over the last six (6) years. As of December 31, 1993, the Plan was underfunded by $18.3 billion. It is represented that the unfunded liabilities of the Plan rose 60 percent (60%) from year end 1992 to year end 1993, from $11.4 billion to $18.3 billion.[11] It is represented that the major factors contributing to this increase were: (1) The decline in interest rates which resulted in lower discount rates that GM uses to calculate the actuarial present value of the liabilities of the Plan; (2) pension benefit increases as a result of labor negotiations; and (3) the cost of a 1993 early retirement program for certain GM employees.

5. It is represented that reducing the underfunding of the Plan is a key objective of GM. In this regard, GM believes that it is imperative to accelerate the pace at which this goal will be accomplished before the next cyclical downturn in the automobile industry anticipated for 1997. In the opinion of GM, a significant reduction in the underfunding of the Plan will improve the security of pension benefits for the participants and beneficiaries. In addition, GM believes that such action would strengthen its long-term financial soundness, its credit ratings, and decrease the cost of debt and improve access to equity capital both for GM and GMAC.[12]

Generally, in order to correct the unfunded liability of its main U.S. plans, GM has revised the mortality assumptions in such plans to more closely reflect recent actual experience. Further, effective for 1993, GM has lowered the asset earnings rate assumption for its main U.S. plans. With regard to funding, GM's Board decided in 1992 to substantially improve the funded status of GM's pension plans by the end of the decade. In this regard, during 1992 and 1993, GM contributed more to such plans than was required by law and will continue to contribute additional amounts above those required in 1994 and future years. Specifically, given current estimates GM anticipates that contributions of over $20 billion will be required to sufficiently fund the Plan which is the subject of this exemption request. GM maintains that it has significant competing cash needs and that not all cash generated by its operations can be used to fund the Plan.

Contributions of Cash and Class E Stock

6. In order to help correct the Plan's unfunded liability, GM proposes to contribute in kind to the Plan shares of Class E stock and $4 billion dollars in cash. In this regard, it is proposed that the Plan receive all of the remaining 222 million unissued shares of Class E stock, less approximately 45 million shares reserved for conversion of GM's Series C Preference Stock, or approximately 177 million shares.[13] If the number of shares available for contribution to the Plan falls below 177 million, GM has agreed to increase the cash contributed by an amount equal to the shortfall (the difference between 177 million and the number of shares actually contributed times the per share value of the contributed stock at the time of contribution or a weighted average price if the stock is not contributed on a single date)[14]. GM estimates that, based on the per share market price as of June 9, 1994, the value of the cash and Class E stock proposed to be contributed is approximately $10 billion. It is represented that the contribution of cash and the Class E stock will in the aggregate immediately reduce the underfunding of the Plan by over 40 percent (40%) on the basis of SFAS No. 87.

7. GM has issued three classes of publicly-held common stock with the following number of shares issued and outstanding, as of December 31, 1993: (a) 718,652,709 shares of $1⅔ par value common stock; (b) 89,930,845 shares of Class H common stock; and (c) 255,763,512 shares of Class E stock. Each class of common stock has dividend, voting, and liquidation rights, as provided in GM's Restated Certificate of Incorporation, as amended. No class has any rights to preferential or cumulative dividends, nor is the amount of dividends payable with respect to any class limited by either contract law or to any predetermined amount. The Certificate of Incorporation authorizes the Board under certain terms to exchange every outstanding share of Class E stock for shares of GM $1⅔ par value stock in a specified ratio if various circumstances arise.

8. While the Class E stock which will be contributed to the Plan will be unregistered, Class E stock which is registered and issued has been widely-held and actively traded on the NYSE for nearly ten (10) years under the symbol GME. Holders of GM Class E common stock have no direct equity interest in EDS nor a priority claim on the assets of EDS, but rather have liquidation rights in the aggregate equity and assets of GM, which include 100 percent (100%) of the common stock of EDS. In the event of the liquidation, dissolution, or winding up of the business of GM, assets remaining after payments to creditors or to preferred or preference stockholders, if any, will be distributed to holders of Class E stock, as well as to holders of $1⅔ par value common stock, and Class H common stock, on a per share basis in proportion to the respective per share liquidation units of such classes of stock.

9. For almost thirty (30) years, EDS has provided, both in the United States and in thirty (30) other countries,

[11] It is represented that the SFAS No. 87 calculations use the same dates as those for plan years, but serve as proxy for calendar year reporting purposes, as permitted under the accounting standard. GM's liability shortfall on an SFAS No. 87 basis for its pension plans worldwide was $22.3 billion at year-end 1993. GM maintains that the Plan's $18.3 billion in underfunding accounts for the vast bulk (82%) of GM's pension underfunding. The remaining underfunded liabilities are primarily attributable to two non-U.S. pension programs. It is represented that GM's other domestic qualified defined benefit plans are each fully or nearly fully funded on an SFAS No. 87 basis.

[12] GM believes that accelerating the funding of the Plan will also help reduce the exposure of the PBGC to liability for certain benefits of the Plan which are guaranteed.

[13] It is represented that GM regularly issues Class E stock to certain 401(k) and stock option plans maintained for employees of GM and its affiliates. As a result, it is possible that at the time of the contribution the remaining number of unissued nonreserved shares of Class E stock will be less than the 177 million shares specifically referenced in the PBGC Agreement, discussed below. GM or EDS contemplates purchase of approximately 9 million shares of Class E stock currently held by the General Motors Retirement Program for Salaried Employes. In the event such sale is consummated, GM may use some or all such shares to bring the number of shares contributed to the Plan up to 177 million. Any remaining shares may then be added to the stock portion of the contribution up to a total of 186 million. It is represented that the additional contributed shares of Class E stock will be treated in the same manner as the 177 million shares under the PBGC Agreement.

[14] The weighted average price will be determined by Duff & Phelps which has been engaged by UST, independent fiduciary.

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applications of information technology to small business, governments, and large corporations, including GM and the Plan. EDS is headquartered in Dallas, Texas and employs approximately 70,500 individuals to provide information technology at customer sites or at one of EDS' nineteen (19) information processing centers worldwide.

As of December 31, 1993, EDS had revenues totaling $8.6 billion, and a net income of $724 million. It is represented that EDS has experienced rapid and consistent growth. In this regard, since 1988, total revenues have increased by 12 percent (12%) annually, and net income has averaged 14 percent (14%) annual growth. Although 39 percent (39%) of the revenues of EDS in 1993 were attributable to business with GM and its affiliates, it is represented that increasingly EDS' business has become independent of GM. In this regard, during the last five (5) years, EDS' revenues from non-GM sources have increased from 40 percent (40%) to 61 percent (61%) of all revenues.

10. Dividends on Class E stock are linked to the earnings performance of EDS. In this regard, under GM's Certificate of Incorporation, dividends on Class E stock may be declared and paid out of assets of GM only to the extent of the paid-in surplus attributable to Class E stock, plus the "Available Separate Consolidated Net Income of EDS" earned since the date GM acquired EDS.[15] Under the dividend policy in effect since 1989, but subject to alteration by the Board, the aggregate annual dividend on a share of Class E stock is equal to approximately 30 percent (30%) of the prior year's Available Separate Consolidated Net Income of EDS. It is represented that stockholders' equity with respect to Class E stock has climbed from $1.4 billion in 1988 to $3.6 billion in 1993, while dividends have increased from $.17 per share to $.40 per share over the same six-year period. Further, the earnings per share attributable to GM Class E stock increased by a compound 14 percent (14%) per annum from 1988 to 1993 when earnings per share equaled $1.51, as of December 31, 1993.[16]

11. With respect to the stock portion of the contribution, GM requests exemptive relief from the prohibitions of sections 406 and 407 of the Act because of its belief, more fully discussed below, that the contribution would not meet the requirements for the acquisition of "employer securities" under section 408(e) of the Act. In this regard, section 408(e) provides, in part, that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of "qualifying employer securities," as defined in section 407(d)(5) of the Act, if such acquisition or sale is for adequate consideration, no commission is charged, and, in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, such acquisition does not exceed 10 percent (10%) of the fair market value of the assets of such plan. Under section 407(d)(5) stock is a "qualifying employer security," if such stock is issued by an employer of employees covered by the plan or by an affiliate of such employer. Section 407(d)(5) further provides that in the case of a plan other than an eligible individual account plan, such as a defined benefit plan, an employer security shall be considered a "qualifying employer security," only if such employer security satisfies the requirements of section 407(f)(1). Section 407(f)(1) provides that stock satisfies the requirements of this paragraph if no more than 25 percent (25%) of the aggregate issued and outstanding shares of stock of the same class is held by the plan and at least 50 percent (50%) of the aggregate amount of such shares is held by persons independent of the issuer.

GM believes that some portion of the Class E Stock to be contributed to the Plan may be viewed as "qualifying employer securities" under the Act because, up to a certain level, the contribution would not violate the ERISA Limits. GM represents that the Plan already owns 17 million shares of Class E stock. Assuming receipt of the cash portion of the contribution, GM maintains that the Plan could acquire additional shares of Class E stock without violating the 10 percent (10%) limitation under section 407(a) of the Act. However, GM desires to contribute a far larger amount of Class E stock to the Plan, with the result that immediately after the transaction the Class E stock held by the Plan would exceed the 10 percent (10%) limitation.

In this regard, the fair market value of the total assets of the Plan, as of March 31, 1994, was approximately $20.7 billion. The fair market value of the "employer securities" and "employer real property" held by the Plan, as of that date, including the Class E stock the Plan already owns, constitutes approximately 3.1 percent (3.1%) of the fair market value of the assets of the Plan. GM estimates that, assuming the Plan receives the cash portion of the contribution and a discount on the Class E stock as a result of certain restrictions applicable to such stock, the aggregate value of "employer securities" and "employer real property" held by the Plan immediately after the contribution will constitute approximately 21 percent (21%) of the value of the total assets of the Plan.

The applicant further notes that the number of shares of Class E stock which GM intends to contribute to the Plan may violate the 25 percent (25%) limitation under section 407(f) of the Act. It is represented that there were 255,763,512 shares of Class E stock issued and outstanding, as of December 31, 1993. If GM contributes 177 million shares of Class E stock, those shares plus the 17 million shares the Plan already owns would boost the Plan's holding to approximately 194 million shares. Accordingly, it is anticipated that immediately after the transaction, the Plan would hold approximately 45 percent (45%) of all the then issued and outstanding shares of Class E stock.

Further, it is represented that several other plans sponsored by GM or its affiliates held, as of January 31, 1994, in the aggregate, some 47.1 million shares of Class E stock. If the contribution was made pursuant to an exemption granted by the Department, it is estimated that the shares of Class E stock held by other GM plans would equal approximately 11 percent (11%) of the then issued and outstanding shares. GM believes an issue exists as to whether such plans are independent of the issuer, within the meaning of section 407(f)(1)(B) of the Act. If the other plans are not independent of the issuer, the Plan's acquisition of Class E stock would violate the 50 percent (50%) limitation under section 407(f).

Following the contribution of the Class E stock, the Plan will hold such stock for some period of time in amounts exceeding the ERISA Limits discussed above. Accordingly, GM requests exemptive relief from sections 406(a)(2) and 407 of the Act for the continued holding of the Class E stock until UST determines that it is appropriate to dispose of such stock on behalf of the Plan.

Agreement With PBGC and Use of Credit Balance

12. Pursuant to an agreement in principle executed on May 9, 1994, GM and the PBGC agreed upon terms respecting both the timing and use of credit balances in the Plan's funding standard account that will result from the contribution. Under the general terms of this agreement, the contribution of the approximately $10 billion combined value of cash and Class E stock will be credited to the Plan's funding standard account. A cash and stock credit balance would be established for the Plan representing the value of such cash and Class E stock. It is represented that the actual contribution of the cash and Class E stock may not occur all at one time but will be completed by September 30, 1995. In this regard, GM contributed on July 27, 1994, $2.5 billion in cash to the Plan and on September 19, 1994, GM contributed an additional $750 million. It is anticipated that before the end of 1994, GM, at its election, may contribute another $750 million to the Plan. If this exemption is granted, GM has the option to consider such cash contributions as part of the proposed $4 billion contribution in cash to the Plan required under the PBGC Agreement, or, at its discretion, GM may elect to make an additional payment of $4 billion in cash to the Plan.

This contribution will be in excess of the minimum funding requirements of the Act and the Code. Under the normal operation of the minimum funding account, the credited value of such contribution would reduce in the year contributed the amount that GM is otherwise required to contribute to the Plan. Further, if the credits were not utilized in any given year, GM ordinarily would be able to use the resulting credit balance, with interest thereon, in succeeding years because the contribution had not previously been applied to meet its minimum funding obligations.

However, pursuant to the agreement between GM and the PBGC, GM has agreed to defer for two (2) years the use of the credit balance arising from the contribution and, thereafter, to phase in full access by GM to the credit balance in the Plan's funding standard account. This approach is designed to assure that the Plan will continue to receive contributions substantially in excess of those to which it would otherwise be entitled.

The terms of the PBGC Agreement contemplate that the contribution of cash and shares of the Class E stock to be made in 1994[17] and 1995 would be in addition to the satisfaction by GM of its statutory funding requirements to the Plan. For 1994, GM could not credit any of the amounts contributed pursuant to the PBGC Agreement towards satisfying its statutory funding requirements. Before 1997, GM could use only the interest generated by the cash portion of the contribution to offset its funding requirements. Starting in 1997 and continuing forward, GM could use all of this cash credit balance subject to one limitation. A credit balance reserve is maintained in the Plan consisting of the cash credit balance or cash generated from stock that has been sold in an amount equal to at least 25 percent (25%) of the contributed value of any remaining unsold, contributed Class E stock for so long as the then current value of Class E stock or other shares ("employer securities" or non-employer securities exchanged for Class E stock) exceeds the ERISA Limits. This restriction will expire on October 1, 2003, if the Class E stock has been exchanged for non-employer securities. The balance of available credits without regard to this limitation could be used by GM without restriction starting in 2004 and continuing in later years.

Beginning in 1999 and continuing until 2004, GM will have access annually to an amount of up to $1.5 billion of the stock credit balance generated by the stock which has been sold. Any unused portion of this $1.5 billion can be carried forward with interest to future years and could be used in addition to amounts otherwise allowed.

There are two exceptional circumstances which if they arise will permit GM access to greater amounts of the cash and stock credit balances than the amounts described above. First, if a new law is passed which increases GM's funding obligations, then GM will have access to an additional amount of the cash and stock credit balances each year to satisfy such increase generated by the legislation. From 1996 through 2000, the additional amounts from the cash and stock balances available would be the lesser of $750 million per year or the amount of the legislative increase in the minimum funding account. Thereafter, GM would have access to the lesser of $950 million per year or the amount of the legislative increase in the minimum funding account.

Second, starting in 1997, if GM experiences a "bad" year in which losses from its North American Operations exceed $1.5 billion and its cash[18] falls below $3 billion, GM can access up to an additional $1 billion of the credit balances that year; subject to a cap of no more than $2 billion in any five (5) year period. In any subsequent "good" year in which GM's profits from its North American Operations exceeds $1 billion, the available credit balances would be reduced by the additional amount used in the prior "bad" year. In effect, GM would be able to access the available credit balances from a future "good" year to use in a "bad" year. In addition, within five (5) years after GM takes any credits in a "bad" year, the remaining credit balances will be reduced by a corresponding amount.

Subject to these annual caps, the actual amount of the stock credit balance available to GM will depend on whether the Plan continues to hold contributed Class E stock (or other "employer securities" exchanged for such stock) above the ERISA Limits. For purposes of this determination, the contributed Class E stock (or other "employer securities" exchanged for such stock) would be valued at the lesser of the contributed value (plus interest)[19] or the then current fair market value of such stock.

In this regard, for as long as the value of the Class E stock in the Plan (or other "employer securities" exchanged for such stock) exceeds the ERISA Limits, GM's access to the stock credit balance will be limited to an amount equal to the value of the contributed Class E stock that has been sold. For purposes of this provision, the value of Class E stock that has been sold is defined to mean the lesser of the contributed value of the sold Class E stock (plus interest)

[15] The Available Separate Consolidated Net Income of EDS is defined so as to require GM to make quarterly allocations of the portion of its consolidated net income earned during that quarter that is attributable to EDS. Such allocations are made between (a) amounts that are available for the payment of dividends on Class E stock and (b) amounts that are available for the payment of dividends on $1⅔ per value common stock. For each quarterly accounting period, the proportion of GM's net income attributable to EDS allocated to amounts available for the payment of dividends on Class E stock is equal to that proportion of such earnings that can be derived by multiplying those earnings by a fraction—the numerator of which is the weighted average number of shares of GM Class E stock outstanding during the period, and the denominator of which is a number initially established by the GM Certificate of Incorporation. At the discretion of the Board, as appropriate, the number in the denominator from time to time decreases as shares of Class E stock are purchased and increases as shares are needed in order to meet certain requirements of GM's employee benefit plans. As of December 1991, 1992, and 1993, the denominator was 479 million, 479.3 million, and 480.6 million shares.

[16] It is represented that the acquisition by the Plan of the 177 million shares of Class E stock will not have any dilutive effect on the dividends paid on or the earnings per share reported for Class E stock, because the increase in the number of shares of Class E stock outstanding that occurs in the numerator of the fraction discussed in footnote 10 without an adjustment to the denominator of such fraction will simply reallocate among existing GM common shareholder groups the amounts of GM earnings available for payment of dividends.

[17] Because the reporting year for the Plan runs from October 1st through the following September 30th, reference to year (e.g.) 1994 means Plan year 1993; 1995 means Plan year 1994, etc.

[18] "Cash" is defined as U.S. Automotive cash and marketable securities (excluding EDS and GMHE) as currently defined by U.S. GAAP as measured on December 31 of that year.

[19] It is represented that interest will be computed at the Plan's funding standard account rate, currently 9%.

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or the actual proceeds received upon sale of such stock.

When the lesser of the contributed value (plus interest) or the then current fair market value of the "employer securities" held by the Plan constitutes less than the ERISA Limits, the maximum amount of the stock credit balance GM will have access to would be the value of the Class E stock that has been sold, plus 75 percent (75%) of the value of the Class E stock (or "employer securities" exchanged for such Class E stock) still held in the Plan.

In the event the Class E stock contributed to the Plan has been exchanged for non-employer securities, the amount of the stock credit balance available to GM will be 75 percent (75%) of the value of the unsold shares plus the value of the stock sold with a further limitation that the total amount of the credit balance related to unsold securities that can be used by GM may not exceed 10 percent (10%) of the then fair market value of the assets of the Plan.

When Class E stock (or any shares exchanged for Class E stock) are sold, the amount of the stock credit balance related to such shares shall be adjusted to the value actually received for such shares if the value received is less than the contributed value of the shares plus interest. If the Class E stock (or any shares exchanged for Class E stock) are sold for more than the contributed value plus interest, any excess proceeds will be amortized as actuarial gain. If GM uses any amount of the stock credit balance related to unsold shares, such amount shall be adjusted to reflect the lower of (i) contributed value plus interest thereon or (ii) the then current fair market value as of the date GM accessed the stock credit balance. If the value ultimately received for the shares with respect to which the related portion of the credit balance has previously been used is less than the credit balance utilized, then the amount of the remaining credit balance related to the contribution of Class E stock shall be reduced by the amount of any loss (offset by unamortized gains) which has not been previously amortized.

Under the terms of the PBGC Agreement, PBGC will have responsibility for monitoring GM's compliance with the terms of such agreement. The enrolled actuary for the Plan will calculate GM's statutory funding requirements and certify GM's use of the contribution credit balances. GM will also provide the PBGC with a copy of the actuarial valuation reports for the Plan and information concerning GM's use of the contribution credit balances, including the distribution of the stock credit balance between sold and unsold Class E stock. GM's independent auditor will provide a statement to PBGC once GM utilizes the financial flexibility provisions described above.

UST has engaged Duff & Phelps to determine the fair market value of the shares of Class E stock as of the date of the contribution of such shares to the Plan. As requested by UST, Duff & Phelps will also determine the fair market value of the Class E stock at various times required under the PBGC Agreement.

Future Transfers and Other Dispositions of Class E Stock

13. UST, the independent fiduciary acting on behalf of the Plan, has negotiated registration and other rights attendant to the Plan's ownership of the Class E stock. These rights are reflected in the terms and conditions as set forth in two agreements—the Registration Rights Agreement and the Transfer Agreement (the RRA and the Transfer Agreement) and give the Plan the ability to sell its Class E stock at such times and in such amounts so as to balance the objectives of diversification and maximization of the value of such stock to the Plan, including maintenance of an orderly market.

It is proposed that these registration and transfer rights [20] will apply to all Class E stock held by the Plan whether acquired pursuant to the proposed contribution in-kind or otherwise held by the Plan at the time the exemption is granted. In this regard, the 17 million shares of Class E stock held by the Plan prior to the contribution will be surrendered to GM so that restrictions may be placed on such shares. At the same time, a registration rights agreement to which the 17 million shares of Class E stock held by the Plan are now subject will be cancelled. UST represents that the substitution of the RRA for the current registration rights agreement to which the 17 million shares are subject will not devalue such shares.

The RRA contains various provisions regarding registration procedures, including selection of underwriters, GM and Plan holdbacks in connection with securities offerings effected by each other, payment of registration expenses and indemnification for disclosure-related liability. If the Class E stock is converted or exchanged into securities of any issuer other than GM in connection with a transaction to which GM is a party, GM will cause the issuer of such securities to be bound by all the provisions of the RRA, and such issuer will succeed to the rights and obligations of GM, other than those relating solely to GM's contribution of the shares to the Plan. Upon reduction of the Plan's ownership to less than 2 percent (2%) of the outstanding Class E stock the registration rights will terminate. Under the RRA, as long as the Plan owns more than 2 percent (2%) of the outstanding Class E stock, the Plan may transfer such stock only under certain terms and conditions summarized in the paragraphs below.

Pursuant to the RRA, the Plan may make two "demand" transfers in any twelve (12) month period. Such transfers may, at UST's discretion, be effected pursuant to either underwritten public offerings registered under the Securities Act of 1933 or negotiated transactions, whether registered or not. The RRA requires GM to prepare and file the appropriate registration statements with the Securities and Exchange Commission (SEC) upon the Plan's "demand" registration and to cooperate with the Plan and the underwriters in the registration and selling process.

It is represented that there will be no limit, except for market considerations, on the amount of Class E stock that can be sold pursuant to a "demand" transfer by the Plan. However, in any public offering the lead underwriters must agree to use their best efforts to assure that no more than 2 percent (2%) of the outstanding Class E stock is transferred to any person or related group. In addition, in a negotiated transaction, the Plan may not transfer more than 2 percent (2%) of the outstanding Class E stock to any person or related group or may not transfer at all to any person or related group required to file a Schedule 13D under the Securities Exchange Act of 1934.

The RRA permits GM to postpone any "demand" transfer by the Plan in order that such transfer not interfere with certain corporate transactions or if such transfer would require disclosure of previously non-public information. The Plan has also agreed not to make any transfer of Class E stock until ninety (90) days after the completion of any underwritten public offering of such stock or any securities convertible into or exchangeable or exercisable for such stock. If, as a result of such postponements or such market holdbacks, the Plan is not able to effect a "demand" transfer for a period of thirteen (13) months, GM must terminate the postponement within

[20] For purposes of the RRA and the Transfer Agreement, the term, "transfer" means any offer, sale, transfer, or other disposition of the Class E stock held by the Plan.

sixty (60) days of the Plan's notification to GM of such fact and take all reasonable actions necessary to effect such transfer.

The RRA contains provisions for coordinating the registration rights of the Plan with the registration rights granted by GM to other investors, including a strategic partner (the Strategic Partner). A Strategic Partner is an investor acting in concert with respect to an investment in GM and designated by the Board of GM, that acquires more than 10 percent (10%) of the outstanding Class E stock in a transaction intended to achieve a strategic objective. In this regard, until the earlier of the date the Plan reduces its holdings to less than 100 million shares of Class E stock or the fifth anniversary of the contribution of such stock to the Plan by GM, the Plan's right to a "demand" transfer will take priority over any "demand" registration rights granted to the Strategic Partner. In addition, until the Plan reduces its holdings to less than 25 million shares of Class E stock, the Plan may elect to participate in any "demand" registration requested by the Strategic Partner on an equal basis. After the Plan has reduced its holdings of Class E stock to less than 25 million shares, it may participate in any Strategic Partner "demand" registration. However, if there is a limit on the number shares of Class E stock included in such registration, those of the Strategic Partner will be included first, but the Plan's shares will have priority over all other holders of registration rights from GM.

The Plan may participate in "piggyback" registrations in connection with underwritten public offerings initiated by GM or any other holder of Class E stock with registration rights, subject to customary cutback provisions and coordination with such other holders. In a "piggyback" registration, if the Plan expects to include at least 25 percent (25%) of the total number of shares of Class E stock in the offering, the Plan may select a co-manager reasonably acceptable to GM. The number of shares that the Plan may include in a "piggyback" registration may be limited, if the lead underwriter or co-managers determine that the total number of shares of Class E stock proposed to be sold will adversely affect the marketability of the offering. In this regard, the shares that GM proposes to sell will take priority. Until the earlier of the date the Plan reduces its holdings of Class E stock to less than 100 million shares or the seventh anniversary date of the initial contribution, the Plan's shares will take priority over those of any other holder of registration rights, including the Strategic Partner. Until the Plan reduces its holdings of Class E stock to less than 25 million shares, the Plan's shares and those held by the Strategic Partner (who owns at least 25 million shares) will be included in the offering on a *pro rata* basis after the shares of GM and before the shares proposed to be sold by other holders of registration rights.

If the Plan has reduced its ownership of Class E stock to below 7.5 percent (7.5%) on a fully diluted basis, excluding employee stock options and similar rights, the Plan may tender into third-party tender offers for such stock. However, at any time while the Plan holds more than 7.5 percent (7.5%) of the Class E stock, it may tender or "put" such stock only under certain conditions. Those conditions center around whether GM has in effect a stockholders rights plan. If a stockholders rights plan has not been adopted the Plan may tender its shares of Class E stock. Generally, however, if a stockholder's rights plan has been adopted and remains in effect during the offering (assuming the rights have not been redeemed or revoked), the Plan may not tender into the offer unless other conditions are met, including GM's consent to the tender.

In the event GM withholds its consent and prevents the Plan from tendering into a third-party tender offer and the tender results in the purchase of more than 50% of the total combined voting power of all outstanding securities of GM, the Plan will have the option to put to GM the same number of shares that would have been tendered for a purchase price in cash equal to the price per share offered in the tender. In the event the consideration offered in the tender was payable in a form other than cash, the RRA provides procedures for valuing such consideration for purposes of the Plan's put option.

In addition to the transfers described in the paragraphs above, the Plan under the RRA is also permitted to transfer Class E stock: (1) Pursuant to Rule 144 under the Securities Act of 1933 after the Plan has reduced its ownership to less than 50 million shares of such stock, subject to certain volume limitations; (2) pursuant to Rule 144 of the Securities Act of 1933 after the Plan has reduced its holdings of Class E stock to less than 25 million shares, subject to certain volume limitations only if the Plan is then an affiliate of GM; (3) to GM or any of its subsidiaries or to any employee benefit plan sponsored by GM or its affiliates; [21] and (4) pursuant to mergers or consolidations in which GM or a subsidiary is a constituent corporation.

14. Certain additional restrictions will be imposed on the Plan's ability to transfer the Class E stock under the terms of the Transfer Agreement. Unlike the RRA, restrictions on transfer contained in the Transfer Agreement are only effective between GM and the Plan. These restrictions will be modified or terminated at various times depending on the occurrence of certain events.

In this regard, until the Class E stock is converted into or exchanged for shares of capital stock of EDS in a transaction that results in GM no longer controlling EDS (the Split-Off), the Plan will not be permitted to transfer more than 5 percent (5%) of the total value of Class E stock then outstanding to any foreign person, as defined in the Code. Further, until 185 days after the effective date of the Split-Off, the Plan may not transfer Class E stock to any person or related group that would, as a result of such transfer, own 40 percent (40%) or more of the outstanding Class E stock. Under certain circumstances after the Split-Off, the Plan may not transfer any Class E stock if, as a result, the Plan would own less than 50 percent (50%) of the Class E stock that it owned immediately after it received notice from GM of the Split-Off. From the date of the initial contribution until the second anniversary of the Split-Off, unless EDS announces a merger with one or more corporations, the Plan may not transfer Class E stock to any person or related group, if, as a result, such person or group would own 5 percent (5%) or more of the Class E stock then outstanding.

15. In managing the Class E stock, UST anticipates liquidating such shares over time in a prudent and orderly fashion in accordance with the terms of the RRA and the Transfer Rights Agreement. Such dispositions may result from sales or exchanges of the Class E stock between the Plan and GM or its affiliates, or certain defined contributions plans sponsored by GM or its affiliates, or the exercise of the put option held by the Plan pursuant to the terms of the RRA. It is represented that the amount received by the Plan upon any sale or exchange of Class E stock

[21] GM represents that only defined contribution plans maintained by GM or its affiliates will be involved in such transfers and that the purchase price paid will be at the prevailing price for such stock on the NYSE. In this regard, the Department notes that no relief is proposed herein for the acquisition of Class E stock by defined contribution plans maintained by GM. However, relief for such transactions may be provided by section 408(e) of the Act.

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with GM or its affiliates will be for no less than "adequate consideration" within the meaning set forth in section 3(18) of the Act, and the amount received by the Plan upon any sale of Class E stock to a defined contribution plan maintained by GM or its affiliates will be the prevailing price for such stock on the NYSE. GM requests relief under section 406 of the Act in connection with such transactions.

In the case of dispositions to defined contribution plans maintained by GM, it is represented that the trustee of such plan will acquire Class E stock only for the purposes of satisfying demand created by the plan's participants. Any Class E stock so acquired by the defined contribution plan will be allocated to participants accounts. The transactions in which plan participants acquire Class E stock will be registered under SEC form S–8 and, thus, the ability to resell such shares will not be restricted in any way.

16. The Class E stock to be contributed by GM will be acquired and managed on behalf of the Plan by UST. UST has been appointed to serve as independent fiduciary on behalf of the Plan with respect to the acquisition of the Class E stock and will also serve as trustee of the Plan with sole discretion respecting the management and disposition of the Class E stock after the acquisition.

It is represented that neither GM nor any of its subsidiaries has any ownership interest in UST or in any of its affiliates. Further, it is represented that UST is independent of GM in that neither UST nor any of its affiliates performed any services for GM, as of the date the application was filed.

UST represents that it is qualified to serve as independent fiduciary and trustee on behalf of the Plan with respect to the proposed transactions. In this regard, UST represents that it has provided investment management and trust services to plans, institutions, endowments, foundations, and individuals for the past 150 years. In addition to its investment management expertise, UST has extensive experience in providing asset allocation, trading strategy, investment advisory, and broker-dealer services. In this regard, UST represents that it currently has under discretionary management more than $30.5 billion in assets and more than $241 billion in assets under non-discretionary custodianship. It is represented that UST has extensive experience with the prudent acquisition and management of "employer securities," pursuant to the provisions of Act. It is further represented that UST employs a staff of professionals who have actually managed "employer securities" for plans in diverse situations, including ESOP-financed leveraged buy-outs, proxy voting, and other matters.

Under the terms of its engagement, UST has sole and exclusive authority and responsibility to act on behalf of the Plan to: (1) Negotiate with GM the terms and conditions, including registration rights, under which the Class E stock may be acquired and held by the Plan; (2) determine whether the Plan should acquire the Class E stock on such terms and conditions; (3) prepare and issue to the Plan a report containing its reasoning and conclusions as to the propriety under the Act of acquiring and holding the Class E stock; and (4) determine, with the assistance of Duff & Phelps, the fair market value of the Class E stock contributed to the Plan and determine the fair market value of such stock at various times pursuant to the terms of the PBGC Agreement.

It is represented that, after the contribution of the Class E stock by GM to the Plan, such contributed stock together with any other shares of Class E stock owned by the Plan, will be held in a separate trust for which UST has agreed to serve as trustee. As trustee, it is represented that UST will have sole discretionary control respecting the management and disposition of all the Class E stock in such trust and will exercise all voting and other rights attendant to ownership of the shares. With regard to disposition of the Class E stock, UST may need to retain a broker or other service provider. It is represented that such service provider will not be an affiliate of UST or GM or its affiliates.[22]

UST is authorized to engage outside advisors to assist in the performance of its duties. In this regard, UST has engaged the law firm of Jones, Day, Reavis & Pogue to advise it and to serve as legal counsel. UST has engaged the services of Goldman, Sachs & Company (Goldman) as its financial advisor to aid in: (1) Evaluating market-related issues with respect to the Class E stock; (2) assisting UST in negotiating the terms and conditions of the acquisition of the Class E stock; and (3) providing background information to UST to facilitate the determination of the value of Class E stock at the time of the initial acquisition by the Plan. UST has also retained Duff & Phelps to furnish at the time of each contribution of shares of Class E stock its opinion as to the value of such shares which will reflect an appropriate discount from the trading price in light of: (a) The number of shares being contributed, (b) the Class E stock already owned by the Plan, and (c) the terms and conditions in certain agreements with GM, relating to the transfer of such shares. The dollar amount of the 25 percent (25%) credit balance reserve maintained in the Plan will be based on the value of the Class E stock as determined by Duff & Phelps at the request of UST at the time of the contribution. UST also represents that it will engage a financial advisor to assist it in planning for and timing the disposition of Class E stock held by the Plan. It is further represented that GM and its affiliates have no ownership interest in Goldman or Duff & Phelps, and neither party currently serves in any capacity for GM.

Because the marketability and dividends of Class E stock are based on the earnings and financial performance of EDS, UST has reviewed the business of EDS, as well as that of GM. In this regard, UST has reviewed historical financial information, equity research views, and rating agency views with respect to both GM and EDS.

In evaluating the proposed transaction, UST along with its financial advisor and legal counsel, have reviewed those documents which it deemed relevant to the proposed contribution of cash and Class E stock, including but not limited to: (a) the Certificate of Incorporation of GM and of EDS; (b) the RRA currently in effect between GM and the Plan; (c) the prior acquisitions of GM securities by other plans; (d) the trust agreements pursuant to the Master Trusts; (e) the audited financial statements of the Plan for 1991 and 1992; (f) the Plan's annual reports on Forms 5500 for 1991 and 1992; (g) other information provided by GMIMCO regarding the Plan's assets held at various times in 1993 and 1994; (h) an analysis of the liquidity needs to pay benefits and administrative expenses over the next five (5) years prepared by the actuaries of the Plan; and (i) the sources of funds, other than the Class E stock, available to meet such liquidity needs. In addition, UST attended meetings and participated in numerous telephone conversations with officers and other representatives of GM and EDS and has also met with representatives of the PBGC and the Department.

With respect to securities issued by GM, UST has reviewed the price, trading volume history, and trading patterns of both the Class E stock and GM's $1⅔ par value common stock. Specifically with regard to the Class E stock, it is represented that UST has analyzed the voting, liquidity, and conversion rights features of such stock and has considered possible scenarios which could result in alternative securities being substituted for the Class E stock. Further, UST represents that it has considered the impact on the Plan and has analyzed various holding, disposition, and risk management strategies, under each of these scenarios.

It is represented that UST has on several occasions met with the named fiduciary of the Plan to consider the impact of the contribution of cash and Class E stock on the Plan's diversification and to address strategies to assure prudent diversification of the Plan's entire asset holding, including making adjustments to the asset allocation guidelines of the Plan that are appropriate in light of the acquisition of the shares.

17. It is the opinion of UST that it is prudent to accept the contribution of cash and shares of Class E stock and that such shares can be prudently managed consistent with the diversification requirements of the Act. Further, for the reasons set forth below, UST has concluded that the proposed contribution of cash and shares is not only in the interest of the Plan and its participants and beneficiaries but is also protective of such interests. In this regard, (a) the contribution of cash and shares of Class E stock will cause an immediate and significant reduction in the amount of the Plan's underfunded liabilities and will enhance the Plan's long term ability to pay benefits to participants and beneficiaries; (b) under the terms of the PBGC agreement, GM will continue to make regular cash contributions to the Plan during the next several years; (c) as EDS has demonstrated consistent growth in revenue, income, and shareholder value and has potential to continue such success, the Plan's holding of the Class E stock over the long term will add to the value of the assets of the Plan; (d) UST has determined that the acquisition by the Plan of the Class E stock will not violate the diversification requirements of section 404(a)(1) of the Act, even though such stock will represent more than 20 percent (20%) of the total value of the assets of the Plan and will constitute approximately 40 percent (40%) of the outstanding Class E stock; (e) UST has determined that the Plan's ability to pay benefits and expenses when due will not be impaired by the receipt of the Class E stock; (f) the Class E stock is widely held and actively traded on an established securities market; (g) UST has negotiated various transfer rights which will give the Plan sufficient access to the capital markets to permit UST to prudently manage the Plan's holdings of the Class E stock consistent with the maintenance of an orderly market, so as to minimize the risk of the Plan's continued holding of the Class E stock, diversify the Plan's assets by decreasing its investment in such stock, and maximize the value such investment; and (h) to the extent the Plan's receipt of the Class E stock improves GM's financial strength, the proposed contribution of stock will also improve GM's long term ability to reduce the Plan's remaining underfunding over a reasonable period of time.

18. In summary, GM represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(a) GM will contribute to the Plan at least 177 million shares of Class E stock but no more than 186 million shares plus $4 billion in cash, with at least $2 billion contributed in conjunction with or prior to the contribution of the Class E stock, and the remaining $2 billion contributed no later than September 30, 1995;

(b) If less than 177 million shares of Class E stock are contributed, GM will contribute additional cash in an amount equal to the difference between 177 million and the number of shares of Class E stock contributed times the per-share value of such stock at the time of contribution, or a weighted average price if such stock is not contributed on a single date;

(c) UST, an independent qualified fiduciary, or a successor independent fiduciary acceptable to the PBGC represents the Plan's interests for all purposes with respect to the Class E stock and will determine prior to entering into any of the transactions, that each such transaction, including the contribution of the Class E stock, is in the interest of the Plan;

(d) UST will negotiate and approve the terms of any of the transactions between the Plan and GM or its affiliates or certain defined contribution plans sponsored by GM or its affiliates;

(e) UST will manage the holding and disposition of the Class E stock and will take whatever action it deems necessary to protect the rights of the Plan;

(f) The terms of any of the transactions between the Plan and parties in interest will be no less favorable to such Plan than terms negotiated at arm's length under similar circumstances with unrelated third parties;

(g) A credit balance reserve is maintained in the Plan consisting of the cash credit balance or cash generated from stock that has been sold in an amount equal to at least 25 percent (25%) of the contributed value of the Class E stock which remains unsold in the Plan, for so long as such stock or any securities received in exchange exceeds the percentage limitations described in section 407(a) and 407(f) of the Act;

(h) An independent qualified appraiser will determine the fair market value of the Class E stock contributed to the Plan, as of the date such shares are contributed, and will determine the fair market value of the Class E stock at various times as required under the PBGC agreement;

(i) With respect to any sale or exchange of Class E stock by the Plan to GM or its affiliates or to any defined contribution plans sponsored by GM or its affiliates, no commission or fee will be charged to or paid by the Plan;

(j) Any sale or exchange of Class E stock between the Plan and GM or its affiliates will be for no less than "adequate consideration" within the meaning set forth in section 3(18) of the Act, and any sale of Class E stock by the Plan to a defined contribution plan sponsored by GM or its affiliates will be at the prevailing price for such stock on the NYSE;

(k) The Plan will incur no fees, costs, or other charges or expenses as a result of its participation in any of the transactions;

(l) In the opinion of UST, the contribution of cash and shares of Class E stock will cause an immediate and significant reduction in the amount of the Plan's underfunded liabilities and will enhance the Plan's long term ability to pay benefits to participants and beneficiaries;

(m) The Plan's holding of the Class E stock over the long term will add to the value of the assets of the Plan;

(n) UST has determined that the acquisition by the Plan of the Class E stock will not violate the diversification requirements of the Act, and the Plan's ability to pay benefits and expenses when due will not be impaired by the receipt of the Class E stock;

(o) The Class E stock is widely held and actively traded on an established securities market; and

(p) The Plan will have sufficient access to the capital markets to permit UST to prudently manage the Plan's holdings of the Class E stock in order to maximize the value of such investment.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all active GM employees participating in the Plan, all retired or separated participants either receiving or entitled to receive benefits from the Plan, all beneficiaries

[22] The applicant represents that it will rely in this regard on section 408(b)(2) of the Act.

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of deceased participants of the Plan who are receiving or are entitled to receive benefits, and all unions representing active GM employees who participate in the Plan.

It is represented that these various classes of interested persons will be notified within fifteen (15) calendar days of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, either by mailing first class or by posting a photocopy of the Notice, plus a copy of the supplemental statement (Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2). Notification will be provided to all retired or separated participants and to all beneficiaries by first-class mail at their last known mailing address. Notification will be provided to active participants by posting at all GM locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters. GM shall also seek to post a copy of the Notice and a copy of the Supplemental Statement at the offices of the unions that represent GM active employees who participate in the Plan.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8776 (This is not a toll-free number.)

Wilson Sporting Goods Co. 401(k) Savings Plan (The Plan)

Located in Chicago, Illinois

[Application No. D–9803]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the past interest-free loan to the Plan (the Loan) by Wilson Sporting Goods Co. (the Employer), a party in interest with respect to the Plan, and (2) the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under Guaranteed Investment Contract No. CG01314A3A (the GIC) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceeds GIC proceeds.

EFFECTIVE DATE: This exemption, if granted, will be effective as of April 1, 1994.

Summary of Facts and Representations

1. The Employer, a Delaware Corporation which is headquartered in Chicago, Illinois, is a wholly owned subsidiary of Amer Group Ltd., a Helsinki, Finland Corporation. The Plan is a defined contribution plan which includes a cash or deferred arrangement under section 401(k) of the Code. The Plan provides for Employer matching contributions and additional Employer discretionary contributions. As of December 31, 1993, the Plan had total assets of approximately $32,150,000. Currently, there are approximately 1700 participants. Participants are entitled to direct the investment of their account balances among various funds established under the Plan's trust agreement: The Bond Fund, the Balanced Fund, the Equity Index Fund, and the Fixed Income Fund. In April, 1989, The American National Bank and Trust Company of Chicago,[23] as trustee for the Plan and at the direction of the Plan's Employee Benefits Committee, purchased the GIC on behalf of the Plan's Fixed Income Fund. The GIC provided a rate of return of 9.93% per annum and a maturity date of March 31, 1994.

2. On April 11, 1991, Executive Life was placed into conservatorship by the Insurance Commissioner of the State of California. The Employer represents that Executive Life was required to cease payments on certain of its insurance products, including the GIC, upon commencement of the conservatorship. The effect of the conservatorship has been to freeze all assets invested in the GIC.[24] This freeze has prevented Plan participants from exercising the rights they would normally have to change investments upon the maturity of a guaranteed investment contract under the Plan.[25] The Employer represents that the Loan was made in order to preserve the Plan's rights with respect to the GIC, and to give participants and beneficiaries the ability to exercise their right to request investment transfers. Since the Loan was not made for the purpose of enabling the Plan to make participant distributions, it is not covered by PTE 80–26. The Loan, which was made on April 7, 1994, was in the amount of $3,184,792.57, which represents the maturity value[26] of the GIC, adjusted for any amounts previously withdrawn from the GIC by the Plan, minus the $1.2 million in periodic advances already made to the Plan. The Employer represents that the Loan is non-interest bearing and the Plan has not and will not incur any expenses in connection with the transaction.

3. Repayment of the Loan is limited to payments made to the Plan by or on behalf of Executive Life, or its successor, or any other responsible third parties. No other assets of the Plan will be available for repayment of the Loan. If the payments by or on behalf of Executive Life are not sufficient to fully repay the Loan, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of

[23] The Northern Trust Company succeeded The American Bank and Trust Company of Chicago as the Plan's trustee in April, 1992.

[24] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC issued by Executive Life.

[25] Following the cessation of payments by Executive Life with respect to the GIC, the Employer made the decision to make periodic advances to the Plan as and when necessary to permit the Plan to make distributions to participants and beneficiaries entitled to distributions as a consequence of termination of employment or the hardship distribution provisions of the Plan. The applicant represents that, as of February, 1994, the periodic advances to the Plan totaled approximately $1.2 million. The applicant also represents that the terms of those periodic advances satisfy the conditions of PTE 80–26 (45 FR 28545, April 29, 1980). This conditional class exemption permits a party in interest to make an interest-free loan to an employee benefit plan, and the repayment of such loan. Specifically, the exemption states, in relevant part, that effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money from a party in interest to an employee benefit plan, nor to the repayment of such loan in accordance with its terms, if no interest or other fee is charged to the plan, the loan is unsecured, and the loan proceeds are used only for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan.

In this proposed exemption the Department expresses no opinion as to whether the periodic advances satisfy the provisions of PTE 80–26.

[26] The maturity value is defined as the total amount deposited under the GIC, plus interest at the guaranteed interest rate, through the date of maturity.

the Act because: (1) The transaction has preserved the Plan's ability to allow participant-directed investment re-allocations; (2) The Plan has not and will not incur any expenses with respect to the transaction; (3) Repayment of the Loan will be made only from amounts paid to the Plan by Executive Life, its successor, or any other third party; (4) If the payments by or on behalf of Executive Life are not sufficient to fully repay the Loan, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount; and (5) Repayment of the Loan will be waived with respect to the amount by which the Loan exceeds the amount the Plan receives from GIC proceeds.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Peoples Security Life Insurance Company (Peoples)

Located in Durham, North Carolina

Commonwealth Life Insurance Company (Commonwealth)

Located in Louisville, Kentucky

[Application Nos. D–9462 and D–9463]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The extension of credit by Peoples or Commonwealth (the Applicants), the sponsors of an investment product (the Group Annuity Contract or GAC) in connection with a plan's investment in the GAC; and (2) the reimbursement of Peoples or Commonwealth for benefit payments made to investing plans from the cashflow generated by the investments in the plans' Custodian Accounts which are set up by a plan pursuant to the GAC, or (3) the reimbursement of Peoples or Commonwealth for benefit payments made to investing plans from the proceeds generated by liquidation of investments in the Custodial Accounts upon termination of the Group Annuity Contract.

The proposed exemption is subject to the following conditions which are set forth below in Section II.

Section II. General Conditions

The relief provided under Section I is available only if the following conditions are met:

1. The decision to enter into the Group Annuity Contract will be made by a plan fiduciary who is independent of Peoples and Commonwealth and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in the Group Annuity Contract, the Independent Fiduciary for such plan receives full and detailed written disclosures of all features of the Group Annuity Contract including all applicable premium charges.

3. Neither Peoples nor Commonwealth or any of their affiliates has discretionary authority or control with respect to the decision to invest plan assets in the investment product described herein or renders investment advice (within the meaning of 29 CFR 2510.3–21(a)) with respect to those assets.

4. Neither Peoples nor Commonwealth or any of their affiliates exercises any discretion or renders investment advice on behalf of a plan with respect to the ongoing acquisition, management or disposition of Custodian Account assets.

5. Peoples and Commonwealth provide copies of the proposed and final exemption as published in the **Federal Register** to each plan which invests in a Group Annuity Contract.

6. The premiums charged by Peoples and Commonwealth for the GAC (including early termination charges assessed in the event of early contract termination) will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and will constitute the only fees charged by Peoples or Commonwealth in connection with such contract other than accrued interest on unreimbursed benefit payments.

7. Peoples and Commonwealth maintain or cause to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (7) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Peoples or Commonwealth or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Peoples or Commonwealth shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (7) below.

8(a) Except as provided in section (b) of the paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 6 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to an investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary of an investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)-(4) of this paragraph 8 shall be authorized to examine the trade secrets of Peoples or Commonwealth or its affiliates or commercial or financial information which is privileged or confidential.

For purposes of this exemption, affiliate means:

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption

Summary of Facts and Representations

1. Peoples is a North Carolina company which is licensed to conduct a life insurance business in 20 states and in the District of Columbia. All of its outstanding shares are owned by Providian Corporation, a Delaware holding company with its principle

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place of business in Louisville, Kentucky. As of December 31, 1992 Peoples had statutory assets of approximately $3.3 billion and statutory and capital surplus of approximately $288 million.

2. Commonwealth is a Kentucky company which is licensed to conduct life insurance business in 37 states and the District of Columbia. All of its outstanding shares are owned by Providian Corporation. As of December 31, 1992, Commonwealth had statutory assets of approximately $4.5 billion and statutory and capital surplus of approximately $273 million.

3. The Applicants represent that they have developed and designed a new group annuity product to respond to plan demand for new product alternatives to traditional guaranteed investment contracts (GICs). They state that traditional GICs provide for a guarantee of a face amount and the crediting of a guaranteed rate of return on contract deposits and provide that such deposits may be withdrawn upon request at book value to pay participant benefits. With a traditional GIC, a plan is exposed to the credit risk that the insurer issuing the GIC may be unable to meet its obligations to repay contract deposits and credited interest.

The Applicants represent that their new group annuity product, the Group Annuity Contract, allows a plan to retain title to investments underlying a plan's obligations to participants and provides assurances that benefits can be paid by the Applicant at any time in an amount up to the book value of such investments.

4. The Applicants represent that the Group Annuity Contracts will operate as follows:

The decision to invest in a Group Annuity Contract will be made by a plan fiduciary who is independent of Peoples, Commonwealth and any affiliate thereof.[27] The plan will establish a Custodian Account to hold title in the name of the plan to a portfolio of assets contributed to the Account by the plan. The plan's trustee acting as a custodian, or a sub-custodian, appointed by such trustee, will perform custodial services in connection with the assets including the safekeeping of securities, the settlement of securities transactions, recordkeeping and the disbursement of cashflow. Neither Peoples, Commonwealth nor any affiliate thereof will perform administrative services in connection with a Custodian Account.

Selection and management of the assets held in the Custodian Account will be the responsibility of an investing plan subject to investment guidelines established by the plan and agreed to by Peoples or Commonwealth and incorporated in the Group Annuity Contract.[28] The Applicants represent that they will not provide any investment advice to a plan in connection with the composition of the investment portfolio held in the Custodian Account. The Applicants further represent that they will not exercise any discretion on behalf of a plan with respect to the ongoing acquisition, management or disposition of Custodian Account assets.

5. The Applicants represent that the Group Annuity Contract obligates Peoples or Commonwealth to make "benefit payments" at the request of the contracting plan from its general account in an amount not to exceed the book value of the investment portfolio owned by the plan. The term "benefit payments" is defined in the Group Annuity Contract to include benefits resulting from a plan participant's retirement, death, disability or termination of employment, and payments resulting from a participant's election to withdraw, borrow or transfer an amount from the participant's account in accordance with the terms of the plan. Unless a special contract option is elected, "benefit payments" do not include benefit payments resulting from employer initiated events such as mergers, layoffs or early retirement programs. Each Contract further provides for Peoples or Commonwealth to provide annuities to participants in lieu of such benefit payments at the request of the plan. At the plan's option, it may fund benefit payments directly from the cashflow [29] of the Custodian Account or from other plan investments in lieu of requesting benefit payments from Peoples or Commonwealth, and it is anticipated that the Contract will only be used by a plan to fund benefits when the Plan's normal sources of funding are insufficient. Benefits payments are made as follows: If a Plan participant desires money, he submits a request to the Plan. If the benefit payment will be made by Peoples or Commonwealth, the Plan sends Peoples or Commonwealth, as applicable, a notice and Peoples or Commonwealth makes a payment. The payment from Peoples or Commonwealth to the plan is an extension of credit. Cashflows are then used to reimburse Peoples or Commonwealth for the extension of credit for benefit payments.

The maximum amount of benefit payments that Peoples or Commonwealth is obligated to make is an amount equal to the "book value" of the Custodian Account established by a plan in connection with the Group Annuity Contract. The term "book value" is generally defined at any time as the (i) initial amount of cash and book value of securities contributed by the plan to the Custodian Account, plus (ii) additional deposits and (iii) interest credited for the period based on the crediting rate, less cash-flow from the Account used to pay any outstanding benefit payments and additional benefit requests or used to pay premiums due either Peoples or Commonwealth.

In addition, three separate events may trigger adjustments to reported book value, including:

(i) If outstanding benefit payments are excessive (*e.g.*, more than 20% of the book value balance), then securities in the Account may be liquidated with proceeds used in support of Peoples or Commonwealth making benefit payments; [30]

(ii) If a security becomes an impaired security, it does not conform to the Contract's guidelines, and must be sold and substituted within a given period, or an adjustment is made to remove the security from the account; [31] and

(iii) If requested payments are not for bona fide benefits at book value, then

[27] The Group Annuity Contracts will be offered to employee benefit plans which are subject to Title I of the Act other than any plan established by Peoples or Commonwealth or any affiliate thereof for their own employees.

[28] Permissible investments are those which are rated by at least one of the following rating agencies: S&P, Moody's or Duff & Phelps. At point of purchase of a security, its rating must be at least Aa3 or AA-A by all those who rate the security. Portfolios will be constructed and maintained as "buy and hold" portfolios. Upon written mutual consent of the plans and the Applicants additional securities may be purchased or substituted by the plans. Accounts will invest only in U.S. dollar denominated, fixed-income securities.

[29] As used herein and as defined in the Contract, the term "cashflow" means the principal (repayment of the face amount of the security by the issuer of the security), interest, dividends, and other monies received, other than liquidation proceeds, with respect to the securities held in the Custodian Account.

[30] If outstanding benefit payments are excessive, Peoples or Commonwealth has the right to send a Notification to the Custodian to liquidate specified securities or a portion thereof pursuant to the liquidation method stated in the contract.

[31] If a security becomes impaired, and no substitution is made, the book value will be reduced by the carrying value of the security. For an additional premium, Peoples or Commonwealth will assume the risk of securities becoming impaired by continuing to value such securities at book value for purposes of determining the "book value" of the Custodian Account. It is anticipated that most plans which do not elect this option will structure the investment portfolio of assets held in the Custodian Account to consist solely or primarily of securities having little or no default risk such as government and government-guaranteed securities.

termination payments are requested and an adjustment to book value reflects the partial termination amounts.

6. Prior to termination of a Contract, Peoples and Commonwealth are entitled to reimbursement from a plan for any outstanding benefit payments. Such reimbursement will come primarily from the cashflow of investments in the Custodian Account. The Group Annuity Contract provides that cashflow from the assets held in a Custodian Account will be first directed to pay Peoples or Commonwealth for the balance of any outstanding benefit payments (and outstanding contract premiums) before any remaining cashflow may be applied by the plan for other purposes. Under certain Group Annuity Contracts, Peoples or Commonwealth may require a plan to liquidate securities held in the Custodian Account (pursuant to a liquidation methodology set forth in the Contract) to reimburse the insurer for outstanding benefit payments if such outstanding payments exceed a level specified in the Contract. A plan is not obligated to remit cashflow to Peoples or Commonwealth for outstanding benefit payments from any source other than the assets held in the Custodian Account. Peoples or Commonwealth bear the risk that such assets will be sufficient to repay any outstanding benefit payments on a timely basis. In some circumstances, as set forth in the Group Annuity Contracts, a plan may choose, but is not required, to make other sources of cash available in an effort to reduce the amount of outstanding benefit payments. If a plan chooses to make other sources of cash available, the plan will receive a book value credit.

Interest accrues on outstanding benefit payments made by Peoples or Commonwealth on a pre-determined basis. Interest accrues on a daily compounded basis at a rate set forth in the Group Annuity Contract from the day that benefit payments are remitted by the insurer to the plan, through, but not including, the day of reimbursement of the payments. Under certain Group Annuity Contracts, the interest rate is equal to the crediting rate used to calculate the "book value" of the Custodian Account. This rate is based on the expected internal rate of return on the securities held in the Custodian Account as that rate may be amended (generally, the rate will not be reset more than quarterly), based on the then current securities in the Account.[32]

[32] Internal rate of return is based on cashflows of the underlying securities. Some securities have cashflows that change over time based on market conditions. As a result, they affect the internal rate of return. Cashflow information and assumptions are provided by independent information sources such as broker-dealers who make a market in the securities or systems such as Bloomberg or Telerate which carry current information about securities. Peoples and Commonwealth do not exercise discretion in amending the internal rate of return.

Under other Group Annuity Contracts, the interest rate is calculated at the beginning of each month and is based on the average of the closing one-month London Inter-Bank Offering rate ("LIBOR") for the last five business days of the prior calendar month. Plans may select a form of the Group Annuity Contract offering the interest rate (*i.e.*, LIBOR or internal rate of return) which they prefer at the time the Group Annuity Contract is issued.

7. The Group Annuity Contract automatically terminates on the Contract's "Maturity Date." The Maturity Date is specified in the Contract and generally coincides with the anticipated point in time when all investments initially held in the Custodian Account have matured and cashflow paid out. The Group Annuity Contract also can be terminated at the election of the contractholder upon advance notification (generally 30 days) to the insurer or by the insurer in the event that the plan ceases to meet the requirements for qualification under the Internal Revenue Code, breaches its material obligations under the Contract or any related agreement that affects the Contract, or assigns the Contract without the insurer's consent. Upon termination of the Group Annuity Contract, Peoples or Commonwealth's obligation to pay benefits ceases and the insurer is entitled to receive (to the extent that the liquidation value of the securities in the Custodian Account are sufficient) the balance of any outstanding benefit payments (including accrued interest) and premiums.[33] If the Contract is terminated prior to its maturity by the plan or by Peoples or Commonwealth under the circumstances described above, either Peoples or Commonwealth is also entitled to an early termination charge equal to the estimated amount of any premiums that would have been paid from the termination date to the earlier of (i) the Maturity Date or (ii) the date two years from the termination date. In calculating the early termination charge, Peoples or Commonwealth will estimate premiums based on book value at the date of termination and where book value would have been two years from the effective date of the contract if it has not been terminated. Calculation of the early termination charge is exact and Peoples and Commonwealth do not exercise discretion in the process.

[33] Under certain Group Annuity Contracts, Peoples or Commonwealth also may terminate the Contract if the book value of the assets in the Custodian Account reach a specified de minimis level but only if the liquidation value of the non-impaired securities in the Custodian Account exceeds book value. No early termination charge is assessed under these circumstances.

8. The Applicants charge an annualized premium at a fixed rate set forth in the Group Annuity Contract. The rate is a percentage of the book value of the securities in a plan's portfolio. The premium and interest which accrues on outstanding benefit payments and early termination charges, if any, are the only consideration received by the Applicant in connection with the Group Annuity Contracts.

9. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria under section 408(a) because:

(a). The decision to enter into the Group Annuity Contract will be made by an independent plan fiduciary who is independent of Peoples and Commonwealth and any affiliates of such entities.

(b). Prior to a plan's investment in the Group Annuity Contract, the Independent Fiduciary for such plan receives full and detailed written disclosures of all features of the Group Annuity Contract including all applicable premium charges.

(c). Neither Peoples nor Commonwealth or any of their affiliates has discretionary authority or control with respect to the decision to invest plan assets in the investment product described herein or renders investment advice (within the meaning of 29 CFR 2510.3–21(a)) with respect to those assets.

(d). Neither Peoples nor Commonwealth or any of their affiliates exercises any discretion or renders investment advice on behalf of a plan with respect to the ongoing acquisition, management or disposition of Custodian Account assets.

(e). The premiums charged by Peoples and Commonwealth for the GAC (including early termination charges assessed in the event of early contract termination) will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and will constitute the only fees charged by Peoples or Commonwealth in connection with such contract other than accrued interest on unreimbursed benefit payments.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department, telephone (202) 219–8971. This is not a toll-free number.

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General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of November 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–28059 Filed 11–10–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–76; Exemption Application No. D–9782, et al.]

Grant of Individual Exemptions; Union Electric Savings Investment Plan (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Union Electric Savings Investment Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 94–78; Exemption Application No. D–9782]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of credit to the Plan by Boatmen's Trust Company (BTC), a party in interest with respect to the Plan, in the form of a payment (the Advance) with respect to group annuity contract CG01285B3A (the GIC) issued by Executive Life Insurance Company (ELIC); and (2) the Plan's potential repayment of the Advance (the Repayments), provided: (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party; (b) no interest and/or expenses are paid by the Plan; (c) the Advance is made with respect to amounts invested by the Plan in the GIC; (d) the Repayments are restricted to the amounts, if any, paid to the Plan after August 2, 1994, by ELIC or other responsible third parties with respect to the GIC (the GIC Proceeds); (e) the Repayments do not exceed the total amount of the Advance; and (f) the Repayments are waived to the extent the Advance exceeds the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 19, 1994, at 59 FR 47957.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Prudential Insurance Company of America Located in New Jersey

[Prohibited Transaction Exemption No. 94–79; Application No. D–9692]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transfer by the Prudential Insurance Company of America (Prudential) of certain assets from its general account (the General Account) into a separate account (the Separate Account), established and managed by Prudential, in connection with the conversion of one of Prudential's non-participating group

annuity contracts (the Non-Participating Annuity Contract) to a participating group annuity contract (the Participating Annuity Contract), issued by Prudential to the Retirement Program Plan for Employees of Union Carbide Corporation and its subsidiary companies (the Plan) and funded through the assets transferred to the Separate Account; provided that the following conditions are met: (a) Prudential transferred to the Separate Account sufficient assets to create a reserve the value of which equaled or exceeded 103% of the value of the Participating Annuity Contract liabilities, as of December 31, 1991; (b) an independent qualified appraiser determined the fair market value of the assets transferred into the Separate Account, as of the date of such transfer; (c) Prudential irrevocably guarantees the payment of benefits under the Participating Annuity Contract to the former participants of the Plan who retired prior to December 31, 1985, (the Retirees); (d) no additional contribution from the Union Carbide Corporation (Union Carbide) or its subsidiary companies or the Plan was or will be required to fund benefits to the Retirees or to any other participants and beneficiaries of the Plan; (e) prior to the transfer of assets between the General Account and the Separate Account, Union Carbide, acting as fiduciary on behalf of the Plan, determined that the transaction was feasible, in the interest of, and protective of the Plan and its participants and beneficiaries and would not affect the payment of benefits to the Retirees; (f) Union Carbide determined that the terms and conditions of the transaction were at least as favorable as those negotiated at arm's length in similar transactions with unrelated third parties; (g) prior to the conversion, Union Carbide negotiated, reviewed, and approved the transaction, and will monitor the transaction; (h) Union Carbide reviewed the appraisal and approved the transfer of each of the assets into the Separate Account prior to the date the transaction was entered; and (i) the Plan incurred no fees, commissions, costs, expenses, or other charges associated with the transaction and will pay no addition compensation as a result of the conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract.[1]

EFFECTIVE DATE: This exemption is effective December 31, 1991.

[1] For purposes of this exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 23, 1994.

The Department received thirty (30) letters from interested persons commenting on the exemption. With respect to all the written comments submitted by interested persons, the Department forwarded copies to the applicant and requested that the applicant address the concerns raised by the commentators in writing. A description of the comments and the applicant's responses are summarized below.

Four of the comment letters responded favorably to the proposed exemption. In this regard, two commentators approved the transaction. One commentator stated that he had no objection as the transaction appeared to improve security of his retirement benefits and had no negative side. One commentator stated that he did not appear to be adversely affected by the transaction, so long as Prudential irrevocable guarantees the payment of benefits.

Several commentators observed that their copies of the Notice of Proposed Exemption (the Notice) were illegible. Prudential has investigated and concluded that, insofar as it can determine, all Notices mailed to interested persons were legible, given the small print size used in the **Federal Register**.

Some commentators indicated that the Notice was incomplete. Specifically, one commentator noted that the missing pages were those preceding page 40611 (the page on which the Notice begins) and following page 40617 (the page on which the Notice ends). Since all interested persons received unaltered copies of the **Federal Register** pages on which the Notice appeared but which also included parts of unrelated notices, it appears to Prudential that commentators may have erroneously concluded that relevant portions of the Notice were omitted.

Two commentators objected to the use of the Participating Annuity Contract due to concerns that such contract may provide less security for Plan benefits. Other commentators were concerned that they had not been notified of the conversion or had not received new certificates under the Participating Annuity Contract. Prudential confirmed that its irrevocable commitment to pay the retirement benefits guaranteed under the former Non-Participating Annuity Contract is not affected in any way by the conversion or the transfer of assets to the Separate Account. It is represented that even if the assets in the Separate Account ultimately prove to be insufficient to pay benefits guaranteed under the Participating Annuity Contract, Prudential's General Account will remain fully obligated to pay the guaranteed benefits. Moreover, because neither the rights and benefits of Retirees covered under the Non-Participating Annuity Contract nor any other aspect of their contractual relationship with Prudential were in any way affected by the conversion, Prudential determined that new certificates were not required.

One commentator expressed concern that Prudential's obligations under the Participating Annuity Contract might be affected in the event Prudential was acquired by or merged with another insurer. Prudential confirms that neither of these events would affect its obligations under such contract.

Several commentators inquired whether additional benefits would be made available as a result of the transaction covered by the requested exemption. Others expressed concern that the exemption might adversely impact their existing pension benefits. Prudential confirms that the transaction covered by the requested exemption will have no impact whatsoever on the pension benefits of covered Retirees. If the assets in the Separate Account perform less well than expected, Prudential's General Account will remain fully responsible for the payment of guaranteed benefits. If the investment experience of the Separate Account is favorable, the Plan will receive any Plan assets remaining in the Separate Account after all contract liabilities have been satisfied.

One commentator expressed concern that the placement of assets in the Separate Account implied that in violation of the Act the assets of the Plan had not been segregated prior to the creation of the Separate Account. In this regard, Prudential pointed out that section 403 of the Act requires assets of a plan to be segregated from the assets of the employer and either held in trust or held by an insurance company, whether in a "separate account" or otherwise. Further, Prudential indicated that when a plan purchases an insurance contract, such as the Non-Participating Annuity Contract, that is backed by the insurer's general account no segregation of the funds held by the insurer is required.

Other commentators expressed concern that Plan assets had been

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transferred to Prudential. As explained in the exemption application, the conversion provided additional protection not required by the Act to Retirees whose benefits were guaranteed under the Non-Participating Annuity Contract by segregating a pool of assets in the Separate Account maintained solely for the benefit of the Plan. Prudential represents that neither the conversion nor the transfer of assets from the General Account to the Separate Account involved an additional transfer of funds from the Plan to Prudential.

In a related matter, another commentator expressed concern that the transfer of assets in connection with the conversion would allow Union Carbide to withdraw funds from the Plan. Prudential confirms that Union Carbide does not have a right to withdraw funds from the Separate Account, and that the Participating Annuity Contract requires any assets remaining in the Separate Account when all contract liabilities have been satisfied to be paid directly to the Plan.

Another commentator requested the identity of the fiduciary of the Participating Annuity Contract. In this regard, Prudential is a fiduciary solely with respect to the management of the assets of the Plan in the Separate Account. To the best of Prudential's knowledge, Union Carbide remains the "named fiduciary" of the Plan.

Two commentators expressed concern regarding the conviction of a former employee of the Benefit Capital Management Corporation (BCMC), an affiliate of Union Carbide that retains certain investment management responsibilities on behalf of the Plan. Certain employees of BCMC also acted on behalf of Union Carbide in its role as independent fiduciary on behalf of the Plan in connection with the transfer of assets to the Separate Account. Prudential confirms that the improper activities of this former employee did not involve the transaction covered by the requested exemption. Moreover, this individual was only one of several persons assigned responsibility for carrying out Union Carbide's duties as fiduciary. In this regard, Union Carbide has verified that this individual's participation in no way affected the determination that the transaction was in the best interests of the Plan participants and beneficiaries.

One commentator suggested that the exemption be subject to the further condition that Prudential transfer assets from the General Account to cover all retirees who contributed to the pension fund prior to September 30, 1985, regardless of whether they retired prior to December 31, 1985. His concern appears to result from his belief that his retirement benefits are provided under the Participating Annuity Contract and that assets sufficient to cover those liabilities were not transferred to the Separate Account. In response, Prudential reiterated that the Participating Annuity Contract covers a group of former participants who retired prior to December 31, 1985. Prudential confirms that the commentator is not receiving any retirement benefits under the Participating Annuity Contract, although he is receiving a portion of his retirement benefits under a different group annuity contract with Prudential. Further, Prudential indicates that this commentator was provided with the Notice, because he is also receiving a portion of his retirement benefits from the Plan, and thus remains a participant in the Plan.

In addition, a group of nineteen (19) commentators telephoned the Department to express uncertainty regarding the meaning of the exemption. These commentators, and other commentators who wrote seeking additional information on the proposed exemption, were assisted with their questions by members of the staff of the Office of Exemption Determinations of the Department.

Finally, three commentators requested a hearing with respect to the exemption. Each of these commentators appear to have requested a hearing because they believed that the transaction would reduce their retirement benefits. As explained above, Prudential represents that the transaction covered by the exemption will not affect the Retirees' pension benefits in any way. Accordingly, the Department does not believe that any issues have been raised which would require the convening of a hearing.

After giving full consideration to the record, including the comments by commentators and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on Tuesday, August 9, 1994, 59 FR 40611.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 8th day of November, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–28080 Filed 11–10–94; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of Submission, new, revision or extension: Revision.

2. The title of the information collections: Proposed Rule, 10 CFR Part 50, "Fracture Toughness Requirements for Light Water Reactor Pressure Vessels" and Draft Regulatory Guide DG–1027, "Format and Content of Application for Approval for Thermal Annealing of Reactor Pressure Vessels." Draft Regulatory Guide DG–1023, "Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 ft-lb." Draft Regulatory Guide DG–1025, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence."

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Holders of an operating license for a nuclear power plant.

6. An estimate of the number of responses annually: 11.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 15,640 hours (approximately 9,040 hours of reporting burden and approximately 6,600 hours of recordkeeping burden).

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Applicable.

9. Abstract: The proposed rule and DG–1027 provide a set of requirements for the use of thermal annealing to mitigate the effects of neutron irradiation. Draft Regulatory Guide DG–1023 provides a detailed description of safety margins' calculation methods based on the acceptance criteria and the reactor pressure vessel beltline materials' ductile fracture resistance properties if the Charpy upper-shelf energy falls below 50 ft-lb regulatory limit, in compliance with Appendix G to 10 CFR Part 50. Draft Regulatory Guide DG–1025 provides a detailed description of calculation and measurement methods, acceptable to the NRC staff, for determining nuclear reactor vessel neutron fluences for determining changes to the vessel fracture toughness properties needed for complying with Appendix G and H of 10 CFR Part 50 and 10 CFR 50.61. Compliance with the information collection requirements contained in the proposed rule and would be mandatory for NRC licensees who elect to thermally anneal their reactor vessel. Compliance with the information collection requirements contained in DG–1023 and DG–1025 would be voluntary.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 4th day of November 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–27991 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8963]

Hydro Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Draft Environmental Impact Statement; Notice of Opportunity for Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Bureau of Land Management (BLM) and U.S. Bureau of Indian Affairs (BIA), has published a Draft Environmental Impact Statement (DEIS) regarding the proposed construction and operation of an in-situ leach (ISL) project in McKinley County, New Mexico. This DEIS describes and evaluates the potential environmental impacts of granting Hydro Resources, Inc. both a source and byproduct material license and minerals operating leases for Federal and Indian lands for the ISL project. This DEIS concludes, after weighing the environmental, technical, and other benefits of the proposed project against the environmental and other costs, that the appropriate action is to issue the requested license and leases authorizing the applicant to proceed with the project as discussed in this DEIS.

DATES: Public meetings on this DEIS will be held at times and locations to be announced in a future notice. Written comments should be received on or before January 7, 1995 at the address listed below.

ADDRESSES: A free single copy of this DEIS (NUREG–1508) may be requested by those considering public comment by writing to the NRC Publications Section, ATTN: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2020 L St. NW., Washington, DC.

Any interested party may submit comments on this document for consideration by the staff. To be certain of consideration, comments on this report must be received by January 7, 1995. Comments received after the due date will be considered to the extent practical. Comments on the DEIS should be sent to Chief, High-level Waste and Uranium Recovery Projects Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. Michael C. Layton, High-Level Waste and Uranium Recovery Projects Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6676.

SUPPLEMENTARY INFORMATION: The NRC, in cooperation with the BLM and the BIA, has prepared a DEIS regarding the administrative action of authorizing Hydro Resources, Inc. (HRI) to conduct in-situ leach (ISL) uranium mining, also known as solution mining, in compliance with both a source and byproduct material license issued by the NRC, and minerals operating leases issued for Federal and Indian lands by the BLM and BIA. The license and leases would provide programmatic and regulatory oversight in administrative matters; impose operating restrictions; and specify monitoring, recordkeeping, and reporting requirements. The DEIS describes the evaluation conducted by the interagency review group concerning (1) the purpose of and need for the proposed action, evaluated under

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NEPA and the agencies' implementing regulations, (2) alternatives considered, (3) existing environmental conditions, and (4) environmental consequences of the proposed action, and the proposed mitigating measures.

Four alternatives were evaluated. HRI's proposal (Alternative 1) is to construct well fields in three separate lease areas near Crownpoint and Church Rock, New Mexico, and to use existing and new surface facilities is processing plants for extracting uranium from aqueous mining solutions. Uranium would be recovered using ion exchange technology, then precipitated, and concentrated. All uranium slurry produced would be dried using a single dryer located in the central processing plant. Uranium slurry would be transferred from the satellite facilities to Crownpoint for further processing. Afterward, ground-water quality would be restored, wells would be plugged and abandoned, each site would be decontaminated or decommissioned, all contaminated material would be removed to a licensed waste disposal site, and all disturbed areas would be reclaimed for unrestricted use.

For Alternative 2, the applicant would conduct mining operations using well fields and surface processing facilities at each site in generally the same manner outlined for Alternative 1. Selecting Alternative 2 would rely upon a finding that Alternative 1 is generally acceptable, but requires minor changes and additions, or more specific information for approval. Certain aspects of the authorized operations, facilities, or equipment would differ from those proposed. These differences would enable the operations to comply with certain regulatory requirements, and would alleviate minor deficiencies in the applicant's proposal, or provide regulating agencies and the public with reasonable assurance that authorized activities would protect public health and safety, and the environment.

For Alternative 3, the applicant would mine uranium using another method which could logically be employed at the proposed sites. Surface or open pit mining methods were not evaluated because the ore bodies are too deep within the ground. This alternative would likely require constructing a new uranium mill owing to the excessive haul distance to the one remaining mill near Grants, New Mexico.

For Alternative 4 (the "No Action" alternative), no Federal licensing, permitting, or leasing would occur at either the Crownpoint or Church Rock locations. This alternative would not affect private minerals operating leases. In regard to the required source material license, other mining methods could be employed, but this would require another license application addressing ore processing and tailings management.

As documented in the DEIS, the review group determined that the applicant's proposal to conduct solution mining to extract uranium in the lease areas is generally acceptable. Alternative 2 would be selected to emphasize regulatory requirements, impose operating restrictions, and specify monitoring, recordkeeping, and reporting requirements to minimize environmental impacts.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2" (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The roquest for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2,1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2,1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Hydro Resources Inc., 12750 Merit Drive, Suite 1210 LB 12, Dallas, TX 75251;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville, Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 4th day of November 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium, Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards.

[FR Doc. 94–27992 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to the Washington Public Power Supply System (the licensee) for operation of its Nuclear Project No. 2 located in Benton County, Washington.

The proposed amendment would modify Technical Specification (TS) 4.0.5.a. to delete the requirement to obtain prior written relief from the Commission for inservice inspection (ISI) and inservice testing (IST) of components conducted pursuant to 10 CFR 50.55a. This change would provide relief from the ASME Code requirement in the interim between the submittal of a relief request and the NRC's issuance of a safety evaluation regarding the relief request. The change would allow the plant to operate in accordance with a proposed relief request while the NRC staff completed its review of the relief request.

The licensee has also proposed to modify TS 4.0.5.b. to add definition for biennial or every-2-year inspection and testing activities. The definition of biennial or every 2 years will be a least once per 731 days.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

[Regarding the change to TS 4.0.5.a:]

The proposed amendment allows continued plant operation in situations where ISI/IST Code compliance may be impractical. Continued operation is allowed only if the Code nonconformance has been determined not to be an unreviewed safety question or require a technical Specification change as defined by 10 CFR 50.59. Further, to support continued operation a relief request must be submitted for Commission approval in accordance with 10 CFR 50.55a.

The Change being proposed is administrative in nature and does not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor doe it affect Technical Specifications that preserve safety analysis assumptions. Any relief from the approved ASME Section XI Code requirements, under the circumstances contemplated by NUREG–1482, will require a 10 CFR 50.59 evaluation to ensure no Technical Specification changes or unreviewed safety questions exist. Further, the required 10 CFR 50.59 review includes a determination as to "if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased." This evaluation will ensure that actions are not taken that could involve a significant increase in the probability or consequences of an accident previously evaluated.

For the above reasons, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of previously evaluated accidents.

[Regarding to change to TS 4.0.5.b:]

Clarification of existing requirements as put forth in ASME XI for a biennial testing frequency as 731 days has no impact on the operation of the plant and does not have a credible impact on the possibility or consequences of a previously evaluated accident. The change does not result in any hardware or operating procedure changes. Hence, such a change cannot increase the probability of a previously evaluated accident. Because it does not involve any equipment modifications or operating mode changes, the consequences of an accident occurring with this change is the same as the consequences of an accident occurring without the change.

Incorporation of the change in the WNP–2 Technical Specifications will not alter the probability of a previously evaluated accident nor increase the consequences of an accident.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

[Regarding the change to TS 4.0.5.a:]

The proposed change is administrative in nature and will not change the physical plant or the modes of operation defined in the WWNP–2 License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Any relief requests from the approved ASME Section XI Code requirements, under the circumstances contemplated by NUREG–1482, will require a 10 CFR 50.59 evaluation to ensure no Technical Specification changes or unreviewed safety questions exist before implementation. The 10 CFR 50.59 evaluation will specifically address whether or not the "possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created."

Therefore, with the control provided by the 10 CFR 50.59 review process and the administrative nature of the change, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Regarding the change to TS 4.0.5.b:]

Because the proposed change introduces no new mode of plant operation nor does it require physical modification of the plant, the possibility of a new or different kind of accident that those previously evaluated is not created by this change.

(3) Does the change involve a significant reduction in a margin of safety?

[Regarding the change to TS 4.0.5.a:]

The margin of safety established by the 4.0.5.a ISI/IST program surveillance requirements is in ensuring that the systems are operable and will perform adequately to support the assumptions of the accident analysis. The change being proposed is admistrative in nature and does not alter the basis for assurance that safety-related activities are performed correctly. The change does not alter the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Any relief request from the approved ASME Section XI Code requirements, under the circumstances contemplated by NUREG–1482, will require a 10 CFR 50.59 evaluation to ensure that no Technical Specification changes or unreviewed safety questions exist as a result of the relief request. Further, the 10 CFR 50.59 review includes a determination as to "if the margin of safety as defined in the basis for any technical specification is reduced." This evaluation will ensure that actions are not taken that could involve a significant reduction in a margin of safety.

For these reasons, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

[Regarding the change to TS 4.0.5.b:]

Clarification of the ASME XI testing frequency of "Biennially or every two years * * * At least once per 731 days" has no impact on the operation of the plant and can not significantly impact the margin of safety created by the affected Technical Specifications. The change clarifies and improves the accuracy and understanding of the Technical Specifications. Because it does not have a technical or operational impact, the margin of safety created by the affected specification is not significantly affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite

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the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specific requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazard consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to M.H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 8, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 9th day of November 1994.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulations.

[FR Doc. 94–28123 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Medical Uses of Isotopes; Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on November 17 and 18, 1994. The meeting was noticed in the **Federal Register** on October 11, 1994. In addition to the items listed in the agenda published on October 11, 1994, there will be a presentation on the review of the NRC Enforcement Policy. The enforcement policy is being reviewed to: (1) perform an assessment of NRC's enforcement program to determine whether the defined purposes of the enforcement program are appropriate, (2) determine whether NRC's enforcement practices and procedures for issuing enforcement actions are consistent with those purposes, and (3) provide recommendations on any changes the Review Team believes advisable.

There will also be a discussion on a draft rulemaking that clarifies that the medical administration of radiation and radioactive materials to an individual (even an individual not scheduled to receive an administration) is the exclusive province of the regulations in 10 CFR Part 35.

DATES: The meeting will begin at 8 a.m. on November 17 and 18, 1994.

ADDRESSES: U.S. Nuclear Regulatory Commission, Two White Flint North, room T2B3, 11545 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Larry W. Campter, Office of Nuclear Material Safety and Safeguards, MS T8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–7269.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *Code of Federal Regulations*, Part 7.

Dated: November 7, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–28056 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–32190–EA–2; ASLBP No. 95–702–01–EA–2]

In the Matter of Western Industrial X-Ray Inspection Co., Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In the Matter of Western Industrial X-Ray Inspection Company, Inc., Evanston, Wyoming

Byproduct Material License No. 49–27356–01; EA 94–131

This Board is being established pursuant to a request for a hearing by Western Industrial X-Ray Inspection Company, Inc. (WIX), in response to an immediately effective order. This order was issued on September 27, 1994, by the Deputy Executive Director for Nuclear Reactor Materials Safety, Safeguards and Operations Support, entitled "Order to Transfer Material (Effective Immediately) and Order Revoking License." 59 FR 50931, October 6, 1994.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 C.F.R. § 2.701. The Board consists of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 4th day of November 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–28057 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. IA–94–024; ASLBP No. 95–703–02–EA]

In the Matter of Larry D. Wicks, Evanston, Wyoming; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In the Matter of Larry D. Wicks

Enforcement Action IA–94–024

This Board is being established pursuant to the request of Larry D. Wicks, President for Western Industrial X-Ray Inspection Company, Inc. (WIX), Evanston, Wyoming. The hearing request was submitted in response to an Order issued by the Deputy Executive Director for Nuclear Reactor Materials Safety, Safeguards and Operations Support, dated September 27, 1994, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)" (59 FR 50932, October 6, 1994).

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 C.F.R. § 2.701. The Board consists of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Rockville, Maryland, this 4th day of November 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–28058 Filed 11–10–94; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44

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U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Public Service Pension Questionnaires.

(2) *Form(s) submitted:* G–208, G–212.

(3) *OMB Number:* 3220–0136.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 8,000.

(9) *Total annual responses:* 8,000.

(10) *Average time per response:* 0.15210 hours.

(11) *Total annual reporting hours:* 1,217.

(12) *Collection description:* A spouse or survivor annuity under the RR Act may be subjected to a reduction for a public service pension. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 94–27957 Filed 11–10–94; 8:45 am]

BILLING CODE 7905–01–M

1995 Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The monthly compensation base under section 1(i) of the Act is $850 for months in calendar year 1995;
2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $2,125.00 for base year (calendar year) 1995;
3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $1,098 for months in calendar year 1995;
4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $2,125.00 for base year (calendar year) 1995;
5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $2,125.00 with respect to disqualifications ending in calendar year 1995;
6. The maximum daily benefit rate under section 2(a)(3) of the Act is $36 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1995.

DATES: The determinations made in notices (1) through (5) are effective January 1, 1995. The determination made in notice (6) is effective for registration periods beginning after June 30, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Timothy H. Hogueisson, Bureau of Research and Employment Accounts, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4789.

SUPPLEMENTARY INFORMATION: The RRB is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Public Law 100–647, to publish by December 11, 1994, the computation of the calendar year 1995 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 1995, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1995.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1995 shall be equal to the greater of (a) $600 or (b) $600 [1+{(A−37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1995 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1995 tier 1 tax base is $61,200. Subtracting $37,800 from $61,200 produces $23,400. Dividing $23,400 by $56,700 yields a ratio of 0.41269841. Adding one 1.41269841. Multiplying $600 by the amount 1.41269841 produces the amount of $847.62, which must then be rounded to $850. Accordingly, the monthly compensation base is determined to be $850 for months in calendar year 1995.

Amounts Related to Changes in Monthly Compensation Base

For years 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1995 monthly compensation base of $850 produces $2,125.00. Accordingly, the amount determined under section 1(k) is $2,125.00 for calendar year 1995.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1995 monthly compensation base is $850. The ratio of $850 to $600 is 1.41666667. Multiplying 1.41666667 by $775 produces $1,098. Accordingly, the amount determined under section 2(c) is $1,098 for months in calendar year 1995.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1995 monthly compensation base of $850 produces $2,125.00. Accordingly, the amount determined under section 3 is $2,125.00 for calendar year 1995.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 times the calendar year 1995 monthly compensation base is $850 produces $2,125.00. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,125.00 for calendar year 1995.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1995, shall be equal to the greater of (a) $30 or (b) $25 [1+{(A−600)/900}], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1995 tier 1 tax base is $61,200. Dividing $61,200 by 60 yields $1,020. The amount is rounded down to $1,000, the nearest multiple of $100. Subtracting $600 from $1,000 produces $400. The ratio of $400 to $900 is 0.44444444. Adding 1 produces 1.44444444. Multiplying $25 by 1.44444444 produces $36.11, which must then be rounded to $36. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 1995, is determined to be $36.

Dated: November 1, 1994.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–27958 Filed 11–10–94; 8:45 am]

BILLING CODE 7905–01–P–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34944; File No. SR–PSE–94–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendment of its Minor Rule Plan and Recommended Fine Schedule With Respect to Options Floor Decorum and Other Minor Trading Rule Violations

November 4, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 14, 1994, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule 10.13(h) of its Minor Rule Plan ("MRP"): Options Floor Decorum and Other Minor Trading Rule Violations. The PSE also proposes to revise its Recommended Fine Schedule pursuant to PSE Rule 10.13(h) relating to Options Floor Decorum and Minor Trading Rule Violations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to make three changes to the MRP. First, the Exchange proposes to eliminate references in Rules 10.13(h) (10) and (11) to "ten-up" and "Ten-Up Rule," because such references are currently inaccurate in light of a recently approved rule change, as well as a pending proposed rule change.[2] Second, the Exchange proposes to add a reference to the MRP that addresses violations of Rule 6.82(c)(2) (which requires Lead Market Makers to honor their guaranteed markets). The Exchange believes that violations of Rule 6.82(c)(2) are already provided for in the MRP by implication (due to a cross reference) and that this proposed change will merely eliminate an ambiguity. Third, the Exchange proposes to amend the MRP to add a reference to new Rule 6.66(c), which provides for the identification of broker-dealer orders on the Options Floor.[3] The Exchange believes that the rule is similar in nature to the disclosure requirements of Rule 6.86, also referred to in the MRP.

The Exchange also proposes to increase the recommended fines in the Recommended Fine Schedule for Option Floor Decorum and Minor Trading Rule Violations. These infractions are currently listed in the Exchange's MRP, which is codified at PSE Rule 10.13. Specifically, the Exchange proposes to increase the recommended fines for the violations specified in the following rules: 10.13 (h) (2)–(4), (h) (7)–(9), (h)(11), (h) (13)–(23), and (h)(26).[4] The Commission has

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release Nos. 34891 (October 25, 1994), 59 FR 54653 (approving 20-up rule); and 34702 (September 22, 1994), 59 FR 49729 (proposal to expand Auto-Ex system capacity to 20 contracts).

[3] See Securities Exchange Act Release No. 34426 (July 21, 1994), 59 FR 38497 (approving Rule 6.66(c)).

[4] These rules denote the following Exchange Rule violations with respect to options trading: failing to properly record the time of receipt, change in limit, or increase in size of an order [(h)(2)]; improper execution of a cross transaction [(h)(3)]; violation of procedures concerning a Market Maker's use of a Floor Broker to effect transactions [(h)(4)]; failure to give up the name of a clearing member by public outcry when requesting a quote and size of the market or after effecting a trade [(h)(7)]; inadvertently placing a non-public order in the book [(h)(8)]; failing to remain for a specified amount of time after trade processing [(h)(9)]; failure to honor a guaranteed market [(h)(10)]; failure to identify an order as for a broker-dealer [(h)(11)]; improper communication by use of hand signals or other means or devices [(h)(12)]; improper vocalization of a trade [(h)(13)]; violating a standard of conduct or dress [(h)(14)]; disruptive action [(h)(15)]; disruptive action involving physical contact [(h)(15)]; disruptive action involving physical contact [(h)(16)]; failing to act in a professional manner [(h)(17)]; use of abusive language [(h)(18)]; time stamping [(h)(19)]; position and exercise limit violations [(h) (20)–(21)]; acting as both Floor Broker and Market Maker and trading in excess of 100 contracts per month as a Market Maker [(h)(22)]; failing to request a market to be

Continued

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previously approved these rules for inclusion in the MRP.[5]

The Exchange proposes to increase the current fine levels for such violations. As a result, the lowest fine on the schedule would be $100 and the highest fine would be $2,500.[6] With respect to most of the proposed fine increases, the Exchange is increasing the fine levels from $100, $250, and $500, for first-, second-, and third-time violations,[7] respectively, to $250, $500, and $750, respectively, for such violations. In addition, the Exchange is proposing to increase the minimum fine for position and exercise limit violations as follows: for between one and three violations (during a running two-year period), the minimum fine would be increased from $100 to $250;[8] for between four and six violations during such period, the minimum fine would be increased from $100 to $500; and for seven or more violations during such period, the minimum fine would be increased from $100 to $750.

The Exchange believes that the proposed changes will enhance its ability to enforce compliance with Exchange Rules and that the fine levels proposed will result in appropriate discipline of members and member organizations, in a manner that is proportionate to the minor nature of such violations. The Exchange believes that the proposed additions to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. Finally, the Exchange notes that it will continue to circulate a copy of its Recommended Fine Schedule to its membership on a regular basis (approximately yearly pursuant to PSE Rule 10.13(f).

The Exchange believes that the proposal is consistent with section 6(b) of the Act in general. In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and with Section 6(b)(7) in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–94–29 and should be submitted by December 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27933 Filed 11–10–94; 8:45 am]

BILLING CODE 8010–01–M

removed from the screen when leaving a trading crowd [(b)(23)]; and unauthorized use of telephones in trading post areas [(b)(26)].

[5] *See* Securities Exchange Act Release Nos. 22634 (November 21, 1985), 50 FR 48853; 32510 (June 24, 1993), 58 FR 35401; and 34322 (July 6, 1994), 59 FR 35956.

[6] Pursuant to the MRP, the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization. *See* PSE Rule 10.13(a). In appropriate circumstances (*e.g.*, where aggravating or mitigating circumstances are present), the Exchange may impose a higher or lower fine than that set forth in the Recommended Fine Schedule. In addition, the Exchange may, at its discretion, proceed with formal disciplinary action if it determines that a given violation is not minor in nature. *See* PSE Rule 10.13(f).

[7] Fines for multiple violations of Options Floor Decorum and Minor Trading Rules are calculated on a running two-year basis. *See* PSE MRP Recommended Fine Schedule.

[8] In addition, the provision for an informal letter of caution for such violations is being eliminated.

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 35–26157]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 4, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 28, 1994, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc., et al.

(70–7218)

CSW Credit, Inc. ("CSW Credit"), a nonutility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and CSW, both of 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment to its application-declaration filed under Section 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

By order dated July 19, 1985 (HCAR No. 23767) ("1985 Order"), CSW was authorized, among other things, to organize CSW Credit to purchase the accounts receivable of the operating companies of CSW at a discount and to finance these purchases with the issuance and sale of debt. CSW Credit was authorized to borrow up to $320 million and CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million through December 31, 1986.

By order dated July 31, 1986 (HCAR No. 24157) ("1986 Order"), CSW Credit was authorized to expand its business to the factoring of accounts receivable of nonaffiliated electric utility companies. In order to finance such transactions, CSW Credit was authorized to borrow up to an additional $160 million and CSW to make additional equity investments in CSW Credit of up to an aggregate of $40 million, through December 31, 1988. The 1986 Order also provided that CSW Credit limit its acquisition of utility receivables from nonassociate utilities so that the average amount of such receivables for the preceding twelve-month period outstanding as of the end of any calendar month would be less than the average amount of receivables acquired from CSW system companies outstanding as of the end of each calendar month during the preceding twelve-month period ("50% Restriction"). Further, the 1986 Order extended the authority of the 1985 Order until December 31, 1988.

By order dated February 8, 1988 (HCAR No. 24575), CSW Credit was authorized, among other things, to factor the accounts receivable of nonaffiliated utility companies, subject to the 50% Restriction, and CSW Credit also was authorized to borrow, through December 31, 1989, up to $320 million and $304 million to finance the factoring of affiliate and nonaffiliated receivables, respectively. CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million and $76 million in connection with the factoring of affiliate and nonaffiliated receivables, respectively. This authority was extended through December 31, 1990 by order dated December 27, 1989 (HCAR No. 25009).

By order dated August 30, 1990 (HCAR No. 25138), CSW Credit was authorized to lower its equity ratio to no less than 5%.

By orders dated December 21, 1990, December 24, 1991 ("1991 Order"), December 9, 1992 and December 21, 1993 (HCAR Nos. 25228, 25443, 25698 and 25959, respectively), CSW Credit's existing authority was extended through December 31, 1991, December 31, 1992, December 31, 1993 and December 31, 1994, respectively. In addition, the 1991 Order granted CSW Credit the authorization to borrow up to an additional $200 million to finance the factoring of associate receivables.

Pursuant to the orders summarized above, the following authority has been granted: (1) CSW Credit has been authorized to borrow $824 million, of which $520 million could be used to purchase receivables of affiliated companies and $304 million could be used to purchase receivables of nonaffiliated companies; and (2) CSW has been authorized to make equity investments in CSW Credit of up to an aggregate of $156 million, of which $80 million could be used to purchase receivables of affiliated companies and $76 million could be used to purchase receivables of nonaffiliated companies.

For the 12 months ended September 30, 1994, CSW Credit had average outstanding receivables purchases from affiliated companies of $382 million and from nonaffiliated companies of $23 million. The outstanding receivable purchases from nonaffiliated companies does not include the $357 million average receivable purchases for the 12 months ended September 30, 1994 from Houston Lighting and Power Company, authorized by order dated December 29, 1992 (HCAR No. 25720). As of September 30, 1994, the amount of remaining authority that CSW Credit had available to purchase receivables from affiliated companies was $138 million and nonaffiliated companies was $281 million.

CSW Credit and CSW now propose to extend the previously granted authorities through December 31, 1995.

Energy Initiatives, Inc., et al.

(70–7727)

Energy Initiatives, Inc. ("EII"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary of General Public Utilities Corporation ("GPU"), and GPU (both, "Applicants"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, have filed a post-effective amendment under Sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 45, 53 and 54 thereunder to their application-declaration filed under Sections 6(a), 7 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 45, 50, 51, 90 and 91 thereunder.

By Orders dated June 26, 1990, December 18, 1992 and September 12, 1994 ("September 1994 Order") (HCAR Nos. 25108, 25715 and 26123, respectively) (collectively, "Orders"), EII was authorized to engage in preliminary project development and administrative activities ("Project Activities") in connection with its investments in: (i) qualifying cogeneration facilities ("QFs"), as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), located anywhere in the United States, (ii) small power production facilities (also "QFs"), as defined by PURPA, and exempt wholesale generators ("EWG"), as defined in Section 32 of the Act, located in any geographic area, and (iii) foreign utility companies ("FUCOs"), as defined in Section 33 of the Act.

The Order also authorized GPU, through December 31, 1994, to: (i) make capital contributions to General portfolios Corporation ("GPC"), EII's immediate parent holding company, which GPC would in turn make available to EII; and (ii) enter into letter of credit and reimbursement agreements ("Reimbursement Agreements") and guarantees or similar obligations ("Guaranties") to secure EII's agreement with any person in connection with EII's Project Activities and the acquisition of ownership or participation interests in projects. The Orders provided that the aggregate amount GPU was permitted to contribute to EII, together with the outstanding face or principal amount of the Reimbursement Agreement and Guarantee obligations, could not exceed $60 million ("Contribution Cap"). The Orders also authorized EII to enter into Reimbursement Agreements and Guarantees in an aggregate amount of up to $10 million through December 31, 1994 ("Debt Cap"). And, the Orders authorized EII to issue, sell and renew, through December 31, 1994, its promissory notes ("Notes") evidencing short-term borrowings from financial institutions, in an aggregate principal amount at any time outstanding (together with the aggregate amount of obligations outstanding under any and all Reimbursement Agreements and Guarantees entered into by EII) not exceeding the Debt Cap, and permitted GPU to guarantee payment of the Notes ("Note Guarantees").

In addition, the September 1994 Order authorized EII to form a wholly-owned Subsidiary ("Services Sub") to provide operational and maintenance services to both affiliated and

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nonaffiliated QFs, EWGs and FUCOs, and to contribute up to $1 million to Services Sub through December 31, 1994 for working capital.

Applicants now propose: (i) to extend until December 31, 1997 the period during which (a) GPU may make capital contributions to EII, and (b) GPU and EII may enter into Reimbursement Agreements and Guarantees; (ii) to increase the Contribution Cap to $200 million and the Debt Cap to $30 million; (iii) that EII may use contributions from GPU to acquire securities and other interests in EWGs and FUCOs; [1] (iv) to enter into Guarantees and Reimbursement Agreements for purposes of guaranteeing the securities or other obligations of EWGs and FUCOs; (v) to assume liabilities of EWGs and FUCOs; (vi) to extend until December 31, 1997 the period during which EII may incur borrowings pursuant to the Notes and GPU may guarantee payment of the Notes pursuant to Note Guarantees; (vii) to extend until December 31, 1997 the period during which EII may make capital contributions up to $1 million to Services Sub; and (viii) that the reservation of jurisdiction be released over EII's request pursuant to section 13(b) of the Act.

Applicants state that the term of each Guarantee, and any letter of credit ("L/C") backed by a GPU or EII Reimbursement Agreements, would not exceed 25 years. Drawings under each L/C would bear interest at not more than 5% above the prime rate as in effect from time to time, and L/C fees would not exceed 1% annually of the face amount of the L/C.

Applicants also state that the aggregate amount of liabilities of EWGs and FUCOs assumed by GPU, plus the aggregate face or principal amount of Guarantees and Reimbursement Agreements entered into by GPU and cash contributed directly to EII, will not exceed the Contribution Cap. The aggregate amount of liabilities of EWGs and FUCOs assumed by EII, plus the aggregate principal or face amount of Guarantees and Reimbursement Agreements entered into by EII and borrowings under Notes incurred by EII, will not exceed the Debt Cap.

Notes issued and sold by EII would mature not later than five years after issuance, and bear interest at a rate not in excess of (i) 250 basis points above the greater of (a) the lending bank's or other recognized prime rate and (b) 50 basis points above the federal funds rate, (ii) 400 basis points above the specified London Interbank Offered Rate plus any applicable reserve requirement, or (iii) a negotiated fixed rate which, in any event, would not exceed 500 basis points above the 30 year "current coupon" treasury bond rate. EII states that it may pay the lenders a facility fee of up to 75 basis points on the aggregate principal amount of the loan facility and a one-time commitment fee of up to 50 basis points, and other customary fees (which would not cause the effective interest rate of the Notes to exceed the rates described above).

Applicants also request a release of the reservation of jurisdiction, in the September 1994 Order, over EII's request to perform operation and maintenance and related project management and administrative services at fair market prices as managing general partner or the operator of QFs, EWGs or FUCOs which are associate companies of EII, under certain circumstances.

[1] Applicants state that they may seek approval, in a separate filing, to form an intermediate subsidiary for the purpose of acquiring interests in FUCOs.

New England Electric System

(70–7753)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under Sections 6(a) and 7 of the Act.

By order dated August 7, 1990 (HCAR No. 25128) the Commission authorized, among other things, NEES to issue and sell from time to time through December 31, 1994, an aggregate of up to 1,395,902 shares of its authorized but unissued common shares, $1 par value, pursuant to the New England Electric System Companies Incentive Thrift Plan II ("Plan").

Through September 30, 1994, NEES has issued 473,086 shares pursuant to the Plan leaving a balance of 922,816 authorized but unissued shares ("Remaining Shares"). NEES now proposes to extend its period of authorization for issuing the Remaining Shares under the Plan from December 31, 1994 to December 31, 1997.

The proceeds from the sale of the Remaining Shares will be added to the general funds of the NEES and be used for any or all of the following purposes: (1) investment in the NEES' subsidiary companies, through loans or advances to such subsidiaries, purchases of additional shares of their capital stocks, or capital contributions; (2) payment of indebtedness of NEES; or (3) general corporate purposes.

Georgia Power Co.

(70–8467)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, a wholly owned public-utility subsidiary company of the Southern Company, has filed an application under Section 9(c)(3) of the Act.

Georgia Power proposes to invest up to $10 million through December 31, 1997 to acquire limited partnership units in one or more limited partnerships ("Partnerships") organized to invest in low-income housing projects in Georgia that qualify for the low-income housing tax credit ("LIHTC") under Section 42 of the Internal Revenue Code ("Code"). A separate Partnership would be organized for each qualifying housing project to facilitate compliance with Section 42 and the financing of the project on a stand-alone basis and to insulate each project from liabilities that may arise in connection with other projects.

Georgia Power proposes to acquire up to 20% interest in each Partnership subject to an aggregate investment of $10 million. The sole general partner of each Partnership will be Heartland Properties, Inc., a subsidiary of WPL Holdings, Inc., an exempt holding company, or an affiliate of Heartland Properties ("General Partner"). The remaining limited partnership interests would be offered to accredited investors including other large Georgia corporations.

A partnership agreement ("Partnership Agreement") would be used in connection with each investment. Under the Partnership Agreement, the limited partners would be comprised of Class A Limited Partners and Class B Limited Partners ("Limited Partners"). Georgia Power will only acquire Class B Limited Partner units.

The term of each Partnership shall be for 50 years. Contributions to the capital of each Partnership by the Limited Partners, which will represent 99% of all contributions, will be made in accordance with a drawdown schedule that is appropriate for any particular housing project. Generally, allocations of profits, losses and tax credits of each Partnership shall be allocated to the Partners in accordance with their respective partnership percentages—up to 20% in the case of Georgia Power. Similarly, cash flows and the net proceeds from any sale or refinancing of a housing project will be distributed to the Partners in accordance with their respective partnership percentages.

The General Partner shall have full and exclusive control over the affairs of each Partnership subject to certain limited approval rights that limited partners may hold under Delaware law. As a Class B Limited Partner, however, Georgia Power will have fewer approval rights than the Class A Limited Partners. Limited Partners are entitled to examine and copy the books and records of the Partnership, to receive financial reports, and to receive a detailed annual operating and capital improvements budget.

The General Partner, or a separate management company with which the Partnership may enter into a management agreement, would manage the day to day operations of each housing project, including leasing activities, rent collection, and property maintenance. It is contemplated that a local real estate developer or property manager in the community in which the project is located would be engaged to provide some or all of these management services.

New England Electric System

(70–8485)

New England Electric System ("NEES"), a registered holding company, has filed a declaration under Section 12(b) of the Act and Rule 45 thereunder.

Subsidiaries of NEES ("Employers") provide, for the benefit of certain officers, life insurance plans funded by individual policies. The combined death benefit to the participant under these insurance plans is three times the annual salary. After termination of employment, participants in the plans may elect, at age 55 or later, to receive annuity income equal to 40% of annual salary. In that event, the life insurance is reduced over fifteen years to an amount equal to final average salary. Due to changes in the tax law, this plan was closed to new participants, and an alternative was established with only a life insurance benefit. These plans are structured so that, over time, the Employers should recover the cost of the insurance premiums.

The life insurance benefit in almost all cases will be provided by an insurance company. The annuity, and in limited instances the insurance benefits, will be paid by the Employers. Although the Employers anticipate recovery of their costs from the proceeds of the policies, their interests in the policies are not segregated from their general assets and the participants in the plans are general creditors of the Employers.

From time-to-time the Employers have granted additional service credit under their pension plans to executives who have professional and business experience prior to joining the NEES system. These letters and agreements do not have a standard format. Most of the individuals covered by them are present or future employees of New England Power Service Company ("Service Company"). The assets of the Service Company consist mainly of amounts currently receivable from affiliates.

To provide greater assurance of the payment of these life insurance and annuity benefits and additional pension benefits to the participants and their beneficiaries, it is proposed that NEES, from time-to-time, give written assurances to the participants that, if an Employer obligated under the amended life insurance program, the collateral assignment life insurance program, or the additional service letter and agreement does not make the payments provided therein, NEES will make such payments. Similar assurance is now provided under four other executive plans by Commission order dated October 12, 1982 (HCAR No. 22664).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–27934 Filed 11–10–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000146]

CMS SBIC, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1194)) by CMS SBIC, L.P., 1926 Arch Street, Philadelphia, PA 19103, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner: CMS SBIC Associates, 1926 Arch Street, Philadelphia, PA 19103	1
Sole Limited Partner: CMS/Mid-Atlantic Business Opportunity Partners, L.P., 1926 Arch Street, Philadelphia, PA 19103	99
Total	100

CMS SBIC, L.P. will be managed by CMS Investment Resources, Inc. The officers and shareholders of CMS Investment Resources, Inc. are:

Name—Relationship to manager	Percentage of ownership of manager
Linda M. DeJure—Vice President, 1417 County Line Rd., Rosemont, PA 19010	0
Dean S. Adler—Vice President, 1320 Huntsman Lane, Gladwyne, PA 19035	0
William A. Landman—Vice President, 124 Woods Lane, Radnor, PA 19087	0
Richard A. Mitchell—Vice President, 16 Winchester Drive, Sewell, NJ 08080	0
Caryn L. Kinzig—Vice President, 173 Shawnee Rd., Ardmore, PA 19008	0
Mark I. Solomon—Director, Pier 5, #240, 7 N. Delaware Ave, Philadelphia, PA 19106	66.7
Paul Silberberg—Director, 2023 Delancey Street, Philadelphia, PA 19103	33.3

The applicant will begin operations with capitalization of approximately $10.0 million and will be a source of equity financings for qualified small business concerns. The applicant will invest primarily in retailing, distribution, manufacturing, financial services, communications, technology, and health care businesses located in the Delaware Valley.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

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A copy of this Notice will be published in a newspaper of general circulation in Philadelphia, Pennsylvania.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 1, 1994.

Robert D. Stillman

Associate Administrator for Investment.

[FR Doc. 94–27995 Filed 11–10–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–096]

Merchant Marine Personnel Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and working groups will meet to discuss various issues. Agenda items include discussions of physical standards and licensing requirements. All meetings will be open to the public.

DATES: The working groups will meet on December 13, 1994, from 8:30 a.m. to 4:00 p.m. The full committee will meet on December 14, 1994, from 9:00 a.m. to 4:00 p.m. Written material should be submitted not later than December 1, 1994.

ADDRESSES: The meetings will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593. Written material should be submitted to CDR Scott J. Glover, MERPAC Executive Director, Commandant (G–MVP), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Commander Scott J. Glover, Commandant (G–MVP), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–0213.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 Section 1 et seq. The agenda will include discussion of the following topics:

(1) "Licensing 2000 and Beyond" recommendations to certified instructors and designated examiners, and to increase the focus on approved training as one of Coast Guard's guarantor of competency;

(2) Physical standards for merchant mariners; and,

(3) National Research Council report, Minding the Helm: Marine Navigation and Piloting.

Attendance is open to the public. With advance notice, and the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 20 copies to the Executive Director no later than December 1, 1994.

Dated: November 7, 1994.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–28038 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–94–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No._____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 7, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27795
Petitioner: Captain Mark J. Paras
Sections of the FAR Affected: 14 CFR 21.24(a)(1)(ii)
Description of Relief Sought: To increase the weight limit for the issuance of a primary category aircraft type certificate from 2,700 pounds to 3,300 pounds for all Seawind amphibious aircraft.

Docket No.: 27802
Petitioner: Richmor Aviation
Sections of the FAR Affected: 14 CFR 21.197(c)(2)
Description of Relief Sought: To permit Richmor Aviation to receive a special flight permit with continuing authorization to conduct ferry flights of aircraft with nine or fewer passenger seats that are maintained under an Approved Aircraft Inspection Program.

Docket No.: 27884
Petitioner: Charlie Hammonds Flying Service, Inc.
Sections of the FAR Affected: 14 CFR 45.22(b)(1)
Description of Relief Sought: To permit the petitioner's Alon A–2, serial number A–73, registration number N6573Q, to be repainted displaying 2-inch high registration marks, although the aircraft will not be 30 years old until November 29, 1995.

Docket No.: 27891
Petitioner: Mr. Stanley G. Fickes
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Fickes to serve as an air carrier pilot after reaching his 60th birthday.

Docket No.: 27912
Petitioner: Captain Dennis P. Cholley
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Captain Cholley to serve as an air carrier pilot after reaching his 60th birthday.

Docket No.: 27915
Petitioner: General Electric Company
Sections of the FAR Affected: 14 CFR 34.21(b)
Description of Relief Sought: To permit General Electric Company to ship 10 CF6–80C2/E1 engines with a new low emissions combustor installed prior to combustor certification.

Docket No.: 27916
Petitioner: Mr. Neil R. Smith
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Smith to serve as captain or first officer in air carrier service after his 60th birthday.

Docket No.: 27923
Petitioner: National Air Transportation Association
Sections of the FAR Affected: 14 CFR appendix I of part 121, subparagraphs 3 & 4
Description of the FAR Affected: To extend the compliance date from September 19, 1994, to January 1, 1995, for medical review officers conferring with employees who have received verified positive drug test results or who have refused to submit to a drug test to (1) advise them of available resources to resolve problems associated with illegal drug use and (2) ensure that the substance abuse professional (SAP) evaluates such employees to determine if employee is in need of assistance in resolving drug-use problems.

Docket No.: 27924
Petitioner: Air Transport Association
Sections of the FAR Affected: 14 CFR appendix I of part 121, subparagraphs 3 & 4
Description of the FAR Affected: To extend the compliance date from September 19, 1994, to January 1, 1995, for medical review officers conferring with employees who have received verified positive drug test results or who have refused to submit to a drug test to (1) advise them of available resources to resolve problems associated with illegal drug use and (2) ensure that the substance abuse professional (SAP) evaluates such employees to determine if employee is in need of assistance in resolving drug-use problems.

Dispositions of Petitions

Docket No.: 23685
Petitioner: Department of the Navy, MCAS Beaufort
Sections of the FAR Affected: 14 CFR 101.23 (b) and (c)
Description of Relief Sought/ Disposition: To extend Exemption No. 3938, as amended, which allow the Department of the Navy, specifically the United States Marine Corps (USMC) Beaufort, South Carolina, to use Missile Plume Simulator GTR–18 Class B Fireworks ("Smokey Sam") within controlled firing areas (CFA) at MCAS Beaufort, South Carolina, and at Beaufort County Airport, South Carolina.

Grant, October 19, 1994, Exemption No. 3938C

Docket No.: 26502
Petitioner: Critical Air Medicine, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow appropriately trained and certificated pilots employed by Critical Air Medicine, Inc., to remove or reinstall aircraft cabin passenger seats and install an approved stretcher in each aircraft it uses for emergency medical evacuation purposes.

Grant, October 5, 1994, Exemption No. 5970

Docket No.: 27790
Petitioner: Sunrise Air Service
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by Sunrise to perform the preventative maintenance function of removing or installing the passenger seats in its aircraft that are operated under 14 CFR part 135.

Grant, September 28, 1994, Exemption No. 5972

Docket No.: 27823
Petitioner: Banc One Service Corporation
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by Banc One Services Corporation to remove and install aircraft seats as required for a particular flight.

Grant, October 5, 1994, Exemption No. 5971

Docket No.: 27831
Petitioner: Flight Express Incorporated
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by Flight Express to remove and install front row seats in a Cessna 210 and Cessna 172G aircraft as required for a particular flight

Grant, October 7, 1994, Exemption No. 5974

Docket No.: 27678
Petitioner: Mr. John . Hart
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow Mr. Hart to remove and replace the passenger seats in his aircraft operating under 14 CFR part 135.

Grant, October 11, 1994, Exemption No. 5975

[FR Doc. 94–28032 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Little Rock Regional Airport, Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Little Rock Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR)art 158).

DATES: Comments must be received on or before. December 14, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address:

Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to J. William Flowers, Acting Manager of Little Rock Regional Airport at the following address:

J. William Flowers, Acting Manager, Little Rock Regional Airport, Number One Airport Drive, Little Rock, AR 72202

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

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FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Little Rock Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 31, 1994, the FAA determined that the application to impose a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 23, 1995.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: May 1, 1995

Proposed charge expiration date: May 31, 2003

Total estimated PFC revenue: $32,580,216.00

Brief description of proposed project(s):

Projects to Impose PFC's

Extend Runway 4L–22R, and

Prepare Site for ALSF–II and for Category III ILS on Runway 22R

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at:

Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Little Rock Regional Airport.

Issued in Fort Worth, Texas on November 31, 1994.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 94–28033 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Snyder County, Union County, Northumberland County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of advise the public that an Environmental Impact Statement will be prepared for the proposed highway project in Penn Township, Monroe Township, Selinsgrove Borough, Hummels Wharf, and Shamokin Dam, Snyder County; Union Township, and East Buffalo Township, Union County; and Northumberland Borough, Milton Borough, East Chillisquaque Township, West Chillisquaque Township, Chillisquaque, Point Township, Turbot Township, Northumberland County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Bradley D. Keazer, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–4422, or John W. Leisenring, Project Manager, Pennsylvania Department of Transportation, District 3–0, 715 Jordan Avenue, Montoursville, Pennsylvania 17754–0218, Telephone: (717) 368–4328.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the safety and capacity on U.S. Routes 11 and 15 north of Selinsgrove in Snyder County, and Traffic Route 147 in Northumberland County. The approximate project length from the farthest north-south termini is 17 miles with a total study area of 35 square miles. Transportation improvements in this area are being studied for several reasons:

- Between I–80 and Chillisquaque, T.R. 147 is a two-lane limited access roadway on four-lane limited access right-of-way. All structures over T.R. 147 were constructed to accommodate four lanes.
- From I–80 north, T.R. 147 designation changes to I–80 and is a four-lane access highway. The accident data indicates T.R. 147 has a high accident rate with a substantial number of head-on collisions and fatalities.
- T.R. 147 has heavy truck traffic due to the expanding industrial development along T.R. 147 and utilization of T.R. 147 to access I–180 and I–80 to the north and U.S. Route 11 and 15 to the south.
- Utilization of T.R. 147 as an alternate to U.S. Route 15 to access I–80, I–180, and U.S. Route 11 has caused congestion and a high accident rate in the Borough of Northumberland.
- The section of U.S. Route 11 and 15 through Shamokin Dam is heavily congested with a high percentage of trucks and a high accident rate. Because this area is highly commercialized, there is a conflict with the truck traffic, the thru traffic, and the business traffic entering and leaving the adjacent establishments. At the northern end of this section, U.S. Route 11 and 15 split, with the traffic either following Route 11 towards Northumberland to access T.R. 147 or using Route 15 north towards Lewisburg. Both routes provide access to I–80.

The project consists of evaluating the following: transportation systems management alternatives; the addition to two lanes to T.R. 147, making it a four-lane limited access route; a new river crossing to connect T.R. 147 to U.S. Route 15 south of Lewisburg; and upgrading and/or relocation of U.S. Routes 11 and 15 through the Shamokin Dam area. The full range of alternatives to be studied will be identified after completion of the Project Needs Assessment.

Consideration will be given to separating this project into two independent projects after the Project Need Assessment and Phase I alternatives are complete. Should this be the case, a revised Notice of Intent will be issued.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public agency meetings will be held throughout the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions

are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Pennsylvania Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultations on Federal programs and activities apply to this program.)

Issued on: November 2, 1994.

Manuel A. Marks,

Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 94–27959 Filed 11–10–94; 8:45 am]

BILLING CODE 4910–22–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The National Advisory Board meeting is scheduled for Wednesday, November 30, 1994, 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda: A detailed agenda will be available at the meeting. The meeting will include remarks from the Acting Chief Executive Officer of the RTC, the Executive Director of the Thrift Depositor Protection Oversight Board and the chair of the National Advisory Board. In addition, there will be briefings from the chairpersons of the six regional advisory boards on their respective meetings held throughout the country from October 25 through November 17. The major issues to be discussed will include RTC Land Fund II sales results and recommendations from the recently completed series of regional meetings.

Statements: Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: November 8, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–27963 Filed 11–10–94; 8:45 am]

BILLING CODE 2221–01–M

VOL 59 ISS 218 NO 14 1994 UMI

Sunshine Act Meetings

Federal Register
Vol. 59, No. 218
Monday, November 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 8, 1994, 59 FR 55740.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 9, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added on the Agenda scheduled for November 9, 1994:

Item No., Docket No., and Company

CAG-17—RP89-183-000, Williams Natural Gas Company
CAG-26—RP94-39-005 and RP94-197-003, Tennessee Gas Pipeline Company

Lois D. Cashell,
Secretary.

[FR Doc. 94-28204 Filed 11-9-94 3:53 pm]
BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, November 8, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Reports of the Office of Inspector General.
Recommendation regarding an administrative enforcement proceeding.
Matters relating to the Corporation's supervisory activities.
Personnel matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki R. Tigert, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Dated: November 8, 1994.

Federal Deposit Insurance Corporation.
Leneta G. Gregorie,
Acting Assistant Executive Secretary.

[FR Doc. 94-28152 Filed 11-9-94; 1:06 pm]
BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m., November 17, 1994.

PLACE: Room 100 (Hearing Room)—800 North Capitol St., N.W., Washington, D.C. 20573-0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Fact Finding Investigation No. 21—*Activities of the Trans-Atlantic Agreement and its Members—Interim Report and Recommendations.*

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 94-28214 Filed 11-9-94; 3:56 pm]
BILLING CODE 6730-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to the **Federal Register** on Tuesday, November 8, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 3:30 p.m., November 15, 1994.

CHANGES IN THE MEETING: Deletion of the following closed item from the agenda:

(C) Proposed changes to the Thrift Plan Investment Options.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 8, 1994.

William W. Wiles,
Secretary of the Board.

[FR Doc. 94-28126 Filed 11-9-94; 10:47 am]
BILLING CODE 6210-01-P

UNITED STATES ENRICHMENT CORPORATION

Board of Directors

TIME AND DATE: 8:00 a.m., Tuesday, November 15, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: Part of this meeting will be open to the public. The balance of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

- Consideration of personnel issues of the Corporation.

Portions Closed to the Public

- Review of commercial and/or financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301-564-3354.

SUPPLEMENTAL INFORMATION: Anyone requiring special accommodations should advise the contact person above at least 48 hours prior to the meeting.

Dated: November 8, 1994.

William H. Timbers, Jr.,
President and Chief Executive Officer.

[FR Doc. 94-28157 Filed 11-9-94; 1:06 pm]
BILLING CODE 6720-01-M

Corrections

Federal Register
Vol. 59, No. 218
Monday, November 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

[Docket No. PY-92-003]

RIN 0581-AA61

Voluntary Poultry Grade Standards

Correction

In proposed rule document 94-25760 beginning on page 52469, in the issue of Tuesday, October 18, 1994, make the following corrections:

§ 70.221 [Corrected]

1.On page 52474, in the second column, in § 70.221, in paragraph (g)(3), in the table, under the heading entitled "Maximum aggregate area permitted" insert a line to separate the heading from the subheading entitled "Breast, legs, and parts".

2.On the same page, in the same column, in § 70.221, in paragraph (g)(3), in the same table, under the subheading entitled "Breast, legs, and parts", in the first line, "1¾ in." should read "¾ in.".

3.On the same page, in the third column, in § 70.221, in paragraph (g)(4), in the table, under the subheading entitled "Elsewhere", in the first line, "1¾ in." should read "1¼ in.".

§ 70.230 [Corrected]

4.On the same page, in the second column, in § 70.230, in paragraph (e)(2), in the table, the heading "Maximum aggregate" should read "Maximum aggregate area permitted".

5.On the same page, in the same column, in § 70.230, in paragraph (e)(2), in the table, under the heading "Maximum aggregate area permitted", in the second line, "1 incn" should read "1 inch".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101,170, and 310

[Docket Nos. 91P-0186 and 93P-0306]

Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements

Correction

In proposed rule document 94-24476 beginning on page 51030 in the issue of Thursday, October 6, 1994, make the following corrections:

1. On page 51033, in footnote 6 at the end of the table, "No" should read "Not".

2. On page 51043, in Table 9, in the first column, in the first entry, remove "1" preceding "Overdose".

§ 310.518 [Corrected]

3. On page 51058, in the second column, in § 310.518, in the introductory text, lines two and three should read "in solid oral dosage form (e.g., tablets or capsules) shall meet the following".

4. On the same page, in the third column, in the same section, in paragraph (a), lines six and seven should read "unit of the product, e.g., tablet or capsule.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA42

Department Hearings and Appeals Procedures; Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In rule document 94-26553 beginning on page 54356 in the issue of Friday, October 28, 1994, make the following corrections:

1. On page 54356, in the second column, in the **SUMMARY**, in the first line, "The" should read "This".

2. On the same page, in the third column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the last line, "43 CFR 3.1307(a)" should read "43 CFR 4.1307(a)".

3. On page 54359, in the 1st column, in the 44th line, "IBIA" should read "IBLA".

4. On the same page, in the same column, in the last paragraph, in the ninth line, "or" should read "of".

5. On the same page, in the second column, in the second full paragraph, in the tenth line, "on" should read "in".

6. On the same page, in the 3rd column, in the 31st line, insert "773.24(c)," after "§§".

7. On page 54360, in the second column, in the first full paragraph, in the fourth line, insert "1253" after "30 U.S.C.".

8. On the same page, in the same column, in the last paragraph, in the 17th line, "ownerships" should read "ownership".

9. On the same page, in the third column, in the seventh line, "persons" should read "person".

10. On the same page, in the same column, in the heading at the bottom of the page, in the first line, "**Appeals**" should read "**Appeal**"; and in the last paragraph, in the first line, "criticized" should read "criticize".

11. On page 54361, in the third column, in the fourth full paragraph, in the fifth line, "alternatives" should read "alternative".

§ 4.1373 [Corrected]

12. On page 54362, in the third column, in § 4.1373(a), in the fourth line, "§ 4.1372(a)" should read "§ 4.1372(b)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-5099-5]

Washington: Final Authorization of State Hazardous Waste Management Program Revisions

Correction

In rule document 94-27170 beginning on page 55322 in the issue of Friday, November 4, 1994, make the following correction:

On page 55322, in the first column, the **ACTION** line should read "Final rule".

BILLING CODE 1505-01-D

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FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-022-00001-2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869-022-00002-1)	33.00	[1] Jan. 1, 1994
4	(869-022-00003-9)	5.50	Jan. 1, 1994
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1-699	(869-022-00004-7)	22.00	Jan. 1, 1994
700-1199	(869-022-00005-5)	19.00	Jan. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

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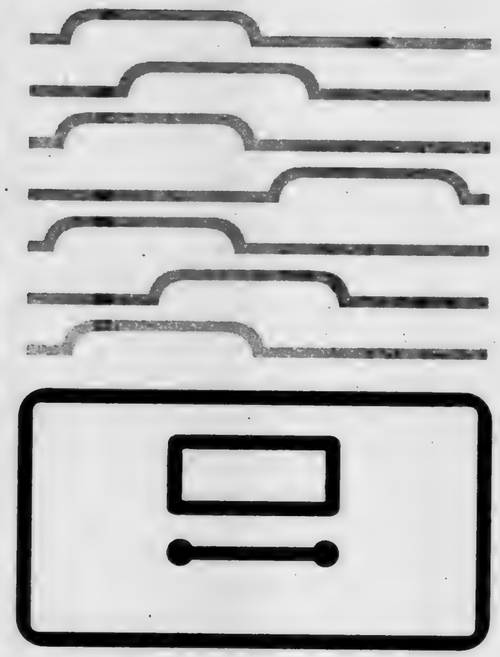
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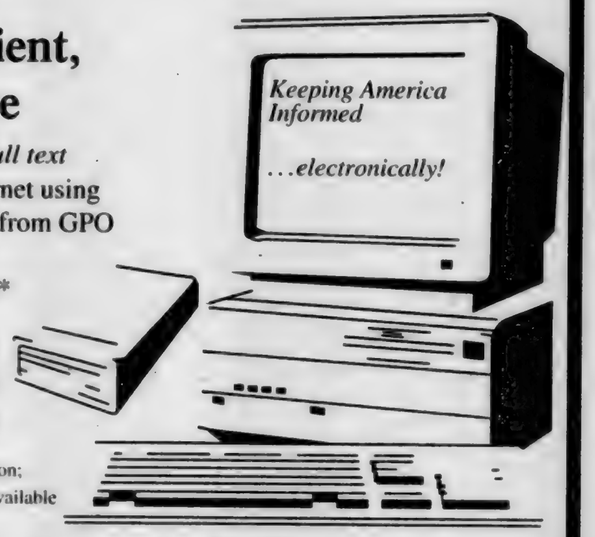
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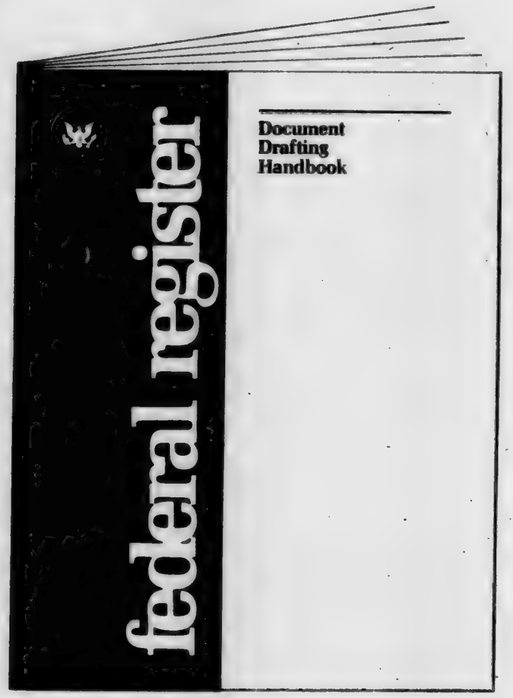
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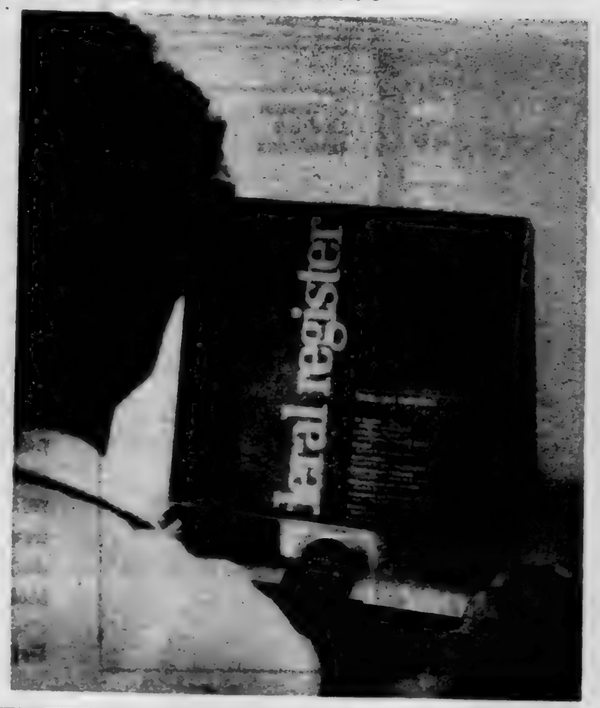
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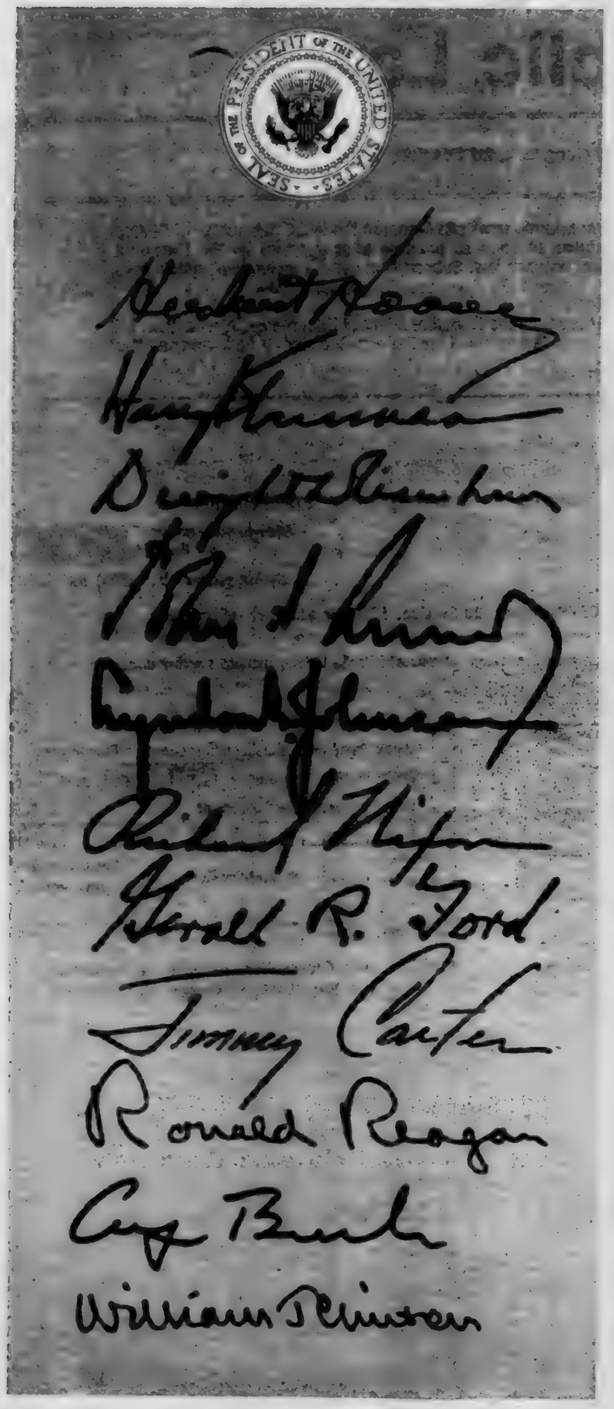
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Part II

Regulatory Information Service Center

Statement by the Vice President

Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations

Agency Regulatory Plans

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Vol. 59, No. 218
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The Regulatory Plan

Statement by the Vice President

On September 30, 1993, the President issued Executive Order 12866, "Regulatory Planning and Review." The regulatory planning and review process created by this order ensures that the Federal Government issues regulations that improve the quality of life without imposing unnecessary costs and does so in a way that is efficient, fair, and accountable to the American people. The preamble of the order sets forth the specific processes to achieve this objective: "to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public."

While much remains to be accomplished in the area of regulatory reform, we have made a good beginning. And, we are determined to continue making progress toward a regulatory system that protects and promotes the public welfare without imposing intolerable or irrational burdens on those who are regulated.

The foundation of our efforts and our first regulatory reform success was the adoption of Executive Order 12866 itself. The order has succeeded in enhancing public accessibility and involvement and Government accountability. With all but a few well-justified exceptions, agencies now allow 60 days for public comment. The Office of Information and Regulatory Affairs (OIRA) has made great strides to improve openness and accountability by, among other things, making available a daily list of draft regulations under review at OIRA and disclosing the subject of meetings between OIRA and the public. Openness and accountability are now—at long last—the way Government conducts its regulatory business.

We have also restored the integrity and legitimacy of the process of centralized review. Under the process established by the Executive order, OIRA is reviewing fewer regulations and doing so in a more focused, timely, and helpful manner. The old regulatory order pitted OIRA and the White House against the Executive branch agencies. We have done much to eliminate the adversarial nature of the centralized review process. As a result, in the year since the Executive order was issued, neither the President nor I have been called upon to resolve a conflict between a Federal agency and OIRA.

This process has also reaffirmed the role of Federal agencies in the regulatory decision-making process. In the Executive Office of the President, we no longer displace the decisions of our Federal agencies; instead, we work hard with agencies to ensure that the principles—and, indeed, the spirit—of the Executive order are realized.

We are also making great progress—although much remains to be accomplished—in enhancing planning and coordination with respect to both new and existing regulations. Over the past year, our entire Administration has paid close attention to the regulatory planning process. I have been directly involved in this process, which has included a meeting of the President's regulatory policy advisors and the heads of the agencies to discuss our priorities for the upcoming year and to help coordinate regulatory activities. The President's regulatory policy advisors and representatives from the Federal agencies meet regularly to discuss important regulatory issues.

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OIRA has done an outstanding job of coordinating regulatory activities. And, the agencies themselves—both Executive agencies and a number of independent regulatory agencies—have been extremely committed to improving coordination: Each Federal agency has appointed a senior official to oversee the agency's regulatory activities, and agencies have been consulting with one another on activities that may affect the work of another agency.

Our commitment to an integrated planning process is reflected in the development and drafting of the Plans set forth in this publication. As noted above, early in the planning process, I convened a meeting of the President's regulatory advisors and the heads of the agencies to discuss our priorities for the upcoming year and to reaffirm our commitment to regulate only when necessary and then in the most cost-effective manner. The agencies then developed Plans that were thoughtful and thorough. My office, OIRA, and Federal agencies then reviewed the submitted Plans, which include the Plans from a record number of independent regulatory agencies; consulted with one another, where necessary; and then, where appropriate, coordinated regulatory activities.

In sum, I am pleased with the progress of the planning process and am proud to present, on behalf of our Executive branch agencies, the outline of their regulatory activities for the upcoming year.

Al Gore

[FR Doc. 94-25842
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REGULATORY INFORMATION SERVICE CENTER

Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulations.

SUMMARY: The Regulatory Flexibility Act (5 U.S.C. 602) requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing. Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry.

The Office of Federal Procurement Policy Act Amendments of 1988 (41 U.S.C. 402) require the development and semiannual publication of a report on procurement regulations. The Unified Agenda helps fulfill that requirement as well.

All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication.

Section 4 of Executive Order 12866 also directs that, as part of the Unified Agenda, beginning with the October 1994 edition, agencies shall prepare a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form. The agency plans appear as the first part of this joint publication; the agency agendas appear as the second part.

This is the first time the **Regulatory Plan** is appearing with the Unified Agenda in the **Federal Register**. Vice President Gore's statement concerning the Plan precedes this introduction. We welcome your comments on the utility of this joint publication and your suggestions for improving future ones.

Following this introduction are the regulatory plans of 29 Federal departments and agencies. These plans contain descriptions of the agencies' most important significant regulatory actions. Each of these agencies has also submitted a regulatory agenda describing their other regulatory actions. The regulatory agendas for these 29 agencies and 34 other agencies appear in Parts III-LXV of this issue of the **Federal Register**.

ADDRESSES: Regulatory Information Service Center, 750 17th Street NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: Mark G. Schoenberg, Executive Director, Regulatory Information Service Center, 750 17th Street NW., Suite 500, Washington, DC 20006, (202) 634-6222.

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INTRODUCTION TO THE REGULATORY PLAN AND THE UNIFIED AGENDA OF FEDERAL REGULATIONS

About the Regulatory Plan

The **Regulatory Plan** serves as a defining statement of the Administration's regulatory policies and priorities. The Plan contains descriptions of the agency's most important significant regulatory actions.

E.O. 12866 directs that an agency's regulatory plan should be published as part of the **Unified Agenda of Federal Regulations** (Unified Agenda) and contain two sections: (1) a narrative statement of its regulatory priorities; and (2) a description of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.

All agency plans appear at the beginning of this joint publication. They are followed by each agency's section of the Unified Agenda and then the indexes to the Plan and Agenda entries.

About the Unified Agenda

The Regulatory Information Service Center (the Center) compiles the **Unified Agenda of Federal Regulations** for the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The Center provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The Office of Information and Regulatory Affairs is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of E.O. 12866.

The Unified Agenda provides uniform reporting of data on regulatory activities under development throughout the Federal Government. This edition of the Unified Agenda includes 63 regulatory agendas from all Federal departments, agencies, and commissions that publish agendas. Agencies of the United States Congress are not included. The Merit Systems Protection Board, the National Capital Planning Commission, and the Office of Special Counsel have published regulatory agendas in the past but have nothing to report for this edition.

The regulatory activities included in the agency agendas are those currently planned for the next 12 months. The agendas do not include regulations that were excluded under E.O. 12866, such as those concerning military or foreign affairs functions and regulations related to agency organization, management, or personnel matters.

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for this publication.

In addition, Executive Order 12875 entitled "Enhancing the Intergovernmental Partnership" (October 26, 1993; 58 FR 58093) directs agencies to reduce the imposition of unfunded mandates upon State, local, and tribal governments. The Order directs agencies that are proposing to impose nonstatutory unfunded mandates to consult with affected governmental officials and document their concerns, report those concerns to the Director of the Office of Management and Budget, and explain the agency's position supporting the continuing need to issue the regulation in light of those concerns. As part of this effort, agencies include in their submissions information on whether their regulatory actions may have an effect on the various levels of government.

The Unified Agenda also helps fulfill the statutory requirement that the Office of Federal Procurement Policy (OFPP) publish a **Procurement Regulatory Activity Report** as required by the Office of Federal Procurement Policy Act Amendments of 1988 (102 Stat. 4055; 41 U.S.C. 402). In their submissions, agencies indicate which regulatory actions are procurement-related, as well as whether or not there is a statutory requirement or a paperwork burden associated with the procurement-related actions. Information that agencies publish in the Plan and the Unified Agenda is used by OFPP to produce its report.

The Plan and the Unified Agenda are produced through a computer system designed and maintained by the Center with the advice and assistance of the Government Printing Office. The system was designed to save agencies time and money by automating the preparation and printing of their materials in a uniform format, as well as the tables of contents and indexes for the publication. In order to further facilitate producing this publication, many agencies currently use computer terminals at their offices to enter information into the Center's computer system.

All Plan and Agenda entries contain uniform data elements, which are described below. Agencies may also include any additional information they consider important.

Congress generally authorizes a single Federal agency to implement, through regulation, a specific policy objective. Sometimes, however, a statute may require that several agencies issue regulations to accomplish the objective. In such cases, the agencies, working with a central coordinator, jointly publish the documents issued in the course of the rulemaking proceeding. These proceedings are referred to as Governmentwide common rules.

In this edition of the Unified Agenda, four Governmentwide common rules are reported by the agencies participating in their development. They are:

- Debarment and Suspension
- New Restrictions on Lobbying
- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Thresholds)

Agencies participating in the development of these common rules have reported them in their individual sections of the Unified Agenda.

Regulatory agendas have been required by Executive orders since 1978. The Unified Agenda has been published in April and October of each year since 1983. This is the first edition to include the **Regulatory Plan**. The Center welcomes your comments on this edition and suggestions for improving future ones.

How To Use the Regulatory Plan and the Unified Agenda

Agency regulatory plans begin with a Statement of Regulatory Priorities that is followed by descriptions of the agency's most important significant regulatory actions. Each agency introduces its part of the Unified Agenda with a preamble providing information specific to that part.

Each agency agenda appears as a separate part in this edition of the **Federal Register**. Each section of the Plan and each part of the Unified Agenda is organized alphabetically in four groups: Cabinet departments, other executive agencies, joint authorities (Agenda only), and independent regulatory agencies. Departments are divided into agencies, which may in turn be divided into subagencies.

In both the **Regulatory Plan** and the Unified Agenda, each agency lists its rules in groups by rulemaking stage:

1. Prerule Stage—actions agencies will undertake in the next 12 months to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. Proposed Rule Stage—actions for which agencies plan to publish a Notice of Proposed Rulemaking (NPRM) as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. Final Rule Stage—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step in their rulemaking process.

4. Completed Actions—(Unified Agenda only) actions or reviews the agency completed or withdrew since publishing its last agenda. This section also includes items that were begun and completed between issues of the Unified Agenda.

In the Unified Agenda, an agency may use a subheading to identify regulations that it has grouped according to a particular topic. When these subheadings are used, they appear above the title of the first regulation in the group.

A bullet (•) preceding an entry indicates that the entry appears in the publication for the first time.

All entries are numbered sequentially from the beginning of the **Regulatory Plan** to the end of the Unified Agenda. The Sequence Number (Seq. No.) preceding the title of each entry identifies the location of the entry in this edition of the **Regulatory Plan** and the Unified Agenda. The same number is used in the indexes to enable readers to find entries on specific subjects.

In the Unified Agenda, for each agency that requests it, the Center provides a computer-produced Table of Contents that appears after the agency preamble. The agency Tables of Contents help readers locate quickly those entries within an agency that may be of most interest to them. Sequence numbers also appear in agency Tables of Contents. **Regulatory Plan** entries are identified in these Tables of Contents by a cross-reference to the Plan that appears in bold brackets.

This publication contains three indexes. The first two indexes list the regulatory actions that agencies believe may have effects on small entities or levels of government. The third is a Subject Index based on the **Federal Register Thesaurus of Indexing Terms** to help readers locate entries from various agencies that may affect a particular area of interest. The index also contains cross references to assist the reader's search.

Regulatory Plan Data Elements

In addition to the Unified Agenda data elements that appear below, each **Regulatory Plan** entry may contain the following information:

- Statement of Need—a description of the need for the regulatory action.
- Summary of the Legal Basis—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.
- Alternatives—a description of the alternatives to be considered or that were considered for analysis as required by section 4(c)(1)(B) of E.O. 12866.
- Anticipated Costs and Benefits—a description of preliminary estimates of the anticipated costs and benefits of the action.
- Risks—a description of the magnitude of the risk being addressed by the action, the amount by which this risk is expected to be reduced by the action, and the relation of these risks and risk reduction efforts to other risks and risk reduction efforts within the agency's jurisdiction.

Unified Agenda Data Elements

Entries describing regulations in the **Regulatory Plan** and the Unified Agenda should contain, at a minimum, the following information:

- Title of the Regulation.
- Legal Authority—the section(s) of the United States Code (U.S.C.) or Public Law (P.L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.
- CFR Citation—the section(s) of the Code of Federal Regulations that will be affected by the action.
- Legal Deadline—an indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some "Other" action.
- Abstract—a description of the problem the regulation will address; the need for a Federal solution; to the extent available, the alternatives that the agency is considering to address the problem; and the potential costs and benefits of the action.
- Timetable—the dates and citations (if available) for all past steps and at least a projected date for the next step for the regulatory action. If a date appears in this section as 00/00/00, it means the date of the action is currently undetermined. Similarly, 10/00/94 means the agency can predict the month and year the action will take place but not the day it will occur.
- Small Entities Affected—indicates whether the rule is expected to have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601) and, if so, whether the small entities are businesses, governmental jurisdictions, or organizations.

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- Government Levels Affected—indicates whether the rule is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.
- Agency Contact—the name, title, address, and phone number of a person in the agency who is knowledgeable about the regulation.
- Procurement—a statement identifying procurement-related actions and indicating whether there is a statutory requirement for the action and whether there is a paperwork burden associated with the action. The Procurement heading appears only if the entry is a procurement-related action.

Some agencies have provided other optional information at their discretion; this information may include:

- Compliance Cost to the Public—the estimated gross compliance cost to the public of the action.
- Affected Sectors—the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by Standard Industrial Classification (SIC) numbers.
- Analysis—agencies may indicate if a Regulatory Flexibility Analysis, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601), is being prepared or if any other kind of analysis or evaluation is being prepared (e.g., an environmental impact statement).

In addition, some agencies have used "Additional Information" to elaborate on the information they have provided.

Data Limitations

Agencies prepared entries for this edition of the **Regulatory Plan** and the Unified Agenda to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed.

The **Regulatory Plan** and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules within them or to confine their regulatory activities to those regulations that appear in those publications. The information in this edition is accurate as of August 19, 1994, in the judgment of the submitting agencies, except as otherwise noted by the agencies. In addition, updates were permitted through October 1.

Where applicable, individual actions will be subject to review for compliance with applicable Executive orders, the Regulatory Flexibility Act, the Office of Federal Procurement Policy Act Amendments of 1988, and the Paperwork Reduction Act at appropriate points in the regulatory process.

List of Abbreviations

The following abbreviations appear throughout this edition of the **Regulatory Plan** and the Unified Agenda:

ANPRM—An Advance Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles, and each title covers a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

EO—An Executive order is a directive from the President to an executive agency, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal departments and agencies.

FY—The Federal fiscal year runs from October 1 to September 30.

NPRM—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- A statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL—A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, as opposed to a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 103-5 is the fifth public law of the 103rd Congress.

RFA—A Regulatory Flexibility Analysis, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601), describes the impact of a proposed rule on small entities. An RFA describes why the agency is considering the action; the objectives of and legal basis for the proposed rule; an estimate of the number of small entities that could be affected and the compliance requirements they would have to fulfill; any other duplicative, overlapping, or conflicting Federal rules; and alternatives to the proposed action. When required, an initial RFA accompanies an NPRM, and a final RFA accompanies a final rule.

RIN—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in this publication as directed by E.O. 12866 (section 4(b)). Additionally, OMB has asked agencies to include RIN numbers in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register** to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their life cycles.

Seq. No.—The Sequence Number identifies the location of an entry in this edition of the Plan and the Unified Agenda.

USC—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, and each title covers a broad area of Federal law.

Information About Additional Copies

Additional copies of this edition of the **Federal Register** are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, (202) 512-1800.

Copies of individual agency materials may be available directly from the agency. Please contact the particular agency for further information.

Dated: October 6, 1994.

Mark G. Schoenberg,

Executive Director.

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DEPARTMENT OF AGRICULTURE (USDA)

Description of Regulatory Priorities

Major Goal and Missions

The Department of Agriculture (USDA) has embarked on a major streamlining and reinvention program as an outgrowth of the National Performance Review (NPR). The most prominent NPR recommendation, which also defines our major goal, is to: "Reorganize the Department of Agriculture to better accomplish its mission, streamline its field structure, and improve service to its customers." Secretary Mike Espy has further directed that this goal be accomplished in an environment that empowers and challenges the USDA career staff to produce the highest level of efficiency and service to the American public in general and the rural and farming community in particular. To achieve our goal, the Secretary has submitted to the Congress a proposal for a major restructuring and streamlining of the USDA which has four key objectives: (1) Refocus and simplify the USDA's headquarters structure, (2) improve accountability and service to customers by reforming USDA management control systems (including procedures for the development and review of regulations), (3) reform the USDA field structure, and (4) reduce costs. Under the proposal, the agencies of the Department would be reengineered around six basic missions which would create a streamlined and revitalized department. These missions are:

- Service to farmers and ranchers;
- Community and economic development in rural areas;
- Food, nutrition, and consumer services;
- Conservation programs;
- Food quality and service; and
- Research, education and economics.

When Congressional action on the restructuring proposal is complete, the USDA will realign its regulatory holdings in the Code of Federal Regulations and take the other actions necessary to bring our regulatory procedures in line with the restructuring.

The Role of Regulations

The programs of the Department are diverse and far-reaching, as are the regulations that attend their delivery. Regulations codify how the Department will conduct its business including the specifics of access to and eligibility for USDA programs. Regulations also specify the behavior of State and local Governments, private industry, businesses, and individuals necessary to comply with their provisions. The diversity in purpose and outreach of our programs contributes significantly to the USDA being at or near the top of Departments which produce the largest number of regulations annually. They range from nutrition standards for the school lunch program, to natural resource and environmental measures governing National Forest usage and soil conservation, to regulations protecting American agribusiness (the largest dollar value contributor to exports) from the ravages of domestic or foreign plant or animal pestilence, and extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply. Many regulations function in a dynamic environment which requires their periodic modification. The factors determining various entitlement, eligibility, and administrative criteria often change from year to year. Therefore, many significant regulations must be revised annually to reflect changes in economic and market benchmarks. Almost all legislation that affects USDA programs has accompanying regulatory needs, often with a significant impact. Two current examples are a bill before the Congress to reform crop insurance and the upcoming 1995 Farm Bill. The crop insurance bill will require broader farmer participation in the program, and by reducing non-insurance disaster payments, lower the overall cost of indemnifying farmers for crop losses. Further, the Congress enacts a new "Farm Bill" every five years, and 1995 marks the start of the next five-year cycle. This seminal legislation affects most agencies of the USDA and results in the addition of new programs, the deletion of others and modification to still others. While the specifics of these bills are not presently known, their passage will have considerable regulatory consequences.

Administration Guidance—USDA Response

In developing and implementing regulations the Department has been guided by the regulatory principles and philosophy set forth by the President in Executive Order No. 12866, "Regulatory Planning and Review." As prescribed in the Order, the USDA is committed to "promulgate only those regulations that are required by law, are necessary to interpret the law, or are made necessary by compelling public need." When considering a rulemaking action, the USDA will assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, if allowed by law. Our analysis will consider the costs and benefits of both quantifiable and qualitative measures, and opt for approaches that maximize net benefits.

The following are examples of USDA response mechanisms that have been undertaken as a result of regulation improvement guidance found in Presidential directives, the "Accompanying Report Of The National Performance Review, Improving Regulatory Systems," and OMB/OIRA instructions:

- Simplified Review Procedures—The process for developing new regulations in USDA is being thoroughly reviewed to identify and implement streamlining opportunities. There is already in place a procedure that provides for expedited review of "not significant" regulations. The Department has also worked cooperatively with OMB to improve the coordination of classification and clearance activities. Simple interactive procedures have been developed and communication has been excellent. The USDA is also exploring opportunities to apply innovative rulemaking approaches. To this end, the Animal Plant and Health Inspection Service is conducting a reinvention laboratory to improve the timeliness of regulations by streamlining the legal review and concurrence process.
- Improved Impact Statements—With respect to "significant regulations," the USDA is working to strengthen the impact analyses which support these regulations. For instance, the impact statement supporting the recently announced School Meals Initiative involved a cooperative effort between Executive Operations staff, the Economic Research Service, and the Food and Nutrition Service to identify and quantify the considerable body of analysis needed to fully represent the impact of this rule on dietary habits, program delivery considerations, and economic impacts on agricultural markets. The resulting impact statement provided an authoritative analysis for this important regulation. Of even greater importance is that the regulation itself will make a major contribution to the health and nutrition of school children all over the country.
- Reduced Paperwork Burdens—The Department is reviewing its existing regulations with an eye toward reducing paperwork and other regulatory burdens wherever possible. One of the USDA's largest agencies, the Agricultural Stabilization and Conservation Service (ASCS), has conducted a comprehensive regulatory review and identified changes in its procedures and forms which will greatly reduce the complexity and paperwork imposed on participants in its programs. In a related project, but not limited to just paperwork, all the agencies of the USDA have completed a review of existing significant regulations to identify opportunities to do away with unneeded regulations and/or modify others to reduce complexity and improve efficiency and customer services.
- Fewer Internal Regulations—Executive Order 12861 directs that all internal agency regulations be reduced by 50% over a 3-year period. A reduction in overall regulations will aid in streamlining work throughout USDA and ease reporting burdens within the Department. USDA has developed an implementation plan and performance measures for achieving the 50% reduction. Progress reports will be submitted to OMB in September 1994 and 1995, with a final report in September of 1996.
- Consensus-Based Rulemaking—In compliance with the President's request to explore non-traditional means of rulemaking, USDA's Animal and Plant Health Inspection Service is conducting an important regulation regarding marine mammal health and safety using the negotiated rulemaking technique.
- Interagency Consultation—Regulations can often be improved by the involvement of other agencies. A recent final rule regarding the data requirements of the Farmland Protection Act was distributed for review. Several agencies offered suggestions to reduce workload by describing more precisely how lands subject to the Act should be defined and identified. There were also suggestions for improving the interagency consultation process. A series of meetings was facilitated by OMB which allowed the parties involved to air their concerns and negotiate approaches to resolving disagreements.
- Improving Regulatory Tools—The Department participates in the four subgroups that have spun off of the parent Regulatory Working Group; viz., Simplification, Electronic Rulemaking, Cost Benefit Analysis and Risk Assessment. Procedures are being established for the Departmental representatives on the various working groups to communicate and coordinate with each other and to disseminate information from their meetings to interested parties throughout the Department.

Major Regulatory Priorities

In 1993, ten of the 43 USDA agencies accounted for 523 of 540 **Federal Register** entries. There are five agencies represented in this Regulatory Plan. They are the Animal and Plant Health Inspection Service, Farmers Home Administration, Food and Nutrition Service, Forest Service, and Food Safety and Inspection Service. Last year their published rules constituted 37 percent of the Department's regulatory output.

This document presents summary information on prospective significant regulations as called for in E.O. 12866. A brief comment on each of the five agencies appears below which summarizes the agency mission and its key regulatory priorities. A summary is also included for the Agricultural Stabilization and Conservation Service, which is a major publisher of commodity regulations. While ASCS regulations are very significant, they are largely formula driven, and for that reason have not been presented with the Plan entries. The agency summaries are followed by the Regulatory Plan entries.

Food Safety and Inspection Service

Mission: Few government agencies have a more pervasive influence on the public than the Food Safety and Inspection Service (FSIS). The FSIS is responsible for ensuring that the Nation's meat and poultry supply is safe, wholesome, unadulterated and properly packaged and labeled.

Priorities: Consistent with the President's call for a regulatory system that works for the people and protects and improves their health and safety, FSIS has undertaken a thorough review of existing regulations to identify changes that could be taken to improve the food safety of the meat and poultry supply, make available new production technologies and provide more complete information to consumers. The review has resulted in regulatory actions, such as mandatory safe-handling labels; processing procedures and cooking instructions for cooked, uncured meat patties; the use of organic sprays on beef, lamb, and pork; and the use of nutritional labeling on meat and poultry products.

A particularly significant regulation presented in the 1994 Regulatory Plan is the Hazard Analysis and Critical Control Point (HACCP) initiative. HACCP is an internationally recognized process control system to prevent problems from occurring during the course of production as opposed to after the product is produced. This rule would amend the meat and poultry inspection regulations to mandate the use of HACCP systems to ensure that production processes are in control and producing safe and unadulterated product. The development of this rule has benefitted from public input in the form of an FSIS-sponsored HACCP roundtable attended by scientists, public health officials, consumer group representatives, inspectors, industry representatives, and farmers.

Another significant FSIS rulemaking action would simultaneously benefit public health and safety and simplify poultry inspection by replacing the several existing poultry inspection systems with a single, standardized, industry-wide inspection system. Also planned is a regulation that would eliminate duplication in the prior labeling approval system, contributing to greater efficiency in government services. The alternatives being considered would eliminate millions of dollars in direct labeling costs without compromising the accuracy and amount of information provided to the consumer.

Animal and Plant Health Inspection Service

Mission: The Animal and Plant Health Inspection Service (APHIS) protects U.S. animal and plant resources from destructive diseases and pests, and ensures humane care and treatment of animals. The agency's programs address both domestic prevention and eradication programs as well as inspection and quarantine services at U.S. ports of entry to prevent the introduction of foreign or exotic diseases or pests.

Priorities: The top regulatory priorities of APHIS will be: to establish comprehensive regulations for the importation of nonindigenous species, to establish updated and specific standards for the humane care and treatment of captive marine mammals. The regulations on nonindigenous species will help prevent the introduction of harmful plant pests. The marine mammal regulations, which are being developed through the negotiated rulemaking process, support the President's directive to widen the application of that rulemaking technique. Lastly, APHIS is supporting

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the Vice President's National Performance Review through the conduct of a "reinvention laboratory" to simplify rulemaking.

Forest Service

Mission: The mission of the Forest Service (FS) is the stewardship of the U.S. National Forests. Major activities include; conservation and resource protection, public recreation, forestry research, and resource management.

Priorities: The President's environmental program includes efforts to incorporate the principles of ecosystem management in natural resource decisionmaking on the National Forests. In support of that effort, proposed regulations will be published governing the amendment, revision, and implementation of forest land management plans. Significantly, the regulation will also streamline the planning process and update planning procedures and requirements in order to reflect court decisions and the agency's experience gained with the first generation of forest plans.

Other regulatory actions will be taken which deal with specific resource management issues. These include: policy and guidelines addressing below-cost timber sale programs on individual national forests; a revision and expansion of current regulations governing the export of Federal timber or the substitution of Federal timber for private timber which is exported, as required by the Forest Resources Conservation and Shortage Relief Act of 1990; the establishment of a new system for determining grazing fees in the Western States and revision of the National Forest System rangeland management regulations to place greater emphasis on stewardship of the rangeland resource; finally, the regulations governing noncommercial group use and distribution of printed material on National Forest System lands will be revised.

Farmers Home Administration

Mission: The mission of the Farmers Home Administration (FmHA)/Rural Development Administration (RDA) involves the administration and delivery of a broad range of loan, grant, and technical assistance programs for the benefit of individual rural residents, communities, businesses, and other entities for farm, housing and rural development purposes. The provisions of FmHA/RDA programs, such as eligibility requirements, loan and grant uses, targeting requirements, and loan servicing benefits, tend to be specified in authorizing legislation; therefore, there is limited discretion in the promulgation of regulations. However, FmHA/RDA is actively reviewing its regulations for opportunities to reduce the paperwork burden on program participants, streamlining operations, and providing better controls to avoid waste, fraud and abuse.

Priority: The significant regulation appearing in this plan results from a comprehensive review of the single family housing program. Major changes in the rule are being proposed to improve and simplify the administration of the program. These changes include: providing more flexibility with regard to size and amenity restrictions for direct loans, use of income ratios instead of a family budget for determining repayment ability, changes to the interest credit calculation method to base any subsidy on a family's percentile of area median income, and changes in the method of selecting and processing applications. This latter initiative focuses on the NPR theme of better "customer service" by setting up a separate fund at the State level for priority applicants. Applications of families in hardship situations would be given expedited handling.

Food and Nutrition Service

Mission: The mission of the Food and Nutrition Service (FNS) is to administer domestic food assistance programs which provide access to a more nutritious diet for persons with low income and encourage better eating habits among all Americans, particularly the Nation's children.

Priorities: FNS has established four policy and programmatic goals for the coming year which are enabled and/or supported by the seven regulatory actions in this Plan and by other regulations under development. These goals include:

- Integrate greater emphasis on nutrition and nutrition education into each of the domestic food programs as part of the Administration's plan for promoting the health of all Americans, particularly the Nation's children, and as a corollary to the President's Health Care Reform initiative. The Plan contains a rule to implement nutrition objectives for school meals.
- Improve the efficiency and integrity of the food assistance programs. An example of program simplification and administrative improvement would be implementation of electronic benefit transfer.
- In decisions relating to procedural requirements for FNS programs, particularly regulations, opportunities will be explored to reduce burden on program operators and recipients, while maintaining program integrity and achieving program objectives.
- In support of the President's welfare reform initiative, FNS will seek means to increase the similarity and coordination among domestic food assistance programs, as well as among the means tested programs administered by other Departments and the States.

Agricultural Stabilization and Conservation Service

Mission: The mission of the Agricultural Stabilization and Conservation Service (ASCS) is prescribed by various statutes which require the agency to: operate commodity programs to support commodity prices and the incomes of producers in a manner that will provide producers flexibility to respond to changing market conditions, maintain adequate carry-over stocks of vital commodities, maintain an agricultural resource base and protect the environment through voluntary conservation programs, and to facilitate the orderly marketing and distribution of certain commodities through Commodity Credit Corporation operations. These goals are addressed through various means including loans, purchases, deficiency payments, conservation compliance, and production adjustment programs.

Priorities: The most significant ASCS regulations are those which implement crop and commodity programs. Such regulations are adjusted annually to reflect changes required by statutory formula and/or commodity market conditions. These recurring rulemaking actions will implement 1995-crop price and income support and production adjustment programs for wheat, feed grains, upland cotton, extra-long staple cotton, and rice. Other crop regulations will include a price support program for oilseeds, a poundage quota and price support program for peanuts, and a marketing quota and price support program for tobacco. While these crop programs have significant economic impact, they are driven by statute and very specific program level setting formulae. Therefore, they are noted here to acknowledge their significance in the overall USDA regulatory plan, but are not further listed in the body of the plan which appears below.

USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

1. ANIMAL WELFARE—STANDARDS FOR MARINE MAMMALS

Legal Authority:

7 USC 2131 to 2159

CFR Citation:

9 CFR 3

Legal Deadline:

None

Abstract:

The Department regulates the treatment of certain marine mammals under the Animal Welfare Act. The present standards for treatment of these animals have been in effect for over 9 years. During this time, advances have been made and new information has been developed with regard to the housing and care of marine mammals. The Department has given notice of its review of the present standards to determine what revisions or additions might be necessary, and has requested comments on appropriate specific standards for treatment of marine mammals. The Department is conducting negotiated rulemaking and developing proposed changes to the regulations.

Statement of Need:

In accordance with the Secretary's authority under the Animal Welfare Act (the Act), the Animal and Plant Health Inspection Service will revise the animal welfare regulations to establish updated standards for the care of marine mammals. The Department will use negotiated rulemaking. Areas to be discussed during the rulemaking process will include but not be limited to, space requirements, transportation, "swim-with-the-dolphins programs," noise levels, water temperatures and quality, recordkeeping, feeding, and solitary confinement of marine mammals. It will be conducted in consultation with the Department of Commerce. The Act authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Under the Act, the Department established standards in 1979 for marine mammals used for research or exhibition purposes. These standards were amended in 1984. During the 10 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the housing and care of marine mammals.

Alternatives:

Options for standards will be discussed during the rulemaking process. This approach will enable affected parties and other interest groups to reach a consensus on updated standards prior to publication of a proposed rule. An alternative of making no changes to the regulations would not take advantage of advances made and new information available regarding the care of marine mammals.

Anticipated Costs and Benefits:

The costs of the proposed regulatory changes will be dependent on which alternatives are determined during the rulemaking process to be most appropriate. The benefits, consisting primarily of the achievement of a socially optimal level of animal welfare, will not be easily measurable.

Risks:

The animal welfare regulations are not intended to reduce "risk" in the usual sense. The primary risk involved is that, in the absence of regulatory requirements, entities might not achieve a socially optimal level of animal welfare in their activities.

Timetable:

Action	Date	FR Cite
ANPRM	07/23/93	58 FR 39458
ANPRM Comment Period End	10/06/93	
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Flexibility Analysis

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RIN: 0579–AA59

USDA—APHIS

2. INTRODUCTION OF NONINDIGENOUS ORGANISMS

Legal Authority:

7 USC 150aa to 150jj; 7 USC 151 to 167; 7 USC 1622n; 31 USC 9701

CFR Citation:

7 CFR 335

Legal Deadline:

None

Abstract:

The scope of the Federal plant pest regulation in 7 CFR 330.200 and the noxious weed regulations in 7 CFR 360 is limited to the importation and interstate movement of recognized plant pests and noxious weeds; the importation and interstate movement of nonindigenous organisms not known to present a plant-pest risk, as well as the release of such organisms into the environment, are not addressed. We believe that APHIS must supplement its current regulations to prevent or minimize the potential problems presented by the introduction (importation, interstate movement, and the release into the environment) of nonindigenous organisms whose plant-pest status is unknown. The proposed regulations would allow APHIS to examine nonindigenous organisms proposed for introduction, evaluate their plant-pest risk, and, if necessary, assign conditions to their introduction in order to prevent plant-pest dissemination.

Statement of Need:

The Animal and Plant Health Inspection Service (APHIS) is developing comprehensive regulations to govern the introduction (importation, interstate movement, and release into the environment) of certain nonindigeno is organisms.

The scope of the plant pest regulations in 7 CFR 330.200 is limited to the movement of known plant pests; the

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movement of nonindigenous organisms not known to present a plant pest risk, as well as the release of such organisms into the environment, are not addressed. A recent report on nonindigenous species that was prepared by the U.S. Congress's Office of Technology Assessment (OTA), "Harmful Non-Indigenous Species in the United States" (OTA-F-565, Washington, DC; U.S. Government Printing Office, September 1993) (referred to below as the OTA report), recommends that APHIS more closely examine any proposed introduction (importation, interstate movement, or release into the environment) into the United States of a nonindigenous organism.

As U.S. Agriculture's "first line of defense," APHIS will supplement its current regulations to prevent or minimize the potential problems presented by the introduction of nonindigenous organisms whose plant pest status is unknown. Therefore, we are developing comprehensive regulations to govern the introduction of nonindigenous organisms that we have reason to believe may be plant pests or may result in the introduction or dissemination of plant pests.

Alternatives:

A "no-action" alternative would continue the current process of reviewing all requests for permits to introduce organisms under the plant pest regulations in 7 CFR 330.200. This alternative would continue to ignore the movement of nonindigenous organisms whose plant pest status is unknown or the release of such organisms into the environment.

We are also considering revisions to the plant pest regulations in 7 CFR 330.200 to make them better suited to reviewing requests to introduce nonindigenous organisms. Under this alternative, we may need to retain specific regulations for the movement of known plant pests and add specific provisions for the release into the environment of organisms whose plant pest status is unknown. We will ensure that the regulations do not result in confusion on the part of permit applicants.

Anticipated Costs and Benefits:

The applicants for permits to introduce nonindigenous organisms have been researchers, scientists, private businesses, and agricultural producers. Approximately two-thirds of all applicants have been nonprofit entities. Most of the applicants are considered to be small entities.

We anticipate that the costs of preparing a permit application for the majority of the nonindigenous organisms covered by the proposed regulations would be negligible because most, if not all, of the data that we would require would already be known to the applicant. We anticipate developing regulations that will enable all permit applications to realize time and cost savings as a result of the clearly defined data requirements and a streamlined review process.

Risks:

The risks associated with the introduction of nonindigenous organisms were discussed in the OTA report mentioned above, which cited losses in the billions of dollars that can be attributed to the negative effects of certain nonindigenous organisms. Despite APHIS's enforcement of existing regulations that govern known plant pests, some nonindigenous organisms that have been deliberately introduced into the United States may have become plant pests following their introduction. APHIS hopes to mitigate such risks by adopting new regulations designed to allow the thorough screening of nonindigenous organisms proposed for entry into the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Federal

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USDA—Farmers Home Administration (FmHA)

PROPOSED RULE STAGE

3. SECTION 502 RURAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS

Legal Authority:

42 USC 1480; 7 CFR 2.23; 7 CFR 2.70; 7 USC 1989; 7 USC 301

CFR Citation:

7 CFR 1944 subpart A; 7 CFR 1910 subpart A; 7 CFR 1965 subpart C; 7 CFR 1951 subpart G; 7 CFR 1944 subpart J; 7 CFR 1924 subpart C; 7 CFR 1930 subpart C; 7 CFR 1941 subpart A; 7 CFR 1944 subpart D; 7 CFR 1944 subpart N; 7 CFR 1951 subpart M; 7 CFR 1951 subpart S; 7 CFR 1955 subpart B

Legal Deadline:

None

Abstract:

This rule will make major revisions on single family housing loan making regulation including elimination of housing restrictions and new concepts of modest housing, revised method of granting interest credit, use of ratios for determining repayment ability, changes in application processing and changes in maximum loan limits.

Statement of Need:

Proposed changes to this regulation are necessary to make the instruction more customer friendly, to conform the direct Rural Housing program with the Guaranteed Rural Housing Loan program and industry standards, and to reduce the Agency's subsidy budget authority. The existing interest credit formula provides no incentive for the applicant to purchase less costly housing since loan payments are virtually the same, regardless of the loan amount. Likewise, the current formula virtually provides availability of interest credit assistance for the life of the loan and existing FmHA borrowers are often reluctant to graduate to other credit while their note payment is reduced due to interest credit subsidy. The four primary initiatives contained in this proposal are: (1) Size and Amenity Restrictions Lessened. Proposal is to use 85 percent of the dollar limitations on FmHA Guaranteed Rural Housing Loans ("HUD caps") for the direct loan program, rather than a laundry list of allowed and disallowed amenities when determining "modest" housing in an area and the maximum amount of the loan. Exceptions are incorporated to allow for higher "caps" where needed. (2) Use of Income Ratios Instead of a Family Budget for Determining Repayment Ability. This approach is more in line with industry standards and is in conformance with the Guaranteed Rural Housing Program. Exceptions are incorporated for the use of a budget under certain circumstances. (3) Changes to Interest Credit Calculation Method: Subsidy to be Based on Family's Percentile of Area Median Income. An interest credit table would be structured to tie the rate of interest paid by the borrower to the relationship of the borrower's income to median income. The interest rate for very-low-income borrowers would not exceed 1 percent. As household income rises, the borrower's interest rate would also rise until eventually the full note rate is reached. Existing FmHA borrowers will also receive assistance under the new system, but increases to the monthly principal and interest payment will be limited to 10 percent per year until the full note rate is reached. A study conducted by the Agency indicates that 94 percent of existing FmHA borrowers will continue to qualify for interest credit under the proposed method. Exceptions have been incorporated to provide additional subsidy in high-cost areas when it is difficult to obtain less costly housing. (4) Changes to Method of Selecting and Processing Applications--Separate Fund for Priority Applications. A separate fund would be maintained by the State Director for priority applications, including mutual Self-Help housing, servicing loans, refinancing non-FmHA debts, and hardship applications from persons living in deficient housing for more than 6 months. The proposal will allow refinancing of non-FmHA debts when the debt is not delinquent, but it is clear the applicant cannot continue to maintain payments for reasons beyond their control; refinancing non-FmHA debts on a building site without a dwelling; and provide financing for military personnel on active duty. Application processing has been streamlined and improved; eligible applicants will be issued a Certificate of Eligibility that is good for 90 days; a maximum of two extensions may be granted if the applicant is actively pursuing locating a home. Time limits have been incorporated regarding completion of the real estate appraisal and approval of the loan. Interest will be collected from the day of settlement to the end of the month; payments will be due on the first of the month.

Alternatives:

Proposed changes to this rule were determined by comparing alternatives used by conventional lenders when conducting similar loan programs and by consulting with interested groups such as the National Association of County Supervisor and County Office Assistants and Clerks, the Housing Assistance Council, and the National Association of Home Builders. The Agency also published an advance notice of proposed rulemaking in the **Federal Register** soliciting comments on the four primary initiatives; comments received were considered and incorporated wherever possible. A study was conducted which indicates that approximately 94 percent of existing borrowers would continue to qualify for interest credit under the proposed method. We will again solicit comments and recommendations when the proposed rule is published in the **Federal Register**.

Anticipated Costs and Benefits:

We do not anticipate costs connected with proposed changes. Benefits include a program which will be more borrower friendly and more in line with conventional lending programs, reduced work load in field offices, and a reduction of interest credit subsidy by approximately 2.5 points, which should reduce the required budget authority by approximately $44,500,000. In addition, the revised method of providing interest credit assistance should encourage applicants to shop for less costly housing, in line with their repayment ability, and will provide an incentive for FmHA borrowers to graduate to other credit.

Risks:

There are no known risks.

Timetable:

Action	Date	FR Cite
ANPRM	04/28/92	57 FR 17858
ANPRM Comment Period End	05/28/92	57 FR 17858
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Undetermined

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USDA—Food and Nutrition Service (FNS)

PROPOSED RULE STAGE

4. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): FOOD DELIVERY SYSTEMS

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

None

Abstract:

A proposed rule addressing WIC Food Delivery Systems was published on December 28, 1990. The Department provided a 120-day comment period for the proposed rule, which closed on April 29, 1991. Nearly 1,100 comments were received from a wide variety of sources. Despite the degree of preliminary input to the December 28, 1990, proposed rule, many of the commenters responding during the formal comment period suggested that the Department's food delivery regulations needed to be proposed again, rather than proceeding directly to a final rule. In addition, several members of Congress requested that the rule be re-proposed in light of its impact on State agency food delivery systems and requirements. This second rule will address all of the provisions contained in the previous rulemaking, but will contain significant modifications to some of the proposed provisions, as well as clarifications to several provisions, which may not have been clearly understood in the earlier rule. (88-512)

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Statement of Need:

Or. December 28, 1990, the Department published a proposed rule designed primarily to strengthen State agency operations in vendor management and related food delivery areas for the WIC Program. This proposal was developed with input over several years' time from State agency experts in food delivery, and with the full support of and encouragement from Congress and the Department's Office of Inspector General (OIG). The Department provided a 120-day comment period for the proposed rule, which closed on April 28, 1991. During this comment period, nearly 1,100 comments were received from State and local WIC agencies, vendors, and associated groups, public interest groups, members of Congress, members of the public, and WIC participants.

Despite the degree of preliminary input to the December 28, 1990, proposed rule, many of the commenters suggested that the Department's food delivery regulations needed to be proposed again, rather than proceeding directly to a final rule. In addition, several members of Congress requested that the rule be reproposed in light of its impact on Stage agency food delivery systems.

The Department has therefore drafted a second proposed rule addressing WIC food delivery systems and requirements. This second rule addresses all of the provisions contained in the previous rulemaking, and contains significant modifications to some of the proposed revisions, as well as clarifications to a number of provisions which may not have been clearly understood in the earlier rule. A 90-day public comment period will be provided with this proposed rule. The Department intends to publish a final rule, based on all of the comments received, by the middle of fiscal year 1995.

Although this rule does not have a direct impact on reducing risks to public health, safety, or the environment, it will significantly improve the operation and accountability of the WIC Program nationwide.

Alternatives:

Given the intensive input that has been gathered for the development of this rule since it was recommended by the General Accounting Office in 1986, and the comments that were received pertaining to the first proposed version of the rule in December 1990, the Department has determined that there are no viable alternatives to the provisions included in this reproposal. The alternative of proceeding directly to promulgation of a final rule based on the 1990 proposal has been rejected by Congress.

Anticipated Costs and Benefits:

The costs of this action include costs due to vendor overcharges and costs associated with the proposal. The estimated costs for implementation of the proposal include a shift of not more than $2.0 million in WIC Program Nutrition Services and Administration (NSA) funds within the 84 State agencies, partially from reduced requirements for management evaluations of local agencies and reduced costs due to elimination of representative on-site monitoring. They also include $0.5 million in additional costs to vendors to meet the proposed minimum training and authorization requirements. It should be noted that all the vendors are currently required to participate in some type of training and complete an application form for program authorization. As such, the estimated $0.5 million in additional costs represents those instances where current training and authorization requirements are below the level established in the proposal. In these instances, vendors may incur costs in attending more frequent training sessions or may be required to complete an application form at more frequent intervals. The estimated cost does not represent charges to the vendor for training or authorization. Rather, the cost represents the estimated cost of the vendor's time to participate in the training session and to complete the application form.

The gross benefit results from a significant reduction in vendor overcharges. A significant net benefit of $37 million is expected, as vendor overcharges are estimated at $39.5 million and costs associated with the proposal are a maximum of $2.5 million.

Risks:

This rule is intended to reduce and minimize the risk of vendor fraud and abuse of the WIC program.

Timetable:

Action	Date	FR Cite
NPRM	12/28/90	55 FR 53446
NPRM Comment Period End	04/29/91	
NPRM	12/00/94	
NPRM Comment Period End	04/00/95	
Final Action	08/00/95	
Final Action Effective	10/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal

Sectors Affected:

None

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RIN: 0584–AA80

USDA—FNS

5. FOOD STAMP PROGRAM: CERTIFICATION PROVISIONS OF THE MICKEY LELAND CHILDHOOD HUNGER RELIEF ACT

Legal Authority:

PL 103-66 Mickey Leland Childhood Hunger Relief Act

CFR Citation:

7 CFR 271.2; 7 CFR 273.1; 7 CFR 273.2; 7 CFR 273.7; 7 CFR 273.8; 7 CFR 273.9; 7 CFR 273.10; 7 CFR 273.12; 7 CFR 273.21

Legal Deadline:

Final, Statutory, September 1, 1994.

All provisions must be implemented on 09/01/94.

Abstract:

The proposed rule will (1) exclude certain general assistance vendor payments from income; (2) increase the amount of the dependent care deduction; (3) require State agencies to establish a statewide limit for dependent care reimbursements paid to participants in the Food Stamp Employment & Training Program; (4) increase the fair market value on vehicles for determining a household's resource limit; (5) exclude the value of vehicles from resources that are used by the household to transport fuel or water; (6) simplify the "household" definition; (7) establish eligibility for children who live with their food-stamp-eligible parents in a drug or alcohol rehabilitation center; (8) provide an income exclusion for

earnings of elementary and secondary school students under 22; and (9) require proration of benefits following a break of more than 30 days in certification.

Statement of Need:

Over 85 percent of the benefits provided by Public Law 103-66 would be to families with children, primarily through reforming the Federal Food Stamp Program. These reforms include: making the Food Stamp Program's treatment of dependent care expenses consistent with those in the AFDC JOBS program while increasing Federal support for E&T training activities for recipients; simplifying the definition of "household" to remove the burden imposed on relatives who "double up" or who take in children who might otherwise be placed in foster care; permits children living with their parents in residential drug or alcohol treatment centers to be eligible for food stamps just like their parents; permits the fair market value of vehicles to be indexed to the CPI for new cars by fiscal year 1996; and aids families living in isolated, rural areas by exempting vehicles they use to carry heating fuel or water.

This proposed rule would implement nine provisions from the Mickey Leland Childhood Hunger Relief Act, Pub. L. 103-66. These provisions are:

A. General Assistance Vendor Payments. Section 13915 of Public Law 103-66 amends section 5(k) of the Food Stamp Act to provide that only those general assistance vendor payments for housing assistance (exclusive of emergency or utility expenses) are counted.

B. Dependent Care Deduction. Section 13922 of Public Law 103-66 amends section 5(e) of the Food Stamp Act to change the dependent care deduction from the current $160 maximum deduction to $200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent.

C. Dependent Care Reimbursements. Section 13922 also amends Section 6(d) of the Food Stamp Act by eliminating the dollar cap on dependent care reimbursements to participants in the Food Stamp Employment and Training (E&T) Program. The law also instructs State agencies to establish a statewide limit on the amount of dependent care costs the State will reimburse.

D. Vehicles Needed to Seek and Continue Employment and for Household Transportation. Section 13923 of Public Law 103-66 amends Section 5(g)(2) of the Food Stamp Act by raising the fair market value exclusion limit for vehicles in increments from its current amount of $4,500. Beginning September 1, 1994, the exclusion will be raised to $4,550 and be effective through September 30, 1995. Beginning October 1, 1995, the exclusion will be raised to $4,600 and be effective through September 30, 1996. On October 1, 1996, and on every October 1 thereafter, the fair market value exclusion limit of vehicles shall be adjusted annually, using a base of $5,000, to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers for new cars as published by the Bureau of Labor Statistics. The change shall be for the 12-month period ending the preceding June 30th, and rounded to the nearest $50 until September 30, 1996.

E. Vehicles Necessary to Carry Fuel or Water. Section 13924 of Public Law 103-66 amends Section 5(g) of the Food Stamp Act to exclude from financial resources the value of a vehicle that is used by a household to transport fuel for heating when that fuel or water is the primary source for the household.

F. Simplifying the Household Definition for Households with Children and Others. Section 13931 amends Section 3(i) of the Food Stamp Act by revising the current definition of "household" by requiring that parents and their children 21 years of age or younger (children that are not themselves parents living with their children or married living with their spouses) who live together; children under 18 years of age who live with and are under the parental control of a person other than their parent (with the exception of foster children), together with that person; and spouses who live together would continue to be treated as a group of individuals who customarily purchase and prepare meals together even if they do not do so.

G. Eligibility of Children of Parents Participating in Drug or Alcohol Abuse Treatment Programs. Section 13932 of Public Law 103-66 amends Section 3 of the Food Stamp Act to provide Food Stamp eligibility to children living with their eligible parents in a drug or alcohol rehabilitation center.

H. Student Earnings. Sections 13911 of Public Law 103-66 amends section 5(d) of the Food Stamp Act to exclude the earnings of elementary and secondary school students under age 22.

I. Proration of Benefits. Section 13916 of Public Law 103-66 amends section 8(c) of the Food Stamp Act to require proration only if a household has a break of more than 30 days in certification.

Summary of the Legal Basis:

All provisions of this proposed rule are mandated by Public Law 103-66 and must be implemented no earlier than September 1, 1994. Implementation of Section 13921 (Child Support Payments) must be completed no later than October 1, 1995.

Alternatives:

Because of the magnitude of changes mandated by Public Law 103-66, the Food and Nutrition Service (FNS) held a public hearing on January 20, 1994, to give advocates, public interest groups, State agencies, and the general public the opportunity to comment on these provisions. Based on the public hearing, the Department is proposing the following alternatives for certain provisions as described below.

Section 13921, Child Support Payments to Nonhousehold Members.

1. Definition of legal obligation. A legal obligation to pay child support must be substantiated by a legal document (e.g., court order) that would be upheld in a court of law. Any other written agreements, such as a written agreement between the child(ren)'s parents or a written agreement developed by lawyers representing each party, would not be legally binding and could not be upheld in court.

2. Required verification. The Department is proposing regulations requiring that household members verify their legal obligation to pay child support and that the household members verify the actual paid amount of child support payments. The Department is proposing this because current data indicate that close to one-half of legally obligated child support payments are not paid in full.

3. Reporting requirements. The legislative history provides the Department with discretion in establishing reporting requirements that will lessen the reporting burdens for the State agencies and food stamp households. State agencies cannot be cited for quality control errors if the amount of the child support deduction at certification was reasonable. The Department intends to propose regulations that are consistent with the legislative history.

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Section 13922, Improving Access to Employment and Training Activities--Dependent Care Deduction. Minimizing administrative burdens on State agencies: The Department is proposing to allow State agencies to delay reducing a household's dependent care deduction whenever a child in the household reaches his/her second birthday during the certification period. The dependent care deduction will be reduced at the next regularly scheduled recertification, which is a more efficient use of staff time and resources.

Section 13931, Simplifying the Household Definition for Households with Children and Others--Major issues:

1. Definition of parental control for minors living with an adult who is not their parent. In previous policy memos, the Department has defined "parental control" as referring to minors who are financially or otherwise dependent on an adult household member who is not their parent. The Department is including this definition of "parental control" in the rule.

2. Minors with children and married minors who are living with an adult who is not their parent. The Department is defining "minor" as a child under 18 years of age. Section 13931 does not address the situation where a minor lives with his/her children and an adult or where a minor is married and both the minor and his/her spouse live with an adult.

Participants at the January 20, 1994, public hearing felt Public Law 103-66 overlooked the fact that minors do have children and that both they and their children may live with an adult who is not the parent of the minor. In many instances, minors with children may have their own income, such as their own AFDC grant. The consensus of the public hearing participants was that a minor with children is not under parental control in such a situation. The issue of married minors was also raised during the hearing. The consensus of public hearing participants was that married minors are not under parental control.

In order to clarify such situations, the Department is proposing that minors who are married and living with their spouse are not under parental control and must be considered a separate household, if the minor and spouse purchase food and prepare meals separately from the adult household member. Minors who are living with their own children are considered not under parental control and must be considered separate households if the minor and his/her children are purchasing food and preparing meals separately.

The Department feels the rule furthers the Administration's goal of keeping minor children under the supervision of an adult. The rule as written would enable a minor living with his/her children or a married minor living with his/her spouse to qualify for food stamps according to their own, separate circumstances. This would lessen the need for the minor to establish his/her own separate residence away from the supervision of the adult household member because the income and resources of the adult's household would not affect the eligibility or benefits of the minor's household.

Moreover, this rule would provide minors living with an adult other than a parent to be considered a separate household under the same circumstances as children living with their parents.

Anticipated Costs and Benefits:

It is estimated that the provisions of this rule will cost $643 million between fiscal years 1994 and 1998. The provision simplifying the household definition for households with children and others will cost approximately $320 million. The provision that increases the fair market value of vehicles will cost approximately $142 million. The provisions which increase the dependent care deduction and which make children of parents participating in drug or alcohol treatment programs eligible to participate in the Food Stamp Program will each cost $4 million. The two provisions, which increase dependent care reimbursements for participants in the E&T program and which exclude from resource consideration vehicles which are needed to carry fuel and water, will both cost less than $1 million. The provision excluding certain general assistance vendor payments will cost $20 million. The provision excluding student earnings will cost $45 million, and the proration provision will cost $107 million. Two provisions, dependent care deduction and E&T dependent care reimbursements, will be coordinated with HHS.

Risks:

Implementation of this proposed rule will reduce the risk to public health by making it easier for needy families with children to qualify for food stamps. Food stamps help families stretch their food dollars so that they can buy a larger amount of nutritious food without expending their own personal funds. Better nutrition is cost-effective because it helps individuals remain healthy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	09/00/95	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

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USDA—FNS

6. • FOOD STAMP PROGRAM RECIPIENT CLAIMS ESTABLISHMENT AND RECOVERY OF OVERISSUANCES

Legal Authority:

7 USC 2011 to 2032

CFR Citation:

7 CFR 273

Legal Deadline:

None

Abstract:

This rule would improve the establishment and collection of recipient claims in the Food Stamp Program. The last significant revision to these regulations was in 1983. Subsequent activities, such as technological advances and general debt management regulations, have rendered many portions of the current rule obsolete. In addition, the current rule has been found to place unnecessary burdens on State agencies. State agencies are responsible for establishing and collecting recipient claims. (94-005)

Statement of Need:

This rule is necessary to improve the establishment and collection of recipient claims. The last significant revision to these regulations was in 1983. Subsequent activities, such as technological advances and general debt management regulations, have rendered many portions of the current rule obsolete. In addition, the current rule has been found to place unnecessary burdens on State agencies. State agencies are responsible for establishing and collecting recipient claims. This rule will address two dimensions of the overissuance problem: establishing claims on excess allowances, and recovering overages where possible. Data from the food stamp quality control system for 1993, the most recent year available, show that overissuances to recipients totaled over $1.8 billion, 8.3 percent of the $22.0 billion in total food stamp issuances that year. These errors were concentrated in just 18 percent of food stamp households, which received an average of almost 50 percent more than they should have. Claims against recipients are a direct means to recover overissuances and, to the extent that recipients know that recovery of overissuances will be sought, represent a deterrent to households to quietly accept the extra food benefits.

Alternatives:

The alternative is not to revise the current rule governing this aspect of the Program. This is not plausible. The current rule is not adequate to facilitate effective and efficient debt management. The inability of State agencies to establish and collect claims has continuously been cited as a deficiency by the Department's Office of Inspector General.

Anticipated Costs and Benefits:

Nationwide, as of October 1, 1993, there was over $800 million in uncollected recipient claims. Inspector General reports have also noted that, in addition to large accounts receivable for established, uncollected claims, there are backlogs of hundreds of millions of claims that have not yet been established. These unestablished claims represent the most current, and typically the most collectable losses to the program. Updated regulations which incorporate recent debt management rules and technological advances, as well as practical suggestions and feedback received from State agencies, should improve the establishment and collection of recipient claims in the Food Stamp Program. In addition, efforts will be made to increase the degree of conformity with claims related issues and procedures currently used in other social programs including the Department of Health and Human Service's Aid to Families with Dependent Children Program.

Risks:

The tolerance of Program abuse or, even the perception of such, undermines the fundamental mission of the Food Stamp Program. The efficient and effective establishment and collection of recipient claims; which this rulemaking addresses, is essential in ensuring that this does not occur.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	08/00/95	
Final Action Effective	11/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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USDA—FNS

7. • COLLECTING FOOD STAMP RECIPIENT CLAIMS FROM FEDERAL INCOME TAX REFUNDS AND FEDERAL SALARIES

Legal Authority:

7 USC 2011 to 2032; 31 USC 3720A; 5 USC 5514; PL 103-66

CFR Citation:

7 CFR 272.2; 7 CFR 273.18

Legal Deadline:

None

Abstract:

This rulemaking will implement a collection method for amounts of food stamp benefits issued to households in excess of amounts they were were entitled to receive. The rule will specify requirements for State agency operation of the Federal income tax refund and Federal salary offset programs. The primary areas of the rulemaking will be the criteria for debts which may be submitted for the two offset programs, the requirements for due process notification to debtors and debtor appeal rights.

Statement of Need:

This action is needed to improve the collection of claims for overissued food stamp benefits due to inadvertent household errors and intentional Program violations. As of October 1, 1993, there was approximately $800 million of such claims uncollected.

The legal basis for the tax offset program is, first, the Deficit Reduction Act of 1984 which authorizes the Secretary of the Treasury to offset past-due and legally enforceable Federal debts from income tax refunds. The second legal basis, the Debt Collection Act of 1982, authorizes Federal agencies to deduct debts from an employee's pay when a Federal agency determines that such employee owes a debt to the Federal government.

This regulatory action will not impact public health, safety or the environment.

Alternatives:

The Internal Revenue Service (IRS) requires that debt records be submitted from the responsible Federal agency, and the IRS only distributes collections and reports to such agencies. The Department of Defense and the U.S. Postal Service maintain employment data of Federal employees and have similar requirements. State agencies maintain records on individual food stamp recipient claims. Consequently, there is no alternative to this rulemaking which will establish policy and procedures for State agency operations.

Anticipated Costs and Benefits:

Costs to the Federal Government on an ongoing annual basis we estimate at $1.1 million. At this point it is difficult to estimate the ongoing, annual collection which tax offset may accomplish. For one reason, State agencies are continuing to join the program with a consequent increase in collections resulting from that factor alone. For another reason, no State agency has been participating long enough for us to determine what a year-to-year collection rate might be. We have seen that about 25 percent of the dollar value of claims which State agencies determine meet the criteria for collection under tax offset are collected through a combination of offsets from tax refunds and voluntary payments in lieu of such collection. Based on this, collections may be in the range of $25 to $50 million annually

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Risks:

This rulemaking addresses the risk of leaving a significant debt to the Federal government uncollected. As mentioned above, this debt currently approaches $800 million. As discussed in relation to anticipated costs and benefits, we believe that between $25 million and $50 million of this debt could be collected on an annual basis, at least for the foreseeable future. The reduction of this debt should positively impact similar risks in the agency because of the reduction in the agency's overall debt.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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USDA—FNS

8. • FOOD STAMP PROGRAM: REVISIONS IN RETAIL FOOD STORE ELIGIBILITY CRITERIA AND IN ELIGIBILITY GUIDANCE AND PROGRAM AUTHORIZATION

Legal Authority:

PL 103-225; 7 USC 2012; 7 USC 2018

CFR Citation:

7 CFR 271; 7 CFR 278

Legal Deadline:

Final, Statutory, March 25, 1994.

Abstract:

This proposed rule sets forth changes required by provisions of the Food Stamp Program Improvements Act of 1994, Pub. L. 103-225, Title II, 108 Stat. 108-110 (1994). The purpose of this rule is to implement these statutory changes to the Food Stamp Act of 1977, as amended. It would revise the definition of "retail food store" to conform to the statutory changes to require that a firm must meet one of two new criteria to qualify for participation in the Food Stamp Program. One criterion focuses on the variety of staple foods for home preparation and consumption available on a continuous basis, including perishables. The second criterion requires that a firm's staple food sales exceed 50 percent of its total gross sales. This rule also addresses the requirement in Public Law 103-225 for new procedures for providing periodic notification of eligibility and for reauthorizing participating firms.

Statement of Need:

Public Law 103-225 amends the Food Stamp Act of 1977, to make changes in eligibility requirements for retail food stores to participate in the Food Stamp Program. Prior to enactment of these changes, a retail food store qualified to participate in the Food Stamp Program if more than 50 percent of its total eligible food sales were in staple foods. The new law changes that to 50 percent of its total gross sales in staple foods. It also provides another option for stores not meeting the new 50 percent rule. Those stores can now qualify if they offer for sale, on a continuous basis, a variety of food in each of four categories of staple foods. The staple food categories are defined as "(1) meat, poultry, or fish; (2) bread or cereals; (3) vegetables or fruits; or (4) dairy products." This statutory change in eligibility will require developing policy definitions for the terms "continuous basis," "variety," and "perishable."

Alternatives:

None. The new law also requires the Secretary to issue new rules providing for the periodic reauthorization of retail food stores and wholesale food concerns. This must include providing periodic notice of the definitions for "retail food stores," "staple foods," and "perishable foods."

Anticipated Costs and Benefits:

The legislation requires a report to Congress assessing the impact of these changes. This report has been requested to determine the impact of Public Law 103-225 on retail food stores. It is expected to be completed and presented to the House and Senate Agriculture Committees not later than 18 months after enactment (March 25, 1994), which means it would be completed by September, 1995.

The report must include data on the (1) number and types of stores newly authorized and (2) number and types of stores withdrawn (denied authorization/reauthorization) from the Food Stamp Program after implementation of the new law. The report must also include a description of the procedures used and the adequacy of those procedures to determine store eligibility to participate in the Food Stamp Program and to authorize and reauthorize stores to participate. Finally, the report must assess the adequacy of the guidance provided by the Secretary to retail food stores concerning the definitions of "retail food stores", "staple foods" and "perishables," and the eligibility criteria for stores to participate in the Food Stamp Program.

Risks:

The report to Congress must include an assessment of whether the change in the definition of "retail food store" has had an adverse effect on the integrity of the Food Stamp Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FNS

FINAL RULE STAGE

9. CHILD NUTRITION PROGRAMS: NUTRITION OBJECTIVES FOR SCHOOL MEALS

Legal Authority:

42 USC 1758

CFR Citation:

7 CFR 210; 7 CFR 220

Legal Deadline:

None

Abstract:

There is scientific consensus that diets high in fat and sodium lead to chronic diseases such as cancer, heart disease and stroke. Additionally, chronic disease often begins in childhood. The Dietary Guidelines for Americans, which is the Federal policy on what makes a healthful diet, recommends limiting daily intake of fat, saturated fat and sodium. However, the School Nutrition Dietary Assessment report shows that most school meals are not in compliance with the Dietary Guidelines. This proposal would revise the regulations governing the National School Lunch Program and School Breakfast Program to update references on meal requirements to incorporate the most recent nutrition information as contained in the Dietary Guidelines. This rule would also remove various paperwork burdens and would modify review requirements to ensure oversight of the proposed nutrition standards. (94-003)

Statement of Need:

This rule would update the current nutrition standards for the National School Lunch and School Breakfast Programs by incorporating the Dietary Guidelines for Americans. The Dietary Guidelines reflect medical and scientific consensus on proper nutrition as a vital element in disease prevention and long-term health promotion. Current standards for essential vitamins, minerals and calories would remain and be augmented with the quantified standards established in the Dietary Guidelines for fat and saturated fat. School meal planners would also be required to reduce sodium and cholesterol, increase dietary fiber and continue to serve a variety of foods. The rule would also adopt meal planning based on analysis of key nutrients (Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning) in lieu of the current meal pattern.

The School Nutrition Dietary Assessment Study showed that, while school lunches currently meet or exceed recommended amounts for vitamins, minerals, and calories, lunches fail to meet the limitations for fat and saturated fat established by the Dietary Guidelines. Sodium levels also were excessive. The Dietary Guidelines stress the importance of limiting fat, saturated fat, cholesterol and sodium, and increasing dietary fiber as critical factors in disease prevention and the promotion of long-term health. This regulation is part of an integrated, comprehensive plan for promoting the health of children and supports the President's Health Care Reform priorities in its emphasis on disease prevention through applying healthful dietary practices in Federal nutrition programs. In recognition of the importance of reinventing and streamlining Government programs, this rulemaking would also remove various paperwork burdens associated with the school meal programs and would modify the review requirements for the National School Lunch Program to ensure adequate oversight of the proposed updated nutrition standards.

Alternatives:

None. Reason for Selection of Proposed Alternative: The overriding purpose behind this rule is to serve more nutritious and healthful meals to school children while maintaining access to the meal programs for needy children and enhancing the flexibility of local schools to administer the programs. This rulemaking acknowledges the positive role school programs must play in establishing childhood eating patterns that influence lifelong habits. The Department also considered extensive oral testimony presented at four public hearings and meetings as well as written comments submitted in response to a notice published in the **Federal Register** on September 13, 1993.

Anticipated Costs and Benefits:

a. Costs: The average food cost of the sample Nutrient Standard Menu Planning (NSMP) menus developed for the assessment was $0.722, which is about the same as the average food cost of $0.72 for school meals prepared under the current meal pattern system. Two weeks of sample menus were developed for elementary and high school students using foods and recipes common to the National School Lunch Program (NSLP). Therefore, even though the costs of labor, equipment and administration were not specifically analyzed, the manner in which the sample menus were developed provides some confidence that nonfood costs of the NSMP sample menus should be similar to those already experienced in NSLP operation.

By definition, the average results reported mean that some school districts would be expected to experience food costs for the sample menus that vary considerably from those reported above. This is not different from the current situation because there is already a wide range of food costs due to factors such as economies of size, geographic variation in delivery and labor costs, and local market conditions.

b. Benefits: Menus can be developed under the NSMP system that meet nutrient targets at a food cost comparable to that of the current meal pattern planning system. The assessment indicates nutritional benefits from using the NSMP system. The NSMP menus include an increased use of fruits, vegetables and grains that is consistent with the Dietary Guidelines for Americans and the Food Guide Pyramid issued by USDA and the Department of Health and Human Services. The sample menus also averaged about 27 percent of food energy from fat and 8 percent of food energy from saturated fat, both of which meet the Dietary Guidelines for Americans goals of 30 and 10 percent of calories respectively. The goal of one-third of the Recommended Dietary Allowance (RDA) was met for 14 important nutrients, as was the goal for calories. The nutrition standards for NSMP also require analysis of cholesterol and sodium, although the Dietary Guidelines for Americans do not specify a quantitative limit and only recommend moderation in consumption. One-third of the average daily limit recommended by the National Research Council (NRC) was used as a standard for comparison purposes. The sodium content of the sample menus exceeded the NRC limit, but still represented a 30-40 percent reduction from the school meal average found in a recent national study. The same national study found that school meals already meet NRC cholesterol recommendations and the sample menus provided slightly less. The updated nutritional standards in the school nutrition programs from nutrient-based menu planning will result in improved eating practices for students that will continue into adulthood and should consequently result in long-term health benefits.

Risks:

This rulemaking is responding to an array of medical and scientific evidence linking improper diet with increased incidence of heart disease, strokes and certain cancers. We know with greater certainty that children who eat healthful, nutritious meals will grow up to be healthy adults. School meals must be updated to reflect this scientific and medical consensus. Additionally, school meals must ensure that children gain an understanding of the relationship between proper nutrition

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and long-term health and disease prevention.

Timetable:

Action	Date	FR Cite
NPRM	06/10/94	59 FR 30218
NPRM Comment Period End	09/08/94	59 FR 30218
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local

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USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

10. HAZARD ANALYSIS AND CRITICAL CONTROL POINTS SYSTEMS; PATHOGEN REDUCTION INTERVENTIONS; SANITATION; AND MICROBIOLOGICAL TESTING REQUIREMENTS

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 308; 9 CFR 310; 9 CFR 318; 9 CFR 320; 9 CFR 325; 9 CFR 326; 9 CFR 327; 9 CFR 381

Legal Deadline:

None

Abstract:

This proposed rule would require all meat and poultry establishments to develop and maintain a Hazard Analysis and Critical Control Point (HACCP) system. The Agency is also proposing certain pathogen reduction interventions in processing operations, which can subsequently be incorporated into industry HACCP systems. Interim targets for pathogen reduction would be established. Microbiological testing is being proposed as a means to evaluate the effectiveness of processing interventions and other process controls and to determine whether establishments are achieving pathogen reduction targets.

Statement of Need:

The mission of the Food Safety and Inspection Service (FSIS) is to ensure that meat and poultry products are safe, wholesome, and accurately labeled. The Agency's goals are to prevent adulteration and to reduce the presence of pathogens in meat and poultry products to the extent science and technology allows. To achieve greater food safety, particularly pathogen reduction, FSIS is proposing to mandate HACCP. In order to achieve near-term reduction in pathogens before HACCP is implemented, the Agency is also proposing certain pathogen reduction interventions in processing operations, which can subsequently be incorporated by meat and poultry establishments into a HACCP system. Interim targets for pathogen reduction would also be established. Microbiological testing is being proposed to evaluate the effectiveness of the interventions and other process controls, and to measure whether each establishment is meeting interim reduction targets.

Inspected meat and poultry establishments would adopt HACCP systems to accomplish and document that their processes are in control and producing safe, unadulterated products. The HACCP approach is a preventive system of process control that is widely recognized by scientific authorities such as the National Academy of Sciences (NAS) and international organizations such as the Codex Alimentarius, and used in the food industry to produce product in compliance with health and safety requirements.

The near-term pathogen reduction interventions would require establishments to develop and adhere to written sanitation standard operating procedures, to apply at least one approved antimicrobial treatment to all meat and poultry carcasses, and to assure expeditious chilling and temperature control of products. Additionally, the industry would begin microbiological testing, both to provide an ongoing measure of the general level of process control and to demonstrate the required reductions in the incidence of pathogens. FSIS will use the data to develop, on a national scale, information on pathogen incidence, subsequently using these baseline data to establish new pathogen reduction goals.

The pathogen reduction interventions and microbiological testing would be near-term interventions that could be implemented shortly after promulgation of a final rule. The development of HACCP systems by establishments would be phased in over a 4-year period after promulgation of a final rule.

Alternatives:

FSIS could continue using current regulations and procedures. NAS determined that the meat and poultry inspection programs as currently structured are effective in ensuring that healthy animals are slaughtered in clean and sanitary environments, and progress has been made in reducing the risks to public health from conditions that can be observed during inspections and can be evaluated during processing. However, NAS also recognized that the current system of organoleptic inspection cannot provide the kind of preventive controls that are needed to reduce foodborne pathogens. Regulations governing meat and poultry must be reformed to target the threat posed to public health by pathogens.

FSIS could institute HACCP as a voluntary system rather than a mandatory system. There is concern, however, that voluntary participation in HACCP may not provide sufficient assurance that all meat and poultry products have been produced under controls designed to minimize food safety hazards or that adequate procedures have been developed to reduce the presence of pathogens.

Anticipated Costs and Benefits:

FSIS is currently analyzing the cost to develop and institute the plans and requirements of this proposed rulemaking. FSIS believes that the proposal's two-tiered approach of short-term and long-term initiatives will reduce the burden of initiating HACCP on the industry by permitting a more gradual introduction of process control. Once HACCP is instituted, costs to maintain it would be significantly less.

The current annual costs to the economy from foodborne illness attributable to pathogens in meat and poultry products are approximately $2 billion. FSIS believes that if these regulations are required for each process in each establishment, the chance of producing adulterated product will be substantially reduced. Further, dramatic reductions in the incidence of pathogens will

significantly reduce foodborne illness. Finally, increased process controls that anticipate and prevent problems should decrease the incidence of product recalls by establishments.

Risks:

The current system of organoleptic inspection has been an effective way of controlling or reducing the risks of eating meat and poultry products by ensuring that only healthy animals are slaughtered, establishments are clean and sanitary, and the adverse conditions that can be observed and evaluated during inspection are remedied. The system has also been effective in reducing the presence of chemical residues in the food supply. However, the current system of organoleptic inspection does not address in a direct and scientific way the risks posed by microbiological pathogens that make people sick. This gap has created a public health problem that is reflected in the level of foodborne illness.

In order to address the risks associated with microbiological contamination of meat and poultry products, FSIS is proposing these regulations. A system of preventive controls with documentation and verification of successful operation should be a critical element of a modern risk-based food safety system. When implemented, this system will be a powerful tool for targeting and preventing significant foodborne hazards, such as those posed by microbiological contamination. As part of this effort, FSIS will establish interim targets for pathogen reduction. Microbiological testing will be conducted by meat and poultry establishments as a means to evaluate the effectiveness of processing controls and interventions as well as to measure each establishment's progress in meeting targets for pathogen reduction. Emphases on improving the control of microbiological hazards in raw products in conjunction with process control will dramatically reduce foodborne illness associated with meat and poultry products. Consumer confidence will be strengthened as a result of the actions taken to reduce the risk of foodborne illness associated with consuming meat and poultry products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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USDA—FSIS

11. • ENHANCED POULTRY INSPECTION

Legal Authority:

21 USC 451 et seq

CFR Citation:

9 CFR 381

Legal Deadline:

None

Abstract:

This proposed rule would amend the poultry products inspection regulations to implement a new system of post-mortem inspection for all poultry species. The proposed system contains several innovations to provide assurances that USDA-inspected and passed poultry products will be free of visible contamination and will require the use of approved antimicrobial treatments in all official establishments. The proposed system would replace all existing systems of poultry post-mortem inspection with a single system in which two inspectors would staff each poultry processing line and examine carcasses for disease and visible contamination. The proposed rule would not mandate a reduction in maximum linespeeds. The proposed system would place additional responsibility on official establishments to assure that the poultry they process is wholesome and free of disease.

Statement of Need:

Under the Poultry Products Inspection Act, as amended, the Secretary of Agriculture carries out an inspection program to ensure that poultry products are safe, not adulterated, and properly marked, labeled, and packaged. The Act authorizes the Secretary to promulgate and enforce such rules and regulations as are necessary to carry out this program.

The Secretary has recently taken steps to further assure the safety of poultry utilizing the latest scientific and technological advances and based on risk assessment principles. This proposal enhances current meat and poultry inspection programs by reducing the sources of microbial contamination. The Secretary's program to enhance poultry inspection includes a "zero tolerance" for fecal matter on raw product; the use of approved antimicrobial treatments; inspection procedure modifications; and 100 percent reinspection of poultry accidentally contaminated during the dressing operation.

This proposal would address all these objectives. FSIS proposes to amend the poultry products inspection regulations to implement a new system of post-mortem inspection for all poultry species and to require the use of approved antimicrobial treatments in all official establishments. All poultry processing lines would be staffed by two USDA inspectors to check for disease and visible contamination. Establishment personnel, positioned before the first USDA inspector, would present for inspection only poultry that are free of disease. Additionally, they would identify to this inspector all poultry requiring off-line trim, salvage or reprocessing. The inspector would stop the line for removal of poultry found to be affected by disease or other abnormality. Establishment trimmers, positioned between the viscera harvest and the final wash, would be responsible for assuring that only carcasses that are free of visible fecal contamination are presented to the second USDA inspector. This inspector, the on-line/off-line carcass inspector, would automatically reduce linespeeds upon any finding of visible fecal contamination. The inspector would also perform 100 percent reinspection of reprocessed poultry. Recordkeeping and verification procedures would be required so that establishment process control could be assured. Finished product standards would be revised to provide a zero tolerance for fecal contamination. Also under this proposal, establishments would be required to apply approved antimicrobial treatments to poultry before the carcass-chilling operation. This requirement could be met by administering, at the final wash, an approved chlorine compound in a concentration of 20 to 50 parts per million.

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Alternatives:

FSIS considered two alternatives to this proposal that would meet the same objectives as the proposal but involve conducting post-mortem inspection after the viscera harvest. The first alternative involves detaching the viscera from poultry carcasses prior to inspection and depositing the organs on a tray that would move under and parallel to the carcass. This arrangement would permit post-mortem inspection after the viscera harvest--a potential contamination point--and permit simultaneous inspection of viscera and carcass.

Under the second alternative, the current post-mortem inspection procedure would be retained, with an additional inspector positioned after the viscera harvest but before the final wash.

Anticipated Costs and Benefits:

The annual losses to the economy from foodborne illness in which poultry is the vehicle have been estimated at almost $1 billion. Reducing the microbial load on raw poultry could help reduce the incidence of illness and the associated costs to the economy.

The proposal outlined here would impose a one-time cost on the regulated industry of approximately $10 million, primarily for installing new inspection stands and for retraining some establishment personnel. Some establishments would also have to install enhanced lighting to meet regulatory requirements and/or install new equipment or make equipment modifications to provide for a chlorine rinse at the final wash.

The cost to industry for the first alternative would be approximately $140 million for new equipment. In addition, downtime for construction and installation could cost the industry as much as $780 million.

However, under the second alternative the Government could incur additional personnel costs of approximately $16 million per annum. Further, on multi-inspector processing lines, production rates may be reduced by 30 to 50 percent, because of limits on the number of birds per minute the final inspector could examine. The impact of the slowed linespeeds could reach $5.2 billion per year for chickens and turkeys.

Risks:

The proposed regulation will reduce the risks to consumers of foodborne disease from consuming poultry.

Timetable:

Action	Date	FR Cite
NPRM	07/13/94	59 FR 35639
NPRM Comment Period End	10/11/94	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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USDA—FSIS

FINAL RULE STAGE

12. PRIOR LABEL APPROVAL PROCESS

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

None

Abstract:

This rule will amend the Federal meat and poultry products inspection regulations to streamline the labeling process. Alternatives being considered would eliminate the need for manufacturers to submit final label applications, provided that sketch applications of such labels have been approved by the Agency, or expand the types of labels eligible for generic approval. This will result in significant savings for manufacturers, as well as FSIS, while continuing to provide consumers with useful and truthful information on product labels.

Statement of Need:

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them are wholesome, not adulterated, and properly labeled.

To assure that meat and poultry products are properly labeled, the Food Safety and Inspection Service (FSIS) conducts a prior labeling approval system under which all labels, with minor exceptions, must be approved by FSIS prior to their use on federally inspected meat and poultry products. To obtain labeling approval, meat and poultry establishments must submit draft labels to FSIS for approval, accompanied by an application for labeling approval. Minor changes to approved labels need not be submitted to FSIS, provided the labeling shows all information required by regulation. These modified labels are known as "generically approved" labels.

In the interest of streamlining the prior labeling approval system and contributing to greater efficiency in government services, FSIS published an advance notice of proposed rulemaking (ANPRM) on March 25, 1992 (57 FR 10300), seeking public comments on two options. Option 1 was to (1) expand the categories of generically approved labels and (2) allow draft (rather than final) labels to be submitted to FSIS. Option 2 was to eliminate the prior label approval system entirely, replacing it with a system already in use at the Food and Drug Administration. In that system, the Agency requires that label content standards be met; the preapproval of individual labels is not required.

On the basis of responses to the ANPRM, in a document published on November 23, 1993 (58 FR 62014), FSIS proposed to expand the categories of generically approved labeling, while continuing to consider procedures that could eventually eliminate prior labeling approval. FSIS is currently evaluating the alternatives to determine the most effective means of streamlining this process.

Alternatives:

The following alternatives are being considered: (1) Gradual elimination of the prior label approval process; (2) eliminating prior label approval immediately.

Anticipated Costs and Benefits:

The final rule could eliminate over $5 million in direct label application costs and alleviate the paperwork burden of establishments by eliminating the requirement that certain labels be submitted for FSIS approval.

Risks:

FSIS recognizes that many detailed labeling requirements are designed to stabilize markets, and that the promulgation of nutrition labeling requirements has replaced the need for many of the detailed provisions now covered under the prior label approval system. Commenters that favored option 1 over option 2 indicated less opposition to the objectives of option 2 than fear of the kind of instability that could ensue if the system were changed in a way that neither allowed adequate time for public comment nor for the industry to adjust its resources to a new process and to fully understand what its responsibilities would be under the new system. FSIS is currently evaluating the options considered to determine how best to streamline this process while ensuring accurate information is provided to the consumer.

Timetable:

Action	Date	FR Cite
ANPRM	03/25/92	57 FR 10300
ANPRM Comment Period End	04/24/92	
NPRM	11/23/93	58 FR 62014
NPRM Comment Period End	01/24/94	
Final Action	03/00/95	
Final Action Effective	04/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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USDA—Forest Service (FS)

PROPOSED RULE STAGE

13. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

Legal Authority:

16 USC 1600 et seq; 5 USC 301

CFR Citation:

36 CFR 219

Legal Deadline:

None

Abstract:

This rulemaking will revise the regulations governing forest land and resource management planning to reflect agency experience in preparing initial forest plans as required by the National Forest Management Act. The rule will articulate and clarify the forest planning and decisionmaking process, propose ways to streamline plan amendment and revision, and, in general, adjust and fine tune the rule and its requirements to make the planning process more realistic, meaningful, and efficient.

Statement of Need:

The planned regulatory action is to revise the existing rule at 36 CFR Part 219, Subpart A, in order to describe the agency's overall framework for National Forest System resource decisionmaking; to incorporate the principles of ecosystem management into resource decisionmaking and management; to establish requirements for implementation, monitoring, evaluation, amendment, and revision of forest plans; and to make various other changes intended to clarify and simplify the planning process.

The planned regulatory action is needed in order to streamline the planning process and update planning procedures and requirements in order to respond to the Critique of Land Management Planning, results of court decisions, and other information which has become available since the existing regulation was promulgated.

The legal basis for the planned regulatory action is the National Forest Management Act, which requires that regulations be promulgated. This action would revise the existing regulation which was finalized in 1982.

Alternatives:

The changes need could only be addressed through a regulatory change.

Anticipated Costs and Benefits:

Quantified information on the costs and benefits is not available. It is anticipated that streamlined planning procedures will result in a reduction in the cost of amending and revising forest plans relative to the same procedures under the existing regulation. In addition, benefits should include improved communication and coordination with the public and other agencies and governments, better understanding of the planning process, improved procedures for resource decisionmaking, and improved on-the-ground results as those decisions are implemented.

Risks:

The planned regulatory action addresses agency planning procedures and would not directly address specific risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
ANPRM	02/15/91	56 FR 6508
NPRM	11/00/94	
NPRM Comment Period End	03/00/95	
Final Action	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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USDA—FS

14. DISPOSAL OF NATIONAL FOREST TIMBER; CANCELLATION OF TIMBER SALE CONTRACTS

Legal Authority:

16 USC 551

CFR Citation:

36 CFR 223.40; 36 CFR 223.116

Legal Deadline:

None

Abstract:

Current regulations governing cancellation of National Forest timber sale contracts do not adequately protect the Government's financial interests in the event the Forest Service is forced to cancel contracts due to events beyond its control arising from compliance with environmental statutes. This rulemaking would remove an unworkable compensation of damages formula, remove limits applicable to length of contract term, and establish a termination for

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environmental protection clause in timber sale contracts, a standard in most Federal procurement contracts.

Statement of Need:

This proposed regulatory action would more realistically allocate the risk between the Government and private parties and protect the Government from unreasonable or excessive financial claims arising from the cancellation of timber sale contracts to comply with environmental laws and regulations. This typically occurs in cases where a species is listed as threatened or endangered under the Endangered Species Act, or the Department determines that a species is sensitive and likely to be listed in the future unless changes in land management are effected.

Alternatives:

The only alternative which was considered was to continue with the regulations that are currently found in 36 CFR 223.40 and 223.116, which do not limit the government's liability for cancellation of timber sale contracts to the out-of-pocket costs incurred by the sale operator. The current regulations also require the Government to pay the contract holder the difference between the cost of replacement timber and the price called for in the sales contract.

Anticipated Costs and Benefits:

It is not the Department's policy to prepare and offer timber sales which would jeopardize the survival of threatened or endangered wildlife species or which would cause a sensitive species to be listed. However, as more scientific data is gathered, it is possible that some timber sales which were consistent with planning guidance at the time they were offered must be canceled in the light of new knowledge. During the 1993-1996 period, this may happen with timber sales located in the habitat of the Mexican spotted owl, the northern goshawk, the marbled murrelet, and northern spotted owl. In these situations, the difference between the Government's liability under the current regulation and its liability calculated using the method in the proposed regulation is approximately $300 million.

Risks:

Under existing law, timber sales contracts which jeopardize the survival of species listed under the Endangered Species Act are canceled. Publication of this rule does not affect public safety or the environment. It reduces the cost to the Government of taking the actions already required to protect the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	11/00/94	
Final Action	04/00/95	
Final Action Effective	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

Undetermined

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USDA—FS

FINAL RULE STAGE

15. 36 CFR PART 222 SUBPART A: MANAGEMENT OF GRAZING USE WITHIN RANGELAND ECOSYSTEMS

Legal Authority:

7 USC 1011; 16 USC 472; 16 USC 551; 16 USC 572; 16 USC 580g; 16 USC 580h; 16 USC 5801; 16 USC 1600 et seq; 31 USC 9701; 43 USC 1901 to 1903; 43 USC 1751; 43 USC 1752

CFR Citation:

36 CFR 222; subpart A

Legal Deadline:

None

Abstract:

This rulemaking seeks to strengthen management of National Forest System rangelands by revising provisions for livestock grazing, improving program efficiency, and clarifying regulatory language. This rulemaking is being closely coordinated with the Bureau of Land Management. It will address a variety of subjects, including ecosystem management, livestock management prescriptions, grazing permit provisions to promote good stewardship, unauthorized use, grazing permit grant policy, minimum permit size, fees for processing charges, debarment, and national goals and objectives.

Statement of Need:

This proposed regulation is needed to assist the agency in providing for healthy, diverse, sustainable rangeland ecosystems on National Forest System lands. Forest Service personnel have reviewed existing regulations for rangeland management. This review has identified parts of the existing regulation that require revision and clarification, as well as parts that are outdated and need to be removed. In addition, several issues not covered in the current regulation were identified as needing to be addressed in the proposed rule. Therefore, this proposed rule revises the National Forest System rangeland management regulations to update direction for management of domestic livestock, to place greater emphasis on stewardship of the rangeland resource, to clarify the link between the livestock grazing permit and forest plans, and to clarify the range management planning and decisionmaking process. In addition, the Department of Agriculture proposes to improve administration of livestock grazing permits and to achieve greater consistency between the grazing management regulations of the Forest Service and the Bureau of Land Management, Department of the Interior. The proposed rule addresses the context in which plans and decisions regarding rangeland management are made to ensure compliance with the National Forest Management Act (16 U.S.C. 1601(i)) and the National Environmental Policy Act (NEPA).

Alternatives:

In developing the proposed grazing program changes, an extensive public participation process was conducted to help define the issues and alternatives. The Secretary of the Interior, with the cooperation of the Assistant Secretary of Agriculture for Natural Resources and Environment, held five Grazing Town Hall meetings in the West during the spring of 1993. Thousands attended. The agencies then conducted a scoping period between July 13 and October 20, 1993, and solicited comments on the advance notices of proposed rulemaking (ANPRMs). A total of about 12,600 letters were received on the ANPRMs published by the two Departments. These letters included over 56,000 separate comments on various aspects of grazing administration and fees. As a result of the comments, a decision was made to separate the grazing fee and grazing program management provisions into two separate rules. The two

Departments cooperated in the preparation of a draft environmental impact statement (EIS) which evaluates several possible fee systems as alternatives to the fee system recommended in the proposed rule. These alternatives are documented in the draft EIS which was released for public comment on May 13, 1994. After a 120-day comment period on the draft EIS, the Bureau of Land Management and the Forest Service will publish a final EIS that incorporates comments and refines the environmental analysis. After the EIS is published, the Secretaries of Agriculture and Interior will issue separate records of decision. The records of decision and rulemakings are separate because the agencies operate under different regulatory authorities.

Anticipated Costs and Benefits:

A major component of the proposed rule provides for a framework for rangeland planning and decisionmaking. An upcoming challenge to the agency is the renewal of approximately 4,500 Forest Service grazing permits in 1995. The reissuance of these permits should be consistent with the basic statutory requirements and the transitional procedures established in the proposed regulation. If this proposed rule is not published, the task of permit reissuance and compliance with statutory requirements must still be accomplished; this proposed rule provides an efficient way to reissue the permits. The estimated incremental cost of permit reissuance in fiscal year 1995 consistent with statutory requirements as implemented in the rule would be approximately $12.5 million. The incremental cost of full compliance with the intent of the proposed regulation is estimated to be $40.5 million per year for a 3-year period beginning in fiscal year 1996. The anticipated benefits of the regulatory action are healthy, diverse, sustainable rangeland ecosystems on National Forest System lands consistent with the direction, goals, and objectives of individual National Forest land management plans. Another benefit is continued grazing use by thousands of family-owned ranches which are dependent on rangelands managed by the Forest Service. Finally, the rule makes Forest Service and Bureau of Land Management grazing administration more consistent.

Risks:

There are no risks to human health or safety associated with this rule. Environmental risks are related to the ability of the agency to effectively manage National Forest System rangelands within current program objectives, environmental standards, and statutory requirements. Failure to promulgate the rule could seriously limit the agency's ability to provide healthy and sustainable rangeland ecosystems and could threaten the economic stability of dependent ranches.

Timetable:

Action	Date	FR Cite
NPRM	08/16/88	53 FR 30954
NPRM Comment Period End	10/17/88	53 FR 30954
ANPRM	08/13/93	58 FR 43202
ANPRM Comment Period End	10/20/93	58 FR 43202
NPRM - Second	04/28/94	59 FR 22074
NPRM Comment Period End	07/28/94	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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USDA—FS

16. LAND USES AND PROHIBITIONS

Legal Authority:

16 USC 472; 16 USC 551; 16 USC 1134; 16 USC 3210; 30 USC 185; 43 USC 1740; 43 USC 1761 to 1771

CFR Citation:

36 CFR 251; 36 CFR 261

Legal Deadline:

None

Abstract:

A Federal District Court has ruled that existing regulations discriminate against groups who wish to gather on National Forests to exercise their first amendment rights of assembly and free speech. The proposed rule will seek to remove ambiguities regarding these first-amendment rights.

The Agency is reviewing the rules of other Federal land managing agencies for possible approaches and is considering establishing separate rules for authorizing short-term, noncommercial uses of National Forests.

There will be no additional costs as a result of the proposed rule change. The benefit will be that the Forest Service will be able to adequately regulate large-group use of the National Forests in a manner that ensures protection of the public health and safety and National Forest resources.

Statement of Need:

Laws enacted by Congress charge the Secretary of Agriculture with the responsibility to regulate the occupancy and use of National Forest System lands. Regulations at 36 CFR part 251 set forth the rules by which occupancy and use of National Forest System lands may be authorized. These rules have been successfully challenged in court in recent years on the grounds that they unduly restrain the constitutional rights of assembly and expression for groups wishing to gather on National Forest System lands. The challenge is to devise rules that reconcile the Secretary's statutory obligation to protect the resources on National Forest System lands with the rights of citizens to gather on those lands.

Current regulations treat occupancy and use of National Forests for noncommercial group events or activities or noncommercial distribution of printed material essentially in the same manner as commercial and other business-like uses. To comply with court rulings, it is necessary to devise rules that distinguish the requirements for obtaining authorization of commercial uses from the requirements for obtaining authorization of noncommercial uses.

Alternatives:

The only alternative considered was to not rewrite the current rule.

Anticipated Costs and Benefits:

There are no significant or measurable social costs associated with this final rule. The rule will be primarily procedural and should not significantly change Federal costs associated with administering occupancy and use of National Forest System lands. There might be some marginal diminution in Federal revenues by making explicit that fees cannot be charged for noncommercial uses; however, most Forest Service units waive such fees

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now or charge the minimum fee. There should be some cost savings from reduced litigation if the rules are deemed to be constitutional. However, the uncertainty of legal challenge makes calculation of any potential cost savings speculative. There may also be some cost savings from increased efficiency in administration of these uses under a permit.

Risks:

The primary risks involved are the damage that has been done and that could be done to National Forest System lands by the approximately 1,800 large groups that gather annually on National Forest lands and the public health and safety problems associated with these gatherings. The rule would eliminate or replace these risks by allowing the agency to address these concerns through the permitting process.

Timetable:

Action	Date	FR Cite
NPRM	05/06/93	58 FR 26940
NPRM Comment Period End	08/04/93	
Final Action	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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USDA—FS

17. FEDERAL TIMBER EXPORT AND SUBSTITUTION RESTRICTIONS (COMPREHENSIVE REVISION)

Legal Authority:

16 USC 620 to 620j

CFR Citation:

36 CFR 223, subpart B; 36 CFR 223, subpart C; 36 CFR 223, subpart D; 36 CFR 223, subpart F; 36 CFR 261, subpart A

Legal Deadline:

Final, Statutory, May 20, 1991.

Abstract:

These rules are necessary to carry out the restrictions placed on the export of unprocessed timber from Federal lands and the restrictions on the direct and indirect purchasing of Federal logs to be used in substitution for the export of unprocessed timber originating from private lands. The rules are mandated by the Forest Resources Conservation and Shortage Relief Act of August 20, 1990. The Act calls for various rules to be issued. The agency anticipates several rulemakings to achieve implementation of the act. See Agency entry 0596-AB25 in Part IV of this issue of the **Federal Register** for related rulemaking.

Statement of Need:

As required by the Forest Resources Conservation and Shortage Relief Act of 1990, the Forest Service is revising and expanding current regulations governing export of Federal timber or the substitution of Federal timber for private timber which is imported. The Act made permanent a provision which had been routinely inserted into Interior Appropriations Acts requiring that, with certain exceptions, no unprocessed timber could be exported which had been harvested from national forests in the contiguous 48 states west of the 100th meridian. To ensure that the restriction had the intended effect of making more wood resources available for domestic manufacturing facilities, the statute also prohibited, with limited exceptions, the substitution of Federal timber for exported private timber. To do this, the Act restricts anyone from purchasing timber from Federal lands if that person had exported timber from private lands within the previous 24 months. A system of monitoring reports is required to be established to track unprocessed timber harvested from the National forests in order to ensure compliance.

Alternatives:

There is no reasonable alternative available to resolve the issue.

Anticipated Costs and Benefits:

Undetermined.

Risks:

If the final rule is not implemented, the Government will not be able to implement and enforce the limitations on export and substitution as required by 16 U.S.C. 620 to 620j.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/20/90	55 FR 48572
Interim Final Rule Effective	11/20/90	
Comprehensive		
NPRM 01/29/91 (56 FR 3354)		
NPRM Comment Period End 03/15/91		
Final Action 11/00/94		
Final Action Effective 12/00/94		
Limited Scope		
NPRM 01/29/91 (56 FR 3375)		
NPRM Comment Period End 02/05/91		
Final Action 12/00/94		
Final Action Effective 12/00/94		

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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RIN: 0596–AB22

USDA—FS

18. 36 CFR 222 RANGE MANAGEMENT, SUBPART C GRAZING FEES

Legal Authority:

16 USC 551; 31 USC 483A; 43 USC 1901; EO 12548; 7 USC 1011(c)

CFR Citation:

36 CFR 222.50; 36 CFR 222.51; 36 CFR 222.52

Legal Deadline:

None

Abstract:

The rulemaking seeks to address public concern about the level of fees charged for livestock grazing on National Forest System lands in the Western United States. The current rule will be revised to apply to national forests, land utilization projects, and national grasslands in: Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and in addition for grazing on the national grasslands in the states of Kansas, Oklahoma, and Texas. The same fee will be proposed by the Bureau of Land Management of the United States Department of Interior for public domain lands in the same general area.

Statement of Need:

The USDA Forest Service published in the **Federal Register** on April 28, 1994, proposed regulations to update the system used to determine the fees for grazing livestock on National Forest System lands in the Western States. The proposed changes in this regulation are needed to obtain a fair and reasonable return to the United States for the privilege of grazing privately owned livestock on publicly owned rangelands administered by the Forest Service. This proposed rule is in keeping with existing statutes that govern grazing fee policy, in particular the Independent Offices Appropriation Act (31 U.S.C. 9701) and the interpretation of this law in Office of Management and Budget Circular 25 which states "where federally owned resources or property are leased or sold, a fair market value should be obtained."

Alternatives:

In development of the proposed grazing program changes, an extensive public participation process was conducted to help define the issues and alternatives. The Secretary of the Interior, with the cooperation of the Assistant Secretary of Agriculture for Natural Resources and Environment, held five Grazing Town Hall meetings in the West during the spring of 1993. Thousands attended. The agencies then conducted a scoping period between July 13 and October 20, 1993 and solicited comments on the advance notice of proposed rulemaking (ANPRM). A total of about 12,600 letters were received on the ANPRM's published by the two Departments. These letters included over 56,000 separate comments on various aspects of grazing administrations and fees. As a result of the comments, a decision was made to separate the grazing fee and grazing program management provisions into two separate rules. The two Departments cooperated in the preparation of a draft environmental impact statement (EIS) which evaluates several possible fee systems as alternatives to the fee system recommended in the proposed rule. These alternatives are documented in the draft EIS which was released for public comment on May 13, 1994. After a 120-day comment period on the draft EIS, the Bureau of Land Management and the Forest Service will publish a final EIS that incorporates comments and refines the environmental analysis. After the EIS is published, the Secretaries of Agriculture and Interior will issue separate records of decision. The records of decision and rulemakings are separate because the agencies operate under different regulatory authorities.

Anticipated Costs and Benefits:

The Forest Service presently has a fee system in effect for charging permit holders for the use of public lands for the grazing of privately owned livestock. To the extent that the proposed rule revises the fee system, there are no anticipated additional costs to the agency for administering and collecting fees under the proposed rule. Anticipated benefits to the government include greater returns to the Federal treasury; increased funding for improvement of resource conditions and improved management of rangelands through the provisions of the range betterment fund as authorized in the Federal Land Policy and Management Act (43 U.S.C. 1751); and increased level of fee credits which would be available for conservation practices within the National Grasslands as provided in the proposed regulation for the improvement of rangeland conditions.

Risks:

There are no known effects or current risks to public health, safety or the environment associated with this proposed regulation.

Timetable:

Action	Date	FR Cite
ANPRM	08/13/93	58 FR 43202
ANPRM Comment Period End	10/20/93	
NPRM	04/28/94	59 FR 22094
NPRM Comment Period End	07/28/94	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Flexibility Analysis; EIS 10/00/94

Additional Information:

This action is closely coordinated with the Bureau of Land Management, United States Department of Interior. The Forest Service has joined the Bureau of Land Management's environmental impact statement as a cooperating agency for the purpose of establishing a new grazing fee. The fee will be implemented simultaneously.

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DEPARTMENT OF COMMERCE (DOC)

Regulatory Plan Overview

Departmental Goals

Sustainable, long-term economic growth is a central focus of the President's policies and priorities. The mission of the Department of Commerce—ensuring and enhancing long-term economic opportunity and a rising standard of living for all Americans—fully supports the President's economic policy.

The Department of Commerce plays a critical role in helping the Nation meet its economic goals. The Department works primarily with and through the private sector, creating partnerships that facilitate job creation, international trade, local and regional economic development, manufacturing excellence, investment in R&D, environmentally sound development, and other activities that contribute to the Nation's economic well-being. It is both the representative and the pacesetter for the course business must take to be competitive in the new world order. The President and the Secretary of Commerce have established a clear set of priorities and programs for the Department of Commerce that will enable the Department to help create the best possible climate for long-term private sector economic growth and development in the United States.

The Department's policy and program priorities stress economic growth and development through:

- Opening and expanding foreign markets and promoting increased exports of U.S. goods and services in markets with the highest potential for growth and in important growing sectors;
- Promoting increased tourism to the United States;
- Advocating free and fair trade policies and enacting and implementing the first post-Cold War export regime—a regime that facilitates trade while safeguarding our national security;
- Enhancing technological development and commercialization through improved strategies for Government-industry cooperation;
- Providing developmental assistance to distressed communities and minority business;
- Establishing a new economic information infrastructure;
- Promoting stewardship and assessment of the global environment; and
- Creating a more effective, economical, productive and responsive Department of Commerce.

The Department's Regulatory Plan directly tracks these policy and program priorities, only a few of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

To the extent permitted by law, all preregulatory and regulatory activities and decisions adhere to the Administration's statement of regulatory philosophy and principles, as set forth in section 1 of Executive Order 12866. The Department of Commerce has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. All regulations are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated. When a regulation is no longer needed, the Secretary's standing order is to rescind it.

The Secretary has prohibited the issuance of any regulation that discriminates on the basis of race, color, religion, gender, sexual orientation, national origin, handicap, or age, and requires that all regulations be written in simple, plain English and be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in Departmental rulemakings, even where public participation is not required by law.

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only six—the Bureau of Export Administration (BXA), the International Trade Administration (ITA), the National Oceanic and Atmospheric Administration (NOAA), the Patent and Trademark Office, the National Telecommunications and Information Administration, and the Technology Administration—plan significant preregulatory or regulatory actions for the Regulatory Plan year. Many of these regulatory actions do not involve new or increased regulation of the private sector. Three of these operating units—BXA; ITA, and NOAA—have the most important of the Department's significant regulatory actions planned for the Regulatory Plan year. These three units are described below, along with their regulatory objectives and priorities and how they relate to the President's priorities and their most significant planned regulatory actions.

In addition, the Department is taking steps to streamline its regulatory processes and delivery systems in line with the President's directives. In his September 30, 1993, Memorandum for Heads of Departments and Agencies, President Clinton stated:

> In order to streamline the entire (Federal) rulemaking process, agencies must, consistent with any applicable laws, utilize internally the most efficient method of developing and reviewing regulations. Accordingly, I direct the head of each agency and department to examine its internal review procedures to determine whether, and if so, how those procedures can be improved and streamlined. In conducting this examination, the agency or department shall consider the number of clearances required by its review process and whether its review process varies according to the complexity or significance of the rule.

Each preregulatory and regulatory action of the Department is undertaken with the concept of streamlining in mind. Methodologies for eliminating levels of review and delegating decisionmaking authority down to the lowest appropriate level are constantly being tested. Further, the Department is employing advanced technology designed to create greater responsiveness. For example, the Office of the General Counsel is currently working with computer experts within the Commerce Department to develop a regulation database and tracking system. This system, which is planned to be fully operational this fall, will provide decisionmakers with precise, concise, and up-to-the-minute information on the substance, status, and history of each of the Department's regulatory actions.

Bureau of Export Administration

The Department of Commerce's Bureau of Export Administration (BXA) administers and enforces U.S. export controls on certain dual-use commodities, software, and technical data, under the Export Administration Act of 1979, as amended (EAA), and other laws. BXA also implements policies and administers programs under certain provisions of the Defense Production Act of 1950 (DPA) designed to assure the availability of industrial resources needed for our national security, both in peacetime and in time of national emergency. In addition, BXA investigates the impact of imports on national security, pursuant to the Trade Expansion Act of 1962 (TEA). Finally, BXA administers controls on nuclear-related exports under the Nuclear Nonproliferation Act of 1978. The regulations of the Bureau of Export Administration are the Export Administration Regulations (EARs).

BXA's main programmatic objective is to operate an export control program which encourages economic opportunities without compromising national security. BXA implements export controls in furtherance of the national security and foreign policy objectives of the United States. BXA helps achieve the major Departmental goal of advocating free and fair trade policies and enacting and implementing the first post-Cold War export regime—a regime that will facilitate trade while safeguarding our national security.

It is essential that United States have and implement export controls that take into account the realities of the post-Cold War world. Strong controls will continue to be needed to combat the threat of proliferation of weapons of mass destruction and to preserve our national security and foreign policy interests. However, long overdue reforms are needed to ensure that our export controls do not unfairly and unnecessarily burden our important commercial interests.

Streamlining the Export Administration Regulations

While many substantive changes to the EARs must await reauthorization of the EAA, BXA's top regulatory priority is to reduce, consistent with U.S. national security and foreign policy interests and present law, U.S. export regulatory barriers to the export of some of our most attractive products—computers and telecommunications—and to clarify, simplify, and make more userfriendly the present EARs. This is one of the export control reform measures announced by the Administration in the first report of the Trade Promotion Coordinating Committee (TPCC), "Toward a National Export Strategy," (Sept. 30, 1993). The TPCC is a 19-agency working group chaired by the Secetary of Commerce whose report recommendations form an integral part of the Administration's economic development strategy for the next several years.

In order to meet the programmatic end described above within the regulatory philosophy and principles of E.O. 12866 and the President's streamlining goals, BXA is planning to re-organize its regulations in a more logical and transaction-oriented order; to make its regulations usable by both newcomers and professionals; to remove redundancy, overlap, and inconsistency; and to use consistent and easily understood drafting style.

Implementing a Revised Export Administration Act

The EAA expired on August 20, 1994. However, on August 19, 1994, the President issued Executive Order 12924 invoking the International Emergency Economic Powers Act and continuing in effect, to the extent permitted by law, the provisions of the EAA and EAR. The EARs will need to be amended, in various degrees, to take into account changes made to the EAA as part of its reauthorization. At the present time, however, we cannot predict with any degree of certainty how the EAA will be amended. Both the House and the Senate are presently considering bills to reauthorize the EAA.

The Administration seeks amendments to the EAA that will make it show a clear preference for multilateral export controls and strengthening multilateral regimes. The development of common control lists and commitments to comparable procedures between members of a regime are essential. The Administration's reauthorization proposal to the Congress contains explicit guidelines for effective regimes which include: (1) full membership by all supplier countries, (2) effective enforcement and compliance procedures, (3) effective implementation procedures, and (4) programs to enhance public understanding.

An important goal of the Administration's proposed EAA reauthorization legislation is to increase the transparency of our export control decisionmaking process. U.S. industry must be able to depend on accurate, consistent, and timely licensing decisions. The Administration proposes new and broader rights of petition for industry to seek relief from export control requirements when it can be demonstrated that they place an unfair burden on U.S. business, or when specific licensing decisions are clearly inequitable when compared to the rules of other nations. Specifically, under the Administration's proposal, industry would have the right to petition for relief when: (1) there is foreign availability or items are expected to become available in the near future, (2) the differences in the control imposed by the United States and other governments places the petitioner at an unfair competitive disadvantage, or (3) the controls are ineffective due to an item's wide domestic availability and the inability to enforce the controls effectively.

Before new export restrictions are imposed or existing restrictions continued, the costs to the United States in lost jobs and in lost export opportunities must be carefully measured. An objective of the new EAA must be to recognize this reality and provide for the thorough assessment of the economic effect of proposed controls. The Administration's legislative proposal, consistent with the philosophy and principles of Executive Order 12866, includes the requirement for a formal evaluation of the costs and benefits of unilateral controls before such controls are imposed and extended.

International Trade Administration

The International Trade Administration (ITA) is responsible for most nonagricultural trade promotion and enforcement activities of the Federal Government. It works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. A large component of ITA's activities do not involve regulation. However, ITA has important regulatory authority under a number of U.S. trade laws.

ITA administers programs to strengthen domestic export competitiveness and to promote U.S. industry's increased participation in international markets. ITA's trade development program includes policy development, industry analysis, and promotion organized by industrial sectors such as aerospace, automotive vehicles and parts, basic industries, chemicals and allied products, energy, and textiles and apparel. Among its regulatory activities, ITA issues export trade certificates of review providing exporters with limited immunity from liability under U.S. antitrust laws.

ITA helps achieve the major Departmental goal of opening and expanding foreign markets and promoting increased exports of U.S. goods and services in markets with the highest potential for growth, such as Asia and Latin America, and in important growing sectors, such as computers, telecommunications, and environmental technologies. The report of the TPCC outlined more than 60 specific actions to strengthen U.S. export promotion efforts. Many of these actions, such as increasing U.S. businesses' awareness of sources of, and access to, trade finance and the establishment of one-stop U.S. Export Assistance Centers, directly involve ITA but do not involve regulation.

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ITA also enforces our trade laws to ensure free and fair competition in our domestic market between U.S.- and foreign-manufactured goods. It administers and enforces the antidumping and countervailing duty laws of the United States. It investigates whether exports to the United States are subsidized or sold at less than fair value; when it finds that they are, and the U.S. International Trade Commission finds that a U.S. industry has been injured or threatened with material injury as a result, it issues an order to the U. S. Customs Service to impose offsetting duties. In addition, ITA administers the Foreign Trade Zone, Watch Quota, and Steel Import Stabilization Programs and the Educational, Scientific, and Cultural Materials Importation Act, and enforces the machine tool voluntary restraint agreements with Japan and Taiwan.

Antidumping and Countervailing Duties Regulations

The top regulatory priority of ITA is revising the antidumping and countervailing duty regulations to conform to anticipated legislation implementing the results of the Uruguay Round multilateral trade negotiations.

The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of antidumping and countervailing duty laws. In order to facilitate the administration of these laws and to provide greater predictability for private parties affected by these laws, it will be necessary to promulgate regulations which translate the principles of the Agreements and the implementing legislation into specific and predictable rules. Revisions also will address matters that were the subject of other uncompleted rulemaking proceedings that the Department of Commerce has previously withdrawn. By clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws, the efficiency and fairness of these laws will be enhanced at little, if any, additional cost. The manner in which these regulations are drafted could have a significant impact on various important sectors of the economy, including steel, lumber and bearings.

National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA) establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental services vital to public safety and to the Nation's economy, such as weather forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the Departmental goal of promoting stewardship and assessment of the global environment.

Three of NOAA's major components, the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects marine mammals, and promotes the economic development of the U.S. fishing industries. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate civil operational land-remote sensing satellite systems.

The Administration is committed to an environmental strategy that promotes sustainable economic development and rejects the false choice between environmental goals and economic growth. The intent is to have the Government's economic decisions be guided by a comprehensive understanding of the environment. The Department of Commerce through NOAA has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development and technology with environmental issues. NOAA has the primary Federal responsibility for providing the sound scientific observations, assessments and forecasts of environmental phenomena on which resource management and other societal decisions can be made. The Department of Commerce's Economics and Statistics Administration has the primary Federal responsibility for providing information about the economy.

In the environmental stewardship area, NOAA's goals include rebuilding U.S. fisheries by refocusing policies and fishery management planning on increased scientific information; increasing the populations of depleted, threatened, or endangered species of marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include modernizing the national weather service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the *entire environment*.

Programs that seek to achieve the above goals involve fishery management activities under the Magnuson Fishery Conservation and Management Act and other statutes, including regulatory, enforcement, and conservation actions; endangered species and marine mammal protection activities; marine habitat conservation activities under the Fish and Wildlife Coordination Act and the Federal Power Act; deep-seabed mining regulatory activities under the Deep Seabed Hard Mineral Resources Act; studies on locating ocean dump sites and disposing of toxic waste under the Marine Protection, Research and Sanctuaries Act and other laws; and estuarine research reserve and national marine sanctuary management activities, including regulatory activities under various statutes.

NOAA's principal regulatory objectives are to manage more effectively the marine fishery resources under its jurisdiction, to implement the designation of the Florida Keys National Marine Sanctuary, and to promulgate natural resource damage assessment regulations applicable to oil spills.

Magnuson Act Rulemakings

Magnuson Fishery Conservation and Management Act (Magnuson Act) rulemakings concern the conservation and management of fishery resources in the U.S. 3-to-200-mile Exclusive Economic Zone (EEZ). Among the several hundred rulemakings that

NOAA plans to issue in the Regulatory Plan year, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery and by other circumstances which cannot be predicted. Once a rulemaking is triggered by a FMC, the Magnuson Act places stringent deadlines upon NMFS in which it must exercise its rulemaking responsibilities. Most of these rulemakings will be minor, involving only the opening or closing of a fishery under an existing FMP. While no one Magnuson Act rulemaking is among the Department's most important significant regulatory actions, and therefore none is specifically described below, the sum of these actions, and a few of the individual actions themselves, are highly significant.

The Magnuson Act, which is the primary legal authority for Federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments. FMPs address a variety of fishery matters, including depressed stocks, overfished stocks, gear conflicts, and foreign fishing. One of the problems that FMPs may use is preventing overcapitalization (preventing excess fishing capacity) of fisheries by limiting access to those dependent on the fishery in the past and/or by allocating the resource through individual transferable quotas which can be sold on the open market to other participants or those wishing access. Quotas set on good scientific information whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds and establishing seasonal and area closures to protect fishery stocks.

NMFS favors the concept of framework FMPs where applicable. Such FMPs provide ranges, boundaries, and decision rules within which NMFS can change management measures without formally amending the FMP. Further, consistent with the recommendations on improving regulatory systems accompanying the Report of the National Performance Review, NMFS favors using market-oriented approaches such as marketable limited access permits and marketable individual quotas in managing fisheries. Open-access fisheries are destined to have too many people investing too much money in vessels and equipment. Access controls (for example, a limited number of permits) represent a rational approach for managing fishery resources; they can be used to control fishing mortality levels and to prevent overfishing, economic dissipation, and subsequent economic and social dislocation. Of course overall quotas will need to be set based on the best scientific information available as to such things as stock status and optimum yields. At present, adequate scientific information is available for only 34 percent of all U.S. fishery resources.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft-implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

The Magnuson Act contains seven national standards against which fishery management measures are judged. NMFS has supplemented these standards with guidelines interpreting each standard. One of the national standards requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. Under the guidelines, NMFS will not approve management measures submitted by an FMC unless the fishery is in need of management. Together, the standards and the guidelines correspond to many of the Administration's principles of regulation as set forth in section 1(b) of Executive Order 12866. One of the national standards establishes a qualitative equivalent to the Executive Order's "net benefits" requirement—one of the focuses of the Administration's statement of regulatory philosophy as stated in section 1(a) of the Order.

Rulemakings implementing an FMP or amendment cannot be precisely scheduled in advance because, for the most part, an FMP or amendment is developed and submitted by an FMC. The timing of the submission is determined by the FMC, not by NMFS. Upon receiving an FMP or amendment and implementing regulations, NMFS is required by the Magnuson Act to publish the proposed implementing regulations within 15 days unless, after preliminary review, NMFS disapproves the FMP or amendment because it is inconsistent with the national standards or too deficient in scope and substance to warrant review. Upon completion of the preliminary review, if NMFS finds that the FMP or amendment is consistent with the national standards and sufficient in scope and substance to warrant further review, NMFS must commence such review. Upon completion of that review, if NMFS finds that the FMP or amendment is consistent with the national standards, the other provisions of the Magnuson Act, and any other applicable law, NMFS must approve the FMP or amendment and issue final regulations implementing it. If the FMP or amendment is not consistent with the Magnuson Act or other applicable law, NMFS must disapprove or partially disapprove it within 95 days of receipt, and the FMC may submit a revised FMP or amendment.

In order to have the most streamlined process for review and clearance of the large volume of Magnuson Act rulemakings in place, NOAA and the Department are undertaking a pilot program to test a new, more collegial, clearance procedure for NMFS rules.

First, NOAA and the Department participate in a weekly conference call to coordinate all regulatory activity.

Next, all NMFS rules are categorized and reviewed according to priority:

1. Those rules designated as "significant or controversial" are fully reviewed at both the NOAA and Departmental level.

2.Those rules designated as "noncontroversial" and "nondiscretionary" are reviewed by NOAA, with the Department being provided the rule for information and, at the option of the Department, comment.

3.Those actions designated as "nondiscretionary, noncontroversial rule-related notices" are cleared by NOAA, with the Department simply

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monitoring any action through the weekly conference call.

This pilot clearance system was designed with two goals in mind. First, the procedures were established to delegate clearance authority to the greatest extent possible, thereby streamlining the number of clearances required for publication of a particular rule or rule-related document. Next, the weekly conference call, where individuals from both organizations discuss all regulatory actions, was instituted to foster an atmosphere of congeniality and cooperation. In practice, these two ideas have meshed into a clearance procedure which is characterized by efficient processing of regulatory actions and frank, nonadversarial communication between the parties.

Florida Keys National Marine Sanctuary Rulemaking

One of NOAA's most important significant regulatory actions will be the proposal by the National Ocean Service of a management plan and implementing regulations for the Florida Keys National Marine Sanctuary. Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2,800 square-nautical-mile area of coastal waters running the entire 220-mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Act makes NOAA responsible for implementing a comprehensive Sanctuary management plan, including a Florida and USEPA developed Water Quality Plan, through regulations designed to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources it contains, many problems never before presented in sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management.

In that approximately 65 percent of the Sanctuary lies within Florida State waters, and numerous State and Federal areas of jurisdiction overlap or lie adjacent to the Sanctuary, it was imperative that the Sanctuary planning process be an interagency effort. Also, due to the high level and diversity of public use of the Florida Keys and the importance of tourism to the area's economy, it was equally important that the public have a strong role in developing the management plan.

Over the past 3 1/2 years, there have been numerous public meetings and workshops on management plan development. Almost all agreed that deteriorating water quality was the major issue affecting the ecosystem of the Keys. In mid-1991, a State, local, and Federal interagency core group was established to assess management issues and, in early 1992, a Sanctuary Advisory Council, whose members were selected from local, State, and Federal agencies, environmental groups, and from the citizenry at large, was appointed by the Governor and the Secretary of Commerce to assist in developing the comprehensive management plan. Clearly the public process being followed is fully consistent with National Performance Review's recommendations for increased public participation during the rulemaking process and E.O. 12866's call for interagency coordination.

A draft management plan and proposed implementing regulations will be published that will further the Clinton Administration's objective of providing long-term protection for ecologically significant areas while maximizing their economic use. The proposed regulations will protect Sanctuary resources with the minimum necessary regulatory burden on Sanctuary users.

A draft environmental impact statement (DEIS) has been prepared which sets forth alternatives for dealing with the problems identified in the planning process (for example, boating, fishing, recreation). Five alternatives are set forth for each problem ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three midrange alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted under each alternative. The DEIS selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. As such, the benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources, that is, shipwrecks, also abound in the surrounding waters. Recent information indicates that there may be more archaeological resources of pre-European cultures than had previously been believed to be the case.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. As such, the major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats, marinas, as well as hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the $1.6 billion in total sales for the area is related to tourism, with another $16 million spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large commercial fishing sector. With approximately 9 percent of the area work force, this industry is the fourth

largest source of employment in the Keys.

Finally, the monetary costs of compliance with these regulations borne by individuals would be relatively small and arise from the following two items. First, those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salving and coral collecting, would be required to obtain permits. However, the amount permitted to be charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas and mineral leasing and development. However, since Congress prohibited this activity, the regulatory prohibition does not itself create this cost. Other than the prohibition of oil, gas and mineral leasing, the Sanctuary regulations contain only one Sanctuary-wide prohibition, live rock harvest, that may generate costs.

Many issues inherent in Sanctuary regulation are foreclosed by prohibitions in the FKNMSPA on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The regulations being drafted employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well-developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted, however it was believed that this method was the best approach for achieving the goals of the statute.

Natural Resources Damage Assessment Regulations

Another of NOAA's most important significant regulatory activities for the Regulatory Plan year is promulgation of final natural resource damage assessment regulations applicable to oil spills.

Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 4201 et seq. (CERCLA, also known as Superfund) and the Oil Pollution Act of 1990, 33 USC 2701 et seq. (OPA), NOAA, in concert with the Department of the Interior (DOI), is charged with developing regulations for natural resources damage assessment for injury to natural resources as a result of hazardous substance release and oil spills. Section 1006(b) of the OPA provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees of the Nation's natural resources. In the event that such natural resources are injured, lost, or destroyed as a result of a discharge of oil, these officials are authorized to assess the injury to the natural resource and develop and implement a restoration plan. Section 1006(e) directs NOAA to take the lead for the Federal Government in developing natural resource damage assessment regulations for harm resulting from oil spills. Such regulations will help fulfill the goal of promoting stewardship and assessment of the global environment.

Natural resource damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration, and the cost of the damage assessment. Determination of damages made in accordance with these regulations by Federal, State or Indian resource trustees will have the "force and effect of a rebuttable presumption" in administrative or judicial proceedings.

The U.S. Court of Appeals for the District of Columbia Circuit has held that damages for lost or diminished resource values should include losses of both direct use values (for example, commerce or recreation) and nonuse ("passive-use") values, to the extent these damages can be reliably measured. "Passive use" values are those not linked to direct use of the resource. These include "existence value," the benefit derived from the existence of a resource even if one never intends to make active use of it, and "bequest value," the satisfaction of knowing that future generations can make use of the resource. Contingent valuation (CV), a survey-based method for determining the public's willingness to pay to ameliorate or avoid a resource injury, is the only procedure currently available for measuring passive use values.

On December 28, 1990, NOAA issued an advance notice of proposed rulemaking for these regulations. Following review of the comments received, NOAA on January 7, 1994, published proposed regulations. Twelve public meetings were held on the proposed regulations in January and February, again showing full consistency with the National Performance Review's recommendation for increased public participation in rulemaking.

A single set of Federal natural resource damage assessment regulations will be more cost efficient than having the individual States develop separate methodologies. It is expected that the trustees will use the procedures contained in the regulations because the Oil Pollution Act provides that any determination or assessment of damages made in accordance with the regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in an administrative or judicial proceeding.

DOC—International Trade Administration (ITA)

PRERULE STAGE

19. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES

Legal Authority:

19 USC 1671 et seq; 19 USC 1673 et seq; 19 USC 1303

CFR Citation:

19 CFR 353; 19 CFR 355; 19 CFR ch III

Legal Deadline:

Other, Statutory, January 1, 1996.

Section 103(b) of the Administration's proposed implementing legislation would establish January 1, 1996, as the deadline for interim final regulations.

Abstract:

Revisions of the antidumping and countervailing duty regulations will be necessary in light of anticipated legislation implementing the results of the Uruguay Round multilateral trade negotiations. Revisions also will address matters that were the subject of other uncompleted rulemaking proceedings that ITA has previously withdrawn. (See April 1994 Unified Agenda of Federal Regulations.) By clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws, the efficiency and fairness of these laws will be enhanced at little, if any, additional cost.

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Statement of Need:

Regulations will be needed to implement the results of the Uruguay Round with respect to the administration of the antidumping and countervailing duty laws. The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of these laws. In order to facilitate the administration of these laws and to provide greater predictability for private parties affected by these laws, it will be necessary to promulgate regulations which translate the principles of the Agreements and the implementing legislation into specific and predictable rules. Revisions also will address matters that were the subject of other uncompleted rulemaking proceedings that the Department of Commerce has previously withdrawn. By clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws, the efficiency and fairness of these laws will be enhanced at little, if any, additional cost. The manner in which these regulations are drafted could have a significant impact on various important sectors of the economy, including steel, lumber and bearings.

Summary of the Legal Basis:

The Secretary of Commerce is responsible for administering the antidumping and countervailing duty laws pursuant to authority contained in several legislative enactments. See 19 USC 1671 et seq.; 19 USC 1673 et seq.; 19 USC 1303. These laws conform to the existing Subsidies Code and the Antidumping Code (Codes) of the General Agreement on Tariffs and Trade (GATT) and reflect internationally agreed rules regarding unfair trade. The Secretary, acting through the Import Administration of the International Trade Administration, is responsible for processing petitions from firms that allege they have been harmed by unfair competition from imports, making preliminary and final determinations about whether such competition was subsidized or benefitted from "dumping," and conducting periodic administrative reviews of antidumping and countervailing duty orders. Merchandise found to be benefitting from subsidies or to have been "dumped" is subject to duties in the amount of the dumping or subsidization.

Alternatives:

U.S. objectives in the Uruguay Round antidumping negotiations were to improve transparency and due process in antidumping proceedings, develop rules regarding the circumvention of antidumping measures, and ensure that the antidumping rules continue to provide an effective tool to combat injurious dumping. The Agreement substantially achieves these objectives.

The Subsidies Agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies nonactionable, provided they are subject to conditions designed to limit distorting effects. The Agreements create three categories of subsidies and remedies: (1) prohibited subsidies; (2) permissible subsidies which are actionable if they cause adverse trade effects; and (3) permissible subsidies which are nonactionable if they are structured according to criteria intended to limit their potential for distortion.

Anticipated Costs and Benefits:

The Uruguay Round Agreements are anticipated to create hundreds of thousands of high-wage, high-skilled jobs in the United States. Further, economists estimate that the Uruguay Round will increase trade and will add between $100 and $200 billion to the United States economy after the round is fully implemented. Finally, the Agreements create an effective set of rules for the prompt settlement of disputes by eliminating shortcomings in the current system which allow parties to prolong the process and block adverse determinations.

The costs of administering the antidumping/countervailing duty system will be increased pursuant to the new rules established in the Uruguay Round. The new Codes dictate a number of new obligations in the investigation of petitions and the conduct of administrative reviews. Binding GATT dispute settlement will also increase legal costs because substantially more challenges to ITA determinations will be brought to the GATT forum.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
Interim Final Rule	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

The Department of Commerce has had a variety of rulemaking proceedings outstanding in various stages of completion, some of these proceedings dating back to 1989. In many instances, work on these proceedings was suspended pending the outcome of the Uruguay Round trade negotiations. With the completion of the Round and the likelihood of implementing legislation, the Department plans on withdrawing these outstanding rulemaking proceedings and addressing the subject matter of those proceedings in the context of this new rulemaking proceeding. The Department withdrew RINs 0625-AA29, 0625-AA31, 0625-AA35, 0625-AA36, 0625-AA39, 0625-AA41, and 0625-AA42.

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DOC—Bureau of Export Administration (BXA)

FINAL RULE STAGE

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20. SIMPLIFICATION OF THE EXPORT ADMINISTRATION REGULATIONS

Legal Authority:

18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation:

15 CFR 768 to 779; 15 CFR 785 to 791; 15 CFR 799

Legal Deadline:

None

Abstract:

The Bureau of Export Administration is undertaking a comprehensive review of the Export Administration Regulations. This review is intended to simplify, clarify and make the export control regulatory requirements more user-friendly.

Statement of Need:

It is essential that the United States have and implement export controls that take into account the realities of a post-Cold War world. Strong controls will continue to be needed to combat the threat of proliferation of weapons of mass destruction and to preserve our national security and foreign policy interests. However, long overdue reforms are needed to ensure that we do not unfairly and unnecessarily burden our important commercial interests.

Two forces are driving the development of export control regulations in the near term as BXA tries to meet these objectives--reauthorization of the Export Administration Act (EAA) and simplification of the Export Administration Regulations (EAR) as recommended by the Trade Promotion Coordinating Committee (TPCC).

a. Export Administration Act. The EAA expired on August 20, 1994. However, on August 19, 1994, the President issued Executive Order 12924 invoking the International Emergency Economic Powers Act and continuing in effect, to the extent permitted by law, the provisions of the EAA and EARs. The EARs will need to be amended, in various degrees, to take into account changes in the EAA once it is reauthorized. At the present time, however, we cannot predict with any degree of certainty how the regulations will need to be amended. Both the House and the Senate will consider bills to reauthorize the EAA prior to the end of their current session.

A primary objective of a new EAA is to show a clear preference for multilateral export controls and to support strengthening the multilateral regimes. The development of common control lists and commitments to comparable procedures between members of a regime are essential. The Administration's reauthorization proposal contains explicit guidelines for effective regimes which include: (1) full membership by all supplier countries, (2) effective enforcement and compliance procedures, (3) effective implementation procedures, and (4) programs to enhance public understanding. Regulatory implementation of many of these objectives will be necessary.

b. Trade Promotion Coordinating Committee. On September 30, 1993, the first report of the Trade Promotion Coordinating Committee (TPCC), "Toward a National Export Strategy," was issued. This report outlined more than 60 specific actions to strengthen United States export promotion efforts. An important recommendation of the TPCC report was to clarify and simplify United States export control regulatory requirements. On February 10, 1994, a notice was published in the **Federal Register** inviting comments on areas that should be the focus of our simplification process.

Summary of the Legal Basis:

The legal authority to regulate exports of dual-use products stems from the Export Administration Act, 50 USC app. 2401, et seq. The EAA authorizes three types of controls: (1) national security controls which cover high technology items of strategic significance, (2) foreign policy controls used to achieve various foreign policy objectives, and (3) short-supply controls restricting the export of commodities that are in domestic short supply.

Section 201 of the Export Enhancement Act of 1992, PL 102-429, commands the President to establish the TPCC. The law requires, among other things, that the TPCC issue an annual report to Congress on the country's exports and export promotion efforts. The statute designates the Secretary of Commerce as the chairperson of the TPCC, with representatives from the Departments of State, Treasury, Agriculture, Energy, and Transportation, the U.S. Trade Representative, Small Business Administration, Agency for International Development, Overseas Private Investment Corporation, Export-Import Bank, the Trade and Development Agency, and such other agencies as the President determines to be necessary.

Alternatives:

At present it is difficult to assess fully all regulatory alternatives because reauthorization legislation has not been enacted. However, a goal of the Administration's proposed EAA reauthorization legislation is to increase the transparency of our export control decisionmaking process. U. S. industry must be able to depend on accurate, consistent, and timely licensing decisions. The Administration proposes new and broader rights of petition for industry to seek relief from export control requirements when it can be demonstrated that they place an unfair burden on U.S. business, or when specific licensing decisions are clearly inequitable when compared to the rules of other nations. Specifically, under the Administration's proposal industry would have the right to petition for relief when: (1) there is foreign availability or items are expected to become available in the foreseeable future, (2) the differences in the control imposed by the United States and other governments places the petitioner at an unfair competitive disadvantage, or (3) the controls are ineffective due to an item's wide availability and the inability to enforce the controls effectively.

BXA is examining the recommendations in the TPCC report in order to clarify and simplify U.S. export control regulatory requirements. Because U.S. economic interests will play a key role in implementing these changes, action will be taken to increase the rigor of economic analysis and data available in the decisionmaking process. With respect to the specific directions of the TPCC, the Department will harmonize U.S. domestic dual-use controls with multilateral controls to the greatest extent possible. This will include circumstances, such as re-export controls, that unilaterally cause delay, denial of licenses or imposition of special license conditions. The changes will eliminate unilateral obstacles and controls, unless their continuation is essential to overriding national interests or is required by statute. To organize U.S. export controls for the long term, there will be a comprehensive review of the existing organizational structure. This review will examine a wide range of options, including further streamlining and expediting the interagency review process.

Anticipated Costs and Benefits:

As BXA considers the imposition of new export restrictions or continuing existing restrictions, we must carefully measure the impact of these steps on job creation and export opportunities. BXA recognizes that, today, to focus on exports is to focus on job creation. Exports and imports amounted to more than 11 percent of the gross domestic product in 1991, up dramatically from 7.5 percent just 5 years earlier. Moreover, exports are vital to the economic health of many key sectors of the manufacturing economy. For instance, computers, aerospace, heavy earth-moving equipment and farm implements are increasingly dependent on export markets.

More than 7 million American jobs are related to exports, and millions more depend on the overall economic activity generated by export trade. In fact, export growth has accounted for much of the overall job growth since

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1986, and virtually all of the growth in manufacturing jobs.

An objective of the new EAA must be to recognize these realities and provide for the thorough assessment of the economic effect of proposed export controls. The Administration's proposal includes the requirement for a formal evaluation of the costs and benefits of unilateral controls before such controls are imposed and extended.

Timetable:

Action	Date	FR Cite
ANPRM	02/10/94	59 FR 6528
ANPRM Comment Period End	03/28/94	
Final Action	12/00/94	
Final Action Effective	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

21. PROPOSED REGULATIONS FOR THE FLORIDA KEYS NATIONAL MARINE SANCTUARY

Legal Authority:

16 USC 1431 et seq; PL 101-605

CFR Citation:

15 CFR 929

Legal Deadline:

Final, Statutory, May 1993.

Abstract:

These regulations are necessary for the implementation of the Congressionally designated national marine sanctuary.

Statement of Need:

Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2,800-square-nautical-mile area of coastal waters running the entire 220-mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is made responsible for implementing a comprehensive Sanctuary management plan through regulations designed to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources it contains, many problems never before presented in sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management.

Summary of the Legal Basis:

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, Public Law 101-605, set out as a note to 16 USC 1433, became law. The FKNMSPA designated, effective the day of enactment, an area of waters and submerged lands, including the living and nonliving resources within those waters, the Florida Keys National Marine Sanctuary. Congress found that the area encompassed "spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs," with the environments being "the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved."

Both Section 7(a) of the FKNMSPA and Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 USC 1431 et seq. authorize NOAA to issue regulations necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and aesthetic resources and qualities of the Florida Keys National Marine Sanctuary.

Alternatives:

In that approximately 65 percent of the Sanctuary lies within Florida State waters, and numerous State and Federal areas of jurisdiction overlap or lie adjacent to the Sanctuary, it was imperative that the Sanctuary planning process be an interagency effort. Also, due to the high level and diversity of public use of the Florida Keys and the importance of tourism to the area's economy, it was equally important that the public have a strong role in developing the management plan.

Over the past 3 1/2 years, there have been numerous public meetings and workshops on management plan development. Almost all agreed that deteriorating water quality was the major issue affecting the ecosystem of the Keys. In mid-1991, a State, local, and Federal interagency core group was established to assess management issues. The core group included representatives from NOAA, EPA, U.S. Department of Interior (both the National Park Service and Fish and Wildlife Service), the Executive Office of the Governor of Florida, the Florida Departments of Community Affairs and of Environmental Protection, the South Florida Water Management District, and the Monroe County Growth Management Division. During the development of the draft comprehensive management plan the Core Group met monthly. While the draft management plan is undergoing NOAA review, the Core Group has met less frequently. However, before the draft environmental impact statement and management plan are disseminated to the public, the Core Group will meet again to coordinate public outreach efforts during the review and comment period. Further, in early 1992, a Sanctuary Advisory Council, whose members were selected from local, State, and Federal agencies, environmental groups, and from the citizenry at large, was appointed by the Governor and the Secretary of Commerce to assist in developing the comprehensive management plan.

The comprehensive Sanctuary management plan is to include a Florida and EPA developed Water Quality Plan. To develop the water quality protection program, EPA and the state of Florida convened an interagency Steering Committee which included NOAA representation. In the 1992 reauthorization of the Marine Protection, Research and Sanctuaries Act, Congress codified this Committee and added citizen participation. NOAA also included staff representatives from EPA and the state water quality agency on the core group charged with developing the overall sanctuary management plan.

EPA and the state of Florida have submitted their water quality protection program for incorporation. The draft comprehensive management plan for the Sanctuary now incorporates all of water quality protection program elements and, as part of the National Environmental Policy Act (NEPA) review, alternatives to each element. As part of the public review process of the draft environmental impact statement and management plan, NOAA will seek public input on which elements of the water quality protection program to include in the management plan. After the public comment period, NOAA will decide whether to incorporate some or all of the elements of the water quality protection program into the management plan.

A draft management plan and proposed implementing regulations will be published that will further the Clinton Administration's objective of providing long-term protection for ecologically significant areas while maximizing their economic use. The proposed regulations will protect Sanctuary resources with the minimum necessary regulatory burden on Sanctuary users.

A draft environmental impact statement (DEIS) has been prepared which sets forth alternatives for dealing with the problems identified in the planning process (e.g., boating, fishing, recreation). Five alternatives are set forth for each problem ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three mid-range alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted under each alternative. The DEIS selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

Anticipated Costs and Benefits:

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. The benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources, that is, shipwrecks, also abound in the surrounding waters. Recent information indicates that there may be more archaeological resources of pre-European cultures than had previously been believed to be the case.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats, marinas, as well as hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the $1.6 billion in total sales for the area is related to tourism, with another $16 million spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large commercial fishing sector. With approximately 9 percent of the area work force, this industry is the fourth largest source of employment in the Keys.

Finally, the monetary costs of compliance with these regulations borne by individuals would be relatively small and arise from the following two items. First, those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salving and coral collecting, would be required to obtain permits. However, the amount permitted to be charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas and mineral leasing and development. However, since Congress prohibited this activity, the regulatory prohibition does not itself create this cost. Other than the prohibition of oil, gas and mineral leasing, the Sanctuary regulations contain only one Sanctuary-wide prohibition, live rock harvest, that may generate costs.

Risks:

Issues inherent in Sanctuary regulation are foreclosed by statutory prohibitions on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The draft regulations employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted; however, it was believed that this method was the best approach for achieving the goals of the statute.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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DOC—NOAA

22. NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION REGULATIONS

Legal Authority:

33 USC 2706

CFR Citation:

15 CFR 990

Legal Deadline:

Final, Statutory, August 18, 1992.

Congress required the regulations to be promulgated no later than 2 years following the enactment of the Oil Pollution Act (OPA).

Abstract:

Section 1006(e) of the Oil Pollution Act requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, acting through NOAA, to promulgate natural resource damage assessment regulations applicable to oil spills. A Federal approach will provide a consistent, uniform set of procedures specifically for use in oil spills. These procedures will be available to Federal, State, Indian, and foreign natural resource trustees. A single Federal solution will be more cost efficient than having the individual States develop separate methodologies. It is expected that trustees will use the procedures contained in the regulations because the Oil Pollution Act provides that any determination or assessment of damages made in accordance with the regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in an administrative or judicial proceeding.

Statement of Need:

Under CERCLA and OPA, DOI and NOAA are charged with developing regulations for natural resources damage assessment for injury to natural resources resulting from a release or substantial threat of release of a hazardous substance or oil. Damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration, and the cost of the damage assessment. Section 1006(b) of the OPA provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees of the Nation's natural resources. In the event that such natural resources are injured, lost, or destroyed as a result of a discharge of oil, these officials are authorized to assess the injury to the natural resource and develop and implement a restoration plan. Section 1006(e) directs NOAA to take the lead for the Federal Government in developing natural resource damage assessment regulations for harm resulting from oil spills. Such regulations will help fulfill the goal of promoting stewardship and assessment of the global environment.

Natural resource damages under both CERCLA and OPA include the cost of restoring a resource, the diminution in its value pending restoration,and the cost of the damage assessment. Determination of damages made in accordance with these regulations by Federal, State or Indian resource trustees will have the "force and effect of a rebuttable presumption" in administrative or judicial proceedings. Currently, natural resource damages resulting from the discharge of oil, or substantial threat of a discharge, are calculated using the rules promulgated by the DOI at 43 CFR 11, or under State law.

The U.S. Court of Appeals for the District of Columbia Circuit has held that damages for lost or diminished resource values should include losses of both direct use values (e.g., commerce or recreation) and nonuse ("passive-use") values to the extent these damages can be reliably measured. "Passive use" values are those not linked to direct use of the resource. These include "existence value," the benefit derived from the existence of a resource even if one never intends to make active use of it, and "bequest value," the satisfaction of knowing that future generations can make use of the resource. Contingent valuation (CV), a survey-based method for determining the public's willingness to pay to ameliorate or avoid a resource injury, is the only procedure currently available for measuring passive use values.

Summary of the Legal Basis:

The OPA provides for the prevention of, liability for, removal of and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, its adjoining shoreline or the Exclusive Economic Zone. Section 1006(e)(1) of the OPA requires NOAA to promulgate regulations for use by authorized Federal, State, or tribal officials, collectively referred to as trustees, in the assessment of damages for injury to, destruction of, loss of or loss of use of natural resources sustained as a result of the discharge of oil.

Alternatives:

As the rulemaking is Congressionally mandated, there is no alternative to the rulemaking itself.

Several options have been discussed concerning simplified procedures and the valuation of "passive use." NOAA and DOI proposed regulations which would allow the use of CV as the measure of passive use values, provided the surveys are structured, pretested and carried out according to strict guidelines.

With respect to use valuation, the estuarine/marine and inland waters compensation formulas described in NOAA's January 7, 1994 proposed rule would be applicable to the vast majority of oil discharges. An analysis of reported coastal discharges of oil from 1973-1990 shows that 99.8 percent of the discharges were less than 50,000 gallons and 99 percent were less than 10,000 gallons. Compensation formulas could be used for most of these relatively small discharges, particularly for those that occur in areas where it would be difficult to ascertain precise environmental effects, for example, small discharges in open water or in areas that are subject to frequent discharges.

These formulas allow an estimate of damages per gallon taking into account average restoration costs, plus average lost direct use values pending restoration. The formulas assume various levels of natural resource effects likely to result from the discharge of oil. These assumptions consider the amount and type of oil discharged and region and habitat type in which the discharge occurs. The formulas are applicable to a wide range of the most commonly discharged oil products. This approach allows both a national consistency and regional specificity.

NOAA is also working with DOI to develop computer models to determine lost-use values. Based upon an initial evaluation, it is likely that NOAA will recommend that these computer models be available procedures that trustees may choose in calculating lost-use values.

To fulfill the trustee obligations for restoration planning NOAA has proposed a process for the development of an administrative record documenting all aspects of an incident relevant to the trustee obligation to restore, rehabilitate, replace or acquire the equivalent natural resources. In NOAA's view an administrative record for injury assessment and selection of restoration alternatives achieves four important objectives: (1) it provides a central repository, open to the public, for all scientific data relevant to the incident; (2) it facilitates public participation; (3) it documents trustee decisionmaking and selection among alternatives to restore, replace or acquire the equivalent; and (4) it minimizes transaction costs by encouraging an open, participatory process for the ultimate resolution (i.e., restoration of natural resources) of an incident rather than resolution through litigation.

Anticipated Costs and Benefits:

NOAA's attempt to minimize transaction costs and discourage complex litigation littered with discovery battles and other activities not leading to restoration of natural resources is born of the unsatisfactory experience of the EXXON Valdez. In that incident all parties were criticized by the public for maintaining the confidentiality of scientific studies, conducting science for purpose of litigation, and then settling the case without providing for the release of the scientific data gathered. Clearly, that process did not serve the public owners of the injured natural resources very well. NOAA and other Federal, State and tribal trustees are now engaged in a very public process for restoration, replacement and acquisition of the equivalent resources injured in the EXXON Valdez incident. However, it is NOAA's view that significantly more fiscal resources might have been available for dedication to restoration of the environment had not so much been committed to litigation over the nature and extent of the injury.

The costs and benefits of the proposed rule can be reviewed using as a baseline the existing regulatory framework under CERCLA. The rule incorporates the Type A Model currently authorized under CERCLA for estimating economic damages associated with relatively minor spills of oil or hazardous substances, and includes a procedure very similar to the existing comprehensive Type B Damage Assessment which is used in connection with relatively large discharges. Significant new costs or benefits are therefore not associated with these aspects of the proposed rule.

The proposed rule, however, proposes two new procedures or methodologies. The first procedure is the use of compensation formulas for estimating damages to estuarine and marine environments and for inland freshwater environments. The second new procedure is the Expedited Damage Assessment for use when certain prespill data are known or readily available and certain other conditions exist. On balance, these new procedural options tend to produce net benefits not only by reducing overall regulatory costs, but by encouraging earlier resource restoration or rendering recovery for a greater number of smaller spills cost-justified.

The compensation formulas, available for use in lieu of more time-consuming and expensive alternatives (Type B procedures or Type A formulas which would require additional basic data and the use of a computer model), tend to reduce the cost of implementing damages assessments. Similarly, the Expedited Damage Assessment option will substitute in some cases for the more costly and time consuming Type B procedure, thus its availability tends to reduce the average cost of implementing damages assessments under OPA regulations. Society will benefit, and deadweight losses will be decreased, by improving the efficiency and scope of recovery for injuries to natural resources.

NOAA also proposes to reaffirm the appropriateness of using the Contingent Valuation (CV) Methodology to estimate lost nonuse values of natural resources provided certain safeguards are observed. The proposed rule would expand to some degree the safeguard procedures to be used in connection with CV studies. However, no new categories of economic goods or services, nor novel methodologies, are introduced. The additional costs associated with the use of CV under these regulations are difficult to quantify. However, such costs are clearly justified by the benefits of the continued ability of society to recover damages for injury to nonuse values of natural resources.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/90	55 FR 53478
Public Meeting Scheduled for 03/20/91	02/28/91	56 FR 8307
ANPRM	04/01/91	56 FR 8307
ANPRM Comment Period Extended to 10/01/92	06/01/92	57 FR 23067
ANPRM Comment Period End	01/15/93	58 FR 4601
ANPRM; Release of Report; Extension of Comment Period to January 15, 1993	01/15/93	58 FR 4601
NPRM	01/07/94	59 FR 1062
6 Cooperative Prespilling Planning Meetings Scheduled During January and February 1994	01/07/94	59 FR 1190
6 Public Meetings Scheduled During January and February 1994	01/07/94	59 FR 1189
NPRM Comment Period End	04/07/94	
NRPM Comment Period Extended to	10/07/94	59 FR 32148
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal Department, consisting of three Military Departments (Army, Navy, and Air Force), nine Unified Combatant Commands, 16 Defense Agencies, and nine DoD Field Activities. It has over 1,600,000 military personnel and 900,000 civilians assigned as of June 30, 1994, and over 500 military installations and properties in the continental United States, U.S. Territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with a new and innovative regulatory program, presents a challenge to the management of the Defense regulatory program under Executive Order (E.O.) 12866 of September 30, 1993.

Because of its nature, composition, and size, the DoD is impacted by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, and Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in E.O. 12866, there must be coordination of proposed regulations among the regulating agencies and the affected Defense Components. Coordinating the proposed regulations in advance throughout an organization as large as the DoD is straightforward, yet a formidable undertaking.

The DoD is not a regulatory agency, but in the course of its operations, does issue regulations on occasion. These regulations, while small in number compared to those of the regulating agencies, can be significant as defined in E.O. 12866. In addition, these regulations may impact the regulatory agencies. An example of this is the Base Closure Community Revitalization requiring coordination with the Departments of Housing and Urban Development and Health and Human Services. DoD, as a part of its new program, is not only receiving coordinating actions from the regulating agencies, but is coordinating with the agencies that are impacted by its regulations.

The regulatory program for the DoD fully incorporates the provisions of the President's priorities and objectives under E.O. 12866. Promulgating and implementing the new regulatory program throughout DoD presents a unique challenge to the management of our regulatory efforts.

Coordination

Interagency

DoD has been receiving regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations have been reviewed, and comments have been forwarded to the Office of Management and Budget. The system is working in the Department and the feedback from the Defense Components is most encouraging. For the first time, they are able to see and comment on regulations from the other agencies before they are required to comply with them.

In a similar manner, DoD has coordinated its significant regulation on community revitalization with the Department of Housing and Urban Development, the Department of Health and Human Services, the General Services Administration, and the public. The coordination process in DoD is working as outlined in E.O. 12866.

Internal

Through regulatory program points of contact in the Department, we have established a system that provides information from the Vice President and the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system provides feedback from DoD regulatory personnel to the Administrator, OIRA. The changes in the internal communications on the regulatory program have been well received within the Department.

Overall Priorities

The Department of Defense needs to function at a reasonable cost, while eliminating ineffective and unnecessarily burdensome regulations. The process should respond in a timely manner, be efficient, cost-effective, and both fair and perceived as fair. This is being done at a time when there is significant downsizing in the Department and it will need to react to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in E.O. 12866 as amplified below.

Problem Identification

Congress typically passes legislation to authorize or require DoD to issue regulations and often is quite specific about the problem identified for correction. Generally, DoD does not initiate regulations as a part of its mission. The significant regulatory action for this year on community revitalization is an example. DoD will work closely with the Congress and the Administration in this area to identify the problem requiring solution, assess its overall significance, and identify the performance-based outcomes desired for a regulatory solution to the problem.

Conflicting Regulations

DoD does not have a large number of significant regulations and the probability of developing conflicting regulations is low. On the other hand, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist using the coordination processes that have been developed as a part of the new way of doing business in the DoD and Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and without the Department.

Alternatives

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality of life, and others to achieve the desired regulatory results. For example, in the significant regulatory action planned for 1995, the public sector is encouraged to acquire base closure properties through outright purchase, or where markets are not ready, to have the property conveyed without cost to the redevelopment authority. As a further incentive, developers are encouraged to acquire the property through a conveyance and still repay the DoD through a profit-sharing mechanism. This innovative approach fully supports the President's regulatory initiatives.

Risk Assessment

A priority in DoD is the assessment and minimization of risk. In the proposed regulation on community revitalization, the risk is ameliorated by incorporating the alternatives involving the risk into the regulation. The Department will either recover the cost of the property through outright sale, or in the case of conveyance, recover the cost later in a financial arrangement with the redevelopment authority.

Cost-Effectiveness

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. If a regulation is required, DoD will consider incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public, government, and regulated entities, using the best available data or parametric analysis methods, to be used in the cost-benefit analysis and the decisionmaking process.

In the current significant regulatory action involving community revitalization, the cost of the regulation to the Government is basically the cost of developing the procedures to dispose of excess real and personal property in the event of a base closure. In return, the Government will receive reimbursement in the event of a direct sale or profit sharing in certain conveyance situations. Cost-effectiveness will be achieved.

Cost-Benefit

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

DoD furthers its commitment to the use of cost-benefit analysis through its involvement in the Cost-Benefit Subgroup of the Regulatory Working Group. That sub-group is now working on the draft Regulatory Impact Analysis Guidance that will have Governmentwide implications for its implementation and use in the regulatory process.

Information-Based Decisions

Lack of information in the rulemaking process has been a serious problem and it is a priority regulatory issue with the DoD. The new thrust of E.O. 12866 with open communications among other Federal agencies, State, local, and tribal governments, public interest groups, and the public at large is a great step towards solving this problem.

In addition, the pressures of time also require agencies to make decisions without as much information as they would like to have. To solve this problem, in part, a priority of the DoD is to use the latest information technology to provide access to the latest technical, scientific, and demographic information in a timely manner through world-wide communications which are available on the "information highway." Furthermore, the Department intends to use more automation in the Notice and Comment Rulemaking process, which should also reduce time pressures in the rulemaking process.

DoD is an active participant in the Information Technology Subgroup of the Regulatory Working Group and is sharing information about the use of technology in the regulatory process with other agencies.

Performance-Based Regulations

Where appropriate, DoD plans to develop performance-based standards that will allow the regulated parties to achieve the regulatory objective in the most cost-effective manner.

Outreach Initiatives

DoD is taking steps to seek the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory programs. In its most recent significant regulation concerning revitalization of the communities, the Department has received hundreds of comments from the public and held a public hearing involving focus groups. Reaching out to organizations and individuals who are affected by, or involved in, the particular regulatory action is a significant regulatory priority of the Department.

Coordination

DoD has embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. This year, the DoD has coordinated its significant regulatory action with the Department of Health and Human Services, the Department of Housing and Urban Development, and the General Services Administration. In addition, for the first time ever, DoD has received regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD Components indicates that the communication among the Federal agencies is a major step toward improving regulations and the regulatory process, and improving overall Government operations as well.

Minimize Burden

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition process. By reforming the acquisition process, DoD can make a significant contribution to reducing this burden, but DoD cannot do it alone. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action, enacted for laudable reasons.

In coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD plans significant reforms to the acquisition system. The result is anticipated to be major reductions in the regulatory burden on the government and public sectors. To effect these changes, DoD has established and staffed the Office of the Under Secretary of Defense for Acquisition Reform.

Simple Design

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

In summary, the rulemaking process in DoD should produce a rule that addresses an identifiable problem, implements the law, implements the President's policies including E.O. 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary.

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Specific Priorities

For this Regulatory Plan, there are four specific DoD priorities, all of which reflect the regulatory principles established in E.O. 12866. For 1995, there is only one significant regulatory action, but in those areas where rulemaking or participation in the regulatory process is required, DoD is developing policy and regulation that incorporates not only the provisions of the President's priorities and objectives under E.O. 12866, but also the National Performance Review, dated September 1993.

The DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the four priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life such as those regulations concerning base closures, the wetlands, acquisition, and health care delivery.

Revitalize Communities Due to Base Closure

On July 2, 1993, President Clinton announced his five-part plan for the economic revitalization of communities where military bases are slated to close. The plan, "A Program to Revitalize Base Closure Communities," is a high administration priority. DoD has worked with representatives of the National Economic Council and the Congress to develop legislation that would enable DoD to implement the plan. Title XXIX of the National Defense Authorization Act for fiscal year 1994 includes the enabling provisions. The interim final rule published at 59 FR 16123, April 6, 1994, encompasses two supporting DoD significant regulatory actions that promulgate guidance required by section 2903 of the Act, and provides interpretive guidance concerning other changes to the base realignment and closure process generated by Title XXIX of the Act.

In recognition of the President's goal to minimize the impact of base closure on the local community's prospects for employment and economic recovery, DoD will be working closely with others to identify problems requiring solutions and identify performance-based outcomes for each base closure initiative requiring regulation. DoD has worked closely among all of the Military Departments, with other Federal agencies and State and local authorities, as well as Congress. In the case of real property screening, after DoD identifies what it needs to retain, the procedures provide for the Departments of Housing and Urban Development (HUD) and Health and Human Services (HHS) to be involved in determining the suitability of and interest in surplus property for homeless use. Specifically tailored for base closure properties, an additional screening is aimed at early identification of the needs of the homeless. In order to accomplish this and the subsequent processes of identifying property for disposal and the process for its disposal or conveyance to another, the DoD has emphasized participation by the public. This ensures that the new community has optimum opportunity for achieving revitalization that is in the interest of the public good.

In this instance, DoD has developed innovative approaches to ensure that property is conveyed in the most cost-effective way possible. One of the most effective mechanisms in this regard has been that DoD has empowered the Military Departments throughout the entire process to work directly with other Federal agencies, homeless providers and reuse planners. Furthermore, when conveyance is not possible, Military Departments have been delegated disposal authority, thereby resulting in responsibility and accountability for real property from "cradle to grave." One more alternative has been included in the regulations involving the leasing of real property early in the reuse process. This process was established as an effective way to quickly attract new jobs to replace those that have been lost by the base closing. In addition, it is an alternative to allow suitable economic reuse to occur until clean-up measures can correct contaminated property and thereby make it available for conveyance.

DoD has minimized the risk of proposed base closure regulations by achieving the desired objectives by the most cost-effective methods which will result in optimizing the cost benefit to all parties involved. Throughout the process, DoD has ensured that potential benefits to society outweigh the costs. Prior to the interim final rule, there was no guidance for ensuring that local redevelopment plans would be comprehensive and embrace the range of feasible reuse options that will result in rapid job creation. When appraising property for disposal, the procedures have been established to take into consideration uncertainties and risks in property development as well as the impact of base closure on market conditions. Moreover, the appraisal will reflect the most likely range of uses consistent with local interests rather than highest and best use. To assist in determining the estimated fair market value, the Military Departments will solicit expressions of interest for the entire, or a substantial portion of the base, share that information with the local redevelopment authority, and do so simultaneously with other screening and disposal actions. Finally, through profit sharing, DoD shall generally share in the division of future profits should the property conveyed for economic development be subsequently sold or leased. The division of profits shall be based on net profits and the share shall generally favor the local redevelopment authority.

In summary, this regulatory initiative minimizes the time required to influence revitalization through the conduct of concurrent activities. An extensive amount of communication and proactive coordination to obtain an information-based decision is conducted among Federal and local authorities, as well as the public. The Military Departments are empowered to make decisions at their level, thereby simplifying the overall revitalization efforts. In the screening process, outreach and training activities are conducted by DoD to inform and involve the general public in activities such as influencing local redevelopment plans, identifying eligible entities for conveyance of property, and taking inventory of property that may be available for reuse. Training is also provided for on-site transition coordinators. The results of the regulations developed for revitalizing communities due to base closure are that red tape is minimized, environmental cleanup is conducted on a fast track, and unused land is transferred or conveyed for the most cost-effective use in the interest of the public good.

Preserve Quality and Quantity of Wetlands

While in fiscal year 1995, the Army Corps of Engineers does not propose any significant regulatory actions as defined by E.O. 12866, the Office of the Assistant Secretary of the Army for Civil Works (OASA(CW)) and the Corps will propose and complete several regulations initiated as part of the President's August 24, 1993, Wetlands Protection Plan. This plan provides for a fair, flexible and effective approach to protecting America's wetlands through both regulatory and nonregulatory mechanisms. It is a comprehensive package of improvements to Federal wetlands programs that is based on the following five principles for Federal wetlands policy:

1. An interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base must be established;

2. Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;

3. Nonregulatory programs, such as advance planning, wetlands restoration, inventory, and research, and public/private cooperative efforts must be encouraged, to reduce the Federal Government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;

4. The Federal Government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context, and;

5. Federal wetlands policy should be based upon the best scientific information available.

The OASA(CW), through the Corps, is developing several regulatory initiatives with respect to the Department of the Army (DA) Section 404 Clean Water Act regulatory program. The first regulatory initiative was finalized on August 25, 1993, when the Corps, along with the Environmental Protection Agency, issued final regulations that clarified the scope of activities regulated under the Clean Water Act. The clarification revised the definition of discharge of dredged material to include incidental discharges associated with drainage, mechanized land clearing, channelization and other excavation. This regulation closed a loophole that had led to the unregulated destruction and degradation of wetlands. These regulations also clarified the point that prior converted cropland (areas which no longer exhibit wetlands characteristics) will not be subject to the Department of the Army Regulatory Program. The clarification on prior converted cropland eliminated inconsistencies between Federal wetlands protection programs under the Clean Water Act and the Food Security Act, thus reducing uncertainty for American farmers regarding Federal jurisdiction and regulation. Finally, these regulations clarified that certain pile-supported structures are regulated under the Clean Water Act.

In 1994 and 1995 the Corps is planning to propose and finalize five regulations pursuant to its authorities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The first regulation establishes the wetland delineator certification program. This program provides for training and certification of individuals, as provided for by Section 307(e) of the Water Resources Development Act of 1990, to submit for approval wetland delineations in accordance with the current Federal wetland delineation manual. Individuals can be certified that they meet certain standards resulting in an expedited decision by the Corps on their submitted wetland delineation. The goal of the certification program is to improve the quality of consultant-prepared wetland delineations that are submitted to the Corps so that they can be approved more quickly by the Corps. The second regulation will establish an administrative appeal process whereby permit applicants and landowners can appeal permit denial decisions and jurisdiction determinations. The administrative appeal process will increase fairness to applicants and landowners in the permitting process by establishing a recourse to Corps permit denial decisions short of going to court. The process will also provide for third-party involvement if the Corps reconsiders a previous permit denial. The third initiative will revise some existing nationwide permits to ensure that appropriate environmental factors are considered and add some new nationwide permits to reduce unnecessary regulatory burdens to the Corps and the public due to the August 23, 1993, regulation mentioned above. The revised and new nationwide permits will also increase efficiency, minimize duplication, and reduce inconsistencies between the Clean Water Act and the Food Security Act wetlands protection programs. The fourth initiative will increase fairness and efficiency in the wetlands permitting process by establishing deadlines for wetlands permitting decisions under the Clean Water Act. Normally, decisions will be made 90 days from the issuance of a public notice except in certain situations that are beyond the control of the Corps or involve delays required by other laws. The final regulation will be a consolidation of the Corps rulemaking and guidance, including the above regulations, that have been issued since the last consolidated regulations dated November 13, 1986. The regulations will also be reorganized to make them clearer and easier to use.

Reform Defense Acquisition

In "Acquisition Reform: A Mandate for Change," the Secretary of Defense highlighted the need for acquisition reform: "The Department of Defense's Bottom-up Review provides the vision and the blueprint for meeting the security challenges of the post-Cold War world, responding to threats anywhere in the world where U.S. interests are at risk. In today's environment, the current process will not always be able to meet the Department's need. DoD will not be able to carry out this blueprint without dramatic changes in its acquisition processes—from determining what the department needs to logistics support and reutilization requirements."

To meet these new security challenges, the United States must be able to rely heavily on commercial companies for defense needs. It cannot rely, as it has in the past, exclusively on companies that are predominantly defense suppliers. As the Secretary has stated, "the DoD cannot afford the extra costs associated with keeping its industrial base isolated from the national base. The country needs the benefit that it would otherwise lose as a result of the defense industrial base being kept out of this national base."

To make this drastic change, the acquisition process must be fundamentally re-engineered, to ensure the commercial sector is fully utilized to support Government needs, and that all possible streamlining measures are adopted. The Acquisition Streamlining Act, pending before the Congress, promises to be a major step towards achieving this goal. Specifically, the legislation is expected to provide relief in the following major areas: (1) comprehensive authority to facilitate commercial item acquisition; and (2) simplifying and streamlining most contract actions. Once enacted, this proposed legislation will become a center of regulatory activity in the Department of Defense. This is anticipated to include extensive rewrite of the Federal Acquisition Regulation (FAR), in coordination with the other Federal Agencies, the Defense Supplements, and other related DoD Directives and Regulations. In addition

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to such actions related to the pending legislation, there is already a substantial Federal-wide FAR rewrite effort underway as a result of a National Performance Review (NPR) recommendation. The Department is committed to acquisition reform and will continue making significant improvements in this area, consistent with the NPR and E.O. 12866. Assessing risk, performing cost-benefit analysis, and minimizing burden are cornerstones in the establishment of a cost-effective acquisition process that is consistent with E.O. 12866.

Improve Health Care Delivery in the Defense Department

DoD operates an extensive system of military medical treatment facilities, in support of two missions: wartime readiness and peacetime benefits. The readiness mission maintains the peacetime health of active duty personnel and makes preparations to attend the sick and wounded in war; the benefits mission provides a health benefit as a condition of service to DoD's eligible beneficiaries, including dependents of active duty personnel and retired military personnel and their dependents and survivors.

The principal health-related regulatory publications of the Department involve CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services (32 CFR Part 199). Through CHAMPUS, DoD shares in the cost of civilian care obtained by eligible beneficiaries when services are unavailable in military medical treatment facilities. CHAMPUS regulations address comprehensively issues such as eligibility, benefits, authorized providers, claims payment, appeals procedures, and the like. Changes to the CHAMPUS regulations are coordinated by DoD with the Departments of Transportation (U.S. Coast Guard) and Health and Human Services (Public Health Service), which also have beneficiaries eligible for CHAMPUS.

Amendments to the CHAMPUS regulations generally focus on program changes arising from revisions to the program's statutory base, or from DoD initiatives to improve the program. Over the next few years, changes in management of high cost care and revisions to reimbursement approaches for providers will be among DoD's regulatory priorities.

A major health care initiative of DoD is the TRICARE Program, which is intended to improve the management and integration of health care delivery in military medical treatment facilities and CHAMPUS, and to increase access to health services, control health care costs, and strengthen quality assurance activities. A major feature of TRICARE will be local health care delivery networks based on arrangements between military and civilian providers and organizations. Beneficiaries will be able to enroll in an HMO-like option to receive all their care from this integrated military-civilian network, or obtain care on a case-by-case basis from the network at preferred cost sharing rates.

The regulatory vehicle for implementation of TRICARE will be an amendment to the CHAMPUS regulation. This amendment will support the objectives of E.O. 12866, in that it will address the identified cost, quality and access concerns in health care in a sensible, cost-effective manner consistent with the President's priorities and with existing law and regulation. We will seek public comment and promulgate rule changes regarding the new health care choices to be made available to beneficiaries and their attendant costs, the additional health care management requirements to be introduced, and rules for establishment and operation of provider networks. An extensive and ongoing effort to inform the public about TRICARE will enhance the E.O. 12866 objective of providing full information to the public to encourage substantial and meaningful participation in the regulatory process. The Department of Defense (DoD) has planned one significant regulatory action for accomplishment in fiscal year 1995. It concerns the revitalization of communities impacted by base closures and is described below.

DOD—Office of the Secretary (OS)

FINAL RULE STAGE

23. • REVITALIZING BASE CLOSURE COMMUNITIES

Legal Authority:

10 USC 2687 note

CFR Citation:

32 CFR 90

Legal Deadline:

Final, Statutory, May 30, 1994.

Such guidance must be issued and effective to enable the Department of Defense (DoD) to perform various acts required by law and to be accomplished prior to May 30, 1994.

Abstract:

The interim final rule promulgates guidance required by section 2903 of the National Defense Authorization Act for fiscal year 1994, and provides interpretive guidance concerning other changes to the base realignment and closure process generated by Title XXIX of the Act. This interim final rule also establishes policy and procedure, assigns responsibilities, and delegates authority under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993.

Statement of Need:

DoD is engaged in a major downsizing, resulting in less land and buildings needed to support the defense mission. As a result of Presidential and Congressional approval of recommendations proffered by nonpartisan commissions provided for in Public Laws 100-526 and 101-510 to assess closure recommendations of the Secretary of Defense, DoD is presently in the process of closing 70 major installations throughout the United States. Furthermore, additional closing recommendations and actions may evolve from subsequent commission meetings scheduled in 1995. Integral to this action, and the President's five-part plan to revitalize base closure communities, is the need to define and establish policy and responsibilities that ensure expeditious and viable disposition of associated real and personal property, as well as speed the economic recovery of communities where bases identified for closure are located. This interim rule addresses that need by prescribing procedures under which this property may be made available to the affected communities, and the process under which other Federal agencies and providers of assistance for the homeless may acquire excess and surplus property. The pivotal legislation for this action is Title XXIX of Public Law 103-160, "Base Closure Communities Assistance," commonly referred to as the "Pryor Amendment."

Summary of the Legal Basis:

On July 2, 1993, President Clinton announced his five-part plan for the economic revitalization of communities where military bases are slated to close. The plan, "A Program to Revitalize Base Closure Communities," is a high administration priority. The Department of Defense worked with representatives of the National Economic Council and the Congress to develop legislation that would enable

the Department to implement the plan. Title XXIX of the National Defense Authorization Act for fiscal year 1994 includes the enabling provisions. The interim final rule promulgates guidance required by section 2903 of the Act and provides interpretive guidance concerning other changes to the base realignment and closure process generated by Title XXIX of the Act. The legal authority for this interim final rule is 10 USC 2687 note. The guidance was issued as an interim final rule in order for the Department of Defense (DoD) to perform various acts required by law prior to May 30, 1994.

Alternatives:

Previously, Federal law required DoD to put closed bases and installations up for sale. After sale, they could be used for development that would result in the creation of jobs and associated revenues. Oftentimes, bases were slow to sell, lying fallow for long periods of time, thus constituting a counterproductive economic situation for the Government, as well as the associated community. As a result of recommendations by an interagency working group convened by the National Economic Council, a legal basis was established for new disposition alternatives in such base closure situations. Title XXIX of Public Law 103-160, "Base Closure Communities Assistance," authorizes several significant and facilitating departures from past procedures. Such major new alternatives as authorizing conveyances of real and personal property at or below fair market value to local redevelopment authorities, making property available for economic development at no initial cost when a market doesn't exist, and sharing profits on future leases and sales, give top priority to the early reuse of a base's valuable assets. DoD has incorporated into its overall base closure program these innovative disposition alternatives that define the goals of the President's five-part plan for revitalization of base closure communities.

Anticipated Costs and Benefits:

The primary cost of this regulatory action is that associated with the establishment and management of procedures which provide for the rapid redevelopment, creation of new jobs, and speedy economic recovery of communities where bases are slated to close. It is minimal. Benefits, on the other hand, will be substantial and will accrue to the Government and the local communities. The Government may receive revenue as a result of direct sales, or later revenues as a result of profit sharing in the future sale or lease of real and personal property conveyed without initial cost. The local communities will receive redevelopment benefits in either case. It is a win-win situation. In both scenarios, however, ensuring that the overall benefit to society outweighs the costs incurred is a DoD priority.

Risks:

The degree of risk is lessened considerably by incorporating the risk variables into the language of the regulatory action itself. For financial risk to the Government, this is considerably reduced by receiving revenues from an outright sale of the property as before, or receiving revenues later through profit-sharing, an option that was never before available. The risk of economic hardship on the community is reduced because there is a built-in mechanism to have the property conveyed at no cost to the community if the community is not market ready. Through this innovative regulatory approach, risk is minimized on both sides of the regulatory action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/06/94	59 FR 16123
Interim Final Rule Effective	04/06/94	59 FR 16123
Interim Final Rule Comment Period End	07/05/94	59 FR 16123
Public Hearing Procedures Interim Final Rule	07/18/94	59 FR 36367
Extension of Comment Period Interim Final Rule	08/05/94	59 FR 34382
Public Hearing Interim Final Rule	08/05/94	59 FR 35463
Final Action	10/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DEPARTMENT OF EDUCATION (ED)

1994 Regulatory Plan

The Department of Education is a new (1980) and relatively small agency with a vast and critical mission:

> to ensure equal access to education and to promote educational excellence throughout the Nation.

For fiscal year 1995, the Department's regulatory plan focuses on the following priorities:

- Initiating a major restructuring of the complex Federal student loan program to achieve Presidential goals of increasing access to higher education while saving Federal education dollars;
- Fulfilling the President's commitment to reinvent the Federal role in education and to provide support and leadership to the national effort to overhaul the Nation's elementary and secondary education system;
- Implementing the President's initiative to establish a national framework within which States can create Statewide School-to-Work opportunities systems that provide American youth with the knowledge and skills to make an effective transition from school to further education and a first job in a high-skill, high-wage career;
- Promoting systemic reform in the Nation's elementary and secondary schools through implementation of the reauthorization of the Elementary and Secondary Education Act; and
- Expanding the consumer information available to students and student athletes to support informed educational choices.

In carrying out these priorities the Department will strive to meet the Secretary's goals for providing more timely and efficient service to the Department's customers and for achieving more effective management of the Department and its programs. The Department is particularly committed to exploring alternatives to regulation, and to regulating only when necessary to achieve essential objectives. Existing regulations will be reviewed with a fresh perspective to determine whether they are necessary and clear and to eliminate burdensome requirements.

The Department will continue to consult with the public, using regulatory negotiation and other innovative techniques to maximize public participation. Most recently, regulatory negotiation has been used successfully by the Department in developing regulations for the Federal Direct Student Loan Program and in achieving consensus on the guarantee agency reserves provisions of the Federal Family Education Loan Program regulations. The Office of Special Education and Rehabilitative Services has shared draft regulations through an electronic bulletin board. Also, before drafting regulations to implement reauthorizing legislation, the Department's Office of Bilingual Education and Minority Languages Affairs and Office of Educational Research and Improvement began outreach activities in the educational community to identify regulatory issues. The Department also coordinates with other appropriate agencies throughout the regulations development process. Examples in the coming year include coordinating programs under the School-to-Work Opportunities Act with the Department of Labor and coordinating regulatory actions supporting empowerment zones and enterprise communities with the Departments of Agriculture and Housing and Urban Development. The Secretary expects similar successful techniques to be used more extensively in the future.

In accordance with Executive Order 12866, the Department is improving assessment of the costs and benefits of its regulations, recognizing that many Department regulations involve nonquantifiable costs and benefits. For example, in developing regulatory amendments for the State Vocational and Applied Technology Education Program (not included in this Regulatory Plan), the Department contacted State and local officials to ascertain the costs and benefits that would result if the proposed changes were adopted. The Department also arranged meetings with representatives from State and local governments and groups representing special populations to seek additional information on costs and benefits.

Throughout the regulatory process, the Department proposes to be a laboratory for innovation and expects to be judged on how well it fulfills these objectives.

Statement of Regulatory Priorities

The U.S. Department of Education will have five major regulatory priorities in 1994:

Federal Direct Student Loan Program

The Federal Direct Student Loan Program is a high regulatory priority for the Department of Education because it is an important new Administration program, represents a significant investment of Federal funds affecting many American families, and involves complex regulatory processes including regulatory negotiation.

The Student Loan Reform Act of 1993 established the Federal Direct Student Loan Program under the Higher Education Act of 1965, as amended. Under the Federal Direct Student Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. Direct loans will account for 5 percent of the total new Federal student loan volume for academic year 1994-95, estimated to be more than $1 billion. Direct loans will increase to at least 60 percent of new student loans by academic year 1998-99. Direct lending will save taxpayers an estimated $4.3 billion through fiscal year 1998 (and $1 billion each year thereafter) by eliminating private-sector excess profits in the current student financial aid system and capitalizing on the Federal Government's ability to borrow at a lower interest rate. A streamlined system offering "one-stop shopping" will make borrowing and repayment easier for students. Students also will have an income-contingent repayment option that tailors their monthly payments to their income.

As permitted by the statute, the Department has already published some interim standards and procedures to administer the program during the first year (1994-1995). School selection criteria and loan origination criteria for the second year (1995- 1996) have also been published. Other standards, criteria, procedures, and regulations to implement the program in the second and subsequent years are being developed through regulatory negotiation.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000), Pub. L. 103-227, enacted March 31, 1994, is the leading edge of this Administration's strategy to reinvent the Federal role in education and to provide support and leadership to the national effort to overhaul the elementary and secondary education system. Goals 2000 (1) codifies and expands the National Education Goals; (2) establishes the National Education Goals Panel and the National Education Standards and Improvement Council; (3) challenges States to develop content and student performance standards, opportunity-to-learn standards, and State assessments, and provides for development of national standards; (4) provides funding to support, accelerate, and sustain State and local improvement efforts in the system of education; (5) provides Federal leadership on the use of technology for educational programs; (6) provides authority to waive statutory and regulatory requirements that impede the ability of a State, local educational agency, or school to carry out State or local improvement plans; and (7) establishes the National Skill Standards Board to be a catalyst in stimulating the development and adoption of a voluntary national system of skill standards, assessment, and certification.

The Department of Labor will administer the provisions relating to the National Skill Standards Board; the Department of Education will administer the remaining provisions. It is likely that regulations will be necessary to implement certain aspects of Goals 2000. However, Goals 2000 provides an ideal laboratory for employing alternatives to regulation whenever possible, in keeping with (1) the intent of the legislation to foster flexibility and innovation at the State and local level, (2) the spirit of Executive Order 12866 instructing agencies to promulgate regulations only where necessary, and (3) this Department's approach to regulation.

School-to-Work Opportunities Act

The School-to-Work Opportunities Act of 1993, Pub. L. 103-239, enacted May 4, 1994, establishes a School-to-Work Opportunities Initiative, to be jointly administered by the Departments of Education and Labor. This initiative establishes a national framework within which States can create Statewide School-to-Work Opportunities systems that provide American youth with the knowledge and skills to make an effective transition from school to further education and a first job in a high-skill, high-wage career. Under the initiative, the Federal Government provides "venture capital" to States and communities to stimulate the creation of Statewide School-to-Work Opportunities systems. These systems will build bridges from school to work that provide students with an integrated array of learning and employment experiences. Under the Act, School-to-Work Opportunities systems must include three core components: (1) work-based learning; (2) school-based learning; and (3) connecting activities. The work-based learning component provides students with a planned program of job training and experiences in a broad range of tasks in an occupational area as well as paid work experience and workplace mentoring. The school-based learning component includes a coherent multiyear sequence of instruction—typically beginning in the eleventh grade and ending after at least one year of postsecondary education—tied to the high academic and skill standards to be developed under the Goals 2000: Educate America Act. Finally, the connecting activities component ensures coordination of the work- and school-based learning components by providing technical assistance in designing work-based learning components, matching students with employers' work-based learning opportunities, and collecting information on what happens to students after they complete their program of studies.

Since this initiative will be administered jointly with the Department of Labor, we are working closely with the Department of Labor to determine what regulations will be necessary for implementation. It is urgent that we move forward quickly on this initiative. As States and localities begin constructing School-to-Work Opportunities systems, our international competitors already have those systems and are moving to strengthen them. In order to ensure rapid and efficient implementation of the Act, we are also exploring possible alternatives to regulation.

Elementary and Secondary Education Act Reauthorization (Part A of Title I of the Elementary and Secondary Education Act 1965)

The Elementary and Secondary Education Act (ESEA) reauthorization would (1) reauthorize and restructure the elementary and secondary education programs of the Department of Education to make them better vehicles for helping all children achieve high standards; (2) direct greater Federal resources to the poorest schools and communities; (3) support education reforms underway in the States; (4) support sustained, intensive professional development in the core academic subjects for educators; (5) assist efforts to make schools safe and drug-free; and (6) provide increased State and local administrative flexibility, in return for greater accountability for successful education results. The ESEA is one of the Federal Government's largest investments in education.

Assuming passage of this critical legislation, regulations may be necessary to implement many of the changes to the ESEA. In particular, regulations are likely to be necessary to implement changes to the Chapter 1 Program in Local Educational Agencies.

Student Right-to-Know Act

The regulations implementing the Student Right-to-Know Act would require institutions of higher education participating in any program authorized by Title IV of the Higher Education Act of 1965, as amended, to collect and disclose graduation and transfer rates to both current and prospective students. Institutions would also be required to report these rates to the Secretary. These proposed regulations will (1) assist students and their families to make more informed decisions about which institution a student should attend; (2) allow institutions to better evaluate the effectiveness of their programs; and (3) establish a uniform methodology for the collection of graduation and transfer rates.

ED—Office of Elementary and Secondary Education (OESE)

PROPOSED RULE STAGE

24. • GOALS 2000: EDUCATE AMERICA ACT

Legal Authority:

PL 103-227

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

The Goals 2000: Educate America Act codifies and provides a framework for monitoring the attainment of the National Education Goals (through the National Education Goals Panel and the National Education Standards and Improvement Council); supports State systemic education reform; establishes the National Skill Standards Board; helps ensure safe schools; and reauthorizes the Department of Education's Office of Educational Research and Improvement.

Statement of Need:

No final determination has been made as to specific regulations that will be necessary to implement the new legislation, and which of these regulations will be the most significant. However, a preliminary analysis indicates that the regulations needed to implement Title II (National Education

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Reform Leadership, Standards, and Assessments) and Title III (State and Local Education Systemic Improvement) may warrant inclusion in the Department's 1994 Regulatory Plan.

Title II of Goals 2000 authorizes grant programs to develop voluntary national opportunity-to-learn standards and to defray the cost of developing, testing, and evaluating State assessments for measuring student achievement against their content and student performance standards. Title II also authorizes a grant program to assist States in planning effectively for the use of technology in schools.

Title III creates a program of grants to States to support, sustain, and accelerate State and local efforts to reform education so that all students can meet challenging State standards. The President has requested nearly $700 million for the Title III program for fiscal year 1995. This important new program will create a partnership between the Federal Government and State and local governments dedicated to promoting and sustaining the reforms that are needed in our Nations's schools.

Alternatives:

The Secretary believes that Goals 2000 offers an excellent opportunity for employing alternatives to regulation whenever possible, reflecting the intent of the legislation to foster flexibility and innovation at the State and local level. With respect to Title III, Goals 2000 authorizes the Secretary to waive certain Federal requirements that could hinder States and school districts from carrying out their school improvement plans.

Anticipated Costs and Benefits:

The regulations are expected to impose minimal requirements necessary to ensure the proper expenditure of Federal funds. A more exact estimate of the anticipated costs and benefits will be made as soon as the scope of the regulations has been determined.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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ED—OESE

25. • PART A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Legal Authority:

20 USC 2701 to 2731; 20 USC 2821 to 2838; 20 USC 2851 to 2854; 20 USC 2891 to 2901

CFR Citation:

34 CFR 200

Legal Deadline:

None

Abstract:

Title I of the Elementary and Secondary Education Act of 1965, originally enacted as part of the War on Poverty, was landmark legislation that responded to the need for extra resources to equalize educational opportunities for children in high-poverty schools. Over the years, Title I has helped raise the performance of disadvantaged children, encouraged parents to become engaged in their children's schooling, equalized local expenditures in high-poverty schools with those of other schools in the district, and provided supplemental services.

Statement of Need:

By the early 1970s, the program had evolved into its current form--small-group instruction in separate classes, most often focused on low-level skills in reading and arithmetic at the elementary school level. In 1993, over $6 billion is being provided to school districts to support extra educational services for over 5.5 million low-achieving children. Recent funding has averaged about $1,000 per participant.

Title I helped to equalize educational opportunities and support a national focus on basic skills in the 1970s. During this period and most of the 1980s, for example, the gap in mathematics achievement between students in disadvantaged urban communities and more advantaged students narrowed substantially, according to the National Assessment of Educational Progress (NAEP).

However, in recent years, progress has stalled, and NAEP indicates that the gap appears to be widening. Schools in very high-poverty communities, in particular, have shown little improvement. Children in high-poverty schools exhibit great need; yet their schools appear unable, for the most part, to provide the enriching instruction and support those children need to succeed at a level equal to other students and to meet challenging standards expected of all students.

The ESEA reauthorization includes Title I (Federal grants to high-poverty areas), Title II (Dwight D. Eisenhower Professional Development Program, Technical Assistance Centers), Title III (technology research and development, demonstration projects), Title IV (safe and drug-free schools and communities), Title V (promoting school equity), Title VI (Indian education), Title VII (bilingual education), Title VIII (Impact Aid), and amendments to various other education laws. In accordance with the Department's program for review of existing regulations under Executive Order 12866 in conjunction with reauthorization, all of these regulations will be reviewed to determine whether they should be modified or eliminated.

The most significant regulations affected by the reauthorization are those for the Chapter 1 Program in Local Educational Agencies in 34 CFR Part 200. The present Chapter 1 structure is not adequate to meet the National Education Goals and the high standards called for in the Goals 2000: Educate America Act. Rather than addressing each of the Chapter 1 structural problems individually, which could result in piecemeal changes, the Administration's proposal takes a new look at the program: what we expect it to do; how Chapter 1 fits into the entire effort of school reform; how it relates to the children's other educational experiences; how to provide the resources and assistance schools need to work effectively; and where responsibility for education lies. The proposed reauthorization would return the program to its original name of Title I, reaffirming the original intent of the program, yet radically transforming its structure.

Alternatives:

Following the enactment of reauthorization legislation, the Secretary will consider possible options to regulations in appropriate circumstances.

Anticipated Costs and Benefits:

To the extent regulations are necessary to implement part A of Title I, consistent with Executive Order 12866, they are expected to impose minimal requirements essential to ensure the proper expenditure of Federal Funds and efficient and effective operation of the program. A more exact estimate of the anticipated costs and benefits will be made after Title I reauthorization is enacted and the scope of the necessary regulations is determined.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

State, Local

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ED—Office of Postsecondary Education (OPE)

PROPOSED RULE STAGE

26. STUDENT RIGHT-TO-KNOW ACT

Legal Authority:

20 USC 1092

CFR Citation:

34 CFR 668

Legal Deadline:

None

Abstract:

These regulations would implement certain provisions of the Student Right-to-Know Act. This Act requires the disclosure by an institution of its completion or graduation rate on an annual basis. The act also requires enrollment information and completion/graduation rate information about the institution's athletes.

Statement of Need:

The Student Right-to-Know Act expands the types of consumer information that institutions of higher education must disclose. The regulations implementing the Act would require institutions of higher education participating in any program authorized by Title IV of the Higher Education Act of 1965, as amended, to collect and disclose graduation and transfer rates to both current and prospective students. In addition, institutions would also be required to report these rates to the Secretary. These proposed regulations will (1) assist students and their families to make more informed decisions about which institutions a student should attend; (2) allow institutions to better evaluate the effectiveness of their programs; and (3) establish a uniform methodology for the collection of graduation and transfer rates.

Alternatives:

Regulations are necessary to implement the statutory requirements. The Secretary has some flexibility with regard to the scope of the information required under the disclosure requirement. The Department, in conjunction with the postsecondary education community, has also developed a form for reporting graduation rate data. This form, once it is finalized, would simplify reporting for institutions, provide the Department with accurate and consistent data, and allow for more efficient compilation and comparison of the data when the Secretary publishes the information as part of the Department's report on the condition of education in the United States. On July 10, 1992, the Secretary published proposed regulations and received numerous comments from the academic community. These comments will be incorporated in a second set of proposed regulations.

Anticipated Costs and Benefits:

The costs associated with these regulations will be those for recordkeeping and disclosure of the information on graduation and transfer rates. In implementing the statutory requirements and providing information to consumers, the Secretary will work with the postsecondary education community to minimize costs for institutions to the extent possible.

Risks:

These regulations do not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/10/92	57 FR 30826
NPRM Comment Period End	08/24/92	
NPRM	10/00/94	
Final Action	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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ED—OPE

27. FEDERAL DIRECT STUDENT LOAN PROGRAM

Legal Authority:

20 USC 1087 et seq

CFR Citation:

34 CFR 685

Legal Deadline:

None

Abstract:

The regulations are needed to implement certain provisions of the Omnibus Budget Reconciliation Act of 1993. These regulations would establish standards, criteria, procedures and other requirements for participation in the Direct Loan Program in the 1995-1996 and subsequent academic years.

Statement of Need:

The Student Loan Reform Act of 1993 established the Federal Direct Student Loan Program under the Higher Education Act of 1965, as amended (HEA). See subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub.

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L. 103-66, enacted August 10, 1993). Under the Federal Direct Student Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders as in the Federal Family Education Loan Program.

The statute directs the Secretary to exercise discretion in the selection of schools participating in the program so that loans made under the program represent no more than 5 percent of new student loan volume for academic year 1994-1995, 40 percent for academic year 1995-1996, 50 percent for academic years 1996-1997 and 1997-1998, and 60 percent for the academic year that begins in 1998.

Regulations are necessary to establish the standards, criteria, and procedures to implement this program. For the first year of the program (1994-1995), to the extent reasonable and necessary for successful implementation, the Secretary is authorized to establish these standards, procedures, and criteria through a notice published in the **Federal Register**. Beginning with academic year 1995-1996, all standards, criteria, procedures, and other implementing regulations are required, to the extent practicable, to be developed through a negotiated rulemaking process (20 U.S.C. 1087g).

Alternatives:

In order to comply with the statutory requirement for negotiated rulemaking, the Secretary of Education and the Assistant Secretary for Postsecondary Education established the Direct Student Loan Regulations Advisory Committee which assisted in developing proposed regulations. The committee was composed of representatives of all the significantly affected interests and considered various alternatives in developing the regulations, including the need for any regulations at all.

Anticipated Costs and Benefits:

Regulations are needed to provide a framework for the Federal Direct Student Loan Program and implement statutory requirements. The regulations are expected to impose minimal requirements necessary to ensure the appropriate use of program funds and will not impose costly and excessive regulatory burdens or require unnecessary Federal supervision. Cost implications are among the considerations during regulatory negotiation.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/18/94	59 FR 42626
NPRM Comment Period End	10/03/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1840–AC05

ED—Office of Vocational and Adult Education (OVAE)

PROPOSED RULE STAGE

28. • SCHOOL-TO-WORK OPPORTUNITIES PROGRAM

Legal Authority:

PL 103-239

CFR Citation:

None

Legal Deadline:

None

Abstract:

The School-to-Work Opportunities Act establishes a national framework for the development of a School-to-Work Opportunity system in every State to provide American youth with the knowledge and skills needed to make an effective transition from school to a first job in a high-skill, high-wage career or to further education and training.

Statement of Need:

Under the Act, Federal funds will be used as venture capital to stimulate State and local creativity in establishing statewide School-to-Work Opportunities systems. To promote this systemic reform, the Act would provide State and local participants with a substantial degree of flexibility to experiment, or to build upon and enrich current promising programs, in fashioning their systems. However, under the Act, all State systems must share certain common features and basic program components. Moreover, through the formation of partnerships among secondary and postsecondary educational institutions, public and private employers, labor organizations, government, community groups, parents, other key groups, communities will take "ownership" and responsibility for giving American youth access to high-level skills and meaningful employment opportunities.

Programs funded under the Act will be jointly administered by the Departments of Education and Labor. The Act is also compatible with, and builds on, related State and local School-to-Work grant activities supported by both Departments under the current Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act). The Act authorizes an appropriation to the Secretaries of Education and Labor of $300 million for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 through 1999.

Alternatives:

Title V of the Act authorizes the Secretaries of Education and Labor to grant waivers of statutory and regulatory requirements of certain Federal job-training and education programs administered by the Departments of Labor and Education to all States (and through States to local partnerships) that have approved State plans. The purpose of the waivers would be to remove impediments to the ability of a State or local partnership to carry out an effective School-to-Work Opportunities Program. Title V also authorizes local partnerships that carry out programs under the Act in high-poverty schools to combine resources under certain education and job-training programs administered by the Departments in order to carry out "schoolwide" School-to-Work Opportunities Programs in these schools. In addition, Title V authorizes States with approved State plans to combine funds under this Act with certain funds under the Perkins Act and the Job Training Partnership Act to implement their statewide School-to-Work Opportunities systems. The Secretaries will consider appropriate alternatives to regulations, and they

expect to fully utilize the flexibility permitted under the statute.

Anticipated Costs and Benefits:

If regulations are published to implement the Act, they would be expected to impose minimal requirements necessary to ensure the proper expenditure of Federal funds consistent with the School-to-Work Opportunities Initiative. A more exact estimate of the anticipated costs and benefits will be made as soon as the scope of implementing regulations, if any, incorporating the flexibility permitted under the Act, has been determined.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local

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DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory Priorities

Highlights of 1994 Regulatory Plan

The Department of Energy's (DOE's) 1994 Regulatory Plan reflects the fundamental changes that have occurred in the Department's mission, priorities and business practices. In keeping with the Department's new strategic plan and the President's initiatives, the following significant regulatory actions are highlighted:

- Energy efficiency appliance standards,
- Federal energy savings performance contracts,
- Radiation protection of the public and environment,
- Nuclear facilities safety management, and
- Contract reform.

The World Has Changed

DOE's challenge is to move away from the Cold War economy, invest in people and technology to strengthen the economy and protect the environment, and reinvent a government that is efficient, serves the American people, and provides more services with fewer resources.

These changes in the world, and our need to change with them, have led to the massive reshaping of DOE's missions, priorities, and business practices. Tinkering around the edges was not enough—DOE had to start anew. Through its strategic planning process, the Department has redirected its extraordinary scientific and technical talent and resources to new and more sharply focused goals: fueling a competitive economy, improving the environment through waste management and pollution prevention, and reducing the nuclear danger.

Our New Mission

The Department of Energy's mission is to advance our welfare as a Nation by providing the technical information and the scientific and educational foundation for the technology, policy, and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense.

Enhancing Energy Efficiency

A strategic energy policy is essential to promoting economic growth, high-wage jobs, and energy security while protecting the environment. Improving the efficiency with which the Nation uses energy is essential to reconciling these goals. Enhancing energy efficiency is good for the economy, the environment, and the Nation's energy security, and is the number one energy priority of this Administration.

The Department's energy efficiency regulations will contribute significantly to meeting the goals of the President's Climate Change Action Plan, by reducing emissions of greenhouse gases. The Department's ongoing rulemakings would set higher energy efficiency standards for 15 major categories of appliances and equipment and make significant contributions to reducing greenhouse gas emissions.

In addition, the Federal Government can set an example for the Nation by improving energy management in its own buildings and facilities. The Department's rulemaking effort to establish procedures on use of energy savings performance contracts will contribute to this effort by increasing the use of "shared energy savings" contracts. These contracts will result in reduced energy bills to the Federal Government without the need for any up-front Federal investment.

A New Vision for Protecting the Environment, Safety and Health

The principal environmental quality objective—and the greatest challenge—for the Department of Energy is to eliminate the risks and imminent threats posed by the Department's former nuclear weapons activities. With the end of the Cold War, DOE has turned its focus to understanding and eliminating the enormous environmental problems created by the Department's historical mission of nuclear weapons production.

The Department is shifting from a reactive approach to environment, safety and health to one that emphasizes pollution prevention. All departmental businesses are proactively ensuring that there is no compromise in public and worker safety.

In support of this effort, the Department's Office of Environment, Safety and Health has initiated a comprehensive review of existing requirements and directives aimed at improving safety and health throughout the DOE complex. This process will allow the Department to eliminate redundant requirements, to identify gaps where new requirements may be needed, and to rationalize the existing body of requirements applicable to the Department's Federal and contractor work force.

Consistent with the Department's new commitment to openness and public participation, DOE intends to use notice and comment rulemakings and other appropriate means of soliciting public participation as it augments the existing body of environment, safety and health requirements.

The Department's rulemaking on radiation protection sets forth, *inter alia*, additional reporting, monitoring and discharge requirements and a dose limitation system for protecting the public. New nuclear safety regulations would strengthen requirements applicable to contractors and subcontractors with nuclear safety responsibilities at the Department's facilities.

Improving Contract Management Practices

The Department relies heavily on contractors to operate its extensive national network of research laboratories, operations offices and other facilities. Earlier this year, the Department's Contract Reform Team reported on its comprehensive review of the Department's contracting practices, recommending over 45 actions to increase contractor accountability and create a more equitable and rational allocation of the costs and risks of contract performance between the Department and its management and operating contractors. These recommendations, some of which will require rulemaking activity, will serve to fundamentally reform the Department's contracting and contract management techniques.

Consistent with the National Performance Review's objective to make government work better and cost less, the Contract Reform Team recommendations would revise traditional contracting practices to increase contractor accountability, enhance competition, improve contract administration and financial accountability, and provide appropriate incentives for contractors to meet and exceed performance criteria and achieve cost savings. A series of rulemakings will be initiated to incorporate these policies into the Department's procurement regulations. For example, amendments to the Department of Energy Acquisition Regulations will revise the current provisions on fines and penalties, third-party liabilities, and loss of or damage to Government property.

Innovations in Business Relationships

President Clinton's Climate Change Action Plan meets the twin challenges of responding to the threat of global warming and strengthening the economy. The Action Plan continues to break new ground in the relationship between government and the private sector—fostering cooperative approaches and a forward looking agenda, rather than relying exclusively on command-and-control mandates that tend to lock technologies into place and stifle innovation.

Under the Climate Challenge, the Department has established a voluntary partnership with electric utilities who have committed to reducing their greenhouse gas emissions. Utilities choose from a wide range of options for reducing, avoiding or sequestering greenhouse gas emissions, and they may experiment with innovative ideas to achieve their emission reduction goals. In support of the Climate Challenge and other Climate Change Action Plan activities, the Department is developing nonregulatory guidelines for the voluntary reporting of greenhouse gases by participating utilities.

Certain of the innovations of the Action Plan are being applied to the Department's regulatory approaches. The Department has begun exploring ways to improve the process used to revise the energy efficiency standards for appliances. For example, prior to beginning the rulemaking process for revising the standards for residential air conditioners and heat pumps, the Department approached the Air-Conditioning and Refrigeration Institute to solicit the support of industry in developing the revised standards. As a result, the industry established an engineering group which worked with the Department to improve the engineering model used in the energy analysis. The group also provided performance and cost data to be used as a basis for the standards analysis. Because of the close cooperation of the industry, the resulting analysis has been greatly improved and the confidence in the projected energy savings for the various design options being considered has been enhanced.

The Department has also supported informal negotiations among manufacturers, environmentalists, State energy offices and utilities to develop new energy efficiency standard levels for refrigerators. Department staff members attended the meetings as observers and provided technical support, legal guidance concerning the Energy Policy and Conservation Act, and encouragement. The general acceptance of negotiated standard levels by the interested parties prior to the issuance of a notice of proposed rulemaking could improve significantly the quality of public participation and the quality of the technical analysis, as well as accelerate the rule development process.

Regulatory Streamlining Efforts

The Department has undertaken a comprehensive initiative to improve and streamline its rulemaking process. The improvement recommendations developed by a cross-cutting team of DOE employees were recently approved by Secretary O'Leary and are in the process of being implemented. These improvements provide for:

- teamwork throughout the rulemaking process;
- mechanisms to promote management attention, responsibility and accountability, including an effective management information system; and
- realignment to provide more effective support to program offices with rulemaking responsibilities.

The successful implementation of these improvements will provide for accelerated implementation of the Department's priority programs; dollar savings; improved transparency and public access to DOE rulemaking activities; and, ultimately, increased public trust and confidence in DOE regulatory efforts.

Review of Existing Regulations

In addition to improving the development of new regulations, the Department has undertaken an in-depth review of its existing regulations to determine if any should be modified or eliminated. On March 1, 1994, the Department published a notice of inquiry in the **Federal Register** (59 FR 9682) that requested public comments on areas of DOE's existing regulations that might be candidates for improvement. The Department also solicited recommendations from over 200 stakeholders organizations and DOE Headquarters and Field Offices. Based on the comments received from the public and other stakeholders, DOE has prepared a second notice of inquiry targeting particular areas of its regulations for possible modification or elimination. This second notice will solicit public comments on specific regulatory improvements in the targeted areas of existing regulations. It is the Department's intention to make such a periodic review of existing regulations an ongoing feature of its regulatory improvement program.

DOE—Energy Efficiency and Renewable Energy (EE)

PRERULE STAGE

29. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL APPLIANCES

Legal Authority:

42 USC 6295

CFR Citation:

10 CFR 430.32

Legal Deadline:

Final, Statutory, January 1, 1992, for Water Heaters, Pool Heaters, Direct Heating Equipment, Mobile Home Furnaces,Kitchen Ranges and Ovens, etc.

Final, Statutory, January 1, 1994, for Central Air Conditioners,Heat Pumps, and Furnaces.

Final, Statutory, November 17, 1994, for Refrigerators,Refrigerator-Freezers, and Freezers.

Final, Statutory, May 14, 1996, for Dishwashers, ClothesWashers, and Clothes Dryers.

Abstract:

This is the initial review of the statutory standards for water heaters, pool heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, room air conditioners, fluorescent lamp ballasts, central air conditioners, heat pumps and furnaces to determine whether those levels need to be amended. This is the second reanalysis of the standards levels for refrigerators, refrigerator-freezers and freezers, dishwashers, clothes washers, and clothes dryers. Television sets will be examined to determine whether conservation standards are justified. These actions are covered by RINs 1904-AA38, 1904-AA47, and 1904-AA67.

Statement of Need:

Experience has shown that the choice of residential appliances being purchased by both builders and homeowners as replacement units is usually based on the first cost, not life-cycle costs. Thus it is necessary to establish minimum energy efficiency standards for appliances to eliminate inefficient products from the market and encourage industry to explore innovative ways to improve product performance.

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Summary of the Legal Basis:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy-efficiency standard levels for most types of major residential appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

Alternatives:

The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. In making this determination a large number of complex issues must be considered. Data and information are solicited from industry and the public at large. Engineering analysis to estimate the efficiency of various combinations of design options, using both calculations (e.g., computer simulation models) or experimental data, is conducted. Predictions of energy savings resulting from more stringent standards are determined using the Lawrence Berkeley Laboratory Residential Energy Model, which forecasts the appliance purchase choices that households make as well as their subsequent appliance usage behavior and energy consumption. The effect of revised standards on an industry's profitability and scale of operation is also evaluated. Proposed revisions to the energy efficiency standards are published in a notice of proposed rulemaking for public comment. Over 6,000 comments were received on the proposed standards for water heaters, pool heaters, direct heating equipment, mobile home furnaces, kitchen ranges and ovens, room air conditioners, fluorescent lamp ballasts and televisions (RIN 1904-AA38). The Department will consider all of these comments in deciding what level should be established for the revised energy efficiency standards for each product before the final rule is issued.

The above process requires a great deal of effort and time to accomplish. The Department has been exploring methods to reduce the amount of effort and shorten the time required to accomplish the appliance standards rulemaking. In this regard, the Department recently has provided technical support and legal guidance to a group of refrigerator manufacturers, environmentalists, State energy offices and utilities involved in informal negotiations concerning standards for refrigerators and freezers. If the negotiated standards are analytically sound the Department could offer them as the Department's proposed rule. The general acceptance of a negotiated standard by the interested parties prior to the proposal could lead to a more speedy final rule. The rulemaking could also be completed with less contention and divisiveness than presently occurs.

Anticipated Costs and Benefits:

These standards, combined with other market stimuli, could yield energy savings worth about $9.4 billion through 2000 and reduce greenhouse gas emissions from projected 2000 levels by 11.8 MMT of carbon equivalent. Redesign and retooling to produce products meeting the more stringent efficiency standards for these products are expected to require an investment in excess of $800 million by the industry.

Risks:

Without appliance standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Standards which are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place such a burden on the industry as to cause some manufacturers to withdraw from the market resulting in a loss of competition and jobs. On the other hand, enhancing appliance energy efficiency reduces atmospheric emissions of CO2, NOx and SOx, or the costs of complying with existing emission limits.

Timetable:

CACs, Heat Pumps, Furnaces, Refrigerators, etc. (RIN 1904-AA47)
ANPRM 09/08/93 (58 FR 47326)
NPRM 12/00/94
Final Action 02/00/96

Dishwashers, Clothes Washers, and Clothes Dryers (RIN 1904-AA67)
ANPRM 10/00/94
NPRM 08/00/95
Final Action 06/00/96

Water & Pool Heaters, Direct Heating Equip., etc. (RIN 1904-AA38)
ANPRM 09/28/90 (55 FR 39624)
NPRM 03/04/94 (59 FR 10464)
Final Action 07/00/95

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

Carl Adams
Director, Appliance Standards Division
Office of Codes and Standards
Department of Energy
Energy Efficiency and Renewable Energy
1000 Independence Ave. SW.
Washington, DC 20585
202 586-7140

RIN: 1904–AA38

DOE—EE

FINAL RULE STAGE

30. FEDERAL SECTOR ENERGY SAVINGS PERFORMANCE CONTRACTING

Legal Authority:

42 USC 8287 Energy Policy Act of 1992, sec 155

CFR Citation:

10 CFR 436

Legal Deadline:

NPRM, Statutory, April 24, 1993.

Abstract:

The regulation would establish standard procedures and methods for use by all Federal agencies to acquire energy savings performance contract services. The regulation would permit Federal agencies to enter into contracts under which contractors would make investments in improving the energy efficiency of Federal facilities, and the savings would be split between the contractor and the Federal Government.

Statement of Need:

The methods and procedures for selecting, monitoring, and terminating contracts with energy service companies will assist Federal agencies in overcoming obstacles to energy savings performance contracting in the Federal sector. Implementation of the rule will accelerate the pace and quality of performance contracts between agencies, energy service companies, industry and utilities. It would also significantly increase private-sector investments in projects and help agencies meet the goals of Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, to reduce energy use by 30 percent by 2005 based on usage from 1985. The Federal Government is the largest energy consumer in the world, having consumed 1.29 quads at a cost of $8.66 billion in fiscal year 1992 for use in over 500,000 buildings (occupying 3.2 billion square feet), 500,000 vehicles and varied industrial processes.

Summary of the Legal Basis:

The Energy Policy Act of 1992 requires development of such methods and procedures by rule.

Alternatives:

No other alternatives were considered in light of the statutory requirement.

Anticipated Costs and Benefits:

Estimated initial start-up cost of implementing the regulation is $500,000. Under the implemented regulation and Executive Order 12902 the Government could save up to $1 billion a year in reduced energy costs.

Risks:

Energy savings performance contracting poses no added risks to public health, safety, or the environment. In fact, by helping to enhance energy efficiency and reduce consumption of fossil fuel, it offers important environmental benefits.

Timetable:

Action	Date	FR Cite
NPRM	04/11/94	59 FR 17204
NPRM Correction	04/22/94	59 FR 19150
NPRM Comment Period End	06/10/94	59 FR 17204
Final Action	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

Procurement:

This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact:

Joan G. Stone
Financing Specialist
EE-44
Department of Energy
Energy Efficiency and Renewable Energy
1000 Independence Ave. SW.
Washington, DC 20585
202 586-5772

RIN: 1904–AA62

DOE—Departmental and Others (ENDEP)

PROPOSED RULE STAGE

31. NUCLEAR SAFETY MANAGEMENT: PHASE II

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 830

Legal Deadline:

None

Abstract:

This action would make additions to DOE's requirements concerning DOE contractor and subcontractor activities for ensuring nuclear safety at DOE facilities. These additional rulemaking requirements include reactor design criteria, natural phenomenon hazards, fire protection, and criticality safety.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligations to protect health and safety are fulfilled and to provide, if needed, a basis for the assessment of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations.

Alternatives:

The Department could continue to impose nuclear safety requirements through administrative directives applicable to DOE contractors.

Anticipated Costs and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

The rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Action	Date	FR Cite
NPRM	09/09/95	
Final Action	06/30/96	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

Stephen Stern
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Department of Energy
Washington, DC. 20545
301 903-2527

RIN: 1901–AA42

DOE—ENDEP

FINAL RULE STAGE

32. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 834

Legal Deadline:

None

Abstract:

This action would add a new 10 CFR part 834 to DOE's regulations establishing a body of rules setting forth the basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety and the environment from the nuclear, radiological, and chemical hazards posed by these DOE activities. Major elements of the proposal included a dose limitation system for protection of the public; requirements for liquid discharges; reporting and monitoring requirements; and residual radioactive material requirements.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligations to protect health and safety are fulfilled and to provide, if needed, a basis for the assessment of civil and criminal

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penalties consistent with the Price-Anderson Amendments Act of 1988.

Summary of the Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations and the protection of the environs around its facilities.

Alternatives:

The Department could continue to impose radiation protection standards through administrative directives applicable to DOE contractors.

Anticipated Costs and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Action	Date	FR Cite
NPRM	03/25/93	58 FR 16268
NPRM Comment Period End	06/22/93	58 FR 16268
Final Action	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Agency Contact:

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RIN: 1901–AA38

BILLING CODE 6450-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory Priorities

This statement of regulatory priorities is in two parts. Part I describes the overall regulatory priorities of the Department. Part II describes these priorities by agency, in greater detail.

I. Overall Priorities

The Department of Health and Human Services, the "People's Department," provides direct services or assistance to one of every five Americans. With emphasis on children, the elderly, disabled persons, the poor and others who are most vulnerable, HHS is the Federal Government's principal agency for protecting health and providing essential human services to Americans. HHS activities are striking in their variety, ranging from the largest programs in Government (Social Security, Medicare, Medicaid) to some of the smallest. HHS responsibilities encompass a wide spectrum including improving infant health; providing care for the elderly; gathering basic national health and welfare statistics; providing job training, health clinics, and Head Start services; conducting health research at the National Institutes of Health; and regulating food and drug products that account for some 25 cents of every dollar spent by American consumers.

The Department's regulatory priorities reflect our broad strategic goals. These key goals include:

- Transforming the welfare system in this country from a system of dependency to a system of transition to work;
- Improving and protecting the health of our citizens, especially the Nation's most vulnerable populations;
- Investing in the future of our Nation's children and youth;
- Increasing the independence and self-sufficiency of the elderly and persons with disabilities; and
- Improving the management of our programs and delivery of services to our customers.

Many of our significant regulatory initiatives address one or more of these Department-wide goals. For example, new Head Start regulations will not only strengthen the existing program as an investment in our nation's children, but will also implement the new component for infants and toddlers through performance standards.

Because of the importance of HHS's regulatory responsibilities, we are emphasizing the principles of Executive Order 12866 which include regulating only where required by statute or to meet a compelling public need, fully considering the costs and benefits of regulatory alternatives, increasing consultation with affected publics, and reducing regulatory burden.

HHS is committed to substantial reforms of our existing regulations to reduce burden on those we regulate while effectively meeting the health and human services responsibilities of this Department. To focus our efforts on those items in most need of revisions, we have asked the public for recommendations through a request published in the **Federal Register** on January 20, 1994. We continue to seek recommendations from the public.

Early consultation with those parties affected by rulemaking is critical to developing workable regulations. HHS will use a number of innovative approaches as we work on developing the most effective strategies for consultation with State and local governments and the wide variety of other groups and individuals affected by regulations issued by this Department. One approach that we plan to use for the first time in the upcoming year is negotiated rulemaking. This process will bring HHS together with external interests who would be significantly affected by a new rule to reach consensus through open discussions on some or all issues under consideration *before* a rule is formally published as a notice of proposed rulemaking.

HHS is taking a new approach to our relationship with State, local, and tribal governments. We are listening to officials of other levels of government concerned about the imposition of unfunded mandates and other significant changes on the way they must operate. Pursuant to Executive Order 12875, "Enhancing the Intergovernmental Partnership," HHS is committed to avoiding where possible imposition of mandates—funded, and particularly unfunded—and to consulting with appropriate levels of government as early as possible in the development of policies and regulations affecting them.

We are carrying out our decisionmaking and consultation with a full appreciation of State, local, and tribal governments as our partners in serving the public. One example of our efforts is the Medicaid regulation on home and community-based care which was published in July 1994. We worked closely with States to craft less burdensome waiver requirements that will give States an opportunity to improve and expand these essential community-based services to provide home care for more individuals and to avoid unnecessary placement in nursing homes or other health care institutions.

There are additional samples of regulations meeting both HHS strategic goals and E.O. 12866 objectives. Under the Mammography Quality standards Act, the Food and Drug Administration is implementing a major initiative to upgrade the quality of mammography services. Higher quality services will help increase the number of women whose cancers are detected early and contribute directly to improving the health of women. Other PHS agencies are working on selected regulations that will also contribute to improving the Nation's health, such as regulations related to State enforcement of laws against selling tobacco products to minors.

Reengineering the Social Security Administration's disability insurance claims process will enable us to dramatically reduce serious backlogs and provide better service. The current process and procedures have not changed significantly since the 1950's. Proposed changes would affect types and locations of personnel in State agencies that serve as agents for the program, and adjudicative standards.

The Health Care Financing Administration is reviewing existing Medicare and Medicaid quality standards, known as "conditions of participation," for health care facilities such as hospitals, home health agencies, and dialysis facilities to identify opportunities to reform these standards to emphasize performance, to make them more customer-centered, and to reduce burden on regulated entities. A number of other regulations to simplify management of HCFA programs and increase program integrity guarantees are also under development.

As a final example of the relationship of our regulatory initiatives to these goals, just this spring our new food labeling standards became effective, providing the American consumer with clear, useable, and understandable nutrition information. This empowers the consumer with the information needed to improve diet and health, and thus reduces his or her risk of certain diseases, including heart disease and cancer.

II. Agency Plans

Virtually all HHS regulations are issued by a handful of agencies within

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the Department. Descriptions of priorities for these are as follows.

Health Care Financing Administration (HCFA)

HCFA is striving to reduce unnecessary burdens that the Medicare and Medicaid programs have imposed on beneficiary populations, all levels of government, and the medical provider community. HCFA is also extending flexibility to the States where it will foster improved and less burdensome operations and facilitate State reform activities.

In order to provide the most responsive and effective services possible, HCFA is conducting rulemakings in an open manner, consulting with and obtaining early and continuous input from the various levels of government, as well as representatives of advocacy and provider organizations. HCFA is working with State and local governments through a continuous and ongoing consultation process in the development of Medicaid regulations. For example, regularly scheduled meetings are held with technical advisory groups that include HCFA and State Medicaid representatives. Regular meetings and consultations are also held by the "Camden Yards Group" that includes representation from the State Medicaid Directors' Association, the American Public Welfare Association, the National Governors' Association, and the Conference of State Legislators. Under this cooperative structure, HCFA can ensure maximum flexibility to State Medicaid programs.

Each major Medicaid regulation is being developed with extensive involvement from this representative structure to assure effectiveness and economy. Examples include: a proposed rule to clarify for States the process for making "findings" concerning the payment for inpatient hospital and long-term care facility services; a notice that will facilitate implementation of the Department's childhood immunization program; a rule that will make good on the President's commitment to the National Governors' Association to simplify the home and community-based services waiver process; and, a rule that will ensure the effective delivery of services under the early periodic screening, diagnostic, and treatment (known as EPSDT) program. These reforms will contribute to improving access and meeting the health needs of children, particularly disadvantaged and minority children.

In accordance with the combined themes of reducing unnecessary burden, improving quality of care, and involving input from a full range of interests, HCFA is developing improved Medicare regulations that will govern conditions of participation for home health agencies and hospitals, and conditions of coverage for the payment of end-stage renal disease. Existing regulations in these areas are unnecessarily burdensome, outdated, and process oriented. They will be replaced with more universally applicable provisions that are patient/outcome oriented and driven by meaningful data to better ensure healthy outcomes for aged patients and those with disabilities. In developing these regulations, HCFA has met, and is continuing to meet, with a variety of provider and consumer representatives.

HCFA is also developing quality assurance regulations for nursing homes. The agency is considering an enforcement regulation that will use patient health status measures as benchmarks for determining whether nursing facilities are in compliance with Medicare and Medicaid participation requirements. For example, where deficiencies that do not harm people are involved, the focus will be on corrective measures. Conversely, for health and safety violations involving potential or actual harm to residents/patients, punitive measures can be expected, such as denial of payment, civil monetary penalties, and exclusion from the Medicare/Medicaid programs. By establishing enforcement remedies that realistically relate to the effects on patient health and safety, the rule will encourage facilities to achieve the highest level of health for the aged and disabled patients in these facilities.

In the area of fiscal responsibility, regulations are being developed to implement the statutory prohibition against patient referrals by physicians to health service entities (e.g., clinical laboratories, home health agencies, physical therapists, etc.) with which the physician has a financial interest or relationship. These regulations are significant because they address the concern that such referral relationships involve a potential for conflict of interest resulting in unnecessary services for Medicare patients and unnecessary costs to the Medicare program.

Several of HCFA's reform efforts are particularly supportive of the President's directive (in Executive Order 12866) to take burden-reducing regulatory actions, and the Secretary's goal of significantly improving HHS management and customer service. Indeed, our efforts are already bearing fruit. For example, in March 1994 HCFA published a regulation that replaced the requirement for physicians to provide hospitals annually with a signed acknowledgement concerning penalties for misrepresenting certain information with a one-time signing requirement at the time a physician is initially granted hospital admitting privileges. One major medical association characterized this change as one that will alleviate the "hassle factor" for physicians and an important step toward restoring mutual trust between the Federal Government and the medical profession.

Public Health Service (PHS) Including the Food and Drug Administration (FDA)

The PHS agencies (which, other than the Food and Drug Administration, have minimal regulatory responsibilities) are working on selected regulatory initiatives that improve individual program areas and support the Secretary's goals. These include regulations on organ procurement, State enforcement of laws against selling tobacco products to minors, reducing potential conflicts of interest in biomedical research, improving respirators used in the workplace, and increasing tribal government responsibilities for managing health care programs.

Through the Food and Drug Administration, HHS has undertaken a number of new regulatory initiatives to speed the development of new drugs to treat serious diseases, particularly the development of drugs to treat and prevent HIV infection, one of the nation's highest health priorities. In support of this goal, FDA funds the National Task Force on AIDS Drug Development, which was established by the Secretary of Health and Human Services, and provides further support in terms of agency expertise in science and medical ethics. FDA has also acted to encourage labeling of prescription drugs for AIDS and other serious illnesses with dosing information for pediatric use, so that these therapies can be readily used to treat children.

Empowerment of the individual to participate in his or her own health care is also a high priority. FDA is developing regulatory initiatives to transform drug labeling into a readily understandable source of information for individuals who are not health professionals, which would help prevent the substantial waste and harm that occurs when patients do not understand how to use therapeutic drugs properly. The agency is completing implementation of the new food labeling at this time in a pioneering effort to provide consumers with information that enables them to use food products in a manner consistent with a healthy life style.

Consistent with the Vice President's recommendation for a new food safety program to reform regulatory oversight of the nation's food supply, FDA is working to replace its current oversight strategy with a cost-effective, state-of-the-art strategy. The agency's proposed new approach for oversight of seafood is based on the system of Hazard Analysis Critical Control Points (HACCP), and FDA plans to work with the food industry to explore expanding HACCP to other components of the food supply.

FDA has embarked on a number of initiatives to improve and focus on women's health. The agency is moving to implement the Mammography Quality Standards Act rapidly to facilitate the detection of breast cancer and is establishing an Office of Women's Health to provide leadership and monitoring in areas such as the application of the agency's revised clinical trial guidelines, the development of new contraceptives and products to protect women against sexually transmitted diseases, and the safety of cosmetics.

The United States leads the world in development of new technologies, and FDA has given priority to products of important new technologies, such as gene and somatic cell therapy and food plants genetically altered through use of recombinant DNA techniques, striking a balance between regulation and reliance on the private sector in a manner that encourages the rapid evolution of these technologies, their continued adaptation to health-related uses, and the building of public confidence in them. To help speed important new drugs and medical devices to patients, the agency has also developed new programs, such as user fees for drug approvals. In order to facilitate the electronic submission of marketing applications for such products, FDA plans to propose steps by which legally binding electronic signatures may be affixed to such applications, thus validating them. FDA will address concerns about the integrity of clinical data submitted to support marketing approval of new therapies by proposing the disclosure by clinical investigators of potentially biasing financial holdings.

Finally, FDA has undertaken the review of a large number of regulations for burdensome provisions that can and should be eliminated. As part of this process, the agency will work to assure that these regulations are effective, consistent, sensible, and understandable. Regulations that will come under scrutiny include a major portion of the general biologics regulations; the blood and blood products regulations; the regulations governing the investigation and review of new animal drugs; and the good manufacturing practice regulations for medical devices.

Social Security Administration (SSA)

The Social Security Administration continuously reviews its regulations to ensure that its policies constitute a properly integrated program that conforms to the statutes, court decisions, public needs, and to the principles of economical, efficient, and effective administration.

SSA has three major initiatives under way. On September 8, 1994, Commissioner Chater issued an agency Disability Process Redesign Plan. Decisions on implementation, including the need for regulations, are not yet final.

SSA is continuing a cooperative project with the Internal Revenue Service (IRS) and other government agencies to develop a simplified wage reporting system. Under the proposed system, Federal and State agencies would develop an integrated reporting approach whereby employers would file employment and wage-related information with a single processing entity. The processing entity would, in turn, be responsible for providing the data to Federal, State, and local agencies for which the submitted information was intended. This system would eliminate redundant wage reports and greatly reduce the complexity of wage and tax reporting requirements presently imposed upon employers.

SSA is currently evaluating findings and recommendations made by the MITRE Corporation to determine the next step toward implementation. The MITRE Corporation's preliminary economic analysis suggests that employers could save approximately $1 billion a year under the system's full implementation. Findings to date indicate that an agreement would be needed with each participating State to ensure that State needs are adequately met and to reach agreement on necessary cost-sharing arrangements.

In addition, SSA is continuing to work with the IRS to coordinate the timing of when employers are required to file wage and tax reports. Currently, employers are required to file Form 941 wage reports by the end of January and Forms W-2/W-3 by the end of February. SSA is attempting to reach an agreement with IRS to simplify these reporting requirements that will satisfy the information-reporting requirements of both IRS and SSA.

The Social Security Administration will become an independent agency, effective March 31, 1995, as a result of the "Social Security Independence and Program Improvement Act of 1994," (Public Law 103-296).

Administration for Children and Families (ACF)

Efforts to reinforce the values of work, family, opportunity and responsibility are the central focus of ACF's impending welfare reform agenda. Under the framework of regulations, this effort will include:

- Identifying and reengineering welfare-related regulations using existing legal authority to facilitate early reform and make way for more fundamental changes, beginning with rules to promote program coordination and simplification. Proposed child care rules were issued this spring to reduce program differences and promote better coordination among the various child care programs.
- A strategy for swift implementation of the President's welfare reform bill upon enactment, consistent with the principles of E.O. 12866.

Implementation of the quality, program expansion, and partnership provisions of the 1994 Head Start Amendments is a key investment priority of the Department. ACF is committed to re-engineering the Head Start program in terms of quality improvement and capacity expansion in concert with public input. As one example, during the next year, particular emphasis will be placed on developing performance standards related to infant and toddler care.

Other ACF regulatory efforts will expand and improve the quality of family support services. For example, in implementing the Family Preservation and Support Program, each State will be enabled to develop, or expand, and operate a program of family preservation services and community-based family support services to prevent child abuse and help parents acquire the skills and tools they need to raise their children. In these and other areas, ACF is relying

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heavily on consultation with State and tribal program administrators, advocacy organizations, and other interested parties to provide ideas for improving the effectiveness of its regulations.

HHS—Social Security Administration (SSA)

PROPOSED RULE STAGE

33. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; HEMIC AND LYMPHATIC SYSTEM, AND MALIGNANT NEOPLASTIC DISEASES (399P)

Legal Authority:

42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation:

20 CFR 404.1500ff, app 1

Legal Deadline:

None

Abstract:

Sections 7.00 and 107.00 (hemic and lymphatic system), and 13.00 and 113.00 (malignant neoplastic diseases) of appendix 1 to Subpart P of Part 404 of the Disability Regulations (404.1501 through 404.1599) describe those impairments which are considered severe enough to prevent a person from engaging in any gainful activity, or in the case of a child under age 18, age-appropriate activities. We are proposing revisions to these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Statement of Need:

We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims for disability benefits involving impairments of the hemic and lymphatic system and malignant neoplastic diseases of adults and children, under titles II and XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating impairments of the hemic and lymphatic system and malignant neoplastic diseases.

The current hemic and lymphatic system and malignant neoplastic diseases listings were last revised on December 6, 1985. There have been numerous advancements in medical science and technology in evaluation and treatment of hemic and malignant lymphatic and neoplastic diseases since then. Not to avail ourselves of the benefit of these advancements would mean that SSA's listings might not accurately identify those individuals who are too functionally impaired to work, or in the case of a child under the SSI program, to perform age-appropriate activities. Sections 205(a), 1102, and 1631(d) of the Social Security Act give the Secretary broad power to make rules to carry out the disability programs.

Alternatives:

The only option considered, other than the one selected, would have been to extend the expiration date of the current listings and not to propose to revise the rules at this time. This option was not selected because there have been medical advances since the current hemic and lymphatic system and malignant neoplastic diseases listings were promulgated which we believe should be reflected in the listings we use in adjudicating Social Security and Supplemental Security Income claims based on disability.

Anticipated Costs and Benefits:

The proposed changes will have negligible program and administrative cost impact because, despite changes in terminology and emphasis, the proposed changes describe a level of severity comparable to the level of severity contained in the current listings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	10/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 0960–AD67

HHS—SSA

34. REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY, ENDOCRINE SYSTEM AND OBESITY AND RELATED CRITERIA (436P)

Legal Authority:

42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation:

20 CFR 404.1500ff, app 1

Legal Deadline:

None

Abstract:

Sections 9.00 and 109.00 of appendix 1 to subpart P of part 404 of the Disability Regulations (404.1501 through 404.1599) describe those impairments which are considered severe enough to prevent a person from engaging in any gainful activity, or in the case of a child under age 18, age-appropriate activities. We are proposing to revise the criteria in these sections to reflect advances in medical knowledge, treatment, and methods of evaluating endocrine impairments. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors and Disability Insurance program.

Statement of Need:

We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims for disability benefits involving the endocrine system and obesity in adults and children, under titles II and XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating impairments of the endocrine system.

The current Endocrine and Obesity listings were last revised on December 6, 1985. There have been numerous advancements in medical science and technology in evaluation and treatment of endocrine and morbid obesity conditions since then. Not to avail ourselves of the benefit of these advancements would mean that SSA's listings might not accurately identify those individuals who are too functionally impaired to work, or in the case of a child under the SSI program, to perform age-appropriate activities. Sections 205(a), 1102, and 1631(d) of the Social Security Act give the Secretary broad power to make rules to carry out the disability programs.

Alternatives:

The only option considered, other than the one selected, would have been to extend the expiration date of the current listings and not to propose to revise the rules at this time. The option was not selected because there have been medical advances since the current endocrine system and obesity listings were promulgated which we believe should be reflected in the listings we use in adjudicating Social Security and SSI claims based on disability.

Anticipated Costs and Benefits:

The proposed changes will have negligible program and administrative cost impact because, despite changes in terminology and emphasis, the proposed changes describe a level of severity comparable to the level of severity contained in the current listings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	10/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—SSA

35. REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY, GROWTH IMPAIRMENTS (444P)

Legal Authority:

42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation:

29 CFR 404.1500ff, app 1

Legal Deadline:

None

Abstract:

Section 100.00 of part B of appendix 1 to subpart P of part 404 of the Disability Regulations (404.1501 through 404.1599) describe those impairments which are considered severe enough to prevent a child under age 18 from engaging in age-appropriate activities. We are proposing revisions to the criteria in Part B of the Listing of Impairments that we use to evaluate growth impairments of persons under the age of 18 who claim Social Security or Supplemental Security Income benefits based on Disability under Title II and Title XVI of the Social Security Act. The revisions contained in these regulations reflect advances in medical knowledge, treatment, and methods of evaluating growth impairments. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Statement of Need:

We propose to revise the criteria in part B of the Listing of Impairments that we use to evaluate claims for disability benefits involving growth impairments of persons under the age of 18 under titles II and XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating growth impairments.

The current Growth Impairment listings were last revised on December 6, 1985. There have been numerous advancements in medical science and technology in evaluation and treatment of growth impairments since then. Not to avail ourselves of the benefit of these advancements would mean that SSA's listings might not accurately identify those children unable to perform age-appropriate activities.

Sections 205(a), 1102, and 1631(d) of the Social Security Act give the Secretary broad power to make rules to carry out the disability programs.

Alternatives:

The only other option we considered was to extend the effective date of the current listings without proposing changes to update the listings. This option was not selected because there have been medical advances since the current growth impairments system listing were promulgated which we believe should be reflected in the listings we use in adjudicating Social Security and SSI claims based on disability.

Anticipated Costs and Benefits:

The proposed changes will have negligible program and administrative cost impact because, despite changes in terminology and emphasis, the proposed growth impairment listings describe a level of severity comparable to the level of severity contained in the current listings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—SSA

FINAL RULE STAGE

36. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; MUSCULOSKELETAL SYSTEM (143F)

Legal Authority:

42 USC 1302; 42 USC 405; 42 USC 1383

CFR Citation:

20 CFR 404.1500ff, appendix 1

Legal Deadline:

None

Abstract:

Sections 1.00 and 101.00 of appendix 1 to the Disability Regulations (404.1501 through 404.1599) describe those musculoskeletal impairments which are considered severe enough to prevent a person from doing any

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gainful activity or, in the case of a child under age 18, age-appropriate activities. We are proposing comprehensive revisions to these sections to ensure that the medical evaluation criteria are up to date and consistent with the latest advances in medicine. The Supplemental Security Income program incorporates by reference and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Statement of Need:

These regulations revise the criteria in the Listing of Impairments that we use to evaluate claims for disability benefits involving musculoskeletal impairments of adults and children under titles II and XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating musculoskeletal impairments.

The current musculoskeletal listing was last revised on December 6, 1985. There have been numerous advancements in medical science and technology in evaluation and treatment of musculoskeletal impairments since then. Not to avail ourselves of the benefit of these advancements would mean that SSA's listings might not accurately identify those individuals who are too functionally impaired to work, or in the case of a child under the Supplemental Security Income program, to perform age-appropriate activities.

Sections 205(a), 1102, and 1631(d) of the Social Security Act give the Secretary broad power to make rules to carry out the disability programs.

Alternatives:

The only other option is to extend the expiration date of the current listings without revising the listings at this time. This option was not selected because there have been medical advances since the current musculoskeletal system listings were promulgated which we believe should be reflected in the listings since we use them in adjudicating Social Security and Supplemental Security Income claims based on disability.

Anticipated Costs and Benefits:

These final regulations will have negligible program and administrative cost impact because, despite changes in terminology and emphasis, the proposed musculoskeletal system listings describe a level of severity comparable to the level of severity contained in the current listings.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	12/21/93	58 FR 67574
NPRM Comment Period End	02/22/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—SSA

37. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS FOR ADULTS (222F)

Legal Authority:

42 USC 405; 42 USC 1382c

CFR Citation:

20 CFR 404.1500ff, app 1; 20 CFR 404.1520a; 20 CFR 404.1528; 20 CFR 416.920a; 20 CFR 416.928

Legal Deadline:

None

Abstract:

These amendments revise the medical evaluation criteria for mental disorders for the Social Security and Supplemental Security Income disability programs. The revisions will reflect advances in medical treatment and in methods of evaluating certain mental impairments and will provide up-to-date medical criteria for use in the evaluation of disability claims based on mental disorders.

Statement of Need:

These regulations revise the adult mental disorders listings we use to evaluate claims for disability benefits involving mental impairments under titles II and XVI of the Social Security Act. They reflect advances in medical knowledge, treatment, and methods of evaluating mental impairments and provide up-to-date medical criteria to evaluate disability based on mental impairments. The current adult mental listing was last revised on August 28, 1985. There have been numerous advancements in medical science and technology in evaluation and treatment of mental disorders since then. Not to avail ourselves of the benefit of these advancements would mean that SSA's listings might not accurately identify those individuals who are too functionally impaired to work.

Medical advancements in disability evaluation and treatment and program experience require that the medical listings be periodically reviewed and updated. The existing listing sunsets on August 28, 1994. It is in the public interest to be kept abreast of these advancements.

Sections 205(a), 1102, and 1631(d) of the Social Security Act give the Secretary broad power to make rules to carry out the disability programs.

Alternatives:

The only other option is to extend the expiration date of the current listings without revising the listings at this time. This option was not selected because there have been medical advances since the current adult mental listings were promulgated which we believe should be reflected in the listings since we use them in adjudicating Social Security and Supplemental Security Income claims based on disability.

Anticipated Costs and Benefits:

Due to an expected small increase in applications and/or awards, the program and administrative costs of these regulations are estimated to increase slightly and this has been budgeted for.

Timetable:

Action	Date	FR Cite
NPRM	07/18/91	56 FR 33130
NPRM Comment Period End	09/18/91	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—SSA

38. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; REPRESENTATIVE PAYEE REFORMS (295F)

Legal Authority:

PL 101-508, sec 5105

CFR Citation:

20 CFR 404.902; 20 CFR 404.2001; 20 CFR 404.2011; 20 CFR 404.2022; 20 CFR 404.2024; 20 CFR 404.2025; 20 CFR 404.2030; 20 CFR 404.2041; 20 CFR 404.2050; 20 CFR 416.601; 20 CFR 416.611; 20 CFR 416.622; 20 CFR 416.624; 20 CFR 416.625; 20 CFR 416.630; ...

Legal Deadline:

None

Abstract:

These regulations, which reflect certain provisions of PL 101-508, modify existing representative payee procedures by requiring the Social Security Administration (SSA) to do a more extensive investigation of representative payee applicants; generally limit to 1 month the deferral or suspension of direct payment of benefits pending selection of a payee; provide stricter standards in determining the fitness of representative payee applicants to manage benefit payments on behalf of beneficiaries; require SSA to repay to the beneficiary or an alternate payee, an amount equal to any misused funds resulting from SSA's negligent failure to investigate or monitor a representative payee; and require SSA to compile and maintain a centralized file of certain beneficiary and payee information.

Statement of Need:

These regulations modify existing representative payee procedures by requiring the Social Security Administration to do a more extensive investigation of representative payee applicants; generally limiting to 1 month the deferral or suspension of direct payment of benefits pending selection of a payee; providing stricter standards in determining the fitness of representative payee applicants to manage benefit payments on behalf of beneficiaries; requiring SSA to repay to the beneficiary or an alternate payee, an amount equal to any misused funds resulting from SSA's negligent failure to investigate or monitor a representative payee; and requiring SSA to compile and maintain a centralized file of certain beneficiary and payee information.

These regulations are needed to amend the Social Security Administration's regulations to reflect certain provisions of Public Law 101-508 (OBRA '90). Sections 205(a), 1102 and 1631(d) of the Act give the Secretary broad power to make rules to carry out these provisions.

Anticipated Costs and Benefits:

Any costs associated with these regulations are the result of legislation and therefore are reflected in the President's budget.

Timetable:

Action	Date	FR Cite
NPRM	03/15/94	59 FR 11949
NPRM Comment Period End	05/16/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—SSA

39. OASDI AND SSI; TESTING MODIFICATIONS TO THE DISABILITY DETERMINATION PROCEDURES (359F)

Legal Authority:

42 USC 405(a); 42 USC 1302; 42 USC 1383

CFR Citation:

20 CFR 404.906; 20 CFR 416.1406

Legal Deadline:

None

Abstract:

We propose to add new rules which would establish authority to test modifications to the disability determination procedures that we follow under titles II and XVI of the Social Security Act. On a limited basis, we may test procedures designed to improve the disability claims process. These models are designed to provide us with comprehensive information regarding the effect of these procedures on the disability process. They would enable us to measure whether, and to what degree, the disability process may be improved, especially with respect to obtaining the correct decision earlier in the process and shortening aggregate processing times. We would measure costs and determine the feasibility of each model. The intended result of testing these models would be to enable SSA to make recommendations for national implementation of improvements to the disability process.

Statement of Need:

We propose to implement pilot projects designed to modify the processing of disability claims. These proposed models will be used in adjudicating claims for Social Security or SSI benefits based on disability. These models will provide SSA with comprehensive information regarding the effect of these interventions on the disability process and will enable us to measure whether and to what degree the disability process is improved, especially with respect to obtaining the correct decision earlier in the process and shortening processing times. we propose to add new rules to provide the authority to test one or more modifications to the disability determination procedures we follow under titles II and XVI of the Act. The tests would be conducted under a rigorous evaluation protocol.

The models in the proposed rules are designed to test enhancement of our current program goals which are to:

- Provide assistance to the disability applicant by making the process of filing a disability claim simpler, more responsive and more compassionate;
- Promote fairness in each disability determination by ensuring that each disability applicant is given an opportunity to provide all the necessary information to complete the

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claim and is aware of his/her rights under the program; and
- Ensure that the Agency's determination is both thorough and equitable.

These regulations are necessary to permit SSA to test new and innovative procedures for improving the disability claims process.

Sections 205(a), 1102, and 1631(d) of the Act give the Secretary broad power to make rules to carry out the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs.

Alternatives:

We examined but rejected seeking the authority for test variations to improve the claims intake process. We considered testing models which involved only selected medical impairments. We rejected this alternative and are not limiting the tests to selected impairments. We will gather specific data that will allow for equitable and fair treatment of all claimants.

Anticipated Costs and Benefits:

The effects of the demonstrations themselves will be very small. It would be speculative to estimate what system changes might later be made. What we hope to accomplish ultimately, however, are significant improvements in the disability determination process that ensure better developed and more timely decisions. Such improvements should promote greater public understanding and satisfaction with the disability program.

Timetable:

Action	Date	FR Cite
NPRM	10/22/93	58 FR 54532
NPRM Comment Period End	01/05/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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HHS—Public Health Service (PHS)

PRERULE STAGE

40. • DEVELOPMENT OF HAZARD ANALYSIS CRITICAL CONTROL POINTS FOR THE FOOD INDUSTRY; REQUEST FOR COMMENTS

Legal Authority:

21 USC 321 et seq; 21 USC 342(a)(4); 21 USC 371(a); 42 USC 264

CFR Citation:

None

Legal Deadline:

None

Abstract:

In this advance notice, FDA is announcing for public comment its plans to develop regulations that would establish requirements for a new comprehensive food safety assurance program for both domestically produced and imported foods that would be based on the principles of Hazard Analysis Critical Control Points (HACCP). The new food safety program would respond to new challenges, such as new food processing and packaging technologies, new food distribution and consumption patterns, exposure to industrial chemicals and chemical waste, the increasing importation of foods, new microbial pathogens, and resource constraints. The most serious of these challenges is presented by food pathogens. The number of recognized food-borne pathogens has broadened considerably, as has awareness of long-term complications from certain food-borne illnesses--such as arthritis, heart disease, and kidney and neurological damage. To meet such challenges, FDA intends to shift the focus of its food safety assurance program away from periodic visual inspection and end-product testing and toward prevention of food safety risks and problems, utilizing the HACCP state-of-the-art preventive approach.

Statement of Need:

In this advance notice, the Food and Drug Administration (FDA) is announcing for public comment its plans to develop regulations that would establish requirements for a new comprehensive food safety assurance program for both domestically produced and imported foods that would be based on the principles of Hazard Analysis Critical Control Points (HACCP).

Although the current food safety assurance program has generally functioned effectively, it is facing new stresses and challenges.

New food processing and packaging technologies, new food distribution and consumption patterns, exposure to industrial chemicals and chemical waste, the increasing importation of foods, new microbial pathogens, and resource constraints all contribute to today's food safety challenge. The most serious of these challenges is presented by food pathogens. Between 1973 and 1988, the number of recognized food-borne pathogens broadened considerably, as did awareness of long term complications from certain food-borne illnesses--such as arthritis, heart disease, and kidney and neurological damage. To meet such challenges, FDA intends to shift the focus of its food safety assurance program away from periodic visual inspection and end-product testing and toward prevention of food safety risks and problems, utilizing the HACCP state-of-the-art preventive approach.

If the agency goes forward in a future rulemaking with an industry-wide standard for food manufacturing, packaging, and holding based on HACCP, such a rulemaking would allow for monitoring the records of a food-processing facility to verify that systems of preventive controls are in place and functioning properly.

Alternatives:

The two principal alternatives to HACCP are end-product testing and comprehensive current good manufacturing practices (CGMP's). FDA concludes that both lack the distinct advantages of an HACCP-based approach. End-product testing does not address the root causes of food safety problems, is not preventive by design, and requires that a large number of samples be analyzed to ensure product integrity. CGMP's are not practical because of the breadth and diversity of the food industry to be covered, FDA's limited resources for preparing the large number of CGMP regulations that would be needed, and the time required to implement these regulations.

Anticipated Costs and Benefits:

FDA's intention in publishing an advance notice of proposed rulemaking with a specific request for comment is to gain information with which the agency can consider options for improving food safety, and to gather data for use in calculating quantitative costs and benefits. In general terms, HACCP focuses on prevention and is designed to prevent hazards from entering food; HACCP permits more effective and efficient oversight by Federal, State, and local governments; and HACCP places primary responsibility for ensuring food safety appropriately on the food manufacturer/distributor to analyze in a rational, scientific manner its production processes in order to identify critical control points and establish critical limits and monitoring procedures. FDA anticipates that costs to industry generated by implementation of HACCP would be offset in three ways: (1) by reducing the amount of food-borne illnesses (for example, total illness reduction benefits estimated to result from FDA's proposal to require an HACCP-based approach to seafood regulation are between $15 and $75 million per year); (2) by increasing public confidence in the Nation's food supply; and (3) by enabling U.S. food companies to compete more effectively in the world market (for example, current recommendations of the Codex Alimentarius Commission's Committee on Food Hygiene encourage the international use of the HACCP system, and the European Community (EC) has begun to require that foods produced within the EC be processed under HACCP requirements).

Risks:

Any potential for contamination of the food supply with industrial chemicals or microbial pathogens must be considered a highly serious risk because of the possibility that such contamination will be widespread, affecting whole segments of the population, causing some severe long-term effects and even loss of life. FDA made a decision to publish a proposal to adapt an HACCP-based approach to regulation of seafood, based on a considerable body of literature and expertise in this area. Less is known about risks posed by other foods, and FDA therefore intends to work with the Centers for Communicable Diseases and other Federal and State agencies to gather and evaluate data on such risks and the amount which they could be expected to be reduced by an HACCP-based approach. FDA is also requesting comment in this advance notice on whether all segments of the food industry merit a mandatory HACCP program, or whether such a program is needed only for certain segments of the industry.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/94	59 FR 39888
ANPRM Comment Period End	12/02/94	
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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HHS—PHS

PROPOSED RULE STAGE

41. MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

Legal Authority:

PL 102-539 Mammography Quality Standards Act of 1992; 42 USC 263b

CFR Citation:

21 CFR 900

Legal Deadline:

Final, Statutory, July 27, 1993.

Standards for accreditation bodies are required by July 27, 1993.

Abstract:

The purpose of the Mammography Quality Standards Act of 1992, enacted October 27, 1992, is to assure quality in all aspects of the practice of mammography. The primary mechanism for this is oversight of all mammography facilities through a certification and inspection program. Only facilities certified by the Secretary will be permitted to produce, process, or interpret mammographic images. The statute also requires the establishment of an advisory committee to set regulatory quality standards and also provides for the establishment of surveillance systems to evaluate breast cancer screening programs. Regulations are required in several areas: Issuance and denial of certificates; standards for accreditation bodies; approval or withdrawal of approval of accreditation bodies; quality standards for facilities; certification of personnel, an inspection program, a user fee program, and an enforcement program. The statute mandates other activities for which regulations may also be necessary, although not specifically required.

Statement of Need:

Nearly 50,000 women die each year from breast cancer. While much research into causes and treatments still needs to be done, we do know that, for women over 50, mortality for lesions found by mammography is 30 percent less than for larger lesions identified by physical examination. Unfortunately, not all mammography facilities offer services commensurate with the value of mammography in the abstract. To ensure quality control compliance, the Congress enacted the MQSA.

The primary mechanism established by the MQSA to ensure quality in mammography is oversight of all mammography facilities through a certification and inspection program. Only facilities certified by the Secretary will be permitted to produce, process, or interpret mammographic images. The statute also requires the establishment of an advisory committee to set regulatory quality standards and also provides for the establishment of surveillance systems to evaluate breast cancer screening programs.

The implementation of these regulations will ensure that mammograms are properly administered and interpreted, to provide adequate protection, diagnosis and treatment of breast cancer among women. FDA has worked with the Health Care Financing Administration, the Centers for Disease Control, and State and local radiation control officials to coordinate mammography quality assurance activities and the development of policies and regulations for implementation of the MQSA and will continue to coordinate its efforts with these agencies as appropriate.

Alternatives:

The statute is prescriptive and does not allow for a substantially different regulatory approach than is being taken by FDA. It allows for discretion in the details of individual standards, and FDA has sought to avoid unnecessary burden in devising these standards. In

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order to reduce the burden of complying with the MQSA regulations on mammography facilities, FDA incorporated existing standards to the maximum extent possible; is issuing Federal certificates, which are required for facilities to legally operate after October 1, 1994, to facilities already accredited by the American College of Radiology; is requiring facilities to submit information for certification only to the accrediting body--not to FDA; and allowing flexibility to accrediting bodies in developing their standards by requiring that accrediting body standards be "substantially the same as" FDA's standards, rather than identical.

Anticipated Costs and Benefits:

Direct Federal costs in fiscal year 1994 are $13 million. There are approximately 10,000 mammography facilities in the United States.

Approximately 8,200 already have accreditation or have applied for accreditation and will not incur significant additional costs. The remaining 1,800 facilities will incur approximately $26 million in one-time costs and recurring costs of about $27 million. Amortizing the one-time costs, the annual cost of the interim rule is about $33 million. Across 1,800 facilities, the average cost will be about $18,000 a year.

There are several benefits associated with these rules. High-quality mammography could significantly reduce breast cancer mortality. Early detection could reduce the morbidity associated with treating later stage disease. There may be a reduction in the number of malpractice claims filed for failure to diagnose early breast cancer. While there are insufficient data available to quantify the potential benefits of the MQSA, the potential magnitude is substantial. Using any conventional method of valuing lives saved, the benefits of these regulations are expected to be many times greater than their costs.

Risks:

The motivation for the MQSA was public response to concerns about breast cancer and to concerns about the quality of mammography services relied on for early detection of breast cancer. Breast cancer is the most prevalent nonskin cancer among women (and the second most deadly) with over 175,000 new cases and 45,000 breast cancer-related deaths occurring annually. The disease is most treatable in the early stages. Missed diagnosis of early lesions due to factors such as poor image quality or incorrect interpretation of images could result in delayed treatment, leading to otherwise avoidable increases in mortality or more complex and costly remediations.

Timetable:

Accrediting Bodies and Quality Standards	
NPRM	05/00/95
Approval of Accrediting Bodies	
Interim Final	12/21/93 (58 FR 67558)
Mammography Quality Standards Act of 1992; Inspection Fees	
Notice	10/00/94
Quality Standards for Mammography Facilities	
Interim Final	12/21/93 (58 FR 67565)

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Federal

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RIN: 0905–AE19

HHS—PHS

42. PRESCRIPTION DRUG PRODUCT LABELING; MEDICATION GUIDE

Legal Authority:

21 USC 321; 21 USC 352; 21 USC 371; 21 USC 355; 42 USC 262

CFR Citation:

21 CFR 201; 21 CFR 208; 21 CFR 314; 21 CFR 600

Legal Deadline:

None

Abstract:

This proposed rule would require that labeling, written in nontechnical language and directed at patients, be dispensed with prescription drug and biological products that are primarily used on an outpatient basis without the direct supervision of a health care professional. The patient labeling would inform the patient about the product and would include such information as the product's approved uses, contraindications, proper administration, adverse drug reactions and cautions for specific populations. The proposed rule would require manufacturers and/or distributors of these products to prepare patient labeling, and would require dispensers to provide the patient labeling to each patient or agent of the patient receiving a covered product. FDA is proposing this rule to promote the safe and effective use of prescription drug products by patients and to ensure that patients have the opportunity to be informed of a drug product's risks and benefits.

Statement of Need:

A fundamental principle of an effective health care system is that patients have a right and responsibility to participate actively in decisions affecting their own health. This requires that patients receive appropriate information, including information about their medicines. Despite the existence of numerous voluntary programs designed to improve patient knowledge, however, FDA has concluded that the number of consumers who receive patient information with their prescription drug products is unacceptably low. This proposed rule will establish a mandatory program of patient information distribution designed to ensure that consumers achieve maximum benefits from the use of prescription drugs and reduce the potential for harm caused by inappropriate patient drug use.

FDA is proposing new regulations that would require that labeling, written in nontechnical language that is directed to the patient, be dispensed with prescription drug and biological products that are used primarily on an outpatient basis without direct supervision by a health care professional. The patient labeling would inform the patient about the drug product and would include information such as the product's approved uses, contraindications, proper administration, adverse drug reactions, and cautions for specific populations (including pregnant women and children). The proposed rule would require prescription drug product manufacturers and/or distributors to prepare patient labeling for covered products. The proposed rule would also require dispensers to provide patient labeling to each patient or agent of the patient receiving a newly prescribed, covered product and to any patient or agent who requests patient labeling when receiving a refill. The proposed rule would not apply to prescription drug products administered in an institutional setting (such as a hospital or nursing home) or in emergency situations.

Alternatives:

FDA considered several alternative programs that could meet the objectives of this proposed regulation.

One alternative was to offer patients access to patient labeling through a catalogue or computer data base at the pharmacy or practitioner's office, but not necessarily dispense individual labeling with each product. FDA decided against this alternative because not all patients would be aware of or able to obtain sufficient information about the drug product, and because the information is needed at home where the drug product is consumed.

A second alternative was to require that patient labeling be dispensed without prior FDA review. FDA decided against this alternative because of the likelihood that the labeling dispensed would not be uniform and consistent with FDA-approved professional labeling, and that the labeling would be promotional and unbalanced in its description of the drug product.

A third alternative was to provide patient labeling with both new and refill prescriptions. FDA decided against this alternative because of the relatively large economic burden it would place on pharmacists.

Anticipated Costs and Benefits:

FDA has analyzed the economic consequences of the proposed rule and has determined that patient labeling will have associated costs near the $100 million threshold that defines a significant regulatory action. Therefore, in accordance with Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354), FDA has developed a preliminary regulatory impact analysis (PRIA). The PRIA concludes that, even when utilizing very conservative benefit estimates, implementation costs will be more than offset by the health care savings that result from an increase in compliance with prescribed drug therapy, and a decrease in the number of adverse drug reactions.

Risks:

FDA has concluded from a review of the current literature that patient noncompliance with prescribed drug regimens ranges from 30 to 50 percent. Patients who do not comply with prescribed regimens are subject to two types of risks: risk of therapeutic failure and risk of adverse drug reaction or drug interaction with other drugs and foods. Both types of risk are potentially very serious. The seriousness of therapeutic failure depends on the seriousness of the illness being treated, while the effects of drug reaction or interaction may range from mild and transitory to long-lasting and even life-threatening.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

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RIN: 0905–AE43

HHS—PHS

43. • FOODS DERIVED FROM NEW PLANT VARIETIES; PREMARKET NOTIFICATION

Legal Authority:

21 USC 331; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371

CFR Citation:

None

Legal Deadline:

None

Abstract:

The Food and Drug Administration is considering development of regulations to require the submission to the agency of information on foods derived from new plant varieties developed using recombinant deoxyribonucleic acid (rDNA) technology, prior to commercial distribution of such foods.

Statement of Need:

The Food and Drug Administration (FDA) is proposing to establish an administrative mechanism for premarket notification to the agency by a developer of the developer's intention to commercialize a food derived from a new plant variety developed using rDNA techniques.

FDA expects that rDNA techniques will be used increasingly to modify food source plants by adding substances that enhance adaptation to growing conditions, lengthen shelf life, improve nutritional characteristics, or lend to food plants a variety of other traits that they have heretofore not possessed. FDA believes that a premarket notification mechanism is needed initially because of the agency's relatively limited experience with foods modified using rDNA techniques. FDA does not expect food from rDNA-altered plants to present a level of risk above that of foods developed through traditional breeding techniques, but does seek to improve its understanding of rDNA-altered food source plants and to ensure that foods derived from such plants are in compliance with applicable legal requirements.

The premarket notification format FDA is proposing will include data and information on the safety and nutritional value of the rDNA-altered food that is developed in the course of developing the rDNA-altered food source plant.

Alternatives:

Alternatives FDA considered include: (1) Regulating foods from rDNA-altered plants no differently from foods developed through more traditional breeding techniques, (2) adopting a less restrictive program, and (3) adopting a more restrictive program. The first two alternatives do not ensure the submission to FDA of scientific data and information on the safety and nutritional value of all rDNA-altered foods intended for commercialization. FDA does not find this alternative acceptable as the development of such information and data is in the interest of the public health and important to building public confidence in foods developed through this potentially promising new technology. The third alternative would be resource-intensive and inconsistent with FDA's belief that the key factors in reviewing safety concerns should be the characteristics of the food product, rather than the fact that new methods are used to develop it.

Anticipated Costs and Benefits:

The costs associated with premarket notification will be associated with the preparation of the notification in a format for submission to FDA, and FDA will focus on developing a streamlined format that industry may use without undue effort. For the most part, the data and information that premarket notification would include do not go beyond the data and information that will be developed through the process

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of developing the rDNA-altered plants. Only in very few cases does FDA anticipate that additional information will be needed to respond to unanswered scientific questions on these foods, and the agency believes that the costs of obtaining such information, as well as the costs of preparing the premarket notification submission, will be offset by the public confidence that a premarket notification program will help to build.

Risks:

FDA does not anticipate that rDNA-altered foods will present any novel or extraordinary risks to the public health. However, a body of data and experience with these foods is needed in order to address the public concern expressed about them and assure consumers that they pose no such risks.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

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RIN: 0905–AE50

HHS—PHS

44. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK RULES

Legal Authority:

42 USC 1320b-8 sec 1138 of the Social Security Act; 42 USC 274 sec 372 of the Public Health Service Act

CFR Citation:

42 CFR 121

Legal Deadline:

None

Abstract:

Section 1138 of the Social Security Act requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) as established by section 372 of the Public Health Service Act. Section 1138 also requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. No other entity (for example, a histocompatibility laboratory) is required to be a member of or abide by the rules of the OPTN under the provisions of the statute. It is the Department's position that no rule, requirement, policy, or other issuance of the OPTN will be considered to be a "rule or requirement" of the Network within the meaning of section 1138 unless the Secretary has formally approved that rule. The OPTN is currently in operation and these rules will impose no further cost or provide any benefit other than that which now exists.

Statement of Need:

Until the enactment of Public Law 99-509, membership in the OPTN was voluntary. A **Federal Register** notice of December 18, 1989, stated that no rule, requirement, policy, or other issuance of the OPTN will be considered a "rule or requirement" of the Network within the meaning of section 1138 unless the Secretary has formally approved that rule. The notice was necessary because policies establishing conditions of participation on coverage for Medicare and Medicaid hospitals and OPOs must be developed through rulemaking approved by the Secretary.

The Department's proposed rule of September 8, 1994, provides for Federal oversight of the processes by which the OPTN allocates organs for transplantation. It focuses the Federal role on ensuring that those processes are fair and equitable, and provide for public participation. It requires the OPTN to operate an automated system for managing information about organ transplant candidates, recipients, and donors, including a computerized waiting list. It requires membership in the OPTN by transplant hospitals and OPOs and allows membership of other organizations and individuals.

The proposed rule also establishes an OPTN Board of Directors to develop organ allocation policies that are patient-based and take into account established medical criteria for transplantation, the length of time potential recipients have been on the national list, and potential recipients whose immune system makes it difficult for them to receive organs. Policies developed by the OPTN must minimize wastage of the scarce supply of human organs for transplantation and improve the outcomes of transplantation. The NPRM also requires OPOs and transplant hospitals to maintain and make available records on patients and donors for whom they are responsible. Finally, the OPTN is required to report at least annually the information that the Department believes is needed to assess the effectiveness of the Nation's organ donation, procurement, and transplantation system.

Section 372 of the PHS Act specifically instructs the Secretary to operate the OPTN through a contract with a private entity. The NPRM retains at the Federal level final control over the authority delegated to the OPTN. In this regard, the Department was persuaded that the standards to be used in this rapidly evolving field are best developed by those with the expertise to do so.

Alternatives:

In lieu of Federal regulations, the OPTN would continue to operate on the basis of voluntary compliance by its membership. Without Federal regulation of the OPTN, transplant hospitals and OPOs are free to devise their own methods for allocating organs, with the potential for creating wide disparities among different localities and regions of the United States.

Anticipated Costs and Benefits:

As an measure relating exclusively to administration of the pertinent statutes, this rulemaking has negligible cost/benefit implications.

Timetable:

Action	Date	FR Cite
NPRM	09/08/94	59 FR 46482
NPRM Comment Period End	12/07/94	59 FR 46482

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 0905–AD26

HHS—PHS

FINAL RULE STAGE

45. BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE (TOBACCO PROVISIONS)

Legal Authority:

42 USC 300x-21

CFR Citation:

45 CFR 96; 45 CFR 130

Legal Deadline:

None

Abstract:

Sets standards and procedures for enforcement of State law against sale of tobacco products to minors as a condition of full funding of Federal block grants to States for prevention and treatment of substance abuse. These requirements apply beginning in fiscal year 1994 except, under certain conditions, in fiscal year 1995.

Statement of Need:

Section 1932(d) of the Public Health Service (PHS) Act requires the Secretary to publish regulations on the standards that will be used in approving Substance Abuse Prevention and Treatment Block Grant applications. Section 1926 of the PHS Act requires that States, as a condition of receiving a grant, must have in place a law that prohibits the sale and distribution of tobacco products to minors. It further requires the States to enforce the provision in a manner that can reasonably be expected to reduce the availability of tobacco products to minors, and to conduct annual, random, unannounced inspections to ensure compliance with the law.

In addition States are required to report as part of their application for Block Grant funds the activities carried out in the previous year for enforcing the provision, the State's success in reducing the availability of tobacco products to minors, and the activities it plans to carry out during the year for which it is seeking funds. If the Secretary determines that a State has not complied with the requirements of section 1926, the Secretary shall penalize the State 10 percent of its allotment the first year, 20 percent the second, 30 percent the third, and 40 percent the fourth and all subsequent years.

These regulations set the criteria and standards for the Secretary's determination of compliance with section 1926.

A notice of proposed rulemaking was issued on August 26, 1993 and the public was given 60 days to comment. The Department will respond to those comments and amend the proposed rule as appropriate.

Alternatives:

The Department has minimal discretion in establishing the criteria and standards to use for establishing compliance. States are statutorily required to carry out random inspections of outlets in a manner that provides an accurate, reliable and valid measure of how successful the enforcement of the provisions is being conducted throughout the State. The results of these inspections constitute an objective measure for the Secretary's use in determining compliance.

Anticipated Costs and Benefits:

The NPRM was considered a major rule for the purposes of carrying out an economic impact analysis. With regard to the States enforcing the State laws on the availability of tobacco products to minors and for conducting the inspections, States may only use the 5 percent of their allocation which they currently use for the purposes of administering the block grant. Thus little to no Federal funds are available to the States to enforce their statute.

We estimate the cost of a substantial enforcement effort at $50 million nationwide. The costs of training staff, moving vending machines, etc., we estimate will cost businesses about $100 million nationwide. The costs of carrying out the inspections we believe will be between $1 and $2 million nationwide. This suggests a total cost of a maximum effort at $152 million nationwide.

The annual benefit of the provision is in reduction of medical bills incurred by those who choose to stop smoking; reduced sick leave and group life-insurance subsidies, increased productivity and the taxes realized from people choosing to stop smoking; the value of lives gained; reduced costs for fire damage that would have been caused by the smokers; and the lives saved from those fires that would not happen. We estimate these savings at one-sixth to one-third of a billion dollars per year.

Risks:

Implementation of the above-cited statute leaves the Department no option other than issuing a regulation in this area. In any case, the risks in not acting against illegal sales of tobacco products are great. The Centers for Disease Control and Prevention (CDC) estimates that at present approximately 500,000 minors become regular smokers each year. A major cause is ready access to illegal tobacco. Three fourths or more of all outlets sell illegally to minors, due in part to insufficient enforcement efforts by many States, which encourage a scofflaw attitude among merchants. CDC estimates that 73 percent of all over-the-counter outlets and 96 percent of all vending machine outlets sell tobacco products to minors.

Timetable:

Action	Date	FR Cite
NPRM	08/26/93	58 FR 45156
NPRM Comment Period End	10/25/93	58 FR 45156
Final Action	12/00/94	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Tribal

Additional Information:

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RIN: 0905–AE05

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HHS—PHS

46. RESPIRATORY PROTECTIVE DEVICES

Legal Authority:

30 USC 842(h); 30 USC 844; 30 USC 957

CFR Citation:

30 CFR 11; 42 CFR 84

Legal Deadline:

None

Abstract:

The proposed rule is the first in a series of regulatory modules which will upgrade current respirator certification requirements. This first module will update testing requirements for air-purifying respirators with particulate filters. The existing requirements allow potentially excessive filter leakage. The proposed rule would also benefit health care settings implementing CDC recommendations for preventing the transmission of tuberculosis. These recommendations include performance criteria for respiratory devices. The proposed rule will enable the certification of a broader range of respirators that meet the CDC performance criteria.

Statement of Need:

A May 24, 1994, proposed rule offered for public comment revised performance criteria to be used for the certification of respiratory protective devices. This proposal sought to transfer existing regulations, oriented specifically to the mine safety field, to the broader public health area. (A complementary proposal was published in the same issue of the **Federal Register** by the Mine Safety and Health Administration, reflecting careful collaboration by the two agencies on this matter.) The proposal also sought to upgrade current testing requirements for particulate filters. This action is the first of a series of modules which will, over the next several years, upgrade current respirator requirements. This modular approach will allow improvements to be implemented on a priority basis, as well as facilitate adaptation to new requirements by the manufacturers and users of respirators.

The most commonly used respirators available today are air-purifying respirators with particulate filters. Current requirements for these respirators allow potentially excessive filter leakage, constituting a significant public health hazard. The continued existence of problems in currently certified respirators and in evaluating respirator safety and efficacy merits prompt attention.

In addition, adoption of performance criteria recommended by CDC for respiratory devices used in health-care settings for protection against Mycobacterium tuberculosis, the infectious agent that causes tuberculosis (TB), may largely depend on increasing the range of appropriate respiratory devices available, which in turn depends on promulgation of this module.

Alternatives:

The certification criteria in the current regulations do not provide sufficient evidence with which National Institute for Occupational Safety and Health (NIOSH) in the Centers for Disease Control (CDC) can reliably certify air-purifying particulate respirators. The present regulatory criteria cannot assure the safety and performance of these devices. If this rule is not promulgated, existing efficacy problems will continue unabated. The excessive filter leakage in some widely used respirators that are currently certified by NIOSH constitutes a significant public health hazard.

In addition, failure to promulgate this regulation would impede efforts in health care settings to meet the current performance criteria recommended by CDC for respiratory devices used in protection against Mycobacterium tuberculosis. The range of respirators available for this purpose would be substantially expanded as a direct result of promulgating this proposed rule.

Anticipated Costs and Benefits:

The Department did not view this rulemaking to be "economically significant" within the definition of E.O. 12866 (e.g., it would not have an effect on the economy of $100 million). The Department did prepare an Initial Regulatory Flexibility Analysis, which concluded that manufacturing costs associated with the proposed changes in certification requirements would be insignificant, and that there should be no increased costs to respirator users. Larger manufacturers are generally prepared for the new requirements and the timeframe for full implementation should allow smaller manufacturers and the respirator user community to prepare without disrupting the supply of certified respirators.

The anticipated benefits of promulgation of this regulation are the increased protection that will be afforded millions of respirator wearers. The certification of air-purifying respirators under these proposed requirements would also enable respirator users to select from a broader range of certified respirators that meet the current performance criteria recommended by CDC for respiratory devices used in health-care settings for protection against Mycobacterium tuberculosis.

Risks:

As many as 7 million American workers use NIOSH-certified respirators to protect themselves from hazards where they work. This number could rise to 10 million before the year 2000. Many of these workers must wear NIOSH-certified respirators as an involuntary condition of employment. Millions of respirators are worn in toxic and lethal environments in which lapses in safety and efficacy can result in injury or death.

Timetable:

Action	Date	FR Cite
NPRM	08/27/87	52 FR 32402
First Public Hearing	01/20/88	52 FR 37639
Second Public Hearing	01/27/88	52 FR 37639
NPRM Public Comment Period End	03/28/88	53 FR 5595
Second NPRM	05/24/94	59 FR 26850
Second NPRM Comment Period End	07/22/94	59 FR 27257
Final	10/00/94	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 0905–AB58

HHS—PHS

47. REVISION OF INDIAN SELF-DETERMINATION REGULATIONS

Legal Authority:

PL 93-638; PL 100-202; PL 100-446; PL 100-472; PL 100-581; PL 101-301; 25 USC 450

CFR Citation:

42 CFR 36; 48 CFR 380.4; 48 CFR 352.280-4

Legal Deadline:

NPRM, Statutory, May 5, 1989. Final, Statutory, August 5, 1989.

Abstract:

Public Law 93-638 passed in 1975, requires the IHS to turn over administrative responsibility for services delivery programs to tribes so requesting, using the mechanism of contracting. Public Law 93-638 also authorizes the IHS to make grants to tribe(s) for the planning, development, and or operations of health programs. Public Law 100-472, enacted October 5, 1988, made significant changes to the statute and required that regulations implementing the amendments be promulgated in final within ten months of enactment. The law provides for tribal consultation and participation in the development of the regulations.

Statement of Need:

In response to the long-standing Indian interest in self-determination, Congress enacted the Indian Self-Determination and Education Assistance Act in 1975. The Indian people have long sought more meaningful participation in the planning, conduct, and administration of their programs and services. The Act reflects a commitment to preserving the Federal relationship with and responsibility to the Indian people by promoting efforts to transfer the operation service delivery programs of the Federal Government to Indian tribes. The 1975 Act requires the Indian Health Service (IHS) to contract with Indian tribes and tribal organizations for the operation of IHS service delivery programs.

The Act also authorizes IHS to make grants to tribes for the planning, development and/or operation of health programs.

On October 5, 1988, Congress amended the Act to expand its coverage and authorize a new nonprocurement contracting process which required revision of existing regulations. The Amendments (Public Law 100-472) provided that the regulations be developed with the participation of and in consultation with Indian tribes and tribal organizations.

The Department of the Interior and the Department of Health and Human Services, as directed, issued a joint notice of proposed rulemaking in the **Federal Register** on January 20, 1994 (59 FR 3166). An initial comment period of 120 days (May 20, 1994) was extended by 90 days to August 20, 1994 at the request of tribal leaders. Additionally, comments on the record were received at three regional meetings and a national meeting.

At the end of the comment period all comments received will be considered and in consultation with and participation of tribal representatives, final regulations will be issued.

Alternatives:

The Department must issue final regulations in this area. With the clear intent of the statute being to maximize Tribal control of the relevant programs, the Department's purpose must be to find the alternative mix of administrative structures in the rule that complies with the mandate as completely as possible. Tribal government views will be given the closest possible consideration.

Anticipated Costs and Benefits:

No additional costs are associated with this final regulation. It is anticipated that Indian tribes and tribal organizations will benefit from having all regulations required for "638" contracts and grants in one title of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3166
NPRM Comment Period End	08/20/94	59 FR 26920
Final Action	05/00/95	

Small Entities Affected:

None

Government Levels Affected:

Tribal

Procurement:

This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Additional Information:

The Act (P.L. 100-472) provides that except for construction contracts, the Office of Federal Procurement Policy Act and Federal Acquisition Regulations shall not apply to self-determination contracts. Therefore, implementing regulations for the Indian Self-Determination Act amendments will include a subpart on construction contracts which, unlike other self-determination awards, will be made subject to certain procurement rules (e.g., FARS, HSARS, FSARS).

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HHS—PHS

48. RESPONSIBILITIES OF PUBLIC HEALTH SERVICE-FUNDED INSTITUTIONS FOR PROMOTING OBJECTIVITY IN RESEARCH

Legal Authority:

42 USC 216; 42 USC 289b-1; 42 USC 299c-3

CFR Citation:

42 CFR 50, subpart F; 42 CFR 309

Legal Deadline:

Final, Statutory, December 8, 1993.

Final rules implementing 42 U.S.C. 289b-1 must be issued not later than 180 days after June 10, 1993

Abstract:

PHS proposes to issue regulations requiring the institutions that apply for or receive funding for biomedical, behavioral, and certain other health-related research under the PHS Act to assume full responsibility for ensuring that the financial interests of the respective institution and the employees of the institution do not compromise the objectivity with which PHS-funded research is conducted or reported.

Statement of Need:

Effective interaction between industry and institutions conducting research is essential to ensure the rapid application of scientific discoveries to the health needs of the Nation and to maintain international competitiveness. Nonetheless, prudent stewardship of public funds includes protecting federally funded research from being

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compromised by the conflicting financial interests of any investigator responsible for the design, conduct, or reporting of the Public Health Service-funded research.

Numerous statutes and programs demonstrate the Federal interest in the promotion of interactions among Government, academia and industry. For example, the Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96-480) encourages technology transfer, particularly through industrial-academic collaborations. The Patent and Trademark Act Amendments of 1980 (P.L. 96-517) allow universities and other funding recipients to apply for patents developed with Federal funding, and expressly promote collaboration between commercial concerns and nonprofit organizations. The Economic Recovery Tax Act of 1981 (P.L. 97-34) is aimed at fostering research and development by small companies and associated university partners. The Federal Technology Transfer Act of 1986 (P.L. 99-502), which amended P.L. 96-480, and Executive Order 12592 provide similar patent and licensing authority to Federal laboratories, and encourage them to participate in cooperative research and development agreements with the private sector and nonprofit organizations, including universities.

These legal authorities facilitate the movement of intellectual capital between the Federal Government, academic institutions, and the private sector. This kind of cross-fertilization is critical to the development of the U.S. biotechnology industry. However, these and other inducements for collaboration, as well as the rapid growth of the biotechnology industry, have created a climate in which the stewardship of public funding for biomedical and behavioral research is increasingly complex and challenging.

The value of the outcomes of PHS-funded research to the health and the economy of the Nation must not be compromised by any financial interest that will, or may be reasonably expected to, bias the design, conduct or reporting of the research. The proposed regulations seek to maintain a reasonable balance between these competing interests, give applicants for PHS research funding responsibility and discretion to identify and manage financial interests that may bias the research, and minimize reporting and other burdens on the applicants.

The notice of proposed rulemaking for this purpose that was published in the June 28, 1994, **Federal Register** reflected an effort to maintain maximum possible consistency between HHS policy in this area and that of the National Science Foundation.

Alternatives:

There is no alternative to publishing regulations in this area, since regulations are statutorily required. The Department has attempted in this rulemaking to maximize the role of grantee institutions in protecting against the potential for biased research. The "assurances" required by the statute could have been far more onerous than those envisioned in the regulations.

The rule was drafted to address these instances of abuse, while minimizing unnecessary burden to researchers. We did not consider any option that would routinely require all researchers to list all of their significant assets (unrelated to the research project), that would encourage searches for hypothetical or speculative conflicts, that would require divestiture of ownership of a product undergoing research, or that would discourage in any way funding grants or contracts to scientists to develop products with significant profit potential.

Anticipated Costs and Benefits:

We do not believe that the annual costs of implementing this rule will reach as much as $1,000 an institution in staff time, or as much as $1 million a year across all institutions. Most of the cost will arise from the several seconds or minutes spent certifying the absence of significant financial interests for individual awards. Spread across thousands of grantee and contractor institutions, these costs are very small.

Timetable:

Action	Date	FR Cite
NPRM	06/28/94	59 FR 33242
NPRM Comment Period End	08/29/94	59 FR 33242
Final Action	01/00/95	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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HHS—Health Care Financing Administration (HCFA)

PROPOSED RULE STAGE

49. INSTITUTIONAL PLAN AMENDMENT FINDINGS (MB-078-P)

Legal Authority:

42 USC 1396a(a)(13)(A); PL 97-35, sec 2173

CFR Citation:

42 CFR 430; 42 CFR 447

Legal Deadline:

None

Abstract:

This rule would provide guidance to States on institutional plan amendment findings and clarify the provisions of the regulations governing effective dates of plan amendments for Medicaid payments of hospital and long term care services. This proposed rule would promote increased economy in the administration of the Medicaid program while retaining State flexibility to the maximum extent possible.

Statement of Need:

This proposed rule comports with E.O. 12866 by reducing the administrative burden on States in their efforts to meet Federal requirements.

The Agency intends to publish a proposed rule that will allow States to more easily comply with the administrative requirements associated with institutional payment methodologies for facilities participating in the Medicaid program.

Current Medicaid regulations concerning the payment for inpatient hospital and long-term care facility services require States to make certain "findings," acceptable to HCFA every time a State changes its payment methods and standards (but not less than annually). For example, if a State makes a payment rate change it must find that the rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers of services. Other findings must be made concerning upper payment limits. These regulations implemented section 1902(a)(13)(A) of the Social Security Act, know as the Boren Amendment.

The problem is that the term "findings" is not defined in the law or regulations; nor has HCFA previously provided States with written guidance as to processes that States could use in making them. In response to requests by States for guidance in this area, HCFA would provide clarification with respect to the procedural requirements with which States must comply in obtaining approval of their methods and standards for making payments for inpatient hospital services and long term care facility services. This clarification will ease the administrative burden on States in their efforts to meet Federal requirements and allow them, when necessary, to more readily demonstrate to the courts that they have complied with statutory requirements.

We are considering modification of existing public notice requirements so that States could avoid publication of notices under the Federal procedures if the State is already required to publish notices in accordance with State laws comparable to the Federal Administrative Procedure Act. Such State notices would satisfy our notice requirement and eliminate unnecessary duplication of effort by the States.

Alternatives:

In developing the proposed rule HCFA has met and will continue to meet with State representatives and provider groups to help ensure an effective and beneficial rule.

Anticipated Costs and Benefits:

There will be no significant costs associated with this rule. The benefits are described above in the Need section.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

State

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RIN: 0938–AG60

HHS—HCFA

50. • REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION (BPD-745-P)

Legal Authority:

42 USC 1395x; 42 USC 1302; 42 USC 1395(cc); 42 USC 1395(hh)

CFR Citation:

42 CFR 482

Legal Deadline:

None

Abstract:

This proposed rule would revise the regulations containing Medicare hospital conditions of participation to reflect innovations in quality health care that have emerged in the last decade. Since the hospital conditions of participation have not been revised since 1986, there is a need to revise the conditions of participation to center on the patient, look at cross-functional hospital performance, reflect quality improvement, and be outcome-oriented. Specific areas for revision include patient assessment, patient rights information management, continuous improvement in quality, discharge planning and administration of organizational environment.

Statement of Need:

The planned regulatory action for the revitalization of the hospital conditions of participation should center on the patient, look at cross functional performance, reflect quality improvement, and be outcome-oriented. The regulation should employ a cross-functional performance strategy. A patient encounters many services and is exposed to several processes that cut across hospital departmental lines. A cross-functional view is more effective because it eliminates redundant and unnecessarily burdensome evaluation criteria and is a more accurate portrayal of patient outcomes vis-a-vis interdependent functions.

Specific areas for regulatory reform include the following: patient assessment, patient rights, information management, continuous improvement in quality, and discharge planning.

In order to make HCFA's requirements patient-centered and outcome-oriented, the new hospital regulations should diminish the focus on procedural compliance and process. In order to ensure quality services, the shift in focus should be on actual organizational performance, the actual care delivered, and the impact and outcome of the treatment.

There is compelling evidence of the need to revise these regulations. They were last revised in 1986. Since then, there have been many changes in the state of the art for hospital activities, as demonstrated, for example, by the myriad of innovations in the hospital accreditation program of the Joint Commission on Accreditation of Healthcare Organizations (Agenda for Change, which includes patient-centered standards and performance-focus standards that emphasize outcomes and quality of care.) To be consistent with contemporary standards, HCFA should transform regulations to reflect innovations in quality health care that have emerged in the past decade and to reduce unnecessary red tape and other burdens.

Earlier this year, HCFA held meetings with national experts and industry groups to discuss how we might proceed. We are analyzing input from these meetings and additional outside consultations will take place during this process.

Alternatives:

HCFA investigated the possibility of revising portions of the hospital conditions of participation. It was determined, however, that an overhaul of the entire regulation would be a more effective way to gain a strategic view of the internal and external organizational environments of hospitals and to achieve flexibility in the regulation to ensure future utilization.

Anticipated Costs and Benefits:

There would not be significant costs associated with this proposed rule. The benefits that would be derived from the rule are discussed under the Need section, above.

Risks:

By revising these regulations to focus on the quality of the actual care given

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to an individual and the effectiveness of that care for the individual patient, we hope to reduce risks to beneficiaries' health and safety. Revised procedures can better focus on ensuring that the care being given to a patient is the care that is actually necessary and effective for that patient. No quantitative estimates of risk reductions are available yet.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 0938–AG79

HHS—HCFA

51. • PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS—EXPANDED TO DESIGNATED HEALTH SERVICES (BPD-809-P)

Legal Authority:

42 USC 1302; 42 USC 1395hh; 42 USC 1395nn

CFR Citation:

42 CFR 411

Legal Deadline:

None

Abstract:

This proposed rule would provide that a physician who has (or has a family member who has) a financial relationship with a health care entity, may not make referrals to that entity for certain services (designated health services) under the Medicare program, except under specified circumstances. This proposed rule would also deny payment to a State for expenditures for designated health services furnished on the basis of a physician referral that all things being equal, would result in denial of payment under Medicare. The provisions of the proposed rule are based on sections 13562 and 13624 of the OBRA '93.

Statement of Need:

Proposed regulations are being developed to implement the statutory prohibition against patient referrals by physician to health service entities with which the physician has a financial interest or relationship. These proposed regulations address the concern that such referral relationships involve an inherent potential for conflict of interest resulting in unnecessary services for Medicare patients and unnecessary costs to the Medicare program.

OBRA '93 amended section 1877 of the Social Security Act (Act), "Limitations on Certain Physician Referrals." As amended by OBRA '93, section 1877, prohibits a physician from making a referral to an entity for the furnishing of designated health services for which Medicare would otherwise pay, if the physician or a member of the physician's immediate family has a financial relationship with that entity. The provision further prohibits an entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a prohibited referral.

Designated health services include the following: clinical laboratory services; physical therapy services; occupational therapy services; radiology or other diagnostic services; radiation therapy services; durable medical equipment; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, and prosthetic devices; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

The provisions of the law related to designated health services other than clinical laboratory services are effective January 1, 1995.

Also, OBRA '93 amended section 1903 of the Act to deny Federal financial participation payments to a State for expenditures for designated health services furnished to an individual on the basis of a physician referral that, all things being equal, would result in the denial of payment under Medicare.

The Agency intends to publish a proposed rule that will set forth the general prohibition and explain provisions of the law that changed the way in which exceptions are applied. In addition, we will propose definitions of each of the designated health services.

(Note that this proposed rule is separate from the final rule, Physician Ownership of, and Referrals to, Entities that furnish Clinical Laboratory Services (BPD-674-FC, RIN 0938-AF40), that will address only referrals for clinical laboratory services.)

Anticipated Costs and Benefits:

This proposed rule is meant to expand applications of rule intended to eliminate certain financial incentives for physicians to order unnecessary and often costly designated health services.

HCFA believes that physicians and entities that perform designated health services, such as hospitals and durable medical equipment companies, are currently reviewing their financial relationships in order to ensure that their activities are not prohibited by provisions of this rule. Estimates of cost savings to be derived from implementation of the proposed rule are not available at this time, but savings are unlikely to be substantial.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—HCFA

52. • HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (BPD-819-P)

Legal Authority:

42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bbb

CFR Citation:

42 CFR 484

Legal Deadline:

None

Abstract:

This proposed rule would revise home health agency conditions of participation to center on the patient, using outcome-oriented measures. This focus is required by OBRA '87.

Statement of Need:

Most of the current HHA conditions of participation have remained unchanged since home health services became a Medicare benefit in 1966. Some limited modifications have been made over the years to comply with legislative changes. As a result, most of the conditions of participation continue to be structure and process oriented. They do not effectively support the mandate of OBRA '87 to develop a patient-centered, outcome-oriented survey process which focuses on the organization and delivery of quality care services.

Because the existing survey process continues to focus on structure and process measures, the discrepancy between a congressional mandate for outcome-oriented care and the authority for measuring the actual performance capabilities of HHAs in patient care services remains a problem. It presents difficulties for both providers and surveyors in areas of survey/certification, medical review, developing data based performance standards for HHA management and monitoring, and implementing a continuous quality improvement system for outcomes of care.

Regulations containing the Medicare HHA conditions of participation must be revised in order to provide a regulatory basis for a patient-centered, outcome-oriented system of home health quality assurance. The implementation of such a system will enhance Medicare's ability to ensure that high-quality care is furnished to the patients of Medicare-certified home health agencies. The Social Security Act authorizes us to regulate this area and no improvements in the survey process can be made without underlying regulatory authority.

The Health Care Financing Administration has already met with a variety of provider and consumer representatives to discuss the development of revised standards. Representatives of consumers, providers and States participated in this effort. Additional consultations are ongoing and will continue during the development of the regulation.

Alternatives:

Congress has mandated the implementation of an outcome-oriented quality assurance system for home health. Therefore, the Medicare home health agency conditions of participation must be revised to provide the basis for implementation of such a system.

Due to this mandate, no alternatives to this action have been considered.

Anticipated Costs and Benefits:

The primary benefit of this rule will be the implementation of a more effective, efficient, and patient-centered system of quality assurance for HHAs. Costs and benefits associated with the implementation of the rule have not yet been estimated, but costs should not be significant.

Risks:

This rule would have the potential for reducing risks to patient health and safety. No quantitative estimates are available yet.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Undetermined

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RIN: 0938–AG81

HHS—HCFA

53. • END STAGE RENAL DISEASE (ESRD) CONDITIONS OF COVERAGE (BPD-818-P)

Legal Authority:

42 USC 1395rr

CFR Citation:

42 CFR 405

Legal Deadline:

None

Abstract:

This proposed rule would revise current conditions of coverage for end-stage renal disease (ESRD) services covered by Medicare. It would update the conditions to reflect new developments in technology and equipment, address the outcome-oriented standards process, emphasize the total patient experience with dialysis and develop performance expectations for the facility that result in quality, comprehensive care for the dialysis patient.

Statement of Need:

Section 1881(b)(1) of the Social Security Act stipulates that payment is made to individuals, providers of services, and renal dialysis facilities that meet the requirements for institutional dialysis services and supplies that are determined by the Secretary. These requirements are the end-stage renal disease (ESRD) conditions of coverage.

The ESRD conditions of coverage regulations have not been comprehensively revised since the regulation's inception in the late 1970s. The current regulations are written in an outdated style that primarily focuses on process-oriented requirements, which are unnecessarily burdensome. They do not provide adequate support for a modern survey system based on an outcome-oriented approach. As a result, revised regulations must be issued to bring the ESRD coverage conditions up to current standards of practice in the ESRD community. The revised regulations must reflect new developments in technology and equipment, as well as address the outcome-oriented standards process.

The regulations need to be revised to reflect the innovations in the dialysis and transplant community. The purpose of revising the regulations is to focus on the patient and the results of the care provided to the patient. Thus, the emphasis should be on the total patient experience with dialysis and quality improvement. The revised regulations should focus on patient-centered, outcome-oriented standards where appropriate. In addition, they should emphasize patient functional well-being and indicate continuous quality improvement. Patient rights and satisfaction will also be key areas in the regulation. The revised regulations would develop performance expectations for the facility that would result in quality, comprehensive care for the dialysis patient.

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The Health Care Financing Administration held an industry meeting to discuss the focus of the conditions of coverage revision. Additional discussions with the ESRD community will occur during the regulations process.

Alternatives:

In the past, HCFA has revised portions of the ESRD regulations. However, it was determined that a complete and thorough revision would be a more effective mechanism for developing a comprehensive approach to quality care for the dialysis patient. In addition, this approach provides the regulation with greater potential for future application. Another option is to update the current regulations and maintain the process-oriented standards without developing an outcome-oriented approach. However, we believe it is important now to move forward with the outcome-oriented approach.

Anticipated Costs and Benefits:

The purpose of this final rule is to ensure that ESRD beneficiaries are receiving quality care in both the areas of dialysis and transplantation. We believe that this regulation is a necessary step to ensure that all facilities are using the most effective technology and equipment. The primary benefit of updating the conditions of coverage is the development of performance expectations for the facility that will result in the comprehensive, integrated care and outcomes the patient needs and wants. As a result, the beneficiaries will receive an improved quality of care. In addition, the revised regulations will address the issue of adequacy of dialysis, and this would have a significant impact on ensuring that patients are not being underdialyzed.

Items that have the potential to affect the cost of the ESRD program include data gathering and infection control. However, at this time the cost or savings to the Medicare program are speculative.

Risks:

If the ESRD regulations are not updated, the regulations will not reflect new developments in technology and equipment. There are new issues that need to be addressed, such as adequacy of dialysis, to ensure that the Medicare beneficiary is receiving the highest quality of care possible.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 0938–AG82

HHS—HCFA

FINAL RULE STAGE

54. PROHIBITION ON UNBUNDLING OF HOSPITAL OUTPATIENT SERVICES (BPD-428-F)

Legal Authority:

42 USC 1395y(a)(14); 42 USC 1395cc(a)(1)(H); 42 USC 1395cc(g); 42 USC 1395x(w)(1)

CFR Citation:

42 CFR 405; 42 CFR 409; 42 CFR 410; 42 CFR 411; 42 CFR 412; 42 CFR 489; 42 CFR 1003

Legal Deadline:

None

Abstract:

These regulations will implement sections 9343(c)(1), (c)(2), and (c)(3) of OBRA '86, as amended by section 4157 of OBRA '90. This rule, issued jointly by HCFA and OIG, will prohibit Medicare payment for most nonphysician services furnished to a hospital outpatient by a provider or supplier other than the hospital, unless the services are furnished under an arrangement with the hospital. The hospital will be obligated by its provider agreement to furnish the services directly or under an arrangement. These regulations will also authorize OIG to impose a civil money penalty, not to exceed $2,000, against any individual who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare in violation of an arrangement.

Statement of Need:

The planned final regulations will prohibit Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than the hospital, unless the services are furnished under an arrangement with the hospital. The hospital will be obligated by its provider agreement to "bundle" the services, that is, to furnish the services directly or under an arrangement. The rule will also authorize the Office of Inspector General to impose a civil money penalty, not to exceed $2000, for violations of the requirement for billing in accordance with their provisions.

The regulations are needed to implement section 9343(c) of OBRA '86, section 4085(i)(7) of OBRA '87, and section 4157 of OBRA '90. They also will establish or help to formalize the referral relationships needed for the implementation of any prospective payment system for outpatient hospital services.

Alternatives:

Alternatives include bundling only those services that are furnished at the hospital to hospital outpatients, not services ordered during or as a result of an encounter at the hospital but provided elsewhere. This approach does not account for certain services (such as computerized tomography (CT) scans or magnetic resonance imaging (MRI) procedures available only outside the hospital) that are furnished as a direct result of the hospital outpatient visit and are integrally linked to the visit. Excluding those services from bundling could create an artificial financial incentive to hospitals to have the services furnished offsite.

We also considered rebundling all services, whether or not furnished on site, that are required for the diagnosis and treatment of the medical condition for which the patient sought outpatient care from the hospital. However, we do not now have the information needed to identify the services reliably. Therefore, we also rejected this approach in developing the proposal and also did not adopt it in the final rule.

Another alternative would be to exclude off-site tests for which results are not sent back to the hospital for analysis, and durable medical equipment (DME) delivered while the patient is at the hospital from the requirement. (DME delivered in other settings would not be affected by the requirement, even if it was ordered during an encounter at the hospital.) However, there are concerns that the first exclusion could create an artificial incentive to redirect test results, while the second is not supported by the statutory provisions.

Anticipated Costs and Benefits:

We do not have quantified estimates of the costs and benefits of the regulation, since they will depend greatly on many individual hospitals' decisions on whether to provide a bundled service directly or arrange for its provision. In general, we expect the highest level of cost to be incurred in the first year of hospital compliance, as hospitals and suppliers develop contracts to formalize their existing referral arrangements. Some costs will also be incurred for later years, since hospitals will be required to bill for services that previously were billed directly to Medicare patients. On the other hand, Medicare patients should benefit from consolidated billing for services, since it will be easier for them to understand what services were provided and what benefits were paid on their behalf. Since "bundling" under these regulations does not require a single payment for each encounter, but only that all billings come through the hospital, there should be minimal changes required to existing hospital systems.

Timetable:

Action	Date	FR Cite
NPRM	08/05/88	53 FR 29486
NPRM Comment Period End	10/04/88	53 FR 29486
Final Action	03/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AD33

HHS—HCFA

55. SURVEY AND CERTIFICATION OF SKILLED NURSING FACILITIES AND NURSING FACILITIES AND ENFORCEMENT PROCEDURES (HSQ-156-F)

Legal Authority:

42 USC 1395aa; 42 USC 1395i-3(g); 42 USC 1396r(g)

CFR Citation:

42 CFR 488; 42 CFR 431; 42 CFR 442; 42 CFR 489

Legal Deadline:

Final, Statutory, January 1, 1988.

Abstract:

This rule will implement sections 4202, 4203, 4212, and 4213 of OBRA '87 (PL 100-203) which govern the process used by HCFA to survey long-term care facilities, and to certify that the facilities meet the participation requirements for the Medicare and Medicaid programs. The rule would also specify a number of sanctions or remedies that could be used when a skilled nursing facility or nursing facility is out of compliance with Federal requirements as an alternative to or in addition to termination.

Statement of Need:

The nursing home reform provisions (sections 4203 and 4213) of OBRA '87 expanded the alternatives to termination available to the Secretary and the States for skilled nursing facilities and nursing facilities out of compliance with program requirements. The new remedies can include temporary management, civil money penalties, denial of payment (different from that established by OBRA '80), emergency closure and transfer of residents, directed plans of correction, and any other sanctions that can be shown to be as effective in deterring noncompliance as those listed above.

Section 1902(a)(33)(B) of the Social Security Act, which existed prior to OBRA '87, is also relevant to the regulation under development. This statutory provision not only gave the States the authority to survey and certify facilities against Medicaid requirements, but also gave the Secretary authority to validate State determinations and make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation. OBRA '87 revised this validation authority of the Secretary for Medicaid-only facilities in the newly created section 1919 of the Act, and gave the Secretary the authority to reduce administrative costs for substandard survey and certification performance by the State. Current regulations reflect preexisting statutory provisions, and regulatory change is needed to implement OBRA '87.

Sections 1395i-3(h) and 1396r(h) of title 42 of the U.S. Code require the Secretary to specify criteria as to when and how each of the remedies is to be applied, the amounts of any fines, and the severity of each of these remedies.

A study by the National Academy of Sciences' Institute of Medicine (IoM) on nursing homes focused on the chronic problem of nursing homes that fail to comply with Federal requirements. The IoM study found that many substandard nursing facilities could easily avoid termination if they came into compliance long enough to be recertified, but that these facilities had no commitment to sustain compliance. Therefore, the IoM study recommended that we implement a range of intermediate remedies to deter violations.

Alternatives:

This regulation will implement statutory requirements and represent the agency's interpretation of those requirements and the analysis of approximately 28,000 public comments. A range of alternatives to improve enforcement or make it more cost-effective are being considered.

Anticipated Costs and Benefits:

We expect that the implementation of these regulations will have the benefit of motivating previously noncompliant facilities to come into compliance with Federal participation requirements. The rule will establish compliance incentives by providing the policy for the imposition of numerous enforcement sanctions in the case of noncompliance.

This final rule will set forth a system capable of detecting and responding to noncompliance with any participation requirement, and is built on the assumption that requirements take on greater or lesser significance depending on the resident outcomes as a result of the deficient practice. While provider agreement terminations will continue to be an enforcement option for any level of noncompliance, alternative remedies are designed to motivate providers to comply quickly with the participation requirements so that they may continue to provide

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quality services to the residents; as well as to provide incentives for facilities to achieve and maintain compliance with health and safety standards before termination becomes necessary.

We do not expect any significant financial change in the administrative costs of the States. However, new State survey responsibilities may result in a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities. We expect that while there will be incremental costs to States and the Federal Government as a result of hearings on terminations and alternative remedies as well as costs for negotiating civil money penalties, we do not believe that these costs will apply in most cases because of the incentive to achieve compliance before adverse actions are taken.

We expect that there will be some costs to facilities and concomitant benefits to patients as noncompliance is reduced. These costs and benefits were addressed in the regulatory analysis dealing with the standards themselves.

Risks:

Although OBRA '87 required States to implement alternative remedies under Medicaid, without uniform Federal requirements that cover both Medicaid and Medicare certified facilities these substandard conditions may continue to occur, thereby jeopardizing the health and safety of nursing home residents.

Timetable:

Action	Date	FR Cite
NPRM	08/28/92	57 FR 39278
NPRM Comment Period End	10/27/92	57 FR 39278
Final Action	10/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Federal

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RIN: 0938–AD94

HHS—HCFA

56. MEDICARE, MEDICAID, AND CLIA PROGRAMS: REGULATIONS IMPLEMENTING THE CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988 (CLIA '88) (HSQ-202-F)

Legal Authority:

42 USC 263a

CFR Citation:

42 CFR 493

Legal Deadline:

None

Abstract:

Historically the Department regulated laboratories by "location," rather than by types of tests they perform. CLIA '88 changed this approach. CLIA '88 requires that the Department "regulate by test," using what is commonly referred to as the "complexity model." A final rule with comment period was published February 28, 1992, that set forth standards for all laboratories based on complexity and responded to public comments on the proposed standards. The regulation was revised by a rule with comment period published on January 19, 1993, 56 FR 5215. The comment period for this rule ended March 22, 1993. A final rule, which will respond to public comments on the February 28, 1992, rule and the January 19, 1993, rule, will also be issued.

Statement of Need:

On October 31, 1988, the Congress enacted comprehensive changes to existing laboratory regulations in CLIA '88. This statute requires the regulation of any facility (including physician offices) that performs tests on human beings for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. Historically, the Department had regulated laboratories by "location," rather than by the types of tests they performed. In addition, CLIA '88 requires that the Department regulate by test, using what is commonly referred to as the "complexity model" to categorize individual laboratory tests based on the experience, skills, and judgment required to perform each test accurately. Requirements vary as a function of the complexity of the tests the laboratory conducts.

The law requires the Secretary to implement the numerous provisions through regulation to ensure the quality of laboratory testing, regardless of where it is provided or who is providing the testing. The law also requires the CLIA '88 program be operated through the assessment of user fees paid by entities subject to these requirements.

On May 21, 1990, the Department published proposed rules to implement CLIA '88 and received over 60,000 public comments. Based on an analysis of these comments, HCFA and the Public Health Service (PHS) developed a final rule with comment period that set forth standards for all entities performing laboratory testing based on test complexity. This rule was published on February 28, 1992, and was effective September 1, 1992. This regulation was revised by a notice with comment period published on January 19, 1993.

Issues that will be addressed in the final rule include personnel standards, especially for rural laboratories; possible revisions to cytology; proficiency testing requirements; employee workplace drug testing; and other issues raised by commenters and early experience with implementation.

The Clinical Laboratory Improvement Advisory Committee (CLIAC), which is composed of members of professional organizations and private citizens, is actively involved in making recommendations regarding technical and scientific aspects of the regulations. In addition, we actively solicit comments from outside organizations such as the American Medical Association, the Association of State and Territorial Public Health Laboratory Directors, and other professional and medical organizations regarding the interpretive guidelines for surveyors and the content and design of the forms required to gather information necessary for the implementation of the regulations.

Alternatives:

HCFA and PHS are currently analyzing over 16,000 comments received on the final rule with comment period published February 28, 1992, and 1,100 comments received in response to the January 19,1993, notice with comment period. As an interim measure, consideration is being given to publishing separate rules to address specific concerns that would otherwise be included in this final omnibus rule. The separate rule would be published prior to the omnibus rule.

A wide range of modifications to improve the cost-effectiveness of the CLIA '88 standards is under consideration.

Anticipated Costs and Benefits:

Since the content of the separate rule has not been determined, it is not possible to project costs and benefits of the omnibus rule at this time. However, it is possible to provide some examples of the types of costs and benefits of this rule. One example of a benefit involves decreased costs of providing unnecessary medical services when a laboratory providing Pap smear testing decreases its rate of false positive results. Conversely, there will be decreased medical costs due to treatment of an advanced stage of cervical cancer when a laboratory providing Pap smear testing decreases its rate of false negative results.

An example of the type of costs that could be associated with this rule is the added cost of testing, especially in medically underserved areas, when a laboratory decides to close, either due to failing to meet the requirements or the perception that it is too costly to continue testing. Patients would have to go to another laboratory that may be further away, or may cost more for the test to be performed. Also, the law requires the affected entities to pay user fees to support the program.

These regulations serve to ensure consistent, reliable laboratory testing which is an integral part of ensuring that individuals receive appropriate treatment.

Risks:

Inferior and inappropriate laboratory testing can result in misdiagnosis causing patient harm. CLIA reduces the potential for inaccurate diagnosis resulting from poorly performed laboratory testing since entities must meet requirements (e.g., quality assurance, proficiency testing, quality control, personnel requirements) which have a direct impact on laboratory testing results. Overly stringent standards could, however, discourage needed testing and reduce early detection of health problems. The Department does not at this time have an estimate of the magnitude and severity of these types of risks, but believes that both the original regulation and the revisions will on balance contribute to better diagnosis.

Timetable:

Action	Date	FR Cite
NPRM	05/21/90	55 FR 20896
NPRM Comment Period End	09/21/90	55 FR 34289
Final Rule With Comment Period	02/26/92	57 FR 7002
Public Comment Period End	04/28/92	57 FR 7002
Effective Date	09/01/92	57 FR 7002
Effective Date	01/19/93	58 FR 5215
Final Rule With Comment Period	01/19/93	58 FR 5215
Comment Period End	03/22/93	58 FR 6215
Final Action	07/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

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RIN: 0938–AE47

HHS—HCFA

57. EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT (EPSDT) SERVICES (MB-28-F)

Legal Authority:

42 USC 1396a(a)(43); 42 USC 1396d(r)

CFR Citation:

42 CFR 441.50; 42 CFR 440.40

Legal Deadline:

None

Abstract:

Section 6403 of OBRA '89 defines in new section 1905(r) of the Social Security Act the following EPSDT services: screening services, vision services, dental services and hearing services. It also extends EPSDT services to include such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) of the Act to correct or ameliorate defects and illnesses and conditions discovered by the screening services whether or not the services are covered under the State plan. Section 6403 also amended section 1902(a)(43) of the Act to require States to report to the Secretary certain information about EPSDT services provided under the plan during each fiscal year. This rule would set forth requirements to implement these statutory provisions.

Statement of Need:

Section 6403 of OBRA '89 added subsection (r) to section 1905 of the Social Security Act (Act) concerning early periodic screening, diagnostic, and treatment (EPSDT) services. The subsection incorporated into statute provisions that already existed in Medicaid regulations on minimum components of EPSDT services provided to most groups of Medicaid recipients under age 21. However, OBRA '89 also (1) modified the definition of screening services by including appropriate blood lead-level testing and health education; (2) required distinct periodicity schedules for screening, dental, vision, and hearing services and required additional interperiodic screening services as medically necessary; (3) added a new required services component for other necessary health-care, diagnostic, treatment, and other measures enumerated in section 1905(a) of the Act to correct or ameliorate defects and physical and mental illnesses and conditions discovered by screening services, whether or not such services are covered under the State Medicaid plan; (4) provided that nothing in Federal Medicaid law permits limiting EPSDT providers to those that can furnish all required EPSDT diagnostic and treatment services or preventing providers qualified to furnish only one such service from program participation; and, (5) required the Secretary to develop by July 1, 1990, and every 12 months thereafter, EPSDT participation goals for each State. Section 6403 of the OBRA '89 also amended section 1902(a)(43) of the Act to require States to report annually to the Secretary (by age and basis of eligibility) on the number of children receiving screening services, the number referred for followup treatment, the number receiving dental services, and results in attaining EPSDT participation goals. The OBRA '89 changes became effective April 1, 1990.

The requirements discussed above must be incorporated into regulations so that existing regulatory requirements will be consistent with the statutory criteria.

Criteria for meeting requirements have been developed by HCFA and presented formally for public comment in the notice of proposed rulemaking. HCFA is considering issues raised by the public comments as we prepare the final rule.

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In the absence of final regulations, States are permitted to apply any reasonable interpretation of these complex statutory requirements. It follows that individual States may interpret and apply the statutory provisions inconsistently with the Federal interpretation, which could result in children being denied access to necessary health services.

Anticipated Costs and Benefits:

We estimate that total Federal/State costs and all transfer payments of the OBRA '89 changes were about $465 million in fiscal year 1992 and $525 million in fiscal year 1993; and will be $595 in fiscal year 1994 and $685 million in fiscal year 1995. These figures reflect the estimate of Medicaid costs attributable to expansion of services.

With respect to benefits, the importance of EPSDT has been underscored by various studies that have documented the effectiveness of EPSDT in reducing medical costs, limiting hospital admissions and emergency room services, enhancing access to care, and improving the health status of participating children.

These regulations will not substantially alter either the costs or the benefits already being realized through expanded access to services.

Risks:

Not applicable. However, as indicated above these additional services will contribute to improved health status of children.

Timetable:

Action	Date	FR Cite
NPRM	10/01/93	58 FR 51288
NPRM Comment Period End	11/30/93	58 FR 51288
Final Action	05/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local

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HHS—HCFA

58. PHYSICIAN OWNERSHIP OF AND REFERRALS TO HEALTH CARE FACILITIES THAT FURNISH CLINICAL LABORATORY SERVICES AND FINANCIAL RELATIONSHIP REPORTING REQUIREMENTS (BPD-674-FC)

Legal Authority:

42 USC 1395nn

CFR Citation:

42 CFR 411

Legal Deadline:

Final, Statutory, October 1, 1991.

Abstract:

This rule will incorporate into regulations the provisions of section 6204 of OBRA '89 as amended by section 4207(e) of OBRA '90 and to some extent, as amended by section 13562 of OBRA '93. It will prohibit a physician from making a referral for the provision of clinical laboratory services to an entity with which the physician, or an immediate family member of the physician, has a financial relationship

Statement of Need:

A final rule with comment period is being developed to implement the statutory prohibition against patient referrals by physician to entities that furnish clinical laboratory services when the physician has a financial relationship with such laboratory entities. These regulations will address the concern that financial relationships involve an inherent potential for conflict of interest resulting in unnecessary services for Medicare patients and unnecessary costs to the Medicare program.

OBRA '89 amended the Social Security Act (Act) by adding a new section 1877, "Limitations on Certain Physician Referrals." Section 1877 was further amended by section 4207 of OBRA '90 and section 13562 of OBRA '93. Some of the new provisions are effective as if they were included in OBRA '90. With certain exceptions, section 1877 prohibits a physician from making a referral to an entity for the furnishing of designated health services for which Medicare would otherwise pay, if the physician or a member of the physician's immediate family has a financial relationship with that entity. The provision further prohibits an entity from presenting or causing to be presented a Medicare claim or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a prohibited referral

Although section 1877 was expanded by OBRA '93 to apply to referrals for designated health services, this final regulation will address only the provisions related to clinical laboratory services that have a January 1, 1992, effective date. The expanded provisions are being addressed in a separate rulemaking proceeding. (See Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships--Expanded to Designated Health Services (BPD-809-P; Regulatory Plan entry 0938-AG80 in the Proposed Rule Stage.)

This regulation is necessary to address the many aspects of section 1877 of the Act. Specifically, we will address when and how a physician has a financial relationship with an entity performing clinical laboratory services. Financial relationships can be through ownership/investment interests or compensation relationships. This regulation will also define key terms found in the statute, such as fair market value, immediate family member, remuneration, group practice, and referral/referring physician.

Alternatives:

We are considering the requests made during the proposed rule comment period for the Secretary to approve additional exceptions.

Anticipated Costs and Benefits:

This final rule is meant to help eliminate certain financial incentives for physicians to order unnecessary and often costly laboratory tests. A recent report from the Office of the Inspector General to Congress estimated that at least 25 percent of the nearly 4,500 independent clinical laboratories are owned in whole or in part by referring physicians. We believe most physicians and laboratories have taken necessary steps to ensure that their activities are not prohibited by provisions of this rule. Savings are unlikely to be substantial and any estimate of savings would be purely speculative.

Timetable:

Action	Date	FR Cite
NPRM	03/11/92	57 FR 8588
NPRM Comment Period End	05/11/92	57 FR 8588
Final Action	02/00/95	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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RIN: 0938–AF40

HHS—HCFA

59. MEDICARE AND MEDICAID PROGRAMS; REQUIREMENTS FOR PHYSICIAN INCENTIVE PLANS IN PREPAID HEALTH CARE ORGANIZATIONS (OMC-010-F)

Legal Authority:

42 USC 1395mm(i); 42 USC 1396b

CFR Citation:

42 CFR 417.01; 42 CFR 417.409; 42 CFR 417.495; 42 CFR 434.67; 42 CFR 1003.100; 42 CFR 1003.101; 42 CFR 1003.102; 42 CFR 1003.103

Legal Deadline:

None

Abstract:

This rule would amend the regulations governing federally qualified health maintenance organizations (HMOs) and competitive medical plans (CMPs) contracting with the Medicare program, and certain HMOs and health insuring organizations (HIOs) contracting with States under the Medicaid program, by implementing changes made by sections 4204(a) and 4731(a) of OBRA '90 concerning physician incentive plans. The changes are intended to allow HMOs, CMPs, and HIOs the flexibility to provide reasonable financial incentives to their physicians and physician groups in order to eliminate unnecessary care and protect enrollees from reduced quality of care or access to care.

Statement of Need:

Sections 4204(a) and 4731(a) of OBRA '90 require the Secretary to develop regulations for physician incentive plans. The managed-care industry has made great use of these incentive plans to control the use of unnecessary services. However, Congress developed this provision because of concerns that the incentive plans could lead to underuse of necessary medical services. Indeed, there is great concern about the potential use of incentive plans to restrict medically necessary care to patients.

In the proposed rule, we indicated that the provisions would apply to Medicare and Medicaid prepaid contracts, but not to commercial contracts by federally qualified HMOs regulated under section 1833 of the Social Security Act. The OBRA'90 provisions require prepaid plans to disclose their physician incentive arrangements to HCFA or to a State Medicaid agency. The Secretary will then determine whether the incentive plan places contracting physician groups at substantial financial risk. If the managed care organization's incentives are found to place contracting physicians at substantial risk, then the organization will be required to conduct annual beneficiary surveys and establish adequate stop-loss protection.

The final rule is intended to allow health maintenance organizations, and health insuring organizations contracting with States under the Medicaid program, the flexibility to provide reasonable financial incentives to their physicians and physician groups in order to eliminate unnecessary care and protect enrollees from reduced quality of care or access to care.

Alternatives:

In the proposed rule, we developed an outlier threshold approach to define substantial financial risk. We examined the distribution of withholds across the industry and determined that the threshold would be the value that exceeded the average withhold. We then proposed aggregate stop-loss requirements consistent with the threshold levels for substantial financial risk.

We considered alternative approaches to the development of substantial financial risk, including use of a median withhold, and assessment of various risk factors. In determining adequate stop-loss protection, we considered both aggregate and per-patient stop-loss limits.

Anticipated Costs and Benefits:

We anticipate that most prepaid plans are already, or will have no difficulty complying with, the final rules and we do not expect any significant associated costs. These rules will protect beneficiaries by ensuring that all necessary services are available and accessible without regard to the physician's financial considerations.

Risks:

If these final regulations are not published, beneficiaries are at risk of not receiving necessary services.

Timetable:

Action	Date	FR Cite
NPRM	12/14/92	57 FR 59024
Public Comment Period End	04/13/93	58 FR 8568
Final Action	01/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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HHS—HCFA

60. REVISIONS TO GEOGRAPHIC PRACTICE COST INDICES, PAYMENT POLICIES AND ADJUSTMENTS TO THE RELATIVE VALUE UNITS UNDER THE PHYSICIAN FEE SCHEDULE FOR CY 1995 (BPD-789-FC)

Legal Authority:

42 USC 1395w-4

CFR Citation:

42 CFR 414

Legal Deadline:

Final, Statutory, January 1, 1995.

Abstract:

This rule discusses changes to the geographic practice cost indices, fee schedule payment areas, revisions to payment policies for specific physician services and adjustments to the relative value units. It also discusses the implementation of the OBRA '93 provisions regarding payment for antigens, which places antigens under the physician fee schedule and subjects them to charge limits.

Statement of Need:

OBRA '89 transformed the Medicare physician payment system from a reasonable charge system with wide variations among specialties and

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geographic areas to a fee schedule based on national relative value units (RVUs). The fee schedule was first implemented in 1992. This document will announce the RVUs upon which Medicare payment for physician services will be based in 1995, including interim RVUs for procedure codes that are new or revised for 1995. The public is given a 60-day period to comment on the interim values. It will also explain the process by which interim 1994 RVUs were reviewed and, in some cases, revised as a result of public comments.

We are also announcing revisions to the geographic adjustment factor (GAF) values. The GAF is equal to a weighted average of the three geographic practice cost indexes (GPCI). These indices reflect justifiable differences in the costs of providing physicians' services among the fee schedule payment localities. The revised GPCIs are based on more recent and comprehensive data than those used to establish the initial indices. This notice also converts the multiple payment localities for Iowa into a single, statewide locality.

After two full years of experience with the physician fee schedule, we have reevaluated several payment policies related to the fee schedule. Proposed revisions to these policies were announced in a notice of proposed rulemaking on June 24, 1994. This final rule will respond to the public comments received on those proposals and announces the final policy decisions. Thus, it will discuss separate payment for care plan oversight of Medicare home health beneficiaries and an increase in the payment amount for certain multiple surgical procedures performed on the same day. This rule will also announce a final decision on the proposal to include clinical laboratory services performed in hospital outpatient settings in the Medicare Volume Performance Standards in fiscal year 1996. Finally, the rule will discuss inclusion of two additional types of service in the physician fee schedule: antigens, as provided for by OBRA 1993, and the monthly capitation payment for end-stage renal disease patients.

This document also discusses the process for periodic review and adjustment of all RVUs. In this regard, we have and will continue to work with the physician community through the American Medical Association Relative Value Update Committee.

The legal basis for updating the RVUs is found in Section 1848(c) of the Social Security Act (Act), which requires the Secretary to establish GPCIs and to review those GPCIs at least every 3 years. Section 1848(c)(4) provides that the Secretary may establish ancillary policies for payment for physician services.

The rule will amend the following sections of title 42 of the Code of Federal Regulations: 414.2 to include antigens in the definition of physicians' services; 414.4 to recognize a statewide fee schedule area for Iowa; and 414.314 to provide for determination of the payment amount for the monthly capitation payment under the physician fee schedule. This regulation adds section 414.39 to describe special rules for payment of physician care plan oversight services.

Alternatives:

An alternative to this notice would be to continue to base payments on 1994 RVUs. This would continue inappropriate payments for certain services and would not allow a national basis for paying for new services. By not revising the GPCIs or the payment policies described in this notice, we would continue inadequate or inequitable payments for certain physician services or fee schedule areas.

Anticipated Costs and Benefits:

These regulations affect mainly the amount paid by the Government to physicians for services they perform for Medicare beneficiaries. The regulations do not affect the level or type of real economic costs of goods and services.

Section 1848(c)(2)(B) of the Social Security Act requires that adjustments to RVUs for a year may not cause the amount of expenditures to differ by more than $20 million from the amount of expenditures if the adjustments had not been made. In general, the payment policies and other revisions included in this notice will be implemented in a budget-neutral manner. Thus, total Medicare expenditures will not be increased or decreased as a result of most of these changes. In order to maintain budget neutrality, we estimate the cost of these revisions and adjust the RVUs for all services.

The inclusion of clinical laboratory services performed in hospital outpatient settings in the MVPS for 1996 would result in estimated budgetary savings of $25 million in fiscal year 1998, $75 million in fiscal year 1999, and $125 million in fiscal year 2000.

Timetable:

Action	Date	FR Cite
NPRM	06/24/94	59 FR 32754
NPRM Comment Period End	08/24/94	59 FR 32754
Final Action	10/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 0938–AG52

HHS—HCFA

61. MEDICAID PROGRAM: FEES FOR VACCINE ADMINISTRATION UNDER PEDIATRIC IMMUNIZATION PROGRAM (MB-084-NC)

Legal Authority:

PL 103-66, sec 13631; 42 USC 1396a(a)(62); 42 USC 1396s

CFR Citation:

None

Legal Deadline:

Final, Statutory, October 1, 1994.

Abstract:

This notice with comment period establishes a regional maximum fee that a Medicaid provider may charge for the administration of qualified pediatric vaccines under the Medicaid Pediatric Immunization Program. It also specifies the methodology used to develop this maximum fee and allows a State to pay a rate lower than the maximum fee if the State can ensure federally vaccine-eligible children adequate access to the vaccines at the lower rate. This notice implements section 1928(c)(2)(C)(ii) of the Social Security Act, as added by section 13631 of OBRA '93.

Statement of Need:

OBRA '93 created the Pediatric Immunization Program, which went into effect as of October 1, 1994. While the program is designed to provide vaccines at no cost to the provider for a federally eligible child, section 1928(c)(2)(C)(ii) of the Social Security Act specifies that a provider may impose a fee for the administration of a vaccine. The fee cannot exceed the provider's cost of administration as determined by the Secretary based on actual regional costs for such administration.

HCFA has just published a public notice with comment period. The public notice sets forth the maximum fees for administration of vaccines and will discuss related issues. In addition, it includes methodologies for documenting access to immunizations.

Without this notice, providers would not know the maximum charge allowed for the administration of vaccines and could decide not to participate in the program, which would deny needy children access to immunizations; thereby risking exposure to preventable disease.

Anticipated Costs and Benefits:

Projected costs are not available at this time. Information on how many program-eligible providers will elect to administer the vaccine and how many States will be able to demonstrate equal access with lower fees is not available at this time. There are potential costs associated with the notice if States cannot or do not elect to demonstrate equal access in order to set lower fees.

Under the Medicaid program, most States currently pay lower fees for vaccine administration than the proposed maximum amounts under the Vaccines for Children program, and there is no requirement that they pay at the maximum rate.

These potential costs could be offset if States elect to set lower fees. Medicaid vaccines are currently covered under the obstetric and pediatric access care requirements. It is difficult to estimate how much, if any, increase in fees would be attributable to this notice as opposed to the obstetric-pediatric access requirement.

The benefits are to successfully carry out the intent of the Pediatric Immunization Program, thereby raising immunization rates and reducing morbidity from contagious childhood diseases.

Timetable:

Action	Date	FR Cite
Effective Date	10/01/94	59 FR 50235
Notice With Comment Period	10/03/94	59 FR 50235
Final Action	00/00/00	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State

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RIN: 0938–AG77

HHS—Administration for Children and Families (ACF)

PROPOSED RULE STAGE

62. • AUTOMOBILE RESOURCE LIMIT

Legal Authority:

42 USC 301; 42 USC 602; 42 USC 606; 42 USC 607; 42 USC 1202; 42 USC 1302; 42 USC 1352; 42 USC 1382

CFR Citation:

45 CFR 233

Legal Deadline:

None

Abstract:

This proposed regulation would increase the automobile resource limit to a $3,500 equity limit from the current $1,500 automobile maximum resource limit. The change is proposed as a first step toward bringing conformity between the AFDC and Food Stamp program's automobile resource limit. It is intended to eliminate some of the administrative complexity involved with valuing vehicles under varying criteria and would result in greater effectiveness and efficiency in administration of both programs.

Statement of Need:

These regulations are proposed in order to make timely reforms that will simplify and streamline the AFDC program. They are designed to achieve consistency in the administration and operation of the AFDC and Food Stamp programs, and are part of the welfare reform initiative.

We are proposing to amend existing regulations to increase the automobile limit to an equity value that is compatible with the current Food Stamp fair market value (FMV) limit with the goal of assuring that a vehicle will meet the requirements of both programs.

Also in keeping with our over-arching goal of improving government assistance, we are working on revised regulations to increase State administrative flexibility.

In developing these regulations, we have had numerous discussions and meetings with Department of Agriculture staff, as well as with representatives from a wide variety of advocacy groups, NGA, NCSL, and APWA.

Anticipated Costs and Benefits:

Estimated actual Federal and State costs are under development. These regulations promote program coordination and simplification and will be beneficial to States and to recipients. They are designed to achieve consistency in the administration and operation of the AFDC and Food Stamp programs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 0970–AB48

HHS—ACF

63. • HEAD START INITIATIVE ON FAMILIES WITH INFANTS AND TODDLERS

Legal Authority:

42 USC 9801 et seq

CFR Citation:

45 CFR 1307

Legal Deadline:

NPRM, Statutory, December 30, 1994.

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Abstract:

This proposed rule will establish a new part 1307 setting forth performance standards that must be used in providing Head Start services to infants, toddlers and pregnant women. The Head Start Act Amendments of 1994 authorize a new program of comprehensive, developmental services for low-income families with infants and toddlers. The statute requires the Department of Health and Human Services to publish performance standards governing the projects to be funded under this authority by the end of this calendar year.

Statement of Need:

The Head Start Act Amendments of 1994 authorize a new program of comprehensive, developmental services for low-income families with infants and toddlers. The statute requires the Department of Health and Human Services to publish performance standards governing the projects to be funded under this authority by the end of this calendar year.

An advisory committee has been established in keeping with the Administration's commitment to consult with program stakeholders and customers in advance of promulgating regulations. The first meeting was held on July 7th.

Anticipated Costs and Benefits:

Any costs associated with this regulation are the result of legislation and therefore are reflected in the President's budget.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

Organizations

Government Levels Affected:

None

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BILLING CODE 4150-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

In January of 1993, the incoming Administration found a HUD suffering from years of reductions in resources, with no clear sense of direction or mission. Secretary Henry Cisneros immediately embarked on a program to "Reinvent HUD" which would involve every HUD employee and key program partners and customers. This effort defined HUD's mission, established priorities for the coming year and identified the most significant program and management problems in need of resolution.

Among the significant obstacles to effective performance identified by HUD staff and customers was the lengthy and cumbersome process required to issue regulations. One of the many sources of frustration with HUD on the part of the public and Congress was the failure to issue regulations on a timely basis to implement programs and statutory changes. HUD's regulatory program is a mission-oriented program, with most regulations implementing program requirements. Timely issuance of regulations is a key factor in effective program implementation.

In July 1993, the Reinventing HUD Task Force issued a report of "Employee Recommendations for Internal Management Improvements That Can Be Implemented Within a Six-month Timeframe." The regulation issuance process was one of five major problem areas identified. Those recommendations which were found to be within management control were implemented by the Deputy Secretary on October 7, 1993. The most significant change in the rules process has been the implementation of the Top 25 Rules procedure. The highest priority rules under development are identified and reviewed with key staff every two weeks at a meeting co-chaired by the Deputy Secretary and Chief of Staff. This results in a common focus by the responsible policy officials and support organizations on the most significant rules.

The Task Force Report also identified external review requirements as an additional source of delay of regulations. The issuance of Executive Order 12866 on September 30, 1993, has addressed the concern for improvement of the external review of regulations by the Office of Management and Budget. The streamlining of the reviews to focus on the Department's significant regulations has resulted in better turnaround and more opportunity for meaningful discussion of significant issues. To make the process still more effective, the Top 25 listing is shared with the Office of Information and Regulatory Affairs and used as a basis for assuring that the critical rules are expedited.

Using this process, the Department has been able to focus in the past year on completing action on outstanding legislative mandates and on preparing regulations to implement the 1994 Multifamily Property Disposition Reform Act. At the same time, the basis has been laid for substantial improvement to major programs through legislative change and revised regulation. The extensive discussions with State and local governments, housing authorities and community development agencies, residents, nonprofit organizations, foundations, associations representing all of these groups and other program participants as part of the reinvention process provided recommendations for change which have been invaluable in developing the regulatory and legislative program.

Carrying out the intent of Executive Order 12866, public participation in the process has been improved by including program partners and the ultimate beneficiaries in working groups and by more extensive use of public meetings. New formats are also being devised to make regulations more comprehensible and workable. Where appropriate, the Department is working closely with other Federal agencies to develop rules.

In addition, the Department is making greater use of modern information technology both internally and externally to support the rules development process and as an integral part of improving program delivery. The Department's internal tracking system is being improved and a new system, HUDCLIPS, is being implemented which will give the public access to Departmental regulations electronically. Information technology is being used to support implementation of streamlined program requirements for the consolidated Community Planning and Development Plan as described below. Innovative techniques are also being used to support the rulemaking process such as the recently completed electronic conference on the RESPA rule described below.

The 1994 Regulatory Plan of the Department of Housing and Urban Development will support the achievement of the Department's mission of helping to create cohesive, economically healthy communities all across America, and accomplishment of the five program priorities established to fulfill the mission. In the coming year, we will complete or initiate regulatory actions which support this mission.

In the plan which follows, we identify the specific regulatory actions we anticipate to support each priority. Further details on all of these actions are included in the descriptions which follow. In some cases, significant legislative initiatives are pending which will become major elements in our plans when enacted. In those cases, specific details on the regulatory action are not available.

Priority: Reducing Homelessness

Reduce the number of homeless Americans through partnerships with local governments and private-sector nonprofit groups that help people gain access to housing and the services they need.

Regulatory Action: Implement the "Stewart B. McKinney Homeless Assistance Reorganization Act of 1994"

Currently, HUD provides homeless assistance to communities through several programs which have separate applications and program requirements, creating an administrative burden for both grantees and HUD. The proposed legislation will reorganize six separate homeless assistance grant programs into a single program that will be formula-based, flexible and designed to help States and cities develop and implement community-devised continuum of care systems. The specific details and timing of the regulations required to support the new program will be determined after enactment.

Priority: Turning Around Public Housing

Make public housing a source of pride to communities by encouraging resident participation in its management, downsizing large developments, restoring deteriorating buildings, offering residents opportunities to move to low-poverty areas, giving residents incentives to work and lift themselves economically, and ensuring that these developments become safe, healthy, and attractive places to live and raise children.

To support the achievement of this priority, the Department has conducted a comprehensive review of all statutes, regulations and related issuances on the public housing program. The review teams included housing authority employees and residents, legal services

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representatives and HUD employees. Based on information provided by their review, detailed plans have been developed to improve the program in five functional areas: organization, management and personnel; financial management; facilities management; marketing and lease management; and community relations and involvement. In each of the areas action plans have been developed which include proposals for legislative change and revisions to regulations and directives. As the changes emanating from this process are implemented, the regulations will be revised to simplify existing language, reduce the number of regulations, allow greater flexibility, and make the program more effective. Specific examples of revisions to major regulations which are in process follow.

In addition to these initiatives, the Department has proposed legislation to reform the public housing rent structure and to create the Community Partnerships Against Crime (COMPAC) to expand the tools available to eliminate crime in public housing. Implementation of these initiatives will be priorities after enactment.

Regulatory Action: Indian Housing Deregulation

This rule proposes amendments to the Indian Housing Consolidated Program regulations to simplify program processes, reduce the number of regulatory requirements, and to provide more flexibility to local Tribal and Indian housing authority (IHA) officials in the administration of the Indian housing program. The rule will provide greater discretion and responsibility to IHAs in carrying out their housing programs, thereby returning them to local control.

The rule was developed with input from program participants beginning in September 1993. In March 1994, a session to discuss the proposed changes was held in Washington, DC, with the National American Indian Housing Council, eight regional IHA associations, and Tribal leaders, as well as a number of representatives from other IHAs. Additional verbal comments were received from the Native American housing community at that time and the six Office of Native American Programs offices continued to involve affected parties in the process by conducting sessions with IHAs and Tribes on the proposed changes.

Regulatory Action: Revision of the Public Housing Management Assessment Program

The Public Housing Management Assessment Program is the major tool for assessing the performance of public housing authorities. However, the current system includes some process-oriented, staff-intensive reporting requirements that are thought not to be necessarily accurate or objective measures of results. The proposed revisions will eliminate unnecessary paperwork and provide better measures of performance and program results to promote better management of public housing developments. The rule incorporates recommendations made as a result of the review of program regulations.

Regulatory Action: Public Housing Development Program Revision

The current public housing development program regulations are outdated and contain unnecessary restrictions on the flexibility of public housing authorities (PHAs). The regulations will be revised to provide more flexibility for all participants with even greater flexibility to the best performers. "High performer" PHAs will have maximum latitude to develop public housing within very broad parameters, and with minimal HUD oversight (with the exception of those elements that the Department, by statute, must perform). Remaining PHAs will be given broadened responsibility commensurate with their abilities and areas of expertise. HUD will retain the option of reviewing any PHA action, thus minimizing risk to the Department.

Streamlining the program will help to reduce a substantial preconstruction pipeline and expedite the provision of replacement housing for developments that should be fully or partially replaced. The proposed regulation will reflect the recommendations resulting from the review of the public housing program.

Priority: Expanding Housing Opportunities

Expand Housing opportunities for low- and moderate-income people through partnerships with state and local governments, private developers, lending institutions, and nonprofit agencies, and reestablish the Federal Housing Administration as an active facilitator of homeownership for low- and moderate-income families.

In May 1994, Secretary Cisneros called for a study on the future of FHA. The study will re-examine how FHA can be reorganized to eliminate bureaucratic barriers and to transform it into a more entrepreneurial, mission-driven institution.

Eight public forums are being held throughout the country this year by Assistant Secretary for Housing-FHA Commissioner Nicolas Retsinas to discuss various aspects of the FHA program and how it could be improved. As this effort continues, the results will be incorporated into plans for revisions of the regulations for the mortgage insurance programs.

The specific actions identified below will support the goal of making housing opportunities available at lower cost.

Regulatory Action: Federal Housing Enterprises Financial Safety and Soundness Act of 1992—Implementing Regulations

This rule will include housing goals for Fannie Mae and Freddie Mac (the Government-Sponsored Enterprises, the "GSEs") for 1995 and beyond, fair-lending requirements, guidelines for new program approval, regulations for proprietary information, reporting requirements, and other issues. The rule will focus additional financing efforts by the GSEs on underserved areas and lower-income families facing affordability problems. It will provide final guidance to replace the Interim Notice under which the GSEs' affordable housing programs are operating.

Prior to drafting this proposed rule, HUD met many times with the GSEs to discuss issues relating to the Interim Notice under which the GSEs were operating. HUD also held two roundtables to discuss the definition of "underserved" used in establishing the central cities, rural areas, and other underserved areas goals. Roundtable participants included the GSEs, researchers, other Federal agencies (Department of Agriculture, Farmers Home, Census Bureau), the Congressional Budget Office, and public-interest groups. HUD also held four meetings with the GSEs during the drafting of the proposed rule for the purpose of allowing HUD to clarify assumptions it was making about the GSEs' operations and projections of future activities.

Regulatory Action: Regulations Implementing the Multifamily Housing Property Disposition Reform Act of 1994

The Reform Act will expedite the foreclosure of multifamily projects with HUD-held mortgages and the sale of multifamily HUD-owned projects.

Expediting the foreclosure and disposition process will reduce the cost to the Federal Government of this program and facilitate the return of the housing inventory to the private housing market. It also will free HUD staff to focus on other housing priorities.

The regulations will utilize a user-friendly question-and-answer format, as well as several charts to explain the more complicated sections.

Regulatory Action: RESPA: Computer Loan Origination and Controlled Business Amendments

This regulation will amend the RESPA rule issued November 2, 1992. It will revise the rule's provisions on use of computer loan origination services and employer-employee exempted payments. This rule promotes the use of interactive electronic technology. In September 1994, the Department sponsored a demonstration of this technology for use in computer loan origination. In addition, the Department conducted an electronic conference on the rule from August 19, 1994, through September 30, 1994.

Regulatory Action: GNMA Multiclass Securities Program—Final Rule

The GNMA Multiclass Securities Program provides increased demand for federally insured and guaranteed mortgages by allowing sponsors to create multiclass securities, backed by GNMA single class mortgage-backed securities, to meet various investors' particular needs. As a result the program enhances liquidity and promotes expanded housing opportunities for low- and moderate-income people by effectively lowering interest rates to the homebuyer.

Priority: Opening Housing Markets

Open housing markets to minorities through vigorous enforcement of fair housing laws and support for creative metropolitan-wide housing and urban development initiatives.

The rules proposed in this section of the plan support not only the Secretary's priority but also the implementation of Executive Order 12892 of January 17, 1994, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing.

Regulatory Action: Implement Fair Housing Planning To Affirmatively Further Fair Housing in Community Planning and Development Programs

The Fair Housing Plan rule will establish clear requirements for entitlement recipients on their obligations to affirmatively further fair housing, promote significantly greater housing choice and opportunity for protected classes, and promote customized remedies for locally identified housing and related discriminatory practices.

Regulatory Action: Regulation on Affirmatively Furthering Fair Housing in All HUD Programs

This rule will provide clear guidance for HUD staff and program participants on the requirement for affirmatively furthering fair housing in all HUD programs. It will demonstrate the Department's commitment to affirmatively further fair housing.

Regulatory Action: Regulation on Significant Facilities and Services

This rule sets forth the requirements which must be met for housing for persons 55 or older to qualify for exemption from the provisions of the Fair Housing Act prohibiting discrimination based on familial status. The proposed rule published July 7, 1994, uses a new approach to rulemaking by providing extensive examples and fact patterns describing circumstances which may be a violation of the Act.

To assure adequate opportunities for public comment, the proposed rule provides for a 90-day public comment period and the Department is conducting four public meetings to solicit additional comments before preparation of a final rule.

Regulatory Action: Mortgage Lending Rule: Implementation of Provisions of Title VIII Which Prohibit Discrimination in Lending and the Provision of Other Financial Assistance

This rule will set forth policies and practices in the provision of mortgage lending which may be violations of the Fair Housing Act. It will also implement provisions of the Fair Housing Act that prohibit discrimination in the making, purchasing, selling, and servicing of home mortgage loans, and the provision of other financial assistance relating to dwellings.

This rule will also contain an appendix with extensive examples of different fact patterns and circumstances that may be violations of the Act. Four public meetings will be conducted on this issue before publication of a proposed rule.

Regulatory Action: Regulation on Property Insurance

This rule will set forth the policies and practices in the provision of property insurance which may be violations of the Fair Housing Act. It will provide guidance to the property insurance industry on compliance with the Act and improve the effectiveness of HUD's enforcement.

This rule will also contain an appendix with extensive examples of different fact patterns and circumstances that may be violations of the Act. To assure broad public participation in the development of this rule, HUD published an advance notice of proposed rulemaking on August 16, 1994. Four public meetings will also be conducted on this issue before publication of a proposed rule.

Regulatory Action: Disparate Impact Rule

This rule will set standards for determining if business practices which are neutral on their face are violations of Title VIII of the Fair Housing Act. This rule will indicate that a violation of the Act can be established without evidence of intent to discriminate. The rule will permit more expeditious relief for victims of this form of discrimination.

This rule will also contain an appendix with extensive examples of different fact patterns and circumstances that may be violations of the Act.

Priority: Empower Communities

Empower communities by supporting local efforts to transform neighborhoods, by reinvigorating economic development programs and creating new opportunities for people and businesses, and by supporting community-based organizations.

Regulatory Action: Final Rule on Empowerment Zones and Enterprise Communities

The Empowerment Zones program is a key step in rebuilding communities in America's poverty-stricken inner cities and rural heartland. It is designed to empower people and communities across the nation by having them identify their own needs and goals and giving them access to government resources at all levels to address their needs and revitalize their poorest neighborhoods. HUD's January 18, 1994, interim rule for the urban Empowerment Zone/Enterprise Community Program was issued simultaneously with the Department of

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Agriculture's rule for the rural Program. The applications for both programs are being reviewed by an interagency task force.

The urben part of the program will be administered by HUD as a Federal-State-local partnership, with a minimum of red tape associated with the application process. The Federal Government will take steps to coordinate Federal assistance in support of the designated areas, including expedited processing, priority funding and working to overcome programmatic regulatory and statutory impediments. This unique interagency effort is being carried out under the leadership of the President's Community Enterprise Board.

Regulatory Action: Consolidated Planning, Application and Reporting Process for CPD Programs

This rule consolidates planning, application, and reporting requirements for all major Community Planning and Development formula programs: Comprehensive Housing Affordability Strategy, Community Development Block Grants, HOME Investment Partnerships, Emergency Shelter Grants and Housing Opportunities for Persons With AIDS. As part of the HUD Reinvention process, the Department has consulted with thousands of jurisdictions, grantees, and providers to identify ways to make the program work better. The Consolidated Plan is a key step in responding to the need for change and assisting grantees in rebuilding communities. It is designed to empower people and communities across the Nation by having them identify their own needs and goals and by providing access to government resources that will help them revitalize their communities. The consolidated planning process provides new tools for enhancing citizen participation and strategic planning. It also seeks to renew partnerships between HUD, State and local governments, public and private agencies and the general citizenry by empowering field staff to assist in developing creative solutions to community problems.

To support the implementation of the Consolidated Plan the Department will be deploying new computer software to automate the application process. This new software will encourage jurisdictions to present comprehensive information in easy-to-read charts, graphs and maps, so that citizens can better understand the relationships between community needs and potential solutions.

Regulatory Action: Final Rule Implementing the HOME Investment Partnerships Program Act

Improved administration of the HOME program to increase its effectiveness as a vehicle for providing housing opportunities in communities has been a priority of the Department. HUD published an interim rule implementing the HOME Program in December, 1991. Since that time, HUD has published five additional interim rules. These rules were developed to implement statutory changes made by the Housing and Community Development Act of 1992 and the Multifamily Housing Property Disposition Reform Act of 1994 and to make changes that would simplify State and local operation of the HOME Program and make it more compatible with other Federal housing programs based upon comments received during numerous public comment periods. This rule will provide a final rule for HOME and further streamline and improve HOME Program operations at the State and local level by drawing upon the experiences of commenters with the HOME Program to develop the final rule.

Other Priority Regulations

The following regulations support multiple programs or reflect specific legislative initiatives.

Regulatory Action: Revision of Lead-Based Paint Rules

The Housing and Community Development Act of 1992 (Title X) made significant revisions to the requirements on the evaluation and control of lead-based paint hazards in federally assisted and federally owned housing. The implementing regulations will specify what must be done, when, and by whom, in each housing program, and they will state minimum standards for how the activities must be done. The purpose of the requirements is to reduce childhood exposure to lead without reducing the supply of affordable housing.

Because of the magnitude of the changes required in HUD's lead-based paint regulations, and the impact these changes will have on other government agencies, the real estate industry and the general public, HUD is seeking information from outside organizations and individuals in the development of the Title X regulations. To date HUD has used the following avenues for outside information:

1. HUD hosts a monthly meeting of the Federal Interagency Lead-Based Paint Task Force. The interagency task force provides a forum for Federal agencies to discuss the impact of Title X.

2. HUD participates in the Task Force on Lead-Based Paint Hazard Reduction and Financing, established by Section 1015 of Title X. The task force includes representatives of public agencies, advocacy groups, the real estate industry, insurance and financing organizations, and private citizens. The purpose of the task force is to discuss issues related to the lead-based paint problem and make recommendations to the Secretary of HUD and the Administrator of EPA by Jan. 1995. Issues include financing, insurance, liability and underwriting. HUD has been using the resources of the task force as it tackles some of the more controversial issues posed by the new Title X regulations.

3. HUD has hosted a meeting with representatives of public housing authorities and related associations, and a conference call with HUD field staff and CPD grantees, to gather client input into the development of the Title X regulations.

Regulatory Action: Restrictions on Housing Assistance to Noncitizens

This rule will implement the provisions of Section 214 of the Housing and Community Development Act of 1980, as amended, that limit admission to federally assisted housing to citizens and certain categories of resident aliens. Currently, public housing agencies and assisted housing owners may not take citizenship into consideration in determining eligibility for housing assistance. As a result, the programs may be serving large numbers of undocumented noncitizens in some parts of the country.

Despite several previous attempts to issue a rule, this provision of the law has never been implemented. This rule is modeled on the October 1988 proposed rule, and takes into consideration public comments received on the October 1988 proposed rule, including comments received on this rule in early 1994 from several organizations with particular interest in immigration matters. It also reflects close coordination with the Department of Justice's Immigration and Naturalization Service. The rule provides for the use of INS's automated SAVE system as an integral basis for compliance with the rule.

Regulatory Action: Title VI Mixed Populations Rule

Title VI of the Housing and Community Development Act of 1992 addresses the issue of "mixed populations" (the combination of elderly and disabled persons and families) in public housing and in certain HUD-assisted housing, and provides that under certain conditions, housing authorities and owners may provide housing occupied only by, or substantially by, elderly families, or only by, or substantially by, disabled families. Subtitle B of Title VI addresses the issue of mixed populations in public housing. The Department published its final rule implementing Subtitle B ("Designated Housing") on April 13, 1994.

Subtitle D of Title VI addresses the issue of mixed populations in certain HUD-assisted housing and allows an owner of a covered Section 8 housing project to elect to provide preferences in housing to elderly families subject to certain statutory requirements. Subtitle D was enacted to address recent problems arising from mixing elderly persons and nonelderly disabled persons in HUD-assisted housing. This rule will make final the interim rule issued on May 3, 1994.

The development of the final rule will have the benefit of insights that will be gained at one or more informal consumer forums where HUD staff meet with residents of HUD-assisted housing who represent both elderly residents and nonelderly persons with disabilities.

HUD—Office of the Secretary (HUDSEC)

PROPOSED RULE STAGE

64. REGULATIONS IMPLEMENTING THE SECRETARY'S AUTHORITY OVER FNMA AND FHLMC (FR-3481)

Legal Authority:

12 USC 4501 to 4589

CFR Citation:

24 CFR 81

Legal Deadline:

Final, Statutory, April 28, 1994.

Abstract:

Under subtitle A, part 2, of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Title XIII of the Housing and Community Act of 1992) (FHEFSSA), the Secretary has general regulatory authority over the Federal National Mortgage Association (Fannie Mae) the Federal Home Loan Mortgage Corporation (Freddie Mac) (jointly referred to as "enterprises"). The Secretary's responsibility does not encompass areas specifically under the authority of the Director of the Office of Federal Housing Enterprise Oversight and all other matters relating to the safety and soundness of the enterprises. The FHEFSSA provided the Secretary with new authority to ensure that each enterprise fulfills its obligations to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with the enterprise's overall public purposes, while maintaining a strong financial condition and reasonable economic return. Pursuant to the FHEFSSA and in accordance with the requirements in Part 2 for notice-and-comment rulemaking, this rule would implement the Secretary's regulatory authority over Fannie Mae and Freddie Mac regarding the establishment of housing goals for 1995 and following years, fair-lending requirements, approval of new programs, proprietary information, reporting requirements, and other issues.

Statement of Need:

Status as a government-sponsored enterprise provides important benefits to the enterprises and their stockholders. The FHEFSSA outlines a strategy to ensure that the enterprises fulfill the public purposes set out in their charters. The Department currently is operating under an interim notice that details the enterprises' housing goals for 1993 and 1994. The statute requires that the Department publish a final rule by April 28, 1994, after notice-and-comment rulemaking.

Summary of the Legal Basis:

The regulations are required by section 1349 of the Federal Housing Enterprises Financial Safety and Soundness act of 1992 (12 USC 4589).

Alternatives:

In developing the proposed rule, the Department considered the experience gained and lessons learned while operating under the interim notice during the transition period of 1993 and 1994. The Department also conducted extensive analysis and research to determine the appropriate changes to the housing goals. Changes from the interim notice will be designed to make the regulatory process simpler and more streamlined for the enterprises. These changes would include streamlining the reports that the enterprises are required to provide to HUD and modifying requirements about which mortgage purchases would qualify for consideration in meeting the goals established for the enterprises. Under the modified requirements the Department expects more transactions to count toward mortgage purchase goals.

HUD has met numerous times with the enterprises to discuss issues relating to the interim notice, under which the enterprises have been operating. In addition, HUD also held two roundtables to discuss the definition of "underserved" used in establishing the mortgage purchase goals for central cities, rural areas, and other underserved areas. Roundtable participants included the enterprises, researchers, other Federal agencies (Department of Agriculture, Farmers Home Administration, Census Bureau), the Congressional Budget Office, and public-interest groups. HUD also held four meetings with the enterprises as the proposed rule was being developed, for the purpose of clarifying assumptions HUD was making about the enterprises' operations and projections of future activities.

Anticipated Costs and Benefits:

Costs: Increased targeting to low- and moderate-income families and underserved areas will increase the credit risk or mortgage default costs experienced by the enterprises. The magnitude of this effect is expected to be small, given their expertise in attracting and underwriting creditworthy low-income borrowers. There may also be some increased cost associated with additional program outreach toward low- and moderate-income borrowers and borrowers in underserved market areas. With respect to fair housing regulations, there will be costs associated with the additional reporting and remedial actions by the enterprises that are mandated by FHEFSSA.

Benefits: The rule would establish that there are substantial unmet housing needs among low-income households and in distressed neighborhoods. The rule will benefit very low-, low-, and moderate-income families by assuring that an appropriate portion of the mortgage purchases of each enterprise relate to housing affordable to low-income families and housing in underserved areas. The rule will also establish a framework through which

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the enterprises will be involved in helping to eliminate discrimination in mortgage finance and to promote Federal fair housing objectives.

Risks:

In relevant part, FHEFSSA was designed to ensure that the enterprises accomplish their public missions. Absent effective regulations, Congress and the public do not know whether the enterprises are carrying out the public purposes required of them in exchange for their status as government-sponsored enterprises. The rule would establish a comprehensive framework that would allow HUD to regulate the enterprises effectively within the scope of HUD's statutory authority.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

Agency Contact:

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Office of the Secretary
202 708-0488

RIN: 2501–AB56

HUD—HUDSEC

65. CONSOLIDATED PLANNING, APPLICATION AND REPORTING PROCESS FOR CPD PROGRAMS: CHAS CDBG, HOME, ESG & HOPWA (FR-3611)

Legal Authority:

42 USC 3535(d)

CFR Citation:

24 CFR 91; 24 CFR 92; 24 CFR 570; 24 CFR 574; 24 CFR 575

Legal Deadline:

None

Abstract:

This rule would consolidate the planning, application and reporting requirements for all major community planning and development formula programs. It would simplify the process of requesting and obtaining formula grant funds, and promote citizen participation, strategic planning, and consultation among public and private agencies, including those outside a single jurisdiction. The rule would replace the current uncoordinated approach with an integrated approach to focus on performance and problem solving. The consolidation is expected to be in place for Fiscal Year 1995.

The Consolidated Plan is a key step in rebuilding communities. It is designed to empower people and communities across the nation by having them identify their own needs and goals and giving them access to government resources to address their needs and revitalize communities. The consolidated planning process provides new tools for enhancing citizen participation and strategic planning. The new computer software that is part of the consolidated planning process encourages jurisdictions to present comprehensive information in easy-to-read charts, graphs and maps, so that citizens can better understand the relationships between community needs and potential solutions. It also seeks to establish a renewed partnership between HUD, State and local governments, public and private agencies and the general citizenry by empowering field staff to work with other entities in fashioning creative solutions to community problems. As a part of the HUD Reinvention process, the Department has consulted with thousands of jurisdictions, grantees, providers, and citizens to identify ways to make the program work better.

Statement of Need:

The current fragmented process for requesting and obtaining formula grant funds hinders the efforts of communities and States to adopt an intelligent, coordinated approach to solving housing and community development problems. The new approach, which requires localities to operate these programs in the same program year, offers jurisdictions the opportunity to shape these and other programs into effective, coordinated neighborhood and community development strategies to revitalize communities.

Summary of the Legal Basis:

The rule combines the Comprehensive Housing Affordability Strategy and non-housing Community Development Plan requirements contained in the National Affordable Housing Act as amended. The statute states the Secretary shall prescribe the requirements for the nonhousing community development needs by regulation. The legal basis for application and reporting requirements for the covered programs are contained in the relevant statutes.

Alternatives:

The National Affordable Act does not provide discretion in implementing provisions of the Comprehensive Housing Affordability Strategy and the nonhousing Community Development Plan.

Anticipated Costs and Benefits:

Costs: The cost of preparing the Consolidated Plan is estimated at 720,850 hours. However, this represents a reduction in the total annual burden on respondents by 240,000 hours and results in a net savings of an estimated $3.6 million.

Benefits: Consolidated planning will result in more effective and efficient use of Federal, State and local funds and better targeting and delivery of services.

Risks:

The lack of such a rule would hinder the ability of States and communities to adopt an intelligent, coordinated approach to solving housing and community development problems.

Timetable:

Action	Date	FR Cite
NPRM	08/05/94	59 FR 40148
NPRM Comment Period End	10/04/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Agency Contact:

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Office of Community Planning and Development
202 708-1283

RIN: 2501–AB72

HUD—HUDSEC

FINAL RULE STAGE

66. LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES (FR-3482)

Legal Authority:

42 USC 4822; 42 USC 3535(d)

CFR Citation:

24 CFR 36; 24 CFR 37

Legal Deadline:

Final, Statutory, January 1, 1995.

Abstract:

The Office of Lead-Based Paint Abatement and Poisoning Prevention was established by Congress within the Office of the Secretary of HUD. The Office provides overall direction to HUD's lead-based paint activities. Currently, part 35 of HUD's regulations address the Department's requirements on lead hazards in housing. The Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992 (Title X), requires substantial revisions to HUD's current regulations for the evaluation and control of lead-based paint hazards in federally assisted and federally owned housing. This legislation evidences a concern with developing a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing. Because of the scope of the problem, the strategy will be implemented on a priority basis and, in part, is to be based on guidelines issued by the Secretary on the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. The revisions required by Title X will affect HUD's housing programs and the housing programs of other Federal agencies.

HUD will consolidate in new parts 36 and 37 of title 24 of the Code of Federal Regulations the multitude of lead-based paint regulations found through HUD programs and will make them more consistent. This will create a single point-of-reference for all of the Department's lead-based paint requirements.

Statement of Need:

The Centers for Disease Control and Prevention (CDC) have labeled lead poisoning as the leading environmental health hazard facing America's children. Childhood lead exposure had been shown to cause damage to the brain and nervous system, which may cause behavior and learning problems, slowed growth, hearing problems, and kidney damage. The results of CDC's third National Health and Nutrition Examination Survey (NHANES III, 1988-1991) indicate that lead exposure has decreased dramatically as a result of the deleading of gasoline. However, the CDC report has concluded that lead paint in older housing is now the primary source of lead exposure. CDC found that 8.9 percent of all American children less than 6 years of age had blood lead levels greater than CDC's level of concern (10mcg/dl). In large central cities, the figure was 21 percent, and among non-Hispanic black children in large central cities, 36.7 percent had blood lead levels above the level of concern. The NHANES report indicates that preventive measures are working, but that more needs to be done to address the danger in the nation's older housing stock.

Summary of the Legal Basis:

Title X amends the Lead-Based Paint Poisoning Prevention Act (42 USC 4822) to focus attention and resources on identifying and controlling lead-based paint hazards in federally assisted and federally owned housing before children are poisoned.

Alternatives:

The statute is generally prescriptive in requiring regulatory action to be taken by HUD. For certain HUD programs the Department has some discretion in the level of hazard evaluation and control measures to be undertaken. Alternatives being considered are primarily (1) the amount of onsite work that is required for hazard evaluation and control, and (2) the level of lead "safeness" that must be achieved. In determining an optimum level of safeness, HUD expects to evaluate the effectiveness of notification and disclosure requirements and good maintenance and housekeeping practices.

Because of the magnitude of the changes required in HUD's lead-based paint regulations and the impact these changes will have on other government agencies, the real estate industry, and the general public, HUD is seeking information from outside organizations and individuals in the development of the Title X regulations. To date HUD has used the following avenues for outside information:

1. HUD hosts a monthly meeting of the Federal Interagency Lead-Based Paint Task Force. The interagency task force provides a forum for Federal agencies to discuss the impact of Title X.

2. HUD participates in the Task Force on Lead-Based Paint Hazard Reduction and Financing, established by section 1015 of Title X. The task force includes representatives of public agencies, advocacy groups, the real estate industry, insurance and financing organizations, and private citizens. The purpose of the task force is to discuss issues related to the lead-based paint problem and, by January 1995, make recommendations to the Secretary of HUD and the Administrator of EPA. Issues being discussed include financing, insurance, liability, and underwriting. HUD has been using the resources of the task force as HUD tackles some of the more controversial issues to be addressed in the new Title X regulations.

3. HUD has hosted a meeting with representatives of public housing authorities and related associations, and has sponsored a conference call with HUD field staff and CPD grantees, to gather client input into the development of the Title X regulations.

Anticipated Costs and Benefits:

HUD is in the early stages of estimating the costs of increased hazard evaluation and control measures, such as new risk assessment and expanded paint stabilization requirements. It is expected that full implementation of the law could cost HUD programs in the hundreds of millions of dollars annually. HUD program offices will bear the majority of these costs, and to a lesser extent, HUD grantees will take on additional lead abatement costs. A regulatory impact analysis will accompany the Title X regulations.

There will also be some cost to the real estate industry in implementing the new lead-based paint notification requirements of Title X. This includes notification to occupants when a risk assessment, inspection, or hazards reduction activity has been undertaken. In addition, the seller/lessor is required to provide the purchaser/lessee with a lead hazard information pamphlet.

Notification requirements in real estate transactions could result in market price changes, creating a transfer of wealth from owners of housing containing lead-based paint to owners of lead-free housing.

Health benefits of the new regulations will include a reduction in lead

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poisoning exposures among children, subsequently reducing costs for medical treatment. The regulations will offer environmental protection to more families with young children by reducing lead paint hazards in the country's housing stock.

Risks:

Without the regulatory changes required by title X, childhood lead exposures will continue at current levels.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

Agency Contact:

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HUD—HUDSEC

67. HOME INVESTMENT IN AFFORDABLE HOUSING PROGRAM (FR-2937)

Legal Authority:

42 USC 12721

CFR Citation:

24 CFR 92

Legal Deadline:

None

Abstract:

Title II of the National Affordable Housing Act of 1990 established the HOME Investment Partnership Program. This program is intended to expand the supply of decent, safe and sanitary affordable housing. Under the HOME Program, HUD provides formula allocations to participating States and units of local government to be used for specified eligible housing activities in accordance with the jurisdiction's approved housing plan. A portion of each allocation must be invested in housing developed, owned or sponsored by community housing development organizations. HUD provides technical assistance to develop the capacity of participating jurisdictions and has developed model programs designed to assist participating jurisdictions in carrying out their programs.

HUD published an interim rule implementing the HOME Program in December 1991. Since that time, HUD has published five additional interim rules. These rules were developed to implement statutory changes by the Housing and Community Development Act of 1992 and the Multifamily Housing Property Disposition Reform Act of 1994. These rules also made changes in response to public comments that were solicited as each rule was published. HUD's experience in administering the program, and the input of program participants at numerous training sessions across the country. The changes simplify State and local operation of the HOME Program and make it more compatible with other Federal housing programs.

Statement of Need:

Promulgation of this regulation is necessary to permit HUD to simplify and improve the operation of the HOME Program.

Section 206 of the National Affordable Housing Act requires that HUD promulgate regulations governing the operation of the HOME Program. State and local participating jurisdictions have been operating the HOME Program for more than two years under interim regulations. In an effort to further streamline and improve HOME Program operations at the State and local level, HUD intends to solicit public comment on the current HOME regulations and potential refinements to the program from all interested parties. HUD will draw upon the experiences of commenters with the HOME Program to develop the final rule.

Summary of the Legal Basis:

Section 206 of the National Affordable Housing requires the Department to issue regulations to implement the HOME Program after notice and opportunity for comment.

Alternatives:

HUD could continue the operation of the HOME Program under the current interim rule. However, it would forfeit the opportunity to make refinements to the program based upon experience and the attendant benefits to jurisdictions participating in the program.

Anticipated Costs and Benefits:

Costs: While the final rule is expected to streamline and simplify HOME program operations for participating jurisdictions, HUD does not expect that this rule will significantly alter the reporting and paperwork burden estimates previously submitted by the Department and approved by OMB.

Benefits: HUD expects that the opportunity to solicit additional public comment based upon actual experience in implementing the program and to modify programmatic requirements in response to that experience will result in substantial simplification of program administration. The jurisdictions administering the program and the private and public for-profit and non-profit entities participating in the program will be able to provide low-income housing more quickly and at lower cost.

Risks:

HUD could continue to operate the HOME Program under the current interim regulations. In doing so, however, it would forego the opportunity to solicit additional public comment and to refine the program rules.

Timetable:

Action	Date	FR Cite
NPRM	03/19/91	56 FR 11592
NPRM Comment Period End	04/18/91	
Interim Final Rule	12/16/91	56 FR 65312
Interim Final Rule Effective Date	01/16/92	56 FR 65312
Interim Final Rule Comment Period End	05/01/92	
Interim Final Rule Effective Date	05/01/92	
Interim Final Rule	12/22/92	57 FR 60960
Interim Final Rule Comment Period End	02/22/93	
Final Action	06/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local

Agency Contact:

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Department of Housing and Urban Development
Office of Community Planning and Development
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RIN: 2501–AB12

HUD—HUDSEC

68. RESTRICTIONS ON ASSISTANCE TO NONCITIZENS (FR-2383)

Legal Authority:

42 USC 1436a

CFR Citation:

24 CFR 200; 24 CFR 215; 24 CFR 235; 24 CFR 236; 24 CFR 247; 24 CFR 812; 24 CFR 880; 24 CFR 881; 24 CFR 882; 24 CFR 883; 24 CFR 884; 24 CFR 885; 24 CFR 886; 24 CFR 887; 24 CFR 912; ...

Legal Deadline:

None

Abstract:

On August 25, 1994, HUD published a proposed rule on section 214 of the Housing and Community Development Act of 1980, as amended in 1981, 1986, and 1988 (Section 214). Section 214 prohibits the Secretary of the Department of Housing and Urban Development (HUD) from providing financial assistance to persons who are not citizens or nationals of the United States, or who do not meet one of the six categories of eligible noncitizens specified in Section 214. The restrictions of Section 214 apply to HUD's Public and Indian Housing programs, the Section 8 Housing Assistance Payments programs, the Rent Supplement program, the Section 236 program and the Section 235 homeownership assistance program.

The August 25, 1994 rule proposed to implement the restrictions against access to federally assisted housing by persons with ineligible immigration status in a way that assures (1) that ineligible noncitizens do not receive scarce housing resources, (2) the protection of eligible persons from discrimination on the basis of national origin; and (3) the process for determining eligibility of noncitizens is as fair and expeditious as possible.

There have been several attempts by HUD to implement the restrictions of Section 214. Rules, both proposed and final, were published in 1982, 1986 and 1988. Despite the publication of final rules during the period between 1982 and 1988, the restrictions of Section 214 have not been made effective. A comprehensive proposed rule was published in October 1988, which would have provided for implementation of Section 214 as last amended in 1987, but this rule was not made final. The August 25, 1994, proposed rule is modeled on the October 1988 proposed rule, and takes into consideration public comments received on the October 1988 proposed rule.

In addition to the comments received on the 1988 proposed rule, HUD held an informal meeting at HUD Headquarters in February 1994 on the subject of the restrictions imposed by Section 214. The meeting was attended by the Farmers Home Administration and several organizations with particular interest in immigration matters, including organizations that represent the interests of low-income and minority persons. These organizations submitted additional comments at, and subsequent to, the February 1994 meeting, and these comments were taken into consideration in development of the August 25, 1994 proposed rule. The August 25, 1994, proposed rule also reflected close coordination with the Department of Justice's Immigration and Naturalization Service.

Statement of Need:

This rule is needed to implement the provisions of section 214 which limit admission to federally assisted housing to U.S. citizens, nationals and certain categories or resident noncitizens. Until a final rule on Section 214 is published and made effective, public housing agencies (PHA) and assisted housing owners (project owners) may not take citizenship or immigration status into consideration in determining eligibility for housing assistance. As a result, HUD's housing programs in some parts of the country may be serving large numbers of noncitizens who are not eligible to receive HUD assistance for housing.

Summary of the Legal Basis:

Section 214 of the Housing and Community Development Act of 1980, as amended in 1981, 1986 and 1988 prohibits the Secretary from providing financial assistance to persons who are not citizens or nationals of the United States or who do not meet one of the six categories of eligible noncitizens specified in section 214.

Alternatives:

There is no viable alternative to this rulemaking. If HUD were to withdraw the rule, either the provisions of section 214 would never be implemented or they would be self-implemented by PHAs and project owners. In the latter case, the potential for discrimination and inconsistent implementation would be certain to spawn protracted and destructive litigation.

Anticipated Costs and Benefits:

Costs: HUD estimates that the direct cost to the Federal Government will be about $500,000 per year to pay for inquiries to the INS save system. Some PHAs may incur additional costs for secondary verifications, hearings and evictions.

Benefits: The benefits are mostly in terms of compliance with the law. It costs no more to serve an ineligible noncitizen in assisted housing than it does an "eligible" tenant. The main effect of the rule will be a redistribution of housing subsidy transfer payments from ineligible noncitizens to eligible tenants.

Risks:

A consequence of not implementing section 214 through rulemaking would be that ineligible noncitizens would continue to receive assistance ahead of eligible families. There is a risk of protracted litigation.

Timetable:

Action	Date	FR Cite
NPRM	10/19/88	53 FR 41038
NPRM Comment Period End	12/19/88	53 FR 41038
NPRM	08/25/94	59 FR 43900
NPRM Comment Period End	10/24/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

ADDITIONAL AGENCY CONTACT: Barbara Hunter, Acting Director, Planning & Procedures (Phone: 202-708-3944)

Agency Contact:

Edward Whipple
Director, Rental & Occupancy Branch
Department of Housing and Urban Development
Office of Public and Indian Housing
202 708-0744

RIN: 2501–AA63

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HUD—Office of Housing (OH)

FINAL RULE STAGE

69. • MULTIFAMILY PROPERTY DISPOSITION (FR-3715)

Legal Authority:

PL 102-233

CFR Citation:

24 CFR 290; 24 CFR 886

Legal Deadline:

Other, Statutory.

July 11,1994

Abstract:

The rule amends HUD's multifamily property disposition regulations at 24 CFR 290 and 886, subpart C, to incorporate statutory amendments arising from the Multifamily Property Disposition Reform Act of 1994 affecting the foreclosure of projects with HUD-held multifamily mortgages, the disposition of HUD-owned multifamily properties, and the management of HUD-owned multifamily properties and multifamily properties with HUD-held mortgages where the Secretary of HUD is mortgagee-in-possession.

The new regulations use an innovative user-friendly question and answer format, as well as several charts to explain the more complicated sections.

Statement of Need:

The regulations at 24 CFR 290 must be conformed to changes enacted in Sections 101(b) - (d) of the Multifamily Property Disposition Reform Act of 1994 (MPDRA) (Pub. L. 102-233, approved April 11, 1994). The legislation was passed in an urgent attempt to speed HUD's sales of HUD-owned projects and foreclosure of HUD-held mortgages; to better target, and thus potentially reduce, the need for Section 8 assistance required by the prior statute; and to provide HUD with more discretion in the operation of the multifamily property disposition program. Conforming changes must be made to the regulations at 24 CFR 886 subpart C, which govern section 8 assistance for the disposition of multifamily projects.

Summary of the Legal Basis:

MPDRA section 101(f) requires HUD to issue interim regulations necessary to implement Section 101(b) - (d) 90 days after enactment and, following public comment, a final rule not later than 12 months after the issuance of the interim regulations.

Alternatives:

Rather than follow the usual format for a regulation, this regulation makes use of tables that lay out--in a more simplified and user-friendly manner--the complex provisions of the regulation, and then provides additional detail to flesh out the information in the tables with a question and answer format.

Anticipated Costs and Benefits:

Costs: Because the revised regulations amend existing regulations to streamline and speed the process of property disposition, and should result in few or no additional monitoring or reporting burdens, additional costs to HUD are negligible. Benefits: The 1994 Act, and subsequently the revised 290 regulations, are intended to speed foreclosure sales of projects with HUD-held mortgages and sales of HUD-owned projects, and also reduce the need to provide Section 8 rent subsidies in those sales. Both actions should significantly reduce government costs and transfer payments by reducing the cost involved in HUD ownership and the amount of longer term Section 8 subsidies.

Risks:

The lack of a regulation implementing the 1994 Act may result in increased government holding costs and unnecessary expenditures of Section 8 funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

Frank Malone
Director, Office of Preservation & Property Disposition
Department of Housing and Urban Development
Office of Housing
202 708-3555

RIN: 2502–AG30

HUD—OH

70. PREFERENCE FOR ELDERLY FAMILIES IN CERTAIN SECTION 8 HOUSING; AND RESERVATION OF UNITS FOR DISABLED FAMILIES (FR-3465)

Legal Authority:

42 USC 3535(d); 42 USC 13604 to 13614; 42 USC 1437

CFR Citation:

24 CFR 886; 24 CFR 880; 24 CFR 881; 24 CFR 883; 24 CFR 884

Legal Deadline:

Final, Statutory, April 28, 1993.

Abstract:

Subtitle D of title VI of the Housing and Community Development Act of 1992 (HCD Act of 1992) allows an owner of a covered Section 8 housing project to elect to provide preferences to elderly families in selecting tenants for available units in the project, subject to certain statutory requirements. (The 1992 Act defines elderly families to mean families whose heads, spouses or sole members are persons 62 years of age or older ("seniors").) An owner of a covered Section 8 project who elects to provide preferences to elderly families also must reserve a percentage of units, not to be less than the percentage determined according to a formula set out in the statute, for disabled families who are not elderly or near-elderly. Subtitle D provides that a covered Section 8 housing project is one that is originally designed primarily for occupancy by seniors.

On May 3, 1994, HUD published an interim rule that amended HUD's Section 8 regulations to provide for the system of occupancy preferences authorized by subtitle D. The interim rule adopts the statutory requirements without change. The rule supplements the statutory provisions by including a provision that describes the types of documents that an owner of a covered Section 8 project should produce to support a claim that the owner's project was originally designed primarily for occupancy by elderly families.

Development of the final rule will have the benefit of insights that will be gained at one or more informal consumer forums where staff from HUD's Multifamily Division will meet with residents of HUD-assisted housing who represent both elderly persons and nonelderly persons with disabilities. These forums will be held in early fall 1994.

Statement of Need:

The rule is needed to update HUD's Section 8 regulations to reflect the system of occupancy preferences authorized by subtitle D of the HCD Act of 1992, and to provide owners with examples of the types of documents that would support a claim that a Section 8 project was originally designed primarily for occupancy by elderly families.

Summary of the Legal Basis:

Section 686 of the HCD Act of 1992 authorizes the Secretary of HUD to issue such regulations as may be necessary to carry out the provisions of subtitles B through F of title VI of the HCD Act of 1992.

Alternatives:

Because of the controversial nature of permitting certain HUD-assisted assisted housing to give seniors a preference in occupancy, HUD determined that publication of a rule that invited public comment was necessary. The occupancy preference for elderly families authorized by subtitle D is anticipated to reduce, to some extent, housing for nonelderly persons with disabilities, which is of concern to persons with disabilities. Before enactment of the HCD Act of 1992, the definition of "elderly persons" in the Section 8 statute included persons with disabilities, regardless of age. The HCD Act of 1992 (1) amended the definition of "elderly persons" to have this term refer only to persons who are 62 years of age or older ("seniors"), and (2) provided a separate definition for persons with disabilities. Although the May 3, 1994, interim rule carefully follows the provisions of subtitle D, which are fairly prescriptive, the May 3, 1994, interim rule serves the purpose of assisting the public to more clearly identify the Section 8 projects that are eligible under subtitle D for the election of occupancy preference provided by that subtitle. Many projects that have Section 8 assistance are not "covered" Section 8 housing and are not eligible, under subtitle D, for the election of preference for elderly families. Additionally, the May 3, 1994, interim rule serves the purpose of describing the types of documents that owners of covered projects should produce to support a claim that their projects were originally designed primarily for occupancy by seniors, and public comment may identify additional documents that should be considered and included in the rule.

Anticipated Costs and Benefits:

Costs: Before an owner can follow the preferences in the statute, s/he will incur costs to determine whether the project was originally designed primarily for the elderly. Once the owner has established documentation to support this, the owner must perform two surveys to determine the number of disabled persons that can be admitted to the project. Although the owner does not have to request HUD approval to use the statutory preference scheme, the owner may be called upon to defend his or her decisions, either by HUD through its monitoring and enforcement functions or by an applicant who has filed a complaint under the HCD Act of 1992, the Fair Housing Act, or any other applicable law.

Benefits: The implementing regulation, by clearly defining eligibility requirements, will serve to reduce HUD staff resources needed to evaluate claims of discrimination and to reduce owners' legal expenses to defend their admissions policies. The implementing regulation will establish a base number of units that can be made available to nonelderly disabled persons in certain elderly projects. This will serve as a distinct resource of much needed housing for the disabled.

Risks:

The failure to proceed with a final rule may leave owners of covered Section 8 projects at risk concerning acceptable evidence to support a claim that a project was originally designed primarily for occupancy by elderly persons (seniors). Although the statute identifies that covered Section 8 projects are those originally designed primarily for occupancy by seniors, the statute does not explain how an owner can prove that the owner's project was originally designed primarily for occupancy by seniors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/03/94	59 FR 22916
Interim Final Rule Effective Date	06/02/94	
Interim Final Rule Comment Period End	07/05/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

Interim Final Rule Effective date: June 2, 1994 through May 3, 1995.

Agency Contact:

Albert Sullivan
Director, Office Housing Management
Department of Housing and Urban Development
Office of Housing
202 708-3730

RIN: 2502–AG05

HUD—OH

71. RESPA REVISIONS (FR-3638)

Legal Authority:

12 USC 2601

CFR Citation:

24 CFR 3500

Legal Deadline:

None

Abstract:

The requirements of the Real Estate Settlement Procedures Act (RESPA) apply to federally related mortgage loans. The Department's regulatory authority under the RESPA is directed toward reducing unnecessarily high settlement costs for homebuyers. In part, HUD's regulations protect homebuyers by requiring advance estimates of settlement costs, establishing limits on escrow accounts, and prohibiting referral fees and kickbacks. On November 2, 1992, the Department published a final rule amending the regulations on RESPA to address new statutory provisions. Included in the 1992 rule were provisions that allowed employer-employee payments for referrals of customers to entities that provided settlement services and, in certain situations, might have encouraged steering through the use of a computer loan origination (CLO) operation. Serious objections have been raised to both provisions. As a result, the Department has reviewed these provisions in the 1992 rule and has proposed modifications on both referral fees and CLOs. The modifications were contained in a proposed rule published on July 21, 1994 (59 FR 37360).

This rule promotes the use of interactive electronic technology. In September 1994, the Department sponsored a demonstration of this technology for use in computer loan origination. The purposes of this demonstration were to provide owners and operators of CLOs with an

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opportunity to demonstrate or discuss the operation and benefits of their systems and the impact of the proposed rule on their systems, and to provide consumer groups, industry organizations, and members of the public with an opportunity to witness such presentations or demonstrations. Information gained by the Department from the Technology Demonstration may be used in developing a final rule.

In addition, the Department conducted an electronic conference on the rule from August 19, 1994, through September 30, 1994. The electronic conference, called CLOnet, was another tool for interested persons to exchange information and ideas on the CLO aspects of the proposed rule. The electronic conference was for discussion only; it was intended to provide industry and individual users who accessed the conference an opportunity to discuss and debate with one another, through a computer network, the CLO aspects of the proposed rule.

The Department used this opportunity as a trial for supplementing its existing FHAnet electronic conference with the subject-specific CLOnet. Such conferences can provide an interactive method for the public to "meet" on and discuss relevant matters.

Statement of Need:

Because of the controversy associated with the 1992 rule and a perception of the rule as an anticonsumer regulation, the Department has determined that revisions to the 1992 rule are necessary. The new Administration committed to a complete review of the issues and held a public hearing and solicited additional comments on provisions of the 1992 rule relating to employer-employee exempted payments, computer loan origination, preemption of State regulations, and controlled business arrangements. The Secretary has articulated three principles to guide the Department's review of the issues:

1. HUD's responsibility is to protect the consumer;

2. HUD should regulate multibillion dollar industries responsibly; and

3. Technological and business arrangement innovations have the potential to provide significant consumer benefits.

Summary of the Legal Basis:

Real Estate Settlement Procedures Act, 12 USC 2601 et seq.

Alternatives:

The Department received considerable negative comment as a result of the publication of the 1992 rule. To assure adequate opportunity for public comment on the issues, in July 1993 the Department invited additional public comment and published notice of a public hearing on the issues. Over 1,500 comments were received in response to this notice, and over 3 dozen individuals made presentations at the informal hearing held on August 6, 1993. The alternatives proposed in the comments and public hearing were considered in drafting the July 21, 1994, proposed rule. The preamble of that proposed rule (59 FR 37360) provides detailed summaries of the issues and alternatives proposed.

Anticipated Costs and Benefits:

Costs: Firms engaging in practices prohibited under the new regulation will incur costs to implement changes in procedures to bring business practices into compliance.

Benefits: The rule will benefit consumers by reducing the cost of mortgage financing. Allowing controlled business arrangements has the potential to benefit consumers from increased convenience of one-stop shopping. Lower prices could also result from increased ease of comparison shopping and cost savings, especially lower marketing costs, that could be passed to consumers. The elimination of the employer-pay-employee exception is intended to eliminate referrals tainted by conflict of interest. Computerized loan originations could lower the search costs involved in shopping for a mortgage loan by putting many lenders in front of the consumer at once.

Risks:

The steering of consumers to certain service providers, through either personal referrals or a limited computerized list of options, may result in higher settlement costs to the consumer (because of a higher interest rate or more points charged on a mortgage, higher title insurance premiums, etc.) or less advantageous selection of various settlement services.

Timetable:

Action	Date	FR Cite
NPRM	07/21/94	59 FR 37360
NPRM Comment Period End	09/19/94	
Final Action	03/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Agency Contact:

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Special Assistant to the Assistant Secretary for Housing--FHC
Department of Housing and Urban Development
Office of Housing
202 708-3600

RIN: 2502-AG26

HUD—Office of Community Planning and Development (CPD)

FINAL RULE STAGE

72. EMPOWERMENT ZONES (FR-3580)

Legal Authority:

26 USC 1391

CFR Citation:

24 CFR 597

Legal Deadline:

None

Abstract:

In August 1933 a new program was enacted to establish Federal empowerment zones and enterprise communities, with the Secretary of HUD responsible for designating urban areas and the Secretary of Agriculture responsible for rural areas. The purpose of this new program (the Empowerment Zones program) is to help distressed communities and their residents to implement strategic plans to create job opportunities and sustainable community development. The program combines tax benefits with substantial investment of Federal resources and enhanced coordination among Federal agencies. The program is designed to empower people and communities across the nation by having them identify their own needs and goals and giving them access to government resources at all levels to address their needs and revitalize their poorest neighborhoods.

Interim rules implementing this program were published by HUD and Agriculture on January 18, 1994, and these rules were used as the basis for inviting applications for nominations of Empowerment Zones and Enterprise Communities (see Notices of same date in **Federal Register**), and will be used for making designation decisions in the fall of 1994. The two Departments

worked together to develop these rules so that similar procedures and policies would be used for the designation of urban and rural zones and communities. Following publication of the rules and the notices inviting applications, both HUD and Agriculture held a series of informational sessions throughout the country to disseminate information and answer questions about the Empowerment Zones Program. The application period to submit nominations for urban and rural designations expired on June 30, 1994, and applications received are being reviewed by an interagency Federal Task Force.

The urban and rural designations to be made under the Empowerment Zones Program are part of a major governmentwide effort to assist distressed communities. This unique interagency effort is being carried out under the oversight of the Community Enterprise Board, created by the President and chaired by the Vice President. This Board is composed of seventeen Cabinet Secretaries, Assistants to the President and Administrators.

The Empowerment Zones program is a key step in rebuilding communities in America's poverty-stricken inner cities and rural heartland. To ensure its success, the Federal Government will take steps to coordinate Federal Assistance in support of designated areas including expedited processing, priority funding, and assisting designated areas in overcoming any programmatic regulatory and statutory impediments.

Statement of Need:

This final rule will supersede an interim rule published January 18, 1994, to implement that portion of Subchapter C, part I, of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of urban Empowerment Zones and Enterprise Communities. The final rule will be prepared in conjunction with the Department of Agriculture and the President's Community Enterprise Board.

Summary of the Legal Basis:

The statute did not explicitly require HUD to issue regulations for the designation of Empowerment Zones and Enterprise Communities. However, because the designation process involves a national competition and will determine which communities will receive significant Federal resources and benefits, the Department published an interim rule.

Alternatives:

There has been widespread interest in this program on the part of local governments and community organizations throughout the country for many years. By the time the legislation was enacted, many cities had plans to apply for designation even though the number of designations allowed by the statute is limited. Because of the high level of interest and the high degree of competitiveness, it was decided that the program requirements and procedures should be published for all potentially eligible applicants to see.

Anticipated Costs and Benefits:

Those communities selected will reap the benefits of higher employment, increased business formation, and accelerated economic revitalization engendered by the package of fiscal and regulatory incentives offered by the program. For those not selected, HUD believes that the steps communities have gone through to develop comprehensive strategic plans as part of the nomination process will be extremely useful for furthering local revitalization efforts. To the extent jobs and economic activity are simply moved among selected and nonselected communities, such movements are transfers. Any net new job and business creation is, however, a benefit.

Risks:

Without the interim rule, all potential applicants may not have known the program requirements and procedures and would not have been able to prepare responsive applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/18/94	59 FR 2700
Interim Final Rule Effective Date	02/17/94	59 FR 2700
Interim Final Rule Comment Period End	02/18/94	
Final Action	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Additional Information:

Effective date: Feb. 17, 1994 through Feb. 18, 1995

Agency Contact:

Michael Savage
Deputy Director, Office of Economic Development
Department of Housing and Urban Development
Office of Community Planning and Development
202 708-2290

RIN: 2506-AB65

HUD—Government National Mortgage Association (GNMA)

FINAL RULE STAGE

73. GNMA MULTICLASS SECURITIES PROGRAM (FR-3554)

Legal Authority:

42 USC 3535(d)

CFR Citation:

24 CFR 395

Legal Deadline:

None

Abstract:

This rule will form the basis of the program governing GNMA Multiclass Securities. Investors will invest in these new securities, increasing demand for federally insured or guaranteed mortgages. This in turn will reduce financing costs for these mortgages to home purchasers. Under the program, GNMA will guarantee various types of multiclass securities, including Real Estate Mortgage Investment Conduits ("REMICs") and grantor trust securities that are not REMICs. The purpose of expanding the GNMA program to include the guaranty of multiclass securities is to increase demand for FHA-insured, VA- or FmHA-guaranteed mortgages in order to reduce financing costs in connection with these mortgages and to raise revenues. This program is authorized under GNMA's enabling legislation found at 12 USC 1716 et seq., as amended by the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 339.

In order to create a multiclass securities program that is responsive to and accepted by the investment community, GNMA has made it a priority to consult with the Wall Street professionals who will be trading, marketing and structuring the GNMA multiclass securities. These meetings were formally held with the initial group of participants and informally held with

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other investment professionals active in the multiclass market.

Statement of Need:

The GNMA Multiclass Securities Program will allow participants to pool GNMA single class mortgage-backed securities into multiclass securities which can be specifically designed to meet various investors' needs. The added demand for GNMA securities will help lower interest rates for homebuyers with federally-insured or guaranteed mortgages and thus may help to further reduce homelessness. These Multiclass Securities, REMICs and non-REMIC grantor trust securities, offer a wide variety of investment opportunities to investors from institutions such as insurance companies and banks to individual investors. The programs to be offered to investors will be flexible, allowing investors the option of working with investment bankers to seek to fill the investment need which the particular investors may have. The overall goal of the program is for GNMA to guaranty multiclass securities, which will increase investment demand for federally insured or guaranteed mortgages and produce guaranty fee income for the Government.

Summary of the Legal Basis:

Section 306(g) of the National Housing Act, 12 USC 1721, as amended by the Omnibus Budget Reconciliation Act of 1993.

Alternatives:

The program by its nature has flexibility in the formation of securities to allow the securities to be custom tailored to the needs of particular investors. The program, in short, has a built-in market mechanism to allow flexibility for the investment community. In addition, these types of securities have been used as investment mechanisms by numerous other secondary market companies including FNMA, FHLMC and other private companies.

Anticipated Costs and Benefits:

The program anticipates generating net earnings of $146 million annually for GNMA and the Department. First time homebuyers and other low- to moderate-income borrowers will likely have lower financing costs for their FHA, VA and FMHA loans. This will increase the national homeownership rate.

Risks:

If the rule is not timely published, GNMA will not have authority to guaranty Multiclass Securities after May 25, 1995. This would be very detrimental to GNMA and the secondary market. Investors could not buy GNMA-backed Multiclass Securities, thereby reducing investment interest in FHA-insured and VA- or FmHA guaranteed loans. This in turn could cause an increase in borrowing costs to borrowers in FHA-insured or VA and FmHA-guaranteed home loan programs.

Timetable:

Action	Date	FR Cite
Final Action	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

Guy S. Wilson
Vice President of Mortgage-Backed Securities
Department of Housing and Urban Development
Government National Mortgage Association
202 401-8970

RIN: 2503–AA10

HUD—Office of Fair Housing and Equal Opportunity (FHEO)

PRERULE STAGE

74. • PROPERTY INSURANCE (FR-3755)

Legal Authority:

42 USC 3600 to 3619

CFR Citation:

24 CFR 100

Legal Deadline:

None

Abstract:

Title VIII of the Civil Rights Act of 1968 made it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 was enacted to strengthen the administrative enforcement provision of Title VIII, to add prohibitions against discrimination in housing on the basis of disability and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. (Title VIII, as amended by the Fair Housing Amendments Act of 1988, is referred to as the Fair Housing Act.)

HUD published its regulations implementing the Fair Housing Act on January 23, 1989. In furtherance of its responsibility to enforce the nondiscrimination requirements of the Fair Housing Act, this rule will address the issue of nondiscrimination in property insurance practices. HUD's current Fair Housing Act regulations provide that discriminatory practices include "refusing to provide municipal services or property or hazard insurance for dwellings, or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin." To assure that protected classes have fair access to property insurance, HUD determined that regulations specifically directed to the issue or discriminatory property insurance practices are necessary. Additionally, Executive Order 12892, entitled "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing" signed by the President Clinton on January 17, 1994 directs the Secretary of HUD to promulgate regulations on the subjects of mortgage lending discrimination and property insurance discrimination.

To ensure broad public participation in the development of regulations on discriminatory property insurance practices, HUD published an advance notice of proposed rulemaking on August 16, 1994. The August 16, 1994, notice announced HUD's intention to publish regulations on this subject, and solicited public comment on specific issues outlined in the notice and on such other issues as the public sought to be addressed by this rule. In the August 16, 1994, notice, HUD also announced that it will work closely with insurance companies, trade associations, State regulators, civil rights groups and community organizations to ensure that HUD hears as many viewpoints as possible on the subject of property insurance practices. Additionally, on July 21, 1994, HUD published a notice announcing a schedule of public meetings that would be held across the country to discuss the issue of discriminatory and nondiscriminatory property insurance practices. The July 21, 1994 notice provides for the following public meetings: August 18, 1994, Chicago, IL; September 22, 1994, in San Francisco, CA; October 18, 1994, in Atlanta, GA; and October 27, 1994, in Boston, MA.

Statement of Need:

Regulations on the subject of nondiscrimination in property insurance are needed to provide guidance to the property insurance industry on what constitutes discriminatory property insurance practice, and to improve the effectiveness of HUD's enforcement through issuance of a regulation that sets forth those policies and practices in the provision of property insurance that constitute violations of the Fair Housing Act. Additionally, this regulation assists the Secretary of HUD in carrying out the Secretary's obligation to affirmatively further fair housing, as mandated by the Fair Housing Act.

Summary of the Legal Basis:

The Fair Housing Act prohibits discrimination in the provision of property insurance on the basis of race, color, national origin, religion, sex, familial status and disability.

Alternatives:

Executive Order 12892, entitled "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing" signed by President Clinton on January 17, 1994, directs the Secretary of HUD to promulgate regulations on property insurance discrimination.

Anticipated Costs and Benefits:

Costs: Additional HUD staffing, travel and consultant costs are associated with preparation and administration of the rule. Property insurers will be encouraged to eliminate certain practices and adopt others which, in some cases, may involve a cost.

Benefits: Regulatory guidance to property insurers and more effective enforcement by HUD will provide greater access to property insurance for protected classes resulting in greater access to mortgage credit and increased homeownership.

Risks:

Failure to issue a regulation establishing nondiscrimination standards in property insurance practices will result in less effective enforcement by HUD, the rights or protected classes will continue to be violated at present levels, and homeownership opportunities will be deprived or reduced for protected-class members.

Timetable:

Action	Date	FR Cite
ANPRM	08/16/94	59 FR 41995
ANPRM Comment Period End	10/17/94	
NPRM	09/00/95	
Final Action	07/00/96	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

Agency Contact:

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Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
202 708-2904

RIN: 2529–AA73

HUD—FHEO

PROPOSED RULE STAGE

75. DEFINITION OF "SIGNIFICANT FACILITIES AND SERVICES" (FR-3502)

Legal Authority:

42 USC 5301

CFR Citation:

24 CFR 100

Legal Deadline:

NPRM, Statutory, April 28, 1993.

Abstract:

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988) exempts "housing for older persons" from the Fair Housing Act's prohibition against discrimination on the basis of familial status. The purpose of the prohibition against discrimination on the basis of familial status and the "housing for older persons" exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for elderly persons. In enacting the Fair Housing Act, the Congress mandated that, in determining whether housing qualifies as housing for older persons 55 years of age or older, the Secretary of HUD develop regulations which include the following factor, among others: the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons.

Section 919 of the Housing and Community Development Act of 1992 instructs the Secretary of HUD to make rules defining what are significant facilities and services specifically designed to meet the physical and social needs of older persons. On July 7, 1994, HUD published a proposed rule that expounds upon the significant facilities and services requirements governing "55 or over housing." The July 7, 1994, proposed rule strives to provide as much certainty as possible regarding the determination whether housing qualified as housing for older persons, but avoids a single, precise, mathematical-like standard, which given the variety of housing facilities and range of services is not possible or equitable. The rule attempts to provide a flexible standard that reflects regional variations in services and facilities which distinguish housing for older persons from other housing in the area, and takes into consideration variations determined by the geography of the site or by the differences in the nature or cost of the housing in question.

To ensure broad public participation and input in this rulemaking process, the proposed rule provides for a 90-day public comment period. Additionally, the Assistant Secretary for Fair Housing and Equal Opportunity scheduled four public meetings across the country to solicit additional comment on this rule. The schedule of meetings is as follows: August 15, 1994, Fontana, CA; August 25, 1994, Tampa, FL; September 29, 1994, Phoenix, AZ; and October 6, 1994, Washington, DC. Through this extended opportunity for public comment, the Department seeks to identify as many factors as possible that clearly distinguish housing for older persons (housing intended for and operated as housing for older persons) from other housing, and to allow affected groups to voice their concerns and questions on the exemption provided for "55 or over" housing.

Statement of Need:

Housing providers, elderly persons, and families with children need to be able to ascertain with confidence whether a housing facility qualifies as housing for older persons under the Fair Housing Act. Clearly defined standards serve to

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protect all three groups. Clearly defined standards will help prevent housing providers from violating Fair Housing Act requirements and will help to avoid the limitation of housing options for both elderly persons and families with children.

Summary of the Legal Basis:

The Fair Housing Act prohibits discrimination against families with children under 18 but allows an exception for housing for older persons.

Alternatives:

Section 919 of the Housing and Community Development Act of 1992 requires the Secretary of HUD to issue regulations that define "significant facilities specifically designed to meet the physical or social needs of older persons."

Anticipated Costs and Benefits:

Costs: Providers of housing for older persons claiming the exemption may incur costs in establishing that their property has significant facilities and services as set forth in the proposed guidelines

Benefits: The clarification provided by the proposed rule will enable housing providers to clearly establish their exemption status. The result will be a reduction in inappropriate denials of housing to families with children.

Risks:

Without clearly defined standards, housing providers that claim the exemption would be at much greater risk of being found in noncompliance with Fair Housing Act requirements as a result of a HUD investigation of a complaint. There also would be increased risk of intentional or inadvertent instances of inappropriate denial of housing opportunities to families.

Timetable:

Action	Date	FR Cite
NPRM	07/07/94	59 FR 34902
NPRM Comment Period End	10/05/94	
Final Action	02/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Agency Contact:

Peter Kaplan
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Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
202 708-2904

RIN: 2529–AA66

HUD—FHEO

76. DISPARATE IMPACT RULE (FR-3534)

Legal Authority:

42 USC 3600 to 3619

CFR Citation:

24 CFR 100

Legal Deadline:

None

Abstract:

This rule will describe those policies and practices in real estate-related transactions which, while neutral on their face, may, in some circumstances, violate the Fair Housing Act because they have a disparate impact upon protected classes. It will also describe the standards required to demonstrate business necessity and the absence of alternatives with a less discriminatory impact.

Following the innovation introduced recently with the significant facilities and services rule, this rule will have an appendix containing extensive examples of fact patterns and the circumstances in which there may be violations of the Act.

Statement of Need:

To promote compliance by the real estate industry and assist HUD investigators by setting forth the standards to be applied in determining whether a violation of the Fair Housing Act has occurred or is about to occur as a result of business practices which, while neutral on their face, have a disparate impact on protected classes.

Summary of the Legal Basis:

The Fair Housing Act prohibits discrimination on the basis of race, color, national origin, sex, religion, familial status or disability.

Alternatives:

Rely on Administrative Law Judge and court decisions on a case-by-case basis for providing guidance to the real estate industry and HUD investigators.

Anticipated Costs and Benefits:

Costs: Firms in the real estate transactions industry will incur costs to develop and implement practices to avoid violating the Act according to the guidelines may be higher in the rule. Operating costs under these new practices may be higher or lower than previous practices.

Benefits: Clearer and more rapid adjudication cases of discrimination in real estate transactions. A reduced incidence of discrimination in real estate transactions as firms conform business practices to the new guidelines. Better housing and labor market outcomes for protected classes.

Risks:

The real estate industry is at risk of substantial penalties for even unintentional violations of the Fair Housing Act without being able to self-regulate using the guidance this regulation will provide.

Without this regulation, detecting and proving disparate impact will continue to be very difficult and victims will continue to suffer higher than necessary levels of discrimination.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Agency Contact:

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Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
202 708-2904

RIN: 2529–AA67

HUD—FHEO

77. • NONDISCRIMINATION IN MORTGAGE LENDING UNDER THE FAIR HOUSING ACT (FR-3732)

Legal Authority:

42 USC 3600 to 3619

CFR Citation:

24 CFR 100

Legal Deadline:

None

Abstract:

This rule is similar to HUD's rule on Discrimination in Property Insurance under the Fair Housing Act, which is discussed elsewhere in Regulatory Plan entry 2529-AA73 but will address the subject of discrimination in mortgage lending under the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate, among other things, in the financing of dwellings on the basis of race, color, religion, sex, national origin, disability, or familial status. (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, is referred to as the Fair Housing Act.)

To ensure that the protected classes have fair access to mortgage credit, this rule will identify and describe policies and practices in the mortgage lending industry which may be violations of the Fair Housing Act. It will implement those provisions of the Fair Housing Act that prohibit discrimination in the making of real estate-related loans and other financial assistance. Additionally, Executive Order 12892, entitled "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing" signed by President Clinton on January 17, 1994, directs the Secretary of HUD to promulgate regulations on the subjects of mortgage lending discrimination and property insurance discrimination.

To ensure broad public participation in the development of regulations on nondiscrimination in lending practices, HUD intends to conduct four public meetings in Federal Fiscal Year 1995 on this subject, and to solicit public comment that will be taken into consideration in development of the proposed rule.

Statement of Need:

The regulation is needed to implement those provisions of the Fair Housing Act that prohibit discrimination in the making of mortgage loans and other real estate-related financial assistance. It is also needed to provide guidance to the real estate industry on what constitutes a lending violation under the Fair Housing Act.

Summary of the Legal Basis:

The Fair Housing Act prohibits discrimination in the making of mortgage loans and other real estate-related financing on the basis of race, color, national origin, religion, sex, familial status and disability.

Alternatives:

Executive Order 12892, entitled "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing" signed by President Clinton on January 17, 1994, directs the Secretary of HUD to promulgate regulations on mortgage lending discrimination.

Anticipated Costs and Benefits:

Costs: Additional HUD staffing, travel and consultant costs are associated with preparation and administration on this rule. Mortgage lenders will be encouraged to eliminate certain practices and adopt others which, in some cases, involve a cost.

Regulatory guidance to mortgage lenders and more effective enforcement by HUD will result in greater access to mortgage credit for protected classes and increased homeownership.

Risks:

Failure to issue a regulation establishing nondiscrimination standards in lending practices will result in less effective enforcement by HUD, the rights of protected classes will continue to be violated at present levels, and homeownership opportunities will be deprived or reduced for protected class members.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	
Final Action	12/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

Agency Contact:

Peter Kaplan
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Department of Housing and Urban Development
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202 708-2904

RIN: 2529–AA72

HUD—FHEO

78. REQUIREMENTS FOR AFFIRMATIVELY FURTHERING FAIR HOUSING IN HUD'S HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS (FR-3565)

Legal Authority:

42 USC 3600 to 3619

CFR Citation:

24 CFR 150

Legal Deadline:

None

Abstract:

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988) provides, within constitutional limitations, for fair housing throughout the United States and prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, handicap, familial status or national origin. The Fair Housing Act places the responsibility for the administration and enforcement of fair housing upon the Secretary of HUD. The Fair Housing Act also places an affirmative obligation upon the Secretary of HUD to administer departmental programs and activities relating to housing and urban development in a manner to affirmatively further fair housing.

This rule (the AFFH rule) will amend HUD's program regulations (except community development) to require the recipients of HUD financial assistance and participants in HUD-administered mortgage/insurance programs (Housing, Public Housing, FHA, etc.) to affirmatively further fair housing. The AFFH rule will establish the policies, procedures and performance standards for HUD-funded entities to administer their housing program in a manner that affirmatively furthers fair housing, that is in a manner that ensures that the families that they serve have a choice of housing in their income range throughout a metropolitan area on a nondiscriminatory basis.

HUD also has under development a Fair Housing Plan rule that is discussed elsewhere in HUD's Regulatory Plan. The Fair Housing Plan rule covers only community development formula grant programs. In order for HUD to carry out its duty under the Fair Housing Act to administer HUD's other programs in a manner that affirmatively furthers fair housing, HUD proposes this separate stand-alone rule on affirmatively furthering fair housing.

The AFFH rule proposes to require that all HUD program participants/recipients conduct an assessment of their policies, practices, procedures, and fair housing impact; determine which are barriers to fair housing choice or discriminatory housing practices, or which have a discriminatory impact on persons covered by the Fair Housing Act;

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eliminate these policies, practices, and/or procedures and replace them with nondiscriminatory alternatives or remove them completely if they have no valid business purpose; submit a plan which shows the corrective actions taken and a schedule for completion as a part of their initial program submission, at renewal of participation, or other appropriate point in the program process.

HUD will review the submission of the AFFH plan under the same principles set out in the Fair Housing Plan rule. HUD will monitor a recipient's performance remotely as well as on-site.

Statement of Need:

The Fair Housing Act specifically directs the Secretary of HUD to administer HUD's housing programs in a manner that affirmatively furthers fair housing. To date, recipients of HUD financial assistance and participants in HUD-administered mortgage/insurance programs have been subject to limited HUD requirements to affirmatively further fair housing, for example, through affirmative fair housing marketing requirements and site and neighborhood standards.

Additionally, several recipients of HUD financial assistance and participants in HUD-administered mortgage/insurance programs maintain policies, practices, and procedures which, although unintended, have a discriminatory result or constitute impediments to fair housing choice. These policies, practices and procedures frequently exclude persons covered by the Fair Housing Act from receiving the full benefits of these programs.

This rule will be a first step in ensuring that HUD's statutory duty to affirmatively further fair housing is carried out in an effective and enforceable manner by establishing uniform standards and guidelines and by requiring recipients to ensure they are complying with this duty by identifying policies, practices and procedures which affirmatively further or fail to affirmatively further fair housing, or are discriminatory housing practices.

Summary of the Legal Basis:

Section 808(e)(5) of the Fair Housing Act requires the Secretary of HUD to administer HUD programs in a manner which affirmatively furthers fair housing.

Alternatives:

Section 815 of the Fair Housing Act directs the Secretary to issue such rules to carry out the Act. Given the Secretary's obligation to administer HUD's housing programs in a manner that affirmatively furthers fair housing, it was determined that the most effective mechanism to ensure that this obligation is met is to amend, by rulemaking, HUD's programs to require HUD recipients to comply with this statutory duty. Establishing this requirement by regulation (as opposed to a notice or handbook) ensures compliance by State, and local governments and other HUD recipients. The rule will establish the procedures and standards by which HUD recipients can fulfill this duty to affirmatively further fair housing, and provide the public with the opportunity to comment before issuing this rule for effect.

Anticipated Costs and Benefits:

Costs: Many of the principles of affirmatively furthering fair housing are already contained in several HUD program regulations, notices, and handbooks, and it is anticipated that where HUD programs are already largely adhering to and implementing these principles, the administrative burden on recipients to ensure that they are in compliance with this Fair Housing Act requirement will be minimal. For other recipients, costs will be incurred in evaluating their current housing policies to ensure that the consequences of these policies do not result in limiting housing choice in a discriminatory manner.

Benefits: This rule is anticipated to expand housing choice for all persons, regardless of race, color, religion, sex or national origin, and concomitantly to reduce the number of segregated communities in the United States.

Risks:

Failure to publish this rule jeopardizes the housing options of persons protected by the Fair Housing Act, and weakens the ability of HUD and HUD's recipients to carry out the obligation imposed by the Fair Housing Act to affirmatively further fair housing in HUD's housing programs. This obligation requires clearly defined and enforceable standards so that, to the extent possible, all parties are aware of their rights and their obligations under the Act. The standards to be established by the AFFH rule will benefit housing authorities and project owners as much as they protect persons protected by the Fair Housing Act. Clearly defined standards will eliminate confusion and perhaps unnecessary litigation concerning whether a HUD recipient is in violation of its duty to affirmatively further fair housing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	
Final Action	04/00/95	
Final Action Effective	07/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

Laurence D. Pearl
Director, Program Standards & Evaluation
Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
202 708-0288

RIN: 2529–AA69

HUD—FHEO

79. FAIR HOUSING PLAN: AFFIRMATIVELY FURTHERING FAIR HOUSING IN COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS (FR-3118)

Legal Authority:

42 USC 3601 to 3619; 42 USC 5304(b); 42 USC 3535(d)

CFR Citation:

24 CFR 570.904(c)

Legal Deadline:

None

Abstract:

This rule amends 24 CFR 570.904(c) to require recipients of HUD community development formula grants to develop a Fair Housing Plan (FHP). The principal components of the FHP are: an analysis of impediments to fair housing choice; a list of actions with measurable results to eliminate the identified impediments to fair housing choice (fair housing action plan); supporting documentation; and options of flexible site selection standards and metropolitan area-wide planning. Section 570.940(c) does not currently require a FHP, but it does emphasize the need for grantees to conduct an analysis of impediments (AI), which about 100 grantees of a universe of 800

have completed. Grantees which have not completed an AI on the date the rule is published in final form will have 9 months to do so.

The AI is described in the rule in detail. It is the undergirding for the fair housing action plan, which sets out the specific action required by the grantee to eliminate the discriminatory housing practices or impediments to choice identified by the AI. The AI can be conducted by the grantee, institutions of higher education, local public or private fair housing entities and real estate and lending industry groups, contractors, or any combination thereof. States and small community grantees are not required to do a full AI, as are entitlement communities.

The rule reiterates the availability of HUD community development formula grant funds for conducting the AI and formulating the fair housing action plan. Activities to eliminate discriminatory practices or impediments to choice which are eligible activities under the CDBG program and/or HOME can be funded through those programs.

This rule provides that HUD will review the jurisdiction's FHP to determine whether the AI is plainly inconsistent with known facts, the corrective actions are plainly inadequate given the facts, actions are not taken as described, or there is independent evidence indicating a violation of the Fair Housing Act. Any assurances given to HUD must have been satisfied.

To familiarize the public with this proposed rule, the Department will conduct, throughout the country, six symposia titled "Fair Housing Planning in America," after the rule is published. The Department has already briefed and solicited input from various public interest groups (such as the National League of Cities and the Conference of Mayors) and participated in conferences sponsored by the Council of State Community Development Agencies and the National Community Development Association.

Statement of Need:

Many States and cities which receive HUD formula grant funds continue to have policies, practices and procedures which result in discriminatory housing practices in violation of the below cited laws. Some of these grantees are communities which have: illegally segregated public housing and/or neighborhoods; biased lending practices; restrictive covenants; exclusionary zoning; etc.

CDBG Entitlement/state grantees, HOME, ESG and HOPWA recipients are required to affirmatively further fair housing as a prerequisite to receiving HUD funds. This proposed rule provides clear guidance for fulfilling this mandate.

The rule gives a description of obligations of States and local governments for carrying out the mandate to affirmatively further fair housing through conducting the AI and implementing a fair housing action plan which addresses problems identified through the AI. Taken together, the AI and the fair housing action plan constitute the fair housing plan.

The fair housing plan is intended to implement the affirmatively furthering component of the Consolidated Plan Rule which combines application requirements of formula-driven CD programs.

The rule will provide guidance to HUD staff and grantees in connection with the requirement to affirmatively further fair housing.

Summary of the Legal Basis:

Fair Housing Act section 808(e)(5), sections 104(b)(2) and 106(d)(5)(B) of the Housing and Community Development Act of 1974, and Section 105(b)(13) of the Cranston-Gonzalez National Affordable Housing Act require the HUD Secretary to administer all HUD programs in a manner which affirmatively furthers fair housing.

Alternatives:

Do not issue rule. This is unacceptable because grantees have requested guidance to clarify their legal obligation to affirmatively furthering fair housing in HUD programs, both in response to prior rulemakings involving the CDBG program and involving the Comprehensive Housing Affordability Strategies.

Issue notice or handbook. We explored this alternative and found the requirement will need a rule to assure compliance by State and local governments.

Anticipated Costs and Benefits:

Costs: Each recipient of HUD assistance will have to undertake different actions affirmatively furthering fair housing on a case-by-case basis. Such action will result in varying costs.

Benefits: In keeping with the strong commitment by the Department to affirmatively furthering fair housing, the following benefits are anticipated: Regulatory clarity for entitlement recipients on their obligations to affirmatively further fair housing, significantly greater housing choice and opportunity for protected classes, and customized remedy for locally identified housing and related discriminatory practices.

Risks:

If this rule were not published, the requirement for the HUD Secretary to affirmatively further fair housing in the Department would not be sufficiently implemented. Illegal housing segregation, lack of fair housing choice, biased lending practices, restrictive covenants, exclusionary zoning, etc., in communities receiving community development assistance would be extremely difficult to identify and eradicate by the Federal Government alone given current resources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

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Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
202 708-2288

RIN: 2529–AA54

HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

60. PUBLIC HOUSING DEVELOPMENT REGULATIONS (FR-3569)

Legal Authority:

42 USC 1437c

CFR Citation:

24 CFR 941

Legal Deadline:

None

Abstract:

This rule proposes to make comprehensive revisions to the

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regulations in 24 CFR part 941 that govern the public housing development program (including acquisition) to reflect HUD's proposal to totally redesign this program. The purpose of the program redesign is to simplify the public housing development process by giving public housing agencies (PHAs) and localities maximum flexibility in developing public housing in their communities. The revised procedures proposed by HUD will shift responsibilities for decisionmaking from HUD Headquarters to the Field Offices and to PHAs wherever possible; reassign responsibility for development activities to Field Office Public Housing Divisions, to ensure coordination between Headquarters and the field; reduce the number and depth of HUD reviews, and in the case of "high performing" PHAs, eliminate most HUD reviews of development activities; promote the development of units in mixed-income communities; and create HUD/PHA/local government partnerships. HUD anticipates that the changes will reduce the public housing development time by 6 to 9 months, on average, and result in a concomitant reduction in the costs of development.

The proposed redesign of the public housing development process involved the participation of public housing agencies, housing industry organizations and other groups affected by the public housing development program. A series of informal meetings on the public housing development process was held by HUD beginning in the spring of 1993. The comments received at these meetings will be reflected in the proposed rule to be published in February 1995.

Statement of Need:

The public housing development regulations in 24 CFR part 241 and Handbook (7417.1 REV-1) have not been substantively revised since October 1980, and, as a result do not take into consideration many of the statutory changes made to the program since 1980. In addition to the need to update the program regulations, there is a need to revise many of the existing regulations that have resulted in a time-consuming and burdensome development process. Under the existing regulations, PHAs are required to obtain HUD approval of each step in the development process before proceeding the next step. The result of this step-by-step approval process is a preconstruction pipeline that is estimated at approximately $2 billion and dates back to 1980. The failure to issue updated and simplified regulations would result in continuing inactivity in the inventory of development projects, leading to a deterioration in the housing authorities' ability to bring proposals to fruition due to escalations in cost, which in turn leads to a lack of sufficient decent, safe and sanitary housing for low-income persons.

Summary of the Legal Basis:

The U.S. Housing Act of 1937 (USHA of 1937) is the authorizing legislation for the public housing development program. The USHA of 1937 made changes to the public housing development program in 1981, 1983, 1987, 1990, and 1992, plus incremental amendments were made in annual appropriations bills. As a result in particular of the 1987 and 1990 amendments, there is a need to update processing standards and criteria to reflect current statutory requirements and to facilitate processing of proposed projects in a stagnated pipeline.

Alternatives:

HUD considered revising handbooks to address the many changes to the public housing development program in advance of issuance of revised regulations. However, handbook revision is not as open a process (involving public participation) as is rulemaking, and the handbook revisions would be limited to those that address statutory requirements that involved little no discretion for implementation on the part of HUD. The type of comprehensive revision contemplated by HUD to this program requires notice-and-comment rulemaking.

Anticipated Costs and Benefits:

Costs: Because the revised regulations are a refinement or improvement of existing procedures, and should result in few or no additional monitoring or reporting burdens, additional costs to PHAs or to HUD are negligible.

Benefits: A complete revision of the public housing development regulations will provide PHAs and HUD Field Offices with the maximum flexibility to develop public housing that is more oriented to the needs of the community, and will eliminate much of the "red tape" currently associated with the development process. The reduction of the burdensome requirements associated with the development process should result in reduced administrative costs and development costs of PHAs and an increase in the supply of affordable public housing units.

Risks:

Failure to change the regulations would result in continuing inactivity in the inventory of development projects, and a deterioration in the housing authorities' ability to bring proposals to fruition due to escalations in cost. Funds appropriated by the Congress to provide decent, safe, and sanitary housing for eligible families would continue to be underutilized.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
Final Action	10/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal

Agency Contact:

Janice D. Rattley
Director, Office of Construction Rehabilitation, & Maintenance
Department of Housing and Urban Development
Office of Public and Indian Housing
202 708-1800

RIN: 2577–AB37

HUD—PIH

FINAL RULE STAGE

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81. PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM (PHMAP) (FR-2897)

Legal Authority:

42 USC 3535(d); 42 USC 1437d(j)

CFR Citation:

24 CFR 901

Legal Deadline:

None

Abstract:

This rule established the Public Housing Management Assessment Program (PHMAP) in accordance with Section 502 of the National Affordable Housing Act of 1990 (approved Nov. 28, 1990, PL 101-625, 104 Stat. 4079). Section 502 requires HUD to assess the management performance of Public Housing Agencies (PHAs) in all major areas of management operations and to designate troubled and mod-troubled PHAs. PHMAP uses a maximum of 12 indicators, including seven specifically

mandated by the statute and five other indicators deemed appropriate by HUD. A PHA designated troubled or mod-troubled is required to enter into a memorandum of agreement (MOA) with HUD that sets forth targets, strategies, incentives and sanctions for improving its management performance. In the event of a substantial default on an agreement, HUD may petition the appropriate State or Federal court of venue for the appointment of a receiver or make other management changes for the troubled PHA. HUD is also authorized to commend exemplary PHAs.

PHMAP is intended to foster a uniform, nationwide level of excellence in public housing.

Statement of Need:

There is a need to address the following issues concerning the current PHMAP regulation: PHMAP reporting and processing are time-consuming; information required from PHAs is not always submitted by HUD's deadline; PHA appeals of HUD decisions can extend the PHMAP process for months; there is a perception that the system tracks "paper" performance rather than "actual" performance; the scoring process results in redundant operations and excessive paperwork; and, a 1993 Inspector General's report stated that the current rule and handbook lacked adequate guidelines, procedures and clarification for several key performance indicators. Rulemaking to address these issues will eliminate redundant and unnecessary procedures and paperwork, minimize the volume of PHMAP-related correspondence, and implement the IG's recommendation.

Summary of the Legal Basis:

Section 502 of the National Affordable Housing Act of 1990 requires HUD to establish procedures, under the rulemaking procedures of 5 U.S.C. 553, for designating troubled public housing agencies.

Alternatives:

The Department has promised (in the preamble to the interim rule) that the PHMAP would be revised on a regular basis, as warranted. Three years of experience under existing regulations and procedures make the case that a revised rule is warranted at this time. The alternative of not publishing a regulatory revision is not viable, for reasons discussed in the Statement of Need above.

Anticipated Costs and Benefits:

Costs: Because the revised regulations are a refinement or improvement of existing procedures, and should result in few or no additional monitoring or reporting burdens, additional costs to PHAs or to HUD are negligible.

Benefits: By increasing the objectivity of the assessment program, making the assessment program more performance-oriented rather than simply compliance-oriented, and reducing certain redundant and unnecessary procedures and paperwork requirements, funding of public housing services can be better targeted and service better delivered to tenants.

Risks:

The revision of the PHMAP reduces the risk of misidentifying housing authorities' performance levels, resulting in inefficient or ineffective application of program funds and/or technical assistance. Refined procedures and clarifications are intended to assure that PHAs will be assessed equitably, and because PHAs use the PHMAP to conduct self-assessments, that all PHAs would be assessing themselves on the same basis.

Timetable:

Action	Date	FR Cite
NPRM	04/17/91	56 FR 15712
NPRM Comment Period End	06/17/91	
Interim Final Rule	01/17/92	57 FR 2160
Interim Final Rule Effective Date	02/18/92	
Interim Final Rule Comment Period End	05/18/92	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local

Agency Contact:

MaryAnn Russ
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Department of Housing and Urban Development
Office of Public and Indian Housing
202 708-1380

RIN: 2577–AA89

HUD—PIH

82. INDIAN HOUSING PROGRAM; PROPOSED AMENDMENTS (FR-3646)

Legal Authority:

42 USC 1437; 25 USC 450(e)

CFR Citation:

24 CFR 950

Legal Deadline:

None

Abstract:

On August 1, 1994, HUD published a proposed rule that would make comprehensive amendments to the Indian Housing Consolidated Program regulations in 24 CFR part 905. The August 1, 1994 proposed rule also would move the regulations from part 905 to 950. The purpose of the amendments is to simplify the Indian Housing Program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal officials and Indian housing authorities (IHAs) in their administration of Indian housing programs. The proposed amendments also would provide greater discretion and responsibility to tribal officials and IHAs in carrying out their housing programs, thereby returning them to local control.

The August 1, 1994 proposed rule is based on a series of consultation meetings with entities and individuals directly affected by the regulations in part 905. In September 1993, HUD's six Native American Program Field Offices began extensive consultation with IHAs and tribal officials about their experience with the administration and operation of Indian housing programs, and solicited comments on HUD's requirements for the program. In March 1994, a consultation session to discuss proposed changes to the Indian Housing Program was held in Washington, DC, with the Native American Indian Housing Council, eight regional IHA associations, Tribal leaders, as well as a number of representatives of the Native American housing community.

The comments received at the March 1994 consultation session, as well as the comments received from the September 1993 consultation process, constitute the basis of the program revisions contained in the August 1, 1994, proposed rule. Following consideration of additional comments received on this rule, HUD will proceed to publish a final rule amending the Indian Housing Consolidated Program regulations. The revised Indian Housing Consolidated Program regulations represent a key step in revitalizing the Indian Housing Programs.

Statement of Need:

IHAs and Tribal officials have expressed to HUD, both during and

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before the consultation process, the need for significant revision to the existing Indian Housing Consolidated Program regulations. These officials advised that the existing regulations were overly burdensome, and impeded their ability to carry out housing programs for Native Americans in an effective manner. The amendments proposed to be made by the August 1, 1994, rule will reduce the administrative burden on IHAs and tribal officials and provide these officials and authorities with greater discretion in administering their housing programs.

Additionally, the revisions to 24 CFR part 905 respond to Executive Order 12866 (Regulatory Planning and Review) which directs each agency to, among other things, harmonize Federal regulatory actions with related State, local and tribal regulatory and other governmental functions, minimize regulatory burdens to the extent possible, and draft simple and easy-to-understand regulations.

Summary of the Legal Basis:

Title II of the United States Housing Act of 1937 provides for the establishment of the Indian Housing Program. The Indian Housing Program includes the rental, Mutual Help and Turnkey III Homeownership Opportunity Programs.

Alternatives:

In its consultation session with IHAs and Tribal Officials, HUD considered alternatives to amending the existing regulations. However, the provisions of part 905 constitute a complete statement of HUD regulations affecting the development and operation of Indian Housing. For part 905 to continue to constitute a complete statement of HUD regulations applicable to Indian housing, amendments to part 905 were necessary. Additionally, the type of comprehensive revision contemplated by HUD to this program require notice and comment rulemaking.

Anticipated Costs and Benefits:

Costs: Because the revised regulations are a refinement or improvement of existing procedures, and should result in few or no additional monitoring or reporting burdens, additional costs to IHAs or to HUD are negligible.

Benefits: The rule will provide IHAs with greater discretion and responsibility in carrying out their housing programs. IHAs will be able to make decisions based on the needs of their community so that IHA activity will better suit local needs.

Risks:

If the revised consolidated rule is not published in final, IHAs and tribal officials will continue to be subject to the existing regulations, and housing assistance to Native Americans could be delayed due to existing burdensome regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/01/94	59 FR 39072
NPRM Comment Period End	09/30/94	
Final Action	02/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Local, Tribal

Agency Contact:

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BILLING CODE 4210-01-F

DEPARTMENT OF THE INTERIOR (DOI)

Overview

Major Objectives

The Department of the Interior (DOI) is the Nation's principal conservation agency, responsible for the management of much of our public lands and resources. It also has major responsibility for actions involving American Indians, Alaska Natives, and residents of island territories under the administration of the United States. DOI's mission is to encourage the conservation and responsible management of the Nation's natural resources and to fulfill the trust responsibilities of the U.S. Government.

In carrying out these responsibilities, DOI pursues the following major objectives:

- Preserving the nation's national park, wilderness, and fish and wildlife resources, and managing its public lands;
- Managing the supply of quality water resources;
- Improving the Federal Government's relationship with State, local, tribal, and territorial governments;
- Promoting the economic and social well-being of American Indians, Alaska Natives, and people of the U.S. territories; and
- Enhancing America's ability to meet its needs for domestic energy and mineral resources.

Major Regulatory Areas

Only one of DOI's ten bureaus—the Office of Surface Mining Reclamation and Enforcement—is primarily engaged in activities most often considered "regulatory." Its regulations set environmental standards for coal mining and reclamation operations and ensure that these standards are met through State programs.

A number of other bureau activities, however, have regulatory components. Those regulations serve primarily to facilitate DOI programs, which focus upon the management of public or trust lands and natural resources under U.S. ownership or control. Some of the major areas of these regulations include:

- Management of migratory birds and preservation of certain marine mammals and endangered species;
- Management of dedicated lands, such as national parks, wildlife refuges, and American Indian trust lands;
- Management of public lands open to multiple use;
- Leasing and oversight of development of Federal energy, mineral, and renewable resources;
- Management of revenues from American Indian and Federal minerals;
- Fulfillment of trust and other responsibilities pertaining to American Indian tribes;
- Natural resource damage assessments; and
- Management of financial and nonfinancial assistance programs.

Regulatory Policy

DOI Regulatory Procedures and Consistency With the Administration's Regulatory Policies

Within the general requirements and guidance set forth in Executive Orders 12866, 12612, and 12630, DOI's regulatory program seeks to accomplish the following: (1) fulfill all legal requirements as specified by statutes or court orders; (2) perform essential functions that cannot be handled by non-Federal entities; (3) minimize regulatory costs to society while maximizing societal benefits; and (4) operate programs openly, efficiently, and in cooperation with Federal and non-Federal entities.

To help meet these objectives, DOI has restructured its regulatory process. In mid-1993, it created the Office of Regulatory Affairs (ORA) within the Office of the Secretary. A primary function of ORA is to help ensure that regulations are promulgated in a timely and efficient manner. As part of this task, ORA requires that all bureaus/offices establish realistic rulemaking schedules. ORA then monitors the development of all rulemakings to ensure that deadlines are met. This structure allows the public to plan more effectively for anticipated regulatory changes and helps regulators focus more clearly upon issues to be regulated.

ORA also coordinates the development of rules that cross bureau or departmental jurisdictional lines and helps ensure that agreements are reached on policy issues early in the rulemaking process. This system substantially reduces delays caused by the late intervention of interested parties.

Encouraging Responsible Management of the Nation's Resources

One of DOI's fundamental goals is to encourage the responsible management of the Nation's natural heritage. The regulatory program is designed to help achieve this by striking appropriate balances between the use and preservation of natural resources. For example, DOI is seeking ways to provide incentives for users of public resources to adopt long-term strategies designed to meet current needs, while preserving resources for future generations. DOI also is seeking to ensure that the Government receives fair prices for public resources. For instance, DOI is restructuring certain fee schedules so that resource consumption fees more accurately reflect value received, thus promoting responsible stewardship and management of public resources.

A specific example planned for fiscal 1995 is mining reform. If the Mining Law of 1872 is amended, DOI will develop regulatory policies to ensure, among other things, that: (1) the American people receive their fair share for the production of minerals from public lands; (2) mining operations are conducted, and abandoned mine sites are restored, in a more environmentally sound manner; (3) claims holdings fees are paid by those seeking to explore for minerals on public lands; and (4) the existing land patent system is eliminated.

Minimizing Regulatory Burdens

DOI has made a major effort to streamline its regulations and to reduce the burdens that they impose. Planning processes for land use and water development have been substantially modified to reduce unnecessary delays and paperwork associated with agency decisionmaking. Moreover, DOI currently is reviewing existing regulations to determine whether their benefits continue to outweigh their costs to society. Rules will continue to be reassessed periodically, and needed changes will be made as existing operations are evaluated.

DOI's review of potential rules focuses both on assuring consistency with broad regulatory policies and goals and on making certain that rules are technically feasible and understandable. DOI is encouraging the use of performance standards rather than traditional command-and-control regulations, providing regulated entities with greater flexibility to develop more efficient and less burdensome compliance procedures.

The Department also has undertaken an intiative to reform the style in which regulations are drafted. Too often, rules are poorly written, unclear, and difficult to understand. This causes confusion for the public and the agencies responsible for implementng the regulations. To remedy this problem, the Department is

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encouraging the use of "plain English" in rulemakings. A number of seminars have been held on this rule-drafting technique, and several promising pilot projects are underway.

Encouraging Public Participation and Involvement in the Regulatory Process

One of the goals of Executive Order 12866 is to ensure that the public has full and adequate opportunities to participate in the development of regulations. Encouraging increased public participation in the regulatory process so as to make regulatory policies more responsive to our customers' needs is a priority under this Adminstration. DOI is reaching out to communities and seeking their input on a variety of regulatory issues. For example, the Secretary and other high-ranking Departmental officials have held numerous public meetings around the country to solicit views on grazing reform regulations. In conjunction with the Indian Health Service, three regional meetings and one national meeting have been held to solicit input on proposed regulations to implement amendments to the Indian Self-Determination and Education Assistance Act. Currently, DOI and the Indian Health Service are developing a process to permit tribes to continue working with the Departments to develop the final rule.

DOI also is encouraging the use of negotiated rulemaking to develop rules with the full participation of affected communities. Several bureaus currently are either employing negotiated rulemaking techniques or are exploring whether negotiated rulemaking is appropriate and feasible for particular rules.

Finally, Departmental policies are designed to delegate decisionmaking, including development and operation of DOI's regulatory programs, to the lowest appropriate level. With decentralization, management procedures can be developed that are sensitive to the various local needs and interests affected by DOI programs.

Bureaus and Offices Within DOI

The following are brief descriptions of the regulatory functions of DOI's major regulatory bureaus and offices.

Office of the Secretary, Office of Environmental Policy and Compliance

The regulatory functions of the Office of Environmental Policy and Compliance (OEPC) stem from requirements under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c) requires the development of natural resource damage assessment rules and the biennial review and revision, as appropriate, of these rules. Rules have been promulgated for the optional use of natural resource trustees to assess compensation for damages to natural resources caused by oil or hazardous substances. OEPC is overseeing the study and possible promulgation of additional rules pursuant to section 301(c)(2) and the review and possible revision of the existing rules in compliance with section 301(c)(3).

In undertaking DOI's responsibilities under section 301(c), OEPC is striving to meet three regulatory objectives: (1) that the minimal amount of regulation necessary be developed; (2) that the assessment process provide for tailoring to specific discharges or releases; and (3) that the process not be considered punitive, but rather a system to achieve fair and just compensation for injuries sustained.

Bureau of Indian Affairs

The philosophy of the Bureau of Indian Affairs (BIA) is to encourage the development and management of human and other resources among American Indians and Alaska Natives, to encourage tribal assumption of BIA programs, and to fulfill trust and other responsibilities of the U.S. Government. BIA regulatory actions serve to balance its dual role as (1) advocate in assisting tribes and encouraging their participation in BIA programs, and (2) trustee protecting and/or enhancing American Indian trust resources.

Important BIA programs are promulgated through regulations, rather than informal guidelines, so that American Indians are aware of, and have an opportunity to participate in the development of standards and procedures affecting them. BIA regulatory policies seek to accomplish the following: (1) ensure consistent policies throughout American Indian Country; (2) promote American Indian involvement in the operation, management, planning, and evaluation of BIA programs and services; (3) provide guidance to applicants for BIA services; and (4) govern the development of American Indian lands and provide for the protection of American Indian treaty and statutory rights.

BIA's regulatory program is designed: (1) to promote American Indian self-determination; (2) to provide American Indians and Alaska Natives with high-quality education and tribal development opportunities; (3) to meet BIA's trust responsibilities; and (4) to meet the needs of tribes and their members.

Bureau of Land Management

The Bureau of Land Management (BLM) is responsible for the development, management, and protection of public land resources that traditionally have been subject to multiple use. The principal authorities for the BLM's activities are the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, the Taylor Grazing Act of 1934, the Mining Law of 1872, the Wild and Free-Roaming Horse and Burro Act, and the Recreation and Public Purposes Act. BLM's programs cover three main program areas: energy and minerals, renewable resources, and lands, including conducting Federal land surveys and maintaining the official records for all Federal and former Federal lands and minerals.

BLM's fundamental regulatory philosophy is that public resources should be managed responsibly, providing maximum benefits to the public, while conserving scarce resources for future generations. BLM's regulatory program is designed to ensure that:

- The resources in the Nation's lands are effectively and efficiently managed in accordance with law;
- The public's concern for the resources will be reflected in significant opportunity for participation in the development of rules;
- The regulatory compliance burden on individuals, firms, and other affected entities is kept to a minimum; and
- Individuals and firms operating under BLM regulations are given the opportunity to respond to, and make decisions based upon, assessments of market situations.

Minerals Management Service

The Minerals Management Service (MMS) has two major responsibilities: (1) timely and accurate collection, distribution, accounting for, and auditing of revenues owed by holders of Federal onshore, offshore, and tribal land mineral leases in a manner that meets or exceeds Federal financial integrity requirements and recipient expectations; and (2) management of the resources of the Outer Continental Shelf (OCS) in a manner that provides for safety, protection of the environment, and conservation of natural resources. These responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Minerals Leasing Act, the Outer Continental Shelf Lands Act, the Indian Mineral Leasing Act, and other related statutes.

The regulatory philosophy of MMS is to develop clear, enforceable rules that support the missions of each program. MMS will continue periodic reviews of offshore regulations to identify changes needed as a result of changes in technology, operating practices, or other factors. Specific revisions to rules to be pursued include ensuring ability of lessee to meet end-of-lease obligations, issuing final rules to implement authority pursuant to the Oil Pollution Act of 1990 to require spill response plans in State and Federal waters, and development of regulations for certification of financial responsibility for offshore facilities. MMS also plans to continue its review and revision of existing regulations and to issue certain rulemakings designed to perform needed "housekeeping" and other refinements to the royalty management regulations (30 CFR chapter II, subchapter A).

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The principal regulatory provisions contained in Title V of SMCRA set minimum requirements for obtaining a permit for surface coal mining operations, set standards for surface coal mining operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, OSM serves as the primary enforcer of SMCRA until the States achieve "primacy," that is, until they demonstrate that their regulatory program meets all the specifications in SMCRA and has regulations consistent with those issued by OSM.

A primacy State takes over the permitting, inspection, and enforcement activities of the Federal Government. OSM changes its role from regulating mining activities directly to overseeing and evaluating State programs. Today, 24 of the 27 key coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and to grants for reclaiming abandoned mine lands. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on American Indian lands.

SMCRA charges OSM with the responsibility of publishing rules and regulations as may be necessary to carry out the purposes of the Act. Clearly, the most fundamental mechanism for ensuring that the purposes of SMCRA are achieved is the basic policy and guidance established through OSM's permanent regulatory program and related rulemakings. Its regulatory framework is developed, reviewed, and applied according to policy directives and legal requirements.

Litigation by the coal industry and environmental groups is responsible for some of the rules now being considered by OSM. Others are the result of efforts by OSM to address areas of concern that have arisen during the course of implementing OSM's regulatory program.

OSM has strived to develop an economical, safe, and environmentally sound program for the surface mining of coal by providing a stable regulatory framework. To achieve stability, OSM has endeavored to create a regulatory program that provides a high degree of continuity in its requirements and creates minimal uncertainty concerning the nature and pace of changes to existing provisions.

OSM also has strived to create a consistent regulatory framework. At the same time, however, OSM has recognized the need: (1) to respond to local conditions; (2) to provide flexibility to react to technological change; (3) to be sensitive to geographic diversity; and (4) to eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

Major regulatory objectives regarding the mining of surface coal include:

- Continuing outreach activities with interested groups during the rulemaking process to increase the quality of the rulemaking process, improve the substance of the rules, and, to the greatest extent possible, reflect consensus on regulatory issues;
- Minimizing the recordkeeping and regulatory compliance burden imposed on the public by means of a review and, where advisable, revision of unnecessary and burdensome regulatory requirements; and
- Publishing final rules to implement the Energy Policy Act of 1992, Public Law 102-486.

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (the Service) has three basic mission objectives:

- To assist in the development and application of an environmental stewardship ethic based on ecological principles and scientific knowledge of fish and wildlife;
- To guide the conservation, development, and management of the Nation's fish and wildlife resources; and
- To administer a national program to provide the public with opportunities to understand, appreciate, and wisely use fish and wildlife resources.

These objectives are met through the following regulatory programs:

- Management of Service lands, primarily national wildlife refuges;
- Management of migratory bird resources;
- Conservation of certain marine mammals and endangered species;
- Allowing certain activities that would otherwise be prohibited by law; and
- Administration of grant and assistance programs.

The Service maintains a comprehensive set of regulations in the first category—those that govern public access, use, and recreation on national wildlife refuges and in national fish hatcheries. As required by law, the Service is authorized to allow such uses only if they are compatible with the purpose for which each area was established. These regulations will be as consistent with State and local laws as practicable and will afford the public as much economic and recreational opportunity as possible. Consistent with the purposes for which those areas are established, with very few exceptions, the Service provides these types of opportunities on each of the more than 500 refuges and hatcheries. These regulations are developed and continually reviewed for improvements, with a substantial amount of public input, and are typically of limited geographical interest.

Management of migratory bird resources, covered by the second category of regulations, entails fulfilling U.S. obligations contained in various international treaties. This regulatory

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program entails an annual issuance on migratory bird hunting seasons and bag limits, developed in partnership with the States, American Indian tribal governments, and the Canadian Wildlife Service. Although these rules are issued annually, this regulatory program has been in existence for more than 50 years and has not significantly changed over that period of time. The regulations are necessary to permit migratory bird hunting that would otherwise be prohibited. Although recent declines in waterfowl populations have reduced the numbers of such birds that may be harvested, the regulations generally do not change significantly from one year to another.

The third category includes regulations to fulfill the statutory obligation to identify and conserve species faced with extinction. The basis for determining endangered species is limited by law to biological considerations, although priorities for allocating Service resources are established consistent with the President's policies (by directing the Service's efforts to species most threatened and those whose protection is of the most benefit to the natural resource). Also included in this program are regulations to enhance the conservation of listed species and of marine mammals for which DOI has management responsibility. This program also contains regulations that provide guidance to other Federal agencies to assist them in complying with section 7 of the Endangered Species Act, which requires them not to conduct activities that would jeopardize the existence of endangered species.

When a species is listed as endangered or threatened, the Service may designate critical habitat to promote the recovery of the species. Under section 7 of the Endangered Species Act, critical habitat designation limits activities carried out, funded, or authorized by Federal agencies within the critical habitat zone. In designating critical habitat, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded from the designation where the benefits of exclusion outweigh the benefits of inclusion, provided that the exclusion will not result in the extinction of the species. For 1995, the Service is developing a number of proposed and final critical habitat rules, including: marbled murrlett (final); delta smelt (final); Alabama sturgeon (final); Louisiana black bear (final); Rio Grande silvery minnow (final); Arizona willow (final); two Klamath River fishes (proposed); Mexican spotted owl (proposed); and Pecos pupfish (proposed).

The fourth category—the Service's regulatory program that permits activities otherwise prohibited by law—entails regulating possession, sale or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. Generally, these regulations are supplemental to State protective regulations, and cover activities that involve interstate or foreign commerce, which must comply with various laws and international obligations. The Service is continually working with foreign and State governments, the industry and individuals affected, and other interested parties to minimize the burdens associated with Service-related activities. The easing of such burdens through regulatory actions continues to balance the benefits that may be made available with the necessity to ensure adequate protection to the natural resource. Most of the regulatory activities are permissive in nature, and the concerns of the public generally center on technical issues.

The last category—the Service's assistance programs—includes a limited number of regulations necessary to ensure that assistance recipients comply with applicable laws and Office of Management and Budget (OMB) Circulars. Regulations in this program help the affected parties to obtain assistance and to comply with requirements imposed by Congress and OMB.

Bureau of Reclamation

In the past couple of years, the Bureau of Reclamation's (Reclamation) mission and goals have substantially changed. Its new mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation applies management, engineering, and scientific skills that result in effective and environmentally sensitive solutions. Reclamation projects provide for some or all of the following concurrent purposes: irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses.

Reclamation's regulatory program is designed to ensure that Reclamation's mission is carried out in a timely and efficient manner.

DOI—Assistant Secretary for Policy, Management and Budget (ASPMB)

PROPOSED RULE STAGE

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83. NATURAL RESOURCE DAMAGE ASSESSMENTS

Legal Authority:

42 USC 9651(c) CERCLA

CFR Citation:

43 CFR 11

Legal Deadline:

NPRM, Judicial, August 8, 1994, for a Type A procedure for Great Lakes environments under a settlement agreement.

NPRM, Judicial, October 27, 1994, for a Type A procedure for coastal and marine environments under a settlement agrement.

Final, Judicial, May 22, 1995, for a Type A procedure for Great Lakes environments under a settlement agreement.

Final, Judicial, July 17, 1995, for a Type A procedure for coastal and marine environments under a settlement agreement.

Abstract:

CERCLA and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance or a discharge of oil. CERCLA calls for the promulgation of two types of natural resource damage assessment regulations: simplified "type A" assessment procedures involving minimal fieldwork; and "type B" procedures for more detailed, site-specific assessments. CERCLA requires that natural resource damage assessment regulations be promulgated and that the regulations be reviewed, and revised as appropriate, every 2 years.

The Department has issued regulations establishing an administrative process for assessing damages, a type A procedure for determining injury and damages from minor spills in coastal and marine environments, and site-specific type B procedures for determining injury and damages when the type A procedure is not applicable.

The type B procedures were challenged in State of Ohio v. United States Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989). The court ordered the Department to revise the type B procedures, among other things, to allow for the assessment of all reliably calculated lost economic values. On April 29, 1991, the Department issued a proposed rule to comply with the court remand (56 FR 19752). On July 22, 1993, the Department reopened the comment period to allow for consideration of new information about the calculation of lost nonuse values of injured resources (58 FR 39328). Based on the comments received, the Department issued a new proposed rule containing standards to promote the reliability of nonuse value estimates (59 FR 23097, May 4, 1994). The proposed standards were developed in consultation with other Federal agencies and are identical to standards proposed by the National Oceanic and Atmospheric Administration (NOAA) as part of its natural resource damage assessment rulemaking under the Oil Pollution Act. The Department issued a final rule addressing all aspects of the court remand other than the assessment of lost nonuse values on March 25, 1994 (59 FR 14261).

The Department is also beginning the biennial review of the administrative process and the type B procedures. The Department is issuing an advance notice of proposed rulemaking to assist in determining which aspects of the administrative process and type B procedures warrant revision. The Department will carefully analyze the comments received before developing a proposed rule. The Department is coordinating this rulemaking with NOAA's natural resource damage assessment rulemaking to ensure the maximum consistency appropriate between the two sets of rules.

In 1989, the Department began the biennial review of the type A procedure for coastal and marine environments. Subsequently, State of Colorado v. United States Department of the Interior, 880 F.2d 481 (D.C. Cir. 1989), ordered the Department to revise the type A procedure to incorporate restoration costs as well as lost economic values. The type A procedure for coastal and marine environments incorporates a computer model capable of calculating damages based on a small number of user-supplied data inputs. The Department is revising the computer model to comply with the court remand as well as the biennial review requirement.

Finally, the Department is developing a new type A procedure for use in the Great Lakes. This procedure, like the type A procedure for coastal and marine environments, incorporates a computer model capable of calculating damages based on a small number of user-supplied data inputs. Both type A computer models have been subjected to extensive analysis and testing, which has resulted in multiple revisions and refinements.

Statement of Need:

These regulations are required by statute and judicial decree. Furthermore, development of standards for the assessment of lost nonuse values is necessary to ensure both that the public receives full compensation for its losses and that polluters are assessed accurate damages. The biennial review of the administrative process and type B procedures is necessary to account for experience gained as well as scientific advancements since the last biennial review. With regard to the type A procedures, use of site-specific type B procedures to assess damages from minor releases or discharges is usually not cost effective. Therefore, the revised type A procedure for coastal and marine environments and the new type A procedure for Great Lakes environments are needed to enable trustees to obtain funds to restore injured resources.

Alternatives:

The only method currently available for the express purpose of calculating lost nonuse values is the contingent valuation (CV) methodology. The court ordered the Department to revise the regulations to allow for the calculation of all reliably calculated lost economic values. Therefore, the only alternative considered for the assessment of lost nonuse values was to determine which, if any, set of standards could be adopted to promote the reliable use of CV to calculate lost nonuse values.

With regard to the biennial review of the administrative process and type B procedures, four alternatives were considered. Alternative 1 was to take no action. Alternative 2 was to revise only the administrative process. Alternative 3 was to revise only the type B procedures. Alternative 4 was to revise both the administrative process and the type B procedures.

With regard to the type A procedure for coastal and marine environments, two alternatives were considered. Alternative 1 was to take no action, which would leave trustees with a type A procedure that calculates only lost economic values. Alternative 2 was to revise the type A procedure in compliance with the statutory biennial review requirement and the court remand to produce a computer model that calculates lost economic values as well as restoration costs.

With regard to the type A procedure for Great Lakes, two alternatives were considered. Alternative 1 was to take no action. Alternative 2 was to develop a type A procedure for minor releases and discharges in the Great Lakes that utilizes a computer model capable of calculating damages based on a small number of user-supplied data inputs.

Anticipated Costs and Benefits:

The natural resource damage assessment regulations do not themselves authorize the assessment and recovery of damages; they simply provide guidance on how to perform assessments.

With regard to standards for assessing lost nonuse values, costs include the costs of preparing regulations, and the cost of performing an assessment using the regulations. Costs should be minimal because no new economic values or methodologies are being introduced; the existing regulations already provide for the use of CV and the assessment of lost nonuse values in certain cases. This rule would merely provide standards for using CV to assess lost nonuse values.

Benefits consist of increased damage recoveries available for restoration of injured resources. It is difficult to quantify the effect that the rulemaking will have on damage recoveries. However, the rulemaking is expected to have a positive effect on damage recoveries by promoting the reliable assessment of lost nonuse values. Benefits are expected to outweigh costs.

With regard to the biennial review of the administrative process and the type B procedures, costs include the costs of preparing regulations, and the cost of performing an assessment using the regulations. Streamlining the administrative process under Alternatives 2 and 4 would reduce the costs associated with performing assessments.

Benefits consist of increased damage recoveries available for restoration of injured resources. Under Alternatives 1 and 2, damage recoveries would be the same as under the current regulations.

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Under Alternatives 3 and 4, revision of the type B procedures would result in increased damage recoveries due to the expansion of what constitutes an "actionable injury" to reflect increases in scientific knowledge.

Alternative 1 would yield a net benefit of $89,756,000.

Alternative 2 would yield a net benefit of $91,016,000.

Alternative 3 would yield a net benefit of $93,386,000.

Alternative 4 would yield a net benefit of $94,955,000.

With regard to the type A procedure for coastal and marine environment, costs include the costs of preparing the regulation, the costs of revising computer model, and the cost of performing an assessment using the regulation.

Benefits consist of increased damage recoveries available for restoration of injured resources. Under Alternative 1, trustees would obtain damages only for lost economic values. Under Alternative 2, trustees would obtain damages for lost economic values as well as restoration costs.

Alternative 1 would yield a net benefit of $14,212,000.

Alternative 2 would yield a net benefit of $56,955,000.

With regard to the type A procedure for Great Lakes environments, costs include the costs of preparing the regulation, the costs of developing a computer model, and the cost of performing an assessment using the regulation. Without a simplified type A procedure, it is unlikely that natural resource trustees would attempt to recover damages for the minor releases or discharges that occur frequently in the Great Lakes. Therefore under Alternative 1, there would be no assessment costs. Under Alternative 2, assessment costs would consist solely of the expenses associated with developing model input data and applying the model.

Benefits consist of increased damage recoveries available for restoration of injured resources. The estimate under Alternative 1 assumes that no damages would be recovered because no assessments would be performed.

Alternative 1 would yield a net cost of $14,294,000.

Alternative 2 would yield a net benefit of $14,294,000.

Risks:

Without appropriate standards to promote the reliability of lost nonuse value estimates, in some cases the public may not be able to obtain full compensation for its losses and in other cases polluters may be assessed damages in excess of actual public losses. Without the biennial review, trustees may be left without the best available assessment procedures, which could prevent trustees from recovering adequate funds to restore injured resources and result in excessive damage assessment costs. Without the new type A procedures, trustees are unlikely to seek compensation for injuries from minor discharges and releases in coastal and marine environments and Great Lakes environments, which would leave injured resources unrestored and prevent polluters from adequately internalizing costs.

Timetable:

Type A–Coastal and Marine Environments (RIN 1090-AA23)	
ANPRM	09/22/89 (54 FR 39015)
ANPRM Comment Period End	10/23/89 (54 FR 39015)
NPRM	10/27/94
NPRM Comment Period End	01/27/95
Final Action	07/17/95
Final Action Effective	08/17/95
Type A–Great Lakes (RIN 1090-AA21)	
ANPRM	09/22/89 (54 FR 39016)
ANPRM Comment Period End	10/23/89 (54 FR 39016)
NPRM	08/08/94 (59 FR 40319)
NPRM Comment Period End	11/07/94 (59 FR 40319)
Type B–Biennial Review (RIN 1090-AA29)	
ANPRM	10/00/94
ANPRM Comment Period End	02/00/95
Type B–Nonuse Values (RIN 1090-AA43)	
NPRM	05/04/94 (59 FR 23097)
NPRM Comment Period End	10/07/94 (59 FR 32175)
Final Action	05/00/95
Final Action Effective	06/00/95

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1090–AA21

DOI—Bureau of Indian Affairs (BIA)

FINAL RULE STAGE

84. REVISED PROCEDURES FOR IMPLEMENTATION OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS OF 1988

Legal Authority:

25 USC 450; 5 USC 5911; 43 USC 1396

CFR Citation:

25 CFR 900; 25 CFR 272; 25 CFR 274; 25 CFR 275; 25 CFR 276; 25 CFR 277; 25 CFR 278

Legal Deadline:

NPRM, Statutory, August 5, 1989.
Final, Statutory, October 5, 1989.

Abstract:

In the mid-1970s, Congress recognized the obligation of the United States to respond to the American Indian peoples' strong desire for self-determination and ensured maximum American Indian participation in the provision of Federal services to American Indian communities. In 1975, the Indian Self-Determination and Education Assistance Act (the Act) was enacted to help facilitate an orderly transition from Federal domination to effective and meaningful participation by the American Indian people in the planning, conduct, and administration of American Indian programs and services. The Act permitted tribes to take over, by contracting with the BIA, the administration and operation of Federal programs designed for the benefit of American Indians. Although the tribes welcomed this opportunity to administer and govern their own programs, the methods and procedures that have been used by BIA used to implement the Act generally have been met with much resistance from tribes and tribal organizations.

The Act was amended in 1988 to eliminate problems and obstacles experienced under the original Act of 1975. For example, the amendments were designed, among other things, to help tribes with administrative and operating costs under contracts and reduce delays in the contract award process. The amendments also provided for improved technical assistance and increases in planning activities.

DOI and the Department of Health and Human Services (HHS) published a joint rulemaking on January 20, 1994. During the comment period, DOI and HHS held three regional and one national meeting with tribes to discuss their concerns with the proposed rule. DOI and HHS currently are examining options and planning procedures to promote tribal participation throughout the development of the final rule. For example, DOI and HHS have extended the comment period for 90 days, and a process is being developed under the Federal Advisory Committee Act to ensure that tribes can participate in the development of the final rule. Participation by American Indians should result, over the long term, in a less burdensome rule for tribal contractors and improved relationships between the Federal agencies and their American Indian constituencies.

Statement of Need:

The 1988 amendments required DOI to promulgate regulations implementing the amendments. Moreover, the legislative history accompanying the amendments suggests that these regulations be developed jointly with HHS.

Alternatives:

This regulation is required by statute. Alternative approaches were considered for many of the provisions, however, and discussions of some of these can be found in the proposed regulation.

Anticipated Costs and Benefits:

A provision in the Act states that the amount of funds provided under the terms of self-determination contracts shall not be less than the appropriate Secretary would have provided for the operation of the programs. Consequently, cost savings are generally indirect and are derived from the benefits to tribes of contracting under the Act.

The benefits of contracting by tribes include allowing tribes to plan and conduct programs based on tribal priorities, needs and desires resulting in improved programs, and programs more responsive to tribal members; providing the opportunity for tribal leadership to serve in a substantive or meaningful manner, and so promoting stability of tribal governments that serve well; and increased employment opportunities for tribal members and upgraded skill levels on the reservations.

The cost savings resulting from improved program operations is likely to be more service per dollar spent, a reduction in unemployment rates and welfare or general assistance rolls. Moreover, good program operations reduce the need for training and technical assistance to tribes, especially those with stable tribal governments and good program management and administration.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3166
NPRM Comment Period End	08/20/94	
Final Action	06/00/95	

Small Entities Affected:

None

Government Levels Affected:

Tribal, Federal

Additional Information:

This rule combined the current 25 CFR parts 271, 272, 274, 275, 276, 277 and 278. Comment period for proposed rule was extended from 5/20/94 to 8/20/94 to accommodate national and tribal meetings.

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DOI—Bureau of Reclamation (RB)

PROPOSED RULE STAGE

85. REGULATIONS FOR ADMINISTERING ENTITLEMENTS TO COLORADO RIVER WATER IN THE LOWER COLORADO RIVER BASIN

Legal Authority:

31 USC 1535; 31 USC 1536; 31 USC 6505

CFR Citation:

43 CFR 415

Legal Deadline:

None

Abstract:

Colorado River water has been apportioned for consumptive use among water users with valid water rights within the States of Arizona, California, and Nevada. This rule would amend current rules for apportioning water from the lower Colorado River basin. The principal data analyzed prior to writing the rule were the records of diversions, return flow, and consumptive use of Colorado River water. Reclamation is obligated to prepare and maintain records of this information pursuant to a 1964 decree by the U.S. Supreme Court in Arizona v. California. Reclamation determined what information is necessary and obtained approval from Office of Management and Budget for the collection of this information. Reclamation also reviewed each lower basin State's water use and projected future use and concluded that a failure by the United States to take action to eliminate diversion of water by illegal diverters would harm legal entitlement holders. Thus, the initial purpose of the rule was to establish a method to eliminate illegal diversion of Colorado River water.

The Lower Colorado Region began compiling a mailing list of known and potentially interested parties when the rule was in preliminary draft stage. The draft rule has been distributed to water users and all then-known and potentially interested parties on three occasions: May 1991, December 1992, and May 1994. The region held a series of public meetings at nine locations in Arizona, Nevada, and California from June 14-30, 1994. Advance notice of the meetings was sent to all known and potentially interested parties. The list of parties includes both traditional and nontraditional constituents. These meetings were held to tell the public why the rule is needed, summarize the major provisions, and explain how they would be able to review and comment on it when the rulemaking process advances to the stage of a proposed rule.

Reclamation will expand the outreach program during the public comment period that may be extended to 6 months. A series of public hearings on the rule will be held during the public comment period and Reclamation will meet with interested water districts, cities, other water users, or public interest groups.

As a result of the outreach, Reclamation has broadened its perspective to take other interests into consideration. For example, Reclamation has agreed to do a programmatic environmental impact statement, rather than a less extensive environmental assessment, on the effect

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of the draft rule. Portions of the draft rule, such as criteria for water conservation plans, will be reviewed and may be revised to accommodate specific needs of water users. Provisions such as nonuse of entitlements and the leasing, marketing and banking of saved water are being revaluated based on comments from the lower basin States, water users, and environmental interests.

Reclamation is committed to fulfilling the Secretary's obligations as water master of the lower Colorado River but will keep a flexible approach in the rulemaking process and seek to obtain a consensus among the lower basin States to the extent possible.

Statement of Need:

The Secretary of the Interior is obligated, by the Boulder Canyon Project Act and a 1963 opinion and 1964 decree of the Supreme Court in Arizona v. California, to manage the Colorado River in the lower Colorado River basin (Lower Basin) and administer Lower Basin water entitlements. Demand for scarce Colorado River water is expected to exceed supply in the near future and not all water use is in compliance with the Supreme Court's decree. The rule will provide the United States the legal framework to enforce actions to eliminate unauthorized water use and provide maximum flexibility for entitlement holders to negotiate voluntary water transfers for the resolution of local water resource problems and demands.

The regulation will benefit the public several ways. Persons or entities with legal water entitlements will have their rights protected by the elimination of illegal diversions. A more secure water supply will provide a major economic benefit to the lower basin States and give communities and individual landowners more reliable water supplies that will provide a more secure basis on which to make economic decisions. Water users with increasing water demands will have a means to obtain increased water supplies to meet those demands through voluntary water transactions under which water may be transferred to a higher value use. Public interest will be protected by ensuring that any proposed transfer of water to a different place of use will be analyzed, prior to approval by Reclamation, to ensure mitigation for impacts on the environment or third parties. Water saved through conservation or land fallowing may be purchased by Federal, State, or private parties for environmental purposes. The rule will also require water users to advance funds to cover the cost of operation and maintenance (O&M) services now performed by the Bureau of Reclamation through use of appropriated funds.

Summary of the Legal Basis:

DOI is required to manage the lower Colorado River pursuant to, among other authorities, the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1929, and the Supreme Court opinion in Arizona v. California, et al., 373 U.S. 546 (1963) and supplemental decrees related to that opinion.

Alternatives:

This regulation documents existing criteria for obtaining entitlements to, and making beneficial consumptive use of, Colorado River water. Some of these criteria are contained in court orders and statutes. The rule is designed to provide a uniform system of structure and control to help eliminate prohibited uses and, with the exception of a few provisions, does not contain new requirements. Alternatives to the rule would be no action, a simpler rule, or a different rulemaking approach.

No action was not a realistic alternative because the Secretary of the Interior is responsible for managing Colorado River water entitlements in the lower basin. The U.S. Supreme Court obligated the Secretary to prepare and maintain records of diversions, return flow, and consumptive use of Colorado River water. The Secretary would be unable to responsibly manage this resource if a procedure is not established to eliminate illegal diversions and thereby protect the rights of junior right holders. Without a rule, the United States would incur greater costs in trying to eliminate illegal diversions of water and may not be able to enforce actions that would need to be taken to protect legitimate entitlement holders.

A simpler rule would ignore issues that need to be addressed. At present, there is no formal written statement of existing management and operational requirements and guidelines for use of Colorado River water in the lower Colorado River basin. The rule will provide the equivalent of a State water code that addresses such basic water issues as how to obtain, transfer, or assign a water entitlement. It will provide guidance for the development of voluntary water transactions such as leases, wheeling, water banking, and marketing that will enable water resource and supply problems to be resolved on a local basis.

Another alternative is a negotiated rulemaking approach. Reclamation did not choose this approach because of the large number of parties involved and a history of the lower basin States being unable to agree on key river management issues for over 70 years. Nevertheless, Reclamation is making the current rulemaking procedure more flexible by allowing time for the lower basin States and Indian tribes with reserved water rights to meet and try to work out alternative solutions to some of the more controversial issues.

Anticipated Costs and Benefits:

The estimated cost of developing and implementing the rule is $200,000. The total cost as of July 14, 1994, is $119,786.07. The estimated cost for continued development and implementation of a final rule by the end of fiscal year 1995 is $80,000. Annual costs to administer the rule, beginning in fiscal year 1996, are estimated to be $40,000 and will increase to $60,000 after 10-15 years due to increased involvement by the water conservation center at that time.

The primary economic benefit of the rule will be the collection of funds advanced to the United States by water users to cover the cost of O&M services performed by the Bureau of Reclamation for the benefit of the water users. Reclamation will collect $11 million annually from the water users and the funds advanced will be deposited in the Reclamation Fund for O&M to the credit of the O&M appropriation. Reclamation's expectation is that funds advanced by water users may be expended by Reclamation for the same purposes and in the same manner as funds appropriated under the O&M appropriation, and will reduce the need for appropriations from Congress to fund these activities.

Risks:

The Secretary would not be able to fulfill his obligation to manage the lower Colorado River and protect legitimate water entitlements if there is no formal rule to prevent illegal diversions. An inability to stop unauthorized use of water may subject the United States to claims for damages from legitimate entitlement holders who are prevented from using all water to which they are legally entitled.

Timetable:

Action	Date	FR Cite
ANPRM	04/22/91	56 FR 16291
NPRM	10/00/94	
NPRM Comment Period End	03/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

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DOI—Bureau of Land Management (BLM)

FINAL RULE STAGE

86. GRAZING ADMINISTRATION EXCLUSIVE OF ALASKA

Legal Authority:

43 USC 315; 43 USC 1701 et seq

CFR Citation:

43 CFR 4100; 43 CFR 4; 43 CFR 1784

Legal Deadline:

None

Abstract:

This rule will amend many of the current provisions for the management of the public rangelands, including establishing appropriate fees for livestock grazing, providing for nonmonetary settlement for unauthorized grazing use determined by the BLM to have resulted from circumstances beyond the control of the permittee or lessee, providing for public participation in management of public rangelands, and providing for the development of standards and guidelines to be met in the administration of livestock grazing. The rule also will amend many of the current provisions for the formation, structure, and roles of advisory councils.

Statement of Need:

The intent of the proposed changes is to make the BLM's rangeland management program more consistent with that of the Forest Service, make BLM grazing administration more compatible with ecosystem management, accelerate restoration and improvement of public rangelands to proper functioning condition, obtain for the public a fair payment for grazing livestock on the public lands, streamline administrative functions, and consider the needs of local communities for open space and their dependence on livestock grazing.

The need for these actions has been identified in various BLM reviews and numerous audits performed by the Interior Office of the Inspector General and the General Accounting Office. These reviews and audits have found that rangeland ecosystems are not functioning properly in many areas of the West, riparian areas are depleted, some upland areas produce far below their potential, and the public is not receiving its fair share for grazing upon Federal lands.

Summary of the Legal Basis:

BLM is responsible under section 303(a) of FLPMA for the management, use, and protection of the public lands and their resources, including public lands and minerals open to mining claim location under the Mining Law of 1872. With respect to these public lands and resources, no other agency or entity is authorized to undertake these actions on behalf of the United States.

Alternatives:

In developing the proposed rule, five management and seven fee options were examined. A detailed discussion of these alternatives is available in the draft environmental impact statement accompanying the rule. The management alternatives include: No action or the continuation of current management; the proposed action, much of which is incorporated in the proposed rule; livestock production; environmental enhancement; and no grazing. The fee options include: the current formula; two modifications of the current formula; the proposed formula of a $3.96 base value adjusted annually by an index reflecting the market value of forage, plus a provision for a 30 percent reduction to recognize instances of exemplary stewardship; a formula based on suggestions of the Western Livestock Producers Alliance and High Country Citizens Alliance, regionally set fees based on the 1983 federal land forage appraisal, and competitive bidding. The fee options considered range from an estimated $1.86 per animal unit month (AUM) under the current formula, to $11.08 per animal unit month for the highest regional fee.

Anticipated Costs and Benefits:

Under the rule as proposed, the current forage fee of $1.98 per AUM would increase to $3.96 per AUM. This increase would be phased in over 3 years. Thereafter, changes in the grazing fee would be linked to changes in the forage value index, and these changes would be limited to plus or minus 25 percent of the previous year's fee. It is estimated that funds available for the Rangeland Betterment Fund would increase by 82 percent under the proposed rule, whereas the funds available would decrease by 21 percent if the grazing fee remains constant.

Under the proposed rule, authorized livestock forage would be 3 percent less after 20 years than under the current rules. This decline is based upon trends during the past 10 years and upon specific actions in the proposed rule, which would reduce allocated forage in the short term. In the long term, however, forage reduction under the proposed rule and under current management practices would be virtually identical. Consequently, impacts on employment and income under the proposed rule would be greater in the short term than under current rules, but would be the same as under current rules in the long term. Ranch employment and income, which has been declining as the Western economy evolves and grows, could continue to decline under the proposed rule, but this decline should be relatively minor compared to growth in other sectors.

Upland acres in functioning condition would increase by about 55 percent whereas, under the current rules, functioning upland acreage would increase by about 30 percent. Roughly 43 percent of BLM riparian areas would be functioning--an increase of 27 percent from 1993. Under current rules, functioning riparian areas would decrease by 3 percent. The proposed rule also would substantially improve upland watershed, vegetation, and wildlife conditions. This, in turn, would improve recreational opportunities for fishing, boating, swimming, wildlife observation, and wilderness studies.

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Risks:

Although there is a potential for some decline in employment and income in the ranching industry, these have been on the decline already, and the rapidly changing Western economy generally overshadows these declines. In the absence of reforms, there is risk that unhealthy rangelands will not improve--resulting in increased costs for rehabilitation and the protection of critical resources (e.g., threatened or endangered species habitat). Also, in the absence of reforms, the public will not receive fair payment for the use of its public lands by livestock producers.

Timetable:

Action	Date	FR Cite
ANPRM	08/13/93	58 FR 43208
ANPRM Comment Period End	09/13/93	58 FR 43208
NPRM	03/25/94	59 FR 14314
NPRM Comment Period End	09/09/94	59 FR 38153
Final Action	12/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DEPARTMENT OF JUSTICE (DOJ)

The Department of Justice is not a major regulatory agency, and carries out its vital investigative, prosecutorial, and other law enforcement activities principally through means other than the regulatory process. Even so, the Department does have significant responsibilities for implementing the Americans with Disabilities Act and other civil rights laws through regulations as well as immigration laws, including the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. The Department's key regulatory goals and initiatives are set forth in detail below.

The Department has worked actively to implement the general regulatory principles of Executive Order 12866. Relatively few of the Department's rules are "significant regulatory actions" requiring review by the Office of Management and Budget under the Executive Order. Accordingly, the reorientation of the OMB review process to focus on significant rules has required the Department to increase its own efforts to ensure that all of its regulations are carefully reviewed for consistency with the Administration's regulatory principles, including the large majority of rules that are not reviewed directly by OMB as "significant regulatory actions."

Statement of Regulatory Priorities

Pursuant to Section 4(c) of Executive Order 12866, the Department of Justice provides the following statement of regulatory priorities, focusing in particular on eight regulatory initiatives in the three areas of civil rights, immigration, and asset forfeiture.

In addition to the specific initiatives set forth below, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this Regulatory Plan, those components carry out key roles in implementing the Department's law enforcement priorities. In particular, the Drug Enforcement Administration (DEA) is responsible for controlling abuse of narcotics and dangerous drugs by restricting the aggregate supply of those drugs. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities; development and maintenance of drug intelligence systems; regulation of legitimate controlled substances; and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA is presently developing regulations to implement the provisions of the Domestic Chemical Diversion Control Act of 1993, which imposes registration requirements upon manufacturers, distributors, importers and exporters of List I chemicals (formerly known as precursor chemicals).

Civil Rights

The Department and its Civil Rights Division are deeply committed to a rigorous and revitalized approach to the enforcement of this nation's civil rights laws. In keeping with that commitment, the Division will be reviewing, updating, and improving its civil rights regulations, which are the Division's basic enforcement tools. As priorities for the coming year, the Division will be focusing on regulations implementing title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments Act of 1972, which are intended to serve as models for other Federal agencies. The Division also is completing the initial ADA rulemaking cycle by amending its regulations under the Americans with Disabilities Act (ADA) to incorporate revised standards applicable to new building and facilities used by State and local governments. The Department's Regulatory Plan has four civil rights initiatives.

All agencies, with the Department's encouragement and support, need to begin the process of updating their title VI regulations, which may now be two decades old. The Department's goal will be the creation of a model, state-of-the-art, title VI rule. This will actually involve two closely related initiatives, one to be used within the Department for programs and activities receiving financial assistance from the Department, and the other for use throughout the Federal Government pursuant to the Department's responsibility to promote coordination of title VI enforcement by all agencies. The Department's model rule is intended to include the most effective enforcement procedures from current regulations and will also contain language to implement the definition of "program or activity" added by the Civil Rights Restoration Act of 1987 (CRRA), Public Law No. 100-259.

The Division will also be publishing a revised proposed regulation, implementing title IX of the Education Amendments of 1972, which forbids discrimination on the basis of sex in educational activities receiving Federal financial assistance. The rule will incorporate statutory amendments to title IX (made by the Civil Rights Restorstion Act of 1987) and controlling judicial precedents. The final title IX regulation is intended to serve also as a model for other Federal agencies to promote effective compliance.

The Department is also planning to make revisions in its regulations implementing title II of the ADA (and conforming changes to title III) in order to incorporate the revised accessibility design guidelines developed by the Architectural and Transportation Barriers Compliance Board (the Access Board). Subtitle A of title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. Title III of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability by public accommodations and in commercial facilities. The Access Board's new guidelines for State and local buildings and facilities are the subject of a related, pending rulemaking proceeding, and have been subject to considerable scrutiny through the Board's regulatory process. The Department of Justice, which is required by statute to promulgate regulations that do not go below the Access Board's minimum guidelines, will incorporate them into the Department's title II rule.

These amendments to the ADA regulations are an important step forward in fulfilling the promise of the ADA in ushering in a new era of opportunity and dignity for the many millions of Americans with disabilities. These regulations, which will apply to new construction and to alterations of State and local buildings and facilities, will open doors that have shut out people with disabilities in the past.

Immigration

The Immigration and Naturalization Service (INS) is responsible for facilitating the entry of persons legally admissible as visitors or as immigrants to the United States, for preventing unlawful entry or receipt of immigration benefits by those who are not entitled to receive them, and for apprehending or removing those aliens who enter or remain illegally in the United States. Though many of the Administration's goals for more effective immigration process require either new statutory authority or increased resources, the regulatory process is a vital aspect of carrying out the goals of the immigration laws.

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Certainly, one of the regulatory challenges facing the Department of Justice is to improve the effectiveness of those regulatory efforts. Commissioner Meissner established three fundamental goals at the time of her confirmation: to increase the professionalization of the Service, to provide immigration control with compassion, and to build the Service's role in immigration policy leadership and communication. The regulatory priorities for the Service follow those priorities, though other desired improvements will require legislative action. Three INS initiatives are included in this Regulatory Plan.

The principal policy and program delivery regulations which will be presented this year address areas of vulnerability in the immigration system. They are also structured to facilitate the proper use of the system by deserving persons. The principal regulation will provide much-needed reforms for the asylum system. After a thorough review of the delivery of asylum determinations, the Department this spring published proposed revisions to asylum regulations which will allow the timely adjudication of cases while instituting safeguards against abuse of the U.S. asylum system. The key priority is the adoption of these asylum reforms in final form. Another regulation will reduce the number of documents which are used to verify immigration status for purposes of employment in order to facilitate employer's compliance with the Act.

The Service has also proposed a number of enhancements to its organizational structure for management of the functions it performs. There is now an approved reorganization which will be implemented this year. Regulations establishing that structure and delegations of authority will be published.

Finally, the Service is presently implementing a number of changes to its fee schedules for various applications. (This rule is not included in the Regulatory Plan because it will be published in the very near future.) The Service is in a continuous improvement program for the delivery of those services it delivers to the public, and the fee structure for those services. Regulations will be promulgated in the future to increase the effectiveness of service delivery as we move to further automation of business functions in both the benefit and enforcement arenas. In particular, the Service will address service to States and localities, information exchange and facilitation of procedures for the public.

Asset Forfeiture

The Executive Office of Asset Forfeiture has one initiative listed in this Regulatory Plan, to revise and consolidate the Department's regulations on remission and mitigation of asset forfeiture. The rule is one part of the Department's set of administrative and legislative initiatives to improve the asset forfeiture program. Further, by replacing numerous sets of agency-specific regulations, this action will reduce the volume of petition regulations, enhance consistency in the petitions process, and facilitate understanding and use of the petitions process by the public.

DOJ—Civil Rights Division (CRT)

PROPOSED RULE STAGE

87. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Legal Authority:

20 USC 1682

CFR Citation:

28 CFR 42 subpart J (New)

Legal Deadline:

None

Abstract:

The Department's proposed regulation implements the requirements of title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of an individual's sex in federally assisted educational programs. On June 17, 1980, the Department published a proposed title IX regulation that was never issued in final form. As a result of interim legislation and judicial opinions, it is necessary to revise our prior proposed regulation before a final regulation can be issued.

Statement of Need:

There is an urgent need to issue this regulation. First, the Department is obligated to issue a title IX regulation since it funds many educational programs. Second, because the Department's regulation will incorporate legislative amendments and controlling precedents to date, it can be expected that other agencies will rely on it in revising their own, outdated, regulations.

Alternatives:

Because title IX requires an agency (such as the Department of Justice) that funds educational programs to issue implementing regulations, issuance of a title IX regulation is mandatory. With respect to the contents of the title IX regulation, the Department will consider all comments received during the public comment period before issuing a final regulation.

Anticipated Costs and Benefits:

In order to carry out this Administration's commitment to equal educational opportunity for women, it is essential that the Department of Justice issue its own regulation implementing title IX. The failure of previous administrations to direct that this regulation be issued means that the Department has no regulation in place to guide the Department in granting financial assistance to educational programs or in investigating complaints of sex discrimination in funded programs.

In providing Federal financial assistance to educational programs, the Department has been subject to the requirements of title IX since it was enacted in 1972. Therefore, promulgating this regulation should not impose any new costs upon recipients of Federal financial assistance.

Risks:

Without a regulation that incorporates legislative amendments and controlling judicial precedents in place, the Department risks violating title IX. Furthermore, if this regulatory activity is not undertaken, there are substantial risks: (1) that individuals who are granted protection from discrimination on the basis of sex will find that their rights are not protected to the extent intended by legislative amendments and controlling judicial decisions, and (2) that Federal program funds will be expended in a discriminatory manner.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

Additional Information:

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DOJ—CRT

88. • AMENDMENT TO NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Legal Authority:

42 USC 2000d to 2000d-4

CFR Citation:

28 CFR 42.101 to 42.112

Legal Deadline:

None

Abstract:

The Department of Justice will be revising and updating its existing regulation implementing title VI for the Department's federally assisted programs and activities, 28 CFR 42.101 to 42.112 (which was issued in 1966).

Statement of Need:

Most of the agencies with title VI enforcement responsibilities issued implementing regulations more than 20 years ago, and those regulations have not been updated to incorporate current case law and statutory changes.

The Department is planning to follow a three-step process, beginning with the informal interagency circulation for comment of a new proposed model title VI regulation. The model regulation is intended to serve as a state-of-the-art guide for agencies as they develop their own amended title VI regulations through notice and comment rulemaking. The model regulation will include the most effective enforcement procedures, as well as language to implement the definition of "program or activity" added by the Civil Rights Restoration Act of 1987.

Following the informal circulation of the model regulation, the Department will publish this proposed amendment to its own title VI regulation. Finally, the Department plans to revise its title VI coordination regulation (titled: Amendment to Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs; see RIN 1190-AA32) and to encourage agencies with outdated regulations to amend their own regulations. This process will result in more useful and effective title VI regulations throughout the Federal Government.

The enforcement procedures for title VI are used for enforcing the other statutes that prohibit discrimination in federally assisted programs and activities, including section 504 of the Rehabilitation Act of 1973, as amended, and title IX of the Education Amendments of 1972, as amended. Under all of these statutes, the Federal agency that provides the Federal financial assistance to the program or activity is responsible for enforcing the nondiscrimination mandate. Thus, amendments to title VI regulations will indirectly result in an update to all other regulations that reference the enforcement procedures of title VI.

Alternatives:

Because amendments to the title VI are long overdue (see Statement of Need above), failing to update and revise existing regulations is not a reasonable alternative. Suggested alternatives will be solicited during the process of circulating the model regulation to affected agencies and will also be obtained during the mandatory public comment period under any proposed regulation. To the extent permitted by law, these comments will be considered in adopting any revisions to the existing regulations.

Anticipated Costs and Benefits:

The Clinton Administration has made a firm commitment to the rigorous and effective enforcement of all Federal civil rights statutes, including title VI of the Civil Rights Act of 1964. This commitment stands in sharp contrast to the lack of enforcement that has characterized previous administrations. One result of this lack of enforcement activity is that the current regulations, under which all fund-granting Federal agencies operate, are badly outdated, making effective enforcement difficult. By updating agency title VI regulations through the process described above, Federal funding agencies will be able to more effectively use their resources to attack and eliminate discriminatory practices by recipients of Federal financial assistance.

It is anticipated that, to the extent that this process results in greater consistency among the title VI regulations issued by various Federal agencies, the task of complying with title VI by recipients of Federal financial assistance will be simplified. Thus, these regulatory activities should not impose any additional costs on recipients of Federal financial assistance.

Risks:

If these regulatory activities are not undertaken, there are substantial risks: (1) that individuals who are granted protection from discrimination on the basis of race, color, and national origin will find that their rights are not protected to the extent intended by legislative amendments and controlling judicial decisions, and (2) that Federal program funds will be expended in a discriminatory manner.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

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DOJ—CRT

89. • AMENDMENT TO COORDINATION OF ENFORCEMENT OF NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Legal Authority:

42 USC 2000d to 2000d-4; EO 12250

CFR Citation:

28 CFR 42.401 to 42.415

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Legal Deadline:

None

Abstract:

The Department of Justice will be revising and updating its title VI coordination regulation, 28 CFR 42.401 to 42.415, which was issued in 1976 pursuant to the authority granted to the Department by E.O. 11764, to coordinate enforcement of title VI by the other Federal fund-granting agencies. The purpose of the title VI coordination regulation is to guide other agencies as they develop their own, agency-specific title VI regulations. The coordination regulation remains in effect under E.O. 12250, the successor to E.O. 11764.

Statement of Need:

Most of the agencies with title VI enforcement responsibilities issued implementing regulations more than 20 years ago, and those regulations have not been updated to incorporate current case law and statutory changes.

In order to encourage these agencies to update their title VI regulations, the Department is planning to follow a three-step process, beginning with the informal interagency circulation for comment of a new proposed model title VI regulation. The model regulation is intended to serve as a state-of-the-art guide for agencies as they develop their own amended title VI regulations through notice and comment rulemaking. The model regulation will include the most effective enforcement procedures, as well as language to implement the definition of "program or activity" added by the Civil Rights Restoration Act of 1987.

Following the informal circulation of the model regulation, the Department will publish a proposed amendment to its own title VI regulation (titled: Amendment to Nondiscrimination in Federally Assisted Programs and Activities--Implementation of Title VI of the Civil Rights Act of 1964; see Regulatory Plan entry 1190-AA31). Finally, the Department will publish this proposed amendment to its title VI coordination regulation and will encourage agencies with outdated regulations to amend their own regulations. This process will result in more useful and effective title VI regulations throughout the Federal Government.

Alternatives:

Because amendments to the title VI are long overdue (see Statement of Need above), failing to update and revise existing regulations is not a reasonable alternative. Suggested alternatives will be solicited during the process of circulating the model regulation to affected agencies and will also be obtained during the mandatory public comment period under any proposed regulation. To the extent permitted by law, these comments will be considered in adopting any revisions to the existing regulations.

Anticipated Costs and Benefits:

The Clinton Administration has made a firm commitment to the rigorous and effective enforcement of all Federal civil rights statutes, including title VI of the Civil Rights Act of 1964. This commitment stands in sharp contrast to the lack of enforcement that has characterized previous administrations. One result of this lack of enforcement activity is that the current regulations, under which all fund-granting Federal agencies operate, are badly outdated, making effective enforcement difficult. By updating agency title VI regulations through the process described above, Federal funding agencies will be able to more effectively use their resources to attack and eliminate discriminatory practices by recipients of Federal financial assistance.

It is anticipated that, to the extent that this process results in greater consistency among the title VI regulations issued by various Federal agencies, the task of complying with title VI by recipients of Federal financial assistance will be simplified. Thus, these regulatory activities should not impose any additional costs on recipients of Federal financial assistance.

Risks:

If these regulatory activities are not undertaken, there are substantial risks: (1) that individuals who are granted protection from discrimination on the basis of race, color, and national origin will find that their rights are not protected to the extent intended by legislative amendments and controlling judicial decisions, and (2) that Federal program funds will be expended in a discriminatory manner.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

The model title VI regulation is currently being prepared for circulation to the applicable Federal agencies.

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DOJ—CRT

FINAL RULE STAGE

90. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS

Legal Authority:

42 USC 12134; 42 USC 12186; 5 USC 301; 28 USC 509; 28 USC 510; PL 101-336

CFR Citation:

28 CFR 35; 28 CFR 36; 28 CFR 37

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rules implementing titles II and III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by public entities (title II) and in places of public accommodation and commercial facilities (title III). Those regulations included accessibility guidelines required for facilities covered by title III--the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)--but did not specifically include guidelines for facilities covered by title II, such as courthouses or prisons. Title II entities now have the option of using ADAAG (without certain exceptions applicable only to title III facilities) or another existing standard, the Uniform Federal Accessibility Standards.

The proposed rule will amend titles II and III to adopt a revised version of ADAAG, which incorporates new guidelines for facilities typically covered by title II. The new guidelines are being issued as an interim rule by the Access Board and will be published on the same day as the Department's proposed rule. The Department's proposed rule will also amend the compliance procedures set forth in subpart F of the title II regulation.

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including titles II and III. Sections 204(c) and 306(c) of the ADA provide that the Attorney General shall promulgate regulations implementing titles II and III that are consistent with the Access Board's ADA guidelines. Because the Department of Justice is required by statute to promulgate regulations that do not go below the Access Board's minimum guidelines, and because this rule will adopt guidelines issued by the Access Board, as also required by statute, this rule is required by statute.

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. All comments (including those that suggest alternatives to the current proposed guidelines) received by the Department on the proposed rule and by the Access Board on its current interim rule and its guidelines published December 21, 1992, have been and will continue to be thoroughly analyzed and considered by the Department prior to the adoption of any final rule.

Anticipated Costs and Benefits:

The Clinton Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to the built environment to persons with disabilities will be better served.

The Access Board has analyzed the impact of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they are a significant regulatory action for purposes of Executive Order 12866. The Access Board has prepared a Regulatory Assessment, which includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered.

The Access Board has determined that this proposed rule will have a significant economic impact on a substantial number of small entities and, therefore, has included the flexibility analysis required by the Regulatory Flexibility Act in its regulatory assessment. The Access Board has made every effort to lessen the economic impacts of its proposed rule on small entities, but recognizes that such impacts are the necessary result of the mandate of the ADA itself. The Access Board's analysis also applies to the Department's proposed adoption of the revised ADAAG. The Department's proposed procedural amendments will not have a significant economic impact on small entities.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments, but recognizes that the guidelines will have some federalism impacts. These impacts are discussed in the Access Board's Regulatory Assessment which also applies to the Department's proposed rule.

Risks:

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31808
NPRM Comment Period End	08/19/94	59 FR 31808
Final Action	10/00/94	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local

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DOJ—Immigration and Naturalization Service (INS)

PROPOSED RULE STAGE

91. CONTROL OF EMPLOYMENT OF ALIENS

Legal Authority:

8 USC 1101; 8 USC 1103; 8 USC 1255a; 8 USC 1255a note; 8 USC 1324a; 8 USC 1160; 8 CFR 2

CFR Citation:

8 CFR 210; 8 CFR 245a; 8 CFR 274a

Legal Deadline:

None

Abstract:

This rule reduces the number of INS-issued documents that are acceptable for purposes of completing the Employment Eligibility Verification Form (Form I-9). This rule will further simplify compliance with the employment eligibility verification requirements and address the concerns of employers who allege confusion created by the multiplicity of acceptable documents on the Form I-9.

A supplemental proposed rule will be issued which will create a requirement on the part of the employee to sign an attestation in Section 3 of Form I-9, during the reverification process indicating that they are still authorized to work in the United States. (INS No. 1399s-94)

Statement of Need:

In a March 1990 report, the General Accounting Office (GAO) noted that the multiplicity of acceptable work eligibility documents can give rise to confusion and uncertainty in the minds

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of employers seeking to determine whether individuals are eligible to work. (Immigration Reform: Employer Sanctions and the Question of Discrimination 62 (GAO/GGD-90-62, Mar. 1990)). A reduction in the number of acceptable documents should reduce confusion and uncertainty on the part of employers, and thereby reduce potential employment discrimination based upon misapplication of the employment eligibility verification requirements.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

One often repeated criticism of employer sanctions is the number of documents that are acceptable for completing the Form I-9. The INS has taken steps to address this criticism. In July 1988, the INS committed to the establishment of procedures for a uniform employment authorization policy. First, the INS limited the number and types of paper documents on which employment could be authorized. Second, the INS introduced the standardized Employment Authorization Document (Form I-688B). Finally, a final rule published on September 20, 1993, and effective September 20, 1994, revises the INS regulations by terminating the validity of all prior versions of the Alien Registration Receipt Card and establishing the current Alien Registration Receipt Card, Form I-551, as the exclusive registration card for use by lawful permanent residents (LPRs). The INS has determined that further steps can be taken to streamline the employment eligibility verification system by reducing the number of documents acceptable for Form I-9 purposes.

Anticipated Costs and Benefits:

Employment is often the magnet that attracts individuals to come to or stay in the United States illegally. The employer sanctions provisions help reduce the strength of this magnet by requiring employers to hire only those individuals who may legally work in the United States. This rule, by reducing the number of documents that are acceptable for employment eligibility verification purposes, will reduce confusion and uncertainty on the part of employers in the application of the employment eligibility verification requirements. This, in turn, will increase employer compliance and thereby result in more jobs being available for those who are authorized to work in the United States. In addition, by reducing confusion and uncertainty on the part of employers, this rule will reduce potential employment discrimination based upon misapplication of the employment eligibility verification requirements.

Risks:

An employment eligibility verification system that relies on a multiplicity of documents, and is difficult to understand, may result in employment discrimination based upon misapplication of the employment eligibility verification requirements. In addition, a complicated employment eligibility verification system may encourage fraud and result in individuals who are authorized to work in the United States being displaced by unauthorized individuals.

Timetable:

Action	Date	FR Cite
NPRM	11/23/93	58 FR 61846
NPRM Comment Period End	12/23/93	58 FR 61846
Supplemental Proposed Rule INS No. 1399s-94 Com. Due 30 days from pub. of supp. rule	10/00/94	
Final Action	12/00/94	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Additional Information:

INS No. 1399-92

INS No. 1399s-94

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DOJ—INS

FINAL RULE STAGE

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92. RULES AND PROCEDURES FOR ADJUDICATION OF APPLICATION FOR ASYLUM OR WITHHOLDING OF DEPORTATION AND EMPLOYMENT AUTHORIZATION

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356; 31 USC 9701

CFR Citation:

8 CFR 103; 8 CFR 208; 8 CFR 236; 8 CFR 242; 8 CFR 274a

Legal Deadline:

None

Abstract:

This rule would amend existing regulations to streamline the adjudication of asylum applications submitted to the Immigration and Naturalization Service. The rule would allow the INS to grant asylum to deserving applicants more promptly and to dispose of meritless and abusive applications through mandatory referral of applications to immigration judges for adjudication as part of exclusion of deportation proceedings. The rule would make asylum interviews discretionary. The rule also would restrict eligibility for employment authorization and would provide for imposition of a filing fee for asylum and work authorization applications.

Statement of Need:

The volume of asylum applications filed has increased from 56,000 in 1991, to over 150,000 in fiscal year 1993. Approximately 398,000 asylum applications were pending as of August 1, 1994. To help process the increase in asylum claims, the Service is doubling the Asylum Officer Corps to a total of 331 officers in 1994. If asylum reform is not implemented, the asylum backlog will continue to grow.

This rule is necessary because the existing system for adjudicating asylum claims lacks the capacity to keep pace with the incoming applications and does not permit the expeditious removal from the United States of those persons whose claims fail. A significant and growing percentage of current asylum applications appear on their face to be nonmeritorious or abusive. Current regulations unduly lengthen and complicate the adjudications process without appreciable benefit to deserving asylum applicants.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

INS reviewed the existing regulations to determine what streamlining measures could be undertaken without the need for regulatory change. This process was undertaken by INS in consultation with various representatives of nongovernmental organizations. It was determined that no significant changes could be made to the process under the existing regulations. As a result, a DOJ working group was convened to undertake the development of a comprehensive reform proposal. A consultant who is an expert in immigration law was hired to assist in this process.

Anticipated Costs and Benefits:

This rule would institute a user fee for filing asylum applications so that the processing of these applications will be self-sustaining to the extent possible. These fees were set at a level which will allow INS to provide the service to asylum applicants without increasing the Service's budget. INS believes that it would impose a hardship on asylum applicants if they were required to pay the entire cost of the service rendered them. Therefore, part of the cost per asylum applicant is currently recovered though a surcharge to the fees for filing applications other than asylum.

Risks:

The risk of not proceeding with reform of the asylum process is that asylum applicants whose claims are not decided will continue to receive indefinite work authorization. This indefinite work authorization puts such applicants into an immigration limbo while their applications are delayed because of the backlog of claims. An additional risk of the current system is that persons without legitimate claims can file asylum applications as a way of remaining in the United States and working during the pendency of their claims. Nonmeritorious claims delay the processing of meritorious claims and the receipt of those benefits provided by law for asylees such as the accrual of residency for naturalization and family reunification visas.

Timetable:

Action	Date	FR Cite
NPRM	03/30/94	59 FR 14779
NPRM Comment Period End	05/31/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

INS No. 1651-93

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DOJ—INS

93. • REORGANIZATION OF THE IMMIGRATION AND NATURALIZATION SERVICE

Legal Authority:

5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356; 31 USC 9701; 8 CFR 2

CFR Citation:

8 CFR 100; 8 CFR 103

Legal Deadline:

None

Abstract:

This rule revises the existing organizational structure within the Immigration and Naturalization Service (Service). On January 14, 1994, the Attorney General approved a reorganization plan for the Service. The changes effected by this rule are necessary to implement that plan.

Statement of Need:

This rule is necessary to establish a classic structure that empowers field managers and allows INS Headquarters to steer, not row. It positions INS to reinvent itself, to rethink the way its officers approach their tasks and missions, so that INS can meet the organizational challenges of a future where effectively administering the Nation's immigration system has become a key national priority.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

INS reviewed previous reports analyzing INS management problems; held formal meetings with key INS personnel, including the National Immigration and Naturalization Service Council leadership, the District Directors Association and the Chief Patrol Agents Association; held telephone conferences with Regional Administrators and with Staff Assistants for Field Operations; conducted telephone interviews with mid-level field managers selected by random process; established a working group, representing major functions and offices; and sought views from external stakeholders with interest in INS. After consideration of all opinions and input, INS is adopting a new organizational structure with a back-to-basics philosophy where accountability at all levels, high standards of integrity, and quality performance will be required.

Anticipated Costs and Benefits:

The plan is designed as much for the future as it is for today. Its premise is that the energy of the INS management team should be focused on the effectiveness of the Service's programs and operations. It is this improving of managerial effectiveness that is the primary anticipated benefit of this reorganization.

Some of the costs and benefits of this reorganization are intangible and cannot be measured until the new structure has been operational. However, cost savings are expected to follow naturally from increased managerial effectiveness.

The new structure provides clear lines of authority and vests responsibility and accountability at the most appropriate levels.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

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DOJ—Legal Activities (LA)

FINAL RULE STAGE

94. REVISION OF REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES

Legal Authority:

28 USC 509; 28 USC 510; 28 USC 515 to 518; 28 USC 524; 8 USC 1324; 15 USC 1177; 17 USC 509; 18 USC 512; 18 USC 981; 18 USC 982; 18 USC 1467; 18 USC 1955; 18 USC 1963; 18 USC 2253; 18 USC 2254

CFR Citation:

28 CFR 9

Legal Deadline:

None

Abstract:

This regulation amends and adopts rules that govern the processing of petitions for remission and mitigation of forfeitures by the Criminal Division, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service of the United States Department of Justice. It is intended to provide a basis for similar rules to be adopted by the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the United States Secret Service of the Department of the Treasury, and the United States Postal Service. The Department proposes this regulation in an effort to ameliorate the harsh results in individual forfeiture cases and to provide relief to innocent persons whose property is used by others for criminal purposes.

Statement of Need:

The current regulations need to be updated to simplify the petition process, to provide for consistent rulings on petitions, to remedy deficiencies in the current regulations, and to provide for petitions filed by or on behalf of certain victims in fraud cases. These regulations are necessary because forfeiture is now being increasingly sought in white collar crime cases involving thousands of victims.

Summary of the Legal Basis:

The legal basis of authority for this regulation is set forth above in Legal Authority. No aspect of this regulatory action is required by statute or court order.

Alternatives:

Regulations governing the remission or mitigation of civil and criminal forfeitures provide essential procedures for the Attorney General to avoid the unfair forfeiture of innocent persons' property interests and to mitigate the sometimes unreasonable and harsh results of forfeitures. The alternative to issuance of this regulation would be to continue the current system of multiple regulations issued by the above described agencies.

Anticipated Costs and Benefits:

No additional cost is anticipated to result from the revised regulations because petitions for remission or mitigation are already an integral part of forfeiture program operations. The anticipated benefit of the revised regulations is the satisfaction of the needs stated in the above Statement of Need.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	06/29/94	59 FR 33457
NPRM Comment Period End	07/29/94	59 FR 33457
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Additional Information:

LEGAL AUTHORITY CONT: 18 USC 2513; 19 USC 1613; 19 USC 1618; 21 USC 853; 21 USC 881; 22 USC 401.

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BILLING CODE 4410-01-P

DEPARTMENT OF LABOR (DOL)

1994 Regulatory Plan

Executive Summary

In the preamble of Executive Order 12866, President Clinton states that the American people deserve a system of government regulations that works for them; one that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing undue burden on society. The Department of Labor plays a major role in achieving this very important goal of the President.

The Department of Labor is one of the largest enforcement agencies within the U.S. Government, administering and enforcing over 180 Federal statutes and their implementing regulations. These regulations cover an estimated 7 million establishments and over 100 million current and former employees, as well as job applicants and retirees.

DOL's 1994 Regulatory Plan includes 21 of the Department's most important significant regulations from five of our major regulatory agencies: Employment Standards Administration (ESA), Occupational Safety and Health Administration (OSHA), Pension and Welfare Benefits Administration (PWBA), Employment and Training Administration (ETA), and Mine Safety and Health Administration (MSHA). These regulations were selected because of their significant impact on the economy or other government agencies and because they comprise the essential elements of each agency's regulatory efforts. While these regulations represent those that are likely to have the greatest impact, it is important to note that the Department views every regulatory effort it undertakes as important and necessary.

Equally important to our regulatory responsibilities is the way that we regulate. As a Department, we are committed to regulatory policies that acknowledge the importance of the private sector and private markets. Our goal is to develop regulations that are effective, consistent, sensible and understandable. To this end, we are committed to coordinating with other government agencies and working closely with target populations and the regulated community whenever appropriate.

The DOL Regulatory Role

The Department of Labor's rulemaking work represents one of the most important and necessary functions of the U.S. Government. These rulemakings directly impact the lives of millions of workers in a wide variety of areas as evidenced by the diverse statutes the Department administers. The Department is charged with the responsibility for protecting America's work force under the Occupational Safety and Health Act and the Federal Mine Safety and Health Act. The Department is also charged with enforcing a number of statutes pertaining to labor standards for workers, such as the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, and certain provisions of the Immigration Reform and Control Act. Among these labor standards are those that guarantee minimum wages and overtime premium payments, protect child labor, set minimum working conditions for agricultural workers and guarantee family leave to workers for the birth or adoption of a child, or if the workers or their family members experience a serious health condition. Other labor statutes are narrower in scope and relate only to those working for government contractors (such as the Davis-Bacon and Related Acts and the McNamara-O'Hara Service Contract Act) or to certain groups of employees (like the Federal Employees' Compensation Act or the Black Lung Benefits Act).

DOL has also undertaken rulemaking related to laws such as the Job Training Partnership Act and the Trade Adjustment Assistance programs that provide essential job training services to workers who are just entering the job market or who are dislocated. Lastly, the Department is charged with enforcing the nondiscrimination and affirmative action requirements of Executive Order 11246 and a number of statutes such as sections 503 and 504 of the Rehabilitation Act, and section 481 of the Job Training Partnership Act. Through these regulations, DOL seeks to ensure that Federal contractors and certain Federal grant recipients provide a level playing field to all applicants, employees and program participants.

In addition, workers and beneficiaries are protected through the Department's efforts to monitor pension and welfare plans (including group health plans) under the Employee Retirement Income Security Act. In order to carry out this responsibility, DOL regulations spell out the standards and requirements that must be met by plan administrators and fiduciaries. DOL is also responsible for overseeing certain aspects of the internal affairs of labor organizations under the Labor-Management Reporting and Disclosure Act.

Administration of each of these statutes requires the promulgation of rules that explain to the affected community exactly what their responsibilities are.

DOL's Regulatory Priorities

Given the Department's extensive mandate, our regulatory plan was developed around essential regulations necessary to assure American workers healthy, safe and fair working conditions. One of the highest priorities for the Department is for OSHA to issue its building-block standards on exposure assessment, medical surveillance, safety and health programs, ergonomics, and recordkeeping. These proposals will address multiple hazards present in most workplaces in a generic fashion. They are essential to OSHA's standard-setting priorities because they will address the potential occupational hazards facing the majority of America's work force.

Other important priorities are the proposed amendments to the regulations implementing Executive Order 11246 to ensure nondiscrimination and affirmative action obligations, to the regulations pertaining to child labor and the exemption from minimum wage and overtime rules for executive, administrative and professional employees under the Fair Labor Standards Act. MSHA will also address the need to update the Agency's existing standards on exposure to potentially harmful chemical substances and to noise, and will develop criteria for the approval of diesel-powered equipment in underground mines.

The Department's regulatory plan also reflects the Administration's commitment to employment and training. We are focusing on building a reemployment system that includes the following features: high quality and longer-term training, a focus on customers and feedback from them, simplified access to programs and services, and better quality information on labor markets and on the performance of service providers. During the coming year, ETA and the Veterans Employment and Training Service (VETS) will review existing regulations in areas where Administration legislative initiatives, such as the proposed Reemployment Act, will necessitate regulations being revised, replaced, or repealed. Where

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possible, new and revised regulations will attempt to incorporate the features and key principles of the new reemployment system. One specific rule being developed by the Department that incorporates some features of the new reemployment system is the proposed rule to implement amendments to the Trade Act made by Title V of the North American Free Trade Agreement Implementation Act.

Regulating in a Smart Way

As a major regulatory agency, DOL recognizes the importance of regulating in a smart way. The Department upholds the objectives of the Executive Order 12866 to enhance planning and coordination with respect to both new and existing regulations and to make the regulatory process more accessible to the public. Already, we have made significant strides in this area.

The building-block standards proposed by OSHA represent a good example of regulating in a smart way. By addressing multiple hazards in a generic fashion, these proposals will ensure consistency across regulations. For instance, Section 6(b) of the OSH Act requires, where appropriate, that OSHA standards include provisions for exposure monitoring. Currently, a variety of substance-specific standards include requirements for exposure monitoring while hundreds of substances in OSHA's Z-tables have no such requirement. A generic standard for exposure assessment would satisfy section 6(b)(7) of the Act, with respect to Z-table substances in the Air Contaminants Standards (29 CFR 1910.1000).

Another example of regulating in a smart way is OSHA's review of certain existing standards. For instance, OSHA plans to issue a revision to its outdated walking and working surfaces standard with a performance-oriented final standard, which will permit more flexibility in compliance. OSHA is also utilizing negotiated rulemaking as an alternative regulatory approach to address the hazards of steel erection.

Similar examples can be found in other areas of the Department. ESA's proposal to amend Executive Order 11246 will streamline, clarify and reduce paperwork requirements associated with compliance. The Mine Safety and Health Administration will soon publish a proposed rule on Testing and Evaluation of Mining Products by Independent Laboratories and Use of Equivalent Approval Requirements. As recommended by the National Performance Review, this rule will allow certain mining equipment and products to be tested and approved by nationally recognized independent laboratories. This rule benefits from a proper use of the private sector to permit the agency to shift resources toward product audits in the field.

Regulations Included in the Plan

Twenty-one regulations are included in DOL's 1994 Regulatory Plan. These regulations acknowledge DOL's important role in rulemaking and the importance of regulating in a smart way. As previously mentioned, these regulations were also selected because of their significant impact on the economy or other Government agencies. A detailed description for each follows.

DOL—Employment Standards Administration (ESA)

PRERULE STAGE

93. CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION (ESA/W-H)

Legal Authority:

29 USC 203

CFR Citation:

29 CFR 570

Legal Deadline:

None

Abstract:

Section 3(1) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary also is directed to designate occupations that may be particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupations orders, and review of some of the applicable hazardous occupation orders and the method of their promulgation. Comment has also been solicited on whether revisions should be considered in the permissible hours and time of day standards for 14- and 15-year-olds. Comment has also been sought on appropriate changes required to implement school-to-work transition programs.

Statement of Need:

Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that may be particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When developing regulatory proposals (after receipt of public comment on the advance notice of proposed rulemaking), the Department's focus will be on assuring healthy, safe and fair workplaces for young workers, and at the same time making regulatory standards less burdensome to the regulated community.

Alternatives:

Full regulatory alternatives will be developed after receipt and analysis of the public comments responding to the advance notice of proposed rulemaking. Alternatives likely to be considered include specific additions or modifications to the hazardous occupation orders and changes to the hours 14- and 15-year-olds may work.

Anticipated Costs and Benefits:

Preliminary estimates of the anticipated costs and benefits of this regulatory action will be developed once decisions are reached on particular proposed changes in the child labor regulations. Benefits will include safer working environments and fewer injuries to young workers.

Risks:

An assessment of the magnitude of the risk addressed by this action and how it relates to other risks within the jurisdiction of DOL will be prepared once decisions are reached on particular proposed changes in the child labor regulations.

Timetable:

Action	Date	FR Cite
Final Action on HOs 2, 10, 12	11/20/91	56 FR 58626
Final Action Effective Date	12/20/91	56 FR 58626
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	10/11/94	59 FR 40318
NPRM	05/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1215–AA09

DOL—ESA

96. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W-H)

Legal Authority:

29 USC 213(a)(1)

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

These regulations set forth the criteria used in the determination of the application of the Fair Labor Standards Act exemption for "executive," "administrative," "professional" and "outside sales employees" from the minimum wage and overtime requirements of the Act. A final rule increasing the salary test criteria was published on 01/13/81 (46 FR 3010) and was scheduled to become effective on 02/13/81. On 02/12/81 (46 FR 11972) an indefinite stay of the final rule was published. On 03/27/81 (46 FR 18998) a proposal to suspend the final rule indefinitely was published with comments due by 04/28/81. As a result of numerous comments and petitions received from industry groups regarding the duties and responsibilities tests as set forth in the regulations, as well as recent case law developments, the Department concluded that a more comprehensive review of these regulations was needed and decided to reopen the comment period and broaden the scope of the review to include all aspects of the regulations. An ANPRM was published on 11/19/85 and its comment period was subsequently extended to 3/22/86. The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain highly skilled computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6-1/2 times the applicable minimum wage. Also, in 1992, the Department issued a final rule which provided, in part, that an otherwise exempt public sector employee would not be disqualified from the exemption's requirement for payment on a "salary basis" solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, requires the employee's pay to be reduced for absences of less than one workday. These revisions were limited in nature and the regulations are still in need of updating and clarification. In addition, recent court rulings have caused confusion as to what constitutes compliance with the regulation's "salary basis" criteria in both the public and private sectors. All of these factors have led the Department to conclude that a comprehensive review of these regulations is both necessary and appropriate. The Department intends to solicit input through a public hearing process to identify issues and to develop regulatory proposals.

Statement of Need:

These regulations set forth the criteria used in the determination of the application of the Fair Labor Standards Act exemption for "executive," "administrative," "professional" and "outside sales employees." The existing salary test levels used in determining who is exempt from the minimum wage and overtime rules were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in the application of the exemption. In addition, numerous comments and petitions have been received in recent years from industry groups regarding the duties and responsibilities tests in the regulations. These factors, as well as recent case law developments, have led the Department to conclude that a comprehensive review of these regulations is needed.

These regulations have been revised in recent years to deal with specific amendments or issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain highly skilled computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6-1/2 times the applicable minimum wage.

Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public sector employers. An interim final rule provided, in part, that an otherwise exempt public sector employee would not be disqualified from the exemption's requirement for payment

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on a "salary basis" solely because the employee is paid according to a public pay and leave system that, absent the use of paid leave, reduces the employee's pay for absences of less than one workday. (In 1992, the Department issued its final rule on this matter.)

Because of the limited nature of these revisions, the regulations are still in need of updating and clarification, especially with regard to applicability to public sector employment. In addition, recent court rulings have caused confusion on what constitutes compliance with the regulation's "salary basis" criteria in both the public and private sectors.

Alternatives:

Because the regulations are sorely out-of-date, a comprehensive rulemaking is necessary. The Department intends to reopen the comment period of the November 1985 advance notice of proposed rulemaking and to obtain additional information pertaining to matters that have arisen subsequently through a hearing process. Following these activities, full regulatory alternatives will be developed.

Anticipated Costs and Benefits:

Some 23 million employees are within the scope of these regulations. Legal developments in court cases are causing progressive loss of control of the guiding interpretations under this exemption and are creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. These court rulings are creating apprehension in both the private and public sectors. Clear and comprehensive regulations will once again provide for central, uniform control over application of these regulations and will eliminate this apprehension.

In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s and that they do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal work force. Resolution of these conflicts over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable.

Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks:

An assessment of the magnitude of the risk addressed by this action and how it relates to other risks within the jurisdiction of DOL will be prepared once decisions are reached on specific proposed changes in these regulations.

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule Indefinitely	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47698
Extension of ANPRM Comment Period From 01/21/86 to 03/22/86	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	51 FR 2525
ANPRM Second - Hearing Notice	11/00/94	
NPRM	04/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

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RIN: 1215–AA14

DOL—ESA

PROPOSED RULE STAGE

97. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS (ESA/OFCCP)

Legal Authority:

EO 11246, as amended; 38 USC 4212; 29 USC 793

CFR Citation:

41 CFR 60-1; 41 CFR 60-2; 41 CFR 60-4; 41 CFR 60-20; 41 CFR 60-30; 41 CFR 60-50; 41 CFR 60-60; 41 CFR 60-250; 41 CFR 60-741; 41 CFR 60-742

Legal Deadline:

None

Abstract:

These regulations cover nondiscrimination and affirmative action obligations of Federal contractors under Executive Order 11246, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212), as amended; and Section 503 of the Rehabilitation Act of 1973, as amended. The NPRM published 08/25/81 and supplemented on 04/23/82 extended the effective date of a final rule published 12/30/80 and proposed amendments to that rule. OFCCP's review of regulatory options continues with emphasis on Executive Order recordkeeping requirements, certification requirements and enforcement sanctions.

Statement of Need:

Parts of the regulations implementing Executive Order 11246 need to be revised, to reflect changes in the law that have occurred over time, streamlined, and clarified. Executive Order 11246 requires all Federal contractors and subcontractors and federally assisted construction contractors and subcontractors to apply a policy of nondiscrimination and affirmative action in employment with respect to race, color, religion, sex, and national origin. The regulatory revisions are necessary in order to allow DOL to effectively and efficiently enforce the provisions of the Executive order. As a first step in updating its Executive order regulations, the Department intends to propose changes to the provisions that govern preaward review requirements; recordkeeping and record retention requirements; enforcement sanctions; and related provisions. In addition, revisions will be made that will conform the Executive order regulations to the recent changes made in the Department's regulations implementing section 503 of the Rehabilitation Act.

A second phase of revision will contain proposals to change provisions that govern requirements for written affirmative action plans, regarding reporting requirements and the definition good faith efforts; the sex discrimination guidelines; and the provisions concerning contractor evaluation procedures. A third phase of revision will focus on provisions applicable to construction contractors.

Alternatives:

After careful review, it was decided that the most effective way to improve compliance with the Executive order provisions, and reduce burdens on compliant contractors, was to propose revisions to these regulations. Administrative actions alone could not produce the desired results. A determination was also made to publish revisions to the remaining regulatory provisions of the Executive order at a later date so that careful consideration can be given to what changes are needed in each of the parts of the regulations.

Anticipated Costs and Benefits:

It is anticipated that the net effect of the proposed changes will be an increase in the rate of compliance with the nondiscrimination and affirmative action requirements of the Executive order and a reduction in compliance costs to Federal contractors. The Department will also be able to employ its resources more efficiently and more effectively.

Risks:

An assessment of the magnitude of the risk addressed by this action and how it relates to other risks within the jurisdiction of DOL will be prepared once decisions are reached on specific proposed changes in the Executive Order 11246 regulations.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/81	46 FR 36213
NPRM - Compliance Reviews, Recordkeeping and Sanctions (41 CFR 60-1)	11/00/94	
NPRM - Affirmative Action Plans (41 CFR 60-2)	03/00/95	
FINAL - Compliance Reviews, Recordkeeping and Sanctions (41 CFR 60-1)	04/00/95	
NPRM - Construction Contractors' Regulations (41 CFR 60-4)	07/00/95	
FINAL - Affirmative Action Plans (41 CFR 60-2)	11/00/95	
FINAL - Construction Contractors' Regulations (41 CFR 60-4)	12/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State

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RIN: 1215–AA01

DOL—ESA

98. LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

Legal Authority:

41 USC 351 et seq; 79 Stat 1034, as amended in 86 Stat. 789; 90 Stat 2358; 41 USC 38; 41 USC 39; 5 USC 301

CFR Citation:

29 CFR 4

Legal Deadline:

None

Abstract:

The Service Contract Act (SCA) applies to Federal contracts principally for the furnishing of services through the use of service employees and, on contracts over $2,500 where the predecessor contract was not subject to a collective bargaining agreement, requires the Department of Labor to determine prevailing wages and fringe benefits in the locality to be paid to various classifications of workers on the contract. Prevailing wage determinations issued by the Department, which become part of the Federal contract, establish the minimum compensation for employees performing on that contract. The Service Employees International Union (SEIU) sued DOL in March 1991 over DOL's practice, since 1976, of issuing two nationwide rates for health and welfare fringe benefits, and for not periodically updating fringe benefit levels. The District Court remanded the case to DOL for exhaustion of administrative remedies, which led to the DOL's Board of Service Contract Appeals decision that remanded the case to the Wage Hour Division to consider alternative methods of implementing the statute. Proposed regulations are required to resolve this litigation. A notice of proposed rulemaking will invite comment on alternatives for updating SCA fringe benefits.

Statement of Need:

In order to resolve a lawsuit filed by the Service Employees International Union over DOL's long-standing administrative practice of issuing two nationwide rates for health and welfare fringe benefits for contracts subject to the Service Contract Act (SCA), DOL has decided that revisions to its regulations are needed. The McNamara-O'Hara Service Contract Act requires the Department of Labor to determine locally prevailing wages and fringe benefits to be paid by service contractors to service employees working on Federal service contracts (unless the predecessor contract was covered by a collective bargaining agreement).

An NPRM will be published to solicit comments on alternative methodologies for issuing prevailing SCA fringe benefits. It is expected that some or all of these alternatives will increase the benefit rates required on SCA contracts and thus increase costs for Federal agencies using service contracts. Because of the impact on Federal agency procurement actions, this action would be considered "significant" under E.O. 12866.

Alternatives:

A number of regulatory alternatives have been considered for inclusion in the NPRM. Among the possible alternatives are: The current two-tier system that sets two benefit rates using data for large and small establishments; a single fringe benefit rate based on the average cost of providing health insurance, retirement, and all other benefits not legally required for all firms in all industries; different benefit rates for each locality; and benefit rates for broad groups of occupations.

Anticipated Costs and Benefits:

The anticipated cost of all the regulatory alternatives to the existing methodology for updating SCA health and welfare fringe benefit rates may likely exceed the costs associated with the existing methodology. Therefore, adoption of an alternative methodology may result in increased procurement costs to Federal agencies who let service contracts. Estimates of costs for each of the alternatives chosen will be prepared for inclusion in the NPRM. The benefit that will result from this regulatory action will be establishment

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of a reasonable and fair methodology for setting benefit rates and the resolution of the lawsuit.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 1215–AA78

DOL—ESA

99. • MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION (29 CFR PART 500)

Legal Authority:

29 USC 1801 to 1872, as amended

CFR Citation:

29 CFR 500

Legal Deadline:

None

Abstract:

The legislative history of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) indicates that the principles found in the court's decision in Hodgson v. Griffin and Brand, 471 F. 2d 235, are to be followed in determining whether a joint employment relationship exists in the employment in migrant and seasonal farm workers in a given fact situation. The Department intends to publish an NPRM to solicit comments on a clarification of the regulations to more closely comport with the legislative history of MSPA and the principles found in Hodgson v. Griffin and Brand and also possible modifications to the procedures for MSPA hearings, seeking more timely decisions.

Statement of Need:

These regulations need to be revised in order to provide some much needed clarifications and to make the hearing process more efficient. In the legislative history to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Congress stated that the term joint employment in MSPA was to have the same meaning as is found in the Fair Labor Standards Act (FLSA). Further remarks in the legislative history indicate that the principles found in Hodgson v. Griffin and Brand were to be determinative. However, subsequent legal developments have created confusion as to the appropriate criteria for determining the existence of a joint employment relationship. In its rulemaking, DOL will solicit comments to clarify the regulatory criteria for determining when a joint employment relationship exists between two or more employers. The Department will also consider modifying the rules relating to procedures for hearings, seeking more timely decisions.

Anticipated Costs and Benefits:

There is no identifiable cost impact to the contemplated clarifying change in the regulations. Employers in the agricultural community will benefit from the clearer, more definitive criteria provided regarding joint employment relationships. An expedited hearing process will also be beneficial to all parties.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1215–AA93

DOL—ESA

100. • PROCEDURES FOR PREDETERMINATION OF WAGE RATES (29 CFR PART 1) AND LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (29 CFR PART 5)

Legal Authority:

40 USC 276a to 276a(7)

CFR Citation:

29 CFR 1; 29 CFR 5

Legal Deadline:

None

Abstract:

The Department attempted to implement revised rules governing the circumstances in which "helpers" may be used on federally funded and assisted construction contracts subject to the Davis-Bacon Act in May 1982 (see 47 FR 23644, 23658 (May 28, 1982); 47 FR 32090 (July 20, 1982). After protracted litigation, a final rule was published in January 1989 (see 54 FR 4234) which became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations--through the Dire Emergency Supplemental Appropriations Act of 1991, PL 102-27, 10 5 Stat. 130, 151 (1991), and then through section 104 of the DOL Appropriations Act of 1994, PL 103-112. Because a further extension of the current moratorium is contemplated, the Department has determined that the helper issue needs to be addressed through rulemaking.

Statement of Need:

The current helper rules are difficult to administer and enforce, and--as evidenced by the prolonged litigation history and subsequent Congressional actions--are highly controversial. In May 1982, the Department attempted to implement revised rules governing the circumstances in which "helpers" may be used on federally funded and federally assisted construction contracts subject to the Davis-Bacon Act. After protracted litigation, a final rule was published in January 1989 and became effective on February 4, 1991. Thereafter, on two occasions, Congress acted to prevent the Department from expending any funds to implement these revised helper regulations. While the current appropriation prohibition expires after September 1994, the Administration supports an extension of the current moratorium to allow additional time for this issue to be addressed through rulemaking. The Administration's support for an extension of the current appropriations moratorium is premised on a commitment to address the helper issue through a rulemaking process in fiscal year 1995.

Alternatives:

None. The Administration has determined that this issue should not be addressed through the legislative process in which it seeks other reforms to the Davis-Bacon Act. Specific regulatory alternatives have not yet been developed.

Anticipated Costs and Benefits:

A new rulemaking regarding the helper criteria will seek to make administration of the Davis-Bacon Act more efficient by establishing reasonable "helper" criteria and methodology--thus resolving the controversy and uncertainty currently experienced by interested parties. Changes in the helper regulations may result in an inability to realize some of the construction procurement cost savings anticipated from the earlier rulemaking. Estimates of the financial impacts of revised "helper" regulations will be prepared for inclusion in the NPRM.

Risks:

Given the history of challenges to this regulation, it is probable that additional litigation will ensue from any new regulatory initiative.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 1215–AA94

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

101. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS—TRANSITIONAL ADJUSTMENT ASSISTANCE NAFTA-TAA

Legal Authority:

PL 103-182 Title V

CFR Citation:

20 CFR 617

Legal Deadline:

Final, Statutory, January 1, 1995.

Final regulation to be issued to the maximum extent feasible by 1/1/95.

Abstract:

Title V of the North American Free Trade Agreement Implementation Act (PL 103-182) amends Chapter 2 of Title II of the Trade Act of 1974 by adding a new Transitional Adjustment Assistance Program (NAFTA-TAA) for workers who lose their jobs because of increased imports from or a shift of production to Mexico and Canada. Most of the provisions of Title V are in the form of amendments to Chapter 2, Title II, of the Trade Act. While some of the provisions are not in the form of amendments to the Trade Act, they nonetheless must be given effect in implementing the NAFTA-TAA program.

Statement of Need:

The North American Free Trade Agreement will expand trade between the U.S., Mexico and Canada. U.S. companies will be able to increase their exports and create new jobs. Mexico and Canada will also be able to do this; so in certain industries some U.S. workers may lose their jobs. It is important that these U.S. workers get assistance in finding new jobs, including obtaining training, if necessary.

The proposed regulations are required to establish clear rules, procedures and guidelines for the Department, for the States and State agencies that serve as agents of the United States, in carrying out their responsibilities under the NAFTA-TAA program. This will assure that workers who lost their jobs due to NAFTA will receive the adjustment assistance they need.

Summary of the Legal Basis:

Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182 enacted December 8, 1993) amends Chapter 2 of Title II of the Trade Act of 1974, by adding a new Transitional Adjustment Assistance Program (NAFTA-TAA) for workers who lose their jobs because of increased imports from or a shift of production to Mexico or Canada.

Anticipated Costs and Benefits:

A cost benefit analysis was not conducted. The regulation codifies procedures and responsibilities stipulated by the NAFTA implementing legislation.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1205–AB07

DOL—Pension and Welfare Benefits Administration (PWBA)

PRERULE STAGE

102. REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Legal Authority:

29 USC 1135; 29 USC 1029; 29 USC 1143; 29 USC 1021; 29 USC 1022; 29 USC 1024; 29 USC 1025; 29 USC 1059

CFR Citation:

29 CFR 2520

Legal Deadline:

None

Abstract:

The Department is undertaking a comprehensive review of the current

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reporting and disclosure requirements to ensure that the Department, participants and beneficiaries are provided meaningful information and that such requirements take into account technological developments that result in more effective and timely communication of benefit and plan information. As an initial step in this review, the Department solicited comments, recommendations and information from the public concerning the current disclosure requirements and changes thereto, taking into account the experience of the past 20 years and changes in communication techniques and types of plans. The public input received in response to this solicitation will enable the Department to review the current disclosure framework and to develop meaningful proposals for changes based on up-to-date information concerning current plan practices.

Statement of Need:

Since ERISA's enactment 20 years ago there have been few modifications to ERISA's reporting and disclosure provisions. Similarly, there have been few changes over the past 10 to 15 years in the Department's regulations implementing ERISA's reporting and disclosure provisions. During this same period, however, there have been dramatic changes in the employee benefit plan area and in the way information is communicated. As a result of these and other changes, questions have been raised with respect to the adequacy and timeliness of the information required to be disclosed to participants and beneficiaries. Similar questions have been raised concerning the information required to be filed with the Department of Labor. To address these issues, the Department has determined that it is appropriate to conduct a comprehensive review of ERISA's reporting and disclosure scheme and, on the basis of that review, propose regulatory and/or legislative changes necessary to address identified deficiencies.

To assist the Department in its review, the Department published a notice in the **Federal Register** (58 FR 68339, December 27, 1993) soliciting public comment on ERISA's provisions and the Department's regulations relating to the summary plan description, summary annual report and individual benefit reports. The Department is currently considering the comments received in response to this Federal Register notice.

However, because of the interrelationship of the information disclosed to participants and beneficiaries with that information required to be filed with the Department of Labor, the Department is expanding its review to include ERISA's reporting provisions, including a review of the Form 5500 Annual Return/Report Series, which is filed annually by an estimated 750,000 employee benefit plans. The Form 5500 Series is a joint Department of Labor, Internal Revenue Service and Pension Benefit Guaranty Corporation form and serves as the principal source of financial information and data available to the Agencies, and participants and beneficiaries, concerning the operations of employee benefit plans. This review will be coordinated with the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

Summary of the Legal Basis:

Title I of ERISA imposes specific reporting and disclosure obligations on administrators of employee benefit plans. It also provides the Secretary with the authority to prescribe exemptions and alternative methods of compliance for employee welfare benefit plans and employee pension benefit plans and to prescribe regulations necessary or appropriate to carry out the provisions of Title I of ERISA.

Alternatives:

ERISA is more prescriptive than most legislation in the degree of specificity of reporting requirements explicitly set forth in the statute. In developing changes, therefore, the Department will be considering changes in the statute which may permit greater flexibility in changing reporting requirements over time as the nature of plans change. The Department will also focus on regulatory changes that will result in more valuable information for beneficiaries and participants, while minimizing the burden and cost to administrators. These considerations will include the content, form and frequency of information provided.

Anticipated Costs and Benefits:

It is not yet known what capital or annual costs may result from modifications to the current reporting and disclosure framework. In developing its regulatory proposal, it is the goal of the Department to strike a balance between benefits and costs by ensuring the provision of useful and timely information to participants, beneficiaries and the Department, while minimizing any costs and burdens to administrators that may result from such changes.

Risks:

ERISA's reporting and disclosure framework is intended to assure that employee benefit plans are operated and managed in accordance with prescribed minimum standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect their rights and benefits under employee benefit plans. Enhanced reporting and disclosure, through regulatory or statutory changes, should serve to mitigate risks of benefit losses by participants and beneficiaries, as well as facilitate compliance by plan administrators, thereby reducing litigation and penalty risks to plan administrators, fiduciaries and sponsors.

Timetable:

Action	Date	FR Cite
ANPRM	12/27/93	58 FR 68339
ANPRM Comment Period End	02/25/94	

Next Action Undetermined

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1210–AA44

DOL—Mine Safety and Health Administration (MSHA)

PROPOSED RULE STAGE

103. NOISE STANDARD

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 70; 30 CFR 71

Legal Deadline:

None

Abstract:

Hearing impairment is a serious occupational hazard in the mining industry. Many miners are consistently exposed to noise levels that are near maximum levels currently permitted by MSHA. As a result, miners may be suffering hearing impairment. MSHA is developing a proposed rule which would establish noise standards to apply to all mining.

Statement of Need:

MSHA's experience under its current standards for occupational exposure to hazardous noise levels indicates that these standards do not provide the protection intended. Many miners are exposed consistently to noise levels that are near the maximum currently permitted by MSHA. As a result, miners may be suffering hearing impairment notwithstanding MSHA's enforcement of existing noise standards. This proposed rule would address the permissible exposure levels, methods of measuring exposure, and methods for controlling exposure. The proposed rule also would include new requirements for audiograms to determine the effectiveness of control measures in reducing the amount of hearing damage in exposed miners.

In addition, MSHA's noise standards for coal mines differ from those for metal and nonmetal mines, and these standards also differ from OSHA's noise standards. MSHA's proposed rule would provide consistent requirements for all mines and increase the level of consistency between OSHA's and MSHA's noise standards.

Alternatives:

MSHA published an advance notice of proposed rulemaking which requested industry comments and data on a number of issues. Based upon its own research and experience, and data and information submitted to the record, MSHA is considering numerous alternatives on a wide variety of complex and controversial issues. For example, MSHA is considering (1) the respective roles of personal hearing protection and engineering controls in controlling miners' exposures; (2) lowering the permissible exposure level; or (3) whether or not to require a hearing conservation program, including audiometric testing, exposure monitoring, and miner training. This proposed rule will derive from MSHA's deliberations and decisions on these issues and alternatives and will seek to conform to OSHA's rule to the extent practical and appropriate.

Anticipated Costs and Benefits:

Depending on the form of the rule, MSHA expects costs to be incurred for engineering controls, personal hearing protection, audiometric testing, training, exposure monitoring, and recordkeeping. The major benefit of implementing the protection sought would be an average annual reduction of about 500 cases of hearing impairment from occupational noise exposure in mining, assuming that existing exposure levels and the number of miners remained constant and that miners were exposed for 20 to 40 years at these levels. The scope and nature of the proposed rule is currently under development and, thus, estimates of costs and benefits are preliminary.

Risks:

Noise is a serious occupational hazard in the mining industry. Occupational exposure to loud noise results in hearing loss and hearing impairment which affects both quality of life and functional capacity. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to MSHA's existing noise standards. In addition, cases of hearing loss reported to MSHA indicate that a significant number of these miners received all of their noise exposure under existing standards. This MSHA data is supported by States workers' compensation data.

Timetable:

Action	Date	FR Cite
ANPRM	12/04/89	54 FR 50209
ANPRM Comment Period End	06/22/90	55 FR 6011
NPRM	05/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1219–AA53

DOL—MSHA

104. CERTIFICATION OF SUPERVISORS

Legal Authority:

30 USC 811

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

This rulemaking would provide for Federal certification of certain supervisors in mining and the certification and identification of a "person-in-charge." Currently, under certain circumstances, MSHA certifies such individuals for underground coal mines. A Federal certification program would ensure that individuals in different States meet a minimum, uniform standard of competence for supervising tasks essential to maintaining a safe and healthy workplace.

Statement of Need:

This rulemaking would provide for Federal certification of supervisors in mining. Currently, many supervisors in mining are certified through various State programs with widely ranging requirements and enforcement policies. MSHA has accepted most of these State certifications for purposes of complying with Federal certification standards. However, inadequate workplace examinations frequently are found to be a contributing cause to deaths and serious injuries in mines. There is a need to ensure that persons in key positions in mining are properly trained and aware of responsibilities and to assure consistency throughout the States.

Alternatives:

Prior to a decision to pursue rulemaking, MSHA worked within the framework of existing State regulations supplemented by Federal certification for certain activities and where State certification programs were either absent or inadequate. This system was found to be inconsistent, ineffective, and inadequate in a number of situations. MSHA is in the process of developing and considering alternative regulatory approaches to address this problem.

Anticipated Costs and Benefits:

Costs are expected to be incurred for operator training (both initial and continuing education) of foremen and

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persons in charge; and development and administration of State programs. Benefits will include greater, and more knowledgeable, compliance with health and safety regulations, and a corresponding reduction in accidents and injuries, through the enhanced awareness and vigilance of the person in charge of the mining operations. The scope and nature of the proposed rule currently are under development and, thus, specific estimates of costs and benefits have not been determined at this time.

Risks:

MSHA experience over the past two decades indicates that the person in charge of specific activities during the mining process is in the best position to ensure that miners follow applicable safety procedures and to ensure that mine operators and other policy level personnel are aware of and correct hazardous conditions and practices. Failure of the supervisor to properly carry out this responsibility has resulted in accidents, deaths, and injuries. For example, the recent Southmountain disaster resulted from smoking in the underground mine. Not only did the supervisor fail to conduct the necessary checks to ensure that smoking materials were not taken underground, but the supervisor has been accused of condoning the practice and participating in it.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State

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RIN: 1219–AA86

DOL—MSHA

105. LEGAL IDENTITY

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 41

Legal Deadline:

None

Abstract:

Section 103(h) of the Mine Act authorizes MSHA to require mine operators to provide any information the Agency needs to perform its functions under the Act. MSHA needs to revise its existing regulations in 30 CFR part 41 to allow better identification and tracking of the controlling entities of mines.

Statement of Need:

Section 109(d) of the Mine Act requires each operator of a mine to file with the Secretary of Labor the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses. This proposal would revise 30 CFR part 41 which implements section 109(d) of the Mine Act. Due to changing conditions in the mining industry, MSHA has determined that the data currently obtained under 30 CFR part 41 is insufficient to allow the Agency to fully enforce the Mine Act. Over the last several years, there has been a significant change in the business structure of mines. The traditional mine operator is increasingly being replaced by contract production operators who have limited authority for decisions affecting health and safety. The revisions to part 41 are needed to enable the Secretary to identify all persons and organizations at a mine responsible for safety and health management decisions. The proposal would provide for an updated system for legal identity registration that will require disclosure of persons with actual authority for operation of the mine and for the decisions necessary for the correction of hazards. This will enable MSHA to direct enforcement where it will be most effective. All parties who have an investment in mining will recognize that safety and health is an important component of that investment.

Alternatives:

One nonregulatory alternative being considered is to place greater burden on the Agency's enforcement personnel to identify and track the many independent contractors currently working on mining property. MSHA is in the process of developing further alternative regulatory approaches to address this problem.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule currently are under development and, thus, estimates of costs and benefits have not been determined at this time. Costs are expected to be far less than $100 million annually. Benefits will include increased safety and health protection for miners because of improved compliance with health and safety regulations by persons who exercise control of mines. The proposal, which would require for the first time the listing of the Employer Identification Number, would facilitate the Secretary's ability to collect delinquent civil penalties.

Risks:

Often the person making the final decisions and controlling the allocation of resources for the correction of hazardous conditions is removed from the day-to-day operations of the mine. For this reason, MSHA is seeking better methods to identify and hold accountable those persons and organizations which control mining operations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	08/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1219–AA88

DOL—MSHA

FINAL RULE STAGE

106. DIESEL-POWERED EQUIPMENT FOR UNDERGROUND COAL MINES

Legal Authority:

30 USC 811; 30 USC 957

CFR Citation:

30 CFR 7; 30 CFR 70; 30 CFR 75

Legal Deadline:

None

Abstract:

MSHA currently has no approval, safety, or health regulations that specifically address the use of diesel-powered equipment in underground coal mines. MSHA has a mining equipment approval program which includes evaluation criteria for the use and maintenance of approved equipment. However, these existing approval regulations do not generally apply to the diesel-powered equipment now being used in underground coal mines. In 1988, a secretarial advisory committee made recommendations to the Secretary concerning safety and health standards for the use of diesel-powered equipment in underground coal mines. Based on those recommendations, MSHA published a proposed rule that included criteria for the approval of diesel engines and other related equipment; addressed exposure limits, monitoring, and reporting requirements for certain diesel emissions; and provided corresponding safety standards for the use of diesel-powered equipment in underground coal mines, including the safe storage and transport of diesel fuel and the training of mechanics.

Statement of Need:

The use of diesel-powered equipment in underground coal mines (mines that vent large amounts of methane) poses a substantial risk of fire or explosion due to the introduction of an ignition source (the engine) into a methane environment and due to the need for underground handling and storage of diesel fuel. The use of diesel-powered equipment in underground coal mines has increased from 175 pieces in 30 mines in 1977 to over 2,230 pieces in 150 mines by 1993. MSHA projects that, given the current state of the industry and assuming no change in existing regulations, this number would increase to about 2,720 units in 220 mines by the year 2000.

Between 1979 and 1992, MSHA investigated 10 diesel-equipment related fires in underground coal mines. Due to the methane gas and coal dust present, any fire in an underground coal mine potentially results in the loss of life. MSHA's mining equipment approval program includes evaluation criteria for the use and maintenance of certain types of mining equipment. However, these existing approval regulations do not generally apply to the diesel-powered equipment now being used in underground coal mines.

In July 1988, an advisory committee convened by the Secretary of Labor made recommendations to the Secretary concerning safety and health standards for the use of diesel-powered equipment in underground coal mines. Based on those recommendations, MSHA published a proposed rule that included criteria for the approval of diesel engines and other related equipment; addressed exposure limits, monitoring, and recordkeeping requirements for certain diesel emissions; and provided corresponding safety standards for the use of diesel-powered equipment in underground coal mines, including the safe storage and transport of diesel fuel and the training of mechanics.

Alternatives:

On January 6, 1992, MSHA published an advance notice of proposed rulemaking soliciting comments on the problem of health effects from occupational exposure to diesel exhaust particulates in the closed environment of the underground mine. MSHA has decided to continue to address the health effects from exposure to diesel particulates in a separate rulemaking.

MSHA considered third-party testing and certification of the results as an alternative to MSHA testing for the approval of diesel-powered equipment. The final rule may contain a combination of safeguards to address this problem.

Anticipated Costs and Benefits:

Costs are expected to be incurred for testing, modifying, and maintaining diesel-powered engines and equipment; maintaining diesel fuel storage areas; training diesel personnel; and ventilation and sampling procedures related to the control of diesel emissions. The major benefit of implementing the proposed regulatory protection would be a reduction in the risk of fires and explosions, and corresponding injuries, resulting from the use of diesel-powered equipment in underground gassy mines. Ensuring that such equipment meet specific criteria also would allow the utilization of advanced diesel technology, such as flame arresters, spark arresters, water scrubbers, and exhaust filters in the approval of diesel engine design. The scope and nature of the final rule is currently under development and, thus, although final estimates of costs and benefits have not been determined, costs are not expected to exceed $20 million. (MSHA's early estimates of $8 million are now considered too low.)

Risks:

The use of diesel-powered equipment in underground gassy coal mines poses a substantial risk of fire or explosion by introducing an ignition source through the engine itself and from the underground handling and storage of diesel fuel. Also, without specific criteria for the design, use, and maintenance of diesel-powered equipment, the Agency lacks an effective means to control hazards of acute and long-term exposure to diesel exhaust on the health of miners.

Timetable:

Action	Date	FR Cite
NPRM	10/04/89	54 FR 40950
NPRM Comment Period End	05/10/91	56 FR 1340[illegible]
Final Action	03/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1219–AA27

DOL—MSHA

107. AIR QUALITY CHEMICAL SUBSTANCES AND RESPIRATORY PROTECTION STANDARDS

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 58; 30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90

Legal Deadline:

None

Abstract:

MSHA's current air quality standards for exposure to hazardous substances were promulgated over 20 years ago. This final rule would update MSHA's permissible exposure limits applicable to hazards encountered in metal and nonmetal and coal mines, revise

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requirements for exposure monitoring, improve precautions for handling restricted-use chemicals, provide miner observation of monitoring records, and establish provisions for medical surveillance and transfer of miners required to use respirators and miners using certain carcinogens.

Statement of Need:

MSHA's current air quality standards for exposure to hazardous airborne contaminants were promulgated over 20 years ago. More recent medical studies and other documentation indicate that these standards may not provide the protection intended. For example, in the 5-year period from 1984-1988, 756 cases of various types of lung disorders in miners from a variety of causes were reported to MSHA. Based on this more recent information and experience under existing standards, MSHA is revising these standards to reduce the number of cases of all types of adverse health effects among miners which may result from exposures to airborne contaminants.

This generic rule would include a comprehensive revision update of MSHA's standards for harmful airborne contaminants; update permissible exposure limits; address methods of monitoring and controlling exposure; and replace outdated incorporations-by-reference with standards for the use of respiratory protection equipment. The final rule also would update asbestos standards; establish precautions for handling restricted-use chemicals; provide for miner observation of exposure monitoring; provide for notification to workers of their overexposures; allow miners access to their exposure monitoring records; and address medical surveillance and transfer provisions for miners required to use respirators and for miners using certain carcinogens.

Alternatives:

MSHA published a proposed rule which provided new air quality requirements for both coal and metal and nonmetal mines. Several public hearings were held. Based upon its own research and experience, public comments, and data and information submitted to the record, MSHA considered numerous alternatives on a wide variety of complex and controversial issues. For example, MSHA considered an alternative which would have limited the chemicals addressed to only those for which MSHA had knowledge of exposures occurring in mining. MSHA chose to continue with a comprehensive list derived, for the most part, from the American Conference of Governmental Industrial Hygienists' (ACGIH) Threshold Limit Values. This alternative is consistent with MSHA's existing standards and MSHA believes it offers better health protection because the potential exists for new chemicals to be brought onto mine property in the future and there would be no burden if a listed chemical were not present. MSHA's proposal also included medical surveillance and transfer for certain carcinogens.

Anticipated Costs and Benefits:

MSHA anticipates that, depending on the alternatives selected under the final rule, the mining industry would incur costs for engineering controls, exposure monitoring, personal protective equipment, medical surveillance, employee notification of overexposures, and recordkeeping. MSHA had estimated in its preliminary regulatory analysis (PRA), that the proposed rule would have had an incremental annual impact well under the $100 million effect on the mining industry, assuming full compliance with the existing rule. The PRA also projected that one benefit of implementing the protection sought would be a significant reduction of 22 fewer cases annually of adverse health effects from occupational exposure to airborne contaminants. The scope and nature of the final rule is currently under development and, thus, final estimates of costs and benefits have not been determined.

Risks:

During the extraction and processing of ore, coal, and rock at mines, miners are exposed to many different hazardous substances. These substances may be inherent in the ore itself; additives used during milling ore processing; chemicals used in cleaning, maintenance of equipment, or laboratory testing. The effect of these substances may range from allergic reactions to systemic toxicity. Some of them are capable of causing cancers, central and peripheral neuropathies, lung disease, liver and kidney damage, birth defects, and other systemic effects. In some instances, exposure to more than one substance may result in greater damage from a combined effect than from exposure to the individual substances. Some cause sensory irritation, which causes rhinitis, cough, sputum production, chest pain, wheezing and dyspnea. MSHA has identified all these health effects as causing a material impairment of health or functional capacity. The Agency believes that the health evidence forms a reasonable basis for proposing revisions to the current levels.

Timetable:

Action	Date	FR Cite
ANPRM	07/06/83	48 FR 31171
ANPRM	11/19/85	50 FR 47702
NPRM	08/29/89	54 FR 35760
NPRM Comment Period End	08/30/91	56 FR 29201
Final Action	09/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 1219–AA48

DOL—Occupational Safety and Health Administration (OSHA)

PROPOSED RULE STAGE

108. STEEL ERECTION (PART 1926)

Legal Authority:

29 USC 655; 40 USC 333

CFR Citation:

29 CFR 1926.750 (Revision); 29 CFR 1926.751 (Revision); 29 CFR 1926.752 (Revision)

Legal Deadline:

None

Abstract:

In the December 29, 1992, **Federal Register**, OSHA announced its intention to form a Negotiated Rulemaking Advisory Committee to negotiate issues associated with a revision to the existing steel erection standard. Four of the primary issues to be negotiated include the need to expand the scope and application of the existing standard, construction specifications and workplaces, written construction safety erection plans, and fall protection. Comments on forming the committee and nominations for

representation on the committee were due by March 29, 1993. The Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC), a 20-member Committee, was established in a **Federal Register** Notice on May 11, 1994; and the SENRAC charter (#1898 for 2 years) as signed by Secretary Reich on May 26, 1994. The first of a series of monthly SENRAC meetings was held in the Washington area on June 14-16, 1994. Other tentative dates of meeting are: July 11-13, 1994; August 16-18, 1994; September 20-22, 1994; November 8-10, 1994; and December 6-8, 1994.

Statement of Need:

The Occupational Safety and Health Administration (OSHA) plans to revise its construction safety standard concerning steel erection activities. The existing standard contains requirements for the safe erection of steel buildings as well as requirements dealing with fall protection for ironworkers during the erection process. OSHA announced in the December 29, 1992, **Federal Register** that it intended to form a Negotiated Rulemaking Advisory Committee to develop a proposed rule on this issue. The notice identified four primary issues to be negotiated including: the need to expand the scope and application of the existing standard; construction specifications and workplaces; written construction safety erection plans; and fall protection. Comments on forming the committee and nominations for representation on the committee were received through March 29, 1993. On May 11, 1994, OSHA announced establishment of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). The SENRAC has met in Bethesda, MD on June 14-16, 1994; Denver, CO on July 11-13, 1994; Boston, MA on August 16-18, 1994; and in Washington, DC on September 20-22, 1994.

The use of the negotiated rulemaking process is thought to be the best approach to resolving the issues involving steel erection safety since the Agency has attempted other approaches over the last 10 years without success. The negotiated rulemaking process is bringing the interested parties together in an attempt to achieve consensus on the issues of steel erection. Meeting monthly, the negotiated rulemaking advisory committee plans to complete the development of draft proposed regulatory text by June 1995. That product will be the basis for OSHA's notice of proposed rulemaking and public participation.

Alternatives:

An alternative to using the negotiated rulemaking process is to publish a notice of proposed rulemaking developed by Agency staff and consider the concerns of the affected interests through the public comment and public hearing process. It is anticipated that using this alternative would result in an extremely long and contentious rulemaking proceeding, with subsequent challenge in the Court of Appeals.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time. Costs are likely to exceed $100 million annually, and benefits will include the prevention of many of the dozens of fatalities and thousands of injuries associated with steel erection activities.

Risks:

The magnitude of the risk associated with steel erection activities is extremely high. It is estimated that over 100 workers are killed every year in falls from elevations during steel erection activities. Falls are currently the number one killer of construction workers, and since the erection of buildings necessarily involves high exposure to falls, the central focus of this rule will be to eliminate or reduce the risks associated with falls. All other construction trades are afforded a higher level of protection from falls by other rules in the construction safety and health standards.

Timetable:

Action	Date	FR Cite
Notice of Committee Establishment	05/11/94	59 FR 24389
NPRM	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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DOL—OSHA

109. MEDICAL SURVEILLANCE PROGRAMS FOR EMPLOYEES

Legal Authority:

29 USC 655(b)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Section 6(b) of the Act requires, where appropriate, provisions for medical surveillance in each 6(b) rulemaking for a harmful substance. A generic standard for medical surveillance would satisfy the requirements of the Act for future standards promulgated under paragraph (6)(b) of the Act, thus making available resources to deal with substantive issues. OSHA has collected considerable useful information as a result of the advance notice of proposed rulemaking published on September 27, 1988 (53 FR 37595). OSHA has also consulted with the Department of Health and Human Services, and is making full use of the expertise within the National Institute for Occupational Safety and Health to develop specific criteria to be used to determine when and what medical surveillance intervention may be appropriate. Medical surveillance requirements in existing standards, such as coke ovens, will be addressed in this rulemaking.

Statement of Need:

Overexposure to hazardous substances causes respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

The number of hazardous substances to which employees are exposed is increasing and appropriate medical surveillance may enhance employee protection from the adverse health effects caused by exposures to many of those substances. With a generic medical surveillance standard, OSHA would be able to provide protection for these workers more quickly than by using the traditional substance-by-substance rulemaking approach.

Of particular concern are the substances in OSHA's Z-tables (contained in 29 CFR 1910.1000). OSHA did not consider medical surveillance provisions in setting the permissible exposure limits (PELs) for these substances. Thus, there are

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several hundred toxic substances with PELs, but with no provision for any kind of medical oversight. Providing medical surveillance on a substance-by-substance basis for all of these chemicals would take a very long time. Some form of generic standard which would provide for variations in possible toxicity, exposure, and workplace conditions would improve worker health in a more efficient manner.

A generic rule could also simplify future rulemakings for specific substances or for updating the PELs on a regular basis. Depending on the ultimate form of the generic standard, it may be possible to devise provisions that would be referenced in future standards. In particular, those provisions that are essentially the same from standard to standard might be promulgated once on a generic basis, and future rules could simply deal with substance-specific issues.

OSHA has collected considerable useful information as a result of the advance notice of proposed rulemaking published on September 27, 1988 (53 FR 37595). OSHA has also consulted with the Department of Health and Human Services, and is making full use of the expertise within the National Institute for Occupational Safety and Health to develop specific criteria to be used to determine when and what medical surveillance intervention may be appropriate.

Questions which may be considered include: (1) In which situations is medical surveillance an effective means of detecting occupational illnesses? (2) What would be a good basis for defining those people who would benefit from medical surveillance? (3) How should the risks and uncertainties inherent in medical tests be evaluated? (4) What tools, other than medical exams, does the medical community use to improve detection of diseases? OSHA has completed a study of the effectiveness of current medical surveillance practices in a broad range of workplaces to help provide information on these and other issues.

Alternatives:

OSHA considers a variety of possible approaches to addressing safety and health problems, including issuing guidelines, using the "general duty clause" of the OSH Act to cite employers who are not providing a safe workplace, issuing hazard alerts, and issuing standards. OSHA believes that in this case, a standard is the appropriate approach. It is the only approach that will assure that employers provide employees with medical surveillance when they are exposed to the Z-table substances. Furthermore, the OSH Act states that where it is appropriate, health standards should include medical surveillance.

OSHA has considered several alternatives: (1) require employers to institute medical surveillance for all situations where substances in the Z-tables are present; (2) require employers to institute medical surveillance for all situations where substances in the Z-tables are present at exposure levels above an action level that would be established; (3) require employers to institute medical surveillance for all substances covered by the Hazard Communication Standard (29 CFR 1910.1200), plus physical and biological hazards; or (4) eligible employees to be determined by exposure greater than a certain percentage of the PEL, when appropriate; for exposure greater than or equal to ceiling values, where appropriate; unexpected exposures resulting from spills, fires, explosions or other unplanned releases; "substantial" exposures to chemicals without PELs; "subetantial" exposure to physical or biological hazards as defined by the exposure assessment standard; and by development of adverse health effects as a result of exposure to chemical, physical, or biological hazards.

Anticipated Costs and Benefits:

The major component of costs may include medical examinations of eligible employees, while benefits will include the prevention of fatalities and illnesses associated with a wide variety of occupational health hazards. The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time.

Risks:

Overexposure to hazardous substances causes respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

Timetable:

Action	Date	FR Cite
ANPRM	09/27/88	53 FR 37595
ANPRM Comment Period End	12/27/88	
NPRM	11/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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DOL—OSHA

110. EXPOSURE ASSESSMENT PROGRAMS FOR EMPLOYEES EXPOSED TO HAZARDOUS CHEMICALS

Legal Authority:

29 USC 655(b)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Section 6(b)(7) of the Act requires, where appropriate, provisions for exposure monitoring for substances regulated by OSHA. OSHA does not have exposure monitoring provisions in the air contaminants standards (29 CFR 1910.1000). A generic standard for exposure assessment would satisfy the monitoring requirements of the Act, thus enabling the Agency to provide relevant protection for workers covered by the air contaminants standard OSHA published an advance notice of proposed rulemaking on September 27, 1988 (53 FR 37591). OSHA intends to publish a notice of proposed rulemaking by August 1995.

Statement of Need:

Overexposure in the workplace to hazardous substances causes a variety of health problems, including respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death. Thus, exposure-assessment programs are necessary to protect employees from adverse health effects resulting from overexposure to hazardous substances. Exposure assessments allow an employer to determine the health risks to their employees, the effectiveness of control measures, and the degree of compliance with the OSHA regulations.

On September 27, 1988, OSHA published an advance notice of proposed rulemaking (ANPRM) requesting information on issues regarding exposure estimation and monitoring. Analysis of the information submitted indicates that exposure assessments are feasible and necessary to reduce the significant risk of adverse health effects occurring in exposed employees. Employers must know what exposures are occurring in order to ensure that they provide the proper protection for their workers. Moreover, as indicated by the comments, such exposure information may not be generated in the absence of a regulatory requirement.

Alternatives:

OSHA considers a variety of possible approaches to addressing safety and health problems, including issuing guidelines, using the "general duty clause" of the OSH Act to cite employers who are not providing a safe workplace, issuing hazard alerts, and issuing standards. OSHA believes that in this case, a standard is the appropriate approach. It is the only approach that will assure that employers determine exposure levels in their establishments. Furthermore, the OSH Act states that where it is appropriate health standards should include exposure monitoring. The Z-table substances have been without an explicit monitoring requirement and the continuing number of illnesses indicates that the time has come to rectify the situation.

Anticipated Costs and Benefits:

Expected costs may include the time required for employers to assess whether they utilize the substances covered, and measurement costs when necessary. Expected benefits include a reduction in overexposures to PEL substances (and perhaps others that have voluntary or recommended limits) when employers discover that they exceed the limits, and the associated reductions in the illnesses caused by workers' exposures at these high levels.

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time.

Risks:

Overexposure to hazardous substances causes respiratory infections, nausea, dizziness, respiratory allergies, heart disease, lung cancer, decreases in pulmonary function, other serious illnesses, and death.

Timetable:

Action	Date	FR Cite
ANPRM	09/27/88	53 FR 37591
ANPRM Comment Period End	12/27/88	
NPRM	08/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1218–AB01

DOL—OSHA

111. ERGONOMIC PROTECTION STANDARD

Legal Authority:

29 USC 655(b); 40 USC 333

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926; 29 CFR 1928

Legal Deadline:

None

Abstract:

The Bureau of Labor Statistics (BLS) has reported the number of reported "disorders associated with repeated trauma" have more than tripled since 1984. These serious, potentially crippling disorders account for 60 percent of all occupational illnesses reported to OSHA in 1991. Back injuries, which are reported separately to BLS, are about 10 times as prevalent as other musculoskeletal disorders. OSHA published an advance notice of proposed rulemaking (ANPRM) on August 3, 1992 (57 FR 34192). A 6-month comment period ended February 1, 1993. OSHA received about 266 comments. The Agency is currently in the process of analyzing these submissions, as well as available scientific literature and enforcement data. In addition, OSHA conducted a telephone survey of firms to collect more information about current programs in industry addressing problems related to ergonomics. All information available to OSHA will be used to determine the type of standard OSHA will develop as well as the specific requirements of the standard.

Statement of Need:

The Ergonomic Protection Standard (EPS) will establish requirements for employers to control risk factors that can cause or aggravate musculoskeletal disorders in exposed employees.

The occurrence of musculoskeletal disorders in employees is increasing rapidly. In 1991, the Bureau of Labor Statistics reported that 60 percent of the new illnesses in the workplace that year (224,000 cases) were "disorders associated with repeated trauma." In 1984, these disorders represented only 28 percent of the new illness cases reported. In addition to these illnesses, a large number of lower back injuries are reported each year.

The costs of musculoskeletal disorders are also increasing rapidly. Workers may become permanently disabled, or require costly treatments such as surgery. Musculoskeletal disorders account for an increasingly large proportion of workers' compensation costs, and for other costs such as those related to lost work days.

Alternatives:

OSHA is currently planning to promulgate a rule that applies to all industrial sectors. It also plans to cover all types of musculoskeletal disorders, in all parts of the body.

Some alternatives considered include limiting the application of the rule to certain industrial sectors, or limiting the types of disorders covered. Other alternatives will be considered as the rule is developed.

Anticipated Costs and Benefits:

Implementation costs associated with the proposed standard include primarily those related to identifying and correcting problem jobs using engineering and administrative controls. Benefits expected are those of reduced pain and suffering due to fewer work-related musculoskeletal disorders of the lower back, upper extremity and lower extremity, as well as lower workers compensation claims and costs, and reduced lost time. Secondary benefits may accrue from improved quality and productivity due to better designed work systems.

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Risks:

The data OSHA has obtained and analyzed indicate that employees are at a significant risk of developing or aggravating musculoskeletal disorders due to exposure to risk factors in the workplace. In addition, information OSHA has obtained from site visits, scientific literature, compliance experience, and other sources indicates that there are economically and technologically feasible means of addressing and reducing these risks to prevent the development or aggravation of such disorders, or to reduce their severity. These data and analyses will be presented in the preamble to the proposed rule.

Timetable:

Action	Date	FR Cite
ANPRM	08/03/92	57 FR 34192
ANPRM Comment Period End	02/01/93	
NPRM	12/00/94	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1218–AB36

DOL—OSHA

112. COMPREHENSIVE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

Legal Authority:

29 USC 655

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926; 29 CFR 1928

Legal Deadline:

None

Abstract:

OSHA has long recognized the utility of comprehensive safety and health programs, and adopted nonmandatory guidance for safety and health program management on January 26, 1989 (54 FR 3904). These guidelines were based on a distillation of safety and health management practices used by employers that have implemented successful comprehensive programs. The major elements OSHA has identified in the guidelines for effective occupational safety and health programs are: (1) management commitment and employee involvement; (2) worksite analysis to anticipate and prevent harmful occurrences; (3) hazard prevention afforded to employees; and (4) safety and health training. Successfully implemented programs generally have a lower incidence of occupationally related illnesses and injuries. In particular, OSHA has found that companies that have implemented comprehensive safety and health programs and are participating in its Voluntary Protection Program have lost-workday case rates that range from one-fifth to one-third the rates experienced by average worksites within their industrial classification. In addition, participating sites reported improved employee morale and productivity as a secondary benefit of their safety and health management activities. OSHA plans to publish a notice of proposed rulemaking that will address the need for all employers to develop and implement a safety and health program for all their workplaces. OSHA will be raising additional issues related to safety and health programs as they pertain to small businesses, those with 10 or fewer employees, and other issues as part of the rulemaking process.

Statement of Need:

This action would propose requirements for employers to develop and implement an occupational safety and health program in their workplaces. It is anticipated that such a program may include elements addressing management commitment, employee participation, worksite hazard identification and analysis, hazard prevention and control, and safety and health training.

The utility of implementing a safety and health program has been widely recognized. As a result, program elements are being developed by various organizations, including a number of States which have differing mandatory requirements that must be implemented by employers.

It appears that employers and employees would both benefit from a single, uniform national approach to the issue. As companies operate in various States, a Federal standard would ensure that they will not need to develop different programs for facilities in different States. In addition, a Federal rule will establish a national level of protection for all workers.

A standard for safety and health programs will reduce risks to workers by setting up a framework to enhance employer commitment to safety and health and by involving employees in the process of identifying and reducing hazards. Employees are often the persons most knowledgeable about identifying workplace hazards, and can help identify the most workable solution to protect themselves. Through the program, the employer, in consultation with employees, will be able to identify and prioritize hazards so that resources can be applied to maximize their impact on reducing injuries, illnesses and fatalities in the workplace.

Alternatives:

Several alternatives being considered include (1) a regulation similar to the guidelines previously issued by OSHA for safety and health program management (54 FR 3904, January 26, 1989); (2) a regulation based on State regulations; (3) or a regulation based on existing consensus standards.

Anticipated Costs and Benefits:

The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time. Costs are likely to exceed $1 billion annually, and benefits will include the prevention of many of the thousands of fatalities and millions of injuries and illnesses associated with a broad spectrum of occupational hazards.

Risks:

There is now increasing evidence that a requirement for all employers to address occupational safety and health programmatically, rather than strictly on a piecemeal, hazard-specific basis, may be beneficial for both regulated employers and their employees. Employers with successfully implemented programs generally have a lower incidence of occupationally related illnesses and injuries. In particular, OSHA has found that companies that have implemented safety and health programs and are participating in its Voluntary Protection Program have lost-workday case rates that range from one-fifth to one-third the rates experienced by average worksites within their industrial classification. In addition, participating sites reported improved employee morale and productivity as a secondary benefit of their safety and health management activities.

A number of States have promulgated requirements for safety and health management programs, and have found them to be an effective tool for improving worker safety and health. For example, the State of Washington has had requirements for employers to develop accident prevention plans for 47 years. Employers implementing such requirements have found resulting benefits to include a reduction in reported injuries and subsequently in costs for worker's compensation. The program requirements vary among the States in terms of employers covered, and specific elements to be implemented.

The General Accounting Office (GAO) recently issued a report to Congress regarding worksite safety and health programs. Entitled Worksite Safety and Health Programs Show Promise, GAO/HRD-92-68 (May 1992), it concluded that available evidence "suggests that comprehensive safety and health programs can have positive effects on safety and health at the worksite." GAO indicated that since there are limitations in the quantitative data on program burden and impact, they were only recommending at this point that OSHA require programs for certain high-risk employers. However, they also suggested that further information should be collected to determine objectively whether other employers should be covered as well.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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RIN: 1218–AB41

DOL—OSHA

113. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Legal Authority:

29 USC 655(b)

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

On August 25, 1993, OSHA was petitioned by the Labor Coalition to Fight TB in the Workplace to initiate rulemaking for a permanent standard to protect workers against occupational transmission of tuberculosis (TB). Although the Centers for Disease Control and Prevention (CDC) have developed recommendations for controlling the spread of tuberculosis in several work settings (correctional institutions, health-care facilities, homeless shelters, long-term care facilities for the elderly, and drug treatment centers), the petitioners stated that in every recent TB outbreak investigated by the CDC noncompliance with CDC's TB control guidelines was evident. After reviewing the available information, OSHA has preliminarily concluded that significant risk of occupational transmission of tuberculosis does exist for some workers and has decided to initiate a standard 6(b) rulemaking. The Agency is currently developing a proposed rule which would require certain employers to take steps to eliminate or minimize employee exposure to TB. OSHA already regulates biological hazards of bloodborne pathogens under 29 CFR 1910.1030 and believes that development of a TB standard is consistent with the Agency's mission and previous activity.

On August 25, 1993, OSHA was petitioned by the Labor Coalition to Fight TB in the Workplace to initiate rulemaking for a permanent standard to protect workers against occupational transmission of tuberculosis (TB). Although the Centers for Disease Control and Prevention (CDC) have developed recommendations for controlling the spread of tuberculosis in several work settings (correctional institutions, health care facilities, homeless shelters, long-term care facilities for the elderly, and drug treatment centers), the petitioners stated that in every recent TB outbreak investigated by the CDC, noncompliance with CDC's TB control guidelines was evident. After reviewing the available information, OSHA preliminarily concluded that significant risk of occupational transmission of TB does exist for some workers. The Agency is currently developing a proposed rule that would require certain employers to take steps to eliminate or minimize employee exposure to TB. OSHA already regulates biological hazards of bloodborne pathogens (e.g., HIV, hepatitis) under 29 CFR 1910.1030 and believes that development of a TB standard is consistent with the Agency's mission and previous activity

Alternatives:

Prior to a decision to publish a proposal, OSHA considered a number of options, including whether or not to develop an emergency temporary standard, an advance notice of proposed rulemaking, or to enforce existing regulations.

Anticipated Costs and Benefits:

Costs will be incurred by employers for engineering controls, respiratory protection, medical surveillance, training, exposure control, recordkeeping, and work practice controls. Benefits will include the prevention of occupationally related tuberculosis transmissions and infections, and a corresponding reduced risk of exposure among the general population. The scope and nature of the proposed rule are currently under development, and thus estimates of costs and benefits have not been determined at this time.

Risks:

TB is a contagious disease that causes infections of the lung, primarily, but which can occur in other areas of the body. Some of the symptoms are fatigue, weight loss, fever, night sweats, loss of appetite, persistent cough and shortness of breath, which may result in serious respiratory illnesses or death.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

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Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1218–AB46

DOL—OSHA

FINAL RULE STAGE

114. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (PART 1910)

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910.21; 29 CFR 1910.22; 29 CFR 1910.23; 29 CFR 1910.24; 29 CFR 1910.25; 29 CFR 1910.26; 29 CFR 1910.27; 29 CFR 1910.28; 29 CFR 1910.29; 29 CFR 1910.30; 29 CFR 1910.31; 29 CFR 1910.32; 29 CFR 1910.128; 29 CFR 1910.129; 29 CFR 1910.130; ...

Legal Deadline:

None

Abstract:

Standards for walking working surfaces and personal fall protection systems will be issued concurrently. Existing standards for walking and working surfaces need to be revised because they are out of date and restrict technological innovation. The proposed revision is performance-oriented and permits flexibility for compliance. In addition, existing standards do not contain criteria for personal fall protection systems. Consequently, requirements containing criteria for personal fall protection systems would be added to 29 CFR part 1910; Subpart I, Personal Protection Equipment, to enhance employee protection from injury and death due to falls to different elevations.

Statement of Need:

The Bureau of Labor Statistics (BLS) reported from the 1987 and 1988 annual surveys that falls accounted for 12 percent of all deaths of employees in workplaces with 11 or more employees. NIOSH reports that deaths from falls are the fourth leading cause of occupational fatalities, accounting for 10 percent of all deaths in the workplace.

The existing standards for walking/working surfaces are out of date, restrict technological innovation, and contain gaps in coverage. Currently, there are no standards for personal fall protection systems that cover all general industry applications. This action would revise the existing regulations for walking/working surfaces (29 CFR part 1910, subpart D) and add new coverage for personal fall protection systems to the current personal protective equipment standards (29 CFR part 1910, subpart I).

The new standards would use a performance-oriented approach to permit flexibility for compliance and to encourage innovation. New criteria for personal fall protection systems would be added to assure that this type of equipment functions properly and is used correctly.

The legal basis for this action is that employees in general industry are exposed to a significant risk of falls on the same level and falls from an elevation. However, this action is not specifically required by statute, and is not required by court order.

The new standards will reduce risks to workers by providing clearer, up-to-date requirements to minimize fall hazards. The standards will also cover new areas of fall protection such as special surfaces and manhole steps, and the use of qualified climbers. The new standards will also recognize personal fall protection systems as an acceptable option for fall protection, as well as provide the criteria to assure that such systems will safely stop a worker's fall.

Alternatives:

The following alternatives were considered for analysis:

- Retaining the existing regulations unchanged. A number of the existing standards are specification-oriented requirements that in some situations are inappropriate, unnecessarily costly, and inflexible. For example, guardrails would be needed for most roof perimeters, and fixed ladders on most towers and other structures would need to be fitted with cages or ladder safety devices. Also, personal fall protection systems, which are suited to many difficult fall protection situations, would not be allowed for use.
- Issuing the proposed rule without the qualified climber exemption. This option would require that all fixed ladders over 24 feet in height utilize cages or ladder-safety devices. Under this option, the benefits would be about the same as the proposed revision (option 3), but the first year capital cost of compliance would be increased by more than a factor of eleven.
- The proposed revision of the existing walking/working surfaces, and the proposed standard for personal fall protection issued on April 10, 1990 (55 FR 13360) which is described above.

Anticipated Costs and Benefits:

Modifications to existing requirements are expected to involve annual costs of less than $20 million. Benefits include the prevention of dozens of fatalities and thousands of injuries associated with falls and other work-surface-related incidents.

Risks:

Nearly all workplaces and employees covered by the Occupational Safety and Health Administration (OSHA) general-industry standards are affected by the standards for walking and working surfaces. These standards covered about 84 million workers in 1988. Examples of walking and working surfaces included in these standards are stairs, step bolts, manhole steps, ramps, ladders, floors, fall-protection systems, scaffolds, and mobile ladder stands.

The Bureau of Labor Statistics (BLS) reported from the 1987 and 1988 annual surveys that falls accounted for 12 percent of all deaths of employees in workplaces with 11 or more employees.

NIOSH, in their publication "Fatal Injuries to Workers in the United States, 1980-1989: A Decade of Surveillance," reports that deaths from falls are the fourth leading cause of occupational fatalities, accounting for 10 percent of all deaths in the workplace. According to the Insurance Institute for Highway Safety, falls are the second largest cause of occupational fatalities, next after deaths due to over-the-road motor vehicle accidents. Falls are second only to motor vehicle accidents as a cause of brain injuries.

OSHA has determined that hazards associated with walking and working surfaces persist and must be addressed with improved standards. The OSHA preliminary regulatory impact analysis estimated that 105,000 disabling injuries and 132 fatalities occur annually which are addressed by these standards.

Special studies have also been developed in order to gain a better understanding of the nature and causes of employee injuries, and the methods required for reducing their numbers. One such study on ladders, conducted by BLS, indicated that in about 55 percent of the accidents where employee injuries occurred, the ladder either moved, slipped, fell, or broke. The study also indicated that ladders were not secured or braced in about 50 percent of the injury incidents. Furthermore, in nearly 60 percent of the incidents, employees were carrying something in their hands at the time of the incident. The proposed standards will address these problems by requiring design criteria and employee training in the use of ladders. Another study of scaffold fatalities and catastrophes developed by OSHA indicated that 90 percent of fatally injured employees were performing their normal job activities. Fifty-five percent of these employees were performing their basic or primary work tasks.

Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	55 FR 13360
Hearing	09/11/90	55 FR 29224
Final Action	06/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

Because RINs 1218-AB05 and 1218-AA48 will be issued concurrently, they have been combined under this RIN 1218-AB04.

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RIN: 1218–AB04

DOL—OSHA

115. INDOOR AIR QUALITY IN THE WORKPLACE

Legal Authority:

29 USC 655

CFR Citation:

29 CFR 1910.1033

Legal Deadline:

None

Abstract:

Health complaints related to indoor air quality (IAQ) have increased significantly following energy conservation measures instituted in the 1970s. Such measures have reduced the infiltration of outside air, allowing the build-up of indoor air contaminants. Adverse health effects associated with indoor air contaminants are classified as: (1) sick building syndrome, which is characterized by general complaints that may include headaches, fatigue, nausea, mucous membrane (eye, nose, and throat) irritation, coughs, and muscle pain; and (2) building-related illness, which describes those specific medical conditions of known etiology which can often be documented by physical signs and laboratory findings. These include respiratory allergies and Legionnaires' disease. A particular concern with matters dealing with indoor air quality is exposure to environmental tobacco smoke (ETS). A wide range of health effects caused by ETS have been reported by the Surgeon General, the National Research Council, the Environmental Protection Agency (EPA), NIOSH, and private researchers, as well as by citizens reporting health effects due to ETS exposure while at work. These effects range from acute annoyance and eye and respiratory tract irritation to the development of chronic pulmonary disease, cardiovascular diseases, and lung cancer. OSHA published a request for information on Indoor Air Quality September 20, 1991 (56 FR 47892). Comment period was extended to March 20, 1992. After reviewing all relevant information, OSHA published a proposal on April 5, 1994 (59 FR 15968). Following publication of the proposal, OSHA extended the comment period to August 13, 1994. Public hearings are scheduled to begin on September 20, 1994.

Statement of Need:

Every day, more than 20 million American workers face an unnecessary health threat because of poor indoor air quality and environmental tobacco smoke (ETS) in the workplace. Thousands of heart disease deaths, hundreds of lung cancer deaths, respiratory disease, legionnaire's disease, asthma, and other ailments are linked to this occupational hazard. More specifically, it is estimated that each year there are approximately 700 cases of lung cancer and 13,000 deaths from heart disease among nonsmoking workers exposed to ETS. Further, America's workers are at risk of developing over a hundred thousand upper respiratory symptoms, as well as many thousands of headaches from poor indoor air quality. The Environmental Protection Agency estimates that 20 to 35 percent of all workers in modern mechanically ventilated buildings may experience air-quality problems that could result in illness, absenteeism, lost productivity, and discomfort.

Surveys have estimated that as many as 85 percent of the polled companies had some sort of smoking restriction in place, due to either concerns about production safety or employee health and safety. The fact that this is a national problem suggests that it should be solved at the Federal level.

OSHA published a Request for Information on September 20, 1991, to collect information to determine if a standard regulating indoor air quality is justified and feasible. Information was requested on the ventilation system performance necessary to optimize indoor air quality, techniques for improving ventilation, building maintenance programs, existing workplace indoor air policies, and local and State laws addressing indoor air quality.

After reviewing and analyzing available information, OSHA published a proposed rule on April 5, 1994. The proposal would require employers to write and implement indoor air quality compliance plans that would include inspection and maintenance of current building ventilation systems to ensure they are functioning as designed. In

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buildings where smoking is allowed, the proposal would require designated smoking areas that would be separate, enclosed rooms where the air would be exhausted directly to the outside. Other proposed provisions would require employers to maintain healthy air quality during renovation, remodeling and similar activities.

The provisions for indoor air quality would apply to 70 million workers and more than 4.5 million nonindustrial indoor work environments, including schools and training centers, offices, commercial establishments, health care facilities, cafeterias and factory break rooms. ETS provisions would apply to all 6 million industrial and nonindustrial work environments under OSHA jurisdiction.

Alternatives:

Prior to publishing the proposal, OSHA considered three alternatives: (1) institute a nonregulatory approach such as guidelines; (2) proceed with rulemaking on a comprehensive indoor air quality standard including passive tobacco smoke; and (3) proceed with rulemaking but issue separate rules for passive tobacco smoke and indoor air quality. OSHA determined that a standard was needed to address indoor air quality and that a comprehensive standard was optimal from both a public health perspective and an efficiency perspective.

Anticipated Costs and Benefits:

OSHA's preliminary estimate of the annual cost of compliance with the indoor air quality standard is $8.1 billion The most costly provision is for building systems operation and maintenance, $8.0 billion. However, OSHA estimates that employers will save $15 billion annually from implementing the standard, including efficiency and productivity improvements, cost reductions in operations and maintenance, and reduced incidence of property damage.

OSHA preliminary estimates that 5,583 to 32,502 cancer deaths and 97,700 to 577,818 coronary heart diseases related to occupational exposure to ETS will be prevented over the next 45 years. This represents 140 to 722 cancer deaths and 2,094 to 13,001 heart diseases each year. OSHA preliminarily estimates that the proposed standard will prevent 4.5 million upper respiratory problems over the next 45 years. This is approximately 105,000 upper respiratory symptoms per year. These estimates understate the prevalence of building-related symptoms since they only reflect excess risk in air conditioned buildings.

Risks:

Evidence in the record indicates that between 20-30 percent of office buildings are "sick," meaning that they have environments that may lead to a variety of health effects. Poor indoor air quality has been shown to result in serious respiratory illness and related diseases, including Legionnaire's disease, pulmonary tract infections, respiratory infections, asthma, respiratory allergies, and other ailments.

Exposure to ETS has been linked to heart disease, lung cancer, decreases in pulmonary function, low birthweight babies, miscarriages, birth defects and other illnesses and diseases. It is estimated that there will be approximately 700 cases of lung cancer and approximately 13,000 deaths from heart disease per year among nonsmoking workers exposed to ETS in the workplace.

Timetable:

Action	Date	FR Cite
Request for Information	09/20/91	56 FR 47892
Comment Period End	01/21/92	56 FR 47892
NPRM	04/05/94	59 FR 15968
NPRM Comment Period End	08/13/94	59 FR 30560
Final Action	00/00/00	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 1218–AB37

BILLING CODE 4510-23-P

DEPARTMENT OF TRANSPORTATION (DOT)

Statement of Regulatory Priorities

The Department of Transportation (DOT) consists of nine operating administrations and the Office of the Secretary, each of which has responsibility for a wide range of regulations. For example, we regulate safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, maritime, commercial space, and pipeline transportation areas. We regulate consumer and economic issues in aviation and provide financial assistance and write the necessary implementing rules for programs involving highways, airports, mass transit, maritime, railroads, and motor vehicle safety. We write regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. We establish tolls and operational requirements for the St. Lawrence Seaway. We regulate the construction and operation of bridges over navigable waters, the prevention of oil pollution, and the security of commercial aviation and passenger vessels. Finally, we have the usual housekeeping regulations governing everything from conflicts of interest to the Privacy Act to seismic standards for building construction.

While it carries this heavy regulatory workload, the Department has long been recognized as a leader in Federal efforts to improve and streamline the regulatory process and ensure that regulations do not impose unnecessary burdens. The Department was the first major Federal agency to establish a comprehensive internal management and review process for new and existing regulations.

This process is codified in the Department's regulatory policies and procedures, which ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. These policies and procedures emphasize that DOT regulations should be necessary, clear, timely, reasonable, and fair, without imposing unnecessary burdens on individuals, the private sector, or State or local governments.

For virtually all DOT rules, the initiating office must prepare an analysis that includes a discussion of the problem intended to be addressed, the major alternatives, the reasons for choosing one alternative over another, and the economic and other consequences of the action. The Department has a management process that permits key officials to follow closely the development of significant regulatory projects. The process is intended to ensure that these rulemakings are completed in a timely manner and facilitates top management's involvement in these actions.

The Department has also undertaken a number of new initiatives to improve the quality of its rulemaking. A number of examples are worth noting. We have taken a number of steps to streamline our concurrence process to enable us to respond more rapidly with needed regulations. We are attempting to provide better, easier public access to our rulemaking process through such things as more informal public meetings, increased use of telecommunications, and an electronic docket. We are also taking steps to improve public awareness and understanding of our rules through training, seminars, guidance material, electronic bulletin boards, and other techniques; for example, approximately 2,000 people attended a recent series of four conferences DOT held on regulatory requirements for drug and alcohol testing of transportation industry employees. We have been stressing improved coordination with other Federal, State, local, and tribal agencies or governments. We are trying to provide as much flexibility as possible for small entities and actively participated in a recent series of conferences and meetings on this subject cosponsored by the Office of Management and Budget and the Small Business Administration. We have increased our already considerable efforts to review existing regulations, recently identifying 10 new areas for review. We have continued our careful analysis of our rules and reemphasized through recent rulemakings our commitment to use non-command and control requirements, to provide maximum flexibility, and to reduce paperwork burdens; included in our initiative are a number of efforts to improve the harmonization of our new rules with those of other countries or international bodies. Finally, as the first department to use regulatory negotiation, we thought it important to stress our support of this valuable process and have recently identified over a half-dozen possible candidates for negotiation during the next year; the Federal Railroad Administration has already published a notice seeking public comment on its proposal to use regulatory negotiation for one of these candidates, a rulemaking addressing the hazards railroad workers face along rights-of-way from moving equipment.

Under the leadership of Secretary of Transportation Federico Peña, the Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: Department of Transportation regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. We will assess the risks addressed by our rules and their costs and benefits, including the cumulative effect. We will consider appropriate alternatives, including nonregulatory approaches. We will also make every effort to ensure that legislation does not impose unreasonable mandates.

The Department will apply this regulatory philosophy to achieving the objectives identified in the Department's January 1994 Strategic Plan. Five of the goals of this plan have regulatory components or implications:

- *Tie America Together* calls for integrating all modes of transportation.
- *Invest Strategically in Transportation Infrastructure* calls for promoting greater opportunities for minority and women owned businesses and identifying opportunities to provide strategic support to new transportation industries (e.g., the commercial space industry). Achieving these objectives calls for creating or improving DOT regulations to assist emerging businesses.
- *Promote Safe and Secure Transportation* involves a variety of activities with important regulatory components. These include enforcing highway safety requirements, improving safety at rail/highway and waterway/bridge intersections, improving the safety of hazardous material and pipeline transportation, and maintaining and advancing aviation, port, and waterway safety.
- *Actively Enhance Our Environment* also involves a variety of activities with important regulatory components. These include setting targets and deadlines for congestion reduction and demand management on highways, as well as implementing the Clean Air Act and Oil Pollution Act.

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•*Put People First* calls for ensuring mobility in all transportation modes for Americans with disabilities and making the Metropolitan Planning Organization planning process work. Both these objectives involve major, continuing regulatory activity by the Department.

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking.

OST is currently leading a major initiative to streamline the Department's regulatory process, to ensure that rulemakings move through the process more quickly and that deadlines are met. This initiative includes greater use of delegation of concurrence and approval authority for regulations; an improved tracking, target date and management reporting system; and greater use of internal rulemaking techniques (such as task forces and early management briefings) and means of getting greater public involvement (such as regulatory negotiation, public meetings, and special science or technical panels) that should expedite and improve rulemaking projects. The initiative also includes a major project to centralize and "computerize" the Department's rulemaking docket functions.

OST continues to provide periodically a 2-day training course on regulatory development and processing for DOT employees. OST also prepares guidance for use of regulatory personnel throughout the Department on such matters as compliance with Executive Orders, economic analyses, paperwork reduction, the Regulatory Agenda and Plan, and other regulatory policy matters.

While OST's principal role concerns making the Department's regulatory process run smoothly, OST also plays an important role in the substance of rulemaking projects having cross-modal significance. OST offices successfully coordinated the Department's effort that led to this year's massive alcohol and drug testing rulemaking. OST continues to coordinate implementation of these rules as well as work on follow-up rulemakings. OST coordinates the Department's response to requirements under the Americans with Disabilities Act and related statutes, and is currently working on rules concerning the accessibility of over-the-road buses and small commuter aircraft. OST is also leading a multimodal task force that will produce, later this year, a final rule revising the Department's disadvantaged business enterprise program regulation.

The Office of Commercial Space Transportation (OCST) within OST is responsible for providing regulatory guidance to the emerging U.S. commercial space transportation industry. U.S. aerospace companies, which have traditionally constructed launch vehicles and conducted launches as contractors of the U.S. Government, have been successfully marketing commercial services worldwide and are now conducting commercial launches on a regular basis. Newer commercial launch firms are developing and testing innovative vehicle technologies that will serve the important small-payload market. The Department, as the agency authorized by statute to license and otherwise regulate commercial space launch activities, is responsible for ensuring that these activities are conducted in a safe manner. At the same time, the Department must also shape its policies and requirements in a way that does not unduly burden the U.S. commercial space transportation industry. OCST, therefore, is seeking to streamline and further refine its regulatory processes, while continuing to consult with other agencies having responsibilities related to commercial space transportation.

Unites States Coast Guard (USCG)

The United States Coast Guard, an armed force of the United States, has many peacetime missions directly affecting the public. These missions include placing and maintaining aids to navigation, enforcing laws and treaties, protecting the marine environment, performing search and rescue, and ensuring marine safety and security. Various statutes authorize the Coast Guard to issue regulations in connection with these missions. The Coast Guard traditionally provides for pollution prevention and safety of passengers, crew, cargo, and ports through a framework of regulations that apply to U.S. flag vessels and foreign vessels that call at U.S. ports. The Marine Safety Council, a group of senior Coast Guard officers, establishes regulatory policy, reviews each rulemaking project, and advises the Commandant of the Coast Guard on regulatory matters.

The Oil Pollution Act of 1990 mandated over 30 different rulemaking projects, affecting pollution liability, personnel training and qualification, and vessel construction and equipment requirements. A number of regulations issued under the authority of the Oil Pollution Act of 1990 are now in effect, including requirements for financial responsibility, double-hull construction, and vessel and facility oil spill response plans. Other rulemaking projects, including requirements for hazardous substances response plans and structural and operational measures to prevent pollution from existing tank vessels, are in progress.

The percentage of foreign vessel traffic in U.S. ports has increased significantly over the past several years. As a result, the Coast Guard is shifting its emphasis from "flag state control" directed primarily at U.S. vessels to "port state control." Its goal will be to identify substandard foreign vessels and operators, and ensure deficiencies are corrected. Through Coast Guard initiatives at the International Maritime Organization (IMO), international standards have been raised to a level comparable with domestic requirements. The Coast Guard intends to increase its acceptance of international standards and eliminate or reduce inconsistencies with domestic regulations, while still ensuring an appropriate level of safety.

Additional emphasis will also be placed on sectors of the maritime industry that have previously not been regulated. As a result of recent casualties, legislation and regulations that would improve navigation and operation requirements for uninspected towing vessels are under consideration. Regulatory projects have been initiated to improve equipment and construction standards for uninspected fishing vessels. Legislation that would expand licensing and inspection requirements for fishing vessels is also under consideration.

Federal Highway Administration (FHWA)

In 1994-1995, the Federal Highway Administration (FHWA) will continue to promulgate regulatory actions to implement the Intermodal Surface Transportation Efficiency Act of 1991 and other relevant statutes and will revise existing regulations where appropriate. The FHWA will rigorously pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of the States can be increased.

The major areas in which the FHWA will initiate or continue to develop significant rulemaking actions in 1994 are in its ongoing zero-base review of the Federal Motor Carrier Safety Regulations and in implementing the Intermodal Surface Transportation Efficiency Act. The goals and objectives of the zero-base review project are to (1) focus on those areas of enforcement and compliance which are most effective in reducing motor carrier accidents, (2)reduce compliance costs, (3)encourage innovation, (4) clearly and succinctly describe what is required, and (5)facilitate enforcement. Through the zero-base review, the FHWA intends to develop a unified, performance-based regulatory system that will enhance safety on our Nation's highways while minimizing the burdens placed on the motor carrier industry. In addition, the FHWA is currently re-drafting the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. We plan to simplify the current process to facilitate responses by the accused motor carriers and drivers, and to offer alternative means of adjudicating the claims. We also intend to promulgate comprehensive rules covering the entire enforcement process from initial contact with the motor carrier to the final disposition of the claim.

National Highway Traffic Safety Administration (NHTSA)

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) include improving highway safety, reducing motor vehicle crashes and related fatalities and injuries, providing information and cost savings to consumers, and improving automotive fuel efficiency. The agency endeavors to pursue policies that encourage the development of nonregulatory approaches when appropriate in meeting its statutory mandate; to issue new standards and regulations or amendments to existing standards and regulations when appropriate; to ensure that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action; and to consider alternatives consistent with the Administration's regulatory principles.

In addition to numerous programs that focus on the safety and performance of the motor vehicle, the agency is engaged in a variety of programs to improve driver behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. This goal is accomplished by providing flexibility and encouraging initiatives in such areas as safety belt usage, motorcycle helmet usage, child safety-seat usage, activities aimed at combating drunk driving and driving under the influence of other drugs, and consumer information activities.

Furthering initiatives begun under the National Performance Review, NHTSA is conducting several program evaluations that are designed to review and evaluate the actual benefits, costs, and overall effectiveness of existing standards and regulations.

In its 1994 Regulatory Plan, NHTSA focuses on three significant rulemakings: to consider additional brake performance requirements for passenger cars; to upgrade the current interior impact standard to provide greater head injury protection from contact with upper vehicle interiors; and to establish corporate average fuel economy standards for light trucks for model years 1998-2006.

The actions included in the Regulatory Plan were undertaken in conformance with a congressional mandate, and reflect a continuation of NHTSA's regulatory reform policy objectives. The suggested Regulatory Plan actions on passenger car brakes and head-impact protection in vehicle interiors are supported by extensive research and crash data. Suggested light truck fuel economy standards were discussed in a report by the National Academy of Sciences, and carefully analyzed in a series of ongoing discussions between NHTSA, the Department of Energy and the Environmental Protection Agency.

NHTSA's regulatory program includes additional proposals that will be undertaken in order to allow design flexibility, promote new technology, and encourage market competition and consumer choice.

Federal Railroad Administration (FRA)

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety. This authority has been delegated to FRA by the Secretary of Transportation. The primary source of the authority is the Federal Railroad Safety Act of 1970, 45 U.S.C. 431 *et seq.*

FRA's general regulatory objective is to develop a regulatory program that meets the basic criteria for such programs set forth in Executive Order 12866 and is based on the regulatory principles enunciated in the Order. FRA's vision is a regulatory program that protects the health and safety of all persons affected by railroading in America and enhances the environment without imposing unreasonable costs on society. In the words of the Order, FRA seeks to create regulations that "are effective, consistent, sensible, and understandable."

More specifically, FRA's objectives are to implement the significant number of pending congressional mandates for railroad safety regulations in the most timely and reasonable manner possible and to address the most important regulatory issues on the agency's own agenda in the same manner.

Our current regulatory priorities include issuance of final rules on several important subjects: maintenance, inspection, and testing of grade crossing warning devices; track safety; power brake inspection and maintenance; and the crashworthiness and inspection of hazardous materials tank cars. (On the last subject, we work jointly with the Research and Special Programs Administration.) Each of these rules will embody cost-effective improvements in the way railroads currently conduct business that will, we believe, significantly increase safety performance in an industry that already has a generally sound safety record.

One especially important FRA initiative planned for the coming year is a proposed rule concerning safety standards for railroad equipment designed for high-speed passenger service. Amtrak, of course, plans to purchase a number of high-speed trainsets in the near future, and other purchases are increasingly likely. The higher speeds at which these trains will operate and their unique features require issuance of standards that address those factors. Such standards will provide the certainty that developers of such systems desire for design and cost estimation purposes. More important, these rules will ensure that important safety features are built into all high-speed equipment designed for use in America.

FRA's regulatory priorities clearly track the President's priorities with respect to the promotion of a safe and efficient transportation system that includes high-speed rail passenger service as a vital component.

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Maritime Administration (MARAD)

MARAD administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation's shipping needs for both domestic and foreign commerce and national security.

MARAD's regulatory objectives and priorities reflect its promotional mandate. Generally, regulation is undertaken only when required by statute, as was the case recently to implement Administration-sponsored legislation to strengthen America's shipyards, or when it would clearly provide a significant net benefit to the Maritime industry and no effective alternative has been identified. MARAD's entry in the present Regulatory Plan falls in the latter category and is designed to bring government procurement of ocean transport more in line with commercial practices. MARAD has been involved in ongoing discussions with the U. S. Department of Agriculture and the U. S. Agency for International Development concerning the proposed changes. Industry, the government and the public should benefit from the rule.

Research and Special Programs Administration (RSPA)

The Research and Special Programs Administration (RSPA) has responsibility for rulemaking under three programs. Through the Associate Administrator for Hazardous Materials Safety, RSPA administers regulatory programs under the Hazardous Materials Transportation Act (HMTA); the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990; and the Sanitary Food Transportation Act. Through the Associate Administrator for Pipeline Safety, RSPA administers regulatory programs under the Natural Gas Pipeline Safety Act of 1968; the Hazardous Liquid Pipeline Safety Act of 1979; and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The Associate Administrator for Research, Technology, and Analysis is responsible for collecting, evaluating, and disseminating the necessary tariff, financial, traffic, and consumer information to support the aviation programs of the Department under the Federal Aviation Act of 1958.

In the area of hazardous materials transportation, the regulatory priorities are to complete the rulemaking actions mandated by the 1990 amendments to the HMTA, including extending Federal regulation to the intrastate highway transportation of hazardous materials and improving hazardous materials identification systems. Other priorities are to issue final rules on detection of flaws in railroad tank cars and crashworthiness protection requirements for tank cars.

The regulatory priorities in the pipeline safety area are to manage the risks inherent in pipeline transportation through strategies directed at prevention, detection, and mitigation activities. Specific regulatory actions to implement these activities include excavation damage prevention programs mandating participation in one-call notification systems; increased inspection requirements using instrumented internal inspection devices; and prescribing the circumstances under which pipeline operators must use emergency flow restricting devices to mitigate spills.

In the aviation information area, the regulatory priorities are to examine ways to improve the Passenger Origin-Destination Survey, explore the issue of confidential treatment of domestic market data, fully automate tariff filings by air carriers, and eliminate routine filing of cargo tariffs.

Federal Aviation Administration (FAA)

The Federal Aviation Act of 1958, as amended, charges the Administrator of the FAA with promoting safety of flight of civil aircraft in air commerce. The stated FAA mission is to provide a safe, secure, and efficient global aviation system which contributes to national security and the promotion of U.S. aviation. The agency relies on its Regulatory Plan to provide that system.

The FAA currently has a major initiative to improve the regulatory process in the spirit of Executive Order 12866, which charges agencies to promulgate regulations that are effective, consistent, sensible, and understandable. As a matter of policy, the FAA will promulgate no regulation if a nonregulatory solution exists. Other innovations include:

- Involving the aviation community early in the regulatory process to obtain input, both on the rule and the economics, from affected parties prior to publishing a proposed regulation. The Aviation Rulemaking Advisory Committee represents members from all aviation interests and is presently working on the resolution of more than 70 issues.
- Improving the agency's economic analysis process. The agency sponsored a public symposium on June 28, 1994, to obtain public input for the improvement of the process.
- Harmonizing the U.S. aviation regulations with those of other countries. The harmonization of the U.S. regulations with the European Joint Aviation Regulations (JAA) is the FAA's most comprehensive long-term rulemaking effort. The differences worldwide in certification standards, practices, and procedures, and operating rules and procedures, must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators. Harmonization and standardization should help the U.S. aerospace industry, which contributed approximately $23 billion in trade surplus for 1990, to remain internationally competitive. While the overall effort to achieve this is global, it will be accomplished by many small, individual, nonsignificant rulemaking projects.
- Reviewing the regulations to identify those rules that are inconsistent with state-of-the-art technology or current industry practice. To enhance its ability to perform its statutory role without undue economic burden on the aviation industry, the agency announced a comprehensive review on January 10, 1994, asking interested parties to identify those regulations that are believed to be unwarranted or inappropriate. The comments provided in response to this notice will assist the agency in establishing its priorities for future regulatory changes. Other reviews will be conducted periodically.
- Improving the regulatory process. To improve its internal process, the FAA is experimenting with a new methodology of processing regulations that will require earlier involvement by all interested parties. Also, through an improved prioritization process, top management at the FAA now identifies certain projects that are designated as expedited rulemakings. These are generally simple, relieving rulemakings that are accomplished quickly through a dedication of resources. In addition, the FAA is working on a rulemaking proposal that would allow the use of a finding of equivalent level of safety that could be used in lieu of exemptions.

Top regulatory priorities of the FAA for 1994-1995 are those affecting security at airports, harmonization of U.S. regulations with those of other countries, certification and maintenance of aircraft, survival equipment, and drug enforcement. Those rulemaking efforts are described in detail in this edition of the Regulatory Plan of the United States Government.

DOT—Office of the Secretary (OST)

PROPOSED RULE STAGE

116. +LICENSING COMMERCIAL SPACE LAUNCH ACTIVITIES

Legal Authority:

49 USC app 2601 to 2623

CFR Citation:

14 CFR 400 to 415

Legal Deadline:

None

Abstract:

The Commercial Space Launch Act of 1984, as amended, grants the Department of Transportation's Office of Commercial Space Transportation authority to license and otherwise regulate commercial launches and the commercial operation of launch sites. The Office must ensure that commercial space launch activities are conducted in a manner that does not jeopardize public health and safety and the safety of property without, however, imposing unnecessary regulatory burdens on the commercial launch industry. The industry has grown in size and complexity since the original regulations were published in 1988, and the Office's licensing program continues to evolve to reflect these changes. This rulemaking would modify the current regulations to reflect a streamlined and more mature licensing regime developed over the past few years. Such changes would benefit the industry by reducing regulatory burdens, thus reducing costs.

This rulemaking is significant because of substantial public interest.

Statement of Need:

On April 4, 1988, the Office of Commercial Space Transportation (OCST) published final regulations for licensing commercial space launch activities. The regulations include the general administrative procedures of OCST as well as revised and expanded policies for licensing commercial launch activities. The industry has grown in size and complexity since the licensing regulations were first published in 1988. As a result, the Office has continued to refine its approach to licensing launch proposals in a manner that facilitates private sector launch activities. This rulemaking would modify the current regulations to reflect a more efficient licensing regime. In addition, the rulemaking will address the procedures and requirements applicable to the licensing of commercial spaceport operators.

Summary of the Legal Basis:

The Commercial Space Launch Act of 1984, as amended, 49 U.S.C. app. 2601 et seq., confers upon the Department of Transportation the responsibility to license and otherwise regulate launches by the private sector of launch vehicles and the commercial operation of launch sites. The Department's Office of Commercial Space Transportation carries out this responsibility for ensuring that these commercial launch activities do not jeopardize public health and safety, the safety of property, and national security and foreign policy interests of the United States.

Alternatives:

No alternatives were considered. OCST is required by the Commercial Space Launch Act to review and act upon applications for licenses to conduct commercial launches and commercial launch site operations. The Act does not permit OCST to follow alternative approaches in carrying out this responsibility. Therefore, although this rulemaking will make further refinements to the licensing process, the basic regulatory approach will not change.

Anticipated Costs and Benefits:

The rule should impose no additional costs on the commercial space transportation industry. By streamlining the licensing process that is already in place, the rule should benefit the industry by reducing the regulatory burden. The rule should benefit the Office by establishing a more efficient licensing mechanism, thereby reducing staff time.

Risks:

The primary purpose of OCST licensing is to ensure that commercial space launch activities do not jeopardize public health and safety and the safety of property and to ensure compliance with international obligations of the United States. Although the historical safety record of government and commercial launch firms is excellent, significant risks or hazards are presented by the launch of launch vehicles. Risks or hazards include possible explosions and fires involving liquid or solid rocket propellants and ordnance, as well as the generation of launch vehicle and payload debris. Launch accidents, including in-flight failures of guidance or destruction systems, may result in injury to launch personnel and the public and in damages to or loss of government and private property. The potential maximum probable loss for injuries and damages from a single launch typically is in the tens of millions of dollars. The OCST licensing process, in conjunction with U.S. Government launch facilities' range safety control procedures, are directed at ensuring these launch activities do not jeopardize public safety or U.S. national interests. In addition, OCST imposes financial responsibility requirements on licensees to protect the public and the government, pursuant to the 1988 amendments to the Commercial Space Launch Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Analysis:

Regulatory Evaluation 10/00/94

Agency Contact:

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RIN: 2105–AB85

DOT—OST

117. +TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES

Legal Authority:

49 USC 322; PL 101-336, Americans with Disabilities Act (ADA)

CFR Citation:

49 CFR 27

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Legal Deadline:

Final, Statutory, May 16, 1994.

Abstract:

The Department is seeking responses to questions concerning requirements for accessibility of over-the-road buses (OTRBs). DOT is required to consider the recent report of the Office of Technology Assessment in drafting OTRB access rules. This project is considered significant because of substantial public interest.

Statement of Need:

This regulation is necessary for the Department to comply with the ADA requirement that it issue a regulation governing accessibility in OTRB service for persons with disabilities.

Summary of the Legal Basis:

Under the ADA, the Department must issue regulations concerning OTRBs. OTRBs are buses with a high passenger deck and a below-deck baggage compartment, of the kind used by Greyhound, other intercity and local fixed-route operators, and charter and tour companies.

When Congress enacted the ADA, it directed DOT to establish limited interim regulations for OTRBs. These interim regulations, which DOT published as part of its 1991 ADA rules, call for OTRBs to provide boarding assistance to individuals with disabilities and to carry their wheelchairs in baggage. By statute, these interim rules could not require lifts or other specific boarding devices.

Based on concerns about the economic weakness of the intercity bus industry and the potential for reductions in OTRB service (particularly to rural areas), Congress directed the Office of Technology Assessment (OTA) to study issues relating to demand, technology, cost-effectiveness, and service impacts of implementing OTRB access. OTA published its report in May 1993. OTA took the view that the ADA requires new OTRBs to be lift-equipped and requires passengers to be able to ride in their own wheelchairs (the highest cost approach to achieving OTRB accessibility). Under OTA's interpretation of the statute, DOT would have little regulatory discretion to fashion more flexible requirements.

Because OTA's study left many questions unanswered, DOT issued, in October 1993, an advance notice of proposed rulemaking (ANPRM) to obtain views on the Department's discretion under the statute and technical, cost and service data critical to the development of a full range of OTRB regulatory options. The Department also held a public workshop, attended by bus industry and disability groups, to discuss OTRB accessibility options.

The gaps in the OTA study, and the Department's consequent need to begin the regulatory process with an ANPRM, have put the Department behind the timetable established in the ADA, which called for a final rule to be issued within one year of the OTA report (i.e., May 1994).

The next step in the process is for the Department to issue a notice of proposed rulemaking (NPRM).

Alternatives:

The Department analyzed comments to the docket in an advance notice of proposed rulemaking and held a workshop involving representatives of interested parties to obtain views on the Department's discretion under the statute for achieving accessibility in OTRB device and technical, costs, and service data. As a result of these activities, several options have been suggested for achieving accessible OTRB service. Option I assumes lift equipage of 100 percent of OTRB's. Option II assumes an accessible OTRB system based primarily on station-based lifts plus ramps and a boarding chair on 100 percent of OTRBs vs. one based on Scalamobiles (a powered stair climber device) on 100 percent of OTRBs. Option III assumes 25 percent lift-equipped OTRBs and 75 percent Scalamobiles. All options assume a 10-year implementation period.

Anticipated Costs and Benefits:

Cost information is very sparse and our estimates are still in flux. Presently, the anticipated annual cost of option I would be $67-$78 million. The high and low cost range reflects differences in lift types, other OTRB and terminal access features, personnel training and forgone revenue from seat and/or package loss. The anticipated annual cost of option II would be $16-$19 million. The high and low costs reflect differences between an accessible OTRB system based primarily on station-based lifts plus ramps and boarding chairs on 100 percent of OTRBs vs. one based on Scalamobiles on 100 percent of OTRBs.

Option III annual costs would be estimated at $40-$45 million based on 25 percent lift-equipped OTRBs and 75 percent of the fleet with Scalamobiles.

Option I would permit persons with disabilities to schedule trips at the last minute and they could remain in their mobility devices while traveling. They would not have to transfer to a vehicle seat. This is the option that would be favored by the disability community, but is the most costly option to the OTRB industry. The high cost of complying with this option could drive some companies out of business.

Under option II, OTRB operators would not be required to purchase buses equipped with vehicle-based lifts or securement locations. They would be required to ensure, within a given period of time, that individuals with disabilities, including wheelchair users, could use all services the operator provides. Wheelchair users would transfer to a vehicle seat, rather than riding in their own mobility aids.

Under option III, OTRB operators, within a given period of time, would have to obtain a certain percentage of lift-equipped buses as part of their mix of services to passengers with disabilities. This approach combines the flexibility of option II with a requirement for a modest level of fleet accessibility, which would enable passengers to ride in their own wheelchairs but would require advance notice to schedule trips. This responds partially to concerns of disability community comments on the Department's ANPRM. Bus industry commenters expressed at least qualified support for this approach.

Risks:

Because of the economic weakness of the intercity bus industry, the Department is concerned that any one of the options for bringing about accessible OTRB service could potentially bring about a reduction in intercity bus service for all users. This could have a significant negative impact on current intercity bus users, most of whom have low incomes and may not have ready access to other means of affordable transportation.

Timetable:

Action	Date	FR Cite
ANPRM	10/12/93	58 FR 52735
ANPRM Comment Period End	11/26/93	
NPRM	10/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Evaluation

Additional Information:

Telephone number for TDD is (202) 755-7687.

Agency Contact:

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RIN: 2105–AC00

DOT—OST

FINAL RULE STAGE

118. +NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND IN AIR TRAVEL (AIR CARRIER ACCESS ACT)

Legal Authority:

29 USC 794

CFR Citation:

49 CFR 27; 14 CFR 382

Legal Deadline:

None

Abstract:

This action would amend portions of the rule implementing section 504 of the Rehabilitation Act of 1973 concerning federally assisted airport facilities to comport with 14 CFR 382, implementing the Air Carrier Access Act of 1986. The proposed rule would also apply the section 504 rule to air carriers receiving Federal financial assistance under the essential air service program. In addition, this action would amend 14 CFR 382 to implement the Air Carrier Access Act with respect to lifts for small commuter aircraft and airport facility accessibility. This rulemaking is considered significant because of substantial public interest.

Statement of Need:

This rule is necessary to further implement the Air Carrier Access Act of 1986.

Summary of the Legal Basis:

In the Department's regulation implementing section 504 of the Rehabilitation Act of 1973, which went into effect in 1979, the Department required federally assisted airports to play a role in boarding assistance for individuals with disabilities.

Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by level-entry boarding platforms and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are suitable devices available for enplaning and deplaning handicapped passengers.

Alternatives:

The Department considered three approaches for assisting persons with disabilities in boarding and deboarding aircraft having fewer than 30 seats at airports where level boarding equipment was not provided. Air carriers and airport operators have the option of using lifts, ramps, or other suitable devices, not normally used for freight, to assist persons with disabilities in enplaning and deplaning small commuter-type aircraft.

Anticipated Costs and Benefits:

The estimated annual compliance costs for carriers and airports of the NPRM's requirements would range from $1.0 to $8.3 million in 1993 dollars. The estimated cost depends upon the number and type of lift boarding devices assumed to be needed at different size airports.

The benefits that would accrue from removing barriers to boarding and deboarding commuter type aircraft cannot be quantified, but could well include increased employment opportunities for persons with disabilities, as well as an enhanced quality of life associated with expanded travel opportunities. Other potential benefits could include reduced injuries and associated medical cost to airline passengers and to airline employees who hand-carry passengers onto aircraft because there is no other means of boarding assistance available.

Risks:

Requiring air carriers and air carrier airports to purchase and maintain boarding assistance equipment could cause financial hardship on these entities. However, not having such equipment available could result in injuries to passengers and employees who continue to hand-carry passengers with disabilities onto aircraft. While hand-carrying persons with disabilities in boarding chairs up and down airstairs on commuter planes (those with less than 30 seats) is not required by the Department's Air Carrier Access Act regulation, such service is sometimes volunteered by carrier employees.

Timetable:

Action	Date	FR Cite
NPRM	03/06/90	55 FR 8081
NPRM Comment Period End	05/04/90	
Second NPRM	09/10/93	58 FR 47681
NPRM Comment Period Extended to 01/07/94	11/30/93	58 FR 63154
Second NPRM Comment Period End	12/09/93	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 03/06/90 (55 FR 8081)

Additional Information:

The telephone number for TDD is (202) 755-7687; a taped copy of the NPRM is available on request. The issue of lifts for small commuter aircraft was removed from RIN 2105-AB60 and consolidated into this proceeding.

Agency Contact:

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RIN: 2105–AB62

DOT—U.S. Coast Guard (USCG)

PRERULE STAGE

119. • +FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (94-048)

Legal Authority:

33 USC 1321(j)

CFR Citation:

33 CFR 154

Legal Deadline:

None

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Abstract:

This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause substantial or significant and substantial harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. This would be defined as any facility capable of transferring hazardous substances regulated under 46 CFR Subchapters D and O to or from a vessel in quantities of 250 barrels or more. A separate rulemaking under RIN 2115-AE88 would address hazardous response plan requirements for tank vessels. This action is considered significant because of substantial public interest.

Statement of Need:

This rulemaking is intended to reduce the impact from hazardous substance spills from vessels and marine transportation-related facilities.

Summary of the Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 USC 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate interim rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under section 1321, "hazardous substances" are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. However, the Coast Guard has identified only 83 hazardous substances currently transferred in bulk by marine transportation-related facilities.

Alternatives:

The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some spilled substances may not be recoverable from the water and other actions may be necessary. Plans would be required, by statute, to address responses to a "worst case discharge." For facilities, a "worst case discharge" is "the largest foreseeable discharge in adverse weather conditions." The Coast Guard is considering requirements for response plans for less than "worst case discharges," similar to the requirements adopted in the vessel and facility response plans rules for oil discharges. Additionally, as in the vessel and facility response plans for oil discharges, owners or operators are required by statute to maintain contracts or other acceptable arrangements with spill-response organizations.

Anticipated Costs and Benefits:

The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts with spill response organizations, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances and a reduction in the severity of the impact of accidental hazardous substance discharges. The Coast Guard does not yet have sufficient information to estimate the potential monetary costs and benefits of this rule. A key element in developing effective regulations for hazardous substance response plans will be the development of an approach for addressing different types of hazardous substances.

Risks:

Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and, in certain cases, help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of facilities involved in transferring hazardous substances in bulk or have a significant impact on the volume of hazardous substances shipped by marine transportation-related facilities. Most facilities involved in transferring hazardous substances in bulk have developed plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Analysis:

Regulatory Evaluation

Agency Contact:

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RIN: 2115–AE87

DOT—USCG

120. • +TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (94-032)

Legal Authority:

33 USC 1321(j)

CFR Citation:

33 CFR 155

Legal Deadline:

None

Abstract:

This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a tank vessel carrying bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to vessels operating on the navigable waters or within the Exclusive Economic Zone (EEZ) of the U.S. that carry bulk hazardous substances regulated under 46 CFR Subchapters D and O. A separate rulemaking under RIN 2115-AE87 would address hazardous substances response plan requirements for marine transportation-related facilities. This action is considered significant because of substantial public interest.

Statement of Need:

This rulemaking is intended to reduce the impact from hazardous substance spills from vessels.

Summary of the Legal Basis:

Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 USC 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate interim rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under section 1321, "hazardous substances" are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. However, the Coast Guard has identified only 83 hazardous substances currently transferred in bulk by marine transportation-related facilities.

Alternatives:

The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some spilled substances may not be recoverable from the water and other actions may be necessary. Plans would be required, by statute, to address responses to a "worst case discharge." For vessels, a "worst case discharge" is "a discharge in adverse weather conditions of its entire cargo." The Coast Guard is considering requirements for response plans for less than "worst case discharges," similar to the requirements adopted in the vessel and facility response plans rules for oil discharges. Additionally, as in the vessel and facility response plans for oil discharges, owners or operators are required by statute to maintain contracts or other acceptable arrangements with spill response organizations.

Anticipated Costs and Benefits:

The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts with spill-response organizations, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances and a reduction in the severity of the impact of accidental hazardous substance discharges. The Coast Guard does not yet have sufficient information to estimate the potential monetary costs and benefits of this rule. A key element in developing effective regulations for hazardous substance response plans will be the development of an approach for addressing different types of hazardous substances.

Risks:

Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and, in certain cases, help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of vessels involved in transferring hazardous substances in bulk, or have a significant impact on the volume of hazardous substances shipped by vessel. Most vessels carrying hazardous substances in bulk have developed plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Analysis:

Regulatory Evaluation

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RIN: 2115–AE88

DOT—USCG

PROPOSED RULE STAGE

121. +STRUCTURAL AND OPERATIONAL MEASURES TO REDUCE OIL SPILLS FROM EXISTING TANK VESSELS WITHOUT DOUBLE HULLS (91-045)

Legal Authority:

46 USC 3703; PL 101-380

CFR Citation:

33 CFR 157

Legal Deadline:

Final, Statutory, August 26, 1991.

Abstract:

This rulemaking will address the interim measures existing vessels must take to provide substantial protection to the environment. The interim measures will apply to existing vessels until the vessel must comply with the double-hull regulations. No tank vessel without a double hull may operate after January 15, 2015. Interim measures are to include structural and operational standards to provide substantial protection to the environment that are economically and technologically feasible. This rulemaking is considered significant due to substantial public interest and environmental impact.

Statement of Need:

This rulemaking is intended to reduce the likelihood of, and impact from, oil spills from existing tank vessels.

Summary of the Legal Basis:

Section 4115(b) of OPA 90, codified at 46 USC 3703a, mandates that the Secretary of Transportation "... issue a final rule to require that tank vessels over 5,000 gross tons ... comply until January 1, 2015, with structural and operational requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible."

Alternatives:

In 1989, the Coast Guard commissioned the National Academy of Sciences to conduct a study of alternative tank vessel designs. The study addressed the feasibility and ramifications of implementing various design options. An advance notice of proposed rulemaking (ANPRM) was published on November 1, 1991, and solicited comments on a number of

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possible structural and operational measures. Comments were specifically solicited on the number of vessels affected, technical feasibility, and costs of various measures. Based on comments received and the Coast Guard's own analysis, the range of possible alternatives was narrowed. Remaining options included protectively located noncargo tanks (PL/Spaces), emergency rapid transfer systems, emergency rescue systems, underpressure systems, and hydrostatically balanced loading (HBL). Following publication of a notice of proposed rulemaking (NPRM) on October 22, 1993, the Coast Guard conducted a public meeting and received additional comments. Several comments expressed concern over the effectiveness of some of the proposed structural and operational measures, such as protectively located spaces and hydrostatic balance loading. Therefore, the Coast Guard is considering a three-prong approach. A partial final rule addressed emergency lightering equipment and preartival notification requirements. Future rulemakings will address the other structural measures and solicit additional comments.

Anticipated Costs and Benefits:

The costs of the proposed rule will depend on what combination of alternatives is eventually selected. Costs may range from approximately $50,000 to create PL/Spaces on a small, pre-MARPOL ship to approximately $25 million to add a double bottom to a very large crude carrier. Lost cargo capacity may also impose substantial costs for certain alternatives, especially HBL, double sides, and double bottoms. The principal benefit of the proposed rule will be a potential reduction in oil spillage into U.S. waters. This should result in reduced cleanup costs and natural resource damages. The proposed regulation would provide environmental benefits during the period of time that single-hull vessels remain in service.

Risks:

The effectiveness of this rulemaking will depend on the combination of alternatives selected.

Timetable:

Action	Date	FR Cite
ANPRM	11/01/91	56 FR 56284
ANPRM Comment Period End	12/31/91	
ANPRM Comment Period Extended to 01/30/92	01/13/92	57 FR 1243
NPRM	10/22/93	58 FR 54870
NPRM Correction	11/19/93	58 FR 61143
Meeting Notice and Extension of Comment Period to 02/21/94	12/16/93	58 FR 65683
NPRM Comment Period End	12/20/93	
Final Rule; Arrival Notice and Lightering Equipment	08/05/94	59 FR 40186
SNPRM; Operational Measures	03/00/95	
SNPRM; Structural Measures	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation; Environmental Impact

Additional Information:

This entry was previously titled Existing Tank Vessel Hull Requirements. The correct docket number is 91-045. The rulemaking project has been divided into three distinct parts: A final rule was published that requires an advance notice of arrival for all tank vessels 5,000 GT or more entering U.S. ports and the carriage of lightering equipment on these vessels. A supplemental notice of proposed rulemaking will be issued for Structural Measures and an SNPRM will be issued for Operational Measures.

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RIN: 2115–AE01

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

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122. +CORROSION CONTROL PROGRAM

Legal Authority:

49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1501; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 49 USC 106(g)

CFR Citation:

14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline:

None

Abstract:

This project would ensure that airplanes used or not used in common carriage in air transportation have a comprehensive corrosion prevention program within their maintenance or inspection program. In April 1988, a commercial transport airplane experienced an in-flight decompression and separation of approximately 18 feet of the fuselage skin and structure at the top of the airplane. The airplane had been in service for 19 years and had flown almost 90,000 flights. The National Transportation Safety Board concluded that the failure of the airline to detect skin disbonding resulted in corrosion and metal fatigue leading to separation of the airplane's skin structure. This rulemaking is considered significant because of substantial public interest.

Statement of Need:

The FAA plans to promulgate a rule that would require persons operating certain airplanes in air transportation to include in their maintenance or inspection program an FAA-approved corrosion prevention and control program. This action is necessary to preclude an unsafe condition in airplanes due to the effects of corrosion.

Summary of the Legal Basis:

Federal Aviation Act of 1958 (P.L. 85-504, October 24, 1978; P.L. 96-192, February 15, 1980)

Alternatives:

The FAA may rely upon airplane operators to develop comprehensive corrosion prevention and control programs as part of their normal maintenance programs or the FAA may rely upon the aviation community to develop comprehensive corrosion prevention and control programs for individual airplane models and recommend rulemaking to implement them in the fleet.

Anticipated Costs and Benefits:

The FAA has implemented corrosion prevention and control programs for eleven models of airplane as part of the aging airplane program. The cost of these programs range from $3,000 to $30,000 per year depending upon the construction of the airplane model. The expected benefit of the proposed rule is a reduction in the risk of accidents related to corrosion that might otherwise occur. The FAA holds that the potential benefits of this proposed rule exceed the expected costs.

Risks:

The U.S. fleet continues to age and recent accident history may not be representative of future conditions or of future exposure to such conditions. The FAA cannot assess the exact proportion or severity of potential accidents that would be averted by issuance of this proposed rule. It is the FAA's position that the requirements for operators to develop and implement corrosion prevention and control programs would result in more consistent conduct of necessary maintenance and in an associated increase in overall safety.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 09/00/95

Additional Information:

Project Number: AFS-93-382R

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RIN: 2120–AE92

DOT—FAA

FINAL RULE STAGE

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123. +AIRCRAFT FLIGHT SIMULATOR USE IN PILOT TRAINING, TESTING, AND CHECKING AND AT TRAINING CENTERS

Legal Authority:

49 USC 1301; 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352; 49 USC 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1502; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 49 USC 106(g)

CFR Citation:

14 CFR 61; 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135; 14 CFR 141; 14 CFR 142

Legal Deadline:

None

Abstract:

This action would amend the pilot and flight instructor certification rules to include additional use of aircraft, aircraft flight simulators, and flight training devices for pilot training, testing, and checking. This notice also would propose a new part 142 that would govern a new concept called training centers. This new concept will emphasize the use of flight simulators in training applicants for pilot certificates. This rulemaking is considered significant because of substantial public interest; it involves a major change in the way industry trains applicants.

Statement of Need:

The training roles of several elements of the aviation community have expanded during the past 10 years. In October 1989, an advisory committee studying matters relating to training and qualification recommended that the FAA standardize the use of flight simulators and flight training devices, provide a means to certificate entities called training centers, and permit the training centers to apply for national approval of core curriculums that could be used by individuals receiving training. This rulemaking project responds to this recommendation by including the concept of a certificated training center.

Summary of the Legal Basis:

Secs. 601 and 602 of the Federal Aviation Act: Section 601 empowers the Administrator to prescribe the minimum standards governing appliances such as simulators; section 602 empowers the Administrator to issue airmen certificates.

Alternatives:

Since the FAA accepted the recommendations of the advisory committee, it will not pursue any nonregulatory options.

Anticipated Costs and Benefits:

The total 10-year cost to implement part 142 is estimated to be about $1.3 million discounted. The benefits of this rule, however, far outweigh its costs. Most of the cost savings come from lowered operations costs. The estimated savings from existing simulator training centers training pilots will be $808 million, discounted over the next 10 years.

Risks:

Flight simulators will expand under the changes in the simulator rule. The future use of simulators should reduce the need for pilot instructional flights and the incidence of instructional flight accidents. Each year many student pilots and their instructors die in instructional flight accidents. In the 10-year period 1983 through 1993, the National Transportation Safety Board reported 307 fatal instructional accidents resulting in 553 fatalities. The FAA estimates the average value of such an accident equals $4.8 million. Instructional flight accidents are a risk that would follow in the absence of the simulator rule.

Timetable:

Action	Date	FR Cite
NPRM	08/11/92	57 FR 35888
NPRM Comment Period End	12/09/92	
SNPRM; Comment Period End 03/22/93	02/19/93	58 FR 9514
Final Action	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 08/11/92 (57 FR 35888)

Additional Information:

This project was formerly entitled "Aircraft Simulator Use in Airman Training and Certification." Project Number AFS-83-105R.

The SNPRM clarified or eliminated certain provisions found to be unclear or inappropriate for present consideration.

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RIN: 2120–AA83

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DOT—FAA

124. +UNESCORTED ACCESS PRIVILEGE

Legal Authority:

49 USC 1354(a); 49 USC 1356; 49 USC 1357; 49 USC 1358 to 1421; 49 USC 106(g)

CFR Citation:

14 CFR 107; 14 CFR 108

Legal Deadline:

Final, Statutory, April 24, 1992.

Aviation Security Improvement Act of 1990

Abstract:

This action proposed to establish regulations to implement criminal history records checks for air carrier and airport security employees. This rulemaking is considered significant because of substantial congressional and public interest.

Statement of Need:

In response to the December 21, 1988, destruction of Pan American Airways Flight 103, former President Bush established a Commission on Aviation Security and Terrorism to assess the overall effectiveness of the U.S. civil aviation security system. The Commission's May 15, 1990, report recommended that Congress enact legislation requiring a criminal history records check for airport employees, identify certain crimes that indicate a potential risk, and enable airport operators to deny employment in positions requiring access to security-sensitive areas. The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990.

Summary of the Legal Basis:

Aviation Security Improvement Act of 1990, Pub. L. 101-604. Section 105(a) amends section 316 of the Federal Aviation Act of 1958 by adding a new subsection (g) captioned "Air Carrier and Airport Security Personnel."

Alternatives:

Because of the statutory mandate, the FAA does not have a nonregulatory option. However, in response to commenters who objected to imposing a background check on all individuals having access to the security identification display area (SIDA), the FAA issued a supplemental notice of proposed rulemaking (Notice 92-3C) that excluded individuals with existing unescorted access privileges. The final rule will not subject current employees with unescorted access authority to the access investigation.

Anticipated Costs and Benefits:

Discounted costs over 10 years are expected to range from $4.3 million to $11.1 million. The FAA finds that air terrorist acts are exceedingly expensive; an act such as the destruction of Pan American Airways Flight 103 could exceed $1.3 billion.

Risks:

The FAA finds that this rulemaking will accomplish an appropriate balance between enhancing the effectiveness of the U.S. civil aviation security system and respecting the employment rights of individuals.

Timetable:

Action	Date	FR Cite
NPRM	02/13/92	57 FR 5352
NPRM Comment Period Extended to 05/15/92	03/12/92	57 FR 8834
NPRM Comment Period End	03/16/92	
Public Meetings Notice	04/09/92	57 FR 12396
SNPRM; Comment Period End 12/17/92	09/18/92	57 FR 43294
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Flexibility Analysis; Regulatory Evaluation 09/18/92 (57 FR 43294)

Additional Information:

Project Number ACS-91-076R.

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RIN: 2120–AE14

DOT—FAA

125. +AGING AIRCRAFT SAFETY

Legal Authority:

49 USC 1301; 49 USC 1303; 49 USC 1344; 49 USC 1348; 49 USC 1352 to 1355; 49 USC 1401; 49 USC 1421 to 1431; 49 USC 1471; 49 USC 1472; 49 USC 1501; 49 USC 1510; 49 USC 1522; 49 USC 2121 to 2125; 49 USC 106(g); EO 11514

CFR Citation:

14 CFR 39; 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline:

Other, Statutory, April 24, 1992.

Aging Aircraft Safety Act of 1991; action must be initiated by 04/24/92.

Abstract:

This action would require air carriers of certain aircraft used in air transportation to demonstrate that the aircraft's maintenance has been adequate to ensure the highest degree of safety. This action would require air carriers of 15-year-old or older aircraft with a maximum certificated takeoff weight of 75,000 pounds or more to demonstrate that certain specified maintenance actions have been performed and to make the aircraft available to the Administrator of the FAA for inspection. This rulemaking is considered significant because of substantial public and congressional interest.

Statement of Need:

The Federal Aviation Administration (FAA) plans to require operators of 15-year-old or older aircraft, used in air transportation, to verify that all aging aircraft requirements have been met at each heavy maintenance check. The FAA has also proposed a framework for operational limits for aircraft, should such limits be necessary in the future. It has been recognized for many years that as aircraft get older they require increased attention and maintenance. However, the Aloha Airlines accident of April 28, 1988, which involved a structural failure on a relatively old and heavily used aircraft, shocked the Federal Aviation Administration, the aviation industry, and the traveling public. The accident challenged the soundness of a number of assumptions that had guided regulatory policy on aircraft age, structures, inspections, and maintenance. Subsequent to this accident, the Congress directed the FAA to initiate a rulemaking proceeding for the purpose of issuing a rule to assure the continuing airworthiness of aging aircraft.

Summary of the Legal Basis:

Aging Aircraft Safety Act of 1991, Public Law 102-143, Oct. 28, 1991 Title IV.

Alternatives:

Because of the statutory mandate, the FAA does not have a nonregulatory option.

Anticipated Costs and Benefits:

The only direct costs of the proposed rule would result from the requirements that operators (1) notify the FAA at least 30 days prior to an airplane's scheduled heavy maintenance check, and (2) make a maintenance record entry which verifies that the airplane is in compliance with all aging-aircraft-related maintenance program requirements. The FAA estimates that the present-value, 10-year cost of these two activities would equal $828,000. By comparison, a single recent fatigue and corrosion related accident resulted in an economic loss to society of $16.7 million.

The expected benefit of the proposed rule is a reduction in the risk of accidents related to fatigue and corrosion that might otherwise occur. This benefit would result from the requirement that operators review their records and verify through a maintenance record entry that their aging airplanes are in full compliance with maintenance program requirements. The FAA holds that the potential benefits of this proposed rule would exceed the expected costs.

Risks:

The U.S. fleet continues to age and recent accident history may not be representative of future conditions or of future exposure to such conditions. The FAA cannot assess the exact proportion or severity of potential accidents that would be averted by issuance of this proposed rule. It is the FAA's position that the requirements for operator demonstration of maintenance program compliance would result in more consistent conduct of necessary maintenance and in an associated increase in overall safety.

Timetable:

Action	Date	FR Cite
NPRM	10/05/93	58 FR 51944
NPRM Comment Period End	02/02/94	
NPRM Comment Period Extended to 03/04/94	02/08/94	59 FR 5741
Final Action	10/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Flexibility Analysis; Regulatory Evaluation 10/05/93 (58 FR 51944)

Additional Information:

Project Number AFS-92-029R.

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DOT—National Highway Traffic Safety Administration (NHTSA)

PROPOSED RULE STAGE

126. +EXTEND ANTILOCK BRAKE SYSTEM TO PASSENGER CARS

Legal Authority:

15 USC 1392; 15 USC 1401; 15 USC 1403; 15 USC 1407

CFR Citation:

49 CFR 571.105; 49 CFR 571.135

Legal Deadline:

Final, Statutory, January 4, 1997. Other, Statutory, December 31, 1993.

Other deadline is for an ANPRM.

Abstract:

The NHTSA Authorization Act of 1991 directs the agency to publish an ANPRM to consider the need for additional brake performance standards for passenger cars, including antilock brake systems (ABSs). The ANPRM laid out the issues that the agency needs to resolve in order to determine whether to proceed with rulemaking on light vehicle ABSs. This action is considered significant because of substantial public interest.

Statement of Need:

This rulemaking is undertaken because the primary benefit of ABS is its ability to prevent loss-of-control accidents caused by wheel lockup during braking by automatically controlling the amount of braking pressure applied to a wheel. This allows the driver to maintain steering control and lateral stability even in panic braking situations. An ABS typically enhances braking efficiency and as a consequence usually results in shorter stopping distances, particularly on low-friction surfaces, compared to the same vehicle without an ABS. Initial crash test data indicate that braking-induced loss-of-control crashes and inability-to-stop-in-time crashes are especially prevalent on wet or slippery roads, a condition in which ABSs would be most beneficial. In 1991, 11 percent of all fatal crashes and 18 percent of property-damage-only crashes occurred on wet or slippery roads.

Summary of the Legal Basis:

In the Intermodal Surface Transportation Efficiency Act (ISTEA), NHTSA is directed to complete a rulemaking to consider the need for any additional brake performance requirements for passenger cars, including antilock brake system (ABS) requirements. Rulemaking is to be completed within 36 months of the ANPRM (1/4/94 59 FR 281).

Alternatives:

The primary alternative would be to let the market determine the extent to which the ABS is installed on passenger cars and light trucks. In the 1993 model year, approximately 40 percent of passenger cars and 80 percent of light trucks were equipped with ABS. NHTSA estimates that 85 percent of new passenger cars and all new light trucks will be equipped with at least 2 rear-wheel ABS by model year 1999/2000, even without a requirement for the system.

Anticipated Costs and Benefits:

Costs:

The unit cost of ABSs for passenger cars is $526. For light trucks, the incremental cost of four-wheel vs. two-wheel ABSs is $231 per unit. The cost of ABS for the new model year fleet is $737 million for passenger cars and $345 million for light trucks, for a total of $1,082 million.

Benefits:

Passenger cars: The agency does not have sufficient data to evaluate the effectiveness of four-wheel antilock brakes on passenger cars. Preliminary analysis of the accident data available at this time does not indicate that a passenger car ABS reduces the number or severity of crashes. However, this analysis only considered early-model applications of ABSs that typically were installed in higher-performance/luxury-model automobiles. As additional and more conventional

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passenger cars are equipped with ABSs and become more prevalent in the on-road vehicle population, the agency will further analyze crash data to examine the real-world performance of the systems in a broader spectrum of vehicles and uses.

Light trucks: The agency's preliminary evaluation of a rear-wheel ABS indicates that it is effective on light trucks in reducing the number of nonfatal run-off-road crashes--rollovers and side and frontal impacts with fixed objects. Analysis of State accident files found that a rear-wheel ABS was effective in such crashes in reducing the risk of nonfatal rollover and side impacts with fixed objects for almost every type of truck, under any type of road condition. Reductions of rollover were typically in the 30-40 percent range, reductions of side impacts with fixed objects in the 15-30 percent range, and reductions of frontal impacts with fixed objects in the 5-20 percent range. The risk of collisions with pedestrians, animals, bicycles, trains, or on-road objects was also significantly reduced, by about 5-15 percent. The agency does not have sufficient data at this time to evaluate whether rear-wheel antilock is effective in reducing fatal light-truck run-off-road crashes.

Risks:

ABS will be directed against the following risks:

For passenger cars, in 1992 there were 402,000 crashes, involving 272,000 injuries and 2,500 fatalities, in which brakes were applied; of these, 140,000 crashes, involving 74,000 injuries and 500 fatalities, occurred when brakes were applied in wet, icy, or snowy conditions.

For light trucks, there were 146,000 crashes, involving 102,000 injuries and 1,400 fatalities, in which brakes were applied; of these, 49,000 crashes, involving 25,000 injuries and 300 fatalities, occurred when brakes were applied in wet, icy, or snowy conditions.

Timetable:

Action	Date	FR Cite
ANPRM	01/04/94	59 FR 281
ANPRM Comment Period End	03/07/94	
ANPRM Comment Period Extended to 04/06/94	03/08/94	59 FR 10779
NPRM	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation

Additional Information:

This entry was formerly titled: Passenger Car Brake Performance.

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DOT—NHTSA

127. +LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARDS FOR MYS 1998 THROUGH 2006

Legal Authority:

15 USC 1657; 15 USC 2002

CFR Citation:

49 CFR 533

Legal Deadline:

Final, Statutory, March 1996.

Abstract:

The agency is beginning to develop a proposal for light truck average fuel economy standards for model years after 1997 and is requesting comments to assist the agency in developing the proposal. This action is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace.

Statement of Need:

The agency has tentatively determined that it is necessary to change the way it has been setting light-truck corporate average fuel economy (CAFE) standards and establish them far enough in advance to require significant fuel economy improvements. The reasons are: first, the need of the Nation to conserve energy is increasing; second, there is a current lack of consumer demand or other market pressure for manufacturers to improve light-truck fuel economy; third, the continued growth in market share of those vehicles means more of these relatively low-fuel-economy vehicles are being driven; and fourth, there is increased concern in recent years about the impact of cars, light trucks, and other personal vehicles on global warming.

Summary of the Legal Basis:

Under 15 U.S.C. 2002, NHTSA is required to establish light truck CAFE standards for each model year. The standards are required to be established at least 18 months before the beginning of each model year.

Alternatives:

No specific alternative levels of light-truck fuel economy standards were proposed in an ANPRM published April 6, 1994. The ANPRM did discuss estimates made by the National Academy of Sciences (NAS) in its April 1992 report, "Automotive Fuel Economy--How Far Should We Go?" The NAS report's estimates of the costs and benefits of "technically achievable" levels of fuel economy should not be taken as NAS' recommendation as to what future fuel economy standards should be. NAS offered two estimates of the "technically achievable" levels of fuel economy for both MYs 2001 and 2006. The lower estimate was given with a high degree of confidence that the light truck fleet could achieve such a level. The higher CAFE level was given with a lower degree of confidence that the fleet could achieve that level due to unidentified uncertainties. The range of values are:

Model Year NAS Technically Achievable:

2001: 24 - 25 mpg; 2006: 26 - 28 mpg.

These estimates did not include large vans and large utility vehicles. While large vans and large utility vehicles combined make up only 7.9 percent of current sales, they represent heavier vehicles with lower fuel economy than the average vehicle considered by NAS. Also, the fleet fuel economy averages do not represent any particular manufacturer's capability, which the agency must consider in setting fuel economy standards.

Anticipated Costs and Benefits:

The NAS committee estimated the likely increases in costs to consumers of improved fuel economy. The agency calculated the expected increases in the average price of new light trucks in MY 2006 associated with the technically achievable levels, using the data contained in the NAS study. The agency estimates that, at a higher-confidence fuel economy level, the incremental retail price equivalent for improved fuel economy ranges from $573 to $1,331 per vehicle, and at a lower-confidence fuel economy level, the range is from $1,205 to $2,443 per vehicle.

Relative to the MY 1997 standard of 20.7 mpg, at the 24 mpg and 25 mpg levels described in the NAS report as "technically achievable" for light trucks in MY 2001, the per-truck lifetime fuel consumption would be reduced by 1,002 to 1,253 gallons, respectively. At the 26 mpg and 28 mpg levels described in the NAS report as "technically achievable" for light trucks in MY 2006, the per-truck lifetime fuel consumption would be reduced by 1,485 and 1,899 gallons, respectively.

Using recent DOE fuel price projections (and a 7 percent annual discount rate), the present values of the above fuel savings per vehicle would be $963-$1,204 at the 24-25 mpg fuel economy levels and $1,427-$1,826 at the 26-28 mpg levels.

Risks:

If such higher fuel economy levels are attained, there would be substantial petroleum savings for the nation as a whole. A 5-million units/year light truck fleet with an average fuel economy rating of 20.7 mpg would consume about 867 million barrels of petroleum over its operating life. At average fuel economy levels of 24.0-25.0 mpg, this figure would be reduced by 14-17 percent, respectively. At 26.0-28.0 mpg, this figure would be reduced by 20-26 percent, respectively.

Timetable:

Action	Date	FR Cite
ANPRM	04/06/94	59 FR 16324
ANPRM Comment Period End	06/04/94	
NPRM	02/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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DOT—NHTSA

FINAL RULE STAGE

128. +REDUCE HEAD INJURIES DUE TO CONTACT WITH UPPER VEHICLE INTERIOR

Legal Authority:

15 USC 1392; 15 USC 1407

CFR Citation:

49 CFR 571.201; 49 CFR 571.205; 49 CFR 571.206; 49 CFR 571.214

Legal Deadline:

NPRM, Statutory, January 31, 1993. Final, Statutory, February 28, 1995.

Abstract:

This action concerns improved head impact protection from interior components of passenger cars, that is, from roof rails, pillars, and front headers. This rulemaking action and notice of a publication date for the NPRM are required by the NHTSA Authorization Act of 1991. This action is considered significant because of safety and cost implications.

Statement of Need:

This rulemaking is undertaken to alleviate the problem that head impacts with the pillars, roof side rails, windshield header, and rear header result in nearly 3,400 passenger car and light truck occupant fatalities and 26,000 moderate-to-critical passenger car and light truck occupant injuries annually. The vast majority of these fatalities and serious injuries are attributable to impacts with upper interior components in the front of the vehicle, that is, components from the B-pillar forward. Although airbags decrease the number of head impacts with the front header and A-pillars, the agency has found a number of cases with front header and A-pillar strikes even though the air bag deployed.

Summary of the Legal Basis:

Many occupant injuries and fatalities result from head impacts with upper vehicle interiors. In 1980, the agency initiated a research program to support upgrading the current interior impact standard to provide occupant protection in these impacts. The agency was then directed by the Intermodal Surface Transportation Efficiency Act (ISTEA) to improve head-impact protection from interior components of passenger cars, that is, from roof rails, pillars, and front headers. A final rule is to be published within 24 months of the NPRM (2/8/93 58 FR 7506).

Alternatives:

Two sets of alternatives were analyzed. The first relates to the injury criteria. The injury criteria are known as Head Injury Criteria (HICs). The higher the HIC, the greater the possibility of serious injury. The first set of alternatives is whether an HIC of 1,000 would be applicable to all components or whether an HIC of 1,000 would be applicable to all components except side components, and an HIC of 800 would apply to side components. A lower HIC for side components may be appropriate since research shows the side of the head is more susceptible to injury than the front of the head. The second set of alternatives relates to whether the amendments would be applicable to both the front and rear seating areas of passenger cars and light trucks.

Anticipated Costs and Benefits:

At an HIC of 1,000, costs were estimated at $29 per passenger car and $45 per light truck. At HICs of 800/1,000, costs were estimated at $49 per passenger car and $68 per light trucks.

Benefits were estimated for the injury-level alternatives. The Abbreviated Injury Scale (AIS) is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. The benefits were estimated as follows:

If an HIC of 1,000 is required, injuries resulting from head impacts in passenger cars per year would be reduced between 862 and 1,114 fatalities and between 575 and 708 AIS 2-5 injuries; injuries in light trucks would be reduced between 276 and 281 fatalities and between 108 to 116 AIS 2-5 injuries.

If an HIC of 800/1,000 is required, head-impact injuries would be reduced for passenger cars between 1,054 and 1,323 fatalities and between 572 and 1,188 AIS 2-5 injuries; injuries in light trucks would be reduced between 291 and 311 fatalities and between 269 and 290 AIS 2-5 injuries.

Risks:

Estimated annual head/face injuries from contacting upper interior components are 2,942 fatalities and 22,844 AIS 2-5 injuries in passenger cars and 409 fatalities and 3,162 AIS 2-5 injuries in light trucks; a total of

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3,351 fatalities and 26,006 AIS 2-5 injuries.

Timetable:

Action	Date	FR Cite
ANPRM	08/19/88	53 FR 31712
ANPRM Comment Period End	10/18/88	
Notice of Intent	06/05/92	57 FR 24008
NPRM	02/08/93	58 FR 7506
NPRM Comment Period End	04/09/93	
Final Action	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 02/08/93 (58 FR 7506)

Additional Information:

This entry was formerly titled: Side-Impact Protection, Head/Neck Protection, and Occupant Ejection Mitigation. The agency published on 10/20/93 (58 FR 54099) a notice of a public hearing and reopened the comment period until 12/01/93. This title has since been revised the second time.

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DOT—Federal Railroad Administration (FRA)

PRERULE STAGE

129. +GENERIC STANDARDS FOR CORRIDORS UP TO 160 MPH

Legal Authority:

45 USC 431; 45 USC 438

CFR Citation:

49 CFR 209 to 245

Legal Deadline:

None

Abstract:

FRA intends to amend many of its regulations, not necessarily within one rulemaking entry, to consider issues unique to high-speed operations up to 160 mph. Some issues on track and power brakes are being addressed in pending rulemakings. Other issues, for example, equipment design and inspection, communications, intrusion detection, employee qualifications, and grade crossings, may be dealt with in a comprehensive rulemaking. Issues such as design of high-speed trainsets may require separate rulemakings. These actions are considered significant because novel policy issues are likely to arise from this high-speed-rail initiative.

Statement of Need:

The Department's Strategic Plan has as two of its goals the promotion of safe and secure transportation and the creation of a new alliance between the Nation's transportation and technology industries, which includes the promotion of high-speed rail as a viable transportation option in select corridors. Issuance of regulations that will help ensure the safety of the emerging high-speed operations will protect passengers, employees, and other affected persons and at the same time provide certainty and clarity that will assist the designers and developers of these systems to plan. This is an opportunity to build safety into an innovative transportation alternative from the very beginning.

Summary of the Legal Basis:

Under the Federal Railroad Safety Act of 1970, the Federal Railroad Administration (by delegation from the Secretary), has regulatory and enforcement authority over all areas of railroad safety. This plenary authority certainly covers the safety of the new high-speed operations. In fact, the statute was amended in 1988 to clarify that this authority extends to all forms of nonhighway ground transportation that run on rails or guideways. There is currently no statutory or judicial requirement to issue regulations in this area.

Alternatives:

Because this rulemaking is at such a formative stage, it is premature to discuss alternatives. However, during the process of developing these rules, FRA will consider all reasonable alternatives. Given the very nature of the subject, FRA has made a preliminary determination that some direct regulation in the form of setting standards will be necessary to ensure public and employee safety.

Anticipated Costs and Benefits:

Having not yet decided what specific standards it intends to issue, FRA cannot yet provide an estimate of the costs and benefits of its regulatory action. FRA is quite mindful of the President's regulatory philosophy and principles, as expressed in section 1 of Executive Order 12866. Accordingly, FRA will base any regulation it issues on a reasoned determination that its benefits justify its costs. To some degree, this will require consideration of the societal benefits (greater transportation efficiency, improved environment, etc.) that high speed rail operations are likely to produce.

Risks:

Sensible, well-considered regulations will reduce the safety risks associated with rail transportation of passengers at very high speeds. Of course, depending on a variety of factors, the probability of an accident is not necessarily greater at higher speeds. However, the consequences of an accident could be greater merely because of the increased energy to be dissipated in an accident at higher speeds. Passengers and railroad employees should not have to incur any appreciably greater risk using high-speed rail service than they would incur using other modes of transportation or lower-speed rail service. The challenge presented is to reduce the risk to an acceptable level without imposing requirements that stifle development. The solution, which is somewhat technically complex, appears to lie in ensuring that the probability of collisions and other impacts is restrained by appropriate accident avoidance measures while, at the same time, the consequences of any accident are reduced by measures designed to absorb crash energy, protect occupants from secondary risks (such as fire and flying debris), and hasten efficient evacuation and emergency response. Of course, FRA's entire safety regulatory program focuses on reducing risks to safety and health, and the agency must address certain risks more immediately pressing than those posed by operations that have not yet begun. Accordingly, while it is important to ensure that safety is built into high-speed operations, FRA must devote most of its regulatory resources to the more immediate risks posed by current operations, many of which are the subject of pending statutory requirements for regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Evaluation

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DOT—Federal Transit Administration (FTA)

FINAL RULE STAGE

130. +STATE RESPONSIBILITY FOR FIXED-GUIDEWAY SYSTEM SAFETY

Legal Authority:

49 USC 5330

CFR Citation:

49 CFR 659

Legal Deadline:

Final, Statutory, October 28, 1992.

Abstract:

Former section 28 of the Federal Transit Act, as amended (now 49 USC 5330), directs the Federal Transit Administration to issue a rule requiring States to oversee the safety of rail fixed guideway systems not regulated by Federal Railroad Administration. This rulemaking would improve the safety of rail fixed-guideway systems. This action is considered significant because of substantial public and congressional interest, and the statutory mandate.

Statement of Need:

A "patchwork" system of regulation of rail fixed-guideway systems (subways, light rail systems, and monorails) has developed throughout the country; some systems regulate themselves, while others are regulated by State oversight agencies. In 1991 Congress addressed this issue by adding section 28 to the Federal Transit Act, as amended, and in doing so, instructed the FTA to issue a regulation requiring a State to designate an agency to oversee the safety of rail fixed guideway systems within the State. With this rule, the FTA intends to develop consistency among the States and various transit agencies operating rail fixed guideway systems and ensure that passengers have safe mass transportation.

Summary of the Legal Basis:

This rulemaking is required by section 28 of the FT Act (now 49 USC 5330), which applies only to those States in which a rail fixed-guideway system operates that is not regulated by the Federal Railroad Administration (FRA), and requires any such State to designate a State oversight agency to be responsible for overseeing the rail-fixed guideway system's safety practices. FTA is required to issue a rule implementing the program, and may withhold Federal funds if a State fails to implement the rule. The provision was added to the FT Act by the 1991 Intermodal Surface Transportation Efficiency Act.

More specifically, the statute describes the responsibilities of the State, the agency the State designates to provide safety oversight, and the type of activities the agency is expected to carry out. In most instances, this entity will be an agency of the State because most rail fixed-guideway systems operate in only one State, but where a rail fixed-guideway system operates in more than one State, the statute permits the affected States to designate any entity, other than the transit agency itself, to oversee that rail fixed-guideway system.

Whether the oversight agency is a State agency or some other entity, it must require each affected transit agency to create a system safety program plan, which the oversight agency reviews and approves. The oversight agency also must investigate accidents and hazardous conditions. Once a hazardous condition has been discovered, the oversight agency must require the transit agency to correct or eliminate it.

If a State has not met these requirements by September 30, 1994, or has not made adequate efforts to comply with them, the Secretary may withhold up to 5 percent of the fiscal year 1995 (or subsequent year) section 9 apportionment attributable to the State or an affected urbanized area in the State. (The section 9 program, the basic transit program upon which cities rely for their transportation needs, provides capital and operating assistance to urbanized (50,000 or more in population) areas. Section 9 funds are apportioned by a statutory formula based on population and population density for areas under 200,000 in population; and on population, population density, and transportation data for areas over 200,000 in population.)

Alternatives:

Because this rule is mandated by Congress, FTA has not considered any nonregulatory ways to address this issue. Through the rulemaking process, however, we have sought to give the affected States a variety of options, especially since several States have in place an existing oversight system. We note, however, that the statute describes, in some detail, the role of the State oversight agency and we have limited the alternatives to those which meet the requirements of section 28.

The Federal Transit Administration published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on June 25, 1992, at 57 FR 28572, and a notice of proposed rulemaking (NPRM) on December 9, 1993, at 58 FR 64856. In the ANPRM, the public was asked to comment about a variety of issues, particularly concerning the role of the State oversight agency. At issue was whether FTA should prescribe in detail the structure and duties of the oversight agency, whether FTA should promulgate general minimum guidelines, or whether FTA should allow the localities to decide for themselves how they would like to structure the oversight agency and the oversight process. We continue to address this issue in the NPRM stage of the rulemaking process.

Anticipated Costs and Benefits:

FTA's regulatory evaluation estimated that implementing the rule would save 2 lives and prevent 195 injuries annually and would cost FTA, the State oversight agencies, and the transit agencies $1,274,300 during the first year, and $11,352,100 over 10 years. The figures for the first year include the one-time start-up costs for all the agencies involved.

Risks:

The primary intent of the rule is to improve the safe operation of rail fixed-guideway systems, which may mean a reduction in the number of accidents and injuries occurring during the operation of a rail fixed-guideway

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system and a consequent lowering of health care costs.

Although the intent of section 28 is to increase the safety of rail fixed-guideway systems, it does not authorize the FTA to regulate them, and hence, does not greatly expand FTA's very limited safety authority. Instead, it requires FTA to require rail fixed-guideway systems, through the State oversight agency, to adopt a proactive process to ensure the safe operation of the system. While mass transit is one of the most reliable and safe modes of transportation, the sheer volume of passengers transported at any one time shows the magnitude of the risk of a catastrophic accident--a relatively minor operational or mechanical failure could endanger many transit riders.

Timetable:

Action	Date	FR Cite
Public Hearing Notice	06/11/92	57 FR 24768
ANPRM	06/25/92	57 FR 28572
ANPRM Comment Period End	08/24/92	
NPRM	12/09/93	58 FR 64856
NPRM Comment Period End	02/07/94	
Hearing Notice; Extension of Comment Period to 03/08/94	02/28/94	59 FR 9460
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

State

Analysis:

Regulatory Flexibility Analysis; Regulatory Evaluation 12/09/93 (58 FR 64856)

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DOT—Research and Special Programs Administration (RSPA)

PROPOSED RULE STAGE

131. +IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS

Legal Authority:

49 USC 1803 to 1808

CFR Citation:

49 CFR 172

Legal Deadline:

Final, Statutory, June 16, 1992, complete rulemaking on central reporting system and computerized telecommunications data center.

Final, Statutory, May 16, 1993, complete rulemaking oncontinually monitored telephone systems.

Final, Statutory, May 16, 1993, final rule on improving system for placarding vehicles transporting hazardous materials.

Abstract:

This rulemaking proposes to determine methods of improving the current system of placarding vehicles transporting hazardous materials; to determine the feasibility and methods for establishing a central reporting system and computerized telecommunications data center for daily hazardous materials shipments in all modes; and to evaluate the need and safety benefits of requiring carriers to establish a continually monitored telephone system to provide information and assistance to emergency responders. This action is required by section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990. This rulemaking is considered significant because of substantial public interest and safety implications.

Statement of Need:

Sections 25 and 26 of the Hazardous Materials Transportation Uniform Safety Act of 1990 require DOT to initiate rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials; to determine methods for establishing and operating a central reporting system and computerized telecommunication data center that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials; and to study the feasibility of requiring carriers of hazardous materials to establish continually monitored telephone systems equipped to provide emergency response information. Although the National Academy of Sciences, in its report to Congress and DOT, did not support implementation of a central reporting system and computerized data communications center, it did identify certain areas in the current system of hazardous materials identification that could be improved incrementally.

Summary of the Legal Basis:

The Hazardous Materials Transportation Uniform Safety Act of 1990 requires DOT to initiate a rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials; to determine methods for establishing and operating a central reporting system and computerized telecommunications data center that can provide information to facilitate responses to accidents and incidents involving the transportation of hazardous materials; and to study the feasibility of requiring carriers of hazardous materials to establish continually monitored telephone systems equipped to provide emergency response information.

Alternatives:

In an advance notice of proposed rulemaking, DOT asked a series of 66 questions addressing three primary areas of regulation: improvements to the current hazard communication system, involving labeling and placarding; the need and feasibility of establishing a central reporting system and data communications center; and the need and feasibility of requiring carriers to maintain a 24-hour emergency response telephone number. Various alternatives have been evaluated in the notice of proposed rulemaking, which will propose an incremental increase in improving the current hazard communication system.

Anticipated Costs and Benefits:

At this time, RSPA has limited information on the costs and benefits associated with issuing regulations on improvements to the hazard communication system, including placarding, establishment and continuing costs for a central reporting system and computerized data center, or for a continually monitored carrier telephone number for information on hazardous materials accidents and

incidents. Various options are being evaluated, and the costs associated with these options and proposed requirements are included in a draft regulatory evaluation as part of the docket. RSPA will continue to assess the costs and benefits associated with the proposed requirements as additional information is obtained through the rulemaking process.

Risks:

Over the last 25 years, DOT has developed a comprehensive hazardous materials transportation regulatory system. This system encompasses various aspects of hazardous materials transportation, including hazardous materials classification criteria, packaging standards for hazardous materials, training of hazardous materials workers, handling requirements for transportation workers, and hazardous communication requirements, including shipping papers, package marking and labeling, vehicle placarding, and emergency response information requirements. The changes proposed in this notice of proposed rulemaking are consistent with the overall approach of DOT to ensure the safe transportation of hazardous materials. These incremental improvements to safety will provide emergency responders with better identification of the hazardous materials involved in the incident and will enable them to better protect themselves and the public.

Timetable:

Action	Date	FR Cite
ANPRM	06/09/92	57 FR 24532
ANPRM Comment Period Extended to 10/09/92	08/05/92	57 FR 34542
ANPRM Comment Period End	08/10/92	
NPRM	08/15/94	59 FR 41848
Public Hearing Notice	08/15/94	59 FR 41848
NPRM Correction	08/26/94	59 FR 44230
Correction to 08/26/94 Correction	08/30/94	59 FR 44795
NPRM Comment Period End	12/02/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 08/15/94 (59 FR 41848)

Additional Information:

Docket HM-206. Formerly entitled "Improving Hazardous Materials Identification: Placarding; Reporting/Tracking; and Continually Monitored Telephone Systems."

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RIN: 2137–AB75

DOT—RSPA

132. +INCREASED INSPECTION REQUIREMENTS

Legal Authority:

49 USC 1672(g); 49 USC 2002(k)

CFR Citation:

49 CFR 192; 49 CFR 195

Legal Deadline:

Final, Statutory, October 24, 1995.

Abstract:

This rulemaking would require gas pipelines in high-density population areas and hazardous liquid pipelines in those areas and in environmentally sensitive areas or navigable waterways to be inspected periodically by internal inspection devices or equivalent means. This action is considered significant because of substantial public interest.

Statement of Need:

Gas transmission and hazardous liquid pipelines in high-density population areas and hazardous liquid pipelines in environmentally-sensitive areas or navigable waterways expose more people and the environment to the potential hazards of-line failures than do similar pipelines in other locations. Many failures in these areas are due to the growth of hidden time-dependent defects, such as material flaws, corrosion, and gouges from excavation damage. Early detection and removal of time-dependent defects in high-risk areas through frequent inspections may be a cost-effective way to prevent accidents and the consequent damage to people and the environment.

Summary of the Legal Basis:

Sections 103 and 203 of the Pipeline Safety Act of 1992 require the Secretary to issue regulations requiring operators to inspect periodically certain pipelines, and to specify the circumstances, if any, under which an instrumented internal inspection device shall be used.

Alternatives:

The alternatives under consideration are possible definitions of "high-density population area", "environmentally sensitive area, and "navigable waterway", and the means of inspection that may be equivalent to internal inspection devices.

Anticipated Costs and Benefits:

The potential costs and benefits of this action have not yet been determined.

Risks:

The magnitude of the risk this action is intended to mitigate is illustrated by our latest published statistics. For example, in 1991, at least 74 of 210 accidents involving hazardous liquid pipelines, or 35 percent, involved causes that might have been prevented by timely inspection. (This number excludes accidents where the cause was reported as excavation damage.) For gas transmission, comparable numbers are 18 of 71 accidents, or 25 percent. An example of the risk that could be lessened by this action is the failure on March 28, 1993, near Reston, Virginia, of a 36-inch petroleum pipeline operated by the Colonial Pipeline Company. An unrepaired gouge that had occurred either during construction or later by excavation damage led to a spill of over 30,000 gallons of diesel fuel into the Sugarland Run creek.

The effect of this action in reducing the overall risk of time-dependent defects is still under study. However, it would depend on the proportion of accidents that occur on lines in high-density population areas, environmentally sensitive areas, and navigable waterways, and on the capability and frequency of inspection method. Because the risk of time-dependent defects is caused to some extent by unrepaired excavation damage, the rulemaking on excavation damage prevention programs also may reduce this risk.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation 12/00/94

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DOT—RSPA

133. +EMERGENCY FLOW-RESTRICTING DEVICES

Legal Authority:

49 USC 2002

CFR Citation:

49 CFR 195

Legal Deadline:

Final, Statutory, October 24, 1996.

Abstract:

This rulemaking would specify those circumstances under which operators of hazardous liquid pipelines are required to use emergency flow-restricting devices, and other procedures, systems, and equipment to detect and locate pipeline ruptures and minimize releases. This action is considered significant because of substantial public interest.

Statement of Need:

The adverse safety and environmental effects of pipeline accidents are often the result of an operator's failure to rapidly detect and locate a leak and to rapidly shut down the pipeline. Quicker response to pipeline leaks through the strategic placement and use of emergency flow-restricting devices, with a reliable leak detection capability, can reduce the amount of liquid spilled into the environment and the consequent damages to life and property.

Summary of the Legal Basis:

Section 212 of the Pipeline Safety Act of 1992 requires the Secretary to survey and assess the effectiveness of emergency flow-restricting devices (including remotely controlled valves and check valves) and other equipment used to detect and locate pipeline ruptures and minimize product releases. Section 212 requires the Secretary, within 2 years after completing the survey and assessment, to issue regulations prescribing the circumstances under which operators of hazardous liquid pipeline facilities must use emergency flow-restricting devices or other equipment.

Alternatives:

The alternatives under consideration are different types of emergency flow-restricting devices and associated leak detection systems, and the sites that would maximize the usefulness of these devices and systems.

Anticipated Costs and Benefits:

The potential costs and benefits of this action have not yet been determined.

Risks:

This action addresses the increased risks to safety and the environment that result from the lack of prompt response to a line leak. Although the magnitude of potential risk reduction has not yet been determined, an example of the type of accident that this action might mitigate is the 1989 spill from an Exxon pipeline in the harbor between New York and New Jersey. Over 500,000 gallons of No. 2 fuel oil entered the water from a gash in the pipeline. A leak detection system that had been malfunctioning for 12 years failed to alert the operator to shut down the pipeline immediately.

This action is related to an action required by the Oil Pollution Act of 1990. This other action, now in effect under an interim final rule, but subject to change, requires operators to develop and execute approved oil spill response plans. Both actions are directed toward improving operators' accident response capabilities and minimizing accident consequences.

Timetable:

Action	Date	FR Cite
ANPRM	01/19/94	59 FR 2802
ANPRM Comment Period End	04/19/94	
NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Analysis:

Regulatory Evaluation

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RIN: 2137–AC39

DOT—Maritime Administration (MarAd)

PROPOSED RULE STAGE

134. +CARGO PREFERENCE—U.S.-FLAG VESSELS; UNIFORM CONTRACTING REQUIREMENTS FOR FEDERAL PROGRAM PARTICIPANTS

Legal Authority:

46 app USC 1241(b)

CFR Citation:

46 CFR 381

Legal Deadline:

None

Abstract:

MARAD is proposing amendments to its cargo preference regulations intended to ensure that U.S.-flag carriers of preference cargoes be allowed to carry such cargoes subject to standard commercial contract and contract tender terms that will allow them to avoid economic harm from discriminatory practices. This is considered a significant regulatory action because it may create a serious inconsistency with an action taken or planned by another agency.

Statement of Need:

The NPRM will propose a uniform charter party to be executed by the U.S. vessel owner and the charterer with respect to the carriage of agricultural commodity preference cargoes and would also require MARAD approval of all freight tenders for such preference cargoes. This action is needed to eliminate charter party terms that are at variance with generally accepted commercial terms and which discriminate against U.S.-flag carriers of agricultural commodity preference cargoes.

Summary of the Legal Basis:

The legal basis for this action is section 901(b) of the Merchant Marine Act, 1936, as amended, 46 App U.S.C. 1241(b), granting MARAD (by delegation from the Secretary of Transportation) authority to issue regulations that are binding on every department or agency having responsibility for administering cargo preference programs. This authority has been affirmed specifically with respect to the content of this rulemaking by a decision by the Department of Justice, Office of Legal Counsel, dated April 19, 1994.

Alternatives:

Alternatives to the action would be to allow these discriminatory practices to continue, or to attempt ad hoc negotiation of many individual charter parties with acceptable terms.

Anticipated Costs and Benefits:

It is anticipated that the requirement for MARAD approval of all freight tenders and the introduction of a uniform charter party will result in an average savings of $5/metric ton of agricultural commodities shipped under the agricultural assistance programs, with an annual cost saving of $30 million, or about 20 percent of the USDA/DOT 1993 budget for U.S.-flag ocean freight differential of $155 million.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Sectors Affected:

441 Deep Sea Foreign Transportation of Freight

Analysis:

Regulatory Evaluation

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DEPARTMENT OF THE TREASURY (TREAS)

Regulatory Plan for Fiscal Year 1995

Background

The Department of the Treasury is composed of, in addition to Departmental Offices, a number of offices and bureaus which have responsibility for a wide range of regulations. The primary missions of the Department include:

- Protecting and collecting the revenue under the Internal Revenue Code and customs laws;
- Supervising national banks and thrift institutions;
- Managing the fiscal operations of the Federal Government;
- Enforcing laws relating to counterfeiting, Federal Government securities, firearms and explosives, foreign commerce in goods and financial instruments, and smuggling and trafficking in contraband;
- Protecting the President, Vice President, and certain foreign diplomatic personnel;
- Training Federal, State, and local law enforcement officers; and
- Producing coins and currency.

While implementing its wide-ranging regulatory responsibilities, Treasury has aggressively pursued opportunities to reduce regulatory burdens, to reach out to the public for input when it promulgates regulations, and to provide clear, concise guidance for the many complicated statutes the Department administers. For example, shortly after the Administration took office, Treasury consulted with other banking regulators, the banking industry, the business community, and consumer groups to assemble a regulatory relief package to address the credit crunch. And the Department's efforts did not stop there: The Department's Office of the Comptroller of the Currency began a project to review, simplify, and reduce the number of regulations it administers regarding national banks.

Themes and Priorities for Fiscal Year 1995

To fulfill the regulatory principles announced by the President in Executive Order (E.O.) 12866, the Treasury Department has the following themes and priorities for fiscal year 1995:

- We will continue to improve the efficiency of collection operations under the tax code through additional automation of taxpayer filing, and we will seek to improve taxpayer compliance with complex tax statutes by providing additional guidance in a number of areas.
- In banking and finance, we will continue to reduce the regulatory burden, where possible, by deleting regulatory requirements, and we will continue to coordinate with other banking regulators to ensure that we implement common statutory schemes through uniform regulatory requirements.
- In the law enforcement arena, we will continue to reach out to law-abiding citizens to get their input when we use regulations to enforce statutory mandates so that law-enforcement compliance costs for businesses are kept to a minimum.
- To improve the ability of U.S. companies and consumers to reap the benefits of expanding international trade, we will improve the efficiency of Customs operations, and finalize regulations implementing the North American Free Trade Agreement Implementation Act and its Customs modernization provisions.

Consistent with these themes and priorities, and our statutory responsibilities to implement the laws as enacted by the Congress and signed by the President, we will continue to look for opportunities to delete unnecessary regulations, seek maximum public input in the promulgation of regulations, and improve our internal regulatory processes. A more detailed description of our regulatory priorities follows.

Statement of Regulatory Priorities

Departmental Offices

Office of the Under Secretary for Enforcement

Office of Financial Enforcement

The Bank Secrecy Act (BSA) authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to maintain records and file reports determined to have a high degree of usefulness in criminal, tax, or regulatory proceedings. These regulations, codified at 31 CFR part 103, are developed by the Office of Financial Enforcement (OFE) and issued by the Director of the Financial Crimes Enforcement Network (FinCEN) in the Office of the Under Secretary for Enforcement. The purpose of these regulations is to combat financial crime, particularly money laundering.

OFE has sought to reduce the cost and burden of compliance with BSA regulations and to enhance the utility of those regulations to law enforcement. To this end, OFE is working to:

- Simplify the Currency Transaction Report (CTR);
- Streamline and simplify the BSA process for exempting certain accounts from BSA currency transaction reporting requirements;
- Clarify existing regulations defining non-bank financial institutions that are subject to BSA regulations;
- Develop regulations requiring, and improve existing mechanisms for, the reporting of suspicious transactions;
- Develop regulations requiring financial institutions to implement "Know Your Customer" procedures; and
- Reduce the substantial recordkeeping requirements applicable to the sale of money orders and other similar monetary instruments.

To comply with the principles and philosophy of E.O. 12866, the Department has initiated extensive consultation with financial institutions and persons affected by BSA reporting and recordkeeping requirements to tailor regulations that impose the least amount of burden. In 1993, the Department convened an interagency Money Laundering Task Force staffed by experienced agents and regulators from Treasury bureaus with BSA compliance and money-laundering responsibilities. This Task Force undertook a comprehensive examination of Treasury's BSA regulatory programs, with a special focus on the manner in which Treasury exercises its BSA authority.

The Task Force made recommendations to the Bank Secrecy Act Advisory Group (Advisory Group) established by the Department, which consists of representatives from financial institutions and trades and businesses affected by the requirements of the BSA and section 6050I of the Internal Revenue Code of 1986, plus staff from Treasury, the Department of Justice, and the White House Office of National Drug Control Policy. The Advisory Group is considering alternative regulatory approaches and formulating recommendations concerning the BSA to Treasury policy officials.

During fiscal year 1995, OFE will accord priority to regulations concerning recordkeeping requirements for international and domestic funds transfers, requirements for the inclusion of certain information in funds transfer payment orders, and the implementation of new anti-money laundering procedures and programs. These regulatory projects are described below.

In addition, OFE will determine whether to withdraw its proposed rules regarding the mandatory aggregation of currency transactions and filing of CTRs by magnetic media. Enhanced computer technology for the tracking and reporting of financial transactions may permit OFE to achieve the objectives of its proposed regulations through alternative means. These alternative methods may permit the design of rules that achieve the Department's regulatory objective in a more cost-effective manner, consistent with the principles of E.O. 12866.

Internal Revenue Service

The Internal Revenue Service (IRS) promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. Consistent with E.O. 12866, the IRS adheres to the following principle in developing its regulations:

> To carry out the tax policy determined by Congress fairly, impartially, reasonably, and practically, taking into account rational tax policy, the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system.

The goal of the IRS is to make the regulations practical and user-friendly by providing guidance that is as clear and simple as possible. Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes.

During fiscal year 1995, the IRS' priorities will include the following regulations interpreting and implementing tax provisions contained in the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) and the North American Free Trade Agreement (NAFTA) Implementation Act:

- *Electronic Funds Transfer for Tax Deposits.* Currently, certain taxpayers are required to deposit taxes with an authorized government depository (generally, a commercial bank or savings institution or a Federal Reserve bank) by various dates specified in regulations. Each deposit must be accompanied by a form (Form 8109, Federal Tax Deposit Coupon) which contains tax and taxpayer information. The government depository processes the form and forwards it to the appropriate IRS Service Center.
  NAFTA amended the Internal Revenue Code to authorize the issuance of regulations that are necessary for the development and implementation of an electronic funds transfer system to replace the current form-based system for the collection of depository taxes. The new system will be phased in over a period of several years, beginning with fiscal year 1994. (Note: A related regulation to be issued by the Financial Management Service is described below.)
- *Substantiation of Certain Charitable Contributions.* OBRA 1993 amended the Internal Revenue Code by not allowing a deduction for a charitable contribution of $250 or more unless the donor obtains contemporaneous written acknowledgment of the contribution from the charitable donee. This new substantiation requirement is effective for contributions made after December 31, 1993. The regulations implementing this section also will provide special substantiation rules for contributions made by payroll deduction.
- *Spousal Travel and Club Dues.* OBRA 1993 limited the deductibility of club dues, spousal travel expenses, and business meals. However, this statutory change did not answer the question of whether by denying the deduction to the employer, the employee is required to recognize income. The regulation will address this and other fringe benefit questions.
- *Lobbying; Influencing Legislation.* OBRA 1993 amended the Internal Revenue Code to deny a deduction for amounts paid or incurred in connection with influencing legislation (other than local legislation) by communicating with members or employees of the legislative and executive branches who may participate in the formulation of legislation. Proposed regulations defining the term "lobbying" were issued in May 1994. Final regulations will provide guidance to business taxpayers and certain exempt organizations also subject to these rules by defining activities of which the costs are not deductible.
- *Earnings Invested in Excess Passive Assets.* This regulation will implement a change in the Internal Revenue Code (section 956A) added by OBRA 1993 which provides rules to determine, with respect to the U.S. shareholder of a controlled foreign corporation (CFC), the amount of earnings of the CFC invested in excess passive assets. The regulation also will provide guidance to taxpayers on the meaning and scope of certain terms in the statute, such as "applicable earnings" and "passive assets," on the application of section 956A with respect to groups of CFCs, and on the computation of the section 956A amount.
- *Diesel Fuel Excise Tax.* OBRA 1993 amended the Internal Revenue Code (section 4081) by imposing an excise tax on diesel fuel. OBRA 1993 provided an exemption from the excise tax for certain diesel fuel; that fuel is dyed to aid compliance in accordance with regulations issued under the Internal Revenue Code. The regulation will provide guidance on issues relating to the imposition of, and liability for, the tax; the exemption for dyed diesel fuel; the back-up tax on dyed diesel fuel used for a taxable purpose; and credits and payments relating to taxed diesel fuel used for a nontaxable purpose.
- *Mark-to-Market Accounting for Dealers in Securities.* OBRA 1993 amended the Internal Revenue Code to require dealers in securities to account for their securities by marking them to market. The statutory definitions of the terms "security" and "dealer in securities" are extremely broad. Preliminary guidance in the form of temporary regulations was provided in 1993. A regulation providing additional guidance will be published in fiscal year 1995.
- *Conduit Financing Arrangements.* This regulation will implement section 7701(l) of the Internal Revenue Code, added by OBRA 1993. This new section provides that the Secretary of the Treasury may issue regulations recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of the parties where the Secretary determines that a recharacterization is appropriate to prevent avoidance of any tax imposed by the Internal Revenue Code.
- *Special Passive Activity Loss (PAL) Rules.* Section 469 of the Internal Revenue Code disallows losses from passive activities to the extent they exceed income from passive activities. Traditionally, passive activities have included (1) trade or business activities in which the taxpayer does not materially participate and (2) rental activities regardless of the level of the taxpayer's participation. OBRA 1993 added section 469(c)(7) to the Internal Revenue Code to modify the PAL rules relating to certain real estate. This regulation will provide taxpayers with guidance concerning the application of the new section.

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The IRS also will accord priority during fiscal year 1995 to the following regulations:

•*Research or Experimental Expenditures.* The Revenue Reconciliation Act of 1989 amended section 174 of the Internal Revenue Code with respect to research and experimental expenditures. These regulations will be revised to provide additional guidance to taxpayers and IRS personnel regarding the term "research and experimental expenditures" under section 174.

•*Triangular Corporate Reorganizations.* Between 1954 and 1971, in order to increase flexibility in structuring transactions, Congress enacted laws allowing an acquiring corporation to acquire the stock or assets of, or to merge into, a target corporation in exchange for stock of the acquiring company's parent corporation in a tax-free "triangular" reorganization. The enabling legislation did not provide guidance, however, as to the effect of the acquisition on the parent corporation's basis in the stock of its acquiring subsidiary. Proposed regulations were issued in 1981 setting forth the IRS position on the basis issue. In a number of transactions since the enabling legislation, and in some cases since the proposed regulations were issued, taxpayers have taken positions that have inappropriately enhanced the parent's basis in the stock of the acquiring subsidiary following triangular reorganizations. These regulations will provide guidance regarding the acquiring parent's basis in the stock of the acquiring subsidiary following a triangular reorganization.

•*Allocation of Interest Expense to U.S. Trade or Business of a Foreign Corporation.* Section 882(a) of the Internal Revenue Code imposes a tax on the income of a foreign corporation that is effectively connected with the conduct of a trade or business within the United States (ECI). Section 882(c) allows deductions and credits only to the extent that they are connected with ECI, and further provides that the proper allocation and apportionment of deductions shall be determined as provided in regulations. Current regulations prescribe rules for allocating interest expense, using an approach that combines concepts of fungibility of funding and tracing of interest expense. Proposed regulations published in 1992 to replace existing rules better reflect the current economic environment and changes in the law since the original regulations were promulgated. The proposed regulations, among other things, impose a 96 percent cap on a bank's actual debt-to-assets ratio; reduce the elective fixed ratio to 93 percent; and eliminate the separate currency pool method of determining the appropriate interest rate for U.S. liabilities.

•*Modification of Debt Instruments.* Under section 1001 of the Internal Revenue Code and current regulations, gain or loss is realized on an exchange of properties that differ materially either in kind or extent. Under longstanding authorities, a material change in the terms of a debt instrument would result in a deemed exchange of properties (the debt instruments) under section 1001. The regulation will provide guidance on determining when a modification of the terms of a debt instrument will rise to the level of a deemed exchange. A proposed rule was issued in 1992.

•*Original Issue Discount; Debt Instruments With Contingent Payments.* Sections 1271-1275 of the Internal Revenue Code, added by the Tax Reform Act of 1984, govern the taxation of debt instruments with original issue discount (OID). These sections provide that OID must be currently accrued by both issuers and holders of debt instruments on a constant yield basis, but the rules provided apply only to debt instruments calling for payments of principal and interest that are fixed both as to timing and amount. Section 1275(d) of the Internal Revenue Code authorizes the issuance of regulations to address the taxation of OID on debt instruments providing for contingent payments. This regulation will address this issue.

Office of the Comptroller of the Currency

As the primary Federal regulator of national banks, the regulatory objective of the Office of the Comptroller of the Currency (OCC) is to supervise national banks as effectively and efficiently as possible. This objective includes maintaining the safety and soundness of the banking industry as a whole, providing support for the industry's efforts to provide credit and other financial services to its communities, and maintaining and enhancing a risk-focused, differential and proactive approach to the supervision of national banks.

A major priority of the OCC is the issuance of revised regulations implementing the Community Reinvestment Act (CRA). This project is described below. This rulemaking, undertaken jointly by the Federal banking agencies, furthers the President's priorities by:

- Expanding credit availability by clarifying the continuing and affirmative obligation of banks to help meet the credit needs of their communities, including low- and moderate-income areas;
- Clarifying compliance requirements and reducing unnecessary regulatory burden by establishing, to the extent feasible, objective assessment standards which minimize compliance burden by focusing on performance; and
- Preserving safety and soundness by clarifying that neither the regulation nor the CRA requires banks to make loans or investments that result in losses or that are otherwise inconsistent with safe and sound operations.

Additional OCC regulatory priorities during fiscal year 1995 include:

•*Concentration of Credit Risk and Risk of Nontraditional Activities.* This rulemaking, undertaken jointly by the Federal banking agencies, would further bank safety and soundness by requiring that adequate account is given to concentration of credit risk and the risks of nontraditional activities in assessing an institution's capital adequacy.

•*Interest Rate Risk.* This rulemaking, undertaken jointly by the Federal banking agencies, would further bank safety and soundness by ensuring that interest rate risk is effectively measured and monitored, and that adequate capital is maintained for that risk.

•*Standards for Safety and Soundness.* This rulemaking, undertaken jointly by the Federal banking agencies, would further bank safety and soundness by enabling the OCC to address problems before they cause significant deterioration in the financial condition of a bank.

•*Recourse Arrangements.* This joint Federal banking agency rulemaking will propose a multilevel approach that would assess risk-based capital against all banking organizations and thrift participants in certain asset securitizations based upon their relative exposure to risk of loss from the underlying assets. The relative exposure to risk of loss would be determined through the use of credit ratings from nationally recognized statistical rating organizations.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the regulatory objective of the Office of Thrift Supervision (OTS) is to effectively and efficiently supervise thrift institutions. This objective includes maintaining the safety and soundness of the thrift industry, providing support for the industry's efforts to provide credit and other financial services to its communities, particularly with respect to housing credit, and maintaining and enhancing a risk-focused, differential and proactive approach to the supervision of thrift institutions.

OTS strives to develop regulatory policies that provide flexibility to sufficiently capitalized, well-managed institutions while closely supervising problem institutions. Savings associations are encouraged to fulfill the housing needs of their communities, particularly the needs of lower- to moderate-income persons. The OTS has worked to improve the effectiveness of the Community Reinvestment Act (CRA) examination process, an issue of particular importance to the President.

Along with the other Federal banking agencies, the OTS has discouraged discriminatory lending practices in the industry through better education, enhanced examination detection techniques, and more aggressive enforcement of fair lending and Equal Credit Opportunity Act laws. The OTS seeks to improve financial monitoring capabilities by developing a more consistent, useful and streamlined financial monitoring system.

The OTS believes that good lending performance should be more actively encouraged and rewarded. Current risks in the industry should be promptly identified and addressed and enforcement actions should be monitored to ensure that they are commensurate with the severity of the problem.

Undercapitalized thrifts should be assisted in developing strategies for timely recapitalization. The OTS continues its efforts to reduce regulatory burden through the application of differential regulation, better coordination of interagency examinations, the establishment of parity among regulated financial institutions where appropriate, and utilization of prompt corrective action provisions.

A major priority of the OTS is the issuance of revised regulations implementing the Community Reinvestment Act (see discussion under Office of the Comptroller of the Currency). This regulatory project is described further.

Additional OTS regulatory priorities during fiscal year 1995 include:

•*Recourse Arrangements.* This joint Federal banking agency rulemaking will propose a multilevel approach that would assess risk-based capital against all banking organizations and thrift participants in certain asset securitizations based upon their relative exposure to risk of loss from the underlying assets. The relative exposure to risk of loss would be determined through the use of credit ratings from nationally recognized statistical rating organizations.

•*Management Interlocks.* This regulatory project would amend the existing OTS regulations implementing the Management Interlocks Act to create two new exemptions. The exemptions would permit two unaffiliated depository organizations that serve the same relevant metropolitan statistical area or community to share management officials when the organizations control less than 20 percent of the deposits in any area or community in which both depository organizations are located.

•*Standards for Safety and Soundness.* This rulemaking, undertaken jointly by the Federal banking agencies, would further thrift safety and soundness by enabling the OTS to address problems before they cause significant deterioration in the financial condition of a thrift.

•*Concentration of Credit Risk and Risk of Nontraditional Activities:* This rulemaking, undertaken jointly by the Federal banking agencies, would further thrift safety and soundness by requiring that adequate account is given to concentration of credit risk and the risks of nontraditional activities in assessing an institution's capital adequacy.

United States Customs Service

The United States Customs Service is responsible for administering laws concerning the importation of goods into the United States. This includes inspecting imports, collecting applicable duties, overseeing the activities of persons and businesses engaged in importing, and enforcing the laws concerning smuggling and trafficking in contraband. The regulatory priorities of Customs for fiscal year 1995 are to facilitate procedures for legitimate commercial transactions and to provide further obstacles to the flow of narcotics and other contraband into the United States.

During fiscal year 1995, Customs plans to undertake several regulatory actions that will affect the traveling and importing public, customs brokers, carriers and commercial importers. Some of these actions will implement legislation relating to U.S. trade agreements and programs. Customs plans to finalize its interim regulations implementing the North American Free Trade Agreement (NAFTA) Implementation Act and to adopt regulations consistent with the General Agreement on Tariffs and Trade. Customs also plans to revise its current regulations to set forth uniform rules. Uniform rules will provide predictability and certainty for Customs and the trade community for determining the country of origin of merchandise under Customs and related laws, including for country-of-origin marking and duty assessment purposes.

Customs also plans actions to improve the efficiency of Customs operations. Under authority granted by the Customs Modernization provisions of the NAFTA Implementation Act, a number of regulatory actions will be undertaken enabling Customs to modernize the way it does business with the trade community. Consistent with the principles of E.O. 12866, the focus of many of these regulations will be the development of a more automated environment to expedite the entry, processing and release of commercial importations. These regulations will benefit the importing public by facilitating the work of Customs officers and the trade community. One of these regulations is discussed below:

•*Test Programs and Procedures.* Customs will issue proposed regulations to permit the Commissioner of Customs to conduct limited test programs/procedures to implement the National Customs Automation Program mandated under the NAFTA Implementation Act. The test programs would be conducted on a voluntary basis with certain eligible members of the public, and offer the opportunity to evaluate alternative approaches to achieving more efficient and effective processing of passengers, carriers, and merchandise. Test programs also may require that participants be exempted from certain Customs regulations, but only to the extent that the different requirements do not affect the collection of revenue, public health, safety, or law enforcement. This test program would achieve many of the President's

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principles for regulation found in E.O. 12866, including examining whether existing regulations need to be changed to achieve the goals of new regulations (required under the NAFTA Implementation Act).

Bureau of Alcohol, Tobacco and Firearms

The Bureau of Alcohol, Tobacco and Firearms (ATF) issues regulations to fulfill its statutory mandate to enforce the Federal laws relating to the manufacture and commerce of alcohol products, tobacco products, firearms and explosives. The primary ATF enforcement and regulatory missions are:

- Preventing illegal traffic in, and criminal use of, firearms;
- Assisting State, local and other Federal law enforcement agencies by tracing firearms and explosives, assisting in the investigation of crimes, and participating in law enforcement task forces;
- Investigating violations of Federal explosives laws and arson-for-profit schemes;
- Issuing licenses and permits applicable to alcohol, tobacco, firearms, and explosives industries;
- Ensuring compliance with and the collection of taxes applicable to alcohol, tobacco, firearms and ammunition;
- Preventing commercial bribery and unfair trade practices in the alcoholic beverage industry, including consumer deception;
- Preventing the illicit manufacture and sale of alcoholic beverages; and
- Assisting States in efforts to eliminate interstate trafficking in, and the sale and distribution of cigarettes in avoidance of State taxes.

During fiscal year 1995, ATF will accord priority to two regulations:

- *Brady Law.* The Brady Law (Pub. L. 103-159) provides a 5-day waiting period before a firearms licensee can transfer a handgun to a nonlicensee. Temporary regulations (including a 90-day comment period) implementing the waiting period and other provisions of the Brady Law were published on February 14, 1994. Final regulations are expected to be issued by December 1994.

Under E.O. 12866, ATF conducted extensive coordination with other Federal agencies, such as the FBI, prior to issuing its proposed rules. In addition, ATF contacted each State's Attorney General, State law enforcement agencies, and many local Chiefs of Police to get input on implementation issues. Finally, ATF also had contacts with the firearms wholesale and retail industries, and with other interested groups, prior to issuing the proposed regulations. This extensive outreach effort continues as ATF prepares the final Brady Law regulations.

- *Unfair Trade Practices Under the Federal Alcohol Administration Act.* On April 26, 1994, ATF published a proposed rule to amend its trade practice regulations in response to the 1992 decision of the United States Court of Appeals for the District of Columbia in *Fedway Associates* v. *Department of the Treasury* (976 F.2d 1416). The proposed rule would add standards for enforcing the exclusion element in the unfair trade practice provisions under the Federal Alcohol Administration Act (FAA). A final rule is expected to be issued by December 1994.

Financial Management Service

Regulations of the Financial Management Service (FMS) are developed to improve Government financial management by linking program and financial management objectives, and by providing financial services, information, advice, and assistance. The FMS serves taxpayers, the Treasury Department and Federal program agencies, and provides support to government policy makers on financial management issues.

The regulatory priorities of the FMS for fiscal year 1995 further the President's goals of improving technology to streamline financial services, and of using electronic funds transfers to the maximum extent possible. As described below, the FMS plans to implement a new Electronic Federal Tax Payments System. This system will move certain tax payments to the Treasury more quickly and will eliminate paper processing, and at the same time address the risks associated with automated payment systems. (Note: A related regulation to be issued by the Internal Revenue Service is described above.)

In addition, the following regulation is a priority of the FMS during fiscal year 1995:

- *Automated Clearing House Standards.* This regulatory project would revise existing FMS regulations governing Automated Clearing House (ACH) standards to use commercial sector rules where feasible and to make the Government a receiver of ACH payments. Consistent with E.O. 12866, these revisions will speed the flow of funds to the Treasury and ease the regulatory burden on private industry.

Bureau of the Public Debt

The Government Securities Act of 1986 (GSA), as amended, authorizes the Secretary of the Treasury to prescribe rules governing financial responsibility, the protection of customer funds and securities, and recordkeeping and reporting requirements for government securities brokers and dealers, including financial institutions. These rules are designed to prevent fraudulent and manipulative acts and practices, and to preserve the integrity, efficiency and liquidity of the government securities market. Under E.O. 12866, in developing these regulations the Department seeks to balance the benefits of regulation with the compliance costs imposed on the government securities market and its participants.

The GSA regulations establish a consistent regulatory approach for all government securities brokers and dealers, including securities firms and financial institutions, in a manner intended to minimize the creation of any competitive advantages for any class of firm. Consistent with the principles stated by the President in E.O. 12866, these regulations are being developed only after considering the cumulative burdens of existing regulations applicable to various broker/dealers, including financial institutions and are designed to minimize duplication or overlap with existing regulations. To help meet this objective, the Treasury actively consults with other regulatory organizations, including the Securities and Exchange Commission (SEC) and the bank regulators to better coordinate its activities in securities regulation.

During fiscal year 1995, priority will be accorded to the following regulations:

- *Holders of Large Positions in Treasury Securities.* This regulation will establish recordkeeping and reporting requirements for holders of large positions in specific Treasury securities in order to monitor the market impact of concentrated holdings and to assist SEC investigations. This regulation will be promulgated under the authority of the Government Securities Act Amendments of 1993.
- *Risk Assessment.* This regulation will require recordkeeping and reporting, pursuant to authority in the Market Reform Act of 1990, designed to assist the regulators in assessing the risk to a specialized government securities broker/dealer from its affiliates. This risk assessment regulation is a companion rule to an existing SEC regulation.

TREAS—Departmental Offices (DO)

PRERULE STAGE

135. • ANTI-MONEY LAUNDERING PROGRAMS

Legal Authority:

31 USC 5318

CFR Citation:

31 CFR 103

Legal Deadline:

None

Abstract:

This regulation would require financial institutions subject to the Bank Secrecy Act (BSA) to implement BSA compliance and anti-money laundering programs and procedures. These programs and procedures would include, among other things, customer identification procedures, enhanced recordkeeping, detection and reporting of suspicious transactions, and related training of financial institution personnel.

Statement of Need:

The Office of Financial Enforcement is examining regulatory changes to enhance the usefulness of the Bank Secrecy Act (BSA) to law enforcement agencies without imposing unnecessary burdens on institutions and businesses subject to the BSA. In this context, OFE is considering the development of a regulation, which would be issued for public comment, that may address the following issues affecting both banks and nonbank financial institutions subject to the BSA:

- Enhancing BSA compliance by establishing procedures for BSA reporting and recordkeeping requirements, requiring the designation of BSA compliance officers and the establishment of training programs;
- Establishing a "Know Your Customer" requirement concerning the identification and verification of identity of account holders and beneficial owners, and customers conducting significant business transactions and/or using safe deposit facilities, including different identification and verification requirements for different categories of customers;
- Enhancing the reporting of suspicious activities by developing procedures for (1) identifying and reporting suspicious transactions or activity to appropriate authorities, and (2) guidelines and training in the identification of suspicious activity by various categories of activity and personnel (e.g., tellers; commercial loan officers; wire transfers); and
- Requiring institutions and businesses subject to the BSA to (1) establish formal policies, procedures and controls for their BSA compliance programs and (2) audit and test their programs for BSA compliance.

Alternatives:

Under consideration is a wide range of alternative approaches to designing the enhanced compliance program, and the types of institutions that should be subject to these requirements.

Anticipated Costs and Benefits:

Because the components of this proposal are under development and the range of financial institutions that would be subject to these requirements has not been identified, the costs and benefits associated with this proposal cannot determined at this time.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1505–AA51

TREAS—DO

FINAL RULE STAGE

136. INTERNATIONAL AND DOMESTIC FUNDS TRANSFERS

Legal Authority:

12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5318

CFR Citation:

31 CFR 103

Legal Deadline:

Final, Statutory, January 1, 1994, for international fundstransfers.

Abstract:

This document proposes to amend Treasury's regulations under the Bank Secrecy Act to require a bank or nonbank financial institution that acts as a transmittor's financial institution in a transmittal of funds to include certain information in the transmittal order when sending it to the receiving financial institution.

Statement of Need:

Money laundering is a vital component of drug trafficking and other criminal activity, and a significant amount of money laundering involves funds transfers. The number of wire transfers completed daily is substantial. In 1992, the average daily number of transfers over Fedwire was 270,000, with average daily dollar amounts of $800 billion and a peak daily dollar amount of over $1 trillion. Treasury and the Board of Governors of the Federal Reserve System (Board) have determined that reporting and recordkeeping requirements for international and domestic funds transfers would have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings.

In 1993, the Office of Financial Enforcement (OFE) issued two proposed regulations concerning recordkeeping requirements for international and domestic funds transfers and proposed requirements for the inclusion of certain information in funds transfer payment orders. The proposed rule concerning domestic funds transfers was issued jointly with the Board. These requirements will be particularly useful in tracing the proceeds of illegal activities and will assist in the identification and prosecution of individuals involved in such activities.

The proposed regulations would apply to insured depository institutions, brokers and dealers in securities, and businesses that provide money transmitting services. The proposed regulations would require these institutions and businesses to gather certain information regarding funds transfers and to include certain information in related payment orders. The specific information to be gathered would depend upon the role of an

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institution or business in a particular funds transfer.

Alternatives:

Although regulations governing the recordkeeping of international and domestic funds transfers are required by law, a range of options exists to accomplish regulatory objectives. In this context, the specific provisions of the proposed rules have been considered by Treasury's Money Laundering Task Force and the Bank Secrecy Act Advisory Group. These reviews, as well as comments received in response to the proposed rules, have identified a number of recommendations for improvements to the proposed rules. These recommendations are under consideration and will be taken into account in developing a final rule.

Anticipated Costs and Benefits:

The rules will have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings. The regulation will impose recordkeeping costs on approximately 60,000 institutions and businesses, which OFE estimates will average 274 hours annually for each such institution and business.

Timetable:

Domestic Funds Transfers (RIN 1505-AA46)	
NPRM 08/31/93 (58 FR 46021)	
NPRM Comment Period End 10/04/93 (58 FR 46021)	
Final Action 00/00/00	
International Funds Transfers (RIN 1505-AA37)	
ANPRM 10/31/89 (54 FR 45769)	
ANPRM Comment Period End 01/02/90 (54 FR 45770)	
NPRM 10/15/90 (55 FR 41696)	
NPRM Comment Period End 11/29/90 (55 FR 41696)	
Comment Period Extended to 01/15/91	12/05/90 (55 FR 50192)
Second NPRM 08/31/93 (58 FR 46014)	
Second NPRM Comment Period End	10/04/93 (58 FR 46014)
Final Action 00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1505–AA46

TREAS—Financial Management Service (FMS)

PRERULE STAGE

137. TREASURY TAX AND LOAN DEPOSITARIES

Legal Authority:

26 USC 6302(h); 31 USC 321; 31 USC 323; 31 USC 3122; 31 USC 3301; 31 USC 3302; 31 USC 3720; 12 USC 90; 12 USC 265; 12 USC 391

CFR Citation:

31 CFR 203 (Revision)

Legal Deadline:

None

Abstract:

Revision of 31 CFR part 203 is in accordance with the development and implementation of the Electronic Federal Tax Payment System. This will replace the current Federal Tax Deposit (TT&L) System. The benefits will be the elimination of 1 day float and Federal Tax Deposit coupons for TT&L deposits. This rule will also mandate Electronic Funds Transfer for Federal tax payments.

Statement of Need:

The collection of taxes by an electronic funds transfer system is required by statute, which also directs the Secretary of the Treasury to prescribe regulations for the development and implementation of the system. Regulations to be issued by the FMS are necessary for the orderly execution of the system; a companion regulation will be issued by the Internal Revenue Service.

The current system for the collection of taxes is based on paper coupons: Financial institution depositaries collect the deposits and process paper coupons. The regulation will reflect the change from a paper based system to an electronic funds transfer system, thus eliminating the need for the paper coupons.

Summary of the Legal Basis:

The Treasury Department is directed by law to increase the percentage of certain taxes that are collected using electronic funds transfer each fiscal year, beginning with a 3 percent threshold in fiscal year 1994. This requirement will be implemented by the Financial Management Service.

Alternatives:

The electronic funds transfer method is required by statute. The technical configuration of the system has not been determined. The FMS will solicit alternatives from affected industry sources.

Anticipated Costs and Benefits:

As a result of the new system, the Federal Government will realize a net benefit by accelerating the deposit of certain taxes to the Treasury. The FMS estimates this benefit to be $813.3 million over a 6-year period beginning in fiscal year 1995, and $178.4 million annually thereafter. In addition, the FMS estimates that the change will eliminate $6.2 million annually in payments to financial institutions for paper coupon processing. Because the technical configuration of the system has not been determined, the associated development costs are unknown.

Risks:

FMS evaluates and establishes policies and practices to protect the Federal Government from several types of automated payment risk. The first type of risk is operational, or systemic, risk requiring accurate and secure operating practices, encryption of payment related data transmissions, redundant facilities, and backup and recovery procedures. A second risk is credit, or settlement, risk associated with the financial condition of parties to the transaction. The third risk is fraud. FMS establishes regulatory policies to limit the Federal Government's liabilities in relation to the second and third areas of risk. In addition, FMS controls access for settlement of automated funds directly to Treasury's account at the Federal Reserve. Further, FMS establishes and monitors adherence to stringent requirements for financial services providers supporting Federal automated payments.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/94	
ANPRM Comment Period End	12/00/94	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1510–AA37

TREAS—Comptroller of the Currency (OCC)

PROPOSED RULE STAGE

138. COMMUNITY REINVESTMENT ACT REGULATION

Legal Authority:

12 USC 21; 12 USC 22; 12 USC 26; 12 USC 27; 12 USC 30; 12 USC 36; 12 USC 93a; 12 USC 161; 12 USC 215; 12 USC 481; 12 USC 1814; 12 USC 1816; 12 USC 1818; 12 USC 1828(c); 12 USC 2901 to 2907

CFR Citation:

12 CFR 25

Legal Deadline:

None

Abstract:

The OCC, with the other Federal financial regulators, is engaged in an overall review of the Community Reinvestment Act Regulations. The agencies would provide clearer guidance to financial institutions on the nature and extent of their CRA obligations and how their performance will be assessed. The agencies intend to eliminate unnecessary burden, enhance public protection, promote compliance, and clarify the regulation. Further, to implement the President's Credit Availability Program, the OCC will review this regulation and remove any provisions that frustrate bank efforts to make credit available, consistent with safety and soundness considerations.

Statement of Need:

The Community Reinvestment Act (CRA) was enacted to encourage federally regulated financial institutions to meet the credit needs of their communities, with particular emphasis on low- and moderate-income areas. The CRA provides that regulations "to carry out the purposes of this chapter shall be published by each appropriate Federal financial supervisory agency" (12 U.S.C. 2905). The agencies originally promulgated such regulations on October 12, 1978.

The CRA regulatory examination and enforcement system has been the subject of much criticism. Financial institutions have complained that the examination process promotes excessive paperwork at the expense of providing loans, services and investments. In addition, they have expressed the view that policy guidance from the supervisory agencies is unclear and that examination standards are applied inconsistently. Community, consumer and other groups have agreed with the industry that there are inconsistencies in CRA evaluations and that current examinations overemphasize process and underemphasize performance.

The goal of the proposed revisions to the CRA regulations is to provide clear guidance to institutions on the nature and extent of their CRA obligation and the methods by which the agencies will assess and enforce that obligation. The proposed CRA examination system will minimize compliance burden while encouraging improved performance, with an emphasis on objective performance standards. The proposed regulation would substitute for the current, process-based assessment factors a new evaluation system that rates institutions based on their actual performance in meeting community credit needs. In particular, the proposed system would evaluate the degree to which an institution is providing loans, branches and other services, and investments to low- and moderate-income people and geographies. The regulation also would clarify how an institution's CRA performance is considered in the corporate application process.

Alternatives:

A series of seven public hearings was held across the country to seek input for developing the proposed rule. Most participants rejected a formulaic approach to CRA. Several commenters suggested the development of strategic plans for CRA performance by financial institutions in conjunction with the communities in which they operate. Some commenters also discussed the concept of making enforceable agreements between financial institutions and community groups or supervisory agencies the central focus of the CRA process. After considering the concerns raised, the proposed rule presents a more objective and enforceable approach to evaluating CRA performance, consistent with the parameters set forth by the President.

Based on comments received to the proposed rule, the agencies are considering a number of new alternatives, including, for example, modification of the performance-based measures in the proposal, changes to the data collection requirement, and provision of more detail on the strategic plan option.

Anticipated Costs and Benefits:

The overall benefit of the rule is an assessment process that is less burdensome for many institutions and that produces more results for the local communities they serve. It is also expected that examiner training, interagency coordination on application standards, performance of examinations, assignment of ratings and the use of enforcement tools will be improved. Access to Home Mortgage Disclosure Act and CRA data is expected to be improved.

The new standards and procedures may cause institutions to incur a modest increase in operating costs. The proposed additional data collection may also serve to increase costs, though any such increase is estimated to be minimal. Although the agencies anticipate that additional examiner training will be necessary in order to implement the rule, such training will be integrated into existing training programs at minimal cost.

Timetable:

Action	Date	FR Cite
NPRM	12/21/93	58 FR 67466
NPRM Comment Period Extended to 02/22/94	02/03/94	59 FR 5138
NPRM Comment Period End	02/22/94	58 FR 67466
Second NPRM	10/07/94	59 FR 51232
Second NPRM Comment Period End	11/21/94	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 1557–AB32

TREAS—Office of Thrift Supervision (OTS)

PROPOSED RULE STAGE

139. COMMUNITY REINVESTMENT ACT

Legal Authority:

12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1814; 12 USC 1816; 12 USC 1818; 12 USC 1828(c); 12 USC 2901 to 2907

CFR Citation:

12 CFR 563e

Legal Deadline:

None

Abstract:

The Federal banking agencies have proposed revisions to their regulations concerning the Community Reinvestment Act. The revisions are intended to implement the continuing and affirmative obligation of regulated financial institutions to help meet the credit needs of their communities, including low and moderate-income areas, consistent with safe and sound operations and to provide guidance on how the agencies assess the performance of institutions in meeting that obligation. The rule is intended to provide clarification regarding the nature and extent of the CRA obligation of financial institutions and the methods by which institutions' compliance with that obligation will be evaluated.

For a further description of this action, see RIN 1557-AB32 under the Office of the Comptroller of the Currency above.

Timetable:

Action	Date	FR Cite
NPRM	12/21/93	58 FR 67466
NPRM Comment Period End	03/24/94	59 FR 5138
Second NPRM	10/07/94	59 FR 51232
Second NPRM Comment Period End	11/21/94	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 4810-25-F

DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) is the custodian and administrator of important public obligations to those who served this Nation. The VA's regulatory responsibility is almost solely confined to carrying out the mandate of the laws enacted by Congress relating to programs for veterans. The Department's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by the VA involve three VA components: the Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery System. The Veterans Benefits Administration has as its basic goal providing high-quality and timely service in delivering nonmedical benefits to eligible veterans and their beneficiaries. The principal goal of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The National Cemetery System's primary mission is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful nation to honor the memory and service of those who served in the Armed Forces.

Consistent with the provisions of Executive Order 12866, the Department is in the process of reviewing and updating regulations. As an example, the Department recently began a comprehensive review of its "Schedule For Rating Disabilities" regulations (38 CFR part 4). This has resulted in improvement in the medical criteria used to evaluate veterans' service-connected disabilities.

Also, the Department has established a new Office of Regulations Management, which was created for the purpose of improving the VA's capability to promulgate regulations. The duties of this Office include oversight responsibilities for ensuring compliance with Executive Order 12866.

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ENVIRONMENTAL PROTECTION AGENCY (EPA)

Administrator's Preamble to the Regulatory Plan

Over the nearly 25 years since its formation, the Environmental Protection Agency has overseen a remarkably successful effort to rid our Nation of the most unsightly and obvious effects of pollution. Many of America's rivers and streams are now restored to healthful recreational uses, and on any given day the air most Americans breathe is pure enough for all but the most vulnerable populations. We have made a good start in cleaning up the most threatening incidences of abandoned hazardous waste, and we have in place a "cradle-to-grave" network to control the indiscriminate disposal of new waste.

Undeniably, we have made a great deal of progress in a very short time. Not only have we committed ourselves to the cleanup of pollution, we have formed the national will to prevent its recurrence by thoughtful management and prevention.

The Job Ahead

As good as this record is, it does not tell the whole story. In some areas population growth and its accompanying environmental stresses have outpaced our efforts. In others, even as we have dealt successfully with many of the largest and most palpable sources of pollutants, we have uncovered evidence of other, more subtle dangers that continue to threaten our health and well-being. For example:

- Thirty years after Rachel Carson warned us in her book, "Silent Spring," to reduce our dependence on pesticides, we have doubled our use of pesticides.
- Twenty-five years after the garbage-filled Cuyahoga River spontaneously caught fire, 40 percent of our rivers and lakes are not suitable for fishing or swimming.
- In 1993, residents of major U.S. cities—Milwaukee, New York, and Washington, DC—were ordered to boil their water. In Milwaukee, thousands got sick from contaminated water; some died.
- Twenty years after passage of the Clean Air Act, one in four Americans lives in an area where air quality does not meet Federal standards. Meanwhile, asthma—a condition aggravated by this remaining pollution—is on the rise.
- Fourteen years after Love Canal, one in four Americans lives within four miles of a toxic dumpsite.

So, despite our success to date, much remains to be done.

Following the President's Lead

As one of the principal regulatory agencies in the Federal Government, EPA is acutely aware of its responsibility to protect public health and the environment in a flexible manner that does not place undue burden on the economy. The President has pointed out that the long-term strength of our economy is inextricably linked to the health of the environment, and vice-versa. Nevertheless, the current costs of our environmental investments are substantial, and the decision to pay those costs is often a difficult one. Therefore, EPA subscribes to the principles the President laid out in Executive Order 12866 to ensure that regulatory agencies exercise their authority prudently.

EPA seeks nonregulatory solutions whenever they can assuredly achieve environmental goals. When regulation is required by either law or circumstance, the Agency seeks to produce rules that forthrightly implement the law, protect public health and our Nation's ecosystems, and—when legally allowable—specifically account for the costs imposed on society. In setting environmental priorities and levels of control, EPA routinely analyzes the risks of pollution when legal and appropriate. In addition, the Agency continues to increase its outreach to partners in State and local government, as well as to environmentalists, industry, and other affected parties, to make sure environmental decisions reflect the best information available about both the problem at hand and appropriate, affordable solutions.

EPA's Common Sense Initiative

One of the specific ways in which EPA is addressing the President's directives is through the Common Sense Initiative, in which the Agency and outside groups will undertake a cooperative investigation of cheaper ways to provide cleaner outcomes. One consequence of EPA's historical approach to regulation is that any given regulated entity may find itself bound by a number of environmental requirements that are not coordinated to achieve efficiency at the point of compliance. A firm may find itself responding to air, water, land, and toxic-substance controls that appear duplicative or unnecessarily burdensome. As a result of the regulatory burden, however, these firms are discouraged from making investments that might very well protect the environment better at a lower overall cost. While there are good reasons to impose multiple requirements from the perspective of national program management, EPA is looking for solutions to problems that make sense not only nationally, but also locally, where real people make real investments to protect the environment.

EPA's Common Sense Initiative will do something about this. The Agency is reaching out to several sectors of industry to examine the real impacts of multiple requirements at the industry/local level. For this initial round of discussions EPA has selected the following industries: auto manufacture, electronics, iron and steel, metal finishing, petroleum refining, and printing. Agency staff and managers intend to listen to industry, environmentalists, State and local governments, and others to learn just how multiple environmental requirements are working at their points of intersection.

When this process turns up ways to improve the environmental performance of these industries by providing cheaper, more flexible ways to comply with our requirements, EPA will work to bring about this "cheaper" solution. In return, the Agency will look to these industries to identify even more effective strategies to control pollution in their plants and communities, so that the public benefits from a "cleaner" solution as well. By pursuing this "cheaper, cleaner" strategy with these initial industries, EPA hopes to learn how to better effect national environmental controls that also make sense locally.

Some of the areas the Common Sense Initiative will explore are: pollution prevention, alternative compliance mechanisms, reform of data management and recordkeeping (especially introduction of electronic reporting), review and reform of existing regulations, coordinating multiple new rulemakings across program lines, multimedia permitting, and the introduction of improved environmental technology.

Strategic Themes

In laying out its agenda under the Clinton Administration, EPA has been guided by several major concepts that will revolutionize not only the Agency, but also the way all participants think about the design and delivery of environmental protection. Even when a statute directs EPA to undertake rulemaking that will, by all outward signs, produce a traditional command-and-control regulation, Agency managers are using these concepts to guide our definition of the problem, our outreach to the public, and our regulatory determinations. To one extent or another, all of the regulations highlighted in this first Regulatory Plan reflect the central strategic themes described below.

A New Generation of Environmental Protection

The Vice President has challenged all of us to join him on a bold new path to revolutionize the Federal Government by making it more efficient and responsive to its customers, the American people. EPA has eagerly joined him in this undertaking in numerous ways. Perhaps most indicative of EPA's new direction is its willingness to attempt more flexible methods to achieve desirable results for the environment. All of EPA's policy actions will benefit from these new attitudes and approaches.

Ecosystem Protection

EPA's mission has always been to protect public health and the environment from the effects of environmental pollution. However, for a variety of reasons, EPA has concentrated a preponderance of its effort on health protection over the past 20 years. Today the Agency is moving to restore the balance between public health and ecological protection, because a natural environment that will not sustain abundant life in all its forms cannot long sustain life for the human species. In this plan there are regulatory actions resulting from EPA's work with States, localities, other Federal agencies, and such private interests as the agricultural community to protect and restore vital ecosystems to nurturing health. Actions emphasizing this theme are those affecting the San Francisco Bay Delta, Great Lakes Water Quality, and Endangered Species.

Environmental Justice

Social inequity is a fact of life in the United States, as it is throughout the world. When it takes the form of inordinate environmental risk imposed upon those who are poor or otherwise powerless, EPA must engage itself in reversing that injustice. America's young, especially poor and minority children, are frequently at the mercy of a world ordered primarily for the convenience of adults. They are particularly susceptible to long-term damage from exposure to lead—damage in the form of lung disorders, learning disabilities, and more. In this Regulatory Plan, EPA proposes to expand our regulation of lead contamination by identifying lead-based hazards in paint, soil, and dust. While such action will support improved protection for all population groups, a principal beneficiary will be the children of the poor, all too many of whom are unsuspectingly exposed to this insidious hazard.

Pollution Prevention

In recent years EPA has emphasized the prevention of pollution as the most efficient alternative to cleaning up after the damage has been done. The Clinton Administration is committed to maintaining this eminently sensible direction. If there were ever a prescription for cheaper, cleaner environmental protection, it surely involves pollution prevention at its core. In this Regulatory Plan there are a number of actions that promote pollution prevention as a major emphasis. For instance, EPA is preparing regulations to guide Risk Management Planning for the prevention of accidental chemical releases. This rule will not only assist industry in adopting appropriate safeguards for prevention of accidents, it will also provide further incentive for the minimization of hazardous chemicals in the community.

EPA's plan to expand the Toxic Release Inventory (TRI), which will require reporting of more chemicals by more types of facilities, will strengthen one of the most significant tools for pollution prevention yet devised. Since the inception of TRI several years ago, firms using risky chemicals have voluntarily and very creatively reduced their inventories and use of these chemicals. Such firms are thereby improving the safety of their own processes, while affording greater protection to the citizens of their communities. Linked to this rule is a possible small-source exemption that will provide some measure of relief to the reporting community. This exemption will allow facilities releasing small amounts of listed chemicals to be exempt from full TRI reporting requirements. EPA's planned Chemical Use Inventory Rule under TSCA will fill a long-standing gap in our understanding of how chemicals are actually used by both consumers and industry. Such information will assist the Agency and the public to prevent pollution by substituting safer chemicals for more toxic substances now employed in high-risk uses.

EPA's Draft Strategy on Waste Minimization and Combustion includes a major initiative to encourage a reduction in the amount of hazardous waste generated in the country and to further ensure the safety and reliability of hazardous waste combustion in incinerators and industrial furnaces. The Draft Strategy is the focal point for a national dialogue both on needed actions to reduce the amount of hazardous wastes generated and on regulatory change to tighten controls on hazardous waste combustors. To ensure the success of the Strategy, the Agency is involving environmental groups, waste-producing industries, waste-management industries, States, municipalities, and all other interested parties in this dialogue.

Better Science and Data

Prudent environmental management requires good information about not only what we know, but also what we must acknowledge as uncertain. While EPA will continue to respond to public concern about the environment, success in finding cleaner, cheaper environmental interventions depends on the expansion of clear, well-characterized information about the problems and their potential solutions. While all the regulatory actions in this Plan depend on such knowledge for their success, two are particularly illustrative of this theme. In one instance EPA proposes to update its methods for testing automobiles for fuel efficiency and emissions under actual road conditions. The closer we can simulate the real-world conditions under which automobiles actually operate, the more likely we are to meet our environmental goals without imposing unnecessary costs on either industry or the individual motorist. In another case EPA will reassess pesticide tolerance levels, which will refine controls on the concentration and toxicity of pesticides to be applied in the future. Of particular importance is EPA's intention to consider measurement of tolerances not only in the field, where they are now set, but also in the marketplace, where they would better reflect actual human exposure.

Environmental Partnerships

While EPA is the Federal Government's chief regulatory arm for environmental protection, we are by no means alone in commitment to this national goal. There are several Federal agencies besides EPA with major environmental responsibilities. States are critical components of our national

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system for environmental protection, as they issue, inspect, and enforce the vast majority of the permits that lie at the root of our system's effectiveness. Municipalities are playing an increasingly important role, and are bearing a great deal of the cost, serving the public's need for a safe, clean environment. And, to a marked extent, individual citizens are studying the facts and playing out key roles in defining what measures of protection are appropriate and necessary in community and home situations. EPA views all these authorities as partners in an increasingly effective national system of environmental protection.

In many of its regulatory actions, EPA is joining forces with such partners to determine the best environmental course to follow. The action to set Radiation Site Cleanup Standards will involve several national agencies in the design of rules to restore polluted Federal facilities to meet public health goals. EPA's response to a petition by the Northeast Ozone Transport Commission will engage the Agency in dialogue with several States on the possibility of imposing additional performance standards on motor vehicles operating in those States. Our redesign of the New Source Review program under the Clean Air Act will make the program simpler and more logical for States to administer. And our revision of RCRA permit procedures will open that program up to far more comprehensive public participation. Finally, the plan cited above to expand the number and type of businesses reporting toxic chemicals, and the number and type of chemicals to be reported, will empower individual citizens to participate in environmental management in their own communities.

Enforcement Accountability

EPA has traditionally emphasized the need for firm, assured enforcement of environmental requirements. In this Regulatory Plan EPA describes a rule to carry out the mandate of the Clean Air Act for Enhanced Monitoring of air sources. This action will promote fairness and improve air quality by requiring that stationary sources monitor and certify continuous compliance with applicable emissions standards. There is substantial flexibility built into the rule regarding the method of monitoring to support certification. In recognition that most Americans, both corporate and private, fully recognize their duty to obey environmental laws, EPA is complementing its zeal for enforcement with a commitment to support positive efforts to uphold environmental standards throughout society. In a recent reorganization EPA has complemented its vigorous effort to seek out and punish violators by creating a unit to provide compliance assistance to those actively seeking responsible, creative ways to carry out their environmental duties under the law.

Seeking Regulatory Alternatives

Wherever possible in its regulatory activities, EPA is pursuing the President's and the Administrator's emphasis on environmental quality at an affordable cost. Even though several of our statutes do not admit of cost as a factor in decisions protecting public health, where legal and appropriate, the Agency is exploring market-based means to achieve important environmental ends. Here are some examples:

Acid Rain: EPA's acid rain program uses a market-based approach to reduce sulfur dioxide emissions from electric utilities. Utilities are allowed to choose the least-cost method of control, whether installing pollution control devices, switching to cleaner fuels, or buying allowances from other utilities. This reduces overall costs while ensuring the desired reductions of pollutants that cause acid rain.

Stratospheric Ozone: In order to phase out ozone-depleting chlorofluorocarbons (CFCs) in an orderly, cost-efficient manner, EPA's regulation is based on a system of allowances that encourages marketable permits. This system allows producers, importers, and exporters to trade in situations where cost can be substantially reduced.

MACT Standards: Under the Clean Air Act, EPA must issue Maximum Achievable Control Technology (MACT) standards that require sources of air pollution to achieve a relatively stringent minimum level of emissions control. This requirement prohibits the use of certain market-based regulatory strategies. However, provisions to allow "emissions averaging" have been and will continue to be incorporated into various MACT rules as appropriate (for example, in the cases of hazardous organics, petroleum refining, and wood furniture). Emissions averaging allows facilities some flexibility to choose which emissions points to control (presumably those for which control measures are cheaper) in order to achieve the overall reductions required for the facility.

Consumer Products: EPA is exploring the use of economic incentives in regulations to reduce volatile organic chemicals (VOCs) from consumer and commercial products. The Agency will include its findings from these explorations in a forthcoming report to Congress. The first of these products to be regulated is likely to be coatings for architectural and industrial maintenance (AIM), which has been the topic of a regulatory negotiation. In the course of this negotiation, the committee has devised a flexible regulatory structure that might encompass a proposal to allow manufacturers to exceed VOC content thresholds in exchange for a fee based on a graduated schedule. Fee revenues would then be used to promote additional VOC reductions through recognition awards or research grants.

State Programs: EPA's Air program has worked in close partnership with States to promote the design and adoption of State-level economic incentive programs. In March EPA issued the Economic Incentive Program rule which establishes the framework for these programs and, in certain instances of nonattainment, requires them. EPA continues to provide technical and financial support to States to explore market incentives, such as emissions trading and vehicle scrappage programs.

Local Financial Assurance: Current EPA regulations require localities to demonstrate financial capability to properly close existing municipal solid waste landfills. In a forthcoming rule, the Agency will allow localities meeting certain criteria to "self-insure" for this purpose. The Agency estimates this new flexibility will save local governments $138 million or more per year.

Universal Wastes: In managing the RCRA Hazardous Waste Program, EPA has become aware of substantial difficulties in treating, storing, transporting, and disposing of certain wastes that are hazardous but nearly ubiquitous in our society. Examples include nickel-cadmium and mercuric oxide batteries and mercury-based thermometers. Since the full RCRA Title C hazardous waste requirements have removed the incentive to recycle such wastes, EPA has proposed different standards that will ensure responsible but more generally affordable management of these wastes, while providing the flexibility needed to promote recycling.

Traditional Actions

Not every action selected for emphasis in this Regulatory Plan fits neatly into the theme categories the

Clinton Administration is stressing for EPA. The Agency continues to regulate environmental problems as prescribed by law, and a number of these actions reflect the fundamental "end-of-pipe" philosophy on which so much of our environmental progress to date has been built. Even these "traditional" ways of doing business, however, benefit from EPA's "cleaner, cheaper" philosophy. For example, in March EPA issued a policy under which EPA will regulate various forms of combustion under a coordinated plan. The rule to revise certain Technical Standards for Incineration under the Combustion Strategy, as well as actions to control Municipal Waste Combustion and Medical Waste Incineration, are good examples in point. EPA will construct these rules around the best science and data that can be assembled, broad public involvement, and an awareness of the effects of dioxin and other minute contaminants on unsuspecting consumers. And the Agency will prepare these actions in the knowledge that tough, coordinated control of hazardous waste incineration will inevitably lead to minimization of waste and the prevention of further pollution.

EPA will continue to make sense of the complicated structure of rules governing the management of hazardous waste. In one case that will mean adding to the list of controls, as the Agency completes its design of Land Disposal Restrictions. In two other related rules, the Hazardous Waste Identification Rules for Contaminated Media and Wastes, EPA will be simplifying the system by removing certain low-risk substances from the universe of wastes required to be treated as hazardous.

In the same spirit, EPA's imposition of controls on mobile sources of air toxics will benefit from new and more productive ways of carrying out our traditional business. For instance we will prepare a rule to control emissions from small-engine, off-road devices such as lawnmowers. Because we know the effects of this rule will reach into virtually every backyard in America, we plan to conduct extra consultation to learn how we can make it effective, practical, and well understood. To do this, we will initiate a Regulatory Negotiation that will involve representatives of all interests affected in the design of our regulatory proposal.

The Challenge of Safe Drinking Water

The Safe Drinking Water Act poses a special challenge to an Agency providing aggressive protection for public health while seeking creative solutions that citizens can afford. The current statute requires that EPA select and regulate 25 contaminants every 3 years, and it provides little flexibility to either the Agency or local water systems in responding to the Act's mandates. This plan presents in some detail four upcoming actions under the Safe Drinking Water Act: Management Standards for Class V Injection Wells, and National Primary Drinking Water Regulations for (1) Groundwater Disinfection, (2) the Phase VIB List of Organic, and (3) Inorganic Contaminants, and Radionuclides. Undoubtedly, the cost of these rules will be substantial. The Agency is currently working on still other broadly applicable rules under the Safe Drinking Water Act, although the next scheduled actions will not fall within this planning period (October 1994 - October 1995). Most notably, these include controls on disinfectants and disinfection byproducts, enhanced surface-water filtration, and arsenic contamination.

EPA is concerned, as are all Americans, that the services and protection that Government provides be necessary, effective, efficient, and equitable. Where possible, the Agency invites broad public involvement and exercises judgment to ensure such a result. For example, the rules referenced above that will cover disinfectants and disinfection byproducts and enhanced surface-water filtration have been the subject of detailed regulatory negotiation involving a broad cross-section of the affected public; their design and costs will reflect the product of that broad consensus. In many cases, however, public concern has been growing about the affordability of some of the rules the Safe Drinking Water Act will continue to mandate both now and in the future.

In response to this concern the Clinton Administration is working with the Congress on amendments to the Safe Drinking Water Act that will help communities afford needed protection and allow the Agency more room to exercise expert judgment in the public interest. Among the most important features of the Administration's proposal are:

- Creation of a multibillion dollar State Revolving Fund to support local drinking-water protection efforts;
- Elimination of the current requirement that EPA issue 25 new standards every 3 years, and replacing it with a risk-based priority-setting process that includes consultation with States and scientific experts;
- Incentives and assistance to small systems for improved management and consolidation of effort;
- Reduced monitoring and treatment requirements for communities that prevent drinking-water contamination; and
- Upgrading of operator training and certification requirements.

EPA believes that these changes will accelerate progress toward the Nation's goal of providing safe, abundant drinking water at an affordable cost to all our citizens. The Administration is committed to work with the Congress to bring them about.

Conclusion

The Clinton Administration is determined to reinvent the way Government does business. As a member of the President's team, Administrator Browner is committed to involve the public fully in the public's business and to carry out EPA's environmental protection agenda in a spirit of genuine openness. The Agency is constantly reexamining how it conducts the public's business, and it actively solicits new ideas from both citizens and State and local partners. While EPA is totally dedicated to the achievement of its environmental goals through appropriate rules and aggressive enforcement, the Agency is also eager to find more flexible, common-sense ways to do its work without compromising its essential responsibilities. This is the new spirit of EPA, and evidence of this commitment may be found throughout this first annual Regulatory Plan.

EPA

PRERULE STAGE

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140. PESTICIDES; TOLERANCE PROGRAM REVISIONS

Legal Authority:

21 USC 346 to 346(a); 21 USC 348

CFR Citation:

40 CFR 177; 40 CFR 180; 40 CFR 185, 40 CFR 186

Legal Deadline:

None

Abstract:

EPA is reassessing the pesticide tolerance-setting process with the goal of improving public health protection provided by the tolerance process,

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increasing public confidence in the safety of the food supply, clarifying and simplifying the process for all affected parties, and utilizing the most cost-efficient methods for implementation and compliance.

Statement of Need:

The Environmental Protection Agency (EPA) registers pesticides for use in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under the Federal Food, Drug and Cosmetic Act (FFDCA), if a pesticide is intended to be used in a manner that will result in pesticide residues in food or animal feed, EPA must establish a maximum allowable level of pesticide residue (tolerance) or an exemption from the tolerance requirement, before the pesticide may be registered for that use under FIFRA.

FFDCA section 408 requires the establishment of tolerances for raw agricultural commodities, and section 409 requires the establishment of a food additive regulation (often called a 409 tolerance) whenever a pesticide comes into direct contact with a processed food or when processing may result in residues which are concentrated to a higher level in the processed form than the level allowed by the raw tolerance.

EPA believes that the current tolerance-setting system, which has been in place essentially unchanged for a number of years, does not create a clear and comprehensible framework for public understanding of the safety of the food supply. As a result, the tolerance-setting system lacks credibility as a means of ensuring food safety. A clear, consistent, and informative program is needed to explain how and why the EPA makes decisions about the levels of pesticide residues that may legally remain in the Nation's food supply.

EPA is therefore evaluating its current process for establishing tolerances for pesticide residues in food and feed, and intends to explore changes in the framework of the tolerance system, particularly the manner in which it evaluates dietary exposures.

Objectives. One objective of the evaluation is that the tolerance assessment use sound science, including more realistic and visible assumptions about dietary exposure. A second goal of the new approach is to ensure that food safety standards are more clearly "health-based," with particular attention paid to making them protective of children and other highly exposed subgroups.

Changes being considered address the point in the food distribution chain at which tolerances are established, the food forms for which tolerances will be established, the types and amounts of residue information needed to support expanded coverage of tolerances, and the manner in which EPA uses the data to estimate exposure.

Alternatives:

Alternatives have not been fully explored, but include expanding the coverage of tolerances to additional foods at additional levels in the distribution chain, and various changes in the way the Agency reviews and assesses residue data to improve its usefulness as a measure of dietary exposure.

Anticipated Costs and Benefits:

No analyses have been done to date. When specific regulatory objectives and alternatives are identified, costs and benefits will be evaluated.

Risks:

The tolerance-setting system is the mechanism by which the safety of the American food supply is protected. Fundamental improvements in this system can contribute to reduced pesticide use, and a better public understanding of the way in which tolerances function to protect the public health. While risk reduction may result, the principal objective of the reassessment is to improve the infrastructure of the system.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3430.

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EPA

PROPOSED RULE STAGE

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141. TSCA CHEMICAL USE INVENTORY RULE

Legal Authority:

15 USC 2607(a)

CFR Citation:

40 CFR 710

Legal Deadline:

None

Abstract:

This action will amend the TSCA Inventory Update Rule (IUR) promulgated in 1986 to require chemical manufacturers to report to EPA the industrial and consumer end uses of chemicals they produce. Currently, the IUR requires chemical manufacturers to report to EPA the names of the chemicals they produce, as well as the locations of manufacturing facilities and the quantities produced. About 4,000 facilities reported data on about 8,000 unique chemicals during the last reporting cycle. Data obtained by the amended IUR will be used by EPA and others to:

- Better understand the potential for chemical exposures and then screen the chemicals now in commerce and identify those of highest concern;
- Establish priorities and goals for their chemical assessment, risk management and prevention programs and monitor their progress;
- Encourage pollution prevention by identifying potentially safer substitute chemicals for uses of potential concern; and
- Enhance the effectiveness of chemical risk communication efforts.

EPA has held meetings with representatives of the chemical industry, environmental groups, environmental justice leaders, labor groups, State governments and other Federal agencies to insure public involvement in the development of the Chemical Use Inventory project. In order to ensure that end use reporting is effective and minimizes reporting burdens, EPA plans to engage the regulated community and other stakeholders in a regulatory negotiation to generate a proposed rule.

Statement of Need:

There are approximately 70,000 chemicals in commerce and listed on the updated Toxic Substances Control Act (TSCA) Inventory. EPA faces the challenge of sorting through these chemicals to identify the ones of most concern and then taking action to mitigate potential risks. The current TSCA Inventory Update Rule collects some of the key data, such as production volumes, that help to identify chemicals of concern, but information on how chemicals are used commercially, which is essential to determining possible exposure routes and scenarios and potential safer substitute chemicals, is not covered by IUR. This action will propose to modify the inventory update process so that data essential to an effective TSCA Inventory screening program are available to EPA.

In addition to the specifics of the kind and format of the desired end use data reporting, EPA would like to engage the regulatory negotiation participants on a number of other reforms of the IUR:

- How to include inorganic chemicals, which have been exempted from reporting in the past, so that risks from these chemicals can be better assessed and managed;
- How to ease the linkage of amended IUR data to other environmental data sources like the Toxic Release Inventory to enhance its usefulness; and
- How to change IUR reporting so that the frequency of submitter confidentiality claims is reduced so that the public can have better access to relevant data on toxics.

A national report will make data collected via the amended IUR publicly available. This report will not contain any information claimed to be confidential.

Alternatives:

Several alternate approaches to securing the desired chemical use data have been evaluated. One of the alternatives considered was whether to add materials accounting and other data elements to the Toxic Release Inventory. EPA plans to evaluate this approach in a separate project.

Anticipated Costs and Benefits:

Total costs of this action depend on the amendments to IUR agreed on during the regulatory negotiation. The amended IUR will assist EPA in screening chemicals not in commerce and identify those of highest concern; establishing priorities and goals for its chemical assessment, risk management and prevention programs and monitor their progress; identifying potentially safer substitute chemicals for uses of potential concern; and enhancing the effectiveness of chemical risk communication efforts.

Risks:

This action will secure data on chemicals in commerce which describes how they are used which is essential to determining possible exposure routes and scenarios. The involvement of diverse interest groups in a regulatory negotiation to develop the proposed rule will insure a high quality project outcome. EPA's toxics program will be able to better focus on chemical risks of most concern.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3301.

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RIN: 2070–AC61

EPA

142. LEAD HAZARD STANDARDS

Legal Authority:

15 USC 2683

CFR Citation:

40 CFR 745

Legal Deadline:

Final, Statutory, April 28, 1994.

Abstract:

The Residential Lead-Based Paint Hazard Reduction Act of 1992 requires EPA to promulgate regulations which identify lead-based paint hazards, lead-contaminated soil, and lead-contaminated dust. EPA is to identify the paint conditions and lead levels in dust and soil that would result in adverse human health effects. On July 14, 1994, EPA issued guidance on this topic to provide information while a proposal is being developed.

Statement of Need:

This rulemaking is required by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), which amended TSCA by adding a new Title IV. Section 403 of TSCA requires the Agency to promulgate regulations that define lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil. Paint conditions and lead levels in dust and soil which would result in adverse health effects are to be identified.

This activity is needed both to reduce uncertainty in determining if a given situation is hazardous to children, and also to make the most efficient use of the Nation's resources by prioritizing actions to reduce lead contamination. It will allow the general public, States, localities, landlords, housing authorities, and others to distinguish hazardous situations based on the condition of the lead-based paint and on the lead levels of dust and soil. This will then allow them to take appropriate action to reduce risks to children.

Alternatives:

Alternatives to be considered include various target levels of soil and dust, and whether a tiered approach is preferable.

Anticipated Costs and Benefits:

Undetermined at this time, although based on previous analyses by the Centers for Disease Control and Prevention, the benefits (including unquantified benefits) are expected to outweigh the costs.

Risks:

The reduction of childhood lead poisoning is a priority for the Administrator. Fetuses and young children are particularly susceptible to lead. Considerable data suggest a correlation between elevated blood lead (EBL) and delays in early neurological and physical development, cognitive and behavioral alterations, alterations in red blood cell metabolism and vitamin D synthesis, kidney impairment, anemia, and in extreme cases, mental retardation and death.

This action is crucial to establishing those circumstances in which lead exposure presents a risk to children. This is essential in making the Nation's housing stock lead-safe, as opposed to lead-free. Thus, this action will not

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only aid in significantly reducing risk, but it will also help to optimize where resources are expended.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
Final Action	09/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

Additional Information:

SAN No. 3243.

Previously listed under RIN 2070-AC53.

Agency Contact:

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RIN: 2070–AC63

EPA

143. RADIATION SITE CLEANUP

Legal Authority:

42 USC 2201/AEA 161; 42 USC 2021/AEA 274; Reorganization Plan No. 3 of 1970

CFR Citation:

40 CFR 196

Legal Deadline:

None

Abstract:

The Agency is developing regulations that will set forth requirements for cleanup levels for sites contaminated with radionuclides. The regulations will be designed to protect human health and the environment from exposure to ionizing radioactive material subject to the Atomic Energy Act and to sites covered under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (i.e., Superfund sites), including but not limited to Federal facilities.

Statement of Need:

The proposed regulation will set standards for the remediation of soil, groundwater, surface water, and structures at Federal facility sites contaminated with radioactive material that will allow these sites to be released for public use. As part of the Agency's fostering of environmental partnerships, this regulation is being developed in coordination with all the relevant Federal agencies.

The number of sites in the U.S. contaminated with radioactive material is estimated to be in the thousands. Contaminated sites range from large Federal facilities (e.g., Department of Energy and Defense sites) to small research laboratories. The estimated cost to clean up these sites is $100-400 billion. Progress in cleaning up sites contaminated with radioactive materials has been limited and slow. These delays have been caused by several factors. Uncertainty about the nature and extent of contamination is partly to blame, but the lack of specific, enforceable radiation site cleanup standards has been a major impediment to site cleanup activities. Currently, differences in site-specific risk assessment methods and uncertainty regarding the cleanup level to be achieved can result in differing levels of cleanup for the same radioactive contaminant found at different sites. To address these inconsistencies, a cleanup standard is needed to guide decisions on the type and level of cleanup to be completed at contaminated facilities. The use of a consistent radiation cleanup standard at all sites ensures that all ethnic, socioeconomic, and racial groups located near sites undergoing cleanup will be equally protected.

Under the authority of the Atomic Energy Act, EPA has the responsibility to protect people and the environment from the harmful effects of ionizing radiation. In addition, Reorganization Plan No. 3 of 1970 provides EPA with the authority to establish standards for the protection of people and the environment from the effects of all radioactive materials.

Alternatives:

EPA is considering four regulatory approaches for the radiation site cleanup regulation: (1) Establishing a dose or risk limit, (2) requiring the use of a "lookup table" of radionuclide- and medium-specific concentrations that would specify cleanup standards applicable to all sites, (3) requiring the use of a "lookup table" and a pathway model to calculate cleanup levels site by site in response to site-specific conditions, and (4) recommending specific technologies to be employed in radiation site cleanups.

Anticipated Costs and Benefits:

The Agency is currently developing a regulatory impact analysis (RIA) to estimate the anticipated economic effects of the draft radiation site cleanup rule. The RIA, however, is not typical of most Agency RIAs. Unique aspects associated with the cleanup of radiation-contaminated sites require a customized approach to the RIA. Instead of comparing costs and benefits to set a cleanup standard, EPA will concentrate on maximizing protectiveness to society.

By specifying a uniform cleanup standard to be achieved at radiation site cleanups, the rule will lead to cost savings associated with (1) streamlined site assessments, (2) reduced legal costs associated with selecting a cleanup risk level, and (3) reduction of market barriers that inhibit the use of existing waste minimization technologies.

There are five major components of total cost associated with the cleanup of radioactively contaminated sites that will be addressed quantitatively: (1) the cost of precleanup activities, which includes initial site characterizations and legal costs; (2) the cost of cleanup; (3) the cost of transporting, by rail and truck, the contaminated soil excavated from a site to a disposal facility; (4) the cost of disposing of contaminated materials; and (5) the cost of verifying that a site cleanup has been successful and the target risk level has been achieved. A sixth major cost component, environmental degradation, will be addressed qualitatively in the RIA.

Risks:

The Agency is currently performing a number of risk analyses to determine a protective cleanup level for the rule. EPA is assessing net health impacts at various cleanup levels and under various cleanup scenarios. Population risk and risks to cleanup workers will also be evaluated. EPA is using computerized models to assess the potential radiation doses and associated risks to the public from all significant exposure scenarios, media, and exposure pathways. The risk analyses are focused on estimating (1) the change in risk to an individual under reasonable maximum exposure conditions, and (2) the number of cancers per year in the exposed population. The methodology is consistent with that described in the Agency's Risk Assessment Guidance for Superfund for Baseline Risk Assessments. The results of this analysis should help clarify which

types of the thousands of potentially affected sites pose the greatest risk and the timeframes over which this risk exists.

Timetable:

Action	Date	FR Cite
ANPRM	10/21/93	58 FR 54474
NPRM	04/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 2073.

Regulatory Flexibility Analysis: Undetermined.

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RIN: 2060–AB31

EPA

144. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER DISINFECTION

Legal Authority:

42 USC 300/SDWA 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

NPRM, Judicial, August 30, 1995. Final, Statutory, June 18, 1989. Final, Judicial, August 30, 1997.

Abstract:

EPA will propose that all public water systems using groundwater use disinfection treatment processes, unless they have a natural disinfection or meet specified variance criteria. This rule will reduce microbial contamination risk from public water systems relying on groundwater as their drinking water source. The sources of microbial contamination are ubiquitous, and contamination can cause diarrhea, other gastrointestinal illness, hepatitis, and a variety of other illnesses. The approximately 180,000 public water systems that use groundwater not under direct influence of surface water will be affected by this regulation. Known treatment technologies include disinfection (through use of chlorine, chloroamines, ozone, chlorine dioxide, or ultraviolet); source protection; well construction codes; and backflow prevention programs.

Statement of Need:

Section 1412 of the Safe Drinking Water Act requires EPA to establish disinfection requirements, including variance criteria, for all public water systems. This rule will meet that statutory requirement and reduce microbial contamination risk from public water systems relying on groundwater as their drinking water source. Under the regulation, systems would be required to disinfect the source water from each of their wells unless they met the natural disinfection criteria established under the rule, or qualified for a variance under Section 1415 of the Safe Drinking Water Act.

Alternatives:

In order to obtain broad and timely input, two early drafts of the rule have already been shared with the public, the first in 1991 and the second in 1992. The regulation is in an early stage of development so the alternatives are not yet developed. One alternative which was considered in the strawman rule issued in 1992 is natural disinfection criteria which would enable a public water system to avoid chemical disinfection. The concept of natural disinfection is innovative. Its implementation poses technical problems but the intent is to avoid incurring cost when there would be no public health benefit. States, tribes, and local government officials will be invited to help the Agency work through these issues.

Anticipated Costs and Benefits:

Not yet available.

Risks:

The rule is intended to reduce the risk of microbial contamination from groundwater drinking water sources. Almost 90 million people are served by 180,000 public water systems relying on groundwater as their drinking water source. More disease outbreaks have occurred in groundwater drinking water sources than surface-water drinking water sources.

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	
Final Action	08/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2340.

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RIN: 2040–AA97

EPA

145. NATIONAL PRIMARY DRINKING WATER REGULATIONS: 25 CONTAMINANTS FROM DRINKING WATER PRIORITY LIST (PHASE VI-B)—ORGANIC AND INORGANIC CONTAMINANTS

Legal Authority:

42 USC 300/SDWA 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

NPRM, Statutory, January 1, 1990. NPRM, Judicial, February 28, 1995. Final, Statutory, January 1, 1991. Final, Judicial, February 28, 1997.

Abstract:

EPA is scheduled to propose MCLGs and NPDWRs for 25 contaminants from the 1991 Drinking Water Priority List, as required by the SDWA of 1986. The SDWA requires regulation of at least 25 contaminants from the Drinking Water Priority List, which are known or anticipated to occur in public water systems, every 3 years starting in 1991. The SDWA directs EPA to promulgate MCLGs at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects occur and which allows for an adequate margin of safety." MCLs are federally enforceable standards and are set as close to the MCLGs as is feasible, taking costs into consideration. The 25 contaminants will be addressed in two rulemakings: Disinfection Byproducts (Phase VI-A) and Organic and Inorganic Contaminants (Phase VI-B). The Phase VI-B rule is intended to reduce cancer risk and other chronic toxicity exposures. (See separate entry for Phase VI-A.)

As required by SDWA Section 1412(b)(3), EPA plans to propose

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regulations for 19 organic and inorganic contaminants (including a number of pesticides) and to eventually set standards for approximately 12 of the 19 contaminants. These contaminants can cause a variety of health effects such as cancer, developmental effects, nervous system dysfunction, and liver and kidney toxicity. An estimated 7,700 to 9,500 water systems would be affected by the regulations. Known treatment technologies vary by contaminants, but include packed tower aeration, conventional granular activated carbon, reverse osmosis, ion exchange, and lime softening.

Statement of Need:

The SDWA requires regulation of at least 25 contaminants from the Drinking Water Priority List, which are known or anticipated to occur in public water systems, every 3 years starting in 1991. The SDWA directs EPA to promulgate maximum contaminant level goals (MCLGs) at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects occur and which allows for an adequate margin of safety." Maximum contaminant levels (MCLs) are federally enforceable standards and are set as close to the MCLGs as is feasible, taking costs into consideration. The regulations also specify analytical methods, treatment technology which can be used to meet the standard, and monitoring/reporting/recordkeeping requirements.

The 25 contaminants are being addressed in three separate rules. The disinfectant/disinfection byproduct (D/DBP) rule, proposed July 29, 1994, contained 12 contaminants for regulation. An additional contaminant was proposed in the Enhanced Surface Water Treatment Rule, also proposed on July 29, 1994. Nineteen organic and inorganic contaminants are scheduled to be proposed in the VI-B rule. The nineteen are: acifluorfen, acrylonitrile, boron, bromomethane, cyanazine, dicamba, 2,4/2,6-dinitrotoluene, ethylene thiourea (ETU), hexachlorobutadiene, manganese, methomyl, metolachlor, metribuzin, molybdenum, 1,1,1,2-trichloroethylene, 1,2,3-trichloropropane, telone, trifluralin, and zinc. By proposing 32 contaminants, the Agency believes it will be able to meet the requirement to promulgate standards for at least 25 contaminants.

By requiring public water systems to meet MCLs, the rule will reduce exposure of the public to contaminants which are thought to be carcinogens or pose other chronic health effect risks

Alternatives:

Alternative MCL levels were considered in the analysis, depending on different exposure scenarios. The Agency will also be requesting comment on the selection criteria used to identify these contaminants for regulation. These criteria may be revised based on pending legislative amendments. The Agency is developing mechanisms for involving States, tribes, and local government officials more closely in the development of this rule, the selection criteria, the application of the criteria to the 19 contaminants, and alternative compliance opportunities which present cost savings opportunities.

Anticipated Costs and Benefits:

Preliminary benefits are that about 13 million people would have reduced exposure to the contaminants in the rule. The annual cost would be about $600 million. The annual cost reflects amortization (over a 20-year period at a 7 percent interest rate) of $12.7 billion in capital costs.

Risks:

The risks posed by the contaminants being regulated include cancer and other chronic toxicity endpoints such as kidney and thyroid effects. Occurrence data were not available for several of the carcinogens to develop an estimate of cancer cases avoided. As stated above, for the noncarcinogens, the Agency estimates that about 13 million people would have reduced exposure as a result of the rule's implementation.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
Final Action	02/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3509.

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RIN: 2040–AC22

EPA

146. MANAGEMENT OF CLASS V INJECTION WELLS UNDER PART C OF THE SAFE DRINKING WATER ACT

Legal Authority:

42 USC 300f/SDWA 1421 to 1425

CFR Citation:

40 CFR 144; 40 CFR 145; 40 CFR 146

Legal Deadline:

None

Abstract:

The SDWA requires EPA to develop regulations for the protection of underground sources of drinking water from contamination by injection wells. Previously promulgated regulations specified minimum standards and technical requirements for Class I-IV wells. Class V wells, including certain septic systems and a variety of drainage wells, are the subject of this action. EPA intends to establish a regulatory framework for the management of these wells that will protect against contamination of groundwater while recognizing the difficulties of this diverse well class. Development of any regulatory program will focus on providing maximum flexibility to State, sub-State, and local entities. EPA will characterize risks associated with various Class V injection wells since data are unavailable for risk assessments on an individual subcategory basis.

Statement of Need:

The SDWA requires EPA to protect current and future underground sources of drinking water (USDWs) from endangerment by injection wells. One group of injection wells, Class V, is, as yet, not covered by specific technical requirements. These wells vary from simple dry wells to complex geothermal wells; injected fluids range from storm-water runoff to industrial wastewaters. EPA's 1987 Report to Congress on Class V Injection Wells determined that for some Class V wells, current regulations do not adequately protect USDWs.

In making a determination of the need for regulation of certain Class V wells, EPA considers how current State programs manage these wells. In general, additional Federal standards will not be prescribed for those that are adequately regulated. This comprehensive and flexible approach will help ensure that mandates are met, costs and burdens to affected entities are minimized, and effective partnerships with implementing States are maintained. States administering the program will incorporate regulations as stringent as the proposed Federal approach and adopt guidance as part of their comprehensive State groundwater protection plans.

Alternatives:

The Agency uses the risk posed by injected fluids as the primary criterion to determine whether specific regulatory requirements or guidance would be the best way to meet SDWA standards for a particular Class V well. Since the potential risks posed by the different types of wells vary, regulatory requirements would be imposed only on those wells judged to be endangering USDWs. Industrial and commercial wastes disposed of in shallow drywells and "misused" septic systems that release fluids in strata above USDWs present the greatest danger to public health and the environment. Cesspools, which inject untreated sanitary wastes, also have a high potential to endanger USDWs. The Agency's preferred approach would likely place specific requirements on certain types of Class V wells. For example, limitations would be placed on those that inject industrial contaminants, a ban on the injection of sanitary waste in cesspools serving 20 or more people might be imposed, and Class V wells that dispose of radioactive wastes below the lowermost USDW would be reclassified as Class I wells. Beneficial Class V wells would most likely continue to be authorized by rule.

For the high-risk industrial disposal wells, six alternatives were already analyzed, ranging from no action to limitations on the injected fluid and requirements for remediation. The Agency's preferred option would limit the injected fluid to drinking water standards at the point of injection, or, conversely, the well's owner/operator could demonstrate that injected fluids will not endanger USDWs. It would also require that where well closure is chosen, owners/operators must also test the soil for hazardous contamination and remove or manage all soils that meet the RCRA definition of a hazardous waste. Current Agency analysis indicates that this strategy achieves the highest level of protection of human health and the environment, allows for the maximum flexibility to the regulated community and State programs, and demonstrates a commonsense approach to an environmental risk by preventing pollution.

For the other wells covered by this approach, the Agency's investigations over the past years revealed that either such wells no longer exist (e.g., community cesspools) or that the wells are located in a State with regulations at least as strict as the proposed rule (e.g., low-level radioactive disposal wells in Texas). The preferred approach would codify these approaches.

Anticipated Costs and Benefits:

The preliminary estimates of the anticipated costs and benefits are based on the impacts associated with approximately 117,500 Class V industrial waste disposal operations. Annualized costs of this option are estimated to range from $0.9 billion to $1.2 billion. The indirect costs of alternative waste management practices vary from $509 to $856 million. This range of magnitude is primarily a function of the number of estimated facilities, rather than high compliance costs for each facility. The average annualized cost per facility is estimated to range from about $7,774 to $10,600. The range does, however, reflect uncertainty about the number of affected facilities, the unit compliance costs estimates, and the responses of the affected facilities to the regulatory requirements.

Available information on which to conduct the benefits assessment was extremely limited. The benefits associated with each alternative were assessed based on the detrimental effects that these wells can have on the quality of USDWs, public health and the environment. What information is available in this area comes from case studies of pollution incidents caused by Class V wells. The Agency believes that the preferred approach would ensure a high degree of protection while not placing unnecessary burdens on Class V well owners/operators.

Risks:

The estimated 117,500 Class V industrial wells are believed to dispose of more than 4 million pounds of industrial waste annually either into or directly above USDWs. Additionally, an estimated 50 percent of these industrial wells are "misused" septic systems designed to treat sanitary waste only. These industrial contaminants impede the primary function of the sanitary waste treatment system, resulting in the release of both improperly treated domestic and industrial waste into the accessible environment.

Because the most likely preferred regulatory option to be proposed targets only this small, industrial subset of Class V wells that presents the highest risk to USDWs, implementation of the rule should result in a large reduction of risk to public health and the environment. Implementation of the rule will encourage owners/operators of Class V wells to use best management practices to reduce the amount of wastes generated, helping to prevent pollution and level the environmental compliance costs with responsible competitors that do not have the unfair economic advantage of Class V well disposal.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
Final Action	11/00/96	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2778.

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RIN: 2040–AB83

EPA

147. IDENTIFICATION AND LISTING OF HAZARDOUS WASTES: HAZARDOUS WASTE IDENTIFICATION RULE (HWIR); WASTE

Legal Authority:

42 USC 6905, 6912(a), 6921, 6922, and 6926

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 262; 40 CFR 264; 40 CFR 268

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Legal Deadline:

Final, Statutory, October 31, 1994.

Abstract:

This action will make modifications to the "mixture" and "derived from" rules. These two rules address when hazardous wastes that are mixed with other wastes, media, or are otherwise managed after generation can be determined to be no longer hazardous.

Statement of Need:

EPA is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) for hazardous waste identification. The amendment would establish exemption criteria for low-risk listed hazardous wastes, wastes mixtures, and derivatives.

Under the amendment, low-risk listed hazardous wastes, wastes mixtures, and derivatives meeting the exemption criteria would no longer be subject to some of the hazardous waste management requirements under Subtitle C of RCRA.

The provisions of this proposal will reflect a balancing of the Agency's informational needs for oversight and enforcement with the practical resource considerations of the generator. This proposal would reduce the demand on scarce Subtitle C landfill capacity and would not increase risk to humans or the environment because the exempt waste would be low risk and not warrant management under Subtitle C. This proposal will also promote pollution prevention, waste minimization, and development of innovative waste treatment technology.

This notice will also contain the Agency's tentative response to a petition for rulemaking submitted by the Chemical Manufacturers Association.

Alternatives:

A variety of alternatives for establishing the exemption criteria and the implementation requirements are currently being identified by a FACA committee co-chaired by EPA and the States. EPA is forging a strong partnership with the States in the interest of our co-regulator, co-implementor roles. No decisions have been made as to what the proposal will include.

Anticipated Costs and Benefits:

Cost and benefit estimates are not yet available.

Risks:

This proposal would maintain current levels of risk protection.

Timetable:

Action	Date	FR Cite
NPRM	05/20/92	57 FR 21450
NPRM Withdrawn	10/30/92	57 FR 49280
NPRM Reproposal	09/00/95	
Final Action	03/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3328.

Agency Contact:

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RIN: 2050–AE07

EPA

148. REVISED TECHNICAL STANDARDS FOR HAZARDOUS WASTE COMBUSTION FACILITIES

Legal Authority:

42 USC /RCRA 3004(a)(q); RCRA 3005(a), CAAA section 112

CFR Citation:

40 CFR 264; 40 CFR 266

Legal Deadline:

None

EPA has signed a settlement agreement to promulgate revised rules for industrial furnaces and incinerators by December 1996 and boilers by December 1999.

Abstract:

The Draft Strategy for Combustion of Hazardous Waste and a settlement agreement commit EPA to upgrade its technical standards for burning hazardous waste in incinerators, boilers and industrial furnaces. These standards would be applicable during the construction and operation of these combustion facilities.

Statement of Need:

Under the Clean Air Act (CAA) Amendments of 1990, EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most HWCs (i.e., incinerators, cement kilns, boilers, and some types of smelting furnaces). In addition, under the Resource Conservation and Recovery Act, EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. EPA is concerned that its current RCRA standards for HWCs may not be adequately protective given that there are no emission standards for chlorinated dioxins and furans and that there have been advances both in risk assessment and control technologies since promulgation of the current standards.

Consequently, the Agency plans to establish new emissions standards for HWCs under joint CAA and RCRA authority. This will avoid duplicative Agency effort and piecemeal regulation of the waste management industry.

Alternatives:

Under provisions of the CAA, the Agency plans to consider the cost-effectiveness of emission limits more stringent than the minimum limits mandated by the statute. Further, the Agency plans to evaluate approaches to reduce emissions of hazardous air pollutants by improving good operating practices (e.g., controlling the way in which problematic materials such as toxic metals are introduced into the combustor).

Anticipated Costs and Benefits:

Because the rulemaking has just recently been initiated, cost and benefit analyses have not yet been conducted.

Risks:

Because the rulemaking has just recently been initiated, risk analyses have not yet been conducted.

Timetable:

Action	Date	FR Cite
NPRM industrial furnaces and incinerators	09/00/95	
Final Action	12/00/96	
NPRM boilers	09/00/98	
Final Action	12/00/99	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3333.

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RIN: 2050–AE01

EPA

149. IDENTIFICATION AND LISTING OF HAZARDOUS WASTES; HAZARDOUS WASTE IDENTIFICATION RULE (HWIR): CONTAMINATED MEDIA

Legal Authority:

42 USC 6912(a)/RCRA 3001; 42 USC 6905; 42 USC 6921; 42 USC 6922; 42 USC 6926

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 262; 40 CFR 264; 40 CFR 268

Legal Deadline:

None

Abstract:

The overall goal of this regulation is to better connect the risks posed by media that are contaminated with hazardous wastes to the regulations that apply to them. Problem areas involved in the remediation of contaminated media will also be addressed. Certain current regulations that apply to all contaminated media wastes regardless of the concentrations and the mobility of toxicants in the media will be modified. The modifications will establish exemption standards for certain low-risk contaminated media so that they will not necessarily be subject to all hazardous waste management requirements.

Statement of Need:

Since 1980, EPA has promulgated comprehensive regulations under Subtitle C of RCRA governing the treatment, storage, disposal and transportation of hazardous wastes. These regulations have been designed primarily to discourage waste generation and disposal, and for those wastes generated, to prevent future environmental contamination. In contrast, the primary objective of the cleanup program is to achieve environmental improvement as quickly and effectively as possible, which is not always possible when there are Subtitle C requirements.

In 1993, EPA, States, and representatives from industry, environmental groups, and the hazardous waste treatment industry (comprising a Federal Advisory Committee (FACA)) reached a tentative agreement on a "harmonized approach" to address this issue. This approach distinguishes between "higher" and "lower" level (bright line) contaminated media based on assessment of potential human health and environmental risks. The bright line would be set at a relatively high risk level to allow States and EPA to identify hot spots that would be subject to Subtitle C requirements (land-disposal regulations and MTR). Media above bright-line concentrations would be subject to specific national treatment requirements; media below the bright line would be exempt from Subtitle C if subject to enforceable site-specific management by the overseeing agency.

Among the issues that must be addressed before this rule can be proposed are: types of media that should be covered; types of sites that should be eligible; the relationship to the existing regulatory framework; and the risk level at which the bright line will be set.

Alternatives:

Alternative regulatory approaches for this rule will be analyzed.

Anticipated Costs and Benefits:

Analyses of costs and benefits will be conducted as part of the economic analysis for this rule required under Executive Order 12866.

Risks:

One of the primary objectives of this rule is to establish requirements for management of contaminated media that more accurately reflect the risks posed by such wastes. Thus, the rule is expected to result in cleanups that achieve the Agency's risk reduction objectives in a more efficient and expeditious manner. More quantitative analysis of the risks associated with this rule will be included in the economic analysis.

Timetable:

Action	Date	FR Cite
NPRM	05/20/92	57 FR 21450
NPRM Withdrawal	10/30/92	57 FR 49280
Reproposal	07/00/95	
Final Action	07/00/96	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 2982.

A description of a related regulatory action appears in Regulatory Plan entry 2050-AE07 in Part II of this issue.

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RIN: 2050–AE22

EPA

150. LAND DISPOSAL RESTRICTIONS—PHASE III: STANDARDS FOR DECHARACTERIZED WASTES AND TREATMENT STANDARDS FOR NEWLY LISTED CARBAMATE, ORGANOBROMINE WASTES, AND SPENT ALUMINUM POTLINERS

Legal Authority:

42 USC 6901/RCRA 3004(m)

CFR Citation:

40 CFR 268

Legal Deadline:

Final, Judicial, January 1996.

Abstract:

EPA will be proposing rules addressing a rule pursuant to the September 25, 1992, decision of the U.S. Court of Appeals in Chemical Waste Management v. EPA, 976 F. 2d (D.C. Cir. 1992). The underlying rule at issue was signed on May 8, 1990, and published on June 1, 1990 (55 FR 22520). The Phase III proposal will establish treatment standards for formerly characteristic wastes primarily managed in land-based wastewater treatment systems whose ultimate discharge is regulated under the Clean Water Act. Treatment standards will also be established for newly listed carbamates and organobromine wastes. The Phase IV proposal will address whether land-based wastewater systems provide treatment that is equivalent to that conducted under the RCRA LDR program. Treatment standards will also be established for wood preserving and mineral processing wastes.

Statement of Need:

In the Phase III rulemaking, EPA will address certain remanded issues pursuant to the September 25, 1992, decision of the U.S. Court of Appeals in Chemical Management vs. EPA, 976

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F 2d (D.C. Cir. 1992). The proposed rule would establish treatment standards for characteristic wastes primarily managed in land-based wastewater treatment systems whose ultimate discharge is regulated under the Clean Water Act and which is disposed in Class I injection wells under the Safe Drinking Water Act. These wastes include spent aluminum potliners, carbamates, and organobromines. The proposal will include a discussion of whether to define and prohibit characteristic wastes not amendable to biological treatment from being placed in biological surface impoundments ("nonamenable wastes") and changes to the LDR program which were given advance notice in the Phase II LDR proposed rulemaking (September 14, 1994; 58 FR 48092).

In the Phase IV rulemaking, EPA will address the remaining remanded issues pursuant to the September 25, 1992, decision, as well as establish treatment standards for certain mineral processing wastes, wood preserving wastes, and toxicity characteristic metals. The remaining remanded issues include whether Clean Water Act (CWA) wastewater treatment systems provide treatment that is equivalent to that conducted under the RCRA LDR program, specifically, the probability that waste constituents may merely be transferred from the CWA treatment surface impoundment to air, sludge, or groundwater, rather than actually being treated so they are removed, destroyed or immobilized as under the LDR program.

Alternatives:

LDR treatment standards are based upon the efficiencies of best demonstrated available technologies (BDAT). Section 3004(m) requires that the treatment standards ensure substantial reductions in wastes' toxicity and/or mobility, such that threats to human health and the environment arising from subsequent land disposal are minimized.

Case-by-case exemptions to these treatment requirements can be granted if a petitioner successfully demonstrates to EPA that there will be no migration of hazardous constituents from a disposal unit for as long as the waste remains hazardous. Applicants for a no-migration petition will be required to demonstrate to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous.

EPA will also conduct national capacity assessments for each set of regulations to determine if effective dates for prohibitions should be extended nationally for eight individual wastes for up to 2 years. A 1-year extension, renewable once, may be granted on a case-by-case basis if it can be shown for specific wastes that insufficient treatment capacity exists and binding contractual commitments exist to construct or obtain alternative treatment capacity.

EPA has also instituted petition procedures for obtaining variances, referred to as treatability variances or equivalent method variances, that may be requested when the waste cannot be treated to the specified level by the model treatment technology, or when the specified treatment technology is not appropriate for the waste. For treatability variances, the generator or treatment properties of the waste differ significantly from wastes analyzed. In developing the treatment standards, the waste cannot be treated to the specified levels or by the specified methods. Two types of treatability variances may be obtained. The first is a variance granted through rulemaking procedures that establishes a new treatability group and treatment standards for that waste and all similar wastes nationwide. The second is granted through administrative procedures, and is granted on a site-specific basis. For equivalent method variances, the generator or treatment facility must demonstrate that a technology that is different from the one specified in the regulations achieves an equivalent degree of treatment.

Finally, EPA is committed to continue to identify ways to simplify the LDR program. In the recent Phase II final rulemaking (signed July 29, 1994), the Agency established a single set of "universal" treatment standards to apply to most hazardous wastes. The Agency also simplified notification requirements and reduced paperwork. EPA will explore additional opportunities for such streamlining in the Phase III and Phase IV rulemakings.

Anticipated Costs and Benefits:

Because these rules involve a universe of affected entities that have not been affected by the LDR program before, the methodology for estimating the volumes and costs is still being developed. The first estimates of volumes for the Phase III rule are expected to be ready by late July 1995, with the estimates of costs ready by early August. The first estimates of volumes and costs for the Phase IV rule should be ready by the end of 1995 or early 1996.

Risks:

These rulemakings will reduce risks to human health and the environment to the same extent as other Agency actions.

Timetable:

Action	Date	FR Cite
ANPRM	10/24/91	56 FR 55160
NPRM	01/00/95	
Final Action	01/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3365.

This entry includes RINs 2050-AA30, 2050-AD36, 2050-AD37, and 2050-AE05.

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RIN: 2050–AD38

EPA

151. NEW SOURCE REVIEW (NSR) REFORM

Legal Authority:

Clean Air Act as amended in 1990, title I

CFR Citation:

40 CFR 51.160 to 51.166; 40 CFR 51, app S; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline:

None

Abstract:

The purpose of this action is to amend EPA's existing new source review regulations, including prevention of significant deterioration, to reduce the level of program complexity. In addition, certain other revisions will be made to improve the clarity of the existing regulatory language. This rulemaking will satisfy obligations under Exhibit B of the settlement agreement in Chemical Manufacturers vs. EPA, No. 79-112 (D.C. Cir.). The regulations contain procedures for

reviewing, permitting, and specifying controls for the construction and modification of major air pollution sources in attainment and nonattainment areas. Several new source review regulations will be affected, including the State implementation requirements for the review of new sources and modifications (40 CFR 51.160-166 and Appendix S), the Federal prevention of significant deterioration program (40 CFR 52.21), and Federal restrictions on new source construction (40 CFR 52.24).

Statement of Need:

In August 1992, EPA voluntarily initiated a comprehensive effort to reform the NSR process. This effort was initiated to examine complaints from the regulated community that the current regulatory scheme is too complex, needlessly delays projects, and unduly restricts source flexibility. Currently there are no applicable statutory or judicial deadlines for the NSR reform rulemaking effort. The goal of this effort is to address industries' concerns without sacrificing the environmental benefits embodied in the present approach; that is, protecting and improving local air quality, and stimulating pollution prevention and advances in control technologies.

In August 1992 and March 1993, public workshops were held to obtain ideas and comments and discuss options for reforming NSR, but not to attempt to reach consensus with the group. In July 1993, the New Source Review (NSR) Reform Subcommittee was formed under the auspices of the Clean Air Act Advisory Committee. The Subcommittee's purpose is to provide independent advice and counsel to EPA on policy and technical issues associated with reforming the NSR rules.

The Subcommittee is composed of representatives from industry, State/local air pollution control agencies, environmental organizations, EPA headquarters and regions, and other Federal agencies (Federal Land Managers (National Park Service and Forest Service), Department of Energy, OMB). Subcommittee meetings have been held on July 21-22, 1993; November 8-9, 1993; January 20-21, 1994; and March 16-17, 1994. A Subcommittee meeting is tentatively scheduled for July 19-20, 1994, in Durham, N.C.

At the July 1993 meeting six subgroups were formed to address Class I area and control technology issues identified by the Subcommittee. Another two subgroups were formed at the November 1993 meeting, one to address NSR applicability issues and the other to address the impact of existing sources on Class I areas.

Summary of the Legal Basis:

There are no applicable statutory or judicial deadlines for the NSR reform rulemaking effort. However, the rule will address two outstanding settlement agreements: CMA Exhibit B and Top-down BACT. The pending settlement on WEPCO may impose a judicial deadline on the rulemaking.

Alternatives:

The Subcommittee discussed numerous options for implementing NSR reform. However, EPA's primary focus will be to consider the specific recommendations developed by the Subcommittee and, where appropriate, use them in this rulemaking effort.

Anticipated Costs and Benefits:

The anticipated costs and benefits resulting from this rulemaking will be part of the Agency's regulatory impact analysis of this rule. The Agency has just begun this analysis, thus, the anticipated costs and benefits are not available at this time.

Risks:

This is a procedural rule applicable to a wide variety of source categories. Moreover, it applies to criteria pollutants for which NAAQS have been established. Any potential risks are considered in the NAAQS rulemaking from a national perspective.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
Final Action	01/00/96	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 3259.

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RIN: 2060–AE11

EPA

152. NAAQS: OZONE (REVIEW)

Legal Authority:

42 USC 7408 section 108 Clean Air Act; 42 USC 7409 Section 109 Clean Air Act

CFR Citation:

40 CFR 50.9

Legal Deadline:

Final, Statutory, December 31, 1980.

Review at 5-year intervals thereafter.

Abstract:

The EPA is reviewing and updating the air quality criteria for ozone to incorporate new scientific and technical information. Based on the revised criteria, the EPA will determine whether revisions to the standards are appropriate.

Statement of Need:

In March 1993, the EPA concluded that revision of the NAAQS was inappropriate, based on the existing air quality criteria for ozone, but decided to expedite the next review of the ozone criteria and NAAQS in light of potentially significant new information. On February 3, 1994, the EPA announced an accelerated schedule for completing the new review. In litigation challenging the March 1993 decision, the EPA subsequently sought and received a voluntary remand of the decision so it could be reconsidered in light of the new information. The EPA intends to complete the remand proceedings on the schedule announced in February. Consistent with that schedule, a draft Criteria Document was sent to the Clean Air Scientific Advisory Committee (CASAC) and made available for public review during February and March of 1994. The CASAC met in July 1994 to review the criteria document and provided oral and written comments, which are being considered by EPA in revising the draft document. Subsequent CASAC meetings will be held to review the revised draft criteria document and drafts of the staff paper.

Anticipated Costs and Benefits:

The anticipated costs and benefits resulting from this rulemaking will be part of the Agency's regulatory impact analysis of this rule. The Agency has just begun this analysis; therefore, the anticipated costs and benefits are not available at this time.

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Timetable:

Action	Date	FR Cite
NPRM	06/00/96	
Final Action	06/00/97	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3353.

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EPA

153. • OZONE TRANSPORT COMMISSION; EMISSION VEHICLE PROGRAM FOR THE NORTHEAST OZONE TRANSPORT REGION

Legal Authority:

42 USC 7511(c)/CAA 184; 42 USC 7506/CAA 176(a); 42 USC 7525/CAA 110; 42 USC 7521/CAA 307(a); 42 USC 7410/CAA 301; 42 USC 7607(d); 42 USC 7601

CFR Citation:

40 CFR 85

Legal Deadline:

Final, Statutory, November 10, 1994.

Abstract:

On February 10, 1994, the Northeast Ozone Transport Commission (OTC) submitted a recommendation to EPA under section 184 of the Clean Air Act, for additional control measures to be applied throughout the Northeast Ozone Transport Region (OTR). Specifically, the OTC recommended that EPA require all State members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle (OTC LEV or LEV) program. Under section 184, EPA is to review the OTC's recommendation to determine whether the additional control measures are necessary to bring any area in the OTR into attainment by the dates specified in the Act, and are otherwise consistent with the Act. Based on this review, EPA is obligated to determine whether to approve, disapprove, or partially approve and partially disapprove OTC's recommendation.

Statement of Need:

On February 10, 1994, the Northeast Ozone Transport Commission submitted a recommendation for adoption of an Ozone Transport Commission Low Emission Vehicle (OTC LEV) program for the entire Northeast Ozone Transport Region. In keeping with EPA's emphasis on environmental partnerships, development of this program will engage the Agency in extensive dialogue with the several States in the Region.

Alternatives:

The Administrator may approve, disapprove, or partially approve and partially disapprove the recommendation.

Anticipated Costs and Benefits:

A cost/benefit analysis has not been completed on this program.

Risks:

The risks are those associated with not attaining the National Ambient Air Quality Standard for ozone within the Northeast Ozone Nonattainment Area, should it be determined that the recommended measure (OTC LEV) is necessary to such attainment.

Timetable:

Action	Date	FR Cite
NPRM	04/26/94	57 FR 13498
Supplemental Notice	10/00/94	
Final Decision Notice	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

State, Local, Tribal

Additional Information:

SAN No. 3526.

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RIN: 2060–AF15

EPA

154. MEDICAL WASTE INCINERATORS

Legal Authority:

Clean Air Act of 1990, section 129

CFR Citation:

40 CFR 60

Legal Deadline:

NPRM, Judicial, February 1995. Final, Statutory, November 1992. Final, Judicial, April 1996.

Abstract:

The EPA is developing new source performance standards (NSPS) and emission guidelines (EG) for existing sources under Sections 111 and 129 of the Clean Air Act. The NSPS are to reflect the maximum degree of reductions in emissions that have been demonstrated for new units. The EG may be less stringent than the standards for new units. States must submit plans for implementing and enforcing the guidelines. Section 129 requires that emission limits be established for particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. These standards are being developed under EPA's integrated combustion strategy, whereby EPA will regulate various forms of combustion under a coordinated plan. Two other elements of this strategy, the emission standards for municipal waste combustion and hazardous waste combustion, are summarized elsewhere in this Regulatory Plan.

Statement of Need:

The medical waste incinerator rules will establish emission limits for dioxins, particulate matter, carbon monoxide, cadmium, lead, mercury, SO2, HC1, and NOx. These rules will require maximum achievable control technology (MACT), as defined by Section 129, to be installed on all applicable facilities to reduce emissions of the above pollutants.

Summary of the Legal Basis:

Section 129 of the Clean Air Act required the rule for medical waste incinerators to be promulgated by November 15, 1992. The Agency is now under a court-ordered deadline to propose by February 1, 1995, and promulgate by April 15, 1996. These rules are to include new source performance standards for new sources and emission guidelines for existing sources.

Alternatives:

The Clean Air Act specifies that the emission guidelines and the new source performance standards can be based on MACT, and that MACT for existing sources can be no less stringent than the average emission limitations achieved by the best performing 12 percent of units; and for new sources, can be no less stringent than the average emission limitations achieved by the best performing similar source. All control technologies for each pollutant as stringent as the floor or more stringent have been analyzed during the development of the standard.

Anticipated Costs and Benefits:

The annualized cost of the standards for new incinerators will be in the range of $75 million to $215 million. The annualized cost of implementing the guidelines for existing incinerators will be in the range of $350 million to $1.2 billion. The combined standards and guidelines will result in reductions of dioxin emissions by more than 99 percent, as will reductions in the 90 percent to 98 percent range for particulate matter, cadmium, lead, mercury, hydrogen chloride, and carbon monoxide.

Risks:

Medical waste incinerators are among the larger sources of dioxin emissions in the country. Because of the adverse effects of dioxin emissions on the public health and ecosystems, it is one of the Agency's highest priorities to reduce the exposure to dioxin emissions. These regulations will reduce dioxin emissions by more than 99 percent.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
Final Action	04/00/96	

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local, Tribal, Federal

Additional Information:

SAN No. 2719.

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RIN: 2060–AC62

EPA

155. NSPS: MUNICIPAL WASTE COMBUSTION—PHASE II AND PHASE III

Legal Authority:

42 USC 4111/Clean Air Act Amendments of 1990, section 129

CFR Citation:

40 CFR 60

Legal Deadline:

NPRM, Judicial, September 1, 1994. Final, Judicial, September 1, 1995.

NPRM, Statutory, November 1991, for Phase II/Large MWCs.

NPRM, Statutory, November 1992, for Phase III/Small MWCs.

Abstract:

The Clean Air Act Amendments of 1990 direct EPA to set standards of performance and emission guidelines for new and existing municipal waste combustors under Sections 111 and 129; to base these standards and guidelines on maximum achievable control technology; and to include emission limits for particulate matter, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, mercury, lead, cadmium, and dioxins and dibenzofurans. The standards for both large and small municipal waste combustors have been combined into one set of standards. These standards are being developed under EPA's integrated combustion strategy, whereby EPA will regulate various forms of combustion under a coordinated plan. Two other elements of this strategy, the emission standards for medical waste and hazardous waste combustion, are summarized elsewhere in this Regulatory Plan.

Statement of Need:

The municipal waste combustor rules will establish emission limits for dioxins, particulate matter, cadmium, lead, mercury, SO2, HC1, and NOx. These rules will require maximum achievable control technology (MACT) as defined by Section 129 to be installed on all applicable facilities to reduce emissions of the above pollutants.

Summary of the Legal Basis:

Section 129 of the Clean Air Act required the rule for municipal waste combustors burning greater than 250 tons per day of waste be promulgated on November 15, 1991, and the rule for municipal waste combustors burning less than 250 tons per day be promulgated by November 15, 1992. The Agency is now under court-ordered deadline for both rules to be proposed by September 1, 1994, and promulgated by September 1, 1995. These rules are to include new source performance standards for new sources and emission guidelines for existing sources.

Alternatives:

The Clean Air Act specifies that the emission guidelines and the new source performance standards be based on MACT and that MACT for existing sources can be no less stringent than the average emission limitations achieved by the best performing 12 percent of units and/or new sources can be no less stringent than the average emission limitations achieved by the best performing similar source. All control technologies for each pollutant as stringent as the floor or more stringent have been analyzed during the development of the standard.

Anticipated Costs and Benefits:

The annualized cost for the new source performance standards for new municipal waste combustors will be about $43 million. The annualized cost for the emission guidelines for existing municipal waste combustors will be about $445 million. Dioxin, particulate matter, cadmium, and lead emissions will be reduced by more than 99 percent. Mercury emissions will be reduced by 85 percent, SO2 and HCl emissions by 95 percent, and NOx emissions by 45 percent. The quantified benefits associated with the rule and the guidelines are in excess of $266 million per year, but the benefit assessment is incomplete at this time. In particular, the current benefit estimate does not include benefits for the control of dioxin, mercury, lead, cadmium, NOx, or carbon monoxide. No valuation of these pollutants is possible at this time.

Risks:

Municipal waste combustors are among the larger sources of dioxin emissions in the country. Because of the adverse

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effects of dioxin emissions on the public health and ecosystems, it is one of the Agency's highest priorities to reduce the exposure to dioxin emissions by more than 99 percent.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	09/00/95	

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local, Federal

Additional Information:

SAN No. 2916.

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RIN: 2060–AD00

EPA

156. REVIEW OF THE FEDERAL TEST PROCEDURE FOR EMISSIONS FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

Legal Authority:

PL 101-549, Sec 208

CFR Citation:

40 CFR 86

Legal Deadline:

NPRM, Judicial, January 31, 1995. Final, Statutory, May 15/1992. Final, Judicial, October 31, 1995. Other, Judicial, May 15, 1993.

Original statutory deadline (5/15/92) is from 11/90 Clean Air Act Amendments. Other Judicial date: per U.S. District Court Consent Decree, EPA issued a preliminary technical report on 5/15/93.

Abstract:

This action revises the Federal Test Procedure (FTP) used to design all Federal emissions test methods, as well as all federally approved methods of estimating and projecting emissions from automobiles. This revision will advance the Agency's strategic aim of using better science and better data by assuring that automobiles can be accurately tested for compliance with Federal standards, and it will also enable EPA and others to obtain accurate emission inventories and projections to assist in planning for attainment of national air quality standards.

Statement of Need:

Section 206(h) of the Clean Air Act requires EPA to "review and revise as necessary" the regulations governing the FTP to "insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude." The driving cycle used for the FTP was adopted over 20 years ago, and accumulated research suggests that it may no longer adequately represent overall vehicle emission control performance under current driving conditions. Extensive surveys of current driving behavior conducted by the EPA indicate significant difference between actual driving behavior and the current FTP. New test cycles determined from the driving behavior surveys were used to compare emissions predicted by the FTP with emissions that occur in actual driving. The test results support the need for revisions to the FTP.

Summary of the Legal Basis:

EPA is under court order to revise the Federal Test Procedure.

Anticipated Costs and Benefits:

A costs and benefits analysis has not been completed on this program.

Risks:

The risks addressed by this action are those associated with not attaining the National Ambient Air Quality Standards for ozone, carbon monoxide, nitrogen oxides, and particulates. These risks have been extensively detailed as part of the individual rulemakings setting these national standards. Achievement and maintenance of attainment of the standards depend in part on accurate knowledge of the emissions characteristics of sources, including automobiles. This action will increase the accuracy of such knowledge by incorporating the latest techniques of emission measurement.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
Final Action	10/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3323.

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RIN: 2060–AE27

EPA

157. CONTROL OF AIR TOXICS EMISSIONS FROM MOTOR VEHICLES

Legal Authority:

42 USC 7545/CAA 211; 42 USC 7521/CAA 202

CFR Citation:

40 CFR 80; 40 CFR 86

Legal Deadline:

Final, Statutory, May 15, 1995.

Abstract:

The Clean Air Act Amendments of 1990 require EPA to study the need for and feasibility of controlling toxic air pollutants associated with motor vehicles and fuels. Based on this study, EPA must promulgate standards containing reasonable requirements to control such toxic emissions, applied at a minimum to benzene and formaldehyde.

Statement of Need:

The Clean Air Act of 1990 required EPA to study the need for and feasibility of controlling toxic air pollutants associated with motor vehicles and fuels. Based on this study, EPA must promulgate standards containing reasonable requirements to control such toxics--at a minimum benzene and formaldehyde. A study was completed and promulgated by EPA on April 30, 1993. In keeping with the Agency's emphasis on better science and data, this study is presently undergoing a peer review process.

Alternatives:

EPA may draw on the reformulated gasoline rule, which will reduce toxic emissions from mobile sources in areas covered by the reformulated gasoline program.

Anticipated Costs and Benefits:

A cost and benefits analysis has not been completed on this program.

Risks:

The air toxics study currently under review found that approximately half the excess cancer risk due to air pollution is caused by mobile sources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

SAN No. 2769.

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RIN: 2060–AC75

EPA

158. EMISSION STANDARDS FOR NEW NONROAD SPARK-IGNITION ENGINES AT AND BELOW 19 KILOWATTS (25 HORSEPOWER) (PHASE 2)

Legal Authority:

42 USC 7547/CAA 213

CFR Citation:

40 CFR 90

Legal Deadline:

NPRM, Judicial, April 30, 1996. Final, Statutory, November 15, 1992. Final, Judicial, April 30, 1997.

Abstract:

This action will establish the second phase of emission standards for new nonroad spark-ignition engines at and below 19 kilowatts (25 horsepower), as required by section 213(a)(3) of the Clean Air Act as amended. This action is the product of a negotiated rulemaking.

Statement of Need:

EPA's 1991 study of nonroad emissions clearly showed that exhaust from the Nation's 89 million pieces of lawn and garden equipment is a significant source of volatile organic compound and carbon monoxide emissions. This rulemaking will establish emission standards for new nonroad spark-ignition engines at and below 19 kilowatts (25 horsepower), as required by section 213(a) of the Clean Air Act.

Alternatives:

EPA is under court order to finalize nonroad standards.

Anticipated Costs and Benefits:

Manufacturers are expected to meet the Phase I standards, which would become effective in 1996, with technology, primarily by improving the air and fuel mixture. Hydrocarbon emissions, which contribute to the formation of ground-level ozone, will be reduced 32 percent.

Risks:

The risks addressed by this action are those associated with not attaining the National Ambient Air Quality Standards for ozone and carbon monoxide. These risks have been extensively detailed as part of the individual rulemakings setting these national standards. Emissions from this category of engines are known to be a significant source of ozone precursors and carbon monoxide.

Timetable:

Action	Date	FR Cite
NPRM	04/00/96	
Final Action	04/00/97	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Additional Information:

SAN No. 3361.

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RIN: 2060–AE29

EPA

159. RISK MANAGEMENT PROGRAM FOR CHEMICAL ACCIDENTAL RELEASE PREVENTION

Legal Authority:

PL 101-549; Clean Air Act Section 112(r)

CFR Citation:

40 CFR 68

Legal Deadline:

Final, Statutory, November 15, 1993.

Abstract:

Section 112(r)(7) of the Clean Air Act (CAA), as amended, required the Environmental Protection Agency (EPA) to promulgate by November 15, 1993, reasonable regulations and appropriate guidance to provide for prevention and detection of accidental releases of chemicals and for responses to such releases. These regulations shall include, as appropriate, provisions concerning the use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations shall require the owner or operator of stationary sources at which a regulated substance is present to prepare and implement a risk management plan (RMP) and provide emergency response in order to protect human health and the environment. EPA has established an Agency-wide work group, which has brought technical, legal, and policy experience and expertise in the chemical process, safety risk management, and other areas related to risk management plans for chemical accidental release prevention. EPA published a notice of proposed rulemaking (NPRM) on October 20, 1993, 40 FR 54190.

These regulations will promote pollution prevention as well as prevention of chemical accidents. They not only will assist industry in erecting appropriate safeguards, but they also will provide further incentive for the minimization of hazardous chemicals in the community.

Each RMP must include a hazard assessment that evaluates the potential effects of an accidental release of any regulated substance. The hazard assessment must include an estimate of potential release quantities and downwind effects, including potential exposure to populations. It must also include a 5-year release history, including the size, concentration, and duration of releases, and must consider worst-case release scenarios. The RMP must document a prevention program, including safety precautions, maintenance, monitoring, and employee training measures. It must document a response program that provides specific action to be taken to protect human health and the environment in response to a release, including the informing of public and

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local agencies, emergency health care, and employee training.

Section 112(r)(7) of the CAA also requires that:

- The RMPs must be registered with EPA;
- The plans must be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the facility is located, and to any local agency that has responsibility for planning for or responding to chemical accidents;
- The plans must be made available to the public, as required by CAA section 114(c);
- EPA must establish a system for auditing the RMPs; and
- EPA must ensure that plans are periodically updated.

Section 112(r)(3) of CAA required EPA to develop and promulgate by November 15, 1992, a list of at least 100 substances ("regulated substances") that are known to cause or may be reasonably anticipated to cause death, injury, or serious adverse health effects to human health or the environment. EPA is also required to set threshold quantities for each listed substance and develop procedures for addition and deletion of substances from the list. EPA promulgated this rule on January 30, 1994, at 40 FR 4478.

The list and thresholds promulgated under CAA section 112(r)(3) will determine which facilities must comply with the accident prevention regulations required under section 112(r)(7) of CAA; that is, those stationary sources that have presented more than a threshold quantity of a regulated substance.

Statement of Need:

Existing Federal regulations addressing the potential for catastrophic events related to chemical substances are focused on emergency preparedness and response. Specifically, the Emergency Planning and Community Right-to-Know Act (EPCRA) established the structure at the State and local levels to deal with emergency planning and response to chemical accidents. Several other laws and programs at the Federal level dealt with emergency response to chemical accidents: the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) created the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). The NCP sets up the Federal Government's emergency response structure and procedures for responding to chemical accidents. The accidental-release prevention provisions under the CAA recognize the need for integrating emergency preparedness and response with activities to prevent accidental releases from occurring in the first place.

The proposed rule for the prevention and detection program, including RMPs for accidental-release prevention, required industry to develop an integrated, holistic approach to managing the risk posed by the presence and use of regulated substances. In the development of its risk management program, EPA has also been coordinating with the Occupational Safety and Health Administration (OSHA). EPA's proposed RMP rule adopts and builds on process safety management elements included in OSHA's chemical process safety standard required under section 304 of the CAA amendments of 1990. (OSHA published a notice of proposed rulemaking (NPRM) on July 17, 1990, 55 FR 29150, and a final rule on February 24, 1992, 57 FR 6316.) These elements include process information, process hazard analysis, standard operating procedures, training, prestartup reviews, mechanical integrity, management of change, accident investigation, safety audits, and emergency response.

Summary of the Legal Basis:

The legal basis for this rulemaking is summarized in the "Abstract" section.

Alternatives:

EPA developed its proposed rule after an extensive information-gathering effort. Three States--California, New Jersey, and Delaware--have risk management plan requirements under State laws. EPA met with officials in all three States and held interviews with seven facilities in these States. EPA then held eight focus groups, five with facilities and three with implementing agencies, in the three States to solicit their opinions on existing and proposed regulations. Finally, EPA held a 2-day roundtable seminar associated with the risk management planning requirements. State officials, trade associations, labor unions, environmentalists, and organizations of public officials participated in the discussions.,

EPA evaluated two options for the risk management program: Program Option 1, the proposed rule, included the statutorily mandated elements (hazard assessment, registration, emergency response program, and risk management plan) plus the mandated prevention program that adopted OSHA's process safety management standard. Program Option 2, based on the New Jersey risk management program, includes all listed elements but requires a greater level of documentation and more detailed requirements for many elements.

Anticipated Costs and Benefits:

Because, from an economic perspective, the RMP regulations and the list of regulated substances are inseparable, EPA prepared a regulatory impact analysis (RIA) that combines the two requirements. As indicated in the previous section, the RIA evaluated two options for the risk management program. Because the two program options cover the same elements with the only difference between the two the level of detail, it was not possible to develop separate estimates of the benefits for the two program options based on data available. Consequently, only one set of benefits estimates was developed.

EPA's proposed option is list 2 in Program Option 1, which is estimated to have an initial cost of $503 million and quantifiable annual benefits of $890 million. The proposed rule is expected to result in other, nonquantifiable benefits as well. By reducing the likelihood of accidental releases and the likelihood that any release will be catastrophic, the rule should reduce facility operating costs which may result in greater output, higher wages, and lower costs for the output. The rule will also encourage facilities to reduce the quantity of hazardous substances stored onsite and to shift to less toxic chemicals, reducing the risk to both workers and the public. Finally, the information provided to the public through the mandated RMP will be useful to both the public and governments at all levels.

Timetable:

Action	Date	FR Cite
NPRM	10/22/93	58 FR 54190
Supplemental NPRM	02/00/95	
Final Action	05/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2979.

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RIN: 2050–AD26

EPA

FINAL RULE STAGE

160. ENDANGERED SPECIES PROTECTION PROGRAM

Legal Authority:

PL 100-478, Sec 1010

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

Pesticides are necessary for production of agricultural food and fiber commodities, yet have the potential to harm threatened or endangered species. EPA will develop and implement an endangered species pesticide labeling program designed to conserve federally listed species and to minimize the impacts to persons who use pesticides. The program will include development of species maps and pesticide use limitation bulletins to be distributed as an extension of pesticide labels. Pesticides that are determined to cause harm to endangered species will require label changes which display precautionary statements and directions on how to obtain county bulletins. EPA will coordinate the program with the U.S. Fish and Wildlife Service of the Department of Interior and the U.S. Department of Agriculture.

Statement of Need:

The Environmental Protection Agency (EPA) registers pesticides for use in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Endangered Species Act (ESA) requires that EPA ensure that registered uses of pesticides will not jeopardize the continued existence or destroy or adversely modify the critical habitat of federally listed endangered or threatened species (listed species). Section 7 of the ESA imposes requirements on EPA to consult with the U.S. Fish and Wildlife Service (for most species) or the U.S. National Marines Fisheries Service (for marine species) if the use of a pesticide "may affect" a listed species or its critical habitat. At the same time, section 1010 of the 1988 amendments to the ESA requires EPA to work jointly with the U.S. Department of Agriculture and the U.S. Department of Interior (USDI) to ensure that listed species are protected from pesticides while also minimizing the impacts on pesticide users. Balancing these responsibilities has led to the development of the Endangered Species Protection Program (ESPP).

Summary of the Legal Basis:

Under FIFRA, use of a pesticide in a manner inconsistent with its labeling is a violation of the law. Thus, in general, ESPP relies on the labeling of pesticide products that may harm listed species or their habitat. If data indicate that a pesticide may adversely affect an endangered or threatened species, EPA will seek a biological opinion from USDI. If the opinion indicates that the pesticide "may affect" the species or its habitat, it will also include recommendations for mitigating actions or practices. EPA will then minimize the jeopardy through the use of use restrictions described in detail in county-specific bulletins and maps which show the geographical area within which use must be restricted. Pesticide product label statements will then instruct the user to consult county bulletins for further instruction.

Alternatives:

The 1988 ESA amendments required EPA to conduct an analysis of alternatives for the program and to solicit public comment on the elements of the program. As noted above, creating an enforceable program under FIFRA must rely on the labeling of pesticide products. Public comments resulting from two proposals in the Federal Register did not reveal alternatives to the labeling/bulletin approach, but did offer a number of alternatives within this overall approach. Most of these alternatives relied on more local input and involvement in determining the pesticide use limitations necessary to protect listed species. To the extent that they were practical and efficient, these alternatives, such as State-initiated plans and landowner agreements, were incorporated into the ESPP.

Anticipated Costs and Benefits:

The benefits of the ESPP are to contribute to the preservation and recovery of endangered and threatened species, specifically, and to maintain and enhance biodiversity and ecosystem functioning in general. The benefits of preserving species are generally acknowledged as being exceedingly high, but cannot be determined on a dollar basis.

The EPA used a case-study approach to analyze economic impacts, based upon the provisions of the program originally intended for implementation in 1988. The results of these case studies have been submitted to OMB, and OMB has been briefed on the results. Costs to pesticide users will be of two types: (1) opportunity costs to determine any pesticide use limitations that might apply to their situation, and (2) costs associated with potential crop losses of the use of higher cost alternative pesticides, when restrictions limit these to the pesticide of choice. Costs based on these case studies could not be extrapolated to the Nation as a whole. To a moderate extent, costs are dependent upon the listing of additional species and possible future changes in the ESA.

Risks:

Most pesticides could cause harm to some listed species that are exposed; for example, nearly all herbicides could affect endangered plants. Pesticide use limitations instituted by the ESPP should result in no exposure or exposure below levels of concern for listed species. Without these use limitations, there is a moderate-to-high probability that some listed species would be harmed by pesticides. EPA is allowing the maximum flexibility, consistent with the ESA, for local involvement to design measures that are both protective of the species and not unnecessarily disruptive of agricultural production, vector control, or other pesticide uses.

Timetable:

Final Endangered Species Protection Program
Notice 12/31/94
Proposed Endangered Species Protection Program
Notice 07/03/89 (54 FR 27984)

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Additional Information:

SAN No. 3113.

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RIN: 2070–AC42

EPA

161. CHEMICAL LIST EXPANSION; EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT SECTION 313

Legal Authority:

42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076/EPCRA 313

CFR Citation:

40 CFR 372

Legal Deadline:

None

Abstract:

The original Toxics Release Inventory (TRI) chemical list consisted of 320 chemicals and chemical categories. In an effort to provide the public with a broader picture of chemicals that will have to submit information for the Toxics Release Inventory in their communities, EPA is expanding the original TRI chemical list. On January 12, 1994 (59 FR 1788), EPA published a proposed rule to add 313 chemicals and chemical categories to the TRI chemical list. Of the 313 chemicals and chemical categories proposed, there are approximately 160 pesticide active ingredients. The chemicals and chemical categories being proposed were selected from numerous other regulatory lists and meet the criteria for human health and environmental toxicity and in addition are extremely toxic to aquatic organisms, EPCRA section 313(d)(2). In addition, the chemicals passed a production volume screen to ensure that reports would be received if the substance is added to the TRI chemical list. Part of this activity included the review of 17 chemicals, previously described in RIN 2070-AC40, 16 of which are from a list of hazardous air pollutants subject to the requirements of the Clean Air Act Amendments of 1990, and one of which was considered for addition due to its extreme aquatic toxicity. Of these 17 chemicals, nine were included in the proposed rule. Linked to this rule is a possible small-source exemption that will provide some measure of relief to the reporting community. This exemption will allow facilities releasing small amounts of listed chemicals to be exempt from full TRI reporting requirements.

Statement of Need:

The original Toxic Release Inventory (TRI) chemical list consisted of 320 chemicals and chemical categories. In an effort to provide the public with a broader picture of chemicals in their communities, EPA, in accordance with EPCRA section 313(d), is expanding the original toxic chemical list. By providing the public with information on these chemicals they can participate in informed environmental decisionmaking to reduce risks to human health and the environment. On January 12, 1994 (59 FR 1788), EPA published a proposed rule to add 313 chemicals and chemical categories to the TRI chemical list. Of the 313 chemicals and chemical categories proposed, there are approximately 160 pesticide active ingredients. The chemicals being proposed were selected from numerous other regulatory lists and meet the criteria for human health and environmental toxicity in EPCRA section 313(d)(2). In addition, the chemicals passed a production volume screen to ensure that reports would be received if they are added to the TRI list. Part of this activity included the review of 17 chemicals, previously described in RIN 2070-AC40/SAN 3007. Sixteen of these chemicals are from a list of hazardous air pollutants subject to requirements of the Clean Air Act Amendments of 1990, and one was considered for addition due to its extreme aquatic toxicity. Of these 17 chemicals nine were included in the proposed rule.

Alternatives:

There were several alternatives that were considered in the analysis and included in the proposed rule. EPA asked for public comment on all of these issues as well as the entire proposed rule. One of the alternatives considered is whether to add categories of chemicals (for example, disocyanates) versus individual chemicals. Another alternative is to not add those proposed chemicals for which data are collected under the Clean Air Act if this information can be made readily available to the public. In addition, EPA considered the option of adding chemicals that are persistent bioaccumulators to TRI and how to modify reporting thresholds so that reports for these chemicals would be received.

Anticipated Costs and Benefits:

The anticipated total costs of this action for the first year are estimated at $161 million and $91 million for subsequent years. The addition of chemicals to the TRI is intended to expand upon the past success of the program in enabling all interested parties to establish credible baselines and to set realistic goals over time. The information reported in TRI increases knowledge of levels of pollutants released to the environment and pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liabilities; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

Risks:

While the substances proposed for addition to the TRI list are, on average, of smaller total national impact than those chemicals currently listed, the manufacturing, processing, or use of these chemicals may still represent a significant concern for individual communities where such chemical activity is concentrated. EPA believes that the public has a right to know about such releases and what facilities are doing to manage wastes containing these chemicals. The public can use this data to evaluate potential risks from these chemicals and to determine how to avoid these risks.

Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Final Action	11/30/94	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3007.

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RIN: 2070–AC47

EPA

162. WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

Legal Authority:

33 USC 1251/CWA 118(c)(2)

CFR Citation:

40 CFR 132

Legal Deadline:

NPRM, Statutory, June 30, 1991. NPRM, Judicial, April 16, 1993. Final, Statutory, June 30, 1992. Final, Judicial, March 13, 1995.

Abstract:

The Great Lakes are a valuable national resource, with unique environmental problems. In 1990 the Great Lakes Critical Programs Act was enacted, requiring States to adopt minimum water quality standards for the protection of the Great Lakes System.

Statement of Need:

The proposed part 132 rule establishes minimum water quality standards, antidegradation policies, and implementing procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin, including waters within the jurisdiction of Indian Tribes. The proposed rule specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The proposed Part 132 rule also contains specific procedures to translate the proposed ambient water quality criteria into enforceable controls on discharges of pollutants, and a proposed antidegradation policy for the Great Lakes System.

The numeric water quality criteria are critical to the success of the Agency's multimedia efforts to protect and restore the Great Lakes ecosystem and would serve as the water quality goals for other elements of our Great Lakes System, such as remedial action plans and lakewide management plans, which specifically target nonpoint sources of pollution for "cleanup" within the Great Lakes System.

Summary of the Legal Basis:

This regulation constitutes the Water Quality Guidance for the Great Lakes System required by section 118(c)(2) of the Clean Water Act (Pub. L. 92-500 as amended by the Great Lakes Critical Programs Act of 1990, Pub. L. 101-596). This guidance specifies minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System to protect human health, aquatic life, and wildlife.

Anticipated Costs and Benefits:

Based on the information provided by each State and a review of the permit files, EPA identified about 3,800 direct dischargers that could be affected by the Part 132 proposal. Of these, about 590 are major dischargers and the remaining 3,210 are minor dischargers. Of the 590 majors, about 275 are industrial facilities and 315 are publicly owned treatment works (POTWs). Out of these dischargers, EPA used a stratified random sampling procedure to select 59 facilities (50 major and 9 minor) that it considered representative of all types and sizes of facilities in the basin.

The estimated total annualized costs for direct and indirect dischargers to implement the Part 132 proposal is between $80 million and $505 million (first-quarter 1992 dollars); costs under the most likely scenario (with a focus on pollution prevention) are about $190 million. Under Scenario 2, major industrial facilities and POTWs account for about 53 percent of the costs, indirect dischargers about 41 percent, and minor dischargers about 6 percent. Among the major dischargers three categories account for about 80 percent of the costs--POTWs (37 percent), organic chemicals/petroleum refining (27 percent), and pulp and paper (15 percent). The Agency estimated the cost effectiveness of the proposed Part 132 rule in terms of cost of reducing the loadings of toxic pollutants.

Future Analyses: We continue to seek involvement of other Federal agencies and interested parties. We held numerous meetings with the general public, industry, environmental groups, local governments, and state regulatory agencies. A second open public meeting is being planned for the September/October 1994 time period. A **Federal Register** notice announcing the meeting will appear in the **Federal Register** in August. The purpose will be to discuss options on a narrow range of issues that are being considered in developing the final Part 132 Rule. We will seriously consider all the comments, information and data provided by the public in developing the Part 132 Rule.

Risks:

The Great Lakes basin is a complex hydrologic system where pollutants can remain in the ecosystem for many years. This presents an increased risk to aquatic life and wildlife throughout the Great Lakes basin. The effects of toxic pollutants on aquatic life and wildlife in the Great Lakes System have been shown to include reproductive damage, wasting, deformities, tumors, and behavioral changes.

Timetable:

Action	Date	FR Cite
Proposed Guidance	04/16/93	58 FR 20802
Final Guidance	03/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Tribal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3203.

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RIN: 2040–AC08

EPA

163. SAN FRANCISCO BAY/DELTA WATER QUALITY STANDARDS

Legal Authority:

33 USC 1251

CFR Citation:

40 CFR 137.37

Legal Deadline:

Final, Statutory, April 6, 1994. Final, Judicial, December 15, 1994.

Abstract:

On December 15, 1993, the Administrator signed a notice

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proposing Federal water quality standards for the San Francisco Bay/Delta estuary. EPA had been sued by numerous environmental groups to propose such standards following its disapproval of portions of the State's water-quality standards in September 1991. EPA Region 9 disapproved the State's standards because they were not adequate to protect the designated fish and wildlife uses of the estuary, as required by section 303 of the Clean Water Act. EPA took this action in conjunction with rulemakings by the U.S. Fish and Wildlife Service and National Marine Fisheries under the Endangered Species Act, all of which were published together on January 6, 1994.

Statement of Need:

In 1978, the State of California (the State) adopted and submitted to EPA a Water Quality Control Plan (1978 Delta Plan) intended to protect designated uses of the Bay/Delta estuary. While EPA approved the 1978 Delta Plan, the Agency conditioned its approval upon (1) a set of "interpretations" of the standards, and (2) the State's commitment to develop additional criteria to protect aquatic life and tidal wetlands in and surrounding Suisun Marsh. For the next decade, EPA largely deferred to the State regarding decisions about estuarine protection. In that time, populations of virtually all of the estuary's key fish species plummeted--some to record low levels. In May 1991, when the State submitted its 1991 Bay/Delta Plan to amend certain salinity criteria and adopt new temperature and dissolved oxygen criteria, EPA's longstanding concerns were not resolved. Consequently, in September 1991, EPA disapproved portions of the State's 1991 Bay/Delta Plan because they did not adequately protect the designated fish and wildlife uses of the estuary. In response, on January 6, 1993, EPA published a set of proposed water-quality standards for the Bay/Delta estuary including salinity criteria to protect fish and wildlife habitat, and survival targets to protect migrating Chinook salmon. The proposed standards would supersede and supplement standards in the 1991 Bay/Delta Plan.

Summary of the Legal Basis:

Section 303 of the Clean Water Act (CWA) requires each State to adopt water-quality standards consisting of designated uses and instream water-quality criteria to protect such uses for all waters of the United States located within that State. Section 303(c) directs States to review and, if appropriate, revise the water-quality standards at least once every 3 years. Any new or revised standards adopted by the State are to be reviewed and approved or disapproved by EPA. In the event that EPA disapproved a State's standards, and the State does not make EPA's requested changes within ninety (90) days of disapproval, or if EPA determines at any time that revised or new standards are necessary to meet CWA requirements, Section 303(c)(4) states that the Administrator shall promptly prepare and publish proposed regulations to establish water-quality standards for the applicable water bodies. EPA's regulations for implementing Section 303(c) are codified at 40 CFR part 131.

Alternatives:

EPA received over 200 comments on the proposed rule. The Agency will review and respond to these comments and include recommendations for alternative standards before the final rule is issued.

Anticipated Costs and Benefits:

Monetized social costs and benefits of the Federal proposals are not directly comparable because some of the benefits for fisheries, ecological improvement, and biological diversity cannot be estimated. However, assuming that the State develops a cost-effective implementation plan for the standards, the estimated economic costs for the agricultural sector are $20 million/year on average, and $25 million/year for the urban sector. The overall costs may be lower than the total of these sector costs given that some of the increases in urban costs may represent payments to the agricultural sector for water transfers. The benefits are estimated at $10 million/year from improved commercial fisheries. Furthermore, the standards are designed to produce unquantified but substantial benefits associated with enhanced ecosystem integrity, decreasing the need to trigger provisions of the Endangered Species Act and increasing opportunities for scientific, educational, and recreational activities.

EPA has been working closely with the urban, agricultural, and environmental interests in developing the final regulatory impact analysis. Through this process, EPA has been promoting water conservation, reclamation, water transfers, and other market-based mechanisms to reduce the economic impacts of the standards and to more efficiently allocate the State's limited water supplies.

Risks:

EPA's proposed water-quality standards for the Bay/Delta estuary are the centerpiece of an emerging regional strategy to halt and reverse the disintegration of ecosystem processes and properties. Consistent with the Agency's promulgation efforts, the San Francisco Estuary Project (SFEP) is implementing a Comprehensive Conservation and Management Plan (CCMP) designed to improve the scientific understanding of the ecosystem, and to establish partnerships for long-term stewardship The SFEP-sponsored fish and riparian inventory has identified small rivers and creeks that serve as refugia for disappearing species. When the proposed promulgation to protect the large rivers and bays is taken together with the efforts to conserve the habitats of smaller rivers and creeks, the resulting strategy constitutes a dual approach to reducing ecological risks. Furthermore, EPA is leading or participating in other important multiagency efforts designed to: (1) restore thousands of acres of tidal marshlands in the North Bay; (2) enhance and conserve farmed wetlands in the Central Delta; (3) resolve concerns regarding the disposal of dredged materials; and (4) prevent the discharge of toxic pollutants into the estuarine system.

Timetable:

Action	Date	FR Cite
NPRM	01/06/94	59 FR 810
Final Action	01/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 3503.

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RIN: 2040–AC35

EPA

164. NATIONAL PRIMARY DRINKING WATER REGULATION: RADIONUCLIDES

Legal Authority:

42 USC 300/SDWA 1412

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

NPRM, Judicial, June 15, 1991. Final, Statutory, June 19, 1989. Final, Judicial, April 30, 1995.

Abstract:

EPA has proposed maximum contaminant level goals (MCLGs) and primary drinking water standards for radionuclides in drinking water. These radionuclides include radium, uranium, radon, total alpha, and beta particle and photon emitters (see RIN 2040-AB90, SAN No. 2782). Radionuclides pose a cancer risk. Also, uranium poses a risk from kidney toxicity.

Statement of Need:

Section 1412 of the Safe Drinking Water Act requires EPA to establish maximum contaminant level goals, maximum contaminant levels (MCLs), analytical methods, treatment technologies, and monitoring/reporting/recordkeeping requirements for 83 contaminants specified in the statute. The six radionuclides covered by this rule (radium 226, radium 228, uranium, radon, alpha emitters, and beta/photon emitters) were among the 83 contaminants for which regulation is required. All of the radionuclides pose a cancer risk. Uranium also poses a kidney toxicity risk.

Alternatives:

In developing the MCLs, EPA considered other levels based on different exposure assumptions. Also, the Agency is considering staged compliance dates to facilitate implementation by small public water systems. The Agency is aware that most radon risk emanates from soil gas rather than drinking water. However, the current Safe Drinking Water Act does not allow the Agency to consider a multimedia approach to regulation. Legislative mandates being considered by Congress would provide the Agency the flexibility to employ a multimedia approach to radon risk reduction. Congress included language in EPA's 1995 Appropriations Act which prohibits the Agency from promulgating the portions of this rule relating to radon if the legislative amendments are not passed. EPA is assessing the implications of the Appropriations Act on the schedule for this regulation.

Anticipated Costs and Benefits:

In the proposed rule, EPA estimated the total benefits as 84 cancer cases averted by regulating all six radionuclides. The cost was estimated at $310 million annually, including a capital cost of $2.4 billion amortized over 20 years at a 3 percent interest rate. Updated projections for radon alone are 88 cancer cases at the proposed level of 300 pCi/l at a cost of $272 million annually. For comparison, radon constituted 80 cancer cases and $180 million of the benefits and costs of the proposed rule. These costs and benefits were peer reviewed extensively by the Science Advisory Board and other groups during the past 2 years.

Risks:

The levels contained in the proposed rule are estimated to avoid 84 cancer cases per year. Also, for several million people, kidney toxicity risk would be reduced.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM	07/18/91	56 FR 33050
Final Action	04/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

Analysis:

Regulatory Flexibility Analysis

Additional Information:

SAN No. 2281.

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RIN: 2040–AA94

EPA

165. RCRA EXPANDED PUBLIC PARTICIPATION AND REVISIONS TO COMBUSTION PERMITTING PROCEDURES

Legal Authority:

42 USC 6905/RCRA 1006; 42 USC 6912/RCRA 2002; 42 USC 6924/RCRA 3004; 42 USC 6925/RCRA 3005; 42 USC 6927/RCRA 3007; 42 USC 6974

CFR Citation:

40 CFR 270.41; 40 CFR 270.42; 40 CFR 270.10

Legal Deadline:

None

Abstract:

EPA is proposing to expand the opportunities for public participation in the RCRA permitting and decisionmaking processes for all hazardous waste treatment, storage, and disposal facilities subject to RCRA permitting requirements. In particular, EPA is proposing to involve the public much earlier in the process and throughout key milestone activities, for example, before a facility submits a permit application to the permitting agency and when the permitting agency receives the application.

The proposal would increase public involvement opportunities during the trial burn stage of the permitting process for combustion facilities and revise the permitting procedures for combustion facilities operating under interim status to make the procedures more closely parallel to the more stringent procedures for new combustion facilities. The Agency will also be clarifying combustion permit modification classifications.

Statement of Need:

EPA developed this proposal to implement key aspects of the Agency's Draft Strategy on Waste Minimization and Hazardous Waste Combustion, issued by EPA Administrator Carol Browner on May 18, 1993. Specifically, this rule addresses the concerns of citizens living near hazardous waste facilities, particularly minority and low-income communities who feel they need greater opportunity to participate in the permitting process. In particular, the proposed rule addresses the following goals of the draft strategy:

- Provide for earlier and more extensive public involvement in permitting activities for all RCRA facilities to assure that the concerns of citizens are heard and addressed;

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- Address trial burns in the combustion permitting process; and
- Evaluate ways to limit the burning of hazardous waste in interim status units during the administrative appeal of a permit denial, prior to a final decision.

Summary of the Legal Basis:

The RCRA statute requires the Agency to provide for, encourage and assist public involvement. The statute also requires the Agency to establish permitting procedures for owners and operators of existing and new hazardous waste management facilities.

Alternatives:

In developing the proposed requirements, EPA balanced needs: to meet the goals of the draft strategy; to be flexible to accommodate existing State programs; and to minimize the burden on the public and the regulated community. EPA is soliciting comments in the rule on several of the proposed requirements, including:

- The applicability of the proposed public involvement requirements--for example, should the requirement for public notice at application submittal apply to post-closure permits? Should the information repository be limited to certain types of facilities? Should the facility or the permitting Agency be responsible for issuing some of the proposed public notices?; and
- Whether a State's public participation meeting for siting a facility should be an allowable substitute for the proposed preapplication meeting.

Anticipated Costs and Benefits:

Based on the economic impact analysis for the proposed rule, the Agency estimates that the proposed requirements would result in an incremental national annual cost of $130,000 (lower bound) to $900,000 (upper bound).

Expanding public involvement opportunities would allow the community to raise concerns and make suggestions early in the permitting process, and to remain involved throughout the decisionmaking process. Earlier community input should assist applicants and permitting agencies in making decisions about the facility and the proposed permit. Airing and addressing issues earlier in the process might avoid delays later.

Timetable:

Action	Date	FR Cite
NPRM	08/02/94	59 FR 28680
Final Action	07/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3315.

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RIN: 2050–AD97

EPA

166. • ENHANCED MONITORING PROGRAM

Legal Authority:

Clean Air Act, sections 114(a)(3), 504(b)

CFR Citation:

40 CFR 64

Legal Deadline:

Final, Judicial, December 20, 1994.

Abstract:

This action is required by the 1990 Clean Air Act amendments to ensure better compliance with existing rules. This program will require major stationary sources to monitor emissions and certify whether continuous compliance with emissions limits has been achieved.

Statement of Need:

The Clean Air Act Amendments of 1990 require major stationary sources to provide ongoing monitoring of compliance. Current monitoring data provides EPA with a "snapshot" which serves only as an indicator of compliance or demonstrates the need for a performance test. This approach does not provide EPA with the ability to assure that emissions reductions from existing rules are being achieved, and results in very few identified violations. To ensure better compliance with existing rules, the Enhanced Monitoring (EM) Rule requires major stationary sources to monitor emissions and certify whether continuous compliance with emissions limits has been achieved. The self-monitoring approach is comparable to the Clean Water Act NPDES program.

Alternatives:

In an effort to balance two competing needs--minimizing regulatory burdens versus maximizing environmental results (emissions reductions)--the Agency solicited comments on a wide range of applicability options. These options, presented in an October 1993 **Federal Register** proposal, ranged from covering all emission units at all major sources (most stringent), to covering only major emission units at major sources (least stringent). Based upon comments received and current cost-benefit calculations, the Agency has developed an option that focuses on the most environmentally significant emission units and will cover approximately 50 percent of the potentially affected universe of sources (facilities), while achieving 90 percent of possible emissions reductions.

The Agency has also developed a flexible, nonprescriptive approach toward selection of monitoring equipment for sources affected by the EM Rule. Sources will have the ability to choose from a series of monitoring equipment options based upon factors such as type of pollutant, type of industrial process, size of emission unit, and available technology that has been approved in previous regulatory decisions. EPA has solicited input from States and the regulated community in an effort to develop a compendium of available monitoring methods which will be published in an Enhanced Monitoring Reference Document. This document will serve as a guide to currently available monitoring methods, and will be periodically updated to include new methods that are developed, identified and accepted. The Enhanced Monitoring Reference Document will also include, for various source categories, examples of presumptively acceptable protocols which EPA has established as meeting the requirements of the EM Rule. This approach will afford the regulated community the opportunity to choose the most cost-effective monitoring approach that meets the parameters set forth in the EM Rule.

Anticipated Costs and Benefits:

In keeping with Executive Order 12866, EPA is preparing a detailed Regulatory Impact Analysis (RIA) that will provide costs and benefits associated with the EM Rule. The RIA will compare the relative costs and benefits of the preferred approach with several other approaches that were considered. The estimated benefits of the EM Rule are approximately $2 billion per year. The benefits are calculated based on reduced adverse health and welfare impacts and "avoided costs" based upon the difference between the costs of an EM program and the costs of more stringent control requirements.

The costs anticipated from the EM Rule are approximately $1 billion per year. The major costs are development of a monitoring protocol, purchase of monitoring equipment, operation and maintenance of the system, recordkeeping and reporting, and "behavioral adjustment costs."

A large part of the total EM costs (70 percent) is in the category of "behavioral adjustment costs." These are costs incurred by facilities as a result of enhanced monitoring equipment that will give faster and more accurate information about compliance problems. Because facilities will be better able to identify problems, it is expected that noncompliance will be addressed more quickly and thoroughly than if enhanced monitoring had not been in place. In some cases, facilities may realize that repeated periods of noncompliance will require the purchase of control equipment. Although it is estimated that the number of facilities that would need to install control equipment is very low, the total costs to these facilities are a large component of the total cost of the EM Rule. The cost and benefit estimates identified in this section are being refined based on comments received on the proposed rule and will be addressed in more detail in the final RIA.

Risks:

The preferred EM option will apply to approximately 20,000 pollutant points nationally. The establishment of enhanced monitoring requirements at these pollutant points will result in the reduction of more than 1.3 million tons of pollution per year. Pollutants reduced by the EM Rule include CO, NOx, PM-10, SO2, and VOCs, as well as certain hazardous air pollutants such as benzene and mercury. The enhanced monitoring provisions apply to existing Clean Air Acts standards; however, enhanced monitoring will also be incorporated into other Clean Air Act regulations that are under development for other pollutants and source types.

As these new rules are developed, pollution reductions beyond 1.3 million tons per year will be realized.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

SAN No. 3584.

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FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Statement of Regulatory Priorities

The Federal Emergency Management Agency's (FEMA's) primary mission is to develop and implement an integrated and viable national program for emergency management. FEMA's goals are to:

- Establish a risk-based, all-hazards national emergency management partnership involving FEMA, other Federal agencies, State and local governments, and volunteer and private organizations;
- Improve the effectiveness of all levels of government to mitigate, prepare for, respond to, and recover from the effects of all hazards, regardless of cause;
- Assist in the development of preparedness planning programs at State and local levels to increase communities's abilities to cope with disaster and emergency situations of all types;
- Provide training programs and materials for all levels of government that are responsive to planning and operational needs for all-hazards emergency management, flexible to changes in those needs, and readily disseminated to the field;
- Establish a comprehensive exercise program for all levels of government that satisfies the demonstration of capability, evaluation of performance, and correction of issues identified;
- Develop guidance for Federal departments and agencies, State and local governments and the private sector for use in the implementation of national security emergency preparedness policy and the development of plans and programs to support a national security emergency;
- Coordinate the development and implementation of plans for the operation and continuity of essential domestic emergency functions of the Federal Government during national security emergencies; and
- Develop comprehensive mitigation programs with emphasis on improved design and construction practices, sound land use management policies and increased public awareness in order to reduce losses to life and property from the effects of natural and other hazards.

To achieve its missions and goals, FEMA's regulatory priority is to accomplish emergency management objectives while reducing administrative procedures and minimizing costs. FEMA administers its programs in partnership with Federal, State, and local governments, using the minimum regulatory activity necessary to achieve the desired results. In the coming year, FEMA expects to continue to work actively with the Administration to streamline the regulatory process, to promote public involvement in the rulemaking process, to reach out to affected constituencies, and otherwise to ensure that FEMA's regulatory programs are consistent with the regulatory philosophy and principles of regulation set forth in Executive Order 12866, Regulatory Planning and Review.

Based on FEMA's regulatory policy and the Administration's regulatory principles, the regulatory activities contemplated by FEMA for fiscal year 1995 are limited to actions that:

- Implement congressionally authorized or Administration-supported programs, for example, revisions to the National Flood Insurance Act; merger and integration of the Federal Civil Defense Act and the Robert T. Stafford Disaster Relief and Emergency Assistance Act; implementation of the Arson Prevention Act; the National Earthquake Hazards Reduction Program assistance to State and local governments; revision of FEMA responsibilities under the Defense Production Act of 1950, as amended;
- Streamline program management, increase fiscal accountability, and reduce the costs of existing programs, e.g., review and revise 44 CFR in light of the recent reorganization of FEMA; revise policies and procedures for assistance to individual disaster victims, administrative remedies for false claims and statements, and fees for radiological emergency preparedness planning services; and
- Reflect changes in laws, conditions, policy, technological advancement or experience from program operations, for example, changes made in the National Flood Insurance Act, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Federal Civil Defense Act, the Fire Prevention and Control Act, the FEMA appropriations act, and other legislation; and changes resulting from FEMA experience in responding to recent disasters.

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GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory Priorities

The General Services Administration (GSA) establishes policy for and provides economical and efficient management of Government property and records, including construction and operation of buildings, procurement and distribution of supplies, utilization and disposal of property; transportation, traffic, and communications management; and management of the Governmentwide automatic data processing resources program.

GSA's regulatory priorities for 1995 reflect the President's mandate that regulations be streamlined to help create a Government that works better and costs less.

Changing the multiple award schedule ordering procedures is by far the most indicative of GSA's commitment to deregulate and unify a cumbersome bureaucratic process. Revisions to three regulations will result in a uniform set of guiding principles that will make it easier for agencies to buy products and services at lower prices.

Revising the entire GSA Acquisition Regulation is another sign of GSA's commitment to a simplified regulatory system that works toward providing services in a timely, efficient, and cost-effective manner.

As required by E.O. 12866, GSA will strive to ensure that our regulations reflect the President's regulatory philosophy, principles, and priorities, and that they conform with GSA's restructured business plan. Periodic reviews will guarantee regulations that are effective, consistent, sensible, and understandable. While GSA's regulations have limited impact on the general public and State and local governments, these reviews will also focus on ways to eliminate any unnecessary requirements our actions may impose on society. Our continuing policy is to use regulatory direction only when it offers the most effective means of carrying out GSA's mission and responsibilities, eliminates requirements that are a burden, and simplifies procurement procedures.

GSA

PRERULE STAGE

167. • IMPLEMENTATION OF PROCUREMENT STREAMLINING LEGISLATION

Legal Authority:
40 USC 486(c)

CFR Citation:
Not yet determined

Legal Deadline:
None

Abstract:
Congress is actively considering proposed legislation that will make major changes in the laws that impact the Federal procurement process in order to streamline procurement procedures. The proposed legislation addresses many of the recommendations of the Section 800 panel on streamlining the procurement laws applicable to the Department of Defense as well as the recommendations of the National Performance Review.

Statement of Need:
Once the proposed legislation is enacted, major changes in the Federal Acquisition Regulation (FAR) and agency supplemental acquisition regulations will be required to implement the statute. GSA, the Department of Defense, and the National Aeronautics and Space Administration, which are jointly responsible for the FAR, will be responsible for promulgating necessary changes to the FAR to implement the procurement streamlining legislation.

Summary of the Legal Basis:
Unknown at this time. Legislation has not yet been enacted.

Alternatives:
Since the legislation has not been enacted, the alternatives for regulatory implementation cannot be detailed at this time.

Anticipated Costs and Benefits:
Formulation of a cost benefit analysis is premature until the statute is enacted.

Risks:
Cannot be established at this time.

Timetable:
Next Action Undetermined

Small Entities Affected:
None

Government Levels Affected:
None

Procurement:
This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

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RIN: 3090–AF51

GSA

PROPOSED RULE STAGE

168. REISSUANCE OF THE GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR)

Legal Authority:
40 USC 486(c)

CFR Citation:
48 CFR 501

Legal Deadline:
None

Abstract:
GSA proposes to revise and reissue chapter 5, 48 CFR, in its entirety. The reissuance will represent the culmination of the Total Quality Management project to review GSA's acquisition regulation/directive system.

Statement of Need:
GSA plans to publish a proposal to revise the entire GSAR. The proposal will redefine the objectives of the procurement system and its regulatory base, establish very narrow standards for the scope and nature of the regulation, eliminate provisions that impede productivity or unnecessarily increase administrative costs, reduce rigid rules in favor of guiding principles, delegate authority and accountability to the lowest level consistent with competency, and reduce the overall volume of the regulation by at least 50 percent. After consideration of public comments, the entire regulation will be issued in final form.

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Alternatives:

Alternatives considered include an approach which would continue to include nonregulatory internal guidance in the GSAR rather than putting the internal guidance in a separate internal directive to be distributed to contracting personnel within the agency.

Anticipated Costs and Benefits:

Issuance of the final regulation will facilitate GSA's ability to operate in a competitive environment by enabling GSA contracting offices to deliver services in a more timely, efficient, and cost-effective manner. A specific dollar savings cannot be calculated.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	04/00/95	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Sectors Affected:

All

Analysis:

Regulatory Flexibility Analysis

Procurement:

This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

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GSA

FINAL RULE STAGE

169. MULTIPLE AWARD SCHEDULE PRICE REDUCTIONS CLAUSE

Legal Authority:

40 USC 486(c)

CFR Citation:

48 CFR 538; 48 CFR 552

Legal Deadline:

None

Abstract:

This proposed change to the General Services Administration Acquisition Regulation would prescribe a Price Reductions clause for use in multiple award schedule (MAS) solicitations and contracts. The clause is a modification of that currently in use. The requirements clarify the clause's applicability, reduce contractor reporting requirements, and eliminate MAS reductions based on a low price to an individual Federal agency.

Statement of Need:

GSA intends to amend the GSAR to prescribe the Price Reductions clause for use in multiple award schedule (MAS) contracts. The clause will replace the Price Reductions clause that is currently being used.

The proposed clause clarifies the clause's applicability, reduces contractor reporting requirements, and eliminates MAS reductions based on a low price to an individual Federal agency. GSA proposes to amend the clause for the following reasons:

The National Performance Review (NPR) recommended that GSA make all MAS contracts nonmandatory. NPR made the recommendation to enable line managers to buy the same or comparable products from a source other than the schedule, if they can find it for less. GSA has implemented the NPR recommendation. The current Price Reductions Clause, however, provides a disincentive for vendors to offer individual agencies less than the schedule price.

The current clause has been subject to differing interpretations. The different interpretations cause confusion and additional administrative burdens on contractors and customer agencies. The revised clause will be clarified.

The current clause also imposes certain administrative burdens on contractors that can be eliminated.

Alternatives:

In developing the proposed rule the following alternatives will be considered.

1. Eliminate the entire clause.

2. Retain the provisions of the clause that require a contractor to give all MAS customers a price reduction, if the contractors sell an item to one customer at less than the MAS price.

3. Add to the proposed clause a requirement that contractors report to the GSA contracting officer all price reductions to individual agencies.

Anticipated Costs and Benefits:

A revised Price Reductions clause will enhance the ability of Federal agencies to obtain MAS products at less than the schedule price. The proposed clause will also reduce administrative requirements imposed upon vendors to track and report price reductions. A specific dollar savings cannot be calculated.

Timetable:

Action	Date	FR Cite
NPRM	02/23/94	59 FR 8590
NPRM Comment Period End	04/25/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Sectors Affected:

Multiple

Analysis:

Regulatory Flexibility Analysis

Procurement:

This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

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RIN: 3090–AF15

GSA

170. REMOVAL OF FEDERAL SUPPLY SCHEDULE ORDERING INSTRUCTIONS

Legal Authority:

40 USC 486(c)

CFR Citation:

41 CFR 101-26

Legal Deadline:

None

Abstract:

Amend the Federal Property Management Regulations to remove Federal Supply Schedule ordering

instructions. These instructions will be restated in the form of nonregulatory guiding principles. Similar action is being taken on the Federal Information Resources Management Regulation. When combined, these actions will result in a uniform set of flexible guiding principles that empower Federal agencies to make "best value" purchasing decisions in a demonopolized environment. These actions are consistent with the National Performance Review and are part of GSA's larger plans to create a Government that works better and costs less.

Statement of Need:

Over time, the Federal Supply Schedule ordering instructions in the FPMR have become obsolete. Hence, it is no longer necessary to retain them.

Summary of the Legal Basis:

The legal authority for this change is 40 USC 486(c). This proposed change is not required by law.

Alternatives:

This proposed change was published in the Federal Register for comment. The following alternatives were suggested:

Keep regulations; eliminate redundancy.

Remove regulations, but insert a strong endorsement of the Multiple Award Schedule Program.

Anticipated Costs and Benefits:

This proposed change will carry out the principles of the National Performance Review by unburdening all Federal agencies from unnecessary regulations. A specific dollar savings cannot be calculated.

Timetable:

Action	Date	FR Cite
NPRM	02/23/94	59 FR 8587
NPRM Comment Period End	04/25/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

Procurement:

This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

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GSA

171. AMENDMENT OF FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION (FIRMR) TO REMOVE PROVISIONS FOR USING GSA NONMANDATORY SCHEDULE CONTRACTS FOR FIP RESOURCES

Legal Authority:

40 USC 486(c); 40 USC 751(f)

CFR Citation:

41 CFR 201

Legal Deadline:

None

Abstract:

This rule revises the FIRMR to remove most of the procedures for ordering from the multiple award schedules (MAS) Federal information processing (FIP) contracts. These procedures will be placed in a FIRMR bulletin as nonregulatory guidance. Due to comments received, requirements for synopsizing orders and the exception for specific make and model justifications will remain in the FIRMR. This rule also increases the synopsis threshold from $50,000 to $100,000, which will greatly expedite agencies' processing of small-dollar FIP MAS orders.

A proposed rule was published in the **Federal Register** concerning these changes. Nineteen agencies and six outside organizations provided comments. Comments on all issues were resolved. The three principal comments, which were incorporated into the final rule, were that respondents wanted the synopsis threshold left in the FIRMR, wanted the procedures for using the FIP MAS contracts to remain in the FIRMR (or in a FIRMR bulletin), and wanted the exception for specific make and model justifications to remain in the FIRMR.

Statement of Need:

The MAS program has been in existence for a number of years but is constantly being revised by GSA to improve performance and better meet the needs of the ordering activities. These changes will not impact Federal outlays. These changes are important to agencies, since they will simplify and expedite the acquisition of low-dollar FIP resources.

Alternatives:

GSA examined FIRMR provisions dealing with schedules requirements to determine their necessity. GSA also reviewed FIRMR provisions for FIP schedules and the regulatory coverage for Federal supply schedules. A FIRMR amendment was developed to make appropriate changes.

Anticipated Costs and Benefits:

The proposed amendment should improve Government efficiency by removing unnecessary regulatory requirements and replacing them with guiding principles. It was based on adequate information garnered from review and analysis of FIRMR provisions and their impact on agency requirements for FIP resources available on GSA schedules. The amendment will not have any effect on the economy.

Risks:

There are no risks associated with this rule because it does not affect public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/23/94	59 FR 8586
NPRM Comment Period End	04/25/94	
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Procurement:

This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

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GSA

172. DEFINITION OF "EQUIVALENT LEVEL OF SAFETY"

Legal Authority:

PL 102-522, sec 108

CFR Citation:

41 CFR 101-6

Legal Deadline:

Final, Statutory, October 26, 1994.

Abstract:

The Federal Fire Safety Act of 1992, signed into law on October 26, 1992, requires that "the Administrator of General Services . . . shall promulgate regulations to further define the term 'equivalent level of safety'." In fulfillment of this requirement, GSA is drafting a regulation that will allow flexibility, encourage technological innovation, and provide cost savings. It is expected that the regulation will only be used in a limited number of cases where total building sprinkler protection is not viable.

The Act requires sprinklers or an equivalent level of safety, in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units. The Act's applicability and requirements are very complex and are summarized below.

A proposed rule was published in the **Federal Register** on May 24, 1994. To be equivalent, the draft rule requires that a fire protection engineering analysis indicate a combination of building features (possibly including partial sprinkler protection) which will prevent a fire and its effects from leaving the room of fire origin.

Statement of Need:

In Federal employee office buildings with more than 25 Federal employees that are newly constructed, purchased, renovated, or leased (with the Government occupying 35,000 sq. ft. or more and some portion on or above the sixth floor):

- Buildings with six or more stories--sprinklers (or an equivalent level of safety) throughout.
- All other buildings--sprinklers (or an equivalent level of safety) for hazardous areas.

In Federal employee housing:

- New or rebuilt multifamily housing--sprinklers (or an equivalent level of safety) throughout, and hard-wired smoke detectors.
- All other housing--hard-wired smoke detectors on tenant change or at least by October 26, 1995.

In federally assisted housing:

- New multifamily housing, four or more stories--sprinklers and hard-wired smoke detectors.
- New multifamily housing in New York City, four or more stories--sprinklers (or an equivalent level of safety), and hard-wired smoke detectors.
- Rebuilt multifamily property, four or more stories--life safety features for existing apartment buildings outlined in NFPA 101, Life Safety Code.
- All other housing--hard-wired or battery-operated smoke detectors.

In addition, the following definitions apply to the requirements of the Act:

- Renovation--the cost of alterations must be more than 50 percent of the value of the structure.
- Rebuilt--the cost of alterations must be more than 70 percent of the replacement cost of the structure.
- Automatic sprinkler system--an electrically supervised integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire will protect human lives by discharging water over a fire area.

The definition of an automatic sprinkler system is unique to the Act. In addition to describing an automatic sprinkler system, the definition sets a performance objective for the system. Automatic sprinkler systems installed in compliance with the Act must be designed to protect human lives. Sprinkler systems are generally not designed with this specific objective in mind.

The requirements of the Act apply to all Federal agencies and all federally owned and leased buildings, except those of the Postal Service and those under the control of the Resolution Trust Corporation.

Summary of the Legal Basis:

In certain buildings, the law requires sprinklers or an equivalent level of safety. An equivalent level of safety is defined in the law as an alternative approach (which may include partial sprinkler protection) determined by a fire protection engineering analysis to provide an equivalent level of life safety to that provided by sprinklers. GSA, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, is required to issue regulations, by October 26, 1994, further defining the term "equivalent level of safety."

In developing the regulations, GSA has held meetings with a working group composed of representatives from the agencies named in the legislation and other affected Federal agencies: The Department of Veterans Affairs, the Social Security Administration, the Department of Housing and Urban Development, and the U.S. Coast Guard were invited to participate because of the Act's potential impact on their office space or housing.

In addition, GSA has sought input from representatives or trade associations, State Fire Marshalls, fire chiefs, consulting engineering firms, building owners, academia, and research.

Anticipated Costs and Benefits:

The proposed rule provides for flexibility, innovation, and cost savings. However, some fire department representatives, and some others, believe equivalency should not be allowed. These groups believe sprinklers are the only solution, especially in highrise buildings, even though model codes allow equivalencies, technical analyses indicate alternatives exist, and practice results in mostly partially sprinklered buildings anyway.

Federally assisted housing units in New York City (which do not use sprinklers) may not provide the level of safety necessary to keep the fire in the room of origin. The equivalency option was specifically given to New York City by an amendment to the Act (Gonzalez substitute amendment for S. 1769) on November 22, 1993.

Risks:

Use of automatic sprinklers is usually the best approach to securing the level of life safety prescribed in the Act. Sprinklers respond automatically to fire, limit fire size, and are also able to notify occupants.

GSA intends to issue regulations outlining fire protection engineering principles which can be used to measure hazard and the amount of protection provided by the building. The regulations will specify certain performance criteria which the building must satisfy in order to be classified as equivalent.

Timetable:

Action	Date	FR Cite
NPRM	05/24/94	59 FR 26768
Extend Comment Period	06/30/94	59 FR 33724
Final Action	10/26/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

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GSA

173. • DELEGATION OF OPERATION AND MANAGEMENT AUTHORITIES OF FEDERALLY OWNED AND LEASED BUILDINGS

Legal Authority:

40 USC 486(c), sec 205(c), 63 Stat 390

CFR Citation:

Not yet determined

Legal Deadline:

None

Abstract:

In 1990, the Office of Real Property Management and Safety, assumed responsibility for delegations of authority involving operation and management for federally owned and leased buildings. Delegated agencies and regional management officials were concerned because there were not complete policies with regard to eligibility for delegations. As a result, administrative policies were developed working with delegated clients and regional officials which provided a framework for determining whether client agencies are eligible for a delegation of operation and maintenance authority. This administrative policy has been in effect and has not been changed since.

This will provide all agencies who have or are interested in having operational delegations the exact criteria which will be considered by GSA in evaluating and assessing a client agency request for an operational delegation.

Statement of Need:

This proposed rule states the eligibility requirements for the granting of a delegation of authority. There is a need to codify the internal procedures.

Alternatives:

The alternative is not to codify the procedures and continue informal process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 3090–AF52

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration (NASA) was established by the National Aeronautics and Space Act of 1958. The purpose of NASA is to carry out aeronautical and space activities of the United States. In order to carry out the purpose, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space station, and related equipment; and to perform such other activities as may be required for the exploration of space. The term "aeronautical and space vehicles" means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts. NASA conducts activities required for the exploration of space with manned and unmanned vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

NASA's mission, as documented in its Strategic Plan dated May 1994, is to explore, use, and enable the development of space for human enterprise; advance scientific knowledge and understanding of the Earth, the Solar System, and the Universe and use the environment of space for research; and research, develop, verify, and transfer advanced aeronautics, space, and related technologies.

The following are narrative descriptions of the most important regulations being planned for publication in the **Federal Register** during fiscal year 1995.

NASA is testing the MidRange Procurement Procedure (48 CFR Part 1871) from July 1, 1993, to June 30, 1997. This simplified procedure covers procurements between $25,000 and $500,000 in annual value. The test began at Marshall Space Flight Center and is being expanded to cover other NASA Centers. The test uses best-value selection and seeks to establish a NASA Acquisition Bulletin Board that will reduce the time it takes to award contracts. Features of the test which are successful will be adopted permanently.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal Agencies. NASA implements and supplements FAR requirements through the NASA FAR Supplement, 48 CFR chapter 18. NASA plans to revise the NASA FAR Supplement, consistent with recommendations of the National Performance Review (NPR). For example, 48 CFR part 1845 implements and supplements FAR part 45, Government Property. Experience with this regulatory material over the last several years, coupled with the NPR emphasis on new approaches to the operation of the Federal Government, has made revision of Part 1845 necessary. The planned review and rewrite will have the objectives of simplifying, shortening, and clarifying Part 1845, while increasing the responsibility of regulation users to implement more general policy guidance. A similar approach will be taken in revising other NASA FAR Supplement parts. In addition, improved procedures, developed by NASA's Procurement Reinvention Laboratory in the Headquarters Acquisition Division, will be considered in revising the NASA FAR Supplement.

The NASA supplemental executive agency standards of ethical conduct regulations, to be issued jointly with the Office of Government Ethics (OGE) in a new chapter of 5 CFR, after OGE approval, will supplement the new OGE executive branch standards of ethical conduct, codified at 5 CFR part 2635. The supplemental regulations will set forth NASA-specific provisions under applicable law and regulation which are needed to round out the executive branchwide ethical standards.

NASA is working on technical amendments to refine and clarify the contractual cross-waiver of liability in NASA agreements involving launch services.

A final rule for procedures for NASA alcohol testing programs will be published to implement the Civil Space Employee Testing Act of 1991 which requires NASA to establish an employee alcohol testing program.

A notice of proposed rulemaking for crime control for child care programs will establish NASA policy and requirements for the development and implementation of child care programs in compliance with the Crime Control Act of 1990. This action will reduce risk to children under the age of 18 in NASA-sponsored child care programs by ensuring that criminal history background checks are conducted on child care workers who provide child care services at NASA-sponsored child care centers.

BILLING CODE 7510-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) promulgates (1) regulations directed to other Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition, and (2) regulations directed to the public relating to access to and use of the historically valuable archives, donated historical materials, Nixon Presidential materials, and Presidential records in the National Archives, regional archives, Presidential libraries, and Presidential Materials Projects operated by NARA. NARA also promulgates regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA's regulatory priorities for fiscal year 1995 will be the clarification and updating of records management regulations concerning Federal agency recordkeeping requirements, electronic records, and audiovisual records; and the completion of the rulemaking process for the NHPRC grant program regulations.

NARA records management regulations must provide agencies with the guidance they need to fulfill their statutory obligation to make and preserve records containing adequate and proper documentation of the agency's business. This guidance must be reviewed and updated periodically to reflect changing information technology and recordkeeping practices in agencies. NARA has determined that existing regulations on personal papers and removal of nonrecord and personal materials do not provide sufficient protection against improper removal of Federal records from agency control. NARA plans to expand guidance on personal papers and add a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials.

During fiscal year 1994, NARA began the rulemaking process to issue records management standards for electronic mail. NARA intends to complete the process with issuance of a final rule early in fiscal year 1995. NARA also plans to revise its audiovisual records management regulations to provide broader coverage of audiovisual materials created by agencies today. The rule will address formats not covered in the current regulations and will help agencies to ensure that audiovisual records are properly preserved.

During fiscal year 1994, NARA issued several rules affecting public use of archival records and materials in NARA research rooms. We plan no significant rulemakings in this area in fiscal year 1995.

Also during fiscal year 1994, NARA began a review of its existing NHPRC grant regulations as required by E.O. 12866. During fiscal year 1995 we intend to complete the rulemaking process with issuance of a final rule updating and improving the current regulation.

NARA

PROPOSED RULE STAGE

174. ELECTRONIC MAIL SYSTEMS

Legal Authority:

44 USC 2904; 44 USC 3101; 44 USC 3102; 44 USC 3105

CFR Citation:

36 CFR 1234

Legal Deadline:

None

Abstract:

The National Archives and Records Administration (NARA) is developing standards for management of Federal records created or received on electronic mail (E-mail) systems. These standards would be issued as an appendix to supplement regulations on electronic records in 36 CFR part 1234. The standards would affect Federal agencies.

Statement of Need:

Though this appendix is not specifically required by statute or court order, US District Court Judge Richey has indicated in court hearings on Armstrong v. EOP that the Government should issue records management standards for electronic mail. In addition, the appendix was crafted during settlement negotiations.

Summary of the Legal Basis:

This regulation reflects the legal requirements for agencies to create and maintain adequate and proper documentation, correctly identify documentation that meets the definition of Federal record, and prevent the unauthorized destruction or removal of Federal records. NARA is required by law to issue standards and guidelines to Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition. The Archivist of the United States is also statutorily responsible for establishing standards for the selective retention of records of continuing value. This regulation reflects the statutory requirements and responsibilities by providing guidance on Federal records that are created as E-mail.

Alternatives:

Given Armstrong v. EOP, there do not appear to be viable alternatives to the appendix. Revising 36 CFR part 1234 would be preferable, but too time consuming.

Anticipated Costs and Benefits:

It is not possible to quantify costs and benefits. Benefits to agencies include those cited above for adequate and proper documentation. For the most part, the guidance agencies must issue can be handled under established agency records management programs. The additional requirements for training all electronic mail users and monitoring the electronic mail systems to ensure proper identification of records could place significant burdens on agencies. However, the impact will vary from agency to agency, depending on the number of employees, the number and capabilities of electronic mail systems, the nature of their current recordkeeping systems, and controls currently in place.

Risks:

Failure to issue this regulation could result in inadequate documentation of significant agency decisions and actions.

Timetable:

Action	Date	FR Cite
NPRM	03/24/94	59 FR 13906
NPRM Comment Period End	06/22/94	59 FR 13906
Second NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

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NARA

175. • STANDARDS FOR AGENCY RECORDKEEPING REQUIREMENTS—RECORDS, NONRECORD MATERIALS, AND PERSONAL PAPERS

Legal Authority:

44 USC 2904; 44 USC 2905; 44 USC 3101; 44 USC 3102; 44 USC 3301; 44 USC 3314

CFR Citation:

36 CFR 1222

Legal Deadline:

None

Abstract:

This regulation expands regulatory guidance on personal papers and adds a requirement for agencies to protect against the removal of Federal records by issuing written procedures for the removal of nonrecord and personal materials. It also adds a requirement that agencies document the removal of nonrecord and personal materials and certify that no Federal records were taken. Finally, this revision provides more explicit guidance on records in electronic form.

Statement of Need:

This regulation is needed to ensure that Federal records are not improperly removed from agency custody by departing officials.

Summary of the Legal Basis:

This regulation reflects the legal requirements for agencies to create and maintain adequate and proper documentation, correctly identify documentation that meets the definition of Federal record, and prevent the unauthorized destruction or removal of Federal records. NARA is required by law to issue standards and guidelines to Federal agencies regarding adequate and proper documentation of the policies and transactions of the Federal Government and for ensuring proper records disposition. The Archivist of the United States is also statutorily responsible for establishing standards for the selective retention of records of continuing value. This regulation reflects the statutory requirements and responsibilities by providing guidance on applying the legal definition of Federal records, distinguishing records from nonrecord materials, identifying and maintaining personal papers, and ensuring that appropriate documentation is provided by contractors.

Alternatives:

An alternative to this regulatory change would be to contract the regulation and move most of the interpretation and guidance to a records management guide on recordkeeping requirements based on this section of the regulation. However, this alternative would not satisfy the need for the requirement for agencies to certify that records are not removed. It also would make compliance with the regulation more difficult as agency personnel would need to refer to both the regulation and a records management guide.

Anticipated Costs and Benefits:

The only new costs associated with compliance with the regulation would be in Federal agency staff resources to implement the requirement to review nonrecord and personal materials that individuals wish to remove from their agency and to certify that Federal records are not included. Agencies could choose to implement the requirement by prohibiting the removal of any documentary materials, at little or no cost, or by various levels of review, where the costs would depend on the size of the agency and the number of individuals likely to request permission to remove materials. We are unable to quantify the costs at this time, but will ask agencies to estimate their costs in the notice of proposed rulemaking.

The benefits that will accrue from adherence to this regulation are also not easily quantifiable; they include creation and protection of Federal records that may be needed for accountability, audit and inspection, continuity, and protection of the rights of the Government and of individuals directly affected by Government actions.

Risks:

Failure to follow these regulations could result in an inability to account for the expenditure of funds, lack of documentation of significant decisions that could have serious or wide-ranging affects on the public, lack of evidence of wrongdoing, resources wasted in "reinventing the wheel," failure to acquire useful documentation created under contract, inefficient operation of Government programs resulting from burdensome searches for needed information, and lack of documentation for future research.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

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BILLING CODE 7515-01-F

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management's overall priorities for the coming year will continue to focus on implementation of the National Performance Review (NPR) recommendations. What regulatory actions are taken will, to a certain extent, depend on the status of civil service reform legislation introduced pursuant to the report of the National Partnership Council. If civil service reform passes, OPM's regulatory efforts will be immediately directed to its implementation. Similarly, this Agency is fully prepared to take action in support of the Administration's health care reform initiative should a significant OPM regulatory role be legislated.

We will continue to implement those NPR recommendations not requiring legislation, as was the case in our accelerated sunset of the Federal Personnel Manual. Other such NPR recommendations that we are now addressing include the following:

- Reform of the Federal Government's position classification system;
- Reform of the Federal Government's Performance Management System;
- Elimination of the Government's time-in-grade restrictions for promotion to enable Federal managers to promote based on demonstrated ability;
- Permission to Federal employees to use accrued sick leave to care for sick or elderly dependents, and permission for sick leave recredit to employees who separate from, and later return to, Federal service, regardless of the length of their separation;
- Deregulation of the Federal Government's merit promotion program to enable agencies to establish internal selection systems consistent with merit principles and other applicable statutory provisions; and
- Deregulation of aspects of the career-conditional appointment system to eliminate unnecessary time limits on reinstatement and simplify rules on acquiring career tenure.

OPM will also be regulating to implement the Federal Workforce Restructuring Act of 1994, which contains amendments to the Government Employees Training Act. These amendments fulfill an important National Performance Review recommendation to remove restrictions on employee training to help develop a multiskilled workforce in the Federal Government.

Our other significant regulatory focus will be on implementation of the Hatch Act Reform Amendments of 1993. Hatch Act reform resulted in two main areas requiring OPM regulatory action. First, our regulations will deal with political activities that are permitted or prohibited for most Federal employees under the amended Hatch Act, as well as specific prohibitions which now apply to employees in certain positions and agencies. Second, the Act provided for the commercial garnishment of employee pay in the executive branch, and we are working with the Departments of Justice and Labor to incorporate their comments in developing the Act's implementing regulations.

OPM is committed to reinventing our role in the Federal personnel community to better serve the Government and the American people. We will regulate in areas when regulation is necessary, but will do so in a manner that both satisfies statutory requirements and is conducive to strong, yet flexible, personnel management. At the same time, we will rededicate ourselves to becoming a stronger resource to which agencies may turn for expertise and innovative solutions in addressing their human resource management needs.

OPM

PROPOSED RULE STAGE

176. • CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Legal Authority:

5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 3304

CFR Citation:

5 CFR 315

Legal Deadline:

None

Abstract:

Governmentwide rules on reinstatement eligibility and career tenure are currently in the Federal Personnel Manual (FPM). With the sunset of the FPM, it will be necessary to incorporate this information into regulation. OPM would also propose changes to simplify the appointing authorities found in chapter 315.

Statement of Need:

Governmentwide rules on reinstatement eligibility and career tenure are currently in the FPM. With the sunset of the FPM, it will be necessary to incorporate this information into regulation. OPM would also propose changes to simplify the appointing authorities found in chapter 315.

Alternatives:

Civil Service Rule 2.2 requires OPM to prescribe "by regulation" the service requirements for career tenure. Reinstatement, a related matter, should be specified by regulation to assure all employees are subject to the same rules. Therefore, alternatives to regulating are not appropriate.

Risks:

Not determined

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

177. • PROMOTION AND INTERNAL PLACEMENT

Legal Authority:

5 USC 3301; 5 USC 3302; 5 USC 3329; EO 10577

CFR Citation:

5 CFR 316; 5 CFR 335

Legal Deadline:

None

Abstract:

The President's National Performance Review (NPR) has made recommendations for a flexible and responsive Federal hiring system, including the elimination of the Federal Personnel Manual. Consistent with these recommendations, OPM plans to

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deregulate the merit promotion program to enable agencies to establish internal selection systems consistent with merit principles and other applicable statutory provisions.

Statement of Need:

The President's NPR has made recommendations for a flexible and responsive Federal hiring system, including the elimination of the Federal Personnel Manual. Consistent with these recommendations, OPM plans to deregulate the merit promotion program to enable agencies to establish internal selection systems consistent with merit principles and other applicable statutory provisions.

Alternatives:

We intend to include in regulation only a basic framework to assure agency use of merit-based selection procedures. Alternatives are not appropriate. Concerning other materials for which there is a need, OPM will use other formats, such as handbooks or pamphlets.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

178. TRAINING

Legal Authority:

5 USC 41

CFR Citation:

5 CFR 410

Legal Deadline:

None

Abstract:

Changes in the regulations to: (1) incorporate revisions to the Government Employees Training Act (GETA) contained in the Federal Workforce Restructuring Act of 1994; and (2) incorporate any requirements in Federal Personnel Manual (FPM) Chapter 410 that need to be continued following abolishment of the chapter under FPM sunset. Plan to follow negotiated rulemaking procedures in regulations.

Statement of Need:

The Human Resources Development Group (HRDG) plans to amend part 410 of 5 CFR. This regulatory action is needed to incorporate changes to the Government Employees Training Act (GETA), resulting from the passage of the Federal Workforce Restructuring Act of 1994. HRDG also plans to incorporate in part 410 of 5 CFR the authority granted to agency heads to designate Presidential appointees, other than heads of agencies, for training. This authority was granted in FPM Letter 410-34 (provisionally retained). In developing these regulations, HRDG will use the negotiated rulemaking process which is endorsed and outlined in Executive Order 12866--Regulatory Planning and Review. A memorandum from Director King to Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, acknowledges our intent to use this process for these regulatory changes. In addition, by using the negotiated rulemaking process, HRDG acknowledges that other regulatory changes or issues may be identified. HRDG, along with its partners, will evaluate any additional regulatory changes or issues to determine if they are consistent with the Administration's philosophy on employee training as outlined in the National Performance Review. HRDG estimates the entire process to last 6 to 7 months with proposed rules being issued in November and final rules being issued in January.

Anticipated Costs and Benefits:

OPM foresees no major costs to agencies in implementing these planned regulations. In fact, the planned regulations will allow agencies to make use of available training services without regard to source, Government or non-Government. This will allow agencies the opportunity to seek the most cost-effective training solutions and to take advantage of the training marketplace.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

179. PERFORMANCE MANAGEMENT REFORM

Legal Authority:

5 USC 43; 5 USC 45

CFR Citation:

5 CFR 430; 5 CFR 451

Legal Deadline:

None

Abstract:

Regulatory changes to comply with legislative reforms, in support of the National Performance Review (NPR) recommendations that decentralize performance management and incentive awards programs to the agencies.

Statement of Need:

Statutory and regulatory changes are needed to implement recommendations in the performance management and incentive awards programs. The NPR recommendations, as confirmed by the National Partnership Council (NPC), suggest decentralization of these programs to allow greater agency flexibility in their design to meet the differing needs of various agency cultures. It is anticipated that legislation will be enacted in the 1994/1995 timeframe. OPM will provide such regulations as may be needed to carry out the purpose of the law. These program areas do not address risks to public health, safety, or the environment.

Alternatives:

The changes being proposed (e.g., providing agencies greater flexibility in the design of their performance management and incentive awards programs) have received considerable debate within the Federal community, culminating with the work of the NPR and the NPC. Proposed changes represent the results of a study commissioned from the National Science Foundation, report recommendations from two Congressionally mandated committees, and proposals made by an interagency workgroup composed of selected directors of personnel.

Anticipated Costs and Benefits:

No administrative start-up costs are anticipated over and above the amounts necessary to meet consultation and partnership requirements for program design and implementation and training of the work force in the requirements of the new systems. Reduced costs for the administration of agency-designed performance management and incentive awards systems are expected to occur over time as agencies adopt programs that are simpler and less costly to administer.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

FINAL RULE STAGE

180. EMPLOYMENT (GENERAL)

Legal Authority:

5 USC 3303(e)

CFR Citation:

5 CFR 300

Legal Deadline:

None

Abstract:

OPM proposes to amend its regulations to reflect that agency heads must ensure that employees in and applicants for employment at their agencies are notified of recently enacted provisions in the Hatch Act Reform Amendments of 1993. These provisions prohibit individuals from requesting, making, transmitting, accepting, or considering political recommendations in taking personnel actions. The proposed regulation will not have any budgetary or other monetary impact in terms of benefits and costs. It will have interagency effects in obligating agency heads to notify employees, as well as applicants for employment, of 5 U.S.C. 3303, as amended.

Statement of Need:

Pursuant to the statutory requirement to issue such regulations in subsection (e) of 5 USC section 3303, as amended, OPM has prepared a proposed regulation requiring agency heads to ensure that employees and applicants for employment at their agencies are notified of the provision in the Hatch Act Reform Amendments of 1993 which prohibits specified individuals from requesting, making, transmitting, accepting, or considering political recommendations in effecting personnel actions. The proposed regulation was published in the **Federal Register** on February 22, 1994 (59 FR 8419). OPM is reviewing comments on this regulation. It is anticipated that this regulation will not result in any significant costs to the Government.

Summary of the Legal Basis:

Hatch Act Reform Amendments of 1993, subsection (e) of 5 U.S.C. section 3303, as amended.

Timetable:

Action	Date	FR Cite
NPRM	02/22/94	59 FR 8419
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

181. • TIME-IN-GRADE RESTRICTIONS

Legal Authority:

5 USC 3301; 5 USC 3302; EO 10577

CFR Citation:

5 CFR 300

Legal Deadline:

None

Abstract:

As part of its vision for a flexible and responsive hiring system, the President's National Performance Review (NPR) has recommended elimination of the time-in-grade restriction that required employees to serve 1 year in grade for eligibility to be promoted above the GS-5 level. The National Partnership Council (NPC) made a similar recommendation. These regulations would implement the NPR and NPC recommendations.

Statement of Need:

As part of its vision for a flexible and responsive hiring system, the President's National Performance Review has recommended elimination of the time-in-grade restriction that requires employees to serve 1 year in grade for eligibility to be promoted above the GS-5 level. These regulations would implement the NPR recommendation.

Risks:

Not determined

Timetable:

Action	Date	FR Cite
NPRM	06/15/94	59 FR 30717
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

182. • CLASSIFICATION SIMPLIFICATION

Legal Authority:

5 USC 51

CFR Citation:

5 CFR 511

Legal Deadline:

None

Abstract:

Legal and regulatory changes needed for simplification of the current General Schedule (white collar) position classification system.

Statement of Need:

Regulations to simplify the current General Schedule (white collar) position classification system will be proposed to implement anticipated statutory changes. These statutory and regulatory changes have been identified by the National Performance Review (NPR) and the National Partnership Council (NPC) as necessary to give agencies, managers, and employees sufficient flexibility in work design and classification to increase the effectiveness, efficiency and economy of the Federal service. It is expected that legislation to implement these simplifications will be passed and enacted in the 1994/1995 timeframe. These regulatory actions do not address risks to public health, safety, or the environment.

Alternatives:

The changes being proposed (e.g., allowing agencies to adopt broad banding based on current statutory grade levels) have received considerable debate within the Federal community, culminating with the work of the NPR and the NPC. Proposed changes represent a long-term sifting of alternatives to reach the objectives of greater flexibility within an overall framework for the Federal Government.

Anticipated Costs and Benefits:

No significant administrative start-up costs, over and above the amounts expended to run the current system, are anticipated. Reduced costs for administration of the Federal General Schedule system will occur over time as agencies adopt classification plans that are simpler and less costly to administer.

Risks:

None

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 3206–AG27

OPM

183. GARNISHMENT OF FEDERAL EMPLOYEE SALARIES

Legal Authority:

5 USC 5520a; 15 USC 1673

CFR Citation:

5 CFR 582

Legal Deadline:

None

Abstract:

The Office of Personnel Management is issuing regulations to implement section 9 of Public Law 103-94. This section provides a means by which the United States Government will be subject to commercial garnishment orders.

Statement of Need:

In accordance with Executive Order 12897, OPM was designated to promulgate regulations to implement newly enacted legislation in the amendments to allow commercial garnishment of the pay of employees in the Executive Branch. On March 29, 1994, an interim regulation was published in the **Federal Register** (50 FR 14541). OPM is reviewing comments and soliciting advice from the Department of Justice, Department of Defense, and Department of Labor in connection with the issuance of the final regulation. It is anticipated that this regulation will not result in any significant cost to the Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/29/94	59 FR 14541
Interim Final Rule Effective	03/29/94	
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 3206–AF83

OPM

184. ABSENCE AND LEAVE; SICK LEAVE

Legal Authority:

5 USC 6311

CFR Citation:

5 CFR 630

Legal Deadline:

None

Abstract:

The proposed regulations would permit employees to use a limited amount of sick leave each year to: (1) provide care for a family member as a result of sickness, injury, pregnancy, or childbirth; (2) make arrangements necessitated by the death of a family member; or (3) attend the funeral of a family member. In addition, these proposed regulations would remove prospectively the 3-year break-in-service limitation on the recredit of sick leave.

Statement of Need:

In response to a recommendation of the National Performance Review, the Office of Personnel Management plans to issue final regulations on the use and recredit of sick leave for Federal employees. The final regulations would permit Federal employees to use a specified portion of their accrued and accumulated sick leave to (1) provide care for a family member as a result of sickness, injury, pregnancy, or childbirth; (2) make arrangements necessitated by the death of a family member; or (3) attend the funeral of a family member. In addition, the final regulations would remove the 3-year break-in-service limitation on the recredit of sick leave. This regulatory change is needed to recognize the needs of Federal employees who struggle to maintain an often precarious

balance between work and family and to assist the Federal Government in recruiting and retaining the employees it needs to accomplish its mission. This regulatory action is authorized by 5 U.S.C. 6311. It does not address risks to public health, safety, or the environment.

Alternatives:

Various alternatives to the proposal to allow employees to use a total of up to 5 days of sick leave each year for family care and bereavement purposes (as set forth in the proposed regulations issued on May 11, 1994) were considered, including a lesser or greater number of days of sick leave per year and an unlimited amount of accrued and accumulated sick leave. In addition, we considered the possibility of making the change involving the recredit of sick leave following a break in service retroactive, rather than prospective, in effect.

Anticipated Costs and Benefits:

The change in policy on the purposes for which sick leave may be used would not have a quantifiable effect on the overall level of Federal expenditures, although it is likely that the overall average usage of sick leave would increase marginally. We estimate that the overall increase in Federal expenditures resulting from the change in the rule on recrediting sick leave would be approximately $5 million over 5 years. These changes would enable the Federal Government more successfully to recruit and retain the employees it needs to accomplish its mission.

Timetable:

Action	Date	FR Cite
NPRM	05/11/94	59 FR 24560
Final Action	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

185. POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

Legal Authority:

5 USC 7325

CFR Citation:

5 CFR 733

Legal Deadline:

Final, Statutory, February 3, 1994.

Abstract:

OPM has issued interim regulations pursuant to 5 U.S.C. 7325, as amended by the Hatch Act Reform Amendments of 1993, to continue in effect OPM's existing exemptions from the political activity provisions of the Hatch Act for employees residing in certain municipalities. There are no new budgetary effects, impacts such as benefits and costs, or interagency or intergovernmental effects.

Statement of Need:

The amended section 7325 of title 5, U.S.C. authorizes OPM to issue regulations exempting the Federal employees of specified communities from the provisions of 5 U.S.C. section 7323(a)(2) and (3), which prohibit Federal employees from running for partisan political office and from soliciting, accepting, or receiving political contributions from the general public. This regulation is needed because the statute specifies that OPM issue exemptions through regulations. OPM has prepared an interim regulation to implement the political activity provisions of the amendments. On February 4, 1994, OPM's regulation regarding the political activities of Federal employees in designated localities was published in the **Federal Register** (59 FR 5313). OPM is reviewing comments on this regulation. It is anticipated that this regulation will not result in any significant costs to the Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/94	59 FR 5313
Final Action	00/00/00	

Small Entities Affected:

None

Government Levels Affected:

None

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OPM

186. • POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Legal Authority:

5 USC 7325; 5 USC 1103; 5 USC 1104

CFR Citation:

5 CFR 734

Legal Deadline:

None

Abstract:

OPM proposes to issue interim regulations pursuant to 5 USC 7325, as amended by the Hatch Act Reform Amendments of 1993, as well as 5 USC 1103-1104, regarding the political activities which the Reform Amendments permit or prohibit. There are no new budgetary effects, impacts such as benefits and costs, or interagency or intergovernmental effects.

Statement of Need:

This regulation is needed because removal is the penalty for violation of the amendments' political activity prohibitions. Thus, Federal employees must have an exact description of the political activities which the amendments permit and prohibit. It is anticipated that this regulation will not result in any significant costs to the Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/94	59 FR 48765
Interim Final Rule Effective	09/23/94	
Interim Final Rule Comment Period End	11/22/94	

Small Entities Affected:

None

Government Levels Affected:

None

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PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs under title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA): a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program.

Under the single-employer insurance program, the PBGC has two primary roles. First, when a plan with insufficient assets to pay guaranteed benefits terminates, PBGC pays participants and beneficiaries their guaranteed benefits and any unfunded nonguaranteed benefits that are payable based on recoveries from employers. Second, PBGC is responsible for providing plan sponsors and plan administrators with guidance in complying with title IV's termination rules and procedures and for administering the plan termination process (a process that all terminating single-employer plans covered by title IV must go through). To finance itself, the PBGC is also responsible for collecting premiums paid by covered pension plans and employer liability amounts arising from the termination of plans without sufficient assets to pay all plan benefits.

In order to carry out these functions, the PBGC must issue regulations interpreting a number of complicated statutory provisions. The areas covered include implementation of the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Under the Multiemployer Insurance Program, as revised by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), PBGC has a more limited role than under the Single-Employer Program. The primary purpose of MPPAA was to strengthen and foster the continuation of multiemployer pension plans by ensuring that employers could not avoid their obligation to share in the funding of plan benefits by withdrawing from participation in a multiemployer plan. To this end, MPPAA imposed withdrawal liability on an employer for either a partial or complete withdrawal from a plan. An employer's withdrawal liability is generally based on its allocable share of the plan's unfunded vested benefits. This liability is calculated, assessed, and collected by the multiemployer plan. Disputes arising from the assessment of liability are to be resolved first through arbitration and then, if necessary, through the courts.

PBGC's insurance function under MPPAA is limited to the provision of financial assistance (in the form of a repayable loan) to a plan that does not have sufficient assets to pay benefits currently due at the guaranteed level. Under MPPAA, guaranteed benefits are generally less than a participant's full benefit under the plan. Plan insolvency necessitating PBGC financial assistance occurs infrequently. During fiscal year 1993, PBGC provided financial assistance to only six multiemployer plans.

The multiemployer regulations fall into several general categories: (1) rules relieving potential administrative burdens imposed by the statute on multiemployer plans; (2) rules waiving or reducing employer withdrawal liability in certain limited circumstances; and (3) rules authorizing multiemployer plans to adopt their own rules in lieu of following certain of the statutory rules.

Regulatory Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV of ERISA: (1) to encourage the continuation and maintenance of voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

In the context of its regulatory program, the PBGC implements its statutory purposes by developing regulations that are designed (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries, (2) to improve services to participants through more responsive benefit payment policies and accelerated determinations of final benefits, (3) to ensure that the several statutory provisions designed to minimize losses for participants in the event of plan termination are fully and effectively implemented and enforced, (4) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible and (5) to simplify the termination process for plans as much as possible.

Legislative Initiatives

In order to assure that the PBGC can accomplish its statutory purposes, the Secretary of Labor established an interagency task force in March 1993. The task force, which was made up of representatives of PBGC, the Departments of Labor, the Treasury and Commerce, the Office of Management and Budget, and the National Economic Council, took a comprehensive look at PBGC insurance. Based on the recommendations of the Task Force, the Administration sent to the Congress the Retirement Protection Act of 1993 (H.R. 3396, introduced October 28, 1993, and S. 1780, introduced November 23, 1993). The Retirement Protection Act, if enacted, would (1) accelerate the funding of underfunded single-employer pension plans, (2) phase out the cap on the variable rate portion of the premium paid to PBGC by underfunded single-employer plans, (3) provide PBGC with better information to prevent employers from escaping their plan funding obligations through corporate transactions, (4) provide better information to participants in underfunded plans on plan funding status and PBGC guarantees, and (5) help assure that workers do not lose pensions because they have lost contact with a terminating pension plan covered by PBGC. The PBGC's 1994 Regulatory Plan is consistent with the Retirement Protection Act and current law.

The PBGC's Regulatory Plan for October 1, 1994, to September 30, 1995, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

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187. CALCULATION AND PAYMENT OF UNFUNDED NONGUARANTEED BENEFITS

Legal Authority:
29 USC 1302(b)(3); 29 USC 1322(c)

CFR Citation:
29 CFR 2623; 29 CFR 2627

Legal Deadline:
None

Abstract:
The Pension Protection Act repealed ERISA sections 4049 and 4062(c).

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Those provisions established new employer liability to plan participants and beneficiaries in the event of a distress termination or involuntary termination by the PBGC of a plan without sufficient assets to pay all benefit commitments; the section 4049 trust was the vehicle for collecting and distributing these liability amounts. This system proved flawed in several respects.

In the Pension Protection Act, Congress created a new scheme by which to channel employer liability recoveries to plan participants and beneficiaries (amended ERISA section 4022(c)). Under new section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC's claim covers both its shortfall (unfunded guaranteed benefits) and participants' losses (unfunded nonguaranteed benefits (UNBs)). In turn, the PBGC is to pay a portion of its employer liability recovery to pay UNBs to participants and beneficiaries.

Statement of Need:

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work. Thus, a new regulation is needed to implement these statutory provisions.

Summary of the Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of Title IV of ERISA.

Alternatives:

The statute provides that the amounts of UNBs that the PBGC will pay under terminated plans be based upon the amounts that the PBGC recovers on its statutory claims for employer liability against the sponsors of those plans and the other trades or businesses under common control with the plan sponsors. However, the statute does not prescribe when the PBGC is to perform its valuation of its recovery with respect to a plan. There are two competing objectives: (1) prompt payment to participants of their UNBs and (2) precise calculation of benefit entitlements. The PBGC could promote prompt payment at the expense of precision of calculation by valuing recoveries whenever the PBGC is otherwise ready to calculate benefits under a plan. On the other hand, the PBGC could promote precision of calculation at the expense of prompt payment by deferring valuation until the collection process is finished, even if that means delaying benefit calculations.

Anticipated Costs and Benefits:

Because of the complexities involved, it may take a long time for the PBGC to determine what its recovery will be. In addition, it may be difficult to value a recovery in cases where the PBGC receives assets other than cash or readily marketable securities. Thus, the accuracy of the PBGC's computation of the amounts payable to participants would be enhanced by waiting longer to make that computation. However, long delays are not generally in the best interest of plan participants. The regulation will attempt to balance adequacy of precision in benefit determinations, avoidance of increased administrative costs, and timely payment of benefits.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	06/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 7708-01-F

RAILROAD RETIREMENT BOARD (RRB)

Statement of Regulatory Priorities

The Railroad Retirement Board administers a retirement program for railroad workers and their families under the Railroad Retirement Act of 1974, and an unemployment and sickness benefit program for railroad workers under the Railroad Unemployment Insurance Act. Regulations issued by the Railroad Retirement Board under these two statutes, and certain Governmentwide statutes, are contained in chapter II of title 20 of the Code of Federal Regulations.

The Board has been involved in a multiyear project to review, revise, and update its regulations. During this project, the Board has published final rules amending nearly all of its regulations. In addition, there are several regulations actively under consideration by the Board at this time. The Board's short-term plan is to publish final regulations to complete the total review and revision project undertaken previously.

The regulations issued by the Railroad Retirement Board are virtually all interpretive rather than legislative in nature. These regulations are designed to be informative and to assist the agency's constituents understand the benefit systems administered by the Board. In promulgating regulations, the agency is mindful of the burdens that may be imposed on the public and crafts its regulations in such a way as to impose the least possible burden on the public. In addition, through regulation, the Board makes every effort to simplify and streamline administration of the programs it administers. We believe that the Board's regulatory review program is consistent with the priorities and objectives of the Administration.

RRB

PROPOSED RULE STAGE

188. EMPLOYERS UNDER THE RAILROAD RETIREMENT ACT; EMPLOYERS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Legal Authority:

45 USC 231f; 45 USC 362(l)

CFR Citation:

20 CFR 202; 20 CFR 301

Legal Deadline:

None

Abstract:

These regulations revise existing part 202 of the Board's regulations defining entities covered under the Railroad Retirement Act and Railroad Unemployment Insurance Act to reflect current law and administrative determinations that have occurred since the regulations were originally adopted.

Statement of Need:

The Board's present regulations under part 202 were, for the most part, adopted in the 1930s and 1940s and do not reflect current case law and the Board's policy and practice adopted as a result of case-by-case adjudication.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

Sectors Affected:

40 Railroad Transportation

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RRB

189. COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Legal Authority:

45 USC 231f(b)(5)

CFR Citation:

20 CFR 226

Legal Deadline:

None

Abstract:

These regulations update the computation of retirement annuities under the Railroad Retirement Act.

Statement of Need:

The Board's present regulations do not reflect current law. These regulations will explain the computation of retirement annuities in a manner understandable to persons applying for benefits.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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RRB

190. EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Legal Authority:

45 USC 362(l); 45 USC 358(a)(19)

CFR Citation:

20 CFR 345

Legal Deadline:

None

Abstract:

These regulations describe how experience-rated contributions are determined under the Railroad Unemployment Insurance Act.

Statement of Need:

The Board is required by statute to adopt a regulation to cover the computation of the experience-based rate in cases involving mergers, sales and partitions.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Unemployment Insurance Act is 45 USC 362(l). Additional authority with respect to this part is found at 45 USC 358(a)(19).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

Federal

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RRB

FINAL RULE STAGE

191. RECOVERY OF OVERPAYMENTS

Legal Authority:

45 USC 231f

CFR Citation:

20 CFR 255

Legal Deadline:

None

Abstract:

Part 255 is being revised to clarify when and how erroneous payments must be recovered under the Railroad Retirement Act.

Statement of Need:

The Board's present regulations do not reflect current Board policies with respect to waiver of overpayments under the RRA. Railroad retirement annuitants should be made aware of such policies. This regulation will clarify the Board's policy and practice with respect to debt collection.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

This regulation should result in savings in administrative costs associated with protests and appeals in debt recovery cases.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/19/91	56 FR 47426
NPRM Comment Period End	10/21/91	56 FR 47426
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

Federal

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RRB

192. EMPLOYEES UNDER THE RAILROAD RETIREMENT ACT

Legal Authority:

45 USC 231f; 45 USC 362(l)

CFR Citation:

20 CFR 203

Legal Deadline:

None

Abstract:

These regulations revise existing part 203 of the Board's regulations defining employees covered under the Railroad Retirement Act and Railroad Unemployment Insurance Act to reflect current law and administrative determinations that have occurred since the regulations were originally adopted.

Statement of Need:

The Board's present regulations under part 203 were, for the most part, adopted in the 1930s and 1940s and do not reflect current case law and the Board's policy and practice adopted as a result of case-by-case adjudication.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/05/89	54 FR 318
NPRM Comment Period End	02/06/89	54 FR 318
Final Action	09/00/95	

Small Entities Affected:

None

Government Levels Affected:

State, Federal

Sectors Affected:

40 Railroad Transportation

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RRB

193. SURVIVOR ANNUITY COMPUTATIONS

Legal Authority:

45 USC 231f(f)(5)

CFR Citation:

20 CFR 228

Legal Deadline:

None

Abstract:

These regulations update the computation of survivor annuities under the Railroad Retirement Act.

Statement of Need:

The Board's present regulations do not reflect current law. These regulations will explain the computation of survivor annuities in a manner understandable to individuals applying for benefits.

Summary of the Legal Basis:

The general authority for issuance of regulations under the Railroad Retirement Act is provided for in section 7(b)(5) of the Act (45 USC 231f(b)(5)).

Alternatives:

None.

Anticipated Costs and Benefits:

There will be no additional costs or burdens imposed by this regulation over and above those imposed by the statute or existing regulation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/30/93	58 FR 51024
NPRM Comment Period End	11/01/93	58 FR 51024
Final Action	12/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

In formulating its Regulatory Plan for the fiscal year 1995, the Small Business Administration (SBA) is mindful of the goals given to it by the President: to increase the availability of capital to small business owners, to ease the burden of regulation and paperwork on small business, and to streamline the Agency so that it can more effectively help create jobs and promote economic development.

In the financial assistance area, SBA will focus on improvement of its Guaranteed Loan, Certified Development Company, and Small Business Investment Company programs. The burden of regulation will be eased by changes in its required documentation and procedures for its Guaranteed Loan and Disaster Loan programs. To help with streamlining, SBA will revamp its existing regulations for the section 8(a) program (for socially and economically disadvantaged firms), for Small Business Development Centers, and for size determinations.

One proposed rule would augment the infusion of capital into the small business community by reducing the scope and complexity of the "alter ego rule." This would relieve restrictions on small business applicants who seek SBA financial assistance through their real estate holding affiliates. SBA also intends to propose rules, analogous to those in its section 7(a) Certified Lenders Program, to expedite the processing of loans made to small businesses by Certified Development Companies.

SBA is presently in the midst of program-wide revisions to its regulations governing Small Business Investment Companies (SBICs). These revisions are designed to make the SBIC program more responsive to the needs of the financial marketplace. Several of these rules have already been finalized, including regulations creating a new form of leverage as well as other changes in SBA's administration of the SBIC Program. Another rule yet to be promulgated would eliminate, for nonleveraged SBICs, certain regulatory requirements no longer needed for protection of SBA's creditor position.

SBA plans to review and improve its documentation and procedures for the section 7(a) and Disaster Loan programs. These improvements may well lead to regulatory changes, as well as revisions to existing standard operating procedures. Another major objective will be efforts to eliminate any unnecessary regulatory burdens that inhibit the growth and productivity of small business. To this end, SBA continues to undertake broad-based periodic reviews of its existing programs to identify regulations that are overly complicated or unduly burdensome or that create other impediments to economic growth in the small business sector.

As a result of this review process, SBA has decided to modify key rules in several programs. It has already taken action to amend its media or "opinion molder" rule to permit applicants engaged in media or media-related industries to receive financial assistance from SBA. In addition to simplifying enforcement efforts, this revision is intended to promote job growth and economic development by making financial assistance available to a larger number of small businesses.

SBA is contemplating several wide-ranging revisions to its rules governing the section 8(a) program. Chief among these is a rulemaking, abstracted below, designed to attune the section 8(a) program more closely to the realities of the commercial environment in which it is intended to operate. Under the proposal, restrictions on self-marketing would be lessened, and the capacity of section 8(a) firms to raise capital would be increased by permitting owners to pledge their interests in such firms as collateral without adversely affecting their eligibility status.

SBA will publish a rulemaking, abstracted below, to clarify Agency policy with respect to its Small Business Development Center Program and to establish a framework for its effective and efficient operation.

SBA will also initiate several rulemakings to update and to simplify the size standards governing eligibility to participate in a broad range of SBA programs, including those in which Government procurements are set aside for competition by small business. One such rule would simplify the size determination process by reducing significantly the number of size standards employed to determine an entity's size status.

In its role as advocate for small business, SBA continues to monitor vigilantly and seek enforcement of the Regulatory Flexibility and Paperwork Reduction Acts as they impact upon small business. SBA also has commenced a project with the Office of Information and Regulatory Affairs to encourage Federal agencies to engage in a serious effort to reduce the burdens imposed by Government regulations on small business. Forums attended by senior representatives of six Federal agencies were held in March and in July 1994. A number of industry-specific working groups established in conjunction with these forums are concentrating on improvements not only to the regulatory processes of the agencies involved, but also to specific regulations that are unduly burdensome for those industries. This effort is ongoing and should produce tangible benefits during fiscal year 1995.

SBA

PROPOSED RULE STAGE

194. SMALL BUSINESS DEVELOPMENT CENTERS

Legal Authority:

PL 96-302; PL 98-395; PL 103-81

CFR Citation:

13 CFR 129

Legal Deadline:

None

Abstract:

Comprehensive regulations governing the Small Business Development Center Program.

Statement of Need:

The SBDC program creates a partnership between SBA and organizations operating the SBDC networks for the provision of business development and technical assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and improvements in management. The SBDC program has been operating under direct statutory authority without regulations. SBA is proposing these regulations to establish a framework for its effective and efficient operation. Many of the provisions set forth in this proposed rule are contained in or have arisen from legislative enactments or formalize current procedures used since the program's inception in 1980.

Summary of the Legal Basis:

The SBDC program is administered pursuant to section 21 of the Small Business Act. Public Law 102-366, the Small Business Credit and Business Opportunity Enhancement Act of 1992, prohibited SBA from issuing any rules for the SBDC program prior to submission and approval by Congress. Public Law 103-81, enacted on August 13, 1993, removed this prohibition.

Alternatives:

This rulemaking codifies existing SBA practice and procedure.

Anticipated Costs and Benefits:

This is a statutorily mandated program the costs of which are reflected in the annual appropriation. It is intended to provide aid to a broad spectrum of small businesses. Benefits from the provision of such assistance will accrue to the general economy in the form of new jobs and increased tax revenues.

Risks:

This regulation addresses no risks to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal

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SBA

195. MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM; ELIGIBILITY AND CONTRACTUAL ASSISTANCE

Legal Authority:

15 USC 634(b)(6); 15 USC 636(j); 15 USC 637(a); 15 USC 637(d); PL 99-661, sec 1207; PL 100-656; PL 101-37; PL 101-574

CFR Citation:

13 CFR 124

Legal Deadline:

None

Abstract:

This rule is an amendment to the program regulations governing appeals of denials of program admission, graduation, and termination actions, and denials of requests for waiver of the requirement that, subject to certain conditions, an 8(a) contract must be performed by the contractor to which it was awarded.

Statement of Need:

This proposal amends several sections of SBA's regulations governing the section 8(a) Program, including restrictions on self-marketing; procedures for eligibility determination appeals, graduation and termination proceedings; use of ownership interests as collateral; receipt of contract awards in excess of a firm's support level and the methodology for valuating indefinite quantity, indefinite delivery contracts for complying with competition threshold requirements. Many of these revisions are required to attune the Program more closely to the realities of the commercial environment in which it must operate. Other revisions, concerning the eligibility status of concerns owned by community development corporations and criteria governing joint venture eligibility for small disadvantaged business set asides and evaluation preferences, are being implemented in response to statutes or court decisions.

Summary of the Legal Basis:

These regulations implement section 8(a) of the Small Business Act. The revision concerning program eligibility for firms owned by community development companies is authorized by Section 626(a)(2) of Public Law 97-35; that concerning joint venture eligibility is mandated by a court decision requiring SBA to exercise jurisdiction over such matters.

Alternatives:

The revisions proposed amend existing provisions of SBA's program regulations.

Anticipated Costs and Benefits:

This rulemaking is designed to effect programmatic changes in SBA's section 8(a) Program and will affect that sector of the small business community designated as socially and economically disadvantaged. As such, no costs, other than administrative, will be incurred by SBA. Benefits accruing to the targeted business community and to the economy in general include enhancement of program opportunities, the creation of jobs and increased tax revenues.

Risks:

The rulemaking addresses no risk to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Procurement:

This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

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COMMODITY FUTURES TRADING COMMISSION (CFTC)

Statement of Regulatory Priorities

The regulatory objectives of the Commodity Futures Trading Commission are to ensure that the commodity futures and option markets remain competitive and respond to underlying supply and demand factors by detecting and preventing threats of price manipulation, abusive trading practices, fraud and other market disruptions, safeguarding the financial soundness of those markets, and providing for appropriate customer protection of those who trade on those markets. Futures markets that are free of manipulation and other anticompetitive forces can most effectively perform their vital economic functions of price discovery and risk transfer. To these ends, the Commission's objectives include protection of customer funds, ensuring the financial integrity of regulated intermediaries, and protection of customers from abusive trade practices.

CFTC

PROPOSED RULE STAGE

195. PROHIBITION ON VOTING BY INTERESTED MEMBERS

Legal Authority:

7 USC 7a(17) (Supp IV 1992)

CFR Citation:

17 CFR 1.67

Legal Deadline:

None

Abstract:

The regulation will implement the provisions of section 217 of the Futures Trading Practices Act of 1992 which require contract markets to adopt rules to avoid conflicts of interest in deliberations and voting by members of the governing board and disciplinary and other oversight committees. The rulemaking will define the relationships between a named party in interest and a member of the governing board or committee which would require abstention from deliberations and voting. The rulemaking also will provide guidelines on situations which would require a member to abstain from voting on a significant action because of a substantial financial interest in the outcome of the vote based on positions held personally or at an affiliated firm, as well as other matters addressed by the statute. The action will potentially impact the selection and composition of contract market governing boards and committees.

Statement of Need:

The regulation will implement the provisions of section 217 of the Futures Trading Practices Act of 1992 which require contract markets to adopt rules to avoid conflicts of interest in deliberations and voting by members of the governing board and disciplinary and other oversight committees. The rulemaking will define the relationships between a named party in interest and a member of the governing board or committee which would require abstention from deliberations and voting. The rulemaking also will provide guidelines on situations which would require a member to abstain from voting on a significant action because of a substantial financial interest in the outcome of the vote based on positions held personally or at an affiliated firm, as well as other matters addressed by the statute. The action will potentially impact the selection and composition of contract market governing boards and committees. This rulemaking will further the regulatory objective of oversight of contract markets so as to assure that the markets remain open, competitive and efficient.

Alternatives:

These rules are required by statutory mandate set forth in the Futures Trading Practices Act of 1992. The Commission intends to pursue this rulemaking to achieve rules that will fulfill this statutory mandate in a cost-effective manner.

Anticipated Costs and Benefits:

As a financial regulator, the Commission is acutely aware of the costs of regulation. Throughout its history, the Commission has taken into account the costs of its proposed regulations in order to ensure that the benefits of its regulations outweigh the costs. To date, we know of no Commission regulation that adversely affected small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601-611 (1988).

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	01/00/95	
Final Action	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 3038-AB03

CFTC

FINAL RULE STAGE

197. REVIEW OF COMMISSION DISCLOSURE REQUIREMENTS CONCERNING COMMODITY POOL OPERATORS

Legal Authority:

7 USC 2; 7 USC 6b; 7 USC 6c; 7 USC 6l; 7 USC 6m; 7 USC 6n; 7 USC 6o; 7 USC 12a

CFR Citation:

17 CFR 4.21; 17 CFR 4.31; 17 CFR 4.10

Legal Deadline:

None

Abstract:

The Commission will review its requirements concerning disclosure materials to be provided pool participants and customers of commodity trading advisors with a view toward simplifying the disclosure process, reducing any unnecessary burdens, and harmonizing the Commission's disclosure requirements with those of other domestic and international regulators.

Statement of Need:

The proposed amendments reflect the Commission's experience in applying the disclosure requirements set forth in part 4 of the Commission's rules and significant evolution in the purposes, structure and activities of the managed funds marketplace. These proposed modifications of the CPO and CTA disclosure framework are designed to achieve greater simplicity, focus and clarity in performance history presentations; streamlining of other required disclosures; and a more concise and readable format for disclosure documents. They are intended to further regulatory priorities by ensuring that full disclosure is made to customers while reducing unnecessary burdens upon commodity pool operators and commodity trading advisors and simplifying the disclosure process for all participants.

Based upon more than fifteen years of experience with administering the part 4 disclosure framework for CPOs and CTAs, the Commission has undertaken a comprehensive review of the disclosure requirements for CPOs and CTAs to identify areas in which the regulatory structure can be streamlined or simplified, while continuing to provide appropriate customer protection. The amendments have three major purposes: (1) simplification of past performance disclosures; (2) reduction of required disclosures as to matters of secondary relevance, such as litigation history, business background and conflicts of interest; and (3) clarification and modernization of various requirements. Disclosure documents would be required to contain a table of contents. General information concerning the pool, including the break-even point, would be required to be set forth in the forepart of the document. The number and content of various previously required bold-face "boilerplate" cautionary statements would be reduced and all information voluntarily provided would be required to follow the relevant required disclosures.

Alternatives:

Changes are also proposed to generally facilitate pool offerings, particularly with respect to areas of overlap or potential inconsistency with Securities and Exchange Commission (SEC) rules. Thus, under the revisions, CPOs may update pool disclosure documents every 9 months, consistent with SEC requirements, rather than every 6 months, as under current CFTC rules. In addition, CPOs may provide accredited investors with a notice of intended offering and term sheet, prior to delivery of a disclosure document.

Similar changes are proposed to be made to the requirements applicable to CTA disclosure documents.

Anticipated Costs and Benefits:

As a financial regulator, the Commission is acutely aware of the costs of regulation. Throughout its history, the Commission has taken into account the costs of its proposed regulations in order to ensure that the benefits of its regulations outweigh the costs. To date, we know of no Commission regulation that adversely affected small entities as defined under the Regulatory Flexibility Act, 5. U.S.C. 601-611 (1988).

Timetable:

Action	Date	FR Cite
NPRM	05/16/94	59 FR 25351
NPRM Comment Period End	08/17/94	
Final Action	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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CFTC

198. RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS

Legal Authority:

7 USC 6f(c) (Supp IV 1992)

CFR Citation:

17 CFR 1.14; 17 CFR 1.15

Legal Deadline:

None

Abstract:

The Commission is proposing risk assessment regulations which would require futures commission merchants(1) to provide reports to the Commission regarding the activities of affiliated persons that are reasonably likely to affect materially the financial or operational condition of such entities; and (2) to obtain certain information and make and keep certain records concerning their policies, procedures or systems for monitoring and controlling financial and operational risks to them resulting from the activities of affiliated persons. The Commission has held discussions with the Securities and Exchange Commission regarding the operation of their temporary risk assessment regulations in an effort to avoid unnecessary duplication and sought input from other financial regulators.

Statement of Need:

The proposed rules, authorized by Congress in section 229 of the Futures Trading Practices Act of 1992, Public Law 102-546, 106 Stat. 3590 (1992), would enhance the Commission's financial surveillance program by providing the Commission with access to information concerning the activities of affiliates of registered futures commission merchants (FCMs) whose activities are reasonably likely to have a material impact on the financial or operational condition of the FCM. As proposed, these rules would require registered FCMs to maintain certain records concerning the financial activities of such material affiliates, to file certain information with the Commission on an annual and quarterly basis and to provide additional information to the Commission upon the occurrence of specified events. The records required to be maintained and the information required to be filed routinely include, among other things, an organizational chart, risk management policies, financial statements, securities and commodity position data, financial instrument holdings, credit extensions, and information regarding positions of affiliates carried by FCMs. Additional information may be required upon the occurrence of a reduction in the FCM's adjusted net capital or the parent company's stockholders' equity, large outflows of the FCM's assets or large losses in positions of affiliates carried by the FCM, changes in an affiliate's credit or capital rating, and an FCM's agreement to guarantee the obligations of an affiliate.

The Commission views these rules as necessary to fulfill its objectives of protecting customer funds and ensuring financial integrity of regulated intermediaries. The rules are intended to enhance the safeguards of customer funds by providing the Commission with increased access to material information concerning the operations of affiliates of the FCM whose activities may expose the FCM to financial or operational risks. The new statutory authority under which these rules are proposed recognizes that, as illustrated by the experience of the CFTC and other regulators with several recent failures of regulated brokerage firms, the operations of regulated FCMs may be materially affected by, and only understood in conjunction with, the activities of affiliated entities, many of which may be unregulated.

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Concomitantly, the effectiveness of ongoing financial oversight programs may depend upon access to information concerning risks to the FCM created by affiliate activity, and the efficacy of regulatory responses to financial problems at the regulated entity may be enhanced by access to information concerning relevant affiliate activity.

Alternatives:

The proposals provide alternative filing options for an FCM that is also a securities broker-dealer, or that is part of a holding company with affiliates subject to the oversight of a Federal banking agency, State insurance commission or a foreign regulator with which the Commission has an information-sharing agreement to avoid duplicative reporting burdens. The staff has also consulted extensively with other financial regulators, and continues to do so, to explore the extent to which they may share with the Commission on a confidential basis relevant risk assessment information concerning entities subject to their supervision so as to reduce duplicative requirements.

Anticipated Costs and Benefits:

As a financial regulator, the Commission is acutely aware of the costs of regulation. Throughout its history, the Commission has taken into account the costs of its proposed regulations in order to ensure that the benefits of its regulations outweigh the costs. To date, we know of no Commission regulation that adversely affected small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601-611 (1988).

Timetable:

Action	Date	FR Cite
NPRM	03/01/94	59 FR 9589
NPRM Comment Period End	07/01/94	
Interim Final Rule	10/00/94	
Final Action	03/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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BILLING CODE 6351-01-F

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Statement of Regulatory Priorities for Fiscal Year 1995

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public against unreasonable risks of injury and death associated with consumer products. The Commission has four methods by which to achieve this objective: participation in developing or revising voluntary product safety standards, development of mandatory product safety standards, development of mandatory corrective actions, or development of information and education campaigns.

In determining which of these methods to use in the case of a particular product, the Commission gathers the best available data on the nature and extent of the hazard posed by the product. This information is analyzed to determine how best to reduce the hazard. In determining what priority to give a particular hazard reduction effort, the Commission is required by its rules to consider the following general criteria:

- frequency and severity of injury
- causality of injury
- chronic illness and future injuries
- cost and benefit of CPSC action
- unforeseen nature of the risk
- vulnerability of the population at risk
- probability of exposure to hazard.

In addition, if a mandatory safety standard is proposed to reduce the hazard associated with a particular product, the Commission is required to find that the regulatory approach selected is the least burdensome means of adequately protecting the public.

The Commission has a small regulatory program. It relies on voluntary standards to address product hazards whenever possible. Regulatory initiatives are undertaken only when manufacturers fail to develop adequate voluntary standards or when there is not substantial conformance with such standards. The Commission considers a balance between mandatory and voluntary standards to be the most effective way to achieve product safety in the 1990s.

In 1995, the Commission will focus on mandatory safety standards which emphasize the protection of vulnerable populations, including children, the elderly, low-income groups, and those who have difficulty understanding safety messages written in English.

Significant CPSC regulatory activities planned for 1995 involve the following regulations: "Standard for the Flammability of Upholstered Furniture"; "Standard for Safety Performance Requirements for Plastic Five-Gallon Containers" (Buckets); and "Requirements for Special Packaging of Household Substances: Revision of Test Protocols for Child-Resistant Packaging." These regulatory activities are described in detail below.

Each of these 1995 regulatory initiatives has a major component related to vulnerable populations. Upholstered furniture fires disproportionately kill and injure children, the elderly and families/individuals with lower incomes. Five-gallon buckets pose a drowning hazard to young children, in particular those in ethnic minority groups in low-income households. Revisions of the test protocol for child-resistant packaging will make this packaging easier for adults, especially the elderly, to use. If child-resistant packaging is easier to use, it will be used more frequently, thereby preventing ingestion of medicines and other harmful substances by young children.

The 1995 regulatory focus on reducing product-related deaths and injuries in vulnerable populations is consistent with the Agency's legally defined mission and priority-setting criteria. In addition, it supports the President's priority to reduce the Nation's health care costs by preventing injury to groups which are frequently the most likely to be injured by a hazardous product.

CPSC

PROPOSED RULE STAGE

199. • FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Legal Authority:

15 USC 1293 Flammable Fabrics Act

CFR Citation:

16 CFR 1640

Legal Deadline:

None

Abstract:

On June 15, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard for upholstered furniture. The ANPRM announced that the regulatory alternatives under consideration include issuance of a mandatory standard to address risks of death, injury, and property damage from fires associated with ignition of upholstered furniture by small open-flame sources. Fire hazards associated with ignition of upholstered furniture by cigarettes or large open-flame sources are outside the scope of this proceeding. The staff is preparing a briefing package for consideration by the Commissioners of the agency when they decide whether to publish a proposed standard.

Statement of Need:

There are approximately 700 deaths, more than 2,000 injuries and $300 million in property damage resulting from upholstered furniture fires each year in the U.S. Upholstered furniture is associated with more fire-related deaths than any other consumer product within the agency's jurisdiction.

Open-flame ignition fires accounted for about one-fourth of the injuries, and one-fifth of the deaths and property damage. Cigarette-ignited fires accounted for about two-thirds of the deaths and over half of the injuries and property damage.

The estimated societal cost of all upholstered furniture fires in 1991 was about $2 billion, including about $0.5 billion attributable to open-flame fires and $1.25 billion to smoking-related fires.

Summary of the Legal Basis:

The Commission has authority under the FFA to issue a "flammability standard or other regulation, including labeling," for a product of interior furnishing if the Commission determines that such a standard "is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." (FFA, section 4(a), 15 U.S.C. 1193 (a).) No aspect of this action is required by statute or court order.

The projected regulation would be a mandatory standard that would require that upholstered furniture sold in the United States resist ignition under test conditions specified in the standard.

Alternatives:

Continued deferral to existing industry voluntary standard for cigarette ignition only;

Continued deferral to existing industry voluntary standard for cigarette ignition

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and development of a voluntary standard for open-flame ignition; or

Development of a mandatory standard for cigarette ignition only.

Anticipated Costs and Benefits:

The estimated annual cost of imposing a mandatory standard for open-flame ignition of furniture will be determined. Given that the total annual societal cost of upholstered furniture fire losses is estimated at nearly $500 million from open-flame fires, the potential benefits of a standard, even if it were only partially effective, could be extremely large.

Risks:

Upholstered furniture is associated with more deaths from fires than any other consumer product within the agency's jurisdiction. There are approximately 700 deaths, more than 2,000 injuries, $300 million in property damage and an estimated overall societal cost of about $2 billion resulting from upholstered furniture fires each year in the U.S. About one-quarter of these costs are due to open-flame ignition fires.

A substantial impact on open flame ignition fires could occur since there is currently no national standard addressing this hazard.

Societal costs associated with upholstered furniture are among the highest costs associated with any product that the agency regulates. This standard has the potential to eliminate as much as one-quarter of that cost.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
ANPRM Comment Period End	08/15/94	59 FR 30735
Staff Sends Briefing Package to Commission	06/00/96	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

200. • SAFETY REQUIREMENTS FOR 5-GALLON PLASTIC BUCKETS

Legal Authority:

15 USC 2056 Consumer Product Safety Act; 15 USC 2057 Consumer Product Safety Act; 15 USC 2058 Consumer Product Safety Act

CFR Citation:

16 CFR 1307

Legal Deadline:

None

Abstract:

On July 8, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding which could result in mandatory requirements to address risks of drowning to children associated with 5-gallon plastic buckets. The ANPRM announced that the regulatory alternatives under consideration include issuance of a mandatory performance standard or labeling requirements for 5-gallon plastic buckets, or a ban of those products. The staff is preparing a briefing package for consideration by the Commissioners of the agency when they decide whether to publish a proposed standard or banning rule.

Statement of Need:

An estimated 40 children a year drown in buckets. They range in age from 7 months to 24 months; approximately two-thirds are male. Minority groups accounted for approximately 70 percent of bucket-related incidents. Most victims were at the lower end of the socioeconomic scale.

Summary of the Legal Basis:

The Commission has authority under the CPSA "to protect the public against unreasonable risks of injury associated with consumer products" and "to develop uniform safety standards for consumer products." (15 U.S.C. 2051) "Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product." (15 U.S.C. 2056) No aspect of this action is required by statute or court order.

The projected regulation would be a mandatory standard that would require that 5-gallon plastic buckets sold in the United States meet certain performance requirements intended to prevent young children from drowning in such buckets.

Alternatives:

Deferral to an existing emergency (temporary) voluntary labeling standard;

Development of a mandatory labeling requirement;

Development of a voluntary performance standard; or

Ban of the product as a hazardous product.

Anticipated Costs and Benefits:

An effective performance standard has the potential to prevent a substantial number of deaths associated with this product.

Further information on the bucket industry and market is needed before the potential costs to industry can be calculated. This information is being sought through an advance notice of proposed rulemaking (ANPRM).

Risks:

Falling into 5-gallon buckets containing liquid is a largely unforeseen hazard for young children which, at least for reported incidents, is fatal far more frequently than not. There are an estimated 40 deaths each year due to drowning in buckets. The victims are children between 7 months and 24 months of age. Almost 90 percent of the reported incidents are fatalities. The victims are predominantly minorities and at the lower end of the socioeconomic scale.

An effective performance standard has the potential to prevent a substantial number of the deaths associated with this product.

Five-gallon buckets rank 14th in deaths to children under 15 years of age from products not intended for use by children. However, since the vast majority of children under 15 are not at risk from this hazard, buckets would rank much higher as a risk to children 2 years old and under. If 5-gallon buckets were listed with products intended for use by children, 40 deaths a year would make them the second-highest ranking product associated with children's deaths.

Timetable:

Action	Date	FR Cite
ANPRM	07/08/94	59 FR 35058
ANPRM Comment Period End	09/06/94	59 FR 35058
Staff Sends Briefing Package to Commission	09/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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CPSC

FINAL RULE STAGE

201. REQUIREMENTS FOR THE SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES; REVISION OF TEST PROTOCOL FOR CHILD-RESISTANT PACKAGING

Legal Authority:

15 USC 1472 Poison Prevention Packaging Act; 15 USC 1473 Poison Prevention Packaging Act

CFR Citation:

16 CFR 1700.20

Legal Deadline:

None

Abstract:

On January 19, 1983, the Commission published an advance notice of proposed rulemaking (ANPRM) soliciting comments on ways to amend the existing requirements for child-resistant packaging to improve the effectiveness and efficiency of these requirements. On October 5, 1990, the Commission proposed specific revisions of the child test protocol and the adult test protocol. On March 5, 1991, the Commission published a notice in the **Federal Register** to extend the period for receipt of written comments on the proposed amendments of the test protocols until July 1, 1991. This notice also solicited comments on additional changes to the adult test protocol. Additional testing was conducted to address issues raised by comments on the proposed amendments. On March 21, 1994, the Commission published the new test data in the **Federal Register** for public comment. The staff is preparing a briefing package for consideration by the Commissioners of the agency when they decide whether to issue final amendments. A decision by the Commission is expected in December 1994.

Statement of Need:

An estimated 133,500 children under age 5 received hospital emergency room treatment in 1991 from accidental ingestions, chemical burns and other acute injuries associated with household chemicals. Over 14,000 of these cases required hospitalization. In 1990, 49 children under age 5 died from accidental ingestion of toxic household chemicals.

Although the PPPA currently requires that child-resistant packaging must not be difficult for most adults to open and properly resecure, some people, especially older adults, find certain types of child-resistant packaging difficult to use, and avoid buying it or using it properly. Child-resistant packages which were easier to use would be used by more people, thus reducing the number of poisonings of children.

Summary of the Legal Basis:

The PPPA authorizes the Commission to establish standards for the "special packaging" of any household substance, including drugs, "to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance." Any packaging required by such standards must be technically feasible, practicable and appropriate for such substances. (15 U.S.C. 1472) No aspect of this action is required by statute or court order.

The proposed regulation is intended to prevent deaths and illnesses resulting from accidental ingestion of drugs by young children. The proposed changes to the test protocol are intended to make child-resistant packaging easier to use and resecure properly by all adults, thus promoting wider use of child-resistant packaging.

Alternatives:

The agency is considering alternatives in several areas of the proposed revisions. These include whether to retain the requirement for 18- to 45-year-old test subjects, what the age distribution of the 60- to 75-year-old subjects should be, and what the length of time for the test period should be. Public comment is being sought on these issues and the related test data.

Anticipated Costs and Benefits:

Child-resistant packaging has been shown to be effective in preventing deaths and injuries due to accidental ingestions. Wider use of child-resistant packages due to increased ease of use would increase this effectiveness. Many packages on the market today will not pass the proposed protocols. Actual costs will depend on the specific requirements of the final regulation.

Risks:

An estimated 133,500 children under age 5 received hospital emergency room treatment in 1991 from accidental ingestions, chemical burns and other acute injuries associated with household chemicals. Over 14,000 of these cases required hospitalization. In 1990, 49 children under age 5 died from accidental ingestion of toxic household chemicals.

Child-resistant packaging has the potential to prevent a large percentage of accidental ingestions by young children.

Poison control centers report over 1 million ingestions by young children each year. Medications alone rank 13th in deaths to children under age 15 from products not specifically intended for children and 11th in emergency-room-treated injuries from these products. Medications were one of only seven product categories to rank in the top twenty in both deaths and injuries to children from products not specifically intended for children. When products in this group which involve fire as a hazard are eliminated, medications rank third as a cause of death. Since medications are not the only products covered by the PPPA, child-resistant packaging is even more important than these numbers indicate.

Timetable:

Action	Date	FR Cite
ANPRM	01/19/83	48 FR 2389
ANPRM Comment Period End	03/21/83	48 FR 2389
NPRM	10/05/90	55 FR 40856
NPRM Comment Period End	07/01/91	56 FR 9181
Publication of New Test Data	03/21/94	59 FR 13264
Comment Period End	05/20/94	59 FR 13264
Commission Decision To Issue Final Amendments	12/00/94	

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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BILLING CODE 6355-01-F

FEDERAL COMMUNICATIONS COMMISSION (FCC)

FINAL RULE STAGE

202. TELEPHONE COMPANY/CABLE TELEVISION CROSS-OWNERSHIP RULES SECTIONS 63.54-63.56

Legal Authority:

47 USC 151; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 218; 47 USC 220; 47 USC 214; 47 USC 521; 47 USC 533; 47 USC 522

CFR Citation:

47 CFR 63.54; 47 CFR 63.55; 47 CFR 63.56; 47 CFR 63.57; 47 CFR 63.58

Legal Deadline:

None

Abstract:

In this stage of the proceeding, the Commission issued a Second Report and Order that modifies FCC rules and regulatory policy to enable local telephone companies to participate in the video marketplace through video dialtone. The FCC decided that local telephone companies may make available to multiple service providers, on a nondiscriminatory common carrier basis, a basic platform that will deliver video programming and other services to end users. Such a policy will advance the FCC's goals of creating an advanced infrastructure, increasing competition in the video marketplace and enhancing the diversity of video services to the American public. The FCC also issued a Recommendation to Congress recommending that the statutory telephone company-cable television cross-ownership restriction be repealed. Further, the Commission solicited comments in a second further notice of proposed rulemaking on the issue of whether the rural exemption to the telephone company-cable television cross-ownership restrictions should be raised to 10,000 persons. As of 7/12/94, Commission has approved five applications for video dialtone trials and one application for commercial video dialtone service.

Statement of Need:

The Commission will consider petitions for reconsideration of its regulatory framework for provision of video services by local telephone companies. This framework established the terms and conditions by which companies may, consistent with statutory requirements, offer video services in their telephone service areas. The Commission's rules in this area are designed to promote investment in our national telecommunications infrastructure, increase competition in the provision of video services, and foster diverse sources of video programming. In furtherance of its video dialtone policy goals, the Commission is also currently considering applications from local telephone companies to offer video dialtone facilities and service to the public, on both a trial and permanent commercial basis.

Alternatives:

Prior to the Commission video dialtone order, telephone company participation in the video marketplace was limited to providing channel service for cable operators--that is, transmitting video signals to subscribers' homes for the cable operator. Telephone companies could not compete with cable operators in the telephone company service area.

Anticipated Costs and Benefits:

Video dialtone will benefit consumers, video programmers, telephone companies, and other service providers by fostering innovation in services, competition in the video marketplace, improved service quality, increased network usage and lower cost telecommunications services and products. Video dialtone should benefit the Nation as a whole by fostering the rapid development of advanced telecommunications facilities, the provision of innovative new services, and increased competition in the telecommunications marketplace.

Timetable:

Action	Date	FR Cite
NOI	09/15/87	52 FR 34818
FNOI/NPRM	09/29/88	53 FR 38042
First R&O	12/17/91	56 FR 65445
FNPRM/SFNOI	12/17/91	56 FR 65464
Recommendations to Congress	08/14/92	
Reconsideration of First R&O	09/09/92	57 FR 41109
Second R&O	09/09/92	57 FR 41106
SFNPRM	09/09/92	57 FR 41118
Pending Video Dialtone Reconsideration	10/00/94	
Further Action on Pending Video Dialtone Applications and Petitions	00/00/00	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

For additional information on the Regulatory Plan, contact Gary Phillips, Federal Communications Commission, Common Carrier Bureau, 1919 M Street, Room 544, Washington, DC 20554, (202) 418-1573.

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RIN: 3060–AE40

FCC

203. EXPANDED INTERCONNECTION WITH LOCAL TELEPHONE COMPANY FACILITIES

Legal Authority:

47 USC 151; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 218; 47 USC 220; 47 USC 404

CFR Citation:

47 CFR 69; 47 CFR 61; 47 CFR 64

Legal Deadline:

None

Abstract:

The Commission adopted rules for expanded interconnection with local telephone company facilities for interstate special access and switched transport, authorized new pricing flexibility for LECs, and has sought comment on hand-off of switching information necessary to permit competition for the provision of tandem switching associated with switched transport.

Statement of Need:

On July 14, 1994, the Commission adopted a Memorandum Opinion and Order in which it reaffirmed its commitment to its expanded interconnection policy. The Commission acted in response to the June 10, 1994, decision of the U.S. Court of Appeals for the D.C. Circuit in Bell Atlantic Telephone Companies v. FCC. In that case, the court said it would vacate in part, and otherwise remand, the first two of the Commission's expanded interconnection orders, on the grounds that the agency lacked authority to require the telephone companies to provide expanded interconnection for

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special access through physical collocation.

In the July 14 order, the Commission directed the local telephone companies to provide expanded interconnection through virtual collocation. The FCC exempted telephone companies from the mandatory virtual collocation requirement at central offices in which they choose to offer physical collocation subject to nonstreamlined regulation by the Commission as a communications common carrier service. The carriers are required to file virtual collocation tariffs on September 1, 1994, scheduled to become effective on December 15, 1994. The Commission's staff will review these tariffs once they are filed. Interested parties may, under the Commission's rules, file petitions to reject, or to suspend and investigate the tariffs. The Commission staff will review those petitions and determine whether rejection or investigation of the tariffs is warranted.

Alternatives:

By acting expeditiously before the court issues its mandate, the FCC sought to avoid the disruption to competition that might result if its expanded interconnection policy lapsed. The Commission's quick response to the court's decision will give affected parties clear guidance on their rights and obligations and preserve the public interest benefits of expanded interconnection.

Anticipated Costs and Benefits:

The increased competition generated by expanded interconnection should lead to lower access charges, which in turn will make it possible for long-distance companies to offer service at lower rates. Competition also creates incentives for telephone companies and their competitors to invest advanced telecommunications technologies, develop innovative services, give users a greater range of choices in telecommunications services, and provide existing services more efficiently.

Timetable:

Action	Date	FR Cite
NPRM & NOI	07/26/91	56 FR 34159
ANPRM	09/20/91	56 FR 44053
ANPRM Comment Period End	11/06/91	56 FR 34159
R&O and NPRM	11/18/92	57 FR 54323
2nd NPRM	12/01/92	57 FR 56888
MO&O	12/31/92	57 FR 62481
NPRM Comment Period End	03/09/93	57 FR 58767
2nd MO&O	09/17/93	58 FR 48752
2nd MO&O and 3rd NPRM	09/17/93	58 FR 48756
3rd R&O	06/27/94	59 FR 32925
MO&O	08/01/94	59 FR 38922
Carriers required to file collocation tariffs on	09/01/94	
Effective Date	12/15/94	

Small Entities Affected:

None

Government Levels Affected:

None

Additional Information:

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FEDERAL HOUSING FINANCE BOARD (FHFB)

Statement of Regulatory Priorities

The Finance Board's three major regulatory priorities for fiscal 1995 are: to ensure that the FHLBanks operate in a financially safe and sound manner; to ensure that they carry out their housing finance mission; and to address what governance authorities currently exercised by the Finance Board may be more appropriately exercised by the FHLBanks, thereby reducing their regulatory burden. Within these "super" priorities, the Finance Board has a number of 1994-95 priority projects, two of which are expected to result in significant regulatory actions (as defined in E.O. 12866) in fiscal 1995. However, it is important to note that the Finance Board will be without authority to take action on regulations or new policy initiatives until a quorum is restored to the Finance Board.

FHLBank Safety And Soundness Priority

The Finance Board's highest priority is to continue to ensure the safety and soundness of the FHLBank System. This priority entails the ongoing examination and supervision of the 12 FHLBanks and the FHLBank System's funding agent, the Office of Finance, and all matters relating to safety and soundness. While none of the projects within this priority is expected to result in a significant regulatory action in fiscal year 1995, the following interrelated matters are the most important components of this top priority for the agency:

1. The execution of the Finance Board-adopted strategic plan for on-site examination of the 12 FHLBanks and the Office of Finance;

2. The development and adoption by the Finance Board of the agency's examination handbook, which will articulate the policies and procedures to be followed by examiners in conducting examinations; and

3. In connection with a comprehensive project to review the capital standards and structure of the FHLBank System, further modifications to, and modernization of, the Financial Management Policy governing investments and other nonadvance financial activities of the FHLBank System—which modifications may include the development of a regulation in place of the existing policy.

FHLBank Housing Finance Mission Priority

The second major Finance Board regulatory priority is to continue to ensure that the FHLBanks carry out their housing finance mission. There are two significant regulatory actions through which the Finance Board intends to further this priority in fiscal year 1995: (1) the amendment of the Finance Board's existing Affordable Housing Program (AHP) regulation; and (2) the possible adoption of a new regulation or guidelines governing the FHLBanks' Community Investment Program (CIP). These two initiatives are described below.

The Finance Board also intends to implement this priority by amending its existing Community Support Requirements (Community Support) regulation to establish specific community support standards applicable to credit union and insurance company members. The Bank Act requires the Finance Board to adopt a regulation establishing standards of "community investment or service" that member institutions must meet in order to maintain continued access to long-term advances.

Under the existing Community Support regulation, the primary standard for evaluating the adequacy of a member's community support activities is the evaluation of the member's compliance with the Community Reinvestment Act of 1977 (CRA), as evidenced by the CRA rating assigned to the member by its Federal banking regulator. However, since the CRA does not apply to credit unions and insurance companies, these institutions do not receive CRA ratings. The amendment to the Community Support regulation is intended to address this issue. The Finance Board does not expect the amendment of the Community Support regulation to constitute a significant regulatory action.

FHLBank Corporate Governance Priority

The Finance Board's third major priority for fiscal 1995 is to reduce the regulatory burden on the FHLBanks by carrying out, to the extent permitted by current law, the recommendation regarding FHLBank System governance contained in a number of the congressional reports mandated by the Housing and Community Development Act of 1992, as well as in the strategic plan called "System 2000" developed jointly by the Finance Board and the System in 1993. The recommendation is that the Finance Board's safety and soundness, regulatory, and supervisory functions be separated from the Finance Board's corporate governance and business oversight functions.

The Finance Board's corporate governance priority promotes the President's National Performance Review priorities in two ways. First, it will "cut red tape" by reducing the number and extent of regulations that control the FHLBanks' business decisions. Second, it will "put customers first" by allowing the FHLBanks more flexibility in carrying out the purpose for which they were created: to channel money from Wall Street to individual housing lenders all across America.

The Finance Board is currently seeking recommendations from the 12 FHLBanks as well as its own senior staff regarding which activities currently carried out by the Finance Board might better be done by the FHLBanks or by a to-be-created central governance authority. The Finance Board will study the recommendations and implement those changes it believes are appropriate and that can be carried out without statutory or regulatory change.

Clearly, the Finance Board would have to modify or eliminate some of its existing regulations in order to effect many of the changes. It is unlikely that any one of the regulatory changes that ultimately emanate from this priority will amount to a significant regulatory action. However, if all of the regulatory changes emanating from this priority were taken together, it is possible that they could amount to a significant regulatory action since the annual reduction of burden on the FHLBanks and the economy could amount to $100 million or more.

FHFB

PRERULE STAGE

204. COMMUNITY INVESTMENT PROGRAM

Legal Authority:

12 USC 1422a; 12 USC 1422b; 12 USC 1430(i)

CFR Citation:

12 CFR 961

Legal Deadline:

None

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Abstract:

Pursuant to section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 423, the Federal Home Loan Banks (FHLBanks) must establish a Community Investment Program (CIP) which will provide funds through FHLBank advances (loans) to a FHLBank's member institutions at interest rates equal to interest rates on FHLBank consolidated bonds or notes having comparable maturity dates with the advances. These advances will be used by the member institutions to provide funding for community-oriented development projects or housing. These regulations will continue the commitment of the FHLBanks to community development lending.

Statement of Need:

The CIP has operated for 4 years without any clarifying regulations. During this time, operational issues have arisen. A regulation or guidelines may be necessary to address these issues in order to establish a more specific framework for the operation of the CIP.

Summary of the Legal Basis:

Section 2B(a)(1) of the Federal Home Loan Bank Act (Bank Act) authorizes the Federal Housing Finance Board (Finance Board) to promulgate regulations necessary to carry out the provisions of the Bank Act. See 12 U.S.C. 1422b(a)(1). Section 10(i) of the Bank Act requires the FHLBanks to establish a CIP, pursuant to the general statutory criteria set forth in section 10(i). The Finance Board therefore has the authority, under its general authority to issue regulations implementing the Bank Act, to issue clarifying regulatory standards governing the CIP.

Alternatives:

Because consideration of additional CIP guidance is in a very preliminary stage, including the issue of whether such guidance will be established by regulation or guidelines, the Finance Board has not yet analyzed the alternative approaches to the issues expected to be addressed in this initiative.

Anticipated Costs and Benefits:

Because the Finance Board has not yet analyzed the alternative approaches to the issues expected to be addressed in the CIP regulation or guidelines, the Finance Board is not yet able to identify the expected costs and benefits of any such CIP regulation or guidelines.

Risks:

The CIP regulation or guidelines will not address issues of financial risk to the FHLBanks. The advances made by the FHLBanks through the CIP, like all FHLBank advances, are governed by the Finance Board's Advances regulation, which addresses the safety and soundness issues involved in making advances. Since advances made through the CIP are overcollateralized, there is a low magnitude of risk of loss to the FHLBanks in making such advances.

Timetable:

Next Action Undetermined

Small Entities Affected:

None

Government Levels Affected:

None

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FHFB

FINAL RULE STAGE

205. AFFORDABLE HOUSING PROGRAM

Legal Authority:

12 USC 1422b(a)(1); 12 USC 1430(j)

CFR Citation:

12 CFR 960

Legal Deadline:

None

Abstract:

The Federal Housing Finance Board (Finance Board) issued a proposed rule revising its regulation governing the Affordable Housing Program (AHP) in order to simplify and clarify the AHP's requirements for the Federal Home Loan Banks (FHLBanks) and their members.

Statement of Need:

The Finance Board is revising its AHP Regulation in order to address operational issues that have arisen during the 4 years the program has been in existence. The proposed AHP amendments will help enhance the AHP's compatibility with various State and Federal housing programs that provide funds in conjunction with AHP funds. In addition, the amendments would make the AHP more responsive to local low-income housing needs in each of the 12 FHLBank districts and increase efficiency in administration of the program.

Summary of the Legal Basis:

Section 10(j) of the Federal Home Loan Bank Act requires the Finance Board to promulgate regulations governing the AHP. See 12 U.S.C. 1430(j).

Alternatives:

During the development of the proposed AHP amendments, the Finance Board considered various alternative approaches to dealing with the operational issues that have arisen over the 4 years of the AHP's existence. In addition, the Finance Board will consider all alternatives suggested by the public during the notice-and-comment process. The Finance Board expects to address these alternatives in its final AHP regulation.

Anticipated Costs and Benefits:

At this time, it is not possible to quantify the expected costs and benefits of the revised AHP regulation. In general, the Finance Board expects the revised AHP regulation to reduce the FHLBanks' administrative costs of operating the AHP.

Risks:

The revised AHP regulation does not address issues of financial risk to the FHLBanks. The advances made by the FHLBanks through the AHP, like all FHLBank advances, are governed by the Finance Board's Advances regulation, which addresses the safety and soundness issues involved in making advances. Since advances made through the AHP are overcollateralized, there is a low magnitude of risk of loss to the FHLBanks in making such advances.

Timetable:

Action	Date	FR Cite
NPRM	01/10/94	59 FR 1323
NPRM Comment Period End	03/11/94	59 FR 1323
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

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FEDERAL MARITIME COMMISSION (FMC)

Statement of Regulatory Priorities

The Federal Maritime Commission's (Commission or FMC) regulatory objectives are guided by the agency's basic mission. The Commission's mission is to be able to take the actions necessary to ensure that the shipping statutes it administers operate as effectively as possible to provide an efficient, economic, and nondiscriminatory ocean transportation system and an environment free of unfair foreign maritime trade practices. Commission regulations are designed to implement each of the various statutes the agency administers in a manner consistent with this mission and in a way that minimizes regulatory costs, fosters economic efficiencies, and promotes international harmony. Since the Commission has no new legislation which requires implementation, the principal objective or priority of the agency's current regulatory plan is to assess its major existing regulations for continuing need, effectiveness, burden on the regulated industry, fairness, and clarity. The Commission has under review, *inter alia*, regulations regarding passenger vessel operator financial responsibility, co-loading arrangements between non-vessel-operating common carriers, possible guidelines for Commission review of substantially anticompetitive agreements between common carriers by water in foreign commerce, and regulations prescribing rate-of-return methodology for common carriers in the domestic offshore trades.

Review of the above-mentioned rate-of-return regulations represents an important regulatory action and serves as an example of the Commission's objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in E.O. 12866. Rate-of-return regulations are issued pursuant to provisions of the Interconstal Shipping Act of 1933 (1933 Act). This Act charges the Commission with the responsibility to determine whether rates and charges of common carriers by water in the domestic offshore trades are just and reasonable. (Domestic offshore trades include, principally, transportation by water between any of the contiguous 48 States or D.C. and Alaska or Hawaii, between any State and any territory, commonwealth, possession or district, and between Alaska and Hawaii.) The 1933 Act also requires the Commission by regulation to prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for such carriers, and from time to time to review such regulations and make such amendments thereto as may be appropriate. Pursuant to this mandate, and in response to concerns expressed by affected carriers and shippers, the Commiasion recently has conducted an exhaustive review of its current rate of return methodology. This review has resulted in issuance of a proposed new methodology which is designed to result in the payment by the carrier's customers of the lowest cost for service in the long run.

FMC

FINAL RULE STAGE

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206. ✦ FINANCIAL REPORTING REQUIREMENTS AND RATE-OF-RETURN METHODOLOGY IN THE DOMESTIC OFFSHORE TRADES (DOCKET NO. 94-07)

Legal Authority:

5 USC 553; 46 USC app 817(a); 46 USC app 841a; 46 USC app 844; 46 USC app 845

CFR Citation:

46 CFR 552.1; 46 CFR 552.2; 46 CFR 552.5; 46 CFR 552.6

Legal Deadline:

None

Abstract:

Proposed action would amend regulations governing financial reporting requirements and rate of return methodology applicable to vessel operating common carriers in the domestic offshore trades. The "weighted average cost of capital" methodology would replace the "comparable earnings test" in determining the reasonableness of a carrier's return-on-rate base. Additionally, rules pertaining to the treatment of insurance expenses, deferred taxes, and the Capital Construction Fund would be amended.

Statement of Need:

The proposed changes to the Commission's financial regulation of vessel operating carriers in the domestic offshore trades are needed to address a number of shipper and carrier concerns regarding the Commission's current rate of return methodology. They also would align the Commission's ratemaking methodologies more closely with those used by numerous other regulatory agencies. The intent is to improve the FMC's methodology for evaluating the reasonableness of rates filed by carriers in the domestic offshore trades and for acquiring the data that are essential to that evaluation.

Summary of the Legal Basis:

This proposal is made pursuant to section 3 of the Intercoastal Shipping Act, 1933, which requires the Commission by regulation to prescribe guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water in the domestic offshore trades, and from time to time thereafter to review such regulations and make such amendments thereto as may be appropriate.

Alternatives:

The Commission addressed potential alternatives to the proposed rule in a previous advance notice of proposed rulemaking (ANPRM), "Financial Reports of Common Carriers by Water in the Domestic Offshore Trades," Docket No. 91-51, 46 CFR 522, 56 FR 57298, November 8, 1991. In this ANPRM, the Commission posed a number of questions outlining the scope of the FMC's regulation of the domestic offshore trades. In addition to the weighted average cost of capital (WACC) approach the Commission proposes in this rulemaking, several parties suggested the Commission adopt, inter alia, a zone of reasonableness approach to rate regulation in place of the comparable earnings test the Commission currently employs. The Commission rejected this approach based upon its determination that any such zone would be contrary to explicit Congressional direction and, therefore, beyond the FMC's statutory authority. See Final Rule, "Financial Reports of Common Carriers by Water in the Domestic Offshore Trades," Docket No. 91-51, 46 CFR 522, 56 FR 13414, March 11, 1993. The other issues and alternatives raised by respondents to the ANPRM are being addressed by this proposed rule.

Anticipated Costs and Benefits:

The aggregate annual cost of the WACC methodology to both the industry and the Government is expected to be about $33,000. This cost is based on the FMC's anticipation of two filings per year and recordkeeping by seven regulated carriers. Similar costs for the comparable earnings method are not available, yet the Commission estimates that WACC costs are not greater than, and may be less than, the costs under the comparable earnings method. Detailed figures for the benefits of each method are not available. However, a brief description of the benefits the Commission expects the WACC to provide relative to the comparable earnings test indicates the clear desirability of the proposed rule.

The WACC methodology is more accurate than the comparable earnings method because it uses actual long-term debt figures for the regulated party, while the comparable earnings test uses an estimated interest expense as a proxy for debt expenses. Because it uses market data and actual data, while combining historical trend, current condition, and future projections, the WACC methodology is able to develop a more accurate measure of the cost of capital, a figure which then becomes the maximum rate of return a carrier is permitted to earn. The WACC also is more objective than the comparable earnings approach because it avoids the need for subjectively adjusting and comparing rates of return. With the WACC, in the unusual case where a proxy must be used, a detailed set of statistics about the proxy firms may be gathered and used. This narrows the grounds for disagreement by experts and increases the certainty and predictability of the result.

WACC also balances the demand by shippers for lower rates with the need for the carrier to be adequately capitalized. If the allowable rate of return is set too high, the carrier's stockholders enjoy earnings that are above those they would earn on alternative investments of comparable risks since these excessive earnings come from shippers paying rates that are too high. On the other hand, if the rate of return is set too low (below the cost of capital), the carrier's stockholders would be unwilling to invest funds needed to keep the business running. Shippers are disadvantaged as the carrier is forced to allow vessels to deteriorate without replacement and the carrier's service level declines. The WACC balances these competing demands, thereby benefitting both shippers and carriers.

Two U.S. Supreme Court cases, Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 391 (1944), affirm the use of the WACC approach. Other regulatory agencies, including the Federal Energy Regulatory Commission, the Interstate Commerce Commission, the Federal Communications Commission, and virtually every State regulatory commission use WACC. The proposed rule, therefore, benefits shippers, carriers, and the Government by bringing the FMC's rate of return methodology into conformance with accepted Federal and State rate-of-return practices.

The WACC also provides the Commission greater regulatory flexibility. The WACC method works equally well regardless of a regulated carrier's capitalization method; the comparable earnings test does not. This provides the greatest benefit when a carrier is entirely debt capitalized, since the WACC looks directly at whether the carrier's rate of return will meet its cost of debt needs. The comparable earnings test, on the other hand, forces the regulated carrier to compare its rate of return with firms that are capitalized differently, thereby increasing the uncertainty the carrier faces whether its rate of return will adequately cover its cost of capital. The more accurate WACC method, since it is flexible enough to apply regardless of the regulated carrier's method of capitalization, offers clear benefits to both carriers and shippers.

Finally, because of technical adjustments in the allowable method for computing a carrier's rate base, each carrier's rate base will fall somewhat. A smaller rate base, in turn, makes the rate of return more sensitive to small changes in income (rate of return is earned income plus interest income divided by rate base). Shippers benefit from this increased sensitivity since small variations from projected income growth resulting from a general rate increase are more readily apparent. Carriers benefit from having a rate base that more accurately reflects their actual capitalization.

Analysis of the proposed rule indicates that these benefits are achieved without additional costs imposed on either carriers or shippers. Estimates of the costs of filing responsibilities, applications for general rate increases, and recordkeeping requirements indicate that the costs will vary only slightly, if at all, as a result of using the WACC rather than the comparable earnings methodology. Nor are FMC monitoring and evaluation costs increased.

Risks:

This rule does not involve risk reduction efforts involving health, public safety, or environmental concerns. Where financial risk is reduced, such risk is addressed in the description of anticipated costs and benefits, supra.

Timetable:

Action	Date	FR Cite
NPRM	04/07/94	59 FR 16592
NPRM Comment Period End	06/06/94	59 FR 16592
Final Action	11/00/94	
Final Action Effective	01/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I. Regulatory Priorities

The Federal Trade Commission is an independent agency charged with protecting consumers and businesses from unfair, deceptive, and anticompetitive practices.

Although the agency pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes, regulation is an important complement to this law enforcement effort, particularly with respect to consumer protection matters. Commission regulations generally are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

The Commission's regulatory efforts for 1994 will encompass consideration of new regulations, modification of existing regulations, and elimination of unneeded regulations. With respect to new regulations, the Commission has been directed by Congress in the Energy Policy Act of 1992 (EPA 92) to establish uniform labeling requirements, if practicable, for alternative fuels (i.e., automotive fuels other than gasoline and diesel, such as compressed natural gas, ethanol, and electricity) and for vehicles that use alternative fuels. The statute provides generally that the rule must require disclosure of "appropriate" cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons.

The Commission published an advance notice of proposed rulemaking on December 10, 1993 (58 FR 64914), and a notice of proposed rulemaking on May 9, 1994 (59 FR 24014). This proceeding is expected to generate considerable interest because of the diverse industries affected by the rule. In July 1994, the Commission convened a public forum with a neutral facilitator to obtain additional public participation in the rulemaking process and to gain the unique perspectives that interaction among interested parties can provide. EPA 92 requires the Commission to issue a final rule by May 9, 1995. EPA 92 also requires the Commission to adopt a rule requiring lamp products to be labeled with the information necessary to enable a consumer to select the most energy efficient lamp that meets the consumer's requirements. The Commission approved this rule on April 25, 1994. In this proceeding, the Commission held a public forum to stimulate broader public interest and involvement. A similar forum was held for the alternative fuels rulemaking.

Also, the Commission recently has been directed by Congress in the Telemarketing and Consumer Fraud and Abuse Prevention Act to issue a rule prohibiting deceptive and abusive telemarketing acts and practices. The Act specifies that the rule contain a definition of what constitutes deceptive telemarketing acts and practices, which may include credit card laundering as well as other acts of assisting or facilitating deceptive telemarketing. The purpose of the rulemaking is to provide consumers with protection from telemarketing deception and abuse. It is anticipated that the Commission will issue a notice of proposed rulemaking in February 1995. The statute requires the final rule to be promulgated within 365 days from the date of enactment.

With respect to rule modifications, the Commission plans to seek comment later this year regarding possible amendments to its Care Labeling Rule (16 CFR 423 (1994)). This rule requires manufacturers and importers of textile wearing apparel to attach care labels to garments (for example, dry clean only). The rule currently requires the instructions to be in words, but allows symbols to be used in addition to words. The FTC will seek comments respecting the desirability of using symbols in lieu of words. Symbols could make care instructions more understandable to non-English-speaking consumers, and thus not only better serve a significant minority of American consumers, but also enhance the prospects of export to and import from Mexico and Canada, consistent with the goals of the North American Free Trade Agreement. The Commission issued an advance notice of proposed rulemaking on June 15, 1994 (59 FR 30733).

The FTC is also committed to eliminating unnecessary rules and regulations. To this end, the Commission this year is seeking information regarding the costs and benefits of 11 of its trade practice rules and voluntary industry guides. (See 59 FR 2955, January 20, 1994.) This assessment is part of the Commission's ongoing program to review all of its rules and guides every 10 years to determine whether they should be retained, modified, or repealed. Since the beginning of this fiscal year, the Commission has repealed three guides and one rule as a result of this program. (See 59 FR 8527, February 23, 1994, announcing repeal of the Guides for the Greeting Card Industry Relating to Discriminatory Practices, and repeal of the trade regulation rule on Discriminatory Practices in Men's and Boy's Tailored Clothing Industry, 16 CFR parts 244 and 412; and 58 FR 68292, December 27, 1993, announcing repeal of the Guides for Advertising Fallout Shelters, and Guides on Radiation Monitoring Instruments, 16 CFR parts 229 and 232.)

With regard to both content and process, the FTC's ongoing and proposed regulatory actions appear compatible with the President's priorities. Substantively, the actions under consideration seek primarily to inform and protect consumers and reduce the regulatory burdens on business. The Commission's efforts this year under EPA 92 also serve to promote environmental protection and conservation of energy resources. Additionally, the Commission's ten-year program for reviewing its existing regulations is in harmony with Section 5(a) of Executive Order 12866 (September 30, 1993; 58 FR 51735), which directs Executive branch agencies to develop a plan to reevaluate periodically all of their significant, existing regulations. Procedurally, the Commission also continues to focus substantial attention on aspects of the regulatory process that Executive Order 12866 seeks to promote: identifying and weighing the costs and benefits of proposed actions and possible alternative actions, and receiving the broadest practicable array of comments from affected consumers, businesses, and the public at large. In sum, therefore, the Federal Trade Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of "private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." Executive Order 12866, Sec. I.

II. Regulatory Actions

The regulatory efforts described in this Plan are not "significant regulatory actions" as that term is defined in Executive Order 12866. The Commission nonetheless includes them because their effects will be widespread and of substantial practical value to businesses and consumers, and because they provide examples of the Commission's anticipated regulatory activities for fiscal year 1995.

FTC

PROPOSED RULE STAGE

207. THE CARE LABELING RULE

Legal Authority:

15 USC 41 et seq

CFR Citation:

16 CFR 423

Legal Deadline:

None

Abstract:

The Care Labeling Rule requires manufacturers and importers of textile wearing apparel to attach cleaning instructions stating what regular care is needed for the ordinary use of the product. The Care Labeling Rule currently requires that care instructions be stated in "appropriate terms." The rule also states that "any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms, so long as the terms fulfill the requirements of the regulation." The rule does not specifically state that the instructions must be set forth in English. The goal of the North American Free Trade Agreement (NAFTA) is to establish a trade zone in which goods can flow freely between Canada, Mexico, and the United States. Both Canada and Mexico, however, require that garments containing instructions in English also contain instructions in French or Spanish, respectively. Thus, textile industry members are concerned about the length of care labels that contain instructions in three languages. Although manufacturers could separately label garments for each of these three countries, this would increase the costs and reduce the advantages of a large free trade zone. These manufacturers, therefore, propose to use care symbols in lieu of care language.

Statement of Need:

In addition, environmentalists are interested in reducing the use of dry cleaning solvents. There is some evidence indicating that some solvents may be damaging to the environment. The Care Labeling Rule currently only requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, some garments that are labeled "dry clean" may also be washable, and if the rule required both washing and dry cleaning instructions for these garments, some members of the public might use dry cleaning solvents less frequently. The Commission does not know at present the incidence with which garments that can be both dry cleaned and washed are labeled only with dry cleaning instructions. The Commission has solicited comment on whether it would be desirable to allow the use of symbols in lieu of language on care labels; on whether, and under what circumstances, it is desirable to require washing instructions as well as dry cleaning instructions; and in general, on the costs, benefits, and regulatory and economic impact of an amended Care Labeling Rule.

Summary of the Legal Basis:

No aspect of this action is required by statute or court order. The Commission has solicited comment on these issues as part of its ongoing program to review periodically all its rules and guides. Any amendment of the Care Labeling Rule will be undertaken pursuant to the general authority granted to the Commission by the Federal Trade Commission Act, 15 U.S.C. 41 et seq. If the Commission decides to amend the rule, the Commission will determine whether that action must be undertaken according to the extensive rulemaking procedures mandated by section 18 of the FTC Act, 15 U.S.C. 57a, or whether other procedural approaches are available and appropriate.

Alternatives:

In considering whether the rule should be modified to permit the use of symbols in lieu of language, the Commission will consider all existing systems of symbols for care labeling and will seek comment on the benefits and burdens associated with each system. In considering whether the rule should be modified to require a washing instruction in addition to a dry cleaning instruction, the Commission will solicit information as to the extent of the impact of the care label on the incidence of dry cleaning, and the costs and benefits to consumers of washing rather than dry cleaning certain fabrics. The Commission will also consider any comments relevant to the rule suggesting alternative ways of reducing the environmental damage that has been associated with PCE.

Anticipated Costs and Benefits:

In the notice requesting comment, the Commission requested information about the costs and benefits of the possible changes to the rule.

Risks:

Perchloroethylene (PCE), the most commonly used dry cleaning solvent, has been designated as a hazardous air pollutant under Section 112 of the Clean Air Act and under many State air toxics regulations. On September 15, 1993, the Environmental Protection Agency (EPA) set national emission standards for new and existing PCE dry cleaning facilities. EPA's Office of Pollution Prevention and Toxics has been working with the dry cleaning industry to reduce human exposure to PCE. EPA and the dry cleaning industry are also collaborating on a Cleaner Technologies Substitute Assessment (CTSA) for the industry, and as a part of this collaboration, EPA has published a summary of a cleaning process known as Multiprocess Wet Cleaning. This process relies on the application of heat, steam and natural soaps to clean clothes that are typically dry cleaned. If the Commission finds that a significant number of washable garments are labeled only with a "dry clean" instruction, changing the rule to require that care instructions state whether the garment can also be washed might reduce risks to public health, safety, and the environment, by encouraging dry cleaners to use multiprocess wet cleaning, and where appropriate, by encouraging consumers to wash, rather than dry clean, certain garments.

Timetable:

Action	Date	FR Cite
Publication of ANPRM	06/15/94	59 FR 30733
Comment Period Closes	10/15/94	
Commission Determination	01/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

None

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208. LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE-FUELED VEHICLES

Legal Authority:

42 USC 13232(a)

CFR Citation:

16 CFR 309

Legal Deadline:

NPRM, Statutory, April 25, 1994. Final, Statutory, May 9, 1995.

Abstract:

Section 406(a) of the Energy Policy Act of 1992 ("EPA 92"), Public Law 102-486, 106 Stat. 2776 (1992), directs the Commission to issue a rule establishing uniform labeling requirements for alternative fuels and alternative-fueled vehicles. The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate" cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons. In formulating the rule, the Commission must consider the problems associated with developing and publishing useful and timely information, taking into account the lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors. The labels themselves must be simple, and where appropriate, consolidated with other labels providing information to consumers.

Statement of Need:

The rulemaking required by section 406(a) of EPA 92 could help promote a primary legislative purpose of EPA 92. EPA 92 establishes a comprehensive national energy strategy designed to increase U.S. energy security and strengthen the economy in cost effective and environmentally beneficial ways. Key programs in Title III, IV, V, and VI of the Act promote the development of alternative fuels and alternative-fueled vehicles (AFVs). Issuing labeling requirements for alternative fuels and AFVs could help promote consumer acceptance of these products, which could generate environmental benefits, including cleaner air.

Alternatives:

The Commission has requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements and what information should be required on the labels. The Commission also has sought comment on how the labeling should be updated and the extent to which the labels should be consolidated with other labels providing information to consumers. After reviewing 28 comments submitted in response to an ANPRM, the Commission published a labeling proposal in the **Federal Register** on May 9, 1994. The Commission proposed that retailers of nonliquid alternative fuels post standard labels identifying the commonly used names and composition of those fuels on fuel dispensers and recharging stations servicing consumers. For AFV labeling, the Commission proposed that original equipment manufacturers and AFV conversion companies affix, and AFV dealers maintain, standard labels on new AFVs sold or offered for sale to consumers. On July 20, 1994, the Commission conducted a workshop-conference to discuss written comments received in response to its labeling proposal. The purpose of the conference was to afford staff and interested parties an opportunity to discuss issues raised in the rulemaking proceeding, to examine areas of significant controversy, and to explore divergent opinions.

Anticipated Costs and Benefits:

The economic impact of the Commission's proposed labeling requirements appears to be de minimis. The Commission proposed no recordkeeping requirements, and the proposed disclosures consist of basic information that is easily ascertainable. The Commission has tentatively concluded that, at present, the proposed labeling requirements also will not affect a substantial number of small entities because it appears that relatively few companies currently sell alternative fuels or manufacture, convert, or sell AFVs.

Risks:

None known.

Timetable:

Action	Date	FR Cite
ANPRM	12/10/93	58 FR 64914
Publication of NPRM	05/09/94	59 FR 24014
Comment Period Ended	06/23/94	
Public Workshop & Conference	07/20/94	
Publication of SNPR	11/00/94	
Final Rule	05/00/95	

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

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Bureau of Consumer Protection
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RIN: 3084–AA57

FTC

209. • TELEMARKETING RULE

Legal Authority:

15 USC 6101

CFR Citation:

16 CFR 309

Legal Deadline:

Final, Statutory, August 1995.

Abstract:

The Telemarketing and Consumer Fraud and Abuse Prevention Act directs the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts and practices within 365 days from the date of enactment of the Act. The Act specifies that the rule contain a definition of deceptive telemarketing acts or practices. According to the statute, this definition may include credit card laundering as well as other acts or practices of other parties that assist or facilitate deceptive telemarketing. The Act further specifies that the rule must include: requirements prohibiting unsolicited telephone calls which reasonably might be considered to be coercive or abusive to the consumer's right to privacy; restrictions on the hours when unsolicited telephone calls may be made; and requirements that the telemarketer disclose the purpose of the call, as well as make any other disclosures the Commission deems appropriate, including the nature and price of the goods and services. In formulating the rule, the statute directs the Commission to consider recordkeeping requirements.

Statement of Need:

The rulemaking required by the Telemarketing Act will assist in providing consumers with necessary protection from telemarketing deception and abuse.

Summary of the Legal Basis:

This rulemaking is required by statute.

Alternatives:

Undetermined.

Anticipated Costs and Benefits:

Undetermined.

Risks:

None known.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
Close of Comment Period	03/00/95	
Final Staff Recommendation	07/00/95	
Final Rule Promulgated	08/00/95	

Small Entities Affected:

Undetermined

Government Levels Affected:

State, Local

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RIN: 3084–AA59

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NUCLEAR REGULATORY COMMISSION (NRC)

Statement of Regulatory Priorities

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) regulates the processing and utilization of source, byproduct, and special nuclear material. The NRC's regulatory mission is to ensure that civilian uses of nuclear materials and facilities are carried out with proper regard for the protection of public health and safety, the environment, and national security. The NRC regulates the operation of nuclear power plants and fuel cycle plants; the safeguarding of nuclear materials from theft and sabotage; the safe transportation of nuclear materials; the decommissioning and return to safe use of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material.

The NRC's regulatory priorities for the next fiscal year are to ensure that:

1. Nuclear power plants and other licensed facilities are operated safely and that licensees are adequately prepared to respond to accidents;

2. The basic principles and criteria that would allow decommissioned lands and structures to be released for unrestricted use are codified;

3. Evolutionary and advanced reactor designs may be reviewed and licensed effectively and efficiently; and

4. The requirements for the review and approval of an application for the renewal of a nuclear power plant operating license ensure a more stable, predictable, efficient, and flexible regulatory process.

The NRC is addressing its regulatory initiatives in a manner that is consistent with the President's regulatory philosophy. The NRC routinely conducts comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations as part of its regulatory process. The NRC has been aggressive and innovative in expanding the scope of public and industry participation in its most significant rulemakings. For example, the NRC has conducted several public workshops and established an electronic bulletin to facilitate participation in the rulemaking to establish radiological criteria for decommissioning. The NRC has also developed internal procedures and programs to ensure that only necessary requirements are imposed on its licensees and to review existing regulations to determine whether the requirements imposed are still necessary.

NRC

PRERULE STAGE

210. • STEAM GENERATOR TUBE INTEGRITY

Legal Authority:

42 USC 2201; 42 USC 5841

CFR Citation:

10 CFR 50

Legal Deadline:

None

Abstract:

The NRC is considering amending its regulations to develop a rule pertaining to steam generator tube integrity. The objective of the rule would be to maintain adequate assurance of steam generator tube integrity while allowing a more appropriate approach to steam generator surveillance and maintenance activities at nuclear power plants. Steam generator degradation is a significant issue affecting current pressurized water reactors.

Statement of Need:

The NRC plans to develop a rule pertaining to steam generator tube integrity (i.e., maintaining an extremely low overall probability of steam generator tube leakage that could result in core damage or exceeding allowable offsite doses). The proposed rule would allow a more flexible approach to steam generator surveillance and maintenance activities through a degradation specific management approach. The regulatory action is intended to:

1. Improve the scope and methods for inspecting steam generator tubing;

2. Provide incentives to continue to improve inspection methods;

3. Develop plugging/repair criteria based on the most appropriate nondestructive parameters, thereby improving enforceability of the criteria and eliminating unnecessary conservatism; and

4. Reflect appropriate considerations of related systems issues.

Operating experience indicates that the current regulatory requirements need to be more stringent in some areas while in other areas they are overly conservative. To date this situation has been dealt with on a plant-specific basis, when necessary. However, a generic approach to dealing with steam generator issues is necessary in order to effectively update inspection and repair criteria. The generic approach that is contemplated will allow appropriate improvements to be applied uniformly across the industry, optimize the use of industry and NRC resources in addressing steam generator issues, and provide a more consistent basis for ensuring public health and safety.

Summary of the Legal Basis:

The NRC is authorized to promulgate new rules. The new rule that will be developed on steam generator integrity will be in accordance with the provisions of 10 CFR 50.109 on backfitting.

Alternatives:

The primary alternative would be to continue with resource intensive plant-specific licensing actions. Other alternatives may be developed as a result of public comments on the proposed rule.

Anticipated Costs and Benefits:

The regulatory action would result in a decrease in costs in some areas (e.g., steam generator tube repair costs, avoidance/delay of steam generator replacement costs), and an increase in cost in other areas (e.g., inspection costs). The regulatory action may also result in a decrease in personnel exposure. Since the proposed rule is intended to be performance based, a major benefit would be in providing a more flexible and cost-effective regulatory program pertaining to maintaining steam generator tube integrity.

Risks:

The regulatory action will result in increases in safety margins in some areas and is intended to provide a more optimal balance in the overall public risks associated with steam generator tube integrity requirements in other areas.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/94	59 FR 47817
ANPRM Comment Period End	12/05/94	
NPRM	12/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 3150–AF04

NRC

PROPOSED RULE STAGE

211. RADIOLOGICAL CRITERIA FOR DECOMMISSIONING OF NUCLEAR FACILITIES

Legal Authority:

42 USC 2201; 42 USC 5841

CFR Citation:

10 CFR 020

Legal Deadline:

None

Abstract:

The proposed rule would amend the Commission's regulations to codify the basic principles and radiological criteria which would allow decommissioned lands and structures to be released for unrestricted public use. In the final rule entitled, "General Requirements for Decommissioning Nuclear Facilities" (June 27, 1988; 53 FR 24018), the need and urgency for guidance with respect to residual contamination criteria was expressed. At that time, it was anticipated that an interagency working group organized by the Environmental Protection Agency would develop necessary Federal guidance. However, in the absence of significant progress by the interagency working group, the Commission had directed that the NRC expedite rulemaking because the requirements, once final, will provide licensees with an incentive to complete site decommissioning.

The proposed rule would establish basic radiological criteria for release of lands and structures. Measurables, in the form of surface and volume radioactive concentrations and site radioactivity inventory values, would be provided in supporting regulatory guidance. These combined activities should benefit the public, industry, and the NRC providing a risk-based framework upon which decommissioning activities and license terminations can be accomplished. The framework will ensure adequate protection of public health and safety and identify residual radioactivity criteria upon which licensees can confidently develop reasonable and responsible decommissioning plans.

Statement of Need:

The Nuclear Regulatory Commission (NRC) is proposing to amend 10 CFR Part 20 of its regulations to provide specific radiological criteria for the decommissioning of soils and structures. The proposed criteria would apply to the decommissioning of all facilities licensed under 10 CFR Parts 30, 40, 50, 60, 61, 70, and 72, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act and the Energy Reorganization Act. The NRC would apply these criteria in determining the adequacy of remediation of residual radioactivity resulting from the possession or use of source, byproduct, and special nuclear material. The proposed rule is intended to provide a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be considered decommissioned.

The NRC has developed the basis for the residual contamination levels in light of changes in basic radiation protection standards, improvements in remediation and radiation detection technologies, decommissioning experience obtained during the past 15 years, and comments received from public workshops held as part of this rulemaking effort. This rulemaking has been closely coordinated with the Environmental Protection Agency from both a policy standpoint and for the technical underpinnings. The EPA was a key participant in the rulemaking workshops conducted for the rulemaking. EPA is preparing a parallel rulemaking. In addition, under the framework of a Memorandum of Understanding (MOU) between NRC and EPA, EPA will make a determination that the NRC rulemaking provides a sufficient level of protection for public health and safety and environment. This coordination will minimize the expenditure of Federal resources, provide a consistent regulatory approach for all facilities, and avoid a duplication of effort or overlapping regulations.

Summary of the Legal Basis:

This proposed rule is being developed under the authority of the Atomic Energy Act of 1954, as amended.

Alternatives:

The NRC presently allows decommissioning on a site-specific basis using existing guidance. The NRC could continue to allow decommissioning to proceed on a case-by-case basis. However, the NRC believes that codifying radiological criteria for decommissioning would provide a more effective method of and a broadly understood set of standards to be used in protecting public health and the environment at decommissioned sites.

Anticipated Costs and Benefits:

The proposed rule would establish a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be decommissioned. The Commission believes that inclusion of criteria in the regulations will result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future. Therefore, the proposed rule would use NRC and licensee resources more efficiently, be applied consistently to all types of licenses, create a predictable basis for decommissioning planning, and eliminate the protracted delays in decommissioning because licensees wait for generic regulatory criteria before proceeding with decommissioning of their facilities. The proposed rule would, for the most part, codify existing regulatory practice. It is not expected to result in any significant additional cost to the industry, the government, or the public. In fact, efficiencies produced by codifying and stabilizing regulatory practice in this area should result in an overall reduction in costs associated with decommissioning nuclear facilities. It is not possible to quantify the extent of these cost reductions at this time.

Risks:

This rulemaking would ensure that decommissioning will be carried out without undue impact on public and occupational health and safety and the environment. The proposed rule ensures a stable framework to accomplish decommissioning and achieves a stable level of costs for risks averted. The proposed amendments enhance the existing regulatory framework by providing a clear and

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consistent regulatory basis for determining the extent to which lands and structures must be remediated before a site can be decommissioned. The Commission believes that inclusion of radiological criteria in the regulations will result in more efficient and consistent licensing actions related to the numerous and frequently complex site decontamination and decommissioning activities anticipated in the future and reduce the risk to public health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/22/94	59 FR 43200
NPRM Comment Period End	12/20/94	
Final Action	06/00/95	

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Agency Contact:

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301 415-6201

RIN: 3150–AD65

NRC

212. • PROCUREMENT OF COMMERCIAL GRADE ITEMS BY NUCLEAR POWER PLANT LICENSEES

Legal Authority:

42 USC 2201; 42 USC 5841

CFR Citation:

10 CFR 021

Legal Deadline:

None

Abstract:

The proposed rule would amend the Commission's regulations to include a generic process for dedication of commercial grade items for safety-related use and to clarify that the entity performing the dedication of a commercial grade item is responsible for discovering, evaluating, and reporting deficiencies as required by NRC regulations. The proposed rule has been developed in response to a petition for rulemaking (PRM-21-02) submitted by the Nuclear Management and Resources Council (NUMARC) requesting that the Commission amend 10 CFR Part 21 in certain respects related to commercial grade items and their dedication for use in safety-related applications. The proposed amendments would improve the efficiency and effectiveness of the current commercial grade item dedication process.

Statement of Need:

The NRC plans to amend 10 CFR part 21 to permit the use of tests and analyses of commercially available products (referred to as commercial grade dedication) to ensure that the products are adequate for use in nuclear power plant safety systems instead of requiring that products be manufactured under a quality assurance program that meets the requirements of Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants." The regulatory action would revise the existing 10 CFR part 21 to:

1. Specifically define commercial grade dedication as the process for providing reasonable assurance that a commercially available product to be used in a nuclear power plant safety system will perform its intended safety function; and

2. Allow the entity performing commercial grade dedication to assume the responsibility for reporting defects and noncompliance.

The proposed amendments are intended to permit the NRC to design its regulations in the most cost-effective manner to achieve the regulatory objective.

Summary of the Legal Basis:

The regulations in 10 CFR part 21 establish procedures and requirements for the implementation of Section 206 of the Energy Reorganization Act of 1974.

Alternatives:

The only alternative considered was to retain, but adjust, the existing regulations. However, to maintain the status quo would deprive industry of the additional flexibility it needs to obtain products suitable for use in nuclear power plant safety systems. Other alternatives may be developed and considered as a result of public comments on the proposed rule.

Anticipated Costs and Benefits:

The proposed amendments would decrease industry costs and compensate for the declining number of hardware suppliers by providing more flexibility to industry in obtaining products suitable for use in nuclear power plant safety systems.

Risks:

The regulatory action would continue to ensure the low risks to public health and safety that have been achieved and maintained at potentially less burdensome costs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	04/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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RIN: 3150–AF01

NRC

213. • REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

Legal Authority:

42 USC 2201; 42 USC 5841

CFR Citation:

10 CFR 54

Legal Deadline:

None

Abstract:

The proposed rule would amend the Commission's regulations to change the requirements that an applicant for renewal of a nuclear power operating license must meet. The proposed rule would clarify the required information that must be submitted to the NRC for review so that the agency can determine whether those requirements have in fact been met, and change the administrative requirements that a holder of a renewed license must meet. The proposed amendment is intended to provide a more stable and predictable process for license renewal, in part, through allowing greater credit for existing licensee programs and activities, including the maintenance rule, that adequately manage the adverse effects of aging. The establishment of a stable and predictable regulatory environment for

license renewal is considered to be essential by nuclear industry representatives because decisions made about license renewal, before the current operating license expires, can have significant economic benefits and, if necessary, allow for the timely planning for replacement power.

Statement of Need:

The NRC is proposing to amend 10 CFR part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants." This proposed amendment is necessary to help ensure a more stable, predictable, efficient, and flexible regulatory process for license renewal. The NRC has given this rulemaking high agency priority due to the ambiguities and instabilities experienced from implementation of the current license renewal rule. The proposed amendment would simplify the license renewal process, primarily by allowing greater reliance on existing programs and the Commission's regulations regarding licensee maintenance activities as evidence that aging of equipment will be adequately managed in the renewal term. By generically crediting existing licensee programs and the regulatory process, including the maintenance rule (10 CFR 50.65), the Commission has effectively narrowed the scope of license renewal aging management reviews to only those structures and components for which the detrimental effects of aging may not be adequately managed in the renewal term.

Summary of the Legal Basis:

The Atomic Energy Act (AEA) of 1954 provides the NRC the authority to regulate commercial nuclear power plants including renewal of licenses. This proposed amendment is within this jurisdiction and will define the criteria under which the NRC will authorize operation beyond the 40 year initial licensed term as provided in the AEA.

Alternatives:

The Commission analyzed two alternatives to the proposed amendment: (1) continue with the existing rule and (2) require a review of only time-limited aging issues. The Commission determined that continuation of the existing rule would result in unnecessary licensee burden and would not provide a stable and predictable regulatory process for license renewal. Additionally, the Commission determined that a process that requires only a review of time-limited aging issues is too limited in scope and may unnecessarily increase risk to the public health and safety by not providing a systematic aging assessment of equipment that may not otherwise be adequately managed in the renewal term.

Anticipated Costs and Benefits:

The Commission has analyzed this proposed amendment and has determined that these changes represent a net benefit of approximately $10 million per application when compared to the existing rule.

Risks:

The proposed amendment is required to provide regulatory stability, predictability, and efficiency in the license renewal process. This amendment would result in no additional risk to public health and is estimated to provide the same level of safety intended as with the current license renewal rule. As a point of reference, the systematic assessment of aging of the original license renewal rule was estimated to result in an averted public dose of 30,000 person-rem when taken over the expected renewal application and renewal duration

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected:

None

Government Levels Affected:

None

Agency Contact:

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301 504-1105

RIN: 3150–AF05

NRC

214. • REVISION OF FEE SCHEDULES; 100 PERCENT FEE RECOVERY, FY 1995

Legal Authority:

31 USC 9701; 42 USC 2201; 42 USC 2213; 42 USC 2214; 42 USC 5841

CFR Citation:

10 CFR 170; 10 CFR 171

Legal Deadline:

Final: Statutory, August 1, 1995.

Omnibus Budget Reconciliation Act of 1990

Abstract:

This rulemaking will amend the licensing, inspection, and annual fees charged to NRC licensees and applicants for an NRC license. The amendments are necessary to recover approximately 100 percent of the NRC budget authority for fiscal year 1995 less the amounts appropriated from the Nuclear Waste Fund.

Statement of Need:

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90) requires that the NRC accomplish the 100 percent recovery through the assessment of fees. The NRC assesses two types of fees to recover its budget authority. License and inspection fees are assessed under the authority of the Independent Offices Appropriation Act to recover the costs of providing individually identifiable services to specific applicants and licensees (10 CFR part 170). OBRA-90 requires that the NRC recover the full cost to the NRC of all identifiable regulatory service that each applicant or licensee receives. The NRC recovers generic and other regulatory costs not recovered through 10 CFR part 170 fees through the assessment of annual fees under the authority of OBRA-90 (10 CFR part 171). Annual fee charges are consistent with the guidance in the Conference Committee Report on OBRA-90 that the NRC assess the annual charge under the principle that licensees who require the greatest expenditure of the agency's resources should pay the greatest annual fee.

Summary of the Legal Basis:

The Omnibus Budget Reconciliation Act requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated for the Nuclear Waste Fund, for fiscal years 1991 through 1998. The Act requires that the fees for fiscal year 1995 must be collected by September 30, 1995. Therefore, the final rule is to become effective by August 1, 1995.

Alternatives:

Because this action is mandated by statute and the fees must be assessed through rulemaking, the NRC did not consider alternatives to this action.

Anticipated Costs and Benefits:

The cost to NRC licensees is the NRC fiscal year 1995 budget authority less the amount appropriated from the Nuclear Waste Fund. The dollar amount is not yet determined but is expected to be in a range close to $522.8 million.

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Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
Final Action	07/00/95	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 3150–AF07

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federal register

Monday
November 14, 1994

Part III

Department of Agriculture

Semiannual Regulatory Agenda

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DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XXI, XXIV-XXIX

9 CFR Chs. I-IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda, October 1994

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not-significant regulations being developed in agencies of the U.S. Department of Agriculture in conformance with Executive Order 12866 "Regulatory Planning and Review." The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96-354.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action.

Requests for copies of the agenda should include a self-addressed, stamped envelope and be directed to: Regulatory Agenda, OBPA, Office of the Secretary, Room 147-E, Administration Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-1272.

SUPPLEMENTARY INFORMATION: For this edition of USDA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate Sequence Number in Part II.

Dated: September 2, 1994.

Marvin J. Shapiro,

Chief, Legislative, Regulatory, and Automated Systems Division.

Agricultural Cooperative Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
215	Federal-State Research on Cooperatives Program	0537-AA00

Agricultural Marketing Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
216	Voluntary and Mandatory Egg and Egg Products Inspection	0581-AA58
217	Voluntary Grading of Poultry Products and Rabbit Products	0581-AA61
218	Relating to Inspection and Grading of Burley Tobacco	0581-AB01
219	Revision of 7 CFR 29.500 Fees and Charges for Inspection and Grading of Imported Tobacco	0581-AB12
220	Salmonella Recognized Laboratory Program	0581-AB38

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
221	National Laboratory Accreditation Program	0581-AA38
222	Organic Certification of Organic Food Production Act of 1990	0581-AA40
223	Review of Basic Formula Price in All Federal Milk Orders	0581-AA57
224	Refrigeration and Labeling Requirements for Shell Eggs	0581-AA66
225	Grading and Inspection, General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Nonfat Dry Milk (Spray Process)	0581-AA96
226	Grading and Inspection, General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk	0581-AA97
227	Revision of the Regulations Governing Inspection Certification and Standards for Fresh Fruits, Vegetables, and Other Products	0581-AB02
228	Change in Fees for Federal Meat Grading and Certification Services	0581-AB07
229	Milk for Manufacturing Purposes and Its Production and Processing Requirements Recommended for Adoption by State Regulatory Agencies (Raw Milk)	0581-AB11
230	User Fees for Cotton Classification Services to Growers 1995 Crop	0581-AB15

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Agricultural Marketing Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
231	Soybean Promotion, Research, and Consumer Information Act; Reapportionment of Directors on the United Soybean Board	0581-AB18
232	Proposed Revision of Part 46, Regulations Under the Perishable Agricultural Commodities Act	0581-AB28
233	Soybean Promotion and Research Program; Procedures for Conduct of a Producer Poll	0581-AB30
234	Beef Promotion and Research: Changes in HTS Numbers	0581-AB31
235	Changes in Fees for Voluntary Federal Meat Grading and Certification Services	0581-AB34
236	Increase Seed Inspection Fees	0581-AB35
237	Pork Promotion Research, and Consumer Information Act of 1985- Increase in Assessment Rate	0581-AB36
238	Regulations under the Federal Seed Act (Amendments)	0581-AB37

Agricultural Marketing Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
239	Revision of Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products	0581-AA45
240	Regulations Under the Federal Seed Act	0581-AA52
241	Grading of Shell Eggs	0581-AA60
242	Grading and Inspection, Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products; General Specification for Dairy Plants Approved for USDA Inspection and Grading	0581-AA95
243	United States Standards for Grades of Tomato Sauce	0581-AA99
244	1994 Adjustment of the Value of Imported Cotton for Collections, Cotton Research and Promotion Assessments	0581-AB14
245	Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (Fee Increase)	0581-AB16
246	Amendments to the Lime Research, Promotion and Consumer Information Order	0581-AB19
247	Implementation of Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order	0581-AB20
248	Watermelon Research and Promotion Plan, Proposed Amendments to the Plan, Rules and Regulations Issued Thereunder, and Procedure for the Conduct of Referenda	0581-AB21
249	Amendments to the Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides	0581-AB22
250	Amendments to the Honey Research, Promotion, and Consumer Information Order	0581-AB23
251	Potato Research and Promotion Plan: Amendment to Rules and Regulations Issued Thereunder	0581-AB26
252	Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempt From Research and Promotion Programs for Fruits, Vegetables, and Specialty Crops Consolidation	0581-AB27
253	Amendment to Egg Research and Promotion Order to Increase the Rate of Assessment	0581-AB32
254	Increase in Fees and Charges for Egg Products Inspection and Egg Poultry and Rabbit Grading	0581-AB33

Agricultural Marketing Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
255	Policy Statement and Regulations Governing Availability of Tobacco Inspection Services to Burley Tobacco on Designated Markets	0581-AA56
256	Fees and Charges, Mandatory Tobacco Inspection	0581-AA62
257	User Fees for Cotton Classification Services to Growers; 1994 Crop	0581-AA86
258	Regulation Governing the Fresh Irish Round White Potato Diversion Program, 1992 Crop	0581-AA93
259	Amendment to Cotton Board Rules and Regulations	0581-AA98
260	Revision of Fees for Fresh Fruit and Vegetable Destination Market Grading Services	0581-AB03
261	Revision of Licensing Procedures for Cottonseed Samplers	0581-AB05
262	Watermelon Research and Promotion Plan; Rules and Regulations; Realignment of Districts	0581-AB08
263	Amendment to the Egg Research and Promotion Order	0581-AB13
264	Pork Promotion, Research and Consumer Information Order; Increase Pork Importer Assessments	0581-AB17
265	Revision of Cotton Research and Promotion Regulations Regarding Assessment of Imported Cotton-Containing Products	0581-AB29

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Agricultural Stabilization and Conservation Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
266	Amendments to Sugar and Crystalline Fructose Marketing Allotment Regulations	0560-AD79

Agricultural Stabilization and Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
267	Amendments to the Production Adjustment Regulations—Reconstitution of Bases, Allotments and Quotas	0560-AC99
268	Pilot Voluntary Production Limitation Program	0560-AD00
269	Amendments to CCC Debt Settlement Regulations Regarding Waiver of Restriction on Program Eligibility and Collection of Judgments by Administrative Offset	0560-AD09
270	1995 Extra Long Staple Cotton Program	0560-AD42
271	90-Day Rule	0560-AD43
272	Colorado River Basin Salinity Control Program Amendments	0560-AD45
273	Amendments to Regulations Regarding Payments to Persons Convicted of Controlled Substance Violations	0560-AD47
274	1994 Options Pilot Program	0560-AD48
275	Program Ineligibility for Noncompliance With Boll Weevil Eradication Program	0560-AD57
276	1995-Crop Marketing Quota and Price Support Level For Flue-Cured Tobacco	0560-AD62
277	1995-Crop Marketing Quota and Price Support Level For Burley Tobacco	0560-AD63
278	1995-Crop Marketing Quota and Price Support Levels For Six Kinds of Tobacco	0560-AD64
279	1995-Crop Marketing Quotas For Three Kinds of Tobacco	0560-AD65
280	1995-Crop Peanuts National Poundage Quota and Minimum Commodity Credit Corporation (CCC) Export-Edible Sales Price for Additional Peanuts	0560-AD66
281	Technical Corrections to the Wheat, Feed Grain, Cotton and Rice Program Regulations	0560-AD72
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284	Regulations for Conservation Compliance Crop Acreage Base (CAB) Adjustments	0560-AD80

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288	Amendment to the Highly Erodible Land and Wetland Conservation Program Regulations—Person Determinations	0560-AC86
289	Amendments to the Wetlands Regulations Regarding Abandoned Acreage and Drainage by Drainage Districts	0560-AC92
290	1993-Crop Sugar Beet and Sugarcane Price Support Loan Rates	0560-AC96
291	Amendment to the U.S. Warehouse Act Regulations—License and Inspection Fees	0560-AD13
292	Conservation Environmental Programs Regulations Regarding Water Quality Incentives Project, Cost Share Provisions of the Emergency Conservation Program, and Other Revisions	0560-AD16
293	1995 Feed Grain Program	0560-AD37
294	1995 Rice Program	0560-AD38
295	1995 Upland Cotton Program	0560-AD39
296	1995 Wool and Mohair Program	0560-AD40
297	1994-Crop Sugar Beet and Sugarcane Price Support Loan Rates	0560-AD41
298	Amendment to the Acreage Conservation Reserve and the Conserving Use Acreage Regulations for Producers Affected by Excessive Rainfall and Flooding	0560-AD50
299	Malting Barley Assessment	0560-AD55
300	Amendments to the Wetlands Reserve Program	0560-AD59
301	1994 Wheat Farmer-Owned Reserve Program	0560-AD60
302	1994 Feed Grain Farmer-Owned Reserve Program	0560-AD61
303	1995-Crop National Average Loan Rates for Quota and Additional Peanuts	0560-AD67
304	Amendments to the Wool and Mohair Program Regulations—Payment Limitations, Marketing Assessments, and Deductions for Marketing Charges	0560-AD68
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319	1994 Wool and Mohair Program	0560-AD19
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321	1994 Upland Cotton Program	0560-AD21
322	1994 Extra Long Staple Cotton Program	0560-AD22
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324	1994-Crop Marketing Quota and Price Support Level for Burley Tobacco	0560-AD25
325	1994 Oilseed Program	0560-AD26
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327	1994-Crop Price Support Levels for Minor Kinds of Tobacco	0560-AD28
328	1993 Wheat Farmer-Owned Reserve (FOR) Program	0560-AD34
329	Term Limits for National Officers or State Presidents of the National Association of Farmer Elected Committeemen	0560-AD46
330	Nonemergency Haying and Grazing on Conservation Reserve Program Grasslands	0560-AD54
331	Amendment to Tobacco Program Regulations—Domestic Marketing Assessment	0560-AD56
332	Cotton User Marketing Certificate Program	0560-AD58
333	Amendment to the Price Support Regulations Regarding Losses to Farm-Stored Loan Collateral Due to Flood	0560-AD69
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335	1994-1995 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas	0560-AD81

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337	Importation of Certain Embryos and Animal Semen	0579-AA63
338	Advance Notice of Proposed Revision of The Federal Seed Act Regulations for Imported Seed	0579-AA64

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340	Regulation of Horses and Farm Animals Under the Animal Welfare Act	0579-AA31
341	Cyclical Review of 9 CFR Part 92, Phase II	0579-AA34
342	Importation of Certain Animals and Poultry and Certain Animal and Poultry Products—Prevention of Poultry Diseases	0579-AA38

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345	Export Certification	0579-AA54
346	Animal Welfare—Standards for Marine Mammals **(Reg Plan Seq. No. 1)**	0579-AA59
347	Introduction of Nonindigenous Organisms **(Reg Plan Seq. No. 2)**	0579-AA61
348	Definition of "Biological Products" and "Guidelines"	0579-AA65
349	In Vitro Tests in Place of Animal Tests for Immunogenicity	0579-AA66

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351	Honeybees and Honeybee Semen; Removing Certain Restrictions on Honeybees and Honeybee Semen From New Zealand	0579-AA37
352	Importation of Nursery Stock Plants, Roots, Bulbs, Seeds, and Other Plant Products—Phase II	0579-AA41
353	Importation of Unmanufactured Wood	0579-AA47
354	Chicken Disease Caused by Salmonella Enteritidis	0579-AA48
355	Importation of Certain Dried Pork Products	0579-AA50
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Cooperative State Research Service—Prerule Stage

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358	Administrative Provisions for Research Grants Program	0524-AA07

Cooperative State Research Service—Proposed Rule Stage

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359	Higher Education Challenge Grants Program; Administrative Provisions	0524-AA02
360	1890 Institution Capacity Building Grants Program; Administrative Provisions	0524-AA03
361	Small Business Innovation Research Program Administrative Provisions	0524-AA08
362	Higher Education Multicultural Scholars Program; Administrative Provisions	0524-AA09
363	Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Revised Administrative Provisions	0524-AA10

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365	Administrative Manual for Federal Excess Personal Property Loaned to State Cooperative Research Activities	0527-AA01

Farmers Home Administration—Prerule Stage

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366	Community Programs Guaranteed Loans	0575-AB48

Farmers Home Administration—Proposed Rule Stage

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367	Liquidation, Management, and Disposition of Real Property Which Secured Single Family Housing (SFH) Loans	0575-AA03
368	Section 502 Rural Housing Loan Policies, Procedures, and Authorizations **(Reg Plan Seq. No. 3)**	0575-AA35
369	Real Property Insurance	0575-AA53
370	Civil Rights Compliance Requirements—1940-D	0575-AA83
371	Planning and Performing Site Development Work	0575-AA88
372	Housing for Rural Homeless and Migrant Farmworkers; Policies, Procedures, and Authorizations	0575-AB14
373	Management of Hazardous Substances	0575-AB18
374	Housing Preservation Grants for Replacement of Housing	0575-AB43
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377	Offsets of Federal Payments to FmHA Borrowers	0575-AB55
378	Revision to Planning and Performing Construction and Other Development and Related Construction Sections of Other FmHA Regulations	0575-AB59
379	Environmental Program	0575-AB64
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381	Small Farmer Outreach Training and Technical Assistance Program	0575-AB74
382	Reorganization Plans Under Federal Bankruptcy Codes	0575-AB76
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384	Rural Housing Voucher Program	0575-AB79
385	Debt Settlement	0575-AB80
386	Decision to Liquidate	0575-AB81
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388	Intermediary Relending Program Rewrite	0575-AB83
389	Special Disaster Set-Aside Program; Fruit and Nut Trees	0575-AB86

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393	Adverse Decisions and Administrative Appeals; FmHA Instruction 1900-B	0575-AA70
394	Farmer Programs Guaranteed Interest Assistance Program	0575-AA80
395	Section 502 Rural Housing Loan Policies, Procedures, and Authorizations (Deferred Mortgage Program)	0575-AA87
396	Farmer Program Account Servicing Policies for Section 1816 and Other Related Sections for the "1990 FACT Act"	0575-AA91
397	Agricultural Resource Conservation Demonstration Program	0575-AB01
398	Implement Section 1818 (Borrower Training) of the Food Agriculture, Conservation, and Trade Act of 1990 (Fact Act)	0575-AB13
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405	1980-E Business and Industrial Loan Program—Audit Requirements	0575-AB37
406	1945-D Emergency Loan Policies, Procedures, and Authorizations—Waiver of Crop Insurance for Crops Planted for Harvest in 1992 and 1993	0575-AB38
407	Insured and Guaranteed Operating and Farm Ownership Loan and Related Instructions To Implement Sections 4, 5, 7, 8, 9, and 19 of the Agricultural Credit Improvement Act of 1992	0575-AB4*
408	Section 14 of the Agricultural Credit Improvement Act of 1992, (Graduation) and Sections 1819 (Loan Assessment) and 1821 (Market Placement) of the Fact Act	0575-AB45
409	Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations	0575-AB47
410	The Agricultural Credit Improvement Act of 1992	0575-AB51
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413	Implement Sections 11 and 13 of the Agriculture Credit Improvement Act 1993 (Application Processing Timeframe)	0575-AB56
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415	Section 515 Nonprofit Set-Aside Funds	0575-AB60
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417	Business and Industrial Interest Buydown	0575-AB69
418	Removal of the Prohibition Against Charging Interest on Interest on FmHA-Guaranteed Loans	0575-AB70
419	Community Facility Loans: Internal Revenue Service Taxpayers Identification Number	0575-AB77
420	Business and Industrial Loan Program	0575-AB84
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424	Debt Settlement—Community and Business Programs	0575-AB26
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426	Appraisal of Farms and Leasehold Interests (FIRREA)	0575-AB30
427	1980-B Farmer Programs Loans—Feasible Plan	0575-AB57
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429	Revisions to the Direct Operating, Farm Ownership, Soil and Water and Emergency Loans Regulations to Modify Collateral Requirements	0575-AB71

Federal Crop Insurance Corporation—Prerule Stage

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431	Sugarcane Endorsement for Part 457 Common Crop Insurance Regulations	0563-AA79
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435	Common Crop Insurance Regulations; Forage Production Insurance Provisions	0563-AA88
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443	Common Crop Insurance Regulations; Almond Crop Insurance Provisions	0563-AA96
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445	General Administrative Regulations; High Risk Land Regulations	0563-AA98
446	General Administrative Regulations; Subpart Q, Collection and Storage of Social Security Account Numbers and Employer Identification Numbers	0563-AA99
447	General Administrative Regulations; Application for Crop Insurance, Regulations for the 1994 and Succeeding Crop Years	0563-AB00
448	General Administrative Regulations; Ineligible File - Crop Insurance Ineligibility	0563-AB01
449	Common Crop Insurance Provisions; Dry Bean Crop Insurance Provisions	0563-AB02
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457	General Administrative Regulations; Group Risk Plan (GRP)	0563-AA83
458	Peanut Endorsement for Part 457 Common Crop Insurance Regulations	0563-AA85

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460	Late and Prevented Planting Provisions for Various Crops	0563-AA80

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462	General Administrative Regulations; Actual Production History (APH) Coverage Program	0563-AA75
463	General Crop Insurance Regulations; Small Grains Crop Insurance Provisions	0563-AA76
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467	United States Standards for Barley	0580-AA29
468	Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems	0580-AA39
469	Fees for Official Inspection and Weighing Service	0580-AA40
470	Fees for Beltsville Laboratory Test Services	0580-AA41
471	U.S. Standards for Flaxseed, Mixed Grains, Oats, Rye, Sunflower Seed, and Triticale	0580-AA42

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473	Fees for Official Inspection and Weighing Services	0580-AA27
474	Fees for Official Pesticide Residue Testing	0580-AA36

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Food and Nutrition Service—Prerule Stage

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479	Consideration of an Alternate Protein Source, Whey Protein Concentrate, as a Meat Alternate for Use in the Child Nutrition Programs	0584-AB69
480	Child and Adult Care Food Program: Elimination of Whole Cow's Milk from the Infant Meal Pattern	0584-AB81

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482	Food Stamp Program: Emergency Assistance for Victims of Disasters	0584-AA85
483	Special Supplemental Food Program for Women, Infants, and Children (WIC): Part 246.10, Food Package III, Children/Women With Special Dietary Needs	0584-AB09
484	Special Supplemental Food Program for Women, Infants and Children (WIC): Miscellaneous Provisions	0584-AB10
485	Child and Adult Care Food Program: Child Nutrition and WIC Reauthorization Act Amendments	0584-AB16
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488	Food Distribution Programs—Paperwork Reduction	0584-AB27
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491	Child Nutrition Programs: Revision of Infant Meal Patterns for the Child Nutrition Program	0584-AB34
492	Commodity Supplemental Food Program: Elderly-Only Sites, Administrative Funding, Referrals to Health and Social Services, Caseload Allocation Process, Priority System, and Miscellaneous	0584-AB37

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Food and Nutrition Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
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494	Food Stamp Program: Resource Provision From the Mickey Leland Memorial Domestic Hunger Relief Act of 1990	0584-AB40
495	National School Lunch Program: Review of Free and Reduced Price Application Under the Coordinated Review Effort	0584-AB50
496	Provisions of Computer Matching and Privacy Protection Act of 1988, Amendments of 1990, and Implementation of the Disqualified Recipient Subsystem	0584-AB51
497	Emergency Food Assistance Program—Administrative Costs	0584-AB54
498	Food Distribution Programs—Disaster Provisions	0584-AB55
499	Food Stamp Program: Monthly Reporting and Retrospective Budgeting	0584-AB57
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501	Food Stamp Program: Excess Shelter Expense Limit and Standard Utility Allowances	0584-AB59
502	Food Stamp Program: Simplification of Program Rules	0584-AB60
503	Food Stamp Program: Payment of Certain Administrative Costs of State Agencies	0584-AB66
504	Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act	0584-AB75
505	Food Stamp Program: Certification Provisions of the Mickey Leland Childhood Hunger Relief Act **(Reg Plan Seq. No. 5)**	0584-AB76
506	Food Stamp Program Medical Expense Deduction	0584-AB78
507	Food Distribution Program on Indian Reservations: Eligibility and Benefits	0584-AB83
508	Food Stamp Program: Revisions in Use and Disclosure of Information Provided by Retail Food Stores and Wholesale Food Concerns	0584-AB87
509	Food Stamp Program Recipient Claims Establishment and Recovery of Overissuances **(Reg Plan Seq. No. 6)**	0584-AB88
510	Collecting Food Stamp Recipient Claims from Federal Income Tax Refunds and Federal Salaries **(Reg Plan Seq. No. 7)**	0584-AB89
511	Food Stamp Program: Revisions in Retail Food Store Eligibility Criteria and in Eligibility Guidance and Program Authorization **(Reg Plan Seq. No. 8)**	0584-AB90
512	Food Stamp Program: Disqualification Penalties for Intentional Program Violations	0584-AB91

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513	Food Stamp Program: Student Eligibility	0584-AA90
514	Miscellaneous Farm Bill Provisions Relating to the Authorization of Retail Firms and Wholesale Food Concerns	0584-AB02
515	Food Stamp Program: Discretionary Retailer Wholesaler Changes	0584-AB03
516	Special Supplemental Food Program for Women, Infants and Children (WIC): Food Cost Containment Requirements	0584-AB11
517	Determination of Eligibility for Free Meals by Summer Food Service Program Sponsors and Free and Reduced Price Meals by Child and Adult Care Food Program Institution	0584-AB17
518	Technical Amendments to the State Processing Program and the National Commodity Processing Program	0584-AB30
519	State Administrative Expense Funds: National School Lunch Program, Special Milk Program, School Breakfast Program, Child and Adult Care Food Programs, Food Distribution Program	0584-AB31
520	Benefit Delivery Rule	0584-AB32
521	Permanent Agreements/Direct Certification in National School Lunch, School Breakfast, and Special Milk Programs	0584-AB35
522	WIC Farmers' Market Nutrition Program	0584-AB43
523	Distribution of Employment and Training Performance-Based Funds	0584-AB47
524	Special Supplemental Food Program for Women, Infants and Children (WIC): Infant Formula Procurement Act of 1992	0584-AB52
525	Special Supplemental Food Program for Women, Infants and Children (WIC): Homelessness/Migrancy as Nutritional Risk Conditions	0584-AB53
526	Food Distribution Program on Indian Reservations—Oklahoma Waiver Authority	0584-AB56
527	National School Lunch P ogram, State Admin. Expense Funds and Determining Elig. for Free and Reduced Price Meals and Free Milk in Schools: Tech. Corrections to Coordinated Review Effort Rule	0584-AB63
528	Food Distribution Program on Indian Reservations: Definition of Indian Tribal Household	0584-AB67
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534	National School Lunch, Special Milk, School Breakfast, Child and Adult Care Food and Summer Food Service Programs: Purchase of Food Products Produced in the U.S	0584-AB82
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536	Food Stamp Program: Maximum Allotments for the 48 States and DC, and Income Eligibility Standards & Deductions for the 48 States, DC, Alaska, Hawaii, Guam, and the Virgin Islands	0584-AB85
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540	Food Stamp Program: Miscellaneous Provisions of the Food, Agriculture, Conservation, and Trade Act of 1991 and Earned Income Tax Credit	0584-AB39
541	Special Supplemental Food Program for Women, Infants, and Children (WIC): Funding Formula	0584-AB70
542	Changing the Name of the Nutrient Reference Value From U.S. RDA to RDI for the Competitive Food Services Regulation	0584-AB71
543	Consideration of Amendments to Appendix A - Alternate Foods for Meals, Cheese Alternate Products, To Allow Low Fat Cheese Alternates	0584-AB72

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545	Food Additives and GRAS Substances Used as Ingredients in Meat Food and Poultry Products	0583-AB02
546	Use of Compressed Air, Carbon Dioxide Gas, or Nitrogen Gas to Facilitate Boning of Carcasses or Parts Thereof	0583-AB13
547	Determining the Amenability of Birds to Mandatory Federal Inspection	0583-AB29
548	Notification of Residue Violators and Testing of Subsequent Shipments of Animals	0583-AB32
549	Requirements for Imported Poultry Products	0583-AB42
550	Substitute Products Identified by Standardized Terms and Nutrient Content Claims	0583-AB51
551	Labeling of Poultry Product Produced by Mechanical Deboning and Products in Which Such Poultry Product Is Used	0583-AB68
552	Hazard Analysis and Critical Control Points Systems; Pathogen Reduction Interventions; Sanitation; and Microbiological Testing Requirements **(Reg Plan Seq. No. 10)**	0583-AB69
553	Recordkeeping and Production Code Requirements for Meat and Poultry Establishments	0583-AB70
554	Refrigeration Requirements for Raw Meat and Poultry Products	0583-AB75
555	Enhanced Poultry Inspection **(Reg Plan Seq. No. 11)**	0583-AB79
556	Use of Trisodium Phosphate on Raw, Unchilled Poultry Carcasses	0583-AB80
557	Nutrition Labeling; New Product Categories and Reference Amounts	0583-AB81

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559	Control of Added Substances and Labeling Requirements for Turkey Ham Products	0583-AA84

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561	Centralization and Automation of Export Certification Process	0583-AB04
562	Policy for Differentiating Between Calves and Adult Cattle	0583-AB18
563	Prior Label Approval Process **(Reg Plan Seq. No. 12)**	0583-AB50
564	Prominent Labeling Disclosures on Meat and Poultry Products	0583-AB53
565	Procedures for Appealing Product Retentions	0583-AB62
566	Nutrition Labeling: Health Claims on Meat and Poultry Products	0583-AB64
567	Trisodium Phosphate as a Post-Chill Antimicrobial Treatment for Raw Poultry	0583-AB65
568	Nutrition Labeling of Ground Beef and Hamburger	0583-AB74
569	Meat Produced by Advanced Meat and Bone Separation Machinery and Meat Recovery System	0583-AB76
570	Use of Soy Protein Concentrate and Food Starch-Modified as Binders in Cured Pork Products: Direct Final Rule	0583-AB82
571	Fee Increase for Inspection Services	0583-AB83

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Food Safety and Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
572	Ante-Mortem Inspection of Disabled Animals on Transport Vehicles	0583-AA98
573	Poultry Post-Mortem Inspection System	0583-AB03
574	Badges for Persons Authorized to Conduct Federal Poultry Inspection	0583-AB54
575	Use of Carbon Dioxide in the Humane Slaughter of Swine	0583-AB57
576	Nutrition Labeling: Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling	0583-AB63
577	Sodium Citrate as a Tripe Denuding Agent	0583-AB66
578	Placement of Nutrition Labeling and Other Mandatory Labeling on Meat and Poultry	0583-AB72
579	Nutrition Labeling of Meat and Poultry Products; Technical Amendments	0583-AB78

Foreign Agricultural Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
580	Proposed Regulations Governing Implementation of the Cooperator Market Development Program Overseas	0551-AA26
581	Section 22 Import Quotas	0551-AA27
582	Reporting Requirements Related to Tobacco Exports	0551-AA32
583	Sugar To Be Re-Exported in Refined Form, Sugar to be Re-Exported in Sugar-Containing Products, and Sugar for Production of Polyhydric Alcohol	0551-AA39

Foreign Agricultural Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
584	Regulations Governing Implementation of the Market Promotion Program (MPP) Overseas	0551-AA24
585	CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103)	0551-AA30
586	Program Criteria for the Sunflowerseed Oil Assistance Program (SOAP) and the Cottonseed Oil Assistance Program (COAP)	0551-AA31
587	Sunflowerseed Oil Assistance Program Operations (SOAP) and Cottonseed Oil Assistance Program Operations (COAP)	0551-AA33
588	Direct Credit Programs (GSM-5, GSM-201, GSM-301) Regulations	0551-AA34
589	Emerging Democracies Agricultural Facility Guarantee Program	0551-AA35
590	Regulations Governing the Financing of Commercial Sales of Agricultural Commodities (P.L. 480 Title I Program)	0551-AA36
591	Foreign Donation of Agricultural Commodities	0551-AA38

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Forest Service—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
592	36 Code of Federal Regulations, Part 251 - Land Uses, Subpart C Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands	0596-AB45
593	Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts	0596-AB46

Forest Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
594	Prohibition on Mechanical Transport and Other Activities in Wilderness	0596-AA39
595	Hydropower Applications	0596-AA47
596	Revise Small Tracts Act Regulations	0596-AA79
597	Isolated Cabin Policy	0596-AA85
598	Solid Waste Disposal Policy	0596-AA92
599	Irrevocable Letter of Credit	0596-AA93
600	Pre-Award Information Requirements	0596-AB03
601	National Forest System Land and Resource Management Planning **(Reg Plan Seq. No. 13)**	0596-AB20
602	Disposal of National Forest Timber; Cancellation of Timber Sale Contracts **(Reg Plan Seq. No. 14)**	0596-AB21
603	Change Emphasis Away From Residual Value Appraisal to Transaction Evidence Appraisal as the Prime Method of Appraising National Forest Timber	0596-AB26
604	Species Surplus to Domestic Manufacturing Needs	0596-AB27
605	Retention of Downpayment on Timber Sale Contracts	0596-AB28
606	Proposed Policy National Forest System Land and Resource Management Planning Forest Service Manual (FSM 1920)	0596-AB31
607	Use of Fixed Anchors for Rock Climbing in Wilderness	0596-AB33
608	Collection of Reimbursable Costs for Processing Special-Use Applications and Administration of Special-Use Authorizations	0596-AB36
609	Exercise of Outstanding Mineral Rights	0596-AB38
610	Smith River National Recreation Area	0596-AB39
611	Indices to Determine Market-Related Term Additions	0596-AB40
612	Market Related Term Additions	0596-AB41
613	Private Sale of Golden Eagle Passports	0596-AB44
614	Permit Fees for Ski Areas	0596-AB49
615	36 CFR 222 Range Management; Subpart C; 222.51 Grazing Fees in the West; (j) Qualification Criteria	0596-AB50

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
616	36 CFR Part 222 Subpart A: Management of Grazing Use Within Rangeland Ecosystems **(Reg Plan Seq. No. 15)**	0596-AA35
617	Indian Allotments on National Forest System Lands	0596-AA52
618	National Forest Prohibitions; Law Enforcement Support Activities	0596-AA75
619	Land Uses and Prohibitions **(Reg Plan Seq. No. 16)**	0596-AA80
620	Timber Sale Performance and Payment Bond Form Revision	0596-AA94
621	Federal Timber Export and Substitution Restrictions (Comprehensive Revision) **(Reg Plan Seq. No. 17)**	0596-AB22
622	State and Private Forestry Assistance Stewardship Incentive Program	0596-AB32
623	Special-Use Applications and Administration of Special-Use Authorizations	0596-AB35
624	36 CFR 222 Range Management, Subpart C Grazing Fees **(Reg Plan Seq. No. 18)**	0596-AB42
625	Occupancy and Use of Developed Sites and Areas of Concentrated Public Use	0596-AB43
626	Use of Bait in Hunting	0596-AB46
627	Animal Damage Management	0596-AB47

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Forest Service—Completed Actions

Sequence Number	Title	Regulation Identifier Number
628	Locatable Minerals	0596-AA49
629	Whiskeytown-Shasta-Trinity National Recreation Area	0596-AA68
630	Hells Canyon National Recreation Area—Private Lands	0596-AA88
631	Disposal of Quartz Minerals on the Ouachita National Forest	0596-AB01
632	Federal Cave Resources Protection	0596-AB02
633	Recreation Residence Authorization Policy	0596-AB06
634	Hells Canyon National Recreation Area—Use of National Forest Lands	0596-AB08
635	Expanded Use of Prospecting Permits and Preference Right Sales for Mineral Materials	0596-AB12
636	Clarification and Revision of Appealable Decisions Under 36 CFR Part 251, Subpart C	0596-AB17
637	Below-Cost Timber Sale Program Policy and Guidelines	0596-AB24

Office of Finance and Management—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
638	Audits of State, Local, and Indian Tribal Governments	0505-AA09

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
639	Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture	0503-AA05
640	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	0503-AA08
641	Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations	0503-AA10

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
642	Food Stamp Program: Forfeiture and Denial of Property Rights	0503-AA07
643	Designation of Rural Empowerment Zones and Enterprise Communities	0503-AA09

Packers and Stockyards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
644	Regulations and Statements of General Policy Under the Packers and Stockyards Act (Group 2)	0590-AA09
645	Regulations and Statements of General Policy Under the Packers and Stockyards Act (Group 3)	0590-AA10
646	Statement of General Policy Under the Packers and Stockyard Act: Care and Handling of Livestock	0590-AA11

Packers and Stockyards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
647	Regulations and Statements of General Policy Under the Packers and Stockyards Act (Group 1)	0590-AA08

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Rural Development Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
648	Alcohol Fuels Credit Implementing Regulations	0570-AA01
649	Rural Technology Development Grants	0570-AA02
650	Liquidation of Loans and Acquisition, Management and Disposal of Security Property	0570-AA03
651	Local Technical Assistance and Planning Grants	0570-AA05
652	Solid Waste Management Grants	0570-AA06
653	Technical Assistance and Training Grants	0570-AA07
654	Rural Business Loan Streamlining	0570-AA09

Rural Development Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
655	Rural Business Enterprise Grants and Television Demonstration Grants	0570-AA08

Rural Electrification Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
656	Loan Security Documents—Telephone Program	0572-AA30
657	Wholesale Contracts for the Purchase and Sale of Electric Power and Energy	0572-AA41
658	Revision of Telecommunication Policies and Procedures for Approval of Standards, Specifications, Contract Forms, and Drawings	0572-AA45
659	Electric System Planning and Design—Policies and Procedures	0572-AA48
660	Margin Stabilization Plans and Revenue and Expense Deferrals	0572-AA50
661	Specification for Fiber Optic Splice Closures	0572-AA62
662	REA Specification for Mechanical Fiber Optic Splices	0572-AA64
663	Rescission of REA Bulletins 345-13, 345-29, 345-75, and 345-178 —Telephone Program Regulations	0572-AA66
664	Electric Standards and Specifications for Materials and Construction	0572-AA67
665	Pre-Loan Policies and Procedures for Insured Electric Loans	0572-AA69
666	Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans	0572-AA71
667	REA Buy American Requirement	0572-AA73
668	Electric Systems Operations and Maintenance	0572-AA74
669	Civil Rights Policies Applicable to REA Borrowers	0572-AA75
670	Loan Documents—Bank Program	0572-AA76
671	Depreciation Rates and Procedures	0572-AA80
672	Specification for Pole Line Hardware	0572-AA83
673	REA Fidelity and Insurance Requirements for Electric and Telephone Borrowers	0572-AA86
674	Title Evidence Policies and Procedures	0572-AA90
675	Preservation of Records Accounting Requirements for REA Electric Borrowers	0572-AA92
676	Use of General Funds Investments, Loan Guarantees, and Retirement of Capital Credits by Electric Borrowers	0572-AB01
677	REA Approval of Sale of Capital Assets by Electric Borrowers	0572-AB02
678	Loan Deferments for Energy Resources Conservation - Electric Program	0572-AB03
679	Power Requirement Studies	0572-AB05
680	State Telecommunications Modernization Plan	0572-AB07
681	Credit Support of Power Supply Borrowers	0572-AB09
682	Accounting Requirements for REA Telephone Borrowers	0572-AB10

Rural Electrification Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
683	Electric System Construction Policies and Procedures—Electric Materials and Construction	0572-AA47
684	Loan Account Computations, Policies, and Procedures	0572-AA65
685	REA Performance Specification for Line Concentrators	0572-AA72

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Rural Electrification Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
686	Electric System Construction Policies and Procedures	0572-AA84
687	Long-Range Financial Forecasts of Electric Borrowers	0572-AA89
688	Exemptions of REA Controls Over Borrower Operations	0572-AA95
689	Pre-loan Policies and Procedures for Electric Loans	0572-AA98
690	Loans for Demand Side Management, Energy Conservation Programs, and On-Grid and Off-Grid Renewable Energy Systems	0572-AA99
691	Refinancing and Prepayment of FFB Loans	0572-AB00
692	Rural Economic Development Loan and Grant Program	0572-AB04
693	Loan Security Documents for Electric Loans	0572-AB06

Rural Electrification Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
694	REA Form 525: Central Office Equipment Contract (Including Installation)	0572-AA20
695	REA Software License Agreement	0572-AA63
696	Specification for Filled Fiber Optic Cables	0572-AA82
697	Equity Development Plans for Electric Borrowers	0572-AA88
698	Telephone Program Loan Policies, Types, and Requirements	0572-AA91
699	Rural Telephone Bank and Telephone Program Loan Policies, Procedures, and Requirements; Telecommunications System Planning and Design Criteria and Construction	0572-AA97
700	Post-loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans	0572-AB05

Soil Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
701	Farmland Protection Policy Act	0578-AA14

Soil Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
702	Soil Surveys	0578-AA00

Office of Operations—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
703	Agriculture Acquisition Regulation	0599-AA00

Office of Operations—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
704	New Restrictions on Lobbying	0599-AA01

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Office of Operations—Completed Actions

Sequence Number	Title	Regulation Identifier Number
705	Vending Facilities Operated by Blind Persons in USDA-Controlled Buildings	0599-AA02

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Cooperative Service (ACS)

Final Rule Stage

215. FEDERAL-STATE RESEARCH ON COOPERATIVES PROGRAM

Legal Authority: 7 USC 1623(b) Agricultural Marketing Act of 1946; PL 103-111

CFR Citation: 7 CFR 4285

Legal Deadline: None

Abstract: Establishment of procedures to award matching fund cooperative research agreements to State agencies in order that they may conduct research related to agricultural products through cooperatives. Established as special payment States in fiscal year 1994 appropriations. The intended effect is to encourage more research at state levels that will enhance the well being of agricultural cooperatives and their members.

Timetable:

Action	Date	FR Cite
NPRM	05/09/94	59 FR 23804
NPRM Comment Period End	06/08/94	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington DC 20250-3252, 202 720-9740

RIN: 0537–AA00

BILLING CODE 3410-05-F

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Marketing Service (AMS)

Prerule Stage

216. VOLUNTARY AND MANDATORY EGG AND EGG PRODUCTS INSPECTION

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act of 1946; 21 USC 1031 to 1056 Egg Products Inspection Act

CFR Citation: 7 CFR 55; 7 CFR 59

Legal Deadline: None

Abstract: The proposal will change the terminology describing facilities to be furnished, redefine dirty eggs; define split samples and recognized laboratories, and clarify scheduling operations, officially identifying products appeal procedures, and general operating procedures, among the inspectors who must enforce both regulations.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Department of Agriculture, Agricultural Marketing Service, Room 3944 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-3506

RIN: 0581–AA58

217. VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act of 1946

CFR Citation: 7 CFR 70

Legal Deadline: None

Abstract: The proposal updates the poultry grade standards to reflect changes in marketing practices. Changes to reflect current industry practices will reclassify discolorations, will expand the range allowable, will eliminate the two procurement grades, will change new carcass weight categories, and will establish new grading criteria for large poultry parts. Change to clarify and strengthen existing regulations related to the definition of "exposed flesh."

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Janice L. Lockard, Chief, Stn. Branch, Poultry Division, Department of Agriculture, Agricultural Marketing Service, Room 3944 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-3506

RIN: 0581–AA61

218. RELATING TO INSPECTION AND GRADING OF BURLEY TOBACCO

Legal Authority: 7 USC 511 et seq

CFR Citation: 7 CFR 29.3053

Legal Deadline: None

Abstract: This revision would require that the average bale weight in each lot of burley tobacco not exceed 100 pounds. The industry has requested the Agricultural Marketing Service be given this authority in order to improve the integrity and uniformity of lots resulting in more orderly marketing and enhancing desirability of American burley.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

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Prerule Stage

Agency Contact: Howard Magwire, Acting Director, Tobacco Division, Department of Agriculture, Agricultural Marketing Service, Room 502 Annex Building, PO Box 96456, Washington, DC 20250-0280, 202 205-0567

RIN: 0581–AB01

219. REVISION OF 7 CFR 29.500 FEES AND CHARGES FOR INSPECTION AND GRADING OF IMPORTED TOBACCO

Legal Authority: 7 USC 511d

CFR Citation: 7 CFR 29.500

Legal Deadline: None

Abstract: This revision would raise the fee charged for the inspection and grading of imported tobacco to a level comparable to that charged for domestic tobacco. This action is required by the Omnibus Budget Reconciliation Act of 1993.

Timetable: Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Howard Magwire, Acting Director, Tobacco Division, Department of Agriculture, Agricultural Marketing Service, Room 502 Annex Building, P.O. Box 96456, Washington DC 20090-6456, 202 205-0567

RIN: 0581–AB12

220. • SALMONELLA RECOGNIZED LABORATORY PROGRAM

Legal Authority: 7 USC 1621 et seq

CFR Citation: 7 CFR 93

Legal Deadline: None

Abstract: The egg products inspection program is administered by the USDA Agricultural Marketing Service (AMS) in accordance with 7 USC 59, Regulations Governing the Inspection of Egg Products. The regulations provide for microbiological surveillance testing of pasteurized egg products for Salmonella spp. The regulations also state that the analyses must be conducted with approved USDA detection methodologies and procedures. A recent audit of the inspection program by the Department's Office of the Inspector General identified a need to strengthen Federal oversight of surveillance samples. To resolve this issue, a domestic Laboratory Recognition Program will be implemented for more than 50 commercial laboratories from which AMS accepts Salmonella test results. The program will require documentation as to ability and proficiency to perform these tests on egg products.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jon E. McNeal, Chief, Technical Services Branch, Department of Agriculture, Agricultural Marketing Service, USDA, AMS, SD, Technical Services Branch, P.O. Box 96456, Room 3517-S, Washington, DC 20090-6456, 202 720-2216

RIN: 0581–AB38

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Marketing Service (AMS)

Proposed Rule Stage

221. NATIONAL LABORATORY ACCREDITATION PROGRAM

Legal Authority: PL 101-624, sec 1321 to 1330; 7 USC 138 to 138i

CFR Citation: Not applicable

Legal Deadline: None

Abstract: The 1990 Farm Bill authorized the creation of a National Laboratory Accreditation Program (NLAP) for laboratories that request accreditation and conduct residue testing of agricultural products or that make claims to the public or buyers of agricultural products concerning chemical residue levels on agricultural products. The program is designed to protect human health by ensuring that laboratories which make claims to the public concerning pesticide residue levels meet minimum quality and reliability standards. The standards for the NLAP will be provided by the Food and Drug Administration with the operation of the program under the Agricultural Marketing Service, USDA. The program costs will be offset by a fee schedule. The one-time appropriation was used to provide for a fully equipped pesticide laboratory to verify the findings of those laboratories applying for accreditation.

Timetable:

Action	Date	FR Cite
ANPRM	11/20/92	57 FR 54727
ANPRM Comment Period End	01/19/93	57 FR 54727
NPRM	00/00/00	
Interim Final Rule	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Sectors Affected: Multiple

Agency Contact: Jon E. McNeal, Chief, Technical Services Branch, Science Division, Department of Agriculture, Agricultural Marketing Service, Room 3517 South Building, Washington, DC 20090-6456, 202 720-6456

RIN: 0581–AA38

222. ORGANIC CERTIFICATION OF ORGANIC FOOD PRODUCTION ACT OF 1990

Legal Authority: PL 101-624, sec 2101 to 2123; 7 USC 6501 to 6522

CFR Citation: None

Legal Deadline: NPRM, Statutory, May 28, 1992. Final, Statutory, October 1, 1993. Other, Statutory, May 28, 1991. The Organic Foods Production Act calls for the Secretary to appoint the National Organic Standards Board 180 days after enactment and convene it within 60 days thereafter.

Abstract: Public Law 101-624 calls for necessary regulations to implement the Organic Foods Production Act of 1990. The legislation calls for a national program to develop standards for certifying products as organic. Actions called for under this Act include: (a) notice for applicants to apply for membership on the National Organic Standards Board; (b) notice of nominations to the Board and announcement of meetings; (c) notice inviting States and other individuals to apply to be Certifying agents; (d) notice,

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hearings and comments for development of regulations for standards for organic livestock products; (e) notice and comment on proposed and final National List of Approved and Prohibited Substances for Organic Production and Handling; (f) notice and comment on proposed amendments to the National List; (g) issue a proposed rule to implement the title for comment; and (h) issue a final rule to implement the program.

Timetable: Next Action Undetermined

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Harold S. Ricker, Assistant Director, Transportation and Marketing Division, Department of Agriculture, Agricultural Marketing Service, Room 4006 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-2704

RIN: 0581–AA40

223. REVIEW OF BASIC FORMULA PRICE IN ALL FEDERAL MILK ORDERS

Legal Authority: 7 USC 601 to 674 Agricultural Marketing Agreement Act

CFR Citation: 7 CFR 1001 to 1139

Legal Deadline: Other, Statutory, October 1, 1991.
An advance notice of proposed rulemaking shall be issued not later than October 1, 1991 (PL 101-624, Sec. 103).

Abstract: To consider the proposed replacement of the Minnesota-Wisconsin price serves as the basic formula price in federal milk marketing orders.

Timetable:

Action	Date	FR Cite
Notice of Hearing	05/15/92	57 FR 20790
NPRM	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John F. Borovies, Chief, Order Formulation Branch Dairy Division, Department of Agriculture, Agricultural Marketing Service, Room 2968 South Building, Washington, DC 20250, 202 720-6274

RIN: 0581–AA57

224. REFRIGERATION AND LABELING REQUIREMENTS FOR SHELL EGGS

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act; 7 USC 1031 to 1056 Egg Products Inspection Act

CFR Citation: 7 CFR 56; 7 CFR 59

Legal Deadline: None

Abstract: Research has shown that refrigeration is a significant factor in the reduction of bacterial growth in shell eggs. To reduce the risk of human illness from Salmonella bacteria, a shell egg industry task force believed that refrigeration of eggs was an appropriate course of action. The task force subsequently sought legislation to require that shell eggs be refrigerated at an ambient temperature no greater than 45 degrees F after packing for the ultimate consumer and be labeled to indicate that refrigeration is required. The Egg Products Inspection Act (EPIA) was amended to include these requirements, effective December 13, 1991. As the proposed regulations will implement the requirements of the EPIA, there is no alternative to this proposal. Based on USDA egg production and price data, estimated first year compliance costs are $40.67 million and represent 1.37 percent of gross industry proceeds or $0.0083 per dozen. Since the first year figures include nonrecurring expenditures for facilities and vehicles, the total industry cost will be less in subsequent years.

Timetable:

Action	Date	FR Cite
NPRM	10/27/92	57 FR 48569
NPRM Comment Period End	12/28/92	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Department of Agriculture, Agricultural Marketing Service, Room 3944 South Building, P.O. Box 96456, Washington DC 20090-6456, 202 720-3506

RIN: 0581–AA66

225. GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED DAIRY PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS; UNITED STATES STANDARDS FOR GRADES OF NONFAT DRY MILK (SPRAY PROCESS)

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: The proposal would revise the U.S. Grade Standards for nonfat dry milk by incorporating a coliform test requirement and lowering the number of bacteria allowed.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Division, Department of Agriculture, Agricultural Marketing Service, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-7473

RIN: 0581–AA96

226. GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED DAIRY PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS; UNITED STATES STANDARDS FOR INSTANT NONFAT DRY MILK

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: The proposal would revise the U.S. Grade Standards for instant nonfat dry milk by limiting the amount of lactose permitted as a processing aid and identifying the level of vitamins contained in vitamin-fortified product.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Division, Department of

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Agriculture, Agricultural Marketing Service, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-7473

RIN: 0581–AA97

227. REVISION OF THE REGULATIONS GOVERNING INSPECTION CERTIFICATION AND STANDARDS FOR FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act of 1946

CFR Citation: 7 CFR 51

Legal Deadline: None

Abstract: The objective is to promote uniformity in the grading and certification of fresh fruits, vegetables, and other products. The regulations governing activities of the grading program have not undergone a substantial revision since 1967. As a result of changes in Department, Agency, and Division policies and industry practices, there is a need to amend the present regulations to more effectively administer the grading program.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Douglas D. Shearer, Head, Grading Seciton, FPB, Fruit and Vegetable Division, Department of Agriculture, Agricultural Marketing Service, Room 2056 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-5870

RIN: 0581–AB02

228. CHANGE IN FEES FOR FEDERAL MEAT GRADING AND CERTIFICATION SERVICES

Legal Authority: 7 USC 1621 et seq

CFR Citation: 7 CFR 54

Legal Deadline: None

Abstract: The purpose of this proposed regulation is to raise the fees for Federal Meat Grading and Certification Services to ensure the program operates on a financially self-supporting basis. The fee increase is in response to a Congressionally-mandated, nationwide 3.09 percent salary increase that was effective Jan. 9, 1994, a Congressionally-mandated variable geographic region salary increase that was effective Jan. 9, 1994, an anticipated nationwide 2.3 percent salary increase in fiscal year (FY) 1995, and a nationwide 2.09 percent salary increase in FY 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/09/93	58 FR 64669
NPRM	10/00/94	
Final Action	12/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Evan J. Stachowicz, Assistant to the Chief, Department of Agriculture, Agricultural Marketing Service, USDA, AMS, LS, MGCB, 14th & Independence SW., Room 2638-S, 202 720-1065

RIN: 0581–AB07

229. MILK FOR MANUFACTURING PURPOSES AND ITS PRODUCTION AND PROCESSING REQUIREMENTS RECOMMENDED FOR ADOPTION BY STATE REGULATORY AGENCIES (RAW MILK)

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act

CFR Citation: None

Legal Deadline: None

Abstract: The proposal would revise the raw milk quality requirements by reducing the maximum allowable somatic cell and bacteria count in producer milk and the maximum allowable bacteria count in commingled or plant milk. This proposal is in response to a request by the Dairy Division of the National Association of State Departments of Agriculture to tighten the model requirements, thus encouraging improvements in the quality of manufacturing grade milk.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Division, Department of Agriculture, Agricultural Marketing Service, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-7473

RIN: 0581–AB11

230. USER FEES FOR COTTON CLASSIFICATION SERVICES TO GROWERS 1995 CROP

Legal Authority: 7 USC 473(a); 7 USC 473(d); 7 USC 55

CFR Citation: 7 CFR 28

Legal Deadline: NPRM, Statutory, March 1, 1995. Final, Statutory, June 1, 1995.
Requires the Secretary to announce fees by June 1 each year as harvesting begins in July and a uniform fee is mandated for the entire crop.

Abstract: Annual revisions of the grower's fee for cotton classification for each crop year are mandated by formula in the Cotton Statistics and Estimates Act, as amended by Public Law 102-237. The revision provides for recovery of the cost of providing the service and allows for the variations in size of the crop and in other factors which affect the costs. The economic impact of revisions is not known, but a slight increase or decrease in the fee would not cause major impact. All services are voluntary.

Timetable: Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: A. Lee Cliburn, Assistant Chief, Program Appraisal Staff, Department of Agriculture, Agricultural Marketing Service, Room 2641 South Building, Washington, DC 20250, 202 720-3193

RIN: 0581–AB15

231. SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT; REAPPORTIONMENT OF DIRECTORS ON THE UNITED SOYBEAN BOARD

Legal Authority: PL 101-624

CFR Citation: 7 CFR 1220

Legal Deadline: None

Abstract: Pursuant to the Soybean, Promotion, Research and Consumer Information Act, reapportionment of the Board is required every three years based on the volume of production.

ALTERNATIVES:

(1) Delay Reapportionment

(2) No Change

The benefit of reapportionment is that it will reflect the current geographic distribution of soybean production

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volume in the United States. No cost change.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Department of Agriculture, Agricultural Marketing Service, Room 2624 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-1111

RIN: 0581–AB18

232. • PROPOSED REVISION OF PART 46, REGULATIONS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

Legal Authority: 15 USC 4990

CFR Citation: 7 CFR 46

Legal Deadline: None

Abstract: The proposed rule would invite comments extending PACA coverage to include fresh and frozen fruits and vegetables that are oil-blanched, including frozen french fried potato products. Under previous regulations, suppliers of these commodities suffered considerable financial losses because oil-blanched products were excluded from the PACA. This proposed rule would grant dealers in frozen oil-blanched products the same rights afforded dealers whose frozen potato product is water blanched.

Timetable:

Action	Date	FR Cite
NPRM	07/12/94	59 FR 35487
NPRM Comment Period End	08/11/94	
NPRM Comment Period Extended to	10/12/94	59 FR 46772
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James Frazier, Assistant Chief, PACA, Department of Agriculture, Agricultural Marketing Service, 14th & Independence Ave., S.W. Room 2095-S, Washington, DC 20090-6456, 202 720-4180

RIN: 0581–AB28

233. • SOYBEAN PROMOTION AND RESEARCH PROGRAM; PROCEDURES FOR CONDUCT OF A PRODUCER POLL

Legal Authority: 7 USC 6301 et seq

CFR Citation: 7 CFR 1220

Legal Deadline: None

Abstract: Pursuant to the Soybean Promotion, Research, and Consumer Information Act, a producers poll must be held during Feb. 9, 1994 - Oct. 1, 1995 period. This rule is necessary to provide for the conduct of a producer poll.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Department of Agriculture, Agricultural Marketing Service, Room 2624 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-1115

RIN: 0581–AB30

234. • BEEF PROMOTION AND RESEARCH: CHANGES IN HTS NUMBERS

Legal Authority: 7 USC 2901 to 2918

CFR Citation: 7 CFR 1260

Legal Deadline: None

Abstract: This proposed rule would revise the Harmonized Tariff System (HTS) numbers which identify bovine animals, beef, and beef products to conform with recent changes in the numbers made by the U.S. Customs Service (UCS). USC uses HTS numbers to collect the federally-legislated $1-per-head assessment on live imported bovine animals and $1-per-head carcass equivalence thereof on beef and beef products. USCS has abolished the old system and has implemented the new numbering system effective January 1, 1994.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Department of Agriculture, Agricultural Marketing Service, Room 2624 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-1115

RIN: 0581–AB31

235. • CHANGES IN FEES FOR VOLUNTARY FEDERAL MEAT GRADING AND CERTIFICATION SERVICES

Legal Authority: 7 USC 1621 et seq

CFR Citation: 7 CFR 54

Legal Deadline: None

Abstract: The purpose of this proposed regulation is to raise the fees for Federal meat grading and certification services to insure that the program operates on a financially self-supporting basis. The fee increase is in response to a Congressionally-mandated nationwide 3.09 percent salary increase that was effective January 9, 1994; a Congressionally-mandated variable, geographic region salary increase that was effective January 9, 1994, an anticipated nationwide 2.3 percent salary increase in fiscal year (FY) 1995, and a nationwide 2.09 percent salary increase in FY 1996.

Timetable:

Action	Date	FR Cite
NPRM	10/00/95	
Final Action	12/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Larry R. Meadows, Chief, Meat Grading and Certification Branch, Department of Agriculture, Agricultural Marketing Service, USDA, AMS, LS, MGC, P.O. Box 96456, Room 2093-So., Washington, DC 20090-6456, 202 720-1113

RIN: 0581–AB34

236. • INCREASE SEED INSPECTION FEES

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 75

Legal Deadline: None

Abstract: This proposal would increase fees for seed testing under the Agricultural Marketing Act (AMA). The AMA provides for the collection of fees and charges equal to the cost of providing the service. The increase in fees will offset increased costs for operating the voluntary program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	05/00/95	
Final Action	09/00/95	

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Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Department of Agriculture, Agricultural Marketing Service, Seed Regulatory and Testing Branch, Building 506, BARC-East, Beltsville, Maryland 20705-2350, 301 504-9430

RIN: 0581–AB35

237. • PORK PROMOTION RESEARCH, AND CONSUMER INFORMATION ACT OF 1985- INCREASE IN ASSESSMENT RATE

Legal Authority: 7 USC 4801 to 4819

CFR Citation: 7 CFR 1230

Legal Deadline: None

Abstract: The Pork Delegate Body voted in March 1994 to increase assessment rate from 0.35 percent to 0.45 percent. The following rulemaking actions must be published: (1) Proposed rule to increase rate (2) Final rule to increase rate (3) Proposed rule to change import assessments (4) Final rule to change import assessments

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Department of Agriculture, Agricultural Marketing Service, Room 2624 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-1115

RIN: 0581–AB36

238. • REGULATIONS UNDER THE FEDERAL SEED ACT (AMENDMENTS)

Legal Authority: 7 USC 1551 to 1611

CFR Citation: 7 CFR 201 to 202

Legal Deadline: None

Abstract: This proposal would update the Federal Seed Act (FSA) seed testing and seed certification regulations. The changes would incorporate the latest advances in seed testing and seed certification procedures. The proposed changes would prevent conflicts between Federal and state seed testing rules and seed certification standards which could inhibit the movement of seed nationally and internationally.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	03/00/95	
Final Action	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Department of Agriculture, Agricultural Marketing Service, Seed Regulatory and Testing Branch, Building 506, BARC-East, Beltsville, Maryland 20705-2350, 301 504-9430

RIN: 0581–AB37

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Marketing Service (AMS)

Final Rule Stage

239. REVISION OF REGULATIONS GOVERNING THE INSPECTION AND GRADING SERVICES OF MANUFACTURED OR PROCESSED DAIRY PRODUCTS

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act of 1946

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: The regulations have not been updated since December 1, 1976. The revisions of regulations are needed to reflect more desirable ways of carrying out the dairy inspection and grading program. The changes are not expected to have any major impact on program participation, however, in that most participants are operating in a manner that is consistent with the proposed changes.

Timetable:

Action	Date	FR Cite
NPRM	08/10/92	57 FR 35492
NPRM Comment Period End	10/09/92	57 FR 35492
Final Action	11/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Tracy Schonrock, Chief, Inspection and Grading Branch, Dairy Division, Department of Agriculture, Agricultural Marketing Service, Room 2968 South Building, Washington, DC 20250, 202 690-0530

RIN: 0581–AA45

240. REGULATIONS UNDER THE FEDERAL SEED ACT

Legal Authority: 7 USC 1551 to 1611 Federal Seed Act

CFR Citation: 7 CFR 201 to 202

Legal Deadline: None

Abstract: Changes in the regulations of the Federal Seed Act (FSA) are to be proposed to eliminate differences between FSA and Association of Official Seed Analysts (AOSA) testing rules as well as differences between minimum seed certification standards of the FSA and those of the Association of Official Seed Certifying Agencies (AOSCA). The FSA regulates the interstate shipment of agricultural and vegetable seed, which is required to be labeled with certain information needed by the seed buyer. The Agricultural Marketing Service (AMS) has cooperative agreements with each of the 50 states who inspect and test seed being sold in their state. Interstate shipments of seed found to be mislabeled can be submitted to AMS for action under the FSA. States test seed according to AOSA rules. AMS must test according to FSA rules. Any alternative to the changes, could in some cases cause seed labeled according to a test conducted by AOSA rules to be mislabeled when tested according to FSA rules, or cause seed certified by an AOSCA member agency to be not in compliance with the FSA. On balance these changes will likely result in no cost or a net savings to the seed industry.

Timetable:

Action	Date	FR Cite
NPRM	05/17/94	59 FR 25706
Public Hearing	06/08/94	59 FR 25706

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Action	Date	FR Cite
NPRM Comment Period End	07/08/94	59 FR 25706
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Department of Agriculture, Agricultural Marketing Service, Building 506, BARC-E, Beltsville, MD 20705, 301 504-9430

RIN: 0581–AA52

241. GRADING OF SHELL EGGS

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act of 1946

CFR Citation: 7 CFR 56

Legal Deadline: None

Abstract: The proposal clarifies and updates provisions of the regulations in response to changing industry practices, program direction, and policy interpretation. Changes to reflect current industry practices would affect grading room requirements, references to the tape used to seal cartons, and the reuse of oil from shell egg protecting operations. Changes to clarify and strengthen existing regulations would affect the definition of "quality assurance inspector," the facilities and equipment required for graders, the temperature of the spray rinse in shell egg cleaning operations, and the "nest run B quality shell" definition. Other changes will be to require a specific level of humidity in cooler rooms to help maintain egg quality and to eliminate wholesale grades and weight classes because they are no longer used.

Timetable:

Action	Date	FR Cite
NPRM	04/05/94	59 FR 15866
NPRM Comment Period End	06/06/94	
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Janice L. Lockard, Chief, Stn. Branch, Poultry Division, Department of Agriculture, Agricultural Marketing Service, Room 3944 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-3506

RIN: 0581–AA60

242. GRADING AND INSPECTION, SPECIFICATIONS FOR APPROVED DAIRY PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS; GENERAL SPECIFICATION FOR DAIRY PLANTS APPROVED FOR USDA INSPECTION AND GRADING

Legal Authority: 7 USC 1621 to 1627 Agricultural Marketing Act

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: The proposal would revise anhydrous milkfat requirements by incorporating international ingredient and compositional specifications.

Timetable:

Action	Date	FR Cite
NPRM	07/27/94	59 FR 38136
NPRM Comment Period End	09/26/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Division, Department of Agriculture, Agricultural Marketing Service, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-7473

RIN: 0581–AA95

243. UNITED STATES STANDARDS FOR GRADES OF TOMATO SAUCE

Legal Authority: 7 USC 1622; 7 USC 1624

CFR Citation: 7 CFR 52; 7 CFR 2371 to 2377

Legal Deadline: None

Abstract: A revision of the U.S. grade standards is proposed. The Agricultural Marketing Act of 1946 (AMA) provides for the development and improvement of standards of quality, condition, quantity, and grade to encourage uniformity and consistency in commercial practices. These standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards. The petition to revise these grade standards came from the Indiana Food Processors Association, now the Mid-America Food Processors Association and several companies that produce tomato sauce. Alternatives to the revision are eliminating the grade standards or taking no action to change the standards. Eliminating the grade standards or taking no action would be difficult because it would impede trade. Many Federal and State food buying agencies rely on the U.S. grade standards as a basis for making their purchases. The revision is needed to reflect current processing and marketing practices and to facilitate trade.

Timetable:

Action	Date	FR Cite
NPRM	09/07/93	58 FR 47071
NPRM Comment Period End	11/08/93	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Harold A. Machias, Senior Marketing Specialist, Processed Products Branch, Department of Agriculture, Agricultural Marketing Service, Room 0709 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-6247

RIN: 0581–AA99

244. 1994 ADJUSTMENT OF THE VALUE OF IMPORTED COTTON FOR COLLECTIONS, COTTON RESEARCH AND PROMOTION ASSESSMENTS

Legal Authority: 7 USC 2101

CFR Citation: 7 CFR 1205

Legal Deadline: None

Abstract: The objective of this rulemaking is to modify the value of imported cotton promulgated in the regulation for the purpose of collecting assessments on imported cotton and cotton-containing products. The new value would reflect the latest data available as published by USDA.

Timetable:

Action	Date	FR Cite
NPRM	08/03/94	59 FR 39480
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Craig Shackelford, Chief, Cotton Research and Promotion Staff, Department of Agriculture, Agricultural Marketing Service, Room 2641 South Building, Washington, DC 20250, 202 720-2259

RIN: 0581–AB14

245. PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS (FEE INCREASE)

Legal Authority: 7 USC 1622; 7 USC 1624

CFR Citation: 7 CFR 52

Legal Deadline: None

Abstract: The objective is to increase the fees for voluntary inspection services to replenish the reserve balance of the trust fund, and ensure the program's financial viability. This will satisfy the requirements of AMS policy.

Timetable:

Action	Date	FR Cite
NPRM	05/24/94	59 FR 26762
NPRM Comment Period End	06/24/94	
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Raymondo O'Neal, Head, Inspection Processed Products Branch, Department of Agriculture, Agricultural Marketing Service, Room 0709 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-5021

RIN: 0581–AB16

246. AMENDMENTS TO THE LIME RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

Legal Authority: 7 USC 6201 to 6212

CFR Citation: 7 CFR 1212

Legal Deadline: None

Abstract: This action would amend the scientific name of the limes to be covered by the program; change the composition of the Lime Board to equalize the representation of domestic producers and importers; increase the minimum exemption level; and delay the deadline for conducting the initial continuance referendum until 30 months after assessments begin under the amended Order. Funds generated under this program are expected to be between one million and two million annually.

Timetable:

Action	Date	FR Cite
NPRM	04/07/94	59 FR 16571
NPRM Comment Period End	05/09/94	
Next Action Undetermined		

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Richard Schultz, Research and Promotion Branch, Department of Agriculture, Agricultural Marketing Service, Room 2535 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-5976

RIN: 0581–AB19

247. IMPLEMENTATION OF FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ORDER

Legal Authority: PL 103-190

CFR Citation: 7 CFR 1208

Legal Deadline: Final, Statutory, May 15, 1994.

Abstract: This action will authorize the assessment of wholesale sales of fresh cut flowers and fresh cut greens to generate funds to increase demand for these horticultural product. Assessments would be paid by wholesale handlers of $750,000 or more in sales annually. The program is expected to generate approximately $10 million in funds at the initial rate of assessments. The Act requires the Secretary to conduct, within three years after the program goes into effect, a referendum to determine if a majority of the industry favors continuing the program.

Timetable:

Action	Date	FR Cite
NPRM	05/26/94	59 FR 33400
NPRM Comment Period End	06/29/94	59 FR 33400
Final Action	10/00/94	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Art Pease, Research and Promotion Branch, Department of Agriculture, Agricultural Marketing Service, Room 2535 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-6930

RIN: 0581–AB20

248. WATERMELON RESEARCH AND PROMOTION PLAN, PROPOSED AMENDMENTS TO THE PLAN, RULES AND REGULATIONS ISSUED THEREUNDER, AND PROCEDURE FOR THE CONDUCT OF REFERENDA

Legal Authority: 7 USC 4901 to 4916

CFR Citation: 7 CFR 1210

Legal Deadline: None

Abstract: This action would authorize elimination of refunds of assessments; authorize the assessment of watermelon imports and the addition of importer member to the National Watermelon Promotion Board; exempt from assessments producers of less than 10 acres of watermelons rather than 5 acres and importers of less than 150,000 pounds; cover all 50 States by the Plan; further clarify a producer's eligibility to serve on the Board; provide that all future referenda be conducted by mail ballot; and make several conforming changes.

Timetable:

Action	Date	FR Cite
NPRM	04/14/94	59 FR 17739
NPRM Comment Period End	05/16/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sonia N. Jimenez, Marketing Specialist, Research and Promotion Branch, Department of Agriculture, Agricultural Marketing Service, Room 2535 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-9916

RIN: 0581–AB21

249. AMENDMENTS TO THE RECORDKEEPING REQUIREMENTS FOR CERTIFIED APPLICATORS OF FEDERALLY RESTRICTED USE PESTICIDES

Legal Authority: 7 USC 136a(d)(1)(c); 7 USC 136i to 136l; 7 USC 450

CFR Citation: 7 CFR 110

Legal Deadline: None

Abstract: On April 9, 1993, final regulations were published in the Federal Register, "Recordkeeping

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Requirements for Certified Applicators of Federally Restricted Use Pesticides." These regulations went into effect on May 10, 1993. USDA proceeded to implement a National program for Federal restricted use pesticide recordkeeping. One of the USDA's first goals was to inform certified pesticide applicators of their responsibilities under the new regulations. Early in the educational efforts of the USDA, questions and comments were received regarding specific interpretations of the regulations. In addition, a lawsuit was filed against the Secretary of Agriculture and the Administrator of the Environmental Protection Agency by the National Coalition Against the Misuse of Pesticides and others. Questions were raised whether the intended objectives of section 1491 of the Food, Agriculture, Conservation, and Trade Act of 1990 were met by the final regulation. USDA is in the process of reviewing comments received regarding the proposed changes to the final rule.

Timetable:

Action	Date	FR Cite
NPRM	04/06/94	59 FR 16400
NPRM Comment Period End	06/06/94	
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local, Tribal

Agency Contact: Bonnie Poli, Chief, Pesticide Records Branch, Department of Agriculture, Agricultural Marketing Service, Suite 200, 8700 Centerville Road, Manassas, VA 22110, 703 330-7826

RIN: 0581–AB22

250. AMENDMENTS TO THE HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Legal Authority: 7 USC 4601 to 4612

CFR Citation: 7 CFR 1240

Legal Deadline: None

Abstract: The objective of this action is to make correcting amendments to sections of the Honey Research, Promotion, and Consumer Information Order and the rules and regulations issued thereunder that were inadvertently not made in the final rule which was published in the Federal Register on August 7, 1991. The final amended the Order and the rules and regulations to conform to amendments made in the Honey Research, Promotion and Consumer Information Act by the Food, Agriculture, Conservation and Trade Act of 1990. The Order as amended allows producers and importers who produce or import a total quantity of less than 6,000 pounds of honey annually to apply for and receive an exemption from paying assessments only if the total amount of such honey is consumed at home, donated, or distributed directly to retail outlets. Sections 1240.50 and 1240.114 will be amended to reflect these changes in the Order.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/02/94	59 FR 22492
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sonia N. Jimenez, Marketing Specialist, Department of Agriculture, Agricultural Marketing Service, Room 2535 South Building, P.O. Box 96456, Washington, DC 20050-6456, 202 720-9916

RIN: 0581–AB23

251. • POTATO RESEARCH AND PROMOTION PLAN: AMENDMENT TO RULES AND REGULATIONS ISSUED THEREUNDER

Legal Authority: 7 USC 2611 to 2627

CFR Citation: 7 CFR 1207

Legal Deadline: None

Abstract: This rule would provide the National Potato Promotion Board the flexibility to change the number of producer members on the Administrative Committee to reflect changes in potato production in the U.S. through amendment of the Board's bylaws, with the Secretary's approval, update the address of the Board's office, and revise the Harmonized Schedule Code number for imported potato starch for human consumption.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/26/94	59 FR 44034
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Georgia C. Abraham, Research and Promotion, Department of Agriculture, Agricultural Marketing Service, Room 2535-S, P.O. Box 96456, Washington, DC 20050-6456, 202 720-5057

RIN: 0581–AB26

252. • RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPT FROM RESEARCH AND PROMOTION PROGRAMS FOR FRUITS, VEGETABLES, AND SPECIALTY CROPS CONSOLIDATION

Legal Authority: 7 USC 601; 7 USC 602; 7 USC 608(a) to 608(e); 7 USC 610; 7 USC 612; 7 USC 614; 7 USC 624; 7 USC 671 to 674; 7 USC 2101 to 2118; 7 USC 2611 to 2627; 7 USC 2701 to 2718; 7 USC 2901 to 2911; 7 USC 3401 to 3417; 7 USC 4301 to 4319

CFR Citation: 7 CFR 1200; 7 CFR 1205; 7 CFR 1207; 7 CFR 1209; 7 CFR 1210; 7 CFR 1211; 7 CFR 1212; 7 CFR 1220; 7 CFR 1230; 7 CFR 1240; 7 CFR 1250; 7 CFR 1290; 7 CFR 1208

Legal Deadline: None

Abstract: This action would consolidate the petition procedures under all research and promotion programs except Beet and Dairy into one section in the code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Martha B. Ransom, Research and Promotion, Department of Agriculture, Agricultural Marketing Service, Rm. 2535-S, P.O. Box 96456, Washington, DC 20050-6456, 202 720-9915

RIN: 0581–AB27

253. • AMENDMENT TO EGG RESEARCH AND PROMOTION ORDER TO INCREASE THE RATE OF ASSESSMENT

Legal Authority: 7 USC 2701 to 2718

CFR Citation: 7 CFR 1250

Legal Deadline: Other, Statutory, August 30, 1994.

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Referendum on this action must be held by 8/30/94 or 11/10/94 if significant.

Abstract: On December 14, 1993, the Egg Research and Consumer Information Act was amended by P.L. 103-188. The amendments raised the maximum rate of assessment to 20 cents per 30-dozen cases of eggs. Under the Act amendments, the Order is being amended to increase the assessment from the current rate of 5 cents to 10 cents per case. This increase will not become effective unless approved by producers voting in a referendum.

Timetable:

Action	Date	FR Cite
NPRM	06/17/94	59 FR 31174
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Janice L. Lockard, Chief, Standardization Branch, Department of Agriculture, Agricultural Marketing Service, Poultry Division, AMS, Room 3944-S, U.S. Department of Agriculture, P.O. Box 96456; Washington, DC 20090-6456, 202 720-3506

RIN: 0581–AB32

254. • INCREASE IN FEES AND CHARGES FOR EGG PRODUCTS INSPECTION AND EGG POULTRY AND RABBIT GRADING

Legal Authority: 7 USC 1621 to 1627; 21 USC 1031 to 1056

CFR Citation: 7 CFR 55; 7 CFR 56; 7 CFR 59; 7 CFR 70

Legal Deadline: None

Abstract: The proposal would increase the fees and charges for Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and mandatory egg products inspection overtime, holiday, and appeal services. The increases wil' cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased agency costs.

Timetable:

Action	Date	FR Cite
NPRM	08/01/94	59 FR 38944
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Department of Agriculture, Agricultural Marketing Service, Room 3944 South Building, P.O. Box 96456, Washington, DC 20090-6456, 202 720-3506

RIN: 0581–AB33

DEPARTMENT OF AGRICULTURE (USDA) — **Completed Actions**

Agricultural Marketing Service (AMS)

255. POLICY STATEMENT AND REGULATIONS GOVERNING AVAILABILITY OF TOBACCO INSPECTION SERVICES TO BURLEY TOBACCO ON DESIGNATED MARKETS

CFR Citation: 7 CFR 29

Completed:

Reason	Date	FR Cite
Withdrawn	06/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Howard Magwire, 202 205-0567

RIN: 0581–AA56

256. FEES AND CHARGES, MANDATORY TOBACCO INSPECTION

CFR Citation: 7 CFR 29

Completed:

Reason	Date	FR Cite
Withdrawn	05/27/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Duncan, 202 205-0567

RIN: 0581–AA62

257. USER FEES FOR COTTON CLASSIFICATION SERVICES TO GROWERS; 1994 CROP

CFR Citation: 7 CFR 27; 7 CFR 28

Completed:

Reason	Date	FR Cite
Final Action	05/20/94	59 FR 26409
Final Action Effective	07/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lee Cliburn, 202 720-3193

RIN: 0581–AA86

258. REGULATION GOVERNING THE FRESH IRISH ROUND WHITE POTATO DIVERSION PROGRAM, 1992 CROP

CFR Citation: 7 CFR 80

Completed:

Reason	Date	FR Cite
Final Action	05/17/94	59 FR 25785

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Darrell Breed, 202 720-6391

RIN: 0581–AA93

259. AMENDMENT TO COTTON BOARD RULES AND REGULATIONS

CFR Citation: 7 CFR 1205

Completed:

Reason	Date	FR Cite
Withdrawn	07/22/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Craig Shackelford, 202 720-2259

RIN: 0581–AA98

260. REVISION OF FEES FOR FRESH FRUIT AND VEGETABLE DESTINATION MARKET GRADING SERVICES

CFR Citation: 7 CFR 51

Completed:

Reason	Date	FR Cite
Final Action	06/20/94	59 FR 31503

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

Agency Contact: Douglas C. Bailey, 202 720-5870

RIN: 0581–AB03

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261. REVISION OF LICENSING PROCEDURES FOR COTTONSEED SAMPLERS

CFR Citation: 7 CFR 61

Completed:

Reason	Date	FR Cite
Final Action	07/01/94	59 FR 28410

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: A. Lee Cliburn, 202 720-2145

RIN: 0581–AB05

262. WATERMELON RESEARCH AND PROMOTION PLAN; RULES AND REGULATIONS; REALIGNMENT OF DISTRICTS

CFR Citation: 7 CFR 1210

Completed:

Reason	Date	FR Cite
Final Action	04/21/94	59 FR 18946
Final Action Effective	04/21/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sonia N. Jimenez, 202 720-9916

RIN: 0581–AB06

263. AMENDMENT TO THE EGG RESEARCH AND PROMOTION ORDER

CFR Citation: 7 CFR 1250

Completed:

Reason	Date	FR Cite
Final Action	08/01/94	59 FR 38875
Final Action Effective	08/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Janice L. Lockard, 202 720-3506

RIN: 0581–AB13

264. PORK PROMOTION, RESEARCH AND CONSUMER INFORMATION ORDER; INCREASE PORK IMPORTER ASSESSMENTS

CFR Citation: 7 CFR 1230

Completed:

Reason	Date	FR Cite
Final Action	09/08/94	59 FR 46323
Final Action Effective	10/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ralph L. Tapp, 202 720-1115

RIN: 0581–AB17

265. • REVISION OF COTTON RESEARCH AND PROMOTION REGULATIONS REGARDING ASSESSMENT OF IMPORTED COTTON-CONTAINING PRODUCTS

Legal Authority: 7 USC 2101

CFR Citation: 7 CFR 1205

Legal Deadline: None

Abstract: This rule would prevent the loss of Cotton Research and Promotion Program assessments on imported cotton-containing products subject to assessment as a result of renumbering Harmonized Tariff Schedule (HTS) designations after AMS has published these numbers in the Federal Register. This rule will allow for the continuation of collections of renumbered HTS resignations as long as no change occurs in the coverage of the designation or in the cotton content of products covered by the designation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/01/94	59 FR 33901
Final Action	08/26/94	59 FR 44033

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Craig Shackelford, Chief, Cotton Research and Promotion Staff, Department of Agriculture, Agricultural Marketing Service, Room 2641-S, 14th & Independence Ave. SW., Washington, DC 20250, 202 720-2259

RIN: 0581–AB29

BILLING CODE 3410-02-F

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Stabilization and Conservation Service (ASCS) — **Prerule Stage**

266. • AMENDMENTS TO SUGAR AND CRYSTALLINE FRUCTOSE MARKETING ALLOTMENT REGULATIONS

Legal Authority: 7 USC 1359

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: This is needed to address a number of issues that were raised during and after the July-September, 1993 period, when allotments were in effect. These issues are 1) processor mergers/acquisitions; 2) tolling or lease arrangements; 3) exports of surplus sugar during allotments; 4) revision of processor data after final allocations are announced; 5) timing of reassignments; 6) reassignments between cane sugar States/ processors and between beet sugar processors; 7) processors' production forecasts; 8) reporting forms–timeliness of resource; and 9) development of alternative test for a new processor to establish processing capacity.

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7383

RIN: 0560–AD79

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Stabilization and Conservation Service (ASCS) — **Proposed Rule Stage**

267. AMENDMENTS TO THE PRODUCTION ADJUSTMENT REGULATIONS—RECONSTITUTION OF BASES, ALLOTMENTS AND QUOTAS

Legal Authority: 7 USC 1379; The Agricultural Adjustment Act of 1938, sec 379, as amended

CFR Citation: 7 CFR 719

Legal Deadline: None

Abstract: This action is needed to amend the regulations regarding reconstitution of bases, allotments, and quotas in order to 1) clarify them, 2) make them more consistent with the payment limitation regulations, and 3) determine whether a spouse should be considered the "same owner" when determining whether land is under the same ownership. No Federal outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC99

268. PILOT VOLUNTARY PRODUCTION LIMITATION PROGRAM

Legal Authority: 7 USC 1444f; 7 USC 1445b-3a; The Agricultural Act of 1949, sec 105B(g), as amended

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Pilot Voluntary Production Limitation Program (PVPLP) for wheat and feed grains, as required by P.L. 101-624. This action will implement regulations to provide for 1) Implementation of the PVPLP in at least 15 states, 2) Limiting the amount of wheat or feed grains that can be disposed of in excess of the production limitation quantity for the marketing year, 3) A production limitation quantity calculation, 4) Terms and conditions for producers who elect to participate, 5) Provisions for excess production, 6) Subsequent year marketing of excess production, and 7) Measures to prevent circumvention of the program, including refunds or forfeitures of commodities. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD00

269. AMENDMENTS TO CCC DEBT SETTLEMENT REGULATIONS REGARDING WAIVER OF RESTRICTION ON PROGRAM ELIGIBILITY AND COLLECTION OF JUDGMENTS BY ADMINISTRATIVE OFFSET

Legal Authority: 28 USC 3201; 15 USC 714b; 15 USC 714c

CFR Citation: None

Legal Deadline: None

Abstract: This action is needed to allow for the waiver of restrictions on program eligibility, as authorized by the Federal Debt Collection Procedures Act of 1990 (the Act), and to facilitate the collection of judgements by administrative offset. The Act provides that debtors who have judgement liens against their property for a debt owed to the United States are not eligible to receive grants or loans made by the United States until the debt is paid in full or otherwise satisfied. However, the Act also permits agencies to waive this restriction. In addition, the Commodity Credit Corporation is authorized to collect debts for other Federal agencies by administrative offset upon receipt of (1) a qualified offset request, (2) a Notice of Levy, or (3) a request or approval by the Department of Justice. This action would authorize ASCS to collect judgements in favor of the United States by administrative offset. This action will result in increased collection of debts owed to the Government.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD09

270. 1995 EXTRA LONG STAPLE COTTON PROGRAM

Legal Authority: 7 USC 1444(h)

CFR Citation: 7 CFR 1413; 7 CFR 1427

Legal Deadline: Final, Statutory, December 1, 1994.
For announcement of the loan rate.

Abstract: This action is needed to implement the ELS Cotton Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of ELS cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) loan rate, and 2) the acreage reduction program. The cost to the Government will be $0 - $5 million.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD42

271. 90-DAY RULE

Legal Authority: 7 USC 1433e

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This action is needed to implement the 90-day rule as provided

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by the Food, Agriculture, Conservation, and Trade Act of 1990. The 90-day rule provides that decisions of State and county offices shall be final after 90 days and that no action shall be taken to recover payments made in error unless the producer had reason to believe that the decision was erroneous. The cost of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD43

272. COLORADO RIVER BASIN SALINITY CONTROL PROGRAM AMENDMENTS

Legal Authority: 43 USC 1592(c)

CFR Citation: 7 CFR 702

Legal Deadline: None

Abstract: This action is needed to amend the Colorado River Basin Salinity Control Program regulations to: (1) provide on-farm/off-farm definitions, and (2) clarify SCS technical assistance in planning and completing the Salinity Control Plan. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD45

273. AMENDMENTS TO REGULATIONS REGARDING PAYMENTS TO PERSONS CONVICTED OF CONTROLLED SUBSTANCE VIOLATIONS

Legal Authority: 21 USC 881a

CFR Citation: 7 CFR 796

Legal Deadline: None

Abstract: This action is necessary to amend the regulations regarding payments to persons convicted of controlled substance violations to reflect recent legislation. Current regulations implement the Food Security Act of 1985 provisions but not the FY 1993 Appropriations Act provisions. This action will thus amend the regulations to implement the statutory provisions regarding controlled substance violations. The primary effect of this action will be to make most conservation programs subject to the controlled substance violation provisions and result in some people being declared ineligible for benefits. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD47

274. 1994 OPTIONS PILOT PROGRAM

Legal Authority: 7 USC 1421 Note

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement the Options Pilot Program for wheat, corn, and soybeans and possibly other program crops, for the 1994 crop year, as required by legislation. The program: (1) May be expanded to include additional States, counties and crops, in addition to the ones already administering the program. (2) Will provide means for farmers to buy put options that would provide price assurance equivalent to deficiency payments and price support benefits. (3) Provide terms and conditions for producers who elect to participate; (4) Provide provisions for administering the program, and (5) Provide measures to prevent circumvention of the program, including refunds and penalties. Only minor administrative and program costs are expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD48

275. PROGRAM INELIGIBILITY FOR NONCOMPLIANCE WITH BOLL WEEVIL ERADICATION PROGRAM

Legal Authority: 7 USC 1444a

CFR Citation: None

Legal Deadline: None

Abstract: This action is necessary to make producers and landowners ineligible for USDA program benefits when they are not in compliance with the Boll Weevil Eradication Program (BWEP). This will ensure better compliance with the BWEP and contribute to the elimination of boll weevils. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD57

276. 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Legal Authority: 7 USC 1314; 7 USC 1445

CFR Citation: 7 CFR 723; 7 CFR 1464

Legal Deadline: Final, Statutory, December 15, 1994.
Marketing Quotas

Abstract: The flue-cured tobacco marketing quota and price support are required by statute. The purpose of quotas and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of the reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), with discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producers in a referendum scheduled for January 1995. Gross loan outlays of $30 million are expected in FY's 1995 and 1996. They will be offset by redemptions and no-net-cost assessments in FY 1996 and later years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the, Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD62

277. 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Legal Authority: 7 USC 1314

CFR Citation: 7 CFR 723; 7 CFR 1464

Legal Deadline: Final, Statutory, February 1, 1995.
Marketing Quota.

Abstract: The burley tobacco marketing quota and price support are required by statute. The purpose of the quota and price support is to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The national quota is based on cigarette manufacturers' intentions, 3-year average exports, a loan stocks adjustment, and a discretionary adjustment of plus or minus 3 percent. The quota may not be less than 90 percent of the previous year's quota except this limit may be waived if producer association inventories likely will exceed 150 percent of reserve stock level. The price support level is based on a formula that averages market prices (2/3 weight) and a cost index (1/3 weight), plus discretion to limit any increase to 65 percent of the formula increase. Marketing quotas are implemented if approved by producers in a referendum scheduled for February 1995. Gross loan outlays of $30 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD63

278. 1995-CROP MARKETING QUOTA AND PRICE SUPPORT LEVELS FOR SIX KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 7 CFR 723; 7 CFR 1464

Legal Deadline: Final, Statutory, March 1, 1995.
Marketing Quotas.

Abstract: Marketing quotas and acreage allotments are required by statute for these kinds of tobacco: Fire-cured (type 21), Fire-cured (types 22-23), Dark Air-cured (types 35-36), Virginia sun-cured (type 37), Cigar Filler (type 46) and Cigar Filler and Binder (types 42-44 and 53-55). Quotas and allotments are determined by statutory formula to balance supply with demand to assure stable supplies for domestic and export use. Marketing quotas are implemented if approved by producers in referenda. Producers approved quotas for the 1995 crops of cigar filler (type 46) and cigar filler and binder (types 42-44 and 53-55) in March, 1993. Referenda for the other kinds are scheduled for March, 1994 and 1995. Producers of these types have historically voted in favor of quotas. Price support levels are set by statutory formula. The Secretary may reduce the level at the request of producer associations, and may limit increases to 65 percent of the formula increase. Gross loan outlays of $2 million are expected in FY 1996. They will be offset by loan redemptions and no-net-cost assessments in FY 1996 and subsequent years, for a net cost of 0.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD64

279. 1995-CROP MARKETING QUOTAS FOR THREE KINDS OF TOBACCO

Legal Authority: 7 USC 1312; 7 USC 1445

CFR Citation: 7 CFR 723

Legal Deadline: Final, Statutory, March 1, 1995.

Abstract: Marketing quotas and acreage allotments are required by statute to be announced for these three kinds of tobacco: Maryland (type 32), cigar filler (type 41) and cigar binder (type 51-52). Marketing quotas are implemented, if approved by producers in referenda, to

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achieve a supply equal to the "reserve supply level" as defined by legislation. No quotas are in effect because producers disapproved quotas for 1992-94 crops, and that status will continue if producers again disapprove quotas for the 1995-97 crops in referenda scheduled for March 1995. Negligible cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD65

280. 1995-CROP PEANUTS NATIONAL POUNDAGE QUOTA AND MINIMUM COMMODITY CREDIT CORPORATION (CCC) EXPORT-EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Legal Authority: 7 USC 1358-1

CFR Citation: 7 CFR 729

Legal Deadline: Final, Statutory, December 15, 1994.

Abstract: This action is needed to implement the national peanut poundage quota, as required by statute. The purpose of the quota is to balance supply with demand at a level that will assure stable supplies for domestic use and assure producers a stable income. The export-edible sales price for additional peanuts provides price stability for additional peanuts sold under contract and assures handlers that CCC will not undercut export efforts. The primary determinations are: 1) National Poundage Quota--set by statutory formula, based on the Secretary's estimate of the amount of peanuts required for domestic food, seed, and related uses for the 1995 marketing year. The 1995 marketing year is from August 1, 1995, through July 31, 1996. 2) Minimum CCC export-edible sales price for additional peanuts--established at the Secretary's discretion (the level has been set at $400 per ton each of the last 7 years). The peanut program as a whole will result in a net realized loss of about $46.5 million, which will be attributable to loan forfeitures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD66

281. TECHNICAL CORRECTIONS TO THE WHEAT, FEED GRAIN, COTTON AND RICE PROGRAM REGULATIONS

Legal Authority: 7 USC 1421 et seq

CFR Citation: 7 CFR 718; 7 CFR 719; 7 CFR 1413; 7 CFR 1414

Legal Deadline: None

Abstract: This action is needed to revise the regulations governing the Wheat, Feed Grain, Cotton, and Rice Programs, as follows: 1) Implement the 0,50/85 and 0,50/92 provisions of the updates Budget Reconciliation Act of 1993; 2) Amend the ARP participation contracts to provide for declarations of intention to participate; 3) Amend the Integrated Farm Management provisions for 1994; 4) Clarify the compliance regulations; and 5) Incorporate existing handbook provisions. Implementation of the 0,50/85 and 0,50/92 provisions is expected to save about $95-$100 million annually. The other provisions will have insignificant costs.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD72

282. WOOL AND MOHAIR RECOURSE LOAN PROGRAM

Legal Authority: 7 USC 1782

CFR Citation: 7 CFR 1428

Legal Deadline: None

Abstract: This action is needed to implement a recourse loan program for wool and mohair through December 31, 1995, as required by statute. Determinations are to be made regarding applicability, administration, disbursement of loans, eligibility, loss or damage, liens, fees, charges and interest, loan rates, approved storage, settlement, foreclosure, loan maturity, and producer liability. The program is to be administered at no net cost to the Federal Government. Loan outlays are estimated at $1 to $20 million from inception to the end of the program.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD75

283. • END-USE CERTIFICATE SYSTEM

Legal Authority: PL 103-182

CFR Citation: 7 CFR 708

Legal Deadline: Final, Statutory, April 7, 1994.

Abstract: This action will implement U.S. end-use certificates for commodities imported from any foreign country, such as Canada, or instrumentality that requires end-use certificates for imports that are products of the U.S. The primary purpose of the U.S. end-use certificate requirement is to help ensure that foreign-produced agricultural commodities are not used in U.S. Government-assisted export programs. The proposed action is in accordance with Section 321(f) of the North American Free Trade Agreement Implementation Act (the Act) which requires that such action be taken by

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the Secretary of Agriculture. The Act is not specific regarding the type of end-use certificate system to be implemented or the information to be collected. The Secretary is directed to issue regulations regarding the information to be provided in end-use certificates. The cost of this program is not yet determined.

Timetable:

Action	Date	FR Cite
ANPRM	04/13/94	59 FR 17495
ANPRM Comment Period End	05/13/94	
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD77

284. • REGULATIONS FOR CONSERVATION COMPLIANCE CROP ACREAGE BASE (CAB) ADJUSTMENTS

Legal Authority: 7 USC 1461 et seq

CFR Citation: 7 CFR 1417

Legal Deadline: None

Abstract: This action is needed to provide the regulations governing the conservation compliance CAB adjustments for the Wheat, Feed Grain, Cotton, and Rice Programs as follows: 1) Implement a pilot program for producers to adjust or create CAB's in order to comply with conservation plan requirements; and 2) establish a conservation CAB pool in selected States and Counties from which producers can draw to increase or create needed CAB's required by conservation plans. Implementation of this program will have insignificant costs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD80

DEPARTMENT OF AGRICULTURE (USDA)
Agricultural Stabilization and Conservation Service (ASCS)

Final Rule Stage

285. SUGAR AND CRYSTALLINE FRUCTOSE MARKETING ALLOTMENT REGULATIONS FOR FISCAL YEARS 1992 THROUGH 1996

Legal Authority: 7 USC 1446; 7 USC 1311

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: The objective of this action is to implement the Sugarcane and Sugar Beet Price Support Program as required by legislation. The primary determination is the implementation of Domestic Marketing Allotments. No Government outlays are expected as a result of this action. This action was previously reported as RIN 0560-AC76. The 1991 price support component of this action was also reported as RIN 0560-AC14 and was completed on 9/18/91.

Timetable:

Action	Date	FR Cite
NPRM	12/02/91	56 FR 61191
NPRM–Withdrawn	07/29/92	57 FR 33459
New NPRM	03/25/93	58 FR 16126
Interim Final Rule	07/06/93	58 FR 36120
Interim Final Rule–Appeals	08/06/93	58 FR 41995
Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC14

286. EXCESSIVE MANUFACTURING (MAKE) ALLOWANCES IN STATE MARKETING ORDERS FOR MILK

Legal Authority: 7 USC 1446e-1; The Food, Agriculture, Conservation, and Trade Act of 1990

CFR Citation: 7 CFR 13

Legal Deadline: Final, Statutory, November 28, 1991.

Abstract: The Food, Agriculture, Conservation, and Trade Act of 1990 requires that, beginning 12 months after enactment, no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese. The law provides for penalties and investigations by the Secretary if a producer provides evidence of such action. No Government outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	06/19/92	57 FR 27371
NPRM Comment Period End	10/19/92	
Supplemental NPRM	01/14/94	59 FR 2307
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC23

287. COMMON PROVISIONS FOR THE 1994 WHEAT, FEED GRAIN, COTTON, AND RICE PROGRAMS

Legal Authority: 7 USC 1441-2; 7 USC 1444; 7 USC 1444-2; 7 USC 1444f; 7 USC 1445b-3a; The Agricultural Act of 1949, as amended

CFR Citation: 7 CFR 1413

Legal Deadline: None

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Abstract: The objective of this action is to implement the Wheat, Feed Grain, Cotton, and Rice Programs as required by legislation. Primary determinations are 1) crops to be allowed to be planted on flexible acreage, 2) implementation of Targeted Option Payments, 3) planting of designated crops and conserving crops on Acreage Conservation Reserve (ACR) acreage, and 4) planting of oats on wheat and feed grain ACR. The net cost to the Government is expected to be $100 million to $200 million.

Timetable:

Action	Date	FR Cite
NPRM	09/03/93	58 FR 46886
NPRM Comment Period End	10/04/93	58 FR 46886
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC74

288. AMENDMENT TO THE HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION PROGRAM REGULATIONS—PERSON DETERMINATIONS

Legal Authority: 16 USC 3801; 16 USC 3811; 16 USC 3812; 16 USC 3821-23; The Food Security Act of 1985, sec 1201, as amended

CFR Citation: 7 CFR 12

Legal Deadline: None

Abstract: The objective of this action is to set a standard for a more consistent "person" determination by using an attribution method for determining benefits that shall be denied persons who are associated with the actual violators of the highly erodible land (HEL) and wetland conservation provisions. The current affiliated person rule for HEL and wetlands is difficult to administer because a strict interpretation of the rules could result in a chain of affiliated persons, all of whom would be ineligible for USDA benefits, when in fact many of the affiliated persons did not play a part in the violation. This action will provide a more equitable and understandable method for imposing sanctions on conservation compliance violations. No costs are expected as a result of this action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC86

289. AMENDMENTS TO THE WETLANDS REGULATIONS REGARDING ABANDONED ACREAGE AND DRAINAGE BY DRAINAGE DISTRICTS

Legal Authority: 16 USC 3801; 16 USC 3821-23

CFR Citation: 7 CFR 12

Legal Deadline: None

Abstract: This action is necessary to enhance the flexibility of wetland regulations for producers without imposing any significant cost on the Government or decreasing protection of wetlands. The determinations are 1) Allow any area used for production of any crop or for long term rotation to not be considered an "abandoned" wetland, and 2) Allow areas drained by a drainage district to be planted to forage crops and harvested by mechanical means. The "abandonment" determination will remove an incentive to keep land in intensive production. The drainage determination will allow production on a small number of acres that otherwise would not likely be farmed. The total acreage involved will likely be less than 50,000 acres, and no impacts on prices are expected. Producers' income could increase by up to $2.5 million per year by the end of ten years through increased efficiency. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	07/06/92	57 FR 29658
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC92

290. 1993-CROP SUGAR BEET AND SUGARCANE PRICE SUPPORT LOAN RATES

Legal Authority: 7 USC 1446g; The Agricultural Act of 1949, sec 206, as amended

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: The objective of this action is to support the price of domestically produced sugarcane and sugar beets at a level that assures growers and processors of these commodities sufficient income, as required by legislation. The primary determinations are 1) the loan rate for raw cane sugar, 2) the loan rate for refined beet sugar, 3) the minimum support price paid by processors for sugarcane, and 4) the minimum support price paid by processors for sugar beets. The Sugar Program is carried out at no net cost to the government. However, based on latest U.S. consumption and price data, the annual cost to U.S. consumers of sugar and corn sweeteners is around $2 billion.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AC98

291. AMENDMENT TO THE U.S. WAREHOUSE ACT REGULATIONS—LICENSE AND INSPECTION FEES

Legal Authority: 7 USC 268

CFR Citation: 7 CFR 735 TO 742

Legal Deadline: None

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Abstract: The Omnibus Budget Reconciliation Act of 1981 required that U.S. Warehouse Act licensing and examination programs be operated on a fee basis. New regulations are required when an increase and/or decrease is warranted. Fixed fees were implemented in 1981 and were last increased in 1985. The interest accumulating in the Warehouse User Fee Account has been the major reason for not having to adjust the fee schedule before now. In more recent years, low interest rates and increased expenses (primarily salaries, travel, and administrative costs), coupled with collections which have not changed significantly over the past 10 years, will result in a deficit in the "fee collection account" by FY 1994 if the fee schedule is not revised, and would thus require a reduction in service. The cost of Government of this action has not yet been determined.

Timetable:

Action	Date	FR Cite
Notice Requesting Comments	08/20/93	58 FR 44320
NPRM	05/19/94	59 FR 26146
NPRM Comment Period End	06/03/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD13

292. CONSERVATION ENVIRONMENTAL PROGRAMS REGULATIONS REGARDING WATER QUALITY INCENTIVES PROJECT, COST SHARE PROVISIONS OF THE EMERGENCY CONSERVATION PROGRAM, AND OTHER REVISIONS

Legal Authority: 16 USC 590 et seq; 16 USC 1503; 16 USC 2201 to 2205; 16 USC 2101 to 2111; PL 102-142

CFR Citation: 7 CFR 701

Legal Deadline: None

Abstract: This action is needed to amend the Conservation and Environmental Program regulations to: (1) add the Water Quality Incentives Project (WQIP) as provided by the 1992 Agricultural Conservation Program appropriations; (2) change the Emergency Conservation Program (ECP) cost share rates from three rates to one rate; (3) authorize cost-share assistance for confined livestock operations under the ECP as provided for in the Disaster Assistance Act of 1989; and (4) revise the regulations for clarity and ease of operation. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
NPRM	01/10/94	59 FR 1293
NPRM Comment Period End	02/09/94	59 FR 1293
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: NPRM incorrectly published as RIN 0560-AD08

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD16

293. 1995 FEED GRAIN PROGRAM

Legal Authority: 7 USC 1444 et seq

CFR Citation: 7 CFR 1413

Legal Deadline:
Final, Statutory, September 30, 1994, ARP.
Final, Statutory, November 15, 1994, Adjustments.

Abstract: This action is needed to provide an adequate supply of feed grains for domestic and foreign utilization, support farm income, hold down Federal costs, conserve natural resources, and comply with statutory requirements. The primary determinations are: 1) Loan and purchase rates and 2) the acreage reduction program. Cost to the Government will be $3.0 to $4.5 billion.

Timetable:

Action	Date	FR Cite
NPRM	08/04/94	59 FR 46937
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD37

294. 1995 RICE PROGRAM

Legal Authority: 7 USC 1441-2

CFR Citation: 7 CFR 1413; 7 CFR 1421

Legal Deadline:
NPRM, Statutory, December 1, 1994. Preliminary ARP announcement.
Final, Statutory, January 1, 1995. Final ARP announcement.

Abstract: This action is needed to implement the Rice Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of rice for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan and purchase rate and 2) The acreage reduction program. Cost to the Government will be $0.7 to $1.0 billion.

Timetable:

Action	Date	FR Cite
Final Action	01/00/95	
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD38

295. 1995 UPLAND COTTON PROGRAM

Legal Authority: 7 USC 1444-2

CFR Citation: 7 CFR 1413; 7 CFR 1427

Legal Deadline:
NPRM, Statutory, November 1, 1994, Preliminary ARP level.
Final, Statutory, November 1, 1994, Loan rate.
Final, Statutory, January 1, 1995, Final ARP level.

Abstract: This action is needed to implement the Upland Cotton Program as as required by the Food, Agriculture,

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Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of cotton for domestic and export use, maintain adequate carryover stocks, and support farm income. The primary determinations are: 1) Loan rate 2) Acreage reduction program 3) Marketing loan and 4) Base quality. Cost to the Government will be $1 to $2 billion.

Timetable:

Action	Date	FR Cite
NPRM	09/27/94	59 FR 49214
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD39

296. 1995 WOOL AND MOHAIR PROGRAM

Legal Authority: 7 USC 1781 et seq

CFR Citation: 7 CFR 1468

Legal Deadline: None

Abstract: This action is needed to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner that will assure a viable domestic wool industry in the future, by supporting the prices of wool and mohair by means of loans, purchases, payments, or other operations. The support level for wool is set by statutory formula. Payments will be 50 percent of the amount otherwise determined. The cost to the Government will be about $66 million.

Timetable:

Action	Date	FR Cite
NPRM	09/16/94	59 FR 47564
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD40

297. 1994-CROP SUGAR BEET AND SUGARCANE PRICE SUPPORT LOAN RATES

Legal Authority: 7 USC 1446g

CFR Citation: 7 CFR 1435

Legal Deadline: None

Abstract: The objective of this action is to support the price of domestically produced sugarcane and sugar beets at a level that assures growers and processors of these commodities sufficient income, as required by legislation. The primary determinations are: 1) the loan rate for raw cane sugar, 2) the loan rate for refined beet sugar, 3) the minimum support price paid by processors for sugarcane, and 4) the minimum support price paid by processors for sugar beets. The Sugar Program is carried out at no net cost to the government. However, based on latest U.S. consumption and price data, the annual cost to U.S. consumers of sugar and corn sweeteners is around $2 billion.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD41

298. AMENDMENT TO THE ACREAGE CONSERVATION RESERVE AND THE CONSERVING USE ACREAGE REGULATIONS FOR PRODUCERS AFFECTED BY EXCESSIVE RAINFALL AND FLOODING

Legal Authority: 7 USC 1441-2; 7 USC 1444-2; 7 USC 1444f; 7 USC 1445b-3a

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to implement changes for the 1993 crop year only, to the minimum size and width requirements for Acreage Conservation Reserve (ACR) and Conserving Use for Payment (CUP) acreage. These changes are necessary because excessive rainfall and flooding in the Midwest has prevented planting of enrolled 1993 crops, caused crop failure, or changed planting patterns. This action will provide terms and conditions for participating producers, permitting them to still be able to designate the required acreage for ACR or CU for payment. Only minor administrative costs are expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/93	58 FR 57721
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD50

299. MALTING BARLEY ASSESSMENT

Legal Authority: 7 USC 1444f

CFR Citation: 7 CFR 1413

Legal Deadline: None

Abstract: This action is needed to reduce the malting barley assessment from 5 percent to 0. This will improve the competitiveness of U.S. barley producers, eliminate the assessment's distortions on production and marketing, and eliminate the paperwork requirements imposed on producers and USDA. No cost to Government is expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/07/94	59 FR 10574
Interim Final Rule Effective	03/07/94	
Comment Period End	04/06/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD55

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300. AMENDMENTS TO THE WETLANDS RESERVE PROGRAM

Legal Authority: 16 USC 3837 et seq

CFR Citation: 7 CFR 703

Legal Deadline: None

Abstract: This action is necessary to fulfill statutory requirements and to implement the Wetland Reserve Program (WRP). The regulations need to be amended for the following reasons: 1) The Omnibus Budget Reconciliation Act of 1993 amended the Food Security Act of 1985 to specify that the Secretary shall enroll in the WRP a total of not less than 330,000 acres by the end of 1995, and a total of not less than 975,000 during the period 1991 through 2000. 2) The number of States participating in the program has increased from 9 in the 1992 pilot WRP to 20, including the 9 pilot States. 3) Experience gained in the pilot program identified the need to change aspects of the acreage enrollment process, such as the bid acceptance procedure, distribution to the States of acreage to be enrolled, and the use of appraisals in certain instances. The use of appraisals will ensure uniformity between landowners generally as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. $66.675 million has been appropriated for FY 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/27/94	59 FR 3772
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD59

301. 1994 WHEAT FARMER-OWNED RESERVE PROGRAM

Legal Authority: 7 USC 1445a

CFR Citation: 7 CFR 1421

Legal Deadline: Final, Statutory, December 15, 1994.

Abstract: This action is needed to implement the FOR program as required by statute. The FOR provides extended loans (at no less than the current loan rate) and storage payments to producers to enable them to store their crops when supplies are abundant, extend the time period for orderly marketing, and provide adequate carryover stocks to ensure a reliable supply. The primary determinations are: 1) Entry: the Secretary may extend loans if: a) the market price of corn during the 90-day period prior to March 15, 1995 is less than 120 percent of the current loan rate; or b) the current year ending stocks-to-use ratio, in percentage terms, is more than 22.5 percent. He must extend loans when both conditions are met; and 2) Maximum quantity of feed grains to be stored in the FOR: the quantity may not be less than 600 million bushels, nor more than 900 million bushels. Entry if feed grains into the FOR would be expected to reduce loan redemptions by about $1.0 billion in FY 1995. However, loan redemptions in FY's 1996-98 will result in net loan costs of $0. Storage payments over the FY 1995-98 period will total about $500 million.

Timetable:

Action	Date	FR Cite
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD61

302. 1994 FEED GRAIN FARMER-OWNED RESERVE PROGRAM

Legal Authority: 7 USC 1445e

CFR Citation: 7 CFR 1421

Legal Deadline: Final, Statutory, March 15, 1995.

Abstract: This action is needed to implement the FOR program as required by statute. The FOR provides extended loans (at no less than the current loan rate) and storage payments to producers to enable them to store their crops when supplies are abundant, extend the time period for orderly marketing, and provide adequate carryover stocks to ensure a reliable supply. The primary determinations are: 1) Entry: the Secretary may extend loans if: a) the market price of corn during the 90-day period prior to March 15, 1995 is less than 120 percent of the current loan rate; or b) the current year ending stocks-to-use ratio, in percentage terms, is more than 22.5 percent. He must extend loans when both conditions are met; and 2) Maximum quantity of feed grains to be stored in the FOR: the quantity may not be less than 600 million bushels, nor more than 900 million bushels. Entry if feed grains into the FOR would be expected to reduce loan redemptions by about $1.0 billion in FY 1995. However, loan redemptions in FY's 1996-98 will result in net loan costs of $0. Storage payments over the FY 1995-98 period will total about $225 million.

Timetable:

Action	Date	FR Cite
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD60

303. 1995-CROP NATIONAL AVERAGE LOAN RATES FOR QUOTA AND ADDITIONAL PEANUTS

Legal Authority: 7 USC 1445c-3

CFR Citation: 7 CFR 1446; 7 CFR 1421

Legal Deadline: Final, Statutory, February 15, 1995.
Price Support.

Abstract: This action is needed to determine the peanut price support levels for quota and additional peanuts, as required by statute. The price support levels provide a domestic price floor for quota and additional peanuts. The primary determinations are: 1) Price support level for quota peanuts--set at previous year's level plus any increase in estimated peanut production costs under a statutory

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formula. Increase is limited to no more than 5 percent above the 1994 level, which is expected to be near the 1993 level of $674.93 per ton, and 2) Price support level for additional peanuts—set at a level sufficient to ensure CCC does not incur losses through the price support program (the level was set at $131.09 per ton for 1993). The peanut program as a whole will result in a net realized loss of about $46.5 million, which will be attributable to loan forfeitures.

Timetable:

Action	Date	FR Cite
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD67

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304. AMENDMENTS TO THE WOOL AND MOHAIR PROGRAM REGULATIONS—PAYMENT LIMITATIONS, MARKETING ASSESSMENTS, AND DEDUCTIONS FOR MARKETING CHARGES

Legal Authority: 7 USC 1783; 7 USC 1785

CFR Citation: 7 CFR 1468

Legal Deadline: None

Abstract: This action is needed to implement changes mandated by recent legislation. The Omnibus Budget Reconciliation Act of 1993 1) provides for a new payment limitation for 1995, 2) eliminates the 1-percent marketing assessment for MY's 1993 through 1995, and 3) disallows the deduction of marketing charges for commissions, coring, and grading when determining net sales proceeds and national payment rates. Because these changes are statutorily required, no alternatives are considered. This action will result in a net decrease in payments of about $3 million, as follows: 1) a decrease of about $1 million for MY 1995 for the change in payment limitations, 2) an increase of about $4 million from removal of the assessment for MY's 1993-95, and 3) a decrease of about $6 million from the removal of the deductions for marketing charges.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/16/94	59 FR 47530
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD68

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305. COOPERATIVE MARKETING ASSOCIATION ELIGIBILITY REQUIREMENTS FOR PRICE SUPPORT

Legal Authority: 7 USC 1441 et seq; 15 USC 714b; 15 USC 714c; 15 USC 714j

CFR Citation: 7 CFR 1425

Legal Deadline: None

Abstract: This action will amend the regulations for cooperatives approved to participate in the price support programs on behalf of their members to: 1) Support 23 handbook requirements that are currently in effect, 2) Allow voting by proxy and under power of attorney in membership meetings, and 3) Require cooperatives to withhold pool distributions from members when notified by CCC that the members have failed to fully comply with regulations, an outstanding claim exists, or an IRS levy has been received. No costs are expected as a result of this action.

Timetable:

Action	Date	FR Cite
NPRM	08/31/94	59 FR 44947
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD70

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306. • GENERAL PRICE SUPPORT REGULATIONS FOR HONEY

Legal Authority: 7 USC 1446l

CFR Citation: 7 CFR 1434

Legal Deadline: None

Abstract: This action is needed to amend the honey price support regulations to incorporate the provisions of the Appropriations Act for Fiscal Year 1994 and the Omnibus Budget Reconciliation Act of 1993 (OBRA). Producers may obtain 1994 crop loans in FY 1994, but the Appropriations Act prohibits expenditures for payments, loan forfeitures, or loan deficiency payments. OBRA changed the nonrecourse loan rate to 50 cents/lb. for CYs 1994 and 1995, 49 cents/lb. for CY 1996, 48 cents/lb. for CY 1997, and 47 cents/lb. for CY 1998. It also changed the payment limitation to $125,000 for CY 1994, $100,000 for CY 1995, $75,000 for CY 1996, and $50,000 for CYs 1997 and 1998. Also, assessments will not be collected after the 1993 crop. This action will also 1) amend administrative actions for liquidated damages to reduce the level of administrative actions applicable to producers who violate the terms and conditions of CCC loan note and security agreements and loan deficiency payment applications, 2) incorporate container requirements that were inadvertently removed by an earlier amendment, and 3) remove (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/09/94	59 FR 23789
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: provisions pertaining to form CCC-701, which is obsolete. A net savings of about $26 million is expected.

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD73

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307. • GENERAL PRICE SUPPORT REGULATIONS FOR GRAIN, RICE, AND OIL SEEDS FOR 1993 TO 1995 CROP YEARS

Legal Authority: 7 USC 1421; 7 USC 1423; 7 USC 1425; 7 USC 1441z; 7 USC 1441-2; 7 USC 1441f-1; 7 USC 1445b-3a; 7 USC 1445c-3; 7 USC 1445e; 7 USC 1446f; 7 USC 714b and 714c

CFR Citation: 7 CFR 1421

Legal Deadline: None

Abstract: This action is needed to amend the price support provisions for wheat, feed grains, rice, and oilseeds. The primary determinations will: (1) Amend Farmer Owned Reserve (FOR) program eligibility requirements and rotation provisions to allow producers (a) to pledge either shelled or ear corn as collateral for a FOR loan, (b) to place repledged loan collateral in the FOR, provided the repledged commodity is under loan for a consecutive 9-month period; and (c) additional flexibility in the rotation of stocks to facilitate maintenance of pledged FOR commodity. (2) Amend administrative actions for liquidated damages to reduce the level of administrative actions applicable to producers who violate the terms and conditions of CCC loan note and security agreements and loan deficiency payment applications. (3) Amend settlement provisions to incorporate the following inadvertently removed provisions: (a) compensation for hauling beyond producer's normal delivery point, (b) delivery by trackloading, (c) storage deduction for early calls of warehouse-stored-loans. No direct outlays are expected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/05/94	59 FR 34345
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD74

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308. 1995 WHEAT LOAN RATE AND ACREAGE REDUCTION PROGRAM

Legal Authority: 7 USC 1445b-3a

CFR Citation: 7 CFR 1413; 7 CFR 1421

Legal Deadline: NPRM, Statutory, April 1, 1994. Final, Statutory, June 1, 1994. Other, Statutory, March 31, 1994. Other deadline is for adjustments.

Abstract: This action is needed to implement the Wheat Program as required by the Food, Agriculture, Conservation, and Trade Act of 1990. The purpose of the program is to assure sufficient supplies of wheat for domestic and export use, maintain adequate carryover stocks, and support farm income. The expected cost is about $1 to $3 billion.

Timetable:

Action	Date	FR Cite
NPRM	04/06/94	59 FR 16149
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD76

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309. • AMENDMENTS TO ASCS AND CCC DEBT SETTLEMENT REGULATIONS

Legal Authority: 31 USC 3711 et seq; 15 USC 714b-c

CFR Citation: 7 CFR 792; 7 CFR 1403

Legal Deadline: None

Abstract: This action is needed to amend the ASCS and CCC debt settlement regulations to: (1) Change the rate of interest CCC charges on its delinquent debts from a rate equal to that assessed under the Prompt Payment Act to a rate equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act. This would allow the late payment interest rate charged by CCC to conform to the late payment interest rate assessed by ASCS, as well as conforming to the rate required by the Federal Claims Collection Act; (2) Delete references to IRS Notices of Levy; and (3) Provide for offset of a debtor's pro rata share of payments due any entity in which the debtor participates and provide for offset when ASCS and CCC determines that a debtor has established an entity, or transferred ownership of, reorganized, or changed in some other manner, his or her operations in order to avoid a debt. This will increase the ability of ASCS and CCC to collect delinquent debts, without adversely affecting nondebtors.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD78

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310. • AMENDMENTS TO THE COTTON PRICE SUPPORT REGULATIONS

Legal Authority: 7 USC 714; 7 USC 1421; 7 USC 1423; 7 USC 1425; 7 USC 1444; 7 USC 1444-2

CFR Citation: 7 CFR 1427

Legal Deadline: None

Abstract: This action is needed to amend the price support provisions for upland and extra loan staple cotton as follows: 1) Reduce the level of administrative actions applicable to producers who violate the terms and conditions of CCC loan note and security agreements and loan deficiency payment applications. 2) Update ASCS regulations to be in agreement with the 1992 Cotton Advisory Committee recommendations that ELS cotton must not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter in order to be eligible for CCC price support loans; and 3) Make minor technical adjustments. No direct outlays are expected.

Timetable:

Action	Date	FR Cite
NPRM	08/02/94	59 FR 39251
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the

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USDA—ASCS

Final Rule Stage

Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7383

RIN: 0560–AD82

311. • REOPENING OF THE 1993 TREE ASSISTANCE PROGRAM

Legal Authority: PL 103-211

CFR Citation: 7 CFR 1478

Legal Deadline: None

Abstract: This action is needed to reopen the 1993 Tree Assistance Program (TAP) for nursery owners, as authorized by the Emergency Supplemental Appropriations Act of 1994 (PL 103-211). The program is intended to reimburse part of the reestablishment costs for small- and medium-scale commercial nursery owners who experienced tree and other nursery plant losses. Payments are only authorized for eligible owners who actually reestablish or rehabilitate eligible trees or other nursery plants. Flat rate cost-share payments will be made to nursery owners who incurred losses due to damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, or excessive wind, or any combination thereof; or related condition including but not limited to heat, insect infestation, plant disease, or other related conditions. Outlays of about $5 million are expected.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7383

RIN: 0560–AD83

312. • AMENDMENT TO THE EMERGENCY LIVESTOCK ASSISTANCE REGULATIONS REGARDING FEED ALLOWANCE AND APPROVAL OF COUNTIES FOR ASSISTANCE

Legal Authority: 7 USC 1471; 15 USC 714b and 714c

CFR Citation: 7 CFR 1475

Legal Deadline: None

Abstract: This action is needed to clarify terminology used to describe how much feed will be allowed to maintain livestock and to allow a pilot program whereby designated State ASC Committees will be authorized to approve counties for Livestock Feed Programs. This action will not affect the cost of the LFP since none of the calculations used to determine benefits are changed.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Administrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7383

RIN: 0560–AD84

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Stabilization and Conservation Service (ASCS)

Completed Actions

313. 1994 WHEAT LOAN RATE AND ACREAGE REDUCTION PROGRAM

CFR Citation: 7 CFR 1413; 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	08/04/94	59 FR 39707

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AC75

314. AMENDMENTS TO THE SUGAR MARKETING ASSESSMENT REGULATIONS

CFR Citation: 7 CFR 1435

Completed:

Reason	Date	FR Cite
Final Action	08/11/94	59 FR 41222

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AC91

315. 1994 FEED GRAIN LOAN RATES AND ACREAGE REDUCTION LEVELS

CFR Citation: 7 CFR 1413

Completed:

Reason	Date	FR Cite
Final Action	08/04/94	59 FR 39707

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD02

316. AGRICULTURAL CONSERVATION AND STABILIZATION SERVICE DEBT SETTLEMENT REGULATIONS

CFR Citation: 7 CFR 792

Completed:

Reason	Date	FR Cite
Final Action	04/05/94	59 FR 15828

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD03

317. FARMER-OWNED RESERVE (FOR) PROGRAM FOR THE 1993 CROP OF FEED GRAINS

CFR Citation: 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	05/18/94	59 FR 25795

Small Entities Affected: None

Government Levels Affected: None

USDA—ASCS

Completed Actions

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD17

318. 1994 RICE PROGRAM

CFR Citation: 7 CFR 1413; 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	05/18/94	59 FR 25794

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD18

319. 1994 WOOL AND MOHAIR PROGRAM

CFR Citation: 7 CFR 1468

Completed:

Reason	Date	FR Cite
Final Action	09/23/94	59 FR 48787

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD19

320. 1994-CROP PEANUTS NATIONAL POUNDAGE QUOTA

CFR Citation: 7 CFR 729

Completed:

Reason	Date	FR Cite
Final Action	02/25/94	59 FR 9066

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD20

321. 1994 UPLAND COTTON PROGRAM

CFR Citation: 7 CFR 1413; 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	05/02/94	59 FR 22495

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD21

322. 1994 EXTRA LONG STAPLE COTTON PROGRAM

CFR Citation: 7 CFR 1413; 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	05/02/94	59 FR 22494

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD22

323. 1994-CROP MARKETING QUOTAS FOR MINOR SIX KINDS OF TOBACCO

CFR Citation: 7 CFR 723

Completed:

Reason	Date	FR Cite
Final Action	05/26/94	59 FR 27215

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD23

324. 1994-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

CFR Citation: 7 CFR 1314; 7 CFR 1445

Completed:

Reason	Date	FR Cite
Final Action	05/03/94	59 FR 22723

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD25

325. 1994 OILSEED PROGRAM

CFR Citation: 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	08/04/94	59 FR 39707

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD26

326. 1994 NATIONAL AVERAGE LOAN RATE FOR QUOTA AND ADDITIONAL PEANUTS AND MINIMUM CCC EXPORT-EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

CFR Citation: 7 CFR 1446; 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	09/16/94	59 FR 47526

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD27

327. 1994-CROP PRICE SUPPORT LEVELS FOR MINOR KINDS OF TOBACCO

CFR Citation: 7 CFR 1464

Completed:

Reason	Date	FR Cite
Final Action	05/26/94	59 FR 27215

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD28

328. 1993 WHEAT FARMER-OWNED RESERVE (FOR) PROGRAM

CFR Citation: 7 CFR 1421

Completed:

Reason	Date	FR Cite
Final Action	05/18/94	59 FR 25795

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD34

329. TERM LIMITS FOR NATIONAL OFFICERS OR STATE PRESIDENTS OF THE NATIONAL ASSOCIATION OF FARMER ELECTED COMMITTEEMEN

CFR Citation: 7 CFR 7

Completed:

Reason	Date	FR Cite
Final Action	04/05/94	59 FR 15827

Small Entities Affected: None

Government Levels Affected: None

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Completed Actions

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD46

330. NONEMERGENCY HAYING AND GRAZING ON CONSERVATION RESERVE PROGRAM GRASSLANDS

CFR Citation: 7 CFR 1410

Completed:

Reason	Date	FR Cite
Final Action	04/08/94	59 FR 16780

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD54

331. AMENDMENT TO TOBACCO PROGRAM REGULATIONS—DOMESTIC MARKETING ASSESSMENT

CFR Citation: 7 CFR 723

Completed:

Reason	Date	FR Cite
Final Action	06/01/94	59 FR 28207

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD56

332. COTTON USER MARKETING CERTIFICATE PROGRAM

CFR Citation: 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	04/15/94	59 FR 17917

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD58

333. AMENDMENT TO THE PRICE SUPPORT REGULATIONS REGARDING LOSSES TO FARM-STORED LOAN COLLATERAL DUE TO FLOOD

CFR Citation: 7 CFR 1421

Completed:

Reason	Date	FR Cite
Withdrawn	08/25/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD69

334. 1994 SPECIFICATIONS FOR COTTON BALE PACKAGING MATERIALS

CFR Citation: 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	07/22/94	59 FR 37399

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, 202 720-7583

RIN: 0560–AD71

335. • 1994-1995 MARKETING YEAR PENALTY RATES FOR ALL KINDS OF TOBACCO SUBJECT TO QUOTAS

Legal Authority: 7 USC 1314

CFR Citation: None

Legal Deadline: None

Abstract: This action announces the penalty rates for all kind of tobacco for the 1994-95 marketing year. Legislation provides that the penalty shall be 75 percent of the previous year's average marketing price. Tobacco producers, operators and dealers need to be advised of the penalty rate prior to the beginning of the marketing year. The penalty rate acts as a deterrent for violators of tobacco program regulations.

Timetable:

Action	Date	FR Cite
Final Action	07/01/94	59 FR 33949

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tom Witzig, Agricultural Economist, Office of the Deputy Adminstrator, Policy Analysis, Department of Agriculture, Agricultural Stabilization and Conservation Service, Room 3741-S, P.O. Box 2415, Washington, DC 20013, 202 720-7583

RIN: 0560–AD81

BILLING CODE 3410-05-F

DEPARTMENT OF AGRICULTURE (USDA)
Animal and Plant Health Inspection Service (APHIS)

Prerule Stage

336. IMPORTATION OF FRUITS AND VEGETABLES

Legal Authority: 7 USC 150dd; 7 USC 150ee; 7 USC 150ff; 7 USC 151 to 167; 7 USC 450; 21 USC 136; 21 USC 136a

CFR Citation: 7 CFR 319.56

Legal Deadline: None

Abstract: The Department regulates the importation of fruits and vegetables into the United States to prevent the introduction of plant pests, including insects and diseases. A review of the Department's fruits and vegetables import regulations indicates the need for a complete revision to make the regulations more effective and to increase compliance with them.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mr. Frank Cooper, Senior Operations Officer, Plant Protection and Quarantine, Department of Agriculture, Animal and Plant Health Inspection Service, Room 816, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-4378

RIN: 0579–AA58

337. IMPORTATION OF CERTAIN EMBRYOS AND ANIMAL SEMEN

Legal Authority: 7 USC 1622; 21 USC 103 to 105; 21 USC 111; 21 USC 134a to 134d; 21 USC 134f; 31 USC 9701

CFR Citation: 9 CFR 98

Legal Deadline: None

Abstract: Cyclical review of 9 CFR part 98, "Importation of Certain Animal Embryos and Animal Semen." An advance notice of proposed rulemaking which solicited public comment on certain existing requirements in part 98, confirmed that the regulations in this part no longer reflect international industry practices and are inconsistent, at least in part, with scientifically accepted procedures. Specific changes proposed will be determined after thorough review of existing requirements. Potential cost and benefits are unknown at this time.

Timetable:

Action	Date	FR Cite
ANPRM	07/08/93	58 FR 36625
ANPRM Comment Period End	09/07/93	
Begin Review	12/00/94	
NPRM	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Roger Perkins, Staff Veterinarian, National Center for Import-Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, 301 436-8172

RIN: 0579–AA63

USDA—APHIS

Prerule Stage

338. ADVANCE NOTICE OF PROPOSED REVISION OF THE FEDERAL SEED ACT REGULATIONS FOR IMPORTED SEED

Legal Authority: 7 USC 1581 to 1611

CFR Citation: 7 CFR 201

Legal Deadline: None

Abstract: On October 1, 1982, the Agricultural Marketing Service transferred to the Animal and Plant Health Inspection Service responsibility for administering Title III of the Federal Seed Act (FSA), which pertains to regulation of foreign commerce in seeds. Shortly afterwards, in 1983, the FSA was amended and the inspection requirements for imported seeds were considerably lessened. However, regulations under the FSA (7 CFR 201.101 to 201.230) have not been revised to reflect either the 1982 transfer of regulatory authority or the 1983 statutory amendments. Therefore, we are considering revising FSA regulations to reflect these changes. We are also considering revising FSA regulations to update or delete obsolete sections, including taxonomies of listed weeds, and simplifying inspection requirements for seed imports from Canada. We will solicit comments from the public on the current regulations and any current revisions.

Timetable:

Action	Date	FR Cite
ANPRM	09/13/94	59 FR 47286
ANPRM Comment Period End	10/31/94	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Polly Lehtonen, Botanist, BATS, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Room 624, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7839

RIN: 0579–AA64

DEPARTMENT OF AGRICULTURE (USDA)
Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

339. EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY

Legal Authority: 21 USC 111 to 113; 21 USC 115; 21 USC 117; 21 USC 120; 21 USC 123 to 126; 21 USC 134b; 21 USC 134f

CFR Citation: 9 CFR 82

Legal Deadline: None

Abstract: Exotic Newcastle Disease (also known as viscerotropic velogenic Newcastle disease and as VVND) and psittacosis or ornithosis (now generally referred to as chlamydiosis) are communicable diseases of birds and poultry. The spread of these diseases in the United States could have serious consequences for the United States poultry industry. A review of the Department's regulations to prevent the interstate spread of these diseases indicates the need for a complete revision to make the regulations more effective and to increase compliance with them.

Timetable:

Action	Date	FR Cite
NPRM	06/28/94	59 FR 33214
NPRM Comment Period End	08/29/94	
NPRM	09/30/94	59 FR 44865
NPRM Comment Period Extended to	11/29/94	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Dr. C.M. Groocock, Senior Staff Veterinarian, Emergency Programs Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Federal Building, Room 746, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8073

RIN: 0579–AA22

340. REGULATION OF HORSES AND FARM ANIMALS UNDER THE ANIMAL WELFARE ACT

Legal Authority: 7 USC 2131 to 2157

CFR Citation: 9 CFR 1; 9 CFR 2; 9 CFR 3

Legal Deadline: None

Abstract: Under the Animal Welfare Act, the Department regulates the treatment of horses used for biomedical or other nonagricultural research, or for nonagricultural exhibition. Currently, the Department regulates the treatment of such horses and other farm animals under general standards for warmblooded animals for which standards are not otherwise included in the regulations. However, because of the increasing use of these animals for nonagricultural research and nonagricultural exhibition, the Department has given notice of its intent to develop specific standards for the animals' humane handling, housing, care, treatment, and transportation, and has requested comments regarding such standards.

Timetable:

Action	Date	FR Cite
ANPRM	04/05/90	55 FR 12667
ANPRM Comment Period Extended	06/12/90	55 FR 23748
ANPRM Comment Period Extended	07/12/90	55 FR 28638

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Action	Date	FR Cite
ANPRM Comment Period End	09/10/90	
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Debra E. Beasley, Senior Staff Veterinarian, Regulatory Enforcement and Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7833

RIN: 0579–AA31

341. CYCLICAL REVIEW OF 9 CFR PART 92, PHASE II

Legal Authority: 7 USC 1622; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 134a; 21 USC 134b; 21 USC 134c; 21 USC 134d; 21 USC 134f; 21 USC 135; 31 USC 9701

CFR Citation: 9 CFR 92

Legal Deadline: None

Abstract: The Department is reviewing the regulations in 9 CFR part 92, which, among other things, govern the importation into the United States of certain animals and poultry, and certain animal and poultry products. This is in compliance with Executive Order 12866 and Departmental Regulation 1512-1, which requires agencies to periodically review regulations.

The Department is conducting this Cyclical Review in phases. Phase I, effective August 2, 1990, reorganized the regulations. The Department is now starting Phase II. Subpart F (Dogs) of 9 CFR Part 92 has been reviewed and a notice of proposed rulemaking will be published. Reviews of the other subparts will follow. If the Department determines those regulations should be changed, notices of proposed rulemaking will be published.

Timetable:

Action	Date	FR Cite
NPRM Subpart F	10/00/94	
NPRM Comment Period End Subpart F	12/00/94	
Final Action Subpart F	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, Department of Agriculture, Animal and Plant Health Inspection Service, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8383

RIN: 0579–AA34

342. IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS—PREVENTION OF POULTRY DISEASES

Legal Authority: 7 USC 1622; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 134a to 134d; 21 USC 134f; 21 USC 135; 31 USC 9701

CFR Citation: 9 CFR 92

Legal Deadline: None

Abstract: The Department currently regulates the importation of poultry and poultry products, including eggs for hatching, to prevent the introduction of certain poultry diseases into the United States. We are considering revising these regulations to add restrictions to prevent the introduction of Salmonella enteritidis, serotype enteritidis, phage-type 4 (referred to below as S. enteritidis, phage-type 4), a virulent type of Salmonella that has not been detected in poultry flocks in the United States. Canada is the only country other than the United States in which poultry flocks are recognized as being free of S. enteritidis, phage-type 4. Safeguards under consideration include testing of individual poultry of the flock of origin in the country of origin, and testing and inspection during quarantine in the United States.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, Department of Agriculture, Animal and Plant Health Inspection Service, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8172

RIN: 0579–AA38

343. PSEUDORABIES

Legal Authority: 21 USC 111 to 113; 21 USC 115; 21 USC 117; 21 USC 120; 21 USC 121; 21 USC 123 to 126; 21 USC 134b; 21 USC 134f

CFR Citation: 9 CFR 85

Legal Deadline: None

Abstract: Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is primarily a disease of swine. The spread of this disease in the United States could have serious consequences for the United States livestock industry. A review of the Department's regulations to prevent the interstate spread of this disease indicates the need for a complete revision to make the regulations more effective and to increase compliance with them.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Dr. Arnold C. Taft, Senior Staff Veterinarian, Swine Health Staff, Department of Agriculture, Animal and Plant Health Inspection Service, Suite 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301 436-7767

RIN: 0579–AA49

344. ADDITION OF CERVIDAE TO THE REGULATIONS CONCERNING TUBERCULOSIS IN LIVESTOCK

Legal Authority: 21 USC 111 to 113; 21 USC 114; 21 USC 114a; 21 USC 114a-1; 21 USC 115 to 117; 21 USC 120 to 126; 21 USC 134b; 21 USC 134f

CFR Citation: 9 CFR 77; 9 CFR 91

Legal Deadline: None

Abstract: Bovine tuberculosis is a contagious, infectious, and communicable disease affecting cattle, bison, and other species, including humans. The spread of bovine tuberculosis in the United States could have serious consequences for the United States cattle and bison industries, as well as for human health. Currently, the regulations concerning control and eradication programs for bovine tuberculosis in livestock only regulate cattle, bison, and swine.

USDA—APHIS — **Proposed Rule Stage**

Recent outbreaks in the United States of bovine tuberculosis in semi-domesticated herds of cervidae (such as deer and elk) have made apparent the need to also regulate these animals in order to prevent the spread of bovine tuberculosis.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Dr. Joseph VanTiem, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8715

RIN: 0579–AA53

345. EXPORT CERTIFICATION

Legal Authority: 7 USC 147a

CFR Citation: 7 CFR 353; 7 CFR 354

Legal Deadline: None

Abstract: The Department is proposing to revise the "Phytosanitary Export Certification" regulations, which concern inspection and certification of plants and plant products offered for export. The proposed rule would facilitate the phytosanitary certification of American agricultural products by ensuring that a sufficient number of qualified individuals are available to carry out Federal certification activities and by implementing new certification systems in conjunction with existing phytosanitary certification. Revising the regulations would make them easier to understand, thereby increasing compliance and the effectiveness of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Leonard M. Crawford, Senior Operations Officer, Plant Protection and Quarantine, Department of Agriculture, Animal and Plant Health Inspection Service, Room 633 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8537

RIN: 0579–AA54

346. ANIMAL WELFARE—STANDARDS FOR MARINE MAMMALS

Regulatory Plan: This entry is Seq. No. 1 in Part II of this issue of the Federal Register.

RIN: 0579–AA59

347. INTRODUCTION OF NONINDIGENOUS ORGANISMS

Regulatory Plan: This entry is Seq. No. 2 in Part II of this issue of the Federal Register.

RIN: 0579–AA61

348. DEFINITION OF "BIOLOGICAL PRODUCTS" AND "GUIDELINES"

Legal Authority: 21 USC 151 to 159

CFR Citation: 9 CFR 101

Legal Deadline: None

Abstract: The proposed rule would update the definitions of "biological products" and "guidelines" to reflect current usage. The definition of biological products has not been amended since 1973. APHIS has received a citizen's petition from producers of veterinary biological products to update this definition to accommodate advances in scientific knowledge and to reflect current usage. Similarly, a definition of guidelines is necessary to describe the purpose of such documents as veterinary biologics memoranda, licensing considerations, and notices.

The proposal would provide guidance to producers who are making a choice to seek regulatory approval from the Food and Drug Administration for a product intended for use as an animal drug (e.g. antibiotics, hormones, feed supplements, etc.) or from APHIS for a product intended for use as a veterinary biological product (e.g. vaccines, adjuvants, immunomodulators, and diagnostics). Submission to the appropriate Federal agency would depend upon the intended use of the product for which regulatory approval is sought.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Dr. Frank Y. Tang, Biotechnologist, BCTA, BBEP, Veterinary Biologics, Department of Agriculture, Animal and Plant Health Inspection Service, Room 852, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, 301 436-4833

RIN: 0579–AA65

349. • IN VITRO TESTS IN PLACE OF ANIMAL TESTS FOR IMMUNOGENICITY

Legal Authority: 21 USC 151 to 159

CFR Citation: 9 CFR 113

Legal Deadline: None

Abstract: Under the Virus-Serum-Toxin Act, veterinary biologics are required to be pure, safe, potent, and efficacious (not contaminated, dangerous, harmful, or worthless). Before a licensed veterinary biological product can be released for market, it must be demonstrated to be potent and efficacious. This is ordinarily done by determining the immunogenicity of the product. The use of fewer animals for immunogenicity testing would be consistent with the intent of animal welfare legislation to reduce dependence on animals for testing when feasible. The proposed rule would allow the use of in vitro tests in place of animal tests for determining the immunogenicity of veterinary biologics, provided that the in vitro tests meet the requirements of a "parallel line assay" so that the relative antigenic potency of a biological product can be determined by comparison with a reference preparation of known antigenicity. The proposed rule should not have a significant economic impact on manufacturers of veterinary biologics and other small businesses since immunogenicity testing is already required under the regulations pertaining to the preparation of veterinary biologics (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

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Government Levels Affected: None

Additional Information: ABSTRACT CONT: (9 CFR part 113). Under the proposed rule, manufacturers would retain the option whether or not to use in vitro tests in place of animal tests, based upon cost or feasibility.

The proposed rule would also require that reference preparations used in the determination of relative antigenic potency be updated periodically so as to ensure that reference preparations continue to be correlated with immunogenicity. Not to require requalification of references could result in the preparation of a worthless biological product.

Agency Contact: Dr. Albert Morgan, Chief Staff Veterinarian, Veterinary Biologics, BBEP, Department of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8245

RIN: 0579–AA66

DEPARTMENT OF AGRICULTURE (USDA)
Animal and Plant Health Inspection Service (APHIS)

Final Rule Stage

350. NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Legal Authority: 40 USC 4321

CFR Citation: 7 CFR 372

Legal Deadline: None

Abstract: The National Environmental Policy Act (NEPA) (42 USC 4321, et seq.) requires that every Federal agency establish procedures to implement the provisions of the Act. The proposed APHIS NEPA Implementing Procedures have been developed to ensure compliance with NEPA. These Agency-specific procedures will enable APHIS decision makers to reach decisions in which environmental concerns are fully reviewed and will ensure timely public involvement in the NEPA process. The procedures will identify Agency actions, requirements, guidance, and references for completion of environmental documents. The new APHIS NEPA Implementing Procedures will supersede the previous issues, APHIS Guidelines for Implementing NEPA Procedures (44 FR 50381-50384 and 44 FR 51272-51274), upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	06/03/94	59 FR 28814
NPRM Comment Period End	08/02/94	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Mr. Robert E. Pizel, Branch Chief, Environmental Analysis & Documentation, Department of Agriculture, Animal and Plant Health Inspection Service, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8565

RIN: 0579–AA33

351. HONEYBEES AND HONEYBEE SEMEN; REMOVING CERTAIN RESTRICTIONS ON HONEYBEES AND HONEYBEE SEMEN FROM NEW ZEALAND

Legal Authority: 7 USC 281

CFR Citation: 7 CFR 322

Legal Deadline: None

Abstract: The regulations governing the importation into the United States of honeybees and honeybee semen contain the criteria used for determining which countries may import honeybees and honeybee semen and under what conditions. This change will allow the importation of honeybees and honeybee semen from New Zealand, for other than research purposes, if accompanied by a certificate of origin.

Timetable:

Action	Date	FR Cite
NPRM	02/06/90	55 FR 3968
NPRM Comment Period End	02/21/90	
NPRM Comment Period Extended	03/02/90	55 FR 7499
NPRM Comment Period End	04/02/90	
NPRM Comment Period Extended	07/18/94	59 FR 36373
NPRM Comment Period End	08/17/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mr. James Fons, Senior Operations Officer, Department of Agriculture, Animal and Plant Health Inspection Service, Room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-8295

RIN: 0579–AA37

352. IMPORTATION OF NURSERY STOCK PLANTS, ROOTS, BULBS, SEEDS, AND OTHER PLANT PRODUCTS—PHASE II

Legal Authority: 7 USC 150dd to 150ff; 7 USC 154; 7 USC 155; 7 USC 157; 7 USC 159; 7 USC 160; 7 USC 162; 7 USC 164a

CFR Citation: 7 CFR 319.37

Legal Deadline: None

Abstract: To prevent the introduction of plant pests and diseases, the Department prohibits or restricts the importation of living plants, roots, bulbs, seeds, and related articles. The Department is updating the lists of those prohibited and restricted articles and is revising the regulatory requirements for the importation of imported plants established in growing media.

Timetable:

Action	Date	FR Cite
NPRM	09/07/93	58 FR 47074
NPRM Comment Period End	12/06/93	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Mr. Frank Cooper, Senior Operations Officer, Plant Protection and Quarantine, Department of Agriculture, Animal and Plant Health Inspection Service, Room 639-C, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-3249

RIN: 0579–AA41

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353. IMPORTATION OF UNMANUFACTURED WOOD

Legal Authority: 7 USC 150dd; 7 USC 150ee; 7 USC 150ff; 7 USC 151 to 167

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: USDA is developing regulations to restrict the importation of certain types of unmanufactured wood, such as logs, lumber, wood chips, bark, and pulp wood. There are a variety of plant pests and diseases associated with these articles, and there has recently been increased interest in importing large quantities of these articles into the U.S. At this time we are considering prohibiting the importation of logs and unmanufactured wood from certain tree genera and species, unless they meet importation criteria contained in the regulations and are imported under a permit issued by APHIS. The trees we are considering regulating in this manner are: all coniferous species; Carya; Fagus; Juglans; Liquidambar; Liriodendron; Nyssa; Populus; Quercus; Salix; and Thuja. The importation criteria would address the genus or species of the tree; the nature of the wood article; the country or area of origin; and methods by which the trees were harvested, stored, and treated.

Timetable:

Action	Date	FR Cite
ANPRM	09/22/92	57 FR 43628
ANPRM Comment Period End	11/23/92	
NPRM	01/20/94	59 FR 3002
Public Hearing	02/10/94	59 FR 3002
Public Hearing	02/23/94	59 FR 3002
NPRM Comment Period End	04/20/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: Mr. Michael J. Shannon, Chief Operations Officer, Operational Support, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-6716

RIN: 0579–AA47

354. CHICKEN DISEASE CAUSED BY SALMONELLA ENTERITIDIS

Legal Authority: 21 USC 111; 21 USC 134a; 21 USC 134f

CFR Citation: 9 CFR 82

Legal Deadline: None

Abstract: Disease caused by the bacterium known as Salmonella enteritidis serotype enteritidis (referred to below as SE) is a serious problem in egg-type chicken breeding flocks and egg production flocks, and is also a serious public health concern. The Animal and Plant Health Inspection Service (APHIS) has established regulations to control the spread of SE in egg-type chicken breeding flocks and egg production flocks, and continues to work to reduce the impact of SE on the poultry industry and consumer health. Under the current APHIS regulatory program, study flocks are identified through traceback of eggs implicated in human outbreaks of SE, these study flocks are subjected to testing for SE, and if the flocks test positive for SE, interstate movement of articles from the flocks is restricted. We are currently working with other agencies including the Agricultural Marketing Service; the Food and Drug Administration, and the Centers for Disease Control to evaluate the success of this approach and determine whether to propose changes to the regulatory procedures of the current program.

Timetable:

Action	Date	FR Cite
NPRM	08/02/93	58 FR 41048
Public Hearing	09/02/93	58 FR 46569
NPRM Comment Period Extended to 11/15/93	09/28/93	58 FR 50527
NPRM Comment Period End	10/01/93	58 FR 41048
Public Hearing	10/07/93	58 FR 52240
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. John Mason, Director, Salmonella Task Force, Veterinary Service, Department of Agriculture, Animal and Plant Health Inspection Service, Room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301 436-4363

RIN: 0579–AA48

355. IMPORTATION OF CERTAIN DRIED PORK PRODUCTS

Legal Authority: 7 USC 147a; 7 USC 150ee; 7 USC 161; 7 USC 162; 7 USC 450; 19 USC 1306; 21 USC 111; 21 USC 114a; 21 USC 134a; 21 USC 134b; 21 USC 134c; 21 USC 134f; 31 USC 9701; 42 USC 4331; 42 USC 4332

CFR Citation: 9 CFR 94

Legal Deadline: None

Abstract: The Federal government has responsibility for preventing the introduction into the United States of various diseases of livestock, including foot-and-mouth disease, rinderpest, African swine fever, and swine vesicular disease. To fulfill this responsibility, it is necessary for the Federal government to revise and update its regulations concerning the importation of pork products, based upon the methods and procedures used to process pork products. APHIS is developing regulations that would allow certain dry-cured pork products to be imported into the United States. Only hams, shoulders and loins derived from certain breeds of swine and processed in a specified manner would be allowed to be imported.

Timetable:

Action	Date	FR Cite
NPRM	04/15/94	59 FR 17999
NPRM Comment Period End	06/14/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7885

RIN: 0579–AA50

356. LLAMAS AND ALPACAS

Legal Authority: 7 USC 147a; 7 USC 150ee; 7 USC 161; 7 USC 162; 7 USC 450; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 114a; 21 USC 134a to 134f; 21 USC 135; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 92; 9 CFR 94

Legal Deadline: None

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Abstract: We are removing certain health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, Poland, and The Netherlands. This action appears warranted to relieve excessively burdensome restrictions

Timetable:

Action	Date	FR Cite
NPRM	08/05/93	58 FR 41643
Notice NPRM Comment Period Extended	09/28/93	58 FR 50527
NPRM Comment Period End	10/04/93	
Comment Period End	11/18/93	
Final Action	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dr. Michael David, Senior Staff Veterinarian, Import-Export Animal Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301 436-7511

RIN: 0579–AA62

DEPARTMENT OF AGRICULTURE (USDA)
Animal and Plant Health Inspection Service (APHIS)

Completed Actions

357. BIRD IMPORTATIONS; QUARANTINE FACILITIES

CFR Citation: 9 CFR 92

Completed:

Reason	Date	FR Cite
Final Action	09/14/94	59 FR 47063
Final Action Effective	10/14/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Keith A. Hand, 301 436-5097

RIN: 0579–AA57

BILLING CODE 3410-34-F

DEPARTMENT OF AGRICULTURE (USDA)
Cooperative State Research Service (CSRS)

Prerule Stage

358. ADMINISTRATIVE PROVISIONS FOR RESEARCH GRANTS PROGRAM

Legal Authority: 7 USC 450i(B); 7 USC 450i(c)(1)(A); 7 USC 3333; 7 USC 5921

CFR Citation: None

Legal Deadline: None

Abstract: Regulation will establish the procedures to be followed annually in the solicitation of proposals, the evaluation of such proposals, and the award of project grants under the National Competitive Research Initiative Grants Program, the Special Research Grants Program, the Rangelands Research Grants Program, and the Biotechnology Risk Assessment Program.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Terry J. Pacovsky, Director, Awards Management Division, Department of Agriculture, Cooperative State Research Service, Ag Box 2245, Washington, DC 20250-2245, 202 401-5024

RIN: 0524–AA07

DEPARTMENT OF AGRICULTURE (USDA)
Cooperative State Research Service (CSRS)

Proposed Rule Stage

359. HIGHER EDUCATION CHALLENGE GRANTS PROGRAM; ADMINISTRATIVE PROVISIONS

Legal Authority: 7 USC 3152

CFR Citation: 7 CFR 3405

Legal Deadline: None

Abstract: Regulation will establish the procedures to be followed annually in the solicitation of proposals, the evaluation of such proposals, and the award of project grants under the Higher Education Challenge Grants Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffery Gilmore, Higher Education Grant Programs Manager, Department of Agriculture, Cooperative State Research Service, Rm 310E Aerospace Center Building, 14th Street & Independence Ave. SW., Washington, DC 20250-2251, 202 401-1790

RIN: 0524–AA02

360. 1890 INSTITUTION CAPACITY BUILDING GRANTS PROGRAM; ADMINISTRATIVE PROVISIONS

Legal Authority: 7 USC 3318

CFR Citation: 7 CFR 3406

Legal Deadline: None

Abstract: Regulation will establish the procedures to be followed annually in the solicitation of proposals, and award of project grants under the 1890 Institution Capacity Building Grants Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

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Action	Date	FR Cite
NPRM Comment Period End	11/00/94	
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffrey Gilmore, Higher Education Grant Programs Manager, Department of Agriculture, Cooperative State Research Service, Rm 310E Aerospace Center, 14th Street & Independence Ave. SW., Washington DC 20250-2251, 202 401-1790

RIN: 0524–AA03

361. SMALL BUSINESS INNOVATION RESEARCH PROGRAM ADMINISTRATIVE PROVISIONS

Legal Authority: 15 USC 638

CFR Citation: 7 CFR 3403

Legal Deadline: None

Abstract: We propose to amend the Administrative Provisions of the Small Business Innovation Research (SBIR) Program to incorporate Compliance with the National Environmental Policy Act (NEPA) and changes to conform with the January 1993 issue of the SBIR Policy Directive. These changes include rewording and/or adding additional wording to further explain existing definitions and new requirements as well as the inclusion of new definitions and new requirements including the Documentation of Multiple Phase II awards. We propose to publish the SBIR Administrative Provisions as one document. This would be a practical and economical way to serve the public as well as offer one updated reference document for easy access.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Terry J. Pacovsky, Director, Awards Management Division, Department of Agriculture, Cooperative State Research Service, AG Box 2245, Washington, DC 20250-2245, 202 401-5024

RIN: 0524–AA08

362. • HIGHER EDUCATION MULTICULTURAL SCHOLARS PROGRAM; ADMINISTRATIVE PROVISIONS

Legal Authority: 7 USC 3152(b)(5); PL 103-111

CFR Citation: 7 CFR 3409

Legal Deadline: None

Abstract: Regulations will establish the procedures to be followed annually in the solicitation of proposals, the evaluation of such proposals and the award of project grants under the Multicultural Scholars Program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	03/00/95	
Final Action	07/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Jeffrey L. Gilmore, Higher Education Grant Porgrams Manager, Department of Agriculture, Cooperative State Research Service, Room 310E, Aerospace Center Building, 14th Street & Independence Ave. SW., Washington, DC 20250-2251, 202 401-1790

RIN: 0524–AA09

363. • FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE FELLOWSHIPS GRANTS PROGRAM; REVISED ADMINISTRATIVE PROVISIONS

Legal Authority: 7 USC 3152(b)(6)

CFR Citation: 7 CFR 3402

Legal Deadline: None

Abstract: Regulations will revise the procedures to be followed annually in the solicitation of proposals, the evaluation of such proposals, and the award of project grants under the program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	10/00/94	
Final Action	11/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffrey L. Gilmore, Higher Education Grant Programs Manager, Department of Agriculture, Cooperative State Research Service, Room 310E, Aerospace Center Building, 14th Street & Independence Ave. SW., Washington, DC 20250-2251, 202 401-1790

RIN: 0524–AA10

BILLING CODE 3410-22-F

DEPARTMENT OF AGRICULTURE (USDA)
Extension Service (EXS)

Proposed Rule Stage

364. PERSONAL PROPERTY

Legal Authority: 40 USC 483(d)(2)(E)

CFR Citation: None

Legal Deadline: None

Abstract: This regulation will set forth the procedures to be followed by State Cooperative Extension entities eligible to receive Federal excess personal property loaned by the Extension Service and used in the conduct of approved USDA cooperative Extension projects and programs. It will also cover the procedure for acquisition and disposal of personal property purchased with Federal funds.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty Bolt, Property Utilization Specialist, Department of Agriculture, Extension Service, Ag Box 0993, Cotton Annex, Washington, DC 20250-0993, 202 401-4502

RIN: 0527–AA02

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DEPARTMENT OF AGRICULTURE (USDA)
Extension Service (EXS)

Final Rule Stage

365. ADMINISTRATIVE MANUAL FOR FEDERAL EXCESS PERSONAL PROPERTY LOANED TO STATE COOPERATIVE RESEARCH ACTIVITIES

Legal Authority: 40 USC 483 (d)(2)(E)

CFR Citation: 7 CFR 3408

Legal Deadline: None

Abstract: This regulation will set forth the procedures to be followed by Cooperative Research entities eligible to receive Federal excess personal property loaned by the Cooperative State Research Service and used in the conduct of approved USDA cooperative research projects and programs.

Timetable:

Action	Date	FR Cite
NPRM	10/14/93	58 FR 53153
NPRM Comment Period End	11/15/93	
Interim Final Rule	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty Bolt, Property Utilization Specialist, Department of Agriculture, Extension Service, 3M00 Cotton Annex Building, Ag Box 0993, Washington, DC 20250-0993, 202 401-4502

RIN: 0527–AA01

BILLING CODE 3410-09-F

DEPARTMENT OF AGRICULTURE (USDA)
Farmers Home Administration (FmHA)

Prerule Stage

366. COMMUNITY PROGRAMS GUARANTEED LOANS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980-I; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: To amend subject regulation to clarify guaranteed loans for community facilities and water and waste disposal systems.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB48

DEPARTMENT OF AGRICULTURE (USDA)
Farmers Home Administration (FmHA)

Proposed Rule Stage

367. LIQUIDATION, MANAGEMENT, AND DISPOSITION OF REAL PROPERTY WHICH SECURED SINGLE FAMILY HOUSING (SFH) LOANS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1955

Legal Deadline: None

Abstract: Create a new subpart D to cover liquidation of Single Family Housing (SFH) loans, and management and sale of SFH inventory property; and revise existing subparts A, B, and C to have them apply to all programs other than SFH. Costs to create new subpart and revise and/or amend existing ones is minimal and would enhance all programs' ability to revise and/or amend the regulations with reduced clearances and provide personnel with clearer and simpler regulations to follow and implement. Will avoid "tie-up" of the regulations for one program subject to changes mandated by legislation or court order for another program, such as SFH changes being held up subject to Farmer Program changes being completed, as has frequently been the case.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA03

368. SECTION 502 RURAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS

Regulatory Plan: This entry is Seq. No. 3 in Part II of this issue of the Federal Register.

RIN: 0575–AA35

369. REAL PROPERTY INSURANCE

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1806

Legal Deadline: None

Abstract: Revisions to bring FmHA into compliance with current industry standards. Also, to incorporate provisions for obtaining and monitoring flood insurance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA53

USDA—FmHA

Proposed Rule Stage

370 CIVIL RIGHTS COMPLIANCE REQUIREMENTS—1940-D

Legal Authority: PL 100-259; PL 88-352; 42 USC 2000d et seq; PL 90-284; 42 USC 3601 to 3619; PL 100-430; PL 92-318; 20 USC 1681 et seq; PL 93-112; 29 USC 794; PL 94-135; 42 USC 6101 et seq; PL 94-239; 15 USC 1601 et seq; EO 11246

CFR Citation: 7 CFR 15; 12 CFR 202; 28 CFR 42; 45 CFR 90; 41 CFR 60 to 64; 24 CFR 14

Legal Deadline: None

Abstract: Will effectuate a comprehensive civil rights regulation implementing the following laws: The Equal Credit Opportunity Act (ECOA); Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (The Fair Housing Act); section 504 Federally conducted programs, Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975, and programs and activities; Amendments of 1972; the Age Discrimination Act of 1975; and Executive Order 11246. The revised regulations will provide detailed guidelines for field offices for improved enforcement and compliance with these laws which heavily impact FmHA's programs. Mechanisms for monitoring compliance by field offices and recipients of FmHA's financial assistance at all levels will decrease the Agency's vulnerability due to noncompliance with recently enacted Civil Rights legislation. Also includes section 504 of the Rehabilitation Act of 1973.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Interim Final Rule	00/00/00	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA83

371. PLANNING AND PERFORMING SITE DEVELOPMENT WORK

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1924-C

Legal Deadline: None

Abstract: Under HR 5334 the Secretary is authorized to accept locally approved subdivisions. This regulation will be amended to no longer require approval of individual subdivisions before FmHA loans are approved within the subdivision. Instead, there will be individual site approval requirements. The cost of implementing the changes would include procedure development, training, and development of forms. The benefits would be that FmHA site requirements would be consistent with HUD and VA.

Timetable:

Action	Date	FR Cite
NPRM	08/19/94	59 FR 42778
NPRM Comment Period End	10/18/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA88

372. HOUSING FOR RURAL HOMELESS AND MIGRANT FARMWORKERS; POLICIES, PROCEDURES, AND AUTHORIZATIONS

Legal Authority: 42 USC 1486

CFR Citation: 7 CFR 1944-H (New)

Legal Deadline: Final, Statutory, March 28, 1991.

Abstract: This regulation provides for the eligibility of the rural homeless and migrant farmworkers under Section 516 Farm Labor Housing Program. Regulations are being drafted to implement this provision of the law which will provide short term occupancy housing for these individuals.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB14

373. MANAGEMENT OF HAZARDOUS SUBSTANCES

Legal Authority: PL 96-510; PL 94-580; PL 94-469; PL 92-500

CFR Citation: 40 CFR 300; 40 CFR 260; 40 CFR 700; 40 CFR 400

Legal Deadline: None

Abstract: There are a number of federal environmental statutes which govern the management of hazardous substances, materials and wastes. At the present time, FmHA does not have implementing regulations for these federal statutes. The development of implementation procedures for managing hazardous substances is necessary to insure consistency in compliance with Federal, as well as State environmental statutes, and to develop appropriate "due diligence" policies to minimize the Agency's liability with regard to environmental cleanups of hazardous waste in loan processing/servicing and property management activities. FmHA has approximately 3,500 inventory properties. FmHA cannot be certain how many of these inventory properties will require hazardous waste cleanup prior to sale.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room

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6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB18

374. HOUSING PRESERVATION GRANTS FOR REPLACEMENT OF HOUSING

Legal Authority: 42 USC 1490m

CFR Citation: 7 CFR 1944 subpart N

Legal Deadline: None

Abstract: The Housing Preservation Grant program will be expanded to include Housing Preservation Grant funds to be used for replacement housing. Funds will be used to provide loans or grants, not to exceed $15,000 per unit, to owners of single family housing to replace existing housing if repairs or rehabilitation of the housing is not practicable and the owner of the housing is unable to afford a loan under Section 502 for replacement housing.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB43

375. LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

Legal Authority: 7 USC 1989; 16 USC 1005; 5 USC 301

CFR Citation: 7 CFR 1942 subpart F; 7 CFR 1823; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: This action will update the loan making and servicing responsibilities for Indian Land Acquisition loan reserve accounts and loan security issues. Weaknesses identified by OIG in past audits will be addressed.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB44

376. ELIMINATION OF CONSOLIDATION OF LOANS

Legal Authority: 7 USC 1989

CFR Citation: 7 CFR 1951

Legal Deadline: None

Abstract: This rule is necessary to eliminate consolidation as a servicing action for insured farm loans. This action is taken as a result of the new requirements under the 1990 FACT Bill regulation and the Federal Credit Reform Act (FCRA) which have made loan consolidation increasingly more difficult and costly. Elimination of consolidation will not eliminate an essential tool for servicing delinquent accounts or reduce program benefits to borrowers.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB46

377. OFFSETS OF FEDERAL PAYMENTS TO FMHA BORROWERS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1951-C; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA) proposes to amend its regulations on offsets of Federal payments to FmHA borrowers by removing repetitious directions and ambiguous guidance used by FmHA field offices to determine salary offset feasibility. The intended effect of this action is to add further guidance on salary offset eligibility criteria and to clarify the language of the regulations. The additional guidance provided by these proposed revisions will help to increase delinquent debt collection. If no revisions are made, it could result in reduced collections using administrative, salary and IRS offset.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB55

378. REVISION TO PLANNING AND PERFORMING CONSTRUCTION AND OTHER DEVELOPMENT AND RELATED CONSTRUCTION SECTIONS OF OTHER FMHA REGULATIONS

Legal Authority: 42 USC 7701 et seq; PL 95-124; EO 12699

CFR Citation: 7 CFR 1924-A; 7 CFR 1942-A; 7 CFR 1942-C; 7 CFR 1948-C; 7 CFR 1980-E; 7 CFR 1980-G; 7 CFR 1944

Legal Deadline: Final, Statutory, September 15, 1994. Other, Statutory, February 28, 1995.
Executive Order 12699 requires agencies to plan and initiate by February 1, 1993, measures to assure appropriate consideration of Seismic Safety.

Abstract: The Earthquake Hazards Reduction Act of 1977 (PL 95-124, 42 USC 7701 et seq.) was passed to reduce the risk of personal injury and property damage from earthquakes through the establishment and maintenance of an effective earthquake hazards reduction program. Executive Order 12699 (EO) "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" requires all Federal agencies to ensure that new Federally assisted buildings are designed and constructed in accord with appropriate seismic design and construction standards. Each agency is responsible for issuing or amending its regulations or procedures, planning for implementation through its own budget process, and regularly reviewing its regulations and procedures. The impact on National economic growth is considered to be negligible. For the typical FmHA/RDA funded new building, the additional cost associated with this requirement (1 to 2 percent of the total construction cost) is expected to be well worth the benefits gained.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	06/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB59

379. ENVIRONMENTAL PROGRAM

Legal Authority: PL 91-190

CFR Citation: 7 CFR 1940

Legal Deadline: None

Abstract: Section 1940.311 of FmHA Instruction 1940-G, Environmental Program, describes certain utility systems which meet the criteria for environmental review using the format for a Class I environmental assessment. There has been some confusion as to what constitutes a "substantial increase" in withdrawal or discharge, and there has also been some confusion as to what criteria should be used when calculating a 50,000 gallon per day withdrawal from surface or groundwater. It is expected that the effect of this action will be eliminate this unnecessary confusion, and reduce documentation and paperwork on the part of FmHA employees in the preparation and review of Class I environmental assessments based on these sections.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB64

380. SECURITY SERVICING FOR MULTIPLE-FAMILY HOUSING LOANS

Legal Authority: 7 USC 1980; 41 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1965-B

Legal Deadline: None

Abstract: Section 1965.85 of FmHA Instruction 1965-B requires that each delinquent MFH account be classified on a delinquency report in addition to the preparation of a detailed servicing plan. Since the plan also includes the reason for the delinquency and the plans for resolving the problem, the classification is a duplication of work. We propose to eliminate the classifying of the account with this revision. The only alternative would be to continue classifying delinquent accounts. The deletion of this requirement would result in reduced burden for District Offices and State Offices. Exhibit A to FmHA Instruction is being revised to clarify completion instructions and to provide uniformity required by the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
NPRM	09/04/90	55 FR 35907
NPRM Comment Period End	11/03/94	55 FR 35907
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB73

381. SMALL FARMER OUTREACH TRAINING AND TECHNICAL ASSISTANCE PROGRAM

Legal Authority: PL 101-624; 7 USC 2279; 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1943-C

Legal Deadline: None

Abstract: The subpart is being added to meet the objectives of the Small Farmer Outreach Training and Technical Assistance Program which will allow the Farmers Home Administration to fund cooperative and other agreements or enter into a Memorandum of Understanding with 1890 or other eligible educational institutions or community based organizations. (1890 Colleges and Universities - Black Land Grant Colleges established under the 1890 Morrill Act.)

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB74

382. REORGANIZATION PLANS UNDER FEDERAL BANKRUPTCY CODES

Legal Authority: 7 USC 1989

CFR Citation: 7 CFR 1924; 7 CFR 1951; 7 CFR 1956; 7 CFR 1962

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA) proposes to amend its insured loan servicing regulations to provide additional guidance to field offices for the servicing of borrowers accounts who file Chapters 11, 12, or 13 bankruptcy. This action is necessary as the present regulations provide very little information on this subject. The intended effect is to have a more uniform and standard system for servicing these types of bankruptcies.

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USDA—FmHA — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB76

383. COMMUNITY FACILITY LOANS: RECREATION AND TOURISM

Legal Authority: 7 USC 1932 note; 12 USC 301; 7 CFR 2.23; 7 CFR 2.70; 7 USC 1989; 42 USC 1480; 7 USC 301; 16 USC 1005

CFR Citation: 7 CFR 1980; 7 CFR 1942; 7 CFR 1948

Legal Deadline: None

Abstract: The existing regulations for RDA's Community Facility Loan Program, Business and Industry Loan Program and Intermediary Relending Program all prohibit loans for recreational facilities. Recognizing that recreation and tourism can be an important tool for economic development in some rural areas, RDA is proposing to remove the prohibition on loans for such facilities from all three programs. This will allow the three programs to be potential sources of financing for rural recreational facilities when other program requirements are met.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB78

384. RURAL HOUSING VOUCHER PROGRAM

Legal Authority: 42 USC 1490r

CFR Citation: 7 CFR 1944-O

Legal Deadline: None

Abstract: This regulation will implement a rural housing voucher program in accordance with Section 542 of the Housing Act of 1949. The Agency proposes to provide funds to grantees to assist very low-income persons and families to afford rental housing in rural areas and by assisting such families pay rent for decent, safe and sanitary housing. Grantees will be selected on a competitive basis and funded for a 5 year period. Assistance will include an administrative fee for the grantee and cover the difference in tenants' rent between Agency determined market rent and 30 percent of the family's adjusted income. Priority and fund distribution will consider subsidy needs of currently build and operating rural rental housing financed under Section 515.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB79

385. DEBT SETTLEMENT

Legal Authority: 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1956-B

Legal Deadline: None

Abstract: The Regulation is being revised to emphasize effective debt collection through administrative offsets, pursuing judgments, and making borrowers more accountable for the debt.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB80

386. DECISION TO LIQUIDATE

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; PL 100-387; 7 CFR 2.23; 7 CFR 2.70; PL 101-82

CFR Citation: 7 CFR 1980

Legal Deadline: None

Abstract: The Agency proposes to amend its regulations and appropriate Lenders Agreement, Form FmHA 449-35, to clarify the circumstances and to establish a timeframe under which the decision to liquidate will be made. The intended effect is to provide three independent criteria to serve as the basis for determining when the decision to liquidate should occur. The anticipated benefit will be that liquidations will occur more uniformly when the three criteria are met. This will provide more guidance to the lender regarding how to proceed when all other workout situations have been exhausted.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB81

387. COMMUNITY FACILITY LOANS

Legal Authority: PL 103-129

CFR Citation: 7 CFR 1942-A

Legal Deadline: Final, Statutory, May 31, 1994.
Prohibition regarding electric service contained in P.L. 103-129 must be implemented within six months of 11/01/93.

USDA—FmHA — **Proposed Rule Stage**

Abstract: The revised regulations will implement a provision of the Rural Electrification Administration Loan Restructuring Act of 1993, that prohibits a condition for assistance under any RDA program be a requirement that the recipient of such assistance accept or receive electric service from any particular utility, supplier, or cooperative. In addition, a proposed change in the security requirements for loans secured primarily by revenue made to construct or improve solid waste facilities is being made. There will be no significant costs associated with this action. The benefits will be in the form of loan and grant funds available to rural communities through the programs.

Timetable:

Action	Date	FR Cite
NPRM	08/19/94	59 FR 42783
NPRM Comment Period End	10/18/94	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB82

388. INTERMEDIARY RELENDING PROGRAM REWRITE

Legal Authority: 7 USC 1932 note; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1948

Legal Deadline: None

Abstract: This regulatory package is an initiative to enhance the program through revisions based on experience with operation of the program. The primary changes under consideration include the following: (1) Provide clarifications as to which requirements apply only to FmHA IRP loan funds and which apply to everything in the IRP revolving fund, (2) Authorize FmHA State Offices to accept and process applications, (3) Clarify conditions under which an intermediary that does not have lending experience may qualify, (4) Provide that proposed intermediaries that are delinquent on a Federal debt are not eligible, (5) Authorize loans for refinancing and prohibit loans for housing, (6) Provide general guidelines for interest rates and terms of loans to ultimate recipients, (7) Provide that intermediaries may receive a series of subsequent loans of up to $1 million each and raise the ceiling on loans to an ultimate recipient to $250,000, (8) Provision for a reserve for bad debts of 15 percent of the intermediary's portfolio, (9) Allow intermediaries to draw up to 25 percent of their loan at loan closing, (10) Revise application requirements to eliminate some items, provide more detail (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule to raise loan limit from 2 million to 4 million	05/12/94	59 FR 24635
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: ABSTRACT CONT: and provide for streamlined subsequent loan applications. (11) Adjust the priority point scoring system. (12) Provide guidelines for FmHA concurrence in proposed loans to ultimate recipients.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB83

389. • SPECIAL DISASTER SET-ASIDE PROGRAM; FRUIT AND NUT TREES

Legal Authority: 7 USC 1989

CFR Citation: 7 CFR 1945-D

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA proposed to make an administrative change to its emergency loan (EM) regulations by revising Exhibit D to include all fruit and nut trees. By including fruit and nut trees, future advances to loan funds can be disbursed up to 5 years when loan funds are used to rehabilitate and/or reestablish the trees. Additionally, the limitation on the amount of physical loss will not exceed the value of the established grove (trees and land), as appraised on the day before the disaster occurred, or 1 year and 1 day before the disaster designation was requested by a State Governor or an FmHA State Director, whichever date has the higher value, minus the present market value of the land and any remaining trees.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB86

DEPARTMENT OF AGRICULTURE (USDA) — Final Rule Stage

Farmers Home Administration (FmHA)

390. RECAPTURE OF SECTION 502, RURAL HOUSING SUBSIDY

Legal Authority: 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1951, subpart I

Legal Deadline: None

Abstract: The Farmers Home Administration (FmHA) proposes to revise the regulation for the recapture of subsidy granted on Section 502 rural housing loans. This action will simplify and automate the calculation process in conjunction with the purchase of a modern commercial off-the-shelf loan servicing system with escrow capability.

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Final Rule Stage

Timetable:

Action	Date	FR Cite
Proposed Rule	10/25/90	55 FR 42987
Final Action	07/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA29

391. DENY CREDIT TO APPLICANTS DELINQUENT ON ANY FEDERAL DEBT

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1910(a); 7 CFR 1941(a); 7 CFR 1943(a); 7 CFR 1945(d); 7 CFR 1980(b); 7 CFR 1943(b); 7 CFR 1823; 7 CFR 1942-A; 7 CFR 1942-C; 7 CFR 1942-G; 7 CFR 1942-H; 7 CFR 1942-I; 7 CFR 1942-J; 7 CFR 1942-K; 7 CFR 1944-A

Legal Deadline: None

Abstract: OMB Circular A-129 dated November 25, 1988, recommends that the processing of applications for Federal direct loans be suspended and require private lenders to suspend processing of loan guarantee applications when an applicant is found to be delinquent on a Federal debt. The Federal Debt Collections Procedures Act of 1990 also requires that credit be denied if an outstanding judgment lien obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, is found.

Timetable:

Acuon	Date	FR Cite
NPRM	05/04/94	59 FR 23018
NPRM Comment Period End	07/15/94	59 FR 2318
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: Item 7 (Cont.) 1944-D, E, and J; 1948-B and C; 1951-E; 1980-E, G, and I

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA66

392. SERVICING CASES WHERE UNAUTHORIZED LOAN OR OTHER FINANCIAL ASSISTANCE WAS RECEIVED—MULTIPLE FAMILY HOUSING

Legal Authority: 5 USC 301; PL 93-357; 42 USC 1480; 42 USC 2942

CFR Citation: 7 CFR 1951, subpart N; 7 CFR 2.70

Legal Deadline: None

Abstract: General revision to keep the regulation current with the clarification of policy and incorporation of changes regarding automated processing of payments.

Timetable:

Action	Date	FR Cite
NPRM	11/19/91	56 FR 58325
NPRM Comment Period End	01/21/92	56 FR 58325

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $5,800; Yearly Recurring Cost: $5,800; Base Year for Dollar Estimates: 1995

Sectors Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA69

393. ADVERSE DECISIONS AND ADMINISTRATIVE APPEALS; FMHA INSTRUCTION 1900-B

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.70

CFR Citation: 7 CFR 1900 subpart B

Legal Deadline: None

Abstract: The Agency published an interim rule amending FmHA Instruction 1900-B to provide for multi-party appeals involving the sale of suitable farmland to eligible applicants and denials of leaseback/buyback and homestead protection rights. These changes were a result of Section 611 of the Agricultural Credit Act of 1987. Subsequently passage of the 1990 Farm Bill P.L. 101-624 required further changes to appeals involving the sale of inventory property classified as suitable farmland. These changes superseded those made in the interim rule. Those changes were published in the Federal Register as an interim rule on April 30, 1992, Vol 57 No. 84 page 18612 (see RIN 0575-AA91).

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/30/92	57 FR 18612
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA70

394. FARMER PROGRAMS GUARANTEED INTEREST ASSISTANCE PROGRAM

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980(a); 7 CFR 1980(b); 7 CFR 1980(d); 7 CFR 1980(e); 7 CFR 1980(g); 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: This regulation will provide for a government subsidy to lenders for interest rates for guaranteed Farmer Programs loans so the borrower will be paying interest rates for guaranteed loans that are similar to insured loans. This should provide an incentive for using the guaranteed loan program. The potential cost to the Government will be reduced as the Government will only pay a lender up to 90 percent of the losses on loans and only part of the interest rate rather than loaning a borrower the full amount of the loan and paying an investor the full cost of the Government borrowing the money for an insured loan. The benefit is that the borrower will be paying an interest rate for guaranteed loans that is comparable to that for insured loans.

USDA—FmHA

Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/28/91	56 FR 8258
Interim Final Rule Comment Period End	04/29/91	56 FR 8258

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA80

395. SECTION 502 RURAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS (DEFERRED MORTGAGE PROGRAM)

Legal Authority: 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1944-A; 7 CFR 1951-G

Legal Deadline: None

Abstract: This regulation is being amended to include a mortgage payment deferral program to enable the Agency to assist a greater number of very low-income families. The Program is intended to provide additional assistance to those families who can not afford the costs of homeownership with full interest credit benefits.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/23/91	56 FR 41764

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The effective date of the law is April 1, 1991.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA87

396. FARMER PROGRAM ACCOUNT SERVICING POLICIES FOR SECTION 1816 AND OTHER RELATED SECTIONS FOR THE "1990 FACT ACT"

Legal Authority: PL 101-624, sec 1816; 7 USC 1989; 42 USC 1480; 5 USC 301; PL 102-554, sec 10; PL 102-554, sec 23

CFR Citation: 7 CFR 1900 subpart B; 7 CFR 1924 subpart B; 7 CFR 1951 subpart S; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Provisions of the Food, Agriculture, Conservation and Trade Act of 1990, as they affect the Farmers Home Administration's Farmer Programs, plus relevant provisions of the Omnibus Budget Reconciliation Act of 1990. In addition, the Agricultural Credit Act of 1992 provided that in extraordinary circumstances, the State Director could extend the 60-day time period for submitting an application for Farmer Programs Loan Servicing (RIN 0575-AB42, published as an interim rule, March 23, 1993, 58 FR 15417). RIN 0575-AB42 will be combined into RIN 0575-AA91; and one final rule will be published.

Timetable:

Action	Date	FR Cite
NPRM	10/23/91	56 FR 54970
NPRM Comment Period End	11/22/91	56 FR 54970
Interim Final Rule	04/30/92	57 FR 18612

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AA91

397. AGRICULTURAL RESOURCE CONSERVATION DEMONSTRATION PROGRAM

Legal Authority: 7 USC 1989; 7 USC 4201; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980, subpart J; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: The FACT Act as amended, authorized a demonstration program to preserve our national farmland resources for future generations. The program provides for Federal guarantees of timely payments of principal and interest due for 10 years and substantial interest assistance on loans made to States and instrumentalities of States. A number of States currently have programs in which the State purchases development rights from farmers so the farmland is not developed. The program was fashioned, to some extent, after several of these programs. States are required to share in this effort by contributing an amount equal to at least half the amount of the loan guaranteed by FmHA. Each eligible State may receive up to $10 million in guarantees per fiscal year. Loan funds may be invested by the borrower to increase the capital available for farmland preservation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/92	57 FR 4336
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: Published in the Federal Register as an Interim Final Rule (57 FR 4336-4350).

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB01

398. IMPLEMENT SECTION 1818 (BORROWER TRAINING) OF THE FOOD AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990 (FACT ACT)

Legal Authority: PL 101-624, sec 1818

CFR Citation: 7 CFR 1910 subpart A; 7 CFR 1943 subpart B; 7 CFR 1924 subpart B; 7 CFR 1941 subpart A; 7 CFR 1945 subpart D; 7 CFR 1943 subpart A; 7 CFR 1951 subpart S; 7 CFR 1980 subpart B; 7 CFR 1962 subpart A; 7 CFR 1965 subpart A

Legal Deadline: None

Abstract: Regulations are needed to set forth the curriculum and process to train FmHA borrowers.

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Timetable:

Action	Date	FR Cite
NPRM	11/25/92	57 FR 55473
NPRM Comment Period End	12/28/92	57 FR 55473
Interim Final Rule	12/30/93	58 FR 69190
Final Action Effective	03/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB13

399. RURAL HOUSING GUARANTEED LOANS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980 subpart D; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Revise existing Guaranteed Loan Regulations to make minor corrections and additions for clarification purposes.

Timetable:

Action	Date	FR Cite
ANPRM	04/28/92	57 FR 17858
ANPRM Comment Period End	05/28/92	57 FR 17858
NPRM	09/03/93	58 FR 46889
NPRM Comment Period End	11/02/93	58 FR 46889
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB15

400. SECTION 502 RURAL HOUSING LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS (INTEREST CREDIT/EARNED INCOME)

Legal Authority: PL 101-508; PL 101-201; 25 USC 1480; 42 USC 1437; EO 12744

CFR Citation: 7 CFR 1944, subpart A

Legal Deadline: None

Abstract: The definition of income is being revised pursuant to the Omnibus Budget Reconciliation Act of 1990. The regulations are being revised to clarify that the interest of individual Indians in trust on restricted land shall not be considered a resource in determining eligibility. Changes are being made to exclude from the Agent Orange settlement fund or any other fund established pursuant to the settlement in Agent Orange liability litigation. Based on a Supreme Court decision FmHA is deleting the public posting that require county supervisors to post on the bulletin board after each selection period a list of those applications selected and notified of the processing of their applications. The county supervisors are also required to review the SFH applicants audited or most recent Federal tax return. The interest credit regulation is being revised to remove previous discrepancies.

Timetable:

Action	Date	FR Cite
NPRM	01/06/93	58 FR 507
NPRM Comment Period End	03/05/93	58 FR 507

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $38,197; Yearly Recurring Cost: $38,197

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB16

401. DISPOSITION OF INTERESTS IN INDIAN TRUST LAND

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1955; 7 CFR 1965

Legal Deadline: None

Abstract: Incorporate requirements of the Cranston-Gonzalez National Affordable Housing Act, Section 708, into FmHA Instructions 1955-A, 1955-B, 1955-C, 1965-B, and 1965-C. This law prohibits the transfer or sale of FmHA's security interest in Indian Trust Land to anyone except an eligible tribal member, the tribe, or the Indian Housing Authority serving the tribes. These requirements will enhance the opportunity of these specific entities to become homeowners, thereby, serving a previously underserved area.

Timetable:

Action	Date	FR Cite
NPRM	10/19/93	58 FR 53891
NPRM Comment Period End	12/17/93	58 FR 53891

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB17

402. GUARANTEED LOAN PROGRAMS; MONITORING LIQUID ACCOUNTS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980-A; 7 CFR 1980-B; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Lenders are currently required to monitor liquidated accounts for five years. This regulation will reduce that period of time to three years. This regulation change only affects the monitoring of guaranteed loan accounts in which a final loss claim has been paid. These accounts will be monitored by lenders for three years following the liquidation for potential future recoveries.

Timetable:

Action	Date	FR Cite
NPRM	05/05/94	59 FR 23173
NPRM Comment Period End	07/05/94	59 FR 23173

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB29

USDA—FmHA

Final Rule Stage

403. FIVE-YEAR APPLICANT LOAN ELIGIBILITY CERTIFICATION BY COUNTY COMMITTEE

Legal Authority: PL 101-554, sec 17

CFR Citation: 7 CFR 1910-A; 7 CFR 1941-A; 7 CFR 1943-A; 7 CFR 1943-B; 7 CFR 1980-B

Legal Deadline: NPRM, Statutory, April 30, 1993. Final, Statutory, October 1, 1993.

Abstract: The objective of this action is to complete a final action for 5-year County Committee eligibility for Farmer Programs loan applications (Except emergency loan applications). The action decrease the paperwork required for loan applications, and reduce the amount of time needed by the county Committee to review loan applications. The action is required by Public Law 101-554 and 101-624. No additional costs to the Government or to the public will be incurred as a result of this action. Government costs will be reduced because County Committee members will spend less time reviewing applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/25/93	58 FR 44745
Final Action Effective	12/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB32

404. IMPLEMENTATION OF CERTIFIED LENDER PROGRAM

Legal Authority: 7 USC 1987; 42 USC 1480; 5 USC 301, sec 15 and 18; PL 102-554

CFR Citation: 7 CFR 1980 subpart A; 7 CFR 1980 subpart B; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: Final, Statutory, October 1, 1993. Other, Statutory, April 28, 1993.
Sec 23 of Pub. L. 102-554, requires that interim regulations be published by April 28, 1993, and final regulations published by October 1, 1993.

Abstract: Lenders participating in the Guaranteed Loan Program have cited the excessive amount of paperwork and time required to apply for and receive approval on guaranteed loans as a deterrent to participation in the program. The Agency assembled a Guaranteed Overview Task Force to identify specific forms and regulations that could be eliminated or revised without increasing the risk to the Government. Fewer forms and a streamlined process will reduce operating costs for both FmHA and lenders. Regulations were being drafted when a law was passed requiring a Certified Lender Program, along with a simplified application process for guaranteed loans of $50,000 or less.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/24/93	58 FR 34302
Final Action Effective	09/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: This rule implements section 18 of the Agricultural Credit Improvement Act of 1992 which establishes a Certified Lender Program (CLP). Farm operating loans and farm ownership loans are excluded with the exception of non-farm enterprise activity from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local offices.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB33

405. 1980-E BUSINESS AND INDUSTRIAL LOAN PROGRAM—AUDIT REQUIREMENTS

Legal Authority: 7 USC 1989; 42 USC 1480; 7 USC 301

CFR Citation: 7 CFR 1980 subpart E

Legal Deadline: None

Abstract: This action will reduce the burden on business and industry guaranteed loan program borrowers by revising the requirements for financial statements and allowing our borrowers to provide unaudited financial statements instead of audits.

Timetable:

Action	Date	FR Cite
NPRM	03/28/94	59 FR 14371
NPRM Comment Period End	05/27/94	59 FR 14371
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB37

406. 1945-D EMERGENCY LOAN POLICIES, PROCEDURES, AND AUTHORIZATIONS—WAIVER OF CROP INSURANCE FOR CROPS PLANTED FOR HARVEST IN 1992 AND 1993

Legal Authority: 7 USC 1989; 7 USC 301

CFR Citation: 7 CFR 1945-D; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: The Food, Agricultural, Conservation and Trade Act of 1990 (FACT Act) (PL 101-624), as amended, waived the requirement for losses to the 1990 crop, and the Dire Supplemental Appropriations Act' waived it again for 1991 crop losses. This action is necessary to implement the provisions of the Supplemental Appropriations, Transfers and Rescissions for the fiscal year ending September 30, 1992, and Other Purposes Act (PL 102-368 1992 Supplemental Appropriations Act).

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/17/92	57 FR 54172
Final Action Effective	09/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB38

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407. INSURED AND GUARANTEED OPERATING AND FARM OWNERSHIP LOAN AND RELATED INSTRUCTIONS TO IMPLEMENT SECTIONS 4, 5, 7, 8, 9, AND 19 OF THE AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Legal Authority: PL 102-554

CFR Citation: 7 CFR 1910; 7 CFR 1924; 7 CFR 1941; 7 CFR 1943; 7 CFR 1945; 7 CFR 1980; 7 CFR 1955

Legal Deadline: Final, Statutory, October 1, 1993. Other, Statutory, April 28, 1993.
Sec 23 of Pub. L. 102-554, requires that interim regulations be published by April 28, 1993, and final regulations published by October 1, 1993.

Abstract: The law was enacted to assist beginning farmers and ranchers in getting started in agriculture. The 1987 Census of Agriculture indicated an increase of 20.7 percent in the number of farmers in the 65 and over age group between 1978 and 1987. During the same period the number of farmers less than 25 years of age declined by 46.2 percent and the number of farmers between 25 and 34 years of age declined by 15 percent. The impact and cost on the farm ownership loan program should be minimal in view of the required 10 percent cash downpayment by beginning farmer applicants. The impact on the operating loan program should be minimal in view of FO loan restrictions during the first 5 years of participation in this program. Applicants have a choice of applying for FO and OL assistance under the new programs or under the existing FO and OL programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/15/93	58 FR 48275
Interim Final Rule Effective	09/30/93	58 FR 48275
Interim Final Rule Comment Period End	10/15/93	58 FR 48275
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB41

408. SECTION 14 OF THE AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992, (GRADUATION) AND SECTIONS 1819 (LOAN ASSESSMENT) AND 1821 (MARKET PLACEMENT) OF THE FACT ACT

Legal Authority: 42 USC 1480; 5 USC 301; 7 USC 1989; PL 101-624, sec 1819; PL 101-624, sec 1821; PL 102-554, sec 14

CFR Citation: 7 CFR 1910; 7 CFR 1924; 7 CFR 1941; 7 CFR 1951; 7 CFR 1980; 7 CFR 2.23; 7 CFR 2.70; 7 CFR 1943; 7 CFR 1945; 7 CFR 1962

Legal Deadline: Final, Statutory, October 1, 1993. Other, Statutory, August 28, 1993.
Sec 23 of Pub. L. 102-554, requires that interim regulations be published by April 28, 1993, and final regulations published by October 1, 1993.

Abstract: The objectives of this action are to improve borrowers' prospects for a successful operation. These changes are intended to promote graduation to private credit in conjunction with Loan Assessment and Market Placement regulations. The expected outcome is more rapid borrower progress and greater numbers of borrowers achieving economic viability. The primary focus of the graduation effort will be those borrowers classified "commercial" and "standard". These classifications signify borrowers that possess a financial position that would normally be expected to enable them to obtain private credit.

Timetable:

Action	Date	FR Cite
NPRM	12/30/93	58 FR 69274
NPRM Comment Period End	02/28/94	58 FR 69274
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB45

409. FARM LABOR HOUSING LOAN AND GRANT POLICIES, PROCEDURES, AND AUTHORIZATIONS

Legal Authority: 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1944, subpart D

Legal Deadline: None

Abstract: The Farmers Home Administration proposes to amend its farm labor housing loan and grant regulations. The intended effect of this proposed rule is to defray costs to nonprofit group or public body for packaging fees. The objective is to use loan/grant funds to reimburse such groups the cost of packaging and/or developing an application for an LH facility and for related technical assistance.

Timetable:

Action	Date	FR Cite
NPRM	09/15/93	58 FR 48330
NPRM Comment Period End	11/15/93	58 FR 48330
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB47

410. THE AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Legal Authority: PL 102-554, sec 18; PL 102-554, sec 22

CFR Citation: 7 CFR 1946; 7 CFR 1980

Legal Deadline: Final, Statutory, October 1, 1993. Other, Statutory, April 28, 1993.
Sec 23 of Pub. L. 102-554, requires that interim regulations be published by April 28, 1993, and final regulations published by October 1, 1993.

Abstract: The objective of this law, as expressed in these changes, is to assist farmers depending on and deserving of FmHA credit by easing credit requirements for guaranteed loans. The ratio of operating expenses of State mediation programs matched by FmHA also will rise from 50 to 70 percent. Both changes are mandated by the law.

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Timetable:

Action	Date	FR Cite
Interim Final Rule	12/17/93	58 FR 65871
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB51

411. 1927-B REAL ESTATE TITLE CLEARANCE AND LOAN CLOSING

Legal Authority: 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1927-B; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Attorney and title companies close FmHA loans, provide title clearances, and disburses FmHA loans funds. In order to protect the security of the government in the execution of these functions, FmHA requires them to have in full force and effect, an acceptable liability insurance policy for errors and omissions, deductible and appropriate level of fidelity coverage in the amount prescribed by FmHA. If the attorney or the title company wishes to close FmHA loans and has a larger deductible or lower insurance liability coverage, the State Director has to obtain authorization or exception from the National Office. The process is cumbersome and requires a great amount of paperwork and time.

Timetable:

Action	Date	FR Cite
NPRM	05/11/94	59 FR 24362
NPRM Comment Period End	07/11/94	59 FR 24362
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB52

412. RURAL BUSINESS ENTERPRISE GRANTS AND TV DEMONSTRATION GRANTS TECHNICAL ASSISTANCE AND TRAINING GRANTS NONPROFIT NATIONAL CORPORATIONS LOAN AND GRANT PROGRAM

Legal Authority: PL 101-624, sec 2375 (e)

CFR Citation: 7 CFR 1942-G; 7 CFR 1942-J; 7 CFR 1980-G

Legal Deadline: None

Abstract: Amend subject regulations to prohibit duplication of technical assistance grant funding provided by Forest Service (FS).

Timetable:

Action	Date	FR Cite
NPRM	03/16/94	59 FR 12200
NPRM Comment Period End	04/15/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB53

413. IMPLEMENT SECTIONS 11 AND 13 OF THE AGRICULTURE CREDIT IMPROVEMENT ACT 1993 (APPLICATION PROCESSING TIMEFRAME)

Legal Authority: PL 102-554

CFR Citation: 7 CFR 1910; 7 CFR 1980

Legal Deadline: Final, Statutory, October 1, 1993. Other, Statutory, April 28, 1993.
Sec 23 of Pub. L. 102-554 requires interim regulations by publish published by April 28, 1993, and final regulations publish by October 1, 1993.

Abstract: The Agricultural Credit Improvement Act of 1992 requires FmHA to change its procedures for notifying applicants for farmer programs loans and loan guarantees when information is needed to complete an application. In addition, County Offices will now be required to report applications that remain pending 45 days after receipt, and the reasons they remain pending. The Agency is also required to report to the Congress every month each application pending more that 60 days after its receipt. In addition, FmHA County Committees are required under the Act to review all applications for direct and guaranteed farmer programs loans not later than 5 days after receipt if there is more than one other complete application pending, and not later than 15 days if there are no other complete applications pending. These changes will ensure more timely and consistent processing of applications. Otherwise, their impact on the Agency should be minimal. Impact on applicants and participating lenders should be favorable, because it will address some of their expressed concerns regarding timeliness in processing.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/29/93	58 FR 68717
Final Action Effective	03/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB56

414. IMPLEMENTATION PROCEDURES FOR HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION PROVISIONS OF THE FOOD SECURITY ACT

Legal Authority: PL 101-624; PL 99-198

CFR Citation: 7 CFR 1940

Legal Deadline: None

Abstract: Subtitle B and subtitle C of title XII of the Food Security Act of 1985, Public Law 99-198, established requirements for the conservation of Wetlands and Highly Erodible Lands. These requirements were subsequently amended by the Food Agriculture Conservation and Trade Act of 1990, Public Law 101-624. The amendments, among other changes, would allow in some cases for graduated payment reductions rather than a complete loss of USDA program benefits to producers who contribute to excess soil erosion or wetland conversion. FmHA proposes to revise existing regulations to reflect the amendments required by Public Law 101-624. In addition, the regulations will be reorganized and supplemented to improve

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understanding and ease of implementation.

Timetable:

Action	Date	FR Cite
Final Action	04/00/95	
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB58

415. SECTION 515 NONPROFIT SET-ASIDE FUNDS

Legal Authority: 42 USC 1485; 7 USC 1989; 5 USC 301; PL 102-550, Sec 708

CFR Citation: 7 CFR 1940 subpart L; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Compliance with provisions of the Housing and Community Development Act allowing limited partnerships with a non-profit general partner to participate in set aside. Various other changes regarding available funds and pooling of unused funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/21/93	58 FR 38949
Final Action Effective	11/00/94	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB60

416. ACQUISITION AND MANAGEMENT OF REAL AND CHATTEL PROPERTY

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 2.23; 7 CFR 2.70; 7 CFR 1955A; 7 CFR 1955C

Legal Deadline: Final, Statutory, April 28, 1993.

Abstract: Provide additional notice to Native Americans to convey property prior to foreclosure, notify tribe of properties value and inform them of the amount of the governments bid at a foreclosure sale. Allow surplus property to be leased with or without an option to purchase to eligible program applicants. Will implement changes required by the Agricultural Improvement Act of 1992, H.R. 6129, which was signed on October 28, 1992. Will also regulate how properties can be transferred to Indian tribes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/29/93	58 FR 68722
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB63

417. BUSINESS AND INDUSTRIAL INTEREST BUYDOWN

Legal Authority: 7 USC 1989; 42 USC 1480; 7 USC 301; PL 103-50

CFR Citation: 7 CFR 1980

Legal Deadline: None

Abstract: This action will implement a provision of Public Law 103-50, which authorizes an interest rate buydown for certain Business and industry loans guaranteed through FY 1994 in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar. Lenders must limit the interest rate charged to prime plus 100 basis points. The Government will pay one percentage point of interest on the loan to the lender, thereby reducing the effective rate paid by the borrower. This action is intended to assist with economic recovery in the disaster areas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/02/94	59 FR 28465
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB69

418. REMOVAL OF THE PROHIBITION AGAINST CHARGING INTEREST ON INTEREST ON FMHA-GUARANTEED LOANS

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1980-A; 7 CFR 1980-B

Legal Deadline: None

Abstract: Lenders participating in the Guaranteed Loan Program have been reluctant to restructure the loans of delinquent guaranteed borrowers because of restrictive regulatory requirements. FmHA requires lenders to set aside the accrued interest portion of loans that are being restructured. Interest is only accrued on the outstanding principal. This practice is contrary to standard industry practice. Lenders normally capitalize the outstanding interest portion of the loan and reschedule or reamortize the payments based on the new principal amount. FmHA's restriction on capitalizing interest reduces the lender's return on the guaranteed loans. Also, the unique treatment of guaranteed loans requires additional bookkeeping efforts. There will be no substantial additional cost or savings with this change.

Timetable:

Action	Date	FR Cite
NPRM	03/30/94	59 FR 14769
NPRM Comment Period End	04/14/94	59 FR 14769
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB70

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419. COMMUNITY FACILITY LOANS: INTERNAL REVENUE SERVICE TAXPAYERS IDENTIFICATION NUMBER

Legal Authority: 7 USC 1989; 16 USC 1005; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

CFR Citation: 7 CFR 1942; 7 CFR 1948; 7 CFR 1951; 7 CFR 1980

Legal Deadline: None

Abstract: To amend subject regulations to comply with OMB Circular A-129 and simplify procedures for the Agencies field staff. Specifically, the changes will implement the requirement to use the Internal Revenue Service Taxpayers Identification number in the Borrowers case number and will provide mechanism for documentation of contacts with lenders. Additionally, some sections have been modified to provide clarification of the rules.

Timetable:

Action	Date	FR Cite
NPRM	06/15/94	59 FR 30717
NPRM Comment Period End	06/15/94	59 FR 30717
Next Action Undetermined		

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB77

420. BUSINESS AND INDUSTRIAL LOAN PROGRAM

Legal Authority: 7 USC 1989; 42 USC 1480; 7 USC 301; 7 CFR 2.23; 7 CFR 27.0

CFR Citation: 7 CFR 1980-E

Legal Deadline: None

Abstract: The Farmers Home Administration proposes to amend its Business and Industry loan servicing regulations. The action is necessary to clarity the procedure for categorizing and classifying loans according to payment frequency criteria. The intended affect is to clarify procedures for classifying and categorizing loan payment history.

Timetable:

Action	Date	FR Cite
NPRM	06/24/94	59 FR 32660
NPRM Comment Period End	08/23/94	59 FR 32660
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB84

421. • SPECIAL DISASTER SET-ASIDE PROGRAM; IMPLEMENTATION

Legal Authority: 7 USC 1989; 5 USC 301; 42 USC 1480

CFR Citation: 7 CFR 1951-T

Legal Deadline: None

Abstract: The Agency is proposing to amend its servicing regulations to implement the Special Disaster Set-aside program to provide FmHA officials with a servicing tool that will allow Farmer Program borrowers who were affected by the 1993 weather disasters to move their FmHA annual installments to the end of the loan term without restructuring their loan account(s). The intended effect is to service disaster victims in an efficient and timely manner and keep farmers and ranchers in business. This program will only be available to disaster victims until April 1, 1995, and only to those borrowers who are current or less than 180 days delinquent.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB85

422. • DISASTER ASSISTANCE

Legal Authority: 7 USC 1989; 5 USC 301; 42 USC 1980

CFR Citation: 7 CFR 1945-A

Legal Deadline: None

Abstract: The Farmers Home Administration proposes to amend its regulation to improve and expedite the disaster designation process that will make emergency loan assistance available in a more expeditious manner in declared/designated disaster areas to assist family farmers whose operations have sustained qualifying losses as a result of a major or natural disaster, and who wish to apply for such loan assistance. To not change the regulation which is out of date with the current definition of a single enterprise and with the current policy of using the Secretary of Agriculture's discretionary authority, if warranted, to designate a county(ies). The regulation would also continue to be out of date with the current policy of basing county wide production losses on a major single enterprise only, in lieu of requiring a determination of countywide production losses in all crops. To change the regulation will bring the designation process in line with the current policy of eliminating the requirement for determining a 30 percent countywide reduction in the normal year's dollar value of all crops in a county(ies). This action will update and improve the process of current policy if (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: State, Tribal

Additional Information: ABSTRACT CONT: there is a 30 percent or greater countywide reduction in the normal year's dollar value of a single enterprise (single crop), which is considered a major enterprise or crop in the county, or a determination that extenuating circumstances exist and warrant a designation under the Secretary of Agriculture's discretionary authority. This change will permit FmHA to automatically gather information for consideration of the Secretary's discretionary authority, and allow the Secretary to expeditiously designate the affected counties and make EM loans available to eligible family farmers.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture.

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Farmers Home Administration, Room 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0575–AB87

DEPARTMENT OF AGRICULTURE (USDA)
Farmers Home Administration (FmHA) — **Completed Actions**

423. WASTEWATER CIRCUIT RIDER GRANTS

CFR Citation: 7 CFR 1942 subpart N

Completed:

Reason	Date	FR Cite
Final Action No appropriation; none anticipated	07/13/94	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB24

424. DEBT SETTLEMENT—COMMUNITY AND BUSINESS PROGRAMS

CFR Citation: 7 CFR 1956

Completed:

Reason	Date	FR Cite
Final Action	09/07/94	59 FR 46158

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB26

425. PLANNING AND PERFORMING CONSTRUCTION AND OTHER DEVELOPMENT

CFR Citation: 7 CFR 1924-A; 7 CFR 1944-A; 7 CFR 2.23; 7 CFR 2.70

Completed:

Reason	Date	FR Cite
Final Action	08/25/94	59 FR 43722

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB27

426. APPRAISAL OF FARMS AND LEASEHOLD INTERESTS (FIRREA)

CFR Citation: 7 CFR 1809; 7 CFR 1901-C; 7 CFR 1922-B; 7 CFR 1922-D; 7 CFR 1922-E; 7 CFR 1941-A; 7 CFR 1943-A; 7 CFR 1943-B; 7 CFR 1944-A; 7 CFR 1944-D; 7 CFR 1944-J; 7 CFR 1945-C; 7 CFR 1945-D; 7 CFR 1951-E; 7 CFR 1951-S

Completed:

Reason	Date	FR Cite
Final Action	05/04/94	59 FR 22961
Final Action Effective	05/04/94	59 FR 22961

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB30

427. 1980-B FARMER PROGRAMS LOANS—FEASIBLE PLAN

CFR Citation: 7 CFR 1980; 7 CFR 2.23; 7 CFR 2.70

Completed:

Reason	Date	FR Cite
Withdrawn - Combined with RIN 0575-AA80	07/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB57

428. BID APPLICATION DEADLINE

CFR Citation: 7 CFR 1980

Completed:

Reason	Date	FR Cite
Final Action	05/06/94	59 FR 23614
Final Action Effective	05/06/94	59 FR 23614

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB67

429. REVISIONS TO THE DIRECT OPERATING, FARM OWNERSHIP, SOIL AND WATER AND EMERGENCY LOANS REGULATIONS TO MODIFY COLLATERAL REQUIREMENTS

CFR Citation: 7 CFR 1941-A; 7 CFR 1943-B; 7 CFR 1945-D; 7 CFR 1951-S

Completed:

Reason	Date	FR Cite
Final Action	05/18/94	59 FR 25797
Final Action Effective	05/18/94	57 FR 25797

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Chris Goettelmann, 202 720-9744

RIN: 0575–AB71

BILLING CODE 3410-07-F

DEPARTMENT OF AGRICULTURE (USDA)
Federal Crop Insurance Corporation (FCIC) — **Prerule Stage**

430. HYBRID CORN SEED AND HYBRID SORGHUM SEED ENDORSEMENT FOR PART 457 - COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to revise the Hybrid Sorghum Seed Endorsement from Part 401, and the Hybrid Sorghum Seed Endorsement from Part 443 and add it to Part 457 Common Crop Insurance Regulations. The new Endorsements under part 457 will contain late and prevented planting provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA78

431. SUGARCANE ENDORSEMENT FOR PART 457 COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to remove the Sugarcane Endorsement from Part 401 - General Crop Insurance Regulations and add it to Part 457 - Common Crop Insurance Regulations. The Sugarcane Endorsement under Part 457 will contain late and prevented planting provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA79

432. NURSERY CROP ENDORSEMENT FOR PART 457 COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to revise the Nursery Crop Insurance Regulations by changing them into an endorsement that will be added to Part 457 - Common Crop Insurance Regulations. The Nursery Crop Endorsement under Part 457 will contain late and prevented planting provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA82

433. TOBACCO ENDORSEMENT FOR PART 457 COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to remove the Tobacco Endorsement from Part 401-General Crop Insurance Regulations and add it to Part 457-Common Crop Insurance Regulations. The Tobacco Endorsement under Part 457 will contain late and prevented planting provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA84

434. • COMMON CROP INSURANCE REGULATIONS; ONION CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure onions. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA87

435. • COMMON CROP INSURANCE REGULATIONS; FORAGE PRODUCTION INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure forage production. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA88

436. • COMMON CROP INSURANCE REGULATIONS; POTATO CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

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Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure potatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA89

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437. • COMMON CROP INSURANCE REGULATIONS; FLAXSEED CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes provisions to insure flaxseed. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as provide other provisions to meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA90

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438. • COMMON CROP INSURANCE REGULATIONS; POPCORN CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure popcorn. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA91

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439. • COMMON CROP INSURANCE REGULATIONS; DRY PEA CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure dry peas. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA92

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440. • COMMON CROP INSURANCE REGULATIONS; SUGARBEET CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure sugarbeets. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA93

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441. • COMMON CROP INSURANCE REGULATIONS; CANNING AND PROCESSING TOMATO CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure canning and processing tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA94

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442. • COMMON CROP INSURANCE REGULATIONS; FRESH TOMATO CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure fresh tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA95

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443. • COMMON CROP INSURANCE REGULATIONS; ALMOND CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure almonds. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA96

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444. • COMMON CROP INSURANCE REGULATIONS; RAISIN CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure raisins. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA97

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445. • GENERAL ADMINISTRATIVE REGULATIONS; HIGH RISK LAND REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation adds new regulations to be known as High Risk Land Regulations which take effect for the 1995 and succeeding crop years. The intended effect of this rule is to set forth rates apart from those prescribed by standard actuarial tables and coverage procedures for acreage on which actual or expected frequency and severity of loss does not reasonably conform to standard insurance coverage and rating determination methods.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA98

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446. • GENERAL ADMINISTRATIVE REGULATIONS; SUBPART Q, COLLECTION AND STORAGE OF SOCIAL SECURITY ACCOUNT NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 400, subpart Q

Legal Deadline: None

Abstract: This regulation amends the above subpart by revising the standards defining a substantial beneficial interest in a crop insurance policyholder. Current provisions state that a substantial beneficial interest in a policyholder is a person with at least a 5% interest in a policyholder. This rule proposes to liberalize this requirement to an interest of 10 percent or more.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA99

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447. • GENERAL ADMINISTRATIVE REGULATIONS; APPLICATION FOR CROP INSURANCE, REGULATIONS FOR THE 1994 AND SUCCEEDING CROP YEARS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 400, subpart D

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation amends the General Administrative Regulations by revising the "Collection of Information and Data (Privacy Act)" statement found on the general crop insurance application. The proposed amendments to the statement include defining "substantial beneficial interest" as those persons whose

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interest in the policyholder is in excess of 10 percent. Other minor changes have been made to more fully comply with provisions of the Privacy Act.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB00

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448. • GENERAL ADMINISTRATIVE REGULATIONS; INELIGIBLE FILE - CROP INSURANCE INELIGIBILITY

Legal Authority: 44 USC 3501 et seq

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes to establish new regulations to prescribe when a producer becomes ineligible to participate in the Federal crop insurance program and procedures to reinstate eligibility.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB01

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449. • COMMON CROP INSURANCE PROVISIONS; DRY BEAN CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure dry beans. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide automatic coverage for late and prevented planting as well as other minor policy changes to better meet the needs of the insured.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB02

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450. • COMMON CROP INSURANCE REGULATIONS; RICE CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes regulations for provisions to insure rice. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB03

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451. • COMMON CROP INSURANCE REGULATIONS, HYBRID SORGHUM SEED CROP INSURANCE PROVISIONS

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation hereby proposes provisions for hybrid sorghum seed crop insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy which contains standard terms and conditions common to most crops.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB04

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452. • GENERAL ADMINISTRATIVE REGULATIONS; NONSTANDARD CLASSIFICATION SYSTEM; SUBPART O

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 400, subpart O

Legal Deadline: None

Abstract: This regulation amends the above subpart by correcting an error in a definition, expanding the definition of "base period" to account for certain exceptions with citrus and sugarcane farming practices, and making other minor changes to the provisions.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB05

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453. • GENERAL ADMINISTRATIVE REGULATIONS; GROUP RISK PLAN OF INSURANCE

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 460

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) hereby proposes to issue provisions which will outline a new risk management tool to be known as the Group Risk Plan of Insurance (GRP). This plan will insure against the widespread loss of production of certain crops in a county and is intended primarily for use by those farmers whose yields tend to follow the county average yield. GRP pays only when the average yield of the entire county drops below the expected county yield for the insured crop set by the FCIC. Payment is based on the percentage of county or area wide loss below the insured's trigger yield.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB06

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454. • GENERAL ADMINISTRATIVE REGULATIONS; INSURANCE COVERAGE BY WRITTEN AGREEMENT

Legal Authority: 7 USC 1506; 7 USC 1516

CFR Citation: 7 CFR 400, subpart S

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) hereby proposes regulations to allow insurance coverage by written agreement for crops in counties which have no actuarial table. Currently, FCIC provides insurance by written agreement for only ASCS program crops. By providing insurance by written agreement, FCIC will provide a risk management tool to a broader base of producers. Additionally, producers will not have to rely on the unpredictable passage of ASCS disaster assistance every year.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB07

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455. • GENERAL CROP INSURANCE REGULATIONS; SUBPART L, REINSURANCE AGREEMENT - STANDARDS FOR APPROVAL

Legal Authority: 7 USC 1501 to 1520

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: This regulation amends the General Crop Insurance Regulations, effective for the 1995 and succeeding reinsurance years by revising the general qualifications for being awarded a Standard Reinsurance Agreement. This rule intends to provide additional information so that the Federal Crop Insurance Corporation can more accurately identify those insurance companies at financial risk.

Timetable:

Action	Date	FR Cite
NPRM	06/14/94	59 FR 30533

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AB08

DEPARTMENT OF AGRICULTURE (USDA)
Federal Crop Insurance Corporation (FCIC)

Proposed Rule Stage

456. REINSURANCE AGREEMENT—STANDARDS FOR APPROVAL REGULATIONS FOR 1988 AND SUBSEQUENT CONTRACT YEARS

Legal Authority: 7 USC 1501 to 1520

CFR Citation: 7 CFR 400, subpart L

Legal Deadline: None

Abstract: FCIC will revise the standards to implement additional criteria for awarding agreements to private insurance companies.

Timetable:

Action	Date	FR Cite
NPRM	06/14/94	59 FR 30533
NPRM Comment Period End	06/29/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA74

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457. GENERAL ADMINISTRATIVE REGULATIONS; GROUP RISK PLAN (GRP)

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes provisions for a new risk management tool, known as the Group Risk Plan (GRP). This crop insurance option is based on area yields and provides indemnities to producers who produce a crop yield less than the area yield they are insured in. Formerly a pilot program, GRP will become an integral part of the crop insurance products offered by FCIC.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA83

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458. PEANUT ENDORSEMENT FOR PART 457 COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to remove the Peanut Endorsement from Part 425 and add it to Part 457-Common Crop Insurance Regulations. The Peanut Endorsement under Part 457 will contain late and prevented planting provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA85

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DEPARTMENT OF AGRICULTURE (USDA)
Federal Crop Insurance Corporation (FCIC)

Final Rule Stage

459. SUNFLOWER ENDORSEMENT FOR PART 457 COMMON CROP INSURANCE REGULATIONS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: This regulation proposes to remove the Sunflower Endorsement from Part 401 - General Crop Insurance Regulations and add it to Part 457 - Common Crop Insurance Regulations. The Sunflower Endorsement under part 457 will contain late and prevented planting provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/23/94	59 FR 48827
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA77

460. LATE AND PREVENTED PLANTING PROVISIONS FOR VARIOUS CROPS

Legal Authority: 7 USC 1501 et seq

CFR Citation: 7 CFR 401

Legal Deadline: None

Abstract: This interim rule amends the General Crop Insurance Regulations, effective for the 1994 and succeeding crop years, by amending the late planting and prevented planting provisions of the corn, sorghum and soybean endorsements. Additionally, this rule serves to incorporate late and prevented planting coverage into the hybrid sorghum seed, rice, cotton, barley, oats, and wheat crop endorsements, and prevented planting provisions into the ELS cotton endorsement. These provisions will be effective for the 1994 crop year.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/93	58 FR 67630
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, Regulatory Specialist, Department of Agriculture, Federal Crop Insurance Corporation, 2101 L Street NW., Washington, DC 20037, 202 254-8314

RIN: 0563–AA80

DEPARTMENT OF AGRICULTURE (USDA)
Federal Crop Insurance Corporation (FCIC)

Completed Actions

461. GENERAL ADMINISTRATIVE REGULATIONS; APPEAL PROCEDURES

CFR Citation: 7 CFR 400, subpart J

Completed:

Reason	Date	FR Cite
Withdrawn	07/28/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, 202 254-8314

RIN: 0563–AA63

462. GENERAL ADMINISTRATIVE REGULATIONS; ACTUAL PRODUCTION HISTORY (APH) COVERAGE PROGRAM

CFR Citation: 7 CFR 400

Completed:

Reason	Date	FR Cite
Final Action	09/19/94	59 FR 47783

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, 202 254-8314

RIN: 0563–AA75

463. GENERAL CROP INSURANCE REGULATIONS; SMALL GRAINS CROP INSURANCE PROVISIONS

CFR Citation: 7 CFR 457

Completed:

Reason	Date	FR Cite
Final Action	02/28/94	59 FR 9382

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, 202 254-8314

RIN: 0563–AA76

464. GENERAL CROP INSURANCE REGULATIONS; COARSE GRAINS CROP INSURANCE

CFR Citation: 7 CFR 457

Completed:

Reason	Date	FR Cite
Final Action	09/27/94	59 FR 49157

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mari L. Dunleavy, 202 254-8314

RIN: 0563–AA81

BILLING CODE 3410-08-F

DEPARTMENT OF AGRICULTURE (USDA)
Federal Grain Inspection Service (FGIS)

Prerule Stage

465. UNITED STATES STANDARDS FOR CORN

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 810

Legal Deadline: None

Abstract: The Federal Grain Inspection Service proposes to initiate a review of the United States Standards for Corn. Public comments will be requested regarding the adequacy of existing corn standards: (e.g. tolerances, classification system, language clarity, and other potential improvements). The review is being initiated to meet the requirements

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Prerule Stage

of Executive Order 12291 and Departmental Regulation 1521 to conduct periodic reviews of existing regulations. This action is a routine administrative review. Alternatives to the existing standards will be considered as the review schedule progresses and public comments are evaluated.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
ANPRM Comment Period End	11/00/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA28

DEPARTMENT OF AGRICULTURE (USDA)
Federal Grain Inspection Service (FGIS)

Proposed Rule Stage

466. A REVIEW OF THE REGULATIONS UNDER THE UNITED STATES GRAIN STANDARDS ACT: PART 800

Legal Authority: 7 USC 71 to 87

CFR Citation: 7 CFR 800

Legal Deadline: None

Abstract: Under the requirements of Executive Order 12291 to periodically review all existing regulations, and USDA Departmental Regulation 1512-1 to conduct each such review within a five-year timeframe, the Federal Grain Inspection Service will review its General Regulations under the United States Grain Standards Act. To simplify and promote a better understanding of policies and procedures, FGIS will be proposing changes to the regulations. Alternatives will be considered after receipt of public comments.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	06/00/95	
Final Action	11/00/95	
Final Action Effective	12/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA08

467. UNITED STATES STANDARDS FOR BARLEY

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 810

Legal Deadline: None

Abstract: The Federal Grain Inspection Service proposes to initiate a review of the United States Standards for Barley. Public comments will be requested regarding the adequacy of existing barley standards: (e.g. tolerances, classification system, language clarity, and other potential improvements). The review is being initiated to meet the requirements of Executive Order 12866 and Departmental Regulation 1521 to conduct periodic reviews of existing regulations. This action is a routine administrative review. Alternatives to the existing standards will be considered as the review schedule progresses and public comments are evaluated.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	01/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA29

468. • OFFICIAL PERFORMANCE AND PROCEDURAL REQUIREMENTS FOR GRAIN WEIGHING EQUIPMENT AND RELATED GRAIN HANDLING SYSTEMS

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 802

Legal Deadline: None

Abstract: The Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act (USGSA), as amended, entitled Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems. FGIS proposes to incorporate by reference the applicable requirements of the National Institute of Standards and Technology (NIST) Handbook 44, "Specification Tolerance, and other Technical Requirements for Weighing and Measuring Services", 1992 edition (Handbook 44) and continue to adopt all requirements for NIST Handbook 105-1 "Specifications and Tolerances for Reference Standard Weights and Measures", 1990 revision (Handbook 105-1).

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA39

469. • FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICE

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800

Legal Deadline: None

Abstract: The Federal Grain Inspection Service (FGIS) is proposing a change in the manner in which it collects fees for Official Inspection and Weighing

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services performed in the United States under the United States Grain Standard Act (USGSA), as amended.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA40

470. • FEES FOR BELTSVILLE LABORATORY TEST SERVICES

Legal Authority: 7 USC 1621 et seq

CFR Citation: 7 CFR 68

Legal Deadline: None

Abstract: The Federal Grain Inspection Services (FGIS) is proposing to adjust fees charged by the Commodity Testing Laboratory at Beltsville, Maryland, by increasing fees for individual services provided by the Laboratory. These revisions are intended to cover projected operating costs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA41

471. • U.S. STANDARDS FOR FLAXSEED, MIXED GRAINS, OATS, RYE, SUNFLOWER SEED, AND TRITICALE

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 810

Legal Deadline: None

Abstract: The Federal Grain Inspection Service is reviewing the existing United States Standards for Flaxseed, Mixed Grain, Oats, Rye, Sunflower Seed, and Triticale.

Timetable:

Action	Date	FR Cite
ANPRM	12/17/93	58 FR 65939
ANPRM Comment Period End	02/15/94	
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA42

DEPARTMENT OF AGRICULTURE (USDA)
Federal Grain Inspection Service (FGIS) — **Final Rule Stage**

472. REGULATORY APPLICATION OF WATER TO GRAIN

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800.61 (a)(1); 7 CFR 800.61 (a)(2)

Legal Deadline: None

Abstract: FGIS proposes to regulate the application of water to grain. The indiscriminate application of water to grain may adversely impact on the storability of such grain and may detract from the quality of such grain.

Timetable:

Action	Date	FR Cite
NPRM	08/04/93	58 FR 41439
NPRM Comment Period End	12/02/93	58 FR 41439
Final Action	10/00/94	•
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA25

473. FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICES

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800.71

Legal Deadline: None

Abstract: The Federal Grain Inspection Service (FGIS) proposes to increase its fees on average by 3.7 percent for Official Inspection and Weighing Services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The USGSA provides for establishment of fees which are to cover the costs for performance of these official services. FGIS's current fee does not generate sufficient revenue to cover any of the approved FY 1992 3.7 percent federal employee raise.

CFR Citation: 7 CFR 810

Legal Deadline: None

Abstract: The Federal Grain Inspection Service is proposing to establish a pesticide residue testing service. The New service will provide testing of

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/06/93	58 FR 3263
Final Action	10/00/94	

Postponement of Effective Date
Interim Final Rule 01/21/93 (58 FR 5255)

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA27

474. FEES FOR OFFICIAL PESTICIDE RESIDUE TESTING

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800

Legal Deadline: None

Abstract: The Federal Grain Inspection Service is proposing to establish a pesticide residue testing service. The New service will provide testing of

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composite wheat sample for various pesticide residues using gas chromatography/mass spectrometry.

Timetable:

Action	Date	FR Cite
NPRM	02/28/94	59 FR 9424
NPRM Comment Period End	03/30/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Analysis: Regulatory Flexibility Analysis

Agency Contact: George Wollam, Regulatory Liaison, Department of Agriculture, Federal Grain Inspection Service, PO Box 96454, Room 0623 South Building, Washington, DC 20090-6454, 202 720-0292

RIN: 0580–AA36

DEPARTMENT OF AGRICULTURE (USDA)
Federal Grain Inspection Service (FGIS) — **Completed Actions**

475. UNITED STATES STANDARDS FOR SOYBEANS

CFR Citation: 7 CFR 810

Completed:

Reason	Date	FR Cite
Final Action	03/07/94	59 FR 10569
Final Action Effective	09/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, 202 720-0292

RIN: 0580–AA14

476. FGIS TO CHANGE PROTEIN REFERENCE METHOD

CFR Citation: 7 CFR 801

Completed:

Reason	Date	FR Cite
Final Action	06/20/94	59 FR 31605
Final Action Effective	07/20/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, 202 720-0292

RIN: 0580–AA37

477. OFFICIAL TESTING SERVICES FOR VOMITOXIN

CFR Citation: 7 CFR 800

Completed:

Reason	Date	FR Cite
Final Action	03/24/94	59 FR 13865
Final Action Effective	04/25/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: George Wollam, 202 720-0292

RIN: 0580–AA38

BILLING CODE 3410-EN-F

DEPARTMENT OF AGRICULTURE (USDA)
Food and Nutrition Service (FNS) — **Prerule Stage**

478. SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

Legal Authority: PL 99-603 Immigration Reform and Control Act of 1986, sec 121; PL 103-66

CFR Citation: 7 CFR 271; 7 CFR 272; 7 CFR 273; 7 CFR 275; 7 CFR 277

Legal Deadline: Other, Statutory, October 1, 1988.
Provision of PL 103-66 effective 4/1/94 unless State meets hardship definition.

Abstract: This rule establishes procedures for State agencies to use to participate in the Systematic Alien Verification for Entitlements (SAVE) system. As required by IRCA, the Immigration and Naturalization Service (INS) implemented this system. IRCA requires the Food Stamp Program (FSP) and certain other entitlement programs to use SAVE to verify the immigration status of aliens applying for benefits. The rule also provides guidelines for Federal reimbursement of administrative costs and proposes to implement a provision of PL 103-66 which reduces the level of Federal reimbursement for SAVE from 100% to 50%. In addition, the rule implements nondiscretionary provisions of IRCA requiring all household members to attest to their citizenship or alien status and certain requirements relating to documentation of alien status. (87-009)

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/07/88	53 FR 39433
Begin Review	10/00/94	
End Review	02/00/95	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AA73

479. CONSIDERATION OF AN ALTERNATE PROTEIN SOURCE, WHEY PROTEIN CONCENTRATE, AS A MEAT ALTERNATE FOR USE IN THE CHILD NUTRITION PROGRAMS

Legal Authority: 42 USC 1751 to 1760; 42 USC 1779; 42 USC 1761; 42 USC 1762a; 42 USC 1765; 42 USC 1766

CFR Citation: 7 CFR 210, app A; 7 CFR 225, app A

Legal Deadline: None

Abstract: The Department has been petitioned to accept whey protein concentrate (WPC) as a meat alternate in the CNP. All interested parties are being encouraged to submit to the Food and Nutrition Service any information that may be of significance to the determination of the acceptance of WPC. The Department will evaluate all information submitted, and based upon this information and its own research, determine whether to propose that current regulations regarding the use of meat alternates in the CNP be modified to accept WPC. (93-004)

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Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
ANPRM Comment Period End	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sheri Ackerman, Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB69

480. • CHILD AND ADULT CARE FOOD PROGRAM: ELIMINATION OF WHOLE COW'S MILK FROM THE INFANT MEAL PATTERN

Legal Authority: 42 USC 1751 to 1760; 42 USC 1779

CFR Citation: 7 CFR 210; 7 CFR 220; 7 CFR 226

Legal Deadline: None

Abstract: Proposal will prohibit consumption of whole cow's milk for infants ages 8-11 months and require breast milk or iron-fortified formula for the entire first year.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/95	
ANPRM Comment Period End	09/00/95	
Final Action	09/00/96	
Final Action Effective	09/00/96	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB81

DEPARTMENT OF AGRICULTURE (USDA)
Food and Nutrition Service (FNS)

Proposed Rule Stage

481. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): FOOD DELIVERY SYSTEMS

Regulatory Plan: This entry is Seq. No. 4 in Part II of this issue of the Federal Register.

RIN: 0584–AA80

482. FOOD STAMP PROGRAM: EMERGENCY ASSISTANCE FOR VICTIMS OF DISASTERS

Legal Authority: 7 USC 2013 (b); 7 USC 2014 (h)

CFR Citation: 7 CFR 272; 7 CFR 273; 7 CFR 280

Legal Deadline: None

Abstract: This rule would define special eligibility and issuance procedures during disasters. The rule addresses the eligibility and issuance of food stamps by the Food Stamp Program during a disaster. (86-029)

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AA85

483. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): PART 246.10, FOOD PACKAGE III, CHILDREN/WOMEN WITH SPECIAL DIETARY NEEDS

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: Food Package III will be revised to increase the maximum quantity of special formula authorized per month; clarify what formula is; add additional authorized WIC foods to the package; and address tailoring.

Need for Action:

This special dietary package currently provides special formula, juice, and cereal. It was designed specifically to assist low-income women and children who require special formulas due to medical conditions. Without WIC these individuals would have difficulty in obtaining special formulas, which tend to be quite expensive. Program administrators, participants and the National Advisory Council on Maternal, Infant and Fetal Nutrition recognize that current monthly maximum quantity of formula allowed is sometimes not sufficient and recommend that it be increased. They also recognized that there is a nutritional need for additional WIC foods to be made available to participants receiving this package. This is a very infrequently used package and the proposed rule will in no way affect the other WIC food packages. (89-505)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	06/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB09

484. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): MISCELLANEOUS PROVISIONS

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This proposed rule responds to a variety of program concerns, most of which have been expressed by WIC State agencies. The proposal strengthens the provision of services to participants in the areas of eligibility determination and nutrition education and increases State agency flexibility regarding the sharing of participant information with other programs. Several minor clarifications and technical corrections are also made. Principal provisions include: (1) mandatory minimum content requirements for nutrition education participant contacts; and (2) additional flexibility for State agencies to share participant information with related programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	06/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Additional Information: (89-515)

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB10

485. CHILD AND ADULT CARE FOOD PROGRAM: CHILD NUTRITION AND WIC REAUTHORIZATION ACT AMENDMENTS

Legal Authority: 42 USC 1766; PL 101-147

CFR Citation: 7 CFR 226

Legal Deadline: Other, Statutory, July 1, 1990.
PL 101-147

Abstract: Implements certain provisions of PL 101-147, including the provision of expansion funds to family day care home sponsors for rural and low-income area outreach; authority for State agencies to establish an every-other-year sponsor application process; a reduction in the number of required monitoring visits in school-sponsored child care; authority for State governors to designate an alternate State agency to administer the adult day care portion of the Program; and a change in the basis for determining States' Program commodity entitlement from current year to prior year data. (90-508)

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	04/00/95	
Final Action	02/00/96	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB16

486. CHILD AND ADULT CARE FOOD PROGRAM: AUTHORITY TO COLLECT OVERCLAIMS

Legal Authority: 42 USC 1766

CFR Citation: 7 CFR 226

Legal Deadline: None.

Abstract: Establishes the Department's authority to collect overclaims where participating institutions fail to comply with regulatory recordkeeping requirements. (87-514)

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	04/00/95	
Final Action	12/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB19

487. CHILD AND ADULT CARE FOOD PROGRAM: PROHIBITION OF INSTITUTIONALIZED ADULTS

Legal Authority: 42 USC 1766

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: Clarifies the statutory intent of PL 100-175, the Older Americans Act of 1987, by incorporating into regulations a provision under which adults residing in institutions are not eligible for benefits under the Child and Adult Care Food Program. (90-514)

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	05/00/95	
Final Action	02/00/96	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB21

488. FOOD DISTRIBUTION PROGRAMS—PAPERWORK REDUCTION

Legal Authority: PL 101-147

CFR Citation: 7 CFR 250; 7 CFR 251

Legal Deadline: None

Abstract: This rule will implement the food distribution portion of the recommendations of the August 1990 task force on paperwork reduction. These recommendations were included in a report to Congress and included perpetual State/Federal agreements and longer contract duration for warehouses.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	03/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB27

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489. FOOD DISTRIBUTION PROGRAMS—IMPLEMENTATION OF 1990 FARM BILL

Legal Authority: PL 101-624

CFR Citation: 7 CFR 250; 7 CFR 251

Legal Deadline: Final, Statutory, July 30, 1992.

Abstract: This rule will revise the requirements for evaluation of state warehousing and distribution systems and conversion to commercial systems.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB28

490. CHILD AND ADULT CARE FOOD PROGRAM: PAPERWORK REDUCTION REGULATIONS

Legal Authority: 42 USC 1766

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: Implements certain recommendations made by the Paperwork Reduction Taskforce established under the Child Nutrition and WIC Reauthorization Act Amendments of 1989. These recommendations include (1) a reduction in the number of certain sponsor review requirements, (2) an increase in the overclaim disregard threshold and (3) modifications to the procedures for State verification of free and reduced price applications. (91-016)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	06/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB33

491. CHILD NUTRITION PROGRAMS: REVISION OF INFANT MEAL PATTERNS FOR THE CHILD NUTRITION PROGRAM

Legal Authority: 42 USC 1758; 42 USC 1766 (g)(1); 42 USC 1733 (e)(1)

CFR Citation: 7 CFR 210; 7 CFR 220; 7 CFR 226

Legal Deadline: None

Abstract: Implements provision in the National School Lunch, School Breakfast and Child and Adult Care Food Program regulations under which reimbursement would be provided for meals served to infants which contain only breast milk. (91-019)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB34

492. COMMODITY SUPPLEMENTAL FOOD PROGRAM: ELDERLY-ONLY SITES, ADMINISTRATIVE FUNDING, REFERRALS TO HEALTH AND SOCIAL SERVICES, CASELOAD ALLOCATION PROCESS, PRIORITY SYSTEM, AND MISCELLANEOUS

Legal Authority: 7 USC 512(c)

CFR Citation: 7 CFR 247

Legal Deadline:

Final, Statutory, October 1, 1990, for funding provisions.

Final, Statutory, October 1, 1991, for all other provisions.

Abstract: This rule is being proposed in response to changes brought about by PL 101-624 and to strengthen other program areas. This proposed rule will implement those provisions of PL 101-624 which affect the Commodity Supplemental Food Program (CSFP) and which do not require Departmental discretion. The following list includes those provisions addressed in this rulemaking: (1) authorizes State agencies to operate elderly-only sites; (2) provides administrative funding to agencies not to exceed 20 percent of the annual appropriation; and (3) mandates that State agencies serving women, infants and children: (a) distribute written information on Food Stamps, AFDC, and Child Support Enforcement Programs; (b) provide each local agency with materials showing the income limits according to family size, applicable to pregnant women, infants, and children in the Medicaid Program; and (c) distribute written information on and referrals to the Medicaid Program, when appropriate. State agencies serving elderly persons shall ensure that written information is provided on Food Stamps, Supplemental Security Income benefits, and Medicaid. (91-015)

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	09/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB37

493. FOOD STAMP PROGRAM: QUALITY CONTROL TECHNICAL AMENDMENTS

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 271.2; 7 CFR 275.3; 7 CFR 275.10; 7 CFR 275.11; 7 CFR 275.13; 7 CFR 275.23

Legal Deadline: None

Abstract: The Food and Nutrition Service is proposing technical changes to the Food Stamp Program's Quality Control System which will reduce the workload on State agencies and improve the efficiency of the quality control system. The proposed changes would: (1) permit State agencies to reduce their sample sizes; (2) clarify the minimum size of the Federal subsample; (3) clarify State sampling procedures; 4) change the formulas for calculating Federal subsample sizes; (5) change the way FNS avoids double billing for compliance issues; (6) clarify the process of conducting a quality control review of negative subsystem cases and add suspended cases, those cases that are certified for the Program but do not receive benefits, to the sample universe of cases that are reviewed under the negative subsystem. (92-006).

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	04/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: RIN 0584-AB07 has been withdrawn, and the actions in that proposed rule have been included in this action.

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB38

494. FOOD STAMP PROGRAM: RESOURCE PROVISION FROM THE MICKEY LELAND MEMORIAL DOMESTIC HUNGER RELIEF ACT OF 1990

Legal Authority: 7 USC 2011 to 2032; PL 101-624; PL 102-237

CFR Citation: 7 CFR 273.8

Legal Deadline: Final, Statutory, October 1, 1991.

Abstract: The NPRM was published on August 13, 1991. After full consideration of comments, the Department has decided that a new proposed rulemaking is warranted to take into consideration comments received and recent legislative changes to the provision as a result of PL 102-237.

The new proposed rule will exempt from consideration as a resource, resources that a household is unable to sell for any significant return because the household's interest is relatively slight or because the costs of selling would be relatively great. Significant return is defined as an amount greater than half the applicable resource limit for the household, in accordance with 7 CFR 273.8, after any expenses of the sale are deducted. (91-020)

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	02/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB40

495. NATIONAL SCHOOL LUNCH PROGRAM: REVIEW OF FREE AND REDUCED PRICE APPLICATION UNDER THE COORDINATED REVIEW EFFORT

Legal Authority: PL 101-147

CFR Citation: 7 CFR 210

Legal Deadline: None

Abstract: Currently, State agencies must review all applications for free and reduced price meals on file as part of an administrative review of the school lunch program or use a statistically valid sample. Generally it is necessary to review all applications in order to determine whether or not the number of meals claimed, by type, is correct. In some instances, however, this level of review is not necessary due to the small number of errors discovered early in the review. This rulemaking will establish guidelines for curtailing such activity with FNS approval. (92-009)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	05/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 202 305-2760

RIN: 0584–AB50

496. PROVISIONS OF COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1988, AMENDMENTS OF 1990, AND IMPLEMENTATION OF THE DISQUALIFIED RECIPIENT SUBSYSTEM

Legal Authority: 5 USC 552(a) Computer Matching and Privacy Protection Act; 7 USC 2015(b) Food Stamp Act

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: In accordance with the Computer Matching and Privacy Protection Act, PL 100-503, and the Computer Matching and Privacy Protection Amendments of 1990, PL 101-508, the Food Stamp Program must extend certain protections to persons whose benefits could be adversely affected by computer matches. These protections include independent verification of computer information, notification to the affected individual and provision of an opportunity to respond to the information before an adverse action becomes effective.

In addition, this proposed rule describes requirements for State agencies to report information on individuals disqualified from the program for intentional program violations to FNS and the related FNS computer matching program known as the Disqualified Recipient Subsystem (DRS). (89-010)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

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Action	Date	FR Cite
NPRM Comment Period End	12/00/94	
Final Action	06/00/95	
Final Action Effective	09/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB51

497. EMERGENCY FOOD ASSISTANCE PROGRAM—ADMINISTRATIVE COSTS

Legal Authority: PL 98-8, Sec 204

CFR Citation: 7 CFR 251

Legal Deadline: None

Abstract: This proposed rule will permit States to charge allowable indirect costs to the Emergency Food Assistance Program grant.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	04/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Office Center, Room 308, Alexandria, VA 22302, 702 305-2760

RIN: 0584–AB54

498. FOOD DISTRIBUTION PROGRAMS—DISASTER PROVISIONS

Legal Authority: PL 100-707

CFR Citation: 7 CFR 250

Legal Deadline: None

Abstract: This rule will propose to: (1) allow simultaneous distribution of commodities and food stamps during disaster; (2) allow commodity distribution to households during situations of distress. This rule will also define necessary accountability procedures. (90-0001)

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB55

499. FOOD STAMP PROGRAM: MONTHLY REPORTING AND RETROSPECTIVE BUDGETING

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 273; 7 CFR 271

Legal Deadline: None

Abstract: Current regulations do not reflect the optional nature of monthly reporting and retrospective budgeting, are complicated, and organized with a different intent than the current system. This action proposes to revise, reorganize and simplify 7 CFR 273.21 through a reproposal of the entire section. It would be changed to reflect the optional nature of monthly reporting and retrospective budgeting, to provide greater flexibility to State agencies, and incorporate experience with waivers. (93-005)

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	01/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB57

500. FOOD STAMP PROGRAM: CHILD SUPPORT DEDUCTION AND REQUIREMENTS FOR ANTICIPATING INCOME AND REPORTING CHANGES

Legal Authority: 7 USC 2011 to 2032; PL 103-66

CFR Citation: 7 CFR 273

Legal Deadline: Other, Statutory, September 1, 1994.
Sections 13911 and 13915 of PL 103-66—effective date.

Abstract: This rule is being proposed to implement section 13921 of the 1993 Mickey Leland Childhood Hunger Relief Act which establishes a deduction for child support paid to a non-household member.

This action also proposes several revisions in Food Stamp Program rules for determining eligibility and benefits of households not required to report changes in their circumstances monthly. The proposed changes are intended to improve the accuracy of benefits provided to households whose income varies from month to month, reduce the number of changes the household must report, and facilitate use of the same procedures in the Food Stamp and Aid to Families with Dependent Children Programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	08/00/95	
Final Action Effective	09/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB58

501. FOOD STAMP PROGRAM: EXCESS SHELTER EXPENSE LIMIT AND STANDARD UTILITY ALLOWANCES

Legal Authority: 7 USC 2011 to 2032; PL 103-66

CFR Citation: 7 CFR 273

Legal Deadline:
Final, Statutory, July 1, 1994, for first increase in excessshelter expense limit.

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Other, Statutory, October 1, 1995, for second increase in excessshelter expense limit.
Other, Statutory, January 1, 1997, for removal of shelterexpense limit.

Abstract: This action proposes several changes in Food Stamp Program rules relating to the development and use of standard utility allowances. The changes are proposed to facilitate use of standard amounts rather than actual utility expenses in determining the benefits of food stamp households.

This rule also proposes to implement section 13912 of the Mickey Leland Childhood Hunger Relief Act which would increase and then eliminate the current limit on excess shelter expenses that may be deducted from household income. (93-006)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	09/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB59

502. FOOD STAMP PROGRAM: SIMPLIFICATION OF PROGRAM RULES

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 273

Legal Deadline: None

Abstract: This action proposes several changes in Food Stamp Program rules relating to social security numbers, combined allotments, residency, excluded resources, cost-of-living adjustments, contract income, self-employment expenses, certification periods, the notice of adverse action, recertification, and suspension under retrospective budgeting. The changes are being proposed as means to simplify regulatory requirements and to increase consistency with requirements of the Aid to Families with Dependent Children (AFDC) program. (93-006)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB60

503. FOOD STAMP PROGRAM: PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Legal Authority: 7 USC 2011 to 2032; PL 103-66, sec 13961

CFR Citation: 7 CFR 277

Legal Deadline: Other, Statutory, April 1, 1994.
The Act requires funding rate reduction effective 04/01/94.

Abstract: State agencies are reimbursed by FNS at standard or enhanced Federal reimbursement level for all allowable costs incurred in the State's operation of the Food Stamp Program. This proposed rule would reduce the Federal reimbursement rate for State agencies for fraud control, system development, and immigration status verification to the standard 50 percent rate. It would also limit the time period during which State agencies may file a claim for retroactive funding, and allows the cost of certifying aid to families with dependent children to be charged to the Food Stamp Program for purposes of Federal reimbursement. (93-010)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	05/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB66

504. FOOD STAMP PROGRAM: QUALITY CONTROL PROVISIONS OF THE MICKEY LELAND CHILDHOOD HUNGER RELIEF ACT

Legal Authority: PL 103-66, sec 13951

CFR Citation: 7 CFR 273; 7 CFR 275

Legal Deadline: None

Abstract: To implement quality control changes to the Food Stamp Act required by section 13951 of the Mickey Leland Childhood Hunger Relief Act in the following areas: 1) interest on quality control claims, 2) the formula for determining quality control claim amounts, 3) variance exclusion for the application of new regulations, 4) time frames for completion of the arbitration process, 5) time frames for determining final error rates, the national average payment error rate, and the amounts of payment claims against State agencies, 6) time frames for notifying State agencies of payment claims, 7) the addition of specific criteria for a determination that "good cause" exists for not imposing a payment claim, and 8) the transfer of authority to make "good cause" determinations from FNS to the Administrative Law Judges. These provisions are nondiscretionary and will not result in an annual effect on the economy of $100 million or more, or a major increase in costs or prices for consumers, individuals, (cont)

Timetable:

Action	Date	FR Cite
Final Action Effective	10/01/91	
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: ABSTRACT CONT: industries, Federal, State or local government agencies, or geographical regions. (93-018)

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department

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of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB75

505. FOOD STAMP PROGRAM: CERTIFICATION PROVISIONS OF THE MICKEY LELAND CHILDHOOD HUNGER RELIEF ACT

Regulatory Plan: This entry is Seq. No. 5 in Part II of this issue of the Federal Register.

RIN: 0584–AB76

506. • FOOD STAMP PROGRAM MEDICAL EXPENSE DEDUCTION

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 273

Legal Deadline: None

Abstract: This action proposes several changes in Food Stamp Program rules relating to the excess medical expense deduction.

Timetable:

Action	Date	FR Cite
NPRM	10/03/94	59 FR 50153
NPRM Comment Period End	12/02/94	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB78

507. • FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: ELIGIBILITY AND BENEFITS

Legal Authority: PL 97-98, sec 1338; PL 95-113

CFR Citation: 7 CFR 253

Legal Deadline: None

Abstract: The rule implements certain provisions of PL 103-66 for the Food Distribution Program on Indian Reservations (FDPIR) by: excluding the earnings of certain household members; revising the definition of household; and conforming resource limits to those used by the Food Stamp Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB83

508. • FOOD STAMP PROGRAM: REVISIONS IN USE AND DISCLOSURE OF INFORMATION PROVIDED BY RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

Legal Authority: PL 103-225; 7 USC 2018(c)

CFR Citation: 7 CFR 278.1

Legal Deadline: None

Abstract: This proposed rule sets forth changes required by provisions of the Food Stamp Program Improvements Act of 1994, PL 103-225, Title II, 108-109 (1994). The purpose of this rule is to implement these statutory changes to the Food Stamp Act of 1977, as amended. It would permit the use and disclosure of information provided by stores to State and Federal law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act, and establishes penalties against persons who misuse any of the information.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2246

RIN: 0584–AB87

509. • FOOD STAMP PROGRAM RECIPIENT CLAIMS ESTABLISHMENT AND RECOVERY OF OVERISSUANCES

Regulatory Plan: This entry is Seq. No. 6 in Part II of this issue of the Federal Register.

RIN: 0584–AB88

510. • COLLECTING FOOD STAMP RECIPIENT CLAIMS FROM FEDERAL INCOME TAX REFUNDS AND FEDERAL SALARIES

Regulatory Plan: This entry is Seq. No. 7 in Part II of this issue of the Federal Register.

RIN: 0584–AB89

511. • FOOD STAMP PROGRAM: REVISIONS IN RETAIL FOOD STORE ELIGIBILITY CRITERIA AND IN ELIGIBILITY GUIDANCE AND PROGRAM AUTHORIZATION

Regulatory Plan: This entry is Seq. No. 8 in Part II of this issue of the Federal Register.

RIN: 0584–AB90

512. • FOOD STAMP PROGRAM: DISQUALIFICATION PENALTIES FOR INTENTIONAL PROGRAM VIOLATIONS

Legal Authority: 7 USC 2011-2032; PL 103-66

CFR Citation: 7 CFR 273

Legal Deadline: Other, Statutory, September 1, 1994.
PL 103-66, sec 13942 effective date.

Abstract: This rule would implement section 13942 of PL 103-66. This provision of the law is aimed at deterring recipient abuse in the Food Stamp Program by increasing the disqualification penalties for intentional Program violations involving individuals trading or receiving coupons or other benefit instruments for firearms, ammunition, explosives or controlled substances. This rule would also implement discretionary changes concerning advance notices of disqualification hearings and the timing of disqualification periods. The bases for these revisions are requests from State agencies and the need for clarification based on a recommendation from the Department's Office of General Counsel. (93-022)

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44343
NPRM Comment Period End	10/28/94	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB91

DEPARTMENT OF AGRICULTURE (USDA)
Food and Nutrition Service (FNS)

Final Rule Stage

513. FOOD STAMP PROGRAM: STUDENT ELIGIBILITY

Legal Authority: 7 USC 2011 to 2032; PL 101-624; PL 100-50; PL 101-392; PL 102-325

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline:
Final, Statutory, October 1, 1991, for effective date ofprovisions of PL 101-624.

Abstract: This action will finalize provisions of Public Law 101-624 governing student eligibility for the Food Stamp Program.

This action will also finalize provisions of Public Laws 100-50, 102-325, and 101-392 governing the treatment of Federal educational assistance for food stamp purposes. (86-027)

Timetable:

Action	Date	FR Cite
NPRM	11/01/93	58 FR 58463
NPRM Comment Period End	01/03/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: The provisions of the statutes become effective on the dates of the legal deadlines for the NPRMs whether regulations have been published or not.

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AA90

514. MISCELLANEOUS FARM BILL PROVISIONS RELATING TO THE AUTHORIZATION OF RETAIL FIRMS AND WHOLESALE FOOD CONCERNS

Legal Authority: 7 USC 2011 to 2031; PL 101-624

CFR Citation: 7 CFR 271; 7 CFR 272; 7 CFR 274; 7 CFR 278

Legal Deadline: Final, Statutory, October 1, 1991.
Effective 120 days from publication of implementing rules.

Abstract: This rule would implement three provisions of the 1990 Farm Bill (PL 101-624, 104 stat 3359) which revise the Food Stamp Act of 1977, as amended (7 USC 2011 et seq.). The first provision would amend the definition of "food" to include meals sold to the homeless program participants by restaurants approved by State agencies for this purpose. Such restaurants must contract with the State and must be authorized by the Food and Nutrition Service to provide meals at concessional prices to homeless participants. The second provision would allow a periodic reauthorization of retail food stores and wholesale food concerns to participate in the Food Stamp Program. The third provision revises criteria for and limits the participation in the program of co-located wholesaler/retailer firms.

Timetable:

Action	Date	FR Cite
NPRM	10/23/91	56 FR 54799
NPRM Comment Period End	11/22/91	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB02

515. FOOD STAMP PROGRAM: DISCRETIONARY RETAILER WHOLESALER CHANGES

Legal Authority: 7 USC 2011 to 2031

CFR Citation: 7 CFR 271; 7 CFR 276; 7 CFR 278; 7 CFR 279

Legal Deadline: None

Abstract: The rule clarifies the Department of Agriculture's policy on authorizing and educating retail grocers who take part in the Food Stamp Program. It eliminates the provision requiring violating firms to post bonds; revises penalties for dollar for dollar trafficking in benefit redemption instruments, and codifies existing authorization policy.

Timetable:

Action	Date	FR Cite
NPRM	03/28/91	56 FR 12857
NPRM Comment Period End	05/28/91	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB03

516. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): FOOD COST CONTAINMENT REQUIREMENTS

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: Final, Statutory, March 10, 1991.

Abstract: This regulation implements the mandates of PL 101-147, enacted November 10, 1989, relative to food cost containment in WIC. In order to

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achieve further savings in the cost of WIC Program foods, principally the cost of infant formula, this rule implements two major legislative provisions. First, it restates and extends into future years the provisions of PL 100-460, which mandated that in order to receive its grant allocation a State agency must examine the feasibility of cost containment systems by 8/30/89 and implement a cost containment system where feasible. Second, the rule requires all WIC State agencies using a retail food delivery system, except certain Indian State agencies, to employ one of two infant formula rebate procurement methods. These two methods are the competitive method (single-supplier contract) and the comparative method, where the State agency fairly compares the cost savings of any alternative form of infant formula cost containment it may wish to implement. The rebate system generating the greatest savings of those compared must then be implemented. This rule establishes specific factors to be considered in the analysis of the systems (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/15/90	55 FR 9709
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Additional Information: ABSTRACT CONT: after completing the cost comparison under comparative method. If the State agency can justify to FNS that the cost containment method resulting in the greatest total savings would cause demonstrable harm to the efficient and effective operation of the WIC Program, a waiver will be granted. Timelines are established in the rule for compliance based on the present rebate contract situation of experiencing unavoidable delays related to the procurement process that prevent the State agency from meeting the implementing timeframes established in the rule. (90-503)

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB11

517. DETERMINATION OF ELIGIBILITY FOR FREE MEALS BY SUMMER FOOD SERVICE PROGRAM SPONSORS AND FREE AND REDUCED PRICE MEALS BY CHILD AND ADULT CARE FOOD PROGRAM INSTITUTION

Legal Authority: 42 USC 1758; PL 101-147

CFR Citation: 7 CFR 225; 7 CFR 226

Legal Deadline: Final, Statutory, July 1, 1990.

Abstract: Implements certain provisions of PL 101-147, including a requirement that applicants for free or reduced price meals need only provide the Social Security Number of the household member who signs the application and a requirement that the Program sponsor rather than the applicant total the income information provided. (90-510)

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/95	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB17

518. TECHNICAL AMENDMENTS TO THE STATE PROCESSING PROGRAM AND THE NATIONAL COMMODITY PROCESSING PROGRAM

Legal Authority: PL 101-624

CFR Citation: 7 CFR 250; 7 CFR 252

Legal Deadline: None

Abstract: This final rule amends the Food Distribution Program regulations to strengthen provisions concerning the processing of donated food and to increase uniformity between provisions governing State processing activities in 7 CFR part 250 and those governing the national commodity processing program in 7 CFR part 252. (88-516)

Timetable:

Action	Date	FR Cite
NPRM	05/25/93	58 FR 29985
NPRM Comment Period End	07/26/93	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB30

519. STATE ADMINISTRATIVE EXPENSE FUNDS: NATIONAL SCHOOL LUNCH PROGRAM, SPECIAL MILK PROGRAM, SCHOOL BREAKFAST PROGRAM, CHILD AND ADULT CARE FOOD PROGRAMS, FOOD DISTRIBUTION PROGRAM

Legal Authority: PL 101-147

CFR Citation: 7 CFR 235

Legal Deadline: None

Abstract: Implements provisions of PL 101-147, Child Nutrition and WIC Reauthorization Act of 1989, which affected State Administrative Expense funding. Specifically, limits the amount of funds a State may carry over from one fiscal year to the next, specifies how funds returned by the State are to be redistributed and authorizes direct payments to alternate agencies operating the adult component of the Child and Adult Care Food Program. (89-519)

Timetable:

Action	Date	FR Cite
NPRM	12/06/91	56 FR 63882
NPRM Comment Period End	02/04/92	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition

USDA—FNS **Final Rule Stage**

Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB31

520. BENEFIT DELIVERY RULE

Legal Authority: 7 USC 2011 to 2032; PL 101-624; PL 100-435; PL 102-237; PL 103-11; PL 103-225

CFR Citation: 7 CFR 272; 7 CFR 274

Legal Deadline: Final, Statutory, February 1, 1992. Other, Statutory, March 15, 1994.
See Abstract.

Abstract: This rule makes final two provisions from PL 101-624 which were implemented on February 1, 1992: aggregate (combined) allotment of benefits to households applying after the 15th of the month, and mail issuance in rural areas where households may experience transportation difficulties obtaining benefits. This rule implements staggered issuance as an option on Indian reservations in accordance with PL 103-11. This rule makes technical changes to current regulatory provisions considered appropriate to clarify and improve issuance. (91-009)

Timetable:

Action	Date	FR Cite
ANPRM	05/20/91	56 FR 23027
ANPRM Comment Period End	06/19/91	
Final Action	12/00/94	
Final Action Effective	03/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB32

521. PERMANENT AGREEMENTS/DIRECT CERTIFICATION IN NATIONAL SCHOOL LUNCH, SCHOOL BREAKFAST, AND SPECIAL MILK PROGRAMS

Legal Authority: PL 101-147

CFR Citation: 7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 245

Legal Deadline: Final, Statutory, July 1, 1990.

Abstract: The Child Nutrition and WIC Reauthorization Act of 1989 made the agreement between the school and the State agency to operate the school nutrition programs a permanent document to be amended as necessary. This law also authorized schools to certify children as eligible for free meals using information obtained directly from food stamp/AFDC offices attesting that these children are receiving food stamps or AFDC benefits. This rule implements these statutory provisions. (89-520)

Timetable:

Action	Date	FR Cite
NPRM	05/28/91	56 FR 24033
NPRM Comment Period End	07/29/91	
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB35

522. WIC FARMERS' MARKET NUTRITION PROGRAM

Legal Authority: 42 USC 1786(m)

CFR Citation: 7 CFR 248

Legal Deadline: None

Abstract: This rulemaking would propose implementing regulations for the establishment of the WIC Farmers' Market Nutrition Program (FMNP) as mandated by PL 102-314. The FMNP is designed to provide fresh nutritious unprepared foods (such as fruits and vegetables) to WIC participants. The foods would be provided by farmers' markets and would also serve to expand the awareness and use of farmers' markets and to increase sales at such markets. The proposed rule would establish criteria for allocating grants to State agencies and for their operation of the FMNP (93-002)

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/11/94	59 FR 11508
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB43

523. DISTRIBUTION OF EMPLOYMENT AND TRAINING PERFORMANCE-BASED FUNDS

Legal Authority: 7 USC 2011 to 2032; PL 102-237

CFR Citation: 7 CFR 273.7

Legal Deadline: None

Abstract: The rule proposes to freeze Federal Employment and Training performance-based grants at the levels the States will receive in fiscal year 1993 until two years from promulgation of this rule in final form. The proposed action will bring the Food Stamp Program regulations into compliance with certain statutory requirements enacted by the Food, Agriculture, Conservation and Trade Act Amendments of 1991. (92-003)

Timetable:

Action	Date	FR Cite
NPRM	01/19/94	59 FR 2779
NPRM Comment Period End	03/21/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB47

524. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): INFANT FORMULA PROCUREMENT ACT OF 1992

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

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USDA—FNS

Final Rule Stage

Legal Deadline: Final, Statutory, April 24, 1993.
PL 102-512 requires that the mandates of these provisions be implemented within 180 days of enactment.

Abstract: This regulation is to amend the Child Nutrition Act of 1966 to encourage multi-State bidding for infant formula rebate contracts for the Special Supplemental Food Program for Women, Infants and Children (WIC), and for other purposes. The major objective of this action is to provide guidelines for the U.S Department of Agriculture, Food and Nutrition Service national office to: (1) solicit bids on behalf of interested State agencies for a cost-containment contract to be entered into by infant formula manufacturers and the WIC State agencies; and (2) disqualify and/or impose civil penalties of up to $100 million per year for infant formula manufacturers that price-fix or engage in related anti-competitive activities. (92-013)

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/07/93	58 FR 47015
Interim Final Rule Effective	09/07/93	58 FR 47015
Interim Final Rule Comment Period End	01/05/94	58 FR 47015
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Additional Information: Under the law, USDA must develop procedures to solicit bids for a cost containment contract to be entered into by infant formula manufacturers and interested WIC State agencies who elect to have USDA perform their bid solicitation and selection process. If two or more States are interested, USDA will solicit bids and select the winning bidder for a cost containment contract. USDA will, in consultation with interested State agencies, divide State agencies into one or more groups and solicit bids for group contracts. This regulation will encourage States to engage in multi-State bidding which is expected to generate an even greater savings to the WIC program, and will ultimately enable the program to significantly increase participation.

Need for Action: To set forth guidelines within 180 days of enactment, for solicitation of infant formula rebate contracts for two or more States or groups in an interim final rule.

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB52

525. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): HOMELESSNESS/MIGRANCY AS NUTRITIONAL RISK CONDITIONS

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This regulation incorporates the amendment made to the Child Nutrition Act of 1966 in section 17(b)(8)(d) of PL 102-342 which establishes homelessness and migrancy as predisposing nutritional risk conditions for the Special Supplemental Food Program for Women, Infants and Children (WIC). The major objective of this action is to provide guidelines to State agencies on service to women, infants, and children certified due to homelessness or migrancy. (93-001)

Timetable:

Action	Date	FR Cite
NPRM	04/06/94	59 FR 16146
NPRM Comment Period End	06/06/94	
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB53

526. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS—OKLAHOMA WAIVER AUTHORITY

Legal Authority: PL 97-98, Sec 1338; PL 95-113

CFR Citation: 7 CFR 254

Legal Deadline: None

Abstract: This interim rule will extend the Department's authority to grant waivers to serve urban places in excess of 10,000 people. This authority expired on September 30, 1985

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/95	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB56

527. NATIONAL SCHOOL LUNCH PROGRAM, STATE ADMIN. EXPENSE FUNDS AND DETERMINING ELIG. FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS: TECH. CORRECTIONS TO COORDINATED REVIEW EFFORT RULE

Legal Authority: PL 101-147

CFR Citation: 7 CFR 210; 7 CFR 235; 7 CFR 245

Legal Deadline: None

Abstract: This final rule corrects a number of provisions contained in the regulations governing the National School Lunch Program which implemented the unified monitoring system of the Child Nutrition and WIC Reauthorization Act of 1989. These changes are technical in nature and do not make substantive changes to the Program. (92-009)

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department

USDA—FNS

Final Rule Stage

of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB63

528. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: DEFINITION OF INDIAN TRIBAL HOUSEHOLD

Legal Authority: PL 88-525; PL 97-98, sec 1338; PL 95-113

CFR Citation: 7 CFR 253; 7 CFR 254

Legal Deadline: None

Abstract: This final rule will amend part 253 to permit households containing a Native American living in "near areas" to participate in the Food Distribution Program on Indian Reservations (FDPIR) regardless of the Native American's tribal affiliation or age. It will also amend part 254 to permit households containing a Native American to participate in FDPIR in Oklahoma regardless of the Native American's age. (82-217)

Timetable:

Action	Date	FR Cite
NPRM	10/20/87	52 FR 39158
Interim Final Rule	01/11/94	59 FR 01447
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB67

529. ALTERNATE FOODS FOR MEALS: ENRICHED MACARONI PRODUCTS WITH FORTIFIED PROTEIN

Legal Authority: 42 USC 1751 to 1760; 42 USC 1779

CFR Citation: 7 CFR 210, app A

Legal Deadline: None

Abstract: FNS is replacing the Protein Efficiency Ration (PER) method of determining protein quality with the Protein Digestibility Corrected Amino Acid Score method. Amendment of the regulations is necessary to alter the protein quality test since the current regulation requires the PER test and allows for no alternatives. This change in the regulation accepts the most accurate, efficient and a less costly method for use in measuring protein quality of this food product used in the National School Lunch Program. This change will allow food companies to minimize costs, thereby allowing them to provide quality products at the lowest cost possible.

This regulation deletes reference to the Food and Drug Administration Standard of Identity (21 CFR 139.117) which has been stayed and clarifies that protein quality is to be determined on the dried cooked food in order to comply with Official Methods of Analysis. The rule also requires manufacturers of enriched macaroni with fortified protein to notify the agency if there is change in the protein portion of their product since the original testing. (93-003)

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22304 oom 308, 703 305-2760

RIN: 0584–AB68

530. CHILD NUTRITION PROGRAMS: NUTRITION OBJECTIVES FOR SCHOOL MEALS

Regulatory Plan: This entry is Seq. No. 9 in Part II of this issue of the Federal Register.

RIN: 0584–AB73

531. FSP: TARGETING FOR INCOME AND ELIGIBILITY VERIFICATION

Legal Authority: PL 99-509, sec 9101

CFR Citation: 7 CFR 272

Legal Deadline: None

Abstract: This action places into final form the interim rule published February 2, 1988, which amended Food Stamp Program regulations. The interim rule implemented the Omnibus Budget Reconciliation Act (OBRA) of 1986, which amended the Social Security Act. As a result, the interim rule prohibited State agencies from being required to use all information obtained through their Income and Eligibility Verification Systems (IEVS) to determine the eligibility of all recipients. State agencies are allowed to identify (target) which information items they follow up on to determine the accuracy of the household's benefits. The interim rule also specifies the elements which State agencies must include in their Plan of Operation concerning targeting action on IEVS information and sets timeliness standards for such action. (86-024)

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/02/88	51 FR 07178
Final Action	10/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB74

532. • FOOD STAMP PROGRAM: UTILITY REIMBURSEMENT EXCLUSION

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This action excludes certain utility reimbursements made by the Department of Housing and Urban Development (HUD) and Farmers Home Administration (FmHA) from income consideration in determining Food Stamp Program eligibility and benefits. (94-012)

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/16/94	59 FR 30864
Final Action Effective	08/01/94	
Final Action	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition

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USDA—FNS **Final Rule Stage**

Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB79

533. • ASSET ACCUMULATION DEMONSTRATION PROJECTS

Legal Authority: PL 103-66, sec 13925

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the Food and Nutrition Service's support for demonstration projects to test the effects of allowing food stamp program participants to accumulate assets for specific purposes related to self-sufficiency.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB80

534. • NATIONAL SCHOOL LUNCH, SPECIAL MILK, SCHOOL BREAKFAST, CHILD AND ADULT CARE FOOD AND SUMMER FOOD SERVICE PROGRAMS: PURCHASE OF FOOD PRODUCTS PRODUCED IN THE U.S

Legal Authority: PL 101-237

CFR Citation: 7 CFR 210; 7 CFR 215; 7 CFR 220; 7 CFR 225; 7 CFR 226

Legal Deadline: None

Abstract: USDA has always encouraged the domestic consumption of nutritious agricultural products through the food assistance programs. However, PL 100-237, enacted January 8, 1988, requires recipient agencies participating in the Child Nutrition and Commodity Distribution Programs to purchase, whenever possible, only food products that are produced in the U.S. The statute allows exceptions to meet unusual or ethnic food preferences and further exempted Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The statute allows for additional exemptions by the Secretary "for such other circumstances as the Secretary considers appropriate." FNS published an interim rule pertaining to Part 250, Food Donations, to implement this and other requirements on July 21, 1988. A final regulation was published July 22, 1993. This rule is only amending rules for food donations, not each of the affected programs. FNS intends to issue final rules to include statutory "Buy American" provisions in the regulations for the School Lunch, Milk, Breakfast, Child and Adult Care, and Summer Food Service Programs. (93-020)

Timetable:

Action	Date	FR Cite
Final Action	02/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Sheri Ackerman, Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2760

RIN: 0584–AB82

535. • TREATMENT OF EDUCATIONAL AND TRAINING ASSISTANCE

Legal Authority: PL 101-624; PL 102-237

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: Final, Statutory, February 1, 1992.

Abstract: This action will finalize provisions of Public Law 101-624 governing the treatment of educational assistance as excluded income or resources.

Timetable:

Action	Date	FR Cite
NPRM	11/01/93	58 FR 58463
NPRM Comment Period End	01/03/94	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: The provisions of the statutes become effective on the dates of the legal deadlines whether regulations have been published or not.

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2246

RIN: 0584–AB84

536. • FOOD STAMP PROGRAM: MAXIMUM ALLOTMENTS FOR THE 48 STATES AND DC, AND INCOME ELIGIBILITY STANDARDS & DEDUCTIONS FOR THE 48 STATES, DC, ALASKA, HAWAII, GUAM, AND THE VIRGIN ISLANDS

Legal Authority: 7 USC 2012 (o)(1); 7 USC 2012 (o)(11); 7 USC 2014 (c); 7 USC 2020 (e)(3)(E)

CFR Citation: None

Legal Deadline: Final, Statutory, October 1, 1994.

Abstract: This notice announces the FY 1995 maximum allotment levels for the 48 States and DC. It also announces the FY 1995 income eligibility standards and deductions for the 48 States, DC, Alaska, Hawaii, Guam, and the Virgin Islands.

Timetable:

Action	Date	FR Cite
Final Action Effective	10/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Analysis: Regulatory Floxibility Analysis

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2246

RIN: 0584–AB85

537. • FOOD STAMP PROGRAM: MAXIMUM ALLOTMENTS FOR ALASKA, HAWAII, GUAM, AND THE VIRGIN ISLANDS

Legal Authority: 7 USC 2012(o)(11)

CFR Citation: None

USDA—FNS **Final Rule Stage**

Legal Deadline: Final, Statutory, October 1, 1994.

Abstract: This notice announces the FY 1995 maximum allotment levels for Alaska, Hawaii, Guam, and the Virgin Islands.

Timetable:

Action	Date	FR Cite
Final Action Effective	10/00/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302, 703 305-2246

RIN: 0584–AB86

DEPARTMENT OF AGRICULTURE (USDA)
Food and Nutrition Service (FNS) **Completed Actions**

538. RULES OF PROCEDURE—ADMINISTRATIVE LAW JUDGES (ALJ)

CFR Citation: 7 CFR 275; 7 CFR 276; 7 CFR 283

Completed:

Reason	Date	FR Cite
Final Action	07/06/94	59 FR 34553
Final Action Effective	08/05/94	59 FR 34553

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AA75

539. FOOD STAMP PROGRAM: INCOME EXEMPTION FOR HOMELESS HOUSEHOLDS IN TRANSITIONAL HOUSING FROM THE MICKEY LELAND CHILDHOOD HUNGER RELIEF ACT

CFR Citation: 7 CFR 272; 7 CFR 273

Completed:

Reason	Date	FR Cite
Final Action	08/29/94	59 FR 44309
Final Action Effective	09/01/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AA96

540. FOOD STAMP PROGRAM: MISCELLANEOUS PROVISIONS OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1991 AND EARNED INCOME TAX CREDIT

CFR Citation: 7 CFR 272.1; 7 CFR 273.2; 7 CFR 273.9; 7 CFR 273.21

Completed:

Reason	Date	FR Cite
Final Action	08/29/94	59 FR 44303
Final Action Effective	10/28/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AB39

541. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): FUNDING FORMULA

CFR Citation: 7 CFR 246

Completed:

Reason	Date	FR Cite
Final Action	10/06/94	59 FR 50818
Final Action Effective	10/01/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AB70

542. CHANGING THE NAME OF THE NUTRIENT REFERENCE VALUE FROM U.S. RDA TO RDI FOR THE COMPETITIVE FOOD SERVICES REGULATION

CFR Citation: 7 CFR 210; 7 CFR 220

Completed:

Reason	Date	FR Cite
Final Action	05/06/94	59 FR 23613
Final Action Effective	05/06/94	59 FR 23613

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AB71

543. CONSIDERATION OF AMENDMENTS TO APPENDIX A - ALTERNATE FOODS FOR MEALS, CHEESE ALTERNATE PRODUCTS, TO ALLOW LOW FAT CHEESE ALTERNATES

CFR Citation: 7 CFR 210, app A

Completed:

Reason	Date	FR Cite
Withdrawn due to other priorities.	08/30/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sheri Ackerman, 703 305-2760

RIN: 0584–AB72

BILLING CODE 3410-30-F

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DEPARTMENT OF AGRICULTURE (USDA)
Food Safety and Inspection Service (FSIS)

Proposed Rule Stage

544. SODIUM/POTASSIUM LACTATE AS MEANS OF REDUCING CERTAIN PATHOGENIC MICROORGANISMS IN SPECIFIC MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to permit the use of sodium lactate and potassium lactate as means of reducing certain pathogenic microorganisms in cooked meat and poultry products, and would provide for additional protection against the growth and toxin development of Clostridia botulinum in these products. FSIS has received a petition from Oscar Mayer Foods Corporation, Madison, Wisconsin, to use these substances in various cooked meat and poultry products at levels not to exceed 4.8 percent of the formulation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AA83

545. FOOD ADDITIVES AND GRAS SUBSTANCES USED AS INGREDIENTS IN MEAT FOOD AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to simplify the procedures by which FSIS approves food additives and Generally Recognized as Safe (GRAS) substances to be used as ingredients in meat food products and poultry products. The proposed rule will be developed in cooperation with the Food and Drug Administration to make the Federal regulation of food additives and other substances that may be used as ingredients in meat food and poultry products more efficient and uniform.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Judith A. Segal, Director, Policy, Evaluation and Planning Staff, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Room 3835, South Building, Washington, DC 20250, 202 720-7773

RIN: 0583–AB02

546. USE OF COMPRESSED AIR, CARBON DIOXIDE GAS, OR NITROGEN GAS TO FACILITATE BONING OF CARCASSES OR PARTS THEREOF

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 310; 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat inspection regulations to permit the use of compressed air or other gases such as nitrogen and carbon dioxide in boning operations as requested by several establishments. Tests indicate that this would facilitate the separation of muscle tissue from the fat tissue and bone of carcasses and parts without affecting the wholesomeness of the product.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jesse Majkowski, Director, Processed Products Inspection Division, Science and Technology, Department of Agriculture, Food Safety and Inspection Service, 14th and Independence Avenue SW., Washington, DC 20250, 202 447-2363

RIN: 0583–AB13

547. DETERMINING THE AMENABILITY OF BIRDS TO MANDATORY FEDERAL INSPECTION

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 362; 9 CFR 381

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking would solicit comments and recommendations regarding criteria to determine the amenability of various species of poultry to Federal inspection. Because of increasing use of formerly wild species for food purposes and genetic variations of traditional species, the Agency is increasingly in need of a framework for deciding when a specific food animal is subject to inspection laws.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/93	58 FR 38090
ANPRM Comment Period End	10/13/93	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Judith A. Segal, Director, Policy, Evaluation and Planning Staff, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Room 3835, South Building, Washington, DC 20250, 202 720-7773

RIN: 0583–AB29

548. NOTIFICATION OF RESIDUE VIOLATORS AND TESTING OF SUBSEQUENT SHIPMENTS OF ANIMALS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 310; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to provide the authority needed to permit FSIS to notify those entities determined to have marketed livestock or poultry with violative levels of residues and to test subsequent shipments of livestock or poultry marketed by the violators. These actions would not establish new policy in these areas but would, instead, permit the Agency to enforce current policy.

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Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Leese, Director, Residue Operations Staff, Inspection Operations, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Washington, DC 20250, 202 720-3311

RIN: 0583–AB32

549. REQUIREMENTS FOR IMPORTED POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the poultry products inspection regulations by defining the phrase "the same as" and by replacing the phrase "at least equal to" with the phrase "the same as" wherever it appears. The proposal could be the result of pending litigation and Congressional clarification as to the meaning of "the same as" as it applies to certified foreign establishments producing poultry products for export to the United States.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John C. Prucha, Acting Deputy Administrator, International Programs, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Room 341-E, Administration Building, Washington, DC 20250, 202 720-3473

RIN: 0583–AB42

550. SUBSTITUTE PRODUCTS IDENTIFIED BY STANDARDIZED TERMS AND NUTRIENT CONTENT CLAIMS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 319; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to establish standards of composition for meat and poultry products such as "low fat" and "low cholesterol," in conjunction with a standardized name. This action stems from the current nutrition labeling rulemaking proceeding which allows modified versions of certain standardized products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AB51

551. LABELING OF POULTRY PRODUCT PRODUCED BY MECHANICAL DEBONING AND PRODUCTS IN WHICH SUCH POULTRY PRODUCT IS USED

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the poultry products inspection regulations to establish labeling requirements for poultry products produced by mechanical deboning and products in which such poultry product is used. FSIS's current regulations do not contain labeling provisions for such product produced by mechanical deboning. An advanced notice of proposed rulemaking was published on June 15, 1993, soliciting comments, information, scientific data, and recommendations concerning the need for rulemaking to establish regulations on the labeling of poultry products produced by mechanical deboning. All comments received in response to this notice will be addressed in the proposed regulations.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/93	58 FR 33040
ANPRM Comment Period End	08/16/93	
Second ANPRM Comment Period End	03/03/94	59 FR 10230
ANPRM Extension of Comment Period Comment Period End	05/02/94	59 FR 22554
Second ANPRM	05/02/94	
ANPRM Extension of Comment Period End	06/01/94	
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Room 350-E, Administration Building, Washington, DC 20250, 202 720-2709

RIN: 0583–AB68

552. HAZARD ANALYSIS AND CRITICAL CONTROL POINTS SYSTEMS; PATHOGEN REDUCTION INTERVENTIONS; SANITATION; AND MICROBIOLOGICAL TESTING REQUIREMENTS

Regulatory Plan: This entry is Seq. No. 10 in Part II of this issue of the Federal Register.

RIN: 0583–AB69

553. RECORDKEEPING AND PRODUCTION CODE REQUIREMENTS FOR MEAT AND POULTRY ESTABLISHMENTS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 320; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations to require that all official establishments maintain certain records to identify all the sources of meat, poultry, and nonmeat and nonpoultry ingredients intended for use and used in meat and poultry products. The records maintained would track the slaughtering, processing and

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distribution of incoming poultry or poultry products, or livestock or carcasses or parts thereof, meat or meat food products, and any other ingredients used to prepare or process poultry or meat food products in official establishments. Additionally, the Federal meat inspection regulations would be amended to require the date of production or similar coding on the immediate or shipping container of all meat or meat food products prepared in official establishments.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patrick Clerkin, Director, Evaluation and Enforcement Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, **202 254-2537**

RIN: 0583–AB70

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554. REFRIGERATION REQUIREMENTS FOR RAW MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: This proposed rule would require establishments to cool carcasses or parts thereof to 40 degrees F. or below within certain time limits after slaughter and dressing. The proposed rule would also require establishments to maintain carcasses or parts thereof at 40 degrees F. or below during shipment and processing until the product enters into a process for ready-to-eat foods, unless approved by the Administrator. Specific actions would be taken by receiving establishments if shipment lots do not meet the temperature requirement prescribed by the proposed rule. This action is being taken to minimize pathogen growth in raw meat products.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	06/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jesse Majkowski, Director, Director, Processed Products Inspection Division, Science and Technology, Department of Agriculture, Food Safety and Inspection Service, 14th and Independence Avenue SW., Washington, DC 20250, **202 447-2383**

RIN: 0583–AB75

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555. • ENHANCED POULTRY INSPECTION

Regulatory Plan: This entry is Seq. No. 11 in Part II of this issue of the **Federal Register**.

RIN: 0583–AB79

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556. • USE OF TRISODIUM PHOSPHATE ON RAW, UNCHILLED POULTRY CARCASSES

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the poultry products inspection regulations to permit the application of trisodium phosphate (TSP) on raw, unchilled poultry carcasses. TSP would be permitted as an antimicrobial agent on raw, unchilled poultry carcasses at a level of 8 to 12 percent. The TSP treatment solution would be maintained at temperatures within a range of 65 degrees Fahrenheit to 85 degrees Fahrenheit and applied by spraying or dipping carcasses for up to 15 seconds. Tests conducted by industry and FSIS have shown that the use of TSP at a level of 8 to 12 percent reduces microbial populations on raw, unchilled poultry carcasses. This proposed rule is in response to a petition filed by Rhone-Poulenc, Inc., Cranbury, New Jersey.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kenneth Peterson, Slaughter Inspection Standards and Procedures Division, Science and Technology, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, **202 720-3219**

RIN: 0583–AB80

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557. • NUTRITION LABELING; NEW PRODUCT CATEGORIES AND REFERENCE AMOUNTS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This proposed rule would amend the Federal meat and poultry products inspection regulations by adding three new product categories and reference amounts to the new product categories and reference amounts chart. FSIS has received requests through public comments and the labeling application process to add new product categories and reference amounts for "Beans with meat, plain or in sauce," "Appetizers," and "Major condiments." "Beans with meat, plain or in sauce" would be added to the meat regulations while "Beans with poultry, plain or in sauce" would be incorporated into the poultry products inspection regulations. "Appetizers" and "Major condiments" would be added to the meat and poultry products inspection regulations. FSIS is also proposing to allow manufacturers to include a new column on their product labels listing the nutrition facts for the new product, if it is a multiple meal, based on the manufacturers' promoted use of such a multiple meal. A multiple meal is a single product that is designed to serve two or more people, e.g., an entree for two or more, at one sitting. The manufacturer's serving size for a multiple meal may not always be the same as FSIS' (cont)

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: portion size for the same product category; this situation makes it difficult for consumers to compare two different brands of products. This optional information would be placed on a label in addition to the required nutrition information.

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Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, **202 254-5256**

RIN: 0583–AB81

DEPARTMENT OF AGRICULTURE (USDA)
Food Safety and Inspection Service (FSIS) — **Final Rule Stage**

558. REQUIREMENTS FOR FOREIGN COUNTRY IMPORT CERTIFICATION AND LIVE ANIMAL IMPORTATION

Legal Authority: PL 99-198

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: This rule will respond to amendments to the Federal Meat Inspection Act by the Food Security Act of 1985. The amendments require that FSIS periodically certify residue control programs submitted by foreign countries desiring to export meat and poultry products to the United States. The amendments also provide the Secretary with the authority to issue an order prohibiting the importation of livestock for immediate slaughter that have been administered a drug or antibiotic banned for use in the United States.

Timetable:

Action	Date	FR Cite
NPRM	07/26/88	53 FR 27998
NPRM Comment Period End	09/26/88	
Reproposal	03/09/90	55 FR 8956
Reproposal Comment Period End	04/09/90	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence Skinner, Director, Foreign Programs Division, International Programs, Department of Agriculture, Food Safety and Inspection Service, Room 0038, South Building, 14th & Independence Avenue SW., Washington, DC 20250, **202 720-6933**

RIN: 0583–AA47

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559. CONTROL OF ADDED SUBSTANCES AND LABELING REQUIREMENTS FOR TURKEY HAM PRODUCTS

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the poultry products inspection regulations to permit the use of added water in turkey ham. The new standard provides for several categories of products that are delineated according to the protein content on a fat-free basis. FSIS was petitioned by the National Turkey Federation, Reston, Virginia, to establish protein fat-free values for turkey ham to promote product standardization and permit producers of turkey ham to compete more equitably with pork producers. This rule will replace the current provision which limits the amount of added water and other substances contained in turkey ham products by requiring the weight of the finished product to be no more than the original weight of the turkey thigh meat used prior to curing.

Timetable:

Action	Date	FR Cite
NPRM	02/21/89	54 FR 7434
NPRM Comment Period End	04/18/89	
Final Action	10/00/94	
Final Action Effective	04/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Jesse Majkowski, Director, Processed Products Inspection Division, Science and Technology, Department of Agriculture, Food Safety and Inspection Service, 14th and Independence Avenue SW., Washington DC 20250, **202 447-2383**

RIN: 0583–AA84

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560. IMPORTED CANADIAN PRODUCT; PROVISION FOR "STREAMLINED" INSPECTION PROCEDURES; EXEMPTION FROM OFFICIAL MARK OF INSPECTION

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: This rule amended the Federal meat and poultry products inspection regulations to provide "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and to exempt Canadian meat and poultry products offered for importation from the requirement that such product and/or containers of product be marked with the official mark of inspection once they are passed for entry into the United States. These actions stemmed from the Canada-United States Free Trade Agreement Implementation Act of 1988, Pub. L. 100-449. These actions specifically responded to one goal of the Agreement whereby both countries are charged with liberalizing agriculture trade practices by seeking ways to eliminate technical or procedural requirements which now may serve to impede trade in agricultural products.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/89	54 FR 273
Interim Final Rule Reopening of Comment Period	03/16/89	54 FR 10621
Interim Final Rule Comment Period End	04/12/89	
Interim Final Rule Correction	06/22/89	54 FR 26186
Interim Final Rule Withdrawal	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

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Agency Contact: Mark Manis, Director, Import Inspection Division, International Programs, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Room 0114, South Building, Washington, DC 20250, 202 720-2952

RIN: 0583–AA99

561. CENTRALIZATION AND AUTOMATION OF EXPORT CERTIFICATION PROCESS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 322; 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the Federal meat and poultry products inspection regulations to provide electronic export certification of all meat and poultry products exported to foreign countries. Domestic inspectors would continue to certify that the product is USDA inspected and passed. Exporters would be required to certify that all foreign requirements have been met. In 1988, the Agency conducted a pilot test to determine the feasibility of streamlining export certification procedures by centralizing controls; utilizing contemporary communications technology; establishing plant review criteria; and modifying stamping requirements. FSIS is reviewing the current regulations to determine what, if any, changes should be made to accommodate electronic issuance of export certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/19/93	58 FR 54012
NPRM Comment Period End	12/17/93	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Fetzner, Director, Export Coordination Division, International Programs, Department of Agriculture, Food Safety and Inspection Service, 14th & Independence Avenue SW., Washington, DC 20250, 202 720-9051

RIN: 0583–AB04

562. POLICY FOR DIFFERENTIATING BETWEEN CALVES AND ADULT CATTLE

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 309; 9 CFR 310

Legal Deadline: None

Abstract: This rule will amend the Federal meat inspection regulations to define the term "calf" for inspection purposes, as a young bovine animal whose weight does not exceed 750 pounds live, or whose dressed carcass weight does not exceed 450 pounds. In addition, the rule will provide that certain indicators of maturity, such as teeth and bone formation, be used in conjunction with weight to determine whether the animal is a "calf."

Timetable:

Action	Date	FR Cite
NPRM	06/08/90	55 FR 23100
NPRM Comment Period End	08/06/90	
Reproposal	08/27/93	58 FR 45296
Reproposal Comment Period End	09/27/93	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Craig Reed, Deputy Administrator, Inspection Operations, Department of Agriculture, Food Safety and Inspection Service, Room 344-E, Administration Building, 14th and Independence Avenue SW., Washington, D. C. 20250, 202 720-3190

RIN: 0583–AB18

563. PRIOR LABEL APPROVAL PROCESS

Regulatory Plan: This entry is Seq. No. 12 in Part II of this issue of the Federal Register.

RIN: 0583–AB50

564. PROMINENT LABELING DISCLOSURES ON MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 319; 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the Federal meat and poultry products inspection regulations to eliminate the requirement that the names and use of certain substances added to specific meat and poultry products be prominently disclosed on the product label as qualifiers to the product name. FSIS believes that qualifying phrases can be eliminated because they duplicate information provided in ingredients statements.

Timetable:

Action	Date	FR Cite
NPRM	11/04/92	57 FR 52586
NPRM Comment Period End	01/04/93	
Final Action	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2590

RIN: 0583–AB53

565. PROCEDURES FOR APPEALING PRODUCT RETENTIONS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 318; 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the Federal meat and poultry products inspection regulations to (1) require establishments to document appeals above the circuit supervisor level related to disposition of retained meat or poultry products, (2) provide that an establishment has 20 days to (a) appeal a retention, (b) recondition or rework product, or (c) properly dispose of the product, and (3) establish procedures to ensure appropriate disposition of product immediately after a decision has been reached on an appeal. The rule also provides procedures for accumulating retained product for the purpose of re-examination with specialized detection equipment.

Timetable:

Action	Date	FR Cite
NPRM	02/14/94	59 FR 6929
NPRM Comment Period End	03/16/94	
NPRM Reopening of Comment Period	04/28/94	59 FR 21948

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Action	Date	FR Cite
NPRM Comment Period End	05/31/94	
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Craig A. Reed, Deputy Administrator, Inspection Operations, Department of Agriculture, Food Safety and Inspection Service, Room 344-E, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250, 202 720-5190

RIN: 0583–AB62

566. NUTRITION LABELING: HEALTH CLAIMS ON MEAT AND POULTRY PRODUCTS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the Federal meat and poultry products inspection regulations to permit the use of health claims that characterize the relationship of a substance to a disease-related or health-related condition on labeling of meat and poultry products. The rule will also establish a labeling application process for such health claims. This action stems from a proposed rule titled "Nutrition Labeling of Meat and Poultry Products" published November 27, 1991, which was made final on January 6, 1993.

Timetable:

Action	Date	FR Cite
NPRM	05/25/94	59 FR 27144
NPRM Comment Period End	07/25/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AB64

567. TRISODIUM PHOSPHATE AS A POST-CHILL ANTIMICROBIAL TREATMENT FOR RAW POULTRY

Legal Authority: 21 USC 451 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend the poultry products inspection regulations to permit the use of trisodium phosphate as a post-chill antimicrobial treatment for inspected and passed raw poultry products. FSIS has received a petition from Rhone-Poulenc, Inc., Cranbury, New Jersey, to use this substance as a processing aid in post-chill poultry slaughter operations.

Timetable:

Action	Date	FR Cite
NPRM	01/05/94	59 FR 551
NPRM Comment Period End	03/07/94	
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William O. James, Director, Slaughter Inspection Standards and Procedures Division, Department of Agriculture, Food Safety and Inspection Service, Science and Technology, Room 202, Cotton Annex Building, Washington, DC 20250, 202 720-3219

RIN: 0583–AB65

568. NUTRITION LABELING OF GROUND BEEF AND HAMBURGER

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 317

Legal Deadline: None

Abstract: This rule will amend the Federal meat inspection regulations to permit percentage labeling for lean and fat on ground beef and hamburger, provided such product labeling contains nutrition information. This rule will also provide increased flexibility in the labeling of ground beef and hamburger, and allow consumers to readily identify and differentiate between the varying lean/fat percentages of these products. This action is taken in response to a petition received from Western States Meat Association, Oakland, California.

Timetable:

Action	Date	FR Cite
NPRM	05/24/94	59 FR 26916
NPRM Comment Period End	07/08/94	
Final Action	10/00/94	

Extension of Comment Period
NPRM 07/05/94 (59 FR 34396)
Extension of Comment Period End
NPRM 08/22/94

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AB74

569. MEAT PRODUCED BY ADVANCED MEAT AND BONE SEPARATION MACHINERY AND MEAT RECOVERY SYSTEM

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 301; 9 CFR 318; 9 CFR 319

Legal Deadline: None

Abstract: This rule will define as "meat" those products derived from the separation of skeletal muscle from livestock carcasses by advanced mechanical meat/bone separation machinery that does not crush, grind, or pulverize bones. Currently, the regulations require that meat products derived from mechanical separation must be labeled as mechanically separated (species), (MS(S)), and may be used only in certain products which must declare the calcium content of MS(S) on their labeling, when MS(S) is used. The new method produces product without crushing, grinding, or pulverizing the bone, and thus eliminates safety concerns regarding the bone content of such product.

Timetable:

Action	Date	FR Cite
NPRM	03/03/94	59 FR 10246
NPRM Comment Period End	05/02/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection

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Final Rule Stage

Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AB76

570. • USE OF SOY PROTEIN CONCENTRATE AND FOOD STARCH-MODIFIED AS BINDERS IN CURED PORK PRODUCTS: DIRECT FINAL RULE

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 318

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) plans to increase the permitted use level of food starch-modified and approve the use of soy protein concentrate in certain cured pork products. Food starch-modified is currently permitted to be added to certain cured pork products as a binder at a level of 2 percent; this rule would increase that level to 3.5 percent. Soy protein concentrate would be permitted for use in certain cured pork products at a level of 2 percent. The technical effect of these substances when added to product is to reduce water purge (pumped brine) from the product. Both of these substances are listed in the Food and Drug Administration regulations as generally recognized as safe for use in foods in accordance with good manufacturing practice. We have reviewed the technical data and information supplied by the petitioners (Central Slya, Fort Wayne, IN, and the National Starch and Chemical Company, Bridgewater, NJ), and have determined that the use of these substances is functional and suitable for the intended purpose. This rule only makes minor, technical changes to the chart of substances approved for use in meat products.

Timetable:

Action	Date	FR Cite
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 254-2565

RIN: 0583–AB82

571. • FEE INCREASE FOR INSPECTION SERVICES

Legal Authority: 21 USC 601 et seq; 21 USC 450 et seq

CFR Citation: 9 CFR 391

Legal Deadline: None

Abstract: This rule will amend the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services primarily as a result of Federal salary increases allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	06/27/94	59 FR 32940
NPRM Comment Period End	07/27/94	
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William L. West, Director, Budget and Finance Administrative Management, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250, 202 720-3367

RIN: 0583–AB83

DEPARTMENT OF AGRICULTURE (USDA)

Food Safety and Inspection Service (FSIS)

Completed Actions

572. ANTE-MORTEM INSPECTION OF DISABLED ANIMALS ON TRANSPORT VEHICLES

CFR Citation: 9 CFR 309; 9 CFR 320

Completed:

Reason	Date	FR Cite
Withdrawn - No further action necessary.	07/18/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William O. James, 202 720-3219

RIN: 0583–AA98

573. POULTRY POST-MORTEM INSPECTION SYSTEM

CFR Citation: 9 CFR 381

Completed:

Reason	Date	FR Cite
Merged With RIN 0583-AB79 - No further action necessary.	07/13/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lester Nordyke, 202 720-6313

RIN: 0583–AB54

574. BADGES FOR PERSONS AUTHORIZED TO CONDUCT FEDERAL POULTRY INSPECTION

CFR Citation: 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Action	08/17/94	59 FR 42155
Final Action Effective	08/17/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William O. James, 202 720-3219

RIN: 0583–AB03

575. USE OF CARBON DIOXIDE IN THE HUMANE SLAUGHTER OF SWINE

CFR Citation: 9 CFR 308

Completed:

Reason	Date	FR Cite
Final Action	04/26/94	59 FR 21638
Final Action Effective	05/26/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William O. James, 202 720-3219

RIN: 0583–AB57

USDA—FSIS

Completed Actions

576. NUTRITION LABELING: USE OF "HEALTHY" AND SIMILAR TERMS ON MEAT AND POULTRY PRODUCT LABELING

CFR Citation: 9 CFR 317; 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Action	05/10/94	59 FR 24220
Final Action Effective	11/10/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, 202 254-2565

RIN: 0583–AB63

577. SODIUM CITRATE AS A TRIPE DENUDING AGENT

CFR Citation: 9 CFR 318

Completed:

Reason	Date	FR Cite
Final Action	08/15/94	59 FR 41640
Final Action Effective	09/14/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William O. James, 202 720-3219

RIN: 0583–AB66

578. PLACEMENT OF NUTRITION LABELING AND OTHER MANDATORY LABELING ON MEAT AND POULTRY

CFR Citation: 9 CFR 317; 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Action	08/08/94	59 FR 40209
Final Action Effective	08/08/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, 202 254-2565

RIN: 0583–AB72

579. • NUTRITION LABELING OF MEAT AND POULTRY PRODUCTS; TECHNICAL AMENDMENTS

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq; 7 USC 450

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This rule will amend its final nutrition labeling regulations which permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products and establish mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. FSIS is taking this action to address inconsistencies in the regulations, improve their accuracy, and correct unintended technical consequences of the regulations, in order to provide consumers with the most informative labeling system possible. Most of the changes are designed to parallel technical amendments the Food and Drug Administration made to its regulations that require nutrition labeling on most foods under its jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	03/16/94	59 FR 12472
NPRM Comment Period End	05/16/94	
Final Action	09/01/94	59 FR 45189
Final Action Effective	09/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 2025050, 202 254-2565

RIN: 0583–AB78

BILLING CODE 3410-DM-F

DEPARTMENT OF AGRICULTURE (USDA)

Foreign Agricultural Service (FAS)

Proposed Rule Stage

580. PROPOSED REGULATIONS GOVERNING IMPLEMENTATION OF THE COOPERATOR MARKET DEVELOPMENT PROGRAM OVERSEAS

Legal Authority: 7 USC 1704

CFR Citation: 7 CFR 1550

Legal Deadline: None

Abstract: These regulations are promulgated to provide minimum requirements and criteria for parties interested in participating in the cooperator Market Development program, as authorized in Section 601 of the Agricultural Act of 1954 (PL 480), and how they may apply and participate.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry D. Abramovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, DC 20250, 202 720-6713

RIN: 0551–AA26

581. SECTION 22 IMPORT QUOTAS

Legal Authority: EO 3019

CFR Citation: 7 CFR 6.20 to 6.34

Legal Deadline: None

Abstract: Provides for quotas for certain dairy and other agricultural products to prevent material interference with the domestic price support program for these commodities. In the case of dairy products, controls are administered through a licensing procedure so that the quotas may be allocated in a fair and equitable manner among importers and users. A fee is charged for each license issued to recover the costs of administering the licensing system. Procedures used to implement section 22 import quotas will need to be revised as the Uruguay Round multilateral trade agreement is implemented.

Timetable:

Action	Date	FR Cite
ANPRM	06/02/94	59 FR 28495
ANPRM Comment Period End	08/01/94	
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Barry D. Abramovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, D. C. 20250, 202 720-6713

RIN: 0551–AA27

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USDA—FAS — **Proposed Rule Stage**

582. REPORTING REQUIREMENTS RELATED TO TOBACCO EXPORTS

Legal Authority: 7 USC 509; PL 101-624, sec 1557

CFR Citation: 7 CFR 1525

Legal Deadline: None

Abstract: Exporters/manufacturers of unmanufactured tobacco, cigarettes and cigarette-ready tobacco are required to maintain records and submit reports pertaining to such records on tobacco content related to crop year, grade, type, country of origin, and poundage to the Secretary of Agriculture. Submitted information will be provided to Congress. Annual cost to the Government is established at $100,000.

Timetable:

Action	Date	FR Cite
ANPRM	12/17/93	58 FR 65941
ANPRM Comment Period End	03/17/94	
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Analysis: Regulatory Flexibility Analysis

Agency Contact: Barry D. Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, 14th Street & Independence Avenue SW., Washington, DC 20250, 202 720-6713

RIN: 0551–AA32

583. SUGAR TO BE RE-EXPORTED IN REFINED FORM, SUGAR TO BE RE-EXPORTED IN SUGAR-CONTAINING PRODUCTS, AND SUGAR FOR PRODUCTION OF POLYHYDRIC ALCOHOL

Legal Authority: 19 USC 1202

CFR Citation: 7 CFR 1530 subpart A; 7 CFR 1530 subpart B; 7 CFR 1530 subpart C

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking addresses some administrative changes to the sugar import licensing programs. These changes are intended to increase the regulatory efficiency, assist in verifying program compliance and provide for the adherence of the applicable sugar provisions of the North American Free Trade Agreement.

Timetable:

Action	Date	FR Cite
ANPRM	05/04/94	59 FR 23017
ANPRM Comment Period End	07/08/94	
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Barry Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, DC 20250-1000, 202 720-6713

RIN: 0551–AA39

DEPARTMENT OF AGRICULTURE (USDA)
Foreign Agricultural Service (FAS)

Final Rule Stage

584. REGULATIONS GOVERNING IMPLEMENTATION OF THE MARKET PROMOTION PROGRAM (MPP) OVERSEAS

Legal Authority: 7 USC 1485

CFR Citation: 7 CFR 1736; 7 CFR 1485

Legal Deadline: None

Abstract: These regulations are promulgated to provide minimum requirements and criteria for parties interested in participating in the Market Promotion Program (MPP) as authorized by the Agricultural Trade Act of 1978, as amended, and how they may apply and participate.

Timetable:

Action	Date	FR Cite
NPRM	04/26/90	55 FR 17618
NPRM Comment Period End	06/26/90	
Interim Final Rule	08/16/91	56 FR 40745
Interim Final Rule Comment Period End	10/15/91	56 FR 40745
Second Interim Final Rule	11/17/93	58 FR 60549
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry D. Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, DC 20250, 202 720-6713

RIN: 0551–AA24

585. CCC EXPORT CREDIT GUARANTEE PROGRAM (GSM-102) AND CCC INTERMEDIATE EXPORT CREDIT GUARANTEE PROGRAM (GSM-103)

Legal Authority: 15 USC 714(b); 15 USC 714(f); 7 USC 5602; 7 USC 5622; 7 USC 5661; 7 USC 5663; 7 USC 5664; 7 USC 5676

CFR Citation: 7 CFR 1493

Legal Deadline: None

Abstract: Revision of the regulations for the GSM-102 and GSM-103 programs to improve and update the current regulations and incorporate material required by the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/06/91	56 FR 25998
Final Action	10/00/94	
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, DC 20250, 202 720-6713

RIN: 0551–AA30

586. PROGRAM CRITERIA FOR THE SUNFLOWERSEED OIL ASSISTANCE PROGRAM (SOAP) AND THE COTTONSEED OIL ASSISTANCE PROGRAM (COAP)

Legal Authority: PL 101-624, sec 1531; 7 USC 5663

CFR Citation: 7 CFR 1570

Legal Deadline: NPRM, Statutory, May 31, 1991.

Abstract: This regulation esfablishes the criteria to evaluate and approve

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proposals for country and commodity initiatives under the SOAP and COAP. The establishment of criteria for these programs is mandated under Section 403(a) of the Agricultural Trade Act of 1978, as amended in Section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/91	56 FR 42222

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Barry D. Abromovage, Regulatory Coordinator, Compliance Review Staff, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington, DC 20250, 202 720-6713

RIN: 0551–AA31

587. SUNFLOWERSEED OIL ASSISTANCE PROGRAM OPERATIONS (SOAP) AND COTTONSEED OIL ASSISTANCE PROGRAM OPERATIONS (COAP)

Legal Authority: 7 USC 1464, sec 201(b)(2)(A); PL 101-624, sec 1541 As amends 7 USC 1464, sec 201 (b)(2)

CFR Citation: 7 CFR 1570 subpart B; 7 CFR 1570 subpart C

Legal Deadline: None

Abstract: Title 7, part 1570, subpart B will establish operational regulations for the Sunflowerseed Oil Assistance Program (SOAP). Title 7, part 1570, subpart C will establish operational regulations for the Cottonseed Oil Assistance Program (COAP). These programs have been previously administered by the Foreign Agricultural Service through the issuance of announcements and invitations for offers. The regulations will replace the issued announcements for SOAP and COAP.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Barry Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, 14th Street & Independence Ave SW., Washington, DC 20250, 202 720-6713

RIN: 0551–AA33

588. DIRECT CREDIT PROGRAMS (GSM-5, GSM-201, GSM-301) REGULATIONS

Legal Authority: 15 USC 714(c) to 714(f); 07 USC 17070; 07 USC 5602; 07 USC 5621; 07 USC 5661; 07 USC 5662; 07 USC 5676

CFR Citation: 7 CFR 1487; 7 CFR 1488; 7 CFR 1491; 7 CFR 1492

Legal Deadline: None

Abstract: This final rule affects the regulations of the Commodity Credit Corporation (CCC) regarding the use of "direct credit." The CCC is issuing this final rule which deletes the regulations for the noncommercial risk assurance programs (GSM-101) and amends the regulations for financing of sales of agricultural commodities (GSM-5), the CCC intermediate credit export sales program for breeding animals (GSM-201) and the CCC intermediate credit export sales program for foreign market development facilities (GSM-301). The amendments to the GSM-5, GSM-201 and GSM-301 Programs are made to incorporate material required by provisions of the Agricultural Trade Act of 1978, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624).

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Barry Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, 14th Street & Independence Avenue SW., Washington, DC 20250, 202 720-6713

RIN: 0551–AA34

589. EMERGING DEMOCRACIES AGRICULTURAL FACILITY GUARANTEE PROGRAM

Legal Authority: 7 USC 5622 (b)

CFR Citation: 7 CFR 17; 7 CFR 1493

Legal Deadline: None

Abstract: The regulations will provide the terms and conditions of obtaining a Commodity Credit Corporation Export Credit Guarantee for agricultural facility establishment or improvement in emerging democracies that will primarily promote the export of U.S. agricultural commodities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/01/93	58 FR 11786
Interim Final Rule Effective	03/01/93	
Interim Final Rule Comment Period End	06/01/93	

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: CCC, since the publication of the interim rule, has developed the Facilities Guarantee Program operational requirements. CCC intends to issue these operational requirements as a guideline, as provided by the interim rule. Soon thereafter CCC will publish a proposed rule, with the same content as the guidelines with the intention of using this proposal as the framework for a final rule after a pilot test of the guidelines.

Agency Contact: Barry Abromovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, 14th & Independence Ave SW., Washington, DC 20250, 202 720-6713

RIN: 0551–AA35

590. REGULATIONS GOVERNING THE FINANCING OF COMMERCIAL SALES OF AGRICULTURAL COMMODITIES (P.L. 480 TITLE I PROGRAM)

Legal Authority: 7 USC 1701 to 1705; 7 USC 1736 (a); 7 USC 1736 (c); 7 USC 5676; EO 12220

CFR Citation: 7 CFR 17

Legal Deadline: None

Abstract: The proposed rule would clarify the interim rule published Feb. 1, 1991 in response to the 1990 Food, Agriculture, Conservation, and Trade Act; it would change the basis for demurrage/despatch computations and the distribution of despatch; and it would limit brokerage payments to country agents and expand U.S. Government access to records. These actions would reduce the possibility of conflicts of interest, expedite loading of commodities, increase competition for ocean transportation and reduce ocean freight expenditures under the PL 480 Title I program.

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Timetable:

Action	Date	FR Cite
NPRM	11/12/92	57 FR 53607
NPRM Comment Period End	01/13/93	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Barry D. Abramovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, 14th & Independence Ave SW., Washington, DC 20250, 202 720-6713

RIN: 0551–AA36

591. FOREIGN DONATION OF AGRICULTURAL COMMODITIES

Legal Authority: 7 USC 1431(b); 7 USC 1736(o)

CFR Citation: 7 CFR 1499

Legal Deadline: None

Abstract: This proposed rule would establish regulations governing the foreign donation of agricultural commodities by Commodity Credit Corporation pursuant to Section 416 (b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985.

Timetable:

Action	Date	FR Cite
NPRM	02/14/94	59 FR 6916
NPRM Comment Period End	04/15/94	
Final Action	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: Federal

Agency Contact: Barry Abramovage, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 4957 South Building, Washington DC 20250-1000, 202 720-6713

RIN: 0551–AA38

BILLING CODE 3410-10-F

DEPARTMENT OF AGRICULTURE (USDA)
Forest Service (FS)

Prerule Stage

592. 36 CODE OF FEDERAL REGULATIONS, PART 251 - LAND USES, SUBPART C APPEAL OF DECISIONS RELATING TO OCCUPANCY AND USE OF NATIONAL FOREST SYSTEM LANDS

Legal Authority: 16 USC 472; 16 USC 551

CFR Citation: 36 CFR 251 subpart C

Legal Deadline: None

Abstract: Management decisions made regarding Programs with Small Business Administration (FSM 2436, and FSH 2409.18 Ch. 90) have been appealed using 36 CFR 217 in the past. The actual compatibility between the type of decisions being made and this appeal rule has been tenuous because these decisions do not have the potential to affect the environment. 36 CFR 215 is now in effect and is clearly even less of an appropriate fit.

36 CFR 251 provides an appeal process appropriate for the decisions being made with regard to small business programs. 36 CFR 251 needs some rewording in order to directly include this class of decisions. Currently it applies to special use situations, but can be broadened to apply to the small business decisions.

Timetable:

Action	Date	FR Cite
Begin Review	10/00/94	
NPRM	11/00/94	
End Review	12/00/94	
NPRM Comment Period End	01/00/95	
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB45

593. • SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; EXTENSION OF TIMBER SALE CONTRACTS

Legal Authority: 16 USC 472a

CFR Citation: 36 CFR 223.50; 36 CFR 223.53

Legal Deadline: None

Abstract: This rule and policy change will provide for extension of National Forest System (NFS) timber sale contracts when such extension will permit the prompt removal and utilization of non-NFS owned timber damaged by catastrophic events. The will define the responsibilities of the parties for requesting and approving such extensions and specify when such extension should be approved. This change will also allow for the use of scarce timber resources and the recovery of economic benefits from timber that might otherwise be lost because of contractual obligations to harvest undamaged timber.

Timetable:

Action	Date	FR Cite
ANPRM Comment Period End	10/00/94	
NPRM	11/00/94	
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB48

DEPARTMENT OF AGRICULTURE (USDA)
Forest Service (FS)

Proposed Rule Stage

594. PROHIBITION ON MECHANICAL TRANSPORT AND OTHER ACTIVITIES IN WILDERNESS

Legal Authority: 16 USC 113 to 136; 16 USC 528 to 531; 16 USC 577 to 577c; 16 USC 1133

CFR Citation: 36 CFR 293.6(a); 36 CFR 261

Legal Deadline: None

Abstract: Except where specifically provided for, the Wilderness Act (16 USC 1133) prohibits both motorized equipment and mechanical transport. Mechanical transport includes devices such as bicycles, hang gliders, wheeled carts, and other items designed to carry people or supplies and powered by either "nonliving" or "living" power sources. The objective of this action is to clarify the definition of mechanical transport in 36 CFR 293.6(a) and to make corollary revisions in the prohibitions applicable to wilderness use, including prohibiting competitive events and expanding the definition of aircraft to include hang gliders, parachutes and parasails.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA47

596. REVISE SMALL TRACTS ACT REGULATIONS

Legal Authority: 16 USC 521(c) to 521(i)

CFR Citation: 36 CFR 254, subpart C

Legal Deadline: None

Abstract: Implementation of the Agency's Small Tracts regulations has revealed an inadvertent inconsistency between the regulations at 36 CFR 254.35(f) and 254.41(a) and the legislative history of the Small Tracts Act of January 12, 1983. The regulations imply that the disposal of mineral fractions by sale can only be made in response to an application from an abutting landowner, thus discouraging the conveyance by sale to the public. The Act clearly authorizes sale of mineral fractions to the public through public sale, as well as individual applications, provided that certain conditions are met. The revisions will clarify the application of the Act to ensure that both individual applications and public sale are permissible means of disposing of qualifying tracts.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

595. HYDROPOWER APPLICATIONS

Legal Authority: 16 USC 551; 43 USC 1761

CFR Citation: 36 CFR 251.54; 36 CFR 251.57

Legal Deadline: None

Abstract: A revision of Agency procedures is needed to reduce confusion regarding the role of the Forest Service in permitting hydroelectric uses on National Forest System lands. The goal of the directives will be to establish procedures, compatible with the procedures of the Federal Energy Regulatory Commission (FERC) for obtaining various approvals and involvement of the Forest Service in a timely manner. In addition, the directives will establish a fee system for hydroelectric uses as required by Title V, Section 501 of the Federal Land Policy and Management Act of 1976. A Notice of Proposed Policy was published 6/8/84 and comments were received. The proposed policy will take those comments into account.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA79

597. ISOLATED CABIN POLICY

Legal Authority: 16 USC 477 to 482; 16 USC 551

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: Agency policy is to terminate isolated cabin authorizations on National Forest System land that were constructed without advance authorization and subsequently authorized by special use permit. These cabins are used for part or full-time occupancy. These cabins differ from recreation residences which were established in tracts specific for this purpose and built with Agency approval and supervision. Isolated cabins originated in several ways, including encroachment and mining claims. They restrict management of the surrounding National Forest land and deprive the public from the use and enjoyment of the land actually occupied and the surrounding area. The action proposed is to see input from the public as to whether the present policy should be continued, or whether it should be revised so as to examine each isolated occupancy and determine whether, in the interest of fairness and equity, the cabin should be converted to a recreation residence. This proposal to revise current policy was originally included in proposed policy on recreation residences (RIN No. 0596-AB06). Reconsideration of the issues involved led do the decision (cont)

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	06/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

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Additional Information: ABSTRACT CONT: to treat each issue separately. The issuance of a final reformulated recreation residence policy on 6/2/94 makes it essential that isolated cabin use be treated promptly.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Wasington, DC 20090-6090, 703 235-1488

RIN: 0596–AA85

598. SOLID WASTE DISPOSAL POLICY

Legal Authority: 16 USC 497; 43 USC 931(o)

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: Solid waste disposal sites (sanitary landfills) on National Forest System lands present the potential for resource degradation, hazardous waste dumping, and future liability. A proposal for solid waste disposal is being developed to reflect changes which have occurred as a result of the Resource and Conservation Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and an increased knowledge of solid waste disposal. The proposal would prohibit the authorization of new sites and provide for the phase out of existing sites. During the phase out period authorizations would be amended to provide resource protection and limit the Government's potential liability. Adoption of this policy would reduce administrative costs associated with administration of solid waste disposal sites, limit future liability, and protect the resources of the National Forest System lands. The proposal would impact 110 sites currently authorized.

Timetable:

Action	Date	FR Cite
ANPRM	06/26/90	55 FR 25990
ANPRM Withdrawn	07/10/90	55 FR 28258
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Interim Final Rule	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Federal

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA92

599. IRREVOCABLE LETTER OF CREDIT

Legal Authority: 16 USC 472a; 16 USC 528 to 531; 16 USC 1600 et seq; 12 USC 1 et seq

CFR Citation: None

Legal Deadline: None

Abstract: In a 1987 court decision, a letter of credit issued in lieu of surety bond was found to be unenforceable because the person who signed the letter of credit did not have authority to do so and because the bank had violated State law in regard to limits of liability. Others were invalid because they exceeded the expiration date. To remedy this problem, the Forest Service is proposing to issue a requirement that the bank president certify as to the authority of the person signing the letter of credit and the conformance with State and Federal statutes. An automatic extension of the expiration date would also be required.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P. O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA93

600. PRE-AWARD INFORMATION REQUIREMENTS

Legal Authority: 16 USC 472(a); 16 USC 618

CFR Citation: 36 CFR 223.101

Legal Deadline: None

Abstract: Recently, as the number of timber sale defaults has increased, the number of debarred purchasers has increased, and the Government has initiated a policy of only doing business with responsible parties, it is becoming commonplace for bidders to form new affiliates in order to continue to be awarded Forest Service timber sale contracts. Unless the bidder voluntarily identifies affiliates, the Agency must make the determination through a time consuming process prior to award, prior to determining if double downpayment rules apply, and prior to taking debarment action. This rule would require bidders to disclose, prior to award of sales, all affiliates, and to certify that none are suspended or debarred. Filing a false certification would be cause for contract cancellation and debarment action.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	03/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB03

601. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

Regulatory Plan: This entry is Seq. No. 13 in Part II of this issue of the Federal Register.

RIN: 0596–AB20

602. DISPOSAL OF NATIONAL FOREST TIMBER; CANCELLATION OF TIMBER SALE CONTRACTS

Regulatory Plan: This entry is Seq. No. 14 in Part II of this issue of the Federal Register.

RIN: 0596–AB21

603. CHANGE EMPHASIS AWAY FROM RESIDUAL VALUE APPRAISAL TO TRANSACTION EVIDENCE APPRAISAL AS THE PRIME METHOD OF APPRAISING NATIONAL FOREST TIMBER

Legal Authority: 16 USC 1600

CFR Citation: 36 CFR 223.60

Legal Deadline: None

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Abstract: The emphasis will be changed in 36 CFR 223.60 away from the Residual Value Appraisal method of appraising National Forest timber to the Transaction Evidence Appraisal method. The basic procedure will be the Transaction Evidence Appraisal system, except in Region 10 where Residual Value appraising will continue to be used in light of the two long-term contracts that are currently in place. Other uses of the Residual Value and other appraisal systems may be used subject to approval from the Chief of the Forest Service.

The present 36 CFR 223.60 leans heavily to the Residual Value Appraisal System. National direction has been given to convert to the Transaction Evidence Appraisal system by October 1, 1992; thus the emphasis in the CFR needs to be changed.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB26

604. SPECIES SURPLUS TO DOMESTIC MANUFACTURING NEEDS

Legal Authority: 16 USC 620 et seq

CFR Citation: 36 CFR 223.200

Legal Deadline: None

Abstract: This proposed rule would amend proposed subpart F, part 223 of title 36 of the Code of Federal Regulations, section 223.200, to list species proposed to be surplus to domestic manufacturing needs. This proposed rule would implement a portion of section 489(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 USC 620 et seq). Section 489(a) of the Act provides that no person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange or otherwise convey such timber from the United States, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States. Section 489(b) of the Act provides that the prohibition contained in section (a) shall not apply to specific quantities of grades and species of unprocessed timber originating in Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs, issued in accordance with (cont)

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	06/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

Additional Information: ABSTRACT CONT: section 553 of title 5 USC.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB27

605. RETENTION OF DOWNPAYMENT ON TIMBER SALE CONTRACTS

Legal Authority: 16 USC 472(a); 16 USC 618

CFR Citation: 36 CFR 223.49

Legal Deadline: None

Abstract: The Federal Timber Sale Contract Payment Modification Act directs the Forest Service to require purchasers to make downpayments and periodic payment on timber sales. The objective of these requirements is to discourage speculative bidding on National Forest System timber sales. This rule will identify the requirements to hold downpayments until the timber sale contract is substantially completed and will establish criteria to determine speculative bidding.

Timetable:

Action	Date	FR Cite
ANPRM	02/02/94	59 FR 4879
ANPRM Comment Period End	03/04/94	
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	03/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $10,000; Yearly Recurring Cost: $0

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB28

606. PROPOSED POLICY NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING FOREST SERVICE MANUAL (FSM 1920)

Legal Authority: 16 USC 1600 et seq

CFR Citation: None

Legal Deadline: None

Abstract: The proposed manual policy would incorporate all direction for land and resource management planning into one Forest Service Manual chapter (FSM 1920). The proposed policy would clarify how the revised land and resource management planning regulations at 36 CFR 219 will be implemented. The proposal will focus on implementation of forest plans: monitoring, evaluation, amendment, and revision of forest plans; and clarifying the relationship between forest planning and project decisionmaking. The agency plans to make this policy available for review during the comment period on the proposed revised rule (see entry for 0596-AB20).

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	08/00/95	
Final Action	12/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB31

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USDA—FS

Proposed Rule Stage

607. USE OF FIXED ANCHORS FOR ROCK CLIMBING IN WILDERNESS

Legal Authority: 16 USC 1121; 16 USC 1131 to 1136

CFR Citation: 36 CFR 261.16; 36 CFR 293.9

Legal Deadline: None

Abstract: The sport of rock climbing is often accomplished by using fixed, rather than removable, metal bolts and anchors. These bolts are considered permanent improvements when installed. These improvements may detract from the wilderness experience and are not always compatible with management of the wilderness resource. The Forest Service proposes to reduce impacts on the wilderness resource by regulating use of fixed anchors for rock climbing in wilderness administered by the agency so that rock climbing occurs in a manner compatible with wilderness management. Alternatives to the proposed action are to prohibit all use of fixed anchors in wilderness, or permit unrestricted use of fixed anchors.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $1,000; Base Year for Dollar Estimates: 1992

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB33

608. COLLECTION OF REIMBURSABLE COSTS FOR PROCESSING SPECIAL-USE APPLICATIONS AND ADMINISTRATION OF SPECIAL-USE AUTHORIZATIONS

Legal Authority: 43 USC 1764; 30 USC 181

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The objective of this proposal is to incorporate into regulation the authority contained in the Mineral Leasing Act and the Federal Land Policy and Management Act to reimburse the United States for reasonable administrative costs associated with the issuance and administration of special-uses on National Forest System lands.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Interim Final Rule	03/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Cost Reimbursement for processing special-use applications and administration of special-use authorizations was originally included under RIN 0596-AA36. The cost reimbursement section was suspended from RIN 0596-AA36 on 01/01/92 (57 51110); the remaining sections pertaining to the special-use application and administration process were included in RIN 0596-AB35.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB36

609. EXERCISE OF OUTSTANDING MINERAL RIGHTS

Legal Authority: 16 USC 478; 16 USC 1613; 30 USC 181; 30 USC 228; 43 USC 1740

CFR Citation: 36 CFR 228, subpart F

Legal Deadline: NPRM, Statutory, December 24, 1992.

Abstract: This subpart will set forth the rules by which the Forest Service will carry out its statutory responsibilities for the management of oil and gas operations involving outstanding mineral rights on National Forest System lands within the Allegheny National Forest. These rules will, as required by the energy bill, PL 102-486, identify that information an owner of outstanding mineral rights must submit to the Forest Service 60 days prior to beginning operations and how the Forest Service will review such information. The Forest Service did not consider other alternatives because these regulations are mandated by law. Public costs are insignificant but public benefits could be substantial in that Forest Service and industry cooperation should be enhanced.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	08/00/95	
Interim Final Rule	10/00/96	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB38

610. SMITH RIVER NATIONAL RECREATION AREA

Legal Authority: 16 USC 460bbb(6); 16 USC 478; 16 USC 551

CFR Citation: 36 CFR 292, subpart G

Legal Deadline: None

Abstract: This subpart will set forth the rules by which the Forest Service will carry out its statutory responsibilities for the management of mineral operations on National Forest System lands within the Smith River National Recreation Area, Six Rivers National Forest. These rules will, as required by the Smith River National Recreation Area Act (PL 102-612), promote and protect the recreation opportunities but still allow for mineral operations to take place. The Forest Service did not consider other alternatives because these regulations are mandated by law. Public costs are insignificant, but the public benefits could be substantial in that the Forest Service and industry cooperation should be enhanced.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	09/00/95	
Interim Final Rule	03/00/96	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB39

USDA—FS

Proposed Rule Stage

611. INDICES TO DETERMINE MARKET-RELATED TERM ADDITIONS

Legal Authority: 16 USC 618(b)

CFR Citation: 36 CFR 233.52 (Revision)

Legal Deadline: None

Abstract: Based on General Accounting Office Testimony Report Number, T-RCED-92-58, 04/28/92, the Secretary of Agriculture agreed to reexamine the use of the Bureau of Labor Statistics unadjusted indices to determine whether wood product prices showed a drastic decline. The Secretary of Agriculture indicated the Forest Service would develop and publish for comment a proposed rule to use an alternative method to determine whether wood prices have drastically declined and warrant granting of a Market-Related Contract Term Addition. The proposed rulemaking will propose using seasonally adjusted producer price indices, adjusted to a constant dollar base, where available, to determine whether a drastic reduction in wood product prices occurred. The title of this proposed rule has been changed from "Market-Related Term Additions" in order to distinguish it from RIN 0596-AB41 with the same title.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB40

612. MARKET RELATED TERM ADDITIONS

Legal Authority: 16 USC 618(b)

CFR Citation: 36 CFR 223.50 (Revision); 36 CFR 223.53 (New)

Legal Deadline: None

Abstract: This proposed rule will provide for extension of certain National Forest System (NFS) timber sale contracts to allow upon request harvest of damaged timber located on other public or private lands which are in need of urgent removal because of catastrophic events beyond the control of the landowner. Catastrophic events which may result in the need for urgent removal of damaged timber include, but are not limited to, fire, flood, insect and disease infestations, drought, and windthrow. This proposed rule will also change Title 36 Code of Federal Regulations (CFR) 223.50, to provide for adjusting periodic payment determination dates that have not been reached when an urgent removal extension is granted.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB41

613. PRIVATE SALE OF GOLDEN EAGLE PASSPORTS

Legal Authority: 16 USC 551; 16 USC 472; 16 USC 4601 to 4606(a); 16 USC 1281(d); 16 USC 1246(i); 16 USC 1133(b); 31 USC 9701; PL 103-66

CFR Citation: None

Legal Deadline: None

Abstract: Congress passed and the President signed the Omnibus Reconciliation Act of 1993. This act authorizes the private sale of Golden Eagle Passports. The Act also directs that such sales will be subject to such terms and conditions as the Secretaries of Agriculture and Interior may jointly prescribe including detailed guidelines for promotional advertising, compliance monitoring, and withholding the cost of sales not to exceed eight percent. The purpose of this regulation is to establish the terms and conditions for the private sale of Golden Eagle Passports. The joint terms will be published in one notice in the Federal Register for both Departments but be documented in separate regulations for each Department.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $10,000; Yearly Recurring Cost: $10,000; Base Year for Dollar Estimates: 1994

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB44

614. • PERMIT FEES FOR SKI AREAS

Legal Authority: PL 99-522; 16 USC 497b

CFR Citation: 36 CFR 251.57

Legal Deadline: None

Abstract: The Forest Service proposes to change its method for determining special use permit fees charged to ski areas from the current Graduated Rate Fee System to a system based on fair market value. The proposed fee system will be less expensive to administer and will meet the statutory and regulatory requirements that fees be based on fair market value.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	
Interim Final Rule	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB49

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USDA—FS — **Proposed Rule Stage**

615. • 36 CFR 222 RANGE MANAGEMENT; SUBPART C; 222.51 GRAZING FEES IN THE WEST; (J) QUALIFICATION CRITERIA

Legal Authority: 16 USC 551; 31 USC 483A; 43 USC 1901

CFR Citation: 36 CFR 222

Legal Deadline: None

Abstract: The rulemaking would propose eligibility criteria for granting a 30 percent reduction in grazing fees for permittees who meet the criteria. The previously published proposed rule for Range Management, Subpart C, Grazing Fees (59 FR 22094), stated that a separate rulemaking would be needed to develop the criteria. The incentive based fee system is intended to encourage participation in special rangeland practices, the furtherance of resource condition objectives, and comprehensive monitoring.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington DC 20090-6090, 703 235-1488

RIN: 0596–AB50

DEPARTMENT OF AGRICULTURE (USDA)
Forest Service (FS) — **Final Rule Stage**

616. 36 CFR PART 222 SUBPART A: MANAGEMENT OF GRAZING USE WITHIN RANGELAND ECOSYSTEMS

Regulatory Plan: This entry is Seq. No. 15 in Part II of this issue of the **Federal Register**.

RIN: 0596–AA35

Action	Date	FR Cite
NPRM Comment Period End	07/22/87	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA52

617. INDIAN ALLOTMENTS ON NATIONAL FOREST SYSTEM LANDS

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603; 43 USC 1740; 25 USC 337

CFR Citation: 36 CFR 254, subpart D (New)

Legal Deadline: None

Abstract: Objectives are to set forth Forest Service procedures and role in the regulation of Indian allotments on National Forest System land. The Indian Allotment Act, as amended, authorizes the Secretary of the Interior to make allotments of National Forest System lands to Indians for homesteading and agricultural and grazing purposes. The Forest Service has relied upon USDI rules and procedures at 43 CFR 2533 to govern its involvement in Indian allotment cases. Litigation and a decision by the Interior Board of Land Appeals indicate the need for the Forest Service to set forth its own regulations when the Forest Service determines that lands are not chiefly valuable for agricultural and grazing purposes.

Timetable:

Action	Date	FR Cite
NPRM	08/22/87	52 FR 23473

618. NATIONAL FOREST PROHIBITIONS; LAW ENFORCEMENT SUPPORT ACTIVITIES

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 683; 7 USC 1011(f); 16 USC 1246(e); 16 USC 1133(c) to 1133(d)(1); 16 USC 559(a)

CFR Citation: 36 CFR 261; 36 CFR 262

Legal Deadline: None

Abstract: The rules at 36 CFR part 261 declare the range of unacceptable public behavior when visiting or using National Forest System lands. Among topics covered are prohibitions on setting campfires in certain areas, unlawful cutting of trees, and other unlawful uses of resources and property of the National Forest System. Violations of these prohibitions carry legal penalties. The rules at 36 CFR part 262 address impoundment of property and rewards for information leading to arrest.

Review has examined the adequacy of the rules for administration of the National Forest System and whether changes in conditions, laws, or other factors require revision. The Agency has completed its review and is now preparing a proposed rule to revise the prohibitions.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/87	
End Review	08/01/88	
NPRM	02/16/94	59 FR 7880
NPRM Comment Period End	04/18/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: RIN 0596-AA65 was combined with RIN 0596-AA75

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA75

619. LAND USES AND PROHIBITIONS

Regulatory Plan: This entry is Seq. No. 16 in Part II of this issue of the **Federal Register**.

RIN: 0596–AA80

620. TIMBER SALE PERFORMANCE AND PAYMENT BOND FORM REVISION

Legal Authority: 31 USC 9301 to 9309; 31 USC 223 to 225

USDA—FS — **Final Rule Stage**

CFR Citation: None

Legal Deadline: None

Abstract: Following a period of high-priced timber sales bid prior to 1982, the Forest Service experienced a number of contract defaults on these sales. Subsequently, the Forest Service has had difficulty collecting from some sureties on the bonds guaranteeing performance on these sales. As part of a financial security initiative affecting future sales, the Forest Service is proposing to revise the payment and performance bonds to clarify surety's obligation in regard to what is being guaranteed, when payment is due in case of default, what additional charges will be assessed if payment is not made when due and when collection action may be suspended. Other alternatives include eliminating surety bonds as a form of security, reducing surety guarantee to mid-point and periodic payment and retention of current bond forms. Upon adoption the final revised bond forms will be issued for use by Forest Service Contracting and Fiscal Officers for future timber sale contracts. The former title, Surety Bond Form Revision, has been modified to more accurately reflect the content of the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	01/17/89	54 FR 1742
NPRM Comment Period End	03/20/89	
Final Action	11/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Final action on this entry has been delayed to obtain advice of the Comptroller General.

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AA94

621. FEDERAL TIMBER EXPORT AND SUBSTITUTION RESTRICTIONS (COMPREHENSIVE REVISION)

Regulatory Plan: This entry is Seq. No. 17 in Part II of this issue of the **Federal Register**.

RIN: 0596–AB22

622. STATE AND PRIVATE FORESTRY ASSISTANCE STEWARDSHIP INCENTIVE PROGRAM

Legal Authority: 16 USC 2101 et seq

CFR Citation: 36 CFR 230

Legal Deadline: None

Abstract: This final rule would incorporate any changes resulting from public comments on the interim rule published December 4, 1991. The interim rule established the interim procedures for administration of the Stewardship Incentive Program. The Program is intended to encourage private landowners, through cost-share assistance, to manage their forest lands for ecohomic, environmental, and social benefits. Only two alternatives were considered in detail: (1) to implement the Program in accordance with 16 USC 2101, et seq, and (2) not to implement the Program, in which case there would be no accelerated program for multiple resource management on nonindustrial private forest lands. The overall effects of the Program over time will be environmentally beneficial by enhancing wetlands, wildlife habitat, forest health, forest productivity, and recreation. The Program will help meet future demand for commodity and noncommodity forest resources. There are no potential negative impacts anticipated for the Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/04/91	56 FR 63581
Interim Final Rule Public Comment Period End	01/21/92	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB32

623. SPECIAL-USE APPLICATIONS AND ADMINISTRATION OF SPECIAL-USE AUTHORIZATIONS

Legal Authority: 43 USC 1764; 31 USC 483(a); 30 USC 181 Mineral Leasing Act; 16 USC 551

CFR Citation: 36 CFR 251(b)

Legal Deadline: None

Abstract: The Forest Service proposes to amend the regulations governing the use and occupancy of National Forest System lands to minimize application expenses, streamline and make more efficient environmental analysis of special use proposals, provide the ability to use one-time payments for easements as presently used in the market place, limit certain liability requirements to amounts determined by a risk assessment, make certain definitions more explicit, and clarify direction on renewal of existing special use regulations. The intended effect is to reduce costs to proponents and the agency, expedite decisionmaking, and administer authorizations in a more "user friendly" manner by removing certain requirements deemed unnecessary and/or outdated.

Timetable:

Action	Date	FR Cite
NPRM	08/14/92	57 FR 36618
NPRM Comment Period End	09/28/92	
Final Action	11/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB35

624. 36 CFR 222 RANGE MANAGEMENT, SUBPART C GRAZING FEES

Regulatory Plan: This entry is Seq. No. 18 in Part II of this issue of the **Federal Register**.

RIN: 0596–AB42

625. OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

Legal Authority: 16 USC 551; 16 USC 472; 16 USC 4601 to 4606(a); 16 USC 1281(d); 16 USC 1246 (i); 16 USC 1133 (b); 31 USC 9701; PL 103-66

CFR Citation: 36 CFR 291

Legal Deadline: None

Abstract: Congress passed and the President signed the Omnibus Reconciliation Act of 1993. This Act authorizes admission fees at National

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Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use. Currently CFR 291.9 only authorizes recreation admission fees in accordance with Legislation. The alternative considered was to implement the admission fees and risk legal challenge. The admission fees will return five million dollars to the Treasury when fully implemented. Costs to collect the fees estimated at $1.24 million annually. States and counties will receive 25 percent of the fee collections. Recreation users will pay a greater share of the cost of operating and maintaining Forest Service recreation programs at the affected sites.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $1,000,000; Yearly Recurring Cost: $1,250,000; Base Year for Dollar Estimates: 1994

Sectors Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB43

626. USE OF BAIT IN HUNTING

Legal Authority: 16 USC 472; 16 USC 497(B); 16 USC 551; 16 USC 1134; 16 USC 3210; 30 USC 185; 43 USC 1740; 43 USC 1761 to 1771

CFR Citation: 36 CFR 251.50; 36 CFR 261.11; 36 CFR 261.58(v); 36 CFR 261.58(cc)

Legal Deadline: None

Abstract: The Forest Service will prepare final policy on the agency's role in regulating the placement of bait on National Forest System lands. This policy will clarify the agency's role in relation to the role of the States and, thus, will provide a consistent approach to the regulation of baiting resident game. The policy will be coordinated with the States before issuance and is of high interest to animal rights and welfare groups. The procedure to implement this policy will not have a direct cost and is a continuation of agency duties to coordinate with State wildlife agencies.

Timetable:

Action	Date	FR Cite
Adoption of Interim Policy	03/14/94	59 FR 11765
Withdrawal of Interim Policy	04/14/94	59 FR 17758
NPRM Comment Period End	06/14/94	
Final Action	11/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB46

627. • ANIMAL DAMAGE MANAGEMENT

Legal Authority: 7 USC 426 to 426b; PL 100-202; 16 USC 1536, sec 7

CFR Citation: 7 CFR 2.51(41); 40 CFR 1508.16; 40 CFR 1508.15

Legal Deadline: None

Abstract: The Forest Service will propose final policy on animal damage management. This final policy will replace current agency procedures for implementing the provisions of the Memorandum of Understanding between the Animal and Plant Health Inspection Service (APHIS)-Animal Damage Control unit and the Forest Service. This policy will clarify the role and responsibility of the Forest Service in coordinating with APHIS on animal damage management and in cooperating with APHIS in discharging the Federal obligations to manage wild vertebrates causing damage on National Forest System lands under the Animal Damage Control Act of 1931.

Timetable:

Action	Date	FR Cite
NPRM	06/13/94	59 FR 30334
NPRM Comment Period End	08/12/94	
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Coordinator, Department of Agriculture, Forest Service, P.O. Box 96090, Washington, DC 20090-6090, 703 235-1488

RIN: 0596–AB47

DEPARTMENT OF AGRICULTURE (USDA)
Forest Service (FS)

Completed Actions

628. LOCATABLE MINERALS

CFR Citation: 36 CFR 228, subpart A

Completed:

Reason	Date	FR Cite
Withdrawn	07/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AA49

629. WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA

CFR Citation: 36 CFR 292, subpart B

Completed:

Reason	Date	FR Cite
End Review	07/12/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AA68

630. HELLS CANYON NATIONAL RECREATION AREA—PRIVATE LANDS

CFR Citation: 36 CFR 292, subpart E (New)

Completed:

Reason	Date	FR Cite
Final Action	06/13/94	59 FR 30492
Final Action Effective	06/13/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AA88

631. DISPOSAL OF QUARTZ MINERALS ON THE OUACHITA NATIONAL FOREST

CFR Citation: 36 CFR 228, subpart C

Completed:

Reason	Date	FR Cite
Withdrawn	07/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB01

632. FEDERAL CAVE RESOURCES PROTECTION

CFR Citation: 36 CFR 290, subpart A (New)

Completed:

Reason	Date	FR Cite
Final Action	06/17/94	59 FR 31146
Final Action Effective	06/17/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB02

633. RECREATION RESIDENCE AUTHORIZATION POLICY

CFR Citation: 36 CFR 251

Completed:

Reason	Date	FR Cite
Final Action	06/02/94	59 FR 28714
Final Action Effective	06/17/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB06

634. HELLS CANYON NATIONAL RECREATION AREA—USE OF NATIONAL FOREST LANDS

CFR Citation: 36 CFR 292, subpart F (New)

Completed:

Reason	Date	FR Cite
Final Action	07/19/94	59 FR 36866
Final Action Effective	07/19/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB08

635. EXPANDED USE OF PROSPECTING PERMITS AND PREFERENCE RIGHT SALES FOR MINERAL MATERIALS

CFR Citation: 36 CFR 228, subpart C

Completed:

Reason	Date	FR Cite
Withdrawn	07/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB12

636. CLARIFICATION AND REVISION OF APPEALABLE DECISIONS UNDER 36 CFR PART 251, SUBPART C

CFR Citation: 36 CFR 251, subpart C

Completed:

Reason	Date	FR Cite
Withdrawn	07/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB17

637. BELOW-COST TIMBER SALE PROGRAM POLICY AND GUIDELINES

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn	07/12/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marian P. Connolly, 703 235-1488

RIN: 0596–AB24

BILLING CODE 3410-11-F

DEPARTMENT OF AGRICULTURE (USDA)
Office of Finance and Management (OFM)

Prerule Stage

638. AUDITS OF STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Legal Authority: 5 USC 301; 31 USC 7505

CFR Citation: 7 CFR 3015; 7 CFR 3016; 7 CFR 3050

Legal Deadline: None

Abstract: Consolidates and revises USDA's policy for audits of State, local and Indian Tribal Governments.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
ANPRM Comment Period End	12/00/94	
Final Action	02/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Agency Contact: David Rector, Acting Director, Department of Agriculture, Office of Finance and Management, Rm 4094 South Building, 14th & Independence Ave SW., Washington DC 20250, 202 720-8345

RIN: 0505–AA09

BILLING CODE 3410-KS-F

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DEPARTMENT OF AGRICULTURE (USDA)
Office of the Secretary (AgSEC)

Proposed Rule Stage

639. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

Legal Authority: PL 101-194 Ethics Reform Act; EO 12674 Ethical Conduct for Government Officers and Employees

CFR Citation: 05 CFR 2635

Legal Deadline: None

Abstract: The regulations will supplement Governmentwide ethical conduct regulations issued by the Office of Government Ethics (OGE) in August 1992. The OGE must approve USDA's supplementation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Donald Downing, Director, Employee Relations Division, Department of Agriculture, Office of the Secretary, AG Box 9616, Washington, DC 20250-9616, 202 720-3327

RIN: 0503–AA05

640. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Legal Authority: 5 USC 301

CFR Citation: 7 CFR 3016

Legal Deadline: None

Abstract: This notice updates the common rule which provides uniform fiscal and administrative requirements applicable to all types of grants and cooperative agreements to State and local governments.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Gerald Miske, Supervisory Program Analyst, Department of Agriculture, Office of the Secretary, Room 3031 South Building, 14th and Independence Ave SW., Washington, DC 20250, 202 720-1553

RIN: 0503–AA08

641. GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

Legal Authority: 31 USC 1111

CFR Citation: 7 CFR 3019

Legal Deadline: None

Abstract: This regulation establishes the administrative requirements for Federal grants and agreements to institutions of higher education, hospitals and non-profit organizations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Gerald Miske, Supervisory Program Analyst, Department of Agriculture, Office of the Secretary, Room 3031 South Building, 14th and Independence Ave. SW., Washington, DC 20250, 202 720-1553

RIN: 0503–AA10

DEPARTMENT OF AGRICULTURE (USDA)
Office of the Secretary (AgSEC)

Final Rule Stage

642. FOOD STAMP PROGRAM: FORFEITURE AND DENIAL OF PROPERTY RIGHTS

Legal Authority: 7 USC 2024(g)

CFR Citation: 7 CFR 271.5

Legal Deadline: None

Abstract: The USDA Office of Inspector General is proposing this rule to implement section 15(g) of the Food Stamp Act of 1977, as amended by section 124 of the Food Stamp Act Amendments of 1980, Public Law 96-249, which authorizes the Secretary of Agriculture to subject to forfeiture and denial of property rights any nonfood items, moneys, negotiable instruments, securities, or other things of value that are furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Act or regulations issued pursuant to the Act, 7 USC 2024(g). The proposed rule would establish procedures concerning the handling of forfeited property to be followed by the Inspector General and other Federal Law enforcement officials. Violations of the Food Stamp Act may cause the Government to acquire property subject to forfeiture and denial of property rights.

Timetable:

Action	Date	FR Cite
NPRM	12/06/93	58 FR 64172
NPRM Comment Period End	02/04/94	58 FR 64172
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Tom Martin, Senior Special Agent, Program Investigations Division, Department of Agriculture, Office of the Secretary, Room 418-A Administration Building, Washington, DC 20250, 202 720-4401

RIN: 0503–AA07

643. DESIGNATION OF RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Legal Authority: PL 103-66

CFR Citation: 7 CFR 25

Legal Deadline: None

Abstract: The interim regulation implements portion of Subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) dealing with the designation of rural Empowerment Zones and Enterprise Communities. This rule authorizes the Secretary of Agriculture to designate not more than three Empowerment Zones and not more than thirty Enterprise Communities based upon the effectiveness of the strategic plan submitted by an applicant and nominated by a State or States and local governments or a State Chartered Economic Development Corporation. The purpose of this program is to empower rural communities and their residents to take effective physical development challenges of today and build for tomorrow as part of a Federal, State, local and private sector partnership. Businesses are to be encouraged to invest and create jobs in distressed areas. Comprehensive local strategic plans are to be adopted and implemented, encouraging entrepreneurship, furthering local self-development and assisting in the revitalization of these areas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/18/94	59 FR 2686
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: Beverly Gillot, Rural Development Specialist, Department of Agriculture, Office of the Secretary, Room 5405 South Building, 14th and Independence Ave SW., Washington, DC 20250, 202 690-2516

RIN: 0503–AA09

BILLING CODE 3410-90-F

USDA—AgSEC

Final Rule Stage

DEPARTMENT OF AGRICULTURE (USDA)
Packers and Stockyards Administration (P&SA)

Proposed Rule Stage

644. REGULATIONS AND STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT (GROUP 2)

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.49; 9 CFR 201.53; 9 CFR 201.55; 9 CFR 201.69; 9 CFR 201.70; 9 CFR 201.71; 9 CFR 201.73; 9 CFR 201.76; 9 CFR 201.98; 9 CFR 201.100; 9 CFR 201.108(1); 9 CFR 201.200; 9 CFR 203.4; 9 CFR 203.18; 9 CFR 203.19; ...

Legal Deadline: None

Abstract: All regulations and statements of general policy issued under the provisions of the Packers and Stockyards Act are being reviewed to determine which sections should be retained in their present form and which sections should be modified or removed. A notice will be published which will identify and propose to retain, modify, or remove each section in this group.

Timetable:

Action	Date	FR Cite
ANPRM	09/15/92	57 FR 42515
ANPRM Comment Period End	11/16/92	57 FR 42515
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	03/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold W. Davis, Assistant Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039 South Building, Washington, DC 20250-2800, 202 720-7063

RIN: 0590–AA09

645. REGULATIONS AND STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT (GROUP 3)

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.10; 9 CFR 201.27; 9 CFR 201.28; 9 CFR 201.29; 9 CFR 201.30; 9 CFR 201.31; 9 CFR 201.32; 9 CFR 201.33; 9 CFR 201.34

Legal Deadline: None

Abstract: All regulations and statements of general policy issued under the provisions of the Packers and Stockyards Act are being reviewed to determine which sections should be retained in their present form and which sections should be modified or removed. A notice will be published which identifies each section and proposes to either retain, modify, or remove the section. The sections included in this document pertain to the registration and bonding requirements under the provisions of the Packers and Stockyards Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/15/92	57 FR 42515
ANPRM Comment Period End	11/16/92	57 FR 42515
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Harold W. Davis, Assistant Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039 South Building, Washington, DC 20250-2800, 202 720-7063

RIN: 0590–AA10

646. • STATEMENT OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARD ACT: CARE AND HANDLING OF LIVESTOCK

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 203.20

Legal Deadline: None

Abstract: Due to concerns regarding the care and handling of livestock, the Agency initiated a program to review the services, facilities, and procedures for receiving and handling livestock at all stockyards. Over 1,400 stockyards were reviewed and problems in the care and handling of livestock were found to exist at some stockyards. As a result of these reviews, the Agency proposes to issue guidelines in the form of a statement of general policy on the care and handling of livestock at stockyards.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Interim Final Rule	07/00/95	
Final Action	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold W. Davis, Assistant Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039, South Building, Washington, DC 20250-2800, 202 720-7063

RIN: 0590–AA11

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DEPARTMENT OF AGRICULTURE (USDA)
Packers and Stockyards Administration (P&SA)

Final Rule Stage

647. REGULATIONS AND STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT (GROUP 1)

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.1; 9 CFR 201.17; 9 CFR 201.30; 9 CFR 201.44; 9 CFR 201.45; 9 CFR 201.61; 9 CFR 201.81; 9 CFR 201.82; 9 CFR 201.86; 9 CFR 201.94; 9 CFR 201.95; 9 CFR 201.96; 9 CFR 203.5; 9 CFR 203.12; 9 CFR 203.17; ...

Legal Deadline: None

Abstract: All regulations and statements of general policy issued under the provisions of the Packers and Stockyards Act are being reviewed to determine which sections should be retained in their present form and which sections should be modified or removed. A notice will be published which will identify and propose to retain, modify, or remove each section in this group.

Timetable:

Action	Date	FR Cite
ANPRM	09/15/92	57 FR 42515
ANPRM Comment Period End	11/16/92	57 FR 42515
NPRM	05/24/94	59 FR 26763
NPRM Comment Period End	07/25/94	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harold W. Davis, Assistant Deputy Administrator, Department of Agriculture, Packers and Stockyards Administration, Room 3039 South Building, Washington, DC 20250-2800, 202 720-7063

RIN: 0590–AA08

BILLING CODE 3410-KD-F

DEPARTMENT OF AGRICULTURE (USDA)
Rural Development Administration (RDA)

Proposed Rule Stage

648. ALCOHOL FUELS CREDIT IMPLEMENTING REGULATIONS

Legal Authority: 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980, subpart A; 7 CFR 1980, subpart E

Legal Deadline: None

Abstract: This action is to implement a new program provided for in PL 102-341. The program will provide guaranteed lines of credit, where an emergency has been declared, for the purchase of grain for the production of alcohol fuel at cooperative facilities as necessary to meet deliveries under contract. The legislation provides for a program level of $30,000,000 to remain available until expended but not beyond Fiscal Year 2009. Plans are to implement the program through a revision of the existing regulations for the Business and Industry (B&I) Guaranteed loan program, using the forms and procedures of the B&I program to the extent that they are appropriate.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA01

649. RURAL TECHNOLOGY DEVELOPMENT GRANTS

Legal Authority: 7 USC 1989; 16 USC 1005; 5 USC 301

CFR Citation: 7 CFR 4284; 7 CFR 1940; 7 CFR 1951; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: Other, Statutory, May 28, 1991.
The Extension Service had $1 million for the program in its FY '93 budget and has funds for FY '94.

Abstract: The Rural Development Administration proposes this action to add a new regulation implementing a grant program to fund the establishment and operation of centers for rural technology or cooperative development. Grants will be available to public bodies and nonprofit organizations. This action is necessary to comply with PL 101-624. An aim of this program is to stimulate nonfederal participation in economic development activities and allow grant funds to reach a broad range of rural economic development efforts.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Tribal, Federal

Additional Information: In order to implement this program, both funds and regulations must exist. The ES has funds for this program in its FY 1993 budget. The RDA will administer the program starting in FY 1994.

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA02

650. LIQUIDATION OF LOANS AND ACQUISITION, MANAGEMENT AND DISPOSAL OF SECURITY PROPERTY

Legal Authority: 7 USC 1989; 42 USC 1480; 16 USC 1005; 5 USC 301

CFR Citation: 7 CFR 4287-A; 7 CFR 4287-B; 7 CFR 1951-E; 7 CFR 1955-A; 7 CFR 1955-B; 7 CFR 1955-C; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: None

Abstract: Farmers Home Administration (FmHA) regulations are amended to remove references to the Programs administered by the Rural Development Administration (RDA). This action will provide RDA regulatory guidance for the liquidation of loans that are in non-compliance with loan agreements. As a result of such action, security property may be taken into inventory. The regulation outlines the policies and procedures for the management and disposition of property acquired by the agency. This change will also clarify the processing of over payments, under payments and refunds, subordinations, and releases from liability.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	04/00/95	
Interim Final Rule	00/00/00	
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA03

USDA—RDA

Proposed Rule Stage

651. LOCAL TECHNICAL ASSISTANCE AND PLANNING GRANTS

Legal Authority: 7 USC 1989; 7 USC 1926

CFR Citation: 7 CFR 4284; 7 CFR 1951; 7 CFR 2.23; 7 CFR 2.70

Legal Deadline: Other, Statutory, May 28, 1991.
Statutory date for implementation of program. In order to implement, both funds and regulations must exist. This program has not yet been funded.

Abstract: The Rural Development Administration (RDA) proposes this action to add a new regulation implementing a grant program to fund local technical assistance and planning activities in rural areas for the purpose of improving economic conditions in the areas. Grants will be available to public bodies and nonprofit organizations. This action is necessary to comply with P.L. 101-624. Grants may be used for technical assistance and training for small businesses, identifying and analyzing business opportunities in rural areas, establishing business support centers, conducting local or multi-county economic development planning, coordination of economic development activities, and leadership development training of local government officials. RDA proposes to fund up to 75 percent of any project funded and require at least a 25 percent matching share from the applicant.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
NPRM Comment Period End	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA05

652. SOLID WASTE MANAGEMENT GRANTS

Legal Authority: PL 101-624, sec 2325

CFR Citation: 7 CFR 4284 subpart I; 7 CFR 1942 subpart J

Legal Deadline: None

Abstract: FmHA implemented this authority by adding it to the existing Technical Assistance grant program for water and waste disposal facilities. In order to prevent confusion and to further refine the requirements of the program, FmHA is proposing to publish a separate regulation for two programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA06

653. TECHNICAL ASSISTANCE AND TRAINING GRANTS

Legal Authority: PL 99-198, sec 1304

CFR Citation: 7 CFR 4284 subpart C; 7 CFR 1942 subpart J

Legal Deadline: None

Abstract: Under current regulations, FmHA administers two separate technical assistance grant programs that have similar requirements. In order to avoid confusion for the public because of differences in eligibility and purposes of the two programs, FmHA proposes to rewrite the existing regulation to separate the two programs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local

Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Farmers Home Administration, 6348 South Building, Washington, DC 20250, 202 720-9744

RIN: 0570–AA07

654. • RURAL BUSINESS LOAN STREAMLINING

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 1980; 7 CFR 4279

Legal Deadline: None

Abstract: New regulations for the program known as the Business and Industry guaranteed loan program will be more user friendly for lenders, borrowers, and agency staff. The regulations will be shorter, better organized, and more simple and clear. Many documentation requirements will be eliminated or consolidated into more convenient formats. Analysis and processing responsibilities will be shifted from the National Office to field offices and from the Agency to lenders. Eligible users of the program will be expanded. This will allow for improved service to the public through faster processing and funding of applications. It will provide for an expanded program with increased impact an rural employment without a corresponding expansion in Agency staff.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

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USDA—RDA — **Proposed Rule Stage**

Government Levels Affected: None
Agency Contact: Chris Goettelmann, Chief, Regulations Anaylsis and Control Branch, Department of Agriculture, Rural Development Administration, 6348 South Building, Washington, DC 20250, 202 720-9744
RIN: 0570–AA09

DEPARTMENT OF AGRICULTURE (USDA)
Rural Development Administration (RDA)

Final Rule Stage

655. RURAL BUSINESS ENTERPRISE GRANTS AND TELEVISION DEMONSTRATION GRANTS

Legal Authority: PL 102-552; 7 USC 1927; 7 USC 1939 (c)
CFR Citation: 7 CFR 1942-G; 7 CFR 4284-B
Legal Deadline: None
Abstract: The provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities; to revise the definition for small and emerging private business enterprise to agree with the program size standards established by the Small Business Administration; to clarify certain administrative regulatory guidelines in order to effect improved program administration; and also authorizes grants for educational purposes and distance learning networks.

Timetable:

Action	Date	FR Cite
NPRM	08/09/94	59 FR 40478
NPRM Comment Period End	09/08/94	
Final Action	00/00/00	

Provide educational/job training instruction. RBEG "Interim" 05/23/94 (59 FR 26585)
Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations
Government Levels Affected: State, Local, Tribal, Federal
Agency Contact: Chris Goettelmann, Chief, Regulations Analysis and Control Branch, Department of Agriculture, Rural Development Administration, 6348 South Building, Washington, DC 20250, 202 720-9744
RIN: 0570–AA08
BILLING CODE 3410-07-F

DEPARTMENT OF AGRICULTURE (USDA)
Rural Electrification Administration (REA)

Proposed Rule Stage

656. LOAN SECURITY DOCUMENTS—TELEPHONE PROGRAM

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1744, subpart D
Legal Deadline: None
Abstract: This new rule provides information on the loan security documents borrowers are required to execute and includes as appendixes REA's standard forms of loan contract, note, and mortgage.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA30

657. WHOLESALE CONTRACTS FOR THE PURCHASE AND SALE OF ELECTRIC POWER AND ENERGY

Legal Authority: 7 USC 901 et seq; PL 99-591
CFR Citation: 7 CFR 1717.300 to 1717.349
Legal Deadline: None
Abstract: This regulation revises REA policies and procedures relating to wholesale power contracts.

Timetable:

Action	Date	FR Cite
NPRM	09/21/90	55 FR 38930
NPRM Comment Period End	11/20/90	
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA41

658. REVISION OF TELECOMMUNICATION POLICIES AND PROCEDURES FOR APPROVAL OF STANDARDS, SPECIFICATIONS, CONTRACT FORMS, AND DRAWINGS

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1755
Legal Deadline: None
Abstract: This regulation will update, consolidate, and clarify REA policies and procedures relating to approvals of REA standards, specifications, equipment contract forms, manual selections, and drawings, and REA acceptances of materials and equipment for use on REA-financed telephone facilities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

USDA—REA — **Proposed Rule Stage**

Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA45

659. ELECTRIC SYSTEM PLANNING AND DESIGN—POLICIES AND PROCEDURES

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1724
Legal Deadline: None
Abstract: This rule will codify and update Agency policies and procedures for the planning and design of electrical systems of REA borrowers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA48

660. MARGIN STABILIZATION PLANS AND REVENUE AND EXPENSE DEFERRALS

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1767, subpart E
Legal Deadline: None
Abstract: This rule will set forth procedures that borrowers must follow to obtain approval of margin stabilization plans and revenue and expense deferrals. The rule will implement provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA62

661. SPECIFICATION FOR FIBER OPTIC SPLICE CLOSURES

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1755
Legal Deadline: None
Abstract: REA proposes to issue a specification for fiber optic splice closures which would describe the mechanical and electrical requirements that ensure safe, reliable, and cost effective closures for REA telephone borrowers. Specific references to appropriate industry standards would be incorporated. Detailed product evaluation procedures will be covered where industry specifications are not available.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA64

662. REA SPECIFICATION FOR MECHANICAL FIBER OPTIC SPLICES

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1755
Legal Deadline: None
Abstract: REA proposes to issue a specification for mechanical fiber optic splices which describes the mechanical and electrical requirements that insure safe, reliable, and cost effective splices for use by REA telephone borrowers. Specific references to industry standards will be incorporated. Product evaluation procedures will be specified where industry specifications are not available.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550
RIN: 0572–AA64

663. RESCISSION OF REA BULLETINS 345-13, 345-29, 345-75, AND 345-178—TELEPHONE PROGRAM REGULATIONS

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq
CFR Citation: 7 CFR 1755
Legal Deadline: None
Abstract: REA withdraws and rescinds four specifications for telephone materials and equipment which are obsolete due to innovations in technology.

Timetable:

Action	Date	FR Cite
NPRM	11/01/89	54 FR 46071
NPRM Comment Period End	01/02/90	
Second NPRM	01/00/95	
Second NPRM Comment Period End	02/00/95	

Small Entities Affected: None
Government Levels Affected: None

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Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA66

664. ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1728

Legal Deadline: None

Abstract: This regulation provides REA borrowers and the public with specifications for material and equipment as a complement to the list of construction standards and specifications incorporated by reference.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA67

665. PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1710; 7 CFR 1714; 7 CFR 1785

Legal Deadline: None

Abstract: This regulation contains the administrative policies, requirements and procedures of the REA electric program for applicants seeking insured loan funds from REA to furnish electric service in rural areas.

Timetable:

Action	Date	FR Cite
NPRM	08/05/94	59 FR 39975
NPRM Comment Period End	10/04/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA69

666. POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1717, subparts A to F; 7 CFR 1717, subparts J to K

Legal Deadline: None

Abstract: This regulation will codify most basic post-loan policies and procedures common to insured and guaranteed electric loans.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA71

667. REA BUY AMERICAN REQUIREMENT

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1792, subpart B

Legal Deadline: None

Abstract: This proposed rule would provide borrowers, material and equipment manufacturers, and the public with proposed rules for compliance with a Buy American requirement in connection with the expenditure of loan, grant, or guaranteed funds. This action will codify the requirements of the Buy American Act and Executive Order 10582. REA Bulletin 43-9:344-3 "Buy American" will be rescinded upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA73

668. ELECTRIC SYSTEMS OPERATIONS AND MAINTENANCE

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1730

Legal Deadline: None

Abstract: The Rural Electrification Administration proposes to codify and clarify REA policy concerning operation and maintenance of borrower electric systems. In addition, it is proposed to add REA policies relating to the review and evaluation of borrower systems and facilities financed with loans from REA. These policies are presently contained in REA Bulletin 161-5 which will be rescinded upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA74

669. CIVIL RIGHTS POLICIES APPLICABLE TO REA BORROWERS

Legal Authority: 7 USC 901 et seq

USDA—REA

Proposed Rule Stage

CFR Citation: 7 CFR 1790

Legal Deadline: None

Abstract: This action provides REA borrowers with access to the requirements of Title VI, Section 504, and the Age Discrimination Act, which apply directly to the operation of their programs and activities. REA Bulletin 20-19:320-19, entitled Nondiscrimination Among Beneficiaries of REA Programs will be rescinded upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA75

670. LOAN DOCUMENTS—BANK PROGRAM

Legal Authority: 7 USC 941 et seq

CFR Citation: 7 CFR 1620

Legal Deadline: None

Abstract: REA proposes to add a new part 1620 which provides information on loan documents which telephone borrowers are required to execute. New part 1620 will also include Rural Telephone Bank standard forms of loan contract, note, and mortgage. Bulletin 402-1, Mortgage Restrictions on Dividends and Other Distributions--Telephone Borrowers, will be rescinded upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA80

671. DEPRECIATION RATES AND PROCEDURES

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1767, subpart C

Legal Deadline: None

Abstract: The Rural Electrification Administration proposes to add a new subpart to 7 CFR 1767 that codifies current policy on depreciation rates and procedures. Revisions are being proposed to the existing policy that will require continuing records to be maintained on a vintage year basis, and that set forth requirements for utilizing depreciation rates that vary from those that are prescribed in this subpart. Current REA policy is set forth in Bulletin 183-1, which will be rescinded upon publication of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	05/00/95	
NPRM Comment Period End	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA83

672. SPECIFICATION FOR POLE LINE HARDWARE

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1728

Legal Deadline: None

Abstract: The Rural Electrification Administration proposes specifications for hardware used on electric utility poles. The organization performing the secretariat function for pole line hardware has withdrawn and ceased to operate, and all existing standards will expire in five years.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234, South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA86

673. REA FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELEPHONE BORROWERS

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1788

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is considering revising its regulations concerning the fidelity and insurance requirements for electric and telephone borrowers.

Timetable:

Action	Date	FR Cite
ANPRM	04/26/93	58 FR 25786
ANPRM Comment Period End	06/28/93	
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234, South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA83

674. TITLE EVIDENCE POLICIES AND PROCEDURES

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1710; 7 CFR 1735

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is considering a revision to its title policy to change REA policies and procedures regarding the submittal of title evidences in connection with real property and right-of-way acquisitions by its borrowers.

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Timetable:

Action	Date	FR Cite
ANPRM	04/23/93	58 FR 21661
ANPRM Comment Period End	05/24/93	
NPRM	12/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234, South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AA90

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675. PRESERVATION OF RECORDS ACCOUNTING REQUIREMENTS FOR REA ELECTRIC BORROWERS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1767, subpart D

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) proposes to amend its regulation by adding a new subpart on Preservation of Records. Current REA policy on this subject is set forth in REA Bulletin 180-2, Manual for Preservation of Borrower's Records. In addition to codifying these policies and procedures, revisions are being proposed to the existing policy that will establish the proper record media forms for record retention. Once the final is effective, REA Bulletin 180-2 will be rescinded.

Timetable:

Action	Date	FR Cite
NPRM	05/00/95	
NPRM Comment Period End	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234, South Building, Washington, DC 20250, **202 720-9550**

RIN: 0572–AA92

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676. USE OF GENERAL FUNDS INVESTMENTS, LOAN GUARANTEES, AND RETIREMENT OF CAPITAL CREDITS BY ELECTRIC BORROWERS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1717, subpart O

Legal Deadline: None

Abstract: This rule will set forth procedures for REA approval of a borrower's use of its own funds that are not the proceeds of REA loans for additions to electric plan. REA loans are secured by a first mortgage on the borrower's total electric system. REA approvals are intended to ensure that the proposed capital additions will not adversely affect the borrower's ability to provide service consistent with the RE Act and to repay its REA loans.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: REA is splitting the old RIN due to the fact that the four subparts of the old RIN were split into separate actions which are progressing at different rates in the regulatory process.

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB01

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677. REA APPROVAL OF SALE OF CAPITAL ASSETS BY ELECTRIC BORROWERS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1717, subpart P

Legal Deadline: None

Abstract: This rule will set forth REA policies and procedures for the sale of capital assets by electric borrowers. REA loans are secured by a first mortgage on the borrower's electric system. REA approval of sales of capital assets are intended to ensure that the sale of the asset will not adversely affect the borrower's ability to provide service consistent with the RE Act, and to repay its REA loans. These policies were last revised in 1972.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: REA is splitting the old RIN due to the fact that the four subparts of the old RIN are now separate regulatory actions which are moving at different rates in the regulatory process.

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB02

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678. LOAN DEFERMENTS FOR ENERGY RESOURCES CONSERVATION - ELECTRIC PROGRAM

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1717, subpart L

Legal Deadline: None

Abstract: This regulation will codify and update the current Rural Electrification Administration (REA) policy implemented through an REA Bulletin which will be rescinded when this rule is published final. This action is necessary to permit a principal payment extension of monthly billed accounts for the purpose of Energy Resources Conservation (ERC) loans. The current ERC loan program implemented in 1980 allows for the extension of only quarterly principal payments. All REA loans approved on or after September 1, 1982, require monthly repayments while those loans approved prior to that date required quarterly repayments. This new regulation will codify the current ERC loan program and will amend it to include monthly billed accounts. Most REA loans have a repayment period of 3.5 years.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

USDA—REA **Proposed Rule Stage**

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB03

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679. • POWER REQUIREMENT STUDIES

Legal Authority: 7 USC 901-950(b); PL 99-591

CFR Citation: 7 CFR 1710 E

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is proposing to update its Power Requirements currently contained in Subpart E of 7 CFR Part 1710, Pre-loan Policies and Procedures for Insured and Guaranteed Electric Loans. The updates to subpart E are needed to reflect the addition to 7 CFR 1710 of Subpart H, Loans for Demand Side Management, Energy Conservation Programs, and On-Grid and Off-Grid Renewable Energy Systems. Subpart H was required by the Rural Electrification Loan Restructuring Act of 1993. Other changes to subpart E are intended to clarify the existing language without changing its overall intent.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB05

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680. • STATE TELECOMMUNICATIONS MODERNIZATION PLAN

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1751 B

Legal Deadline: None

Abstract: The Rural Electrification Administration is setting out those provisions of the Rural Electrification Loan Restructuring Act of 1993 (P.L. 103-129) requiring the development of State Telecommunications Modernization Plans and establishing the requirements of those plans. The primary purpose of the plan is to allow each State, or if the State declines to prepare the plan , REA borrowers to whom the eligibility passes, to develop a standard "blueprint" for a telecommunications system within the state so that these systems are compatible. Further it is anticipating that the plans will provide for increased reliability, and improve access for rural residents to other telephonic and information services, presently available to most urban and suburban residents. At a minimum, the plan must meet the following objectives: 1) provide for the elimination of party line service; 2) provide for the availability of telecommunications services for improved business, educational, and medical services; 3) encourage and improve computer networks and information highways for subscribers in rural areas; 4) provide for uniform deployment in rural and non-rural areas.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB07

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681. • CREDIT SUPPORT OF POWER SUPPLY BORROWERS

Legal Authority: 7 USC 901-950(b); PL 99-591

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: The Rural Electrification Administration is proposing to develop a regulation concerning credit support requirements for its borrowers. Such credit support will be required where adequate strength is not present at the borrower to support the risk associated with a proposed loan guarantee.

Timetable:

Action	Date	FR Cite
ANPRM	06/02/94	59 FR 28495
ANPRM Comment Period End	07/18/94	
ANPRM Comment Period Reopened	07/20/94	59 FR 36998
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

RIN: 0572–AB09

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682. • ACCOUNTING REQUIREMENTS FOR REA TELEPHONE BORROWERS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1770 C

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is proposing to add a new subpart that codifies REA's current policy on the accounting for postretirement benefits, Rural Telephone Bank stock, cushion of credit investments, Rural Economic Development loans, and satellite or cable television services.

Timetable:

Action	Date	FR Cite
NPRM	09/14/94	59 FR 47097
NPRM Comment Period End	11/14/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, **202 720-9550**

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DEPARTMENT OF AGRICULTURE (USDA)
Rural Electrification Administration (REA)

Final Rule Stage

683. ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES—ELECTRIC MATERIALS AND CONSTRUCTION

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1726, subparts A to F; 7 CFR 1726, subparts J to K

Legal Deadline: None

Abstract: This rule will codify and update Agency policies and procedures for the construction of electrical systems of REA borrowers.

Timetable:

Action	Date	FR Cite
NPRM	06/03/94	59 FR 28924
NPRM Comment Period End	08/02/94	
Final Action	03/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA47

684. LOAN ACCOUNT COMPUTATIONS, POLICIES, AND PROCEDURES

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1785; 7 CFR 1786, subpart A

Legal Deadline: None

Abstract: REA proposes to codify, consolidate, and update the policies and procedures currently contained in REA Bulletin 20-9:320-12.

Timetable:

Action	Date	FR Cite
NPRM	04/07/93	58 FR 18043
NPRM Comment Period End	05/07/93	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA65

685. REA PERFORMANCE SPECIFICATION FOR LINE CONCENTRATORS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: REA is proposing to revise the specification to reflect the latest technical advancements in line concentrator performance. REA is also proposing to rescind Bulletin 345-185 (REA Form 397g) from section 1755.97, Incorporation By Reference of Telephone Standards. REA proposes to codify the revised Bulletin as 7 CFR 1755.397.

Timetable:

Action	Date	FR Cite
NPRM	04/25/94	59 FR 19661
NPRM Comment Period End	05/25/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA84

686. ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1726, subpart H

Legal Deadline: None

Abstract: The Rural Electrification Administration proposes to allow borrowers to modify its standard forms of electric contracts by revising the provision relating to indemnification of the owner by the contractor.

Timetable:

Action	Date	FR Cite
NPRM	02/01/94	59 FR 4603
NPRM Comment Period End	04/04/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250, 202 720-9550

RIN: 0572–AA89

688. EXEMPTIONS OF REA CONTROLS OVER BORROWER OPERATIONS

Legal Authority: 7 USC 901 et seq; PL 103-201

CFR Citation: 7 CFR 1710.7; 7 CFR 1717

Legal Deadline: Final, Statutory, May 18, 1994.

Public Law 103-129 (107 Stat 2342) was passed "To clarify the regulatory oversight exercised by the REA with respect to certain electric borrowers" and required interim rules within 180 days.

Abstract: The Rural Electrification Administration is amending its regulations governing policies and requirements with respect to controls and approvals over borrower operations and the granting of lien accommodations and subordinations. These changes are required by Public Law 103-201, passed on December 17, 1993, and apply to electric borrowers whose net worth exceeds 110 percent of the outstanding balance of loans made or guaranteed by REA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/28/94	59 FR 3982
Interim Final Rule Effective	01/28/94	
Interim Final Rule Comment Period End	04/28/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA96

689. PRE-LOAN POLICIES AND PROCEDURES FOR ELECTRIC LOANS

Legal Authority: 7 USC 901 et seq; PL 103-129

CFR Citation: 7 CFR 1710; 7 CFR 1714

Legal Deadline: Final, Statutory, December 16, 1993.
Public Law 103-129 (107 Stat 1356), "Rural Electrification Loan Restructuring Act of 1993", was passed on November 1, 1993, and required REA to issue interim final rules on it within 45 days.

Abstract: REA is amending its pre-loan regulations for electric borrowers by restructuring the REA electric loan program, as required by Public Law 103-129. The areas affected are loan purposes, the definition of "rural area," applicable interest rates, loan terms and conditions, and REA oversight of borrowers, among others.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/93	58 FR 66260
Interim Final Rule Effective	12/20/93	
Interim Final Rule Comment Period End	03/21/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA98

690. LOANS FOR DEMAND SIDE MANAGEMENT, ENERGY CONSERVATION PROGRAMS, AND ON-GRID AND OFF-GRID RENEWABLE ENERGY SYSTEMS

Legal Authority: 7 USC 901 et seq; PL 103-129

CFR Citation: 7 CFR 1710

Legal Deadline: Final, Statutory, January 1, 1994.
Public Law 103-129 (107 Stat 1356), "Rural Electrification Loans Restructuring Act of 1993", was signed on November 1, 1993, and required REA to issue interim final rules on it by Jan. 1, 1994.

Abstract: REA is amending its pre-loan regulations for electric loans to incorporate changes to electric loan policies as required by Public Law 103-129. This action permits REA to make loans for demand side management, energy conservation programs, and on- and off-grid renewable energy systems.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/04/94	59 FR 494
Interim Final Rule Effective	01/04/94	
Interim Final Rule Comment Period End	05/04/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AA99

691. REFINANCING AND PREPAYMENT OF FFB LOANS

Legal Authority: 7 USC 901 et seq; PL 103-66

CFR Citation: 7 CFR 1786, subpart G

Legal Deadline: Final, Statutory, September 24, 1993.
Public Law 103-66 required REA to issue a rule by September 24, 1993, to implement Subtitle B - Rural Electrification of the Omnibus Reconciliation Act of 1993.

Abstract: The Rural Electrification Administration (REA) is adding a new regulation to implement Subtitle B - Rural Electrification of the Omnibus Reconciliation Act of 1993. This new rule will provide guidelines to REA-guaranteed Federal Financing Bank (FFB) borrowers who wish to refinance or prepay outstanding indebtedness in FFB loans, and at the borrower's option, add the prepayment premium to the principal of the refinanced loan advance after paying a fee of 2.5 percent of the premium.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/93	58 FR 51007
Interim Final Rule Effective	09/30/93	
Interim Final Rule Comment Period End	12/29/93	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AB00

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USDA—REA

Final Rule Stage

692. • RURAL ECONOMIC DEVELOPMENT LOAN AND GRANT PROGRAM

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1703 B

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is proposing to add a new provision to the selection of projects to be funded under the existing program. The new provision will enhance the potential for funding for applications from areas that : 1) were recently designated by the President as a natural disaster area; 2) have experienced severe economic dislocation due to the loss, removal, or closing of a major source of employment; 3) have experienced long-term and severe economic deterioration, demonstrated by severe unemployment or a high percentage of population out-migration; and 4) have been designated as a Rural Empowerment Zone or Rural Enterprise Community.

Timetable:

Action	Date	FR Cite
NPRM	07/28/94	59 FR 38377
NPRM Comment Period End	08/29/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AB04

693. • LOAN SECURITY DOCUMENTS FOR ELECTRIC LOANS

Legal Authority: 7 USC 901 et seq

CFR Citation: 7 CFR 1718

Legal Deadline: None

Abstract: The Rural Electrification Administration is proposing to update and revise its standard forms of the mortgage and loan contract used with electric borrowers. The provisions of these loan security documents will be clarified and brought into conformance with changes to electric loan terms and conditions required by the Rural Electrification Loan Restructuring Act of 1993, the amendments to 7 CFR Parts 1710 and 1714 which implemented those statutory changes, as well as other regulations issued by REA over the past several years. The revision will also provide better customer service to REA electric borrowers and supplemental lenders by bringing REA documents more in conformance with loan security documents used in the private sector. Continuing to use the current outdated forms of the mortgage and loan contract would impose unacceptable burdens on REA, its borrowers, and on supplemental lenders with respect to responding expeditiously and cost-effectively to recent changes in law and REA regulations and the ongoing changes in the economic and financial environment in which REA borrowers compete.

Timetable:

Action	Date	FR Cite
NPRM	09/29/94	59 FR 49594
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AB06

DEPARTMENT OF AGRICULTURE (USDA)
Rural Electrification Administration (REA)

Completed Actions

694. REA FORM 525: CENTRAL OFFICE EQUIPMENT CONTRACT (INCLUDING INSTALLATION)

CFR Citation: 7 CFR 1755

Completed:

Reason	Date	FR Cite
Final Action	06/17/94	59 FR 31120
Final Action Effective	07/18/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA20

695. REA SOFTWARE LICENSE AGREEMENT

CFR Citation: 7 CFR 1753; 7 CFR 1755

Completed:

Reason	Date	FR Cite
Final Action	04/14/94	59 FR 17675
Final Action Effective	05/16/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA63

696. SPECIFICATION FOR FILLED FIBER OPTIC CABLES

CFR Citation: 7 CFR 1755

Completed:

Reason	Date	FR Cite
Final Action	07/05/94	59 FR 34353
Final Action Effective	08/04/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA82

697. EQUITY DEVELOPMENT PLANS FOR ELECTRIC BORROWERS

CFR Citation: 7 CFR 1710.116

Completed:

Reason	Date	FR Cite
Withdrawn - Issue now covered under RIN 0572-AA69	07/20/94	

Small Entities Affected: None

Government Levels Affected: None

USDA—REA

Completed Actions

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA88

698. TELEPHONE PROGRAM LOAN POLICIES, TYPES, AND REQUIREMENTS

CFR Citation: 7 CFR 1735.46

Completed:

Reason	Date	FR Cite
Final Action	06/08/94	59 FR 29536
Final Action Effective	07/08/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA91

699. RURAL TELEPHONE BANK AND TELEPHONE PROGRAM LOAN POLICIES, PROCEDURES, AND REQUIREMENTS; TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA AND CONSTRUCTION

CFR Citation: 7 CFR 1610; 7 CFR 1735; 7 CFR 1737; 7 CFR 1744; 7 CFR 1751; 7 CFR 1753

Completed:

Reason	Date	FR Cite
Final Action - Except State Telecom Mod Plan (RIN 0572-AB07)	04/13/94	59 FR 17460
Final Action Effective	05/13/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, 202 720-9550

RIN: 0572–AA97

700. • POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1744; 7 CFR 1753

Legal Deadline: None

Abstract: The Rural Electrification Administration (REA) is amending its post-loan regulations for telephone borrowers to ease borrower reporting requirements and further clarify existing policy. In addition, REA proposes to amend the telecommunications system construction regulations to reflect minor changes such as moving the definitions section from one subpart to another.

Timetable:

Action	Date	FR Cite
NPRM	03/04/94	59 FR 10327
NPRM Comment Period End	05/03/94	
Final Action	08/25/94	59 FR 43714
Final Action Effective	09/26/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. Lamont Heppe, Deputy Director, Program Support Staff, Department of Agriculture, Rural Electrification Administration, 14th & Independence Ave. SW., Room 2234 South Building, Washington, DC 20250-1500, 202 720-9550

RIN: 0572–AB08

BILLING CODE 3410-15-F

DEPARTMENT OF AGRICULTURE (USDA)
Soil Conservation Service (SCS)

Proposed Rule Stage

701. FARMLAND PROTECTION POLICY ACT

Legal Authority: 7 USC 4201

CFR Citation: 7 CFR 658

Legal Deadline: None

Abstract: This rule amends part 658 of title 7 of the Code of Federal Regulations, which implements the Farmland Protection Policy Act (FPPA), 7 USC 4201-4209. Congress amended the FPPA through section 1255 of the Food Security Act of 1985, Pub. L. 99-198. The amendments contained in this rule will request Federal agencies to return a copy of the "Farmland Impact Rating Form AD-1006," to USDA once the final decision is made on a proposed conversion, and inform USDA of progress in reviewing and revising their policy and procedures to protect farmland. This information will be used to make the annual report to Congress as required in the 1985 amendments to FPPA. The amendments recognize the statutory authority of a governor of a state to bring legal actions to enforce the FPPA. It also provides policy direction for Federal agencies on providing or denying assistance and restores a subsection of the existing rule that was omitted from publication by clerical error.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Public Compliance Cost: Initial Cost: $0; Yearly Recurring Cost: $0; Base Year for Dollar Estimates: 1987

Sectors Affected: None

Agency Contact: Michael F. King, Director, Administrative Services Division, Department of Agriculture, Soil Conservation Service, Room 6016 South Building, 14th & Independence Ave. SW., Washington, DC 20250, 202 447-4811

RIN: 0578–AA14

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DEPARTMENT OF AGRICULTURE (USDA)
Soil Conservation Service (SCS)

Final Rule Stage

702. SOIL SURVEYS

Legal Authority: PL 74-46 The Soil Conservation and Domestic Allotment Act; PL 89-560 Soil Surveys for Resource Planning and Development; 42 USC 3271; 42 USC 3274

CFR Citation: 7 CFR 611

Legal Deadline: None

Abstract: Prescribes the policy on soil survey operations including cooperative relationships with State agencies, standards, guidelines and plans on survey operations, distribution of soil survey information, and cartographic operations services furnished. (SCS 83-006)

Timetable:

Action	Date	FR Cite
End Review	12/31/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Michael F. King, Director, Administrative Services Division, Department of Agriculture, Soil Conservation Service, Room 6016 South Building, 14th & Independence Ave. SW., Washington, DC 20250, 202 447-4811

RIN: 0578–AA00

BILLING CODE 3410-16-F

DEPARTMENT OF AGRICULTURE (USDA)
Office of Operations (OO)

Proposed Rule Stage

703. AGRICULTURE ACQUISITION REGULATION

Legal Authority: 5 USC 301; 40 USC 486(c)

CFR Citation: 48 CFR 401 to 453 (Revision)

Legal Deadline: None

Abstract: This rule anticipates miscellaneous changes to the Department of Agriculture Acquisition Regulation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: Multiple

Procurement: This is a procurement-related action for which there is no statutory requirement. The agency has not yet determined whether there is a paperwork burden associated with this action.

Agency Contact: Larry Schreier, Procurement Analyst, Department of Agriculture, Office of Operations, Rm 1550 South Building, Washington, DC 20250, 202 720-8924

RIN: 0599–AA00

DEPARTMENT OF AGRICULTURE (USDA)
Office of Operations (OO)

Final Rule Stage

704. NEW RESTRICTIONS ON LOBBYING

Legal Authority: 5 USC 301; 31 USC 1352

CFR Citation: 7 CFR 3018

Legal Deadline: None

Abstract: Prescribes USDA policy and procedures for compliance with section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 USC 1352). Imposes restrictions and disclosure requirements on payments to persons for influencing activities in connection with contracts (excluding contracts subject to the Federal Acquisition Regulation), grants, cooperative agreements, loans, or commitments to insure or guarantee loans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6736
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Joseph J. Daragan, Procurement Analyst, Department of Agriculture, Office of Operations, Rm 1550 South Building, 14th & Independence Avenue SW., Washington, DC 20250, 202 720-5729

RIN: 0599–AA01

DEPARTMENT OF AGRICULTURE (USDA)
Office of Operations (OO)

Completed Actions

705. VENDING FACILITIES OPERATED BY BLIND PERSONS IN USDA-CONTROLLED BUILDINGS

CFR Citation: 7 CFR 1.91 to 1.94

Completed:

Reason	Date	FR Cite
Final Action	07/15/94	59 FR 36019

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Kiley, 202 720-5001

RIN: 0599–AA02

[FR Doc. 94-23417 Filed 11-10-94; 8:45 am]

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federal register

Monday
November 14, 1994

Part IV

Department of Commerce

Semiannual Regulatory Agenda

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DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, XI, XII

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: October 1994 regulatory agenda.

SUMMARY: In compliance with Executive Order (E.O.) 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act (Pub. L. 96-354), the Department of Commerce, in April and October of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, and rulemaking actions completed since the April 1994 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's October 1994 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 1994, through September 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Michael A. Levitt, Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-0846.

SUPPLEMENTARY INFORMATION: E.O. 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of June 8, 1994, the Office of Management and Budget (OMB) issued guidelines and procedures for the preparation and publication of the October 1994 Regulatory Plan and Unified Agenda of Federal Regulations. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires agencies to publish, in April and October of each year, a regulatory flexibility agenda which contains a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities.

Department of Commerce Regulatory Plan

For this edition of the Department of Commerce's agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate Sequence Number in Part II.

Explanation of Information Contained in the Agenda

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the Economic Development Administration, the Bureau of Export Administration, the International Trade Administration, the National Institute of Standards and Technology (NIST), the National Oceanic and Atmospheric Administration (NOAA), and the Patent and Trademark Office, issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda are proposed or final Federal Information Processing Standards (FIPS) issued by NIST under Public Law 100-235. FIPS consist of standards and guidelines to improve Federal Government use and management of computers and information technology. The standards, while often of great use to industry and the public, apply only to the Federal Government. In developing the standards and guidelines and in providing technical guidance and coordination to Federal agencies, NIST works closely with private industry standard-setting organizations.

Another large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, a section on "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries which require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing can be conducted in a fishery for which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The DOC October 1994 regulatory agenda follows.

Dated: August 31, 1994.

Glenn Piercy,

Acting General Counsel.

DOC

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
706	Contract Clauses and Solicitation Provisions for the Commerce Automated Solicitation System	0690-AA09
707	Source Evaluation Procedures and Miscellaneous Revisions to the Commerce Acquisition Regulation	0690-AA10
708	Modify Requirement in the Commerce Acquisition Regulation To Publish Presolicitation Notices in the Commerce Business Daily for DOC Procurements Which Will Be Performed in Foreign Countries	0690-AA18
709	Modify the Commerce Acquisition Regulation To Use a Deviation Version of a Federal Acquisition Regulation Clause on the Buy American Trade Agreement Acts	0690-AA19
710	Commerce Acquisition Regulation, Changes to the Commerce Ship Construction, Alteration, and Repair Clauses	0690-AA21
711	Testimony by Employees in the Production of Documents in Legal Proceedings	0690-AA22
712	Standards of Ethical Conduct—Department of Commerce Supplemental Regulations	0690-AA23

Bureau of Economic Analysis—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
713	Benchmark Survey of U.S. Direct Investment Abroad—1994	0691-AA22
714	Change in Exemption Level for BE-577, Direct Transactions of U.S. Reporter with Foreign Affiliate	0691-AA23
715	Short Form for Reporting Small Foreign Affiliates in the BE-11, Annual Survey of U.S. Direct Investment Abroad	0691-AA25

Bureau of Economic Analysis—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
716	Financial Services Providers and Unaffiliated Foreign Persons	0691-AA24

Bureau of the Census—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
717	Revision of Foreign Trade Statistics Regulations	0607-AA10
718	Change in the Definition of "General Use" Software From Technical Data to Commodity	0607-AA16

Economic Development Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
719	Review of Regulations for Economic Development Administration—Department of Commerce	0610-AA47
720	Special Economic Development and Adjustment Assistance Grants	0610-AA48

Economic Development Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
721	General Requirements for Financial Assistance—Design, Construction of Buildings To Accommodate the Physically Handicapped	0610-AA05
722	General Requirements for Financial Assistance: Employment of Expediters or Administrative Employees; Compensation of Persons Engaged by or on Behalf of Applicants	0610-AA18
723	Protection of EDA's Interest in Facilities Acquired, Built, or Improved With EDA Grant Funds	0610-AA35
724	Public Works—Industrial Parks and Sites	0610-AA40
725	General Requirements for Financial Assistance—Electric and Gas Facilities	0610-AA43
726	Overall Economic Development Program—Progress Report	0610-AA44

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Economic Development Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
727	Public Works and Development Facilities Program—Specific Types of Projects—Skill Training Center Facilities	0610-AA51
728	Designation of Areas; Public Works and Development Facilities Program	0610-AA54

General Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
729	Nonprocurement Debarment and Suspension	0605-AA02
730	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	0605-AA04

General Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
731	New Restrictions on Lobbying	0605-AA06
732	Uniform Administrative Requirement for Grants and Agreement With Institutions of Higher Education, Hospitals and Other Nonprofits and Commercial Organizations	0605-AA09

International Trade Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
733	Antidumping Duties; Countervailing Duties **(Reg Plan Seq. No. 19)**	0625-AA45

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

International Trade Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
734	Procedures for Imposing Sanctions for Violation of an Antidumping or Countervailing Duty Protective Order	0625-AA43
735	Antidumping and Countervailing Duties; Exclusions	0625-AA44

International Trade Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
736	Antidumping Duties; Countervailing Duties	0625-AA32
737	Short Supply Procedures for ITA	0625-AA34

Bureau of Export Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
738	Defense Priorities and Allocations System (DPAS)	0694-AA02
739	Revision of Foreign Boycott Provisions of Export Administration Regulations	0694-AA11
740	Transfer of Dual-Use Items From U.S. Munitions List to the Commerce Control List	0694-AA52
741	Exports to Iran; Revision of Foreign Policy Controls	0694-AA62
742	Simplification of the Export Administration Regulations **(Reg Plan Seq. No. 20)**	0694-AA67

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Bureau of Export Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
743	Equipment Related to the Production of Chemical Weapons and Warfare Agents, Microorganisms and Toxins; Revisions to Australia Group Members	0694-AA69
744	Exports of Certain California Crude Oil	0694-AA70
745	Revisions to the Export Administration Regulations; Corrections and Clarifications	0694-AA72
746	Implementation of the Cuba Democracy Act	0694-AA77
747	Revisions to the Export Administration Regulations: Exports of Sample Shipments and Mixtures Containing Chemical Weapons Precursors	0694-AA78
748	Revisions to Controls on Missile Technology Items in Cooperation With the Missile Technology Control Regime	0694-AA84
749	Revisions to Controls on Items of Nuclear Proliferation Concern in Cooperation With the Nuclear Suppliers Group	0694-AA85
750	Additional Unmandated Restrictions on Reexports to Libya	0694-AA87
751	Commerce Control List; Revisions and Clarifications to the Export Administration Regulations; Advisory Opinions	0694-AA89
752	Offsets in Military Exports	0694-AA91
753	Revisions to the EAR To Implement the United Nations Embargo on Arms and Related Material to Rwanda	0694-AA98
754	Exports to Taiwan: Expansion of Import Certificate/Delivery Verification (IC/DV) Procedure, Shorter Processing Time Frames and General License GCG	0694-AB00
755	Effect of Imported Articles on the National Security	0694-AB01

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Bureau of Export Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
756	Commerce Control List; Items Controlled for Nuclear Nonproliferation Reasons	0694-AA66
757	Revisions to the Export Administration Regulations; Transfers of Technology to Foreign Nationals in the United States	0694-AA71
758	Revisions to the Export Administraiion Regulations; Clarifications; Savings Clause	0694-AA73
759	Revisions to the Export Administration Regulations: General License GCG and Editorial Clarifications	0694-AA74
760	Revisions and Clarifications to the Export Administration Regulations; Exports to Vessels and Aircraft	0694-AA75
761	Exports to Argentina: Establishment of Import Certificate/Delivery Verification (IC/DV) Procedure, Shorter Processing Time Frames and General License GCG	0694-AA79
762	Exports to International Waters	0694-AA80
763	Commerce Control List; Revisions and Clarifications to the Export Administration Regulations; Fingerprint Equipment and Reexport Policy for the PRC	0694-AA81
764	Electronic Submissions of Validated License Applications	0694-AA82
765	Changes in Categories 3, 4, and 5 of the Commerce Control List Based on COCOM Review; Expansion of Favorable Consideration Treatment; Etc	0694-AA83
766	Exports to South Africa; Revision of Foreign Policy Controls	0694-AA86
767	Establishment of New General License for Shipments to Country Groups QWY and the People's Republic of China	0694-AA97
768	Exports to South Africa; Removal or Foreign Policy Controls	0694-AA99

National Institute of Standards & Technology—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
769	FIPS for POSIX System Administration	0693-AA71
770	FIPS for IRDS Export/Import File Format	0693-AA76
771	Revision of FIPS 177, Initial Graphics Exchange Specification (IGES)	0693-AB13
772	FIPS for Building Grounding and Bonding Requirements for Telecommunications	0693-AB23
773	Proposed Revision of FIPS 146-1, Government Open Systems Interconnection Profile (GOSIP)	0693-AB24
774	Proposed Revision of FIPS 119, Ada Programming Language	0693-AB25
775	Revision of FIPS 125-1, MUMPS (Massachusetts General Hospital Utility Multi-Programming System)	0693-AB26
776	Proposed FIPS for Information Retrieval in the Government Information Locator Service (GILS)	0693-AB29
777	Proposed Revision of FIPS 21-3, COBOL	0693-AB32
778	Revision of FIPS 180, Secure Hash Standard	0693-AB33

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National Institute of Standards & Technology—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
779	FIPS for Cryptographic Service Calls	0693-AB34
780	Proposed Revision of FIPS 179, Government Network Management Profile (GNMP)	0693-AB35

National Institute of Standards & Technology—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
781	FIPS for Portable Operating System Interface (POSIX)—Part 2: Shell and Utilities	0693-AA70
782	Fastener Quality	0693-AA90
783	Second Solicitation of Comments on Proposed FIPS for Standard Security Label for Information Transfer	0693-AA99
784	Proposed FIPS for ODA Raster DAP	0693-AB12
785	Proposed FIPS for Administration Standards for the Telecommunications Infrastructure of Federal Buildings	0693-AB14
786	Revision of FIPS 172, VHSIC Hardware Description Language (VHDL)	0693-AB22
787	FIPS for SQL Environments	0693-AB28
788	Proposed Revision of FIPS 153, Programmer's Hierarchical Interactive Graphics System (PHIGS)	0693-AB30

National Institute of Standards & Technology—Completed Actions

Sequence Number	Title	Regulation Identifier Number
789	FIPS 186, Digital Signature Standard (DSS)	0693-AA86
790	Approval of Withdrawal of FIPS 71, Advanced Data Communication Control Procedures (ADCCP) and FIPS 78, Guideline for Implementing ADCCP	0693-AA98
791	FIPS for Standard Page Description Language	0693-AB03
792	National Voluntary Laboratory Accreditation Program	0693-AB15
793	National Voluntary Conformity Assessment Systems Evaluation	0693-AB17
794	FIPS 173, Spatial Data Transfer Standard (SDTS)	0693-AB18
795	FIPS for Open Document Architecture (ODA), Interchange Format, Language, and Associated Profiles	0693-AB21
796	Manufacturing Technology Centers	0693-AB27

National Oceanic and Atmospheric Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
797	Use in Enforcement Proceedings of Information Collected by Voluntary Fishery Data Collectors	0648-AE40
798	Prescription of Fishways Under Section 18 of the Federal Power Act	0648-AG53
799	New Dealer Reporting Form for Large Pelagics	0648-AG76
800	Amendment 1 to the Fishery Management Plan for Atlantic Coast Red Drum	0648-AG86
801	Proposed Regulations for the Key Largo National Marine Sanctuary	0648-AA33
802	Proposed Regulations for the Looe Key National Marine Sanctuary	0648-AB64
803	Regional Marine Research Program	0648-AF20

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
804	Scientific Research—Domestic and Foreign Fishing	0648-AC61
805	Procedure for Setting Quotas on Removal of Atlantic Bottlenose Dolphins From the Waters of the Gulf of Mexico and Florida's East Coast	0648-AD39
806	U.S. General Standards for Grades of Finfish Products	0648-AD53
807	Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands	0648-AD91
808	Certificate of Legal Origin for Anadromous Fish Products	0648-AD93

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National Oceanic and Atmospheric Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
809	Secretarial Amendment to the FMP for Atlantic Swordfish	0648-AE09
810	General Provisions for Domestic Fisheries	0648-AE39
811	Fishery Management Plan for Corals and Associated Plants and Invertebrates for Puerto Rico and the U.S. Virgin Islands	0648-AE47
812	Fishery Management Plan for Atlantic Herring	0648-AE50
813	Amendment 7 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic	0648-AE52
814	Sea Turtle Monitoring and Conservation Measures for Nonshrimp Fisheries	0648-AE54
815	Regulatory Amendment on Interactive Communications in the Groundfish Fisheries of the GOA and BSAI	0648-AE78
816	Amendment 21B to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands	0648-AE97
817	Amendment 5 to the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish	0648-AF01
818	Amendment 21A to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands To Prohibit Bottom Trawling Adjacent to the Pribilof Islands	0648-AF02
819	Proposed Rule To Require Certain Fish From Mexico To Retain Heads and Tails Intact in Order To Protect the Endangered Totoaba	0648-AF32
820	Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic	0648-AF37
821	Regulatory Amendment Implementing Groundfish Gear Changes in the Pacific Coast Groundfish Fishery	0648-AF38
822	Amendment 9 to the FMP for Atlantic Surf Clams and Ocean Quahogs	0648-AF41
823	Taking of Marine Mammals Incidental to Fisheries-Related Research	0648-AF50
824	Regulatory Amendment—Changes to Directed Fishing Regulations For Groundfish Off of Alaska	0648-AF53
825	Regulatory Amendment Regarding Mesh Size in Trawls and Rock Sole Vessel Incentive Program Standards in Alaska Groundfish Fisheries	0648-AF57
826	Regulatory Amendment To Modify Permit Application Requirements for All Fishery Management Plans in the Western Pacific Region	0648-AF62
827	Regulatory Amendment To Implement Measures in the North Pacific Anadromous Stocks Act of 1992	0648-AF69
828	Regulatory Amendment To Establish a Vessel Monitoring System Within the Pelagic Fisheries of the Western Pacific Region	0648-AF77
829	Regulatory Amendment for Other Species of Reef Fish in the Gulf of Mexico—Red Grouper, Red Porgy, Amberjack, and Gag Grouper	0648-AF78
830	Designated Critical Habitat; Johnson's Seagrass	0648-AF79
831	Screening of Water Diversions To Protect Sacramento River Winter-Run Chinook Salmon	0648-AF80
832	Fishery Management Plan for the North Pacific Scallop Fisheries	0648-AF81
833	Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico	0648-AF83
834	Amendment 2 to the FMP for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic	0648-AF85
835	Fishery Management Plan for Atlantic Tunas	0648-AF86
836	Fishery Management Plan for Tilefish	0648-AF87
837	Amendment 1 to the Fishery Management Plan for Atlantic Billfish	0648-AF88
838	Amendment 8 to the Pacific Coast Groundfish FMP To Implement Individual Quotas for the Fixed-Gear Sablefish Fishery (or Regulatory Amendment for Nontrawl Trip Limits)	0648-AF90
839	Regulatory Amendment Defining Harvesting Capacity Unit and Management System Under the Western Pacific Pelagics FMP	0648-AG04
840	Foreign Nations' Marine Mammal Program Amendments	0648-AG05
841	Designation of Critical Habitat for the Gulf of Maine Population of Harbor Porpoise	0648-AG06
842	Direct Take of Threatened Salmon by Native Americans	0648-AG15
843	Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico	0648-AG23
844	Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic	0648-AG25
845	Amendment 1 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic	0648-AG26
846	Amendment 8 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic	0648-AG27
847	Amendment 8 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648-AG29
848	Regulatory Amendment To Consider Use of Open Access and Limited Entry Gear on the Same Trip for the Pacific Coast Groundfish Fishery	0648-AG30
849	Regulatory Amendment to Require Accurate Weight Measurements for Alaska Groundfish Harvests	0648-AG32
850	Taking and Importing of Marine Mammals: Tuna Purse Seine Vessel Observer Expenses	0648-AG35
851	General Provisions; Endangered Fish or Wildlife; Threatened Fish and Wildlife; Sea Turtle Conservation Measures	0648-AG38
852	Fishery Management Plan Amendment To Allow Processing of Nonindividual Fishing Quota Species on Vessels and Disallow Catcher Vessel Halibut IFQ Use on Freezer Vessels	0648-AG41
853	Definition of "Intermediary Nation"	0648-AG42
854	Designated Critical Habitat; Deer Creek Summer Steelhead	0648-AG44

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855	Regulatory Amendment to the Individual Fishing Quota Program for Groundfish off Alaska	0648-AG45
856	General Provisions for Domestic Fisheries—Standard Definitions/ Guidelines for Council Operations/Administration: Oath, voting, compensation, insurance, unused leave	0648-AG46
857	Designated Critical Habitat; Pacific Steelhead	0648-AG49
858	Designated Critical Habitat; Atlantic Salmon	0648-AG50
859	Regulatory Amendment To Change Recordkeeping and Reporting Requirements in Alaska Groundfish Fisheries	0648-AG54
860	Take of Marine Mammals by the U.S. Navy Incidental to Military Activities in the South Atlantic of the United States	0648-AG55
861	Designated Critical Habitat; Pacific Coho Salmon	0648-AG56
862	Designated Critical Habitat; Pacific Coho Salmon	0648-AG57
863	Designated Critical Habitat; Umpqua River Sea-Run Cutthroat Trout	0648-AG58
864	Regulation to Provide Disaster Relief to West Coast Salmon Fisheries	0648-AG75
865	Proposed List of Fisheries as Authorized by Public Law 103-238	0648-AG77
866	Proposed Rule to Authorize the Incidental Taking of Marine Mammals During Commercial Fishing Operations as Directed by Public Law 103-238	0648-AG78
867	Proposed Rule to Authorize Lethal Takings of Marine Mammals by State Authorities	0648-AG79
868	Proposed Rule to Amend Marine Mammal Regulations to Authorize Incidental Takings of Marine Mammals by Harassment as Authorized by Public Law 103-238	0648-AG80
869	Regulatory Amendment To Impose Restrictions on Fishing Black Rockfish Off Oregon	0648-AG81
870	Regulatory Amendment to Modify the Sablefish NonTrawl Regular Season in the Pacific Coast Groundfish Fishery	0648-AG82
871	Regulatory Amendment for Managing Pelagic Fisheries by U.S. Vessels Beyond EEZ throughout Pacific	0648-AG85
872	Amendment 3 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands	0648-AG87
873	Amendment 1 to the Fishery Management Plan for Corals and Reef-Associated Plants and Invertebrates for Puerto Rico and the U.S. Virgin Islands	0648-AG88
874	Regulatory Amendment to Establish Additional Special Management Zones for Reef Fish conservation and management in the Gulf of Mexico	0648-AG89
875	Generic Fishery Management Plan Amendment for the Definition of Traps in the Gulf of Mexico	0648-AG90
876	Regulatory Amendment To Establish The Bering Sea And Aleutian Islands "A" Season Framework	0648-AG92
877	Regulatory Amendment For Grid Sorting	0648-AG93
878	Regulatory Amendment For The Gulf Of Alaska Seamount Fisheries	0648-AG94
879	Regulatory Amendment For Bering Sea And Aleutian Islands Area Halibut Non-Trawl Prohibited Species Catch Management and Jig Gear Exemption	0648-AG95
880	Regulatory Amendment To Clarify Criteria And Format For Community Development Plan Amendments	0648-AG96
881	Regulatory Amendment Allowing Early Individual Fishing Quota Fishing in the Aleutian Islands Area	0648-AG97
882	Regulatory Amendment Codifying the Community Development Quota Compensation Formula	0648-AG98
883	Fishery Management Plan Amendment to Allow One-Time Trade of Groundfish Quota Shares Between Gulf of Alaska and Bering Sea and Aleutian Islands Areas	0648-AG99
884	Fishery Management Plan Amendment To Supersede Inshore/Offshore Allocation Program for the Bering Sea and Aleutian Island Pollock and the Gulf of Alaska Pollock and Pacific Cod	0648-AH00
885	1995 Catch Sharing Plan and Conservation Measures for Pacific Halibut	0648-AH01
886	Fishery Management Plan Amendment to Increase Personal/Vessel Use Limits In Individual Fishing Quota Fisheries	0648-AH02
887	Amendment 26 To The FMP for the Groundfish Fishery Of The Bering Sea And Aleutian Islands And Amendment 29 to the FMP For The Groundfish Fishery of the Gulf Of Alaska	0648-AH03
888	Taking and Importing of Marine Mammals: Proposed Rule Prohibiting U.S. Citizens From Encircling Marine Mammals During Tuna Fishing Operations	0648-AH04
889	Fishery Management Plan for Scup North of Cape Hatteras	0648-AH05
890	Fishery Management Plan For Black Sea Bass North Of Cape Hatteras	0648-AH06
891	Regulatory Amendment For Multiple "A" Pacific Groundfish Limited Entry Permits Per Vessel	0648-AH07
892	Atlantic Shark Fishery Quota Adjustment	0648-AH09
893	Proposed Designation of Critical Habitat for the Mid-Columbia River Summer Chinook Salmon	0648-AH10
894	Proposed Designation of Critical Habitat for Puget Sound Salmon Stocks	0648-AH11
895	Regulations Governing Processed Fishery Products	0648-AH18
896	Proposed Rule to Establish Guidelines for Nonlethally Deterring Marine Mammals From Endangering Personal Safety or Damaging Public or Private Property	0648-AH19
897	Regulatory Amendment to Facilitate Monitoring and Enforcement in the Pacific Coast Groundfish Fishery	0648-AH21
898	Proposed Regulations for the Fagatele Bay National Marine Sanctuary	0648-AA74
899	Proposed Regulations for the Channel Islands National Marine Sanctuary	0648-AC03

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900	Proposed Regulations for the Gulf of the Farallones National Marine Sanctuary	0648-AC05
901	The Monitor National Marine Sanctuary	0648-AC78
902	Proposed Regulations for the Northwest Straits National Marine Sanctuary	0648-AC91
903	Proposed Regulations for the Norfolk Canyon National Marine Sanctuary	0648-AC92
904	Proposed Regulations for the Florida Keys National Marine Sanctuary **(Reg Plan Seq. No. 21)**	0648-AD85
905	Thunder Bay National Marine Sanctuary	0648-AE41
906	Gray's Reef National Marine Sanctuary	0648-AE42
907	National Marine Sanctuary Program, Site Evaluation List	0648-AF23
908	Licensing of Private Remote-Sensing Space Systems	0648-AC64
909	Natural Resource Damage Assessment and Restoration Regulations **(Reg Plan Seq. No. 22)**	0648-AE13
910	National Weather Service Modernization Criteria	0648-AF72

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

National Oceanic and Atmospheric Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
911	Processed Fishery Products, Processed Products Thereof & Certain Other Processed Food Products: U.S. Standards for Grades of Frozen Fish Blocks & Products Made Therefrom, Etc	0648-AA46
912	U.S. General Standards for Grades of Shrimp	0648-AA47
913	Endangered Fish and Wildlife; Approaching Humpback Whales in Hawaiian Waters	0648-AB79
914	Fishermen's Protective Act	0648-AC73
915	Performance Standards for Tuna Vessel Operators	0648-AD03
916	Revised Regulations Governing Permits for the Taking, Importing and Exporting of Protected Species for Scientific Research and Public Display	0648-AD11
917	Secretarial Fishery Management Plan for Sharks of the Atlantic Ocean	0648-AD12
918	Regulations Governing the Take of Dolphins Incidental to Removing Oil and Gas Platforms in the Gulf of Mexico	0648-AD25
919	Regulatory Amendment—U.S. Nationals Fishing in Russian Fisheries	0648-AD29
920	U.S. Standards for Grades of Frozen Fish Portions	0648-AD92
921	Regulatory Amendment To Implement Permit, Reporting, and Recordkeeping and Observer Requirements for Processing Vessels Over 125 Feet and Their Catcher Vessels; Pacific Coast Groundfish	0648-AE01
922	U.S. Standards for Grades of Whole or Dressed Fish	0648-AE69
923	U.S. Standards for Grades of North American Freshwater Catfish and Products Made Therefrom	0648-AE70
924	U.S. Standards for Grades of Fish Fillets	0648-AE71
925	Amendment 35 to the FMP for Groundfish of the GOA and Amendment 31 to the FMP for Groundfish of the BSAI to revise IFQ transfer Provisions	0648-AE79
926	Taking and Importing of Marine Mammals; Dolphin Mortality Limits During Purse Seine Sets on Marine Mammals in the Eastern Tropical Pacific	0648-AF07
927	Taking and Importing of Marine Mammals; "Dolphin-Safe" Tuna Labeling	0648-AF08
928	Fishing Vessel Capital Construction Fund Procedures—Eligibility for Safety Improvements	0648-AF22
929	Amendment To Enhance Data on Bycatch and Establish a Pilot Program for Donation of Atlantic Swordfish	0648-AF42
930	Fishing Vessel Obligation Guarantee Program	0648-AF48
931	Regulatory Amendment To Require Bluefin Tuna Statistical Documents	0648-AF74
932	Amendment 8 to the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region	0648-AF82
933	Regulatory Amendment to Impose Trip Limits on Commercial Catches of Atlantic Sharks	0648-AG02
934	Regulatory Adjustments to 1994-1995 Atlantic Tuna Fisheries	0648-AG14
935	Financial Disclosure of Fishery Management Council Nominees, Members, and Executive Directors	0648-AG16
936	Regulatory Amendment Designating "Routine" Trip Limits in the Pacific Coast Groundfish Fishery	0648-AG31
937	Taking and Importing of Marine Mammals: Prohibition on Setting on Any Northeastern Offshore Spotted Dolphin	0648-AG33
938	Taking and Importing of Marine Mammals; Taking of Marine Mammals Under the ATA Permit After February 28, 1994	0648-AG36
939	Sea Turtle Conservation Measures; Section 10 Incidental Take Permits; Final Rule	0648-AG37
940	Flotation Devices in Bottom-Opening, Single-Grid Turtle Excluder Devices in the Southeastern United States	0648-AG71
941	Final Notice of Changes in the Management Regimes for Atlantic Migratory King and Spanish Mackerel and Gulf Group of King Mackerel	0648-AH17
942	General Authorization for Scientific Research Involving Level B Harassment	0648-AH20
943	Final Regulations for the Stellwagen Bank National Marine Sanctuary	0648-AC94

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National Oceanic and Atmospheric Administration—Final Rule Stage (Continued)

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944	Implementation of Coastal Zone Management Act Appeal Fees	0648-AD83
945	Technical Conforming Changes to Existing NOAA Regulations To Implement 1990 Reauthorization of the Coastal Zone Management Act	0648-AE11
946	Civil Procedure Regulations	0648-AF96
947	NOAA Climate and Global Change Program—Proposal Submission Guidelines	0648-AG51

National Oceanic and Atmospheric Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
948	Regulatory Amendment—Standard Product Recovery Rates for Alaska Groundfish	0648-AD44
949	Regulatory Amendments to Implement the North Pacific Fisheries Research Plan	0648-AD80
950	Amendment 11 to the FMP for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon, and California	0648-AE05
951	Amendment 7 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region	0648-AE35
952	Amendment 6 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic	0648-AE51
953	Amendment 23 to the FMP for BSAI Groundfish, Amendment 28 to the FMP for GOA Groundfish, and Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI	0648-AE62
954	Regulatory Amendment To Revise Requirements for Reporting and Recordkeeping	0648-AE63
955	Amendment 7 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic	0648-AE98
956	Designated Critical Habitat; Northern Right Whale	0648-AF06
957	Amendment 25 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands	0648-AF17
958	Regulatory Amendment—Northeast Region General Fisheries Permit and Reporting Procedures	0648-AF33
959	Amendment 5 to the FMP for American Lobster	0648-AF39
960	Regulatory Amendment to the Domestic Groundfish Observer Program	0648-AF54
961	1994 Management Measures for Commercial, Recreational, and Treaty Indian Salmon Fisheries off the Coasts of Washington, Oregon, and California	0648-AF61
962	Regulatory Amendment for Atlantic Sharks To Enhance Data Collection, Management, and Enforcement	0648-AF63
963	Regulatory Amendment To Place Restrictions on Vessels and Processors Affiliated with Donut Hole Operations	0648-AF65
964	Regulatory Amendment on Total Weight Measurements for the Bering Sea and Aleutian Islands Area Community Development Quota Fisheries	0648-AF66
965	Regulatory Amendment To Establish Permit Consolidation Procedures Under the Pacific Coast Groundfish FMP Limited Entry Program	0648-AF76
966	Amendment 7 to the FMP for the Reef Fish Resources of the Gulf of Mexico	0648-AF84
967	Automated Broker Interface System in Lieu of the Paper NOAA Form 370 for Entry of Certain Fish Products	0648-AF92
968	Regulatory Amendment To Establish the 1994-96 Allocation of Pacific Whiting	0648-AF95
969	Implementation of a Mandatory Observer Program for the Hawaii-Based Longline Fishery (Pelagic Fisheries of the Western Pacific)	0648-AF97
970	Establish Pilot Program To Allow Retention of Undersized Swordfish for Donation to Needy	0648-AF99
971	Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery	0648-AG00
972	Regulatory Amendment to Modify the Process for Announcing Annual Quotas Under the Northern Anchovy Fishery Management Plan	0648-AG03
973	Definition of "Import" as It Pertains to the Regulations Restricting Exports to the United States of Yellowfin Tuna and Certain Other Fish and Fish Products	0648-AG07
974	Regulatory Amendment To Clarify Permits, Exempted Gear, Trip Limits, Calculation of Allocations, and Sablefish Regular Season in the Pacific Coast Groundfish Limited Entry Fishery	0648-AG08
975	Conservation Measures for Pacific Halibut and 1994 Catch Sharing Plan	0648-AG09
976	Implementing a Clarification to a Portion of Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery	0648-AG10
977	Amendment 6 (Secretarial Amendment) to the Fishery Management Plan for Northeast Multispecies Fishery	0648-AG18
978	Amendment 2 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries	0648-AG20
979	Determinations and Appeals for Limited Access Management of Pacific Halibut and Sablefish In and Off Alaska	0648-AG21
980	FMP Amendments to Raise CDQ Allocation Limit From 12 to 33 Percent	0648-AG22
981	Amendment 10 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648-AG24
982	Amendment 9 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648-AG28
983	Taking and Importing of Marine Mammals: Dolphin-Safe Requirement for the U.S. Market as of June 1, 1994	0648-AG34

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National Oceanic and Atmospheric Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
984	Regulatory Amendment for Area 4B Halibut Set-aside and Trip Limit	0648-AG39
985	Regulatory Amendment to Reduce Likelihood of Premature Fishery Closures in the Gulf of Alaska Groundfish Fisheries	0648-AG43
986	Total Allowable Catch Determination for Atlantic Swordfish for 1994	0648-AG47
987	Regulatory Amendment To Restrict Use of Catcher Vessel Quota Shares by Solely Owned Corporations	0648-AG48
988	Regulatory Amendment To Increase Observer Coverage in Bering Sea Area 517 and the Catcher Vessel Operational Area	0648-AG52
989	Pacific Coast Groundfish Limited-Entry Fishery; Final Rule To Extend for 15 Days the Current 3-Month Suspension of the Vessel Size Endorsement Requirement	0648-AG60
990	Proposed Rule and Subsidence Harvest Estimate for the 1994 Fur Seal Harvest on the Pribilof Islands	0648-AG61
991	Short-Term Area Restrictions to Shrimping From Cape Canaveral, FL, to the Virginia-North Carolina Border To Protect Leatherback Sea Turtles	0648-AG62
992	Implementation of Framework Adjustment 1 to the Northeast Multispecies Fishery Management Plan	0648-AG64
993	Revision to Amendment 5 to the Northeast Multispecies Fishery Management Plan	0648-AG66
994	Emergency Rule To Prohibit the Taking of Live Rock in the Exclusive Economic Zone Off the Southern Atlantic States	0648-AG68
995	Use of Limited Tow Times in Lieu of Turtle Excluder Devices in a Restricted Area Off North Carolina	0648-AG69
996	Emergency Interim Rule To Limit Chum Salmon Bycatch in the BSAI Management Area During the 1994 Pollock Non-roe Season	0648-AG72
997	Final Rule To Implement Measures In Framework 1 To The Atlantic Sea Scallop Fishery Management Plan	0648-AG83
998	Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan	0648-AG84
999	Regulatory Amendment to Council Guidelines on Conduct of Meetings (Voting Procedures)	0648-AG91
1000	Final Rule to Implement Measures In Framework 4 To The Northeast Multispecies Fishery Management Plan	0648-AH08
1001	Emergency Interim Rule To Designate Separate Trawl Fishing Categories in the GOA and Change Directed Fishing Standards	0648-AH12
1002	Technical Amendment of Amendment 5 to the Multispecies Fishery Management Plan	0648-AH13
1003	Emergency Interim Rule For Haddock Protection	0648-AH14
1004	Emergency Interim Rule To Protect Small Sea Scallops	0648-AH15
1005	Emergency Rule To Prohibit The Taking Of Live Rock In the Exclusive Economic Zone of the Gulf Of Mexico	0648-AH16
1006	Emergency Rule to Authorize Additional Harvest of the Gulf Of Alaska Sablefish Total Allowable Catch	0648-AH22
1007	Final Regulations for the Olympic Coast National Marine Sanctuary	0648-AC93
1008	Amendments to the National Marine Sanctuary Regulations To Conform Them With Changes to the Marine Protection, Research, and Sanctuaries Act (MPRSA)	0648-AF75
1009	Guidelines for the Processing of Applications for Nondiscretionary Financial Assistance From NOAA	0648-AF59

National Telecommunications and Information Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1010	Establishment of the Telecommunications and Information Infrastructure Grant Program	0660-AA04

National Telecommunications and Information Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1011	Implementation of the Land Mobile Spectrum Efficiency Plan	0660-AA07

National Telecommunications and Information Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1012	Transfer of Spectrum From the Federal Government to the FCC	0660-AA05
1013	Requiring Proof of Compliance with FCC Licensing Requirements	0660-AA08

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Patent and Trademark Office—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1014	Patent Application Electronic Submission Rules	0651-AA50
1015	Revision of Patent and Trademark Fees	0651-AA74
1016	Early Publication of Patent Applications	0651-AA75

Patent and Trademark Office—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1017	Trademark Procedures	0651-AA46
1018	Patent Term Extension Application Requirements	0651-AA52
1019	Changes in Computer Program Listings Filed in Patent Applications	0651-AA58
1020	Procedures for Amending Patent Applications	0651-AA62
1021	Changes in Patent and Trademark Assignment Practice	0651-AA64
1022	Cross Appeals in PTO Disciplinary Proceedings	0651-AA65
1023	Establishing Prior Invention To Overcome Cited Patent	0651-AA67
1024	Changes to Mailing Procedures	0651-AA70
1025	Changes to Patent Interference Procedural Rules	0651-AA71
1026	Changes in Requirements for Addressing Trademark Applications and Trademark-Related Papers	0651-AA73

Patent and Trademark Office—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1027	Revision of Patent Cooperation Treaty Provisions	0651-AA72

Patent and Trademark Office—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1028	Patent Interference Practice	0651-AA53
1029	Patent Interference Practice; Patentability of Claims	0651-AA66
1030	Revision of Patent and Trademark Fees	0651-AA68
1031	Revision of Certain Patent and Trademark Automation Fees	0651-AA69

Technology Administration—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1032	Promotion of Private Sector Industrial Technology Partnerships	0692-AA13
1033	Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements	0692-AA14

Technology Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1034	Licensing of Government-Owned Inventions	0692-AA04
1035	Administration of a Uniform Patent Policy With Respect to Domestic Rights in Inventions Made by Government Employees	0692-AA05

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United States Travel and Tourism Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1036	Guidelines and Procedures To Provide Financial Assistance to Cooperative Tourism Marketing Programs for International Tourism Trade Development	0644-AA02

DEPARTMENT OF COMMERCE (DOC)
Office of the Secretary (OS)
Proposed Rule Stage

706. CONTRACT CLAUSES AND SOLICITATION PROVISIONS FOR THE COMMERCE AUTOMATED SOLICITATION SYSTEM

Legal Authority: 41 USC 251 et seq; PL 98-369; PL 98-577

CFR Citation: 48 CFR 1301 to 1353

Legal Deadline: None

Abstract: The Department of Commerce is currently reviewing standardized contract clauses and solicitation provisions for inclusion in a planned departmentwide automated solicitation system. A proposed amendment to the Commerce Acquisition Regulation (CAR) would illustrate and incorporate these standardized clauses and provisions. This should ultimately be less burdensome to Department contractors and potential contractors, since the clauses and provisions would be used uniformly throughout the Department.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Shirl Kinney, Director, Office of Acquisition Management, Department of Commerce, Office of the Secretary, 14th Street and Constitution Avenue NW., Washington, DC 20230, **202 482-2773**

RIN: 0690–AA08

707. SOURCE EVALUATION PROCEDURES AND MISCELLANEOUS REVISIONS TO THE COMMERCE ACQUISITION REGULATION

Legal Authority: 41 USC 251 et seq

CFR Citation: 48 CFR 1301 to 1353

Legal Deadline: None

Abstract: The proposed amendment will revise the CAR to incorporate references to the Department's Acquisition Manual chapter on formal source selection procedures and will also add agency procedures in those areas of the CAR where the FAR specifies that agency procedures are required. In addition, the proposed amendment will update the CAR to conform with the latest policies and procedures of the FAR.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Shirl Kinney, Director, Office of Acquisition Management, Department of Commerce, Office of the Secretary, 14th Street and Constitution Avenue NW., Washington, DC 20230, **202 482-2773**

RIN: 0690–AA13

708. MODIFY REQUIREMENT IN THE COMMERCE ACQUISITION REGULATION TO PUBLISH PRESOLICITATION NOTICES IN THE COMMERCE BUSINESS DAILY FOR DOC PROCUREMENTS WHICH WILL BE PERFORMED IN FOREIGN COUNTRIES

Legal Authority: 41 USC 251 et seq

CFR Citation: 48 CFR 1305

Legal Deadline: None

Abstract: Revise the Commerce Acquisition Regulation, part 5, to reflect class deviation that presolicitation Commerce Business Daily notices are not required for foreign procurements. The current procedures are burdensome and delay the procurements needlessly. Most of the potential sources are foreign firms and publishing the presolicitation notices does not achieve Government goals of increasing competition among U.S. firms. The revised regulation will require notices to be provided if there are a significant number of U.S. firms doing business in the location and these firms are able to provide the required supplies or services.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Shirl Kinney, Director, Office of Acquisition Management, Department of Commerce, Office of the Secretary, 14th Street and Constitution Avenue NW., Washington, DC 20230, **202 482-2773**

RIN: 0690–AA18

709. MODIFY THE COMMERCE ACQUISITION REGULATION TO USE A DEVIATION VERSION OF A FEDERAL ACQUISITION REGULATION CLAUSE ON THE BUY AMERICAN TRADE AGREEMENT ACTS

Legal Authority: 41 USC 251 et seq

CFR Citation: 48 CFR 1325; 48 CFR 1352

Legal Deadline: None

Abstract: Revise the Commerce Acquisition Regulation to authorize the use of a contract clause which deviates from the FAR Clause at 52.225-9 "Buy American Act-Trade Agreements Act-Balance of Payments Program" and the provision at 52.225-7 "Buy American

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Act-Trade Agreement Act-Balance of Payment Program Certificate." The revision will permit the case of a provision and clause which does not give U.S. firms a disadvantage against foreign firms. Recently the FAR provision and clause were found to be in violation of the Trade Agreement Act. The proposed CAR Regulation will remain in effect only until the FAR is revised to correct this problem. The rule is in accord with the Governmentwide policies established by the Office of Federal Procurement Policy.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Shirl Kinney, Director, Office of Acquisition Management, Department of Commerce, Office of the Secretary, 14th Street and Constitution Avenue NW., Washington, DC 20230, 202 482-2773

RIN: 0690–AA19

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710. COMMERCE ACQUISITION REGULATION, CHANGES TO THE COMMERCE SHIP CONSTRUCTION, ALTERATION, AND REPAIR CLAUSES

Legal Authority: 41 USC 251 et seq

CFR Citation: 48 CFR 1317; 48 CFR 1352

Legal Deadline: None

Abstract: The Department of Commerce is revising parts 1317 and 1352 of the Commerce Acquisition Regulation (CAR) in regard to the clauses required for use in contracts for ship construction, ship alteration, and ship repair. These changes are needed to incorporate language applicable to the requirements of the Fleet Replacement and Modernization (FRAM) program and to give Department of Commerce contracting officers more flexibility in drafting appropriate terms and conditions for contracts involving ship construction, alteration, and repair.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 373 Ship and Boat Building and Repairing

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Shirl Kinney, Director, Office of Acquisition Management, Department of Commerce, Office of the Secretary, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-2773

RIN: 0690–AA21

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711. • TESTIMONY BY EMPLOYEES IN THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Legal Authority: 5 USC 301; 15 USC 1501; 15 USC 1512; 15 USC 1513; 15 USC 1515; 15 USC 1518; Reorganization Plan No. 5 of 1950; 44 USC 3101

CFR Citation: 15 CFR 15a

Legal Deadline: None

Abstract: The Department of Commerce is amending 15 CFR part 15a which prescribes policies to be followed with respect to the testimony of Department employees regarding official matters, and the production of Department documents in legal proceedings. These regulations serve as a statement of policy and the amendments expand the scope of the existing regulations and provide for more comprehensive standards and guidelines for Department components, employees, other federal agencies, and the public in general regarding the appropriate procedures concerning testimony and the production of documents.

Timetable:

Action	Date	FR Cite
NPRM	09/09/94	59 FR 46598
NPRM Comment Period End	11/08/94	
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: M. Timothy Conner, Attorney-Adviser, Department of Commerce, Office of the Secretary, Room 5890, 14th Street and Constitution Avenue NW., Washington, DC 20230, 202 482-1067

RIN: 0690–AA22

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712. • STANDARDS OF ETHICAL CONDUCT—DEPARTMENT OF COMMERCE SUPPLEMENTAL REGULATIONS

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353; 5 USC app (Ethics in Government Act); 26 USC 7214(b); EO 12674, 54 FR 15159, 3 CFR, 1989 Comp, p 215 as modified; EO 12831, 55 FR 42547, 3 CFR, 1990 Comp, p 306; 5 CFR 2635.105

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Department of Commerce with the concurrence of the Office of Government Ethics (OGE) proposes to issue supplemental standards of ethical conduct for the officers and employees of the Department. The proposed rule will supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics. 5 CFR Part 2635.

The proposed rule is a necessary supplement to the standards issued by OGE because it addresses ethical issues unique to the Department. The proposed rule establishes regulations which: (1) define "Agency Designee" for purposes of the Standards of Conduct; (2) designate agency components for purposes of the gift and outside employment rules; (3) limit employees from acquiring or retaining conflicting financial interests; (4) provide rules for seeking advice concerning determinations of appearances of impropriety; and (5) establish rules for prior approval regarding outside employment and activities.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Karen Kucik, Attorney Advisor, Department of Commerce, Office of the Secretary, 14th Street & Constitution Avenue NW., Rm. 5882, Washington, DC 20230, 202 219-9132

RIN: 0690–AA23

DEPARTMENT OF COMMERCE (DOC)
Bureau of Economic Analysis (BEA) — **Proposed Rule Stage**

713. BENCHMARK SURVEY OF U.S. DIRECT INVESTMENT ABROAD—1994

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Serv Survey Act

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend rule 15 CFR 806.16 to provide for the conduct of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad--1994, as required by the International Investment and Trade in Services Survey Act, 22 USC 3101 to 3108 (see especially section 4(b) of the Act). The existing rule covers a similar survey for 1989 which has been completed and which the new survey will update.

Timetable:

Action	Date	FR Cite
NPRM	08/26/94	59 FR 44090
NPRM Comment Period End	10/11/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty L. Barker, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, Room 7006, BE-50, Washington, DC 20230, 202 606-9800

RIN: 0691–AA22

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714. CHANGE IN EXEMPTION LEVEL FOR BE-577, DIRECT TRANSACTIONS OF U.S. REPORTER WITH FOREIGN AFFILIATE

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Serv Survey Act

CFR Citation: 15 CFR 806.14

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.14 to raise the exemption level for reporting on the BE-577, Direct Transactions of U.S. Reporter with Foreign Affiliate, to $20 million, from $15 million.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty L. Barker, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, (BE-50), Washington, DC 20230, 202 606-9800

RIN: 0691–AA23

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715. • SHORT FORM FOR REPORTING SMALL FOREIGN AFFILIATES IN THE BE-11, ANNUAL SURVEY OF U.S. DIRECT INVESTMENT ABROAD

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Serv Survey Act

CFR Citation: 15 CFR 806.14

Legal Deadline: None

Abstract: This action will amend existing 15 CFR 806.14 to create Form BE-11B(SF), or Short Form, for reporting small, majority-owned foreign affiliates in the BE-11, Annual Survey of U.S. Direct Investment Abroad. Small affiliates are those with assets, sales, or net income above the $15 million reporting threshold for the BE-11 survey, but with no one of the three items exceeding $50 million. The existing Form BE-11B will be relabeled Form BE-11B(LF), or Long Form, and will be used for reporting majority-owned foreign affiliates with assets, sales, or net income exceeding $50 million. The Short Form is being introduced to bring the annual survey into conformity with exemption levels and reporting requirements proposed for reporting in the 1994 BE-10, Benchmark Survey of U.S. Direct Investment Abroad. (BEA is also evaluating whether to raise the threshold for reporting in the BE-11 survey from $15 million to $20 million.)

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
NPRM Comment Period End	11/00/95	
Final Action	01/00/96	
Final Action Effective	02/00/96	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty L. Barker, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, (BE-50), Washington, DC 20230, 202 606-9800

RIN: 0691–AA25

DEPARTMENT OF COMMERCE (DOC)
Bureau of Economic Analysis (BEA) — **Final Rule Stage**

716. FINANCIAL SERVICES PROVIDERS AND UNAFFILIATED FOREIGN PERSONS

Legal Authority: 22 USC 3101 to 3108 Int'l Investment & Trade in Serv Survey Act; 15 USC 4908 Omnibus Trade and Competitiveness Act of 1988

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will create a rule to conduct a new annual survey of cross-border financial services transactions by U.S. financial services providers or intermediaries with unaffiliated foreign persons. Data reported on this survey will be used to extend into non-benchmark years universe estimates developed from the proposed BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

Timetable:

Action	Date	FR Cite
NPRM	07/28/94	59 FR 38387
NPRM Comment Period End	09/12/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: Betty L. Barker, Chief, International Investment

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DOC—BEA — **Final Rule Stage**

Division, Department of Commerce, Bureau of Economic Analysis, (BE-50), Washington, DC 20230, 202 606-9800

RIN: 0691–AA24

DEPARTMENT OF COMMERCE (DOC)
Bureau of the Census (CENSUS) — **Proposed Rule Stage**

717. REVISION OF FOREIGN TRADE STATISTICS REGULATIONS

Legal Authority: 13 USC 301 to 307

CFR Citation: 15 CFR 30.1 to 30.92

Legal Deadline: None

Abstract: Review of 15 CFR 30 for changes to conform to the harmonized system for imports and exports as mandated by the Omnibus Trade and Competitiveness Act of 1988. This review will combine elements of housekeeping changes, updating obsolete information, clarification, conforming to the harmonized system (including metric measurements), and bringing the system in line with current reporting practices. There should be no added burden or costs to the public because there are no additional information or reporting requirements.

The benefits of these changes will be to allow direct comparisons between U.S. imports and exports and to allow comparisons between trade balances of the United States and its major trading partners.

Additionally, section 30.54 will be revised to raise the exemption from Shipper's Export Declaration filing requirements for exports by mail from $500 to $2500. This will reduce the reporting burden on the public, particularly small shippers.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	10/00/95	
Final Action Effective	01/01/96	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: All

Agency Contact: Harold Blyweiss, Chief, Regulations Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Washington, DC 20233, 301 783-5310

RIN: 0607–AA10

718. CHANGE IN THE DEFINITION OF "GENERAL USE" SOFTWARE FROM TECHNICAL DATA TO COMMODITY

Legal Authority: 13 USC 301 to 307

CFR Citation: 15 CFR 30.1

Legal Deadline: None

Abstract: The Census Bureau proposes to change the definition of "General Use" software from technical data to commodity. This will involve changes to the Foreign Trade Statistics Regulations. "General Use" software as a commodity will be valued on the transaction value and will be included in the merchandise trade statistics.

This will complement data collected in surveys by the Bureau of Economic Analysis on software as a service transaction. There will be some increase in reporting burden on exporters.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Interim Final Rule	10/00/95	
Final Action	10/01/96	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: All

Agency Contact: Harold L. Blyweiss, Chief, Regulations Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Washington, DC 20233, 301 763-5310

RIN: 0607–AA16

DEPARTMENT OF COMMERCE (DOC)
Economic Development Administration (EDA) — **Prerule Stage**

719. REVIEW OF REGULATIONS FOR ECONOMIC DEVELOPMENT ADMINISTRATION—DEPARTMENT OF COMMERCE

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR ch III

Legal Deadline: None

Abstract: EDA is in the process of reviewing its regulations to update and streamline those in need of revision.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., Room 7001, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA47

720. SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE GRANTS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 308

Legal Deadline: None

Abstract: EDA intends to initiate regulatory action to revise the rules governing the use of loan funds under its Revolving Loan Fund (RLF) program. The proposed regulatory action is contingent upon legislation being enacted which would provide

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that EDA funds lose their Federal character after the first round of grant funds has been loaned out. The legislation would also provide for its retroactive application.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., Room 7001, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA48

DEPARTMENT OF COMMERCE (DOC)
Economic Development Administration (EDA) — **Final Rule Stage**

721. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE—DESIGN, CONSTRUCTION OF BUILDINGS TO ACCOMMODATE THE PHYSICALLY HANDICAPPED

Legal Authority: 42 USC 4151 to 4156; 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309.14

Legal Deadline: None

Abstract: These regulations will be changed to conform to the recently amended DOC rule at 15 CFR part 8b.18 (55 FR 29316, July 18, 1990), to include references to Uniform Federal Accessibility Standards (UFAS).

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/94	
Final Action	02/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Operations and Administration, 14th Street & Constitution Avenue NW., Room 7001, Washington, DC 20230, 202 482-5441

RIN: 0610–AA05

722. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE: EMPLOYMENT OF EXPEDITERS OR ADMINISTRATIVE EMPLOYEES; COMPENSATION OF PERSONS ENGAGED BY OR ON BEHALF OF APPLICANTS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309

Legal Deadline: None

Abstract: This rule amends EDA's general requirements regulation, employment of expediters or administrative employees, concerning EDA positions involving discretion, to conform to the reorganization of EDA pursuant to Department of Commerce Organization Order 45-1. Old positions which are no longer in existence are deleted. New comparable positions are listed in the amended regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/20/85	50 FR 97
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-5441

RIN: 0610–AA18

723. PROTECTION OF EDA'S INTEREST IN FACILITIES ACQUIRED, BUILT, OR IMPROVED WITH EDA GRANT FUNDS

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 314

Legal Deadline: None

Abstract: EDA intends to initiate regulatory action to protect its interests by enabling EDA to expend funds to care for property acquired by virtue of its lien interest in property purchased or improved with EDA grant funds, including liquidation, litigation, or any other necessary action. The proposed regulatory action is contingent upon legislation being enacted which authorizes EDA to expend funds and take other actions to protect its ownership rights in property purchased or improved with EDA grant funds.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA35

724. PUBLIC WORKS—INDUSTRIAL PARKS AND SITES

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 305

Legal Deadline: None

Abstract: The requirement for a property value agreement from the owner of a private industrial park or site will be less restrictive, so that such an agreement will only be required where there is an apparent or actual incidence of the private owner's failure to deal at arm's length, or if the Assistant Secretary chooses for any other reason to impose the requirements for such an agreement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/95	
Final Action	04/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of

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Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA40

725. GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE—ELECTRIC AND GAS FACILITIES

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 309.4

Legal Deadline: None

Abstract: EDA will amend its rule on financing gas or electrical facilities to omit references to primary or secondary functions, to be consistent with the Public Works and Economic Development Act (PWEDA)(42 USC 3214(e)).

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/03/90	55 FR 18594
Final Action	11/00/95	
Final Action Effective	11/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA43

726. OVERALL ECONOMIC DEVELOPMENT PROGRAM—PROGRESS REPORT

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 304.8

Legal Deadline: None

Abstract: EDA will amend its reporting requirements for Overall Economic Development Program (OEDP) periodic revisions to coincide with the previous project's final report, and the time of submission of the next grant period work program and application. This change applies to EDA's planning grant recipients.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/95	
Final Action	07/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA44

727. PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM—SPECIFIC TYPES OF PROJECTS—SKILL TRAINING CENTER FACILITIES

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 305.45

Legal Deadline: None

Abstract: The purpose of the amendment to 13 CFR 305.45 is to clarify EDA's policies on skill training programs and sheltered workshops. Projects involving bona fide training are to be encouraged when they provide education for workers who can then move into the private sector. Projects involving sheltered workshops should also be encouraged because they often provide jobs to long-term unemployed, which are comparable to those in the private sector.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/07/92	57 FR 11674
Final Action	03/00/95	
Final Action Effective	03/00/96	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, Herbert C. Hoover Bldg., Room 7001, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4687

RIN: 0610–AA51

728. DESIGNATION OF AREAS; PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

Legal Authority: 42 USC 3211; DOC Organization Order 10-4, as amended

CFR Citation: 13 CFR 302; 13 CFR 305

Legal Deadline: None

Abstract: The purpose of these proposed amendments is to more accurately reflect current policies, recent census data, and median family incomes in order to bring current data into play in determining eligibility. The intended effect is to designate the most distressed areas and to fund needed economic development projects in accordance with current data.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/94	59 FR 15328
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Sectors Affected: Multiple

Agency Contact: Awilda Marquez, Chief Counsel, Department of Commerce, Economic Development Administration, 14th Street & Constitution Avenue NW., Room 7001, Washington, DC 20230, 202 482-4687

RIN: 0610–AA54

DEPARTMENT OF COMMERCE (DOC)
General Administration (ADMIN) — **Proposed Rule Stage**

729. NONPROCUREMENT DEBARMENT AND SUSPENSION

Legal Authority: EO 12549, Debarment and Suspension; EO 12689; 5 USC 301

CFR Citation: 15 CFR 26

Legal Deadline: None

Abstract: Executive Order 12689, signed August 16, 1989, calls for agency debarment and suspension actions under procurement or nonprocurement activities to have reciprocal Governmentwide effect. The common rule will be amended to reflect the requirements contained in the Executive order.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Phelan III, Acting Director, Office of Federal Assistance, Department of Commerce, Office of Administration, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4115

RIN: 0605–AA02

730. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Legal Authority: 5 USC 301

CFR Citation: 15 CFR 24

Legal Deadline: None

Abstract: On June 9, 1987, a notice of a proposed rule establishing Governmentwide administrative requirements for grants and cooperative agreements to States and local governments was published in the Federal Register (52 FR 21820-21862). On March 11, 1988, a final rule was published in the Federal Register (53 FR 8033-8103) and was made effective October 1, 1988. Subsequently, a November 4, 1988 NPRM was published in the Federal Register (53 FR 44715-44819) that proposed to amend the common rule to incorporate requirements for grantees that are universities or nonprofit organizations. Based on comments received in response to the NPRM, however, OMB published a notice (55 FR 45289-45290) cancelling plans for such changes. Currently, an interagency task force is now in the process of updating and revising the requirements for States and local governments, and Commerce regulations published at 15 CFR 24 will be amended to accommodate these modifications.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: John J. Phelan III, Acting Director, Office of Federal Assistance, Department of Commerce, Office of Administration, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-5817

RIN: 0605–AA04

DEPARTMENT OF COMMERCE (DOC)
General Administration (ADMIN) — **Final Rule Stage**

731. NEW RESTRICTIONS ON LOBBYING

Legal Authority: 31 USC 1352; PL 101-121, sec 319; 5 USC 301

CFR Citation: 15 CFR 28

Legal Deadline: None

Abstract: The interim final rule is in response to section 319 of PL 101-121. Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, must disclose lobbying.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6736
Interim Final Rule Comment Period End	04/27/90	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: John J. Phelan III, Acting Director, Office of Federal Assistance, Department of Commerce, Office of Administration, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4115

RIN: 0605–AA06

732. • UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND AGREEMENT WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NONPROFITS AND COMMERCIAL ORGANIZATIONS

Legal Authority: 5 USC 301

CFR Citation: 15 CFR 14

Legal Deadline: None

Abstract: On November 29, 1993, Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements, with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" was published in the Federal Register (58 FR 62992). In the published revised circular, OMB specified as "required action" that Federal agencies responsible for awarding and administering grant and other agreements to recipients described therein, shall adopt the language of the Circular unless other provisions are required by Federal Statute or exceptions or deviations are approved by OMB. This interim final rule adopts the provisions of the Circular and its language to the maximum extent feasible with minor language changes made to make the language apply specifically to the DOC and its operating units. This rule also contains certain policies that have been DOC policy for many years that may differ from the language of Circular A-110, but are consistent with and further implements the intent of Circular A-110 with DOC.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

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Agency Contact: John J. Phelan III, Acting Director, Office of Federal Assistance, Department of Commerce, Office of Administration, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4115

RIN: 0605–AA09

DEPARTMENT OF COMMERCE (DOC)
International Trade Administration (ITA) — **Prerule Stage**

733. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES

Regulatory Plan: This entry is Seq. No. 19 in Part II of this issue of the Federal Register.

RIN: 0625–AA45

DEPARTMENT OF COMMERCE (DOC)
International Trade Administration (ITA) — **Proposed Rule Stage**

734. PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF AN ANTIDUMPING OR COUNTERVAILING DUTY PROTECTIVE ORDER

Legal Authority: 5 USC 301; 19 USC 1677f

CFR Citation: 19 CFR 354

Legal Deadline: None

Abstract: The Department needs to enhance the administrative efficiency of its investigations of alleged violations of administrative protective orders (APOs) and of the process for imposing sanctions for violations, as well as the fairness of the procedures to all concerned parties. The Department is considering (1) expedited procedures for certain APO violations that are uncontested, inadvertent, and technical; (2) providing for warnings to be issued where a finding of a violation would lead to unjustifiably harsh sanctions; (3) where warranted, permitting the agency to dismiss a charge without prejudice without the appointment or approval of an administrative law judge; (4) providing for a sunset provision that is fairer to past violators and that eases the administrative burden; and (5) permitting a private reprimand as a sanction without requiring as a precondition that parties engage in settlement discussions. The Department expects to benefit from gains in administrative efficiency and fairness without incurring any additional costs.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joan MacKenzie, Senior Attorney, Department of Commerce, International Trade Administration, Room H4621, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-1310

RIN: 0625–AA43

735. ANTIDUMPING AND COUNTERVAILING DUTIES; EXCLUSIONS

Legal Authority: 5 USC 301; PL 96-39; PL 98-573; PL 100-418

CFR Citation: 19 CFR 353; 19 CFR 355

Legal Deadline: None

Abstract: ITA is proposing to amend its regulations to eliminate company-specific exclusions and to require the suspension of liquidation for all entries from companies receiving a zero or de minimis rate in an antidumping or countervailing duty investigation. Experience has shown that company-specific exclusions may result in the evasion of antidumping and countervailing duty liability by firms funneling sales of subject merchandise through companies that have been excluded from an order. Once a company is excluded, it is extremely difficult for the ITA to gather information regarding that company's selling practices or, when necessary, to subject its exports to the outstanding order. Eliminating exclusions will enable ITA, in appropriate circumstances, to examine the selling practices of a company receiving a zero or de minimis rate before its entries are liquidated.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William D. Hunter, Counselor to the Chief Counsel for Import Administration, Department of Commerce, International Trade Administration, Room 3622, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4224

RIN: 0625–AA44

DEPARTMENT OF COMMERCE (DOC)
International Trade Administration (ITA) — **Final Rule Stage**

736. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES

Legal Authority: 19 USC 1671 et seq; 19 USC 1673 et seq

CFR Citation: 19 CFR 353; 19 CFR 355

Legal Deadline: None

Abstract: Revisions to the current antidumping duty and countervailing duty regulations are needed in order to conform those regulations to certain statutory amendments made by the Omnibus Trade and Competitiveness Act of 1988. Those amendments deal with (1) downstream product monitoring; (2) consultations with the International Trade Commission on certain scope rulings; (3) procedures for administrative protective orders; (4) correction of ministerial errors; and (5) effective dates. The revisions will enable the Department to apply the new statutory provisions in an orderly and efficient basis.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/09/90	55 FR 9046
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: William D. Hunter, Counselor to the Chief Counselor for Import Administration, Department of Commerce, International Trade Administration, Room 3622, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-4224

RIN: 0625–AA32

737. SHORT SUPPLY PROCEDURES FOR ITA

Legal Authority: PL 101-221

CFR Citation: 19 CFR 357

Legal Deadline: None

Abstract: The authority for this program expired on March 31, 1992, when the steel voluntary restraint agreements terminated. Accordingly, the regulations will be withdrawn.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/12/90	55 FR 1348
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffrey C. Lowe, Attoney-Advisor, Department of Commerce, International Trade Administration, Room 3622, 14th Street & Constitution Avenue NW., Washington, DC 20230, 202 482-1439

RIN: 0625–AA34

DEPARTMENT OF COMMERCE (DOC)
Bureau of Export Administration (BXA) — **Final Rule Stage**

738. DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS)

Legal Authority: 50 USC app 2061 et seq; 50 USC app 468; EO 12656; EO 12742; EO 12929

CFR Citation: 15 CFR 700

Legal Deadline: None

Abstract: The Defense Priorities and Allocations System (DPAS) implements the priorities and allocations authority of title I of the Defense Production Act of 1950, as amended, and the priorities authority of section 18 of the Selective Service Act of 1948. The DPAS was published as a final rule on July 30, 1984. Based on the findings and recommendations of an interagency sponsored study concerning the controlled materials program, and comments from both defense agency and industry users, this proposed rule would amend the DPAS to remove the controlled materials provisions and make certain revisions to its procedural requirements. These amendments will have no costs associated with them, would reduce the regulatory and information reporting burden on industry and make the DPAS more effective and efficient, result in cost savings for defense contractors, would update certain other provisions to conform to statutory and jurisdictional changes, and would make the DPAS more compatible with current industry practices.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: Multiple

Agency Contact: Richard V. Meyers, DPAS Program Manager, Department of Commerce, Bureau of Export Administration, Office of Industrial Resources Admin., National Security Preparedness Div., Room 3878, Washington, DC 20230, 202 482-3634

RIN: 0694–AA02

739. REVISION OF FOREIGN BOYCOTT PROVISIONS OF EXPORT ADMINISTRATION REGULATIONS

Legal Authority: 50 USC 1701 et seq; 50 USC app 2401 et seq; EO 12002; EO 12058; EO 12214; EO 12735

CFR Citation: 15 CFR 769

Legal Deadline: None

Abstract: The Department proposes to revise the foreign boycott provisions of the Export Administration Regulations. The revisions would clarify the application of: (1) the intent provision to the reporting requirement; (2) the jurisdictional requirements relating to the implementation of letters of credit; (3) the furnishing information prohibitions to information about the nationality of directors and about blacklisted persons; (4) the shipping requirement exception to refusals to use blacklisted vessels; and (5) the import and shipping document exception to information about the nationality of carriers and residence of manufacturers or suppliers. The revisions are intended to clarify areas of confusion. In addition, the proposal would remove many references and provisions dealing with effective dates and grace periods that are no longer applicable.

Timetable:

Action	Date	FR Cite
NPRM	09/26/89	54 FR 39415
NPRM Comment Period End	10/26/89	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Diamond, Acting Director, Compliance Policy Division, Department of Commerce,

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Bureau of Export Administration, Washington, DC 20230, **202 482-4550**

RIN: 0694–AA11

740. TRANSFER OF DUAL-USE ITEMS FROM U.S. MUNITIONS LIST TO THE COMMERCE CONTROL LIST

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7420; 10 USC 7430(e); 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC USC 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 799.1

Legal Deadline: None

Abstract: The COCOM Industrial List (IL) controls so-called dual-use items, which have both civil and military uses. There is not a direct correspondence between the IL and BXA's Commerce Control List (CCL) because some IL items are controlled by the State Department in the U.S. munitions list.

In his November 15, 1990, memorandum of disapproval of H.R. 4653, the President determined that, "By June 1, 1991, the United States will remove from the U.S. munitions list all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized." This rule will implement BXA controls through the CCL on those items removed from the U.S. munitions list as a result of the President's decision.

Timetable:

Action	Date	FR Cite
Transfer of Communications Satellites	10/23/92	57 FR 48312
Navigation and. Avionics	06/23/93	58 FR 34211
Final Rule: Transfer of Commercial Communication Satellites	09/08/93	58 FR 47322
Transfer of Items From the USMI to the CCL; Imposition of Certain Foreign Policy Controls	10/26/93	58 FR 57549
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Jerold Better**, Electronics Engineer, Office of Technology and Policy Analysis, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-1641**

RIN: 0694–AA52

741. EXPORTS TO IRAN; REVISION OF FOREIGN POLICY CONTROLS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7420; 10 USC 7430(e); 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 771; 15 CFR 785; 15 CFR 799

Legal Deadline: None

Abstract: This interim rule amends the Export Administration Regulations by revising the special country policies and provisions, consistent with the National Defense Authorization Act (NDAA) of 1992, to establish a policy of denial for all items that require a validated license for Iran, except items subject to short supply controls.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Patricia Muldonian**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-2440**

RIN: 0694–AA62

742. SIMPLIFICATION OF THE EXPORT ADMINISTRATION REGULATIONS

Regulatory Plan: This entry is Seq. No. 20 in Part II of this issue of the **Federal Register**.

RIN: 0694–AA67

743. EQUIPMENT RELATED TO THE PRODUCTION OF CHEMICAL WEAPONS AND WARFARE AGENTS, MICROORGANISMS AND TOXINS; REVISIONS TO AUSTRALIA GROUP MEMBERS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 773; 15 CFR 778 15 CFR 799

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Numbers (ECCNs) 1B70 and 1C61. These ECCNs control dual-use items that can be used in the production of chemical and biological weapons (CBW). The changes made by this rule are intended to conform the list of CBW-related items controlled by the United States to the lists of items agreed to and adopted by the countries participating in the Australia Group (AG). In addition, this rule revises the list of countries participating in the AG to include Argentina and Hungary, since both countries now participate in the AG.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/18/94	59 FR 12824
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Patricia Muldonian**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-2440**

RIN: 0694–AA69

744. EXPORTS OF CERTAIN CALIFORNIA CRUDE OIL

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7420; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: This rule would amend the short supply regulations to allow export of up to 25,000 barrels per day of California heavy crude oil having a gravity of 20 degrees API or lower.

Timetable:

Action	Date	FR Cite
NPRM	03/24/94	59 FR 13900
NPRM Comment Period End	04/25/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Patricia Muldonian**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-2440**

RIN: 0694–AA70

745. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; CORRECTIONS AND CLARIFICATIONS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: This rule makes the following clarifications and corrections to the Export Administration Regulations: Establishes a standard savings clause to protect exporters from sudden increases in controls; revises General License GCG to ensure that BXA has the opportunity to review sensitive exports such as those controlled for missile technology or chemical or biological warfare reasons; clarifies the countries eligible for General License GFW; clarifies procedures for submitting classification requests; and makes typographical corrections to previously issued regulations.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Sharron Cook**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-4819**

RIN: 0694–AA72

746. IMPLEMENTATION OF THE CUBA DEMOCRACY ACT

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Cuba Democracy Act required certain actions to tighten the embargo on Cuba. This includes changes in general license provisions for ship stores and new controls on medicines. These changes will complement regulations already issued by the Department of the Treasury.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Sharron Cook**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-4819**

RIN: 0694–AA77

747. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS: EXPORTS OF SAMPLE SHIPMENTS AND MIXTURES CONTAINING CHEMICAL WEAPONS PRECURSORS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12750

CFR Citation: 15 CFR 778; 15 CFR 799

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which appears in the Export Administration Regulations (EAR). This rule amends the CCL by revising Export Control Classification Number (ECCN) 1C60. These ECCNs control dual-use precursors and intermediate chemicals that can be used in the production of chemical warfare agents. The changes made by this rule are based on recent discussions in the Australia Group (AG) or identified for intercessional resolution.

Timetable:

Action	Date	FR Cite
Final Action	11/04/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Patricia Muldonian**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-2440**

RIN: 0694–AA78

748. REVISIONS TO CONTROLS ON MISSILE TECHNOLOGY ITEMS IN COOPERATION WITH THE MISSILE TECHNOLOGY CONTROL REGIME

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The United States participates in the Missile Technology Control Regime (MTCR), which meets twice each year to promote effective multilateral export controls on items that could be used in developing missiles capable of delivering weapons of mass destruction. These meetings generally result in changes to controls that must be reflected in the Export Administration Regulations. BXA anticipates that a rule will be published following each semiannual meeting of the MTCR.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Hillary Hess**, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, **202 482-4819**

RIN: 0694–AA8

749. REVISIONS TO CONTROLS ON ITEMS OF NUCLEAR PROLIFERATION CONCERN IN COOPERATION WITH THE NUCLEAR SUPPLIERS GROUP

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC

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7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354 app; 50 USC 2401 app et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The United States participates in the Nuclear Suppliers Group (NSG) which meets twice each year to promote effective multilateral export controls on items that could be used in developing nuclear weapons. These meetings generally result in changes to controls that must be reflected in the Export Administration Regulations. BXA anticipates that a rule will be published following each semiannual meeting of the NSG.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hillary Hess, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AA85

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750. ADDITIONAL UNMANDATED RESTRICTIONS ON REEXPORTS TO LIBYA

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The United Nations agreed on an additional measure in response to Libya's refusal to extradite suspects in the bombing of Pan Am Flight 103. These new sanctions include denial of exports that would assist in movement of oil and gas within Libya. Equipment subject to these new restrictions is already controlled, and the policy is being implemented in licensing decisions. This rule merely adds the existing policy to the regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hillary Hess, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AA87

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751. COMMERCE CONTROL LIST; REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS; ADVISORY OPINIONS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: This rule clarifies and makes editorial corrections to a number of sections of the Export Administration Regulations. In particular, the rule specifies that requests for advisory opinions concerning license requirements must identify the actual exporter, adds a new note to a Commerce Control List (CCL) entry, corrects the eligibility paragraphs of two CCL entries, clarifies which items may be reexported from COCOM participating and cooperating countries to the People's Republic of China, and makes other editorial corrections.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharron Cook, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AA89

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752. OFFSETS IN MILITARY EXPORTS

Legal Authority: 50 USC app 2099

CFR Citation: 15 CFR 701

Legal Deadline: None

Abstract: This new regulation will implement section 309 of the Defense Production Act of 1950, amended. This authority requires that U.S. firms entering into defense-related offset agreements concluded with foreign governments or companies associated with military export sales valued in excess of $5 million in value, furnish information regarding the agreements to the Department of Commerce. Compliance with this rule will involve minimal cost and time as the information requested is readily available to respondents and will primarily affect large defense contractors rather than small business entities.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Karen Swasey, Offsets Program Manager, Department of Commerce, Bureau of Export Administration, Office of Industrial Resource Administration, Strategic Analysis Division, Room 3878, Washington, DC 20230, 202 482-3795

RIN: 0694–AA91

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753. • REVISIONS TO THE EAR TO IMPLEMENT THE UNITED NATIONS EMBARGO ON ARMS AND RELATED MATERIAL TO RWANDA

Legal Authority: 18 USC 2570 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 785; 15 CFR 799

Legal Deadline: None

Abstract: Reacting to the turmoil and slaughter of innocent civilians in Rwanda and fulfilling United States obligations to implement an international arms embargo mandated by the United Nations Security Council, the President has banned the sale and supply of arms and related material to Rwanda. To supplement the State Department controls on items on the U.S. Munitions List, the BXA is designating certain items on the Commerce Control List that are subject to the arms embargo and a policy of denial to Rwanda. No items may be exported to Rwanda under any general license including shipments of limited value.

DOC—BXA

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hillary Hess, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AA98

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754. • EXPORTS TO TAIWAN: EXPANSION OF IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) PROCEDURE, SHORTER PROCESSING TIME FRAMES AND GENERAL LICENSE GCG

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12058

CFR Citation: 15 CFR 770; 15 CFR 771; 15 CFR 775

Legal Deadline: None

Abstract: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Taiwan export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharron Cook, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AB00

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755. • EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Legal Authority: 19 USC 1862

CFR Citation: 15 CFR 705

Legal Deadline: None

Abstract: Section 232 of the Trade Expansion Act of 1962, as amended (19 USC 1862) provides for the investigation of imports of articles which threaten to impair the national security. The implementing regulation, "Effect of Imported Articles on the National Security" (15 CFR 705), prescribes procedures to be followed by the Department of Commerce to commence and conduct such an investigation. Because of recent amendments to the Act, this regulation must be revised to set forth requirements for additional action to be taken by the Secretary of Commerce upon commencing, conducting, and completing an investigation, and reporting the disposition of an investigation to the Congress, and by the President in making a determination to take action against the imports of the article.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Karen Swasey, Section 232 Investigations Program Manager, Department of Commerce, Bureau of Export Administration, Office of Industrial Resource Administration, Strategic Analysis Division, Room 3878, Washington, DC 20230, 202 482-3795

RIN: 0694–AB01

DEPARTMENT OF COMMERCE (DOC)

Bureau of Export Administration (BXA)

Completed Actions

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756. COMMERCE CONTROL LIST; ITEMS CONTROLLED FOR NUCLEAR NONPROLIFERATION REASONS

CFR Citation: 15 CFR 771; 15 CFR 772; 15 CFR 773; 15 CFR 774; 15 CFR 778; 15 CFR 786; 15 CFR 787; 15 CFR 799

Completed:

Reason	Date	FR Cite
Final Action	03/09/94	59 FR 10958
Final Action Effective	03/09/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Willard Fisher, 202 482-4479

RIN: 0694–AA66

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757. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; TRANSFERS OF TECHNOLOGY TO FOREIGN NATIONALS IN THE UNITED STATES

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Final Action	03/22/94	59 FR 13449
Final Action Effective	03/22/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA71

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758. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; CLARIFICATIONS; SAVINGS CLAUSE

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Merged with RIN 0694-AA82	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA73

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759. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS: GENERAL LICENSE GCG AND EDITORIAL CLARIFICATIONS

CFR Citation: 15 CFR 700 to 799

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DOC—BXA — **Completed Actions**

Completed:

Reason	Date	FR Cite
Merged with RIN 0694-AA72	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA74

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760. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS; EXPORTS TO VESSELS AND AIRCRAFT

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Merged with RIN 0694-AA67	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA75

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761. EXPORTS TO ARGENTINA: ESTABLISHMENT OF IMPORT CERTIFICATE/DELIVERY VERIFICATION (IC/DV) PROCEDURE, SHORTER PROCESSING TIME FRAMES AND GENERAL LICENSE GCG

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Final Action	06/15/94	59 FR 30682
Final Action Effective	06/15/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA79

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762. EXPORTS TO INTERNATIONAL WATERS

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Merged with RIN 0694-AA67	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA80

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763. COMMERCE CONTROL LIST; REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS; FINGERPRINT EQUIPMENT AND REEXPORT POLICY FOR THE PRC

CFR Citation: 10 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Withdrawn	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, 202 482-2440

RIN: 0694–AA81

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764. ELECTRONIC SUBMISSIONS OF VALIDATED LICENSE APPLICATIONS

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Merged with RIN 0694-AA67	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Willard Fisher, 202 482-2440

RIN: 0694–AA82

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765. CHANGES IN CATEGORIES 3, 4, AND 5 OF THE COMMERCE CONTROL LIST BASED ON COCOM REVIEW; EXPANSION OF FAVORABLE CONSIDERATION TREATMENT; ETC

CFR Citation: 15 CFR 770; 15 CFR 772; 15 CFR 773; 15 CFR 775; 15 CFR 776; 15 CFR 778; 15 CFR 779; 15 CFR 785; 15 CFR 799

Completed:

Reason	Date	FR Cite
Final Action	05/16/94	59 FR 25303
Final Action Effective	05/16/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharron Cook, 202 482-4819

RIN: 0694–AA83

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766. EXPORTS TO SOUTH AFRICA; REVISION OF FOREIGN POLICY CONTROLS

CFR Citation: 15 CFR 771; 15 CFR 785; 15 CFR 779

Completed:

Reason	Date	FR Cite
Final Action	03/25/94	59 FR 14360
Final Action Effective	03/28/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hillary Hess, 202 482-4819

RIN: 0694–AA86

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767. • ESTABLISHMENT OF NEW GENERAL LICENSE FOR SHIPMENTS TO COUNTRY GROUPS QWY AND THE PEOPLE'S REPUBLIC OF CHINA

Legal Authority: 18 USC et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(a); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 771; 15 CFR 774; 15 CFR 799

Legal Deadline: None

Abstract: The Coordinating Committee for Multilateral Export Controls (COCOM) agreed to cease functioning on March 31, 1994. The current control lists will be retained by the member nations until a successor regime is established. To help make the transition, the United States established a new General License GLX, which allows certain shipments to civil end-users and end-uses in formerly proscribed destinations. The new general license will reduce paperwork and licensing delays for exporters, and will focus controls on exports that are of direct strategic concern.

Timetable:

Action	Date	FR Cite
Final Action	04/04/94	59 FR 15621
Final Action Effective	04/04/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patricia Muldonian, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-2440

RIN: 0694–AA97

DOC—BXA — **Completed Actions**

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768. • EXPORTS TO SOUTH AFRICA; REMOVAL OR FOREIGN POLICY CONTROLS

Legal Authority: 18 USC 2510 et seq; 30 USC 185; 42 USC 6212; 10 USC 7240; 10 USC 7430(e); 50 USC 1710 et seq; 22 USC 3201 et seq; 42 USC 2139(a); 43 USC 1354; 50 USC app 2401 et seq; 46 USC 466(c); EO 11912; EO 12058; EO 12735

CFR Citation: 15 CFR 771; 15 CFR 773; 15 CFR 779; 15 CFR 785; 15 CFR 786; 15 CFR 799

Legal Deadline: None

Abstract: On May 25, 1994, the United Nations Security Council (UNSC) passed Resolution 919 lifting the arms embargo against South Africa, and withdrawing their recommendation for other voluntary restrictions on sales to the South African military and police. In recognition of the UNSC action and the installation of a democratically elected, nonracial government in South Africa, the Bureau of Export Administration is amending the Export Administration Regulations (EAR) to eliminate controls established to implement an arms embargo and to remove specific controls to the South African military and police.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/25/94	
Final Action	06/15/94	59 FR 30684

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hillary Hess, Export Administration Specialist, Department of Commerce, Bureau of Export Administration, Washington, DC 20230, 202 482-4819

RIN: 0694–AA99

DEPARTMENT OF COMMERCE (DOC)
National Institute of Standards & Technology (NIST) — **Proposed Rule Stage**

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769. FIPS FOR POSIX SYSTEM ADMINISTRATION

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt a set of specifications on an interim basis to provide functional system administration requirements for POSIX operating system implementations. Actual utility names and options for system administration will be specified in a future revision to this FIPS. This standard will facilitate the interchange of computer programs among different vendor systems and architectures.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA71

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770. FIPS FOR IRDS EXPORT/IMPORT FILE FORMAT

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt an American National Standard being developed by Standards Committee X3H4. The standard will specify the precise format of files used to exchange information between IRDSs. The specification will complete the IRD-IRD Interface, the functionality of which is specified in FIPS PUB 156.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA76

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771. REVISION OF FIPS 177, INITIAL GRAPHICS EXCHANGE SPECIFICATION (IGES)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revision will update FIPS 177 by adopting revised voluntary industry specifications for IGES. The revision will enable the Federal Government to maintain compatibility with industry practices for the representation and exchange of product definition data used in computer-aided design and computer-aided manufacturing systems.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB13

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772. FIPS FOR BUILDING GROUNDING AND BONDING REQUIREMENTS FOR TELECOMMUNICATIONS

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will adopt a voluntary industry standard to enable the planning, design, and installation of telecommunications grounding systems within a building to support a multivendor, multiproduct environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151

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Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB23

773. PROPOSED REVISION OF FIPS 146-1, GOVERNMENT OPEN SYSTEMS INTERCONNECTION PROFILE (GOSIP)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard defines communications protocols that enable systems developed by different vendors to interoperate and that enable the users of different applications on these systems to exchange information. A revision will be proposed to expand the options for protocol selection and meet changing government requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB24

774. PROPOSED REVISION OF FIPS 119, ADA PROGRAMMING LANGUAGE

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revised FIPS will adopt revised voluntary industry specifications (ANSI/ISO/IEC 8652:1994) for the Ada programming language. This proposed revision will supersede FIPS PUB 119 in its entirety.

Timetable:

Action	Date	FR Cite
NPRM	07/11/94	59 FR 35315
NPRM Comment Period End	10/00/94	59 FR 35315
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB25

775. REVISION OF FIPS 125-1, MUMPS (MASSACHUSETTS GENERAL HOSPITAL UTILITY MULTI-PROGRAMMING SYSTEM)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revised FIPS will adopt revised voluntary industry specifications (ANSI/MDC/ X11.1-199X) for the MUMPS programming language. This proposed revision will supersede FIPS PUB 125-1 in its entirety.

Timetable:

Action	Date	FR Cite
NPRM	07/05/94	59 FR 34414
NPRM Comment Period End	10/03/94	49 FR 34414
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB26

776. • PROPOSED FIPS FOR INFORMATION RETRIEVAL IN THE GOVERNMENT INFORMATION LOCATOR SERVICE (GILS)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This FIPS will select options from voluntary industry standard Z39.50-1992, Information Retrieval Application Service Definition and Protocol Specification for Open Systems Interconnection, to meet Federal Government requirements for the operation of the Government Information Locator Service (GILS).

Timetable:

Action	Date	FR Cite
NPRM	07/05/94	59 FR 34412
NPRM Comment Period End	10/03/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB29

777. • PROPOSED REVISION OF FIPS 21-3, COBOL

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revision will modify the FIPS to reflect corrections and clarifications made to the COBOL specifications by a voluntary industry standards committee. This standard promotes the portability of COBOL programs among different computer systems.

Timetable:

Action	Date	FR Cite
NPRM	07/11/94	59 FR 35312
NPRM Comment Period End	10/11/94	59 FR 35312
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB32

778. • REVISION OF FIPS 180, SECURE HASH STANDARD

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revision will correct a minor technical flaw that was discovered in the secure hash algorithm. The algorithm computes a condensed message digest that represents the original message and that can be used in computing a digital signature.

Timetable:

Action	Date	FR Cite
NPRM	07/11/94	59 FR 35317
NPRM Comment Period End	10/00/94	59 FR 35317
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB33

779. • FIPS FOR CRYPTOGRAPHIC SERVICE CALLS

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will specify a set of generic cryptographic service calls, or applications program interface (API), for application programs to interface with a cryptographic module for requesting cryptographic functions. The service calls will specify the interface for common cryptographic functions such as message encryption and decryption, message authentication, digital signature generation and verification, key management, and user authentication.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB34

780. • PROPOSED REVISION OF FIPS 179, GOVERNMENT NETWORK MANAGEMENT PROFILE (GNMP)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: The proposed revision will remove the requirement for mandatory use of FIPS 179 and expand agency options for network management to open, voluntary standards, including those based on Open Systems Interconnection (OSI) protocols.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB35

DEPARTMENT OF COMMERCE (DOC)

National Institute of Standards & Technology (NIST)

Final Rule Stage

781. FIPS FOR PORTABLE OPERATING SYSTEM INTERFACE (POSIX)—PART 2: SHELL AND UTILITIES

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt Draft International Standard ISO/IEC 9945-2:1992, Information Technology--Portable Operating System Interface (POSIX)--Part 2: Shell and Utilities as a FIPS. This standard will extend the functionality of the POSIX standard by providing an interactive interface for users to control processing.

Timetable:

Action	Date	FR Cite
NPRM	06/07/89	54 FR 24375
NPRM Comment Period End	09/05/89	54 FR 24375
Second NPRM	01/28/94	59 FR 4034
Second NPRM Comment Period End	04/28/94	59 FR 4034
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA70

782. FASTENER QUALITY

Legal Authority: PL 101-592

CFR Citation: 15 CFR 280

Legal Deadline: NPRM, Statutory, May 15, 1991.

Abstract: This rule will implement the Fastener Quality Act. In 1990, Congress enacted the Fastener Quality Act (the Act) to protect public safety, deter introduction of nonconforming fasteners into commerce, improve traceability of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. The Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing, and certification (in accordance with standardized methods) of fasteners used in critical applications.

Timetable:

Action	Date	FR Cite
NPRM	08/17/92	57 FR 37032

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DOC—NIST — **Final Rule Stage**

Action	Date	FR Cite
NPRM Comment Period End	11/02/92	57 FR 37032
Final Action	04/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Belinda L. Collins, FQA Program Manager, Office of Standards Services, Department of Commerce, National Institute of Standards & Technology, Room A603 Administration, Gaithersburg, MD 20899, 301 975-4000

RIN: 0693–AA90

783. SECOND SOLICITATION OF COMMENTS ON PROPOSED FIPS FOR STANDARD SECURITY LABEL FOR INFORMATION TRANSFER

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will specify the format for security labels to be used in information transfer. Security labels will facilitate the institution of controls to prevent accidental or intentional disclosure, modification, or destruction of data.

Timetable:

Action	Date	FR Cite
NPRM	08/21/92	57 FR 37948
NPRM Comment Period End	11/19/92	
Second NPRM	01/28/94	59 FR 4031
Second NPRM Comment Period End	03/29/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AA99

784. PROPOSED FIPS FOR ODA RASTER DAP

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will specify an interchange format suitable for the transfer of raster images between systems designed for raster graphics applications. The standard will enable users to transfer documents between different equipment designed for raster processing.

Timetable:

Action	Date	FR Cite
NPRM	01/28/94	59 FR 4032
NPRM Comment Period End	04/28/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB12

785. PROPOSED FIPS FOR ADMINISTRATION STANDARDS FOR THE TELECOMMUNICATIONS INFRASTRUCTURE OF FEDERAL BUILDINGS

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will adopt ANSI/TIA/EIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings. The standard will provide the administrative requirements for the telecommunications equipment spaces, cable pathways, grounding, wiring, and termination hardware that support the distribution of information within a new, existing, or renovated office building or campus.

Timetable:

Action	Date	FR Cite
NPRM	04/15/93	58 FR 19663
NPRM Comment Period End	07/15/93	58 FR 19663
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB14

786. REVISION OF FIPS 172, VHSIC HARDWARE DESCRIPTION LANGUAGE (VHDL)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revised FIPS will adopt revised voluntary industry specifications for the VHDL programming language contained in ANSI/IEEE 1076-1993. This proposed revision will supersede FIPS PUB 172 in its entirety.

Timetable:

Action	Date	FR Cite
NPRM	04/12/94	59 FR 17336
NPRM Comment Period End	07/11/94	59 FR 17336
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB22

787. • FIPS FOR SQL ENVIRONMENTS

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This standard will define conformance profiles that can be used by both vendors and users to specify exact requirements for how various products fit into an SQL environment. The initial emphasis is on SQL external repository interface profiles for non-SQL data repositories.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	06/20/94	
NPRM	06/22/94	59 FR 32186
Final Action	12/00/94	

DOC—NIST — **Final Rule Stage**

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB28

788. • PROPOSED REVISION OF FIPS 153, PROGRAMMER'S HIERARCHICAL INTERACTIVE GRAPHICS SYSTEM (PHIGS)

Legal Authority: PL 100-235

CFR Citation: None

Legal Deadline: None

Abstract: This revision will add features to the current standard for PHIGS, which defines basic functionality for control and data interchange between an application program and its graphic support systems. New graphics features will be provided in the revision which will adopt voluntary industry specifications for PHIGS.

Timetable:

Action	Date	FR Cite
NPRM	06/17/94	59 FR 31209
NPRM Comment Period End	09/15/94	59 FR 31209
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Sectors Affected: 357 Computer and Office Equipment

Agency Contact: Shirley Radack, Computer Specialist, Department of Commerce, National Institute of Standards & Technology, B151 Technology, Gaithersburg, MD 20899, 301 975-2833

RIN: 0693–AB30

DEPARTMENT OF COMMERCE (DOC)
National Institute of Standards & Technology (NIST)

Completed Actions

789. FIPS 186, DIGITAL SIGNATURE STANDARD (DSS)

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	05/19/94	59 FR 26208
Final Action Effective	12/01/94	59 FR 26208

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Shirley Radack, 301 975-2833

RIN: 0693–AA86

790. APPROVAL OF WITHDRAWAL OF FIPS 71, ADVANCED DATA COMMUNICATION CONTROL PROCEDURES (ADCCP) AND FIPS 78, GUIDELINE FOR IMPLEMENTING ADCCP

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	06/22/94	59 FR 32186
Final Action Effective	06/22/94	59 FR 32186

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Shirley Radack, 301 975-2833

RIN: 0693–AA98

791. FIPS FOR STANDARD PAGE DESCRIPTION LANGUAGE

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn - Not in best interest of the Government to propose FIPS.	07/29/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Shirley Radack, 301 975-2833

RIN: 0693–AB03

792. NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

CFR Citation: 15 CFR 7; 15 CFR 285

Completed:

Reason	Date	FR Cite
Final Action	05/03/94	59 FR 22742
Final Action Effective	06/02/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Albert Thalen, 301 975-4017

RIN: 0693–AB15

793. NATIONAL VOLUNTARY CONFORMITY ASSESSMENT SYSTEMS EVALUATION

CFR Citation: 15 CFR 286

Completed:

Reason	Date	FR Cite
Final Action	04/22/94	59 FR 19129
Final Action Effective	05/23/94	59 FR 19129

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Donaldson, 301 975-4029

RIN: 0693–AB17

794. FIPS 173, SPATIAL DATA TRANSFER STANDARD (SDTS)

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	06/10/94	59 FR 29985
Final Action Effective	12/30/94	59 FR 29985

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Shirley Radack, 301 975-2833

RIN: 0693–AB18

795. FIPS FOR OPEN DOCUMENT ARCHITECTURE (ODA), INTERCHANGE FORMAT, LANGUAGE, AND ASSOCIATED PROFILES

CFR Citation: None

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DOC—NIST — **Completed Actions**

Completed:

Reason	Date	FR Cite
Withdrawn - Not in best interest of the Government to propose FIPS	07/29/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Shirley Radack, 301 975-2833

RIN: 0693–AB21

796. • MANUFACTURING TECHNOLOGY CENTERS

Legal Authority: 15 USC 278K

CFR Citation: 15 CFR 290

Legal Deadline: None

Abstract: This rule amends the procedures which implement the Regional Centers for the Transfer of Manufacturing Technology program by revising the matching fund requirements in the fifth and sixth years of operation to reflect program experience during the first five years. The maximum allowable Federal funding will be one third of total expenses during years five and six. The rule also revises the requirements for cash match. At least half of the match must be cash or full-time personnel loaned to the operating organizations.

Timetable:

Action	Date	FR Cite
NPRM	01/27/94	59 FR 3803
NPRM Comment Period End	02/28/94	
Final Action	05/02/94	59 FR 22504
Final Action Effective	05/02/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Peter Heydemann, Director, Technology Services, Department of Commerce, National Institute of Standards & Technology, Room A365 Physics, Gaithersburg, MD 20899, 301 975-4500

RIN: 0693–AB27

DEPARTMENT OF COMMERCE (DOC) — Prerule Stage

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

797. USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Legal Authority: 16 USC 1853(f)

CFR Citation: 15 CFR 904; 50 CFR 11; 50 CFR 12

Legal Deadline: None

Abstract: Problem: The National Marine Fisheries Service requires scientific data about the state of various fisheries in order to provide better management. In the past, much of this data has been collected by voluntary fishery data collectors placed aboard private vessels by NMFS. Owners and operators of these vessels have expressed concern that information collected by these voluntary fishery data collectors might be used against them in a subsequent enforcement proceeding, thereby affecting their willingness to take on these collectors. Solution: The newly enacted statute "restricts" the use of data obtained by voluntary fishery data collectors in subsequent enforcement proceedings brought pursuant to the Magnuson Fishery Conservation and Management Act, 16 USC 1801, the Marine Mammal Protection Act, 16 USC 1361, and the Endangered Species Act, 16 USC 1531.

Timetable: Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: Regulations will likely appear at 15 CFR part 905.

Agency Contact: Joel LaBissonniere, Attorney, Office of General Counsel–Enforcement and Litigation, Department of Commerce, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Fourth Floor, Silver Spring, MD 20910, 301 427-2202

RIN: 0648–AE40

798. PRESCRIPTION OF FISHWAYS UNDER SECTION 18 OF THE FEDERAL POWER ACT

Legal Authority: 16 USC 791a et seq

CFR Citation: 50 CFR 405 (New)

Legal Deadline: None

Abstract: The Department of the Interior and the Department of Commerce (Departments) seek advance comments on a proposed rule to implement the Departments' authority to prescribe fishways under section 18 of the Federal Power Act (FPA). The proposed rule is a procedural rule that identifies how the Departments would prescribe fishways included in Federal Energy Regulatory Commission licenses for hydropower facilities. It includes a definition of fishways that comports with the language of the National Energy Policy Act of 1992 (PL 102-496). The Departments' objectives are to codify agency practice as well as provide applicants with notice of the Departments' information needs and prescription procedures. This should eliminate unnecessary costs, confusion, and procedural burdens on hydropower project sponsors while protecting important fishery resources affected by hydropower projects.

The Departments are interested in advance comments on the proposed procedures and definitions. The no-action option will be used as a baseline for analysis. Benefits and costs (cont)

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
ANPRM Comment Period End	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: of the proposal have not been quantified. However, the process of licensing hydropower facilities requires an economic and environmental analysis for each action.

Agency Contact: John Hall, Chief, Anadromous Fish Habitat, Conservation Division, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS - F/HP4, Silver Spring, MD 20910, 301 713-2325

RIN: 0648–AG53

DOC—NOAA — **Prerule Stage**

799. • NEW DEALER REPORTING FORM FOR LARGE PELAGICS

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 285; 50 CFR 630; 50 CFR 678

Legal Deadline: None

Abstract: Establishes a new dealer reporting system for ex-vessel buyers of Atlantic highly migratory species: Sharks, tunas, and swordfish. Replaces and consolidates current dealer reporting systems which differ by region and species.

Timetable: Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries, Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG76

800. • AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC COAST RED DRUM

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 647

Legal Deadline: None

Abstract: Amendment 1 would implement a rebuilding schedule for the overfished Atlantic coast red drum resource.

Timetable:

Action	Date	FR Cite
ANPRM	01/00/95	
NPRM	09/00/95	
NPRM Comment Period End	10/00/95	
Final Action	12/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region; NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG86

NATIONAL OCEAN SURVEY/OFFICE OF COASTAL RESOURCES MANAGEMENT

801. PROPOSED REGULATIONS FOR THE KEY LARGO NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 929

Legal Deadline: None

Abstract: These regulations are being revised to implement the Florida Keys National Marine Sanctuary Protection Act (Pub. L. 101-605) by incorporating the Key Largo Sanctuary into the Florida Keys National Marine Sanctuary management plan and regulations.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AA33

802. PROPOSED REGULATIONS FOR THE LOOE KEY NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 et seq

CFR Citation: 15 CFR 937

Legal Deadline: None

Abstract: These regulations are being revised to implement the Florida Keys National Marine Sanctuary Protection Act (Pub. L. 101-605) by incorporating the Looe Key Sanctuary into the Florida Keys National Marine Sanctuary management plan and regulations.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AB64

OFFICE OF THE ADMINISTRATOR

803. REGIONAL MARINE RESEARCH PROGRAM

Legal Authority: 16 USC 1447 et seq; PL 101-593

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Regulations will state Regional Boards structure, proposed review process for plans, and research proposals.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
ANPRM Comment Period End	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Graham, Chief, Environmental Studies, Department of Commerce, National Oceanic and Atmospheric Administration, 1335 East-West Highway, Silver Spring, MD 20910, 301 713-2435

RIN: 0648–AF20

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DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

NATIONAL MARINE FISHERIES SERVICE

804. SCIENTIFIC RESEARCH—DOMESTIC AND FOREIGN FISHING

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 611; 50 CFR 620

Legal Deadline: None

Abstract: This rule would define scientific research and experimental fishing under the Magnuson Act and add several prohibitions to the general regulations governing domestic fisheries.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2334**

RIN: 0648–AC61

805. PROCEDURE FOR SETTING QUOTAS ON REMOVAL OF ATLANTIC BOTTLENOSE DOLPHINS FROM THE WATERS OF THE GULF OF MEXICO AND FLORIDA'S EAST COAST

Legal Authority: 16 USC 1361

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: Regulations will establish a procedure for setting and revising quotas to govern the removal of Atlantic bottlenose dolphins (Tursiops truncatus) from the Gulf of Mexico and Florida's east coast. Regulations will be supported by an EIS that will provide a comprehensive review of the status of stocks of bottlenose dolphins in the southeast region and the validity of the 2 percent rule for determining the allowable take to the extent reliable data are available. These regulations and quotas will take into account other types of taking such as those that may occur incidentally to commercial fisheries.

Timetable:

Action	Date	FR Cite
ANPRM	05/31/90	55 FR 22042
ANPRM Comment Period End	07/02/90	
NPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Action to be taken will be reevaluated in the context of the Marine Mammal Protection Act as reauthorized in 1994.

Agency Contact: Katherine Wang, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2289**

RIN: 0648–AD39

806. U.S. GENERAL STANDARDS FOR GRADES OF FINFISH PRODUCTS

Legal Authority: 7 USC 1621 to 1630 Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 263 subparts A to E

Legal Deadline: None

Abstract: The purpose of this notice is to invite written comments to evaluate national interest in deleting nine (9) current U.S. grade standards covering finfish products and the development of a new U.S. General Standards for Grades of Finfish Products that would be applicable to all species and cover the major market forms, i.e., whole and dressed, steaks, and fillets.

Timetable:

Action	Date	FR Cite
ANPRM	04/15/94	59 FR 18091
ANPRM Comment Period End	06/02/94	59 FR 23095
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, **508 281-9319**

RIN: 0648–AD53

807. FISHERY MANAGEMENT PLAN FOR THE QUEEN CONCH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801 et seq, Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: Not yet determined

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the fishery management council.

Abstract: This new Fishery management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands will establish Federal management measures to rebuild the overfished queen conch resource off Puerto Rico and the U.S. Virgin Islands. Proposed measures include minimum size restrictions and bag limits for commercial and recreational fisheries.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, **813 570-5301**

RIN: 0648–AD91

808. CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

Legal Authority: PL 101-627, sec 801; Fishery Conservation Amendments of 1990

CFR Citation: 50 CFR 247

Legal Deadline: Final, Statutory, May 27, 1991.
Final regulations are required by PL 101-627, section 801(d) within 180 days of November 28, 1990, provided an agreement is in place with another country under section 801(a) of PL 101-627.

Abstract: The regulation wil provide for the issuance of Certificates of Legal Origin for anadromous fish and anadromous fish products legally harvested by vessels of the United States. The certificates will be issued pursuant to agreements between the United States and other countries negotiated under section 801(a) of PL 101-627.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: These regulations cannot be put into effect until the United States enters into an agreement with another country under section 801(a) of PL 101-627. The Department of State has not yet negotiated such an agreement. Accordingly, there is no timetable for implementing these regulations.

Agency Contact: Alan Mager, Special Agent, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, Office of Enforcement, 1315 East-West Highway, Silver Spring, MD 20910, **301 427-2300**

RIN: 0648–AD93

809. SECRETARIAL AMENDMENT TO THE FMP FOR ATLANTIC SWORDFISH

Legal Authority: 16 USC 1801 et seq, Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 630

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after beginning of review.

Abstract: PL 101-627 (signed into law November 7, 1990) transferred full responsibility for the management of swordfish, including preparation of fishery management plans and amendments, from the regional fishery management councils to the Secretary of Commerce. The Secretary will prepare an amendment to the FMP for Atlantic swordfish that will reduce fishing mortality, prevent overfishing, rebuild an overexploited resource, and be consistent with conservation measures recommended by the International Commission for the Conservation of Atlantic Tunas. The existing FMP management measures remain in effect until superseded by Secretarial actions. Management measures to reduce overfishing may include a moratorium on issuance of new fishing permits or a limited entry system. In addition, quotas will be adjusted.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2334**

RIN: 0648–AE09

810. GENERAL PROVISIONS FOR DOMESTIC FISHERIES

Legal Authority: 16 USC 1801-81 Magnuson Act

CFR Citation: 50 CFR 620

Legal Deadline: None

Abstract: The amendments to the Magnuson Act of November 14, 1990, added several new prohibitions such as the ban on large-scale driftnet fishing and the prohibition on assaulting observers. The regulations at 50 CFR 620 contain the prohibitions that apply generally to domestic fishing regulated under the Magnuson Act. The regulations must be amended to reflect the recent amendments to the Magnuson Act and to update and improve current language generally. The alternative would be to leave the regulatory language as it is now. This would be unacceptable because it would leave the regulation out of date and inconsistent with the current statutory language. The benefits would be to improve the current regulations and to clarify the scope of the new statutory language. There are no potential costs identified.

Timetable:

Action	Date	FR Cite
NPRM	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carol Messing, Staff Attorney, Department of Commerce, National Oceanic and Atmospheric Administration, Office of General Counsel, 8484 Georgia Avenue, Room 400, Silver Spring, MD 20910, **301 427-2202**

RIN: 0648–AE39

811. FISHERY MANAGEMENT PLAN FOR CORALS AND ASSOCIATED PLANTS AND INVERTEBRATES FOR PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: Not yet determined

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: The Fishery Management Plan (FMP) for Corals and Associated Plants and Invertebrates for Puerto Rico and the U.S. Virgin Islands will address the impacts of human activities on the condition of coral reefs in Federal waters off Puerto Rico and the U.S. Virgin Islands, and related habitats, and respond to the rapidly expanding fishery for aquarium species, especially in Puerto Rico. Specifically, the FMP would: (1) prohibit the harvest of stony corals, sea fans, gorgonians, and live rock, except for scientific research, education, and habitat restoration; (2) limit harvest of other invertebrates to dip nets and slurp guns, with certain exceptions; (3) prohibit the use of chemicals and explosives; and (4) require permits and reporting to improve data collection.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center

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Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AE47

812. FISHERY MANAGEMENT PLAN FOR ATLANTIC HERRING

Legal Authority: 16 USC 1801 et seq. Magnuson Fishery Conservation & Mgmt. Act

CFR Citation: 50 CFR 646

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the Regional Fishery Management Council.

Abstract: This fishery management plan would implement management measures for Atlantic herring in the EEZ off New England and the Mid-Atlantic States.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	
NPRM Comment Period End	09/00/95	
Final Action	10/00/95	
Final Action Effective	11/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9300

RIN: 0648–AE50

813. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 646

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: Amendment 7 would: (1) establish size limits for hogfish and mutton snapper; (2) extend permitting requirements to dealers and headboats/charterboats; (3) specify allowable search; (4) modify the management unit to include scup; (5) only off North Carolina, allow sink net fishermen fishing for spot, croaker, and weakfish to make multigear trips, and allow retention of all fish harvested with black sea bass pots and/or bandit gear that meet the minimum size limits.

Timetable:

Action	Date	FR Cite
NPRM	09/19/94	59 FR 47833
NPRM Comment Period End	10/31/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AE52

814. SEA TURTLE MONITORING AND CONSERVATION MEASURES FOR NONSHRIMP FISHERIES

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 217; 50 CFR 222; 50 CFR 227

Legal Deadline: None

Abstract: NMFS proposes to protect sea turtles through the implementation of sea turtle conservation measures on nonshrimp fisheries. Bottom trawlers in the mid-Atlantic take sea turtles when not using turtle excluder devices (TEDs) and may jeopardize the continued existence of endangered sea turtles. NMFS proposes to require TEDs in all bottom trawlers operating from Texas through Delaware. Other nonshrimp fisheries using tow lines, gill nets, or other gear probably take significant numbers of sea turtles. In order to better quantify that level of take, NMFS proposes to require observers in all fisheries suspected of taking turtles in all U.S. waters.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/92	57 FR 30709
ANPRM Comment Period End	08/08/92	
Notice of Intent To Do an EIS	05/06/94	59 FR 23608
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $25,000; Yearly Recurring Cost: $12,500; Base Year for Dollar Estimates: 1992

Analysis: Regulatory Flexibility Analysis

Agency Contact: Russell Bellmer, Chief, Endangered Species Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1315 East-West Highway, SSMC#1, Silver Spring, MD 20910, 301 713-2319

RIN: 0648–AE54

815. REGULATORY AMENDMENT ON INTERACTIVE COMMUNICATIONS IN THE GROUNDFISH FISHERIES OF THE GOA AND BSAI

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: This amendment will determine requirements for interactive communications in the groundfish fisheries of the Gulf of Alaska and Bering Sea and Aleutian Islands area to enhance reporting and recordkeeping.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	00/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AE78

816. AMENDMENT 21B TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the fishery management council.

Abstract: Amendment authorizes measures pertaining to salmon bycatch in the trawl fisheries of the Bering Sea and Aleutian Islands; Salmon time/area closures.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	08/00/95	
Final Action	10/00/95	
Final Action Effective	11/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AE97

817. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 655

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the fishery management council.

Abstract: Amendment 5 would establish a moratorium on entry of vessels and add a requirement for mandatory reporting.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9200

RIN: 0648–AF01

818. AMENDMENT 21A TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS TO PROHIBIT BOTTOM TRAWLING ADJACENT TO THE PRIBILOF ISLANDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the fishery management council.

Abstract: This action would prohibit trawling adjacent to the Pribilof Islands to protect important crab habitat areas.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P. O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AF02

819. PROPOSED RULE TO REQUIRE CERTAIN FISH FROM MEXICO TO RETAIN HEADS AND TAILS INTACT IN ORDER TO PROTECT THE ENDANGERED TOTOABA

Legal Authority: 16 USC 1531 et seq. Endangered Species Act

CFR Citation: 50 CFR 227

Legal Deadline: None

Abstract: In response to a petition, the National Marine Fisheries Service may propose to regulate the importation of certain fish from Mexico by requiring those fish to be imported with heads and tails intact. This action, if warranted, would be in order to prevent the illegal importation of totoaba, an endangered scianid fish, which when in fillet form is indistinguishable from the other species. Preliminarily, NMFS has determined that this rule, if promulgated, will have a minimal economic impact on importers, as major importers require fish imports to retain heads in order to determine freshness.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth R. Hollingshead, Fishery Biologist, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, SSMC#1, Silver Spring, MD 20910, 301 713-2055

RIN: 0648–AF32

820. AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 640

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the fishery management council.

Abstract: Amendment 4 would: (1) establish a year-round daily bag limit of two lobsters for all fishermen north of the Florida/Georgia border; and (2) provide an exemption for spiny lobsters caught on hook-and-line headboats from North Carolina through the Atlantic side of the Florida Keys.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	02/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center

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Proposed Rule Stage

Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AF37

821. REGULATORY AMENDMENT IMPLEMENTING GROUNDFISH GEAR CHANGES IN THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This regulatory amendment implements groundfish gear changes that would update the definitions and specifications for legal groundfish gear to conform with changes in the fishery, technology, and State regulations. It would also simplify the marking requirement for commercial vertical hook-and-line gear that is closely tended.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AF38

822. AMENDMENT 9 TO THE FMP FOR ATLANTIC SURF CLAMS AND OCEAN QUAHOGS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 652

Legal Deadline: NPRM, Statutory. NPRM 15 days from date amendment review begins and council is sent copy for comments.

Abstract: This amendment would manage the fishery for mahogany clams (ocean quahogs) off a portion of the coast of Maine, in the EEZ.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	06/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Kenneth Hollingshead, Fishery Biologist, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, SSMC#1, Silver Spring, MD 20910, 301 713-2055

RIN: 0648–AF50

823. TAKING OF MARINE MAMMALS INCIDENTAL TO FISHERIES-RELATED RESEARCH

Legal Authority: 16 USC 1631 et seq

CFR Citation: 50 CFR 228

Legal Deadline: None

Abstract: The National Marine Fisheries Service has received requests from its regional offices to take small numbers of marine mammals incidental to fisheries-related research over the next 5 years. This activity would be allowed under section 101(a)(5) of the Marine Mammal Protection Act, if NMFS makes certain findings and regulations are issued that cover monitoring and reporting.

Timetable:

Action	Date	FR Cite
ANPRM	12/09/91	56 FR 64234
ANPRM Comment Period End	01/08/92	56 FR 64234
NPRM	04/00/95	
NPRM Comment Period End	05/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9200

RIN: 0648–AF41

824. REGULATORY AMENDMENT—CHANGES TO DIRECTED FISHING REGULATIONS FOR GROUNDFISH OFF OF ALASKA

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: Regulatory amendment to clarify, simplify, and framework directed fishing standards in the Alaska groundfish fisheries.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	10/00/94	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AF53

825. REGULATORY AMENDMENT REGARDING MESH SIZE IN TRAWLS AND ROCK SOLE VESSEL INCENTIVE PROGRAM STANDARDS IN ALASKA GROUNDFISH FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: This regulatory amendment specifies trawl mesh size to reduce bycatch of undersized fish and reduce waste in the Alaska groundfish fisheries.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AF57

DOC—NOAA

Proposed Rule Stage

826. REGULATORY AMENDMENT TO MODIFY PERMIT APPLICATION REQUIREMENTS FOR ALL FISHERY MANAGEMENT PLANS IN THE WESTERN PACIFIC REGION

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 680; 50 CFR 681; 50 CFR 683; 50 CFR 685

Legal Deadline: None

Abstract: This regulatory amendment would amend the rules and forms for Federal fishing permit applications to minimize problems for fishermen completing applications and administrators determining whether applicants qualify for permits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AF62

827. REGULATORY AMENDMENT TO IMPLEMENT MEASURES IN THE NORTH PACIFIC ANADROMOUS STOCKS ACT OF 1992

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: None

Abstract: This regulatory amendment would prohibit net fishing for salmon outside of Alaska waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
NPRM Comment Period End	10/00/95	
Final Action	12/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AF69

828. REGULATORY AMENDMENT TO ESTABLISH A VESSEL MONITORING SYSTEM WITHIN THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 685

Legal Deadline: None

Abstract: This amendment implements an automated vessel monitoring system (VMS) as a pilot project for at least 3 years. Holders of permits for vessels operating in the pelagic longline fishery around Hawaii are required to carry VMSs as provided by NMFS. The VMS provides the ability to monitor the location of fishing vessels to ensure adequate surveillance and enforcement of areas around the Hawaiian Islands closed to longline fishing.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AF77

829. REGULATORY AMENDMENT FOR OTHER SPECIES OF REEF FISH IN THE GULF OF MEXICO—RED GROUPER, RED PORGY, AMBERJACK, AND GAG GROUPER

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 641

Legal Deadline: None

Abstract: Under the framework regulatory adjustment procedures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, this action may establish new management measures for red grouper, red porgy, greater amberjack, gag grouper, black sea bass, red snapper, and gray triggerfish. These measures, based on new stock assessments in 1994, may include commercial quotas, bag limits, trip limits, and minimum size limits.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AF78

830. DESIGNATED CRITICAL HABITAT; JOHNSON'S SEAGRASS

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NMFS) has proposed that Johnson's seagrass be listed as threatened under the Endangered Species Act (ESA). Section 4(b)(2) of the ESA requires that critical habitat be designated for a listed species after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Critical habitat is the specific area within the geographical range of the species that has physical or biological features essential to the conservation of the species and which may require special management consideration or protection. Section 4(b)(6)(C) of the ESA requires that a regulation designating critical habitat be published concurrently with a final listing determination unless critical habitat is not then determinable. In that case a final designation of critical habitat may be extended for up to one year. NMFS intends to designate

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critical habitat concurrently with a final listing determination.

Timetable:

Action	Date	FR Cite
NPRM	08/04/94	59 FR 39716
NPRM Comment Period End	10/13/94	
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Margaret C. Lorenz, Marine Resource Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AF79

831. SCREENING OF WATER DIVERSIONS TO PROTECT SACRAMENTO RIVER WINTER-RUN CHINOOK SALMON

Legal Authority: 16 USC 1533 et seq

CFR Citation: 50 CFR 227; 50 CFR 222

Legal Deadline: None

Abstract: NMFS is considering proposing regulations under the Endangered Species Act that would establish screening requirements for water diversions from the Sacramento River and Delta to protect a listed species, the winter-run chinook salmon. There are over 2,000 unscreened diversions along the River and Delta. NMFS is concerned that these unscreened diversions may cause substantial losses of juvenile salmon.

Timetable:

Action	Date	FR Cite
ANPRM	10/18/93	58 FR 53703
ANPRM Comment Period End	12/18/93	
Extension of Comment Period for 90 Days	01/20/94	59 FR 3068
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Margaret C. Lorenz, Protected Species Management, Department of Commerce, National Oceanic and Atmospheric Administration, Room 8249 - SSMCI, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AF80

832. FISHERY MANAGEMENT PLAN FOR THE NORTH PACIFIC SCALLOP FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 673

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the North Pacific Fishery Management Council.

Abstract: This action would establish a Fishery Management Plan which establishes a system for conservation and management of Alaska's scallop fishery; establishes a moratorium on the entry of new vessels into the scallop fishery to control continued growth in fishing capacity while alternative management measures to address the overcapacity problem are developed.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Control date notice for North Pacific Scallop Fisheries 06/15/94 59 FR 30772; 04/24/94 - Effective Date

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AF81

833. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 658

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: Amendment 7 would: (1) move unharvested royal red shrimp from the category of total allowable level of foreign fishing to the category of domestic quota; (2) revise the overfishing definition for royal red shrimp; (3) provide a definition of overfishing for white shrimp; and (4) provide for a framework adjustment for the overfishing definition for brown, white, and pink shrimp.

Timetable:

Action	Date	FR Cite
NPRM	09/12/94	59 FR 46810
NPRM Comment Period End	10/24/94	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AF83

834. AMENDMENT 2 TO THE FMP FOR CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 638

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: Amendment 2 would: (1) establish an annual harvest quota for the exclusive economic zone (EEZ) of 252,000 pounds harvest for 1994 through 1996 from the Pasco-Hernando County line to the Monroe-Collier County line, Florida, with no chipping permitted in that area; (2) ban harvest or possession of wild live area; (3) prohibit the use of power-assisted tools to break up or dislodge live rock pieces in the Gulf EEZ off Florida south of the Pasco/Hernando County line; (4) establish a daily vessel live rock trip limit of 25 5-gallon buckets south of the Pasco/Hernando County line; (5) establish an annual quota of 1995; (6) ban the harvest of wild live rock in the South Atlantic south of the Broward-Dade County line, Florida, for 1994 and 1995; (6) ban the harvest of wild live rock in the South Atlantic EEZ no later than January 1, 1996; and (7) prohibit chipping of live rock

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during the harvest period and allow no take or possession in the EEZ north of Dade County, Florida.

Timetable:

Action	Date	FR Cite
NPRM	09/28/94	59 FR 49377
NPRM Comment Period End	11/07/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AF85

835. FISHERY MANAGEMENT PLAN FOR ATLANTIC TUNAS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 285

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after beginning of review.

Abstract: This Fishery Management Plan will establish management measures for Atlantic tunas under authority of the Magnuson Act, as well as the Atlantic Tunas Convention Act, as set forth in the 1990 amendments to the Magnuson Act.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
NPRM Comment Period End	11/00/95	
Final Action	01/00/96	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-7334

RIN: 0648–AF86

836. FISHERY MANAGEMENT PLAN FOR TILEFISH

Legal Authority: 16 USC 1801 et seq

CFR Citation: Not yet determined

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: This FMP would manage tilefish (Lopholatilus chamaeleonticeps) in the EEZ along the Atlantic Coast north of the Virginia/North Carolina border to rebuild the stock.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Allen Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9300

RIN: 0648–AF87

837. AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC BILLFISH

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 644

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after beginning of review.

Abstract: This amendment will define overfishing for Atlantic billfish, clarify the plan objectives and the definition of optimum yield, and implement regulatory changes to reduce fishing mortality.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	06/00/95	
Final Action	08/00/95	
Final Action Effective	09/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1335 East-West Highway, Silver Spring, MD 20910, 301 713-7334

RIN: 0648–AF88

838. AMENDMENT 8 TO THE PACIFIC COAST GROUNDFISH FMP TO IMPLEMENT INDIVIDUAL QUOTAS FOR THE FIXED-GEAR SABLEFISH FISHERY (OR REGULATORY AMENDMENT FOR NONTRAWL TRIP LIMITS)

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the Pacific Fishery Management Council.

Abstract: Regulations would implement Amendment 8 to the Pacific Coast Groundfish FMP to establish an individual quota system for sablefish caught with fixed gear off Washington, Oregon, and California. Alternatively a regulatory amendment may implement trip limits in the nontrawl sablefish fishery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AF90

839. REGULATORY AMENDMENT DEFINING HARVESTING CAPACITY UNIT AND MANAGEMENT SYSTEM UNDER THE WESTERN PACIFIC PELAGICS FMP

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 685

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Legal Deadline: None

Abstract: Amendment 7 to the Western Pacific Pelagics FMP established a new limited entry program for the longline fishery, based in Hawaii and a framework procedure for adjusting harvesting capacity in the fleet. This rulemaking would implement the harvesting capacity management system, under which individual vessels would be assigned harvesting capacity units that can be transferred independently of the vessels. This would allow market forces to determine whether individuals retain or transfer their permits and/or harvesting capacity units.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	04/00/95	
Final Action	06/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AG04

840. FOREIGN NATIONS' MARINE MAMMAL PROGRAM AMENDMENTS

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.24(e)(5)(v)(B)

Legal Deadline: None

Abstract: This rule will change the requirement that foreign nations make changes to their marine mammal programs within 180 days of the date such changes are effective for U.S. fishermen. This is necessary to provide more time for foreign governments to make such changes.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AG05

841. DESIGNATION OF CRITICAL HABITAT FOR THE GULF OF MAINE POPULATION OF HARBOR PORPOISE

Legal Authority: 16 USC 1531 et seq, Endangered Species Act

CFR Citation: 50 CFR 226

Legal Deadline: Final, Statutory. The ESA requires critical habitat designation within one year of the listing date. The listing has not been made final to date.

Abstract: Pursuant to the Endangered Species Act (ESA) NMFS will propose to designate critical habitat for the Gulf of Maine harbor porpoise population following listing this population under the ESA. Under the ESA, NMFS may extend a designation of critical habitat for one year following listing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: Proposed designation is dependent upon final determination to list the Gulf of Maine population of harbor porpoise as threatened under the Endangered Species Act. Deadlines and action dates are also dependent upon the date of final listing. This date has yet to be established.

Agency Contact: Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG06

842. DIRECT TAKE OF THREATENED SALMON BY NATIVE AMERICANS

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 227.21

Legal Deadline: None

Abstract: NMFS has under consideration a proposal to allow terminal area tribes (Shoshone-Bannock, Nez Perce) to directly harvest threatened Snake River chinook salmon in the terminal areas. Pursuant to the Endangered Species Act, large numbers of these fish can be taken incidentally to other actions, but there is no allowance for even a small directed take of these fish.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG15

843. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR THE STONE CRAB FISHERY OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 654

Legal Deadline: NPRM, Statutory. Final, Statutory. NPRM 15 days and final action 110 days from receipt from a Regional Fishery Management Council

Abstract: Amendment 5 would establish a moratorium on registration of commercial vessels for up to four years to establish compatibility with a Florida statute implementing a moratorium on permits; and provide a framework measure under which rules consistent with those adopted by Florida can be implemented for the EEZ off Florida by regulatory amendment as approved by the National Marine Fisheries Service.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	10/00/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG23

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844. AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 642

Legal Deadline: NPRM, Statutory. Final, Statutory. NPRM 15 days and final action 110 days from receipt from a Regional Fishery Management Council.

Abstract: Amendment 8 management measures being considered include: permits for commercial mackerel dealers; a 3,000-lb. commercial daily trip limit for Atlantic group king mackerel; an extension of the cobia management area to include the exclusive economic zone (EEZ) from Virginia to New York; reestablishment of the boundary separating Gulf and Atlantic groups of king mackerel; a daily commercial trip limit for cobia; at sea vessel-to-vessel transfer of Atlantic group Spanish mackerel among commercial vessels in the EEZ off Florida; and a framework provision under which the South Atlantic Fishery Management Council would have the authority to propose management measures (quotas, trip limits, etc.) for Gulf group king mackerel in the seasonal (November-March) area off the Florida east coast.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG25

845. AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 659

Legal Deadline: NPRM, Statutory. Final, Statutory. NPRM 15 days and final action 110 days after receipt from a Regional Fishery Management Council.

Abstract: Amendment 1 would add rock shrimp to the management unit of the Fishery Management Plan for the Shrimp Fishery of the South Atlantic (FMP). Management options for the rock shrimp fishery in the U.S. exclusive economic zone (EEZ) of the east coast of Florida (EEZ area from Duval County south to and including St. Lucie County) considered under Amendment 1 include: area restrictions, fishing seasons, trawl net mesh sizes, count entry systems (including individual transferable quotas and a transferable quotas and a license limitation system).

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	04/00/95	
Final Action	06/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG26

846. AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 646

Legal Deadline: NPRM, Statutory. Final, Statutory. NPRM 15 days and final action 110 days from receipt from a Regional Fishery Management Council.

Abstract: Amendment 8 would establish an individual transferable quota system for the snowy grouper and tilefish fishery in the U.S. exclusive economic zone of the South Atlantic.

Timetable:

Action	Date	FR Cite
NPRM	01/00/96	
NPRM Comment Period End	02/00/96	
Final Action	04/00/96	
Final Action Effective	05/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG27

847. AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 641

Legal Deadline: NPRM, Statutory. NPRM 15 days and final action 110 days from receipt from a Regional Fishery Management Council.

Abstract: Amendment 8 would implement an individual transferable quota and/or license limitation system to control access to the red snapper fishery, and would include an allocation of quota shares with an appeals process.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	04/00/95	
Final Action	06/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG29

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848. REGULATORY AMENDMENT TO CONSIDER USE OF OPEN ACCESS AND LIMITED ENTRY GEAR ON THE SAME TRIP FOR THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This rule will consider whether or not to allow a vessel to use both open access gear and limited entry gear on the same fishing trip. Allowing both gears on the same trip causes potential problems in enforcement and determination of which trip limits apply.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	08/00/95	
Final Action Effective	09/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AG30

849. REGULATORY AMENDMENT TO REQUIRE ACCURATE WEIGHT MEASUREMENTS FOR ALASKA GROUNDFISH HARVESTS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: Regulatory amendment to require accurate catch weights be provided for all groundfish harvested off Alaska. This may require that certified scales be placed onboard each vessel and that catch weights be measured for each species.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	02/00/95	
Final Action	04/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG32

850. TAKING AND IMPORTING OF MARINE MAMMALS: TUNA PURSE SEINE VESSEL OBSERVER EXPENSES

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.24

Legal Deadline: None

Abstract: NMFS proposes to amend its regulations governing the reimbursement of tuna vessel owners for the cost of carrying NMFS observers (50 CFR 216.24(f)(4)). The regulations require that a U.S.-flag tuna purse seine vessel holding a certificate of inclusion under the general permit issued to the American Tunaboat Association carry an observer when assigned by the Director, Southwest Region, NMFS. The regulations currently require that NMFS reimburse vessel operators for all costs associated with carrying the observers. The proposed rule change would require that "the vessel owner shall incur all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels."

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 301 980-4001

RIN: 0648–AG35

851. GENERAL PROVISIONS; ENDANGERED FISH OR WILDLIFE; THREATENED FISH AND WILDLIFE; SEA TURTLE CONSERVATION MEASURES

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 217; 50 CFR 220; 50 CFR 221; 50 CFR 222; 50 CFR 223; 50 CFR 224; 50 CFR 227

Legal Deadline: None

Abstract: NMFS proposes to make both technical and substantive changes to the ESA regulations. These changes would make the implementing regulations easier to understand and to enforce. NMFS also proposes to substantively change ESA regulations by prohibiting the take of threatened, as well as endangered, species. NMFS also proposes to amend the regulations to allow non-Federal parties to incidentally take threatened species with an incidental take permit.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/92	57 FR 30709
ANPRM Comment Period End	08/08/92	
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Heather Weiner, Endangered Species Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC #3, Silver Spring, MD 20910, 301 713-2319

RIN: 0648–AG38

852. FISHERY MANAGEMENT PLAN AMENDMENT TO ALLOW PROCESSING OF NONINDIVIDUAL FISHING QUOTA SPECIES ON VESSELS AND DISALLOW CATCHER VESSEL HALIBUT IFQ USE ON FREEZER VESSELS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days from receipt from the Regional Fishery Management Council.

Abstract: Allow processing (freezing) of non-individual fishing quota species on vessels using catchor vessel individual fishing quota and disallowing catcher vessel halibut individual fishing quota use on freezer vessels.

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Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	02/00/95	
Final Action	03/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG41

853. DEFINITION OF "INTERMEDIARY NATION"

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.3; 50 CFR 216.24(e)(5)(xiv)

Legal Deadline: None

Abstract: NMFS will promulgate a rule to revise the definition of "intermediary nation" to coincide with statutory changes in the definition.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AG42

854. DESIGNATED CRITICAL HABITAT; DEER CREEK SUMMER STEELHEAD

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Other, Statutory, September 21, 1995.
Endangered Species Act sec. 4(b)(3)(D)(ii)

Abstract: The regulation will propose critical habitat designation for the Deer Creek summer steelhead, if the species is proposed for listing under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	
Final Action	03/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG44

855. REGULATORY AMENDMENT TO THE INDIVIDUAL FISHING QUOTA PROGRAM FOR GROUNDFISH OFF ALASKA

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: None

Abstract: To provide geographic locations of primary ports; require landing and weighing of all individual fishing quota species on first landing of any species; authorize International Pacific Halibut Commission biologists to board vessels and inspect individual fishing quota fish; hail weights: "accurate" for clearing in Bellingham, and "estimate" for landing in Alaska; landings in three ports in Canada; underage carryover to next year; change definition of "trip"; and clarify that use of catcher vessel individual fishing quota must not violate catcher vessel length categories.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, Post Office Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG45

856. GENERAL PROVISIONS FOR DOMESTIC FISHERIES—STANDARD DEFINITIONS/ GUIDELINES FOR COUNCIL OPERATIONS/ADMINISTRATION: OATH, VOTING, COMPENSATION, INSURANCE, UNUSED LEAVE

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 620; 50 CFR 601; 50 CFR 605

Legal Deadline: None

Abstract: This action would standardize definitions for: vessels-for-hire engaged in recreational fishing (VHERF), charter boat, headboat; and marine recreational and commercial fishing and fishermen. This action would also revise the Oath of Office taken by members appointed to the Regional Fishery Management Councils (Councils), revise Council members' compensation, revise procedures for voting on a motion, revise procurement section to allow Councils to purchase property insurance, and revise procedures for the payment of unused annual/sick leave upon retirement or death.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	02/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries, Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG46

857. DESIGNATED CRITICAL HABITAT; PACIFIC STEELHEAD

Legal Authority: 16 USC 1533

CFR Citation: 50-CFR 226

Legal Deadline: Other, Statutory, February 16, 1996.
Endangered Species Act section 4(b)(3)(D)(ii)

Abstract: The regulation will propose critical habitat designation for coastal

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steelhead populations that are proposed for listing under the Endangered Species Act in California, Oregon, and Washington.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG49

858. DESIGNATED CRITICAL HABITAT; ATLANTIC SALMON

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Other, Statutory, October 1, 1994.
Endangered Species Act sec 4(b)(3)(D)(ii)

Abstract: The regulation will propose to designate critical habitat for Atlantic salmon, if the species is proposed for listing under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG50

859. REGULATORY AMENDMENT TO CHANGE RECORDKEEPING AND REPORTING REQUIREMENTS IN ALASKA GROUNDFISH FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: This regulatory amendment would revise recordkeeping and reporting requirements to establish separate reporting areas for Federal and State waters and revises requirements for reporting and recordkeeping for harvesting and processing of groundfish off Alaska; provides authority to collect information with new forms.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG54

860. TAKE OF MARINE MAMMALS BY THE U.S. NAVY INCIDENTAL TO MILITARY ACTIVITIES IN THE SOUTH ATLANTIC OF THE UNITED STATES

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 228

Legal Deadline: None

Abstract: The U.S. Navy has requested NMFS to issue regulations that would authorize a small take of marine mammals incidental to ship shock trials and small-scale underwater explosive tests in oceanic waters offshore Florida. Under the Marine Mammal Protection Act, NMFS is allowed to authorize these takings if certain findings are made and regulations are issued that include requirements for monitoring and reporting.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Kenneth Hollingshead, Fishery Biologist, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC #1, Silver Spring, MD 20910, 301 713-2055

RIN: 0648–AG55

861. DESIGNATED CRITICAL HABITAT; PACIFIC COHO SALMON

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Other, Statutory, October 20, 1995.
Endangered Species Act sec. 4(b)(3)(D)(ii)

Abstract: The regulation will propose critical habitat designation for coastal coho salmon populations that are proposed for listing under the Endangered Species Act in California, Oregon, and Washington.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	
Final Action	03/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG56

862. DESIGNATED CRITICAL HABITAT; PACIFIC COHO SALMON

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Other, Statutory, July 21, 1995.
Endangered Species Act sec. 4(b)(3)(D)(ii)

Abstract: The regulation will propose critical habitat designation for coastal coho salmon populations that are proposed for listing under the Endangered Species Act in California, Oregon, and Washington. The only portion of this under statutory deadline is the Oregon portion. NMFS expanded the status review to include populations in California and Washington.

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Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG57

863. DESIGNATED CRITICAL HABITAT; UMPQUA RIVER SEA-RUN CUTTHROAT TROUT

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: NPRM, Statutory, April 1, 1995.
Endangered Species Act sec. 4(b)(3)(D)(ii)

Abstract: NMFS has issued a proposed rule to list the Umpqua River cutthroat trout in Oregon as endangered under the Endangered Species Act of 1973. NMFS has also determined that the Umpqua River cutthroat trout is a "species" as interpreted under the ESA. Upon completion of an analysis on the critical habitat for the Umpqua River cutthroat trout, NMFS plans to propose critical habitat for the species.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, F/PR8, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AG58

864. • REGULATION TO PROVIDE DISASTER RELIEF TO WEST COAST SALMON FISHERIES

Legal Authority: 16 USC 4101 to 4107

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This regulatory action will provide disaster assistance to commercial fishermen in the salmon fisheries off the coasts of Washington, Oregon, and California. The Secretary of Commerce declared that a fishery resource disaster exists in these fisheries due to extremely low stock abundances of chinook and coho salmon. Assistance under the Interjurisdictional Fisheries Act of 1986 in the amount of $12 million has been requested by the Secretary. The President must request and the Congress grant the request for disaster assistance. This regulatory action would impose specific conditions governing the award of the proposed assistance intended to alleviate economic hardship to eligible industry participants.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AG75

865. • PROPOSED LIST OF FISHERIES AS AUTHORIZED BY PUBLIC LAW 103-238

Legal Authority: 16 USC 1361 et seq The Marine Mammal Protection Act

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Statutory, July 28, 1994.

Abstract: The Marine Mammal Protection Act Amendments of 1994 (Pub. L. 103-238) modified the scope for classification of commercial fisheries based upon their incidental take rate of marine mammals. The amended MMPA provides for the focus of incidental takings to be on the mortality and serious injury and less upon harassment takings. In addition, the MMPA now distinguishes between incidental and intentional takings during commercial fishing operations. As a result, NMFS is proposing to amend its List of Commercial Fisheries based upon the statutory modifications.

Timetable:

Action	Date	FR Cite
NPRM	09/01/94	59 FR 45263
NPRM Comment Period End	11/30/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Vicki Credle, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2322

RIN: 0648–AG77

866. • PROPOSED RULE TO AUTHORIZE THE INCIDENTAL TAKING OF MARINE MAMMALS DURING COMMERCIAL FISHING OPERATIONS AS DIRECTED BY PUBLIC LAW 103-238

Legal Authority: 16 USC 1361 et seq The Marine Mammal Protection Act

CFR Citation: 50 CFR 229

Legal Deadline: Final, Statutory, September 1, 1995.

Abstract: The Marine Mammal Protection Act Amendments of 1994 (Pub. L. 103-238) created new sections 117 and 118 which mandate a new program for managing incidental takes during commercial fishing operations. These sections, which will be implemented through rulemaking, among other things:(1) prohibit intentional takings; (2) require independent regional advisory scientific review groups; (3) require marine mammal stock assessment reports; (4) establish incidental take reduction teams, plans and review procedures for strategic marine mammal stocks; (5) require conformance to the greatest extent practicable with Federal and state fishery management plans; and (6) require reporting and monitoring of

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incidental takes resulting in mortality or serious injury.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: **Vicki Credle**, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, **301 713-2322**

RIN: 0648–AG78

867. • PROPOSED RULE TO AUTHORIZE LETHAL TAKINGS OF MARINE MAMMALS BY STATE AUTHORITIES

Legal Authority: 16 USC 1361 et seq The Marine Mammal Protection Act

CFR Citation: 50 CFR 216

Legal Deadline: Final, Statutory, January 1, 1995.

Abstract: Section 120 of the MMPA as amended in 1994 provides the Secretary the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on salmonids that are either 1) listed under the ESA; 2) approaching a threatened or endangered status, or 3) migrate through the Ballard Locks in Seattle. The process for determining whether to implement the authority commences with a State developing and submitting an application that provides a detailed description of the interaction problem. If warranted by scientific evidence, NMFS is to establish a Pinniped-Fishery Interaction Task Force to address the situation described in the application and publish a notice in the Federal Register requesting public comment on the application. Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice, the Pinniped-Fishery Interaction Task Force is to recommend approval or denial of the proposed intentional lethal taking along with recommendations on the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: of the recommendations, NMFS must either approve or deny the application.

Agency Contact: **Kenneth R. Hollingshead**, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, **301 713-2055**

RIN: 0648–AG79

868. • PROPOSED RULE TO AMEND MARINE MAMMAL REGULATIONS TO AUTHORIZE INCIDENTAL TAKINGS OF MARINE MAMMALS BY HARASSMENT AS AUTHORIZED BY PUBLIC LAW 103-238

Legal Authority: 16 USC 1361 et seq The Marine Mammal Protection Act

CFR Citation: 50 CFR 228

Legal Deadline: Final, Statutory, January 1, 1995.

Abstract: On April 30, 1994, the President signed Pub. L. 103-238, the Marine Mammal Protection Act Amendments of 1994. One part of this law amended section 101(a)(5) to establish an expedited process by which citizens of the United States, who engage in a specified activity (other than commercial fishing) within a specific geographic region, can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The proposed rule, if implemented, would establish specific time limits for public notice and comment on any requests for authorization which would be granted under this rule; implement procedures for the establishment of scientific peer review groups to review an applicant's monitoring plan when the taking may affect the availability of a stock for subsistence uses; and limit authorizations to a period of 1 year.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: **Kenneth R. Hollingshead**, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, **301 713-2055**

RIN: 0648–AG80

869. • REGULATORY AMENDMENT TO IMPOSE RESTRICTIONS ON FISHING BLACK ROCKFISH OFF OREGON

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This regulatory action will impose trip limits and time/area closures on black rockfish fishing off the coast of Oregon in order to preserve declining stocks of black rockfish. Restrictions on harvest and areas fished will adversely affect fishermen in the short term, but these measures are designed to protect black rockfish and encourage the rebuilding of stocks in the long term. These measures are to be developed by the State of Oregon and complement measures in state waters.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: **William Stelle**, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, **206 526-6150**

RIN: 0648–AG81

870. • REGULATORY AMENDMENT TO MODIFY THE SABLEFISH NONTRAWL REGULAR SEASON IN THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: By amending the Pacific Coast groundfish Federal regulations, this regulatory action will modify the regular season for the Sablefish nontrawl fishery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: **William Stelle**, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, **206 526-6150**

RIN: 0648–AG82

871. • REGULATORY AMENDMENT FOR MANAGING PELAGIC FISHERIES BY U.S. VESSELS BEYOND EEZ THROUGHOUT PACIFIC

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 685

Legal Deadline: None

Abstract: This regulatory amendment would extend permit, reporting, and observer placement requirements on longline vessels of the U.S. that are fishing stocks in the management unit for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region beyond the exclusive economic zone in the Pacific Ocean. The rule is necessary for comprehensive monitoring of all vessels fishing common stocks and possibly affecting the status of the shared stocks, other fishery interests, or protected resources so that the need for conservation and management measures can be determined.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	04/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: **Rodney McInnis**, Acting Director, Southwest Region, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90804-4213, **310 980-4001**

RIN: 0648–AG85

872. • AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 669

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days from receipt from a Region al Fishery Management Council.

Abstract: Amendment 3 would revise the overfishing definition for red hind to ensure better conservation of this highly utilized resource.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: **Andrew J. Kemmerer**, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, **813 570-5301**

RIN: 0648–AG87

873. • AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN FOR CORALS AND REEF-ASSOCIATED PLANTS AND INVERTEBRATES FOR PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Amendment 1 would establish marine conservation districts to conserve representative reef areas and fishery habitat in the U.S. exclusive economic zone of the Caribbean.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: **Andrew J. Kemmerer**, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, **813 570-5301**

RIN: 0648–AG88

874. • REGULATORY AMENDMENT TO ESTABLISH ADDITIONAL SPECIAL MANAGEMENT ZONES FOR REEF FISH CONSERVATION AND MANAGEMENT IN THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 641

Legal Deadline: None

Abstract: This action would amend the regulations implementing the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) in accordance with a framework regulatory procedure for establishing additional special management zones (SMZs) intended to protect reef fish resources associated with artificial reefs or fish attraction devices in the exclusive economic zone (EEZ) of the Gulf of Mexico. The Gulf of Mexico Fishery Management Council (Council) is expected to propose two SMZs consisting of large ocean tracts in the

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EEZ off Alabama in which fishing would be controlled by gear restrictions and bag limits. These SMZ tracts were originally proposed by the Council under FMP Amendment 5 but were disapproved by NOAA/NMFS based on potential adverse effects on the vermilion snapper fishery conducted in these areas.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG89

875. • GENERIC FISHERY MANAGEMENT PLAN AMENDMENT FOR THE DEFINITION OF TRAPS IN THE GULF OF MEXICO

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 640; 50 CFR 641; 50 CFR 654; 50 CFR 658

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days from receipt from a Region al Fishery Management Council.

Abstract: This amendment would: (1) modify the construction specifications for a spiny lobster trap used in the exclusive economic zone (EEZ), and establish specifications for a stone crab trap in the EEZ; (2) prohibit the use of blue crab traps in the EEZ off Florida; and (3) establish geographic and reef fish bycatch restrictions for traps other than reef fish traps.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG90

876. • REGULATORY AMENDMENT TO ESTABLISH THE BERING SEA AND ALEUTIAN ISLANDS "A" SEASON FRAMEWORK

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: None

Abstract: This regulatory amendment delays the start date of the pollock "A" season for the offshore component fishery.

Timetable:

Action	Date	FR Cite
NPRM	09/26/94	59 FR 49051
NPRM Comment Period End	10/26/94	
Final Action	11/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Original action delaying the start date of the pollock "A" season each year was withdrawn by the Council 02/25/94, because of the lack of industry consensus which prevented Council action; continued reduction in season length and associated loss in revenues prompted Council consideration and approval at its June meeting.

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG92

877. • REGULATORY AMENDMENT FOR GRID SORTING

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672

Legal Deadline: None

Abstract: Mandatory requirement for specified trawl operations to install sorting grids to facilitate more timely return to the sea of bycatch of halibut, thereby reducing halibut bycatch mortality.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
NPRM Comment Period End	10/00/95	
Final Action	12/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG93

878. • REGULATORY AMENDMENT FOR THE GULF OF ALASKA SEAMOUNT FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672

Legal Deadline: None

Abstract: To provide effective management tools for monitoring groundfish catch harvested seaward of the EEZ to discourage illegal harvests in the EEZ.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
NPRM Comment Period End	05/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

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879. • REGULATORY AMENDMENT FOR BERING SEA AND ALEUTIAN ISLANDS AREA HALIBUT NON-TRAWL PROHIBITED SPECIES CATCH MANAGEMENT AND JIG GEAR EXEMPTION

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: None

Abstract: To authorize annual specification on how unused portions of seasonal halibut bycatch allowances specified for the Bering Sea and Aleutian Islands non-trawl fisheries are rolled over to subsequent season; authorize exemption of Bering Sea and Aleutian Islands jig gear fisheries from halibut bycatch restrictions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	01/00/95	
Final Action	02/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG95

880. • REGULATORY AMENDMENT TO CLARIFY CRITERIA AND FORMAT FOR COMMUNITY DEVELOPMENT PLAN AMENDMENTS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: None

Abstract: Housekeeping measures to clarify management organization informational needs, submission of annual reports, changes to community development plan amendments triggered by change of more than 10 percent in the budget, etc.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG96

881. • REGULATORY AMENDMENT ALLOWING EARLY INDIVIDUAL FISHING QUOTA FISHING IN THE ALEUTIAN ISLANDS AREA

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: None

Abstract: To alter season opening date for sablefish in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands groundfish fishery to relieve restrictions on a small number of vessels that traditionally fish in that area.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG97

882. • REGULATORY AMENDMENT CODIFYING THE COMMUNITY DEVELOPMENT QUOTA COMPENSATION FORMULA

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: None

Abstract: Community development quota compensation formula codification for the individual fishing quota program for Pacific halibut and sablefish fixed gear fisheries off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	09/29/94	59 FR 49637
NPRM Comment Period End	11/14/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG98

883. • FISHERY MANAGEMENT PLAN AMENDMENT TO ALLOW ONE-TIME TRADE OF GROUNDFISH QUOTA SHARES BETWEEN GULF OF ALASKA AND BERING SEA AND ALEUTIAN ISLANDS AREAS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from the regional fishery management council.

Abstract: One-time trade of groundfish quota shares between Gulf of Alaska and Bering Sea and Aleutian Islands areas regardless of vessel and block categories.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	12/00/94	
Final Action	01/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG99

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DOC—NOAA

Proposed Rule Stage

884. • FISHERY MANAGEMENT PLAN AMENDMENT TO SUPERSEDE INSHORE/OFFSHORE ALLOCATION PROGRAM FOR THE BERING SEA AND ALEUTIAN ISLAND POLLOCK AND THE GULF OF ALASKA POLLOCK AND PACIFIC COD

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action effective 110 days after receipt from the Regional Fishery Management Council

Abstract: Existing inshore/off shore allocation program expires at the end 1995. A new FMP amendment would supersede the allocation program for BSAI pollock and GOA pollock and Pacific cod among inshore/offshore components and CDQ fisheries.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	
NPRM Comment Period End	09/00/95	
Final Action	11/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AH00

885. • 1995 CATCH SHARING PLAN AND CONSERVATION MEASURES FOR PACIFIC HALIBUT

Legal Authority: 16 USC 773 to 773K

CFR Citation: 50 CFR 301

Legal Deadline: None

Abstract: This regulation implements measures for the conservation of Pacific halibut in the northern Pacific Ocean and Bering Sea and the management of fishing by U.S. International Pacific Halibut Commission

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	01/00/95	
Final Action	02/00/95	
Final Action Effective	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AH02

887. • AMENDMENT 26 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AND AMENDMENT 29 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE GULF OF ALASKA

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: NPRM, Statutory. Final, Statutory

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AH01

886. • FISHERY MANAGEMENT PLAN AMENDMENT TO INCREASE PERSONAL/VESSEL USE LIMITS IN INDIVIDUAL FISHING QUOTA FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and Final Action 110 days after receipt from the Regional Fishery Management Council.

Abstract: Increase personal/vessel use limits to relieve potentially unnecessary restrictions on Individual Fishing Quota use.

Timetable:

Action	Date	FR Cite
NPRM	09/00/95	
NPRM Comment Period End	10/00/95	
Final Action	11/00/95	
Final Action Effective	12/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AH03

888. • TAKING AND IMPORTING OF MARINE MAMMALS: PROPOSED RULE PROHIBITING U.S. CITIZENS FROM ENCIRCLING MARINE MAMMALS DURING TUNA FISHING OPERATIONS

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.24

Legal Deadline: NPRM, Statutory. Final, Statutory, March 1, 1994.

Abstract: This rule will propose implementation of section 301 of the International Dolphin Conservation Act, which makes it unlawful for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, with certain exceptions.
NPRM 15 days and final action 110 days after receipt from the regional fishery management council.

Abstract: Authorize voluntary retention and processing of salmon taken as bycatch in the Alaska trawl fisheries for donation to food bank organizations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	
Final Action	07/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: Original action would have required all trawl vessels participating in the groundfish fishery to register to fish in either the western central Gulf of Alaska or the Bering Sea and Aleutian Islands area, but not both was withdrawn 02/25/94, because Council decided not to go forward with this action. Council expects to take final action on the revised abstract for this amendment at their September 1994 meeting.

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AH03

DOC—NOAA

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	10/00/94	
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AH04

889. • FISHERY MANAGEMENT PLAN FOR SCUP NORTH OF CAPE HATTERAS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: NPRM, Statutory, November 15, 1994.

Abstract: A new fishery management plan for scup (Stenotomus chrysops) north of Cape Hatteras will be implemented. Proposed management measures are unknown at this time (October, 1994), and may include but are not limited to a minimum fish size, gear specifications, seasons, and limited access to the fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Allen E. Peterson, Jr., Acting Regional Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH05

890. • FISHERY MANAGEMENT PLAN FOR BLACK SEA BASS NORTH OF CAPE HATTERAS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 637

Legal Deadline: NPRM, Statutory, November 15, 1994.

Abstract: A new fishery management plan for black sea bass (Centropristis striata) occurring north of Cape Hatteras will be implemented. Proposed management measures are unknown at this time (October, 1994) and may include but are not limited to a minimum fish size, gear specifications, seasons, and limited access to the fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH06

891. • REGULATORY AMENDMENT FOR MULTIPLE "A" PACIFIC GROUNDFISH LIMITED ENTRY PERMITS PER VESSEL

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This regulatory action would amend Pacific Coast groundfish regulations to allow multiple "A" limited entry permits per vessel. This effectively may be accomplished by attaching trip limits to the permits rather than to the vessels.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AH07

892. • ATLANTIC SHARK FISHERY QUOTA ADJUSTMENT

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 678

Legal Deadline: None

Abstract: Adjustment of annual quotas for the Atlantic Shark fishery.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	12/00/94	
Final Action Effective	01/01/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries, Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AH09

893. • PROPOSED DESIGNATION OF CRITICAL HABITAT FOR THE MID-COLUMBIA RIVER SUMMER CHINOOK SALMON

Legal Authority: 16 USC 1531 et seq The Endangered Species Act

CFR Citation: 50 CFR 226

Legal Deadline: NPRM, Statutory, June 3, 1995.
Endangered Species Act section 4(b)(3)(D)(ii)

Abstract: The regulation will propose critical habitat for the mid-Columbia River summer chinook salmon if the species is proposed for listing under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West

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Highway, Silver Spring, MD 20910, 301 713-2322

RIN: 0648–AH10

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894. • PROPOSED DESIGNATION OF CRITICAL HABITAT FOR PUGET SOUND SALMON STOCKS

Legal Authority: 16 USC 1531 et seq The Endangered Species Act

CFR Citation: 50 CFR 226

Legal Deadline: NPRM, Statutory, March 15, 1995.
Endangered Species Act section 4(b)(3)(D)(ii)

Abstract: NMFS will propose critical habitat for Puget Sound salmon stocks if the species is/are proposed for listing under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marta Nammack, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2322

RIN: 0648–AH11

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895. • REGULATIONS GOVERNING PROCESSED FISHERY PRODUCTS

Legal Authority: 7 USC 1621 to 1630

CFR Citation: 50 CFR 260

Legal Deadline: None

Abstract: NMFS is amending its regulations to introduce new marks for use on inspected products and in inspected facilities. NMFS is also proposing new language associated with one of its marks to more accurately reflect its regulatory requirements. NMFS' actions are a result of industry and consumer comments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rita Creitz, Program Analyst, Inspection Services Division, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, 310 713-2355

RIN: 0648–AH18

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896. • PROPOSED RULE TO ESTABLISH GUIDELINES FOR NONLETHALLY DETERRING MARINE MAMMALS FROM ENDANGERING PERSONAL SAFETY OR DAMAGING PUBLIC OR PRIVATE PROPERTY

Legal Authority: 16 USC 1361 et seq The Marine Mammal Protection Act

CFR Citation: 50 CFR 216

Legal Deadline: Final, Statutory, January 1, 1995.

Abstract: On April 30, 1994, the President signed Pub. L. 103-238, the Marine Mammal Protection Act Amendments of 1994. One part of this law implemented a new section 101(a)(4) to authorize the nonlethal harassment takings by citizens of the United States to deter marine mammals from: (1) Damaging commercial fishing gear or catch; (2) damaging private property; (3) endangering public safety; or (4) damaging public property. The amendments require a list of guidelines for use in safely deterring marine mammals and provide for prohibiting certain deterrent measures that may have a significant adverse impact on marine mammals.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kenneth R. Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2055

RIN: 0648–AH19

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897. • REGULATORY AMENDMENT TO FACILITATE MONITORING AND ENFORCEMENT IN THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This action will implement new regulatory provisions and modify existing regulatory provisions to facilitate monitoring of fishing activities and enforcement in the Pacific Coast groundfish fishery. It also will make miscellaneous technical clarifications to existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	
NPRM Comment Period End	07/00/95	
Final Action	09/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AH21

NATIONAL OCEAN SURVEY/OFFICE OF COASTAL RESOURCES MANAGEMENT

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898. PROPOSED REGULATIONS FOR THE FAGATELE BAY NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: 15 CFR 941

Legal Deadline: None

Abstract: These existing regulations are to be revised to improve enforcement of prohibited activities, provide additional protective provisions, and update permit requirements.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
NPRM Comment Period End	05/00/95	
Final Action	11/00/95	
Final Action Effective	01/00/96	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AA74

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899. PROPOSED REGULATIONS FOR THE CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: 15 CFR 935

Legal Deadline: None

Abstract: These existing regulations are to be revised to improve enforcement of prohibited activities, provide additional protective provisions, and update permit requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	
Final Action	05/00/95	
Final Action Effective	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC03

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900. PROPOSED REGULATIONS FOR THE GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: 15 CFR 936

Legal Deadline: None

Abstract: These existing regulations are being revised to improve enforcement of prohibited activities, provide additional protective provisions, and update permit requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	02/00/95	
Final Action	08/00/95	
Final Action Effective	10/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC05

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901. THE MONITOR NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 et seq

CFR Citation: 15 CFR 924

Legal Deadline: None

Abstract: These regulations are being revised to update site management provisions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC78

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902. PROPOSED REGULATIONS FOR THE NORTHWEST STRAITS NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These regulations will protect the conservational, recreational, ecological, historical, research, educational, and esthetic qualities of the waters of northern Puget Sound in the State of Washington, if the area is designated as a national marine sanctuary.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	02/00/96	
Final Action Effective	06/00/96	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC91

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903. PROPOSED REGULATIONS FOR THE NORFOLK CANYON NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: 15 CFR 939

Legal Deadline: None

Abstract: These regulations will protect the ecological, recreational, and esthetic resources of the waters surrounding Norfolk Canyon if the area is designated as a national marine sanctuary.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC92

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904. PROPOSED REGULATIONS FOR THE FLORIDA KEYS NATIONAL MARINE SANCTUARY

Regulatory Plan: This entry is Seq. No. 21 in Part II of this issue of the Federal Register.

RIN: 0648–AD85

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905. THUNDER BAY NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These regulations will protect the ecological, recreational, and esthetic resources of the waters surrounding Thunder Bay if the area is designated as a national marine sanctuary.

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Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AE41

906. GRAY'S REEF NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 to 1445

CFR Citation: 15 CFR 938

Legal Deadline: None

Abstract: These regulations are being revised to update site management provisions.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AE42

907. NATIONAL MARINE SANCTUARY PROGRAM, SITE EVALUATION LIST

Legal Authority: 16 USC 1431 to 1434

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: NOAA plans to amend the National Marine Sanctuary Program regulations which implement the Site Evaluation List development process. NOAA will integrate the procedures and criteria for identifying, evaluating, and selecting sites of special historical significance with the procedures and criteria for identifying, evaluating, selecting, and ranking sites of special natural resource significance. The purpose of integrating the two processes is to develop a single, comprehensive SEL which will include sites of both natural resource and historical, cultural, and human use value.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Capt. Francesca M. Cava, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Services, 1305 East-West Highway (N/ORM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AF23

OFFICE OF THE ADMINISTRATOR

908. LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

Legal Authority: 15 USC 4244; PL 102-555

CFR Citation: 15 CFR 960

Legal Deadline: None

Abstract: Pub. L. 102-555 amends the Land Remote Sensing Commercialization Act of 1984 to transfer the LANDSAT program from the Department of Commerce to a joint NASA/DOD office. However, title II retains the basic provisions of title IV of the previous act authorizing the Secretary of Commerce to license private operators of land remote sensing space systems who are subject to U.S. jurisdiction. The Secretary is required to consult with the Secretaries of Defense and State, who are responsible for determining conditions to protect national security and foreign policy concerns, respectively. The recent Act removes a regulatory restriction which required operators to make the data available to all customers on the same terms and conditions.

Timetable:

Action	Date	FR Cite
ANPRM	01/18/89	54 FR 01945
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Catherine Shea, Staff Attorney, Department of Commerce, National Oceanic and Atmospheric Administration, 1325 East-West Highway, Room 18109, Silver Spring, MD 20910, 301 713-0053

RIN: 0648–AC64

909. NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION REGULATIONS

Regulatory Plan: This entry is Seq. No. 22 in Part II of this issue of the Federal Register.

RIN: 0648–AE13

910. NATIONAL WEATHER SERVICE MODERNIZATION CRITERIA

Legal Authority: PL 102-567; 15 USC 313 note

CFR Citation: 15 CFR 947; 15 CFR 946 app A

Legal Deadline: Final, Statutory, October 29, 1993.

Abstract: The Secretary of Commerce shall contract with the National Research Council, who shall review the scientific and technical modernization criteria for proposed certification actions to automate or close field offices of the National Weather Service.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nicholas Scheller, Implementation Manager, Department of Commerce, National Oceanic and Atmospheric Administration, Room 17146, 1325 East-West Highway, Silver Spring, MD 20910, 301 713-0454

RIN: 0648–AF72

DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA) — **Final Rule Stage**

NATIONAL MARINE FISHERIES SERVICE

911. PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF & CERTAIN OTHER PROCESSED FOOD PRODUCTS: U.S. STANDARDS FOR GRADES OF FROZEN FISH BLOCKS & PRODUCTS MADE THEREFROM, ETC

Legal Authority: 7 USC 1621 to 1630, Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 264A

Legal Deadline: None

Abstract: The revised rule will expand the coverage of established voluntary standards for grades of fishery products to include new products made from fish blocks. The standards will take into account new technology and equipment. These standards will be used in a voluntary program of fishery products inspection and certification by the NMFS. Industry has shown a high level of interest and support for the revisions.

Timetable:

Action	Date	FR Cite
NPRM	09/21/89	54 FR 38881
NPRM Comment Period End	11/06/89	
Extension of Comment Period	12/29/89	54 FR 53660
NPRM Comment Period End	01/29/90	54 FR 53660
Interim Final Rule	10/16/90	55 FR 41856
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing; 209 Miscellaneous Food Preparations and Kindred Products

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508 281-9319

RIN: 0648–AA46

912. U.S. GENERAL STANDARDS FOR GRADES OF SHRIMP

Legal Authority: 7 USC 1621 to 1630 Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 265A

Legal Deadline: None

Abstract: The final rule will establish general quality grading standards for all nonbreaded forms of fresh or frozen shrimp. These grading standards will provide for the systematic differentiation of the quality of shrimp into categories -- U.S. grades A, B, and Substandard. The proposed standards will be applied to all commercial species of fresh or frozen shrimp in raw or cooked states in all nonbreaded market forms. The adoption of grading standards is expected to facilitate trade in shrimp of all commercial species, as consumers will be able to select shrimp on the basis of identified quality. Industry has shown great interest in and support for the standards.

Timetable:

Action	Date	FR Cite
NPRM	05/20/82	47 FR 21840
NPRM Comment Period End	08/18/82	47 FR 21840
NPRM	09/21/89	54 FR 38885
NPRM Comment Period End	11/06/89	
Extension of Comment Period	12/29/89	54 FR 53660
NPRM Comment Period End	01/29/90	54 FR 53660
Interim Final Rule	10/24/91	56 FR 55090
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing; 209 Miscellaneous Food Preparations and Kindred Products

Additional Information: Neither an RIA nor an RFA is required or will be prepared.

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508 281-9319

RIN: 0648–AA47

913. ENDANGERED FISH AND WILDLIFE; APPROACHING HUMPBACK WHALES IN HAWAIIAN WATERS

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222.31

Legal Deadline: Final, Statutory, January 1, 1995.

Abstract: In waters of the United States surrounding the State of Hawaii, it is lawful for a person to approach no closer than 100 yards to a humpback whale, regardless of whether the approach is made in waters designated under Section 222.31 of Title 50 as cow-calf waters. This final rule will conform to the requirements of the MMPA Amendments of 1994.

Timetable:

Action	Date	FR Cite
NPRM	11/24/86	51 FR 42271
NPRM Comment Period End	12/24/86	51 FR 42271
Interim Final Rule	11/23/87	52 FR 44912
Final Action	10/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing

Agency Contact: Jim Lecky, Chief, Protected Species Management Division, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AB79

914. FISHERMEN'S PROTECTIVE ACT

Legal Authority: 22 USC 1980

CFR Citation: 50 CFR 258

Legal Deadline: None

Abstract: Reinstating regulations inadvertently dropped when the Fishermen's Guaranty Fund Program was transferred to the State Department. Revisions to program procedures deriving from an Internal Control Review completed in May 1992, will be incorporated in the regulations as well as clarifications suggested by the General Counsel. These revised procedures will reduce the risk that fraudulent claims will be paid and clarify procedures for applicants.

Timetable:

Action	Date	FR Cite
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles Cooper, Program Leader, Department of

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Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2396**

RIN: 0648–AC73

915. PERFORMANCE STANDARDS FOR TUNA VESSEL OPERATORS

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NOAA has established a system of performance standards for operators of U.S.-flag tuna purse seine fishing vessels that catch yellowfin tuna associated with marine mammals in the eastern tropical Pacific Ocean.

Timetable:

Action	Date	FR Cite
NPRM	11/01/89	54 FR 46086
NPRM Comment Period End	12/01/89	
Interim Final Rule Effective	05/16/90	
Interim Final Rule	05/17/90	55 FR 20458
Interim Final Rule Comment Period End	09/03/90	
Final Action	05/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Rodney McInnis**, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, **310 980-4001**

RIN: 0648–AD03

916. REVISED REGULATIONS GOVERNING PERMITS FOR THE TAKING, IMPORTING AND EXPORTING OF PROTECTED SPECIES FOR SCIENTIFIC RESEARCH AND PUBLIC DISPLAY

Legal Authority: 16 USC 1361 et seq, Marine Mammal Protection Act; 16 USC 1531 et seq, Endangered Species Act; 16 USC 1151 et seq, Fur Seal Act

CFR Citation: 50 CFR 216; 50 CFR 215; 50 CFR 222

Legal Deadline: Final, Statutory, January 1, 1995.

Abstract: These proposed revisions would update and consolidate existing permit regulations that have been promulgated for the taking, import, export, or conduct of an otherwise prohibited activity involving protected species (i.e., marine mammals and endangered or threatened species) for purposes of scientific research, public display, or enhancement under the Marine Mammal Protection Act, the Endangered Species Act, and the Fur Seal Act. These revisions would implement amendments to the Marine Mammal Protection Act enacted in 1988 and 1994, and clarify when a permit is required and the scope and extent of permit authority under these Acts. The final rule would add permit-specific and generally applicable terms and conditions, which would clarify permit requirements and review procedures, and would amend the criteria for deciding whether to issue or deny permits, and revise administrative requirements and procedures. These revisions are intended to provide a comprehensive regulatory foundation for these special exception permits and to make administration of the NMFS permit program more efficient, consistent and predictable. The NMFS is proposing to (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/14/93	58 FR 53320
NPRM Comment Period End	01/28/94	58 FR 68848
Interim Final Rule	01/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Additional Information: ABSTRACT CONT: consolidate permit regulations into a single part of title 50.

Agency Contact: **Art Jeffers**, Chief, Public Display and Education Branch, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2289**

RIN: 0648–AD11

917. SECRETARIAL FISHERY MANAGEMENT PLAN FOR SHARKS OF THE ATLANTIC OCEAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 678

Legal Deadline: NPRM, Statutory. NPRM 15 days after and final action 110 days after beginning of review.

Abstract: The Secretarial Fishery Management Plan establishes a new management program intended to: (1) prevent overfishing of Atlantic Ocean sharks; (2) encourage management of sharks throughout their range; (3) establish a data collection, research and fishery monitoring program; (4) prohibit the practice of "finning"; and (5) optimize benefits and minimize wastes of shark resources. Proposed measures include: (1) annual commercial quotas; (2) recreational bag limits; (3) prohibition on "finning"; (4) commercial fishing permits; (5) prohibition on sale of recreational catch; (6) reporting of catch and effort information by commercial vessels and by those operating recreational fishing tournaments; (7) an annual fishing year beginning July 1 of each year; (8) a requirement for all fishermen to cut the fishing line for all sharks not taken as part of the quota or bag limit; and (9) commercial fishery closures after attainment of annual quotas.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Sectors Affected: 091 Commercial Fishing

Analysis: Regulatory Flexibility Analysis

Additional Information: Will involve new collections of information under the Paperwork Reduction Act.

Agency Contact: **Richard H. Schaefer**, Director, Office of Fisheries Conservation and Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2334**

RIN: 0648–AD12

918. REGULATIONS GOVERNING THE TAKE OF DOLPHINS INCIDENTAL TO REMOVING OIL AND GAS PLATFORMS IN THE GULF OF MEXICO

Legal Authority: 16 USC 1371(a)(5); 16 USC 1361 et seq

CFR Citation: 50 CFR 228

Legal Deadline: None

Abstract: NMFS has received an amended request from the American Petroleum Institute for the take of bottlenose and spotted dolphins incidental to the removal of oil and gas platforms in the Gulf of Mexico. This activity would be allowed under section 101(a)(5) of the Marine Mammal Protection Act if the Service makes certain findings and if regulations are issued that cover monitoring and reporting.

Timetable:

Action	Date	FR Cite
NPRM	06/17/93	58 FR 33425
NPRM Comment Period End	08/16/93	
Final Action	11/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Kenneth R. Hollingshead**, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2323**

RIN: 0648–AD25

919. REGULATORY AMENDMENT—U.S. NATIONALS FISHING IN RUSSIAN FISHERIES

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 299

Legal Deadline: None

Abstract: The regulation specifies procedures for U.S. nationals fishing in the Russian economic zone. Procedures include annual permits, port calls, visas, emergency medical treatment, exchange of crews, research vessels, and Russian-imposed sanctions. U.S. nationals are required to comply with permit requirements, comply with Russian law, provide information contained in permits, report on and keep records for 3 years on fish and fish products on board when departing and reentering the EEZ, protect marine mammals, and cooperate with enforcement procedures.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/17/89	54 FR 29896
Second Interim Final Rule	07/30/92	57 FR 33649
Second Interim Final Rule Comment Period End	09/14/92	57 FR 33649

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Action	Date	FR Cite
Final Action	12/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: 091 Commercial Fishing

Agency Contact: **Richard H. Schaefer**, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, **301 713-2334**

RIN: 0648–AD29

920. U.S. STANDARDS FOR GRADES OF FROZEN FISH PORTIONS

Legal Authority: 7 USC 1621 to 1630, Agricultural Marketing Act of 1946

CFR Citation: 50 CFR 264; 50 CFR 269

Legal Deadline: None

Abstract: The revised rule will expand coverage of established voluntary standards for grades of frozen fish portions. The standards will take into account new technology and equipment. These standards will be used in a voluntary program of fishery products inspection and certification by NMFS. Industry has shown a high level of interest and support for the revisions.

Timetable:

Action	Date	FR Cite
NPRM	06/11/90	55 FR 23565
NPRM Comment Period End	08/27/90	55 FR 23565
Interim Final Rule	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Thomas J. Moreau**, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, **506 281-9319**

RIN: 0648–AD92

921. REGULATORY AMENDMENT TO IMPLEMENT PERMIT, REPORTING, AND RECORDKEEPING AND OBSERVER REQUIREMENTS FOR PROCESSING VESSELS OVER 125 FEET AND THEIR CATCHER VESSELS; PACIFIC COAST GROUNDFISH

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: Regulations would implement a comprehensive data collection and regulatory program for all processing vessels longer than 125 feet and for all harvesting vessels that deliver their catch to those vessels in the groundfish fishery off Washington, Oregon, and California. This program would consist of: (1) a requirement that processing vessels carry NMFS-certified observers; (2) a requirement for a mandatory Federal permit; (3) recordkeeping and reporting requirements; and (4) a definition for "fishing trip" for processing vessels over 125 feet in length for the purpose of applying trip landing and frequency limits.

Timetable:

Action	Date	FR Cite
NPRM	11/19/92	57 FR 54552
NPRM Comment Period End	12/21/92	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: **William Stelle**, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, **206 526-6150**

RIN: 0648–AE01

922. U.S. STANDARDS FOR GRADES OF WHOLE OR DRESSED FISH

Legal Authority: 7 USC 1621 to 1630

CFR Citation: 50 CFR 261

Legal Deadline: None

Abstract: NMFS is testing an alternative set of U.S. standards for grades of whole or dressed fish for use in NMFS's National Seafood Inspection Program. The test standards recognize advances made by industry in process

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controls. The test standards allow for evaluation of flavor, odor, and texture in the pre-processing state, evaluation of physical defects in the thawed/fresh state, and evaluation for dehydration in the frozen state. Products graded using the test standards will be allowed to make reference to applicable grades on the label of the product.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508 281-9319

RIN: 0648–AE69

923. U.S. STANDARDS FOR GRADES OF NORTH AMERICAN FRESHWATER CATFISH AND PRODUCTS MADE THEREFROM

Legal Authority: 7 USC 1621 to 1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090)

CFR Citation: 50 CFR 267

Legal Deadline: None

Abstract: NMFS is testing an alternative set of U.S. standards for grades of North American freshwater catfish and products made therefrom for use in NMFS's National Seafood Inspection Program. The test standards recognize advances made by industry in process controls. The test standards allow for evaluation of flavor, odor, and texture in the pre-processing state, evaluation of physical defects in the thawed/fresh state, and evaluation for dehydration in the frozen state. Products graded using the test standards will be allowed to make reference to applicable grades on the label of the product.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508 281-9319

RIN: 0648–AE70

924. U.S. STANDARDS FOR GRADES OF FISH FILLETS

Legal Authority: 7 USC 1621 to 1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090)

CFR Citation: 50 CFR 263

Legal Deadline: None

Abstract: NMFS is testing an alternative set of U.S. standards for grades of fish fillets for use in NMFS's National Seafood Inspection Program. The test standards recognize advances made by industry in process controls. The test standards allow for evaluation of flavor, odor, and texture in the pre-processing state, evaluation of physical defects in the thawed/fresh state, and evaluation for dehydration in the frozen state. Products graded using the test standards will be allowed to make reference to applicable grades on the label of the product.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas J. Moreau, Director, Technical Services Unit, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508 281-9319

RIN: 0648–AE71

925. AMENDMENT 35 TO THE FMP FOR GROUNDFISH OF THE GOA AND AMENDMENT 31 TO THE FMP FOR GROUNDFISH OF THE BSAI TO REVISE IFQ TRANSFER PROVISIONS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 676

Legal Deadline: NPRM, Statutory. NPRM 15 days and final action 110 days from receipt from the Regional Fishery Management Council.

Abstract: This action provides issuance of Individual Fishing Quotas (IFQ) quota shares in blocks; revises regulations to prevent individuals who receive an initial allocation of quota share in in southeastern Alaska from taking advantage of the hired master allowance provided to corporations that receive an initial allocation of quota share in the southeast by transferring an individual quota share to a solely owned corporation.

Timetable:

Action	Date	FR Cite
NPRM	06/28/94	59 FR 33272
NPRM Comment Period End	08/08/94	
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, Director, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AE79

926. TAKING AND IMPORTING OF MARINE MAMMALS; DOLPHIN MORTALITY LIMITS DURING PURSE SEINE SETS ON MARINE MAMMALS IN THE EASTERN TROPICAL PACIFIC

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.24

Legal Deadline: None

Abstract: This interim final rule will amend the current performance standards in the MMPA regulations to ensure that U.S. vessels can be legally prevented from making sets on tuna associated with dolphins in the eastern tropical Pacific Ocean once the vessels' dolphin mortality limit is reached. This rule also implements portions of the International Dolphin Conservation Act of 1992.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/19/93	58 FR 29127
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AF07

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927. TAKING AND IMPORTING OF MARINE MAMMALS; "DOLPHIN-SAFE" TUNA LABELING

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216; 50 CFR 247

Legal Deadline: None

Abstract: This rule will finalize the interim final rule implementing the Dolphin Protection Consumer Information Act. The interim final rule: (1) identified fish and fish products subject to importation requirements mandated by the Marine Mammal Protection Act, as amended by the DPC14; (2) specified the use and contents of a new NOAA form required to import into the United States certain fish and fish products potentially harvested with methods injurious to marine mammals; (3) required importers of certain fish and fish products harvested by nations that engage in high seas large-scale driftnet fishing to provide certification by a responsible government official of the harvesting nation that the items to be imported were not harvested with large-scale driftnets in certain areas of the high seas; and (4) regulated the use of labels suggesting that tuna products are "dolphin safe." This rule also implements portions of the High Seas Driftnet Fisheries Enforcement Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/19/91	56 FR 47418
Final Action	10/00/94	
Final Action Effective	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AF08

928. FISHING VESSEL CAPITAL CONSTRUCTION FUND PROCEDURES—ELIGIBILITY FOR SAFETY IMPROVEMENTS

Legal Authority: 46 USC 1177

CFR Citation: 50 CFR 259

Legal Deadline: None

Abstract: To allow use of capital construction funds for approved safety improvement projects.

Timetable:

Action	Date	FR Cite
NPRM	11/18/92	57 FR 54356
NPRM Comment Period End	12/18/92	
Final Action	04/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2396

RIN: 0648–AF22

929. AMENDMENT TO ENHANCE DATA ON BYCATCH AND ESTABLISH A PILOT PROGRAM FOR DONATION OF ATLANTIC SWORDFISH

Legal Authority: 16 USC 971 to 971h

CFR Citation: 50 CFR 630

Legal Deadline: None

Abstract: This action would establish a pilot program to allow donation, on an experimental basis, of dead, undersized Atlantic swordfish to charitable organizations for data collection and humanitarian purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/23/93	58 FR 68109
NPRM Comment Period End	02/09/94	
NPRM Comment Period Extended to	06/24/94	59 FR 29770
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AF42

930. FISHING VESSEL OBLIGATION GUARANTEE PROGRAM

Legal Authority: 46 USC 1271 to 1279

CFR Citation: 50 CFR 255

Legal Deadline: None

Abstract: This regulation will add definitions of "aquaculture" and "underutilized species."

Timetable:

Action	Date	FR Cite
Final Action	04/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael L. Grable, Division Chief, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2390

RIN: 0648–AF48

931. REGULATORY AMENDMENT TO REQUIRE BLUEFIN TUNA STATISTICAL DOCUMENTS

Legal Authority: 16 USC 971 et seq

CFR Citation: 50 CFR 285

Legal Deadline: None

Abstract: This amendment would establish the requirement that bluefin tuna imported into Customs territory of the United States be accompanied by a statistical document indicating harvesting nation and area of catch.

Timetable:

Action	Date	FR Cite
NPRM	06/16/94	59 FR 30886
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AF74

932. AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR CRUSTACEAN FISHERIES OF THE WESTERN PACIFIC REGION

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 681

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Legal Deadline: NPRM, Statutory. Final, Statutory.
NPRM 15 days and final action 110 days after receipt from a regional fishery management council.

Abstract: This Amendment would resolve administrative problems associated with implementation of the annual administrative quota system and renewal of limited entry permits in situations where the preliminary quota determination for the Hawaiian lobster fishery would result in a low or zero quota. Changes in notification and reporting procedures would also enhance enforcement and monitoring efforts.

Timetable:

Action	Date	FR Cite
NPRM	08/09/94	59 FR 40515
NPRM Comment Period End	09/23/94	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AF82

933. REGULATORY AMENDMENT TO IMPOSE TRIP LIMITS ON COMMERCIAL CATCHES OF ATLANTIC SHARKS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 678

Legal Deadline: None

Abstract: This rule implements commercial trip limits for permitted vessels fishing for Atlantic large coastal pelagic sharks in order to lower daily landings, to extend the open season, and to reduce the likelihood that the semiannual quota will be exceeded.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG02

934. REGULATORY ADJUSTMENTS TO 1994-1995 ATLANTIC TUNA FISHERIES

Legal Authority: 16 USC 971 et seq

CFR Citation: 50 CFR 285

Legal Deadline: None

Abstract: This action will establish fishing category quotas for the 1994-1995 bluefin tuna fishing season and revise regulations concerning incidental take of bluefin.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/14/94	59 FR 17723
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG14

935. FINANCIAL DISCLOSURE OF FISHERY MANAGEMENT COUNCIL NOMINEES, MEMBERS, AND EXECUTIVE DIRECTORS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 601

Legal Deadline: None

Abstract: This rule revises regulations concerning the practices, procedures and operations of the Regional Fishery Management Councils under the Magnuson Fishery Conservation and Management Act. It increases the detail and availability of information in required financial disclosures of Councils' nominees, voting members, and Executive Directors and is intended to reduce the likelihood of financial conflicts of interest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/11/94	59 FR 11557
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG16

936. REGULATORY AMENDMENT DESIGNATING "ROUTINE" TRIP LIMITS IN THE PACIFIC COAST GROUNDFISH FISHERY

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This abbreviated rule would enable timely inseason adjustments to trip limits for certain species, such that the harvest guidelines or allocations for those species are not exceeded. The species include groundfish caught incidental to the California halibut or sea cucumber fishery, and lingcod.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AG31

937. TAKING AND IMPORTING OF MARINE MAMMALS: PROHIBITION ON SETTING ON ANY NORTHEASTERN OFFSHORE SPOTTED DOLPHIN

Legal Authority: 13 USC 1361 et seq

CFR Citation: 50 CFR 216.24

Legal Deadline: Final, Judicial, December 31, 1994.
27 January 94 court order (amended) requires that NMFS issue final regulations within 30 days of the date of the final order.

Abstract: The United States District Court for the Northern District of California issued an order on January 27, 1994, that requires NMFS to issue final regulations, within 40 days of the date of the order, prohibiting the encirclement of any schools of dolphins where an official U.S. or Inter-American Tropical Tuna Commission observer observes any northeastern offshore spotted dolphins in such school prior to release of the net skiff, and incorporating such prohibition into the comparability standards developed pursuant to section 1371(a)(2)(B) of the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AG33

938. TAKING AND IMPORTING OF MARINE MAMMALS; TAKING OF MARINE MAMMALS UNDER THE ATA PERMIT AFTER FEBRUARY 28, 1994

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: Final, Statutory, March 1, 1994.

Abstract: The International Dolphin Conservation Act provides that, if no major purse seine tuna fishing country enters into an agreement for a moratorium on setting on marine mammals during the course of commercial fishing operations, the total dolphin mortalities authorized under the general permit issued to the American Tunaboat Association shall not exceed the number of dolphin mortalities which occurred under the permit during the preceding year.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	
Final Action	03/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rodney McInnis, Acting Director, Southwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, 310 980-4001

RIN: 0648–AG36

939. SEA TURTLE CONSERVATION MEASURES; SECTION 10 INCIDENTAL TAKE PERMITS; FINAL RULE

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 227

Legal Deadline: None

Abstract: NMFS regulations currently require non-Federal entities to obtain an ESA section 10 incidental take permit if endangered species of sea turtles may be taken incidental to fishing activities. This rule, if implemented, would require incidental take permits for threatened species of sea turtles, as well.

Timetable:

Action	Date	FR Cite
NPRM	07/21/94	59 FR 37213
NPRM Comment Period End	08/22/94	
Final Action	11/00/94	
Final Action Effective	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Russell Bellmer, Chief, Endangered Species Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC #3, Silver Spring, MD 20910, 301 713-2319

RIN: 0648–AG37

940. • FLOTATION DEVICES IN BOTTOM-OPENING, SINGLE-GRID TURTLE EXCLUDER DEVICES IN THE SOUTHEASTERN UNITED STATES

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 227

Legal Deadline: None

Abstract: NMFS has issued a rule to require shrimp trawlers using Turtle Excluder Devices (TEDs) in the Gulf of Mexico and Atlantic Ocean areas to attach floatation devices to the TEDs if they are single-grid TEDs with bottom escape openings. Floatation devices adequate to lift TEDs from the seafloor are specified. This action is necessary to improve the ability of bottom-opening single-grid TEDs to safely exclude sea turtles.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/20/94	59 FR 33447
Date Effective	07/08/94	59 FR 33447
Final Action	12/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Heather Weiner, Endangered Species Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2319

RIN: 0648–AG71

941. • FINAL NOTICE OF CHANGES IN THE MANAGEMENT REGIMES FOR ATLANTIC MIGRATORY KING AND SPANISH MACKEREL AND GULF GROUP OF KING MACKEREL

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 642

Legal Deadline: None

Abstract: This rule changes the total allowable catch for the Atlantic groups of king and Spanish mackerel and the commercial vessel trip limits for Gulf group king mackerel.

Timetable:

Action	Date	FR Cite
NPRM	08/09/94	59 FR 40509
NPRM Comment Period End	08/24/94	
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AH17

DOC—NOAA

Final Rule Stage

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DOC—NOAA

Final Rule Stage

942. • GENERAL AUTHORIZATION FOR SCIENTIFIC RESEARCH INVOLVING LEVEL B HARASSMENT

Legal Authority: 16 USC 1151 et seq Fur Seal Act; 16 USC 1631 et seq Marine Mammal Protection Act

CFR Citation: 50 CFR 215; 50 CFR 216

Legal Deadline: Final, Statutory, August 30, 1994.

Abstract: This interim final rule is required by the 1994 amendments to the Marine Mammal Protection Act. These regulations establish a general authorization for bona fide scientific research on non-endangered and non-threatened marine mammals that may result in harassment with only the potential to disturb. Inclusion under the general authorization is achieved by letter of intent to the National Marine Fisheries Service and a letter of confirmation from the Service.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/03/94	59 FR 50372
Interim Final Rule Comment Period End	11/17/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are discussing whether to issue this rule jointly.

Agency Contact: Ann Terbush, Chief, Permits Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2289

RIN: 0648–AH20

NATIONAL OCEAN SURVEY/OFFICE OF COASTAL RESOURCES MANAGEMENT

943. FINAL REGULATIONS FOR THE STELLWAGEN BANK NATIONAL MARINE SANCTUARY

Legal Authority: 16 USC 1431 et seq; PL 102-587, sec 2202

CFR Citation: 15 CFR 940

Legal Deadline: None

Abstract: These regulations will protect the ecological, recreational, and esthetic resources of the waters surrounding the Stellwagen Bank National Marine Sanctuary, designated by Congress in Pub. L. 102-587, section 2202.

Timetable:

Action	Date	FR Cite
NPRM	02/08/91	56 FR 5282
NPRM Comment Period End	04/08/91	
Final Rule	10/19/93	58 FR 53865
Notice of Effectiveness of Final Rule	10/00/94	
Second NPRM	10/00/94	
Notice of Amendment to Final Rule	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, Chief, Sanctuaries and Reserves Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/0RM2), Silver Spring, MD 20910, 301 713-3125

RIN: 0648–AC94

944. IMPLEMENTATION OF COASTAL ZONE MANAGEMENT ACT APPEAL FEES

Legal Authority: 16 USC 1451 et seq

CFR Citation: 15 CFR 930

Legal Deadline: None

Abstract: This rulemaking will implement new authority under the Coastal Zone Management Act to charge fees for appeals.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Margo F. Jackson, Asst. General Counsel for Ocean Services, Office of General Counsel, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 6th Floor, Silver Spring, MD 20910, 301 713-2967

RIN: 0648–AD83

945. TECHNICAL CONFORMING CHANGES TO EXISTING NOAA REGULATIONS TO IMPLEMENT 1990 REAUTHORIZATION OF THE COASTAL ZONE MANAGEMENT ACT

Legal Authority: 16 USC 1451 et seq

CFR Citation: 15 CFR 923; 15 CFR 926; 15 CFR 927; 15 CFR 931

Legal Deadline: None

Abstract: This rulemaking will make technical conforming changes to NOAA's existing regulations which are necessary to implement the 1990 reauthorization of the Coastal Zone Management Act.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean & Coastal Resource Mgmt., Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway (N/0RM4), Silver Spring, MD 20910, 301 713-3087

RIN: 0648–AE11

OFFICE OF THE ADMINISTRATOR

946. CIVIL PROCEDURE REGULATIONS

Legal Authority: 16 USC 1801 to 1882; 16 USC 1531 to 1543; 16 USC 1361 to 1407; 16 USC 3371 to 3378; 16 USC 1431 to 1439; 16 USC 773 to 773k; 16 USC 951 to 961; 16 USC 1021 to 1032; 16 USC 3631 to 3644; 42 USC 9101 et seq; 30 USC 1401 et seq; 16 USC 971 to 971i; 16 USC 781 et seq; 16 USC 972 to 972b; 16 USC 916 to 916l; ...

CFR Citation: 15 CFR 904

Legal Deadline: None

Abstract: This rule will amend NOAA's regulations to make them consistent with a Federal District Court ruling on the Agency's consideration of a respondent's ability to pay when assessing a civil penalty. The amendment removes a provision which places the burden on the respondent to raise and prove inability to pay an assessed penalty when the statute involved requires NOAA to take ability to pay into account.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/02/93	58 FR 58484
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Hugh Schratwieser, Attorney Adviser, Department of Commerce, National Oceanic and Atmospheric Administration, Office of the Assistant General Counsel for Enforcement and Litigation (GCEL), 8484 Georgia Ave. 4th Fl, Silver Spring, MD 20910, 301 427-2202

RIN: 0648–AF96

DOC—NOAA

Final Rule Stage

947. NOAA CLIMATE AND GLOBAL CHANGE PROGRAM—PROPOSAL SUBMISSION GUIDELINES

Legal Authority: 49 USC 1463; 15 USC 313; 15 USC 2921

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This rule will specify criteria and procedures for eligibility, submission and evaluation, and selection for proposals for funding that are under the NOAA Climate and Global Change Program's annual program announcement. The intent of the program is to improve the ability to observe, understand, predict, and respond to changes in the environment of our planet. The NOAA program is an element of the interagency U.S. Global Change Research Program. NOAA's program is designed to complement other agency contributions to that national effort.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Irma DuPree, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Global Programs, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910-5603, 301 427-2089

RIN: 0648–AG51

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Completed Actions

948. REGULATORY AMENDMENT—STANDARD PRODUCT RECOVERY RATES FOR ALASKA GROUNDFISH

CFR Citation: 50 CFR 672; 50 CFR 675

Completed:

Reason	Date	FR Cite
Final Action	10/05/94	59 FR 50699
Final Action Effective	11/04/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AD44

949. REGULATORY AMENDMENTS TO IMPLEMENT THE NORTH PACIFIC FISHERIES RESEARCH PLAN

CFR Citation: 50 CFR 301; 50 CFR 671; 50 CFR 672; 50 CFR 675; 50 CFR 677

Completed:

Reason	Date	FR Cite
Final Action	09/06/94	59 FR 46126
Final Action Effective	10/06/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AD80

950. AMENDMENT 11 TO THE FMP FOR COMMERCIAL AND RECREATIONAL SALMON FISHERIES OFF THE COAST OF WASHINGTON, OREGON, AND CALIFORNIA

CFR Citation: 50 CFR 661

Completed:

Reason	Date	FR Cite
Final Action	05/04/94	59 FR 23013
Final Action Effective	04/29/94	

Small Entities Affected: Businesses

Government Levels Affected: State, Tribal

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AE05

951. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

CFR Citation: 50 CFR 685

Completed:

Reason	Date	FR Cite
Final Action	05/25/94	59 FR 26979
Final Action Effective	06/24/94	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Rodney McInnis, 310 980-4001

RIN: 0648–AE35

952. AMENDMENT 6 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

CFR Citation: 50 CFR 646

Completed:

Reason	Date	FR Cite
Final Action	05/26/94	59 FR 27242
Final Action Effective	06/27/94	59 FR 27242

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Andrew J. Kemmerer, 813 570-5301

RIN: 0648–AE51

953. AMENDMENT 23 TO THE FMP FOR BSAI GROUNDFISH, AMENDMENT 28 TO THE FMP FOR GOA GROUNDFISH, AND AMENDMENT 4 TO THE FMP FOR THE COMMERCIAL KING AND TANNER CRAB FISHERIES IN THE BSAI

CFR Citation: 50 CFR 671; 50 CFR 672; 50 CFR 675; 50 CFR 676

Completed:

Reason	Date	FR Cite
Final Action	08/24/94	59 FR 43534

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AE62

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Completed Actions

954. REGULATORY AMENDMENT TO REVISE REQUIREMENTS FOR REPORTING AND RECORDKEEPING

Completed:

Reason	Date	FR Cite
Duplicate of RIN 0648-AG54	07/18/94	

RIN: 0648–AE63

955. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

CFR Citation: 50 CFR 642

Completed:

Reason	Date	FR Cite
Final Action	08/25/94	59 FR 43779
Final Action Effective	09/23/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew J. Kemmerer, 813 570-5301

RIN: 0648–AE98

956. DESIGNATED CRITICAL HABITAT; NORTHERN RIGHT WHALE

CFR Citation: 50 CFR 226

Completed:

Reason	Date	FR Cite
Final Action	06/03/94	59 FR 28793
Final Action Effective	07/05/94	59 FR 28793

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Michael Payne, 301 713-2322

RIN: 0648–AF06

957. AMENDMENT 25 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS

CFR Citation: 50 CFR 675

Completed:

Reason	Date	FR Cite
Final Action	04/20/94	59 FR 18757
Final Action Effective	05/20/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AF17

958. REGULATORY AMENDMENT—NORTHEAST REGION GENERAL FISHERIES PERMIT AND REPORTING PROCEDURES

CFR Citation: 50 CFR 622; 50 CFR 625; 50 CFR 628; 50 CFR 649 to 652; 50 CFR 655

Completed:

Reason	Date	FR Cite
Withdrawn	08/31/94	59 FR 44959

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., 508 281-9200

RIN: 0648–AF33

959. AMENDMENT 5 TO THE FMP FOR AMERICAN LOBSTER

CFR Citation: 50 CFR 649

Completed:

Reason	Date	FR Cite
Final Action	06/22/94	59 FR 31938
Final Action Effective	07/20/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., 508 281-9200

RIN: 0648–AF39

960. REGULATORY AMENDMENT TO THE DOMESTIC GROUNDFISH OBSERVER PROGRAM

CFR Citation: 50 CFR 672; 50 CFR 675

Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22133
Final Action Effective	07/01/94	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AF54

961. 1994 MANAGEMENT MEASURES FOR COMMERCIAL, RECREATIONAL, AND TREATY INDIAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

CFR Citation: 50 CFR 661

Completed:

Reason	Date	FR Cite
Final Action	05/04/94	59 FR 22999
Final Action Effective	05/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AF61

962. REGULATORY AMENDMENT FOR ATLANTIC SHARKS TO ENHANCE DATA COLLECTION, MANAGEMENT, AND ENFORCEMENT

CFR Citation: 50 CFR 678

Completed:

Reason	Date	FR Cite
Merged with RIN 0648-AD12	07/20/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard H. Schaefer, 301 713-2334

RIN: 0648–AF63

963. REGULATORY AMENDMENT TO PLACE RESTRICTIONS ON VESSELS AND PROCESSORS AFFILIATED WITH DONUT HOLE OPERATIONS

CFR Citation: 50 CFR 675

Completed:

Reason	Date	FR Cite
Merged with RIN 0648-AG85	08/15/93	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AF65

964. REGULATORY AMENDMENT ON TOTAL WEIGHT MEASUREMENTS FOR THE BERING SEA AND ALEUTIAN ISLANDS AREA COMMUNITY DEVELOPMENT QUOTA FISHERIES

CFR Citation: 50 CFR 675

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Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	05/16/94	59 FR 25346
Final Action Effective	06/15/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AF66

965. REGULATORY AMENDMENT TO ESTABLISH PERMIT CONSOLIDATION PROCEDURES UNDER THE PACIFIC COAST GROUNDFISH FMP LIMITED ENTRY PROGRAM

CFR Citation: 50 CFR 663

Completed:

Reason	Date	FR Cite
Final Action	04/14/94	59 FR 17726
Final Action Effective	04/08/94	59 FR 17726

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AF76

966. AMENDMENT 7 TO THE FMP FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

CFR Citation: 50 CFR 641

Completed:

Reason	Date	FR Cite
Final Action	02/11/94	59 FR 6588
Final Action Effective	02/07/94	59 FR 6586

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Andrew J. Kemmerer, 813 570-5301

RIN: 0648–AF84

967. AUTOMATED BROKER INTERFACE SYSTEM IN LIEU OF THE PAPER NOAA FORM 370 FOR ENTRY OF CERTAIN FISH PRODUCTS

CFR Citation: 50 CFR 216.24

Completed:

Reason	Date	FR Cite
Final Action	04/06/94	59 FR 16144
Final Action Effective	05/06/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, 310 980-4001

RIN: 0648–AF92

968. REGULATORY AMENDMENT TO ESTABLISH THE 1994-96 ALLOCATION OF PACIFIC WHITING

CFR Citation: 50 CFR 663

Completed:

Reason	Date	FR Cite
Final Action	04/13/94	59 FR 17491
Final Action Effective	04/08/94	59 FR 17491

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AF95

969. IMPLEMENTATION OF A MANDATORY OBSERVER PROGRAM FOR THE HAWAII-BASED LONGLINE FISHERY (PELAGIC FISHERIES OF THE WESTERN PACIFIC)

CFR Citation: 50 CFR 685

Completed:

Reason	Date	FR Cite
Final Action	04/19/94	59 FR 18499
Final Action Effective	04/23/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, 310 980-4001

RIN: 0648–AF97

970. ESTABLISH PILOT PROGRAM TO ALLOW RETENTION OF UNDERSIZED SWORDFISH FOR DONATION TO NEEDY

Completed:

Reason	Date	FR Cite
Withdrawn - Duplicate of RIN 0648-AF42	07/20/94	

RIN: 0648–AF99

971. AMENDMENT 6 TO THE FISHERY MANAGEMENT PLAN FOR THE SUMMER FLOUNDER FISHERY

CFR Citation: 50 CFR 625

Completed:

Reason	Date	FR Cite
Final Action	06/03/94	59 FR 28809
Final Action Effective	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., 508 281-9200

RIN: 0648–AG00

972. REGULATORY AMENDMENT TO MODIFY THE PROCESS FOR ANNOUNCING ANNUAL QUOTAS UNDER THE NORTHERN ANCHOVY FISHERY MANAGEMENT PLAN

CFR Citation: 50 CFR 662

Completed:

Reason	Date	FR Cite
Final Action	04/21/94	59 FR 18977
Final Action Effective	04/20/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, 310 980-4001

RIN: 0648–AG03

973. DEFINITION OF "IMPORT" AS IT PERTAINS TO THE REGULATIONS RESTRICTING EXPORTS TO THE UNITED STATES OF YELLOWFIN TUNA AND CERTAIN OTHER FISH AND FISH PRODUCTS

CFR Citation: 50 CFR 216.3; 50 CFR 216.24(e)(1)(ii)

Completed:

Reason	Date	FR Cite
Final Action	07/14/94	59 FR 35864

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, 310 980-4001

RIN: 0648–AG07

974. REGULATORY AMENDMENT TO CLARIFY PERMITS, EXEMPTED GEAR, TRIP LIMITS, CALCULATION OF ALLOCATIONS, AND SABLEFISH REGULAR SEASON IN THE PACIFIC COAST GROUNDFISH LIMITED ENTRY FISHERY

CFR Citation: 50 CFR 663

Completed:

Reason	Date	FR Cite
Final Action	01/06/94	59 FR 698
Final Action Effective	01/01/94	59 FR 698

Small Entities Affected: Businesses

Government Levels Affected: Federal

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Completed Actions

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AG08

975. CONSERVATION MEASURES FOR PACIFIC HALIBUT AND 1994 CATCH SHARING PLAN

CFR Citation: 50 CFR 301

Completed:

Reason	Date	FR Cite
Final Action	05/02/94	59 FR 22522
Final Action Effective	05/01/94	

Small Entities Affected: Businesses

Government Levels Affected: Tribal, Federal

Agency Contact: William Stelle, 206 526-6150

RIN: 0648–AG09

976. IMPLEMENTING A CLARIFICATION TO A PORTION OF AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE SUMMER FLOUNDER FISHERY

CFR Citation: 50 CFR 625

Completed:

Reason	Date	FR Cite
Final Action	03/15/94	59 FR 11934
Final Action Effective	04/13/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., 508 281-9200

RIN: 0648–AG10

977. AMENDMENT 6 (SECRETARIAL AMENDMENT) TO THE FISHERY MANAGEMENT PLAN FOR NORTHEAST MULTISPECIES FISHERY

CFR Citation: 50 CFR 651

Completed:

Reason	Date	FR Cite
Final Action	06/22/94	59 FR 32134
Final Action Effective	06/30/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., 508 281-9250

RIN: 0648–AG18

978. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE COMMERCIAL KING AND TANNER CRAB FISHERIES

CFR Citation: 50 CFR 671

Completed:

Reason	Date	FR Cite
Final Action	06/01/94	59 FR 28276
Final Action Effective	06/27/94	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG20

979. DETERMINATIONS AND APPEALS FOR LIMITED ACCESS MANAGEMENT OF PACIFIC HALIBUT AND SABLEFISH IN AND OFF ALASKA

CFR Citation: 50 CFR 677

Completed:

Reason	Date	FR Cite
Final Action	06/01/94	59 FR 28281
Final Action Effective	07/01/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG21

980. FMP AMENDMENTS TO RAISE CDQ ALLOCATION LIMIT FROM 12 TO 33 PERCENT

CFR Citation: 50 CFR 676

Completed:

Reason	Date	FR Cite
Final Action	08/24/94	59 FR 43502
Final Action Effective	09/23/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG22

981. AMENDMENT 10 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

CFR Citation: 50 CFR 641.

Completed:

Reason	Date	FR Cite
Withdrawn by Gulf of Mexico Fishery Management Council.	07/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Andrew J. Kemmerer, 813 570-5301

RIN: 0648–AG24

982. AMENDMENT 9 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

CFR Citation: 50 CFR 641

Completed:

Reason	Date	FR Cite
Final Action	08/02/94	59 FR 39301
Final Action Effective	07/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Andrew J. Kemmerer, 813 570-5301

RIN: 0648–AG28

983. TAKING AND IMPORTING OF MARINE MAMMALS: DOLPHIN-SAFE REQUIREMENT FOR THE U.S. MARKET AS OF JUNE 1, 1994

CFR Citation: 50 CFR 216; 50 CFR 247

Completed:

Reason	Date	FR Cite
Final Action	06/13/94	59 FR 30305
Final Action Effective	06/02/94	59 FR 30305

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rodney McInnis, 301 980-4001

RIN: 0648–AG34

984. REGULATORY AMENDMENT FOR AREA 4B HALIBUT SET-ASIDE AND TRIP LIMIT

CFR Citation: 50 CFR 301

Completed:

Reason	Date	FR Cite
Final Action	05/26/94	59 FR 27241
Final Action Effective	06/06/94	

Small Entities Affected: Businesses

Government Levels Affected: None

DOC—NOAA

Completed Actions

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG39

985. REGULATORY AMENDMENT TO REDUCE LIKELIHOOD OF PREMATURE FISHERY CLOSURES IN THE GULF OF ALASKA GROUNDFISH FISHERIES

CFR Citation: 50 CFR 672; 50 CFR 675

Completed:

Reason	Date	FR Cite
Final Action	07/27/94	59 FR 38132
Final Action Effective	08/09/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG43

986. TOTAL ALLOWABLE CATCH DETERMINATION FOR ATLANTIC SWORDFISH FOR 1994

CFR Citation: 50 CFR 630

Completed:

Reason	Date	FR Cite
Withdrawn based on annual stock assessment; no quota adjustment needed	07/10/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard H. Schaefer, 301 713-2334

RIN: 0648–AG47

987. REGULATORY AMENDMENT TO RESTRICT USE OF CATCHER VESSEL QUOTA SHARES BY SOLELY OWNED CORPORATIONS

CFR Citation: 50 CFR 676

Completed:

Reason	Date	FR Cite
Merged with RIN 0648-AE79	08/05/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG48

988. REGULATORY AMENDMENT TO INCREASE OBSERVER COVERAGE IN BERING SEA AREA 517 AND THE CATCHER VESSEL OPERATIONAL AREA

CFR Citation: 50 CFR 675

Completed:

Reason	Date	FR Cite
Accomplished Without Rulemaking	07/18/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Steven Pennoyer, 907 586-7228

RIN: 0648–AG52

989. • PACIFIC COAST GROUNDFISH LIMITED-ENTRY FISHERY; FINAL RULE TO EXTEND FOR 15 DAYS THE CURRENT 3-MONTH SUSPENSION OF THE VESSEL SIZE ENDORSEMENT REQUIREMENT

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 663

Legal Deadline: None

Abstract: This final rule would extend for 15 days the current 3-month suspension of the vessel size endorsement requirement for vessels operating in the limited-entry fishery for Pacific groundfish off Washington, Oregon, and California.

Timetable:

Action	Date	FR Cite
Final Action Effective	03/31/94	59 FR 15345
Final Action	04/01/94	59 FR 15345

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: William Stelle, Director, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, 206 526-6150

RIN: 0648–AG60

990. • PROPOSED RULE AND SUBSIDENCE HARVEST ESTIMATE FOR THE 1994 FUR SEAL HARVEST ON THE PRIBILOF ISLANDS

Legal Authority: 16 USC 1151; 16 USC 1361

CFR Citation: 50 CFR 215

Legal Deadline: NPRM, Statutory.

By April 1 of each year, the Assistant Administrator will publish a summary of previous year's harvest and proposed estimates for that year's harvest.

Abstract: NMFS is proposing that the number of fur seals to be taken for subsistence purposes on the Pribilof Islands, Alaska, be the same in 1994 as in 1992 and 1993: 281-500 fur seals for St. George Island and 1,645-2,000 for St. Paul Island, Pribilofs. NMFS also proposes that these estimates be applicable for a 3-year period, beginning in 1994. This is a proposed amendment to section 215.32 of the Fur Seal Act.

Timetable:

Action	Date	FR Cite
NPRM	05/13/94	59 FR 25024
NPRM Comment Period End	06/13/94	59 FR 25024
Final Action	07/12/94	59 FR 35471
Final Action Effective	07/12/94	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2322

RIN: 0648–AG61

991. • SHORT-TERM AREA RESTRICTIONS TO SHRIMPING FROM CAPE CANAVERAL, FL, TO THE VIRGINIA-NORTH CAROLINA BORDER TO PROTECT LEATHERBACK SEA TURTLES

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 217; 50 CFR 227

Legal Deadline: None

Abstract: NMFS issued a temporary restriction that established waters from Cape Canaveral, Florida, to the North Carolina-Virginia border as a conservation zone and notified shrimpers that short-term area closures may have been necessary if high numbers of leatherback turtles were observed in the area.

Timetable:

Action	Date	FR Cite
Final Action Effective	06/03/94	
Final Action	06/08/94	59 FR 29545

Small Entities Affected: None

Government Levels Affected: None

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Agency Contact: Margaret Lorenz, Marine Resource Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2322

RIN: 0648–AG62

992. • IMPLEMENTATION OF FRAMEWORK ADJUSTMENT 1 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: Framework #1 to the FMP for the NE Multispecies fishery changes the beginning date of given fishing year to May 1, and the ending date to April 30 of the following year. This action was primarily taken to ensure the first year of implementation of the days-at-sea program was administered over a full 12-month period rather than less than twelve months.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/01/94	
Final Action	05/03/94	59 FR 22760

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Regional Director, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AG64

993. • REVISION TO AMENDMENT 5 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: This revised portion of Amendment 5 to the FMP exempts fishermen from certain provisions in the FMP related to the winter flounder fishery under certain conditions when fishing in state waters.

Timetable:

Action	Date	FR Cite
NPRM	05/13/94	59 FR 25026
Withdrawn	08/13/94	59 FR 40510

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Regional Director, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AG66

994. • EMERGENCY RULE TO PROHIBIT THE TAKING OF LIVE ROCK IN THE EXCLUSIVE ECONOMIC ZONE OFF THE SOUTHERN ATLANTIC STATES

Legal Authority: 18 USC 1801 et seq

CFR Citation: 50 CFR 638

Legal Deadline: None

Abstract: The emergency rule prohibits all taking of live rock in the exclusive economic zone (EEZ) off the southern Atlantic States from the NC/VA boundary to the Dade/Broward County in Florida; prohibits chipping of live rock in the EEZ from the Dade/Broward County line to the Atlantic/Gulf of Mexico boundary; and limits the harvest of live rock from the EEZ off the southern Atlantic States in 1994 to 485,000 lb.

Timetable:

Action	Date	FR Cite
Final Action	06/27/94	59 FR 32938
Final Action Effective	06/27/94	59 FR 32938

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AG68

995. • USE OF LIMITED TOW TIMES IN LIEU OF TURTLE EXCLUDER DEVICES IN A RESTRICTED AREA OFF NORTH CAROLINA

Legal Authority: 16 USC 1531 et seq Endangered Species Act

CFR Citation: 50 CFR 227

Legal Deadline: None

Abstract: NMFS has amended the regulations protecting sea turtles to allow compliance with tow-time limits as an alternative to the use of turtle excluder devices (TEDs) by shrimp trawlers in a 30-square mile (48.3 sq. km) area off the coast of North Carolina through November 30, 1994. This area seasonally exhibits high concentrations of red and brown algae that make trawling with TEDs impractical. This final rule authorizes a 30-minute tow limit through August 15, 1994; a 55-minute tow limit from August 16 through October 31, 1994; and a 75-minute tow limit from November 1 through November 30, 1994 to allow shrimp trawlers to harvest shrimp efficiently during their traditional shrimping season (March through November) and maintain adequate protection for sea turtles in this area.

Timetable:

Action	Date	FR Cite
Final Action Effective	06/27/94	
Final Action	06/30/94	59 FR 33697

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Heather Weiner, Endangered Species Division, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910-3226, 301 713-2319

RIN: 0648–AG69

996. • EMERGENCY INTERIM RULE TO LIMIT CHUM SALMON BYCATCH IN THE BSAI MANAGEMENT AREA DURING THE 1994 POLLOCK NON-ROE SEASON

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 675

Legal Deadline: None

Abstract: The emergency action involves three management measures: (1) an area closure that would be implemented when the 1994 non-chinook salmon bycatch in the catcher vessel operational area reaches 42,000 fish; (2) additional observer coverage on motherships receiving groundfish caught in the catcher vessel operational area and (3) requirements for electronic communication observer coverage shoreside processors that receive groundfish harvested from the catcher vessel operation area.

Timetable:

Action	Date	FR Cite
Final Action	07/12/94	59 FR 35476
Final Action Effective	08/15/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Emergency Interim Rule effective 08/15/94 through 11/12/94.

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AG72

997. • FINAL RULE TO IMPLEMENT MEASURES IN FRAMEWORK 1 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 650

Legal Deadline: None

Abstract: This rule implements measures contained in framework Adjustment 1 to the Atlantic Sea Scallop Fishery Management Plan. It adjusts the maximum crew size, redesignates the fishing year for sea scallops to begin on March 1 each year, and refines existing gear requirements.

Timetable:

Action	Date	FR Cite
Final Action	07/19/94	59 FR 36720
Final Action Effective	08/17/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AG83

998. • FRAMEWORK ADJUSTMENT 3 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: This final rule implements Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan. This rule limits the amount of regulated species allowed on board vessels fishing with small mesh to either 500lb (226.8kg) or 10 percent of weight of non-regulated species, whichever is less.

Timetable:

Action	Date	FR Cite
Final Action	07/19/94	59 FR 36725
Final Action Effective	08/17/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AG84

999. • REGULATORY AMENDMENT TO COUNCIL GUIDELINES ON CONDUCT OF MEETINGS (VOTING PROCEDURES)

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 605

Legal Deadline: None

Abstract: This regulatory amendment revises existing guidelines governing voting procedures of the Regional Fishery Management Councils established by the Magnuson Fishery Conservation and Management Act. The intent is to ensure that NMFS understands the fishery management measures in motions on which the Councils vote to request action by the Secretary of Commerce and to ensure that the exact Council vote on emergency actions becomes part of the record or minutes of the meeting.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/27/93	58 FR 50288
Final Action	08/01/94	59 FR 38942
Final Action Effective	08/01/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Richard H. Schaefer, Director, Office of Fisheries, Conservation and Management, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy, Silver Spring, MD 20910, 301 713-2334

RIN: 0648–AG91

1000. • FINAL RULE TO IMPLEMENT MEASURES IN FRAMEWORK 4 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: This rule implemented a series of time and area closures for sink gillnet gear to reduce bycatch of harbor porpoise in the multispecies fishery. These measures replace blocks of time each month during which all sink gillnets would be required to be removed from the water.

Timetable:

Action	Date	FR Cite
Final Action Effective	06/20/94	
Final Action	06/25/94	59 FR 26972

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH08

1001. • EMERGENCY INTERIM RULE TO DESIGNATE SEPARATE TRAWL FISHING CATEGORIES IN THE GOA AND CHANGE DIRECTED FISHING STANDARDS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672; 50 CFR 675

Legal Deadline: None

Abstract: Management measures were implemented to prevent overfishing of GOA Thronyhead rockfish and Pacific ocean perch and to limit unnecessarily high bycatch amounts of these rockfish species and Pacific halibut in the GOA trawl fisheries in a manner that will reduce the likelihood of premature fishery closures.

Timetable:

Action	Date	FR Cite
Final Action Effective	02/07/94	
Final Action	02/10/94	59 FR 6222

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Action was an emergency interim rule effective 02/07/94 through 05/11/94. Comments were invited on this action until

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02/25/94. Emergency interim rule extended through 08/09/94 (59 FR 24965).

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99807, 907 586-7228

RIN: 0648–AH12

1002. • TECHNICAL AMENDMENT OF AMENDMENT 5 TO THE MULTISPECIES FISHERY MANAGEMENT PLAN

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: This Technical Amendment clarifies the Final Rule for Amendment 5 published on March 1, 1994. It contains clarifying definitions; a detailed description of the measurement technique for square-mesh nets; a clarification of the exemption permitting fishing for non-regulated species with midwater trawl or purse seine gear in the regulated mesh areas; clarifying language regarding a vessel's authorization to fish during the appeal process; clarifying language regarding the expiration date of dealer operator, and vessel permits; a prohibition on sale, barter, trade between parties not holding federal permits; clarification of restriction on transfer of sea of regulated species; and three corrections (including metric conversion and clearer, more detailed versions of figures 1 and 3).

Timetable:

Action	Date	FR Cite
Final Action	08/17/94	59 FR 42176

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Jr., Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH13

1003. • EMERGENCY INTERIM RULE FOR HADDOCK PROTECTION

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 651

Legal Deadline: None

Abstract: This emergency interim rule implemented: A 500-pound (226.8 Kg) possession limit for haddock for all vessels except scallop dredge vessels which were prohibited from possessing or landing haddock, a January through May closure of the area known as Closed Area II except for lobster pot and scallop dredge vessels, an expansion in size of Closed Area II and suspension of the February through May closure of the area known as Closed Area I, except for vessels using sink gillnet gear, a prohibition of the transfer of fish at sea, and a ban on pair trawling in the multispecies fishery.

Timetable:

Action	Date	FR Cite
Final Action	01/03/94	59 FR 26
Final Action Effective	01/03/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Emergency rule extended from 4/03/94 through 6/30/94 (4/04/94, 50 FR 15656)

Agency Contact: Allen E. Peterson, Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH14

1004. • EMERGENCY INTERIM RULE TO PROTECT SMALL SEA SCALLOPS

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 650

Legal Deadline: None

Abstract: This emergency rule provided alternatives to the minimum ring size required for Atlantic sea scallop dredges by Amendment 4 to the FMP. From March 4, through April 30, 1994, participants in the fishery must comply with the scallop meat count requirement and corresponding shell-height requirement or the ring-size requirement.

Timetable:

Action	Date	FR Cite
Final Action Effective	03/04/94	
Final Action	03/09/94	59 FR 11006
Correction	03/28/94	59 FR 14370

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Allen E. Peterson, Acting Director, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930, 508 281-9250

RIN: 0648–AH15

1005. • EMERGENCY RULE TO PROHIBIT THE TAKING OF LIVE ROCK IN THE EXCLUSIVE ECONOMIC ZONE OF THE GULF OF MEXICO

Legal Authority: 18 USC 1801 et seq

CFR Citation: 50 CFR 638

Legal Deadline: None

Abstract: This emergency rule prohibits the taking of live rock in the EEZ of the Gulf of Mexico from the Pasco/Hernando county line in Florida to the Alabama/Mississippi boundary; and in the Gulf EEZ off Florida south of Pasco/Hernando county line, prohibits use of power-assisted tools to break up or dislodge pieces of live rock and to establish a daily vessel harvest and possession limit for live rock of 25 5-gallon buckets.

Timetable:

Action	Date	FR Cite
Final Action	05/16/94	59 FR 25344
Final Action Effective	05/16/94	59 FR 25344

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Andrew J. Kemmerer, Director, Southeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432, 813 570-5301

RIN: 0648–AH16

1006. • EMERGENCY RULE TO AUTHORIZE ADDITIONAL HARVEST OF THE GULF OF ALASKA SABLEFISH TOTAL ALLOWABLE CATCH

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 672

Legal Deadline: None

Abstract: NMFS is reopening the sablefish hook-and-line fishery in certain areas of the Gulf of Alaska during the September 12-14, 1994, opening of the pacific halibut fishery. NMFS is also increasing the retainable bycatch amount (directed fishing standard) to 30 percent for the sablefish hook-and-line fishery in the Southeast Outside District during the same period, and is establishing authority for the Regional Director to authorize an increase in the directed fishing standard at another time during any subsequent opening of a Pacific halibut fishery.

Timetable:

Action	Date	FR Cite
Final Action	08/31/94	59 FR 44944

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Emergency rule is effective 09/12/94 thru 12/10/94

Agency Contact: Steven Pennoyer, Director, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, SE., P.O. Box 21668, Juneau, AK 99802, 907 586-7228

RIN: 0648–AH22

1007. FINAL REGULATIONS FOR THE OLYMPIC COAST NATIONAL MARINE SANCTUARY

CFR Citation: 15 CFR 925

Completed:

Reason	Date	FR Cite
Final Action	05/11/94	59 FR 24586

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, 301 713-3125

RIN: 0648–AC93

1008. AMENDMENTS TO THE NATIONAL MARINE SANCTUARY REGULATIONS TO CONFORM THEM WITH CHANGES TO THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA)

CFR Citation: 15 CFR 922; 15 CFR 924; 15 CFR 929; 15 CFR 935; 15 CFR 936; 15 CFR 937; 15 CFR 938; 15 CFR 941; 15 CFR 942; 15 CFR 943; 15 CFR 944

Completed:

Reason	Date	FR Cite
Final Action	11/18/93	58 FR 60778
Final Action Effective	11/18/93	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. Francesca Cava, 301 713-3125

RIN: 0648–AF75

1009. GUIDELINES FOR THE PROCESSING OF APPLICATIONS FOR NONDISCRETIONARY FINANCIAL ASSISTANCE FROM NOAA

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	04/28/94	59 FR 81
Final Action Effective	04/28/94	59 FR 81

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David Litton, 301 713-0942

RIN: 0648–AF59

DEPARTMENT OF COMMERCE (DOC)

National Telecommunications and Information Administration (NTIA)

Prerule Stage

1010. ESTABLISHMENT OF THE TELECOMMUNICATIONS AND INFORMATION INFRASTRUCTURE GRANT PROGRAM

Legal Authority: 47 USC 901 et seq

CFR Citation: None

Legal Deadline: None

Abstract: A new information infrastructure grant program called the Telecommunications and Information Infrastructure Assistance Program (TIIAP) was established within NTIA pursuant to The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies appropriations Act of 1994, P.L. 103-121, 107 Stat. 1175. Appropriations of $26 million were made for fiscal year 1994 to fund the planning and construction of telecommunications and information infrastructure grants under NTIA's existing grant authority. NTIA released public notice in the Federal Register announcing the availability of these funds on March 4, 1994. The TIIAP program is part of the President's plan for telecommunications infrastructure development. Under the program, matching grants will enable State and local governments and nonprofit entities to help bring the capabilities of advanced telecommunications technologies to the public. A wide range of demonstrations will be funded that provide the basis for connecting schools, libraries, health care facilities, museums, and other social and community services with interactive data, voice, and video telecommunications capabilities. There is also

Timetable:

Action	Date	FR Cite
Notice of FY 1994 Funding	03/04/94	59 FR 10562
Notice of FY 1995 Funding	01/00/95	
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: pending authorization legislation in both the House (The Telecommunications and Information Infrastructure and Public Broadcasting Facilities Assistance Act of 1993, H.P. 2639) and the Senate (The National Telecommunication and Information Administration Authorization Act of 1994, S. 1883) that would provide funding for future years for an information infrastructure grant program within NTIA. The proposed authorization would also narrow eligibility for the existing Public Telecommunications Facilities Program to public broadcasting entities. Nonbroadcast applicants, however, would be eligible to apply under the new information infrastructure grant program. Upon passage of such legislation, NTIA will take any necessary actions to conform current programs and regulations with the new statutory mandates, either through formal rulemaking or guidelines. NTIA has been appropriated $64 million for the information infrastructure grant

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program, and $2 million for the existing public broadcasting grant program for FY 1995. NTIA anticipates that notice of availability of funds will be issued January 1995, deadline for grants applications will be April 1995

Agency Contact: Dr. Charles Rush, Associate Administrator, Office of Telecommunications & Info. Applications, Department of Commerce, National Telecommunications and Information Administration, Room 4701, 14th & Constitution Avenue NW., Washington, DC 20230, 202 482-5802

RIN: 0660–AA04

DEPARTMENT OF COMMERCE (DOC)
National Telecommunications and Information Administration (NTIA)

Proposed Rule Stage

1011. IMPLEMENTATION OF THE LAND MOBILE SPECTRUM EFFICIENCY PLAN

Legal Authority: 47 USC 903(c)(3)

CFR Citation: None

Legal Deadline: None

Abstract: In FY 1995, NTIA plans the following activities to implement its land mobile spectrum efficiency plan: (1) issue a public notice regarding the procedure used to review government agency-owned and -operated land mobile communications systems to ensure selection of spectrum-efficient and cost-effective technologies; (2) publish proposed procedures to be followed by commercial vendors seeking to offer land mobile communication services on a fee-for-service basis to Federal agencies; (3) publish a final rule rechanneling government land mobile spectrum bands at 138-150.8 MHz and 406-420 MHz to 12.5/6.25 KHz, with schedules for conversion and development of allotment plans and standards where necessary; (4) issue a public notice on standards for land mobile communications systems in the 138-150.8 MHz and 406-420 MHz spectrum bands; and (5) issue a Notice of Inquiry on increased sharing of land mobile services between Federal, State and local government.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Agency Contact: Robert Mayher, Director, Office of Plans and Policies, Office of Spectrum Management, Department of Commerce, National Telecommunications and Information Administration, Room 4090, 14th & Constitution Avenue NW., Washington, DC 20230, 202 482-1139

RIN: 0660–AA07

DEPARTMENT OF COMMERCE (DOC)
National Telecommunications and Information Administration (NTIA)

Final Rule Stage

1012. TRANSFER OF SPECTRUM FROM THE FEDERAL GOVERNMENT TO THE FCC

Legal Authority: Title VI of Omnibus Budget Reconciliation Act of 1993; 47 USC 921, PL 103-66

CFR Citation: None

Legal Deadline: Other, Statutory, February 10, 1995.
Final Report on Spectrum Reallocation due on February 10, 1995.

Abstract: The Omnibus Budget Reconciliation Act of 1993 contains several provisions relating to reform of both Federal and private use of the electromagnetic spectrum. This reform includes authorization for the Federal Communications Commission (FCC) to use competitive bidding to assign radio licenses to private users, as well as reallocation of some spectrum currently used by the Federal Government to the FCC for licensing to private users. The reallocation will make more spectrum available for new technologies and services being developed by the private sector. As the agency responsible for managing use of the Federal Government's spectrum, NTIA will oversee the withdrawal of incumbent Federal users from frequencies to be reallocated. Costs may include displacement of incumbent Federal users and their relocation to different frequencies. Following its customary practice, NTIA will address such spectrum issues at the Interdepartmental Radio Advisory Committee (IRAC), which will be given the opportunity to make a recommendation on these issues, although any final decision rests with the Secretary. (cont)

Timetable:

Action	Date	FR Cite
NPRM	02/09/94	59 FR 6005
NPRM Comment Period End	05/11/94	
Final Action	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: Certain IRAC proposals and decisions are subject to public notice and comment pursuant to the National Telecommunications and Information Administration Organization Act, codified at 47 U.S.C. 901 et seq. A preliminary report and request for comments on spectrum reallocation was issued on February 10, 1994. Comments were due on May 11, 1994 and were submitted to the FCC for review.

Agency Contact: Richard D. Parlow, Associate Administrator, Office of Spectrum Management, Department of Commerce, National Telecommunications and Information Administration, Room 4099, 14th & Constitution Avenue NW., Washington, DC 20230, 202 482-1850

RIN: 0660–AA05

1013. REQUIRING PROOF OF COMPLIANCE WITH FCC LICENSING REQUIREMENTS

Legal Authority: PL 103-66, sec 600, Omnibus Budget & Reconciliation Act of 1993

CFR Citation: None

DOC—NTIA — **Final Rule Stage**

Legal Deadline: Other, Statutory, February 7, 1994.
The NTIA Manual must be revised within 90 days of enactment of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No 103-66, 107 Stat. 387 (November 9, 1993).

Abstract: The NTIA Manual of Regulations and Procedures for Radio Frequency Management is being revised to require Federal agencies to ensure that any nongovernment entity using Government facilities or radio frequencies assigned by NTIA, for nongovernment purposes, has been licensed by the Federal Communications Commission. NTIA's Manual will be revised to instruct Federal users how to include this information in their applications for frequency assignments.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William D. Gamble, Deputy Associate Administrator, Office of Spectrum Management, Department of Commerce, National Telecommunications and Information Administration, Room 4099, 14th & Constitution Avenue NW., Washington, DC 20230, 202 482-1850

RIN: 0660–AA08

DEPARTMENT OF COMMERCE (DOC)
Patent and Trademark Office (PTO)

Prerule Stage

1014. PATENT APPLICATION ELECTRONIC SUBMISSION RULES

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The Office proposes to allow patent and trademark applicants the option of submitting their applications electronically. The proposed revisions to 37 CFR 1 and 2 would set out the procedures for filing patent and trademark applications in an electronic format.

Timetable:

Action	Date	FR Cite
ANPRM	11/30/92	57 FR 56537
ANPRM Comment Period End	03/01/93	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Edward R. Kazenske, Chief of Staff, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 305-8600

RIN: 0651–AA50

1015. • REVISION OF PATENT AND TRADEMARK FEES

Legal Authority: 35 USC 41; 35 USC 1115; 35 USC 6; 35 USC 376; 35 USC 1051; 15 USC 1113; 15 USC 1.23; PL 101-508; PL 102-204

CFR Citation: 37 CFR 1.16; 37 CFR 1.17; 37 CFR 1.18; 37 CFR 1.19; 37 CFR 1.20; 37 CFR 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; 37 CFR 2.6

Legal Deadline: None

Abstract: The Patent and Trademark Office (PTO) proposes to amend its rules of practice to revise patent statutory fees and most trademark fees to reflect fluctuations in the Consumer Price Index (CPI) and other non-statutory patent fees to recover the average costs of providing the goods or services consistent with the Patent and Trademark Authorization Act of 1991 (Public Law 102-204).

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Kopson, Assistant Director, Office of Planning and Evaluation, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 305-8510

RIN: 0651–AA74

1016. • EARLY PUBLICATION OF PATENT APPLICATIONS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: Congress is considering legislation that would mandate early publication of pending patent applications, except those under secrecy order. Early publication will require printing some information about pending patent applications 18 months after the effective filing date of each patent application. The advanced notice of proposed rulemaking requests comments from the public on issues that must be addressed to implement early publication, for example, what parts of the pending application should be printed in paper form; should the public be entitled to access to the application file after publication; should the public be entitled to participate in the examination process after publication; and how should the costs of early publication be recovered?

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 305-9054

RIN: 0651–AA75

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DEPARTMENT OF COMMERCE (DOC)
Patent and Trademark Office (PTO)

Proposed Rule Stage

1017. TRADEMARK PROCEDURES

Legal Authority: 15 USC 1051 et seq

CFR Citation: 37 CFR 2.24; 37 CFR 2.85(e); 37 CFR 2.102(e); 37 CFR 2.119; 37 CFR 2.146(d); 37 CFR 2.162(e); 37 CFR 2.183; 37 CFR 2.33; 37 CFR 2.111(b); 37 CFR 2.80; 37 CFR 2.187; 37 CFR 2.189

Legal Deadline: None

Abstract: The proposed rule changes concern housekeeping changes to conform the rules to the Trademark Law Revision Act of 1988 and other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Penod End	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Lynne Beresford, Trademark Administrator, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 305-9464

RIN: 0651–AA46

1018. PATENT TERM EXTENSION APPLICATION REQUIREMENTS

Legal Authority: 35 USC 6; 35 USC 156

CFR Citation: 37 CFR 1.740; 37 CFR 1.785

Legal Deadline: None

Abstract: The regulations pertaining to applications for patent term extension are proposed to be amended to clarify requirements for eligibility and filing.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Penod End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles E. Van Horn, Deputy Assistant Commissioner for Patent and Projects, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 305-9054

RIN: 0651–AA52

1019. CHANGES IN COMPUTER PROGRAM LISTINGS FILED IN PATENT APPLICATIONS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.96

Legal Deadline: None

Abstract: Patent applications directed to computer program-related inventions often include numerous pages of computer program listings. The proposed modification in the regulations would specify a format for all computer program listings. This format would improve clarity and uniformity of the text and reduce the volume of printed pages of any patents which issue from these applications.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Penod End	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: J. Michael Thesz, Special Program Examiner, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 305-9284

RIN: 0651–AA58

1020. PROCEDURES FOR AMENDING PATENT APPLICATIONS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.121; 37 CFR 1.122; 37 CFR 1.124

Legal Deadline: None

Abstract: Amendments of patent applications are now presented in the form of instructions to change the written text at identified locations (e.g., page and line) in the application. A new practice would be adopted to require the submission of a replacement page containing the amendment. The new practice will reduce costs for the patent applicant and the Office by eliminating the need for the patent applicant to submit instructions and eliminating the need for the Office to amend the text of the application.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	
NPRM Comment Penod End	09/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, Department of Commerce, Patent and Trademark Office, Office of Assistant Commissioner for Patents, Washington, DC 20231, 703 305-9054

RIN: 0651–AA62

1021. CHANGES IN PATENT AND TRADEMARK ASSIGNMENT PRACTICE

Legal Authority: 15 USC 1060; 15 USC 1113; 15 USC 1123; 15 USC 6; 15 USC 261

CFR Citation: 37 CFR 3

Legal Deadline: None

Abstract: PTO proposes to revise its assignments practices to provide for electronic filing of assignments.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Patrick Rowe, Director, Office of Public Records, Department of Commerce, Patent and Trademark Office, Washington, DC 20231, 703 308-9743

RIN: 0651–AA64

1022. CROSS APPEALS IN PTO DISCIPLINARY PROCEEDINGS

Legal Authority: 5 USC 500; 15 USC 1123; 35 USC 6; 35 USC 31; 35 USC 32; 35 USC 41

CFR Citation: 37 CFR 10.155

Legal Deadline: None

Abstract: The Patent and Trademark Office (PTO) proposes to allow cross appeals in PTO practitioner disciplinary proceedings and thereby eliminate the need to file contingent notices of appeals.

Timetable:

Action	Date	FR Cite
NPRM	07/21/93	58 FR 38994
NPRM Comment Penod End	08/20/93	58 FR 38994

DOC—PTO

Proposed Rule Stage

Action	Date	FR Cite
Second NPRM	10/00/94	
NPRM Comment Period End	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cameron Weiffenbach, Director, Office of Enrollment and Discipline, Department of Commerce, Patent and Trademark Office, Box OED, Washington DC 20231, 703 308-5285

RIN: 0651–AA65

1023. ESTABLISHING PRIOR INVENTION TO OVERCOME CITED PATENT

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.131

Legal Deadline: None

Abstract: When an application and a patent are owned by the same party and claim the same patentable invention as defined in rule 601(n), applicant and the Office are placed in a difficult position. Applicant cannot use a rule 131 affidavit to overcome the prior art effect of the 35 USC 102(e) patent, and an interference is not normally declared by the Office between a pending application and a patent belonging to the same party. The amendment of rule 131 will permit applicant to overcome the prior art effect of the patent in these circumstances.

Timetable:

Action	Date	FR Cite
NPRM	09/30/94	59 FR 49876
NPRM Comment Period End	12/01/94	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, Department of Commerce, Patent and Trademark Office, Room 919, PK2, Washington, DC 20231, 703 305-9054

RIN: 0651–AA67

1024. CHANGES TO MAILING PROCEDURES

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.1; 37 CFR 1.5; 37 CFR 1.8; 37 CFR 1.10

Legal Deadline: None

Abstract: Currently all letters and other communications intended for the Patent and Trademark Office must be addressed to "Commissioner of Patents and Trademarks," Washington, DC 20231. The proposed rule change would require incoming mail to be addressed to specific box locations also.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jeffrey V. Nase, Director, Office of Petitions, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 305-9285

RIN: 0651–AA70

1025. • CHANGES TO PATENT INTERFERENCE PROCEDURAL RULES

Legal Authority: 35 USC 6; 35 USC 135

CFR Citation: 37 CFR subpart E

Legal Deadline: None

Abstract: The Patent and Trademark Office is proposing to amend rules relating to patent interference practice, particularly with regard to sanctions against a party, preliminary statements, preliminary motions, and taking testimony.

Timetable:

Action	Date	FR Cite
NPRM	10/03/94	59 FR 50181
NPRM Comment Period End	11/30/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Fred E. McKelvey, Chief Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231, 703 603-3336

RIN: 0651–AA71

1026. • CHANGES IN REQUIREMENTS FOR ADDRESSING TRADEMARK APPLICATIONS AND TRADEMARK-RELATED PAPERS

Legal Authority: 35 USC 6

CFR Citation: 37 CFR 1.1; 37 CFR 1.8(a)(1); 37 CFR 1.10 (b)

Legal Deadline: None

Abstract: The regulation addresses the change of address for trademark-related mail sent to the Patent and Trademark Office.

Timetable:

Action	Date	FR Cite
Notice of Change of Address	06/06/94	59 FR 29275
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lynne Beresford, Trademark Legal Administrator, Department of Commerce, Patent and Trademark Office, Office of the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, 703 305-9464

RIN: 0651–AA73

DEPARTMENT OF COMMERCE (DOC)
Patent and Trademark Office (PTO)

Final Rule Stage

1027. • REVISION OF PATENT COOPERATION TREATY PROVISIONS

Legal Authority: 5 USC 500; 35 USC 6; 35 USC 31; 35 USC 32; 35 USC 41, 35 USC 376

CFR Citation: 37 CFR 1.412; 37 CFR 1.421; 37 CFR 1.445; 37 CFR 10.9

Legal Deadline: None

Abstract: The proposed regulations provide that if an international application submitted under the Patent Cooperation Treaty is improperly filed with the United States Receiving Office, it will, under certain circumstances, be transmitted to the International Bureau of the World Intellectual Property

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DOC—PTO — **Final Rule Stage**

Organization acting as a Receiving Office. Such transmittal to the International Bureau occurs if a fee is paid and at least one applicant has indicated a residence or nationality in a PCT member country or has no residence or nationality indicated. (The proposal also provides that a person not registered to practice before the USPTO may practice before the U.S. International Searching and Preliminary Examining Authorities if that person has a right to practice before the International Bureau).

Timetable:

Action	Date	FR Cite
NPRM	06/30/94	59 FR 33707
NPRM Comment Period End	08/29/94	59 FR 33707
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Charles Pearson, PCT Legal Administrator, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Crystal Park II, Room 919, Washington, DC 20231, 703 308-6515

RIN: 0651–AA72

DEPARTMENT OF COMMERCE (DOC)
Patent and Trademark Office (PTO) — **Completed Actions**

1028. PATENT INTERFERENCE PRACTICE

CFR Citation: 37 CFR 1.11; 37 CFR 1.601; 37 CFR 1.607; 37 CFR 1.608; 37 CFR 1.632; 37 CFR 1.633; 37 CFR 1.637; 37 CFR 1.653; 37 CFR 1.656

Completed:

Reason	Date	FR Cite
Withdrawn	10/03/94	59 FR 50181

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ian Calvert, 703 603-0293

RIN: 0651–AA53

1029. PATENT INTERFERENCE PRACTICE; PATENTABILITY OF CLAIMS

CFR Citation: 37 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	10/03/94	59 FR 50181

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Fred E. McKelvey, 703 603-3336

RIN: 0651–AA66

1030. REVISION OF PATENT AND TRADEMARK FEES

CFR Citation: 37 CFR 1.16; 37 CFR 1.17; 37 CFR 1.18; 37 CFR 1.19; 37 CFR 1.20; 37 CFR 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; 37 CFR 2.6

Completed:

Reason	Date	FR Cite
Final Action	08/25/94	59 FR 43736
Final Action Effective	10/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Kopson, 703 305-8510

RIN: 0651–AA68

1031. REVISION OF CERTAIN PATENT AND TRADEMARK AUTOMATION FEES

CFR Citation: 37 CFR 1.21; 37 CFR 2.6

Completed:

Reason	Date	FR Cite
Withdrawn	08/25/94	59 FR 43736

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Kopson, 703 305-8510

RIN: 0651–AA69

DEPARTMENT OF COMMERCE (DOC)
Technology Administration (TA) — **Prerule Stage**

1032. PROMOTION OF PRIVATE SECTOR INDUSTRIAL TECHNOLOGY PARTNERSHIPS

Legal Authority: 15 USC 1512; 15 USC 3710; 15 USC 205a

CFR Citation: 15 CFR 1160 subpart A

Legal Deadline: None

Abstract: 15 CFR part 1160 subpart A will be reviewed to determine if it is consistent with existing technology policies relating to industry roadmaps.

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mark Bohannon, Chief Counsel for the Technology Administration, Department of Commerce, Technology Administration, Washington, DC 20230, 202 482-1984

RIN: 0692–AA13

1033. RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS AND COOPERATIVE AGREEMENTS

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: None

Abstract: The Under Secretary for Technology held a public meeting on October 25, 1993, to discuss the need to revise the regulation.

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Agency Contact: Jon Paugh, Acting Director, Technology Competitiveness, Department of Commerce, Technology

DOC—TA — **Prerule Stage**

Administration, Washington, DC 20230, 202 482-2100

RIN: 0692–AA14

DEPARTMENT OF COMMERCE (DOC)
Technology Administration (TA) — **Proposed Rule Stage**

1034. LICENSING OF GOVERNMENT-OWNED INVENTIONS

Legal Authority: 35 USC 208

CFR Citation: 37 CFR 404; 37 CFR 102

Legal Deadline: None

Abstract: The Department will be reviewing the patent licensing regulation in 37 CFR part 404 to see if the process for granting licenses can be expedited or improved. The Under Secretary for Technology held a public meeting on November 12, 1993, to discuss revising the licensing regulation.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Jon Paugh, Acting Director, Technology Competitiveness, Department of Commerce, Technology Administration, Room H 4418, Washington, DC 20230, 202 482-2100

RIN: 0692–AA04

1035. ADMINISTRATION OF A UNIFORM PATENT POLICY WITH RESPECT TO DOMESTIC RIGHTS IN INVENTIONS MADE BY GOVERNMENT EMPLOYEES

Legal Authority: EO 10096; EO 10930; 35 USC 207 to 208; 15 USC 3701 et seq

CFR Citation: 37 CFR 501; 37 CFR 101

Legal Deadline: None

Abstract: The Department held a public meeting on July 31, 1991, to discuss the need to revise the employee rights determination procedure.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: None

Agency Contact: Jon Paugh, Acting Director, Technology Competitiveness, Department of Commerce, Technology Administration, Room H 4418, Washington, DC 20230, 202 482-2100

RIN: 0692–AA05

DEPARTMENT OF COMMERCE (DOC)
United States Travel and Tourism Administration (USTTA) — **Final Rule Stage**

1036. GUIDELINES AND PROCEDURES TO PROVIDE FINANCIAL ASSISTANCE TO COOPERATIVE TOURISM MARKETING PROGRAMS FOR INTERNATIONAL TOURISM TRADE DEVELOPMENT

Legal Authority: 22 USC 2123; 22 USC 2123a

CFR Citation: 15 CFR 1200

Legal Deadline: None

Abstract: The USTTA has been establishing guidelines and procedures to administer the financial assistance program outlined in the Tourism Policy and Export Promotion Act of 1992. This financial assistance to Cooperative Tourism Marketing Programs for International Tourism Trade Development would support expansion and more effective investment in international tourism trade development. This would be expected to result in increased international visitation and would contribute to the economic well-being of the various States and regions of the United States. However, Public Law 103-121; the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act for FY 1994, prohibited any of the funds appropriated for USTTA to be used for this financial assistance program. For this reason, the program has not been implemented.

Timetable:

Action	Date	FR Cite
NPRM	01/22/93	58 FR 5672
NPRM Comment Period End	02/15/93	58 FR 5672
NPRM Comment Period Extended to 03/23/93	02/16/93	58 FR 8564
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Karen M. Cardran, Director, Marketing Programs, Department of Commerce, United States Travel and Tourism Administration, Room 1860, 14th and Constitution Avenue NW., Washington, DC 20230, 202 482-1904

RIN: 0644–AA02

[FR Doc. 94-22295 Filed 11-10-94; 8:45 am]
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Part V

Department of Defense

Semiannual Regulatory Agenda

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DEPARTMENT OF DEFENSE (DOD)

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

Improving Government Regulations; Regulatory Plan and Semiannual Agenda of Regulations

AGENCY: Department of Defense (DoD).

ACTION: Publication of the consolidated regulatory plan and semiannual agenda of DoD regulatory documents.

SUMMARY: The Department of Defense (DoD) is publishing this consolidated regulatory plan and semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under E.O. 12866 "Regulatory Planning and Review" and the Office of Federal Procurement Policy Act of 1988 (41 U.S.C. 402). This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under E.O. 12866, the Federal Procurement Policy Act, and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of E.O. 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

The agenda portion of this document updates the report published on April 25, 1994, and includes regulations expected to be issued and under review over the next 12 months. The procurement-related agenda items included herein will also be used by the Office of Federal Procurement Policy to publish the "Procurement Regulatory Activity Report" required by the Office of Federal Procurement Policy Act Amendments of 1988.

The next agenda is scheduled to be published in April 1995, with the next regulatory plan scheduled for October 1995. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general regulatory plan and semiannual agenda information, contact Mr. William P. Pearce, telephone 703-604-4582, or write to Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703-697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Mrs. Patricia H. Means, Directives Division, Directorate for Correspondence and Directives, Washington Headquarters Services; telephone 703-697-4111. For general information on Office of the Secretary agenda items which are procurement-related, contact Mr. Owen L. Green III, telephone 703-604-5929, or write to Defense Acquisition Regulations System, 3062 Defense Pentagon, Washington, DC 20301-3062.

For general information on Department of the Army regulations, contact Mr. Kenneth L. Denton, telephone 703-325-6277, or write to Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Room 1050, Hoffman I, Alexandria, Virginia 22331-0302.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. John F. Studt, telephone 202-272-0199, or write to Office of the Chief of Engineers, Attn: CECW-OR, Washington, DC 20314-1000.

For general information on Department of the Navy regulations, contact Ms. Alcinda P. Wenberg, telephone 703-602-6766, or write to Department of the Navy, Commander, Naval Information Systems Management Center, Crystal Gateway 2, Room 1500, 1225 Jefferson Davis Highway, Arlington, Virginia 22202-4302.

For general information on Department of the Air Force regulations, contact Ms. Patsy J. Conner, telephone 703-614-3488, or write to Department of the Air Force, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330-1610.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This consolidated regulatory plan and agenda is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of E.O. 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD Directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement Directives). The OSD agenda section contains the primary Directives under which DoD components promulgate their implementing regulations.

To ease identification and to clarify the differences among the variety of issuances reported, they are identified by their DoD internal numbering system, which denotes component level of authority and type of issuance, in addition to the required CFR number.

In addition, this agenda, although published under the reporting requirements of E.O. 12866, will continue to be the DoD single-source reporting vehicle, which will identify issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;

b. Paperwork Reduction Act;

c. Office of Federal Procurement Policy Act Amendments of 1988.

These DoD issuances, which are directly applicable under these statutes, will be identified in the agenda and their action status indicated. Generally, the reports in this agenda will contain four sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage: and (4) completed actions.

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary environmental burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in each section.

Although sensitive to the needs of the public and regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission.

For this edition of the Department of Defense's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate Sequence Number in Part II.

Note: The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 and section 3 of E.O. 12866.

Dated: August 19, 1994.

D. O. Cooke,

Director, Administration and Management.

Office of the Secretary—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1037	Production Surveillance (DAR Case 93-D003)	0790-AF13
1038	Sequence of Progress Payments (DAR Case 93-D016)	0790-AF28
1039	Small Purchase References (DAR Case 93-D015)	0790-AF57
1040	Personal Services Contracts (DAR Case 94-D302)	0790-AF76
1041	EUCOM Supplement (DAR Case 94-D001)	0790-AF77

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1042	Grants and Cooperative Agreements to State and Local Governments	0790-AF68
1043	Waiver of Non-Manufacturer Rule (DAR Case 91-055)	0790-AD55
1044	Electronic Funds Transfer (DAR Case 90-D009)	0790-AD80
1045	Overhead Should Cost Reviews (DAR Case 92-D010)	0790-AD95
1046	Personal Services Compensation (DAR Case 91-085D)	0790-AE45
1047	Demilitarization (DAR Case 92-D024)	0790-AE48
1048	Uniform Procurement Instrument Identification Numbers (PIIN) (DAR Case 92-D044)	0790-AE64
1049	Organizational Conflicts of Interest (DAR Case 92-D344)	0790-AE90
1050	Screening Threshold (DAR Case 93-D008)	0790-AF18
1051	Technical Data (DAR Case 91-312)	0790-AF29
1052	Debarment and Suspension (DAR Case 93-D018)	0790-AF31
1053	Domestic Construction Materials (DAR Case 93-D019)	0790-AF32
1054	Greatest Value Source (DAR Case 93-D020)	0790-AF39
1055	Government Supply Sources (DAR Case 94-D002)	0790-AF79

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1056	Total Quality Management (DoD Directive 5000.51)	0790-AB33
1057	Restrictions on Lobbying	0790-AC54
1058	Release of Acquisition-Related Information (DoD Directive 5230.aa)	0790-AC62
1059	Pilot Program Policy	0790-AF26
1060	Science, Mathematics, and Engineering (SME) Education	0790-AF27
1061	National Security Education Program (NSEP) Grants To Institutions Of Higher Education (DoD Directive 1025.cc)	0790-AF59
1062	Revitalizing Base Closure Communities **(Reg Plan Seq. No. 23)**	0790-AF61
1063	Revitalizing Base Closure Communities - Base Closure Community Assistance	0790-AF62
1064	Collection From Third Party Payers of Reasonable Costs of Healthcare Services	0790-AF63
1065	Revitalizing Base Closure Communities - Base Closure Community Assistance II	0790-AF64
1066	Indebtedness of Military Personnel(DoD Directive 1344.9)	0790-AF65
1067	Teacher and Teacher's Aide Placement Assistance Program	0790-AF71
1068	DLA Acquisition Regulation; Small Business and Small Disadvantaged Business Concerns	0790-AF72
1069	DLA Acquisition Regulation; Fuel Allocation Procedures	0790-AF73

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Office of the Secretary—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1070	Program To Encourage Public And Community Service Employment (DoD Instruction 1332.37)	0790-AF75
1071	Timekeeping and Labor Accounting Systems (DAR Case 91-004)	0790-AD16
1072	Valves and Machine Tools (DAR Case 91-320)	0790-AD63
1073	Acquisition of Commercial Items (DAR Case 89-316)	0790-AD79
1074	Insurance Liability to Third Parties (DAR Case 92-D015)	0790-AE00
1075	Drug-Free Workforce (DAR Case 88-083)	0790-AE40
1076	Incremental Funding, Fixed Price Contracts (DAR Case 90-037)	0790-AE42
1077	Undefinitized Contractual Actions (DAR Case 92-D033)	0790-AE55
1078	Streamlined Research and Development Procedures (Lab Demonstrations) (DAR Case 92-D034)	0790-AE56
1079	Contractor Insurance/Pension Reviews (DAR Case 92-D040)	0790-AE60
1080	Offset Administrative Costs (DAR Case 93-D004)	0790-AF14
1081	Lifeboat Survival System (DAR Case 93-D308)	0790-AF34
1082	Indian Tribal or Alaska Native Corporation (DAR Case 93-D309)	0790-AF35
1083	Aircraft Fuel Cells (DAR Case 93-D307)	0790-AF36
1084	Progress Payments (DAR Case 93-D305)	0790-AF37
1085	Part 35 Clauses (DAR Case 93-D022)	0790-AF40
1086	Services at Installations Being Closed (DAR Case 93-D323)	0790-AF42
1087	Reduction in Defense Programs (DAR Case 93-D321)	0790-AF44
1088	Redesignation of USD(A) (DAR Case 93-D320)	0790-AF45
1089	Terrorist Countries (DAR Case 93-D319)	0790-AF46
1090	Award to Foreign Controlled Contractors (DAR Case 93-D318)	0790-AF47
1091	Indirect Costs of Institutions of Higher Education (DAR Case 93-D317)	0790-AF48
1092	Small and Disadvantaged Businesses and Certain Institutions of Higher Education (DAR Case 93-D315)	0790-AF50
1093	Reflagging or Repair Work (DAR Case 93-D313)	0790-AF51
1094	Preference for Local and Small Business (DAR Case 93-D324)	0790-AF53
1095	North American Free Trade Agreement (NAFTA) (DAR Case 93-D310)	0790-AF54
1096	Javits-Wagner-O'Day Program (DAR Case 94-D305)	0790-AF78

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1097	Stars and Stripes (S&S) Newspaper and Business Operations (DoD Directive 5120.11)	0790-AF06
1098	Provision of Early Intervention Services to Infants and Toddlers With Disabilities and Their Families	0790-AF74
1099	Contract Services, Continuation of Essential Services During Crisis (DAR Case 91-071)	0790-AD44
1100	Joint Ventures (DAR Case 91-054)	0790-AD54
1101	Uniform Suspension and Debarment (DAR Case 92-D007)	0790-AD93
1102	Adequate Price Competition (DAR Case 92-D011)	0790-AD96
1103	General Accounting Office Bid Protest Regulations (DAR Case 91-006D)	0790-AE43
1104	Berry Amendment Exceptions (DAR Case 92-D020)	0790-AE46
1105	Cost Accounting Standards Definitions and References (DAR Case 92-D025)	0790-AE49
1106	Orders Under the Economy Act (DAR Case 92-D032)	0790-AE54
1107	DFARS Subpart 231.1, Editorial (DAR Case 92-D035)	0790-AE57
1108	Office of Naval Research Basic Agreements (DAR Case 92-D036)	0790-AE58
1109	Precious Metals (DAR Case 92-D039)	0790-AE59
1110	DODDS - Contracting Activity (DAR Case 92-D043)	0790-AE63
1111	Economic or Employment Report (DAR Case 92-D316)	0790-AE72
1112	Four Ton Dolly Jacks (DAR Case 92-D328)	0790-AE79
1113	Made in America Label (DAR Case 92-D329)	0790-AE80
1114	Section 1207 (DAR Case 92-D332)	0790-AE82
1115	Small Business Subcontracting Plan (DAR Case 92-D333)	0790-AE83
1116	Certificate of Competency Requirements (DAR Case 92-D334)	0790-AE84
1117	Certification of Contract Claims (DAR Case 92-D339)	0790-AE86
1118	Penalties for Unallowable Costs (DAR Case 92-D343)	0790-AE89
1119	Elimination of Ozone Depleting Substances (DAR Case 92-D354)	0790-AE96
120	Public-Private Competition (DAR Case 92-D355)	0790-AE97

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Office of the Secretary—Completed Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
1121	Overseas Severance Pay (DAR Case 92-D359)	0790-AE98
1122	Hazardous Materials on Arsenal Property (DAR Case 92-D361)	0790-AF00
1123	Antifriction Bearings (DAR Case 92-D366)	0790-AF04
1124	MIL-Standard 295A Forms (DAR Case 92-D037)	0790-AF09
1125	Ammunition and Explosives (DAR Case 93-D005)	0790-AF15
1126	Fixed Price Development Contracts (DAR Case 93-D006)	0790-AF16
1127	Government Property, DD Form 1662 (DAR Case 93-D007)	0790-AF17
1128	Designation of Paying Office (DAR Case 93-D009)	0790-AF19
1129	Distribution of Contracts (DAR Case 93-D010)	0790-AF20
1130	Audit Report Recommendations (DAR Case 93-D012)	0790-AF21
1131	SBIR Rights in Data (DAR Case 93-D301)	0790-AF22
1132	Small Business Competitiveness Demonstration Program (DAR Case 93-D302)	0790-AF23
1133	Coal and Petroleum Pitch Carbon Fiber (DAR Case 93-D303)	0790-AF24
1134	Surety Bond Waiver Reporting (DAR Case 93-D304)	0790-AF25
1135	Angolan Petroleum (DAR Case 93-D306)	0790-AF33
1136	DD Form 2222, Short Form Research Contract (Dar Case 93-D021)	0790-AF38
1137	MIL-STD-973 (DAR Case 93-D023)	0790-AF41
1138	Overseas Workload Program (DAR Case 93-D322)	0790-AF43
1139	Mentor-Protege (DAR Case 93-D316)	0790-AF49
1140	Petroleum Products (DAR Case 93-D312)	0790-AF52
1141	Ballistic Missile Defense Organization (DAR Case 93-D014)	0790-AF56
1142	Carbonyl Iron Powders (DAR Case 94-D301)	0790-AF80
1143	Economy Act (DAR Case 94-D303)	0790-AF81
1144	Cost or Pricing Data (DAR Case 94-D304)	0790-AF82

Department of the Army—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1145	Army Regulation 500-51, Emergency Employment of Army and Other Resources—Support to Civilian Law Enforcement	0702-AA23
1146	Army Regulation 27-20, The Army Claims System	0702-AA24
1147	Army Regulation 27-40, Litigation	0702-AA25
1148	Army Regulation 190-9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies	0702-AA26
1149	Restrictions Governing Operation of Unauthorized Vehicles on Fort Harrison	0702-AA27
1150	Fort Lewis Regulation 350-33	0702-AA29

Department of the Army—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1151	Fort Jackson Regulation 600-3: Prohibited Personnel Practices	0702-AA28

U.S. Army Corps of Engineers—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1152	Regulatory Programs of the Corps of Engineers, Part 325, Appendix D—Endangered Species Counterpart Regulations	0710-AA17
1153	Part 326, Enforcement; Class II Administrative Penalties	0710-AA25

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U.S. Army Corps of Engineers—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1154	Regulatory Programs of the Corps of Engineers	0710-AA30
1155	Nationwide Permit Program (New Nationwide Permits for Additional Activities)	0710-AA32
1156	Regulatory Programs of the Corps of Engineers, Wetland Delineator Certification Program	0710-AA38
1157	Regulatory Program of the Corps of Engineers—90-Day Decisions	0710-AA40
1158	Regulatory Program of the Corps of Engineers—Administrative Appeals	0710-AA41

U.S. Army Corps of Engineers—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1159	Flood Control and Agricultural Water Supply Cost-Sharing Requirements Under the Ability-to-Pay Provision	0710-AA39

Department of the Navy—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1160	Adjustments to Prices Under Shipbuilding Contracts	0703-AA34
1161	Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public (Privacy Act)	0703-AA44
1162	Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General	0703-AA45

Department of the Navy—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1163	Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public (Freedom of Information Act)	0703-AA46

Department of the Air Force—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1164	Public Affairs Policies and Procedures	0701-AA18
1165	Air Force Materiel Command Federal Acquisition Regulation Supplement; Vendor Rating System	0701-AA34
1166	Civil Aircraft Use of United States Air Force Airfields	0701-AA42

Department of the Air Force—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1167	Air Force Privacy Act Program	0701-AA30
1168	Air Force Materiel Command Contractor Performance Assessment	0701-AA33
1169	Utilization of Excess and Disposal of Surplus Real Property	0701-AA35
1170	Environmental Impact Analysis Process	0701-AA36
1171	Personnel Review Boards	0701-AA43

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Office of Assistant Secretary for Health Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1172	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Expanded Dental Coverage for Dependents of Active Duty Members of the Uniformed Services	0720-AA19
1173	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Special Health Care Delivery Programs	0720-AA21
1174	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services	0720-AA23

Office of Assistant Secretary for Health Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1175	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Supplemental Insurance Plans (DoD 6010.8-R)	0720-AA01
1176	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Program for the Handicapped (DoD 6010.8-R)	0720-AA04
1177	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Basic Program (DoD 6010.8-R)	0720-AA06
1178	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Former Spouse/Widow(er) and Federal Claims Collection Act (DoD 6010.8-R)	0720-AA07
1179	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Certified Marriage and Family Therapists (DoD 6010.8-R)	0720-AA10
1180	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Requirements for Coverage and Reimbursement of Services of Physicians in Teaching Settings (DoD 6010.8-R)	0720-AA13
1181	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage of Hospice Care for Terminally Ill CHAMPUS Beneficiaries	0720-AA18
1182	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospital Payment for Ambulatory Care	0720-AA20
1183	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Continued Health Care Benefit Program	0720-AA24

DEPARTMENT OF DEFENSE (DOD)
Office of the Secretary (OS)

Prerule Stage

1037. PRODUCTION SURVEILLANCE (DAR CASE 93-D003)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 242.110

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to replace the current three categories of production surveillance with a pre-delivery surveillance approach.

Timetable:

Action	Date	FR Cite
Case opened	02/18/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF13

1038. SEQUENCE OF PROGRESS PAYMENTS (DAR CASE 93-D016)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204; 48 CFR 242

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require that contracts include separate contract line number or subline item numbers for each discreet long line accounting classification reference number.

Timetable:

Action	Date	FR Cite
Case opened	08/17/93	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. The agency has not yet determined whether there is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon,

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Prerule Stage

Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF28

1039. SMALL PURCHASE REFERENCES (DAR CASE 93-D015)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 213

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to revise DFARS references to "small purchase limitation," "simplified purchase," and "small purchase threshold" in connection with Section 800 recommendation to raise threshold to $100,000.

Timetable:

Action	Date	FR Cite
Case opened	08/10/93	
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF57

1040. • PERSONAL SERVICES CONTRACTS (DAR CASE 94-D302)

Legal Authority: PL 103-160, Sec 712; PL 103-160, Sec 715

CFR Citation: 48 CFR 237.000

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to establish procedures for entering into personal service contracts to carry out health care responsibilities in medical treatment facilities of DoD.

Timetable:

Action	Date	FR Cite
Case opened	02/03/94	
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF76

1041. • EUCOM SUPPLEMENT (DAR CASE 94-D001)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 201

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to incorporate text and clauses from the U.S. European Command Supplement.

Timetable:

Action	Date	FR Cite
Case opened	02/03/94	
Next Action Undetermined		

Small Entities Affected: Undetermined

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. The agency has not yet determined whether there is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF77

DEPARTMENT OF DEFENSE (DOD)

Office of the Secretary (OS)

Proposed Rule Stage

1042. • GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 33

Legal Deadline: None

Abstract: In response to a recommendation by the National Performance Review, this proposed revision to the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," is issued to raise the dollar threshold for simplified procedures for small purchases (simplified acquisition threshold) by State and local grantees. The agencies' common rule provides uniform fiscal and administrative requirements applicable to all types of grants and cooperative agreements to State and local governments.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: State, Local

Agency Contact: M. Herbst, Department of Defense, Office of the Secretary, 703 614-0205

RIN: 0790–AF68

1043. WAIVER OF NON-MANUFACTURER RULE (DAR CASE 91-055)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 219.502; 48 CFR 219.7000; 48 CFR 252.219

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to apply Small Business Administration waivers to the Small

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Disadvantaged Business set aside program.

Timetable:

Action	Date	FR Cite
Case opened	08/26/91	
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD55

1044. ELECTRONIC FUNDS TRANSFER (DAR CASE 90-D009)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.910

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to reflect the Department of Defense unique requirements for use of electronic funds transfer for contract payments.

Timetable:

Action	Date	FR Cite
Case opened	05/30/90	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD80

1045. OVERHEAD SHOULD COST REVIEWS (DAR CASE 92-D010)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.810

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to provide guidance for use of overhead should cost reviews.

Timetable:

Action	Date	FR Cite
Case opened	04/02/92	
NPRM	06/17/94	59 FR 31189
NPRM Comment Period End	08/16/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD95

1046. PERSONAL SERVICES COMPENSATION (DAR CASE 91-085D)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 242.15

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to establish a DoD threshold for review of contractor compensation systems.

Timetable:

Action	Date	FR Cite
Case opened	12/02/91	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE45

1047. DEMILITARIZATION (DAR CASE 92-D024)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 245.604; 48 CFR 245.7310; 48 CFR 252.245

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to develop a clause to notify contractors of demilitarization requirements.

Timetable:

Action	Date	FR Cite
Case opened	07/23/92	
NPRM	03/16/94	59 FR 12223
NPRM Comment Period End	05/16/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE48

1048. UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS (PIIN) (DAR CASE 92-D044)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204.70

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to revise the numbering system for orders placed against another Department of Defense activity's contracts and to replace the Department of Defense activity address numbers with DOD activity address codes.

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Timetable:

Action	Date	FR Cite
Case opened	12/15/92	
NPRM	08/18/94	59 FR 42568
NPRM Comment Period End	09/19/94	
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE64

1049. ORGANIZATIONAL CONFLICTS OF INTEREST (DAR CASE 92-D344)

Legal Authority: PL 102-484, Sec 819

CFR Citation: 48 CFR 209.500; 48 CFR 252.209

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to implement section 819, PL 102-484, which revises 10 USC 2399(a) regarding contractor participation in certain phases of procurement.

Timetable:

Action	Date	FR Cite
Case opened	10/29/92	
NPRM	11/01/93	58 FR 58316
NPRM Comment Period End	01/03/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF18

1051. TECHNICAL DATA (DAR CASE 91-312)

Legal Authority: PL 102-190, Sec 807

CFR Citation: 48 CFR 227

Legal Deadline: Final, Statutory, November 1, 1992.

Abstract: Modify the Defense FAR Supplement to develop language concerning technical data.

Timetable:

Action	Date	FR Cite
Case opened	11/27/91	
NPRM	06/20/94	59 FR 31584
NPRM Comment Period End	08/19/94	
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE90

1050. SCREENING THRESHOLD (DAR CASE 93-D008)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 245.608

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to raise the threshold for items of serviceable property from $500 to $1,000 to conform with Federal Acquisition Regulation 45.606-5.

Timetable:

Action	Date	FR Cite
Case opened	06/02/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF29

1052. DEBARMENT AND SUSPENSION (DAR CASE 93-D018)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 209.405

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to list certain actions agencies may not take with contractors debarred, suspended or proposed for debarment.

Timetable:

Action	Date	FR Cite
Case opened	09/22/93	
NPRM	07/14/94	59 FR 35895
NPRM Comment Period End	09/12/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF31

1053. DOMESTIC CONSTRUCTION MATERIALS (DAR CASE 93-D019)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.202

Legal Deadline: None

DOD—OS

Proposed Rule Stage

Abstract: Modify the Defense FAR Supplement to state that the cost of a particular domestic construction material shall be considered unreasonable when it exceeds the cost of foreign material by more than 50 percent (including duty).

Timetable:

Action	Date	FR Cite
Case opened	10/15/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF32

1054. GREATEST VALUE SOURCE (DAR CASE 93-D020)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.806; 48 CFR 244.202

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to clarify DoD policy on selection of subcontractors who offer the greatest value to the Government.

Timetable:

Action	Date	FR Cite
Case opened	11/02/93	
NPRM	08/18/94	59 FR 42569
NPRM Comment Period End	10/17/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF39

1055. • GOVERNMENT SUPPLY SOURCES (DAR CASE 94-D002)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 251.102; 48 CFR 252.251

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to clarify DoD policy on contractor payments for purchases made from Government supply sources including charging interest for late payments and suspending contractor access to DoD material.

Timetable:

Action	Date	FR Cite
Case opened	06/10/94	
NPRM	08/02/94	59 FR 39316
NPRM Comment Period End	10/03/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF79

DEPARTMENT OF DEFENSE (DOD)
Office of the Secretary (OS)

Final Rule Stage

1056. TOTAL QUALITY MANAGEMENT (DOD DIRECTIVE 5000.51)

Legal Authority: EO 12637

CFR Citation: 32 CFR 281

Legal Deadline: None

Abstract: This proposed rule establishes policy and assigns responsibility for implementation of the Total Quality Management concept in the Department of Defense. The concept will be implemented both internally with the Department of Defense as well as in DoD acquisition strategies.

Timetable:

Action	Date	FR Cite
NPRM	07/19/89	54 FR 30227
NPRM Comment Period End	08/18/89	54 FR 30227
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: F. Doherty, Department of Defense, Office of the Secretary, 703 695-7915

RIN: 0790–AB33

1057. RESTRICTIONS ON LOBBYING

Legal Authority: PL 102-121; 31 USC 1352; 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 28

Legal Deadline: None

Abstract: The Department of Defense (DoD) is adopting the following interim rule establishing new restrictions on lobbying and will proceed with internal agency coordination, the results of which will be reflected in the final common rule. It is the Department of Defense's objective to establish uniform practices within the Office of the Secretary of Defense, the military departments, and the defense agencies that would be consistent with those being established by other executive departments and agencies in adopting this Governmentwide rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6737
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Local

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Final Rule Stage

Agency Contact: M. Herbst, Department of Defense, Office of the Secretary, 703 614-0205

RIN: 0790–AC54

1058. RELEASE OF ACQUISITION-RELATED INFORMATION (DOD DIRECTIVE 5230.AA)

Legal Authority: PL 101-189

CFR Citation: 32 CFR 286h

Legal Deadline: None

Abstract: This rule establishes the policy of the Department of Defense to make the maximum amount of acquisition-related information available to the public and to respond promptly to specific requests from the public.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/12/90	55 FR 28614
Interim Final Rule Comment Period End	08/13/90	55 FR 28614
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: S. Slavsky, Department of Defense, Office of the Secretary, 703 697-8335

RIN: 0790–AC62

1059. PILOT PROGRAM POLICY

Legal Authority: 10 USC 2340 note

CFR Citation: 32 CFR 2

Legal Deadline: None

Abstract: This document establishes the criteria for nominating an acquisition program as a participant in the Defense Acquisition Pilot Program, the procedures for designation under the pilot program, and the policies related to requests for statutory and regulatory relief to be granted under the pilot program.

Timetable:

Action	Date	FR Cite
NPRM	12/02/93	58 FR 63542
NPRM Comment Period End	01/31/94	58 FR 63543

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: R. Sylvester, Department of Defense, Office of the Secretary, 703 697-6399

RIN: 0790–AF26

1060. SCIENCE, MATHEMATICS, AND ENGINEERING (SME) EDUCATION

Legal Authority: 10 USC 301

CFR Citation: 32 CFR 118

Legal Deadline: None

Abstract: This document provides support to institutions of higher education through infrastructure assistance to historically black colleges and universities and minority institutions. It also defines minority institutions and establishes procedures for DoD programs and activities in Science, Mathematics, and Engineering (SME) education.

Timetable:

Action	Date	FR Cite
NPRM	12/17/93	58 FR 65956
NPRM Comment Period End	02/15/94	58 FR 65956

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: R. Herndon, Department of Defense, Office of the Secretary, 703 614-0205

RIN: 0790–AF27

1061. • NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION (DOD DIRECTIVE 1025.CC)

Legal Authority: 20 USC 1141(a)

CFR Citation: 32 CFR 206

Legal Deadline: Final, Statutory, April 5, 1994.

Abstract: The National Security Education Act provided for the National Security Education Program, the National Security Education Board, and a Trust Fund in the US Treasury to provide all resources for the program. Under the Act the Secretary is directed to carry out a program to award undergraduate scholarships, graduate fellowships, and grants to institutions of higher education. This rule is to inform those concerned with institutional grants to be offered under the 1994-1995 pilot grants program of the preliminary guidelines.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/05/94	59 FR 26116
Interim Final Rule Effective	05/19/94	59 FR 26116
Interim Final Rule Comment Period End	07/18/94	59 FR 26116

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: E. Collier, Department of Defense, Office of the Secretary, 703 696-1991

RIN: 0790–AF59

1062. • REVITALIZING BASE CLOSURE COMMUNITIES

Regulatory Plan: This entry is Seq. No. 23 in Part II of this issue of the Federal Register.

RIN: 0790–AF61

1063. • REVITALIZING BASE CLOSURE COMMUNITIES - BASE CLOSURE COMMUNITY ASSISTANCE

Legal Authority: 10 USC 2687 note

CFR Citation: 32 CFR 91

Legal Deadline: Final, Statutory, May 30, 1994.
Such guidance must be issued and effective to enable the Department of Defense to perform various acted required by law and to be accomplished prior to May 30, 1994.

Abstract: The interim final rule promulgates guidance required by section 2903 of the National Defense Authorization Act for Fiscal Year 1994, and provides interpretive guidance concerning other changes to the base realignment and closure process generated by Title XXIX of the Act. This interim final rule also establishes policy and procedure, assigns responsibilities, and delegates authority under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/06/94	59 FR 16127
Interim Final Rule Effective	04/06/94	59 FR 16127
Interim Final Rule Comment Period End	07/05/94	59 FR 16127
Public Hearing Procedures Interim Final Rule	07/18/94	59 FR 36367
Extension of Comment Period Interim Final Rule	08/05/94	59 FR 34382
Public Hearing Interim Final Rule	08/05/94	59 FR 35463
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: For a further description of this action and a related action (RIN 0790-AF61), see the Department of Defense Regulatory Plan appearing in Part II of this issue of the Federal Register.

Agency Contact: F. Savat, Department of Defense, Office of the Secretary, 703 614-5356

RIN: 0790–AF62

1064. • COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

Legal Authority: 5 USC 301; 10 USC 1095

CFR Citation: 32 CFR 220

Legal Deadline: None

Abstract: This proposed rule would replace the current method of per diem billings based on diagnostic related groups and expand the single outpatient billing category to as many as forty to fifty, and expand the billing for outpatient services to include land ambulance service, air ambulance service and hyperbaric service.

Timetable:

Action	Date	FR Cite
NPRM	04/28/94	59 FR 21949
NPRM Comment Period End	06/27/94	59 FR 21949

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Federal

Agency Contact: K. Reeals, Department of Defense, Office of the Secretary, 703 756-8910

RIN: 0790–AF63

1065. • REVITALIZING BASE CLOSURE COMMUNITIES - BASE CLOSURE COMMUNITY ASSISTANCE II

Legal Authority: 10 USC 2687 note

CFR Citation: 32 CFR 91

Legal Deadline: Final, Statutory, May 30, 1994.
Such guidance must be issued and effective to enable the Department of Defense (DoD) to perform various acts required by law and to be accomplished prior to May 30, 1994.

Abstract: The proposed amendment publishes for comment the guidance required by section 2908 of the National Defense Authorization Act for Fiscal Year 1994. Section 2908 of the Act provides authority for the Secretary of Defense to transfer real property or facilities available as a result of a base closure, to persons paying the cost of environmental restoration activities on the property.

Timetable:

Action	Date	FR Cite
NPRM	04/06/94	59 FR 16157
NPRM Comment Period End	07/05/94	59 FR 16157
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: F. Savat, Department of Defense, Office of the Secretary, 703 614-5356

RIN: 0790–AF64

1066. • INDEBTEDNESS OF MILITARY PERSONNEL(DOD DIRECTIVE 1344.9)

Legal Authority: PL 103-94; 10 USC 113(d)

CFR Citation: 32 CFR 50

Legal Deadline: None

Abstract: In order to comply with Public Law the Hatch Act Reform Amendments of 1994, the Department of Defense is in the process of promulgating a regulation with regard to members of the Armed Forces which includes provisions for the involuntary allotment of the pay of a member of the Armed Forces for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authorities, as appropriate, to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	04/26/94	59 FR 21713
NPRM Comment Period End	06/27/94	59 FR 21713

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: A. Cook, Department of Defense, Office of the Secretary, 703 697-3387

RIN: 0790–AF65

1067. • TEACHER AND TEACHER'S AIDE PLACEMENT ASSISTANCE PROGRAM

Legal Authority: 10 USC 1151; 10 USC 1598; 10 USC 2410c

CFR Citation: 32 CFR 254

Legal Deadline: None

Abstract: This program provides stipends to Service members and eligible individuals losing Defense jobs and provides grants to local educational agencies who hire separated military members, terminated Department of Defense and Department of Energy employees, and displaced defense contractor scientists and engineers as teachers and teacher aides. The intent of this program is to relieve shortages of elementary and secondary school teachers and teacher's aides through placement of qualified separating military, Department of Defense and Department of Energy employees, and displaced contractor employees in schools that serve a concentration of children from low-income families.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/94	59 FR 7213
Interim Final Rule Effective	02/22/94	59 FR 7213
Interim Final Rule Comment Period End	04/18/94	59 FR 7213

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

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Final Rule Stage

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Agency Contact: O. Thomas, Department of Defense, Office of the Secretary, 703 696-4384

RIN: 0790–AF71

1068. • DLA ACQUISITION REGULATION; SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Legal Authority: 5 USC 301; 10 USC 2202; 48 CFR 1, subpart 1.3; 48 CFR 201, subpart 201.3

CFR Citation: 48 CFR 5419; 48 CFR 5452

Legal Deadline: None

Abstract: The Defense Logistics Agency (DLA) proposes to establish a new 48 CFR Chapter 54 to contain DLA acquisition regulations. New parts 5419 and 5452 provide regulatory coverage which incorporates two nonstandard clauses in domestic bulk petroleum solicitations and contracts concerning small business set asides and evaluation preference for Small Disadvantaged Business concerns into DLAR on a permanent basis. The proposed coverage supplements the contract quality requirements of the Defense Federal Acquisition Regulation Supplement (DFARS) by adding prescriptive language and contract clauses to satisfy the specific needs of DLA.

Timetable:

Action	Date	FR Cite
NPRM	04/28/94	59 FR 21954
NPRM Comment Period End	06/27/94	59 FR 21954

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: M. Reardon, Department of Defense, Office of the Secretary, 703 274-6431

RIN: 0790–AF72

1069. • DLA ACQUISITION REGULATION; FUEL ALLOCATION PROCEDURES

Legal Authority: 5 USC 301; 10 USC 2202; 48 CFR 1, subpart 1.3; 48 CFR 201, subpart 201.3

CFR Citation: 48 CFR 5452

Legal Deadline: None

Abstract: The Defense Logistics Agency proposes to add coverage to 48 CFR Chapter 54. The proposed changes affect regulations on Solicitation Provisions and Contract Clauses. The proposed changes implement and supplement the Federal Acquisition Regulation 49.504(a)(1) which requires the use of FAR Default Clause 52.249-8. The changes are required in order to incorporate three nonstandard clauses in bulk, bunkers, intoplane, and posts, camps, and stations petroleum solicitations and contracts concerning fuel allocations procedures. These fuel allocation clauses permit DFSC contractors to supply less than the full amount of fuel contracted by the government, without being terminated for default, during periods of exceptional fuel shortages.

Timetable:

Action	Date	FR Cite
NPRM	04/28/94	59 FR 21956
NPRM Comment Period End	06/27/94	59 FR 21956

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: M. Reardon, Department of Defense, Office of the Secretary, 703 274-6431

RIN: 0790–AF73

1070. • PROGRAM TO ENCOURAGE PUBLIC AND COMMUNITY SERVICE EMPLOYMENT (DOD INSTRUCTION 1332.37)

Legal Authority: 10 USC 1143(c)

CFR Citation: 32 CFR 77

Legal Deadline: None

Abstract: The proposed rule would establish guidelines for the registration of public and community service organizations and a listing of separating DoD personnel and their spouses to be maintained by the DoD. The purpose of the public and community service organizational registry is to provide an avenue for public and community service organizations to recruit highly skilled and experienced separating DoD personnel and their spouses.

Timetable:

Action	Date	FR Cite
NPRM	04/04/94	59 FR 15673
NPRM Comment Period End	06/03/94	59 FR 15673

Next Action Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: D. Witkowski, Department of Defense, Office of the Secretary, 703 695-1636

RIN: 0790–AF75

1071. TIMEKEEPING AND LABOR ACCOUNTING SYSTEMS (DAR CASE 91-004)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 209; 48 CFR 242

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to add general standard of responsibility for prospective contractors to have sufficient internal accounting controls.

Timetable:

Action	Date	FR Cite
Case opened	02/18/91	
NPRM	06/10/91	56 FR 26645
NPRM Comment Period End	08/11/91	
NPRM	09/24/93	58 FR 49938
NPRM Comment Period End	11/26/93	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD16

DOD—OS

Final Rule Stage

1072. VALVES AND MACHINE TOOLS (DAR CASE 91-320)

Legal Authority: PL 102-190, Sec 834

CFR Citation: 48 CFR 225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to extend the restriction on foreign purchases of valves and machine tools through fiscal year 1996.

Timetable:

Action	Date	FR Cite
Case opened	11/27/91	
Interim Final Rule	04/23/92	57 FR 14988
NPRM	09/08/93	58 FR 47243
NPRM Comment Period End	10/08/93	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD63

1073. ACQUISITION OF COMMERCIAL ITEMS (DAR CASE 89-316)

Legal Authority: PL 101-189, Sec 824

CFR Citation: 48 CFR 211.70

Legal Deadline: NPRM, Statutory, May 28, 1990. Final, Statutory, August 26, 1990.

Abstract: Modify the Defense FAR Supplement to require development of a simplified uniform contract for acquisition of commercial items.

Timetable:

Action	Date	FR Cite
Case opened	12/06/89	
NPRM	07/11/90	55 FR 28514
NPRM Comment Period End	08/27/90	
Interim Final Rule	11/27/91	56 FR 60066

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AD79

1074. INSURANCE LIABILITY TO THIRD PARTIES (DAR CASE 92-D015)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 228.322

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to remove out-dated language.

Timetable:

Action	Date	FR Cite
Case opened	05/06/92	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE00

1075. DRUG-FREE WORKFORCE (DAR CASE 88-083)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 223

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require contractors to maintain a drug-free workforce.

Timetable:

Action	Date	FR Cite
Case opened	06/14/88	
Interim Final Rule	09/28/88	53 FR 37763
Final Rule	12/30/91	56 FR 67209
NPRM	07/23/92	57 FR 32769
Interim Final Rule	07/23/92	57 FR 32736
NPRM Comment Period End	09/21/92	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE40

1076. INCREMENTAL FUNDING, FIXED PRICE CONTRACTS (DAR CASE 90-037)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.7; 48 CFR 252.232

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to permit the use of incremental funding of fixed-price contracts under certain situations.

Timetable:

Action	Date	FR Cite
Case opened	09/26/90	
Interim Final Rule	09/01/93	58 FR 46091

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of the

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Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE42

1077. UNDEFINITIZED CONTRACTUAL ACTIONS (DAR CASE 92-D033)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 217.740

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to clarify the limitations on obligation and expenditure of funds for undefinitized contractual actions.

Timetable:

Action	Date	FR Cite
Case opened	10/26/92	
NPRM	11/01/93	58 FR 58317
NPRM Comment Period End	01/03/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE55

1078. STREAMLINED RESEARCH AND DEVELOPMENT PROCEDURES (LAB DEMONSTRATIONS) (DAR CASE 92-D034)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 235

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to develop streamlined procedures for research and development procurements of $10 million or less.

Timetable:

Action	Date	FR Cite
Case opened	10/26/92	
NPRM	11/03/93	58 FR 58873
NPRM Comment Period End	01/03/94	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE56

1079. CONTRACTOR INSURANCE/PENSION REVIEWS (DAR CASE 92-D040)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 242.730

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to raise the threshold for conducting Contractor Insurance/Pension Reviews from $10 million to $40 million when other than sealed bid procedures are used.

Timetable:

Action	Date	FR Cite
Case opened	11/25/92	
NPRM	09/24/93	58 FR 49960
NPRM Comment Period End	11/26/93	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AE60

1080. OFFSET ADMINISTRATIVE COSTS (DAR CASE 93-D004)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to comply with revisions to Defense Security Assistance Agency policy.

Timetable:

Action	Date	FR Cite
Case opened	04/21/93	

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF14

1081. LIFEBOAT SURVIVAL SYSTEM (DAR CASE 93-D308)

Legal Authority: PL 103-139, Sec 8124

CFR Citation: 48 CFR 225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require that 50% or more of the labor in the manufacture and assembly be performed in the United States for a totally enclosed lifeboat survival system which consists of the lifeboat and associated davits and winches .

Timetable:

Action	Date	FR Cite
Case opened	12/01/93	
Interim Final Rule	04/22/94	59 FR 19145

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

DOD—OS

Final Rule Stage

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF34

1082. INDIAN TRIBAL OR ALASKA NATIVE CORPORATION (DAR CASE 93-D309)

Legal Authority: PL 103-139, Sec 8051

CFR Citation: 48 CFR 219

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to provide that an Indian Tribal or Alaska Native corporation furnishing products of a small business concern shall not be denied the opportunity to be awarded a procurement solely because it is not the actual manufacturer or processor.

Timetable:

Action	Date	FR Cite
Case opened	12/01/93	
Interim Final Rule	05/13/94	59 FR 24958

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Tribal, Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF35

1083. AIRCRAFT FUEL CELLS (DAR CASE 93-D307)

Legal Authority: PL 103-139, Sec 8090

CFR Citation: 48 CFR 225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require the Department of Defense to only procure aircraft fuel cells that are produced or manufactured in the United States by a domestic-owned and domestic-operated entity.

Timetable:

Action	Date	FR Cite
Case opened	12/01/93	
Interim Final Rule	03/14/94	59 FR 11729

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF36

1084. PROGRESS PAYMENTS (DAR CASE 93-D305)

Legal Authority: PL 103-139, Sec 8155

CFR Citation: 48 CFR 232.501; 48 CFR 252.232

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to reduce the customary progress payment rate for large businesses from 85% to 75% for all solicitations issued on or after November 11, 1993.

Timetable:

Action	Date	FR Cite
Case opened	11/15/93	
Interim Final Rule	11/24/93	58 FR 62045

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF37

1085. PART 35 CLAUSES (DAR CASE 93-D022)

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 235

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to insert component level clauses in the Defense FAR Supplement.

Timetable:

Action	Date	FR Cite
Case opened	12/01/93	

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF40

1086. SERVICES AT INSTALLATIONS BEING CLOSED (DAR CASE 93-D323)

Legal Authority: PL 103-160, Sec 2907

CFR Citation: 48 CFR 237

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to provide that the Department of Defense may contract with local governments for the provision of police services, fire protection services, airfield operation services, or other community services at installations being closed.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Interim Final Rule	07/15/94	59 FR 36088

Next Action Undetermined

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DOD—OS

Final Rule Stage

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF42

1067. REDUCTION IN DEFENSE PROGRAMS (DAR CASE 93-D321)

Legal Authority: PL 103-160, Sec 1372

CFR Citation: 48 CFR 249.7003; 48 CFR 249.252

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require defense contractors upon notification of termination of or substantial reduction of a defense program to provide notice to certain employees of the termination or substantial reduction.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/16/93	58 FR 43285
Case opened	12/14/93	
Interim Final Rule	05/27/94	59 FR 27662
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Additional Information: Incorporates the interim rule from RIN 0790-AF02.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF44

1068. REDESIGNATION OF USD(A) (DAR CASE 93-D320)

Legal Authority: PL 103-160, Sec 904

CFR Citation: 48 CFR 201

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to redesignate the Office of the Under Secretary of Defense for Acquisition as Under Secretary of Defense for Acquisition and Technology.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF45

1069. TERRORIST COUNTRIES (DAR CASE 93-D319)

Legal Authority: PL 103-160, Sec 843

CFR Citation: 48 CFR 209.100; 48 CFR 252.209

Legal Deadline: Final, Statutory, February 28, 1994.

Abstract: Modify the Defense FAR Supplement to require certain contractors to report each commercial transaction which that contractor has conducted or will conduct with the government of any terrorist country.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF46

1090. AWARD TO FOREIGN CONTROLLED CONTRACTORS (DAR CASE 93-D318)

Legal Authority: PL 103-160, Sec 842; PL 102-484, Sec 836; PL 102-484, Sec 840

CFR Citation: 48 CFR 209.100; 48 CFR 225.720; 48 CFR 252.209; 48 CFR 252.225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to revise the definition of entity controlled by foreign government, and implement Sections 836 and 840 of PL 102-484, which prohibit award of certain contracts to entities owned or controlled by foreign governments.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF47

1091. INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION (DAR CASE 93-D317)

Legal Authority: PL 103-160, Sec 841

DOD—OS

Final Rule Stage

CFR Citation: 48 CFR 231

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to prohibit the Department of Defense (DOD) from placing a limitation on the amount that DOD may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for DOD under a DOD contract.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Interim Final Rule	05/19/94	59 FR 26143
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF48

1092. SMALL AND DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION (DAR CASE 93-D315)

Legal Authority: PL 103-160, Sec 811

CFR Citation: 48 CFR 219.301; 48 CFR 226.7000; 48 CFR 252.219; 48 CFR 252.226

Legal Deadline: NPRM, Statutory, December 15, 1993. Final, Statutory, March 30, 1994.

Abstract: Modify the Defense FAR Supplement to revise (1) the definition of historically black colleges and universities; (2) the definition of minority institutions; and (3) award eligibility.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Interim Final Rule	04/29/94	59 FR 22130
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF50

1093. REFLAGGING OR REPAIR WORK (DAR CASE 93-D313)

Legal Authority: PL 103-160, Sec 315

CFR Citation: 48 CFR 247

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Interim Final Rule	03/07/94	59 FR 10579
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF51

1094. PREFERENCE FOR LOCAL AND SMALL BUSINESS (DAR CASE 93-D324)

Legal Authority: PL 103-160, Sec 2912

CFR Citation: 48 CFR 219; 48 CFR 226.71

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to require the Department of Defense to give preference to small business concerns and small disadvantaged business concerns and to qualified businesses located in a vicinity of a military installation being realigned or closed.

Timetable:

Action	Date	FR Cite
Case opened	12/14/93	
Interim Final Rule	03/16/94	59 FR 12191
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, **703 604-5929**

RIN: 0790–AF53

1095. NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) (DAR CASE 93-D310)

Legal Authority: PL 103-182

CFR Citation: 48 CFR 225; 48 CFR 252.225

Legal Deadline: Final, Statutory, January 1, 1994.

Abstract: Modify the Defense FAR Supplement to implement the North American Free Trade Agreement.

Timetable:

Action	Date	FR Cite
Case opened	12/15/93	
Interim Final Rule	01/10/94	59 FR 1288
Next Action Undetermined		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Analysis: Regulatory Flexibility Analysis

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense

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Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF54

1096. • JAVITS-WAGNER-O'DAY PROGRAM (DAR CASE 94-D305)

Legal Authority: PL 100-590, Sec 133

CFR Citation: 48 CFR 253.204

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to remove the reporting requirement for actions with blind or other severely handicapped.

Timetable:

Action	Date	FR Cite
Case opened	05/03/94	
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF78

DEPARTMENT OF DEFENSE (DOD)
Office of the Secretary (OS)

Completed Actions

1097. STARS AND STRIPES (S&S) NEWSPAPER AND BUSINESS OPERATIONS (DOD DIRECTIVE 5120.11)

CFR Citation: 32 CFR 246

Completed:

Reason	Date	FR Cite
Final Action	04/22/94	59 FR 19137
Final Action Effective	10/05/94	59 FR 19137

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: R Oleszewski, 703 274-4868

RIN: 0790–AF06

1098. • PROVISION OF EARLY INTERVENTION SERVICES TO INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES

Legal Authority: 20 USC 1400 et seq; 20 USC 241; 20 USC 241 note

CFR Citation: 32 CFR 80

Legal Deadline: None

Abstract: Guidance is required for the Department of Defense (DoD) Section 6 School Arrangements and the Military Services pursuant to Section 6 of the Impact Aid Law of 1950, as amended (20 USC 241), as amended by PL 102-119, "Individuals With Disabilities Act (IDEA), Amendments of 1991." By statute, DoD must provide all substantive rights, protections and procedural safeguards, including the process procedures of IDEA, in the DoD Section 6 School Arrangements. This final rule provides guidance outlining the procedures for the provision of early intervention services for eligible children with disabilities ages birth to 2 (inclusive) and a free appropriate education and related services, for children with disabilities ages 3 to 21 (inclusive) enrolled in the DoD Section 6 School Arrangements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/06/93	58 FR 51996
Final Action	07/25/94	59 FR 37689
Final Action Effective	07/25/94	59 FR 37689

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: H. Navarez, Department of Defense, Office of the Secretary, 703 696-4373

RIN: 0790–AF74

1099. CONTRACT SERVICES, CONTINUATION OF ESSENTIAL SERVICES DURING CRISIS (DAR CASE 91-071)

CFR Citation: 48 CFR 207.105; 48 CFR 237.741; 48 CFR 252.237

Completed:

Reason	Date	FR Cite
Final Action - Case closed. No DFARS language needed.	08/05/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AD44

1100. JOINT VENTURES (DAR CASE 91-054)

CFR Citation: 48 CFR 219.001; 48 CFR 252.219

Completed:

Reason	Date	FR Cite
Final Action - Case closed. No DFARS language needed.	03/31/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AD54

1101. UNIFORM SUSPENSION AND DEBARMENT (DAR CASE 92-D007)

CFR Citation: 48 CFR 209.406

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item II	05/27/94	59 FR 37662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AD93

1102. ADEQUATE PRICE COMPETITION (DAR CASE 92-D011)

CFR Citation: 48 CFR 215.804

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item VII	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AD96

1103. GENERAL ACCOUNTING OFFICE BID PROTEST REGULATIONS (DAR CASE 91-006D)

CFR Citation: 48 CFR 233.104

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXXI	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE43

1104. BERRY AMENDMENT EXCEPTIONS (DAR CASE 92-D020)

CFR Citation: 48 CFR 225

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XX	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE46

1105. COST ACCOUNTING STANDARDS DEFINITIONS AND REFERENCES (DAR CASE 92-D025)

CFR Citation: 48 CFR 235

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item L	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE49

1106. ORDERS UNDER THE ECONOMY ACT (DAR CASE 92-D032)

CFR Citation: 48 CFR 217.500

Completed:

Reason	Date	FR Cite
Final Action - Case closed. No DFARS language needed.	02/04/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE54

1107. DFARS SUBPART 231.1, EDITORIAL (DAR CASE 92-D035)

CFR Citation: 48 CFR 231.100; 48 CFR 252.231

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXV	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE57

1108. OFFICE OF NAVAL RESEARCH BASIC AGREEMENTS (DAR CASE 92-D036)

CFR Citation: 48 CFR 235.015

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXXIV	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE58

1109. PRECIOUS METALS (DAR CASE 92-D039)

CFR Citation: 48 CFR 245.607

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXXVII	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE59

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1110. DODDS - CONTRACTING ACTIVITY (DAR CASE 92-D043)

CFR Citation: 48 CFR 202.101

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item L	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE83

1111. ECONOMIC OR EMPLOYMENT REPORT (DAR CASE 92-D316)

CFR Citation: 48 CFR 231.205

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXIX	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE72

1112. FOUR TON DOLLY JACKS (DAR CASE 92-D328)

CFR Citation: 48 CFR 225.70; 48 CFR 252.225

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXI	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE79

1113. MADE IN AMERICA LABEL (DAR CASE 92-D329)

CFR Citation: 48 CFR 209.406; 48 CFR 209.407

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item III	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE80

1114. SECTION 1207 (DAR CASE 92-D332)

CFR Citation: 48 CFR 219; 48 CFR 226; 48 CFR 252.219

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item X	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE82

1115. SMALL BUSINESS SUBCONTRACTING PLAN (DAR CASE 92-D333)

CFR Citation: 48 CFR 219.605; 48 CFR 219.104; 48 CFR 219.106; 48 CFR 219.705

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE84

1117. CERTIFICATION OF CONTRACT CLAIMS (DAR CASE 92-D339)

CFR Citation: 48 CFR 233.70; 48 CFR 252.233

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXXII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: Businesses

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE86

1118. PENALTIES FOR UNALLOWABLE COSTS (DAR CASE 92-D343)

CFR Citation: 48 CFR 231; 48 CFR 252

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXVI	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE89

1119. ELIMINATION OF OZONE DEPLETING SUBSTANCES (DAR CASE 92-D354)

CFR Citation: 48 CFR 207.105; 48 CFR 210.002

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item IV.	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE96

1120. PUBLIC-PRIVATE COMPETITION (DAR CASE 92-D355)

CFR Citation: 48 CFR 217.780

Completed:

Reason	Date	FR Cite
Final Action - Case closed. No DFARS language needed.	06/01/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE97

1121. OVERSEAS SEVERANCE PAY (DAR CASE 92-D359)

CFR Citation: 48 CFR 231.200; 48 CFR 237.100; 48 CFR 252.237

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-6, Item XXVIII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AE98

1122. HAZARDOUS MATERIALS ON ARSENAL PROPERTY (DAR CASE 92-D361)

CFR Citation: 48 CFR 223.71; 48 CFR 252.223

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XVII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF00

1123. ANTIFRICTION BEARINGS (DAR CASE 92-D366)

CFR Citation: 48 CFR 225.701; 48 CFR 225.710; 48 CFR 252.225

Completed:

Reason	Date	FR Cite
Final Action - DAC 91-06, Item XXIII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF04

1124. MIL-STANDARD 295A FORMS (DAR CASE 92-D037)

CFR Citation: 48 CFR 210.070; 48 CFR 253.000

Completed:

Reason	Date	FR Cite
Final Action DAC 91-6, Item V	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF09

1125. AMMUNITION AND EXPLOSIVES (DAR CASE 93-D005)

CFR Citation: 48 CFR 223.370; 48 CFR 252.223

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XVI	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF15

1126. FIXED PRICE DEVELOPMENT CONTRACTS (DAR CASE 93-D006)

CFR Citation: 48 CFR 235.006

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XXXIII	05/27/94	59 FR 27662
Final Action Effective 05/27/94		

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Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF16

1127. GOVERNMENT PROPERTY, DD FORM 1662 (DAR CASE 93-D007)

CFR Citation: 48 CFR 245.505; 48 CFR 252.245

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XXXVI.	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF17

1128. DESIGNATION OF PAYING OFFICE (DAR CASE 93-D009)

CFR Citation: 48 CFR 242.205

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XXXV	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF19

1129. DISTRIBUTION OF CONTRACTS (DAR CASE 93-D010)

CFR Citation: 48 CFR 204.201

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item I	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF20

1130. AUDIT REPORT RECOMMENDATIONS (DAR CASE 93-D012)

CFR Citation: 48 CFR 215.807

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item VIII	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF21

1131. SBIR RIGHTS IN DATA (DAR CASE 93-D301)

CFR Citation: 48 CFR 227.405; 48 CFR 252.227

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item VI	05/27/94	59 FR 27662
Final Action Effective	06/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF22

1132. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (DAR CASE 93-D302)

CFR Citation: 48 CFR 219.100

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XIV	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF23

1133. COAL AND PETROLEUM PITCH CARBON FIBER (DAR CASE 93-D303)

CFR Citation: 48 CFR 225; 48 CFR 252.225

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XXII	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF24

1134. SURETY BOND WAIVER REPORTING (DAR CASE 93-D304)

CFR Citation: 48 CFR 219.808

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XIII	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF25

1135. ANGOLAN PETROLEUM (DAR CASE 93-D306)

CFR Citation: 48 CFR 225.704; 48 CFR 252.225

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XIX	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF33

1136. DD FORM 2222, SHORT FORM RESEARCH CONTRACT (DAR CASE 93-D021)

CFR Citation: 48 CFR 235.071

Completed:

Reason	Date	FR Cite
Final Action Case closed. No DFARS language needed.	03/09/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF38

1137. MIL-STD-973 (DAR CASE 93-D023)

CFR Citation: 48 CFR 243.205; 48 CFR 248.270; 48 CFR 252.243; 48 CFR 252.248

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item L	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF41

1138. OVERSEAS WORKLOAD PROGRAM (DAR CASE 93-D322)

CFR Citation: 48 CFR 225

Completed:

Reason	Date	FR Cite
Final Action Case closed. No DFARS language needed.	04/30/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF43

1139. MENTOR-PROTEGE (DAR CASE 93-D316)

CFR Citation: 48 CFR 219

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item XV	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF49

1140. PETROLEUM PRODUCTS (DAR CASE 93-D312)

CFR Citation: 48 CFR 225

Completed:

Reason	Date	FR Cite
Final Action	05/05/94	59 FR 23169
Final Action Effective	05/05/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF52

1141. BALLISTIC MISSILE DEFENSE ORGANIZATION (DAR CASE 93-D014)

CFR Citation: 48 CFR 202.101; 48 CFR 204.7003; 48 CFR 209.202; 48 CFR 209.403; 48 CFR 225.701; 48 CFR 249.7001; 48 CFR 252.225; 48 CFR 253.204

Completed:

Reason	Date	FR Cite
Final Action DAC 91-06, Item L	05/27/94	59 FR 27662
Final Action Effective	05/27/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, 703 604-5929

RIN: 0790–AF56

1142. • CARBONYL IRON POWDERS (DAR CASE 94-D301)

Legal Authority: PL 103-396, Sec 9151

CFR Citation: 48 CFR 225.700; 48 CFR 252.225

Legal Deadline: None

Abstract: Modify the Defense FAR Supplement to delete the restrictions on carbonyl iron powders.

Timetable:

Action	Date	FR Cite
Case opened	01/31/94	
Final Action	03/07/94	59 FR 10579
Final Action Effective	03/07/94	

Small Entities Affected: None

Government Levels Affected: Federal

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DOD—OS

Completed Actions

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF80

1143. • ECONOMY ACT (DAR CASE 94-D303)

Legal Authority: PL 103-160, Sec 844

CFR Citation: 48 CFR 217.500

Legal Deadline: Final, Statutory, May 31, 1994.

Abstract: Modify the Defense FAR Supplement to define the role of the contracting officer in the approval process for Economy Act orders.

Timetable:

Action	Date	FR Cite
Case opened	02/04/94	
Final Action Effective	04/25/94	
Final Action	05/03/94	59 FR 22759

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF81

1144. • COST OR PRICING DATA (DAR CASE 94-D304)

Legal Authority: PL 101-189, Sec 824

CFR Citation: 48 CFR 214.203; 48 CFR 215.804; 48 CFR 231.205; 48 CFR 252.214

Legal Deadline: Final, Statutory, August 30, 1990.

Abstract: Modify the Defense FAR Supplement to implement a statutory requirement to broaden exemptions.

Timetable:

Action	Date	FR Cite
Case opened	03/01/94	
Final Action Case closed. No DFARS language needed.	03/04/94	

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Owen Green, Procurement Analyst, Defense Acquisition Regulations Council, Department of Defense, Office of the Secretary, ATTN: IMD 3D139, OUSD (A&T), 3062 Defense Pentagon, Washington, DC 20301-3062, 703 604-5929

RIN: 0790–AF82

DEPARTMENT OF DEFENSE (DOD)

Department of the Army (DOA)

Final Rule Stage

1145. ARMY REGULATION 500-51, EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES—SUPPORT TO CIVILIAN LAW ENFORCEMENT

Legal Authority: 10 USC 331

CFR Citation: 32 CFR 501

Legal Deadline: None

Abstract: This is not a major Army program revision. This revision to 32 CFR part 501 makes minor changes in the basic policies, defines emergencies, outlines command authority, outlines use of martial law in this area, defines protection of Federal property, and defines end of commitment.

Timetable:

Action	Date	FR Cite
NPRM	07/13/93	58 FR 37770
NPRM Comment Period End	08/12/93	58 FR 37770
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: Manuscript was published in the Federal Register. Comment period is over. Proponent is in the process of preparing a final manuscript. After approval by the Army JAG and authentication by Administrative Assistant, document will be published as a final rule.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA23

1146. ARMY REGULATION 27-20, THE ARMY CLAIMS SYSTEM

Legal Authority: 10 USC 939; 28 USC 1346; 32 USC 715

CFR Citation: 32 CFR 536; 32 CFR 537

Legal Deadline: None

Abstract: 32 CFR parts 536 and 537 are being consolidated. 32 CFR part 536 will become the Army Claims System. Part 537 will be removed and held for future use. This revision prescribes the policies, procedures, and responsibilities for investigating, processing, and settling claims against and in favor of the United States under the authority conferred by certain statutes, regulations, international and interdepartmental agreements, and Department of Defense Directives. It is intended to ensure that claims are properly investigated, adjudicated objectively and fairly, and either paid or collection action initiated.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/9-	

Small Entities Affected: Business.

Government Levels Affected: Undetermined

DOD—DOA

Final Rule Stage

Additional Information: Master manuscript is completed and is in the process of being finalized and prepared for transmittal to the Federal Register.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA24

1147. ARMY REGULATION 27-40, LITIGATION

Legal Authority: 5 USC 552; 10 USC 218; 18 USC 219; 28 USC 50.15; 28 USC 2415; 31 USC 3711; 33 USC 400; 41 USC 290; 43 USC 666

CFR Citation: 32 CFR 516

Legal Deadline: None

Abstract: This part prescribes policy and procedures for litigation in civilian court proceedings, including providing representation of the Army and its personnel in Federal and State court proceedings; remedies for procurement fraud; environmental litigation; bankruptcy; prosecution in Federal court of offenses in which the Army has an interest; release of information and appearance of witnesses in criminal and civil court actions; procedures to follow when soldiers are summoned for jury duty; and procedures for cooperation with the Office of Special Counsel.

Timetable:

Action	Date	FR Cite
NPRM	07/17/92	57 FR 13852
NPRM Comment Period End	08/17/92	57 FR 13852
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: Final rule awaiting approval by the Army Judge Advocate General and the Administrative Assistant to the Secretary of the Army's authentication.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA25

1148. ARMY REGULATION 190-9, ABSENTEE DESERTER APPREHENSION PROGRAM AND SURRENDER OF MILITARY PERSONNEL TO CIVILIAN LAW ENFORCEMENT AGENCIES

Legal Authority: 10 USC 801 to 940

CFR Citation: 32 CFR 630

Legal Deadline: None

Abstract: This update revises provost marshall procedures and responsibilities for surrender of military personnel to civilian law enforcement authorities.

Timetable:

Action	Date	FR Cite
NPRM	05/28/93	58 FR 31070
NPRM Comment Period End	06/28/93	58 FR 31070
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: Local

Additional Information: Proponent is in the process of preparing the revised Army Regulation. When manuscript is complete, 32 CFR part 630 will be published as a final rule. The completed manuscript must first be approved by the Army Judge Advocate General and authenticated by the Administrative Assistant to the Secretary of the Army.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA26

1149. • RESTRICTIONS GOVERNING OPERATION OF UNAUTHORIZED VEHICLES ON FORT HARRISON

Legal Authority: 16 USC 470; 16 USC 1531; 18 USC 1382; 50 USC 797

CFR Citation: 32 CFR 552, subpart K

Legal Deadline: None

Abstract: This subpart establishes restrictions governing the operation of unauthorized vehicles on the Army training areas of Fort Benjamin Harrison, Indiana.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/06/94	59 FR 34581
Interim Final Rule Effective	09/05/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 32 CFR part 552, subpart K was established as an interim rule effective on publishing in the Federal Register. However, comments will continue to be taken until 5 August 1994.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA27

1150. • FORT LEWIS REGULATION 350-33

Legal Authority: 16 USC 470; 16 USC 1531; 18 USC 1382; 50 USC 797

CFR Citation: 32 CFR 552, subpart M

Legal Deadline: None

Abstract: This action establishes 32 CFR part 552, subpart M, Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/07/94	59 FR 34761
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Uninterrupted military use of training areas is vital to the maintenance of U.S. and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warning provided during training scheduling or use permit processing.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA29

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DEPARTMENT OF DEFENSE (DOD)
Department of the Army (DOA)

Completed Actions

1151. • FORT JACKSON REGULATION 600-3: PROHIBITED PERSONNEL PRACTICES

Legal Authority: 10 USC ch 47; 21 USC 801 et seq

CFR Citation: 32 CFR 552, subpart L

Legal Deadline: None

Abstract: This subpart establishes prohibited practices on the installation of Fort Jackson, SC. These prohibited practices apply to all persons assigned to, attached to, or present on the installation of Fort Jackson, SC.

Timetable:

Action	Date	FR Cite
NPRM	07/29/93	58 FR 40611
NPRM Comment Period End	09/29/93	
Final Action	06/17/94	59 FR 31144
Final Action Effective	06/17/94	59 FR 31144

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This action establishes 32 CFR part 552, subpart L, Personnel–Prohibited Practices.

Agency Contact: Kenneth L. Denton, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Commander, U.S. Army Publications and Printing Command, ATTN: ASQZ-PDS, Alexandria, VA 22331-0302, 703 325-6277

RIN: 0702–AA28

DEPARTMENT OF DEFENSE (DOD)
U.S. Army Corps of Engineers (COE)

Prerule Stage

1152. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, PART 325, APPENDIX D—ENDANGERED SPECIES COUNTERPART REGULATIONS

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 325, app D

Legal Deadline: None

Abstract: Procedures for the protection of endangered species in the regulatory program of the Corps of Engineers. Because of the increased emphasis being placed on endangered species by the Federal and State resource agencies, the Corps identified a need to provide more definitive guidance on implementing the Endangered Species Act (ESA) in its regulatory program. The Corps is now developing counterpart regulations with the Department of Interior. The regulations would bring together various guidance used in the past by both the Corps and DOI. The regulations will include guidance on how the ESA Amendments impact applicants for Federal permits.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Policy Development Section, Department of Defense, U.S. Army Corps of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1782

RIN: 0710–AA17

1153. PART 326, ENFORCEMENT; CLASS II ADMINISTRATIVE PENALTIES

Legal Authority: 33 USC 1319(g)

CFR Citation: 33 CFR 326.7

Legal Deadline: None

Abstract: The regulation provides the procedures for assessing Class II administrative penalties for violations of the conditions and limitations contained in permits issued by the Corps of Engineers pursuant to section 404 of the Clean Water Act. Clean Water Act Class II administrative penalties may not exceed $10,000 per day, and may not exceed a maximum of $125,000.

Timetable: Next Action Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Public Compliance Cost: Initial Cost: $1,000,000; Yearly Recurring Cost: $3,000,000; Base Year for Dollar Estimates: 1989

Sectors Affected: All

Agency Contact: Jack T. Chowning, Policy Development Section, Regulatory Branch, Department of Defense, U.S. Army Corps of Engineers, 20 Massechusetts Avenue NW., Washington, DC 20314-1000, 202 272-1781

RIN: 0710–AA25

DEPARTMENT OF DEFENSE (DOD)
U.S. Army Corps of Engineers (COE)

Proposed Rule Stage

1154. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 320 to 330

Legal Deadline: None

Abstract: The Corps of Engineers intends to make numerous clarifications to its existing regulations at 33 CFR 320 to 330, to consolidate all permit regulations into one document, and to reorganize 33 CFR 325 for clarity. Since the Corps Regulatory Program final regulations were published in the Federal Register on November 13, 1986 (51 CFR 41206), there has been need to clarify several of those provisions. Since 1986, the Corps has adopted two new appendices at 33 CFR 325, appendices B and C, and the Corps has also adopted revisions to the Nationwide Permit Program (33 CFR 330) and Class I Administrative Civil Penalties (33 CFR 326). The Corps has proposed several changes that include revisions to the definition of discharge of Dredged Material and Fill Material and prior converted croplands. For clarity, the Corps intends to consolidate all these changes into one document.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

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Proposed Rule Stage

Action	Date	FR Cite
NPRM Comment Period End	05/00/95	
Final Action	10/00/95	
Final Action Effective	12/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Policy Development Section, Department of Defense, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1782

RIN: 0710–AA30

1155. NATIONWIDE PERMIT PROGRAM (NEW NATIONWIDE PERMITS FOR ADDITIONAL ACTIVITIES)

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 330

Legal Deadline: None

Abstract: The Corps will propose new nationwide permits based on a review of activities being authorized by individual permit. The authorization of activities by nationwide permits is the most efficient and effective way to regulate minor activities with minimal impacts and thus reduce the regulatory burden of the Corps regulatory program while maintaining environmental safeguards.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	
Final Action	06/00/95	
Final Action Effective	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Policy Development Section, Department of Defense, U.S. Army Corps of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1782

RIN: 0710–AA32

1156. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, WETLAND DELINEATOR CERTIFICATION PROGRAM

Legal Authority: 33 USC 1344

CFR Citation: 33 CFR 320; 33 CFR 323; 33 CFR 325; 33 CFR 328

Legal Deadline: None

Abstract: The regulation establishes the procedures for certification under the Corps of Engineers Wetland Delineator Certification Program developed pursuant to section 307(e) of the Water Resources Development Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	02/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Karen Kochenbach, Assistant to the Chief, Policy Development Section, Regulatory Branch, Department of Defense, U.S. Army Corps of Engineers, HQUSACE, ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1784

RIN: 0710–AA38

1157. REGULATORY PROGRAM OF THE CORPS OF ENGINEERS—90-DAY DECISIONS

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 325

Legal Deadline: None

Abstract: The Corps of Engineers is revising its regulations to provide that permit decisions should be made within 90 days of the issue of a public notice. A decision deadline would also be provided for these circumstances. This process is included in the President's Wetland Protection Plan to make sure that decisions are made without unnecessary delays. This will aid applicants in planning their projects and allow for more realistic expectations of obtaining permit decisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	04/00/95	
Final Action Effective	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Policy Development Section, Department of Defense, U.S. Army Corps of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1782

RIN: 0710–AA40

1158. REGULATORY PROGRAM OF THE CORPS OF ENGINEERS—ADMINISTRATIVE APPEALS

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 331

Legal Deadline: None

Abstract: The regulation establishes an administrative appeal process for permit denials by permit applicants and wetland delineations by property owners. This process is included in the President's Wetland Protection Plan to increase fairness in the permitting process by allowing landowners to seek a speedy recourse of these decisions without having to go to court.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	02/00/95	
Final Action Effective	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sam Collinson, Chief, Policy Development Section, Department of Defense, U.S. Army Corps of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000, 202 272-1782

RIN: 0710–AA41

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DEPARTMENT OF DEFENSE (DOD)
U.S. Army Corps of Engineers (COE)

Final Rule Stage

1159. FLOOD CONTROL AND AGRICULTURAL WATER SUPPLY COST-SHARING REQUIREMENTS UNDER THE ABILITY-TO-PAY PROVISION

Legal Authority: 33 USC 2201 et seq

CFR Citation: 33 CFR 241

Legal Deadline: None

Abstract: The Corps of Engineers is revising procedures for ability-to-pay determinations for flood control projects and issuing procedures for ability-to-pay determinations for agricultural water supply projects. This action is pursuant to section 201 of the Water Resource Development Act of 1992, Public Law 102-580, which called for a review of regulations on ability to pay, in light of locally prevailing conditions such as those associated with areas specified in the legislation, and for the Secretary of the Army to amend the regulation to the extent that he determines necessary.

Timetable:

Action	Date	FR Cite
NPRM	06/24/94	59 FR 32670
NPRM Comment Period End	08/23/94	59 FR 32670
Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Donald L. Barnes, Chief, Policy Development Branch, Policy and Planning Division, Department of Defense, U.S. Army Corps of Engineers, HQUSACE, Director of Civil Works, ATTN: CECW-PA, Washington, DC 20314-1000, 202 272-0120

RIN: 0710–AA39

DEPARTMENT OF DEFENSE (DOD)
Department of the Navy (NAVY)

Final Rule Stage

1160. ADJUSTMENTS TO PRICES UNDER SHIPBUILDING CONTRACTS

Legal Authority: 10 USC 2405

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: The interim rule prescribes policies and procedures to restrict contract price adjustments under shipbuilding contracts, thus implementing by regulation the requirements of 10 USC 2405. The interim rule also defines the terminology of 10 USC 2405 and promulgates a solicitation provision and contract clause on price adjustments to shipbuilding contracts. This action is intended to clarify the meaning and ensure the consistent interpretation, implementation, and administration of the statute.

Timetable:

Action	Date	FR Cite
NPRM	11/16/89	54 FR 47689
NPRM Comment Period End	02/15/90	55 FR 3608
NPRM	06/29/90	55 FR 26708
NPRM Comment Period End	08/16/90	55 FR 33541
Public Hearing	10/26/90	55 FR 43150
Interim Final Rule	12/05/91	56 FR 63664
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Richard A. Moye, Senior Procurement Analyst, Department of Defense, Department of the Navy, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition), Washington, DC 20350-1000, 703 602-2807

RIN: 0703–AA34

1161. • AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC (PRIVACY ACT)

Legal Authority: 5 USC 552; 32 CFR 286; 32 CFR 296

CFR Citation: 32 CFR 701

Legal Deadline: None

Abstract: This proposed rule reestablishes the Navy's Privacy Program and incorporates the changes made to the revised instruction.

Timetable:

Action	Date	FR Cite
NPRM	06/01/94	59 FR 28305
NPRM Comment Period End	08/01/94	59 FR 28305
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Doris M. Lama, Department of Defense, Department of the Navy, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000, 703 614-2004

RIN: 0703–AA44

1162. • PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE SUPERVISION OF THE JUDGE ADVOCATE GENERAL

Legal Authority: 10 USC 826; 10 USC 827; 32 CFR 700.1202

CFR Citation: 32 CFR 776

Legal Deadline: None

Abstract: This rule sets forth regulations concerning the professional conduct of attorneys practicing law under the supervision of the Judge Advocate General of the Navy.

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	
Final Action Effective	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Capt. P. W. Kelley, Department of Defense, Department of the Navy, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, 703 614-1781

RIN: 0703–AA45

DEPARTMENT OF DEFENSE (DOD)
Department of the Navy (NAVY)

Completed Actions

1163. • AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC (FREEDOM OF INFORMATION ACT)

Legal Authority: 5 USC 552; 32 CFR 286; 32 CFR 296

CFR Citation: 32 CFR 701

Legal Deadline: None

Abstract: This rule sets forth amended regulations pertaining to the Department of the Navy's Freedom of Information Act Program. The rule reflects changes in the Secretary of the Navy's procedures.

Timetable:

Action	Date	FR Cite
Final Action	06/09/94	59 FR 29721

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Doris M. Lama, Department of Defense, Department of the Navy, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000, 703 614-2004

RIN: 0703–AA46

DEPARTMENT OF DEFENSE (DOD)
Department of the Air Force (AF)

Proposed Rule Stage

1164. PUBLIC AFFAIRS POLICIES AND PROCEDURES

Legal Authority: 10 USC 8013

CFR Citation: 32 CFR 837

Legal Deadline: None

Abstract: Describes Air Force Public Affairs program and how public affairs resources are to be managed to effectively reach public affairs goals.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Col. Conley, Department of Defense, Department of the Air Force, SAF/PAR, 1690 Air Force Pentagon, Washington, DC 20330-1690, 703 697-5838

RIN: 0701–AA18

1165. AIR FORCE MATERIEL COMMAND FEDERAL ACQUISITION REGULATION SUPPLEMENT; VENDOR RATING SYSTEM

Legal Authority: 5 USC 301; 10 USC 2305(a)(3)

CFR Citation: 48 CFR 5315

Legal Deadline: None

Abstract: This rule will assist replenishment spare parts contracting personnel in determining which competitive offer represents the best value to the Government. Vendor Rating System (VRS) will accomplish this by providing a 12-month historical record of each contractor's quality and delivery performance on completed AFMC replenishment spare parts contracts as a numerical rating. This data will then be used to make a best-value decision in source selection awards. Pending coordination with the DOD Past Performance Coordinating Council and approval by USD(A)/DDP, the policy will be reissued for public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/24/90	55 FR 42863
NPRM Comment Period End	11/23/90	55 FR 42863
Second NPRM	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: S. Wiginton, Department of Defense, Department of the Air Force, HQ AFMC/PKP, 4375 Chidlaw Road, Suite 6, Wright Patterson AFB, OH 45433-5006, 513 257-6055

RIN: 0701–AA34

1166. CIVIL AIRCRAFT USE OF UNITED STATES AIR FORCE AIRFIELDS •

Legal Authority: 49 USC 1507; 49 USC 2203

CFR Citation: 32 CFR 855

Legal Deadline: None

Abstract: This rule establishes responsibilities and describes procedures for civil aircraft use of Air Force airfields.

Timetable:

Action	Date	FR Cite
NPRM	09/24/93	58 FR 49952
NPRM Comment Period End	10/25/93	58 FR 49952
Second NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: R. A. Young, Civil Aviation Branch, Department of Defense, Department of the Air Force, HQ USAF/XOOBC, 1480 Air Force Pentagon, Washington, DC 20330-1480, 703 697-5967

RIN: 0701–AA42

DEPARTMENT OF DEFENSE (DOD)
Department of the Air Force (AF)

Final Rule Stage

1167. AIR FORCE PRIVACY ACT PROGRAM

Legal Authority: 5 USC 552a

CFR Citation: 32 CFR 806b

Legal Deadline: None

Abstract: Establishes Air Force policies and procedures for implementing Privacy Act requirements for collecting, safeguarding, maintaining, using, accessing, amending, and disseminating personal information kept by the

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Department of the Air Force in Privacy Act systems of records.

Timetable:

Action	Date	FR Cite
NPRM	07/28/94	59 FR 38389
NPRM Comment Period End	09/26/94	59 FR 38389
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anne W. Turner, Air Force Access Programs Manager, Department of Defense, Department of the Air Force, SAF/AAIQ, 1610 Air Force Pentagon, Washington, DC 20330-1610, 703 697-3491

RIN: 0701–AA30

1168. AIR FORCE MATERIEL COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Legal Authority: 10 USC 2305(a)(3)

CFR Citation: 32 CFR 838

Legal Deadline: None

Abstract: This rule will expand CPAR coverage to operation and maintenance contracts in AFMC. The CPAR system has been effective in improving the ability of AFMC source selection officials when making judgments concerning past performance of contractors on AFMC systems contracts. Performance on these contracts tends to be complex and is accomplished over several years. The CPAR system provides a consistent structure for collecting performance assessments by program officials over the life of these contracts.

Timetable:

Action	Date	FR Cite
NPRM	03/15/90	55 FR 9733
NPRM Comment Period End	04/16/90	55 FR 9733
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: R. Summerour, Department of Defense, Department of the Air Force, SAF/AQCF, 1060 Air Force Pentagon, Washington, DC 20330-1060, 703 695-3859

RIN: 0701–AA33

1169. UTILIZATION OF EXCESS AND DISPOSAL OF SURPLUS REAL PROPERTY

Legal Authority: PL 100-526, sec 204; PL 101-510, sec 2905

CFR Citation: 41 CFR 132-47

Legal Deadline: None

Abstract: Describes the procedure to be used by the Air Force to transfer excess real property between Federal agencies and to dispose of surplus real property.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/91	56 FR 13286
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gilbert Sailer, Special Assistant, Real Property, Department of Defense, Department of the Air Force, AFBCA/RP, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209-2803, 703 696-5566

RIN: 0701–AA35

1170. ENVIRONMENTAL IMPACT ANALYSIS PROCESS

Legal Authority: PL 91-190

CFR Citation: 32 CFR 989

Legal Deadline: None

Abstract: Contains policies, responsibilities, and procedures for the Air Force EIAP in the United States and its territories and possessions.

Timetable:

Action	Date	FR Cite
NPRM	04/11/94	59 FR 17061
NPRM Comment Period End	06/10/94	59 FR 17061
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Kenneth L. Reinertson, Department of Defense, Department of the Air Force, HQ USAF/CEVP, 1260 Air Force Pentagon, Washington, DC 20330-1260, 703 697-1235

RIN: 0701–AA36

1171. • PERSONNEL REVIEW BOARDS

Legal Authority: 10 USC 1034; 10 USC 1552

CFR Citation: 32 CFR 865

Legal Deadline: None

Abstract: Subpart A establishes procedures for the consideration of applications for the correction of military records. The revision clarifies various minor provisions of the subpart.

Timetable:

Action	Date	FR Cite
NPRM	07/26/94	59 FR 37953
NPRM Comment Period End	09/26/94	59 FR 37953
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: C. Bruce Braswell, Executive Director, Department of Defense, Department of the Air Force, AFBCMR, 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, MD 20331-7002, 301 981-5727

RIN: 0701–AA43

DEPARTMENT OF DEFENSE (DOD)
Office of Assistant Secretary for Health Affairs (DODOASHA) — **Proposed Rule Stage**

1172. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); EXPANDED DENTAL COVERAGE FOR DEPENDENTS OF ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes an expanded dental program for dependents of active duty members of the Uniformed Services. The amendment specifically describes: (1) the enhanced benefit structure; (2) enrollment and eligibility requirements; (3) premium cost-sharing; and (4) benefit payment levels. We believe the provisions of this amendment will provide military families with the high quality of care they desire at an affordable price.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: D Bennett, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-1094

RIN: 0720–AA19

1173. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); TRICARE PROGRAM; SPECIAL HEALTH CARE DELIVERY PROGRAMS

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes requirements and procedures for implementation of the TRICARE program, the purpose of which is to improve the management and integration of health care delivery in military treatment facilities and CHAMPUS. In addition, it establishes rules for several special care delivery programs, including PRIMUS and NAVCARE clinics.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: S. Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs, 703 695-3350

RIN: 0720–AA21

1174. • CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); MENTAL HEALTH SERVICES

Legal Authority: 5 USC 301; 10 USC 1079; 10 USC 1086

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed rule is to reform CHAMPUS quality care standards and reimbursement methods for impatient mental health services. The rule would update existing standards for residential treatment centers (RTCs) and establish new standards for approval as CHAMPUS - authorized providers for substance abuse rehabilitation facilities and partial hospitalization programs.

Timetable:

Action	Date	FR Cite
NPRM	06/29/94	59 FR 33465
NPRM Comment Period End	08/29/94	59 FR 33465

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: D. Kamin, Department of Defense, Office of Assistant Secretary for Health Affairs, 703 697-8975

RIN: 0720–AA23

DEPARTMENT OF DEFENSE (DOD)
Office of Assistant Secretary for Health Affairs (DODOASHA) — **Final Rule Stage**

1175. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); SUPPLEMENTAL INSURANCE PLANS (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule defines and limits the types of plans recognized as supplemental insurance coverage under CHAMPUS. The rule will also help provide guidance in identifying plans that would come under the CHAMPUS double coverage regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/12/91	56 FR 26946
NPRM Comment Period End	07/12/91	56 FR 26946

Next Action Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: S. Regensberg, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-3572

RIN: 0720–AA01

1176. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); PROGRAM FOR THE HANDICAPPED (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule simplifies access to, and administration of, the CHAMPUS Program for the Handicapped (PFTH). The PFTH benefit is limited to active duty Uniformed Service member dependents with moderate or severe mental retardation or a serious physical handicap. This proposal does not alter the PFTH benefit or PFTH eligibility requirements, but simply rewrites the applicable provisions to remove

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redundant material, provide more concise definition of key terms, and establish greater flexibility in the administration of the Program.

Timetable:

Action	Date	FR Cite
NPRM	06/10/91	56 FR 26635
NPRM Comment Period End	07/25/91	56 FR 26635

Next Action Undetermined

Small Entities Affected: Organizations

Government Levels Affected: Undetermined

Agency Contact: J. Baker, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-4019

RIN: 0720–AA04

1177. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); BASIC PROGRAM (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed rule removes the existing CHAMPUS benefit exclusion of certain diagnostic or treatment procedures which involve electronic transmission of data. The intention of this proposed amendment is to allow coverage, in addition to the current coverage of remote cardiac pacemaker monitoring, of otherwise allowable procedures when they employ electronic transfer of data to improve the quality and efficiency of the management of a clinical condition.

Timetable:

Action	Date	FR Cite
NPRM	09/24/91	56 FR 48134
NPRM Comment Period End	10/24/91	56 FR 48134

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: J Baker, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-4019

RIN: 0720–AA06

1178. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); FORMER SPOUSE/WIDOW(ER) AND FEDERAL CLAIMS COLLECTION ACT (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This proposed rule updates regulation changes to stipulate that annulled remarriages of former spouses or widows or widowers will be regarded as if the remarriage had never taken place and will reinstate their eligibility effective 12:01 a.m. of the day following the annulment; will clarify the effect of Medicare entitlement of former spouses; and will adopt the Federal Claims Collection Act and the Federal Claims Collection Standards by reference.

Timetable:

Action	Date	FR Cite
NPRM	09/24/91	56 FR 48135
NPRM Comment Period End	10/24/91	56 FR 48135

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: A Armijo, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 362-3630

RIN: 0720–AA07

1179. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); CERTIFIED MARRIAGE AND FAMILY THERAPISTS (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule amends the regulations to comply with section 702 of the National Defense Authorization Act for Fiscal Year 1991 which removed the requirement for physician supervision and referral for certified marriage and family therapists and requires all certified marriage and family therapists to accept CHAMPUS payment as payment in full. The intent of this amendment is to ensure that the relationship of certified marriage and family therapists is consistent with other mental health practitioners with comparable education and training while also protecting the CHAMPUS beneficiaries from incurring added out-of-pocket costs for care rendered that is not part of the current CHAMPUS mental health benefits package.

Timetable:

Action	Date	FR Cite
NPRM	11/12/91	56 FR 57498
NPRM Comment Period End	12/12/91	56 FR 57498

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: J Carroll, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-3521

RIN: 0720–AA10

1180. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); REQUIREMENTS FOR COVERAGE AND REIMBURSEMENT OF SERVICES OF PHYSICIANS IN TEACHING SETTINGS (DOD 6010.8-R)

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This amendment provides specific requirements for coverage and reimbursement of services of teachings physicians and for physicians in training.

Timetable:

Action	Date	FR Cite
NPRM	12/10/91	56 FR 64488
NPRM Comment Period End	01/09/92	56 FR 64488

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: S Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-4005

RIN: 0720–AA13

1181. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); COVERAGE OF HOSPICE CARE FOR TERMINALLY ILL CHAMPUS BENEFICIARIES

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The Defense Authorization Act for FY 1992-1993, Public Law 102-190, directs CHAMPUS to provide hospice care in the manner and under the conditions provided in section 1981 (dd) of the Social Security Act (42 USC 1395x(dd)). This section of the Social Security Act sets forth coverage/benefits guidelines, along with certification criteria for participation in a hospice program. The CHAMPUS hospice benefit is designed to provide palliative care to individuals with a prognoses of less than 6 months to live.

Timetable:

Action	Date	FR Cite
NPRM	09/10/93	58 FR 47692
NPRM Comment Period End	10/12/93	58 FR 47692

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: D Bennett, Department of Defense, Office of Assistant Secretary for Health Affairs, 303 361-1094

RIN: 0720–AA18

1182. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); HOSPITAL PAYMENT FOR AMBULATORY CARE

Legal Authority: 10 USC 1079; 10 USC 1086; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This amendment establishes a new payment method for ambulatory care (other than ambulatory surgery) provided by hospitals to CHAMPUS beneficiaries, under which payment amounts would be based on the cost of the service rather than on the billed charge, as at present.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3046
NPRM Comment Period End	03/21/94	59 FR 3046

Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: S. Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs, 703 695-3350

RIN: 0720–AA20

1183. • CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); CONTINUED HEALTH CARE BENEFIT PROGRAM

Legal Authority: 10 USC ch 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, October 1, 1994.
Congress directed the program to start by October 1, 1994.

Abstract: This rule establishes a continued Health Care Benefit Program (CHCBP) for certain DoD health care beneficiaries who lose eligibility for health care in the Military Health Services System (MHSS). It provides for use of the CHAMPUS benefit structure and CHAMPUS rules and procedures for the CHCBP.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/06/94	59 FR 16136
Interim Final Rule Comment Period End	06/06/94	59 FR 16136
Interim Final Rule Effective	10/01/94	59 FR 16136

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: G. Zimmerman, Department of Defense, Office of Assistant Secretary for Health Affairs, 703 695-3331

RIN: 0720–AA24

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Part VI

Department of Education

Semiannual Regulatory Agenda

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DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulations and Regulatory Plan

AGENCY: Office of the Secretary, Education.

ACTION: Publication of the semiannual agenda of Federal regulations and regulatory plan.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulations issued under the authority of section 4(b) of Executive Order 12866 "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to Kenneth C. Depew, Division of Regulations Management, Office of the General Counsel, Department of Education, Room 5112, FB-10, 600 Independence Avenue SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, OMB, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda. The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For this edition of the Department of Education's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by the bracketed bold reference which directs the reader to the appropriate Sequence Number in Part II.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation of any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(b)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned action.

If the "Abstract" section of an entry refers readers to the preamble, it means that amendments to those particular regulations would be designed (1) to effect regulatory relief, including reducing paperwork and compliance burdens, improving cost effectiveness, and to the extent possible, vesting greater discretion in State and local agencies and (2), if necessary, to clarify and simplify requirements governing that program.

The Department also will review all regulations that will be published to ensure that, if appropriate, those regulations support the National Education Goals.

This publication in the **Federal Register** does not impose any binding obligation on the Department with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

Dated: August 19, 1994.

Steven Y. Winnick,

Acting General Counsel.

Departmental Management—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1184	Supplemental Standards of Ethical Conduct for Employees of the Department of Education: Prior Approval for outside activities and employment	1880-AA60

Departmental Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1185	Education Department General Administrative Regulations—Unsolicited Applications	1880-AA61
1186	Amendment to Education Department General Administrative Regulations	1880-AA62
1187	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	1880-AA53

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Departmental Management—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1188	General Education Provisions Act—Enforcement: Proportionality and Equitable Offsets	1880-AA56
1189	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) and Student Assistance General Provisions	1880-AA51

Departmental Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1190	Education Department General Administrative Regulations—Amendment III	1880-AA50
1191	State-Administered Programs in Federal, State and Local Partnership for Educational Improvement	1880-AA59
1192	New Restrictions on Lobbying	1880-AA48
1193	Family Educational Rights and Privacy	1880-AA57

Departmental Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1194	Uniform Administrative Requirements for Grants and Cooperative Agreements for Institutions of Higher Education, Hospitals, or Nonprofit Organizations	1880-AA34

Office for Civil Rights—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1195	Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance	1870-AA06

Office of Elementary and Secondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1196	Goals 2000: Educate America Act **(Reg Plan Seq. No. 24)**	1810-AA72
1197	Part A of Title I of the Elementary and Secondary Education Act of 1965 **(Reg Plan Seq. No. 25)**	1810-AA73

References in boldface appear in the Regulatory Plan in Part II of this issue of the Federal Register.

Office of Elementary and Secondary Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1198	Chapter 1 Program in Local Educational Agencies; and Chapter 1—Migrant Education Program	1810-AA70

Office of Postsecondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1199	Upward Bound Program	1840-AC02
1200	Student Support Services Program	1840-AC03
1201	Student Right-to-Know Act **(Reg Plan Seq. No. 26)**	1840-AB44

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Office of Postsecondary Education—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1202	Student Assistance General Provisions—Ability to Benefit (Guidelines to Assist Institutions in Determining Student Eligibility for Title IV, HEA Student Financial Assistance)	1840-AB84
1203	Student Assistance General Provisions—Cash Management	1840-AC13
1204	Federal Family Education Loan Program—State Share of Default Costs	1840-AC09
1205	Federal Family Education Loan Program—Conforming Amendments with Federal Direct Student Loan Program	1840-AC12
1206	Federal Direct Student Loan Program **(Reg Plan Seq. No. 27)**	1840-AC05

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Office of Postsecondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1207	Ronald E. McNair Postbaccalaureate Achievement	1840-AB65
1208	Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program	1840-AB71
1209	Student Assistance General Provisions - Verification of Student Aid Application Information	1840-AC10
1210	Federal Family Education Loan Program—Guaranty Agency Reserves	1840-AC06
1211	Federal Pell Grant Program; Presidential Access Scholarship Program	1840-AB73

Office of Postsecondary Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1212	Institutional Eligibility	1840-AB87
1213	Institutional Eligibility Under the Higher Education Act of 1965, as Amended—Eligibility of Foreign Institutions and Foreign Graduate Medical Schools	1840-AB88
1214	Secretary's Procedure and Criteria for Recognition of Accrediting Agencies	1840-AB82
1215	Strengthening Institutions Program	1840-AB78
1216	Faculty Development Fellowship Program	1840-AC04
1217	Patricia Roberts Harris Fellowship Program	1840-AC01
1218	State Postsecondary Review Program	1840-AB89
1219	Student Assistance General Provisions and Federal Family Education Loan Programs—Third-Party Servicers	1840-AB80
1220	Student Assistance General Provisions—Subparts A and B	1840-AB85
1221	Student Assistance General Provisions—Subparts D and F	1840-AB86
1222	Campus Security Act	1840-AB98
1223	Student Assistance General Provisions—Subpart E - Verification of Student Aid Application Information	1840-AC08
1224	Federal Stafford Loan Cancellation Demonstration Program	1840-AB62
1225	Exceptional Performance Designation in the Federal Family Education Loan Program (FFELP) for Lenders, Servicers, and Guaranty Agencies	1840-AB81
1226	Federal Family Education Loan Program (FFELP) Loan Cancellation and Garnishment Regulations	1840-AB83
1227	Federal Family Education Loan Program (FFELP) (General Administration)	1840-AB97
1228	Federal Stafford Loan Repayment Provisions	1840-AB99
1229	Federal Family Education Loan Program (FFEL)—Teachout Provisions	1840-AC07
1230	Federal Direct Student Loan Program	1840-AC11
1231	National Early Intervention Scholarship and Partnership Program	1840-AB79

Office of Special Education and Rehabilitative Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1232	State Vocational Rehabilitation Services Program	1820-AB12
1233	State Vocational Rehabilitation Services Program—Evaluation Standards and Performance Indicators	1820-AB14

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Office of Special Education and Rehabilitative Services—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1234	Disability and Rehabilitation Research; General Provisions; Research and Demonstration Projects; Rehabilitation Research and Training Centers; Rehabilitation Engineering Research Centers	1820-AB01
1235	State Vocational Rehabilitation Services Program—Order of Selection	1820-AB13
1236	Centers for Independent Living—Evaluation Standards and Compliance Indicators	1820-AA81
1237	Client Assistance Program	1820-AB16

Office of Special Education and Rehabilitative Services—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1238	Nomenclature Changes	1820-AB26
1239	The State Independent Living Rehabilitation Services Program; Centers for Independent Living; Independent Living Services for Older Blind Individuals	1820-AB18
1240	Centers for Independent Living	1820-AB19
1241	Independent Living Services for Older Blind Individuals	1820-AB20
1242	Rehabilitation Training: Rehabilitation Long-Term Training	1820-AB21
1243	State Vocational Rehabilitation In-Service Training	1820-AB24
1244	Training of Interpreters for Deaf Individuals	1820-AB25

Office of Vocational and Adult Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1245	School-to-Work Opportunities Program **(Reg Plan Seq. No. 28)**	1830-AA14

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Office of Vocational and Adult Education—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1246	State Vocational and Applied Technology Education Programs	1830-AA12
1247	State Vocational and Applied Technology Education Programs	1830-AA13

Office of Intergovernmental and Interagency Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1248	U.S. Exchange Visitor Program—Request for Waiver of the Two-Year Foreign Residence Requirement	1860-AA02

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DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)
Prerule Stage

1184. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF EDUCATION: PRIOR APPROVAL FOR OUTSIDE ACTIVITIES AND EMPLOYMENT

Legal Authority: 5 USC 7301; 5 USC (Ethics in Government Act of 1978); EO 12674

CFR Citation: 5 CFR ch 53

Legal Deadline: None

Abstract: These regulations would establish criteria for seeking prior approval of outside activities at the Department of Education.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan A. Winchell, General Attorney, Office of the General Counsel, Department of Education, 600 Independence Avenue SW., Room 5444, FB10, Washington, DC 20202-2110, 202 401-1730

RIN: 1880–AA60

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)
Proposed Rule Stage

1185. EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS—UNSOLICITED APPLICATIONS

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 75

Legal Deadline: None

Abstract: These regulations proposed to amend part 75 to permit the Secretary to consider exceptional unsolicited grant applications if they meet certain requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Peter Wathen-Dunn, General Attorney, Department of Education, Office of the General Counsel, 600 Independence Avenue SW., Room 4434, FB-10, Washington, DC 20202-2110, 202 401-3690

RIN: 1880–AA61

1186. • AMENDMENT TO EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 75

Legal Deadline: None

Abstract: The proposed amendment would broaden the criteria the Secretary considers in determining the order in which discretionary grant applications will be selected for funding. Specifically the proposed amendment would expand the criteria to include a grant recipient's use of funds under all previous Department of Education grant programs. Currently the criteria include only past use of funds under the same grant programs. The proposed amendment will also clarify that the deadline date for the receipt of application is the date that the application is received at the Department, not the postmark date.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kathy Thomas, Off. of the Chief Financial Officer, Grant and Contract Service, Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, 202 401-6901

RIN: 1880–AA62

1187. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 080

Legal Deadline: None

Abstract: These regulations propose to amend part 80 to revise certain Governmentwide administrative requirements for grants and cooperative agreements to State and local governments in conjunction with a revised common rule to be issued by Federal agencies to implement a revised version of OMB circular A-102.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Greg Vick, Grants and Contracts Service, Office of the Chief Financial Officer, Department of Education, 400 Maryland Avenue SW., Room 3636, ROB-3, Washington, DC 20202-4700, 202 708-8199

RIN: 1880–AA53

1188. GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT: PROPORTIONALITY AND EQUITABLE OFFSETS

Legal Authority: 20 USC 1221e-3(a)(1); 20 USC 1234; 20 USC 3474(a)

CFR Citation: 34 CFR 81

Legal Deadline: None

Abstract: The proposed regulations would clarify circumstances under which benefit to a grant or cooperative agreement and equitable offset are taken into account in determining harm to an identifiable Federal interest under GEPA.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Theodore Sky, Senior Counsel, Office of the General Counsel, Department of Education, 600 Independence Avenue SW., Room 5364, FB-10, Washington, DC 20202-2110, 202 401-2605

RIN: 1880–AA56

ED—EDMAN
Proposed Rule Stage

1189. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) AND STUDENT ASSISTANCE GENERAL PROVISIONS

Legal Authority: 20 USC 1082(a)(1) to 1082 (h)(1); 20 USC 1094(c)(1)(D); 20 USC 1221e-3(a)(1); 20 USC 3474; EO 12689

CFR Citation: 34 CFR 85; 34 CFR 668

Legal Deadline: None

Abstract: These proposed regulations would implement Executive Order 12689, which requires agency debarment and suspension actions under procurement or nonprocurement activities to have reciprocal Governmentwide effect. The regulations would also clarify the policy and procedures that affect both Governmentwide debarment and suspension and termination of participation of institutions of higher education in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mary Jane Kane, Grants and Contracts Service, Office of the Chief Financial Officer, Department of Education, 400 Maryland Avenue SW., Room 3636, ROB-3, Washington, DC 20202-4700, 202 708-7802

RIN: 1880–AA51

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN)
Final Rule Stage

1190. EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS—AMENDMENT III

Legal Authority: 20 USC 1221e-3(a)(1)

CFR Citation: 34 CFR 075; 34 CFR 076

Legal Deadline: None

Abstract: These proposed regulations would amend parts 75 and 76 to clarify various issues related to indirect cost rates, including the appropriate application of restricted indirect cost rates. Part 76 is revised to incorporate the restricted indirect cost rate requirements now found in part 75.

Timetable:

Action	Date	FR Cite
NPRM	01/14/94	59 FR 2480
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Glenn Riley, Grants and Contracts Service, Office of the Chief Financial Officer, Department of Education, 400 Maryland Avenue SW., Room 3636, ROB-3, Washington, DC 20202-4700, 202 708-7640

RIN: 1880–AA50

1191. STATE-ADMINISTERED PROGRAMS IN FEDERAL, STATE AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

Legal Authority: 20 USC 1221e to 3(a)(1); 20 USC 1221e to 2831(a); 20 USC 1221e to 2974(b); 20 USC 1221e to 3474; 31 USC 6503

CFR Citation: 34 CFR 76; 34 CFR 298

Legal Deadline: None

Abstract: These regulations propose to make changes that would limit the interest liability of the Department under the Cash Management Improvement Act of 1990 (CMIA) in cases when the Department is late in making an initial payment under a State-administered program because a State failed to submit a plan or other required document in a timely fashion. Also, because granting pre-award costs would result in significant interest liabilities under the CMIA, the preamble to the NPRM notifies States that the Department will no longer grant pre-award costs to a State that fails to submit a substantially approvable State plan by the date established for the submission of the plan.

Timetable:

Action	Date	FR Cite
NPRM	12/16/93	58 FR 65856
NPRM Comment Period End	01/18/94	
Final Action	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Peter Wathen-Dunn, General Attorney, Department of Education, 600 Independence Avenue SW., Room 4434, FB-10, Washington, DC 20202-2110, 202 401-3690

RIN: 1880–AA59

1192. NEW RESTRICTIONS ON LOBBYING

Legal Authority: 31 USC 1352; 20 USC 347-4

CFR Citation: 34 CFR 082

Legal Deadline: None

Abstract: These regulations implement provisions to prohibit recipients of Federal grants and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific grant or loan and impose certain certification and disclosure requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6736
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Greg Vick, Grants and Contracts Service, Office of the Chief Financial Officer, Department of Education, 400 Maryland Avenue SW., Room 3636, ROB-3, Washington, DC 20202-4700, 202 708-8199

RIN: 1880–AA48

1193. FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Legal Authority: 20 USC 1232g

CFR Citation: 34 CFR 099

Legal Deadline: None

Abstract: The regulations are needed to implement section 1555 of the Higher

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Education Amendments of 1992, P.L. 102-325, codified at 20 U.S.C. section 1232g(a)(4)(B)(ii). The provision amends the Family Educational Rights and Privacy Act (FERPA) to exclude from the definition of "education records," and thereby from the protection of FERPA, records which are created and maintained by a law enforcement unit of an educational agency or institution for the purpose of law enforcement.

Timetable:

Action	Date	FR Cite
NPRM	08/11/93	58 FR 42836
NPRM	12/14/93	58 FR 65298
NPRM Comment Period End	02/14/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: LeRoy Rooker, Family Policy Compliance Office, Office of Human Resources & Administration, Department of Education, 400 Maryland Avenue SW., 2100 Corridor, L'Enfant Plaza, Washington, DC 20202-4605, 202 732-1807

RIN: 1880–AA57

DEPARTMENT OF EDUCATION (ED)
Departmental Management (EDMAN) — Completed Actions

1194. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS FOR INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OR NONPROFIT ORGANIZATIONS

CFR Citation: 34 CFR 074; 34 CFR 080

Completed:

Reason	Date	FR Cite
Final Action	07/06/94	59 FR 34722

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Greg Vick, 202 708-8199

RIN: 1880–AA34

DEPARTMENT OF EDUCATION (ED)
Office for Civil Rights (OCR) — Proposed Rule Stage

1195. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Legal Authority: 20 USC 1681

CFR Citation: 34 CFR 106

Legal Deadline: None

Abstract: These proposed regulations would amend the fringe benefits provision of the regulations implementing Title IX of the Education Amendments of 1972. The regulations would require employers offering employees a fringe benefit plan to have both equal pay-in and equal pay-out provisions, regardless of the sex of the employee.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeanette J. Lim, Director, Policy, Enforcement and Program Service, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW., Rm 5036, Switzer Bldg., Washington, DC 20202-1170, 202 205-8635

RIN: 1870–AA06

DEPARTMENT OF EDUCATION (ED)
Office of Elementary and Secondary Education (OESE) — Proposed Rule Stage

1196. • GOALS 2000: EDUCATE AMERICA ACT

Regulatory Plan: This entry is Seq. No. 24 in Part II of this issue of the Federal Register.

RIN: 1810–AA72

1197. • PART A OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

Regulatory Plan: This entry is Seq. No. 25 in Part II of this issue of the Federal Register.

RIN: 1810–AA73

DEPARTMENT OF EDUCATION (ED)
Office of Elementary and Secondary Education (OESE) — Completed Actions

1198. CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES; AND CHAPTER 1—MIGRANT EDUCATION PROGRAM

CFR Citation: 34 CFR 200; 34 CFR 201

Completed:

Reason	Date	FR Cite
Final Action	08/10/94	59 FR 41168

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Wendy Jo New, 202 260-0982

RIN: 1810–AA70

DEPARTMENT OF EDUCATION (ED)
Office of Postsecondary Education (OPE) — Proposed Rule Stage

1199. UPWARD BOUND PROGRAM

Legal Authority: 20 USC 1070a-11; 20 USC 1070a-13

CFR Citation: 34 CFR 645

Legal Deadline: None

Abstract: These regulations are needed to amend the Upward Bound applicant selection criteria and prior experience criteria and to clarify other sections of this regulation as needed.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard T. Sonnergren, Director, Div. of Student Services, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 5065, FOB-6, Washington, DC 20202-5249, 202 708-4804

RIN: 1840–AC02

1200. STUDENT SUPPORT SERVICES PROGRAM

Legal Authority: 20 USC 1070a-11; 20 USC 1070a-14

CFR Citation: 34 CFR 646

Legal Deadline: None

Abstract: These regulations would revise the selection criteria, the prior experience criteria and other sections of the regulations for the purpose of clarifying existing provisions as well as placing greater emphasis on grantee accountability.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard T. Sonnergren, Director, Div. of Student Services, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 5065, FOB-6, Washington, DC 20202-5249, 202 708-4804

RIN: 1840–AC03

1201. STUDENT RIGHT-TO-KNOW ACT

Regulatory Plan: This entry is Seq. No. 26 in Part II of this issue of the Federal Register.

RIN: 1840–AB44

1202. STUDENT ASSISTANCE GENERAL PROVISIONS—ABILITY TO BENEFIT (GUIDELINES TO ASSIST INSTITUTIONS IN DETERMINING STUDENT ELIGIBILITY FOR TITLE IV, HEA STUDENT FINANCIAL ASSISTANCE)

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1092; 20 USC 1094; 20 USC 1141

CFR Citation: 34 CFR 668

Legal Deadline: None

Abstract: These regulations would implement guidelines for institutions to determine student eligibility by administering an ability to benefit test and would include a cumulative list of

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approved Ability-To-Benefit Examinations, as provided by the Higher Education Amendments of 1992 (Pub. L. 102-325, enacted July 23, 1992).

Timetable:

Action	Date	FR Cite
NPRM	08/16/94	59 FR 42134
NPRM Comment Period End	10/17/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Lorraine Kennedy**, Program Analyst, Student Eligibility and Verification Section, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4318, ROB-3, Washington, DC 20202, **202 708-4601**

RIN: 1840–AB84

1203. • STUDENT ASSISTANCE GENERAL PROVISIONS—CASH MANAGEMENT

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1092; 20 USC 1094; 20 USC 1099c; 20 USC 1141

CFR Citation: 34 CFR 668

Legal Deadline: None

Abstract: These regulations promote sound cash management practices by institutions that participate in title IV, HEA programs by strengthening and making uniform the cash management rules for those programs.

The proposed regulations govern the management of funds an institution receives under the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, Federal Perkins Loan, Federal Family Education Loan, and Federal Direct Loan programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs).

Timetable:

Action	Date	FR Cite
NPRM	09/29/94	59 FR 49766
NPRM Comment Period End	10/31/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **John Kolotos**, Program Specialist, Department of Education, Office of Postsecondary Education, 600 Independence Avenue SW., Room 4318, ROB-3, Washington, DC 20202-5244, **202 708-7888**

RIN: 1840–AC13

1204. • FEDERAL FAMILY EDUCATION LOAN PROGRAM—STATE SHARE OF DEFAULT COSTS

Legal Authority: 20 USC 1087a et seq

CFR Citation: 34 CFR 682

Legal Deadline: None

Abstract: These regulations implement provisions of the Student Loan Reform Act. These regulations address the Secretary's implementation of section 428(n) of the Higher Education Act of 1965 that requires a State to pay a fee to the Department of Education based on the costs of student loan defaults for students attending schools in that State.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: **Barbara Bauman**, Program Specialist, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4310, ROB-3, Washington, DC 20202, **202 708-8242**

RIN: 1840–AC12

1206. FEDERAL DIRECT STUDENT LOAN PROGRAM

Regulatory Plan: This entry is Seq. No. 27 in Part II of this issue of the **Federal Register**.

RIN: 1840–AC05

Agency Contact: **Doug Laine**, Program Specialist, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4310, ROB-3, Washington, DC 20202, **202 708-8242**

RIN: 1840–AC09

1205. • FEDERAL FAMILY EDUCATION LOAN PROGRAM—CONFORMING AMENDMENTS WITH FEDERAL DIRECT STUDENT LOAN PROGRAM

Legal Authority: 20 USC 1087a et seq

CFR Citation: 34 CFR 682

Legal Deadline: None

Abstract: These regulations revise provisions in the Federal Family Education Loan Program to conform to provisions in the Federal Direct Student Loan Program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	12/00/94	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: **Barbara Bauman**, Program Specialist, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4310, ROB-3, Washington, DC 20202, **202 708-8242**

RIN: 1840–AC12

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Final Rule Stage

1207. RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT

Legal Authority: 20 USC 1070a-15

CFR Citation: 34 CFR 647

Legal Deadline: None

Abstract: These regulations implement changes in this discretionary grant program made by the Higher Education Amendments of 1992. The regulations would provide administrative provisions for the Ronald E. McNair program, which assists disadvantaged college students in preparing for doctoral study. Previously, this program was administered under the program statute and the Education Department General Administrative Regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/02/93	58 FR 63870
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Richard T. Sonnergren**, Director, Division of Student Services, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 5065, FOB-6, Washington, DC 20202-5249, **202 708-4804**

RIN: 1840–AB65

ED—OPE — **Final Rule Stage**

1208. STUDENT ASSISTANCE GENERAL PROVISIONS, FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Legal Authority: 20 USC 1070b to 1070b-3; 20 USC 1087aa to 1087hh; 20 USC 1094; 20 USC 2571 to 2756b

CFR Citation: 34 CFR 668; 34 CFR 674; 34 CFR 675; 34 CFR 676

Legal Deadline: None

Abstract: These regulations revise the Student Assistance General Provisions resulting from public comments received in response to a notice published in the Federal Register requesting comments on statutes and regulations that substantially impede economic growth or impose unnecessary burdens. These regulations also revise the existing campus-based regulations to implement the Higher Education Amendments of 1992 and the Higher Education Technical Amendments of 1993.

Timetable:

Action	Date	FR Cite
NPRM	06/22/94	59 FR 32264
NPRM Comment Period End	08/22/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Susan Morgan**, Chief, Campus-Based Loan Programs Section, Loans Branch, Div. of Policy Development, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4310, ROB-3, Washington, DC 20202-5447, **202 708-4690**

RIN: 1840–AB71

1209. • STUDENT ASSISTANCE GENERAL PROVISIONS - VERIFICATION OF STUDENT AID APPLICATION INFORMATION

Legal Authority: 20 USC 1085; 20 USC 1088; 20 USC 1091; 20 USC 1092; 20 USC 1094; 20 USC 1141

CFR Citation: 34 CFR 668

Legal Deadline: None

Abstract: These regulations are needed to implement changes in the percentage of Title IV applicants an institution is required to verify annually in an award year and the dollar tolerance amount.

Timetable:

Action	Date	FR Cite
NPRM	04/28/94	59 FR 22070
NPRM Comment Period End	05/31/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Lorraine Kennedy**, Program Analyst, Student Eligibility and Verification Section, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4318, ROB-3, Washington, DC 20202, **202 708-4601**

RIN: 1840–AC10

1210. FEDERAL FAMILY EDUCATION LOAN PROGRAM—GUARANTY AGENCY RESERVES

Legal Authority: 20 USC 1087a et seq

CFR Citation: 34 CFR 682

Legal Deadline: None

Abstract: These regulations implement provisions of the Student Loan Reform Act. These regulations address the preservation and recovery of reserve funds of guarantee agencies. The Secretary convened negotiated rulemaking sessions to assist in the development of the notice of proposed rulemaking. The regulations reflect the consensus of the negotiators.

Timetable:

Action	Date	FR Cite
NPRM	08/10/94	59 FR 41184
Final Action	12/00/94	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: **Doug Laine**, Program Specialist, Department of Education, Office of Postsecondary Education, Room 4310, ROB-3, 400 Maryland Avenue SW., Washington, DC 20202, **202 708-8242**

RIN: 1840–AC06

1211. FEDERAL PELL GRANT PROGRAM; PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM

Legal Authority: 20 USC 1070a

CFR Citation: 34 CFR 690; 34 CFR 691

Legal Deadline: None

Abstract: FEDERAL PELL GRANT PROGRAM: These regulations amend the Pell Grant Program regulations to incorporate statutory changes made by the Higher Education Amendments of 1992. These changes alter how institutions administer the Federal Pell Grant program and incorporate new requirements that the Federal Pell Grants supplement and not supplant a State's postsecondary educational expenditures for incarcerated students within that State.

PRESIDENTIAL ACCESS SCHOLARSHIP PROGRAM: These regulations implement the Presidential Access Scholarship Program and set forth the requirements that States, institutions, and students must follow to participate in and administer the Presidential Access Scholarship Program.

Timetable:

Action	Date	FR Cite
NPRM	02/25/94	59 FR 9354
NPRM Comment Period End	04/11/94	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: **Fred H. Sellers**, Chief, Pell and State Grant Section, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4018, ROB-3, Washington, DC 20202-5447, **202 708-4607**

RIN: 1840–AB73

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DEPARTMENT OF EDUCATION (ED)
Office of Postsecondary Education (OPE)

Completed Actions

1212. INSTITUTIONAL ELIGIBILITY
CFR Citation: 34 CFR 600
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22324

Small Entities Affected: None
Government Levels Affected: Federal
Agency Contact: Cheryl Leibovitz, 202 708-7888
RIN: 1840–AB87

1213. INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED—ELIGIBILITY OF FOREIGN INSTITUTIONS AND FOREIGN GRADUATE MEDICAL SCHOOLS
CFR Citation: 34 CFR 600
Completed:

Reason	Date	FR Cite
Final Action	04/28/94	59 FR 22064

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Joyce Coates, 202 708-7888
RIN: 1840–AB88

1214. SECRETARY'S PROCEDURE AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES
CFR Citation: 34 CFR 602
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22251

Small Entities Affected: None
Government Levels Affected: State
Agency Contact: Karen W. Kershenstein, 202 708-7417
RIN: 1840–AB82

1215. STRENGTHENING INSTITUTIONS PROGRAM
CFR Citation: 34 CFR 607
Completed:

Reason	Date	FR Cite
Final Action	08/15/94	59 FR 41914

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Louis J. Venuto, 202 708-8839
RIN: 1840–AB78

1216. FACULTY DEVELOPMENT FELLOWSHIP PROGRAM
CFR Citation: 34 CFR 641
Completed:

Reason	Date	FR Cite
Final Action	07/01/94	59 FR 34198

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Alfreda Liebermann, 202 260-3245
RIN: 1840–AC04

1217. PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM
CFR Citation: 34 CFR 649
Completed:

Reason	Date	FR Cite
Withdrawn	07/13/94	

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Alfreda Liebermann, 202 260-3245
RIN: 1840–AC01

1218. STATE POSTSECONDARY REVIEW PROGRAM
CFR Citation: 34 CFR 667
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22284

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: John Kolotos, 202 708-7888
RIN: 1840–AB89

1219. STUDENT ASSISTANCE GENERAL PROVISIONS AND FEDERAL FAMILY EDUCATION LOAN PROGRAMS—THIRD-PARTY SERVICERS
CFR Citation: 34 CFR 668; 34 CFR 682
Completed:

Reason	Date	FR Cite
Interim Final Rule	04/29/94	59 FR 22348

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Greg Allen, 202 708-7888
RIN: 1840–AB80

1220. STUDENT ASSISTANCE GENERAL PROVISIONS—SUBPARTS A AND B
CFR Citation: 34 CFR 668
Completed:

Reason	Date	FR Cite
Interim Final Rule	04/29/94	59 FR 22348

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Wendy Macias, 202 708-7888
RIN: 1840–AB85

1221. STUDENT ASSISTANCE GENERAL PROVISIONS—SUBPARTS D AND F
CFR Citation: 34 CFR 668
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22314

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Paula M. Husselmann, 202 708-7888
RIN: 1840–AB86

1222. CAMPUS SECURITY ACT
CFR Citation: 34 CFR 668
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22314

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Paula Husselmann, 202 708-7888
RIN: 1840–AB98

1223. STUDENT ASSISTANCE GENERAL PROVISIONS—SUBPART E - VERIFICATION OF STUDENT AID APPLICATION INFORMATION
CFR Citation: 34 CFR 668
Completed:

Reason	Date	FR Cite
Final Action	04/28/94	59 FR 22066

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Lorraine Kennedy, 202 708-4601
RIN: 1840–AC08

ED—OPE

Completed Actions

1224. FEDERAL STAFFORD LOAN CANCELLATION DEMONSTRATION PROGRAM
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	06/16/94	59 FR 31084

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Barbara Bawman, 202 708-8242
RIN: 1840–AB62

1225. EXCEPTIONAL PERFORMANCE DESIGNATION IN THE FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP) FOR LENDERS, SERVICERS, AND GUARANTY AGENCIES
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	06/24/94	59 FR 32862

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Ronald Streets, 202 708-8242
RIN: 1840–AB81

1226. FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP) LOAN CANCELLATION AND GARNISHMENT REGULATIONS
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	04/29/94	59 FR 22462

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: George Harris, 202 708-8242
RIN: 1840–AB83

1227. FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP) (GENERAL ADMINISTRATION)
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	06/28/94	59 FR 33334

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Patsy Beavan, 202 807-8242
RIN: 1840–AB97

1228. FEDERAL STAFFORD LOAN REPAYMENT PROVISIONS
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	06/29/94	59 FR 33580

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: George Harris, 202 708-8242
RIN: 1840–AB99

1229. FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFEL)—TEACHOUT PROVISIONS
CFR Citation: 34 CFR 682
Completed:

Reason	Date	FR Cite
Final Action	04/11/94	59 FR 17170

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Patricia Newcombe, 202 708-8242
RIN: 1840–AC07

1230. • FEDERAL DIRECT STUDENT LOAN PROGRAM
Legal Authority: 20 USC 1087a et seq
CFR Citation: 34 CFR 685
Legal Deadline: None

Abstract: These standards, criteria, and procedures govern the repayment and consolidation of loans under the Federal Direct Student Loan Program in the academic year beginning July 1, 1994.

Timetable:

Action	Date	FR Cite
Final Action	07/01/94	59 FR 34278

Small Entities Affected: None
Government Levels Affected: None
Agency Contact: Lynn Mahaffie, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 4060, ROB-3, Washington, DC 20202, 202 708-9069
RIN: 1840–AC11

1231. NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM
CFR Citation: 34 CFR 693
Completed:

Reason	Date	FR Cite
Final Action	05/12/94	59 FR 24868

Small Entities Affected: None
Government Levels Affected: State
Agency Contact: Fred Sellers, 202 708-4607
RIN: 1840–AB79

DEPARTMENT OF EDUCATION (ED)
Office of Special Education and Rehabilitative Services (OSERS)

Proposed Rule Stage

1232. STATE VOCATIONAL REHABILITATION SERVICES PROGRAM
Legal Authority: 29 USC 711(e); PL 102-569
CFR Citation: 34 CFR 361
Legal Deadline: None

Abstract: This action is needed to revise existing regulations to implement changes made to the Rehabilitation Act of 1973 by the Rehabilitation Act Amendments of 1992. Those changes include significant revisions in definitions, new definitions, new State plan requirements, and new eligibility requirements for services. These regulations include the regulatory provisions previously listed under RIN 1820-AB15.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	06/00/95	

Small Entities Affected: None

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ED—OSERS — **Proposed Rule Stage**

Government Levels Affected: State, Local

Agency Contact: Beverlee Stafford, Special Assistant to the Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3028, Switzer Building, Washington, DC 20202-2531, 202 205-5482

RIN: 1820–AB12

1233. STATE VOCATIONAL REHABILITATION SERVICES PROGRAM—EVALUATION STANDARDS AND PERFORMANCE INDICATORS

Legal Authority: PL 102-569

CFR Citation: 34 CFR 361

Legal Deadline: Final, Statutory, September 30, 1994.

Abstract: This action is needed to revise existing regulations due to changes in authorizing legislation made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102-569). Amendments require the development of standards and performance indicators.

Timetable:

Action	Date	FR Cite
ANPRM	02/19/93	58 FR 9458
NPRM	03/00/95	
Final Action	09/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Beverlee Stafford, Special Assistant to the Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3028, Switzer Building, Washington, DC 20202-2531, 202 205-5482

RIN: 1820–AB14

DEPARTMENT OF EDUCATION (ED)
Office of Special Education and Rehabilitative Services (OSERS) — **Final Rule Stage**

1234. DISABILITY AND REHABILITATION RESEARCH; GENERAL PROVISIONS; RESEARCH AND DEMONSTRATION PROJECTS; REHABILITATION RESEARCH AND TRAINING CENTERS; REHABILITATION ENGINEERING RESEARCH CENTERS

Legal Authority: 29 USC 760 to 762; 29 USC 762(b)(2); 29 USC 762(b)(3)

CFR Citation: 34 CFR 350; 34 CFR 351; 34 CFR 352; 34 CFR 353

Legal Deadline: None

Abstract: These regulations authorize NIDRR to fund disability and rehabilitation research activities that address a wide range of problems confronting persons with disabilities, facilitate the distribution of information, improve the distribution of technological devices, and increase the scientific and technological information presently available in the field of rehabilitation. The regulations establish procedures designed to assist in the provision of vocational and other rehabilitation services, and in developing and sharing rehabilitation information found useful in other nations. The regulations also fund centers to provide training (including graduate training) to research other rehabilitation personnel and innovative methods of applying advanced technological and scientific knowledge to solve rehabilitation problems. These regulations are also needed to implement certain provisions of the Rehabilitation Act Amendments of 1992, Pub. L. 102-569.

Timetable:

Action	Date	FR Cite
NPRM	08/10/94	59 FR 41176
Final Action	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Betty Jo Berland, Planning Officer, NIDRR, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3422, Switzer Building, Washington, DC 20202-2651, 202 205-9739

RIN: 1820–AB01

1235. STATE VOCATIONAL REHABILITATION SERVICES PROGRAM—ORDER OF SELECTION

Legal Authority: 29 USC 721(a)(5)(A); PL 102-569

CFR Citation: 34 CFR 361

Legal Deadline: None

Abstract: This action is needed to revise existing regulations due to changes in authorizing legislation made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102-569). Amendments require that specific regulations be promulgated regarding criteria for order of selection.

Timetable:

Action	Date	FR Cite
NPRM	07/16/93	58 FR 38482
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Beverlee Stafford, Special Assistant to the Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3028, Switzer Building, Washington, DC 20202-2531, 202 205-5482

RIN: 1820–AB13

1236. CENTERS FOR INDEPENDENT LIVING—EVALUATION STANDARDS AND COMPLIANCE INDICATORS

Legal Authority: 20 USC 796d-1(b); 20 USC 796f-4

CFR Citation: 34 CFR 366

Legal Deadline: None

Abstract: The Rehabilitation Act Amendments of 1992 establish evaluation standards for centers for independent living and require the Department to develop and publish indicators of minimum compliance with these standards. These regulations implement this statutory requirement and set an important precedent for evaluating Federal rehabilitation programs. Minimum compliance with the evaluation standards is a prerequisite for continuation funding.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/92	57 FR 30860
NPRM	10/27/93	58 FR 57942
NPRM Comment Period End	02/22/94	
Final Action	12/00/94	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Beverlee Stafford, Special Assistant to the Commissioner, Rehabilitation Services Administration, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3028, Switzer Bldg., Washington, DC 20202-2531, 202 205-5482

RIN: 1820–AA61

ED—OSERS — **Final Rule Stage**

1237. CLIENT ASSISTANCE PROGRAM

Legal Authority: 29 USC 732

CFR Citation: 34 CFR 370

Legal Deadline: None

Abstract: These regulations implement changes in this formula grant program made by the Rehabilitation Act Amendments of 1992, including the expansion of the services provided by CAPs to include dissemination of information related to Title I of the Americans with Disabilities Act of 1990, and the implementation of due process requirements that apply if a Governor chooses to redesignate the agency designated to conduct the State's CAP.

Timetable:

Action	Date	FR Cite
NPRM	10/08/93	58 FR 52614
Final Action	11/00/94	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Beverlee Stafford, Special Assistant to the Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW., Room 3028, Switzer Building, Washington, DC 20202-2531, 202 205-5482

RIN: 1820–AB16

DEPARTMENT OF EDUCATION (ED)
Office of Special Education and Rehabilitative Services (OSERS) — **Completed Actions**

1238. NOMENCLATURE CHANGES

CFR Citation: 34 CFR 300; 34 CFR 307; 34 CFR 315; 34 CFR 318; 34 CFR 346; 34 CFR 350; 34 CFR 351; 34 CFR 359; 34 CFR 361; 34 CFR 363; 34 CFR 365; 34 CFR 366; 34 CFR 367; 34 CFR 369; 34 CFR 371; ...

Completed:

Reason	Date	FR Cite
Withdrawn	04/29/94	59 FR 22145

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gregory March, 202 205-8441

RIN: 1820–AB26

1239. THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM; CENTERS FOR INDEPENDENT LIVING; INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

CFR Citation: 34 CFR 365

Completed:

Reason	Date	FR Cite
Final Action	08/15/94	59 FR 41880

Small Entities Affected: Organizations

Government Levels Affected: State, Local

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB18

1240. CENTERS FOR INDEPENDENT LIVING

CFR Citation: 34 CFR 366

Completed:

Reason	Date	FR Cite
Merged With RIN 1820-AB18	05/12/94	59 FR 24814

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB19

1241. INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

CFR Citation: 34 CFR 367

Completed:

Reason	Date	FR Cite
Merged With RIN 1840-AB18	05/12/94	59 FR 24814

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB20

1242. REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

CFR Citation: 34 CFR 386

Completed:

Reason	Date	FR Cite
Final Action	06/16/94	59 FR 31060

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB21

1243. STATE VOCATIONAL REHABILITATION IN-SERVICE TRAINING

CFR Citation: 34 CFR 388

Completed:

Reason	Date	FR Cite
Final Action	08/05/94	59 FR 40176

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB24

1244. TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

CFR Citation: 34 CFR 396

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ED—OSERS — **Completed Actions**

Completed:

Reason	Date	FR Cite
Final Action	10/14/94	59 FR 52218

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Beverlee Stafford, 202 205-5482

RIN: 1820–AB25

DEPARTMENT OF EDUCATION (ED)
Office of Vocational and Adult Education (OVAE) — **Proposed Rule Stage**

1245. • SCHOOL-TO-WORK OPPORTUNITIES PROGRAM

Regulatory Plan: This entry is Seq. No. 28 in Part II of this issue of the Federal Register.

RIN: 1830–AA14

DEPARTMENT OF EDUCATION (ED)
Office of Vocational and Adult Education (OVAE) — **Completed Actions**

1246. STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS

CFR Citation: 34 CFR 403.32; 34 CFR 403.116; 34 CFR 403.118; 34 CFR 403.120; 34 CFR 403.193; 34 CFR 405.1; 34 CFR 405.3; 34 CFR 405.20; 34 CFR 406.1; 34 CFR 406.3; 34 CFR 406.10

Completed:

Reason	Date	FR Cite
Final Action	07/28/94	59 FR 38512

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Sharon A. Jones, 202 205-8237

RIN: 1830–AA12

1247. STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS

CFR Citation: 34 CFR 403.32; 34 CFR 403.111; 34 CFR 403.191

Completed:

Reason	Date	FR Cite
Withdrawn	10/11/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Sharon Jones, 202 205-8237

RIN: 1830–AA13

DEPARTMENT OF EDUCATION (ED)
Office of Intergovernmental and Interagency Affairs (EDSI) — **Final Rule Stage**

1248. U.S. EXCHANGE VISITOR PROGRAM—REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Legal Authority: 8 USC 1182(e); 20 USC 2451 et seq

CFR Citation: 34 CFR 50

Legal Deadline: None

Abstract: These regulations simplify the language and format of provisions establishing procedures, criteria, and other policies used by the Department of Education in requesting waivers for exchange visitors with respect to areas in which the Department serves as an interested agency.

Timetable:

Action	Date	FR Cite
NPRM	03/01/93	58 FR 11924
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Jean Pedersen, Internat'l Management & Research Specialist, International and Territorial Services Staff, Department of Education, Office of Intergovernmental and Interagency Affairs, 400 Maryland Avenue SW., Room 3047, FOB-6, Washington, DC 20202-3721, 202 401-0430

RIN: 1860–AA02

[FR Doc. 94-21655 Filed 11-10-94; 8:45 am]
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federal register

Monday
November 14, 1994

Part VII

Department of Energy

Semiannual Regulatory Agenda

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DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: October 1994 regulatory agenda.

SUMMARY: The Department of Energy has prepared and today is publishing its October 1994 regulatory agenda pursuant to instructions of the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), dated June 8, 1994.

FOR FURTHER INFORMATION CONTACT: For further information about any particular item on the regulatory agenda, please contact the individual listed under that item. For further information on the regulatory agenda in general, please contact: Theodore ("Ted") Wilson, Room 6B-256, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: Entries appended to this notice reflect the status of activities as of approximately August 15, 1994. They are divided into categories, first by subagencies and then according to their stage of rulemaking action: Prerule, proposed rulemaking, final rulemaking, or completed actio.

For this edition of the Department of Energy's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate Sequence Number in Part II.

Appended entries contain the following information: (1) The organizational unit responsible for the regulation; (2) the Regulation Identifier Number (RIN) assigned by OMB; (3) title; (4) whether the action appears in The Regulatory Plan as one of the Department's most important significant regulatory actions; (5) the name, title, address, and telephone number of a person who is knowledgeable about the regulation; (6) effects on small business (that is, whether the action is likely to have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act) and effects on Federal, State, and local governments; (7) citation to the affected portion of the Code of Federal Regulations (CFR); (8) legal authority (that is, a citation to the section of the United States Code (USC), Public Law (PL), or Executive order (EO) that authorizes the regulatory action); (9) abstract describing the particular regulatory action in progress or under consideration; (10) legal deadline (that is, the statutory or judicial deadline, if any); and (11) timetable (that is, the dates and citations, if applicable, for all past stages and the date for at least the next stage of the rulemaking). The timetable for completed actions (that is, regulations completed or withdrawn and reviews completed since the preceding regulatory agenda) gives the completion date and any related citation.

For each procurement-related regulatory action, additional information is provided on whether there is a statutory requirement for the action and whether there is a paperwork burden associated with the action.

A draft of this regulatory agenda has been transmitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration for comment, if any, pursuant to 5 U.S.C. 602(b).

Issued in Washington, DC, on August 19, 1994.

Robert R. Nordhaus,
General Counsel.

Energy Efficiency and Renewable Energy—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1249	Energy Efficiency Standards for Residential Appliances **(Reg Plan Seq. No. 29)**	1904-AA38
1250	Energy Efficiency Standards for Dishwashers, Clothes Washers, and Clothes Dryers	1904-AA67
1251	Private/Municipal Alternative Fuels Fleet Program	1904-AA72

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Energy Efficiency and Renewable Energy—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1252	Test Procedures for Central Air Conditioners and Heat Pumps—Amendments	1904-AA46
1253	Energy Efficiency Standards for Central Air Conditioners, Heat Pumps, Furnaces, Refrigerators, Refrigerator-Freezers and Freezers	1904-AA47
1254	Test Procedures for Water Heaters, Kitchen Ranges, Ovens and Microwaves, and Clothes Washers—Amendment	1904-AA52
1255	Energy Efficiency Standards for Federal Residential Buildings	1904-AA53
1256	Test Procedures for Commercial Air Conditioners and Heat Pumps	1904-AA57
1257	Test Procedures for Commercial Furnaces and Boilers	1904-AA58
1258	Test Procedures for Storage Water Heaters, Instantaneous Water Heaters, and Unfired Hot Water Storage Tanks	1904-AA59
1259	Measurement of Alternative Fuel Use	1904-AA63
1260	Alternative Fuel Provider Vehicle Acquisition Mandate, State Fleet Mandate, and the Alternative Fuel Vehicle Credit Program	1904-AA64
1261	State and Local Alternative Fuels Incentives Program	1904-AA66

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Energy Efficiency and Renewable Energy—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1262	Energy Efficiency Standards for Federal Commercial Buildings	1904-AA69
1263	Definitions for Certain Fluorescent and Incandescent Lamps	1904-AA70
1264	Test Procedures and Certification Requirements for Faucets, Showerheads, Water Closets, and Urinals; and Certification Requirements for Residential Appliances	1904-AA71

Energy Efficiency and Renewable Energy—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1265	Equivalent Petroleum-Based Fuel Economy Calculation for Electric Vehicles	1904-AA40
1266	Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters—Amendment	1904-AA45
1267	Test Procedures for Fluorescent and Incandescent Reflector Lamps	1904-AA61
1268	Federal Sector Energy Savings Performance Contracting **(Reg Plan Seq. No. 30)**	1904-AA62
1269	Renewable Energy Production Incentive	1904-AA65
1270	Clarification of Existing Clothes Washer Test Procedure	1904-AA68

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Energy Efficiency and Renewable Energy—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1271	Electric Motor Manufacturer Petition Procedures	1904-AA60

Defense and Security Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1272	Personnel Assurance Program	1992-AA14

Defense and Security Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1273	Personnel Security Assurance Program: Substance Abuse Testing Procedures	1992-AA13
1274	Assistance to Foreign Atomic Energy Activities—Listing Updates	1992-AA20

Defense and Security Affairs—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1275	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material	1992-AA15

Departmental and Others—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1276	Review of Administrative Procedures with Respect to Imports and Exports of Natural Gas	1901-AA25
1277	Renegotiation of Power Sales Contracts	1901-AA36

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Departmental and Others—Prerule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
• 1278	Enforcement of Employee Safety Standards at Nuclear Weapons Facilities	1901-AA44
1279	Implementation of DOE Science Education Enhancement Act	1901-AA51

Departmental and Others—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1280	Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions	1901-AA19
1281	Energy Board of Contract Appeals; Organization, Functions and Authorities; Rules of Practice	1901-AA30
1282	Rules of Practice to Govern Proceedings to Resolve Certain Disputes Arising Between M&O Contractors and Their Subcontractors	1901-AA31
1283	Nuclear Safety Management: Phase II **(Reg Plan Seq. No. 31)**	1901-AA42
1284	Standard Contract for the Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste	1901-AA49
1285	Energy Planning and Management Program	1901-AA50
1286	The Office of Energy Research Financial Assistance Program	1901-AA54
1287	Payments for Special Burdens and in Lieu of Taxes	1901-AA58
1288	Occupational Radiation Protection—Amendment	1901-AA59
1289	DOE Grants for Educational Purposes	1901-AA61
1290	Privacy Act—Exemption of an Inspector General System of Records	1901-AA62
1291	Discretionary Environmental Management Funding to Federally Recognized American Indian Tribes	1901-AA63
1292	Redesign and Revision of Wholesale Power and Transmission Rates	1901-AA64

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Departmental and Others—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1293	Freedom of Information	1901-AA32
1294	Radiation Protection of the Public and the Environment **(Reg Plan Seq. No. 32)**	1901-AA38
1295	Office of Hearings and Appeals Procedural Regulations	1901-AA55
1296	Epidemiology and Other Health Studies Financial Assistance Program	1901-AA56
1297	Annotation of Land Records for Remediated Properties	1901-AA57
1298	Privacy Act—Exemption of Certain Counterintelligence Systems of Records	1901-AA60

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Departmental and Others—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1299	Preference Policy for Sales of Surplus Firm Power and Surplus Nonfirm Energy Under the Northwest Power Act	1901-AA37
1300	Uranium Enrichment Decontamination and Decommissioning Fund	1901-AA52
1301	Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites	1901-AA53

Office of Procurement and Assistance Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1302	Department of Energy Property Management Regulations; Miscellaneous Personal Property	1991-AA28
1303	Resolution of Disputes Between Subcontractors and DOE Management and Operating Contractors	1991-AA44
1304	Technology Transfer: DOE Management and Operating Contractors	1991-AA63
1305	Debarment and Suspension (Common Rule)	1991-AA69

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Office of Procurement and Assistance Management—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1306	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule)	1991-AA85
1307	DEAR: Security Procedures	1991-AA86
1308	DEAR: Amendment to Workplace Substance Abuse Programs at DOE Sites	1991-AA97
1309	DEAR: Financial Management Clauses	1991-AB02
1310	Legislative Lobbying Cost Prohibition	1991-AB08
1311	DEAR: Extend-Compete Revisions	1991-AB09
1312	Independent Research and Development/Bid and Proposal Costs and Travel Cost Guidelines	1991-AB12
1313	Revision to A-102 Common Rule to Raise Threshold for Simplified Small Purchases under Grants	1991-AB15

Office of Procurement and Assistance Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1314	DEAR: Patent Policy Revisions	1991-AA23
1315	New Restrictions on Lobbying (Common Rule)	1991-AA64
1316	Acquisition of Federal Information Resources by Contract	1991-AA81
1317	Amendment to Workplace Substance Abuse Programs at DOE Sites	1991-AA90
1318	DEAR: Project Control System	1991-AA93
1319	DEAR: Organizational Conflicts of Interest	1991-AA95
1320	DEAR: Interagency Agreements	1991-AA98
1321	DEAR: Recovered/Recycled Materials	1991-AB05
1322	Procurement Set Asides for Small Business and Others	1991-AB11
1323	Uniform Administrative Requirements for Grants With Educational Institutions, Hospitals, and Other Nonprofit Institutions	1991-AB13
1324	Limits on Participation in Certain DOE Research and Development Programs	1991-AB14
1325	DEAR: Interagency Acquisition Under the Economy Act	1991-AB16

Office of Procurement and Assistance Management—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1326	DEAR: Miscellaneous Changes on Acquisition of Personal Property	1991-AA32
1327	Personnel Appendices and Employee Relocation Under Management and Operating Contracts	1991-AA80
1328	DEAR: M&O Work Authorization and Control System	1991-AA91
1329	DEAR: Ownership of Records	1991-AA96
1330	Seismic Safety Standards	1991-AB03
1331	DEAR: Updated Coverage	1991-AB04
1332	Review of Contractors' Purchasing Systems	1991-AB07

Office of General Counsel—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1333	Patent Waiver Regulation	1990-AA02
1334	Payment of Travel Expenses of Persons Who Are Not Government Employees	1990-AA15
1335	Conduct of Employees	1990-AA19

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Office of General Counsel—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1336	Foreign Gifts and Decorations	1990-AA04
1337	Production or Disclosure of Material or Information and Provision of Agency Witnesses in Federal and State Proceedings	1990-AA12
1338	DOE Patent Licensing Regulations—Amendment	1990-AA18

DEPARTMENT OF ENERGY (DOE)
Energy Efficiency and Renewable Energy (EE)

Prerule Stage

1249. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL APPLIANCES

Regulatory Plan: This entry is Seq. No. 29 in Part II of this issue of the Federal Register.

RIN: 1904–AA38

1250. ENERGY EFFICIENCY STANDARDS FOR DISHWASHERS, CLOTHES WASHERS, AND CLOTHES DRYERS

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430

Legal Deadline: Final, Statutory, May 14, 1996.

Abstract:

This rulemaking reviews the energy conservation standards for dishwashers, clothes washers, and clothes dryers in order to determine whether the standard levels need to be amended. This is the second reanalysis for these products.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	
NPRM	08/00/95	
Final Action	05/00/96	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: A description of this regulatory action is included in Regulatory Plan entry 1904-AA38, which appears in Part II of this issue of the Federal Register.

Agency Contact: P. Marc LaFrance, Program Manager, Appliance Standard Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA67

1251. • PRIVATE/MUNICIPAL ALTERNATIVE FUELS FLEET PROGRAM

Legal Authority: 42 USC 13257 Energy Policy Act, sec 507(b)

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, December 15, 1996.
Alternative Final Statutory Deadline is January 1, 2000.

Abstract: The Energy Policy Act of 1992 gives the Secretary authority to implement a private and municipal fleet program by December 15, 1996, or by January 1, 2000 if it is deemed necessary to meet the fuel displacement goals in section 502. The Secretary must make several determinations, by rule, in order to implement the private fleet program. A fleet program, if implemented, is expected to accelerate the use of alternative fuels. A fleet program will also lay the groundwork for expanded use of alternative fuel vehicles by non-fleet users.

Timetable:

Action	Date	FR Cite
ANPRM	11/30/94	
NPRM	10/15/95	

Small Entities Affected: None

Government Levels Affected: Local

Agency Contact: David Rodgers or Kenneth Katz, Program Manager, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8053

RIN: 1904–AA72

DEPARTMENT OF ENERGY (DOE)
Energy Efficiency and Renewable Energy (EE)

Proposed Rule Stage

1252. TEST PROCEDURES FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS—AMENDMENTS

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: These revisions to the test procedures for central air conditioners and heat pumps in accordance with the Energy Policy and Conservation Act, as amended, will include appliances that perform water heating in addition to air conditioning or heating. They will also add new test procedures for test of integrated center air conditioners/water heater systems. This is prompted by the issuance of a Decision and Order granting a waiver to the Carrier Corporation for its Hydrotech 2000 integrated heat pump/ water heater (Waiver CAC-005, 55 FR 13607, April 11, 1990).

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: None

DOE—EE

Proposed Rule Stage

Government Levels Affected: Undetermined

Agency Contact: Edward Pollock, Program Leader, Appliance Standards Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence, Ave. SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA46

1253. ENERGY EFFICIENCY STANDARDS FOR CENTRAL AIR CONDITIONERS, HEAT PUMPS, FURNACES, REFRIGERATORS, REFRIGERATOR-FREEZERS AND FREEZERS

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline:
Final, Statutory, January 1, 1994, for central air conditioners,heat pumps, and furnaces.
Final, Statutory, November 17, 1994, for refrigerators,refrigerator-freezers, and freezers.

Abstract:

This rulemaking reviews the statutory standards for central air conditioners, neat pumps and furnaces to determine whether those levels need to be amended. This is the second reanalysis of the standard levels for refrigerators, refrigerator-freezers and freezers.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
NPRM	12/00/94	
Final Action	02/00/96	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: A description of this regulatory action is included in Regulatory Plan entry 1904-AA38, which appears in Part II of this issue of the Federal Register.

Agency Contact: Edward Pollock, Program Leader, Appliance Standards Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA47

1254. TEST PROCEDURES FOR WATER HEATERS, KITCHEN RANGES, OVENS AND MICROWAVES, AND CLOTHES WASHERS—AMENDMENT

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: In accordance with the Energy Policy and Conservation Act as amended, the test procedures for water heaters, kitchen ranges, ovens, microwaves, and clothes washers are being revised. Rulemaking issues include: with respect to water heater test procedures, inclusion of electric instantaneous water heaters and storage water heaters with less than 20 gallons volume and revision of the first hour rating; with respect to test procedures for kitchen ranges, ovens and microwaves, revision of the constant for annual cooking energy and improvements in measurement of microwave efficiencies; and with respect to clothes washer test procedures, measurements for water usage and water retention.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Ingrid Watson, Program Manager, Appliance Standard Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., 5E-066, Washington, DC 20585, 202 586-7140

RIN: 1904–AA52

1255. ENERGY EFFICIENCY STANDARDS FOR FEDERAL RESIDENTIAL BUILDINGS

Legal Authority: 42 USC 6834 Energy Policy Act of 1992, sec 101(a)(2)

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: Title III of the Energy Conservation and Production Act as amended by the Energy Policy Act of 1992 (PL 102-486, October 24, 1992) provides that DOE establish Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. The standards for Federal buildings are intended to parallel closely the voluntary building energy codes of the Energy Policy Act for private sector construction. Interim energy performance standards which DOE had issued before enactment of the Energy Policy Act are to remain in effect for the Federal sector until the new Federal building energy standards become effective.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	
Final Action	03/00/96	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Stephen P. Walder, Program Manager, Building Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 301 586-0517

RIN: 1904–AA53

1256. TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Legal Authority: 42 USC 6313; 42 USC 6314

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: The test procedures will require manufacturers to use a standardized method to measure the energy efficiency of commercial air conditioners and heat pumps. These measurements will determine whether the product complies with the energy efficiency standards established by PL 102-486 sec 122. The test procedures will also provide the data used in the EnergyGuide product labeling program. The rulemaking will adopt the energy efficiency standards in PL 102-486 sec 122.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Edward Pollock, Program Leader, Appliance Standards

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Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., 5E-066, Washington, DC 20585, 202 586-7140

RIN: 1904–AA57

1257. TEST PROCEDURES FOR COMMERCIAL FURNACES AND BOILERS

Legal Authority: 42 USC 6313; 42 USC 6314

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: The test procedures for commercial furnaces and boilers will require manufacturers to use a standardized method to measure energy efficiency. These measurements will determine whether the product complies with the energy efficiency standards established by PL 102-486 sec 122. The test procedure will also provide the data used in the EnergyGuide product labeling program. The rulemaking will adopt the energy efficiency in PL 102-486 sec 122.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Cyrus Nasseri, Program Manager, Appliance Standard Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., 5E-066, Washington, DC 20585, 202 586-7140

RIN: 1904–AA58

1258. TEST PROCEDURES FOR STORAGE WATER HEATERS, INSTANTANEOUS WATER HEATERS, AND UNFIRED HOT WATER STORAGE TANKS

Legal Authority: 42 USC 6313; 42 USC 6314

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action would adopt the test procedures for storage water heaters, instantaneous water heaters, and unfired hot water storage tanks from the American Society of Heating, Refrigerating and Air-conditioning Engineers. These test procedures will require manufacturers to use a standardized method to measure energy efficiency. These measurements will determine whether the products comply with the energy efficiency standards established by PL 102-486 sec 122. The test procedures will also provide the data used in the Energy Guide product labeling program. The rulemaking will adopt the energy efficiency standards in PL 102-486 sec 122.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: William W. Hui, Program Manager, Appliance Standard Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA59

1259. MEASUREMENT OF ALTERNATIVE FUEL USE

Legal Authority: 42 USC 13217 Energy Policy Act of 1992, sec 308

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, October 24, 1993.

Abstract: Section 308 of the Energy Policy Act of 1992 requires DOE, in consultation with the General Services Administration, to develop guidelines directed at measuring alternative fuel use in Federal dual-fuel vehicles. Initial analysis of data collection and measurement requirements indicates that slight modifications to existing Form 6200.2 may be adequate to accomplish the objective of section 308. DOE collects energy consumption data from the agencies using Form 6200.2, including fuel used for transportation. If these modifications prove adequate, no rulemaking would be needed.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: David Rodgers, Program Manager, Office of Alternative Fuels, EE-33, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-7182

RIN: 1904–AA63

1260. ALTERNATIVE FUEL PROVIDER VEHICLE ACQUISITION MANDATE, STATE FLEET MANDATE, AND THE ALTERNATIVE FUEL VEHICLE CREDIT PROGRAM

Legal Authority: 42 USC 13251 Energy Policy Act of 1992, sec 501; 42 USC 13257(o) Energy Policy Act of 1992, sec 507(o); 42 USC 13258 Energy Policy Act of 1992, sec 508; 42 USC 13261 to 13263 Energy Policy Act of 1992, sec 511 to 513

CFR Citation: 10 CFR 490

Legal Deadline: Final, Statutory, January 1, 1994.
In addition, the statute requires final rules by 10/24/93, for electricity providers who purchase electric vehicles.

Abstract: Section 501 of the Energy Policy Act requires the Department of Energy (DOE) to issue regulations (1) requiring alternative fuel providers to acquire an escalating percentage of alternative fuel vehicles, including an exemption process and (2) requiring that the alternative fuel providers program does not apply to generators, transmitters, importers, or sellers of electricity until January 1, 1998, if they plan to satisfy program requirements with electric vehicles and notify DOE by January 1, 1996. Section 508 of the Energy Policy Act authorizes the Department of Energy to allocate credits to fleets or covered person who obtain alternative fuel vehicles in excess of the number required or prior to the date that they are required. This action also covers enforcement provisions.

Section 507(o) of the Act, Mandatory State Fleet Program, requires State Governments to acquire alternative fueled vehicles, beginning with model year 1996 at a rate of 10 percent of State vehicle fleets and rising to a rate of 75 percent for model years 2000 and thereafter. The Secretary must promulgate a rule providing that States may submit plans which, if (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: approved by the Secretary, would be in lieu of the State meeting the annual percentages solely through purchases of new State-owned vehicles.

Agency Contact: Kenneth R. Katz, Program Manager, Office of Alternative Fuels, EE-33, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-6116

RIN: 1904–AA64

1261. STATE AND LOCAL ALTERNATIVE FUELS INCENTIVES PROGRAM

Legal Authority: 42 USC 13235 Energy Policy Act of 1992, sec 409

CFR Citation: Not yet determined

Legal Deadline:
Final, Statutory, October 24, 1993, State and Local Incentives.
Final, Statutory, April 24, 1994, State Fleets.

Abstract: This rulemaking is responsive to section 409 of the Energy Policy Act of 1992 regarding acceleration of the introduction and use of alternative fuel and alternative fueled vehicles.

Section 409, State and Local Incentives Programs, requires the Secretary to: issue regulations establishing guidelines for State alternative fuels and alternative fueled vehicles incentives and plans; invite Governors to submit a plan on introducing alternative fueled vehicles in the State by the year 2000; and provide a State that has an approved plan with information, technical assistance, and financial assistance to implement the plan and purchase alternative fueled vehicles. The States are required to contribute at least 20 percent in cost-sharing.

Section 507(o) of the Act, Mandatory State Fleet Program, requires State Governments to acquire alternative fueled vehicles, beginning with model year 1996 at a rate of 10 percent of State vehicle fleets and rising to a rate of 75 percent for model years 2000 and thereafter. The Secretary must promulgate a rule providing that States may submit plans which, if approved (cont)

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Francis X. Mallgrave, Program Manager, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-8077

RIN: 1904–AA66

1262. • ENERGY EFFICIENCY STANDARDS FOR FEDERAL COMMERCIAL BUILDINGS

Legal Authority: 42 USC 6834 Energy Policy Act of 1992, sec 101(a)(2)

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: Title III of the Energy Conservation and Product Act as amended by the Energy Policy Act of 1992 (PL 102-486, October 24, 1992) provides that DOE establish Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. The standards for Federal buildings are intended to parallel closely the voluntary building energy codes of the Energy Policy Act for private sector construction. Interim energy performance standards which DOE had issued before enactment of the Energy Policy Act are to remain in effect for the Federal sector until the new Federal building energy standards become effective.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
Final Action	02/00/96	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Ronald B. Majette, Program Manager, Buildings Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-7935

RIN: 1904–AA69

1263. • DEFINITIONS FOR CERTAIN FLUORESCENT AND INCANDESCENT LAMPS

Legal Authority: 42 USC 6293 Energy Policy Act of 1992, sec. 123(d)

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action will define a colored incandescent and fluorescent lamp. It will define a rough or vibration service incandescent reflector lamp also. These lamps are exempt from standards but were not defined in the Energy Policy Act of 1992.

Timetable:

Action	Date	FR Cite
NPRM	09/28/94	59 FR 49478
NPRM Comment Period End	12/12/94	59 FR 49478
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Terry Logee, Program Manager, Appliance Standards Division, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-1689

RIN: 1904–AA70

1264. • TEST PROCEDURES AND CERTIFICATION REQUIREMENTS FOR FAUCETS, SHOWERHEADS, WATER CLOSETS, AND URINALS; AND CERTIFICATION REQUIREMENTS FOR RESIDENTIAL APPLIANCES

Legal Authority: 42 USC 6293; 42 USC 6295

CFR Citation: 10 CFR 430.2; 10 CFR 430.62(a)(2)

Legal Deadline: None

Abstract: This action is intended to provide coverage for plumbing products. It will incorporate by reference established test procedures and add sampling plans, certification, reporting and labeling requirements and definitions for faucets, showerheads, urinals and water closets and clarify the existing certification reporting requirements for all covered residential appliances.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: Undetermined

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DOE—EE — **Proposed Rule Stage**

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: William W. Hui, Program Manager, Appliance Standard Division, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA71

DEPARTMENT OF ENERGY (DOE) — Final Rule Stage
Energy Efficiency and Renewable Energy (EE)

1265. EQUIVALENT PETROLEUM-BASED FUEL ECONOMY CALCULATION FOR ELECTRIC VEHICLES

Legal Authority: PL 96-185, sec 18; PL 94-413, sec 13(c); PL 94-163, sec 503(a)(3)

CFR Citation: 10 CFR 474

Legal Deadline: None

Abstract: The final rule on the inclusion of electric vehicles in the Corporate Average Fuel Economy (CAFE) program was issued by DOE on April 15, 1981. It established a methodology for determining the equivalent petroleum-based fuel economy of electric vehicles so that they could be included in a manufacturer's overall CAFE program. This methodology was based on several factors including the energy efficiency of the vehicle, the efficiency of electricity generation and transmission, the fuels used to generate electricity, and the driving patterns of electric vehicles. This rulemaking would update the factors in this methodology that are necessary for calculating the CAFE credits for electric vehicles.

Timetable:

Action	Date	FR Cite
NPRM	02/04/94	59 FR 5336
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Report comparing Alternative Motor Fuels Act with existing rule completed April 1992. Second report recommending new Petroleum Equivalency Factor for NPRM completed May 1992.

Agency Contact: Rogelio Sullivan, Program Manager, Electric and Hybrid Propulsion Division, Department of Energy, Energy Efficiency and Renewable Energy, EE-322, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8042

RIN: 1904–AA40

1266. TEST PROCEDURES FOR FURNACES/BOILERS, VENTED HOME HEATING EQUIPMENT, AND POOL HEATERS—AMENDMENT

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: These revisions to the test procedures for furnaces and boilers, vented home heating equipment and pool heaters in accordance with the Energy Policy and Conservation Act, as amended, would incorporate by reference ASHRAE Standard 103-1988 and would establish a new annual efficiency descriptor. This revision is prompted by the ASHRAE revision of Standard 103-1982 and the need to add annual efficiency as a new descriptor.

Timetable:

Action	Date	FR Cite
NPRM	08/23/93	58 FR 44583
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Cyrus Nasseri, Program Manager, Appliance Standard Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA45

1267. TEST PROCEDURES FOR FLUORESCENT AND INCANDESCENT REFLECTOR LAMPS

Legal Authority: 42 USC 6293 Energy Policy Act of 1992, sec 123(d)

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: The test procedures will require manufacturers to use an accredited laboratory and a standardized method to measure the energy efficiency of fluorescent and incandescent reflector lamps and to measure the color rendering index of fluorescent lamps. These measurements will determine whether products comply with the energy efficiency standards established by PL 102-486 sec 123.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/28/94	59 FR 49468
Interim Final Rule Effective	10/28/94	
Interim Final Rule Effective	10/28/94	
Interim Final Rule Comment Period End	12/12/94	59 FR 49468

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Terry Logee, Program Manager, Appliance Standards, Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., 5E-066, Washington, DC 20585, 202 586-1689

RIN: 1904–AA61

1268. FEDERAL SECTOR ENERGY SAVINGS PERFORMANCE CONTRACTING

Regulatory Plan: This entry is Seq. No. 30 in Part II of this issue of the Federal Register.

RIN: 1904–AA62

1269. RENEWABLE ENERGY PRODUCTION INCENTIVE

Legal Authority: 42 USC 13317 Energy Policy Act of 1992, sec 1212

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Section 1212 of the Energy Policy Act requires the Department of Energy (DOE) to pay, subject to the availability of appropriations, a production incentive to the owner or operator of a "qualified renewable energy facility" for electric energy generated by the facility.

The need for Federal Action was established by the Act. The specific requirements to receive payments are to be established by DOE. The incentive payments to publicly owned utilities provide a complement to the tax credits available to privately held utilities and electric power generators.

Timetable:

Action	Date	FR Cite
NPRM	05/13/94	59 FR 24982
Final Action	12/20/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: Program must be established in sufficient time to make payments during Fiscal Year 1995.

Agency Contact: Dr. Allan R. Hoffman, Associate Deputy Assistant Secretary, Office of Utility Technologies, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-1786

RIN: 1904–AA65

DOE—EE — **Final Rule Stage**

1270. CLARIFICATION OF EXISTING CLOTHES WASHER TEST PROCEDURE

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This rulemaking reviews testing requirements when clothes washers are offered with a warm rinse lock-out design feature. DOE has concluded that an industry interpretation of the clothes washer test procedure, while inconsistent with the underlying purpose of the test procedure, has sufficient legal basis to necessitate an amendment of the test procedure in order to avoid material understatements of actual energy consumption.

Timetable:

Action	Date	FR Cite
NPRM	12/22/93	58 FR 67710
NPRM Comment Period End	03/24/94	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: P. Marc LaFrance, Program Manager, Appliance Standards, Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-7140

RIN: 1904–AA68

DEPARTMENT OF ENERGY (DOE) — Completed Actions
Energy Efficiency and Renewable Energy (EE)

1271. ELECTRIC MOTOR MANUFACTURER PETITION PROCEDURES

Legal Authority: 42 USC 6313; 42 USC 6314

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: The Energy Policy Act of 1992 establishes energy efficiency standards for 1 to 200 horsepower motors. The Act exempts "definite purpose motors" and "special purpose motors" from the standards. Under the third exemption category, the Secretary may, by rule, exempt any other motors meeting certain statutory criteria. If necessary, this rulemaking would provide guidance to manufacturers of any motors in third category on how to petition DOE for exemption from the standards.

Upon analysis to date, the Department as yet has not identified any electric motors that would be covered under the third category for exemption, and has so notified the industry. Thus, a rule will probably not be needed.

Timetable:

Action	Date	FR Cite
Withdrawn - Rule not necessary. See Abstract.	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Carl Adams, Director, Appliance Standards Division, Office of Codes and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Ave SW., 5E-066, Washington, DC 20585, 202 586-7140

RIN: 1904–AA60

DEPARTMENT OF ENERGY (DOE) — Proposed Rule Stage
Defense and Security Affairs (DSA)

1272. PERSONNEL ASSURANCE PROGRAM

Legal Authority: 42 USC 2012 et seq, Atomic Energy Act of 1954

CFR Citation: 10 CFR 711

Legal Deadline: None

Abstract: The Department of Energy (DOE) conducts a Personnel Assurance Program (PAP) under DOE 5610.11 "Program to Prevent Accidental or Unauthorized Nuclear Explosive Detonation." The PAP was created in order to assure the reliability and safety of individuals in certain critical positions and is a part of the DOE nuclear weapons and explosives safety program. To further minimize the potential risks to personnel, public health and safety, and national security, the Department now proposes this rule which describes the PAP and provides for testing for alcohol under certain circumstances and for possible use of illegal drugs by DOE Federal and contractor employees requiring PAP certification or recertification. The DOE employees under the PAP are part of the DOE Drug-Free Workplace Program (DOE 3792.3). The DOE contractors

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DOE—DSA — Proposed Rule Stage

under the PAP are a part of the Workplace Substance Abuse Programs at DOE Facilities (10 CFR 707).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: James Turner or Tom Stepan, Defense Programs, Department of Energy, Washington, DC 20545, 301 903-3463

RIN: 1992–AA14

DEPARTMENT OF ENERGY (DOE)
Defense and Security Affairs (DSA)

Final Rule Stage

1273. PERSONNEL SECURITY ASSURANCE PROGRAM: SUBSTANCE ABUSE TESTING PROCEDURES

Legal Authority: 42 USC 2161; 42 USC 2165; 42 USC 2201

CFR Citation: 10 CFR 710, subpart B

Legal Deadline: None

Abstract: The Department of Energy (DOE) has established the Personnel Security Assurance Program (PSAP) through the publication of the revision to 10 CFR 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." The PSAP was created in order to assure the reliability of individuals in certain positions, defined in Section 710.50(a), and referred to as PSAP positions for purposes of this proposed rule. The Department now proposes to amend this rule to promulgate guidelines for DOE contractors for testing for possible use of illegal drugs or alcohol by their PSAP-cleared employees. These guidelines will constitute a baseline PSAP substance abuse testing component.

Timetable:

Action	Date	FR Cite
NPRM	03/08/91	56 FR 10075
NPRM Comment Period End	04/08/91	
Final Action	12/00/94	
Final Action Effective	01/30/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The final amendment to the PSAP Rule is dependent on the publication of 10 CFR 707 and its amendment to provide alcohol testing protocols.

Agency Contact: Lynn Gebrowsky, Office of Nonproliferation and National Security, Department of Energy, Washington, DC 20585, 301 903-3200

RIN: 1992–AA13

1274. • ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES—LISTING UPDATES

Legal Authority: 42 USC 2077; 42 USC 2156 to 2158; 42 USC 2201; 42 USC 2273; PL 93-438, sec 104; PL 95-91, sec 301

CFR Citation: 10 CFR 810

Legal Deadline: None

Abstract: The Department of Energy is amending 10 CFR part 810 to remove Argentina, Brazil, Chile, and South Africa from the list of countries for which specific authorization by the Secretary of Energy is required before a person subject to U.S. jurisdiction can engage directly or indirectly in the production of special nuclear material outside the United States. The amendment will enable U.S. firms and individuals to assist civilian nuclear power reactor-related activities in these countries under general authorization. This will make the regulations consistent with U.S. foreign policy commitments and reflect the recent significant progress made by these four countries on matters related to nuclear nonproliferation.

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44381
NPRM Comment Period End	09/28/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Zander Hollander, Export Control Specialist, Export Control Operations Division, Department of Energy, 1000 Independence Avenue SW., NN-43, Washington, DC 20585, 202 586-2125

RIN: 1992–AA20

DEPARTMENT OF ENERGY (DOE)
Defense and Security Affairs (DSA)

Completed Actions

1275. CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

Legal Authority: 42 USC 2161; 42 USC 2165; 42 USC 2201; EO 10450; EO 10865

CFR Citation: 10 CFR 710, subpart A

Legal Deadline: None

Abstract: The criteria and procedures would be revised to permit: Managers to render final determinations when an individual processed under part 710 declines the right to a hearing; termination of processing or administrative termination of security clearance when an individual refuses to submit or complete required security forms or be subject to a personnel security interview; and final determinations to be rendered by a delegee of the Secretary.

This action would also reflect that hearing officer and second tier review functions would be performed by the DOE Office of Hearings and Appeals. In this regard, please see RIN 1901-AA55.

DOE—DSA — Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	12/08/93	58 FR 64509
Final Action	07/08/94	59 FR 35178

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ernest E. Wagner, Office of Security Affairs, Department of Energy, Washington, DC 20545, 301 903-4178

RIN: 1992–AA15

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP)

Prerule Stage

1276. REVIEW OF ADMINISTRATIVE PROCEDURES WITH RESPECT TO IMPORTS AND EXPORTS OF NATURAL GAS

Legal Authority: 15 USC 717b

CFR Citation: 10 CFR 590

Legal Deadline: None

Abstract: To review the administrative procedure regulations contained in 10 CFR part 590 in order to determine any amendments needed to the regulations in light of the amendment to the Natural Gas Act of 1938 made by section 201 of the Energy Policy Act of 1992. Section 201 deemed in the public interest, and required DOE to grant, most natural gas import and export applications for which DOE previously had made a public interest determination.

Timetable: Next Action Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Clifford P. Tomaszewski, Director, Office of Natural Gas (FE-50), Office of Fossil Energy, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-9482

RIN: 1901–AA25

1277. RENEGOTIATION OF POWER SALES CONTRACTS

Legal Authority: 16 USC 839(c)

CFR Citation: Not applicable

Legal Deadline: None

Abstract: To review whether changes are needed in the policies, practices, and procedures regarding renegotiation of Bonneville Power Administration power sales contracts. This review is related to a multi-year process of renegotiation of these contracts.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Scott Wilson, Department of Energy, Bonneville Power Administration, Portland, Oregon 97208-3621, 503 230-7638

RIN: 1901–AA36

1278. ENFORCEMENT OF EMPLOYEE SAFETY STANDARDS AT NUCLEAR WEAPONS FACILITIES

Legal Authority: PL 102-190, sec 3131

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Public Law 102-190, sec 3131, subsection (b) directs the Department of Energy to assess civil penalties against contractors at DOE nuclear weapons facilities who fail either to provide training to employees engaged in hazardous substance response and emergency response or fail to certify that such workers have been adequately trained. The regulation will provide the procedures for enforcement as provided for in sec 3131.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Smith, Industrial Hygienist, Department of Energy, EH-31.1, Washington, DC 20545, 301 903-4669

RIN: 1901–AA44

1279. IMPLEMENTATION OF DOE SCIENCE EDUCATION ENHANCEMENT ACT

Legal Authority: PL 101-510, DOE Science Education Enhancement Act; PL 101-514, sec 305

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This is a review to determine what portion of Public Law 101-510 will require a program rule. Public Law 101-510, DOE Science Education Enhancement Act: (1) states that the support for science education is now considered one of DOE's main missions; (2) encourages development and implementation of existing science, mathematics, and engineering education at DOE laboratories; (3) provides for more efficient coordination of DOE education programs between the laboratories and educational institutions; (4) authorizes the Secretary to establish new educational programs; and (5) establishes "partnerships" between the Department, DOE facilities, and educational institutions. The purpose of any program rule and DOE Orders is to set forth the administrative and financial policies and procedures applicable to educational partnerships, personal property partnerships, laboratory cooperative science centers, precollege, undergraduate and educational institutions and related organizations. The potential benefits of the program include (1) identifying and successfully managing the (cont)

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: Federal

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Additional Information: ABSTRACT CONT: total DOE-wide educational environment for the future; (2) eliminating duplication of effort in implementing educational programs; (3) better communication flow between DOE, its laboratories, universities, schools, other Federal agencies, and State organizations; (4) providing a better systematic approach to administering and implementing policies as required by Public Law 101-510; (5) evaluating and managing existing and future funding requirements; and (6) recognizing potential educational problems and establishing internal policies and procedures to resolve them.

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DOE—ENDEP — **Prerule Stage**

Agency Contact: Michael L. Wolfe, Program Manager (ET-31), Office of Univer. & Science Educ. Programs, Department of Energy, 1000 Independence Ave SW., Washington, DC 20585, 202 586-5462

RIN: 1901–AA51

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP) — **Proposed Rule Stage**

1280. ELECTRIC POWER SYSTEM PERMITS AND REPORTS; APPLICATIONS; ADMINISTRATIVE PROCEDURES AND SANCTIONS

Legal Authority: PL 95-91; PL 66-280; EO 12038

CFR Citation: 10 CFR 205

Legal Deadline: None

Abstract: These regulations would streamline the existing procedures for applying to the DOE for Presidential permits and electricity export authorizations, by eliminating the use of FERC "trial-type" procedures and establishing a less adversarial process of decisionmaking. These regulations may also establish that DOE's decisional criterion is only electric power system reliability and not the economic or commercial viability of projects.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Ellen Russell, Fuels Conversion Analyst, (FE-52), Office of Coal and Electricity, Department of Energy, Room 3F-094, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-9624

RIN: 1901–AA19

1281. ENERGY BOARD OF CONTRACT APPEALS; ORGANIZATION, FUNCTIONS AND AUTHORITIES; RULES OF PRACTICE

Legal Authority: 41 USC 601 et seq

CFR Citation: 10 CFR 1023

Legal Deadline: None

Abstract: Update statement of Board organization, functions and authorities; update rules of practice for contract appeals to provide for alternative dispute resolution (ADR) and other purposes.

Timetable:

Action	Date	FR Cite
NPRM	06/30/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: E. Barclay Van Doren, Chair, Board of Contract Appeals, Department of Energy, 4040 N. Fairfax Drive, Rm 1006, Arlington, VA 22203, 703 235-2700

RIN: 1901–AA30

1282. RULES OF PRACTICE TO GOVERN PROCEEDINGS TO RESOLVE CERTAIN DISPUTES ARISING BETWEEN M&O CONTRACTORS AND THEIR SUBCONTRACTORS

Legal Authority: PL 95-91, title VI, sec 644; PL 83-703, sec 161; 9 USC 1 to 14

CFR Citation: 10 CFR 1023; 48 CFR 970

Legal Deadline: None

Abstract: Procedures are necessary to resolve certain disputes arising between DOE management and operating (M&O) contractors and their subcontractors.

Timetable:

Action	Date	FR Cite
NPRM	06/30/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: E. Barclay Van Doren, Chair, Board of Contract Appeals, Department of Energy, 4040 N. Fairfax Drive, Rm. 1006, Arlington, VA 22203, 703 235-2700

RIN: 1901–AA31

1283. NUCLEAR SAFETY MANAGEMENT: PHASE II

Regulatory Plan: This entry is Seq. No. 31 in Part II of this issue of the Federal Register.

RIN: 1901–AA42

1284. STANDARD CONTRACT FOR THE DISPOSAL OF SPENT NUCLEAR FUEL AND/OR HIGH-LEVEL RADIOACTIVE WASTE

Legal Authority: 42 USC 10222

CFR Citation: 10 CFR 961

Legal Deadline: None

Abstract: On April 18, 1983, DOE published a rule that established the Standard Contract for the Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (Standard Contract) to be used by DOE in furnishing disposal services to the owners and generators of spent nuclear fuel (SNF) and/or high-level radioactive waste (HLW) (48 FR 16590). The Standard Contract represents the sole contractual mechanism for DOE acceptance and disposal of SNF. The Standard Contract establishes the requirements and operational responsibilities of DOE and the owners and generators of SNF regarding administrative matters, fees, terms of payment, waste acceptance criteria and waste acceptance procedures. This rulemaking concerns changes and additions to the Standard Contract.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Nancy H. Slater, Industrial Specialist (Nuclear), Department of Energy, Logistics and Utility Interface Branch (RW-432) Office of Civilian Radioactive Waste Management, Wash. DC 20585, 202 586-8370

RIN: 1901–AA49

DOE—ENDEP — **Proposed Rule Stage**

1285. ENERGY PLANNING AND MANAGEMENT PROGRAM

Legal Authority: PL 102-486, sec 114 Energy Policy Act of 1992

CFR Citation: Not yet determined

Legal Deadline: Final, Statutory, October 24, 1993.
Section 114 of PL 102-486 requires final regulations to be adopted by 10/24/93.

Abstract: Section 114 of PL 102-486 requires the Administrator of Western Area Power Administration (Western) to revise existing guidelines. New regulations, to be in place by 10/24/93, require each customer purchasing energy under a long-term firm power service contract with Western to implement integrated resource planning (IRP) by 10/24/95. Western's proposed rule does not consider alternatives to IRP, due to statutory mandate, although alternatives are being evaluated in the draft EIS. As part of the same rulemaking, where permitted by law, Western proposes to extend a major portion of long-term firm power sold to existing customers pursuant to contracts expiring over the next several years. Extensions of resource commitments will provide long-term resource stability necessary for effective IRP. Western is evaluating alternative lengths of contract extensions and amounts of resource commitments in the draft EIS, as well as a no-action alternative of using existing marketing criteria allocation processes for contract and resource extensions. Costs of compliance with these rules may be considerable, but utilities that have developed IRP have found the resulting (cont)

Timetable:

Action	Date	FR Cite
NPRM	08/09/94	59 FR 40543
NPRM Comment Period End	10/11/94	59 FR 40543
Final Action	01/13/95	
Final Action Effective	02/13/95	

Small Entities Affected: None

Government Levels Affected: None

Public Compliance Cost: Initial Cost: $270,000; Yearly Recurring Cost: $50,000; Base Year for Dollar Estimates: 1993

Sectors Affected: 491 Electric Services

Analysis: Draft EIS 02/24/93; Final EIS 09/24/93

Additional Information: ABSTRACT CONT: benefits outweigh the expense.

Agency Contact: Robert C. Fullerton, Director, Division of Marketing & Rates, Western Area Power Administration, Department of Energy, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401-3398, 303 275-1610

RIN: 1901–AA50

1286. THE OFFICE OF ENERGY RESEARCH FINANCIAL ASSISTANCE PROGRAM

Legal Authority: 42 USC 2051; 42 USC 5817; 42 USC 5901 et seq; 42 USC 7254; 42 USC 7256; 31 USC 6301 et seq

CFR Citation: 10 CFR 605

Legal Deadline: None

Abstract: Action to be taken will improve grants administration by providing a more streamlined and uniform approach to post-award requirements, yet maintain stewardship and accountability responsibilities.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Jean A. Morrow, Grants Policy Analyst (ER-64), Department of Energy, Office of Energy Research, Washington, DC 20545, 301 903-2452

RIN: 1901–AA54

1287. PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES

Legal Authority: 42 USC 2208 Atomic Energy Act of 1954, sec 168

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: To revise the Department of Energy's policy on making payments for special burdens and in lieu of taxes to State and local taxing jurisdictions pursuant to the Atomic Energy Act of 1954. Prior to the 1987 issuance of DOE Order 2100.12, the Department and its predecessor agencies approved such payment requests on an ad hoc basis. To ensure all eligible taxing jurisdictions are provided appropriate opportunity to comment, the revised policy is being established through the rulemaking process. The Department anticipates no added costs by issuing the revised policy as a regulation rather than as an internal directive revision.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Local

Agency Contact: Cathy Canning, Director, Financial Policy Division, Office of Chief Financial Officer, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-4860

RIN: 1901–AA58

1288. OCCUPATIONAL RADIATION PROTECTION—AMENDMENT

Legal Authority: 42 USC 2201; 42 USC 7191

CFR Citation: 10 CFR 835

Legal Deadline: None

Abstract: 10 CFR part 835 establishes the basic requirements for DOE contractor and subcontractor activities to ensure radiation protection of occupational workers at DOE facilities. See 58 FR 65458 (December 14, 1993) The proposed amendment to Part 835 would include several items not previously covered such as sealed radioactive source accountability and control, and surface contamination values for tritium. Sealed source accountability and control requirements currently appear in DOE Notice 5400.9, and tritium surface radioactivity values in the Radiation Control (RADCON) Manual. This rulemaking stems from DOE's ongoing effort to strengthen the protection of health and safety from the nuclear and radiological hazards posed by these DOE facilities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

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Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: R. Thomas Bell or Joel Rabovsky, Health Physicist (EH-411), Health Physics Programs Divisions, Department of Energy, 19901 Germantown Rd., Germantown, MD 20874, 301 903-3889

RIN: 1901–AA59

1289. • DOE GRANTS FOR EDUCATIONAL PURPOSES

Legal Authority: 42 USC 7254; 42 USC 7256

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: This rule will support use of financial assistance awards by the Office of University and Science Education to promote vital program missions. In addition, the rule procedures will facilitate an open and competitive process for obtaining financial assistance awards.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Michael Wolfe, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-5462

RIN: 1901–AA61

1290. • PRIVACY ACT—EXEMPTION OF AN INSPECTOR GENERAL SYSTEM OF RECORDS

Legal Authority: 5 USC 552a

CFR Citation: 10 CFR 1008

Legal Deadline: None

Abstract: The purpose of this action is to exempt one system of records from certain subsections of the Privacy Act (5 U.S.C. 552a). The system of records is Inspection Abstract Report Files of the Office of Inspector General (DOE-83). These rules will enable the Office of the Inspector General to carry out its administrative, analytical, and investigatory duties and responsibilities.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Denise Diggin, Chief, FOI and Privacy Branch, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-6025

RIN: 1901–AA62

1291. • DISCRETIONARY ENVIRONMENTAL MANAGEMENT FUNDING TO FEDERALLY RECOGNIZED AMERICAN INDIAN TRIBES

Legal Authority: 42 USC 7254; 42 USC 7256

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Department is developing eligibility standards and funding criteria for the distribution of DOE discretionary funds to federally recognized American Indian tribes by DOE's Office of Environmental Management. Because of the potential for broad interest in funding, DOE is providing interested parties an opportunity for comment on issues related to the funding of tribes who are directly affected by DOE activities. The authority for this action is found in section 646 of the DOE Organization Act, regarding remediation activities and management programs for former and current weapons production facilities. This action also furthers the purposes of DOE Order 1230.2, American Indian Tribal Government Policy.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	02/04/94	59 FR 5405
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: Tribal

Agency Contact: Margaret Fernandez/Brandt Petrasek, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-5821

RIN: 1901–AA63

1292. • REDESIGN AND REVISION OF WHOLESALE POWER AND TRANSMISSION RATES

Legal Authority: 16 USC 839e

CFR Citation: Not applicable

Legal Deadline: None

Abstract: This is an action by the Bonneville Power Administration (BPA) to redesign and revise its wholesale power and transmission rates. The principal purposes of this action would be to allow BPA to recover sufficient revenues to timely meet its repayment and other cost recovery obligations, to be a reliable and competitive power supplier, to send appropriate price signals to customers, and to otherwise meet BPA ratemaking standards set forth in various statutes.

Timetable:

Action	Date	FR Cite
NPRM	10/12/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This action could have been excluded from the regulatory agenda since it is being undertaken in accordance with the formal rulemaking provisions of 5 USC 556, 557. It is being included, however, in order to provide the public with the fullest notice of DOE's regulatory activities.

Agency Contact: Randy Roach, Attorney/Legal Services, Department of Energy, Bonneville Power Administration - APR, P.O. Box 3621, Portland, OR 97208, 503 230-4201

RIN: 1901–AA64

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP) — **Final Rule Stage**

1293. FREEDOM OF INFORMATION

Legal Authority: 5 USC 552

CFR Citation: 10 CFR 1004

Legal Deadline: None

Abstract: This rule will revise the DOE regulations on the procedures and principles to be applied in responding to requests for records under the Freedom of Information Act (FOIA) 5 USC 552. Revisions include updated names and addresses of organizational entities, and updated guidelines for the schedule of fees associated with processing requests. A proposed section on policies would clarify DOE's operation of a first-in, first-out policy in responding to FOIA requests. The issue of when contractor records become agency records also will be resolved in the new rule. The role of the Office of Hearings and Appeals is clarified.

Timetable:

Action	Date	FR Cite
NPRM	10/23/91	56 FR 55036
2d NPRM (Remainder of Amendments)	10/00/94	
Final Action (contractor records)	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Sectors Affected: All

Agency Contact: Abel Lopez, Attorney-Advisor (GC-80), Office of General Counsel, Department of Energy, Office of General Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8618

RIN: 1901–AA32

DOE—ENDEP — **Final Rule Stage**

1294. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Regulatory Plan: This entry is Seq. No. 32 in Part II of this issue of the Federal Register.

RIN: 1901–AA38

1295. OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

Legal Authority: 42 USC 7101 et seq; 15 USC 761 et seq

CFR Citation: 10 CFR 1003; 10 CFR 205

Legal Deadline: None

Abstract: Codify procedural regulations of Office of Hearings and Appeals in Chapter X of Title 10, which contains general provisions of DOE regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/07/94	59 FR 34767
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-2084

RIN: 1901–AA55

1296. EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

Legal Authority: 42 USC 2051

CFR Citation: 10 CFR 602

Legal Deadline: None

Abstract: The rule will support the Office of Environment, Safety and Health's use of financial assistance awards to promote vital program missions, including protecting the health of workers at Department of Energy sites, as well as other individuals potentially affected by energy production, transmission, or use. The rule procedures also will facilitate an open and competitive process for obtaining financial assistance awards.

Timetable:

Action	Date	FR Cite
NPRM	10/18/93	58 FR 53671
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Gerry Peterson, Senior Epidemiologist, EH-422, Department of Energy, Office of Environment, Safety and Health, Washington, DC 20545, 301 903-2340

RIN: 1901–AA56

1297. ANNOTATION OF LAND RECORDS FOR REMEDIATED PROPERTIES

Legal Authority: PL 95-604, sec 104(d)

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: Under section 104(d) of the Uranium Mill Tailings Radiation Control Act of 1978, the Department of Energy (DOE) is required to issue appropriate rules and regulations concerning the annotation of land records of designated inactive uranium mill sites and vicinity properties included for remedial action under the Act. The annotation is to be conducted by States and is intended to ensure that future purchasers of remediated inactive uranium mill sites and vicinity properties will be notified, prior to such purchase, of the condition of the land.

Timetable:

Action	Date	FR Cite
NPRM	07/14/89	54 FR 29732
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Jacob W. Gatrell, Director, Off-Site Program Division (EM-451), Office of Envir. Rest. & Waste Management, Department of Energy, Trevion II Bldg, GTN, Washington, DC 20585, 301 903-7221

RIN: 1901–AA57

1298. • PRIVACY ACT—EXEMPTION OF CERTAIN COUNTERINTELLIGENCE SYSTEMS OF RECORDS

Legal Authority: 5 USC 552a

CFR Citation: 10 CFR 1008

Legal Deadline: None

Abstract: This action would amend the Department's Privacy Act regulations, 10 CFR Part 1008, by adding two systems or records to the list of systems exempted from certain provisions of the Act. The two systems are Counterintelligence Administrative and Analytical Records and Reports (DOE-81) and Counterintelligence Investigative Records (DOE-84). These exemptions are needed to enable the Office of Counterintelligence to perform its administrative, analytical, and investigatory duties and responsibilities. These duties and responsibilities are carried out pursuant to Executive Order 12333, "Department of Energy Procedures for Intelligence Activities," and DOE Order 5670.3, "Counterintelligence Program."

Timetable:

Action	Date	FR Cite
NPRM	09/08/94	59 FR 46522
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Denise B. Diggin, Chief, Freedom of Information and

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DOE—ENDEP — **Final Rule Stage**

Privacy Acts Branch, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, **202 586-6020**

RIN: 1901–AA60

DEPARTMENT OF ENERGY (DOE)
Departmental and Others (ENDEP) — **Completed Actions**

1299. PREFERENCE POLICY FOR SALES OF SURPLUS FIRM POWER AND SURPLUS NONFIRM ENERGY UNDER THE NORTHWEST POWER ACT

Legal Authority: 16 USC 839c(f); 16 USC 837(b)

CFR Citation: Not applicable

Legal Deadline: None

Abstract: Section 5(f) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Pub. L. 96-501, provides that the Bonneville Power Administration (BPA) may sell or otherwise dispose of power which is surplus to the obligations of the Administrator under sections 5(b), (c), and (d) in accordance with that Act and other applicable provisions of the statute. Section 9(c) of the Northwest Power Act and the Act of August 31, 1964, Pub. L. 88-552 (the Northwest Preference Act), provide that the BPA may only sell power outside the Pacific Northwest that is surplus firm power, surplus nonfirm energy, or surplus capacity as defined in those Acts. Surplus firm power, surplus nonfirm energy or surplus capacity is defined as energy or capacity for which there is no market or demand in the Pacific Northwest at rates established for the disposition of such energy or capacity. In February 1990, BPA published for comment a proposal for adoption of policy and procedures for sales of surplus firm power, surplus nonfirm energy, and surplus capacity. To complete its effort to establish a formal policy on the disposal of this power, BPA will issue in the Federal Register a Notice (cont)

Timetable:

Action	Date	FR Cite
ANPRM	02/23/90	55 FR 6420
Withdrawn No action is being taken.	08/01/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: of Response to Comments on Issues to be Addressed in establishing a Preference Policy, as well as a Notice of Draft Policy and a Final Policy.

Agency Contact: Thomas Miller, Attorney/OGC, Department of Energy, Bonneville Power Administration, Portland, Oregon 97208-3621, **503 230-4201**

RIN: 1901–AA37

1300. URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

Legal Authority: PL 102-486, sec 1101

CFR Citation: 10 CFR 766

Legal Deadline: None

Abstract: Under section 1101 of the Energy Policy Act of 1992, a fund for the decontamination and decommissioning (D&D) of uranium enrichment facilities is to be established in the Treasury of the United States. The Energy Policy Act requires deposits into the D&D fund of $480 million a year. To support the D&D fund; DOE is required to collect from domestic utilities an amount not to exceed $150 million annually (as adjusted for inflation); the remainder of annual deposits to the D&D fund is to be provided through Congressional appropriations. The annual collection of a "special assessment" from domestic utilities is to continue for a period of 15 years, or until the fund accumulates $2.25 billion.

The fund is to be used to support (1) the D&D of DOE's uranium enrichment facilities and (2) the reimbursement of owners of active uranium and thorium processing sites for a portion of their mino-tailing remediation costs attributable to the production and sale of uranium or thorium to the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	08/02/93	58 FR 41164
Interim Final Rule for FY 1993 Special Assessment	08/02/93	58 FR 41160
Final Action	08/15/94	59 FR 41956

Small Entities Affected: None

Government Levels Affected: State, Federal

Additional Information: DOE is developing procedures for collecting the special assessment from utilities in two phases: (1) the calculation methodology and collection of special assessments from utilities in fiscal year 1993 were addressed in an interim final rule, published on August 2, 1993; and (2) contributions to be made after fiscal year 1993 were addressed in a proposed rule, also published on August 2, 1993.

Agency Contact: Ross Bradley, Environmental Management Coordinator, Office of Eastern Area Programs (EM-42), Department of Energy, Trevion II Bldg., Washington, DC 20585-0002, **301 903-7646**

RIN: 1901–AA52

1301. REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

Legal Authority: PL 102-486, sec 1001 to 1004

CFR Citation: 10 CFR 765

Legal Deadline: Final, Statutory, April 22, 1993.
PL 102-486, sec. 1002, requires DOE to "issue regulations 180 days after enactment."

Abstract: DOE is required to annually reimburse active uranium and thorium licensees up to $5.50 per ton of remediated by-product material generated as an incident of uranium or thorium sales to the United States Government. Total reimbursement to all licensees is limited to $310 million. DOE is required to issue regulations governing the reimbursement process. The rule establishes procedures for: (1) The determination of eligible licensees, by-product material quantities, and reimbursable costs; (2) claim submittal, review, and verification; (3) inflation adjustment; and (4) dispute resolution.

DOE—ENDEP — **Completed Actions**

Timetable:

Action	Date	FR Cite
NPRM	08/09/93	58 FR 42450
Final Action	05/23/94	59 FR 26714
Final Action Effective	06/22/94	59 FR 26714

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: David E. Mathes, Director, Division of Off-Site Remediation, Office of Southwestern Area Programs (EM-45), Department of Energy, Trevion II Bldg, Washington, DC 20585-0002, **301 903-7220**

RIN: 1901–AA53

DEPARTMENT OF ENERGY (DOE)
Office of Procurement and Assistance Management (PR) — **Proposed Rule Stage**

1302. DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS; MISCELLANEOUS PERSONAL PROPERTY

Legal Authority: 42 USC 7254

CFR Citation: 41 CFR 109

Legal Deadline: None

Abstract: Updates the Property Management Regulations regarding management of the Department's personal property.

Timetable:

Action	Date	FR Cite
NPRM	12/31/94	
Final Action	06/30/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wilson, Supply Management Representative, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, **202 586-8260**

RIN: 1991–AA28

1303. RESOLUTION OF DISPUTES BETWEEN SUBCONTRACTORS AND DOE MANAGEMENT AND OPERATING CONTRACTORS

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: Establishes a system in the Department of Energy Acquisition Regulation (DEAR) to allow subcontractors under DOE Management and Operating contracts access in certain circumstances to the Energy Board of Contract Appeals in resolution of disputes with the contractor. Procedural changes by the Board of Contract Appeals also are necessary in order fully to implement this action. See RIN 1901-AA31.

Also clarifies that DOE Contracting Officers lack authority to designate Management and Operating contractors as purchasing agents for DOE absent special authorization.

Timetable:

Action	Date	FR Cite
NPRM	06/30/95	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, **202 586-8264**

RIN: 1991–AA44

1304. TECHNOLOGY TRANSFER: DOE MANAGEMENT AND OPERATING CONTRACTORS

Legal Authority: PL 101-189, sec 3133; 42 USC 7256(a); PL 103-160, sec 3160

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: Public Law 101-189 amended the Stevenson-Wydler Technology Innovation Act to include DOE management and operating laboratories. Subsequently, PL 103-160 expanded the definition of a laboratory to include DOE Weapon Production Facilities. DOE will need to to amend DEAR 970 to standardize the implementation of its technology transfer program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Howard K. Mitchell, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, **202 586-8190**

RIN: 1991–AA63

1305. DEBARMENT AND SUSPENSION (COMMON RULE)

Legal Authority: EO 12689

CFR Citation: 10 CFR 1035; 10 CFR 1036

Legal Deadline: None

Abstract: This conforms procurement debarment procedures and nonprocurement debarment procedures to have reciprocal Governmentwide effect.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Cynthia Yee, Procurement Analyst, Department of Energy, Office of Procurement and

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DOE—PR

Proposed Rule Stage

Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-1140

RIN: 1991–AA69

1306. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS (COMMON RULE)

Legal Authority: 42 USC 7254; 42 USC 7256

CFR Citation: 10 CFR 600, subpart E

Legal Deadline: None

Abstract: This rulemaking modifies the Governmentwide Common Rule pertaining to administrative requirements for grants and cooperative agreements to States, local governments and Indian tribes. The rule was first published in 1988 and this revision updates some provisions of the rule and changes others to address issues that have been raised.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Local

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Edward Sharp, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8192

RIN: 1991–AA85

1307. DEAR: SECURITY PROCEDURES

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 904; 48 CFR 952

Legal Deadline: None

Abstract: Revise security procedures regarding foreign ownership, control and influence to clarify requirements and simplify approval process.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Robert Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8247

RIN: 1991–AA88

1308. DEAR: AMENDMENT TO WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 923.5; 48 CFR 970.2305

Legal Deadline: None

Abstract: To implement revised requirements of 10 CFR 707 concerning alcohol abuse in contracts subject to DOE's Workplace Substance Abuse Programs. This rule would conform the Department of Energy Acquisition Regulation to 10 CFR 707 in this respect. See RIN 1991-AA90.

Timetable: Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Edward Simpson, Procurement Analyst, Office of Policy, Department of Energy, Office of Procurement and Assistance Management, Washington, DC 20585, 202 586-8246

RIN: 1991–AA97

1309. DEAR: FINANCIAL MANAGEMENT CLAUSES

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: The existing regulation will be revised to provide uniform guidance to management and operating contractors on required financial management contract clauses.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Michael L. Righi, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8175

RIN: 1991–AB02

1310. LEGISLATIVE LOBBYING COST PROHIBITION

Legal Authority: 42 USC 7256A

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: The existing Department of Energy Acquisition Regulation will be amended to preclude any misunderstandings between the Department and its contractors regarding the allowability of costs related to legislative lobbying.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Michel L. Righi, Procurement Analyst (HR-521.1), Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8175

RIN: 1991–AB08

1311. DEAR: EXTEND-COMPETE REVISIONS

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 970

Legal Deadline: None

DOE—PR

Proposed Rule Stage

Abstract: Revise policy to place greater emphasis on competition for management and operating contracts and to require that contracts be competed at least once every 10 years, absent extraordinary circumstances.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Richard Langston, Procurement Analyst (HR-521.1), Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave SW., Washington, DC 20585, 202 586-8247

RIN: 1991–AB09

1312. INDEPENDENT RESEARCH AND DEVELOPMENT/BID AND PROPOSAL COSTS AND TRAVEL COST GUIDELINES

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 915; 48 CFR 931; 48 CFR 942; 48 CFR 951; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: The action would make amendments to the Department of Energy Acquisition Regulation to provide guidance to contractors regarding the allowability of independent research and development/bid and proposal and travel costs. It results from the recodification of cost accounting standards into Title 48 of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Terrence D. Sheppard, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave.,SW, Washington, DC 20585, 202 586-8174

RIN: 1991–AB12

1313. • REVISION TO A-102 COMMON RULE TO RAISE THRESHOLD FOR SIMPLIFIED SMALL PURCHASES UNDER GRANTS

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 600.436

Legal Deadline: None

Abstract: Proposed amendment to the common grant rules for State and local Governments, to increase the small purchase threshold under grants to $100,000.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Agency Contact: Cherlyn Seckinger, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8192

RIN: 1991–AB15

DEPARTMENT OF ENERGY (DOE)

Final Rule Stage

Office of Procurement and Assistance Management (PR)

1314. DEAR: PATENT POLICY REVISIONS

Legal Authority: 42 USC 2011 et seq. The Atomic Energy Act of 1954; 42 USC 5901 et seq, Fed. Nonnuclear Energy R&D Act of 1974; 42 USC 7101 et seq, The DOE Organization Act

CFR Citation: 48 CFR 927; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: The Department of Energy Acquisition Regulation (DEAR), promulgated March 29, 1984, at 49 FR 11922, supplements and implements the Federal Acquisition Regulation. A more recent Federal Acquisition Circular was issued to establish a FAR part 27 concerning patents. It will be necessary to amend the DEAR to supplement and implement the FAR and to explain how DOE patent policy will differ due to our statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	03/29/94	59 FR 14593
NPRM Comment Period End	05/31/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8264

RIN: 1991–AA23

1315. NEW RESTRICTIONS ON LOBBYING (COMMON RULE)

Legal Authority: PL 101-121, sec 319

CFR Citation: 10 CFR 1036

Legal Deadline: None

Abstract: The Department will join 28 other Executive agencies in issuing a final common rule for the purpose of implementing new statutory prohibitions and disclosure requirements with regard to certain influencing activities.

Timetable:

Action	Date	FR Cite
OMB Interim Final Guidance	12/20/89	54 FR 52306

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Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6736
Further OMB Guidance	06/15/90	55 FR 24540
Further OMB Guidance	01/15/92	57 FR 1772

Next Action Undetermined

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Howard K. Mitchell, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8190

RIN: 1991–AA64

1316. ACQUISITION OF FEDERAL INFORMATION RESOURCES BY CONTRACT

Legal Authority: 40 USC 486(c); 42 USC 7101

CFR Citation: 48 CFR 939; 48 CFR 970.39

Legal Deadline: None

Abstract: Provides procedures governing acquisition of Federal information processing resources by contract.

Timetable:

Action	Date	FR Cite
NPRM	12/02/93	58 FR 63556
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: K. Smith, Policy Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8189

RIN: 1991–AA81

1317. AMENDMENT TO WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

Legal Authority: 42 USC 2012 et seq, Atomic Energy Act of 1954

CFR Citation: 10 CFR 707

Legal Deadline: None

Abstract: This action will amend the Department's rule governing the use of illegal drugs at DOE sites to ensure that substance abuse programs include provisions that also address misuse and abuse of alcohol. DOE expects to mitigate the potential for harm to the environment and to the public health and safety at DOE sites by contractor employees and other individuals performing health or safety sensitive functions. Cost incurred will affect primarily cost reimbursement type contracts for managing, operating, constructing, and servicing DOE facilities and certain other on-site contractors and subcontractors.

Timetable:

Action	Date	FR Cite
NPRM	07/22/92	57 FR 32664
NPRM Comment Period End	09/21/92	57 FR 32664
Final Action	11/30/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Juanita E. Smith, Special Assistant, Substance Abuse, HR-524, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-9033

RIN: 1991–AA90

1318. DEAR: PROJECT CONTROL SYSTEM

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 952.212-73; 48 CFR 970

Legal Deadline: None

Abstract: Amend the Department of Energy Acquisition Regulation (DEAR) to require selected contractors performing project work to have project control system in place which meets the requirements set forth in DOE Notice 4700.5, Project Control System Guidelines.

Timetable:

Action	Date	FR Cite
NPRM	02/08/94	59 FR 5751
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Kevin M. Smith, Procurement Analyst, HR-521, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8189

RIN: 1991–AA93

1319. DEAR: ORGANIZATIONAL CONFLICTS OF INTEREST

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 909.57

Legal Deadline: None

Abstract: Regulation is to clarify certain aspects of existing regulations covering organizational conflicts of interest in the award of contracts and subcontracts.

Timetable:

Action	Date	FR Cite
NPRM	07/16/93	58 FR 38340
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8264

RIN: 1991–AA95

1320. DEAR: INTERAGENCY AGREEMENTS

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 917.5

Legal Deadline: None

Abstract: DOE originally proposed substantial revisions to the text of 48 CFR subpart 917.5 (59 FR 36918, July 9, 1993). As a result of the comments received and DOE's own further review under Executive Order 12861, "Elimination of One-Half of Executive Branch Internal Regulations," and Executive Order 12866, "Regulatory Planning and Review," DOE has decided to cancel the proposed rule. At RIN 1991-AB16, DOE is cancelling the entirety of the existing regulation.

Timetable:

Action	Date	FR Cite
NPRM	07/09/93	58 FR 36918
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Richard Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave, Washington, DC 20585, 202 586-8247

RIN: 1991–AA98

DOE—PR

Final Rule Stage

1321. DEAR: RECOVERED/RECYCLED MATERIALS

Legal Authority: 42 USC 7254; 42 USC 486(c); 42 USC 6962

CFR Citation: 48 CFR 923; 48 CFR 970

Legal Deadline: None

Abstract: This rule is to amend the Department of Energy Acquisition Regulation to provide for the use of products that contain recovered/recycled materials.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: P. Devers Weaver, Procurement Policy Division, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave SW., Washington, DC 20585, 202 586-8250

RIN: 1991–AB05

1322. PROCUREMENT SET ASIDES FOR SMALL BUSINESS AND OTHERS

Legal Authority: PL 102-486, sec 3021 The Energy Policy Act of 1992

CFR Citation: 48 CFR 926; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: To provide procedures to allow DOE to accomplish goals described in Section 3021 of the Energy Policy Act of 1992 for set aside award preferences for (1) small and disadvantaged business, (2) historically black colleges and universities, and (3) colleges and universities with 20% or more Hispanics or Native American students.

Timetable:

Action	Date	FR Cite
NPRM	07/11/94	59 FR 35294
Final Action	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Robert M. Webb, Procurement Analyst (HR-521.1), Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave SW., Washington, DC 20585, 202 586-8264

RIN: 1991–AB11

1323. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS WITH EDUCATIONAL INSTITUTIONS, HOSPITALS, AND OTHER NONPROFIT INSTITUTIONS

Legal Authority: 42 USC 7254; 42 USC 7256

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This rulemaking will modify the provisions in 10 CFR 600 dealing with educational institutions, hospitals and other nonprofit organizations to reflect changes made to the recently revised OMB Circular A-110.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cherrie Seckinger, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8192

RIN: 1991–AB13

1324. LIMITS ON PARTICIPATION IN CERTAIN DOE RESEARCH AND DEVELOPMENT PROGRAMS

Legal Authority: 42 USC 13525 Energy Policy Act of 1992, sec 2306

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: To develop guidelines to implement section 2306 of the Energy Policy Act of 1992. Section 2306 imposes eligibility requirements for financial assistance awards under titles XX through XXIII of the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. The agency has not yet determined whether there is a paperwork burden associated with this action.

Agency Contact: Robert C. Marlay, Director, Office of Technology Policy, (PO-62), Department of Energy, Departmental and Others, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-3900

RIN: 1991–AB14

1325. • DEAR: INTERAGENCY ACQUISITION UNDER THE ECONOMY ACT

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 917.5

Legal Deadline: None

Abstract: DOE is removing 48 CFR subpart 917.5 from the Code of Federal Regulations. Please see RIN 1991-AA98.

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DOE—PR

Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Additional Information: This action is procedural in nature and does not raise any substantive issues. Thus, DOE did not request public comment.

Agency Contact: Richard Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8247

RIN: 1991–AB16

DEPARTMENT OF ENERGY (DOE)
Office of Procurement and Assistance Management (PR)

Completed Actions

1326. DEAR: MISCELLANEOUS CHANGES ON ACQUISITION OF PERSONAL PROPERTY

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 908; 48 CFR 970; 48 CFR 945

Legal Deadline: None

Abstract: To provide additional, and to revise current, policy guidance in the Department of Energy Acquisition Regulation (DEAR) on the acquisition of personal property.

Timetable:

Action	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Robert Wilson, Supply Management Representative, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8260

RIN: 1991–AA32

1327. PERSONNEL APPENDICES AND EMPLOYEE RELOCATION UNDER MANAGEMENT AND OPERATING CONTRACTS

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 970 to 3101; 48 CFR 970 to 3102

Legal Deadline: None

Abstract: The rulemaking will (1) establish one basic method -- the personnel appendix -- for recording advance understandings on personnel costs, (2) clarify that only those personnel policies and associated costs which are set forth in the personnel appendix are reimbursable under the contract, (3) make allowable contractors dependent care programs which meet DOE criteria and the contractor's workforce needs, (4) allow reimbursement to contractor employees for tax liabilities incurred as a result of relocating at DOE direction, and (5) clarify provisions on allowable contractor pension costs and describe the Department's contractor pension funding policy. The rule will enhance control over contractor personnel relocation costs.

Timetable:

Action	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: John J. Edmondson, Director, Office of Contractor Human Resource Mgmt., Department of Energy, Office of Procurement and Assistance Management, Room 4H-023, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-9008

RIN: 1991–AA80

1328. DEAR: M&O WORK AUTHORIZATION AND CONTROL SYSTEM

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970.10; 48 CFR 970.52

Legal Deadline: None

Abstract: Amend the DEAR to require management and operating contracts to utilize an improved contract work authorization and control system.

Timetable:

Action	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8247

RIN: 1991–AA91

1329. DEAR: OWNERSHIP OF RECORDS

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: This amendment would allow ownership of certain records to vest in DOE management and operating contractors, even though produced at Government expense provided the contract contains terms ensuring the Government's right to audit, use, and copy such records.

Timetable:

Action	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

DOE—PR

Completed Actions

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-8247

RIN: 1991–AA96

1330. SEISMIC SAFETY STANDARDS

Legal Authority: 42 USC 7254; 42 USC 7256; EO 12699

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This proposed rulemaking brings the Financial Assistance Rules into compliance with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

Timetable:

Action	Date	FR Cite
NPRM	11/30/93	58 FR 63123
Final Action	04/19/94	59 FR 18473

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Cherrie Seckinger, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8192

RIN: 1991–AB03

1331. DEAR: UPDATED COVERAGE

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 904; 48 CFR 917; 48 CFR 936; 48 CFR 943; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: The existing regulation will be updated to delete obsolete coverage and to clarify existing guidance.

Timetable:

Action	Date	FR Cite
NPRM	12/02/93	58 FR 63553
Final Action	05/11/94	59 FR 24357

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Kevin M. Smith, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585, 202 586-8189

RIN: 1991–AB04

1332. REVIEW OF CONTRACTORS' PURCHASING SYSTEMS

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 944; 48 CFR 970

Legal Deadline: None

Abstract: The DEAR will be revised to provide changed coverage on contractors' purchasing systems reviews and new coverage on self assessment reviews of management and operating contractor purchasing systems.

Timetable:

Action	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: P. Devers Weaver, Department of Energy, Office of Procurement and Assistance Management, Procurement Policy Division, Washington, DC 20585, 202 586-8250

RIN: 1991–AB07

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC)

Proposed Rule Stage

1333. PATENT WAIVER REGULATION

Legal Authority: 42 USC 2182; 42 USC 5908; PL 99-661

CFR Citation: 10 CFR 784

Legal Deadline: None

Abstract: The regulation provides procedures and standards for obtaining a waiver of the Government's rights in inventions made under DOE research and development contracts with entities that are not small businesses or nonprofit institutions, and terms and conditions of such waivers. Currently, DOE waiver policy is provided in DOE Procurement Regulations (41 CFR 9-9.109-6). The proposed regulation places DOE patent waiver policy in a separate regulation, and also provides updates, revisions and clarifications to waiver policy as contained in 41 CFR 9-9.109-6.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Agency Contact: Robert M. Poteat, Acting Assistant General for Technology, Transfer and Intellectual Property, Department of Energy, Office of General Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-2802

RIN: 1990–AA02

1334. PAYMENT OF TRAVEL EXPENSES OF PERSONS WHO ARE NOT GOVERNMENT EMPLOYEES

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 1060

Legal Deadline: None

Abstract: The regulation needs to be revised to reflect the delegation of authority from the Office of Personnel

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DOE—OGC — Proposed Rule Stage

Management to pay travel expenses of certain job applicants in traveling to preemployment interviews required by the Department.

Timetable:

Action	Date	FR Cite
NPRM	01/31/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Susan Beard, Acting Deputy Assistant General for Standards of Conduct, Department of Energy, Office of General Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-1522

RIN: 1990–AA15

1335. CONDUCT OF EMPLOYEES

Legal Authority: 42 USC 7211 et seq; PL 103-160, sec 3161; EO 12674

CFR Citation: 10 CFR 1010; 5 CFR 2635

Legal Deadline: None

Abstract: The DOE regulation on conduct of employees needs to be revised to reflect the issuance of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and the repeal of conflict-of-interest provisions formerly applicable to DOE employees.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Susan Beard, Acting Deputy Assistant General Counsel for Standards of Conduct, Department of Energy, Office of General Counsel, 1000 Independence Ave SW., Washington, DC 20585, 202 586-1522

RIN: 1990–AA19

DEPARTMENT OF ENERGY (DOE)
Office of General Counsel (OGC) — Completed Actions

1336. FOREIGN GIFTS AND DECORATIONS

Legal Authority: 5 USC 7342; 41 CFR 101-49.001-5

CFR Citation: 10 CFR 1050

Legal Deadline: None

Abstract: The DOE regulations need to be amended to reflect the increase in the dollar amount of "minimal value," as determined by General Services Administration (GSA) regulation. Accordingly, the DOE regulations will reference the GSA regulation. Whether a gift is of "minimal value" is a factor in whether the regulations apply.

Timetable:

Action	Date	FR Cite
Final Action	08/31/94	59 FR 44895
Final Action Effective	08/31/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Because this matter relates to agency management or personnel, DOE determined that general notice of proposed rulemaking was not required.

Agency Contact: Susan Beard, Acting Deputy Assistant General Counsel for Standards of Conduct, Department of Energy, Office of General Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-1522

RIN: 1990–AA04

1337. PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION AND PROVISION OF AGENCY WITNESSES IN FEDERAL AND STATE PROCEEDINGS

Legal Authority: 42 USC 7254; 5 USC 301

CFR Citation: 10 CFR 202

Legal Deadline: None

Abstract: DOE currently has a regulation to establish an agencywide procedure for processing subpoenas and/or requests for testimony by DOE officers and employees or requests for DOE records in litigation in which the Department is not a party. The revised regulation would establish or clarify policies, practices, responsibilities, and procedures to provide for the orderly and efficient handling of requests while minimizing the disruption of official agency business.

Timetable:

Action	Date	FR Cite
Withdrawn - This discretionary action has been canceled.	07/12/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: This rule is procedural in nature and is exempt from notice and comment.

Agency Contact: I. Avrum Fingeret, Deputy Assistant General Counsel for Special Litigation (GC-31), Department of Energy, Office of General Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-5678

RIN: 1990–AA12

1338. DOE PATENT LICENSING REGULATIONS—AMENDMENT

Legal Authority: 35 USC 207

CFR Citation: 37 CFR 404; 10 CFR 781

Legal Deadline: None

Abstract: The proposed regulation is based on 37 CFR 404, Commerce Department's regulation on Licensing of Government-Owned Patents. The proposed regulation would amend 10 CFR 781 to reflect current DOE patent licensing policies and procedures, terms, and conditions, while removing any inconsistencies with statutory changes since 1980.

Timetable:

Action	Date	FR Cite
Withdrawn - Date dependent on issuance of Dept of Commerce regulations	07/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert J. Marchick, Patent Counsel (GC-62), Assistant General Counsel for Tech. Transfer, Department of Energy, Office of General

DOE—OGC — Completed Actions

Counsel, 1000 Independence Ave. SW., Washington, DC 20585, 202 586-4792

RIN: 1990–AA18

[FR Doc. 94-22296 Filed 11-10-94; 8:45 am]
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Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

20 CFR Ch. III

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A, Chs. II, III, and XIII

Unified Agenda of Regulations

AGENCY: Office of the Secretary, HHS.

ACTION: Publication of unified agenda of regulations.

SUMMARY: The President's September 30, 1993, Executive order (12866) and the Regulatory Flexibility Act of 1980 require the Department to publish an agenda of significant regulations being developed and an indication of those regulatory actions that are being analyzed for their effect on small businesses. The Department published its last agenda on April 25, 1994.

FOR FURTHER INFORMATION CONTACT: For further inquiries or comments related to specific regulations listed in the agenda, the public is encouraged to contact the appropriate responsible individual. Questions or comments on the overall agenda should be sent to: Ann White, Regulations Coordinator, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201; telephone: (202) 690-6824.

SUPPLEMENTARY INFORMATION:

Department of Health and Human Services Regulatory Plan

For this edition of the Department of Health and Human Services' regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in Part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate Sequence Number in Part II.

Health Care Financing Administration

Please note that many of the Health Care Financing Administration entries use acronyms and public law citations that refer to popular titles of well-known laws. As an aid to readers, we offer the following cross-reference guide:

COBRA '85—Consolidated Omnibus Budget Reconciliation Act of 1985 (PL 99-272).

OBRA '86—Omnibus Budget Reconciliation Act of 1986 (PL 99-509).

OBRA '87—Omnibus Budget Reconciliation Act of 1987 (PL 100-93).

MCAA '88—Medicare Catastrophic Coverage Act of 1988 (PL 100-360).

FSA '88—Family Support Act of 1988 (PL 100-485).

CLIA '88—Clinical Laboratory Improvement Amendments of 1988 (PL 100-578).

TMRA '88—Technical and Miscellaneous Revenue Act of 1988 (PL 100-647).

OBRA '89—Omnibus Budget Reconciliation Act of 1989 (PL 101-239).

OBRA '90—Omnibus Budget Reconciliation Act of 1990 (PL 101-508).

OBRA '93—Omnibus Budget Reconciliation Act of 1993 (PL 103-66).

Jacquelyn Y. White,

Deputy Executive Secretary to the Department.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1339	Nondiscrimination Requirements (Including on the Basis of Sex or Religion) Applicable to Block Grants and Standard Nondiscrimination Procedures Applicable to Certain Other Programs	0991-AA02
1340	Civil Money Penalties (CMPs) for Certain Hospital Physician Incentive Plans	0991-AA45
1341	Civil Money Penalties (CMPs) for Certain Practices Relating to Medicare Supplemental Policies	0991-AA53
1342	Amendment to Grants Management Common Rule To Raise Threshold for Simplified Small Purchases	0991-AA77

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1343	Civil Money Penalties and Exclusions for Assistants at Cataract Surgery	0991-AA37
1344	Block Grant Programs	0991-AA55
1345	Uniform Administrative Requirements for Grants and Cooperative Agreements	0991-AA56
1346	Civil Money Penalties for Physician Ownership of and Referral to Certain Health Care Entities	0991-AA65
1347	Additional Safe Harbor Provisions Under the Anti-Kickback Statute	0991-AA66
1348	Safe Harbors for Protecting Health Plans	0991-AA69
1349	Governmentwide Guidance for New Restrictions on Lobbying; Interim Final Guidance	0991-AA70
1350	Revisions to the PRO Sanctions Process	0991-AA73
1351	Clarification of the OIG Safe Harbor Anti-Kickback Provisions	0991-AA74

HHS

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1352	Civil Money Penalties and Intermediate Sanctions for HMOs and Competitive Medical Plans	0991-AA44

Departmental Management—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1353	Implementation of the Equal Access to Justice Act in Agency Proceedings	0990-AA02

Social Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1354	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Adjustments in SSI Benefits on Account of Retroactive Benefits Under Title II (061P)	0960-AB38
1355	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Evaluation Guides for Determining Substantial Gainful Activity (SGA) (147P)	0960-AB73
1356	Old-Age, Survivors, and Disability Insurance Program; Nonpayment of Benefits to Prisoners, Vocational Rehabilitation Exception (166P)	0960-AC16
1357	Old-Age, Survivors and Disability Insurance and Supplemental Security Income Programs; Vocational Factors Regulations Restructuring and Clarification (207P)	0960-AC61
1358	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Interim Disability Benefits (215P)	0960-AC76
1359	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Appeals Council Notice Requirements (235P)	0960-AC93
1360	Supplemental Security Income Program; Augmented Benefits (271P)	0960-AD07
1361	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Fees for Representation of Claimants (296P)	0960-AD23
1362	OASDI and SSI for the Aged, Blind and Disabled; Continuation of Benefits on Account of Participation in a Non-State VR Program (299P)	0960-AD26
1363	Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion From Income and Resources of Victims' Compensation Payments and State Relocation Assistance (311F)	0960-AD36
1364	Supplemental Security Income for the Aged, Blind, and Disabled; Reimbursement for VR Services Furnished During Certain Months of Non-payment (315P)	0960-AD39
1365	Code of Conduct for Administrative Law Judges and Administrative Appeals Judges of the Social Security Administration (341P)	0960-AD54
1366	Election of Benefits Based on Age by Disabled Widow, Widower, and Surviving Divorced Spouse Beneficiaries (343P)	0960-AD56
1367	Against Equity and Good Conscience (348P)	0960-AD62
1368	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Hemic and Lymphatic System, and Malignant Neoplastic Diseases (399P) **(Reg Plan Seq. No. 33)**	0960-AD67
1369	Procedures for Handling Earnings Reports (418F)	0960-AD70
1370	Conduct of Representatives Under Title II or Title XVI (431P)	0960-AD73
1371	Statement of Earnings and Benefit Estimate (415P)	0960-AD74
1372	Fees for Federal Administration of State Supplementary Payments in the SSI Program (376P)	0960-AD75
1373	Who May Protect a Potential Claimant's Filing Date or Application for Supplemental Security Income Benefits (408P)	0960-AD76
1374	Reliable Information Which is Currently Available for Determining Benefit Amounts in the Supplemental Security Income Program (NEWMAN) (434P)	0960-AD77
1375	Revised Medical Criteria for Determination of Disability, Endocrine System and Obesity and Related Criteria (436P) **(Reg Plan Seq. No. 34)**	0960-AD78
1376	Revised Medical Criteria for Determination of Disability, Growth Impairments (444P) **(Reg Plan Seq. No. 35)**	0960-AD80
1377	Valuation of Certain In-Kind Support and Maintenance (ISM) Where There is a Cost-of-Living Adjustment in SSI Benefits (454P)	0960-AD82
1378	Relationship/Coverage Actions Note Initial Determinations/SSI Corrections (455P)	0960-AD83

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HHS

Social Security Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1379	Prevention of Adverse Effects on Eligibility and Benefit Amount When Spouse or Parent Absent Due to Active Military Service (462P)	0960-AD66
1380	Extension of Time Period for Not Counting as Resources, Funds Received for Repair or Replacement of Damaged or Destroyed Excluded Resources in the SSI Program (486P)	0960-AD87
1381	Federal OASDI and SSI for the Aged, Blind, and Disabled; Signature Requirements for State Agency Medical and Psychological Consultants in Disability Determinations (465P)	0960-AD88
1382	Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income, Acceptable Medical Sources (469P)	0960-AD91
1383	Old-Age, Survivors, and Disability Insurance Program; Contributions for Support (475P)	0960-AD92
1384	Computation of SSI Benefits for the First Three Months of Payment (476P)	0960-AD93
1385	Definition of "Largest Benefit Amount" for Purposes of Determining the Earnings Record on Which a Person Who Is Simultaneously Entitled to Child's Insurance Benefits (481P)	0960-AD95

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Social Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1386	Supplemental Security Income Program; Suspensions, Terminations, and Advance Notice of Adverse Determinations (031F)	0960-AA22
1387	Old-Age, Survivors, and Disability Insurance Program; Revised Medical Criteria for Determination of Disability; Musculoskeletal System (143F) **(Reg Plan Seq. No. 36)**	0960-AB01
1388	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Program; Continued Payment of Benefits to Persons in Vocational Rehabilitation Programs (131F)	0960-AB05
1389	Supplemental Security Income Program; Proceeds of a Loan, Payment of Pro Rata Share of Household Operating Expenses (180F)	0960-AC42
1390	Old-Age, Survivors, and Disability Insurance Program; Applicability of Government Pension to Certain Federal Employees (188F)	0960-AC46
1391	Supplemental Security Income Program; Continuation of Full Benefit Standard for Certain Persons Temporarily Institutionalized (198F)	0960-AC55
1392	Old-Age, Survivors, and Disability Insurance Program; Medical Criteria for Evaluating Mental Disorders for Adults (222F) **(Reg Plan Seq. No. 37)**	0960-AC74
1393	Supplemental Security Income Program; Treatment of Augmented Veterans' Benefits (231F)	0960-AC82
1394	Supplemental Security Income Program; Waiver of SSI Rule for Deeming to Children the Income and Resources of Their Parents for Certain Disabled Children (252F)	0960-AC96
1395	SSI Program; Reduction in Time When Income and Resources of Separated Couples Must Be Treated as Jointly Available for Purposes of SSI Eligibility and Benefits (254F)	0960-AC98
1396	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Updating Nomenclature (264F)	0960-AD11
1397	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Representative Payee Reforms (295F) **(Reg Plan Seq. No. 38)**	0960-AD22
1398	Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers to Deny a Request for Appeals Council Review (334F)	0960-AD45
1399	OASDI and SSI; Testing Modifications to the Disability Determination Procedures (359F) **(Reg Plan Seq. No. 39)**	0960-AD63
1400	Reliable Information Which Is Currently Available for Determining Benefit Amounts in the Supplemental Security Income Program (382F)	0960-AD65
1401	Compensation of Qualified Organizations Serving as Representative Payees Under Title II and Title XVI (423F)	0960-AD71
1402	Federal OASDI and SSI; Computing Benefit Amounts, Disposing of Underpayments, Resolving Overpayments, and Payment Restriction (428F)	0960-AD72
1403	Federal Old-Age, Survivors, and Disability Insurance; Evidence Required to Presume a Person Is Dead (443F)	0960-AD79
1404	Temporary Increase in Sponsorship Period for Aliens Under the SSI Program (457F)	0960-AD84
1405	Replacement of Lost, Damaged or Stolen Excluded Resources (Hurricane Andrew) (458I)	0960-AD85
1406	Technical Changes to Title XVI (466F)	0960-AD89
1407	Supplemental Security Income for the Aged, Blind or Disabled; Evidence of Lawful Admission for Permanent Residence in the United States (486F)	0960-AD90

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

HHS

Social Security Administration—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1408	Supplemental Security Income Program; What Is Not Income (121F)	0960-AB09
1409	Supplemental Security Income Program; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work (171F)	0960-AC22
1410	Old-Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Deemed Application Date Based on Misinformation (267F)	0960-AD05
1411	Supplemental Security Income Program; Financial Institution Accounts in the SSI Program (278F)	0960-AD10
1412	Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Certain Royalties and Honoraria (310F)	0960-AD35
1413	Supplemental Security Income Program; Treatment of Promissory Notes in Home Replacement Situations (182F)	0960-AD61
1414	Appeal Rights Following State-Initiated Mass Change in Federally Administered State Supplementary Payments Resulting in Reduction, Suspension, or Termination of State Supplementary Payments (383F)	0960-AD66
1415	Eligibility for Children of Armed Forces Personnel Residing Outside the United States Other Than in Foreign Countries (452F)	0960-AD81
1416	Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for the Listing of Impairments, Mental Disorders in Adults (477F)	0960-AD94

Public Health Service—Office of Assistant Secretary for Health (OASH)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1417	Public Health Service Policies on Research Misconduct	0905-AE02
1418	Standards of Compliance for Abortion-Related Services in Family Planning Service Projects	0905-AE03

Public Health Service—Office of Assistant Secretary for Health (OASH)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1419	Privacy Act; Exempt System	0905-AD31

Public Health Service—Substance Abuse and Mental Health Services Administration (SAMHSA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1420	Confidentiality of Substance Abuse Patient Records	0905-AD97
1421	Protection and Advocacy for Individuals With Mental Illness	0905-AD99
1422	Community Mental Health Services Block Grants	0905-AE24

Public Health Service—Substance Abuse and Mental Health Services Administration (SAMHSA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1423	Block Grants for Prevention and Treatment of Substance Abuse	0905-AD98
1424	Block Grants for Prevention and Treatment of Substance Abuse (Tobacco Provisions) **(Reg Plan Seq. No. 45)**	0905-AE05

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Public Health Service—Centers for Disease Control and Prevention (CDC)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1425	Respiratory Protective Devices **(Reg Plan Seq. No. 46)**	0905-AB58
1426	Interstate Shipment of Biological Material That Contains or May Contain Infectious Substances	0905-AC89
1427	Medical Examination of Aliens	0905-AD29

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Public Health Service—Food and Drug Administration (FDA)—Prerule Stage

Sequence Number	Title	Regulation Identifier Number
1428	Medical Foods	0905-AD91
1429	Sunglasses; Labeling; Ultraviolet Radiation	0905-AE35
1430	Investigational Device Exemption: Cost Recovery	0905-AE36
1431	Development of Hazard Analysis Critical Control Points for the Food Industry; Request for Comments **(Reg Plan Seq. No. 40)**	0905-AE60

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Public Health Service—Food and Drug Administration (FDA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1432	Over-the-Counter (OTC) Drug Review	0905-AA06
1433	New Animal Drug Approval Process; Implementation of Title I of the Generic Animal Drug and Patent Term Restoration Act	0905-AA96
1434	Infant Formula Act	0905-AC46
1435	Reporting of Errors and Accidents Relating to Blood Safety and Withdrawal of Previously Proposed Rule	0905-AD67
1436	Proposed Labeling for Drug Products Based on False or Fraudulent Data	0905-AD71
1437	Review of Warnings, Use Instructions, and Precautionary Information Under Section 314 of the National Childhood Vaccine Injury Act of 1986	0905-AD72
1438	Performance Standard for the Infant Apnea Monitor	0905-AD83
1439	Mammography Quality Standards Act of 1992 **(Reg Plan Seq. No. 41)**	0905-AE19
1440	Certification of Drugs Composed Wholly or Partly of Insulin; Fees for Certification of Drugs Composed Wholly or Partly of Insulin	0905-AE28
1441	Adverse Experience Reporting Requirements for Human Drug and Licensed Biological Products	0905-AE29
1442	Electronic Signatures	0905-AE31
1443	Financial Disclosure by Clinical Investigators	0905-AE32
1444	Effective Date of Requirement for Submission of Premarket Approval Applications	0905-AE34
1445	Latex Condoms/Gloves: Expiration Date Labeling	0905-AE37
1446	Amalgam Ingredient Labeling	0905-AE39
1447	Latex Warning	0905-AE40
1448	Premarket Approval of Medical Devices; Supplemental Applications	0905-AE41
1449	Medical Devices; Restricted Devices	0905-AE42
1450	Prescription Drug Product Labeling; Medication Guide **(Reg Plan Seq. No. 42)**	0905-AE43
1451	Hearing Aids; Professional and Patient Labeling; Conditions for Sale	0905-AE46
1452	Human Tissue Intended for Transplantation: Proposed Rule	0905-AE49
1453	Foods Derived from New Plant Varieties; Premarket Notification **(Reg Plan Seq. No. 43)**	0905-AE50
1454	Classification of Computer Software Programs That Are Medical Devices	0905-AE58
1455	Iron Containing Drugs and Supplements	0905-AE59
1456	New Drug and Biological Product License Applications; Regulations Implementing the Prescription Drug User Fee Act of 1992 and Clarifying Existing Regulations	0905-AE61
1457	Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Proposod Amendment of Certain Requirements for Finished Pharmaceuticals	0905-AE63

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Public Health Service—Food and Drug Administration (FDA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1458	Policies Concerning Uses of Sulfiting Agents	0905-AB52
1459	Abbreviated New Drug Application Regulations (Title I of the "Drug Price Competition and Patent Term Restoration Act of 1984")	0905-AB63
1460	Current Good Manufacturing Practice for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection	0905-AC90
1461	Lead in Foods	0905-AC91
1462	Expediting Approval for Drugs Intended To Treat Life-Threatening and Severely Debilitating Illnesses	0905-AC94
1463	Fees for Certification Services; Insulin and Color Additive Certification Programs	0905-AD34
1464	Prescription Drug Marketing Act of 1987; Policy Information, Guidance, and Clarifications	0905-AD44
1465	Implementation of the Safe Medical Devices Act of 1990	0905-AD59
1466	Mandatory HACCP Seafood Inspection Program	0905-AD60
1467	Bottled Water	0905-AD65
1468	Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Revision of "Pediatric Use" Subsection in the Labeling	0905-AD76
1469	Recordkeeping and Reporting: Electronic Products	0905-AD78
1470	General Biological Product Standards; Alternative Procedures and Exceptions	0905-AD82
1471	Medical Devices; Protective Restraints; Revocation of Exemptions From 510(k) Premarket Notification Procedures and Current Good Manufacturing Practices Regulations	0905-AD84
1472	Threshold of Regulation Policy for Components of Food Contact Articles	0905-AD86
1473	Food Labeling Review	0905-AD89
1474	Levo-Alpha-Methadol (LAAM) in Maintenance; Joint Proposed Revision of Conditions for Use	0905-AD92
1475	Temporomandibular Joint Implant Classification	0905-AD93
1476	Disqualification of Clinical Investigators	0905-AD94
1477	Investigational Device Exemption; Intraocular Lenses	0905-AD95
1478	Dietary Supplement Label Review	0905-AD96
1479	Adverse Experience Reporting Required for Licensed Biological Products	0905-AE18
1480	Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Addition of "Geriatric Use" Subsection in the Labeling	0905-AE26
1481	Tamper-Evident Packaging Requirements for Over-The-Counter Human Drug Products	0905-AE27
1482	Substances Prohibited for Use in Ruminant Feed	0905-AE45

Public Health Service—Food and Drug Administration (FDA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1483	Implementation of Title I of the Generic Animal Drug and Patent Term Restoration Act	0905-AD15

Public Health Service—Health Resources and Services Administration (HRSA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1484	National Health Service Corps Loan Repayment Program; Grants for State Loan Repayment Programs	0905-AC65
1485	Organ Procurement and Transplantation Network Rules **(Reg Plan Seq. No. 44)**	0905-AD26
1486	Health Education Assistance Loan (HEAL) Program: Lenders'/ Holders' Performance Standards	0905-AD87
1487	National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table - II	0905-AE52

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Public Health Service—Health Resources and Services Administration (HRSA)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1488	National Vaccine Injury Compensation Program (VICP): Revisions to the Vaccine Injury Table	0905-AD64
1489	Grants for Faculty Training Projects in Geriatric Medicine and Dentistry	0905-AE13
1490	Grants for the Establishment of Departments of Family Medicine	0905-AE17

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Public Health Service—Health Resources and Services Administration (HRSA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identifier Number
1491	Medical Facility Construction and Modernization Requirements for Provision of Services to Persons Unable to Pay (Nursing Homes)	0905-AE33
1492	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Amendment to Data Bank Regulations To Comply With Court Order	0905-AE38
1493	Federally Supported Health Centers Assistance Act of 1992	0905-AE48
1494	National Practitioner Data Bank for Adverse Information on Physicians, Dentists, and Other Health Care Practitioners: Debt Collection Methods	0905-AE53
1495	Technical Amendments to the Health Professions, Nursing, and Allied Health Training Grant Programs Under 42 CFR Parts 57 and 58	0905-AE54

Public Health Service—Health Resources and Services Administration (HRSA)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1496	Maternal and Child Health (MCH) Project Grants	0905-AD88
1497	Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay (Charitable Facilities)	0905-AE06
1498	Grants for Nurse Practitioner and Nurse-Midwifery Programs	0905-AE11

Public Health Service—Indian Health Service (IHS)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1499	Indian Health Service Loan Repayment Program Regulations	0905-AC96
1500	Indian Health Service Catastrophic Health Emergency Fund Program	0905-AC97
1501	Revision of Urban Indian Health Regulations	0905-AD20
1502	Acquisition Under the Buy Indian Act	0905-AE09

Public Health Service—Indian Health Service (IHS)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1503	Revision of Indian Self-Determination Regulations **(Reg Plan Seq. No. 47)**	0905-AC98
1504	Review of the Determination of an Indian Tribe's Resource Deficiency Level	0905-AD21

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Public Health Service—National Institutes of Health (NIH)—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1505	Grants for Research Projects	0905-AC02
1506	National Institutes of Health AIDS Research Loan Repayment Program	0905-AD18
1507	Hazardous Substances Basic Research and Training Grants	0905-AD46
1508	National Institutes of Health Construction Grants	0905-AD49
1509	Standards for Bone Marrow Registries and Centers	0905-AD51
1510	Training Grants	0905-AD56
1511	National Institutes of Health Center Grants	0905-AE00
1512	Grants for National Alcohol Research Centers	0905-AE08
1513	National Institutes of Health Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds	0905-AE56

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Public Health Service—National Institutes of Health (NIH)—Proposed Rule Stage (Continued)

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1514	Undergraduate Scholarship Program Regarding Professions Needed by the NIH	0905-AE57
1515	Traineeships (Termination Policies)	0905-AE62

Public Health Service—National Institutes of Health (NIH)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1516	Traineeships	0905-AD28
1517	National Institute of Environmental Health Sciences Hazardous Waste Worker Training	0905-AD69
1518	Responsibilities of Public Health Service-Funded Institutions for Promoting Objectivity in Research **(Reg Plan Seq. No. 48)**	0905-AE01
1519	National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects	0905-AE25
1520	National Library of Medicine Grants	0905-AE55

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Public Health Service—National Institutes of Health (NIH)—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1521	Health and Human Services Policy for Protection of Human Subjects	0905-AE47

Public Health Service—Agency for Health Care Policy and Research (AHCPR)—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1522	Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts	0905-AD30

Health Care Financing Administration—Proposed Rule Stage

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1523	Hospice Services (MB-7-P)	0938-AC52
1524	Transfer of Resources for Less Than Fair Market Value (MB-10-P)	0938-AD18
1525	Medicare Coverage of Outpatient Occupational Therapy Services (BPD-425-P)	0938-AD32
1526	Revisions to the Freedom of Information Regulations (OPA-1-P)	0938-AD60
1527	New Minimum Standards for Medicare Supplemental (Medigap) Policies (BPD-491-P)	0938-AD82
1528	Fee Schedule for Payment of Clinical Psychologist Services (BPD-495-P)	0938-AD84
1529	Clarification of "Without Fault" as It Applies to Physician Provider and Supplier Liability (BPD-719-P)	0938-AD95
1530	Protection of Income and Resources for Community Spouse (MB-23-P)	0938-AE12
1531	Physician Certification and Plan of Care Requirements and Inspection of Care Reviews (HSQ-178-P)	0938-AE17
1532	Medicaid Payment of Medicare Cost Sharing for Qualified Medicare Beneficiaries and Qualified Disabled and Working Individuals and Specified Low-Income Medicare Beneficiaries (MB-031-P)	0938-AE38
1533	Coverage of Physician Assistant, Nurse Practitioner, and Clinical Nurse Specialist Services (BPD-708-P)	0938-AF00
1534	Provider Reimbursement Determinations and Appeals Revisions (BPD-727-P)	0938-AF28
1535	Alternative Sanctions for Psychiatric Hospitals (HSQ-191-P)	0938-AF32
1536	Medicaid Payment for Obstetrical and Pediatric Services—Adequate Payment Level Provision (MB-036-P)	0938-AF62
1537	Clarification of Coverage of Inpatient Psychiatric Services (MB-060-P)	0938-AF73
1538	Federally Qualified Health Center Services (Medicaid) (MB-043-P)	0938-AF90
1539	Minimum Physician Qualifications for Certain Services (MB-059-P)	0938-AF92
1540	Revisions to Rules on Health Care Prepayment Plans (OMC-016-P)	0938-AF97
1541	Conditions of Participation for Rural Health Clinics (BPD-764-P)	0938-AG05

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1543	Medicare Appeals of Individual Claims (BPD-453-P)	0938-AG18
1544	End-Stage Renal Disease (ESRD) Payment Exception Requests and Organ Procurement Costs (BPD-763-P)	0938-AG20
1545	Appointment of Representatives for Appeal (BPO-120-P)	0938-AG30
1546	Enforcement Requirements for Renal Dialysis Facilities (HSQ-204-P)	0938-AG31
1547	Disclosure of Confidential PRO Information for Research Purposes (HSQ-208-P)	0938-AG33
1548	Community Supported Living Arrangements Services (MB-070-P)	0938-AG35
1549	Telephone Requests for Review of Initial Determinations (BPO-121-P)	0938-AG48
1550	Conditions for Payment for Physicians' Services in Teaching Settings (BPD-792-P)	0938-AG53
1551	New Look Behind for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) (HSQ-214-P)	0938-AG58
1552	Effect of Change of Ownership on Provider and Supplier Penalties, Sanctions, and Overpayments (HSQ-215-P)	0938-AG59
1553	Institutional Plan Amendment Findings (MB-078-P) **(Reg Plan Seq. No. 49)**	0938-AG60
1554	Medicare Program: Limitations on Medicare Coverage of Cataract Surgery (BPD-797-PN)	0938-AG65
1555	Effects of Generally Accepted Accounting Principles (GAAP) on Reasonable Costs Determinations (BPD-800-P)	0938-AG66
1556	Expansion of the Definition of Eye and Ear Specialty Hospitals (BPD-804-P)	0938-AG67
1557	Salary Equivalency Guidelines for Physical and Respiratory Therapy Services Furnished Under Arrangements (BPD-808-PN)	0938-AG70
1558	Medicaid: Optional Coverage of TB-Related Services for Individuals Infected with Tuberculosis (MB-082-P)	0938-AG72
1559	Proposed Payments to Disproportionate Share Hospitals for FY 1995 (MB-089-N)	0938-AG75
1560	Revision of Medicare Hospital Conditions of Participation (BPD-745-P) **(Reg Plan Seq. No. 50)**	0938-AG79
1561	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Expanded to Designated Health Services (BPD-809-P) **(Reg Plan Seq. No. 51)**	0938-AG80
1562	Home Health Agency (HHA) Conditions of Participation (BPD-819-P) **(Reg Plan Seq. No. 52)**	0938-AG81
1563	End Stage Renal Disease (ESRD) Conditions of Coverage (BPD-818-P) **(Reg Plan Seq. No. 53)**	0938-AG82
1564	Distinct Parts and Costing for Skilled Nursing Facilities and Nursing Facilities (BPD-815-P)	0938-AG84
1565	Extension of Certain Effective Dates for Clinical Laboratory Requirements and Personnel Requirements for Cytologists (HSQ-217-FC)	0938-AG86
1566	Clinical Laboratory Improvement Amendment (CLIA) Fee Schedules (HSQ-219-FC)	0938-AG87
1567	Approval of the American Society for Histocompatibility and Immunogenetics for the Specialty of Histocompatibility (HSQ-220-N)	0938-AG88
1568	Medicaid: Coverage of Rehabilitation Services (MB-076-P)	0938-AG89
1569	Medicaid: Nominal Copayments for Institutional Services for Medicaid Recipients (MB-090-FC)	0938-AG90
1570	Wage Index Used To Adjust Payment Rates for Hospice Services Under the Medicare Program (BPD-820-N)	0938-AG93

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1571	Payment for Clinical Diagnostic Laboratory Services (BPD-309-F)	0938-AB50
1572	Home and Community-Based Services and Respiratory Care for Ventilator-Dependent Individuals (MB-8-FC)	0938-AC55
1573	Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care (BPD-393-FC)	0938-AC58
1574	Denial of Payment for Substandard Quality Care (HSQ-132-F)	0938-AC84
1575	Revised Effective Date of Medicare/Medicaid Provider Agreement and Supplier Participation (HSQ-139-F)	0938-AC88
1576	Changes Concerning Suspension of Medicare Payments and Determinations of Allowable Interest Expense (BPO-118-FC)	0938-AC99
1577	Changes Concerning the Definition of Accrual Basis of Accounting (BPD-366-FC)	0938-AD01
1578	Optional Payment System for Low Medicare Volume Skilled Nursing Facilities (BPD-409-F)	0938-AD02
1579	Criteria and Procedures for Making Medical Services Coverage Decisions That Relate to Health Care Technology (BPD-432-F)	0938-AD07
1580	Revisions to Conditions of Participation for Hospitals and Conditions for Coverage of Suppliers of End-Stage Renal Disease Services (BPD-421-F)	0938-AD11
1581	Medicaid Eligibility of Poverty Level Groups and Extended Coverage of Services (MB-13-F)	0938-AD1[illegible]
1582	Prohibition on Unbundling of Hospital Outpatient Services (BPD-426-F) **(Reg Plan Seq. No. 54)**	0938-AD33
1583	Changes to Peer Review Organization Regulations (HSQ-135-F)	0938-AD38
1584	Payment for Durable Medical Equipment and Orthotic and Prosthetic Devices (BPD-494-F)	0938-AD65

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1585	Medicare Secondary Payer for Disabled Individuals (BPD-482-FC)	0938-AD73
1586	Medicare Coverage of Home Health Services, Medicare Conditions of Participation and Home Health Aide Supervision (BPD-469-F)	0938-AD78
1587	Appeals for Enrollees of Prepaid Health Care Plans (OMC-008-F)	0938-AD79
1588	Omnibus Nursing Home Reform Requirements (BPD-488-FC)	0938-AD81
1589	Survey and Certification of Skilled Nursing Facilities and Nursing Facilities and Enforcement Procedures (HSQ-156-F) **(Reg Plan Seq. No. 55)**	0938-AD94
1590	HMO Organizational Structure and Services (OMC-007-F)	0938-AE25
1591	"Confined to the Home" Requirements for Home Health Services (BPD-626-F)	0938-AE34
1592	Survey Requirements and Alternative Sanctions for Home Health Agencies (HSQ-169-F)	0938-AE39
1593	Hospital Standard for HIV Infectious Blood (BPD-633-F)	0938-AE40
1594	Medicare, Medicaid, and CLIA Programs: Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) (HSQ-202-F) **(Reg Plan Seq. No. 56)**	0938-AE47
1595	Conditions of Coverage for Organ Procurement Organizations (BPD-646-FC)	0938-AE48
1596	Preadmission Screening and Annual Resident Review (BPD-661-F)	0938-AE49
1597	Extended Medicaid Eligibility for Certain Individuals (MB-026-F)	0938-AE51
1598	Resident Assessment in Long-Term Care Facilities (HSQ-180-F)	0938-AE61
1599	Post-Contract Beneficiary Protections and Other Provisions (OMC-003-F)	0938-AE63
1600	Conforming Provisions for 1988 HMO Amendments (OMC-004-F)	0938-AE64
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1604	Medicare Coverage of Prescription Drugs Used in Immunosuppressive Therapy (BPD-424-F)	0938-AE94
1605	Fire Safety Standards for Hospitals, Long-Term Care Facilities, and Intermediate Care Facilities for the Mentally Retarded (BPD-650-F)	0938-AE97
1606	Coverage of Screening Pap Smears (BPD-705-F)	0938-AE98
1607	Medicare Coverage of Clinical Psychologist, Other Psychologist, and Clinical Social Worker Services—Medicare (BPD-706-F)	0938-AE99
1608	Allowing Certifications and Recertifications by Nurse Practitioners and Clinical Nurse Specialists for Certain Services (BPD-709-F)	0938-AF01
1609	Changes to the Long-Term Care Facility Survey Process (HSQ-175-FC)	0938-AF02
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1616	Physician Ownership of and Referrals to Health Care Facilities That Furnish Clinical Laboratory Services and Financial Relationship Reporting Requirements (BPD-674-FC) **(Reg Plan Seq. No. 58)**	0938-AF40
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1618	Medicare and Medicaid Programs; Advance Directives (BPD-718-F)	0938-AF50
1619	Partial Hospitalization Services in Community Mental Health Centers (BPD-736-F)	0938-AF53
1620	Requirements for Enrollment of Medicaid Recipients Under Cost Effective Employer Based Group Health Plans (MB-047-F)	0938-AF64
1621	Referral to Child Support Enforcement Agencies of Medicaid Families With an Absent Parent (MB-051-F)	0938-AF68
1622	Medicaid: Outstationed Intake Locations for Certain Low-Income Pregnant Women, Infants and Children (MB-052-IFC)	0938-AF69
1623	Optional Spenddown (MB-055-IFC)	0938-AF72
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1625	National Coverage Decisions: Rules for Risk Contracting HMOs and CMPs (OMC-019-F)	0938-AF75
1626	Part B Advance Payments to Physicians/Suppliers or Other Entities Furnishing Items or Services Under Medicare Part B (BPO-105-F)	0938-AF85
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1628	Retroactive Enrollment (OMC-015-F)	0938-AF98
1629	Payment for Preadmission Services (BPD-731-F)	0938-AG00
1630	Change in Provider Agreement Regulations Related to Federal Employee Health Benefits (BPD-748-F)	0938-AG03
1631	Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers (BPD-762-FN)	0938-AG04

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1634	Revisions to the Definition of End-Stage Renal Disease and Resumption of Entitlement (BPD-738-F)	0938-AG19
1635	Standards for Quality of Water Used in Dialysis and Revised Guidelines on Reuse of Hemodialyzer Filters for End-Stage Renal Disease Patients (BPD-766-F)	0938-AG21
1636	Medicare Program: Proposed Additions to and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers (BPD-776-FN)	0938-AG27
1637	Medicare Program: Special Payment Limits for Home Blood Glucose Monitors (BPD-778-FN)	0938-AG28
1638	General Evaluation Criteria and Standards for Evaluating Performance of Contract (HSQ-207-GNC)	0938-AG32
1639	Withdrawal of Coverage of Diagnostic Nocturnal Penile Tumescence Testing (Impotence Testing) (BPD-780-FN)	0938-AG43
1640	Medicare Program: Limitations on Medicare Coverage of Intermittent Positive Pressure Breathing Machine Therapy (BPD-781-FN)	0938-AG44
1641	Noncoverage of Electrostimulation of Salivary Glands for the Treatment of Xerostomia (Dry Mouth) (BPD-782-FN)	0938-AG45
1642	Part A Premium for 1995 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (OACT-046-N)	0938-AG49
1643	Medicare Program: Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1995 (OACT-047-N)	0938-AG50
1644	Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1995 (OACT-048-N)	0938-AG51
1645	Revisions to Geographic Practice Cost Indices, Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for CY 1995 (BPD-789-FC) **(Reg Plan Seq. No. 60)**	0938-AG52
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1648	Freedom of Choice Waiver; Conforming Changes (OMC-021-F)	0938-AG63
1649	Payment to Swing Bed Hospitals (BPD-805-FC)	0938-AG58
1650	Physician Performance Standard Rates of Increase for FY 1995 and Physician Fee Schedule Update for CY 1995 (BPD-807-FNC)	0938-AG69
1651	Categorization of CLIA Tests and Personnel Modifications (HSQ-216-FC)	0938-AG71
1652	Medicaid Program: Nurse-Midwife Services (MB-085-P)	0938-AG73
1653	Medicaid Program: Fees for Vaccine Administration Under Pediatric Immunization Program (MB-084-NC) **(Reg Plan Seq. No. 61)**	0938-AG77
1654	Criteria for Medicare Coverage of Lung Transplants (BPD-812-NC)	0938-AG83
1655	Information, Counseling, and Assistance Grants Programs: Medicare Program (OBS-001-FC)	0938-AG91
1656	Qualified Health Maintenance Organizations: Technical Amendments (OMC-009-FC)	0938-AG92

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Sequence Number	Title	Regulation Identifier Number
1657	Medicaid Eligibility and Coverage Requirements (MB-001-F)	0938-AA58
1658	Deduction of Incurred Medical Expenses (Spenddown) (MB-020-F)	0938-AB07
1659	Home and Community-Based Services for the Elderly (MB-019-F)	0938-AD55
1660	Payment Adjustments for Hospitals That Serve a Disproportionate Number of Low-Income Patients (MB-017-IFC)	0938-AE35
1661	Utilization and Quality Control Peer Review Organizations (PRO): Confidential Information (HSQ-190-P)	0938-AF03
1662	Day Habilitation and Related Services (MB-37-P)	0938-AF10
1663	Medicare Coverage of Screening Mammography (BPD-724-F)	0938-AF26
1664	Medicare, Medicaid, and CLIA Programs: Inspection and Certification Procedures for Laboratories (HSQ-193-P)	0938-AF33
1665	Medicaid Drug Use Review Program and Electronic Claims Management System for Outpatient Drug Claims (MB-050-F)	0938-AF67
1666	Intermediary and Carrier Checks That Are Lost, Stolen, Defaced, Mutilated, Destroyed, or Paid on Forged Endorsements (BPO-114-FC)	0938-AG16
1667	Changes in Physician Attestation Requirements (BPD-769-F)	0938-AG34
1668	Medicare Program: Changes to the Inpatient Hospital Prospective Payment Systems and Fiscal Year 1995 Rates (BPD-802-F)	0938-AG46
1669	Reductions in Payments for SNF Services (BPD-795-NC)	0938-AG56
1670	Limitations on Revisions to Final Administrative Cost Proposals (BPO-122-P)	0938-AG57

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Health Care Financing Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identifier Number
1671	Required Laboratory Procedures for Rural Health Clinics (BPD-783-F)	0938-AG62
1672	Self-Implementing Coverage and Payment Provisions: 1993 Legislation (BPD-791-F)	0938-AG64
1673	Final Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1994 (MB-088-N)	0938-AG74
1674	Small Business Innovation Research Grants for FY 95 (ORD-068-N)	0938-AG76
1675	Medicare and Medicaid Programs; Medicare-Medicaid Coverage Data Bank Requirements: Preliminary Guidance (BPO-125-N)	0938-AG79

Administration for Children and Families—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1676	Foster Care, Adoption Assistance, and Child Welfare Services	0970-AA97
1677	Amendments to Developmental Disabilities Rules	0970-AB11
1678	Standards for Safe Transportation	0970-AB24
1679	Title IV-E Training	0970-AB25
1680	Standards for Purchase of Facilities	0970-AB31
1681	National Voter Registration Act of 1993 Provisions Affecting Public Assistance Agencies	0970-AB32
1682	Family Preservation and Support	0970-AB34
1683	Notice of Proposed Rulemaking for the Administration of Native Americans 45 CFR Part 1336	0970-AB37
1684	Interstate Case Closure	0970-AB41
1685	Direct Payments to Indian Tribes and Tribal Organizations under Title IV-B, Subpart 1	0970-AB44
1686	Repatriation - Advance Approval of Costs	0970-AB45
1687	Reduction of Reporting Requirements for the State Systems Advance Planning Document (APD) Process	0970-AB46
1688	Block Grant Programs (Low Income Home Energy Assistance Program —LIHEAP)—FY 1995 and FY 1996 Provisions	0970-AB47
1689	Automobile Resource Limit **(Reg Plan Seq. No. 62)**	0970-AB48
1690	Administrative Flexibility Rule	0970-AB49
1691	Head Start Initiative on Families With Infants and Toddlers **(Reg Plan Seq. No. 63)**	0970-AB50
1692	Flexibility in the Utilization of Information Obtained through the Income Eligibility Verification System	0970-AB51
1693	Designation of Alternative Agency to Serve Indian Tribal Children	0970-AB52
1694	Income Eligibility Criteria for Indian Tribes	0970-AB53
1695	Construction of Head Start Facilities	0970-AB54
1696	Quality Standards for Head Start Programs	0970-AB55
1697	Head Start Fellowships Program	0970-AB56

References in boldface appear in the Regulatory Plan in Part II of this issue of the **Federal Register**.

Administration for Children and Families—Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
1698	Aid to Families With Dependent Children Program; Extension of Medicaid Eligibility When Support Collections Result in Termination of AFDC Eligibility	0970-AA07
1699	Block Grant Programs (Low-Income Home Energy Assistance Program —LIHEAP) FY 91 and FY 92 Provisions	0970-AB15
1700	Block Grant Programs (Low-Income Home Energy Assistance Program—LIHEAP)—FY 93 and FY 94 Provisions	0970-AB16
1701	Family Violence Prevention and Services	0970-AB18
1702	Child Abuse and Neglect State Grant Program	0970-AB23
1703	State Legalization Impact Assistance Grant	0970-AB28
1704	Child Care—Revised Regulations	0970-AB32
1705	Statewide Automated Child Welfare Information System	0970-AB38
1706	Child Support Enforcement Program: Paternity Establishment and Revision of Child Support Enforcement Program and Audit Regulations	0970-AB40
1707	Refugee Resettlement Program: Miscellaneous Changes	0970-AB42

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Administration for Children and Families—Completed Actions

Sequence Number	Title	Regulation Identifier Number
1708	Revisions of Child Support Enforcement Program and Audit Regulations	0970-AA74
1709	Head Start Performance Standards for Infants, Toddlers, and Pregnant Women	0970-AB04
1710	Technical Changes to the AFDC Program as Required by OBRA 90	0970-AB14
1711	Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation and General Administration - Public Assistance Programs	0970-AB39

Administration on Aging—Proposed Rule Stage

Sequence Number	Title	Regulation Identifier Number
1712	Grants for State and Community Programs on Aging, Intrastate Funding Formulas; Training, Research and Discretionary Programs; Vulnerable Elder Rights; and Grants to Indians & Native Hawaiians	0985-AA00

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Proposed Rule Stage

1339. NONDISCRIMINATION REQUIREMENTS (INCLUDING ON THE BASIS OF SEX OR RELIGION) APPLICABLE TO BLOCK GRANTS AND STANDARD NONDISCRIMINATION PROCEDURES APPLICABLE TO CERTAIN OTHER PROGRAMS

Legal Authority: 42 USC 9906; 42 USC 300x-7; 42 USC 708; 42 USC 8625; 42 USC 9821; 42 USC 9849; 42 USC 1397; 42 USC 300w-7

CFR Citation: 45 CFR 94

Legal Deadline: None

Abstract: To implement the nondiscrimination requirements applicable to block grants authorized by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, as amended by the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508.

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2806
NPRM Comment Period End	03/24/86	
Second NPRM	11/00/94	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Marcella Haynes, Director, Policy & Special Projects Staff, Office for Civil Rights, Department of Health and Human Services, Office of the Secretary, 330 Independence Ave., SW., Rm. 5034, Washington, DC 20201, **202 619-0671**

RIN: 0991–AA02

1340. CIVIL MONEY PENALTIES (CMPS) FOR CERTAIN HOSPITAL PHYSICIAN INCENTIVE PLANS

Legal Authority: PL 99-509, Sec 9313(c); PL 101-239, Sec 6003(g)(3); PL 101-508, Sec 4204(a)(3); PL 101-508, Sec 4731(b)(1)

CFR Citation: 42 CFR 1001; 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would prohibit a hospital from knowingly making incentive payments to a physician as an inducement to reduce or limit services provided to Medicare or Medicaid beneficiaries who are under the direct care of that physician. The rule would also set forth standards governing the imposition of CMPs for each such individual for whom payments are made.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, OMP, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA45

1341. CIVIL MONEY PENALTIES (CMPS) FOR CERTAIN PRACTICES RELATING TO MEDICARE SUPPLEMENTAL POLICIES

Legal Authority: PL 100-360, Sec 428(b); PL 101-508, Sec 4351; PL 101-508, Sec 4353(a); PL 101-508, Sec 4354; PL 101-508, Sec 4355(a); PL 101-508, Sec 4357

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would authorize the imposition of CMPs against individuals or entities who knowingly and willfully use misleading and fraudulent practices in the advertisement, solicitation, offering for sale, or delivery of Medicare supplemental health insurance (Medigap) policies. Penalties would also be established for failure to meet Medigap policy loss-ratio requirements, failure to comply with policy simplification standards, and failure to obtain Secretarial certification of Medigap policies in States with non-approved regulatory programs.

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Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, OMP, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA53

1342. • AMENDMENT TO GRANTS MANAGEMENT COMMON RULE TO RAISE THRESHOLD FOR SIMPLIFIED SMALL PURCHASES

Legal Authority: 5 USC 301

CFR Citation: 45 CFR 92

Legal Deadline: None

Abstract: This proposal would raise the threshold for simplified small purchase procedures for grantees from $25,000 to $100,000.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	12/00/94	
Final Action	05/00/95	
Final Action Effective	05/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local, Tribal

Additional Information: OMB Circular A-102

Agency Contact: Charles Gale, Director, Division of Grants Policy and Oversight, Department of Health and Human Services, Office of the Secretary, Room 517-D, 200 Independence Avenue SW., Washington, DC 20301, **202 690-6377**

RIN: 0991–AA77

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Final Rule Stage

1343. CIVIL MONEY PENALTIES AND EXCLUSIONS FOR ASSISTANTS AT CATARACT SURGERY

Legal Authority: PL 99-272, Sec 9307; PL 99-514, Sec 1895(b)(16)

CFR Citation: 42 CFR 1001; 42 CFR 1003

Legal Deadline: None

Abstract: These final regulations provide for the imposition of civil money penalties and exclusions against physicians billing the Medicare program or program beneficiaries for services of an assistant at surgery for cataract operations where prior approval has not been granted. This rule specifically responds to various comments raised as a result of the interim final, and makes a number of technical corrections to those final regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/10/87	52 FR 11649
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, OMP, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA37

1344. BLOCK GRANT PROGRAMS

Legal Authority: PL 100-485; PL 100-607; PL 100-690

CFR Citation: 45 CFR 96

Legal Deadline: None

Abstract: Recent legislation modified technical, administrative and reporting requirements for several of the Department's block grants. This notice would propose regulatory changes to reflect these statutory changes and to clarify certain other block grant regulatory provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/17/92	57 FR 31682
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Terrance Tychan, Department of Health and Human Services, Office of the Secretary, 200 Independence Avenue SW., Washington, DC 20201, **202 690-6901**

RIN: 0991–AA55

1345. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS

Legal Authority: 5 USC 301

CFR Citation: 45 CFR 74

Legal Deadline: None

Abstract: On 11/29/93 OMB revised circular A-110 which contains administrative requirements for grants to universities, hospitals, and nonprofit organizations. 45 CFR Part 74 is being revised to implement the circular.

Timetable:

Action	Date	FR Cite
45 CFR 74		
Interim Final Rule	08/25/94	(59 FR 43754)
Comment Period End	10/24/94	
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Charles Gale, Director, Division of Grants Policy and Oversight, Department of Health and Human Services, Office of the Secretary, Rm 517D, HHH Bldg., 200 Independence Avenue SW., Washington, DC 20201, **202 690-6377**

RIN: 0991–AA56

1346. CIVIL MONEY PENALTIES FOR PHYSICIAN OWNERSHIP OF AND REFERRAL TO CERTAIN HEALTH CARE ENTITIES

Legal Authority: PL 101-239, Sec 6204; PL 101-508, Sec 4207(e); PL 101-508, Sec 4207(m)(2); PL 103-66, Sec 13562

CFR Citation: 42 CFR 1003

Legal Deadline: Final, Statutory, October 1, 1991.

Abstract: This rule will implement new civil money penalty authorities regarding prohibited physician ownership and referral arrangements as

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set forth in Section 1877 of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	10/20/93	58 FR 54096
NPRM Comment Period End	12/20/93	
Final Action	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: This rulemaking is being developed in conjunction with RIN 0938-AF40 and will be amended in accordance with OBRA 1993 and the inclusion of designated health services.

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector General, OMP, Department of Health and Human Services, Office of the Secretary, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA65

1347. ADDITIONAL SAFE HARBOR PROVISIONS UNDER THE ANTI-KICKBACK STATUTE

Legal Authority: PL 100-93, Sec 2; PL 100-93, Sec 14

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This final rule will set forth additional "safe harbor" provisions, as authorized by section 14 of PL 100-93. The final rule delineates business and payment practices relating to the Medicare and State health care programs that will be immunized from either criminal or civil prosecution in accordance with the Medicare/Medicaid anti-kickback statute.

Timetable:

Action	Date	FR Cite
NPRM	09/21/93	58 FR 49008
NPRM Comment Period End	11/22/93	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of Inspector General, OMP, Department of Health and Human Services, Office of the Secretary, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA66

1348. SAFE HARBORS FOR PROTECTING HEALTH PLANS

Legal Authority: PL 100-93, Sec 2; PL 100-93, Sec 14

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This rule establishes additional "safe harbor" provisions, as authorized by section 14 of PL 100-93. This rule protects certain health care plans, such as health maintenance organizations, that offer incentives to enrollees or that enter into negotiated price reduction agreements with contract health care providers.

Timetable:

Action	Date	FR Cite
Final Rule With Comment Period	11/05/92	57 FR 52723
Extension of Public Comment Period	01/07/93	58 FR 2989
Interim Final Rule	11/05/93	57 FR 52723
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: The OIG is currently assessing the public comments received and will be issuing a revised final rule.

Agency Contact: Joel Jay Schaer, Regulations Officer, Office of the Inspector General, OMP, Department of Health and Human Services, Office of the Secretary, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA69

1349. GOVERNMENTWIDE GUIDANCE FOR NEW RESTRICTIONS ON LOBBYING; INTERIM FINAL GUIDANCE

Legal Authority: 31 USC 1352

CFR Citation: 45 CFR 93

Legal Deadline: None

Abstract: This interim final rule is in response to section 319 of P.L. 101-121. Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or guarantee a loan, must disclose lobbying activities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/90	55 FR 6736
Next Action Undetermined		

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Charles Gale, Director, Division of Grants Policy and Oversight, Department of Health and Human Services, Office of the Secretary, Rm 517D, HHH Bldg., 200 Independence Avenue SW., Washington, DC 20201, **202 690-6574**

RIN: 0991–AA70

1350. REVISIONS TO THE PRO SANCTIONS PROCESS

Legal Authority: 42 USC 1302; 42 USC 1320c-5; PL 100-93, sec 6; PL 100-93, sec 8; PL 100-93, sec 10; PL 100-203, sec 4095; PL 101-508, sec 4205

CFR Citation: 42 CFR 1004

Legal Deadline: None

Abstract: This rule will revise and update the procedures governing the imposition and adjudication of sanctions predicated on recommendations of State Peer Review Organizations. These changes are necessitated by statutory revisions resulting from PL 100-93, PL 100-203, and PL 101-508. This rule will also set forth new appeal and reinstatement procedures that are presently codified in 42 CFR part 1004.

Timetable:

Action	Date	FR Cite
NPRM	02/25/94	59 FR 9452
NPRM Comment Period End	04/29/94	
Final Action	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General, OMP, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA73

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1351. CLARIFICATION OF THE OIG SAFE HARBOR ANTI-KICKBACK PROVISIONS

Legal Authority: PL 100-93, sec 14

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This rule will clarify various aspects of the original set of safe harbor provisions that were published on July 29, 1991 (56 FR 35952) and that are currently set forth in 42 CFR 1001.952(a)-(k). This clarifying rule will modify the final safe harbor provisions to give greater clarity to their original intent.

Timetable:

Action	Date	FR Cite
NPRM	07/21/94	59 FR 37202
NPRM Comment Period End	09/21/94	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of the Inspector General, OMP, 330 Independence Avenue SW., Washington, DC 20201, **202 619-3270**

RIN: 0991–AA74

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Office of the Secretary (OS)

Completed Actions

1352. CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS FOR HMOS AND COMPETITIVE MEDICAL PLANS

CFR Citation: 42 CFR 1003; 42 CFR 417; 42 CFR 431; 42 CFR 434

Completed:

Reason	Date	FR Cite
Final Action	07/15/94	59 FR 36072
Final Action Effective	09/13/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, 202 619-3270

RIN: 0991–AA44

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Departmental Management (HHSDM)

Final Rule Stage

1353. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Legal Authority: 5 USC 504(c)(1)

CFR Citation: 45 CFR 13

Legal Deadline: None

Abstract: The Equal Access to Justice Act generally requires agencies to pay attorney fees to parties prevailing against the Government in certain types of administrative proceedings. It requires each agency to issue rules implementing the Act as it applies to these proceedings. As originally enacted, the Act had a sunset clause. A statutory amendment eliminated the sunset provision and made other changes in the Act. The instant regulation would amend 45 CFR part 13 (HHS's regulation implementing the Act) to eliminate the corresponding sunset provision and to make other changes conforming with the statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	06/19/87	52 FR 23311
NPRM Comment Period End	08/17/87	
Final Action	01/00/95	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Timothy M. White, Acting Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, **202 619-0150**

RIN: 0990–AA02

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Social Security Administration (SSA)

Proposed Rule Stage

1354. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT OF RETROACTIVE BENEFITS UNDER TITLE II (061P)

Legal Authority: 42 USC 405; 42 USC 1320a-6; 42 USC 1302; 42 USC 1383; PL 98-369, Sec 2615; 42 USC 1383b; 42 USC 1327

CFR Citation: 20 CFR 404.408b; 20 CFR 416.1123; 20 CFR 416.1402(m); 20 CFR 416.1123a; 20 CFR 404.902

Legal Deadline: None

Abstract: Sec. 2615 of Pub. L. 98-369 amended sec. 1127 of the Social Security Act to eliminate windfalls that permitted some people who were paid Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) benefits retroactively to receive more in total benefits for the same period than if they had been paid the benefits when regularly due. The two main changes are: (1) SSI benefits will be reduced where retroactive OASDI benefits have

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been paid before the SSI benefits. Under prior law, reductions could be made only in retroactive OASDI benefits and only when the retroactive SSI had been paid first. (2) OASDI or SSI benefits payable upon reinstatement following a period of suspension or termination will be reduced by the amount of SSI benefits that would not have been paid if the OASDI benefits had been paid when regularly due. We will amend our regulations to conform to the statutory changes. Any costs/savings are associated with the legislation being implemented and not with the regulations themselves.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, 410 965-8471

RIN: 0960–AB38

1355. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; EVALUATION GUIDES FOR DETERMINING SUBSTANTIAL GAINFUL ACTIVITY (SGA) (147P)

Legal Authority: PL 98-460, Sec 10; PL 99-643; PL 100-203; PL 101-508

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: These proposed changes will clarify how the Social Security Administration evaluates a person's work activity. These regulations also will increase the monthly earnings amount that constitutes services for trial work period purposes and change the rules to allow the value of any subsidy or impairment-related work expenses to be deducted in determining that monthly earnings amount. These regulations also reflect statutory changes with respect to the trial work period and the re-entitlement period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cassandra Bond, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1794

RIN: 0960–AB73

1356. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; NONPAYMENT OF BENEFITS TO PRISONERS, VOCATIONAL REHABILITATION EXCEPTION (166P)

Legal Authority: 42 USC 402(x)(1); 42 USC 405

CFR Citation: 20 CFR 404.468; 20 CFR 404.469 (New)

Legal Deadline: None

Abstract: Existing regulations at 20 CFR 404.468(d) provide a vocational rehabilitation exception to the nonpayment of benefits to prisoners provision described at 20 CFR 404.468(a). Under the exception, the nonpayment provision does not apply if a prisoner who is entitled to benefits on the basis of disability is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for the individual by a court of law. In addition, the Secretary must determine that the program is expected to result in the individual being able to do substantial gainful activity upon release and within a reasonable time. No benefits will be paid to the prisoner for any month prior to the approval of the program. The proposed regulations would set out more definitive criteria for applying the exception and would define terms, such as "rehabilitation program," "court of law," and "reasonable time," for purposes of applying the exception.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 410 965-8470

RIN: 0960–AC16

1357. OLD-AGE, SURVIVORS AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; VOCATIONAL FACTORS REGULATIONS RESTRUCTURING AND CLARIFICATION (207P)

Legal Authority: 42 USC 405; 42 USC 421; 42 USC 423; 42 USC 1302; 42 USC 1382c; 42 USC 1383

CFR Citation: 20 CFR 404.1520; 20 CFR 404.1550 to 404.1567; 20 CFR 416.920; 20 CFR 416.950 to 416.967

Legal Deadline: None

Abstract: Based upon adjudicative experience, we are proposing clarifications and a restructuring of the disability vocational evaluation regulations.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 410 965-6243

RIN: 0960–AC61

1358. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; INTERIM DISABILITY BENEFITS (215P)

Legal Authority: 42 USC 423(h); 42 USC 1383(a); PL 100-647, Sec 8001

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: These regulations implement a section of Pub. L. 100-647 that authorizes interim benefit payments whenever an Administrative Law Judge (ALJ) decides that a claimant is entitled to benefits based on disability or blindness and the Secretary has not issued his final decision within 110 days after the date of the ALJ's determination.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health

and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1759

RIN: 0960–AC76

1359. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; APPEALS COUNCIL NOTICE REQUIREMENTS (235P)

Legal Authority: 42 USC 401(g); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 421(d); 42 USC 1302; 42 USC 1383; 42 USC 1383b

CFR Citation: 20 CFR 404.973; 20 CFR 416.1473

Legal Deadline: None

Abstract: These proposed regulations amend the existing regulations to clarify the requirements that the Appeals Council (AC) notify the parties of its reasons for reviewing a case and the issues to be decided. The proposed regulations clarify the AC's procedures with regard to providing the notice required by the regulations and do not represent any change in policy. These regulations are intended to remove any ambiguities in the current regulations concerning the circumstances and the manner in which the AC provides notice to the parties.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-6243

RIN: 0960–AC93

1360. SUPPLEMENTAL SECURITY INCOME PROGRAM; AUGMENTED BENEFITS (271P)

Legal Authority: 42 USC 1382a

CFR Citation: 20 CFR 416.1121; 20 CFR 416.1122

Legal Deadline: None

Abstract: These proposed regulations will state how benefits from other programs that have been augmented to provide for dependents are treated under the Supplemental Security Income program. Our current regulations only explain the treatment of the primary beneficiary's portion of an augmented Department of Veterans Affairs benefit.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8470

RIN: 0960–AD07

1361. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; FEES FOR REPRESENTATION OF CLAIMANTS (296P)

Legal Authority: PL 101-508, Sec 5106

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: We propose to amend the regulations to reflect section 5106(a) of Pub. L. 101-508 which modifies the manner in which past-due benefits are calculated and the process by which SSA approves fees charged by persons representing claimants before the Agency.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1759

RIN: 0960–AD23

1362. OASDI AND SSI FOR THE AGED, BLIND AND DISABLED; CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VR PROGRAM (299P)

Legal Authority: PL 101-508, Sec 5113

CFR Citation: 20 CFR 404.316; 20 CFR 404.337; 20 CFR 404.352; 20 CFR 404.902; 20 CFR 404.1586; 20 CFR 404.1596; 20 CFR 404.1597; 20 CFR 416.1321; 20 CFR 416.1338; 20 CFR 416.1402

Legal Deadline: None

Abstract: These regulations will implement section 5113 of Pub. L. 101-508, which amends sections 225(b) and 1631(a)(6) of the Act to extend eligibility for continuation of benefits under these sections to persons who are participating in a non-State VR program. Prior to these amendments, the law only provided for continuation of benefits when a person was participating in a State VR Program. These regulatory changes will bring our regulations into conformity with the amendments to the law.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD26

1363. SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; EXCLUSION FROM INCOME AND RESOURCES OF VICTIMS' COMPENSATION PAYMENTS AND STATE RELOCATION ASSISTANCE (311F)

Legal Authority: PL 101-508, sec 5031; PL 101-508, sec 5035; PL 103-66, sec 13732

CFR Citation: 20 CFR 416.1124; 20 CFR 416.1161(a); 20 CFR 416.1204(a); 20 CFR 416.1210; 20 CFR 416.1229 (New); 20 CFR 416.1239 (New)

Legal Deadline: None

Abstract: These regulations will provide for the exclusion from income and from resources (for nine months) in the Supplemental Security Income Program payments received by a person from a State established fund to aid victims of crime and payments received as State or local government relocation assistance.

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Timetable:

Action	Date	FR Cite
NPRM	08/26/94	59 FR 44093
NPRM Comment Period End	10/25/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: RIN 0960-AD37 has been merged with this action.

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1753

RIN: 0960–AD36

1364. SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; REIMBURSEMENT FOR VR SERVICES FURNISHED DURING CERTAIN MONTHS OF NON-PAYMENT (315P)

Legal Authority: PL 101-508, Sec 5037

CFR Citation: 20 CFR 416.1321; 20 CFR 416.1331; 20 CFR 416.1338; 20 CFR 416.1402; 20 CFR 416.2201

Legal Deadline: None

Abstract: These regulations reflect section 5037 of Pub. L. 101-508, which amends section 1615 of the Act, to provide for reimbursement for VR services furnished during certain months of nonpayment of Supplemental Security Income benefits. Prior to these amendments there was no provision in the law for such reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD39

1365. CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES AND ADMINISTRATIVE APPEALS JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (341P)

Legal Authority: EO 12674 as modified by EO 12731;; 42 USC 405

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: These regulations would establish a Code of Conduct for OHA Administrative Law Judges and Administrative Appeals Judges.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Office of Regulations, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD54

1366. ELECTION OF BENEFITS BASED ON AGE BY DISABLED WIDOW, WIDOWER, AND SURVIVING DIVORCED SPOUSE BENEFICIARIES (343P)

Legal Authority: 42 USC 405

CFR Citation: 20 CFR 404.335; 20 CFR 404.336; 20 CFR 404.337

Legal Deadline: None

Abstract: We propose to amend our regulations to permit the election of benefits based on age by widows, widowers and surviving divorced spouses (hereinafter, collectively widows) who are at least age 60 and who are already entitled to widow's benefits based on disability. This proposal would allow the widow to choose which of the two types of widow's benefits is more advantageous. The estimated increase in benefit payments is less than $500,000 per year for fiscal years 1992-1995.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cassandra Bond, Legal Assistant, Office of Regulations, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1794

RIN: 0960–AD56

1367. AGAINST EQUITY AND GOOD CONSCIENCE (348P)

Legal Authority: 30 USC 923; 42 USC 404; 42 USC 1383

CFR Citation: 20 CFR 404.509; 20 CFR 410.561d; 20 CFR 416.554

Legal Deadline: None

Abstract: These proposed regulations amend the existing regulations to change how we determine when recovery of an overpayment would be against equity and good conscience. Currently, regulations permit determinations that recovery of an overpayment would be against equity and good conscience under three specific conditions. The proposed regulations will provide for the "against equity and good conscience" determination to be based on an examination and consideration of a variety of factors such as cause and result of overpayment and fairness as they affect both the beneficiary and the Social Security Administration.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Office of Regulations, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8470

RIN: 0960–AD62

1368. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; HEMIC AND LYMPHATIC SYSTEM, AND MALIGNANT NEOPLASTIC DISEASES (399P)

Regulatory Plan: This entry is Seq. No. 33 in Part II of this issue of the **Federal Register**.

RIN: 0960–AD67

1369. PROCEDURES FOR HANDLING EARNINGS REPORTS (418F)

Legal Authority: 42 USC 405(a); 42 USC 1302(a); 42 USC 1320b-1

CFR Citation: 20 CFR 422.115; 20 CFR 422.120

Legal Deadline: None

Abstract: These regulations will update our current regulations to reflect the procedures we use for handling employers' wage reports that lack a correct social security number. Additionally, the regulations will include our requirements for employers to file corrections of erroneous wage reports. The regulations will also include a description of our process for providing pension plan information under the Employee Retirement Income Security Act of 1974. There are no significant costs.

Timetable:

Action	Date	FR Cite
NPRM	08/30/94	59 FR 44674
NPRM Comment Period End	10/31/94	
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: Local, Federal

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD70

1370. CONDUCT OF REPRESENTATIVES UNDER TITLE II OR TITLE XVI (431P)

Legal Authority: 42 USC 405(a); 42 USC 406; 42 USC 1302(a); 42 USC 1383(d)(1); 42 USC 1383(d)(2)

CFR Citation: 20 CFR 404.1700ff; 20 CFR 416.1500ff

Legal Deadline: None

Abstract: These regulations explain who may serve as a representative, how claimants appoint and discharge representatives, the necessary qualifications which representatives must possess, and rules of conduct and standards of responsibility that a representative must follow.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-0243

RIN: 0960–AD73

1371. STATEMENT OF EARNINGS AND BENEFIT ESTIMATE (415P)

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1320b-13

CFR Citation: 20 CFR 404.811; 20 CFR 404.812 (New); 20 CFR 422.125

Legal Deadline: None

Abstract: Section 1143(c) of the Social Security Act requires that by not later than September 30, 1995, we must furnish a social security account statement to each eligible individual who has attained age 60 by October 1, 1994, is not receiving social security benefits, and for whom we can determine a current mailing address. During fiscal year 1995 through 1999, we must furnish such a statement to eligible individuals attaining age 60 in the fiscal year they turn age 60. Similarly, beginning no later than October 1, 1999, we must provide such a statement annually to eligible individuals age 25 or over. In these regulations, we provide who will be sent a statement, how we will not be sent a statement, how we will determine addresses, and the contents of the statements. We have not yet compiled all the costs. These regulations will benefit the public by implementing section 1143(c) which will help individuals verify that we have entered their correct earnings into our records and by showing the benefits to which such individuals may become entitled.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD74

1372. FEES FOR FEDERAL ADMINISTRATION OF STATE SUPPLEMENTARY PAYMENTS IN THE SSI PROGRAM (376P)

Legal Authority: 42 USC 1302; 42 USC 1382(e); 42 USC 1383; PL 93-66, sec 212

CFR Citation: 20 CFR 416.2010; 20 CFR 416.2090

Legal Deadline: None

Abstract: Section 13731 of Pub. L. 103-66 (the Omnibus Budget Reconciliation Act of 1993) enacted August 10, 1993, requires the Secretary to assess each State an administration fee for processing the State's mandatory and optional supplementary payments. The fee will be charged for all State supplementary payments issued on or after October 1, 1993. Also, the Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides services beyond the level customarily provided in the administration of such payments.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD75

1373. WHO MAY PROTECT A POTENTIAL CLAIMANT'S FILING DATE OR APPLICATION FOR SUPPLEMENTAL SECURITY INCOME BENEFITS (408P)

Legal Authority: 42 USC 1302; 42 USC 1382; 42 USC 1383(a); 42 USC 1383(d); 42 USC 1383(e)

CFR Citation: 20 CFR 416.315ff

Legal Deadline: None

Abstract: These proposed regulations would make protecting a filing date easier and protect potential claimants

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from losing SSI benefits if an application is filed.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1759

RIN: 0960–AD76

1374. RELIABLE INFORMATION WHICH IS CURRENTLY AVAILABLE FOR DETERMINING BENEFIT AMOUNTS IN THE SUPPLEMENTAL SECURITY INCOME PROGRAM (NEWMAN) (434P)

Legal Authority: 42 USC 1302; 42 USC 1382(a) to 1382(c); 42 USC 1383

CFR Citation: 20 CFR 416.420

Legal Deadline: None

Abstract: The Social Security Act (the Act) provides that if the Secretary of Health and Human Services (the Secretary) determines that reliable information is currently available concerning the income of an individual, the Secretary may use that information to determine an individual's current month's supplemental security income (SSI) benefit amount. This method of determining SSI benefit amounts is an exception to the use of income from a prior month, known as retrospective monthly accounting (RMA). The Secretary has determined that no reliable information exists which is currently available for determining SSI benefit amounts for a current month using any method other than RMA. These rules are applicable only in California pursuant to a court order issued in Newman v. Shalala.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD77

1375. REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY, ENDOCRINE SYSTEM AND OBESITY AND RELATED CRITERIA (436P)

Regulatory Plan: This entry is Seq. No. 34 in Part II of this issue of the Federal Register.

RIN: 0960–AD78

1376. REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY, GROWTH IMPAIRMENTS (444P)

Regulatory Plan: This entry is Seq. No. 35 in Part II of this issue of the Federal Register.

RIN: 0960–AD80

1377. VALUATION OF CERTAIN IN-KIND SUPPORT AND MAINTENANCE (ISM) WHERE THERE IS A COST-OF-LIVING ADJUSTMENT IN SSI BENEFITS (454P)

Legal Authority: PL 103-66, sec 13735

CFR Citation: 20 CFR 416.420; 20 CFR 416.1130(a)

Legal Deadline: None

Abstract: These proposed regulation would reflect the amendment to section 1611(c) of the Act, effective January 1, 1995, that the current Federal benefit rate be used in determining the value of certain in-kind support and maintenance for the first 2 months after there is a cost-of-living adjustment in SSI benefits.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1759

RIN: 0960–AD82

1378. RELATIONSHIP/COVERAGE ACTIONS NOTE INITIAL DETERMINATIONS/SSI CORRECTIONS (455P)

Legal Authority: 42 USC 402; 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 405(b); 42 USC 416; 42 USC 423; 42 USC 428(a); 42 USC 428(b); 42 USC 428(c); 42 USC 428(d); 42 USC 428(e); 42 USC 1302; 42 USC 401(j); 42 USC 405(a)

CFR Citation: 20 CFR 404.331; 20 CFR 404.332; 20 CFR 404.341; 20 CFR 404.357; 20 CFR 404.361; 20 CFR 404.366; 20 CFR 404.903; 20 CFR 416.1180

Legal Deadline: None

Abstract: This regulation will make technical changes to several sections. Most of the changes correct problems with wording which occurred during the 1980 recodification. One change corrects an obvious clerical error in the wording of section 416.1180. Another change expands section 404.903 to clarify that extending social security or medical coverage in accordance with section 218 of the Act is a matter between the individual and the State and is not subject to SSA's administrative review process.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Lois Berg, Paralegal Specialist, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1713

RIN: 0960–AD83

1379. PREVENTION OF ADVERSE EFFECTS ON ELIGIBILITY AND BENEFIT AMOUNT WHEN SPOUSE OR PARENT ABSENT DUE TO ACTIVE MILITARY SERVICE (462P)

Legal Authority: PL 103-66, sec 13733

CFR Citation: 20 CFR 416.1160ff

Legal Deadline: None

Abstract: These proposed regulations reflect the provisions of section 13733 of Pub. L. 103-66 which allows us to consider, absent evidence to the contrary, an ineligible parent or spouse who is absent from a deeming household due solely to an active duty military assignment, to be living in the same household as the eligible individual for deeming purposes. This will prevent possible adverse SSI effects which could otherwise result when a military deemor is absent from the household.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1759

RIN: 0960–AD86

1380. • EXTENSION OF TIME PERIOD FOR NOT COUNTING AS RESOURCES, FUNDS RECEIVED FOR REPAIR OR REPLACEMENT OF DAMAGED OR DESTROYED EXCLUDED RESOURCES IN THE SSI PROGRAM (436P)

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.1232

Legal Deadline: None

Abstract: In the past several years, portions of the United States have experienced natural disasters that have had unprecedented effects on supplemental security income (SSI) recipients. In August 1992, Hurricane Andrew devastated south Florida causing damage estimated in excess of $18 billion. Because of the extent of the devastation, many SSI recipients in the area were unable to use insurance payments to repair or replace their damaged property within the timeframes provided by regulations at that time. With the expiration of existing timeframes, the payments would have counted as a resource for SSI purposes. On March 17, 1994, the Social Security Administration (SSA) published interim-final regulations which provided victims of Hurricane Andrew with an additional 12-month time period if needed in which to repair or replace their property. We are proposing regulations which provide SSA with the flexibility to consider these types of occurrences and provide individuals with additional time to repair or replace damaged or destroyed excluded resources when certain criteria are met.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD87

1381. • FEDERAL OASDI AND SSI FOR THE AGED, BLIND, AND DISABLED; SIGNATURE REQUIREMENTS FOR STATE AGENCY MEDICAL AND PSYCHOLOGICAL CONSULTANTS IN DISABILITY DETERMINATIONS (465P)

Legal Authority: 42 USC 405(a); 42 USC 421; 42 USC 1302; 42 USC 1382c; 42 USC 1383; 42 USC 1383b

CFR Citation: 20 CFR 404.1615; 20 CFR 416.1015

Legal Deadline: None

Abstract: We propose to revise sections 404.1615 and 416.1015 of the current regulations regarding the certifications required on disability determination forms. Current regulations require that, unless the disability determination is made by a State agency disability hearing officer, disability hearing officer, disability determinations will be made by a team consisting of a State agency medical or psychological consultant and a State agency disability examiner, even when the determination is made on technical, nonmedical grounds. We propose to remove the requirement that a medical or psychological consultant make the determination jointly with the disability examiner when there is no medical evidence to be evaluated.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harry J. Short, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, 410 965-6243

RIN: 0960–AD88

1382. • FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME, ACCEPTABLE MEDICAL SOURCES (469P)

Legal Authority: 42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation: 20 CFR 404.1513; 20 CFR 416.913

Legal Deadline: None

Abstract: We propose to add speech and language pathologists to the list of acceptable medical sources in our current regulations. These sources will assist us in establishing the existence of speech and language impairments. We also propose to make other changes in our regulations to clarify what we mean by an acceptable medical source.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard M. Bresnick, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1758

RIN: 0960–AD91

1383. • OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; CONTRIBUTIONS FOR SUPPORT (475P)

Legal Authority: 42 USC 402(d)(3); 42 USC 416(b)(3); 42 USC 405(a); 42 USC 1302

CFR Citation: 20 CFR 404.366

Legal Deadline: None

Abstract: To provide more uniformity in our decision making, we are amending our rules on the contributions for support that must be provided by the insured to certain categories of claimants for child's benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

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Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, **410 965-8471**

RIN: 0960–AD92

1384. • COMPUTATION OF SSI BENEFITS FOR THE FIRST THREE MONTHS OF PAYMENT (476P)

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.320

Legal Deadline: None

Abstract: SSI eligibility and payment are calculated by taking into account income received by the applicant/recipient. Two calculations must be made for each month. The first is the eligibility computation and is based on the current (payment) month's income. The second is the eligibility computation, which, under retrospective monthly accounting, is based (usually) on the income of a prior month called the budget month. Generally the budget month is 2 months prior to the payment month. The transitional computation for the first 3 months of ssi payment is an exception to the general rule described above. While the eligibility computation continues to apply to the current month's income, the budget month on which each of the first 3 months' payments are based is the first month of eligibility. This policy was intended to facilitate the transition into 2 month retrospective accounting cycle and to avoid penalizing the recipient for income received prior to initial SSI eligibility. However, the policy also has the effect of counting income which is only received in one month more than one time. In Jones v. Shalala the Ninth Circuit Court of Appeals ruled

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, **410 965-1762**

RIN: 0960–AD93

1385. • DEFINITION OF "LARGEST BENEFIT AMOUNT" FOR PURPOSES OF DETERMINING THE EARNINGS RECORD ON WHICH A PERSON WHO IS SIMULTANEOUSLY ENTITLED TO CHILD'S INSURANCE BENEFITS (481P)

Legal Authority: 42 USC 402(d); 42 USC 402(k); 42 USC 1302; 42 USC 405(a)

CFR Citation: 20 CFR 404.304; 20 CFR 404.353b; 20 CFR 404.407d

Legal Deadline: None

Abstract: Section 202(k)(2)(A) of the Act (42 U.S.C. 402(k)(2)(A)) contains the statutory requirements for determining the earnings record on which SSA will pay a person, who is simultaneously entitled to child's insurance benefits on the earnings records of more than one worker. Generally, the child's benefits will be paid on the earnings record that yields the highest primary insurance amount (PIA). However, under certain circumstances, the child's benefits will be paid on the earnings record that yields a lower PIA if that record produces the "largest benefit" to which the child could be entitled under section 202(d) without the application of the reduction under the "family maximum" provisions. In implementing section 202(k)(2)(A), SSA has determined the "largest benefit" under section 202(k)(2)(A) by comparing the original benefit amount (i.e., 50 percent of the PIA of a living worker and 75 percent of the PIA of a deceased worker) calculated on the dependent and/or survivor claim of the child on the earnings record of each worker without applying any reductions or deductions. The United States District Court for the Northern District of Alabama in Agee v. Sullivan rejected

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lois Berg, Paralegal Specialist, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, **410 965-1713**

RIN: 0960–AD95

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Social Security Administration (SSA)

Final Rule Stage

1386. SUPPLEMENTAL SECURITY INCOME PROGRAM; SUSPENSIONS, TERMINATIONS, AND ADVANCE NOTICE OF ADVERSE DETERMINATIONS (031F)

Legal Authority: 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c; 42 USC 1382d; 42 USC 1383; PL 99-643, sec 3; PL 99-643, sec 4; PL 100-203, sec 9103; PL 100-203, sec 9112; PL 100-203, sec 9115; PL 101-239, sec 8009; PL 101-508, sec 5038; PL 101-508, sec 5105

CFR Citation: 20 CFR 416B; 20 CFR 416G; 20 CFR 416M

Legal Deadline: None

Abstract: This regulation reorganizes, revises, and clarifies the rules on stopping, reducing, suspending, and terminating an SSI beneficiary's SSI benefits. This regulation's purpose is to make these rules easier to read and understand. These rules also reflect the following statutory enactments: (1) section 3 of Pub. L. 99-643, (2) section 4 of Pub. L. 99-643, (3) section 9103 of Pub. L. 100-203, (4) section 9112 of Pub. L. 100-203, (5) section 9115 of Pub. L. 100-203, (6) section 8009 of Pub. L. 101-239, (7) section 5038 of Pub. L. 101-508, and (8) section 5105 of Pub. L. 101-508.

Timetable:

Action	Date	FR Cite
Notice of Decision to Develop Regs	06/19/79	44 FR 35241
NPRM	05/08/86	51 FR 17057
NPRM Comment Period End	07/07/86	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, **410 965-1759**

RIN: 0960–AA22

1387. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; REVISED MEDICAL CRITERIA FOR DETERMINATION OF DISABILITY; MUSCULOSKELETAL SYSTEM (143F)

Regulatory Plan: This entry is Seq. No. 36 in Part II of this issue of the **Federal Register.**

RIN: 0960–AB01

1388. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAM; CONTINUED PAYMENT OF BENEFITS TO PERSONS IN VOCATIONAL REHABILITATION PROGRAMS (131F)

Legal Authority: 42 USC 405; 42 USC 425; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404.316; 20 CFR 404.337; 20 CFR 404.352; 20 CFR 404.902; 20 CFR 404.1586; 20 CFR 404.1596; 20 CFR 404.1597; 20 CFR 416.1321; 20 CFR 416.1338; 20 CFR 416.1331; 20 CFR 416.1402

Legal Deadline: None

Abstract: These changes permit the continued payment of disability benefits to persons who medically recover while participating in a vocational rehabilitation (VR) program, without regard to whether the person was expected at the onset of the VR program to medically recover before the scheduled completion date of the program and without regard to whether the person has any residual functional limitation. These changes bring the regulations into conformity with certain court decisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/14/86	51 FR 17616
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, **410 965-8471**

RIN: 0960–AB05

1389. SUPPLEMENTAL SECURITY INCOME PROGRAM; PROCEEDS OF A LOAN, PAYMENT OF PRO RATA SHARE OF HOUSEHOLD OPERATING EXPENSES (180F)

Legal Authority: 42 USC 1302

CFR Citation: 20 CFR 416.1103; 20 CFR 416.1133

Legal Deadline: None

Abstract: Money borrowed (a loan) is not income for SSI purposes and therefore has no effect on a person's SSI benefits. These regulations will state that only cash transactions may be considered loans. These regulations will also provide that the one-third reduction rule which applies when a person who lives in another's household and receives in-kind support and maintenance will not apply if the SSI recipient pays his or her pro rata share in cash and no later than the month under consideration. No additional costs or savings are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	08/20/90	55 FR 33922
NPRM Comment Period End	10/19/90	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, **410 965-8470**

RIN: 0960–AC42

1390. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; APPLICABILITY OF GOVERNMENT PENSION TO CERTAIN FEDERAL EMPLOYEES (188F)

Legal Authority: 42 USC 402(b); 42 USC 402(c); 42 USC 402(e); 42 USC 402(f); 42 USC 402(g); PL 100-203, Sec 9007; PL 100-647, Sec 8014

CFR Citation: 20 CFR 404.408a

Legal Deadline: None

Abstract: This final rule would reflect provisions of the Omnibus Budget Reconciliation Act of 1987 (PL 100-203, sec 9007) on the Government pension offset and provisions of the Technical and Miscellaneous Revenue Act of 1988 (PL 100-647), which also contained new rules on the government pension offset.

Timetable:

Action	Date	FR Cite
NPRM	12/12/89	54 FR 51036
NPRM Comment Period End	02/12/90	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, **410 965-8471**

RIN: 0960–AC46

1391. SUPPLEMENTAL SECURITY INCOME PROGRAM; CONTINUATION OF FULL BENEFIT STANDARD FOR CERTAIN PERSONS TEMPORARILY INSTITUTIONALIZED (198F)

Legal Authority: PL 100-203, Sec 9115; PL 99-643, Sec 3

CFR Citation: 20 CFR 416.211; 20 CFR 416.413; 20 CFR 416.414; 20 CFR 416.1149; 20 CFR 416.1167; 20 CFR 416.1325; 20 CFR 416.2040; 20 CFR 416.410; 20 CFR 416.412; 20 CFR 416.640; 20 CFR 416.1147

Legal Deadline: None

Abstract: These regulations conform to statutory amendments which require continued payment for up to three months based on the full payment rate to certain persons eligible for SSI payments under sections 1619 or 1611 of the Social Security Act who enter certain medical or psychiatric

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institutions. Without the provisions, SSI benefits would be reduced or suspended.

Timetable:

Action	Date	FR Cite
NPRM	09/28/92	57 FR 44519
NPRM Comment Period End	11/27/92	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lawrence V. Dudar, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Blvd., Baltimore, MD 21235, 410 965-1759

RIN: 0960–AC55

1392. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM; MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS FOR ADULTS (222F)

Regulatory Plan: This entry is Seq. No. 37 in Part II of this issue of the Federal Register.

RIN: 0960–AC74

1393. SUPPLEMENTAL SECURITY INCOME PROGRAM; TREATMENT OF AUGMENTED VETERANS' BENEFITS (231F)

Legal Authority: 42 USC 1382a

CFR Citation: 20 CFR 416.1123

Legal Deadline: None

Abstract: These regulations describe the treatment of the dependent's portion of an augmented Department of Veterans Affairs benefit as income to the dependent by the SSI program.

Timetable:

Action	Date	FR Cite
NPRM	05/18/90	55 FR 20612
NPRM Comment Period End	07/17/90	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Diane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-3470

RIN: 0960–AC82

1394. SUPPLEMENTAL SECURITY INCOME PROGRAM; WAIVER OF SSI RULE FOR DEEMING TO CHILDREN THE INCOME AND RESOURCES OF THEIR PARENTS FOR CERTAIN DISABLED CHILDREN (252F)

Legal Authority: 42 USC 1382c(f)(2)

CFR Citation: 20 CFR 416.415; 20 CFR 416.1148; 20 CFR 416.1165; 20 CFR 416.1202

Legal Deadline: None

Abstract: These proposed regulations reflect the provisions of section 8010 of Pub. L. 101-239 which waive the SSI income and resource deeming rules (which deem the income and resources of a disabled child's parents to the child if the child is living at home) for disabled children who were eligible for SSI benefits while in a medical institution and who qualify for Medicaid under a State home care plan authorized under title XIX when deeming parental income and resources would make the disabled child ineligible for SSI benefits or eligible for a payment of less than the personal needs allowance. This was effective June 1, 1990.

Timetable:

Action	Date	FR Cite
NPRM	09/22/93	58 FR 49249
NPRM Comment Period End	11/22/93	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Cassandra Bond, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1794

RIN: 0960–AC96

1395. SSI PROGRAM; REDUCTION IN TIME WHEN INCOME AND RESOURCES OF SEPARATED COUPLES MUST BE TREATED AS JOINTLY AVAILABLE FOR PURPOSES OF SSI ELIGIBILITY AND BENEFITS (254F)

Legal Authority: 42 USC 1382c(b)

CFR Citation: 20 CFR 416.120(c); 20 CFR 416.305; 20 CFR 416.430; 20 CFR 416.432; 20 CFR 416.532(c); 20 CFR 416.554; 20 CFR 416.1130(c); 20 CFR 416.1147; 20 CFR 416.1801(c); 20 CFR 416.1802(b); 20 CFR 416.1806; 20 CFR 416.1811; 20 CFR 416.1830(a); 20 CFR 416.1832(c); 20 CFR 416.1832(d)

Legal Deadline: None

Abstract: This proposed regulation requires that a married couple be treated as separate individuals for purposes of SSI eligibility and benefit determination beginning with the month after the month they begin living apart. This change is effective October 1, 1990.

Timetable:

Action	Date	FR Cite
NPRM	03/08/94	59 FR 10766
NPRM Comment Period End	05/09/54	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-6470

RIN: 0960–AC98

1396. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; UPDATING NOMENCLATURE (264F)

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404; 20 CFR 410; 20 CFR 416; 20 CFR 422

Legal Deadline: None

Abstract: This regulation amends current regulations to replace outdated nomenclature and terminology, to eliminate little used rules and provisions which are no longer in effect, and to correct technical errors such as misspellings and incorrect cross-references.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Cassandra Bond, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations,

6401 Security Boulevard, Baltimore, MD 21235, 410 965-1794

RIN: 0960–AD11

1397. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; REPRESENTATIVE PAYEE REFORMS (295F)

Regulatory Plan: This entry is Seq. No. 38 in Part II of this issue of the Federal Register.

RIN: 0960–AD22

1398. ORGANIZATION AND PROCEDURES; PROCEDURES OF THE OFFICE OF HEARINGS AND APPEALS; AUTHORITY OF APPEALS OFFICERS TO DENY A REQUEST FOR APPEALS COUNCIL REVIEW (334F)

Legal Authority: 42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 422.205

Legal Deadline: None

Abstract: We propose to amend our regulations to give Appeals Officers of the Appeals Council authority to deny requests for review of hearing decisions. Presently, this authority rests only with members of the Appeals Council.

Timetable:

Action	Date	FR Cite
NPRM	01/10/94	59 FR 1363
NPRM Comment Period End	03/11/94	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lois Berg, Legal Assistant, Office of Regulations, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 410 965-1713

RIN: 0960–AD45

1399. OASDI AND SSI; TESTING MODIFICATIONS TO THE DISABILITY DETERMINATION PROCEDURES (359F)

Regulatory Plan: This entry is Seq. No. 39 in Part II of this issue of the Federal Register.

RIN: 0960–AD63

1400. RELIABLE INFORMATION WHICH IS CURRENTLY AVAILABLE FOR DETERMINING BENEFIT AMOUNTS IN THE SUPPLEMENTAL SECURITY INCOME PROGRAM (382F)

Legal Authority: 42 USC 1302; 42 USC 1382(a) to 1382(c); 42 USC 1382(e); 42 USC 1382a; 42 USC 1382f; 42 USC 1383

CFR Citation: 20 CFR 416.420

Legal Deadline: NPRM, Judicial, March 16, 1993.

Abstract: Pursuant to the Court order in Gould, et al. v. Sullivan, No. C2-87-964 (S.D. Ohio, October 2, 1992), we proposed a rule for determining benefits in the SSI program. Under section 1611(c)(4)(A) of the Social Security Act, if the Secretary determines that reliable information is currently available concerning the income and other circumstances of an individual for a month, the Secretary may use that information to determine an individual's SSI benefit amount for that month. This discretionary method of determining SSI benefit amounts is an exception to the use of information from a prior month, known as retrospective monthly accounting (RMA), as provided in section 1611(c)(1) of the Act. The proposed rule explained that the Secretary has determined that no information exists which is reliable and currently available to use in computing SSI benefit amounts pursuant to section 1611(c)(4).

Timetable:

Action	Date	FR Cite
NPRM	03/16/93	58 FR 14191
NPRM Comment Period End	05/17/93	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD65

1401. COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES UNDER TITLE II AND TITLE XVI (423F)

Legal Authority: 42 USC 405(a); 42 USC 405(j); 42 USC 1302; 42 USC 1383(a)(2)

CFR Citation: 20 CFR 404.2040; 20 CFR 404.2040a; 20 CFR 416.640; 20 CFR 416.640a

Legal Deadline: None

Abstract: These additional changes to the final regulations which were published on June 1, 1992 will require a representative payee to set aside a personal needs allowance for all institutionalized beneficiaries; preclude a qualified organization that serves as representative payee from taking a fee from the personal needs allowance of all institutionalized beneficiaries; and allow a qualified organization to collect its fee for services from conserved benefits in certain limited circumstances.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD71

1402. FEDERAL OASDI AND SSI; COMPUTING BENEFIT AMOUNTS, DISPOSING OF UNDERPAYMENTS, RESOLVING OVERPAYMENTS, AND PAYMENT RESTRICTION (428F)

Legal Authority: 42 USC 405(a); 42 USC 415(a)(7); 42 USC 1302(a)

CFR Citation: 20 CFR 404.213; 20 CFR 404.460; 20 CFR 404.503; 20 CFR 404.510

Legal Deadline: None

Abstract: Current regulations on the windfall elimination provision do not explain how SSA will treat the purchase of noncovered retroactive service, e.g., the purchase of coverage for military service. The regulations will state that we will accept such service in determining whether an insured individual is exempt from the

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windfall provision because he or she became eligible before 1986 for a pension based on noncovered employment. The regulations will also include three technical amendments. First, we will delete a cross reference which erroneously indicates that a person otherwise eligible for an underpayment of benefits must be the parent of an insured individual. Second, we will change age 72 to age 70 regarding deductions for net earnings from self-employment. Third, we will delete the German Democratic Republic and Albania from the list of countries to which payment of benefits is restricted.

Timetable:

Action	Date	FR Cite
NPRM	07/20/94	59 FR 37000
NPRM Comment Period End	09/19/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, Legal Assistant, Department of Health and Human Services, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8471

RIN: 0960–AD72

1403. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE; EVIDENCE REQUIRED TO PRESUME A PERSON IS DEAD (443F)

Legal Authority: 42 USC 405(a); 42 USC 1102

CFR Citation: 20 CFR 404.720

Legal Deadline: None

Abstract: These proposed regulations reflect a new proposed policy providing that the presumption of death arises when the claimant establishes an individual has been absent from his or her residence and not heard from for 7 years. Once the presumption is made, the burden then shifts to us to rebut the presumption either by presenting evidence that the missing individual is still alive or by providing an explanation to account for the individual's absence in a manner consistent with continued life rather than death. Policy concerning the rebuttal of a presumption of death will also be provided in a new section to the regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/20/94	59 FR 37002
NPRM Comment Period End	09/19/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD79

1404. TEMPORARY INCREASE IN SPONSORSHIP PERIOD FOR ALIENS UNDER THE SSI PROGRAM (457F)

Legal Authority: PL 103-152, sec 7

CFR Citation: 20 CFR 416.1160; 20 CFR 416.1204

Legal Deadline: None

Abstract: Section 7 of Pub. L. 103-152 amended section 1621 of the Social Security Act to temporarily increase the sponsorship period for aliens under the SSI program from 3 years to 5 years following the alien's date of lawful admission to the U.S. The increase in the sponsorship period is effective January 1, 1994. Beginning October 1, 1996, the 3-year sponsorship period will be reinstated. We will amend our regulations to conform to the statutory changes. Any costs/savings are associated with the legislation and not with the regulations themselves.

Timetable:

Action	Date	FR Cite
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lois Berg, Paralegal Specialist, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1713

RIN: 0960–AD84

1405. REPLACEMENT OF LOST, DAMAGED OR STOLEN EXCLUDED RESOURCES (HURRICANE ANDREW) (458I)

Legal Authority: 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 416.1232

Legal Deadline: None

Abstract: Some supplemental security income (SSI) recipients who were victims of Hurricane Andrew in south Florida have not been able to replace or repair their damaged homes and other excluded resources due to circumstances beyond their control. This means that some SSI recipients will be holding assets (insurance money) in amounts that will disqualify them for SSI benefits if held for periods exceeding the maximum 18-month period currently in regulations at section 416.1232. Since Hurricane Andrew occurred in August 1992, SSI recipients could become ineligible as early as March 1994. We are codifying in regulations, interim final rules which provide additional time for victims of Hurricane Andrew to replace or repair their damaged excluded resources without suffering loss or interruption of their SSI benefits.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/94	59 FR 12544
NPRM Comment Period End	05/17/94	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1762

RIN: 0960–AD85

1406. • TECHNICAL CHANGES TO TITLE XVI (466F)

Legal Authority: 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382j

CFR Citation: 20 CFR 416.1236; 20 CFR 416 app

Legal Deadline: None

Abstract: We are amending the supplemental security income regulations by making technical changes to update the appendix at the end of Subpart K which lists exclusions from income in statutes other than the Social Security Act and to update the lists of statutory exclusions from resources contained in Subpart L.

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-8470

RIN: 0960–AD89

1407. • SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND OR DISABLED; EVIDENCE OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE IN THE UNITED STATES (486F)

Legal Authority: 42 USC 1302; 42 USC 1382c(a)(1)(B); 42 USC 1382c(e); 42 USC 1383

CFR Citation: 20 CFR 416.1615

Legal Deadline: None

Abstract: On September 20, 1993, the Immigration and Naturalization Service (INS) published a regulatory change concerning the documents which certify the alien status of a lawful permanent resident within the United States. The change which establishes INS Form I-551, Alien Registration Receipt Card, as the definitive evidence of lawful permanent resident status is effective September 20, 1994. Since aliens who apply for SSI benefits as lawful permanent residents must submit evidence of this status, we are revising the title XVI regulations to reflect the change in the INS regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lois Berg, Paralegal Specialist, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1713

RIN: 0960–AD90

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Social Security Administration (SSA)

Completed Actions

1408. SUPPLEMENTAL SECURITY INCOME PROGRAM; WHAT IS NOT INCOME (121F)

CFR Citation: 20 CFR 416.1103(a)

Completed:

Reason	Date	FR Cite
Final Action	07/01/94	59 FR 33906

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, 410 965-8470

RIN: 0960–AB09

1409. SUPPLEMENTAL SECURITY INCOME PROGRAM; CONTINUATION OF BENEFITS AND SPECIAL ELIGIBILITY FOR CERTAIN SEVERELY IMPAIRED RECIPIENTS WHO WORK (171F)

CFR Citation: 20 CFR 416.260; 20 CFR 416.261; 20 CFR 416.262; 20 CFR 416.265; 20 CFR 416.268; 20 CFR 416.269; 20 CFR 416.1112; 20 CFR 416.1402; 20 CFR 416.264; 20 CFR 416.1403

Completed:

Reason	Date	FR Cite
Final Action	08/12/94	59 FR 41400

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard M. Bresnick, 410 965-1758

RIN: 0960–AC22

1410. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME PROGRAMS; DEEMED APPLICATION DATE BASED ON MISINFORMATION (267F)

CFR Citation: 20 CFR 404.612; 20 CFR 404.614; 20 CFR 404.615; 20 CFR 404.633 (New); 20 CFR 404.992; 20 CFR 404.903; 20 CFR 416.310; 20 CFR 416.325; 20 CFR 416.351 (New); 20 CFR 416.1402; 20 CFR 416.1403

Completed:

Reason	Date	FR Cite
Final Action	08/31/94	59 FR 44918

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, 410 965-1762

RIN: 0960–AD05

1411. SUPPLEMENTAL SECURITY INCOME PROGRAM; FINANCIAL INSTITUTION ACCOUNTS IN THE SSI PROGRAM (278F)

CFR Citation: 20 CFR 416.1201(b); 20 CFR 416.1208 (New)

Completed:

Reason	Date	FR Cite
Final Action	05/31/94	59 FR 27985

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, 410 965-1762

RIN: 0960–AD10

1412. SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED; TREATMENT OF CERTAIN ROYALTIES AND HONORARIA (310F)

CFR Citation: 20 CFR 416.1110; 20 CFR 416.1111; 20 CFR 416.1121

Completed:

Reason	Date	FR Cite
Final Action	08/24/94	59 FR 43470

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Duane Heaton, 410 965-8470

RIN: 0960–AD35

1413. SUPPLEMENTAL SECURITY INCOME PROGRAM; TREATMENT OF PROMISSORY NOTES IN HOME REPLACEMENT SITUATIONS (182F)

CFR Citation: 20 CFR 416.1212

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HHS—SSA — Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	08/23/94	59 FR 43263

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry Lerner, 410 965-1762

RIN: 0960–AD61

1414. APPEAL RIGHTS FOLLOWING STATE-INITIATED MASS CHANGE IN FEDERALLY ADMINISTERED STATE SUPPLEMENTARY PAYMENTS RESULTING IN REDUCTION, SUSPENSION, OR TERMINATION OF STATE SUPPLEMENTARY PAYMENTS (383F)

CFR Citation: 20 CFR 416.1401; 20 CFR 416.1402; 20 CFR 416.1403.

Completed:

Reason	Date	FR Cite
Final Action	08/22/94	59 FR 43035

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jack Schanberger, 410 965-8471

RIN: 0960–AD66

1415. ELIGIBILITY FOR CHILDREN OF ARMED FORCES PERSONNEL RESIDING OUTSIDE THE UNITED STATES OTHER THAN IN FOREIGN COUNTRIES (452F)

CFR Citation: 20 CFR 416.215

Completed:

Reason	Date	FR Cite
Final Action	08/12/94	59 FR 41399

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Henry D. Lerner, 410 965-1762

RIN: 0960–AD81

1416. • FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE; DETERMINING DISABILITY AND BLINDNESS; EXTENSION OF EXPIRATION DATE FOR THE LISTING OF IMPAIRMENTS, MENTAL DISORDERS IN ADULTS (477F)

Legal Authority: 42 USC 1302; 42 USC 1383; 42 USC 405

CFR Citation: 20 CFR 404.1500

Legal Deadline: None

Abstract: The Social Security Administration issues listings of impairments to evaluate disability and blindness under the Social Security and Supplemental security income (SSI) programs. This rule would extend the expiration date for the adult mental disorders listings. We propose no revisions to the medical criteria in the listings; they would remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on mental impairments at step three of our sequential evaluation process.

Timetable:

Action	Date	FR Cite
Final Action	08/16/94	59 FR 41974

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Richard M. Bresnick, Legal Assistant, Department of Health and Human Services, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235, 410 965-1758

RIN: 0960–AD94

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage
Public Health Service (PHS)—Office of Assistant Secretary for Health (OASH)

1417. PUBLIC HEALTH SERVICE POLICIES ON RESEARCH MISCONDUCT

Legal Authority: 42 USC 289b; 42 USC 290aa

CFR Citation: 42 CFR 93

Legal Deadline: None

Abstract: The proposed regulation will revise the definition of research misconduct, identify responsibilities of institutions receiving allegations of research misconduct involving PHS-supported research, provide a hearing opportunity for persons found to have engaged in research misconduct, and set forth other policies of the Department of Health and Human Services related to research integrity.

Timetable:

Action	Date	FR Cite
NPRM	06/28/94	59 FR 33242
NPRM Comment Period End	08/29/94	59 FR 33242
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Lawrence Rhoades, Director, Division of Policy and Education, Office of Research Integrity, Department of Health and Human Services, Public Health Service, 5515 Security Lane, Suite 700, Rockville, MD 20852, 301 443-5300

RIN: 0905–AE02

1418. STANDARDS OF COMPLIANCE FOR ABORTION-RELATED SERVICES IN FAMILY PLANNING SERVICE PROJECTS

Legal Authority: 42 USC 300a-4

CFR Citation: 42 CFR 59

Legal Deadline: None

Abstract: This rule would return the Family Planning Service Program, funded under Title X of the Public Health Service Act, to the compliance standards operative prior to February 2, 1988, with regard to the statutory provision prohibiting abortion as a method of family planning in projects funded under that title.

Timetable:

Action	Date	FR Cite
NPRM	02/05/93	58 FR 7464
NPRM Comment Period End	08/09/93	58 FR 34024
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Gerald Bennett, Acting Deputy Assistant Secretary for Population Affairs, Department of Health and Human Services, Public Health Service, East West Towers, Suite

HHS—PHS—OASH — Final Rule Stage

200, West Bldg., 5600 Fishers Lave, Rockville, MD 20857, 301 594-4000

RIN: 0905–AE03

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Completed Actions
Public Health Service (PHS)—Office of Assistant Secretary for Health (OASH)

1419. PRIVACY ACT; EXEMPT SYSTEM

CFR Citation: 45 CFR 5b

Completed:

Reason	Date	FR Cite
Final Action	07/19/94	59 FR 36717
Final Action Effective	08/18/94	59 FR 36717

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. Lawrence Rhoades, 301 443-5300

RIN: 0905–AD31

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Proposed Rule Stage
Public Health Service (PHS)—Substance Abuse and Mental Health Services Administration (SAMHSA)

1420. CONFIDENTIALITY OF SUBSTANCE ABUSE PATIENT RECORDS

Legal Authority: 42 USC 290dd-2, as amended by PL 102-321; 42 USC 290dd-3, as amended by PL 102-321

CFR Citation: 42 CFR 2

Legal Deadline: None

Abstract: This action modifies rules at 42 CFR part 2 to clarify coverage of general medical facilities in light of U.S. v. Eide, 875 F.2d 1429, 1438 (9th Cir. 1989).

Timetable:

Action	Date	FR Cite
NPRM	08/18/94	59 FR 42561
NPRM Comment Period End	10/17/94	
Final Action	03/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: Alternate Contact: Sue Martone, DLEA, SAMHSA, PHS, Room 12C-15, 5600 Fishers Lane, Rockville, MD 20857; 301-443-4640

Agency Contact: Joseph D. Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Public Health Service, 5600 Fishers Lane, Room 12C-15, Rockville, MD 20857, 301 443-4640

RIN: 0905–AD97

1421. PROTECTION AND ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS

Legal Authority: 42 USC 10801 et seq. as amended by PL 102-173

CFR Citation: 45 CFR 51

Legal Deadline: Final, Statutory, May 27, 1992.
Section 9 of P.L. 102-173, enacted on 11/27/91, sets this deadline.

Abstract: Sets requirements for funding State and State-designated systems for protecting and advocating for individuals with mental illness. By law, these requirements must be set out in regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	
NPRM Comment Period End	01/00/95	
Final Action	04/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: Alternate Contact: Sue Martone, DLEA, SAMHSA, PHS; Room 12C-15, 5600 Fishers Lane, Rockville, MD 20857; 301-443-4640

Agency Contact: Joseph D. Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Public Health Service, 5600 Fishers Lane, Room 12C-15, Rockville, MD 20857, 301 443-4640

RIN: 0905–AD99

1422. COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANTS

Legal Authority: 42 USC 300X-1, PL 102-321, ADAMHA Reorganization Act

CFR Citation: 45 CFR 96

Legal Deadline: None

Abstract: States and territories must submit annual applications which include State plans and implementation reports for services delivery to adults with serious mental illness and children with serious emotional disturbance under the Community Mental Health Services Block Grant statute. Regulatory action is necessary to establish uniform application format and to institute requirements with regard to addressing and reporting on the statutory criteria the Secretary must use to determine if applications comply with legislative mandates (sections 1911, 1920 and 1941-1954 of the Public Health Service Act, as amended by P.L. 102-321), thus meeting approval for grant award.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	
NPRM Comment Period End	04/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Tribal

Agency Contact: Joseph Faha, Director, Div. of Legislation and External Affairs, Department of Health and Human Services, Public Health Service, Room 12C-15, Parklawn

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HHS—PHS—SAMHSA — Proposed Rule Stage

Building, 5600 Fishers Lane, Rockville, MD 20857, **301 443-4640**

RIN: 0905–AE24

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage
Public Health Service (PHS)—Substance Abuse and Mental Health Services Administration (SAMHSA)

1423. BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Legal Authority: 42 USC 300-x et seq, as amended by PL 102-321

CFR Citation: 45 CFR 96

Legal Deadline: Final, Statutory, August 25, 1992.
Awards to States after January 1, 1993 cannot be made until implementing regulations are published.

Abstract: Sets requirements for block grants for prevention and treatment of substance abuse. The requirements include criteria for approval of State plans which must by statute be prescribed in regulations. These provisions are effective immediately. However, States have 90 days from the effective date to bring previously submitted FY 1993 applications into substantial compliance and need to submit applications in the prescribed format beginning only with 1994 applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/93	58 FR 17062
Interim Final Rule Comment Period End	06/01/93	
Final Action	12/00/94	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Tribal

Additional Information: Alternate Contact: Sue Martone, DLEA, SAMHSA, PHS, 5600 Fishers Lane, Room 12C-15, Rockville, MD 20852; 301-443-4640

Agency Contact: Joseph D. Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Public Health Service, 5600 Fishers Lane, Room 12C-15, Rockville, MD 20857, **301 443-4640**

RIN: 0905–AD98

1424. BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE (TOBACCO PROVISIONS)

Regulatory Plan: This entry is Seq. No. 45 in Part II of this issue of the **Federal Register**.

RIN: 0905–AE05

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Final Rule Stage
Public Health Service (PHS)—Centers for Disease Control and Prevention (CDC)

1425. RESPIRATORY PROTECTIVE DEVICES

Regulatory Plan: This entry is Seq. No. 48 in Part II of this issue of the **Federal Register**.

RIN: 0905–AB58

1426. INTERSTATE SHIPMENT OF BIOLOGICAL MATERIAL THAT CONTAINS OR MAY CONTAIN INFECTIOUS SUBSTANCES

Legal Authority: 42 USC 216; 42 USC 264; 42 USC 271

CFR Citation: 42 CFR 72

Legal Deadline: None

Abstract: The revised regulation will clarify and expand the requirements for proper packaging and handling of infectious substances during interstate shipment. The revised regulation will ensure that all biological material that could contain infectious substances is packaged in a manner for interstate shipment that minimizes the potential for leakage and possible contamination of the environment and minimizes direct physical contact with the contents by package handlers. The revised regulation is not expected to have a major impact on the cost of shipping these materials.

Timetable:

Action	Date	FR Cite
NPRM	03/02/90	55 FR 7678
NPRM Comment Period End	05/09/90	55 FR 7678
Final Action	10/00/94	
Final Action Effective	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jonathan Y. Richmond, Ph.D., Director, Office of Health and Safety, Centers for Disease Control and Prevention, Department of Health and Human Services, Public Health Service, 1600 Clifton Road NE., Mailstop F-05, Atlanta, GA 30333, **404 639-3453**

RIN: 0905–AC89

1427. MEDICAL EXAMINATION OF ALIENS

Legal Authority: 8 USC 1182; 8 USC 1224; 8 USC 1225; 42 USC 216; 42 USC 249; 42 USC 252; PL 101-649

CFR Citation: 42 CFR 34

Legal Deadline: None

Abstract: This is a proposed revision in the regulations for the medical examination of aliens. The regulations were developed to provide for the physical and mental examination of aliens within the United States or in other countries as required by the Immigration and Nationality Act. This revision would update the regulations in accordance with current epidemiologic concepts and medical diagnostic standards.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/31/91	56 FR 25000
Interim Final Comment Period End	08/02/91	56 FR 25000

HHS—PHS—CDC — Final Rule Stage

Action	Date	FR Cite
Final Action	00/00/00	
Final Action Effective	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Charles R. McCance, Director, Division of Quarantine, Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E-04, Atlanta, GA 30333, **404 639-8100**

RIN: 0905–AD29

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Prerule Stage
Public Health Service (PHS)—Food and Drug Administration (FDA)

1428. MEDICAL FOODS

Legal Authority: 21 USC 321; 21 USC 341; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 350; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360ee; 21 USC 371

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Food and Drug Administration is considering development of regulations for medical foods, as defined by the Orphan Drug Act Amendments of 1988 (21 USC 360ee(b)(3)) to assure, among other things, the safety and effectiveness of these products, proper labeling of the nutrient content and purported uses, including adequate and appropriate directions for use, and quality control and good manufacturing practices.

Timetable:

Action	Date	FR Cite
ANPRM	00/00/00	
ANPRM Comment Period End	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Carol Lang, Regulatory Branch, Division of Programs and Enforcement Policy, Office of Spec Nut., Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-456), 200 C Street SW., Washington, DC 20204, **202 205-5372**

RIN: 0905–AD91

1429. SUNGLASSES; LABELING; ULTRAVIOLET RADIATION

Legal Authority: 21 USC 352

CFR Citation: 21 CFR 801

Legal Deadline: None

Abstract: The failure of sunglasses to block the transmittance of a sufficient amount of UV rays may result in macular degeneration, a condition affecting vision significantly. Not all sunglasses provide adequate protection for those at high risk. FDA believes that consumers should be aware of the degree of protection provided. FDA is publishing the ANPRM to gather additional information on the extent of the problem and to seek potential solutions.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE35

1430. INVESTIGATIONAL DEVICE EXEMPTION: COST RECOVERY

Legal Authority: 21 USC 360j (g)

CFR Citation: 21 CFR 812.7

Legal Deadline: None

Abstract: FDA is considering revising its regulation concerning recovering costs from patients for devices being investigated for safety and effectiveness information before commercial marketing. Presently, 21 CFR 812.7(b) prohibits investigators from charging subjects a price larger than that necessary to recover costs of manufacture, research, development and handling. FDA believes that this may encourage more widespread use of investigational devices than is appropriate. FDA is publishing this ANPRM to gather information on the nature and extent of the problem.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE36

1431. • DEVELOPMENT OF HAZARD ANALYSIS CRITICAL CONTROL POINTS FOR THE FOOD INDUSTRY; REQUEST FOR COMMENTS

Regulatory Plan: This entry is Seq. No. 40 in Part II of this issue of the **Federal Register**.

RIN: 0905–AE60

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Food and Drug Administration (FDA)

Proposed Rule Stage

1432. OVER-THE-COUNTER (OTC) DRUG REVIEW

Legal Authority: 21 USC 321p; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360a; 21 USC 371a

CFR Citation: 21 CFR 310; 21 CFR 330; 21 CFR 333; 21 CFR 334; 21 CFR 335; 21 CFR 336; 21 CFR 337; 21 CFR 338; 21 CFR 339; 21 CFR 340; 21 CFR 341; 21 CFR 342; 21 CFR 343; 21 CFR 344; 21 CFR 345; ...

Legal Deadline: None

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. NOTE: NPRM for "Antidotes, Toxic Ingestion Products" was combined with NPRM for "Emetic Products" and reproposed as "Poison Treatment Products." NPRM for "Astringent (Wet Dressings) Products" was included in the NPRM for "Skin Protectant Products." NPRM for "Diaper Rash Products" was included in NPRMs for "Antifungal," "Antimicrobial," "External Analgesic" and "Skin Protectant Products." NPRM for "Fever Blister/Cold Sore Products (External)" was included in NPRMs for "External Analgesic" and "Skin Protectant Products." NPRM for "Insect Bites and Stings (Relief) Products" was included in NPRMs for "External Analgesic" and "Skin Protectant Products." "Poison Ivy/Oak/Sumac Prevention" was included in NPRMs for "External Analgesic" and "Skin Protectant Products." NPRM for "Mercurial (Topical) Products" to be included in revised NPRM (cont)

Timetable:

Acne (Topical) Products
ANPRM 03/23/82 (47 FR 12430)
NPRM 01/15/85 (50 FR 2172)
NPRM (Amendment) 08/07/91 (56 FR 37622)
Final Action 08/16/91 (56 FR 41008)

Alcohol (Oral) in OTC Drug Products
NPRM 10/21/93 (58 FR 54466)
Final Action 03/00/95

Alcohol (Topical) Products (To be merged w/other rulemkg)
ANPRM 05/21/82 (47 FR 22324)

Amendment (DPH Combinations) Cough/Cold (Comb.) Products
NPRM 03/00/95

Anorectal Products
ANPRM 05/27/80 (45 FR 35576)
NPRM 08/15/88 (53 FR 30756)
Final Action 08/03/90 (55 FR 31776)
Final Action (LYCD) 09/02/93 (58 FR 46746)
Final Action (Witch Hazel) 06/03/94 (59 FR 29755)

Antacid Drug Products
ANPRM 04/05/73 (38 FR 8714)
NPRM 11/12/73 (38 FR 31260)
Final Action 06/04/74 (39 FR 9862)
NPRM (Amendment) (Overindulgence) 12/24/91 (56 FR 66754)
Final Action (Amendment) (Warning) 08/26/93 (58 FR 45204)
NPRM (Amendment) (Testing) 09/23/93 (58 FR 49826)
NPRM (Amendment)(Sodium Bicarb.) 02/02/94 (59 FR 5060)

Anthelmintic Products
ANPRM 09/09/80 (45 FR 59541)
NPRM 08/24/82 (47 FR 37062)
Final Action 08/01/86 (51 FR 27756)

Antibiotic First Aid Products
ANPRM 04/01/77 (42 FR 17642)
NPRM 07/09/82 (47 FR 29986)
Final Action 12/11/87 (52 FR 47312)
NPRM (Amendment) 08/18/89 (54 FR 34188)
Final Action 03/15/90 (55 FR 9721)
NPRM (Amendment) 05/11/90 (55 FR 19868)
NPRM (Amendment) 06/08/90 (55 FR 23450)
Final Action (Amendment) 10/03/90 (55 FR 40379)
Final Action (Amendment) 12/05/90 (55 FR 50171)

Anticaries Products
ANPRM 03/28/80 (45 FR 20666)
NPRM 09/30/85 (50 FR 39854)
NPRM 06/15/88 (53 FR 22430)
Final Action 12/00/94

Antidiarrheal Products
ANPRM 03/21/75 (40 FR 12924)
NPRM 04/30/86 (51 FR 16138)
Final Action 02/00/95

Antidotes, Toxic Ingestion Prdts (Now Poison Treatment Prdts)
ANPRM 01/05/82 (47 FR 444)

Antiemetic Products
ANPRM 03/21/75 (40 FR 12934)
NPRM 07/13/79 (44 FR 41064)
Final Action 04/30/87 (52 FR 15886)
NPRM (Amendment) 08/26/93 (58 FR 45216)
Final Action 04/11/94 (59 FR 16981)

Antiflatulent Drug Products
NPRM 11/12/73 (38 FR 31260)
Final Action 06/04/74 (39 FR 19877)
NPRM (Amendment) 01/29/88 (53 FR 2716)

Antifungal (Topical) Products
ANPRM 03/23/82 (47 FR 12480)
NPRM 12/12/89 (54 FR 51136)
NPRM (Amendment) (Diaper Rash) 06/20/90 (55 FR 25240)
Final Action (Amdt.)(Diaper Rash) 12/18/92 (57 FR 60430)
Final Action (Partial) 09/02/93 (58 FR 46744)
Final Action 09/23/93 (58 FR 49890)

Antimicrobial Products
ANPRM 09/13/74 (39 FR 33103)
NPRM 01/06/78 (43 FR 1210)
NPRM (Amendment) (Diaper Rash) 06/20/90 (55 FR 25246)

Antiperspirant Products
ANPRM 10/10/78 (43 FR 46694)
NPRM 08/20/82 (47 FR 36492)
Final Action 00/00/00

Antiseptic First Aid
ANPRM 09/13/74 (39 FR 33103)
NPRM 01/06/78 (43 FR 1210)
NPRM (Revised) 07/22/91 (56 FR 33644)
Final Action 00/00/00

Antiseptic Products (Professional Use)
ANPRM 09/13/74 (39 FR 33103)
NPRM 01/06/78 (43 FR 1210)
NPRM (Revised) 06/17/94 (59 FR 31402)

Aphrodisiac Products
ANPRM 10/01/82 (47 FR 43572)
NPRM 01/15/85 (50 FR 2168)
Final Action 07/07/89 (54 FR 28780)

Aspirin (Heart Labeling)
NPRM 10/20/93 (58 FR 54224)

Aspirin (Reye Syndrome)
NPRM 10/20/93 (58 FR 54228)

Astringent (Wet Dressings) Prdts (Merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39436)

Benign Prostatic Hypertrophy Products
ANPRM 10/01/82 (47 FR 43566)
NPRM 02/20/87 (52 FR 5406)
Final Action 02/27/90 (55 FR 6926)

Boil Ointments
ANPRM 06/29/82 (47 FR 28306)
NPRM 01/26/88 (53 FR 2198)
Final Action 11/15/93 (58 FR 60332)

Camphorated Oil Drug Products
ANPRM 09/26/80 (45 FR 63869)
Final Action 09/21/82 (47 FR 41716)

Cholecystokinetic Products
ANPRM 02/12/80 (45 FR 9286)
NPRM 08/24/82 (47 FR 37068)
Final Action 06/10/83 (48 FR 27004)
NPRM (Amendment) 08/15/88 (53 FR 30786)
Final Action (Amendment) 02/28/89 (54 FR 8320)

Corn and Callus Remover Products
ANPRM 01/05/82 (47 FR 522)
NPRM 02/20/87 (52 FR 5412)
Final Action 08/14/90 (55 FR 33258)

Cough/Cold (Anticholinergic) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 07/09/82 (47 FR 30002)
Final Action 11/08/85 (50 FR 46582)

HHS—PHS—FDA

Proposed Rule Stage

Cough/Cold (Antihistamine) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 01/15/85 (50 FR 2200)
NPRM (Amendment) 08/24/87 (52 FR 31892)
Final Action 12/09/92 (57 FR 58356)
Final Action (Amendment)(Warning) 01/28/94 (59 FR 4216)

Cough/Cold (Antitussive) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 10/19/83 (48 FR 48576)
Final Action 08/12/87 (52 FR 30042)
NPRM (Amendment) 07/06/89 (54 FR 28442)
NPRM (Amendment) 10/02/89 (54 FR 40412)
Final Action (Amendment) 07/06/90 (55 FR 27806)
Final Action (Amendment) 10/03/90 (55 FR 40381)
NPRM (Amendment)(Warning) 06/19/92 (57 FR 27666)
NPRM (Amendment)(Ingredients) 12/09/92 (57 FR 58378)
Final Action (Amendment)(Warning) 10/20/93 (58 FR 54232)
Final Action (Amdt.)(Ingredients) 06/03/94 (59 FR 29172)

Cough/Cold (Bronchodilator) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 10/26/82 (47 FR 47520)
Final Action 10/02/86 (51 FR 35326)
NPRM (Amendment)(Warning) 06/19/92 (57 FR 27662)
Final Action (Amendment)(Warning) 10/20/93 (58 FR 54238)

Cough/Cold (Combination) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 08/12/88 (53 FR 30522)
NPRM (Amendment)(DPH Combinations) 03/00/95
Final Action 00/00/00

Cough/Cold (Expectorant) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 07/09/82 (47 FR 30002)
Final Action 02/28/89 (54 FR 8494)
Final Action (Technical Changes) 06/30/92 (57 FR 29176)

Cough/Cold (Expectorant/Ipecac) Products
Final Action 09/14/92 (57 FR 41857)

Cough/Cold (Nasal Decongestant) Products
ANPRM 09/09/76 (41 FR 38312)
NPRM 01/15/85 (50 FR 2220)
NPRM (Amendment) 06/19/92 (57 FR 27658)
Final Action 08/23/94 (59 FR 43386)

Dandruff, Seborrheic Dermatitis and Psoriasis Control Products
ANPRM 12/03/82 (47 FR 54646)
NPRM 07/30/86 (51 FR 27346)
Final Action 12/04/91 (56 FR 63554)
NPRM (Amendment) 04/05/93 (58 FR 17554)
Final Action 01/28/94 (59 FR 4000)

Daytime Sedatives
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 08/22/79 (44 FR 36378)

Diaper Rash Products (Merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39406)

Digestive Aid Products
ANPRM 01/05/82 (47 FR 454)
NPRM 01/29/88 (53 FR 2706)
Final Action 10/21/93 (58 FR 54450)

Emetic Products
ANPRM 03/21/75 (40 FR 12939)
NPRM 09/05/78 (43 FR 39544)

Exocrine Pancreatic Insufficiency Products
ANPRM 12/21/79 (44 FR 75666)
NPRM 11/08/85 (50 FR 46594)
NPRM (Reproposed) 07/15/91 (56 FR 32282)
Final Action 03/00/95

External Analgesic Products
ANPRM 12/04/79 (44 FR 69768)
NPRM 02/08/83 (48 FR 5852)
NPRM (Amendment) (Dandruff) 07/30/86 (51 FR 27360)
NPRM (Amendment) (Anorectal) 08/25/88 (53 FR 32592)
NPRM (Amendment) (Poison Ivy) 10/03/89 (54 FR 40818)
NPRM (Amendment) (Fvr Blister/Ext) 01/31/90 (55 FR 3370)
NPRM (Amendment) (1%Hydrocortisone) 02/27/90 (55 FR 6932)
NPRM (Amendment) (Diaper Rash) 06/20/90 (55 FR 25234)
Final Action (Diaper Rash) 12/18/92 (57 FR 60426)
Final Action 00/00/00

Fever Blister Products (Internal)
ANPRM 01/05/82 (47 FR 502)
NPRM 06/17/85 (50 FR 25156)
Final Action 06/30/92 (57 FR 29166)

Fvr Blister/Cold Sore Prdts (Ext.) (To be merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39436)

Hair Grower and Hair Loss Prevention Products
ANPRM 11/07/80 (45 FR 73955)
NPRM 01/15/85 (50 FR 2190)
Final Action 07/07/89 (54 FR 28772)

Hormone (Topical) Products
ANPRM 01/05/82 (47 FR 430)
NPRM 10/02/89 (54 FR 40618)
Final Action 09/09/93 (58 FR 57608)

Hypo/Hyperphosphatemia Products
ANPRM 12/09/80 (45 FR 81154)
NPRM 01/15/85 (50 FR 2160)
Final Action 05/11/90 (55 FR 19852)

Ingrown Toenail Relief Products
ANPRM 10/17/80 (45 FR 69128)
NPRM 09/03/82 (47 FR 39120)
Final Action 09/09/93 (58 FR 47602)

Insect Bite & Sting (Relief) Prdts (Merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39412)

Insect Repellent Drug Products (Internal)
ANPRM 01/05/82 (47 FR 424)
NPRM 06/10/83 (48 FR 26986)
Final Action 06/17/85 (50 FR 25170)

Internal Analgesic Products
ANPRM 07/08/77 (42 FR 35346)
NPRM 11/16/88 (53 FR 46204)
NPRM (Amendment) (Overindulgence) 12/24/91 (56 FR 66762)
NPRM (Amdt.)(Sodium Bicarbonate) 02/02/94 (59 FR 5068)

Internal Analgesic Products (Overindulgence)
Final Action 00/00/00

Internal Deodorant Products
ANPRM 01/05/82 (47 FR 512)
NPRM 06/17/85 (50 FR 25162)
Final Action 05/11/90 (55 FR 19862)

Labeling of Drug Products for OTC Use
NPRM 04/05/93 (58 FR 17553)
Final Action 01/28/94 (59 FR 3998)

Laxative Products
ANPRM 03/21/75 (40 FR 12902)
NPRM 01/15/85 (50 FR 2124)
NPRM (Amendment) 10/01/86 (51 FR 35136)
NPRM (Amendment) 09/02/93 (58 FR 46589)
Final Action 03/00/95

Leg Muscle Cramps (Nocturnal Relief) Products
ANPRM 10/01/82 (47 FR 43562)
NPRM 11/08/85 (50 FR 46588)
Final Action 08/22/94 (59 FR 43234)

Male Genital Desensitizer Products
ANPRM 09/07/82 (47 FR 39412)
NPRM 10/02/85 (50 FR 40260)
Final Action 06/19/92 (57 FR 27654)

Menstrual Products
ANPRM 12/07/82 (47 FR 55075)
NPRM 11/16/88 (53 FR 46194)

Mercurial (Topical) Products (To be merged w/other rulemkg)
ANPRM 01/05/82 (47 FR 436)

Nailbiting/Thumbsucking Deterrent Products
ANPRM 10/17/80 (45 FR 69122)
NPRM 09/03/82 (47 FR 39096)
Final Action 09/02/93 (58 FR 46749)

Nighttime Sleep Aid Products
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 02/14/89 (54 FR 6814)
NPRM (Amendment) 08/26/93 (58 FR 45217)
Final Action (Amendment) 04/11/94 (59 FR 16982)

NDA Labeling Exclusivity
NPRM 11/09/93 (58 FR 59622)

Ophthalmic Products
ANPRM 05/06/80 (45 FR 30002)
NPRM 06/28/83 (48 FR 29788)
Final Action 03/04/88 (53 FR 7076)
Final Action (Anti-infective) 12/18/92 (57 FR 60416)

Oral Discomfort (Relief) Products
ANPRM 05/25/82 (47 FR 22712)
NPRM 09/24/91 (56 FR 48302)

Oral Health Care Products
ANPRM 05/25/82 (47 FR 22760)
NPRM 01/27/88 (53 FR 2436)
NPRM (Amendment) (Antimicrobials) 02/09/94 (59 FR 6084)
Final Action 00/00/00

Oral Mucosal Injury Products (Merged w/Oral Health Care)
ANPRM 11/02/79 (44 FR 63270)
NPRM 07/26/83 (48 FR 33984)

Oral Wound Healing Products
ANPRM 11/02/79 (44 FR 63270)
NPRM 07/26/83 (48 FR 33984)
Final Action 07/18/86 (51 FR 26112)

Otic Products (Earwax)
NPRM 07/09/82 (47 FR 30012)
Final Action 08/08/86 (51 FR 28656)

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Otic Products (Swimmers Ear)
NPRM 07/30/86 (51 FR 27366)
Final Action 12/00/94
Overindulgence Remedies
ANPRM 10/01/82 (47 FR 43540)
NPRM 12/24/91 (56 FR 66742)
NPRM (Amendment)(Warning) 05/05/93 (58 FR 26886)
Overindulgence Remedies/Prevention of Inebriation
ANPRM 10/01/82 (47 FR 43540)
Final Action 07/19/83 (48 FR 32872)
Pediculicide Products
ANPRM 06/29/82 (47 FR 28312)
NPRM 04/03/89 (54 FR 13480)
Final Action 12/14/93 (58 FR 65452)
Poison Ivy/Oak/Sumac Prevention (Merged w/other rulemkg)
ANPRM 09/07/82 (47 FR 39412)
Poison Treatment Products
NPRM 01/15/85 (50 FR 2244)
Final Action 02/00/95
Reporting of Adverse Reactions
NPRM 12/00/94
Skin Bleaching Products
ANPRM 11/03/78 (43 FR 51546)
NPRM 09/03/82 (47 FR 39108)
NPRM (Reproposed) 03/00/95
Skin Protectant Products
ANPRM 08/04/78 (43 FR 34628)
NPRM 02/15/83 (48 FR 6820)
NPRM (Amendment) (Astringent) 04/03/89 (54 FR 13490)
NPRM (Amendment) (Poison Ivy) 10/03/89 (54 FR 40808)
NPRM (Amendment) (Fvr Blister/Ext) 01/31/90 (55 FR 3362)
NPRM (Amendment) (Diaper Rash) 06/20/90 (55 FR 25204)
Final Action (Astringent) 10/21/93 (58 FR 54466)
Final Action (Witch Hazel) 08/03/94 (59 FR 28767)
Final Action 03/00/95
Smoking Deterrent Products
ANPRM 01/05/82 (47 FR 490)
NPRM 07/03/85 (50 FR 27552)
Final Action 06/01/93 (58 FR 31236)
Sodium Labeling
NPRM 04/25/91 (56 FR 19222)
Final Action 03/00/95
Status of Certain Category II and III Ingredients
NPRM 05/16/90 (55 FR 20434)
Final Action 11/07/90 (55 FR 46914)
NPRM 08/25/92 (57 FR 38568)
Final Action 05/10/93 (58 FR 27636)
Stimulant (Overindulgence) Products
NPRM (Amendment) 12/24/91 (56 FR 66758)
Stimulant Products
ANPRM 12/08/75 (40 FR 57292)
NPRM 06/13/78 (43 FR 25544)
Final Action 02/29/88 (53 FR 6100)
Stomach Acidifier Products
ANPRM 10/19/79 (44 FR 60316)
NPRM 01/15/85 (50 FR 2184)
Final Action 08/17/88 (53 FR 31270)
Sunscreen Products
ANPRM 08/25/78 (43 FR 38206)
NPRM 05/12/93 (58 FR 28194)
Second NPRM 06/08/94 (59 FR 29706)
Sweet Spirits of Nitre
ANPRM 02/22/80 (45 FR 11846)
Final Action 06/27/80 (45 FR 43400)
Topical Drug Products Containing Benzoyl Peroxide (Labeling)
NPRM 11/00/94
Vaginal Contraceptive Products
ANPRM 12/12/80 (45 FR 82014)
NPRM 10/00/94
Vaginal Drug Products
ANPRM 10/13/83 (48 FR 46694)
Withdrawal Published 02/03/94 (59 FR 5226)
Vitamin/Mineral Products
ANPRM 03/16/79 (44 FR 16126)
Withdrawal 11/27/81 (46 FR 57914)
Wart Remover Products
ANPRM 10/03/80 (45 FR 65609)
NPRM 09/03/82 (47 FR 39102)
NPRM (Amendment) 03/27/87 (52 FR 9992)
Final Action 08/14/90 (55 FR 33246)
NPRM (Amendment)(Directions) 01/28/94 (59 FR 4015)
Water Soluble Gums
NPRM 10/30/90 (55 FR 45782)
Final Action 08/26/93 (58 FR 45194)
Weight Control Products
ANPRM 02/26/82 (47 FR 8466)
NPRM 10/30/90 (55 FR 45788)
Final Action 08/08/91 (56 FR 37792)
NPRM (Amendment) 01/00/95

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: for "Antimicrobial Products." NPRM for "Alcohol (Topical) Products" to be included in revised NPRM for "Antimicrobial Products." The NPRM for "Antimicrobial Products" is being revised because it is being updated and split into two sections: first aid products and health care products.

SMALL ENTITIES AFFECTED: The effects, if any, vary depending on the individual rulemaking. However, the agency anticipates that the rules would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Agency Contact: William E. Gilbertson, Director, Monograph Review Staff, Office of OTC Drug Evaluation, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-810), 5600 Fishers Lane, Rockville, MD 20857, **301 594-5000**

RIN: 0905–AA06

1433. NEW ANIMAL DRUG APPROVAL PROCESS; IMPLEMENTATION OF TITLE I OF THE GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

Legal Authority: 21 USC 360b; 21 USC 371

CFR Citation: 21 CFR 514

Legal Deadline: Final, Statutory, November 5, 1989.
The deadline applies to the GADPTRA sections. There is no deadline relating to the other sections.

Abstract: On December 17, 1991, the agency published a proposed revision of the existing regulations that is consistent with the current procedural regulations for human drugs where appropriate. The New Animal Drug Application (NADA) revisions articulate general requirements in regulations containing performance standards and would complement them through detailed guidelines on, among other matters, appropriate ways of meeting requirements for submission of chemistry, pharmacology, and statistical data that would better address the intricate scientific issues involved. A separate proposed rule for reporting requirements for marketed animal drugs also published on that date. The agency intends to repropose the NADA proposed rule to incorporate some recent changes in procedure. The agency also proposes to amend its regulations to implement Title I of the Generic Animal Drug and Patent Term Restoration Act, which established new standards for marketing approval of generic copies approved after 1962.

Timetable:

New Animal Drug Approval Process
NPRM 12/17/91 (56 FR 65544)
NPRM 03/00/95
Reporting Requirements for Marketed Animal Drugs
NPRM 12/17/91 (56 FR 65581)
Final Action 03/00/95

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: For information concerning reporting requirements for marketed animal drugs, contact William C. Keller, Director, Division of Surveillance, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, (301) 594-1722. For further information contact Lonnie W. Luther, Chief, Generic Animal Drug and Quality Control Staff, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, (301) 594-1623.

Agency Contact: Andrew J. Beaulieu, Deputy Director, Office of New Animal Drug Evaluation, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine (HFV-101), 7500 Standish Place, Rockville, MD 20855, **301 594-1620**

RIN: 0905–AA96

1434. INFANT FORMULA ACT

Legal Authority: 21 USC 350a

CFR Citation: 21 CFR 107; 21 CFR 106

Legal Deadline: None

Abstract: The agency published on December 24, 1991, a final rule implementing the Infant Formula Act of 1986. The rule establishes infant formula record and record retention requirements. The agency is also preparing a proposed rule that will establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements and reports for the production of infant formulas.

Timetable:

Action	Date	FR Cite
Final Rule	12/24/91	56 FR 66566
NPRM	07/00/95	
NPRM Comment Period End	10/00/95	
Current Good Mfg. Practices; Qual Control Proc		
NPRM 07/00/95		
Infant Form Cons Comp, Micro Test & Recd Retention Req		
NPRM 01/26/89 (54 FR 3783)		
NPRM (Comment Period End) 03/27/89		
Second NPRM 00/00/00		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Carolyn W. Miles, Nutritionist, Regulatory Branch, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-456), 200 C Street SW., Washington, DC 20204, **202 205-5372**

RIN: 0905–AC46

1435. REPORTING OF ERRORS AND ACCIDENTS RELATING TO BLOOD SAFETY AND WITHDRAWAL OF PREVIOUSLY PROPOSED RULE

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360i; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262 to 264

CFR Citation: 21 CFR 600; 21 CFR 606

Legal Deadline: None

Abstract: All licensed manufacturers are required to notify FDA promptly of errors or accidents in the manufacture of products that may effect the safety, purity, or potency of any distributed biological product (21 CFR 600.14). The reporting of certain errors or accidents occurring in the manufacture of blood and blood components is necessary so that FDA can respond where the public health may be endangered and provide added assurance as to the continued safety, identity, quality, purported quality, and purity of blood and blood components. FDA has determined that errors and accidents that are detected and corrected before a finished unit is removed from the unprocessed inventory and made available for release and distribution do not affect the safety of the blood supply and need not be reported to the agency. The proposed rule would require licensed establishments, unlicensed establishments, and transfusion services to report and keep records. The cost to licensed establishments would be minimal. (cont)

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	
NPRM Comment Period End	12/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Additional Information: ABSTRACT CONT: Since they already are required to report, licensed establishments would only have to make some changes in standard operating procedures. Unlicensed establishments are already required to keep records and conduct investigations. Under the proposed rule they would have to establish reporting procedures and report to FDA. The transfusion services would have to assure their recordkeeping and investigation procedures are sufficient and establish reporting procedures. Reporting by transfusions services is expected to be minimal.

Agency Contact: Jean M. Olson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, **301 594-3074**

RIN: 0905–AD67

1436. PROPOSED LABELING FOR DRUG PRODUCTS BASED ON FALSE OR FRAUDULENT DATA

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355 to 358; 21 USC 360 to 360b; 21 USC 371; 21 USC 374; 21 USC 376; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n; 42 USC 264

CFR Citation: 21 CFR 201

Legal Deadline: None

Abstract: The agency proposes to revise its regulations pertaining to human drug product labeling. The proposed revisions would subject drug products whose labeling was based in whole or in part on false or fraudulent data or information to the statutory requirements in section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act. The proposal would also interpret the term "false or fraudulent labeling."

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anne Kirchner, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1049**

RIN: 0905–AD71

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1437. REVIEW OF WARNINGS, USE INSTRUCTIONS, AND PRECAUTIONARY INFORMATION UNDER SECTION 314 OF THE NATIONAL CHILDHOOD VACCINE INJURY ACT OF 1986

Legal Authority: PL 99-660, sec 314

CFR Citation: None

Legal Deadline: Final, Statutory, June 22, 1989.

Abstract: Section 314 of the National Childhood Vaccine Injury Act of 1986 mandated that the warnings, use instructions, and precautionary information of specified childhood vaccines be reviewed and that their adequacy in warning health care professionals of the nature and extent of dangers posed by such vaccines be determined. This precautionary information is contained in the package insert of each vaccine licensed by the agency. FDA held a public meeting to receive public comment on the adequacy of these package inserts.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting; Public Comment on Package Inserts	07/31/92	57 FR 33915
NPRM	06/00/95	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: A public meeting was held on 9/18/92 on section 314 Labeling Review. Presentations were made by FDA, CDC, manufacturers, parents groups, and the public on the adequacy of the current labeling.

Agency Contact: Tracey Forfa, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, **301 594-3074**

RIN: 0905–AD72

1438. PERFORMANCE STANDARD FOR THE INFANT APNEA MONITOR

Legal Authority: 21 USC 360d

CFR Citation: 21 CFR 800

Legal Deadline: None

Abstract: FDA is proposing a mandatory standard for infant apnea monitors which are intended for use on infants to detect cessation of breathing. The standard includes requirements for infant apnea monitors in four areas: Patient monitoring, electrical, mechanical and environmental, and labeling. FDA considered reliance upon voluntary standards to address risks presented by these devices but determined that a mandatory standard is necessary.

Timetable:

Action	Date	FR Cite
ANPRM	07/08/83	48 FR 31392
NPRM	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: James J. McCue, Jr., Chief, Operations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD83

1439. MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

Regulatory Plan: This entry is Seq. No. 41 in Part II of this issue of the **Federal Register**.

RIN: 0905–AE19

1440. CERTIFICATION OF DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN; FEES FOR CERTIFICATION OF DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

Legal Authority: 21 USC 352; 21 USC 356; 21 USC 371

CFR Citation: 21 CFR 429.40; 21 CFR 429.55

Legal Deadline: None

Abstract: The Food and Drug Administration intends to issue an interim rule, with opportunity for public comment, to announce that it will no longer routinely perform tests and assays on insulin samples prior to certification where there is a testing and marketing history sufficient to establish that precertification testing is no longer necessary. The interim rule will also revise the fee schedule for insulin certification services to reflect the change in FDA's certification policy.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Wayne H. Mitchell, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1049**

RIN: 0905–AE28

1441. ADVERSE EXPERIENCE REPORTING REQUIREMENTS FOR HUMAN DRUG AND LICENSED BIOLOGICAL PRODUCTS

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355 to 357; 21 USC 371; 21 USC 374; 21 USC 216; 21 USC 262; 21 USC 263; 21 USC 263a; 21 USC 264; 21 USC 300aa--25

CFR Citation: 21 CFR 20; 21 CFR 310; 21 CFR 312; 21 CFR 314; 21 CFR 600

Legal Deadline: None

Abstract: The agency proposes to amend its adverse experience reporting regulations for human drug products and licensed biological products to make the requirements consistent with a new single unified form (FDA Form 3500A) and require the use of this new reporting form. The new form was announced as part of FDA's MedWatch program. The proposed regulations would also revise certain definitions and reporting periods and formats as recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and the World Health Organization's Council for International Organizations of Medical Sciences (CIOMS). In addition, the proposal would amend the regulations governing the design of, and the analysis and reporting of data from, clinical studies. These proposed amendments are intended to provide more complete and accurate information that would enable sponsors, investigators, and FDA to determine early on the toxicity of investigational drugs during clinical studies.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Howard P. Muller, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1049**

RIN: 0905–AE29

1442. ELECTRONIC SIGNATURES

Legal Authority: 21 USC 301 et seq; 21 USC 201 et seq

CFR Citation: 21 CFR 11

Legal Deadline: None

Abstract: FDA is proposing regulations to set forth criteria for agency acceptance of electronic records and electronic signatures in lieu of paper records and handwritten signatures. The new rules would apply to any records requirements in Chapter I of Title 21 (all program areas and industries), unless specifically exempted by future regulations. For documents required to be maintained, but not submitted to FDA, persons could use electronic records and signatures upon the effective date of a final rule. For documents submitted to FDA, persons could use electronic records and signatures if FDA has stated, in a public docket to be maintained for that purpose, that the intended receiving organization is prepared to accept the submission in electronic form. (The proposed rule does not require use of electronic records and signatures, but permits their use under certain circumstances.) This action is being taken as a follow-up to the agency's 7/21/92 advance notice of proposed rulemaking. The intended effect is to permit and foster use of new technologies in a manner that is consistent with FDA's overall mission and (cont)

Timetable:

Action	Date	FR Cite
ANPRM	07/21/92	57 FR 32185
ANPRM Comment Period End	10/19/92	
NPRM	08/31/94	59 FR 45160
NPRM Comment Period End	11/29/94	
Final Action	05/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: ABSTRACT CONT: that preserves the integrity of the agency's enforcement activities.

Agency Contact: Paul J. Motise, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-323), 7500 Standish Place, Rockville, MD 20855, **301 594-1089**

RIN: 0905–AE31

1443. FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

Legal Authority: 42 USC 262; 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 356; 21 USC 357; 21 USC 360; 21 USC 371; 21 USC 372; 21 USC 373; 21 USC 374; 21 USC 375

CFR Citation: 21 CFR 54; 21 CFR 312.53; 21 CFR 312.57; 21 CFR 312.64; 21 CFR 314.50; 21 CFR 314.60; 21 CFR 314.94; 21 CFR 314.200; 21 CFR 314.300; 21 CFR 320.36; 21 CFR 330.10; 21 CFR 601.2; 21 CFR 807.31; 21 CFR 807.87; 21 CFR 807.100

Legal Deadline: None

Abstract: This proposed regulation addresses the problem of certain financial arrangements and interests of clinical investigators that have the potential to bias the outcome of clinical trials. The problem is significant because clinical research data provide the basis for FDA's evaluation of drugs, biologics and devices for marketing. The regulation requires the sponsor of a product that is the subject of a marketing application to submit either a statement certifying that the clinical investigator is not a party to any problematic financial interests and arrangements or a statement disclosing problematic interests and arrangements to which the investigator is a party. This information would enable FDA to subject the relevant clinical research data to an appropriate level of scrutiny to test its reliability. Alternatives are to prohibit investigators from holding certain financial interests altogether or to require divestiture by the investigator of a prohibited interest. The estimated costs to industry associated with preparation, submission, and retention of the information required by this proposed rule are well below the $100 million threshold that defines a significant (cont)

Timetable:

Action	Date	FR Cite
NPRM	09/22/94	59 FR 47807
NPRM Comment Period End	12/21/94	
Final Action	04/00/96	

Small Entities Affected: None

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Additional Information: ABSTRACT CONT: regulatory action. The proposed rule is not expected to impose a significant resource burden on FDA because the submission of statements is limited to clinical data submitted in support of marketing applications, ruling out data from the large number of studies that do not lead to applications, and FDA estimates that sponsors will be able to certify for the majority of their clinical investigators, so that most submitted data will not require intensified scrutiny. The proposed rule will strengthen the FDA review process.

Agency Contact: John S. Ensign, Department of Health and Human Services, Food and Drug Administration, Office of Health Affairs (HFY-20), 5600 Fishers Lane, Rockville, MD 20857, **301 443-1382**

RIN: 0905–AE32

1444. EFFECTIVE DATE OF REQUIREMENT FOR SUBMISSION OF PREMARKET APPROVAL APPLICATIONS

Legal Authority: 21 USC 360e

CFR Citation: 21 CFR 868; 21 CFR 870; 21 CFR 872; 21 CFR 878; 21 CFR 882; 21 CFR 888

Legal Deadline: Final, Statutory, December 1, 1995.

Abstract: Class III devices which were on the market before 1976 were exempt from premarket approval until FDA issues a rule requiring the submission

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of premarket approval applications. The Safe Medical Devices Act of 1990 directed FDA to Review the classification of pre-1976 Class III devices and require premarket approval for those devices remaining in Class III. There are approximately 125 pre-1976 Class III devices not yet addressed. The devices covered by this proposal are devices which FDA believes may no longer be commercially viable. FDA is providing an opportunity for manufacturers to petition for reclassification before premarket approval is required.

Timetable:

Action	Date	FR Cite
Notice	05/06/94	59 FR 23731
NPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20857, **301 594-4765**

RIN: 0905–AE34

1445. LATEX CONDOMS/GLOVES: EXPIRATION DATE LABELING

Legal Authority: 21 USC 351; 21 USC 352

CFR Citation: 21 CFR 801

Legal Deadline: None

Abstract: Latex patient examination and surgeon gloves and latex condoms are used as a barrier to transmission of diseases through bodily fluids, including AIDS. Latex deteriorates over time, reducing its utility as a barrier. The proposed rule would require manufacturers of these products to perform testing to establish an appropriate expiration date for their product and to place that date on their labeling.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE37

1446. AMALGAM INGREDIENT LABELING

Legal Authority: 21 USC 352

CFR Citation: 21 CFR 801

Legal Deadline: None

Abstract: Certain dental amalgams may contain ingredients which may cause some persons severe adverse reactions. Therefore, FDA would propose that labeling for dental amalgams must include the ingredients so that health professionals may choose the appropriate amalgam for the patient.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE39

1447. LATEX WARNING

Legal Authority: 21 USC 352

CFR Citation: 21 CFR 801

Legal Deadline: None

Abstract: Certain persons may be subject to severe adverse reaction upon contact with latex. Therefore, FDA would propose to require that devices containing latex have a warning in the labeling concerning the presence of latex and the potential risk. This will enable health professionals and consumers to make an informed choice concerning the use of a device.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE40

1448. PREMARKET APPROVAL OF MEDICAL DEVICES; SUPPLEMENTAL APPLICATIONS

Legal Authority: 21 USC 360e

CFR Citation: 21 CFR 814.39

Legal Deadline: None

Abstract: FDA has become aware of several situations in which a supplement to an approved premarket for a change in a device approval application (PMA) was not submitted even though FDA believed that a supplement was required. Therefore, FDA would propose to revise its regulation to clarify when a supplement is required. This would result in fewer unapproved changes in devices.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE41

1449. MEDICAL DEVICES; RESTRICTED DEVICES

Legal Authority: 21 USC 351; 21 USC 360j(e)

CFR Citation: 21 CFR 801; 21 CFR 899

Legal Deadline: None

Abstract: The proposal would designate certain categories of devices as "restricted devices." Restricted devices are defined by the statute as devices that must be restricted in their sale, distribution or use because of their potential for harmful effect or collateral measures necessary to their use. FDA would propose to include in this category devices such as those that pierce or penetrate the skin, implantable devices, devices that introduce medicinal gas or energy into the body and devices that are used for diagnosis that must be interpreted or analyzed by a qualified health professional. Restricted devices are subject to certain limitations on distribution and to special labeling requirements. FDA also may regulate the advertising of restricted devices.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE42

1450. PRESCRIPTION DRUG PRODUCT LABELING; MEDICATION GUIDE

Regulatory Plan: This entry is Seq. No. 42 in Part II of this issue of the **Federal Register**.

RIN: 0905–AE43

1451. HEARING AIDS; PROFESSIONAL AND PATIENT LABELING; CONDITIONS FOR SALE

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360d; 21 USC 371; 21 USC 360j(e)

CFR Citation: 21 CFR 801.420; 21 CFR 801.421

Legal Deadline: None

Abstract: FDA is considering revising its present regulation governing the labeling and conditions for sale of hearing aids. The present rule requires an examination by a physician before purchase of a hearing aid, but permits an informed adult to waive that requirement. There is some evidence that this waiver provision is being misused. FDA is reconsidering which types of health professionals are competent to perform hearing evaluations. FDA is also considering revisions to its professional and patient labeling to require updated information.

Timetable:

Action	Date	FR Cite
ANPRM	11/10/93	58 FR 59695
ANPRM Comment Period End	01/10/94	
NPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE46

1452. • HUMAN TISSUE INTENDED FOR TRANSPLANTATION: PROPOSED RULE

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 1270

Legal Deadline: None

Abstract: FDA is amending the regulations to require the registration of those establishments engaged in procurement, processing, storage, or distribution of human tissue intended for transplantation. It is also intended to clarify those requirements previously promulgated by the interim rule.

Timetable:

Action	Date	FR Cite
Interim Rule; Opport. for Comment	12/14/93	58 FR 65514
Interim Rule; Comment Period End	03/14/94	
NPRM	02/00/95	
NPRM Comment Period End	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Paula McKeever, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, **301 594-3074**

RIN: 0905–AE49

1453. • FOODS DERIVED FROM NEW PLANT VARIETIES; PREMARKET NOTIFICATION

Regulatory Plan: This entry is Seq. No. 43 in Part II of this issue of the **Federal Register**.

RIN: 0905–AE50

1454. • CLASSIFICATION OF COMPUTER SOFTWARE PROGRAMS THAT ARE MEDICAL DEVICES

Legal Authority: 21 USC 321(h); 21 USC 351; 21 USC 352; 21 USC 360(c)

CFR Citation: None

Legal Deadline: None

Abstract: FDA is announcing its intention to classify stand-alone computer software products that fit the definition of a medical device under the Federal Food, Drug, and Cosmetic Act. In so doing, the agency anticipates promulgating relevant exemptions by using a risk-based approach as required under the Medical Device Amendments to the act. Under this approach all medical software devices will be subject to the adulteration and misbranding provisions of the act. Moderate risk devices will additionally be subject to the registration, listing and good manufacturing practice requirements for adverse events and complaints. High risk devices would be the only products to require premarket submissions. FDA is seeking comment on potential criteria related to the intended uses of medical software devices that might be used in determining the level of risk as part of this document. FDA is also clarifying the manner in which FDA's current statutory authorities govern medical software devices under the act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Chuck Furfine, Regulatory Review Scientist/Software Expert, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AE58

1455. • IRON CONTAINING DRUGS AND SUPPLEMENTS

Legal Authority: 21 USC 343; 21 USC 348; 21 USC 351; 21 USC 352

CFR Citation: 21 CFR 101; 21 CFR 170; 21 CFR 310

Legal Deadline: None

Abstract: FDA is responding to three citizen petitions that were submitted in

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response to an increase in deaths and poisonings in small children due to accidental ingestion of iron containing drugs and dietary supplements. The petitions requested that FDA require label warning statements for these products and special packaging to ensure the safe use of these products.

Timetable:

Action	Date	FR Cite
NPRM	10/06/94	59 FR 51030
NPRM Comment Period End	12/20/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John Hathcock, Director, Division of Applied Science and Technology, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-465), 200 C Street SW., Washington, DC 20204, 202 205-5363

RIN: 0905–AE59

1456. • NEW DRUG AND BIOLOGICAL PRODUCT LICENSE APPLICATIONS; REGULATIONS IMPLEMENTING THE PRESCRIPTION DRUG USER FEE ACT OF 1992 AND CLARIFYING EXISTING REGULATIONS

Legal Authority: 21 USC 379(e); 21 USC 379(g) to 379(h)

CFR Citation: 21 CFR 314.51; 21 CFR 314.60; 21 CFR 314.61; 21 CFR 314.71; 21 CFR 314.100; 21 CFR 314.110; 21 CFR 314.120; 21 CFR 600.3; 21 CFR 601.2; 21 CFR 601.3; 21 CFR 611

Legal Deadline: None

Abstract: FDA is proposing new regulations and amendments to current regulations governing the submission of applications for marketing approval for human drug and biological products to specify what must be submitted as a separate original marketing application, what may be combined in a single application, what changes to an approved application may be submitted as a supplement, and when applicants should respond to FDA action letters. FDA is taking this action to provide clear regulatory policy to industry and to assure fair and consistent implementation of the provisions of the Prescription Drug User Fee Act of 1992 (PDUFA). The new regulations codify longstanding policies as well as specific definitions and policies that have been developed and used to implement the PDUFA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Thomas Hassall, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-5), 5600 Fishers Lane, Rockville, MD 20857, 301 594-5740

RIN: 0905–AE61

1457. • CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; PROPOSED AMENDMENT OF CERTAIN REQUIREMENTS FOR FINISHED PHARMACEUTICALS

Legal Authority: 21 USC 321; 21 USC 351 to 352; 21 USC 355 to 357; 21 USC 360b; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 210.3; 21 CFR 211.22; 21 CFR 211.68; 21 CFR 211.82; 21 CFR 211.84; 21 CFR 211.101; 21 CFR 211.103; 21 CFR 211.110; 21 CFR 211.111; 21 CFR 211.113; 21 CFR 211.115; 21 CFR 211.160; 21 CFR 211.166; 21 CFR 211.192; 21 CFR 211.220; ...

Legal Deadline: None

Abstract: FDA is proposing revisions to the current good manufacturing practice (CGMP) regulations at 21 CFR parts 210 and 211 regarding finished pharmaceuticals. The new regulations either codify current agency policies or current industry practices. Among other things, the proposal would create or clarify requirements for process and methods validation, appropriate laboratory testing procedures, and protection against contamination. The proposal is designed to update the CGMP regulations in response to technological changes and the agency's experience with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: None

Government Levels Affected: Federal

Agency Contact: Howard P. Muller, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, 301 594-1046

RIN: 0905–AE63

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Food and Drug Administration (FDA)

Final Rule Stage

1458. POLICIES CONCERNING USES OF SULFITING AGENTS

Legal Authority: 21 USC 321; 21 USC 336; 21 USC 341; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 182.3616; 21 CFR 182.3637; 21 CFR 182.3739; 21 CFR 182.3766; 21 CFR 182.3798; 21 CFR 182.3862; 21 CFR 100; 21 CFR 130.9

Legal Deadline: None

Abstract: Acceptable evidence and information exist to show that a subgroup of asthmatics is at moderate to severe risk for a severe reaction upon exposure to sulfites. The agency's primary tool for handling a situation where population subgroups may be at increased risk from a food ingredient that is safe for most people is to use labeling to inform those persons who need or want to avoid the ingredient.

The agency issued a final rule, effective January 7, 1987, that requires that when a sulfiting agent is present in a finished food at 10 parts per million or greater, the sulfiting agent must be declared on the label. In addition, FDA issued a final rule, effective August 8, 1986, prohibiting the use of sulfiting agents on raw fruits and vegetables intended to be served or sold raw to consumers (e.g., in salad bars). On December 10, 1987, FDA announced its tentative conclusion that there is no longer a basis to find that the use of sulfiting agents on "fresh" potatoes served or sold unpackaged to consumers is GRAS. On December 19, 1988, FDA proposed to affirm, with specific limitations, that certain other uses of sulfiting agents are GRAS (cont)

Timetable:

Action	Date	FR Cite
Food Labeling; Declaration of Sulfiting Agents		
NPRM 04/03/85 (50 FR 13306)		
Final Action 07/09/86 (51 FR 25012)		
Effective Date 01/09/87 (51 FR 25012)		
GRAS Status of the Use of Sulfiting Agents on Fresh Potatoes		
NPRM-To be Merged w/Frozen Potatoes	12/10/87	52 FR 46968
Final Action 03/15/90		55 FR 9826
GRAS Status of Certain Other Food Uses of Sulfiting Agents, Etc.		
NPRM 12/19/88		53 FR 51065
Final Action 10/00/94		
Revoking Use of Sulfiting Agents on Fruits & Vegetables, Etc.		
NPRM 08/14/85		50 FR 32836
Final Action 07/09/86		51 FR 25021
Effective date 08/09/86		51 FR 25021
Status of the Use of Sulfiting Agents on Shrimp		
NPRM 12/19/88		53 FR 51065
Tentative Final Rule 02/00/95		
Status of Use of Sulfit Agents on Minimally Procd & Froz Potatoes		
NPRM 02/00/95		

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: and to establish labeling requirements for sulfiting agents in standardized foods.

On March 15, 1990 (55 FR 9826), FDA issued a final rule prohibiting the use of sulfiting agents on "fresh" potatoes (55 FR 9826) and requested data and information concerning the use of sulfiting agents on frozen potatoes (55 FR 9834).

On August 3, 1990, the United States District Court for the Middle District of Pennsylvania declared the final rule concerning fresh potatoes to be "null and void" based on perceived procedural defects in the rulemaking proceeding. The Government appealed the district court's decision. On May 22, 1991, the U.S. Court of Appeals for the Third Circuit en banc affirmed, by an equally divided vote and without opinion, the decision of the district court invalidating on procedural grounds FDA's final rule revoking the GRAS status of the use of sulfiting agents on fresh potatoes.

FDA's reproposed rule will include the GRAS status of sulfiting agents on both minimally processed (formerly fresh) and frozen potatoes.

Agency Contact: JoAnn Ziyad, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-207), 200 C Street SW., Washington, DC 20204, 202 254-9528

RIN: 0905–AB52

1459. ABBREVIATED NEW DRUG APPLICATION REGULATIONS (TITLE I OF THE "DRUG PRICE COMPETITION AND PATENT TERM RESTORATION ACT OF 1984")

Legal Authority: 21 USC 355 title I

CFR Citation: 21 CFR 10; 21 CFR 310; 21 CFR 314; 21 CFR 320

Legal Deadline: None

Abstract: Until the passage of title I of the Drug Price Competition and Patent Term Restoration Act of 1984, abbreviated new drug application (ANDA) procedures were only available for generic products equivalent to pioneer drugs approved before 1962. Title I opened up the ANDA policy to generic copies of products approved after 1962. On July 10, 1989 (54 FR 28872), FDA proposed regulations to implement Title I. The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products first approved after 1962. These new provisions will benefit consumers by making generic drug products available more quickly.

The agency is preparing the final rule in two segments. The final rule for the first segment, which establishes requirements for the format and content of an ANDA, suitability petitions, and certain administrative actions, published in the Federal Register of April 28, 1992 (57 FR 17950). The agency is reviewing the public comments submitted in response to the proposed requirements for patent certification and exclusivity and preparing a final rule on the segment.

Timetable:

Action	Date	FR Cite
NPRM	07/10/89	54 FR 28872
NPRM Comment Period End	10/10/89	
NPRM Extension of Comment Period	10/11/89	54 FR 41629
NPRM Public Comment Period End	01/09/90	
NPRM Extension of Comment Period	01/16/90	55 FR 1471
NPRM Public Comment Period End	04/09/90	
Final Action Effective	11/02/94	
Content and Format, Suitability Petitions		
Final Action	04/28/92	57 FR 17950
Patent Certification and Exclusivity		
Final Action	10/03/94	59 FR 50338

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Wayne H. Mitchell, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, 301 594-1049

RIN: 0905–AB63

1460. CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS; NOTIFICATION OF CONSIGNEES RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK FOR TRANSMITTING HIV INFECTION

Legal Authority: 21 USC 351 to 360k; 21 USC 374; 42 USC 262 to 264

CFR Citation: 21 CFR 606; 21 CFR 610

Legal Deadline: None

Abstract: The agency currently requires that all blood and blood components intended for the manufacture of any product be tested for antibody to human immunodeficiency virus (HIV). In instances when the blood of a donor is found to contain antibodies to HIV, some blood centers have initiated a program of voluntary "look-back" to determine the suitability of previous donations and to notify consignees of blood and blood components obtained from the donor's prior donations. Consignees may withdraw or destroy such blood and blood products, and may trace and notify recipients. A well-conducted look-back program can provide an effective mechanism for quarantine of products and for identifying, testing, and counseling

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recipients of transfusions determined to be at increased risk of HIV infection--those who receive blood from a donor later found to be infected with HIV. The agency is publishing a final rule to establish a mandatory look-back program. The final rule will require blood collection facilities to develop a procedure to identify and quarantine products from prior collections and to notify consignees promptly whenever a blood donor who has previously donated blood or source (cont)

Timetable:

Action	Date	FR Cite
NPRM	06/30/93	58 FR 34962
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: plasma is found to be positive for the antibody to HIV; and to keep appropriate records when such notification has been made. In addition, the final rule will require hospital transfusion services to notify recipients of blood products of increased risk for transmitting HIV and to keep appropriate records of the notification process. The purpose of the rulemaking is to ensure the notification of consignees and blood transfusion recipients and that prompt and appropriate action is taken.

Agency Contact: Sharon Carayiannis, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, 301 594-3074

RIN: 0905–AC90

1461. LEAD IN FOODS

Legal Authority: 21 USC 321; 21 USC 336; 21 USC 342(a); 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 109; 21 CFR 182; 21 CFR 189

Legal Deadline: None

Abstract: In light of the public health concerns raised by continuing findings concerning the effects of low levels of exposure to lead, particularly exposure by pregnant women, infants, and children, the agency is undertaking a comprehensive effort to further reduce lead levels in food where controllable or avoidable sources of lead addition to food can be identified. The goal of FDA is to reduce consumers' exposure to lead in the diet to the lowest level that can be practicably obtained. FDA has identified several potential sources of dietary lead exposure that it intends to address in proposed rules in its initiatives to reduce exposure to lead in the diet.

Timetable:

Action	Date	FR Cite
NPRM	06/01/89	54 FR 23485
NPRM Comment Period End	07/31/89	
Prohibit Use of Lead-Soldered Food Cans		
NPRM 06/21/93 (58 FR 33860)		
Final Action 12/00/94		
Prohibit Use of Tin-Coated Lead Foil Capsules on Wine Bottles		
NPRM 11/25/92 (57 FR 55485)		
Final Action 02/00/95		

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Michael E. Kashtock, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-306), 200 C Street SW., Washington, DC 20204, 202 205-4681

RIN: 0905–AC91

1462. EXPEDITING APPROVAL FOR DRUGS INTENDED TO TREAT LIFE-THREATENING AND SEVERELY DEBILITATING ILLNESSES

Legal Authority: 21 USC 351 to 357; 21 USC 371; 42 USC 262

CFR Citation: 21 CFR 312

Legal Deadline: None

Abstract: In the Federal Register of October 21, 1988 (53 FR 41561), FDA issued an interim rule, effective upon date of publication, with opportunity for public comment, that set forth procedures designed to speed the availability of new therapies to desperately ill patients, while preserving appropriate guarantees for safety and effectiveness. These procedures are intended to facilitate the development, evaluation, and marketing of such products, especially where no satisfactory alternative therapies exist. These procedures reflect the recognition that physicians and patients are generally willing to accept greater risks or side effects from products that treat life-threatening and severely debilitating illnesses. These procedures also reflect the recognition that the benefits of the drug need to be evaluated in light of the severity of the disease being treated. The procedures apply to life-threatening or severely debilitating illnesses. The agency is reviewing the public comments submitted in response to the interim rule and preparing a Federal Register document that will respond to these comments. The (cont)

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/88	53 FR 41561
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: agency is also considering the recommendations contained in the report of the "National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS."

Agency Contact: Howard P. Muller, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, 301 594-1049

RIN: 0905–AC94

1463. FEES FOR CERTIFICATION SERVICES; INSULIN AND COLOR ADDITIVE CERTIFICATION PROGRAMS

Legal Authority: 21 USC 502; 21 USC 506; 21 USC 701; 21 USC 706

CFR Citation: 21 CFR 80.10; 21 CFR 429.55

Legal Deadline: None

Abstract: In the Federal Register of October 4, 1991 (56 FR 50248), FDA issued an interim rule effective on November 4, 1991 with opportunity for public comment, revising the fee schedule for insulin certification services. The fees are intended to recover the full costs of operation of FDA's insulin certification program, including the unfunded liability of the Civil Service Retirement Fund and appropriate overhead costs of the

Public Health Service and Department of Health and Human Services. FDA is also considering similar amendments to the regulations governing fees for the color additive certification program.

Timetable:

Action	Date	FR Cite
Interim Final Rule (Insulin)	10/04/91	56 FR 50248
Interim Final Rule (Color Additives)	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: David R. Petak, Chief, Accounting Branch, Department of Health and Human Services, Food and Drug Administration, Office of Management (HFA-120), 5600 Fishers Lane, Rockville, MD 20857, 301 443-1766

RIN: 0905–AD34

1464. PRESCRIPTION DRUG MARKETING ACT OF 1987; POLICY INFORMATION, GUIDANCE, AND CLARIFICATIONS

Legal Authority: PL 100-293 Prescription Drug Marketing Act of 1987

CFR Citation: 21 CFR 203

Legal Deadline: None

Abstract: The Prescription Drug Marketing Act of 1987 (PDMA) amended the Federal Food, Drug, and Cosmetic Act to: (1) require State licensing of wholesale distributors of prescription human drugs under Federal guidelines including minimum standards for storage, handling, and recordkeeping; (2) ban the reimportation of prescription human drugs produced in the United States, except when reimported by the manufacturer for emergency use; (3) ban the sale, trade, or purchase of drug samples; (4) ban trafficking in or counterfeiting of drug coupons; (5) mandate storage, handling, and recordkeeping requirements for drug samples; (6) require licensed practitioners to request drug samples in writing; (7) prohibit, with certain exceptions, the resale of prescription human drugs purchased by hospitals or health care facilities; and (8) set forth criminal and civil penalties for violations of these provisions. In the Federal Register of September 14, 1990 (55 FR 38012), FDA issued a final rule setting forth Federal guidelines for State licensing of wholesale drug distributors. This proposed rule would provide (cont)

Timetable:

Action	Date	FR Cite
NPRM	03/14/94	59 FR 11842
NPRM Comment Period End	08/01/94	
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: information, guidance, and clarification of those sections of PDMA that are not related to State licensing of wholesale distributors.

Agency Contact: Erica L. Keys, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, 301 594-1049

RIN: 0905–AD44

1465. IMPLEMENTATION OF THE SAFE MEDICAL DEVICES ACT OF 1990

Legal Authority: PL 101-629 Safe Medical Devices Act of 1990

CFR Citation: 21 CFR 860; 21 CFR 820; 21 CFR 807; 21 CFR 803; 21 CFR 17; 21 CFR 812; 21 CFR 7; 21 CFR 814; 21 CFR 821; 21 CFR 861; 21 CFR 895

Legal Deadline:
NPRM, Statutory, August 28, 1991, for Medical Device Tracking.
Final, Statutory, November 28, 1991, for Exemption ofHumanitarian Devices, etc.
Other, Statutory, December 1, 1991, for Classification ofTransitional Devices Notice.
Final, Statutory, November 28, 1992, for Medical Device Tracking.

Abstract: The Safe Medical Devices Act of 1990 (SMDA), enacted November 28, 1990, was intended to assure marketed devices are safe and effective, FDA learns quickly of device problems, and has authority to remove defective devices from the market. The act directs or authorizes FDA to develop these regulations: Medical Device Reporting--This rule will require healthcare facilities and distributors to report deaths and serious injuries/illnesses related to medical devices. Medical Device Tracking--This regulation requires manufacturers to track certain devices to the user. Classification of Transitional Devices--FDA issued a notice to require submission of adverse safety and effectiveness data on transitional devices. FDA will now propose to keep each device in class III, or reclassify it in class I or II. Good Manufacturing Practices for Medical Devices--FDA proposed to add preproduction design validation in existing CGMP regulations. Exemption of Humanitarian Devices--The proposed rule gives procedures for applications for certain premarket review exemptions for humanitarian devices. (cont)

Timetable:

Action	Date	FR Cite
Final Action	00/00/00	
Assignment of Agency Component for Review of Premarket Applctns		
Notice (Public Hearing) 07/12/91 (56 FR 31951)		
Final Action 11/21/91 (56 FR 31951)		
Civil Money Penalties		
NPRM 05/26/93 (58 FR 30680)		
Final Action 12/00/95		
Classification of Transitional Devices		
Notice 11/14/91 (56 FR 57960)		
Notice(Extension of Comment Period) 03/10/92 (57 FR 8462)		
Notice (Extension of Deadline) 11/30/92 (57 FR 56586)		
Final Rule (Contact Lenses) 03/04/94 (59 FR 10283)		
CGMPs for Medical Devices		
ANPRM (Revisions;Request for Cmnts) 06/15/90 (55 FR 24544)		
ANPRM (Suggested Changes;Availblty) 11/30/90 (55 FR 49644)		
ANPRM (Extension of Comment Period) 02/14/91 (56 FR 5965)		
Notice (Open Public Advsy Cmte Mtg) 04/17/91 (56 FR 15626)		
NPRM 11/23/93 (58 FR 61952)		
Final Action 00/00/00		
Exemption of Humanitarian Devices		
NPRM 12/21/92 (57 FR 60491)		
Final Action 02/00/95		
Medical Device Recall Authority		
NPRM 05/14/94 (59 FR 30656)		
NPRM (Correction) 06/23/94 (59 FR 32489)		
Final Action 00/00/00		
Medical Device Reporting		
Notice (Public Conf.;Rqst for Info) 03/28/91 (56 FR 12934)		
NPRM 11/26/91 (56 FR 60024)		
Final Rule (Distributor Reporting) 09/01/93 (58 FR 46514)		
Final Action 12/00/94		

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Medical Device Tracking
NPRM 03/27/92 (57 FR 10702)
NPRM 05/29/92 (57 FR 22971)
Final Action 05/29/92 (57 FR 22966)
Final Action (Not. Stat. Eff. Date 08/16/93 (58 FR 43442)
Miscellaneous Procedural Changes in Medical Device Regulations
Final Action 12/10/92 (57 FR 58400)
Pre-Amendment Class III Devices (merged with 0905-AE34)
Notice 05/06/94 (59 FR 23731)
Reports of Removals and Corrections of Medical Devices
NPRM 06/04/94 (59 FR 13828)
Final Action 00/00/00
Safe Medical Devices Act of 1990; Implementation Plans
Notice 04/05/91 (56 FR 14111)
Summaries of Safety & Effectiveness for Premarket Notification
Final Action 04/28/92 (57 FR 18062)
Notice (Stay of Effective Date) 06/01/92 (57 FR 23059)
Final Action 10/00/94
Temporary Suspension of a Premarket Approval Application
NPRM 10/12/93 (58 FR 52729)
Final Action 12/00/94

Small Entities Affected: None

Government Levels Affected: None

Additional Information: ABSTRACT CONT: Summaries of Safety and Effectiveness for Premarket Notification--A final rule will set forth information to be included in data summaries on which substantial equivalence determinations are made. Recall of Medical Devices--FDA will propose procedures for using its authority to order device recalls and notifications. Reports of Removal and Corrections--FDA will propose procedures for manufacturers to report to FDA health-related market removals and corrections of devices. Civil Money Penalties--FDA proposed regulations to establish procedures for a hearing to which persons are entitled before the imposition of civil money penalties. Procedural Changes in Medical Device Regulations--This final rule made revisions in regulations necessary because of procedural changes made by the SMDA. Premarket Review of Combination Products--FDA published a final rule establishing procedures for determining which FDA center will review premarket approval applications for products that are a combination of a device and a drug or biologic.

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD59

1466. MANDATORY HACCP SEAFOOD INSPECTION PROGRAM

Legal Authority: 21 USC 342 Federal Food, Drug, and Cosmetic Act; 21 USC 371 Federal Food, Drug, and Cosmetic Act; 21 USC 374 Federal Food, Drug, and Cosmetic Act; 42 USC 264 Public Health Service Act; 21 USC 321; 21 USC 343; 21 USC 346; 21 USC 348; 21 USC 379e; 21 USC 381; 42 USC 241; 42 USC 242l; 42 USC 300u-l; 42 USC 216; 42 USC 243

CFR Citation: 21 CFR 123; 21 CFR 1240

Legal Deadline: None

Abstract: The Food and Drug Administration intends to issue requirements for the safe processing and importing of fish and fishery products in keeping with Hazard Analysis Critical Control Point (HACCP) principles. HACCP involves the identification and monitoring of "critical control points" in a processing or other operation the failure of which can render a product adulterated. HACCP has been strongly endorsed by the National Academy of Sciences for use by the seafood industry.

Timetable:

Action	Date	FR Cite
NPRM	01/28/94	59 FR 4142
NPRM Comment Period End	03/29/94	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: 42 USC 264; 42 USC 271

Agency Contact: Philip Spiller, Deputy Director, Office of Seafood, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-401), 200 C Street SW., Washington, DC 20204, **202 254-3885**

RIN: 0905–AD60

1467. BOTTLED WATER

Legal Authority: 21 USC 341; 21 USC 343(h); 21 USC 349; 21 USC 371(a)

CFR Citation: 21 CFR 103

Legal Deadline: Other, Statutory. Other deadline is for publication of NPRM or Notice within 180 days of EPA final action.

Abstract: In fulfillment of its mandate under the Safe Drinking Water Act, EPA is currently in the midst of reviewing and establishing standards for contaminants in public drinking water such as pathogenic bacteria, pesticides and organic chemicals. When EPA establishes such standards for public drinking water, FDA is required to take appropriate action to amend its regulations for bottled drinking water or state its reasons for not doing so. FDA also establishes identity standards for a food when it has determined that the standard will promote honesty and fair dealing in the interest of consumers.

Timetable:

Beverages; Bottled Water
NPRM 01/05/93 (58 FR 393)
Final Action 04/00/95
Microbiological Quality Standard
NPRM 10/06/93 (58 FR 25042)
Final Action 04/00/95
Quality Standard for Lead and Copper
NPRM 01/05/93 (58 FR 389)
Final Action 05/25/94 (59 FR 26933)
Quality Standards for 24 Contaminants
NPRM 08/04/93 (58 FR 41612)
Final Action 11/00/95
Quality Standards for 39 Contaminants
NPRM 01/05/93 (58 FR 382)
Final Action 10/00/94

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Michael E. Kashtock, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-306), 200 C Street SW., Washington, DC 20204, **202 205-4681**

RIN: 0905–AD65

1468. SPECIFIC REQUIREMENTS ON CONTENT AND FORMAT OF LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISION OF "PEDIATRIC USE" SUBSECTION IN THE LABELING

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355 to 358; 21 USC 360 to 360b; 21 USC 371; 21 USC 374; 21 USC 376; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n; 42 USC 264

CFR Citation: 21 CFR 201

Legal Deadline: None

Abstract: In the Federal Register of October 16, 1992 (57 FR 47423), the agency proposed to amend its regulations pertaining to the specific content and format of prescription drug labeling by revising the current "Pediatric Use" subsection of professional labeling to provide for the inclusion of more complete information about use of a drug in children and about hazards associated with this use. This regulatory action is intended to respond to concerns in FDA and elsewhere that current prescription drug labeling does not contain adequate information about the use of drugs in children. The agency is reviewing the public comments submitted in response to the proposed rule and preparing a final rule.

Timetable:

Action	Date	FR Cite
NPRM	10/16/92	57 FR 47423
NPRM Comment Period End	12/15/92	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Erica L. Keys, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1049**

RIN: 0905–AD76

1469. RECORDKEEPING AND REPORTING: ELECTRONIC PRODUCTS

Legal Authority: 21 USC 360hh; 21 USC 360ii; 21 USC 360jj; 21 USC 360kk; 21 USC 360ll; 21 USC 360mm; 21 USC 360nn; 21 USC 360oo

CFR Citation: 21 CFR 1000; 21 CFR 1002

Legal Deadline: None

Abstract: The Final Rule would amend FDA regulations on Recordkeeping and Reporting of adverse events and other information relating to radiation emitting electronic products. The timing and content of certain reports will be revised to enhance the usefulness of the information. This action will result in improved protection of the public health while reducing the regulatory burden on manufacturers and distributors.

Timetable:

Action	Date	FR Cite
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Stephen Ripley, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, **301 594-3074**

RIN: 0905–AD82

1470. GENERAL BIOLOGICAL PRODUCT STANDARDS; ALTERNATIVE PROCEDURES AND EXCEPTIONS

Legal Authority: 42 USC 262

CFR Citation: 21 CFR 610; 21 CFR 640; 21 CFR 630

Legal Deadline: None

Abstract: The Food and Drug Administration is amending its regulations governing biological products. This amendment would authorize the Director, Center for Biologics Evaluation and Research, to approve an exception or alternative to any regulation in 21 CFR governing biological products. The regulation will provide flexibility needed to accommodate rapid changes in biotechnology and to assure the continued availability of biological products.

Timetable:

Action	Date	FR Cite
ANPRM	07/02/82	47 FR 29004
ANPRM	11/16/82	47 FR 51706
ANPRM	07/01/85	50 FR 27024
NPRM	10/25/90	55 FR 43066
NPRM Comment Period End	01/22/91	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD78

1471. MEDICAL DEVICES; PROTECTIVE RESTRAINTS; REVOCATION OF EXEMPTIONS FROM 510(K) PREMARKET NOTIFICATION PROCEDURES AND CURRENT GOOD MANUFACTURING PRACTICES REGULATIONS

Legal Authority: 21 USC 351; 21 USC 360; 21 USC 360c; 21 USC 360e; 21 USC 360y; 21 USC 371

CFR Citation: 21 CFR 880.6760; 21 CFR 890.3910

Legal Deadline: None

Abstract: FDA has become aware through various sources of numerous reports of complications including permanent physical injuries, severe psychological disabilities, other serious injuries and deaths that have been attributed to incorrect supervision, handling or application of protective restraint devices by medical or paramedical personnel. Complications associated with protective restraint devices frequently result from misuse of the devices. To address potential misuse, manufacturers should include specific directions for use, to the extent that such directions are not currently available or not attached to or kept with the garment. Revocation of the premarket notification exemptions will allow FDA to collect information about the current availability and actual employment of directions for use and to monitor the introduction into commerce of new and changed protective restraints. Revocation of the exempting Current Good Manufacturing Practice regulation will allow FDA to require the necessary controls over labeling. FDA is also considering educational programs to address this problem. FDA anticipates total first year costs of $930,000 for this regulation. (cont)

Timetable:

Action	Date	FR Cite
NPRM	06/19/92	57 FR 27397
NPRM Comment Period End	09/18/92	
Final Action	12/00/94	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ABSTRACT CONT: These costs will be offset by the saving of lives and reduced product liability exposure.

Agency Contact: Patricia Dubill, Department of Health and Human

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Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD84

1472. THRESHOLD OF REGULATION POLICY FOR COMPONENTS OF FOOD CONTACT ARTICLES

Legal Authority: 21 USC 321; 21 USC 341; 21 USC 342; 21 USC 346a; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 170; 21 CFR 171; 21 CFR 174

Legal Deadline: None

Abstract: FDA is establishing a policy for determining when the likelihood/extent of migration of a component of a food contact article is so trivial as not to require regulation as a food additive. A substance considered under this Threshold of Regulation Policy would undergo an abbreviated review by FDA, as opposed to the extensive review and formal issuance of a regulation required for other food additives. This final rule lists the criteria which must be met for a food-contact material to be reviewed under this policy and identifies the types of data that FDA will need for its review. This policy will reduce regulatory cost and delays and thereby bring important and innovative products to market faster.

Timetable:

Action	Date	FR Cite
NPRM	10/12/93	58 FR 52719
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Edward J. Machuga, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-216), 200 C Street SW., Washington, DC 20204, **202 254-9526**

RIN: 0905–AD86

1473. FOOD LABELING REVIEW

Legal Authority: 15 USC 1453; 15 USC 1454; 15 USC 1455; 21 USC 321; 21 USC 331; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 100; 21 CFR 101; 21 CFR 102; 21 CFR 161

Legal Deadline: None

Abstract: The Nutrition Labeling and Education Act of 1990 (NLEA) requires that most foods bear nutrition labeling. In developing the final rules that were published on January 6, 1993, the agency identified three areas that should be the subject of additional rulemaking: a definition for the nutrient content claim "healthy"; a definition for "nonfunctional slack-fill"; and requirements for the identification of certain ingredients on food labels. Proposed regulations addressing these issues were published on January 6, 1993. On May 12, 1993, FDA announced that, in accordance with the NLEA, the regulation it proposed on January 6, 1993, on nonfunctional slack-fill was considered a final rule. Subsequently, on December 6, 1993, FDA issued a final rule responding to the comments received to the January 6, 1993, proposal. FDA also proposed on June 15, 1993, to amend its January 6, 1993, final rules on nutrient content and health claims to have the provisions that exempted restaurant menus from the requirements for how nutrient content claims and health claims are to be made. FDA also proposed to modify the provisions that delay the effective date of these regulations for (cont)

Timetable:

Action	Date	FR Cite
Misleading Containers; Nonfunctional Slack Fill		
NPRM	01/06/93	58 FR 2957
Final Action	12/06/93	58 FR 64123
Nutrient Content Claims and Health Claims; Restaurant Foods		
NPRM	06/15/93	58 FR 33055
Final Action	03/00/95	
Nutrient Content, Definition of the Term, Healthy		
NPRM	01/06/93	58 FR 2944
Final Action	05/10/94	59 FR 24232
Protein Hydrolysates; Broth in Tuna; and/or Labeling		
NPRM (Declaration of Ingredients)	01/06/93	58 FR 2950
Final Action (Dec. of Ingredients)	00/00/00	
Reference Daily Intakes		
NPRM	01/04/94	59 FR 427
Final Action	04/00/95	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Additional Information: ABSTRACT CONT: small restaurant firms for one year. Finally, the agency proposed january 4, 1994, to establish reference daily intakes based on the 9th and 10th editions of the National Research Council's Recommended Dietary Allowances. These actions were proposed following reconsideration of the provisions in question.

Agency Contact: F. Edward Scarbrough, Director, Office of Food Labeling, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-150), 200 C Street SW., Washington, DC 20204, **202 205-4561**

RIN: 0905–AD89

1474. LEVO-ALPHA-METHADOL (LAAM) IN MAINTENANCE; JOINT PROPOSED REVISION OF CONDITIONS FOR USE

Legal Authority: 21 USC 355; 21 USC 371; 21 USC 823; 42 USC 241(d); 42 USC 290ee-3; 42 USC 257a

CFR Citation: 21 CFR 291

Legal Deadline: None

Abstract: The Food and Drug Administration and the National Institute on Drug Abuse are reviewing comments on an interim rule that revised the conditions for the treatment of narcotic addiction to provide for the use of LAAM in the maintenance treatment of narcotic addicts. The interim rule allows narcotic treatment programs to provide an additional treatment drug for use in the maintenance treatment of narcotic addicts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/20/93	58 FR 38704
Interim Final Rule Comment Period End	09/20/93	
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Wayne H. Mitchell, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1046**

RIN: 0905–AD92

1475. TEMPOROMANDIBULAR JOINT IMPLANT CLASSIFICATION

Legal Authority: 21 USC 360c; 21 USC 360e

CFR Citation: 21 CFR 872.3940; 21 CFR 872.3950; 21 CFR 872.3960; 21 CFR 872.3970

Legal Deadline: None

Abstract: The final rule would classify into class III (Premarket approval) certain temporomandibular joint (TMJ) prostheses including the interarticular disc prosthesis (the interpositional implant), the mandibular condyle prosthesis, and the glenoid fossa prosthesis. This action would allow FDA to require manufacturers of these devices to submit premarket approval applications demonstrating the safety and effectiveness of these devices. The devices present a risk of implant loosening or displacement; foreign body reaction; degenerative changes to the natural articulating surfaces; infection; and loss of implant integrity.

Timetable:

Action	Date	FR Cite
NPRM	09/18/92	57 FR 43165
NPRM Comment Period End	12/08/92	57 FR 56876
Reproposal	02/14/94	59 FR 6935
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD93

1476. DISQUALIFICATION OF CLINICAL INVESTIGATORS

Legal Authority: 21 USC 360j(g)

CFR Citation: 21 CFR 812

Legal Deadline: None

Abstract: The rule would amend the investigational device exemption (IDE) regulations to provide for a procedure for disqualification of clinical investigators in cases of fraud or other serious violations of the regulations. Persons whose disqualification is proposed would be entitled to an opportunity for hearing.

Timetable:

Action	Date	FR Cite
NPRM	10/06/93	58 FR 52144
Final Action	02/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD94

1477. INVESTIGATIONAL DEVICE EXEMPTION; INTRAOCULAR LENSES

Legal Authority: 21 USC 360j(g)

CFR Citation: 21 CFR 813; 21 CFR 812

Legal Deadline: None

Abstract: The rule would revoke the separate investigational device exemption regulation for intraocular lenses (IOL's). IOL's would then be subject to the same IDE regulation (21 CFR Part 812) as all other devices. The IOL-IDE regulation was originally created as an interim measure.

Timetable:

Action	Date	FR Cite
NPRM	10/06/93	58 FR 52142
Final Action	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health (HFZ-84), 2098 Gaither Road, Rockville, MD 20850, **301 594-4765**

RIN: 0905–AD95

1478. DIETARY SUPPLEMENT LABEL REVIEW

Legal Authority: 15 USC 1453; 15 USC 1454; 15 USC 1455; 21 USC 321; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 101

Legal Deadline: NPRM, Statutory, June 15, 1993. Final, Statutory, December 31, 1993.
If final regulations on labeling of Dietary Supplements are not published by 12/31/93, the proposed regulations shall be considered the final regulations.

Abstract: With the publication of various final rules on January 6, 1993, the agency completed action on its food labeling initiative under the Nutrition Labeling and Education Act of 1990. Rulemaking on nutrition labeling of dietary supplements was delayed due to requirements of the Dietary Supplement Act of 1992 (DSA), which amended the law to provide that the agency would issue proposed regulations for dietary supplements by June 15, 1993, and final regulations by December 31, 1993. Three proposed regulations were developed and published on June 18, 1993; Health Claims for Dietary Supplements, Nutrient Content Claims for Dietary Supplements, and Mandatory Nutrition Labeling for Dietary Supplements. On October 14, 1993, FDA published a proposal to not authorize health claims on the labels of dietary supplements of 5 nutrient/disease relationships: (1) Dietary fiber and cancer (2) Dietary Fiber and CVD, (3) Antioxidants and Cancer, (4) Omega-3 fatty acids and CHD, (5) Zinc and immune function in the elderly. In addition, FDA also published a proposed rule to authorize the use of health claims about the relationship of folates and neural tube defects. On January 4, 1994, FDA published notices (cont)

Timetable:

Action	Date	FR Cite
Health Claims and Label Statements; Dietary Supplements		
NPRM Folic Acid and Neural Tube Def	10/14/93	58 FR 53254
Final Action	00/00/00	
Health Claims; Diet. Fiber/Cancer, CHD; Antioxidant/CVD; Omega-3		
NPRM	10/14/93	58 FR 53296
Health Claims; Dietary Supplements		
NPRM	06/18/93	58 FR 33700
Final Action	01/04/94	59 FR 395
Nutrient Content Claims; Dietary Supplements		
NPRM	06/18/93	58 FR 33731
Final Action	01/04/94	59 FR 378
Nutrition Labeling; Dietary Supplements		
NPRM	06/18/93	58 FR 33715
Final Action	01/04/94	59 FR 354

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Additional Information: ABSTRACT CONT: stating that it considered the proposals to be final regulations by operational statute. However, the notices also stated that FDA considers

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the October 14, 1993, rulemakings to be ongoing. The agency intends to continue rulemaking with respect to folates and to issue a final rule as quickly as possible. FDA is also considering new scientific information that may support health claims for some of the nutrient-disease relationships given above. If this information is sufficient to support claims, the agency will repropose to allow those claims.

Agency Contact: John Hathcock, Director, Divisions of Science and Applied Technology, Office of Special Nutritionals, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS-465), 200 C Street SW., Washington, DC 20204, **301 594-6006**

RIN: 0905–AD96

1479. ADVERSE EXPERIENCE REPORTING REQUIRED FOR LICENSED BIOLOGICAL PRODUCTS

Legal Authority: 21 USC 321; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264; 42 USC 300aa-25

CFR Citation: 21 CFR 600

Legal Deadline: None

Abstract: FDA is amending the regulations to require manufacturers, packers, and distributors (hereafter referred to as LICENSED MANUFACTURERS) of licensed biological products to report to FDA within 15 working days all adverse experiences associated with the use of a biological product that are both serious and unexpected; any significant increase in the frequency of a serious, but expected adverse experience; periodically all other adverse experiences; and product distribution and disposition data. FDA is taking this action to provide a mechanism under which LICENSED MANUFACTURERS would inform the agency, on a timely basis, of any unanticipated safety problems with marketed biological products.

Timetable:

Action	Date	FR Cite
NPRM	03/29/90	55 FR 11611
NPRM Comment Period End	05/29/90	
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Paula McKeever, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM-635), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, **301 594-3074**

RIN: 0905–AE18

1480. SPECIFIC REQUIREMENTS ON CONTENT AND FORMAT OF LABELING FOR HUMAN PRESCRIPTION DRUGS; ADDITION OF "GERIATRIC USE" SUBSECTION IN THE LABELING

Legal Authority: 21 USC 352; 21 USC 355; 42 USC 262

CFR Citation: 21 CFR 201

Legal Deadline: None

Abstract: On November 1, 1990 (55 FR 46134), the agency proposed to amend its regulations governing the content and format of labeling for human prescription drug products to require a subsection in the labeling that would include information on the use of a drug in the elderly. This proposal reflects growing recognition by FDA and others of the special concerns associated with prescription drug use in this age group. FDA believes that providing access to this information is necessary for the safe and effective use of prescription drugs in older populations. The agency is reviewing the public comments submitted in response to the proposed rule and preparing a final rule.

Timetable:

Action	Date	FR Cite
NPRM	11/01/90	55 FR 46134
NPRM Comment Period End	12/31/90	
Final Action	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Erica L. Keys, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1046**

RIN: 0905–AE26

1481. TAMPER-EVIDENT PACKAGING REQUIREMENTS FOR OVER-THE-COUNTER HUMAN DRUG PRODUCTS

Legal Authority: 21 USC 321; 21 USC 351; 21 USC 352; 21 USC 371

CFR Citation: 21 CFR 211

Legal Deadline: None

Abstract: On January 18, 1994 (59 FR 2542), the agency proposed to amend its tamper-resistant packaging requirements to require that all over-the-counter (OTC) human drug products marketed in two-piece, hard gelatin capsules be sealed. The proposal also solicited public comments on whether additional regulatory changes, such as packaging performance standards, may be necessary. FDA has required tamper-resistant packaging features for OTC drug products since 1982. The tamper-resistant packaging regulations were revised in 1989 in response to continuing tamper incidents. Despite the regulatory protection provided by the regulations, two-piece, hard gelatin capsules remain vulnerable to malicious tampering and were implicated in tampering incidents in 1991. This proposed regulatory action is in response to the 1991 tampering incidents.

Timetable:

Action	Date	FR Cite
NPRM	01/18/94	59 FR 2542
NPRM Comment Period End	03/21/94	
Final Action	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Howard P. Muller, Regulatory Counsel, Division of Regulatory Affairs, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (HFD-362), 7500 Standish Place, Rockville, MD 20855, **301 594-1049**

RIN: 0905–AE27

1482. SUBSTANCES PROHIBITED FOR USE IN RUMINANT FEED

Legal Authority: 21 USC 321; 21 USC 342; 21 USC 348; 21 USC 371

CFR Citation: 21 CFR 589.2000

Legal Deadline: None

Abstract: The Food and Drug Administration is considering a proposal to ban the feeding of certain materials to ruminants. Epidemiological evidence developed in the United Kingdom suggests increased vigilance and precautionary practices are necessary to assure that Bovine Spongiform Encephalopathy (BSE) is not introduced among cattle herds in the United States. This same evidence has suggested that the feeding of certain animal derived materials caused the BSE epidemic in the United Kingdom.

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44584
Final Action	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John P. Honstead, Veterinary Medical Officer, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine (HFV-222), 7500 Standish Place, Rockville, MD 20855, **301 594-1728**

RIN: 0905–AE45

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Completed Actions
Public Health Service (PHS)—Food and Drug Administration (FDA)

1483. IMPLEMENTATION OF TITLE I OF THE GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

CFR Citation: 21 CFR 514

Completed:

Reason	Date	FR Cite
Merged With RIN 0905-AA96	07/15/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lonnie W. Luther, **301 594-1623**

RIN: 0905–AD15

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — Proposed Rule Stage
Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

1484. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM; GRANTS FOR STATE LOAN REPAYMENT PROGRAMS

Legal Authority: PL 100-177; PL 101-597

CFR Citation: 42 CFR 62.21 to 62.30; 42 CFR 62.51 to 62.58

Legal Deadline: None

Abstract: The National Health Service Corps (NHSC) Revitalization Amendments of 1990, PL 101-597, amends Section 338B of the PHS Act which authorizes the NHSC Loan Repayment Program. These Amendments also revise the State Loan Repayment Program at Section 338I of the PHS Act. The interim rule relating to both these programs as published April 3, 1989, will be revised to reflect the 1990 amendments. Regulations governing the Special Repayment Program established under PL 100-177 were published on 11/6/91 in final form under RIN 0905-AD58, separate from this NPRM (RIN 0905-AC65). The amended NHSC Loan Repayment Program (RIN 0905-AD57) removes the provision which limits the Secretary's loan repayment to one month in advance of services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/03/89	56 FR 13458
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Primary Health Care, Department of Health and Human Services, Public Health Service, East-West Tower Bldg., 4350 East-West Highway, 7th Floor, Bethesda, MD 20814, **301 594-4060**

RIN: 0905–AC65

1485. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK RULES

Regulatory Plan: This entry is Seq. No. 44 in Part II of this issue of the **Federal Register**.

RIN: 0905–AD26

1486. HEALTH EDUCATION ASSISTANCE LOAN (HEAL) PROGRAM: LENDERS'/ HOLDERS' PERFORMANCE STANDARDS

Legal Authority: 42 USC 216; 42 USC 292 to 292o

CFR Citation: 42 CFR 60

Legal Deadline: NPRM, Statutory, October 13, 1993.

Abstract: This Notice of Proposed Rulemaking proposes to amend the existing regulations governing the HEAL Program to establish standards for lenders and holders as required by the Health Professions Education Extension Amendments of 1992 (Pub. L. 102-408). These standards would provide lenders and holders a greater incentive to work to maintain low HEAL default rates and, thus, improve the long-term solvency of the Student Loan Insurance Fund.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 8-48, Rockville, Maryland 20857, **301 443-1173**

RIN: 0905–AD87

1487. • NATIONAL VACCINE INJURY COMPENSATION PROGRAM: REVISIONS AND ADDITIONS TO THE VACCINE INJURY TABLE - II

Legal Authority: 42 USC 216; 42 USC 300aa-14; 42 USC 300aa-1 note.

CFR Citation: 42 CFR 100

Legal Deadline: None

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HHS—PHS—HRSA

Proposed Rule Stage

Abstract: The Secretary has made findings as to the illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table by regulation pursuant to section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act. These proposed regulations would have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the new regulations become effective.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas E. Balbier, Jr., Director, Division of Vaccine Injury, Compensation Program, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8A-35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-6593

RIN: 0905–AE52

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

Final Rule Stage

1488. NATIONAL VACCINE INJURY COMPENSATION PROGRAM (VICP): REVISIONS TO THE VACCINE INJURY TABLE

Legal Authority: 42 USC 216; 42 USC 300aa-14; 42 USC 300aa-1 note.

CFR Citation: 42 CFR 100

Legal Deadline: NPRM, Statutory, December 22, 1990.
Section 312 of PL 99-660 requires the Secretary to propose regulations to amend the Vaccine Injury Table, based on the findings of the Institute of Medicine (IOM) study, (cont)

Abstract: The National Vaccine Injury Compensation Program (VICP), administered by the Secretary, and governed by subtitle 2 of title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986 (the Act), provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines. The nature of the injuries, disabilities, illnesses, conditions, and deaths which will be presumed to result from the administration of specific vaccines, and the time period in which the first symptom or manifestation of onset must occur for this presumption to apply, are outlined in section 2114 of the Act in what is known as the Vaccine Injury Table. This Final Rule makes refinements to the Vaccine Injury Table to more accurately reflect current scientific knowledge about the conditions that result from vaccines which will result in appropriate compensation for injuries related to vaccines.

Timetable:

Action	Date	FR Cite
NPRM	08/14/92	57 FR 36878
Public Hearing	10/29/92	57 FR 49055
NPRM Comment Period End	02/11/93	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: LEGAL DEADLINE CONT: within 3 years of the effective date of title III (12/22/87). Since the IOM study was not completed until August 1991, it was not possible to meet this legal deadline. This section also requires the Final regulation to be published 6 months after the NPRM. Given the 180-day comment period, the 6-month requirement is an impossibility.

Agency Contact: Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation Program, BHPr, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 8A35, Rockville, Maryland 20857, 301 443-0593

RIN: 0905–AD64

1489. GRANTS FOR FACULTY TRAINING PROJECTS IN GERIATRIC MEDICINE AND DENTISTRY

Legal Authority: 42 USC 216; 42 USC 294o

CFR Citation: 42 CFR 57, subpart PP

Legal Deadline: None

Abstract: This final amends the Grants for Faculty Training Projects in Geriatric Medicine and Dentistry regulations to bring the existing regulations into conformity with technical amendments made by the Health Professions Extension Amendments of 1992 (Pub. L. 102-408); to propose two new definitions for "relevant advanced training or experience" and "geriatric psychiatry"; and to remove a section regarding the period of time for fellowship appointments for more flexibility in implementing the program.

Timetable:

Action	Date	FR Cite
NPRM	03/03/94	59 FR 10104
NPRM Comment Period End	04/04/94	
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Neil H. Sampson, Director, Division of Associated, Dental & Public Health Professions, BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8-101, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-6853

RIN: 0905–AE13

1490. GRANTS FOR THE ESTABLISHMENT OF DEPARTMENTS OF FAMILY MEDICINE

Legal Authority: 42 USC 216; 42 USC 293k

CFR Citation: 42 CFR 57, subpart R

Legal Deadline: None

Abstract: This final amends the Grants for the Establishment of Departments of Family Medicine regulations to expand the definition of "academic administrative unit" to clarify which academic administrative units are eligible for support under the authority of section 747 of the Public Health Service Act.

Timetable:

Action	Date	FR Cite
NPRM	07/19/94	59 FR 36733
NPRM Comment Period End	08/18/94	59 FR 36733
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marc L. Rivo, M.D., Director, Division of Medicine, Bureau of Health Professions, Department of Health and Human Services, Health Resources and Services Administration, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, 301 443-6190

RIN: 0905–AE17

1491. MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION REQUIREMENTS FOR PROVISION OF SERVICES TO PERSONS UNABLE TO PAY (NURSING HOMES)

Legal Authority: 42 USC 291 et seq; 42 USC 300q et seq

CFR Citation: 42 CFR 124 subpart F

Legal Deadline: None

Abstract: The current regulations stipulate that an indigent is ineligible for Hill-Burton uncompensated services if the individual is covered under a third-party insurance or governmental program. This requirement has created major compliance problems for many Hill-Burton obligated nursing homes. In most of these nursing homes, the only individuals who meet the income eligibility requirements for receipt of Hill-Burton uncompensated services (Category A and B eligibility) are also covered by their State's Medicaid program; hence, they are by definition ineligible for Hill-Burton uncompensated services. The proposed regulations would address this problem by establishing a third income-eligibility level (Category C) for nursing homes, which would allow individuals whose annual incomes are greater than those under Category A and B to be eligible for nursing home services. This would result in a limit substantially above the Medicaid income eligibility limit, thus allowing more individuals to be eligible for services in Hill-Burton nursing homes.

Timetable:

Action	Date	FR Cite
NPRM	04/04/94	59 FR 15693
NPRM Comment Period End	06/03/94	59 FR 15693
Final Action	10/00/94	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Charlotte G. Pascoe, Director, Division of Facilities Compliance, Bureau of Health Resources Development, Department of Health and Human Services, Public Health Service, 5600 Fishers Lane, Room 11-19, Parklawn Building, Rockville, Maryland 20857, 301 443-5656

RIN: 0905–AE33

1492. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: AMENDMENT TO DATA BANK REGULATIONS TO COMPLY WITH COURT ORDER

Legal Authority: 42 USC 11101 et seq

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: These regulations amend the current regulations under section 60.7(a) and (c) to require reporting of medical malpractice payments only by entities which make these payments on behalf of physicians and other health care practitioners, deleting the requirement of reporting by persons who make such payments.

Timetable:

Action	Date	FR Cite
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Department of Health and Human Services, Health Resources and Services Administration, Room 8-67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443-2300

RIN: 0905–AE38

HHS—PHS—HRSA

Final Rule Stage

1493. • FEDERALLY SUPPORTED HEALTH CENTERS ASSISTANCE ACT OF 1992

Legal Authority: 42 USC 216; 42 USC 233

CFR Citation: 42 CFR 6

Legal Deadline: None

Abstract: These regulations clarify that the range of health care services provided by eligible entities and individuals would be covered under the Federal Tort Claims Act (FTCA). As a result, health centers would not have to purchase private insurance policies to cover gaps of malpractice liability exposure. The intended effect of this proposed rule is to save funds for PHS grantees and invest such savings into providing additional health services to the medically underserved populations of covered health centers and their health professionals. The Domestic Policy Council staff requested the publication of these rules in an expeditious manner to facilitate full implementation of the 1992 legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/19/94	59 FR 42790
NPRM Comment Period End	09/19/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Libby Merrill, Legislative Analyst, Office of Program and Policy Development, Bureau of Primary Health Care, Department of Health and Human Services, Public Health Service, East-West Tower Bldg., 4350 East-West Highway, 7th Floor, Bethesda, MD 20814, 301 594-4060

RIN: 0905–AE48

1494. • NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS, DENTISTS, AND OTHER HEALTH CARE PRACTITIONERS: DEBT COLLECTION METHODS

Legal Authority: 42 USC 11101 et seq

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: This final rule would modify section 60.12(c), "Assessing and collecting fees," of the Data Bank regulations to provide Data Bank customers several alternative ways to

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pay the fee(s) associated with querying the Data Bank. The regulation currently prescribes that "fees must be paid by check or money order made payable to 'U.S. Department of Health and Human Services' or to the unit stated in the billing." Those options would be expanded to include payment by credit card and other electronic means (e.g., automated clearinghouse).

Timetable:

Action	Date	FR Cite
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Department of Health and Human Services, Health Resources and Services Administration, Room 8-67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, **301 443-2300**

RIN: 0905–AE53

1485. • TECHNICAL AMENDMENTS TO THE HEALTH PROFESSIONS, NURSING, AND ALLIED HEALTH TRAINING GRANT PROGRAMS UNDER 42 CFR PARTS 57 AND 58

Legal Authority: 42 USC 293; 42 USC 293c; 42 USC 293d; 42 USC 293j; 42 USC 293k; 42 USC 293l; 42 USC 293m; 42 USC 293n; 42 USC 294; 42 USC 294b; 42 USC 294i; 42 USC 294o

CFR Citation: 42 CFR 57; 42 CFR 58

Legal Deadline: None

Abstract: This final rule amends various Public Health Service (PHS) health professions, nursing, and allied health training grant regulations, codified at 42 CFR parts 57 and 58, to bring these programs into conformity with statutory amendments made by the Health Professions Extension Amendments of 1992 to the various sections of the PHS Act under title VII and VIII. Technical changes being made to the regulations are: (1) the renumbering of PHS section numbers and their corresponding United States Code numbers within the regulations; (2) the removal of the reference to the National Advisory Council on Health Professions Education and the requirements for the Council's review of title VII grants; (3) the removal of the reference to section 705 of the PHS Act concerning audit and inspection requirements, which is redundant to the requirements that are covered under 45 CFR part 74; (4) the removal of repealed and inactive title VII and VIII health professions, nursing, and allied health training grant program regulations; and (5) other technical changes which are clarifying or editorial changes in nature.

Timetable:

Action	Date	FR Cite
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty B. Hambleton, Chief, Planning, Evaluation and Legislation, Branch, Office of Research & Planning/BHPr, Department of Health and Human Services, Health Resources and Services Administration, Room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, **301 443-1590**

RIN: 0905–AE54

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — **Completed Actions**
Public Health Service (PHS)—Health Resources and Services Administration (HRSA)

1496. MATERNAL AND CHILD HEALTH (MCH) PROJECT GRANTS

CFR Citation: 42 CFR 51a

Completed:

Reason	Date	FR Cite
Final Action	07/19/94	59 FR 36703
Final Action Effective	08/18/94	59 FR 36703

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: Lynn Squire, **301 443-2778**

RIN: 0905–AD88

1497. MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION; REQUIREMENTS FOR PROVISION OF SERVICES TO PERSONS UNABLE TO PAY (CHARITABLE FACILITIES)

CFR Citation: 42 CFR 124 subpart F

Completed:

Reason	Date	FR Cite
Final Action	08/30/94	59 FR 44634
Final Action Effective	08/30/94	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Charlotte G. Pascoe, **301 443-5656**

RIN: 0905–AE06

1498. GRANTS FOR NURSE PRACTITIONER AND NURSE-MIDWIFERY PROGRAMS

CFR Citation: 42 CFR 57, subpart Y

Completed:

Reason	Date	FR Cite
Withdrawn Pending nursing reauthorizing legislation	07/06/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marla E. Salmon, ScD. RN, **301 443-5786**

RIN: 0905–AE11

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — **Proposed Rule Stage**
Public Health Service (PHS)—Indian Health Service (IHS)

1499. INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM REGULATIONS

Legal Authority: PL 100-713

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: Public Law 100-713, enacted November 23, 1988, authorized a program in which health professionals would have their health professions education loans repayed in amounts up to a maximum of $25,000 per year in exchange for service in an Indian health program. The Secretary is directed to implement some provisions by regulations, i.e., waiver provision. P. L. 102-573 raised the maximum to $35,000 for repayment of educational loans.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	
NPRM Comment Period End	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linus Everling, Chief, Scholarship Branch, Indian Health Service, Department of Health and Human Services, Public Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, MD 20852, **301 443-6197**

RIN: 0905–AC96

1500. INDIAN HEALTH SERVICE CATASTROPHIC HEALTH EMERGENCY FUND PROGRAM

Legal Authority: PL 100-713

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: Public Law 100-713, enacted November 23, 1988, authorized a new program establishing a catastrophic health emergency fund. The Secretary is directed to establish the program by regulations consistent with provisions of the Law including a definition of a catastrophic disease.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty J. Penn, Chief, Regulations Branch, DLR, Indian Health Service, Department of Health and Human Services, Public Health Service, 12300 Twinbrook Parkway., Suite 450, Rockville, MD 20852, **301 443-1116**

RIN: 0905–AC97

1501. REVISION OF URBAN INDIAN HEALTH REGULATIONS

Legal Authority: PL 100-713

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: P.L. 100-713, enacted November 23, 1988, requires the Secretary to prescribe, by regulation, the criteria for selecting urban Indian organizations to enter into contracts.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	
NPRM Comment Period End	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty J. Penn, Chief, Regulations Branch, DLR, Indian Health Service, OPEL, Department of Health and Human Services, Public Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852, **301 443-1116**

RIN: 0905–AD20

1502. ACQUISITION UNDER THE BUY INDIAN ACT

Legal Authority: 25 USC 47

CFR Citation: 48 CFR ch 3, app A

Legal Deadline: None

Abstract: This regulation will update and standardize existing regulations for the Buy Indian Act to coincide with the Department of Interior regulations at 48 CFR Chapter 14. There are no costs associated with these revised regulations. These revisions will increase competition among Indian economic enterprises and facilitate economic development of Indian reservations by increasing opportunities for Indian businesses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	
NPRM Comment Period End	03/00/95	

Small Entities Affected: None

Government Levels Affected: Tribal

Procurement: This is a procurement-related action for which there is a statutory requirement. The agency has not yet determined whether there is a paperwork burden associated with this action.

Agency Contact: Myrna Mooney, Small and Disadvantaged Business Utilization, Specialist, Department of Health and Human Services, Public Health Service, 12300 Twinbrook Parkway - Suite 450, Rockville, MD 20852, **301 443-1480**

RIN: 0905–AE09

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) — **Final Rule Stage**
Public Health Service (PHS)—Indian Health Service (IHS)

1503. REVISION OF INDIAN SELF-DETERMINATION REGULATIONS

Regulatory Plan: This entry is Seq. No. 47 in Part II of this issue of the **Federal Register**.

RIN: 0905–AC98

1504. REVIEW OF THE DETERMINATION OF AN INDIAN TRIBE'S RESOURCE DEFICIENCY LEVEL

Legal Authority: PL 100-713

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: P.L. 100-713, enacted November 23, 1988, requires the Secretary to establish, by regulation, procedures which would allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

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Timetable:

Action	Date	FR Cite
NPRM	10/10/91	56 FR 51189
NPRM Comment Period End	12/09/91	56 FR 51189
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betty J. Penn, Chief, Regulations Branch, DLR, Indian Health Service, OPEL, Department of Health and Human Services, Public Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852, 301 443-1116

RIN: 0905–AD21

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Public Health Service (PHS)—National Institutes of Health (NIH) — **Proposed Rule Stage**

1505. GRANTS FOR RESEARCH PROJECTS

Legal Authority: 42 USC 216

CFR Citation: 42 CFR 52

Legal Deadline: None

Abstract: Regulations covering grants for research projects will be amended to show changes necessitated by enactment of Public Laws 99-158, 99-660, 100-607, 101-549, 101-613, 102-222, 102-321, and 102-588, and to show their applicability to various programs administered by the Centers for Disease Control and the Food and Drug Administration previously omitted from the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, 9000 Rockville Pike, Room 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AC02

1506. NATIONAL INSTITUTES OF HEALTH AIDS RESEARCH LOAN REPAYMENT PROGRAM

Legal Authority: 42 USC 216; 42 USC 288-1

CFR Citation: 42 CFR 68

Legal Deadline: None

Abstract: Section 634 of PL 100-607 creates a new program through which health professionals can obtain federally funded repayment of educational loans by conducting AIDS research as NIH employees. The new regulations will cover this program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marc Horowitz, Director, NIH AIDS Research Loan Repayment Program, Department of Health and Human Services, Public Health Service, Office of AIDS Research, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892, 301 496-0357

RIN: 0905–AD18

1507. HAZARDOUS SUBSTANCES BASIC RESEARCH AND TRAINING GRANTS

Legal Authority: 42 USC 9660; 42 USC 216

CFR Citation: 42 CFR 65a

Legal Deadline: None

Abstract: Regulations will be promulgated concerning grants for research and training made for the purpose of understanding, assessing, and reducing the adverse effect on human health of exposure to hazardous substances. The grants are authorized by section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as added by section 209 of the Superfund Amendments and Reauthorization Act (SARA) of 1986, P.L. 99-499.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Dr. William A. Suk, Program Administrator, Division of Extramural Research and Training, Department of Health and Human Services, Public Health Service, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709, 919 541-0797

RIN: 0905–AD46

1508. NATIONAL INSTITUTES OF HEALTH CONSTRUCTION GRANTS

Legal Authority: 42 USC 216; 42 USC 285a-2; 42 USC 285a-3; 42 USC 285a-4; 42 USC 285b-3; 42 USC 285d-6; 42 USC 285i; 42 USC 285m-3; 42 USC 287a-2; 42 USC 287a-3; 42 USC 300cc-41

CFR Citation: 42 CFR 52b

Legal Deadline: None

Abstract: Regulations concerning NCI construction grants will be amended to more clearly show their general applicability to all NIH extramural programs with construction grant authority. Additionally, the regulations will be amended to show new administrative and technical requirements, add new procedures for the recovery of grant funds for facilities no longer used for biomedical research, show new PHS Act section numbers, and update the listing of other HHS regulations relevant to construction grants.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AD49

HHS—PHS—NIH — **Proposed Rule Stage**

1509. STANDARDS FOR BONE MARROW REGISTRIES AND CENTERS

Legal Authority: 42 USC 216; 42 USC 274k

CFR Citation: 42 CFR 122

Legal Deadline: Final, Statutory, May 14, 1991.

Abstract: Regulations will be proposed to implement title I of PL 101-616, Transplant Amendments Act of 1990, which added section 379 to the Public Health Service Act. Section 379 authorizes the Secretary to establish and maintain a National Bone Marrow Donor Registry, and further provides that the Secretary shall establish and enforce criteria, standards, and procedures for entities participating in the National Bone Marrow Donor Program, including the National Registry.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul R. McCurdy, MD, Special Assistant for Clinical Hematology, Div. of Blood Diseases and Resources, NHLBI, Department of Health and Human Services, Public Health Service, Federal Building, Room 516, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301 496-8387

RIN: 0905–AD51

1510. TRAINING GRANTS

Legal Authority: 42 USC 216; 42 USC 242l(b)(3); 42 USC 284(b)(1)(C); 42 USC 287c(b); 42 USC 300cc-15(a)(1); 42 USC 300cc-41(a)(3)(C); 42 USC 7403(h)(2)

CFR Citation: 42 CFR 63a

Legal Deadline: None

Abstract: New regulations concerning non-NRSA training grants authorized by various PHS Act sections and training activities authorized by section 103(h)(2) of the Clean Air Act, as amended by section 901 of the Clean Air Act Amendments of 1990, P.L. 101-549. The regulations are intended to serve as a standing set of regulations that could be adapted for future training grant programs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: Additional Legal Authorities: 42 USC 286a-7(c)(1)(G)

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AE00

1511. NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Legal Authority: 42 USC 216; 42 USC 285a-3; 42 USC 285b-4; 42 USC 285c-5; 42 USC 285d-6; 42 USC 285e-2; 42 USC 285e-3; 42 USC 285f-1; 42 USC 285g-5; 42 USC 285g-7; 42 USC 285m-3; 42 USC 285o-2; 42 USC 300cc-16; 42 USC 285a-6(c)(1)(b); 42 USC 285c-8; ...

CFR Citation: 42 CFR 52a

Legal Deadline: None

Abstract: NIH Center Grants regulations will be amended to show their applicability to the Drug Abuse Research Centers Program authorized by PHS Act, section 464N, as added by section 123 of the ADAMHA Reorganization Act, P.L. 102-321, and several new centers authorized under the NIH Revitalization Act of 1993.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, Bldg. 31, Rm. 3B-11, 9000 Rockville Pike, Bethesda, MD 20892, 301 496-2832

RIN: 0905–AE08

1512. GRANTS FOR NATIONAL ALCOHOL RESEARCH CENTERS

Legal Authority: 42 USC 216, 285n-2

CFR Citation: 42 CFR 54a

Legal Deadline: None

Abstract: Regulations governing grants for alcohol abuse and alcoholism prevention, treatment, and rehabilitation services, and National Alcohol Research Centers will be amended to set forth changes necessitated by enactment of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act, Public Law 102-321, and other changes necessary to update the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, Bldg. 31, Rm. 3B-11, 9000 Rockville Pike, Bethesda, MD 20892, 301 496-2832

RIN: 0905–AE08

1513. • NATIONAL INSTITUTES OF HEALTH CLINICAL RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

Legal Authority: 42 USC 216; 42 USC 288-5

CFR Citation: 42 CFR 68a

Legal Deadline: None

Abstract: Regulations would be issued to govern the awarding of educational loan payments under the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Background authorized by section 487E of the Public Health Service Act, as added by provisions of the NIH Revitalization Act of 1993.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marc Horowitz, Dir., Clinical Research Loan Repayment Prog., Individuals from Disadvantaged Backgrounds, Department of Health and Human Services, Public Health Service,

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HHS—PHS—NIH

Proposed Rule Stage

Office of AIDS Research, 9000 Rockville Pike, Bethesda, MD 20892, 301 402-0852

RIN: 0905–AE56

1514. • UNDERGRADUATE SCHOLARSHIP PROGRAM REGARDING PROFESSIONS NEEDED BY THE NIH

Legal Authority: 42 USC 288-4; 42 USC 216

CFR Citation: 42 CFR 60B

Legal Deadline: None

Abstract: Section 487D of the PHS Act, as added by the NIH Revitalization Act of 1993, creates a program offering scholarships, in an amount not to exceed $20,000 per year of academic study, to individuals from disadvantaged backgrounds who are enrolled as full-time students at accredited institutions pursuing academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient agrees to service (employment), after graduation at the NIH, for one year. Additionally, the individual agrees to ten consecutive weeks of service (employment) at the NIH during which the individual is attending the institution and receiving the NIH scholarship. The proposed new regulations will cover this program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marc Horowitz, Dir., NIH AIDS Research Loan Repayment, Program, Department of Health and Human Services, Public Health Service, Office of AIDS Research, NIH, 9000 Rockville Pike, Bethesda, MD 20892, 301 402-0852

RIN: 0905–AE57

1515. • TRAINEESHIPS (TERMINATION POLICIES)

Legal Authority: 42 USC 216; 42 USC 283g(d); 42 USC 284(b)(1)(C); 42 USC 286b-3; 42 USC 287c(b)

CFR Citation: 42 CFR 63

Legal Deadline: None

Abstract: Regulations governing NIH traineeships will be amended to set forth additional conditions under which awards may be terminated.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AE62

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—National Institutes of Health (NIH)

Final Rule Stage

1516. TRAINEESHIPS

Legal Authority: 42 USC 216; 42 USC 283g(d); 42 USC 284(b)(1)(C); 42 USC 286b-3; 42 USC 287c(b)

CFR Citation: 42 CFR 63

Legal Deadline: None

Abstract: Regulations concerning National Institutes of Health, and National Library Medicine traineeships will be revised in their entirety to cover traineeships awarded under sections 404 E(d)(2), 405(b)(1)(C), 472, and 485B of the PHS act.

Timetable:

Action	Date	FR Cite
NPRM	08/06/93	58 FR 42039
NPRM Comment Period End	10/05/93	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Rm. 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AD28

1517. NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS WASTE WORKER TRAINING

Legal Authority: 42 USC 9660a; 42 USC 1816

CFR Citation: 42 CFR 65

Legal Deadline: None

Abstract: Regulations concerning the NIEHS Hazardous Waste Worker Training Program will be amended to make them applicable to grants administered under the Hazardous Materials Employee Training Grant Program. The grants are authorized under section 118 of the Hazardous Materials Transportation Act (HMTA), 49 USC App. 1816, as amended by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990, P.L. 101-615.

Timetable:

Action	Date	FR Cite
NPRM	09/29/93	58 FR 50897
NPRM Comment Period End	11/29/93	
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AE01

1518. RESPONSIBILITIES OF PUBLIC HEALTH SERVICE-FUNDED INSTITUTIONS FOR PROMOTING OBJECTIVITY IN RESEARCH

Regulatory Plan: This entry is Seq. No. 48 in Part II of this issue of the Federal Register.

RIN: 0905–AE01

HHS—PHS—NIH

Final Rule Stage

1519. NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

Legal Authority: 42 USC 216; 42 USC 285b-1

CFR Citation: 42 CFR 52e

Legal Deadline: None

Abstract: Regulations governing NHLBI grants for prevention and control projects will be amended to conform them to changes in PHS Act section 419 made by the NIH Revitalization Act of 1993.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-2832

RIN: 0905–AE25

1520. • NATIONAL LIBRARY OF MEDICINE GRANTS

Legal Authority: 42 USC 216; 42 USC 286b-5

CFR Citation: 42 CFR 59a

Legal Deadline: None

Abstract: Regulations governing National Library of Medicine grants for establishing, expanding, and improving basic medical library resources are being amended to reflect the change in the maximum award amount from $750,000 to $1,000,000 as authorized by the National Institutes of Health Revitalization Act of 1993.

Timetable:

Action	Date	FR Cite
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John J. Migliore, NIH Regulations Officer, Department of Health and Human Services, Public Health Service, National Institutes of Health, 9000 Rockville Pike, Bldg 31, Rm 1B25, Center DR MSC 2075, Bethesda, MD 20892-2075, 301 496-4606

RIN: 0905–AE55

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—National Institutes of Health (NIH)

Completed Actions

1521. • HEALTH AND HUMAN SERVICES POLICY FOR PROTECTION OF HUMAN SUBJECTS

Legal Authority: 5 USC 301; 42 USC 289

CFR Citation: 45 CFR 46

Legal Deadline: None

Abstract: HHS is amending its Human Subjects Protection regulations to rescind the provision requiring prior review and advice from an Ethical Advisory Board for research applications and proposals involving in vitro fertilization of human ova as a prerequisite to funding by HHS and its components. The provision was nullified by the National Institutes of Health Revitalization Act of 1993. The regulations are being amended to reflect this statutory nullification.

Timetable:

Action	Date	FR Cite
Final Action	06/01/94	59 FR 28276
Final Action Effective	06/01/94	59 FR 28276

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: F. William Dommel, Jr., J.D., Office of Protection from Research Risks, NIH, Department of Health and Human Services, Public Health Service, NIH, Bldg. 31, Room 5B63, 9000 Rockville Pike, Bethesda, MD 20892-001, 301 496-7005

RIN: 0905–AE47

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Public Health Service (PHS)—Agency for Health Care Policy and Research (AHCPR)

Final Rule Stage

1522. HEALTH SERVICES RESEARCH, EVALUATION, DEMONSTRATION, AND DISSEMINATION PROJECTS; PEER REVIEW OF GRANTS AND CONTRACTS

Legal Authority: 42 USC 299c-1(e)

CFR Citation: 42 CFR 67

Legal Deadline: None

Abstract: This final rule revises the regulations under 42 CFR part 67 governing grants for health services research and grants for health services research centers made by the former National Center for Health Services Research and Health Care Technology Assessment (NCHSR). Public Law 101-239, enacted on December 19, 1989, established the Agency for Health Care Policy and Research to replace the NCHSR, and in title IX of the PHS Act and section 1142 of the Social Security Act provided the new agency with a much expanded role in health services research. The final rule will reflect applicable provisions of these statutes, as amended by P.L. 102-410.

Timetable:

Action	Date	FR Cite
NPRM	11/16/93	58 FR 60510
NPRM Comment Period End	01/18/94	
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Linda K. Demlo, Ph.D., Director, Office of Program Development, Agency for Health Care Policy and Research, Department of

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HHS—PHS—AHCPR — Final Rule Stage

Health and Human Services, Public Health Service, Suite 603, 2101 East Jefferson Street, Rockville, MD 20852, 301 594-2453

RIN: 0905–AD30

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Health Care Financing Administration (HCFA) — Proposed Rule Stage

1523. HOSPICE SERVICES (MB-7-P)

Legal Authority: 42 USC 1396d(a)(18); 42 USC 1396d(o); 42 USC 1396a(a)(13)(D); 42 USC 1396o(a)(2)(E)

CFR Citation: 42 CFR 418.32; 42 CFR 435.218; 42 CFR 435.231; 42 CFR 440.165; 42 CFR 447.53; 42 CFR 447.327; 42 CFR 447.381 to 447.384; 42 CFR 435.726; 42 CFR 435.735; 42 CFR 436.231

Legal Deadline: None

Abstract: This regulation would implement section 9505 of PL 99-272 by establishing eligibility and coverage requirements, payment procedures and conditions of participation for optional Medicaid coverage of hospice care. It would also implement section 9435(b) of PL 99-509 regarding payment for hospice care for individuals residing in a nursing facility or intermediate care facility in a State that has not elected to cover hospice services. It also would implement sections 4705 and 4717 of PL 101-508 which further clarifies conditions for payment and the scope of benefits.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400 EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-5850

RIN: 0938–AC52

1524. TRANSFER OF RESOURCES FOR LESS THAN FAIR MARKET VALUE (MB-10-P)

Legal Authority: 42 USC 1396p(c)

CFR Citation: 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: These regulations would conform the Medicaid regulations to section 1917(c) of the Social Security Act, which was extensively revised by section 303(b) of MCCA '88 (PL 100-360) as amended by section 608(d)(16)(B) of FSA '88 (PL 100-485) and section 6411(e)(1) of based services with no time limit on the penalty if these individuals or their spouses made transfers of assets (including establishing trusts under certain conditions) for less than fair market value during a prohibited period. The period of ineligibility applies if the individual or spouse made a transfer of assets for less than fair market value at any time during or after the 36-month period immediately before a date established according to a formula established in the law.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: ABSTRACT CONT: This rule will also reflect statutory revisions mandated by OBRA '93.

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-4451

RIN: 0938–AD18

1525. MEDICARE COVERAGE OF OUTPATIENT OCCUPATIONAL THERAPY SERVICES (BPD-425-P)

Legal Authority: 42 USC 1395x(s); 42 USC 1395x(p); 42 USC 1395x(w)(1)

CFR Citation: 42 CFR 400.202; 42 CFR 410; 42 CFR 424; 42 CFR 484; 42 CFR 485; 42 CFR 489

Legal Deadline: None

Abstract: This rule would implement section 9337 of PL 99-509 which provides Medicare coverage for outpatient occupational therapy services furnished by providers and independent practitioners, identical to the coverage for outpatient physical therapy. It also would implement section 6133(a) of PL 101-239 which increased the payment limit for outpatient occupational therapy services provided by independent practitioners. This proposed rule would also redesignate current subpart Q of part 405 of the Medicare rules as new part 485.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marsha Klamner, Health Insurance Specialist, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Rm. 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-4632

RIN: 0938–AD32

1526. REVISIONS TO THE FREEDOM OF INFORMATION REGULATIONS (OPA-1-P)

Legal Authority: 5 USC 552; EO 12600

CFR Citation: 42 CFR 401.101 to 401.104; 42 CFR 401.110 to 401.112; 42 CFR 401.120 to 401.125; 42 CFR 401.130 to 401.138; 42 CFR 401.140 to 401.145; 42 CFR 401.150 to 401.154

Legal Deadline: None

Abstract: This rule proposes changes to the regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised based on HCFA's experience with the FOIA in administering the Medicare and Medicaid programs. This rule would also conform HCFA's FOIA regulations to regulations published by the Department of Health and Human Services, as well as to guidance issued by the Office of Management and Budget, the Department of Justice, Presidential Executive Order 12600, and to the Freedom of Information Reform Act of 1986.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Martha DiSario, Acting Director, Office of Public Affairs, Department of Health and Human Services, Health Care Financing Administration, Room 435-H HHH Building, 200 Independence Avenue SW., Washington, DC 20201, 202 690-5113

RIN: 0938–AD60

HHS—HCFA — Proposed Rule Stage

1527. NEW MINIMUM STANDARDS FOR MEDICARE SUPPLEMENTAL (MEDIGAP) POLICIES (BPD-491-P)

Legal Authority: 42 USC 1395u; 42 USC 1395ss

CFR Citation: 42 CFR 403.200; 42 CFR 403.201; 42 CFR 403.205; 42 CFR 403.206; 42 CFR 403.210; 42 CFR 403.211 to 403.220; 42 CFR 403.222; 42 CFR 403.224; 42 CFR 403.226; 42 CFR 403.228; 42 CFR 403.229; 42 CFR 403.231; 42 CFR 403.332; 42 CFR 403.239; 42 CFR 403.250 to 403.258

Legal Deadline: None

Abstract: This rule would organize and codify in regulations the statutory changes to Medigap provisions made in 1987, 1988, 1989, and 1990. It will contain specific procedures for review of State regulatory plans (and individual policies) as required in OBRA '90. The new standards were enacted by OBRA '87, and '90, the Medicare Catastrophic Coverage Act of 1988 and the Medicare Catastrophic Coverage Repeal Act of 1989.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Julie Walton, Health Insurance Specialist, Long Term Care Branch, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4622

RIN: 0938–AD82

1528. FEE SCHEDULE FOR PAYMENT OF CLINICAL PSYCHOLOGIST SERVICES (BPD-495-P)

Legal Authority: 42 USC 1395k(a)(2)(B)(iii); 42 USC 1395x(gg); 42 USC 1395x(hh); 42 USC 1395w-4; 42 USC 1395x(b); 42 USC 1395l(a)(1)(L); 42 USC 1395x(s)

CFR Citation: 42 CFR 410

Legal Deadline: None

Abstract: This interim final rule with comment period establishes fee schedules for payment for therapeutic and miscellaneous diagnostic services furnished under Medicare Part B by clinical psychologists or incident to the services of a clinical psychologist. It implements a portion of section 4077(b) of OBRA '87 as amended.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Elisa Tunanidas, Health Insurance Specialist, Division of Medical Services Payment, Department of Health and Human Services, Health Care Financing Administration, 1-H-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4505

RIN: 0938–AD84

1529. CLARIFICATION OF "WITHOUT FAULT" AS IT APPLIES TO PHYSICIAN PROVIDER AND SUPPLIER LIABILITY (BPD-719-P)

Legal Authority: 42 USC 1395gg

CFR Citation: 42 CFR 405.350 to 405.355; 42 CFR 405.356 to 405.361; 20 CFR 404.506 to 510

Legal Deadline: None

Abstract: This rule would amend the Medicare regulations to clarify our interpretation of "without fault" as it applies to physician, provider, supplier and beneficiary liability for overpayments. This definition would result in greater uniformity of determinations by carriers and intermediaries. Additionally, this proposed rule would incorporate in HCFA regulations pertinent portions of Social Security Administration regulations dealing with "without fault."

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paul Olenick, Director, Division of Medicare Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4472

RIN: 0938–AD95

1530. PROTECTION OF INCOME AND RESOURCES FOR COMMUNITY SPOUSE (MB-23-P)

Legal Authority: 42 USC 1396r-5

CFR Citation: 42 CFR 435.630; 42 CFR 435.632; 42 CFR 435.634; 42 CFR 435.636; 42 CFR 435.638; 42 CFR 435.640; 42 CFR 435.642; 42 CFR 435.644; 42 CFR 435.646; 42 CFR 435.648

Legal Deadline: None

Abstract: These regulations would interpret section 303(a) of MCCA '88, as amended by section 608(d)(16)(A) of the FSA (PL 100-485), section 6411(e)(3) of OBRA '89 (PL 101-239) and section 4714 of OBRA '90 (PL 101-508). Section 303(a) allocates income and resources between a spouse who is institutionalized and the spouse remaining in the community. It also provides special post-eligibility rules for institutionalized individuals who have spouses in the community. The revision would allow the community spouse to retain more income to meet living expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: Undetermined

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Government Levels Affected: State, Local

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4451**

RIN: 0938–AE12

1531. PHYSICIAN CERTIFICATION AND PLAN OF CARE REQUIREMENTS AND INSPECTION OF CARE REVIEWS (HSQ-178-P)

Legal Authority: 42 USC 1396b(g); 42 USC 1396a(a)(30); 42 USC 1396a(a)(44)

CFR Citation: 42 CFR 400; 42 CFR 440; 42 CFR 441; 42 CFR 456; 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule would make the requirements for physician certification and development of a plan of care general State plan requirements. States would no longer be required to make quarterly showings that they had determined compliance with those requirements or with utilization review. A quarterly demonstration to the Secretary of an effective program of medical review as demonstrated by a satisfactory utilization control program would be limited to Inspections of Care (IOCs) in participating Intermediate Care Facilities/Mentally Retarded (ICFs/MR) and psychiatric hospitals. This rule will establish review criteria specifically for ICFs/MRs that ensure essential client protections and focus on the provision of active treatment. This rule will also clarify utilization control requirements included in 42 CFR part 456, Subpart S.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Helene Fredeking, Director, Division of Long Term Care Services, Department of Health and Human Services, Health Care Financing Administration, 2-D-2, ME, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6807**

RIN: 0938–AE17

1532. MEDICAID PAYMENT OF MEDICARE COST SHARING FOR QUALIFIED MEDICARE BENEFICIARIES AND QUALIFIED DISABLED AND WORKING INDIVIDUALS AND SPECIFIED LOW-INCOME MEDICARE BENEFICIARIES (MB-031-P)

Legal Authority: 42 USC 1396a(a)(10)(E); Clause VIII of the matter following 42 USC 1396a(a)(10)(F); 42 USC 1396a(o)(8); 42 USC 1396a(m)(4); 42 USC 1396a(n); 42 USC 1396b(f)(4); 42 USC 1396d(a); 42 USC 1396d(p); 42 USC 1302

CFR Citation: 42 CFR 431.625; 42 CFR 435; 42 CFR 436; 42 CFR 441.256; 42 CFR 447.600 to 447.620; 42 CFR 447.51; 42 CFR 447.53

Legal Deadline: None

Abstract: These rules would propose to require States to include in their State plans payment of Medicare cost-sharing for specified low-income Medicare beneficiaries (SLMBS), Qualified Medicare Beneficiaries (QMB) and Qualified Disabled and Working Individuals (QDWI). The territories have the option to do the same. We would define cost-sharing, specify criteria for determining QMB status, propose requirements and options for payment amounts and limitations, and provide for Federal financial participation in State payments for Medicare cost-sharing on behalf of QMBs. For QDWIs Federal financial participation would be limited to Medicare, Part A premium. The changes would implement provisions of MCCA '88 as modified by the FSA '88, TMRA '88, OBRA '89, and OBRA '90. Many of these provisions went into effect January 1, 1989.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: TIMETABLE: Pending consultation with outside groups and resolution of complex issues.

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4451**

RIN: 0938–AE38

1533. COVERAGE OF PHYSICIAN ASSISTANT, NURSE PRACTITIONER, AND CLINICAL NURSE SPECIALIST SERVICES (BPD-708-P)

Legal Authority: 42 USC 1395x(s)(2)(K); 42 USC 1395u(b)(12); 42 USC 1395x(aa)

CFR Citation: 42 CFR 405; 42 CFR 410

Legal Deadline: None

Abstract: This proposed rule would conform Medicare regulations to the provisions in sections 9338 of OBRA '86, 4076(a) of OBRA '87, 6114 of OBRA '89, and 4155 of OBRA '90. These sections amended portions of the Social Security Act (the Act) concerning the coverage of and payment for certain services described in section 1861(s)(2)(K) of the Act that are performed by physician assistants, nurse practitioners, and clinical nurse specialists.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: TIMETABLE: Pending publication of 0938-AF01 (BPD-709-F).

Agency Contact: William Larson, Program Analyst, Office of Coverage & Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4639**

RIN: 0938–AF00

1534. PROVIDER REIMBURSEMENT DETERMINATIONS AND APPEALS REVISIONS (BPD-727-P)

Legal Authority: 42 USC 1395oo

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This regulation would update and clarify regulations governing the Provider Reimbursement Review Board and would deal with such issues as the parties to a Board hearing, jurisdiction of the Board, time periods for filing appeals, and the definition of "good cause" for late filings. The Board has authority to adjudicate disputes

between providers and intermediaries under section 1878 of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Olenick, Director, Division of Medicare & Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401,"" EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4472**

RIN: 0938–AF28

1535. ALTERNATIVE SANCTIONS FOR PSYCHIATRIC HOSPITALS (HSQ-191-P)

Legal Authority: 42 USC 1395cc; 42 USC 1396a

CFR Citation: 42 CFR 488

Legal Deadline: None

Abstract: These regulations would provide an alternative to terminating a psychiatric hospital's participation in the Medicare and Medicaid programs for facilities found to be out of compliance with participation requirements. These alternative sanctions could be imposed instead of terminating a psychiatric hospital's participation in the Medicare and Medicaid programs where deficiencies do not present immediate jeopardy to the health and safety of psychiatric hospital patients.

These amendments are necessary to conform HCFA regulations to changes made by section 6020 of OBRA '89 (PL 101-239) and section 4755 of OBRA '90 (PL 101-508).

The purpose of the legislation is to encourage correction of deficiencies that do not jeopardize patient health and safety before termination becomes necessary.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Pam Vocke, Director, Division of Program Operations, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2, ME, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-7089**

RIN: 0938–AF32

1536. MEDICAID PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES—ADEQUATE PAYMENT LEVEL PROVISION (MB-036-P)

Legal Authority: 42 USC 1396a(a)(30)(A); 42 USC 1396a(s); 42 USC 1396r-7

CFR Citation: 42 CFR 430.12; 42 CFR 430.16; 42 CFR 447.204; 42 CFR 447.300; 42 CFR 447.301; 42 CFR 447.393; 42 CFR 447.397

Legal Deadline: None

Abstract: This rule would implement section 1902(a)(30)(A) of the Social Security Act, which requires that Medicaid payment rates be established at a level to ensure access to services for Medicaid recipients is at least equal to the access available to the general population in the geographic area. It would also implement section 1926 of the Social Security Act by establishing State plan requirements concerning obstetrical and pediatric services.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: State

Additional Information:

TIMETABLE: Pending resolution of complex policy issues.

Agency Contact: Bernard Truffer, Director, Division of Payment Policy, Department of Health and Human Services, Health Care Financing Administration, Room 291 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-0691**

RIN: 0938–AF62

1537. CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC SERVICES (MB-060-P)

Legal Authority: 42 USC 1396d(h)(l)(A)

CFR Citation: 42 CFR 440; 42 CFR 441

Legal Deadline: None

Abstract: This rule would establish settings, other than psychiatric hospitals, in which inpatient psychiatric services may be covered under State Medicaid plans. It would implement section 4755(a)(1) of OBRA '90.

Timetable:

Action	Date	FR Cite
NPRM	11/00/94	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-5659**

RIN: 0938–AF73

1538. FEDERALLY QUALIFIED HEALTH CENTER SERVICES (MEDICAID) (MB-043-P)

Legal Authority: 42 USC 1396a(a)(13); 42 USC 1396b(m); 42 USC 1396d(l); 42 USC 1396n(b)

CFR Citation: 42 CFR 440; 42 CFR 447

Legal Deadline: None

Abstract: These regulations would establish a new category of facilities known as federally Qualified Health Centers (FQHCs) and a new category of Medicaid services known as FQHC services. This new type of facility includes community health centers, migrant health centers and health care for the homeless programs, which are receiving or are eligible to receive certain grants from the Public Health Service, and health programs or facilities operated by an Indian tribe or tribal organization. These regulations would establish requirements for coverage and payment of FQHC services under the Medicaid program. These regulations would implement section 6404 of OBRA '89 (PL 101-239) and section 4704 of OBRA '90 (PL 101-508) and reflect statutory revisions mandated.

Timetable:

Action	Date	FR Cite
NPRM	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information:

TIMETABLE: Pending resolution of complex policy and operational issues.

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Agency Contact: Bernard Truffer, Director, Division of Payment Policy, Department of Health and Human Services, Health Care Financing Administration, Room 291, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-1357**

RIN: 0938–AF90

1539. MINIMUM PHYSICIAN QUALIFICATIONS FOR CERTAIN SERVICES (MB-059-P)

Legal Authority: 42 USC 1396b(i)

CFR Citation: 42 CFR 441

Legal Deadline: None

Abstract: This rule would establish qualifications that physicians must meet as a condition for payment under Medicaid for services furnished to children under 21 and to pregnant women (and women during the 60 days following termination of pregnancy). Section 4752(e) of PL 101-508 establishes these requirements for services furnished on or after January 1, 1992. The regulation and legislation are intended to assure that high quality services are furnished to women and children.

Timetable:

Action	Date	FR Cite
NPRM	08/06/93	58 FR 42041
NPRM Comment Period End	10/05/93	58 FR 42042
Second NPRM	04/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Bob Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-5659**

RIN: 0938–AF92

1540. REVISIONS TO RULES ON HEALTH CARE PREPAYMENT PLANS (OMC-016-P)

Legal Authority: 42 USC 1395l; 31 USC 9701

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: This regulation would impose a range of requirements on Health Care Prepayment Plans corresponding to certain provisions for prepaid health plans under section 1876 of the Social Security Act. The expanded regulatory requirements would increase beneficiary protections and strengthen Federal oversight of the HCFA program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Tracy Jensen, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AF97

1541. CONDITIONS OF PARTICIPATION FOR RURAL HEALTH CLINICS (BPD-764-P)

Legal Authority: 42 USC 1395l(a); 42 USC 1395l(b); 42 USC 1395l(d); 42 USC 1395x(aa); 42 USC 1395oo(j); 42 USC 1395ww(a)(4); 42 USC 1395(a)(13)

CFR Citation: 42 CFR 405; 42 CFR 410; 42 CFR 491

Legal Deadline: None

Abstract: This rule would update our regulations to incorporate several health care coverage and payment provisions contained in Public Laws 100-203, 101-239, and 101-508 (the OBRAs '87, '89, and '90) and would propose administrative changes that clarify policy related to sharing space between rural health centers and other entities, such as physician offices.

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jacqueline Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4635**

RIN: 0938–AG05

1542. INCOME AND ELIGIBILITY VERIFICATION SYSTEM (MB-66-P)

Legal Authority: 42 USC 1320b-7

CFR Citation: 42 CFR 435.940; 42 CFR 435.945; 42 CFR 435.948; 42 CFR 435.952; 42 CFR 435.953; 42 CFR 435.955; 42 CFR 435.960; 42 CFR 435.965

Legal Deadline: None

Abstract: This rule would amend our regulations to allow States more flexibility to limit their income and eligibility verification system data match requests to only those matches that are productive or useful. States would be required to submit plans of alternative income and eligibility verification system procedures for approval by HCFA. The flexibility offered by this change would afford States the freedom to design more efficient data matches.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: State

Additional Information:

TIMETABLE: Pending publication of AFDC regulation (RIN 0970-AB13).

Agency Contact: Donna Jarosinski, Program Analyst, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 273, EHR, 6325 Security Boulevard, Baltimore, MD 21207, **410 966-5928**

RIN: 0938–AG12

1543. MEDICARE APPEALS OF INDIVIDUAL CLAIMS (BPD-453-P)

Legal Authority: 42 USC 1395ff

CFR Citation: 42 CFR 405.732; 42 CFR 405.801; 42 CFR 405.837; 42 CFR 405.838; 42 CFR 405.839; 42 CFR 405.840

Legal Deadline: None

Abstract: This rule would implement sections 9313(a)(1) and 9341 of PL 99-509. Section 9313(a)(1) permits providers, physicians or suppliers to represent beneficiaries, with certain limitations, in pursuing appeals of adverse determinations regarding claims for benefits under Medicare Part A or Part B. Section 9341 extends to Medicare Part B claimants the right to a hearing before an administrative law judge if the amount in controversy is at least $500 and to judicial review, provided the amount in controversy is at least $1000. Section 9341 also limits the review of national coverage determinations and prohibits judicial review of any regulation or instruction, initially issued before January 1, 1981, relating to a method of determining the amount of payment under Part B.

Timetable:

Action	Date	FR Cite
NPRM	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Olenick, Director, Division of Medicare Eligibility Policy, BPD, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4472**

RIN: 0938–AG18

1544. END-STAGE RENAL DISEASE (ESRD) PAYMENT EXCEPTION REQUESTS AND ORGAN PROCUREMENT COSTS (BPD-763-P)

Legal Authority: 42 USC 1395rr

CFR Citation: 42 CFR 413.170; 42 CFR 413.172; 42 CFR 413.174; 42 CFR 413.176; 42 CFR 413.178; 42 CFR 413.179; 42 CFR 413.180; 42 CFR 413.182; 42 CFR 413.184; 42 CFR 413.186; 42 CFR 413.188; 42 CFR 413.190; 42 CFR 413.192; 42 CFR 413.194; 42 CFR 413.196; ...

Legal Deadline: None

Abstract: These regulations specify the criteria HCFA would use to determine if a facility furnishing dialysis services to patients with end stage renal disease qualifies for a higher payment under an exception to the prospectively determined payment rate. We are proposing to compute the acquisition costs of hearts and livers using the same method we now use to pay for the acquisition costs of kidneys.

Timetable:

Action	Date	FR Cite
NPRM	08/26/94	
NPRM Comment Period End	10/25/94	59 FR 44097
Final Action	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Michael Powell, Health Insurance Specialist, Division of Special Payment Programs, BPD, Department of Health and Human Services, Health Care Financing Administration, Room 1-A-5, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4557**

RIN: 0938–AG20

1545. APPOINTMENT OF REPRESENTATIVES FOR APPEAL (BPO-120-P)

Legal Authority: 42 USC 1395ff

CFR Citation: 42 CFR 405.870; 42 CFR 405.701(c)

Legal Deadline: None

Abstract: This rule would clarify current regulations concerning: who can be appointed as representatives at Medicare appeal proceedings; the appointment procedure for representatives; whether a representative may be paid for his or her services; and the representative's specific responsibilities. These changes would improve the administration of the claims appeal process.

Timetable:

Action	Date	FR Cite
NPRM	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Betsy Horne, Chief Appeals Branch, Bureau of Program Operations, Department of Health and Human Services, Health Care Financing Administration, G-C-1 Meadows East Building, 6325 SEcurity Boulevard, Baltimore, Maryland 21207, **410 966-4292**

RIN: 0938–AG30

1546. ENFORCEMENT REQUIREMENTS FOR RENAL DIALYSIS FACILITIES (HSQ-204-P)

Legal Authority: 42 USC 1395rr(h)

CFR Citation: 42 CFR 405; 42 CFR 405.2181; 42 CFR 405.2182; 42 CFR 405.2184

Legal Deadline: None

Abstract: This rule would implement section 12 of PL 100-93, which amended section 1881 of the Social Security Act by adding a new paragraph (h). Paragraph (h) broadens the Secretary's authority to impose alternative sanctions on suppliers of end-stage renal disease services when the noncompliance of the supplier does not immediately jeopardize patient health and safety. Alternative sanctions provide HCFA with a more flexible response to facility deficiencies short of termination.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Debbie Schoenemann, Chief, Survey and Certification Procedures Branch, HSQ, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6771**

RIN: 0938–AG31

1547. DISCLOSURE OF CONFIDENTIAL PRO INFORMATION FOR RESEARCH PURPOSES (HSQ-208-P)

Legal Authority: 42 USC 1320c-9

CFR Citation: 42 CFR 1320c-9

Legal Deadline: None

Abstract: This rule would allow Peer Review Organizations (PROs) to disclose confidential information to researchers without the consent of the individuals who would be identified. Currently, PROs can only disclose to the public nonconfidential aggregate data where no one is specifically identified. The Statute, however, provides for limited disclosure in case there are circumstances the Secretary shall by regulations provide to assure adequate protection of the rights and interest of patients, health care practitioners, or providers. HCFA is now emphasizing the sharing of PRO data for educational and research purposes as evidenced by the implementation of the Uniform Clinical Data Set and the Health Care Quality Improvement Initiative. This regulatory revision will make confidential PRO information accessible to researchers while still protecting the identities of beneficiaries and practitioners from unwarranted disclosure. PRO flexibility to share information with researchers

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is comparable with the revised requirements in the PRO's Fourth Scope of Work contract.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: State, Federal

Agency Contact: Mike Rappaport, Director, Division of Systems Management, Health Standards Quality Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-3, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-6759

RIN: 0938–AG33

1548. COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES (MB-070-P)

Legal Authority: 42 USC 1395u

CFR Citation: 42 CFR 435.3; 42 CFR 435.260; 42 CFR 440.1; 42 CFR 440.190; 42 CFR 441.400; 42 CFR 441.402; 42 CFR 441.404; 42 CFR 441.406; 42 CFR 441.408; 42 CFR 441.410; 42 CFR 441.412; 42 CFR 441.414

Legal Deadline: None

Abstract: This rule would specify requirements that must be met in order for a State to be eligible to provide community supported living arrangements services to individuals with developmental disabilities as an optional Medicaid service.

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State

Additional Information:

TIMETABLE: Pending resolution of Complex Policy Issues.

Agency Contact: Mary Jean Duckett, Chief, Home and Community Based Waivers Branch, MB, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-5649

RIN: 0938–AG35

1549. TELEPHONE REQUESTS FOR REVIEW OF INITIAL DETERMINATIONS (BPO-121-P)

Legal Authority: 42 USC 1395ff

CFR Citation: 42 CFR 405.807

Legal Deadline: None

Abstract: Current Medicare regulations allow a Medicare beneficiary to appeal, in writing, decisions to deny payment for a claim under supplementary medical insurance. This rule would allow a beneficiary to appeal an initial payment determination either in writing or by telephone.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Rosalind Little, Appeals Branch, Division of Appeals and Communication, Department of Health and Human Services, Health Care Financing Administration, G-C-1 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-6972

RIN: 0938–AG48

1550. CONDITIONS FOR PAYMENT FOR PHYSICIANS' SERVICES IN TEACHING SETTINGS (BPD-792-P)

Legal Authority: 42 USC 1302; 42 USC 1395w

CFR Citation: 42 CFR 405; 42 CFR 415

Legal Deadline: None

Abstract: This rule would establish in regulations current coverage and payment policy concerning teaching physicians' services. It would also establish in regulations certain policies relating to the coverage and payment of the services of residents in settings other than hospitals. This proposed rule will supersede the proposed rule published on February 7, 1989 (54 FR 5946).

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information:

TIMETABLE: Pending resolution of complex policy issues.

Agency Contact: William Morse, Program Analyst, Physician and Practitioner Payment Branch, Department of Health and Human Services, Health Care Financing Administration, 1-H-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4520

RIN: 0938–AG53

1551. NEW LOOK BEHIND FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (ICFS/MR) (HSQ-214-P)

Legal Authority: 42 USC 1396i

CFR Citation: 42 CFR 442.116

Legal Deadline: None

Abstract: The rule would add regulations to delineate HCFA/DHHS authority to cancel the Medicaid approval of an intermediate care facility for the mentally retarded (ICF/MR) if HCFA determines that the facility has failed to meet Medicaid certification requirements. The rule would also eliminate the current regulatory policy by which States are entitled to up to 120 days of FFP for ICFs/MR having been terminated from the Medicaid program, while their appeals are pending.

Timetable:

Action	Date	FR Cite
NPRM	08/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Pamela V. Vocke, Director, Division of Program Operations, Health Standards and Quality Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2, ME Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-7089

RIN: 0938–AG58

1552. EFFECT OF CHANGE OF OWNERSHIP ON PROVIDER AND SUPPLIER PENALTIES, SANCTIONS, AND OVERPAYMENTS (HSQ-215-P)

Legal Authority: 42 USC 1395hh

CFR Citation: 42 CFR 405.1803; 42 CFR 405.1811; 42 CFR 405.1835; 42 CFR 489.18

Legal Deadline: None

Abstract: This rule would amend regulations on provider agreements to clarify the effect a change of ownership has on penalties and sanctions incurred by Medicare providers and suppliers. It would state that all Medicare penalties and sanctions are automatically assigned to a new owner unless otherwise stated in the change of ownership. It would also extend the same principle to overpayments; i.e., we would amend the regulations on provider overpayments to require the new owner of a provider or a supplier to be liable for any Medicare overpayments paid to the previous owner unless otherwise stated in the change of ownership. Finally, we would clarify the effect of a leasing arrangement has on a provider agreement and on supplier approval.

Timetable:

Action	Date	FR Cite
NPRM	02/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Pamela V. Vocke, Director of Program Operations, Health Standards and Quality Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2, ME Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-7089

RIN: 0938–AG59

1553. INSTITUTIONAL PLAN AMENDMENT FINDINGS (MB-078-P)

Regulatory Plan: This entry is Seq. No. 49 in Part II of this issue of the Federal Register.

RIN: 0938–AG60

1554. MEDICARE PROGRAM: LIMITATIONS ON MEDICARE COVERAGE OF CATARACT SURGERY (BPD-797-PN)

Legal Authority: 42 USC 1395x; 42 USC 1395y

CFR Citation: None

Legal Deadline: None

Abstract: This notice would announce the Medicare program's proposal to adopt certain recommendations set forth by the Agency for Health Care Policy and Research and the Guidelines for Cataract Practice in order to define medical necessity with respect to Medicare coverage of cataract surgery and Nd:YAG capsulotomy. This would reinforce our policy of noncoverage for most preoperative testing for cataract surgery, as set forth in the Medicare Coverage Issues Manual.

Timetable:

Action	Date	FR Cite
Proposed Notice	02/00/95	

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Karen Fink, Health Insurance Specialist, Office of Coverage and Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21297, 410 966-4643

RIN: 0938–AG65

1555. EFFECTS OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP) ON REASONABLE COSTS DETERMINATIONS (BPD-800-P)

Legal Authority: 42 USC 1395x(v)

CFR Citation: 42 CFR 413.20; 42 CFR 413.24

Legal Deadline: None

Abstract: This proposed rule would clarify our policy on the application of generally accepted accounting principles (GAAP) for Medicare reimbursement purposes. We would specify that the use of GAAP is required for cost reporting purposes but that the Secretary is not required to follow GAAP in determining Medicare reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John Eppinger, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4518

RIN: 0938–AG66

1556. EXPANSION OF THE DEFINITION OF EYE AND EAR SPECIALTY HOSPITALS (BPD-804-P)

Legal Authority: 42 USC 1395(l)(i)(4)

CFR Citation: 42 CFR 413

Legal Deadline: None

Abstract: Hospitals designated as eye or eye and ear hospitals receive a blended payment for the facility costs of ambulatory surgical procedures based on 75 percent of costs and 25 percent of the ambulatory surgical center rate for cost reporting periods beginning before January 1, 1995. In accordance with section 13532 of OBRA '93, this proposed rule would expand the definition of eye or eye and ear hospitals. The expanded definition would extend eligibility for designation as an eye or eye and ear hospital to hospitals meeting specified criteria.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn Muller, Payment Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4589

RIN: 0938–AG67

1557. SALARY EQUIVALENCY GUIDELINES FOR PHYSICAL AND RESPIRATORY THERAPY SERVICES FURNISHED UNDER ARRANGEMENTS (BPD-808-PN)

Legal Authority: 42 USC 1395x(v)(5)

CFR Citation: 42 CFR 413.106

Legal Deadline: None

Abstract: This notice proposes revisions for the salary equivalency guidelines for Medicare payment for the reasonable costs of physical and respiratory therapy services and other therapy services furnished by providers under arrangements with an outside contractor. The guidelines are used by Medicare fiscal intermediaries to determine the maximum allowable costs of those services.

Timetable:

Action	Date	FR Cite
Proposed Notice	10/00/95	

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Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Jacqueline Gordon, Program Analyst, Payment Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4517**

RIN: 0938–AG70

1558. MEDICAID: OPTIONAL COVERAGE OF TB-RELATED SERVICES FOR INDIVIDUALS INFECTED WITH TUBERCULOSIS (MB-082-P)

Legal Authority: 42 USC 1396a(a)(10)(A)(ii); PL 103-66, Sec 13603; 42 USC 1396a

CFR Citation: 42 CFR 435.219; 42 CFR 435.201; 42 CFR 440.250

Legal Deadline: None

Abstract: This rule would amend the existing Medicaid regulations to provide for optional Medicaid coverage of low-income individuals infected with tuberculosis (TB). These individuals would be eligible only for specified TB-related services.

The rule would incorporate and interpret provisions of section 13603 of OBRA '93.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Joe Dulany, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-0665**

RIN: 0938–AG72

1559. PROPOSED PAYMENTS TO DISPROPORTIONATE SHARE HOSPITALS FOR FY 1995 (MB-089-N)

Legal Authority: 42 USC 1396r-4(f)

CFR Citation: 42 CFR 447.297; 42 CFR 447.298; 42 CFR 447.299

Legal Deadline: Other, Statutory, October 1, 1994.
The Social Security Act requires publication of preliminary amounts by the beginning of each Federal fiscal year.

Abstract: This notice will contain the preliminary Fiscal Year 1995 national target and each State's allotment for disproportionate share hospital (DSH) payments. DSH payments are payment adjustments made to Medicaid participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. Implementing regulations require that a notice be published before the start of each FFY with the preliminary amounts for the FFY.

Timetable:

Action	Date	FR Cite
Proposed Notice	10/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Richard Strauss, Analyst, Division of Financial Management, Department of Health and Human Services, Health Care Financing Administration, Room 273, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-2010**

RIN: 0938–AG75

1560. • REVISION OF MEDICARE HOSPITAL CONDITIONS OF PARTICIPATION (BPD-745-P)

Regulatory Plan: This entry is Seq. No. 50 in Part II of this issue of the Federal Register.

RIN: 0938–AG79

1561. • PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS—EXPANDED TO DESIGNATED HEALTH SERVICES (BPD-809-P)

Regulatory Plan: This entry is Seq. No. 51 in Part II of this issue of the Federal Register.

RIN: 0938–AG80

1562. • HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (BPD-819-P)

Regulatory Plan: This entry is Seq. No. 52 in Part II of this issue of the Federal Register.

RIN: 0938–AG81

1563. • END STAGE RENAL DISEASE (ESRD) CONDITIONS OF COVERAGE (BPD-818-P)

Regulatory Plan: This entry is Seq. No. 53 in Part II of this issue of the Federal Register.

RIN: 0938–AG82

1564. • DISTINCT PARTS AND COSTING FOR SKILLED NURSING FACILITIES AND NURSING FACILITIES (BPD-815-P)

Legal Authority: 42 USC 1395i-3; 42 USC 1395r

CFR Citation: 42 CFR 409; 42 CFR 483

Legal Deadline: None

Abstract: In this proposed rule we would define "distinct part" by specifying that a distinct part is a physically identifiable unit of an institution (that is, an entire ward wing, floor, or building) including all beds in the unit. This rule also proposes an alternative approach for calculating Medicare payments to a skilled nursing facility (SNF). This new "distinct costing" procedure would enable a participating SNF to establish a distinct costing area within the SNF for its relatively high intensity residents so that it can isolate and fully capture the routine cost of their care without resorting to the use of arbitrary certification boundaries to achieve this result.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Ullman, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **401 966-5667**

RIN: 0938–AG84

1565. • EXTENSION OF CERTAIN EFFECTIVE DATES FOR CLINICAL LABORATORY REQUIREMENTS AND PERSONNEL REQUIREMENTS FOR CYTOLOGISTS (HSQ-217-FC)

Legal Authority: 42 USC 263a

CFR Citation: 42 CFR 493.855; 42 CFR 493.1201; 42 CFR 493.1202; 42 CFR 493.1203; 42 CFR 493.1213: 42 CFR 493.1215; 42 CFR 493.1217; 42 CFR 493.1218; 42 CFR 493.1223; 42 CFR 493.1443

Legal Deadline: None

Abstract: This rule will extend the date by which a laboratory must enroll in an HHS-approved cytology proficiency testing program. It also extends the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing. In addition, we are extending the phase-in for minimum quality control requirements for unmodified, moderate complexity testing cleared through the Food and Drug Administration premarket notification on premarket approval processes. The date extensions do not reduce current requirements for quality test performance. Rather, they take into account more realistic timeframes based on actual experience.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Kremann, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, Meadowwood East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 597-5906**

RIN: 0938–AG86

1566. • CLINICAL LABORATORY IMPROVEMENT AMENDMENT (CLIA) FEE SCHEDULES (HSQ-219-FC)

Legal Authority: PL 100-578

CFR Citation: 42 CFR 493.638; 42 CFR 493.649

Legal Deadline: None

Abstract: The preamble to this final rule with comment period announces updated fees that laboratories must pay as required by CLIA '88. Fee increases are necessary to meet the costs of program administration, which are to be borne by the laboratories. In addition, technical conforming changes are made to the regulations to ensure consistent and complete references.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Ed Mortimore, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, Meadowwood East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 597-2140**

RIN: 0938–AG87

1567. • APPROVAL OF THE AMERICAN SOCIETY FOR HISTOCOMPATIBILITY AND IMMUNOGENETICS FOR THE SPECIALTY OF HISTOCOMPATIBILITY (HSQ-220-N)

Legal Authority: 42 USC 263a

CFR Citation: 42 CFR 493.501

Legal Deadline: None

Abstract: This notice announces HCFA's approval of the American Society for Histocompatibility and Immunogenetics as an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments at 1988 for the specialty of histocompatibility. The effect of this notice is to exempt laboratories accredited by the American Society for Histocompatibility from having to be surveyed by Medicare surveyors for that specialty, except for validation and complaint investigation surveys.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Anthony Tirone, Director, Office of Survey and Certification, HSQB, Department of Health and Human Services, Health Care Financing Administration, 2-D-2, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6763**

RIN: 0938–AG88

1568. • MEDICAID: COVERAGE OF REHABILITATION SERVICES (MB-076-P)

Legal Authority: 42 USC 1396d(a)(13)

CFR Citation: 42 CFR 440.130; 42 CFR 440.110; 42 CFR 440.90

Legal Deadline: None

Abstract: The rule would amend the Medicaid regulations to redefine rehabilitation services furnished as medical assistance under the Medicaid program. The rule also would clarify the limitations on and conditions for providing rehabilitation services in various settings. These amendments incorporate and interpret a statutory change to the definition of rehabilitation services made by section 4719 of OBRA '90.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Linda Sizelove, Chief, Medicaid Coverage Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4626**

RIN: 0938–AG89

1569. • MEDICAID: NOMINAL COPAYMENTS FOR INSTITUTIONAL SERVICES FOR MEDICAID RECIPIENTS (MB-090-FC)

Legal Authority: 42 USC 1396a(a)(14); 42 USC 1396o

CFR Citation: 42 CFR 447.54; 42 CFR 447.55

Legal Deadline: None

Abstract: This final rule with comment period redefines the nominal maximum deductible, coinsurance, or copayment charge that a State may impose on certain Medicaid recipients for each admission for inpatient hospital services. This revision of the copayment amount will help prevent undue hardships on Medicaid recipients who have low or no income by limiting the impact of rising health care costs.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

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HHS—HCFA — **Proposed Rule Stage**

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Marinos Svolos, Office Director, Medicaid Eligibility Policy, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 323, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4451

RIN: 0938–AG90

1570. • WAGE INDEX USED TO ADJUST PAYMENT RATES FOR HOSPICE SERVICES UNDER THE MEDICARE PROGRAM (BPD-820-N)

Legal Authority: 42 USC 1395f(i); 5 USC 561 to 590

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: The Medicare hospice benefit has been in effect since 1983. This proposed rule would update the wage index that we use to adjust payment rates in different areas of the country, which reflect local differences in area wage levels. We are considering development of this proposed rule through a "negotiated rulemaking" proceeding under the Negotiated Rulemaking Act of 1990. The next step will be to publish a notice of intent to form an advisory committee to negotiate the wage index.

Timetable:

Action	Date	FR Cite
Notice of Intent	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Randal S. Ricktor, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, MD 21207, 410 966-5650

RIN: 0938–AG93

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Health Care Financing Administration (HCFA)

Final Rule Stage

1571. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY SERVICES (BPD-309-F)

Legal Authority: 42 USC 1395l(a)(1)(D); 42 USC 1395l(a)(2)(D); 42 USC 1395l(b)(3); 42 USC 1395l(h); 42 USC 1395cc(a)(2)(A); 42 USC 1396b(i)(7)

CFR Citation: 42 CFR 405.501; 42 CFR 405.502; 42 CFR 405.505; 42 CFR 405.506; 42 CFR 405.511; 42 CFR 405.556; 42 CFR 405.1310; 42 CFR 413.170; 42 CFR 414.350 to 414.378; 42 CFR 424.55; 42 CFR 424.64; 42 CFR 431.54; 42 CFR 447.10; 42 CFR 447.300; 42 CFR 447.321

Legal Deadline: None

Abstract: This regulation will incorporate provisions of Public Laws 98-369, 99-272, 99-509, 100-203, 100-647, 101-239 and 101-508 regarding payment and "assignment" for diagnostic clinical laboratory tests establishing in regulations the methods for implementing fee schedules. This rule would set forth the methods by which the fee schedules would be updated and would allow certain adjustments for exceptions to the fee schedule. It will also reflect a statutory revision mandated by the OBRA '93.

Timetable:

Action	Date	FR Cite
NPRM	08/18/93	58 FR 43156
NPRM Comment Period End	10/18/93	58 FR 43156
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

TIMETABLE: Pending publication of RIN 0938-AF40.

Agency Contact: Ron Wren, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-4506

RIN: 0938–AB50

1572. HOME AND COMMUNITY-BASED SERVICES AND RESPIRATORY CARE FOR VENTILATOR-DEPENDENT INDIVIDUALS (MB-8-FC)

Legal Authority: 42 USC 1396n(c)

CFR Citation: 42 CFR 435.726; 42 CFR 435.735; 42 CFR 440.180; 42 CFR 441.301; 42 CFR 441.302; 42 CFR 441.303; 42 CFR 441.304; 42 CFR 441.305; 42 CFR 441.306; 42 CFR 441.307; 42 CFR 441.308; 42 CFR 441.310; 42 CFR 440.185; 42 CFR 440.250

Legal Deadline: None

Abstract: This rule revises the regulations for home and community based services as required by section 9502 of PL 99-272, sections 9408 and 9411 of PL 99-509, sections 4102 and 4118 of PL 100-203, sections 411(k)(10)(A) and 411(k)(10)(H) of PL 100-360, section 8427 of PL 100-647, and sections 4741 and 4742 of PL 101-508.

Timetable:

Action	Date	FR Cite
NPRM	06/01/88	53 FR 19950
NPRM Comment Period End	07/31/88	53 FR 19950
Final Rule With Comment Period	07/25/94	59 FR 37702
Effective Date	08/24/94	59 FR 37702
Comment Period End	09/23/94	59 FR 37702
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400 EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-5659

RIN: 0938–AC55

1573. PARTICIPATION IN CHAMPUS AND CHAMPVA, HOSPITAL ADMISSIONS FOR VETERANS, DISCHARGE RIGHTS NOTICE, AND HOSPITAL RESPONSIBILITY FOR EMERGENCY CARE (BPD-393-FC)

Legal Authority: 42 USC 1395x; 42 USC 1395cc; 42 USC 1395dd

CFR Citation: 42 CFR 488.18; 42 CFR 489.20; 42 CFR 489.24; 42 CFR 489.25; 42 CFR 489.26; 42 CFR 489.27; 42 CFR 489.53; 42 CFR 1003

Legal Deadline: None

Abstract: This final rule formally implements statutory requirements that require Medicare participating hospitals with emergency departments to provide upon request medical examinations and treatments for individuals with emergency medical conditions and women in labor. A participating hospital that has specialized capabilities or facilities (such as burn, shock trauma, or neonatal intensive care units) must accept an appropriate transfer if they have the capacity to treat the individual. Hospitals failing to meet those requirements may have their Medicare provider agreements terminated, and hospitals and responsible physicians may be subject to civil money penalties. Under section 9122 of PL 99-272, Medicare participating hospitals are required to accept CHAMPUS and CHAMPVA payment as payment in full for services provided to CHAMPUS and CHAMPVA beneficiaries. These regulations also implement section 9305(b) of PL 99-509, which requires Medicare hospitals to give patients a notice of their discharge rights.

Timetable:

Action	Date	FR Cite
NPRM	06/16/88	53 FR 22513
NPRM Comment Period End	08/15/88	53 FR 22513
Final Rule With Comment Period	06/22/94	59 FR 32086
Effective Date	07/22/94	59 FR 32086
Comment Period End	08/22/94	59 FR 32086
Final Rule	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jacqueline Sheriden, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR Bldg., 6325 Security Blvd., Baltimore, MD 21207, 410 966-4635

RIN: 0938–AC58

1574. DENIAL OF PAYMENT FOR SUBSTANDARD QUALITY CARE (HSQ-132-F)

Legal Authority: 42 USC 1320c-3(a); 42 USC 1395cc(a)(1)(K); 42 USC 1395u; 42 USC 1395pp(b)

CFR Citation: 42 CFR 462.105; 42 CFR 466; 42 CFR 473; 42 CFR 476; 42 CFR 489.21

Legal Deadline: None

Abstract: This final rule implements section 9403 of PL 99-272; section 9353(c) of PL 99-509; section 4096(a) of PL 100-203; and section 4205 of PL 101-508. In accordance with these statutory provisions, Peer Review Organizations (PROs) are authorized to deny Medicare payment to a physician or hospital for services furnished that are of substandard quality. Beneficiaries are protected from liability for the cost of the services where payment is denied because services were of substandard quality.

Timetable:

Action	Date	FR Cite
NPRM	01/08/89	54 FR 1956
NPRM Comment Period End	03/20/89	54 FR 1956
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information:

TIMETABLE: Pending review in light of the Health Care Quality Improvement Initiative under the PRO program.

Agency Contact: Harvey Brook, Office of Peer Review, Department of Health and Human Services, Health Care Financing Administration, 2-D-2 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 410 966-6853

RIN: 0938–AC84

1575. REVISED EFFECTIVE DATE OF MEDICARE/MEDICAID PROVIDER AGREEMENT AND SUPPLIER PARTICIPATION (HSQ-139-F)

Legal Authority: 42 USC 1395cc; 42 USC 1396i

CFR Citation: 42 CFR 440.10; 42 CFR 440.70; 42 CFR 442.13; 42 CFR 488.11; 42 CFR 489.13; 42 CFR 498.3

Legal Deadline: None

Abstract: This rule will establish uniform rules for determining the effective date of participation for all providers and suppliers whose Medicare or Medicaid approval requires onsite surveys by the State survey agency. Also, it provides criteria for determining the effective date of participation for those providers and suppliers who are deemed to meet the conditions by an accreditation. It would also specify that those dissatisfied with a decision on their effective date of participation under Medicare are entitled to a Medicare reconsideration and hearing on the decision.

Timetable:

Action	Date	FR Cite
NPRM	10/08/92	57 FR 46362
NPRM Comment Period End	12/07/92	
Final Action	04/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: Pam Vocke, Director, Division of Program Operations, Office of Survey and Certification, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2 Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21207, 410 966-7089

RIN: 0938–AC88

1576. CHANGES CONCERNING SUSPENSION OF MEDICARE PAYMENTS AND DETERMINATIONS OF ALLOWABLE INTEREST EXPENSE (BPO-118-FC)

Legal Authority: 42 USC 1320b-4; 42 USC 1395g; 42 USC 1395x(v)(1)(A); 42 USC 1395l; 42 USC 1395gg

CFR Citation: 42 CFR 413.153; 42 CFR 405.370; 42 CFR 413.5(c)(3); 42 CFR 405.371; 42 CFR 405.372; 42 CFR 405.373; 42 CFR 405.375

Legal Deadline: None

Abstract: This rule will change the Medicare regulations to provide for the following: (1) elimination of the requirement that in case of overpayments to health care providers, the contractor makes a determination that a suspension of payment is needed to protect the program against financial loss before the payment can be suspended; (2) clarification of procedures and roles of contractors, HCFA, and the Office of Inspector General relating to suspension of payment; (3) elimination of the requirement that investment income of providers from gifts, grants, and endowments be offset against allowable interest expenses if that investment income is commingled with other

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funds; and (4) extension of the list of exceptions to the interest expense investment income offset provision to include investment income from deferred compensation plans and self-insurance funds.

Timetable:

Action	Date	FR Cite
NPRM	08/22/88	53 FR 31888
NPRM Comment Period End	10/21/88	53 FR 31888
Final Rule With Comment Period	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

TIMETABLE: Pending resolution of complex administrative issues.

Agency Contact: Sam Guida, Director, Div. of Acct Managmt & Collections, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, 1-E-6 Meadows East Building, 6325 Security Blvd., Baltimore, MD 21207, **410 966-7495**

RIN: 0938–AC99

1577. CHANGES CONCERNING THE DEFINITION OF ACCRUAL BASIS OF ACCOUNTING (BPD-366-FC)

Legal Authority: 42 USC 1395x(v)(1)(A)

CFR Citation: 42 CFR 413.24

Legal Deadline: None

Abstract: This rule will revise the Medicare regulations to clarify the definition of "accrual basis of accounting" to indicate that expenses must be incurred by a provider of health care services before Medicare will pay its share of those expenses. This change is intended to incorporate into the regulations Medicare's longstanding policy regarding the circumstances under which we recognize, for the purposes of program payment, a provider's claim for costs for which it has not actually expended funds during the current cost reporting period.

Timetable:

Action	Date	FR Cite
NPRM	10/09/91	56 FR 50834
NPRM Comment Period End	12/09/91	56 FR 50834
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Eppinger, Payment Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4518**

RIN: 0938–AD01

1578. OPTIONAL PAYMENT SYSTEM FOR LOW MEDICARE VOLUME SKILLED NURSING FACILITIES (BPD-409-F)

Legal Authority: 42 USC 1395yy(d)

CFR Citation: 42 CFR 413.200; 42 CFR 413.202; 42 CFR 413.204; 42 CFR 413.208; 42 CFR 413.210; 42 CFR 413.212; 42 CFR 413.214; 42 CFR 413.216; 42 CFR 413.220; 42 CFR 413.221; 42 CFR 413.1; 42 CFR 413.24

Legal Deadline: None

Abstract: This rule will allow skilled nursing facilities (SNFs) that provide fewer than 1,500 days of care to Medicare beneficiaries in a cost reporting period to have the option of receiving prospective payments in the following cost reporting period. The prospective payments would be based on components of SNF costs such as routine operating costs, capital-related costs, and a return on equity for proprietary facilities for routine services furnished before October 1, 1993. This rule will also specify that the return on equity provision for proprietary SNFs is eliminated effective October 1, 1993.

Timetable:

Action	Date	FR Cite
NPRM	06/08/94	59 FR 29578
NPRM Comment Period End	08/08/94	59 FR 29578
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4513**

RIN: 0938–AD02

1579. CRITERIA AND PROCEDURES FOR MAKING MEDICAL SERVICES COVERAGE DECISIONS THAT RELATE TO HEALTH CARE TECHNOLOGY (BPD-432-F)

Legal Authority: 42 USC 1395y

CFR Citation: 42 CFR 400.200; 42 CFR 405.201; 42 CFR 405.203; 42 CFR 405.205; 42 CFR 405.207; 42 CFR 405.209

Legal Deadline: None

Abstract: The final rule establishes in regulations generally applicable criteria and procedures for determining whether a service is "reasonable and necessary" under the Medicare program; it sets forth the coverage decisionmaking process; and it summarizes and provides an analysis of the public comments that we received in response to the January 30, 1989 proposed rule (54 FR 4302). The objective of the criteria and procedures set forth in this rule is to ensure that Federal funds are expended only for medical services that are appropriate to meet an individual's medical needs.

Timetable:

Action	Date	FR Cite
NPRM	01/30/89	54 FR 4302
NPRM Comment Period End	03/31/89	54 FR 4302
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Additional Information:

TIMETABLE: Pending resolution of complex policy issues.

Agency Contact: Walter Rutemueller, Chief, Special Coverages Isues Branch, Department of Health and Human Services, Health Care Financing Administration, 401 East High Rise Bldg., 6325 Security Blvd., Baltimore, MD 21207, **410 966-5395**

RIN: 0938–AD07

1580. REVISIONS TO CONDITIONS OF PARTICIPATION FOR HOSPITALS AND CONDITIONS FOR COVERAGE OF SUPPLIERS OF END-STAGE RENAL DISEASE SERVICES (BPD-421-F)

Legal Authority: 42 USC 1395x(e)(6)(B); 42 USC 1395x(ee); PL 99-509, Sec 9339(d)

CFR Citation: 42 CFR 405; 42 CFR 482

Legal Deadline: None

Abstract: This final rule will require hospitals, as a condition of participation, to provide a discharge planning process for patients in accordance with section 9305(c) of PL 99-509. Revisions will also implement section 6025 of PL 101-239 to allow a doctor of dental surgery or dental medicine to be a hospital medical director if the laws of the State in which the hospital is located permit. The preamble to this final rule withdraws proposed regulations for the qualifications of laboratory directors under section 9339(d) of PL 99-509. The information collection burden of several end-stage renal disease regulations is reduced.

Timetable:

Action	Date	FR Cite
NPRM	06/16/88	53 FR 22506
NPRM Comment Period End	08/15/88	53 FR 22506
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jacqueline Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4635**

RIN: 0938–AD11

1581. MEDICAID ELIGIBILITY OF POVERTY LEVEL GROUPS AND EXTENDED COVERAGE OF SERVICES (MB-13-F)

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1396a(l); 42 USC 1396a(f); 42 USC 1396a(m); 42 USC 1396b(f); 42 USC 1396r-1; 42 USC 1396a(a)(47); 42 USC 1396a(e)(6); 42 USC 1396a(e)(7); 42 USC 1396a(a)(17)

CFR Citation: 42 CFR 431; 42 CFR 435; 42 CFR 436; 42 CFR 440; 42 CFR 447

Legal Deadline: None

Abstract: This rule will amend the Medicaid regulations to incorporate changes relating to Medicaid eligibility groups and coverage of services made by the Medicare Catastrophic Coverage Act of 1988 (PL 100-360), OBRAs '90, '89, '87, and '86 (PL 101-508, PL 101-239, PL 100-203 and PL 99-509), and the Homeless Eligibility Clarification Act of the Anti-Drug Abuse Act of 1986 (PL 99-570). This rule will add eligibility groups of pregnant women, infants and children, and aged and disabled individuals with incomes up to specified percentage of the Federal poverty line; clarify eligibility of homeless individuals; and add provisions for the presumptive eligibility period for pregnant women who, based on preliminary information, appear to meet income requirements under Medicaid.

Timetable:

Action	Date	FR Cite
NPRM	03/23/94	59 FR 13666
NPRM Comment Period End	05/23/94	
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 323 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4451**

RIN: 0938–AD17

1582. PROHIBITION ON UNBUNDLING OF HOSPITAL OUTPATIENT SERVICES (BPD-426-F)

Regulatory Plan: This entry is Seq. No. 54 in Part II of this issue of the **Federal Register**

RIN: 0938–AD33

1583. CHANGES TO PEER REVIEW ORGANIZATION REGULATIONS (HSQ-135-F)

Legal Authority: 42 USC 1395y(a); 42 USC 1320c; 42 USC 1396a(a)(30); 42 USC 1395cc(a)

CFR Citation: 42 CFR 400.200; 42 CFR 411.15; 42 CFR 431.630; 42 CFR 433.15; 42 CFR 462.1; 42 CFR 462.101; 42 CFR 462.102; 42 CFR 462.106; 42 CFR 462.107; 42 CFR 66.1; 42 CFR 466.71; 42 CFR 466.76; 42 CFR 466.78; 42 CFR 466.83

Legal Deadline: None

Abstract: This rule will set forth several changes to regulations that govern Peer Review Organizations (PROs) and is based on statutory changes contained in COBRA '85 (PL 99-272) and OBRA '86 (PL 99-503). In addition, several technical changes will be included as a result of experience gained with the PRO program by HCFA. This rule also implements the new quality review requirements for certain Medicaid Health Maintenance Organization contracts.

Timetable:

Action	Date	FR Cite
NPRM	03/16/88	53 FR 8654
NPRM Comment Period End	05/16/88	53 FR 8654
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Harvey Brook, Office of Peer Review, Department of Health and Human Services, Health Care Financing Administration, Rm. 2-D-2 Meadows East Bldg., 6325 Security Blvd., Baltimore, MD. 21207, **410 966-6853**

RIN: 0938–AD38

1584. PAYMENT FOR DURABLE MEDICAL EQUIPMENT AND ORTHOTIC AND PROSTHETIC DEVICES (BPD-494-F)

Legal Authority: 42 USC 1395m(a); 42 USC 1395x(n)

CFR Citation: 42 CFR 405.501; 42 CFR 405.514; 42 CFR 414.200; 42 CFR 414.202; 42 CFR 414.210; 42 CFR 414.220; 42 CFR 414.222; 42 CFR 414.226; 42 CFR 414.228; 42 CFR 414.229; 42 CFR 410.36; 42 CFR 410.38; 42 CFR 414.232

Legal Deadline: None

Abstract: This final rule responds to comments received in response to the final rule with comment period (57 FR 57675) implementing section 4062 of PL 100-203 and sections 4152 and 4153 of PL 101-508. That rule established fee schedules and payment methodologies that govern payments for six categories of durable medical equipment and orthotic and prosthetic devices. If changes are warranted based on our evaluation of comments, they will be incorporated in this final rule. It will also reflect statutory revisions mandated by OBRA '93.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/07/92	57 FR 57675
Effective Date	01/06/93	57 FR 57675
Public Comment Period End	02/05/93	57 FR 57675
Final Action	03/00/95	

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Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Long, Program Analyst, Division of Medical Services Payment, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5 ELR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-5655

RIN: 0938–AD65

1585. MEDICARE SECONDARY PAYER FOR DISABLED INDIVIDUALS (BPD-482-FC)

Legal Authority: 42 USC 1395y(b)

CFR Citation: 42 CFR 411

Legal Deadline: None

Abstract: This rule implements the Medicare secondary payer (MSP) provision for disabled individuals who are covered under large group health plans (LGHPs). Under this provision LGHPs may not take into account that such individuals are entitled to Medicare. The rule contains procedures under which a plan can appeal a determination of nonconformance which could lead to a tax penalty. It reflects statutory revisions mandated by OBRA '86, OBRA '89, and OBRA ' 93, some of which also affect the MSP provisions for persons who are entitled on the basis of age or end-stage renal disease.

Timetable:

Action	Date	FR Cite
NPRM	03/08/90	55 FR 8491
NPRM Comment Period End	05/08/90	55 FR 8491
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Herbert Pollock, Chief, Medicare Benefit Coordination Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, Maryland 21207, 410 966-4474

RIN: 0938–AD73

1586. MEDICARE COVERAGE OF HOME HEALTH SERVICES, MEDICARE CONDITIONS OF PARTICIPATION AND HOME HEALTH AIDE SUPERVISION (BPD-469-F)

Legal Authority: 42 USC 1395x(m); 42 USC 1395x(o); 42 USC 1395x(f); 42 USC 1395x(n); 42 USC 1395f(dd)

CFR Citation: 42 CFR 409; 42 CFR 413; 42 CFR 418; 42 CFR 484

Legal Deadline: None

Abstract: These regulations establish home health aide supervision and duty requirements applicable to all home health agencies and hospices that provide home health aide services under the Medicare program. In addition, these regulations codify longstanding policies concerning the limitations and exclusions applicable to home health services covered under the Medicare program. The rule also clarifies policies concerning exclusions for drugs and biological and prosthetic devices.

Timetable:

Action	Date	FR Cite
NPRM	09/27/91	56 FR 49154
NPRM Comment Period End	11/26/91	56 FR 49154
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Thomas, Health Insurance Specialist, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR, 6325 Security Blvd., Baltimore, Md. 21207, 410 966-4623

RIN: 0938–AD78

1587. APPEALS FOR ENROLLEES OF PREPAID HEALTH CARE PLANS (OMC-008-F)

Legal Authority: 42 USC 1395mm; 42 USC 1395l(a)(1)(A)

CFR Citation: 42 CFR 405; 42 CFR 417; 42 CFR 482

Legal Deadline: None

Abstract: This rule will amend or establish regulations relating to appeal rights and procedures for Medicare beneficiaries who are enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). Specifically, the rule will extend to HMO and CMP members the right to request review by a PRO of early hospital discharges; impose a 60-day limit for HMOs and CMPs to process requests by beneficiaries for reconsideration of decisions on denied services or claims; and require HCPPs to establish appeal procedures for enrollees who are Medicare beneficiaries. These changes are aimed at improving efficiency and at providing beneficiaries equitable appeal rights, regardless of their enrollment status.

Timetable:

Action	Date	FR Cite
NPRM	10/07/92	57 FR 46119
NPRM Comment Period End	12/07/92	57 FR 46119
Final Action	11/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Maureen Miller, Program Analyst, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360 Cohen Building, 330 Independence Ave. SW., Washington, DC 20201, 202 619-0129

RIN: 0938–AD79

1588. OMNIBUS NURSING HOME REFORM REQUIREMENTS (BPD-488-FC)

Legal Authority: 42 USC 1395i-3; 42 USC 1395x; 42 USC 1396r

CFR Citation: 42 CFR 418; 42 CFR 440; 42 CFR 441; 42 CFR 482; 42 CFR 483; 42 CFR 488

Legal Deadline: None

Abstract: This rule will implement several provisions of OBRA '87 other than those implemented through the rules published on February 2, 1989, and September 26, 1991, governing long term care facility participation in the Medicare and Medicaid programs effective October 1, 1990, and State requirements for Federal financial participation. The provisions include Federal standards for evaluating State waivers of nursing facility nurse staffing requirements, use of physical and chemical restraints in nursing facilities, qualifications of nursing home administrators, notices of Medicaid rights to be given to persons admitted to nursing facilities, and other technical changes.

Timetable:

Action	Date	FR Cite
NPRM	02/05/92	57 FR 4516
NPRM Comment Period End	04/06/92	57 FR 4516
Final Rule With Comment Period	05/00/95	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Bill Ullman, Health Insurance Specialist Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-5667

RIN: 0938–AD81

1589. SURVEY AND CERTIFICATION OF SKILLED NURSING FACILITIES AND NURSING FACILITIES AND ENFORCEMENT PROCEDURES (HSQ-156-F)

Regulatory Plan: This entry is Seq. No. 55 in Part II of this issue of the Federal Register.

RIN: 0938–AD94

1590. HMO ORGANIZATIONAL STRUCTURE AND SERVICES (OMC-007-F)

Legal Authority: 42 USC 300e(a); 42 USC 300e(b)(1); 42 USC 300e(b)(3)(A); 42 USC 300e(c)

CFR Citation: 42 CFR 417.100; 42 CFR 417.101; 42 CFR 417.103; 42 CFR 417.104; 42 CFR 417.107

Legal Deadline: None

Abstract: This regulation will provide organizations which operate health maintenance organizations (HMOs) that are federally qualified under Title XIII of the Public Health Service Act with greater flexibility in operating other health benefit plans. It will also authorize, with certain limitations, federally qualified HMOs to offer out-of-plan physician services and require a reasonable deductible for those services. Further, this regulation would permit the HMO to use assets of the parent organization to meet fiscal soundness and insolvency protection requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/15/93	58 FR 38170
NPRM Comment Period End	09/13/93	58 FR 38170
Final Action	05/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Maureen Miller, Analyst, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Bldg., 330 Independence Avenue SW., Washington, DC 20201, 202 619-0129

RIN: 0938–AE25

1591. "CONFINED TO THE HOME" REQUIREMENTS FOR HOME HEALTH SERVICES (BPD-626-F)

Legal Authority: 42 USC 1395f(a)(2)(C); 42 USC 1395n(a)(2)(A)

CFR Citation: 42 CFR 409.42

Legal Deadline: None

Abstract: This rule clarifies when a home health patient is considered "confined to the home" in order to receive home health benefits.

Timetable:

Action	Date	FR Cite
NPRM	10/07/91	56 FR 50542
NPRM Comment Period End	12/06/91	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: John Thomas, Health Insurance Specialist, Long Term Care Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-4623

RIN: 0938–AE34

1592. SURVEY REQUIREMENTS AND ALTERNATIVE SANCTIONS FOR HOME HEALTH AGENCIES (HSQ-169-F)

Legal Authority: 42 USC 1395w-2; 42 USC 1395bbb

CFR Citation: 42 CFR 488; 42 CFR 489; 42 CFR 498

Legal Deadline: None

Abstract: These rules will establish periodic, unannounced surveys of home health agencies (HHAs) and other survey requirements and also will specify a number of sanctions that could be used, when an HHA is out of compliance with Federal requirements, as an alternative or in addition to terminating an HHA's participation in the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	08/02/91	56 FR 37054
NPRM Comment Period End	10/01/91	56 FR 37054
Final Action	03/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Federal

Agency Contact: Pam Vocke, Director, Division of Program Operations, Office of Survey and Certification, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2 Meadows East, 6300 Security Boulevard, Baltimore, MD 21207, 410 966-7089

RIN: 0938–AE39

1593. HOSPITAL STANDARD FOR HIV INFECTIOUS BLOOD (BPD-633-F)

Legal Authority: 42 USC 1395x(e)(9)

CFR Citation: 42 CFR 482

Legal Deadline: None

Abstract: This final rule will require hospitals to notify either each recipient or each recipient's physician whenever potentially HIV infectious blood has been administered, and to provide each recipient with information to obtain testing and counseling. This rule implements a recommendation of the President's Commission on AIDS.

Timetable:

Action	Date	FR Cite
NPRM	06/30/93	58 FR 34977
NPRM Comment Period End	08/30/93	58 FR 34977
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Chief, Long Term Care Branch, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR, 6325 Security Blvd, Baltimore, MD 21207, 410 966-4620

RIN: 0938–AE40

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1594. MEDICARE, MEDICAID, AND CLIA PROGRAMS: REGULATIONS IMPLEMENTING THE CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988 (CLIA '88) (HSQ-202-F)

Regulatory Plan: This entry is Seq. No. 56 in Part II of this issue of the **Federal Register**.

RIN: 0938–AE47

1595. CONDITIONS OF COVERAGE FOR ORGAN PROCUREMENT ORGANIZATIONS (BPD-646-FC)

Legal Authority: 42 USC 1395x

CFR Citation: 42 CFR 485; 42 CFR 405; 42 CFR 482

Legal Deadline: Final, Statutory, November 16, 1991.

Abstract: This final rule sets forth changes to the conditions of coverage for organ procurement organizations (OPOs). It deals with the definition of an OPO service area, expansion of the qualifications for the Board of Directors, OPO assistance to be provided to hospitals in establishing and implementing protocols governing organ procurement activity, establishing criteria for allocating organs, and organ testing for AIDS.

Timetable:

Action	Date	FR Cite
NPRM	06/21/91	56 FR 28513
NPRM Comment Period End	08/21/91	56 FR 28513
Final Rule With Comment Period	09/08/94	59 FR 46500
Effective Date	10/11/94	59 FR 46500
Comment Period End	11/07/94	59 FR 46500
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Claude Mone, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-5666**

RIN: 0938–AE48

1596. PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW (BPD-661-F)

Legal Authority: 42 USC 1395r

CFR Citation: 42 CFR 483

Legal Deadline: NPRM, Statutory, March 19, 1990.

Abstract: The final rule with comment period published November 30, 1992, (57 FR 56450) implemented sections 4211 of OBRA '87, section 6901 of OBRA '89, and section 4801 of OBRA '90. The provisions included: (1) State requirements for preadmission screening and annual resident review of individuals with mental illness or mental retardation who are applicants to or residents of nursing facilities that are certified for Medicaid; and (2) appeals systems for persons who may be transferred or discharged from facilities or who wish to dispute a determination made in the preadmission screening and annual review process. The changes in this rule included OBRA '90 provisions defining "severe mental illness" and "specialized services" which will reduce State review workloads and clarify Medicaid matching payment for the States. Following analysis of the public comments, we may issue a final rulemaking document.

Timetable:

Action	Date	FR Cite
NPRM	03/23/90	55 FR 10951
NPRM Comment Period End	05/22/90	55 FR 10951
Final Rule With Comment Period	11/30/92	57 FR 56450
Public Comment Period End	01/29/93	57 FR 56450
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Jan Earle, Program Analyst, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-0103**

RIN: 0938–AE49

1597. EXTENDED MEDICAID ELIGIBILITY FOR CERTAIN INDIVIDUALS (MB-026-F)

Legal Authority: 42 USC 1396r-6; 42 USC 1396r(b)

CFR Citation: 42 CFR 435; 42 CFR 436; 42 CFR 440; 42 CFR 447

Legal Deadline: None

Abstract: This regulation will revise current regulations to reflect that participants in work supplement programs are deemed to be AFDC recipients under the State plan and make Medicaid eligibility mandatory for those individuals; to provide extended Medicaid benefits to certain families when they become ineligible for AFDC solely because of increased earnings from, or hours of, employment; and to revise certain conditions of eligibility that minor parents and pregnant minors must meet before receiving Medicaid benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/14/93	58 FR 65312
NPRM Comment Period End	02/11/94	58 FR 65312
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Federal

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4451**

RIN: 0938–AE51

1598. RESIDENT ASSESSMENT IN LONG-TERM CARE FACILITIES (HSQ-180-F)

Legal Authority: 42 USC 1395i-3; 42 USC 1396r

CFR Citation: 42 CFR 483

Legal Deadline: Final, Statutory, January 1, 1989.

Abstract: Sections 1819(b)(3) and 1919(b)(3) of the Social Security Act, as amended by PL 100-203, require skilled nursing facilities in the Medicare program and before October 1, 1990, as nursing facilities in the Medicaid program, to conduct a comprehensive, standardized assessment of each resident's capability to perform daily life functions. The assessment must also describe significant impairments in the resident's functional capacity and be based on a uniform minimum data set specified by the Secretary. Sections 1819(f)(6)(A) and 1919 (f)(6)(A) of the Act require the Secretary to specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments. This rule would specify this minimum data set and establish guidelines for using it.

Timetable:

Action	Date	FR Cite
NPRM	12/28/92	57 FR 61614
NPRM Comment Period End	02/26/93	57 FR 61614
Final Action	06/00/95	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Sue Nonemaker, Program Analyst, Division of Long Term Care, Department of Health and Human Services, Health Care Financing Administration, 2-D-2, ME, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6825**

RIN: 0938–AE61

1599. POST-CONTRACT BENEFICIARY PROTECTIONS AND OTHER PROVISIONS (OMC-003-F)

Legal Authority: 42 USC 1395mm

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: This rule will provide Medicare beneficiaries with certain coverage for pre-existing conditions under supplemental insurance after non-renewal or termination of a Medicare health maintenance organization (HMO) or competitive medical plan (CMP) contract; provide a 30-day open enrollment period for individuals who would otherwise lose prepaid Medicare coverage as a result of termination, non-renewal or reduction in service area of a risk contract; accelerate the deadline for risk contracting HMOs and CMPs to submit adjusted community rate proposals, require all HMOs and CMPs to furnish a copy of an executed enrollment application form to Medicare applicants, and require HCPPs to comply with HMO/CMP beneficiary application procedures.

Timetable:

Action	Date	FR Cite
NPRM	03/11/94	59 FR 11230
NPRM Comment Period End	05/09/94	
Final Action	08/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tracy Jensen, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360 Cohen Building, 330 Independence Ave. SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AE63

1600. CONFORMING PROVISIONS FOR 1988 HMO AMENDMENTS (OMC-004-F)

Legal Authority: 42 USC 300e(c); 42 USC 300e-1(l); 42 USC 300e-9

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: This rule would conform existing regulations to sections 5(b) and 7 of the Health Maintenance Organization (HMO) Amendments of 1988 (PL 100-517). It would prohibit employers from financially discriminating against HMO enrollees in setting employee health plan contributions.

Timetable:

Action	Date	FR Cite
NPRM	07/05/91	56 FR 30723
Public Comment Period End	09/03/91	56 FR 30723
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marty Abeln, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Building, 330 Independence Ave. SW., Washington, DC 20201, **202 205-9582**

RIN: 0938–AE64

1601. EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT (EPSDT) SERVICES (MB-28-F)

Regulatory Plan: This entry is Seq. No. 57 in Part II of this issue of the **Federal Register**.

RIN: 0938–AE72

1602. PAYMENT FOR NURSING AND ALLIED HEALTH SCIENCE EDUCATION (BPD-685-F)

Legal Authority: PL 101-239, Sec 6205; PL 101-508, Sec 4004; PL 101-508, Sec 4159; 42 USC 1395x note

CFR Citation: 42 CFR 413

Legal Deadline: NPRM, Statutory, July 1, 1990.

Section 6205(b)(2) of PL 101-239 required that a proposed rule be published before July 1, 1990 and that a final rule not be effective before 10/01/90.

Abstract: This rule will set forth our policy for the payment of the costs of approved nursing and allied health science programs, an action directed by section 6205(b)(2) of PL 101-239. For the most part, the provisions set forth in this rule restate or clarify our current policies governing these costs, which have been previously set forth in the provider reimbursement manual and other documents, but have never been included in the regulations. In addition, we are amending the list of approved programs and clarify payment rules for certified registered nurse anesthetist programs. This rule will also implement section 4004 of PL 101-508, which provides that, effective with cost reporting periods beginning on or after October 1, 1990, under certain conditions, costs incurred by a hospital or educational institution related to the hospital for clinical training are treated as pass-through costs and paid on the basis of reasonable cost even though the hospital does not operate the education programs.

Timetable:

Action	Date	FR Cite
NPRM	09/22/92	57 FR 43659
NPRM Comment Period End	11/23/92	57 FR 43659
Final Action	07/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Nancy Edwards, Chief, Payment Limitations and Exclusions Branch, Department of Health and Human Services, Health Care Financing Administration, 1-H-1 ELR, 6325 Security Blvd., Baltimore, Maryland 21207, **410 966-4531**

RIN: 0938–AE79

1603. UNIFORM ELECTRONIC COST REPORTING SYSTEM FOR HOSPITALS (BPD-689-F)

Legal Authority: 42 USC 1395ww(f)(1)(B)

CFR Citation: 42 CFR 413.20; 42 CFR 413.24; 42 CFR 413.40; 42 CFR 412.52

Legal Deadline: None

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Abstract: This rule will implement section 1886(f)(1)(B) of the Social Security Act, which requires the Secretary to place into effect a standardized electronic cost reporting format and allows the Secretary to waive the requirement where such implementation would result in a financial hardship for a hospital. Under this rule, all hospitals are required to submit their cost reports, for hospital cost reporting periods beginning on or after October 1, 1989, in a uniform electronic format.

Timetable:

Action	Date	FR Cite
NPRM	08/19/91	56 FR 41110
Comment Period End	10/18/91	56 FR 41110
Final Rule With Comment Period	05/25/94	59 FR 26960
Effective Date	06/24/94	59 FR 26960
Comment Period End	07/25/94	59 FR 26960
Final Action	00/00/00	

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: William Goeller, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4513**

RIN: 0938–AE80

1604. MEDICARE COVERAGE OF PRESCRIPTION DRUGS USED IN IMMUNOSUPPRESSIVE THERAPY (BPD-424-F)

Legal Authority: 42 USC 1395x(s)(2)(J)

CFR Citation: 42 CFR 410

Legal Deadline: None

Abstract: This final rule amends the regulations to reflect section 9335(c) of OBRA '86 and section 4075 of OBRA '87. These statutory provisions provide Medicare coverage for prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made for a period of one year after the transplant procedure. The final rule will also reflect statutory revisions mandated by OBRA 1993.

Timetable:

Action	Date	FR Cite
NPRM	01/19/88	53 FR 1383
NPRM Comment Period End	03/21/88	53 FR 1383
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Walter Rutemueller, Chief, Special Coverage Issues Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-5395**

RIN: 0938–AE94

1605. FIRE SAFETY STANDARDS FOR HOSPITALS, LONG-TERM CARE FACILITIES, AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (BPD-850-F)

Legal Authority: 42 USC 1395x; 42 USC 1396d

CFR Citation: 42 CFR 482.41(b)(1); 42 CFR 483.70(a); 42 CFR 483.470(j)(2)(i)(C)

Legal Deadline: None

Abstract: This rule amends the fire safety standards for hospitals, long term care facilities, and intermediate care facilities for the mentally retarded and affects only those facilities. It deletes references to the 1967 and 1973 editions of the Life Safety Code of the National Fire Protection Association and requires compliance with either the 1981 or 1985 editions depending on the date when the facility was first certified to participate in Medicare or Medicaid. This rule creates a uniform policy for all types of facilities that participate in the Medicare and Medicaid programs. The rescission of the 1967 and 1973 editions of the Life Safety Code is intended to ensure that Medicare and Medicaid beneficiaries and recipients have the benefit of the most current fire protection standards.

Timetable:

Action	Date	FR Cite
NPRM	08/01/90	55 FR 31196
NPRM Comment Period End	10/01/90	55 FR 31196
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Chief, Long Term Care Branch, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4620**

RIN: 0938–AE97

1606. COVERAGE OF SCREENING PAP SMEARS (BPD-705-F)

Legal Authority: 42 USC 1395x(s)(14); 42 USC 1395x(nn)

CFR Citation: 42 CFR 410.10; 42 CFR 411.15; 42 CFR 410.56

Legal Deadline: None

Abstract: This rule will establish regulations under section 6115 of OBRA '89 to govern Medicare Part B coverage of screening pap smears and related medically necessary services (including a physician's interpretation of the test results) provided to a woman for the early detection of cervical cancer.

Timetable:

Action	Date	FR Cite
NPRM	11/26/93	58 FR 62312
NPRM Comment Period End	01/24/94	58 FR 62312
Final Action	07/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: William Larson, Program Analyst, Medical Services Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4639**

RIN: 0938–AE98

1607. MEDICARE COVERAGE OF CLINICAL PSYCHOLOGIST, OTHER PSYCHOLOGIST, AND CLINICAL SOCIAL WORKER SERVICES—MEDICARE (BPD-706-F)

Legal Authority: 42 USC 1395l(c); 42 USC 1395x(hh)(2); 42 USC 1395x(ii)

CFR Citation: 42 CFR 410; 42 CFR 417; 42 CFR 424

Legal Deadline: None

Abstract: This rule will address provisions of section 6113 of OBRA '89 and section 4157 of OBRA '90. Section

6113 of OBRA '89 provides coverage for the services of clinical psychologists (CPs) and clinical social workers. It requires CPs to agree to consult with the patient's primary care or attending physician. Also, it eliminates the dollar limitation that previously applied to mental health services although the 62.5 percent limitation still applies. OBRA '89 also provides coverage for clinical social worker services, but places two limitations on separate payment, which apply to services provided to inpatients of hospitals and skilled nursing facilities that are Medicare participating. Section 4157 of OBRA '90 unbundled CP services from the definition of "inpatient hospital services."

Timetable:

Action	Date	FR Cite
NPRM	12/29/93	58 FR 68829
NPRM Comment Period End	02/28/94	58 FR 68829
Final Action	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Regina Walker, Program Analyst, Office of Coverage & Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-6735**

RIN: 0938–AE99

1608. ALLOWING CERTIFICATIONS AND RECERTIFICATIONS BY NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS FOR CERTAIN SERVICES (BPD-709-F)

Legal Authority: 42 USC 1395f(a)

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This final regulation implements section 6028 of OBRA '89. It allows nurse practitioners and clinical nurse specialists working in collaboration with a physician to certify and recertify that extended care services are needed or continue to be needed.

Timetable:

Action	Date	FR Cite
NPRM	06/28/91	56 FR 29609
NPRM Comment Period End	08/27/91	56 FR 29609
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Chief, Long Term Care Branch, Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 401 EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-4620**

RIN: 0938–AF01

1609. CHANGES TO THE LONG-TERM CARE FACILITY SURVEY PROCESS (HSQ-175-FC)

Legal Authority: PL 101-239, Sec 6901(a); 42 USC 1395i-3; 42 USC 1395aa(d); 42 USC 1396r

CFR Citation: 42 CFR 442; 42 CFR 488

Legal Deadline: None

Abstract: This final rule with comment period amends the Medicare and Medicaid regulations by removing obsolete long-term care survey forms, guidelines, and procedures used by State agencies when they evaluate a Medicare skilled nursing facility or a Medicaid nursing facility for compliance with Federal certification requirements. Effective October 1, 1990, the application of new Federal participation requirements for these facilities with an increased focus on actual or potential resident outcomes has made the survey forms and process in existing regulations outdated. Retention of the outdated items could cause confusion in connection with directions State survey agencies must follow in determining facility compliance.

Timetable:

Action	Date	FR Cite
Final Rule With Comment Period	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Additional Information:

TIMETABLE: Pending court ruling.

Agency Contact: Pam Vocke, Director, Division of Program Operations, Department of Health and Human Services, Health Care Financing Administration, 2-D-2, ME, 6325 Security Blvd., Baltimore, MD 21207, **410 966-7089**

RIN: 0938–AF02

1610. CASE MANAGEMENT (MB-27-F)

Legal Authority: 42 USC 1396d; 42 USC 1396n

CFR Citation: 42 CFR 431.51(c); 42 CFR 440.169; 42 CFR 440.250; 42 CFR 441.10; 42 CFR 441.18; 42 CFR 447.327; 42 CFR 431.54

Legal Deadline: None

Abstract: This rule will place into our regulations provisions of COBRA '85, OBRA '86, TEFRA '86, TMRA '88 and OBRA '87 dealing with case management services. These regulations would provide for optimal Medicaid coverage of case management services furnished to specific groups in specific geographic areas or political subdivisions within a State.

Timetable:

Action	Date	FR Cite
NPRM	10/15/93	58 FR 53481
NPRM Comment Period End	12/14/93	
Final Action	06/00/95	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Blvd., Baltimore, MD 21207, **410 966-5659**

RIN: 0938–AF07

1611. MEDICAID THIRD PARTY LIABILITY: COST EFFECTIVENESS WAIVERS (MB-39-F)

Legal Authority: 42 USC 1396a(a)(25)

CFR Citation: 42 CFR 433.138; 42 CFR 433.139

Legal Deadline: None

Abstract: This rule will provide States with the opportunity to request waivers of certain third party liability requirements if the State has more cost effective methods than those required to be used under current regulations. These requirements relate to methods and procedures for determining liability of third parties to pay for services furnished under Medicaid and for paying claims. The waivers will apply to administratively imposed requirements, not statutory requirements.

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Timetable:

Action	Date	FR Cite
NPRM	02/02/94	59 FR 4880
NPRM Comment Period End	04/03/94	59 FR 4880
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Richard Friedman, Director, Division of Payment Systems, Department of Health and Human Services, Health Care Financing Administration, 273, EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-3292

RIN: 0938–AF11

1612. REQUIRED COVERAGE OF NURSE PRACTITIONER SERVICES—MEDICAID (MB-41-F)

Legal Authority: 42 USC 1396d(a)(21)

CFR Citation: 42 CFR 440

Legal Deadline: None

Abstract: This regulation will require direct payment to certified pediatric and family nurse practitioners to the extent that these providers are authorized to practice under State laws. It would implement section 6405 of OBRA '89 (PL 101-239) which became effective July 1, 1990.

Timetable:

Action	Date	FR Cite
NPRM	12/23/91	56 FR 66392
NPRM Comment Period End	02/22/92	56 FR 66392
Final Action	01/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, 400, EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-3659

RIN: 0938–AF12

1613. PAYMENT FOR FEDERALLY QUALIFIED HEALTH CENTER (FQHC) SERVICES (BPD-728-F)

Legal Authority: 42 USC 1395x(s)(2)(E); 42 USC 1395x(aa)(3); 42 USC 1395x(aa)(4); 42 USC 1395k(a)(2)(D)(ii); 42 USC 1395l(b)(5)

CFR Citation: 42 CFR 405; 42 CFR 491

Legal Deadline: None

Abstract: This final rule will respond to comments received as a result of our publication of a final rule with comment period (57 FR 24961) which established a new category of facility known as an FQHC, the services of which are covered under the Medicare program. Those regulations also established requirements for coverage and payment of FQHC services under Medicare. They implemented section 4704 of PL 101-508. This final rule will clarify or change policy, as appropriate, based on our evaluation of public comments.

Timetable:

Action	Date	FR Cite
Effective Date	06/12/92	57 FR 24961
Final Rule with Comment Period	06/12/92	57 FR 24961
Public Comment Period End	08/11/92	57 FR 24961
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Jackie Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 441, EHR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-4635

RIN: 0938–AF14

1614. OBRA '90 AND MISCELLANEOUS MANAGED CARE TECHNICAL AMENDMENTS (OMC-018-FC)

Legal Authority: 42 USC 1396b(m); 42 USC 1396a(e)(2)(A)

CFR Citation: 42 CFR 434.21 to 44; 42 CFR 447.361; 42 CFR 447.362

Legal Deadline: None

Abstract: This rule will require certain health insuring organizations to be subject to the regulations governing prepaid health plans. This rule will also allow State-only funds to be paid to Medicaid contracting entities. These funds will not be considered when computing the rate at which Federal financial participation is made. Further, this rule will incorporate several technical amendments from section 4732 of OBRA '90.

Timetable:

Action	Date	FR Cite
NPRM	05/09/94	59 FR 23820
NPRM Comment Period End	07/08/94	59 FR 23820
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local

Agency Contact: Jane McClard, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 233, ELR, 6325 Security Blvd., Baltimore, MD 21207, 410 966-5321

RIN: 0938–AF15

1615. CRITERIA FOR THE DETERMINATION OF REASONABLE COSTS FOR MEDICARE —CONTRACTING PREPAID HEALTH PLANS (OMC-006-F)

Legal Authority: 42 USC 1395mm(h); 42 USC 1395x(v)(1)(A)

CFR Citation: 42 CFR 417.532(a)(3); 42 CFR 417.802; 42 CFR 417.800(c)

Legal Deadline: None

Abstract: This rule will remove the absolute payment limit that is to be applied to Prepaid Health Organizations with cost contracts under section 1876 of the Social Security Act. This regulation will also set forth the revised criteria that HCFA will use in determining claimed costs that are reasonable and therefore reimbursable for prepaid health organizations with cost contracts under section 1876 and agreements under section 1833.

Timetable:

Action	Date	FR Cite
NPRM	02/22/94	59 FR 8435
NPRM Comment Period End	04/25/94	59 FR 8435
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: A. G. D'Alberto, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, 1-G-2 Oak Meadows, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-7610

RIN: 0938–AF16

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1616. PHYSICIAN OWNERSHIP OF AND REFERRALS TO HEALTH CARE FACILITIES THAT FURNISH CLINICAL LABORATORY SERVICES AND FINANCIAL RELATIONSHIP REPORTING REQUIREMENTS (BPD-674-FC)

Regulatory Plan: This entry is Seq. No. 58 in Part II of this issue of the Federal Register.

RIN: 0938–AF40

1617. MEDICAID PAYMENT FOR COVERED OUTPATIENT DRUGS UNDER REBATE AGREEMENTS (MB-046-IFC)

Legal Authority: 42 USC 1396a(a); 42 USC 1396b(i); 42 USC 1396r-8; 42 USC 1396b(a)

CFR Citation: 42 CFR 447

Legal Deadline: None

Abstract: This rule will incorporate section 4401 of OBRA '90 which concern reimbursement for prescribed drugs. Section 4401 amended title XIX of the Social Security Act to add specific requirements for payment for covered outpatient drugs. In general, the requirements concern: denial of Federal financial participation unless rebate agreements and drug use review are in effect; prohibiting some State plan drug access limitations for drugs covered under a rebate agreement; and the content of the rebate agreements. The drug rebate agreement was previously published in the Federal Register on February 21, 1991 (56 FR 7049). This rule will also reflect statutory revisions mandated by the Veteran's Health Care Act of 1992 and OBRA '93.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/94	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Larry Reed, Chief, Medicaid Noninstitutional Payment Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 273 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-0830

RIN: 0938–AF42

1618. MEDICARE AND MEDICAID PROGRAMS; ADVANCE DIRECTIVES (BPD-718-F)

Legal Authority: 42 USC 1395cc

CFR Citation: 42 CFR 417.436; 42 CFR 417.801; 42 CFR 431.20; 42 CFR 431.107; 42 CFR 434.28; 42 CFR 483.10; 42 CFR 484.10; 42 CFR 489.10; 42 CFR 489.100; 42 CFR 489.104; 42 CFR 498.3; 42 CFR 417.472; 42 CFR 489.102

Legal Deadline: None

Abstract: The final rules will make minor changes in the interim rule, which implemented statutory provisions effective in December, 1991. They will amend the Medicare and Medicaid regulations governing provider agreements and contracts to establish requirements for States, hospitals, nursing facilities, skilled nursing facilities, providers of home health care or personal care services, hospice programs and prepaid health plans concerning advance directives. An advance directive is a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when an individual's condition makes him or her unable to express his or her wishes. The intent of these provisions is to enhance an individual's control over medical treatment decisions. These rules implement sections 4206 and 4751 of OBRA '90.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Comment Period	03/06/92	57 FR 8194
Public Comment Period End	05/05/92	57 FR 8194
Final Action	04/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jacqueline Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4635

RIN: 0938–AF50

1619. PARTIAL HOSPITALIZATION SERVICES IN COMMUNITY MENTAL HEALTH CENTERS (BPD-736-F)

Legal Authority: 42 USC 1395k(a)(2)(J); 42 USC 1395x(ff)(3); 42 USC 1395cc(e)(2)

CFR Citation: 42 CFR 400; 42 CFR 410; 42 CFR 413; 42 CFR 489; 42 CFR 498

Legal Deadline: None

Abstract: In accordance with section 4162 of OBRA '90, this interim final rule sets forth the coverage criteria and payment methodology for partial hospitalization services furnished in community mental health centers. It also specifies the requirements a community mental health center must meet in order to enter into a Medicare provider agreement to furnish partial hospitalization services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/11/94	59 FR 6570
Interim Final Rule Effective	03/13/94	59 FR 6570
Comment Period End	04/12/94	59 FR 6570
Final Action	08/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jackie Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4635

RIN: 0938–AF53

1620. REQUIREMENTS FOR ENROLLMENT OF MEDICAID RECIPIENTS UNDER COST EFFECTIVE EMPLOYER BASED GROUP HEALTH PLANS (MB-047-F)

Legal Authority: 42 USC 1396a(a)(10); 42 USC 1396a(u)(l); 42 USC 1396d(a); 42 USC 1396a(a)(25); 42 USC 1396a(e); 42 USC 1396e

CFR Citation: 42 CFR 435.2; 42 CFR 435.3; 42 CFR 435.10; 42 CFR 435.186; 42 CFR 435.188

Legal Deadline: None

Abstract: This rule will amend our regulations to provide for continuation of payment of health insurance premiums for individuals who are entitled to elect COBRA continuation coverage under a group health plan provided by an employer with 75 or

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more employees; require Medicaid recipients to apply for enrollment in employer-based cost effective group health plans as a condition of Medicaid eligibility; require State agencies to pay for premiums, deductibles, coinsurances and other cost sharing obligations under employer-based cost effective group health plans, and define "COBRA continuation coverage" and "COBRA beneficiaries."

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31569
NPRM Comment Period End	08/19/94	59 FR 31569
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Federal

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4451**

RIN: 0938–AF64

1621. REFERRAL TO CHILD SUPPORT ENFORCEMENT AGENCIES OF MEDICAID FAMILIES WITH AN ABSENT PARENT (MB-051-F)

Legal Authority: 42 USC 1396k

CFR Citation: 42 CFR 433.160

Legal Deadline: None

Abstract: This rule will require State Medicaid agencies to refer Medicaid families with an absent parent to child support enforcement (CSE) agencies. Section 9142 of OBRA '87 required CSE agencies to provide all CSE services to such Medicaid families who have assigned to the State their rights to medical support. The purpose of these rules is to require States to make this referral to State CSE agencies to ensure that those recipients requiring CSE services receive them.

Timetable:

Action	Date	FR Cite
NPRM	09/22/93	58 FR 49272
NPRM Comment Period End	11/22/93	58 FR 49272
Final Action	06/00/95	

Small Entities Affected: None

Government Levels Affected: None

Additional Information: MB-041-F will incorporate response to public comments made on 0938-AF65, MB-048-F.

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Boulevard, Baltimore, MD 21207, **410 966-4451**

RIN: 0938–AF68

1622. MEDICAID: OUTSTATIONED INTAKE LOCATIONS FOR CERTAIN LOW-INCOME PREGNANT WOMEN, INFANTS AND CHILDREN (MB-052-IFC)

Legal Authority: 42 USC 1396a(a)(55)

CFR Citation: 42 CFR 435.901; 42 CFR 435.902; 42 CFR 435.903; 42 CFR 435.904; 42 CFR 435.907

Legal Deadline: None

Abstract: This rule implements a statutory requirement that State Medicaid agencies must provide for receipt and initial processing of Medicaid applications filed by certain low-income pregnant women, infants, and children at locations which are other than those used for receipt and processing of Aid to Families with Dependent Children (AFDC) applications. The statutory requirement also provides that the application form for these individuals must not be the AFDC application form.

The rule is based on section 1902(a)(55) of the Social Security Act as added by section 4602 of OBRA '90, PL 101-508.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Comment Period	08/23/94	59 FR 48805
Comment Period End	11/22/94	59 FR 48805
Effective Date	11/24/94	59 FR 48805
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4451**

RIN: 0938–AF69

1623. OPTIONAL SPENDDOWN (MB-055-IFC)

Legal Authority: 42 USC 1396b(f)(2); 42 USC 1396a(a)(17)

CFR Citation: 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: This rule would allow States to choose the option of a variation of the spenddown for medically needy individuals. Under the regular spenddown program a medically needy individual becomes eligible for Medicaid by spending down income in excess of the medically needy income standard until the standard is reached. Under the optional program, an applicant could choose to pay an amount equal to their excess income to the State instead of becoming eligible only after incurring expenses. This option was provided by section 4723 of OBRA '90.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Comment Period	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local

Additional Information: TIMETABLE: Pending consultation with outside organizations.

Agency Contact: Marinos Svolos, Director, Division of Eligibility Policy, Department of Health and Human Services, Health Care Financing Administration, Room 323 EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4451**

RIN: 0938–AF72

1624. MEDICARE AND MEDICAID PROGRAMS: REQUIREMENTS FOR PHYSICIAN INCENTIVE PLANS IN PREPAID HEALTH CARE ORGANIZATIONS (OMC-010-F)

Regulatory Plan: This entry is Seq. No. 59 in Part II of this issue of the **Federal Register**.

RIN: 0938–AF74

1625. NATIONAL COVERAGE DECISIONS: RULES FOR RISK CONTRACTING HMOS AND CMPS (OMC-019-F)

Legal Authority: 42 USC 1395mm(c)(2)

CFR Citation: 42 CFR 417

HHS—HCFA

Final Rule Stage

Legal Deadline: None

Abstract: Under this rule, Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) that have entered into risk contracts with HCFA will be protected against large unanticipated cost increases that will result from having to furnish a new or increased Medicare benefit established by a national coverage decision. When the Secretary estimates that the new or increased benefit will result in a significant change in the HMO's or CMP's costs, the organization will not be required to furnish the service to its Medicare enrollees until the cost has been taken into account in determining the monthly per capita amounts that HCFA pays the HMO or CMP. This rule would implement section 4204(c) of OBRA '90.

Timetable:

Action	Date	FR Cite
NPRM	02/22/94	59 FR 8429
Public Comment Period End	04/25/94	59 FR 8429
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tracy Jensen, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AF76

1626. PART B ADVANCE PAYMENTS TO PHYSICIANS/SUPPLIERS OR OTHER ENTITIES FURNISHING ITEMS OR SERVICES UNDER MEDICARE PART B (BPO-105-F)

Legal Authority: 42 USC 1395u(c)

CFR Citation: 42 CFR 421.212

Legal Deadline: None

Abstract: This rule would amend Medicare regulations to provide advance payment to physicians, suppliers, or entities that furnish items or services under Medicare Part B. These payments could be made only when claims processing is so delayed that interest payments alone are insufficient to adequately compensate the provider, in light of cash flow needs. This change is intended to result in more efficient and economical administration of the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	07/18/94	59 FR 36415
NPRM Comment Period End	09/16/94	59 FR 36415
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Samuel Guida, Director, Division of Account Management & Collection, Department of Health and Human Services, Health Care Financing Administration, Room 1-E-6, ME Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-7495**

RIN: 0938–AF85

1627. APPLICATION OF INTEREST CHARGES TO MEDICARE SECONDARY PAYER RECOVERIES (BPO-108-GN)

Legal Authority: 31 USC 3711; 31 USC 3717

CFR Citation: 42 CFR 401.601; 42 CFR 405.376; 45 CFR 30.16; 45 CFR 30.13

Legal Deadline: None

Abstract: This notice announces that HCFA is proceeding under its authority to charge interest on secondary payer payments overdue to HCFA. Experience has shown that parties owing monies to HCFA are not motivated to make timely payments and require followup efforts to collect the payments. The existing regulation at 42 CFR 401.607, which authorizes claims collection (including interest), and other authorities are being invoked to stimulate prompt payment.

Timetable:

Action	Date	FR Cite
Notice	04/00/95	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: John Albert, Program Analyst, Div. of Entitlement & Benefit Coordination, Department of Health and Human Services, Health Care Financing Administration, Room 3-E-5 ME Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-7457**

RIN: 0938–AF87

1628. RETROACTIVE ENROLLMENT (OMC-015-F)

Legal Authority: 42 USC 1395mm

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: This regulation will allow retroactive enrollment of up to 90 days for individuals enrolling with an eligible organization (which has a risk-sharing contract under section 1876 of the Social Security Act) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse). The regulation implements section 4204(e) of the Omnibus Budget Reconciliation Act of 1990, PL 101-508. In addition, the rule will permit the Secretary to authorize retroactive disenrollment in specific cases

Timetable:

Action	Date	FR Cite
NPRM	12/27/93	58 FR 68366
Public Comment Period End	02/25/94	58 FR 68366
Final Action	07/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tracy Jensen, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Building, 330 Independence Avenue SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AF98

1629. PAYMENT FOR PREADMISSION SERVICES (BPD-731-F)

Legal Authority: 42 USC 1395ww(a)(4)

CFR Citation: 42 CFR 412.2(c); 42 CFR 413.40

Legal Deadline: None

Abstract: This rule implements section 4003 of OBRA '90, entitled "Expansion of DRG Payment Window," which amended the statutory definition of "inpatient operating cost" to include certain preadmission services. Included are services (other than ambulance services) by a hospital (or by an enti wholly owned or operated by the hospital) to the patient during the three days immediately preceding the date of the patient's admission if the services are diagnostic services (including

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clinical diagnostic laboratory tests), or are other services related to the admission (as defined by the Secretary).

Timetable:

Action	Date	FR Cite
Effective Date	01/12/94	59 FR 1654
Interim Final Rule With Comment Period	01/12/94	59 FR 1654
Public Comment Period End	03/14/94	59 FR 1654
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bill Ullman, Health Insurance Specialist Div. of Provider Services Coverage Policy, Department of Health and Human Services, Health Care Financing Administration, 401 East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207, 410 966-5667

RIN: 0938–AG00

1630. CHANGE IN PROVIDER AGREEMENT REGULATIONS RELATED TO FEDERAL EMPLOYEE HEALTH BENEFITS (BPD-748-F)

Legal Authority: 5 USC 8904(b)

CFR Citation: 42 CFR 489

Legal Deadline: None

Abstract: This rule will amend current Medicare regulations to require that payment for inpatient hospital services furnished to retired Federal workers age 65 and older who enrolled in a Federal Employee Health Benefits (FEHB) plan but who are not entitled to receive hospital benefits under Medicare Part A (Hospital Insurance) may not exceed the hospital payments established for Medicare purposes for inpatient hospital services. The rule will also amend current Medicare regulations to authorize HCFA to consider termination or nonrenewal of a hospital's Medicare provider agreement for knowingly and willfully failing to accept, on a repeated basis, the Medicare rate as payment in full from an FEHB plan. This rule will implement section 7002(f) of OBRA '90, enacted November 5, 1990.

Timetable:

Action	Date	FR Cite
NPRM	02/10/94	59 FR 6228
NPRM Comment Period End	04/11/94	59 FR 6228
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Jackie Sheridan, Chief, Health Organizations Branch, Department of Health and Human Services, Health Care Financing Administration, 401 EHR, 6325 Security Boulevard, Baltimore, MD 21207, 410 966-4635

RIN: 0938–AG03

1631. PAYMENT FOR EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY SERVICES FURNISHED BY AMBULATORY SURGICAL CENTERS (BPD-762-FN)

Legal Authority: 42 USC 1395l(i)(2)

CFR Citation: 42 CFR 416.120; 42 CFR 416.125; 42 CFR 416.130

Legal Deadline: None

Abstract: This notice complies with the court order by the U.S. District Court for the District of Columbia on March 12, 1992, in The American Lithotripsy Society v. Louis W. Sullivan, M.D. The court order stays implementation of the Medicare payment rate announced on December 31, 1991 (56 FR 67666) for Extracorporeal Shock Wave Lithotripsy Services furnished in Medicare Participating Ambulatory Surgical Centers and use of the payment rate in determining the Medicare allowance in hospital out-patient departments until the Secretary publishes certain information relevant to the setting of the Extracorporeal Shock Wave Lithotripsy Rate, receives comments, and publishes a final notice.

Timetable:

Action	Date	FR Cite
Proposed Notice	10/01/93	58 FR 51355
Public Comment Period End	12/30/93	58 FR 6128
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Joan H. Sanow, Health Insurance Specialist, Division of Special Payment Programs, Department of Health and Human Services, Health Care Financing Administration, Room 1-A-5, ELR, 6325 Security Boulevard, Baltimore, MD 21207-5187, 410 966-5723

RIN: 0938–AG04

1632. INTERMEDIARY AND CARRIER FUNCTIONS (BPO-111-N)

Legal Authority: 42 USC 1395h; 42 USC 1395u

CFR Citation: 42 CFR 421.100; 42 CFR 421.200

Legal Deadline: None

Abstract: Current regulations list functions that intermediaries and carriers must perform. All intermediaries and all carriers must perform all the enumerated functions. This rule changes the regulations to bring them into greater conformance with the Medicare statute, which gives the Health Care Financing Administration flexibility to move some functions from one contractor to another to reduce inefficiency, lower cost or achieve better program administration.

Timetable:

Action	Date	FR Cite
NPRM	02/22/94	59 FR 8446
NPRM Comment Period End	04/25/94	59 FR 8446
Notice to Reopen Comment Period	07/17/94	59 FR 35664
Comment Period End	10/11/94	59 FR 35664
Final Action	00/00/00	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Alan Bromberg, Program Analyst, Div. of Contractor Planning & Managemt, BPO, Department of Health and Human Services, Health Care Financing Administration, 3-F-1 ME Building, 6325 Security Boulevard, Baltimore, MD 21207, 410 966-7441

RIN: 0938–AG06

1633. REVISED MEDICAID MANAGEMENT INFORMATION SYSTEMS (MB-38-FN)

Legal Authority: 42 USC 1396b(r)

CFR Citation: 42 CFR 433.1; 42 CFR 431.17; 42 CFR 447.10; 42 CFR 447.45; 42 CFR 74.20; 42 CFR 74.21

Legal Deadline: None

Abstract: This notice sets forth revised general functional requirements for the Medicaid Management Information System (MMIS). The MMIS consists of software and hardware used to process Medicaid claims and to retrieve and produce utilization and management information about services that are

required by the Medicaid agency or Federal Government for administrative or audit purposes. The revised requirements allow States more flexibility to exercise variations in the implementation. (Systems concepts without prescribing a particular system design or solution.)

Timetable:

Action	Date	FR Cite
Proposed Notice	11/22/93	58 FR 61692
Public Comment Period End	01/21/94	58 FR 61692
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Richard Friedman, Director, Division of Payment Systems, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 273, ELR, 6325 Security Boulevard, Baltimore, MD 21207, 410 966-3292

RIN: 0938–AG10

1634. REVISIONS TO THE DEFINITION OF END-STAGE RENAL DISEASE AND RESUMPTION OF ENTITLEMENT (BPD-738-F)

Legal Authority: 42 USC 426-1

CFR Citation: 42 CFR 406.13

Legal Deadline: None

Abstract: This rule revises the definition of end-stage renal disease to clarify that only those individuals whose kidneys have failed and for whom the disease is expected to be a life-long affliction are eligible for Medicare and end-stage renal disease benefits. This rule also specifies that Medicare enrollment resumes for individuals who again begin a regular course of renal dialysis treatments after a previous course is terminated (with or without kidney transplant) and include the same considerations for those who have a second transplant.

Timetable:

Action	Date	FR Cite
NPRM	01/06/94	59 FR 714
NPRM Comment Period End	03/07/94	59 FR 714
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Paul Olenick, Director, Division of Medicare Eligibility Policy, BPD, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4472

RIN: 0938–AG19

1635. STANDARDS FOR QUALITY OF WATER USED IN DIALYSIS AND REVISED GUIDELINES ON REUSE OF HEMODIALYZER FILTERS FOR END-STAGE RENAL DISEASE PATIENTS (BPD-766-F)

Legal Authority: 42 USC 1395rr

CFR Citation: 42 CFR 405.2140; 42 CFR 405.2150

Legal Deadline: None

Abstract: This rule incorporates by reference, in our regulations, the Association for the Advancement of Medical Instrumentation (AAMI) guidelines for monitoring the quality of water used in dialysis as published in "Hemodialyzers System, Second Edition." It also updates an existing incorporation by reference to reflect the 1992 edition AAMI voluntary guidelines and standards on "Recommended Practice for Reuse of Hemodialyzers." These guidelines clarify certain issues and reflect current medically acceptable dialysis standards and techniques.

Timetable:

Action	Date	FR Cite
NPRM	02/14/94	59 FR 6937
NPRM Comment Period End	04/15/94	59 FR 6937
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jackie Sheridan, Chief, Health Organizations Branch, BPD, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4635

RIN: 0938–AG21

1636. MEDICARE PROGRAM: PROPOSED ADDITIONS TO AND DELETIONS FROM THE CURRENT LIST OF COVERED SURGICAL PROCEDURES FOR AMBULATORY SURGICAL CENTERS (BPD-776-FN)

Legal Authority: 42 USC 1395i(1)

CFR Citation: None

Legal Deadline: None

Abstract: This notice implements sections 1833(i)(l) of the Social Security Act, which requires, in part, that the list of covered ambulatory surgical center (ASC) procedures be reviewed and updated at least every 2 years. The last update was published December 31, 1991. This notice announces specific proposed additions to, and deletions from, the list of surgical procedures for which facility services are covered when the procedures are performed in a Medicare participating ASC. The notice also announces changes to our criteria for deleting procedures from the ASC list. Additionally, it announces the assignment of payment groups for each addition. Finally, it reflects statutory revisions mandated by OBRA '93

Timetable:

Action	Date	FR Cite
Proposed Notice	12/14/93	58 FR 65357
Public Comment Period End	02/14/94	58 FR 65357
Final Action	01/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jacqueline Sheridan, Chief, Health Organizations Branch, BPD, Department of Health and Human Services, Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207, 410 966-4635

RIN: 0938–AG27

1637. MEDICARE PROGRAM: SPECIAL PAYMENT LIMITS FOR HOME BLOOD GLUCOSE MONITORS (BPD-778-FN)

Legal Authority: 42 USC 1395l; 42 USC 1395u(b)

CFR Citation: None

Legal Deadline: None

Abstract: This notice establishes special payment limits for standard home blood glucose monitors, identified as code E0607 of the HCFA common procedure coding system. The notice is intended to prevent excessive payment for these items.

Timetable:

Action	Date	FR Cite
Proposed Notice	01/06/94	59 FR 755

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HHS—HCFA

Final Rule Stage

Action	Date	FR Cite
Comment Period End	03/07/94	59 FR 755
Final Action	02/00/95	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: **Joel Kaiser**, Health Insurance Specialist, Medical Services Payment Branch, BPD, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4499**

RIN: 0938–AG28

1638. GENERAL EVALUATION CRITERIA AND STANDARDS FOR EVALUATING PERFORMANCE OF CONTRACT (HSQ-207-GNC)

Legal Authority: 42 USC 1320c-2(h)(2)

CFR Citation: 42 CFR 462

Legal Deadline: None

Abstract: The notice provides general criteria and standards that will be used to evaluate the effective and efficient performance of Utilization Quality Control Peer Review Organizations (PROs) for new contracts entered into on or after April 1, 1993 by the 53 PROs.

Timetable:

Action	Date	FR Cite
Notice With Comment Period	02/00/95	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Nancy Lafferty**, Program Analyst, Department of Health and Human Services, Health Care Financing Administration, Room 2-D-2, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6783**

RIN: 0938–AG32

1639. WITHDRAWAL OF COVERAGE OF DIAGNOSTIC NOCTURNAL PENILE TUMESCENCE TESTING (IMPOTENCE TESTING) (BPD-780-FN)

Legal Authority: 42 USC 1395y

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the Medicare program's intent to withdraw coverage for diagnostic nocturnal tumescence (NPT) testing in the sleep disorder clinic and to exclude coverage for nocturnal penile tumescence testing by plethysmography and other monitoring devices in all settings. Public Health Service studies show that NPT testing is not a reliable index for evaluating impotence. Therefore, it does not meet HCFA's criteria for effectiveness.

Timetable:

Action	Date	FR Cite
Proposed Notice	01/04/94	59 FR 308
Public Comment Period End	03/07/94	59 FR 309
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Maxine Hormats**, Special Coverage Issues Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4630**

RIN: 0938–AG43

1640. MEDICARE PROGRAM: LIMITATIONS ON MEDICARE COVERAGE OF INTERMITTENT POSITIVE PRESSURE BREATHING MACHINE THERAPY (BPD-781-FN)

Legal Authority: 42 USC 1395x; 42 USC 1395y

CFR Citation: None

Legal Deadline: None

Abstract: Intermittent positive pressure breathing (IPPB) machine therapy is currently covered under Medicare as durable medical equipment for patients whose ability to breathe is severally impaired. Based on a Public Health Service recommendation, we propose to place limitations on Medicare coverage of IPPB machine therapy.

Timetable:

Action	Date	FR Cite
Proposed Notice	06/29/94	59 FR 33520
Comment Period End	08/29/94	59 FR 33520
Final Action	00/00/00	

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: **Walter Rutenmueller**, Chief, Special Coverage Issues Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-5395**

RIN: 0938–AG44

1641. NONCOVERAGE OF ELECTROSTIMULATION OF SALIVARY GLANDS FOR THE TREATMENT OF XEROSTOMIA (DRY MOUTH) (BPD-782-FN)

Legal Authority: 42 USC 1395y

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the Medicare program's intent to exclude from coverage electrostimulation of the salivary glands in the treatment of xerostomia secondary to Sjogren's Syndrome. Public Health Service (PHS) studies show that there is insufficient data to establish the clinical utility of electrostimulation to evaluate its long-term effectiveness, or to identify those xerostomia patients who would benefit from this procedure. Also, PHS reports that electrostimulation is not widely accepted as a treatment for xerostomia secondary to Sjogren's Syndrome.

Timetable:

Action	Date	FR Cite
Proposed Notice	05/23/94	59 FR 26653
Comment Period End	07/22/94	59 FR 26653
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **Francina Spencer**, Special Coverage Issues Branch, Department of Health and Human Services, Health Care Financing Administration, Room 401, EHR Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4614**

RIN: 0938–AG45

1642. PART A PREMIUM FOR 1995 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (OACT-046-N)

Legal Authority: 42 USC 1395i-2; 42 USC 1395i-2a

CFR Citation: None

Legal Deadline: Other, Statutory, September 30, 1994.

HHS—HCFA

Final Rule Stage

Other deadline is for publication of Notice.

Abstract: This notice announces the hospital insurance premium for calendar year 1995 under Medicare's hospital insurance program (Part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement. The uninsured aged are those individuals who are not insured under the Social Security or Railroad Retirement Acts and do not otherwise meet the requirements for entitlement to Medicare Part A. The disabled beneficiaries are those who lose monthly Social Security cash payments because they returned to work even though their disability continues. Section 1818(d) of the Social Security Act specifies the method to be used to determine this amount.

Timetable:

Action	Date	FR Cite
Notice	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **John Wandishin**, Director, Division of Hospital Insurance, Department of Health and Human Services, Health Care Financing Administration, 1705 Whitehead Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6389**

RIN: 0938–AG49

1643. MEDICARE PROGRAM: MONTHLY ACTUARIAL RATES AND MONTHLY SUPPLEMENTARY MEDICAL INSURANCE PREMIUM RATES BEGINNING JANUARY 1, 1995 (OACT-047-N)

Legal Authority: 42 USC 1395r

CFR Citation: None

Legal Deadline: Other, Statutory, September 30, 1994.
Other deadline is for publication of Notice.

Abstract: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees, in the Medicare Supplementary Insurance (SMI) program for the 12 months beginning January 1, 1995. It also announces the monthly SMI premium rate to be paid by all enrollees during the 12 months beginning January 1, 1995.

Timetable:

Action	Date	FR Cite
Notice	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **John Wandishin**, Director, Division of Hospital Insurance, Department of Health and Human Services, Health Care Financing Administration, Room M-1, 1705 Whitehead Bulding, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6396**

RIN: 0938–AG50

1644. INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR 1995 (OACT-048-N)

Legal Authority: 42 USC 1395e

CFR Citation: None

Legal Deadline: Other, Statutory, September 15, 1994.
Other deadline is for publication of Notice.

Abstract: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 1995 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae to be used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: **John Wandishin**, Director, Division of Hospital Insurance, Department of Health and Human Services, Health Care Financing Administration, Room M-1, 1705 Whitehead Building, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-6389**

RIN: 0938–AG51

1645. REVISIONS TO GEOGRAPHIC PRACTICE COST INDICES, PAYMENT POLICIES AND ADJUSTMENTS TO THE RELATIVE VALUE UNITS UNDER THE PHYSICIAN FEE SCHEDULE FOR CY 1995 (BPD-789-FC)

Regulatory Plan: This entry is Seq. No. 60 in Part II of this issue of the **Federal Register.**

RIN: 0938–AG52

1646. REDUCTIONS IN PAYMENTS FOR HHA SERVICES (BPD-793-NC)

Legal Authority: 42 USC 1302; 42 USC 1395x(r)(1); 42 USC 1395hh; PL 103-66, Sec 13564

CFR Citation: 42 CFR None

Legal Deadline: None

Abstract: This notice in accordance with PL 103-66, provides that there be no changes in home health services cost limits for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996. This notice also requires the Secretary, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restrictions on changes in the cost limits.

Timetable:

Action	Date	FR Cite
Notice With Comment Period	11/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: **Robert Kuhl**, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4597**

RIN: 0938–AG54

1647. DATE FOR FILING MEDICARE COST REPORTS (BPD-794-F)

Legal Authority: 42 USC 1395g

CFR Citation: 42 CFR 405.376; 42 CFR 413.24

Legal Deadline: None

Abstract: This rule will extend the time frame providers have to file cost reports from no later than 3 months after the close of the period covered by the report to no later than 5 months after the close of that period. This

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change is necessary to ensure that providers have an adequate amount of time to file complete and accurate cost reports. We would define what HCFA considers to be an "acceptable" cost report submission.

Timetable:

Action	Date	FR Cite
NPRM	05/25/94	59 FR 26998
Public Comment Period End	07/25/94	59 FR 26998
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Katie Walker, Payment Policy Branch, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-7278**

RIN: 0938–AG55

1648. FREEDOM OF CHOICE WAIVER; CONFORMING CHANGES (OMC-021-F)

Legal Authority: 42 USC 1302

CFR Citation: 42 CFR 431.55; 42 CFR 431.57

Legal Deadline: None

Abstract: This rule amends existing Medicaid regulations on freedom of choice waivers granted under section 1915(b) of the Social Security Act (Act) to conform them to the amendments made to the Act by sections 4604 and 4742 of OBRA '90.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Public Comment Period End	02/01/94	59 FR 4597
Effective Date	03/03/94	59 FR 4597
Comment Period End	04/04/94	59 FR 4597
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Tracy Jensen, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360 Cohen Building, 330 Independence Ave. SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AG63

1649. PAYMENT TO SWING BED HOSPITALS (BPD-805-FC)

Legal Authority: 42 USC 1395tt

CFR Citation: 42 CFR 413.53; 42 CFR 413.114

Legal Deadline: None

Abstract: This final rule with comment period would implement section 4008(j) of PL 101-508 by setting forth a new methodology for payment of routine extended care services provided in a swing bed hospital. Medicare payment for such services is determined based on the average rate per patient day paid by Medicare for routine care services provided in a free standing skilled nursing facility (SNF) in the region where the hospital is located. These rates will be determined prospectively based on the most recent SNF cost reporting data available. In accordance with PL 101-508, this rule also provides that payment for these services will be the higher of the payment cost rate in effect for the current calendar year or for the payment rate received by the swing-bed hospital for the prior calendar year.

Timetable:

Action	Date	FR Cite
Final Rule With Comment Period	05/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Katie Walker, Director, Division of Payment and Reporting Policy, Department of Health and Human Services, Health Care Financing Administration, Room 1-F-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-7278**

RIN: 0938–AG68

1650. PHYSICIAN PERFORMANCE STANDARD RATES OF INCREASE FOR FY 1995 AND PHYSICIAN FEE SCHEDULE UPDATE FOR CY 1995 (BPD-807-FNC)

Legal Authority: 42 USC 1302; 42 USC 1395w-4; 42 USC 1395hh

CFR Citation: None

Legal Deadline: Final, Statutory, October 31, 1994.

Abstract: This notice announces the calendar year (CY) 1995 updates to the Medicare physician fee schedule and the Federal fiscal year (FY) 1995 performance standard rates of increase for expenditures and volume of physicians' services under the Medicare Supplementary Medical Insurance (Part B) program as required by sections 1848(d) and (f), respectively, of the Social Security Act.

Timetable:

Action	Date	FR Cite
Final Notice With Comment Period	10/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernard Patashnik, Director, Division of Medical Services Payment, Department of Health and Human Services, Health Care Financing Administration, Room 1-H-5, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4497**

RIN: 0938–AG69

1651. CATEGORIZATION OF CLIA TESTS AND PERSONNEL MODIFICATIONS (HSQ-216-FC)

Legal Authority: 42 USC 263a; 42 USC 1302; 42 USC 1395

CFR Citation: 42 CFR 493.2; 42 CFR 493.3; 42 CFR 493.5; 42 CFR 493.7; 42 CFR 493.9; 42 CFR 493.17; 42 CFR 493.18; 42 CFR 493.19; 42 CFR 493.20; 42 CFR 493.21; 42 CFR 493.25; 42 CFR 493.35; 42 CFR 493.37; 42 CFR 493.39; 42 CFR 493.43; ...

Legal Deadline: None

Abstract: This final rule with comment period responds to comments received concerning two previously published rules (57 FR 7002 and 58 FR 5215) for implementing CLIA. In this rule, we expand personnel requirements so that more people are qualified to perform high complexity tests and physician performed (now called provider-performed) microscopy procedures and to supervise high complexity testing.

Timetable:

Action	Date	FR Cite
Final Rule With Comment Period	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Judith Yost, Chief Laboratory & Home Health Services Branch, HSQB, Department of Health and Human Services, Health Care

Financing Administration, Room 1-C-2 MWE, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 597-5907**

RIN: 0938–AG71

1652. MEDICAID PROGRAM: NURSE-MIDWIFE SERVICES (MB-085-P)

Legal Authority: PL 103-66, Sec 13605

CFR Citation: 42 CFR 440

Legal Deadline: None

Abstract: This rule would expand coverage of nurse-midwife services under the Medicaid program by including coverage for those services. The nurse-midwives perform outside the maternity cycle as allowed by State law and regulation. The provisions of this rule conform the regulations to the legislative provisions of OBRA '93.

Timetable:

Action	Date	FR Cite
NPRM	07/18/94	59 FR 36479
NPRM Comment Period End	09/16/94	59 FR 36479
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wardwell, Director, Division of Coverage Policy, Medicaid Bureau, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-5659**

RIN: 0938–AG73

1653. MEDICAID PROGRAM: FEES FOR VACCINE ADMINISTRATION UNDER PEDIATRIC IMMUNIZATION PROGRAM (MB-084-NC)

Regulatory Plan: This entry is Seq. No. 61 in Part II of this issue of the **Federal Register**.

RIN: 0938–AG77

1654. • CRITERIA FOR MEDICARE COVERAGE OF LUNG TRANSPLANTS (BPD-812-NC)

Legal Authority: 42 USC 1395y

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces Medicare criteria for coverage of lung transplants under certain circumstances. We have determined, based on results of an assessment conducted by the Public Health Service, that lung transplants are a medically reasonable and necessary service when furnished to patients with progressive end-stage pulmonary or cardiopulmonary disease and when furnished by participating facilities that meet specific criteria. Facilities electing to seek Medicare coverage will be required to submit information establishing that the criteria are met for evaluation by HCFA.

Timetable:

Action	Date	FR Cite
Notice With Comment Period	10/00/94	

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Claude Mone, Health Insurance Specialist, Department of Health and Human Services, Health Care Financing Administration, Room 400, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-4671**

RIN: 0938–AG83

1655. • INFORMATION, COUNSELING, AND ASSISTANCE GRANTS PROGRAMS: MEDICARE PROGRAM (OBS-001-FC)

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 403

Legal Deadline: None

Abstract: This rule establishes, for fiscal years 1994 and beyond, a minimum level of funding for grants made to States to provide Medicare beneficiaries with information, counseling, and assistance related to obtaining adequate and appropriate health insurance coverage. It also establishes in regulations the condition for eligibility for these grants, limitations on the use of grant funds in certain circumstances, and annual reporting requirements. This grant program is in accordance with OBRA '90.

Timetable:

Action	Date	FR Cite
Effective Date	10/07/94	
Final Rule With Comment Period	10/07/94	59 FR 51125
Comment Period End	12/06/94	
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Eric Lang, Health Insurance Specialist, Office of Beneficiary Services, Department of Health and Human Services, Health Care Financing Administration, Room 600, EHR, 6325 Security Boulevard, Baltimore, Maryland 21207, **410 966-3193**

RIN: 0938–AG91

1656. • QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS: TECHNICAL AMENDMENTS (OMC-009-FC)

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 300e; 42 USC 300e-5; 42 USC 300e-9; 31 USC 9701

CFR Citation: 42 CFR 417

Legal Deadline: None

Abstract: This rule clarifies and updates portions of the HCFA regulations that pertain to Federal qualification of health maintenance organizations (HMOs), continued regulation of qualified HMOs, inclusion of qualified HMOs in employee health benefits plans offered by employers, and administration of outstanding loans and loan guarantees that were awarded before October 1, 1986, under the Public Health Service Act.

Timetable:

Action	Date	FR Cite
Final Rule With Comment Period	10/03/94	59 FR 49834
Effective Date	10/31/94	59 FR 49834
Comment Period End	11/29/94	59 FR 49834
Final Action	00/00/00	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Tracy Jensen, Health Insurance Specialist, Office of Managed Care, Department of Health and Human Services, Health Care Financing Administration, Room 4360, Cohen Building, 200 Independence Avenue SW., Washington, DC 20201, **202 619-2158**

RIN: 0938–AG92

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Health Care Financing Administration (HCFA)

Completed Actions

1657. MEDICAID ELIGIBILITY AND COVERAGE REQUIREMENTS (MB-001-F)

CFR Citation: 42 CFR 435; 42 CFR 436

Completed:

Reason	Date	FR Cite
Final Action	08/22/94	59 FR 43050
Final Action Effective	08/18/94	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Marinos Svolos, 410 966-4451

RIN: 0938–AA58

1658. DEDUCTION OF INCURRED MEDICAL EXPENSES (SPENDDOWN) (MB-020-F)

CFR Citation: 42 CFR 435.732; 42 CFR 435.831; 42 CFR 436.831

Completed:

Reason	Date	FR Cite
Withdrawn No further action needed.	07/26/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Marinos Svolos, 410 966-4451

RIN: 0938–AB07

1659. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY (MB-019-F)

CFR Citation: 42 CFR 435.3; 42 CFR 435.217; 42 CFR 435.726; 42 CFR 435.735; 42 CFR 436.2; 42 CFR 436.217; 42 CFR 440.250; 42 CFR 441.10; 42 CFR 441.350 to 441.357; 42 CFR 441.360; 42 CFR 441.365; 42 CFR 400.203; 42 CFR 440.1; 42 CFR 440.181

Completed:

Reason	Date	FR Cite
Withdrawn	07/26/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wardwell, 410 966-5659

RIN: 0938–AD55

1660. PAYMENT ADJUSTMENTS FOR HOSPITALS THAT SERVE A DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS (MB-017-IFC)

CFR Citation: 42 CFR 412; 42 CFR 440; 42 CFR 447

Completed:

Reason	Date	FR Cite
Withdrawn	07/26/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Bernard Truffer, 410 966-1357

RIN: 0938–AE35

1661. UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATIONS (PRO): CONFIDENTIAL INFORMATION (HSQ-190-P)

CFR Citation: 42 CFR 476

Completed:

Reason	Date	FR Cite
Final Action	07/18/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Harvey Brook, 410 966-6853

RIN: 0938–AF03

1662. DAY HABILITATION AND RELATED SERVICES (MB-37-P)

CFR Citation: 42 CFR 440

Completed:

Reason	Date	FR Cite
Withdrawn - Combined with 0938-AF89 (MB-076-P)	04/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Wardwell, 410 966-5659

RIN: 0938–AF10

1663. MEDICARE COVERAGE OF SCREENING MAMMOGRAPHY (BPD-724-F)

CFR Citation: 42 CFR 405.534; 42 CFR 405.535; 42 CFR 410.1; 42 CFR 410.10; 42 CFR 411.15; 42 CFR 413.123; 42 CFR 494.50

Completed:

Reason	Date	FR Cite
Final Action	09/30/94	59 FR 49826
Final Action Effective	10/01/94	59 FR 49826

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Larson, 410 966-4639

RIN: 0938–AF26

1664. MEDICARE, MEDICAID, AND CLIA PROGRAMS: INSPECTION AND CERTIFICATION PROCEDURES FOR LABORATORIES (HSQ-193-P)

CFR Citation: 42 CFR 493

Completed:

Reason	Date	FR Cite
Withdrawn by HCFA - no further action anticipated	09/19/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Pam Vocke, 410 966-7089

RIN: 0938–AF33

1665. MEDICAID DRUG USE REVIEW PROGRAM AND ELECTRONIC CLAIMS MANAGEMENT SYSTEM FOR OUTPATIENT DRUG CLAIMS (MB-050-F)

CFR Citation: 42 CFR 456

Completed:

Reason	Date	FR Cite
Final Action	09/23/94	59 FR 48811
Final Action Effective	10/24/94	59 FR 48811

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Al Beachley, 410 966-3325

RIN: 0938–AF67

1666. INTERMEDIARY AND CARRIER CHECKS THAT ARE LOST, STOLEN, DEFACED, MUTILATED, DESTROYED, OR PAID ON FORGED ENDORSEMENTS (BPO-114-FC)

CFR Citation: 42 CFR 424.350; 42 CFR 424.352; 42 CFR 424.354

Completed:

Reason	Date	FR Cite
Final Action	07/26/94	

Small Entities Affected: None

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Completed Actions

Government Levels Affected: None

Agency Contact: Samuel Guida, 410 966-7495

RIN: 0938–AG16

1667. CHANGES IN PHYSICIAN ATTESTATION REQUIREMENTS (BPD-769-F)

CFR Citation: 42 CFR 412.46(c)

Completed:

Reason	Date	FR Cite
Final Action	05/09/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jackie Sheridan, 410 966-4635

RIN: 0938–AG34

1668. MEDICARE PROGRAM: CHANGES TO THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEMS AND FISCAL YEAR 1995 RATES (BPD-802-F)

CFR Citation: 42 CFR 412; 42 CFR 413

Completed:

Reason	Date	FR Cite
Final Action	09/01/94	59 FR 45330
Final Action Effective	10/01/94	59 FR 45330

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Federal

Agency Contact: Lana Price, 410 966-4529

RIN: 0938–AG46

1669. REDUCTIONS IN PAYMENTS FOR SNF SERVICES (BPD-795-NC)

CFR Citation: 42 CFR 413.30

Completed:

Reason	Date	FR Cite
Withdrawn by HCFA - no further action necessary.	09/01/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Robert Kuhl, 410 966-4597

RIN: 0938–AG56

1670. LIMITATIONS ON REVISIONS TO FINAL ADMINISTRATIVE COST PROPOSALS (BPO-122-P)

CFR Citation: 42 CFR 421.10

Completed:

Reason	Date	FR Cite
Withdrawn	06/30/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Don Posen, 410 966-7533

RIN: 0938–AG57

1671. REQUIRED LABORATORY PROCEDURES FOR RURAL HEALTH CLINICS (BPD-783-F)

CFR Citation: 42 CFR 491.9

Completed:

Reason	Date	FR Cite
Withdrawn	04/21/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Jacqueline Sheridan, 410 966-4635

RIN: 0938–AG62

1672. SELF-IMPLEMENTING COVERAGE AND PAYMENT PROVISIONS: 1993 LEGISLATION (BPD-791-F)

CFR Citation: 42 CFR 405.2137; 42 CFR 405.2163; 42 CFR 405.2401; 42 CFR 406.32; 42 CFR 408.20; 42 CFR 410.10; 42 CFR 410.52; 42 CFR 410.60; 42 CFR 413.157; 42 CFR 413.124; 42 CFR 413.130; 42 CFR 418.306

Completed:

Reason	Date	FR Cite
No comments received on 05/25/94 rule; no action necessary.	10/06/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Matt Plonski, 410 966-4662

RIN: 0938–AG64

1673. FINAL LIMITATIONS ON AGGREGATE PAYMENTS TO DISPROPORTIONATE SHARE HOSPITALS: FEDERAL FISCAL YEAR 1994 (MB-088-N)

CFR Citation: 42 CFR 447.297; 42 CFR 447.298

Completed:

Reason	Date	FR Cite
Final Action	05/02/94	

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Richard Strauss, 410 966-2019

RIN: 0938–AG74

1674. SMALL BUSINESS INNOVATION RESEARCH GRANTS FOR FY 95 (ORD-068-N)

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Notice	10/03/94	59 FR 50246

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Carl Hackerman, 410 966-6644

RIN: 0938–AG76

1675. • MEDICARE AND MEDICAID PROGRAMS; MEDICARE-MEDICAID COVERAGE DATA BANK REQUIREMENTS: PRELIMINARY GUIDANCE (BPO-125-N)

Legal Authority: 42 USC 1320b-14

CFR Citation: None

Legal Deadline: None

Abstract: This notice informs the public about section 1144 of the Social Security Act, which is self-implementing, and provides preliminary guidance to employers who are required to report information about all individuals covered by group health plans to a newly established Medicare-Medicaid Coverage Data Bank. Information in the data bank will be used to help identify situations where employer group health plans are responsible for making primary payments for services received by Medicare or Medicaid beneficiaries. This notice provides: information on the background and legislative

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authority for the data bank; definitions of key terms; reporting requirements; the identity of entities that are required to, or may, report; reporting dates; penalties for noncompliance; and methods of reporting.

Timetable:

Action	Date	FR Cite
Final Action	05/10/94	59 FR 24167

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: William Zavoina, Department of Health and Human Services, Health Care Financing Administration, Bureau of Program Operations, 1445 Meadows East Bldg., Baltimore, MD 21207, 410 966-7461

RIN: 0938–AG78

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Administration for Children and Families (ACF)

Proposed Rule Stage

1676. FOSTER CARE, ADOPTION ASSISTANCE, AND CHILD WELFARE SERVICES

Legal Authority: 42 USC 627

CFR Citation: 45 CFR 1355; 45 CFR 1356; 45 CFR 1357

Legal Deadline: None

Abstract: This NPRM will propose criteria the Department will use to verify that a State has met statutory requirements and is eligible to receive additional funds under section 427 of the Social Security Act. The proposed rule will contain the specific criteria by which State performance in meeting the requirements of section 427 is determined, the percentage levels and other standards for case record compliance, and procedures for conducting compliance reviews.

Timetable:

Action	Date	FR Cite
NPRM	06/00/95	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: This action was previously reported under RIN 0980-AA08.

Agency Contact: Daniel H. Lewis, Associate Commissioner, Children's Bureau, Admin. on Children, Youth, and Families, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8618

RIN: 0970–AA97

1677. AMENDMENTS TO DEVELOPMENTAL DISABILITIES RULES

Legal Authority: 42 USC 6000 et seq

CFR Citation: 45 CFR 1385; 45 CFR 1386; 45 CFR 1387; 45 CFR 1388

Legal Deadline: Final, Statutory, April 29, 1991.

Abstract: This NPRM will propose to update current rules with clarifications and new requirements to implement recent changes in the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990 (Pub. L. 101-496) and 1994 (Pub. L. 103-230).

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: State

Additional Information: This action was previously reported under RIN 0980-AA48.

Agency Contact: John Doyle, Director, Administration and Planning Staff, Administration on Developmental Disabilities, Department of Health and Human Services, Administration for Children and Families, 200 Independence Avenue, SW., Room 315D, Washington, DC 20201, 202 690-5504

RIN: 0970–AB11

1678. STANDARDS FOR SAFE TRANSPORTATION

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1310

Legal Deadline: None

Abstract: The NPRM will propose Head Start Performance Standards for the safe transportation of Head Start children, including vehicle requirements, driver qualifications and training and safety rules for children and staff while enroute and loading and unloading of vehicles.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8569

RIN: 0970–AB24

1679. TITLE IV-E TRAINING

Legal Authority: 42 USC 674

CFR Citation: 45 CFR 235; 45 CFR 1356.60

Legal Deadline: None

Abstract: Section 474 of the Social Security Act authorizes Federal matching for training personnel employed or preparing for employment by the State or local child welfare agency at 75 percent instead of 50 percent as for other administrative costs. This NPRM will clarify what is included in the higher reimbursement rate.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: State

Agency Contact: Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, Admin. on Children, Youth & Families, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8618

RIN: 0970–AB25

HHS—ACF

Proposed Rule Stage

1680. STANDARDS FOR PURCHASE OF FACILITIES

Legal Authority: 42 USC 9601 et seq

CFR Citation: 45 CFR 1309

Legal Deadline: None

Abstract: This regulation will propose standards for the purchase of facilities as required by the Head Start Improvement Act of 1992.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8569

RIN: 0970–AB31

1681. NATIONAL VOTER REGISTRATION ACT OF 1993 PROVISIONS AFFECTING PUBLIC ASSISTANCE AGENCIES

Legal Authority: PL 103-31

CFR Citation: 45 CFR 205:50 (a)(4); 45 CFR 206.10; 42 CFR 431.307 (a); 42 CFR 431.307 (b)

Legal Deadline: None

Abstract: Incorporates general guidance for public assistance agencies regarding registration procedures to be carried out by State Public Assistance offices. It removes former prohibitions from distributing such materials in these offices.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Mack Storrs, Director, Division of AFDC Program, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9289

RIN: 0970–AB32

1682. FAMILY PRESERVATION AND SUPPORT

Legal Authority: 42 USC 430 to 435

CFR Citation: 45 CFR 1355; 45 CFR 1356; 45 CFR 1357

Legal Deadline: None

Abstract: This NPRM will propose to amend the requirements under title IV-B subpart 1 for the Child Welfare Services State plan and set forth the requirements the State must adhere to in the development and submission of its comprehensive five year plan under title IV-B, subpart 2, family preservation and support services. The submission of this jointly developed plan is required in order to receive both child welfare services funds under subpart 1 and family preservation and support services funds under subpart 2 for fiscal years 1995 and following.

Timetable:

Action	Date	FR Cite
NPRM	10/04/94	59 FR 50646
NPRM Comment Period End	12/05/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Tribal

Agency Contact: Daniel H. Lewis, Deputy Associate Commissioner, Children's Bureau, ACYF, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1187, Washington, DC 20013, 202 205-8618

RIN: 0970–AB34

1683. NOTICE OF PROPOSED RULEMAKING FOR THE ADMINISTRATION OF NATIVE AMERICANS 45 CFR PART 1336

Legal Authority: 42 USC 2991

CFR Citation: 45 CFR 1336

Legal Deadline: None

Abstract: The regulations propose to amend 45 CFR part 1336 to implement new legislative requirements. It will incorporate an appeals procedure affording applicants the opportunity to appeal based on organizational ineligibility or activities deemed ineligible, when determined by the ANA Commissioner. Native American organizations are expected to welcome these changes which provide for an appeal of appeals decisions and comport with recent amendments to the statute.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	
Final Action	03/00/96	

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Sharon McCully, Director, Planning and Support, Department of Health and Human Services, Administration for Children and Families, 200 Independence Ave SW., Washington, DC 20201, 020 690-5780

RIN: 0970–AB37

1684. INTERSTATE CASE CLOSURE

Legal Authority: 42 USC 1102

CFR Citation: 45 CFR 303

Legal Deadline: None

Abstract: This regulation proposes to make critical changes to aid States in converting their caseloads to automated systems by 1995. Its scope is limited to interstate case closure issues, and should provide helpful guidance to States in eliminating from their caseloads cases which can no longer be worked. States have been requesting such criteria for the past several years. The intent of this regulation is to lessen State burdens, rather than to create new ones. This measure would complement welfare reform efforts by helping States to streamline their caseloads as they move to automated systems, thus preparing them for changes in the welfare system.

Timetable:

Action	Date	FR Cite
NPRM	00/00/00	

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Agency Contact: Susan Notar, Program Specialist, Office of Child Support Enforcement, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-4606

RIN: 0970–AB41

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Proposed Rule Stage

1685. DIRECT PAYMENTS TO INDIAN TRIBES AND TRIBAL ORGANIZATIONS UNDER TITLE IV-B, SUBPART 1

Legal Authority: 42 USC 628

CFR Citation: 45 CFR 1357.40

Legal Deadline: None

Abstract: This NPRM will propose to amend the regulations governing direct payments to Indian Tribes and Indian Tribal Organizations (ITOs) for child welfare services under title IV-B, subpart 1. It will eliminate the requirement that to be eligible, Indian Tribes and ITOs must provide services under contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act. It will also add a description of the formula used to calculate the amount of Federal funds available to eligible Tribes and ITOs under title IV-B, subpart 1.

Timetable:

Action	Date	FR Cite
NPRM	10/00/94	

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Tribal

Agency Contact: Michael Ambrose, Director, Division of Child Welfare, Children's Bureau, ACYF, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8618

RIN: 0970–AB44

1686. REPATRIATION - ADVANCE APPROVAL OF COSTS

Legal Authority: 42 USC 1313

CFR Citation: 45 CFR 212

Legal Deadline: None

Abstract: This document proposes to amend the regulations concerning the U.S. Repatriate Program. The proposal is to require agencies providing assistance to groups of United States citizens who are returned from foreign countries to the United States by the Department of State due to war, threat of war, civil disorder, or natural disaster to request advance approval from the Administration of Children and Families to incur expenses for planning receptions for such groups, for implementing such plans. This action is necessary in order for the Department to control the limited funding available for such activities.

Timetable:

Action	Date	FR Cite
NPRM	08/19/94	59 FR 42795
NPRM Comment Period End	10/18/94	
Final Action	08/00/95	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: David B. Smith, Director, Division of State Legalization and, Repatriation, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9255

RIN: 0970–AB45

1687. • REDUCTION OF REPORTING REQUIREMENTS FOR THE STATE SYSTEMS ADVANCE PLANNING DOCUMENT (APD) PROCESS

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 95.600

Legal Deadline: None

Abstract: These proposed rules will decrease the reporting burden on States and increase their flexibility within the State systems APD process by increasing the threshold under which APDs and related procurement documents need not be submitted for Federal approval. Additionally, States will no longer be required to submit biennial security plans for Federal review and approval.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Undetermined

Government Levels Affected: None

Procurement: This is a procurement-related action for which there is a statutory requirement. There is no paperwork burden associated with this action.

Agency Contact: Bill Davis, Management Analyst, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-6404

RIN: 0970–AB46

1688. • BLOCK GRANT PROGRAMS (LOW INCOME HOME ENERGY ASSISTANCE PROGRAM —LIHEAP)—FY 1995 AND FY 1996 PROVISIONS

Legal Authority: 42 USC 8621

CFR Citation: 45 CFR 96

Legal Deadline: None

Abstract: This Notice of Proposed Rulemaking will amend the DHHS block grant regulations to implement changes to the Low Income Home Energy Assistance Program (LIHEAP) statute which were made by the Human Services Amendments of 1994 (Pub. L. 103-252). Several of the provisions in the new law are self-implementing, but a few require implementing regulations. The major provisions requiring implementing regulations are: -- Inclusion of new Assurance 16, to require grantees to submit as a part of their annual application a description of their annual application a description of their "self-sufficiency" activities and to submit a report to DHHS on the effect of these activities; -- Inclusjon of allowable uses of DOE rules for weatherization services provided with LIHEAP funds; -- Inclusion for requirements for submission of data on households served. In addition, other related amendments to the regulations will be included, concerning the following issues: -- Consideration of different weighting of factors under the allocation formula for the leveraging incentive program; -- Hearing requirements for adult disallowances; -- Allotments for territories; and, -- Standards for reviewing grantee interpretations of -- statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: State, Tribal

Agency Contact: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9351

RIN: 0970–AB47

HHS—ACF

Proposed Rule Stage

1689. • AUTOMOBILE RESOURCE LIMIT

Regulatory Plan: This entry is Seq. No. 62 in Part II of this issue of the Federal Register.

RIN: 0970–AB48

1690. • ADMINISTRATIVE FLEXIBILITY RULE

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 205.31

Legal Deadline: None

Abstract: This proposed rule adds a new section 205.31 which will provide a simple administrative process for requesting waivers of certain AFDC regulatory provisions. Such waivers will give States more flexibility to devise procedures for the effective and efficient administration of their AFDC programs. The major provisions for which waivers will be granted are: (1) the requirements for prospective budgeting of income; (2) the time period for calculating the total amount of overpayment and the determination of when the initial overpayment begins; and (3) other provisions on various disregards and self-employment earnings.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Mack Storrs, Director, Division of AFDC Program, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9289

RIN: 0970–AB49

1691. • HEAD START INITIATIVE ON FAMILIES WITH INFANTS AND TODDLERS

Regulatory Plan: This entry is Seq. No. 63 in Part II of this issue of the Federal Register.

RIN: 0970–AB50

1692. • FLEXIBILITY IN THE UTILIZATION OF INFORMATION OBTAINED THROUGH THE INCOME ELIGIBILITY VERIFICATION SYSTEM

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 205.55; 45 CFR 205.56; 45 CFR 205.60; 45 CFR 205.62

Legal Deadline: None

Abstract: States will be given the flexibility to eliminate certain data matches and/or to selectively match only certain categories of recipients or applicants. In addition, States can also adjust the timeframes for follow-up of match "hits". States must demonstrate that their proposed changes will result in a more efficient and cost effective matching operation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Mack Storrs, Director, Division of AFDC Program, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9289

RIN: 0970–AB51

1693. • DESIGNATION OF ALTERNATIVE AGENCY TO SERVE INDIAN TRIBAL CHILDREN

Legal Authority: 42 USC 9801

CFR Citation: 45 CFR 1302

Legal Deadline: None

Abstract: This NPRM will specify a process by which an Indian tribe may identify and establish an alternative agency to provide Head Start Services if the agency previously serves the tribe is terminated.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Organizations

Government Levels Affected: Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, 370 L'Enfant Promenade SW., Washington, DC 20013, 202 205-8569

RIN: 0970–AB52

1694. • INCOME ELIGIBILITY CRITERIA FOR INDIAN TRIBES

Legal Authority: 45 USC 9801

CFR Citation: 45 CFR 1305

Legal Deadline: None

Abstract: This NPRM will revise the income eligibility criteria used in enrolling Head Start children and families to allow Indian tribes, in certain situations, to enroll more children whose families do not meet Head Start's income criteria than would otherwise be possible.

Timetable:

Action	Date	FR Cite
NPRM	01/00/95	

Small Entities Affected: Organizations

Government Levels Affected: Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8569

RIN: 0970–AB53

1695. • CONSTRUCTION OF HEAD START FACILITIES

Legal Authority: 42 USC 9801

CFR Citation: 45 CFR 1309

Legal Deadline: None

Abstract: This NPRM will establish procedures to be used by Head Start agencies in requesting to use Head start grant funds to construct or renovate a Head Start facility.

Timetable:

Action	Date	FR Cite
NPRM	03/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box

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Proposed Rule Stage

1182, Washington, DC 20013, 202 205-8569

PIN: 0970–AB54

1696. • QUALITY STANDARDS FOR HEAD START PROGRAMS

Legal Authority: 42 USC 9801

CFR Citation: 45 CFR 1301; 45 CFR 1304; 45 CFR 1309

Legal Deadline: NPRM, Statutory, May 18, 1995.
Legal deadline only pertains to performance standards.

Abstract: The NPRM will establish performance standards with respect to services provided by Head Start Programs including health, education, parent involvement, nutritional, social and transitional services, administrative and financial management standards and standards relating to the condition and location of facilities used to carry out Head Start activities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8569

RIN: 0970–AB55

1697. • HEAD START FELLOWSHIPS PROGRAM

Legal Authority: 42 USC 9801

CFR Citation: 45 CFR 1311

Legal Deadline: None

Abstract: This NPRM will establish the policies and procedures to be used in selecting individuals to be part of the Head Start Fellowship Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8569

RIN: 0970–AB56

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Administration for Children and Families (ACF)

Final Rule Stage

1698. AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; EXTENSION OF MEDICAID ELIGIBILITY WHEN SUPPORT COLLECTIONS RESULT IN *TERMINATION OF AFDC ELIGIBILITY*

Legal Authority: 42 USC 606; 42 USC 1302; PL 98-378, Sec 20; PL 100-485, Sec 303(e)

CFR Citation: 42 CFR 435; 42 CFR 436; 45 CFR 233

Legal Deadline: None

Abstract: This final rule, which implements section 20 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), specifies that in any case where the collection or increased collection of support under title IV-D of the Social Security Act contributes in whole or part to a family's ineligibility for AFDC, the family is deemed, but only for the purpose of Medicaid eligibility, to be receiving AFDC for a period of four calendar months after the last month of AFDC eligibility. This applies only to families who receive AFDC in three of the six months immediately preceding the month of ineligibility. "Received" includes those individuals denied an AFDC payment solely because of a payment under $10, the recoupment of an overpayment, or because the payment is determined to be zero as a result of rounding.

Timetable:

Action	Date	FR Cite
NPRM	11/27/92	57 FR 56294
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Mack A. Storrs, Director, Division of AFDC Program, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9289

RIN: 0970–AA07

1699. BLOCK GRANT PROGRAMS (LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM —LIHEAP) FY 91 AND FY 92 PROVISIONS

Legal Authority: 42 USC 8621 et seq

CFR Citation: 45 CFR 96

Legal Deadline: None

Abstract: This final rule amends the Department's regulations governing the administration of block grant programs; this rule applies to the Low-Income Home Energy Assistance Program (LIHEAP). The rule revises provisions included in an interim final rule published 01/16/92, that amended the block grant regulations and implemented changes to the LIHEAP statute which were made by the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101-501). These changes involve the Department's response to formal complaints, a reduction in the percent of LIHEAP funds that grantees may carry forward from one fiscal year to the next, waiver authority to increase the percent of LIHEAP funds that grantees may use for weatherization from 15% to 25%, a requirement for additional outreach and intake services under certain circumstances, and a new leveraging incentive program. This final rule also makes several related, largely technical amendments to the block grant regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/92	57 FR 1960
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9351

RIN: 0970–AB15

HHS—ACF

Final Rule Stage

1700. BLOCK GRANT PROGRAMS (LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM—LIHEAP)—FY 93 AND FY 94 PROVISIONS

Legal Authority: 42 USC 8621 et seq

CFR Citation: 45 CFR 96

Legal Deadline: None

Abstract: The final rule will amend the DHHS block grant regulations to implement changes to the Low Income Home Energy Assistance Program (LIHEAP) statute which were made by the Augustus F. Hawkins Services Reauthorization Act (HRSA) of 1990 (Pub. L. 101-501) and language in the fiscal year 1993 appropriations statute (Pub. L. 102-394) that will affect grantee administration of the LIHEAP program in fiscal years 1993 and 1994. The major changes effective FY 93 and FY 94 is: -- Ending of authority to transfer LIHEAP funds to other block grant programs. This rule also contains proposed requirements for an application completion date in order for Indian tribes and tribal organizations to receive Community Service Block Grant program funds. The rule includes certain submission and completion dates for States applying for Community Services, Social Services and LIHEAP block grant funds to cover requirements under the Cash Management Improvement Act of 1990, P.L. 101-453. Finally, this final rule includes changes proposed

Timetable:

Action	Date	FR Cite
NPRM	11/16/93	58 FR 60498
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9351

RIN: 0970–AB16

1701. FAMILY VIOLENCE PREVENTION AND SERVICES

Legal Authority: 42 USC 10407

CFR Citation: 45 CFR 1370

Legal Deadline: NPRM, Statutory, August 26, 1992. Final, Statutory, September 25, 1992.

Abstract: Would implement the requirements under the Family Violence Prevention and Services Act which provides various grants related to domestic violence.

Timetable:

Action	Date	FR Cite
NPRM	12/10/93	58 FR 64920
Final Action	01/00/95	

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-2333

RIN: 0970–AB18

1702. CHILD ABUSE AND NEGLECT STATE GRANT PROGRAM

Legal Authority: 42 USC 5101

CFR Citation: 45 CFR 1340

Legal Deadline: None

Abstract: The primary purpose of this NPRM will be to propose revisions to existing regulations at 45 CFR 1340 in order to implement recent amendments to the Child Abuse Prevention and Treatment Act with respect to confidentiality requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/18/94	59 FR 26046
Final Action	03/00/95	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: David W. Lloyd, Director, National Center on Child Abuse and Neglect, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8586

RIN: 0970–AB23

1703. STATE LEGALIZATION IMPACT ASSISTANCE GRANT

Legal Authority: PL 99-603; PL 102-394

CFR Citation: 45 CFR 402

Legal Deadline: None

Abstract: This rule amends the SLIAG regulations to implement the amendment to IRCA that directs the Secretary to reallocate any SLIAG funds not expended by States by December 30, 1994 to States which had expended their entire allocations, based on each State's percentage share of total unreimbursed legalization alien costs in all States. The reallocated funds will be available until June 30, 1995.

Timetable:

Action	Date	FR Cite
NPRM	05/31/94	59 FR 28038
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: State

Agency Contact: David B. Smith, Director, Division of State Legalization and Repatriation, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-9255

RIN: 0970–AB28

1704. CHILD CARE—REVISED REGULATIONS

Legal Authority: 42 USC 1302

CFR Citation: Not yet determined

Legal Deadline: None

Abstract: The Administration for Children and Families will amend existing regulations which govern the administration of child care programs under Title IV-A of the Social Security Act (AFDC Child Care, Transitional Child Care, At-Risk Child Care) and the Child Care and Development Block Grant. Based on recent legislative changes, as well as comments from state and tribal program administrators, child care advocates and other interested parties, we are examining a number of specific regulatory provisions. The purpose of this regulatory package will be to implement legislative changes, reduce program differences, and promote better program coordination. We do not expect these changes to result in significant program costs; administrative savings may result.

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HHS—ACF — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	05/11/94	59 FR 24510
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: Undetermined

Agency Contact: Olivia M. Golden, Commissioner, Administration on, Children, Youth and Families, Department of Health and Human Services, Administration for Children and Families, P.O. Box 1182, Washington, DC 20013, 202 205-8572

RIN: 0970–AB33

1705. STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEM

Legal Authority: PL 103-66

CFR Citation: 45 CFR 1355; 45 CFR 1356

Legal Deadline: None

Abstract: These interim final rules implement section 13713 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 signed by the President on August 10, 1993.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/93	58 FR 87939
Final Action	12/00/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Naomi B. Marr, Director, Office of Information Systems Mgmt, Department of Health and Human Services, Administration for Children and Families, 300 E Hubert Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201, 202 401-6960

RIN: 0970–AB38

1706. CHILD SUPPORT ENFORCEMENT PROGRAM: PATERNITY ESTABLISHMENT AND REVISION OF CHILD SUPPORT ENFORCEMENT PROGRAM AND AUDIT REGULATIONS

Legal Authority: 42 USC 663(h); 42 USC 604(d); 42 USC 652(a)(1); 42 USC 652(a)(4)

CFR Citation: 45 CFR 301; 45 CFR 302; 45 CFR 303; 45 CFR 305

Legal Deadline: Other, Statutory, October 1, 1993.
Statutory effective date; the law allows for a later effective date in States needing to enact State laws.

Abstract: This final rule contains provisions regarding both paternity establishment and the audit. The paternity establishment provisions which implement the requirements of section 13721 of the Omnibus Budget Reconciliation Act of 1993 (OBRA'93) require States to adopt a variety of procedures designed to streamline the paternity establishment process. These include the use of default orders, a presumption of paternity based on genetic test results, conditions for admission of genetic test results as evidence, and expedited decision-making process for paternity cases in which title IV-D services are being provided. In addition, this final regulation amends regulations governing the audit of State Child Support Enforcement (IV-D) programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV-D of the Act. This regulation specifies how audits will evaluate State compliance with the requirements set forth in title IV-D of the Act and Federal regulations, including requirements resulting from the Family Support Act

Timetable:

Action	Date	FR Cite
NPRM	11/29/93	58 FR 62599
Final Action	10/00/94	

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Additional Information: This regulation includes RIN 0970-AA74 which is hereby withdrawn.

Agency Contact: Marianne Upton, Branch Chief, Policy Division, Office of Child Support Enforcement, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, 202 401-5373

RIN: 0970–AB40

1707. REFUGEE RESETTLEMENT PROGRAM: MISCELLANEOUS CHANGES

Legal Authority: 8 USC 1522

CFR Citation: 45 CFR 400

Legal Deadline: None

Abstract: We are proposing to make miscellaneous changes to existing regulations at 45 CFR Part 400.

Timetable:

Action	Date	FR Cite
NPRM	08/12/94	59 FR 41417
Interim Final Rule	08/00/95	

Small Entities Affected: None

Government Levels Affected: State, Local

Agency Contact: Toyo A. Biddle, Deputy Director, Division of Policy Analysis, Department of Health and Human Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, D.D. 20447, 202 401-9250

RIN: 0970–AB42

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Administration for Children and Families (ACF) — **Completed Actions**

1708. REVISIONS OF CHILD SUPPORT ENFORCEMENT PROGRAM AND AUDIT REGULATIONS

CFR Citation: 45 CFR 301; 45 CFR 305

Completed:

Reason	Date	FR Cite
Withdrawn - Combined With RIN 0970-AB40	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Lourdes Henry, 202 401-5440

RIN: 0970–AA74

HHS—ACF — **Completed Actions**

1709. HEAD START PERFORMANCE STANDARDS FOR INFANTS, TODDLERS, AND PREGNANT WOMEN

CFR Citation: 45 CFR 1307

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/94	

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: Douglas Klafehn, 202 205-8569

RIN: 0970–AB04

1710. TECHNICAL CHANGES TO THE AFDC PROGRAM AS REQUIRED BY OBRA 90

CFR Citation: 45 CFR 205; 45 CFR 233

Completed:

Reason	Date	FR Cite
Final Action	05/19/94	59 FR 26141

Small Entities Affected: None

Government Levels Affected: State, Local, Federal

Agency Contact: Mack A. Storrs, 202 401-9289

RIN: 0970–AB14

1711. AUTOMATIC DATA PROCESSING EQUIPMENT AND SERVICES; CONDITIONS FOR FEDERAL FINANCIAL PARTICIPATION AND GENERAL ADMINISTRATION - PUBLIC ASSISTANCE PROGRAMS

CFR Citation: 45 CFR 95; 45 CFR 205

Completed:

Reason	Date	FR Cite
Final Action	06/15/94	59 FR 30707

Small Entities Affected: None

Government Levels Affected: None

Agency Contact: William Davis, 202 401-6404

RIN: 0970–AB39

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
Administration on Aging (AOA) — **Proposed Rule Stage**

1712. GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING, INTRASTATE FUNDING FORMULAS; TRAINING, RESEARCH AND DISCRETIONARY PROGRAMS; VULNERABLE ELDER RIGHTS; AND GRANTS TO INDIANS & NATIVE HAWAIIANS

Legal Authority: PL 102-375, sec 202(a)(10); PL 102-375, sec 202(a)(14); PL 102-375, sec 305(a); PL 102-375, sec 305(a)(1); PL 102-375, sec 305(a)(c); PL 102-375, sec 305(a)(2); PL 102-375, sec 305(a)(2)(D); PL 102-375, sec 305(a)(1)(E); PL 102-375, sec 305(a)(2)(E); PL 102-375, secs 305(d)(1) to 305(d)(4); PL 102-375, sec 305(a)(A)(i); PL 102-375, sec 306(a)(6)(O)(i); PL 102-375, sec 306(a)(13); PL 102-375, sec 307(a)(1); PL 102-375, sec 307(a)(C)(i); ...

CFR Citation: 45 CFR 1321; 45 CFR 1324; 45 CFR 1326; 45 CFR 1327; 45 CFR 1328

Legal Deadline: NPRM, Statutory, April 1, 1993. Final, Statutory, June 1, 1993.

Abstract: The Administration on Aging (AoA) is proposing to revise the current rules governing State agencies, area agencies on aging, Indian tribes, organizations serving older individuals who are Hawaiian Natives, and service providers providing services and advocating on behalf of older individuals who are eligible for supportive and nutrition services under the Older Americans Act of 1965, as amended.

The purpose of these revisions is to provide a structure for the operation of the Act's Title VII program for vulnerable elder rights protection activities under a new 45 CFR part 1327 of these regulations; establish competitive guidelines and procedures for the making of Title IV grants and contracts, under a new 45 CFR part 1324 of these regulations; and clarify new program and policy directions in the development of intrastate funding formulas, as well as past omissions, under 45 CFR parts 1321, 1326, and 1328 of these current regulations. We believe that these additions and revisions will assist State agencies, area agencies on aging, Indian tribes, organizations serving older individuals who are Hawaiian Natives, and service (cont)

Timetable:

Balance of OAA Amendments
NPRM 11/00/94
Elder Rights Protection
NPRM 10/00/94
Intrastate Funding Formulas
NPRM 03/17/94 (59 FR 12728)
NPRM Comment Period End 05/16/94
Final Action 10/00/94

Small Entities Affected: Organizations

Government Levels Affected: State, Tribal

Additional Information: ABSTRACT CONT: providers in the development and provision of community-based services.

Agency Contact: William F. Benson, Deputy Assistant Secretary for Aging, Department of Health and Human Services, Administration on Aging, 330 Independence Avenue SW., Room 4760, Cohen Bldg., Washington, DC 20201, 202 619-0556

RIN: 0985–AA00

[FR Doc. 94-23418 Filed 11-10-94; 8:45 am]
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